PROCEEDINGS OF THE MEETING

OF THE COMMITTEES OF FOURTEEN AND SIXTEEN

OF THE SEVEN STATES OF THE COLORADO RIVER BASIN

AND THE POWER ALLOTTEES

**
****
******
****
****
**

LA FONDA HOTEL - SANTA FE, NEW MEXICO

APRIL 14, 15, 16, 1943

(CONFIDENTIAL)

CONTENTS

Appearances. 1-4

Distribution of proceedings of meeting of Committee of Fourteen, November, 1942. 4-5

Announcement by Chairman Clifford H. Stone of procedure to be followed during the conference. 5

Letter from Laurence Duggan of the Department of State. 5-6

Presentation of proposal of Department of State for allocation of Colorado River water to Mexico by Lawrence M. Lawson. 7-8

Motion by Frank Delaney that states caucus to consider proposal of Department of State. 8

Explanation by R. L. Lowry of paragraph A of proposal of Department of State. 9

Discussion of paragraphs A and B and suggested changes in wording. . 9-13

Explanation of paragraph C by Lawrence M. Lawson. 16

General discussion with E. B. Delber and Lawrence M. Lawson of paragraphs A and B. Doubt expressed as to exact intent of meaning of wording used, suggested changes. 16-33

Meeting recessed to reconvene at 2:00 p.m., April 15, 1943, allowing time for caucus of the states. 33

Announcement of change in membership of Committee of Sixteen. . . . 34

Motion by Arvin B. Shaw that meeting resolve itself into executive session. 34

Motion by Arvin B. Shaw that engineering committee be appointed to analyze engineering facts of proposal of Department of State. Expression of opinion that one week or ten days time would be needed to analyze proposal. 37-38

Substitute motion by William R. Wallace that proposed engineering committee meet and determine whether they can arrive at an agreement or whether it would require substantial time. 38

Withdrawal of motion by Arvin B. Shaw. 38

Withdrawal of motion by William R. Wallace. 39

CONTENTS

Motion by Arvin B. Shaw that committee of eight be appointed to consider time required to analyze proposal. 39

Statement by Clifford H. Stone that committee be appointed with the understanding that its members make as much progress as they can within the next few hours, clarifying proposal of the Department of State, and make a progress report. 43

Motion by Arvin B. Shaw that above suggestion be adopted as his motion (motion passed). 43

Appointment of members of engineering committee. 44

Motion by Alma Davis that engineering committee report back by 4:00 p.m. 44

Report of engineering committee by Frank C. Merriell. 44

Motion by William R. Wallace that report be received and filed (motion passed). 47

Motion by Frank Delaney that Mr. Hackworth be asked to explain policy the State Department will follow in its negotiation and application of the formula. 47

Discussion of interpretation of "extraordinary drought". 49-50

Statement by Arvin B. Shaw expressing doubt and confusion of qualifying "A" and "B" water. 50-51

Statement by Clifford H. Stone concerning classification of "A" and "B" water. 51-52

Statement by M. J. Dowd regarding return flow as it relates to water under paragraphs A and B. 52-53

Statement by R. J. Tipton regarding return flow and use of facilities for delivery of water to Mexico. 53-55

Motion by Alma Davis that committee approve, in principle, paragraphs A and B of the proposal of the Department of State; putting a ceiling of 750,000 A.F. in A. 56

Correction in report of engineering committee by Frank C. Merriell. 59-60

CONTENTS

Explanation by representatives of the Department of State and Bureau of Reclamation of questions and misunderstandings regarding provisions of proposal, and suggested changes by members of the committee. 60-74

Statement by Mr. Hackworth suggesting advisability of negotiating treaty as soon as possible. 74-75

Motion by Alma Davis that committee approve, in principle, proposal of Department of State. 75

Statement by representatives of California that they wish to discuss proposal with interests in California and that more time is necessary for consideration of proposal before voting. 75-78

Suggestion by E. F. Scattergood that committee go into executive session before voting on proposal. 78

Withdrawal of motion by Mr. Davis. 81

Motion by Frank Delaney that committee go on record as approving, in principle, the proposal of the Department of State and that the Chairman appoint a committee of five to put the recommendation in form of a resolution (motion passed). 81

Motion to adjourn by J. M. Gaylord (motion not carried). 81

Invitation by Henry S. Wright for Committee of Fourteen to meet in Phoenix, Arizona, May 3, 1943 to consider proposed contract between the Secretary of the Interior and the State of Arizona for delivery of water from Lake Mead. 81

Amendment to motion that committee of eight, one from each state and the power allottees, be appointed, instead of five, as above stated (motion passed). 82

Appointment of above mentioned committee. 82

Report of resolution committee (committee of eight). 83

Resolution adopted by majority vote. 84

Resolution by William R. Wallace approving proposal of Department of State and expressing faith and confidence in the representatives of the Department of State. 84-85

Motion to adopt above resolution. 85

CONTENTS

Opposition to adoption of resolution by Arvin B. Shaw, contending it embraces two different matters and indicates all the states approved the formula of the Department of State. 85

Suggestion by Mr. DeArmond that resolution be amended. 85

Motion by Arvin B. Shaw to table motion to adopt Wallace resolution (not passed). 86

Motion to adopt Wallace resolution, passed by majority vote. 86

Appointment of Judge Wilson on editing committee. 87

Motion by Mr. Swing expressing appreciation of the committee and advisers for courtesy and social accommodations extended to them by members of the committee and officials of New Mexico. 87

Presentation of Statement of Policy of the Upper Basin States by Judge Wilson. 87-88

Motion that Statement of Policy be declared to express the sentiments of the entire committee. 88

Statement by Mr. Swing opposing Statement of Policy. 88-89

Adoption of Statement of Policy by majority vote. 92

Adjournment of meeting. 92

MEETING OF THE COMMITTEE OF SIXTEEN
OF THE SEVEN STATES OF THE COLORADO RIVER BASIN
AND THE POWER ALLOTTEES

Wednesday, April 14, 1943.

The meeting was called to order by Chairman Stone, at 2:00 o'clock p.m., on Wednesday, April 14, 1943.

JUDGE STONE: Will the meeting please come to order? We should first take appearances, and in order that the record may be clear, may I ask that each one give his full name clearly, the state or agency you represent, and your address. It is quite important to have the address because of the aid in sending out material later. I hope you will keep that in mind. It is much better to announce appearances than to pass around a paper as has been done before because by announcing your name, then we shall become better acquainted since there are some here who have not been here before. We shall start to my left and proceed around the table;

APPEARANCES

MEMBERS OF THE COMMITTEE OF SIXTEEN

Name	
ARIZONA	
Henry S. Wright	Chairman, Colorado River Commission of Arizona, P. O. Box 589, Phoenix, Arizona
Alma M. Davis	Member, Colorado River Commission of Arizona, Route 2, Mesa, Arizona
CALIFORNIA	
Evan T. Hewes	Chairman, Colorado River Board of California, El Centro, California
Lewis A. Hauser	Secretary, Colorado River Board of California, 811 Washington Bldg., Los Angeles, California
COLORADO	
Clifford H. Stone	Director, Colorado Water Conservation Board, State Office Building, Denver, Colorado
Frank Delaney	Member, Colorado River Water Conservation District, Glenwood Springs, Colorado

NEVADA

Charles F. DeArmond (entered late)	Member, Colorado River Commission of Nevada, Las Vegas, Nevada

NEW MEXICO

Thomas M. McClure	State Engineer, Santa Fe, New Mexico
Fred E. Wilson	Attorney for Interstate Streams Commission of New Mexico, Albuquerque, New Mexico

UTAH

William R. Wallace	Member, Advisory Board Department of Publicity and Industrial Development, Utah Oil Building, Salt Lake City, Utah
Grover A. Giles	Attorney General of Utah, Capitol, Salt Lake City, Utah

WYOMING

L. C. Bishop	State Engineer of Wyoming, Cheyenne, Wyoming
Louis J. O'Marr	Attorney General of Wyoming, Cheyenne, Wyoming

POWER ALLOTTEES

E. F. Scattergood	Advisory Engineer, Department of Water & Power of Los Angeles, 207 So. Broadway, Los Angeles, California
J. M. Gaylord	Chief Electrical Engineer, Metropolitan Water District of Southern California, 306 West 3rd Street, Los Angeles, California

DEPARTMENT OF STATE

Green S. Hackworth	Legal Adviser, Washington, D. C.
J. F. McGirk	Assistant Chief, Bureau of American Republics, Washington, D. C.
Charles A. Timm	Adviser, Washington, D. C.

INTERNATIONAL BOUNDARY COMMISSION

Lawrence M. Lawson	Commissioner, El Paso, Texas
Frank B. Clayton	Counsel, El Paso, Texas
C. M. Ainsworth	Engineer, El Paso, Texas

R. L. Lowry	Engineer, El Paso, Texas
Peter Flood	Engineer, El Paso, Texas

DEPARTMENT OF INTERIOR, BUREAU OF RECLAMATION

S. O. Harper	Chief Engineer, Denver, Colorado
E. B. Debler	Senior Hydraulic Engineer, Denver, Colorado
L. J. Foster	Construction Engineer, Yuma, Arizona

ADVISERS

ARIZONA

Nellie T. Bush	Member, Colorado River Commission of Arizona, Parker, Arizona
Donald C. Scott	Engineer, Colorado River Commission of Arizona, Phoenix, Arizona
Charles A. Carson	Attorney, Colorado River Commission of Arizona, Title & Trust Building, Phoenix, Arizona

CALIFORNIA

Robert W. Kenny	Attorney General of California, 600 State Building, San Francisco, California
Arvin B. Shaw, Jr.	Special Assistant Attorney General of California. 835 Rowan Building, Los Angeles, California
A. E. Chandler	Special Counsel, Department of Water & Power of Los Angeles, Balboa Building, San Francisco, California
S. B. Robinson	Chief Assistant City Attorney of Los Angeles, Department of Water & Power of Los Angeles, 207 So. Broadway, Los Angeles, California
M. J. Dowd	Consulting Engineer, Imperial Irrigation District, Imperial, California
A. R. Arledge	Engineer, Department of Water & Power of Los Angeles, 207 So. Broadway, Los Angeles, California
Fred W. Simpson	Member, Colorado River Board of California, Pacific Center Building, San Diego, California
James H. Howard	General Counsel, Metropolitan Water District, 306 West 3rd Street, Los Angeles, California
John H. Mathews	Attorney, Department of Water & Power of Los Angeles, 207 So. Broadway, Los Angeles, California
Phil D. Swing	Special Counsel, City of San Diego and Coachella Valley County Water District, 604 San Diego Trust & Savings Building, San Diego, California

Gail C. Larkin	General Counsel, Southern California Edison Company, Edison Building, Los Angeles, California
N. B. Hinson	Engineer, Southern California Edison Company, Edison Building, Los Angeles, California
C. C. Elder	Hydrographic Engineer, Metropolital Water District, 306 West 3rd Street, Los Angeles, California

COLORADO

Gail L. Ireland	Attorney General of Colorado, Capitol Building, Denver, Colorado
Jean S. Breitenstein	Special Counsel, Colorado Water Conservation Board, Denver, Colorado
John B. O'Rourke	Member, Colorado Water Conservation Board, Durango, Colorado
Frank C. Merriell	Secretary-Engineer, Colorado River Water Conservation District, Grand Junction, Colorado
R. J. Tipton	Consulting Engineer, Colorado Water Conservation Board, 1231 First National Bank Building, Denver, Colorado

NEW MEXICO

Ed. H. Foster	Farmington, New Mexico
R. J. Coory	Farmington, New Mexico

UTAH

Ora Bundy	Director, Water Resources Division, Department of Publicity and Industrial Development, Dooly Building, Salt Lake City, Utah
Ed. H. Watson	State Engineer, Capitol, Salt Lake City, Utah
E. J. Skeen	Special Counsel to State Engineer, Capitol, Salt Lake City, Utah

JUDGE STONE: All of the states appear to be represented except Nevada. I was advised Mr. DeArmond expected to be here. Does anyone have a report concerning Nevada? If not, we shall hope Mr. DeArmond will arrive later.

MR. ROBINSON: I was advised he was trying to get reservations, but had been unable to do so.

JUDGE STONE: Another preliminary matter is with respect to the proceedings of the Committee of Fourteen and Sixteen held at Los Angeles in November. Those proceedings have been prepared and are ready for distribution. I didn't bring all of the copies down here because it seemed more

appropriate to send them out from Denver. However, I brought enough to give three to each state for the purpose of this meeting, and there are additional copies--four of them. Those copies should be distributed two to the Department of State and two to the Bureau of Reclamation. There will be other copies available and they will be distributed on the basis of the list heretofore used, except that if the Department of State or the Bureau of Reclamation desire additional copies, they can be made available. These copies are all marked "Confidential" as has been the case in the past and they are all numbered. I will ask Mr. Robinson to distribute them and take the numbers. You will recall in Los Angeles we took a lot of time taking numbers in meeting, and I am trying to avoid that now. I think these should be distributed as you might have occasion to refer to them during this conference. There appears in the Appendix of these proceedings the statement prepared by the special committee consisting of Mr. Shaw, Mr. Wallace and myself. There is also the Chandler statement which was considered at Los Angeles and discussed with the Department of State. That discussion took place when we met Mr. Hackworth on March 29th. (Books distributed)

Another preliminary matter is with respect to procedure during this conference. We have a large group here. The committee consists of two from each state and two representing the Power Allottees under the Boulder Canyon Act. In the interest of orderly procedure, the Chair wishes to suggest that during this conference the representatives of the two government agencies, and the members of the committee, have the privilege of the floor, and that all others, consultants and advisers, speak when called upon by the representatives from their particular state. If we proceed in that way, we shall save a lot of time and have an orderly procedure. However, the Chair wishes to hear any objections to that procedure--don't hesitate to speak up if that is not desirable. Not hearing any, I assume it is acceptable.

This meeting was called primarily to give further consideration to the question of the allocation of water to Mexico. On March 13th I received a letter from Mr. Duggan, Adviser on Political Relations of the Department of State. That letter indicates the occasion for this meeting. I should like to have the letter placed in the record, and as you are not all familiar with it, I shall read it:

"DEPARTMENT OF STATE
Washington

March 13, 1943.

My dear Judge Stone:

This Department, having given careful consideration both to the fundamental factors involved in the Colorado River problem and to the matter of an appropriate time schedule, will be prepared early in April to present to the Committee of Sixteen, with the view of obtaining its cooperation and assistance, certain suggestions regarding the proposed allocation by treaty to Mexico of a portion of the waters of this river. In view of the importance

of avoiding any further delay, the Department considers it highly desirable to present these proposals to the Committee not later than the period of April 7-14.

That any further postponement of this matter should be avoided is made evident by at least two important considerations. In the first place, there is reason to believe that Mexico now earnestly desires to negotiate a water treaty at the earliest possible moment. Assuredly, there are advantages to the United States in conducting the negotiations with Mexico while it has this attitude. In the second place, all available data on developments in the Mexican delta tend strongly to support the view that a treaty should be made before Mexico builds up still more uses based upon the large surpluses of water that are now and will be for some time to come beyond the control of the United States.

In reference to the request for a hearing before the Legal Adviser of the Department, I am glad to be able to say that in the interval before the meeting of the full Committee, called to hear the Department's proposals, Mr. Hackworth will be happy to hear any oral comments or statements that Mr. Shaw, Mr. Chandler, and possibly others may desire to make.

Within the time limits above indicated, the Department would find it helpful to receive your suggestions regarding definite dates both for the hearing before the Legal Adviser and for the meeting of the full Committee.

Sincerely yours,

(Signed) Laurence Duggan, Adviser
on Political Relations.

Judge Clifford H. Stone,
Chairman, Committee of Sixteen,
Colorado River Basin,
Denver, Colorado."

JUDGE STONE: Pursuant to that suggestion, this meeting was called. In the meantime, the meeting with Mr. Hackworth was held in Washington on March 29th. All of the states were represented in that meeting except Nevada and Wyoming. On March 30th, a meeting to consider the engineering aspects of the problem was held at El Paso. I am advised that all of the states were represented there except Nevada and Arizona. If that is not correct, I trust someone will correct me. It would seem that since this letter clearly indicates the purpose of this meeting, namely, the hearing of such proposals as the State Department wishes to make at this time, that we should immediately plunge into the problem before us. I believe the State Department is now ready to make its proposal. Is that correct, Mr. Lawson?

MR. LAWSON: Ladies and gentlemen, members of the Committee of Sixteen and Fourteen: I have been selected by representatives of the Department of State to present this proposal to you, and I might add, entirely unsuspected and unsolicited. It comes from a study of the factual situation, the benefit of advice and consultation we have had with the Committee, and also from meetings with the representatives of the Bureau of Reclamation. The proposal contains six short paragraphs, each for some specific purpose. The first covers the situation of the distribution of stored and regulated water in Mexico. The second covers the question of making available recovered flows at the International Boundary line. I should say that covers several kinds of water; probably four, recovered waters, surpluses, sluicing and flood waters. The third provision is that in which the Department took into consideration suggestions from the Power group limiting, if you please, the maximum second-footage that might be present in the river at any one time. The fourth covers the subject of making waters available, from the United States for beneficial use in Mexico. The fifth limits the amount that Mexico could acquire an interest in, and the sixth covers cases of extraordinary drought or accident to irrigation systems in the United States so the amount of water to Mexico might be diminished in proportion to the amount delivered in the United States. I think the best way to go into this matter now would be to read this statement:

It is proposed that the United States make the following deliveries of water to Mexico in complete satisfaction of any and all demands by Mexico now or hereafter, whether on the basis of established use, equity, or otherwise:

A. The United States shall deliver each year, at designated places so far as practicable, at the International Boundary and distribute through the year as requested by Mexico and approved by the United States an amount of water equal to ten per cent of diversions for that year from the Colorado River for agricultural and domestic use in the States of Arizona, California and Nevada.

B. In addition to the deliveries specified in paragraph A, the United States shall deliver, at designated places so far as practicable, at the International Boundary for use in Mexico any other water arriving and being available at the International Boundary from the Colorado River; provided that the aggregate amount of water divertible under this paragraph B shall never be less than 750,000 acre feet in any year; and provided, further, the aggregate deliveries by the United States to Mexico, including the amounts specified in paragraph A, shall not be more than 2,000,000 acre feet in any year.

C. Mexico shall not demand, and the United States shall not be required to make, deliveries of water to Mexico at rates in excess of 5,000 cubic feet per second.

D. Mexico shall not demand, and the United States shall not be required to make, deliveries of water which cannot be beneficially used in Mexico.

E. Mexico shall concede that it may not acquire any interest in, or make any claim to, the use of Colorado River waters in excess of the allocations made herein; and any deliveries of Colorado River water by the United States to Mexico in excess of the deliveries under paragraph A and the minimum 750,000 acre feet delivery specified in Paragraph B shall be subject to such excess water arriving and being available at the International Boundary.

F. In case of extraordinary drought or serious accident to the irrigation system in the United States, the amount of water delivered to Mexico shall be diminished in the same proportion as the water delivered to lands under the irrigation system below Boulder Dam in the United States.

MR. SWING: Regarding procedure, I would like to ask whether the technical advisers of the respective committee members will be permitted to ask questions as to what this means, or whether our ignorance must remain until after we have adjourned?

JUDGE STONE: As I announced, your representatives from California will give you the opportunity to ask such questions as you desire. I am placing the responsibility of calling upon advisers on the committee members rather than leaving that responsibility in my hands because there are so many here and I don't want anybody to be overlooked. I am leaving that in the hands of your committee members.

MR. DELANEY: It seems to me before we can make any more progress it will be necessary for the states to caucus and consider this proposal, and I would like to make a motion accordingly.

MR. WALLACE: Wouldn't it be wise if each of these paragraphs was read and explained separately by a member of the State Department? For instance, paragraph 1 requires explanation as far as I am concerned. I would like each one read separately and call upon someone to explain it.

JUDGE STONE: The procedure I had in mind was a combination of what Mr. Delaney suggested, and the one made by you (indicating Mr. Wallace). There should be such questions and discussion as are necessary to clarify the statement so we will understand what each paragraph means. Then after that has been accomplished, we can adjourn for a meeting of the various states.

MR. WALLACE: I would like to have the explanation from members of the State Department.

JUDGE STONE: It probably would be better, and during the course of the explanation, there can be questions asked. As each paragraph is taken up let's dispose of the questions with respect to it when the explanation is made. In that way we shall perhaps have a better understanding of this statement before we caucus. With that in mind, Mr. Lawson, are you prepared to take up each paragraph, explain it and answer such questions as members desire to ask?

MR. LAWSON: We will, among our members here, try to answer such questions as come up, and we are ready now to go into a more detailed explanation of each paragraph first.

JUDGE STONE: Then let us proceed in that way.

MR. LOWRY: Without going into any detail, paragraph A is based on diversions made in the Lower Basin. It was so worded that it covers those three states. That goes back to the Compact under which certain allotments are made, and it would be expected under this that the ten percent would be a figure, roughly, of somewhere between 700,000 and 750,000 acre feet.

MR. DAVIS: When you speak of the ten percent of the diversions to Arizona, California and Nevada, you mean from the main stream of the Colorado or its tributaries?

A: It's contemplated, if I am familiar with the history of this, that it is from the Colorado River.

Q: And does not include the tributaries within the State of Arizona?

A: That's right.

Q: Nor Nevada?

A: That's right.

JUDGE STONE: May I ask does that include diversions from the main stem by Nevada?

A: Yes, if the diversions are from the main stem of the Colorado, they are included. It does not include diversions from tributaries above the confluence with the main stream.

JUDGE STONE: Let's ask these questions by states. Arizona, do you have any?

MR. WRIGHT: Mr. Carson has a question.

MR. CARSON: Judge Stone, with the explanation of this being from the main stream, I should think that there should be inserted in that first paragraph, - "ten percent of diversions for that year from the main stream of the Colorado River." Is that acceptable to the State Department?

JUDGE STONE: It probably would not be well to make insertions at this time. Let's understand it, and after the states caucus, then such clarifying language as may be suggested, such as made by Mr. Carson, should be considered. Any further questions from Arizona? California?

MR. HEWES: Mr. Chairman, at this stage of the game I don't think it's possible for the California representatives to ask any more than just a few

limited questions at this time. I would like to call on any of the members of the Committee of Fourteen and Sixteen from California if they have any questions they would like to ask?

JUDGE STONE: Then call on your advisers.

MR. DOWD: I would like to know what is meant by the statement "at designated places so far as practicable, at the International Boundary?"

MR. LOWRY: In answer to Mr. Dowd's question, "at designated places at the boundary line" was put in there to keep from having to count diversions of water delivered to Mexico at any point except the boundary. Those points having been selected, that would contemplate water in the river that may reach the boundary line. The designated places having been picked out, it is that water which reaches the boundary line which we are thinking of.

Q: If diversions are made at some other point and thereby water is lost, Mexico wouldn't share in those losses?

A: This means the water would have to reach the boundary.

Q: Is it the intention that the water is to be delivered to Mexico at the boundary and they are to be charged with no losses above the boundary?

A: The water is to be measured at the boundary line.

Q: In other words, the United States will assume, or the states will have to assume, losses of any water delivered to Mexico under this? The United States will deliver water without charge at such points as Mexico may designate?

A: I wouldn't say it that way. I would say the water is to be delivered at the boundary line and there measured.

MR. HEWES: Any other questions?

MR. DOWD: The other point, it says here "ten percent of diversions." That's a different statement than it would be if it were ten percent of the water used. What I am trying to get at, under the Compact, in the first place, allotment is made to the Lower Basin and not from the main stream of the Colorado in the Lower Basin, and in the second place, the measured allotment is for consumptive use, which as stated in the California Limitations Act, is diversions less returns to the river. There would be one figure if you measured by diversions and another if you measured consumption for beneficial use, if you bring that factor in there.

MR. LOWRY: In regard to that, it is hard to estimate just how much that would be. I gave a range of somewhere between 700,000 and 750,000 acre feet. There are experts here who have studied that and I think it might well wait until it comes up for general discussion.

MR. SCATTERGOOD: It's probably due to my lack of following this correctly, but it seems paragraph B speaks of water in addition to the ten percent specified in paragraph A, and says that "provided that the aggregate amount of water divertible under this paragraph B shall never be less than 750,000 acre feet in any year," and B is in addition to A. We say the amount shall never be less than 750,000 in addition to the ten percent. That's the way it reads to me.

MR. LOWRY: That's correct. This B water is made up of water from possibly four different sources. It will contain water from returns which are in the river, it will contain water made up by flood flows up to certain amounts, it will contain excess water passing Boulder Dam, and it will contain water made up from releases that might be made for sluicing purposes. It's water which would naturally be expected to be in the river.

MR. SCATTERGOOD: It's water that would be available in whatever amount it may be.

MR. LOWRY: The paragraph places a lower limit and an upper limit.

Q: In other words, the United States proposal shall guarantee 750,000 acre feet a year from such sources, in addition to guaranteeing ten percent of the diversions, which might themselves be 750,000 acre feet or a total of a million and a half guaranteed delivery.

A: Something like that--whatever the figures will work out.

MR. SWING: Will you repeat that?

MR. LOWRY: If I understood Mr. Scattergood's question correctly, by combining A and B water we would be guaranteeing a million and a half acre feet to Mexico.

MR. HEWES: Mr. Swing, have you any questions?

MR. SWING: I would like to clear up your answer to Mr. Dowd. If the United States, by treaty, obligated itself to deliver water to Mexico at designated points on the boundary line, Mr. Dowd said that would mean a delivery without cost, and you said you wouldn't say that. What have you to say on the subject of delivery without cost?

MR. LOWRY: I am not prepared to speak on that. That may come out in later discussions.

Q: There isn't anything in here which says the United States assumes all responsibility, to deliver water free at the boundary line.

A: The language will speak for itself. The interpretation will be cleared up in discussion. If I understand you correctly, this says the water shall be delivered at the boundary; there isn't anything said about the cost, and I am not prepared to speak on it.

MR. HOWARD: It isn't clear to me how ten percent could be determined concurrently during the course of a year. It says "ten percent of diversions for that year from the Colorado River." How is it proposed to determine that ten percent unless the use in Mexico happened to fit the use curves in the states?

A: I don't think the use curve as compared between the United States and Mexico enters into that. As stated here, it's an amount. Mexico can use her water and we will use ours. Uses will be well determined at the beginning of the year; what acreage, what diversions will be required to take care of them, and on that basis we will have a pretty fair understanding at the beginning of the year what diversions will be. There's a chance during the year, under this proposal, that if big changes come about they could be modified during the year.

Q: By using the phrase "for agricultural and domestic use," do you mean that to be broad enough to include diversions for industrial and commercial uses as well? I understood your preliminary statement to include all diversions and was not intended to apply strictly to agricultural and domestic purposes.

A: Domestic use would cover municipal use and things like that. Industrial use is usually classed with domestic use.

MR. LAWSON: The idea was to eliminate power diversions from consideration of these diversions.

MR. HEWES: Any further questions from California representatives?

MR. SHAW: Was there a purpose in using this expression "diversions" rather than using such an expression as "net consumptive uses?" Let me amplify; a project may divert half a million acre feet and discharge 100,000 acre feet back into the river. Will you give the purpose for using that expression?

MR. LOWRY: The purpose behind this is--diversions are measurable; use is very hard to determine. It is sometimes done, but most of the time it isn't. It was put in there to mean just that--that they are subject to measurement.

MR. HOWARD: How was the ten percent arrived at? What I am getting at is it an arbitrary figure or was it determined by considering the acreage available for use in the Lower Basin as compared with Mexico?

A: It was arrived at in consideration of what they were able to use, and pretty well based on the amount they were using prior to the regulation of the flow.

Q: That was not considered as duplicating the 750,000 acre feet fixed in B?

A: No sir.

JUDGE STONE: Has Colorado any questions?

MR. DELANEY: I understand Mr. Tipton has a question to ask.

MR. TIPTON: Most of my questions have been cleared up although there has been some discussion of other paragraphs besides A.

JUDGE STONE: There was one question asked which went into B.

MR. TIPTON: Most of the matters have been cleared up that I had in mind, except one possible related question. Is your estimate of 750,000 acre feet which Mexico would receive under A based on what you consider more or less ultimate diversions in the Lower Basin? At the present time the amount delivered under A would be less than 750,000.

MR. LOWRY: That's correct. The amounts stated by me a moment ago represent what is expected under ultimate conditions. Ten percent determined from present conditions would be far smaller than that.

JUDGE STONE: Has New Mexico any questions?

MR. McCLURE: The only question in my mind, that 5,000 cubic feet in C would include total diversions at any one time?

MR. LOWRY: That's correct. We would not be obligated to deliver at rates in excess of that. It limits them in what amount they may ask for in any one month, or something like that, to keep them on a reasonable basis.

(No questions from Utah or Wyoming.)

JUDGE STONE: We will now pass to paragraph B. Arizona?

MR. WRIGHT: We pass.

MR. HEWES: We pass, although there has been no further explanation of B.

JUDGE STONE: Have you any further explanation to make?

MR. LOWRY: If there are no questions, it is apparently understood.

MR. DOWD: So far as practical, what have you to say about the delivery point? Why was that phrase used, "at designated places?"

MR. LOWRY: I don't know whether the United States can determine where we will deliver it. That's got to be worked out where Mexico wants it delivered. This is broad as it stands, but the details have not been worked out.

MR. DOWD: It's quite far-reaching.

JUDGE STONE: Has Colorado any questions?

MR. TIPTON: My question is directed at the statement "provided that the aggregate amount of water divertible under this paragraph B shall never be less than 750,000 acre feet in any year." I am wondering about the word "divertible." Is it contemplated this 750,000 acre feet will be delivered the same as the A water, when requested by Mexico, or whether there would be charged against the 750,000 acre feet any water that at the various points along the boundary that would be divertible whether Mexico asked for it or not?

MR. LAWSON: Divertible water has special significance in that, because as you all understand, recovered water, surpluses and floods do not arrive on any schedule, nor is it the kind of water that could be scheduled to Mexico, or at least delivered in any pre-arrangement. That is particularly put in there to make possible the making up of the full 750,000 acre feet whether it coincided with the present Mexican use curve or not. It can probably be assumed that that kind of water, B water, will arrive at the boundary line in a pretty straight curve in July, August or September, but we are unwilling, at least at this time, to schedule or disregard as unusable water, that water that would arrive at the boundary line in the winter or late fall months, but want that included as part of the 750,000 acre feet.

MR. SWING: As I understand your explanation, the word "divertible" was intentionally put in there to cover all water reaching the boundary line in the bed of the river, whereas, it seems obvious to me, that by using the word "divertible" you havedistinguished between two kinds of water in the bed of the river; water divertible and water that is not divertible. Obviously, if you know the boundary line condition, where the Colorado River crosses the line, there is no place where you could divert water at the boundary line from the bed of the river, and there is bound to be undivertible water at the boundary line which you exclude by simply saying there must be 750,000 acre feet under B which you can divert and deliver to Mexico. Have I misunderstood your language?

MR. LAWSON: You have to some extent.

MR. DOWD: Take return flow and sluicing from the Imperial Dam which has passed all diversion points, which probably would reach the boundary line and would be undivertible water in the bed of the river?

A: From your understanding of it, we haven't said what we meant. We put the word "divertible" in there for the purpose of forcing the use by Mexico of water that was different from their demands or scheduled supply. It was available water that they could divert. The elimination of that would require our conforming to a schedule of their present use and not giving us credit for that water which in the winter months is there for some use; a difference maybe of 300,000 acre feet.

MR. SCATTERGOOD: Would it help if you said "delivered" at the boundary?

A: "Delivered" has such a wide meaning; it's going to get there anyway and we hardly deliver it. As to the question of "delivered" and "divertible" water, in my own mind at least, divertible water would include the winter water.

MR. SCATTERGOOD: "Divertible" would convey the idea of its being physically such as might be diverted and put to use; that's the trouble with the word. However, I understand your intent.

MR. LAWSON: The only thing I would like to get before the members was our intention of trying to include that full year's supply rather than any use of a word like "usable" water by Mexico.

MR. HOWARD: Would the words "shall be present in the river" help any?

MR. LAWSON: That might be better.

MR. CARSON: How about substituting "reaching the international boundary" in place of the word "divertible?"

MR. LAWSON: That might cover it.

JUDGE STONE: Does everyone understand what was intended by the word "divertible?"

MR. SHAW: Is it your intention to include all water which reaches the boundary in the river or diversion channels?

MR. LAWSON: In the river. Do you mean through channels along the boundary?

MR. SHAW: I understand the expression "at designated places," which corresponds to the language in A, to give you the liberty of designating places either in the river or other channels, so I take it this 750,000 acre feet would include water delivered to Mexico in excess of the ten percent flowing in the river, whether in the river or side channels. You mean to include all water which reaches the boundary during the year?

A: That's right, except there would be flood flows that we would not class as divertible; that would be an excess amount. There would be more water at times than we would deliver to Mexico.

Q: I understood you to say in your first statement that one of the classes of water would be flood flows; another class would be excess flows from Boulder, and I gather all such flows would be counted in making up the 750,000 whatever their immediate volume at any one time.

A: But there will be at times much more water than we would agree to

furnish Mexico.

Q: Does the international boundary mean the upper boundary or lower, or both?

A: Both.

Q: Two places of measurement for one quantity of water, 20 miles apart?

A: Yes, but still the boundary.

Q: You can measure it either up above or below.

A: It's only at one place or the other, I understand.

MR. DOWD: Well, you don't.

MR. LAWSON: We understood there would be some advantage in taking advantage of the flow between the upper and lower boundary.

MR. SHAW: We understand it's the measurement of any water when it passes the boundary.

MR. SWING: At the point most favorable to the United States? Is that what you mean? I didn't hear your answer.

MR. LAWSON: I didn't answer.

(New Mexico, Utah and Wyoming have no questions.)

JUDGE STONE: Now we come to more or less general provisions of this statement. I think rather than take up each one separately, we might consider them generally, paragraphs C, D, E and F. Before we call for questions, does the State Department desire to make any further explanation with respect to C, D, E and F?

MR. LAWSON: In connection with C, that refers to the question of discharge, arrived at by probably the maximum of the combination of A and B and was put in there for the purpose of limiting that discharge and give a recognition of the power development on the river more than anything else.

JUDGE STONE: Before we start on these questions on C, D, E and F, I should like to ask Mr. Harper if the Bureau of Reclamation has any questions on A or B, or has any comments at this time?

MR. HARPER: I believe Mr. Debler may be able to clear up one or two of these points in B.

MR. DEBLER: I believe the only term that needs some explanation is the word "divertible" which Mr. Shaw was speaking of. By divertible, I

believe was intended to mean water which Mexico, with a reasonable effort at utilization, could use. In the first place, water available under B consists of water released from regulating reservoirs, and finally the reservoir back of the Imperial Dam; water in excess of the amounts which the United States interests desire to use. That water in turn consists of waters reaching Imperial Dam which might possibly be carried through canals diverting there. It could be water, principally return flow, coming down the Gila River. It could be water going through the Siphon Drop power plant and not at the time wanted by any United States interest below there, that principal interest at this time being the Yuma project. It could be water used at the desilting plant at the Imperial Dam. It would then, in the aggregate, be water which reaches the international boundary in whatever amount, for any reason, and water which could be carried through the by-passing canals and not wanted at the time by U. S. interests. Taking, for instance, all water reaching the boundary in the river, that water would be divertible, I assume, to the extent that Mexico could reasonably be required to use the same, whether by diversions at Hanlon Heading, Rockwood Heading, through gravity diversions in Mexico or pumping diversions in Mexico. In other words, it's all water reaching the boundary, other than the water under item A which Mexico could reasonably be expected or required to use. The term necessitates definition in the treaty as it is finally drawn up. In other words, the term "divertible" requires definition, because Mexico could not reasonably be required to accept as divertible water under item B amounts reaching the boundary, other than waters under item A, in excess of what she could reasonably be asked to use by whatever means of diversion is employed.

MR. HOWARD: That would exclude water that arrives at the boundary in a season when it was not required for use in Mexico, I take it.

A: That's right. I will modify that definition to this extent: when Mexico could not reasonably be asked to make use of such water.

MR. TIPTON: That means winter return flow to the extent that Mexico could reasonably be asked to use it. We know that today Mexico uses practically no winter water. That's true in the United States to a much lesser degree. However, I would anticipate, under this treaty as finally drawn, Mexico would be expected, sooner or later, to adapt its cropping system to use the water which would otherwise be lost and not put an undue burden on the United States by reason of declining to make use of a reasonable amount of winter water.

MR. SHAW: With that definition, we don't know what this means. There are a number of terms in this proposal which will require definitions. It is my understanding that the Treaty will naturally include a definition of terms. You definitely disagree with Mr. Lawson's definition of the term "divertible."

MR. DEBLER: No, I disagree more with the meaning you put on it.

MR. SHAW: I thought we reached an understanding with Mr. Lawson as to what he meant.

MR. DEBLER: I accepted this opportunity to explain it because I noticed there was a misunderstanding, if I may put it that way, of what Mr. Lawson had in mind.

MR. McCLURE: How does that definition of divertible water comply with yours?

MR. LAWSON: It looks like he would be willing to put in a phrase "usable by Mexico" which we have not.

MR. DEBLER: Not usable by Mexico, because I have purposely stated it was water which Mexico could reasonably be asked or required to use.

MR. McCLURE: If you go back to reasonable, you go back to customs, and they haven't been reasonably using it so it can't be usable now.

MR. DEBLER: We have had that too often in the past where irrigators have sometimes, to my own knowledge, diverted, or have used only what you might call the "cream" and declined water which is not so easily used, but under changing conditions irrigators are being required everywhere to modify their uses to conform to a better utilization of available supplies.

MR. SCATTERGOOD: I understood Mr. Lawson's idea was that that water was to appear there in an amount. Your conception seems to include the idea of obligation on the part of the United States to regulate that water to the extent of what you would conceive as a reasonable basis of use by Mexico.

MR. DEBLER: Not at all, Mr. Scattergood. These waters will be there in available, though highly erratic, amounts. Paragraph B as I conceive of it means that Mexico will be charged with that water to the extent that it is reasonably divertible by Mexico and will not be charged with other waters in excess thereof, even though they are present. Aside from that if the United States can divert water through the canals diverting at the Imperial Dam and make delivery of that water elsewhere than in the river at the boundary, then the United States accepts the obligation to do so. In other words, we would, as I understand this provision, make deliveries where Mexico wants them so far as they can be practically made. I think all of you understand the return flow coming down the Gila River cannot be delivered elsewhere than at the boundary, but excess power waters coming down the Colorado can be diverted at Imperial Dam and be delivered elsewhere than in the river at the boundary. There is no regulation implied.

MR. HARPER: Is it the intent that Mexico shall be required to make reasonable use of water under B before she can demand delivery of water under A? In other words, can Mexico waste B water and demand A water in lieu thereof?

MR. DEBLER: My interpretation is that if Mexico received 2 million acre feet of divertible water under B she has no claim to any further water under A.

MR. SHAW: Will you repeat Mr. Harper's question? (Reporter does so.)

MR. DEBLER: If Mexico can use two million acre feet of B water she cannot claim any A water.

MR. SWING: That two million includes both A and B water, doesn't it?

MR. DEBLER: They cannot ask for A water to an extent more than required to make up the two million acre feet.

MR. SWING: You have missed the point of my question.

MR. DEBLER: That's the minimum, but there is also a maximum of the total water under both A and B.

GENERAL GILES: There is a floor of a million and a half acre feet.

MR. DEBLER: And a ceiling of two million. If Mexico receives two million under B she cannot demand any A water.

MR. HARPER: May I explain my question further? We have been, in the past, wasting large quantities of water down the river, and at these particular times Mexico might adapt her demands to maximum use of B water. On the other hand, Mexico may take the stand that she will have the right to call on the United States at any time for A water and may say "Why should we put ourselves out by trying to use B water when it isn't quite so convenient as to call for A water a week later."

MR. DEBLER: That's the question I attempted to answer. First, by stating what is divertible water. As I read this item B Mexico can be charged with the sluicing water to the extent it is held to be divertible even if she doesn't use it.

MR. HARPER: It would be charged only against the B account and not against A.

MR. DEBLER: It doesn't need to be A, but when the B account amounts to two million acre feet, that is the limit of Mexico's right. She cannot ask for any further water under either A or B.

MR. TIPTON: I am getting more and more confused. The way I read it, A is a definite obligation. The United States is obligated to deliver to Mexico ten percent of the diversions from the main stream of the Colorado made by the states of California, Arizona and Nevada. That cannot be wiped off the books. Then, in addition thereto, there is another definite obligation; there shall be in the river other kinds of water up to 750,000 acre feet. We have a definite obligation to make available this other 750,000 acre feet. The difference between the two classes of water as I see it, is water she can call for as she requires it, subject to the approval of the United States. The second is water that she is charged with as and when it occurs up to a certain amount. You'll have to have a definition of

"chargeability," which is the difficulty, although "divertible" has been put in apparently for that purpose. I think I can see what the intent of the State Department was--any water down there that was divertible by Mexico by existing facilities, pumps or otherwise, would be charged to the 750,000 acre feet, but I don't think any B water can wipe out A water. A water is a definite obligation to start with and Mexico could, as I read it, use A water to firm up B water and have a block of water fitting within her pattern of use. She could make use of A water in order to firm up B water.

ANOTHER SPEAKER: If it requires no firming, then what?

MR. TIPTON: I imagine that will be taken care of. You have delivered the ten percent that is down there in accordance with the way she requires it and that becomes chargeable under A.

Q: If Mexico has two million acre feet under B, how much more water is she entitled to?

MR. TIPTON: Now you are getting back to divertible as against usable. I don't think the two million acre feet of divertible water would wipe out the A water. Two million acre feet of diverted water would. I think the A water is water the United States is obligated to deliver to Mexico in accordance with the way she wants it subject, apparently, to approval of the United States.

(Recess for ten minutes.)

JUDGE STONE: May I suggest that during this conference the different persons sitting at the table retain their seats so we will be used to your being at certain places so we shall know where you are. When we recessed we were discussing paragraphs A and B together. Are there further comments, or explanations, or questions concerning those? Mr. Lawson, did you have anything further to add? Mr. Debler? Mr. Harper?

MR. ROBINSON: I might ask Mr. Debler as to whether he would regard water which passed the boundary in the channel of the river as distinguished from that which crosses the border in ditches as being water which Mexico could be reasonably required or expected to use?

MR. DEBLER: It would be both.

Q: In other words, you are assuming there are possibilities of diversion in Mexico. Mexico is already diverting water that way. It is a very minor quantity.

A: I refer to water taken from the Alamo canal. When we speak of the boundary, we think of the Rockwood heading as being at the boundary, and you would classify any diverted water, as well as the natural stream as being water which Mexico could be reasonably expected to use. Water passing both headings and the boundary to the extent it could be reasonably used would be so charged.

Q: That doesn't quite reach the point. You consider, as a matter of fact, any that could be reasonably used would be charged?

A: I am not sufficiently familiar with the physical situation as it is today or will be in the future.

Q: The point of the question, in earlier discussions it was apparently understood there was no possibility for diversions in Mexico, not any appreciable amount. They might pump a little but not any substantial quantity.

A: The water in the channel of the river is reasonably within a minimum of 750,000 acre feet and would have to be delivered through the canals or go down the channel of the stream.

Q: I take it you include as canals the Rockwood and Hanlon Headings?

A: Yes. I would say on that point, it's a matter for determination as this proposal ripens into a treaty. It's a matter for determination by the United States as to whether or not Mexico can reasonably divert any amount of water below the boundary. I am not sufficiently familiar with that physical situation to say whether Mexico now or in the future can make such diversions or in what amount.

Q: If as a physical matter she couldn't, then this whole 750,000 acre feet would have to be supplied through canals?

A: That's right.

MR. HEWES: Mr. Debler, you already stated you considered your words "reasonable effort" as applying to pumping water in the river channel. For your information, Mr. Robinson, a considerable quantity of water is being diverted below the lower boundary in that form.

A: I include pumping as a reasonable diversion.

MR. HOWARD: You have used in your discussion the word "reasonable" quite frequently. My experience has been that what appears to be reasonable to one man is unreasonable to another, depending on what his interests may be. Have you given any thought as to how reasonable use can be determined or what could be charged against Mexico by such a standard?

A: That's a matter for negotiation as this proposal ripens into a treaty.

Q: Would you attempt to crystalize it into a treaty so the words "reasonable use" wouldn't appear in the final document?

A: My experience is rather disappointing even in that form. Just how far you could go, Mr. Howard, is a question. After all, conditions change from time to time, and it may well develop in the negotiations that no one,

neither side, would care to adopt an iron clad definition, in which event the two nations, and their representatives, might agree to the existence of some form of arbitration commission. I am not suggesting that particularly, I am pointing out the possibilities only.

Q: Within quite a wide range, we would be signing over for the determination of some negotiators or arbitrators the administration of the treaty?

A: I think that's unavoidable. It's as much to our interest--I would say more to our interest, than Mexico's, I should think, but again I am quite sure that it's a matter that the negotiators of the treaty will consider very carefully. As to what would be the best form of definition, whether iron clad and absolutely unchangeable in the future, I have a feeling it would be to our interest to make it adjustable by some method.

JUDGE STONE: Mr. Lawson, do you have any further comments in view of the further questions that were asked on A and B?

MR. LAWSON: I would like to say this proposal does not represent what the language of some treaty might be. It does attempt to establish some principle for amounts of water. Undoubtedly a final agreement would have a clarification of these words that now seem so misunderstandable. One of the purposes of our meeting with you was to get the benefit of your ideas of these definitions and what they actually mean. I am quite sure that any final agreement between the United States and Mexico should not contain any word or phrase that is subject to some two or three separate interpretations. Already we have discovered in this language used now that some of the words need clarifying, and we would hope to have all of that language more or less commented upon and suggestions made that would remove these questions of interpretation.

JUDGE STONE: As to intent, may I ask was it intended by section B to make that water necessarily usable in Mexico?

MR. LAWSON: It was our intention that this wording would make the recovered flow, up to 750,000 acre feet, available to Mexico and we would have a credit for that amount as it came or appeared in the river. For instance, if we were to add in that paragraph B "arriving at or being available at the boundary line of the river and usable for Mexico," that would mean we would disregard some 200,000 or 300,000 acre feet that would arrive there in months that now Mexico makes little use of. We intended to get a credit for 750,000 acre feet that was in the river at the boundary line.

MR. SWING: At any time of the year?

A: Yes.

MR. WALLACE: In Article B there are three words, "arriving," available," "divertible;" the word "usable" isn't in that paragraph. If I have read it

right, and I would like to be corrected if I haven't, that water wouldn't be charged to Mexico if it couldn't be used in Mexico, excepting at a reasonable cost, and the reasonableness of that cost will be decided by the man who is administrator of the river.

JUDGE STONE: I don't understand that's Mr. Lawson's explanation of the intent.

MR. LAWSON: There will be, in connection with the word "divertible," there will be water, flood flows, that are not divertible, but it's too much water to ignore.

MR. WALLACE: I think that's perfectly clear. If I am not mistaken there are three words used here, "arriving," "available" and "divertible." Now those waters are to be charged to Mexico unless they can only be used at an excess cost. That will vary as the years go by.

MR. LAWSON: I don't understand your excess cost.

MR. WALLACE: You couldn't possibly use excess cost as a basis. During flood flows there is twice as much water as the United States can put to use at that particular time. You are trying to deliver to Mexico 750,000 acre feet under this paragraph that they can use.

MR. LAWSON: There is no mention of the word "usable." We purposely omitted that because that water would be along the lines of the winter flow that gets there now and will continue to arrive there.

Q: And you expect with the change of cropping they will be able to use that winter flow?

A: We hope to get some credit for that flow.

MR. TIPTON: Whether they use it or not, we will get credit for it?

A: Yes.

JUDGE STONE: Are there any further questions?

MR. GAYLORD: There is the idea of reasonable use advanced by Mr. Debler, which idea places a very heavy obligation on some one to decide whether Mexico can properly be required to use a certain amount of water at any given time. As I understand Mr. Lawson, his idea is that reasonable use is not included in his idea of the provision.

MR. LAWSON: We hope they will develop such reasonable use as will use those winter waters. We estimate there is an average of 200,000 to 350,000 acre feet that will arrive in the winter period at the boundary which will be available and divertible for Mexican use.

JUDGE STONE: I think the question Mr. Gaylord asked is the present intent. The language may have to be changed, but the intent was that that water may be charged against Mexico even though it's not used.

A: That's what B means--that's right.

Q: Do you think it will ultimately be necessary in some negotiations under the treaty to arrive at a percentage use each month, or use each year, of this B water?

A: No, I assume the B water is there and we have no control over it.

MR. SWING: I'd like to ask in reference to paragraph C, is that 5,000 cubic feet the total of A and B water combined?

A: That's right.

MR. CARSON: I have been somewhat concerned by Mr. Lawson's and Mr. Debler's understanding of that. I wonder if it could be reached in something like this: Beginning at the middle of paragraph B say "Provided that the aggregate amount of water reaching the international boundary in flows of 5,000 cubic feet per second or less, under this paragraph shall never be less than 750,000 acre feet in any one year"--getting away from the idea of continued future negotiations, so at any time the river flowed there in flows of 5,000 cubic feet per second or less, it would be charged against this 750,000 acre feet in paragraph B. Define it as you go now as to what would be usable in Mexico.

A: You can understand our insertion of the 5,000 cubic feet was at any time during the year, the combined A and B flow.

Q: If you would say in B "the water reaching the international boundary in flows of 5,000 second feet or less," the effect of it would be to say that is usable in Mexico. Or some flow figure that would figure out in accordance with the actual flow so as to avoid all of the question of future negotiations or possible arbitration.

A: In your firming up of the recovered flow by control, it should never reach more than 5,000 cubic feet, but you take advantage of the 5,000 cubic feet that might be in the river which would contain none of the A water. Is that your idea?

Q: It would contain both A and B water, and any time it reached there in some figure of flow of 5,000 second feet or less, the effect of it would be the United States would say that is chargeable to Mexico against the 750,000 acre feet under paragraph B.

MR. DEBLER: I think you can readily see where that wouldn't work, because under conditions of today we have 5,000 second feet flowing in the river throughout the winter. If this were all chargeable to Mexico, she would not be entitled to any water during the summer season.

MR. CARSON: The effect of it would be if we have the obligation to send it down under this proposed paragraph, as we do, whether they use it or not, if it is not flood flow, we'll get credit for it.

MR. DEBLER: Mexico cannot possibly use 5,000 second feet in the winter, nor one fifth of that.

MR. CARSON: Couldn't you put in a figure that would go in there?

MR. DEBLER: The proposition was made by someone else that a schedule of flows be made so that any waters received by Mexico from A and B water up to that schedule would be charged to Mexico. That is one way of defining what is divertible water. There is one item I would like to call to your attention. The 5,000 second feet as used in this proposal, is different from what you are talking about. In other words, this proposed 5,000 second feet is a limitation on the demand that Mexico can make on us at any time. Now we are talking of something else; we are talking of a schedule through the year which would be available.

MR. CARSON: That might not be the right figure, but say in flows of 4,000 second feet or less, or whatever the amount is.

MR. DEBLER: Let me point out the difficulty you run into immediately. Mexico is not making any use of water in the winter, and if this million and a half acre feet were to be scheduled the way Mexico wants it today you would receive no credit for any water going down in the winter.

MR. CARSON: What we want is credit for that, of course.

MR. DEBLER: The State Department is trying to induce Mexico to use some of the winter water by making it chargeable to some extent in order to lessen the burden on the United States by making more of this waste water usable. That goes back to the proposition, however, that you could unquestionably, as I see it, arrange a schedule which would induce that use of water, and as stated within the limitations you have in mind for the year.

MR. BISHOP: That is something you would have to take up with Mexico; we couldn't do that.

MR. DEBLER: So far as I know this has not even been discussed with Mexico. It means negotiations, of course. So getting right back to your question, that's an open matter.

MR. CARSON: The point I am trying to make is to have in there some figure of flow. I don't know what the figure should be--I just used the 5,000 second feet because it was mentioned here, but have it specified in the treaty that Mexico would be charged with all water delivered at the international boundary in flows of 2,000, 3,000 or 4,000 second feet or less, then future arguments, or negotiations, or possible arbitration under the 1935 Treaty would be avoided.

MR. DEBLER: I presume, too, you would have in mind there would be some provisions for variation from season to season, or year to year, as conditions change, in your schedule.

MR. CARSON: It might be necessary to have some floor so that the United States would know, and Mexico would know, when the river had more than that amount we would consider it to be flood water, and under your definition, not usable in Mexico, so I think you could regulate it. It would be better to arrive at some figure of flow rather than have negotiation or arbitration.

MR. SCATTERGOOD: This statement B doesn't involve any obligation on the United States as to whether it would be usable in Mexico. We are adding something further to it than B, as it is now written, contemplates, according to Mr. Lawson's statement.

JUDGE STONE: We have to get at the intent. This statement might be greatly changed so far as terminology is concerned, but what we ought to strive for is to get at the intent, and in answer to you, Mr. Scattergood, I understood from Mr. Lawson that the question of usable water was not included in paragraph B, is that right?

MR. LAWSON: It does enter into it.

MR. SCATTERGOOD: If it does include the idea, as far as practicable we could work out ways of having the water reach the river at specified places; that's secondary.

MR. DELANEY: About all we can do at this stage is determine, from the explanation given by the representatives of the State Department, the intent of these various paragraphs of this proposal. The various delegates and representatives of the states may have different ideas as to the language to be used and what principle to follow, but if we are going to make any progress, we will have to go at it in a slightly different way. Get at the question of intent first and go at the other idea later.

JUDGE STONE: That's right; we ought to strive to get at the intent and not change any of the language--we can consider that afterwards, after the intent is clearly in the minds of the committee.

MR. SIMPSON: I wanted to ask Mr. Lawson what effect might this guarantee to Mexico have on the contracts of various agencies with the Interior Department? Has that been thoroughly considered?

MR. LAWSON: I think that can be further explored. Generally, B water will be there, but the A water is scheduled water from the river sources. We all know that at the present time there is a surplus flow many times greater than any of these figures, and it has developed in the question of A water, that the ultimate diversions, ten percent of which would be Mexico's supply, is what we must consider,--the ultimate situation. You can understand there is no necessity for applying that principle when there

is more water in the river than can be used.

Q: I am thinking of years of low flow, in years to come, 20 or 25 years from now, under our contract, would the City of San Diego have to sacrifice, at that rate, 112,000 acre feet?

A: I think that can best be answered by the Reclamation Bureau.

MR. McCLURE: I don't see how it would work out that way. There is an allotment in the Colorado River Compact of seven and one half million acre feet to the Lower Basin, and ten percent of that would be 750,000 acre feet. It would be diverted, all of it, to agricultural uses. These A and B paragraphs are tied right in to that Compact, aren't they?

MR. SHAW: No, the term "Colorado River system" is used in the Compact, and the diversions are subject to returns to the river.

MR. McCLURE: The diversions are tied down to use under the Compact.

MR. LAWSON: There is another reason which enters into it, the return flow from diversions is easily ascertained, but water for municipal use over on the coast will certainly never reach the Colorado River.

MR. HOWARD: That explanation was made before, but I am contending this document doesn't speak the same language as the Compact, in that it refers to the California Limitations Act, and I think the Boulder Canyon Act refers to diversions, less return, to the river, as the measurement under the Compact. The amount allocated to the Lower Basin includes 3b water, and the Compact deals with the river system and all its tributaries, and doesn't deal with the main stream alone. This does, so the two are not integrated. I say that in response to Mr. McClure's statement and not yours (indicating Mr. Lawson).

MR. DOWD: Under paragraph B, and also under A, but particularly under B, in discussing this diversion, I would like to know whether the intent under that was that the United States would make the water available to Mexico if she could use it, or does it mean that Mexico might have to stand the cost of making it available itself.

MR. LAWSON: Yes and no. It was intended there to make it available to Mexico by diversion.

Q: Diversion by whom?

JUDGE STONE: Are you referring to A or B?

MR. DOWD: Either one. Mr. Debler kept speaking of what Mexico might reasonably use the water for, and I was wondering if it is the intention of the United States to furnish the water for Mexico or whether it might be expected Mexico would have to furnish her own facilities for getting water out of the river?

MR. LAWSON: That doesn't answer the question because there is some water they can use at the second boundary by pumping.

Q: Who would be required to make the diversion, the United States or Mexico?

A: After it reached Mexico, it would be their business.

Q: There is a 20 mile spread there.

A: Are you thinking about the possibility of Mexico duplicating what was done once in diversion of water with a diversion dam?

Q: It could be diverted by pump or gravity, but it would appear the United States is to make the water available to Mexico, and because it is in the stream Mexico might use it. What I am trying to get at is what is the intent, the measure of usability or divertibility? Do you mean divertible by Mexico?

A: No, I think that's purposely omitted. That's a question for negotiation.

Q: Then the way the negotiations are terminated would have a very strong bearing on the amount of water we would have to furnish Mexico.

A: This is intended to discuss or put before you the amount of water in limiting quantities.

MR. SWING: Following up the Dowd question, and your statement it was purposely omitted from this, that it is a matter for negotiation, is it your intent, as a result of these negotiations, that if Mexico puts on enough pressure that you would give your consent to Mexico putting in a diversion dam between the upper and lower boundary lines for the purpose of making the water passing the upper boundary available to Mexico by gravity?

A: First, Mr. Swing, our intentions in this proposal are confined to amounts of water generally, and second, speaking personally at least, we cannot visualize any permission for Mexico to put in a diversion dam between the two boundary lines. If there is one put in it should be above the upper boundary line.

Q: If that's your judgment and the State Department's, it's all right.

JUDGE STONE: Are there any further questions as to paragraphs A and B?

MR. SKEEN: I would like to ask a question about A and B. In A the words "Colorado River" are used, and the same language is used in B. I take it from the discussion in A that means the main stem of the Colorado, and in B it means the Colorado River and its tributaries. Is that right?

MR. LAWSON: No, it means the Colorado River in both cases.

Q: It was my understanding that one of you said the Colorado River meant the main stem of the river. If that's true in both cases, of course the Gila River is involved, which is a tributary, and in computing your ten percent if you take any diversions from the Gila River it would be much more than otherwise.

MR. SCATTERGOOD: In B it is the waste water involved, but in A, only, the diversion from the Gila is not involved.

MR. SKEEN: But in B wouldn't you consider waste water from the Gila in making up that 750,000 acre feet?

MR. LOWRY: The waste waters, which are the only ones which amount to anything, are those which reach the Colorado River and which reach the river at the boundary; that's clearly the plan.

MR. SKEEN: That doesn't answer my questions. In the discussion, it was mentioned that the water at the boundary might be in ditches or drains from the Gila which would reach the border.

JUDGE STONE: My understanding is that the waste or return water from the Gila is contemplated in B and would be in the main river, so therefore, it is involved in that way because of the physical situation. Is that right?

MR. LAWSON: Whatever water is in the river is involved; it's got to be.

MR. DOWD: For instance, under B, if there were diversions from the Gila River and the proposed flood dam, and those diversions were lead by canals to the south and reached the international boundary, then his point is should they not be included in B water; whereas the way it reads, unless they would actually reach the Colorado River they wouldn't be included in B.

A: I just don't understand a physical set-up that would make that possible. I assume most of the waters coming from the Gila system would be underground water and not be surface water by diversion.

MR. SKEEN: It's my understanding there might be water in drains that would have as its source water from the river, and what I wanted to get clear is whether the term "Colorado River" refers to the system and all its tributaries or just the main stem.

A: Let us analyze one situation: Water which reaches the boundary below Yuma Valley by drains or waste water from canals, that's Colorado River water. It isn't Gila River water.

MR. DOWD: (addressing Arizona delegates) Is that a fact?

MR. CARSON: Yes.

MR. LAWSON: I doubt if anybody could distinguish between water going into drains, or underground, from Gila River sources, or drainage or application of irrigation water from the Colorado River.

MR. DOWD: If that read "reaching the boundary from the Colorado River and its tributaries" then there wouldn't be any question as to where it came from. That's what he is trying to get at.

JUDGE STONE: Isn't that a matter to be kept in mind subject to clarification? Are there any further questions on A and B?

MR. SWING: I want to get an answer to Mr. Simpson's question. Is it the intention of the State Department and the boundary commissioner to give away to Mexico, under a treaty, the quantities of water already obligated by the United States to be delivered to the City of San Diego and the Coachella Valley water district, and half of that of the Metropolitan water district, or is it your intention not to encroach upon prior obligations of the United States government heretofore solemnly issued?

MR. LAWSON: I think in the last analysis, the intention is to carry out or be guided at least, by the Compact between the states.

Q: That was not the question. I am speaking of prior obligations of the government already entered into and on which the communities have expended $450,000,000.

A: You specifically mention the water supply of San Diego for which there was set apart some 150,000 acre feet and you ask whether part of that is going to be delivered to Mexico.

Q: Yes, that's what I want to know.

A: The basis of this, and reading the compact, we figured there was sufficient surplus waters to make up this amount. --

Q: I don't want to discuss that question now--it would take all night. May we have your assurance that the amount here proposed to be given to Mexico, to which you have given years of study, does not conflict, or undermine, or diminish, the ability of the United States to perform its already entered into obligations with these communities?

A: Those contracts, and those provisions for delivery of water to the City of San Diego and the irrigation districts you mention are all set out in this compact, as I assume, in one way or another.

Q: They are not mentioned in the compact.

A: Do I understand it's just the promise of the United States to deliver?

JUDGE STONE: May I call your attention to the question we are attempting to arrive at, which is the intent of the State Department, and the question which Mr. Swing is now proposing goes to the question of effect which the states themselves would have to determine from their own knowledge of water supplies, and what this allocation would involve, and their knowledge and interpretation of the Colorado River Compact.

MR. SWING: My question is what is the intention of the drafters of this proposal to give one and one-half million or two million acre feet to Mexico with reference to these prior obligations of the United States government?

JUDGE STONE: I still believe, Mr. Swing, that goes into the effect of the allocation of these quantities. This formula goes to the question of allocation of certain given quantities of water. Now, as to what the effect will be on any section of the Colorado River Basin is a matter upon which the states themselves will have to pass judgment. To ask the State Department whether they believe it will interfere with obligations that the government now has is a matter which I should think would not come within this present discussion. We can assume the State Department is attempting to protect the United States in its maximum use.

MR. SWING: If they will say so, I will accept that and sit down.

JUDGE STONE: When I say maximum use, I mean keeping in mind the obligation of one nation with another. Those two factors are involved.

MR. HACKWORTH: I might answer we have entertained no intent--the only intent is to try to make an agreement with Mexico, and no intent as to users of water in the United States. We want to get you people to agree that we can make an agreement with Mexico along the lines of this draft.

MR. SWING: You don't expect us to agree if it injures us, do you?

MR. HACKWORTH: I don't know about that.

MR. HOWARD: I realize and fully appreciate the effect of what the chairman said about the appropriateness of this discussion, and yet it is a matter of extreme importance to those of us who have investments in these contracts, and I would like to say a few words about that now. Mr. Lawson indicated the matter was guided by the Compact. The Compact was made in 1922; subsequent to that time, in 1928, the Boulder Canyon Project Act was passed which authorized contracts for the use of waters to be stored at Boulder Dam. While it is true that the Compact says if the United States shall make allocations of water to Mexico, that water shall be taken first, from surplus, and then apportioned between the Upper and Lower Basins, the Boulder Canyon Project Act also specifically says that

the impounded waters at Boulder Dam should be devoted to use in the United States, and it authorized the Secretary of the Interior to make contracts for permanent service, and that language was carried over from the Compact.

What Mr. Swing is talking about is with respect to the contracts for electric energy which are for 50 years and which were authorized by the Boulder Canyon Act. On the strength of those contracts, my own clients have invested about $200,000,000, and if we take in all of the contracts, the investment based upon all of the contracts, it would run to between four hundred and five hundred million dollars. In addition to that, we have undertaken to repay the cost of the Boulder Dam, so we feel strongly about any situation which might conceivably at any time in the future impair the ability of the United States to perform those contracts, and that should be guarded against. In order to crystallize the matter and determine the reaction of the State Department, I would like to know--not now but before the end of this conference--what the reaction of the Bureau of Reclamation would be to some such language as this inserted in the treaty. This was written out right here at the table, I might state, and is not a preliminary study:

> "Nothing herein shall be construed to require delivery of water to Mexico in quantities, or at rates of flow, which will impair the ability of the United States to fulfill its obligations heretofore made under the Boulder Canyon Project Act or the Adjustment Act."

If some such language as that could be put in the treaty some of the difficulties would be resolved. We would then know with certainty it was not the intention of the State Department to enter into any agreement which would impair the ability of the United States to perform those contracts which it has already made and which have been relied upon in good faith. I submit that language, or its equivalent, as a very proper means of protecting those who have made investments or who have relied upon the contracts of the Secretary of the Interior whether they have made investments as yet or not.

JUDGE STONE: I think Mr. Howard's statement as to this suggestion is appropriate. It can be considered during the conference. However, may we limit the discussion of this matter at the present time to a clarification of the intent of this particular document. The Chairman can readily see that the members of the committee, having ascertained the intent as to specific quantities of water, will want to study this further. It will naturally follow in the latter part of this conference that other principles and further discussion will develop, but it was my hope that we might expedite the matter if we confined the present discussion to a clarification as to what was intended, keeping in mind, as Mr. Hackworth explained, an attempt is here made to set forth quantities of water as a basis for a possible adjustment with Mexico. As to the effect of that, there are several other factors and questions which the various states will want to consider, and which will be considered before the confer closes. With that in mind, may we go ahead with the further questions.

there are any, regarding the intent and interpretation of the language here used. If there are no further questions on A and B, may we then pass to C, D, E and F.

MR. DELANEY: These members say we are ready for a recess.

JUDGE STONE: Thank you. We have two announcements to make before we recess. This seems an appropriate point where the different groups will want to caucus and discuss among themselves this formula. Would it be appropriate to allow sufficient time in the morning before we convene for that purpose? Is that the desire of the members?

MR. DELANEY: I move we recess until 2 p.m. tomorrow for the purpose of giving these different groups time to get together and caucus.

MR. HEWES: I second the motion.

MR. LAWSON: This memorandum is still in the confidential stage, and I wouldn't like to see it in the newspaper in the morning.

JUDGE STONE: May it be plainly understood by everyone that this proposal is of a confidential nature and it should be further understood that all of these proceedings are confidential and that no publicity be given whatever. I haven't observed any newspapermen in the room and I don't think there have been any. As we started out, we are now continuing on a confidential consideration of this question. Before we adjourn Judge Wilson has an announcement to make.

JUDGE WILSON: At the request of Governor Dempsey, I desire to extend an invitation to this entire group to have dinner in the Coronado room as guests of the State of New Mexico. I would also like to say we would appreciate it if you would return to these rooms at 6:30 and I hope Mr. McClure has arranged for refreshments. I regret the lateness of this invitation and I hope none of you have made other arrangements. It is to be entirely informal; there will be no speaking, especially about water.

JUDGE STONE: May I ask Mr. McClure or Judge Wilson about conference rooms? I take it this room will be available in the morning and I wonder if there could be available two or three other rooms where conferences can be held. He says that that can be arranged, so we will recess until 2:00 p.m. tomorrow.

THURSDAY SESSION, 2:00 P.M., APRIL 15, 1943

JUDGE STONE: The meeting will please come to order. For the purpose of the record, and as a formal matter, may I ask whether, since our last meeting, there has been any change in any state representation on the Committee of Sixteen? I happen to know there has been a change in one, and I thought we ought to check.

MR. WRIGHT: Arizona has made a change; Mr. Davis is on the committee in place of Mr. Farmer.

JUDGE STONE: Any changes in any other state or of the allottees? Then the committee remains the same and the Arizona change has been put in the record.

Since we adjourned last night, this proposal of the State Department has been under study and I assume there may be further questions concerning it. With that in mind, we shall first proceed with the opportunity of asking any questions you may have resulting from a further study of it.

Arizona	Passes
California	Passes
Colorado	No further questions
New Mexico	None
Nevada	Not present
Utah	No sir
Wyoming	None

JUDGE STONE: We shall proceed then with any comments. This procedure now is not designed to ask the various states and power allottees as to whether they approve or disapprove of the formula, but it is an opportunity for comments which I am sure the State Department, as well as the Bureau of Reclamation, would be glad to have. With that in mind, may I ask Arizona representatives whether you have any comments to make?

MR. WRIGHT: I think Mr. Scott may have.

MR. SCOTT: I don't have any that were not touched upon yesterday.

JUDGE STONE: California?

MR. SHAW: We have no general comments on the plan proposed, but it rather looks to us as though this is about the time for the committee to go into executive session and excuse the representatives of the governmental departments. That will have to arise some time or other during this meeting, and until the committee has something pretty well crystallized to talk about with the Departments, it rather seems the session should be executive. On behalf of the California members of the committee I so move.

JUDGE STONE: I presume that means members of the committee and their advisers?

MR. SHAW: Yes sir.

MR. DELANEY: I believe, as far as Colorado is concerned, there are more comments and suggestions to be made and probably offered with the idea of getting further information from the State Department. We would, if Mr. Shaw is not too insistent, prefer to go ahead and see if there are any further comments to be made before we go into executive session.

MR. SHAW: I don't want to preclude any further statements from the government representatives. I took it that opportunity had been open and no questions were to be asked. I suggest, in view of Mr. Delaney's statement, that the order of business might revert back to asking questions or making comments--whatever Mr. Delaney had in mind.

MR. DELANEY: After consultation with the other members, we have concluded if it is the desire of California to go into executive session, we will accede to their request.

JUDGE STONE: Is that motion seconded? (Seconded by Colorado and motion carried.)

JUDGE WILSON: Is it possible that the representatives of the State Department might desire to make any further statement before they leave?

JUDGE STONE: I think we certainly ought not to go into executive session until we have inquired whether or not the Department of State or Bureau of Reclamation has any statement which anyone representing those agencies desires to make, recognizing that in executive session this may be pretty thoroughly gone into.

MR. HACKWORTH: On behalf of the Department, I don't have any further statement to make.

MR. HARPER: The Bureau of Reclamation has no further statement, Mr. Chairman.

JUDGE STONE: Do we have the understanding that you men will remain available all afternoon so we can call you in, if desired?

MR. HACKWORTH: We will hold ourselves available.

(Representatives of both governmental departments leave the room.)

JUDGE STONE: Is it the desire of the members of the committee that the proceedings of this executive session be made a matter of record or not?

MR. SHAW: It should be reported, and determined afterward whether it should be written up.

JUDGE STONE: The Chair then will take it for granted that it is understood that the proceedings now in executive session will be taken down and transcribed and the usual review of the proceedings made before they are distributed. It seems to the Chair the only way to get this discussion started is to proceed again with comments. With that in mind, I assume you desire we proceed by calling the roll of states. Arizona, do you have any comments?

Arizona	Passes
California	Passes
Colorado	Passes
New Mexico	Passes
Wyoming	Passes
Utah	Passes
Nevada	Not present

What is your next order of business? Do you wish to vote on the proposal or do you have any modifications or clarifying language to suggest?

Arizona	No sir
California	Nothing prepared to submit now
Colorado	Nothing at this time
New Mexico	None
Nevada	Not present

MR. SCATTERGOOD: Mr. Chairman, I have just received a telegram advising that Mr. DeArmond will arrive this afternoon.

Utah No sir

MR. BISHOP: (Wyoming) This morning there was a suggestion made in regard to wording in paragraph F to make it conform to paragraph A. It wasn't my idea but I have a note on it here. The way it is it would be very much different from the meaning in paragraph A where it said "10 percent of diversions," and down here it says, "water delivered to lands." That would be pretty hard to reconcile, so we ought to make it read "diverted for lands." I just offer that as a suggestion for consideration.

JUDGE STONE: How do you want to proceed in this matter? Anyone have a suggestion?

MR. SHAW: We sat with the committee yesterday afternoon and heard the proposal read, and we have pondered over it for a number of hours this morning. I don't want any mistake about this--I believe it to be the sense and the desire of all members of the committee to cooperate with the United States on this extremely important subject, and to furnish all aid we ca the government representatives in the way of helping them. We have also responsibility of representing our states and of satisfying ourselves as to what the proposal means, and as to what our final conclusion shall be on it. Now I don't think it's unkind to say--and I think it may reflect the view of a good many of us--that this proposal which has been put on this one page and

put in front of us, has been hastily prepared and is not well digested. It contains phrases upon which the government representatives appear to differ as to what they are talking about, and differ in particulars which are of major importance to us in finding out where we come out.

Inquiry of Department representatives on several points yesterday developed the answer that that particular point would have to be left to negotiations between the two countries later on before a treaty is made, and possibly to handling by an administrative commission or some kind of arbitration commission at some indefinite period in the future, with variations or leeways, evidently, of hundreds of thousands of acre feet of water. It doesn't quite seem that we should snapshot a decision for or against this plan without being as precisely sure as we can be what it means. I doubt from the discussion of yesterday that we can today set down on paper in this group meeting any analysis of this plan that will suit us, or what the result is with reference to any particular interest. And I doubt if further questioning of the Department men would help us very much because of the generality of their answers to questions yesterday.

So it comes down to a question of procedure, I think, as to what is the best way for the committee to clarify what is unclear, to the best of its ability. The thought has been expressed, and I am putting it before you for consideration, that these questions primarily revolve about engineering facts, and a substantial amount of exploration on this subject as affected by the plan proposed by the State Department should be made so that we will not be shooting in the dark when we come to a vote. To suggest what might be an orderly process, perhaps the technical men and engineers should be given the task of analyzing this plan. I mean in the way of designating a subcommittee--I imagine one from each state and one from the power interests--to analyze the engineering facts and factors presented in this plan, and tell us how it differs from the resolution which the committee adopted last June; tell us, either jointly or separately, as they may conclude is best, what the effect of the comprehensive plan on the interests of each state and each project appears to be. Those things, which should be studied in my opinion, are not such as can be very easily determined at any debate around the table here, nor are the majority of us qualified to deal with these figures and factors. There are skilled engineers representing each of the states who are competent, and I think it might be in order to ask that they sit down with the engineers for the Interior and State Departments and probe into this thing and explore it, and give us a report of their findings on which this committee can proceed. On behalf of the California members, I so move.

If my statement, which has been rather rambling, isn't clear, I will put it this way: It is moved that a committee of one engineer from each state and the power interests be designated to analyze the engineering facts and factors relating to this plan proposed by the State Department, in cooperation with the engineers of the State Department and Interior Department, and report its findings to the Committee of Sixteen. Of course, I want to say that that work should be done as expeditiously as possible, consistent with thorough consideration. It is evidently not a thing to be done in a day. It should

be done thoroughly and done promptly, so no one can feel that the solution of the problem has been materially delayed.

JUDGE STONE: You have heard the motion, is there a second?

MR. WALLACE: For how long a period?

MR. SHAW: The answer would depend on the engineers as to the length of time, but I should think it would take a week, ten days or two weeks to boil this matter down so as to give this committee something to bite on.

JUDGE STONE: I believe this motion should be seconded for discussion of it. The only comment the Chair would care to make is, I don't believe we should assume it would take a week or ten days to analyze it. I think it ought to be understood if a committee is appointed that they would go into immediate session with the engineers from the two departments and ascertain whether or not this job could not be thoroughly understood and done while we are here.

GENERAL GILES: With that understanding, I will second the motion.

MR. SHAW: That isn't my motion, because I doubt if it is practical. I don't believe thirty or forty men should sit here while the subcommittee does the work necessary to complete the job.

JUDGE STONE: At least by getting together we could find out what could be accomplished. It looks clearly within the realm of possibility that we could get a pretty clear answer in a comparatively short session. If the idea is it will take a week or ten days, we'll have to inquire when the State Department men can work with ours, which would mean more delay. I think it would be very inadvisable to leave here and expect everybody to find time to come back in ten days.

MR. WALLACE: I am sure everyone wants to do the best thing so I'll offer a substitute motion: That the engineers meet this afternoon and advise us whether they can get into agreement, or whether it would require substantial time.

GENERAL GILES: Second it.

JUDGE STONE: Do you make that as an amendment to the motion?

MR. WALIACE: Whatever the proper procedure is, I so move.

JUDGE STONE: This could be simplified if Mr. Shaw is willing to withdraw his motion.

MR. SHAW: I quite accept the idea of inquiring of these men as to what procedure to follow in their judgment, and as to what they can do within 24 hours or so, and withdraw my motion for the time being until this motion is acted on.

MR. SWING: There is no committee mentioned in this last motion.

MR. WALLACE: I'll withdraw my motion then.

JUDGE STONE: With both of them withdrawn, there is nothing before the committee.

MR. SHAW: There is no point in wasting time, so I move that a committee of eight be appointed, one from each state and the power interests, to retire and consider and report to the Committee of Sixteen as to the time required to make a thorough analysis of the proposal laid before us by the State Department. That's the issue, isn't it?

JUDGE STONE: Not as to how much time it would take. My idea was to have a discussion at this time and from that discussion determine whether or not some conclusions might not be reached at this time.

MR. WALLACE: They certainly will determine that. If the data are here upon which a decision can be made, the engineers know it. If the data aren't here, and the engineers disagree, then we will proceed further.

MR. SHAW: The point is to have this subcommittee retire and report to this committee this afternoon as to what is feasible in the way of completing a study of this plan. It ought to be possible in an hour or so to have a report from that committee.

JUDGE STONE: You have heard the motion and Mr. Giles seconded it.

MR. McCLURE: I may be dumb, or something, but who is this committee to meet with? I want an explanation. Is the State Department or the Bureau of Reclamation to determine the quantities and what they mean in a proposal they make? Is this committee going to meet with the State Department engineers or jointly with the Bureau of Reclamation, or what?

MR. SHAW: Both departments.

MR. McCLURE: What is the relation of the State Department to the Bureau of Reclamation? It appears to me one is parallel with the other and I am under the impression we are dealing with the State Department and not the Bureau of Reclamation as to these quantities. Is this committee going to meet with the Bureau of Reclamation or the State Department engineers to figure out what these things are?

JUDGE STONE: The original motion was that this committee should confer with the engineers of both departments. I want you to understand this motion. If the Chair understands it, this committee would only be charged with meeting with them and determining how long it would take to analyze this proposal, to make an engineering study of it. That's the only purpose of the committee; they would have no function to make an analysis, or attempt any preliminary analysis or to discuss an analysis. They would simply determine how long it would take them. Do you need seven men to do that and

are we gaining much if that is as far as the motion goes? May I remind you that we have two departments of government, we have a large committee with a number of advisers, who have come a long distance to be here; it is a busy group and it would seem to me there may be the possibility of coming to some conclusions and reaching some understanding of this formula within a comparatively short time, and I don't know why we should shut that off.

MR. HEWES: From the remarks made to me by Mr. Hackworth and others, I have come to the conviction that some, at least, of the representatives of the State Department have a very wrong and far from correct understanding of factual matters which are essential in determining quantities of water, and availability of water. It seems that a get-together of the representatives of this committee and State Department--and there was a suggestion to include the Bureau of Reclamation--to thoroughly canvass the situation and bring about an understanding of the facts before we can proceed. Otherwise, the Colorado River Basin States are apt to find ourselves with a treaty with Mexico, granting Mexico very much more water than is necessary, and that would not be to the advantage of any of us. I feel it is very very important that they should have an appreciation of the factual matters which I know some of them do not have,--those who have most to do with this matter. For that reason, it would seem to me we should ask our technical men, eight of them, to consider this for a while, as to the extent of time it would take, working with the representatives of the State Department and Interior Department, if that be the determination of this committee. Also, I favor Mr. Shaw's original motion, give them sufficient time to go into this with sufficient thoroughness to give us the assurance that the State Department has such understanding of the facts as to enable it to deal with Mexico on the most favorable basis it is practical for us to get. It would be much more favorable than this proposition indicates.

MR. WALLACE: What period of time do you think that would take?

MR. HEWES: I feel much as Mr. Shaw answered you, it would take ten days or possibly as much as two weeks; not any more than now intervenes between the time when Mr. Duggan indicated to us he would return, so it wouldn't seem it should delay things.

JUDGE STONE: We ought to make as much progress every time we meet as we possibly can, and if this committee, after going into these things, let us say this afternoon or possibly tomorrow morning, can clarify some things and make a report at that time, they can determine better how much more time it will take, if it takes more time, and it doesn't seem wise to me to just appoint seven men to discuss how long it is going to take. Certainly we have seven men from the State Department and three from the Bureau of Reclamation, and a number of engineers here representing the states, and I want to plead with you not to just say "go determine how much time you need," but how much can we do here.

MR. SCATTERGOOD: Would it be harmful to have the eight technical men discuss this for a while and report back so we can discuss from thereon the the question you raised?

JUDGE STONE: There are some questions going to come up of a legal nature, and it might not be possible for Mr. Hackworth to come here again. I understand he sacrificed much this time, and we should not keep delaying this from one time to another on the plea of getting more information. Since we adjourned the last meeting in November, some of the states I know have been making rather intensive studies of this matter.

MR. SHAW: We presented to the State Department our definite and comprehensive ideas on this subject in June of last year, and it took nine months to give us its views. I don't think any of us would want to take action without having the opportunity for full information and reflection, and I think, in deference to Mr. Wallace's suggestion, it is in order for someone to reach a conclusion as to this time element. Then let the committee pass on that as it sees fit.

MR. DELANEY: I remember I attended a meeting in El Paso something like a year or more ago and in a general way this same general proposition was before the committee for consideration as we have now, and as I recall a legal and engineering committee was appointed at that time. The meeting was adjourned for about a month, and I believe those reports appear in the minutes of the proceedings of June 17 to 20, inclusive. It seems to me with these engineering reports before us we have a pretty good general background of what the situation is going to be on this river in 1950 and 1988, and as I see it--maybe my remarks are not appropriate on the motion before the house--but as I see it, these engineers are not going to change their findings made at that time to any great extent, so the question before us is how far we can go to acceding to the formula that has been laid before us by the State Department. To make it short, I want to express this as my own personal opinion--it may be entirely different from the other delegates from Colorado--I feel this matter should be considered now and we should go as far as we can with the engineering data we have. If the lack of it arises, and we cannot act intelligently because of the want of information, then we can take such steps as may be necessary to get it. At the present time the states should go ahead and form some sort of opinion as to this proposition placed before us by the State Department for consideration. I don't think it will do any good to refer it to an engineering committee.

MR. SHAW: I question that because the report made by the engineering committee last year was not directed to the kind, or any particular kind, of plan, particularly as the one before us. Here we have a momentous proposition which is twenty-four hours old, and it must be analyzed.

MR. DELANEY: Aren't the basic facts the same?

MR. SHAW: The basic facts don't relate to this plan.

JUDGE STONE: I can't see why it should take ten days to take the basic facts and discuss those facts with the representatives who are here.

MR. SHAW: We have made a guess at the time--I'll leave it to the engineers to say.

JUDGE STONE: I am of the opinion these engineers may make some substantial progress in three or four hours of discussion of some of the terms used and get a clear understanding. If we proceed in your way we will go away from here without any understanding of what is intended. I think this intention can be worked out with the engineers and the government representatives.

MR. SHAW: I think the engineers ought to retire and report to us this afternoon as to the time element. That is Mr. Wallace's wish and I'll yield to Utah.

MR. BUNDY: Utah has gone over all the data we have, and also tried to apply that data to the proposal of the State Department, and we think we are pretty well prepared to make a decision at this time. Speaking for Utah, it is entirely proper for all of us to go into this engineers' meeting. What the technical men may put before this Committee of Sixteen, and the facts which they are able to present, might lead to the adoption or the throwing out of this proposition, as the Committee of Sixteen sees best. We can at least find out where we stand.

MR. TIPTON: As to Mr. Shaw's statement as to what the technical men can do, it is obvious there are some items in the proposal of the State Department not well understood. All of us recognize that. It isn't plain how much water Mexico might get under A, where the diversions will be made from the stream, where and when returns come back and are to be reused. There is a difference of opinion between the two government agencies as to what the 750,000 acre feet under B means. If it is Mr. Shaw's idea that some of these matters can be cleared up by the engineering group then I agree, but if it is his idea that after they are cleared up then the engineering group should determine the over-all effect, then I do not necessarily agree but believe that each group must consider that from its own viewpoint, after we determine clearly the intent of the proposal.

MR. SHAW: I didn't mean in suggesting this study to put chains on the committee. I feel that the men who would be likely to be designated on that committee are of such caliber they can guide themselves better than I could suggest they be guided. I did have in mind that since the proposal before us is not clear, and it is apparent the government representatives do not at the moment have the answers to the questions, that in view of that the engineering committee should sit down with the engineers of both departments and explore the subject sufficiently to find out what the answers are or should be. I am sure the men designated on this committee would attempt to shape some kind of a set-up in figures so we could understand what it was we were talking about. I doubt if sitting here in general discussion of this one-sheet plan we can ever reshape it and know what it is or what they have arrived at.

I think in the course of that investigation the engineering committee would probably, and naturally, come to a statement as to the difference between this plan and the resolution of June of last year. I think that is

extremely important to us. On the face of it, speaking by and large, it looks as though the government is asking us to concede to Mexico two or two and a half times the amount specified in the resolution of last year, but it is quite possible that that may be far in error, and it seems to me we should know just as definitely as possible what it is the plan means, or if some other plan might be suggested, what it would mean.

MR. DAVIS: In the call for this meeting, it states here, quoting Mr. Duggan's letter: "In view of the importance of avoiding any further delay, the Department considers it highly desirable to present these proposals to the committee not later than the period of April 7 to 14." I gather there was a time limit. Now we have discussed this proposal and I think all of us understand what it means. They have raised the ante of delivery of water to Mexico. If you are considering further delay, which this motion does, you ought to get the advice of the State Department as to what they would consider in the matter, because, after all, they will write the treaty. They want our advice, assistance and cooperation. I think it would be out of order for us to go ahead and then tell the State Department about it. Why not call them in and say we would like further consideration and see what fits in with their plans; those who are familiar with it and who have taken it up informally with the Mexican people. This is a proposal that they think they can get into agreement with Mexico on, and the time element seems vital. It would be more desirable, it seems to me, to call in the State Department and get their advice as to what they would like.

JUDGE STONE: There is a kind of middle ground between yours and Mr. Shaw's suggestion. I think Mr. Shaw's objective is to ascertain the time in which it could be accomplished. We will have done a sound thing rather than just a procedure, if we would appoint this committee with the understanding they go as far as they can in the next few hours to clarify the meaning of this proposal, and then if it is determined in that meeting with the State Department and the Bureau of Reclamation that it will take additional time, and the engineers can estimate it, they can report back and at the same time get up a progress report. They can submit a statement of clarification as to certain matters. Obviously some of these things can be readily clarified, and if we are to have any further delay, which Mr. Davis says is a question we cannot fool with, as the State Department wants to go ahead, but if there is to be some delay that delay can be determined at that time. But just to appoint a committee to come back and tell us how long it will take is lost motion.

MR. SHAW: I will adopt the suggestion the chair has just made. I think we have talked about this motion longer than it would have taken the engineering committee to get out a report. So I would like to adopt the Chair's suggestion as my motion.

GENERAL GILES: The second will accede.

(Vote taken.)

JUDGE STONE: The motion carried. Now each state will name its member

of that committee:

Arizona	D. C. Scott
California	M. J. Dowd
Colorado	Frank C. Merriell
New Mexico	Thomas M. McClure
Utah	Ora Bundy
Wyoming	L. C. Bishop
Power Allottees	C. C. Elder

JUDGE STONE: May I suggest we recess the committee and I shall find the representatives of the two government departments and ask them to come in with this committee.

MR. DAVIS: I move that the engineering committee report back by 4 p.m.

The motion was duly seconded and carried, and the meeting recessed at 3:00 p.m.

The meeting reconvened and was called to order by Judge Stone at 4:30 p.m.

JUDGE STONE: The meeting will please come to order. The first order of business will be to hear the report of the committee appointed before we recessed.

MR. MERRIELL: Mr. Chairman, in the very short time at our disposal, we spent some minutes in discussion of the various proposals and the difficulties concerning them, and the report of the committee is embodied in a resolution, as follows:

"As a result of the conference with representatives of the State Department and the Bureau of Reclamation, it appeared that the State Department by proposal is suggesting that the United States negotiate with Mexico on the basis of delivery to Mexico of one and one-half million acre feet per year. It is the opinion of this engineering committee that until the Committee of Sixteen determines whether or not this is the basis acceptable to the states, further deliberations of the engineering committee do not at this time seem pertinent."

That's our report.

MR. SCOTT: There was another factor discussed that couldn't be entered in the resolution and that was the matter whereby the State Department agreed that a ceiling of 750,000 acre feet would be placed on the water described in A of their proposal, and I think that should be brought into this at this time, as part of the findings of this committee.

MR. DOWD: Mr. Lawson made the statement that that was based on their estimates as to what the return flow would be. Didn't he make some remark

like that?

MR. MERRIELL: I didn't understand they were their estimates.

MR. SHAW: Was that A or B water?

A: A water.

Q: What relation does that have to return flow?

MR. SCOTT: I don't know. Mr. Dowd has some figures on that.

MR. DOWD: To get a green light from the committee on the basis of one and one-half million acre feet, what they had in mind was that A water might be used to firm up B water. If we went wrong on estimates of B water it might take more than 750,000 acre feet of A water to firm that up to make the million and a half. I understood him to say he was willing to place a ceiling of 750,000 acre feet on the A water, if that would be sufficient to firm up the million and one half acre feet to Mexico.

MR. DAVIS: Do I get it then that the State Department agreed they would be willing to negotiate with Mexico for a million and a half acre feet, that that would be the maximum?

MR. DOWD: Minimum; the ceiling would be two million.

MR. WALLACE: No guarantee whatever on the extra half million acre feet?

JUDGE STONE: The guarantee is limited to the million and one half.

MR. DAVIS: That is as provided in A and B, the A water being firm and the B water being as delivered.

MR. DOWD: As Mr. Lawson discussed it, they consider the A water is to firm up the B water.

JUDGE STONE: Do you mean that this B water would be firmed up and brought up to that figure by the application of A water?

MR. DOWD: That Mexico could use it in that way.

MR. TIPTON: I would like to ask, do I understand Mr. Dowd their suggestion was that the A water would still stand as ten percent of diversions with a ceiling of 750,000 acre feet?

A: That's correct.

Q: So that that would be the maximum amount and it would be an amount that would not be realized for many years. The A water would be less than that, and they would further guarantee an amount of 750,000 acre feet of B water?

A: Of course, we all recognize the fact that the 750,000 wouldn't come for some years. The A water, under the ten percent of diversions, is not important for some years and they figure all the B water will take care of Mexico regardless of the A water. In the future when it would become important, that would be the ceiling. Provided, of course, they are able to firm up the million and a half.

Q: The only guarantee then, as I understand it, would be the ceiling of 750,000 acre feet of A water; even with 10 percent of diversions it couldn't be more than 750,000?

A: That's right.

Q: And the only guarantee on the B water would be 750,000 acre feet?

A: Mr. Lawson's statement was that this A water is the same, or equivalent to the 750,000 acre feet offered Mexico back in the old negotiations of 1928 or 1929, with which some of us don't agree at all, but that was the idea as long as they got 750,000 acre feet.

Q: As long as they got a million and a half?

A: 750,000 of A water and then we supplement it later on. After we discussed the current flow, he said his suggestion that the 750,000 be a ceiling, or ten percent of diversions, was based on the estimates they had used as to what the return flow would be to make up the B water.

MR. SCATTERGOOD: How could A water supplement B water and still have 750,000 acre feet of A water?

A: The B water of 750,000 acre feet might be available as a steady use. Mexico would arrange the schedule.

Q: A seasonal schedule, not total, yearly schedule?

A: No.

MR. MERRIELL: I understood Mr. Lawson to say this during the course of a very brief and hurried discussion. He made the statement that the proposition formulated by the State Department is their notion of how to get at the matter; that the State Department would welcome other suggestions that would seem more reasonable to members of the Committee of Sixteen. I think of one other statement: Mr. Lawson intimated that the difference between the 750,000 acre feet of A water, to which he agreed, and the proposed guarantee of 750,000 acre feet of B water, and the ceiling expressed in the proposal of two million acre feet, was recognition of the fact that the Mexicans will attempt, naturally, to put all the water to use they can, but under the frame of this proposal they are on notice that any demands above a million and a half acre feet are distinctly at their own risk.

MR. DELANEY: What's before this committee right now, the question of acceptance or rejection of this report? Should a motion be made?

JUDGE STONE: No motion has been made. The motion I take it is in the nature of a report made to this committee, and the report does not suggest action by this committee; it is more informative than anything else.

MR. WALLACE: I move the report be received and filed.

MR. DELANEY: Seconded. (Vote taken)

JUDGE STONE: The motion is carried.

MR. DAVIS: May we have that report read again, because I think it does require action by this committee. They said they couldn't go any farther until the million and one-half acre feet were accepted.

MR. MERRIELL: (Reads report again.)

JUDGE STONE: Before you proceed on the basis of that report, or any other basis in considering the question of allocation, may I say it has come to the attention of the Chairman that there appears a notion on the part of some that this, if approved, would be the offer made by the United States to Mexico, and then it is said, obviously, Mexico would up it, which would mean coming back to get approval for a better proposition. That involves, naturally, the question of how the State Department conducts its negotiations, and it involves the question of policy. No one but the State Department can answer that question. For that reason I have taken occasion --that's the reason I was late--to talk to Mr. Hackworth and his associates about that. Apparently, Mr. Lawson doesn't speak on that question of policy but there are those from the State Department who do. I have asked Mr. Hackworth if he would give that some thought and determine whether or not he would be willing to indicate to the committee what the policy is with regard to the handling of any formula which is approved here. I think that would be enlightening; it might tend to make everybody feel better if you understood how this formula was to be handled. I mention it now because it appeared to me before you get on this question of total guaranteed delivery you would like to know it.

MR. WALLACE: How can we learn it?

JUDGE STONE: I have talked to Mr. Hackworth, and I am inclined to think he will be willing to indicate what the policy would be on that. I think he probably would be willing to say. If you want to know that we can ask if he is ready to discuss it. Would you like to do that?

MR. DELANEY: I move we ask him to explain the application of the formula.

GENERAL GILES: Seconded.

JUDGE STONE: If there is no objection, I will do so.

MR. DAVIS: Shouldn't we agree before he comes in, if we are in agreement on the million and one-half acre feet as a ceiling, then we ought to be able to determine that, and then as to how he applies the formula for delivery to Mexico, have him explain that.

JUDGE STONE: Some of the members would like to know about this other matter before voting on the million and one-half acre feet.

MR. DAVIS: I don't care.

MR. SHAW: I noticed Mr. Davis' form of expression. I don't think it corresponded to our understanding of the committee's report. If we understand the committee's report this afternoon, it doesn't specify a ceiling of a million and a half acre feet, but a minimum of a million and a half with some other ceiling.

JUDGE STONE: Guaranteed delivery of one and one-half million acre feet.

MR. SHAW: With some other maximum.

MR. DAVIS: Only as water goes down that we can't use.

MR. TIPTON: It is a distinct ceiling of one and one-half million acre feet of guaranteed water, and it can be less than that.

MR. SHAW: Is that your report, Mr. Merriell?

MR. MERRIELL: I attempted to explain that the reference to two million acre feet in the proposal was intended to be, primarily, as Mr. Lawson indicated, anything over the ceiling was done at their own risk--anything over one and one-half million.

MR. SHAW: Where does the two million acre feet come in? What weight or value or importance has the two million?

MR. MERRIELL: Under present conditions there is a great deal of excess water, and there will be for many years, yet even under those conditions the United States would not bind itself to stand ready to deliver any more than the quantity of water mentioned in the proposal, and it guarantees only the ceiling.

MR. SCATTERGOOD: Under what conditions would the water available be less than one and one-half million? You say that is the ceiling, but there would be conditions when there wouldn't be that much.

A: Under condition of use; it might never reach one and one-half million acre feet.

Q: Does the ten percent still apply, if the ten percent was less than

750,000 acre feet?

A: It applies only to the quantity of water Mexico can beneficially use.

Q: Our obligation to deliver A water wouldn't exceed ten percent but would the ceiling of 750,000 still hold if the ten percent was less than that?

A: The plan at present provides ten percent, and Mr. Lawson stated he would be willing to make a ceiling of 750,000 acre feet of A water.

Q: There is a lack of logic from a practical standpoint in the guarantee of the B water. That involves an explanation of A water, and I wanted to be sure. It seems, regardless of how long a period of low stream flow there may be, we are still guaranteeing there shall be present at the boundary in the river at specified points, as agreed upon, 750,000 acre feet. We are bound to make available that much present in the river at the boundary even though we have a series of very low years. It seems that ought to be cut down in some manner with the discharge from Boulder Dam. That would be the ceiling, but if the discharge from Boulder Dam is thirty percent short for several years, we are going to suffer all of the loss and Mexico is going to have her pound of flesh or 750,000 acre feet, present in the river regardless of how our agricultural lands may suffer.

JUDGE STONE: Do you place no reliance in paragraph F where it says in case of extraordinary drought or serious accident the amount of water will be diminished? I take that to be an escape clause which, if those conditions occurred, Mexico would have to suffer the same as the United States.

MR. SHAW: "Extraordinary drought" refers to a single extreme year, such as 1934. To be extraordinary, it couldn't refer to a series of dry years, which might run ten, thirty or sixty years.

MR. SCATTERGOOD: If that would read "for periods of low average" they would go down together, then my thought would be satisfied. Extraordinary drought--we have low periods that are not extraordinary I would judge, and yet if it was a long time both countries ought to go down together.

MR. McCLURE: That 750,000 acre feet does not include the return sluicing water, and if you run into a low flow period, and you maintain your diversions, your ten percent will stay up, but if you don't maintain them it will go down. You will have an accounting in there and you will still have your return flow water which will make up the 750,000 acre feet; or, you have a balance the other way, less than ten percent.

MR. SCATTERGOOD: I am one of those who believes there won't be 750,000 acre feet of return flow or flash floods or make-ups, and especially that would be true, if ever, during low water periods, and, of course, during low water periods we couldn't keep up our diversions.

MR. McCLURE: It would automatically reduce your A water.

MR. SCATTERGOOD: It would automatically reduce the A water; that is logic, but at the same time that happens, still we have to guarantee 750,000 acre feet of B water present in the river, and that isn't logical in my judgment. We should simply provide that during periods when the discharge from Boulder is below the average yearly discharge, that the B water would be cut down in proportion.

MR. TIPTON: It occurs to me Mr. Scattergood might have a good point. Of course, I think you all realize there is a difference of opinion among engineers as to what the return flow might be. I have made estimates and others have, and I personally believe the return flow and desilting water will be more than 750,000 acre feet, based on only the development of the first unit of the Gila. I believe with proper drainage that can be made available to Mexico under the terms of this agreement. In my own mind, I believe the 750,000 acre feet probably would be there, but I think Mr. Scattergood has a good point. There might be a series of years when diversions would be so short that the returns would be cut down correspondingly. There wouldn't be by any means a normal amount of desilting water, or maybe none, and we would be called upon to make up some deficiencies in the B water when we could least afford it. Incidentally, my estimates of return flow have been reviewed by the Bureau of Reclamation and they consider them conservative, nearer the middle-of-the-road than otherwise, but I think Mr. Scattergood has a good point.

JUDGE STONE: You think that escape clause might be reworded?

MR. TIPTON: I think that clause takes care of remote conditions, conditions that happen infrequently. "Extraordinary drought" cannot be defined; nobody can say what is normal; nobody can define it within accurate limits--it is a matter of opinion, as to what is extraordinary flood or drought. Nobody can accurately define it and I think it needs more tying down. I think it should be made to apply to a situation that would occur more frequently than so-called "extraordinary drought."

MR. SHAW: I would like to follow that thought along a little further and in a more specific manner. If I recall it correctly, the estimate in the Jacobs-Stevens report was in the neighborhood of a million acre feet a year of return flow, total flows which would be in the river at the boundary --possibly a shade over that. Now that report was based on assumptions which your engineering committee declined to accept, and Mr. Tipton has made his own estimates on the subject. If I recall them, they were substantially less than that range, 770,000 acre feet, I believe. In order that we can see what it is that we are talking about in these two classifications of water, and the two different guarantees applying to each, and the possible scaling down on each under future conditions, let's keep in mind that other engineers have formed tentative opinions that this total water in the river, return flow, might amount to 200,000 or 300,000 acre feet.

Now it is clear as a bell if we guarantee 750,000 acre feet of B water and it so happens over a period of the next hundred years the actual water returned to the river from all sources does happen to be 250,000 acre feet instead of 750,000, there will be a deficiency there and that can only be supplied to meet the guarantee of the United States by taking it out of stored water from Boulder Dam, which means that beside the covenant to give ten percent of the diversions of the Lower Basin to Mexico, in controlled fashion, you have to give another half million acre feet out of some source. So it is worth pondering a little how much you want to tie your conclusion to an estimate of engineers, which is necessarily based on the unknown future, with nothing to assure you or guarantee that that figure happens to be right. We have talked some this afternoon, casually, of an engineering estimate made in the year 1922 by the Reclamation Service that the total run-off of the Colorado River would be between 20 and 22 million, that the average might be near 21 million acre feet, and, therefore, there would be an excess of five million acre feet to play with with Mexico. That is a bad error in engineering, and if we get into something like that someone will be badly hurt.

It rather seems to me that any approach--I am just putting this out as my personal opinion and without attempting to speak for any group--but since what we are talking about is an over-all agreement to deliver to Mexico a million and one-half acre feet,--it is not an agreement to let them have what comes down the river plus 750,000 acre feet, but an actual agreement to deliver so much as will equal one and one-half million acre feet, we might as well face that and then find out where you will get the water from. I can't see at present any point whatever in dividing this water into A and B water. We are confusing ourselves and getting into qualifications and limitations and guaranties which don't serve any purpose. If we were dealing with a single quantity there would be less difficulty in understanding it and in finding out who will deliver it and where it will come from. It might appear more pertinent to see how solid the engineering estimates are. There may be three-quarters of a million acre feet we won't have, however much we try to conserve. I am throwing these things out for consideration, because they represent a few of the items puzzling us and represent questions that need to be answered before you can come to an answer to the main question.

JUDGE STONE: I am not an engineer, but I think you are wrong when you say there is no occasion, no purpose, in the two classes of water. Engineers can correct me if I am wrong in this, but apparently there is an obvious intention in this formula to set out quite an important distinction, one which was expressed here by someone as amounting to 150,000 to 200,000 acre feet. The A water is firm water delivered when it is needed and usable in Mexico. The B water is water which is chargeable to Mexico even though some of it is delivered in the winter and not usable, and to that extent it is to our advantage in separating them. There is just one interesting sidelight on the suggestion here, further engineering studies may bring about an agreement as to what this return flow is. I think this committee has available to it as capable engineers as we have anywhere. It is clear to the committee, without going clear back to the Jacobs-Stevens report,

that there have been differences as to what that return flow may be. No one, truly, even can say just who is right, but I don't see how you could better the estimates by trying to get engineers to agree on their estimates. I recall a case in which my state was interested and when we were attempting to reach a settlement we tried to get the engineers together and agree upon some of the basic information on some of their estimates and conclusions. They worked for a week and were just as far apart. The reason they were is because each of them was doing what he thought represented his best judgment. He was making certain assumptions, taking certain periods for study and he came out different from the other fellow. I cannot see, if an engineer has studied this, let's say Mr. Dowd or Mr. Tipton, neither one of them would give us an estimate unless he thought it was his best judgment. So it comes down to be a matter of judgment and men of that type cannot very well compromise their judgment. There was a suggestion made here this afternoon that looked to me like a possible solution of this problem. Mr. Scattergood raised a point that was bothering him, and Mr. Tipton says he probably has a very good thought or conclusion and something may be done about it. It occurs to the Chairman that F, or some modification of it, taken in connection with B, might get us on a basis acceptable to the State Department, which at the same time would wipe out the uncertainty of what would happen in the next fifty to one hundred years. On language of that kind we would come nearer accomplishing an adjustment of this matter than by trying to get people together on what the return flow would be.

MR. DOWD: The State Department threw a little light on that subject and that was this: They told us they had used the figure of 100,000 acre feet at the lower boundary from the Yuma project, not in the river, which would include waste from the Yuma project, which is about what they have now in their present practice of handling the water. In the first place, all of us know we can't handle water fifty years from now like we do now, so as far as the waste part of that goes, which I understand is nearly half of it, the rest is drainage or return flow, but waste from the Yuma Canal, my opinion is, under proper handling that would be greatly decreased. In any event that could be available on demand. Mr. Lawson stated he firmly believed that the water should be in the hands of the United States, which would mean any water appearing between the upper and lower boundaries or below, Mexico might pump out or make other use of. What I am getting at is this: If we take the first unit of the Gila project, as Mr. Tipton referred to, a large part of that is on the Yuma Mesa with the probabilities --at least some of us feel--such return flow is disappearing and getting in the hands of Mexico. It doesn't slope towards the Gila so there is no reason for it to appear there. There is only a small portion of that in the Yuma Valley proper. All of that water on this small acreage has to be pumped some 45 or 50 feet and I don't believe where you are pumping water that high you are going to have any type of economy. If it were gravity or open canals it would be different, so the natural use of water there shouldn't compare to the use of water in the Yuma Valley, Palo Verde, Parker or Mojave, so it seems reasonable to expect that so far as unused water from the first unit of the Yuma project is concerned, it will not be very much. As far as the water above the upper boundary, we must preclude any water from appearing between the two boundaries or below the boundary

which Mexico is using now. You have the return flow, ultimately, from the 25,000 acres on the Yuma Indian Reservation, and you have the return flow of seepage of twenty-five miles of the All-American Canal, where the loss is always decreasing, so we don't think that will amount to much. You will have occasional water from the Gila River, but as you know a flood control project has been proposed, and will be built in the vicinity of the Gila River, seventy or eighty miles up from Yuma. If that flood control project makes available usable irrigation water it seems reasonable that will be used in the upper end of the lower Gila, and wouldn't be allowed to waste down in the lower Gila, and seventy-five or eighty percent is lost by evaporation.

We do know that the sub-flow appearing in Mexico comes from up on the Gila, but when you take all of these things into account and say there will be an average of a thousand second feet a day of return flow from these few meager sources, it doesn't seem to me it is within reason to expect that under proper regulation it will be that much--when water becomes as valuable to the Lower States as it will be later on. And that is only on the first unit of the Gila, to which Arizona won't agree. All of our past studies were based on only what we call "projects under construction" which would include the first unit of the Gila project, so there are many things to be considered. Let me put it this way: In June, after mature deliberation, this committee passed a resolution in which it said it wouldn't go beyond 800,000 acre feet in the river at the upper boundary when releases from Boulder were 10,000,000 acre feet, which is the average release. In other words, our 800,000 acre feet included all the return flow, which would certainly be the major portion of the return flow which is included in this B water. So if that does amount to the quantity indicated here, then under our June resolution we would be saying what we could give Mexico in the river would be 500,000 acre feet of Boulder water and 300,000 acre feet of return flow, because we provided if Mexico took delivery at any point but at the boundary, any transmission losses or any water which escaped into Mexico by reason of diversions above the boundary so it could not be used, would nevertheless be charged against Mexico.

There will be a considerable quantity of water appear below the lower boundary. If this were to reach a million and one-half acre feet and could reasonably be used at any and all points in Mexico, that would be one thing, and an entirely different proposition. Mexico can, as we have discussed before, put in wells and pump from the ground; she can lower the ground water so that this return flow will not appear in the river. Nevertheless, we have guaranteed her 750,000 acre feet of B water, so it seems we are still not taking into this picture the things the committee discussed in June, which were so far away from what we decided we could give. We should consider the facts that have been developed since June in El Paso that would justify this committee in more than doubling the amount of water we could deliver to Mexico, and eliminating from the picture these other factors which we think Mexico will use, which are pumping water which we are feeding from our projects in the United States.

MR. TIPTON: I am not going to argue about the quantity of return flow.

I just want to state that I heard Mr. Dowd make almost exactly the same remarks at the June meeting as now, and I took those very seriously into consideration at the time I was making an estimate of the return flow, including the first unit of the Gila. I arrived at an estimate, taking all those things into consideration, and I have heard nothing up to date which would cause me to change that estimate. As I indicated to you, I have conferred with the Bureau of Reclamation as to what diversions might be on the first unit of the Gila, and their ideas of return flow, and they are not far different from mine.

One point very decidedly needs clearing up with the State Department. I don't think the points of delivery and the points used to charge water to Mexico should stop at the upper boundary. It has been my idea that the United States should get credit for all returns to the river, at least up to and including the lower boundary, and if it could be arranged, to include any water that might get to the river below the lower boundary. I don't know what the State Department has in mind for points of delivery. My own idea is that there are a number of points of delivery that probably will come into the picture and should come into it. Delivery through the All-American Canal, the Siphon Drop, and pump delivery at the present time from the Yuma drain near San Luis, and possibly delivered to the Sonora area through the main canal of the Yuma project. One very important facility I think should be considered by the State Department is an intercepting drain of substantial size to cut across the lower end of the first unit of the Gila and bring water to whatever canal might exist to serve the Sonora area. We should get credit for at least all of the water that accrues to the river above the lower boundary.

I think we are confronted with something entirely aside from engineering. I think we are confronted with a very practical matter. We can argue all we want about what the return flow might be, what the ultimate development in the United States might be, what the flow of the river might be. We might argue from a legal standpoint about what is right and what is not, but we are confronted with the proposition there is going to be a treaty made with Mexico. Many of us believe that unless a treaty is made soon, Mexico will substantially increase her uses, which is within her ability to do. She could even provide her own diversion to the Alamo Canal, and there would be available for many years a substantial amount she could take. In other words the situation is not entirely in our hands. If time runs on and uses are increased, we will be confronted with a worse situation than now and there might be the question of arbitration. I think we have to rely on the good faith of the State Department,--and I think we are justified in doing that as evidenced by their actions up to date--in getting the best possible deal they can with Mexico. If that deal hurts some of us we can't help it. In other words, if the State Department has presented to us a formula which they believe to be about the minimum they can deal with Mexico on, I am not sure whether we can substantially change it, except to safeguard ourselves in periods of severe drought such as Mr. Scattergood suggested. I think some modifications should be made to take care of the situation when we could not make the deliveries without causing too much hardship to United States interests.

I don't agree with Mr. Dowd on his comparison of this proposal with the proposal contained in the resolution of the committee in June. If you will remember, Mr. Dowd suggested to the committee one evening an allocation to Mexico--I don't remember the amount--but it was around 700,000 acre feet, based on the average releases from Boulder, and that that delivery should be made at Imperial Dam. In other words, there would be no return flow included in that. I was the one who insisted the delivery should not be specified at that point, that it should be some place below so we could get credit for return flow. We (the engineering subcommittee) upped the figure by 100,000 to 800,000 acre feet. We then came back and reported to the main committee and asked where the point of delivery should be. There was considerable insistence on the part of California it should be at Imperial Dam. I said that or the All-American Canal was satisfactory to me. Mr. Merriell took exception to that. The delivery point was finally designated as the upper boundary. If you would add to the suggestion of Mr. Dowd at that meeting the return flow down to and including the lower boundary, you will not get any great difference between what the committee proposed at that time and what this formula proposes. You will get a difference of 200,000 or 300,000 acre feet more and not two or three times more.

There is one other thing pertinent to this subject, the question of facilities. Again I want to say I believe all of the facilities that can be used to deliver water to Mexico and are suitably situated should be used, both those constructed now and those which might be constructed for that specific purpose. I think such facilities should be in the hands of the United States. I don't see for the moment any sacredness in the use of the All-American Canal for delivery of water to Mexico; or in the Pilot Knob. Some deliveries might be through the Siphon Drop, some of which could go through the main canal of the Yuma project and be delivered to Sonora land. The water passing the Imperial Dam could be picked up at the Rockwood heading or some other heading constructed for that purpose even though pumps might have to be used. It would be a good condition to have a fairly substantial flow in the river from the Imperial Dam down to the lower boundary to keep the channel in good condition. So there are many facilities and combinations of facilities that can be used for delivery of water to Mexico. I think it is quite important that they be under the control of, and operated by, the United States. I cannot conceive of Mexico looking to private interests for the delivery of water, nor of the United States looking to private interests to fulfill treaty obligations.

MR. SHAW: I am glad this discussion of return flow has been brought up for this reason: I don't yield to anyone in my respect for the capacity of the engineers who made these estimates. I believe them to be of the highest type men available. The resulting fact, however, is there is a wide range between the opinions expressed to us. That means, if I understand it correctly, that the subject is one on which that range of difference of opinion is possible and on which the realization may come one way or the other or in the middle. I suggest, therefore, there is only one sound way to deal with that kind of opinion as an important factor relating to this allocation of water; that is, to accept the lower estimate just as a banker would accept the lower figure in appraising real estate.

JUDGE STONE: That would be all right, if we could get together on that basis.

MR. SHAW: Nobody can say what is the best proposal we will make or Mexico will accept. I don't think the men are sufficiently clear or accurate in their statement or understanding of the problem to say that. I don't think we should resign our efforts to make the deal the best one which can be made, because I think that the State Department won't attempt to do anything different or less. It may be that an entirely different basis of proposal would work out and that Mexico would accept it. Nobody can say the opposite.

JUDGE STONE: It is very clear to the Chair there are two very important things that could be explored and clarified. One of them is this question which was the subject of discussion first by Mr. Scattergood, and then by Mr. Tipton. There is some possibility of the formula being altered to take care of that condition. There is this other thing discussed by Mr. Dowd as to the places of deliveries and Mr. Tipton's idea about that, as compared with Mr. Dowd's from discussion with the State Department. Fortunately, we have the International Boundary Commissioner here with his engineers, and with men who can talk on policy, and things like that can be cleared up, or there is at least the possibility of clearing them up. I think we need not let differences of opinions on these questions existing here today prevent us from trying to arrive at some solution.

MR. ARLEDGE: I don't believe the return flow will reach the estimate of Mr. Tipton but I don't quarrel with him on that ground. I would only ask that the guarantee of 750,000 acre feet of B water be removed. I would want to see Mexico get all the water she can, and our resolution doesn't preclude them from getting it, but we assume that would have to be made up from Boulder. If our estimates were low, then our firm water must come from A water, which would bring us back to the 750,000 acre feet in the proposal of the State Department. It doesn't look possible that that could be entirely removed, but it does look as if something could be done about strengthening the escape clause.

MR. DAVIS: Aren't we up to the place where it is a matter of clarifying the language as we have discussed it in this provision, and then agreeing whether or not, as provided in A and B, we are willing to agree on a million and a half acre feet as provided therein?

JUDGE STONE: I think it is more than clarifying language. I should like very much to see these questions which stick out like sore thumbs clarified by a discussion with representatives of the State Department who are here, and I would like to suggest before we adjourn that we follow up this discussion with a further discussion with them.

MR. DAVIS: To get this before the committee, I move that we approve, in principle, the delivery of a million and a half acre feet of water to Mexico as provided in A and B, putting a ceiling of 750,000 acre feet in A.

MR. DELANEY: There is a motion pending already. However, I am willing to withdraw it if that is desired.

JUDGE STONE: I think that would be the wise thing to do. I should imagine most everybody would feel better about voting on this question of principle if some of these things were clarified.

MR. DAVIS: The point is a lot of people here wanted to get away and to my mind we have had a lot of shadow-boxing.

MR. SWING: For a thing to be hung around our necks for centuries, two or three hours do not make a great deal of difference.

JUDGE STONE: There was a motion pending before yours.

MR. DAVIS: I'll withdraw mine.

JUDGE STONE: The motion as made by Mr. Delaney, and seconded, was to request Mr. Hackworth to come in and explain the application of this formula.

MR. SWING: Aren't you willing to have Mr. Lawson and the rest of them come in?

MR. DELANEY: I'll accept that amendment.

(Vote taken.)

JUDGE STONE: The motion is carried.

MR. TIPTON: I am not certain what you are going to discuss with Mr. Hackworth. I think Mr. Delaney's motion resulted from your suggestion, as to what the procedure was going to be--were they going to approach the State Department of Mexico on this as the minimum and if they couldn't get by report back? I think that was the original motion, but now it seems these other matters are to be discussed.

JUDGE STONE: It is my understanding that all of these questions are to be discussed.

MR. SCATTERGOOD: We are not prepared to discuss these other questions.

JUDGE STONE: It appears to me--I can't quite understand why there is so much opposition to discussing these things with the State Department. They are here, and we can argue what they mean all day when we can call them in and ask them.

JUDGE WILSON: Isn't it true that every state refused to ask any questions of the State Department? They all had opportunities--I think it went around possibly twice and the states clearly indicated they didn't care to ask any more questions about engineering problems.

JUDGE STONE: There was this question of delivery at the boundary. Mr. Dowd gave Mr. Lawson's explanation of it and we heard what Mr. Tipton said.

MR. McCLURE: If I understood Mr. Lawson, he stated these deliveries would be made at both boundaries, along the upper channel and the lower boundary and the record will show it.

MR. SCATTERGOOD: That is true, but it doesn't extend it to the other things which Mr. Tipton has mentioned. They are not along the boundary at all, but other places.

MR. McCLURE: There may be some projects, we might want to bring in your drains and other things, but in regard to the general principle of where deliveries will be made, I think it was very definite they would be at the lower and upper boundaries and in the international channel.

MR. SCATTERGOOD: I don't mean to suggest a lack of frankness, but I think that procedure was not what the original idea was. In the second place, the original idea came as a suggestion from the Chair and we are confusing our ideas. If we discussed with them what the implication would be, that is all we have to discuss with them. Personally, it seems to me we are not representing our interests here as we should, and our people in the basin as a whole if we, without further effort, simply agree to a million and a half acre feet with certain lesser amounts for less than normal or average years. That is just the B water part of it. I have in mind, particularly on the maximum, the idea among engineers of what would be available down there as return waters, or something near the maximum of 750,000 acre feet,--in the neighborhood of the maximum and not the minimum which is 250,000 acre feet or less. I don't think we, as people of experience and intelligence representing our interests in the upper or lower states as a whole should simply say to the State Department, because they indicated to us they couldn't accept our proposition of last June, that we are going to take their proposition, instead of getting a compromise out of it and lose around 200,000 acre feet that we could save.

It will be difficult to maintain harmonious cooperative relations in the basin if we get too little water for what we have to accomplish, and there would be constantly difficult relations to work out. Somebody has to give way, and give way unnecessarily, in my best judgment, to the extent of some 200,000 or 300,000 acre feet, if we simply say we agree with certain modifications which are only logical and sensible. I think that we fail to get the idea of getting engineers to agree on something as to return waters down there. My experience with engineers is they can get together on something, even though it is different from the opinion of any one, as a basis for us to act on and be able to go home and face our constituents. I don't see how anybody can go home in any state in the basin--in all my experience which has extended over thirty years--and feel we have done our duty, if we simply say O.K., a million and a half acre feet is all right. I never heard of such a thing, never had part in such a thing. With figures varying from 250,000 up to 750,000 we should take a position with the State Department based on something between those two limits, something that the

engineers think they can get together on, and what we indicated we would like of them.

I don't see how Colorado can go back and face its people agreeing to one and one-half million acre feet without a show-down effort, or near one, and yet cooperative with the State Department. I don't believe it is necessary for the State Department to give one and one-half million acre feet to Mexico, half of which is plain gift and regulated, and half on top of that which they never had before; then guaranteeing 750,000 acre feet on top of that, with modifications, which we all seem to be for in low periods. That is why, Mr. Chairman, I hesitate to talk to the other people until we have talked this out.

JUDGE STONE: How can you talk this out when there is obviously some question, some misunderstanding of what the State Department means, and there is obviously some misunderstanding as to the point you are talking about, strengthening the escape clause, when these Department of State men are here and can explain them. After you bring them in there may develop other questions. If we can't frankly discuss this with the State Department where there is a mere difference as to understanding what this means, and also if we can't take up with them some questions suggested by you....

MR. SCATTERGOOD: If you do that as a matter of course and it is so understood, following that discussion we want executive session again to consider the general problem further. There shouldn't be any objection to it. I wanted to say what I have said, regardless of its application to the question of this present move of having them come in. If they come in it is with the understanding we want to discuss certain things and then progress with our work.

JUDGE STONE: That doesn't mean they come in and we'll agree right now. That question can and will come up later, but we are dealing with an awfully important problem and we hope we can continue to work together. My thought is that we should, here and now, call in these men who have come 2,000 miles to meet with us and at least get a clear understanding of everything.

MR. SHAW: I move the committee recess until 7:30 or 8:00 o'clock as it is evident this discussion with the Government men can't take place in fifteen minutes.

The meeting then recessed until 8:00 p.m.

* *

JUDGE STONE: The meeting will please come to order. I understand that Mr. DeArmond is here, so let the record show his appearance for Nevada.

MR. MERRIELL: I find it is necessary for me to make a correction in the report of the engineering committee with regard to the resolution which I read. I called for a voice vote when the motion was put and I understood I heard four affirmative and three negative votes, including mine. After

the general committee adjourned, Mr. McClure informed me his vote was negative, which would make three affirmative and four negative votes. Due to this misunderstanding of mine and due to the fact the time limit set had expired, the engineering committee took no further action, but the record should not show the motion was passed.

JUDGE STONE: I think it is quite unnecessary to have any further discussion. The record will show the correction. Before we recessed it was quite apparent that there still existed in the minds of some of the committee members certain disagreement or possible misapprehension with respect to this proposal of the State Department. There also appeared to be in the minds of some certain questions as to how the State Department proposed to submit such a proposal to Mexico. It might be briefly stated that one question which arose had to do with the place of delivery, whether the upper or lower boundary was included. In the discussion some question arose as to whether the escape clause was adequate, whether in drought periods the United States would unduly suffer, whereas a guaranteed delivery would be made to Mexico. Some expressed doubt as to whether the escape clause would be effective for more than one year even though there would be successive years of drought. Those were two of the principal questions raised. I believe there were others, where clarification would be helpful. Then, too, because of the report of the engineering committee, there was a desire on the part of most of the members of the committee that A be changed so as to put a ceiling of 750,000 acre feet on that allocation. It seemed desirable there be some understanding with the State Department about that. The members of the State Department and Bureau of Reclamation are now here and with the indication which I have given as to these questions, it might be appropriate if some of them could be cleared up.

MR. TIPTON: May I suggest, I think one of the matters mostly concerning the group was the B water. It was the understanding on the part of some that it was the idea of the State Department the B water probably would always be available at certain designated points along the boundary. There is some question as to whether it would or would not be available. There is some question about how much return flow, desilting, and other water would be available at those points. I think that is an important question--whether it can be answered or not is another, but it is one that should be presented to the State Department and the Bureau of Reclamation.

JUDGE STONE: Are you prepared to discuss any of these questions, gentlemen?

MR. LAWSON: I would like to say something on points of delivery. In doing so I call attention to statements which I have already made that it was the intention of the Department and Commission, insofar as possible, at various points to use all the return flow, whether that occurred as drainage water on the eastern side of the river at the lower boundary line, or return flow at the upper boundary line. I augment that to include drainage water which might arrive at the southern boundary in drainage canals. I say that because the chief idea of the department and commission was to take advantage, and count in, all of these available waters that we could

and in doing so reduce, as far as possible, that which would have to be released and controlled to make up one and one-half million acre feet. I think that covers the question of locality. There may be other developed places. There may not be such large surpluses, but those accumulations in operation that may reach the border in canals on the Arizona side in drainage water, as far as possible, it was the general intention of the department to take advantage of all those flows as they occur and are available.

JUDGE STONE: Are there any other questions that you wish to discuss which have been suggested?

MR. LAWSON: Would you repeat them?

JUDGE STONE: Since they are largely engineering questions, and the Chair not being an engineer, I am going to suggest that one of the engineers, either Mr. Tipton or Mr. Dowd present them. Will either one of you gentlemen do so?

MR. TIPTON: I only have two things in mind. There was the suggestion made by some members of the committee in which I concur, that the escape clause, Paragraph F, applies to something--extraordinary drought--that is not well defined. Nobody knows what that is--nobody knows what normal is. Mr. Scattergood made the suggestion that that might be better defined. The A water is automatically taken care of but reduction in B water due to drought might be provided for in some kind of language that is more specific. The second major question, and I don't know whether the State Department is prepared to answer it, but the Bureau of Reclamation may be, is to what extent would the delivery of B water, under average conditions, be required to be made up by releases from Lake Mead? Put more simply, is there going to be, under ultimate conditions, 750,000 acre feet of divertible water accruing to the river below Imperial Dam from return flow and from desilting water. If we assume the obligation of delivering 750,000 acre feet of divertible water under B, is that going to require releases directly from Lake Mead to make up some difference? The estimates of return flow vary widely, I imagine the full range of variation is in the neighborhood of 500,000 acre feet. The minimum estimate of return flow, under ultimate conditions, is 250,000 acre feet; the maximum estimate--I won't presume to quote the maximum, but something in excess of 750,000 acre feet. That is an important question. Whether the State Department is prepared to answer that, or whether the Bureau of Reclamation can answer it, I don't know, but that's something which greatly concerns the committee.

MR. LAWSON: Let me answer the first question relative to the escape clause. The language used in this proposal is practically identical with the language used in the 1906 water treaty with Mexico, and it has at times been applied. We have had the experience and we have seen it work--at least we are satisfied that it fully answers the purpose. We have, as you know, irrigation districts in two states which have been supplying water to Mexico, and at times of extraordinary drought, they were very much interested in the situation and interested in the application of this clause to Mexican deliveries. So far there has been no word of objection offered by either one of the districts or by Mexico, and it has been applied in a drought period lasting

over a year. In that situation it was not very difficult to make actual practical application of it. Contracts for water in the Reclamation projects, both in New Mexico and Texas, generally call for delivery of three acre feet at the beginning of the season and faced with drought conditions the project manager for the Bureau of Reclamation has been unwilling to contract for more water than he saw in sight, and those contracts were cut fifty percent and contracts made for a foot and a half of water rather than the full year's three. That same reduction then would apply to Mexican deliveries without protest on their part. In other words, an extraordinary drought condition becomes very common knowledge to everybody and there has been no difficulty in its application so far as the 1906 treaty is concerned.

MR. McCLURE: Was that clause exercised prior or subsequent to the All-American Dam?

MR. LAWSON: After. It was a real test, no questioning that.

MR. SWING: Your statement explains how the language came to be in your draft. The question, I think, we would like to have answered is whether you would be willing to either modify the language or add at the end of paragraph B more general language to the effect that in any year in which deliveries to American lands were reduced because of a drought, act of God or accident, the deliveries to Mexico should be proportionately reduced.

MR. LAWSON: I see no objection to that.

MR. SHAW: Would that apply to any low period flow? We were thinking of your expression "extraordinary;" there might be one year out of thirty in which there is an extraordinary drought, but the ordinary low flow period which comes along in cycles wouldn't come within that expression.

MR. LAWSON: I can see various degrees of drought and that the proportion of deliveries to Mexico should follow those in the United States.

MR. TIPTON: The A water would automatically be taken care of, but the B water stands as a definite obligation of 750,000 acre feet. However, in your opinion there would be no objection to scaling the B water down in accordance with reduction of deliveries to United States lands?

MR. LAWSON: I assume a decrease of B water would follow shortly after A decreases.

MR. TIPTON: But there would be no objection in scaling the deliveries in accordance with such decrease?

MR. DOWD: Inasmuch as the Boulder Canyon Project Act says no one shall have the use of stored water in the Dam itself except under contract then in effect, say that if the contracts cannot be met, reductions will be applied in the same proportion to Mexico.

MR. LAWSON: No.

Q: Under the Act I don't see how any water can be used except under contract with the Secretary. If there is a drouth or shortage where the Secretary can't meet those contracts, then the same percent of reduction should be applied to Mexico.

MR. LAWSON: Suppose you made a contract and the Secretary didn't deliver the water and there wasn't any drought condition?

MR. DOWD: This Act provides the Secretary won't deliver water unless a contract is made. Under those conditions where no one can use the water except by contract in effect, the Secretary cannot meet his contracts.

MR. LAWSON: You are saying it, I'm not.

MR. DOWD: I am asking the question, if that is it?

MR. LAWSON: I am putting it still on drought conditions.

MR. DOWD: Under those contracts you can get more water than you can show need for, but the condition here would only apply in case the Secretary couldn't meet those contracts. It would be coming down to the question of whether water for Mexico would be on a parity with all contracts in the United States.

MR. DAVIS: Do you mean your construction is that the Secretary then must deliver water to Mexico by contract?

MR. DOWD: No, I don't say that at all. What I am trying to say is, any water the Secretary delivers in the United States will be by contract. Whenever you have a shortage of water or the Secretary cannot meet his contracts, that the deficiency would be applied against Mexican water. So it puts Mexican water on the same basis as all American contracts whether the rights were acquired years ago or were just acquired.

MR. SCATTERGOOD: You seemed to acquiesce in the language used by Mr. Swing. I thought that that language could be in the first part of paragraph F as a substitute for some of the language already there, and that would take care of this whole question we are talking about.

MR. LAWSON: I see no objection to the addition of it, but just where it should be is a question.

JUDGE STONE: That covers the second point. Do you care to comment on the third one mentioned by Mr. Tipton?

MR. LAWSON: No, I would rather have Mr. Debler give his views on that.

MR. DEBLER: The amount of return flow, which is ultimately the most dependable part of the water that Mexico would receive under B, depends, of course, a good deal on the remaining planning work for the utilization of Arizona's water. Assuming that the present Gila project is expanded to

include the full 500,000 acres, or thereabouts which has been considered the ultimate size of that project, then, in my estimation, the annual return flow going to the boundary will be at least 750,000 acre feet a year. I think that is the main part of the return flow because the only other area from which return flow becomes available under this proposal is that from the Yuma project itself, together with the losses from the All-American Canal. At the present time Mexico receives about 90,000 acre feet a year from the Yuma project at the lower international boundary, and the two items together than, in my opinion, would quite materially exceed even 750,000 acre feet per year. I think we must all recognize that the extent to which that water would be delivered in satisfaction of item B water depends a good deal on the degree to which that water becomes chargeable to Mexico under the definition of divertible water. If the chargeability of that water extends substantially to all of the return flow, then I am certain that the return flow will fully equal the 750,000 acre feet.

MR. SHAW: Two questions: Is it possible to expect that any of the return flow from the Gila project could be recaptured and used in the United States, assuming as you did, that the project was expanded to 500,000 acres?

MR. HARPER: I think Mr. Foster can answer that.

MR. FOSTER: It would be possible to put a pumping plant on the side of the main canal and recapture the return flow.

MR. SHAW: Similar to the system used in the Salt River Valley, through use of drainage water to irrigate, is that correct?

MR. FOSTER: It would depend entirely on what form the return flow took--whether surface or underflow. If it was underflow it would be similar; it wouldn't be if it was surface water. If it was underflow it would probably appear in the Colorado River.

Q: Where?

A: At some point below Yuma.

MR. DOWD: If you are talking about the entire Gila project, wouldn't it seem perhaps worthy of consideration to reuse some of this return flow rather than let it go to Mexico?

A: It depends on what quality that water is, as to whether you would want to recapture it.

Q: If it couldn't be used on the Gila project, would you expect Mexico to use it?

A: Mexico might be able to use it while the United States could not.

MR. SHAW: My second question is: suppose you shift your assumption and instead of assuming the entire 585,000 acres of the Gila project is put under

irrigation, only the first unit of 150,000 is put under irrigation. What then would be your estimate as to return flow?

MR. DEBLER: You are speaking of ultimate return flow?

MR. SHAW: Under those conditions--assuming only 150,000 acres are irrigated instead of 585,000 acres?

A: I will answer with the explanation that the ultimate condition involves an interim condition where the Arizona allocation of water is not fully used.

MR. DOWD: You can assume an aqueduct is built into the Phoenix Valley, which you are investigating now, so it would turn out that the ultimate situation was that only the first unit of the Gila was irrigated, most of which is on the mesa, then what would be your estimate of the return flow?

A: It would still be the same amount, for the reason brought out by Mr. Foster, that the quality of that water is involved.

MR. SHAW: You mean the return flow from 150,000 acres would be the same?

A: I take it that was amended by Mr. Dowd's assumption that the balance of the water would be used further in Arizona.

Q: Say in the Salt River Valley or elsewhere?

A: Salt River Valley.

Q: Where it would not affect the conditions on the lower Gila?

A: It still does, because the quality of the return flow would be the same.

MR. DOWD: We don't mean using return flow on the Gila project.

A: Mr. Shaw wishes to assume there would be only 150,000 acres irrigated on what is now called the Gila project and the balance of the water would be used, let us say, in the vicinity of Phoenix. The situation would still be the same with respect to the quality of the return flow and it would then go down the Gila River in the same amount. In other words, there is involved there, not only the consumptive use of the water, but also the quality of the unconsumed water.

Q: If it came down the Gila Valley couldn't it be used on the Gila project?

A: That water could not safely be re-used.

Q: A large part of the 750,000 acre feet would be too salty to be used again?

A: To be used by itself. The use would depend on the mixing of that water with the water which Mexico receives under A.

Q: How would that be mixed?

A: It would have to be mixed after it reaches the boundary.

Q: Even if the A water is used on high land which the B water can't reach?

A: In that event Mexico's development would be limited.

Q: Providing unless you separated it, of course.

A: That is the possibility, of course.

MR. SHAW: Under those circumstances would you estimate 750,000 acre feet of return flow entirely available?

A: It would be available. If Mexico chose not to dilute it she would have to take the chance of using water which we would consider unfit.

MR. SWING: Did you give the quantity of return flow for the first unit of the Gila by itself?

A: In my estimation it would be fully 300,000 acre feet, or somewhere in that vicinity.

Q: From 150,000 acres?

A: That's right. Assuming you put five acre feet of water on it.

Q: Could you get more than a quarter return?

A: Yes, you get two feet return.

MR. DAVIS: Mr. Foster, you were asked if you could recapture some of the water from the Gila project and you said by putting a well at the siphon. That wouldn't be return flow from the Gila would it?

MR. FOSTER: From all that part of the Gila project that lies to the east of Yuma mesa on the Fortuna range; it would include the Mohawk and such diversions, but it would not apply to the acreage on the Yuma mesa.

Q: So it would only be partly recaptured?

A: Only to the extent of the acreage developed above.

MR. McCLURE: Mr. Lawson, in the 1906 treaty there is no special clause regarding the quality of water is there?

MR. LAWSON: No sir.

MR. DOWD: Do you consider return flow from the Yuma Mesa would apply above or below the upper boundary?

MR. DEBLER: I believe all of it would appear in the Yuma Valley.

Q: Which would be above the lower boundary?

A: Yes.

Q: That brings up the question whether Mr. Lawson contemplated any diversions from the upper boundary?

MR. LAWSON: Not from the Yuma Valley.

JUDGE STONE: I thought Mr. Lawson made that clear--east of the river at the lower boundary.

MR. LAWSON: That was one point, but I assume there will be a demand or use by Mexico of water from the main stream below the upper boundary.

MR. DOWD: I understood you to say any diversions would be made in the United States.

A: I can visualize something that might be going on today--a pumping plant by the Mexicans themselves to take water out of the river below the lower boundary.

Q: Would it be charged against them?

A: I think what is contemplated is, water delivered at either one of these boundaries is chargeable against them.

MR. SHAW: Taking the item of water which is reaching Sonora through the Yuma canals, drainage and waste water in irrigation ditches, those waters would be available as A water wouldn't they?

A: I don't think so.

Q: Under future conditions they are subject to regulation through that system as controlled water as might be ordered?

A: That is not my understanding of it. I haven't seen any control exercised on the main supply of the Yumma Valley drainage canal.

Q: I was thinking of it as a possible source of regulated water so as to use the Yuma system in that fashion.

A: I am assuming the A water would be controlled, if possible, by some scheduling, and it seems to me now at least, without further study that the water from some main canal that might not be surplus water uncontrolled but probably put through some means of carriage, that that would be delivered

water. The same way, on the opposite side of the river, the water would be so classed.

Q: The siphon on the Yuma project carrying water under the river is of larger capacity than needed so there would be some excess capacity to carry water down to the Sonora side if they chose to do so. That source of delivery would be A water, would it not?

MR. FOSTER: There is no extra capacity in the Yuma siphons.

JUDGE STONE: Is that all of the engineering questions?

MR. SHAW: Mr. Tipton raised one question which he stated is important--one, two or three successive questions in connection with this escape clause, which was this: Assume that the B water amounts to more than 750,000 acre feet; that B water, to some extent, is present in the river, is it susceptible of control and diversion?

MR. LAWSON: I doubt it.

Q: My question is directed at this: assuming an excess of B water, would that cut down the A water at all or are those two entirely independent?

A: It is my intention, and what I intended to convey by what I have said, A water is to make up the deficiency of B. For instance, you could take present conditions, where the B water is in such a large amount there is no necessity for A.

Q: I am not clear about that. I understood the B water couldn't be controlled but the A could.

A: It is there available. After all, we are looking to the total amount of water to be furnished Mexico. We put a figure in there of 750,000 acre feet. Sometimes there is two or three times that amount at the boundary, so there is no necessity for putting A water there.

Q: Take it the other way: if B water drops down to 300,000 acre feet, as Mr. Debler said, would it be necessary for the United States to deliver controlled water from Lake Mead to the extent of the additional 450,000 acre feet?

A: I assume so.

MR. TIPTON: May I clear the record? I think his answer was there would be 300,000 acre feet of return flow from the first unit of the Gila. There are other sources of return flow. If there were only the first unit irrigated, I would like to ask Mr. Debler how much total B water there would be if there was no excess water coming from Lake Mead?

MR. DEBLER: I think you have stated an impossible condition, Mr. Tipton, because if Arizona irrigates only the first unit of the Gila project, I don't

see how you can hold all the water in Boulder Dam.

MR. TIPTON: That's true, but there are other sources of B water. The point I was trying to make, there is the Yuma project return and wastes, losses of the All-American canal, and desilting water in addition to the 300,000 form the first unit.

A: In addition to that first unit, the present waste and return flow of the Yuma project is something like 100,000 acre feet. The losses from the All-American canal are relatively small but I have put an estimate of 25,000 on that so there would be then some 425,000 acre feet of return flow, including a very small waste at the lower end of the Yuma project. I wish to point out, however, there will be in addition to that some desilting waste at the Imperial Dam, the amount of which at the moment is very small but which will, of course, gradually increase as desilting becomes necessary, and then ultimately can decrease as the river becomes stabilized below the Parker Dam. I am not in a position to make an estimate of what the ultimate desilting waste will amount to.

MR. SHAW: May my question to Mr. Lawson be considered modified in accordance with Mr. Debler's last statement?

MR. McCLURE: Does that include any return flow out of the Gila at all?

MR. DEBLER: Only the first unit.

Q: And that you said would probably occur below the upper boundary. Is there any augmenting to the Colorado by return flow from the Gila?

A: You are thinking in terms of water that originates in the Gila River basin itself.

Q: And reaches the Colorado that isn't divertible for American use.

A: In the past ten years the average amount of water that has come out of the Gila River is a little over 100,000 acre feet per year.

MR. DOWD: And some years nothing.

A: Very true--practically nothing, but it has averaged about 300,000 acre feet. That quantity naturally must be expected to decrease somewhat as the control of the Gila and its tributaries becomes more complete.

MR. McCLURE: Is there any average quantity of discharge that might be written off as flash floods or flood water, some part of which might be diverted at either the upper or lower boundary?

A: A considerable part of that water is flash flood water, but I am not in a position to say how much of that 300,000 would come under the term of divertible water.

Q: Going back to Mr. Shaw's question--the difference between A water and this return flow, flash flood and sluicing water is that your A water is on demand, and your B water is available but at the time it is available cannot be put on any schedule of demand. It could be used through facilities for diverting but you can't deliver it when it comes with the exception of the return flow.

MR. HARPER: The slucing water could be put on schedule.

MR. DEBLER: Return flow can be forecast quite closely; the desilting water only within limits; it depends. Any part can be made available at will as there is a certain amount of flexibility by being able to permit the silt to accumulate to a certain degree and the remove it. Of course, the silt in itself will not come in a uniform amount from year to year.

MR. McCLURE: Would it be in such large quantities it couldn't be used or would the flow be varied or a small discharge of 2,000, 3,000, 4,000, 5,000 second feet where we would be limited on this proposition, or would it be in greater amounts?

A: Ultimately the amounts should not be in very great flows. They would be in the nature of not to exceed 2,000 second feet at any time.

MR. DAVIS: If the Sentinel Dam was built, how would that affect this water you are talking about?

A: That dam would assist very materially in making the Gila water more available for use, ot only because it would then be regulated to some degree, but because it is a good quality of water. Naturally, if that is a good quality water and it does amount to very much there is the prospect that it would be utilized in Arizona.

MR. TIPTON: One question, directed at the proposition that possibly a discussion about what would return from the first unit of the Gila is more or less academic. I understood Mr. Debler answered a while ago if there was only the first unit of the Gila project irrigated by Arizona there would be plenty of B water coming down the stream from Boulder. If Arizona irrigates additional areas by the Parker-Phoenix Aqueduct, or otherwise, again a return flow figure of 750,000 acre feet or more would result. I am asking if that is true or otherwise?

MR. DEBLER: That is correct.

MR. SHAW: Checking your statement that if only the first unit was irrigated in Arizona, Arizona would not be using her full allotment of water, will you state what Arizona's full allotment is from the Colorado River system?

JUDGE STONE: That isn't a fair question.

MR. SHAW: Then may Mr. Debler's comment on this subject go out of the record, because it is based on the assumption that Arizona has so much and

will be using so much.

MR. DEBLER: If the Gila project is built to the size of about 500,000 acres that has been contemplated, the water supply would come from this Section 4 (a) of the Project Act, which mentions the agreement which the states of Arizona, California and Nevada are authorized to enter into which provides that of the seven and one-half million acre feet annually apportioned to the Lower Basin by Article III of the Colorado River Compact, there shall be apporticned 300,000 to Nevada and 2,800,000 to the State of Arizona.

MR. DOWD: Does it say that 2,800,000 acre feet is from the main stream?

A: Just the Colorado River system.

JUDGE STONE: There is just one other engineering matter which I understood was discussed in the engineering committee and that was with reference to the 750,000 limitation as applied to A. Do you have any comment to make on that, Mr. Lawson?

MR. LAWSON: I think the question was asked in that meeting whether a ceiling of 750,000 acre feet could be established for A water. My reply was I saw no objection to the ceiling of 750,000 acre feet if the return flow equalled the same amount. In other words, the department insists on putting before you a proposal of one and one-half million acre feet of water for Mexico, to be made up as much as possible from return and recovered flow, and where that is not sufficient to bring in controlled water.

MR. SWING: Do you have any objection to amending Section A to add in a ceiling of 750,000 acre feet in view of the assurance given by Mr. Debler regarding the return flow?

MR. LAWSON: I don't think that wording could very well be made in the agreement.

Q: Are you willing to add the language "not exceeding 750,000 acre feet per year?"

A: No.

MR. SHAW: With the uncertainty as to the return flow equalling that amount, do you think the uncertainty must be borne by one side rather than the other?

A: I have a great deal of respect for Mr. Debler's ideas on that and I must take somebody's viewpoint in the absence of something better.

Q: I gather from your answer you decline to accept Mr. Swing's suggestion?

A: I haven't indicated any uncertainty.

Q: If there isn't any uncertainty, wouldn't the limit be proper?

A: There are limits both ways. We have already applied one ourselves. We have applied a limit; if there is more than 750,000 acre feet in the river then there will not be the necessity for releases of 750,000 from Boulder. I am assuming it will work both ways.

MR. WALLACE: Is it the idea that Mexico is to get between A and B waters a total of not less than one and one-half million acre feet, and that any water in addition to that she takes at her own risk?

A: That is the meaning of this proposal.

MR. DOWD: Do you think the quality of water will come in for consideration?

A: I think so.

Q: In other words, I would assume Mexico would want assurance that this water would be fit for agricultural purposes?

A: It hasn't come to that stage yet.

Q: Don't you think it will come into it?

A: I think so.

MR. SHAW: How would that affect the general quantity of water to satisfy this plan?

A: There are too many factors in connection with that, to answer.

Q: It might require larger volumes of water going down the river to satisfy a demand for usable water than if that limitation wasn't in it, isn't that true?

A: I can appl; the same conditions that might affect the Imperial Valley.

MR. SCATTERGOOD: In answer to one question as to the one and one-half million acre feet of A and B water, you said "yes." We understand that is subject to diminution in low periods?

A: It is subject to conditions that may not occur in one year but several.

MR. LARKIN: I have heard a great deal of discussion of quantity and I would like to ask if there is any significance in the delivery of 5,000 second feet? I understand the engineers were recommending 4,000 and I have heard no discussion as to whether that 5,000 is fundamental in the proposal which has been submitted?

MR. LOWRY: In answer to Mr. Larkin's question, there is significance to the figure of 5,000 second feet. Under the distribution through the year that Mexico has indicated is necessary for their type of agriculture, there is now a limit or maximum in one month of twenty percent of the annual demand. In terms of one and one-half million acre feet that we are talking about as the annual demand, that would be at the rate during one month of about 5,000 second feet. That is the significance of the figure.

MR. TIPTON: I think that's a very important question. It has been discussed in this committee many times and there is no need to repeat in detail the technical phases of the problem, but just a brief summary. Releases are made from Boulder for the generation of power at a certain rate and that rate of release is by no means parallel to the requirements below Boulder Dam for agricultural and municipal purposes. However, under present conditions, the demands below Boulder are such that they lie well within the pattern of releases for power. However, as time goes on and the requirements for agricultural and municipal uses increase below Boulder, particularly if there are allocations made to Mexico, there will be a conflict between releases for generation of power and requirements for water for agriculture. Releases for power during the summer season has a sag; for other purposes it has a definite hump. Mexico's requirements at the present time have a greater degree of hump than United States uses, so this question of rate of delivery is very important. It is conceivable as uses increase in the United States that during the period when these two curves are closest together, when the hump for irrigation in the United States is highest and releases for power are lowest, the remaining amount of water to Mexico might be much less than 5,000 second feet. What is the answer then? The curtailment of generation of power in order that the winter releases shall be less and the summer releases greater? In my opinion, that is not the answer.

The Davis Dam and reservoir is a unit of this river control system. It has always been recognized as essential to make releases for power from Boulder parallel with uses below. I think it is very essential for this committee and the State Department to recognize the importance of Davis Dam and Reservoir. They will have to come into the picture in the not too distant future to re-regulate the water. At that time the significance of 4,000 or 5,000 second feet will pass out of the picture because re-regulation can be had. In my opinion Davis Dam will have to come into the picture before 1950 to eliminate any such conflict, and it will not be entirely by virtue of increased uses in the United States but by reason of deliveries of water made to Mexico. It will be essential that Davis be constructed for reconciliation of releases from Boulder and deliveries to Mexico. We must consider Davis as an essential part of this scheme.

MR. LOWRY: I would like to state it was put in there to restrict Mexico to a reasonable demand, a 5,000 second feet maximum demand. It was also for the purpose of keeping them from coming in and wanting fifty percent of their demand in any one month. At the same time it has a significance that way, it would be beneficial to Mexico on the other side--it would probably be the limit of maximum flood flow with which we could charge them under this B water. In other words, flood flows in excess of that, such as have come down

from the Gila or main Colorado, any excess of an amount, which might not be that figure but something comparable, would not be chargeable as divertible water.

(Ten minute recess.)

JUDGE STONE: The meeting will please come to order. When we reconvened after dinner there were questions suggested to the Department of State and Bureau of Reclamation, mainly of engineering, except the first one, which I presume involves something of a matter of policy. It had to do with the submission of any proposal to Mexico. Does the State Department care to make any statement regarding that?

MR. HACKWORTH: Are you speaking about the formula we submitted?

JUDGE STONE: Yes.

MR. HACKWORTH: We haven't agreed upon any formula to be submitted to Mexico, and we probably will not do so until after we have had some discussions and have come to a point where we feel that a formula might well be submitted. I have in mind, Mr. Chairman, the experience we have had here. These discussions have been going on for a long long time but it was only yesterday we submitted a formula--day before, I believe. So that in negotiations of this sort with another country, the submission of any formula would be preceded by discussions for the purpose of determining how the minds of the other people are operating. That is the best answer I can give you on that particular question.

JUDGE STONE: Is there anything else which the State Department or Bureau of Reclamation wishes to submit at this time?

MR. DEBLER: I would like to make a suggestion, one that the State Department consider, if practicable--the combining of the waters in A and B if that will give us any greater assurance of securing all the credit we can secure from the use of B waters up to the assured delivery of a million and a half acre feet. I am not prepared to submit any formula, but the objective is to secure the greatest possible assurance of credit to the United States for delivery of B water to the extent that it can be used to meet the full requirements of any treaty that is drawn up.

JUDGE STONE: Is there anything further the State Department wishes to say?

MR. HACKWORTH: Nothing more except I desire to say this: we think that the time is opportune now for bringing about an understanding with Mexico; that the longer the matter is delayed the more difficult our position will be. For these reasons we very much hope that the suggestions which we have made to the committee may be acted upon with reasonable promptness, so that we can take up negotiations and try to bring about a definite understanding which, in my judgment and in that of the Secretary of State, would be desirable from all points of view. That is the only thing I can add. I would

like to urge, if I am not out of order in doing so, that the committee give us its judgment on our proposal at the earliest possible date. I think you can well understand why I say that delay will not do us any good in this matter. That is the reason why I ask that we be given an answer as soon as may be practicable. I am not trying to push you into this matter, but merely give you an expression of the point of view of the Department as to how we feel about it from a psychological standpoint.

MR. SHAW: I have the impression from your statement, and it is also a verification of a report made here in the engineering committee by Mr. Lawson; the impression is that this proposal which has been before us is not necessarily a positively fixed thing. The question which I ask is whether the State Department wishes to have suggestions as to possible modifications of the detail of this plan or not.

MR. HACKWORTH: If you have any suggestions which you think would be helpful, we would be glad to have them. We want to cooperate with you and we want you to cooperate with us. I feel we are one of you and if you can help us to help you and help ourselves, it would be appreciated of course.

MR. DELANEY: At the time of our deliberations in El Paso I was entirely ignorant of an arbitration agreement between the United States and Mexico and the South American Republics. Since I have learned of that arbitration treaty, it has been a matter of considerable concern to me, and after reading it I concluded, by giving it half way liberal construction, that any dispute that might arise between the United States and Mexico would come within the purview of this arbitration treaty. I am wondering if the State Department would express any opinion as to the interpretation of the Department gives to that agreement or treaty, insofar as it relates to this question of the allocation of the waters of the Colorado River, if and when a dispute arises, and on the further assumption that maybe no treaty will be reached.

JUDGE STONE: Is there any answer or comment the State Department wishes to make on that?

MR. HACKWORTH: I would like to answer off the record.

JUDGE STONE: You may do so.

(Here off the record.)

MR. DAVIS: I move we approve, in principle, the memorandum submitted by the State Department, keeping in mind the discussions, clarifications and corrections.

MR. BISHOP: Second the motion.

MR. DOWD: We had, after long deliberation, arrived at an agreement in June in El Paso, but this proposal, we think, amounts to nearly twice as much. It would seem--at least some of us will find it necessary to discuss it with the other parties in interest at home and that there is no way we can

pass on this thing overnight. It seems the orderly procedure would be to give the states necessary time to discuss it with others involved, rather than ask for a commitment at this time.

JUDGE STONE: I don't understand what you mean when you say "overnight."

A: This was presented yesterday out of a clear sky as far as California is concerned. We had no idea of what the proposition was going to be. Some of us feel it is nearly doubling the offer suggested by the Committee of Sixteen at El Paso last June. That is a serious enough proposition for the Lower Basin states. We should not be asked, with just a few here and with the interests involved and the amount of money involved, to give either a "yes" or "no" answer to this proposition tonight.

MR. McCLURE: The Committee of Sixteen is acting on it. Isn't the Committee here?

MR. DAVIS: May I make a statement in support of the motion? We all conceded two or three years ago that we were in agreement Mexico should receive 750,000 acre feet. Then we were informed they wouldn't accept such an amount and feelers were put out, as I understand it, to arrive at a point where we could reasonably expect to enter into negotiations, and as I get it then we thought of a million acre feet. That was discussed, then the sliding scale was adopted which may have been over a million and a half under certain conditions. Then it came to us that a million and a half acre feet was about the minimum we could expect to negotiate a treaty on. So it isn't anything overnight or something new. We have known all the engineering facts that are available and engineering committees have been appointed, gone down into Mexico, brought reports back and we have had those under discussion, and it isn't anything new. The only thing new is the million and a half acre feet which we feel is either that or nothing.

MR. WALLACE: We have been over that a good deal.

MR. HEWES: Mr. Chairman, the notice I received of this meeting was a duplicate of the letter which you read to the committee yesterday from Mr. Duggan to you, and the meeting of the Committee of Sixteen was for the purpose of the State Department's presenting a proposition to the Committee and we respectfully met here by request. Mr. Davis might be correct--some of the committee may have been advised this would involve a million and a half acre feet, but as one member of the committee I was not so advised. I arrived here yesterday with no knowledge as to what the Department of State's proposition might be. During the discussions there developed, in my opinion, sufficient controversy between the two departments of government here as to lead me to believe it was not too clear even to the Department of State what their proposition was, that was being presented. We are not here, as I understand it, asked by the Department of State to approve of a deal that has been made; we are asked to approve of something that's very vague and indefinite as far as I am concerned.

The only thing I know, or have been able to sift out of the confusion

of thoughts and expressions that have been given here, is the figure of a million and a half acre feet of water. I have confidence in our State Department; I accept their statements in all sincerity that they have no other intentions in the world than to obtain the best deal they can for the United States and the Colorado River Basin. I come from the Lower Basin and am right on the firing line when it comes to giving water to Mexico. As far as I am concerned, if I am called on to vote tonight to approve the proposal as presented by the State Department, my vote will be "no." If it is the desire of the committee and the State Department for them to explore the possibilities with Mexico of what kind of a deal they may arrive at, I would much prefer to leave this meeting and pass on it at a later date. I'll have to go back to California and discuss what amount of water that we in the Lower Basin states have consistently felt could be conceded to Mexico without seriously impairing or endangering the millions of dollars already spent in the United States. If the committee insists on voting on the approval or disapproval of the plan before us, tonight, that will be the position I will have to take.

JUDGE STONE: May I ask you, in your judgment, if you did go back to California to discuss it, is it in such shape you could discuss it, and would there be some chance that your vote would be otherwise?

MR. HEWES: I couldn't answer that tonight. As far as quantities of water that we have to deal with are concerned, many California agencies up to the present time thought we voted for the amount discussed in El Paso last June.

MR. McCLURE: How much did you think that was, 800,000 acre feet?

A: As I recall, the sliding scale amounted to 800,000 acre feet based on deliveries of 10,000,000 acre feet at Boulder.

Q: And deliveries at Imperial Dam of 800,000 acre feet?

A: No, releases at Boulder, as I recall.

Q: It didn't include return flow below the Imperial Dam?

MR. DOWD: It was 800,000 acre feet at the boundary.

MR. SCATTERGOOD: Mr. Hackworth has been gracious enough to say he doesn't want to insist on immediate action, or action except within a reasonable time. The State Department has been cooperative in this matter and they want cooperation, and we want to give it, and we have done the best we can, the power contractors, to contribute to it. Personally, I feel that we all have confidence in the State Department that they will do the best they can. They having before them our resolution and proposition of last June and might perhaps approach Mexico in a more advantageous way then they could if they committee approved the proposition before us now. I would suppose the State Department wouldn't offer that proposition to Mexico.

As Mr. Hackworth said, they will have many discussions before they make a proposition and I wouldn't suppose they would go the full extent of this formula. I have a feeling that our State Department would be in a position to do more for us, which they want to do, and our country's interests, which they are responsible for at the same time, if this was not approved than if it were approved. We entered this meeting this evening with the distinct understanding that these things would be discussed and we would then go into executive session with respect to other matters, and that this evening was a progress meeting and not a final one. I think the proposal is out of order for final action.

JUDGE STONE: That is true.

MR. SCATTERGOOD: But aside from that, I don't know whether I am right or not. I have had a good many years of experience in negotiating things of minor and major importance to our community, and have worked for harmony and the best interests of every state in this basin, as well as an attitude of cooperation with the State Department in this instance, and other departments of government in other matters, both as adviser and otherwise. I am now adviser on the War Production Board, which is a privilege and I so regard it in working out matters of war interest. This, to my mind, in a large degree, is a matter of interest in our war effort in relations with Mexico. If I were a member of the State Department negotiating with Mexico, I would rather not have authorization, but having something below this proposition, it might be referred to and used as one of its "difficulties" if you like, in working out an agreement with Mexico. I am not ready to vote on it and I don't think we should at this time.

JUDGE STONE: I think this much is true. I want to say when Mr. Scattergood asked if we would go ahead in executive session after these questions were answered, I believed we would do so, and can still do so if we desire to do that, with the members of the two departments excluded.

MR. DAVIS: I think they should stay because they could get the benefit of any discussions in connection with it.

JUDGE STONE: I am just trying to be fair to Mr. Scattergood. I said we would and if he now insists we do so, I feel called upon to carry out my promise.

MR. SCATTERGOOD: I don't insist but I think we should conform to our program, but I am willing to discuss this at length as I supposed we would.

JUDGE STONE: When?

A: Before determining what the Committee of Sixteen's feeling is on this matter. If the rest of the committee feel they wish to act at this time without any further discussion, it seems there must have been a great deal of discussion somewhere that the power contractors have not known about. I don't believe that kind of procedure is in line with the best interests of the State Department, this community or the United States.

JUDGE STONE: I don't know what you have in mind about discussions elsewhere, except I assume the California group have discussed it. We have discussed it in Colorado, what we might be required to give in order to reach an adjustment of this matter, and I assume other states have done likewise.

A: During the twenty-four or twenty-eight hours since this proposition has been before us California water interests and the power contractors--Mr. DeArmond has not been with us, but we have discussed it, and lately since he has been here. We endeavored to get an engineering group to go into these matters so we might be better informed--that I, myself, might be better informed--along with others--and that didn't work out. Now we are not permitted even an opportunity to discuss it with our engineers and among ourselves; that doesn't seem to be wanted. That's why I made the remark I did about the presentation yesterday of this proposal.

JUDGE WILSON: I will ask you whether or not in your discussions with your own group in California you have ever considered you might have to give Mexico a million or a million and a half acre feet of water, and what your position would be if that time ever arrived?

MR. HACKWORTH: If our presence is in any way interfering with the work of the committee, I think we should retire. We have no desire to stay here and listen to discussions if it is thought inadvisable from any point of view. We are ready to step out unless you think you might want further word with us, and if you do we can come back.

MR. SCATTERGOOD: I haven't anything to say and will never have anything to say that I would object to members of the State Department hearing, but if we enter into discussion here as to what this would mean, I wouldn't think it would be appropriate to ask you to sit here and listen.

GENERAL GILES: If we were called on to vote at this time, under the circumstances, I would hesitate to do so as a matter of fair play. I understand the Chairman gave Mr. Scattergood to understand that this committee would resolve itself into executive session after this meeting. I have grave doubt whether we will accomplish anything by meeting in executive session at this time, but that's beside the point. This committee has existed since 1938 and has accomplished a great deal by the conference method. There have been a lot of hot sessions and a lot of bitter feeling but we finally came around to agreements. I wouldn't want this committee to get into the position of one group questioning the honesty of others of the group. The integrity of the committee means more to me than a vote on this proposition tonight. Therefore, in the interest of fair play, I think the understanding between Mr. Scattergood and the Chair ought to prevail.

JUDGE STONE: It should be made plain that this was not a private understanding, it was made here in open session. I assume everyone heard it.

JUDGE WILSON: I asked a question a moment ago but I didn't mean it to be impertinent. I asked it to get right down to the situation we find

ourselves in. I want to find out--haven't we all, in the months gone by in the past year or so, in our own minds, as individual states, determined how much we could afford to give Mexico? We have all fixed a limit, and if California has reached the conclusion that 750,000 acre feet is all they would ever consent to, why not take that position now? Would further discussion enable California to recede from the position it took in El Paso? You know whether you would or not. I say this in all good faith and without trying to be impertinent. I think there is a limit beyond which the other states would not go, and if the quantity of water promised Mexico reaches two million, three million or four million acre feet, I think all of us will agree if the department makes such an agreement they make it without our approval or consent. However, it seems to me that California knows, and in all good faith I appreciate your position--I know what you fear, but will the time ever come when you will willingly say to the State Department, make a treaty but don't go over 750,000 acre feet?

MR. SCATTERGOOD: We have never said that, as a matter of fact, and I don't presume we ever will. I think the best kind of an answer to your question which I know--knowing you as I do--was made in good faith, is that we of California, like Mr. Hewes has stated, have confidence in our State Department, and as far as I am concerned, and I think they all feel that way about it, we would much prefer the State Department go ahead with its negotiations and go as far as possible with Mexico. Certainly our action of last June would not be a deterrent because that was a lower figure than the State Department feels will be necessary in order to deal with Mexico. If the State Department thinks that it can deal with Mexico on some basis within any reasonable reach of our action of June, California, in good grace, couldn't do other than to acquiesce in it. If we have an executive session and Mr. Hackworth and the others with him would be interested to listen in--under the circumstances if I were you I wouldn't want to hear a long drawn-out discussion--I, personally, would rather you be here because I don't want you to feel I have anything to say to this committee that I wouldn't want you to know I said.

MR. BISHOP: I will withdraw my second in deference to these gentlemen. Maybe Mr. Davis will withdraw his motion. It might be better to sleep on it so I move we adjourn until 9 o'clock tomorrow morning.

MR. SCATTERGOOD: We have discussed this proposition and its phases in a fundamental sort of way and our ideas have been interchanged. We had an executive session and discussed a lot of things at length in detail, and we have had this further meeting. I wonder whether or not an expression of confidence on the part of this committee, which would be unanimous without any question, without any definite action with respect to the quantity of water or any proposition, wouldn't serve your purpose equally well, and maybe we could answer that in the morning.

MR. HACKWORTH. I can only reply now we very much appreciate Mr. Scattergood's expression of confidence and we shall try to our utmost not to betray that. It would, however, be very helpful to the Department if it could have an expression from the committee as to the extent it is willing

to go. It is to be understood, of course, as Mr. Scattergood has stated, the mere fact you give us an upper limit does not mean we will take it all. We have no desire to give away water which you people need so badly and we will do the best we can with your interests in mind, but we would be in a much better position, I think, if, instead of a vote of confidence, we could have in lieu thereof a statement as to how you feel, the extent to which you would be willing to go if it were necessary to go that far. I think, Mr. Chairman, having in mind all that has been said, and having in mind the purpose of our coming to this particular meeting, we have probably fulfilled our purpose this evening, and unless the Chair thinks we will be needed, I would suggest we be allowed to retire and let the committee proceed in the regular way. We are not part of the committee and we don't belong in the committee's discussions except when you want us to participate. I think the whole thing would be clarified to some extent if we were to retire, with the permission of the Chair.

MR. DAVIS: I'll withdraw my motion.

There was further discussion and the representatives of the two government bureaus were asked to remain. There were also several motions to adjourn, none of which received seconds.

MR. DELANEY: I wish to move that this committee go on record as approving, in principle, the statement placed before us by the State Department and boundary commission, and that the Chairman appoint a committee of five to put our recommendation in the form of a resolution.

MR. DAVIS: Second the motion.

This provoked considerable discussion which was interrupted by Mr. Wright of Arizona extending an invitation to the Committee of Fourteen to meet in Phoenix, Arizona, May 3, 1943, to consider a proposed contract to be submitted to the Secretary of the Interior. Upon motion of Mr. Wallace, seconded by Mr. Bishop and unanimously carried, the invitation was accepted.

MR. GAYLORD: I move we adjourn.

MR. BISHOP: Seconded.

JUDGE STONE: Let's have a roll call.

Arizona	No
California	No
Colorado	No
Nevada	Yes
New Mexico	No
Utah	Yes
Wyoming	Yes
Power Allottees	Yes

JUDGE STONE: The vote on this matter is by states, each state one vote,

power allottees one vote. Since this was a tie, call the roll again.

Arizona	No
California	No
Colorado	No
Nevada	Yes
New Mexico	No
Utah	Yes
Wyoming	Yes
Power Allottees	No

MR. DELANEY: The suggestion has been made there should be a member on this committee from each state, so I am willing to amend my motion to make it a committee of eight instead of five as stated in the original motion.

JUDGE STONE: In voting on this motion we shall call the roll of states.

Arizona	Yes
California	No
Colorado	Yes
Nevada	Not voting
New Mexico	Yes
Utah	Yes
Wyoming	Yes
Power Allottees	No

JUDGE STONE: The motion is carried. I assume this committee should be appointed now and it can meet in the morning. I shall now ask for your appointments on that committee.

Arizona	Mr. Davis
California	Mr. Shaw
Colorado	Mr. Delaney
Nevada	Mr. DeArmond
New Mexico	Mr. Wilson
Utah	Mr. Wallace, Chairman
Wyoming	Mr. Bishop
Power Allottees	Mr. Robinson

JUDGE STONE: It occurs to me that the State Department and Bureau of Reclamation representatives may want to know whether you want them to meet with you, or do you want them to be in readiness to meet if you call upon them?

MR. DAVIS: I suggest they meet with us.

Upon motion, duly seconded and carried, the meeting adjourned until 11 o'clock a.m., April 16, 1943.

FRIDAY MORNING, 11:00 A.M., APRIL 16, 1943

(Mr. S. B. Robinson substituted for Mr. Scattergood as member for power allottees.)

JUDGE STONE: In order that the record may be straight, let it show that the reporter was absent while certain proceedings took place. The pertinent proceedings were that the resolution committee appointed immediately prior to adjournment last night met this morning and presented a proposed resolution, which is as follows:

"REPORT OF COMMITTEE

Your Committee heretofore designated to formulate a Resolution showing the action of the Committee of Sixteen in acting upon a motion to approve the proposal of the Department of State in reference to allocation of waters of the Colorado River between the United States and Mexico, submit herewith their report in the form of the following resolution:

RESOLUTION

BE IT RESOLVED, that this committee approve, in principle, the proposal submitted to it by the Department of State as a basis for negotiations with the Republic of Mexico for an equitable apportionment of the use of the waters of the Colorado River between the two nations;

BE IT FURTHER RESOLVED, that it is the sense of the committee that the quantity of water required to be delivered to Mexico by the provisions of paragraphs A and B, as limited by paragraph E, of the proposal as submitted, be treated as a maximum quantity, and that the ultimate quantity of water to be delivered to Mexico under the provisions of any Treaty be kept within such limitations;

BE IT FURTHER RESOLVED, that we respectfully suggest that further consideration of the Department of State be given to the language of paragraph F of the proposal so as to make it more protective to the United States, and so it will cover other conditions as to possible future water shortages peculiar to the Colorado River System."

Thereafter it was moved by Mr. Wilson, seconded by Mr. Davis that the report of the committee be adopted. Let the record further show that inquiry was made as to whether or not this superseded and excluded consideration of discussions on matters which have taken place during this conference. It was understood in answer to that inquiry that this resolution, together with the entire record of this conference will be considered by the State Department.

MR. SHAW: I think the record should also show that the vote of the committee on this resolution was five yes, two no, Mr. DeArmond not voting. And that in voting I made the statement that it cannot be determined from the resolution, or the plan, whether the maximum amount approved by the resolution is one and one-half million, two million, two and one-quarter million acre feet or any other figure.

MR. ROBINSON: For the purpose of the record I make the same explanation here I made before the committee, namely, that I recognize fully it was the duty of the committee to present a report consistent with the action of the Committee of Sixteen last night, but that I felt constrained to vote "no" because any other vote might seem inconsistent with the vote taken in the committee meeting, and I believe Mr. Shaw stated his concurrence in that statement. Might I supplement that just a little further. I made this further explanation that some of us feel--whether rightly or wrongly is immaterial--but we feel that a treaty such as contemplated by this resolution might impair the ability of the United States to perform its contracts already entered into, and obviously we cannot give assent to something which might impair the contracts which are in existence.

JUDGE STONE: Any further discussion respecting the motion now before us? The question has been called for. A roll of the states and power allottees will be called to determine the action of the committee on the motion just made to adopt the resolution.

Arizona	Yes
California	No
Colorado	Yes
Nevada	Not voting
New Mexico	Yes
Utah	Yes
Wyoming	Yes
Power Allottees	No

The vote is five for, two against, one not voting. So the motion is carried and the resolution adopted.

MR. WALLACE: I desire to offer the following resolution:

"RESOLVED, that the representatives of the seven states of the Colorado River Basin, having full faith and confidence in the representatives of the Department of State of the United States, and having at a series of meetings had opportunity to present to said representatives full and complete information and data as to all conditions affecting each state in a division of the waters of the Colorado River between the United States and the Republic of Mexico, and based upon such information and data the Department of State has presented to the representatives of the seven states a formula for the division of said waters between the United States and the Republic of Mexico;

NOW, THEREFORE, the representatives of the seven states having approved the treaty suggestion as contained in such formula, express the hope that at the conclusion of the treaty negotiations the amount of water to be delivered to Mexico may be substantially less than the amount suggested in said formula. The representatives of the seven states are confident the treaty will contain provisions for the most careful conservation of the water supply and for the fair compensation to water users within the United States for the facilities used in the delivery of water to Mexico."

I move the adoption of that resolution.

JUDGE WILSON: Seconded.

MR. SHAW: That resolution, as I heard it, sounds as though it constitutes action upon two separate matters, a vote of confidence in the State Department, and a statement that the states have approved the formula of the State Department. That hasn't occurred, all the states have not approved it. I don't believe it is fair to couple those ideas in a resolution and require a vote upon a thing in the conjunctive which will necessarily embarrass certain members of the committee.

MR. DeARMOND: I move the resolution be amended to say the Committee of Sixteen by a majority vote has accepted it.

MR. WALLACE: I'll accept that amendment.

JUDGE STONE: Does that meet your objection?

MR. SHAW: I don't think so.

JUDGE STONE: Is there any further discussion?

MR. HEWES: I don't know whether it would meet Mr. Shaw's objection but it doesn't meet mine because I still consider it a left-handed endorsement of the committee's action. I stated specifically in all sincerity that I have confidence in our State Department, and as far as I am personally concerned I would be willing to vote again expressing our faith in the State Department, but I will not vote in favor of what I consider a left-handed endorsement of a proposition I have already voted "no" on.

JUDGE STONE: Is there any further discussion? If not we shall proceed with the roll call on the motion to adopt the resolution.

Arizona?

MR. DAVIS: I wish this thing would be clarified. We have already taken action on the formula. Why can't this just be a resolution of appreciation and confidence in the State Department? If it is made that way I will vote for it, otherwise not.

JUDGE STONE: No one desires to put California on the spot. Does Mr. Wallace desire to amend his resolution so it is a straight vote of confidence?

MR. WALLACE: I don't care to make any change in the resolution.

MR. SHAW: I move that the motion be laid on the table.

MR. DOWD: Second it.

JUDGE STONE: Call the roll of states.

Arizona	No
California	Yes
Colorado	No
Nevada	No
New Mexico	No
Utah	No
Wyoming	No
Power Allottees	Yes

MR. ROBINSON: Explaining the vote of the power allottees, I'd like to say we most heartily concur in the expressions of confidence and appreciation to the State Department and Interior Department, and appreciation of the attitude they have shown throughout this entire matter, but solely for the reasons stated by Mr. Hewes, that the resolution as offered implies, or may be taken as implying, the same concurrence in the main resolution, therefore, I vote "yes" on the motion to lay this on the table.

JUDGE STONE: The motion to table is lost. We shall now vote on the motion to adopt the resolution. Roll call.

Arizona	Yes	
California	No	
Colorado	Yes	
Nevada	Yes	
New Mexico	Yes	
Utah	Yes	
Wyoming	Yes	
Power Allottees	No	(with same explanation as on previous motion.)

The vote on the motion to adopt the resolution offered by Mr. Wallace is six for, two against, so the resolution is accordingly adopted. Is there any further matter to come before the committee?

MR. SHAW: I suppose the usual order should be made with reference to the preparation of the transcript. I might point out that one member of the editing committee who has served in the past, Judge Shute, has departed from our midst. The other two members are Shaw, chairman, and General Giles. A third member should be appointed.

JUDGE STONE: I'll appoint Judge Wilson of New Mexico to take the place of Judge Shute. I assume the State Department would like to have this transcript available as soon as possible. That being the case, I trust that the proceedings may be prepared and edited as soon as possible and I will expedite the mimeographing.

MR. DeARMOND: Some of us didn't get copies of this resolution or the last one. Could they be mailed to us promptly?

JUDGE STONE: Yes, I will attend to that.

MR. SWING: I desire to move the appreciation of the Committee of Sixteen and the technical advisers for the social accommodations that have been accorded to all of us by the two New Mexico members, the Governor and other officials during our stay here in Santa Fe.

GENERAL GILES: Second it. (Unanimously carried.)

JUDGE STONE: It was voted last night we would have that meeting at Phoenix on May 3rd, and I'd appreciate it if you tell me about how many will be there as I told Mr. Scott I would let him know.

JUDGE WILSON: The proposal submitted to this committee by the Department of State referred to points of delivery at designated places at the international boundary. In view of the understanding that any treaty negotiated with Mexico will provide for delivery points as may be agreed upon between the two nations, the Upper Basin states had a meeting and discussed the matter, and have set forth a declaration of their policy, which is now offered for the record and as a suggestion to the Department of State. I will read it and ask that it be permitted to be inserted in the record and transmitted to the Department of State as a suggestion coming from the Upper Basin states, with full opportunity for the other states, if they desire, to concur in the sentiments expressed in this declaration.

MR. SWING: Is this a proper part of the proceedings of the Committee of Sixteen?

JUDGE STONE: Judge Wilson is asking permission to insert it in the record. I suppose the other states might want to enter into it also.

JUDGE WILSON: (reads)

STATEMENT OF POLICY

1. To further the public interest, to promote international comity, to effectuate by the exercise of national sovereignty the most certain and economical delivery of water, to insure the greatest beneficial use of water and to aid in obtaining a minimum allocation of water to Mexico, it is necessary that the Imperial Dam, the Pilot Knob power site and the All-American Canal from the

Imperial Dam down to the Pilot Knob power site, and all other artificial facilities constructed and to be constructed, used and to be used, for the delivery of water from the basin of the Colorado River in the United States to Mexico under any treaty allocating any of such waters shall be owned by, under the control of, and operated by the United States and that all such natural facilities shall be under the control of the United States. To attain these objectives and to protect the irrigated and irrigable lands in both the United States and Mexico, it is further necessary to recognize the following:

(a) That the conservation of the water of the Colorado River requires the most economical methods of delivery of usable water to Mexico; and that to accomplish this purpose consideration must be given to the following places of delivery, or combinations thereof:

(1) By way of Pilot Knob wasteway or the tail race of Pilot Knob plant.

(2) By way of the Yuma main canal.

(3) By way of Colorado River and the Rockwood heading of the Alamo Canal.

(4) From the Colorado River in the international section and in Mexico.

(5) Any drainage works suitably located from which delivery of water may be made to Mexico.

(b) That the channelization of the Colorado River in the international section and in Mexico, the construction and maintenance of adequate levee protection in the international section and in Mexico, the construction of flood control facilities on the Gila River, and the re-regulation of the Colorado River by the proposed Davis Dam and Reservoir are all of paramount importance.

2. The matters above mentioned should be included in any negotiations with Mexico, and made a part of any treaty concerning any allocation of the waters of the Colorado River between the United States and Mexico.

I move that this declaration of policy as just read and as coming from the Upper Basin states be declared by this committee to express the sentiments of the entire committee.

GENERAL GILES: Seconded.

MR. SWING: This is the final humiliation and adds to the indignity

already done to California and its communities. I would like the Upper Basin states to imagine for a moment a group meeting in Los Angeles adopting a resolution expressing their public views and policy that the United States Government should take over the Moffat Tunnel for the purpose of making a military highway through it, excluding the railroad and water conveniences now being used to serve the people of that community, and making other declarations of policy as to how the properties owned by the people of that state should be handled, or a similar corresponding public policy with reference to property in the State of Utah. We have gone pretty far here already in trampling on what I consider to be vested rights of communities of California.

With all the courtesy of the Chairman, there has been the steam-roller effect at all stages of the proceedings with which you have rolled forward to your pre-determined goal. It seems to me this exceeds the limit of human endurance for you to take this position, and to undertake to usurp even our rights under the Constitution to protect those things which we own, which we are obligated to pay for, and which I think are far afield from the purposes for which this meeting was called, according to the call of the Chairman. As far as I am concerned, if this measure is adopted, I will not feel that the interests of California or any community which I represent can receive fair or equitable treatment or consideration by the group who takes favorable action upon that motion.

JUDGE WILSON: I would like to say one word in reply to Mr. Swing. I am sorry he has attributed to us any ulterior motives to California or any other state. The motive which actuated me in feeling this was a proper matter to be presented to this committee and the State Department is that I realize this is a treaty between two sovereign nations, and it seemed reasonable if the United States agrees to deliver quantities of water to Mexico at certain designated places, that the United States should have absolute control of the facilities through which, and by means of which, her obligation is to be carried out. I feel likewise if I were on the other side of the boundary, a member of the other nation, I would expect to look to the United States of America to carry out any obligation she might have undertaken to deliver water, measuring it and controlling the devices by means of which the treaty is carried out. That was my sole motive and I don't see anything in that which should arouse the feelings that Mr. Swing expressed, and I hope he doesn't take them home.

JUDGE STONE: The Chair wishes to comment on two things: First, I don't believe it can be said that the Chair has attempted in any way, or has been a party to countenancing steam-roller methods. The Chair has seen to it that everyone has had full opportunity to speak in order that all views be given. That has always been our policy. I need only recall the time when there were matters before this committee in which California people were very definitely and very seriously concerned. I think the Chair and others went a long way in doing everything possible to bring about a full recognition of that. The mere fact that this committee cannot always agree on all questions is no indication that any group has not had a full opportunity to present its views and has not been fairly treated.

It is very evident that at this time we cannot agree on some things. It is likely in the future we can agree on many. It is also possible there will be other things we cannot agree on and yet we are all men who have expressed our desire to sit around the table and discuss these things and take action. There has been no desire, Mr. Swing, to steam roller; it is merely a difference of opinion. As to pre-determined action, I want to say when this question first came up two years ago, so far as Colorado was concerned, we started in to make a careful study of the entire matter as to how it would affect Colorado. We made engineering studies and we already know how far we can go and how far we cannot go. I assumed every other state made the same sort of determination; at least, it would appear it was the advisable thing to do. I assumed after two years of full discussion of this matter some might say it should be given further discussion. We have had under consideration a vast amount of data and the consideration of many factors. It appears, too, that we should fully appreciate the opportunity which has been given to the Colorado River Basin states representatives to express ourselves in these matters; to assist, if you please, in pointing out to the State Department various matters and interests within the states involved which should be protected. That is an opportunity which has been accorded to us. It appeared to the Chair there was an obligation on our part, an obligation not to be considered and reconsidered, studied and restudied. The State Department and the Department of the Interior--particularly the State Department in this instance--have very serious obligations with respect to another nation in the western hemisphere. It is a matter that could not be disregarded and for that reason it seemed sooner or later we had to come to some conclusion, without indefinitely drawing it out.

It was pointed out over a year ago that the Secretary of State desired us to take some action, so it appears here that the charge of steam-roller is not well taken. It is a difference of opinion and because of that difference we have not all been happy about it. I regret it very much. I wish we could settle all of these things without a divided vote. I want to say some of us fully appreciate the position California is in. I know it is a serious matter, more so perhaps to their interests than to others within the basin. We think we know there are some reasons why you cannot join in some action and yet that should not deter the best judgment of the other members; they should be given the credit for having acted in good faith, as I am sure they have.

Regarding this question here, there is one thing I want to say--it isn't in there--but it is assumed if deliveries have to be made, and are to be made, pursuant to some treaty, and the facilities in the course of the procedure must be controlled by the United States, that certainly the facilities would not be taken over in disregard of constitutional rights and without just compensation. It merely expresses a procedure which seemed important in this whole situation. You can't make a treaty with a nation and then expect that nation to deal with somebody else in order to get what is agreed to be done. I think this motion is fairly made. The Upper states might have taken that action and submitted it in the absence of this committee, but they have chosen to lay it before you.

MR. DELANEY: I feel probably that it is obligatory upon me as one who was instrumental in insisting upon the consideration of this matter at this time, to explain my position. I have attended many conferences of the committee and subcommittees connected with the Committee of Fourteen. I have always felt, some way or other, there was some hidden undisclosed obstacle in the way of a complete understanding. According to my experience, it is my considered judgment that the best way to arrive at an understanding is to bring that matter out openly and discuss it. I am very sorry Mr. Swing has seen fit to accuse the Chairman of partiality and being a party to a prearranged program. I would certainly take no offense if the states of the Lower Basin saw fit to meet and consider problems which they, in their opinion, thought were of paramount importance to them.

But to come to this matter, I looked at it from a sort of legal standpoint. I looked at Article 6 of the Constitution of the United States, and I considered this arbitration treaty, and I came to the conclusion that that simple constitutional provision meant something; that a treaty made pursuant to the constitution was the supreme law of the land; then I commenced to apply it to the Colorado situation under the Compact. I concluded Colorado does have a direct interest in the subject matter of this resolution and that direct interest is that under the provisions of the Compact we shall not be required to turn down for the use of Mexico from our allotment any more water than was absolutely essential. Here is the United States dealing with Mexico, and I concluded at this time, in fairness to California, not in any attempt to confiscate their property, but in order that the State Department can have before it the views of the Upper Basin states, particularly Colorado, it is essential for the United States to assume complete jurisdiction of some of these facilities, even though that involves the payment of some sort of reimbursement in the way of money to California, that it must be considered at this time.

I feel, Mr. Swing, we were trying to be fair--not working under cover, in bringing this matter up, because I don't think any man can say, as you indicated, that the Upper Basin states have no stake in the cards now being dealt. So I take the position, honestly and above-board, that we have a right to present this for the information of the State Department. If we were to do it in any other manner except as we did, we might be subject to accusations of bad faith, but under the circumstances, we believe they are unfounded.

MR. DeARMOND: There is one suggestion I would like to make in this statement. It says "it is necessary that the Imperial Dam," etc. I don't feel I could subscribe to that as binding Nevada to that particular statement. If the words "it may become necessary" were put in there, I think the balance of the statement we could subscribe to.

JUDGE WILSON: We will consent to those words.

JUDGE STONE: Yesterday when many of these things came up, the Chair went a long way to keep this open. Is there any further comment?

MR. SHAW: There is no use arguing the obvious.

JUDGE STONE: The vote will be taken by states. Call the roll:

Arizona	Yes
California	No
Colorado	Yes
Nevada	Yes
New Mexico	Yes
Utah	Yes
Wyoming	Yes
Power Allottees	No

MR. ROBINSON: I would like to say the reason for my vote is I don't feel there can be at this time sufficient opportunity to study the proposal. There may be some features of it on which the power contractors will agree, and there are undoubtedly some we cannot, and therefore, because of the impossibility of sufficient consideration at this time we are constrained to vote "no."

JUDGE STONE: The vote resulted in six affirmative, and two negative votes, so the motion is carried. Are there any other matters to come before this committee?

MR. DAVIS: I move we adjourn.

Motion was seconded by General Giles and unanimously carried.

Meeting adjourned.