

**DOCUMENTS ON THE USE AND CONTROL
OF WYOMING'S INTERSTATE STREAMS**

**WYOMING'S COMPACTS, TREATIES
AND COURT DECREES**

Compiled by the Interstate Streams Division
Wyoming State Engineer's Office
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STATE OF WYOMING
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TABLE OF CONTENTS

A Summary of Wyoming's River Basin Compacts and Court Decrees	1
 PART 1: INTERSTATE RIVER COMPACTS	13
Amended Bear River Compact, 1978.....	15
Belle Fourche River Compact, 1943.....	33
Colorado River Compact, 1922	43
Snake River Compact, 1949	52
Upper Colorado River Basin Compact, 1948	65
Upper Niobrara River Compact, 1962.....	83
Yellowstone River Compact, 1950.....	91
 PART 2: INTERNATIONAL TREATY	105
Treaty Between The United States And Mexico, Relating To Waters Of The Colorado And Tijuana Rivers And Of The Rio Grande, 1944	106
Memorandum Of Understanding As To Functions And Jurisdiction Of Agencies Of The United States In Relation To The Colorado And Tijuana Rivers and The Rio Grande Below Fort Quitman, Texas, Under Water Treaty Signed At Washington, February 3, 1944,	127
 PART 3: COURT DECREES	134
Laramie River Decree.....	136
June 5, 1922 Final Decree.....	137
October 9, 1922 Modified Final Decree	139
June 1, 1936 Decree.....	141
February 8, 1957 Stipulation.....	142
1957 Order Vacating Former Decree and Entering New Decree.....	146
 North Platte Decree.....	152
October 8, 1945 Decree	153
January 14, 1953 Stipulation.....	159
June 15, 1953 Order Modifying and Supplementing Decree of October 8, 1945.....	165
March 15, 2001 Final Settlement Stipulation	170
November 13, 2001 Modified North Platte Decree	177
 Roxana Canal Decree	192
February 4, 1941 Decree.....	193
Memorandum to Clarify Certain Points in the Agreement Between the Idaho and Wyoming Appropriators Diverting Water from Teton Creek and Tributaries.....	196

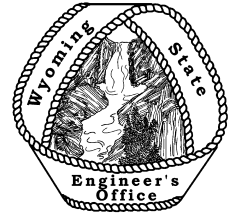
LIST OF FIGURES

Figure 1 - Wyoming River Basin Compacts and Decrees	12
Figure 2 - Bear River Basin	14
Figure 3 - Belle Fourche River Basin	32
Figure 4 - Colorado River Basin.....	42
Figure 5 - Snake River Basin.....	51
Figure 6 - Upper Colorado River Basin.....	64
Figure 7 - Upper Niobrara River Basin.....	82
Figure 8 - Yellowstone River Basin.....	90
Figure 9 - Laramie River Basin	135
Figure 10 - Exhibit "A" to February 8, 1957 Laramie River Stipulation	148
Figure 11 - North Platte River Basin	151
Figure 12 - Teton and South Leigh Creeks	191



A SUMMARY OF WYOMING'S INTERSTATE RIVER COMPACTS AND COURT DECREES

Prepared by the Interstate Streams Section
Wyoming State Engineer's Office



INTRODUCTION

The rights of states to the waters of interstate streams may be settled by decrees of the Courts of the United States or by interstate compacts which are agreements negotiated between states dividing the waters of interstate streams.

The rights of Colorado and Wyoming to the waters of the Laramie River and the rights of Colorado, Wyoming and Nebraska to the waters of the North Platte River have been established by decree of the United States Supreme Court. The rights of Wyoming and Idaho water users on Teton Creek and South Leigh Creek have been settled by a decree of the United States District Court for the District of Wyoming.

Wyoming's rights to the waters of the Bear River, Belle Fourche River, Colorado River (Green River, Little Snake River, and Henry's Fork of the Green River), the Niobrara River, the Snake River, and the Yellowstone River (Clarks Fork of the Yellowstone River, Big Horn River, Tongue River and Powder River) have been settled by interstate compacts.

International treaties can also affect Wyoming where some of the water that rises in Wyoming eventually finds its way to another country. This is the case with the Colorado River, of which the Green River is a major tributary.

A brief summary of the documents relating to interstate and international streams is provided below.

SUMMARY OF COMPACTS

Interstate compacts basically provide for the distribution and use of the waters of streams or rivers that flow across state lines. An integral part of any division or apportionment is the method of measurement or accounting. In general, two methods of providing for the measurement of the agreed division are found in the compacts affecting Wyoming rivers. The first method involves the division of the consumptive use of the waters, which implies the ability to measure such use by irrigation, municipal,

or other beneficial purposes. The second method is to divide the divertible flow that is the water that flows, or would flow, past some defined point, among the states. The primary purpose of interstate river compacts is the division of stream flow among the participating states. Also of considerable importance and interest are the many supplemental clauses contained in the compacts. For instance, in most Wyoming compacts, downstream states are given the right to acquire sites for storage or control structures in upstream states. In connection with this, an important feature contained in some compacts is the provision that downstream states must make "in lieu" tax payment for any revenue lost to the other state due to these structures.

1. **Amended Bear River Compact (1978).** This compact provides that in the administration of the Bear River among the States of Idaho, Utah, and Wyoming, the river shall be divided into three divisions. When a water emergency exists, as provided by the terms of the compact, water administration becomes effective to diversions by section in the Upper Division; by percentage between the States of Wyoming and Idaho in the Central Division; and by priority of right in the Lower Division.

Upper Division: This division is the portion of Bear River from its source in the Uinta Mountains to and including Pixley Dam, a diversion dam in the Southwest Quarter of Section 25, Township 23 North, Range 120 West, Sixth Principal Meridian, Wyoming. A water emergency shall be deemed to exist within this division when the total divertible flow is less than 1,250 cubic feet per second. Divertible flow is allocated for diversion as follows:

Upper Utah Section Diversions	0.6%
Upper Wyoming Section Diversions	49.3%
Lower Utah Section Diversions	40.5%
Lower Wyoming Section Diversions	9.6%

Central Division: This division is the portion of the Bear River from Pixley Dam to and including Stewart Dam, a diversion dam in Section 34, Township 13 South, Range 44 East, Boise Base and Meridian, Idaho. A water emergency shall be deemed to exist within this division when the total divertible flow is less than 870 cubic feet per second or the flow of Bear River at Border gaging station is less than 350 cubic feet per second, whichever shall first occur. When such a condition exists, all divertible flow in this division shall be allocated such that the portion of the river between Pixley Dam and the point where the river crosses the Wyoming-Idaho line near Border shall be limited for the benefit of the State of Idaho, not to exceed forty-three (43) percent of the divertible flow. The remaining fifty-seven (57) percent of the divertible flow shall be available for use in Idaho in the Central Division, but if any portion of such allocation is not used therein, it shall be available for use in Idaho in the Lower Division.

Lower Division: This division is the portion of the Bear River between Stewart Dam and Great Salt Lake, including Bear Lake and its tributary drainage. When the flow of water across the Idaho-Utah boundary line is insufficient to satisfy water rights in Utah covering water applied to beneficial use prior to January 1, 1976, any water user in Utah may file a petition with the Commission alleging that by reason of diversions in Idaho, he is being deprived of water to which he is justly entitled, and that by reason thereof, a water emergency exists, and requesting the distribution of water under the direction of the Commission. If the Commission finds a water emergency exists, it shall put into effect water delivery schedules based on priority of rights and prepared by the Commission without regard to the boundary line for all or any part of the Division and during such emergency, water shall be delivered in accordance with such schedules by the state official charged with the administration of public waters.

Rights to water first applied to beneficial use on or after January 1, 1976, shall be satisfied from the following respective allocations made to Idaho and Utah, which apportion the remaining water in the Lower Division including ground water tributary to the Bear River.

1. Idaho shall have the first right to the use of such remaining water resulting in an annual depletion of not more than 125,000 acre-feet.
2. Utah shall have the second right to the use of such remaining water resulting in an annual depletion of not more than 275,000 acre-feet.
3. Idaho and Utah shall each have an additional right to deplete annually on an equal basis, 75,000 acre-feet of the remaining water after the rights provided above have been satisfied.
4. Any remaining water in the Lower Division after the allocations above have been satisfied shall be divided thirty (30) percent to Idaho and seventy (70) percent to Utah.

The original compact grants to Wyoming and Utah the right for each to store, above Stewart Dam, an additional 17,750 acre-feet of Bear River water in any water year and to Idaho the right to store 1,000 acre-feet of water in Idaho or Wyoming on Thomas Fork for use in Idaho. In addition, the Amended Compact (1978) allows further storage entitlements to Utah and Wyoming for 70,000 acre-feet of Bear River water in any water year above Stewart Dam to be divided equally and to Idaho an additional 4,500 acre-feet of Bear River water in any water year to be stored in Idaho or Wyoming for use in Idaho. Water rights granted on water appropriated under this last entitlement, including ground water tributary to the Bear River, which is applied to beneficial use on or after January 1, 1976, shall not result in an annual increase in depletion of the flow of the Bear River and its tributaries above Stewart Dam of more than 28,000 acre-feet in excess of the depletion as of January 1, 1976. Thirteen thousand (13,000) acre-feet of the additional depletion above Stewart Dam is allocated to each of Utah and Wyoming, and two thousand (2,000) acre-feet is allocated to Idaho. Idaho, Utah, and Wyoming are also granted the right

to store and use water above Stewart Dam that otherwise would be bypassed or released from Bear Lake at times when all other direct flow and storage rights are satisfied. Water availability and depletions are to be calculated and administered by a Commission-approved procedure.

2. **Belle Fourche River Compact (1943).** The Compact for the division of the waters of the Belle Fourche River between Wyoming and South Dakota was negotiated and ratified by the two states and the Federal government in 1943. This Compact recognizes all existing rights in Wyoming, as of the date of the Compact. It permits Wyoming unlimited use for stock water reservoirs not exceeding 20 acre-feet in capacity, and allocates to Wyoming 10% of the unallocated flow existing as of the date of the Compact.

3. **Colorado River Compacts (1922 and 1948).** A compact between the Upper Colorado River Basin States (Wyoming, Colorado, New Mexico and Utah) and the Lower Colorado River Basin States (Arizona, Nevada and California) was negotiated in 1922. This Compact allocated 7½ million acre-feet of consumptive use annually to the Upper Basin. It also provided that a minimum flow of 75,000,000 acre-feet in any consecutive ten-year period should be maintained at Lee Ferry, which is the point on the river dividing the Upper Basin from the Lower Basin. In addition, provision was made for future treaties with Mexico. As a result of this clause, the 1944 Colorado, Tijuana, and Rio Grande Treaty indirectly has influence on the regulation of the Colorado River. In 1948, a compact among the Upper Basin States was negotiated. It was ratified by all the states and the Federal government in 1949. Arizona has a small area in the Upper Basin, and therefore was included in the Upper Basin negotiations. This Upper Colorado River Basin Compact apportions the use allocated to the Upper Basin by the 1922 Compact as follows: 50,000 acre-feet per annum to Arizona and of the remaining quantity 51-3/4% to Colorado; 11-1/4% to New Mexico; 23% to Utah; and 14% to Wyoming. The 1948 Compact also divided the waters of Henry's Fork between Wyoming and Utah on a straight priority basis for existing development, and the waters of the Little Snake River below its confluence with Savery Creek between Wyoming and Colorado for existing development on a straight priority basis and the unused waters, 50% to each of the two States.

4. **Upper Niobrara River Compact (1962).** The compact dividing the waters of the Niobrara River between the States of Nebraska and Wyoming was negotiated by the two States in 1962 and approved by Congress in 1969. It provided that stock water reservoirs (not larger than 20 acres-feet in capacity) in Wyoming should not be restricted except by Wyoming law. No restrictions were placed on diversion or storage of water in Wyoming except on the main stem east of Range 62 West and on Van Tassel Creek south of Section 27, Township 32 North, Range 60 West. In this area, direct diversions are regulated on an interstate priority basis with lands in Nebraska west of Range 55 West, and storage reservoirs with priority dates prior to August 1, 1957 may store water only during the period of October 1 to June 1, unless water is available after meeting direct flow appropriations in Wyoming and Nebraska

west of Range 55 West. Storage reservoirs with priority dates after August 1, 1957 may store a maximum of 500 acre-feet in any water year with dates of storage limited to the period of October 1 to May 1, unless water is available after meeting direct flow appropriations in Wyoming and Nebraska west of Range 55 West. Ground water development was recognized to be a significant factor and the compact provides for investigation of this resource and possible apportionment at a later date.

5. **Snake River Compact (1949).** The Compact dividing the waters of the Snake River and Salt River between the states of Idaho and Wyoming was negotiated by the two states in 1949 and ratified by them and the Federal government in 1950. The Compact recognizes, without restrictions, all existing rights in Wyoming as of the date of the Compact. It permits Wyoming unlimited use for domestic and stock uses provided that stock water reservoirs shall not exceed 20 acre-feet in capacity. It permits Wyoming to divert (or store) for new developments, for supplemental or original supply, 4% of the Wyoming-Idaho State line flow of the Snake River.

6. **Yellowstone River Compact (1950).** The Yellowstone River Compact dividing the waters of the tributaries (Clarks Fork, Big Horn, Tongue and Powder) of the Yellowstone among the states of Wyoming, Montana and North Dakota was negotiated in 1950, and ratified by the three states and the Federal government in 1951. This Compact included the following provisions for all four of the tributaries:

- A. Existing rights as of January 1, 1950, maintain their status quo.
- B. Existing and future domestic and stock water uses including stock water reservoirs up to a capacity of 20 acre-feet are exempted from provisions of the Compact.
- C. Devices and facilities for the control and regulation of surface water are exempted from the provisions of the Compact.

The unappropriated or unused total divertible flow of each tributary after needs for supplemental supply for existing rights are met, is allocated to Wyoming and Montana as follows:

Clarks Fork of the Yellowstone River:

Wyoming 60%

Montana 40%

Big Horn River (exclusive of Little Big Horn River):

Wyoming 80%

Montana 20%

Tongue River:

Wyoming 40%

Montana 60%

Powder River (including the Little Powder River):

Wyoming 42%

Montana 58%

Lands in Montana and North Dakota below Intake, Montana are entitled to beneficial use of the flow of the Yellowstone River on a proportionate basis of acreage irrigated.

The points of measurement designated in the Compact and the gaging stations used to define the divertable flow are:

<u>Stream</u>	<u>Point</u>	<u>Designated Compact Gaging Station</u>	<u>USGS Gage #</u>
Clarks Fork	above Rock Creek	Clarks Fork at Edgar, MT	06208500
<u>Stream</u>	<u>Point</u>	<u>Designated Compact Gaging Station</u>	<u>USGS Gage #</u>
Big Horn	at Mouth (Exclusive of Little Big Horn River)	Big Horn River near Custer, MT	06294500
Tongue	at Mouth	Tongue River at Miles City, MT	06308500
Powder	at Mouth (Exclusive of Little Powder River)	Powder River near Locate, MT	06326500

SUMMARY OF INTERNATIONAL TREATY

The International Treaty between the United States and Mexico dated 1944 dividing the waters of the Colorado River, which flows from the United States into Mexico, also affects Wyoming. This treaty guaranteed to Mexico the delivery of 1,500,000 acre-feet of water per annum. By the 1922 Colorado River Compact, the burden of supplying this water to Mexico during periods of short water supplies is equally borne by the Upper Basin, of which Wyoming is a part, and the Lower Basin.

The Colorado River Basin Project Act (PL 90-537, Sec. 202) provides that the satisfaction of the requirements of the Mexican Water Treaty from the Colorado River constitutes a national obligation which shall be met by any augmentation project developed under the provisions of the Act.

SUMMARY OF COURT DECREES

NOTE: Appendices and Exhibits are available online at <http://seo.state.wy.us>

1. **North Platte River.** During the mid-1930s, the state of Nebraska filed an action against the

states of Colorado and Wyoming in the U.S. Supreme Court over the flows of the North Platte River. In 1945, the Court handed down a decree equitably apportioning the waters of the North Platte among the states. The decree included the following provisions:

(a) Exclusive of the Kendrick Project and Seminoe Reservoir, the State of Wyoming is enjoined from diverting water from the North Platte River above the Guernsey Reservoir and from the North Platte River and its tributaries above Pathfinder Dam, for the irrigation of more than a total 168,000 acres of land during irrigation season.

(b) Exclusive of the Kendrick Project and Seminoe Reservoir, the State of Wyoming is enjoined from storing more than 18,000 acre-feet of water from the North Platte River and its tributaries above the Pathfinder Reservoir for irrigation purposes during any one year.

(c) The storage rights of the Pathfinder, Guernsey, Seminoe, and Alcova reservoirs are junior to 1165 cubic feet per second for the irrigation of land in Western Nebraska, and the State of Wyoming is enjoined from storing or permitting the storage of water in these reservoirs otherwise than in accordance with the rule of priority.

(d) The natural flow of the North Platte River in the section of the river between the Guernsey Dam and Tri-State Dam, or approximately the Wyoming-Nebraska state line, between May 1 and September 30 of each year, is apportioned 25% to Wyoming and 75% to Nebraska.

It also limits Colorado to the irrigation of 135,000 acres, the storage of 17,000-acre-feet of water in any one-year, and the diversion of an average 6,000 acre-feet out of the North Platte River Basin annually.

By stipulation agreed upon by the three States and approved by the Supreme Court of the United States the decree was amended in 1953 as follows:

Colorado was permitted to increase its irrigated acreage to 145,000 acres and the states of Wyoming and Nebraska were permitted to store 40,000 acre-feet during any water year in Glendo Reservoir, with such storage, including holdover, never to exceed 100,000 acre-feet. The 40,000 acre-feet of storage during the year is divided 25,000-acre-feet to Nebraska and 15,000 acre-feet to Wyoming.

Nebraska filed a lawsuit in the U.S. Supreme Court on October 6, 1986 alleging that Wyoming had violated certain aspects of the 1945 Decree. The U.S. Supreme Court approved the Final Settlement Stipulation and entered the Modified Decree on November 13, 2001. The Final Settlement Stipulation and the Modified Decree (Appendix A) include the following provisions:

(a) For the North Platte River and its tributaries, including water from hydrologically connected groundwater wells, upstream of Pathfinder Dam and between Pathfinder Dam and Guernsey Reservoir, Wyoming is enjoined from consuming more than the largest amount of water consumed for

irrigation from such sources in any ten consecutive year periods between 1952 and 1999, inclusive. Pursuant to the methodology approved by the parties, the largest amount of water during the ten-year period noted above is 1,280,000-acre-feet upstream of Pathfinder, and 890,000 acre-feet between Pathfinder and Guernsey.

(b) Exclusive of the Kendrick Project, for the North Platte River and its tributaries upstream of Guernsey Reservoir including water from hydrologically connected groundwater wells, Wyoming is enjoined from intentionally irrigating more than a total of 226,000 acres of land during any one irrigation season. Ten years following the settlement date, this provision will be replaced with two injunctions: one intentionally irrigated limitation for the area above Pathfinder and one for the area between Guernsey and Pathfinder. The total of the two shall not exceed 226,000 acres.

(c) Exclusive of Wheatland Irrigation District, for the Laramie River and its tributaries including hydrologically connected groundwater wells downstream of Wheatland Irrigation District's Tunnel No. 2, Wyoming is enjoined from intentionally irrigating more than a total of 39,000 acres of land during any one irrigation season.

(d) In accordance with an April 20, 1993 U.S. Supreme Court opinion, Inland Lakes has the priority of December 6, 1904, and the United States has the right to accrue up to 46,000 acre-feet of water during the non-irrigation season months of October, November, and April for storage in the four Inland Lakes located in Nebraska.

(e) As in the 1945 Decree, natural flow of the North Platte River in the section of the river between the Guernsey Dam and Tri-State Dam, between May 1 and September 30 of each year, is apportioned 25% to Wyoming and 75% to Nebraska.

(f) Within the area bounded by Whalen Diversion Dam on the west, 300 feet south of the Ft. Laramie Canal on the south, one mile north of the Interstate Canal on the north, and the Wyoming-Nebraska state line on the east, diversions between May 1 and September 30 for irrigation purposes from groundwater wells with water right priorities after October 8, 1945, shall be replaced or the pumping shall be regulated to prevent such diversions.

(g) Within the area bounded by Whalen Diversion Dam on the west, the Fort Laramie Canal on the south, the Interstate Canal on the north and the Wyoming-Nebraska state line on the east, surface water diversions for irrigation purposes from the tributaries to the North Platte River shall be administered and accounted as diversions of natural flow in accordance with the equitable apportionment of natural flow, 25% to Wyoming and 75% to Nebraska in the section of the river between Guernsey and Tri-State Dam. For the depletions that occur when natural flow is insufficient to meet the demands of both Wyoming and Nebraska irrigators who divert from the North Platte River at or above Tri-State Dam,

Wyoming must replace the depletion amount or those irrigation rights not in priority to divert shall be regulated to prevent such diversions.

(h) By stipulation of all three states and the United States in September 1997 (Appendix D), Wyoming shall install measuring devices at no less than eight of the largest irrigation reservoirs storing water from the North Platte River and its tributaries upstream of Pathfinder Reservoir, to accurately measure the annually accrued irrigation storage in each reservoir. The storage limitation injunction from the 1945 Decree is unchanged in the 2001 Modified Decree: Wyoming is enjoined from storing or permitting the storage of more than 18,000 acre-feet of water for irrigation purposes upstream of Pathfinder Reservoir exclusive of Seminoe Reservoir during any one year.

(i) By stipulation of Nebraska, Wyoming and the United States in December 1998, referred to as the 1998 Allocation Stipulation (Appendix E), the parties jointly agreed to a method of allocating storage water during periods of shortage. The Bureau of Reclamation (Reclamation) shall follow procedures and guidelines when allocating storage water from Pathfinder and Guernsey Reservoirs, and the Inland Lakes. (See Exhibit 5 to Appendix G). During the first week in February, March, and April, Reclamation shall advise the other parties when the current year is likely to be an “allocation year” if storage and forecasted water supplies are less than the approximate irrigation demand for the year of 1,100,000 acre-feet. With respect to water rights administration upstream of Pathfinder Reservoir before May 1st, if Reclamation advises that the current year is a likely allocation year, the Reclamation shall be deemed to have placed a priority call for Pathfinder Reservoir, excluding the Pathfinder Modification Project. With respect to water rights administration along the mainstem of the North Platte River and the tributaries between Pathfinder Dam and Guernsey Reservoir, before May 1st, if Reclamation advises that the current year is a likely allocation year, the Reclamation shall be deemed to have placed a priority call for Inland Lakes (April only), Guernsey, and Glendo storage rights. In both situations described above, the Wyoming State Engineer shall determine whether the calls are valid and warrant regulation upstream of the calling right. Between May 1st and September 30th during an allocation year, Wyoming will limit the cumulative diversions for irrigation purposes from the mainstem of the North Platte River between Pathfinder Dam and Guernsey Reservoir to 6,600 acre-feet per two-week period.

(j) By an amended stipulation of all three states and the United States in March 2001, the Pathfinder Modification Stipulation (Appendix F) includes the following provisions:

(i) The capacity of Pathfinder Reservoir may be increased by approximately 54,000 acre-feet to recapture original storage space lost to sediment.

(ii) The recaptured space would store water under the existing 1904 storage right for Pathfinder Reservoir except that it could not place regulatory calls on existing upstream water rights other

than the rights pertaining to Seminoe Reservoir.

(iii) Approximately 34,000-acre-feet of the 54,000 acre-feet of recaptured space would be accounted for in an environmental account and operated for the benefit of endangered species and their habitat in Central Nebraska.

(iv) Wyoming has the exclusive right to contract with Reclamation for the use of the remaining 20,000 acre-feet of the recaptured capacity. The primary use of the 9600 acre-feet of annual estimated firm yield from this “Wyoming Account” is to supplement Wyoming municipalities’ water right needs. The account’s other uses in prioritized order are: to serve as Wyoming’s source of replacement water required by the Modified Decree, to replace Wyoming’s excess depletions from existing water related activities under the Platte River Recovery Implementation Program (Program), or to be leased to a program for endangered species recovery.

(k) The North Platte Decree Committee (NPDC) was created to assist in monitoring, administering, and implementing the Modified Decree and the Final Settlement Stipulation. The NPDC shall act in accordance with the NPDC Charter (Appendix G), and may modify by unanimous agreement the administrative procedures attached as Exhibits 3 through 12 to the Charter.

(l) The river carriage and reservoir loss calculations established in the 1945 Decree have been replaced with the procedures defined in Exhibit 9 to the NPDC Charter, Appendix G.

(m) Upon occurrence of ‘negative natural flow at Orin’, as defined in Exhibit 7 of the NPDC Charter, the Wyoming State Engineer will administer water rights or take other action as necessary to eliminate the negative natural flow at Orin.

(n) Within five years of the court approved settlement date, pursuant to Wyoming law, Wyoming will adjudicate the following:

(i) All unadjudicated groundwater permits for irrigation wells hydrologically connected to the North Platte River or its tributaries above Guernsey Reservoir and wells hydrologically connected to the Laramie River or its tributaries downstream of Wheatland Tunnel #2, exclusive of the Wheatland Irrigation District.

(ii) All existing unadjudicated groundwater permits for irrigation wells within the area bounded by Whalen Diversion Dam on the west, 300 feet south of the Ft. Laramie Canal on the south, one mile north of the Interstate Canal on the north, and the Wyoming-Nebraska state line on the east.

(iii) All unadjudicated surface water permits for irrigation purposes that divert from tributaries and drains that lie within the area bounded by Whalen Diversion Dam on the west, the Ft. Laramie Canal on the south, the Interstate Canal on the north, and the Wyoming-Nebraska state line on

the east.

2. **Laramie River.** In 1911, Wyoming sued Colorado in the Supreme Court to limit Colorado diversions from the Laramie River. In 1922, the Supreme Court handed down its decree, which allowed Colorado to annually divert 4,250 acre-feet for the meadow lands and 33,500 acre-feet by transmountain diversion plus "the relatively small amount of water appropriated..." from the headwaters of Deadman Creek, through the Wilson Supply Ditch. In 1936, the Supreme Court of the United States stated that the record showed that the "relatively small amount of water" referred to actually amounted to 2,000 acre-feet of water per year. Therefore, the total annual diversion allowed Colorado was 39,750 acre-feet. In 1939, Wyoming secured an order from the Supreme Court of the United States restraining Colorado from diverting more than the 39,750 acre-feet annually that the state had been allotted. The Supreme Court stated that this amount should be administered according to Colorado laws. By stipulation between Colorado and Wyoming in 1957, the Supreme Court vacated all former decrees and decreed that only 19,875 acre-feet of water per year could be diverted from the Laramie River Basin and that 29,500 acre-feet per year could be diverted by the meadow land users for the irrigation of certain lands described by map in the decree.

3. **Teton and South Leigh Creeks.** Conflict between the water users on Teton and South Leigh Creeks in Wyoming and Idaho was settled by a decree of the United States District Court entered February 4, 1941, known as the "Roxana Decree". This decree contains a stipulation entered into between the Wyoming and Idaho water users. The stipulation sets forth that the Wyoming users shall be unlimited in their divisions from Teton Creek and its tributaries until the flow diminishes to 170 cubic feet per second. After that, the Wyoming water users are limited to a diversion of 1 cubic feet per second for each fifty acres of land. When the flow further reduces to 90 cubic feet per second, the flow of Teton Creek and its tributaries is divided equally between the Wyoming and Idaho water users. The Wyoming appropriators are permitted unlimited diversions from South Leigh Creek until the natural flow of the creek diminishes to a total of 16 cubic feet per second, after which time the Wyoming users are permitted to divert one-half of the stream flow and the Idaho users are permitted to divert the balance.

* * * * *

Wyoming River Basin Compacts and Decrees

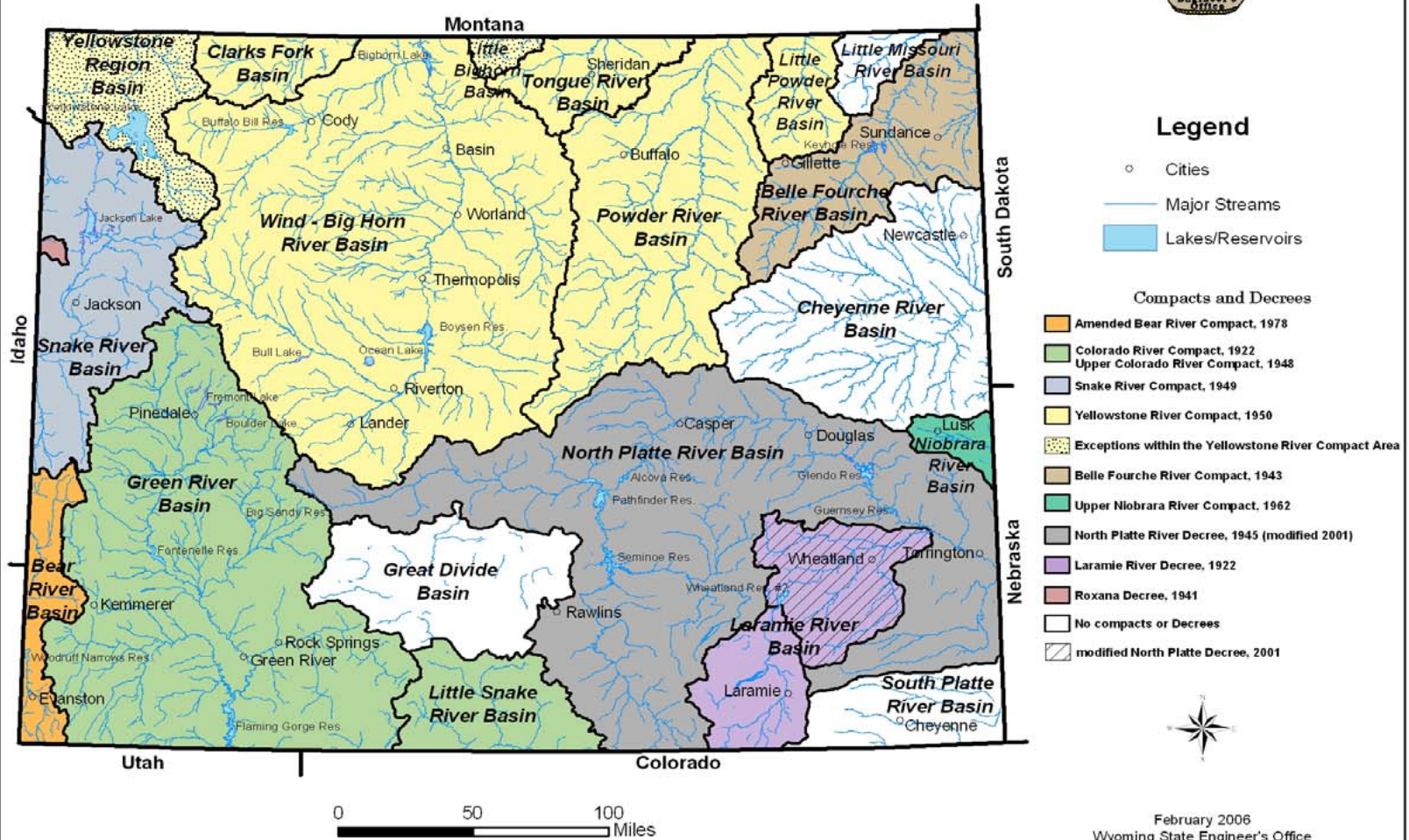


Figure 1 – Wyoming River Basin Compacts and Decrees

PART 1: INTERSTATE RIVER COMPACTS

Bear River Basin



Figure 1 - Bear River Basin

AMENDED BEAR RIVER COMPACT, 1978

<u>Signatory States:</u>	Idaho, Utah and Wyoming
<u>Rivers Controlled:</u>	Bear River and its tributaries
<u>Ratifications:</u>	Wyo. Stat. Ann. §41-12-101 (2005) [Act of March 6, 1979, 1979 Wyo. Sess. Laws, ch.151, p. 337] Idaho Code §42-3402 (2003) [Act of April 5, 1979, 1979 Idaho Sess. Laws, ch. 322, p. 862] Utah Code Ann. §73-16-2 (2005) [Act of May 8, 1979, 1979 Utah Laws, ch.254, p. 1213]
<u>Summary:</u>	The Compact becomes operative only when an emergency is found to exist as provided for by the terms of the Compact. When an emergency is declared, the Compact regulates the river by creating three divisions: Upper, Central, and Lower. Water administration becomes effective to diversions by section in the Upper Division; by percentage between the States of Wyoming and Idaho in the Central Division; and by priority for rights in the Lower Division.

The Compact also apportions storage rights in the Bear River Basin above Stewart Dam and allocates increases in depletion from the Bear River and its tributaries, including ground water tributary to the Bear River, which occur on or after January 1, 1976, among the states. Each state is allowed the use of water, including ground water, for ordinary domestic and stock watering purposes including the right to impound water for such purposes in reservoirs having capacities not in excess of 20 acre-feet without deduction from the allocation made in the Compact.

AMENDED BEAR RIVER COMPACT, 1978

The State of Idaho, the State of Utah, and the State of Wyoming, acting through their respective commissioners after negotiations participated in by a representative of the United States of America appointed by the president, have agreed to an amended Bear River Compact as follows:

ARTICLE I

A. The major purposes of this compact are to remove the causes of present and future controversy over the distribution and use of the waters of the Bear River; to provide for efficient use of water for multiple purposes; to permit additional development of the water resources of Bear River; to promote interstate comity; to accomplish an equitable apportionment of the waters of the Bear River among the compacting states.

B. The physical and all other conditions peculiar to the Bear River constitute the basis for this compact. No general principle or precedent with respect to any other interstate stream is intended to be established.

ARTICLE II

As used in this compact the term -

1. "Bear River" means the Bear River and its tributaries from its source in the Uinta Mountains to its mouth in Great Salt Lake
2. "Bear Lake" means Bear Lake and Mud Lake
3. "Upper Division" means the portion of Bear River from its source in the Uinta Mountains to and including Pixley Dam, a diversion dam in the southeast quarter of Section 25, Township 23 North, Range 120 West, Sixth Principal Meridian, Wyoming;
4. "Central Division" means the portion of the Bear River from Pixley Dam to and including Stewart Dam, a diversion dam in Section 34, Township 13 South, Range 44 East, Boise Base and Meridian, Idaho;
5. "Lower Division," means the portion of the Bear River between Stewart Dam and Great Salt Lake, including Bear Lake and its tributary drainage
6. "Upper Utah Section Diversions" means the sum of all diversions in second-feet from the Bear River and the tributaries of Bear River joining the Bear River upstream from the point where the Bear River crosses the Utah-Wyoming state line above Evanston, Wyoming, excluding the diversions by the Hilliard East Fork Canal, Lannon Canal, Lone Mountain Ditch, and Hilliard West Side Canal;
7. "Upper Wyoming Section Diversions" means the sum of all diversions in second-feet

from the Bear River main stem from the point where the Bear River crosses the Utah-Wyoming state line above Evanston, Wyoming, to the point where the Bear River crosses the Wyoming-Utah state line east of Woodruff, Utah, and including the diversions by the Hilliard East Fork Canal, Lannon Canal, Lone Mountain Ditch, and Hilliard West Side Canal;

8. "Lower Utah section diversions" means the sum of all diversions in second-feet from the Bear River main stem from the point where the Bear River crosses the Wyoming-Utah state line east of Woodruff, Utah, to the point where the Bear River crosses the Utah-Wyoming state line northeast of Randolph, Utah;

9. "Lower Wyoming Section Diversions" means the sum of all diversions in second-feet from the Bear River main stem from the point where the Bear River crosses the Utah-Wyoming state line northeast of Randolph to and including the diversion at Pixley Dam;

10. "Commission" means the Bear River Commission, organized pursuant to Article III of this Compact;

11. "Water user" means a person, corporation, or other entity having a right to divert water from the Bear River for beneficial use

12. "Second-foot" means a flow of one cubic foot of water per second of time passing a given point

13. "Acre-foot" means the quantity of water required to cover one acre to a depth of one foot, equivalent to 43,560 cubic feet

14. "Biennium" means the 2-year period commencing on October 1 of the first odd numbered year after the effective date of this compact and each 2-year period thereafter;

15. "Water year," means the period beginning October 1 and ending September 30 of the following year

16. "Direct flow" means all water flowing in a natural watercourse except water released from storage or imported from a source other than the Bear River watershed

17. "Border Gaging Station" means the stream flow gauging station in Idaho on the Bear River above Thomas Fork near the Wyoming-Idaho boundary line in the northeast quarter of the northeast quarter of Section 15, Township 14 South, Range 46 East, Boise Base and Meridian, Idaho;

18. "Smiths Fork" means a Bear River tributary, which rises in Lincoln County, Wyoming and flows in a general southwesterly direction to its confluence with Bear River near Cokeville, Wyoming

19. "Grade Creek" means a Smiths Fork tributary that rises in Lincoln County, Wyoming

and flows in a westerly direction and in its natural channel is tributary to Smiths Fork in Section 17, Township 25 North, Range 118 West, Sixth Principal Meridian, Wyoming;

20. "Pine Creek" means a Smiths Fork tributary which rises in Lincoln County, Wyoming, emerging from its mountain canyon in Section 34, Township 25 North, Range 118 West, Sixth Principal Meridian, Wyoming, and in its natural channel is tributary to Smiths Fork in Section 36, Township 25 North, Range 119 West, Sixth Principal Meridian, Wyoming;

21. "Bruner Creek" and "Pine Creek Springs" means Smiths Fork tributaries which rise in Lincoln County, Wyoming, in Sections 31 and 32, Township 25 North, Range 118 West, Sixth Principal Meridian, and in their natural channels are tributary to Smiths Fork in Section 36, Township 25 North, Range 119 West, Sixth Principal Meridian, Wyoming;

22. "Spring Creek" means a Smiths Fork tributary which rises in Lincoln County, Wyoming, in Sections 1 and 2, Township 24 North, Range 119 West, Sixth Principal Meridian, Wyoming, and flows in a general westerly direction to its confluence with Smiths Fork in Section 4, Township 24 North, Range 119 West, Sixth Principal Meridian, Wyoming;

23. "Sublette Creek" means the Bear River tributary, which rises in Lincoln County, Wyoming and flows in a general westerly direction to its confluence with Bear River in Section 20, Township 24 North, Range 119 West, Sixth Principal Meridian, Wyoming;

24. "Hobble Creek" means the Smiths Fork tributary, which rises in Lincoln County, Wyoming and flows in a general southwesterly direction to its confluence with Smiths Fork in Section 35, Township 28 North, Range 118 West, Sixth Principal Meridian, Wyoming;

25. "Hilliard East Fork Canal" means that irrigation canal which diverts water from the right bank of the East Fork of Bear River in Summit County, Utah, at a point west 1,310 feet and north 330 feet from the southeast corner of Section 16, Township 2 North, Range 10 East, Salt Lake Base and Meridian, Utah, and runs in a northerly direction crossing the Utah-Wyoming state line into the southwest quarter of Section 21, Township 12 North, Range 119 West, Sixth Principal Meridian, Wyoming;

26. "Lannon Canal" means that irrigation canal which diverts water from the right bank of the Bear River in Summit County, Utah, east 1,480 feet from the west quarter corner of Section 19, Township 3 North, Range 10 East, Salt Lake Base and Meridian, Utah, and runs in a northerly direction crossing the Utah-Wyoming state line into the south half of Section 20, Township 12 North, Range 119 West, Sixth Principal Meridian, Wyoming;

27. "Lone Mountain Ditch" means that irrigation canal which diverts water from the right bank of the Bear River in Summit County, Utah, north 1,535 feet and east 1,120 feet from

the west quarter corner of Section 19, Township 3 North, Range 10 East, Salt Lake Base and Meridian, Utah, and runs in a northerly direction crossing the Utah-Wyoming state line into the south half of Section 20, Township 12 North, Range 119 West, Sixth Principal Meridian, Wyoming;

28. "Hilliard West Side Canal" means that irrigation canal which diverts water from the right bank of the Bear River in Summit County, Utah, at a point north 2,190 feet and east 1,450 feet from the south quarter corner of Section 13, Township 3 North, Range 9 East, Salt Lake Base and Meridian, Utah, and runs in a northerly direction crossing the Utah-Wyoming state line into the south half of Section 20, Township 12 North, Range 119 West, Sixth Principal Meridian, Wyoming;

29. "Francis Lee Canal" means that irrigation canal which diverts water from the left bank of the Bear River in Uinta County, Wyoming, in the northeast quarter of Section 30, Township 18 North, Range 120 West, Sixth Principal Meridian, Wyoming, and runs in a westerly direction across the Wyoming-Utah state line into Section 16, Township 9 North, Range 8 East, Salt Lake Base and Meridian, Utah;

30. "Chapman Canal" means that irrigation canal which diverts water from the left bank of the Bear River in Uinta County, Wyoming, in the northeast quarter of Section 36, Township 16 North, Range 121 West, Sixth Principal Meridian, Wyoming, and runs in a northerly direction crossing over the low divide into the Saleratus drainage basin near the southeast corner of Section 36, Township 17 North, Range 121 West, Sixth Principal Meridian, Wyoming and then in a general westerly direction crossing the Wyoming-Utah state line;

31. "Neponset Reservoir" means that reservoir located principally in Sections 34 and 35, Township 8 North, Range 7 East, Salt Lake Base and Meridian, Utah, having a capacity of 6,900 acre-feet.

ARTICLE III

A. There is hereby created an interstate administrative agency to be known as the "Bear River Commission" which is hereby constituted a legal entity and in such name shall exercise the powers hereinafter specified. The commission shall be composed of nine commissioners, three commissioners representing each signatory state, and if appointed by the president, one additional commissioner representing the United States of America who shall serve as chairman, without vote. Each commissioner, except the chairman, shall have one vote. The state commissioners shall be selected in accordance with state law. Six commissioners who shall include two commissioners from each state shall constitute a quorum. The vote of at least two-thirds of the commissioners when a quorum is present shall be necessary

for the action of the commission.

B. The compensation and expenses of each commissioner and each adviser shall be paid by the government which he represents. All expenses incurred by the commission in the administration of this compact, except those paid by the United States of America, shall be paid by the signatory states on an equal basis.

C. The Commission shall have power to:

1. Adopt by-laws, rules, and regulations not inconsistent with this compact;
2. Acquire, hold, convey or otherwise dispose of property;
3. Employ such persons and contract for such services as may be necessary to carry out its duties under this compact;
4. Sue and be sued as a legal entity in any court of record of a signatory state, and in any court of the United States having jurisdiction of such action;
5. Cooperate with state and federal agencies in matters relating to water pollution of interstate significance;
6. Perform all functions required of it by this compact and do all things necessary, proper or convenient in the performance of its duties hereunder, independently or in cooperation with others, including state and federal agencies.

D. The commission shall:

1. Enforce this compact and its orders made hereunder by suit or other appropriate action
2. Compile a report covering the work of the commission and expenditures during the current biennium, and an estimate of expenditures for the following biennium and transmit it to the President of the United States and to the Governors of the signatory states on or before July 1 following each biennium.

ARTICLE IV

Rights to direct flow water shall be administered in each signatory state under state law, with the following limitations:

A. When there is a water emergency, as hereinafter defined for each division, water shall be distributed therein as provided below.

1. Upper Division

a. When the divertible flow as defined below for the Upper Division is less than 1,250 second-feet, a water emergency shall be deemed to exist therein and such divertible flow is allocated for diversion in the river sections of the Division as follows:

Upper Utah Section Diversions - 0.6 percent,

Upper Wyoming Section Diversions - 49.3 percent,

Lower Utah Section Diversions - 40.5 percent,

Lower Wyoming Section Diversions - 9.6 percent.

Such divertible flow shall be the total of the following five items:

- (1) Upper Utah Section Diversions in second-feet,
- (2) Upper Wyoming Section Diversions in second-feet,
- (3) Lower Utah Section Diversions in second-feet,
- (4) Lower Wyoming Section Diversions in second-feet,
- (5) The flow in second-feet passing Pixley Dam.

b. The Hilliard East Fork Canal, Lannon Canal, Lone Mountain Ditch, and Hilliard West Side Canal, which divert water in Utah to irrigate lands in Wyoming, shall be supplied from the divertible flow allocated to the Upper Wyoming Section Diversions.

c. The Chapman, Bear River, and Francis Lee Canals, which divert water from the main stem of Bear River in Wyoming to irrigate lands in both Wyoming and Utah, shall be supplied from the divertible flow allocated to the Upper Wyoming Section Diversions.

d. The Beckwith Quinn West Side Canal, which diverts water from the main stem of Bear River in Utah to irrigate lands in both Utah and Wyoming, shall be supplied from the divertible flow allocated to the Lower Utah Section Diversions.

e. If for any reason the aggregate of all diversions in a river section of the upper Division does not equal the allocation of water thereto, the unused portion of such allocation shall be available for use in the other river sections in the Upper Division in the following order: (1) in the other river section of the same State in which the unused allocation occurs; and (2) in the river sections of the other State. No permanent right of use shall be established by the distribution of water pursuant to this paragraph e.

f. Water allocated to the several sections shall be distributed in each section in accordance with state law.

2. Central Division

a. When either the divertible flow as hereinafter defined for the Central Division is less than 870 second-feet, or the flow of the Bear River at Border Gaging Station is less than 350 second-feet, whichever shall first occur, a water emergency shall be deemed to exist in the Central Division and the total of all diversions in Wyoming from Grade Creek, Pine Creek, Bruner Creek and Pine Creek Springs, Spring Creek, Sublette Creek, Smiths Fork, and all the tributaries of Smiths Fork above the mouth of Hobbie Creek including Hobbie Creek, and from the main stem of the Bear River between

Pixley Dam and the point where the river crosses the Wyoming-Idaho state line near Border shall be limited for the benefit of the State of Idaho, to not exceeding forty-three (43) percent of the divertible flow. The remaining fifty-seven (57) percent of the divertible flow shall be available for use in Idaho in the Central Division, but if any portion of such allocation is not used therein, it shall be available for use in Idaho in the Lower Division.

The divertible flow for the Central Division shall be the total of the following three items:

(1) Diversions in second-feet in Wyoming consisting of the sum of all diversions from Grade Creek, Pine Creek, Bruner Creek and Pine Creek Springs, Spring Creek, Sublette Creek, and Smiths Fork and all the tributaries of Smiths Fork above the mouth of Hobbie Creek including Hobbie Creek, and the main stem of the Bear River between Pixley Dam and the point where the river crosses the Wyoming-Idaho state line near Border, Wyoming.

(2) Diversions in second-feet in Idaho from the Bear River main stem from the point where the river crosses the Wyoming-Idaho state line near Border to Stewart Dam including West Fork Canal, which diverts at Stewart Dam.

(3) Flow in second-feet of the Rainbow Inlet Canal and of the Bear River passing downstream from Stewart Dam.

b. The Cook Canal, which diverts water from the main stem of the Bear River in Wyoming to irrigate lands in both Wyoming and Idaho, shall be considered a Wyoming diversion and shall be supplied from the divertible flow allocated to Wyoming.

c. Water allocated to each state shall be distributed in accordance with state law.

3. Lower Division

a. When the flow of water across the Idaho-Utah boundary line is insufficient to satisfy water rights in Utah, covering water applied to beneficial use prior to January 1, 1976, any water user in Utah may file a petition with the Commission alleging that by reason of diversions in Idaho he is being deprived of water to which he is justly entitled, and that by reason thereof, a water emergency exists, and requesting distribution of water under the direction of the Commission. If the Commission finds a water emergency exists, it shall put into effect water delivery schedules based on priority of rights and prepared by the Commission without regard to the boundary line for all or any part of the Division, and during such emergency, water shall be delivered in accordance with such schedules by the state official charged with the administration of public waters.

B. The Commission shall have authority upon its own motion (1) to declare a water emergency in any or all river divisions based upon its determination that there are diversions which violate this Compact and which encroach upon water rights in a lower State, (2) to make appropriate

orders to prevent such encroachments, and (3) to enforce such orders by action before State administrative officials or by court proceedings.

C. When the flow of water in an interstate tributary across a state boundary line is insufficient to satisfy water rights on such tributary in a lower State, any water user may file a petition with the Commission alleging that by reason of diversions in an upstream State he is being deprived of water to which he is justly entitled and that by reason thereof a water emergency exists, and requesting distribution of water under the direction of the Commission. If the Commission finds that a water emergency exists and that interstate control of water of such tributary is necessary, it shall put into effect water delivery schedules based on priority of rights and prepared without regard to the State boundary line. The State officials in charge of water distribution on interstate tributaries may appoint and fix the compensation and expenses of a joint water commissioner for each tributary. The proportion of the compensation and expenses to be paid by each State shall be determined by the ratio between the number of acres therein which are irrigated by diversions from such tributary, and the total number of acres irrigated from such tributary.

D. In preparing interstate water delivery schedules, the Commission, upon notice and after public hearings, shall make findings of fact as to the nature, priority and extent of water rights, rates of flow, duty of water, irrigated acreages, types of crops, time of use, and related matters; provided that such schedules shall recognize and incorporate therein priority of water rights as adjudicated in each of the signatory States. Such findings of fact shall, in any court or before any tribunal, constitute *prima facie* evidence of the facts found.

E. Water emergencies provided for herein shall terminate on September 30 of each year unless terminated sooner or extended by the Commission.

ARTICLE V

A. Water rights in the Lower Division acquired under the laws of Idaho and Utah covering water applied to beneficial use prior to January 1, 1976, are hereby recognized and shall be administered in accordance with state law based on priority of rights as provided in Article IV, paragraph A.3. Rights to water first applied to beneficial use on or after January 1, 1976, shall be satisfied from the respective allocations made to Idaho and Utah in this paragraph and the water allocated to each State shall be administered in accordance with State law. Subject to the foregoing provisions, the remaining water in the Lower Division, including ground water tributary to the Bear River, is hereby apportioned for use in Idaho and Utah as follows:

(1) Idaho shall have the first right to the use of such remaining water resulting in an annual depletion of not more than 125,000 acre-feet;

(2) Utah shall have the second right to the use of such remaining water resulting in an annual depletion of not more than 275,000 acre-feet;

(3) Idaho and Utah shall each have an additional right to deplete annually on an equal basis, 75,000 acre-feet of the remaining water after the rights provided by subparagraphs (1), and (2) above have been satisfied;

(4) Any remaining water in the Lower Division after the allocations provided for in subparagraphs (1), (2), and (3) above have been satisfied shall be divided; thirty (30) percent to Idaho and seventy (70) percent to Utah.

B. Water allocated under the above subparagraphs shall be charged against the State in which it is used regardless of the location of the point of diversion.

C. Water depletions permitted under provisions of subparagraphs (1), (2), and (3), and (4) above, shall be calculated and administered by a Commission-approved procedure.

ARTICLE VI

A. Existing storage rights in reservoirs constructed above Stewart Dam prior to February 4, 1955 are as follows:

Idaho	324 acre-feet
Utah.....	11,850 acre-feet
Wyoming	2,150 acre-feet

Additional rights are hereby granted to store in any water year above Stewart Dam, 35,500 acre-feet of Bear River water and no more under this paragraph for use in Utah and Wyoming; and to store in any water year in Idaho or Wyoming on Thomas Fork 1,000 acre-feet of water for use in Idaho. Such additional storage rights shall be subordinate to, and shall not be exercised when the effect thereof will be to impair or interfere with (1) existing direct flow rights for consumptive use in any river division and (2) existing storage rights above Stewart Dam, but shall not be subordinate to any right to store water in Bear Lake or elsewhere below Stewart Dam. One-half of the 35,500 acre-feet of additional storage right above Stewart Dam so granted to Utah and Wyoming is hereby allocated to Utah, and the remaining one-half thereof is allocated to Wyoming.

B. In addition to the rights defined in Paragraph A. of this Article, further storage entitlements above Stewart Dam are hereby granted. Wyoming and Utah are granted an additional right to store in any year 70,000 acre-feet of Bear River, water for use in Utah and Wyoming to be divided equally; and Idaho is granted an additional right to store 4,500 acre-feet of Bear River water in Wyoming

or Idaho for use in Idaho. Water rights granted under this paragraph and water appropriated, including ground water tributary to Bear River, which is applied to beneficial use on or after January 1, 1976, shall not result in an annual increase in depletion of the flow of the Bear River and its tributaries above Stewart Dam of more than 28,000 acre-feet in excess of the depletion as of January 1, 1976. Thirteen thousand (13,000) acre-feet of the additional depletion above Stewart Dam is allocated to each of Utah and Wyoming, and two thousand (2,000) acre-feet is allocated to Idaho.

The additional storage rights provided for in this paragraph shall be subordinate to, and shall not be exercised when the effect thereof will be to impair or interfere with (1) existing direct flow rights for consumptive use in any river division and (2) existing storage rights above Stewart Dam, but shall not be subordinate to any right to store water in Bear Lake or elsewhere below Stewart Dam; provided, however, there shall be no diversion of water to storage above Stewart Dam under this paragraph B. when the water surface elevation of Bear Lake is below 5,911.00 feet, Utah Power & Light Company datum (the equivalent of elevation 5,913.75 feet based on the sea level datum of 1929 through the Pacific Northwest Supplementary Adjustment of 1947). Water depletions permitted under this paragraph B. shall be calculated and administered by a Commission-approved procedure.

C. In addition to the rights defined in Article VI, paragraphs A. and B., Idaho, Utah and Wyoming are granted the right to store and use water above Stewart Dam that otherwise would be bypassed or released from Bear Lake at times when all other direct flow and storage rights are satisfied. The availability of such water and the operation of reservoir space to store water above Bear Lake under this paragraph shall be determined by a Commission-approved procedure. The storage provided for in this paragraph shall be subordinate to all other storage and direct flow rights in the Bear River. Storage rights under this paragraph shall be exercised with equal priority on the following basis: six (6) percent thereof to Idaho; forty-seven (47) percent thereof to Utah; and forty-seven (47) percent thereof to Wyoming.

D. The waters of Bear Lake below elevation 5,912.91 feet, Utah Power & Light Company Bear Lake datum (the equivalent of elevation 5915.66 feet based on the sea level datum of 1929 through the Pacific Northwest Supplementary Adjustment of 1947) shall constitute a reserve for irrigation. The water of such reserve shall not be released solely for the generation of power, except in emergency, but after release for irrigation, it may be used in generating power if not inconsistent with its use for irrigation. Any water in Bear Lake in excess of that constituting the irrigation reserve may be used for the generation of power or for other beneficial uses. As new reservoir capacity above the Stewart Dam is constructed to provide additional storage pursuant to paragraph A. of this article, the Commission shall make a finding in writing as to the quantity of additional storage and shall thereupon make an order increasing the irrigation reserve in accordance with the following table:

<u>Additional Storage acre-feet</u>	<u>Lake surface elevation Utah Power & Light Company Bear Lake datum</u>
5,000	5,913.24
10,000	5,913.56
15,000	5,913.87
20,000	5,914.15
25,000	5,914.41
30,000	5,914.61
35,500	5,914.69
36,500	5,914.70

E. Subject to existing rights, each State shall have the use of water, including ground water, for ordinary domestic, and stock watering purposes, as determined by State law and shall have the right to impound water for such purposes in reservoirs having storage capacities not in excess, in any case, of 20 acre-feet, without deduction from the allocation made by paragraphs A., B. and C. of this Article.

F. The storage rights in Bear Lake are hereby recognized and confirmed subject only to the restrictions hereinbefore recited.

ARTICLE VII

It is the policy of the signatory States to encourage additional projects for the development of the water resources of the Bear River to obtain the maximum beneficial use of water with a minimum of waste, and in furtherance of such policy, authority is granted within the limitations provided by this Compact, to investigate, plan, construct, and operate such projects without regard to state boundaries, provided that water rights for each such project shall, except as provided in Article VI, paragraphs A. and B. thereof, be subject to rights theretofore initiated and in good standing.

ARTICLE VIII

A. No state shall deny the right of the United States of America, and subject to the conditions hereinafter contained, no state shall deny the right of another signatory state, any person or entity of another signatory state, to acquire rights to the use of water or to construct or to participate in the construction and use of diversion works and storage reservoirs with appurtenant works, canals, and conduits in one state for use of water in another state, either directly or by exchange. Water rights acquired for out-of-state use shall be appropriated in the state where the point of diversion is located in the manner provided by law for appropriation of water for use within such state.

B. Any signatory state, any person or any entity of any signatory state, shall have the right to acquire in any other signatory state such property rights as are necessary to the use of water in conformity

with this Compact by donation, purchase, or, as hereinafter provided through the exercise of the power of eminent domain in accordance with the law of the state in which such property is located. Any signatory state, upon the written request of the governor of any other signatory state for the benefit of whose water users property is to be acquired in the state to which such written request is made, shall proceed expeditiously to acquire the desired property either by purchase at a price acceptable to the requesting governor, or if such purchase cannot be made, then through the exercise of its power of eminent domain and shall convey such property to the requesting state or to the person, or entity designated by its governor provided, that all costs of acquisition and expenses of every kind and nature whatsoever incurred in obtaining such property shall be paid by the requesting state or the person or entity designated by its governor.

C. Should any facility be constructed in a signatory state by and for the benefit of another signatory state or persons or entities therein, as above provided, the construction, repair, replacement, maintenance and operation of such facility shall be subject to the laws of the state in which the facility is located.

D. In the event lands or other taxable facilities are acquired by a signatory state in another signatory state for the use and benefit of the former, the users of the water made available by such facilities, as a condition precedent to the use thereof, shall pay to the political subdivisions of the state in which such facilities are located, each and every year during which such rights are enjoyed for such purposes, a sum of money equivalent to the average of the amount of taxes annually levied and assessed against the land and improvements thereon during the ten years preceding the acquisition of such land. Said payments shall be in full reimbursement for the loss of taxes in such political subdivision of the state.

E. Rights to the use of water acquired under this Article shall in all respects be subject to this Compact.

ARTICLE IX

Stored water, or water from another watershed may be turned into the channel of the Bear River in one state and a like quantity, with allowance for loss by evaporation, transpiration, and seepage, may be taken out of the Bear River in another state either above or below the point where the water is turned into the channel, but in making such exchange the replacement water shall not be inferior in quality for the purpose used or diminished in quantity. Exchanges shall not be permitted if the effect thereof is to impair vested rights or to cause damage for which no compensation is paid. Water from another watershed or source, which enters the Bear River by actions within a state, may be claimed exclusively by that state and use thereof by that state shall not be subject to the depletion limitations of Articles IV, V

and VI. Proof of any claimed increase in flow shall be the burden of the State making such claim, and it shall be approved only by the unanimous vote of the Commission.

ARTICLE X

A. The following rights to the use of Bear River water carried in interstate canals are recognized and confirmed.

Name of Canal	Date of Priority	Primary right second –feet	<u>Lands Irrigated</u>	
			Acres	State
Hilliard East Fork	1914	28.00	2,644	Wyoming
Chapman	8-13-86	16.46	1,155	Wyoming
	8-13-86	98.46	6,892	Utah
	4-12-12	.57	40	Wyoming
	5- 3-12	4.07	285	Utah
	5-21-12	10.17	712	Utah
	2- 6-13	.79	55	Wyoming
	8-28-05	¹ 134.00		
Francis Lee	1879	2.20	154	Wyoming
	1879	7.41	519	Utah

¹*Under the right as herein confirmed not to exceed 134 second-feet may be carried across the Wyoming-Utah state line in the Chapman Canal at any time for filling the Neponset Reservoir, for irrigation of land in Utah and for other purposes. The storage right in Neponset Reservoir is for 6,900 acre-feet, which is a component part of the irrigation right for the Utah lands listed above.*

All other rights to the use of water carried in interstate canals and ditches, as adjudicated in the State in which the point of Diversion is located, are recognized and confirmed.

B. All interstate rights shall be administered by the State in which the point of diversion is located and during times of water emergency, such rights shall be filled from the allocations specified in Article IV hereof for the section in which the point of diversion is located, with the exception that the diversion of water into the Hilliard East Fork Canal, Lannon Canal, Lone Mountain Ditch, and Hilliard West Side Canal shall be under the administration of Wyoming. During times of water emergency, these canals and the Lone Mountain Ditch shall be supplied from the allocation specified in Article IV for the

Upper Wyoming Section Diversions.

ARTICLE XI

Applications for appropriation, for change of point of diversion, place and nature of use, and for exchange of Bear River water shall be considered and acted upon in accordance with the law of the state in which the point of diversion is located, but no such application shall be approved if the effect thereof will be to deprive any water user in another state of water to which he is entitled, nor shall any such application be approved if the effect thereof will be an increase in the depletion of the flow of the Bear River and its tributaries beyond the limits authorized in each State in Articles IV, V and VI of this Compact. The official of each state in charge of water administration shall, at intervals and in the format established by the Commission, report on the status of use of the respective allocations.

ARTICLE XII

Nothing in this compact shall be construed to prevent the United States, a signatory state or political subdivision thereof, person, corporation, or association, from instituting or maintaining any action or proceeding, legal or equitable, for the protection of any right under state or federal law or under this Compact.

ARTICLE XIII

Nothing contained in this Compact shall be deemed:

1. To affect the obligations of the United States of America to the Indian tribes;
2. To impair, extend or otherwise affect any right or power of the United States, its agencies or instrumentalities involved herein; nor the capacity of the United States to hold or acquire additional rights to the use of the water of the Bear River;
3. To subject any property or rights of the United States to the laws of the States which were not subject thereto prior to the date of this Compact;
4. To subject any property of the United States to taxation by the states or any subdivision thereof, nor to obligate the United States to pay any state or subdivision thereof for loss of taxes.

ARTICLE XIV

At intervals not exceeding twenty years, the Commission shall review the provisions hereof, and after notice and public hearing, may propose amendments to any such provision, provided, however, that the provisions contained herein shall remain in full force and effect until such proposed amendments have been ratified by the legislatures of the signatory States and consented to by Congress.

ARTICLE XV

This Compact may be terminated at any time by the unanimous agreement of the signatory states. In the event of such termination, all rights established under it shall continue unimpaired.

ARTICLE XVI

Should a court of competent jurisdiction hold any part of this Compact to be contrary to the constitution of any signatory State or to the Constitution of the United States, all other severable provisions of this Compact shall continue in full force and effect.

ARTICLE XVII

This Compact shall be in effect when it shall have been ratified by the legislature of each signatory state and consented to by the Congress of the United States of America. Notice of ratification by the legislature of the signatory states shall be given by the governor of each signatory state to the governor of each of the other signatory states and to the President of the United States of America, and the President is hereby requested to give notice to the governor of each of the signatory states of approval by the Congress of the United States of America.

IN WITNESS WHEREOF, the Commissioners and their advisers have executed this Compact in five originals, one of which shall be deposited with the General Services Administration of the United States of America, one of which shall be forwarded to the governor of each of the signatory states, and one of which shall be made a part of the permanent records of the Bear River Commission.

Done at Salt Lake City, Utah, this 22nd day of December 1978.

For the State of Idaho:

CLIFFORD J. SKINNER

J. DANIEL ROBERTS

DON W. GILBERT

For the State of Utah:

S. PAUL HOLMGREN

SIMEON WESTON

DANIEL F. LAWRENCE

For the State of Wyoming:

GEORGE L. CHRISTOPULOS

J. W. MYERS

JOHN A. TEICHERT

Approved:

WALLACE N. JIBSON

Representative of the United States of America

Attest:

DANIEL F. LAWRENCE

Secretary of the Bear River Compact Commission

NOTES

Congressional Consent to Negotiations. --- By the Act of July 24, 1946, (60 Stat. 658), the Congress gave its consent to the negotiation by the States of Idaho, Utah, and Wyoming of a compact "providing for an equitable division and apportionment among the said States of the waters of the Bear River and all of its tributaries in the three States ***." This consent was given "upon condition that one suitable person from the Department of the Interior, who shall be appointed by the President of the United States, shall participate in said negotiations as the representative of the United States and shall make report to Congress of the proceedings and of any compact entered into." The Act cited also provided that no such compact should be effective until it had been ratified by the legislature of each of the states and "approved" by the Congress.

Congressional Consent to the Compact. --- The Compact set out above is an amended Compact. Consent to the original Compact was given in the Act of March 17, 1958 (72 Stat. 38). The remaining sections of this act read as follows:

SEC. 2. All officers, agencies, departments, and persons of and in the United States Government shall cooperate with the Bear River Commission, established pursuant to the compact consented to hereby, in any manner authorized by law other than this Act, it being the purpose of Congress: that the United States Government shall assist in the furtherance of the objectives of a Bear River Compact and in the work of the commission created thereby.

SEC. 3. Any modification of the allocation of storage rights contained in Article V shall become effective only when consented to by the Congress.

SEC. 4. The right to alter, amend, or repeal this Act is expressly reserved. Consent to the Amended Compact was given in the Act of February 8, 1980, (94 Stat. 4) from which the text of the Compact set out above is taken.

Legislative History of the Compact. --- For legislative history of the original Compact, see S1086, and HR 4647, HR 5379, HR 6381, 15th Congress; House Report 1375 (Committee on Interior and Insular Affairs) and Senate Report 843 (Committee on Interior and Insular Affairs), 85th Congress; Congressional Record, vols. 103 and 104.

For legislative history of the Amended Compact, see S1489, and HR 4320, 96th Congress; House Report 96-524 (Committee on Interior and Insular Affairs) and Senate Report 96-526 (Committee on the Judiciary), 96th Congress; Congressional Record vols. 125 and 126.

Belle Fourche Basin

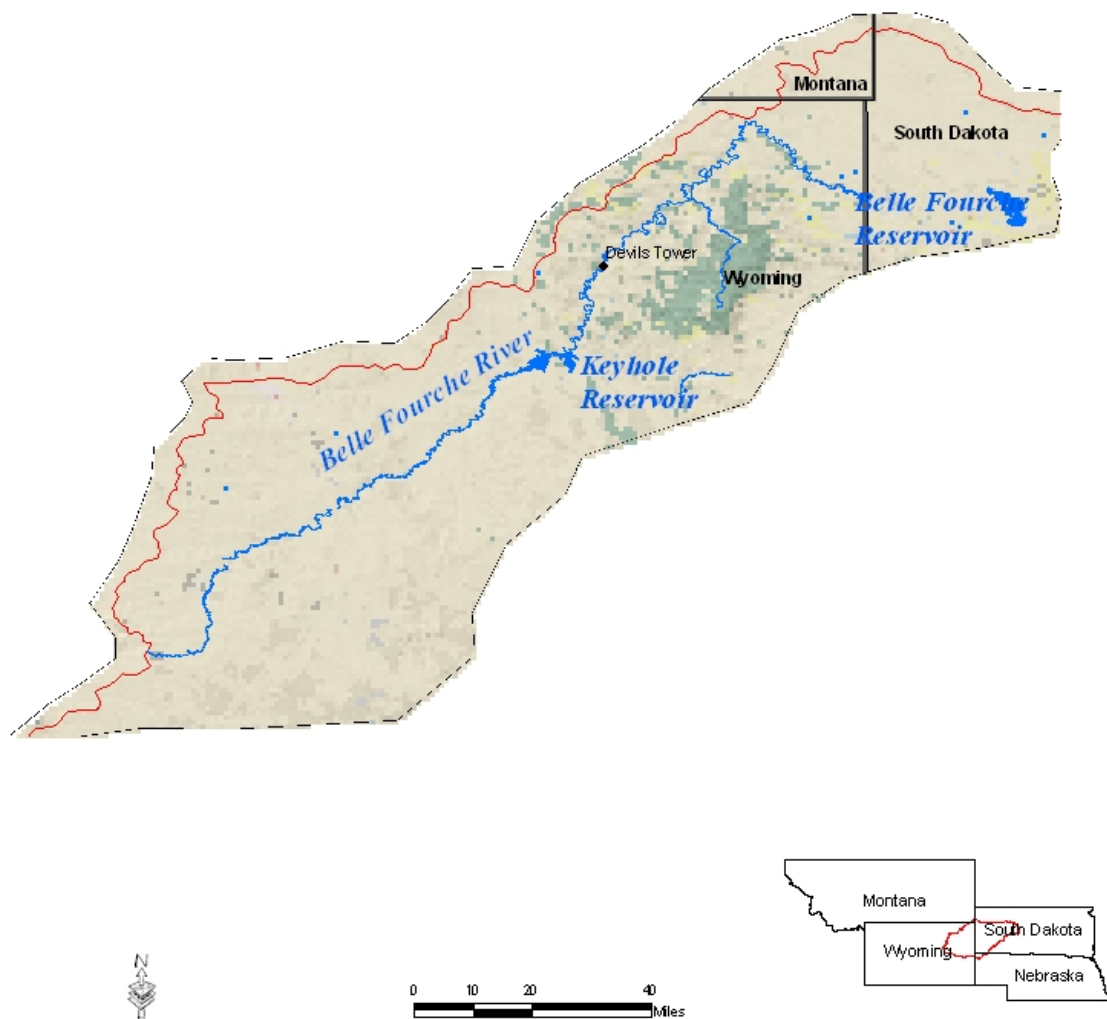


Figure 3 - Belle Fourche River Basin

BELLE FOURCHE RIVER COMPACT, 1943

<u>Signatory States:</u>	South Dakota and Wyoming
<u>Rivers Controlled:</u>	Belle Fourche River and its tributaries arising in Wyoming.
<u>Ratifications:</u>	Wyo. Stat. Ann. §41-12-201 through 215 (2005) [Act of March 3, 1943, 1943 Wyo. Sess. Laws, ch. 117, p. 153] S.D. Codified Laws §46A-17-1 (2005) [Act of March 4, 1943, 1943 S.D. Sess. Laws ch. 283, p. 281]
<u>Summary:</u>	This Compact recognizes all existing rights in Wyoming, as of the date of the Compact. It permits Wyoming unlimited use for stock water reservoirs not exceeding 20 acre-feet in capacity, and it allows Wyoming to deplete the unappropriated flow under the conditions existing as of the date of the compact by an additional 10%.

BELLE FOURCHE RIVER COMPACT, 1943

The States of South Dakota and Wyoming, parties signatory to this Compact (hereinafter referred to as South Dakota and Wyoming, respectively, or individually as a State, or collectively as the States) have resolved to conclude a compact as authorized under the Act of Congress of February 26, 1927, Chapter 216, 44 Stat. 1247, and, after negotiations participated in by the following named State Commissioners.

For South Dakota:

M. Q. SHARPE
G. W. MORSMAN
S. G. MORTIMER
W. D. BUCHHOLZ

For Wyoming:

L. .C. BISHOP
SAMUEL McKEAN
L. H. ROBINSON
MRS. E. E. McKEAN

and by Howard R. Stinson, appointed as the Representative of the United States of America, have agreed upon the following articles, to-wit:

ARTICLE I

A. The major purposes of this compact are to provide for the most efficient use of the waters of the Belle Fourche River Basin (hereinafter referred to as the Basin) for multiple purposes; to provide for an equitable division of such waters; to remove all causes, present and future, which might lead to controversies; to promote interstate comity; to recognize that the most efficient utilization of the waters within the basin is required for the full development of the basin; and to promote joint action by the states and the United States in the efficient use of water and the control of floods.

B. The physical and other conditions peculiar to the Basin constitute the basis for this compact; and none of the States hereby, nor the Congress of the United States by its consent, concedes that this compact establishes any general principle or precedent with respect to any other interstate stream.

C. Either State and all others using, claiming or in any manner asserting any right to the use of the waters of the Belle Fourche River under the authority of that State, shall be subject to the terms of this Compact.

ARTICLE II

As used in this Compact:

A. The term "Belle Fourche River" shall mean and include the Belle Fourche River and all

its tributaries originating in Wyoming

B. The term "basin" shall mean that area in South Dakota and Wyoming, which is naturally drained by the Belle Fourche River, and all its tributaries

C. The term "beneficial use" is herein defined to be that use by which the water supply of a drainage basin is depleted when usefully employed by the activities of man, and includes water lost by evaporation, and other natural causes from streams, canals, ditches, irrigated areas, and reservoirs;

D. Where the name of the State or the term "State" or "States" is used, these shall be construed to include any person or entity of any nature whatsoever using, claiming, or in any manner asserting any right to the use of the waters of the Belle Fourche River under the authority of that State.

ARTICLE III

It shall be the duty of the two States to administer this Compact through the official in each State who is now or may hereafter be charged with the duty of administering the public water supplies, and to collect and correlate through such officials the data necessary for the proper administration of the provisions of this Compact. Such officials may, by unanimous action, adopt rules and regulations consistent with the provisions of this Compact.

The United States Geological Survey, or whatever federal agency may succeed to the functions and duties of that agency, insofar as this Compact is concerned, shall collaborate with the officials of the States charged with the administration of this Compact in the execution of the duty of such officials in the collection, correlation, and publication of information necessary for the proper administration of this Compact.

ARTICLE IV

Each State shall itself or in conjunction with other responsible agencies cause to be established, maintained, and operated such suitable water gaging stations as it finds necessary to administer this Compact.

ARTICLE V

A. Wyoming and South Dakota agree that the unappropriated waters of the Belle Fourche River as of the date of this Compact shall be allocated to each State as follows:

90% to South Dakota

10% to Wyoming;

Provided, that allocations to Wyoming shall be exclusive of the use of these waters for domestic and stock use, and Wyoming shall be allowed unrestricted use for these purposes, except that no reservoir for such use shall exceed twenty (20) acre-feet in capacity. For storage of its allocated water, Wyoming shall have the privilege of purchasing at cost not to exceed ten percent (10%) of the total storage capacity for any

reservoir or reservoirs constructed in Wyoming for irrigation of lands in South Dakota, or may construct reservoirs itself for the purpose of utilizing such water. Either State may temporarily divert, or store for beneficial use, any unused part of the above percentages allotted to the other, but no continuing right shall be established thereby.

B. Rights to the use of the waters of the Belle Fourche River, whether based on direct diversion or storage, are hereby recognized as of the date of this Compact to the extent these rights are valid under the law of the State in which the use is made, and shall remain unimpaired hereby. These rights, together with the additional allocations made under A of this Article, are agreed to be an equitable apportionment between the States of the waters of the Basin.

C. The waters allocated under A of this Article and the rights recognized under B of this Article are hereinafter referred to collectively as the apportioned water. For the purposes of the administration of this Compact and determining the apportioned water at any given date within a given calendar year, there shall be taken the sum of:

(1) The quantity of water in acre-feet that passed the Wyoming-South Dakota state line during the period from January 1 of that year to that given date

(2) The quantity of water in acre-feet in storage on that date in all reservoirs built in Wyoming on the Belle Fourche River subsequent to the date of this Compact.

ARTICLE VI

Any person, entity, or State shall have the right to acquire necessary property rights in another State by purchase or through the exercise of the power of eminent domain for the construction, operation and maintenance of storage reservoirs and of appurtenant works, canals, and conduits required for the enjoyment of the privileges granted by Article V and Article VII A; provided, however, that the grantees of such rights shall pay to the political subdivisions of the State in which such works are located, each and every year during which such rights are enjoyed for such purposes, a sum of money equivalent to the average annual amount of taxes assessed against the lands and improvements thereon during the 10 years preceding the use of such lands in reimbursement for the loss of taxes to said political subdivisions of the State.

ARTICLE VII

A. Either State shall have the right, by compliance with the laws of the other State, to file applications for and receive permits to construct or participate in the construction and use of any dam, storage reservoir, or diversion works in such State for the purpose of conserving and regulating the apportioned water of the other State; provided, that such right is subject to the rights of the other State to control, regulate, and use water apportioned to it.

B. Each claim hereafter initiated for storage or diversion of water in one State for use in another State shall be filed in the Office of the State Engineer of the State in which the water is to be stored or diverted, and a duplicate copy of the application including a map showing the character and location of the proposed facilities and the lands to be irrigated shall be filed in the Office of the State Engineer of the State in which the water is to be used. If a portion or all the lands proposed to be reclaimed are located in a State other than the one in which the water is to be restored or diverted, then, before approval of the application shall be granted, said application shall be checked against the records of the appropriate office of the State in which the water is to be used, and a notation shall be placed thereon by the officer in charge of such records to the effect that the land description does not indicate a conflict with existing water rights. All endorsements shall be placed on both the original and duplicate copies of all such maps filed to the end that the records in both States may be complete and identical.

C. Appropriations may hereafter be adjudicated in the State in which the water is stored or diverted, and where a portion or all the lands irrigated are in the other State, such adjudications shall be confirmed in the latter State by the proper authority. Each adjudication is to conform with the laws of the State where the water is stored or diverted and shall be recorded in the county and State where the water is used.

ARTICLE VIII

In case any reservoir is constructed in, Wyoming to be used principally for irrigation of lands in South Dakota, sufficient water not to exceed 10 cubic feet per second shall be released at all times for stock water use.

ARTICLE IX

No reservoir hereafter built solely to utilize the water allocated to Wyoming shall have a capacity in excess of one thousand (1,000) acre-feet.

ARTICLE X

The provisions of this Compact shall remain in full force and effect until amended by action of the legislature of the States and consented to and approved by the Congress of the United States in the same manner as this Compact is required to be ratified to become effective.

ARTICLE XI

This Compact may be terminated at any time by unanimous consent of the States, and upon such termination, all rights then established hereunder or recognized hereby shall continue to be recognized as valid by the States notwithstanding the termination of the other provisions of the Compact.

ARTICLE XII

Nothing in this Compact shall be construed to limit or prevent either state from instituting or

maintaining any action or proceeding, legal or equitable, in any federal court or the United States Supreme Court for the protection of any right under this Compact or the enforcement of any of its provisions.

ARTICLE XIII

Nothing in this Compact shall be deemed:

A. To impair or affect any rights or powers of the United States, its agencies, or instrumentalities, in and to the use of the waters of the Belle Fourche River nor its capacity to acquire rights in and to the use of said waters

B. To subject any property of the United States, its agencies, or instrumentalities to taxation by either State or subdivision thereof, or to create an obligation on the part of the United States, its agencies, or instrumentalities, by reason of the acquisition, construction or operation of any property or works of whatsoever kind, to make any payments to any State or political subdivision thereof, State agency, municipality, or entity whatsoever in reimbursement for the loss of taxes;

C. To subject any property of the United States, its agencies, or instrumentalities, to the laws of any State to an extent other than the extent to which these laws would apply without regard to the Compact.

ARTICLE XIV

This Compact shall become operative when approved by the legislature of each of the States, and when consented to by the Congress of the United States by legislation providing, among other things, that:

A. Any beneficial uses hereafter made by the United States, or those acting by or under its authority, within a State, of the waters allocated by this Compact, shall be within the allocations hereinabove made for use in that State and shall be taken into account in determining the extent of use within that State;

B. The United States, or those acting by or under its authority, in the exercise of rights or powers arising from whatever jurisdiction the United States has in, over and to the waters of the Belle Fourche River and all its tributaries, shall recognize, to the extent consistent with the best utilization of the waters for multiple purposes, that beneficial use of the waters within the basin is of paramount importance to development of the Basin, and no exercise of such power or right thereby that would interfere with the full beneficial use of the waters shall be made except upon a determination, giving due consideration to the objectives of this Compact and after consultation with all interested federal agencies and the State officials charged with the administration of this Compact, that such exercise is in the interest of the best utilization of such waters for multiple purposes;

C. The United States, or those acting by or under its authority, will recognize any established use, for domestic and irrigation purposes, of the apportioned waters which may be impaired by the exercise of Federal jurisdiction in, over, and to such waters; provided, that such use is being exercised beneficially, is valid under the laws of the appropriate State and in conformity with this Compact at the time of the impairment thereof, and was validly initiated under State law prior to the initiation or authorization of the federal program or project which causes such impairment.

ARTICLE XV

Should a court of competent jurisdiction hold any part of this Compact to be contrary to the constitution of any State or of the United States, all other severable provisions shall continue in full force and effect.

IN WITNESS WHEREOF, the Commissioners have signed this Compact in triplicate original, one of which shall be filed in the archives of the Department of State of the United States of America and shall be deemed the authoritative original, and of which a duly certified copy shall be forwarded to the Governor of each of the States.

Done at the City of Cheyenne in the State of Wyoming, this 18th day of February, in the year of Our Lord, One Thousand Nine Hundred and Forty-Three.

Commissioners for South Dakota:

M. Q. SHARPE
G. W. MORSMAN
S. G. MORTIMER
W. D. BUCHHOLZ

Commissioners for Wyoming:

L. C. BISHOP
SAMUEL McKEAN
L. H. ROBINSON
Mrs. E. E. McKEAN

I have participated in the negotiation of this Compact and intend to report favorably thereon to the Congress of the United States.

HOWARD R. STINSON

Representative of the United States of America

NOTES

Congressional Consent to Negotiations. --- By the Act of February 26, 1927 (44 Stat. 1247), the Congress gave its consent to the negotiation by the States of South Dakota and Wyoming of compacts "providing for an equitable division and apportionment * * * of the water supply of the Belle Fourche" and other streams common to the two States. This consent was given "upon condition that a representative of the United States from the Department of the Interior, to be appointed by the President, shall participate in the negotiations and shall make report to Congress of the proceedings and of any compact or agreement entered into." It was also provided that no such compact or agreement should become effective until it had been "approved" by the legislatures of the States and by Congress.

Congressional Consent to the Compact. --- Act of February 26, 1944 (58 Stat. 94) from which the text of the Compact above is taken.

Section 2 of this Act reads as follows:

"(a) In order that the conditions stated in Article XIV of the Compact hereby consented to shall be met and that the Compact shall be and continue to be operative, the following provisions are enacted:

"(1) Any beneficial uses hereafter made by the United States, or those acting by or under its authority, within a State, of the waters allocated by such compact, shall be within the allocations made by such compact for use in that State and shall be taken into account in determining the extent of use within that State;

"(2) The United States, or those acting by or under its authority, in the exercise of rights or powers arising from whatever jurisdiction the United States has in, over, and to the waters of the Belle Fourche River and all its tributaries shall recognize, to the extent consistent with the best utilization of the waters for multiple purposes, that beneficial use of the waters within the Basin is of paramount importance to the development of the Basin; and no exercise of such power or right thereby that would interfere with the full beneficial use of the waters within the Basin shall be made except upon a determination, giving due consideration to the objectives of such compact and after consultation with all interested Federal agencies and the State officials charged with the administration of such compact, that such exercise is in the interest of the best utilization of such waters for multiple purposes;

"(3) The United States, or those acting by or under its authority, will recognize any established use, for domestic and irrigation purposes, of the apportioned water which may be impaired by the exercise of Federal jurisdiction in, over, and to such water; Provided, That such use is being exercised beneficially, is valid under the laws of the appropriate State and in conformity with such compact at the time of the

impairment thereof and was validly initiated under State law prior to the initiation or authorization of the Federal program or project which causes such impairment.

"(b) as used in this section, the following terms: 'beneficial use,' 'Basin,' and 'apportioned water,' shall have the same meanings as those ascribed to them in the compact consented to by this Act."

After approving the bill, the President issued the following statement dated February 28, 1944:

"In signing the Belle Fourche River Basin Compact bill, I find it necessary to call attention, as I did last May in the case of the Republican River Compact bill, to the restrictions imposed upon the use of water by the United States. The procedure prescribed by the bill for the exercise of the powers of the Federal Government would not be entirely satisfactory in all circumstances but the prospects in fact for the exercise of such powers in the Belle Fourche basin are not great. For streams where conditions are otherwise and there appears to be a possible need for Federal comprehensive multiple-purpose development or where opportunities for important electric power projects are present, I believe the Belle Fourche River Compact should not serve as a precedent. In such cases the compact and the legislation should more adequately reflect recognition of the responsibilities and prerogatives of the Federal Government."

Legislative History of the Compact. --- See H. R. 2580 and S. 1057, 78th Congress; House Report 788 (Committee on Irrigation and Reclamation) and Senate Report 683 (Committee on Irrigation and Reclamation), 78th Congress; 89 Cong. Rec. 9533-9535 (1943), 90 Cong. Rec. 1660 (1944) P. L. 236, 78th Congress. Hearings on H. R. 2580 were printed; for report of Federal representative see pp. 12-15.

Colorado River Basin



Figure 4 - Colorado River Basin

COLORADO RIVER COMPACT, 1922

<u>Signatory States:</u>	Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming
<u>Rivers Controlled:</u>	Colorado River and its tributaries within the United States
<u>Ratifications:</u>	<p>Wyo. Stat. Ann. §41-12-301 through 302 (2005) [1925 Wyo. Sess. Laws, ch. 3, p. 85]</p> <p>Ariz. Rev. Stat. §45-1311 (2003) [1944 Ariz. Sess. Laws ch. 5]</p> <p>Cal. Stat. c. 370, p. 1896 (1943) [1929 Cal. Stats., ch. 15, p. 37]</p> <p>Colo. Rev. Stat. §37-61-101 through 104 (2004) [1923, Colo. Sess. Laws, SB410]</p> <p>Nev. Rev. Stat. §538.010 (1995) [1925 Nev. Stat., ch. 96, p. 135]</p> <p>N.M. Stat. Ann. §72-15-5 (1978) [1923, N.M. Laws, ch. 6, 1925 N.M. Laws, ch. 28]</p> <p>Utah Code Ann. §73-12a-1 (2005) [1923, Utah Laws , ch. 5]</p>
<u>Summary:</u>	<p>The Compact divides the Colorado River Basin States into two basins: the Upper Basin (Colorado, New Mexico, Utah, Wyoming and part of Arizona) and the Lower Basin (Arizona, California, Nevada and parts of New Mexico and Utah). The consumptive use allowed the states of the Upper and Lower Basins is 7½ million acre-feet per annum. In addition, there is a guaranteed flow at Lee Ferry of 75 million acre-feet in any consecutive 10-year period.</p> <p>The Compact also sets preference for the uses that can be made of the water:</p> <ol style="list-style-type: none">1) Domestic and agriculture;2) Storage for the generation of power;3) Navigation. <p>In addition, a structure for preliminary settlement of disputes is established.</p>

COLORADO RIVER COMPACT, 1922

The States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming, having resolved to enter into a compact under the Act of the Congress of the United States of America approved August 19, 1921, (42 Statutes at Large, page 171), and the Acts of the Legislatures of the said States, have through their Governors appointed as their Commissioners:

W. S. Norviel for the State of Arizona,

W. F. McClure for the State of California,

Delph E. Carpenter for the State of Colorado,

J. G. Scrugham for the State of Nevada,

Stephen B. Davis, Jr. for the State of New Mexico,

R. E. Caldwell for the State of Utah,

Frank C. Emerson for the State of Wyoming,

who, after negotiations participated in by Herbert Hoover, appointed by the President as the representative of the United States of America, have agreed upon the following articles.

ARTICLE I

The major purposes of this Compact are to provide for the equitable division and apportionment of the use of the waters of the Colorado River system; to establish the relative importance of different beneficial uses of water; to promote interstate comity; to remove causes of present and future controversies and to secure the expeditious agricultural and industrial development of the Colorado River Basin, the storage of its waters, and the protection of life and property from floods. To these ends the Colorado River Basin is divided into two Basins, and an apportionment of the use of part of the water of the Colorado River system is made to each of them with the provision that further equitable apportionment may be made.

ARTICLE II

As used in this Compact:

(a) The term "Colorado River system" means that portion of the Colorado River and its tributaries within the United States of America.

(b) The term "Colorado River Basin" means all of the drainage area of the Colorado River system and all other territory within the United States of America to which the waters of the Colorado River system shall be beneficially applied.

(c) The term "States of the Upper Division" means the States of Colorado, New Mexico,

Utah, and Wyoming.

(d) The term "States of the Lower Division" means the States of Arizona, California, and Nevada.

(e) The term "Lee Ferry" means a point in the main stream of the Colorado River one mile below the mouth of the Paria River.

(f) The term "Upper Basin" means those parts of the States of Arizona, Colorado, New Mexico, Utah, and Wyoming within and from which waters naturally drain into the Colorado River System above Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System above Lee Ferry.

(g) The term "Lower Basin" means those parts of the States of Arizona, California, Nevada, New Mexico, and Utah within and from which waters naturally drain into the Colorado River System below Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System below Lee Ferry.

(h) The term "domestic use" shall include the use of water for household, stock, municipal, mining; milling, industrial, and other like purposes, but shall exclude the generation of electrical power.

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 Lee Ferry water to supply one-half of the deficiency so recognized in addition to that provided in paragraph (d).

(d) The States of the Upper Division will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre-feet for any period of 10 consecutive years reckoned in

continuing progressive series beginning with the 1st day of October next succeeding the ratification of this Compact.

(e) The States of the Upper Division shall not withhold water, and the States of the Lower Division shall not require the delivery of water, which cannot reasonably be applied to domestic and agricultural uses.

(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).

(g) In the event of a desire for further apportionment as provided in paragraph (f) any two signatory States, acting through their Governors, may give joint notice of such desire to the Governors of the other signatory States and to the President of the United States of America, and it shall be the duty of the Governors of the signatory States and of the President of the United States of America forthwith to appoint representatives, whose duty it shall be to divide and apportion equitably between the Upper Basin and Lower Basin the beneficial use of the unapportioned water of the Colorado River System as mentioned in paragraph (f), subject to the legislative ratification of the signatory States and the Congress of the United States of America.

ARTICLE IV

(a) Inasmuch as the Colorado River has ceased to be navigable for commerce and the reservation of its waters for navigation would seriously limit the development of its Basin, the use of its waters for purposes of navigation shall be subservient to the uses of such waters for domestic, agricultural, and power purposes. If the Congress shall not consent to this paragraph, the other provisions of this Compact shall nevertheless remain binding.

(b) Subject to the provisions of this Compact, water of the Colorado River System may be impounded and used for the generation of electrical power, but such impounding and use shall be subservient to the use and consumption of such water for agricultural and domestic purposes and shall not interfere with or prevent use for such dominant purposes.

(c) The provisions of this article shall not apply to or interfere with the regulation and control by any State within its boundaries of the appropriation, use, and distribution of water.

ARTICLE V

The chief official of each signatory State charged with the administration of water rights, together with the Director of the United States Reclamation Service and the Director of the United States Geological Survey, shall cooperate, ex officio:

(a) To promote the systematic determination and coordination of the facts as to flow, appropriation, consumption, and use of water in the Colorado River Basin, and the interchange of available information in such matters.

(b) To secure the ascertainment and publication of the annual flow of the Colorado River at Lee Ferry.

(c) To perform such other duties as may be assigned by mutual consent of the signatories from time to time.

ARTICLE VI

Should any claim or controversy arise between any two or more of the signatory States: (a) with respect to the waters of the Colorado River System not covered by the terms of this Compact; (b) over the meaning or performance of any of the terms of this Compact; (c) as to the allocation of the burdens incident to the performance of any article of this Compact or the delivery of waters as herein provided; (d) as to the construction or operation of works within the Colorado River Basin to be situated in two or more States, or to be constructed in one State for the benefit of another State; or (e) as to the diversion of water in one State for the benefit of another State, the Governors of the States affected upon the request of one of them, shall forthwith appoint commissioners with power to consider and adjust such claim or controversy, subject to ratification by the legislatures of the States so affected.

Nothing herein contained shall prevent the adjustment of any such claim or controversy by any present method or by direct future legislative action of the interested States.

ARTICLE VII

Nothing in this Compact shall be construed as affecting the obligations of the United States of America to Indian tribes.

ARTICLE VIII

Present perfected rights to the beneficial use of waters of the Colorado River System are unimpaired by this Compact. Whenever storage capacity of 5,000,000 acre-feet shall have been provided on the main Colorado River within or for the benefit of the Lower Basin, then claims of such rights, if any, by appropriators or users of water in the Lower Basin against appropriators or users of water in the Upper Basin shall attach to and be satisfied from water that may be stored not in conflict with Article III.

All other rights to beneficial use of waters of the Colorado River System shall be satisfied solely from the water apportioned to that Basin in which they are situated.

ARTICLE IX

Nothing in this Compact shall be construed to limit or prevent any State from instituting or maintaining any action or proceeding, legal or equitable, for the protection of any right under this

Compact or the enforcement of any of its provisions.

ARTICLE X

This Compact may be terminated at any time by the unanimous agreement of the signatory States. In the event of such termination, all rights established under it shall continue unimpaired.

ARTICLE XI

This Compact shall become binding and obligatory when it shall have been approved by the Legislatures of each of the signatory States and by the Congress of the United States. Notice of approval by the Legislatures shall be given by the Governor of each signatory State to the Governors of the other signatory States and to the President of the United States and the President of the United States is requested to give notice to the Governors of the signatory States of approval by the Congress of the United States.

IN WITNESS WHEREOF, the Commissioners have signed this Compact in a single original, which shall be deposited in the archives of the Department of State of the United States of America and of which a duly certified copy shall be forwarded to the Governor of each of the signatory States.

Done at the City of Santa Fe, New Mexico, this twenty-fourth day of November, A. D. One Thousand Nine Hundred and Twenty-two.

W. S. NORVIEL
W. F. MCCLURE
DELPH E. CARPENTER
J. G. SCRUGHAM
STEPHEN B. DAVIS, JR.
R. E. CALDWELL
FRANK C. EMERSON

Approved:
HERBERT HOOVER

NOTES

Congressional Consent to Negotiations. --- The Act of August 19, 1921 (42 Stat. 171) gave Congress' consent to the negotiation by the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming of "a compact or agreement not later than January 1, 1923, providing for an equitable division and apportionment among said States of the water supply of the Colorado River and of the streams tributary thereto * * *." Provision was made in the Act for appointment by the President of a person to participate in the negotiations "as the representative of and for the protection of the interests of the United States * * *." It was also provided that no compact so negotiated should become effective "unless and until the same shall have been approved by the Legislature of each of said States and by the Congress of the United States."

Congressional Consent to and Legislative History of the Compact. --- By section 13, subsection (a), of the Boulder Canyon Project Act (45 Stat. 1057, 1064), the Congress "approved" the Colorado River Compact and waived the provision of Article XI requiring that it be ratified by the legislatures of all seven States. In so doing, it provided that the Congress' approval should "become effective when the State of California and at least five of the other States mentioned, shall have approved or may hereafter approve said compact * * * and shall consent to such waiver * * *." Section 4, subsection (a), of the same Act provided, among other things, that the Act should not be effective until the compact had been ratified by all seven States or until it had been ratified by California and five other states and "until the State of California, by act of its legislature, shall agree irrevocably and unconditionally with the United States and for the benefit of the States of Arizona, Colorado, Nevada New Mexico, Utah, and Wyoming, as an express covenant and in consideration of the passage of this Act, that the aggregate annual consumptive use (diversions less returns to the river) of water of and from the Colorado River for use in the State of California, including all uses under contracts made under the provisions of this Act and all water necessary for the supply of any rights which may now exist, shall not exceed four million four hundred thousand acre-feet of the waters apportioned to the lower basin States by paragraph (a) of Article III of the Colorado River compact, plus not more than one-half of any excess or surplus waters unapportioned by said compact, such uses always to be subject to the terms of said compact."

For the Act of the California legislature agreeing to this condition, see its Act of March 4, 1929 [Cal. Stats. 1929, p. 38].

For the President's proclamation of June 25, 1929, declaring that the conditions of the Boulder Canyon Project Act had been fulfilled, see 46 Stat. 3000.

The evolution of the Boulder Canyon Project Act can be traced in the following bills and the hearings, committee reports and floor debate thereon:

H. R. 11449, 67th Congress (Hearings before House Committee on Irrigation of Arid Lands, 1922-23).

H. R. 2903, 68th Congress (Hearings before House Committee on Irrigation of Arid Lands, 1923, and before House Committee on Irrigation and Reclamation, 1923-24).

S. 727, 68th Congress (Hearings before Senate Committee on Irrigation and Reclamation, 1924-25).

H. R. 6251 and H. R. 9826, 69th Congress (Hearings before House Committee on Irrigation and Reclamation, 1926, H. Rept. No. 1657 on H. R. 9826, 1926; Hearings before House Committee on Rules, 1927; 67 Cong. Rec. 5425-5427; 68 Cong. Rec. 2633-2637, 2652-2654, 3073-3080, 3272-3273, 3292-3294, 5822-5832).

S. 3331, 69th Congress (Hearings before Senate Committee on Irrigation and Reclamation, acting pursuant to S. Res. 320, 68th Congress, 1925-26; S. Rept. No. 654, 1926; 67 Cong. Rec. 8139-8150, 12619-12627; 68 Cong. Rec. 2369-2374, 2761-2765, 4156-4161, 4290-4307, 4309-4326, 4405-4416, 4421-4424, 4426-4456, 4495-4523, 4529-4530, 4541-4542, 4652-4653, 4655, 4763-4766, 4892, 4896-4900).

H. R. 5770, 70th Congress (Hearings before House Committee on Irrigation and Reclamation, 1928).

S. 728 and S. 1274, 70th Congress (Hearings before Senate Committee on Irrigation and Reclamation, 1928; S. Rept. No. 592 on S. 728, 1928; 69 Cong. Rec. 7245-7253, 7387-7397, 7515-7544, 7622-7627, 7630-7638, 9433-9443, 9449-9464, 9886-9891, 10200-10202, 10257-10266, 10271-10282, 10287-10302, 10462-10510, 10511-10513).

H. R. 5773, 70th Congress (Hearings before House Committee on Irrigation and Reclamation, 1928; H. Rept. No. 918, 1928; Hearings before Committee on Rules, 1928; 69 Cong. Rec. 9486- 9513, 9622-9658, 9662-9664, 9760-9769, 9770-9786, 9975-9991, 70 Cong. Rec. 67-80, 227-245, 264- 269, 277-298, 314-340, 381-402, 458-474, 518-530, 565-603, 615-621, 830-838; P. L. 642, 70th Congress).

Snake River Basin

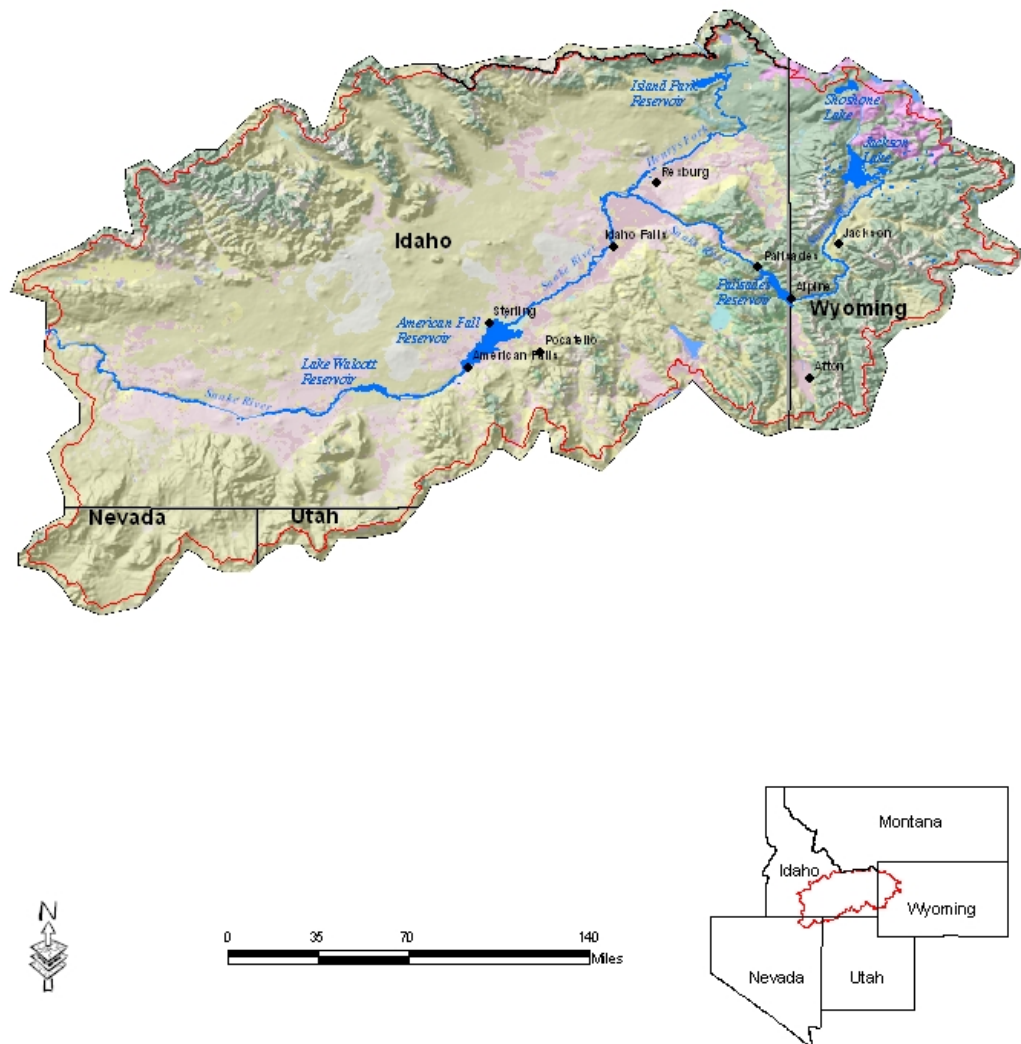


Figure 5 - Snake River Basin

A. The term "Snake River" as distinguished from terms such as "Snake River and its tributaries" shall mean the Snake River from its headwaters to the Wyoming-Idaho boundary and all tributaries flowing into it within the boundaries of Wyoming, and the Salt River and all its tributaries

B. The terms "Idaho" and "Wyoming" shall mean, respectively, the State of Idaho and the State of Wyoming, and, except as otherwise expressly provided, either of those terms or the term "State" or "States" used in relation to any right or obligation created or recognized by this Compact shall include any person or entity of any nature whatsoever, including the United States;

C. The term "domestic use" shall mean the use of water by an individual, or by a family unit or household for drinking, cooking, laundering, sanitation and other personal comforts and necessities; and for the irrigation of a family garden or orchard not exceeding one-half acre in area;

D. The term "stock water use" shall mean the use of water for livestock and poultry

E. The term "established Wyoming rights" shall mean Snake River water rights that have been validly established of record in Wyoming prior to July 1, 1949, for use in Wyoming.

ARTICLE III

A. The waters of the Snake River, exclusive of established Wyoming rights and other uses coming within the provisions of (c) of this Article III, are hereby allocated to each State for storage or direct diversion as follows:

To Idaho 96 percent

To Wyoming 4 percent

subject to the following stipulations and conditions as to the four percent allocated to Wyoming:

1. One-half may be used in Wyoming by direct diversion or by storage and subsequent diversion without provision being made for replacement storage space;

2. The other one-half may be diverted for direct use or stored for later diversion and use on the condition that there shall have been provided for reimbursement of Idaho users replacement storage space to the extent of one-third of the maximum annual diversion in acre-feet but not in excess, however, of one-third of half the total hereby allocated to Wyoming. Until this total replacement storage space has been made available, provision for meeting its proportionate part of this total shall be a prerequisite to the right to use water in Wyoming for any irrigation project authorized after June 30, 1949, for construction by any federal agency.

B. The amount of water subject to allocation as provided in (a) of this Article III shall be determined on an annual water-year basis measured from October 1 of any year through September 30 of the succeeding year. The quantity of water to which the percentage factors in (a) of this Article III shall be applied through a given date in any water year shall be, in acre-feet, equal to the algebraic sum of:

1. The quantity of water, in acre-feet, that has passed the Wyoming state line in the Snake River to the given date, determined on the basis of gaging stations to be established at such points as are agreed on under the provisions of (b) of Article VI;

2. The change during that water year to the given date in quantity of water, in acre-feet, in any existing or future reservoirs in Wyoming which water is for use in Idaho;

3. The quantity of water, in acre-feet, stored in that water year and in storage on the given date for later diversion and use in Wyoming, under rights having a priority later than June 30, 1949;

4. One-third of the quantity of water, in acre-feet, excluding any storage water held over from prior years, diverted, under rights having a priority later than June 30, 1949, in that water year to the given date:

(a) From the Snake River for use that year on lands in Wyoming; and

(b) From tributaries of the Salt River for use that year on lands in Idaho.

C. There are hereby excluded from the allocations made by this Compact:

1. Existing and future domestic and stock water uses of water; provided, that the capacity of any reservoir for stock water shall not exceed twenty (20) acre-feet;

2. Established Wyoming rights; and

3. All water rights for use in Idaho on any tributary of the Salt River heading in Idaho, which were validly established under the laws of Idaho prior to July 1, 1949; and all such uses and rights are hereby recognized.

ARTICLE IV

No water of the Snake River shall be diverted in Wyoming for use outside the drainage area of the Snake River except with the approval of Idaho; and no water of any tributary of the Salt River heading in Idaho shall be diverted in Idaho for use outside the drainage area of said tributary except with the approval of Wyoming.

ARTICLE V

Subject to the provisions of this Compact, waters of the Snake River may be impounded and used for the generation of electrical power, but such impounding and use shall be subservient to the use of such waters for domestic, stock and irrigation purposes, and shall not interfere with or prevent their use for such preferred purposes. Water impounded or diverted in Wyoming exclusively for the generation of electrical power shall not be charged to the allocation set forth in Article III of this Compact.

ARTICLE VI

A. It shall be the duty of the two States to administer this Compact through the official in each State who is now or may hereafter be charged with the administration of the public water supplies, and to collect and correlate through such officials the data necessary for the proper administration of the provisions of this Compact. Such officials may, by unanimous action, adopt rules and regulations consistent with the provisions of this Compact.

B. The States shall in conjunction with other responsible agencies cause to be established, maintained and operated such suitable water gaging stations as they find necessary to administer this Compact. The United States Geological Survey, or whatever federal agency may succeed to the functions and duties of that agency, so far as this Compact is concerned, shall collaborate with officials of the States charged with the administration of this Compact in the execution of the duty of such officials in the collection, correlation and publication of information necessary for its proper administration.

C. In the case of failure of the administrative officials of the two States to agree on any matter necessary to the administration of this Compact, the Director of the United States Geological Survey, or whatever official succeeds to his duties, shall be asked to appoint a federal representative to participate as to the matters in disagreement, and points of disagreement shall be decided by majority vote.

ARTICLE VII

A. Either State shall have the right to file applications for and receive permits to construct or participate in the construction and use of any dam, storage reservoir or diversion works in the other State for the purpose of conserving and regulating its allocated water and to perfect rights thereto. Either State exercising this right shall comply with the laws of the other State except as to any general requirement for legislative approval that may be applicable to the granting of rights by one State for the diversion or storage of water for use outside of that State.

B. Each claim or right hereafter initiated for storage or diversion of water in one State for use in the other State shall be filed in the office of the proper official of the State in which the water is to be stored or diverted, and a duplicate copy of the application, including a map showing the character and location of the proposed facilities and the lands to be irrigated, shall be filed in the office of the proper official of the State in which the water is to be used. If a portion or all the lands proposed to be reclaimed are located in a State other than the one in which the water is to be stored or diverted, then, before approval, said application shall be checked against the records of the office of the State in which the water is to be used, and a notation shall be placed thereon by the officer in charge of such records as to whether or not he approves the application. All endorsements shall be placed on both the original and duplicate

copies of all such applications and maps filed to the end that the records in both States may be complete and identical.

ARTICLE VIII

A. Neither State shall deny the right of the United States, and, subject to the conditions hereinafter contained, neither State shall deny the right of the other State to acquire rights to the use of water, or to construct or participate in the construction and use of diversion works and storage reservoirs with appurtenant works, canals and conduits in one State for the purpose of diverting, conveying, storing or regulating water in one State for use in the other State, when such use is within the allocation to such State made by this Compact.

B. Either State shall have the right to acquire such property rights as are necessary to the use of water in conformity with this Compact in the other State by donation, purchase or through the exercise of the power of eminent domain. Either State, upon the written request of the Governor of the other State, for the benefit of whose water users' property is to be acquired in the State to which such written request is made, shall proceed expeditiously to acquire the desired property either by purchase at a price satisfactory to the requesting State, or, if such purchase cannot be made, then through the exercise of its power of eminent domain and shall convey such property to the requesting State or such entity as may be designated by the requesting State; provided, that all costs of acquisition and expenses of every kind and nature whatsoever incurred in obtaining the requested property shall be paid by the requesting State at the time and in the manner prescribed by the State requested to acquire the property.

C. Should any facility be constructed in either State by and for the benefit of the other State, as above provided, the construction, repair, replacement, maintenance and operation of such facility shall be subject to the laws of the State in which the facility is located, except that, in the case of a reservoir constructed in either State for the benefit of the other State, the proper officials of the State in which the facility is located shall permit the storage and release of any water to which the other State is entitled under this Compact.

D. Either State having property rights in the other State acquired as provided in B of this Article VIII shall pay to the political subdivisions of the State in which such property rights are located, each and every year during which such rights are held, a sum of money equivalent to the average annual amount of taxes assessed against those rights during the ten years preceding the acquisition of such rights in reimbursement for the loss of taxes to said political subdivision of the State, except that this provision shall not be applicable to interests in property rights the legal title to which is in the United States. Payments so made to a political subdivision shall be in lieu of any and all taxes by that subdivision on the property rights for which the payments are made.

ARTICLE IX

The provisions of this Compact shall not apply to or interfere with the right or power of either State to regulate within its boundaries the appropriation, use and control of waters allocated to such State by this compact.

ARTICLE X

The failure of either State to use the waters, or any part thereof, the use of which is allocated to it under the terms of this Compact, shall not constitute a relinquishment of the right to such use to the other State, nor shall it constitute a forfeiture or abandonment of the right to such use.

ARTICLE XI

In case any reservoir is constructed in one State where the water is to be used principally in the other State, sufficient water not to exceed five (5) cubic feet per second shall be released at all times, if necessary for stock water use and conservation of fish and wildlife.

ARTICLE XII

The provisions of this Compact shall remain in full force and effect unless amended or terminated by action of the legislatures of both States and consented to and approved by the Congress of the United States in the same manner as this Compact is required to be ratified and approved to become effective; provided, that in the event of such amendment or termination all rights theretofore established hereunder or recognized hereby shall continue to be recognized as valid by both States notwithstanding such amendment or termination.

ARTICLE XIII

Nothing in this Compact shall be construed to limit or prevent either State from instituting or maintaining any action or proceeding, legal or equitable, for the protection of any right under this Compact or the enforcement of any of its provisions.

ARTICLE XIV

A. Nothing in this Compact shall be deemed:

1. To affect adversely any rights to the use of the waters of the Snake River, including its tributaries entering downstream from the Wyoming-Idaho state line, owned by or for Indians, Indian tribes and their reservations. The water required to satisfy these rights shall be charged against the allocation made to the State in which the Indians and their lands are located;
2. To impair or affect any rights or powers of the United States, its agencies or instrumentalities, in and to the use of the waters of the Snake River nor its capacity to acquire rights in and to the use of said waters;
3. To apply to any waters within the Yellowstone National Park or Grand Teton National

Park;

4. To subject any property of the United States, its agencies or instrumentalities to taxation by either State or subdivisions thereof, nor to create an obligation on the part of the United States, its agents or instrumentalities, by reason of the acquisition, construction or operation of any property or works of whatsoever kind, to make any payments to any State or political subdivisions thereof, state agency, municipality or entity whatsoever in reimbursement for the loss of taxes;

5. To subject any works of the United States used in connection with the control or use of waters, which are the subject of this, Compact to the laws of any State to an extent other than the extent to which these laws would apply without regard to this Compact.

B. Notwithstanding the provisions of A of this Article, any beneficial uses hereafter made by the United States, or those acting by or under its authority, within either State, of the waters allocated by this Compact shall be within the allocations hereinabove made for use in that State and shall be taken into account in determining the extent of use within that State.

ARTICLE XV

This Compact shall become operative when approved by legislative enactment by each of the States, and when consented to by the Congress of the United States.

ARTICLE XVI

Wyoming hereby relinquishes the right to the allocation of stored water in Grassy Lake Reservoir, as set forth in Wyoming's reservoir Permit No. 4631 Res. and evidenced by Certificate No. R-1, page 318, and all claims predicated thereon.

IN WITNESS WHEREOF the Commissioners have signed this compact in quadruplicate, one (1) of which shall be filed in the archives of the Department of State of the United States of America and shall be deemed the authoritative original, and of which a duly certified copy shall be forwarded to the Governor of each of the States.

Done at the city of Cheyenne, in the state of Wyoming, this 10th day of October, in the year of our Lord, one thousand nine hundred and forty-nine.

Commissioners for Idaho

MARK R. KULP
N. V. SHARP
CHARLES H. WELTEROTH
ROY MARQUESS
IVAL V. GOSLIN
R. WILLIS WALKER
ALEX O. COLEMAN

Commissioners for Wyoming

L. C. BISHOP
E. B. HITCHCOCK
J. G. IMESON
DAVID P. MILLER
CARL ROBINSON
CIRIL D. CRANNEY
CLIFFORD P. HANSEN

LEONARD E. GRAHAM
CHARLES E. ANDERSON
A. K. VAN ORDEN

CLIFFORD W. WILSON
LLOYD VAN DEBURG

I have participated in the negotiation of this Compact and intend to report favorably thereon to the Congress of the United States.

R. J. NEWELL

Representative of the United States of America

NOTES

Congressional Consent to Negotiations. --- By the Act of June 3, 1948 (62 Stat. 294), the Congress gave its consent to the negotiation of a Snake River Compact by the States of Idaho and Wyoming. The consent was given "upon condition that one suitable person, who shall be appointed by the President of the United States, shall participate in said negotiations as the representative of the United States and shall make report to the Congress of the proceedings and of any compact entered into." The Act also provided that any compact agreed upon shall not be effective until ratified by the Legislatures of the States and "approved" by the Congress and that "nothing in this Act shall apply to any waters within the Yellowstone National Park and Grand Teton National Park or shall establish any right or interest in or to any lands within the boundaries thereof or in subsequent additions thereto."

Congressional Consent to and Legislative History of the Compact. --- The "consent and approval" of the Congress was given the Snake River Compact by the Act of March 21, 1950 (64 Stat. 29), from which the text of the Compact above is taken. Section 2 of this Act "expressly reserved" the "right to alter, amend, or repeal this Act."

For legislative history, see S. 3159, 81st Congress; House Report 1743 (Committee on Public Lands), 81st Congress; 96 Cong. Rec. 2573-2575, 3063-3065 (1950); P.L. 464, 81st Congress.

Presidential and Budget Bureau Comments on Compact.--- In connection with the negotiations of the Yellowstone River Compact, the President expressed his views on certain provisions of the Snake River Compact in a letter to the Federal Representative dated May 3, 1950, to which was attached to a memorandum from the Director of the Bureau of the Budget dated April 21, 1950. The two documents read as follows:

"May 3, 1950

"MY DEAR MR. NEWELL: The purpose of this letter is to call your attention to a problem of growing concern and, in the solution of which, the Federal Representatives assigned to interstate water compact commissions are in a position to perform a valuable public service. I refer to the somewhat recent tendency to incorporate in interstate water compacts questionable or conflicting provisions imposing restrictions on use of waters by the United States, such as appear in the Snake River Compact enactment, which I approved on March 21, 1950 (Public Law 464, 81st Congress, 2nd Session).

"In this particular case, the possibility of misinterpretation of certain apparently conflicting provisions was not considered to be serious enough to warrant withholding approval of the enrolled enactment of the Congress (S. 3159). Such provisions however, if followed as precedent for general application, may jeopardize the prospect of consent and approval of compacts by the Federal Government because of the far reaching effects such provisions might have upon the interests of the United States. This matter is further discussed in a memorandum to me from the Director of the Bureau of the Budget, a copy of which is enclosed for your information and guidance.

"I fully realize how difficult it is to resolve the numerous complex jurisdictional and other problems encountered in reaching agreement upon the allocation of waters of an interstate stream. At the same time, I am impressed with the importance of insuring that compact provisions reflect as clearly as possible a recognition of the respective responsibilities and prerogatives of the United States and the affected States. I can assure you that any efforts made by you and the other compact commissioners with whom you have occasion to collaborate in eliminating or correcting this area of possible conflict, will be appreciated.

"Sincerely yours,

"Harry S. Truman"

"April 21, 1950

"Memorandum for the President:

"Analysis of the enrolled enactment granting the consent and approval of the Congress to the Snake River Compact, prior to your approval on March 21, 1950, (Public Law 464, 81st Congress, 2nd Session), revealed the possibility of misinterpretation of certain apparently conflicting provisions, which did not appear to be serious enough in this particular case to provide a sound basis for recommending disapproval of the bill, but which, if followed as precedent for general application, might have far reaching effects upon the interests of the United States. The conflicts arise primarily between specific provisions imposing restrictions upon uses of water by the United States for power and other purposes, and the general savings clause in Article XIV. This article provides that nothing in the Compact shall be deemed to impair or affect any rights or powers of the United States in and to the use of the waters of the

Snake River nor its capacity to acquire rights in and to the use of said waters. By reason of such conflicts, doubts may rise as to the extent of the control which the States concerned may exercise over the rights, interests and structures owned or built by the United States on the river. The resulting possibility of confusion thus tends to defeat one of the basic purposes of the Compact, of settling the respective rights and interests of the Federal and State Governments in, over and to the river.

"The Committee on Public Lands of the House of Representatives, in its report on the bill (S. 3159) recorded its interpretation of the term "beneficial uses" appearing in Article XIV-B, as not regarded by the Committee as including the use and control of water by the United States by reason of its power with respect to navigable waters under the commerce clause of the Constitution (H. R. Report No. 1743, 81st Congress, 2nd Session). It is also significant that the Congress saw fit to include in the enactment a provision (Section 2) expressly preserving to the United States the right to alter, amend, and repeal the Act at any time.

"Somewhat similar provisions appear in the proposed Cheyenne River Compact now pending before Congress (H. R. 3336 and S. 1211) and in the Republican River Compact approved May 26, 1943, and the Belle Fourche River Basin Compact approved February 26, 1944. In approving each of these latter enactments, President Roosevelt issued a statement emphasizing that the procedure prescribed by the bill for exercise of the powers of the Federal Government, would not be entirely satisfactory in all circumstances and that these Compacts should not serve as precedents, particularly for streams where there appears to be a possible need for Federal comprehensive multiple purpose development or where opportunities for important electric power projects are present. Likewise, the Snake River Compact should not serve as a precedent.

"In its report in S. 3159 the Public Lands Committee of the Senate expressed the view that the compact method is the logical and proper manner to settle interstate water controversies. With this view, I am in accord but I am also mindful that Compact provisions, which are subject to misinterpretation or leave in doubt the respective rights and interests of the United States and the affected States, serve to impair these rights. It is obvious therefore, that the compact method places upon the compact commissioners the important responsibility of drawing compacts in specific and unequivocal language, devoid of all possible ambiguity, and which do not attempt to define, limit or otherwise determine the extent of the powers to be exercised by the United States which is a matter for determination by the Congress through Federal legislation as required.

"The importance of insuring that future compacts more adequately reflect a clear recognition of the respective responsibilities and prerogatives of the United States and the affected States, I believe is readily apparent. In formulating provisions of interstate water compacts, which impose restrictions upon

use by the United States of waters in the streams concerned, the responsibility for protecting the rights and interests of the United States rests in the first instance upon those appointed to represent the Federal Government in negotiations with the State compact commissions. The Federal Representatives also are in a position to assist the compact commission in avoiding further use of questionable or conflicting provisions similar to the aforementioned, in order to minimize the possibility of disapproval of the compact by the State legislatures or the Federal Government, or the later possibility of prolonged and costly litigation.

“F.J. Lawton

“Director”

Upper Colorado River Basin



Figure 6 - Upper Colorado River Basin

UPPER COLORADO RIVER BASIN COMPACT, 1948

<u>Signatory States:</u>	Arizona, Colorado, New Mexico, Utah, and Wyoming
<u>Rivers Controlled:</u>	Colorado River and its tributaries above Lee Ferry, Arizona
<u>Ratifications:</u>	<p>Wyo. Stat. Ann. §41-12-401 (2005) [Act of Jan. 25, 1949, 1949 Wyo. Sess. Laws, ch. 6, p. 7]</p> <p>Ariz. Rev. Stat. §45-1321 (2003) [Act of Jan. 21, 1949, 1949 Ariz. Sess. Laws, ch. 4, p. 5]</p> <p>Colo. Rev. Stat. §37-62-101 (2004) [Act of Feb. 2, 1949, 1949 Colo. Sess. Laws p. 498)</p> <p>N. M. Stat. §72-15-26 (1978) [Act of Feb. 2, 1949, 1949 N. M. Laws, ch. 5, p. 9]</p> <p>Utah Code Ann. §73-13-9 (1953) [Act of Jan. 31, 1949, 1949 Utah Laws, ch. 12, p. 25]</p>
<u>Summary:</u>	<p>The Compact apportions the water use allocated to the Upper Basin by the 1922 Colorado River Compact. The apportionment is as follows: 50,000 acre-feet per annum to Arizona, and of the remaining quantity 51-3/4% to Colorado; 11-1/4% to New Mexico; 23% to Utah; and 14% to Wyoming.</p> <p>The Compact also divides the waters of Henrys Fork between Wyoming and Utah on a straight priority basis. The Compact divides the waters of the Little Snake River below its confluence with Savery Creek between Wyoming and Colorado for existing development on a straight priority basis and of the unused waters, 50% to each of the two states.</p>

UPPER COLORADO RIVER BASIN COMPACT, 1948

The State of Arizona, the State of Colorado, the State of New Mexico, the State of Utah and the State of Wyoming, acting through their Commissioners,

Charles A. Carson for the State of Arizona,

Clifford H. Stone for the State of Colorado,

Fred E. Wilson for the State of New Mexico,

Edward H. Watson for the State of Utah, and

L.C. Bishop for the State of Wyoming,

after negotiations participated in by Harry W. Bashore, appointed by the President as the representative of the United State of America, have agreed, subject to the provisions of the Colorado River Compact, to determine the rights and obligations of each signatory State respecting the uses and deliveries of the water of the Upper Basin of the Colorado River, as follows:

ARTICLE I

(a) The major purposes of this Compact are to provide for the equitable division and apportionment of the use of the waters of the Colorado River System, the use of which was apportioned in perpetuity to the Upper Basin by the Colorado River Compact; to establish the obligations of each State of the Upper Division with respect to the deliveries of water required to be made at Lee Ferry by the Colorado River Compact; to promote interstate comity; to remove causes of present and future controversies; to secure the expeditious agricultural and industrial development of the Upper Basin, the storage of water and to protect life and property from floods.

(b) It is recognized that the Colorado River Compact is in full force and effect and all of the provisions hereof are subject thereto.

ARTICLE II

As used in this Compact:

(a) The term "Colorado River System" means that portion of the Colorado River and its tributaries within the United States of America.

(b) The term "Colorado River Basin" means all of the drainage area of the Colorado River System and all other territory within the United States of America to which the waters of the Colorado River System shall be beneficially applied.

(c) The term "States of the Upper Division" means the States of Colorado, New Mexico, Utah and Wyoming.

(d) The term "States of the Lower Division" means the States of Arizona, California and

Nevada.

(e) The term "Lee Ferry" means a point in the main stream of the Colorado River one mile below the mouth of the Paria River.

(f) The term "Upper Basin" means those parts of the States of Arizona, Colorado, New Mexico, Utah, and Wyoming within and from which waters naturally drain into the Colorado River System above Lee Ferry, and also parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the Colorado River System above Lee Ferry.

(g) The term "Lower Basin" means those parts of the States of Arizona, California, Nevada, New Mexico and Utah within and from which waters naturally drain into the Colorado River System below Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the Colorado River System below Lee Ferry.

(h) The term "Colorado River Compact" means the agreement concerning the apportionment of the use of the waters of the Colorado River System dated November 24, 1922, executed by Commissioners for the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming, approved by Herbert Hoover, representative of the United States of America, and proclaimed effective by the President of the United States of America, June 25, 1929.

(i) The term "Upper Colorado River System" means that portion of the Colorado River System above Lee Ferry.

(j) The term "Commission" means the administrative agency created by Article VIII of this Compact.

(k) The term "water year" means that period of twelve months ending September 30 of each year.

(l) The term "acre-foot" means the quantity of water required to cover an acre to the depth of one foot and is equivalent to 43,560 cubic feet.

(m) The term "domestic use" shall include the use of water for household, stock, municipal, mining, milling, industrial and other like purposes, but shall exclude the generation of electrical power.

(n) The term "virgin flow" means the flow of any stream undepleted by the activities of man.

ARTICLE III

(a) Subject to the provisions and limitations contained in the Colorado River Compact and in this Compact, there is hereby apportioned from the Upper Colorado River System in perpetuity to the States of Arizona, Colorado, New Mexico, Utah and Wyoming, respectively, the consumptive use of water as

follows:

(1) To the State of Arizona the consumptive use of 50,000 acre-feet of water per annum.

(2) To the States of Colorado, New Mexico, Utah and Wyoming, respectively, the consumptive use per annum of the quantities resulting from the application of the following percentages of the total quantity of consumptive use per annum apportioned in perpetuity to and available for use each year by the Upper Basin under the Colorado River Compact and remaining after the deduction of the use, not to exceed 50,000 acre-feet per annum, made in the State of Arizona.

State of Colorado, 51.75 per cent; State of New Mexico, 11.25 per cent; State of Utah, 23.00 per cent; State of Wyoming, 14.00 per cent.

(b) The apportionment made to the respective States by paragraph (a) of this Article is based upon, and shall be applied in conformity with, the following principles and each of them:

(1) The apportionment is of any and all man-made depletions;

(2) Beneficial use is the basis, the measure and the limit of the right to use;

(3) No State shall exceed its apportioned use in any water year when the effect of such excess use, as determined by the Commission, is to deprive another signatory State of its apportioned use during that water year; provided that this subparagraph (b) (3) shall not be construed as:

(i) Altering the apportionment of use, or obligations to make deliveries as provided in Articles XI, XII, XIII or XIV of this Compact:

(ii) Purporting to apportion among the signatory States such uses of water as the Upper Basin may be entitled to under paragraphs (f) and (g) of Article III of the Colorado River Compact; or

(iii) Countenancing average uses by any signatory State in excess of its apportionment.

(4) The apportionment to each State includes all water necessary for the supply of any rights, which now exist.

(c) No apportionment is hereby made, of such uses of water as the Upper Basin may be entitled to under paragraphs (f) and (g) of Article III of the Colorado River Compact.

(d) The apportionment made by this Article shall not be taken as any basis for the allocation among the signatory States of any benefits resulting from the generation of power.

ARTICLE IV

In the event curtailment of use of water by the States of the Upper Division at any time shall become necessary in order that the flow at Lee Ferry shall not be depleted below that required by Article III

of the Colorado River Compact, the extent of curtailment by each State of the consumptive use of water apportioned to it by Article III of this Compact shall be in such quantities and at such times as shall be determined by the Commission upon the application of the following principles:

(a) The extent and times of curtailment shall be such as to assure full compliance with Article III of the Colorado River Compact;

(b) If any State or States of the Upper Division, in the ten years immediately preceding the water year in which curtailment is necessary, shall have consumptively used more water than it was or they were, as the case may be, entitled to use under the apportionment made by Article III of this Compact, such State or States shall be required to supply at Lee Ferry a quantity of water equal to its, or the aggregate of their, overdraft of the proportionate part of such overdraft, as may be necessary to assure compliance with Article III of the Colorado River Compact, before demand is made on any other State of the Upper Division;

(c) Except as provided in subparagraph (b) of this Article, the extent of curtailment by each State of the Upper Division of the consumptive use of water apportioned to it by Article III of this Compact shall be such as to result in the delivery at Lee Ferry of a quantity of water which bears the same relation to the total required curtailment of use by the States of the Upper Division as the consumptive use of Upper Colorado River System water which was made by each such State during the water year immediately preceding the year in which the curtailment becomes necessary bears to the total consumptive use of such water in the States of the Upper Division during the same water year; provided, that in determining such relation the uses of water under rights perfected prior to November 24, 1922, shall be excluded.

ARTICLE V

(a) All losses of water occurring from or as the result of the storage of water in reservoirs constructed prior to the signing of this Compact shall be charged to the State in which such reservoir or reservoirs are located. Water stored in reservoirs covered by this paragraph (a) shall be for the exclusive use of and shall be charged to the State in which the reservoir or reservoirs are located.

(b) All losses of water occurring from or as the result of the storage of water in reservoirs constructed after the signing of this Compact shall be charged as follows:

(1) If the Commission finds that the reservoir is used, in whole or in part, to assist the States of the Upper Division in meeting their obligations to deliver water at Lee Ferry imposed by Article III of the Colorado River Compact, the Commission shall make findings, which in no event shall be contrary to the laws of the United States of America under which any reservoir is constructed, as to the reservoir capacity allocated for that purpose. The whole or that portion, as the case may be, of reservoir losses as found by the Commission to be reasonably and properly chargeable to the reservoir or reservoir capacity utilized to assure deliveries at Lee Ferry shall be charged to the States of the Upper Division in the

proportion which the consumptive use of water in each State of the Upper Division during the water year in which the charge is made bears to the total consumptive use of water in all States of the Upper Division during the same water year. Water stored in reservoirs or in reservoir, capacity covered by this subparagraph (b) (1) shall be for the common benefit of all of the States of the Upper Division.

(2) If the Commission finds that the reservoir is used, in whole or in part, to supply water for use in a State of the Upper Division, the Commission shall make findings, which in no event shall be contrary to the laws of the United States of America under which any reservoir is constructed, as to the reservoir or reservoir capacity utilized to supply water for use and the State in which such water will be used. The whole or that proportion, as the case may be, of reservoir losses as found by the Commission to be reasonably and properly chargeable to the State in which such water will be used shall be borne by that State. As determined by the Commission, water stored in reservoirs covered by this subparagraph (b) (2) shall be earmarked for and charged to the State in which the water will be used.

(c) In the event the Commission finds that a reservoir site is available both to assure deliveries at Lee Ferry and to store water for consumptive use in a State of the Upper Division, the storage of water for consumptive use shall be given preference. Any reservoir or reservoir capacity hereafter used to assure deliveries at Lee Ferry shall by order of the Commission be used to store water for consumptive use in a State provided the Commission finds that such storage is reasonably necessary to permit such State to make the use of the water apportioned to it by this Compact.

ARTICLE VI

The Commission shall determine the quantity of the consumptive use of water, which use is apportioned by Article III hereof, for the Upper Basin and for each State of the Upper Basin by the inflow-outflow method in terms of man-made depletions of the virgin flow at Lee Ferry, unless the Commission, by unanimous action, shall adopt a different method of determination.

ARTICLE VII

The consumptive use of water by the United States of America or any of its agencies, instrumentalities or wards shall charged as a use by the State in which the use is made; provided, that such consumptive use incident to the diversion, impounding, or conveyance of water in one State for use in another shall be charged to such latter State.

ARTICLE VIII

(a) There is hereby created an interstate administrative agency to be known as the "Upper Colorado River Commission." The Commission shall be composed of one Commissioner, representing each of the States of the Upper Division, namely, the States of Colorado, New Mexico, Utah and Wyoming, designated or appointed in accordance with the laws of each such State and, if designated by the President,

one Commissioner representing the United States of America. The President is hereby requested to designate a Commissioner. If so designated the Commissioner representing the United States of America shall be the presiding officer of the Commission and shall be entitled to the same power and rights as the Commissioner of any State. Any four members of the Commission shall constitute a quorum.

(b) The salaries and personal expenses of each Commissioner shall be paid by the Government, which he represents. All other expenses, which are incurred by the Commission incident to the administration of this Compact, and which are not paid by the United States of America, shall be borne by the four States according to the percentage of consumptive use apportioned to each. On or before December 1 of each year, the Commission shall adopt and transmit to the Governors of the four States and to the President a budget covering an estimate of its expenses for the following year, and of the amount payable by each State. Each State shall pay the amount due by it to the Commission on or before April 1 of the year following. The payment of the expenses of the Commission and of its employees shall not be subject to the audit and accounting procedures of any of the four States; however, all receipts and disbursement of funds handled by the Commission shall be audited yearly by a qualified independent public accountant and the report of the audit shall be included in and become a part of the annual report of the Commission.

(c) The Commission shall appoint a Secretary, who shall not be a member of the Commission, or an employee of any signatory State or of the United States of America while so acting. He shall serve for such term and receive such salary and perform such duties as the Commissioners may direct. The Commission may employ such engineering, legal, clerical and other personnel as, in its judgment, may be necessary for the performance of its functions under this Compact. In the hiring of employees, the Commission shall not be bound by the civil service laws of any State.

(d) The Commission, so far as consistent with this Compact, shall have the power to:

- (1) Adopt rules and regulations;
- (2) Locate, establish, construct, abandon, operate and maintain water gaging stations;
- (3) Make estimates to forecast water run-off on the Colorado River and any of its tributaries;
- (4) Engage in cooperative studies of water supplies of the Colorado River and its tributaries;
- (5) Collect, analyze, correlate, preserve and report on data as to the stream flows, storage, diversions and use of the waters of the Colorado River, and any of its tributaries;
- (6) Make findings as to the quantity of water of the Upper Colorado River System used each year in the Upper Colorado River Basin and in each State thereof;
- (7) Make findings as to the quantity of water deliveries at Lee Ferry during each water

year;

(8) Make findings as to the necessity for and the extent of the curtailment of use, required, if any, pursuant to Article IV hereof;

(9) Make findings to the quantity of reservoir losses and as to the share thereof chargeable under Article V hereof to each of the States;

(10) Make findings of fact in the event of the occurrence of extraordinary drought or serious accident to the irrigation system in the Upper Basin, whereby deliveries by the Upper Basin of water which it may be required to deliver in order to aid in fulfilling obligations of the United States of America to the United Mexican States arising under the Treaty between the United States of America and the United Mexican States, dated February 3, 1944 (Treaty Series 994) become difficult, and report such findings to the Governors of the Upper Basin States, the President of the United States of America, the United States Section of the International Boundary and Water Commission, and such other Federal officials and agencies as it may deem appropriate to the end that the water allotted to Mexico under Division III of such treaty may be reduced in accordance with the terms of such Treaty;

(11) Acquire and hold such personal and real property as may be necessary for the performance of its duties hereunder and to dispose of the same when no longer required;

(12) Perform all functions required of it by this Compact and do all things necessary, proper or convenient in the performance of its duties hereunder, either independently or in cooperation with any state or federal agency;

(13) Make and transmit annually to the Governors of the signatory States and the President of the United States of America, with the estimated budget, a report covering the activities of the Commission for the preceding water year.

(e) Except as otherwise provided in this Compact the concurrence of four members of the Commission shall be required in any action taken by it.

(f) The Commission and its Secretary shall make available to the Governor of each of the signatory States any information within its possession at any time, and shall always provide free access to its records by the Governors of each of the States, or their representatives, or authorized representatives of the United States of America.

(g) Findings of fact made by the Commission shall not be conclusive in any court, or before any agency or tribunal, but shall constitute prima facie evidence of the facts found.

(h) The organization meeting of the Commission shall be held within four months from the effective date of this Compact.

ARTICLE IX

(a) No State shall deny the right of the United States of America and, subject to the conditions hereinafter contained, no State shall deny the right of another signatory State, any person, or entity of any signatory State to acquire rights to the use of water, or to construct or participate in the construction and use of diversion works and storage reservoirs with appurtenant works, canals and conduits in one State for the purpose of diverting, conveying, storing, regulating and releasing water to satisfy the provisions of the Colorado River Compact relating to the obligation of the States of the Upper Division to make deliveries of water at Lee Ferry, or for the purpose of diverting, conveying, storing or regulating water in an upper signatory State for consumptive use in a lower signatory State, when such use is within the apportionment to such lower State made by this Compact. Such rights shall be subject to the rights of water users, in a State in which such reservoir or works are located, to receive and use water, the use of which is within the apportionment to such State by this Compact.

(b) Any signatory State, any person or any entity of any signatory State shall have the right to acquire such property rights as are necessary to the use of water in conformity with this compact in any other signatory State by donation, purchase or through the exercise of the power of eminent domain. Any signatory State, upon the written request of the Governor of any other signatory State, for the benefit of whose water users property is to be acquired in the State to which such written request is made, shall proceed expeditiously to acquire the desired property either by purchase at a price satisfactory to the requesting State, or, if such purchase cannot be made, then through the exercise of its power of eminent domain and shall convey such property to the requesting State or such entity as may be designated by the requesting State; provided, that all costs of acquisition and expenses of every kind and nature whatsoever incurred in obtaining the requested property shall be paid by the requesting State at the time and in the manner prescribed by the State requested to acquire the property.

(c) Should any facility be constructed in a signatory State by and for the benefit of another signatory State or States or the water users thereof, as above provided, the construction, repair, replacement, maintenance and operation of such facility shall be subject to the laws of the State in which the facility is located, except that, in the case of a reservoir constructed in one State for the benefit of another State or States, the water administration officials of the State in which the facility is located shall permit the storage and release of any water which, as determined by findings of the Commission, falls within the apportionment of the State or States for whose benefit the facility is constructed. In the case of a regulating reservoir for the joint benefit of all States in making Lee Ferry deliveries, the water administration officials of the State in which the facility is located, in permitting the storage and release of water, shall comply with the findings and orders of the Commission.

(d) In the event property is acquired by a signatory State in another signatory State for the use and benefit of the former, the users of water made available by such facilities, as a condition precedent to the use thereof, shall pay to the political subdivisions of the State in which such works are located, each and every year during which such rights are enjoyed for such purposes, a sum of money equivalent to the average annual amount of taxes levied and assessed against the land and improvements thereon during the ten years preceding the acquisition of such land. Said payments shall be in full reimbursement for the loss of taxes in such political subdivisions of the State, and in lieu of any and all taxes on said property, improvements and rights. The signatory States recommend to the President and the Congress that, in the event the United States of America shall acquire property in one of the signatory States for the benefit of another signatory State, or its water users, provision be made for like payment in reimbursement of loss of taxes.

ARTICLE X

(a) The signatory States recognize La Plata River Compact entered into between the States of Colorado and New Mexico, dated November 27, 1922, approved by the Congress on January 29, 1925 (43 Stat. 796), and this Compact shall not affect the apportionment therein made.

(b) All consumptive use of water of La Plata River and its tributaries shall be charged under the apportionment of Article III hereof to the State in which the use is made; provided, that consumptive use incident to the diversion, impounding or conveyance of water in one State for use in the other shall be charged to the latter State.

ARTICLE XI

Subject to the provisions of this Compact, the consumptive use of the water of the Little Snake River and its tributaries is hereby apportioned between the States of Colorado and Wyoming in such quantities as shall result from the application of the following principles and procedures:

(a) Water used under rights existing prior to the signing of this Compact.

(1) Water diverted from any tributary of the Little Snake River or from the main stem of the Little Snake River above a point one hundred feet below the confluence of Savery Creek and the Little Snake River shall be administered without regard to rights covering the diversion of water from any down-stream points.

(2) Water diverted from the main stem of the Little Snake River below a point one hundred feet below the confluence of Savery Creek and the Little Snake River shall be administered on the basis of an interstate priority schedule prepared by the Commission in conformity with priority dates established by the laws of the respective States.

(b) Water used under rights initiated subsequent to the signing of this Compact.

(1) Direct flow diversions shall be so administered that, in time of shortage, the curtailment of use on each acre of land irrigated there under shall be as nearly equal as may be possible in both of the States.

(2) The storage of water by projects located in either State, whether of supplemental supply or of water used to irrigate land not irrigated at the date of the signing of this Compact, shall be so administered that in times of water shortage the curtailment of storage of water available for each acre of land irrigated there under shall be as nearly equal as may be possible in both States.

(c) Water uses under the apportionment made by this Article shall be in accordance with the principle that beneficial use shall be the basis, measure and limit of the right to use.

(d) The States of Colorado and Wyoming each assent to diversions and storage of water in one State for use in the other State, subject to compliance with Article IX of this Compact.

(e) In the event of the importation of water to the Little Snake River Basin from any other river basin, the State making the importation shall have the exclusive use of such imported water unless by written agreement, made by the representatives of the States of Colorado and Wyoming on the Commission, it is otherwise provided.

(f) Water use projects initiated after the signing of this Compact, to the greatest extent possible, shall permit the full use within the Basin in the most feasible manner of the waters of the Little Snake River and its tributaries, without regard to the state line; and, so far as is practicable, shall result in an equal division between the States of the use of water not used under rights existing prior to the signing of this Compact.

(g) All consumptive use of the waters of the Little Snake River and its tributaries shall be charged under the apportionment of Article III hereof to the State in which the use is made; provided, that consumptive use incident to the diversion, impounding or conveyance of water in one State for use in the other shall be charged to the latter State.

ARTICLE XII

Subject to the provisions of this Compact, the consumptive use of the waters of Henrys Fork, a tributary of Green River originating in the State of Utah and flowing into the State of Wyoming and thence into the Green River in the State of Utah; Beaver Creek, originating in the State of Utah and flowing into Henry's Fork in the State of Wyoming; Burnt Fork, a tributary of Henrys Fork, originating in the State of Utah and flowing into Henrys Fork in the State of Wyoming, Birch Creek, a tributary of Henrys Fork, originating in the State of Utah and flowing into Henrys Fork in the State of Wyoming; and Sheep Creek, a tributary of Green River in the State of Utah, and their tributaries are hereby apportioned between the States of Utah and Wyoming in such quantities as will result from the application of the following principles and

procedures.

- (a) Waters used under rights existing prior to the signing of this Compact.

Waters diverted from Henrys Fork, Beaver Creek, Burnt Fork, Birch Creek and their tributaries, shall be administered without regard to the state line on the basis of an interstate priority schedule to be prepared by the States affected and approved by the Commission in conformity with the actual priority of right of use, the water requirements of the land irrigated and the acreage irrigated in connection therewith.

- (b) Waters used under rights from Henrys Fork, Beaver Creek, Burnt Fork, Birch Creek and their tributaries, initiated after the signing of this Compact shall be divided fifty percent to the State of Wyoming and fifty percent to the State of Utah and each State may use said waters as and where it deems advisable.

- (c) The State of Wyoming assents to the exclusive use by the State of Utah of the water of Sheep Creek, except that the lands, if any, presently irrigated in the State of Wyoming from the water of Sheep Creek shall be supplied with water from Sheep Creek in order of priority and in such quantities as are in conformity with the laws of the State of Utah.

- (d) In the event of the importation of water to Henry's Fork, or any of its tributaries, from any other river basin, the State making the importation shall have the exclusive use of such imported water unless by written agreement made by the representatives of the States of Utah and Wyoming on the Commission, it is otherwise provided.

- (e) All consumptive use of waters of Henrys Fork, Beaver Creek, Burnt Fork, Birch Creek, Sheep Creek, and their tributaries shall be charged under the apportionment of Article III hereof to the State in which the use is made; provided, that consumptive use incident to the diversion, impounding or conveyance of water in one State for use in the other shall be charged to the latter State.

- (f) The States of Utah and Wyoming each assent to the diversion and storage of water in one State for use in the other State, subject to compliance with Article IX of this Compact. It shall be the duty of the water administrative officials of the State where the water is stored to release said stored water to the other State upon demand. If either the State of Utah or the State of Wyoming shall construct a reservoir in the other State for use in its own State, the water users of the State in which said facilities are constructed may purchase at cost a portion of the capacity of said reservoir sufficient for the irrigation of their lands there under.

- (g) In order to measure the flow of water diverted, each State shall cause suitable measuring devices to be constructed, maintained and operated at or near the point of diversion into each ditch.

- (h) The State Engineers of the two States jointly shall appoint a Special Water Commissioner who shall have authority to administer the water in both States in accordance with the terms of this Article.

The salary and expense of such Special Water Commissioner shall be paid, thirty percent by the State of Utah and seventy percent by the State of Wyoming.

ARTICLE XIII

Subject to the provisions of this Compact, the rights to the consumptive use of the water of the Yampa River, a tributary entering the Green River in the State of Colorado, are hereby apportioned between the States of Colorado and Utah in accordance with the following principles:

(a) The State of Colorado will not cause the flow of the Yampa River at the Maybell Gaging Station to be depleted below an aggregate of 5,000,000 acre-feet for any period of ten consecutive years reckoned in continuing progressive series beginning with the first day of October next succeeding the ratification and approval of this Compact. In the event any diversion is made from the Yampa River or from tributaries entering the Yampa River above the Maybell Gaging Station for the benefit of any water use project in the State of Utah, then the gross amount of all such diversions for use in the State of Utah, less any returns from such diversions to the River above Maybell, shall be added to the actual flow at the Maybell Gaging Station to determine the total flow at the Maybell Gaging Station.

(b) All consumptive use of the waters of the Yampa River and its tributaries shall be charged under the apportionment of Article III hereof to the State in which the use is made; provided, that consumptive use incident to the diversion, impounding or conveyance of water in one State for use in the other shall be charged to the latter State.

ARTICLE XIV

Subject to the provisions of this Compact, the consumptive use of the waters of the San Juan River and its tributaries is hereby apportioned between the States of Colorado and New Mexico as follows:

The State of Colorado agrees to deliver to the State of New Mexico from the San Juan River and its tributaries which rise in the State of Colorado a quantity of water which shall be sufficient, together with water originating in the San Juan Basin in the State of New Mexico, to enable the State of New Mexico to make full use of the water apportioned to the State of New Mexico by Article III of this Compact, subject, however, to the following:

(a) A first and prior right shall be recognized as to:

(1) All uses of water made in either State at the time of the signing of this Compact, and

(2) All uses of water contemplated by projects authorized, at the time of the signing of this Compact, under the laws of the United States of America whether or not such projects are eventually constructed by the United States of America or by some other entity.

(b) The State of Colorado assents to diversions and storage of water in the State of Colorado

for use in the State of New Mexico, subject to compliance with Article IX of this Compact.

(c) The uses of the waters of the San Juan River and any of its tributaries within either State which are dependent upon a common source of water and which are not covered by (a) hereof, shall in times of water shortages be reduced in such quantity that the resulting consumptive use in each State will bear the same proportionate relation to the consumptive use made in each State during times of average water supply as determined by the Commission; provided, that any preferential uses of water to which Indians are entitled under Article XIX shall be excluded in determining the amount of curtailment to be made under this paragraph.

(d) The curtailment of water use by either State in order to make deliveries at Lee Ferry as required by Article IV of this Compact shall be independent of any and all conditions imposed by this Article and shall be made by each State, as and when required, without regard to any provisions of this Article.

(e) All consumptive use of the waters of the San Juan River and its tributaries shall be charged under the apportionment of Article III hereof to the State in which the use is made; provided, that consumptive use incident to the diversion, impounding or conveyance of water in one State for use in the other shall be charged to the latter State.

ARTICLE XV

(a) Subject to the provisions of the Colorado River Compact and of this Compact, water of the Upper Colorado River System may be impounded and used for the generation of electrical power, by such impounding and use shall be subservient to the use and consumption of such water for agricultural and domestic purposes and shall not interfere with or prevent use for such dominant purposes.

(b) The provisions of this Compact shall not apply to or interfere with the right or power of any signatory State to regulate within its boundaries the appropriation, use and control of water, the consumptive use of which is apportioned and available to such State by this Compact.

ARTICLE XVI

The failure of any State to use the water, or any part hereof, the use of which is apportioned to it under the terms of this Compact, shall not constitute a relinquishment of the right to such use to the Lower Basin or to any other State, nor shall it constitute a forfeiture or abandonment of the right to such use.

ARTICLE XVII

The use of any water now or hereafter imported into the natural drainage basin of the Upper Colorado River System shall not be charged to any State under the apportionment of consumptive use made by this Compact.

ARTICLE XVIII

(a) The State of Arizona reserves its rights and interests under the Colorado River Compact as a State of the Lower Division and as a State of the Lower Basin.

(b) The State of New Mexico and the State of Utah reserve their respective rights and interests under the Colorado River Compact as States of the Lower Basin.

ARTICLE XIX

Nothing in this Compact shall be construed as:

(a) Affecting the obligations of the United States of America to Indian tribes;

(b) Affecting the obligations of the United States of America under the Treaty with the United Mexican States (Treaty Series 994);

(c) Affecting any rights or powers of the United States of America, its agencies or instrumentalities, in or to the waters of the Upper Colorado River System, or its capacity to acquire rights in and to the use of said waters;

(d) Subjecting any property of the United States of America, its agencies or instrumentalities, to taxation by any State or subdivision thereof, or creating any obligation on the part of the United States of America, its agencies or instrumentalities, by reason of the acquisition, construction or operation of any property or works of whatever kind, to make any payment to any State or political subdivision thereof, State agency, municipality or entity whatsoever, in reimbursement for the loss of taxes;

(e) Subjecting any property of the United States of America, its agencies or instrumentalities, to the laws of any State to any extent other than the extent to which such laws would apply without regard to this Compact.

ARTICLE XX

This Compact may be terminated at any time by the unanimous agreement of the signatory States. In the event of such termination, all rights established under it shall continue unimpaired.

ARTICLE XXI

This Compact shall become binding and obligatory when it shall have been ratified by the legislatures of each of the signatory States and approved by the Congress of the United States of America. Notice of ratification by the legislatures of the signatory States shall be given by the Governor of each signatory State, to the Governor of each of the other signatory States and to the President of the United States of America, and the President is hereby requested to give notice to the Governor of each of the signatory States of approval by the Congress of the United States of America.

IN WITNESS WHEREOF, the Commissioners have executed six counterparts hereof each of which shall be and constitute an original, one of which shall be deposited in the archives of the Department

of State of the United States of America, and one of which shall be forwarded to the Governor of each of the signatory States.

Done at the City of Santa Fe, State of New Mexico, this 11th day of October 1948.

CHARLES A. CARSON

Commissioner for the State of Arizona

CLIFFORD H. STONE

Commissioner for the State of Colorado

FRED E. WILSON

Commissioner for the State of New Mexico

EDWARD H. WATSON

Commissioner for the State of Utah

L.C. BISHOP

Commissioner for the State of Wyoming

GROVER A. GILES

Secretary

Approved:

HARRY W. BASHORE

Representative of the United States of America

NOTES

Congressional Consent to Negotiation. --- Section 19 of the Boulder Canyon Project Act (45 Stat. 1057, 1065), gave the Congress' consent "to the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming to negotiate and enter into compacts or agreements, supplemental to and in conformity with the Colorado River Compact and consistent with this Act for a comprehensive plan for the development of the Colorado River and providing for the storage, diversion, and use of the waters of said river." The consent was given "upon condition that a representative of the United States, to be appointed by the President, shall participate in the negotiations and shall make report to Congress of the proceedings and of any compact or agreement entered into." It was also provided that no such compact should be effective until "approved" by the legislatures of the States and by the Congress. See also Article VI of the Colorado River Compact.

Congressional Consent to the Compact. --- Act of April 6, 1949 (93 Stat. 31), from which the text of the Compact above is taken.

Legislative History of the Compact. --- For legislative history, see S. 790 and H.R. 2325, 81st Congress; Senate Report 39 (Committee on Interior and Insular Affairs) and House Report 270 (Committee on Public Lands), 81st Congress; 95 Cong. Rec. 2758-2762, 3036-3041 (1949); P.L. 37, 81st Congress. Printed hearings on H.R. 2325.

Related Documents. --- The report of the Federal Representative is printed in Senate Document 8, 81st Congress. The Upper Colorado River Basin Compact Commission published, in mimeographed form, an undated three-volume Official Record of its proceedings, including the final report of its Engineering Advisory Committee and that Committee's "Inflow-Outflow Manual."

Niobrara River Basin

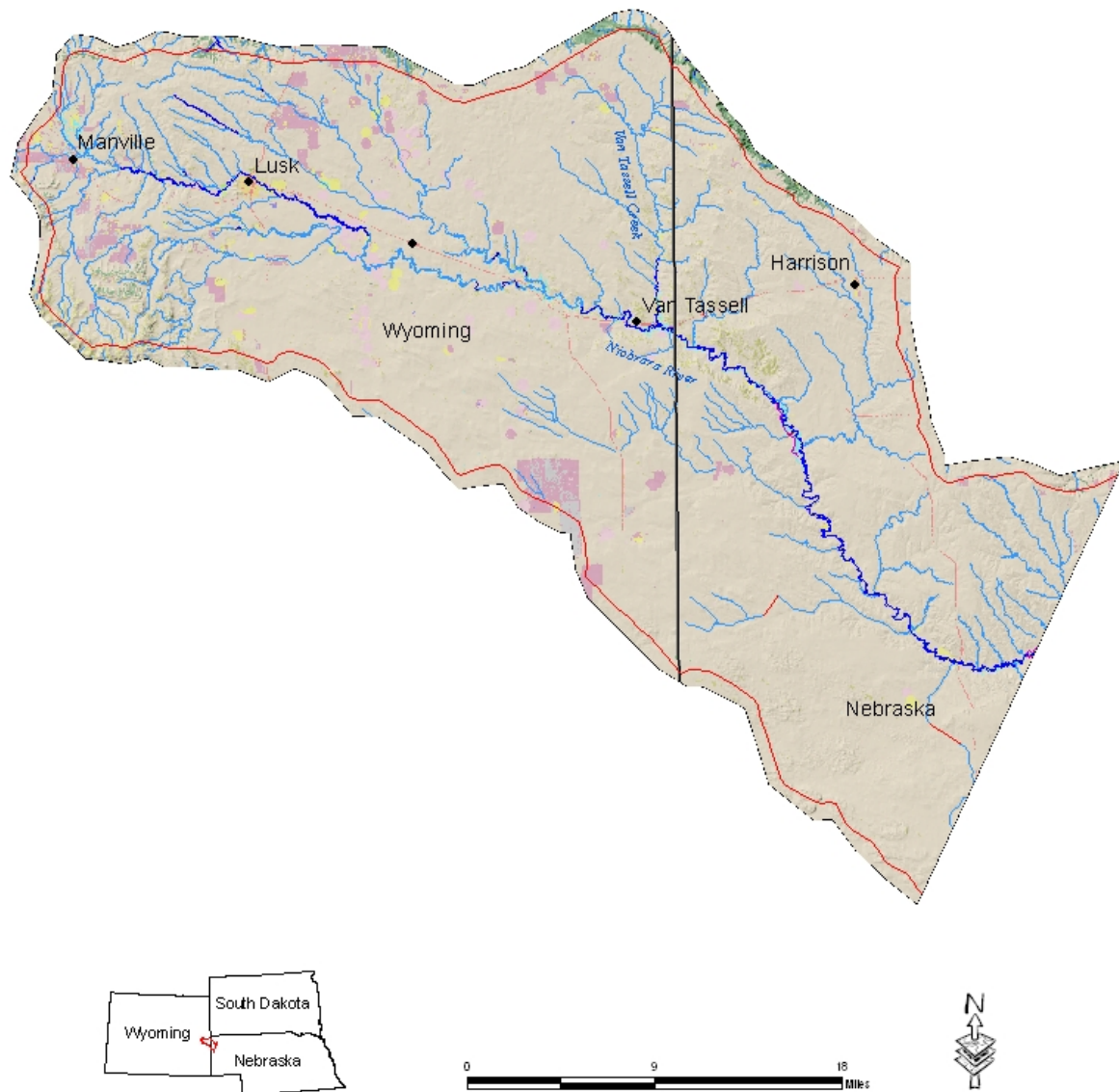


Figure 7 - Upper Niobrara River Basin

UPPER NIOBRARA RIVER COMPACT, 1962

<u>Signatory States:</u>	Nebraska and Wyoming
<u>Rivers Controlled:</u>	The Niobrara River and its tributaries in Nebraska and Wyoming west of Range 55 West of the 6 th Principal Meridian.
<u>Ratifications:</u>	Wyo. Stat. §41-512.5 (Supp. 1969) [Act of Feb. 16, 1963, Wyo. Sess. Laws, ch. 105] Neb. Rev. Stat. vol. 2A, app. §1-112 (1995) [Act of Oct. 26, 1962, 1963 Neb. Laws, ch. 332]
<u>Summary:</u>	The Compact provides for only limited restrictions on Wyoming's use of the Niobrara River. Basically, these restrictions relate to: 1) priority dates and storage rights in Wyoming reservoirs and 2) priority dates and direct flow reights in the Niobrara, its tributaries and ditches. The Compact also lays the foundation for future apportionment of the ground water in the Niobrara River Basin.

UPPER NIOBRARA RIVER COMPACT, 1962

The State of Wyoming, and the State of Nebraska, parties signatory to this Compact (hereinafter referred to as Wyoming and Nebraska, respectively, or individually as a "State" or collectively as "States"), having resolved to conclude a compact with respect to the use of waters of the Niobrara River Basin, and being duly authorized by Act of Congress of the United States of America, approved August 5, 1953 (Public Law 191, 83rd Congress, 1st Session, Chapter 324, 67 Stat. 365) and the Act of May 29, 1958 (Public Law 85-427, 85th Congress, S. 2557, 72 Stat. 147) and the Act of August 30, 1961 (Public Law 87-181, 87th Congress, S. 2245, 75 Stat. 412) and pursuant to the Acts of their respective Legislatures have, through their respective Governors, appointed as their commissioners: for Wyoming, Earl Lloyd, Andrew McMaster, Richard Pfister, John Christian, Eugene P. Willson, H. T. Person, Norman B. Gray, E. J. Van Camp; For Nebraska, Dan S. Jones, Jr., who after negotiations participated in by W. E. Blomgren appointed by the President of the United States of America, have agreed upon the following articles:

ARTICLE I

A. The major purposes of this Compact are to provide for an equitable division or apportionment of the available surface waters supply of the Upper Niobrara River Basin between the states; to provide for obtaining information or groundwater and underground water flow necessary for apportioning the underground flow by supplement to this Compact; to remove all causes, present and future which might lead to controversies; and to promote interstate comity.

B. The physical and other conditions peculiar to the upper Niobrara River Basin constitute the basis for this Compact, and neither of the States hereby concedes that this Compact establishes any general principle or precedent with respect to any other interstate stream.

C. Either State and all others using, claiming or in any other manner asserting any right to the use of the waters of the Niobrara River Basin under the authority of that State, shall be subject to the terms of this Compact.

ARTICLE II

A. The term "Upper Niobrara River" shall mean and include the Niobrara River and its tributaries in Nebraska and Wyoming west of Range 55 West of the 6th P. M.

B. The term "Upper Niobrara River Basin" or the term "Basin" shall mean that area in Wyoming and Nebraska, which is naturally drained by the Niobrara River west of Range 55 West of the 6th P. M.

C. Where the name of a State or the term "State" or "States" is used, they shall be construed

to include any person or entity of any nature whatsoever using, claiming, or in any manner asserting any right to the use of the waters of the Niobrara River under the authority of that State.

ARTICLE III

It shall be the duty of the two (2) States to administer this Compact through the official in each State who is now or may hereafter be charged with the duty of administering the public water supplies, and to collect and correlate through such officials the data necessary for the proper administration of the provisions of this Compact. Such officials may, by unanimous action, adopt rules and regulations consistent with the provisions of this Compact.

The States agree that the United States Geological Survey, or whatever federal agency may succeed to the functions and duties of that agency, insofar as this Compact is concerned, may collaborate with the officials of the States charged with the administration of this Compact in the execution of the duty of such officials in the collection, correlation, and publication of information necessary for the proper administration of this Compact.

ARTICLE IV

Each State shall itself or in conjunction with other responsible agencies cause to be established, maintained, and operated such suitable water gaging stations as are found necessary to administer this Compact.

ARTICLE V

A. Wyoming and Nebraska agree that the division of surface waters of the Upper Niobrara River shall be in accordance with the following provisions:

1. There shall be no restrictions on the use of the surface waters of the Upper Niobrara River by Wyoming except as would be imposed under Wyoming law and the following limitations:

(a) No reservoir constructed after August 1, 1957, and used solely for domestic and stock water purposes shall exceed twenty (20) acre-feet in capacity.

(b) Storage reservoirs with priority dates after August 1, 1957, and storing water from the main stem of the Niobrara River east of Range 62 West of the 6th P. M. and from the main stem of Van Tassel Creek south of Section 27, Township 32 North, Range 60 West of the 6th P. M. shall not store in any water year (October 1 of one (1) year to September 30 of the next year) more than a total of 500 acre-feet of water.

(c) Storage in reservoirs with priority dates prior to August 1, 1957, and storing water from the main stem of the Niobrara River East of Range 62 West and from the main stem of Van Tassel Creek south of Section 27, Township 32 North, shall be

made only during the period October 1 of one (1) year to June 1 of the next year and at such times during the period June 1 to September 30 that the water is not required to meet the legal requirements by direct flow appropriations in Wyoming and Nebraska west of Range 55 West. Where water is pumped from such storage reservoirs, the quantity of storage water pumped or otherwise diverted for irrigation purposes or other beneficial purposes from any such reservoir in any water year shall be limited to the capacity of such reservoir as shown by the records of the Wyoming State Engineer's Office, unless additional storage water becomes available during the period June 1 to September 30 after meeting the legal diversion requirements by direct flow appropriations in Wyoming and Nebraska west of Range 55 West.

(d) Storage in reservoirs with priority dates after August 1, 1957 and storing water from the main stem of the Niobrara River east of Range 62 West and the main stem of Van Tassel Creek south of Section 27, Township 32 North, shall be made only during the period October 1 of one (1) year to May 1 of the next year and at such times during the period May 1 and September 30 that the water is not required for direct diversion by ditches in Wyoming and in Nebraska west of Range 55 West.

(e) Direct flow rights with priority dates after August 1, 1957, on the main stem of the Niobrara River east of Range 62 West and Van Tassel Creek south of Section 27, Township 32 North, shall be regulated on a priority basis with Nebraska rights west of Range 55 West, provided that any direct flow rights for maximum of 143 acres which may be granted by the Wyoming State Engineer with a priority date not later than July 1, 1961 for lands which had territorial rights under the Van Tassel No. 4 Ditch with a priority date of April 8, 1882, and the Van Tassel No. 5 Ditch with a priority date of April 18, 1882, shall be exempt from the provisions of this subsection (e).

(f) All direct flow diversions from the main stem of the Niobrara River east of Range 62 West and from Van Tassel Creek south of Section 27, Township 32 North shall at all times be limited to their diversion rates as specified by Wyoming law, and provided that Wyoming laws relating to diversion of "surplus water" (W.S. 41-4-317 through 41-4-324) shall apply only when the water flowing in the main channel of the Niobrara River west of Range 55 West is in excess of the legal diversion requirements of Nebraska ditches having priority dates before August 1, 1957.

ARTICLE VI

A. Nebraska and Wyoming recognize that the future use of ground water for irrigation in the

Niobrara River basin may be a factor in the depletion of the surface flows of the Niobrara River, and since the data now available are inadequate to make a determination in regard to this matter, any apportionment of the ground water of the Niobrara River Basin should be delayed until such time as adequate data on ground water of the basin are available.

B. To obtain data on ground water, Nebraska and Wyoming, with the cooperation and advice of the United States Geological Survey, Groundwater Branch, shall undertake ground water investigations in the Niobrara River basin in the area of the Wyoming-Nebraska State line. The investigations shall be such as are agreed to by the State Engineer of Wyoming and the Director of Water Resources of Nebraska, and may include such observation wells as the said two officials agree are essential for the investigations. Costs of the investigations may be financed under the cooperative ground water programs between the United States Geological Survey and the States, and the States' share of the costs shall be borne equally by the two States.

C. The ground water investigations shall begin within one year after the effective date of this Compact. Upon collection of not more than twelve months of ground water data Nebraska and Wyoming with the cooperation of the United States Geological Survey shall make, or cause to be made an analysis of such data to determine the desirability or necessity of apportioning the ground water by supplement to this Compact. If, upon completion of the initial analysis, it is determined that apportionment of the ground water is not then desirable or necessary, re-analysis shall be made at not to exceed two-year intervals, using all data collected until such apportionment is made.

D. When the results of the ground water investigations indicate that apportionment of ground water of the Niobrara River Basin is desirable, the two States shall proceed to negotiate a supplement to this Compact apportioning the ground water of the Basin.

E. Any proposed supplement to this Compact apportioning the ground water shall not become effective until ratified by the legislatures of the two States and approved by the Congress of the United States.

ARTICLE VII

The provisions of this Compact shall remain in full force and effect until amended by action of the Legislatures of the signatory States and until such amendment is consented to and approved by the Congress of the United States in the same manner as this Compact is required to be ratified and consented to in order to become effective.

ARTICLE VIII

Nothing in this Compact shall be construed to limit or prevent either State from instituting or maintaining any action or proceeding, legal or equitable, in any court of competent jurisdiction for the

protection of any right under this Compact or the enforcement of any of its provisions.

ARTICLE IX

Nothing in this Compact shall be deemed:

A. To impair or affect any rights or powers of the United States, its agencies, or instrumentalities, in and to the use of the waters of the Upper Niobrara River Basin nor its capacity to acquire rights in and to the use of said waters; provided that any beneficial uses of the waters allocated by this Compact hereafter made within a State by the United States, or those acting by or under its authority, shall be taken into account in determining the extent of use within that State.

B. To subject any property of the United States, its agencies, or instrumentalities to taxation by either State or subdivision thereof, nor to create an obligation on the part of the United States, its agencies, or instrumentalities, by reason of the acquisition, construction or operation of any property or works of whatsoever kind, to make any payment to any State or political subdivision thereof, State agency, municipality, or equity whatsoever in reimbursement for the loss of taxes.

C. To subject any property of the United States, its agencies, or instrumentalities, to the laws of any State to an extent other than the extent to which these laws apply without regard to the Compact.

D. To affect the obligations of the United States of America to Indians or Indian tribes, or any right owned or held by or for Indians or Indian tribes, which is subject to the jurisdiction of the United States.

ARTICLE X

Should a court of competent jurisdiction hold any part of this Compact contrary to the Constitution of any State or of the United States, all other severable provisions shall continue in full force and effect.

ARTICLE XI

This Compact shall become effective when ratified by the Legislatures of each of the signatory States and by the Congress of the United States.

IN WITNESS WHEREOF, the commissioners have signed this Compact in triplicate original, one of which shall be filed in the archives of the United States of America and shall be deemed the authoritative original, and one copy of which shall be forwarded to the Governor of each of the signatory States.

Done at the city of Cheyenne, in the state of Wyoming, this 26th day of October, in the year of our Lord, One Thousand Nine Hundred Sixty-Two, 1962.
Commissioners for the State of Nebraska

Dan S. Jones, Jr.

Commissioners for the State of Wyoming

Earl Lloyd
Andrew McMaster
Richard Pfister
John Christian
Eugene P. Wilson
H. T. Person
Norman B. Gray
E. J. Van Camp

I have participated in the negotiation of this Compact and intend to report favorably thereon to the Congress of the United States.

W. E. Blomgren

Representative of the United States of America.

NOTES

Congressional Consent to Negotiation. --- By the Act of August 5, 1953 (67 Stat. 365) the Congress gave its consent to negotiations between the States of Wyoming and Nebraska. The time for negotiation was extended by the Act of May 29, 1958 (72 Stat. 147) and again by the Act of August 30, 1961 (75 Stat. 412)
Congressional Consent to Compact. --- Act of August 4, 1969 (83 Stat. 86) from which the text of the Compact set out above is taken. Sections 2 and 3 of this Act read as follows:

Section 2: The right to alter, amend or repeal this Act is reserved.

Section 3. Nothing in this Act shall be deemed to impair or affect any rights or powers of the United States, its agencies, instrumentalities, permittees or licensees in, over, and to the use of the waters of the Upper Niobrara River Basin; nor to impair or affect their capacity to acquire rights in and to the use of said waters.

Legislative History of the Compact. --- For legislative history, see House Report No. 91-359 (Committee on Interior and Insular Affairs); Senate Report No 91-265 (Committee on Interior and Insular Affairs); Cong. Rec. vol. 115 (1969); and Public Law 91-52.

Yellowstone River Basin

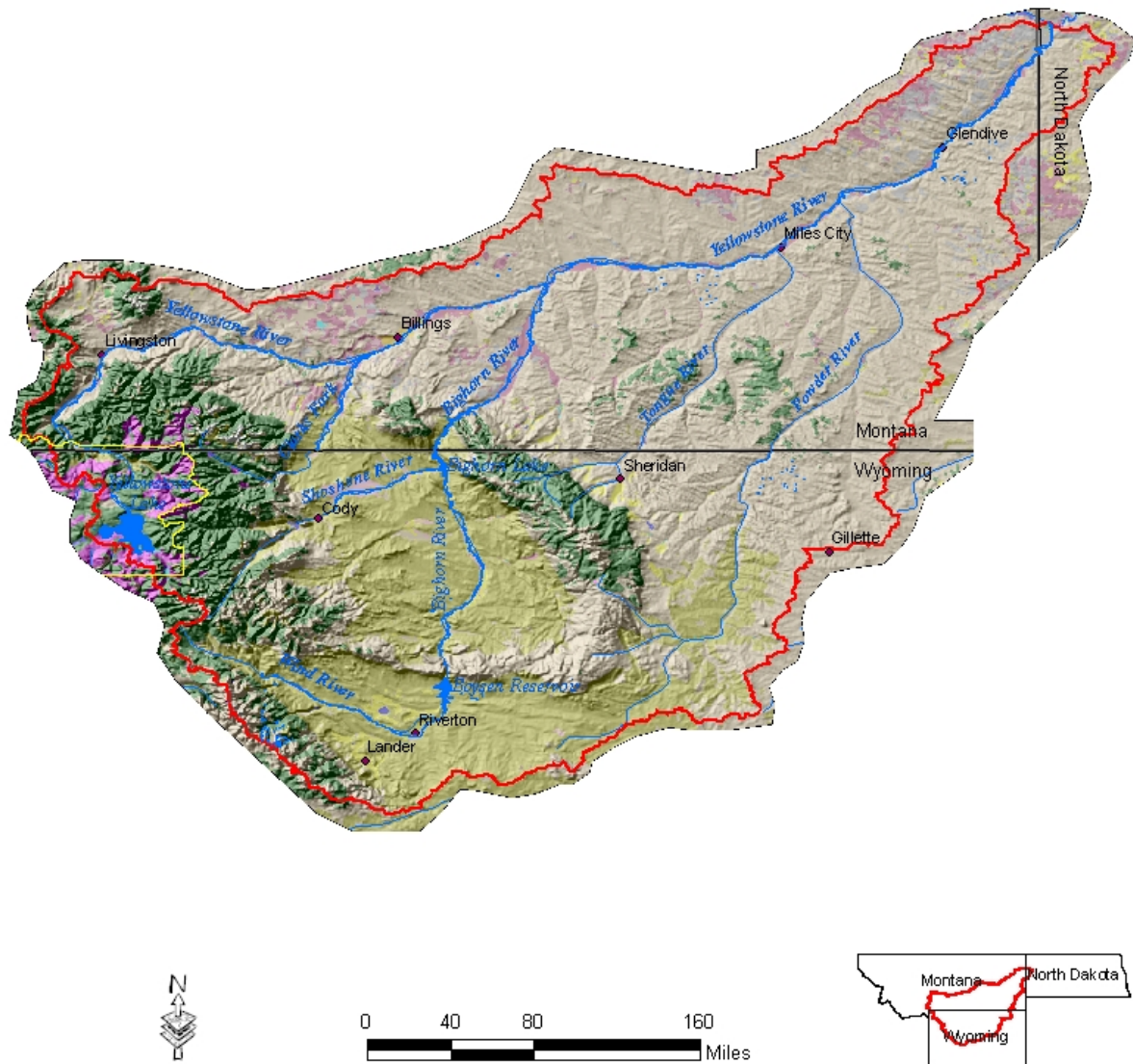


Figure 8 - Yellowstone River Basin

YELLOWSTONE RIVER COMPACT, 1950

<u>Signatory States:</u>	Montana, North Dakota and Wyoming
<u>Rivers Controlled:</u>	Yellowstone River and its tributaries (Clarks Fork, Big Horn, Tongue and Powder), excluding Yellowstone National Park.
<u>Ratifications:</u>	<p>Wyo. Stat. Ann. §41-12-601 (2005) [Act of Jan. 27, 1951, 1951 Wyo. Sess. Laws, ch. 10, p. 7]</p> <p>Mont. Code Ann. §85-20-101 (2003) [Act of Feb. 13, 1951, 1951 Mont. Laws, ch. 39, p. 58]</p> <p>N.D. Cent. Code §61-23-01 (2003) [Act of March 7, 1951, 1951 N.D. Laws, ch. 339, p. 505]</p>
<u>Summary:</u>	<p>The Compact deals with division of the waters of the four tributaries to the Yellowstone River. To all tributaries the following rules apply: 1) existing rights as of January 1, 1950 maintain their status quo; 2) no water may be diverted from the Yellowstone River Basin without consent from all States; 3) existing and future domestic and stock water uses including stock water reservoirs up to a capacity of 20 acre-feet are exempted from provisions of the Compact.</p> <p>The unappropriated or unused total divertable flow of each tributary after needs for supplemental supply for existing rights are met, is allocated to Wyoming and Montana on a percentage basis.</p>

YELLOWSTONE RIVER COMPACT, 1950

The State of Montana, the State of North Dakota, and the State of Wyoming, being moved by consideration of interstate comity, and desiring to remove all causes of present and future controversy between said States and between persons in one and persons in another with respect to the waters of the Yellowstone River and its tributaries, other than waters within or waters which contribute to the flow of streams within the Yellowstone National Park, and desiring to provide for an equitable division and apportionment of such waters, and to encourage the beneficial development and use thereof, acknowledging that in future projects or programs for the regulation, control and use of water in the Yellowstone River basin the great importance of water for irrigation in the signatory States shall be recognized, have resolved to conclude a Compact as authorized under the Act of Congress of the United States of America, approved June 2, 1949 (Public Law 83, 81st congress, first session), for the attainment of these purposes, and to that end, through their respective governments, have named as their respective Commissioners:

For the State of Montana:

Fred E. Buck
A. W. Bradshaw
H. W. Bunston
John Herzog
John M. Jarussi
Ashton Jones
Chris Josephson
A. Wallace Kingsbury

P. F. Leonard
Walter M. McLaughlin
Dave M. Manning
Joseph Muggli
Chester E. Onstad
Ed F. Parriott
R. R. Renne
Keith W. Trout

For the State of North Dakota:

I. A. Acker
J. J. Walsh

Einar H. Dahl

For the State of Wyoming:

L. C. Bishop
Earl T. Bower
J. Harold Cash
Ben F. Cochrane
Ernest J. Goppert
Richard L. Greene
E. C. Gwillim
E. J. Johnson
Lee E. Keith

N. V. Kurtz
Harry L. Littlefield
R. E. McNally
Will G. Metz
Mark N. Partridge
Alonzo R. Shreve
Charles M. Smith
Leonard F. Thornton
M. B. Walker

who, after negotiations participated in by R. J. Newell, appointed as the representative of the United States of America, have agreed upon the following articles, to-wit:

ARTICLE I

A. Where the name of a State is used in this Compact, as a party thereto, it shall be construed to include the individuals, corporations, partnerships, associations, districts, administrative departments, bureaus, political subdivisions, agencies, persons, permittees, appropriators, and all others using, claiming, or in any manner asserting any right to the use of the waters of the Yellowstone River System under the authority of said State.

B. Any individual, corporation, partnership, association, district, administrative department, bureau, political subdivision, agency, person, permittee, or appropriator authorized by or under the laws of a signatory State, and all others using, claiming, or in any manner asserting any right to the use of the waters of the Yellowstone River System under the authority of said State, shall be subject to the terms of this Compact. Where the singular is used in this article, it shall be construed to include the plural.

ARTICLE II

A. The State of Montana, the State of North Dakota, and the State of Wyoming are hereinafter designated as "Montana", "North Dakota", and "Wyoming", respectively.

B. The terms "Commission" and "Yellowstone River Compact Commission" mean the agency created as provided herein for the administration of this Compact.

C. The term "Yellowstone River Basin" means areas in Wyoming, Montana, and North Dakota drained by the Yellowstone River and its tributaries, and includes the area in Montana known as Lake Basin, but excludes those lands lying within Yellowstone National Park.

D. The term "Yellowstone River System" means the Yellowstone River and all of its tributaries, including springs and swamps, from their sources to the mouth of the Yellowstone River near Buford, North Dakota, except those portions thereof, which are within or contribute to the flow of streams within the Yellowstone National Park.

E. The term "tributary" means any stream, which in a natural state contributes to the flow of the Yellowstone River, including interstate tributaries and tributaries thereof, but excluding those, which are within or contribute to the flow of streams within the Yellowstone National Park.

F. The term "interstate tributaries" means the Clarks Fork, Yellowstone River; the Bighorn River (except Little Bighorn River); the Tongue River; and the Powder River, whose confluences with the Yellowstone River are respectively at or near the city (or town) of Laurel, Big Horn, Miles City, and Terry, all in the State of Montana.

G. The terms "divert" and "diversion" means the taking or removing of water from the Yellowstone River or any tributary thereof when the water so taken or removed is not returned directly into the channel of the Yellowstone River or of the tributary from which it is taken.

H. The term "beneficial use" is herein defined to be that use by which the water supply of a drainage basin is depleted when usefully employed by the activities of man.

I. The term "domestic use" shall mean the use of water by an individual, or by a family unit or household for drinking, cooking, laundering, sanitation and other personal comforts and necessities; and for the irrigation of a family garden or orchard not exceeding one-half acre in area.

J. The term "stock water use" shall mean the use of water for livestock and poultry.

ARTICLE III

A. It is considered that no Commission or administrative body is necessary to administer this Compact or divide the waters of the Yellowstone River Basin as between the states of Montana and North Dakota. The provisions of this Compact, as between the States of Wyoming and Montana, shall be administered by a Commission composed of one representative from the State of Wyoming and one representative from the State of Montana, to be selected by the Governors of said States as such States may choose, and one representative selected by the Director of the United States Geological Survey or whatever Federal agency may succeed to the functions and duties of that agency, to be appointed by him at the request of the States to sit with the Commission and who shall, when present, act as Chairman of the Commission without vote, except as herein provided.

B. The salaries and necessary expenses of each State representative shall be paid by the respective State; all other expenses incident to the administration of this Compact not borne by the United States shall be allocated to and borne one-half by the State of Wyoming and one-half by the State of Montana.

C. In addition to other powers and duties herein conferred upon the Commission and the members thereof, the jurisdiction of the Commission shall include the collection, correlation, and presentation of factual data, the maintenance of records having a bearing upon the administration of this Compact, and recommendations to such States upon matters connected with the administration of this Compact, and the Commission may employ such services and make such expenditures as reasonable and necessary within the limit of funds provided for that purpose by the respective States, and shall compile a report for each year ending September 30 and transmit it to the Governors of the signatory States on or before December 31 of each year.

D. The Secretary of the Army; the Secretary of the Interior; the Secretary of Agriculture; the Chairman, Federal Power Commission; the Secretary of Commerce, or comparable officers of whatever Federal agencies may succeed to the functions and duties of these agencies, and such other federal officers and officers of appropriate agencies of the signatory states having services or data useful or necessary to the Compact Commission, shall cooperate, ex officio, with the Commission in the execution

of its duty in the collection, correlation, and publication of records and data necessary for the proper administration of the Compact; and these officers may perform such other services related to the Compact as may be mutually agreed upon with the Commission.

E. The Commission shall have power to formulate rules and regulations and to perform any act which they may find necessary to carry out the provisions of this Compact, and to amend such rules and regulations. All such rules and regulations shall be filed in the office of the State Engineer of each of the signatory States for public inspection.

F. In case of the failure of the representatives of Wyoming and Montana to unanimously agree on any matter necessary to the proper administration of this Compact, then the member selected by the director of the United States Geological Survey shall have the right to vote upon the matters in disagreement and such points of disagreement shall then be decided by a majority vote of the representatives of the States of Wyoming and Montana and said member selected by the Director of the United States Geological Survey, each being entitled to one vote.

G. The Commission herein authorized shall have power to sue and be sued in its official capacity in any Federal Court of the signatory States, and may adopt and use an official seal, which shall be judicially noticed.

ARTICLE IV

The Commission shall itself, or in conjunction with other responsible agencies, cause to be established, maintained, and operated such suitable water gaging and evaporation stations as it finds necessary in connection with its duties.

ARTICLE V

A. Appropriative rights to the beneficial uses of the water of the Yellowstone River system existing in each signatory State as of January 1, 1950, shall continue to be enjoyed in accordance with the laws governing the acquisition and use of water under the doctrine of appropriation.

B. Of the unused and unappropriated waters of the interstate tributaries of the Yellowstone River as of January 1, 1950, there is allocated to each signatory State such quantity of that water as shall be necessary to provide supplemental water supplies for the rights described in paragraph (a) of this Article V, such supplemental rights to be acquired and enjoyed in accordance with the laws governing the acquisition and use of water under the doctrine of appropriation, and the remainder of the unused and unappropriated water is allocated to each State for storage or direct diversions for beneficial use on new lands or for other purposes as follows:

1. Clarks Fork, Yellowstone River

- (a) To Wyoming 60%
 - To Montana 40%
 - (b) The point of measurement shall be below the last diversion from Clarks Fork above Rock Creek.
2. Bighorn River (Exclusive of Little Bighorn River)
- (a) To Wyoming 80%
 - To Montana..... 20%
- (b) The point of measurement shall be below the last diversion from the Bighorn River above its junction with the Yellowstone River, and the inflow of the Little Bighorn River shall be excluded from the quantity of water subject to allocation.
3. Tongue River
- (a) To Wyoming 40%
 - To Montana 60%
- (b) The point of measurement shall be below the last diversion from the Tongue River above its junction with the Yellowstone River.
4. Powder River (Including the Little Powder River)
- (a) To Wyoming 42%
 - To Montana 58%
- (b) The point of measurement shall be below the last diversion from the Powder River above its junction with the Yellowstone River.

C. The quantity of water subject to the percentage allocations, in Paragraph B 1, 2, 3 and 4 of this Article V, shall be determined on an annual water year basis measured from October 1st of any year through September 30th of the succeeding year. The quantity to which the percentage factors shall be applied through a given date in any water year shall be, in acre-feet, equal to the algebraic sum of:

- 1. The total diversions, in acre-feet, above the point of measurement, for irrigation, municipal, and industrial uses in Wyoming and Montana developed after January 1, 1950, during the period from October 1st to that given date;
- 2. The net change in storage, in acre-feet, in all reservoirs in Wyoming and Montana above the point of measurement completed subsequent to January 1, 1950, during the period from October 1st to that given date;
- 3. The net change in storage, in acre-feet, in existing reservoirs in Wyoming and Montana above the point of measurement, which is used for irrigation, municipal, and industrial purposes developed after January 1, 1950, during the period October 1st to that given date;

4. The quantity of water, in acre-feet, that passed the point of measurement in the stream during the period from October 1st to that given date.

D. All existing rights to the beneficial use of waters of the Yellowstone River in the States of Montana and North Dakota, below Intake, Montana, valid under the laws of these States as of January 1, 1950, are hereby recognized and shall be and remain unimpaired by this Compact. During the period May 1 to September 30, inclusive, of each year, lands within Montana and North Dakota shall be entitled to the beneficial use of the flow of waters of the Yellowstone River below Intake, Montana, on a proportionate basis of acreage irrigated. Waters of tributary streams, having their origin in either Montana or North Dakota, situated entirely in said respective States and flowing into the Yellowstone River below Intake, Montana, are allotted to the respective States in which situated.

E. There are hereby excluded from the provisions of this Compact:

1. Existing and future domestic and stock water uses of water: Provided, that the capacity of any reservoir for stock water so excluded shall not exceed twenty (20) acre-feet;

2. Devices and facilities for the control and regulation of surface waters.

F. From time to time the Commission shall reexamine the allocations herein made and upon unanimous agreement may recommend modifications therein as are fair, just, and equitable, giving consideration among other factors to:

1. Priorities of water rights;

2. Acreage irrigated;

3. Acreage irrigable under existing works; and

4. Potentially irrigable lands.

ARTICLE VI

Nothing contained in this Compact shall be as construed or interpreted as to affect adversely any rights to the use of the waters of Yellowstone River and its tributaries owned by or for Indians, Indian tribes, and their reservations.

ARTICLE VII

A. A lower signatory State shall have the right, by compliance with the laws of an upper signatory State, except as to legislative consent, to file application for and receive permits to appropriate and use any waters in the Yellowstone River System not specifically apportioned to or appropriated by such upper State as provided in Article V; and to construct or participate in the construction and use of any dam, storage reservoir, or diversion works in such upper State for the purpose of conserving and regulating water that may be apportioned to or appropriated by the lower State: provided, that such right is subject to the rights of the upper State to control, regulate, and use the water apportioned to and

appropriated by it: and provided further, that should an upper State elect, it may share in the use of any such facilities constructed by a lower State to the extent of its reasonable needs upon assuming or guaranteeing payment of its proportionate share of the cost of the construction, operation, and maintenance. This provision shall apply with equal force and effect to an upper State in the circumstance of the necessity of the acquisition of rights by an upper State in a lower State.

B. Each claim hereafter initiated for an appropriation of water in one signatory State for use in another signatory State shall be filed in the office of the State Engineer of the signatory State in which the water is to be diverted, and a duplicate copy of the application or notice shall be filed in the office of the State Engineer of the signatory State in which the water is to be used.

C. Appropriations may hereafter be adjudicated in the State in which the water is diverted, and where a portion or all of the lands irrigated are in another signatory State, such adjudications shall be confirmed in that State by the proper authority. Each adjudication is to conform to the laws of the State where the water is diverted and shall be recorded in the County and State where the water is used.

D. The use of water allocated under Article V of this Compact for projects constructed after the date of this Compact by the United States of America or any of its agencies or instrumentalities, shall be charged as a use by the State in which the use is made: Provided, that such use incident to the diversion, impounding, or conveyance of water in one State for use in another shall be charged to such latter State.

ARTICLE VIII

A lower signatory State shall have the right to acquire in an upper State by purchase, or through exercise of the power of eminent domain, such lands, easements, and rights-of-way for the construction, operation, and maintenance of pumping plants, storage reservoirs, canals, conduits, and appurtenant works as may be required for the enjoyment of the privileges granted herein to such lower State. This provision shall apply with equal force and effect to an upper State in the circumstance of the necessity of the acquisition of rights by an upper State in a lower State.

ARTICLE IX

Should any facilities be constructed by a lower signatory State in an upper signatory State under the provisions of Article VII, the construction, operation, repairs, and replacements of such facilities shall be subject to the laws of the upper State. This provision shall apply with equal force and effect to an upper State in the circumstance of the necessity of the acquisition of rights by an upper State in a lower State.

ARTICLE X

No water shall be diverted from the Yellowstone River Basin without the unanimous consent of

all the signatory States. In the event water from another river basin shall be imported into the Yellowstone River Basin or transferred from one tributary basin to another by the United States of America, Montana, North Dakota, or Wyoming, or any of them jointly, the state having the right to the use of such water shall be given proper credit therefore in determining its share of the water apportioned in accordance with Article V herein.

ARTICLE XI

The provisions of this Compact shall remain in full force and effect until amended in the same manner as it is required to be ratified to become operative as provided in Article XV.

ARTICLE XII

This Compact may be terminated at any time by unanimous consent of the signatory States, and upon such termination all rights then established hereunder shall continue unimpaired.

ARTICLE XIII

Nothing in this Compact shall be construed to limit or prevent any State from instituting or maintaining any action or proceeding, legal or equitable, in any Federal Court or the United States Supreme Court, for the protection of any right under this Compact or the enforcement of any of its provisions.

ARTICLE XIV

The physical and other conditions characteristic of the Yellowstone River and peculiar to the territory drained and served thereby and to the development thereof, have actuated the signatory States in the consummation of this Compact, and none of them, nor the United States of America by its consent and approval, concedes thereby the establishment of any general principle or precedent with respect to other interstate streams.

ARTICLE XV

This Compact shall become operative when approved by the Legislature of each of the signatory States and consented to and approved by the Congress of the United States.

ARTICLE XVI

Nothing in this Compact shall be deemed:

(a) To impair or affect the sovereignty or jurisdiction of the United States of America in or over the area of waters affected by such compact, any rights or powers of the United States of America, its agencies, or instrumentalities, in and to the use of the waters of the Yellowstone River Basin nor its capacity to acquire rights in and to the use of said waters;

(b) To subject any property of the United States of America, its agencies, or instrumentalities to taxation by any State or subdivision thereof, nor to create an obligation on the part of the United States

of America, its agencies, or instrumentalities, by reason of the acquisition, construction, or operation of any property or works of whatsoever kind, to make any payments to any State or political subdivision thereof, State agency, municipality, or entity whatsoever in reimbursement for the loss of taxes;

(c) To subject any property of the United States of America, its agencies, or instrumentalities, to the laws of any State to an extent other than the extent to which these laws would apply without regard to the Compact.

ARTICLE XVII

Should a Court of competent jurisdiction hold any part of this Compact to be contrary to the Constitution of any signatory State or of the United States of America, all other severable provisions of this Compact shall continue in full force and effect.

ARTICLE XVIII

No sentence, phrase, or clause in this Compact or in any provision thereof, shall be construed or interpreted to divest any signatory State or any of the agencies or officers of such States of the jurisdiction of the water of each State as apportioned in this Compact.

IN WITNESS WHEREOF the Commissioners have signed this Compact in quadruplicate original, one (1) of which shall be filed in the archives of the Department of State of the United States of America and shall be deemed the authoritative original, and of which a duly certified copy shall be forwarded to the Governor of each signatory State.

Done at the city of Billings in the state of Montana, this 8th day of December, in the year of our Lord, One Thousand Nine Hundred and Fifty.

Commissioners for the State of Montana:

Fred E. Buck
A. W. Bradshaw
H. W. Bunston
John Herzog
John M. Jarussi
Ashton Jones
Chris Josephson
A. Wallace Kingsbury

P. F. Leonard
Walter M. McLaughlin
Dave M. Manning
Joseph Muggli
Chester E. Onstad
Ed F. Parriott
R. R. Renne
Keith W. Trout

Commissioners for the State of North Dakota:

I. A. Acker
Einar H. Dahl
J. J. Walsh

Commissioners for the State of Wyoming:

L.C. Bishop
Earl T. Bower

Ben F. Cochrane
Ernest J. Goppert

Richard L. Greene
E. C. Gwillim
E. J. Johnson
Lee E. Keith

N. V. Kurtz
Harry L. Littlefield

R. E. McNally
Will G. Metz
Mark N. Partridge
Alonzo R. Shreve
Charles M. Smith
Leonard F. Thornton
M. B. Walker

I have participated in the negotiation of this Compact and intend to report favorably thereon to the Congress of the United States.

R. J. Newell

Representative of the United States of America.

NOTES

Congressional Consent to Negotiations. --- By the Act of June 2, 1949 (63 Stat. 152), the Congress gave its consent to the negotiation by the States of Montana, North Dakota and Wyoming of a Yellowstone River Compact or agreement not later than June 1, 1952. The consent was upon condition "one suitable person, who shall be appointed by the President of the United States shall participate in said negotiations as the Representative of the United States and shall make a report to Congress of proceedings and of any compact or agreement entered into." The Act further provided that the compact or agreement should not be effective until "approved" by the legislatures of the States and by the Congress and that "nothing in this Act shall apply to any waters within or tributary to the Yellowstone National Park or shall establish any right or interest in or to any lands within the boundaries thereof."

In a letter to Robert Newell, the Federal Representative on the Yellowstone River Compact negotiating team, the President expressed his views on certain possible compact provisions by reference to the recently approved Snake River Compact. The text of the letter and an attached memorandum from the Director of the Bureau of the Budget follow:

"May 3, 1950

"MY DEAR MR. NEWELL: The purpose of this letter is to call your attention to a problem of growing concern and, in the solution of which, the Federal Representatives assigned to interstate water compact commissions are in a position to perform a valuable public service. I refer to the somewhat recent tendency to incorporate in interstate water compacts questionable or conflicting provisions imposing restrictions on use of waters by the United States, such as appear in the Snake River Compact

enactment, which I approved on March 21, 1950 (Public Law 464, 81st Congress, 2nd Session).

"In this particular case, the possibility of misinterpretation of certain apparently conflicting provisions was not considered to be serious enough to warrant withholding approval of the enrolled enactment of the Congress (S. 3159). Such provisions however, if followed as precedent for general application, may jeopardize the prospect of consent and approval of compacts by the Federal Government because of the far reaching effects such provisions might have upon the interests of the United States. This matter is further discussed in a memorandum to me from the Director of the Bureau of the Budget, a copy of which is enclosed for your information and guidance.

"I fully realize how difficult it is to resolve the numerous Complex jurisdictional and other problems encountered in reaching agreement upon the allocation of waters of an interstate stream. At the same time, I am impressed with the importance of insuring that compact provisions reflect as clearly as possible a recognition of the respective responsibilities and prerogatives of the United States and the affected States. I can assure you that any efforts made by you and the other compact commissioners with whom you have occasion to collaborate in eliminating or correcting this area of possible conflict, will be appreciated.

"Sincerely yours,

"Harry S. Truman"

"April 21, 1950

"Memorandum for the President:

"Analysis of the enrolled enactment granting the consent and approval of the Congress to the Snake River Compact, prior to your approval on March 21, 1950, (Public Law 464, 81st Congress, 2nd Session), revealed the possibility of misinterpretation of certain apparently conflicting provisions, which did not appear to be serious enough in this particular case to provide a sound basis for recommending disapproval of the bill, but which, if followed as precedent for general application, might have far reaching effects upon the interests of the United States. The conflicts arise primarily between specific provisions imposing restrictions upon uses of water by the United States for power and other purposes, and the general savings clause in Article XIV. This article provides that nothing in the compact shall be deemed to impair or affect any rights or powers of the United States in and to the use of the waters of the Snake River nor its capacity to acquire rights in and to the use of said waters. By reason of such conflicts, doubts may rise as to the extent of the control which the States concerned may exercise over the rights, interests and structures owned or built by the United States on the river. The resulting possibility of confusion thus tends to defeat one of the basic purposes of the compact, of settling the respective rights and interests of the Federal and State Governments in, over and to the river.

"The Committee on Public Lands of the House of Representatives, in its report on the bill (S. 3159) recorded its interpretation of the term "beneficial uses" appearing in Article XIV-B, as not regarded by the Committee as including the use and control of water by the United States by reason of its power with respect to navigable waters under the commerce clause of the Constitution (H. R. Report No. 1743, 81st Congress, 2nd Session). It is also significant that the Congress saw fit to include in the enactment a provision (Section 2) expressly preserving to the United States the right to alter, amend, and repeal the Act at any time.

"Somewhat similar provisions appear in the proposed Cheyenne River Compact now pending before Congress (H. R. 3336 and S. 1211) and in the Republican River Compact approved May 26, 1943, and the Belle Fourche River Basin Compact approved February 26, 1944. In approving each of these latter enactments, President Roosevelt issued a statement emphasizing that the procedure prescribed by the bill for exercise of the powers of the Federal Government, would not be entirely satisfactory in all circumstances and that these compacts should not serve as precedents, particularly for streams where there appears to be a possible need for Federal comprehensive multiple purpose development or where opportunities for important electric power projects are present. Likewise the Snake River Compact should not serve as a precedent.

"In its report in S. 3159 the Public Lands Committee of the Senate expressed the view that the compact method is the logical and proper manner to settle interstate water controversies. With this view I am in accord but I am also mindful that compact provisions, which are subject to misinterpretation or leave in doubt the respective rights and interests of the United States and the affected States, serve to impair these rights. It is obvious therefore, that the compact method places upon the compact commissioners the important responsibility of drawing compacts in specific and unequivocal language, devoid of all possible ambiguity, and which do not attempt to define, limit or otherwise determine the extent of the powers to be exercised by the United States which is a matter for determination by the Congress through Federal legislation as required.

"The importance of insuring that future compacts more adequately reflect a clear recognition of the respective responsibilities and prerogatives of the United States and the affected States, I believe is readily apparent. In formulating provisions of interstate water compacts, which impose restrictions upon use by the United States of waters in the streams concerned, the responsibility for protecting the rights and interests of the United States rests in the first instance upon those appointed to represent the Federal Government in negotiations with the State compact commissions. The Federal Representatives also are in a position to assist the compact commission in avoiding further use of questionable or conflicting provisions similar to the aforementioned, in order to minimize the possibility of disapproval of the

compact by the State legislatures or the Federal Government, or the later possibility of prolonged and costly litigation.

“F.J. Lawton

“Director”

Congressional Consent to and Legislative History of the Compact. --- Act of October 30, 1951 (65 Stat. 663) from which the text of the Compact set out above is taken. Section 2 of this Act read as follows:

"The right to alter, amend or repeal Section 1 of this Act is expressly reserved. This reservation shall not be construed to prevent the vesting of rights to the use of water pursuant to applicable law and no alteration, amendment or repeal of Section 1 of this Act shall be held to affect rights so vested."

For legislative history, see S. 1311 and H.R. 3544, 82nd Congress; Senate Report 883 (Committee on Interior and Insular Affairs) and House Report 1118 (Committee on Interior and Insular Affairs), 82nd Congress; 97 Cong. Rec. 12954-12956, 13478-13480 (1951); P.L. 231, 82nd Congress.

PART 2: INTERNATIONAL TREATY

RIO GRANDE, COLORADO, TIJUANA TREATY, 1944

<u>Signatory Nations:</u>	Mexico and United States
<u>Rivers Controlled:</u>	Colorado River and its tributaries, Tijuana River and the Rio Grande.
<u>Summary:</u>	<p>The following text contains the portions of the Treaty, which deal with the allocations of the Colorado River between Mexico and the United States. Part II and IV dealing with the Rio Grande and Tijuana River are omitted. The Treaty guarantees to Mexico the delivery of 1,500,000 acre-feet of water per year. Pursuant to provisions found in Article III of the 1922 Colorado River Compact, the water for Mexico is to be supplied first from the waters which are surplus over and above the aggregate of the quantities specified in paragraphs (a) and (b) of Article III; and if such surplus shall prove insufficient for that purpose, then the burden of supplying any deficiency necessary to deliver this quantity of water to Mexico is equally borne by the Upper Basin of the Colorado River (of which Wyoming is a part) and the Lower Basin.</p>

TREATY BETWEEN THE UNITED STATES AND MEXICO, RELATING TO WATERS OF THE COLORADO AND TIJUANA RIVERS AND OF THE RIO GRANDE, 1944

The Government of the United States of America and the Government of the United Mexican States: animated by the sincere spirit of cordiality and friendly cooperation which happily governs the relations between them; taking into account the fact that Articles VI and VII of the Treaty of Peace, Friendship and Limits between the United States of America and the United Mexican States signed at Guadalupe Hidalgo on February 2, 1848, and Article IV of the boundary treaty between the two countries signed at the City of Mexico December 30, 1853 regulate the use of the waters of the Rio Grande (Rio Bravo) and the Colorado River for purposes of navigation only; considering that the utilization of these waters for other purposes is desirable in the interests of both countries, and desiring, moreover, to fix and delimit the rights of the two countries with respect to the waters of the Colorado and Tijuana Rivers, and of the Rio Grande (Rio Bravo) from Fort Quitman, Texas, United States of America, to the Gulf of Mexico, in order to obtain the most complete and satisfactory utilization thereof, have resolved to conclude a treaty and for this purpose have named as their plenipotentiaries:

The President of the United States of America:

Cordell Hull, Secretary of State of the United States of America, George S. Messersmith, Ambassador Extraordinary and Plenipotentiary of the United States of America in Mexico, and Lawrence M. Lawson, United States Commissioner, International Boundary Commission, United States and Mexico; and

The President of the United Mexican States:

Francisco Castillo Najera, Ambassador Extraordinary and Plenipotentiary of the United Mexican States in Washington, and Rafael Fernandez MacGregor, Mexican Commissioner, International Boundary Commission, United States and Mexico; who, having communicated to each other their respective Full Powers and having found them in good and due form, have agreed upon the following:

I --- PRELIMINARY PROVISIONS

ARTICLE 1

For the purposes of this Treaty it shall be understood that:

- (a) "The United States" means the United States of America.
- (b) "Mexico" means the United Mexican States.
- (c) "The Commission" means the International Boundary and Water Commission, United States and Mexico, as described in Article 2 of this Treaty.

(d) "To divert" means the deliberate act of taking water from any channel in order to convey it elsewhere for storage, or to utilize it for domestic, agricultural, stock-raising or industrial purposes whether this be done by means of dams across the channel, partition weirs, lateral intakes, pumps or any other methods.

(e) "Point of diversion" means the place where the act of diverting the water is effected.

(f) "Conservation capacity of storage reservoirs" means that part of their total capacity devoted to holding and conserving the water for disposal thereof as and when required, that is, capacity additional to that provided for silt retention and flood control.

(g) "Flood discharges and spills" means the voluntary or involuntary discharge of water for flood control as distinguished from releases for other purposes.

(h) "Return flow" means the portion of diverted water that eventually finds its way back to the source from which it was diverted.

(i) "Release" means the deliberate discharge of stored water for conveyance elsewhere or for direct utilization.

(j) "Consumptive use" means the use of water by evaporation, plant transpiration or other manner whereby the water is consumed and does not return to its source of supply. In general it is measured by the amount of water diverted less the part thereof, which returns to the stream.

(k) "Lowest major international dam or reservoir" means the major international dam or reservoir situated farthest downstream.

(l) "Highest major international dam or reservoir" means the major international dam or reservoir situated farthest upstream.

ARTICLE 2

The International Boundary Commission established pursuant to the provisions of the Convention between the United States and Mexico signed in Washington March 1, 1889 to facilitate the carrying out of the principles contained in the Treaty of November 12, 1884 and to avoid difficulties occasioned by reason of the changes which take place in the beds of the Rio Grande (Rio Bravo) and the Colorado River shall hereafter be known as the International Boundary and Water Commission, United States and Mexico, which shall continue to function for the entire period during which the present Treaty shall continue in force. Accordingly, the term of the Convention of March 1, 1889 shall be considered to be indefinitely extended, and the Convention of November 21, 1900 between the United States and Mexico regarding that Convention shall be considered completely terminated.

The application of the present Treaty, the regulation and exercise of the rights and obligations which the two Governments assume there under, and the settlement of all disputes to which its

observance and execution may give rise are hereby entrusted to the International Boundary and Water Commission, which shall function in conformity with the powers and limitations set forth in this Treaty.

The Commission shall in all respects have the status of an international body, and shall consist of a United States Section and a Mexican Section. The head of each Section shall be an Engineer Commissioner. Wherever there are provisions in this Treaty for joint action or joint agreement by the two Governments, or for the furnishing of reports, studies or plans to the two Governments, or similar provisions, it shall be understood that the particular matter in question shall be handled by or through the Department of State of the United States and the Ministry of Foreign Relations of Mexico.

The Commission or either of its two Sections may employ such assistants and engineering and legal advisers as it may deem necessary. Each Government shall accord diplomatic status to the Commissioner, designated by the other Government. The Commissioner, two principal engineers, a legal adviser, and a secretary, designated by each Government as members of its Section of the Commission, shall be entitled in the territory of the other country to the privileges and immunities appertaining to diplomatic officers. The Commission and its personnel may freely carry out their observations, studies and field work in the territory of either country.

The jurisdiction of the Commission shall extend to the limitrophe parts of the Rio Grande (Rio Bravo) and the Colorado River, to the land boundary between the two countries, and to works located upon their common boundary, each Section of the Commission retaining jurisdiction over that part of the works located within the limits of its own country. Neither Section shall assume jurisdiction or control over works located within the limits of the country of the other without the express consent of the Government of the latter. The works constructed, acquired or used in fulfillment of the provisions of this Treaty and located wholly within the territorial limits of either country, although these works may be international in character, shall remain, except as herein otherwise specifically provided, under the exclusive jurisdiction and control of the Section of the Commission in whose country the works may be situated.

The duties and powers vested in the Commission by this Treaty shall be in addition to those vested in the International Boundary Commission by the Convention of March 1, 1889 and other pertinent treaties and agreements in force between the two countries except as the provisions of any of them may be modified by the present Treaty.

Each Government shall bear the expenses incurred in the maintenance of its Section of the Commission. The joint expenses, which may be incurred as agreed upon by the Commission, shall be borne equally by the two Governments.

ARTICLE 3

In matters in which the Commission may be called upon to make provision for the joint use of international waters, the following order of preferences shall serve as a guide:

1. Domestic and municipal uses.
2. Agriculture and stock-raising.
3. Electric power.
4. Other industrial uses.
5. Navigation.
6. Fishing and hunting.
7. Any other beneficial uses, which may be determined by the Commission.

All of the foregoing uses shall be subject to any sanitary measures or works, which may be mutually agreed upon by the two Governments, which hereby agree to give preferential attention to the solution of all border sanitation problems.

II --- RIO GRANDE (RIO BRAVO)

Articles 4, 5, 6, 7, 8 and 9 are omitted.

III --- COLORADO RIVER

ARTICLE 10

Of the waters of the Colorado River, from any and all sources, there are allotted to Mexico:

(a) A guaranteed annual quantity of 1,500,000 acre-feet (1,850,234,000 cubic meters) to be delivered in accordance with the provisions of Article 15 of this Treaty.

(b) Any other quantities arriving at the Mexican points of diversion, with the understanding that in any year in which, as determined by the United States Section, there exists a surplus of waters of the Colorado River in excess of the amount necessary to supply uses in the United States and the guaranteed quantity of 1,500,000 acre-feet (1,850,234,000 cubic meters) annually to Mexico, the United States undertakes to deliver to Mexico, in the manner set out in Article 15 of this Treaty, additional waters of the Colorado River system to provide a total quantity not to exceed 1,700,000 acre-feet (2,096,931,000 cubic meters) a year. Mexico shall acquire no right beyond that provided by this subparagraph by the use of the waters of the Colorado River system, for any purpose whatsoever, in excess of 1,500,000 acre-feet (1,850,234,000 cubic meters) annually.

In the event of extraordinary drought or serious accident to the irrigation system in the United States, thereby making it difficult for the United States to deliver the guaranteed quantity of 1,500,000 acre-feet (1,850,234,000 cubic meters) a year, the water allotted to Mexico under subparagraph (a) of this Article will be reduced in the same proportion as consumptive uses in the United States are reduced.

ARTICLE 11

(a) The United States shall deliver all water allotted to Mexico wherever these waters may arrive in the bed of the limitrophe section of the Colorado River, with the exceptions hereinafter provided. Such waters shall be made up of the waters for the said river, whatever their origin, subject to the provisions of the following paragraphs of this Article.

(b) Of the waters of the Colorado River allotted to Mexico by subparagraph (a) of the Article 10 of this Treaty, the United States shall deliver, wherever such waters may arrive in the limitrophe section of the river, 1,000,000 acre-feet (1,233,489,000 cubic meters) annually from the time the Davis Dam and Reservoir are placed in operation until January 1, 1980 and thereafter 1,125,000 acre-feet (1,387,675,000 cubic meters) annually, except that, should the main diversion structure referred to in subparagraph (a) of Article 12 of this Treaty be located entirely in Mexico and should Mexico so request, the United States shall deliver a quantity of water not exceeding 25,000 acre-feet (30,837,000 cubic meters) annually, unless a larger quantity may be mutually agreed upon, at a point, to be likewise mutually agreed upon, on the international land boundary near San Luis, Sonora, in which event the quantities of 1,000,000 acre-feet (1,233,489,000 cubic meters) and 1,125,000 acre-feet (1,387,675,000 cubic meters) provided hereinabove as deliverable in the limitrophe section of the river shall be reduced by the quantities to be delivered in the year concerned near San Luis, Sonora.

(c) During the period from the time the Davis Dam and Reservoir are placed in operation until January 1, 1980, the United States shall also deliver to Mexico annually, of the water allotted to it, 500,000 acre-feet (616,745,000 cubic meters), and thereafter the United States shall deliver annually 375,000 acre-feet (462,558,000 cubic meters), at the international boundary line, by means of the All-American Canal and a canal connecting the lower end of the Pilot Knob Wasteway with the Alamo Canal or with any other Mexican canal which may be substituted for the Alamo Canal. In either event the deliveries shall be made at an operating water surface elevation not higher than that of the Alamo Canal at the point where it crossed the international boundary line in the year 1943.

(d) All the deliveries of water specified above shall be made subject to the provisions of Article 15 of this Treaty.

ARTICLE 12

The two Governments agree to construct the following works:

(a) Mexico shall construct at its expense, within a period of five years from the date of the entry into force of this Treaty, a main diversion structure below the point where the northern-most part of the international land boundary line intersects the Colorado River. If such diversion structure is located in the limitrophe section of the river, its location, design and construction shall be subject to the approval of the Commission. The Commission shall thereafter maintain and operate the structure at the expense of

Mexico. Regardless of where such diversion structure is located, there shall simultaneously be constructed such levees, interior drainage facilities and other works, or improvements to existing works, as in the opinion of the Commission shall be necessary to protect lands within the United States against damage from such floods and seepage as might result from the construction, operation and maintenance of this diversion structure. These protective works shall be constructed, operated and maintained at the expense of Mexico by the respective Sections of the Commission, or under their supervision, each within the territory of its own country.

(b) The United States, within a period of five years from the date of the entry into force of this Treaty, shall construct in its own territory and at its expense, and thereafter operate and maintain at its expense, the Davis Storage Dam and Reservoir, a part of the capacity of which shall be used to make possible the regulation at the boundary of the waters to be delivered to Mexico in accordance with the provisions of Article 15 of this Treaty.

(c) The United States shall construct or acquire in its own territory the works that may be necessary to convey a part of the waters of the Colorado River allotted to Mexico to the Mexican diversion points on the international land boundary line referred to in this Treaty. Among these works shall be included: the canal and other works necessary to convey water from the lower end of the Pilot Knob Wasteway to the international boundary, and, should Mexico request it, a canal to connect the main diversion structure referred to in subparagraph (a) of this Article, if this diversion structure should be built in the limitrophe section of the river, with the Mexican system of canals at a point to be agreed upon by the Commission on the international land boundary near San Luis, Sonora. Such works shall be constructed or acquired and operated and maintained by the United States Section at the expense of Mexico. Mexico shall also pay the costs of any sites or rights of way required for such works.

(d) The Commission shall construct, operate and maintain in the limitrophe section of the Colorado River, and each Section shall construct, operate and maintain in the territory of its own country on the Colorado River below Imperial Dam and on all other carrying facilities used for the delivery of water to Mexico, all necessary gaging stations and other measuring devices for the purpose of keeping a complete record of the waters delivered to Mexico and of the flows of the river. All data obtained as to such deliveries and flows shall be periodically compiled and exchanged between the two Sections.

ARTICLE 13

The Commission shall study, investigate and prepare plans for flood control on the Lower Colorado River between Imperial Dam and the Gulf of California, in both the United States and Mexico, and shall, in a Minute, report to the two Governments the works which should be built, the estimated cost thereof, and the part of the works to be constructed by each Government. The two Governments agree to construct, through their respective Sections of the Commission, such works as may be recommended by

the Commission and approved by the two Governments, each Government to pay the costs of the works constructed by it. The Commission shall likewise recommend the parts of the works to be operated and maintained jointly by the Commission and the parts to be operated and maintained by each Section. The two Governments agree to pay in equal shares the cost of joint operation and maintenance, and each Government agrees to pay the cost of operation and maintenance of the works assigned to it for such purpose.

ARTICLE 14

In consideration of the use of the All-American Canal for the delivery to Mexico, in the manner provided in Articles 11 and 15 of this Treaty, of a part of its allotment of the waters of the Colorado River, Mexico shall pay to the United States:

(a) A proportion of the costs actually incurred in the construction of Imperial Dam and the Imperial Dam-Pilot Knob section of the All-American Canal, this proportion and the method and terms of repayment to be determined by the two Governments, which, for this purpose, shall take into consideration the proportionate uses of these facilities by the two countries, these determinations to be made as soon as Davis Dam and Reservoir are placed in operation.

(b) Annually, a proportionate part of the total costs of maintenance and operation of such facilities, these costs to be prorated between the two countries in proportion to the amount of water delivered annually through such facilities for use in each of the two countries.

In the event that revenues from the sale of hydro-electric power which may be generated at Pilot Knob become available for the amortization of part or all of the costs of the facilities named in subparagraph (a) of this Article, the part that Mexico should pay of the costs of said facilities shall be reduced or repaid in the same proportion as the balance of the total costs are reduced or repaid. It is understood that any such revenue shall not become available until the cost of any works, which may be constructed for the generation of hydro-electric power at said location, has been fully amortized from the revenues derived therefrom.

ARTICLE 15

A. The water allotted in subparagraph (a) of Article 10 of this Treaty shall be delivered to Mexico at the points of delivery specified in Article 11, in accordance with the following two annual schedules of deliveries by months, which the Mexican Section shall formulate and present to the Commission before the beginning of each calendar year:

Schedule I

Schedule I shall cover the delivery, in the limitrophe section of the Colorado River, of 1,000,000 acre-feet (1,233,498,000 cubic meters) of water each year from the date Davis Dam and Reservoir are placed in operation until January 1, 1980 and the delivery of 1,125,000 acre-feet (1,387,675,000 cubic

meters) of water each year thereafter. This schedule shall be formulated subject to the following limitations:

With reference to the 1,000,000 acre-foot (1,233,489,000 cubic meters) quantity:

(a) During the months of January, February, October, November and December the prescribed rate of delivery shall be not less than 600 cubic feet (17.0 cubic meters) nor more than 3,500 cubic feet (99.1 cubic meters) per second.

(b) During the remaining months of the year the prescribed rate of delivery shall be not less than 1,000 cubic feet (28.3 cubic meters) no more than 3,500 cubic feet (99.1 cubic meters) per second.

With reference to the 1,125,000 acre-foot (1,387,675,000 cubic meters) quantity:

(a) During the months of January, February, October, November and December the prescribed rate of delivery shall be not less than 675 cubic feet (19.1 cubic meters) nor more than 4,000 cubic feet (113.3 cubic meters) per second.

(b) During the remaining months of the year the prescribed rate of delivery shall be not less than 1,125 cubic feet (31.9 cubic meters) no more than 4,000 cubic feet (113.3 cubic meters) per second.

Should deliveries of water be made at a point on the land boundary near San Luis, Sonora, as provided for in Article 11, such deliveries shall be made under a sub-schedule to be formulated and furnished by the Mexican Section. The quantities and monthly rates of deliveries under such sub-schedule shall be in proportion to those specified for Schedule I, unless otherwise agreed upon by the Commission.

Schedule II

Schedule II shall cover the delivery at the boundary line by means of the All-American Canal of 500,000 acre-feet (616,745,000 cubic meters) of water each year from the date Davis Dam and Reservoir are placed in operation until January 1, 1980 and the delivery of 375,000 acre-feet (462,558,000 cubic meters) of water each year thereafter. This schedule shall be formulated subject to the following limitations:

With reference to the 500,000 acre-foot (616,745,000 cubic meters) quantity:

(a) During the months of January, February, October, November and December the prescribed rate of delivery shall be not less than 300 cubic feet (85 cubic meters) nor more than 2,000 cubic feet (56.6 cubic meters) per second.

(b) During the remaining months of the year the prescribed rate of delivery shall be not less than 500 cubic feet (14.2 cubic meters) nor more than 2,000 cubic feet (56.6 cubic meters) per second.

With reference to the 375,000 acre-foot (462,558,000 cubic meters) quantity:

(a) During the months of January, February, October, November and December the prescribed rate of delivery shall be not less than 225 cubic feet (6.4 cubic meters) nor more than 1,500 cubic feet (42.5 cubic meters) per second.

(b) During the remaining months of the year the prescribed rate of delivery shall be not less than 375 cubic feet (10.6 cubic meters) nor more than 1,500 cubic feet (42.5 cubic meters) per second.

B. The United States shall be under no obligation to deliver, through the All-American Canal, more than 500,000 acre-feet (616,745,000 cubic meters) annually from the date Davis Dam and Reservoir are placed in operation until January 1, 1980 or more than 375,000 acre-feet (462,558,000 cubic meters) annually thereafter. If, by mutual agreement, any part of the quantities of water specified in this paragraph are delivered to Mexico at points on the land boundary otherwise than through the All-American Canal, the above quantities of water and the rates of deliveries set out under Schedule II of this Article shall be correspondingly diminished.

C. The United States shall have the option of delivering, at the point on the land boundary mentioned in sub-paragraph (c) of Article 11, any part or all of the water to be delivered at that point under Schedule II of this Article during the months of January, February, October, November and December of each year, from any source whatsoever, with the understanding that the total specified annual quantities to be delivered through the All-American Canal shall not be reduced because of the exercise of this option, unless such reduction be requested by the Mexican Section, provided that the exercise of this option shall not have the effect of increasing the total amount of scheduled water to be delivered to Mexico.

D. In any year in which there shall exist in the river water in excess of that necessary to satisfy the requirements in the United States and the guaranteed quantity of 1,500,000 acre-feet (1,850,234,000 cubic meters) allotted to Mexico, the United States hereby declares its intention to cooperate with Mexico in attempting to supply additional quantities of water through the All-American Canal as such additional quantities are desired by Mexico, if such use of the Canal and facilities will not be detrimental to the United States, provided that the delivery of any additional quantities through the All-American Canal shall not have the effect of increasing the total scheduled deliveries to Mexico. Mexico hereby declares its intention to cooperate with the United States by attempting to curtail deliveries of water through the All-American Canal in years of limited supply, if such curtailment can be accomplished without detriment to Mexico and is necessary to allow full use of all available water supplies, provided that such curtailment shall not have the effect of reducing the total scheduled deliveries of water to Mexico.

E. In any year in which there shall exist in the river water in excess of that necessary to satisfy the requirements in the United States and the guaranteed quantity of 1,500,000 acre-feet (1,850,234,000 cubic meters) allotted to Mexico, the United States Section shall so inform the Mexican Section in order that the latter may schedule such surplus water to complete a quantity up to a maximum of 1,700,000 acre-feet (2,096,931,000 cubic meters). In this circumstance the total quantities to be delivered under Schedules I and II shall be increased in proportion to their respective total quantities and the two schedules thus increased shall be subject to the same limitations as those established for each under paragraph A of this Article.

F. Subject to the limitations as to rates of deliveries and total quantities set out in Schedules I and II, Mexico shall have the right, upon thirty days notice in advance to the United States Section, to increase or decrease each monthly quantity prescribed by those schedules by not more than 20% of the monthly quantity.

G. The total quantity of water to be delivered under Schedule I of paragraph A of this Article may be increased in any year if the amount to be delivered under Schedule II is correspondingly reduced and if the limitations as to rates of delivery under each schedule are correspondingly increased and reduced.

IV --- TIJUANA RIVER

Article 16 omitted.

V --- GENERAL PROVISIONS

ARTICLE 17

The use of the channels of the international rivers for the discharge of flood or other excess waters shall be free and not subject to limitation by both country, and neither country shall have any claim against the other in respect of any damage caused by such use. Each Government agrees to furnish the other Government, as far in advance as practicable, any information it may have in regard to such extraordinary discharges of water from reservoirs and flood flows on its own territory as may produce floods on the territory of the other.

Each Government declares its intention to operate its storage dams in such manner, consistent with the normal operations of its hydraulic systems, as to avoid, as far as feasible, material damage in the territory of the other.

ARTICLE 18

Public use of the water surface of lakes formed by international dams shall, when not harmful to the services rendered by such dams, be free and common to both countries, subject to the police regulations of each country in its territory, to such general regulations as may appropriately be prescribed and enforced by the Commission with the approval of the two Governments for the purpose of the

application of the provisions of this Treaty, and to such regulations as may appropriately be prescribed and enforced for the same purpose by each Section of the Commission with respect to the areas and borders of such parts of those lakes as lie within its territory. Neither Government shall use for military purposes such water surface situated within the territory of the other country except by express agreement between the two Governments.

ARTICLE 19

The two Governments shall conclude such special agreements as may be necessary to regulate the generation, development and disposition of electric power at international plants, including the necessary provisions for the export of electric current.

ARTICLE 20

The two Governments shall, through their respective Sections of the Commission, carry out the construction of works allotted to them. For this purpose, the respective Sections of the Commission may make use of any competent public or private agencies in accordance with the laws of the respective countries. With respect to such works as either Section of the Commission may have to execute on the territory of the other, it shall, in the execution of such works, observe the laws for the place where such works are located or carried out, with the exceptions hereinafter stated.

All materials, implements, equipment and repair parts intended for the construction, operations and maintenance of such works shall be exempt from import and export customs duties. The whole of the personnel employed either directly or indirectly on the construction, operation or maintenance of the works may pass freely from one country to the other for the purpose of going to and from the place of location of the works, without any immigration restrictions, passports or labor requirements. Each Government shall furnish, through its own Section of the Commission, convenient means of identification to the personnel employed by it on the aforesaid works and verification certificates covering all materials, implements, equipment and repair parts intended for the works.

Each Government shall assume responsibility for and shall adjust exclusively in accordance with its own laws all claims arising within its territory in connection with the construction, operation or maintenance of the whole or of any part of the works herein agreed upon, or of any works which may, in the execution of this Treaty, be agreed upon in the future.

ARTICLE 21

The construction of the international dams and the formation of artificial lakes shall produce no change in the fluvial international boundary, which shall continue to be governed by existing treaties and conventions in force between the two countries.

The Commission shall, with the approval of the two Governments, establish in the artificial lakes, by buoys or by other suitable markers, a practicable and convenient line to provide for the exercise of the

jurisdiction and control vested by this Treaty in the Commission and its respective Sections. Such line shall also mark the boundary for the application of the customs and police regulations of each country.

ARTICLE 22

The provisions of the Convention between the United States and Mexico for the rectification of the Rio Grande (Rio Bravo) in the El Paso-Juárez Valley signed on February 1, 1933, shall govern, so far as delimitation of the boundary, distribution of jurisdiction and sovereignty, and relations with private owners are concerned, in any places where works for the artificial channeling, canalization or rectification of the Rio Grande (Rio Bravo) and the Colorado River are carried out.

ARTICLE 23

The two Governments recognize the public interest attached to the works required for the execution and performance of this Treaty and agree to acquire, in accordance with their respective domestic laws, any private property that may be required for the construction of the said works, including the main structures and their appurtenances and the construction materials therefor, and for the operation and maintenance thereof, at the cost of the country within which the property is situated, except as may be otherwise specifically provided in this Treaty.

Each Section of the Commission shall determine the extent and location of any private property to be acquired within its own country and shall make the necessary requests upon its Government for the acquisition of such property.

The Commission shall determine the cases in which it shall become necessary to locate works for the conveyance of water or electrical energy and for the servicing of any such works, for the benefit of either of the two countries, in the territory of the other country, in order that such works can be built pursuant to agreement between the two Governments. Such works shall be subject to the jurisdiction and supervision of the Section of the Commission within whose country they are located.

Construction of the works built in pursuance of the provisions of this Treaty shall not confer upon either of the two countries any rights either of property or of jurisdiction over any part whatsoever of the territory of the other. These works shall be part of the territory and be the property of the country wherein they are situated. However, in the case of any incidents occurring on works constructed across the limitrophe part of a river and with supports of both banks, the jurisdiction of each country shall be limited by the center line of such works, which shall be marked by the Commission, without thereby changing the international boundary.

Each Government shall retain, through its own Section of the Commission and within the limits and to the extent necessary to effectuate the provisions of this Treaty, direct ownership, control and jurisdiction within its own territory and in accordance with its own laws, over all real property - including that within the channel of any river - rights of way and rights *in rem*, that it may be necessary to enter

upon and occupy for the construction, operation or maintenance of all the works constructed, acquired or used pursuant to this Treaty. Furthermore, each Government shall similarly acquire and retain in its own possession the titles, control and jurisdiction over such works.

ARTICLE 24

The International Boundary and Water Commission shall have, in addition to the powers and duties otherwise specifically provided in this Treaty, the following powers and duties:

(a) To initiate and carry on investigations and develop plans for the works which are to be constructed or established in accordance with the provisions of this and other treaties or agreements in force between the two Governments dealing with boundaries and international waters; to determine, as to such works, their location, size, kind and characteristic specifications; to estimate the costs of such works; and to recommend the division of such costs between the two Governments, the arrangements for the furnishing of the necessary funds, and the dates for the beginning of the works, to the extent that the matters mentioned in this subparagraph are not otherwise covered by specific provisions of this or any other Treaty.

(b) To construct the works agreed upon or to supervise their construction and to operate and maintain such works or to supervise their operation and maintenance, in accordance with the respective domestic laws of each country. Each Section shall have, to the extent necessary to give effect to the provisions of this Treaty, jurisdiction over the works constructed exclusively in the territory of its country whenever such works shall be connected with or shall directly affect the execution of the provisions of this Treaty.

(c) In general to exercise and discharge the specific powers and duties entrusted to the Commission by this and other treaties and agreements in force between the two countries, and to carry into execution and prevent the violation of the provisions of those treaties and agreements. The authorities of each country shall aid and support the exercise and discharge of these powers and duties, and each Commissioner shall invoke when necessary the jurisdiction of the courts or other appropriate agencies of his country to aid in the execution and enforcement of these powers and duties.

(d) To settle all differences that may arise between the two Governments with respect to the interpretation or application of this Treaty, subject to the approval of the two Governments. In any case in which the Commissioners do not reach an agreement, they shall so inform their respective governments reporting their respective opinions and the grounds therefor and the points upon which they differ, for discussion and adjustment of the difference through diplomatic channels and for application where proper of the general or special agreements which the two Governments have concluded for the settlement of controversies.

(e) To furnish the information requested of the Commissioners jointly by the two Governments on matters within their jurisdiction. In the event that the request is made by one Government alone, the Commissioner of the other Government must have the express authorization of his Government in order to comply with such request.

(f) The Commission shall construct, operate and maintain upon the limitrophe parts of the international streams, and each Section shall severally construct, operate and maintain upon the parts of the international streams and their tributaries within the boundaries of its own country, such stream gaging stations as may be needed to provide the hydrographic data necessary or convenient for the proper functioning of this Treaty. The data so obtained shall be compiled and periodically exchanged between the two Sections.

(g) The Commission shall submit annually a joint report to the two Governments on the matters in its charge. The Commission shall also submit to the two Governments joint reports on general or any particular matters at such other times as it may deem necessary or as may be requested by the two Governments.

ARTICLE 25

Except as otherwise specifically provided in this Treaty, Articles III and VII of the Convention of March 1, 1889 shall govern the proceedings of the Commission in carrying out the provisions of this Treaty. Supplementary thereto the Commission shall establish a body of rules and regulations to govern its procedure, consistent with the provisions of this Treaty and of Articles III and VII of the Convention of March 1, 1889 and subject to the approval of both Governments.

Decisions of the Commission shall be recorded in the form of Minutes done in duplicate in the English and Spanish languages, signed by each Commissioner and attested by the Secretaries, and copies thereof forwarded to each Government within three days after being signed. Except where the specific approval of the two Governments is required by any provision of this Treaty, if one of the Governments fails to communicate to the Commission its approval or disapproval of a decision of the Commission within thirty days reckoned from the date of the Minute in which it shall have been pronounced, the Minute in question and the decisions which it contains shall be considered to be approved by that Government. The Commissioners, within the limits of their respective jurisdictions, shall execute the decisions of the Commission that are approved by both Governments.

If either Government disapproves a decision of the Commission the two Governments shall take cognizance of the matter, and if an agreement regarding such matter is reached between the two Governments, the agreement shall be communicated to the Commissioners, who shall take such further proceedings as may be necessary to carry out such agreement.

VI --- TRANSITORY PROVISIONS

ARTICLE 26

During a period of eight years from the date of the entry into force of this Treaty, or until the beginning of operation of the lowest major international reservoir on the Rio Grande (Rio Bravo), should it be placed in operation prior to the expiration of said period, Mexico will cooperate with the United States to relieve, in times of drought, any lack of water needed to irrigate the lands now under irrigation in the Lower Rio Grande Valley in the United States, and for this purpose Mexico will release water from El Azúcar Reservoir on the San Juan River and allow that water to run through its systems of canals back into the San Juan River in order that the United States may divert such water from the Rio Grande (Rio Bravo). Such releases shall be made on condition that they do not affect the Mexican irrigation system, provided that Mexico shall, in any event, except in cases of extraordinary drought or serious accident to its hydraulic works, release and make available to the United States for its use the quantities requested, under the following conditions: that during the said eight years there shall be made available a total of 160,000 acre-feet (197,358,000 cubic meters) and up to 40,000 acre-feet (49,340,000 cubic meters) in any one year; that the water shall be made available as requested at rates not exceeding 750 cubic feet (21.2 cubic meters) per second; that when the rates of flow requested and made available have been more than 500 cubic feet (14.2 cubic meters) per second the period of release shall not extend beyond fifteen consecutive days; and that at least thirty days must elapse between any two periods of release during which rates of flow in excess of 500 cubic feet (14.2 cubic meters) per second have been requested and made available. In addition to the guaranteed flow, Mexico shall release from El Azúcar Reservoir and conduct through its canal system and the San Juan River, for use in the United States during periods of drought and after satisfying the needs of Mexican users, any excess water that does not in the opinion of the Mexican Section have to be stored and that may be needed for the irrigation of lands which were under irrigation during the year 1943 in the Lower Rio Grande Valley in the United States.

ARTICLE 27

The provisions of Article 10, 11, and 15 of this Treaty shall not be applied during a period of five years from the date of the entry into force of this Treaty, or until the Davis Dam and the major Mexican diversion structure on the Colorado River are placed in operation, should these works be placed in operation prior to the expiration of said period. In the meantime Mexico may construct and operate at its expense a temporary diversion structure in the bed of the Colorado River in territory of the United States for the purpose of diverting water into the Alamo Canal, provided that the plans for such structure and the construction and operation thereof shall be subject to the approval of the United States Section. During this period of time the United States will make available in the river at such diversion structure river flow not currently required in the United States, and the United States will cooperate with Mexico to the end

that the latter may satisfy its irrigation requirements within the limits of those requirements for lands irrigated in Mexico from the Colorado River during the year 1943.

VII --- FINAL PROVISIONS

ARTICLE 28

This Treaty shall be ratified and the ratifications thereof shall be exchanged in Washington. It shall enter into force on the day of the exchange of ratifications and shall continue in force until terminated by another Treaty concluded for that purpose between the two Governments.

IN WITNESS WHEREOF the respective Plenipotentiaries have signed this Treaty and have hereunto affixed their seals.

Done in duplicate in the English and Spanish languages, in Washington on this third day of February, 1944.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

CORDELL HULL (SEAL)

GEORGE S. MESSERSMITH (SEAL)

LAWRENCE M. LAWSON (SEAL)

FOR THE GOVERNMENT OF THE UNITED MEXICAN STATES:

F. CASTILLO NAJERA (SEAL)

RAFAEL FERNANDEZ MACGREGOR (SEAL)

PROTOCOL

The Government of the United States of America and the Government of the United Mexican States agree and understand that:

Wherever, by virtue of the provisions of the Treaty between the United States of America and the United Mexican States, signed in Washington on February 3, 1944, relating to the utilization of the waters of the Colorado and Tijuana Rivers and of the Rio Grande from Fort Quitman, Texas, to the Gulf of Mexico, specific functions are imposed on, or exclusive jurisdiction is vested in, either of the Sections of the International Boundary and Water Commission, which involve the construction or use of works for storage or conveyance of water, flood control, stream gaging, or for any other purpose, which are situated wholly within the territory of the country of that Section, and which are to be used only partly for the performance of treaty provisions, such jurisdiction shall be exercised, and such functions, including the construction, operation and maintenance of the said works, shall be performed and carried out by the

Federal agencies of that country which now or hereafter may be authorized by domestic law to construct, or to operate and maintain, such works. Such functions or jurisdictions shall be exercised in conformity with the provisions of the Treaty and in cooperation with the respective Section of the Commission, to the end that all international obligations and functions may be coordinated and fulfilled.

The works to be constructed or used on or along the boundary, and those to be constructed or used exclusively for the discharge of treaty stipulations, shall be under the jurisdiction of the Commission or of the respective Section, in accordance with the provisions of the Treaty. In carrying out the construction of such works the Sections of the Commission may utilize the services of public or private organizations in accordance with the laws of their respective countries.

This Protocol, which shall be regarded as an integral part of the aforementioned Treaty signed in Washington on February 3, 1944, shall be ratified and the ratifications thereof shall be exchanged in Washington. This Protocol shall be effective beginning with the day of the entry into force of the Treaty and shall continue effective so long as the Treaty remains in force.

IN WITNESS WHEREOF the respective Plenipotentiaries have signed this Protocol and have hereunto affixed their seals.

Done in duplicate, in the English and Spanish languages, in Washington, this fourteenth day of November, 1944.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

E. R. STETTINIUS, JR. (SEAL)

Acting Secretary of State of the United States of America.

FOR THE GOVERNMENT OF THE UNITED MEXICAN STATES:

F. CASTILLO NAJERA (SEAL)

Ambassador Extraordinary and Plenipotentiary
of the United Mexican States in Washington.

NOTES

The texts of the treaty and protocol above set out are taken from Treaty Series No. 994 (see also 59 Stat. 1219), which also includes the Spanish texts; here omitted. After public hearings by the Committee on Foreign Relations, which have been printed, and after debate (91 Cong. Rec. 2324- 2349, 2750,2805-2833, 3092-3107, 3112-3132, 3152-3173, 3174-3178, 3278-3280, 3290-3320, 3365-3385, 3387-3388, 3407-3430, 3480-3492 (1945), ratification was advised by the Senate April 18, 1945 (Executive A and Executive H, 78th Congress) subject to certain understandings hereinafter set out; the

treaty and protocol were ratified by the President November 1, 1945, subject to those understandings, and by the President of the United States of Mexico October 16, 1945, after the Mexican Senate on September 27, 1945, had approved the understandings in all matters affecting the rights and obligations between the parties; ratifications were exchanged in Washington on November 8, 1945; and the treaty and protocol, subject to the understandings, were proclaimed by the President on November 27, 1945, effective November 8, 1945.

The resolution of the Senate advising and consenting to ratification was as follows:

"Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of Executive A, Seventy-eighth Congress, second session, a treaty between the United States of America and the United Mexican States, signed at Washington on February 3, 1944, relating to the utilization of the waters of the Colorado and Tijuana Rivers and of the Rio Grande from Fort Quitman, Texas, to the Gulf of Mexico, and Executive H, Seventy-eighth Congress, second session, a protocol, signed at Washington on November 14, 1944, supplementary to the treaty, subject to the following understandings, and that these understandings will be mentioned in the ratification of this treaty as conveying the true meaning of the treaty, and will in effect form a part of the treaty:

"(a) That no commitment for works to be built by the United States in whole or in part at its expense, or for expenditures by the United States, other than those specifically provided for in the treaty, shall be made by the Secretary of State of the United States, the Commissioner of the United States Section of the International Boundary and Water Commission, the United States Section of said Commission, or any other officer or employee of the United States, without prior approval of the Congress of the United States. It is understood that the works to be built by the United States, in whole or in part at its expense, and the expenditures by the United States, which are specifically provided for in the treaty, are as follows:

"1. The joint construction of the three storage and flood-control dams on the Rio Grande below Fort Quitman, Texas, mentioned in Article 5 of the Treaty.

"2. The dams and other joint works required for the diversion of the flow of the Rio Grande mentioned in subparagraph II of Article 5 of the Treaty, it being understood that the commitment of the United States to make expenditures under this subparagraph is limited to its share of the cost of one dam and works appurtenant thereto.

"3. Stream-gaging stations which may be required under the provisions of section (j) of Article 9 of the Treaty and of subparagraph (d) of article 12 of the treaty.

"4. The Davis Dam and Reservoir mentioned in subparagraph (b) of Article 12 of the Treaty.

"5. The joint flood-control investigations, preparation of plans, and reports on the Rio Grande below Fort Quitman required by the provisions of Article 6 of the Treaty.

"6. The joint flood-control investigations, preparation of plans, and reports on the lower Colorado River between the Imperial Dam and the Gulf of California required by Article 13 of the Treaty.

"7. The joint investigations, preparation of plans, and reports on the establishment of hydroelectric plants at the international dams on the Rio Grande below Fort Quitman provided for by Article 7 of the Treaty.

"8. The studies, investigations, preparation of plans, recommendations, reports, and other matters dealing with the Tijuana River System, provided for by the first paragraph (including the numbered subparagraphs) of Article 16 of the Treaty.

"(b) Insofar as they affect persons and property in the territorial limits of the United States, the powers and functions of the Secretary of State of the United States, the Commissioner of the United States Section of the International Boundary and Water Commission, the United States Section of said Commission, and any other officer or employee of the United States, shall be subject to the statutory and constitutional controls and processes. Nothing contained in the treaty or protocol shall be construed as impairing the power of the Congress of the United States to define the terms of office of members of the United States Section of the International Boundary and Water Commissioner or to provide for their appointment by the President by and with the advice and consent of the Senate or otherwise.

"(c) That nothing contained in the treaty or protocol shall be construed as authorizing the Secretary of State of the United States, the Commissioner of the United States Section of the International Boundary and Water Commission, or the United States Section of said Commission, directly or indirectly to alter or control the distribution of water to users within the territorial limits of any of the individual States.

"(d) That 'international dam or reservoir' means a dam or reservoir built across the common boundary between the two countries.

"(e) That the words 'international plants', appearing in Article 19, mean only hydroelectric generating plants in connection with dams built across the common boundary between the two countries.

"(f) That the words 'electric current', appearing in Article 19, means hydroelectric power generated at an international plant.

"(g) That by the use of the words, 'The jurisdiction of the Commission shall extend to the limitrophe parts of the Rio Grande (Rio Bravo) and the Colorado River, to the land boundary between the two countries, and to works located upon their common boundary ***' in the first sentence of the fifth paragraph of Article 2, is meant: 'The jurisdiction of the Commission shall extend and be limited to the

limitrophe parts of the Rio Grande (Rio Bravo) and the Colorado River, to the land boundary between the two countries, and to works located upon their common boundary ***.'

"(h) The word 'agreements' whenever used in subparagraphs (a), (c), and (d) of Article 24 of the treaty shall refer only to agreements entered into pursuant to and subject to the provisions and limitations of treaties in force between the United States of America and the United Mexican States.

"(i) the word 'disputes' in the second paragraph of Article 2 shall have reference only to those disputes between the Governments of the United States of America and the United Mexican States.

"(j) First, that the one million seven hundred thousand acre-feet specified in subparagraph (b) of Article 10 includes and is not in addition to the one million five hundred thousand acre-feet, the delivery of ,which to Mexico is guaranteed in subparagraph (a) of Article 10; second, that the one million five hundred thousand acre-feet specified in three places in said subparagraph (b) is identical with the one million five hundred thousand acre-feet specified in said subparagraph (a); third, that any use by Mexico under said subparagraph (b) of quantities of water arriving at the Mexican points of diversion in excess of said one million five hundred thousand acre-feet shall not give rise to any future claim of right by Mexico in excess of said guaranteed quantity of one million five hundred thousand acre-feet of water.

"(k) The United States recognizes a duty to require that the protective structures to be constructed under Article 12, paragraph (a), of this treaty, are so constructed, operated, and maintained as to adequately prevent damage to property and lands within the United States from the construction and operation of the diversion structure referred to in said paragraph."

MEMORANDUM OF UNDERSTANDING AS TO FUNCTIONS AND
JURISDICTION OF AGENCIES OF THE UNITED STATES IN RELATION TO
THE COLORADO AND TIJUANA RIVERS AND THE RIO GRANDE BELOW
FORT QUITMAN, TEXAS, UNDER WATER TREATY SIGNED AT
WASHINGTON, FEBRUARY 3, 1944.

This memorandum of understanding made this 14th day of February, 1945, between the Department of State and the United States Section, International Boundary and Water Commission, United States and Mexico (hereinafter referred to as the "United States Section"), represented by the Secretary of State, and the Department of the Interior, represented by the Secretary of the Interior, pursuant to the provisions of the Treaty of February 3, 1944 between the United States and Mexico relating to the Colorado and Tijuana Rivers and the Rio Grande below Fort Quitman, Texas, (hereinafter referred to as the "treaty"); the Protocol between the two Governments supplementary to the treaty (hereinafter referred to as the "protocol") dated November 14, 1944; and existing domestic law of the United States.

WITNESSETH, THAT,

a. WHEREAS, the treaty establishes certain reciprocal rights and obligations of the two nations and requires for its execution both joint and independent determinations and actions on the part of the two Governments as represented, in the case of the United States, by the Department of State and in the case of Mexico by the Ministry of Foreign Relations, or acting through their respective Sections of the International Boundary and Water Commission; and

b. WHEREAS, the use of works both of an international and domestic character will be necessarily involved in the discharge of various treaty functions; and

c. WHEREAS, the protocol provides that the said Governments agree and understand that:

Wherever, by virtue of the provisions of the Treaty between the United States of America and the United Mexican States, signed in Washington on February 3, 1944, relating to the utilization of the waters of the Colorado and Tijuana Rivers and of the Rio Grande from Fort Quitman, Texas, to the Gulf of Mexico, specific functions are imposed on, or exclusive jurisdiction is vested in, either of the Sections of the International Boundary and Water Commission, which involve the construction or use of works for storage or conveyance of water, flood control, stream gaging, or for any other purpose, which are situated wholly within the Territory of the country of that Section, and which are to be used only partly for the performance of treaty provisions, such jurisdiction shall

be exercised, and such functions, including the construction, operation and maintenance of the said works, shall be performed and carried out by the Federal agencies of that country which now or hereafter may be authorized by domestic law to construct or to operate and maintain, such works. Such functions or jurisdictions shall be exercised in conformity with the provisions of the Treaty and in cooperation with the respective Section of the Commission, to the end that all international obligations and functions may be coordinated and fulfilled.

The works to be constructed or used on or along the boundary, and those to be constructed or used exclusively for the discharge of treaty stipulations, shall be under the jurisdiction of the Commission or of the respective Section, in accordance with the provisions of the Treaty. In carrying out the construction of such works the Sections of the Commission may utilize the services of public or private organizations in accordance with the laws of their respective countries.

and which protocol is by the terms thereof made an integral part of the treaty, to be effective on the day of the entry into force of the treaty and to continue effective so long as the treaty remains in force; and

d. WHEREAS, by virtue of the treaty and the protocol, the Secretary of State and the United States Section are vested with general jurisdiction over the performance of treaty functions, in so far as the rights and obligations of the United States are concerned, and are likewise vested, and from time to time in the future may be further vested, with jurisdiction over various works, constructed and to be constructed, on or along the boundary between the United States and Mexico, and over certain matters and problems of an international character arising on or affecting the said boundary, by virtue of treaties in force between the two nations, and by virtue of Acts of Congress; and

e. WHEREAS, the Secretary of the Interior, pursuant to the Reclamation Law and other Acts of Congress pertaining to the investigation, conservation and utilization of the water resources of the United States, has been, and from time to time in the future may be authorized to construct and to operate and maintain certain facilities wholly in the United States for the storage and conveyance of water, flood control, production of hydroelectric power and for other purposes, which facilities primarily pertain to the functions of the Department of the Interior, but, some of the facilities, in consequence of the treaty, will in part also pertain to treaty functions; and

f. WHEREAS, the Bureau of Reclamation (hereinafter referred to as the "Bureau") is an agency of the Department of the Interior which aids and assists the Secretary of the Interior in the performance of his responsibilities and functions pursuant to the Reclamation Law and other Acts of Congress pertaining to the investigation, conservation and utilization of the water resources of the United States; and

g. WHEREAS, in order that all international and domestic obligations and functions prescribed by the treaty and domestic law may be coordinated and fulfilled in the manner contemplated by the protocol, it is mutually desirable to define and set forth the specific jurisdiction and functions to be exercised by the Department of State and the United States Section, and the Department of the Interior and its agency, the Bureau, with respect to the operation and maintenance of such existing works as may be necessary in whole or in part to the fulfillment of treaty provisions, or which may be constructed, operated and maintained pursuant thereto, and with respect to the gathering and collation of certain information and data and the making of certain findings of fact and recommendations which may become necessary or desirable in the fulfillment of treaty provisions; and to define the cooperation between the said Interior agency and the United States Section as contemplated by the protocol in the performance of functions under their respective jurisdiction;

Now, therefore, it is agreed as follows:

1. The principles enunciated in this memorandum and in the protocol and hereinabove in recital c set forth shall control with respect to all facilities or works which now exist and which are to be used in whole or in part in the discharge of treaty functions, or which may hereafter be constructed pursuant to the treaty in relation to the Rio Grande below Fort Quitman, Texas, and the Colorado and Tijuana Rivers, even though such facilities or works may not be herein specifically enumerated. For the purpose of defining the respective jurisdiction and function of the Department of State, the Department of the Interior and their respective agencies represented thereby, respecting facilities which have been heretofore, or, which hereafter may be constructed or hereafter used in connection with the performance of treaty provisions:

(a) The term “works” and the term “facilities” shall be construed as embracing either or both works and facilities, and

(b) For the purpose of this memorandum, the term “works located upon their common boundary,” as used in the treaty, and the term “on * * * the boundary” wherever used in the treaty or the protocol, shall have application only to works or features of works situated partly in both countries. For the purpose of this memorandum the term “along the boundary,” as used in the protocol, shall have application only to works or the features of works located in such proximity to the boundary and of such a character as to control or affect the regimen or flow of the boundary sections of the Rio Grande or Colorado River, as determined by the Secretary of State after consultation with the Secretary of the Interior and, in the event they shall not be in accord as to such determination, with the approval of the President.

The provisions of this subdivision of this memorandum shall not be construed to affect:

(1) The allocation of works as to jurisdiction or function, or both, made elsewhere in this memorandum.

(2) The regulatory jurisdiction of the Commission or the United States Section arising under prior existing treaties and Acts of Congress.

(c) Nothing in this memorandum shall be construed as affecting, limiting, or modifying the functions and activities of the United States Geological Survey, or of the United States Section, respectively, with respect to stream gaging and other water resources investigations.

2. The United States Section shall consult with the Bureau with respect to the plans contemplated by subsection (2) of Article 16 of the treaty relating to the Tijuana River.

3. The Department of State and the Department of the Interior, and their respective agencies, the United States Section and the Bureau, in the exercise of their respective jurisdictions and performance of their respective functions, will cooperate with each other, among other things, as to effecting, to the extent permissible by law, assignment of personnel, transfer of funds and exchange of information to the end that there may be fulfilled the provisions of the treaty, as supplemented by the protocol, and the Reclamation Law and all other Acts of Congress pertaining to the functions of the Department of the Interior as to the investigation, conservation and utilization of the natural resources of the United States. The Secretary of State and the Secretary of the Interior will cooperate in making studies, reports and recommendations, including those pertaining to the obtaining of such legislative authorization as may be necessary, concerning the allocation of costs of construction and operation and maintenance of existing or future works, and of water investigations, within the United States which have been heretofore, or may be in the future, constructed or performed in whole or in part under authority vested in the Secretary of the Interior and which may be utilized in whole or in part in the fulfillment of the treaty.

4. Unless and until otherwise provided in accordance with the domestic law of the United States, in conformance with the treaty and the protocol, the Bureau shall exercise or continue to exercise jurisdiction and shall perform functions and construction, where new construction may be involved, and operation and maintenance, within the principles stated herein, as to facilities and works as follows:

(a) **Rio Grande**

(1) All facilities and works within the United States constituting the Valley Gravity Canal and Storage project as provided for in the Act of June 28, 1941 (55 Stat. 303, 338) except those portions of the Project designated by the Secretary of State, under the authority of that Act, as being international in character: *Provided*, however, that whenever the construction, operation or maintenance of any feature of such works or facilities may involve the use of, affect or interfere with the construction, operation or maintenance of any feature of the Lower Rio Grande Flood Control project under the jurisdiction of the United States Section, the plans and specifications and principles of operation as to

such feature of the said Valley Gravity Canal and Storage project shall be formulated by the Bureau subject to the approval of the United States Section.

(b) **Colorado River**

(1) All facilities and works above and including Laguna Dam, and all works constituting a part of the Yuma and Gila Federal Reclamation project of the Department of the Interior.

(2) All-American Canal.

(3) Pilot Knob check and Wasteway and, to whatever extent provision may be made for the generation of electric energy at Pilot Knob by the United States, the Pilot Knob power plant and appurtenances.

(4) The design of the protective works within the United States contemplated by the provisions of Article 12 (a) of the Treaty as a result of the construction of the Mexican diversion structure in the Colorado River shall be subject to the approval of the Bureau, with the understanding that the part of such works to be built in the United States may be built and operated and maintained by the Bureau, at its option, subject to supervisory control by the United States Section.

(5) The flood control works contemplated by Article 13 of the Treaty above Laguna Dam and, to the extent that may hereafter be agreed upon between the United States Section and the Bureau by a memorandum supplementary hereto, the flood control works allocated to the United States between Laguna Dam and the boundary: *Provided*, however, that nothing herein shall impair or modify the jurisdiction and functions of the Bureau under the Act of January 21, 1927 (44 Stat. 1010), as amended, relating to the Colorado River front work and levee system.

(6) The Bureau will collect and communicate to the United States Section such data and information as may be necessary for the use of the United States Section in making the determinations and findings of fact in accordance with Article 10 and Article 15 of the Treaty. Such determinations and findings shall be made by the United States Section after consultation with the Bureau.

5. Unless and until otherwise provided in accordance with domestic laws of the United States, in conformance with the Treaty and the protocol, the United States Section shall exercise or continue to exercise jurisdiction, and shall perform functions and construction, where new construction may be involved, and operation and maintenance, within the principles stated herein, as to facilities and works as follows:

(a) **Rio Grande**

(1) In so far as the functions of the United States Section may be involved, the engineering planning, designing, construction, and operation and maintenance of the international dams and other works provided for in the Treaty: *Provided*, however, that the United States Section shall

consult with the Bureau relative to locations, plans and designs for construction, and principles of operation of the principal international storage dams, and shall consult with the National Park Service relative to the location of any such dam which would involve construction in or the impounding of water on lands in the area of the Big Bend National Park.

(2) Power plants at the international storage dams: *Provided*, however, that the United States Section shall consult with the Bureau with respect to plans and designs for the construction of such plants, and principles of operation; and *Provided*, further, that the disposition in the United States of hydroelectric power which, pursuant to the provisions of Article 7 of the Treaty, is generated at the international storage dams on the Rio Grande and is made available to the United States, shall be made in accordance with such provisions therefor as the Congress of the United States shall have provided or will provide; and the Department of States will consult with the Department of the Interior in the performance of its functions regarding future agreements, regulations and other matters provided for in Article 19 of the Treaty; and *Provided*, further, that the Secretary of State will cooperate with the Secretary of the Interior in connection with such Legislation as hereafter may be proposed in the Congress whereby the Secretary of the Interior may be authorized to dispose of such power as may so become available to the United States for disposal therein.

(b) **Colorado River**

(1) Functions with respect to approval of the location, design, and construction and principles of operation of the main diversion structure provided for in Article 12 (a) of the Treaty if it shall be built in the limitrophe section of the river: *Provided*, however, that the United States Section shall consult with the Bureau as to the location, design, and principles of operation of such structure.

(2) Works constructed or acquired pursuant to Article 12 (c) of the treaty and used exclusively for delivery of water to Mexico: *Provided*, that the United States Section will consult with the Bureau in the development of plans and in the operation and maintenance of such works and: *Provided*, further, that no agreement pursuant to Articles 11 (b) or 15-B of the Treaty which will involve the use for the purposes set out therein of any works under the jurisdiction of the Secretary of the Interior shall be made without prior arrangements having been made with him.

(3) The part of the flood control works between Imperial Dam and the Gulf of California provided for in Article 13 of the Treaty, which may be assigned to the United States, except the part lying above Laguna Dam, and except as provided in subdivision (b) 5 of Article 4 hereof: *Provided*, that the United States Section will consult with the Bureau with respect to the design and construction of the part of such works which may be built in the United States.

(4) Approval of the plans for the temporary diversion structure referred to in Article 27 of the Treaty, and approval of the construction and operation thereof, subject to concurrence therein by the Bureau.

(5) Subject to the provisions of subdivision (b) (4) of Article 4 hereof, the design, construction, and maintenance and operation of the protective works within the United States contemplated by the provisions of Article 12 (a) of the Treaty as a result of the construction of the Mexican diversion structure in the Colorado River.

6. Where the use of any works under the jurisdiction or control of the Bureau is required for the discharge of any Treaty functions, such work or works shall be operated and maintained, in cooperation with the United States Section, in such manner that all Treaty functions may be coordinated and fulfilled. Where provision is made in this memorandum of understanding for consultation regarding the planning, design, construction or operation of works, or the discharge of other Treaty functions, or functions under domestic law, it is understood that the Bureau and the United States Section will mutually cooperate in furnishing such advice and assistance, consistent with their normal operations and to the extent permissible by law, in furnishing such services as may be requested by one of the other.

7. In order to insure compliance with the provisions of the Treaty and domestic law, to the fullest extent practicable, wherever action is proposed to be taken by one of the cooperating agencies in the exercise of its jurisdiction or function pertaining to subject matter the responsibility or function of the other which may be affected thereby, an opportunity for consultation will be afforded by the acting agency a reasonable time in advance of the taking of such action.

8. The status of the jurisdiction and functions of the United States Section and the Bureau, respectively, shall continue, as to the Rio Grande above Fort Quitman and works thereon, as such status may exist independently of and unaffected by this memorandum.

9. This memorandum of understanding shall not become effective until it has been approved by the President of the United States and until the Treaty as supplemented by the protocol becomes effective by an exchange of ratifications.

IN WITNESS WHEREOF; the Secretary of State and the Secretary of the Interior have hereunto subscribed their official signature the day and year first above written.

Approved: June 18, 1945
(Signed) Harry S. Truman,
President of the United States.

(Signed) Joseph C. Grew,
Acting Secretary of State
(Signed) Harold L. Ickes,
Secretary of the Interior

PART 3: COURT DECREES

Laramie River Basin



Figure 9 - Laramie River Basin

WYOMING v. COLORADO

LARAMIE RIVER LITIGATION

Decree, 259 U.S. 496, 42 S. Ct. 594, 66 L. Ed. 999 (1922);

Modified Decree, 260 U.S. 1, 43 S. Ct. 2, 66 L. Ed. 1026 (1922);

Decree, June 1, 1936;

Stipulation, February 8, 1957;

Modified Decree, 353 U.S. 953, 77 S. Ct. 865, 1 L. Ed. 2d 906 (1957)

Final Decree, June 5, 1922

**WYOMING v. COLORADO
LARAMIE RIVER DECREE**

OCTOBER TERM, 1921

SUPREME COURT OF THE UNITED STATES

No. 3, Orig.

**STATE OF WYOMING, COMPLAINANT v. STATE
OF COLORADO et al.**

This cause having been heretofore submitted on the pleadings and the evidence taken before and reported by the commissioners appointed for the purpose, and the court being now fully advised in the premises:

IT IS CONSIDERED, ORDERED, AND DECREED that the defendants, their officers, agents, and servants, be, and they are hereby, severally enjoined from diverting or taking from the Laramie River and its tributaries in the state of Colorado more than 15,500 acre-feet of water per annum in virtue of or through what is designated in the pleadings and evidence as the Laramie-Poudre Tunnel appropriation in that State:

Provided, that this decree shall not prejudice the right of the State of Colorado, or of any one recognized by her as duly entitled thereto, to continue to exercise the right now existing and hereby recognized to divert and take from such stream and its tributaries in that State 18,000 acre-feet of water per annum in virtue of and through what is designated in the pleadings and evidence as the Skyline Ditch appropriation in that state; nor prejudice the right of that state, or of any one recognized by her as duly entitled thereto, to continue to exercise the right now existing and hereby recognized to divert and take from such stream and its tributaries in that state 4,250 acre-feet of water per annum in virtue of and through the meadow land appropriations in that state which are named in the pleadings and evidence, nor prejudice or affect the right of the state of Colorado or the state of Wyoming, or of any one recognized by either State as duly entitled thereto, to continue to exercise the right to divert and use water from Sand Creek, sometimes spoken of as a tributary of the Laramie River in virtue of any existing and lawful appropriation of the waters of such creek;

And, it is also considered, ordered, and decreed that the State of Wyoming do have and recover from the defendants her lawful costs herein.

And, it is further considered, ordered, and decreed that the clerk of this Court do transmit to the chief magistrates of the States of Colorado and Wyoming copies of this decree duly authenticated under the seal of this Court.¹

¹ A modified decree was entered October 9, 1922. See 260 U.S. 1, 43 Sup. Ct. 2, 67 L. Ed. --.

Modified Final Decree, October 9, 1922

OCTOBER TERM, 1921

SUPREME COURT OF THE UNITED STATES

No. 3, Orig.

**STATE OF WYOMING, COMPLAINANT v. STATE
OF COLORADO et al.**

PER CURIAM.

1. On consideration of the defendants' petition for a rehearing heretofore presented by leave of the court, it is considered, ordered, and decreed that the decree entered herein on June 5, 1922, be modified to read as follows:

This cause having been heretofore submitted on the pleadings and the evidence taken before and reported by the commissioners appointed for the purpose, and the Court being now fully advised in the premises:

It is considered, ordered, and decreed that the defendants, their officers, agents, and servants, be, and they are hereby, severally enjoined from diverting or taking from the Laramie River and its tributaries in the state of Colorado more than 15,500 acre-feet of water per annum in virtue of or through what is designated in the pleadings and evidence as the Laramie-Poudre Tunnel appropriation in that state.

Provided, that this decree shall not prejudice the right of the state of Colorado, or of any one recognized by her as duly entitled thereto, to continue to exercise the right now existing and hereby recognized to divert and take from such stream and its tributaries in that state 18,000 acre-feet of water per annum in virtue of and through what is designated in the pleadings and evidence as the Skyline Ditch appropriation in that state, nor prejudice the right of that state, or of any one recognized by her as duly entitled thereto, to continue to exercise the right now existing and hereby recognized to divert and take from such stream and its tributaries in that state 4,250 acre-feet of water per annum in virtue of and through the meadow land appropriations in that state which are named in the pleadings and evidence, nor prejudice the right of the state of Colorado, or of any one recognized by her as duly entitled thereto, to continue to exercise the right now existing and hereby recognized to divert and take from the headwaters of Deadman Creek, a Colorado tributary of the Laramie River, the relatively small amount of water appropriated therefrom prior to the year 1902 by and through what is designated in the evidence as the

Wilson Supply Ditch, nor prejudice or affect the right of the state of Colorado or the state of Wyoming, or of any one recognized by either state as duly entitled thereto, to continue to exercise the right to divert and use water from Sand Creek, sometimes spoken of as a tributary of the Laramie River, in virtue of any existing and lawful appropriation of the waters of such creek.

And, it is also considered, ordered, and decreed that the costs of this suit be apportioned among and paid by the parties thereto as follows: The State of Wyoming one-third, the State of Colorado, one-third, and the two corporate defendants jointly one-third.

And, it is further considered, ordered, and decreed that the clerk of this court do transmit to the chief magistrates of the States of Colorado and Wyoming copies of this decree duly authenticated under the seal of this Court.

2. In view of the modifications hereby made in the decree of June 5, 1922, the petition for rehearing in this cause is hereby denied.

Decree, June 1, 1936

OCTOBER TERM, 1935

SUPREME COURT OF THE UNITED STATES

No. 10, Orig.

**STATE OF WYOMING, COMPLAINANT v. STATE
OF COLORADO et al.**

DECREE

This cause having been heretofore submitted on the pleadings and the evidence taken before and reported by the Commissioners appointed for the purpose, and the Court being now fully advised in the premises:

IT IS CONSIDERED, ORDERED and DECREED that the State of Colorado, her officers, agents and servants, and her water claimants, be, and they are hereby severally enjoined from diverting or taking from the Laramie River and its tributaries in the State of Colorado more than four thousand two hundred and fifty (4,250) acre-feet of water per annum in virtue of and through the meadowland appropriations in that State which are named in the pleadings and evidence, such diversion to be measured at the headgates through which the water is diverted.

And it is also considered, ordered and decreed that the State of Wyoming be, and she is hereby, given leave to apply later on for an appropriate order respecting the measurement and recording of all diversions in the State of Colorado from the Laramie River and its tributaries in the event the two States are unable to agree upon an appropriate plan for measuring and recording such diversions and there proves to be a need for action by this Court in this matter. Jurisdiction of the cause will be retained for the purposes of such an application.

In addition, it is further ordered and adjudged that costs in the suit be taxed one-half to each of the two States.

A true copy.

Test:

/s/ Charles Elmon Cropley
Clerk, Supreme Court, U. S.

Seal

STIPULATION AND DECREE, 1957
In The
SUPREME COURT OF THE UNITED STATES

October Term, 1956

No. 3, Orig.

THE STATE OF WYOMING, Complainant

v.

THE STATE OF COLORADO, Defendant

STIPULATION

This stipulation, by and between the State of Wyoming, complainant, and the State of Colorado, defendant, is made and entered into in consideration of the following premises:

1. This action was brought in 1911 by the State of Wyoming against the State of Colorado and two Colorado corporations to prevent a proposed diversion from their natural basin of the waters of the Laramie River, an interstate stream that rises in Colorado and flows into Wyoming. The original decree in this action was entered in 1922 and the opinion accompanying it is recorded in 259 U. S. 419. In terms, the decree was an injunction limiting a specific transmountain diversion of water, without prejudice to certain other transmountain diversions in Colorado or to certain diversions for the irrigation of the meadowland within the basin in Colorado. The decree has been amended and modified by subsequent decisions in the same action that are reported in 259 U. S. 496 (1922); 260 U. S. 1 (1922); 286 U. S. 494 (1932); 298 U. S. 573 (1936); and 309 U. S. 572 (1940). The net effect of said decree as so modified from time to time is to apportion the waters of the Laramie River between Wyoming and Colorado so that in each year Colorado appropriators may divert in the aggregate 39,750 acre-feet of water, leaving to Wyoming the remaining flow of the Laramie River and its Colorado tributaries. The apportionment and allocation among the specific users of the aggregate water so awarded to Colorado is left to determination by Colorado under the laws governing appropriation of water as administered in Colorado. The decree excluded Sand Creek, which is only nominally a tributary of the Laramie River, and in this stipulation, the same exclusion applies.

2. By agreement among the Colorado users, first made in 1942 and since that date renewed from year to year, the total 39,750 acre-feet allocated to Colorado has been divided, 19,875 acre-feet to

the transmountain, or out-of-basin, users and the remainder to the meadowland, or in-basin, users. The 19,875 acre-feet remaining to the meadowland appropriators by operation of this year-to-year agreement is substantially less than the amount they could take under their appropriations recognized by Colorado law, and, they contend, insufficient to permit them to raise a normal crop of mountain hay on their said lands. They have requested Wyoming to agree to increased diversions limited to use upon the meadowlands, asserting that 90% of more of any additional water taken by them from the Laramie River and used on meadowland will return to the river for use in Wyoming; and they have stated that if such increased diversions are not permitted they must for economic reasons consider selling and transferring their share of the Colorado water to transmountain, or out-of-basin users, among whom there exists a ready market for such water.

3. Colorado contends that under the present decree in this suit she has the right to permit her appropriators to divert and take all of any part of the 39,750 acre-feet per annum for use outside of the basin of the Laramie River.

4. Wyoming contends that under the law of prior appropriation applicable in both States the place of use of water cannot be changed to the detriment of other appropriators from the stream, that in excess of 16,000 acre-feet of the 19,875 acre-feet diverted each year to the meadowlands under the above agreement has returned to the stream and flows to Wyoming and is available for the use of her appropriators, and that serious damage would result to her appropriators if any part of the 19,875 acre-feet presently used on meadowlands within the basin should be transported out of the watershed.

5 Colorado desires to obtain the right to divert additional water for use only by the meadowland appropriators, without increasing the presently irrigated acreage and without extending the irrigating season.

6. Wyoming desires to insure the continuation of the return flow from the water diverted to the meadowlands, and to eliminate the threat that the meadowland appropriations may be diverted out of the basin of the river.

7. Negotiations looking forward to the settlement of this controversy were started in 1951. The agreement embodied in this stipulation has the approval of committees of water users of each state and the approval of the State Engineer and the Governor of each state. The economic interests of all persons and parties bound by the existing decree of this court can best be served and protected by modification of the literal terms of said decree so as to permit the Colorado meadowland appropriators to divert and use more water and so as to protect the continued utilization within Wyoming of the return flows from such use in Colorado.

8. It is agreed that the amount of water apportioned to the in-basin Colorado users shall be used only on lands which have been irrigated by or to which Laramie River waters were allocated during

one or more of the irrigating seasons in the years 1941 to 1955, since transfer of use of such waters might materially reduce the return flow to the Laramie River. In order to render the location of lands meeting this qualification certain and specific, such lands as are included within the above qualifications are indicated by cross-hatching on Exhibit "A", attached hereto, and it is agreed that the said Exhibit "A" may be made a part of any decree entered herein as conclusively establishing the lands within the Laramie River basin in Colorado on which Laramie River water may be used for irrigation.

IT IS THEREFORE STIPULATED AND AGREED that the parties will file a joint motion with the United States Supreme Court, to which this stipulation shall be attached, requesting the Court to approve this stipulation, to vacate the decrees heretofore entered in this action and to substitute therefore a new decree, in words and figures as follows:

"This cause having been heretofore submitted on the stipulation of the parties thereto, and the Court being now fully advised in the premises:

"It is ordered, adjudged and decreed that:

"I. The State of Colorado, or anyone recognized by her as duly entitled thereto, shall have the right to divert from the Laramie River and its tributaries, for use in the State of Colorado, 49,375 acre-feet of water in each calendar year, which diversion and use shall be subject to the limitations and restrictions hereinafter set forth. The State of Wyoming, or anyone recognized by her as duly entitled thereto, shall have the right to divert and use all water flowing and remaining in the Laramie River and its tributaries after such diversion and use in Colorado.

"II. The State of Colorado, its officers, attorneys, agents and employees be, and they are severally enjoined

(a) from diverting or permitting the diversion of more than 19,875 acre-feet of water in any calendar year from the Laramie River and its tributaries for use in Colorado at any or all points outside of the basin of said river, which amount may be diverted by the present owners of transmountain water rights or by their successors in ownership, through any ditches, canals, tunnels or structures capable of carrying the same, as the owners of said water rights and of such structures may from time to time agree among themselves, or as may be determined by a court of competent jurisdiction;

(b) from diverting or permitting the diversion of more than 29,500 acre-feet of water in any calendar year from the Laramie River and its tributaries for use in Colorado within the drainage basin of said river, of which amount not more than 1,800 acre-feet shall be diverted in any calendar year after July 31; provided, that if in any calendar year any part of all of said 19,875 acre-feet of water which may be diverted for use outside of the drainage basin of said river is not so diverted for use outside the drainage basin of said river, the amount not so diverted may be added to the amount which may be diverted hereunder for use in Colorado within the drainage basin of said river. Such water diverted for use in

Colorado within the drainage basin of said river shall be diverted only through the headgates of ditches serving, and shall only be used to irrigate, those lands within the Laramie River basin in Colorado which are marked and designated by cross-hatching on Exhibit "A" attached hereto and hereby made a part hereof, by the present owners of said lands and the water rights serving said lands, or by their successors in ownership, and none of said waters shall be used for irrigation of any lands not included within the boundaries of the lands so indicated on Exhibit "A".

"III. Except as modified or restricted hereby, the relative rights to the use of Colorado's share of the Laramie River shall continue to be governed by the rules of appropriation and use as determined by the laws of Colorado, and shall be administered by its water officials.

"IV. This decree shall not prejudice or affect the rights of the State of Colorado or the State of Wyoming, or of anyone recognized by either state as duly entitled thereto, to continue to exercise the right to divert and use water from Sand Creek, sometimes spoken of as a tributary of the Laramie River, in virtue of an existing and lawful appropriation of the waters of such creek.

"V. The clerk of this Court shall transmit to the chief magistrates of the States of Wyoming and Colorado copies of this decree duly authenticated under the seal of this Court."

Dated at Denver, Colorado, this 8th day of February 1957.

STATE OF COLORADO

By:

DUKE W. DUNBAR, Attorney General
FRANK E. HICKEY, Deputy Attorney General
JOHN B. BARNARD, JR., Assistant Attorney General
FELIX L. SPARKS, Special Assistant Attorney General

Approved:

STEPHEN L. R. McNICHOLS, Governor
J. E. WHITTEN, State Engineer
IVAN C. CRAWFORD, Director Colorado Water Conservation Board

Dated at Cheyenne, Wyoming, this 8th day of February, 1957.

STATE OF WYOMING

By:

GEORGE F. GUY, Attorney General
HOWARD BLACK, Deputy Attorney General
FRANK J. TRELEASE, Special Counsel

Approved:

MILWARD L. SIMPSON, Governor
L. C. BISHOP, State Engineer and Interstate Stream Commissioner
PAUL A. RECHARD, Chief of Water Development, Wyoming Natural Resource Board

ORDER VACATING FORMER DECREE AND ENTERING NEW DECREE
OCTOBER TERM, 1956
SUPREME COURT OF THE UNITED STATES

No. 3, Orig.

STATE OF WYOMING, COMPLAINANT v. STATE
OF COLORADO et al.

Upon consideration of the joint motion of counsel for the parties in this case to vacate the former decree (259 U.S. 496, 42 S.Ct. 594 ; 260 U.S. 1, 43 S.Ct. 2), it is ordered that the joint motion be, and it is hereby, granted and the former decree, as amended, is vacated and a new decree is entered to read as follows:

“ IT IS ORDERED, ADJUDGED AND DECREED, that:

“ I. The State of Colorado, or anyone recognized by her as duly entitled thereto, shall have the right to divert from the Laramie River and its tributaries, for use in the State of Colorado, 49,375 acre-feet of water in each calendar year, which diversion and use shall be subject to the limitations and restrictions hereinafter set forth. The State of Wyoming, or anyone recognized by her as duly entitled thereto, shall have the right to divert and use all water flowing and remaining in the Laramie River and its tributaries after such diversion and use in Colorado.

“ II. The State of Colorado, its officers, attorneys, agents and employees be, and they are severally enjoined

“ (a) from diverting or permitting the diversion of more than 19,875 acre-feet of water in any calendar year from the Laramie River and its tributaries for use in Colorado at any or all points outside of the basin of said river, which amount may be diverted by the present owners of transmountain water rights or by their successors in ownership, through any ditches, canals, tunnels or structures capable of carrying the same, as the owners of said water rights and of such structures may from time to time agree among themselves, or as may be determined by a court of competent jurisdiction;

“ (b) from diverting or permitting the diversion of more than 29,500 acre-feet of water in any calendar year from the Laramie River and its tributaries for use in Colorado within the drainage basin of said river, of which amount not more than 1,800 acre-feet shall be diverted in any calendar year after July 31; provided, that if in any calendar year any part or all of said 19,875 acre-feet of water which may be

diverted for use outside of the drainage basin of said river is not so diverted for use outside the drainage basin of said river, the amount not so diverted may be added to the amount which may be diverted hereunder for use in Colorado within the drainage basin of said river. Such water diverted for use in Colorado within the drainage basin of said river shall be diverted only through the headgates of ditches serving, and shall only be used to irrigate, those lands within the Laramie River Basin in Colorado which are marked and designed by cross-hatching on Exhibit "A" attached hereto and hereby made a part hereof, by the present owners of said lands and the water rights serving said lands or by their successors in ownership, and none of said waters shall be used for the irrigation of any lands not included within the boundaries of the lands so indicated on Exhibit "A".

" III. Except as modified or restricted hereby, the relative rights to the use of Colorado's share of the Laramie River shall continue to be governed by the rules of appropriation and use as determined by the laws of Colorado, and shall be administered by its water officials.

" IV. This decree shall not prejudice or affect the right of the State of Colorado or the State of Wyoming, or of anyone recognized by either state as duly entitled thereto, to continue to exercise the right to divert and use water from Sand Creek, sometimes spoken of as a tributary of the Laramie River, in virtue of an existing and lawful appropriation of the waters of such creek.

" V. The Clerk of this Court shall transmit to the chief magistrates of the States of Wyoming and Colorado copies of this decree duly authenticated under the seal of this Court."

The motion of Ward Goodrich et al. for leave to intervene is denied.

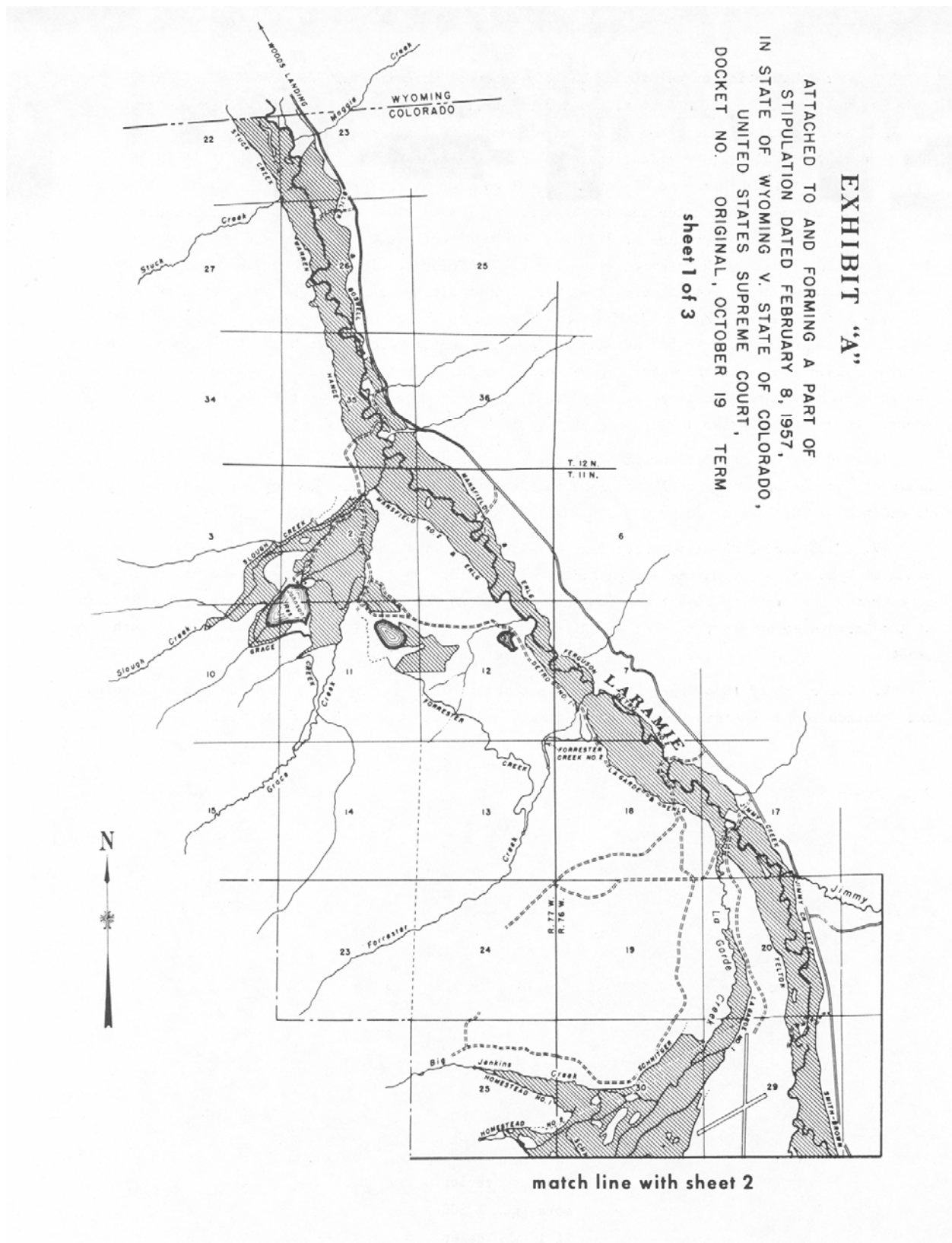
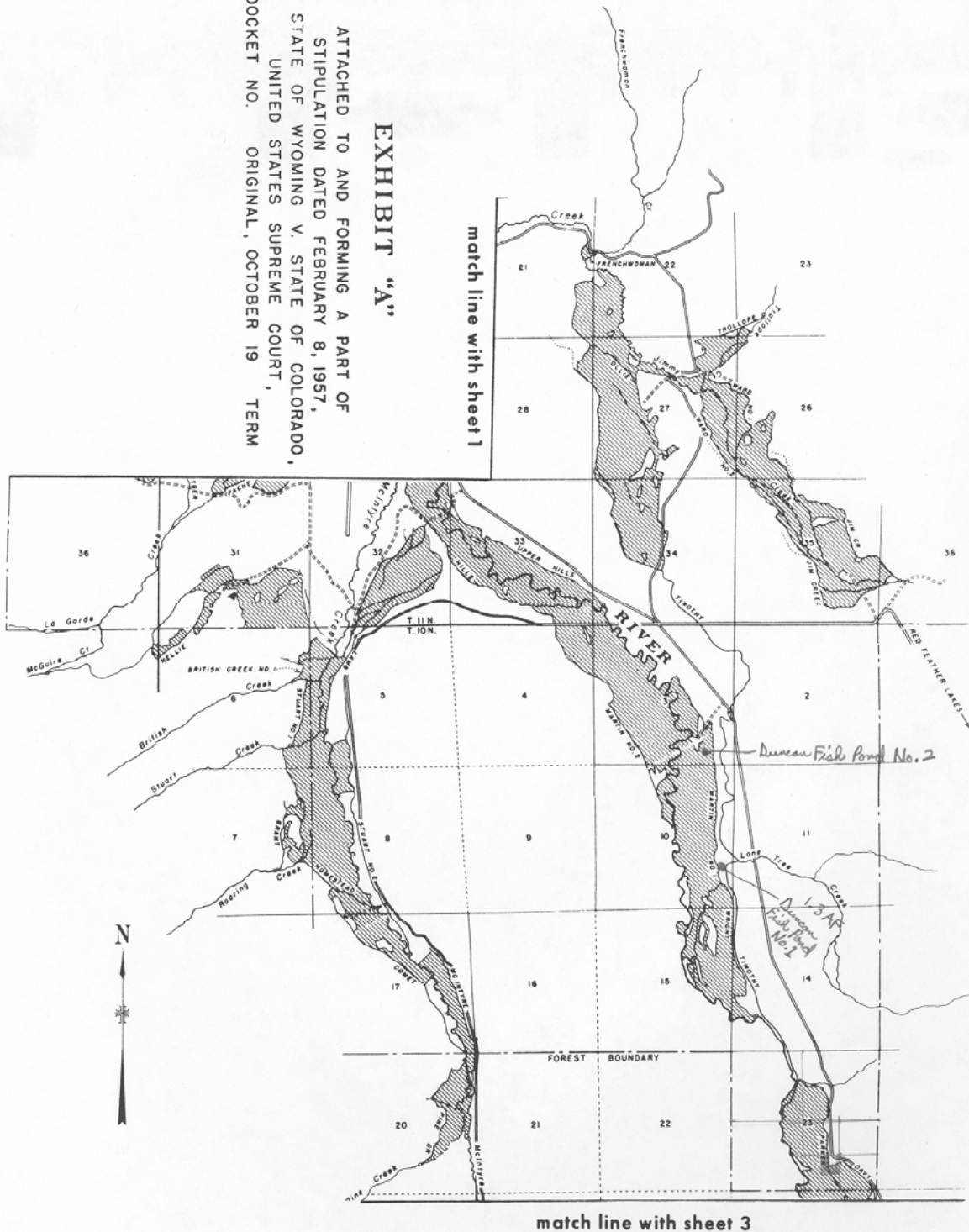


Figure 10 - Exhibit "A" to February 8, 1957 Laramie River Stipulation

EXHIBIT "A"

ATTACHED TO AND FORMING A PART OF
 STIPULATION DATED FEBRUARY 8, 1957,
 IN STATE OF WYOMING V. STATE OF COLORADO,
 UNITED STATES SUPREME COURT,
 DOCKET NO. ORIGINAL, OCTOBER 19 TERM



North Platte River Basin

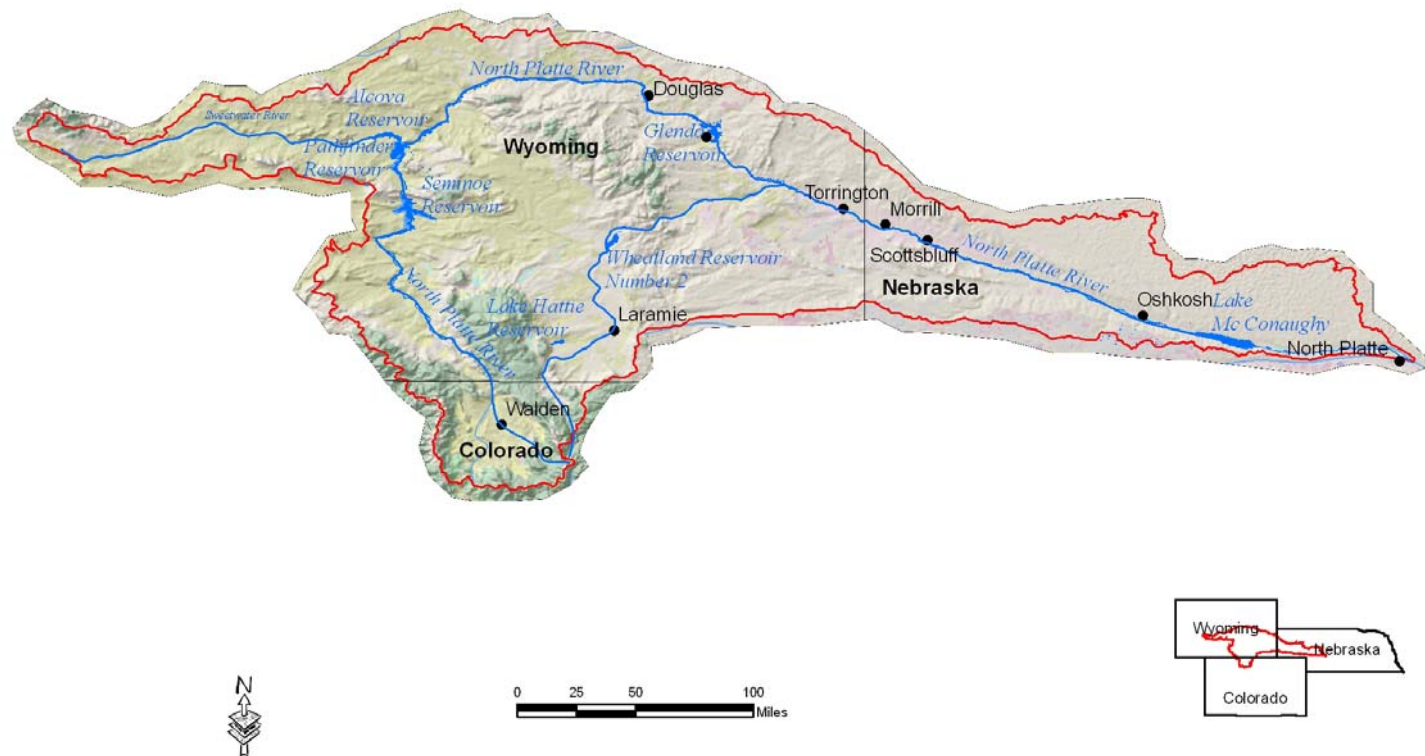


Figure 11- North Platte River Basin

NEBRASKA v. WYOMING

COURT DECREES

Decree: 325 U.S. 665, 66 S. Ct. 1, 89 L. Ed. 1857 (1945);

Stipulation: January 14, 1953

Order Modifying and Supplementing Decree of October 8, 1945: 345 U.S. 981, 73 S. Ct. 1041, 97 L. Ed. 1394 (1953);

Final Settlement Stipulation: Dated March 13, 2001

Order Modifying Decree: 534 U.S. 40, 122 S. Ct. 420, 151 L.Ed.2d 356 (2001)

NOTE: Appendices and Exhibits are available online at <http://seo.state.wy.us>

OCTOBER TERM, 1945

Decree

SUPREME COURT OF THE UNITED STATES

No. 6, Orig.

THE STATE OF NEBRASKA, Complainant,
vs.
THE STATE OF WYOMING, Defendant,
and
THE STATE OF COLORADO, Impleaded Defendant,
THE UNITED STATES OF AMERICA, Intervenor

DECREE

[October 8, 1945]

This cause having been heretofore submitted on the report of the Special Master and the exceptions of the parties thereto and the Court being now fully advised in the premises:

IT IS ORDERED, ADJUDGED AND DECREED that:

I. The State of Colorado, its officers, attorneys, agents and employees, be and they are hereby severally enjoined

(a) From diverting or permitting the diversion of water from the North Platte River and its tributaries for the irrigation of more than a total of 135,000 acres of land in Jackson County, Colorado, during any one irrigation season;

(b) From storing or permitting the storage of more than a total amount of 17,000 acre feet of water for irrigation purposes from the North Platte River and its tributaries in Jackson County, Colorado, between October 1 of any year and September 30 of the following year;

(c) From exporting out of the basin of the North Platte River and its tributaries in Jackson County, Colorado, to any other stream basin or basins more than 60,000 acre feet of water in any period of ten consecutive years reckoned in continuing progressive series beginning with October 1, 1945.

II. Exclusive of the Kendrick Project and Seminole Reservoir the State of Wyoming, its officers, attorneys, agents and employees, be and they are hereby severally enjoined

(a) From diverting or permitting the diversion of water from the North Platte River above the Guernsey Reservoir and from the tributaries entering the North Platte River above the Pathfinder Dam for the irrigation of more than a total of 168,000 acres of land in Wyoming during any one irrigation season.

(b) From storing or permitting the storage of more than a total amount of 18,000 acre feet of water for irrigation purposes from the North Platte River and its tributaries above the Pathfinder Reservoir between October 1 of any year and September 30 of the following year.

III. The State of Wyoming, its officers, attorneys, agents and employees, be and they are hereby severally enjoined from storing or permitting the storage of water in Pathfinder, Guernsey, Seminoe and Alcova Reservoirs otherwise than in accordance with the relative storage rights, as among themselves, of such reservoirs, which are hereby defined and fixed as follows:

First, Pathfinder Reservoir;

Second, Guernsey Reservoir;

Third, Seminoe Reservoir; and

Fourth, Alcova Reservoir;

Provided, however, that water may be impounded in or released from Seminoe Reservoir, contrary to the foregoing rule of priority operation for use in the generation of electric power when and only when such storage or release will not materially interfere with the administration of water for irrigation purposes according to the priority decreed for the French Canal and the State Line Canals.

IV. The State of Wyoming, its officers, attorneys, agents and employees be and they are hereby severally enjoined from storing or permitting the storage of water in Pathfinder, Guernsey, Seminoe or Alcova Reservoirs, and from the diversion of natural flow water through the Casper Canal for the Kendrick Project between and including May 1 and September 30 of each year otherwise than in accordance with the rule of priority in relation to the appropriations of the Nebraska lands supplied by the French Canal and by the State Line Canals, which said Nebraska appropriations are hereby adjudged to be senior to said four reservoirs and said Casper Canal, and which said Nebraska appropriations are hereby identified and defined, and their diversion limitations in second feet and seasonal limitations in acre feet fixed as follows:

<u>LANDS</u>	<u>CANAL</u>	<u>LIMITATION IN SEC.-FT.</u>	<u>SEASONAL LIMITATION IN ACRE-FT</u>
Tract of 1025 acres	French	15	2,227
Mitchell Irrig. District	Mitchell	195	35,000
Gering Irrig. District	Gering	193	36,000
Farmers Irrig. District	Tri-State	748	183,050
Ramshorn Irrig. District	Ramshorn	14	3,000

V. The natural flow in the Guernsey Dam to Tri-State Dam section between and including May 1 and September 30 of each year, including the contribution of Spring Creek, be and the same hereby is apportioned between Wyoming and Nebraska on the basis of twenty-five per cent to Wyoming and seventy-five per cent to Nebraska, with the right granted Nebraska to designate from time to time the

portion of its share which shall be delivered into the Interstate, Fort Laramie, French and Mitchell Canals for use on the Nebraska lands served by these canals. The State of Nebraska, its officers, attorneys, agents and employees, and the State of Wyoming, its officers, attorneys, agents and employees, are hereby enjoined and restrained from diversion or use contrary to this apportionment, provided that in the apportionment of water in this section the flow for each day, until ascertainable, shall be assumed to be the same as that of the preceding day, as shown by the measurements and computations for that day, and provided further, that unless and until Nebraska, Wyoming and the United States agree upon a modification thereof, or upon another formula, reservoir evaporation and transportation losses in the segregation of natural flow and storage shall be computed in accordance with the following formula taken from United States' Exhibit 204A:

RESERVOIR EVAPORATION LOSSES.

Seminole, Pathfinder and Alcova Reservoirs.

Evaporation will be computed daily based upon evaporation from Weather Bureau Standard 4 foot diameter Class 'A' pan located at Pathfinder Reservoir. Daily evaporation will be multiplied by area of water surface of reservoir in acres and by co-efficient of 70% to reduce pan record to open water surface.

Guernsey Reservoir.

Compute same as above except use pan evaporation at Whalen Dam.

RIVER CARRIAGE LOSSES.

River carriage losses will be computed upon basis of area of river water surface as determined by aerial surveys made in 1939 and previous years and upon average monthly evaporation at Pathfinder Reservoir for the period 1921 to 1939, inclusive, using a co-efficient of 70% to reduce pan records to open water surface.

Daily evaporation losses in second-feet for various sections of the river are shown in the following table:

TABLE

		<u>Daily Loss----Second Feet</u>				
<u>River Section</u>	<u>Area Acres</u>	<u>May</u>	<u>June</u>	<u>July</u>	<u>Aug.</u>	<u>Sept.</u>
Alcova to Wendover	8360	53	76	87	76	56
		<u>Daily Loss----Second Feet</u>				
<u>River Section</u>	<u>Area Acres</u>	<u>May</u>	<u>June</u>	<u>July</u>	<u>Aug.</u>	<u>Sept.</u>
Guernsey Res. to Whalen	560	4	5	6	5	4
Whalen to State Line	2430	16	22	25	22	16

Above table is based upon mean evaporation at Pathfinder as follows: May .561 ft.; June .767 ft.; July .910 ft.; Aug. 799 ft.; Sept. .568 ft. Co-efficient of 70% to reduce pan record to open water surface.

Above table does not contain computed loss for section of river from Pathfinder dam to head of Alcova reservoir (area 170 acres) because this area is less than submerged area of original river bed in Alcova reservoir and is, therefore, considered as off-set.

Likewise the area between Seminoe Dam and Head of Pathfinder Reservoir is less than the area of original riverbed through Pathfinder Reservoir--considered as offset. Evaporation losses will be divided between natural flow and storage water flowing in any section of river channel upon a proportional basis. This proportion will ordinarily be determined at the upper end of the section except under conditions of intervening accruals or diversions that materially change the ratio of storage to natural flow at the lower end of the section. In such event, the average proportion for the section will be determined by using the mean ratio for the two ends of the section.

In the determination of transportation losses for the various sections of the stream, such time intervals for the passage of water from point to point shall be used as may be agreed upon by Nebraska, Wyoming and the United States, or in the absence of such agreement, as may be decided upon from day to day by the manager of the government reservoirs, with such adjustments to be made by said manager from time to time as may be necessary to make as accurate a segregation as is possible.

VI. This decree is intended to and does deal with and apportion only the natural flow of the North Platte River. Storage water shall not be affected by this decree and the owners of rights therein shall be permitted to distribute the same in accordance with any lawful contracts, which they may have entered into or may in the future enter into, without interference because of this decree.

VII. Such additional gauging stations and measuring devices at or near the Wyoming-Nebraska state line, if any, as may be necessary for making any apportionment herein decreed, shall be constructed and maintained at the joint and equal expense of Wyoming and Nebraska to the extent that the costs thereof are not paid by others.

VIII. The State of Wyoming, its officers, attorneys, agents and employees be and they are hereby severally enjoined from diverting or permitting the diversion of water from the North Platte River or its tributaries at or above Alcova Reservoir in lieu of or in exchange for return flow water from the Kendrick Project reaching the North Platte River below Alcova Reservoir.

IX. The State of Wyoming and the State of Colorado be and they hereby are each required to prepare and maintain complete and accurate records of the total area of land irrigated and the storage and exportation of the water of the North Platte River and its tributaries within those portions of their

respective jurisdictions covered by the provisions of paragraphs I and II hereof, and such records shall be available for inspection at all reasonable times; provided, however, that such records shall not be required in reference to the water uses permitted by paragraph X hereof.

X. This decree shall not affect or restrict the use or diversion of water from the North Platte River and its tributaries in Colorado or Wyoming for ordinary and usual domestic, municipal and stock watering purposes and consumption.

XI. For the purposes of this decree:

- (a) "Season" or "seasonal" refers to the irrigation season, May 1 to September 30, inclusive;
- (b) The term "storage water" as applied to releases from reservoirs owned and operated by the United States is defined as any water which is released from reservoirs for use on lands under canals having storage contracts in addition to the water which is discharged through those reservoirs to meet natural flow uses permitted by this decree;
- (c) "Natural flow water" shall be taken as referring to all water in the stream except storage water;
- (d) Return flows of Kendrick Project shall be deemed to be "natural flow water" when they have reached the North Platte River, and subject to the same diversion and use as any other natural flow in the stream.

XII. This decree shall not affect:

- (a) The relative rights of water users within any one of the States who are parties to this suit except as may be otherwise specifically provided herein;
- (b) Such claims as the United States has to storage water under Wyoming law; nor will the decree in any way interfere with the ownership and operation by the United States of the various federal storage and power plants, works and facilities.
- (c) The use or disposition of any additional supply or supplies of water which in the future may be imported into the basin of the North Platte River from the water shed of an entirely separate stream, and which presently do not enter said basin, or the return flow from any such supply or supplies.
- (d) The apportionment heretofore made by this Court between the States of Wyoming and Colorado of the waters of the Laramie River, a tributary of the North Platte River;
- (e) The apportionment made by the compact between the States of Nebraska and Colorado, apportioning the water of the South Platte River.

XIII. Any of the parties may apply at the foot of this decree for its amendment or for further relief. The Court retains jurisdiction of this suit for the purpose of any order, direction, or modification of the decree, or any supplementary decree, that may at any time be deemed proper in relation to the subject matter in controversy. Matters with reference to which further relief may hereafter be sought shall include, but shall not be limited to, the following:

(a) The question of the applicability and effect of the Act of August 9, 1937, 50 Stat. 564, 595-596, upon the rights of Colorado and its water users when and if water hereafter is available for storage and use in connection with the Kendrick Project in Wyoming.

(b) The question of the effect upon the rights of upstream areas of the construction or threatened construction in downstream areas of any projects not now existing or recognized in this decree;

(c) The question of the effect of the construction or threatened construction of storage capacity not now existing on tributaries entering the North Platte River between Pathfinder Reservoir and Guernsey Reservoir;

(d) The question of the right to divert at or above the head gate of the Casper Canal any water in lieu of, or in exchange for, any water developed by artificial drainage to the river of sump areas on the Kendrick Project;

(e) Any question relating to the joint operation of Pathfinder, Guernsey, Seminoe and Alcova Reservoirs whenever changed conditions make such joint operation possible.

(f) Any change in conditions making modification of the decree or the granting of further relief necessary or appropriate.

XIV. The costs in this cause shall be apportioned and paid as follows: the State of Colorado one-fifth; the State of Wyoming two-fifths; and the State of Nebraska two-fifths. Payment of the fees and expenses of the Special Master has been provided by a previous order of this Court.

XV. The clerk of this Court shall transmit to the chief magistrates of the States of Colorado, Wyoming, and Nebraska, copies of this decree duly authenticated under the seal of this Court.

North Platte River, 1952

In the
SUPREME COURT OF THE UNITED STATES

No.5, Original

THE STATE OF NEBRASKA, Complainant,
vs.
THE STATE OF WYOMING, Defendant,
and
THE STATE OF COLORADO, Impleaded Defendant,
THE UNITED STATES OF AMERICA, Intervenor

STIPULATION

Whereas, the State of Colorado on or about September 6, 1951, notified the States of Wyoming and Nebraska, and the United States that the State of Colorado would seek, either by negotiations among the parties or by application to the United States Supreme Court to modify or remove the restrictions imposed upon the State of Colorado in the Decree entered in this cause by the United States Supreme Court on October 8, 1945.

Whereas, the State of Colorado bases its claim for modification of the Decree upon the provisions of Article XIII of the Decree and the facts that (1) land is now and for a number of years has been irrigated within the Kendrick Project in Wyoming, (2) substantial quantities of water have become available for storage and use in connection with the Kendrick Project, (3) the United States Bureau of Reclamation has prepared plans for, and has proposed the construction of, a new reservoir on the North Platte River near the town of Glendo, Wyoming, and (4) since 1940 the water supply of the North Platte River basin has been in excess of that which occurred during the period 1931-1940.

Whereas, the State of Colorado represents that the irrigated acreage in Jackson County, Colorado, in the year 1952 is 134,467 acres and that the Jackson County ranchers need to put additional land under irrigation in order to maintain their existing economy, but cannot safely engage in any project for the irrigation of additional land for fear of violation of the 1945 Decree.

Whereas, the parties have carried on extensive negotiations concerning the claim by Colorado for modification of the Decree in the course of which negotiation Colorado has repeatedly asserted that it must press for modification of the Decree because if it does not do so, it fears that it will be met with the objection that it has sat back and done nothing while the uses of water under the Kendrick project are

established by the storage of water and the application of such stored water to the irrigation of Kendrick Project lands.

Whereas, the State of Nebraska takes the position that all matters growing out of the provisions of the Act of August 9, 1937 (50 Stat. 564-595) are matters which cannot affect the rights of the State of Nebraska as previously determined by the court, and that by the approval of this stipulation it is understood that the State of Nebraska does not recede from this position and does not concede that any developments on the Kendrick Project can ever affect the rights or position of the State of Nebraska.

Whereas, the State of Nebraska contends that there has been no substantial amount of increase in the flow of water into Nebraska through the North Platte River since the date of the entry of the Decree herein; and that the State of Colorado has not since said date increased its acreage of land under irrigation from the North Platte River to the limit permitted by said Decree.

Whereas, the State of Wyoming takes the position that the Act of August 9, 1937 (50 Stat. 564-595) confers no right on the State of Colorado to increased water uses within the natural basin of the North Platte River in Colorado superior to any right to store or to divert water for the Kendrick Project in Wyoming; and the State of Wyoming, by the approval of this stipulation, does not concede the validity of any claim by Colorado based upon the said Act of August 9, 1937, or waive any right to oppose any claim by Colorado based thereon; and further, the State of Wyoming, by the approval of this stipulation, does not recognize, and it is Wyoming's position, that Colorado has no equitable right, as against Wyoming, to increased water uses in Colorado.

Whereas, the parties hereto desire to recognize the present conditions of water supply in the North Platte basin, but do not desire in any way to retreat from the legal positions taken by them based upon conditions considered by the Court in previous proceedings in this case.

Whereas, the construction of the Glendo Reservoir would provide storage for regulating flows in the North Platte River at Glendo to supply water for the irrigation of lands in the basin of the North Platte River in western Nebraska, and to supply water for the irrigation of lands in the basin of the North Platte River in southeastern Wyoming below Guernsey Reservoir, and would provide additional regulation of natural flow and storage water below Alcova Reservoir, and would improve efficiency in irrigation operations and would permit additional power production.

Whereas, it is expected that after recognizing all existing rights and other rights provided for in this stipulation in and to the use of North Platte River water, the natural flow waters impounded in Glendo Reservoir will be used to supply annually 25,000 acre-feet of water for the irrigation of lands in the basin of the North Platte River in western Nebraska, and to supply annually 15,000 acre-feet of water for the irrigation of lands in the basin of the North Platte River in southeastern Wyoming below Guernsey Reservoir; provided, however, that it is not contemplated that the regimen of the natural flow of the North Platte River above Pathfinder Reservoir will be changed by the operation of Glendo Reservoir, or that the

regimen of the natural flow of the North Platte River below Pathfinder Reservoir will be changed by such operations, except to the extent necessary to provide for such additional supply, and to permit operations in accordance with the provisions of Article XVII hereinafter set forth.

Now THEREFORE, IT IS HEREBY STIPULATED AND AGREED that after this stipulation becomes effective, the parties will file a joint motion with the United States Supreme Court, to which this stipulation shall be attached, requesting the Court to approve this stipulation and to modify and supplement the existing Decree of October 8, 1945, in the following particulars:

1. In Article I (a) of the Decree the figure "145,000" shall be substituted for the figure "135,000."

2. The following new Articles shall be added at the foot of the Decree:

XVI

Whatever claims or defenses the parties or any of them may have in respect to the application, interpretation or construction of the Act of August 9, 1937 (50 Stat. 564-595) shall be determined without prejudice to any party arising because of any development of the Kendrick Project occurring subsequent to October 1, 1951.

XVII

In the event that Glendo Reservoir is constructed, the following provisions shall be effective:

- (a) The construction and operation of the Glendo Project shall not impose any demand on areas at or above Seminoe Reservoir which will prejudice any rights that the States of Colorado or Wyoming might have to secure a modification of the Decree permitting an expansion of water uses in the natural basin of the North Platte River in Colorado or above Seminoe Reservoir in Wyoming.

- (b) The construction and operation of Glendo Reservoir shall not affect the regimen of the natural flow of the North Platte River above Pathfinder Dam. The regimen of the natural flow of the North Platte River below Pathfinder Dam shall not be changed, except that not more than 40,000 acre-feet of the natural flow of the North Platte River and its tributaries which cannot be stored in upstream reservoirs under the provisions of the Decree may be stored in the Glendo Reservoir during any water year, in addition to evaporation losses on such storage, and further the amount of such storage water that may be held in storage at anyone time, including carryover storage, shall never exceed 100,000 acre-feet. Such storage water shall be disposed of in accordance with contracts to be hereafter executed, and it may be used for the irrigation of lands in the basin of the North Platte River in western Nebraska to the extent of 25,000 acre-feet annually, and for the irrigation of lands in the basin of the North Platte River in southeastern Wyoming below

Guernsey Reservoir to the extent of 15,000 acre-feet annually, provided that it shall not be used as a substitute for storage water contracted for under any existing permanent arrangements. The above limitation on storage of natural flow does not apply to flood water which may be temporarily stored in any capacity allocated for flood control in the Glendo Reservoir, nor to water originally stored in Pathfinder Reservoir which may be temporarily re-stored in Glendo Reservoir after its release from Pathfinder and before its delivery pursuant to contract; nor to water which may be impounded behind Glendo Dam, as provided in the Bureau of Reclamation Definite Plan Report for the Glendo Unit dated December 1952, for the purpose of creating a head for the development of water power.

(c) Article III of the Decree shall be amended by striking the word "and" immediately preceding, and by inserting immediately following the words, "Fourth. Alcova Reservoir." the words "Fifth, Glendo Reservoir;" and the storage rights of Glendo Reservoir shall be subject to the provisions of said Article III.

(d) Article IV hereof, and the injunction granted as to storage of water in Pathfinder, Guernsey, Seminoe or Alcova Reservoirs shall be extended to include Glendo on the same basis and Glendo shall be added to the number of the four reservoirs therein listed as junior to the Nebraska appropriations therein mentioned.

(e) Article V of the Decree, relating to reservoir evaporation losses and river carriage losses, shall be amended as follows:

1. Amend the heading "Guernsey Reservoir" to read "Glendo and Guernsey Reservoirs."

2. Amend the table under the heading "River Carriage Losses" to read as follows:

TABLE

<u>River Section</u>	<u>Area</u>	<u>Daily Loss---Second Feet</u>				
	<u>Acres</u>	<u>May</u>	<u>June</u>	<u>July</u>	<u>Aug.</u>	<u>Sept.</u>
Alcova to Glendo Reservoir	6,740	43	61	70	61	45
Guernsey Reservoir to Whalen	560	4	5	6	5	4
Whalen to State Line	2,430	16	22	25	22	16

3. After the first paragraph following the table insert a new paragraph to read as follows:

"Above table does not contain computed loss for section of river from Glendo Dam to head of Guernsey Reservoir (area 680 acres) because this area is less than submerged area

of original river bed (940 acres) in Glendo Reservoir and is, therefore, considered as offset.”

XVIII

Any of the parties may apply at the foot of this Decree for its amendment or for further relief, except that for a period of five years from and after the date of entry of the Amended Decree the State of Colorado shall not institute any proceedings for the amendment of the Decree or for further relief. In the event that within said period of five years any other party applies for an amendment of the Decree or for further relief, then the State of Colorado may assert any and all rights, claims or defenses available to it under the Decree as amended.

It is FURTHER STIPULATED AND AGREED that this stipulation will become effective when:

1. By appropriate legislative and official action the State of Wyoming has approved a permit for the construction and operation of Glendo Dam and Reservoir in substantial conformity with the Bureau of Reclamation Definite Plan Report for the Glendo Unit, dated December 1952; and
2. The appropriate authorities of the State of Nebraska, Wyoming and Colorado, and the United States have approved this stipulation; and
3. The States of Nebraska, Wyoming and Colorado have submitted to the Secretary of the Interior comments approving the Bureau of Reclamation Definite Plan Report for the Glendo Unit, dated December 1952; provided that this stipulation shall be without effect unless it is executed by the parties, and the three foregoing conditions met, on or before June 1, 1953.

Dated January 14, 1953.

STATE OF NEBRASKA

By CLARENCE S. BECK, Attorney General

BERT L. OVERCASH, Assistant Attorney General

STATE OF WYOMING

By H. S. HARNSBERGER, Attorney General

W. J. WEHRLI, Special Counsel

L. C. BISHOP, State Engineer

STATE OF COLORADO

By DUKE W. DUNBAR, Attorney General

H. LAWRENCE HINKLEY, Deputy Attorney General

GEORGE J. BAILEY, Vice Chairman, Colorado Water Conservation Board
JEAN S. BREITENSTEIN, Attorney for Colorado Water Conservation Board

UNITED STATES OF AMERICA

By WALTER H. WILLIAMS, Attorney, Department of Justice
C. V. MARMADUKE, JR., Special Assistant to the Attorney

North Platte River, 1952

In the
SUPREME COURT OF THE UNITED STATES

No.5, Original

THE STATE OF NEBRASKA, Complainant,
vs.
THE STATE OF WYOMING, Defendant,
and
THE STATE OF COLORADO, Impleaded Defendant,
THE UNITED STATES OF AMERICA, Intervenor

[June 15, 1953]

ORDER MODIFYING AND SUPPLEMENTING
DECREE OF OCTOBER 8, 1945

The joint motion for approval of a stipulation and to modify and supplement the decree is granted and an order is entered in compliance with the stipulation.

The parties to this cause having filed a stipulation, dated January 14, 1953, and a joint motion for approval of the stipulation and to modify and supplement the decree entered on October 8, 1945 (325 U.S. 665 , 66 S. Ct. 1) and the Court being fully advised:

The stipulation dated January 14, 1953, is approved; and

It is Ordered that the decree of October 8, 1945, is hereby modified and supplemented as follows:

1. In paragraph I(a) of the decree the figure "145,000" is substituted for the figure "135,000."
2. Paragraph XIII is amended by striking the first sentence and substituting for it the following:

Any of the parties may apply at the foot of this decree for its amendment or for further relief, except that for a period of five years from and after June 15, 1953 the State of Colorado shall not institute any proceedings for the amendment of the decree or for further relief. In the event that within said period of five years any other party applies for an amendment of the decree or for further relief, then the State of Colorado may assert any and all rights, claims or defenses available to it under the decree as amended.

3. Two new paragraphs, as follows, are added to the decree:

XVI. Whatever claims or defenses the parties or any of them may have in respect to the application, interpretation or construction of the Act of August 9, 1937 (50 Stat. 564-595) shall be determined without prejudice to any party arising because of any development of the Kendrick Project occurring subsequent to October 1, 1951.

XVII. When the Glendo Dam and Reservoir are constructed, the following provisions shall be effective:

(a) The construction and operation of the Glendo Project shall not impose any demand on areas at or above Seminoe Reservoir which will prejudice any rights that the States of Colorado or Wyoming might have to secure a modification of the decree permitting an expansion of water uses in the natural basin of the North Platte River in Colorado or above Seminoe Reservoir in Wyoming.

(b) The construction and operation of Glendo Reservoir shall not affect the regimen of the natural flow of the North Platte River above Pathfinder Dam. The regimen of the natural flow of the North Platte River below Pathfinder Dam shall not be changed, except that not more than 40, 000 acre feet of the natural flow of the North Platte River and its tributaries which cannot be stored in upstream reservoirs under the provisions of this decree may be stored in the Glendo Reservoir during any water year, in addition to evaporation losses on such storage, and, further, the amount of such storage water that may be held in storage at any one time, including carryover storage, shall never exceed 100,000 acre feet. Such storage water shall be disposed of in accordance with contracts to be hereafter executed, and it may be used for the irrigation of lands in the basin of the North Platte River in western Nebraska to the extent of 25,000 acre feet annually, and for the irrigation of lands in the basin of the North Platte River in southeastern Wyoming below Guernsey Reservoir to the extent of 15,000 acre feet annually, provided that it shall not be used as a substitute for storage water contracted for under any existing permanent arrangements. The above limitation on storage of natural flow does not apply to flood water which may be temporarily stored in any capacity allocated for flood control in the Glendo Reservoir, nor to water originally stored in Pathfinder Reservoir which may be temporarily re-stored in Glendo Reservoir after its release from Pathfinder and before its delivery pursuant to contract; nor to water which may be impounded behind Glendo Dam, as provided in the Bureau of Reclamation Definite Plan Report for the Glendo Unit dated December 1952, for the purpose of creating a head for the development of water power.

(c) Paragraph III of the decree is amended to read as follows:

III. The State of Wyoming, its officers, attorneys, agents and employees, be and they are hereby severally enjoined from storing or permitting the storage of water in Pathfinder, Guernsey, Seminoe, Alcova and Glendo Reservoirs otherwise than in accordance with the relative storage rights, as among themselves, of such reservoirs, which are hereby defined and fixed as follows:

First, Pathfinder Reservoir;

Second, Guernsey Reservoir;

Third, Seminoe Reservoir;

Fourth, Alcova Reservoir; and

Fifth, Glendo Reservoir;

Provided, however, that water may be impounded in or released from Seminoe Reservoir, contrary to the foregoing rule of priority operation for use in the generation of electric power when and only when such storage or release will not materially interfere with the administration of water for irrigation purposes according to the priority decreed for the French Canal and the State Line Canals.

Storage rights of Glendo Reservoir shall be subject to the provisions of this paragraph III.

(d) Paragraph IV of the decree is amended to read as follows:

IV. The State of Wyoming, its officers, attorneys, agents and employees be and they are hereby severally enjoined from storing or permitting the storage of water in Pathfinder, Guernsey, Seminoe, Alcova and Glendo Reservoirs, and from the diversion of natural flow water through the Casper Canal for the Kendrick Project between and including May 1 and September 30 of each year otherwise than in accordance with the rule of priority in relation to the appropriations of the Nebraska lands supplied by the French Canal and by the State Line Canals, which said Nebraska appropriations are hereby adjudged to be senior to said five reservoirs and said Casper Canal, and which said Nebraska appropriations are hereby identified and defined, and their diversion limitations in second feet and seasonal limitations in acre feet fixed as follows:

<u>Lands</u>	<u>Canal</u>	<u>Limitation In Sec.-Ft.</u>	<u>Seasonal Limitation In Acre-Ft.</u>
Tract of 1025 acres	French	15	2,227
Mitchell Irrig. District	Mitchell	195	35,000
Gering Irrig. District	Gering	193	36,000
Farmers Irrig. District	Tri-State	748	183,050
Ramshorn Irrig. District	Ramshorn	14	3,000

(e) Paragraph V of the decree is amended to read as follows:

V. The natural flow in the Guernsey Dam to Tri-State Dam section between and including May 1 and September 30 of each year, including the contribution of Spring Creek, be and the same hereby is apportioned between Wyoming and Nebraska on the basis of twenty-five per cent to Wyoming and seventy-five per cent to Nebraska, with the right granted Nebraska to designate from time to time the portion of its share which shall be delivered into the Interstate, Fort Laramie, French and Mitchell Canals for use on the Nebraska lands served by these canals. The State of Nebraska, its officers, attorneys, agents and employees, and the State of Wyoming, its officers, attorneys, agents and employees, are hereby enjoined and restrained from diversion or use contrary to this apportionment, provided that in the apportionment of water in this section the flow for each day, until ascertainable, shall be assumed to be the same as that of the preceding day, as shown by the measurements and computations for that day, and provided further, that unless and until Nebraska, Wyoming and the United States agree upon a modification thereof, or upon another formula, reservoir evaporation and transportation losses in the segregation of natural flow and storage shall be computed in accordance with the following formula taken from United States' Exhibit 204A and the stipulation of the parties dated January 14, 1953, and filed on January 30, 1953:

Reservoir Evaporation Losses.

Seminole, Pathfinder and Alcova Reservoirs.

Evaporation will be computed daily based upon evaporation from Weather Bureau Standard 4 foot diameter Class 'A' pan located at Pathfinder Reservoir. Daily evaporation will be multiplied by area of water surface of reservoir in acres and by coefficient of 70% to reduce pan record to open water surface.

Glendo and Guernsey Reservoirs.

Compute same as above except use pan evaporation at Whalen Dam.

River Carriage Losses.

River carriage losses will be computed upon basis of area of river water surface as determined by aerial surveys made in 1939 and previous years and upon average monthly evaporation at Pathfinder reservoir for the period 1921 to 1939, inclusive, using a co-efficient of 70% to reduce pan records to open water surface.

Daily evaporation losses in second-feet for various sections of the river are shown in the following table:

TABLE

<u>River Section</u>	<u>Area Acres</u>	<u>Daily Loss---Second Feet</u>				
		<u>May</u>	<u>June</u>	<u>July</u>	<u>Aug.</u>	<u>Sept.</u>
Alcova to Glendo Reservoir	6,740	43	61	70	61	45
Guernsey Reservoir to Whalen	560	4	5	6	5	4
Whalen to State Line	2,430	16	22	25	22	16

Above table is based upon mean evaporation at Pathfinder as follows: May .561 ft.; June .767 ft.; July .910 ft.; Aug. .799 ft.; Sept. .568 ft. Co-efficient of 70% to reduce pan record to open water surface.

Above table does not contain computed loss for section of river from Glendo Dam to head of Guernsey Reservoir (area 680 acres) because this area is less than submerged area of original river bed (940 acres) in Glendo Reservoir and is, therefore, considered as off-set.

Above table does not contain computed loss for section of river from Pathfinder Dam to head of Alcova Reservoir (area 170 acres) because this area is less than submerged area of original river bed in Alcova Reservoir and is, therefore, considered as off-set.

Likewise the area between Seminoe Dam and head of Pathfinder Reservoir is less than area of original river bed through Pathfinder Reservoir-considered as off-set. Evaporation losses will be divided between natural flow and storage water flowing in any section of river channel upon a proportional basis. This proportion will ordinarily be determined at the upper end of the section except under conditions of intervening accruals or diversions that materially change the ratio of storage to natural flow at the lower end of the section. In such event the average proportion for the section will be determined by using the mean ratio for the two ends of the section.

In the determination of transportation losses for the various sections of the stream, such time intervals for the passage of water from point to point shall be used as may be agreed upon by Nebraska, Wyoming and the United States, or in the absence of such agreement, as may be decided upon from day to day by the manager of the government reservoirs, with such adjustments to be made by said manager from time to time as may be necessary to make as accurate a segregation as is possible.

OCTOBER TERM, 2000
Final Settlement Stipulation
SUPREME COURT OF THE UNITED STATES

No. 108, Orig.

FINAL SETTLEMENT STIPULATION

SUPREME COURT OF THE UNITED STATES
NO.108, ORIG.
STATE OF NEBRASKA, PLAINTIFF v. STATES
OF WYOMING AND COLORADO
BEFORE THE HONORABLE OWEN OLPIN
SPECIAL MASTER

NOTE: Appendices and Exhibits are available online at <http://seo.state.wy.us>

The States of Nebraska, Wyoming, and Colorado, the United States and Basin Electric Power Cooperative hereby enter this Final Settlement Stipulation:

I. General

A. Nebraska, Wyoming, Colorado, and the United States agree to modification and supplementation of the North Platte Decree, 325 U.S. 665 (1945), as modified 345 U.S. 981 (1953). The Modified Decree is attached as Appendix A (Modified Decree). A redline/strikeout version of the North Platte Decree showing the modifications is attached as Appendix B.

B. The parties to this Final Settlement Stipulation also agree to undertake certain other obligations set forth in this stipulation. By consenting to this stipulation, Colorado is not admitting that any measures to be undertaken by any other party would be reasonable or appropriate within Colorado.

C. Upon the Court's approval and adoption of this stipulation and entry of the Modified Decree, all claims of any party to this case against another party arising prior to the date of the Court's approval of this stipulation and entry of the Modified Decree shall be dismissed with prejudice.

D. Claims for which leave to file was or could have been sought in this case with respect to activities or conditions occurring before the effective date of this stipulation are hereby waived and forever barred, except as a possible affirmative defense in a future proceeding. With respect to activities and conditions occurring after the date of such dismissal, the dismissal will not preclude a party from seeking enforcement of the provisions of the Modified Decree or from seeking equitable relief to modify this stipulation or the Modified Decree pursuant to Paragraph XIII of the Modified Decree. By agreeing to the dismissal with prejudice of the claims, counterclaims and cross-claims in this case, a party does not waive or prejudice any right that it otherwise would have to assert in a future action any legal theory or position that it asserted in this case with respect to activities or conditions occurring after the date of such dismissal.

E. This Final Settlement Stipulation and the Modified Decree shall not affect the apportionment between the States of Wyoming and Colorado of the waters of the Laramie River down to and including the Wheatland Project. The only existing limitation in the Modified Decree on Wyoming's use of the Laramie River is provided in paragraph II(d) of the Modified Decree.

F. The parties have previously entered into stipulations resolving specific claims in this case. The following stipulations are attached hereto and by this reference are incorporated into this Final Settlement Stipulation:

1. Amendment of the 1953 Order to Provide for Use of Glendo Storage Water (Appendix C);
2. Procedures for 1945 Decree Paragraph II(b) [now paragraph II(e) of the Modified Decree] Storage Accounting (Appendix D); and
3. Stipulation Among the State of Wyoming, The State of Nebraska, and the United States Relating to the Allocation of Water During Periods of Shortage (Appendix E).

G. The parties previously entered into a stipulation (Amendment of the 1953 Order to Provide for the Modification of Pathfinder Reservoir filed on September 10, 1997) providing for the modification of Pathfinder Dam. Pursuant to this Final Settlement Stipulation, the parties have amended the 1997 stipulation to provide for the modification of Pathfinder Dam. The amended stipulation, attached as Appendix F is hereby incorporated into this Final Settlement Stipulation and replaces the 1997 stipulation.

H. The parties previously entered into a stipulation (Amendment of the 1953 Order Paragraph V, River Carriage Losses filed on September 10, 1997) providing for revision of the river carriage losses. Pursuant to this Final Settlement Stipulation, the parties have included the river carriage losses in Exhibit 9 to the North Platte Decree Committee Charter and revised paragraph V of the Modified Decree accordingly. Therefore, the parties hereby withdraw the 1997 stipulation filed with the Special Master.

II. North Platte Decree Committee

The North Platte Decree Committee (NPDC) is hereby created by the States of Nebraska, Wyoming, and Colorado, and the United States of America effective upon the Court's approval and adoption of this Final Settlement Stipulation and entry of the Modified Decree. The North Platte Decree Committee shall operate in accordance with the North Platte Decree Committee Charter (Charter) attached as Appendix G. Attached to the Charter as Exhibits 4 through 15 are administrative procedures that are hereby approved and adopted to monitor, administer, and implement the Modified Decree and this Final Settlement Stipulation. The North Platte Decree Committee may modify the procedures, which are attached to the Charter and referenced elsewhere in this Final Settlement Stipulation. The parties agree that failure of the North Platte Decree Committee, or the parties to the North Platte Decree Committee, to act upon, resolve or agree on a matter that has been submitted to the North Platte Decree Committee shall not preclude a party from seeking leave of the Court to bring an action pursuant to Paragraph XIII of the Modified Decree. The states of Nebraska, Wyoming, and Colorado, and the United States of America may modify the Charter by unanimous agreement consistent with this Final Settlement Stipulation and the Modified Decree.

III. Allocation Year Administration

During allocation years, pursuant to the procedure attached to the North Platte Decree Committee Charter as Exhibit 5, Wyoming will implement the following water rights administration:

A. With respect to water rights administration upstream of Pathfinder Reservoir, before May 1, when the Bureau has advised the other parties that the current water year is likely to be an allocation year, as defined in Appendix E, the Bureau shall be deemed to have placed a priority call for Pathfinder Reservoir, excluding the Pathfinder Modification Project, without the need to formally request such a call. Consistent with applicable state law, the Wyoming State Engineer shall determine whether the call is valid and warrants the regulation of water rights upstream of Pathfinder Reservoir. If the Wyoming State Engineer determines that the call is not valid or that regulation of upstream water rights is not warranted, he/she shall so notify the Bureau and the North Platte Decree Committee in writing and describe the basis for that determination. However, the Wyoming State Engineer's refusal to honor such a call cannot be based upon the provisions of the Modified Decree or this Final Settlement Stipulation other than the provisions of the procedure attached to the Charter as Exhibit 5. In all other circumstances, the call will be applied by the Wyoming State Engineer to discontinue diversions under water rights junior to Pathfinder Reservoir and to limit diversions under water rights senior to Pathfinder Reservoir to one cubic foot per second per seventy acres.

B. With respect to water rights administration along the main stem of the North Platte River and the tributaries between Pathfinder Dam and Guernsey Reservoir, before May 1, when the Bureau has advised the other parties that the current water year is likely to be an allocation year, as defined in

Appendix E, the Bureau shall be deemed to have placed a priority call for the Inland Lakes (April only), Guernsey, and Glendo storage rights, without the need to formally request such a call. Consistent with applicable state law, the Wyoming State Engineer shall determine whether the call is valid and warrants the regulation of water rights upstream of the calling water right. If the Wyoming State Engineer determines that the call is not valid or that regulation of upstream water rights is not warranted, he/she shall so notify the Bureau and the North Platte Decree Committee in writing and describe the basis for that determination. However, the Wyoming State Engineer's refusal to honor such a call cannot be based upon the provisions of the Modified Decree or this Final Settlement Stipulation other than the provisions of the procedure attached to the Charter, as Exhibit 5. In all other circumstances the call will be applied by the Wyoming State Engineer to discontinue diversions under junior water rights and to limit diversions under senior water rights to one cubic foot per second per seventy acres, with the exception that if Guernsey Reservoir has filled and Glendo Reservoir has not filled, water rights with priorities senior to March 1, 1945 will be allowed to divert up to two cubic feet per second per seventy acres.

C. After May 1, in an allocation year, Wyoming will limit the cumulative irrigation diversions from the mainstem of the North Platte River between Pathfinder Dam and Guernsey Reservoir to 6,600 acre-feet per two-week period.

IV. Adjudications

A. Within five years of the final court approval of this stipulation, pursuant to Wyoming law, Wyoming will adjudicate the following:

1. All unadjudicated groundwater permits for irrigation wells hydrologically connected to the North Platte River or its tributaries above Guernsey Reservoir;

2. All unadjudicated surface water permits for irrigation purposes that divert from tributaries and drains that lie within the area bounded by Whalen Diversion Dam on the west, the Ft. Laramie Canal on the south, the Interstate Canal on the north, and the state line on the east, excluding the drainage basins of the Laramie River and Horse Creek;

3. All existing unadjudicated groundwater permits for irrigation wells within the area bounded by Whalen Diversion Dam on the West, 300 feet south of the Ft. Laramie Canal on the south, one mile north of the Interstate Canal on the north and extending downstream to the state line on the east; and

4. All unadjudicated groundwater permits for irrigation wells hydrologically connected to the Laramie River or its tributaries downstream of Wheatland Tunnel #2, exclusive of the Wheatland Irrigation District.

B. All groundwater permits for irrigation wells within the area bounded by Whalen Diversion Dam on the west, 300 feet south of the Ft. Laramie Canal on the south, one mile north of the Interstate Canal on the north and extending downstream to the state line on the east permitted after final

court approval of this stipulation shall be adjudicated under Wyoming law within ten years after permitting.

V. Administration

A. Upon any occurrence of "negative natural flow at Orin", as defined in Exhibit 7 to the Charter, the Wyoming State Engineer will administer water rights or take other action as necessary to eliminate the negative natural flow at Orin. This administration will be implemented pursuant to the procedure attached to the Charter as Exhibit 7.

B. The flow releases that are to be delivered at the mouth of the Laramie River for the months of May through September made from Grayrocks Reservoir pursuant to the Agreement of Settlement and Compromise dated December 4, 1978 shall be protected administratively by the State of Wyoming to ensure their delivery to the North Platte River. From May through September such releases will be subject to administration and accounting as natural flow. Wyoming will administer the Grayrocks Reservoir water rights and other water rights associated with the Laramie River Power Station pursuant to the Water Administration of the Lower Laramie River System Relating to Basin Electric Power Cooperative's Water Rights, attached to the Charter as Exhibit 3. Said Exhibit 3 cannot be modified without the consent of the North Platte Decree Committee and Basin Electric.

C. Consistent with paragraph XII(a) of the Modified Decree, nothing in this Final Settlement Stipulation or the procedures attached to the Charter shall prevent any water right holder from requesting a priority call on the North Platte River.

VI. Acquisition of Rights

A. Within three years of the final court approval of this stipulation, Wyoming will acquire the rights pertaining to the development of the Corn Creek Irrigation Project and cancel all water rights and water supply obligations of Basin Electric Power Cooperative under its agreement entitled "Contract" dated July 24, 1974, as amended by "Contract Amendment No.1," dated April 6, 1982, with the Corn Creek Irrigation District.

B. Within three years of the final court approval of this stipulation, Wyoming will acquire the water rights and facilities associated with the Goshen Irrigation District pump station (further described in Permit No. 4883 Enl.). Wyoming will seek a change of use and change of point of diversion under state law to the confluence of the Laramie River and the North Platte River, subject to the following conditions:

1. The use would be limited to supplementing natural flow to meet demand in the Whalen to Tri-State reach of the North Platte River;

2. The maximum seasonal volume for the new use at the new point of diversion will be 2,500 acre feet per year; and

3. The flow releases that are to be delivered at the mouth of the Laramie River for the months of May through September made from Grayrocks Reservoir pursuant to the Agreement of Settlement and Compromise dated December 4, 1978 will not be diminished by such change of use or change of point of diversion.

VII. Acreage in the Kendrick Project

The Kendrick Project was found feasible by the Secretary of the Interior on August 27, 1935, and approved by the President on August 30, 1935, under terms of section 4 of the Act of June 25, 1910 (36 Stat. 836), and subsection B of section 4 of the Act of December 5, 1924 (43 Stat. 702). Subsection B of section 4 of the Act of December 5, 1924, provided that the project would be constructed in two units of 35,000 acres and 31,000 acres respectively. The construction of the second unit of 31,000 acres was to be deferred, however, until the results of conservation and legal utilization of water were ascertained.

Pursuant to the Act of September 4, 1957 (Public Law 85-283, 71 Stat. 608) and the Amendatory Contract between the United States of America and the Casper-Alcova Irrigation District, no more than 35,000 acres of land in the First Unit of the Kendrick Project may be irrigated. The right to the use of the major works of the Kendrick Project for the Second Unit remains suspended until (a) a determination has been made that an adequate water supply is available for the irrigation of lands of the Second Unit under water permits for the Kendrick Project issued by the State of Wyoming, (b) the Casper-Alcova Irrigation District has undertaken the obligation to repay a proportionate share of the construction costs of project works, and (c) works for the delivery and distribution of water for the lands of the Second Unit have been constructed. The United States will provide notice to the states of Nebraska, Wyoming and Colorado no less than twelve months in advance of taking any of the above steps. The irrigated acreage under the Kendrick Project must remain within the Kendrick Project.

VIII. Additional Reporting

A. Wyoming will report to the North Platte Decree Committee water right applications and associated water use of irrigation wells permitted after January 1, 2001 within the boundaries of Wheatland Irrigation District. The obligation in this paragraph will be implemented pursuant to procedures attached to the Charter as Exhibit 13.

B. Wyoming will report to the North Platte Decree Committee all municipal, industrial and export water right applications and petitions for water right changes of use within the Wyoming North Platte River basin, excluding the area upstream of Wheatland Tunnel #2 on the Laramie River and excluding those uses defined as de minimis in paragraph XII (f) of the Modified Decree. The obligation in this paragraph will be implemented pursuant to procedures attached to the Charter as Exhibit 14.

C. Wyoming will report to the North Platte Decree Committee all water right applications for construction of new dams or enlargements of existing dams with a proposed reservoir capacity for storage of water originating in the North Platte River basin of greater than twenty acre-feet and ground

water recharge projects within the Wyoming North Platte River basin, excluding the Laramie River basin upstream of Wheatland Tunnel #2. The obligation in this paragraph will be implemented pursuant to procedures attached to the Charter as Exhibit 15.

D. The NPDC will develop procedures to monitor water use in the area between Guernsey Dam and the Whalen Diversion Dam.

IX. Approval, Adoption and Modification of Procedures

The procedures attached to the Charter as Exhibits 4 through 15 are hereby approved and adopted. Such procedures may be modified from time to time by the North Platte Decree Committee if the modifications are consistent with this stipulation and the Modified Decree.

X. Entirety of Agreement

This Final Settlement Stipulation and appendices thereto, the Modified Decree, the Charter with exhibits, and the Joint Motion for Approval of Stipulation, Modification of Decree and Dismissal With Prejudice, together constitute the entire agreement among the parties hereto. No previous representations, inducements, promises or agreements, oral or otherwise, among the parties not contained in the documents identified in this paragraph or made in compliance with the requirements and obligations contained in the documents identified in this paragraph shall be of any force or effect. Nothing in this paragraph shall be construed as preventing the States of Nebraska, Wyoming, and Colorado and the United States of America from modifying the Charter as provided in paragraph II of this Final Settlement Stipulation. Nothing in this paragraph shall be construed as preventing the North Platte Decree Committee from modifying administrative procedures as provided in Article V. of the Charter.

MODIFIED NORTH PLATTE DECREE

OCTOBER TERM, 2001

Decree

SUPREME COURT OF THE UNITED STATES

No. 108, Orig.

STATE OF NEBRASKA, PLAINTIFF v. STATES

OF WYOMING AND COLORADO

**ON PETITION FOR ORDER ENFORCING DECREE AND FOR
INJUNCTIVE RELIEF**

[November 13, 2001]

The Final Report of the Special Master is received and order filed.

DECREE

This cause, having come to be heard on the Final Report of the Special Master appointed by the Court, IT IS HEREBY ORDERED THAT:

1. The Final Settlement Stipulation executed by all of the parties to this case and presented to the Special Master on March 15, 2001, is approved;
2. The proposed Modified Decree submitted as the Appendix to the Final Settlement Stipulation is entered, replacing the decree originally entered in this case on October 8, 1945, as modified on June 15, 1953;
3. All claims, counterclaims and cross-claims brought in this case are hereby dismissed with prejudice; and
4. The parties shall share in the cost of this litigation in the manner that this Court shall order following the entry of the Modified Decree.

Appendix

Modified North Platte Decree

[Entered on October 8, 1945, *Nebraska v. Wyoming*, 325 U. S. 589, 665 (1945), modified and supplemented on June 15, 1953, *Nebraska v. Wyoming*, 345 U. S. 981 (1953), and further modified November 13, 2001, *Nebraska v. Wyoming*, 534 U. S. 40 (2001).]

This Court equitably apportioned the North Platte River among the States of Colorado, Wyoming, and Nebraska in 1945. *Nebraska v. Wyoming*, 325 U. S. 589, 665 (1945). The Decree was amended pursuant to a stipulation and joint motion of the parties in 1953. *Nebraska v. Wyoming*, 345 U. S. 981 (1953). In 1986, the State of Nebraska filed suit against the State of Wyoming. In 1987, Wyoming filed counterclaims against Nebraska. This Court resolved certain issues on cross-motions for summary judgment in 1993. *Nebraska v. Wyoming*, 507 U. S. 584 (1993). In 1995, this Court granted in part and denied in part Nebraska's motion to amend its petition, and granted in part and denied in part Wyoming's motion to amend its counterclaims and to file cross-claims against the United States. *Nebraska v. Wyoming*, 515 U. S. 1 (1995). The parties have agreed upon this Court's entry of this Modified Decree to a dismissal with prejudice of all claims, counterclaims, and cross-claims for which leave to file was or could have been sought in this case.

The parties to this cause having filed a Final Settlement Stipulation dated March 13, 2001, which includes the parties' agreement to create the North Platte Decree Committee to assist them in monitoring, administering, and implementing this Modified Decree, and a Joint Motion for Approval of Stipulation, Modification of Decree and Dismissal with Prejudice, and the Court being fully advised:

IT IS ORDERED:

That the Final Settlement Stipulation dated March 13, 2001, is hereby approved and adopted;

That all claims, counterclaims, and cross-claims for which leave to file was or could have been sought in this case are hereby dismissed with prejudice; and

That the Decree of October 8, 1945, as amended on June 15, 1953, is hereby modified as follows:

I. The State of Colorado, its officers, attorneys, agents and employees, be and they are hereby severally enjoined:

(a) From diverting or permitting the diversion of water from the North Platte River and its tributaries for the irrigation of more than a total of 145,000 acres of land in Jackson County, Colorado, during any one irrigation season;

(b) From storing or permitting the storage of more than a total amount of 17,000 acre feet of water for irrigation purposes from the North Platte River and its tributaries in Jackson County, Colorado, between October 1 of any year and September 30 of the following year;

(c) From exporting out of the basin of the North Platte River and its tributaries in Jackson County, Colorado, to any other stream basin or basins more than 60,000-acre feet of water in any period of ten consecutive years reckoned in continuing progressive series beginning with October 1, 1945.

II. The State of Wyoming, its officers, attorneys, agents and employees, be and they are hereby severally enjoined:

(a) From diverting or permitting the diversion of water for irrigation from the North Platte River and its tributaries, including water from hydrologically connected groundwater wells, upstream of Pathfinder Dam for the consumption in any period of ten consecutive years reckoned in continuing progressive series, of more than the largest amount of water consumed for irrigation from such sources in any ten consecutive year period between 1952 and 1999, inclusive. This injunction becomes effective the first full calendar year after the date of entry of this Modified Decree. The consumptive use of irrigation water in this area to be counted under this injunction shall include the following:

(1) Water consumed for irrigation purposes on lands irrigated with surface water diversions of natural flow;

(2) Water consumed for irrigation purposes on lands irrigated with water stored pursuant to paragraph II (e)

(3) Water consumed for irrigation purposes on lands irrigated by water from hydrologically connected groundwater wells

(4) Water consumed for purposes other than irrigation under water rights transferred since October 8, 1945 from an irrigation use to another use;

The largest amount of water consumed for irrigation from such sources in any ten consecutive year period between 1952 and 1999 inclusive, has been determined by the parties pursuant to a methodology and procedures approved and adopted in the Final Settlement Stipulation to be 1,280,000 acre feet. For the purpose of determining compliance with this injunction, the amount of water consumed for irrigation from such sources shall be determined by the same methodology and procedures. After ten years of administration, accounting and reporting under this injunction, the methodology and the ten consecutive year limit will be reviewed by the North Platte Decree Committee pursuant to procedures approved and adopted in the Final Settlement Stipulation to determine if there is a better methodology for calculating the largest amount of water consumed for irrigation in such ten consecutive year period and for determining compliance. In making such calculation, any acreage historically reported by the Wyoming State Engineer as irrigated by direct flow surface water or stored water or as transfers, between 1952 and 1999 inclusive, and used in the existing methodology, shall not be changed. In addition, the other acreage used in the existing methodology shall not be changed unless the North Platte Decree Committee agrees that such change results in a more accurate determination of acres actually irrigated between 1952 and 1999 inclusive. In any new methodology, to determine compliance with the

consumptive use limit, the acreage above Pathfinder Dam, when combined with the acreage between Pathfinder Dam and Guernsey Reservoir, cannot exceed the 226,000 acreage limitation pursuant to paragraph II(c). If Nebraska, Wyoming and the United States agree on a new methodology and a new limit, they shall notify the Court and this paragraph will be modified accordingly. As provided in paragraph XIII, absent agreement on a new methodology and a new limit, Nebraska, Wyoming, or the United States may seek recourse to the Court to resolve these issues.

(b) From diverting or permitting the diversion of water for irrigation from the North Platte River and its tributaries, including water from hydrologically connected groundwater wells, between Pathfinder Dam and Guernsey Reservoir for the consumption in any period of ten consecutive years reckoned in continuing progressive series, exclusive of the Kendrick Project, of more than the largest amount of water consumed for irrigation from such sources in any ten consecutive year period between 1952 and 1999, inclusive. This injunction becomes effective the first full calendar year after the entry of this Modified Decree. The consumptive use of irrigation water in this area to be counted under this injunction shall include the following:

(1) Water consumed for irrigation purposes on lands irrigated with surface water diversions of natural flow

(2) Water consumed for irrigation purposes on lands irrigated with water stored in reservoirs that store water from the tributaries between Pathfinder Dam and Guernsey Reservoir;

(3) Water consumed for irrigation purposes on lands irrigated by water from hydrologically connected groundwater wells

(4) Water consumed for purposes other than irrigation with water rights transferred since October 8, 1945 from an irrigation use to another use;

The largest amount of water consumed for irrigation from such sources in any ten consecutive year period between 1952 and 1999 inclusive, has been determined by the parties pursuant to a methodology and procedures approved and adopted in the Final Settlement Stipulation to be 890,000 acre feet. For the purpose of determining compliance with this injunction, the amount of water consumed for irrigation from such sources shall be determined by the same methodology and procedures. After ten years of administration, accounting and reporting under this injunction, the methodology and the ten consecutive year limit will be reviewed by the North Platte Decree Committee pursuant to procedures approved and adopted in the Final Settlement Stipulation to determine if there is a better methodology for calculating the largest amount of water consumed for irrigation in such ten consecutive year period and for determining compliance. In making such calculation, any acreage historically reported by the Wyoming State Engineer as irrigated by direct flow surface water or stored water or as transfers, between 1952 and 1999 inclusive, and used in the existing methodology, shall not be changed. In addition, the other acreage used in the existing methodology shall not be changed unless the North Platte Decree

Committee agrees that such change results in a more accurate determination of acres actually irrigated between 1952 and 1999 inclusive. In any new methodology, to determine compliance with the consumptive use limit, the acreage above Pathfinder Dam, when combined with the acreage between Pathfinder Dam and Guernsey Reservoir, cannot exceed the 226,000-acreage limitation pursuant to paragraph II(c). If Nebraska, Wyoming and the United States agree on a new methodology and a new limit, they shall notify the Court and this paragraph will be modified accordingly. As provided in paragraph XIII, absent agreement on a new methodology and a new limit, Nebraska, Wyoming, or the United States may seek recourse to the Court to resolve these issues.

(c) From diverting or permitting the diversion of water from the North Platte River and its tributaries, including water from hydrologically connected groundwater wells, upstream of Guernsey Reservoir for the intentional irrigation of more than a total of 226,000 acres of land in Wyoming during any one irrigation season, exclusive of the Kendrick Project. The acres in this area to be counted under this injunction shall include the following, provided that an intentionally irrigated acre that receives water from more than one source shall be counted only once:

- (1) Acres irrigated by surface water diversions of natural flow;
- (2) Acres irrigated by water stored pursuant to paragraph II(e);
- (3) Acres irrigated by water stored in reservoirs that store water from the tributaries between Pathfinder Dam and Guernsey Reservoir;
- (4) Acres irrigated with water from hydrologically connected groundwater wells;
- (5) The equivalent of the acres found by order of the Wyoming State Board of Control to have been historically irrigated and that formed the basis for the transfer of water rights where water rights on the North Platte River upstream of Guernsey Reservoir or the tributaries upstream of Pathfinder Dam are transferred after October 8, 1945, from an irrigation use to another use; provided, however, that the amount of acres counted for a given year may be reduced proportionately to the extent that the actual diversion and use of water under the transferred water right during that year are less than the total diversion and use allowed by the order approving such transfer;
- (6) The equivalent of the acres found by order of the Wyoming State Board of Control to have been historically irrigated and that formed the basis for the transfer of water rights where water rights on the tributaries entering the North Platte River between Pathfinder Dam and Guernsey Reservoir are transferred after January 1, 2001, from an irrigation use to another use; provided, however, that the amount of acres counted for a given year may be reduced proportionately to the extent that the actual diversion and use of water under the transferred water right during that year are less than the total diversion and use allowed by the order approving such transfer;

Ten years after the entry of this Modified Decree, the provision that enjoins Wyoming from intentionally irrigating more than 226,000 acres upstream of Guernsey Reservoir will be replaced with

two injunctions, one that limits the number of acres that can be irrigated above Pathfinder Dam and one that limits the number of acres that can be irrigated between Pathfinder Dam and Guernsey Reservoir. Wyoming has the discretion to designate the irrigated acreage limitation above Pathfinder Dam and the irrigated acreage limitation between Pathfinder Dam and Guernsey Reservoir, so long as the total irrigated acreage limitation does not exceed 226,000 acres. After Wyoming makes such designation, Nebraska, Wyoming and the United States will so notify the Court and the Modified Decree will be modified accordingly.

(d) From diverting or permitting the diversion of water from the Laramie River and its tributaries, including water from hydrologically connected groundwater wells, downstream of the Wheatland Irrigation District's Tunnel No. 2, exclusive of the area within the Wheatland Irrigation District, for the intentional irrigation of more than a total of 39,000 acres of land in Wyoming during any one irrigation season. The acres in this area to be counted under this injunction shall include the following, provided that an intentionally irrigated acre that receives water from more than one source shall be counted only once:

- (1) Acres irrigated by surface water diversions of natural flow;
- (2) Acres irrigated by stored irrigation water released from a reservoir;
- (3) Acres irrigated with water from hydrologically connected groundwater wells;
- (4) The equivalent of the acres found by order of the Wyoming State Board of Control to have been historically irrigated and that formed the basis for the transfer of water rights where water rights are transferred after January 1, 2001, from an irrigation use that is subject to the limitations of this paragraph II(d) to another use; provided, however, that the amount of acres counted for a given year may be reduced proportionately to the extent that the actual diversion and use of water under the transferred water right during that year are less than the total diversion and use allowed by the order approving such transfer;

(e) From storing or permitting the storage of more than a total amount of 18,000 acre feet of water for irrigation purposes from the North Platte River and its tributaries above Pathfinder Reservoir between October 1 of any year and September 30 of the following year, exclusive of Seminole Reservoir.

III. The State of Wyoming, its officers, attorneys, agents and employees, be and they are hereby severally enjoined from storing or permitting the storage of water in Pathfinder, Guernsey, Seminole, Alcova and Glendo Reservoirs and the Inland Lakes otherwise than in accordance with the relative storage rights, as among themselves, of such reservoirs, which are hereby defined and fixed as follows:

First, Pathfinder Reservoir;

Second, Inland Lakes with the same priority date as Pathfinder Reservoir;

Third, Guernsey Reservoir;

Fourth, Seminole Reservoir;
Fifth, Alcova Reservoir; and
Sixth, Glendo Reservoir;

Provided, however, that water accruing in priority to the storage right of a reservoir listed above, and water accruing to the Glendo Reservoir reregulating space pursuant to paragraph XVII(g), may be physically stored in, released from, or exchanged with another reservoir so long as the water is accounted in accordance with the foregoing rule of priority and only when such storage, release, or exchange will not materially interfere with the administration of water for irrigation purposes according to the priority decreed for the French Canal and the State Line Canals. Further, in accordance with the opinion of this Court dated April 20, 1993 (507 U. S. 584) the United States has the right to divert 46,000 acre feet of water during the non-irrigation season months of October, November and April for storage in the Inland Lakes. Historically, pursuant to annual agreements entered in the discretion of the parties, such diversions have occurred at a rate not exceeding 910 cubic feet per second from gains accruing to the river downstream of Alcova Reservoir. This right shall be administered in accordance with procedures to be reviewed and adopted annually by the North Platte Decree Committee.

IV. The State of Wyoming, its officers, attorneys, agents and employees, be and they are hereby severally enjoined from storing or permitting the storage of water in Pathfinder, Guernsey, Seminole, Alcova and Glendo Reservoirs, and from the diversion of natural flow water through the Casper Canal for the Kendrick Project between and including May 1 and September 30 of each year otherwise than in accordance with the rule of priority in relation to the appropriations of the Nebraska lands supplied by the French Canal and by the State Line Canals, which said Nebraska appropriations are hereby adjudged to be senior to said five reservoirs and said Casper Canal, and which said Nebraska appropriations are hereby identified and defined, and their diversion limitations in second feet and seasonal limitations in acre feet fixed as follows:

Lands	Canal	Limitation in Sec. Feet	Seasonal Limitation in Acre Feet
Tract of 1,025 acres	French	15	2,227
Mitchell Irrigation District	Mitchell	195	35,000
Gering Irrigation District	Gering	193	36,000
Farmers Irrigation District	Tri-State	748	183,050
Ramshorn Irrigation District	Ramshorn	14	3,000

This paragraph limits the extent to which these canals may stop the federal reservoirs from storing water and the Casper Canal from diverting natural flow water. It does not place any absolute ceilings or other

restrictions on the quantities of water that these canals may actually divert. *Nebraska v. Wyoming*, 507 U. S. 584, 603 (1993); see also *Nebraska v. Wyoming*, 515 U. S. 1, 10 (1995).

V. The natural flow in the Guernsey Dam to Tri-State Dam section between and including May 1 and September 30 of each year, including the contribution of Spring Creek, be and the same hereby is apportioned between Wyoming and Nebraska on the basis of twenty-five per cent to Wyoming and seventy-five per cent to Nebraska, with the right granted Nebraska to designate from time to time the portion of its share which shall be delivered into the Interstate, Fort Laramie, French and Mitchell Canals for use on the Nebraska lands served by these canals. The natural flow in a portion of certain tributaries and drains as defined in paragraph V(a) shall also be included in the natural flow apportioned by this paragraph. The State of Nebraska, its officers, attorneys, agents, and employees, and the State of Wyoming, its officers, attorneys, agents, and employees, are hereby enjoined and restrained from diversion or use contrary to this apportionment, provided that in the apportionment of water in this section the flow for each day, until ascertainable, shall be assumed to be the same as that of the preceding day, as shown by the measurements and computations for that day. Provided further that:

(a) Diversions under surface water rights for irrigation purposes from those parts of the tributaries and drains to the North Platte River that lie within the area bounded by Whalen Diversion Dam on the west, the Ft. Laramie Canal on the south, the Interstate Canal on the north, and the Wyoming-Nebraska state line on the east, excluding the drainage basins of the Laramie River and Horse Creek, shall be administered and accounted as diversions of natural flow for the purposes of the foregoing percentage apportionment, unless the depletions to the North Platte River resulting from such diversions are replaced. The amount of such depletions, and the method for their replacement in the ordinary course of administration, shall be determined and implemented pursuant to procedures that have been approved and adopted in the Final Settlement Stipulation.

(b) Diversions for irrigation purposes from wells with water right priorities between October 8, 1945, and including December 31, 2000, located within the area bounded by Whalen Diversion Dam on the west, 300 feet south of the Ft. Laramie Canal on the south, one mile north of the Interstate Canal on the north, and the Wyoming-Nebraska state line on the east, shall be regulated as follows: To the extent the pumping of such wells results in depletions to the North Platte River between Whalen Diversion Dam and the state line or to the portions of tributaries described in paragraph V(a) between May 1 and September 30, such depletions shall be replaced or the pumping shall be regulated to prevent such depletions, unless such depletions occur when the natural flow in the Guernsey Dam to Tri-State Diversion Dam reach exceeds irrigation demands in that reach. The amount of such depletions, and the method for their replacement in the ordinary course of administration shall be determined and implemented pursuant to procedures that have been approved and adopted in the Final Settlement Stipulation.

(c) Diversions for irrigation purposes from wells with water right priorities after December 31, 2000, located within the area bounded by Whalen Diversion Dam on the west, 300 feet south of the Ft. Laramie Canal on the south, one mile north of the Interstate Canal on the north, and the Wyoming-Nebraska state line on the east, shall be regulated or subject to depletion replacement pursuant to procedures that have been approved and adopted in the Final Settlement Stipulation.

(d) The river carriage and reservoir loss calculations established in the Decree of October 8, 1945, have been replaced with administrative procedures attached to the North Platte Decree Committee Charter. These procedures may be modified from time to time by the North Platte Decree Committee.

VI. This Modified Decree is intended to and does deal with and apportion only the natural flow of the North Platte River. Storage water shall not be affected by this Modified Decree, and the owners of rights therein shall be permitted to distribute the same in accordance with any lawful contracts, which they may have entered into or may in the future enter into without interference because of this Modified Decree.

VII. Such additional gauging stations and measuring devices at or near the Wyoming-Nebraska state line, if any, as may be necessary for making any apportionment herein decreed, shall be constructed and maintained at the joint and equal expense of Wyoming and Nebraska to the extent that the costs thereof are not paid by others.

VIII. The State of Wyoming, its officers, attorneys, agents and employees be and they are hereby severally enjoined from diverting or permitting the diversion of water from the North Platte River or its tributaries at or above Alcova Reservoir in lieu of or in exchange for return flow water from the Kendrick Project reaching the North Platte River below Alcova Reservoir.

IX. The State of Wyoming and the State of Colorado be and they hereby are each required to prepare and maintain complete and accurate records of the total area of land irrigated and the storage and exportation of the water of the North Platte River and its tributaries within those portions of their respective jurisdictions covered by the provisions of paragraphs I, II(c), II(d), and II(e). The State of Wyoming is also required to prepare and maintain complete and accurate records of the total consumption of irrigation water in the portion of its jurisdiction covered by paragraphs II(a) and II(b). The record keeping and reporting required of the State of Wyoming by this paragraph shall be implemented in accordance with procedures that have been approved and adopted in the Final Settlement Stipulation. The records required by this paragraph shall be available for inspection at all reasonable times; provided, however, that such records shall not be required in reference to the water uses permitted by paragraphs X and XII (f).

X. This Modified Decree shall not affect or restrict the use or diversion of water from the North Platte River and its tributaries in Colorado or Wyoming for ordinary and usual domestic, municipal and stock watering purposes and consumption.

XI. For the purposes of this Modified Decree:

- (a) “Season” or “seasonal” refers to the irrigation season, May 1 to September 30, inclusive;
- (b) The term “storage water” as applied to releases from reservoirs owned and operated by the United States is defined as any water which is released from reservoirs for use on lands under canals having storage contracts in addition to the water which is discharged through those reservoirs to meet natural flow uses permitted by this Modified Decree;
- (c) “Natural flow water” shall be taken as referring to all water in the stream except storage water;
- (d) Return flows from the Kendrick Project shall be deemed to be “natural flow water” when they have reached the North Platte River, subject to the same diversion and use as any other natural flow in the stream;
- (e) “Hydrologically connected groundwater wells” are defined in procedures attached to the North Platte Decree Committee Charter as Exhibits 4, 6, and 12 approved and adopted in the Final Settlement Stipulation. The North Platte Decree Committee may modify such definition in accordance with the Final Settlement Stipulation.

XII. This Modified Decree shall not affect:

- (a) The relative rights of water users within any one of the States who are parties to this suit except as may be otherwise specifically provided herein;
- (b) Such claims as the United States has to storage water under Wyoming law nor will the Modified Decree in any way interfere with the ownership and operation by the United States of the various federal storage and power plants, works and facilities;
- (c) The use or disposition of any additional supply or supplies of water that may be imported into the basin of the North Platte River from the watershed of an entirely separate stream or the return flow from any such supply or supplies;
- (d) The apportionment heretofore made by this Court between the States of Wyoming and Colorado of the waters of the Laramie River, a tributary of the North Platte River, down to and including the Wheatland Project. The waters of the Laramie River below the Wheatland Project are not apportioned by this Modified Decree. The only existing limitation in this Modified Decree on Wyoming’s use of the Laramie River is provided in paragraph II(d);
- (e) The apportionment made by the compact between the States of Nebraska and Colorado, apportioning the water of the South Platte River;
- (f) Water diverted for de minimis uses, defined as:
 - (1) Ponds with capacities of twenty acre-feet or less for purposes other than irrigated agriculture;

(2) Wells with capacities less than or equal to twenty-five gallons per minute for a single project for purposes other than irrigated agriculture; and

(3) Miscellaneous uses that withdraw or divert less than fifty acre-feet per year for a single project other than stock watering, domestic or irrigated agriculture.

XIII. Any of the parties may apply at the foot of this Modified Decree for its amendment or for further relief. Any dispute related to compliance or administration shall be submitted to and addressed by the North Platte Decree Committee before a party may seek leave of the Court to bring such dispute before the Court. The Court retains jurisdiction of this suit for the purpose of any order, direction, or modification of the decree, or any supplementary decree, that may at any time be deemed proper in relation to the subject matter in controversy. Further, the Court retains jurisdiction, upon proper showing, to adjudicate all matters for which authority or responsibility is granted to the North Platte Decree Committee by this Modified Decree or the Final Settlement Stipulation. Matters with reference to which further relief may hereafter be sought shall include, but shall not be limited to, the following:

(a) The question of the applicability and effect of the Act of August 9, 1937 (50 Stat. 564, 595-596) upon the rights of Colorado and its water users;

(b) The question of the effect upon the rights of upstream areas of the construction or threatened construction in downstream areas of any projects not now existing or recognized in this Modified Decree;

(c) The question of the effect of the construction or threatened construction of storage capacity not now existing on tributaries entering the North Platte River between Pathfinder Reservoir and Guernsey Reservoir;

(d) The question of the right to divert at or above the headgate of the Casper Canal any water in lieu of, or in exchange for, any water developed by artificial drainage to the river of sump areas on the Kendrick Project;

(e) Any question relating to the joint operation of Pathfinder, Guernsey, Seminoe, Alcova and Glendo Reservoirs whenever changed conditions make such joint operation possible;

(f) Any change in conditions making modification of the Modified Decree or the granting of further relief necessary or appropriate;

(g) Failure of the North Platte Decree Committee, or the parties to the North Platte Decree Committee, to act upon, resolve or agree on a matter that has been submitted to the North Platte Decree Committee.

XIV. The costs in the original cause were apportioned and paid pursuant to previous order of this Court. The costs in the present cause and the payment of the fees and expenses of the Special Master have been apportioned and paid according to previous orders of this Court with which the parties agree and the Court hereby confirms.

XV. The clerk of this Court shall transmit to the Governors and Attorneys General of the States of Colorado, Wyoming, and Nebraska, the Solicitor General of the United States of America, and Basin Electric Power Cooperative, copies of this Modified Decree duly authenticated under the seal of this Court.

XVI. Whatever claims or defenses the parties or any of them may have in respect to the application, interpretation or construction of the Act of August 9, 1937 (50 Stat. 564, 595-596) shall be determined without prejudice to any party arising because of any development of the Kendrick Project occurring subsequent to October 1, 1951.

XVII. The following provisions are effective for the operation of Glendo Dam and Reservoir:

(a) The operation of the Glendo Project shall not impose any demand on areas at or above Seminoe Reservoir which will prejudice any rights that the States of Colorado or Wyoming might have to secure a modification of the Modified Decree permitting an expansion of water uses in the natural basin of the North Platte River in Colorado or above Seminoe Reservoir in Wyoming.

(b) The operation of Glendo Reservoir shall not affect the regime of the natural flow of the North Platte River except that not more than 40,000 acre feet of the natural flow of the North Platte River and its tributaries which cannot be stored in upstream reservoirs under the provisions of this Modified Decree may be stored in Glendo Reservoir during any water year for disposition by the United States under contracts, in addition to evaporation losses on such storage, and further, the amount of water that may be held in storage at any one time for disposition by the United States under contracts, including carryover storage, shall never exceed 100,000 acre-feet. Such storage water shall be disposed of in accordance with contracts executed or to be hereafter executed, in compliance with federal law, and may be used for any beneficial purpose in Nebraska within the Platte River basin to the extent of 25,000 acre-feet annually and for any beneficial purpose in Wyoming within the Platte River basin to the extent of 15,000 acre-feet annually. The above limitation on the amount of storage of natural flow does not apply: 1) to flood water which may be temporarily stored in any capacity allocated for flood control in Glendo Reservoir; 2) to water originally stored in Pathfinder Reservoir which may be temporarily re-stored in Glendo Reservoir after its release from Pathfinder and before its delivery pursuant to contract; 3) to Inland Lakes account water temporarily stored in accordance with this Court's Order of April 20, 1993; 4) to water which may be impounded behind Glendo Dam, as provided in the Bureau of Reclamation Definite Plan Report for the Glendo Unit, Wyoming, dated December 1952, as revised through December 1959 (Glendo Definite Plan Report) for the purpose of creating a head for the development of water power; or 5) to water in Glendo Reservoir used for the purposes described in paragraph XVII(g).

(c) Each State may substitute or supplement quantities of storage water obtained under other contractual arrangements with Glendo Reservoir storage supplies. Subject to contractual arrangements with the United States Bureau of Reclamation, including any required compliance with the Endangered

Species Act, 16 U. S. C. §1531 et seq. and the National Environmental Policy Act, 42 U. S. C. §4321 et seq., each State shall also enjoy unrestricted use of its respective storage allocation in Glendo Reservoir, so long as the use is below Glendo Reservoir and within the Platte River basin.

(d) Glendo Reservoir storage water may be consumptively used in Wyoming by exchange or other means, upstream of Glendo Reservoir under the terms of this paragraph. For every two acre feet of Glendo storage water diverted upstream of Glendo Reservoir pursuant to such an exchange, all of which may be fully consumed, an additional acre foot of Wyoming's Glendo storage allocation shall be contracted at the same time for storage and release from Glendo Reservoir and passed through Guernsey Reservoir to the North Platte River. Except as may be modified in accordance with paragraph XVII(e), or by agreement of the parties, such additional water shall be released from the reservoir at the same time and at a rate proportionate to the diversion of the water contracted for use upstream from Glendo Reservoir during the irrigation season. During the non-irrigation season, due to operational constraints of the outlets at Guernsey Reservoir, such additional water will be held in the Glendo account and released prior to the first of May as may be operationally practical. Except as provided in paragraph XVII (e), once released, such additional water shall be considered natural flow water for purposes of the 75/25 apportionment specified in paragraph V.

(e) If the valid exercise or enforcement of federal law or authority requires Wyoming or a water user within Wyoming to cause the release of a portion of Wyoming's Glendo allocation for environmental purposes downstream of Glendo Reservoir, the additional water contracted and released under paragraph XVII (d) may be dedicated to and used for that purpose. Any water released pursuant to such requirement shall not be considered natural flow but shall be administered and protected as storage water in accordance with state law within both Wyoming and Nebraska until used for its intended purposes.

(f) Storage water in Glendo Reservoir from either State's allocation may be used for fish and wildlife purposes downstream of Glendo Reservoir under contractual arrangements with the United States Bureau of Reclamation, subject to approval of Wyoming for contracts for water from Wyoming's storage allocation and subject to approval of Nebraska for contracts for water from Nebraska's storage allocation. Any water released pursuant to such agreement shall not be considered natural flow but shall be administered and protected as storage water in accordance with state law within both Wyoming and Nebraska until used for its intended purposes.

(g) The United States Bureau of Reclamation has the discretion to hold water in Glendo Reservoir in excess of the limitations stated in paragraph XVII(b) in accordance with the operation of the reregulation space in Glendo Reservoir under Permit No. 5998 Res. and Certificate of Construction of Reservoir, as clarified by Order of the Wyoming State Board of Control dated November 29, 2000. Such water may be used, subject to federal law, for the following purposes:

(1) to replace water that passed the Wyoming-Nebraska state line in excess of the amount ordered by canals with storage contracts below the Wyoming-Nebraska state line as the unintended result of physical limitations on the ability to control water deliveries;

(2) to replace evaporation from the storage ownership accounts of Pathfinder Reservoir, Guernsey Reservoir, Seminoe Reservoir, Alcova Reservoir, and Glendo Reservoir; and

(3) to supplement the natural flow that is available for apportionment pursuant to paragraph V.

XVIII. The creation of the North Platte Decree Committee is hereby approved and ratified. Procedures that have been approved and adopted in the Final Settlement Stipulation may be modified from time to time by the North Platte Decree Committee if the modifications are consistent with the Modified Decree. In the event of a conflict between any procedure, the Final Settlement Stipulation and the Modified Decree, the provisions of this Modified Decree shall control.

Teton and South Leigh Creeks

(Roxana Court Decree)

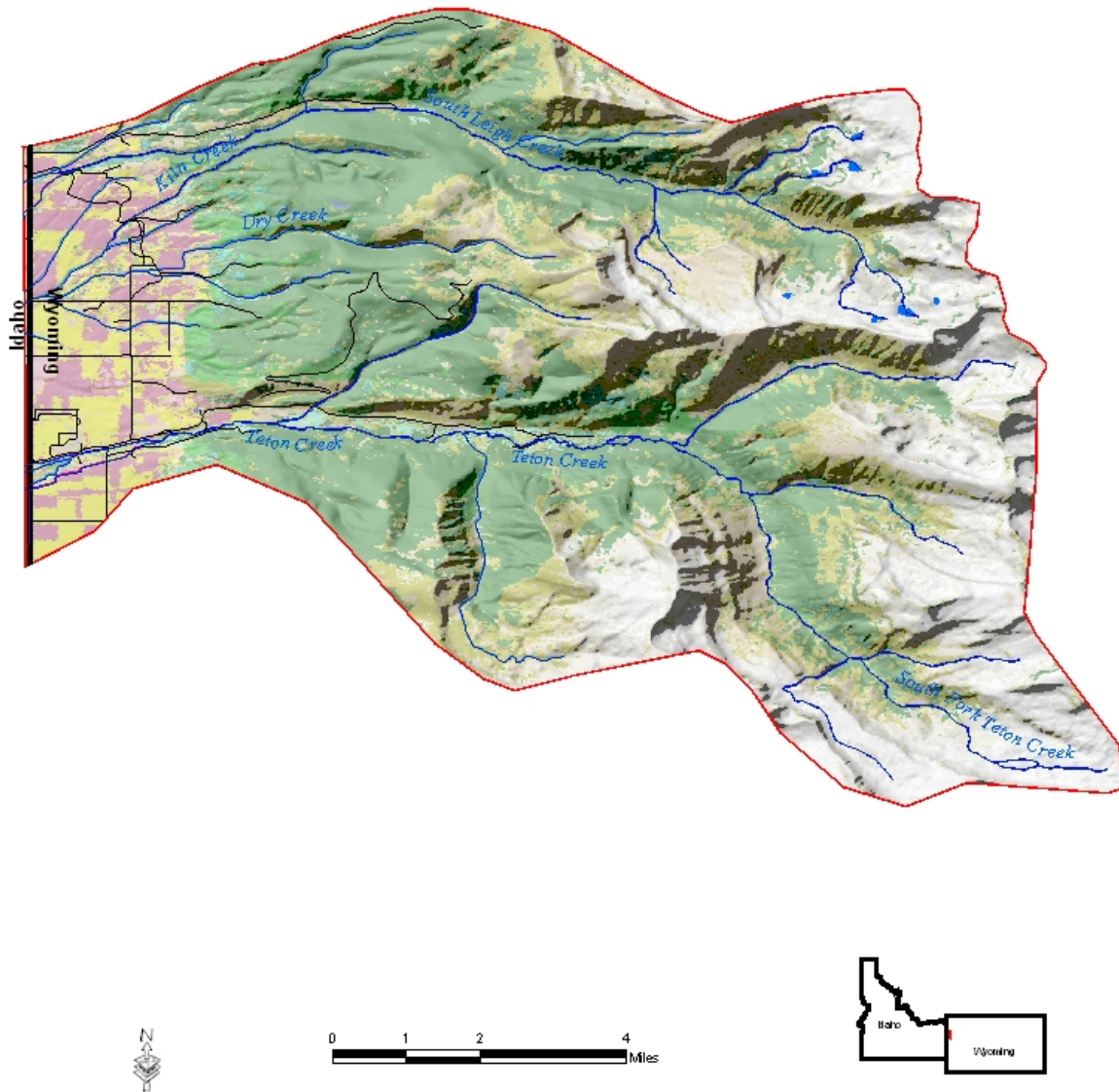


Figure 12 - Teton and South Leigh Creeks

TETON AND SOUTH LEIGH CREEKS LITIGATION

ROXANA CANAL CO., A CORPORATION, et al. v. DANIELS, et al.
Equity 2447 (United States District Court for the District of Wyoming, February 4, 1941)

1st Stipulation filed January 10, 1938

(Complete Stipulation can be found on the Wyoming State Engineer's
Office website at <http://seo.state.wy.us>)

2nd Stipulation dated March 20, 1940 (filed July 6, 1940)

(Complete 2nd Stipulation can be found on the Wyoming State Engineer's
Office website at <http://seo.state.wy.us>)

Decree—Dated February 4, 1941 –Page 194

Memorandum to Clarify Certain Points in the Agreement between the Idaho and
Wyoming Appropriators Diverting Water from Teton Creek and Tributaries
filed February 4, 1941 --Page 197

FEBRUARY 4, 1941 DECREE

ROXANA CANAL CO., A CORPORATION, et al. v. DANIELS, et al.

Equity 2447 (United States District Court for the District of Wyoming, February 4, 1941)

Teton and South Leigh Creeks, 1941

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE

DISTRICT OF WYOMING

IN EQUITY NO. 2447

DECREE

Now, therefore, the said first stipulation filed January 10, 1938 is hereby adopted as proof of the rights of the said parties plaintiff and defendant, and the second stipulation filed July 6, 1940, is approved, confirmed and adopted as a part of this decree; and the Court being fully informed and advised in the premises,

It is ordered, adjudged, and decreed that,

The waters of Teton Creek, a tributary of Teton River, Idaho, an interstate stream, shall be distributed to the appropriators and water users in the State of Wyoming and they shall be permitted to use all the waters from said Teton Creek as they can apply to beneficial use, until the total stream flow of said Teton Creek and its tributaries in the State of Wyoming shall recede to one hundred seventy (170) cubic feet per second of time; that in the determination of said stream flow all diversions in Wyoming, including the Grand Teton Canal, shall be and constitute a part of the said stream flow in determining the total of the said stream flow; that when the said stream flow of the said Teton Creek, and its tributaries in Wyoming shall recede to one hundred seventy (170) cubic feet per second of time, the Wyoming users, who divert water above the diversion of the Grand Teton Canal, shall thereafter be limited and permitted to divert one cubic foot per second of time for each fifty (50) acres of land (being one miner's inch per acre) for Wyoming lands of the said users in the State of Wyoming, and to continue to be so regulated until the flow of the said Teton Creek, and its tributaries in Wyoming, including all the Wyoming diversions, diminishes to ninety (90) cubic feet per second of time, after which time the stream flow of the said Teton Creek, and its tributaries, is to be divided between the Wyoming and Idaho areas for the benefit of their appropriators, on a fifty-fifty basis, that is,---that Wyoming shall be entitled to divert one-half of said stream flow and one-half of said stream flow shall be permitted to flow down said stream for Idaho. It being understood and agreed that all ditches diverting in Wyoming, and now having legal appropriations of water in Wyoming and/or Idaho, to be supplied from the one-half of said stream flow awarded to Wyoming, excepting therefrom the Grand Teton Canal, which for the sake of this decree, although having its diversion works in the State of Wyoming, is to be considered as an Idaho

appropriation, and if entitled under the laws of the State of Idaho to any of the stream flow of Teton Creek, shall be supplied from any portion or percentage herein agreed as the portion or percentage to which Idaho shall be entitled for the benefit of its appropriators.

It is further decreed that what is known as the Southside Canal, which canal supplies water to both Wyoming and Idaho appropriators along the boundary line of the States, and which has been granted Wyoming Permit No. 7420* for the diversion of water from Teton Creek, in Wyoming, is to be considered as a Wyoming diversion and the users in both Wyoming and Idaho supplied with water from it are to be furnished and supplied from the part or portion of the stream flow of said Teton Creek awarded Wyoming.

It is ordered, adjudged, and decreed that the waters of South Leigh Creek shall be distributed as follows,---the Wyoming appropriators may divert as much of the stream flow of South Leigh Creek as they can apply to a beneficial use upon their lands until the natural flow of said stream, at the Idaho-Wyoming boundary line, including all diversions from said stream above said boundary line, diminishes to a total of sixteen (16) cubic feet per second of time, at which time the Wyoming users shall be permitted and may divert one-half of the stream flow of said South Leigh Creek, the balance to flow down said stream for Idaho users.

The determination of the amount of the stream flow of the said streams, and the division of the waters thereof, as between the states, as herein decreed, shall be under the supervision and direction of the Commissioner of Reclamation of the State of Idaho, and the State Engineer of the State of Wyoming.

The distribution of water among the users of Wyoming of the part or portion of the waters of said streams which they shall be entitled to shall be under the direction and supervision of the State Engineer of Wyoming, or other proper Wyoming officer; the distribution among and to Idaho users of the part or portion herein to which they may be entitled of said stream flow shall be under the direction and supervision of the Commissioner of Reclamation of Idaho, or other proper Idaho officer.

It is decreed that all diversions within the State of Wyoming shall install diversion works and measuring devices, approved by the State Engineer of Wyoming, on all ditches and canals to make possible accurate measurements and proper administration and distribution of the waters of said creeks.

That in carrying out this decree and the distribution of the waters of said streams, the part or portion of said stream flow to which the water users and appropriators in the State of Wyoming shall be entitled shall be distributed in accordance with the rights of priority, as fixed and determined by the Board of Control, or Court of the State of Wyoming.

That the distribution of the water of said creeks to which the appropriators and water users of the State of Idaho shall be entitled under this decree shall be distributed to the Idaho users by the proper

* Permit No. 7520 erroneously used in original Decree.

officer of the State of Idaho according to the rights and priorities as fixed by the Courts of the State of Idaho.

That the rights fixed and decreed to the parties who have joined in the foregoing stipulations, or their predecessors in interests, either by the Board of Control of the State of Wyoming or the Courts of Wyoming, and by the Courts of the State of Idaho are hereby recognized and decreed as binding upon all of the parties who have signed the foregoing stipulation as the same affects the quantity of stream flow and dates of priorities of said creeks as awarded to the Wyoming appropriators and users and the Idaho appropriators and users.

The Court retains jurisdiction of this cause for a period of one year for the purpose of making any correction to the decree or the determining of the rights of any parties who may have an interest in the waters of said streams who are not now parties to this action and desire to become parties hereto.

Each party shall pay his own costs.

Done in open court this 4th day of February 1941.

(Signed) T. BLAKE KENNEDY

Judge

THE FOLLOWING MEMORANDUM IS TO CLARIFY CERTAIN
POINTS IN THE AGREEMENT BETWEEN THE IDAHO AND
WYOMING APPROPRIATORS DIVERTING WATER FROM TETON
CREEK AND TRIBUTARIES

1. That at all times when the flow of water in Teton Creek in Wyoming exceeds 90 cubic feet per second of time, and is less than 170 cubic feet per second of time, the parties to this settlement who divert water in Wyoming, whether such diversion is for Wyoming or Idaho users, are to be limited to the diversion of not more than 1 cubic foot of water per second of time for each 50 acres of land (1 inch per acre as expressed by some); and at all times when the stream flow of said Creek in Wyoming is less than 90 cubic feet per second of time, the available supply is to be divided equally between the two states; it being understood that all ditches diverting in Wyoming, from Teton Creek, and now having legal appropriations of water in Wyoming and/or Idaho, to be supplied from the one-half of said stream flow awarded to Wyoming, excepting therefrom the Grand Teton Canal, which, for the sake of this agreement, is to be considered as an Idaho appropriation and receive any water to which it may be entitled, under the laws of the State of Idaho, from the Idaho portion of said stream flow; the administration of said rights shall be by each state, in accordance with their existing laws.

2. That the water supply of the town of Driggs, Idaho, now diverted and conveyed to said town from a diversion in the State of Wyoming shall be taken from the portion of the water allotted to Idaho to the extent of the right of said town, but shall be limited to such right as now established by permit or decree by the Board of Control or other proper department of the State of Wyoming and such right not to be recognized in an amount in excess of said permit or decree or in excess of the amount heretofore diverted by said town, through any diversion made from Teton Creek or tributaries in the State of Wyoming.

The undersigned agrees to the foregoing interpretation of the portion of the agreement referred to.

(Signed) JAMES A. GREENWOOD

JAMES A. GREENWOOD, Attorney for the Wyoming appropriators.

Signed

(Signed) L. C. BISHOP

L. C. BISHOP, Interstate Streams Commissioner for Wyoming.

Signed

(Signed) F. A. MILLER

F. A. MILLER, Attorney for the Idaho appropriators.

Signed Dec. 19, 1940

(Signed) JAMES SPOFFORD

JAMES SPOFFORD, Commissioner of Reclamation for Idaho.

Signed Dec. 19, 1940