

Republican Compact  
P 4

Importance of International and Interstate River

Compacts to My State

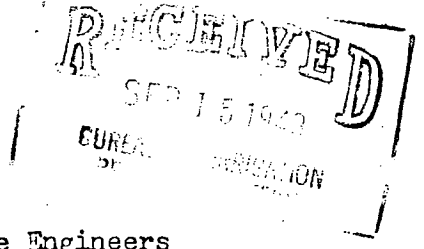
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The State of Nebraska is a party to two existing interstate river compacts. Because of its central location the State is not affected, except perhaps indirectly, by any compact of an international nature.

The first interstate compact entered into by Nebraska is the South Platte River Compact between Colorado and Nebraska. It was the second such compact among irrigation states to be consented to by Congress. It became effective when signed by the President in March, 1926.

This compact was negotiated by the duly authorized commissioners for Colorado and Nebraska in a very few months. In fact, the 1923 Nebraska Legislature authorized the appointment of a compact commissioner and, in the same session, ratified the compact. The absence at the time of any serious controversy between the States or among water users no doubt accounts for the rapid consummation of the pact.

The purpose of the South Platte River Compact, as set forth in the preamble, is "to remove all causes of present and future controversy between said States, and between citizens of one against citizens of the other, with respect to the waters of the South Platte River." Its provisions "bind its citizens, corporations and all others engaged or interested in the diversion or use of waters of the South Platte River in that State."

It also provides (1) for the maintenance by Colorado and Nebraska, at their joint expense, of a gaging station at or near the state line and for the exchange and

publication of records and data, (2) for the diversion of the waters of Lodgepole Creek, a tributary flowing through Nebraska and entering the South Platte River in Colorado, (3) for the allocation and apportionment of all of the waters flowing in the South Platte River (4) that either State, its corporations or its citizens, may construct, maintain and operate diversion works, canals, storage reservoirs and other necessary structures in the other State, and grants, each to the other, the right to acquire by purchase, prescription or by exercising the power of eminent domain, the necessary rights of way, etc.; that compliance by Colorado with the terms of the compact and the delivery of water according to its terms shall relieve that State of any further or additional demand by Nebraska on the waters of the stream within Colorado.

The compact contains a declaration that neither State concedes that any general principle or precedent is established with respect to other future interstate compacts. It also contains a provision that the compact may be terminated or modified at any time by mutual consent of the signatory States.

The South Platte River Compact has been in effect for nearly twenty-five years and has been administered by the water officials of the two States without friction or conflict.

The other compact to which Nebraska is a party is the Republican River Compact, first consummated by the commissioners for Colorado, Kansas and Nebraska in March, 1941, and ratified by the legislatures of the signatory States that same year. It was subsequently consented to by the Congress but was vetoed by the President in April, 1942, because it contained a declaration that the Republican River and its tributaries are not navigable, which the President interpreted as an attempt to withdraw the jurisdiction of the United States over the waters of the Republican Basin for purposes of navigation.

In his veto message, he expressed his approval, in principle, of a suitable compact to allocate and apportion the waters of the Basin among the three States for irrigation and other purposes, and for joint Federal-State action in the control and use of said waters.

On August 4, 1942, Congress approved an act granting consent to the three States to negotiate a new compact and providing for the participation of a federal representative in the deliberations. Thereafter, following meetings in Denver and Lincoln in November and December, 1942, at which interested federal agencies were represented, the compact commissioners and the federal representative consented and signed a second compact on December 11, 1942. No change in the original allocations or apportionments were made, but the declaration concerning the navigability of the river and its tributaries was eliminated. As a substitute, the new compact contained language intended to give assurance that federal programs and projects undertaken in the Basin would take into account the best use of waters for multiple uses, and would recognize uses for irrigation and domestic purposes as property rights. The second compact was immediately ratified by the legislatures of the three States, was consented to by the Congress and, on May 26, 1943, it was approved by the President.

The major purposes of the Republican River Compact are to provide for the most efficient use of the waters of the Basin for multiple purposes; to provide for an equitable division of such waters; to remove all causes which might lead to <sup>contro-</sup>versies; to promote interstate comity; to recognize that the most efficient utilization of the waters in 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 floods.

Beneficial consumptive use is declared to be the basis and principle upon which the allocations of water are predicated. Specific allocations in acre-feet are made to each State from the computed average annual virgin water supply originating in the

Basin. Provision is made for adjusting the allocations should the future computed virgin water supply of any source vary more than ten percent from the computed figures set forth in the compact.

The compact provides that the use of the waters therein allocated shall be subject to the laws of the State, for use in which the allocations are made. The right is given any signatory State to participate in the construction and use of irrigation facilities in any upper State and the right of any such State to acquire necessary property rights in an upper State is provided. A provision is made for the administration of the compact through the official in each State who is responsible for administering the public water supplies. Provision is also made for the United States Geological Survey to collaborate with the State officials in the collection and publication of water records.

The negotiation of this compact was comparatively simple due to the fact that little irrigation development had taken place in the Basin which would be the basis for interstate complications and no controversy over the waters existed at the time of the deliberations. On the other hand, because of this lack of irrigation development and the absence of the need for stream-flow records for administrative purposes, the records of the water supply of the Basin were very meagre.

The allocations to the various States were based largely on the amount of irrigable land within the Basin in each of the States, as determined by the Bureau of Reclamation in their preliminary investigations started in 1939.

Pending the completion of Bureau of Reclamation and Corps of Engineer projects in the Basin which will provide regulatory reservoirs and irrigation works, there has been no occasion for administering the compact as yet. Pursuant to the desires of the water officials of the three States, the United States Geological Survey has been operating eighteen compact stations in the Basin since 1944. Ten were old stations previously operated under the Survey-State cooperative program and the others are new

stations. The Bureau of Reclamation, which has continued investigations in the Basin, has recently expressed the opinion that in some instances it appears that the limitations and allocations set up by the compact may preclude maximum irrigation development on some of the smaller interstate tributaries. However, the Bureau has not completed its water supply studies and has not reached a final conclusion as to whether or not it feels that a serious problem exists in this connection. It would be surprising if some errors in estimated water supplies and allocations were not made, due to the absence of reliable discharge records. The possibility that compliance with the terms of the compact may impede development in certain areas serves to emphasize the need for stream-flow records on all streams even though the value of such records in undeveloped areas may not be recognized readily.

At this time there are no proposed compacts in which Nebraska is interested. There has been some consideration given to the negotiating of a compact on the Bite River between the States of South Dakota and Nebraska but apparently there is no prospect of any immediate action being taken.

The North Platte River is the interstate stream of most importance to Nebraska. This stream is now being administered under the United States Supreme Court decree handed down in 1945, following more than ten years of expensive litigation among the states of Colorado, Wyoming and Nebraska and the United States. An attempt to negotiate a compact on the North Platte River was started in 1921 when a commission composed of representatives of the three States and the United States met and made a preliminary draft of a compact. The commission continued its efforts until 1936 but it was unable to draft an agreement that was satisfactory to all concerned. The fact that the river was developed quite fully and many vested rights were involved largely accounts for the difficulty in arriving at a compact.

Although administration of the river under the Court Decree apparently has been satisfactory since the Decree became effective in 1945, it has not yet been tested during a period of drought so that it cannot be said that it will be satisfactory under all conditions. Already there have arisen several questions as to the interpretation of the Decree, resulting in a controversy within our State which is delaying proposed additional development on the river. Perhaps if a compact had been made there would now be no occasion for controversy.

In summarizing may I say that Nebraska recognizes the value of interstate compacts and prefers the compact method of apportioning the waters of interstate streams to that of costly law suits.