PROCEEDINGS OF CONFERENCE
OF THE
COMMITTEE OF FOURTEEN
OF THE
COLORADO RIVER BASIN STATES

Held at Denver, Colorado

November 17 and 18, 1939
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<td>E. T. Stewart</td>
<td>Deputy Water Commissioner of the State of Arizona</td>
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<td>A. E. Chandler</td>
<td>Department of Water and Power of the City of Los Angeles</td>
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<td>G. W. Shute</td>
<td>Attorney for Colorado River Commission of Arizona</td>
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<td>F. H. Fowler</td>
<td>Consulting Civil Engineer, San Francisco, California</td>
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<td>A. W. McHendrie</td>
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<td>R. J. Tipton</td>
<td>Consulting Engineer, Colorado Water Conservation Board</td>
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<td>E. B. Debler</td>
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<td>George M. Corlett</td>
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<td>Honorable Joseph C. O'Mahoney</td>
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<td>Colonel W. T. Hammond</td>
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<td>Colonel Kelvin</td>
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<td>Captain Hardin</td>
<td>Office of Chief of Engineers, Washington</td>
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<td>Gray Mashburn</td>
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<td>Thomas M. McClure</td>
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<td>A. T. Hannett</td>
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<td>Honorable Ralph L. Carr</td>
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<td>Evan T. Hewes</td>
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<td>Alma M. Davis</td>
<td>Member of Colorado River Commission of Arizona, Mesa, Arizona</td>
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<td>Donald C. Scott</td>
<td>Arizona Colorado River Commission</td>
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<td>Grover A. Giles</td>
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<td>R. A. Richardson</td>
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<td>Frank C. Merriell</td>
<td>Secretary-Engineer, Colorado River Conservation District, Colorado</td>
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<td>E. W. Kramer</td>
<td>Regional Director, Federal Power Commission</td>
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<td>R. G. Hosea</td>
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<td>Mr. Dowd</td>
<td>Member of the Colorado Water Conservation Board, Grand Junction, Colorado</td>
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<td>Silmon Smith</td>
<td>Member of the Colorado Water Conservation Board, Durango, Colorado</td>
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<td>Judge John B. O'Rourke</td>
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<td>State Engineer of California</td>
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<td>Mr. De Baut</td>
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<td>Arvin E. Shaw, Jr.</td>
<td>Assistant Attorney General, Advisor of the California Colorado River Commission</td>
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<td>Mr. Whitman</td>
<td>Arizona</td>
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MEETING OF THE COMMITTEE OF FOURTEEN OF THE SEVEN STATES
OF THE COLORADO RIVER BASIN

NOVEMBER 17, 1939

ROOM 243 STATE CAPITOL BUILDING

DENVER, COLORADO

JUDGE STONE, CHAIRMAN: Meeting will come to order. We shall take
the appearances. If there are those who are appearing for absent members,
will they announce it. I have a letter from Mr. A. M. Smith of Nevada
stating that he has designated General Mashburn to act for him. I am sure
we are sorry to hear that Tom has had to undergo an operation and it is
impossible for him to attend this meeting.

The appearances are:

NEVADA:
    Gray Mashburn, Attorney General of Nevada
    Charles F. DeArmond, Resident Engineer, Colorado River Commission
    of Nevada

WYOMING:
    Perry W. Jenkins, Wyoming Conservation Board
    L. C. Bishop, State Engineer of Wyoming

NEW MEXICO:
    Thomas M. McClure, Secretary of Interstate Streams Commission
    A. T. Hannett, Attorney for the Interstate Streams Commission

COLORADO:
    Byron G. Rogers, Attorney General of Colorado
    Clifford H. Stone, Director, Colorado Water Conservation Board

CALIFORNIA:
    Lewis A. Hauser, California Colorado River Board
    Evan T. Hewes, California Colorado River Board

ARIZONA:
    Alma M. Davis, Arizona Colorado River Commission
    Donald C. Scott, Arizona Colorado River Commission

UTAH:
    Grover A. Giles, Deputy Attorney General of Utah
    R. A. Richardson, Member Water Storage Commission of Utah

Others present are:
    Frank C. Merriell, Secretary-Engineer, Colorado River Conserva-
    tion District, Colorado
    E. W. Kramer, Regional Director, Federal Power Commission
R. G. Hosea, Executive-Secretary, Colorado River Board of California
Mr. Dowd of California
Simmon Smith, Member of the Colorado Water Conservation Board
Judge John B. O'Rourke, Member of the Colorado Water Conservation Board
Mr. Lyons of California
Mr. Gray of California
Mr. Hiatt, State Engineer, State of California
Mr. De Baut of California
Arvin B. Shaw, Jr., Assistant Attorney General, Advisor of the California Colorado River Commission
Mr. Whitman of Arizona
Mr. La Fever of Arizona
Northcutt Ely, Department of Water and Power of the City of Los Angeles
E. T. Stewart, Deputy Water Commissioner of the State of Arizona
A. E. Chandler, Department of Water and Power of the City of Los Angeles
G. W. Shute, Attorney for Colorado River Commission of Arizona
F. R. Fowler, Consulting Civil Engineer, San Francisco, California
A. W. McHendrie, Arkansas Valley Ditch Association, Colorado
C. L. Patterson, Chief Engineer, Colorado Water Conservation Board
Mr. Farmer, Member Arizona Colorado River Commission
R. J. Tipton, Consulting Engineer, Colorado Water Conservation Board
C. C. Elder, Hydrographic Engineer, Metropolitan Water District of Southern California
E. B. Debler, Chief Hydraulic Engineer, Bureau of Reclamation, Denver, Colorado
J. C. Stevens, Water Consultant, National Resources Planning Board
Dr. B. M. Woods, Regional Chairman, National Resources Planning Board, Berkeley, California
Harlowe M. Stafford, Counselor for Region No. 7 of the National Resources Planning Board
George M. Corlett, Attorney-at-Law, Monte Vista, Colorado

JUDGE STONE: There are a few preliminary matters, gentlemen. I note there is no one here from the Reclamation Bureau at this meeting. Usually Mr. E. B. Debler attends. He has been called to Portland because of the death of his Father. I suggest we call Commissioner John C. Page who is now in Denver.

MR. BISHOP: I make a motion that he be notified.

MR. JENKINS: Second.

MR. ROGERS: Is this a suggestion for him to discuss or explain the attitude concerning the Boulder Canyon Project Adjustment Act?

JUDGE STONE: It may be that he will be willing to discuss it, and maybe he won't. I think, however, since we are meeting here and he is in the city, we should notify him of the meeting and give him our wish that
he might have a short time to attend this meeting.

The motion has been made and seconded; all in favor say "Aye."

Motion carried.

JUDGE STONE: The Chairman will designate General Rogers to contact Commissioner Page and when that is done I think it well to ask him whether or not he would like to have someone from the Bureau sit in on this meeting.

MR. TIPTON: Mr. Debler is back.

JUDGE STONE: I didn't know that. You all know that Senator O'Mahoney is also in Denver, and Mr. Jenkins is trying to reach him to ascertain whether he would like to be here at any time during the day.

MR. JENKINS: He is out of the hotel just at present but we have left word for him to call when he gets back.

JUDGE STONE: Byron, will you get in touch with Governor Carr? We hope to have Governor Carr make a few remarks. He is leaving at noon, but hopes he will be able to come up here for a moment.

Gentlemen, the agenda which was sent out included the following items:

1. Report of special committee on Bridge Canyon matter.
3. Consideration of any proposals.
4. Consideration which may be pending under plan of comprehensive development in the Colorado River Basin.

It occurs to me to take up the Jacobs-Stevens Report first. Do I understand, Mr. Tipton, that Mr. Stevens will be here?

MR. TIPTON: He is here.

JUDGE STONE: We are glad you are here, Mr. Stevens. Mr. Tipton, as chairman of the committee on the Jacobs-Stevens Report, is that committee ready to report?

MR. TIPTON: That will be ready after lunch. The report is ready, but is being typed.

JUDGE STONE: Mr. Giles, is the special committee on the Bridge Canyon matter ready to report?

MR. GILES: Yes. I will present the committee with copies of the report so they can follow as I read it.

JUDGE STONE: Are there other copies? May we have them for the other men.

MR. GILES: Judge Stone, Members of the committee and Visitors; As a
preliminary statement may I say that we have appreciated the fine spirit of cooperation that the Arizona representatives have shown in this work with this committee. We conceived our duty to be purely a professional duty as lawyers. We don't think it was the function of the sub-committee to suggest any policy to this committee concerning this matter; we have treated the problem purely as a legal question; the report is as follows:

"At the Phoenix conference on December 17, 1938, you directed the undersigned Subcommittee to consider the legal question whether the granting by the Federal Power Commission of the application of the State of Arizona for a preliminary permit for the Bridge Canyon Dam would result in the State of Arizona's being bound by the provisions of Section 13 (c), Boulder Canyon Project Act.

The application was filed by the State Land Commissioner of Arizona and was thereafter amended to substitute the Colorado River Commission of Arizona as the agency making the application on behalf of the State.

A. The first legal question considered is: Does the Colorado River Commission of Arizona have power, in the absence of ratification by the Legislature of Arizona of the Colorado River Compact, to effectively accept the provisions of the Compact as far as the Bridge Canyon project is concerned?

1. An Interstate Compact is both a law and a treaty. As a treaty it irrevocably binds a sovereign State and its rights and authority. As a law, it limits and governs the rights held and those to be obtained, by the people of the State, and creates duties to be observed by them.

2. The making of such compact is a legislative act of the highest order, especially authorized by the Constitution of the United States. It cannot be accomplished by the States. The added sanction of Congress is required.

3. The Constitution of Arizona reposes the legislative power in the Legislature.

4. A Legislature may constitutionally delegate to an administrative agency the power to "fill in details", within the framework of a policy or standards established by the Legislature. Power to ratify a compact is not of that character. Such power could not constitutionally be delegated, either to the State Land Commissioner or to the Colorado River Commission.

5. Accordingly a ratification of the Compact by either the Commissioner or Commission would not bind the State and would be void.

6. There is no substantial difference between
ratifying a compact and doing some other act, the automatic
effect of which is to bind the State or its rights by the
terms of the compact. The Legislature could not constitution-
ally delegate to a Commission or Commissioner the power to do
either.

7. Senate Bill 112, adopted by the 1939 Arizona
Legislature authorizes the Colorado River Commission "to claim
rights"; "to enforce existing rights and claims of the State";
"to make application for dam sites upon the Colorado River
and its tributaries and perfect the State's rights thereto
with any department of the State, or of another state or the
United States"; "to make appropriations of waters of the
Colorado River"; "to gather data" and "to discover potential
users of power and to encourage feasible enterprises" for
Colorado River power.

8. In our opinion, the Legislature did not intend,
by Senate Bill 112, to authorize the Commission to bind either
the State or its people by the Compact, for the express words
of authority in the Act look exclusively towards acquiring
rights for the State. There is no express mention of author-
ity to subtract from or limit the rights of the State or its
people.

9. Section 13 (c) Boulder Canyon Project Act,
specifically requires that any permit granted by the United
States "shall be upon the express condition and with the
express covenant" that the rights of the permittee shall
"be subject to and controlled by said Colorado River
Compact." Senate Bill 112 does not expressly give the
Colorado River Commission any authority to make covenants
imposing obligations upon the State. Nor is such author-
ity to covenant that the State is subject to the Compact
fairly to be implied from Senate Bill 112. The Arizona
Legislature has consistently and positively refused to
ratify the Compact, except upon a condition which has failed.

10. The application to the Federal Power Commission
does not contain any express consent of the Commission
or of the State of Arizona that the terms of Section 13
(c) shall be effective, nor has the State by any legislative
Act expressly consented to the imposition on it of the obli-
gations specified in Section 13 (c). Nor has the Legislature
ratified the compact as a whole.

We do not undertake to express any opinion as to
the legal effect of any such steps, if they should be taken
by Arizona. In view of the foregoing considerations, the
opinion of your Subcommittee is that the answer to the first
question stated in this report is "No."

B. A second legal question is embraced in the in-
quiry made of the Subcommittee, to-wit:
Whether, in view of the fact that the State of Arizona has not voluntarily consented to the Colorado River Compact, it is certain that the Congress can constitutionally impose the obligations of the Compact upon a sovereign State, by means of such a statute as Section 13 (c)?

We note for your information that, probably under the provisions of Section 10 (a) of the Federal Power Act, the Federal Power Commission has invited the Secretary of the Interior to express his opinion as to whether the Bridge Canyon Permit should be granted.

Section 10 (a) reads:

Sec. 10. All Licenses issued under this part shall be on the following conditions:

"(a) That the project adopted, including the maps, plans, and specifications, shall be such as in the judgment of the Commission will be best adapted to a comprehensive plan for improving or developing a water-way or water-ways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes; and if necessary in order to secure such plan the Commission shall have authority to require the modification of any project and of the plans and specifications of the project works before approval."

Section 7 (b) of the Federal Power Act provides:

"(b) Whenever, in the judgment of the Commission, the development of any water resources for public purposes should be undertaken by the United States itself, the Commission shall not approve any application for any project affecting such development, but shall cause to be made such examinations, surveys, reports, plans, and estimates of the cost of the proposed development as it may find necessary, and shall submit its findings to Congress with such recommendations as it may find appropriate concerning such development."

We are informed that on May 27, 1939, the Secretary of the Interior filed with the Federal Power Commission a recommendation which reads in part:

"The Bureau of Reclamation states under date of April 28, 1939, that:

"In order to secure the maximum benefits from the development of this site (Bridge Canyon) the reservoir should be operated in coordination with the Boulder Canyon Project, and other dams planned for ultimate development along the Colorado River in supplying future requirements for power, irrigation, silt and flood control
along the Colorado River."

"In view of the action taken by the representatives of the Colorado River Compact, (Denver meeting, March 15, 1939, asking six months further time for consideration of application) together with the fact that it is highly improbable that the desired results can be achieved by permitting the State of Arizona to develop the site for which reclamation withdrawal was made, it is the opinion of the Bureau that the Secretary of the Interior should recommend against the approval of the application at this time."

Secretary Ickes continued:

"The National Park Service states under date of May 3, 1939, that: 'This Service has taken the position that the Federal Power Act of 1935 (49 Stat., 838) prohibits the Federal Power Commission from issuing a license for a power project within the National Monument (Grand Canyon National Monument).

"This Service prefers, however, to oppose the granting of the license on another ground. When the National Monument was established in 1932, we were aware that the Bridge Canyon site would probably be used for the construction of a dam at some future time. Because of the background of experience in cooperation between the Bureau of Reclamation and this Service for the utilization of Government lands and waters of reclamation projects for the purposes of public recreation, we believe that the proposed dam, if constructed, should be constructed by the Bureau of Reclamation rather than by the State of Arizona.'"

The Secretary then concluded:

"In view of the foregoing I recommend that the application be not approved.

Sincerely yours,

Harold L. Ickes,
Secretary of the Interior

1. This question was partially answered in the case of Arizona vs. California, 283 U. S., 423, in which the Supreme Court held Sec. 13 (c) constitutional as against the particular contentions raised by Arizona in that case.

2. This Subcommittee cannot, in the absence of further authority, assure you that there are no possible constitutional questions which could be raised by Arizona which were not settled in the above mentioned case.
The Subcommittee, accordingly answers the second question stated above, "No."

Respectfully submitted,
November 17, 1939.

Grover A. Giles, Chairman
A. T. Hannett
Arvin B. Shaw, Jr.

Members of Subcommittee

JUDGE STONE: Thank you for the report. Gentlemen, Governor Carr of Colorado has come into the room. I think most of you know him; perhaps there are some who have not met him. He has been engaged so many years in water matters in which Colorado is interested that I presume all of you have had contacts with him.

Governor Carr, we should like to have you, if you will, say a word to the committee.

GOVERNOR CARR: I welcome you, that is my word.

(The governor stayed for a short while and then asked to be excused).

JUDGE STONE: You have heard the reading of the report on the Bridge Canyon matter of Mr. Giles; Chairman, Mr. Shaw of California and Governor Hannett of New Mexico.

MR. GILES: I will move its adoption.

JUDGE STONE: Motion has been made to adopt the report.

GOVERNOR HANNEr: I second it.

JUDGE STONE: The motion is now open for discussion. Do any other members desire to make any comment?

MR. SHAW: I think not.

GOVERNOR HANNEr: No, sir.

JUDGE STONE: The motion is open for discussion. Mr. Davis, I think it would be proper at this time for any complaint which the State of Arizona wishes to make on the matter.

MR. DAVIS: With your permission, we will ask our attorney to do that.

JUDGE SHUTE: I analyzed this report of the committee in the few minutes I have had to read it and considered it since Mr. Giles read it. I seem to analyze something like this: We don't want to have anything to do with Arizona until she ratifies the compact. As I view it, that is
the extent of this report, and probably, after all, Mr. Chairman, that report is well taken. During the short interval I have had in represent-
ing this commission and making my investigation, I have found there is a lot of dirt in the Colorado River not deposited by the stream. We have tried to get away from this thing down in Arizona because the present commission and those working with it have found if we don't get some place by cooperating, we can't get some place antagonizing everybody we come in contact with.

We are not going back home and spread the propaganda that Arizona is going to have this Compact thrust down her throat whether she likes it or not. The one way to fail is to try to tell somebody that he should do one thing or another. Rather, we would prefer going back to our state and saying to the people of that state, "Those people up there are willing to cooperate with us in every way they can, that we will cooperate with them, and we must, necessarily, if we expect to go anywhere with all the other six states of the Basin, cooperate to the extent of complying with the Compact."

Now you will notice from a reading of the report that Arizona did undertake to ratify the Compact, and I think right here and now is a good place to let each member of this committee and those visiting who have come from far and near know that the attempted ratification of this Compact which took place at the last legislature was not an attempt that did not have the help of the Arizona Commission at that time, and as I have ex-
plained since, the attempted ratification was brought about by individuals who really belong to other groups. That is probably why it was tied with a string. Now, after all that attempt was a bona fide attempt, it had a basis that had a lot of merit.

We do not believe we can go wrong if we stick to those terms of the Boulder Canyon Project Act, and we will stick to those terms, because the limits define the rights of Nevada, California and Arizona.

Our good friends from California don't approve of that reading in a way I do. I hardly approve of the action they took. That, however, is my private opinion and has nothing to do with the commission. In getting back to what I told you in the beginning, if you try to stick something down a man's throat, he is going to oppose it. Members of the committee of Arizona did attempt a bona fide act, ratifying the Compact, that it be ratified with California and Nevada.

I am in hearty accord with most everything that is in this report. I think the conclusions that are drawn there are right, largely. We have no authority to bind the State of Arizona on a ratification of a Compact. The Arizona Commission has no power to say to Arizona, "You have already entered this Compact," and to say that to Arizona would mean we would stir up the long political fight that has been raging. I do say this, I do not agree with this report that if Arizona makes an application for the dam site at Bridge Canyon, whether she be a state or whether she be an in-
dividual, makes no difference because the power act which controls these things has stated positively just what must take place when those ap-
lications are made, and among them is: "they must accept the conditions of the Colorado Compact when that application is made."
Now, I know the committee members are going to say to me, "Why, you wouldn't say for a moment that that would relieve the question of Arizona state rights in there and make her reduced to the position of an individual, would you?" I feel quite sure that that is what this committee would say to me. My answer to that must necessarily be, "I do not know." Because I don't. But from the examination which I have made of it, I am firmly of the opinion, legal opinion, that when Arizona makes an application for the Bridge Canyon Dam site to the Federal Power Commission, the terms of the Act under which the Federal Power Commission was created are just as binding upon Arizona as it is upon John Smith or Bill Jones although Arizona may never sign the Compact, because they are not related in anywise and have nothing to do with each other except what the Federal Power Act says: that when you make an application of that character you are bound by the terms of the Compact.

That seems to me to be in line with ordinary reasoning and at least keeps us outside of this situation and outside of this field that would plunge us immediately into a political contest in our state.

Now, I think that is all I desire to say here except this: The Arizona Commission are here now and expect to be here in the future, cooperating in every way that that commission can cooperate with other states and other members of that committee. We will do whatever you want us to do within the bounds of reason to get us by.

MR. DAVIS: There is one statement there by the National Park Service objecting.

JUDGE SHUTE: I don't know just where that National Park Service comes in. Mr. Scott tells me that this application and the water does not touch the National Park in any way, even when it is full; so there couldn't be very much to that question, it seems to me, and right along that line, down with us we have, I think we have somewhere around fifty-three to fifty-five percent of all of our immense areas, more than 113,000 square miles in Indian reservations, and steadily increasing in monuments.

MR. DAVIS: Seventy-two percent.

JUDGE SHUTE: Well, maybe, it was around fifty-five percent the last time I checked it, and we bitterly resent National Monument officials attempting to dictate to us when we should do something that we think is for the benefit of the people of Arizona, simply upon the ground that some department of the government ought to do it. It is just gradually eating us up, little by little, until finally we will find ourselves trotting back to Washington to consult some clerk in the City of Washington before we can do the simplest thing within our own state lines. I think that is all, gentlemen.

JUDGE STONE: Thank you, Judge Shute. I should like to remark that during all of these negotiations the members of this committee have been impressed by the fairness of the present Arizona commission, the members of which have sat in this Committee of Fourteen. They have shown in an unusual degree an attitude of cooperation.
As remarked by Mr. Giles, in introducing this report, the matters covered here are confined to legal considerations. Of course, the other six states all having signed the Colorado River Compact and their rights being defined by that Compact, we must, in order to protect those rights, consider these legal matters. The Compact, after all, is something like a constitution, where a river basin is involved, and I presume all those bound by that constitution are as jealous of it, and I should think rightfully so, as we are jealous of the provisions of our national constitution or state constitutions.

I presume there is not a member of this committee that would desire to take such action, or conduct the affairs of the committee in such a way, that we would impede rather than help the solution of the situation in Arizona where the present commission, if I understand that policy rightfully, is seeking to bring about ratification to overcome a condition which has existed there over many years. So this legal report covers what it was intended to cover, advice to the Committee of Fourteen on the legal questions involved.

Do others from Arizona desire to make further statements?

MR. DAVIS: It just occurs to me now that these objections that are raised in this report to the committee, it seems to me are objections rather to be presented to the Federal Power Commission to be effective rather than anyone else, and their legal counsel will have to decide as to whether or not this will prohibit them from granting the permit.

GOVERNOR CARR: If you will excuse me, pardon me Mr. Davis, I have to leave town. I would like to stay with you but I have to go. I kind of feel at home in this bunch. I feel as if I am among friends. Convey my regards to your Dad, Mr. Ely. Good by.

MR. DAVIS: What I had in mind was in this report of the committee in answer to the Federal Power Commission's request to the different states of any objection to this permit being granted and what objections the other states would have and so state it, and it seems to me as I get it now, now clarify me, Mr. Giles, if I am wrong, if Arizona signed the Compact this objection would not exist but it does exist until they do.

MR. GILES: From the legal standpoint.

GOVERNOR HANNETT: Not a matter of policy.

MR. DAVIS: Well then, this would result then in advice to the Federal Power Commission if they should look at it in the same way.

MR. GILES: I think perhaps I should say this to you, Mr. Davis, then if I am not right my associates can correct me. I said in the beginning that we are not attempting to suggest what this committee should say in its answer to your application. We were asked for advice on a legal question; we have answered that request. Now, whether this committee would take that position before the Federal Power Commission or not is a question before us now and, naturally, we have to answer your applications. I don't see anything in our report touching the merits of your application.
MR. DAVIS: Well, that is what I want to get at. Is this a stop sign?

MR. GILES: Well, I regard it as a sort of demur to your application.

GENERAL MASHBURN: As a matter of fact, you advise it.

MR. GILES: Yes, because you don’t think they are bound by any action that would be taken under present conditions.

MR. DAVIS: What we are particularly interested in at this time is what your answer will be to the Federal Power Commission when they ask you to state any objections to power permit and then what the different states are going to answer.

MR. GILES: I have no authority to answer that question.

JUDGE STONE: As I understand the question, Mr. Davis, when this matter was first discussed in the Committee of Fourteen the legal question of whether the other states would be protected in the absence of ratification by Arizona was injected into the discussion. At that time the members of the committee were not fully advised as to the legal status. They did not know how the granting of such a permit and the ultimate construction—possible ultimate construction of the project—would affect the other states in the absence of ratification by Arizona.

Not knowing that, this sub-committee was asked to advise this committee. Now the members of the Committee of Fourteen have this advice before them, and with this advice before them it is for the committee to determine whether or not the various states should oppose or decide not to oppose the application of Arizona. That is something for the committee to act upon at this session.

MR. DAVIS: This will be the answer to the question of the Federal Power Commission to the various governors, which has been transmitted back to this committee as to whether or not they have objections to the granting of this permit.

JUDGE STONE: In the meantime, time within which to make any objections has been extended. In other words, it has been the desire of this committee to cooperate to the fullest possible extent and, therefore, not take hasty action by just going in and opposing without full advice. There may be other considerations which enter into the decision of the committee, but so far as the legal matters are concerned we have the committee coming in and putting their advice before us.

MR. DAVIS: I want to clear up in the mind of this committee which is reporting here. Have they any recommendations to make on what should be done to this report?

JUDGE STONE: The motion has been made that the report be adopted and that motion has not been acted upon. That goes to the effect of receiving—of adopting—the report as being the advice as far as the legal matter is concerned.
Then the next question is whether in view of this legal advice what further action shall the states take, if any, with respect to approving or opposing the application of Arizona?

MR. DAVIS: May I ask Mr. Giles a question? Would you be willing to make the statement that if Arizona ratifies the Compact, your objections would not hold?

MR. GILES: I think I can say that definitely from a legal standpoint.

MR. DAVIS: Your view of the matter is there would be no objection.

MR. GILES: From the standpoint of law only. I wouldn't attempt to bind my state as to whether they should make objections to some other factor.

MR. DAVIS: As far as your committee is concerned the answer to these questions that when Arizona becomes signatory to the Compact would be "yes" instead of "no."

MR. GILES: That is right.

MR. SCOTT: May I ask Mr. Giles a question?

JUDGE STONE: Yes.

MR. SCOTT: In approaching this proposition, you approached it on the basis of, you might say, the standard form of Federal Power application is the granting of a standard form. Now then, would it be out of line for consideration to consider it on the basis of what rights or what power the Federal Power Commission, as a grantor of a license, would have in opposing such regulations which would be identical to the Boulder Canyon Project Act and the Compact? Would an approach like that be run contrary to your finding? In other words, have we voided all possibilities or have we come to a stalemate on this only as a ratification proposition?

MR. GILES: I think my associates and myself have got to take this position in this to be consistent to our report; there is no other door through which you could be bound. We don't think the Federal Power Act will assist you in any way, shape or form from our viewpoint. No matter what they might want to do.

MR. SCOTT: It wasn't to assist us. Now, can the Federal Power Commission, by their prerogative and right, impose certain rules and regulations upon a state, in connection with a power application? Now, if they would impose such rules and regulations upon this site that would satisfy you, would that be a possible approach in your mind—in your study?

MR. GILES: If we could as a matter of law say they have that authority, yes. But we don't think they have.

MR. SCOTT: It wasn't clear in my mind that you covered it. You covered it, as I understood it, with the commission's right to bind the state, but I feel that it is purely a legal question and I am getting out of my field. I am only anxious to clear this up in my own mind, and that
is to whether the Federal Power Commission has some power and right to impose regulations upon the state applying for such a permit?

MR. GILLES: I think that is true but we are dealing with a compact. An interstate compact is both a law and treaty. Now, we don't think that you can approach this question without considering this Compact. That is our position and since there is a compact in existence with six states signatory and only one other state involved and that is Arizona, we don't think you can approach anything on the river that would directly or indirectly effect our rights without you approaching it through the channel of our legislative bodies.

MR. DAVIS: May I interject this here? We would agree up to this point but your conclusion would have to be then that by the six states ratifying the Compact and the Boulder Canyon Project Act that Arizona is forever shut out until they do get ratification.

MR. GILLES: Oh no, I didn't say that.

MR. DAVIS: But, because we haven't signed the Compact we haven't surrendered any of our rights. We are talking about one thing as our legal rights there and it seems to me that you have overlooked that one thing, that Arizona hasn't been bound by the Compact, and, therefore, has not surrendered and Congress couldn't take it away because the Supreme Court has said that. It is our desire to get here and see all that entered in here, and I don't believe that you could support your stand there in the light of the Supreme Court decision already rendered that Arizona has not given up any rights from the fact she has not entered into the Compact, and before the Compact she had a right to file on this dam site. But that is the way we would like to solve it. Do I make myself clear there?

MR. GILLES: We expected you to take that position.

MR. DAVIS: You have stated part of the decision, the other part you have not taken into consideration.

GENERAL ROGERS: That is on the assumption that Arizona has an absolute right in everything of the water of the stream. Now that is a false assumption for the reason that Colorado, Arizona and New Mexico rights are based upon consideration of what are the rights of the other respective states. Now, if you had the river alone and there wasn't anything else within your premise, but you start with a false premise that Arizona has an absolute right or Colorado or any other state to all the waters of the stream.

MR. DAVIS: I wouldn't say that. Whatever rights before the Compact, we still have.

GENERAL ROGERS: That Compact is an attempt to have a concrete definition of those rights. Now, as Mr. Giles said, you neither have gained nor lost anything so far as the Compact is concerned.

MR. FARMER: Mr. Chairman, may I say a word?
JUDGE STONE: Yes, just a moment.

GENERAL ROGERS: Your right to use is an absolute right, it is based upon the right of the other states also. Now, the point that Mr. Giles says you neither gain nor lose anything but you didn't have the absolute right to begin with. Maybe that would clear this.

MR. JENKINS: I would suggest too that it appears that these gentlemen have some solution to this matter. They have some proposition they wish to make. Now, before we decide on the adoption of the report and close the matter, I would like to hear their proposition and then see whether there is any legal objections or whether we can get around the proposition.

JUDGE STONE: The members of the Arizona Commission who are here would like to get together and go over the matter before action is taken. Under those circumstances I shall entertain a motion to recess until 2:00 o'clock.

MR. DAVIS: Mr. Chairman, may I make a statement here? As I understood it the special sub-committee passed upon the legal question, but you have included something here which I don't see, the objections of the Park Service and the Bureau of Reclamation. Now, we object to those things because that is a matter of policy rather than legal question.

JUDGE STONE: So far as the adoption of this report is concerned it will be adopted as advice, it will be received and accepted only as being legal advice to the Committee of Fourteen to take such action as may be determined. That will merely be considered as advice to the committee.

GENERAL MASHBURN: May I, before we recess, say a word? As I understand your report here the report really ends about the middle of page four and the remainder of it is merely furnishing the committee information.

MR. GILES: That is right.

JUDGE STONE: The report will be so considered. The advice will include the legal questions as fully set out. The other matters, as General Mashburn points out, constitute information to the Committee of Fourteen. If the report is adopted, then it will be received and accepted as advice on the legal question. The matter of policy will have to be evidenced by further action.

We shall now recess until 2 o'clock this afternoon.

MR. TIPTON: Judge Stone, this technical committee, I would like to have them in five minutes before to sign the report.

Recess until 2:00 P.M.
Friday afternoon, November 17, 1939 - Committee of Fourteen, Denver, Colorado

JUDGE STONE: Gentlemen, the meeting will come to order. Now before we recessed at noon the gentlemen from Arizona asked that the commission from that state have an opportunity to discuss this Bridge Canyon matter. Do you have anything more, Mr. Davis, that you desired to discuss at this time?

MR. DAVIS: Yes, if I might make a statement, Judge. It puts us on the spot so I think about the best way is to lay it right on the table and show you what our position is. When this was brought up to the commission that our commission submit a brief to them giving our position in this matter, we find that that brief hasn't been mentioned in mere particulars or the items brought up in that and we find ourselves in a great divergence of opinion here with this report. Now then the first time we saw this was when it was put on the table this morning and that is rather a short time to really give an answer and for the rest of this committee to pass judgement on these things on such short notice. Now here is another point. We are rather concerned with this Committee of Fourteen and we are rather proud of it and we think the solution to the development of this basin will go through most effectively through the Committee of Fourteen, through reports and recommendations, etc. So there is no action we want to take at this time, Judge Stone, that would in any way detract from the word of the committee. We don't want to be in a minority so we are asking at this time and we hope you won't think it is just a stall, but inasmuch as this hasn't been mentioned and isn't the answer we would like, this is our suggestion, that this be referred back to them and that our attorney meet with them and see if they can't thrash out some of these things and get in accord with it, discuss it around the table, as it is a controversial matter, and see if they couldn't come back here with something to this committee when we have time to consider it.

Now then, there is another thing. There is one thing that we take violent objection to and that is where you quote the Park Service and the Bureau of Reclamation and the Secretary of Interior. We object to that vigorously. You said you have started out here considering the cold blooded legal position and if this goes through you are going to be confronted with it in the development of the river all the way down. Now, we may want to go to the Bureau of Reclamation with our problems but we don't want to be in the position where we would say that this Committee of Fourteen has said that the Bureau of Reclamation, in effect, is the only bureau to have anything to do with it. That dam site is in Arizona and there are certain benefits that should accrue to Arizona and we want to be in on it. We want to cooperate with the federal agencies and we appreciate their service and all that they have done, but we don't want to put ourselves in the position that the Federal Government can take unappropriated water and have title to it.

GENERAL MASBURN: You consider then, that portion of the report beginning on page four and continuing throughout the remainder
of the report, as an approval of the position taken by the Park Service and the Reclamation Bureau?

MR. DAVIS: We take it that that was one of the reasons why the states should object to us getting a permit.

GENERAL MASHBURN: My understanding is, that serves only one purpose and that is to inform this committee of facts and information that the committee has ascertained by the study of this proposition they have made as to the position taken by the Park Service and the Federal Power Commission in matters similar to that.

MR. DAVIS: Yes, but that isn't a matter of law. That is a matter of policy outlined by those departments.

GENERAL MASHBURN: I don't think that it is really a part of the report and should be considered a part of the report. They start out with the very first statement "We note for your information certain things" and apparently it is merely to inform the committee of the matters they have ascertained through their study.

MR. HANNETT: There is a question of law here also. Section 7B quoted on page 5 reading . . .

MR. DAVIS: Yes, but that is the Federal Power Commission. That is the law creating the Federal Power Commission but it isn't the quotation to which I referred.

MR. HANNETT: The Power Commission has absolute authority to reject any state or any individual application saying we prefer to do that ourselves.

MR. DAVIS: We are not objecting to the regulations of the Power Commission. We are making application under that law and we have to subscribe to all that.

MR. JENKINS: Is it your desire that this matter go over for the present time without making any particular action or do you want to take it up and discuss these points right now?

MR. DAVIS: That will be up to the committee. Our recommendation to you is this, that this be referred back to this committee and then with the request that they meet with our attorney and see if they can agree.

MR. HANNETT: If you make a motion to that effect, I will second it.

MR. JENKINS: You can amend the motion to adopt. If you want you can offer an amendment that it be referred back to the committee or you can offer a substitute motion if you wish.

JUDGE STONE: The motion has been made. If it is desired to withdraw the motion as made and consider this one, the member of the committee who made the original motion may do so.
MR. GILES: I can withdraw the motion?

JUDGE STONE: Do you desire to do so?

MR. GILES: Yes, in view of what has been said, I think that is the only course to take.

JUDGE STONE: Let the record show that the original motion is withdrawn. Now Mr. Davis, you have made a motion, as the Chair understands it, that this report be re-referred to the committee with the suggestion that this committee meet with the attorney for the Arizona Colorado River Commission and discuss the matter further.

MR. DAVIS: Further and see if they can bring back to this Committee of Fourteen a definite recommendation as to what the action of the committee shall be in the line with the law.

JUDGE STONE: Now it seems to me the question of bringing a recommendation is not proper because the question of policy will have to be passed upon by the Committee of Fourteen and I doubt whether the members of this committee will want to recommend as to policy. If they wish to do so, we would be glad to have them, but I take it that this is purely a legal matter and this committee is acting upon the legal phases. I thought it was your idea that some of these differences of opinion might be ironed out. Now if that is what is intended, then I think the motion should be limited.

MR. DAVIS: Let it so state that it be re-referred to the committee, asking that our attorney meet with them in working this out.

JUDGE STONE: Let's get the motion clearly. Let the record show that "It was moved by Mr. Davis and seconded by Governor Hannett that this report be re-referred to the sub-committee consisting of Mr. Giles, Governor Hannett, and Mr. Shaw, with the suggestion that these gentlemen meet with Mr. Shute, Attorney for the Arizona Colorado River Commission and attempt to iron out differences of opinion as to the legal phases". Is that it?

MR. DAVIS: And make further report to the Committee of Fourteen.

MR. McCLURE: How much time on the extension?

JUDGE STONE: Perhaps that should be considered. We will have to immediately make further request for additional time to the Federal Power Commission.

MR. DAVIS: Judge Stone, I think -- but didn't that run up until January 1?

MR. SHAW: It extends time only to December 6.

JUDGE STONE: Is that correct? You may be right about that.

MR. DAVIS: They were to report this to the committee on January 1.
JUDGE STONE: I heard something to that effect that their records show that.

MR. DAVIS: They report and you can set the time for the next meeting subject to your call.

MR. JENKINS: Mr. Chairman, to straighten out the record, this committee was merely a committee to bring in information regarding phases of the law, without any recommendation for action on the part of the committee: and so we can continue them for gathering more information. There are no recommendations now in this.

JUDGE STONE: It wasn't intended. It was merely advisory in its character to this committee.

MR. HANNETT: It was intended to be a committee advisory.

JUDGE STONE: In order to have an understanding, the Chair rules that the functions of the special sub-committee were advisory in character and intended to consider and submit a legal opinion. Did the committee so understand it? I take it it did because of the nature of the report.

MR. GILES: That is right, Judge Stone.

JUDGE STONE: Very well then, I would like to make this comment. I suppose, Mr. Davis, that because of the situations in Arizona which have heretofore been explained by you and others from that state, there is some possibility while this matter is pending that this question of compact ratification may be worked out.

MR. DAVIS: That is one of the things, Judge Stone, but more than that it was to get the right answer to it and we don't feel that we can take snap judgment on this and answer this here. We are not in accord with it, we don't want to accept or reject it at the present time, but we certainly are not in accord with those legal opinions at the present time; and we can see that if we take that stand it is going to embarrass the Committee of Fourteen and we don't want to do anything of that kind. We want to work in full cooperation and harmony with this committee. We think it should go through this committee right down the line in order that we won't have any condition arising here that is going to be controversial to the extent to divide the committee and weaken its power.

GENERAL MASBURN: It seems to me that the sub-committee has done a very fine piece of work here. I appreciate the information you have given us.

JUDGE STONE: Are you ready for the question?

MR. HAUSER: I would like to ask this for a point of information. I assume there is going to be no possibility of the Committee of Fourteen meeting prior to the date of December 6. The question before the committee at the present time is of re-referring the subject matter back to the sub-committee. Now I understand that at this meeting we
were going to take up the question of what position we were going
to take as a Committee of Fourteen before the Federal Power Commission
in regard to this application and naturally it seemed to me to be in
order here that we have some understanding as to whether Arizona was
going to join with the other states in asking for a postponement or
continuance of their application before the Federal Power Commission.

MR. DAVIS: In answer, that is up to the Committee. We are part
of the committee whatever it decides.

JUDGE STONE: If this motion should carry, I take it that Arizona
would join with the other states in asking for further time?

MR. DAVIS: Certainly.

JUDGE STONE: Within which to file protests. With that understand-
ing then, gentlemen, are you ready for the question? Those in favor
indicate the same by saying "Aye". Those opposed "Nay".

The motion is unanimously carried.

Now the next question is, what time should we ask to be granted --
what further time do we need in this matter. Six months?

MR. DAVIS: What would you suggest, Judge? Here is the position
we are in. The Federal Power Commission asked the governors of these
various states if they had any objections, and then it was presented
in this way that it could be discussed. Now we don't like to arbi-
trarily say give us more time and more time. How long would you
suggest?

JUDGE STONE: First I want to say, and I think all of you will
join with me, that the report indicates some careful legal study and
I feel that this committee has really gotten down to considering this
matter. Now it involves some further discussions with your attorney,
I think as to the time which should be allowed, that hinges on two
questions. How much more time to accomplish the purpose of this mo-
ton will this committee require? The other is that we shouldn't
leave it for this committee to meet again too soon. I take it that all
of you are busy and we shouldn't have any more meetings than are abso-
lutely necessary. So what does the committee think about it?

MR. GILES: I don't know how the affairs of these other gentlemen
are now, Judge Stone, to take this matter up right away. Are you in a
position to say when you can meet on this matter?

MR. HANNETT: I am tied up but I could meet sometime in December
or later.

JUDGE SHUTE: Of course that depends largely on just where we
meet and attempt to get together. I am pretty well filled up for the
next thirty days, but any time that the other members of the committee
could arrange it I think I could arrange to meet.
MR. SHAW: I live in Pasadena and we have a football game in the Rosebowl on January 1.

JUDGE STONE: As far as the chairman is concerned in calling the meeting, I like to meet the convenience of the various members. Now would it be the opinion that we should allow six months to have this worked out and have another meeting or should it be disposed of sooner than that?

MR. SHAW: I suspect, Mr. Chairman, it can be disposed of sooner than that. I also suspect that it is possibly annoying to the Power Commission and possibly inconvenient for this committee to meet within a short limit of time. A time limit doesn't do any harm. If you cut the limit too short you may force yourselves into a meeting that will not be convenient.

JUDGE STONE: That was the thought I had in mind. Mr. Kramer, could you give us any indications? We have had very fine cooperation from the Power Commission in granting extension of time. Do you think that a further request would be the proper thing under the circumstance?

MR. KRAMER: I think that the request coming from the applicant as well as from the committee, that our commission would see no reason why the extension could not be granted. Of course, I can't talk authoritatively on that. Does that answer the question?

JUDGE STONE: Yes. Then I will entertain a motion.

MR. JENKINS: If you consider, say six months, it is a year from January the next regular meeting of the legislature and if we extend it on to that time we would have this question settled.

JUDGE STONE: Well, there is a question of whether this whole thing should slumber.

MR. JENKINS: If they wish it to slumber, I would be in favor of letting it rest in peace.

JUDGE STONE: Well, the Chair will entertain a motion, gentlemen, as to the time.

MR. JENKINS: I suggest that Arizona make the motion.

MR. GILES: I was going to move that there be a joint request made by the Committee of Fourteen and Arizona as the applicant to the Federal Power Commission for an extension of time for at least six months.

MR. DAVIS: What comes to me, if you could make that -- if you can get that in six months, that is fine. If you want more time for the Committee of Fourteen to meet, they would almost have to meet to get an extension of time; there isn't anything to prevent us from disposing of this at the next meeting. Could you set the time within a certain period? It doesn't make any difference, just so it is ample time, and then meet as soon as you can.
JUDGE STONE: Will you accept twelve months as substitute for six months?

MR. GILES: I would accept that.

MR. DAVIS: You as Chairman can call a meeting.

JUDGE STONE: Yes, we will probably meet before a year passes by, but it just seems that while we were making an application it might be advisable to make it a year.

MR. GILES: I will amend the motion.

JUDGE STONE: The motion is that a joint request of the Committee of Fourteen ... 

MR. KRAMER: I was going to suggest, Mr. Chairman, that the extension application to the Commission be made for six months and then if that was not found a long enough time, a second application be made. I think they would not like to see it about too long. It would be in the nature of a withdrawal if made much longer.

JUDGE STONE: Your suggestion is good. The Chair will put the motion. It has been moved and seconded that joint requests be made by the Colorado River Basin Committee of Fourteen and the State of Arizona for an extension of time of six months, such application being made to the Federal Power Commission, it being understood that this request covers the granting of a six months further time within which the several states make protest.

GENERAL MASHBURN: That is six months additional, if necessary.

JUDGE STONE: No, covering just the straight six months from December 6.

MR. DeARMOND: I would suggest that the Chair be authorized if it is found impossible to apply for a second extension of six months and then it wouldn't be necessary to call the committee together again. I want to amend the motion.

GENERAL MASHBURN: Second.

JUDGE STONE: Then moved that the motion be amended to provide that the Chairman be authorized to ask for an additional six months of time if it seems advisable and necessary.

Question is on the original motion. Those favoring, indicate by the usual sign. Opposed. The motion is carried.

We will vote now on the original motion. Those in favor indicate by the usual sign. Opposed. The motion is carried.
JUDGE STONE: We now reach the Jacob-Stevens Committee. Mr. Tipton, are you ready to report?

MR. TIPTON: Yes, sir. It just came back from the mimeographers. The committee has not yet signed any of the copies. I am assuming the committee will sign the report.

JUDGE STONE: It has been suggested and the chair will allow such time that when the sub-committee makes the supplemental report that a copy be sent to each member of the Committee of Fourteen so that you will have a chance to study it.

MR. TIPTON: Mr. Chairman, Gentlemen. Before I read the report, I want to express the appreciation of the committee to the various agencies and individuals who helped in this work. That includes the Bureau of Reclamation, Imperial District, Yuma District, Mr. Foster of the Bureau of Reclamation who furnished two guides to guide the committee over the Yuma and California area, Mr. Hewes and Mr. Dowd who took us over the lower Rio Grande area, Mr. Stevens, co-author of the Jacob-Stevens Report for being available at all times to meet with the committee and coming all the way from Portland to Yuma to do it. I was remiss in not inviting Mr. Jacobs to do likewise. I want the committee to understand that this technical committee was in communication with Mr. Jacobs during the review of this report.

The report of the committee is as follows:
On September 2, 1937 the Acting Secretary of the Interior wrote the following to the Secretary of State:

"In your letter of June 22, 1937, you requested this Department to designate two outstanding engineers to prepare a confidential report on the water supply of the Colorado River for your guidance in negotiating a treaty with Mexico. Arrangements have been made to designate Mr. John C. Stevens of Portland, Oregon, and Mr. Joseph Jacobs of Seattle, Washington, for this purpose."

The Secretary of State outlined the scope of the proposed investigation on September 13, 1937 as follows:

"It is my opinion that the object of the report may best be realized by including in the scope of the report quantities of water available at the international boundary in terms of annual usable acre-feet, (1) under existing developments, (2) upon completion of projects now in progress, and (3) under planned future development, giving consideration to probable future cycles of run-off and other hydrological factors."

Messrs. Jacobs and Stevens, as a result of the above, prepared a report on the "Amount of surplus waters in the Colorado River System after providing for requirements in the United States under varying conditions as to the extent of cultural development in different sections of the Basin". The report consisting of 291 pages of text, maps, and tables, 54 pages of which constitute the main body of the report, was transmitted to the Secretary of the Interior on January 20, 1938.

The authors estimated ultimate surplus waters of the Colorado River based on two assumed schedules of water use in the United States. Schedule A was based upon full development in the Upper Basin as visualized by the authors from present information concerning potential feasible projects and arable lands, together with the development of what the authors considered to be all feasible projects in New Mexico, Arizona, Nevada and Utah. California has set up seven priorities to the Colorado River water. Schedule A assumed that water will be utilized by all of these priorities except the seventh, which is indefinite.

Under Schedule B water uses in the basin were assumed to be in accordance with the "primary" allocation of water made by the Colorado River compact involving a consumptive use of 7,500,000 acre-feet in the Upper Basin and 8,500,000 acre-feet in the Lower Basin, or a total of 16,000,000 acre-feet. Under Schedule B the uses assumed by the authors in the Lower Basin are below those assumed in Schedule A. Potential uses in the Lower Basin which were eliminated by the authors under Schedule B were certain units of the Colorado Indian project, and several small projects in Nevada and Arizona. The Gila project was reduced to 450,000 acres and California uses were limited to the first four priorities, plus 302,000 acre-feet of the fifth priority.
Under the above assumptions the authors concluded ultimate conditions in the basin would be as follows:

<table>
<thead>
<tr>
<th>Number</th>
<th>Item</th>
<th>Unit</th>
<th>Schedule A</th>
<th>Schedule B</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Upper Basin - Irrigated &amp; arable areas</td>
<td>acres</td>
<td>2,650</td>
<td>500</td>
</tr>
<tr>
<td></td>
<td>Population</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Stream depletion</td>
<td>A.F.</td>
<td>6,348</td>
<td>7,500</td>
</tr>
<tr>
<td>4</td>
<td>Lower Basin - Irrigated &amp; arable areas</td>
<td>acres</td>
<td>1,816</td>
<td>1,160</td>
</tr>
<tr>
<td></td>
<td>Population</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Stream depletion</td>
<td>A.F.</td>
<td>9,074</td>
<td>8,500</td>
</tr>
<tr>
<td>7</td>
<td>Colorado Sys--Irrigated &amp; arable areas</td>
<td>acres</td>
<td>4,486</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Item in U.S.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Population</td>
<td></td>
<td>1,660</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Stream depletion</td>
<td>A.F.</td>
<td>16,397</td>
<td>16,000</td>
</tr>
<tr>
<td>10</td>
<td>Virgin runoff at Upper Boundary</td>
<td>A.F.</td>
<td>17,850</td>
<td>17,850</td>
</tr>
<tr>
<td>11</td>
<td>Unregulated surplus to Mexico</td>
<td>A.F.</td>
<td>1,453</td>
<td>1,850</td>
</tr>
<tr>
<td>12</td>
<td>Correction for storage</td>
<td></td>
<td>479</td>
<td>406</td>
</tr>
<tr>
<td>13</td>
<td>Regulated surplus to Mexico</td>
<td></td>
<td>1,932</td>
<td>2,256</td>
</tr>
<tr>
<td>14</td>
<td>Return flow below Upper Boundary</td>
<td></td>
<td>263</td>
<td>263</td>
</tr>
<tr>
<td>15</td>
<td>Regulated surplus at Upper Boundary</td>
<td></td>
<td>1,669</td>
<td>1,993</td>
</tr>
</tbody>
</table>

Runoff at Boundary Resulting from Return Flow Below, and Necessary Releases at Imperial Dam

<table>
<thead>
<tr>
<th>Date</th>
<th>Release</th>
<th>Unit</th>
<th>Schedule A</th>
<th>Schedule B</th>
</tr>
</thead>
<tbody>
<tr>
<td>16</td>
<td>Releases for desilting operation at Imperial Dam</td>
<td>A.F.</td>
<td>387</td>
<td>357</td>
</tr>
<tr>
<td>17</td>
<td>Net return flow between Imperial Dam and Upper Boundary, from irrigation</td>
<td>A.F.</td>
<td>935</td>
<td>637</td>
</tr>
<tr>
<td>18</td>
<td>Minimum surplus at Upper Boundary</td>
<td></td>
<td>1,322</td>
<td>994</td>
</tr>
<tr>
<td>19</td>
<td>Return flow below Upper Boundary</td>
<td></td>
<td>263</td>
<td>263</td>
</tr>
<tr>
<td>20</td>
<td>Minimum surplus reaching Mexico</td>
<td></td>
<td>1,585</td>
<td>1,257</td>
</tr>
</tbody>
</table>

The source of the minimum surplus reaching Mexico is summarized in the following tables:

<table>
<thead>
<tr>
<th>River Section</th>
<th>Desilting Water acre-feet</th>
<th>Irrigation Return acre-feet</th>
<th>Total acre-feet</th>
</tr>
</thead>
<tbody>
<tr>
<td>From Imperial Dam to Baja California Boundary</td>
<td>387,000</td>
<td>935,000</td>
<td>1,322.00</td>
</tr>
<tr>
<td>From Baja California boundary to Sonora Boundary</td>
<td>0</td>
<td>117,000</td>
<td>117,000</td>
</tr>
<tr>
<td>Below Sonora Boundary</td>
<td>0</td>
<td>116,000</td>
<td>116,000</td>
</tr>
<tr>
<td>Totals</td>
<td>387,000</td>
<td>1,198,000</td>
<td>1,585,000</td>
</tr>
<tr>
<td>River Section</td>
<td>Desilting Water acre-feet</td>
<td>Irrigation Return acre-feet</td>
<td>Total acre-feet</td>
</tr>
<tr>
<td>-------------------------------------</td>
<td>---------------------------</td>
<td>-----------------------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>From Imperial Dam to Baja</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>California Boundary</td>
<td>357,000</td>
<td>637,000</td>
<td>994,000</td>
</tr>
<tr>
<td>From Baja California Boundary to Sonora Boundary</td>
<td>0</td>
<td>117,000</td>
<td>117,000</td>
</tr>
<tr>
<td>Below Sonora Boundary</td>
<td>0</td>
<td>116,000</td>
<td>116,000</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td>357,000</td>
<td>900,000</td>
<td>1,257,000</td>
</tr>
</tbody>
</table>

The authors list five major contingencies or possibilities that may affect their conclusions respecting conditions at ultimate development, as follows:

(a) It is possible that the water at Imperial Dam will be so relatively free of silt as to require less desilting water than has been assumed. This would operate to decrease the boundary surplus.

(b) If, for any reason, the final units of the Gila project were not built, and the water supply intended therefor were diverted for uses outside the basin, then the return flow from those units would not materialize and the boundary surplus would accordingly be reduced.

(c) The possibility that a longer stream flow record will show a reduced mean annual yield of the Colorado River from that of the present record. This would cause an accordant decrease in the boundary surplus. If the future showed an increase in mean annual yield of the river, that increase would be mainly absorbed in projects in the United States and the boundary surplus would probably not be materially increased.

(d) Should the physical possibility of recovering all, or any portion, of the releases at Imperial Dam and the return flow between Imperial Dam and the boundary, be actually exercised for further service of projects in the United States, to that extent would the boundary surplus be reduced.

(e) Should radically changing conditions warrant irrigation expansions and more extensive transmountain diversions in the Upper Basin than now appears practicable on the economic horizon prior to 1965, to that extent will the potentialities in the Lower Basin be curtailed and the boundary surplus reduced.

The authors also qualify their conclusions with respect to that portion of the estimated minimum surplus reaching Mexico which consists of return flow water by the following statement:
"It will of course be physically possible to recover a considerable portion of the minimum surplus of either schedule for use in the United States but the desirability of, or the necessity for, that procedure is questionable; first, from economic considerations, and second, as a matter of expediency, as it would deprive Mexico of her only dependable source of supply in the ultimate period."

The authors further state that:

"The problem is not easy of solution, nor does it lend itself to simple, unqualified answers. There are, in fact, several answers, depending upon unavoidable varying possibilities as to the final extent of feasible projects, and the limit of future water usage in the United States, in the light of Colorado River Compact allocations; upon the water rights priority; upon the assumptions to the dependable of relatively short stream flow records as an index to future run-off; and upon the extent of necessary water releases at the Imperial Dam for silt control and how these releases may change in the future."

Summaries of the Jacobs-Stevens report were made available to each of the seven states during the spring of 1938 and a mimeographed copy of the full report was made available in the fall of that year. Representatives of each state made some study of the report and it was discussed from time to time by the Colorado River basin Committee of Fourteen. At the meeting of that committee in Los Angeles on June 5, 6, 7, 1939 a technical committee was created to review the Jacobs-Stevens report and report back to the Committee of Fourteen.

Appointments were made to the committee, as follows:

<table>
<thead>
<tr>
<th>STATE</th>
<th>COMMITTEE MEMBER</th>
<th>OFFICIAL POSITION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arizona</td>
<td>Donald Scott</td>
<td>Member, Colorado River Commission</td>
</tr>
<tr>
<td>California</td>
<td>C. C. Elder</td>
<td>Hydrographic Engineer, Metropolitan Water District</td>
</tr>
<tr>
<td>Colorado</td>
<td>R. J. Tipton</td>
<td>Consultant, Water Conservation Board</td>
</tr>
<tr>
<td>Nevada</td>
<td>C. F. DeArmand</td>
<td>Member, Colorado River Commission</td>
</tr>
<tr>
<td>New Mexico</td>
<td>Thomas M. McClure</td>
<td>State Engineer</td>
</tr>
<tr>
<td>Utah</td>
<td>Thos. H. Humphreys</td>
<td>State Engineer</td>
</tr>
<tr>
<td>Wyoming</td>
<td>L. Clark Bishop</td>
<td>State Engineer</td>
</tr>
</tbody>
</table>

Since its appointment, four members of the committee have prepared memoranda on the Jacobs-Stevens report; the committee has held five meetings; and has visited the Colorado River area lying below the Imperial Dam, including the proposed Gila project, the Yuma project, and the area irrigated in the delta region in Lower California. During the time the committee was in the Yuma area, Mr. Stevens, co-author of the report, met with the committee and discussed the conclusions contained in the report and other matters pertaining thereto.
While in the authors' report there are visualized conditions during four stages of development, namely virgin, present (1937) early (about 1950), and ultimate (approximately 2,000), only the conclusions of the authors with respect to the ultimate stage of the development have been reviewed by the committee.

The authors found also that the opportunities for the beneficial use of water in the United States are such as ultimately to require the entire dependable supply. This conclusion is covered by the following statement:

"It is obvious from this study that the United States can beneficially use all the water of the Colorado River that can be made available to it."

Contingency (c) as outlined by the authors implies the same conclusion. This being the case, the major matter which required consideration by the committee was probable conditions obtaining below the Imperial Dam under ultimate development of the basin. While there were a number of conclusions reached by the authors with respect to uses of water above that point in the two basins with which the committee did not agree, yet those differences are not set forth in this report since the only question is the amount of usable water that will be available to Mexico under ultimate conditions.

The main items, therefore, that were considered were the amount of desilting water incident to Imperial Dam operations that would be available to Mexico, and the amount of return flow reaching the river below Imperial Dam that from practical considerations would be unusable in the United States.

The following are the conclusions and recommendations of the committee, resulting from its review of the report, its visit to the Yuma area, and the knowledge of individual members of the Committee, some of whom have been connected with Colorado River matters for many years.

The conclusions relate only to the Jacobs-Stevens report. The committee considered it beyond the scope of the instructions to it to comment on probable bases for treaty negotiations with Mexico with respect to Colorado River water, or to express any opinion as to the amount of water which might be ceded to Mexico, or the manner of its delivery.

CONCLUSIONS

1. The report represents an excellent compilation of available basic data with respect to stream flow, irrigated lands, and present and proposed projects in the Colorado River basin. This is considered by the committee to be the best and most up to date compilation of such data available.

2. The report shows that there is opportunity in the United States to utilize all the water of the Colorado River and that the only water
reaching Mexico in the absence of a treaty providing otherwise will be
unused return flow, desilting water, regulation return below the Imperial
Dam, and unregulated flood flows. This conclusion by the authors is con-
curred in by the Committee.

3. Of the minimum surplus reaching Mexico under Schedule A, which
the authors conclude to be 1,585,000 acre-feet per annum, 387,000 acre-
feet consists of releases for desilting operation at Imperial Dam, and
1,198,000 acre-feet represents return flow below Imperial Dam and above
the Lower Boundary.

Under Schedule B, of the 1,257,000 acre-feet concluded by the
authors to be the minimum surplus reaching Mexico, 357,000 acre-feet
consists of water released for desilting operations at Imperial Dam,
and 900,000 acre-feet of return flow between Imperial Dam and the Lower
Boundary.

In the opinion of the committee contingency (a), as outlined by the
authors, has become an actuality. The committee concludes that there
will be no dependable supply for Mexico from desilting operations at
the Imperial Dam. The water reaching Imperial Dam already is relatively
free of silt. There is insufficient silt in the water properly to seal
the All-American Canal. It is understood that the sixteen-mile reach
of the canal which lies above the Yuma project is to be lined with a
layer of clay. The silt problem has changed rapidly to a sand problem,
due to the gradual regrading of the river bed. In the opinion of the
committee the river bed will become so stabilized that the silt and sand
problem will be nominal and the water required for desilting or sluicing
purposes will reach the boundary so irregularly and in such varying
amounts to make it largely unusable.

4. The major portion of the return flow assumed to reach Mexico
under both schedules is assumed to originate on the Gila project. If
the quality of this water is satisfactory for agricultural use the com-
mittee concludes that a substantial part of it can be, and will be, used
in the United States, in the absence of a treaty providing otherwise.
The application of water to the higher lands of the Gila project in the
San Cristobal and Palomas valleys (see attached map) will result in con-
siderable return flow which from practical considerations will be usable
in the lower portions of the Gila project (Desert unit), providing the
saline content is not sufficient to make it unsuitable for irrigation
purposes. It is believed that means will be provided for the use of
this water by gravity, thereby reducing the total amount of water pumped.
This return also can be easily made usable by the All-American Canal by
means of a pumping plant at Yuma with a lift of about 34 feet.

It should be noted that the authors recognized the use of this re-
turn flow in the United States as a possibility, stating, however, that
such use might not be expedient, since it would deprive Mexico of her
only dependable supply. The Committee concludes that the authors went
beyond the directed scope of their investigation when they arrived at
this conclusion. The matter of expediency is one which rests with the
states and the Federal Government, and one which should not have been
considered in the report.
5. It is concluded that sufficient data were not available to justify the conclusion of the authors that the ultimate consumption of water in the Upper Basin will be 6,348,000 acre-feet under Schedule A. It is significant that a small increase in the assumed unit consumptive use in the Upper Basin would raise the total from 6,348,000 acre-feet to the 7,500,000 acre-feet allocated by the Colorado River Compact to the states of the Upper Basin. Transmountain diversion projects which would have been considered infeasible 20 years ago have been approved and financed, and in some cases are now under construction. It is difficult to forecast what will be economically feasible sixty years from now.

6. Under Schedule B the authors assume a consumptive use of 7,500,000 acre-feet of water per year in the Upper Basin and 8,500,000 acre-feet of water in the Lower Basin, in accordance with the "primary" allocation of water by the Colorado River Compact. The authors then assume that all water in excess of the 16,000,000 acre-feet involved in the "primary" allocation will be available for use of Mexico. The committee believes this assumption to be erroneous in that the Colorado River Compact provides that:

"Article III
(a) There is hereby apportioned from the Colorado River system in perpetuity to the upper basin and to the lower basin, respectively, the exclusive beneficial consumptive use of 7,500,000 acre-feet of water per annum, which shall include all water necessary for the supply of any rights which may now exist.

(b) In addition to the apportionment in paragraph (a), the lower basin is hereby given the right to increase its beneficial consumptive use of such waters by 1,000,000 acre-feet per annum.

(c) If, as a matter of international comity, the United States of America shall hereafter recognize in the United States of Mexico any right to the use of any waters of the Colorado River system, such waters shall be supplied first from the waters which are surplus over and above the aggregate of the quantities specified in paragraphs (a) and (b); and if such surplus shall prove insufficient for this purpose, then, the burden of such deficiency shall be equally borne by the upper basin and the lower basin, and whenever necessary the States of the upper division shall deliver at Lees Ferry water to supply one-half of the deficiency so recognized in addition to that provided in paragraph (d).

(f) Further equitable apportionment of the beneficial uses of the waters of the Colorado River system unapportioned by paragraphs (a), (b), and (c) may be made in the manner provided in Paragraph (g) at any time after October 1, 1963, if and when either basin shall have reached its total beneficial consumptive use as set out in paragraphs (a) and (b)."

Since there is no treaty at present providing for delivery of water to Mexico, it should not be assumed by anyone that the total water supply
in excess of the primary allocation by the Compact of 16,000,000 acre-feet would be available to Mexico.

7. With the information available at present and the uncertainties surrounding the problem, all of which were fully recognized by the authors, the committee concludes that it is not possible at this time to forecast the dependable supply of water that ultimately will be available to Mexico, in the absence of a treaty stipulating that amount.

RECOMMENDATIONS

The committee recommends the following:

1. That further consideration of this matter be deferred at least until the current comprehensive investigation of the Colorado River Basin being conducted by the Department of the Interior is completed.

2. That suggestions be made to the State Department that it initiate a continuing investigation of uses of Colorado River water in Mexico, and allied matters. Such an investigation should include a determination of past uses and areas of irrigated and irrigable lands, and present uses and areas. The study should be continuing so that data at all times will be up to date.

3. That the State Department, in cooperation with other appropriate agencies, be asked to make such ground water studies and additional stream flow measurements as are necessary to a determination of river gains and losses below the Imperial Dam.

4. That the United States Bureau of Reclamation be asked to make such measurements as are necessary accurately to account for all the water diverted to the Yuma project, so that consumptive use by, and return flow from, the area can be determined. This will provide a guide for future estimates of consumptive use by and return flow from the irrigated area, tributary to the river between Imperial Dam and the lower boundary.

Respectfully submitted,

L. Clark Bishop
C. F. DeArmand
C. C. Elder
T. H. Humphreys
T. M. McClure
Donald Scott
R. J. Tipton, Chairman
MR. TIPTON: I want to explain that Mr. Humphreys did not meet with the committee during its meeting this last two days. He did have a rough draft. I talked to him in Salt Lake and he said the report was satisfactory and he would sign it as prepared.

JUDGE STONE: Does anyone have any questions?

MR. TIPTON: There is the one correction on the last page, the reason for striking the last sentence, it is the opinion of the committee although not expressed in this report since we stated we were considering the conclusions of the Jacobs-Stevens report, that if and when treaty negotiations are started with Mexico, the basis for allocation of water will not be on any such report as the Jacobs-Stevens report, or similar report; it will not be based on the amount of water that Mexico naturally would get under ultimate conditions. It would be based on other considerations and rights, international, and water they have used, so we feel such a report as this, to discuss it in light of treaty negotiations is more or less academic, and the study will be valuable for other reasons and will probably . . .

MR. DOWD: In your recommendations, the first one, that further consideration of this matter be deferred until the comprehensive . . . etc., do you mean further consideration of this Committee of Fourteen or by the Department of State in negotiating the treaty?

MR. TIPTON: By the surplus that would ultimately reach Mexico. Consideration of the matter of negotiating a treaty with Mexico. It might be forced on the Committee of Fourteen.

MR. DAVIS: The surplus of water to Mexico naturally available?

MR. TIPTON: Yes, or any other.

MR. JENKINS: Isn't it by the Colorado River compact matter that it should be deferred until October 1, 1963 because if at that time there is found to be any further allocation of water, a readjustment is to be made?

MR. TIPTON: I think maybe we don't make that quite clear. We are recommending here that any further consideration of the matter of the amount of water that naturally would be available to Mexico under ultimate conditions be deferred, at least until complete investigations have been completed.

MR. JENKINS: But if when that date arrives, will the Colorado River Compact determine what is left?

MR. TIPTON: I think long before that time Mexico will have been ceded some water. Whether it is out of supplemental water or priority allocation, it might well be, it will be 1963 before they can be determined. But long before that there will be some water ceded to Mexico.

MR. JENKINS: Well in the Compact it says further equitable appropriation may be met in the manner prescribed in Paragraph G any time
after October 1963 if and when the basin shall have reached its beneficial consumptive use set out in Paragraphs A and B.

MR. TIPTON: This is the consideration of how much supplemental water will be available down there in spite of the United States' use.

JUDGE STONE: Any further questions?

MR. TIPTON: The committee would be glad to answer any questions in connection with this or questions of procedure. I have answered some of these questions giving my personal opinion. Some members may have other opinions.

JUDGE STONE: May we have their appearances? Some new people have come in.

Colonel W. T. Hammond, Division Engineer, Corp of Engineers, San Francisco; Colonel Kelvin, District Engineer, Los Angeles; Captain Hardin, from the office of Chief of Engineers, Washington.

MR. DAVIS: May I say that we owe a vote of thanks to this committee. They not only took available records, but they went down into the Yuma country where Mr. Farmer lives, and across the border last July, so that should be enough said. The temperature reaches 120° down there. They didn't overlook anything.

JUDGE STONE: Mr. Stevens, do you have any comment to make?

MR. STEVENS: I agree in a large measure with the conclusions that the committee has presented. I think they have done a splendid work. It took us four months to draft that report, and they have taken nearly as long to review it. I want to say that I have not had an opportunity to confer with Major Jacobs on this and I can only speak for myself. However, I am inclined to say he will agree with me. I will say further that I saw this report just now for the first time, although at our meeting at Yuma I had an opportunity to talk awhile with the committee, and some of the main conclusions that were discussed at that time appear in this report. But I would like to go over it in a general way and touch some of the points that they have mentioned.

In the first place, the title of the report; I don't know whether they got this title, or rather where they got this title. Is that quoted "Report of Technical Committee on Review of Jacobs-Stevens Report"?

MR. TIPTON: That was out of your letter of transmittal. I want to apologize to you and your committee for not putting in the citation here, we didn't let the mimeograph people know. That is quoted.

MR. STEVENS: "The Amount of Surplus Waters in the Colorado River after providing for requirements in the United States under Varying Conditions as to the Extent of Cultural Development in Different Sections of the Basin, by Jacobs-Stevens, Consulting Engineers". It was contemplated that, at that time, it might be used as a basis for a treaty with
Mexico. We recommended under the terms of the compact that surplus water over and above the allocations given of 16,000,000 A. F. are to be primarily under the terms as quoted there. Some of that water will be ceded to Mexico.

You know the history of those negotiations. The Commission appointed some years ago, without going into detail, offered Mexico 750,000 A. F. but Mexico demanded 3,600,000 A. F. on the basis that their contract gave them one-half the water of the Imperial Canal and one-half of that 10,000 cubic feet capacity would run to 3,600,000 A. F. The Commission appointed could not agree, and that work was abandoned in an attempt to negotiate further. However, we did not say that those supplemental waters must go to Mexico. I think the committee has been very liberal in quoting our various contingencies. It was our attempt to set up the surplus. A suggested distribution of that has been made. It has not been consummated. However, they said Mexico would be supplied under that surplus and the Boulder Canyon Act says any unused surplus not given to Mexico shall be given to Arizona and California. It has no legal effect. Those surpluses are simply what we conclude from what our information tells us. The surplus that would probably result would be after, as we say, the full development of the Basin.

Section A was without regard to any compact treaty, based entirely on physical considerations, how much land, how much water, how much can the lower basin consume. I agree with the committee, and so stated in our report, that anything could happen that would change that schedule, better technique in driving tunnels, pumping plants much more feasible than appeared at that time, additional studies as to the available acreage that could be irrigated and also investigations as to requirements of water; all of those things would affect these quantities of water and the ability of the upper basin to consume it. Now up to the present time there is nothing that has happened to change my opinion. We will just have to wait, it couldn't be determined until 1963. We realize that they are to be divided in whatever way as such treaties and compacts might dictate.

They have desilting requirements at the Imperial Dam, and they were not known. We examined the data and discussed the matter with the engineers. The Bureau itself has spent a considerable amount of money in putting in seventy two desilters there. But as I understand it, it now appears that clarification of the River will make it unnecessary. They did immediately relieve 25% of surplus that is desilted water, 25% of that amount available for diversions onto the land along the Colorado River basin.

MR. TIPTON: I think the committee's conclusion here on page four where it says: "It will of course be physically possible to recover a considerable portion of the minimum surplus of either schedule for use in the United States but the desirability of, or the necessity for, that procedure is questionable; first, from economic considerations, and second, as a matter of expediency, as it would deprive Mexico of her only dependable source of supply in the ultimate period".
MR. STEVENS: It was uncalled for on our part, and had I the power, I would tear the words out. It was outside of our scope, the disposition of those surpluses. I would like to have that taken out, but it is there.

There is also this fact as to the use of water in the upper basin, or any Basin, where there is a growing tendency in the use of water, and while we have set up certain consumptive uses to be applied to the lands, we would see that in all probability the consumption might be reduced, land increased, or an economic use of water. After the water supplies become scarce, the tendency to economize is forced upon agriculture. We are supplying as much as has to do with crop requirement. Where there is an abundance of water, the use and requirements are found to be extravagant, but if there is this fact, that it will supply lands in the Colorado River Basin, taking the Basin as a whole, as we have stated, and even more, by pumping, there are large areas that may be irrigated, and large areas that may not because of insufficient quantities of water. There will be an urge toward a greater economy in the use of water. If that change comes about as we visualize it, I am inclined to believe that the quantity of water may not be exceeded and may be rather reduced than exceeded.

We did not mean to leave the question, and I don't believe they could get that idea from the report that the surpluses were all usable. That was discussed at considerable length, and if I could take time to look through the report, I could find some statements that show that. It is not possible to regulate it so that some water cannot be lost. Then you have the surplus water on the Gila; in flood time it is utterly unusable even with reservoirs. The reservoirs would be empty fifty of sixty percent of the time. We did not intend to leave the impression, and I think we can find a place where it is clear that those waters are not always usable. There is such a long time between it and the return water. The questions of usable water is still open.

Now taking up some of these questions of the committee where I agree with the committee in its conclusions, that the quantity of desilting water has already disappeared and there are four conclusions, page seven "If the quality of the water is satisfactory . . . " I have already touched on that "if the quality of the water is so and so", nobody can tell what the effect in sixty years will be.

The authors went beyond their scope. I agree with the committee in that regard. I agree with the conclusion seven, with the information available and the uncertainties surrounding the problem that the committee concludes that it is not possible at this time to forecast the dependable supply of water that ultimately will be available to Mexico. Nevertheless, when we made it, it was the best conclusion we could make.

I told this committee down at Yuma, going entirely outside this report, that I felt any treaty with Mexico, not only on the Colorado, but other places along the International Boundary line, would be based entirely on the emergencies of the Mexican situation, and whatever they
might acquire a right to use is dependent entirely on the treaty that may be negotiated, and my feeling is that this report or any other report that attempts to say how much water we have unused is not the real basis for a treaty, but that which is actually put to use is the only appropriation that would appeal to a tribunal as a basis for treaty. That is a matter for the State Department to determine. The chairman asked us to determine the quantity of surplus water in the United States under the conditions set forth and we did the best we could with the data available, except for that one point.

MR. TIPPLE: Will you feel free to comment on the committee's recommendations, two, three and four on page nine?

MR. STEVENS: "That suggestions be made to the State Department that it initiate a continuing investigation of uses of Colorado River water in Mexico, and allied matters. Such an investigation should include a determination of past uses and areas of irrigated and irrigable lands, and present uses and areas. The study should be continuing so that the data at all times will be up to date." I don't know. That is a matter of going across our boundaries and attempting to continue investigations in Mexico. I don't believe we could do it. Maybe the International Boundary Commission could do it. It would be excellent if it could.

We are making the suggestion that the State Department do that. I also meant to comment on the other questions, three and four. "That the State Department, in cooperation with other appropriate agencies, be asked to make such ground water studies and additional stream flow measurements as are necessary to a determination of river gains and losses below the Imperial Dam".

That complete information be determined, regarding channel losses, return flows, use of water in operation and wastes. There are inevitably many types of operations; and that complete data be determined of the use and disposition of all water diverted by the Yuma Project. We were greatly handicapped for relative information on that point, and much information which we had for these waters had to do with channel loss and also with the wastes that might occur.

We have practically no information. Since then I think they have undertaken to get more reliable data and I have just been in conference today and yesterday with Mr. Walter, Chief Engineer, and the United States Geological Survey by which some arrangements are being made to determine more correctly the return flow and channel losses in that vicinity. First, our report recommended that a gaging station be located at the upper boundary. Apparently physical conditions precluded that so the plan is now to take four or five series of measurements a year starting at the Yuma gaging station and measuring all the inflows measurable at boundary, at Sonora boundary, with all inflows that come in so that at least three or four times a year we have a basis for comparison so that on those particular days we will know what those return flows and general losses were. That will probably be a substitute for a permanent gaging station down there because of the physical conditions.
On the whole I am quite agreeable to the committee's report and I think they have done a splendid job and I thank the committee very much for the consideration of this report. It is a big subject with many answers, no one answer being sufficient. The whole thing is hinged on what may happen in the next sixty years.

MR. JENKINS: From what data do you arrive at that idea of irrigation and arable acres in the upper division of the basin?

MR. STEVENS: It is all set forth in the report. The basin is divided into thirteen sub-basins. I think the upper basin was based on such acreage of land as was given by the census report, supplemented in recent years by the investigations of the Bureau of Reclamation as to the amount of arable lands that were available in those states. Now those areas of arable lands have not yet been converted into projects and it is recognized the probabilities are that much of the land counted as arable cannot be included in certain projects; and in other cases there are more lands than were given, but remember this was based on the information available in the fall of 1937 and 1938. Whatever comes in now in the way of new material will warrant a change in our conclusions. If that is to be reviewed in ten years from now . . .

MR. JENKINS: There is probably a big change as the land classification has yielded about double of what was conceived at that time.

MR. STEVENS: I don't know that there is any additional data; up in your territory perhaps there is an increase, but on the other hand a decrease some place else. As far as I am aware, there is no data which has been introduced to warrant any change in my own conclusion.

MR. SCOTT: There has been a question regarding that gaging on the lower reaches at the border and I wonder if that will really give a complete picture because you can visualize that area being cultivated in the southeast corner there. It is going to be a large amount of that return flow that will eventually migrate across the border in either the Mexican drainage canal system there at some point below where we have considered it and I wonder if there shouldn't be some thought given to the return flow.

MR. STEVENS: That is the reason we stated that some portion of these surpluses may be recovered. The portion that we speak of is this area here going across the boundary here instead of getting into the river. Those are utterly recoverable. The only way we would find out the extent of that return flow would be to pick it up way down in Mexico. It couldn't be done.

MR. SCOTT: Immediately that becomes a vital question to Arizona because by the terms of our consumptive use that is the only definite record that has been made. And I presume that the same method of approach will be applied to Arizona as California so therefore if we apply water to the lands there and they return to Mexico we will be charged with that while we will be furnishing, I would say that is a guess, anyway they will be usable to Mexico, so in other words, we will be furnishing usable water to Mexico which will be charged to us.
MR. STEVENS: On this project now the amount of water that is being allowed: We took the amount of water that is being provided by the Bureau of Reclamation in establishing these pumping capacities. We assume that all of this area -- that all the canals and ditches will be concrete lined so that the seepage will be reduced to a minimum and the only percolating water will be that which percolates on the field and the Bureau is now allowing four acre feet per acre pumping capacity. If there is not a preponderous amount of percolating water, some substantial quantity in the field going downward all the time, you are going to have an alkaline concentration on those lands that will curl your hair; and it is necessary that you permit some of that water to go by. If you attempt to hold it on so that there will be no return flows, you will be the sufferer.

MR. SCOTT: That is the only means you can handle that ground from the very physical nature of the ground because of the sandy and porous nature. The lack of silt which we don't have now so we will have humus built up in the soil the amount of water will probably be in excess of four acres.

MR. STEVENS: I think so too but if you have pumping capacity, you can put on as much water as you want to. In the beginning there will be plenty of surplus and that surplus will gradually diminish as the lands become colonized. Then of course the return water from all this other area which finds its way into the Gila River. You can go up here about twenty five miles and pick up considerable water that can be put on these lower lands. But what is the quality of that water going to be sixty years from now?

JUDGE STONE: This report is before you. What is your pleasure with respect to it?

GOVERNOR JENNITT: I move we adopt the report and that a vote of thanks be extended to the committee.

MR. DAVIS: Second.

CALLS FOR QUESTION, MOTION IS PUT AND CARRIED.

JUDGE STONE: Now I take it that means the Chairman will communicate the recommendations to the State Department. Is that your pleasure?

MR. TIPTON: That is up to the Committee of Fourteen.

MR. STEVENS: Mr. Chairman, this report was made at the request of the State to the Secretary of Interior, so perhaps your recommendation should go to the same party for whom the report was prepared. It was addressed to the Secretary of the Interior.

JUDGE STONE: The report has been adopted. Is it the understanding that it carry with it all of the recommendations so that it will mean that these recommendations and the request contained in them will be communicated to the appropriate federal authorities. Under Mr. Stevens suggestion the recommendations would be communicated to the
Secretary of the Interior and, if there is no objection and that is the understanding of the committee, the Chairman will act accordingly.

MR. TIPTON: I don't know what the opinion of the other members of the committee is, but it would appear that in some way these recommendations should also go to the State Department despite the fact that the other procedure was that it came down through the Department of the Interior. This committee has been dealing directly with the State Department.

JUDGE STONE: I think that would be wise. Now this disposes of the report of the special committee. There is, however, one question which has always been in my mind. Judging from what others have said I think that some of the others may have the same question, namely: There is some attempt, as to how effectual it is there may be disagreement, but at least some attempt in Mexico to utilize as quickly as possible as much of this water as possible. Therefore, we have had some discussion on the proposition of whether it is advisable for the states of the Colorado River Basin to allow this matter to drift along, or whether the states should use what influence they may have to induce an earlier consideration of treaty negotiations. In other words, it seems that the lapse of time will run against our interests rather than in our favor. I think it would probably be appropriate at this time to have some comment on that. At least the Chairman would like to have it. Mr. Tipton, does your committee have any comments to make on that question?

MR. TIPTON: The committee did not discuss that question. I will say it this way, the committee did not discuss it sufficiently to arrive at a conclusion that could be considered a conclusion of the committee. It was given considerable consideration during the trip through the delta area. We saw the result of the present aggregarian system, a result that some of us familiar with conditions in Mexico knew existed. The lands going back to the original state but we can't assume, I don't believe, that that sort of condition will be permanent.

MR. STEVENS: I think I will inject a word of contention, that any arrangement of that kind should be done only after full consideration of the legal aspects. Mexico is now claiming 3,600,000 A. F. by reason of a contract which they had with the old development company. The thing may require by contract that which couldn't be acquired otherwise. That is a legal question, but I just inject that word.

MR. JENKINS: I believe the Secretary remarked that they made an agreement that they needed 10,000 second feet, one-half of that amount.

GOVERNOR HANNETT: The only legal opinion I know of in regard to International Water Rights, was in the Cleveland Administration. Then the Secretary of State was advised that Mexico had no claim or right to the water from the standpoint of international law. I know of no other decision and I made a careful search at the time of the Texas lawsuit.

MR. JENKINS: Isn't it a fact that there isn't any law of appropriation down there?
GOVERNOR HANNETT: Well, the Supreme Court of the United States went into that matter in Arizona and there was a doctrine of appropriation in Sonora when Mexico was carved out of Sonora.

MR. TIPTON: They have a system of water rights in the Diaz regime which is considered good under the present Governor.

MR. JENKINS: With regard to urging or pushing the matter of settling this question, it seems to me we can't do anything until this investigation is completed. There has been such a change is our estimate or understanding as to the amount of water and the amount of land to be irrigated along the . . . in the upper basin, that I don't see how we can say what our needs are until the comprehensive study is complete.

JUDGE STONE: Is it the opinion of the committee that this report having been made, the matter lay over for further consideration? California, what is your suggestion?

MR. HENES: I recommend we defer any action at this time. I understand a survey is being made by the State Department along the Rio Grande that may have a very favorable bearing, and increase the advantages of the Colorado River Basin States at the time they start to negotiate a treaty.

JUDGE STONE: Unless there is further action or comment, we shall then consider that for the present at least, the committee has taken all action necessary, appropriate or advisable and the matter will be further considered by the committee at other meetings. We pass to the other item on the agenda. That is the consideration of application of Arizona for water from Lake Mead. The members of the Arizona Commission, as you all know, have contacted separately the several states of the basin.

Senator O'Mahoney then entered the room.

JUDGE STONE: Gentlemen, may I introduce Senator O'Mahoney. We are delighted to have him here with us. (Applause)

SENATOR O'MAHONEY: Let's proceed without interruption.

JUDGE STONE: The State of Arizona contacted the various states of the Basin and the proposition is that they wish to make application to the Secretary of the Interior for water out of Lake Mead. The Chairman is not advised as to what action, if any, has been taken by the respective states. When the Arizona group met with Colorado, those of us who conferred with them adopted a resolution which was later considered by the Colorado Water Conservation Board and approved. Do the representatives from Arizona have anything to submit?

MR. DAVIS: We are concerned about getting water from the Colorado River. We believe, under the Boulder Canyon Act, if we are going to get any water stored at Lake Mead, it is necessary to have a contract with the Secretary of the Interior, so we wanted to advise all the states. That is what we had in mind. Our attorney found that the regulations under the Wilbur administration had been withdrawn by Secretary Ickes,
and we wanted to have them re-instated so we could ask for a contract. We want this committee and the states to know how and what we are doing and how we are going about it. We want to go to the Secretary of the Interior. If these states have any objections, we want them now, and don't want a fight before the Secretary of the Interior.

JUDGE SHUTE: I only have this to add. When we began looking about to see where we stood, as Mr. Davis has said, we didn't find ourselves in a very good position. Water having come down the Colorado and from Lake Mead, thence let out for power purposes and for domestic uses, naturally we began to think about the contract with the Secretary of the Interior particularly in the light of regulations passed during Mr. Wilbur's administration.

I am very glad we have Mr. Ely with us, because he has to back me up in what I am going to say.

In other words in the Wilbur book covering the Boulder Canyon and the Colorado River, certain regulations were set forth for a contract which, it is stated, the Secretary would make with the State of Arizona. Well that sounds rather good, so an investigation of that situation revealed that these regulations have been withdrawn. Therefore we were stopped until something could be done, or until reinstatement of the regulations or something along the same line, so we can make some agreement with the Secretary. With that end in view, the matter was taken up with Senator Hayden and we were advised finally that they would like very much to have a sort of an agreement between the States in the basin relative to that water before that meeting; but in the meantime they did check up on regulations and found out they had been withdrawn, and naturally we turned to the Basin States to see what their attitude might be.

We desire to have the other states satisfied and would like to have the matter worked through the Committee of Fourteen so there could be no objections made by the committee or any state belonging to the Committee of Fourteen before the matter was ironed out. All states have been contacted, including California, and we believe the only way we can ever get any allocation of water from Lake Mead is a contract with the Secretary or the Tri-state agreement provided in the Boulder Canyon Project Act itself. California turned us down on the contract idea. That is the question and problem we are bringing here today to discuss with you.

GOVERNOR HANNETT: I don't see how this committee has any jurisdiction over that. Arizona is entitled to an equitable appropriation of water out of the Colorado, and that a contract with the Secretary of the Interior and isn't any business of ours.

JUDGE STONE: Perhaps Mr. Ely could give us a better background. Arizona feels that if that state could go before the Secretary of the Interior with a proposed contract and in the absence of any objection from the Colorado River Basin States, it might be possible to secure it. If there is an objection, it may be defeated. Since these states have been attempting to act, so far as possible in unison, it would seem well
if objections could be worked out ahead of time. Then it would simply be a matter between the Secretary of the Interior and the State of Arizona. Perhaps Mr. Ely can give us further enlightenment.

MR. ELY: I will be very happy to say what I know about it. I am speaking as an individual and without instructions on behalf of any claimant. In 1930, at the time the power contracts were up for negotiation and it was necessary as a precedent to the making of the first appropriation, it became necessary that the Metropolitan Water District, make a water contract. That led to the consideration of difficulties between the Metropolitan Water District and other users and the claims of other users in California. Mr. Hiatt, the State Engineer of California, was requested by Secretary Wilbur to try to work out an agreement setting up priorities between themselves as to whatever quantities of water should be available for California. After protracted negotiations the principals reached an agreement, due to Mr. Hiatt, Mr. Coffee and Mr. Debler, which resulted in the setting up of seven priorities among the California interests. The Metropolitan Water District and the City of San Diego were not then the users of water, but the Interior Department felt it was necessary to include them in the picture and the list of priorities, particularly, and in view of the possible Mexican negotiations, all seven California allottees were included for water to be delivered from Lake Mead under Section Five of the Boulder Canyon Project Act. Dr. Wilbur thought it only fair to Arizona to attempt to do something there, having in mind water would be discharged from Boulder Dam for power purposes in advance of the time when the three states might reach an agreement. He proposed by regulations to offer Arizona a water contract covering the uses which might be provided following construction of the dam. That is, for use below the dam. Section Five of the project act provides no one shall have a right of the delivery of stored water from the reservoir except by contract with the Secretary of the Interior, and providing that it is for the benefit of users in Arizona with ditches diverting below the dam. It would not deal with us if any diversions were made by Arizona above the Dam. The quantity set up was 2,800,000 A. F. specifically stating it was without any determination of priority as against California or Nevada, and deals solely with water placed in the Lower Basin and did not propose to take water from the Upper Basin states.

Those regulations were promulgated in September 1933. They have been discussed with people before that, particularly Representative Douglas. Things appeared to be in such a turmoil and led to difficulties and Dr. Wilbur felt the proposition should be on record as a warning to Mexico. So it was promulgated in the form of regulations realizing, of course, that the contract could not stand effective until Arizona signed the compact. It would cover the use of water under the Colorado River Compact and would provide any uses made under that Compact that were possible. At that time it was impossible to secure ratification in Arizona and this was a method where she might come along that course. The Governor of Arizona sent a telegram late in 1933 asking to send somebody out to negotiate, that they were interested, and after some correspondence, Dr. Wilbur thought that was a question for consultation, and Mr. Debler, Mr. Coffee and I participated. However,
some gentlemen in Arizona who were opposed and whom you have encountered, objected very violently, with the result that it was put on the shelf.

The Wilbur Administration ended and Arizona undertook to negotiate a contract with the new Secretary on a different basis; it proposed a new basis on the old figures of 2,300,000. It was discovered that the six states were opposed to that. The regulations were rescinded, and no further action has been taken. Now it has always seemed to me, individually, that that approach is the most feasible one on the Arizona side. We should not forego and give up quantities of water. The priorities can be worked out in the course of time. If it is feasible to earmark a certain quantity of water to Arizona as against Mexico without setting up priorities against other states, it seems to have a certain national advantage. The power Districts at Boulder Dam as I recall are estimated at the beginning to run in excess of 114,000,000 acre feet and as late as 1989.

That being so, unless Mexico is stopped or a contract which does earmark water, the users will be built up on the fifty year basis, which we would have great difficulty of disposing of by treaty later. As to terms of the contract, Arizona might find it possible to, it might fear to recite in that contract, that acceptance of the contract carries with it the ratification of the Compact. With the ratification of the Compact, it would have a stated amount. That contract would deal only with main stream water, available from the dam or below the dam. It would not deal with any use on the Gila River. If Arizona can do as California has already done, deal with the Secretary of the Interior in the gross amount, and deal with the other states in the determination of priorities, the whole American side will profit by it and no state will be hurt by it, particularly if in the contract the Colorado River Compact is accepted.

MR. HENES: As I understand it, that contract was for 2,800,000 A. F., the contract did say not to exceed 2,800,000 A. F.

MR. ELY: You are correct. Water beneficially used up to and not to exceed 2,800,000.

JUDGE STONE: In order to indicate, at least what action Colorado took, this resolution was approved by our Board. (Reads resolution)
Resolution adopted by the
Colorado Water Conservation Board
for the guidance of the Colorado Representatives
on the Committee of Fourteen

"Resolved that the proposition of the Colorado River
Commission of Arizona to enter into negotiations with the
Secretary of Interior for a contract for the use of water
from Lake Mead, be not opposed by the State on condition
that Arizona becomes a party signatory to the Colorado River
Compact before such contract becomes operative and provided
that Colorado have the right to be represented at such nego-
tiations between the Secretary of Interior and Arizona and be
authorized to object on any grounds that may appear later."
MR. GILES: This matter has not been presented to Utah, and I am not in a position to say at this time.

GENERAL MACOMBURN: I might say that Nevada hasn't acted on it at all. The Colorado River Commission of Nevada representatives are not in a position to act or express themselves one way or the other.

JUDGE SHUTE: Mr. Chairman, I think that the committee from Arizona expressed themselves with respect to that resolution as favorable to it. We are dealing with a matter here now that I really do believe runs along with the Colorado River Compact. In other words we are now dealing with the water of the river and it becomes highly important from every viewpoint as we see it to protect the Upper Basin states and everybody else as far as we can who may be connected with the Compact.

Now as we see it, and as we expressed ourselves, we have no objection whatever to the very suggestion which Mr. Ely injected into it a moment ago of writing directly into this contract with the Secretary that its going into effect is contingent upon the adoption by the State of Arizona of the Compact. That would be helpful to us in a measure. While we have a considerable burden to carry through, we think we can carry that burden in this instance because it does go directly to the power of the Compact and the way it has been drawn and the use of the water under the Compact. In other words, we have no objection to that.

JUDGE STONE: I should have remarked that Arizona took what appeared to us a very broad view of this and said that they had no objection to such a stipulation because of the matters which have been explained to you by Judge Shute.

MR. GILES: May I ask Judge Shute a question? You sent a copy of the proposed contract to the Attorney General's office and I wonder if the rest of the people got the same?

JUDGE SHUTE: I think all the members of the committee got one. I think you will find it follows the language of the old contract so as to eliminate questions that might arise relative to the protection of the Upper Basin states.

JUDGE STONE: Was this clause agreeable to Arizona?

JUDGE SHUTE: It was not included in it. We wanted that to come from this group.

CALIFORNIA: California had not received a copy of the contract at the time of our departure.

JUDGE STONE: Do the members of the committee think -- even though there is a possibility that some states are not prepared to act -- that
probably such a provision written into the contract would eliminate any objection on the part of any state?

GOVERNOR HANNETT: What is the reason of that?

JUDGE STONE: If the contract does not become operative until Arizona ratifies the Colorado River Compact.

MR. DAVIS: We want to see first, if there are any objections by the other states. We would like to know them and see what they are and iron them out; and second, when this is presented and the Secretary wants to put in some other provision, that each state have a representative to see their rights are protected.

JUDGE STONE: It seems to me because of the attitude taken by Arizona, that we should cooperate as far as possible and that a provision of this kind written into the contract itself and not constituting in any sense an amendment to the Compact, that under those conditions we should cooperate as far as possible because there are some decided advantages as explained by Mr. Ely. It ties right into this Mexican situation. So it would seem advisable, if these states can take some action on that and not delay too long the efforts of Arizona to become signatory to the Compact. In other words, this may become an entering wedge to bring about a situation that has long been sought.

MR. JENKINS: Does Arizona wish an action on the part of the committee?

MR. DAVIS: We would be very pleased Mr. Jenkins. If you have any objections let us have them.

MR. ELY: I don't like to intrude on this matter, but having seen this sort of effort tried at various times and fail because of the disagreement between the states, might I suggest that the only step that seems necessary is an acknowledgement that Arizona has informed the committee of its plans and wishes, and the committee might simply state that they trust that any such contract if worked out would be subject to and conditional on ratification of the Compact and assume that the first stage would be the preparation of a preliminary draft between Arizona and the Interior Department which would be discussed with this committee and an opportunity given for expression by this committee before any state becomes committed upon it.

I don't think on my meager statement anybody could commit himself to a contract that he has never seen, and furthermore, the figures used nearly ten years ago now are doubtless subject to new figures by the Reclamation Bureau and the Reclamation Bureau and Interior Department might have many other ideas in mind.

JUDGE STONE: I think that is a good suggestion. Apparently it hasn't been considered through the appropriate authorities in some of these states and I doubt whether some of these authorities in the states can consider it until a draft of the contract is submitted. Then, if that is submitted to all the states and is considered by
those who must pass upon it in those states, the matter could be fur-
ther taken up with the Committee of Fourteen in an effort to have uni-
ified action. In other words, we attempted to solve many of these
problems without a lot of controversy within the Basin. Would it not
be possible, Judge Shute, to prepare a copy of this contract, and I
think it would probably be well if you agree to this provision as
suggested by the Colorado resolution, if you believe that is a good
thing, that it be prepared with that included. Would that be agreeable
to you?

JUDGE SHUTE: Speaking personally, it seems to me that I would
like some sort of a resolution to the effect that -- practically what
the Colorado Commission has already included. Now, of course, the sug-
gestion by Mr. Ely -- there are many things that ought to be written
into this contract probably -- but most certainly in preparing a rough
draft of it and using the old idea of the Secretary of the Interior as
a basis for it in preparing the contract as submitted to you and the
other members of the committee, that deviated very little from the
original writing, because I can recognize the dangers that confronted
us immediately, unless we do stick close to the text and the text is
sufficient to cover our needs. That is, I think it is, except maybe
in one or two small instances that really are not of much moment. We
could draft a contract that would follow so closely the language of
the old regulation that little objection could be found to it. And
as expressed by Mr. Davis, if some state has some objection to it,
let's have it. Let's see what it is and iron it out if we can. Let's
find out what the trouble is. If we find this is wrong or that is wrong,
I believe we can get together on it. I believe that we can finally
arrive at a proper solution of the matter. We are open to suggestions.
We do want to work with you and we do want our state down there to rati-
fy the Compact and come in on an equitable basis.

MR. HAUSER: Mr. Chairman, California finds itself in accord with
Judge Shute's statement, if I understand this correctly so far as pro-
cedure is concerned, and that would be whatever form of contract is to
be submitted, it be submitted to either this committee, or a sub-com-
mittee that this committee might select here, to study and see whether
we can't iron out any objectionable factors or points that might be
involved in it before the contract was ever taken to the Secretary of
the Interior, thereby eliminating what we might describe as that
"horrible friction" that arose out of the last draft, and as I under-
stand, Judge Shute, that is the position you are taking. That whatever
form of contract you see fit to use to present to the Secretary of the
Interior would first be submitted to this committee.

JUDGE SHUTE: Yes, I believe that is right.

MR. HAUSER: The contract that has been discussed here was not
received by the California Commission at the time of its departure from
California and, therefore, California is not in a position to take any
position before the committee on that draft or contract whatsoever.
When Mr. Davis and Mr. Farmer met with the California Commission, we
were under the impression from that discussion that the question to be
be submitted would be whether or not the Committee of Fourteen objected
or approved the adoption of the previous regulation which Mr. Ely stated here carried with it a form of contract as Exhibit A.

Now we find that there is another contract that has been discussed. Well, regardless of how slight might be the deviation from that contract, classified as Exhibit A, in the original deliberations, it is something that has to be discussed with the California Commission. So we are not in a position to take any position. But California would like very much, so far as procedure is concerned, to see whatever form of a contract or rough draft of contract that Arizona might desire and have the opportunity to discuss and analyze that before it goes to the Secretary of the Interior.

JUDGE STONE: It seems to me that is the proper procedure.

GENERAL MASHBURN: Mr. Chairman, I want to say that Nevada has a spoonful or two of this water, but only a spoonful or two. At Salt Lake City all of the interested states and representatives of them were perfectly willing to enter into an agreement with Nevada that it should have not only the 300,000 acre feet that we are authorized by the Boulder Canyon Project Act to compact with the other two Lower Basin states for, but twice that amount if we could convert it to beneficial use; so I don't think there would be much objection to Nevada getting its share of this water and whatever consideration is given to this matter, I want it understood that we intend to follow up with somewhat similar arrangement for the portion of the water of the Colorado River that we would be entitled to or has been tentatively allocated to us in the Boulder Canyon Project Act.

While I am on my feet, I want to say this: This is the situation which I have hoped for for almost nine years, where we could get around the table and talk these things over and see if we could not come to some satisfactory and harmonious agreement. The particular contract that is presented here now, it seems to me, we are not in position to either approve or disapprove of at this time. Some of us, in fact I suppose none of us, except probably Colorado, is in a position to know what our Commissioners may desire with reference to this particular contract. I think that for that reason it is a good idea for us to probably take some general action that would indicate that we are in sympathy with a contract which would meet the provisions of the Colorado River Compact and the Boulder Canyon Project Act and include in it a provision that it is not to be effective until Arizona does come into the Compact in some way; and I don't care whether that is by the front door or the back door, just so Arizona is made a party to the Compact and bound by it.

I think it is what you want. I do think that while we are all here, and before we take any action, it might be a good idea for us to find out just what this contract provides for insofar as water to Arizona for their water users. As I understand your contract, Judge Shute, the first paragraph provides or simply means that you are to have all of the Gila River and in addition to that you are to have 2,800,000 acre feet of the stored water from the Reservoir. In addition to that you are to have all the other rights you have to take water from the river direct. Is that what your contract provides for?
JUDGE SHUTE: Those allocations were lifted directly from the allocation I have heretofore discussed.

GENERAL MASHBURN: And, of course, the 2,800,000 acre feet is to be reduced by whatever water you take out of the river between Lees Ferry and Boulder Dam reservoir. Well, aren’t you getting back to a situation which wrecked us before, if you eliminate the waters of the Gila River entirely? Now you are still claiming the waters of the Gila River and that is not to be considered in this tentative allocation of 1,400,000 acre feet to California, 2,800,000 acre feet to Arizona and 300,000 acre feet to Nevada.

MR. DAVIS: That is what has kept Arizona out of the Compact, the fact that they want to charge the waters of the Gila up to any water.

MR. JENKINS: Against the 2,800,000 acre feet.

GENERAL MASHBURN: I want to help you, but it seems to me that we are running into the same rock that wrecked us before. That is that when the Upper Basin states and the Lower Basin states, other than Arizona, felt that the 2,800,000 acre feet to Arizona included the Gila River, and I am bringing out these points simply because I don’t know whether the representatives here are willing to recede from their former position.

MR. DAVIS: What are you going to do with that extra 2,000,000 acre feet?

GENERAL MASHBURN: It seems to me that might be equitably divided there. I don’t think that Arizona would take the position of wanting all of it. I don’t think California would want to have it all. Now, if we could get together on that one point, it seems to me that we are in position to go places.

MR. DAVIS: There is a question that we can easily state our position if you would like to hear it.

GENERAL MASHBURN: I want all of us here to understand exactly what we are talking about.

GOVERNOR HANNEIT: If you ratify the Compact, that eliminates that argument. As far as the Upper Basin states are concerned, any contract between Arizona and the Secretary of the Interior definitely recognizes the priority of Arizona; that eliminates us from the picture so we have no interest in any other term in the contract. It just recognizes our priority and that eliminates all interest in it.

JUDGE STONE: Gentlemen, may this Board continue consideration of this matter at a later time because Senator O’Mahoney is here and he is interested primarily at this time in a report of the present status of the proposed modification of the Boulder Canyon Project Act.

SENATOR O’MAHONEY: It seems to me to be much better for you to proceed with that discussion while you have it on the anvil and I am
not going to ask you to interrupt this, but I will follow the Boulder Canyon Project Adjustment bill all right.

MR. JENKINS: If we don't settle this matter can't we continue over the discussion in the morning or tomorrow sometime? I am like Senator O'Mahoney, I think this ought to be ironed out.

MR. GILES: I think we are about ready to settle it. Arizona asks that we do something in order that they can go back home and prepare a contract. My thought is: We should say to you that we won't consider your contract favorably, unless you do put a provision in it respecting the compact. In other words, if you are to come to us with a contract first and then we come back at you and insist upon this provision, making your contract subject to your signing the Compact, so we send you back to put it in. Or do you want this committee to take some action now and say to you that when your contract gets here that unless it contains that provision, it won't be considered?

JUDGE SHUTE: Of course you put it rather bluntly. I like to have a blow straight from the shoulder so far as I am personally concerned; but, how do we know unless we can say that the form of contract that we have already presented is satisfactory to the committee provided you put that into it? In other words, if we go home, then will we be confronted with a dozen other objections to it? All of you are more or less familiar with this proposal. If you are not familiar with it, all you have to do is pick up the book of the Wilbur and Ely regulations with the additional paragraph that it shall become effective when we ratify the Compact.

MR. GILES: You misunderstood my purpose. I was just wondering what this committee could possibly do at this time.

GOVERNOR HANNETT: I move you that a resolution be adopted similar to the one that the Colorado Water Conservation Board adopted.

GENERAL ROGERS: I will second the motion.

JUDGE STONE: You have heard the motion.

VOICE: Will you read the resolution please?

JUDGE STONE: (Reads the resolution) Now we had in mind that, as remarked by Governor Hannett, so far as the Upper Basin states are concerned, a contract would not operate against us provided its operation was contingent upon ratification unconditionally by the State of Arizona of the Compact. Now, whether those same conditions, the same situation holds with respect to the Lower states, maybe another question. However, so far as the Upper Basin states are concerned that is a protective measure at least.

MR. HEWES: I wonder if Governor Hannett would have any objections to changing the wording of the resolution to the extent of making it read that we will oppose it unless it carries the ratification of the Colorado River Compact rather than the wording that we will not oppose it if it carries the ratification of the Colorado River Compact.
MR. JENKINS: Mr. Chairman, I think we have to object to that because I really don't believe that Wyoming will feel like pledging herself to oppose it. I would rather put it the other way, "that we will not oppose it, if the Compact is ratified"; but to state, Mr. Hewes, that we will oppose it, I wouldn't like to pledge our state to that.

MR. HEWES: Do you want to pledge the state not to oppose this regardless of what it might be so long as it carries ratification of the compact?

MR. JENKINS: It says in the last paragraph unless certain contingencies arising later that makes it necessary for us to oppose. I think that is covered in that last statement.

MR. DAVIS: May I state here so you will know clearly what I have in mind. We wanted this committee to know what we were trying to do. We had nothing to cover up. Now I think it is due us at least that we should have some action to show that you have at least received the information from us and one can question whether we have done it or not. Now, whatever action you would take and if there is any objections, we will then know exactly what your objection is.

GENERAL MASHBURN: Might it not be better for us to think about this matter overnight and a sub-committee be appointed to draft a resolution in which the position of the Committee of Fourteen is expressed?

MR. DAVIS: That is all right with us.

GENERAL MASHBURN: And present it tomorrow?

MR. JENKINS: Would it suit your position better to take the resolution in the form that Mr. Hewes suggested?

MR. DAVIS: Well, I would prefer it as the Colorado resolution reads. They prepared it on their own initiative and they want it and will accept it.

JUDGE STONE: Would it be agreeable to this committee that the Chair appoint a committee to go over this resolution and report back in the morning, say at eight o'clock, and possibly we could conclude our work by 9:30, when the Drainage Basin Committee meets, and see whether or not a resolution can be worked out satisfactory to those who are here?

MR. GILES: I so move.

MR. BISHOP: Second.

JUDGE STONE: The motion is that the Chair appoint a committee of three to consider and submit a resolution upon which the sub-committee is agreed evidencing the action of this Board on Arizona's proposal. Are you ready for the question, gentlemen?

QUESTION CALLED FOR, MOTION PUT AND PASSED.
JUDGE STONE: I would like some suggestions, gentlemen, as to whom you want to sit on that committee.

VOICE: There is Perry Jenkins, General Mashburn and yourself, unless California . . .

JUDGE STONE: I have been working about eighteen hours a day for the last week.

GENERAL ROGERS: Well then let Mr. Shaw, Governor Hannett . . .

GENERAL MASHBURN: I would like to suggest Mr. Hewes. I do that because of this situation. This water is the water coming to the Lower Basin states that we are dealing with now. There are three states involved, that is Arizona, California and Nevada, and California and Arizona are certainly entitled to the lion's share of this water, -- are entitled to it because they can use it. I would like to have Mr. Hewes or one of the other of the representatives from California on this committee.

GENERAL ROGERS: Pardon the interruption. Why not have one from the three states, you and Arizona and California?

JUDGE STONE: I had that in mind to appoint Mr. Hewes, General Mashburn and Governor Hannett and it would be understood that that committee will work with Mr. Davis and his associates, including Judge Shute. I feel that as soon as the committee works out a resolution that it would save time for this committee to confer with Arizona either before or during the time that you are working it out.

MR. HEWES: I would appreciate it very much if you would substitute Mr. Shaw in my place. Mr. Shaw -- I should have introduced Mr. Shaw in his new capacity as representing our commission for the Attorney General of the State of California. He has been appointed by the Attorney General of the State of California to represent our commission in legal matters and he is appearing at the Committee of Fourteen meeting here for the first time in that position.

JUDGE STONE: We are glad to know that. Mr. Shaw's work heretofore with this committee has indicated that he will be very helpful in work of this kind. The record will show that the sub-committee consists of Mr. Shaw, General Mashburn and Governor Hannett.

MR. SCOTT: Mr. Chairman, I think probably another interest, as Mr. Ely pointed out early in the history of this thing, that in anything that we may start to draft, there is still another interest, and that is the Department of the Interior. I wonder if anything that we draw up now, whether when it gets to them -- we have experienced rather recently that the Department of the Interior rather took it apart. Maybe we can avoid some time and trouble by working this thing out all together. It might be well if we had somebody here to represent the Department of the Interior at this time as to what their wishes might be.
JUDGE STONE: I imagined the Department of the Interior official would not want to participate. However, it did occur to me that Mr. Ely would be helpful.

MR. SHAW: Mr. Ely, will you? He is always welcome.

JUDGE STONE: I am sure that your help would be fine if you are willing to do that.

MR. ELY: I will be glad to do what I can.

JUDGE STONE: Is there any further business?

MR. DeARMOND: In connection with this, since Arizona is going to bring these things up before the commission, we may as well state that our state will also want to put through a contract for their 300,000 acre feet.

JUDGE STONE: Gentlemen, before you all go, let me make it clear that we are recessing until eight o'clock tomorrow morning in the Centennial Room of the Shirley Savoy Hotel.

RECESS.
Saturday morning, November 18, 1939

JUDGE STONE: Gentlemen, the meeting will come to order. Now, who was selected chairman of the special sub-committee on the Arizona matter?

GENERAL MASHBURN: We have a resolution that we have agreed upon and would like to present. However, it has been suggested that in view of the fact of the tentative agreement—contract which was prepared and presented by Arizona, and there is some desire to discuss it, that the representatives of the six compact states now go into executive session to discuss some of the matters that are desired to be discussed at that meeting. For that reason I move now that the Committee of Fourteen resolve itself into an executive session of the representatives from the six compact states for a few moments. I don’t think it will take long for the matter to be presented.

MR. HOUSER: Second.

JUDGE STONE: You gentlemen from Arizona, is that agreeable to you?

MR. DAVIS: No, but we will go out.

Motion put and passed.

JUDGE STONE: Colorado should like to ask that you permit us to keep Frank Merriell. He is from Western Colorado.

Arizona Delegates leave the room.

Arizona representatives are called back to the meeting after executive session of six compact states.

JUDGE STONE: Gentlemen, I am sorry that matters at this time came up when we have to have, I suppose through the necessity of the case, division of conference; but it did seem advisable in this case. It is the desire of all of these states to assist Arizona as much as possible in bringing about a ratification of the Compact. Failure to ratify seems to cloud the solution of this problem, not only the problem today but one which has existed over many years and which will be perplexing and maybe troublesome as we go along.

This meeting which we have just held resulted in an agreement by the six states on the following resolution:

"Resolved that the representatives of the six compact states of the Committee of Fourteen recommend that said compact states oppose the execution of a contract between the state of Arizona and the Department of the Interior for storage of water in and delivery from Lake Mead unless
and until Arizona, prior to or concurrently with the execution of such a contract, unequivocally ratifies the Colorado River Compact, and unless the terms of such contract be drafted in conference with the Committee of Fourteen prior to negotiations with the Department of the Interior.

Now, gentlemen from Arizona, do you wish to make comment at this time or would you like to read it over?

MR. DAVIS: Judge Stone, I might say this, that if this group has agreed on it, our only purpose is what we want to do and how we are intending to do it, and whether we like it or don't, if that is your decision, we don't come here with the idea of telling you anything else. We want to protect our interests in the river, which we intend to do and do the best we can. Now, it seemed to me there were some conflicting ideas there.

JUDGE STONE: Well, I think before this breaks up and in view of the efforts which we have so strenuously made to try to get along in a harmonious manner that we would like to have you study this and possibly there might be some suggestions of change although the principles announced by this resolution, I think, will be rather strenuously insisted upon by the six states. Now, in discussing this we were proceeding on the basis that you had said to us that it will be some help in Arizona for us to take some certain action. Whether this was the help which you hoped for is for you to decide.

MR. DAVIS: It is resolved in the simplest terms that when you ratify the Compact then we will talk to you about a contract.

JUDGE STONE: No, that isn't what it says at all.

MR. FARMER: Could I suggest that we have a copy of it and study it?

JUDGE STONE: The idea is that in the meantime we will be attempting to agree on a contract in the Committee of Fourteen but when this contract is finally agreed to that it will carry provision that there must be ratification of the Colorado River Compact and the Compact shall be ratified prior to or concurrently with the signing of the contract.

MR. DAVIS: It seemed to me the thing was in conflict that while in theory it is all right that working out physically of such a thing will be practically impossible. The Compact has to be ratified and the contract will have to be entered...

MR. FARMER: Well, let's have a copy.

MR. DAVIS: We don't want to split hairs on it. We would like to state our position, Judge Stone. We want to protect our interests in the river. We feel we have some in or out of the Compact. Now, we feel the best way is through the committee of states. We feel a better way is through a tri-state agreement.
JUDGE STONE: Possibly in the meantime you can make one.

GENERAL MASHBURN: Mr. Chairman and Mr. Davis, may I state that my view of this resolution is that it is simply an acceptance of your suggestion yesterday that we help you work out a contract which will be satisfactory and have the endorsement of the seven states and then when that is worked out you will present it to the Secretary of Interior and we will assist you in getting it through. Of course, if we are not able to do that after negotiations and sitting around the table and talking it over, why, you have whatever rights you have now to go to the Secretary of the Interior.

MR. DAVIS: It isn't altogether a question of the contract, it is a question of the method of getting it and the procedure you have set up whether that is workable or not.

GENERAL ROGERS: As explained by General Mashburn, it was not to stop everything right now but with the full understanding, of course, that negotiations could proceed with the state, and to be specific, that no contract would ever be effective unless Arizona had ratified the Compact. This way you are free and that was the intent and purpose of this resolution and, as pointed out by General Mashburn, it is the desire of all the states to cooperate with you in that particular.

MR. DAVIS: Our point—we don't object to any of those things, but in the procedure you have set up, it is a matter of delaying it and stalling it off. It is your procedure that you have set up. Whether it is or not we would like a chance to study that.

GENERAL MASHBURN: We are willing to work as expeditiously as you can.

JUDGE STONE: Nothing can be agreed to until the contract itself is studied and worked out. Well nothing will be stopped along that line but that before it becomes effective, Arizona must ratify the Compact, that is what it amounts to.

MR. DAVIS: Do I understand that this is in conformity with the resolution your board passed? We were in accord with that. You said in that you wouldn't object to us obtaining a contract if the contract didn't become operative until we ratified the Compact, and that you wanted to be free to offer any other objections which you may see fit, in the future.

JUDGE STONE: This is different in this respect, that Arizona under this resolution isn't free to go and negotiate a contract with the Secretary of the Interior with these states merely sitting in there. This definitely sets up that we shall work on that contract in conference with all of the states. That is, that Arizona sit in with all the members of the Committee of Fourteen, sit in on a drafting and consideration of this contract and not merely Arizona present a contract to the Secretary of the Interior with the right that we shall sit down there with you. In other words we don't want to air all of our troubles before the Secretary of Interior. We want to agree on the contract before we go down there.
MR. DAVIS: Now in order that we keep good faith in the thing, let's have an understanding that if in the writing, that we are perfectly willing that you should assist in, we are not bound to accept your decisions nor you are not bound to accept ours if we cannot get an agreement on it.

MR. JENKINS: But, Mr. Davis, you must understand that with the adoption of this the other six states have agreed under these circumstances to take hands-off and not only take hands-off but to agree to assist you when these terms are carried out, and if you proceed without these terms and anything comes up that is not in accord with the other states, they will certainly object before the Department of Interior.

MR. DAVIS: Here is my point, that referring it back here and taking this procedure we in no sense want to refer this as a matter of arbitration but as a matter of conference, but it will have to continue on that matter of conference.

JUDGE STONE: That is right, Mr. Davis, it is a matter of procedure which I think will assist you. We shall try to get together on the terms of contract in the meantime. In other words, some of these states, as they say, have not seen the contract which you propose. If we can agree upon the contract it will avoid a lot of trouble.

MR. DAVIS: The Secretary may inject some things that none of us will like. You get our position, in fact we invite your assistance in working it out.

JUDGE STONE: Now, if we can work out a contract here in conference with these states, and then it can be presented by you and have the support of these states there is some likelihood of it being accepted with little change, and if there are some changes which are insisted upon and imposed by these states any one state would want to reserve the right to inspect the matters which the Secretary of Interior may inject. Then there is the additional provision in here that the ratification and the signing of the compact will be concurrent. Now, I don't believe there will be any difficulty in working that out, it is just a mere matter of detail.

MR. DAVIS: I don't believe it will take long to determine whether we are in accord with it.

JUDGE SHUTE: Mr. Chairman, may I ask a question? Do I understand that it is the opinion of the Committee of Fourteen that all of the Basin states should concur in the making of this contract and to that end we will continue to work out the terms of it without respect to what has been said or done heretofore? Is that your idea of the resolution?

JUDGE STONE: I think that is substantially correct.

JUDGE SHUTE: I think that is fine. Then if we can agree when we do get to working on it, we do agree on the terms of this contract then we all go together to the Secretary of Interior and say we have agreed on this contract, namely, that we think Arizona ought to ratify a compact before the contract is made before you grant it.

JUDGE STONE: That is right.
MR. HUGHES: Will the copy of this resolution go to the Secretary of the Interior?

JUDGE STONE: We will have to take that up. I think it would be unwise at this time. I don't see the necessity of it.

JUDGE SHUTE: Mr. Chairman, I have in my hand here what seems to be a copy of this resolution and I don't see the necessity for it. We, I think, would all concur that when it comes to the drafting of this contract that all of the Basin states who want to should sit in on it and see that it is properly and rightly done. Now, from that time on we are working in accord. Why should we put into a resolution the language "unless and until Arizona has unequivocably ratified said compact." Now, we agree on that part of it but from that minute on why should we go on record here on a matter that is not necessary. Why should we put that in the record here.

MR. GILES: What lines do you object to?

JUDGE SHUTE: That "unless" carries the impression "we won't do anything." In other words if you would make your resolution to the effect that we want to sit in on this and adopt the contract that you want to get to the Secretary of Interior and from that minute on we will all work together and it will become absolutely effective. In other words, we would be willing to have your resolution say that the six Basin states will concur in the making of this contract and the contract will contain the provision that it shall not be effective until Arizona ratifies the Compact. We are perfectly willing for that statement.

GENERAL MASHBURN: Are you willing that that statement be written in the contract?

JUDGE SHUTE: Yes, certainly. It couldn't be any other place but to say here on a resolution "unequivocably ratifies the Colorado River Compact" is nothing but a red flag to a bull.

JUDGE STONE: It is a difference in words.

MR. SCOTT: The difference of timing there too; that our legislature may not be in session concurrently with the signing or the time of signing with this contract. Therefore, we go up before the Secretary with a contract which is agreed upon by everybody and the Secretary cannot sign it or nobody can sign it because our timing is involved in this case to where we can neither ratify nor sign, then you could readily see there may be a new Secretary and then we would start in and do it all over again. It is physically inoperative.

MR. SHAW: May I discuss that subject? It is one that might make trouble if the conditions that Mr. Scott has just mentioned were the actual conditions. I suggest this to you, you have to have an Act adopted by your legislature. That is one thing that is clear isn't it? Second, in order to have a contract with the United States effective and binding upon the State of Arizona you have to have an act of legislature and you gentlemen sitting as the Arizona Colorado River Commission have not the
authority to contract with the United States under the Act. You have to have an Act adopted by your legislature to make it a contract and those two Acts can be written in one Act or passed separately as you gentlemen choose to work it out. But I don't think that the question of time involves any serious question.

JUDGE STONE: I think that was the thought in mind, Mr. Scott. As I understand it, under the Boulder Canyon Project Act, and that procedure was followed also in California, it doesn't become a contract until it is ratified by the legislature.

MR. SHAW: Why I think we are talking very much possibly now about alternative words, gentlemen. If this proposal were put this way perhaps: That the states proceed in conference to consider the drafting of a contract; that contract shall provide --no, I don't think that is right-- that that contract shall not be executed unless and prior to or concurrently therewith the State of Arizona ratifies the Compact. I think that is all expressed in the resolution as drawn. That the execution of the contract and ratification of the Compact shall be simultaneous at least.

JUDGE STONE: I am probably not thinking of the same thing. How is this contract signed? The contract as executed by the Secretary of the Interior, it is executed by the State of Arizona legally when the legislature authorizes it?

MR. SHAW: Yes.

JUDGE STONE: Now I don't see the meaning or the necessity of the words which you now express. I don't understand you perhaps. In other words, if you get together here in the Committee of Fourteen and agree to a contract, then if there is any contract to submit to the legislature of Arizona it will have to be one which has been signed by the Secretary of the Interior?

MR. SHAW: No, I think we have a misapprehension there. The ordinary course of the execution of such contract is for the draft to be prepared and agreed upon before the parties. The contracting party and the Secretary sign thereupon as of the same date of course. That is the process which the department has followed, I think. Mr. Ely is here.

MR. ELY: That is right.

GENERAL MASHBURN: That has been the process on all power contracts I know.

JUDGE SHUTE: Mr. Chairman, the more I look at this the more it seems to me that it is absolutely unworkable. The provisions of "unless and until Arizona prior to"—how on earth do we go to Arizona and ask Arizona to ratify a contract that had never been made with the Secretary or concurrently;—and then comes in Mr. Scott's timing. The only way in the world that could be done would be to have them both operating together at the same time; so when you get right down it is absolutely unworkable; while we do agree with the spirit, the language is obnoxious.
JUDGE STONE: We don't want to have an unworkable proposition here.

GENERAL MASHBURN: Take the word "prior" it isn't unworkable and there is no conflict in timing.

GENERAL KERR: I have listened to this with considerable interest. I don't believe there is any disagreement here over the objectives at all and having dealt with a legislature and it being a political body from a political standpoint, I can't think of any worse language than is used in this resolution. I think you are antagonizing every member of your legislature when you think they have got to do it.

If you had a resolution along this line: that Arizona not having ratified the Compact, we don't feel that we are in a position at this time to deal with it. I think it could be worked out a little more diplomatically.

MR. FARMER: If it is made so the contract could become effective, then we could go to our legislature after we had a contract.

GENERAL KERR: I don't know anything about your legislature but I don't believe they will ratify it if you present it that way.

MR. SHAW: I have two or three words that may solve the question. This clause reads "prior to or concurrently to the execution of such a contract." I just suggest this to you tentatively for consideration. "Prior to or concurrently" and instead of "execution" put in the words "ratification by the Arizona legislature."

JUDGE SHUTE: I see no difference.

MR. FARMER: If we had a situation where we could go and secure a contract that becomes effective upon Arizona ratifying the Compact we would have no trouble but if we have one that the ratification has got to be concurrent, why then we have.

MR. SCOTT: What objection have you got to the wording by the Colorado Water Conservation Board? That sounds likely to everybody except California.

MR. SHAW: We object to an existence of an executed contract in favor of the State of Arizona at a time before you have committed yourselves to the application of the Compact.

MR. SCOTT: I don't see how we are committed.

MR. DAVIS: There is no contract until it is signed.

MR. SHAW: Lets be plain about it, gentlemen. True, but as long as you have that contract executed you have an option indefinite in extent in which you may have all the fence on one side or another and there is no purpose so far as we can see in a document being written and signed by the Secretary of the Interior and remaining a public document for everybody to study and interpret unless you have arrived at the point of
committing yourself by that time, having seen the contract and being satisfied with it.

MR. DAVIS: I wish you would explain to me what advantage has Arizona gained, what advantage have we got that we haven't got now?

MR. SHAW: Why do you want the contract executed first?

MR. DAVIS: So we will have something to present to our legislature. If we get our contract we have no objection to signing the Compact.

MR. FARMER: We have taken it to the legislature. It has refused to do that on the grounds they refused to commit themselves as they knew nothing of what kind of a contract we would then get.

MR. SHAW: That is the reason for the State of Arizona refusing to execute the contract. Now, if you have settled matters you know what contract you are going to get.

MR. DAVIS: We haven't done anything to present to our legislature. Agree to this and ratify your Compact and we think the Secretary will sign.

GENERAL ROGERS: The object and purpose of this resolution was that between now and that time Arizona, through your committee here, would negotiate with these people, that is with the six compacting states, and, then, if an agreement is arrived at which is satisfactory to the Secretary of the Interior you have a contract there which upon ratification becomes effective.

MR. DAVIS: That is what we want to do. Why not state it in such language then?

MR. ELY: I don't like to intrude in this matter again, but it seems to me the question that is causing the difficulty is one of procedure and the procedure that you must contemplate, whether you approve or not, is that normally followed by the Interior Department which is this: After a draft has been reduced to paper, in this case after conference between the states and finally with the Interior Department, it is submitted to the Secretary through formal channels for approval as to form. He never signs first and if he does approve as to form, it is simply an indication to the other party who proposed the contract that if that other party executes in that form, then the Secretary will add his signature.

Now the draft so submitted to the Secretary for approval as to form may very well contain a provision that the contract itself shall not become effective for any purpose until the state of Arizona has ratified the Compact and authorized execution of this agreement or ratified execution of it. That document containing that clause and bearing the Secretary's signature of approval as to form will be submitted to Arizona's legislature. The legislature, if it approves, would pass a short and simple act authorizing execution of it and ratifying the Colorado River Compact whereupon whomever that Act authorizes to fix his signature could sign the contract for Arizona and it would then come back to the Secretary
of Interior for execution by the Secretary. At no time should there be a contract outstanding bearing the signatures of the Secretary of Interior and whoever represents Arizona which is floating around waiting for the Arizona legislature to act upon. It need not bear any signature until the legislature has acted and it seems to me that procedure, once it is understood which is the only procedure I know of that you can follow.

MR. DAVIS: But here is this word "unequivocably." Do you suppose for a minute that your legislature is going to unequivocally ratify this compact, and if the Secretary refuses to go through with it.

JUDGE STONE: I think you have a misunderstanding. It seems to me what we need is perhaps for Judge Shute and one or two others to get together and see if we can't write a resolution to carry out the action of the six states and at the same time find one which will not have the objections which this one seems to have. Now you say you agree on the principles we are attempting to work out here.

MR. DAVIS: We agree on what you want but we don't like the language.

MR. FARMER: Could you appoint Mr. Byron Rogers and Northcutt Ely and Mr. Shaw and Judge Shute on a committee to try and work this out?

MR. ELY: You had better restrict your committee to principals in this matter.

MR. FARMER: You understand the procedure.

MR. JENKINS: I think that if the language were written merely to cover the procedure, I think that that would be satisfactory to both parties. Just to describe the procedure.

JUDGE STONE: Of course, the procedure has to carry out the principles.

MR. JENKINS: If that was the language of the procedure, why couldn't we do this, simply say, "Be it Resolved that this contract be worked out by the committee, and then when so worked out, that it be sent to the Secretary for his approval and for the ratification of the compact by Arizona." Now that puts it in a general way and just carries it right square through and it doesn't put anything in here that the legislatures are going to resent. I think it will work out right along that line.

JUDGE STONE: Well, we might talk here all day and not arrive at the proper language and I want to see us get together on this matter because I don't believe there is any difference in opinion as to what is desired. I think there is no misapprehension on the part of Arizona what the other states are going to insist on. Namely, that the effectiveness of this contract is dependent upon the ratification of the Colorado River Compact. It then resolves itself in some language which will carry out what we all want, that is, ratification of the compact. So I am going to appoint Mr. Shaw, Byron Rogers and Judge Shute on that committee. Mr. Ely has said he is not a member of this Committee of Fourteen, but I am going to ask him to sit in.
Recess for special resolution committee.

Committee of Fourteen reconvenes.

JUDGE STONE: Gentlemen, before this resolution comes, there are one or two others I thought ought to come here. I understand that the reclamation staff is meeting here and I imagine that it is rather inconvenient for Mr. Debler to have to wait on us and we wanted him here as much as possible after this matter is worked out and then I desire to ask Mr. Debler if there was anything he desired to submit to the committee at this time. I had on the agenda the consideration of any matters on the plan of comprehensive development which would come before the meeting. So while we are waiting for these other two or three I wonder if you have anything you desire to present?

MR. DEBLER: I don't know that I have, Judge. The work is just going ahead about as laid out at the Los Angeles and previous meetings, and there hasn't been any development of any kind that was unanticipated. It is just merely a matter of coming along as rapidly as we can, according to the projects outlined. However, if there are any of these gentlemen who desire to ask me questions, I will be very glad to answer them, if I can.

JUDGE STONE: Any questions anyone has? I guess you are all pretty well satisfied with the way things are going on.

MR. DEBLER: I am sure that isn't quite true, but we are getting along as well as we can.

JUDGE STONE: We think you are, and we are glad to have you sit in on the other matters here too.

JUDGE STONE: We will proceed now with the resolution or report of the committee. Mr. Shaw is to present the report.

MR. SHAW: May I say that this resolution has been prepared by the Committee for consideration.

Resolved that it is essential for representatives of the six compact states as follows:

The representatives of the State of Arizona have asked the views of the representatives of the six compact states of the Committee of Fourteen on the proposal of Arizona to enter into a contract with the Secretary of Interior for water to be delivered from Lake Mead. As no draft has been submitted to the Interior Department the representatives of the compact states can only express their general policy, namely:

1. The proposed contract ought to be drafted in conference of the Committee of Fourteen and be in form satisfactory to the states before being submitted to the Interior Department.
2. When and if a draft is approved as to form by the Secretary of Interior it shall contain a provision that it shall not be executed unless and until the Arizona legislature has authorized such execution and has ratified the Colorado River Compact as the other states have done.

3. The compact states will oppose final execution of any contract which is not made subject to the compact in this manner.

I am not a member of the committee, Mr. Chairman, if I were I would move the adoption of the resolution.

GENERAL MASHBURN: I make a motion that the report be adopted.

MR. GILES: Second.

GENERAL KERR: Why number 3. Isn't that covered in the other part of the resolution?

MR. SHAW: At first our statements of what we think ought to be done. There wasn't any discussion in the committee as to why this last paragraph should be added but it might as well be clear among all of us as to what the consequence is if the mode isn't followed.

GENERAL KERR: I was just wondering if it isn't superfluous?

MR. DAVIS: You said until a form is acceptable to all states. What is your interpretation of that? You mean the Committee of Fourteen?

MR. SHAW: Here is the discussion I had with Judge Shute. We had it written originally approved by the Committee of Fourteen. Now that leaves open to conjecture at least whether a form approved by a majority would be binding upon each separate state and I don't think either the state of Arizona or California wants to be bound by majority vote and that is why we changed from Committee of Fourteen to Committee of States. It may be that this effort will not lead to a successful result but the states will unanimously approve any form. If that is the situation, however, I think we have all got to recognize that it will have to meet it as it develops.

MR. JENKINS: What is a sufficient approval of a state?

MR. SHAW: I don't know that I can answer your question, Mr. Jenkins. I don't think that any of us would want to have this matter thrashed along until it had to be submitted to the seven legislatures.

MR. JENKINS: That is what I am afraid of. I want to know.

JUDGE STONE: Couldn't you overcome that whole proposition by putting unanimously to the Committee of Fourteen?

MR. SHAW: Let's say in form satisfactory to the representatives of the states.
MR. JENKINS: That will be better and then we will not have to wait for legislatures to meet, and act and if one legislature doesn't ratify we will have to wait two years more for them to meet.

MR. SHAW: Does that meet with the approval of the members of the Committee?

JUDGE SHUTE: Yes.

MR. DAVIS: Here is the question in my mind. Now Arizona will be bound by this, and suppose the states in a year or two years do not get into accord and there is five do and two do not, would we still be prohibited?

MR. SHAW: We will have to meet that when it arises.

MR. DAVIS: We want to keep good faith in this thing.

MR. SHAW: We all know this and this committee exists as a matter of confidence and cooperation and if those elements fail, this Committee of Fourteen has no legal authority whatsoever. It binds nobody unless we choose to adhere to it.

MR. DAVIS: It is a gentlemen's agreement.

JUDGE STONE: It is an effort to so represent the interests of the states that we will have the support of the states.

MR. DAVIS: One is whether or not Arizona couldn't present if one or two states objected, couldn't get together on the terms of it.

JUDGE STONE: Don't you think it would be wise to cross that bridge when we come to it?

MR. DAVIS: So long as we understand. Would the other states that weren't in agreement with Arizona think they had to oppose it?

MR. SHAW: Let me clarify that please, Mr. Davis. This is actually a resolution adopted by the representatives of the compact states. You gentlemen from Arizona may express as you wish as to what your plans are when the compact states have adopted this resolution. You may bind yourselves as little or as far as you wish, but I think I agree with Judge Shute that this is not a resolution on which Arizona need vote.

MR. DAVIS: Well we want to be in the position that we want to go along with you and whatever it implies to show the sincerity in that we will follow. It remains then that that is your expression of how you would like to see it worked out and Arizona will go along as far as we can.

JUDGE STONE: I was in hopes that it meant more than that, that we are trying to work out something satisfactory to the entire committee. It is true that there is that element explained by Mr. Shaw that after all what the compact states desire is what you want to know. But over
and above that there is the desire on our part in working out a procedure which is satisfactory to you and that you will go along with us. I think we can have that understanding.

MR. DAVIS: We want to be in that position, too.

JUDGE STONE: Well that has been changed as suggested and it is before you. Is there any further discussion?

Calls for question.

Vote was taken by six states. Unanimously carried.

JUDGE STONE: The resolution is adopted.

MR. ELY: I think while Mr. Debler is here that while that resolution contemplates the States will consult together, before it is submitted to the Department of the Interior, it should be effective, perhaps Mr. Debler and Mr. Coffee might be available during the discussions and negotiation of it. I know, for one, their aid is invaluable and certainly they ought to be consulted from time to time.

JUDGE STONE: I am glad to get that suggestion, and I believe that expresses the desire of all the members of the committee. I presume you would be willing to sit in with us Mr. Debler?

MR. DEBLER: Yes, sir.

JUDGE STONE: There is another thing, if anything is to be accomplished on this, we shouldn't permit it to drift along. Do we have some idea at this time when Arizona can be ready to submit to this committee a text?

JUDGE SHUTE: When do you want it?

GEN. MASBURN: May I suggest that a sub-committee of either three or five be appointed to work out this draft preliminary to presenting it to the Committee of Fourteen. In other words, if we can get together a group of three or five to work out this proposition, it seems to me we will make far greater progress, than if we tried to get around the table, all fourteen members and discuss the matter. I suggest, therefore, that, unless there is some objection, that the chair appoint a committee of three or five, to draft the preliminary work. I think that that committee probably would operate better if you had a committee of five members, three from each of the lower basin states and two from the upper basin.

MR. JENKINS: Agreed.

GEN. MASBURN: Because we are dealing with the water that goes to the lower basin states, but you are protected in your compact on the division of water. The upper basin states get half and the lower basin states get half, and this is a division among the lower basin states. I have no objection to it being worked out the other way.
JUDGE STONE: Would you put that in the form of a motion. The suggestion is before you for discussion.

MR. ROGERS: Don't you think it possibly better if Arizona, they know what they have in mind, were to at least put a rough draft to all the states and from there we can go on. There is no cause for us to go with them at first.

GEN. MASHBURN: That will be all right.

JUDGE STONE: I assume it proper procedure for Arizona to present this tentative draft and in order to present it to the entire committee, it might be well to submit the draft first to the entire committee?

MR. SHAW: That is quite possible.

JUDGE STONE: How would this be, in order that everyone may feel that that State is sufficiently and properly represented to have a subcommittee of 7, one from each State. Would that be satisfactory?

MR. ROGERS: Do you mean now?

JUDGE STONE: No, when we have the time to get to it.

MR. JENKINS: I would say right now I want to demur to that. I think that is another bridge we better cross when we get to it. I think if we learn a little bit what Arizona wants in the form of a contract, that would be the way, if they would submit this contract we have been discussing and let us have it to discuss, then we can appoint a committee to work on it.

JUDGE STONE: I think the thought back of that was to have a more effective way of working it out. For instance, if there are things to which we all don't readily agree in a tentative draft submitted, this tentative draft first drawn by Arizona could be submitted to the Committee of Seven, perhaps that committee would have to work four or five days on it, and then bring it in to the Committee of Fourteen. And when everybody is in here, it is more satisfactory for effective work. If some one wants to make a motion, we will dispose of that.

MR. DAVIS: I would suggest that we submit to the various states a proposed tentative contract and then let them get in conference at the earliest possible date at your call. Appoint that sub-committee now. The draft would be presented to this particular sub-committee. Each member of the sub-committee could take it up in his own state. Then I would suggest that you set a date at which time they would meet with the Committee of Fourteen.

JUDGE STONE: Of course, the draft will come to each State. And I hope we can say that it has been presented to every state, they in turn have taken it up, and so everyone can speak with authority.

MR. DAVIS: We will present it to the member of this sub-committee in each State and present it in our way.
JUDGE STONE: I am going to leave it to each state whether we will have the sub-committee or if we do have one, shall it be a committee of seven, as outlined by Mr. Davis. That meets with your approval, does it Arizona?

ARIZONA: Yes.

CALIFORNIA: Yes.

WYOMING: We are not in favor of that. We think it should be submitted to the Committee as a whole first. The idea is that Arizona will prepare a tentative draft to be sent to each State.

JUDGE STONE: That is right, and the next step would be a meeting of a drafting committee of seven to work it over and try to work out as many of the difficulties as possible and finally it can come to the entire Committee of Fourteen.

MR. GILES: This Committee will be designated by you?

JUDGE STONE: No, each State will designate his own man.

MR. DAVIS: I move as outlined by you. Will you set a time when they should report.

MR. ROGERS: That depends on what Arizona says.

MR. DAVIS: Arizona will have something to shoot at, we would like to see it move along.

JUDGE STONE: I think the members on the committee should be designated at this time, and I don't believe the chair should designate them. I think it better procedure that each State notify me within a period of ten days, your representative on that Committee and then I can call the committee together. That is better, you may not be ready to designate the man now.

MR. HEWES: Would there be no objection to making that thirty days. In other words, some form of contract is going to be submitted to the States. We are going to have an opportunity to discuss that with our respective boards. Following that it will be left to the committee. I don't see any particular reason for the time, the ten days. I think possibly some of the states might wish to have a meeting with the representatives.

JUDGE STONE: I think that is true.

MR. DAVIS: Who are we sending this contract to, to whom shall we send the contracts.

JUDGE STONE: That will be sent to the one designated. That may be some time.

MR. SHAW: I suggest that they be sent to Judge Stone and he will distribute them.
MR. DAVIS: Arizona suggests submitting on or before January 1st.

MR. HEWES: That is entirely up to Arizona.

JUDGE STONE: We want it done as soon as possible. If you can submit it by that time, we can fix our procedure accordingly.

MR. DAVIS: We will on or before January first, submit our contract, and what time will intervene when we can get together again?

MR. DEARMOND: I think possibly there might be something affecting the lower basin states before the Committee of Fourteen, which might be worked out between the states down there as affecting the allocation between those states, and I think in setting January 1st, I think we would like to be consulted on that matter, and it might help to smooth out the operation of this committee and save themselves some work.

MR. DAVIS: I move we follow the procedure outlined by the chair and the date of the sub-committee meeting be subject to the call of the chair.

MR. ROGERS: Second.

JUDGE STONE: Before you act on this, I want to put it in the record in the form of procedure. It has been moved, and seconded, that this procedure will be followed: That Arizona submit sufficient copies for each member of the Committee of Fourteen, that these be forwarded through the Chairman to the members of the Committee. That within a period of thirty days each State will communicate the name of its representative and that thereafter the chair will call a meeting of the Sub-committee of Seven to be followed by a full meeting of this group. Is that the way you understand it now?

Question called, Vote taken and Motion carried.

JUDGE STONE: That completes the agenda of the meeting. Is there anything else to come before the meeting?

MR. SHAW: Would be a convenience if the last meeting prior to the Los Angeles meeting and a transcript of this meeting could be gotten to us at some reasonable time. I don't mean to crowd the matter.

JUDGE STONE: I might explain with respect to the transcript, prior to the Los Angeles meeting. Mr. Robinson made a lengthy statement. I sent that transcript for him to correct and he has not had the time to do it. I happen to know how busy he has been. I shall write to him and ask him if we may have that and as soon as that is here, we can get it right out. That transcript of the Committee of Fourteen is completed and you will have that very shortly. As to this transcript, it will take a while to complete it. However, do you think it advisable to include in this transcript the stenographic report of the discussions we have just now carried on, or not?
MR. HEWES: There have been several points that have been clarified. I think we should have it in.

MR. SHAW: In the executive session?

JUDGE STONE: That would not be included.

MR. JENKINS: I move the Committee of Fourteen adjourn.

Motion carried.