

CENTRAL FILES

REPUBLICAN RIVER COMPACT

Signed December 31, 1942

together with

EXPLANATORY STATEMENT AND REPORT

by

M. C. Hinderlider

Republican River Compact Commissioner

for Colorado

Compact now Pending before General
Assembly of the State of Colorado
for Ratification

1 joint action by the States and the United States in the efficient use
2 of water and the control of destructive floods.

3 The physical and other conditions peculiar to the Basin consti-
4 tute the basis for this compact, and none of the States hereby, nor
5 the Congress of the United States by its consent, concedes that this
6 compact establishes any general principle or precedent with respect to
7 any other interstate stream.

8 ARTICLE II

9 The Basin is all the area in Colorado, Kansas, and Nebraska,
10 which is naturally drained by the Republican River, and its tributa-
11 ries, to its junction with the Smoky Hill River in Kansas. The main
12 stem of the Republican River extends from the junction near Haigler,
13 Nebraska, of its North Fork and the Arikaree River, to its junction
14 with Smoky Hill River near Junction City, Kansas. Frenchman Creek
15 (River) in Nebraska is a continuation of Frenchman Creek (River) in
16 Colorado. Red Willow Creek in Colorado is not identical with the
17 stream having the same name in Nebraska. A map of the Basin approved
18 by the Commissioners is attached and made a part hereof.

19 The term "Acre-foot", as herein used, is the quantity of water
20 required to cover an acre to the depth of one foot and is equivalent
21 to forty-three thousand, five hundred sixty (43,560) cubic feet.

22 The term "Virgin Water Supply", as herein used, is defined to be
23 the water supply within the Basin undepleted by the activities of man.

24 The term "Beneficial Consumptive Use" is herein defined to be
25 that use by which the water supply of the Basin is consumed through

1 the activities of man, and shall include water consumed by evaporation
2 from any reservoir, canal, ditch, or irrigated area.

3 Beneficial consumptive use is the basis and principle upon which
4 the allocations of water hereinafter made are predicated.

5 ARTICLE III

6 The specific allocations in acre-feet hereinafter made to each
7 State are derived from the computed average annual virgin water supply
8 originating in the following designated drainage basins, or parts
9 thereof, in the amounts shown:

10 North Fork of the Republican River drainage basin in Colorado,

11 44,700 acre-feet;

12 Arikaree River drainage basin, 19,610 acre-feet;

13 Buffalo Creek drainage basin, 7,890 acre-feet;

14 Rock Creek drainage basin, 11,000 acre-feet;

15 South Fork of the Republican River drainage basin, 57,200

16 acre-feet;

17 Frenchman Creek (River) drainage basin in Nebraska, 98,500 acre-

18 feet;

19 Blackwood Creek drainage basin, 6,800 acre-feet;

20 Driftwood Creek drainage basin, 7,300 acre-feet;

21 Red Willow Creek drainage basin in Nebraska, 21,900 acre-feet;

22 Medicine Creek drainage basin, 50,800 acre-feet;

23 Beaver Creek drainage basin, 16,500 acre-feet;

24 Sappa Creek drainage basin, 21,400 acre-feet;

25 Prairie Dog Creek drainage basin, 27,600 acre-feet;

1 drainage basin in Colorado and of the Red Willow Creek
2 drainage basin in Colorado.

3 There is hereby allocated for beneficial consumptive use in
4 Kansas, annually, a total of one hundred ninety thousand, three hun-
5 dred (190,300) acre-feet of water. This total is to be derived from
6 the sources and in the amounts hereinafter specified and is subject
7 to such quantities being physically available from those sources:

8 Arikaree River drainage basin, 1,000 acre-feet;

9 South Fork of the Republican River drainage basin, 23,000 acre-
10 feet;

11 Driftwood Creek drainage basin, 500 acre-feet;

12 Beaver Creek drainage basin, 6,400 acre-feet;

13 Sappa Creek drainage basin, 8,800 acre-feet;

14 Prairie Dog Creek drainage basin, 12,600 acre-feet;

15 From the main stem of the Republican River upstream from the low-
16 est crossing of the river at the Nebraska-Kansas state line
17 and from water supplies of upstream basins otherwise un-
18 allocated herein, 138,000 acre-feet; provided, that Kansas
19 shall have the right to divert all or any portion thereof
20 at or near Guide Rock, Nebraska; and

21 In addition there is hereby allocated for beneficial consumptive
22 use in Kansas, annually, the entire water supply originating
23 in the Basin downstream from the lowest crossing of the
24 river at the Nebraska-Kansas state line.

25 There is hereby allocated for beneficial consumptive use in

1 Nebraska, annually, a total of two hundred thirty-four thousand, five
2 hundred (234,500) acre-feet of water. This total is to be derived
3 from the sources and in the amounts hereinafter specified and is sub-
4 ject to such quantities being physically available from those sources:
5 North Fork of the Republican River drainage basin in Colorado,
6 11,000 acre-feet;
7 Frenchman Creek (River) drainage basin in Nebraska, 52,800 acre-
8 feet;
9 Rock Creek drainage basin, 4,400 acre-feet;
10 Arikaree River drainage basin, 3,300 acre-feet;
11 Buffalo Creek drainage basin, 2,600 acre-feet;
12 South Fork of the Republican River drainage basin, 800 acre-feet;
13 Driftwood Creek drainage basin, 1,200 acre-feet;
14 Red Willow Creek drainage basin in Nebraska, 4,200 acre-feet;
15 Medicine Creek drainage basin, 4,600 acre-feet;
16 Beaver Creek drainage basin, 6,700 acre-feet;
17 Sappa Creek drainage basin, 8,800 acre-feet;
18 Prairie Dog Creek drainage basin, 2,100 acre-feet;
19 From the North Fork of the Republican River in Nebraska, the main
20 stem of the Republican River between the junction of the
21 North Fork and Arikaree River and the lowest crossing of the
22 river at the Nebraska-Kansas state line, from the small
23 tributaries thereof, and from water supplies of upstream
24 basins otherwise unallocated herein, 132,000 acre-feet.
25 The use of the waters hereinabove allocated shall be subject to

1 the laws of the State, for use in which the allocations are made.

2

ARTICLE V

3 The judgment and all provisions thereof in the case of Adelbert
4 A. Weiland, as State Engineer of Colorado, et al, v. The Pioneer Irrig-
5 ation Company, decided June 5, 1922, and reported in 259 U. S. 498,
6 affecting the Pioneer Irrigation ditch or canal, are hereby recognized
7 as binding upon the States; and Colorado, through its duly authorized
8 officials, shall have the perpetual and exclusive right to control
9 and regulate diversions of water at all times by said canal in con-
10 formity with said judgment.

11 The water heretofore adjudicated to said Pioneer Canal by the
12 District Court of Colorado, in the amount of fifty (50) cubic feet
13 per second of time is included in and is a part of the total amounts
14 of water hereinbefore allocated for beneficial consumptive use in
15 Colorado and Nebraska.

16

ARTICLE VI

17 The right of any person, entity, or lower State to construct,
18 or participate in the future construction and use of any storage
19 reservoir or diversion works in an upper State for the purpose of
20 regulating water herein allocated for beneficial consumptive use in
21 such lower State, shall never be denied by an upper State; provided,
22 that such right is subject to the rights of the upper State.

23

ARTICLE VII

24 Any person, entity, or lower State shall have the right to acquire
25 necessary property rights in an upper State by purchase, or through

1 the exercise of the power of eminent domain, for the construction,
2 operation and maintenance of storage reservoirs, and of appurtenant
3 works, canals and conduits, required for the enjoyment of the privi-
4 leges granted by Article VI; provided, however, that the grantees of
5 such rights shall pay to the political subdivisions of the State in
6 which such works are located, each and every year during which such
7 rights are enjoyed for such purposes, a sum of money equivalent to the
8 average annual amount of taxes assessed against the lands and improve-
9 ments during the ten years preceding the use of such lands, in reim-
10 bursement for the loss of taxes to said political subdivisions of
11 the State.

12 ARTICLE VIII

13 Should any facility be constructed in an upper State under the
14 provisions of Article VI, such construction and the operation of such
15 facility shall be subject to the laws of such upper State.

16 Any repairs to or replacements of such facility shall also be
17 made in accordance with the laws of such upper State.

18 ARTICLE IX

19 It shall be the duty of the three States to administer this com-
20 pact through the official in each State who is now or may hereafter
21 be charged with the duty of administering the public water supplies,
22 and to collect and correlate through such officials the data necessary
23 for the proper administration of the provisions of this compact. Such
24 officials may, by unanimous action, adopt rules and regulations
25 consistent with the provisions of this compact.

1 or instrumentalities, to the laws of any State to any extent
2 other than the extent these laws would apply without regard
3 to this compact.

4 ARTICLE XI

5 This compact shall become operative when ratified by the Legis-
6 lature of each of the States, and when consented to by the Congress
7 of the United States by legislation providing, among other things,
8 that:

9 (a) Any beneficial consumptive uses by the United States, or
10 those acting by or under its authority, within a State, of
11 the waters allocated by this compact, shall be made within
12 the allocations hereinabove made for use in that State and
13 shall be taken into account in determining the extent of
14 use within that State.

15 (b) The United States, or those acting by or under its au-
16 thority, in the exercise of rights or powers arising from
17 whatever jurisdiction the United States has in, over, and
18 to the waters of the Basin shall recognize, to the extent
19 consistent with the best utilization of the waters for
20 multiple purposes, that beneficial consumptive use of the
21 waters within the Basin is of paramount importance to the
22 development of the Basin; and no exercise of such power or
23 right thereby that would interfere with the full beneficial
24 consumptive use of the waters within the Basin shall be
25 made except upon a determination, giving due consideration

1 to the objectives of this compact and after consultation
2 with all interested federal agencies and the state officials
3 charged with the administration of this compact, that such
4 exercise is in the interest of the best utilization of such
5 waters for multiple purposes.

6 (c) The United States, or those acting by or under its authority,
7 will recognize any established use, for domestic and irri-
8 gation purposes, of the waters allocated by this compact
9 which may be impaired by the exercise of federal juris-
10 diction in, over, and to such waters; provided, that such
11 use is being exercised beneficially, is valid under the
12 laws of the appropriate State and in conformity with this
13 compact at the time of the impairment thereof, and was
14 validly initiated under state law prior to the initiation
15 or authorization of the federal program or project which
16 causes such impairment.

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

7 Done in the City of Lincoln, in the State of Nebraska, on the
8 31st day of December, in the year of our Lord, one thousand nine
9 hundred forty-two.

10
11 M. C. Hinderlider
12 Commissioner for Colorado

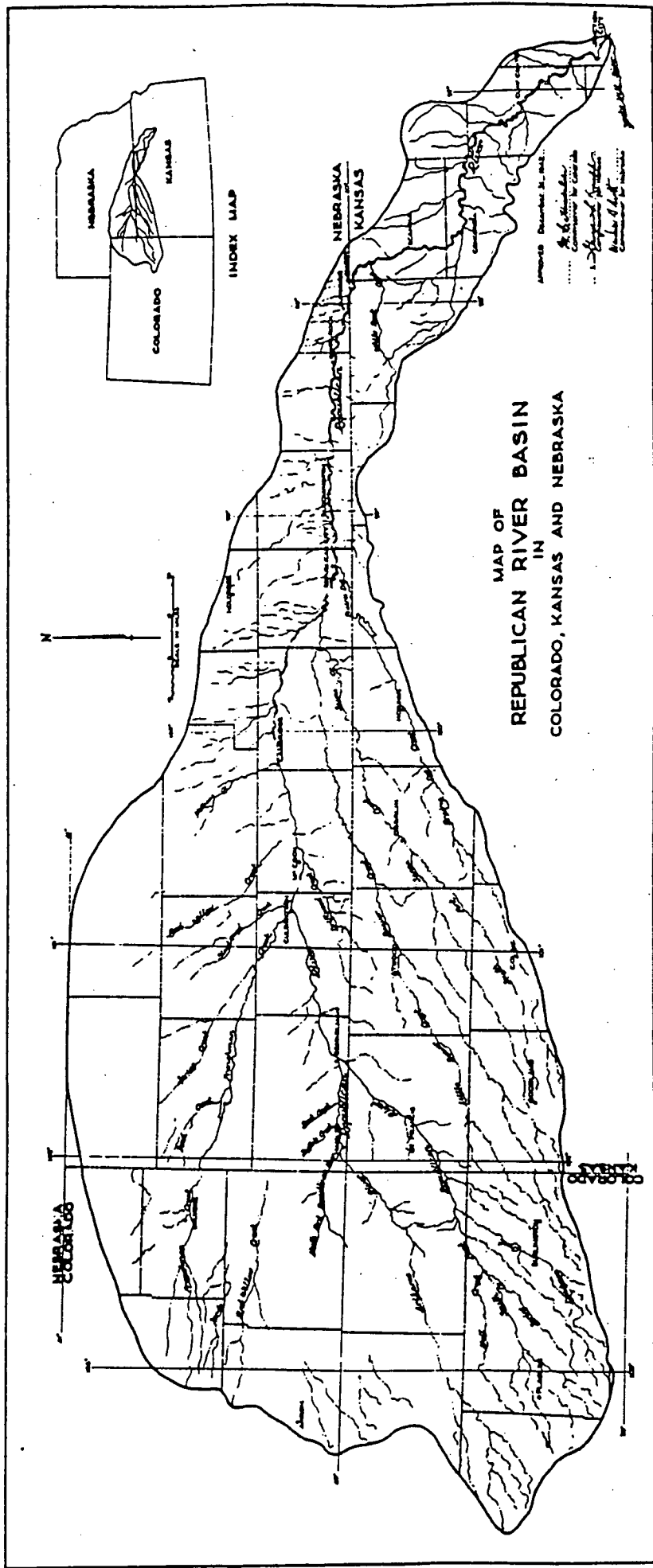
13
14 George S. Knapp
15 Commissioner for Kansas

16
17 Wardner G. Scott
18 Commissioner for Nebraska

19 I have participated in the negotia-
20 tions leading to this proposed compact
21 and propose to report to the Congress of
22 the United States favorably thereon.

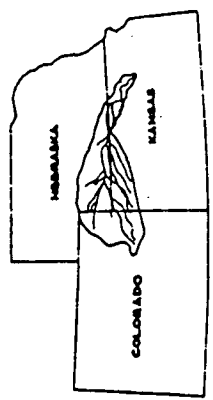
23
24 Glenn L. Parker
25 Representative of the United States

<u>NAME</u>	<u>AGENCY REPRESENTED</u>	<u>ADDRESS</u>
George S. Knapp	Division of Water Resources, Kansas	Topeka, Kansas
M. C. Hinderlider	State Engineer, Colorado	Denver, Colorado
R. H. Willis	Chief, Bureau of Irrig. Power & Drainage	Bridgeport, Nebr.
W. E. Steps	Division of Water Resources, Kansas	Topeka, Kansas
J. A. Keimig	Bureau of Reclamation	Denver, Colo.
C. Eynon	Regional Counsel, Bureau of Reclamation	Denver, Colo.
Mat Tolman	Irrigation Supt., Kansas River District, Bureau of Reclamation	Indianola, Nebr.
Jesse L. Honnold	Bureau of Reclamation	Denver, Colo.
H. P. Dugan	Bureau of Reclamation	Denver, Colo.
Adrian H. Williams	Geological Survey	Washington, D.C.
Douglas D. Lewis	Geological Survey	Lincoln, Nebr.
Walter J. Ware	Corps of Engineers	Kansas City, Mo.
F. H. Klietsch	State Engineer, Nebraska	Lincoln, Nebr.
A. A. Batson	Bureau of Reclamation	Denver, Colo.
Dan S. Jones, Jr.	Nebraska Bureau of Irrigation	Lincoln, Nebr.
H. E. Robinson	Dist. Manager, Bureau of Reclamation	Indianola, Nebr.
E. V. Lindseth	Bureau of Reclamation	Denver, Colo.
E. S. Kimmel	Nebr. Bureau of Irrigation	Bridgeport, Nebr.
A. W. Redman	Bureau of Reclamation	Indianola, Nebr.
H. R. Boyd	Bureau of Reclamation	Indianola, Nebr.



MAP OF
REPUBLICAN RIVER BASIN
 IN
COLORADO, KANSAS AND NEBRASKA

Compiled December 21, 1942
 By E. W. Williams, Chief,
 and J. E. Williams, Assistant Chief,
 Colorado Department of Conservation
 Under the direction of
 W. C. Calkins, Chief,
 Nebraska Game and Parks Commission



Explanatory Statement and
Report on Republican River Compact

There is herewith submitted to the General Assembly of the State of Colorado, with recommendation for favorable consideration, a new Republican River Compact. After two conferences by the Republican River Compact Commissioners and their legal advisers, this Compact was signed by the Commissioners for the States of Colorado, Kansas and Nebraska, at Lincoln, Nebraska, on the 31st day of December, 1942. The major purposes of this Compact are set forth in Article I which reads, in part, as follows:

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

The negotiation of this Compact by the States of Colorado, Kansas and Nebraska was authorized by an Act of the Congress of the United States, approved August 4, 1942 (Public No. 696-77th Congress, Chapter 545-2nd Session) which authorized these states "to negotiate and enter into a compact not later than June 1, 1945, providing for an equitable division and apportionment among the said states of the waters of the Republican and also of its tributaries above its junction with the Smoky Hill River in Kansas, upon condition that a suitable person, who shall be appointed by the President of the United States, shall participate in said negotiations as the representative of the United States and shall make report to the Congress of the proceedings and of any compact entered into; ***"

Thereafter and pursuant to their several authorities, the Governors

of each of the signatory States named the same Commissioners who had been designated to negotiate a former Compact, and the President appointed as the representative of the United States, Glenn L. Parker, Chief Hydraulic Engineer of the United States Geological Survey.

The Commission held its first meeting in Denver, Colorado on December 2-3, 1942, when, by unanimous action of the Commission, Mr. Parker was designated Chairman thereof. Another, and the final meeting was held in Lincoln, Nebraska, on December 29, 30, 31, 1942, following which this Compact was signed by the Commissioners and the Federal representative endorsed upon the Compact the following:

"I have participated in the negotiations leading to this proposed compact and propose to report to the Congress of the United States favorably thereon.

Glenn L. Parker
Representative of the United States"

Throughout these two conferences the Commissioner for Colorado was advised on all matters by Attorney General Gail L. Ireland and Judge Clifford H. Stone, Director of the Colorado Water Conservation Board, whose services in this connection were most valuable. During the negotiations the Commissioners for Kansas and Nebraska were advised by representatives of the Attorneys General of those two states. Prior to the attachment of the signatures of the Commissioners to this Compact, the Governors of each of the signatory states were fully advised of the conclusions reached by the Commissioners, and approved the same.

The Legislatures of Colorado, Kansas and Nebraska, in 1941, ratified a former Compact allocating the waters of the Republican river basin. That Compact was later approved by the Congress of the United States. The Act providing for Congressional approval, however, was vetoed by the President. The veto message of the President set forth, in substance, that the Compact

failed to adequately protect the interests of the United States. This situation arose out of the inclusion in Article I of the former Compact the following language:

"The Republican River and tributaries thereof within the basin, as hereinabove defined, are not navigable, and all uses of water of a consumptive nature, as hereinafter defined, wherever such uses may occur within the basin, shall constitute paramount uses".

The Federal Power Commission with support, in varying degree, from other Federal agencies, strenuously opposed within the Congress, the last mentioned provision.

Numerous amendments to the approving legislation were proposed in Congress. The adoption of these amendments, however, would have constituted material modifications of that Compact, and would have required a re-reference of the Compact to the Legislatures of the signatory states. They were finally defeated, and Congress approved the former Compact without modifying provisions, but, as stated, the approving legislation was vetoed by the President.

In general, it should be stated that representatives of certain Federal agencies contended that the provisions of Article I of the first Compact, above quoted, created a dangerous precedent, and were contrary to federal jurisdiction and to the public interest, unless interpreted, limited and modified by appropriate amendments to be incorporated in the approving legislation.

Following the abortive effort to obtain final approval of the former Compact by the Congress, it was believed by the Commissioners that the uses of the waters of the Republican river and its tributaries and the inherent Federal and States' interests could be correlated in such way as to permit of the most beneficial use of the waters of the Basin.

Congressional authorization to make a new Compact having been obtained, further negotiations followed, as above outlined.

During these negotiations for a new Compact, representatives of the Departments of Agriculture and Interior, the Corps of U. S. Engineers and the National Resources Planning Board, were in attendance and contributed materially in the negotiations of the Commissioners.

This Compact eliminates the objectional provision in the former Compact, hereinabove quoted.

Article XI of this Compact, however, is designed to protect the States' interests in these waters by a recognition that the most efficient utilization of the waters within the Basin is for beneficial consumptive use, and also to promote joint action by the States and the Federal Government in effectuating such use and for the control of destructive floods.

It will be noted that this Compact provides that, unless the Congress of the United States in its approving legislation includes the provisions set forth in Article XI for the protection of the interests of the States, then the approval would be ineffectual. These protective measures may be summarized as follows;

1. Any beneficial consumptive uses by the United States, or those acting by or under its authority, within a State, of the waters allocated by this Compact, shall be made within the allocations of water for use within such State.

2. That the United States, or those acting by or under its authority, in the exercise of rights or powers arising from whatever jurisdiction the United States has in, over, and to the waters of the Basin, shall recognize, to the extent consistent with the best utilization of the waters for multiple purposes, that the beneficial consumptive use of the waters within the Basin, is of paramount importance to the development of the Basin.

3. That no exercise of Federal jurisdiction over such waters, that would interfere with the full beneficial consumptive use of the waters within the Basin, shall be made except upon a determination, giving due consideration to the objectives of this Compact and after consultation with all interested Federal agencies and State officials charged with the administration of this

Compact, that such exercise is in the interest of the best utilization of such waters for multiple purposes.

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

In considering this Compact it should be noted that beneficial consumptive use is the basis and the principle upon which the allocations of water are made and predicated. Beneficial consumptive use is defined by the Compact in these words:

"The term 'Beneficial Consumptive Use' is herein defined to be that use by which the water supply of the Basin is consumed thru the activities of man, and shall include water consumed by evaporation from any reservoir, canal, ditch, or irrigated area".

This definition of "Beneficial Consumptive Use" must be considered in connection with Article XI of the Compact. "Beneficial Consumptive Use", as above defined, includes the use of water for domestic, irrigation and industrial purposes. The use of water for these purposes is regulated and controlled under State laws.

The Federal Government claims jurisdiction over the waters of the Basin for the production of hydro-electric energy, the maintenance of navigable capacity within and without the Basin, and in the interest of flood control, all of which in general, are of a non-consumptive character.

It is believed that the interests of the Federal Government and of the signatory States in the waters of the Basin, are adequately protected and correlated by the provisions of Article X and XI, and by other provisions of this Compact.

In its deliberations resulting in the first draft of a Compact, the

Commission gave careful consideration to the report of the Corps of U. S. Engineers dated February 27, 1940, covering its comprehensive study in 1939-1940 of the needs for flood control, including presently irrigated and arable areas, water conservation and related benefits to irrigation, domestic requirements, and power development. The Commission conferred from time to time with representatives of the U. S. Bureau of Reclamation which was then engaged in field investigations and studies of water supply, irrigated and arable areas within the Basin, the development of which would require the consumptive use of the waters of the Republican river and its tributaries. During its deliberations the Commission also conferred with representatives of the Bureau of Agricultural Economics of the U. S. Department of Agriculture which had just completed a field study and voluminous report on the underground water resources of the Basin and the availability of the same for future developments therein. While the absence of extensive development of the natural resources of the Basin tended to simplify the problem of allocating the waters thereof, the Commission was confronted with other difficult problems involving a multiplicity of primary and secondary tributary stream systems which are largely disassociated in their possibilities for use, and which, due to their erratic character, will require the construction of extensive regulatory works throughout the Basin. A careful evaluation by the Commission, of the total available water supplies of the Basin, based upon the preceding eleven years during which period fairly reliable records of stream flow are available, and of the results of the studies by the Corps of U. S. Engineers, U. S. Bureau of Reclamation and Bureau of Agricultural Economics, with respect to irrigated and arable areas, disclosed that the virgin water supplies of the Basin when regulated by storage reservoirs are, in general, ample to meet all present and future requirements for domestic, irrigation and industrial uses within the Basin, with

periodic surpluses which, when regulated, could be made to serve navigation needs, if any, outside the Basin.

The Compact allocates for beneficial consumptive use in Colorado, annually, a total of 54,100 acre-feet derived from the following sources:

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

and, in addition, the entire water supply of the Frenchman and Red Willow Creek drainage basins in Colorado.

It is specifically pointed out that the above allocations of water are identical with the allocations made by the former Compact heretofore approved by the Legislatures of the signatory states; and that such are in no manner or detail changed by this Compact. In the interest of clarity, however, it was considered desirable, in this Compact, to transpose the order in which the determined basic water supplies of the Basin, and the specific allocations to each of the three States, was set out in the former Compact. The only material changes in this Compact, were made to meet the conflicts between the various uses of water, and between Federal and State interests in these waters. These latter changes, as hereinabove explained, are all of a legal nature.

The foregoing allocations constitute about 23 percent of the total water supply of the North Fork of the Republican; 79 percent of that of the Arikaree; 44 percent of that of the South Fork of the Republican; and 100 percent of that of the Beaver, Frenchman and Red Willow Creek drainage basins in Colorado. It should be borne in mind that these allocations of water do not limit the right of Colorado or any of its agencies to divert and apply much larger quantities of water than the amounts allocated by the Compact.

Particular attention is called to Article I of this Compact which

provides in part as follows:

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

It is believed that this Compact equitably apportions the total available average annual virgin water supplies of the Basin, both surface and underground, among the three signatory States, in such manner and in such amounts as will not only protect all existing uses within the Basin, but will insure, insofar as possible, that the available water supplies when regulated by storage works, will adequately meet future requirements for domestic, irrigation, industrial and recreational purposes, and that it affords ample opportunity for multiple use development and for flood control. It provides for the collaboration by the U. S. Geological Survey with the Compact Commissioners of the three States, in the collection, correlation and publication of water facts necessary for the proper administration of the Compact.

It is also believed that this Compact, by its recognition and correlation of the inherent rights of the signatory States and their entities, and those of the Federal Government, provides the sound and constructive basis dictated by the physical and other conditions peculiar to the Basin, as mentioned in Article I of this Compact, for the regulation, control and most beneficial uses of the waters of the Basin, which uses are of such vital importance to that arid and semi-arid region.

As Commissioner for the State of Colorado, I, therefore, submit this Compact to the 34th General Assembly of the State of Colorado, for its consideration, and recommend the ratification of the same by your Honorable body.

M. C. HINDERLIDER

Republican River Compact Commissioner
for Colorado