

URC 1/10.2/R31/1948

C.2

JAN 22 1949

DOCUMENTS DIVISION

COLORADO STATE PUBLICATIONS LIBRARY



3 1799 00141 6452

REPORT AND SUBMISSION
of the
UPPER COLORADO RIVER BASIN COMPACT

Negotiated and signed by
Commissioners representing
**The States of Arizona, Colorado, New Mexico,
Utah and Wyoming**

at Santa Fe, New Mexico, October 11, 1948

to the
Governor and General Assembly, State of Colorado
by the
COMMISSIONER FOR COLORADO



Publication Approved by James A. Noonan, Controller

December, 1948

REPORT AND SUBMISSION
by the
COMMISSIONER FOR COLORADO
of the
UPPER COLORADO RIVER BASIN COMPACT

Negotiated and signed by
Commissioners representing
THE STATES OF ARIZONA, COLORADO, NEW MEXICO,
UTAH AND WYOMING
at Santa Fe, New Mexico, October 11, 1948

★ ★ ★ ★ ★

THE COMMISSION

HARRY W. BASHORE, *Federal Representative and Chairman*
CHARLES A. CARSON, *for Arizona* CLIFFORD H. STONE, *for Colorado*
FRED E. WILSON, *for New Mexico* EDWARD H. WATSON, *for Utah*
L. C. BISHOP, *for Wyoming*

★ ★ ★ ★ ★

ENGINEERING ADVISORY COMMITTEE

J. R. RITER, *Bureau of Reclamation, Chairman*
R. GAIL BAKER and R. I. MEEKER, *for Arizona*
R. J. TIPTON, F. C. MERRIELL and R. M. GILDERSLEEVE, *for Colorado*
J. H. BLISS and J. R. ERICKSON, *for New Mexico*
C. O. ROSKELLEY, *for Utah*
R. D. GOODRICH and H. T. PERSON, *for Wyoming*
H. P. DUGAN, *Federal Representative*

★ ★ ★ ★ ★

LEGAL ADVISERS

J. G. WILL of *Bureau of Reclamation, Federal Representative*
JESSE A. UDALL, *for Arizona*
JEAN S. BREITENSTEIN, *for Colorado*
MARTIN A. THREET, *for New Mexico*
J. A. HOWELL and EDWARD W. CLYDE, *for Utah*
W. J. WEHRLI, *for Wyoming*

**STATEMENT OF FEDERAL REPRESENTATIVE
AT TIME OF SIGNING
UPPER COLORADO RIVER BASIN COMPACT**

We are gathered here today in the Palace of Governors at Santa Fe, New Mexico, on an occasion which marks a turning point in the history of the Colorado River Basin. There is about to be signed here a document which will forever be an example of fairness, a demonstration of statesmanship of the highest order, and finally, a proof of the ability of States to deal with their mutual problems, no matter how complex, through the traditional and constitutional compact method.

The Upper Colorado River Basin Compact which we are now about to execute will be a tower of strength to the States of Arizona, Colorado, New Mexico, Wyoming and Utah, perhaps for centuries to come. It is a structure for the completion of which we have labored long. It is sound in design. Each part of it has been wrought with great care by men who are notably skilled in their professions and experts in the compact process. It has been buildded by men of good will; and because it has been so buildded, it will endure.

I have already announced my intention as representative of the United States of America to approve the Upper Colorado River Basin Compact. I shall approve it because it fully recognizes the interests of the Federal Government; because it creates conditions that will positively foster the conservation and development of the water resources of this vast area for agricultural and domestic purposes; and because it is equitable and sound from every point of view.

It has been an honor to preside over the meetings of the Upper Colorado River Basin Compact Commission. It has been a privilege to participate in the negotiations that have finally culminated in these ceremonies today.

There is honor and glory for each Commissioner and his staff. No delegation need leave here with a feeling other than one of high achievement for its State and for the Basin as a whole. I congratulate each one of you. I wish you God-speed on your trip home; and I trust that you will work just as hard for ratification by your state legislatures and by the Congress of the United States of America as you have during these many months of meeting and negotiation. Your work is not done. You have taken but the first and I believe the most difficult step on the long road toward full development of this Upper Basin.

December, 1948

THE GOVERNOR AND GENERAL ASSEMBLY OF
THE STATE OF COLORADO

There is herewith submitted the Upper Colorado River Compact which was negotiated and signed by Commissioners representing the States of Arizona, Colorado, New Mexico, Utah and Wyoming, and approved by the Federal representative, on the 11th day of October, A. D. 1948. This Compact accomplishes two principal purposes: (a) It apportions the use of the water of the Upper Colorado River System among the five signatory States; and (b) it determines the respective obligations of the States of Colorado, New Mexico, Utah and Wyoming to deliver water, as required by the Colorado River Compact of 1922, for use in the Lower Basin.

The Commissioner submits:

1. That this Compact is fair and provides an equitable apportionment among the signatory States of the use of the waters of the Upper Colorado River Basin.
2. That it provides an equitable and workable determination of the respective obligations of the signatory States to make the deliveries of the water at Lee Ferry required by the Colorado River Compact.
3. That the incidental provisions of the Compact, including the creation of an administrative agency, are necessary to carry out its principal purposes.
4. That the amount of water made available for consumptive use in Colorado by the Compact is all that could reasonably be expected in view of the application of the principles of equitable apportionment to a limited water supply.
5. That the Compact will protect existing water rights and present utilization of Colorado River water in the State.
6. That the apportionment made by the Compact to Colorado will meet the requirements for reasonable potential water development in the State.
7. That the Compact is in conformity with the provisions of the Colorado River Compact which apportions water between the Upper and Lower Basins of the Colorado River.
8. That the Compact is in the best interests of the State of Colorado and its citizens and is necessary to accomplish development of a major water resource of the State.

Accordingly, the Commissioner respectfully recommends and urges that it be ratified by the General Assembly of Colorado.

The Compact was executed in six counterparts, each of which constitutes an original. One original has been delivered to the Governor of Colorado. A copy of the Compact, together with explanatory material, is attached hereto.

Respectfully submitted,
CLIFFORD H. STONE
Commissioner for Colorado

**RESOLUTION UNANIMOUSLY ADOPTED BY COLORADO
WATER CONSERVATION BOARD ON DECEMBER 10, 1948**

WHEREAS, The Colorado Water Conservation Board on September 27, 1948, after a presentation and full discussion of the Vernal draft of the proposed Upper Colorado River Basin Compact, approved that draft of Compact and authorized the Colorado Compact Commissioner to execute such Compact on behalf of the State of Colorado with such technical and language changes, not affecting the apportionment to or obligations of Colorado, as were acceptable to him and to his Engineering and Legal advisers, and

WHEREAS, Pursuant to such Resolution the Colorado Compact Commissioner did, in the City of Santa Fe, New Mexico, on October 11, 1948, execute the Upper Colorado River Compact on behalf of the State of Colorado, and

WHEREAS, The Board has now reviewed and considered the Compact so executed at Santa Fe and finds that the Compact complies with the Resolution of September 27, 1948, and

WHEREAS, The Board further finds that the Compact is fair and equitable and furnishes an essential basis for the development of the water resource of the Upper Colorado River.

NOW THEREFORE, BE IT RESOLVED, That the Colorado Water Conservation Board approves the Upper Colorado River Basin Compact signed at Santa Fe, New Mexico, on October 11, 1948, and urges the General Assembly of the State of Colorado to ratify that Compact at as early a date as is consistent with orderly legislative procedure.

FURTHER RESOLVED, That upon the ratification of the Compact by the signatory states the Congress of the United States should be urged to give its consent and approval to the Compact.

FURTHER RESOLVED, That the Board commends the Colorado Commissioner and his advisers for the work which they have done in negotiating the Compact.

FURTHER RESOLVED, That copies of this Resolution shall be forwarded by the Secretary of the Board to each member of the General Assembly of the State of Colorado and to the Senators and Congressmen representing the State of Colorado in the Congress of the United States.

Adopted and approved by unanimous vote this 10th day of December, A. D. 1948.

(GEORGE J. BAILEY)
Vice Chairman of the Board

ATTEST:

(CLIFFORD H. STONE)
Director and Secretary of the Board



NECESSITY FOR AN UPPER COLORADO RIVER BASIN COMPACT

The Colorado River Compact of 1922 made no apportionment of water, or of the use of water, among the States of the Colorado River Basin. As hereinafter explained, the 1922 apportionment was between the Upper and Lower Basins of the River.

Since 1922 water development in the Upper Colorado River Basin and projected plans for ultimate, integrated development have precipitated questions of available water supplies in the various States for proposed projects. This is particularly true of the major projects which will utilize large volumes of water. The Bureau of Reclamation, in making a finding of economic justification and recommending or approving a Federal project, must make a determination of an assured water supply for it. When the Congress acts upon such a project and appropriates money for its construction, it must be shown that the project, together with other water uses, will demand no more water than is available to the State which seeks the project. Then, too, the interested States of the Basin cannot assume the risk of promoting any project which, if constructed, will later involve a controversy over its water supply. It is fully realized that a stage of development on the River has been reached when all projects for the maximum and most efficient utilization of a limited water supply must fit into an integrated, basin-wide plan.

As authorized by Section 15 of the Boulder Canyon Project Act (45 Stat. 1057, 1065), passed in 1928, and Section 2 of the Boulder Canyon Project Adjustment Act (54 Stat. 774), passed in 1940, the Bureau of Reclamation has been carrying on studies and investigations on the Colorado River for a number of years. These investigations and the formulation of a report were intensified in the years 1944, 1945 and the forepart of 1946. On June 7, 1946, a departmental report of the Department of Interior on the Colorado River was issued. This followed and was based upon a report and recommendations, dated March 22, 1946, by the Directors of Regions III and IV, Bureau of Reclamation.

This 1946 report stated:

"There is not enough water available in the Colorado River system for full expansion of existing and authorized projects and for all potential projects outlined in the report, including the new possibilities for exporting water to adjacent watersheds. The need for a determination of the rights of the respective States to deplete the flow of the Colorado River consistent with the Colorado River Compact and its associated documents, therefore, is most pressing."

And the same report recommended:

"That the States of the Colorado River Basin determine their respective rights to deplete the flow of the Colorado River consistent with the Colorado River Compact."

This report of 1946 was submitted to the affected States, pursuant to Section 1 of the Flood Control Act of 1944, for their respective views. Colorado submitted its comments and criticisms of the report to the Secretary of Interior, and concurred in the conclusion that there should be an apportionment of water among the States of the Upper Basin.

After reviewing the comments of the States and of various Federal agencies on the 1946 report, the Secretary of Interior on July 19, 1947, submitted his interim report on the status of investigations of potential water resource development in the Colorado River Basin in Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming. The Secretary in his letter of transmittal to the Congress, dated July 24, 1947, explained:

"As stated in the interim report, existing circumstances tend to preclude the formulation of a comprehensive plan of development of the water resources of the Colorado River Basin at this time. Accordingly, although I cannot now recommend authorization of any project, I am transmitting the report to you in order that the Congress may be apprised of this comprehensive inventory of potential water resource developments in the Colorado River Basin and of the present situation regarding water rights in that basin."

The conclusions of the 1947 report on the Colorado River contained this language:

"That a comprehensive plan of development for the Colorado River Basin cannot be formulated at this time;

"That further development of the resources of the Colorado River Basin, particularly large-scale development, is seriously handicapped, if not barred, by lack of determination of the rights of individual States to utilize the waters of the Colorado River system. The water supplies for projects to accomplish such development might be assured as a result of compact among the States of the separate basins, appropriate court or congressional action, or otherwise;

"That the States of the Upper Colorado River Basin and States of the Lower Colorado River Basin should be encouraged to proceed expeditiously to determine their respective rights to the waters of the Colorado River consistent with the Colorado River Compact."

It is clear from the foregoing that development of Colorado's share of Colorado River water is at a standstill until a compact apportioning the use of such water among the interested States is consummated. Because of the division of the use of water between the Upper and Lower Basins by the 1922 Colorado River Compact, the Upper Basin States may proceed with such apportionment independent of what may be done by the States of the Lower Basin. In recognition of this situation, the Upper Colorado River Basin Compact was negotiated and signed. It does not become a completed Compact binding on the signatory States until ratified by their respective Legislatures and approved by the Congress.

NEGOTIATION OF THE COMPACT

On July 22, 1946, the Governors of Arizona, Colorado, New Mexico, Utah and Wyoming, or their representatives, met at Cheyenne, Wyoming, and agreed to initiate the negotiation of an Upper Colorado River Basin Compact. Compact Commissioners at that time had been, or later were, appointed in accordance with the laws of the respective participating States. Also the President of the United States had appointed Harry W. Bashore, former Commissioner of the Bureau of Reclamation, as Federal representative on the Commission.

The organization meeting of the Commission was held at Salt Lake City, Utah, on July 31, 1946. Harry W. Bashore was elected chairman and Grover A. Giles, Attorney General of Utah, secretary. Plans of procedure, including the manner of making the official record, were agreed upon, and the Commission provided for the creation of an Engineering Advisory Committee.

Before the Compact was signed on October 11, 1948, eight meetings and fifty sessions of the Commission were held as follows:

Meeting	Session	Date	Time	Place	
No. 1		July 31, 1946		Salt Lake City, Utah	
	No. 1	July 31, 1946	10:00 AM	Salt Lake City, Utah	
	No. 2	July 31, 1946	1:30 PM	Salt Lake City, Utah	
No. 2		Sept. 17-18, 1946		Santa Fe, New Mexico	
	No. 3	Sept. 17, 1946	10:00 AM	Santa Fe, New Mexico	
	No. 4	Sept. 17, 1946	1:30 PM	Santa Fe, New Mexico	
	No. 5	Sept. 18, 1946	10:00 AM	Santa Fe, New Mexico	
No. 3		Oct. 28-30-31 and Nov. 2, 1946		Field Meetings	
	No. 6	Oct. 28, 1946	1:45 PM	Rock Springs, Wyoming	
	No. 7	Oct. 30, 1946	10:00 AM	Grand Junction, Colorado	
	No. 8	Oct. 31, 1946	2:00 PM	Price, Utah	
	No. 9	Nov. 2, 1946	8:00 AM	Farmington, New Mexico	
	No. 10	Nov. 2, 1946	10:00 AM	Farmington, New Mexico	
	No. 4		Sept. 8, 1947		Cheyenne, Wyoming
		No. 11	Sept. 8, 1947	3:00 PM	Cheyenne, Wyoming
	No. 5		Dec. 1-2-3-4, 1947		Denver, Colorado
		No. 12	Dec. 1, 1947	10:00 AM	Denver, Colorado
No. 13		Dec. 1, 1947	2:00 PM	Denver, Colorado	
No. 14		Dec. 2, 1947	9:00 AM	Denver, Colorado	
No. 15		Dec. 2, 1947	2:00 PM	Denver, Colorado	
No. 16		Dec. 3, 1947	1:30 PM	Denver, Colorado	
No. 17		Dec. 4, 1947	9:00 AM	Denver, Colorado	
No. 18		Dec. 4, 1947	1:30 PM	Denver, Colorado	
No. 6		Feb. 17-18-19-20-21 1948		Denver, Colorado	
	No. 19	Feb. 17, 1948	10:00 AM	Denver, Colorado	
	No. 20	Feb. 18, 1948	4:00 PM	Denver, Colorado	
	No. 21	Feb. 19, 1948	9:30 AM	Denver, Colorado	
	No. 22	Feb. 19, 1948	2:00 PM	Denver, Colorado	
	No. 23	Feb. 19, 1948	7:30 PM	Denver, Colorado	
	No. 24	Feb. 20, 1948	10:00 AM	Denver, Colorado	
	No. 25	Feb. 20, 1948	1:30 PM	Denver, Colorado	
	No. 26	Feb. 21, 1948	9:30 AM	Denver, Colorado	

Meeting	Session	Date	Time	Place
No. 7		July 7 to 21, 1948		Vernal, Utah
	No. 27	July 7, 1948	10:00 AM	Vernal, Utah
	No. 28	July 7, 1948	2:00 PM	Vernal, Utah
	No. 29	July 8, 1948	9:30 AM	Vernal, Utah
	No. 30	July 9, 1948	9:30 AM	Vernal, Utah
	No. 31	July 10, 1948	9:30 AM	Vernal, Utah
	No. 32	July 12, 1948	9:30 AM	Vernal, Utah
	No. 33	July 13, 1948	9:30 AM	Vernal, Utah
	No. 34	July 14, 1948	9:30 AM	Vernal, Utah
	No. 35	July 15, 1948	9:30 AM	Vernal, Utah
	No. 36	July 16, 1948	9:30 AM	Vernal, Utah
	No. 37	July 19, 1948	9:30 AM	Vernal, Utah
	No. 38	July 19, 1948	8:00 PM	Vernal, Utah
	No. 39	July 20, 1948	10:00 AM	Vernal, Utah
	No. 40	July 20, 1948	8:00 PM	Vernal, Utah
No. 41	July 21, 1948	9:00 AM	Vernal, Utah	
No. 8		Oct. 4 to 11, 1948		Santa Fe, New Mexico
	No. 42	Oct. 4, 1948	10:00 AM	Santa Fe, New Mexico
	No. 43	Oct. 4, 1948	2:20 PM	Santa Fe, New Mexico
	No. 44	Oct. 5, 1948	10:00 AM	Santa Fe, New Mexico
	No. 45	Oct. 5, 1948	2:00 PM	Santa Fe, New Mexico
	No. 46	Oct. 6, 1948	2:00 PM	Santa Fe, New Mexico
	No. 47	Oct. 7, 1948	10:00 AM	Santa Fe, New Mexico
	No. 48	Oct. 8, 1948	2:00 PM	Santa Fe, New Mexico
	No. 49	Oct. 9, 1948	3:30 PM	Santa Fe, New Mexico
	No. 50	Oct. 11, 1948	2:00 PM	Santa Fe, New Mexico

Meeting No. 3, with sessions held in four different States, as shown above, was designed to obtain the views and comments of the people of these States relative to the Compact and to enable the Commission to explain its proposed procedure and objectives and the need for a Compact. These sessions were all well attended and showed the great interest of the water users of the Basin in the undertaking.

All sessions during the period of negotiation were open to the people of the participating States. On only one occasion was an executive session held. Representatives of interested water users' organizations and irrigation and conservancy districts of the States were in attendance at all of the sessions. Most of the members of the Colorado Water Conservation Board at one time or another were in attendance and were of assistance to the Commissioner. During the negotiations, progress was reported at regular meetings of the Water Board and various proposed provisions of the Compact considered. After the Vernal meeting when an apportionment was made and the major portion of the Compact agreed upon by the Commission, the Board entered its formal approval of the Compact; and after the Compact was signed on October 11, 1948, it was approved by the Board as shown by the resolution which is made a part of this submission.

The Engineering Advisory Committee was created because it was recognized that available information on water supplies, water uses and other data were not sufficient to serve as a guide to the Commission in making the Compact. The Commission assigned to the Committee specific tasks. The personnel of the Committee is shown at the beginning of this report. The Committee met on the average of every two months over a period of more than two years. Its work was not confined to meetings.

of members of the Committee but included the time and efforts of staff engineers of the Bureau of Reclamation and of the individual States. The Committee's final report is available in the office of the Colorado Water Conservation Board to anyone who wishes to study it, and is made a part of the official record of the Commission. It is not a fact-finding report of any Federal agency or of any one State but represents united work and agreed conclusions by an agency of the Federal government and a group of interested States. It not only served well the Commission but will be of inestimable worth to the water-users of the Basin in the future.

The report of the Bureau of Reclamation submitted to the President of the United States by the Secretary of Interior on July 24, 1947, entitled "The Colorado River" (House Document 419, Eightieth Congress, First Session; 285 pp.), was of great value to the Commission in considering potential development of the Basin and important factors in connection therewith. It had taken years for the Bureau to make the investigation and prepare this report.

Colorado's Commissioner wishes to acknowledge the outstanding services of Jean S. Breitenstein, his legal adviser, and Royce J. Tipton, his principal engineering adviser. Without their help, the results evidenced by the Compact could not have been attained. The assistance and engineering studies made by Frank C. Merriell, Engineer-Secretary of the Colorado River Water Conservation District, made up of seven counties in Western Colorado, was of great value not only to the Engineering Advisory Committee, of which he was a member, but also to the Commissioner. C. L. Patterson, before his resignation as Chief Engineer of the Colorado Water Conservation Board, was a capable member of the Engineering Committee. He was replaced by R. M. Gildersleeve of the engineering staff of the Board, who served well in the preparation of the engineering studies.

All of the signatory States owe a debt of gratitude and appreciation to the Bureau of Reclamation in the making of this Compact. Services of inestimable value were rendered by the Bureau. Besides the Federal members of the Engineering Advisory Committee, above mentioned, C. B. Jacobson, Regional Hydrologist of Region 4, Bureau of Reclamation, Salt Lake City, Utah, rendered valuable help to the engineering Committee. J. G. Will, Assistant Chief Counsel of the Bureau, Washington, D. C., served as chairman of the drafting committee and as a member of the Legal Committee. His fairness, objective approach to Compact problems and ability won for him the confidence and respect of all members of the Commission. J. R. Riter, as chairman of the Engineering Advisory Committee, displayed a devotion to the task, conscientious endeavor, fairness and ability which elicited the high commendation of the Commission. Harry W. Bashore, Federal representative and Chairman of the Commission, presided in an impartial manner and guided well the Commission over many "rough spots." All of these services by the Bureau were rendered without cost to the States.

The Department of Agriculture, by making available to the Commission, without cost to the States except for traveling expenses, the serv-

ices of Harry F. Blaney, the country's most outstanding expert on the subject of beneficial consumptive use of water, served the Commission in an important respect.

The official record of the Commission contains approximately 1900 typewritten pages. It is being put in permanent form so that it will be preserved and made available for future use by the signatory States and the Government. Thus there will be avoided the situation which now exists with respect to the Colorado River Compact. An important part of the minutes of the Colorado River Compact Commission of 1922, after careful search, cannot be found in Washington or in the official records of any of the seven signatory States. These lost minutes have a vital bearing on controversies which have arisen on the Colorado River.

The Commission has not as yet adjourned sine die. Its members resolved to continue its organization for the purpose of aiding in the consideration of ratification by the States and approval by the Congress of the Compact.

EXCERPTS FROM REPORT OF ENGINEERING ADVISORY COMMITTEE

The report of the Engineering Advisory Committee is 202 pages long, including the appendices. No appreciable amount of the information contained in it can be included here, but it seems well to quote certain pertinent data as follows:

“AVERAGE ANNUAL HISTORIC FLOWS AT STATE LINE (1914-1945, INCL.)

<i>Colorado</i>	1000 A. F.
Little Snake River (at mouth).....	226.9
Yampa River (exclusive of Little Snake River).....	1,172.5
White River	576.2
Ungaged area tributary to Green River.....	27.4
Colorado River including Gunnison River.....	5,469.9
Dolores River.....	762.3
San Juan River above Rosa.....	929.9
Pine River	294.7
Animas River.....	807.2
La Plata River.....	30.9
Mancos River.....	48.2
McElmo Creek.....	51.1
Ungaged area tributary to San Juan River.....	13.5
Colorado share of main stem channel losses within State.....	—2.3
Net Flow at State Line.....	10,408.4*

(*These figures when the 1000 A.F. guide at the top of the column is applied mean 10,408,400 A.F.)

"HISTORIC CONTRIBUTIONS AT LEE FERRY
(AVERAGE 1914-1945, INCL.)

State	Historic Flow at State Lines acre-feet	Out of state losses acre-feet	Historic Contribution to Flow at Lee Ferry Acre-feet	% of total
Arizona	133,200	1,000	132,200	0.96
Colorado	10,408,400	455,600	9,952,800	72.18
New Mexico..	186,100	7,700	178,400	1.29
Utah	2,022,800	6,000	2,016,800	14.63
Wyoming	1,610,600	102,200	1,508,400	10.94
Total	14,361,100	572,500	13,788,600	100.00

"Irrigated Areas

"The following tabulation shows the average irrigated areas for the study period, 1914-1945, inclusive, and the present irrigated areas adopted by the Engineering Committee.

"IRRIGATED AREAS

State	Average for 1914-1945, incl.	Present
Arizona	3,770	9,840
Colorado	790,606	790,600*
New Mexico	39,000	43,620
Utah	288,520	303,977
Wyoming	228,700	236,675
Total	1,350,596	1,384,712

*Assumed to be same as average for period, 1914-1945."

"Incidental Areas

"The areas of non-cropped land adjacent to and consuming irrigation water incidental to the irrigation of the crop lands were estimated by inspection of the Bureau of Reclamation land classification sheets, field inspection, available aerial surveys and other detail and general maps of the irrigated areas. The incidental areas adopted by the Committee are as follows:

(Average for Study Period, 1914-1945, inclusive)

Arizona	Negligible
Colorado	106,812 Acres
New Mexico.....	6,482 "
Utah	48,625 "
Wyoming	28,600 "
Total.....	190,519 "

"MAN-MADE DEPLETIONS AT STATE LINES AND AT LEE FERRY
AVERAGES FOR 1914-1945, INCL.
(Acre feet)

State	At Sites of Use	At State Lines	At Lee Ferry
Arizona	4,000	4,000	4,000
Colorado	1,062,800	1,042,800	1,016,100
New Mexico	72,200	71,300	69,500
Utah	556,500	544,800	544,300
Wyoming	227,700	226,400	216,000
Total	1,923,200	1,889,300	1,849,900

"Virgin Flow at Lee Ferry

"Virgin streamflow contributions at state lines and at Lee Ferry were obtained by adding to the historic contributions the man-made stream depletions estimated at these sites. The following tabulation shows the virgin contributions at state lines and Lee Ferry and also the out of state channel losses which were estimated for average undepleted flow conditions.

"VIRGIN FLOW AT LEE FERRY

State	Virgin flow at state lines acre-feet	Out of state losses acre-feet	Contribution to virgin flow at Lee Ferry acre-feet	% of total
Arizona	137,200	1,000	136,200	0.87
Colorado	11,451,200	482,300	10,968,900	70.14
New Mexico	257,400	9,500	247,900	1.58
Utah	2,567,600	6,500	2,561,100	16.38
Wyoming	1,837,000	112,600	1,724,400	11.03
Total	16,250,400	611,900	15,638,500	100.00

"Main Stem Reservoir Operations

"The flow of the Colorado River is not uniform but varies from year to year. At Lee Ferry the historic flow has ranged between a minimum of about 4,400,000 acre-feet in 1934 to a maximum of about 21,900,000 acre-feet in 1917. The average historic flow for 1914-1945, inclusive, was 13,788,600 acre-feet. In the 10-year period of lowest historic flow, 1931-40, inclusive, the average annual flow at Lee Ferry was 10,151,000 acre-feet.

"Reservoir operation studies were made to determine the extent to which the Upper Basin can make its apportioned water uses during drought cycles and still meet its compact obligations at Lee Ferry, as it is quite evident that holdover reservoirs must be constructed in the Upper Colorado River Basin to impound water in years of high runoff, and to release such stored water in critical periods of low runoff, such as 1931-40, to help meet the Upper Division obligation at Lee Ferry.

"Such reservoirs will deplete the flow at Lee Ferry by reason of evaporation losses in excess of present stream channel losses. However, such losses, and the holdover storage capacity required to regulate the

stream flow at Lee Ferry can only be approximated at this time until all storage sites have been studied in detail. It is recognized also, that upstream development of future irrigation projects and storage reservoirs will furnish some equation of streamflows, and will to some extent reduce the capacity needed in holdover reservoirs as herein reported.

"Operation studies were made for the 32-year period, 1914 through 1945. * * * * These studies indicate a required live holdover storage capacity of not to exceed 30,000,000 acre-feet and stream depletions due to reservoir losses of approximately 500,000 acre-feet annually.

"The actual amount of such holdover storage capacity will be influenced by the extent to which the streamflow will be equated by the operation of upstream holdover storage capacity needed to regulate streamflows at the sites of diversions and the equating effect of upstream irrigation developments."

COLORADO RIVER COMPACT OF 1922

The Upper Colorado River Basin Compact must be in conformity with, and may not violate, the Colorado River Basin Compact of 1922. That Compact was negotiated and signed by Commissioners representing all seven States of the Colorado River Basin. It was later ratified by the signatory States and approved by the Congress. For this reason any consideration of the Upper Colorado River Basin Compact should be approached with the understanding of the salient terms of the first Compact.

The Colorado River Compact was signed at Santa Fe, New Mexico, on November 24, 1922. More than six years passed before it was finally approved by the Congress on December 21, 1928, through provisions contained in the Boulder Canyon Project Act (45 Stat. 1057-1068). During the intervening period much controversy arose over its ratification and Congressional approval, resulting to a considerable degree from opposition in Arizona.

Section 4 (a) of the Boulder Canyon Project Act gave consent to the Compact if ratified by only six of the signatory States, including the State of California, provided 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 to 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 4,400,000 acre-feet of the waters apportioned to the lower basin States by paragraph (1) 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."

The California Legislature passed this self-limitation statute and the respective Legislatures of California, Colorado, Nevada, New Mexico, Utah and Wyoming completed state ratification by March 4, 1929. The President of the United States proclaimed the Compact effective on June 25, 1929. Arizona did not ratify until 1944.

The Colorado River Compact of 1922 accomplishes these things:

1. It divides the Colorado River Basin into an Upper and Lower Basin. The dividing point is at Lee Ferry which is on the river approximately thirty miles (river distance) below the Utah-Arizona boundary line and one mile below the mouth of the Paria River. Colorado and Wyoming are entirely within the Upper Basin. California and Nevada are entirely within the Lower Basin. Arizona, Utah and New Mexico include territory within each of the two Basins.

2. It makes no apportionment of water among the seven States of the Colorado River Basin but it divides the beneficial consumptive use of water between the Upper and Lower Basins. The beneficial consumptive use of 8,500,000 acre-feet annually is apportioned to the Lower Basin and the beneficial consumptive use of 7,500,000 acre-feet annually, to the Upper Basin.

3. It also creates two classes of Colorado River Basin States, namely "States of the Lower Division" and "States of the Upper Division." The States of the Lower Division are Arizona, California and Nevada and the States of the Upper Division are Colorado, New Mexico, Utah and Wyoming. The Compact provided that 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 first day of October next succeeding the ratification of this Compact."

It should be noted that this provision constitutes a joint and several obligation of the States of the Upper Division to deliver at Lee Ferry the 75,000,000 acre-feet of water during each consecutive ten-year period for use of the States of the Lower Division.

4. It treats any water over and above the total 16,000,000 acre-feet apportionment for beneficial consumptive use in the two Basins as "surplus;" and it specifies that if the United States—"shall recognize in Mexico any right to the use of any waters of the Colorado River system, such waters shall be supplied first from"—such surplus. If such surplus proves insufficient to meet recognized rights to the use of water in Mexico, 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 1945 a treaty between the United States and Mexico was consummated. This treaty guarantees to Mexico the right to use annually 1,500,000 acre-feet of water.

5. It provides that the surplus over and above the 16,000,000 acre-foot total beneficial consumptive use apportionment to the two basins and the water required to meet Mexico treaty demands, shall be subject to—"further equitable apportionment at any time after October 1, 1963, if and when either basin shall have reached its total beneficial consumptive use"—as set out in the Compact.

EXPLANATION OF ARTICLES CONTAINED IN THE UPPER COLORADO RIVER BASIN COMPACT

The Upper Colorado River Basin Compact contains 21 separate articles, each of which must be considered in order to have an understanding of the principles and objects of the proposed Compact.

The introductory paragraph of the Compact states the official personnel of the Compact Commission. Colorado's Commissioner, Clifford H. Stone, was appointed by the Governor of Colorado under the provisions of the 1937 Act creating the Colorado Water Conservation Board. Prior to the appointment, the Governor consulted interested individuals from all sections of the State. As required by law, the appointment was confirmed by the Colorado Water Conservation Board. The action on the part of the Board was unanimous.

Since an Upper Basin Compact must conform to the 1922 Compact, the opening paragraph expressly states that the Upper Basin Compact is subject to the provisions of the Colorado River Compact.

No reference is made in the Compact as to any Congressional authorization for the making of the Compact. Under the United States Constitution and the decisions of the United States Supreme Court construing that Constitution, States of the Union have the right to enter into compacts provided only the consent of Congress is obtained. There is no law requiring States to secure antecedent authorization before negotiating a compact. Under their powers as quasi-sovereigns, the States may compact and their compacts will be effective if, after the compact is negotiated, the Congress of the United States consents thereto.

ARTICLE I

This Article is a declaration of intent. Three of the principles of the Compact should be specifically mentioned. The Compact provides for the equitable apportionment of such use of the water of the Colorado River system as was apportioned in perpetuity to the Upper Basin by the Colorado River Compact. Also the Compact establishes the obligations of each State of the Upper Division with respect to the deliveries of water at Lee Ferry which are required by the Colorado River Compact, and it is recognized specifically that all provisions of the Upper Basin Compact are subject to the Colorado River Compact which is and remains in full force and effect.

ARTICLE II

This Article is made up entirely of definitions of terms appearing in the Compact. Among the definitions are included all of the definitions appearing in the 1922 Compact. In addition, certain terms not there defined but appearing in the Upper Basin Compact are expressly defined.

Attention is particularly directed to subparagraph (m) which defines the term "domestic use" as including the use of water for household, stock, municipal, mining, milling, industrial, and other like purposes but excluding the generation of electrical power.

ARTICLE III

This is the apportionment Article. In considering it one must bear in mind two important facts, namely: (1) The 1922 Compact does not apportion water but instead the use of water. This resulted from the decision by the makers of the original Compact that they should avoid any argument on the question as to whether the United States or the individual States own the unappropriated waters of the River. For this purpose a means of apportioning use rather than apportioning water was devised; (2) While the 1922 Compact, by its paragraph III (a), apportions to the Upper Basin the beneficial consumptive use of 7,500,000 acre-feet of water annually, such use is subject to the availability of water. The States of the Upper Division are required by the 1922 Compact to maintain certain flows at Lee Ferry. The water available for use in the Upper Basin is that remaining after the Lee Ferry delivery requirements are satisfied. In view of the uncertainty as to the total amount of water which might be available for the Upper Basin the Compact Commission determined that so far as the States of the Upper Division are concerned the apportionment must be in terms of percents of the total amount of water apportioned to, and available for use in, the Upper Basin.

Accordingly an apportionment was made upon the following basis: Arizona, which is not a State of the Upper Division, was granted the right to use a maximum of 50,000 acre-feet annually. The use of the water apportioned to, and available for use in, the Upper Basin and remaining after the deduction of the use by Arizona of not to exceed 50,000 acre-feet annually, was apportioned on the following basis:

- To Colorado 51.75%;
- To New Mexico 11.25%;
- To Utah 23%;
- To Wyoming 14%.

It is of interest to consider the analysis made by the Colorado Commissioner and his advisers before agreeing to the percentage stated for Colorado. A very careful study was made of existing and potential uses in Colorado both within and without the natural Basin of the stream. On the assumption that 7,500,000 acre-feet of water will be available for use in the Upper Basin, the Colorado percentage is sufficient for a water supply to take care of all existing uses on both the Eastern and Western Slopes, for an expansion of uses on the Western Slope to an

extent that would result in the consumption of double the amount of water now being consumed on the Western Slope, for taking care of all transmountain diversions constructed or under construction and all planned extensions thereof or additions thereto and for an estimated million acre-feet annually which may be made available for potential transmountain diversion projects. This appraisal was used in considering the apportionment question. It does not constitute a commitment on the manner in which Colorado shall eventually utilize its share of the water.

It is true that Colorado endeavored to secure a larger apportionment. However, it must be realized that each of the States advanced requests for a greater apportionment than that eventually received. In the meeting at Vernal, Utah, when the Commissioners for the various States first came forward with their requests, the total amounted to 117% of the available water in the Upper Basin. It was necessary for each State to reduce its request. The final result, while not satisfying the ultimate potentialities of any State, constitutes as fair and equitable an apportionment as is humanly possible. No State can say with any justification that the Compact does not treat it fairly.

Particular attention is directed to the apportionment made to the State of New Mexico. It is well known that in Northwestern New Mexico, there is a large Indian population which in late years has attracted much popular attention. The Commissioners wisely determined the water allocation should be such as to satisfy fully the needs of the Indians. Accordingly, New Mexico was allotted a share of water sufficiently large to take care of every water use currently planned for the Indians by the Office of Indian Affairs and in addition to afford New Mexico an equitable share of water available for use by the whites. Indian uses of water are charged against the share of the State in which the use is made.

It was necessary to specify certain principles upon which the apportionment was made. This is done in subparagraph (b) of Article III. It is recognized that the apportionment includes all man-made depletions, that beneficial use is the basis of the right to use, and that the allotment to each State includes all water necessary for the supplying of existing rights. Subparagraph (b) (3) recognizes certain limitations designed to protect each State in securing the use of the water allotted to it.

The Compact does not apportion any water which under the terms of the 1922 Compact falls within the category of surplus. It is specifically stated that the apportionment made by the Compact shall not be taken as any basis for the allocation of benefits resulting from the generation of power.

ARTICLE IV

This Article relates to curtailment of use if necessary in order to maintain Lee Ferry flows. Under the 1922 Compact the States of the Upper Division may not deplete the Lee Ferry flow below specified quantities. To prevent a violation of that Compact it was necessary in the Upper Basin Compact to make provision for the curtailment of uses so as to prevent a depletion of the flow to an extent which would violate

the 1922 Compact. Article IV gives to the administrative agency created by the Compact the authority to determine the extent of curtailment both as to quantity and time. In doing so, however, the Commission must follow certain stated principles. The curtailment must be such as to assure full compliance with the Colorado River Compact. If any State or States in the ten years preceding the year in which curtailment is necessary, has used more water than they were entitled to use under the apportionment made in Article III, then such State or States must deliver at Lee Ferry a quantity of water equal to the overdraft before demand is made on any other State for curtailment. Except for this requirement the extent of curtailment by each Upper Division State must be such as to deliver at Lee Ferry the quantity of water which bears the same relation to a total curtailment as the consumptive use of water by that State in the preceding year bears to the total consumptive use in all of the States of the Upper Division during the same year. It is most important to note that in determining the last-mentioned relationship uses of water under rights perfected prior to November 24, 1922, are excluded. The value of this provision to Western Slope users should be recognized. A very high proportion of their uses was made under rights antedating 1922.

ARTICLE V

This Article pertains to the charging of reservoir evaporation losses. One of the weaknesses in the 1922 Compact is its failure to provide any method of charging such reservoir evaporation losses. This omission has resulted in a serious dispute among the Lower Basin States as to their liability for water lost by evaporation from the surfaces of Lake Mead and Lake Havasu.

The negotiators of the Upper Basin Compact deemed it essential to avoid, if possible, such disputes in the Upper Basin and to that end they have incorporated in Article V principles to be followed in charging reservoir evaporation losses. Such losses from reservoirs constructed prior to the signing of the Compact are charged to the State in which the reservoirs are located and water stored in such reservoirs is for the use of the State in which the reservoirs are located. Reservoirs constructed after the signing of the Compact are divided into two classes. If, as found by the administrative agency, a reservoir is used in whole or in part to assist the Upper Division States in meeting at Lee Ferry delivery obligations, then the losses, as found by the Commission to be chargeable to the reservoir or reservoir capacity so utilized, shall be charged to each State of the Upper Division in the proportion that the consumptive use of water in that State during the year in which the charge is made bears to the total consumptive use in all of the Upper Division States during the same year. Water stored in such reservoir or reservoir capacity is to be for the common benefit of all the States of the Upper Division and is not to be earmarked for any particular State.

As to reservoir or reservoir capacity found by the Commission to be used to supply water for use in an Upper Division State, the Commission shall make a finding in regard thereto and all the reservoir losses properly

allocable to such reservoir or reservoir capacity shall be charged to the State which has the use of the water and the water shall be earmarked for and charged to that State.

The Commissioners thought that there might be some controversy as to whether a reservoir site should preferably be used for the benefit of a particular State or for the benefit of all the States of the Upper Division in making Lee Ferry deliveries. Accordingly, paragraph (c) provides that the storage of water for consumptive use in a State of the Upper Division shall have preference.

ARTICLE VI

The purpose of this Article is to establish the method of measuring consumptive use of water. There is no purpose in making an apportionment of consumptive use unless the procedure for measurement is defined. There have been in the Colorado River Basin two conflicting theories as to the measurement of consumptive use. Without entering upon a technical discussion of the details, it is sufficient to say that under one of these theories the use is measured by totaling the diversions from the river and subtracting therefrom the return flows. Under the second theory the quantity of consumptive use is determined by computing the extent to which the man-made uses have depleted the stream flows at designated points. The first theory is utterly unworkable in Colorado. On the Western Slope there are thousands of ditch diversions. To apply the principle of diversions less returns it would theoretically be necessary to install automatic measuring devices at the headgate of each ditch. By such procedure the diversions could be measured. The measuring of returns to the river from this multitude of individual diversions would present a complex problem for which no easy solution has ever been indicated. The situation in Colorado is comparable to that existing in other Upper Basin States.

The negotiators of the Upper Basin Compact also gave consideration to the intent of the makers of the 1922 Compact. It was concluded that such intent was to measure uses in terms of stream depletions at Lee Ferry so far as the Upper Basin is concerned.

After full consideration, it was determined that consumptive use should be measured "by the inflow-outflow method in terms of man-made depletions of the virgin flow at Lee Ferry." The "inflow-outflow" method is an engineering procedure whereby the amount of water occurring in the Upper Basin is measured by series of rim stations. The outflow is, of course, determined by the flow at Lee Ferry. The amount of consumptive use represents the change in the relationship between the index stations from that existing under virgin conditions and that existing at any particular time after the stream has been depleted by man's activities.

"Man-made depletions" means the reduction in river flow caused by the activities of man. "Virgin flow," sometimes called "reconstructed flow," means the amount of water flowing in the river before any of it is put to use by man's activities.

The actual determination of the consumptive use by the procedure indicated is made a responsibility of the administrative agency. The

Commissioners recognized that in the future some other or different method of measurement might become necessary; hence the Commission is given the right to adopt a different method of determination, but in taking such action the Commission must act unanimously.

ARTICLE VII

Article VII is designed to make clear that uses of water by agencies, instrumentalities, or wards of the United States shall be charged against the State in which the use occurs. Among other things, this means that Indian uses are a charge against the share of the State in which the use is made.

Another point made clear by this Article is that where water is diverted, stored, or conveyed in one State for use in another State, the charge is against the State which receives the beneficial use of the water.

ARTICLE VIII

This very important Article creates an interstate agency to administer the Compact. It was obvious to all the Commissioners that the multitude of problems which may develop in connection with the use of Upper Basin water could neither be foreseen nor solved at this time. A desirable feature of any compact is flexibility. Under the circumstances, it was deemed essential to set up an agency authorized to administer the Compact.

Article VIII creates the "Upper Colorado River Commission." Arizona, because of its slight interest in the Upper Basin, was not given a place on the Commission. The other four States each have a Commissioner designated or appointed in accordance with the laws of the particular State. The President of the United States is requested to designate a Commissioner for the United States who shall be the presiding officer and shall have the same powers and rights as the Commissioner of any State. A quorum consists of any four members of the Commission. Expenses of the Commission, except the salaries and expenses of each Commissioner and the expenses paid by the United States, are borne by the four States according to the percentage of consumptive use apportioned to each. This means that Colorado, which has an apportionment of 51.75%, must bear 51.75% of the expense of the Commission.

The Commission is required to appoint a Secretary who shall not be a member of the Commission or an employee of any signatory State or of the United States. Engineering, legal, clerical or other personnel may be employed without regard to the civil service laws of any State.

The Commission is given numerous specific powers. Among the more important are the following: To adopt rules and regulations, to establish gaging stations, to forecast water run-off, to report on water supplies and uses, to make findings on matters covered by the Compact, to acquire and hold personal and real property, and to make annual reports. All of these powers must be exercised in a manner consistent with the Compact. Concurrence of four members of the Commission is necessary on any

matter except where the Compact requires unanimous action. The records of the Commission shall be readily available to the official representatives of the States and of the United States. The organization meeting of the Commission must be held within four months from the effective date of the Compact.

Consideration was given to the question as to whether or not the Commission should have judicial powers. It was finally agreed that it would be improper to delegate any judicial authority to the Commission. However, it seemed very desirable to give some standing to findings of fact made by the Commission. Accordingly, paragraph (g) provides that findings of fact made by the Commission while not conclusive in any court shall constitute prima facie evidence of the facts found.

ARTICLE IX

In order to utilize fully the waters of the Upper Basin it will be necessary to have facilities in one State to divert, store, convey and regulate water both for use in another State and for use in satisfying the Lee Ferry delivery obligations. Article IX has as its purpose the provision of machinery necessary for the establishment of facilities in one State for the benefit of another State or States.

It should be recognized that Colorado more than any other State is affected by this Article. Plans for future development encompass facilities located in Colorado for the use of Wyoming, Utah and New Mexico. It will be recalled that Colorado has a statute forbidding diversions in this State for use in another State. In the negotiation of the Republican River Compact Colorado was confronted with the same situation as is presented on the Upper Colorado. In fairness to our neighbors we must permit the construction and use of facilities in Colorado for the benefit of States lower on the stream. To do this it is necessary to supersede the statute above mentioned.

Another problem relates to the use of the power of eminent domain. There are decisions to the effect that one State may not come within the boundaries of another State and there exercise the power of eminent domain. To get around this difficulty it was necessary to provide that an upper State would in its own sovereign capacity exercise the power of eminent domain upon the proper request from another State.

The principles set forth in Article IX follow very closely those contained in the Republican River Compact, which was made by Colorado, Nebraska and Kansas. Because of particular conditions existing on the Upper Colorado it was necessary to go into more detail than is found in the Republican River Compact.

In connection with the facilities in an Upper State for use in a Lower State, the Lower State must bear the expense and, in acquiring the property and constructing the facilities, must comply with the laws of the Upper State. The storage and release of water is made by the Upper State upon the order of the State for whose benefit the facility is constructed or, if the facility is constructed for the benefit of all States, upon

the order of the Commission. The rights of the Lower State are subject to the rights of the water users in the State where the facilities are located to receive and use the water apportioned to the State in which the facility is constructed.

As a condition precedent to the use of facilities, it is required that, except in the case of the United States, those for whose benefit the facilities are constructed must pay to the State in which the facilities are located, in lieu of taxes lost, a sum equivalent to the average amount of taxes levied and assessed against the land and improvements thereon during the ten years preceding the acquisition of the land for use and benefit of the Lower State.

ARTICLE X

This Article recognizes the continued validity of the La Plata River Compact which was entered into in 1922 between Colorado and New Mexico for the apportionment of the waters of that stream which is a tributary of the San Juan arising in Southwestern Colorado and flowing into New Mexico. Consumptive uses of La Plata River water are charged under the apportionment made in Article III to Colorado and New Mexico.

This Article is the first of several dealing with specific interstate tributaries. The Commission deemed it wise to settle the rights of the States on interstate tributaries of the Upper Colorado rather than to have those tributaries the subject matter of individual compacts.

ARTICLE XI

This Article determines the rights of Colorado and Wyoming to the use of the waters of the Little Snake River which arises in Colorado and flows back and forth across the Colorado-Wyoming line nineteen times before finally joining the Yampa River in Colorado. The existing rights on the main stream below the confluence of Savery Creek and Little Snake are required to be administered on the basis of an interstate priority schedule. Rights initiated subsequent to the signing of the Compact, both direct flow and storage, are required to be so administered that in times of water shortage the curtailment of use in each State shall be as nearly equal as is possible. Future water use projects shall to the greatest extent possible result in an equal division between the two States of water not used under rights existing prior to the signing of this Compact.

Water uses along the Little Snake and along all other tributaries which are individually treated by the Compact, are chargeable against the apportionment made in Article III to the State in which the consumptive use occurs.

ARTICLE XII

This relates to Henry's Fork, Beaver Creek, Burnt Fork, Birch Creek, and Sheep Creek, all of which originate in Utah and join the Green River in Wyoming. Water uses under rights existing prior to the signing of the Compact are required to be administered on the basis of a priority sched-

ule. On certain of these creeks water uses under rights initiated in the future are divided equally between the two States. Measuring devices are required to be maintained at ditch diversion points. Provision is made for the appointment by the two State engineers of a special water Commissioner with authority to administer the water in both States in accordance with this Article. The salary and expenses of this Commissioner are paid 30% by Utah and 70% by Wyoming.

ARTICLE XIII

This Article pertains to the Yampa River, a tributary of the Green River. A compelling reason for the apportionment between Utah and Colorado of the use of the Yampa River water was the fact that Utah desired assurance of a water supply for its Central Utah Project.

By this Article Colorado agrees not to deplete the flow of the Yampa at the Maybell Station below 5,000,000 acre-feet in any period of ten consecutive years. The Colorado engineers are of the opinion that the water supply of the Yampa River is adequate to take care of all existing and potential uses made from that stream in Colorado and still meet the required delivery at Maybell.

ARTICLE XIV

By this Article the use of the waters of the San Juan River are apportioned between Colorado and New Mexico. The San Juan River and its principal tributaries arise in Colorado and then flow into New Mexico. Reference has heretofore been made to the fact that the apportionment made by Article III to New Mexico is adequate to care for all projects planned by the Office of Indian Affairs.

Colorado agrees to deliver to New Mexico a quantity of water which shall be sufficient, together with water originating in the Basin in New Mexico, to enable New Mexico to make full use of water apportioned to it, subject to certain conditions. A prior right is recognized in all uses of water existing at the time of the signing of the Compact and in all uses contemplated by projects authorized for construction at such time. It is provided that uses of water dependent upon a common water supply and not existing or authorized at the time of the signing of the Compact shall in times of water shortage be so reduced that the resulting consumptive use in each State is proportionate to the use made during times of average supply, with the exception that if any preferential uses are recognized in the Indians such uses shall be excluded at the time of determining the amount of curtailment. The overriding obligation of each State to contribute to Lee Ferry deliveries is recognized.

ARTICLE XV

Paragraph (a) of this Article provides that the use of water for the generation of electrical power shall be subservient to the dominant use of such water for agricultural and domestic purposes.

Paragraph (b) assures each State the right to regulate within its boundaries the appropriations, use and control of water apportioned and available to it under the Compact.

ARTICLE XVI

This is a savings clause protecting the States against any abandonment or forfeiture of water because of failure to use.

ARTICLE XVII

This is a usual compact provision concerning water imported to the natural basin of the stream from some other basin. The use of such water is not charged to the State making the importation as water apportioned by Article III of this Compact.

ARTICLE XVIII

By this Article Arizona reserves its rights under the 1922 Compact as a Lower Division State and Arizona, New Mexico and Utah reserve their rights under that Compact as Lower Basin States.

ARTICLE XIX

The intent of this Article is to recognize the rights of the United States.

It is stated that nothing in the Compact affects the obligations of the United States to Indian tribes or under the Treaty with the United Mexican States. Likewise, the Compact does not disturb the rights or powers of the United States in the waters of the Upper Colorado River System or its capacity to acquire rights in and to the use of such waters.

It is expressly stated that the Compact does not subject any property of the United States to taxation or to any payments whatsoever in reimbursement for loss of taxes.

Paragraph (e) expressly provides that the Compact does not subject any property of the United States to the laws of any State "to an extent other than the extent to which such laws would apply without regard to this Compact."

In connection with this Article XIX it must be recognized that without the provisions contained therein it would be impossible to secure the necessary Congressional consent to this Compact.

ARTICLE XX

This provides for the termination of the Compact by unanimous agreement of the signatory States. In this connection it should be pointed out that such termination cannot result from executive action. The Compact to be effective must be ratified by the Legislature of each State. Termination can only result from similar action.

As a necessary protective measure it is provided that in the event of termination all rights established under the Compact shall continue unimpaired.

ARTICLE XXI

This relates to the procedure for ratification and approval of the Compact. The Legislature of each signatory State must ratify the Compact and the Congress must consent thereto. The machinery for giving the necessary notices is provided for in this Article.

The concluding paragraph provides for execution of the Compact in six original counterparts, one of which shall be deposited with the Department of State of the United States and one of which shall be forwarded to the Governor of each signatory State.

UPPER COLORADO RIVER BASIN COMPACT

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 States 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 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 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 to the total quantity of consumptive use per annum apportioned in perpetuity to and available for use each year by 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 Article 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, or intended to be 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 or 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 proportion, 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 be 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 powers 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 Commission 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 as 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 thereunder 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 thereunder 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 Henry's 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 Henry's Fork, originating in the State of Utah and flowing into Henry's Fork in the State of Wyoming; Birch Creek, a tributary of Henry's Fork originating in the State of Utah and flowing into Henry's 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 Henry's 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 Henry's 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 Henry's 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 thereunder.

(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 expenses 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 provision 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, 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.

(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 thereof, 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 an 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

RECEIVED

APR 07 1999

STATE PUBLICATIONS
Colorado State Library