

COLORADO RIVER BASIN STATES COMMITTEE

Transcript of Proceedings

September 15, 1952

Mabry Hall

State Capitol Building

Santa Fe

New Mexico

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APPEARANCES

MEMBERS OF THE COLORADO RIVER BASIN STATES COMMITTEE

ARIZONA:

J. H. Moeur General Counsel, Arizona Interstate Stream
Commission, Phoenix, Arizona.

COLORADO:

Clifford H. Stone Director, Colorado Water Conservation
Board, State Office Building,
Denver, Colorado.

NEW MEXICO:

John H. Bliss State Engineer, Capitol Building,
Santa Fe, New Mexico.

John R. Erickson Engineer, New Mexico Interstate Stream
Commission, Santa Fe, New Mexico.
sitting in for
Fred E. Wilson.

UTAH:

Joseph M. Tracy State Engineer,
State Capitol,
Salt Lake City, Utah.

Clinton D. Vernon Attorney General of Utah,
State Capitol,
Salt Lake City, Utah.

WYOMING:

L. C. Bishop State Engineer,
Cheyenne, Wyoming.

Norman W. Barlow Assistant Interstate Streams Commissioner,
Cora, Wyoming.

ADVISERS AND OTHERS PRESENT

NEW MEXICO:

I. J. Coury	New Mexico Interstate Stream Commission, Farmington, New Mexico.
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WYOMING:

J. R. D'Amico	Assistant Director, Wyoming Natural Resource Board, Cheyenne, Wyoming.
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BUREAU OF RECLAMATION:

H. P. Dugan	Head of River Regulation Section, Hydrology Branch, Denver, Colorado.
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Harry W. Bashore	Chairman, Upper Colorado River Commission, Mitchell, Nebraska.
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J. G. Will	Secretary and General Counsel, Upper Colorado River Commission, Denver, Colorado.
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Berkley Johnson	Chairman, Rio Grande Compact Commis- sion; Chairman, Pecos Compact Commission, Santa Fe, New Mexico.
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Hans Kramer	Chairman, Arkansas Compact Adminis- tration, San Francisco, Calif.
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PROCEEDINGS

The meeting was called to order by Chairman Stone at 8:00 o'clock p.m., on Monday, September 15, 1952, in Mabry Hall, State Capitol Building, Santa Fe, New Mexico.

CHAIRMAN STONE: We might take the appearances here. Arizona, Mr. Moeur; and the other representative is Wayne Akin?

MR. MOEUR: Yes, and he had to leave.

CHAIRMAN STONE: He left. Utah, that is Mr. Tracy and Mr. Vernon, is that correct?

MR. TRACY: Right.

CHAIRMAN STONE: New Mexico, who are the members of the Committee?

MR. BLISS: Myself and Fred Wilson, but John Erickson said he will come. Fred Wilson will not be here.

CHAIRMAN STONE: Wyoming, L. C. Bishop and Norman Barlow, is that correct, sir?

MR. BISHOP: I guess that is it. I am not sure.

CHAIRMAN STONE: Colorado, the two members are Frank Delaney, who is not present, and myself.

I should like to wait for a moment if John Erickson is going to be here, and Norman Barlow.

(Informal recess.)

CHAIRMAN STONE: These other men aren't here and it is nearly eight-thirty, so we will proceed.

We were advised that Mr. Moeur and Mr. Akin would

be here at the time the Upper Colorado River Commission met. Since the members of the Committee from the other states are in a large measure either members of the Commission or advisers to the Commission, it seemed that it would be in the interest of saving expense and time to have a meeting to check up with the affairs of the Committee, ascertaining whether there was any action on anything that should be taken and particularly to receive a report from Arizona regarding this litigation, to discuss that and to take any action which may seem appropriate. A report was made by Mr. Moeur before the Commission this morning.

(Report made by Mr. Moeur before the Upper Colorado River Commission was as follows:)

MR. MOEUR: As you already know, most of you at least, on the 13th of August of this year, the State of Arizona filed in the Supreme Court of the United States, a motion for leave to file a Bill of Complaint. The Bill of Complaint sets forth the position of Arizona on the matter of the use of waters of the Lower Colorado River Basin. The suit is directed against the State of California and a number of irrigation districts in that state and municipalities that are now diverting water. We felt that this suit was justified at this time; we hoped that the action meets with the approval of you people up here.

Arizona has three times been before the Supreme Court of the United States in an attempt to get this matter settled, and the Supreme Court has failed to take jurisdiction.

As set out in the proposed Bill of Complaint, which of course is attached to this motion, we point out that the situation is now different than that which existed when any of the other cases were considered by the Supreme Court.

For instance, just to hit the highlights, since the last case was before the Supreme Court, Arizona has ratified the Colorado River Compact. Arizona has secured from the Secretary of the Interior a contract for 2,800,000 acre-feet of water per year from the main stream of the Colorado River to be diverted either above or below Lake Mead. And for this year, and last year, if you will read the Complaint, you will find there is a record of the diversions by California; the diversions last year amounted to approximately 4,500,000 acre-feet, and according to their requests this year they will divert in excess of 5,000,000 acre-feet.

Now I think that becomes a matter of concern to you people up here because in all of these hearings, these different controversies, California recently has maintained that they have a legal right to divert and put to beneficial consumptive use, 5,362,000 acre-feet a year. They are diverting somewhere near that amount this year. And if they do divert that and put it to beneficial consumptive use, it may well be that they may make some claims not only against Arizona but also against other subsequent upstream users.

That is about the sum and substance of this Complaint. We spent a lot of time in preparing the Complaint. We attempted to narrow the issues so that if the Supreme Court

does take jurisdiction, the issues before the Court would not become so involved that it would necessitate the appointment of a Master.

We pointed out the three differences of opinion existing between the two states:

No. 1: Is III (b) water--so-called III (b) water under the Compact--apportioned water? If it is apportioned water, then California by its Self-Limitation Act is precluded from claiming the right to use any part of that water; and we point out that the Supreme Court in a case already decided did say that that was apportioned water. That is No. 1; that isn't of too much concern to the Upper Basin.

No. 2 is a question of a definition of the phrase, "beneficial consumptive use". Arizona's position is that beneficial consumptive use is the depletion of the stream made by man, and that we should not be charged with the use of salvaged water.

We point out in the Complaint that that was the particularly important question on the Gila River. The Gila River, which is a part of the system of the Colorado, of course, in its natural stage, virgin condition, without any dams, would have emptied into the Colorado River approximately 1,200,000 acre-feet of water a year, that is, if there were no dams in the Gila or any of its tributaries. Actually, by building a series of dams in the upper part of the Gila River and its tributaries, Arizona uses water that would never have reached the Colorado River. That water would have been

lost by transpiration, evaporation and natural stream losses before it ever reached the river. California in its contentions all the way through has contended that we should be charged with the use of that salvaged water.

We have asked the Supreme Court to decide those two questions together with the remaining question, which also may be of some importance to you up here, and that is: Who stands the evaporation losses in those Lower Basin reservoirs? California maintains that their contracts are firm contracts, that all evaporation losses should be charged to Arizona. It is our contention that those evaporation losses should be shared ratably by the people who benefit from that storage.

Now I know you haven't got too much time to listen to this too much in detail. I just wanted to give you the general idea or picture of what we are trying to do. We hope the Supreme Court when they convene in their October term take some action on this. We hope they will see fit to grant this motion and let us file this bill and thrash this matter out once and for all, and thus clear the decks for full development of the river from its source to its confluence with the Gulf of California. If any of you are interested and don't have copies of this bill, if you will let me know, or better still if you will write to Ray Killian, Executive Secretary of the Arizona Interstate Stream Commission at Phoenix, we will be glad to furnish you copies.

If there are any questions that any of you have here and now, I will be glad to answer them if I can; if I

can't answer them, Mr. Akin can.

I think that is about all, Mr. Chairman, that I have to report on that matter now.

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CHAIRMAN STONE: I should like to ask Mr. Moeur if he now wishes to present any further report or to present anything for consideration of the Committee?

MR. MOEUR: I don't think so, Mr. Chairman, except I neglected to say this morning that following the filing of this bill with the Supreme Court, we served the defendants, and we have heard nothing more from them. They have all been served by the United States Marshal and so forth.

That is about all. You heard the report I made this morning. Some of the Upper Basin States have been so kind as to ask for any suggestions about possible intervention or anything of the kind. My thought on that is now, that you better wait and see what the Supreme Court does. If they grant this motion to file this bill, then California will have to answer and you may find it expedient to take some action. You may find it expedient to do nothing. You can't tell until that time comes and cross that bridge when you get to it.

CHAIRMAN STONE: It is a matter, Mr. Moeur, which needs careful watching; is that not true?

MR. MOEUR: I don't think there is any question about that.

MR. TRACY: Mr. Chairman, didn't the State of Colorado and the State of Wyoming withdraw from any action on this? Or

is this a new proposition?

CHAIRMAN STONE: Well the State of Colorado and the State of Wyoming has taken no action; neither has any other state of the Upper Basin.

MR. TRACY: But in any contemplated action, didn't we at the last meeting discuss that very thing and go into that, and the State of Colorado and the State of Wyoming felt that they wouldn't care to take any part in it?

CHAIRMAN STONE: I don't think any definite decision was made. That discussion I believe, Mr. Tracy, took place in the Upper Colorado River Commission when the Commission adopted the resolution which Mr. Will referred to this morning and under which he took the action in writing the Governors of Arizona and California.

This Committee as such has never taken any action and the only action taken was the resolution of the Upper Colorado River Commission which was taken--when was that, Jeff?

MR. WILL: That was June a year ago. In fairness to Mr. Tracy I think this ought to be recalled, that during the course of the discussion of the resolution that was adopted by the Commission at that time, Mr. Breitenstein discussed the situation in which the respective states found themselves; and it became clear I think, that in his judgment, the validity of the 1922 Compact could not be successfully assailed unless both Colorado and Wyoming were before the Court, since both Colorado and Wyoming are parties to that Compact. That therefore, if they were not before the Court, the validity of the

1922 Compact, as I said, could not be successfully assailed. Accordingly, it seemed to him at that time that neither Colorado nor Wyoming should be parties to any litigation of this nature.

MR. TRACY: You say that took place in the Upper Colorado River Commission?

MR. WILL: In its meeting of June 2nd, 1951.

MR. TRACY: I thought it was this Committee.

CHAIRMAN STONE: No, Mr. Tracy, I am sure that was before the Upper Colorado River Commission. You recall that resolution?

MR. TRACY: I recall it, and I was thinking it was in this Basin States Committee.

CHAIRMAN STONE: No, we have never had it discussed in this Committee. And my recollection of the discussion was along the line explained by Mr. Will, the distinction between Colorado and Wyoming, and Utah and New Mexico, being that the latter two states lie party in the Lower Basin.

MR. MOEUR: I might report to you that following the Denver meeting--most of you know this already--the Department of the Interior approved the contract turning over the All-American Canal to the Imperial Irrigation District.

Off the record. (Discussion off the record.)

CHAIRMAN STONE: Let the record show that the other gentleman representing Wyoming, Mr. Barlow, is now here; and Mr. Erickson, representing New Mexico, has come in. And Mr. Dugan and Mr. D'Amico have arrived. Also let the record show

that we are honored with the presence of the Chairman of the Upper Colorado River Commission, Harry W. Bashore; the Chairman of the Arkansas Compact Administration, General Hans Kramer; and Mr. Berkley Johnson who is the Chairman and Federal Representative on the Rio Grande Compact Commission, and also the Pecos Compact Commission. We are pleased to have you.

MR. KRAMER: Your Committee is well chaperoned.

CHAIRMAN STONE: Yes, by some very distinguished gentlemen.

Now we drifted into a discussion of the Imperial contract. May I ask Mr. Moeur, how did they operate this year in the absence of rules and regulations?

MR. MOEUR: The thing was turned over actually about May 1st, and they promulgated some rules and regulations. Of course under the contract itself, they have to follow a master schedule, and they promulgated some rules and regulations but they didn't put all the things in there that we wanted in there.

For instance, the question of who is going to bear the additional expense--the canal isn't completed. It was turned over as a completed job. Holding water in the canal at its maximum capacity will be a necessity if they are going to produce power at Pilot Knob. They have got to hold the water up there to produce that head. To operate that canal at maximum capacity, they have to put on additional lining and do a lot of repairs to existing lining, an improvement that would be put in there solely for the purpose of making it a forebay

for the power generation.

Well, I don't know who is going to pay for that. We were told that under this contract, any additional work that would have to go in there for the power would be paid for by the Imperial Irrigation District. Naturally, the Yuma people don't want to pay for it; they aren't going to be benefited by it.

Another question is the question of silt control. When they back that water up and operate that to hold that water back to generate power, to produce that power head, they are going to deposit a lot of silt in the canal. The outlet for the Yuma Valley Water Users Association is on the bottom of the canal, and up about where the silt will accumulate pretty good. You know what is going to happen out there; if they open up the gate at the bottom they will take all the silt from the canal and it could easily cost them fifty, sixty or a hundred thousand dollars a year, which on a 50,000 acre project the boys will holler about.

We were told that will be taken care of. As far as we know, those things haven't been taken care of.

CHAIRMAN STONE: An effort is still being made?

MR. MOEUR: We are still trying to get them done but they haven't been done yet.

CHAIRMAN STONE: If there is no further report or anything further that Mr. Moeur wishes to offer on that Imperial Irrigation District contract--he is better able to report on that than anyone because Arizona has irrigation

interests that are directly affected by that contract.

MR. WILL: Just for information may I ask a question in regard to those regulations? The regulations issued to date, are they said by the Federal Government to be complete?

MR. MOEUR: I couldn't answer that question. I know in the first place that we were told before the regulations were issued, we would be given an opportunity to go over them, and we were not given that opportunity; and very recently there have been some more regulations. Joe Mansfield has been taking care of that. He is one of the attorneys of the Stream Commission assigned that particular job. Joe has been on a vacation. Before I left I tried to get a report from him and I couldn't get it, so I can't answer.

I don't think they are supposed to be complete, and these others might be considered matters of policy more than rules and regulations.

CHAIRMAN STONE: Are there any other questions?

MR. BASHORE: I would like to ask Mr. Moeur what reference is made in the agreement between the Department of the Interior and the Imperial Irrigation District in regard to the rehabilitation of that canal and the silt regulation, if any.

MR. MOEUR: That is what I was talking about. As I remember, and I am not sure whether there was something in the contract, but we were told that the rehabilitation and the extra work necessary to make it feasible from a power standpoint, would be borne by Imperial. The language, as I remember

it, was pretty indefinite and it looked like a large part of it might be charged to repairs and the Arizona interests charged with a considerable portion of it. The lining job on that canal was a rotten job, as you probably know, Harry.

MR. BASHORE: I don't know of any rotten job of the Bureau of Reclamation.

MR. MOEUR: They put in a clay lining and it never did hold. That is not a concrete lining on that canal; you know that?

MR. BASHORE: Yes.

CHAIRMAN STONE: Are there any other questions? (No response.) If not, let us go back to this suit and I should like to ask General Vernon if he has any comments to make about it, or any suggestions or recommendations to the Committee?

MR. VERNON: There is only one thing that occurred to me that I thought we might toss out here for some consideration--I hadn't thought it through by any means, it just occurred to me tonight in talking to you, Judge--that inasmuch as indicated by the complaint that has been filed, California has now for the first time used more than the 4,400,000 acre-feet and has requested for next year something in excess of 5,000,000---

MR. MOEUR: That is this year.

MR. VERNON: Last year they used a little more than 4,400,000 acre-feet?

MR. MOEUR: Yes.

MR. VERNON: --that either this Basin States Committee or possibly the Commission itself, might wish to make a record of their protest or opposition to the use of more than 4,400,000 acre-feet by California, by filing with the Secretary of the Interior a letter of protest or taking some action such as that. I think it might be well to toss that around and see whether that would be advisable.

MR. MOEUR: They would probably tell you they aren't putting that much water to beneficial consumptive use. But this fact can't be disputed, that they claimed the right to divert and put to beneficial consumptive use, 5,362,000 acre-feet of water a year; and they are making diversions this year almost to that amount.

Whether they are putting it to beneficial consumptive use, I don't propose to show so far as my state is concerned; I don't think the burden is on us to show that. The burden is on them to show they are diverting that much and not putting it to beneficial consumptive use.

CHAIRMAN STONE: The major part of that is out of the Basin in any event.

MR. MOEUR: Oh yes, the bigger percentage is out of the Basin--very little in the Basin.

MR. WILL: Isn't this true so far as the State of California is concerned in the light of the terms of the California Self-Limitation statute: The extent of their use is determined by diversions less returns; there can be no returns obviously from those uses that are out of the Basin, and that

is where their major uses are?

CHAIRMAN STONE: The only uses in the Basin are Palo Verde and one or two other small districts.

MR. MOEUR: But they have said on several occasions when we have confronted them with the fact they are running a lot of water into the Salton Sea, diverting more to the Imperial Irrigation District than they can possibly use, that they are taking advantage of the fact that the Upper Basin cannot use it and they are leaching out their land. But I think the leaching of the land is beneficial consumptive use; if they divert it to leach the land and run it into the Salton Sea, I don't know but what that is a beneficial consumptive use. It seems to me it is.

MR. WILL: It is so far as the definition of consumptive use with respect to California is concerned.

MR. MOEUR: I don't think there would be any question about it because there is no return flow. If they could leach the land and throw it back into the river again, that would be a different story; but they are throwing it into the Salton Sea.

I think it might be well for you people to consider--of course that is more an Upper Basin States deal than this Committee here--but I think it might be well to consider and see what their answer is in this case, if we get into court; and then your action will be guided by what that answer is.

MR. WILL: Of course the position of the Upper Colorado River Commission has already been made clear in this

sense: In the hearings on the second barrel of the San Diego Aqueduct, the Commission made it very clear that according to its calculations, the diversions for that second barrel--and quite possibly the diversions to the full extent of the capacity of the first barrel, but certainly this was true with respect to the second barrel--would exceed the uses to which California was entitled under the 1922 Compact in the light of the priority agreement entered into by certain California entities.

We said then and we made it very clear--it is part of the printed records of the Congress and of the hearings on that bill--that therefore in connection with the second barrel, without question there was a doubt as to the legal availability of water. We pointed out that a doubt as to the legal availability of water for the purpose had arisen in connection with the Central Arizona Project. And we said if the Congress should pass the second barrel bill, there would then be created an interesting precedent which the Congress might be faced with in connection with the Central Arizona Project.

MR. MOEUR: We put an amendment in there in the bill that specifically provided that should be charged against California's uses of water, the effect of which would have been to take that away from some 5th or 6th priority, and probably Imperial and that water that they propose to irrigate the East and West Mesa with. Off the record. (Discussion off the record.)

MR. MOEUR: We have got an area along the river over there where we have a very serious situation. The engineers are making some studies of it now, but this is immediately adjacent to the river. By the channelization of the river, this land now has become so it can be put to cultivation; it was water-logged before. We have had a number of squatters go in there. We have had people actually go in there on Government land immediately adjacent to the river, clear it and level it and put it into cultivation. They can never acquire title to the land. They go down the river and stick a pump in and pump out enough water to irrigate it; and if they raise cotton three or four years, they make money out of the deal. They know you people aren't going to put all your water to use up here for 25 or 30 years.

The Bureau of Land Management won't take any action to get them out, so they are just squatters. They aren't so bad; I think we have got most of them stopped now. But the question of who can issue a water right on that water down there has become a very pertinent question on that because a number of them have made an application to the Bureau, particularly to Moritz, for a contract for water.

Now the Boulder Canyon Project Act provides that if you are going to get any water you have got to have a contract because the Secretary of the Interior runs the dam; you have got to have a contract.

We had a meeting in Yuma. Mr. Coffey, the Bureau attorney from Los Angeles, was over there. I asked Coffey,

"Don't you think Arizona has got anything to say about where that water is to be used in Arizona?" He said, "I don't think they have got a thing to say about it. Any time that water is impounded behind a dam that the Government controls, nobody but the Secretary of the Interior has a word to say about where that water is used." You are going to have the same thing up here. That is one step.

The next step is, when they built that dam at Parker they flooded a lot of the area back of the dam and in this flooded area they apparently created a very ideal situation for ducks and geese, and particularly for geese. Apparently there are only some over 5,000 of this particular kind of geese left in this country. They nest and breed in Minnesota or Ohio, back in the Midwest, and then they come out there to this place, and then they go on down to the Yaqui River somewhere in Mexico later on.

When they started this channelizing work by Needles they dried up this place that these geese had been feeding and apparently some of them died. They tell me literally thousands of letters from these game people went into the Secretary of the Interior. They went in from all over the country, including the Midwest, and they said, "You have got to protect these geese." So Chapman issued a temporary order to do something about it. I don't know who is going to be charged with this water in the long run.

In the meantime, a representative of the State of Arizona--supposed to be a representative of the State of

Arizona but he didn't represent the State really, he was a member of the Fish and Game Commission--one from California and one from Nevada got together and some Bureau people, and they recommended a program that would have used considerable water and taken considerable land. Now most of this land is land that is Government land along the river that is under this withdrawal.

When that subcommittee report came to the Governor for comment he sent it down to me and I was pretty caustic, I guess, on it because I couldn't see permitting this land to raise food for ducks and geese when agriculture might be needing it. The Governor turned it down.

So then they moved in with the Federal Fish and Game boys, and if you ever got up against that bunch, some of them are awful tough. They have proposed a program which ultimately will use probably 150,000 acre-feet of water a year. The first unit is restoration of this duck and geese deal, and then they propose to go on and do a lot more. I figured it out and their proposals to take care of these geese would cost about \$20 a goose; and I believe I could raise geese cheaper than \$20 a goose. That is the way this thing figures out.

We went into this meeting they had in Boulder and we said, "Are you going to charge this water to Arizona?" and Mr. Coffey said, "Well, I presume so." We asked, "Haven't we got anything to say about it?" And he said, "Nothing in the world. If the United States Government wants to contract with the Federal Fish and Game people, they could contract for all

the water they wanted to and Arizona wouldn't have anything to say about it." You may have something like that with you states up here before you get through with it.

Let me say the Bureau officials in Washington apparently don't agree with Mr. Coffey and they think that the states have got something to say about where that water goes. But I think you are going to maybe sooner or later have to kind of back us up on that proposition, that the states have got a right to say where the water that is allocated to that particular state is used, and that at least it is a compromise proposition, a two-way proposition, and that the Federal Government should never issue a contract to use that stored water except when it is approved by the state.

Now that is the sum and substance of it.

CHAIRMAN STONE: That presents a very interesting problem. I wonder if that isn't a matter, based upon Mr. Moeur's explanation of it, that we shouldn't look into; and if it is, is that a problem for the Upper Colorado River Commission or this Committee?

MR. MOEUR: I just threw it out to you because we have got it now and you are going to have it sooner or later.

MR. WILL: May I say this--and I will admit, however, that I am shooting from the hip--the problem is one that is now immediately before Arizona and the Basin States Committee; it is not one with which we ourselves are immediately faced.

CHAIRMAN STONE: What do you mean by "we ourselves"?

MR. WILL: I mean the Upper Colorado River Commission.

CHAIRMAN STONE: We are "ourselves" in both instances.

MR. WILL: We have enough problems as it is without taking on some more. I am just shooting from the hip; I may be completely haywire. But for the time being I would certainly prefer that the problem be handled by the Basin States Committee.

CHAIRMAN STONE: You know it is an easy thing--and we generally resort to the easy thing--to hear about these matters and they are interesting, we think that sometime somebody will do something about it, and then nobody does anything.

MR. MOEUR: I stopped this for the time being. I went back to Washington and Wayne was with me, and we went in and had a pretty full meeting with this Fish and Game bunch, and most of them were fairly decent. There was one blond fellow and he was tougher than a boot.

But the Bureau of Reclamation backed us up pretty well on that. They sent a couple of fellows with us, and they are a little vexed with those people because the Secretary instructed them to go ahead and do some work which will cost several thousand dollars, this first work.

MR. TRACY: They are putting the water back on the land?

MR. MOEUR: They are going to put the water back temporarily. This is supposed to be a temporary proposition to take care of the geese until they can work something out. The Fish and Game told the people, "That isn't temporary; that is permanent." And then the Bureau--Gene Eaton was there and

a young fellow from the Bureau and a young fellow named Maddock, son of old Tom Maddock who lives in Arizona, the boy did us a nice job out there, tried to help us--the Bureau and Fish and Wildlife got in a fuss, who is going to pay for the rest of it. "We are only constructing a temporary structure." "No, that has to be permanent." They let bids and turned down all the bids because they were too high. They are going to take the money they collect for duck stamps and do the rest of it.

CHAIRMAN STONE: The what?

MR. MOEUR: Duck stamps. To kill a duck you have to have a stamp. It was a very interesting thing and we had quite a time with them, and they finally came out with this, "We better get our ducks in a row here and we won't do anything until we make some studies." So the whole thing is held up until they make some studies back there.

CHAIRMAN STONE: The thing I am talking about is the opinion expressed by Coffey in which you say the Washington office does not agree. Is that not a matter in the opinion of the Committee we should look into or do something about?

MR. VERNON: Well it certainly should be followed I think. It is a matter of procedure as to how you follow it. Do you want to follow it as an entire Basin States Committee or do you want to place some responsibility on someone to personally follow it and make a report?

CHAIRMAN STONE: I rather apprehend if the whole Committee follows it we will follow it in a short session and

nothing will be done about it. What I am trying to explore now, is that a danger signal that we should note at the present time and begin to get into it? Or can we let it drift for a while? What do you say, Norm?

MR. BARLOW: Of course at \$20 apiece we don't want too many ducks.

MR. MOEUR: These are geese.

CHAIRMAN STONE: I am thinking about a little broader aspect than that.

MR. BARLOW: I was being facetious.

MR. BLISS: It is a local problem here in New Mexico, but we now have three chief reservoirs under temporary injunction to prevent the water users from draining their own water to maintain a feeding place for ducks and maintain fish.

MR. MOEUR: Who brought that injunction, the United States Fish and Wildlife Service?

MR. BLISS: No, they were local actions in all cases brought in the District Court, except one was transferred to Federal Court.

MR. BARLOW: They are all state reservoirs?

MR. BLISS: No, one is Elephant Butte. Two of them are Federal reservoirs.

MR. BARLOW: Of course that movement is increasing. I don't know on what grounds they are going to accomplish it but they are going to try by public opinion to see that reclamation in no way interferes with the propagation of fish and wildlife.

MR. KRAMER: Was the injunction in the case of Elephant Butte issued by the Federal Court?

MR. BLISS: Yes. Judge Hatch issued a temporary injunction they cannot withdraw Elephant Butte below 15,000 acre-feet.

CHAIRMAN STONE: That whole thing is a serious question that is gradually creeping up on us. You find evidence of it many places and it is quite a movement which, if carried far enough, would greatly restrict the use and development of the water resources of the West.

MR. ERICKSON: I think it is time for concerted action against it, myself, because it is an increasing movement. It is just going everywhere, in all directions.

MR. MOEUR: One thing that got me: Here is the United States Fish and Wildlife Service under the Department of the Interior, and here is the Secretary of the Interior contracting with his own outfit--my right hand contracting with my left hand. I don't know what the answer is.

MR. ERICKSON: What did the geese do before that situation occurred on the Colorado River down there?

MR. MOEUR: This smart boy there with the blond hair, I asked him that question, I said: "Well what did these geese do before they built Parker Dam?" And he said, "There was a swamp along there all the time. I can bring you all the Navajo Indians you want to show there was a swamp there." Young Maddock spoke up and said, "I wouldn't go too strong on that. There weren't any Navajo Indians in that country at that time."

I wouldn't go too strong on that." There wasn't a swamp there either.

MR. ERICKSON: That is the situation occurring in all these places. Because an irrigation structure has created a place for wildlife and fish, now they say that it has to be left there because it was created.

MR. MOEUR: And you can't use the irrigation structure--

CHAIRMAN STONE: For the purpose for which it was built.

MR. MOEUR: --for which it was intended. I just throw that in for your information.

CHAIRMAN STONE: I am inquiring of the Committee--I am just the Chairman--whether these two matters suggested by Mr. Moeur relative to the authority of the State as against the position which Mr. Coffey takes as to the authority of the Secretary of the Interior, and this question of the geese and wildlife generally--are those of sufficient import or is it opportune for this Committee to appoint a committee to look into it and follow it up?

MR. BLISS: I think it is quite important in a way. I don't know just how effective we can be in dealing with the Middle Valley. Our own State Game and Fish Department, the Game and Fish Warden, contacted all members of the Rio Grande Compact Commission and asked them if they were going to permit this terrible loss of fish--which has occurred anyhow once in 17, 18 years--to occur. It was pointed out to him by all of

the commissioners that if the terms of the Compact dictated that the reservoir had to be drained, it had to be drained.

He said, "In that case I have got to go to the public." His idea is he simply goes to the public through the sportsmen associations and papers, and he gets them all behind him and they come out and there is now a temporary injunction against the draining of a lot of dams--I beg your pardon, there isn't at the present time. A hearing was held just last week and under considerable pressure from those who sought to bring the injunction, the chief engineer of the district committed the district on the stand--and I don't know whether he has the legal authority to do so or not--but he made the statement the district would not drain Alamogorda Reservoir below 5,000 acre-feet unless they were forced to do so by the Federal Government or the Rio Grande Compact Commission.

It isn't his water and the water does not belong to the district as such. I seriously doubt if he has the right to make that statement. But at least that is in the record and if he tries to release the water now below 5,000 acre-feet for any reason of his own, he will be in contempt of court.

MR. WILL: May I ask this: Was it on the basis of that statement this temporary injunction was dissolved?

MR. BLISS: Yes.

MR. ERICKSON: The Judge dismissed the injunction on that statement.

MR. KRAMER: That would solve the problem.

MR. BLISS: I doubt the chief engineer has the right

to tell people they can't take their water.

MR. BISHOP: It sounds to me like the people that had a contract for water for irrigation would have something to say about it.

MR. KRAMER: If I understand you correctly, John, in the case of Elephant Butte such an injunction has issued?

MR. BLISS: Right.

CHAIRMAN STONE: Is that just a temporary injunction?

MR. BLISS: I believe it is still a temporary injunction, but they couldn't get it withdrawn.

CHAIRMAN STONE: Of course the nature of a temporary injunction doesn't mean too much as to the final outcome. Often a temporary injunction is granted to keep the matter in status quo.

(Discussion off the record.)

MR. BLISS: The district attorneys have invoked the name of the State in each one of these suits so they will not have to put up any bond.

MR. BASHORE: Who pays for the storage capacity?

MR. BLISS: No one--the people that put up the money.

MR. ERICKSON: The water users.

MR. BLISS: The water users have contracted to pay for it.

MR. BASHORE: Isn't it confiscation of property then?

CHAIRMAN STONE: I would think if the water users would bring this to final hearing as to a permanent injunction,

that the matter might result satisfactorily.

MR. BLISS: We have a very peculiar statute that looks quite innocuous on the face of it that was written into the law thirty odd years ago, which says that the water rights of a stream shall never be impaired by the use of water dams or water diverting, and fish life shall not be impaired by the structures.

MR. MOEUR: Most of those streams didn't have any fish.

MR. BLISS: Elephant Butte had nothing.

MR. MOEUR: There was no fish there. And after the built the dam it was stocked and they had a lot of fish. That is true in Arizona. Until they built those dams there the water was so muddy there wasn't any fish. Now it is a great fishing stream.

CHAIRMAN STONE: Now we have discussed these questions. Do you want to take any action at this time or do you want to defer it? It is up to the Committee. If nobody wants to propose any action we will take it that is a subject brought to our attention and the Committee has not seen fit to take any action at this time.

MR. ERICKSON: I would like to hear the views of the Chairman on this subject.

CHAIRMAN STONE: The views of the Chairman?

MR. ERICKSON: Yes, sir.

CHAIRMAN STONE: Well I rather indicated that by my suggestion that I thought we ought to set up a committee to

look into this, but that is up to the Committee.

MR. TRACY: Unless you have a specific case in point, what are you going to do about it?

CHAIRMAN STONE: I think we have some very specific points.

MR. TRACY: Can we go into the New Mexico case? Can we go into the other one?

CHAIRMAN STONE: It is a part of the general movement which does affect the Colorado, and very definitely, and will affect it more in the future. And on this question of Mr. Coffey's statement, I think that is something we should take note of.

MR. MOEUR: I am like Mr. Tracy; I don't know what you can do now. And if you see fit to appoint a committee, I am going to be in pretty close touch with that down there; and while it is pretty hard to write letters to all of you, if I could keep a committee informed and get their views on these things, the time might come when we thought some action by you people was indicated. At least the matter should be called to your attention, and it seems to me that is about as far as you would want to go now.

But I would appreciate it if you would have a committee that I can send more information on what has happened, and it is largely a legal question.

CHAIRMAN STONE: I think that is all you can do at the moment.

MR. BISHOP: It looks like we should battle for the

Colorado River Storage Project until we win it and then tie into something else.

CHAIRMAN STONE: I think if we have a committee it would be nothing more than following up on it.

MR. ERICKSON: In the meantime, this is creeping up on you all over, everywhere you turn.

MR. KRAMER: We have had it on the Arkansas this summer.

CHAIRMAN STONE: We had the same experience.

MR. WILL: I didn't mean to suggest, Mr. Chairman, by anything that I said that this thing isn't important; it is important. The only thing I meant to suggest was that it seems to me to be a matter that the Basin States Committee could best handle. It is of a general nature. In fact, it goes beyond the limits of the interests of the Basin States Committee. It affects all the states of the West.

This problem is not local to the Colorado River Basin by any means. I have heard about it in the Missouri Basin, I have heard about it everywhere in the West, and I do think that it would be useful to have a committee of this Basin States Committee look into this thing and report on it.

Possibly, among other things, I don't think it would be a vain thing at all to bring forward for consideration at the Long Beach convention of the National Reclamation Association, a resolution on this subject. At least the Federal Government would pay as much attention to it as it does to the other resolutions of the N.R.A.

CHAIRMAN STONE: Which is nothing at all.

MR. VERNON: I move a committee of three be appointed by the Chairman to look into the matter and follow it and report back to the Basin States Committee at a later date.

CHAIRMAN STONE: Is there a second to that motion?

MR. BLISS: Second the motion.

CHAIRMAN STONE: The motion is made and seconded. You have heard the motion. Is there any further discussion? (No response.)

MR. TRACY: Question.

(Thereupon a vote was taken and Mr. Vernon's motion carried unanimously.)

CHAIRMAN STONE: May I appoint that committee. Since Mr. Moeur is a member of this Committee and is closer to the matters that immediately affect the Colorado River- but it is of westwide significance--I am going to appoint Mr. Moeur as chairman; General Vernon; and Mr. Barlow, will you serve on that?

MR. BARLOW: I will be glad to assist in any way I can.

MR. VERNON: Mr. Chairman, may I suggest that you appoint someone from New Mexico to it in my place?

CHAIRMAN STONE: Someone said a committee of three, and by all means I think someone from New Mexico should be on it. (Discussion.) And John Bliss from New Mexico.

MR. VERNON: In my place.

MR. MOEUR: Why don't you leave me off?

CHAIRMAN STONE: Wait a minute. I have made you chairman, and someone suggested a committee of three, and I had appointed General Vernon. The Chair is bound to comply with the motion, which was a committee of three. Therefore, it will be Mr. Moeur, Mr. Bliss, and Mr. Barlow. May we proceed to the other matters.

Is there any further action you wish to take with respect to this litigation at this time, or the suggestion made by General Vernon? Or is that a case of watchful waiting for the present?

MR. VERNON: I think probably in view of the comment made by Mr. Moeur that we await the time when California files an answer and we see what their position is, it might be just as well to await that time. But I don't think we ought to lose sight of the question. I am not urging necessarily that we file such a document, but I think we ought to give serious consideration to it. I think in view of what Hub pointed out we might await the time when California has taken a position.

CHAIRMAN STONE: I think that is a very wise observation and unless there is some suggestion to the contrary, we will take note of what has been reported to us. I think we should be vigilant and watch the situation. And if any member of the Basin States Committee feels that the situation is such that we should meet and further consider it, I shall immediately call a meeting. So that disposes of those two matters.

Anything further to come before the Committee?

MR. WILL: May I also suggest this for the record,

that it surely is understood that none of the states will take action in connection with this litigation without consultation first with the sister states in the same basin, the Upper Basin.

CHAIRMAN STONE: Do you understand that in a real sense, Mr. Will--it at least appears that way to me--this matter of litigation is of concern to both this Committee and the Commission?

MR. WILL: Yes.

CHAIRMAN STONE: And since the two groups are substantially the same except that Arizona is a member of the Colorado River Basin States Committee, may we have an understanding that at the moment when we are engaged in a period of watchful waiting, no state of this group of five states, members of this Committee, and the four states, members of the Upper Colorado River Commission, will take action without consultation of the full group?

MR. VERNON: With one exception--you don't want to tie the hands of Arizona, do you?

CHAIRMAN STONE: I think that is understood.

MR. VERNON: You said no one of the five states that are represented on the Basin States Committee.

MR. MOEUR: I would appreciate it if before any action is taken they would give me an opportunity to talk about it.

CHAIRMAN STONE: I appreciate the statement of Mr. Vernon. You are the complainant in the case and you have to

be the master of the case, and these states don't want to interfere with that. That didn't occur to me at that time. And when I said five states, I believe it should be confined to four states, none of these states which are involved in the litigation.

MR. MOEUR: May I suggest also that what the states do may be controlled by the attorney generals of the states. In my state we work with the attorney general pretty closely. But after all, the attorney general is the legal representative of the state. And these people here, other than Mr. Vernon, should advise the legal entity in their state we have this kind of gentleman's agreement, and they should be requested to conform to it so they won't get off the base.

CHAIRMAN STONE: As far as Colorado is concerned, there is close liaison between the attorney general's office and our office. The attorney general is a member of the State Water Board, and I am sure that will be the situation in Colorado.

MR. WILL: There is one last thing I would like to offer for the record. I didn't make the statement today before the Commission--I probably should have--but I want to make it before this Committee. I think it is owing to Arizona, I think it is owing to Mr. Moeur and to his fellow counsel for Arizona and to Wayne Akin, that they have at all times kept in close touch with us and they have done their level best so to frame their complaint in the Supreme Court as not to question the validity of the law of the river and as not to involve us. And

for that I believe they are entitled to due credit.

CHAIRMAN STONE: I am very glad you brought that up, Mr. Will. I certainly share your statement--the fact that Arizona has been very careful not to involve these other states, has seen to it that the law of the river be recognized, and that is a matter that these states fought valiently on before the Committees of Congress in connection with Senate Resolution 145. It seems to me Arizona has kept good faith all the way through and this Committee should express its appreciation for this attitude and for the position which Arizona has taken; and I trust that the record as made by these statements is one to which all of those here present subscribe.

Are there other matters, gentlemen, to come before this Committee?

MR. BLISS: Mr. Chairman, reverting to the fish and wildlife, I presume there is no objection and it might be desirable to consider the introduction, as Jeff has suggested, of a resolution before the National Reclamation Association at Long Beach?

MR. MOEUR: I think probably it would be a very good idea, particularly on this question of emphasizing states water rights and so on and so forth, and maybe on the fish and wildlife.

CHAIRMAN STONE: I think this Upper Colorado River Commission in connection with state water rights is definitely concerned with Echo Park.

MR. BLISS: Mr. Chairman, I didn't get the import of Mr. Price's statement. Is the Secretary reversing himself on Echo Park?

CHAIRMAN STONE: Mr. Price reported the contents of a letter. Personally I don't think he is, irrespective of his letter.

MR. TRACY: It is the same language he has been following all the way, is it not? He has recognized that and said that very same thing in all his letters.

CHAIRMAN STONE: Yes.

MR. MOEUR: I think I have unburdened all of Arizona's trouble.

CHAIRMAN STONE: Mr. Moeur, will the committee which we have just appointed call this to the attention of the Resolutions Committee of the National Reclamation Association when the convention is held at Long Beach?

MR. MOEUR: Off the record. (Discussion off the record.)

CHAIRMAN STONE: Mr. Bliss, do you have anything further to bring before the Committee?

MR. BLISS: No.

CHAIRMAN STONE: Mr. Erickson?

MR. ERICKSON: No.

CHAIRMAN STONE: Mr. Barlow?

MR. BARLOW: No.

CHAIRMAN STONE: Mr. Bishop?

MR. BISHOP: No.

CHAIRMAN STONE: Mr. Moeur?

MR. MOEUR: I have occupied most of the time of the Committee.

CHAIRMAN STONE: General Vernon?

MR. VERNON: No, sir.

CHAIRMAN STONE: Mr. Will?

MR. WILL: No.

CHAIRMAN STONE: Mr. Coury?

MR. COURY: No, sir.

CHAIRMAN STONE: We have some distinguished visitors here. Gentlemen, do you have anything to say to the Committee? We are pleased that you are here. General Kramer?

MR. KRAMER: Judge, I appreciate the privilege of being in the bleachers and watching the performance.

CHAIRMAN STONE: Some of this discussion is rather a reflection or mirroring of some of the problems we have on the Arkansas.

MR. KRAMER: Indeed so. And I was particularly interested in the fact that a Federal Court had entertained an action in a case of Elephant Butte Dam. That is of more than passing interest in the case of the Arkansas.

CHAIRMAN STONE: The situation in New Mexico, because of the matter which John mentions, may make the situation different here; and yet when you consider these conditions favorable to fish and wildlife are created by the dam itself, I shouldn't think it would.

Harry Bashore, do you have anything to say to this

group?

MR. BASHORE: No, I think not, Judge. Thank you.

CHAIRMAN STONE: This old gentleman that I got acquainted with--and I should say "young" gentleman, he was young then and still is--Berkley Johnson.

MR. JOHNSON: I have nothing to say--I will say one thing: You know this suit on the Elephant Butte ended up in the Federal Court. The Assistant U. S. Attorney stated to me a while back he felt the same thing should have happened on the El Vado, that should have gotten into the Federal Court instead of District Court.

CHAIRMAN STONE: Mr. D'Amico, do you have anything?

MR. D'AMICO: No, sir.

CHAIRMAN STONE: Mr. Dugan?

MR. DUGAN: No, sir.

MR. KRAMER: Who was the defendant in the case of Elephant Butte?

MR. BLISS: The Elephant Butte Irrigation District, the El Paso County Water Improvement District No. 1, and the Bureau of Reclamation operating officials.

MR. ERICKSON: The injunction is against the operator of the gates.

MR. BLISS: Against all operating officials.

MR. ERICKSON: An employee of the Bureau of Reclamation.

MR. KRAMER: A Federal official?

MR. BLISS: Yes.

CHAIRMAN STONE: Are there further questions?

MR. WILL: Judge, one thing has been suggested to me by the gentleman who is sitting next to me and who is too modest to speak up, and that is, if these five states, each knowing who would be their representative on the Resolutions Committee of the N.R.A., were to get those gentlemen together in advance of the Association's convention at Long Beach, that group of five members of the Association's Resolutions Committee could wield a good deal of power, not only to get the right kind of resolution in connection with the fish and geese and ducks, but also with respect to the Colorado River Storage Project and participating projects.

CHAIRMAN STONE: And also this question that Mr. Coffey brings up.

MR. WILL: Certainly.

MR. MOEUR: That is the reason I accepted this chairmanship; because Mansfield was in the middle of it and he is going to be my member of the Resolutions Committee.

CHAIRMAN STONE: That is a good suggestion and I will get in touch with Mr. Breitenstein, who will be our member.

MR. TRACY: Do you know who Utah's will be? Judge Howell?

MR. VERNON: That selection will be made today or tomorrow.

CHAIRMAN STONE: Will you get in touch with Judge Howell. Who will be New Mexico's member?

MR. BLISS: I don't know who will be on the Resolutions Committee.

CHAIRMAN STONE: You don't know, but you will get in touch with him?

MR. COURY: John Bliss has been the faithful member on the Resolutions Committee for New Mexico.

CHAIRMAN STONE: How about Wyoming?

MR. BISHOP: Mr. Thornton.

CHAIRMAN STONE: Will you get in touch with him?

MR. BISHOP: Yes.

CHAIRMAN STONE: I think that is a subject in which Mr. Thornton is very much interested. If you will all do that that will take care of the five states and carry out this suggestion.

Now does anyone else have a suggestion as valuable as that?

There is just one other thing I would like to bring before this Committee. I have served as Chairman of this Committee, and the committee of which it is a successor, the Committees of 14 and 16, for something like 14 or 15 years. I do not wish to monopolize the position. It is a two-headed position; I served both as Chairman and Secretary, and general functionary. I would be pleased if you would consider the selection of a successor to me as Chairman of that Committee. I am still very much interested in the Committee and believe it has a real function, and perhaps as many functions to perform as it has been performing in the past.

MR. MOEUR: Who is the Vice Chairman of the Committee?

CHAIRMAN STONE: I don't think we have a Vice Chairman.

MR. MOEUR: I will address this to Mr. Bliss acting as Chairman: I would move, in view of the distinguished service that Judge Stone has given this Committee, we re-elect him until the next election, whenever it might be.

(Second.)

MR. BLISS: All in favor of the motion say "Aye".
(Thereupon a vote was taken and Mr. Moeur's motion carried unanimously.)

CHAIRMAN STONE: My little speech didn't do any good.

MR. VERNON: And that it be the sense of this group that you are not monopolizing the position.

CHAIRMAN STONE: If there is nothing further to come before the Committee, we shall stand adjourned subject to the call of the Chairman.

(9:35 p.m., Monday, September 15, 1952, meeting of the Colorado River Basin States Committee adjourned.)

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