

October 1, 1938

Dr. Harlan H. Barrows,
C/o Department of Geography,
University of Chicago,
Chicago

Dear Dr. Barrows:

This will acknowledge receipt of your two airmail letters of September 29. I am very glad to have this information.

Since the date of my last letter, Governor Corlett came to El Paso, to discuss with us (Major Burges, Judge Mechem, and me) the proposition submitted by the Attorney General. While he did not commit himself or his State to any particular course of action, he manifested an interest in the proposition and his attitude was most friendly. The principal questions he raised were those you mention on the second page of your letter: that is, whether the entry of the consent decree in the Supreme Court might not have the effect of placing the administration of the terms of the decree under some official appointed by the Court, and whether the Attorneys General have authority to bind the States in a stipulation of this kind.

We had previously gone carefully into this matter, and reached the following conclusions: first, that the decree should embody only the substantive provisions of the Compact, in effect merely declaring the rights of the three States, the administration of the Compact or the decree to be left to the States, themselves. As a matter of fact, the Supreme Court has frequently taken the position that it should not, at least initially, prescribe any method for the enforcement of a decree, the assumption being that once the rights have been declared by the Court, the parties themselves will conform to the terms of the decree without compulsion. Indeed, I believe that the Court has appointed water masters or other administrative officials only upon the request of one or more of the parties litigant. However, we thought that any danger could be obviated by submitting the matter in advance to the Hon. Charles Warren, the Master in Chancery, together with a form of the proposed decree, in order that he might obtain an expression from the individual members of the Court. As its appointee, he is in such close contact with the Court that we all believe there

would be no difficulty in his getting such an expression, and it occurs to us that both he and the Court would be glad thus to dispose of some very troublesome litigation.

When Governor Corlett left he asked us to prepare a form of the decree to be submitted to Attorney General Rogers, of Colorado, and this we have done. This will be sent to Governor Corlett within the next few days. I enclose a copy of the first draft, which you understand is in tentative form.

With respect to the second question raised by you, in your letter, and by Governor Corlett while he was here: at the time I first made this suggestion to the Attorney General of Texas, he raised this very point. However, after going into the matter thoroughly, he reached the definite conclusion that he, as the chief law officer of the State, is vested with full discretion and power to institute litigation and either prosecute it to conclusion or compromise it by entering into an agreed judgment. He needs no authorization, either from the Legislature or the Executive, to institute litigation, and this necessarily carries with it the right to conclude the litigation by either of the methods mentioned. Such right of the chief law officer seems to have been recognized from the earliest days in England and is inherent in our system of jurisprudence. Even our friends in the lower valley seemed to have reached this conclusion, rather reluctantly, because they first proposed to seek to enjoin the Attorney General from entering into any such agreement. I think perhaps we convinced Governor Corlett of this, although, of course, there may be something in the constitution of Colorado that would change the rule there.

Reverting once more to the first of these questions: It is quite possible that, if, in the future, any State, by a motion in the Supreme Court, alleges a violation of the terms of the decree, the Court might appoint a water master or other officer having similar powers. This would be the case if suit were brought for violation of the provisions of the Compact or, for that matter, for violation of water rights independent of the Compact. And the only effect of the consent decree in this respect would be to bring this intervention one step nearer.

I am very doubtful, however, that the proposal of the Attorney General of Texas will be accepted by New Mexico. This was the impression that Governor Corlett got from his brief conference with some of the New Mexico authorities on his way down here. There seem to be two reasons for this attitude: in the first place, I understand that Albuquerque has withdrawn her application for the Jemez Creek project. The

city authorities have reached the conclusion that it is better to get their water supply from wells in the vicinity than from the headwaters of that stream, and have withdrawn their application for federal funds for this project. That was the most important of their proposed projects, the Barr Irrigation District project being considered of minor importance. Hence, there is no longer any necessity for haste. Secondly, I gather from what Governor Corlett had to say of his conversations at Santa Fé, that the New Mexico authorities suspect some sinister implication in our proposal. Under these circumstances, I am refraining from communicating with the New Mexico people unless and until they express some interest in the proposal or a desire to go into the matter further.

I was very much encouraged yesterday after reading a letter just received from Judge Oscar C. Dancy, of Brownsville, with which he enclosed copies of letters he had written and received with respect to the attitude of the lower Rio Grande valley towards the Compact and the consent decree. Judge Dancy, as I believe I have told you, agrees with us one hundred per cent., and he has been very active in seeking to persuade his neighbors that their best interest will be served by cooperation. It now seems that Mr. Robertson and Mr. Tamm, the two most influential leaders of the opposition, have finally reached this same conclusion, and Judge Dancy expresses the belief that my visit down there may have the effect of bringing the whole valley over to our side. I sincerely hope he is right, and I plan to leave El Paso next week so as to reach Brownsville on October 10. If they withdraw their opposition, there will be no further danger that ratification will be defeated in the Legislature and, from our standpoint, at least, no necessity for the consent decree. Of course this is by no means a certainty, and I will leave it entirely to your own good judgment whether the matter should be pushed. I do not feel in a position myself to urge it any further.

Yours very sincerely,

Frank B. Clayton
Rio Grande Compact Com-
missioner for Texas

NATIONAL RESOURCES COMMITTEE
INTERIOR BUILDING
WASHINGTON

Department of Geography
University of Chicago

Air Mail
September 29, 1938

Confidential

Mr. Frank B. Clayton,
McBroom & Clayton,
Bassett Tower,
El Paso, Texas.

Dear Mr. Clayton:

I do not yet know whether or not Mr. Ickes decided to rescind the allocation for the Albuquerque water supply project. I think, however, such action by him is imminent and I do not know, of course, what effect it may have upon Gov. Hannett, Mr. McClure, and our other friends in New Mexico.

For your information only, I may say that the Wagon Wheel Gap project was disapproved by the Regional Office of the Public Works Administration and by one or more divisions of the Public Works Administration in Washington. (Doubtless Gov. Corlett does not yet know this.) Of course, those actions were not final, though I think it probable that Mr. Ickes will approve them. I am not surprised at the unfavorable status of the project. Gov. Corlett and his friends apparently assumed that funds undoubtedly could be obtained from PWA if Professor Adams and I would only agree to clear the project under the President's executive memorandum. It seemed to me, however, that PWA might well hesitate to finance by grant and loan so costly a project in such an area - one in which there has not been pressing need for work relief. If Mr. Ickes approves the action of his subordinates, the project will not, of course, be officially referred to us for consideration under the executive memorandum. If it is rejected by PWA, the attitude of Gov. Corlett and his constituents toward the Compact may conceivably be altered.

Yours sincerely

Harlan H. Barrows.
Harlan H. Barrows.

August 3, 1933

Hon. Homer I. Leonard,
McAllen, Texas

Dear Homer:

On May 27 last a meeting between representatives of water users on the Rio Grande below Fort Quitman, on the one hand, and representatives of the Irrigation Districts under the Rio Grande Project and of the Bureau of Reclamation, on the other, was held at El Paso. I arranged this meeting at the request of Mr. F. S. Robertson, of San Benito, who is secretary of the Water Conservation Association of the Lower Rio Grande Valley, and, likewise at Mr. Robertson's request, presided over the meeting as chairman. The purpose of this meeting was to discuss a possible arrangement or understanding with reference to the amount of water in the Rio Grande to be permitted by the upper districts to flow past Fort Quitman. Mr. Robert M. Kirkpatrick, an attorney, of Mercedes, attended the meeting as representing the water districts in your county.

I am enclosing a copy of the printed transcript of the proceedings of this meeting, with the hope, for reasons which I shall presently explain, that you will take an opportunity to read it.

I know that you are interested in the Rio Grande Compact and in the conflict among the States of Colorado, New Mexico, and Texas over the waters of the Rio Grande. This conflict, as you know, has existed over a long period of time, and to resolve it the Compact, after months of negotiation, was entered into. Your interest in these matters has been manifested in the past by the very generous aid you have given me as Rio Grande Compact Commissioner, not only in connection with the compact negotiations, but also in connection with the lawsuit against New Mexico. This litigation so far has cost the State and the Irrigation Districts most vitally concerned more than \$100,000.00. It is now stayed, pending the action of the Congress and the three state legislatures with reference to the approval and ratification of the Compact.

I also know that you are interested in these questions from the standpoint of your own district. We all understand that the lower Rio Grande valley is in a very precarious

condition with respect to its water supply and that in the very near future steps are going to have to be taken to rectify this situation.

It is for all these reasons that I am writing you.

Your attitude towards ratification of the Rio Grande Compact will be influenced, I know, solely by the consideration of what you believe is for the best interest of your constituents. And regardless of what that attitude is or may be, I very much desire that you shall be in possession of all the facts; and I know that when you do have all the facts before you the conclusion you reach will be a fair one.

Towards the latter part of the negotiations among the commissioners for the three States, the meetings were attended by representatives of the lower Rio Grande valley interests. The final meeting was attended by Mr. Clark, Chairman of the Board of Water Engineers, Mr. Robertson, and Mr. A. L. Montgomery, of San Benito. It was the opinion of every one of the Texas representatives attending the meeting that by the Compact Texas secured all that she was entitled to, and, indeed, all that could physically be delivered to her. And I know then of course, as I do now, that a difference of opinion existed between the upper and lower water users in Texas as to whether the districts under the Rio Grande Project were obligated to deliver any water past Fort Quitman and if so, the amount. But we felt that this controversy (if the difference had then reached the stage where it could be so termed) was a matter for internal negotiation, and that its injection into the negotiations for a permanent compact would gravely prejudice our case and perhaps result in the collapse of the negotiations. Obviously, Colorado and New Mexico could not be asked to guarantee that any certain quantity of water would be delivered to any particular locality in Texas. Their only responsibility was to see that Texas' equitable share was delivered at the state line, or, rather, delivered into Elephant Butte reservoir, which is the point of control.

It seemed to me then that there was some attitude on the part of certain individuals in the lower Rio Grande valley to predicate their support of the ratification of the Compact by the Legislature upon a successful termination of their differences with the two upper districts. Or, to put it in another way, there seemed to me to be an indication that if their claims were not conceded by the upper districts, the lower water users would oppose ratification. This attitude, if it in fact exists, seems to me unwise from every viewpoint:

Concededly, Texas received in the Compact everything she was entitled to receive, and perhaps more than she could get as a result of litigation, which would inevitably follow the defeat of ratification. Obviously, the lower districts could not profit by this.

If a solution of their mutual difficulties could not be arrived at by negotiation and the representatives of the lower districts feel that their rights were being invaded by the upper districts, there are forums in which those matters can be settled authoritatively. Most assuredly, however, these issues are quite foreign to any question of ratification of the Compact. Ratification or non-ratification should be based solely upon a consideration of whether Texas, as a State, was getting, by virtue of the Compact, all she was entitled to or even more than she could get as a result of litigation, taking into consideration the time, effort, expense and hazards involved in the latter very unsatisfactory way of settling these interstate difficulties. If the Legislature is satisfied that Texas has made a good bargain, then I can not see how any interstate disagreements should be allowed to influence its action.

I hope and firmly believe that the meeting here on May 27 clarified this situation and that whatever hostility may have existed prior to the meeting now no longer exists. It seemed to me that when the gentlemen representing the interests below Fort Quitman left El Paso their attitude was one of friendship and cooperation, and that many things had been made plain to them that were not understood before. My impressions seemed to be confirmed yesterday, when Judge Oscar Dancy, of Cameron County, called at my office to discuss the very serious water problems of the lower Rio Grande valley.

You may be sure that I thoroughly appreciate how very serious these problems are. I also want to assure you that if I can be of any service in helping to solve them, I am yours to command.

Judge Dancy assured me that it is not his attitude, and he does not believe it is the attitude of others in the lower valley, to seek to defeat ratification of the Compact simply a difference of opinion exists as to the relative rights of the upper and lower valley water users. This is the same as the feeling expressed by many of the gentlemen attending the meeting on May 27, and I hope it is the universal feeling among your constituents.

I am frank to say that I do not believe that even a partial solution of your difficulties lies in an agreement

as to any guaranteed delivery past Fort Quitman with the upper districts. In the first place, because of the small quantity that can actually, physically be passed and the very poor quality of the water, the amount which you could beneficially use twelve hundred miles below us would be infinitesimal, some 200,000 acre-feet passing Fort Quitman annually (the past ten-year record) as against some 3,500,000 to 4,000,000 discharging annually into the Gulf, unused, in normal years. And, irrespective of any agreement, the consensus of engineering authority is that at least this amount (200,000 acre-feet) will necessarily continue to flow past Fort Quitman, and very probably will be increased, rather than diminished, if the supply to the reservoir is made more certain by the ratification of the Compact. Some discussion of this point was heard at the meeting (see p. 25 of the transcript).

The insuperable obstacles that lie in the way of any such guaranteed delivery were fully explained at the conference of May 27, and it is for this reason, as well as for the many others, that I should very much like for you to read this transcript or, at any rate, the particular portions I have marked and to which I shall refer below.

Mr. Robertson, the man primarily responsible for the meeting, who represented the districts in Cameron County, said: "We came up here to ask you gentlemen for an agreement. I take it for granted that your explanation why you can't enter into such an agreement is perfectly reasonable. I don't believe you could if you would."

The history of the matter is pretty well set out on pp. 10 and 11, and 15 to 19 of the transcript. On pp. 12 and 13 you will find some statements bearing upon the question of whether ratification of the Compact should not be considered quite independently of the situation in the lower valley. On pp. 19 to 22 you will find a discussion by Dr. Marlan H. Barrows, of Chicago, a member of the Water Resources Committee of the National Resources Committee, who was responsible, more than any one else, for the Rio Grande Joint Investigation, which cost the United States and the three cooperating States (but especially the United States government) the sum of \$400,000.00, and upon the basis of which we were finally able to negotiate the Compact. Pp. 24 and 25 will show you pretty well the spirit of the gentlemen attending this meeting at the time it adjourned. These excerpts in particular I wish you would read. They summarize the situation, and I feel that when you have read them and discussed

Frank B. Clayton
The Orange Company
Houston, Texas

Dear Sirs:

With kindest regards and best wishes, I am

over-
by the realization of the company.
know the condition their interests will be best understood
that when you have thoroughly reviewed the matter you will
interests of your constituents come first, and I am hopeful
part is up for realization. I understand of course that the
on come you to any particular course of action when the com-
tion from you, without inquiring in any way to embarrass you
desires. In any event, I should appreciate having an expres-
to go into these matters with you thoroughly if you think it
I should be very glad indeed to go to Cameron County

state regarding the company by non-realization.
three states, the attitude will hardly be friendly to any
in an effort to facilitate a mutual understanding among the
money in connection with the Orange Joint Investment
since the National Resources Committee spent a large sum of
and the funds to undertake the large task this would be, and
National Resources Committee which considers both the present
on both sides. I know of no other Federal agency than the
Board, and this will demand a very extensive investigation
that the Colorado and the Orange under problems be treated to
a treaty with Mexico. To get the treaty will probably require
you need storage on the Rio Grande. But to get it, we must have
realization of the difficulties of the Lower Valley. Sincerely,
It seems to me that Dr. Ballou pointed out the real

part.
put to you for the unending assistance you have given me in the
you know, I hold your views in very high esteem, and I am glad
not in fact any conflicting interests. In any event, as I think
in fact, I believe you will satisfy yourself that there are
possible conflict of interests within the state. In fact, and
eided on the merits of the company alone, and not upon any
you will agree that the question of realization should be de-
them with the men down there who were present at this meeting.

LAW OFFICES
MCBROOM & CLAYTON
BASSETT TOWER
EL PASO, TEXAS

November 16, 1938

Hon. W. Lee O'Daniel,
Fort Worth, Texas

Dear Governor O'Daniel:

There is enclosed herewith a printed copy of the Rio Grande Compact signed by the commissioners for Texas, New Mexico, and Colorado, and the United States, on March 18, 1938, which is now awaiting ratification by the three state legislatures and approval by the Congress.

It is hoped that ratification of this compact will end a forty-year controversy among the three signatory States, and will pave the way to negotiations for a treaty with Mexico respecting the waters of the lower Rio Grande.

Since the necessity will undoubtedly arise soon after the convening of the Forty-sixth Legislature for you to take official action respecting this compact, and since the matter is of vital importance to all the communities along the Rio Grande, I am taking the liberty of imposing on your time with a brief resumé of the historical background of this document:

Prior to 1890 irrigation in the Rio Grande valley, in Texas and New Mexico above Fort Quitman, had reached a high stage of development. In the early 1890's water shortages began to occur along the river, in the Mesilla, El Paso, and Juarez valleys, and the people in these valleys, in both countries, complained to the United States Government, and Mexico presented claims for damages aggregating some \$35,000,000.00. Our government thereupon made a survey, which revealed that the shortages were occasioned principally by large irrigation developments in Colorado. To remedy the situation and to settle Mexico's claims, an embargo was placed by the Secretary of the Interior on further irrigation development of any magnitude in the Rio Grande basin in Colorado and New Mexico, and negotiations between the United States and Old Mexico for a treaty with respect to the waters of the Rio Grande were begun. The treaty was signed in 1906. Under it, the United States guaranteed to Mexico, in return for the relinquishment of all claims for damages, and of all other claims to the waters of the Rio Grande above Fort Quitman, an annual delivery, in

perpetuity, in the Rio Grande, at the head of the Mexican canal here, at El Paso, of 60,000 acre-feet of water.

Pursuant to the treaty, gillings were made in 1960 and 1908 on all unappropriated waters of the Rio Grande, to be impounded in a storage dam to be constructed near Engle, New Mexico, for the benefit of lands in New Mexico and Texas between that point and Fort Quitman, Texas, and to insure the delivery to Mexico of its annual quota.

Elephant Butte dam was constructed near Engle, New Mexico, with an original capacity of 2,639,000 acre-feet, the dam and its attendant works being completed in 1916, at a cost of some fifteen millions of dollars. \$1,000,000.00 of this cost was borne by the United States Government as an incident of its obligation under the treaty with Mexico. The rest is being repaid by the owners of the lands benefitted, on the American side, above Fort Quitman.

In 1925 the embargo placed by the Secretary of the Interior on further development of irrigation in Colorado and New Mexico was lifted. Both States had in prospect large new developments, which threatened to impair the supply of water to Elephant Butte reservoir - the only source of supply for lands in Texas and New Mexico between Elephant Butte dam and Fort Quitman.

In 1923 Colorado and New Mexico had enacted legislation and appointed commissioners for the purpose of negotiating for an equitable apportionment of the waters of the Rio Grande, and in 1925 Texas followed suit. The Texas statute is now Articles 7466a to -d, Revised Civil Statutes, the first of which reads as follows:

"The Governor of this State shall, with the advise and consent of the Senate appoint some qualified person a commissioner to represent the State of Texas in conference with commissioners duly appointed to represent the states of New Mexico and Colorado, and a representative of the Government of the United States, to negotiate an agreement respecting the use, control and disposition of the waters of the Rio Grande and its tributaries above Fort Quitman, Texas."

Pursuant to these Acts, commissioners were appointed by the three States and the United States, and they negotiated almost continuously until a temporary compact was signed and ratified in 1929. By its terms, that compact was to expire on June 1, 1935, but by subsequent extensions it was in force until

October 1, 1937.

For various reasons, not necessary to recount here, the unrest, particularly in Texas, continued, resulting, in 1935, in the filing in the Supreme Court of the United States of a lawsuit, brought by Texas against New Mexico, over the waters of the Rio Grande. Many hearings were had in this lawsuit before a master in chancery appointed by the Supreme Court, necessitating the employment of many technical experts and the preparation of much technical testimony. This litigation has already cost the State of Texas and the irrigation districts affected more than \$100,000.00.

Shortly after the suit was filed, the National Resources Committee tendered its services to the Rio Grande Compact Commission in helping to overcome the almost insuperable obstacles which lay in the way of negotiating a permanent compact, and, in December, 1935, the Commission adopted a resolution accepting the Committee's good offices and agreeing that the three States should participate in an investigation, to be conducted jointly with the United States Government. This investigation was commenced early in 1936 and was concluded about the middle of 1937. It cost more than \$400,000.00, all but \$55,000.00 of which was contributed by the federal government and its various agencies. The balance of the cost was allocated among the three States.

In May, 1937, further hearings in the lawsuit between Texas and New Mexico were suspended, pending completion of the survey by the National Resources Committee and in order to allow the commissioners for the three States time to negotiate a permanent compact, if possible, based upon the findings of that survey, termed the Rio Grande Joint Investigation.

I am taking the liberty of sending you, under separate cover, a copy of the report, in two volumes, of the Rio Grande Joint Investigation, which you will find of interest in this connection.

Upon suspension of the hearings in the lawsuit, negotiations for a compact were resumed, finally resulting, in March, 1938, in the signing of what was designed as a permanent compact. The enclosed is a (printed) copy of that compact. It must of course be ratified by the legislatures of the three States and approved by the Congress of the United States before it becomes effective. After ratification, the lawsuit pending in the United States Supreme Court, between Texas and New Mexico, will be dismissed.

We believe this compact represents a fair and

equitable settlement of the controversies that have raged almost continuously for over forty years between the three States. As far as Texas is concerned, it in effect prevents further encroachments on the waters of the Rio Grande by the two upper basin States. In any event, it represents the best efforts of the Texas commissioners, engineers, attorneys, and other technical experts who have labored so assiduously since 1925. If ratified, it will, in our judgment, restore a feeling of security to the water users in Texas above Fort Quitman, and will very materially aid in solving the problems confronting the water users in Texas below Fort Quitman.

A few words with reference to the last proposition may be permitted me:

Originally, there was some misunderstanding in the minds of water users in the lower Rio Grande valley with respect to the effect of the compact upon their rights and prospects. The treaty with Mexico of 1906, the filings of 1906 and 1908, the Act of the Texas Legislature of 1925, the temporary compact, the lawsuit between Texas and New Mexico, the report of the Rio Grande Joint Investigation, and, finally, the permanent compact itself, all refer to the Rio Grande above Fort Quitman. The reason for this is: the water shortages subsequent to 1880, which were the occasion for all the negotiations that followed, were felt only above Fort Quitman, this by reason of the fact that the lands in Texas above Fort Quitman derived their water supply solely from the main stream and not from tributaries, of any importance, coming in below Engle, New Mexico. Below Fort Quitman, however, the situation was different. Below there the supply came almost entirely from tributaries in Texas and in Mexico, and no water shortages had been experienced.

In deed, it has been only in very recent years that the lower Rio Grande valley has suffered from lack of water, and these dry seasons have alternated with seasons of destructive floods, the waters of which, if impounded, would afford a dependable and ample supply. By way of illustration: the water passing Fort Quitman in recent years has averaged approximately 200,000 acre-feet annually. During these years, however, there has passed into the Gulf, unused, some 4,000,000 acre-feet annually, on the average. Considering the facts that there are some twelve hundred miles of river channel between Fort Quitman and the Gulf, that countless diversions on both sides the river intervene, that there is a material loss from seepage and evaporation, and that the water passing Fort Quitman is so highly saline in content as to be practically unusable, it can readily be seen that the water in Elephant Butte reservoir has no appreciable relation to the water supply of the lower Rio Grande

valley.

Ratification of the compact does, however, have a substantial relation to the problems of the lower valley. This is so for the reason that the ultimate solution of those problems depends upon the storage of flood waters, which damage the land and waste away into the Gulf. Yet, there can be no storage without a treaty with Mexico, and Mexico has consistently refused to negotiate with the United States for a treaty respecting the waters of the lower Rio Grande independently of negotiations for a treaty respecting the use of the waters of the Colorado of the West, in which Mexico is vitally interested. Moreover, it is apparent that our government would hardly be in a position to negotiate with Mexico respecting either stream until the differences existing among the basin States within the United States over the waters of these two rivers have been reconciled and finally settled. To quote from the remarks made at a meeting between representatives of the upper and lower interests by Dr. Harlan H. Barrows, a member of the Water Resources Committee of the National Resources Committee, "Failure of the Compact would necessitate resumption of the litigation between Texas and New Mexico. Such litigation always is a slow and costly method of settlement and its results are likely to be inconclusive and unsatisfactory to the people. . . It would be tragic if that compact were not ratified by each of the States. It would be calamitous to the lower basin, as well as to the upper basin. Further, I venture frankly and in the most friendly spirit to say this to you, and you may write it down almost as a formula: no compact, no treaty; no treaty, no storage dams; no dams, no regulation of the waters of the lower river."

As I have said, there was at first some misunderstanding among the people of the lower Rio Grande valley concerning the purpose and effect of the compact. But this I believe has been resolved. I recently spent several days in the lower valley, meeting with representatives of the various interests, and we discussed with each other freely and frankly all the ramifications of the compact and the possible solution of our mutual problems, and I believe I am safe now in saying that a spirit of friendly cooperation prevails in all the regions along the Rio Grande in Texas with respect to ratification of the compact and negotiations with the upper Colorado basin States leading to a treaty with Mexico. In this connection, I am taking the liberty of quoting from a letter I received a few weeks ago from Judge Oliver C. Aldrich, county judge of Hidalgo County, and also president of the Water Conservation Association of the Lower Rio Grande Valley:

Mr. O' Daniel

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11 16 38

"I am very glad that I had an opportunity of meeting you personally and talking with you and of getting a better understanding of the work you have been doing on the compact commission. Now that I know what the suit in the United States Supreme Court is all about and I have had first-hand information from you, we have been able to satisfy the entire membership of our Association. I think your trip down here was well worth while and I feel that it has done much to put down some discord we had in our Association. You can rest assured that we will be glad to work together in the future in solving our mutual problems."

I am also enclosing with the report of the Rio Grande Joint Investigation (Under separate cover) a copy of a paper written by Mr. Emory W. Watts, of McAllen, Texas, entitled, "Comments on the Problem of Water Supply for the Lower Rio Grande Valley," an article which unquestionably represents a great deal of hard work and straight thinking on the part of the author. It is as good an exposition of the problem and its solution as I have yet seen, and I respectfully commend it to your attention.

I realize full well that you are a very busy man but I also know that you are well aware of this very pressing problem, and I have read in the newspapers expressions from you of your interest in solving it. It is for these reasons that I presume upon your time to the extent that I have by this letter.

The opportunity did not present itself, either at Beaumont, during the convention, or here in El Paso this week, to discuss this matter with you, because your time on both occasions was limited and completely taken up with other matters. However, if there are points about which you should like further information, I should indeed be glad to meet with you at any time and place convenient to you, and talk them over with you.

In this connection, you will note that there is provision in the compact for commissioners from each of the States to supervise the enforcement of its terms. This will be more or less of a technical nature, requiring a great deal of time and calling for the services of men thoroughly familiar with the situation, preferably residing within the area directly involved, since the plan is to have an office centrally located (at Albuquerque or Santa Fe probably) from which the workings of the compact can best be handled.

I have had the honor of representing Texas in the

Mr. O'Daniel

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11 16 38

capacity of Rio Grande Compact Commissioner for the last four years, and have devoted a great deal of time to a study of these problems. In addition, I was special counsel for the State in the trial of the lawsuit against New Mexico, and at the hearings before the master in chancery I examined the expert witnesses for our side and cross examined those for New Mexico. This likewise, as you will appreciate, required rather extensive preparation.

If you are not otherwise committed, I should appreciate your considering me for reappointment to this office, if the compact is ratified, as I sincerely hope and believe it will be. As to my qualifications, I respectfully refer you to Governor Allred, to the present Attorney General, Hon. William McCraw, to the First Assistant Attorney General, Hon. H. Grady Chandler, who participated in the trial of the lawsuit, and to the respective managers, directors and attorneys of the various irrigation districts affected (Elephant Butte Irrigation District, Las Cruces, New Mexico, Mr. N. B. Phillips, Manager; El Paso County Water Improvement District No. 1, Mr. Roland Harwell, Manager; and Hudspeth County Conservation and Reclamation District No. 1, Mr. M. Scarborough, El Paso, Texas, President. With respect to the first mentioned, it may seem odd that I should include a New Mexico irrigation district in this category, but the fact is that the interests of the Elephant Butte Irrigation District, in New Mexico, are identical with those in Texas, and are opposed to other irrigation interests in New Mexico, and representatives of the Elephant Butte District gave us very material assistance in the lawsuit and participated with us in the negotiations for the compact.).

Yours very sincerely,

Frank B. Clayton
Rio Grande Compact Commissioner for Texas

FBC:EGG
encl

P. S. I should also be glad for you to refer to Major Richard F. Burges, of this city, my predecessor in this office, who has rendered me invaluable advice and assistance.

F. B. C.

SMITH & HALL

ATTORNEYS

EDINBURG, TEXAS

September 29, 1938

SAWNIE B. SMITH
HARRY L. HALL

Mr. Frank B. Clayton
Rio Grande Compact Commissioner
for Texas, Bassett Tower,
El Paso, Texas

Dear Mr. Clayton:

There has been considerable comment on the fact that the Rio Grande Compact between Colorado, New Mexico and Texas, dated March 18, 1938, makes no provision for the division of waters below Elephant Butte between the States of New Mexico and Texas and makes no provision concerning the amount of water to which Texas is entitled.

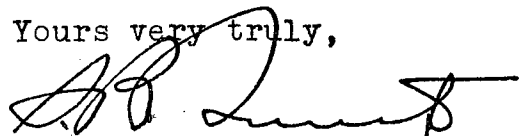
I understand that theoretically, if not in fact, the total amount of water in the project storage provided for in the compact is used or needed by the Rio Grande project except the portion thereof required to be delivered to Mexico. I also understand that the Rio Grande project is an established, defined area lying about 60% in New Mexico and about 40% in Texas. Therefore, if these understandings are correct, and the present usage and physical conditions remain the same, the division of the waters as between Texas and New Mexico would be in the proportions of the Rio Grande project area in said two States.

I do not find anything in the compact, however, which ties down and limits the use or division of the waters according to present usage and physical conditions, and nothing that would prevent controversy between the two States in the future regarding the division of the waters between the two States.

This omission is too obvious to have been inadvertent, and, therefore, unquestionably, the Commissioners had what they considered valid reason for it. In behalf of a number of interested parties in this area, I would appreciate it very much if you would advise me why the respective rights of Texas and New Mexico to these waters were not defined and provided for in the compact in express terms.

With best wishes, I am,

Yours very truly,



Sawnie B. Smith

SBS:BH

October 4, 1938

Mr. Sawnie B. Smith,
Edinburg, Texas

Dear Mr. Smith:

This will acknowledge receipt of your letter of September 29.

The question of where the point of division of the waters of the Rio Grande, as between Texas and New Mexico should be fixed has been the subject of a great deal of study ever since the original Rio Grande Compact Act was passed, in 1928. It was decided prior to the signing of the temporary compact that New Mexico's obligations as expressed in the compact must be with reference to deliveries at Elephant Butte reservoir, and this provision was inserted in the temporary compact. The reasons for it are numerous. In fact, the obstacles in the way of providing for any fixed flow at the Texas line were considered insuperable.

The Rio Grande Project, as you know, is operated as an administrative unit by the Bureau of Reclamation, and the dam and releases from the reservoir are controlled by the Bureau and will continue to be at least until the federal government is repaid its investment, and very probably even beyond that time. Obviously, neither Colorado nor New Mexico could be expected to guarantee any fixed deliveries at the Texas line when the operation of the dam is not within their control but is in the control of an independent government agency.

Moreover, measurements of the waters passing the Texas state line would be very difficult and expensive, if not impossible. This, for the reason that irrigation canals, ditches and laterals cross the line, which is of a very irregular contour, at many different points, carrying water in addition to what is carried in the river, itself, and it would require continual measurements in these various channels to make any reasonably accurate computations of the total flow.

However, the question of the division of the water released from Elephant Butte reservoir is taken care of by

Mr. Smith

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contracts between the districts under the Rio Grande Project and the Bureau of Reclamation. These contracts provide that the lands within the Project have equal water rights, and the water is allocated according to the areas involved in the two States. By virtue of the contract recently executed, the total area is "frozen" at the figure representing the acreage now actually in cultivation: approximately 88,000 acres for the Elephant Butte Irrigation District, and 67,000 for the El Paso County Water Improvement District No. 1, with a "cushion" of three per cent. for each figure.

I apprehend that there will never be any difficulty about the allocation of this water.

The arrangement just mentioned is of course a private one between the districts involved, and for that reason it was felt neither necessary nor desirable that it be incorporated in the terms of the Compact.

The lands above Fort Quitman and below the Rio Grande Project eastern boundary receive only "tail-end" or waste water, the lands in the Hudspeth County district taking its water by virtue of a contract and the lands privately owned below the district lower boundary only by taking by gravity or pumps what happens to be in the river channel.

The deliveries to Mexico are of course governed by treaty.

I trust this is the information you desire but if there is any other which I can supply, please feel free to call upon me.

With best regards personally, I am

Yours sincerely,

Frank B. Clayton
Rio Grande Compact Commis-
sioner for Texas

February 7, 1939

Senator H. L. Winfield,
Austin, Texas

Dear Heinie:

Bill has told me about the splendid manner in which you presented to Governor O'Daniel the matter of ratification of the Rio Grande Compact, as well as of my reappointment as commissioner, and you may be sure that I deeply appreciate this, and all your many other favors. I hope that I shall some time have an opportunity to reciprocate, and I want you always to feel free to call on me.

Bill no doubt told you that the governing board of the Water Conservation Association of the Lower Rio Grande Valley last week adopted a resolution endorsing ratification of the Compact, and it now seems that there will be absolutely no opposition to the adoption of this measure by the Legislature. For a time, as the result of a misunderstanding, they were opposing us up here and threatening to oppose ratification, but that sentiment, I am glad to say, entirely changed. For this, I am greatly indebted to Judge Oscar C. Dancy, county judge at Brownsville. At his instance, I spent a week last fall in that section of the State, talking with various leaders in the valley - directors, managers, and attorneys of the irrigation districts, and other men of prominence in the towns between Mission and Brownsville, and when I left I do not believe we had an "enemy" in any camp. Judge Dancy accompanied me almost everywhere I went, and without his aid I am afraid my efforts would have been only partially successful.

Bill said there was some misunderstanding regarding the bill which I prepared ratifying the Compact and which Governor Allred submitted, as to whether it contained an appropriation item. The bill itself calls for no appropriation. Adopting the language of the original statute passed in 1925, it provides that the salary of the commissioner shall be \$250.00 a month until otherwise provided by law, but it contains no appropriation for this or any other purpose. In his message submitting ratification, however, Governor Allred did, at my instance, recommend an emergency appropriation of \$5,000.00 to pay the salary and expenses of the commissioner for the remainder of the fiscal year. The Legislature appropriated

only \$1000.00 for salary and expenses of the commissioner for the fiscal year beginning September 1, 1938, and this has all now been expended, leaving nothing for either expenses or salary.

The setting up of machinery for the enforcement of the Company, when ratified, will of course entail some expense. I have never charged any overhead expense of my office as expenses of the commissioner, and do not expect to. But we have in contemplation setting up a central office, at Albuquerque or Santa Fé, with an engineer in charge to collect and correlate the data called for by the Compact and, in general, to supervise the details of enforcement, and this office, if it is set up, will be maintained at the joint expense of the three States. Already, I have incurred considerable expense for blueprints, hydrographic data, traveling, etc., for which I have not been reimbursed.

But it occurs to me that this matter may as well go over until after the Compact is ratified, and I can take up with the Appropriations Committee (I have been requested to appear before the Committee on March 27), in connection with the regular appropriation, this question of an emergency appropriation, and I will write Harold Hankamer to this effect.

I am explaining this to you simply in order that you may be in possession of all the relevant facts.

In the thought that it may be of interest to you, I am sending you a pamphlet prepared by the state engineer of Colorado, in which are incorporated the Compact, the engineer's report to the Governor of Colorado, and his analysis of the Compact. It is of particular interest to me because it shows a picture of the signing of the Compact, with the Governor of Colorado, the Governor of New Mexico, and several of the legal and engineering advisers to the Commission, present.

Again, with many thanks, and with my very best wishes,

Yours sincerely,

Frank B. Clayton

FBC:ESC
encl