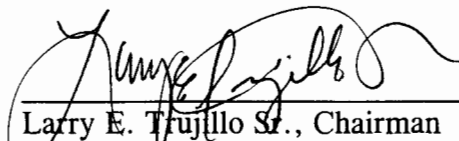


**MINUTES OF SPECIAL MEETING  
OF THE  
ARKANSAS RIVER COMPACT ADMINISTRATION  
WEDNESDAY, MARCH 25, 1998**

HELD VIA TELEPHONIC CONFERENCE CALL  
WEDNESDAY, MARCH 25, 1998, AT 1:00 P.M. MST (2:00 CST)  
[Transcript of recorded conference call]

The following transcript is the official minutes of the Arkansas River Compact Administration's March 25, 1998 Special Meeting, as signified by the signature of the Chairman of the Administration, pursuant to Administration approval given on 12/8/98 at

Jamar, Co.,

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

Operator: Ladies and Gentlemen, thank you for standing by. At this time I would to conduct a brief roll call to ensure line quality. Please respond with your present location when I call out your name. Larry Trujillo?

Trujillo: Sterling

Operator: Mary Louise Clay? (pause) Mary Louise Clay? (No response)

Rogers: (inaudible)

Operator: Dale Book?

Book: Denver.

Operator: David Pope?

Pope: Topeka, Kansas.

Operator: Steve Witte?

Witte: Pueblo, Colorado.

Operator: Kevin Salter?

Salter: Garden City, Kansas.

Operator: John Draper?

Draper: Santa Fe, New Mexico.

Operator: Mark Rude?

Rude: Stafford, Kansas.

Operator: Mr. Evans and Mr. Simpson?

Evans: Alamosa, Colorado.

Operator: Thank you. Mr. Miller, were you able to hear your participants clearly?

Miller: Yes, and except for Mary Louise Clay. Did Jim or Tom Pointon answer for that?

Rogers: Yes, we did.

Miller: OK, great, I think that's everybody.

Operator: If you need operator assistance during the conference, please press star followed by the zero and if you should disconnect from this conference and would like to rejoin, please dial 1-888-633-8017. Once again, that number is 1-888-633-8017, and as a reminder, this call is being recorded, Wednesday, March 25, 1998. Please go ahead, Mr. Miller.

Miller: OK, I'm going to turn this over to Mr. Trujillo, the Chairman.

Trujillo: OK, let's...hello, everybody, and why don't we just call the meeting to order and have roll call, starting with you, Mr. Miller, for Colorado members?

Miller: Well, this is Steve Miller, I'll let you know that Peter Evans, the Acting Director of the Water Conservation Board, is at another site, and is on the call, and he can introduce the Colorado delegation, and he will be chairing that, I believe.

Trujillo: Who's chairing the Colorado delegation?

Evans: I am, this is Peter Evans. I'm in Alamosa, but Tom Pointon ...

Trujillo: OK.

Evans: ... and Jim Rogers are on the phone from Lamar.

Trujillo: OK, Mr. Rogers and Mr. Pointon, when I call your name please say here, just so we get it recorded. Mr. Rogers?

Rogers: Yes.

Trujillo: Mr. Pointon?

Pointon: Yes.

Trujillo: And Kansas, Mr. Pope?

Pope: Yes, this is David Pope, I'm in Topeka, and while I've not heard their voices yet, my understanding is that both of our other two compact members, Mr. Buerkle and Mr. Overton, are there at Garden City.

Trujillo: When I call your name, will you please respond, to get it on the record, please. Mr. Buerkle?

Salter: Buerkle's not present.

Trujillo: Not present?

Salter: Correct.

Trujillo: And Mr. Overton?

Overton: Present.

Trujillo: So we have two members of the Kansas delegation present, correct?

Pope: Yes, that is correct.

Trujillo: OK. Why don't we go ahead then and proceed, Mr. Miller. It is my understanding that we have three items to take care of?

Miller: One other thing, Mr. Trujillo, I did give out a call-in number, because people were traveling.

Trujillo: Right.

Miller: So this call isn't restricted to just people that we placed calls to. Is there anybody on the call that did call in, other than Larry Trujillo? Any federal agencies? Apparently not. OK.

Trujillo: Let me, before we go ... the three items ... are we still dealing with the three separate items?

Miller: Yes, sir.

Trujillo: And let me, for the record also, question that all members were, Mr. Buerkle and all other members, were notified of the meeting.

Miller: Yes, I did that personally.

Trujillo: OK, and are you satisfied that there was sufficient notification of the three items to be discussed today with everyone concerned so that the public or those interested had an opportunity to partake in today's meeting? Are both Mr. Pope and Mr. Miller satisfied that that's happened?

Pope: This is David Pope, I believe that's the case. I believe the agenda item was distributed and was available there at our local office as well, in addition to being here in Topeka.

Trujillo: And evidently you feel the same way, Mr. Miller?

Miller: Yes, but I'm going to have to defer from now on to my boss, Mr. Evans.

Trujillo: OK, Mr. Evans, do you feel that there was adequate notice to people who had an interest in this matter?

Evans: Yes, we're satisfied.

Trujillo: OK, Mr. Evans, why don't we go ahead then and proceed with the first item on the agenda. I assuming everyone has the agenda that was sent out which has Notice of Special Telephonic Meeting, as the heading on it. Then we'll go to the first matter, unless there's some objection, and the adoption of the resolution. Mr. Evans.

Evans: Mr. Chairman, we've discussed this among the Colorado delegation and the Colorado delegation supports both of these amendments.

Trujillo: Mr. Pope.

Pope: Yes, this is David Pope. My understanding is that the members of the Kansas delegation are in support of both of the amendments to the Offset Account Resolution. Mr. Overton, is that a fair statement?

Overton: Yes.

Trujillo: OK. Unless there's some objection, then why don't we move forward with a motion for the adoption of the resolution?

Miller: Mr. Trujillo, this is Steve Miller. We're going to ... the call's being recorded as was stated, we'll make minutes from that tape here. Just to identify what we're talking about, the resolution that relates to agenda item 1a, amending paragraph 9, is attached to a March 12 letter from John Draper to Dennis Montgomery, and I believe that's been sent to all the sites on the call and everybody should have that.

Trujillo: Right.

Miller: And then the resolution that relates to agenda item 1b, amending paragraph 5b of the Offset Account, is attached to a letter from John Draper to Dennis Montgomery, dated March 24, and there's an identical resolution attached to a March 25 letter from John Draper to Lt. Colonel Wagner. Lt. Colonel Wagner, are you on the phone, by the way?

Wagner: Yes, I am here.

Miller: OK. The identical resolution is attached to both those March 25 and 24 letters, and we'll put those as attachments to the minutes, but there were some earlier versions out

there floating around.

Trujillo: Right, and with that explanation what I would like to do is have a motion to place the resolution forward and then ask and see if there's any discussion on it.

Evans: Mr. Chairman, this is Peter Evans. I would move the adoption of these amendments.

Trujillo: OK, do I hear a second, please?

Pope: Mr. Chairman, this is David Pope, I would second the motion. As a procedural matter, I assume that includes both amendments in the same motion?

Trujillo: Let's take amendment 1a first, and give anyone at the conference an opportunity to discuss it or do you have any questions?

Evans: That's the amendment to paragraph 9?

Trujillo: Right, paragraph 9 with respect to the time of delivery of certain water to the Offset Account in John Martin Reservoir for the use of Kansas. Well, let's go ahead with the language. We're reading the language now and bringing them together. Unless there's some objection, we'll just take them both together. Any objection to that?

Evans: There doesn't appear to be any objection here.

Trujillo: OK, any discussion on the motion to adopt both paragraph 9 and paragraph 5b? Are there any questions or discussion ... and I'm being extra careful in asking this because of the nature of the call, and I just don't want later ... question raised that opportunity wasn't given for discussion. So is there any discussion out there ... questions, please? If there is none, then we'll take the vote. Mr. Pope, would you please vote for Kansas.

Pope: Kansas votes aye on the motion.

Trujillo: And Colorado, Mr. Evans.

Evans: Colorado votes aye.

Trujillo: The resolution is adopted, and Mr. Miller, you will make the appropriate distribution for signature?

Miller: Yes. Actually, John, John Draper has the originals of both those documents, perhaps he could initiate.

Trujillo: Mr. Draper, will you do that, please?

Draper: Yes, I'd be glad to.

Trujillo: Thank you, appreciate it.

Pope: Mr. Chairman, related to this item procedurally, I'd like to make a suggestion and a request. Each of these two resolutions, the item a and the item b, make amendments to the Offset Account Resolution that was originally adopted a year ago, roughly.

Trujillo: Right.

Pope: It would be my suggestion that the complete Offset Account Resolution be retyped to incorporate these particular changes in addition to the actions we're taking today. I'd view that as strictly procedural, but I believe it would then result in us having one document that would be current as of these amendments.

Trujillo: All right, I think that would be appropriate with some explanation as to what happened and the dates of adoption of these amendments here, so that whoever's reading the documents would see the chronology of the events as they occurred.

Pope: Yes, I'd be happy to receive any other comments on that. That's strictly procedural. I do not believe it changes the substance of what we're doing today.

Miller: This is Steve Miller. Then we would circulate a revised Offset Account Resolution for signature rather than these individual resolutions?

Pope: I think as a matter of formality, we probably need to do both, Steve.

Miller: OK.

Pope: Sign these as the resolutions on which we took action, which stand on their own.

Miller: Right, I guess I'm asking, where is the Corps' signature important? On the resolutions?

Pope: Well, it probably needs to be on all of them. It would be on ...

Trujillo: I would say we should have documents showing what happened ... what occurred here today, and have those documents signed separately with, then, the resolution amended and incorporated into one document and signed, with some type of chronology and explanation as to when this took place, so someone reading the document knows the chronology of when the original was adopted last year, and that these two were adopted today, and incorporated into one document. At least I would hope that that's the way we would do it. Is that a problem, Mr. Draper, since you're going to ... ?

Draper: No, that wouldn't be a problem ... Mr. Chairman.

Trujillo: Is that all right, Mr. Evans ... Mr. Pope, with your delegations?

Evans: I think that's appropriate. Jim or Tom, do you agree? Colorado supports it then.

Trujillo: OK.

Pope: As long as Mr. Overton agrees, well then I think Kansas supports it, of course.

Trujillo: The important thing is that we show..I think it's good to have one final document, but also show the chronology so there's a true picture of what occurred here, and what has occurred since last year. Anything else on this matter? If not, why don't we go to item 2, which is the transfer of water.

Salter: Excuse me, this is Kevin Salter in Garden City. Bob Buerkle is now present.

Trujillo: Mr. Buerkle, are you present?

Buerkle: Yes.

Trujillo: OK. The full delegation from Kansas is then present. Who's going to address item number 2 first, Mr. Pope or Mr. Evans?

Pope: I think it needs to be Mr. Evans.

Trujillo: Mr. Evans, the floor is yours.

Evans: OK, well, everybody has this draft that was circulated ... I guess a revised draft today. Resolution of the Arkansas River Compact Administration Concerning John Martin Reservoir Permanent Pool.

Trujillo: Was that second draft dated March 13th?

Evans: Right. This is dated March 25th, third draft.

Trujillo: Right. I have that. Right. Does everyone have a copy of that draft?

Miller: You probably don't Mr. Chairman, because I was unable to figure out where you were this morning.

Trujillo: Was that the one you faxed to my office?

Miller: Yes, I do believe I tried to fax it to your Pueblo office. Did they get it to you?

Trujillo: Right. Yes.

Miller: OK, great.

Trujillo: Why don't we put that on the table, please, through a motion, and then we can discuss it?

Evans: We've discussed this among the Colorado delegation, and move the approval of this resolution.

Trujillo: OK, do I hear a second?

Pope: Mr. Chairman, this is Mr. Pope. I'll second the resolution, but I would like to discuss the matter, so we will get it on the table for official action.

Trujillo: OK, it is now properly before us. Go ahead with the discussion, Mr. Pope.

Pope: The language is just been something we've just received, so have not really had had an opportunity to look at that very much explicitly. I think conceptually my understanding of this resolution would be to allow a transfer of certain water to the permanent pool if the matter is then agreed to by the Colorado State Engineer and myself as Kansas Chief Engineer, and of course subject to operating criteria under the original permanent pool resolution. I guess I would make just a couple of comments and then I'd like to hear comments from others. If this resolution would be passed, then I think it would be important during the course of the considerations related to whether such a transfer actually occurred, to look at a few issues. One of those would be to make sure that we carefully look at the original permanent pool resolution that was adopted August 14th of 1976, and make sure that this action is consistent with the policy set forth therein, which in essence allows water deliveries pursuant to the Muddy Creek Decree, and then secondly, other water deliveries from other valid water rights owned or controlled by the State of Colorado, may be added to the permanent pool subject to the approval of the Compact Administration, and that's essentially what we would be authorizing to look at here today ... that we haven't had much chance to examine in much detail. I would also like to note that we would want to resolve any issues regarding appropriate conditions, we believe any such transfers should be only the consumptive use portion of any water transferred to the permanent pool with appropriate release of return flows from the reservoir, and then finally, that we would want to examine carefully the issue of benefits to Kansas as well as to Colorado. So those are kind of the key points I wanted to just mention so that there would be an understanding of all parties that there are some things that would still need to be looked at here, even if we move forward with this.

Trujillo: Mr. Evans, a response?

Evans: Actually, I'd like to hear next from Steve Miller and I think Dennis Montgomery's on the line there.

Trujillo: OK, Mr. Miller?

Miller: I think Dennis may have a better handle on how we would react to those conditions.

Trujillo: OK. Mr. Montgomery?

Montgomery: I think we can work with Mr. Pope's conditions. I appreciate Kansas' cooperation today in agreeing to a resolution that would at least authorize transfers if we can get the agreement of the Colorado State Engineer and the Kansas Chief Engineer. This will provide an opportunity to invade the flood control pool in John Martin in accordance with the federal legislation that authorizes the permanent pool, and will reduce releases that cause flooding for water users in Colorado and Kansas downstream from the dam, so I think we can work with the conditions that Mr. Pope has outlined in his comments.

Trujillo: Any comments by any members of the Administration, the other four members?

Pointon: This is Tom Pointon. You know, Colorado is not the only ones who play on that pool. According to those at John Martin Reservoir, the operators, they say there was 30,000 visitors last year and a lot of them were from Kansas. They have records that show that almost 3,000 Kansas people stayed in the paid park below John Martin Reservoir, so if Kansas would see some way to show some beneficial use to that permanent pool to the residents of Kansas, I would think they could kind of help us a little.

Trujillo: Any other comments from any other members of the Administration? Any comments by any other participants of the conference call? Mr. Pope, does that address the questions that you raise, or at least the understanding that you are trying to get between Kansas and Colorado, sufficiently?

Pope: I think so. I simply wanted just to mention that there are some issues there that we would want to work through. We are, certainly, very willing to cooperate with our sister state of Colorado and certainly recognize that John Martin Reservoir provides a wonderful opportunity for recreation and this may be a way or a time that some help can be provided. We just simply want to be careful as we move forward through these items that we fully understand the consequences.

Trujillo: OK, any further discussion? If not, Mr. Pope, would you please cast the vote for Kansas?

Pope: Kansas will vote aye.

Trujillo: Colorado.

Evans: Colorado does the same.

Trujillo: OK, the resolution is adopted and now who would like to try to address item number 3 on the agenda, the discussion of the John Martin Reservoir spill accounting in '98?

Pope: Mr. Chairman, this is David Pope again. I could perhaps make a couple of brief comments. There may be comments from others, as well.

Trujillo: And just for clarification, the purpose of this is strictly for discussion of this matter?

Pope: Yes, we are not proposing action. I think it's simply an acknowledgment that there has been a matter related to the accounting of the spill from John Martin Reservoir since it began last December. Considerable correspondence has been exchanged between Mr. Simpson and I regarding this matter. I believe that those letters have been provided to various other members of the Administration and yourself as Chairman, if I understand that correctly.

Trujillo: Right.

Pope: We still ... I simply would like to at this point note for the Administration that we do not consider this matter yet resolved. We do appreciate the fact that our correspondence has been answered. We've received letters from Mr. Simpson. We have been taking this matter under advisement and looking at the accounting and still do have concerns. We do not believe that the states are in agreement, or at least Mr. Simpson and I are not in agreement on the matter, but we will continue to pursue that and respond likely in the near future in all likelihood with some information that hopefully will point out our concerns in regard to the impacts on the actual accounting. I do not think it's necessary at this time to go into any depth about the nature of those concerns. I think they are pretty well laid out in the correspondence.

Trujillo: OK. Mr. Evans, any comments?

Evans: Mr. Chairman, I would just say that the State Engineer is not on this end of the call any longer, but it's my understanding that we are in complete agreement with Mr. Pope's comment, that more work is needed to resolve this.

Trujillo: OK, any comment by the members of the Administration? Any further discussion?

Pope: Mr. Chairman, if there are not any comments from any other members of the Administration, let me just ask if there are comments from others from Kansas. I know several of our people are out of town at this point, and, of course, Mr. Draper is available down in Santa Fe. Comments from Mr. Draper or Mr. Rolfs or any of

those people?

Trujillo: Any comments from any participants of the conference?

Draper: Not from here in Santa Fe, Mr. Chairman.

Trujillo: OK, no further discussion then. Is there any other business to be brought before this meeting? If not, again, particularly to you, Mr. Miller, and Mr. Pope and Mr. Evans, and the members of the Administration, thank you from the Chairman. I appreciate your cooperation. I read your correspondence and the work. I know these are very, very difficult issues for both states, and I appreciate the work that both states do in order to try to achieve some resolutions that will benefit both states. And again I thank you. If there's any other comments from anyone before we adjourn?

Pope: No. Thank you very much.

Trujillo: OK, if not, consider the meeting adjourned, and thank you again everybody.

End of call.

ATTACHMENTS  
TO MINUTES OF ARCA SPECIAL MEETING MARCH 25, 1998

- A. Notice of Special Telephonic Meeting
- B. March 12, 1998 Letter from John B. Draper to Dennis Montgomery
- C. March 24, 1998 Letter from John B. Draper to Dennis Montgomery
- D. March 25, 1998 Letter from John B. Draper to Lt. Col. Lloyd S. Wagner
- E. Resolution to Amend Offset Account Resolution, signed March 30, 1998
- F. Second Amendment to the Resolution Concerning an Offset Account in John Martin Reservoir for Colorado Pumping, signed March 30, 1998
- G. Resolution of the Arkansas River Compact Administration Concerning the John Martin Reservoir Permanent Pool, signed March 30, 1998
- H. Resolution Concerning an Offset Account in John Martin Reservoir for Colorado Pumping as Amended March 30, 1998, signed March 30, 1998

# Attachment A

# ARKANSAS RIVER COMPACT ADMINISTRATION

307 SOUTH FIFTH STREET, LAMAR, COLORADO 81052

719-336-9696

## FOR COLORADO

DARIES C. LILE, DENVER  
THOMAS R. POINTON, LAS ANIMAS  
JAMES G. ROGERS, LAMAR

## CHAIRMAN AND FEDERAL REPRESENTATIVE

LARRY E. TRUJILLO, SR.  
PUEBLO, COLORADO

## FOR KANSAS

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

## NOTICE OF SPECIAL TELEPHONIC MEETING OF THE ARKANSAS RIVER COMPACT ADMINISTRATION

**Wednesday March 25, 1998**

**1:00 - 1:30 P.M. MST**

**(2:00 - 2:30 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. Adopting a resolution to modify the previously adopted Offset Account Resolution, specifically:
  - a. Paragraph 9 with respect to the time of delivery of certain water into the offset account at John Martin Reservoir for use by Kansas, and
  - b. Paragraph 5B with respect to monthly and seasonal caps on usable flow.
2. Authorizing the transfer of water that would otherwise spill from Colorado water user storage accounts at John Martin Reservoir as an additional source of water for the permanent pool pursuant to agreements between the Colorado Division of Wildlife and storage account owners at such times as the Operations and Assistant Operations Secretaries determine there would be no injurious downstream impacts.
3. Introductory discussion of John Martin Reservoir spill accounting in CY 1998.

Any person wanting to monitor or participate in the telephonic meeting should contact one of the proposed 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	Mary Louise Clay	719-336-9696
2. Kansas Div. of Water Resources, Topeka, KS	David Pope	785-296-3717
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

Notice issued by the Colorado Water Conservation Board pursuant to the authority of the ARCA Recording Secretary, Mary Louise Clay.

# Attachment B

OF COUNSEL  
William R. Federico  
Seth D. Montgomery

**MONTGOMERY & ANDREWS**  
PROFESSIONAL ASSOCIATION  
ATTORNEYS AND COUNSELORS AT LAW

Post Office Box 2307  
Santa Fe, New Mexico 87504-2307

J.O. Seth (1883-1963)  
A.K. Montgomery (1903-1987)  
Frank Andrews (1914-1981)

March 12, 1998

Victor R. Ortega  
Gary Kilpatrick  
Thomas W. Olson  
Walter J. Melendres  
Bruce Hart  
John B. Draper  
Nancy M. King  
Sarah M. Singleton  
Stephen S. Hamilton

Galen M. Butler  
Edmund H. Kendrick  
Louis W. Ross  
Paul S. Grand  
Carolyn A. Wolf  
Andrew S. Montgomery  
Grace Phillips  
Alexandra Corwin  
Monica R. Garcia

325 Paseo de Peralta  
Santa Fe, New Mexico 87501

Telephone (505) 982-3573  
Fax (505) 982-4289

VIA TELECOPY & U.S. MAIL

Dennis Montgomery, Esq.  
Hill & Robbins, P.C.  
100 Blake Street Building  
1441 18th Street, Suite 100  
Denver, Colorado 80202-1256

Re: Kansas v. Colorado, No. 105, Orig., U.S. Supreme Court

Dear Dennis:

Thank you for your draft of an amendment to the Offset Account Resolution of March 9, 1998. I am enclosing a modified amendment to the Offset Account Resolution which we have developed from your draft. The considerations that motivated the changes included simplification, avoidance of possible areas of dispute, and conformance to the language of the existing Offset Account Resolution.

If the enclosed form of amendment is agreeable to Colorado, we can schedule the approval meeting of the Compact Administration. If not, I would suggest that we discuss differences by telephone.

Best regards.

Sincerely yours,



John B. Draper

JBD:dlo  
Enclosure

cc: (w/encl.)  
David Pope  
Don Pitts  
Lee Rolfs  
Dale Book

**RESOLUTION  
TO AMEND  
THE OFFSET ACCOUNT RESOLUTION**

**RECEIVED  
MAR 12 1998**

**WHEREAS**, the Arkansas River Compact Administration and the <sup>Colorado Water Conservation Board</sup> duly authorized representative of the Chief of Engineers of the U.S. Army Corps of Engineers jointly approved a storage account in John Martin Reservoir known as the "Offset Account in John Martin Reservoir for Colorado Pumping" [hereinafter the "Offset Account"]; and

**WHEREAS**, the Resolution Concerning an Offset Account in John Martin Reservoir for Colorado Pumping [hereinafter "Offset Account Resolution"] requires that 500 acre-feet of fully consumable water be delivered by the State of Colorado or Colorado water users to the Offset Account by April 1 of each year as a prerequisite for Colorado's right to deliver or permit the delivery by Colorado water users of up to 10,000 acre-feet of water (including the said 500 acre-feet) to the Offset Account pursuant to the Resolution during the period until the next succeeding April 1 [hereinafter "Initial Storage Charge Water"]; and

**WHEREAS**, the conservation pool in John Martin Reservoir is currently full, the contents of the Offset Account have been spilled, and water is currently being spilled from accounts granted in the Administration's Resolution Concerning an Operating Plan for John Martin Reservoir as revised through December 11, 1984;

**WHEREAS**, the States of Colorado and Kansas believe that greater flexibility is needed with regard to the timing of the delivery of the Initial Storage Charge Water;

**NOW THEREFORE BE IT RESOLVED** that the Administration and the Chief of Engineers of the Corps of Engineers, or his duly authorized representative, jointly approve the following amendment to the Resolution Concerning An Offset Account in John Martin Reservoir for Colorado Pumping:

The first sentence of paragraph 9 of the Offset Account Resolution is amended to read as follows:

9. Notwithstanding other provisions of this Resolution, 500 acre-feet of fully consumable water shall be delivered by Colorado or Colorado water users to the Offset Account by April 1 of each year, or at a later time in any one year if agreed to by the Colorado State Engineer and the Kansas Chief Engineer, or within two weeks after this Resolution becomes effective, whichever is later, which delivery shall be a prerequisite for Colorado's right to deliver or permit the delivery by Colorado water users of up to 10,000 acre-feet of water (including the said 500 acre-feet) to the Offset Account pursuant to this Resolution during the period until the next succeeding April 1.

**JOINTLY APPROVED:**

\_\_\_\_\_  
Chairman  
Arkansas River Compact  
Administration

\_\_\_\_\_  
Recording Secretary  
Arkansas River Compact  
Administration

\_\_\_\_\_  
District Engineer  
Albuquerque District  
Duly Authorized Representative of  
the Chief of Engineers  
U.S. Army Corps of Engineers

\_\_\_\_\_  
Date

UDOKAN-RES-AMEND-OFFSET

# Attachment C

OF COUNSEL  
William R. Federico  
Seth D. Montgomery

# MONTGOMERY & ANDREWS

PROFESSIONAL ASSOCIATION  
ATTORNEYS AND COUNSELORS AT LAW

Post Office Box 2307  
Santa Fe, New Mexico 87604-2307

J.D. Seth (1883-1883)  
A.K. Montgomery (1803-1987)  
Frank Andrews (1914-1981)

March 24, 1998

Victor R. Ortega  
Gary Kipatric  
Thomas W. Olson  
Walter J. Melendres  
Bruce Herr  
John B. Draper  
Nancy M. King  
Sarah M. Singleton  
Stephen S. Hamilton

Galen M. Butler  
Edmund H. Kendrick  
Louis W. Rose  
Paul S. Grand  
Carolyn A. Wolf  
Andrew S. Montgomery  
Grace Phillips  
Alexandra Corwin

325 Paseo de Peralta  
Santa Fe, New Mexico 87601  
Telephone (505) 982-3873  
Fax (505) 982-4289

VIA TELECOPY & U.S. MAIL

Dennis M. Montgomery, Esq.  
Hill & Robbins, P.C.  
100 Blake Street Building  
1441 18th Street, Suite 100  
Denver, Colorado 80202-1256

Re: Second Amendment to the Resolution Concerning an Offset Account in  
John Martin Reservoir for Colorado Pumping


Dear Dennis:

In accordance with our telephone conversation earlier today, I am enclosing a revision of your proposed form of resolution to amend the existing Offset Account Resolution with regard to the determination of evaporation charges.

The changes address Kansas' concerns that the part of the evaporation allocation procedure which attempts to parallel the usable flow analysis associated with the HIM should provide (1) that, when the seasonal cap amount for the summer is reached, only depletions of usable flow that would be calculated thereafter are eliminated, and (2) that the caps should apply only to amounts associated with diversions in Kansas, not amounts recharged in Kansas. Also, the new language is now explicitly limited to evaporation allocation. Other less significant changes have also been made.

Please confirm that the enclosed form of Resolution is acceptable to Colorado and ready for approval at the Compact meeting tomorrow at 1:00 pm Mountain Time.

Sincerely yours,



John B. Draper

JBD:dlo  
Enclosure

**SECOND AMENDMENT  
TO THE RESOLUTION  
CONCERNING AN OFFSET ACCOUNT  
IN JOHN MARTIN RESERVOIR FOR COLORADO PUMPING**

WHEREAS, the Arkansas River Compact Administration and the authorized representative of the Chief of Engineers of the U.S. Army Corps of Engineers, on March 17, 1997, jointly approved a Resolution Concerning an Offset Account in John Martin Reservoir for Colorado Pumping [hereinafter the "Offset Account Resolution"]; and

WHEREAS, the State of Colorado and Kansas desire to modify the language of paragraph 5.B of the Offset Account Resolution to conform more closely to the usable flow analysis used with the Kansas Hydrologic-Institutional Model approved in Kansas v. Colorado, 514 U.S. 673 (1995);

NOW THEREFORE BE IT RESOLVED that the Administration and the Chief of Engineers of the Corps of Engineers, or his duly authorized representative, jointly approve the following amendment to the Offset Account Resolution:

1. The last sentence of paragraph 5.B of the Offset Account Resolution is amended to read as follows:

For the summer storage season in the Reservoir (April 1 - October 31), the Colorado State Engineer shall assume that net depletions to usable Stateline flows are 81.9 percent of the net stream depletions at the Stateline, and for the winter storage season (November 1 - March 31), the Colorado State Engineer shall assume that net depletions to usable Stateline flows are 34.9 percent of the net stream depletions at the Stateline; provided that

if the monthly Stateline flow exceeds 30,000 acre-feet during the summer storage season or 7,500 acre-feet during the summer storage season. If 72 percent of the measured monthly Stateline flow exceeds 31,000 acre-feet, or during the winter storage season, no depletion to usable Stateline flows 25 percent of the measured monthly Stateline flow exceeds 7,500 acre-feet, the Colorado State Engineer shall be determined assume that net depletions to usable Stateline flows are 9.9% of the net stream depletions at the Stateline for such months for the purpose of this paragraph. In addition, if, during the summer storage season, 72% of the measured Stateline flow, limited to 30,000 acre-feet per month, exceeds 140,000 acre-feet, then the Colorado State Engineer shall assume that net depletions to usable Stateline flows thereafter within that summer storage season shall be 9.9% of the net stream depletions at the Stateline. The computation of depletions to usable Stateline flows described in this paragraph shall only be for the purpose of assigning the evaporation charge for water stored in the Offset Account.

JOINTLY APPROVED:

\_\_\_\_\_  
 Chairman  
 Arkansas River Compact  
 Administration

\_\_\_\_\_  
 Recording Secretary  
 Arkansas River Compact  
 Administration

\_\_\_\_\_  
 District Engineer  
 Albuquerque District  
 Duly Authorized Representative of  
 the Chief of Engineers  
 U.S. Army Corps of Engineers

\_\_\_\_\_  
 Date

ADJ CAN SECOND RESOLUTION

# Attachment D

## MONTGOMERY &amp; ANDREWS

OF COUNSEL  
William R. Federici  
Seth D. Montgomery

PROFESSIONAL ASSOCIATION  
ATTORNEYS AND COUNSELORS AT LAW

Post Office Box 2307  
Santa Fe, New Mexico 87504-2307

J.O. Seth (1883-1983)  
A.K. Montgomery (1903-1987)  
Frank Andrews (1914-1981)

March 25, 1998

Victor R. Ortega  
Gary Kilpatrick  
Thomas W. Olson  
Walter J. Melendres  
Bruce Herr  
John B. Draper  
Nancy M. King  
Sarah M. Singleton  
Stephen S. Hamilton

Galen M. Buller  
Edmund H. Kendrick  
Louis W. Rose  
Paul S. Grand  
Carolyn A. Wolf  
Andrew S. Montgomery  
Grace Phillips  
Alexandra Corwin

325 Paseo de Peralta  
Santa Fe, New Mexico 87501

Telephone (505) 982-3873  
Fax (505) 982-4289

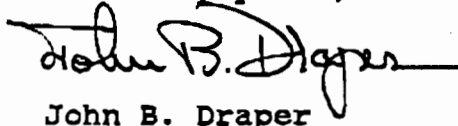
VIA TELECOPY &amp; U.S. MAIL

Lt. Col. Lloyd S. Wagner  
District Engineer  
Albuquerque District  
U.S. Army Corps of Engineers  
4101 Jefferson Plaza  
Albuquerque, New Mexico 87109

Dear Col. Wagner:

Please find enclosed a proposed Second Amendment to the Resolution Concerning an Offset Account in John Martin Reservoir for Colorado Pumping. Based on discussions, we believe that this form of resolution is likely to be acceptable to the State of Colorado. Like the original Offset Account Resolution, it provides for joint approval by ARCA and the Chief of Engineers or his duly authorized representative. Therefore, we are forwarding this to you for your review. I understand that you already have a copy of the proposed form of resolution to make the first amendment to the Offset Account Resolution.

Sincerely yours,



John B. Draper

JBD:dlo  
enclosure

cc: (via telecopy & U.S. Mail w/encl.)  
Dick Kreiner  
Dennis Montgomery  
Steve Miller

**SECOND AMENDMENT  
TO THE RESOLUTION  
CONCERNING AN OFFSET ACCOUNT  
IN JOHN MARTIN RESERVOIR FOR COLORADO PUMPING**

WHEREAS, the Arkansas River Compact Administration and the authorized representative of the Chief of Engineers of the U.S. Army Corps of Engineers, on March 17, 1997, jointly approved a Resolution Concerning an Offset Account in John Martin Reservoir for Colorado Pumping [hereinafter the "Offset Account Resolution"]; and

WHEREAS, the States of Colorado and Kansas desire to modify the language of paragraph 5.B of the Offset Account Resolution to conform more closely to the usable flow analysis used with the Kansas Hydrologic-Institutional Model approved in Kansas v. Colorado, 514 U.S. 673 (1995);

NOW THEREFORE BE IT RESOLVED that the Administration and the Chief of Engineers of the Corps of Engineers, or his duly authorized representative, jointly approve the following amendment to the Offset Account Resolution:

1. The last sentence of paragraph 5.B of the Offset Account Resolution is amended to read as follows:

For the summer storage season in the Reservoir (April 1 - October 31), the Colorado State Engineer shall assume that net depletions to usable Stateline flows are 81.9 percent of the net stream depletions at the Stateline, and for the winter storage season (November 1 - March 31), the Colorado State Engineer shall assume that net depletions to usable Stateline flows are 34.9 percent of the net stream depletions at the Stateline; provided that

~~if the monthly Stateline flow exceeds 30,000 acre-feet during the summer storage season or 7,500 acre-feet during the summer storage season, if 72 percent of the measured monthly Stateline flow exceeds 30,000 acre-feet, or during the winter storage season, no depletion to usable Stateline flows 25 percent of the measured monthly Stateline flow exceeds 7,500 acre-feet, the Colorado State Engineer shall be determined assume that net depletions to usable Stateline flows are 9.9% of the net stream depletions at the Stateline for such months for the purpose of this paragraph. In addition, if, during the summer storage season, 72% of the measured Stateline flow, limited to 30,000 acre-feet per month, exceeds 140,000 acre-feet, then the Colorado State Engineer shall assume that net depletions to usable Stateline flows thereafter within that summer storage season shall be 9.9% of the net stream depletions at the Stateline. The computation of depletions to usable Stateline flows described in this paragraph shall only be for the purpose of assigning the evaporation charge for water stored in the Offset Account.~~

**JOINTLY APPROVED:**

---

**Chairman  
Arkansas River Compact  
Administration**

---

**Recording Secretary  
Arkansas River Compact  
Administration**

---

**District Engineer  
Albuquerque District  
Duly Authorized Representative of  
the Chief of Engineers  
U.S. Army Corps of Engineers**

---

**Date**

**DBD/KAN-SECOND-RESOLUTION**

# Attachment E

**RESOLUTION  
TO AMEND  
THE OFFSET ACCOUNT RESOLUTION**

WHEREAS, the Arkansas River Compact Administration and the duly authorized representative of the Chief of Engineers of the U.S. Army Corps of Engineers jointly approved a storage account in John Martin Reservoir known as the "Offset Account in John Martin Reservoir for Colorado Pumping" [hereinafter the "Offset Account"]; and

WHEREAS, the Resolution Concerning an Offset Account in John Martin Reservoir for Colorado Pumping [hereinafter "Offset Account Resolution"] requires that 500 acre-feet of fully consumable water be delivered by the State of Colorado or Colorado water users to the Offset Account by April 1 of each year as a prerequisite for Colorado's right to deliver or permit the delivery by Colorado water users of up to 10,000 acre-feet of water (including the said 500 acre-feet) to the Offset Account pursuant to the Resolution during the period until the next succeeding April 1 [hereinafter "Initial Storage Charge Water"]; and

WHEREAS, the conservation pool in John Martin Reservoir is currently full, the contents of the Offset Account have been spilled, and water is currently being spilled from accounts granted in the Administration's Resolution Concerning an Operating Plan for John Martin Reservoir as revised through December 11, 1984;


WHEREAS, the States of Colorado and Kansas believe that greater flexibility is needed with regard to the timing of the delivery of the Initial Storage Charge Water;

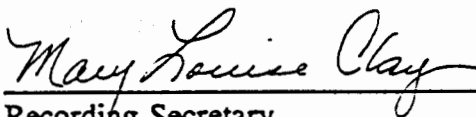
NOW THEREFORE BE IT RESOLVED that the Administration and the Chief of Engineers of the Corps of Engineers, or his duly authorized representative, jointly approve the following amendment to the Resolution Concerning An Offset Account in John Martin Reservoir for Colorado Pumping:

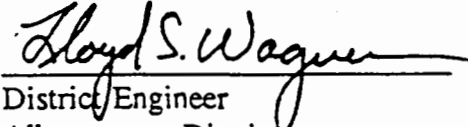
The first sentence of paragraph 9 of the Offset Account Resolution is amended to read as follows:

9. Notwithstanding other provisions of this Resolution, 500 acre-feet of fully consumable water shall be delivered by Colorado or Colorado water users to the Offset Account by April 1 of each year, or at a later time in any one year if agreed to by the Colorado State Engineer and the Kansas Chief Engineer, or within two weeks after this Resolution becomes effective, ~~whichever is later,~~ which delivery shall be a prerequisite for Colorado's right to deliver or permit the delivery by Colorado water users of up to 10,000 acre-feet of water (including the said 500 acre-feet) to the Offset Account pursuant to this Resolution during the period until the next succeeding April 1.

JOINTLY APPROVED:

  
Chairman  
Arkansas River Compact  
Administration

  
Recording Secretary  
Arkansas River Compact  
Administration

  
District Engineer  
Albuquerque District  
Duly Authorized Representative of  
the Chief of Engineers  
U.S. Army Corps of Engineers

30 March 98  
Date

# Attachment F

**SECOND AMENDMENT  
TO THE RESOLUTION  
CONCERNING AN OFFSET ACCOUNT  
IN JOHN MARTIN RESERVOIR FOR COLORADO PUMPING**

WHEREAS, the Arkansas River Compact Administration and the authorized representative of the Chief of Engineers of the U.S. Army Corps of Engineers, on March 17, 1997, jointly approved a Resolution Concerning an Offset Account in John Martin Reservoir for Colorado Pumping [hereinafter the "Offset Account Resolution"]; and

WHEREAS, the States of Colorado and Kansas desire to modify the language of paragraph 5.B of the Offset Account Resolution to conform more closely to the usable flow analysis used with the Kansas Hydrologic-Institutional Model approved in Kansas v. Colorado, 514 U.S. 673 (1995);

NOW THEREFORE BE IT RESOLVED that the Administration and the Chief of Engineers of the Corps of Engineers, or his duly authorized representative, jointly approve the following amendment to the Offset Account Resolution:

1. The last sentence of paragraph 5.B of the Offset Account Resolution is amended to read as follows:

For the summer storage season in the Reservoir (April 1 - October 31), the Colorado State Engineer shall assume that net depletions to usable Stateline flows are 81.9 percent of the net stream depletions at the Stateline, and for the winter storage season (November 1 - March 31), the Colorado State Engineer shall assume that net depletions to usable Stateline flows are 34.9 percent of the net stream depletions at the Stateline; provided that

~~if the monthly Stateline flow exceeds 30,000 acre feet during the summer storage season or 7,500 acre feet during the summer storage season, if 72 percent of the measured monthly Stateline flow exceeds 30,000 acre-feet, or during the winter storage season, no depletion to usable Stateline flows 25 percent of the measured monthly Stateline flow exceeds 7,500 acre-feet, the Colorado State Engineer shall be determined~~assume that net depletions to usable Stateline flows are 9.9% of the net stream depletions at the Stateline for such months for the purpose of this paragraph. In addition, if, during the summer storage season, 72% of the measured Stateline flow, limited to 30,000 acre-feet per month, exceeds 140,000 acre-feet, then the Colorado State Engineer shall assume that net depletions to usable Stateline flows thereafter within that summer storage season shall be 9.9% of the net stream depletions at the Stateline. The computation of depletions to usable Stateline flows described in this paragraph shall only be for the purpose of assigning the evaporation charge for water stored in the Offset Account.

JOINTLY APPROVED:

Larry L. Sigilson  
Chairman  
Arkansas River Compact  
Administration

Mary Louise Clay  
Recording Secretary  
Arkansas River Compact  
Administration

Lloyd S. Ubaque  
District Engineer  
Albuquerque District  
Duly Authorized Representative of  
the Chief of Engineers  
U.S. Army Corps of Engineers

30 March 98  
Date

[JBD]KAN-SECOND-RESOLUTION

# Attachment G

RECEIVED

APR 2 - 1998

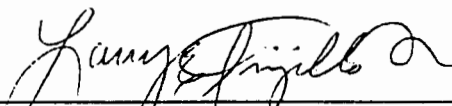
Colorado Water  
Conservation Board

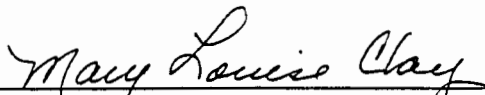
**RESOLUTION  
OF THE  
ARKANSAS RIVER COMPACT ADMINISTRATION  
CONCERNING  
THE JOHN MARTIN RESERVOIR PERMANENT POOL**

**BE IT RESOLVED** by the Arkansas River Compact Administration that the Operations Secretary, in consultation with the Assistant Operations Secretary, is hereby authorized for the remainder of Compact Year 1998 to transfer water that would otherwise spill from John Martin Reservoir into the John Martin Reservoir permanent pool, if such transfers are agreed to by the Colorado State Engineer and the Kansas Chief Engineer. Such transfers shall be subject to the John Martin Reservoir Permanent Pool Operating Criteria adopted by the Administration on August 14, 1976.

Entered this 24th day of March, 1998, at a special telephonic meeting of the Arkansas River Compact Administration.

**ARKANSAS RIVER COMPACT ADMINISTRATION**

By:   
Larry E Trujillo, Sr., Chairman

By:   
Mary Louise Clay, Recording Secretary

# Attachment H

**RESOLUTION CONCERNING  
AN OFFSET ACCOUNT IN  
JOHN MARTIN RESERVOIR FOR  
COLORADO PUMPING  
AS AMENDED MARCH 30, 1998**

WHEREAS, Article IV-D of the Arkansas River Compact provides as follows:

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, the United States Supreme Court has determined that post-Compact well pumping in the State of Colorado has caused material depletions of usable Stateline flows of the Arkansas River in violation of the Arkansas River Compact [hereinafter the "Compact"], Kansas v. Colorado, 115 S.Ct 1733 (1995); and

WHEREAS, the State of Colorado [hereinafter "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 as long as any depletions to usable Stateline flows caused by such pumping are replaced; and

WHEREAS, Section 2 of the Act of Congress approving the Compact provides in relevant part as follows:

[T]he 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, an account in John Martin Reservoir [hereinafter the "Reservoir"] is not necessary for Colorado's compliance with the Compact, but an account would be of benefit to Colorado by facilitating compliance with the Compact by Colorado and its water users to the extent that Colorado allows post-Compact well pumping by its water users in excess of the pre-Compact entitlement of 15,000 acre-feet per year, and Colorado has requested such an account; and

WHEREAS, the Offset Account [as hereinafter defined] would create benefits for water users in Kansas but also monitoring and accounting burdens for the State of Kansas [hereinafter "Kansas"]; and

WHEREAS, the existence of an account in the Reservoir does not, in and of itself, assure compliance with the Compact by Colorado and its water users; and

WHEREAS, the Arkansas River Compact Administration [hereinafter the "Administration"] recognizes that it has the authority to create the Offset Account as provided for herein, but that neither the Administration nor either of its member states has any obligation to create the account provided for in this Resolution; and

WHEREAS, concurrently with the adoption of the original form of this Resolution, Colorado and Kansas entered into a Stipulation Re Offset Account in John Martin Reservoir [hereinafter the "Stipulation"]; and

WHEREAS, this Resolution is being readopted as amended;

NOW THEREFORE, BE IT RESOLVED that, pursuant to Section 2 of the Act of Congress approving the Compact, the Administration and the Chief of Engineers of the Corps of Engineers or his duly authorized representative, jointly approve a storage account in the Reservoir to be established and operated as follows:

1. There is hereby established 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. Deliveries of water to the Offset Account shall be stored in the conservation pool but shall not be inflows into the Reservoir which accrue to conservation storage, and water in the Offset Account shall reside below elevation 3,851 feet above mean sea level (bottom of flood control storage). The establishment of the Offset Account is for the primary purpose of facilitating Compact compliance by Colorado and its water users 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 except as authorized herein. The intent of this Resolution is that, to the extent that Colorado allows post-Compact well pumping in Colorado in excess of the pre-Compact entitlement of 15,000 acre-feet per year, any depletions to usable Stateline flows caused by such pumping be contemporaneously offset by delivering replacement water to the Stateline or by making replacement water available in the Offset Account where it can be called for by Kansas in accordance with this Resolution.

2. The Offset Account shall be separate from and in addition to the accounts established by the Administration's Resolution Concerning an Operating Plan for John Martin Reservoir as revised through December 11, 1984 [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 [hereinafter the "Colorado State Engineer"] may deliver or permit the delivery by Colorado water users of water to the Offset Account upon timely notice to the Kansas Chief Engineer or his delegate [hereinafter the "Kansas Chief Engineer"]. Such notice shall specify and document the following: the source of the water delivered, the amount of water, the purpose for which the water is delivered, the time of delivery, the rate of delivery, the extent to which the water is fully consumable, and the quantity, timing, and location of any associated return flows.

4. Only water approved for storage in the Offset Account by the Colorado State Engineer may be delivered to the Offset Account, 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 using the method set out in U.S. Geological Survey Water Resources Investigations 78-75 (Sept. 1978) [hereinafter the "Livingston Formula"]. At the time of delivery of water to the Offset Account, the Colorado State Engineer shall determine the extent to which water delivered to the Offset Account is fully consumable and shall thereafter demand the release of any water necessary to maintain historical return flows to Colorado ditches and the Stateline from deliveries of water historically used for agricultural irrigation; provided, however, that the Kansas Chief Engineer may, at his option, direct that water necessary to maintain historical return flows to the Stateline [hereinafter "Stateline Return Flow"] remain in the Offset Account or be transferred to the Kansas account provided for in Section II of the 1980 Operating Plan [hereinafter "Kansas Section II Account"] for later release, and provided further, that the Colorado State Engineer's determination of the extent to which water delivered to the Offset Account is fully consumable shall not be binding on the Administration or Kansas. Once the Colorado State Engineer has determined the extent to which the water delivered to the Offset Account is fully consumable or is Stateline Return Flow, and has notified the Kansas Chief

Engineer in accordance with paragraph 3 above, the Kansas Chief Engineer may demand the release of the water in the Offset Account which is fully consumable at any time and at any rate and may demand the release or direct the transfer of water in the Offset Account which is Stateline Return Flow at any time and at any rate .

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. Evaporation from water in the Offset Account shall be charged against Colorado until:

- A. The water is released or transferred in accordance with this Resolution, or
- B. Thirty days after the Colorado State Engineer has determined and notified the Kansas Chief Engineer of the estimated monthly net depletion to usable Stateline flows caused by post-Compact diversions of tributary ground water from the Valley Fill Aquifer and surficial aquifers along the Arkansas River between Pueblo Dam and the Stateline ("the estimated monthly net depletion of usable Stateline flows"), to the extent the Kansas Chief Engineer has not previously demanded the release of water available for replacement in the Offset Account in an amount equal to or greater than the estimated monthly net depletion to usable Stateline flows, the evaporation loss on that amount of water or portion thereof shall thereafter be charged to Kansas. In order to determine the estimated monthly net depletion to usable Stateline flows for

purposes of this paragraph only, the Colorado State Engineer shall use the following procedure unless he and the Kansas Chief Engineer agree otherwise: the Colorado State Engineer shall use the presumptive stream depletions established in Rule 4.2 of the Amended Rules and Regulations Governing the Diversion and Use of Tributary Ground Water in the Arkansas River Basin, Colorado, effective June 1, 1996 [hereinafter "Amended Rules"] and unit response functions presently utilized in accordance with the Amended Rules to determine stream depletions at the Stateline caused by post-Compact diversions of tributary ground water from the Valley Fill Aquifer and surficial aquifers along the Arkansas River between Pueblo Dam and the Stateline. Further, the Colorado State Engineer shall use the same procedures currently used under the Amended Rules to determine the timing and location of return flows from diversions of imported waters and other augmentation water in determining net stream depletions at the Stateline. For the summer storage season in the Reservoir (April 1 - October 31), the Colorado State Engineer shall assume that net depletions to usable Stateline flows are 81.9 percent of the net stream depletions at the Stateline, and for the winter storage season (November 1 - March 31), the Colorado State Engineer shall assume that net depletions to usable Stateline flows are 34.9 percent of the net stream depletions at the Stateline; provided that during the summer storage season, if 72 percent of the measured

monthly Stateline flow exceeds 30,000 acre-feet, or during the winter storage season, 25 percent of the measured monthly Stateline flow exceeds 7,500 acre-feet, the Colorado State Engineer shall assume that net depletions to usable Stateline flows are 9.9% of the net stream depletions at the Stateline for such months. In addition, if, during the summer storage season, 72% of the measured Stateline flow, limited to 30,000 acre-feet per month, exceeds 140,000 acre-feet, then the Colorado State Engineer shall assume that net depletions to usable Stateline flows thereafter within that summer storage season shall be 9.9% of the net stream depletions at the Stateline. The computation of depletions to usable Stateline flows described in this paragraph shall only be for the purpose of assigning the evaporation charge for water stored in the Offset Account.

Notwithstanding paragraph B above, until thirty days after the Colorado State Engineer has determined and notified the Kansas Chief Engineer of the quantity and timing of any estimated Stateline Return Flow in the Offset Account, and the time for release of such water to the Stateline has passed, the evaporation loss on that amount of Stateline Return Flow shall be charged to Colorado, but shall thereafter be charged to Kansas.

6. In accordance with the provisions of paragraphs 3 and 4 above, the Colorado State Engineer may deliver or permit the delivery of water by Colorado water users to the Offset Account, in an amount not to exceed 1,500 acre-feet per Compact year, for the purpose of replacing depletions to the inflows to conservation storage caused by post-Compact well pumping in Colorado and may (1) direct the transfer of such water from the Offset Account to

conservation storage to replace depletions to the inflows to conservation storage, or (2) to the extent such water is not needed to replace depletions to the inflows to conservation storage, may change the prior designation of water previously designated for the purpose of transfer to conservation storage. Once the Colorado State Engineer has notified the Kansas Chief Engineer of the change of designation, such water may be released or transferred in accordance with this Resolution.

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

8. Transit losses for releases from the Offset Account shall not be replenished from the Kansas transit loss account. Transit losses associated with the release of Stateline Return Flow from the Offset Account shall be replaced by the entity which delivered such Stateline Return Flow to the Offset Account, provided that any increase in transit losses which results if the Kansas State Engineer directs that Stateline Return Flow remain in the Offset Account and calls for the release of such Stateline Return Flow at a later time shall be borne by Kansas. Such transit losses on releases of Stateline Return Flow shall be determined using the Livingston Formula for Subreach 6, removing bank and channel storage from the calculation, unless the Colorado State Engineer and the Kansas Chief Engineer agree otherwise. In order to ensure the arrival of releases of Stateline Return Flow at the Stateline if the Kansas Chief Engineer calls for the release of such Stateline Return Flow during the summer storage season in the Reservoir (April 1-October 31), an amount of water equal to the transit losses determined using the Livingston Formula for Subreach 6, including bank and channel storage, shall be released with the Stateline Return Flow and shall be charged to the entity which delivered the Stateline Return

Flow, except that Kansas shall bear any increase in evaporation resulting from the summer storage release.

9. Notwithstanding other provisions of this Resolution, 500 acre-feet of fully consumable water shall be delivered by Colorado or Colorado water users to the Offset Account by April 1 of each year, or at a later time in any one year if agreed to by the Colorado State Engineer and the Kansas Chief Engineer, which delivery shall be a prerequisite for Colorado's right to deliver or permit the delivery by Colorado water users of up to 10,000 acre-feet of water (including the said 500 acre-feet) to the Offset Account pursuant to this Resolution during the period until the next succeeding April 1. For delivery of water to the Offset Account in excess of 10,000 acre-feet during each period, five percent of the amount delivered shall be allocated to Kansas. The said 500 acre-feet and five percent of any water delivered in excess of 10,000 acre-feet during each period [hereinafter "Storage Charge Water"] shall be allocated to Kansas, not for offset of depletions of usable flow at the Stateline but as part of Kansas' equitable share of the benefits arising from the creation of the Offset Account in the Reservoir. The Kansas Chief Engineer may direct that Storage Charge Water be transferred to the Kansas Section II Account or may demand the release of Storage Charge Water at any time and at any rate. If Storage Charge Water is retained in the Offset Account, Kansas shall bear the evaporation after April 1. Colorado water users shall bear the evaporation prior to April 1. Any shortfall due to evaporation in the 500 acre-foot April 1 delivery requirement shall be made up out of the next delivery of water after April 1 by Colorado water users. Kansas shall bear the transit losses associated with the release of Storage Charge Water. Such transit losses shall be calculated using the Livingston Formula for Subreach 6, unless the Colorado State Engineer and the Kansas Chief Engineer agree otherwise.

10. No transfers, releases or exchanges shall be made of water in the Offset Account except releases and transfers authorized by this Resolution or approved by the Administration.

11. Not later than December 1 of each year, 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 primary purpose of facilitating Compact compliance by Colorado in connection with increased post-Compact pumping by Colorado water users, the Colorado State Engineer shall report to the Administration and the Kansas Chief Engineer 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, including documentation not already provided and a report of the status of water delivered to the Offset Account, within two months of the end of the month reported. The Administration recognizes that use of this Offset Account to facilitate Compact compliance by Colorado after the effective date of this Resolution may result in additional monitoring costs to Kansas. The Administration recognizes that Kansas is not waiving its right to claim reasonable compensation from Colorado for such additional monitoring expenses incurred by Kansas after the effective date of this Resolution. The Colorado State Engineer shall timely share relevant information with the Kansas Chief Engineer concerning use of the Offset Account in a manner that will minimize Kansas' monitoring costs. Each year the Colorado State Engineer and the Kansas Chief Engineer shall discuss further ways to minimize such costs.

13. In the event that runoff conditions occur in the Arkansas River basin upstream from the Reservoir that cause water to spill from the Reservoir, then water stored in the Permanent Pool in excess of 10,000 acre-feet shall spill before water stored in the accounts

granted in Subsections III A, B, and C of the 1980 Operating Plan, which shall spill before the water stored in the Offset Account, 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 conservation storage.

14. Water available under priority rights decreed to the ditches of Colorado Water District 67 [hereinafter "District 67"] may be stored in the Offset Account only when no water is accruing to conservation storage, provided that return flows shall be maintained and accounted for in accordance with paragraphs 3 and 4 above; and water may be transferred into the Offset Account from accounts of the ditches of District 67 in the Reservoir provided for in Section II of the 1980 Operating Plan in accordance with this Resolution; provided that such storage or transfers are in accordance with the Amended Rules adopted by the Colorado State Engineer and, with respect to transfers from District 67 accounts, shall include both the consumable and return flow portions of such water.

15. 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, except as provided in the Stipulation.

16. All terms employed in this Resolution which are defined in the Compact or the 1980 Operating Plan shall have the same meaning as set out in the Compact or the 1980 Operating Plan, as the case may be.

17. The effective date of this Resolution shall be the date on which the Chief of Engineers of the Corps of Engineers, or his duly authorized representative, gives his approval by signing and dating below in the space provided. This Resolution shall not be affected by the

termination of the 1980 Operating Plan, except that operations contemplated in this Resolution which rely on the existence of the 1980 Operating Plan shall no longer occur if the 1980 Operating Plan is terminated. This Resolution shall be in full force and effect until March 31, 1998, and year-to-year thereafter subject to the following provisions:


A. Either Colorado or Kansas, through its Compact delegation, may terminate this Resolution effective March 31 by giving written notice to the Administration by February 1 of the same Compact year.

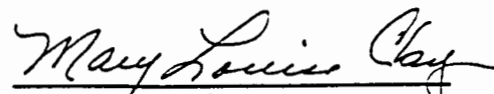
B. In the event that this Resolution is terminated, water in the Offset Account at that time may remain in storage in the Offset Account and be released or transferred as provided above until no water remains in the Offset Account, at which time the Offset Account shall be terminated.

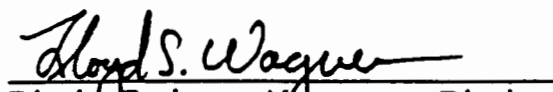
18. Colorado may, as it sees fit, fulfill or, as a condition to delivery of water to the Offset Account by Colorado water users, require its water users to fulfill the delivery requirements and be responsible for evaporation and transit loss charges imposed on Colorado by this Resolution, provided that Colorado shall require Colorado water users who wish to deliver water to the Offset Account to comply with this Resolution in all respects and shall require immediate cessation of the use of the Offset Account by any Colorado water user or users in the event of any substantial failure by such Colorado water user or users to comply with this Resolution.

19. Any releases of water from the Offset Account shall not exceed the channel capacity as determined by the Corps of Engineers.

JOINTLY APPROVED:

  
Chairman  
Arkansas River Compact  
Administration

  
Recording Secretary  
Arkansas River Compact  
Administration

  
District Engineer, Albuquerque District,  
Duly Authorized Representative of the  
Chief of Engineers  
U.S. Army Corps of Engineers

  
Date

UDD/KAN-RES-AMND-MARCH