

DRAFT

YELLOWSTONE RIVER COMPACT COMMISSION

Minutes of Meeting
Nov. 29, 1949

The first meeting of the Yellowstone River Compact Commission was held at the Northern Hotel in Billings, Montana, on November 29, 1949, and was called to order at 10:00 a.m. by Mr. R. J. Newell, Federal representative on the Commission.

Mr. Fred Buck moved that Mr. Newell serve as permanent Chairman of the Compact Commission. Mr. Lloyd seconded the motion which was unanimously carried.

It was moved, seconded, and unanimously carried that a secretary be elected. Mr. O. C. Reedy was nominated, and there being no further nominations was unanimously elected to serve.

The members of the Wyoming delegation were introduced by Mr. Earl Lloyd, Deputy State Engineer of Wyoming, and the members of the Montana delegation by Mr. Fred Buck, State Engineer of Montana. Mr. I. A. Acker was the only representative from North Dakota. Representatives of Federal agencies and unofficial observers were introduced by the Chairman. A complete attendance list is appended.

The Chairman asked for an expression of the desires of the Commission with respect to whether the meetings would be open to the public and the press, closed, or partially open. Messrs. Lloyd, Buck, and Acker expressed the belief that the meetings should be open, and there being no objections it was so ordered.

The Chairman inquired whether a verbatim transcript of the record would be required or whether a complete set of minutes would suffice. Messrs. Buck and Lloyd recommended that a verbatim transcript not be required; and there being no objection, it was so ordered.

The Chair suggested that approval of the minutes be deferred until the following meeting, with a draft copy of the proposed minutes being furnished to each member of the Commission, and others entitled to copies, as soon as possible after each meeting. After some discussion, there being no objection, it was so ordered.

The Chair asked whether anyone had objection to standardizing on 8 x 10 $\frac{1}{2}$ " paper for the records, and there being no objection it was agreed that this would be done.

The Chair inquired as to the matter of voting procedure. After discussion, it was concluded that voting was not important in Commission meetings. The Compact, as negotiated, must be unanimously supported by the Commission, and the disparity of the size of delegation from the three states will not be of consequence.

At the request of the Chairman, for use in preparation of mailing lists and record of attendance, all present filled out cards giving names, addresses, and official connections.

The Chairman suggested that unless someone desired otherwise, he would call on the State delegations for introductory statements with respect to the problems which would be encountered in drawing up the Compact. Mr. Earl Lloyd made a brief introductory statement

for the State of Wyoming. Wyoming feels that a Compact on the Yellowstone River and tributaries is essential in view of new developments proposed. He described the area in Wyoming and its tributaries and pointed out that all areas were represented by members of the Commission. The provisions of prior Compacts have been satisfactory with respect to the Clarks Fork and the Big Horn Rivers, and in general the Powder River. There has been difficulty, however, in reaching a satisfactory solution of the problems on the Tongue River.

Mr. Goppert, representing the Clarks Fork area, indicated that no serious controversy between Wyoming and Montana existed with respect to that stream. There was in general sufficient water for present irrigation, and probable future irrigation. This was particularly true if reservoirs proposed to be built for power purposes were constructed, as they would provide adequate regulation. These, or some other storage facilities, would be required for ultimate development. Mr. Bower, representing the Big Horn River area, indicated that storage would be necessary to permit full beneficial use of the water of the Big Horn. He indicated that there is sufficient water, if properly stored and conserved to meet needs of both states. Mr. Cochrane, representing the Wind River area, described the extensive potential developments in Fremont County and emphasized the need for a supplemental supply for existing irrigators. He described the procedure under which present appropriators divert more than the legal

allowance, spreading water on their lands and effecting storage in this manner. He pointed out that if their diversions were cut back to the legally permissible quantities it would work a hardship on them unless other storage facilities were provided. Mr. Gwillim described the Tongue River as a typical mountain stream, fed by two main tributaries. It has heavy runoff in the spring, with a shortage in the late season, and will require storage facilities to permit conservation and use of the water. Mr. Greene, representing the Powder River, also spoke of the problem of storage, that stream being very similar to the Tongue River.

The Chair then called on Mr. Fred Buck, who described the Yellowstone Basin in Montana. He pointed out that all consequential tributaries of the river entered from the south, except for the Shields River which flows from the north. This fact creates a situation under which Montana is dependent on Wyoming for water in the Yellowstone River. Mr. Buck then described previous attempts to reach an agreement, beginning in the early 1930's and extended through 1947. He pointed out the methods used in reaching the conclusions expressed in the 1944 draft of Compact, describing the three blocks of water which were allocated; first, that needed for existing irrigation; second, that for potential irrigation; and third, that which remained.

Mr. Jarussi stated that Carbon County, Montana, has an adequate supply of water to serve existing and potential irrigation,

the problem being how best to use the water. Mr. Bunston described the Big Horn Basin, Montana, and pointed out the importance of storage. There is considerable runoff between the last diversion in Wyoming and the first diversion in Montana, but this runoff comes too early in the season to be of much use to the Montana irrigators, and for useful water they must depend on flow across the State line. Yellowtail Dam and Reservoir proposed for construction may solve the problem of storage. Another complicating factor is the treaty rights of the Indians, which must be considered. Mr. Manning suggested that the problem is principally mechanical and that if the factual data are made available an equitable determination can be made to form the basis for a Compact. He recommended the importance of telling the people in the area that the problem can be solved and is being solved in an equitable and amicable manner and not taking a defeatist attitude.

Mr. Leonard described briefly the Tongue River situation. He pointed out that storage has been mentioned by nearly every speaker, but that the Compact does not concern storage but rather deals with natural flow, and that this fact must be kept in mind. Previous Compacts were based on lands irrigated without regard to priorities of irrigation as between the states. He suggested that there might be some difference of opinion as to the validity of this approach. He further pointed out that the water being divided is that which crosses the State line, not that which exists at any other point.

Mr. Muggli, also representing the Tongue River area, reiterated that the problem was one of an equitable division of the water, not a question of storage. Mr. Onstad, speaking for the Powder River interests, pointed out that there had not been much difficulty in reaching an accord on the Powder River previously, and he saw no reason for serious problems to arise this time. He agreed that storage was not a part of the Compact, but suggested that the construction of storage facilities might likely prove a solution to many of the problems which would arise with or without a Compact. Mr. McLaughlin and Mr. Herzog spoke briefly about the interests of the irrigators along the main stem.

Mr. Acker described the relatively small drainage area in North Dakota. He pointed out that, comparatively, North Dakota has a minor interest in the water of the Yellowstone, but does desire adequate water for all its potentially irrigable area amounting to some 24,000 acres, including that now irrigated. Some of the area now irrigated diverts in Montana, and this introduces a minor complication in the drawing up of a Compact. Mr. Acker also mentioned the minor tributaries of the Yellowstone, which rise in North Dakota and pass through Montana before reaching the river. There has been some development along these streams, and more development is in prospect; and the state is, of course, interested in protecting these water users. Mr. Acker pointed out specifically the second paragraph of sub-Article A5 of Article V of the 1944 draft of Compact and suggested

that consideration be given to eliminating this paragraph, since it seemed to have no meaning. He felt that it was not necessary to have a Compact, including Federal ratification thereof, for every agreement that the states might reach on the division of water. Sometimes this would be necessary, but in many instances where Federal interests are not involved he felt that an agreement between the states themselves might serve as well as the more formal Compact to accomplish division of water. He returned to the discussion of storage and indicated ways in which storage might modify some of the problems, giving as an example the construction of Baldhill Reservoir on Sheyenne River by the Corps of Engineers. The Corps is taking no part in the use of the stored water, but has indicated that this is a problem for the State and other agencies to solve.

Mr. Newell presented the interests of the several Federal agencies very briefly, the overall Basin development activity of the Bureau of Reclamation and the Corps of Engineers, the general interest of the Department of Agriculture in anything that affects farming and the specific interests of the Forest Service and Soil Conservation Service of that Department in conservation measures on areas which they control. He emphasized the many extensive interests of the Bureau of Indian Affairs in the area, particularly in the Wind River Basin at the head of the Big Horn and in the Lower Big Horn. The Bureau of Land Management has extensive interests in the public domain within the Yellowstone Basin in Wyoming and Montana, and

minor, if any, interests in North Dakota. The National Park Service is interested in protecting Yellowstone National Park and in the overall recreational aspects of development of the Missouri River Basin.

The Chairman posed the question of how to approach the assignment. Mr. Lloyd suggested setting up an Engineering Subcommittee which would assemble all available data. The states and the Bureau of Reclamation would be represented on the Committee, and possibly the Geological Survey and Federal Power Commission. (It was pointed out that Mr. Leshar S. Wing of the Federal Power Commission will be present at future meetings of the Compact Commission.)

Mr. Buck stated that the idea of the Engineering Subcommittee had struck him somewhat suddenly, and compared that suggestion with the manner in which the International Joint Commission operated with respect to International streams through an Engineering Board and Engineering Committees. He pointed out that the same method was used in negotiating a Compact on the Upper Colorado River, and concluded by concurring in the suggestion. Other Commissioners from Montana and Wyoming also concurred, and Mr. Bower suggested the importance of having accurate basic data for use in selling a proposed Compact to the legislatures of the several states. Messrs. Gwillim and Lloyd discussed the extent of the data already available in Wyoming and that which they believed would be available in the files of the Bureau of Reclamation. Mr Leonard stated that he

concurrent in the idea, that it necessarily followed that the present meeting would be a preliminary organization meeting only, that the collection of data would take some time, and he raised the question of how much time would be required. He pointed out that the study should cover not only lands irrigated, but also other physical factors involved. The Chair urged the necessity of limiting the activities of the Committee by means of specific instructions, and suggested a recess so that the State delegations could discuss the question, outline proposed instructions, and recommend Committee appointments.

Mr. Lloyd suggested the possibility that the Committee might meet today and make recommendations as to the data which would be required. Dean Goodrich described the complexity of the situation on the Upper Colorado and stated that it took about two years to collect the data, but that he saw no need for any such length of time to be required in this case.

Mr. Bunston moved that an Engineering Committee be appointed to study the problem, the motion was seconded, and after some discussion withdrawn.

It was moved to recess after the news picture was taken until 2:00 p.m. The motion was seconded and carried.

The discussion continued on the activities of the Committee with a suggestion that the Committee be furnished the order in which the streams would be studied so that data could be collected

in that order. It was suggested that the Commissioners representing areas along each stream might meet to discuss specific problems prior to the next meeting of the full Commission. The Chair suggested that data should be available at the earliest possible date, and asked Dean Goodrich to be prepared to estimate how long the study would require.

Mr. Gwillim stated that the time would be largely dependent on the amount available from the Bureau. Mr. Pratt promised, on the behalf of the Bureau, that all available material could be utilized and all possible help would be given. Portions of the 1938 report to the Wyoming legislature were read, which outlined data lacking at that time, but in process of collection. It was pointed out that most of these data have been collected and are now available. There was further discussion of the basis of negotiating former Compacts.

After a news photo the Commission recessed to meet at 2:00 p.m. at the Commercial Club.

The Commission reconvened at 2:00 p.m.

The Chair introduced the Honorable John W. Bonner, Governor of Montana, who welcomed the Committee to the state, pointed out the importance of the job of drawing a Compact for the division of the waters of the Yellowstone River and of the need of having a report to present to the Montana legislature at its next session in January 1951. He spoke of this activity as democracy in action

where three states meet to consider their mutual problems and reach agreement thereon.

The Chair called for further discussion of procedures.

Mr. Lloyd urged that an Engineering Committee be set up to assemble basic data.

Mr. McNalley moved that the Chair appoint an Engineering Advisory Committee consisting of three representatives from Montana, three from Wyoming, and representatives of Governmental agencies to investigate, gather data and assist the Compact Commission. The motion was seconded.

It was recommended that the Bureau of Reclamation, Geological Survey and Federal Power Commission have representatives on the Committee.

It was suggested that North Dakota should be represented and the maker of the motion stated that the omission was an oversight. Mr. Acker asked that the State Engineer of North Dakota be the only Committee member from that state. It was suggested that the State Engineers of the three states be designated on the Committee with power to call on others for assistance. Mr. Lloyd stated that the State Engineer of Wyoming, as ex-officio Interstate Streams Commissioner, would probably prefer not to serve on the Engineering Committee. Mr. Buck suggested that three representatives from each state should not be necessary, that one would be sufficient.

There was general discussion of the makeup of similar committees to advise other compact commissions. That for the Snake River consisted of one from each state and one Federal representative from the Bureau of Reclamation. For the Upper Colorado Committee each state appointed whatever number of Committeemen it desired, and the Federal representative added assistants as he wished.

It was moved to amend the motion by reducing the representation to one from each state and one from the Bureau of Reclamation.

Motion was seconded and unanimously carried.

The motion as amended was unanimously carried.

The Chair asked the state groups to furnish names of the state representatives. Mr. Fred Buck was suggested as Montana representative. There was some discussion of the situation in Wyoming.

Mr. Acker moved that the representatives on the Engineering Committee be authorized to deputize any persons that they see fit to assist them.

The motion was seconded and carried.

The Chair appointed the State Engineers of the three states, Mr. Fred Buck from Montana, Mr. J. J. Walsh from North Dakota, and Mr. L. C. Bishop from Wyoming, together with Mr. Carl L. Myers as the Bureau of Reclamation representative.

The Chair asked if written instructions would be required for the guidance of the Committee.

Mr. Manning suggested four items to be required, and as discussion continued the list was expanded to the following:

1. A flow table on the main stem and tributaries.
2. Acreage irrigated.
3. Potential irrigable acreage together with the source of records and estimate.
4. Record of priorities in the three states.
5. Consumptive use of water including industrial use.
6. Climatological data.
7. Storage available.
8. Potential Storage.

Mr. Buck suggested that the compact should be based on the same general theory as the previous Compact. Mr. Gwillim moved that the Committee report by January 15 what information is available and what will be required. There was discussion of the time required to make such a report by Messrs. Gwillim, Buck, Acker, and Myers. The motion was withdrawn.

Mr. Manning moved that the Chair be authorized to appoint a representative of the Bureau of Indian Affairs on the Engineering Committee.

The motion was seconded, and after brief discussion carried.

Mr. W. S. Hanna was appointed.

Mr. Gwillim moved that as soon as the Committee convened and elected a Chairman it would, at the call of its Chairman, issue a report. The motion was seconded.

Mr. Bower commented that a time limit only would constitute sufficient restriction on the activities of the Committee. Mr. Pratt suggested that the Committee report should include a tabulation of data available and a suggestion as to further items which would be needed.

Mr. Gwillim's motion was withdrawn.

Mr. Pratt moved that the Engineering Committee heretofore selected be instructed by the Commission to prepare as soon as possible, but not later than January 15, 1950, a tabulation of existing information included within the eight items previously discussed, and a tabulation of further items which the Committee feels are required to enable the Commission to arrive at a solution.

The motion was seconded.

Mr. Bunston suggested that in its initial tabulation the Committee might add such items as it had available and felt would be necessary. There was discussion of the instructions and the time limit imposed.

The motion was carried unanimously.

Mr. Myers asked that the Committee members present meet at his office to look over data available and determine what portions thereof can be used in present form.

Mr. Hanna asked for a discussion of future program of the Commission after the Committee report was issued. There was discussion of the date for the next meeting. Mr. Bower suggested that the Chairman call a meeting of the Commission whenever he felt anything could be accomplished. Mr. Newell asked if the report should not be circulated to the Commission members a few days before the next Commission meeting. There was general concurrence on the proposal, and it was agreed that the call for the next meeting would go out with the Engineering report.

The Chair asked for further discussion of procedure or of any details that might be taken up.

Mr. Leonard brought up a discussion of a second paragraph of sub-Article A5 of Article V of the 1944 draft of Compact, reading as follows:

"All residual flows of the Yellowstone River below Sidney, Montana, after the states of Montana and Wyoming have made, or may make, full beneficial use of the waters of said stream, is hereby allotted to the State of North Dakota."

Mr. Acker moved that this paragraph be excluded from the proposed Compact.

The motion was seconded.

The Chair ruled the motion out of order since the details of the Compact were not under discussion.

Mr. Bunston inquired whether North Dakota should not be entitled to a specific amount of water based on acreage within that state rather than having only a right to whatever was left. There was discussion of the problem and of the related matters of the rights to water in streams rising in North Dakota and flowing into the Yellowstone River, and of extensive sprinkler irrigation. There was considerable discussion of the division of the water between Montana and North Dakota at the lower end of the river.

Question was asked whether any of the Boulder River Drainage Basin extended into Wyoming. Mr. Myers stated that neither the Boulder nor the Stillwater Basins extended over the Wyoming state line.

The question of the status of treaty rights of the Indians came up for discussion, and Mr. Turnbull presented language prepared to serve as a substitute for Article XV of the 1944 draft, which language was proposed by the Commissioner of Indian Affairs. There was considerable discussion of the meaning of the language, the need for such language, and of the position of the Bureau of Indian Affairs in general and the legal niceties involved.

It was moved that the meeting adjourn subject to the call of the Chairman. Motion was seconded and passed, and the meeting adjourned at 3:50 p.m.

Approved:

SIGNED

R. J. Newell, Chairman

O. C. Reedy

O. C. Reedy
Secretary

ATTENDANCE LIST

November 29, 1949

Members of the Commission

Federal Representative

R. J. Newell

Montana

A. W. Bradshaw
Fred E. Buck
H. W. Bunsten
John Herzog
John M. Jarussi
A. Wallace Kingsbury
P. F. Leonard
Walter M. McLaughlin
Dave H. Manning
Joseph Muggli
Chester Onstad
Keith W. Trout

North Dakota

I. A. Acker

Wyoming

Earl T. Bower
J. Harold Cash
Ben F. Cochrane
Ernest J. Goppert
R. L. Greene
E. C. Gwillim
E. J. Johnson
Lee E. Keith
N. V. Kurtz
Earl Lloyd
R. E. McNally
Mark N. Partridge
A. R. Shreve
Charles M. Smith
L. F. Thornton
Dr. M. B. Walker
R. D. Goodrich - Engineering Advisor

Others

W. M. Berry, Prairie Farms Rehabilitation Adm., Canada
Gerald J. Cravetz, Montana State Engineer's Office
Oscar Moberg, " " " "
Mr. Cook " " " "
Walter J. Turnbull, Jr., Bureau of Indian Affairs
A. B. Melzner " " " "
W. S. Hanna " " " "
John D. Goshorn, Geological Survey
Frank A. Swenson, " "
K. R. Melin " "
Harold T. Tysk, Bureau of Land Management
D. F. Burroughs, National Park Service
E. L. Doeling, Fish and Wildlife Service
Geo. O. Pratt (for K. F. Vernon), Bureau of Reclamation
Alvin E. Bielefeld, Bureau of Reclamation
D. N. Lindeman " " "
Leonard B. Desmul " " "
D. C. Ketchum " " "
R. H. Workinger " " "
Carl L. Myers " " "
R. J. Young " " "
O. C. Reedy, Secretary