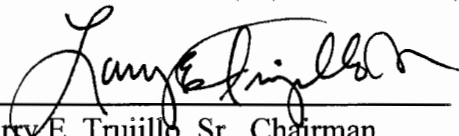


**MINUTES OF SPECIAL MEETING
OF THE
ARKANSAS RIVER COMPACT ADMINISTRATION
FRIDAY, JANUARY 26, 1996**

VIA
TELEPHONIC CONFERENCE CALL
FRIDAY, JANUARY 26, 1996
AT 2:00 P.M. MST (3:00 P.M. CST)

[Transcript of Recorded Conference Call]

The following transcript is the official minutes of the Arkansas River Compact Administration's January 26, 1996 Special Meeting, as signified by the signature of the Chairman of the Administration, pursuant to Administration approval given on 12/6/96 at telephonic (phone)
(date) (meeting)



Larry E. Trujillo, Sr., Chairman
Arkansas River Compact Administration

Commencing at approximately 2:10 P.M. MST, January 26, 1996.

Operator: Thank you for standing by, everyone. We're now in conference with Mr. Lile. At this time, I would like to conduct a brief roll call to ensure line quality. Please respond with your present location when I call your name. Don Higbee?

Higbee: Present.

Operator: Thank you. David Pope?

Pope: Yes, present.

Operator: Steve Witte?

Witte: Present.

Operator: Thank you. Mark Rude?

Rude: Present.

Operator: Thank you. Dick Kreiner?

Kreiner: Present.

Operator: Thank you. Tom Gibbens?

Gibbens: Present.

Operator: Thank you. Thelma Lujan?

Lujan: Present.

Operator: Thank you. Carl Genova?

Genova: Present.

Operator: And we have just added Brent Spronk. And if you do disconnect from this call at any time during this conference, please dial 1-800-669-7054. Once again that number is 1-800-669-7054, and as a reminder, this conference is being recorded today. Just go ahead.

Pope: Brent isn't here yet?

Miller: Brent didn't read the notice close enough, so he's taking the call at his office in a few minutes.

Pope: OK.

Miller: Let me ask, ah, some of the ... at the Don Higbee site ... is Jim Rogers there?

Higbee: Yes, he is.

Miller: And at the Pueblo site, Steve Witte's office, is Larry Trujillo there?

Trujillo: Yes, I am.

Miller: OK.

Pope: This is David Pope. We have a question, too. I didn't hear John Draper's name mentioned. Is he on the line?

Miller: I don't believe he was listed as a site. Do you want him on the line?

Pope: Yes, I thought ... not listed as a site for conference, but listed on the telephone call.

Miller: Well, we did not make that arrangement.

Pope: Oh, I'm sorry. Is there a way, if we get the number right away, operator, to hook him in?

Montgomery: I think he's gone, David.

Miller: I can do it ... tell me what number to use for Draper, and we'll make that tie-in as quick as we can.

Pope: Let me look and see if I can ...

Montgomery: David, I've got his number.

Pope: Do you have his number? OK.

Montgomery: In Santa Fe?

Pope: If we can ... one of us can try to tie him in just through our regular phone capacity.

Operator: Pardon me, this is the conference operator. Do you wish to add another participant?

Miller: Yes.

Operator: May I have his name please?

Miller: John Draper.

Operator: Tom Draper.

Montgomery: John.

Operator: Oh, Don Draper. One moment.

Montgomery: It is John, J-O-H-N, Draper, and the number is area code 505, 986-2525.

Operator: OK, the name is John Draper, at area code 505, 986-2525?

Montgomery: Correct.

Operator: OK. I will dial out to him and add him to your conference.

(Pause while Mr. Draper being added to conference call.)

Miller: I guess while we're waiting here, can we find out ... Thelma?

Lujan: Yes?

Miller: How many people do you have there in your office?

Lujan: Six.

Miller: Are they all Board members?

Lujan: I have three Board members; (and) Danny Marques, with the Division of Water Resources; James Fernandez, City of Trinidad; William Cordova, City of Trinidad; and Russ Pallone of Colorado State Parks.

Miller: Just for your information, Thelma, Sandy's up here ... Sandy MacDougall.

Lujan: OK.

Miller: Paul Flack is here, from Parks, listening here, and so's Jim Townsend, from the Corps in Pueblo.

Kreiner: Steve, while we're waiting, I might as well introduce who's on at this end. This is Dick Kreiner, with the Corps of Engineers in Albuquerque, we have our District Engineer, Steve Wagner; Jim White, chief of planning; myself; and Tom Ryan, from the reservoir control section.

Lile: Why don't we ... it would probably be a good idea to go around to each site and do that while we're waiting.

Operator: Pardon me, I'm adding John Draper to conference.

Draper: Hello.

Pope: Hello. Do we have Brent Spronk yet?

Book: We have Dale Book sitting in for Brent until he returns to the office.

Lile: This is Chuck Lile at the Denver location, we'll go around again of who's here ... we have myself, Chuck Lile, we have Steve ... excuse me, Steve Miller, Dennis Montgomery, Hal Simpson, Wendy Weiss, Sandy MacDougall, Jim Townsend and Paul Flack. We would like to have each site ... know one thing, that the operator is recording this call ... and the last time we had a meeting, somehow we lost that recording, it never came through from the phone company...we would like to turn on a tape recorder too, as a back up. Anybody have any objection to that? Hearing none, I will do that, and then I will ask that perhaps each group go around and introduce themselves, and then we'll have the chairman of the commission take over the meeting.

Trujillo: Here in the Pueblo office, Larry Trujillo,

Kastner: Steve Kastner

Driscoll: Tom Driscoll

Shipley: Tom Shipley

Witte: Steve Witte

Simpson: Tom Simpson

Kepler: Keith Kepler

Flory: Joe Flory

Trujillo: Chuck.

Lile: Yes.

Trujillo: Do we have Mr. Rogers and Mr. Genova on line someplace?

Genova: This is Carl Genova.

Trujillo: Ok, how about Mr. Rogers?

Rogers: This is Jim Rogers at Lamar.

Trujillo: Mr. Pope, I know you're on the line. What about Mr. Buerkle and Mr. Overton?

Buerkle: This is Bob Buerkle, I'm on the line.

Trujillo: Mr. Overton, is he present?

Pope: He could not make it today.

Trujillo: OK. And ...

Pope: Mr. Chairman.

Trujillo: Yes.

Pope: I'm sorry, I didn't mean to interrupt, I was just trying to introduce who's here in Topeka in my office.

Trujillo: Fine, that's good.

Pope: Of course, my name is David Pope, here in the office with me is Don Pitts from the Kansas Attorney General's Office; Leland Rolfs, an attorney here in my office; and also Bob Lytle, here with the Kansas Division of Water Resources.

Trujillo: OK, is everyone introduced?

Rude: I might introduce those out here in Garden City.

Trujillo: Good. Why don't you do that, please.

Rude: OK, this is Mark Rude, and in my office here we have Bob Buerkle, of course; we have Tim Unruh with the Garden City Telegram; Dave Brenn with the Garden City

Company; Larry Gennette on my staff; Al Knoll; Ervin Ploeger with the Amazon Ditch; Henry Gillan, representing the Associated Ditches in Kansas; Kevin Salter on my staff; and that's it.

Higbee: Mr. Chairman.

Trujillo: Yes.

Higbee: This is Don Higbee in Lamar. We have a happy crowd here of eight people: James Amos with the Pueblo Chieftain; myself, Don Higbee; Jim Rogers; Wendy Shinn; Colin Thompson, with Amity; Bill Howland with the Division of Water Resources; and Don Taylor with the Division of Water Resources.

Trujillo: OK, thank you, anybody else that has not been introduced?

Gibbens: This is Tom Gibbens with the Bureau of Reclamation in Loveland.

Trujillo: Yes sir.

Gibbens: I have two other people, all Bureau of Reclamation personnel, Malcomb Wilson, water resources planning engineer; and Julie Swanda, contract specialist.

Trujillo: OK, thank you. Anybody else that has not introduced themselves?

Lujan: Mr. Chairman, Thelma Lujan in Trinidad, do you want me to repeat the attendees here?

Trujillo: Why don't you go ahead, Thelma, in case that wasn't recorded the first time.

Lujan: OK, I have Eugene Aiello, chairman of the Board; Erma Evans, a Board member; Danny Marques, State of Colorado Division of Water Resources; James Fernandez, City of Trinidad; William Cordova, City of Trinidad; and Russ Pallone, Colorado State Parks.

Trujillo: Thank you very much Ms. Lujan. Anybody else?

Spronk: Chairman Trujillo, this is Brent Spronk.

Trujillo: Yes, go ahead.

Spronk: I'm here by my office now.

Trujillo: OK. Thank you. Anybody else that has not been introduced for the record?

Draper: Mr. Chairman, this is John Draper.

Trujillo: Yes.

Draper: I'm at my office in Santa Fe.

Trujillo: OK, thank you Mr. Draper. Anyone else who has not been introduced? I guess, with that we'll call this meeting to order, the meeting of the Arkansas River Compact Administration. It is my understanding, Mr. Pope and Mr Lile, that there are two items that we will address today as shown on the agenda [Copy attached as Exhibit A] that was sent out. One, a request to amend the operating principles for the Trinidad Project, to recognize the enlarged permanent pool, and second, the Colorado request to establish a special account in John Martin Reservoir to store water to offset depletions to useable Stateline flows caused by post-compact well pumping in Colorado. Is that correct?

Lile: Yes.

Pope: Yes, that's my understanding as well.

Trujillo: OK, then why don't we ... is there any other business that any other member of the Compact anticipates bringing up besides those two items? If not, we'll proceed to item number one, Mr. Pope ... or Mr. Lile, would you proceed with the Trinidad Project.

Lile: We have received ...

Trujillo: Please identify yourself when you speak.

Lile: This is Chuck Lile ...

Trujillo: For the record also, please. Go ahead Chuck.

Lile: We have received the Kansas proposal [Copy attached as Exhibit B] in response to our proposal [Copy attached as Exhibit C] on the Trinidad Operating Principles. I believe we have a few minor comments we would like to make on that, but we would like to ask Wendy Weiss to raise those issues if we could at this time.

Trujillo: Wendy, why don't you go ahead now.

Weiss: Thank you. Can you hear me?

Pope: Yes.

Weiss: Really, the one question we had, and I would also appreciate hearing from the Corps on this, is on your addition to attachment A, paragraph 5: "there shall never be any release or transfer of water from the permanent fishery pool". We were concerned that there should perhaps be an exception for a dam safety emergency situation that might warrant that.

Trujillo: Mr. Pope.

Pope: Yes, Wendy, this is David Pope. We were certainly not intending to hamper emergency operations related to safety of dams. Our presumption and this perhaps needs to be clarified, was that there was other authority or language somewhere that would allow the Corps of Engineers to perform that function. If that needs to be clarified, perhaps that's an issue we need to discuss, and I would also like to hear from the Corps, if that's an appropriate concern of theirs.

Trujillo: Does the Corps want to respond to that, please?

Wagner: This is Lt. Colonel Steve Wagner, yeah, we would need to reserve the right to operate the flood operations regardless of what this is ... we would want to maintain that capability.

Trujillo: OK, Wendy.

Weiss: Could we just propose some language, say to add "except for dam safety emergency situations", or if the Corps has some other language that you would suggest that would cover it.

Spronk: Excuse me, Wendy, could you point out to me where that provision already exists for other accounts in the reservoir. Perhaps it should be broader than just for this one.

Weiss: Is there anything in any of the other accounts that have language that says that there shall never be any release or transfer? That's my only concern, is that "never" is very mandatory sounding ...

Trujillo: Is there any language, Mr. Pope, or any ideas that you propose to add to do that?

Pope: Well, again, I think we can try to craft a solution to this ... in ... under the existing principles I don't believe it also allows a specific language related to that by the Corps of Engineers, so again our presumption was that in the overall authorization to operate the project, that issue would have been dealt with. If, as I think it was Brent that said a minute ago, it would seem to be an issue irrespective of what account we're talking about here. I certainly understand, Wendy, that this is very explicit language in terms of this particular account.

Trujillo: I guess my question would be to the Corps of Engineers, if that kind of language is not included in exhibit A, is there language elsewhere that would cover it, and of course the concern with the word "never" also exists.

Wagner: This is Steve Wagner again. I believe this is a unique case, where the word "never" is used in that way. I think that if you were to add the following language at the end of the sentence, so that this would read as follows: "there shall never be any release or transfer of water from the permanent fishery pool excepting by necessity of dam safety or flood emergency operations." That caveat would then allow us to operate, and addresses the concerns that we would have.

Trujillo: Do you see any problem or objections to that, Mr. Pope?

Pope: I don't think so, but lets ... can we ... can we have the language read one more time?

Wagner: The original language would stand as is: "there shall never be any release or transfer of water from the permanent fishery pool" at that point you would add "excepting by necessity of dam safety or, flood emergency operations."

Spronk: Excuse me, this is Brent Spronk, can we add "as determined by the Corps or the District Engineer"?

Wagner: Ah ... "as determined by the District Engineer".

Trujillo: Who was the last person that spoke?

Wagner: It was Steve Wagner.

Trujillo: Thank you.

Lile: That's acceptable, in our opinion. This is Chuck Lile.

Trujillo: Mr. Pope.

Pope: Let me ask if there are others in the Kansas delegation that have comments or concerns on the proposed language.

Trujillo: OK.

Rolfs: This is Lee Rolfs. I have a question for the Corps. How would the fishery pool be involved in flood control operations, or how could it be?

Wagner: We'll let Dick address that.

Kreiner: This is Dick Kreiner. Normally it would not ... but just to leave us all options in emergency situations, it was stated in that way.

Rolfs: This is Lee Rolfs. I can see how, if for instance, the dam were about to fail ... all pools might have to be emptied, but I was just having trouble visualizing how it could be involved in the flood control operations.

Kreiner: I couldn't give you a situation just right off the top of my head ... this is Dick Kreiner again.

Pope: Dick, this is David Pope.

Trujillo: Go ahead, Mr. Pope.

Pope: It wouldn't, really ... the dam safety provision provide whatever latitude was needed? Maybe we're being too particular here, but ...

Kreiner: It probably would. The only case that I could see is this ... if we could forecast that we were going to get enough inflow from a severe rain ... rainfall storm event and we had an opportunity to pre-evacuate that, that would be the only scenario I think that we could use that authority. It's pretty hard to predict that, though, I might add.

Pope: Yeah.

Trujillo: Any other questions Mr. Pope?

Pope: Unless there's someone else in the Kansas delegation, I think we can probably live with the language. It may go a little further than what's necessary, but I think we can live with it.

Trujillo: OK, would someone make a motion to amend paragraph 5. We have the language ... delete the period after the word "pool" and add the language that was given by the Corps?

Lile: This is Chuck Lile, and let me first ask if the other Compact Administration members have any objections to that language in Colorado?

Genova: This is Carl Genova. I have no objections.

Rogers: This is Jim Rogers, I have no objections.

Lile: OK, consequently, Colorado would move that we make the amendment as proposed.

Trujillo: Do I hear a second to that amendment?

Genova: Carl Genova. I'll second it.

Trujillo: OK, are there any objections? There being none, that amendment is adopted. Any other questions regarding the resolution.

Spronk: For the record, could you read back that amendment one last time please?

Trujillo: Wagner, would you please read back that amendment?

Wagner: OK. Steve Wagner. It would now read "there shall never be any release or transfer of water from the permanent fishery pool excepting by necessity of dam safety, flood emergency operation" ... oh, excuse me, "as determined by the Corps of Engineers, District Engineer."

Rolfs: This is Lee Rolfs. That's not the way we had it ... the way we had it was "excepting by necessity of dam safety or emergency...or flood emergency operations as determined by the District Engineer."

Wagner: This is Steve Wagner. That's correct.

Trujillo: OK.

Wagner: The Corps of Engineers ... it should read "the Corps of Engineers, District Engineer."

Trujillo: "The Corp of Engineers", comma, "District Engineer", period.

Wagner: Correct.

Trujillo: OK. Mr. Lile or Mr. Pope, any other questions? Mr. Pope.

Pope: No.

Trujillo: OK then. Anything else on the resolution? If not, the chair would then entertain a motion to adopt the resolution.

Gibbens: This is Tom Gibbens with the Bureau of Reclamation.

Trujillo: Yes, sir.

Gibbens: I would like to comment on the paragraph under 4 of exhibit A.

Trujillo: OK, sir.

Gibbens: I would like to have some language substituted for the phrase “without interference to useable Stateline flows”.

Trujillo: That's in paragraph 4? Is that in the headline paragraph, sir?

Gibbens: It's in paragraph 4 in the ... about ...

Trujillo: Paragraph 4?

Gibbens: It's on the page ...

Trujillo: OK.

Gibbens: It says “without interference to useable Stateline flows” ... we would like to substitute “without depletion of the inflow to John Martin Reservoir.”

Trujillo: Hang on a minute. I haven't found that yet ...

Miller: It is referring to ... This is Steve Miller ... he's referring to the first paragraph number 4 on exhibit A ...

Trujillo: OK.

Miller: ... about two lines down.

Trujillo: Right ... OK, thank you ... Could you repeat your suggested language to go with that please?

Gibbens: We would like to strike “without interference to useable Stateline flows” and substitute “without depletion of the inflow to John Martin Reservoir.”

Trujillo: Mr. Pope or Mr. Lile, any comments on that?

Pope: This is Mr. ... this is David Pope. I ... Tom, could you explain the basis of your suggested change?

Gibbens: Well, essentially the reason we would like to see it changed is ... is because it seems like the exchange to fill the excess space is essentially an accounting procedure at the John Martin Reservoir, and we don't want it to be interpreted that there is a responsibility for the Bureau of Reclamation in review of operating principles to carry out that review clear to the Stateline.

Trujillo: Anything else, Mr Pope?

Pope: I ... not at the moment ... I guess I would like to hear other comments.

Trujillo: Any other comments on that suggestion?

Genova: This is Carl Genova. I would support Mr. Gibbens on that.

Lile: This is Chuck Lile, I have no objections to that.

Trujillo: Anyone have any objections? Do members of the Compact have any objection?

Spronk: Mr. Pope, I believe we need to probably confer ...

Trujillo: Who spoke last, please, for the record?

Spronk: Brent Spronk.

Trujillo: Thank you. Mr. Pope, would you like to take a minute?

Pope: Yes, it's always difficult to confer in this sort of a forum. I think I understand the change, but I'm not really sure that I see this as that big a problem. Let me ask whether Mr. Draper has any comment or whether this is something we may want to defer, and there may be a later point in the meeting where we need to do some conferring as well.

Draper: Yes, this is John Draper.

Trujillo: Yes sir, Mr. Draper.

Draper: I think we ... I think we do need to confer if the Bureau believes this is an essential change. It's not something that I think we're prepared to accede to on the telephone.

Trujillo: OK. Does the Bureau see this as the ... an absolutely needed change?

Gibbens: Well, I think ... you know ... we've made our comment known on the record, and we would probably use that if in some time in the future someone wanted us to carry out any review to the Stateline, we would probably advise people that we made this comment and would not intend to necessarily do that.

Trujillo: OK ... Mr. Genova, you have supported that comment ... are your feelings still that we should make that change?

Genova: Well, I would still support Mr. Gibbens as it relates to the Stateline flow.

Trujillo: Well then, Mr. Pope, how would you suggest then that we proceed on this?

Pope: Mr. Chairman, let me ... let me just ask one more question of Mr. Gibbens.

Trujillo: Sure.

Pope: If the ... this is not our position at this point, but would it help your concern if the words "without depletion to inflow of John Martin Reservoir" were simply inserted, rather than as a substitution? And given your last comment, then at least that would be noted in there as an issue.

Trujillo: Is that acceptable, sir?

Gibbens: I think it may be acceptable at the present time, with the understanding that when we finish our review of the operating principles that this particular language is also subject to review and could be changed somewhere in the near future.

Pope: I certainly would ... this is David Pope again. I think we all need to realize that these principles can be changed in the future by separate action ... there's nothing herein that either guarantees that or prevents that.

Spronk: This is Brent Spronk. Mr. Gibbens, I have a question.

Gibbens: Yes.

Spronk: Are you suggesting that depletions to the inflow at John Martin equate to useable Stateline flows?

Gibbens: No, I'm not ... what I'm saying is ... you're bringing up a good point ... is that useable Stateline flows is kind of an undefined thing out there that people don't agree on. And I think if we limited that to depletions of John Martin Reservoir, that may be still an outstanding item for discussion by people other than the Bureau of Reclamation.

Spronk: I guess ... this is Brent Spronk again ... to clarify my question ... perhaps depletions to John Martin might not encompass the whole universe of depletion to useable flows, but do you believe it is a useable flow, ah, a depletion to useable flow, or an interference with useable Stateline flows.

Lile: Mr. Chairman.

Gibbens: No, I do not.

Trujillo: Yes.

Lile: Mr. Chairman. This is Chuck Lile, and I think we have a motion here that we should just act on, we note Mr. Gibbens' objection, and his concern.

Draper: Mr. Chairman, this is John Draper.

Trujillo: Yes.

Draper: I would want to suggest to Mr. Pope that if he were going to adopt some change or consider adopting some change to the language that's presently before the Administration, that we should confer before doing that.

Trujillo: Well ...

Weiss: Excuse me, this is Wendy Weiss.

Trujillo: Yes, Wendy.

Weiss: We're not proposing a change. We are proposing to move forward ... (interference)

Trujillo: We're having some trouble with the phones ... would you repeat yourself again?

Weiss: We were proposing to move forward with the resolution as proposed by Kansas subject to the one amendment that has been made to Exhibit A. We're not proposing any change, we've noted Mr. Gibbens' concern, and we would like to proceed with the language "without interference to useable Stateline flows."

Trujillo: OK, and going back, just to refresh my memory, Mr. Lile, you said that a motion has been made, I do not recall a motion being made on the adoption ... of the resolution.

Lile: You're correct, Mr. Chairman.

Trujillo: Then we're still open for discussion, however, the chair would entertain a motion and if both members of the Compact from both states are in agreement to move forward, we will. And then the matter can be revisited at either a special meeting if we have much of an emergency, or certainly we can revisit this at our meeting in December.

Lile: Chuck Lile ... and I would like to confer on the record with the other two representatives from Colorado, Mr. Genova and Mr. Rogers. I would propose that we make a motion accepting this resolution with the one amendment that has

previously been made.

Genova: I would go along with that. This is Carl Genova.

Trujillo: Mr. Rogers.

Rogers: This is Jim Rogers, I'd go along with that.

Trujillo: Mr. Pope, would you care to confer on this?

Pope: This is David Pope, I would like to ask Bob Buerkle, if he is prepared to proceed with the resolution with the one amendment only that we've discussed, and ask also others on the line from Kansas if they have concerns about that.

Trujillo: Any questions? Concerns?

Buerkle: This is Bob Buerkle, I'll go along with the resolution with the one amendment.

Trujillo: OK, the Chairman would entertain a motion to adopt the resolution.

Lile: This is Chuck Lile.

Trujillo: Yes, sir.

Lile: And I would ... to make the record clear, I will move the Kansas proposal concerning Trinidad Reservoir, as it has been amended at this meeting, to ... I would move that the Compact commission adopt that resolution.

Trujillo: Do I hear a second?

Genova: This is Carl Genova, I will second that.

Trujillo: Do I hear any objections from any of the members of the Compact? There being none, the resolution is adopted. If there are no other questions, we will move over to item 2 of the agenda.

Miller: Chairman Trujillo.

Trujillo: Yes.

Miller: Mr. Chairman, this is Steve Miller. As to the logistics of signing this ... did ... Kansas I guess now has the word processing version that was adopted ... will they take the lead on circulating that for signature?

Pope: This is David Pope, and yes, we can do that.

Miller: OK.

Trujillo: OK, does that satisfy your question, Mr. Miller

Miller: Yes.

Trujillo: OK, everyone ready to proceed to item No 2?

Lile: Yes.

Trujillo: All right, item number 2, Mr. Pope or Mr. Lile?

Lile: Mr. Chairman, this is Chuck Lile. I would propose Colorado's initial resolution to remain as we made at the last Compact meeting on Dec. 12th, regarding a John Martin Reservoir, offset account.

Trujillo: OK. Mr. Pope.

Pope: I guess I ...

Trujillo: Well let me make some clarifying statements, OK. What we've got before us, or what I understand that Mr. Lile is wanting to proceed with is the proposal that we heard December 12th, and I do not have minutes presently, but if my memory serves me correctly, if I'm wrong, please someone out there correct me, two were voted upon ... and both resolutions were voted upon ... both defeated, and we were to take up new resolutions, or a resolution, but hopefully, resolutions that you folks would have discussed, for both states at this meeting. Where are we at on that subject?

Pope: Mr. Chairman, this is David Pope, I think your recollection is correct. Action was taken at the last Compact meeting on each of the proposals, one by Colorado and one by Kansas. Since that time Colorado sent out, I think, the same version, or with minor changes, to the one that was considered at the time of the meeting. Kansas has reviewed that in some depth, we have prepared an alternative resolution that essentially melds many of the provisions together from both the original Kansas resolution and the Colorado resolution. We have tried to get that out to everyone here today before the conference call. We recognize that time has been somewhat short, but did our best to try to look at this with great care, and I believe that our meeting here should recognize the fact that there are really two proposals that have been sent out for consideration. I think we're prepared to discuss, as needed, the changes that would be represented by our resolution, if that's what the chair would prefer or if Colorado has another way ... wanting to ask some questions, we can

entertain those as well.

Trujillo: OK. Mr. Lile, we have the, at least I have, the December 27, 1995 resolution [Copy attached as Exhibit D] sent out by you, Chuck, and then we have the one [Copy attached as Exhibit E] that was faxed out this morning by you, Mr. Pope.

Pope: Yes.

Trujillo: Is that correct? That's the one we're working off, Mr. Lile? December 27th?

Lile: Yes.

Trujillo: OK. Do you wish ... why don't we proceed with the Colorado ... either to discuss the two, to see if some agreement can be achieved, or discuss the Colorado resolution and either see what input Kansas has to it, to see whether or not that can be either approved or amended for approval. Why don't we start with that discussion. Mr. Lile.

Lile: I want to ask Dennis Montgomery our counsel to discuss ... to start that discussion.

Trujillo: Yes sir. Mr. McDonald (sic).

Montgomery: This is Mr. Montgomery, for the record.

Trujillo: Excuse me, I'm sorry.

Montgomery: Mr. Chairman, I don't think any useful purpose would be served by discussing the resolution again today. Particularly in light of the fact that we're on an expensive telephone conference. Mr. Lile did send out a copy of the resolution with the letter of December 27th, and requested comments from Kansas. We heard nothing back from Kansas until approximately 1 o'clock today with a counter resolution which is unacceptable to Colorado, so I don't see any reason for further discussion at this telephonic conference today.

Trujillo: OK, Mr. Montgomery, if we see no need for further discussion, that gives us two alternatives to proceed with. One, we can either take up each of the proposals separately, let them either pass or die on their own merits, or we can table this matter for further discussion by the states of Kansas and Colorado, and hopefully come up with a conclusion at a later meeting, and I would like to have some recommendation from you, as well as from Mr. Pope, and/or their attorney as to how you both wish to proceed.

Montgomery: Thank you Mr. Chairman, this is Mr. Montgomery again. I think your suggestion

would be the best. Simply to take up the Colorado resolution, vote upon that. If Kansas then wants to propose its counter-resolution, it can do that, and the Compact Administration can vote on that.

Trujillo: OK, and is there any desire on the part of Kansas to handle the matter any differently, Mr. Pope?

Pope: Ah, let me ask Mr. Draper if he has comments at this time.

Trujillo: Mr. Draper.

Draper: Yes, Mr. Chairman. I think it would be helpful to this process, in the hopes of reaching at some point an accommodation of the parties, to allow Kansas to briefly review its revised version of the resolution, so that the Administration can be aware of the position that Kansas has come to on this. And perhaps provide the basis for future negotiation between the states.

Montgomery: Mr. Chairman, this is Mr. Montgomery.

Trujillo: Yes.

Montgomery: Quite frankly, we don't think that's helpful at this time, the telephone conference is an expensive way to allow Kansas to provide its comments. Mr. Lile sent out his letter on December 27th, so if Kansas had comments it could submit those to Colorado in writing. We see no reason why if Kansas has further comments to make, it can't submit those in writing, following the telephonic conference, but don't see any reason to take up time with a telephone conference for such comments.

Trujillo: Mr. Draper, any comments?

Draper: Well, if that's the position that Colorado wants to take, there may not be any need to do that for their benefit. We'll review what the next step ought to be, if they don't care to have the State of Kansas' position at this point.

Trujillo: Well, speaking for the chair and also I'd like to hear from the members of the Compact, I would hope that there's a desire from members of both states to resolve this question. I agree that it probably cannot be done today ... in discussion at this type of a conference. But if we ... whether we table both resolutions or act on them today, I would be hopeful that at least we could agree to continue either in writing back and forth or discussing this matter by phone between the two states, to continue to work towards some resolution of this matter.

Montgomery: Mr. Chairman, this is Mr. Montgomery again.

Trujillo: Yes?

Montgomery: I think that's very useful, I just think its an extremely wasteful way to do that discussion by a telephone conference, its enormously expensive with all the people who are involved. We sent out a letter a month ago in order to have that type of discussion prior to the telephonic conference today.

Trujillo: Mr. Montgomery, I don't know if you misunderstood me ... my position is that I do not feel that we can reach a resolution based on your statements earlier by telephone conference. All I'm looking for here is, if we do proceed ... whether or not we proceed with these two resolutions, what I'm hoping ... looking forward to is that some level of discussion continue on this matter.

Montgomery: Colorado is always willing to do that.

Trujillo: What's that?

Montgomery: This is Mr. Montgomery. Colorado is always willing to discuss matters with Kansas, in particular those involving the use of John Martin Reservoir.

Trujillo: The members of the Compact, either Kansas or Colorado, Mr. Rogers, Mr. Genova, Mr. Buerkle, do you have any comments or suggestions?

Genova: This is Carl Genova, I think we should proceed as Dennis Montgomery has outlined. I have not seen the Kansas resolution, I couldn't make a judgement on it today.

Trujillo: Do you mean to tell me, sir, that this copy of the Kansas resolution, is not in the hands of every member?

Genova: I don't have it. I don't know about the others.

Trujillo: Mr. Rogers?

Rogers: Yes, I have a copy of it.

Trujillo: OK, well, I don't think ... with all due respect to Mr. Genova, I don't think we can ... we should proceed without every member of the Compact having a copy of the resolution, and certainly I don't think its beneficial or timely to read the resolution for your benefit, Mr. Genova, because unless you've got a lot more capacity of memory than I do, I don't think that would serve you well, I don't see how we can deal with the John Martin ... with the Kansas resolution without a copy in the hands of each of the members of the Compact.

Genova: Well, I couldn't make a judgement without a copy, and I do not have a copy.

Trujillo: And I appreciate that, sir. Mr. Pope, do you have any suggestions with regards to proceeding with your resolution before I go back to Mr. Lile with regard to the Colorado resolution?

Pope: Well, I regret the fact that Carl doesn't have a copy of the resolution, I guess I thought that we had tried to get it to each of the sites that were listed for the conference call and each of the individuals that we had fax numbers for, and apparently that did not ... include Carl. I assumed that you were at one of the sites, Carl.

Genova: No, I'm at my home.

Pope: All right, well I certainly understand your concerns and I wouldn't expect you to vote on something that you'd not seen. We know the time is short and certainly have no reservations if more time is needed to consider this matter and deal with it to the extent possible at some time in the future, and I'm comfortable with that ... with that position.

Trujillo: It appears ... at least it would be my position, that we cannot address the Kansas resolution ... Mr. Lile, what are your wishes with regard to the Colorado resolution?

Lile: Well, we felt we gave Kansas ample time to respond to our resolution and we would again like to see if that's acceptable to the State of Kansas.

Trujillo: OK, then why don't we put the resolution from Colorado on the table for discussion. Mr. Lile, why don't you proceed on that.

Lile: Mr. Chairman, I would like to move the resolution of the December 12th meeting that Colorado presented and further we provided to Kansas in our letter of December 27th for Compact Administration consideration.

Trujillo: OK, do I hear a second on that before we have discussion, please?

Genova: This is Carl Genova, I'll second it.

Trujillo: The motion has been made and seconded, and now we'd open it up for discussion. Mr. Lile.

Lile: We feel, as we felt at the meeting ... at the Compact Administration meeting, that our resolution is workable and we are in support of that position.

Trujillo: OK, any comments from Mr. Montgomery? Mr. Montgomery, any comments before I call on Mr. Pope?

Montgomery: None.

Trujillo: OK, Mr. Pope.

Pope: Thank you, Mr. Chairman, this is David Pope. I don't know that, as was inferred earlier by ... earlier comments by Mr. Montgomery, that it serves a lot of purpose to have a lengthy discussion on this. Unless I'm mistaken, the resolution that was transmitted out December 27th is one and the same as the resolution that we acted upon at the Compact meeting itself. Am I incorrect in that understanding?

Tape Side 2

Lile: Mr. Pope, yes, this is Chuck Lile, yes, that is correct, what you understand.

Pope: I don't know that I understand why we're needing to take a second vote on the same resolution. If Colorado wishes to do that, we're certainly prepared to do that. I don't believe the resolution is acceptable to Kansas, I certainly ... based on the conferring that we have had earlier. I hope I'm not misstating anything on behalf of Mr. Buerkle, who's also on the line. If there are further comments by Mr. Draper, I'd ask him to make those at this time.

Trujillo: Mr. Draper, any comments?

Draper: Mr. Chairman, since it does appear to be the same resolution that was taken up for a vote at the formal meeting, the annual meeting, and I would not think there's a need to take it up for a vote again at this point.

Trujillo: Any comment by any of the members of the Compact?

Buerkle: This is Bob Buerkle.

Trujillo: Yes sir.

Buerkle: I voted no on the resolution at the Compact meeting in Lamar, and I'll still vote no.

Trujillo: Well, Mr. Lile, I tend to ... is the resolution attached to your letter dated December 27th '95 identical to the one we voted on at our annual meeting in December?

Lile: Yes, Mr. Chairman, and I would just move the question, I think that would be appropriate at this time, rather than continue discussion of the issue just ... I would

just move to call for the question.

Trujillo: OK, the question is being called for. Would you please enter your vote on this matter. Mr. Pope.

Pope: Kansas votes no.

Trujillo: And, Mr. Lile.

Lile: Colorado votes yes.

Trujillo: OK, the resolution fails, and is not adopted, and I would hope that now we can at least discuss for a second or two some mechanism to continue dialogue or if not continue, at least commence the dialogue on this resolution again and try to come up to some resolution on it. And if not, I'd hate to see this thing go down to December the 9th, 1996. And certainly to some discussion between Misters Draper and Montgomery, Lile, and Pope, it would appear that we can come up with some resolution and if nothing else, at least with an agreement to disagree, and not revisit the matter until later, but I'd like to bring it to some conclusion in the near future. Any comments by Mr. Lile or Mr. Pope?

Pope: Well, Mr. Chairman, this is David Pope. I certainly appreciate your comments, and Kansas would certainly be willing to receive comments ... or at the appropriate time by Colorado on the proposed resolution that we made. I would be happy to ask that we take action on it at this time, but its already been made clear in terms of the Colorado position and I certainly understand the timing issue and the comments that Mr. Genova made about not having it. So under those circumstances I'll not take further action at this time, unless someone else on the Kansas delegation suggests we do so. But we're again open to consideration of this matter in the way in which we've suggested.

Trujillo: OK.

Draper: Mr. Chairman.

Trujillo: Yes.

Draper: This is John Draper.

Trujillo: Yes, sir.

Draper: I would add that the record should be clear here, that Kansas is proposing the form of resolution that has been received by most people, and we continue to propose that

and would encourage Colorado to take a close look at it, and if they would like to accept that or adopt it in some modified form, if they would contact the State of Kansas and provide for further discussions that might lead to a resolution.

Trujillo: OK, Mr. Draper, thank you. If someone wanted to proceed with the Kansas resolution, I would have had no problem with it, but I believe that would be impossible without Mr. Genova having a copy. However, at least as chairman of the Compact I would be more than happy to convene a meeting in the near future, given two things, I guess ... one, giving Mr. Genova an opportunity to receive a copy, and two, also providing ample opportunity for more negotiations between the two states.

Lile: Mr. Chairman, this is Chuck Lile, and we appreciate that effort. We have ... in the light that we have recently received ... only within the last few hours, received a copy of this resolution, we are certainly always willing to work with Kansas to look for solutions, but we think its kind of ... we need to have the ample time to evaluate it, and we would propose that we will respond to Kansas in writing concerning this resolution, after ample consultation and discussions among the Compact Administration members in Colorado.

Trujillo: OK. Unless there are any objections by any of the members of the Compact, what I would suggest then is that we adjourn this meeting, and hopefully Mr. Lile and Mr. Pope can confer further ... I certainly intend to get on the phone and call each of you next week and discuss not the resolution itself, I don't think as chairman its my concern to get into the detail of the resolution. On the other hand, however, I feel it is certainly my obligation to make sure that the matters before the Compact move forward on a timely basis, that I do whatever I can to encourage both states to resolve their differences, or at least achieve a point of agreement that they can't be resolved. And unless there's any objections the meeting will be adjourned, after I allow for comments from anyone. And then I will be in contact with both Mr. Lile and Mr. Pope by phone. Any comments by anyone, or any objections to adjourning?

Lile: Mr. Chairman, before we adjourn, I would like to express my ...

Trujillo: Who is this?

Lile: This is Chuck Lile again. I would like to express my appreciation to the State of Kansas for working with us on the Trinidad resolution, and I thank them for that, and that would be all the comments I think we'd make at this time.

Trujillo: Thank you, Mr. Lile. Anybody ... any other member of the Compact care to make a statement. If not, gentlemen, Mr. Pope, Mr. Lile, other members of the Compact, thank you very much. I appreciate your patience and thank you very much for your time, and hopefully we can arrive at a time for a future meeting sometime in the near

future.

Lile: Thank you Mr. Chairman.

Pope: Thank you, Mr. Chairman.

Trujillo: That adjourns the meeting, thank you very much.

Whereupon the meeting was adjourned at approximately 3 P.M. MST.

C:\STEVE\FILE\WORKFILE\ARCA\MEETINGS\1996\1_26_96.MIN
March 5, 1996

Exhibit A

ARKANSAS RIVER COMPACT ADMINISTRATION

307 SOUTH FIFTH STREET, LAMAR, COLORADO 81052

719-336-9696

FOR COLORADO

DARIES C. LILE, DENVER
CARL G. GENOVA, PUEBLO
JAMES G. ROGERS, LAMAR

CHAIRMAN AND FEDERAL REPRESENTATIVE

LARRY E. TRUJILLO, SR.
PUEBLO, COLORADO

FOR KANSAS

DAVID L. POPE, TOPEKA
ROBERT BUEKLE, HOLCOMB
EUGENE OVERTON, SYRACUSE

NOTICE OF SPECIAL TELEPHONIC MEETING OF THE ARKANSAS RIVER COMPACT ADMINISTRATION

Friday, January 26, 1996 at 2:00 p.m. MST (3:00 p.m. CST)

A Special Meeting of the **Arkansas River Compact Administration (ARCA)** will be held by telephonic conference call at the time noted above. The meeting will be convened for consideration of the following topics:

1. Colorado request to amend the Operating Principles for the Trinidad Project to recognize the enlarged permanent pool.
2. Colorado request to establish a special account in John Martin Reservoir to store water to offset depletions to useable Stateline flows caused by post-compact well pumping in Colorado.

Any person wanting to monitor or participate in the telephonic meeting must contact one of the tentative listening sites listed below prior to the meeting. Listening sites with speaker phones have been tentatively established (depending on demand and necessity) at the following locations:

<u>SITE</u>	<u>COORDINATOR</u>	<u>PHONE</u>
1. ARCA Office, 307 S. Main Street, Lamar, CO	Don Higbee	719-336-9696
2. Kansas Div. of Water Resources, Topeka, KS	David Pope	913-296-3717
3. Colorado Water Conservation Board, Denver, CO	Steve Miller	303-866-3441
4. Colorado Div. of Water Res., Div. 2 Engineer, Pueblo, CO	Steve Witte	719-542-3368
5. Kansas Div. of Water Resources, Garden City, KS	Mark Rude	316-276-2901
6. U.S. Army Corps of Engineers, Albuquerque, NM	Dick Kreiner	505-254-3432
7. U.S. Bureau of Reclamation, Loveland CO	Tom Gibbens	970-667-4410
8. Purgatoire River Water Cons. Dist., Trinidad CO	Thelma Lujan	719-846-7285

Notice issued by the Colorado Water Conservation Board pursuant to the authority of the ARCA Recording Secretary, Don Higbee.

Exhibit B

LL GRAVES, GOVERNOR
ice A. Devine, Secretary of Agriculture



DIVISION OF WATER RESOURCES
David L. Pope, Chief Engineer-Director
901 South Kansas Avenue, 2nd Floor
Topeka, Kansas 66612-1283
(913) 296-3717 FAX (913) 296-1176

KANSAS DEPARTMENT OF AGRICULTURE

COVER PAGE

DATE: 1/26/96 FAX: _____

Please deliver the following 8 pages, including the cover page to:

NAME: Steve Miller / Chuck Lile PHONE: _____

FIRM: _____

ADDRESS: _____

SENT BY: Lee Rolfs/bs FAX: (913) 296-1176
Division of Water Resources
Kansas Department of Agriculture

If you have any questions concerning this transmission, please contact this phone number (913-296-3710).

Steve -

Attached is Kansas' Proposed Resolution for discussion at the ARCA conference call today. Would you please distribute this to the Colorado area people listed below with the underline and check marks? Our office will distribute to the rest of list. Thank you for you assistance in getting this document distributed as quickly as possible.

Please call if you have any problems or are unable to distribute this document as requested. Thanks again!

✓ <u>Mr. Larry E. Trujillo, Sr.</u> ARCA Chairman (719) 546-0363	✓ <u>Mr. James G. Rogers</u> c/o Higbee (719) 544-0800	✓ <u>Mr. Carl G. Genova</u> c/o Witte (719) 336-2422
Mr. David L. Pope, P.E., Chief Engineer, Kansas DWR (913) 296-1176	✓ <u>Steve Witte</u> ARCA Operations Sec. (719) 544-0800	Don Higbee ✓ ARCA Recording Sec (719) 336-2422
Mr. John Draper, Montgomery and Andrews (505) 982-4289	Mr. Lee Rolfs, Attorney, Kansas DWR (913) 296-1176	Mark Rude, Water Comm., Kansas DWR (316) 276-9315
✓ <u>Dennis Montgomery</u> Spec. Ass't Attorney General (303) 296-2388	✓ <u>Jennifer Gimbel</u> Colo. Attorney General Office (303) 866-3558	✓ <u>Doug Cain</u> , Subdistrict Chief U.S. Geological Survey (719) 544-7155
Dick Kreiner, Reservoir Control U.S. Army Corps of Engineers (505) 254-3489	✓ <u>Mr. A. Jack Garner</u> U.S.B.R., Eastern Colo. (970) 663-3212	✓ <u>Sandy MacDougall</u> Attorney, PRWCD (719) 520-9447
Thelma Lujan		

1-26-96 Minutes Exhibit B

RESOLUTION
OF THE
ARKANSAS RIVER COMPACT ADMINISTRATION
CONCERNING

**AN AMENDMENT TO THE OPERATING PRINCIPLES FOR THE TRINIDAD DAM
AND RESERVOIR PROJECT RECOGNIZING THE ENLARGED PERMANENT POOL**

WHEREAS, Article IV-D of the Arkansas River Compact provides: "This Compact is not intended to impede or prevent the future beneficial development of the Arkansas river basin in Colorado and Kansas by federal or state agencies, by private enterprise, or by combinations thereof, which may involve construction of dams, reservoirs and other works for the purposes of water utilization and control, as well as the improved or prolonged functioning of existing works: Provided, that the waters of the Arkansas river, as defined in Article III, shall not be materially depleted in usable quantity or availability for use to the water users in Colorado and Kansas under this compact by such future development or construction;" and

WHEREAS, Article III of the Compact specifically excludes "waters brought into the Arkansas River basin from other river basins" from the definition of "waters of the Arkansas river;" and

WHEREAS, in P.L. 85-500, dated July 3, 1958, Congress authorized the Trinidad Project "substantially in accordance with the recommendations" in a Review Report by the U.S. Army Corps of Engineers ("Army Corps") dated June 30, 1953, published as House Document No. 325, 84th Congress; and

WHEREAS, Kansas by letter from Gov. William H. Avery dated December 30, 1966 approved proposed Operating Principles for the Trinidad Project subject to five additional conditions; and

WHEREAS, the Arkansas River Compact Administration (the "Administration") reviewed and approved the Trinidad Project Operating Principles, including the Five Kansas Conditions, by resolution dated June 6, 1967; and

WHEREAS, the U.S. Bureau of Reclamation ("Reclamation") and the Purgatoire River Conservancy District ("PRWCD") approved the Operating Principles, including the additional five Kansas Conditions; and

WHEREAS, the 1964 Irrigation Report for the Trinidad Project, prepared by Reclamation, states that the project will serve the functions of flood control, irrigation, and fish and wildlife with an initial space allocation of 4,500 acre-feet from the total reservoir volume of 114,500 acre-feet to the fish and recreation pool. The 1964 report further states that "water stored in the permanent fishery pool is to be furnished by the State of Colorado;" and

WHEREAS, the Trinidad Project was constructed by the Army Corps and was substantially completed by January 1, 1977; and

WHEREAS, a 1986 resurvey of the as-constructed reservoir determined that it in fact contained a total of 125,967 acre-feet of capacity with an additional 11,467 acre-feet of space

that was not allocated to any use or purpose by existing agreements, contracts, or the Operating Principles, and

WHEREAS, the State of Colorado owns and operates Trinidad Lake State Park at Trinidad Reservoir and is vitally interested in the preservation and enhancement of the permanent fishery and recreation pool at Trinidad Reservoir; and

WHEREAS, the Army Corps conducted an Environmental Assessment ("EA") of the proposed reallocation of the excess space consistent with the requirements of the national environmental Policy Act ("NEPA"); and

WHEREAS, following the NEPA review, the Army Corps assigned the unallocated space to the permanent fishery pool, thereby increasing the pool to 15,967 acre-feet, as set out in the Final EA, dated September 1994; and

WHEREAS, the Operating Principles, as currently approved, define the capacity of the permanent fishery pool as being 4,500 acre-feet of a total reservoir capacity of 114,500 acre-feet; and

WHEREAS, Kansas Condition No. 2 of the Operating Principles states: "Any subsequent amendment of the Operating Principles should be subject to the review and approval of the same interests as provided for in the original procedure;" and

NOW, THEREFORE, BE IT RESOLVED that the Administration hereby approves,
subject to the approvals provided for below, the proposed amendment to the Operating
Principles for the Trinidad Dam and Reservoir Project, as set forth in the attached Exhibit
"A," increasing the size of the permanent fishery pool to 15,967 acre-feet.

Entered this 26th day of January, 1996, at a special telephonic meeting of the
Arkansas River Compact Administration.

Larry E. Trujillo, Sr.
Chairman

DATE

State of Colorado

DATE

State of Kansas

DATE

U.S. Bureau of Reclamation

DATE

Purgatoire River Water
Conservancy District

DATE

U.S. Army Corps of Engineers

DATE

EXHIBIT "A"

TO RESOLUTION OF THE ARKANSAS RIVER COMPACT ADMINISTRATION

DATED JANUARY 26, 1996

AND AMENDMENT TO THE OPERATING PRINCIPLES FOR THE TRINIDAD
RESERVOIR PROJECT RECOGNIZING THE ENLARGED PERMANENT POOL

1. On page 2, Article I - OBJECTIVES, number 4: change the capacity of the Permanent Fishery Pool from "4,500" to "15,967" acre-feet.
2. On page 2, Article I - OBJECTIVES, number 4: change the "Total Capacity 114,500" to "Total Allocated Capacity 125,967" acre-feet.
3. On page 3, Article II - DEFINITION OF TERMS, number 5: change "4,500" to "15,967" acre-feet.
4. On page 11, Article V - FISHERY AND RECREATION, number 1: revise to read as follows:

Water for the initial filling and for replacing evaporation and seepage losses will be acquired by the State of Colorado without interference to the District water supply and without interference to usable Stateline flows, or without additional cost to the District or the United States for the Trinidad Project as envisioned in House Document No. 325. In the specific case of the 11,467 acre-feet allocated to the permanent fishery pool pursuant to the Final Environmental Assessment for Revision of the Water Control Manual to Allocate Excess Storage in Trinidad Lake, Las Animas County, Colorado, U.S. Army Corps of Engineers, dated September 1994, the initial filling shall only be made using waters imported into the Arkansas River basin from other river basins, either by direct importation or by exchange pursuant to the laws of Colorado. The initial filling and the replacement of evaporation and seepage shall be made according to the following procedures:

1. All water rights on the Purgatoire River downstream of Trinidad Reservoir will be satisfied during the period of any exchange;
2. Prior to any exchange, the specific source of imported or native water, as limited by the Operating Principles for Trinidad Dam and Reservoir Project, as amended, will be verified by the Colorado State Engineer;
3. For each acre-foot of native water stored in Trinidad Reservoir by exchange, the Colorado Division of Parks will deliver an acre-foot of identifiable imported water, or native water whose consumptive use has been determined by final decree of the Colorado Water Court, to the Arkansas River at Las Animas gaging station;

4. Transit losses between the source of supply for an exchange and the Las Animas gage will be determined and assessed by the Colorado State Engineer, using the "Livingston method" or other suitable means, to assure that a "one for one" exchange is accomplished.

The Colorado State Engineer will report and account contemporaneously and annually to the Arkansas River Compact Administration on the initial filling and replacement of evaporation and seepage in the permanent fishery pool.

5. On p. 11, Article V - FISHERY AND RECREATION, number 3: revise to read as follows:

There shall never be any release or transfer of water from the permanent fishery pool.

Exhibit C

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

FAXED
1/8 R



Roy Romer
Governor

James S. Lochhead
Executive Director, DNR

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

FACSIMILE TRANSMITTAL COVER SHEET & MEMO

DATE: January 8, 1996
FROM: CHUCK LILE/STEVE MILLER, CWCB *CL*
TO: ARKANSAS RIVER COMPACT ADMINISTRATION MEMBERS AND
RELATED PARTIES

✓ Mr. Larry E. Trujillo, Sr. ARCA Chairman (719) 546-0363	✓ Mr. James G. Rogers c/o Higbee (719) 544-0800	✓ Mr. Carl G. Genova c/o Witte (719) 336-2422
✓ Mr. David L. Pope, P.E., Chief Engineer, Kansas DWR (913) 296-1176	✓ Steve Witte ARCA Operations Sec. (719) 544-0800	✓ Don Higbee ARCA Recording Sec (719) 336-2422
✓ Mr. John Draper, Montgomery and Andrews (505) 982-4289	✓ Mr. Lee Rolfs, Attorney, Kansas DWR (913) 296-1176	✓ Mark Rude, Water Comm., Kansas DWR (316) 276-9315
✓ Dennis Montgomery Spec. Ass't Attorney General (303) 296-2388	✓ Jennifer Gimbel Colo. Attorney General Office (303) 866-3558	✓ Doug Cain, Subdistrict Chief U.S. Geological Survey (719) 544-7155
✓ Dick Kreiner, Reservoir Control U.S. Army Corps of Engineers (505) 254-3489	✓ Mr. A. Jack Garner U.S.B.R., Eastern Colo. Proj. Off. Attorney, PRWCD (970) 663-3212	✓ Sandy MacDougall (719) 520-9447
✓ Thelma Lujan Manager, PRWCD (719) 846-6941		

PAGES TRANSMITTED, including this cover page: 8

ACKNOWLEDGMENT REQUESTED: YES ☐ NO ☒

ORIGINAL MAILED: YES ☒ NO ☐

ADDITIONAL COMMENTS:

Attached is Colorado's revised ARCA Resolution regarding amended operating principles for the Trinidad Project with respect to the enlarged permanent pool. The revisions reflect requested changes submitted by Kansas through John Draper at the conclusion of the ARCA annual meeting in Lamar CO on Dec. 12, 1995. In addition some minor editorial corrections were made to the draft proposed by Colorado on Dec. 12. This resolution is to be acted on at the ARCA Special Telephonic Meeting now scheduled for Friday Jan. 26, 1996 at 2 PM (MST) (3 PM CST).

CC: ✓ Hal Simpson, DWR-SEO
Tom Easley, CDPOR

Gene Jencsok, CWCB
Chuck Lile, CWCB

ARCA_001.FAX

1-26-96 Minutes Exhibit C

RECEIVED

JAN 08 1996

Colorado Water
Conservation Board

RESOLUTION
OF THE
ARKANSAS RIVER COMPACT ADMINISTRATION
CONCERNING
AN AMENDMENT TO THE OPERATING PRINCIPLES FOR THE TRINIDAD
RESERVOIR PROJECT RECOGNIZING THE ENLARGED PERMANENT POOL

WHEREAS, Article IV-D of the Arkansas River Compact provides: "This Compact is not intended to impede or prevent the future beneficial development of the Arkansas River basin in Colorado and Kansas by Federal or State agencies, by private enterprise, or by combinations thereof, which may involve construction of dams, reservoirs and other works for the purposes of water utilization and control, as well as the improved or prolonged functioning of existing works: Provided that the waters of the Arkansas River, as defined in Article III, shall not be materially depleted in usable quantity or availability for use to the water users in Colorado and Kansas under this Compact by such future development or construction"; and

WHEREAS, Article III of the Compact specifically excludes "waters brought into the Arkansas River basin from other river basins" from the definition of "waters of the Arkansas River"; and

WHEREAS, in P.L. 85-500, dated July 3, 1958, Congress authorized the Trinidad Project "substantially in accordance with the recommendations" in a Review Report by the U.S. Army Corps of Engineers ("Army Corps") dated June 30, 1953, published as House Document No. 325, 84th Congress; and

WHEREAS, Kansas by letter from Gov. William H. Avery dated December 30, 1966 approved proposed Operating Principles for the Trinidad Project subject to five additional conditions; and

WHEREAS, the Arkansas River Compact Administration (the "Administration") reviewed and approved the Trinidad Project Operating Principles, including the Five Kansas Conditions, by resolution dated June 6, 1967; and

WHEREAS, the U. S. Bureau of Reclamation ("Reclamation") and the Purgatoire River Water Conservancy District ("PRWCD") approved the Operating Principles, including the additional Five Kansas Conditions; and

WHEREAS, the 1964 Irrigation Report for the Trinidad Project, prepared by Reclamation, states that the project will serve the functions of flood control, irrigation, and fish and wildlife with an initial space allocation of 4,500 acre-feet from the total reservoir volume of 114,500 acre-feet to the fish and recreation pool. The 1964 Report further states that "water stored in the permanent fishery pool is to be furnished by the State of Colorado:"; and

WHEREAS, the Trinidad Project was constructed by the Army Corps and was substantially completed by January 1, 1977; and

WHEREAS, a 1986 resurvey of the as-constructed reservoir determined that it in fact contained a total of 125,967 acre-feet of capacity with an additional 11,467 acre-feet of space that was not allocated to any use or purpose by existing agreements, contracts, or the Operating Principles; and

WHEREAS, the State of Colorado owns and operates Trinidad Lake State Park at Trinidad Reservoir and is vitally interested in the preservation and enhancement of the permanent fishery and recreation pool at Trinidad Reservoir; and

WHEREAS, the Army Corps conducted an Environmental Assessment ("EA") of the proposed reallocation of the excess space consistent with the requirements of the National Environmental Policy Act ("NEPA"); and

WHEREAS, following the NEPA review, the Army Corps assigned the unallocated space to the permanent fishery pool, thereby increasing the pool to 15,967 acre-feet, as set out in the Final EA, dated September 1994; and

WHEREAS, the Operating Principles, as currently approved, define the capacity of the permanent fishery pool as being 4,500 acre-feet of a total reservoir capacity of 114,500 acre-feet; and

WHEREAS, Kansas Condition No. 2 of the Operating Principles states: "Any subsequent amendment of the Operating Principles should be subject to the review and approval of the same interests as provided for in the original procedure"; and

WHEREAS, the State of Colorado, the State of Kansas, Reclamation, PRWCD, and the Army Corps have approved the following amendment to the current Operating Principles as set forth in June 23, 1995 letters from Lt. Col. Gary Burroughs, District Engineer of the Albuquerque District, Corps of Engineers to Mr. David L. Pope of Kansas and Mr. James Lochhead of Colorado, as shown by the signatures below;

NOW, THEREFORE, BE IT RESOLVED that the Administration hereby approves, subject to the approvals referenced in the foregoing paragraph, the proposed amendment to the Operating Principles for the Trinidad Dam and Reservoir Project, as set forth in the attached Exhibit "A," increasing the size of the permanent fishery pool to 15,967 acre-feet.

BE IT FURTHER RESOLVED, that adoption of this resolution does not preclude, and should not deter, the U.S. Bureau of Reclamation from investigating and recommending additional modifications to enhance and refine the operation of the permanent fishery pool during the pending 10 Year Review of the Trinidad Project Operating Principles.

Entered this 26th day of January, 1996, at a special telephonic meeting of the Arkansas River Compact Administration.

Larry E. Trujillo, Sr.
Chairman

DATE

State of Colorado

DATE

State of Kansas

DATE

U.S. Bureau of Reclamation

DATE

Purgatoire River Water
Conservancy District

DATE

U.S. Army Corps of Engineers

DATE

EXHIBIT "A"

TO RESOLUTION OF THE ARKANSAS RIVER COMPACT ADMINISTRATION

DATED JANUARY 26, 1996

AN AMENDMENT TO THE OPERATING PRINCIPLES FOR THE TRINIDAD
RESERVOIR PROJECT RECOGNIZING THE ENLARGED PERMANENT POOL

1. On page 2, Article I - OBJECTIVES, number 4: change the capacity of the Permanent Fishery Pool from "~~4,500~~" to "15,967" acre-feet.
2. On page 2, Article I - OBJECTIVES, number 4: change the Total Capacity from "~~114,500~~" to "125,967" acre-feet.
3. On page 3, Article II - DEFINITION OF TERMS, number 5: change "~~4,500~~" to "15,967" acre-feet.
4. On page 11, Article V - FISHERY AND RECREATION, number 1: revise to read as follows:

Water for the initial and subsequent fillings and for replacing evaporation and seepage losses will be acquired by the State of Colorado without interference to the District water supply and without interference to usable Stateline flows, or without additional cost to the District or the United States for the Trinidad Project as envisioned in House Document No. 325. In the specific case of the 11,467 acre-feet allocated to the permanent fishery pool pursuant to the Final Environmental Assessment for Revision of the Water Control Manual to Allocate Excess Storage in Trinidad Lake, Las Animas County, Colorado, U.S. Army Corps of Engineers, dated September 1994, the initial filling shall only be made using waters imported into the Arkansas River basin from other river basins, either by direct importation or by exchange pursuant to the laws of Colorado. Initial and subsequent fillings and the replacement of evaporation and seepage shall be made according to the following procedures:

1. All water rights on the Purgatoire River downstream of Trinidad Reservoir will be satisfied during the period of any exchange;
2. Prior to any exchange, the specific source of the water will be verified by the Division Engineer;

3. For each acre-foot of native water stored in Trinidad Reservoir by exchange, the Colorado Division of Parks will deliver an acre-foot of identifiable water to the Arkansas River at Las Animas gaging station;

4. Transit losses between the source of supply for an exchange and the Las Animas gage will be determined and assessed by the Division Engineer, using the "Livingston method" or other suitable means, to assure that a "one for one" exchange is accomplished.

The Division Engineer will report and account annually to the Arkansas River Compact Administration on the initial and subsequent fillings of the permanent fishery pool.

Exhibit D

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

December 27, 1995

David L. Pope
Division of Water Resources
Chief Engineer-Director
901 S. Kansas Ave., 2nd Floor
Topeka, KS 66612-1283

RE: Resolution to Establish a Storage Account in John Martin Reservoir.

Dear David:

At the annual meeting of the Arkansas River Compact Administration, Colorado submitted a resolution to establish a storage account to store water to replace depletions to usable Stateline flow caused by post-compact well pumping in Colorado, subject to certain conditions. While Colorado prefers an account for a minimum period of five years, Colorado is willing to accept an account limited to one year in deference to concerns expressed by Kansas about the mechanics of operation of the account.

At the Administration meeting, however, Mr. Draper stated that Kansas was opposed to an account for a longer term because Kansas felt that establishing an account would provide a benefit to Colorado by allowing Colorado to develop unused flows of the Arkansas River by post-compact well development without providing any benefit to Kansas, other than the benefits to which Kansas is entitled in the Compact. Mr. Draper indicated that Kansas was willing to look at a short-term account to facilitate bringing post-compact well pumping in Colorado into compliance with the Compact but that there needed to be some equitable sharing of benefits for the two states before Kansas would agree to a longer term account.

Colorado does not agree with this view of the Compact. However, to better understand Kansas' position, it would be helpful if, prior to the special telephonic meeting on January 19, 1996, you would provide any proposed changes or modifications to the resolution proposed by Colorado at the meeting and a statement of the benefits Kansas thinks it is entitled to received from the creation of an account in John Martin Reservoir. For reference, and your convenience, we have attached a copy of the resolution as modified following initial discussions with the Engineering Committee on December 11, 1995 and subsequently presented during the annual meeting on December 12, 1995.

1-26-96 Minutes Exhibit D

As Mr. Montgomery stated at the meeting, the creation of an account to store water to replace depletions to usable Stateline flow would be beneficial to water users in Kansas by providing greater assurance that post-compact well pumping in Colorado does not deplete usable Stateline flow. Moreover, Colorado has proposed that Kansas may demand the release of water contained in this account for delivery to the Stateline at any time and at whatever rate it desires. This would allow Kansas to demand releases of water from John Martin Reservoir at times when it would be most beneficial for crop production. Thus, the account proposed by Colorado would in no way interfere with Kansas' use of the reservoir and would in fact provide water users in Kansas with the benefit of being able to demand releases at times when water is most beneficial.

Please let me hear from you as soon as possible.

Very truly yours,

A handwritten signature in dark ink, appearing to read "E. J. Jencsoek". The signature is fluid and cursive, with a large, stylized "J" and "C".

for
Daries C. Lile
Director

cc: Larry E. Trujillo, Sr.
Lt. Col. Lloyd S. Wagner
Carl Genova
James Rogers
Hal D. Simpson
Steven J. Witte
David Robbins/Dennis Montgomery
Wendy C. Weiss

RESOLUTION
CONCERNING
STORAGE ACCOUNT FOR THE STATE OF COLORADO
IN JOHN MARTIN RESERVOIR

WHEREAS, pursuant to Article VIII B(2) of the Arkansas River Compact, the Arkansas River Compact Administration has power to prescribe procedures for the administration of the Compact, including procedures involving the operation of the John Martin Reservoir Project, provided that where such procedures involve the operation of the John Martin Reservoir Project, they shall be subject to the approval of the District Engineer in charge of said Project; and

WHEREAS, pursuant to Article VIII B(3) of the Compact, the Administration has the power to perform all functions required to implement the Compact and to do all things necessary, proper or convenient in the performance of its duties; and

WHEREAS, Article IV-D of Compact provides:

This Compact is not intended to impede or prevent future beneficial development of the Arkansas River basin in Colorado and Kansas by Federal or State agencies, by private enterprise, or by combinations thereof, which may involve construction of dams, reservoirs and other works for the purposes of water utilization and control, as well as the improved or prolonged functioning of existing works: Provided, that the waters of the Arkansas River, as defined in Article III, shall not be materially depleted in usable quantity or availability for use to the water users in Colorado and Kansas under this Compact by such future development or construction.

and

WHEREAS, after the adoption of the Arkansas River Compact, water users in Colorado with pre-compact wells installed more efficient pumps and improved or prolonged the functioning of such wells; and

WHEREAS, various water users in the Arkansas River Valley in Colorado constructed wells and pumped ground water for irrigation use after the adoption of the Arkansas River Compact; and

WHEREAS, in his July 1994 Report in Kansas v. Colorado, No. 105, Original, United States Supreme Court, Special Master Arthur L. Littleworth concluded that post-compact well pumping in Colorado had caused material depletions of usable Stateline flows of the Arkansas River in violation of the Arkansas River Compact; and

WHEREAS, in an opinion issued on May 15, 1995, the United States Supreme Court agreed with the Special Master's determination and overruled exceptions to the Special Master's Report filed by the States of Kansas and Colorado, Kansas v. Colorado, 514 U.S. ___, 115 S.Ct. ___, 131 L.Ed.2d 759 (1995); and

WHEREAS, on October 30, 1995, Kansas and Colorado stipulated that depletions to usable Stateline flow caused by post-compact well pumping in Colorado for the period 1950-85 are 328,505 acre-feet, which stipulation was approved by the Special Master; and

WHEREAS, depletions to usable Stateline flow caused by post-compact well pumping in Colorado for the period 1986-94 have yet to be determined; and

WHEREAS, neither the Special Master nor the U.S. Supreme Court have determined a method for repayment of past depletions; and

WHEREAS, Colorado believes that repayment in water of some or all of past depletions may be ordered by the U.S. Supreme Court or agreed upon with Kansas; and

WHEREAS, the Colorado State Engineer has proposed Amended Rules and Regulations Governing the Diversion and Use of Tributary Ground Water in the Arkansas River Basin, Colorado, which require that on or after April 1, 1996, all diversions of tributary ground water for irrigation use from the Valley Fill and surficial aquifers along the Arkansas River by well users having water rights with a priority of, or junior to, December 14, 1948, shall be discontinued unless depletions to usable Stateline flow are replaced; and

WHEREAS, the Amended Rules and Regulations further provide that diversions for irrigation use from the Valley Fill and surficial aquifers by well users having decreed water rights with a priority date senior to December 14, 1948, shall be limited to an aggregate total of 15,000 acre-feet per year unless depletions to usable Stateline flow caused by diversions of amounts greater than 15,000 acre-feet per year are replaced in accordance with a plan approved by the State and Division Engineers pursuant to the Rules; and

WHEREAS, release or transfer of water from a storage account in John Martin Reservoir would be an effective means to prevent or replace depletions to usable Stateline flow caused by post-compact well pumping in Colorado; and

WHEREAS, a storage account for the State of Colorado can be established in John Martin Reservoir without interfering with conservation storage under the Compact or accounts established under the Administration's Resolution Concerning an Operating Plan for John Martin Reservoir adopted April 24, 1980, and revised on May 10, 1984, and December 11, 1984 (hereinafter "the 1980 Operating Plan"), or the John Martin Reservoir Permanent Pool authorized

by the August 14, 1976 Resolution of the Compact Administration (hereinafter "permanent pool"); and

WHEREAS, the creation of a storage account for the State of Colorado in John Martin Reservoir would permit the future beneficial development of the Arkansas River basin in Colorado in a manner consistent with Article IV-D of the Compact;

NOW THEREFORE BE IT RESOLVED that the Administration hereby approves the creation of a storage account for the State of Colorado, which account may be used to store water to replace depletions to usable Stateline flow caused by post-compact well pumping in Colorado, subject to the following conditions:

1. This account shall be in addition to the accounts established by the 1980 Operating Plan and the permanent pool.
2. Evaporation charges shall be made against water stored in this account in the manner set forth in Subsection II F of the 1980 Operating Plan. The evaporation charges shall be prorated amongst conservation storage and the accounts, including this account, according to the amounts in them.
3. In the event that runoff conditions occur in the Arkansas River basin upstream from John Martin Reservoir that cause water to spill physically over the Project's spillway, then water stored in the permanent pool in excess of 10,000 acre-feet shall spill before water stored in this account, which shall spill before the accounts granted in Subsection III A, B, and C of the 1980 Operating Plan, which shall spill before the accounts granted in Section II of the 1980 Operating Plan, which shall spill before the Kansas Transit Loss Account, all of which shall spill before the conservation pool water.

4. Kansas may demand the release of water contained in this account for delivery to the Stateline at any time and at whatever rate it desires; provided that if Kansas demands a release of water contained in this account, Colorado shall receive credit for the delivery of such water at the Stateline as a replacement or repayment of depletions to usable Stateline flow. Colorado may demand the release of water contained in this account at any time and at whatever rate it desires; provided that if Colorado demands a release of water contained in this account, it shall not constitute an admission by Kansas that any delivery of such water to the Stateline was a replacement or repayment of depletions to usable Stateline flow.

5. Releases from this account may be made simultaneously with deliveries into this account. However, such simultaneous releases and deliveries cannot create a deficit in this account.

6. All releases of water from this account for delivery to the Stateline are subject to transit losses between John Martin Dam and the Stateline, as determined by the Colorado Division Engineer, and the transit losses shall be borne by such releases. Releases of water from this account for delivery to the Stateline shall be measured at the Stateline, allowing appropriate arrival times. Transit losses on such releases shall not be replenished from the Kansas transit loss account.

7. The total quantity in this account at any time cannot exceed 20,000 acre-feet.

8. Deliveries to this account shall not be subject to transfers provided in Subsection III D of the 1980 Operating Plan.

9. Not later than December 1 of each year, the Colorado Division Engineer shall make an accounting of the operation under this resolution for the previous compact year available to the Operations Committee of the Administration and to interested parties.

10. Creation of this account does not give any water user in Colorado a right to store water in this account to prevent or replace depletions caused by post-compact well pumping, and storage of water in this account shall be subject to the approval of the Colorado State Engineer. This account may not be used for the storage of water for augmentation plans for wells having priority dates later than 1995 without the approval of the Administration.

11. This account shall be subject to the approval of the District Engineer of the U.S. Army Corps of Engineers in charge of the John Martin Reservoir Project.

12. Water stored in this account may be released by exchange or otherwise to avoid a spill or in the event more water is delivered into the account than is needed to replace depletions to usable Stateline flow.

13. This account shall terminate five years from the date of this resolution unless extended by the Administration; however, this account shall not be affected by the termination of the 1980 Operating Plan and termination of this account shall not cause water in this account to revert to conservation storage. If this account is terminated, any water in the account at that time may be released in accordance with this resolution until no water remains in the account.

14. Any source of water approved by the Colorado State Engineer which is fully consumable may be stored in this account, except return flows from deliveries of water used for agricultural irrigation, provided that adequate transit losses are charged during delivery of water to this account, which losses shall be determined by the Colorado Division Engineer.

15. Except as provide in paragraph 4 above, adoption of this resolution does not constitute an admission by Kansas that any release from this account is in fact a repayment or replacement of depletions to usable Stateline flows of the Arkansas River and shall not prejudice the ability of Kansas to object or to otherwise represent its interest in Kansas v. Colorado, No. 105, Original, or in any future cases or controversies before the Administration or in a court of competent jurisdiction in the event Kansas does not agree with Colorado's accounting of any repayment or replacement of depletions to usable Stateline flows of the Arkansas River.

Entered this ____ day of December, 1995.

Chairman
Arkansas River Compact
Administration

Secretary
Arkansas River Compact
Administration

Exhibit E

STATE OF KANSAS



ILL. SAVES, GOVERNOR
Alice A. Devine, Secretary of Agriculture

DIVISION OF WATER RESOURCES
David L. Pope, Chief Engineer-Director
901 South Kansas Avenue, 2nd Floor
Topeka, Kansas 66612-1293
(913) 296-3717 FAX (913) 296-1176

KANSAS DEPARTMENT OF AGRICULTURE

RECEIVED

COVER PAGE

JAN 26 1996
Colorado Water
Conservation Board

DATE: 1/26/96 FAX: _____

Please deliver the following _____ pages, including the cover page to:

NAME: See list below. PHONE: _____

FIRM: _____

ADDRESS: _____

SENT BY: Leland E. Rolfs FAX# (913) 296-1176
Division of Water Resources
Kansas Department of Agriculture

If you have any questions concerning this transmission, please contact this phone number (913-296-3710).

AUGMENTATION ACCOUNT

Attached is Kansas' Proposed Resolution for the ARCA conference call to be held today.

- | | | |
|--|--|--|
| ✓ Mr. Larry E. Trujillo, Sr.
ARCA Chairman
(719) 546-0363 | ✓ Mr. James G. Rogers
c/o Higbee
(719) 544-0800 | ✓ Mr. Carl G. Genova
c/o Witte
(719) 336-2422 |
| ✓ Mr. David L. Pope, P.E.,
Chief Engineer, Kansas DWR
(913) 296-1176 | ✓ Steve Witte
ARCA Operations Sec.
(719) 544-0800 | ✓ Don Higbee
ARCA Recording Sec
(719) 336-2422 |
| ✓ Mr. John Draper,
Montgomery and Andrews
(505) 982-4289 | ✓ Mr. Lee Rolfs,
Attorney, Kansas DWR
(913) 296-1176 | ✓ Mark Rude,
Water Comm., Kansas DWR
(316) 276-9315 |
| ✓ Dennis Montgomery
Spec. Ass't Attorney General
(303) 296-2388 | ✓ Jennifer Gimbel
Colo. Attorney General Office
(303) 866-3558 | ✓ Doug Cain, Subdistrict Chief
U.S. Geological Survey
(719) 544-7155 |
| ✓ Dick Kreiner, Reservoir Control
U.S. Army Corps of Engineers
(505) 254-2489 342-3489 | ✓ Mr. A. Jack Garner
U.S.B.R., Eastern Colo. Proj. Off.
(970) 663-3212 | ✓ Sandy MacDougall
Attorney, PRWCD
(719) 520-9447 |
| ✓ Thelma Lujan
Manager, PRWCD
(719) 846-6941 | ✓ Steve Miller/
Chuck Life | |

1-26-96 Minutes Exhibit E

**RESOLUTION CONCERNING
AN OFFSET ACCOUNT IN
JOHN MARTIN RESERVOIR FOR
COLORADO PUMPING**

WHEREAS, the United States Supreme Court has determined that the State of Colorado violated the Arkansas River Compact [hereinafter the "Compact"] during the period 1950 through 1985, Kansas v. Colorado, 115 S.Ct 1733 (1995); and

WHEREAS, the State of Colorado is currently not in compliance with the Compact; and

WHEREAS, the State of Colorado desires to continue to allow ground water pumping by its water users in excess of the pre-Compact pumping entitlement of 15,000 acre-feet per year determined by the United States Supreme Court; and

WHEREAS, Article IX-A of the Compact contains the following proviso:

"Provided, that the Chief of Engineers is hereby authorized to operate the conservation features of the John Martin Reservoir Project in a manner conforming to such Compact with such exceptions as he and the Administration created pursuant to the Compact may jointly approve;" and

WHEREAS, the issue of Compact compliance by Colorado is presently pending before the Special Master appointed by the United States Supreme Court; and

WHEREAS, the existence of an account in John Martin Reservoir [hereinafter the "Reservoir"] is not necessary for Colorado's compliance with the Compact, but it is recognized that it would be of benefit to Colorado to establish such an account and that Colorado has requested such an account; and

WHEREAS, the existence of an account in the Reservoir does not, in and of itself, assure Colorado's compliance with the Compact; and

WHEREAS, the Administration recognizes that neither the Administration nor either of its member states has any obligation to create the account provided for in this Resolution;

NOW THEREFORE, BE IT RESOLVED that the Administration and the Chief of Engineers of the Corps of Engineers, pursuant to Article IX-A of the Compact, jointly approve a temporary storage account in the Reservoir to be established and operated as follows:

1. There is hereby established for Compact Year 1996 only a new storage account in the Reservoir to be known as the "Offset Account in John Martin Reservoir for Colorado Pumping" [hereinafter the "Offset Account"]. The size of the Offset Account shall be 20,000 acre-feet. Water in the Offset Account shall not be considered to be water in the conservation pool. The establishment of the Offset Account is for purposes of facilitating Compact compliance by Colorado after the effective date of this Resolution and is not for the purpose of repayment for violations of the Compact by Colorado prior to the effective date of this Resolution or replacement to Colorado ditches.

2. The Offset Account shall be separate and in addition to the accounts established by the Administration's Resolution Concerning an Operating Plan for John Martin Reservoir [hereinafter the "1980 Operating Plan"] and the John Martin Reservoir Permanent Pool authorized by the Administration Resolution of August 14, 1976 [hereinafter the "permanent pool."]

3. The Colorado State Engineer or his delegate may deliver water to the Offset Account upon prior notice to the Kansas Chief Engineer or his delegate. Such notice shall specify the source of the water to be delivered, the amount of water, the time of delivery and the rate of delivery.

4. The Colorado State Engineer may deliver for storage in the Offset Account only water which is imported or which has been determined to be fully consumable by final decree of the Colorado Water Court; provided that return flows from deliveries of water used for agricultural irrigation shall be properly maintained; and further provided that adequate transit losses shall be

charged during delivery of water to the Offset Account, which losses shall be determined by the Colorado State Engineer.

5. Evaporation charges shall be made against water stored in the Offset Account in the manner set forth in Subsection II F of the 1980 Operating Plan. The evaporation charges shall be prorated amongst conservation storage and the accounts, including the Offset Account, according to the amounts in them.

6. Kansas may demand the release of water contained in the Offset Account for delivery to the Stateline at any time and at whatever rate it desires; Colorado may demand the release of water contained in this account at any time and at whatever rate it desires; provided that, except as otherwise limited in this Resolution, Colorado shall receive credit for the delivery of such water at the Stateline as a replacement or repayment of depletions to usable Stateline flow only to the extent allowed by the usable flow analysis approved by the Supreme Court in Kansas v. Colorado, 115 S.Ct. 1733, 1741-42 (1995). Amounts released from the Offset Account may not offset depletions of usable flow occurring outside the same compact year.

7. Releases from the Offset Account may be made simultaneously with deliveries into the account. However, such simultaneous releases and deliveries cannot create a deficit in the Offset Account.

8. All releases of water from the Offset Account for delivery to the Stateline are subject to transit losses between John Martin Dam and the Stateline, as determined by the Colorado State Engineer, and the transit losses shall be borne by such releases. Releases of water from this account for delivery to the Stateline shall be measured at the Stateline, allowing appropriate arrival times. Transit losses on such releases shall not be replenished from the Kansas transit loss account. The amount of a delivery shall be the difference between the amount of water that would have reached the Stateline if there had been no delivery and the total measured amount

of water that actually arrived at the Stateline during such delivery. The Colorado State Engineer and the Kansas Chief Engineer shall confer on the procedures used to determine the amount of the delivery.

9. Deliveries to this account shall be subject to the transfers required in Subsection III D of the 1980 Operating Plan.

10. No transfers, releases or exchanges shall be made of water in the Offset Account except releases to offset current depletions of usable stateline flows.

11. Not later than December 1, 1996, the Colorado State Engineer shall make an accounting of the operation under this Resolution for the previous compact year available to the Operations Committee of the Administration and to interested parties.

12. In recognition of the fact that the operation of the Offset Account is for the purpose of facilitating increased post-Compact pumping by Colorado water users, Colorado shall report to Kansas and the Administration on a monthly basis the timing and amount of deliveries to the Offset Account, the monthly pumping in location and amount in excess of Colorado's pre-Compact entitlement and Colorado's monthly accounting of Compact compliance, within two months of the end of the month reported. Colorado shall also pay to Kansas a reasonable amount of at least \$25,000 for Kansas' costs to monitor pumping by Colorado users in excess of Colorado's pre-Compact entitlement during Compact Year 1996 and the effects of such pumping. Colorado shall pay such sum to Kansas within 60 days after the effective date of this Resolution. Additional sums shall be paid to Kansas upon a showing of such expenses in excess of \$25,000 by Kansas. Kansas shall refund any excess to Colorado.

13. In the event that runoff conditions occur in the Arkansas River basin upstream from John Martin Reservoir that cause water to spill physically over the Project's spillway, then water stored in the permanent pool in excess of 10,000 acre-feet shall spill before water stored in the

Offset Account, which shall spill before the accounts granted in Subsection III A, B, and C of the 1980 Operating Plan, which shall spill before the accounts granted in Section II of the 1980 Operating Plan, which shall spill before the Kansas Transit Loss Account, all of which shall spill before the conservation pool water. Colorado shall receive no credit, however, for offsets against stateline depletions of usable flow for spills of the Offset Account.

14. No water made available under priority rights decreed to the ditches of Colorado Water District 67 may be stored in the Offset Account; nor may water be transferred into the Offset Account from any other account in the Reservoir unless previously approved by the Administration.

15. A. Neither the adoption of this Resolution nor the establishment or operation of the Offset Account shall constitute a waiver of either State's rights under the Compact (if such a waiver is possible as a matter of law) or prejudice the ability of either State to represent its interests in present or future cases or controversies before the Administration or any court of competent jurisdiction.

B. Notwithstanding Paragraph 15-A above, the existence or use of the Offset Account shall have no bearing on the determination of depletions to usable stateline flows or Compact compliance except for actual deliveries pursuant to Paragraph 6 above.

16. All terms employed in this Resolution which are defined in the Compact shall have the same meaning as set out in the Compact.

17. The effective date of this Resolution shall be the date on which the Chief of Engineers of the Corps of Engineers gives his approval by signing and dating below in the space provided. The Offset Account shall expire at the end of Compact Year 1996, except that water remaining in the Offset Account at that time may remain in storage and be released as provided above until the end of Compact Year 1997, at which time any remaining water shall be

transferred to the Conservation Pool. The Offset Account shall not be affected by the termination of the 1980 Operating Plan.

JOINTLY APPROVED:

Chairman
Arkansas River Compact
Administration

Secretary
Arkansas River Compact
Administration

Colorado Member
Arkansas River Compact
Administration

Kansas Member
Arkansas River Compact
Administration

Chief of Engineers
U.S. Army Corps of Engineers

Date