ARKANSAS RIVER COMPACT ADMINISTRATION
MINUTES OF SPECIAL MEETING
MONDAY, JUNE 14, 1999

HELD VIA TELEPHONIC CONFERENCE CALL
MONDAY, JUNE 14, 1999 AT 1:00 M.D.T. (2:00 C.D.T.)
[Transcript of Recorded Conference Call]

The following transcript is the official minutes of the Arkansas River Compact Administration's June 14, 1999 Special Meeting, as signified by the signature of the Chairman of the Administration, pursuant to Administration approval given on 12/12/06 at Lamar.

APPVD Robin J. Jennison, Chairman

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

Operator: This call is being tape recorded at the request of the State of Colorado. The leader for today's conference call is Mr. Steve Miller. Today's date is June 14, 1999 at 2:00 p.m. Central Daylight Time. The Call ID number is 7758482. The Miller Conference Call, I have your conference leader, Mr. Steve Miller on line. Sir you may begin your meeting.

Miller: OK, well I thought you were going to do a roll call for us. Hello?

Operator: All right, sir. At this time I'd like to do a brief roll call. When I call your name, please respond with your location. Do I have Mary Louise Clay on line?

Clay: At Lamar, Colorado.

Operator: Thank you, Ma'am. Larry Trujillo?

Trujillo: Denver, Colorado.

Operator: Lt. Colonel Tom Fallin?

Fallin: Albuquerque, New Mexico.

Operator: Thank you, sir. Mr. David Pope?

Pope: Yes, Topeka, Kansas.

Operator: Thank you, sir. Mr. Mark Rude?

Rude: Garden City.

Operator: Thank you. Mr. Randy Hayzlett?

Hayzlett: Lakin.

Operator: Thank you. Mr. David Brenn?

Brenn: Garden City.

Operator: Thank you, sir. Mr. Steve Witte?

Witte: Pueblo, Colorado.

Operator: Thank you, sir. Grady McNeil?

McNeil: Denver, Colorado.

Operator: Thank you, sir. Jim Rogers?

Rogers: Lamar, Colorado.

Operator: Thank you. Mr. Tom Pointon? Mr. Pointon, sir?

Pointon: Las Animas, Colorado.

Operator: Thank you. Mr. Dale Book?

Book: Denver, Colorado.

Operator: Thank you. Kevin Salter?

Salter: Garden City, Kansas.

Operator: Thank you. Mr. Donald Pitts?

Pitts: Lawrence, Kansas.

Operator: Thank you, sir. Dennis Montgomery?

Montgomery: Denver, Colorado.

Operator: Thank you, sir. And Wendy Weiss?

Weiss: Denver, Colorado.

Operator: Thank you. Mr. Miller, were you able to hear everyone all right?

Miller: Yes. Some better than others, maybe we just need to talk up, but the other question I had is, was Mark Stark in Hasty, Colorado?

Operator: All right, sir. We had the wrong number for him.

Miller: 336-3432, did not work?

Operator: The area code was (719) 336-3432.

Miller: Dennis Garcia, are you there?

Garcia: Yes, Albuquerque, New Mexico.

Miller: Do you know what the right number is for Mark Stark?

Lt. Col. Fallin: This is Lieutenant Colonel Fallin. Its area code (719) 336-3476.

Operator: All righty, sir. Thank you.

Lt. Col. Fallin: Thank you.

Miller: Would you try that one for us, operator? We could start without Mark being on.

Operator: All righty sir, I'll call him in right away.

Miller: Add him in, please. And Mr. Trujillo, I guess you could start for us.

Trujillo: OK, it's ... where's the record being kept? Who's doing the record on this?

Miller: I'm doing some notes, this is Steve Miller, but we're also recording the call, and I'll prepare minutes, verbatim minutes off of that.

Trujillo: Has the recording started already, Steve?

Miller: I believe so ... they're recording it at MCI, not me.

Trujillo: OK, I just want to be sure the roll call that we just took is recorded. Is that taken place?

Miller: It's supposed to be, I ...

Trujillo: OK, we can ask her when she comes back. Let's assume that it has taken place, at least you've got notes; also the rest of us who are here...we'll call the special meeting to order on June 14, 1999 at approximately 1:10 p.m. Mountain Daylight Time, and the information I have, the only business to be taken care of and the only notification made to members is that of dealing with the authorization for the remainder of the compact year to transfer water that otherwise would spill from the John Martin Reservoir into the John Martin Reservoir Permanent Pool. Is that correct? Steve?

Miller: Yes.

Trujillo: And how would you like to proceed? Is Mr. Evans present?

Evans: Yes.

Trujillo: Mr. Evans and Mr. Pope, which one of you would like to go first?

Pope: This is David Pope. I think probably it's appropriate for Peter to go first.

Operator: Mr. Mark Stark joins, sir.

Miller: Thank you. Operator?

Operator: Yes, sir?

Miller: Is the recording running right now?

Operator: Yes sir, and the roll call was included in that, sir.

Miller: Great. Thank you very much.

Trujillo: Thank you very much.

Operator: You're welcome.

Trujillo: Why don't you go ahead, then, Mr. Evans?

Evans: OK, I'm going to have Steve Miller explain our proposal, and including the resolution that was distributed with the notice.

Miller: OK.

Trujillo: Just as a reminder, before you speak, anyone here for this meeting, please identify yourself for the tape.

Miller: This is Steve Miller, and I think I'll try to describe this...I worked with Steve Witte on the issue a little bit, and I might turn it over to him or let him jump in when he feels the need. We prepared a draft resolution and a notice of the meeting and that should have been faxed and/or emailed to everybody who is on this call, if not I apologize and we could fax if we get to the point where people want to look at the actual words. The basic concept is that John Martin went into flood operations fairly quickly in early May due to a lot of rain in the Front Range of Colorado. At that time the permanent pool only had 9,000 acre feet in it and it is allowed to invade the flood space by up to 10,000 acre feet. Now that we're on the descending end of the flood operation at John Martin, there's about 8,000 left in the flood pool. We saw an opportunity to put some of the flood water into the

permanent pool without changing any of the conservation pool operations, and the resolution we prepared is similar, in fact identical except for the dates, to one that ARCA did adopt last year. That resolution allows the State Engineer of Colorado and the Chief Engineer of Kansas to agree to a plan for transferring water into the permanent pool. In discussions with David Barfield in Topeka there's some concern that what we're proposing here might be different than what was approved by ARCA in 1976 which requires Colorado own the water or be in control of the water that is moved into the permanent pool. We're not sure what Kansas' concern is, if they're concerned with the conflicting language or if they're concerned somehow about moving water, the physical operation of moving water from the flood pool into the permanent pool. I think we could correct the technical mismatch between the '76 language and the proposed '99 language by changing some of the wording in the draft resolution that I sent out last week, but if there's a more fundamental concern, then we need to talk about that. Steve Witte, did I cover it?

Witte: Yes, I think so.

Miller: OK, then I suggest that since we didn't have the luxury of really conferring with Kansas officials before we put this together, I'm not sure where they really are on it, and I appreciate David Barfield kind of going out on a limb when no one else was around, to agree to set up this meeting so we could see if there was opportunity to agree on something.

Trujillo: OK, Mr. Barfield or Mr. Pope, do you want to respond?

Pope: This is David Pope. I guess I thought it would be appropriate to try to amplify a little bit on the comments that Steve had just made in regard to questions that we might have, and certainly Kansas was willing and is willing to talk about this issue. Last year's resolution, which I think the proposed resolution is identical to as Steve has said except for the date, did contain a provision that the transfers that were agreed to by the Colorado State Engineer and the Kansas Chief Engineer shall be subject ... this is the last line in the resolution basically, the full paragraph, it says "such transfers shall be subject to the John Martin Reservoir Permanent Pool operating criteria adopted by the Administration on August 14, 1976." It was our view at that time, and I think still is, that the proposed action we took last year was not in conflict with the '76 Resolution, or it could not be in conflict with that resolution, and I think that would continue to be the position that we would want to take this year. Referring to that particular resolution, it does ... in the ... for those of you that have that in front of you, the 1976 resolution of August 14th, says that the final be it further resolved, I'll essentially quote ... it says that "water deliveries from other valid water rights owned or controlled by the State of Colorado may be added to the permanent pool water supply subject to the

approval of this Administration." And of course, earlier parts of the resolution talk about the Muddy Creek decree and other sources. So I guess...the point Dave Barfield I think made to Steve Miller was simply that we thought the proposed action last year was simply just to allow a source of water consistent with that resolution to be approved by the Administration and I think that's what the resolution did. Now we're a little unclear, we're not aware that that was actually done last year, as it turned out. Maybe Steve Witte or someone could help explain what really did happen last year, and how that might work this year. But I wanted to just clarify what our concerns were and what we understood the case to be.

Trujillo: Steve, do you want to respond to that, please?

Witte: Yes, this is Steve Witte. My recollection is that the resolution that was passed March 24, 1998 was done in anticipation of a spill occurring later in the year...later in the compact year of 1998, and that spill did not materialize and so the resolution became moot at that point.

Trujillo: Does that answer your question, Mr. Pope?

Pope: Yes, I think it does, and I was fairly sure that it had not occurred, either, but I just arrived back in the office and we talked a little bit here today, but really haven't gone back and checked any records or any detail there on that. I guess the other question then would be is if we were to adopt this resolution today...what would be the plan of operation that Colorado has in mind to fulfill its terms?

Trujillo: Mr. Witte?

Witte: Well, initially, my concept was that 1,000 acre feet approximately of the water currently in the flood pool could be moved into the permanent pool, thus topping off the 10,000 acre foot capacity that is allowed to invade the flood pool.

Miller: And that's where I ... this is Steve Miller, that was the concept, and the draft resolution that I sent out maybe could be strengthened to make it clear that that is what we were talking about, and in my view that would resolve potential conflicts with the '76 Resolution. In other words, ARCA adopted the '76 Resolution, and ARCA could change for this year the impact of that resolution by being clearer in the '99 Resolution that it would be a direct transfer from flood pool to permanent pool.

Trujillo: Mr. Pope, if we'd follow that, would that then satisfy your concerns?

Pope: Ah, no I don't think it would. Again, I think I understand now what's being proposed, but we're not sure in the brief discussion with the other two Kansas

Compact members, we're really not sure that we're willing to commit to that. We are willing to consider a special approval of the transfer of water that would be consistent with the '76 resolution into the permanent pool to top it off, but that might be water that otherwise would be available, but as far as just a direct transfer from the flood pool to the permanent pool, we're not convinced that's an appropriate action to take.

Trujillo: Just a point of clarification, you stated that the last resolution passed last year had the statement in it that "such transfer shall be subject to the John Martin Reservoir Permanent Pool Operating Criteria adopted by the Administration on August 14, '76.

Pope: Right.

Trujillo: That statement is also in this resolution. At least the copy I've got before me.

Pope: Yes, it is, and with that statement in it would be our view that the process might be acceptable but I do not believe it would allow the action to be taken that has been explained here today. The proposed resolution, which may in itself be acceptable, we do not believe would allow the proposed action, which is simply a direct transfer of 1,000 acre feet, more or less, to the permanent pool, and while I know Steve Miller has offered try to revise the resolution, I'm not sure that ... I don't think that solves our problem. If Colorado wants to proceed with the resolution as drafted and similar to as we did last year, with maybe a little tinkering, we might be willing to go along with that, but again, I think we would also like to know how this exchange of water would occur, or where the water could come from to offset the transfer into the flood pool.

Weiss: David?

Pope: Yes?

Weiss: This is Wendy Weiss. I want to make sure I understand your concerns. I think I understand the legal basis for what you're saying, but what I want to understand is the reason for it. Is your concern that you want this 1,000 acre feet that is being spilled from flood control to be released downstream to Kansas because you think you have a use for it in Kansas and so you object to the water being transferred to the permanent pool rather than released for use in Kansas, or is it a concern, not about the physical supply of water, but about the legality or the precedent or something more along those lines. Which are we dealing with here?

Pope: Actually, Wendy, I guess I'd say both. We think there's ...the water is benefitting users in Kansas, particularly through recharge. There has been a substantial

amount of that that has occurred during the flood operations, and even though this is a relatively small amount of water, there has been the benefit from that, so we don't think its just water running down river. We also do have concerns about the precedent and being inconsistent with the '76 resolution. And while I agree technically that past actions can be changed, we're concerned about doing that. So I guess the answer is it's both. It's trying to offer an alternative that if there is some other form of transfer of water that Colorado would like to propose into the permanent pool, we're willing to listen to a plan, as long as we understand it, that it would be consistent with the '76 action and perhaps would be acceptable otherwise.

Weiss: The reason...I asked the question because if it were purely the legal thing and the precedent, I think we could work with you to draft some language of a one-time only no precedent nature, perhaps something similar to what we did with the stockponds this year, but if it's actually the water you want released physically from the reservoir, then that's obviously a very different matter. That's why I asked the question.

Rolfs: Mr. Chairman, this is Lee Rolfs.

Trujillo: Yes?

Rolfs: I heard some language, I can't recall who mentioned it, but talked about actually amending, maybe even for one year, the 1976 operating agreement, and I guess that makes me a little uncomfortable in that I don't think that was on the agenda for this meeting.

Trujillo: No, I don't think we should get into a discussion of amending the August 14, 1976 Operating Rules without further notice for a different meeting, because I would suppose other people might be interested and certainly should have the opportunity of that notice. However, it is also beginning to appear that this resolution presently before us that was properly announced by Mr. Miller has not been sufficiently discussed amongst the two states prior to the meeting, I would hope that that would have occurred or if there is no resolution easily available on the table that the two parties can agree to, that we would do that and reconvene the meeting at a later date, but unless Mr. Miller, Mr. Evans or you, Mr. Pope think that there's some quick fix to this disagreement on what the resolution says and what you're both ready to adopt.

Miller: This is Steve Miller, and Lee, I said I wasn't proposing to change the 1976 Operating Criteria. I was proposing that we could agree not to apply one of its terms to the operation we were contemplating this year. If that's not doable, it's not doable, or not acceptable, it's not acceptable. But I wasn't proposing that we

change the '76 criteria. I think those criteria maybe need to be re-examined, but not today.

Rolfs: Okay.

Miller: I think the other thing is that, if the proposal to move water from the flood pool into the permanent pool is not something that Kansas can approve, we could use today's meeting, maybe we'd want to take a look at the notice, but ARCA can approve other sources of water for the permanent pool, and we do have all the ARCA members on, and we've had some discussion about other water that we might be able to approve today to put in the permanent pool if Kansas wanted to pursue that or hear us on that.

Evans: Mr. Chairman, this is Peter Evans, I wonder if I could ask David Pope for a little clarification?

Trujillo: Certainly, Mr. Evans.

Evans: David, it sounds like you'd be willing to consider other sources, is that true?

Pope: Yes, I think in general terms I would be. Obviously I'd want to know what that is, but I think the '76 Resolution allows that and we're willing to do that, I think in essence the resolution that's been drafted before us would allow some forms of transfers at least, if we adopted it, on provisions that the Colorado State Engineer and the Kansas Chief Engineer would have to agree. I'd have to ask my fellow compact members, but I think we're at least willing to listen to proposals.

Evans: This is Peter Evans again. I just wanted to be clear then that it wasn't...that the issue you were raising as a concern had to do with transferring the water from the flood pool as a source.

Pope: Yes, that's a concern.

Evans: OK. Then if we have other sources, we could propose those and you'd be willing to consider that.

Pope: I think that's correct.

Witte: This is Steve Witte. David, I'd also like to ask you a question, and that is in what specific respect is the proposal that I described in your view contrary to the permanent pool operating criteria of 1976?

Pope: It was my view that water in the flood pool of John Martin Reservoir would not be

considered a water delivery from other valid water rights owned or controlled by the State of Colorado. I'm not a lawyer, but my understanding of water administration in a situation would ... I was not aware that there would be a Colorado water right authorizing storage nor would it be controlled by the State of Colorado in the flood pool.

Trujillo: Does that answer your question, Mr. Witte?

Witte: I think so, yes.

Trujillo: And, um ...

Stark: Mr. Trujillo, this is Mark Stark out at John Martin Reservoir, and I've got a question for both Mr. Pope and Mr. Witte and I will admit this is from a layman's perspective, but from the water rights administration perspective my question would be, the river for users along the river now since May 2nd has been considered in a free river condition, which means that people have filled their reservoirs, have used irrigation water at their beck and call, wherever needed and as much as they needed, it was a free river condition. Would the storage in available space for this permanent pool not fall within that criteria from the perspective of a free river condition, notwithstanding the transfer from the flood pool as described?

Trujillo: You want to answer that, Steve?

Miller: Steve Miller or Steve Witte?

Stark: Witte, I guess ... well, I address that to Mr. Witte and Mr. Pope because that ... that, from a layman's perspective appears where the conflict lies as to what's happening with this water in the river, and I would add that while there's probably a benefit being received by the State of Kansas, no doubt in my mind of that, I have received numerous complaints of water in excess of what was ... what is desired by the constituency who use and are affected by the Arkansas River past the Stateline. And, I mean, it seems like again, I'm presenting this from a layman's perspective, but it appears to be awfully convoluted as to ... particularly in a free river condition.

Witte: Well, Mark this is Steve Witte, and I think as I understand your question, it's a very good one. If Mr. Pope's concern about the conflict between water that's currently in the flood pool being under Colorado's control is the prime conflict that he sees between the proposal as originally made and the principles described in the Operating Criteria, would alternatively water appropriated ... water inflowing into John Martin Reservoir ... appropriated into the permanent pool be acceptable?

Trujillo: Mr. Pope?

Pope: You're talking about just different language, Steve?

Witte; No, I think, it's a different principle ... as I understood ... what I'm talking about is if Colorado, say the Division of Wildlife, were to establish a water right through appropriation ... appropriating water as it entered John Martin Reservoir to be placed or added to the permanent pool ... would that overcome your concerns about the apparent ... any concerns of conflict with the 1976 Operating Criteria ... would that be a more acceptable proposal? This would be water that would otherwise spill and so be consistent with the proposed resolution presented here today.

Trujillo You want to comment on that, Mr. Pope?

Pope: Well, I ... perhaps, but I ... if you're saying, Steve, that inflow somehow would be credited directly to the permanent pool under a ... essentially a brand new Colorado appropriation ... is that the principle that you would be describing?

Witte: Yes, through a right established by appropriation.

Pope: Well ... That may have more implications or concerns than the other alternatives, I don't know, but how would that be implemented? What's the process to do that? That just essentially automatically happens, or there is a decree ultimately required, or what's the process on that?

Witte: This is Steve Witte, and probably I ought to allow one of the Colorado attorneys to articulate it, but the process as I understand it would be the formulation of an intent to take and control water that is otherwise unappropriated and place it to a beneficial use, which in this case would be for the purposes of the permanent pool, which I think are fisheries and recreation?

Trujillo: Do you care to comment on that, either Wendy or Lee?

Rolfs: Mr. Chairman, this is Lee Rolfs. I'm still not sure I'm following you, Steve, as to how this water right ... they have to make some sort of application? Is some sort of approval necessary, some sort of court decree? How would this be established? Can they just go out and do they do it under Colorado law?

Weiss: Lee? This is Wendy. Under Colorado law, if there is a free river, someone can simply make an appropriation by diverting the water to beneficial use without obtaining any approval. If they want to have an administratable right that would have a priority date, they then need to go to water court and have it adjudicated,

but it's not necessary to do so, they simply would not get a priority date for their water right. It would be a perpetually junior water right for the amount they appropriated.

Rolfs: By merely using it under these set of circumstances of a free river, they acquire the ability to do that, it's just not legally protectable in any kind of call?

Weiss: Exactly.

Pope: Wendy, this is David. Is it your view that that process would be consistent with the terminology that it would be a valid water right owned and controlled by the State of Colorado?

Weiss: Yes, it is a valid water right. It is a perpetually junior water right because it does not get a priority date for purposes of administration, but it is a water right.

Pointon: This is Tom Pointon, I'd like to hear David Pope's answer to Mark Stark's question.

Trujillo: Mr. Pope, Mr. Pointon just asked a question, did you hear that?

Pope: Yes, I think so.

Trujillo: Do you care to respond to it?

Pope: Tom, basically, I certainly understand Mark's question and in essence comment ... I'm aware of the fact that when we have flood control operations like has occurred and there's ... at least as compared to normal conditions, a lot of water in the river, the Corps is aware, as probably anyone, that when they evacuate flood storage that there's a point at which some people may view it as being too much water, other people may view it as being beneficial because they're up on a little higher ground and they get more recharge, but it depends on who that landowner is and what their situation is. I'm certainly aware that there have been individuals that have felt like they have received damage to their adjacent properties, they are very low properties, some of which farmed up pretty close to the river back in all those years when we had very little water. In any event, I think I understand the point. We're certainly not claiming a huge water shortage during this time period. My comment was simply earlier made to illustrate just because there's a substantial amount of water flowing in the river, doesn't mean there aren't some benefits from that ... there's been a very large amount of recharge that Kansas has received, perhaps there has been some cost to that as well, but we think that's probably minor as compared to the total amount of water. Relative to the total amount of water, the amount we're talking about here is pretty small, and if a proper

mechanism can be worked out here, why we don't inherently have a problem with water being stored in the permanent pool. We've supported that for years, but in reality you have a tradeoff between filling the permanent pool versus some amount of additional benefit downstream. Tom, that's what I was really trying to say earlier.

Trujillo: Okay, Mr. Evans and Mr ... any other discussion on this? Mr. Evans and Mr. Pope, how do you wish to proceed?

Pope: Well, earlier, Peter Evans said, or Steve Miller, one had talked about some alternatives for sources of water and I guess I was still interested in having those, at least hear about and consider, and perhaps after that we'll be in a position to know what action is appropriate.

Trujillo: Well, any alternative sources would, if this resolution is adopted, have to comply with the Operating Criteria of 1976. Am I correct?

Pope: That's our view. That's right.

Trujillo: Well, what would be the harm in adopting this resolution? And of course transfers couldn't take place without it being agreed upon both by the State Engineer of Colorado and the Chief Engineer of Kansas, and to proceed and leave this matter in their hands that that transfers could take place, one, if they agreed upon it and, two, if it met the Operating Criteria of 1976? Is there a problem with that, either Mr. Evans or Mr. Pope?

Evans; This is Peter Evans, Mr. Chairman, and certainly we don't a problem with that ... obviously we have some issues that our State Engineer and Mr. Pope would need to work out but I think that would provide the framework, taking advantage of this commission meeting to give us the latitude to do that.

Trujillo: Reading the draft of this resolution that's before me, it certainly doesn't approve anything other than what you have just stated because you still have those two criteria that have to be met, which is agreement between the two states along with the compliance of the permanent ... of the Operating Criteria of 1976. Do you have a problem with that, Mr. Pope?

Pope: No, I think actually with a very minor change after hearing all the discussion, that I at least would be willing to consider the resolution and I would have to defer to my other fellow members of the Administration before we could make a final commitment, but ...

Trujillo: Would you put that on the table for purpose of discussion to see that that minor

change is that you would propose?

Pope: Yes ... you have your proposed resolution in front of you ... if we ... and I don't believe this changes the substance, it's just a little clarification ... on line four where it says "if such transfers are agreed to ..."

Trujillo: Right. Proceed.

Pope: If we would insert in there the words "in advance" and then at the end of that same sentence, after it says "Kansas Chief Engineer"...

Trujillo: Yes.

Pope: Insert the words "in writing" so the full phrase would then would say .."if such transfers are agreed to in advance by the Colorado State Engineer and the Kansas Chief Engineer in writing " ...

Trujillo: Do you have any problem with that, Mr. Evans or Mr. Miller? Mr. Witte?

Evans: No ... this is Peter Evans ... we wouldn't object to a change like that.

Miller: This is Mr. Miller. And the alternate sources that I mentioned earlier, that David Pope just mentioned, was really the option of making a new appropriation under free river conditions, as Steve Witte described, and if Kansas was agreeable to that, I think ARCA has to approve that as a new source of water. Some of the other things we can do to get water into the permanent pool over the rest of this year, some have already been approved by ARCA such as putting trans-mountain water into the permanent pool, that's an approved source already and there would be no need for further ARCA action. We would need to account for that and explain it to Kansas, and I think my boss, Peter Evans, wants to see us do those things ahead of time in the spirit of what David just said, you know, in advance, in writing, we can certainly notify Kansas, but that doesn't require formal ARCA action. We took that action back in 1980, I believe. So if the idea of making a new appropriation is still alive in anybody's mind, ARCA ought to take that up today or we'll have to take that up in the future. I don't think that just the two engineers can agree to allow that to be a new source of water. At least not as I read the draft that I put together. I don't think it embraces new sources of water.

Trujillo: You want to respond to that, Mr. Pope?

Pope: We may need some other advice on this question. I had not envisioned that it was necessary to go beyond the language that's in this resolution for implementing on a one-time basis that last paragraph of the '76 resolution, but if that's not the case,

well then we certainly need to understand that up front. I think I would be real reluctant under the nature of this meeting and the notice and just the time to think it through to provide some sort of blanket approval of a new source. If the option ...after we have a chance to fully understand it, and if the option that has been described is within the language of the proposed resolution, well then that might be a different matter, but apparently that's not how its being viewed.

Trujillo: I would like to ask Lee or Wendy your view of this resolution, one, and I believe the need that would exist to come before ARCA again if any new source separate from this resolution was arrived upon by both states. I still think it would have to come back before ARCA but I'd like to hear your responses Lee and Wendy both.

Weiss: Well, this is Wendy, I'm thinking that maybe one way we can deal with this because I'd hate to say we thought it didn't have to come back and then have that hold us back later and we think well, what's the authority? One possibility would be to add to this resolution the understanding that for this year only given the time exigencies and perhaps the need to act quickly while this situation of high water continues that the Administration would be delegating to the Colorado State Engineer and the Kansas Chief Engineer the authority to approve an additional source of water for this year only, and have ARCA clarify that it intends that that would be allowed this year rather than having to come back to another meeting to approve another source if we can't do that today.

Trujillo: Lee, would you want to respond to that or make a comment on that?

Rolfs: This is Lee Rolfs, I'm just trying to review the language about the resolution in the '76 Operating Criteria ... and its not clear to me if we'd have to come back for additional approval either, and I'd certainly wouldn't want to cast all benefit of the doubt in not doing it ... certainly wanted to make sure we did it correctly ... we hadn't really thought through that one in advance of the meeting, I think.

Trujillo: Do you then, Mr. Evans and Mr. Pope, want to proceed with this resolution?

Pope: Let me ask.

Trujillo: Go ahead. Who's that?

Pope: This is David Pope, Mr. Chairman. Was the option that's been described the only other alternative Colorado has considered for a source this year? Are there any other existing mechanisms that might achieve similar results?

Trujillo: Mr. Miller?

Miller: Well, I believe there's probably the possibility for the Division of Wildlife, and Grady you can correct me if I'm wrong, or give us an assessment of the prospects, the Division of Wildlife can probably acquire some trans-mountain water this year. That will be at some cost to the Division of Wildlife, and that's already an approved ARCA source, so ARCA wouldn't need to take any action on that one.

Pope: Uh huh.

Miller: That's where we will probably go, back to the drawing board tomorrow to figure out what our possibilities are in that avenue, but like I said that wouldn't require ARCA approval, but we really didn't brainstorm that one, but it's in the background.

Rolfs: This is Lee Rolfs. What kind of ... I'm not sure who to address this to but what kind of time frame are we looking at here before John Martin Reservoir flood pool is empty?

Trujillo: Mr. Witte?

Miller: This is Steve Miller, I can tell you real quick we've got some big black clouds outside the window right now, I don't know what it's like down in Pueblo ...

Witte: Well, where as only being able to see into the future as far as I am able, it is also dependent on the ... not only the inflow to John Martin, but what actions the Corps of Engineers determines to take regarding the evacuation of the flood pool. I know prior to this past weekend, we were thinking that there were very good prospects that the spill might be concluded by Wednesday of this week, perhaps, so I guess I don't have a very good projection at this point.

Garcia: This is Dennis Garcia with the Corps in Albuquerque. Our latest evacuation schedule will take us into Thursday or Friday before we drop below a 1,000 acre feet in the flood space if there's no significant dangers in inflow.

Witte: So by the end of the week you're projecting that John Martin Reservoir may no longer be spilling, is that correct?

Garcia: That's correct.

Rolfs: Thank you, that's helpful.

McNeil: Mr. Chairman, this is Grady McNeil with the Division of Wildlife.

Trujillo: Yes, Grady.

and my feeling is that water entering Kansas can always be put to beneficial use as Mr. Pope relayed, and that would be my concern.

Trujillo: Mr. Brenn?

Brenn: I concur with Mr. Hayzlett and Mr. Pope. I think I had real concerns looking at new appropriations without significant study. I also have a question, Mr. Chairman.

Trujillo: Go ahead.

Brenn: As to the criteria Colorado uses to define free water, or free river.

Trujillo: Wendy, do you want to respond to that, or Mr. Miller?

Weiss: I'll take a crack at it, and I may ask Dennis Montgomery to speak up on this one, too. Normally, our criteria, if it's purely an intrastate criteria, is whether all priorities on the river calling for water are satisfied. In the case of the Arkansas River Compact, that becomes more complicated because we also have the concern of John Martin Reservoir. We have to make a judgment call. First, John Martin Reservoir would be spilling, and second, do we consider that there is still a compact call on ... and that does go to the question of beneficial use in Kansas.

Trujillo: Mr. Montgomery, you want to add to that?

Montgomery: No, I thought Wendy did a good job.

Trujillo: Does that answer your questions, sir?

Brenn: Yes, it does.

Miller: This is Steve Miller. I don't know if this number's been put on the table, but just checking the gages this morning, the flow at Coolidge is probably 2,500 cfs, at Garden City it's over 2,000, through Wichita it's 2,000, and at the Kansas-Oklahoma border it's 4,500 cfs this morning, so that might put in some context what we mean by free river.

Trujillo: OK, Mr. Pope and Mr. Evans, what are your wishes as far as proceeding with this and that of your delegation and your members?

Evans: Mr. Chairman, this is Peter Evans again, and I would, I guess like to propose that the Administration approve this resolution with the amendment suggested by Mr. Pope.

Trujillo: Mr. Evans, would you like to put that in the form of a motion?

Evans: I will move that the Arkansas River Compact Administration approve the resolution circulated in advance of this meeting with the clarification that the agreement to be reached between the Colorado State Engineer and the Kansas Chief Engineer be established in writing prior to implementing the action.

Trujillo: Any second to that motion?

Pope: This is David Pope. I'm willing to second that.

Trujillo: OK. Any further discussion on that...that motion's before us and it would be the resolution that I suppose would be for everyone with the addition of...it would then read...the forth line...if such transfers are agreed to in advance by the Colorado State Engineer and the Kansas Chief Engineer in writing", period, and that would be the only change to the resolution, is that correct as both of you see it?

Evans: Ah, yes, Mr. Chairman, this is Peter Evans.

Trujillo: OK. Mr. Pope? Is that the change as you understand it, sir?

Pope: Yes.

Trujillo: OK, unless there's any other discussion, I'd like to call for the question. Mr. Evans and Mr. Pope, why don't you go ahead and cast the votes ... I guess I could just call the roll. Mr. Pope?

Pope: Mr. Chairman ... kind of a point of order?

Trujillo: Sure.

Pope: I think maybe Mr. Evans actually had a question too, but I would need to do an internal poll of our other two other compact members before we actually vote as a state.

Trujillo: Why don't you go ahead and proceed and do that?

Pope: Is there a question first by Mr. Evans?

Miller: Well, this is Steve Miller. I was just wondering if anyone was receptive of Wendy's suggestion to broaden the authority that we'd be giving to the Chief Engineer and

the State Engineer to consider new sources? That ARCA could ... in other words, if David and Hal Simpson could agree that a new appropriation might be a satisfactory way of accomplishing the objective in '99, that we somehow modify this resolution today to make it clear that that was within what they could be discussing down the road?

Trujillo Is there objection to that? I had ... at least to my understanding was, somebody ... one of the members of the Compacts, had objected to it, but if I was wrong, please proceed. Mr. Pope, is there an objection to adding that additional authority?

Pope: This is David Pope. I think we had left unresolved the question of how to deal with that, so it's a good point to be brought up. I don't particularly have a problem with broadening the language but I would certainly want to make clear if we did that, that that's not a commitment that we would be able to reach agreement on, new sources ... that certainly would allow the flexibility to consider it if we were able to reach agreement.

Evans: Mr. Pope, this is Peter Evans, and I would just add that if you're agreeable I think that it would certainly be appropriate, assuming that again, it's subject to the agreement being placed in writing prior to the action.

Trujillo: Well, why don't we do this to make sure that we all understand correctly ... why don't we adopt the amendment that's before the Administration now, adding the words "in advance, and in writing." And if that that passes, then, of course, someone, one of you can quickly draft up the additional language that would then be inserted in this. Is that agreeable?

Pope: So, let me ask, Mr. Chairman, this is David Pope, we're voting then on the amendment?

Trujillo: We're doing nothing more than amend the resolution, not on the resolution itself, to insert your language "in advance and in writing" and get that behind us, so that we can then take the next piece.

Pope: My understanding is, and Dave and Randy correct me, but I think Kansas can support the amendment.

Brenn: Yes.

Hayzlett: Yes.

Trujillo: Why don't we call for the vote on that, and to be clear, this is merely on amending

the resolution and not on the resolution itself, adding the proposed language by Mr. Pope. Mr. Pope, are you in favor of that?

Pope: Kansas votes Aye.

Trujillo: Mr. Evans?

Evans: Yes, Mr. Chairman.

Trujillo: OK, that's adopted. Now let's move on to the language, the proposed language that you were talking about, Mr. Miller, why don't we take that next, please?

Evans: Mr. Chairman, this is Peter Evans. I wonder if we could ask Wendy Weiss to suggest some drafting help here.

Trujillo: That would be fine. If either Wendy or Lee can get together, feel free to discuss this matter and try to come up with some language for that additional ...

Weiss: Let me throw something out ... I'm just writing it as we talk, so this is certainly a first cut at it, but something to the effect, "the administration further delegates to the Colorado State Engineer and the Kansas Chief Engineer authority to approve water deliveries from other sources for 1999 only."

Trujillo: Mr. Rolfs?

Rolfs: This is Lee Rolfs, and I think that's generally what we've been talking about. I guess ... how would you define new sources, in terms of ... does that mean water rights or is it broader than that?

Weiss: I thought what we'd do, Lee is basically finesse it for purposes of this resolution, from other sources, leaving it open, and then the question would be, what do we agree to? Obviously, Kansas can then decide and discuss whether it would include a new appropriation.

Trujillo: And ... This is Larry Trujillo, and of course other sources, whatever that is, would also be required to comply with the amendment that we just made to the resolution, correct?

Weiss: Yes, it would have to be in advance and in writing.

Trujillo: Mr. Rolfs, anything else?

Rolfs: I'm trying to go back to the compact here to see if we're running amok of anything

here in Article V.H, and...

Trujillo: Mr. Pope, is there any comment you've got while Mr. Rolfs is looking for that?

Pope: This is David Pope. No, we just need a minute to consider that. I might ask also, if ... I know Don Pitts is on the line, if Don has any comments about this.

Trujillo: Mr. Pitts, are you on the line?

Pitts: Yes, I am.

Trujillo: Do you have any questions?

Pitts: No, I don't. I certainly would support the compact ... the Kansas compact members and what they have said.

Rolfs: Mr. Chairman, this is Lee Rolfs. Article V.H talks about the ditch diversion rights will not be increased beyond the total ... without the Administration making certain findings. I'm not sure whether this falls in the category of ditch diversion rights.

Trujillo: Could we not ... Mr. Rolfs, if the resolution, the additional language was approved, could we not do that and then if indeed whatever other sources you are considering, that the two states are considering, do not fall into Article V.A of the Compact, then of course it would be impossible to do without coming back to the compact. But if you find other sources that are not in conflict with Article V.A or the Compact, then you folks could proceed if we had agreement amongst the two states.

Rolfs: I think that might be possible, but its Article V.H as in "Howard" that I'm concerned with.

Trujillo: Is that V.A as in "Able" or H, did you say?

Rolfs: H, as in Howard.

Trujillo: Howard. Thank you. Would that not be clear then, and I guess I'm posing the question to both Wendy, Lee and Mr. Pope and Mr. Evans, as well as the four other members of the Compact, that if this language is adopted it would seem very clear to me that they could not proceed if it was contrary to that Article of the Compact. However, if they found other sources that were not contrary to the Article, then they could proceed of course if the matter was agreed to by both in advance and in writing. Would that not be the case?

Rolfs: This is Lee Rolfs. I guess as long as we have the understanding that ... Kansas ... has to approve this in advance before it happens, and second, that we're not giving any assurances to any particular source without having it proposed exactly by Colorado and us having the chance to evaluate it, that's what we're concerned about.

Trujillo: If the resolution is adopted with the language that has already amended that resolution, it would appear ... that's rather clear to me that it could not happen unless it was in advance, in writing, and with the agreement of both states, and now added to it, I hope the understanding that not contrary to Article V.H of the Compact.

Rolfs: Or any other Article of the ...

Trujillo: Right, or any other Article of the Compact ...

Rolfs: In the meantime, this might come up rather quickly.

Trujillo: Would not that be the understanding, Wendy, and I guess primarily, Mr. Pope and Mr. Evans?

Weiss: This is Wendy Weiss again. This would certainly be my understanding and to the language that I proposed before, I think we could easily add "they have the authority to approve in advance and in writing water deliveries from other sources".

Trujillo: That ... we might add the language, "that is not otherwise contrary to the Compact Administration."

Weiss: Yes, we could do that.

Trujillo: Would that serve us ...

Weiss: And in writing and consistent with the Arkansas River Compact.

Trujillo: Right.

Rolfs: I think that would be good.

Trujillo: Would that be acceptable, Mr. Pope and the Kansas delegation?

Pope: Speaking for myself, I think we could probably accept that with the new language

adding on, "inconsistent with the Arkansas River Compact," together with those other words that Wendy suggested, and then if that action would pass, we would just expect to receive a proposal fairly soon, since apparently this needs to be dealt with this week, and hopefully that could include an assurance that it was consistent with...

Trujillo: With the Compact.

Pope; Maybe we could give Wendy and Lee a chance to confer on that.

Trujillo: Mr. Pope, would you confer with the members of your compact, please?

Pope: Dave and Randy, how do you feel?

Hayzlett: I'd feel comfortable with that, David, I think, as long as we had that language in there, I think that would be workable.

Trujillo OK, why don't we then, Mr. Evans, take the language and read it into the record that is proposed as written by Wendy so we can all understand it and we'll vote on that and of course with the understanding that we're just voting on the amendment to the remainder of the resolution and then we'll act on the resolution later.

Weiss: Peter, if you don't have it, I can read ...

Trujillo: Would you please?

Weiss: I don't know if you've got it all down

Evans: I didn't get it altogether, Wendy.

Trujillo: Why don't you read it, and then, Mr. Evans, if it's agreed upon and you would so desire, go ahead and put it in the form of a motion.

Weiss: All right. The Administration further delegates to the Colorado State Engineer and the Kansas Chief Engineer authority to approve, in advance, in writing, and consistent with the Arkansas River Compact, water deliveries from other sources for 1999 only.

Trujillo: Do you want to put that in the form of a motion?

Evans: Yes, Mr. Chairman. Could I consult with the other members of my delegation just quickly?

Trujillo: Absolutely.

Evans: Jim? Tom? How do you feel?

Pointon: It's fine with me.

Rogers: Fine with me.

Evans: Very good. Mr. Chairman, this is Peter Evans, and I would move the adoption of the proposed amendment just read by Wendy Weiss.

Trujillo: Any second to that motion?

Pope: This is David Pope. I second it.

Trujillo OK. Any discussion? If not, Mr. Pope, would you please vote for the Kansas delegation?

Pope: Kansas votes Aye.

Trujillo: Mr. Evans, for the Colorado delegation?

Evans: Mr. Chairman, the State of Colorado votes Aye as well.

Trujillo: OK, now to the resolution. Any other discussion on adopting the resolution itself? If not, Mr. Pope or Mr. Evans, would you care to put that in the form of a motion please, or any of the other members of the Compact.

Evans; Mr. Chairman, this is Peter Evans again. I would move the adoption of the resolution as we have twice amended it today.

Trujillo: Do I hear a second?

Pope: This is David Pope, and I would second this, and let me also just add, I think it probably goes without saying, but we do not consider this act precedential.

Trujillo: OK, we've heard the second and the remark, and I believe I heard concurring remarks previous to yours by Wendy Weiss. If there's no further discussion, Mr. Pope, would you cast your vote on the resolution itself, please?

Pope: Before I vote, let me make sure that...are the other two members in concurrence on this?

Brenn: Dave Brenn ... I am.

Hayzlett: This is Randy. Yes, I am.

Pope: OK, with that, Kansas votes Aye.

Trujillo: Mr. Evans, would you please do the same?

Evans: Yes, Mr. Chairman, this is Peter Evans. Can I ask Jim Rogers and Tom Pointon whether they're in agreement?

Trujillo: Sure.

Rogers: This is Jim Rogers and I am.

Pointon: This is Tom Pointon and I'm in agreement.

Evans: OK, Mr. Chairman, this is Peter Evans, and on that basis, Colorado would cast its vote in support of this resolution with the amendments, and would like to express our appreciation to the State of Kansas and its representatives for helping us to work this out again this year.

Trujillo: OK, the resolution is hereby adopted, and I guess, Mr. Miller, would you please as soon as possible reduce that to writing and fax all of us with a copy of that? I would certainly appreciate it.

Miller: Yes, and I'll mail a hard-copy for signature I guess also.

Trujillo: OK, and there was nothing else on the agenda that was published and so nothing else can come before the meeting. On the side, Mr. Pope, are you going to be available sometime today or tomorrow by phone...I need to talk to you about another matter?

Pope: I'll be available yet today, I'll be out of the office probably all...

Trujillo: Why don't I call you right after this?

Pope: That would be fine.

Trujillo: OK. Thank you. And unless there is any other questions or comments, any questions or comments before we adjourn the meeting?

Witte: This is Steve Witte.

Trujillo: Yes, Steve?

Witte: In order to avoid problems that have cropped up in the past, am I to understand that even given the approval in writing by the two State Engineers, that this cannot be placed into effect until I receive written approval of this resolution in hand?

Trujillo: I would suppose that, you know ... Mr. Rolfs and Wendy can certainly tune in ... but I suppose when that agreement is done they will reduce it to writing and fax it to you immediately and you would have it in writing.

Miller: This is Steve Miller. You're probably referring to the Trinidad situation this winter. And there were more numerous signatories to that, because it was changing part of the Operating Principles ... this just needs to be signed by Mr. Trujillo and Mary Louise ... and so I'm pretty sure I can get Mr. Trujillo's signature maybe today yet, and Mary Louise's tomorrow, and then it would be signed and we could circulate it immediately.

Weiss: And I think that beyond that, though, nothing is to be ... nothing would be stored from a not-previously approved source of water until Steve, you got something faxed with signatures from Hal and from David Pope.

Witte: I understand that.

Unknown: Right.

Pope: That's correct.

Trujillo: Any other questions, to clarify any other matter? I want to thank all of you, and the meeting is hereby adjourned. Thank you very much.

Evans: Thank you.

Weiss: Thank you.

All: Good bye.

End of tape, end of telephonic meeting.

ATTACHMENTS
TO MINUTES OF ARCA SPECIAL MEETING

A. Notice of Special Telephonic Meeting

B. Proposed Resolution Concerning the John Martin Reservoir Permanent Pool

C. Adopted Resolution of the Arkansas River Compact Administration Concerning the John Martin Reservoir Permanent Pool, dated June 14, 1999.

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B. Proposed Resolution Concerning the John Martin Reservoir Permanent Pool

C. Adopted Resolution of the Arkansas River Compact Administration Concerning the John Martin Reservoir Permanent Pool, dated June 14, 1999.

ARKANSAS RIVER COMPACT ADMINISTRATION
307 South Fifth Street, Lamar, Colorado 81052
719-336-9696

For Colorado
Peter H. Evans, Denver
Thomas R. Pointon, Las Animas
James G. Rogers, Lamar

Chairman and Federal Representative
Larry E. Trujillo, Sr.
Denver, Colorado

For Kansas
David L. Pope, Topeka
David A. Brenn, Garden City
Randy Hayzlett, Lakin

NOTICE OF SPECIAL TELEPHONIC MEETING OF THE ARKANSAS RIVER COMPACT ADMINISTRATION

Monday June 14, 1999
1:00 - 1:30 P.M. MDT
(2:00 - 2:30 P.M. CDT)

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 topic:

> Authorizing the transfer of water that would otherwise spill from John Martin Reservoir into the permanent pool to fill it up to a maximum of 10,000 acre-feet, at such times as the Kansas Chief Engineer and the Colorado State Engineer determine there would be no injurious downstream impacts.

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:

SITE	COORDINATOR	PHONE
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.

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 1999 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 ____ day of June, 1999, 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

RESOLUTION
OF THE
ARKANSAS RIVER COMPACT ADMINISTRATION
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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 1999 to transfer water that would otherwise spill from John Martin Reservoir into the John Martin Reservoir permanent pool, if such transfers are agreed to in advance by the Colorado State Engineer and the Kansas Chief Engineer in writing. Such transfers shall be subject to the John Martin Reservoir Permanent Pool Operating Criteria adopted by the Administration on August 14, 1976. The Administration further delegates to the Colorado State Engineer and the Kansas Chief Engineer the authority to approve in advance, in writing, and consistent with the Arkansas River Compact, water deliveries from other sources for Compact Year 1999 only.

Entered this 14th day of June, 1999, at a special telephonic meeting of the Arkansas River Compact Administration.

ARKANSAS RIVER COMPACT ADMINISTRATION

By: Larry E Trujillo, Sr.

Larry E Trujillo, Sr., Chairman

By: Mary Louise Clay

Mary Louise Clay, Recording Secretary