THE INTERSTATE COMPACT - UPPER COLORADO RIVER BASIN
by
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Introduction

In assigning this topic it was the intention of the Program Planning Committee to present the interstate compact to this Conference as one possible method of organizing for western water development. The fact that certain features of the Upper Colorado River Basin Compact will be described should not be construed as suggesting that an identical compact would meet the organizational needs of our eleven western States. Any compacting States will have problems peculiar to them to which the terms of their compact must be specifically related.

The Upper Colorado River Basin Compact was selected for this discussion because it represents the highest attainment in application of this device to western water problems. This compact was formulated by the States in a highly competitive situation. Circumstances were accentuated by the fact that the Federal government would not proceed with resource development involving a water supply that was insufficient to permit construction of all potential projects until the rights of each state were legally defined. This compact was designed to determine permanently the rights of five affected Upper Basin States to the use
of water previously apportioned by the basic Colorado River Compact.\textsuperscript{2} It also created a genuine administrative agency with a range of powers surpassing that of any previous similar water resources body. Political scientists have classified this document as a regional administrative compact.\textsuperscript{3} If a compact is deemed to be a desirable organizational vehicle for western water development an agreement of this character will be needed.

**Historical**

Early in this century the water users in the Lower Colorado River Basin, especially in California, found it necessary to construct large storage works on the lower river for multiple purposes of flood control, navigation, river regulation, and hydropower generation. States of the Upper Basin, noting the extremely more rapid growth in the Lower Basin than in their own, were fearful that if large storage works were constructed in the Lower Basin, the States of Arizona, California, and Nevada would put most of the Colorado River system to use, and, under the doctrine of prior appropriation, would forever preclude the Upper Basin States from developing a fair share of the water. For this reason, the Upper Basin States insisted that a compact be executed apportioning the waters of the river before such structures as Hoover Dam and Lake Mead could be constructed in the Lower Basin. The result was the Colorado River Compact of 1922.
In the field of water resources the Colorado River Compact provides the earliest prominent example of a regional water allocation compact with extremely limited administrative features. It is restricted to establishing the relative importance of different beneficial uses of water. It did not apportion water among several States of the Basin, but simply between the Upper and the Lower Basin, with provision for future allowance of water from the two basins for Mexico, if the United States recognized the right of its neighbor to it. This was done in the Mexican Water Treaty.

Under the Colorado River Compact the administrative arrangement is very simple. It merely requires the chief officials of the seven States charged with administration of water rights to cooperate in the coordination of facts with respect to the flow and use of water in the Colorado River Basin, and to perform such other duties as may be assigned by mutual consent from time to time.

After the Colorado River Compact became effective the Upper Basin States began making plans to develop their water resources. They were soon reminded, however, that the amount of water apportioned to the Upper Basin was not sufficient for the construction of all desired projects. The Bureau of Reclamation, after having completed an inventory of the possible projects in 1946, found it necessary to tell the States that before it could proceed with an Upper Basin-wide, multiple-purpose, water resources program the Upper Basin States...
would have to agree among themselves concerning the amount of water use that could be accomplished in each State. This led directly to the negotiation of the Upper Colorado River Basin Compact by the five States, Arizona, Colorado, New Mexico, Utah, and Wyoming.

The Upper Colorado River Basin Compact

Major Purposes of Upper Colorado River Basin Compact

The Upper Colorado River Basin Compact provides an improved and more complete mechanism for regional administration of the Colorado River's waters than does its predecessor. Its major purposes are to provide for the equitable division and apportionment of the use of the waters of the Colorado River which were apportioned in perpetuity to the Upper Basin by the Colorado River Compact; to establish the obligations of each State with respect to the deliveries of water required to be made to the Lower Basin by the Colorado River Compact; to remove causes of 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. Thus, the five Upper Basin States have agreed to a complete and definite allocation of Upper Basin water among themselves. The Upper Colorado River Commission, an inter-state administrative agency, was created to handle Colorado River affairs of the four Upper Division States, Colorado, New Mexico, Utah, and Wyoming. (Arizona is not a member of the Commission.) This organization is composed of one Commissioner from each of the four
Upper Division States and one Commissioner representing the United States, who has the same powers and rights as the Commissioner of any State. Concurrence of four members of the Commission is necessary on any matter, except where the Compact requires unanimous consent.\(^\text{10}\)\

**Curtailment of Water Use**

One of the Commission's duties is to determine the curtailment of the use of water by its member States in the event this becomes necessary to meet obligations imposed by the Colorado River Compact or the Mexican Water Treaty. The extent of each State's curtailment of consumptive use of water apportioned to it by the Upper Basin Compact "shall be in such quantities and at such times as shall be determined by the Commission" in accordance with specified principles in the agreement.\(^\text{11}\)\

**Other Compact Provisions**

The Compact provides that when reservoirs or facilities of one State are located in the territory of another there shall be payment of money in lieu of taxes to political subdivisions in which such works are located.\(^\text{12}\) The use of eminent domain is provided in order to acquire such extra-territorial facilities.\(^\text{13}\) The Compact embraces a number of bi-State agreements apportioning the use of certain streams within the Upper Basin. Recognition is given to the LaPlata River Compact of 1925 between Colorado and New Mexico.\(^\text{14}\) The
The consumptive use of water of Little Snake River and its tributaries is apportioned between Colorado and Wyoming. The consumptive use of water of Henry's Fork and other streams is apportioned between Utah and Wyoming, and provision is made for joint appointment of a special water master who has authority to administer the water in both States. The consumptive use of water of the Yampa River is apportioned between Colorado and Utah, and the consumptive use of water of the San Juan River and its tributaries between Colorado and New Mexico. The provisions of the Compact do not apply to, or interfere with, the right or power of any signatory State to regulate within its own boundaries the appropriation, use, and control of water the consumptive use of which is apportioned to it.

The Compact provides that the failure of a State to use any part of the water apportioned to it does not constitute a relinquishment of the right to such use to the Lower Basin or to any other State, nor does it constitute a forfeiture or abandonment of the right to use it. Also, the use of any water that might be 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 that is made by the Compact.

**Other Powers of Commission**

Among other powers granted to the Upper Colorado River Commission by the Compact are powers to: (1) adopt rules and regulations;
(2) locate, establish, construct, and operate water gaging stations;
(3) forecast water runoff on the river or any of its tributaries; (4) engage in cooperative studies of water supplies; (5) collect, analyze, preserve, and report on data as to stream flows, storage, diversions, and use of the waters of the 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 Basin and in each State; (7) make findings as to the quantity of water deliveries to the Lower Basin during each water year; (8) make findings as to the necessity for, and the extent of curtailment of use by its member States if such is required; (9) make findings as to quantity of reservoir losses and as to the share thereof chargeable to each of the States; (10) perform all functions required of it by the Compact and do all things necessary, proper, or convenient in the performance of its duties thereunder, either independently or in cooperation with any State or Federal agency.

Findings of fact made by the Commission are not conclusive in any court or before any agency or tribunal, but they do constitute prima facie evidence of the facts found. 23/

Compact Termination

The Compact can be terminated at any time by the unanimous agreement of the signatory States. Any rights established under it would remain in effect. 24/
Compact Protection

The predecessor Colorado River Compact in apportioning the use of the waters between the two Basins served to protect that resource for the Upper Basin against usurpation by the Lower Basin. In this manner benefits were assured for the basin of origin of the water supply.

The Upper Colorado River Basin Compact in apportioning the use of water among the five Upper Basin States protected each Upper Basin State against the other, and again to a finer degree preserved benefits for the areas of origin.

Coordination of Efforts

We have found that the Upper Colorado River Basin Compact has provided a basic, legal vehicle for coordination of our four States with the Federal government through our administrative commission. At the same time it has made possible effective cooperation and coordination among the States themselves.

Regional Development

Our Compact has proved to be an effective instrument for regional development. By working in a close spirit of cooperation among themselves and with the Federal government, and within the intent and terms of the Upper Basin Compact, the four member States of the Upper Colorado River Commission were successful in 1956 in obtaining Congressional authorization of the Colorado River Storage Project.25/ This project is an Upper Basin-wide, multiple-purpose
program with water development benefits for each State. It can be regarded as a means of implementing that major purpose of the compact "to secure the expeditious agricultural and industrial development of the Upper Basin, the storage of water, and to protect life and property from floods." It is interesting to note that the Storage Project Authorization Act provides for apportionment among the States of excess power revenues of a Basin Fund for repayment of irrigation project costs according to a percentage formula similar to that employed in the Upper Basin Compact for the apportionment of water and for the allocation of costs of operating the Upper Colorado River Commission.²⁶/

International Implications

Both the Colorado River and the Upper Colorado River Basin Compacts make reference to an international problem. In this manner, both agreements supplement and strengthen the complex treaty arrangements between the United States and the Republic of Mexico relating to an allocation of Colorado River water to Mexico.²⁷/

Similarities In Western States and Upper Basin States

By this point in our discussion you are probably aware that in many respects the seven States of the Colorado River Basin with their Colorado River Compact and the four States of the Upper Colorado River Commission have had to face situations analogous to many that will be encountered by the eleven States in their organization for western water development. For a successful western states water plan a great
deal of integration of activities on an interstate level will be necessary. Coincident with interstate cooperation must be a high degree of federal-state integration.

Compacts - General

Interstate compacts are deeply rooted in the United States Constitution wherein it says: "No State shall without the Consent of Congress, enter into any Agreement or Compact with another State, or with a foreign Power."28/

A compact is similar in content and form to an international treaty. It is usually embodied in State law as a special document, and is enacted in substantially identical words by the legislature of each State. If necessary, it can be enforced by suit in the U. S. Supreme Court, and it takes precedence over an ordinary statute. It would be necessary to obtain the consent of the Congress for a water compact among eleven western states.

A Western States Water Compact

Compacts Preferred

The newly-created Western States Water Council should thoroughly consider the compact approach in the light of its legal strength and adaptability. It has many advantages and a few disadvantages that can be either eliminated or minimized by proper planning in the negotiation period. In spite of the forty-year controversy between Arizona and California recently decreed by the Supreme Court, but not on the basis
of the Colorado River Compact, the interstate compact has been estab-
lished as the preferred and most generally accepted method of effecting
the allocation of waters of interstate streams. The Supreme Court has
indicated that the compacting procedure is superior to judicial deter-
mination. 29/

There are thirteen water allocation compacts in effect in the West. 30/
One of our Upper Basin States, Colorado, is a party to eight of them. Cer-
tainly, a formal, regional water allocation and administrative agreement
would offer one possibility for the efficient performance that would be
required in interstate water development and management in an area so
large and complex as the western United States.

Federal Participation

A regional administrative compact as a step in organization for
western water development would constitute a permanent, formal, con-
tractual agreement among the States. Undoubtedly certain advisory,
recommendatory, and investigative powers would also have to be in-
cluded for an operating commission. Furthermore, federal representation
would be mandatory because: (a) the United States has great national
interest in public lands, fish and wildlife resources, and in navigation
and flood control on interstate waters; (b) due to State limitations federal
funds would be required for project construction; (c) some of the streams
are international in character and agreements with Canada and Mexico
would be involved.
Some authorities claim that there is nothing in Canadian law to prevent a province from entering into a compact with American States, providing the subject is one over which a province has jurisdiction.31/ Agreements between Canadian Provinces and the United States are hampered by the fact that Canada has no constitutional clause similar to ours. Also, the Dominion government appears reluctant to permit direct participation of the provincial governments in international agreements. On the other hand, because under the United States Constitution our States would have to obtain the consent of Congress to enter into any agreement with Canadian authorities, it appears that the preferred and most practicable method for negotiation with Canada would be at the federal treaty level, as in the past in the fields of water and power. The States and Provinces could then be integrated into the international agreement by providing for their acceptance of the terms of the treaty as provisions of a compact. In effect, this is what happened on the Colorado River with respect to the relationship of the two nations and the seven States; although the
Colorado River Compact preceded the Mexican Water Treaty and the Upper Colorado River Basin Compact followed after the international treaty.

**National Interest In Western Water Plan**

Regardless of the approach finally selected by eleven States working together through their Western States Water Council, the entire nation will be watching closely. We will be wishing them the highest degree of success in resolving the difficult and complicated problems associated with the equitable distribution, development and management of western water resources in the national interest. We can do nothing less.

**REFERENCES**


2. Pursuant to Act of Aug. 19, 1921 (42 Stat. 171) (1922). The Compact can be found at 70 Cong. Rec. 324 (1928), and U. S. Dept. of Interior, Documents on the Use and Control of the Waters of Interstate and International Streams 39 (1956). It was approved by Congress as Sec. 13 of the Boulder Canyon Project Act in 1928 (45 Stat. 1064). This compact was negotiated in 1922 and enacted by six states in 1925 but not approved by Congress until 1928 nor ratified by the seventh state, Arizona, until 1944.

4. The Upper Basin States are: Arizona, Colorado, New Mexico, Utah, and Wyoming. The Lower Basin States are: Arizona, California, Nevada, New Mexico, and Utah. Arizona has only minor interests in the Upper Basin, and the Upper Division States include Colorado, New Mexico, Utah, and Wyoming. Utah and New Mexico have only minor interests in the Lower Basin, and the Lower Division States are: Arizona, California, and Nevada. Colorado River Compact Art. II (c) (d) (f) (g).

5. Art. III (c), Colorado River Compact. The right of Mexico to water from the river was recognized by international treaty between the U. S. and Mexico, dated February 3, 1944. (Treaty Series 994), (59 Stat. 1219) (1945).

6. Colorado River Compact, Art. V.


9. Ibid., Art. III (a)

10. Ibid., Art. VIII (a) and (e).

11. Ibid., Art. IV and Art. VIII (d) (10).

12. Ibid., Art. IX (d).

13. Ibid., Art. IX (b).
14. Ibid., Art. X.
15. Ibid., Art. XI.
16. Ibid., Art. XII.
17. Ibid., Art. XIII.
18. Ibid., Art. XIV.
19. Ibid., Art. XV (b)
20. Ibid., Art. XVI.
21. Ibid., Art. XVIII.
22. Ibid., Art. VIII (d) (1) through (13).
23. Ibid., Art. VIII (g).
24. Ibid., Art. XX.
26. Colorado River Storage Project Act, Sec. 5 (e) apportions excess revenues: Colorado, 46%; Utah, 21.5%; New Mexico, 17%; Wyoming, 15.5%. Art. III (a) and Art. VIII (b) respectively, apportion water use and Commission expenses: Colorado, 51.75%; Utah, 23%; New Mexico, 11.25%; Wyoming, 14%.
27. Colorado River Compact, Art. III (c) and Upper Colorado River Basin Compact, Art. IV (a); Art. VIII (d) (10); Art. XIX (b).
29. Colorado v. Kansas, 320 U.S. 383, 392 (1943). "Such controversies may appropriately be composed by negotiation and
and agreement, pursuant to the compact clause of the Federal Constitution. We say of this case, as the court has said of interstate differences of like nature, that such mutual accommodations and agreement should, if possible, be the medium of settlement, instead of invocation of our adjudicatory power."


30. These 13 water compacts are:


(b) LaPlata River Compact between Colorado and New Mexico (43 Stat. 796) 1925.

(c) South Platte River Compact between Colorado and Nebraska, (44 Stat. 195) 1926.

(d) Red River Compact among Minnesota, North Dakota, South Dakota (52 Stat. 150) 1938.

(e) Rio Grande Compact among Colorado, New Mexico, Texas (53 Stat. 785) 1939.

(f) Republican River Compact among Colorado, Kansas, Nebraska (57 Stat. 494) 1943.
(g) Belle Fourche Compact between South Dakota and Wyoming
(58 Stat. 94) 1944.

(h) Costilla Creek Compact between Colorado and New Mexico
(60 Stat. 246) 1946.

(i) Upper Colorado River Basin Compact of 1948 among Colorado,
  New Mexico, Utah, and Wyoming (63 Stat. 31) 1949.

(j) Pecos River Compact between New Mexico and Texas
(63 Stat. 159) 1949

(k) Arkansas River Compact between Colorado and Kansas,

(l) Snake River Compact between Idaho and Wyoming
(64 Stat. 29) 1950.

(m) Bear River Compact among Idaho, Utah, and Wyoming