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COLORADO REVISED STATUTES

\*\*\* THIS DOCUMENT REFLECTS CHANGES CURRENT THROUGH ALL LAWS PASSED AT THE FIRST REGULAR SESSION OF THE 68TH GENERAL ASSEMBLY OF THE STATE OF COLORADO \*\*\*

TITLE 37. WATER AND IRRIGATION  
WATER CONSERVATION BOARD AND COMPACTS  
ARTICLE 64. ANIMAS-LA PLATA PROJECT COMPACT

**GO TO COLORADO STATUTES ARCHIVE DIRECTORY**

*C.R.S. 37-64-101 (2011)*

37-64-101. Animas-La Plata project compact

The general assembly hereby ratifies the compact designated as the "Animas-La Plata Project Compact" to which the consent of congress was given by Public Law 90-537, section 501 (c), approved September 30, 1968, by the senate and house of representatives of the United States of America. Said compact is as follows:

**ANIMAS-LA PLATA PROJECT COMPACT**

The State of Colorado and the State of New Mexico, in order to implement the operation of the Animas-La Plata Federal Reclamation Project, Colorado-New Mexico, a proposed participating project under the Colorado River Storage Project Act (*70 Stat. 105; 43 U.S.C. 620*) and being moved by considerations of interstate comity, have resolved to conclude a compact for these purposes and have agreed upon the following articles:

**ARTICLE I**

A. The right to store and divert water in Colorado and New Mexico from the La Plata and Animas River systems, including return flow to the La Plata River from Animas River diversions, for uses in New Mexico under the Animas-La Plata Federal Reclamation Project shall be valid and of equal priority with those rights granted by decree of the Colorado state courts for the uses of water in Colorado for that project providing such uses in New Mexico are within the allocation of water made to that state by articles III and XIV of the Upper Colorado River Basin Compact (*63 Stat. 31*).

B. The restrictions of the last sentence of Section (a) of Article IX of the Upper Colorado River Basin Compact shall not be construed to vitiate paragraph A of this article.

**ARTICLE II**

This Compact shall become binding and obligatory when it shall have been ratified by the legislatures of each of the signatory States.

**HISTORY:** Source: L. 69: p. 1231, § 1. C.R.S. 1963: § 149-13-1.

Cross references: For water rights generally, see § § 5 to 8 of art. XVI, *Colo. Const.*



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TITLE 37. WATER AND IRRIGATION  
WATER CONSERVATION BOARD AND COMPACTS  
ARTICLE 69. ARKANSAS RIVER COMPACT

**GO TO COLORADO STATUTES ARCHIVE DIRECTORY**

*C.R.S. 37-69-101 (2011)*

37-69-101. Arkansas River compact

The general assembly hereby ratifies the compact between the state of Colorado and the state of Kansas designated as the "Arkansas river compact" signed in the city of Denver, state of Colorado, on the 14th day of December, A. D. 1948, by Henry C. Vidal, Gail L. Ireland, and Harry B. Mendenhall, commissioners for the state of Colorado, and George S. Knapp, Edward F. Arn, William E. Leavitt, and Roland H. Tate, commissioners for the state of Kansas, and approved by Hans Kramer, representative of the United States of America. Said compact is as follows:  
Arkansas River Compact

The state of Colorado and the state of Kansas, parties signatory to this compact (hereinafter referred to as "Colorado" and "Kansas," respectively, or individually as a "state," or collectively as the "states") having resolved to conclude a compact with respect to the waters of the Arkansas river, and being moved by considerations of interstate comity, having appointed commissioners as follows:

Henry C. Vidal, Gail L. Ireland, and Harry B. Mendenhall, for Colorado; and George S. Knapp, Edward F. Arn, William E. Leavitt, and Roland H. Tate, for Kansas; and the consent of the congress of the United States to negotiate and enter into an interstate compact not later than January 1, 1950, having been granted by Public Law 34, 79th Congress, 1st Session, and pursuant thereto the President having designated Hans Kramer as the representative of the United States, the said commissioners for Colorado and Kansas, after negotiations participated in by the representative of the United States, have agreed as follows:

Article I

The major purposes of this compact are to:

A. Settle existing disputes and remove causes of future controversy between the states of Colorado and Kansas, and between citizens of one and citizens of the other state, concerning the waters of the Arkansas river and their control, conservation and utilization for irrigation and other beneficial purposes.

B. Equitably divide and apportion between the states of Colorado and Kansas the waters of the Arkansas river and their utilization as well as the benefits arising from the construction, operation and maintenance by the United States of John Martin reservoir project for water conservation purposes. Article II

The provisions of this compact are based on (1) the physical and other conditions peculiar to the Arkansas river and its natural drainage basin, and the nature and location of irrigation and other developments and facilities in connection therewith; (2) the opinion of the United States supreme court entered December 6, 1943, in the case of *Colorado v. Kansas* (320 U. S. 383) concerning the relative rights of the respective states in and to the use of waters of the Arkansas

river; and (3) the experience derived under various interim executive agreements between the two states apportioning the waters released from the John Martin reservoir as operated by the corps of engineers.

Article III

As used in this compact:

A. The word "stateline" means the geographical boundary line between Colorado and Kansas.

B. The term "waters of the Arkansas river" means the waters originating in the natural drainage basin of the Arkansas river, including its tributaries, upstream from the stateline, and excluding waters brought into the Arkansas river basin from other river basins.

C. The term "stateline flow" means the flow of waters of the Arkansas river as determined by gauging stations located at or near the stateline. The flow as determined by such stations, whether located in Colorado or Kansas, shall be deemed to be the actual stateline flow.

D. "John Martin reservoir project" is the official name of the facility formerly known as Caddoa reservoir project, authorized by the Flood Control Act of 1936, as amended, for construction, operation and maintenance by the war department, corps of engineers, later designated as the corps of engineers, department of the army, and herein referred to as the "corps of engineers." "John Martin reservoir" is the water storage space created by "John Martin dam".

E. The "flood control storage" is that portion of the total storage space in John Martin reservoir allocated to flood control purposes.

F. The "conservation pool" is that portion of the total storage space in John Martin reservoir lying below the flood control storage.

G. The "ditches of Colorado water district 67" are those ditches and canals which divert water from the Arkansas river or its tributaries downstream from John Martin dam for irrigation use in Colorado.

H. The term "river flow" means the sum of the flows of the Arkansas and the Purgatoire rivers into John Martin reservoir as determined by gauging stations appropriately located above said reservoir.

I. The term "the administration" means the Arkansas river compact administration established under article VIII.

Article IV

Both states recognize that:

A. This compact deals only with the waters of the Arkansas river as defined in article III.

B. This compact is not concerned with the rights, if any, of the state of New Mexico or its citizens in and to the use in New Mexico of waters of Trinchera creek or other tributaries of the Purgatoire river, a tributary of the Arkansas river.

C. (1) John Martin dam will be operated by the corps of engineers to store and release the waters of the Arkansas river in and from John Martin reservoir for its authorized purposes.

(2) The bottom of the flood control storage is presently fixed by the chief of engineers, U. S. Army, at elevation 3,851 feet above mean sea level. The flood control storage will be operated for flood control purposes and to those ends will impound or regulate the streamflow volumes that are in excess of the then available storage capacity of the conservation pool. Releases from the flood control storage may be made at times and rates determined by the corps of engineers to be necessary or advisable without regard to ditch diversion capacities or requirements in either or both states.

(3) The conservation pool will be operated for the benefit of water users in Colorado and Kansas, both upstream and downstream from John Martin dam, as provided in this compact. The maintenance of John Martin dam and appurtenance works may at times require the corps of engineers to release waters then impounded in the conservation pool or to prohibit the storage of water therein until such maintenance work is completed. Flood control operation may also involve temporary utilization of conservation storage.

D. This compact is not intended to impede or prevent future beneficial development of the Arkansas river basin in Colorado and Kansas by federal or state agencies, by private enterprise, or by combinations thereof, which may involve construction of dams, reservoirs and other works for the purposes of water utilization and control, as well as the improved or prolonged functioning of existing works: Provided, that the waters of the Arkansas river, as defined in article

III, shall not be materially depleted in usable quantity or availability for use to the water users in Colorado and Kansas under this compact by such future development or construction.

#### Article V

Colorado and Kansas hereby agree upon the following basis of apportionment of the waters of the Arkansas river:

A. Winter storage in John Martin reservoir shall commence on November 1st of each year and continue to and include the next succeeding March 31st. During said period all water entering said reservoir up to the limit of the then available conservation capacity shall be stored: Provided, that Colorado may demand releases of water equivalent to the river flow, but such releases shall not exceed 100 c.f.s. (cubic feet per second) and water so released shall be used without avoidable waste.

B. Summer storage in John Martin reservoir shall commence on April 1st of each year and continue to and include the next succeeding October 31st. During said period, except when Colorado water users are operating under decreed priorities as provided in paragraphs F and G of this article, all water entering said reservoir up to the limit of the then available conservation capacity shall be stored: Provided, that Colorado may demand releases of water equivalent to the river flow up to 500 c.f.s., and Kansas may demand releases of water equivalent to that portion of the river flow between 500 c.f.s. and 750 c.f.s., irrespective of releases demanded by Colorado.

C. Releases of water stored pursuant to the provisions of paragraphs A and B of this article shall be made upon demands by Colorado and Kansas concurrently or separately at any time during the summer storage period. Unless increases to meet extraordinary conditions are authorized by the administration, separate releases of stored water to Colorado shall not exceed 750 c.f.s., separate releases of stored water to Kansas shall not exceed 500 c.f.s., and concurrent releases of stored water shall not exceed a total of 1250 c.f.s.: Provided, that when water stored in the conservation pool is reduced to a quantity less than 20,000 acre-feet, separate releases of stored water to Colorado shall not exceed 600 c.f.s., and separate releases of stored water to Kansas shall not exceed 400 c.f.s., and concurrent releases of stored water shall not exceed 1,000 c.f.s.

D. Releases authorized by paragraphs A, B, and C of this article, except when all Colorado water users are operating under decree priorities as provided in paragraphs F and G of this article, shall not impose any call on Colorado water users that divert waters of the Arkansas river upstream from John Martin dam.

E. (1) Releases of stored water and releases of river flow may be made simultaneously upon the demands of either or both states.

(2) Water released upon concurrent or separate demands shall be applied promptly to beneficial use unless storage thereof downstream is authorized by the administration.

(3) Releases of river flow and of stored water to Colorado shall be measured by gauging stations located at or near John Martin dam and the releases to which Kansas is entitled shall be satisfied by an equivalent in state line flow.

(4) When water is released from John Martin reservoir appropriate allowances as determined by the administration shall be made for the intervals of time required for such water to arrive at the points of diversion in Colorado and at the state line.

(5) There shall be no allowance or accumulation of credits or debits for or against either state.

(6) Storage, releases from storage and releases of river flow authorized in this article shall be accomplished pursuant to procedures prescribed by the administration under the provisions of article VIII.

F. In the event the administration finds that within a period of fourteen days the water in the conservation pool will be or is liable to be exhausted, the administration shall forthwith notify the state engineer of Colorado, or his duly authorized representative, that commencing upon a day certain within said fourteen day period, unless a change of conditions justifies cancellation or modification of such notice, Colorado shall administer the decreed rights of water users in Colorado water district 67 as against each other and as against all rights now or hereafter decreed to water users diverting upstream from John Martin dam on the basis of relative priorities in the same manner in which their respective priority rights were administered by Colorado before John Martin reservoir began to operate and as though John Martin dam had not been constructed. Such priority administration by Colorado shall be continued until the administration finds that water is again available in the conservation pool for release as provided in this compact, and timely notice of such finding shall be given by the administration to the state engineer of Colorado or his duly authorized representative; provided, that except as controlled by the operation of the preceding provisions of this paragraph and other applicable

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provisions of this compact, when there is water in the conservation pool the water users upstream from John Martin reservoir shall not be affected by the decrees to the ditches in Colorado water district 67. Except when administration in Colorado is on a priority basis the water diversions in Colorado water district 67 shall be administered by Colorado in accordance with distribution agreements made from time to time between the water users in such district and filed with the administration and with the state engineer of Colorado or, in the absence of such agreement, upon the basis of the respective priority decrees, as against each other, in said district.

G. During periods when Colorado reverts to administration of decree priorities, Kansas shall not be entitled to any portion of the river flow entering John Martin reservoir. Waters of the Arkansas river originating in Colorado which may flow across the state line during such periods are hereby apportioned to Kansas.

H. If the usable quantity and availability for use of the waters of the Arkansas river to water users in Colorado water district 67 and Kansas will be thereby materially depleted or adversely affected, (1) priority rights now decreed to the ditches of Colorado water district 67 shall not hereafter be transferred to other water districts in Colorado or to points of diversion or places of use upstream from John Martin dam; and (2) the ditch diversion rights from the Arkansas river in Colorado water district 67 and of Kansas ditches between the state line and Garden City shall not hereafter be increased beyond the total present rights of said ditches, without the administration, in either case (1) or (2), making findings of fact that no such depletion or adverse effect will result from such proposed transfer or increase. Notice of legal proceedings for any such proposed transfer or increase shall be given to the administration in the manner and within the time provided by the laws of Colorado or Kansas in such cases.

## Article VI

A. (1) Nothing in this compact shall be construed as impairing the jurisdiction of Kansas over the waters of the Arkansas river that originate in Kansas and over the waters that flow from Colorado across the state line into Kansas.

(2) Except as otherwise provided, nothing in this compact shall be construed as supplanting the administration by Colorado of the rights of appropriators of waters of the Arkansas river in said state as decreed to said appropriators by the courts of Colorado, nor as interfering with the distribution among said appropriators by Colorado, nor as curtailing the diversion and use for irrigation and other beneficial purposes in Colorado of the waters of the Arkansas river.

B. Inasmuch as the Frontier canal diverts waters of the Arkansas river in Colorado west of the state line for irrigation uses in Kansas only, Colorado concedes to Kansas and Kansas hereby assumes exclusive administrative control over the operation of the Frontier canal and its headworks for such purposes, to the same extent as though said works were located entirely within the state of Kansas. Water carried across the state line in Frontier canal or any other similarly situated canal shall be considered to be part of the state line flow.

## Article VII

A. Each state shall be subject to the terms of this compact. Where the name of the state or the term "state" is used in this compact these shall be construed to include any person or entity of any nature whatsoever using, claiming or in any manner asserting any right to the use of the waters of the Arkansas river under the authority of that state.

B. This compact establishes no general principle or precedent with respect to any other interstate stream.

C. Wherever any state or federal official agency is referred to in this compact such reference shall apply to the comparable official or agency succeeding to their duties and functions.

## Article VIII

A. To administer the provisions of this compact there is hereby created an interstate agency to be known as the Arkansas river compact administration herein designated as "the administration".

B. The administration shall have power to:

(1) Adopt, amend and revoke by-laws, rules and regulations consistent with the provisions of this compact;

(2) Prescribe procedures for the administration of this compact: Provided, that where such procedures involve the operation of John Martin reservoir project they shall be subject to the approval of the district engineer in charge of said project;

(3) Perform all functions required to implement this compact and to do all things necessary, proper or convenient in the performance of its duties.

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C. The membership of the administration shall consist of three representatives from each state who shall be appointed by the respective governors for a term not to exceed four years. One Colorado representative shall be a resident of and water right owner in water districts 14 or 17, one Colorado representative shall be a resident of and water right owner in water district 67, and one Colorado representative shall be the director of the Colorado water conservation board. Two Kansas representatives shall be residents of and water right owners in the counties of Finney, Kearny or Hamilton, and one Kansas representative shall be the chief state official charged with the administration of water rights in Kansas. The President of the United States is hereby requested to designate a representative of the United States, and if a representative is so designated he shall be an ex officio member and act as chairman of the administration without vote.

D. The state representatives shall be appointed by the respective governors within thirty days after the effective date of this compact. The administration shall meet and organize within sixty days after such effective date. A quorum for any meeting shall consist of four members of the administration: Provided, that at least two members are present from each state. Each state shall have but one vote in the administration and every decision, authorization or other action shall require unanimous vote. In case of a divided vote on any matter within the purview of the administration, the administration may, by subsequent unanimous vote, refer the matter for arbitration to the representative of the United States or other arbitrator or arbitrators, in which event the decision made by such arbitrator or arbitrators shall be binding upon the administration.

E. (1) The salaries, if any, and the personal expenses of each member shall be paid by the government which he represents. All other expenses incident to the administration of this compact which are not paid by the United States shall be borne by the states on the basis of 60 per cent by Colorado and 40 per cent by Kansas.

(2) In each even numbered year the administration shall adopt and transmit to the governor of each state its budget covering anticipated expenses for the forthcoming biennium and the amount thereof payable by each state. Each state shall appropriate and pay the amount due by it to the administration.

(3) The administration shall keep accurate accounts of all receipts and disbursements and shall include a statement thereof, together with a certificate of audit by a certified public accountant, in its annual report. Each state shall have the right to make an examination and audit of the accounts of the administration at any time.

F. Each state shall provide such available facilities, equipment and other assistance as the administration may need to carry out its duties. To supplement such available assistance the administration may employ engineering, legal, clerical and other aid as in its judgment may be necessary for the performance of its functions. Such employees shall be paid by and be responsible to the administration, and shall not be considered to be employees of either state.

G. (1) The administration shall co-operate with the chief official of each state charged with the administration of water rights and with federal agencies in the systematic determination and correlation of the facts as to the flow and diversion of the waters of the Arkansas river and as to the operation and siltation of John Martin reservoir and other related structures. The administration shall co-operate in the procurement, interchange, compilation and publication of all factual data bearing upon the administration of this compact without, in general, duplicating measurements, observations or publications made by state or federal agencies. State officials shall furnish pertinent factual data to the administration upon its request. The administration shall, with the collaboration of the appropriate federal and state agencies, determine as may be necessary from time to time, the location of gauging stations required for the proper administration of this compact and shall designate the official records of such stations for its official use.

(2) The director, U. S. geological survey, the commissioner of reclamation and the chief of engineers, U. S. Army, are hereby requested to collaborate with the administration and with appropriate state officials in the systematic determination and correlation of data referred to in paragraph G (1) of this article and in the execution of other duties of such officials which may be necessary for the proper administration of this compact.

(3) If deemed necessary for the administration of this compact, the administration may require the installation and maintenance, at the expense of water users, of measuring devices of approved type in any ditch or group of ditches diverting water from the Arkansas river in Colorado or Kansas. The chief official of each state charged with the administration of water rights shall supervise the execution of the administration's requirements for such installations.

H. Violation of any of the provisions of this compact or other actions prejudicial thereto which come to the attention of the administration shall be promptly investigated by it. When deemed advisable as the result of such investigation, the administration may report its findings and recommendations to the state official who is charged with the ad-

ministration of water rights for appropriate action, it being the intent of this compact that enforcement of its terms shall be accomplished in general through the state agencies and officials charged with the administration of water rights.

I. Findings of fact made by the administration shall not be conclusive in any court or before any agency or tribunal but shall constitute prima facie evidence of the facts found.

J. The administration shall report annually to the governors of the states and to the President of the United States as to matters within its purview.

#### Article IX

A. This compact shall become effective when ratified by the legislature of each state and when consented to by the congress of the United States by legislation providing substantially, among other things, as follows:

Nothing contained in this act or in the compact herein consented to shall be construed as impairing or affecting the sovereignty of the United States or any of its rights or jurisdiction in and over the area or waters which are the subject of such compact: Provided, that the chief of engineers is hereby authorized to operate the conservation features of the John Martin reservoir project in a manner conforming to such compact with such exceptions as he and the administration created pursuant to the compact may jointly approve.

B. This compact shall remain in effect until modified or terminated by unanimous action of the states and in the event of modification or termination all rights then established or recognized by this compact shall continue unimpaired.

IN WITNESS WHEREOF, the commissioners have signed this compact in triplicate original, one of which shall be forwarded to the secretary of state of the United States of America and one of which shall be forwarded to the governor of each signatory state.

Done in the city and county of Denver, in the state of Colorado, on the fourteenth day of December, in the year of our Lord one thousand nine hundred and forty-eight.

Henry C. Vidal,

Gail L. Ireland,

Harry B. Mendenhall,

Commissioners for Colorado.

Attest:

Warden L. Noe, Secretary.

George S. Knapp,

Edward F. Arn,

William E. Leavitt,

Roland H. Tate,

Commissioners for Kansas.

Approved:

Hans Kramer,

Representative of the

United States.

**HISTORY:** Source: L. 49: p. 485, § 1.CSA: C. 90, § 39(1).CRS 53: § 148-9-1. C.R.S. 1963: § 149-9-1.

Cross references: For water rights generally, see §§ 5 to 8 of art. XVI, *Colo. Const.*

ANNOTATION

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Law reviews. For article, "Revision of Water and Irrigation Statutes", see *31 Dicta 29 (1954)*. For article, "The Law of Equitable Apportionment Revisited, Updated and Restated", see *56 U. Colo. L. Rev. 381 (1985)*.

Specific, detailed findings of violations required. Water court erred in failing to enter specific, detailed findings of violations of the Arkansas Compact, if any, caused by diminished return flows and to enter additional modifications and conditions in the final decrees to prevent or compensate such violations of the compact. *S.E. Colo. Water Cons. v. Ft. Lyon Canal Co.*, 720 P.2d 133 (Colo. 1986).

Where the terms of the Arkansas River Compact give the state of Kansas "exclusive administrative control" over the operation of a canal, Kansas has the exclusive jurisdiction to determine the water rights of the canal company. *Frontier Ditch v. S.E. Colo. Water Cons.*, 761 P.2d 1117 (Colo. 1988).

Applied in *People ex rel. Danielson v. Amity Mut. Irrigation Co.*, 668 P.2d 1368 (Colo. 1983).



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**GO TO COLORADO STATUTES ARCHIVE DIRECTORY***C.R.S. 37-69-102 (2011)*

37-69-102. When compact effective

Said compact shall not become effective unless and until the same has been ratified by the legislature of each of the signatory states and consented to by the congress of the United States. The governor of the state of Colorado shall give notice of the ratification of the said compact to the governor of the state of Kansas and to the president of the United States.

**HISTORY:** Source: L. 49: p. 496, § 2.CSA: C. 90, § 39(2).CRS 53: § 148-9-2. C.R.S. 1963: § 149-9-2.



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## ARTICLE 69. ARKANSAS RIVER COMPACT

**GO TO COLORADO STATUTES ARCHIVE DIRECTORY***C.R.S. 37-69-103 (2011)*

37-69-103. Interstate agency created by compact

It is hereby recognized, found, determined, and declared that the compact creates an interstate agency which is known as the Arkansas river compact administration and which is an independent entity whose members and employees are not officers and employees of either of the states signatory to the compact.

**HISTORY:** Source: L. 49: p. 496, § 3.CSA: C. 90, § 39(3).CRS 53: § 148-9-3. C.R.S. 1963: § 149-9-3.



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37-69-104. Appointment of members of compact administration

After the said compact becomes effective the Colorado members of the Arkansas river compact administration shall be appointed by the governor, shall serve until revocation of their appointment by the governor, and, on behalf of the Arkansas river compact administration, the state of Colorado shall pay the necessary expenses and also compensation of said members in an amount which shall be fixed by the governor and when so fixed shall be changed only by action of the governor.

**HISTORY:** Source: L. 49: p. 496, § 4.CSA: C. 90, § 39(4).CRS 53: § 148-9-4. C.R.S. 1963: § 149-9-4.



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*C.R.S. 37-69-105 (2011)*

37-69-105. Payment of expenses of compact administration

The Colorado share of the expenses of the Arkansas river compact administration and the expenses and compensation of the Colorado members of that administration shall be paid out of funds appropriated by the general assembly to the Colorado water conservation board and warrants shall be drawn against such appropriation upon vouchers signed by the governor and the director of the Colorado water conservation board.

**HISTORY:** Source: L. 49: p. 496, § 5.CSA: C. 90, § 39(5).CRS 53: § 148-9-5. C.R.S. 1963: § 149-9-5.



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*C.R.S. 37-69-106 (2011)*

37-69-106. Administrative code inapplicable

The provisions of articles 2, 3, 31, 35, and 36 of title 24, C.R.S., shall be inapplicable to any acts or proceedings taken to carry out the purposes of said compact.

**HISTORY:** Source: L. 49: p. 496, § 6.CSA: C. 90, § 39(6).CRS 53: § 148-9-6. C.R.S. 1963: § 149-9-6.



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*C.R.S. 37-61-101 (2011)*

37-61-101. Colorado River compact

The General Assembly hereby approves the compact, designated as the "Colorado River Compact", signed at the City of Santa Fe, State of New Mexico, on the 24th day of November, A.D. 1922, by Delph E. Carpenter, as the Commissioner for the State of Colorado, under authority of and in conformity with the provisions of an act of the General Assembly of the State of Colorado, approved April 2, 1921, entitled "An Act providing for the appointment of a Commissioner on behalf of the State of Colorado to negotiate a compact and agreement between the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming and between said States and the United States respecting the use and distribution of the waters of the Colorado River and the rights of said States and the United States thereto, and making an appropriation therefor.", the same being Chapter 246 of the Session Laws of Colorado, 1921, and signed by the Commissioners for the States of Arizona, California, Nevada, New Mexico, Utah, and Wyoming, under legislative authority, and signed by the Commissioners for said seven States and approved by the Representative of the United States of America under authority and in conformity with the provisions of an Act of the Congress of the United States, approved August 19, 1921, entitled "An Act to permit a compact or agreement between the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming, respecting the disposition and apportionment of the waters of the Colorado River, and for other purposes.", which said compact is as follows:  
Colorado River Compact

The States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming, having resolved to enter into a compact, under the Act of the Congress of the United States of America approved August 19, 1921, (42 Statutes at Large, page 171), and the Acts of the legislatures of the said states, have through their Governors appointed as their commissioners:

W. S. Norviel, for the State of Arizona;  
W. F. McClure, for the State of California;  
Delph E. Carpenter, for the State of Colorado;  
J. G. Scrugham, for the State of Nevada;  
Stephen B. Davis, Jr., for the State of New Mexico;  
R. E. Caldwell, for the State of Utah;  
Frank C. Emerson, for the State of Wyoming;

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who, after negotiations participated in by Herbert Hoover appointed by the President as the representative of the United States of America, have agreed upon the following articles:

## Article I

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; to establish the relative importance of different beneficial uses of water; to promote interstate comity; to remove causes of present and future controversies; and to secure the expeditious agricultural and industrial development of the Colorado River Basin, the storage of its waters and the protection of life and property from floods. To these ends the Colorado River Basin is divided into two Basins, and an apportionment of the use of part of the water of the Colorado River System is made to each of them with the provision that further equitable apportionments may be made.

## 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 "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 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 System below Lee Ferry.

(h) 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.

## Article III

(a) There is hereby apportioned from the Colorado River System in perpetuity to the Upper Basin and to the Lower Basin respectively the exclusive beneficial consumptive use of 7,500,000 acre feet of water per annum, which shall include all water necessary for the supply of any rights which may now exist.

(b) In addition to the apportionment in paragraph (a) the Lower Basin is hereby given the right to increase its beneficial consumptive use of such waters by one million acre per annum.

(c) If, as a matter of international comity, the United States of America shall hereafter recognize in the United States of Mexico any right to the use of any waters of the Colorado River System, such waters shall be supplied first from the waters which are surplus over and above the aggregate of the quantities specified in paragraphs (a) and (b); and if such surplus shall prove insufficient for this purpose, 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 addition to that provided in paragraph (d).

(d) 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 ten consecutive years reckoned in continuing progressive series beginning with the first day of October next succeeding the ratification of this compact.

(e) The States of the Upper Division shall not withhold water, and the States of the Lower Division shall not require the delivery of water, which cannot reasonably be applied to domestic and agricultural uses.

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(f) Further equitable apportionment of the beneficial uses of the waters of the Colorado River System unapportioned by paragraphs (a), (b) and (c) may be made in the manner provided in paragraph (g) at any time after October first, 1963, if and when either basin shall have reached its total beneficial consumptive use as set out in paragraphs (a) and (b).

(g) In the event of a desire for a further apportionment as provided in paragraph (f) any two signatory States, acting through their Governors, may give joint notice of such desire to the Governors of the other signatory States and to the President of the United States of America, and it shall be the duty of the Governor of the signatory states and of the President of the United States of America forthwith to appoint representatives, whose duty it shall be to divide and apportion equitably between the Upper Basin and Lower Basin the beneficial use of the unapportioned water of the Colorado River System as mentioned in paragraph (f), subject to the Legislative ratification of the signatory States and the Congress of the United States of America.

## Article IV

(a) Inasmuch as the Colorado River has ceased to be navigable for commerce and the reservation of its waters for navigation would seriously limit the development of its Basin, the use of its waters for purpose of navigation shall be subservient to the uses of such waters for domestic, agricultural and power purposes. If the Congress shall not consent to this paragraph, the other provisions of this compact shall nevertheless remain binding.

(b) Subject to the provisions of this compact, water of the 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.

(c) The provisions of this article shall not apply to or interfere with the regulation and control by any state within its boundaries of the appropriation, use and distribution of water.

## Article V

The Chief Official of each signatory State charged with the administration of water rights, together with the Director of the United States Reclamation Service and the Director of the United States Geological Survey shall co-operate, ex officio:

(a) To promote the systematic determination and coordination of the facts as to flow, appropriation, consumption and use of water in the Colorado River Basin, and the interchange of available information in such matters.

(b) To secure the ascertainment and publication of the annual flow of the Colorado River at Lee Ferry.

(c) To perform such other duties as may be assigned by mutual consent of the signatories from time to time.

## Article VI

Should any claim or controversy arise between any two or more of the signatory States: (a) with respect to the waters of the Colorado River System not covered by the terms of this compact; (b) over the meaning or performance of any of the terms of this compact; (c) as to the allocation of the burdens incident to the performance of any article of this compact or the delivery of waters as herein provided; (d) as to the construction or operation of works within the Colorado River Basin to be situated in two or more States, or to be constructed in one State for the benefit of another State; or (e) as to the diversion of water in one State for the benefit of another State; the Governors of the States affected, upon the request of one of them, shall forthwith appoint Commissioners with power to consider and adjust such claim or controversy, subject to ratification by the Legislatures of the States so affected.

Nothing herein contained shall prevent the adjustment of any such claim or controversy by any present method or by direct future legislative action of the interested States.

## Article VII

Nothing in this compact shall be construed as affecting the obligations of the United States of America to Indian tribes.

## Article VIII

Present perfected rights to the beneficial use of waters of the Colorado River System are unimpaired by this compact. Whenever storage capacity of 5,000,000 acre feet shall have been provided on the main Colorado River within or for the benefit of the Lower Basin, then claims of such rights, if any, by appropriators or users of waters in the Lower Basin, against appropriators or users of water in the Upper Basin shall attach to and be satisfied from water that may be stored not in conflict with Article III.

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All other rights to beneficial use of waters of the Colorado River System shall be satisfied solely from the water apportioned to that Basin in which they are situated.

## Article IX

Nothing in this compact shall be construed to limit or prevent any State from instituting or maintaining any action or proceeding, legal or equitable, for the protection of any right under this compact or the enforcement of any of its provisions.

## Article X

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 XI

This compact shall become binding and obligatory when it shall have been approved by the Legislatures of each of the signatory States and by the Congress of the United States. Notice of approval by the Legislatures shall be given by the Governor of each signatory State to the Governors of the other signatory 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 the signatory States of approval by the Congress of the United States.

In Witness Whereof, The Commissioners have signed this compact in a single original, which shall be deposited in the archives of the Department of State of the United States of America 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, New Mexico, this Twenty-fourth day of November, A.D. One Thousand Nine Hundred and Twenty-Two.

W. S. Norviel,

W. F. McClure,

Delph E. Carpenter,

J. G. Scrugham,

Stephen B. Davis, Jr.,

R. E. Caldwell,

Frank E. Emerson.

Approved:

Herbert Hoover.

**HISTORY:** Source: L. 23: p. 684, § 1. CSA: omitted. CRS 53: § 148-2-1. C.R.S. 1963: § 149-2-1.

Cross references: For water rights generally, see § 5 to 8 of art. XVI, *Colo. Const.*

Editor's note: The numbering system within the compacts in articles 61 to 69 of this title, inclusive, are those of the original compacts and are not to be confused with the numbering system of C.R.S. 1973.

Law reviews: For article, "Interstate Water Allocation Compacts: When the Virtue of Permanence Becomes the Vice of Inflexibility", see 74 *U. Colo. L. Rev.* 105 (2003).

## ANNOTATION

Law reviews. For article, "Water for Oil Shale Development", see 43 *Den. L.J.* 72 (1966). For comment, "Bryant v. Yellen: Perfected Rights Acquire New Status Under a Belated Clarification of Arizona v. California", see 58 *Den. L.J.* 847 (1981). For article, "The Law of Equitable Apportionment Revisited, Updated and Restated", see 56 *U. Colo. L. Rev.* 381 (1985). For article, "Competing Demands for the Colorado River", see 56 *U. Colo. L. Rev.* 413 (1985). For article, "Management and Marketing of Indian Water: From Conflict to Pragmatism", see 58 *U. Colo. L. Rev.* 515 (1988). For article, "Colorado River Governance", see 68 *U. Colo. L. Rev.* 573 (1997).

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## COLORADO REVISED STATUTES

\*\*\* THIS DOCUMENT REFLECTS CHANGES CURRENT THROUGH ALL LAWS PASSED AT THE FIRST REGULAR SESSION OF THE 68TH GENERAL ASSEMBLY OF THE STATE OF COLORADO \*\*\*

TITLE 37. WATER AND IRRIGATION  
WATER CONSERVATION BOARD AND COMPACTS  
ARTICLE 61. COLORADO RIVER COMPACT

**GO TO COLORADO STATUTES ARCHIVE DIRECTORY**

*C.R.S. 37-61-102 (2011)*

37-61-102. Compact effective on approval

That said compact shall not be binding and obligatory on any of the parties thereto unless and until the same has been approved by the legislature of each of the said states and by the congress of the United States, and the governor of the state of Colorado shall give notice of the approval of said compact by the general assembly of the state of Colorado to the governors of each of the remaining signatory states and to the president of the United States, in conformity with article XI of said compact.

**HISTORY:** Source: L. 23: p. 693, § 2.CSA: omitted.CRS 53: § 148-2-2. C.R.S. 1963: § 149-2-2.



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## COLORADO REVISED STATUTES

\*\*\* THIS DOCUMENT REFLECTS CHANGES CURRENT THROUGH ALL LAWS PASSED AT THE FIRST REGULAR SESSION OF THE 68TH GENERAL ASSEMBLY OF THE STATE OF COLORADO \*\*\*

TITLE 37. WATER AND IRRIGATION  
WATER CONSERVATION BOARD AND COMPACTS  
ARTICLE 61. COLORADO RIVER COMPACT

**GO TO COLORADO STATUTES ARCHIVE DIRECTORY**

*C.R.S. 37-61-103 (2011)*

37-61-103. Approval waived

That the provisions of the first paragraph of article XI of the Colorado River Compact, making said compact effective when it has been approved by the legislature of each of the signatory states, are hereby waived and said compact shall become binding and obligatory upon the state of Colorado and upon the other signatory states, which have ratified or

C.R.S. 37-61-103

may hereafter ratify it, whenever at least six of the signatory states have consented thereto and the congress of the United States has given its consent and approval, but this article shall be of no force or effect until a similar act or resolution has been passed or adopted by the legislatures of the states of California, Nevada, New Mexico, Utah, and Wyoming.

**HISTORY:** Source: L. 25: p. 525, § 1.CSA: omitted.CRS 53: § 148-2-3. C.R.S. 1963: § 149-2-3.



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COLORADO REVISED STATUTES

\*\*\* THIS DOCUMENT REFLECTS CHANGES CURRENT THROUGH ALL LAWS PASSED AT THE FIRST REGULAR SESSION OF THE 68TH GENERAL ASSEMBLY OF THE STATE OF COLORADO \*\*\*

TITLE 37. WATER AND IRRIGATION  
WATER CONSERVATION BOARD AND COMPACTS  
ARTICLE 61. COLORADO RIVER COMPACT

**GO TO COLORADO STATUTES ARCHIVE DIRECTORY**

*C.R.S. 37-61-104 (2011)*

37-61-104. Certified copies of compact

That certified copies of this article be forwarded by the governor of the state of Colorado to the president of the United States, the secretary of state of the United States, and the governors of the states of Arizona, California, Nevada, New Mexico, Utah, and Wyoming.

**HISTORY:** Source: L. 25: p. 526, § 2.CSA: omitted.CRS 53: § 148-2-4. C.R.S. 1963: § 149-2-4.





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COLORADO REVISED STATUTES

\*\*\* THIS DOCUMENT REFLECTS CHANGES CURRENT THROUGH ALL LAWS PASSED AT THE FIRST REGULAR SESSION OF THE 68TH GENERAL ASSEMBLY OF THE STATE OF COLORADO \*\*\*

TITLE 37. WATER AND IRRIGATION  
WATER CONSERVATION BOARD AND COMPACTS  
ARTICLE 68. AMENDED COSTILLA CREEK COMPACT

**GO TO COLORADO STATUTES ARCHIVE DIRECTORY**

*C.R.S. 37-68-101 (2011)*

37-68-101. Amended Costilla Creek compact

The general assembly hereby ratifies the amended compact between the state of Colorado and the state of New Mexico, designated as the "Amended Costilla Creek Compact", signed in the city of Santa Fe, state of New Mexico, on the seventh day of February, A. D. 1963, by J. E. Whitten, commissioner for the state of Colorado, and S. E. Reynolds, commissioner for the state of New Mexico, which said amended compact is as follows:  
Amended Costilla Creek Compact

The state of Colorado and the state of New Mexico, parties signatory to this compact (hereinafter referred to as "Colorado" and "New Mexico," respectively, or individually as a "state," or collectively as the "states"), having on September 30, 1944 concluded, through their duly authorized commissioners, to-wit: Clifford H. Stone for Colorado and Thomas M. McClure for New Mexico, a compact with respect to the water of Costilla Creek, an interstate stream, which compact was ratified by the states in 1945 and was approved by the congress of the United States in 1946; and

The states, having resolved to conclude an amended compact with respect to the waters of Costilla Creek, have designated, pursuant to the acts of their respective legislatures and through their appropriate executive agencies, as their commissioners:

J. E. Whitten, for Colorado

S. E. Reynolds, for New Mexico

who, after negotiations, have agreed upon these articles:

Article I

The major purposes of this compact are to provide for the equitable division and apportionment of the use of the waters of Costilla Creek; to promote interstate comity; to remove causes of present and future interstate controversies; to assure the most efficient utilization of the waters of Costilla Creek; to provide for the integrated operation of existing and prospective irrigation facilities on the stream in the two states; to adjust the conflicting jurisdictions of the two states over irrigation works and facilities diverting and storing waters in one state for use in both states; to equalize the benefits of water from Costilla Creek, used for the irrigation of contiguous lands lying on either side of the Boundary, between the citizens and water users of one state and those of the other; and to place the beneficial application of water diverted from Costilla Creek for irrigation by the water users of the two states on a common basis.

The physical and other conditions peculiar to the Costilla Creek and its basin, and the nature and location of the irrigation development and the facilities in connection therewith, constitute the basis for this compact; and neither 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.

Article II

As used in this compact, the following names, terms and expressions are described, defined, applied and taken to mean as in this article set forth:

(a) "Costilla Creek" is a tributary of the Rio Grande which rises on the west slope of the Sangre de Cristo range in the extreme southeastern corner of Costilla County in Colorado and flows in a general westerly direction crossing the boundary three times above its confluence with the Rio Grande in New Mexico.

(b) The "Canyon Mouth" is that point on Costilla Creek in New Mexico where the stream leaves the mountains and emerges into the San Luis Valley.

(c) The "Amalia Area" is that irrigated area in New Mexico above the Canyon Mouth and below the Costilla Reservoir which is served by decreed direct flow water rights.

(d) The "Costilla-Garcia Area" is that area extending from the Canyon Mouth in New Mexico to a point in Colorado about four miles downstream from the boundary, being a compact body of irrigated land on either side of Costilla Creek served by decreed direct flow water rights.

(e) The "Eastdale Reservoir No. 1" is that off-channel reservoir located in Colorado in sections 7, 8 and 18, township 1 north, range 73 west, and sections 12 and 13, township 1 north, range 74 west, of the Costilla Estates survey, with a nominal capacity of three thousand four hundred sixty-eight (3,468) acre-feet and a present usable capacity of two thousand (2,000) acre-feet.

(f) The "Eastdale Reservoir No. 2" is that off-channel reservoir located in Colorado in sections 3, 4, 9 and 10, township 1 north, range 73 west, of the Costilla Estates survey, with nominal capacity of three thousand forty-one (3,041) acre-feet.

(g) The "Costilla Reservoir" is that channel reservoir, having a nominal capacity of fifteen thousand seven hundred (15,700) acre-feet, located in New Mexico near the headwaters of Costilla Creek. The present usable capacity of the reservoir is eleven thousand (11,000) acre-feet, subject to future adjustment by the state engineer of New Mexico. The condition of Costilla Dam may be such that the state engineer of New Mexico will not permit storage above a determined stage except for short periods of time.

(h) The "Cerro Canal" is that irrigation canal which diverts water from the left bank of Costilla Creek in New Mexico near the southwest corner of section 12, township 1 south, range 73 west, of the Costilla Estates survey, and runs in a northwesterly direction to the boundary near Boundary Monument No. 140.

(i) The "boundary" is the term used herein to describe the common boundary line between Colorado and New Mexico.

(j) The term "Costilla Reservoir System" means and includes the Costilla Reservoir and the Cerro Canal, the permits for the storage of water in Costilla Reservoir, the twenty-four and fifty-two hundredths (24.52) cubic feet per second of time of direct flow water rights transferred to the Cerro Canal, and the permits for the diversion of direct flow water by the Cerro Canal as adjusted herein to seventy-five and forty-eight hundredths (75.48) cubic feet per second of time.

(k) The term "Costilla Reservoir System Safe Yield" means that quantity of usable water made available each year by the Costilla Reservoir System. The safe yield represents the most beneficial operation of the Costilla Reservoir System through the use, first, of the total usable portion of the yield of the twenty-four and fifty-two hundredths (24.52) cubic feet per second of time of direct flow rights transferred to the Cerro Canal, second, of the total usable portion of the yield of the direct flow Cerro Canal permits, and third, of that portion of the water stored in Costilla Reservoir required to complete such safe yield.

(l) The term "usable capacity" is defined and means that capacity of Costilla Reservoir at the stage above which the state engineer of New Mexico will not permit storage except for short periods of time.

(m) The term "temporary storage" is defined and means the water permitted by the state engineer of New Mexico to be stored in Costilla Reservoir for short periods of time above the usable capacity of that reservoir.

(n) The term "additional storage facilities" is defined and means storage capacity which may be provided in either state to impound waters of Costilla Creek and its tributaries in addition to the nominal capacity of Costilla Reservoir and the Costilla Creek complement of the Eastdale Reservoir No. 1 capacity.

(o) The term "duty of water" is defined as the rate in cubic feet per second of time at which water may be diverted at the headgate to irrigate a specified acreage of land during the period of maximum requirement.

(p) The term "surplus water" is defined and means water which cannot be stored in operating reservoirs during the storage season or water during the irrigation season which cannot be stored in operating reservoirs and which is in excess of the aggregate direct flow rights and permits recognized by this compact.

(q) The term "irrigation season" is defined and means that period of each calendar year from May 16 to September 30, inclusive.

(r) The term "storage season" is defined and means that period of time extending from October 1 of one year to May 15 of the succeeding year, inclusive.

(s) The term "points of interstate delivery" means and includes (1) the Acequia Madre where it crosses the boundary; (2) the Costilla Creek where it crosses the boundary; (3) the Cerro Canal where it reaches the boundary; and (4) any other interstate canals which might be constructed with the approval of the commission at the point or points where they cross the boundary.

(t) The term "water company" means The San Luis Power and Water Company, a Colorado corporation, or its successor.

(u) The word "commission" means the Costilla Creek Compact commission created by Article VIII of this compact for the administration thereof.

#### Article III

1. To accomplish the purposes of this compact, as set forth in Article I, the following adjustments in the operation of irrigation facilities on Costilla Creek, and in the use of water diverted, stored and regulated thereby, are made:

(a) The quantity of water delivered for use in the two states by direct flow ditches in the Costilla-Garcia Area and by the Cerro Canal is based on a duty of water of one cubic foot per second of time for each eighty (80) acres, to be applied in the order of priority; provided, however, that this adjustment in each instance is based on the acreage as determined by the court in decreeing the water rights for the Costilla-Garcia Area, and in the case of the Cerro Canal such basis shall apply to eight thousand (8,000) acres of land. In order to better maintain a usable head for the diversion of water for beneficial consumptive use the adjusted maximum diversion rate under the water right of each of the ditches supplying water for the Costilla-Garcia Area in Colorado is not less than one cubic foot per second of time.

(b) There is transferred from certain ditches in the Costilla-Garcia Area twenty-four and fifty-two hundredths (24.52) cubic feet per second of time of direct flow water rights, which rights of use are held by the water company or its successors in title, to the headgate of the Cerro Canal. The twenty-four and fifty-two hundredths (24.52) cubic feet of water per second of time hereby transferred represents an evaluation of these rights after adjustment in the duty of water, pursuant to subsection (a) of this Article, and includes a reduction thereof to compensate for increased use of direct flow water which otherwise would have been possible under these rights by this transfer.

(c) Except for the rights to store water from Costilla Creek in Eastdale Reservoir No. 1 as hereinafter provided, all diversion and storage rights from Costilla Creek for Eastdale Reservoirs No. 1 and No. 2 are relinquished and the water decreed thereunder is returned to the creek for use in accordance with the plan of integrated operation effectuated by this compact.

(d) The Cerro Canal direct flow permit shall be seventy-five and forty-eight hundredths (75.48) cubic feet per second of time.

(e) There is transferred to and made available for the irrigation of lands in Colorado a portion of the Costilla Reservoir complement of the Costilla Reservoir System Safe Yield in order that the storage of water in that reservoir may be made for the benefit of water users in both Colorado and New Mexico under the provisions of this compact for the allocations of water and the operation of facilities.

2. Each state grants for the benefit of the other and its water users the rights to change the points of diversion of water from Costilla Creek, to divert water from the stream in one state for use in the other and to store water in one state

for the irrigation of lands in the other, insofar as the exercise of such rights may be necessary to effectuate the provisions of this Article and to comply with the terms of this compact.

3. The water company has consented to and approved the adjustments contained in this Article; and such consent and approval shall be evidenced in writing and filed with the commission.

Article IV

The apportionment and allocation of the use of Costilla Creek water shall be as follows:

(a) There is allocated for diversion from the natural flow of Costilla Creek and its tributaries sufficient water for beneficial use on meadow and pasture lands above Costilla Reservoir in New Mexico to the extent and in the manner now prevailing in that area.

(b) There is allocated for diversion from the natural flow of Costilla Creek and its tributaries thirteen and forty-two hundredths (13.42) cubic feet of water per second of time for beneficial use on lands in the Amalia Area in New Mexico.

(c) In addition to allocations made in subsections (e), (f) and (g) of this Article, there is allocated for diversion from the natural flow of Costilla Creek fifty and sixty-two hundredths (50.62) cubic feet of water per second of time for Colorado and eighty-nine and eight hundredths (89.08) cubic feet of water per second of time for New Mexico, subject to adjustment as provided in Article V (e), and such water shall be delivered for beneficial use in the two states in accordance with the schedules and under the conditions set forth in Article V.

(d) There is allocated for diversion from the natural flow of Costilla Creek sufficient water to provide each year one thousand (1,000) acre-feet of stored water in Eastdale Reservoir No. 1, such water to be delivered as provided in Article V.

(e) There is allocated for diversion to Colorado thirty-six and five-tenths per cent (36.5%) and to New Mexico sixty-three and five-tenths per cent (63.5%) of the water stored by Costilla Reservoir for release therefrom for irrigation purposes each year, subject to adjustment as provided in Article V (e) and such water shall be delivered for beneficial use in the two states on a parity basis in accordance with the provisions of Article V. By "parity basis" is meant that neither state shall enjoy a priority of right of use.

(f) There is allocated for beneficial use in each of the states of Colorado and New Mexico one-half of the surplus water, as defined in Article II (p), to be delivered as provided in Article V.

(g) There is allocated for beneficial use in each of the states of Colorado and New Mexico one-half of any water made available and usable by additional storage facilities which may be constructed in the future.

Article V

The operation of the facilities of Costilla Creek and the delivery of water for the irrigation of land in Colorado and New Mexico, in accordance with the allocations made in Article IV, shall be as follows:

(a) Diversions of water for use on lands in the Amalia Area shall be made as set forth in Article IV (b) in the order of decreed priorities in New Mexico and of relative priority dates in the two states, subject to the right of New Mexico to change the points of diversion and places of use of any of such water to other points of diversion and places of use; provided, however, that the rights so transferred shall be limited in each instance to the quantity of water actually consumed on the lands from which the right is transferred.

(b) Deliveries to Colorado of direct flow water below the Canyon Mouth shall be made by New Mexico in accordance with the following schedule:

Deliveries of Direct Flow Water to Colorado During Irrigation Season

Usable Discharge	Incremental Allocations	Points of Inter-	Cumulative Allocations	Remarks
------------------	-------------------------	------------------	------------------------	---------

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state  
of Creek at to Colorado Deliv- to Colorado  
ery  
Canyon (C.F.S.) (C.F.S  
)  
Mouth  
Gaging  
Station  
(C.F.S.)  
(1) (2A)(2B)(3) (4) (5)  
25.00 1.05 Acequ Incremental allo-  
ia cation is 4.2%  
Madre of the usable  
discharge when  
usable discharge is less than  
25.00 C.F.S.  
2.53 Cerro Canal Incremental allo-  
cation is 10.13%  
of the usable discharge when  
usable discharge is less than  
25.00 C.F.S.  
4.70 Cerro Canal 8.28 This 4.70 C.F.S.  
is not a part  
of the Colorado allocation of  
the direct flow water of the  
Costilla Reservoir System  
and is not subject to  
adjustment in the event of  
a change in the usable  
capacity of Costilla Reservoir.

Incremental allocation is  
18.8% of the usable discharge  
when usable discharge is less  
than 25.00 C.F.S. This 4.70  
C.F.S. allocated to Colorado  
for delivery through the Cerro  
Canal is 5.50 C.F.S. of the  
original 6.55 C.F.S. allocated  
to Colorado for delivery  
through the Acequia Madre  
less 0.8 C.F.S. correction for  
losses.

36.88

.38 Cerro

Canal This 0.38 C.F.S.  
is not a part

of the Colorado allocation  
of the direct flow water of  
the Costilla Reservoir System  
and is not subject to adjustment  
in the event of a change in the  
usable capacity of Costilla  
Reservoir. Incremental  
allocation is 3.26% of the  
usable discharge in excess  
of 25.38 C.F.S. and less  
than 36.88 C.F.S.

4.04

Cerro Canal

12.70 Incremental al-  
location is

35.11% of the usable discharge  
in excess of 25.38 C.F.S. and

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less than 36.88 C.F.S.

38.62	1.00	Creek	13.70	Incremental allocation is
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100% of the usable discharge  
in excess of 37.62 C.F.S. and  
less than 38.62 C.F.S.

44.76	2.24	Cerro	Canal	15.94	Incremental allocation is
-------	------	-------	-------	-------	---------------------------

36.5% of the usable discharge  
in excess of 38.62 C.F.S. and  
less than 44.76 C.F.S.

50.91	6.00	Creek	21.94	Incremental allocation is
-------	------	-------	-------	---------------------------

100% of the usable discharge  
in excess of 44.91 C.F.S. and  
less than 50.91 C.F.S.

56.48	.13	Cerro	Canal	22.07	Incremental allocation is
-------	-----	-------	-------	-------	---------------------------

11.18% of the usable discharge  
in excess of 55.35 C.F.S.  
and  
less than 56.48 C.F.S.

61.48	1.00	Creek	23.07	Incremental allocation is
-------	------	-------	-------	---------------------------

100% of the usable discharge  
in excess of 60.48 C.F.S.  
and  
less than 61.48 C.F.S.

64.22	At usable creek dis-			
-------	----------------------	--	--	--

charge of

64.22 C.F.S. the Cerro Canal

direct flow permit becomes

operative after 1,000 acre-feet

has been stored in Eastdale

Reservoir No. 1.

139.70	27.55 Cerro Canal	50.62 Incremental allocation is
--------	-------------------	---------------------------------

36.5% of the usable discharge

in excess of 64.22 C.F.S. and

less than 139.70 C.F.S.

The actual discharges of Costilla Creek at the Canyon Mouth Gaging Station at which the various blocks of direct flow water become effective shall equal the flows set forth in column (1) increased by the transmission losses necessary to deliver those flows to the headgates of the respective direct flow ditches diverting in New Mexico.

The delivery of ditch water at the boundary shall equal the allocation set forth in columns (2a) and (2b) reduced by the transmission losses between the headgate of the ditch and the point where the ditch crosses the boundary. The allocations to be delivered to Colorado through the Cerro Canal represent, except as otherwise indicated in column (5) of the table above, 36.5 percent of those blocks of direct flow water of the Costilla Reservoir System which are subject to adjustment as provided in subsection (e) of this article.

The provisions of article III (1) (a) shall not be applicable to the Colorado allocation of 5.08 C.F.S. which is transferred from the Acequia Madre to the Cerro Canal by this amendment to the Costilla Creek compact and shall not be applicable to the 0.8 C.F.S. which is transferred from Colorado to New Mexico by this amendment to the Costilla Creek compact.

The above table is compiled on the basis of the delivery to Colorado at the boundary of thirty-six and five-tenths percent (36.5%) of all direct flow water of the Costilla Reservoir System diverted by the Cerro Canal and the delivery at the boundary of all other direct flow water allocated to Colorado, in the order of priority, all such deliveries to be adjusted for transmission losses. In the event of change in the usable capacity of the Costilla Reservoir, Colorado's share of all direct flow water of the Costilla Reservoir System diverted by the Cerro Canal, to be delivered at the boundary and adjusted for transmission losses, shall be determined by the percentages set forth in column (4) of the table which appears in subsection (e) of this article.

(c) During the storage season, no water shall be diverted under direct flow rights unless there is water in excess of the demand of all operating reservoirs for water from Costilla Creek for storage.

(d) In order to assure the most efficient utilization of the available water supply, the filling of Eastdale Reservoir No. 1 from Costilla Creek shall be commenced as early in the spring as possible and shall be completed as soon thereafter as possible. The Cerro Canal or any other ditch which may be provided for that purpose shall be used, insofar as practicable, to convey the water from the Canyon Mouth to Eastdale Reservoir No. 1. During any season when the commission determines that there will be no surplus water, any diversions, waste or spill from any canal or canals supplying Eastdale Reservoir No. 1 will be charged to the quantity of water diverted for delivery to said reservoir.



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(e) The commission shall estimate each year the safe yield of Costilla Reservoir System and its component parts as far in advance of the irrigation season as possible, and shall review and revise such estimates from time to time as may be necessary.

In the event the usable capacity of the Costilla Reservoir changes, the average safe yield and the equitable division thereof between the states shall be determined in accordance with the following table:

Usable Capacity of Costilla Reservoir	Average Annual Safe Yield (acre-feet)(percent)	Division of Safe Yield Colorado	New Mexico	(5)	(6)
(1)	(2)	(3)	(4)	(5)	(6)
0	1,800	1,510	83.9	290	
16.1					
1,000	3,400	2,000	58.8	1,400	41.2
2,000	4,900	2,450	50.0	2,450	50.0
3,000	6,400	2,910	45.5	3,490	54.5
4,000	7,900	3,370	42.7	4,530	57.3
5,000	9,300	3,800	40.9	5,500	59.1
6,000	10,700	4,220	39.4	6,480	60.6
7,000	12,000	4,620	38.5	7,380	61.5
8,000	13,200	4,990	37.8	8,210	62.2
9,000	14,300	5,320	37.2	8,980	62.8
10,000	15,200	5,600	36.8	9,600	63.2
11,000	16,000	5,840	36.5	10,160	63.5
12,000	16,600	6,020	36.3	10,580	63.7
13,000	17,000	6,140	36.1	10,860	63.9
14,000	17,400	6,270	36.0	11,130	64.0
15,000	17,700	6,360	35.9	11,340	64.1
15,700	17,900	6,420	35.9	11,480	64.1

Intermediate quantities shall be computed by proportionate parts.

In the event of change in the usable capacity of the Costilla Reservoir, the Costilla Reservoir complement of the Costilla Reservoir System Safe Yield shall be divided between Colorado and New Mexico in accordance with the percentages given in columns 4 and 6, respectively, of the above table.

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Each state may draw from the reservoir in accordance with the allocations made herein, up to its proportion of the Costilla Reservoir complement of the Costilla Reservoir System Safe Yield and its proportion of temporary storage and no more. Colorado may call for the delivery of its share thereof at any of the specified points of interstate delivery.

Deliveries of water from Costilla Reservoir to the Canyon Mouth shall be adjusted for transmission losses, if any, between the two points. Deliveries to Colorado at the boundary shall be further adjusted for transmission losses from the Canyon Mouth to the respective points of interstate delivery.

Water stored in Costilla Reservoir and not released during the current season shall not be held over to the credit of either state but shall be apportioned when the safe yield is subsequently determined.

(f) The Colorado apportionment of surplus water, as allocated in Article IV (f), shall be delivered by New Mexico at such points of interstate delivery and in the respective quantities, subject to transmission losses, requested by the Colorado member of the commission.

(g) In the event that additional water becomes usable by the construction of additional storage facilities, such water shall be made available to each state in accordance with rules and regulations to be prescribed by the commission.

(h) When it appears to the commission that any part of the water allocated to one state for use in a particular year will not be used by that state, the commission may permit its use by the other state during that year, provided that a permanent right to the use of such water shall not thereby be established.

## Article VI

The desirability of consolidating various of the direct flow ditches serving the Costilla-Garcia Area, which are now or which would become interstate in character by consolidation, and diverting the water available to such ditches through a common headgate is recognized. Should the owners of any of such ditches, or a combination of them, desire to effectuate a consolidation and provide for a common headgate diversion, application therefor shall be made to the commission which, after review of the plans submitted, may grant permission to make such consolidation.

## Article VII

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

- (a) On Costilla Creek immediately below Costilla Reservoir.
- (b) On Costilla Creek at or near the Canyon Mouth above the headgate of Cerro Canal and below the Amalia Area.
- (c) On Costilla Creek at or near the boundary.
- (d) On the Cerro Canal immediately below its headgate.
- (e) On the Cerro Canal at or near the boundary.
- (f) On the intake from Costilla Creek to the Eastdale Reservoir No. 1, immediately above the point where the intake discharges into the reservoir.
- (g) On the Acequia Madre immediately below its headgate.
- (h) On the Acequia Madre at the boundary.
- (i) Similar gaging stations shall be maintained and operated at such other points as may be necessary in the discretion of the commission for the securing of records required for the carrying out of the provisions of the compact.

Such gaging stations shall be equipped, maintained, and operated by the commission directly or in cooperation 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 VIII

The two states shall administer this compact through the official in each state who is now or may hereafter be charged with the duty of administering the public water supplies, and such officials shall constitute the Costilla Creek Compact Commission. In addition to the powers and duties hereinbefore specifically conferred upon such commission, the commission shall collect and correlate factual data and maintain records having a bearing upon the administration of this compact. In connection therewith, the commission may employ such engineering and other assistance as may be reasonably necessary within the limits of funds provided for that purpose by the states. The commission may, by unan-

imous action, adopt rules and regulations consistent with the provisions of this compact to govern its proceedings. The salaries and expenses of the members of the commission shall be paid by their respective states. Other expenses incident to the administration of the compact, including the employment of engineering or other assistance and the establishment and maintenance of compact gaging stations, not borne by the United States shall be assumed equally by the two states and paid directly to the commission upon vouchers submitted for that purpose.

The United States geological survey, or whatever federal agency may succeed to the functions and duties of that agency, shall collaborate with the commission in the correlation and publication of water facts necessary for the proper administration of this compact.

#### Article IX

This amended compact shall become operative when ratified by the legislatures of the signatory states and consented to by the Congress of the United States; provided, that, except as changed herein, the provisions, terms, conditions and obligations of the Costilla Creek Compact executed on September 30, 1944, continue in full force and effect.

IN WITNESS WHEREOF, the commissioners have signed this compact in triplicate original, one copy of which shall be deposited in the archives of the department of state of the United States of America, and one copy of which shall be forwarded to the governor of each of the signatory states.

Done in the city of Santa Fe, New Mexico, on the 7th day of February, in the year of our Lord, one thousand nine hundred and sixty-three.

(Signed) J. E. Whitten,

Commissioner for Colorado.

(Signed) S. E. Reynolds,

Commissioner for New Mexico.

**HISTORY:** Source: L. 45: p. 278, § 1.CSA: C. 90, § 51(1).CRS 53: § 148-7-1.L. 63: p. 982, § 1. C.R.S. 1963: § 149-7-1.

Cross references: For water rights generally, see § 5 to 8 of art. XVI, *Colo. Const.*

Cross references: For Costilla Creek Compact prior to 1963 amendment, see article 7 of chapter 148, CRS 53.



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COLORADO REVISED STATUTES

\*\*\* THIS DOCUMENT REFLECTS CHANGES CURRENT THROUGH ALL LAWS PASSED AT THE FIRST REGULAR SESSION OF THE 68TH GENERAL ASSEMBLY OF THE STATE OF COLORADO \*\*\*

TITLE 37. WATER AND IRRIGATION  
WATER CONSERVATION BOARD AND COMPACTS  
ARTICLE 68. AMENDED COSTILLA CREEK COMPACT

**GO TO COLORADO STATUTES ARCHIVE DIRECTORY**

*C.R.S. 37-68-102 (2011)*

37-68-102. When compact operative

## C.R.S. 37-68-102

(1) Said compact shall not become operative unless and until the same has been ratified by the legislature of each of the signatory states and consented to by the congress of the United States, in the manner provided by, and in conformity with, said compact, and the governor of the state of Colorado shall give notice of the approval of said compact, by this act, to the governor of the state of New Mexico and to the president of the United States.

(2) The amendments to said compact shall not become operative unless and until the same shall have been ratified by the legislature of each of the signatory states and consented to by the congress of the United States, in the manner provided by, and in conformity with, said compact, and the governor of the state of Colorado shall give notice of the approval of said compact, by this article, to the governor of the state of New Mexico and to the president of the United States.

**HISTORY:** Source: L. 45: p. 292, § 2.CSA: C. 90, § 51(2).CRS 53: § 148-7-2.L. 63: p. 999, § 2. C.R.S. 1963: § 149-7-2.



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COLORADO REVISED STATUTES

\*\*\* ARCHIVE MATERIAL \*\*\*

\*\*\* THIS DOCUMENT REFLECTS CHANGES RECEIVED THROUGH THE 2010 LEGISLATIVE SESSION \*\*\*  
AND THE NOVEMBER 2, 2010 GENERAL ELECTION  
\*\*\* ANNOTATIONS CURRENT THROUGH DECEMBER 10, 2009 \*\*\*

TITLE 37. WATER AND IRRIGATION  
WATER CONSERVATION BOARD AND COMPACTS  
ARTICLE 63. LA PLATA RIVER COMPACT

*C.R.S. 37-63-101 (2010)*

37-63-101. The La Plata River compact

The General Assembly hereby approves the compact, designated as the "La Plata River Compact", signed at the City of Santa Fe, State of New Mexico, on the 27th day of November, A. D. 1922, by Delph E. Carpenter as the Commissioner for the State of Colorado, under authority of and in conformity with the provisions of an Act of the General Assembly of the State of Colorado, approved April 2, 1921, entitled "An Act providing for the appointment of a commissioner on behalf of the State of Colorado to negotiate a compact or agreement between the States of Colorado and New Mexico respecting the use and distribution of the waters of the La Plata River and the rights of said States thereto, and making an appropriation therefor.", the same being Chapter 244 of the Session Laws of Colorado, 1921, and signed by Stephen B. Davis, Jr., as the Commissioner for the State of New Mexico, under legislative authority, which said compact is as follows:

La Plata River Compact

The State of Colorado and the State of New Mexico, desiring to provide for the equitable distribution of the waters of the La Plata River and to remove all causes of present and future controversy between them with respect thereto, and being moved by considerations of interstate comity, pursuant to Acts of their respective Legislatures, have resolved to conclude a compact for these purposes and have named as their commissioners:

Delph E. Carpenter, for the State of Colorado; and Stephen B. Davis, Jr., for the State of New Mexico; who have agreed upon the following Articles:

Article I

The State of Colorado, at its own expense, shall establish and maintain two permanent stream-gauging stations upon the La Plata River for the purpose of measuring and recording its flow, which shall be known as the Hesperus Station and the Interstate Station, respectively.

The Hesperus Station shall be located at some convenient place near the village of Hesperus, Colorado. Suitable devices for ascertaining and recording the volume of all diversions from the river above Hesperus Station, shall be established and maintained (without expense to the State of New Mexico), and whenever in this compact reference is made to the flow of the river at Hesperus Station, it shall be construed to include the amount of the concurrent diversions above said station.

The Interstate Station shall be located at some convenient place within one mile of, and above or below, the interstate line. Suitable devices for ascertaining and recording the volume of water diverted by the Enterprise and Pioneer Canals, now serving approximately equal areas in both States, shall be established and maintained (without expense to

## C.R.S. 37-63-101

the State of New Mexico), and whenever in this compact reference is made to the flow of the river at the Interstate Station, it shall be construed to include one-half the volume of the concurrent diversions by such canals, and also the volume of any other water which may hereafter be diverted from said river in Colorado for use in New Mexico.

Each of said stations shall be equipped with suitable devices for recording the flow of water in said river at all times between the 15th day of February and the 1st day of December of each year. The State Engineers of the signatory States shall make provision for co-operating gauging at the two stations, for the details of the operation, exchange of records and data, and publication of the facts.

## Article II

The waters of the La Plata River are hereby equitably apportioned between the signatory States, including the citizens thereof, as follows:

1. At all times between the first day of December and the fifteenth day of the succeeding February, each State shall have the unrestricted right to use of all water which may flow within its boundaries.

2. By reason of the usual annual rise and fall, the flow of said river between the fifteenth day of February and the first day of December of each year, shall be apportioned between the States in the following manner:

(a) Each State shall have the unrestricted right to use all the waters within its boundaries on each day when the mean daily flow at the Interstate Station is one hundred cubic feet per second, or more.

(b) On all other days the State of Colorado shall deliver at the Interstate Station a quantity of water equivalent to one-half of the mean flow at the Hesperus Station for the preceding day, but not to exceed one hundred cubic feet per second.

3. Whenever the flow of the river is so low that in the judgment of the State Engineers of the States, the greatest beneficial use of its waters may be secured by distributing all of its waters successively to the land in each State in alternating periods, in lieu of delivery of water as provided in the second paragraph of this article the use of the waters may be so rotated between the two States in such manner for such periods, and to continue for such time as the State Engineers may jointly determine.

4. The State of New Mexico shall not at any time be entitled to receive nor shall the State of Colorado be required to deliver any water not then necessary for beneficial use in the State of New Mexico.

5. A substantial delivery of water under the terms of this Article shall be deemed a compliance with its provisions and minor and compensating irregularities in flow or delivery shall be disregarded.

## Article III

The State Engineers of the States by agreement, from time to time, may formulate rules and regulations for carrying out the provisions of this compact, which, when signed and promulgated by them, shall be binding until amended by agreement between them or until terminated by written notice from one to the other.

## Article IV

Whenever any official of either State is designated to perform any duty under this compact, such designation shall be interpreted to include the State official or officials upon whom the duties now performed by such official may hereafter devolve.

## Article V

The physical and other conditions peculiar to the La Plata River and the territory drained and served thereby constitute the basis for this compact, and neither of the signatory States concedes the establishment of any general principle or precedent by the concluding of this compact.

## Article VI

This compact may be modified or terminated at any time by mutual consent of the signatory States and upon such termination all rights then established hereunder shall continue unimpaired.

## Article VII

This compact shall become operative when approved by the Legislature of each of the signatory States and by the Congress of the United States. Notice of approval by the Legislatures shall be given by the Governor of each State to the Governor of the other State, and the President of the United States is requested to give notice to the Governors of the signatory States of approval by the Congress of the United States.

IN WITNESS WHEREOF, The commissioners have signed this compact in duplicate originals, one of which shall be deposited with the Secretary of State of each of the signatory States.

Done at the city of Santa Fe, in the State of New Mexico, this 27th day of November, in the year of our Lord One Thousand Nine Hundred and Twenty-Two.

Delph E. Carpenter, Stephen B. Davis, Jr.

**HISTORY:** Source: L. 23: p. 696, § 1.CSA: omitted.CRS 53: § 148-3-1. C.R.S. 1963: § 149-3-1.

Cross references: For water rights generally, see § § 5 to 8 of art. XVI, *Colo. Const.*

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.

For apportionment as a question of federal common law, see *Hinderlider v. La Plata River Cherry Creek Ditch Co.*, 304 U.S. 92, 58 S. Ct. 803, 82 L. Ed. 774 (1938), reversing 101 *Colo.* 73, 70 P.2d 849 (1937).

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COLORADO REVISED STATUTES

\*\*\* THIS DOCUMENT REFLECTS CHANGES CURRENT THROUGH ALL LAWS PASSED AT THE FIRST REGULAR SESSION OF THE 68TH GENERAL ASSEMBLY OF THE STATE OF COLORADO \*\*\*

TITLE 37. WATER AND IRRIGATION  
WATER CONSERVATION BOARD AND COMPACTS  
ARTICLE 66. RIO GRANDE RIVER COMPACT

**GO TO COLORADO STATUTES ARCHIVE DIRECTORY**

*C.R.S. 37-66-101 (2011)*

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 RiverQuantities in thousands of acre-feet

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

1000  
15020  
20045  
25075  
300109  
350147  
400188  
450232  
500278  
550326  
600376  
650426  
700476

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 RiverQuantities in thousands of acre-feet

Rio Grande at Lobatos less

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

20060  
25065  
30075  
35086  
40098  
450112

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500127  
 550144  
 600162  
 650182  
 700204  
 750229  
 800257  
 850292  
 900335  
 950380  
 1,000430  
 1,100540  
 1,200640  
 1,300740  
 1,400840

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)

1000  
 20065  
 300141  
 400219  
 500300  
 600383

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700469  
800557  
900648  
1000742  
1100839  
1200939  
13001042  
14001148  
15001257  
16001370  
17001489  
18001608  
19001730  
20001856  
21001985  
22002117  
23002253

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.

## C.R.S. 37-66-101

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, Colora-

do 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.

**HISTORY:** Source: L. 39: p. 489, § 1.CSA: omitted.CRS 53: § 148-5-1. C.R.S. 1963: § 149-5-1.

Cross references: For water rights generally, see § § 5 to 8 of art. XVI, *Colo. Const.*

## ANNOTATION

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 Prot. Ass'n v. Gould*, 674 P.2d 914 (*Colo.* 1983).





C.R.S. 37-66-102

TITLE 37. WATER AND IRRIGATION  
WATER CONSERVATION BOARD AND COMPACTS  
ARTICLE 66. RIO GRANDE RIVER COMPACT

**GO TO COLORADO STATUTES ARCHIVE DIRECTORY**

*C.R.S. 37-66-102 (2011)*

37-66-102. Compact to be ratified

Said compact shall not become binding or operative unless and until the same has been ratified by the legislature of each of the signatory states and consented to by the congress of the United States, and the governor of the state of Colorado shall give notice of the approval of said compact to the governor of the state of New Mexico, to the governor of the state of Texas, and to the president of the United States, in conformity with article XVII of said compact.

**HISTORY:** Source: L. 39: p. 500, § 2.CSA: omitted.CRS 53: § 148-5-2. C.R.S. 1963: § 149-5-2.



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COLORADO REVISED STATUTES

\*\*\* THIS DOCUMENT REFLECTS CHANGES CURRENT THROUGH ALL LAWS PASSED AT THE FIRST REGULAR SESSION OF THE 68TH GENERAL ASSEMBLY OF THE STATE OF COLORADO \*\*\*

TITLE 37. WATER AND IRRIGATION  
WATER CONSERVATION BOARD AND COMPACTS  
ARTICLE 65. SOUTH PLATTE RIVER COMPACT

**GO TO COLORADO STATUTES ARCHIVE DIRECTORY**

*C.R.S. 37-65-101 (2011)*

37-65-101. South Platte River compact

The General Assembly hereby approves the compact, designated as the "South Platte River Compact", between the states of Colorado and Nebraska, signed at the City of Lincoln, State of Nebraska, on the 27th day of April, A.D. 1923, by Delph E. Carpenter as the Commissioner for the State of Colorado, under authority of Chapter 243, Session Laws of Colorado, 1921, and Chapter 190, Session Laws of Colorado, 1923, and by Robert H. Willis as the Commissioner for the State of Nebraska, thereunto duly authorized, which said compact is as follows:

South Platte River Compact Between  
The States Of  
Colorado And Nebraska

The State of Colorado and the State of Nebraska, desiring 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, and being moved by considerations of interstate comity, have resolved to conclude a compact for these purposes and, through their respective Governors, have named as their commissioners:

Delph E. Carpenter, for the State of Colorado; and Robert H. Willis, for the State of Nebraska; who have agreed upon the following articles:

Article I

In this compact:

1. The State of Colorado and the State of Nebraska are designated, respectively, as "Colorado" and "Nebraska".
2. The provisions hereof respecting each signatory State, shall include and bind its citizens and corporations and all others engaged or interested in the diversion and use of the waters of the South Platte River in that State.
3. The term "Upper Section" means that part of the South Platte River in the State of Colorado above and westerly from the west boundary of Washington County, Colorado.
4. The term "Lower Section" means that part of the South Platte River in the State of Colorado between the west boundary of Washington County and the intersection of said river with the boundary line common to the signatory States.
5. The term "Interstate Station" means that streams gauging station described in Article II.

## C.R.S. 37-65-101

6. The term "flow of the river" at the Interstate Station means the measured flow of the river at said station plus all increment to said flow entering the river between the Interstate Station and the diversion works of the Western Irrigation District in Nebraska.

## Article II

1. Colorado and Nebraska, at their joint expense, shall maintain a stream gauging station upon the South Platte River at the river bridge near the town of Julesburg, Colorado, or at a convenient point between said bridge and the diversion works of the canal of the Western Irrigation District in Nebraska, for the purpose of ascertaining and recording the amount of water flowing in said river from Colorado into Nebraska and to said diversion works at all times between the first day of April and the fifteenth day of October of each year. The location of said station may be changed from year to year as the river channels and water flow conditions of the river may require.

2. The State Engineer of Colorado and the Secretary of the Department of Public Works of Nebraska shall make provision for the co-operative gauging at and the details of operation of said station and for the exchange and publication of records and data. Said state officials shall ascertain the rate of flow of the South Platte River through the Lower Section in Colorado and the time required for increases or decreases of flow, at points within said Lower Section, to reach the Interstate Station. In carrying out the provisions of Article IV of this compact, Colorado shall always be allowed sufficient time for any increase in flow (less permissible diversions) to pass down the river and be recorded at the Interstate Station.

## Article III

The waters of Lodgepole Creek, a tributary of the South Platte River flowing through Nebraska and entering said river within Colorado, hereafter shall be divided and apportioned between the signatory States as follows:

1. The point of division of the waters of Lodgepole Creek shall be located on said creek two miles north of the boundary line common to the signatory states.

2. Nebraska shall have the full and unmolested use and benefit of all waters flowing in Lodgepole Creek above the point of diversion and Colorado waives all present and future claims to the use of said waters. Colorado shall have the exclusive use and benefit of all waters flowing at or below the point of division.

3. Nebraska may use the channel of Lodgepole Creek below the point of division and the channel of the South Platte River between the mouth of Lodgepole Creek and the Interstate Station, for the carriage of any waters of Lodgepole Creek which may be stored in Nebraska above the point of division and which Nebraska may desire to deliver to ditches from the South Platte River in Nebraska, and any such waters so carried shall be free from interference by diversions in Colorado and shall not be included as a part of the flow of the South Platte River to be delivered by Colorado at the Interstate Station in compliance with Article IV of this compact, provided, however, that such runs of stored water shall be made in amounts of not less than ten cubic feet per second of time and for periods of not less than twenty-four hours.

## Article IV

The waters of the South Platte River hereafter shall be divided and apportioned between the signatory States as follows:

1. At all times between the fifteenth day of October of any year and the first day of April of the next succeeding year, Colorado shall have the full and uninterrupted use and benefit of the waters of the river flowing within the boundaries of the State, except as otherwise provided by Article VI.

2. Between the first day of April and the fifteenth day of October of each year, Colorado shall not permit diversions from the Lower Section of the river, to supply Colorado appropriations having adjudicated dates of priority subsequent to the fourteenth day of June, 1897, to an extent that will diminish the flow of the river at the Interstate Station, on any day, below a mean flow of 120 cubic feet of water per second of time, except as limited in paragraph three (3) of this Article.

3. Nebraska shall not be entitled to receive and Colorado shall not be required to deliver, on any day, any part of the flow of the river to pass the Interstate Station, as provided by paragraph two (2) of this Article, not then necessary for beneficial use by those entitled to divert water from said river within Nebraska.

4. The flow of the river at the Interstate Station shall be used by Nebraska to supply the needs of present perfected rights to the use of water from the river within said State before permitting diversions from the river by other claimants.

## C.R.S. 37-65-101

5. It is recognized that variable climatic conditions, the regulation and administration of the stream in Colorado, and other causes, will produce diurnal and other unavoidable variations and fluctuations in the flow of the river at the Interstate Station, and it is agreed that, in the performance of the provisions of said paragraph two (2), minor or compensating irregularities and fluctuations in the flow at the Interstate Station shall be permitted; but where any deficiency of the mean daily flow at the Interstate Station may have been occasioned by neglect, error or failure in the performance of duty by the Colorado water officials having charge of the administration of diversions from the Lower Section of the river in that state, each such deficiency shall be made up, within the next succeeding period of seventy-two hours, by delivery of additional flow at the Interstate Station, over and above the amount specified in paragraph two (2) of this Article, sufficient to compensate for such deficiency.

6. Reductions in diversions from the Lower Section of the river, necessary to the performance of paragraph two (2) of this Article by Colorado, shall not impair the rights of appropriators in Colorado (not to include the proposed Nebraska canal described in Article VI), whose supply has been so reduced, to demand and receive equivalent amounts of water from other parts of the stream in that State according to its Constitution, laws, and the decisions of its courts.

7. Subject to compliance with the provisions of this Article, Colorado shall have and enjoy the otherwise full and uninterrupted use and benefit of the waters of the river which hereafter may flow within the boundaries of that State from the first day of April to the fifteenth day of October in each year, but Nebraska shall be permitted to divert, under and subject to the provisions and conditions of Article VI, any surplus waters which otherwise would flow past the Interstate Station.

## Article V

1. Colorado shall have the right to maintain, operate, and extend, within Nebraska, the Peterson Canal and other canals of the Julesburg Irrigation District which now are or may hereafter be used for the carriage of water from the South Platte River for the irrigation of lands in both states, and Colorado shall continue to exercise control and jurisdiction of said canals and the carriage and delivery of water thereby. This Article shall not excuse Nebraska water users from making reports to Nebraska officials in compliance with the Nebraska laws.

2. Colorado waives any objection to the delivery of water for irrigation of lands in Nebraska by the canals mentioned in paragraph one (1) of this Article, and agrees that all interests in said canals and the use of waters carried thereby, now or hereafter acquired by owners of lands in Nebraska, shall be afforded the same recognition and protection as are the interests of similar land owners served by said canals within Colorado; provided, however, that Colorado reserves to those in control of said canals the right to enforce the collection of charges or assessments, hereafter levied or made against such interest of owners of the lands in Nebraska, by withholding the delivery of water until the payment of such charges or assessments; provided, however, such charges or assessments shall be the same as those levied against similar interests of owners of lands in Colorado.

3. Nebraska grants to Colorado the right to acquire by purchase, prescription, or the exercise of eminent domain, such rights-of-way, easements or lands as may be necessary for the construction, maintenance, operation, and protection of those parts of the above mentioned canals which now or hereafter may extend into Nebraska.

## Article VI

It is the desire of Nebraska to permit its citizens to cause a canal to be constructed and operated for the diversion of water from the South Platte River within Colorado for irrigation of lands in Nebraska; that said canal may commence on the south bank of said river at a point southwesterly from the town of Ovid, Colorado, and may run thence easterly through Colorado along or near the line of survey of the formerly proposed "Perkins County Canal" (sometimes known as the "South Divide Canal") and into Nebraska, and that said project shall be permitted to divert waters of the river as hereinafter provided. With respect to such proposed canal it is agreed:

1. Colorado consents that Nebraska and its citizens may hereafter construct, maintain, and operate such a canal and thereby may divert water from the South Platte River within Colorado for use in Nebraska, in the manner and at the time in this Article provided, and grants to Nebraska and its citizens the right to acquire by purchase, prescription, or the exercise of eminent domain such rights-of-way, easements or lands as may be necessary for the construction, maintenance, and operation of said canal; subject, however, to the reservations and limitations and upon the conditions expressed in this Article which are and shall be limitations upon and reservations and conditions running with the rights and privileges hereby granted, and which shall be expressed in all permits issued by Nebraska with respect to said canal.

2. The net future flow of the Lower Section of the South Platte River, which may remain after supplying all present and future appropriations from the Upper Section, and after supplying all appropriations from the Lower Section per-

fectured prior to the seventeenth day of December, 1921, and after supplying the additional future appropriations in the Lower Section for the benefit of which a prior and preferred use of thirty-five thousand acre-feet of water is reserved by subparagraph (a) of this Article, may be diverted by said canal between the fifteenth day of October of any year and the first day of April of the next succeeding year subject to the following reservations, limitations and conditions:

(a) In addition to the water now diverted from the Lower Section of the river by present perfected appropriations, Colorado hereby reserves the prior, preferred and superior right to store, use and to have in storage in readiness for use on and after the first day of April in each year, an aggregate of thirty-five thousand acre-feet of water to be diverted from the flow of the river in the Lower Section between the fifteenth day of October of each year and the first day of April of the next succeeding year, without regard to the manner or time of making such future uses, and diversions of water by said Nebraska canal shall in no manner impair or interfere with the exercise by Colorado of the right of future use of the water hereby reserved.

(b) Subject at all times to the reservation made by subparagraph (a) and to the other provisions of this Article, said proposed canal shall be entitled to divert five hundred cubic feet of water per second of time from the flow of the river in the Lower Sections, as of priority of appropriation of date December 17, 1921, only between the fifteenth day of October of any year and the first day of April of the next succeeding year upon the express condition that the right to so divert water is and shall be limited exclusively to said annual period and shall not constitute the basis for any claim to water necessary to supply all present and future appropriations in the Upper Section or present appropriations in the Lower Section and those hereafter to be made therein as provided in subparagraph (a).

3. Neither this compact nor the construction and operation of such a canal nor the diversion, carriage and application of water thereby shall vest in Nebraska, or in those in charge or control of said canal or in the users of water therefrom, any prior, preferred or superior servitude upon or claim or right to the use of any water of the South Platte River in Colorado from the first day of April to the fifteenth day of October of any year or against any present or future appropriator or use of water from said river in Colorado during said period of every year, and Nebraska specifically waives any such claims and agrees that the same shall never be made or asserted. Any surplus waters of the river, which otherwise would flow past the Interstate Station during such period of any year after supplying all present and future diversions by Colorado, may be diverted by such a canal, subject to the other provisions and conditions of this Article.

4. Diversion of water by said canal shall not diminish the flow necessary to pass the Interstate Station to satisfy superior claims of users of water from the river in Nebraska.

5. No appropriations of water from the South Platte River by any other canal within Colorado shall be transferred to said canal or be claimed or asserted for diversion and carriage for use on lands in Nebraska.

6. Nebraska shall have the right to regulate diversions of water by said canal for the purposes of protecting other diversions from the South Platte River within Nebraska and of avoiding violations of the provisions of Article IV; but Colorado reserves the right at all times to regulate and control the diversions by said canal to the extent necessary for the protection of all appropriations and diversions within Colorado or necessary to maintain the flow at the Interstate Stations as provided by Article IV of this compact.

#### Article VII

Nebraska agrees that compliance by Colorado with the provisions of this compact and the delivery of water in accordance with its terms shall relieve Colorado from any further or additional demand or claim by Nebraska upon the waters of the South Platte River within Colorado.

#### Article VIII

Whenever any official of either State is designated herein to perform any duty under this compact, such designation shall be interpreted to include the state official or officials upon whom the duties now performed by such official may hereafter devolve, and it shall be the duty of the officials of the State of Colorado charged with the duty of the distribution of the waters of the South Platte River for irrigation purposes, to make deliveries of water at the Interstate Station in compliance with this compact without necessity of enactment of special statutes for such purposes by the General Assembly of the State of Colorado.

#### Article IX

The physical and other conditions peculiar to the South Platte River and to the territory drained and served thereby constitute the basis for this compact and neither of the signatory States hereby concedes the establishment of any general principle or precedent with respect to other interstate streams.

#### Article X

This compact may be modified or terminated at any time by mutual consent of the signatory States, but, if so terminated and Nebraska or its citizens shall seek to enforce any claims of vested rights in the waters of the South Platte River, the statutes of limitation shall not run in favor of Colorado or its citizens with reference to claims of the Western Irrigation District to the water of the South Platte River from the sixteenth day of April, 1916, and as to all other present claims from the date of the approval of this compact to the date of such termination, and the State of Colorado and its citizens who may be made defendants in any action brought for such purpose shall not be permitted to plead the statutes of limitation for such period of time.

Article XI

This compact shall become operative when approved by the Legislature of each of the signatory States and by the Congress of the United States. Notice of approval by the Legislature shall be given by the Governor of each State to the Governor of the other State and to the President of the United States, and the President of the United States is requested to give notice to the Governors of the signatory States of the approval by the Congress of the United States.

IN WITNESS WHEREOF, the Commissioners have signed this compact in duplicate originals, one of which shall be deposited with the Secretary of State of each of the Signatory States.

Done at Lincoln, in the State of Nebraska, this 27th day of April, in the year of our Lord One Thousand Nine Hundred and Twenty-three.

Delph E. Carpenter,

Robert H. Willis.

**HISTORY:** Source: L. 25: p. 529, § 1.CSA: omitted.CRS 53: § 148-4-1. C.R.S. 1963: § 149-4-1.

Cross references: For water rights generally, see § 5 to 8 of art. XVI, *Colo. Const.*

ANNOTATION

State engineer may make supplementary rules. As a result of changed conditions that have occurred since the South Platte river compact was created, the compact is deficient in establishing standards for administration within Colorado. Therefore, the compact is no longer self-executing, and the state engineer may adopt rules as necessary to ensure compliance, subject to the statutory conditions imposed by § 37-92-308 and other applicable sections. *Simpson v. Bijou Irrigation Co.*, 69 P.3d 50 (Colo. 2003).



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COLORADO REVISED STATUTES

\*\*\* THIS DOCUMENT REFLECTS CHANGES CURRENT THROUGH ALL LAWS PASSED AT THE FIRST REGULAR SESSION OF THE 68TH GENERAL ASSEMBLY OF THE STATE OF COLORADO \*\*\*

TITLE 37. WATER AND IRRIGATION  
WATER CONSERVATION BOARD AND COMPACTS  
ARTICLE 62. UPPER COLORADO RIVER COMPACT

**GO TO COLORADO STATUTES ARCHIVE DIRECTORY**

*C.R.S. 37-62-101 (2011)*

37-62-101. Upper Colorado River compact

The general assembly hereby ratifies the compact among the states of Colorado, New Mexico, Utah, Wyoming, and Arizona, designated as the "Upper Colorado river basin compact" and signed in the city of Santa Fe, state of New Mexico, on the 11th day of October, A. D. 1948, by 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, Charles A. Carson, commissioner for the state of Arizona, and approved by Harry W. Bashore, representative of the United States of America. Said compact is 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

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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 appropriated 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 the 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 the 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 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; or

(iii) Countenancing average uses by any signatory state in excess of its apportionment.



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(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 use 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 the 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 a 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.

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(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 disbursements 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 gauging stations;
- (3) Make estimates to forecast water run-off on the Colorado river and any of its tributaries;
- (4) Engage in co-operative 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;

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(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 co-operation 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 above 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 users 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.

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(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 per cent to the state of Wyoming and fifty per cent 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 per cent by the state of Utah and seventy per cent 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:

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(a) The state of Colorado will not cause the flow of the Yampa river at the Maybell gauging 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 gauging 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 gauging station to determine the total flow at the Maybell gauging 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 interest 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 water;

(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. Carlson,  
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.

**HISTORY:** Source: L. 49: p. 498, § 1.CSA: C. 90, § 64(1).CRS 53: § 148-8-1. C.R.S. 1963: § 149-8-1.

Cross references: For water rights generally, see § 5 to 8 of art. XVI, *Colo. Const.*



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COLORADO REVISED STATUTES

\*\*\* THIS DOCUMENT REFLECTS CHANGES CURRENT THROUGH ALL LAWS PASSED AT THE FIRST  
REGULAR SESSION OF THE 68TH GENERAL ASSEMBLY OF THE STATE OF COLORADO \*\*\*

TITLE 37. WATER AND IRRIGATION  
WATER CONSERVATION BOARD AND COMPACTS  
ARTICLE 62. UPPER COLORADO RIVER COMPACT

**GO TO COLORADO STATUTES ARCHIVE DIRECTORY**

*C.R.S. 37-62-102 (2011)*

37-62-102. When compact operative

Said compact shall not become operative unless and until the same has been ratified by the legislatures of each of the signatory states and consented to by the congress of the United States. The governor of the state of Colorado shall give notice of the ratification of said compact to the governors of the states of New Mexico, Utah, Wyoming, and Arizona, and to the president of the United States.

**HISTORY:** Source: L. 49: p. 515, § 2.CSA: C. 90, § 64(2).CRS 53: § 148-8-2. C.R.S. 1963: § 149-8-2.





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*C.R.S. 37-62-103 (2011)*

37-62-103. Interstate agency created by compact

It is hereby recognized, found, determined, and declared that the compact creates an interstate agency which is known as the upper Colorado river commission and which is an independent entity whose members and employees are not officers and employees of any of the states signatory to the compact.

**HISTORY:** Source: L. 49: p. 516, § 3.CSA: C. 90, § 64(3).CRS 53: § 148-8-3. C.R.S. 1963: § 149-8-3.



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*C.R.S. 37-62-104 (2011)*

37-62-104. Appointment of Colorado member of commission

After the said compact becomes effective, the Colorado member of the upper Colorado river commission shall be appointed by the governor, and shall serve until revocation of his appointment by the governor, and, on behalf of the upper Colorado river commission, the state of Colorado shall pay his necessary expenses and also compensation in an amount which shall be fixed by the governor, and when so fixed shall be changed only by the governor.

C.R.S. 37-62-104

**HISTORY:** Source: L. 49: p. 516, § 4.CSA: C. 90, § 64(4).CRS 53: § 148-8-4. C.R.S. 1963: § 149-8-4.

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**GO TO COLORADO STATUTES ARCHIVE DIRECTORY***C.R.S. 37-62-105 (2011)*

37-62-105. Payment of expenses of commission

The Colorado share of the expenses of the upper Colorado river commission and the expenses and the compensation of the Colorado member of that commission shall be paid out of funds appropriated by the general assembly to the Colorado water conservation board and warrants shall be drawn against such appropriations upon vouchers signed by the governor and the director of the Colorado water conservation board.

**HISTORY:** Source: L. 49: p. 516, § 5.CSA: C. 90, § 64(5).CRS 53: § 148-8-5. C.R.S. 1963: § 149-8-5.