

# Appendix D

## Summary of Compacts and Litigation

### Governing Colorado's Use of Interstate Streams

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Governing Colorado's Use of Interstate Streams

# **COLORADO DIVISION OF WATER RESOURCES**



## **A SUMMARY OF COMPACTS AND LITIGATION GOVERNING COLORADO'S USE OF INTERSTATE STREAMS**

**2000**

Any evaluation of the supply of water available for use to the citizens of Colorado must, of necessity, include a study of the laws which govern the topic. This evaluation must concern itself not only with state law, which tells the water administrator how to distribute water as between citizens of the state, but must also consider the ramifications of constitutional law and international law, for Colorado is so situated that the streams arising within her borders are vital to the economics of eighteen other states and the Republic of Mexico.

The consideration of geography alone is enough to make Colorado a prospective defendant in any interstate water case, but consideration of economics appears to be even more important. One-twentieth of the land in Colorado is under irrigation, a proportion which exceeds any other state. Considering irrigation by surface water only, Colorado has half again as much land under irrigation as any other state. The ability to protect and defend this huge portion of the state's economy is of major importance to Colorado.

Colorado is directly involved in one international treaty, nine interstate compacts, two U.S. Supreme Court decrees, and one interstate agreement, but before a discussion of the treaty, compacts, and decrees, it would seem appropriate to discuss the mechanisms available for the solution of controversies between states.

Three methods are available in the United States for this purpose:

1. Direct legislation by Congress,
2. A suit by one state against another in the United States Supreme Court,
3. A compact between states approved, where necessary, by Congress.

The first of these methods is very limited in scope, for while Congress has absolute power in administration of territories, its ability to interfere between states is permitted only within its constitutional powers, which in themselves are very limited.

The second method is granted by Article III, Section 2 of the U.S. Constitution, wherein it grants each state the right to seek redress from legal wrongs before the Supreme Court. This method is a civilized substitution for war between the states, and often the results are as unpredictable. Two major drawbacks can result from this course. The first is the difficulty in securing execution of a judgment against a state since each is a sovereign body not subject to the laws and actions of the other, necessitating some kind of Federal intervention for enforcement. The second drawback, and perhaps the most insurmountable, is that not all matters in dispute between states are capable of judicial determination.

The third method of resolution of interstate controversies is provided for in the U.S. Constitution in Article I, Section 10, Clause 3, whereby it is stated that, ". . . no state shall, without the consent of Congress, . . . enter into any agreement or compact with another state, or with a foreign power". This method provides the advantage of lengthy discussion of the controversy outside of a formal court environment by individuals who are knowledgeable on the topic, leading to a mutual understanding of problems, and hopefully, a mutually beneficial solution in the form of a compact.

Often, great criticism is leveled against the Colorado representatives who were instrumental in the framing of the several compacts to which the state is party. These criticisms range from the accusation that they "gave our water away" to the charge that they were "short-sighted" and should have been more cognizant of Colorado's tremendous natural resources and its consequent potential for future growth and need for water. Certainly, the Compact negotiators were not blessed with superhuman abilities and did, in fact, make some questionable decisions, but before judging them too harshly it is imperative that the situation, as it existed at the time of negotiation, be understood.

The first area to examine is that of the prevailing legal mood in the U.S. Supreme Court with respect to the equitable settlement of water controversies. The Supreme Court had decided many interstate controversies, but only two cases pertained to the question of water and irrigation in the arid and relatively unpopulated West. Colorado was a defendant in both of these cases.

The first case was Kansas v. Colorado, 185 U.S. 208; 206 U.S. 46; (1901, 1907). This case concerned the Arkansas River and its depletion by irrigation. From this case, the principle of "equitable apportionment" was evolved, which could be construed to allow one state all or substantially all of the waters of a stream in order to offset other advantages the other state may have. This principle relied heavily on preserving existing developed uses, and the ramifications of this kind of thinking were apparent when considering the state of development of Colorado as opposed to California on the Colorado River.

The second landmark case which had great bearing on Colorado's negotiators was Wyoming v. Colorado, 259 U.S. 419, 496; 260 U.S. 1; (1922). This case concerned the waters of the Laramie River, and the Supreme Court upheld the theory that when two contesting states both operate under the doctrine of prior appropriation, then that doctrine can be applied on an interstate basis. Having been severely limited in these two cases, Colorado's negotiators began to search for a more viable way to protect Colorado's waters for future use.

The second constraint placed on the negotiators was the lack of good hydrologic data. For example, in 1922 the historic records indicated a mean annual flow in the Colorado River at Lee Ferry of 15,000,000 acre-feet. We now know that the period of record available was a wet one and that the long-term mean flow at Lee Ferry was approximately 13,000,000 acre-feet per year. In another instance, the streams in the Republican River Compact were allocated, in some instances, on the basis of less than ten years of record. History shows some of these to have been underestimated by as much as 80%.

We see, then, that while the Compacts to which Colorado is a signatory state are restrictive, the potential for much more damaging Court decisions existed.

With this brief background, the following summaries are presented. These summaries in no way are conclusive or all-encompassing, as each Compact is a very complicated and difficult document. Any decisions concerning any Compact should be made only after a thorough evaluation of the full document.

**INTERNATIONAL AND INTERSTATE  
DOCUMENTS AFFECTING  
COLORADO'S USE OF WATER**

**International Treaties**

Mexican Treaty on Rio Grande, Tijuana, and  
Colorado Rivers - 1945

**Interstate Compacts**

Colorado River Compact	1922
La Plata River Compact	1922
South Platte River Compact	1923
Rio Grande River Compact	1938
Republican River Compact	1942
Costilla Creek Compact	1944 (Rev. 1963)
Upper Colorado River Compact	1948
Arkansas River Compact	1948
Animas-La Plata Project Compact	1969

**U. S. Supreme Court Cases**

<u>Nebraska v. Wyoming</u>	325 U.S. 589 (1945)
<u>Wyoming v. Colorado</u>	353 U.S. 953 (1957)

**Agreements**

Pot Creek Memorandum of Understanding - 1958  
Sand Creek Memorandum of Agreement - 1997

## **COLORADO RIVER COMPACT**

November 24, 1922

**Signatory States:** Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming

### **Major Purposes:**

1. Equitable division of the waters of the Colorado River (Art. I)
2. Establish relative importance of different uses (Art. II)
3. Promote interstate comity (Art. I)
4. Remove causes of present and future controversies (Art. I)
5. Secure expeditious agricultural and industrial development of the basin (Art. I)

### **Important Provisions:**

1. Divides Colorado River Basin into the Lower Basin (California, Arizona, Nevada) and the Upper Basin (Colorado, Utah, New Mexico, Wyoming) at Lee Ferry, Arizona. (Art. I and II)
2. Allocates 7,500,000 acre-feet of consumptive use to each basin per annum. (Art. III)
3. Allows Lower Basin to increase its consumptive use by 1,000,000 acre-feet per year. (Art. III)
4. Provides for Mexican allocation, first from surplus waters above the 15,000,000 acre-feet per year, and secondly splits obligation equally between the basins. (Art. III)
5. Provides that Upper Basin shall deliver 75,000,000 acre-feet in each consecutive 10-year period to the Lower Basin. (Art. III)
6. Subordinates navigation use to domestic, agriculture, and power purposes. (Art. IV)
7. Subordinates power use to domestic and agricultural purposes. (Art. IV)
8. Termination of compact by unanimous agreement of all signatory states. (Art. X)

## LA PLATA RIVER COMPACT

November 27, 1922

**Signatory States:** Colorado and New Mexico

**Colorado Commissioner:** State Engineer

### Major Purposes:

1. Equitable distribution of the waters of the La Plata River (Preamble)
2. Remove causes of present and future controversy (Preamble)
3. Promote interstate comity (Preamble)

### Important Provisions:

1. State of Colorado shall at her own expense operate two gaging stations on the La Plata River; one being the Hesperus station and one being the interstate station at or near the state line. (Art. I)
2. Flow at the Hesperus station means the river flow at that station plus the amount of concurrent diversions above that station. (Art. I)
3. Flow at the interstate station means the river flow at that station plus one-half of the concurrent diversions of the Enterprise and Pioneer Canals, plus any other diversion in Colorado for use in New Mexico. (Art. I)
4. Both gages will be operated between February 15 and December 1. (Art. I)
5. Between December 1 and February 15, each state has unrestricted use of all water within its boundaries. (Art. II)
6. Between February 15 and December 1, the water shall be apportioned as follows:
  - a. Each state has unrestricted use on those days where the interstate station has a mean daily flow of 100 cfs or more. (Art. II)
  - b. On all other days, Colorado must deliver to the interstate station half of the mean flow at Hesperus for the preceding day, but not more than 100 cfs. (Art. II)
7. Whenever the flow is so low that the state engineers of each state agree that greater beneficial use can be obtained, the water can be distributed to each state successively in alternate periods in lieu of the schedule set in (6) above. (Art. II)
8. Substantial delivery of water in accordance with the Compact is deemed a compliance, and minor irregularities shall be disregarded. (Art. II)
9. Compact can be modified or terminated by mutual consent of the signatory states.

## **SOUTH PLATTE RIVER COMPACT**

April 27, 1923

**Signatory States:** Colorado and Nebraska

**Colorado Commissioner:** State Engineer

### **Major Purposes:**

1. Remove all causes of present and future controversy between the states and its citizens with respect to the South Platte River (Preamble)
2. Promote interstate comity (Preamble)

### **Important Provisions:**

1. "Upper Section" means that portion of the South Platte in Colorado upstream of the west boundary of Washington County. (Art. I)
2. "Lower Section" means that portion of the South Platte between the west boundary of Washington County and the stateline. (Art. I)
3. "Flow of the river" means the measured flow at Julesburg plus the inflow below that station and above the diversion works of the Western Irrigation District in Nebraska. (Art. I)
4. The waters of Lodgepole Creek are divided at a point two miles north of the stateline. Nebraska is entitled to exclusive use above the division point, and Colorado has exclusive use of all waters below the division point. (Art. III)
5. Colorado has the right to full and uninterrupted use of all the waters in the "Lower Section" during the period of October 15 to April 1, except that should Nebraska construct the South Divide Canal with a heading near Ovid, Colorado, then that canal will bear an appropriation date of December 17, 1921, and Colorado shall have full use of the waters in the "Lower Section" plus 35,000 acre-feet less the amount diverted by the South Divide Canal under its appropriation date during the period October 15 to April 1. (Art. IV and VI)
6. Between April 1 and October 15, Colorado shall not permit diversions from the "Lower Section" by Colorado appropriators whose decrees are junior to June 14, 1897, on any day when the interstate station shows a mean flow less than 120 cfs. (Art. IV)
7. Because of climatic conditions, minor irregularities in the delivery of water shall be disregarded. However, if a deficiency in delivery should result from neglect on the part of Colorado, the deficiency shall be made up within 72 hours. (Art. IV)
8. Colorado waives any objection it may have to the diversion of waters in Colorado for use in Nebraska through the Peterson Canal or other canals in the Julesburg Irrigation District. (Art. V)
9. The Compact may be modified or terminated by mutual consent of the signatory states. (Art. X)



## **RIO GRANDE COMPACT**

March 18, 1938

**Signatory States:** Colorado, New Mexico, and Texas

**Colorado Commissioner:** State Engineer

### **Major Purposes:**

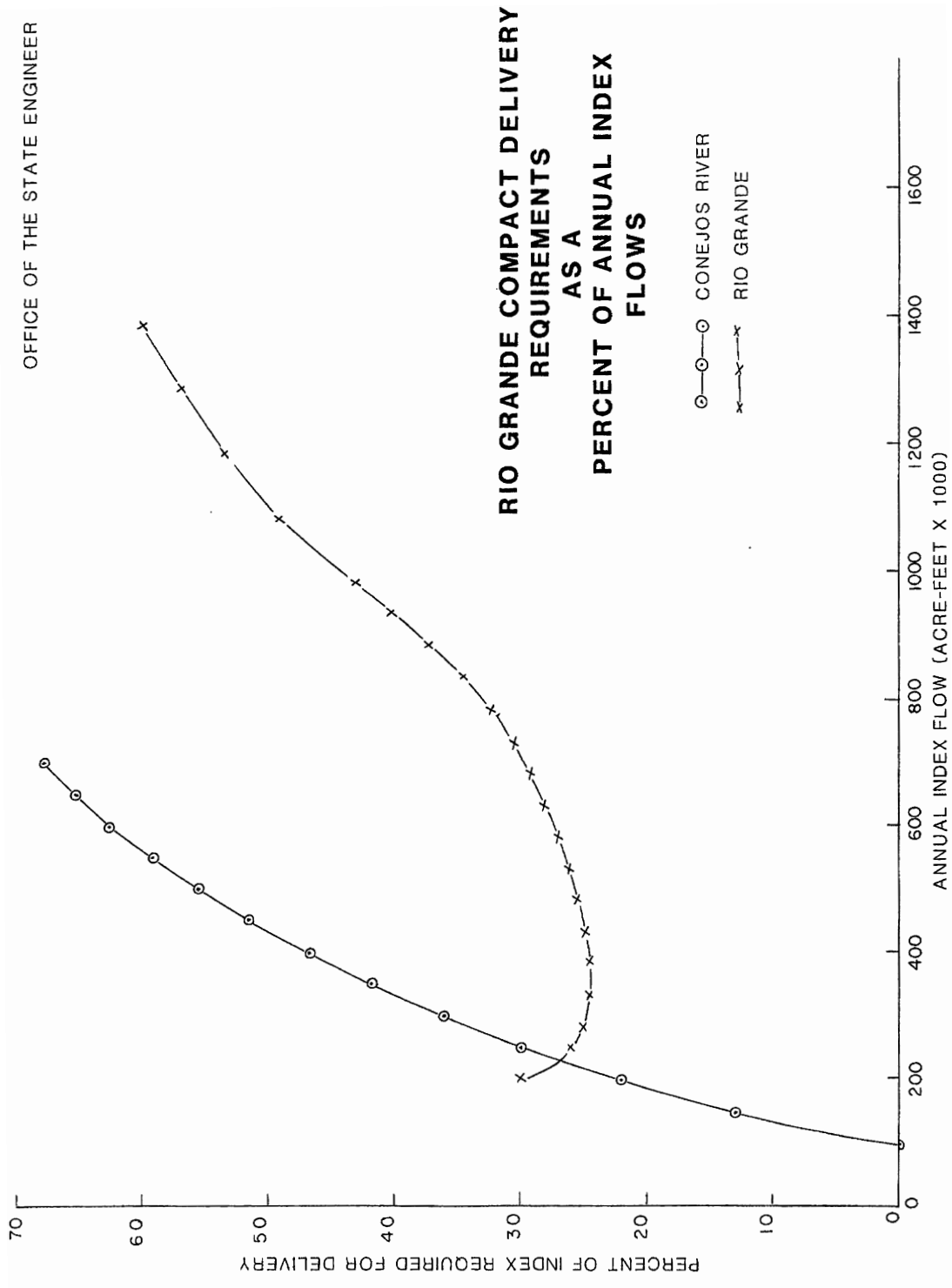
1. To remove all cause of present and future controversy between the states concerning the waters of the Rio Grande above Ft. Quitman, Texas (Preamble)
2. To promote interstate comity (Preamble)
3. To effect an equitable apportionment of the waters of the Rio Grande above Ft. Quitman, Texas (Preamble)

### **Important Provisions:**

1. Rio Grande Basin means all of the territory drained by the Rio Grande and its tributaries in Colorado, New Mexico and Texas.
2. The Commission shall cause to be maintained and operated, among others, the following stream gaging stations: (Art. II)
  - a. Rio Grande near Del Norte above the principal points of diversion to the San Luis Valley
  - b. Conejos River near Mogote
  - c. Los Pinos River near Ortiz
  - d. San Antonio River at Ortiz
  - e. Conejos River at its mouth near Las Sauses
  - f. Rio Grande near Lobatos
  - g. Automatic water stage recorders on all reservoirs constructed after 1929, as well as stream gaging stations below such reservoirs.
3. Colorado is obliged to deliver at Lobatos the sum of the amounts set forth in the delivery schedules for the Conejos River and the Rio Grande less 10,000 acre-feet. The Conejos Index Supply includes the San Antonio River and Los Pinos River flows for the months April through October. These schedules require zero delivery for an index of 100,000 acre-feet, up to 68% delivery for an index of 700,000 acre-feet on the Conejos, and 30% delivery for an index of 200,000 acre-feet, and up to 60% delivery for an index of 1,400,000 acre-feet on the Rio Grande (see attached graph). (Art. III)
4. If the Closed Basin is used for delivery of water to the Rio Grande, the water must contain no more than 45% sodium ions in the total positive ion count when total dissolved solids exceed 350 ppm. (Art. III)

## **RIO GRANDE COMPACT (cont.)**

5. Delivery credits and debits shall be computed on the basis of each calendar year, and Colorado's annual or accrued debit shall not exceed 100,000 acre-feet except as either or both may be caused by holdover storage in reservoirs constructed after 1937. (Art. VI)
6. Colorado shall retain, insofar as possible, water in storage at all times to the extent of her accrued debit. (Art. VI)
7. In any year in which actual spill occurs, accrued credits are reduced in proportion to the amount of credit held by Colorado and New Mexico, and both states do not have a delivery obligation. In any year in which there is actual spill of usable water, all accrued debits are canceled. (Art. VI)
8. In any year that accrued debits exceed the minimum unfilled capacity of project storage, such debits shall be reduced proportionally to an aggregate amount equal to the minimum unfilled capacity. (Art. VI)
9. No increase in storage in reservoirs constructed after 1929 is permitted whenever there is less than 400,000 acre-feet of usable water in project storage. (Art. VII)
10. During January of any year, the Commissioner for Texas or New Mexico may demand the release of water from reservoirs constructed after 1929 to the amount of the accrued debit of Colorado and/or New Mexico. (Art. VIII)
11. Review of nonsubstantive changes in the Compact can be considered every fifth year. (Art. XIII)
12. The schedules of delivery in the Compact shall never be changed as a result of an increase or diminution in the delivery of water to Mexico. (Art. XIV)



## REPUBLICAN RIVER COMPACT

December 31, 1942

**Signatory States:** Colorado, Kansas and Nebraska

**Colorado Commissioner:** State Engineer

### Major Purposes:

1. Provide for most efficient use of water for multiple purposes (Art. I)
2. Remove all present and future controversy (Art. I)
3. Promote interstate comity (Art. I)
4. Recognize that the most efficient utilization of waters in the basin is for beneficial consumptive use (Art. I)
5. Promote joint action between the U.S. and the states in the efficient use of water and in the control of floods (Art. I)

### Important Provisions:

1. Allocation of waters are based on a computation of average, annual virgin water supply in the respective streams. (Art. III)
2. Colorado is allocated the beneficial use of the following waters on an annual basis:

North Fork of the Republican	10,000 acre-feet
Arikaree River	15,400 acre-feet
South Fork of the Republican	25,400 acre-feet
Beaver Creek	<u>3,300 acre-feet</u>
<b>Total</b>	<b>54,100 acre-feet</b>

plus the entire supply of Frenchman Creek and Red Willow Creek in Colorado. (Art. IV)
3. Kansas is allocated on an annual basis 190,300 acre-feet of beneficial consumptive use and Nebraska 234,500 acre-feet. (Art. IV)
4. No provision is made for any debit or credit system, but provisions are made for readjustment of historical, annual virgin flows should they vary more than 10% from those set forth in the Compact. Reallocations can be made on these readjusted flows. (Art. III)

## **COSTILLA CREEK COMPACT**

September 30, 1944  
(Amended February 7, 1963)

**Signatory States:** Colorado and New Mexico

**Colorado Commissioner:** State Engineer

### **Major Purposes:**

1. Equitable division of the waters of Costilla Creek (Art. I)
2. Remove present and future causes of interstate controversy (Art. I)
3. Assure the most efficient utilization of water (Art. I)
4. Provide for integrated operation of existing and prospective irrigation facilities in the two states (Art. I)
5. Adjust conflicting jurisdictions of the two states over irrigation works diverting and storing water in one state for use in both states (Art. I)
6. Equalize benefits of water from Costilla Creek (Art. I)
7. Place the beneficial application of water on an equal basis in both states (Art. I)

### **Important Provisions:**

1. Provides for the calculation of a safe yield prior to delivery of water each year. (Art. II)
2. Defines an irrigation season (May 16 - Sept. 30) and a storage season (Oct. 1 - May 15). (Art. II)
3. Establishes a duty of water of one cubic-foot per second for each 80 acres of land irrigated. (Art. III)
4. Involves the relinquishment of Colorado water rights and the change of decreed amounts. (Art. III)
5. Establishes schedules of delivery to each state based on water available. (Art. V)
6. Prohibits direct flow diversions during the storage season. (Art. V)

## UPPER COLORADO RIVER COMPACT

October 11, 1948

**Signatory States:** Arizona, Colorado, New Mexico, Utah and Wyoming

**Colorado Commissioner:** Appointed by the Governor

### Major Purposes:

1. Provide for the equitable division of the waters of the Upper Basin allocated by the terms of the Colorado River Compact (Art. I)
2. Establish the obligations of each state of the Upper Basin with respect to required deliveries at Lee Ferry, as set forth in the Colorado River Compact (Art. I)
3. Promote interstate comity (Art. I)
4. Remove causes of present and future controversies (Art. I)
5. Secure the expeditious agricultural and industrial development of the Upper Basin (Art. I)

### Important Provisions:

1. Apportionment of waters of the Upper Basin as follows:

Arizona	50,000 acre-feet/yr.
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Of the total beneficial consumptive use allocated to the Upper Basin less the 50,000 acre-feet per year to Arizona, the apportionment is (Art. III):

Colorado	51.75%
New Mexico	11.25%
Utah	23.00%
Wyoming	14.00%

2. The apportionment is based upon the allocation of man-made depletions, and beneficial use is the basis, the measure, and the limit of the right to use. (Art. III)
3. No state shall exceed its apportioned use in any water year when the effect of such use is to deprive another signatory state of its apportioned use. (Art. III)

## UPPER COLORADO RIVER COMPACT (cont.)

4. If a call should be placed at Lee Ferry by the Lower Basin, the extent of curtailment by each state of the Upper Basin shall be determined by the following:
  - a. The extent and times of curtailment shall assure full compliance with Article III of the Colorado River Compact. (Art. III)
  - b. If any state shall have in the ten-year period preceding the call exceeded its allocation, it shall make up that overdraft before demand is placed on any other state. (Art. IV)
  - c. Curtailment shall be proportioned among the states in the same ratio as beneficial use of waters occurred during the preceding year, provided that use by rights which predate November 24, 1922, shall be excluded. (Art. IV)
5. The Compact recognizes the provisions of the La Plata River Compact, and consumptive use of water under it shall be charged to the respective states under Article III of this Compact. (Art. X)
6. Apportions the waters of the Little Snake River between Colorado and Wyoming differentially between rights perfected before the Compact and those perfected after its signing. (Art. XI)
7. Apportions the waters of Henry's Fork, a tributary of the Green River between Utah and Wyoming. (Art. XII)
8. Apportions the waters of the Yampa River between Colorado and Utah such that Colorado must ensure that the flow of the Yampa at Maybell must not fall below 5,000,000 acre-feet for any consecutive 10-year period. (Art. XIII)
9. Apportions the waters of the San Juan River system between Colorado and New Mexico in such a way that Colorado agrees to deliver in the San Juan and its tributaries enough water to meet New Mexico's entitlement under Article III considering the water which originates within New Mexico proper. (Art. XIV)

## ARKANSAS RIVER COMPACT

December 14, 1948

**Signatory States:** Colorado and Kansas

**Colorado Commissioners:** One resident from former Water District 14 or 17, one resident from former Water District 67, and the Director of the Colorado Water Conservation Board

### Major Purposes:

1. Settle existing and future controversy between the states concerning the utilization of the waters of the Arkansas River (Art. I)
2. Equitably divide and apportion the waters of the Arkansas River between Colorado and Kansas as well as the benefits which arise from the construction of John Martin Reservoir (Art. I)

### Important Provisions:

1. The conservation pool at John Martin Reservoir will be operated for the benefit of water users in Colorado and Kansas, both upstream and downstream from the dam. (Art. IV)
2. The Compact is not intended to impede development of the Arkansas Basin in either state provided that the waters of the Arkansas River shall not be materially depleted in usable quantity or availability. (Art. IV)
3. From November 1 to March 31 (winter storage) of each year, all water entering John Martin Reservoir shall be stored up to the limit of the conservation pool, except that Colorado can demand release of the river inflow up to 100 cfs as long as no waste occurs. (Art. V)
4. Summer storage in John Martin Reservoir shall commence on April 1 and continue to October 31 of each year. All water entering the reservoir during this period shall be stored except:
  - a. When Colorado water users are operating under decreed priorities.
  - b. Colorado may demand releases of river inflow up to 500 cfs and Kansas may demand releases of water equivalent to that portion of river inflow between 500 cfs and 750 cfs regardless of Colorado releases. (Art. V)
5. Releases of stored water shall be made upon concurrent or separate demands by Colorado or Kansas at any time during the summer storage period. Limitations imposed are:
  - a. Unless specifically authorized by the Compact Administration, separate releases by Colorado shall not exceed 750 cfs and separate releases by Kansas shall not exceed 500 cfs.
  - b. Concurrent releases shall not exceed 1250 cfs.
  - c. When water stored in the conservation pool is less than 20,000 acre-feet, releases to Kansas shall not exceed 400 cfs and concurrent releases shall not exceed 1000 cfs. (Art. V)



## ARKANSAS RIVER COMPACT (cont.)

6. When the supply in the conservation pool falls below a 14-day supply level, the Compact Administration will notify the State Engineer of Colorado of the date when the supply will be exhausted, and at that time, Colorado priorities above and below the dam will be administered together. (Art. V)
7. When water is available in the conservation pool at John Martin Reservoir, Colorado users above the dam shall not be effected by priorities located below John Martin Reservoir. (Art. V)
8. When Colorado reverts to administration of decreed priorities, Kansas shall not be entitled to any river flow entering John Martin Reservoir. (Art. V)
9. The 1980 Operating Plan approved by the Compact Administration modifies Article V by establishing separate volumetric accounts for each state that can be released from John Martin Reservoir when directed by each state. The Colorado account is 60 percent and the Kansas account is 40 percent of any water stored pursuant to the Compact.

## **ANIMAS-LA PLATA PROJECT COMPACT**

June 7, 1969

**Signatory States:** Colorado and New Mexico

**Colorado Commissioner:** Not Specified

**Major Purposes:**

1. Implement the operation of the Animas-La Plata Reclamation Project
2. Consideration of interstate comity

**Important Provision:**

Provides New Mexico with the right to divert and store water from the La Plata and Animas River systems under the Project with the same validity and equal priority as those rights granted by Colorado courts for Colorado users of Project water, providing such uses are within New Mexico's allocation in the Upper Colorado River Compact.

**NEBRASKA v. WYOMING**

325 U.S. 589 (1945)

**Important Provisions:**

1. Colorado is prohibited from diverting water from the North Platte River and its tributaries for irrigation of more than 135,000 acres in Jackson County during one irrigation season. (This value was changed to 145,000 acres by the Court on June 14, 1953).
2. Colorado is prohibited from storing more than 17,000 acre-feet of water for irrigation purposes from the North Platte River and its tributaries in Jackson County between October 1 of any year and September 30th of the following year.
3. Colorado is prohibited from exporting out of the basin of the North Platte River and its tributaries in Jackson County more than 60,000 acre-feet in any consecutive 10-year period.
4. Colorado and Wyoming are required to maintain accurate records of irrigated acreage, volumes of water stored, and volumes of water exported for inspection at all times.
5. This decree does not affect or restrict the use or diversion of water from the North Platte River and its tributaries for ordinary and usual domestic, municipal, and stock watering purposes.

**WYOMING v. COLORADO**  
353 U.S. 953 (1957)

**Important Provisions:**

1. Permits Colorado to divert from the Laramie River and its tributaries 49,375 acre-feet per year, subject to the following limitations:
  - a. No more than 19,875 acre-feet per year may be diverted by Colorado for use outside the basin.
  - b. No more than 29,500 acre-feet per year may be diverted by Colorado for use within the basin, of which not more than 1,800 acre-feet can be diverted after July 31 of each year.
  - c. Any portion of the 19,875 acre-feet per year not diverted by Colorado for use outside the basin can be added to the 29,500 acre-feet per year permitted for use within the basin.
  - d. All waters diverted by Colorado for use within the basin are restricted to irrigation use on those lands designated by the court at the time of the decree.
2. This decree does not prejudice the right of either state to exercise the use of the waters of Sand Creek.

## **POT CREEK MEMORANDUM OF UNDERSTANDING**

April 1, 1958

**Signatory States:** Colorado and Utah

**Major Purpose:**

Develop a workable and equitable division of the waters of Pot Creek between the signatory states.

**Important Provisions:**

1. Both states agree that a Compact is necessary, but that prior to its formulation, a workable system must be developed.
2. The states agree to the appointment of a water commissioner with authority to administer in both states with Colorado bearing 20% of his expenses.
3. Establishes a schedule of priorities for use in both states and defines a period before which direct flow diversions cannot be exercised, namely May 1 of each year.

## **SAND CREEK MEMORANDUM OF AGREEMENT**

March 13, 1939

Revised August 7, 1997

**Signatory States:** Colorado and Wyoming

**Major Purpose:**

To allocate the waters of Sand Creek between the signatory states in accordance with the priority water rights in each state.

**Important Provisions:**

1. Recognize that Wyoming water rights are entitled to 50.68 cfs prior to diversions by Colorado ditches.
2. Amended in 1997 to require delivery of 40 cfs to the stateline by Colorado for a seven-day period at the commencement of the irrigation season. Thereafter, Colorado is required to deliver 35 cfs, if physically available, to the stateline if needed for irrigation in Wyoming.
3. Limits diversions of the Wilson Supply Ditch (transbasin diversion) and the Sand Creek Ditch to amounts of water in excess of that allocated to Wyoming.