

37-66-101. Rio Grande River compact.

The general assembly hereby approves the compact between the states of Colorado, New Mexico, and Texas, designated as the "Rio Grande compact", signed at the city of Santa Fe, state of New Mexico, on the 18th day of March, A. D. 1938, by M. C. Hinderlider, commissioner for the state of Colorado; Thomas M. McClure, commissioner for the state of New Mexico; Frank B. Clayton, commissioner for the state of Texas, and approved by S. O. Harper, representative of the President of the United States, which said compact is as follows:

Rio Grande Compact

The state of Colorado, the state of New Mexico, and the state of Texas, desiring to remove all causes of present and future controversy among these states and between citizens of one of these states and citizens of another state with respect to the use of the waters of the Rio Grande above Fort Quitman, Texas, and being moved by considerations of interstate comity, and for the purpose of effecting an equitable apportionment of such waters, have resolved to conclude a compact for the attainment of these purposes, and to that end, through their respective governors, have named as their respective commissioners:

For the state of Colorado--M. C. Hinderlider

For the state of New Mexico--Thomas M. McClure

For the state of Texas--Frank B. Clayton

who, after negotiations participated in by S. O. Harper, appointed by the President as the representative of the United States of America, have agreed upon the following articles, to-wit:

Article I

(a) The state of Colorado, the state of New Mexico, the state of Texas, and the United States of America, are hereinafter designated "Colorado," "New Mexico," "Texas," and the "United States," respectively.

(b) "The commission" means the agency created by this compact for the administration thereof.

(c) The term "Rio Grande basin" means all of the territory drained by the Rio Grande and its tributaries in Colorado, in New Mexico, and in Texas above Fort Quitman, including the closed basin in Colorado.

(d) The "closed basin" means that part of the Rio Grande basin in Colorado where the streams drain into the San Luis lakes and adjacent territory, and do not normally contribute to the flow of the Rio Grande.

(e) The term "tributary" means any stream which naturally contributes to the flow of the Rio Grande.

(f) "Transmountain diversion" is water imported into the drainage basin of the Rio Grande from any stream system outside of the Rio Grande basin, exclusive of the closed basin.

(g) "Annual debits" are the amounts by which actual deliveries in any calendar year fall below scheduled deliveries.

(h) "Annual credits" are the amounts by which actual deliveries in any calendar year exceed scheduled deliveries.

(i) "Accrued debits" are the amounts by which the sum of all annual debits exceeds the sum of all annual credits over any common period of time.

(j) "Accrued credits" are the amounts by which the sum of all annual credits exceeds the sum of all annual debits over any common period of time.

(k) "Project storage" is the combined capacity of Elephant Butte reservoir and all other reservoirs actually available

for the storage of usable water below Elephant Butte and above the first diversion to lands of the Rio Grande project, but not more than a total of 2,638,860 acre-feet.

(l) "Usable water" is all water, exclusive of credit water, which is in project storage and which is available for release in accordance with irrigation demands, including deliveries to Mexico.

(m) "Credit water" is that amount of water in project storage which is equal to the accrued credit of Colorado, or New Mexico, or both.

(n) "Unfilled capacity" is the difference between the total physical capacity of project storage and the amount of usable water then in storage.

(o) "Actual release" is the amount of usable water released in any calendar year from the lowest reservoir comprising project storage.

(p) "Actual spill" is all water which is actually spilled from Elephant Butte reservoir, or is released therefrom for flood control, in excess of the current demand on project storage and which does not become usable water by storage in another reservoir; provided, that actual spill of usable water cannot occur until all credit water shall have been spilled.

(q) "Hypothetical spill" is the time in any year at which usable water would have spilled from project storage if 790,000 acre-feet had been released therefrom at rates proportional to the actual release in every year from the starting date to the end of the year in which hypothetical spill occurs, in computing hypothetical spill the initial condition shall be the amount of usable water in project storage at the beginning of the calendar year following the effective date of this compact, and thereafter the initial condition shall be the amount of usable water in project storage at the beginning of the calendar year following each actual spill.

Article II

The commission shall cause to be maintained and operated a stream gauging station equipped with an automatic water stage recorder at each of the following points, to-wit:

(a) On the Rio Grande near Del Norte above the principal points of diversion to the San Luis valley;

(b) On the Conejos river near Mogote;

(c) On the Los Pinos river near Ortiz;

(d) On the San Antonio river at Ortiz;

(e) On the Conejos river at its mouths near Los Sauces;

(f) On the Rio Grande near Lobatos;

(g) On the Rio Chama below El Vado reservoir;

(h) On the Rio Grande at Otowi bridge near San Ildefonso;

(i) On the Rio Grande near San Acacia;

(j) On the Rio Grande at San Marcial;

(k) On the Rio Grande below Elephant Butte reservoir;

(l) On the Rio Grande below Caballo reservoir.

Similar gauging stations shall be maintained and operated below any other reservoir constructed after 1929, and at such other points as may be necessary for the securing of records required for the carrying out of the compact; and automatic water stage recorders shall be maintained and operated on each of the reservoirs mentioned, and on all others constructed after 1929.

Such gauging stations shall be equipped, maintained and operated by the commission directly or in co-operation with an appropriate federal or state agency, and the equipment, method and frequency of measurement at such stations shall be such as to produce reliable records at all times.

Article III

The obligation of Colorado to deliver water in the Rio Grande at the Colorado-New Mexico state line, measured at or near Lobatos, in each calendar year, shall be ten thousand acre-feet less than the sum of those quantities set forth in the two following tabulations of relationship, which correspond to the quantities at the upper index stations:

Discharge of Conejos River Quantities in thousands of acre-feet

Conejos Index Supply (1) Conejos River at Mouths (2)

100	0
150	20
200	45
250	75
300	109
350	147
400	188
450	232
500	278
550	326
600	376
650	426
700	476

Intermediate quantities shall be computed by proportional parts.

(1) Conejos index supply is the natural flow Conejos river at the U. S. G. S. gauging station near Mogote during the calendar year, plus the natural flow of Los Pinos river at the U. S. G. S. gauging station near Ortiz and the natural flow of San Antonio river at the U. S. G. S. gauging station at Ortiz, both during the months of April to October, inclusive.

(2) Conejos river at mouths is the combined discharge of branches of this river at the U. S. G. S. gauging stations near Los Sauces during the calendar year.

Discharge of Rio Grande Exclusive of Conejos River
Quantities in thousands of acre-feet

Rio Grande at Lobatos less

Rio Grande at Del Norte (3) Conejos at Mouths (4)

200 60

250 65

300 75

350 86

400 98

450 112

500 127

550 144

600 162

650 182

700 204

750 229

800 257

850 292

900 335

950 380

1,000 430

1,100 540

1,200 640

1,300 740

1,400 840

Intermediate quantities shall be computed by proportional parts.

(3) Rio Grande at Del Norte is the recorded flow of the Rio Grande at the U. S. G. S. gauging station near Del Norte during the calendar year (measured above all principal points of diversion to San Luis Valley) corrected for the operation of reservoirs constructed after 1937.

(4) Rio Grande at Lobatos less Conejos at mouths is the total flow of the Rio Grande at the U. S. G. S. gauging station near Lobatos, less the discharge of Conejos river at its mouths, during the calendar year.

The application of these schedules shall be subject to the provisions hereinafter set forth and appropriate adjustments shall be made for (a) any change in location of gauging stations; (b) any new or increased depletion of the runoff above inflow index gauging stations; and (c) any transmountain diversions into the drainage basin of the Rio Grande above Lobatos.

In event any works are constructed after 1937 for the purpose of delivering water into the Rio Grande from the closed basin, Colorado shall not be credited with the amount of such water delivered, unless the proportion of sodium ions shall be less than forty-five per cent of the total positive ions in that water when the total dissolved solids in such water exceeds three hundred fifty parts per million.

Article IV

The obligation of New Mexico to deliver water in the Rio Grande at San Marcial, during each calendar year, exclusive of the months of July, August and September, shall be that quantity set forth in the following tabulation of relationship, which corresponds to the quantity at the upper index station:

Discharge of Rio Grande at Otowi Bridge
And at San Marcial Exclusive of July,
August and September
Quantities in thousands of acre-feet

Otowi Index Supply (5) San Marcial Index Supply (6)

100 0

200 65

300 141

400 219

500 300

600 383

700 469

800 557

900 648

1000 742

1100 839

1200 939

1300 1042

1400 1148

1500 1257

1600 1370

1700 1489

1800 1608

1900 1730

2000 1856

2100 1985

2200 2117

2300 2253

Intermediate quantities shall be computed by proportional parts.

(5) The Otowi index supply is the recorded flow of the Rio Grande at the U. S. G. S. gauging station at Otowi Bridge near San Ildefonso (formerly station near Buckman) during the calendar year, exclusive of the flow during the months of July, August and September, corrected for the operation of reservoirs constructed after 1929 in the drainage basin of the Rio Grande between Lobatos and Otowi Bridge.

(6) San Marcial index supply is the recorded flow of the Rio Grande at the gauging station at San Marcial during the calendar year exclusive of the flow during the months of July, August and September.

The application of this schedule shall be subject to the provisions hereinafter set forth and appropriate adjustments shall be made for (a) any change in location of gauging stations; (b) depletion after 1929 in New Mexico at any time of the year of the natural runoff at Otowi Bridge; (c) depletion of the runoff during July, August and September of tributaries between Otowi Bridge and San Marcial, by works constructed after 1937; and (d) any transmountain diversions into the Rio Grande between Lobatos and San Marcial.

Concurrent records shall be kept of the flow of the Rio Grande at San Marcial, near San Acacia, and of the release from Elephant Butte reservoir, to the end that the records at these three stations may be correlated.

Article V

If at any time it should be the unanimous finding and determination of the commission that because of changed physical conditions, or for any other reason, reliable records are not obtainable, or cannot be obtained, at any of the stream gauging stations herein referred to, such stations may, with the unanimous approval of the Commission, be abandoned, and with such approval another station, or other stations, shall be established and new measurements shall be substituted which, in the unanimous opinion of the commission, will result in substantially the same results, so far as the rights and obligations to deliver water are concerned, as would have existed if such substitution of stations and measurements had not been so made.

Article VI

Commencing with the year following the effective date of this compact, all credits and debits of Colorado and New Mexico shall be computed for each calendar year; provided, that in a year of actual spill no annual credits nor annual debits shall be computed for that year.

In the case of Colorado, no annual debit nor accrued debit shall exceed 100,000 acre-feet, except as either or both may be caused by holdover storage of water in reservoirs constructed after 1937 in the drainage basin of the Rio

Grande above Lobatos. Within the physical limitations of storage capacity in such reservoirs, Colorado shall retain water in storage at all times to the extent of its accrued debit.

In the case of New Mexico, the accrued debit shall not exceed 200,000 acre-feet at any time, except as such debit may be caused by holdover storage of water in reservoirs constructed after 1929 in the drainage basin of the Rio Grande between Lobatos and San Marcial. Within the physical limitations of storage capacity in such reservoirs, New Mexico shall retain water in storage at all times to the extent of its accrued debit. In computing the magnitude of accrued credits or debits, New Mexico shall not be charged with any greater debt in any one year than the sum of 150,000 acre-feet and all gains in the quantity of water in storage in such year.

The commission by unanimous action may authorize the release from storage of any amount of water which is then being held in storage by reason of accrued debits of Colorado or New Mexico; provided, that such water shall be replaced at the first opportunity thereafter.

In computing the amount of accrued credits and accrued debits of Colorado or New Mexico, any annual credits in excess of 150,000 acre-feet shall be taken as equal to that amount.

In any year in which actual spill occurs, the accrued credits of Colorado, or New Mexico, or both, at the beginning of the year shall be reduced in proportion to their respective credits by the amount of such actual spill; provided, that the amount of actual spill shall be deemed to be increased by the aggregate gain in the amount of water in storage, prior to the time of spill, in reservoirs above San Marcial constructed after 1929; provided, further, that if the commissioners for the states having accrued credits authorized the release of part, or all, of such credits in advance of spill, the amount so released shall be deemed to constitute actual spill.

In any year in which there is actual spill of usable water, or at the time of hypothetical spill thereof, all accrued debits of Colorado, or New Mexico, or both, at the beginning of the year shall be cancelled.

In any year in which the aggregate of accrued debits of Colorado and New Mexico exceeds the minimum unfilled capacity of project storage, such debits shall be reduced proportionally to an aggregate amount equal to such minimum unfilled capacity.

To the extent that accrued credits are impounded in reservoirs between San Marcial and Courchesne, and to the extent that accrued debits are impounded in reservoirs above San Marcial, such credits and debits shall be reduced annually to compensate for evaporation losses in the proportion that such credits or debits bore to the total amount of water in such reservoirs during the year.

Article VII

Neither Colorado nor New Mexico shall increase the amount of water in storage in reservoirs constructed after 1929 whenever there is less than 400,000 acre-feet of usable water in project storage; provided, that if the actual releases of usable water from the beginning of the calendar year following the effective date of this compact, or from the beginning of the calendar year following actual spill, have aggregated more than an average of 790,000 acre-feet per annum, the time at which such minimum stage is reached shall be adjusted to compensate for the difference between the total actual release and releases at such average rate; provided, further, that Colorado or New Mexico, or both, may relinquish accrued credits at any time, and Texas may accept such relinquished water, and in such event the state, or states, so relinquishing shall be entitled to store water in the amount of the water so relinquished.

Article VIII

During the month of January of any year the commissioner for Texas may demand of Colorado and New Mexico, and the commissioner for New Mexico may demand of Colorado, the release of water from storage reservoirs constructed after 1929 to the amount of the accrued debits of Colorado and New Mexico, respectively, and such releases shall be made by each at the greatest rate practicable under the conditions then prevailing, and in proportion to the total debit of each, and in amounts, limited by their accrued debits, sufficient to bring the quantity of usable water in project storage to 600,000 acre-feet by March first and to maintain this quantity in storage until April thirtieth, to the end that a normal release of 790,000 acre-feet may be made from project storage in that year.

Article IX

Colorado agrees with New Mexico that in event the United States or the state of New Mexico decides to construct the necessary works for diverting the waters of the San Juan river, or any of its tributaries, into the Rio Grande, Colorado hereby consents to the construction of said works and the diversion of waters from the San Juan river, or the tributaries thereof, into the Rio Grande in New Mexico, provided the present and prospective uses of water in Colorado by other diversions from the San Juan river, or its tributaries are protected.

Article X

In the event water from another drainage basin shall be imported into the Rio Grande basin by the United States or Colorado or New Mexico, or any of them jointly, the state having the right to the use of such water shall be given proper credit therefor in the application of the schedules.

Article XI

New Mexico and Texas agree that upon the effective date of this compact all controversies between said states relative to the quantity or quality of the water of the Rio Grande are composed and settled; however, nothing herein shall be interpreted to prevent recourse by a signatory state to the supreme court of the United States for redress should the character or quality of the water, at the point of delivery, be changed hereafter by one signatory state to the injury of another. Nothing herein shall be construed as an admission by any signatory state that the use of water for irrigation causes increase of salinity for which the user is responsible in law.

Article XII

To administer the provisions of this compact there shall be constituted a commission composed of one representative from each state, to be known as the Rio Grande compact commission. The state engineer of Colorado shall be ex officio the Rio Grande compact commissioner for Colorado. The state engineer of New Mexico shall be ex officio the Rio Grande compact commissioner for New Mexico. The Rio Grande compact commissioner for Texas shall be appointed by the governor of Texas. The President of the United States shall be requested to designate a representative of the United States to sit with such commission, and such representative of the United States, if so designated by the President, shall act as chairman of the commission without vote.

The salaries and personal expenses of the Rio Grande compact commissioners for the three states shall be paid by their respective states, and all other expenses incident to the administration of this compact, not borne by the United States, shall be borne equally by the three states.

In addition to the powers and duties hereinbefore specifically conferred upon such commission, and the members thereof, the jurisdiction of such commission shall extend only to the collection, correlation and presentation of factual data and the maintenance of records having a bearing upon the administration of this compact, and, by unanimous action, to the making of recommendations to the respective states upon matters connected with the administration of this compact. In connection therewith, the commission may employ such engineering and clerical aid as may be reasonably necessary within the limit of funds provided for that purpose by the respective states. Annual reports compiled for each calendar year shall be made by the commission and transmitted to the governors of the signatory states on or before March first following the year covered by the report. The commission may, by unanimous action, adopt rules and regulations consistent with the provisions of this compact to govern their proceedings.

The findings of the Commission shall not be conclusive in any court or tribunal which may be called upon to interpret or enforce this compact.

Article XIII

At the expiration of every five year period after the effective date of this compact, the commission may, by unanimous consent, review any provisions hereof which are not substantive in character and which do not affect the basic principles upon which the compact is founded, and shall meet for the consideration of such questions on the

request of any member of the commission; provided, however, that the provisions hereof shall remain in full force and effect until changed and amended within the intent of the compact by unanimous action of the commissioners, and until any changes in this compact are ratified by the legislatures of the respective states and consented to by the congress, in the same manner as this compact is required to be ratified to become effective.

Article XIV

The schedules herein contained and the quantities of water herein allocated shall never be increased nor diminished by reason of any increase or diminution in the delivery or loss of water to Mexico.

Article XV

The physical and other conditions characteristic of the Rio Grande and peculiar to the territory drained and served thereby, and to the development thereof, have actuated this compact and none of the signatory states admits that any provisions herein contained establishes any general principle or precedent applicable to other interstate streams.

Article XVI

Nothing in this compact shall be construed as affecting the obligations of the United States of America to Mexico under existing treaties, or to the Indian tribes, or as impairing the rights of the Indian tribes.

Article XVII

This compact shall become effective when ratified by the legislatures of each of the signatory states and consented to by the congress of the United States. Notice of ratification shall be given by the governor of each state to the governors of the other states and to the President of the United States, and the President of the United States is requested to give notice to the governors of each of the signatory states of the consent of the congress of the United States.

IN WITNESS WHEREOF, the commissioners have signed this compact in quadruplicate original, one of which shall be deposited in the archives of the Department of State of the United States of America and shall be deemed the authoritative original, and of which a duly certified copy shall be forwarded to the governor of each of the signatory states.

Done at the city of Santa Fe, in the state of New Mexico, on the 18th day of March, in the year of our Lord, One Thousand Nine Hundred and Thirty-eight.

(Sgd.) M. C. Hinderlider

(Sgd.) Thomas M. McClure

(Sgd.) Frank B. Clayton

APPROVED:

(Sgd.) S. O. Harper.

Source: L. 39: p. 489, § 1. not in CSA. CRS 53: § 148-5-1. C.R.S. 1963: § 149-5-1.

ANNOTATION

Am. Jur.2d. See 78 Am. Jur.2d, Waters, §§ 71, 72.

C.J.S. See 81A C.J.S., States, §§ 8, 31; 93 C.J.S., Waters, § 10.

Law reviews. For article, "Recent Developments in Colorado Groundwater Law", see 58 Den. L.J. 801 (1981). For article,

"The Law of Equitable Apportionment Revisited, Updated and Restated", see 56 U. Colo. L. Rev. 381 (1985). For article, "The Rio Grande Convention of 1906: A Brief History of An International and Interstate Apportionment of the Rio Grande", 77 Den. U. L. Rev. 287 (1999).

State engineer may promulgate and enforce appropriate rule. In order to promulgate and enforce rules for compliance with Rio Grande river compact commitments, the state engineer may promulgate and enforce appropriate rules for the administration of water rights. In re Rules & Regulations Governing Water Rights, 196 Colo. 197, 583 P.2d 910 (1978).

Separate water delivery rules in accord with compact. Separate delivery rules which subject use of the Conejos river and the Rio Grande mainstem to separate administration are in accord with this compact, specifically with article III. Alamosa-La Jara Water Users Protection Ass'n v. Gould, 674 P.2d 914 (Colo. 1983).