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UPPER NIOBRARA RIVER COMPACT, 1962

Signatory States: Nebraska and Wyoming

Rivers Controlled: The Niobrara River and its tributaries in Nebraska and Wyoming west of Range 55 West of the 6th P. M.

Ratifications:

Wyo. Stat. 941-512.5 (Supp. 1969) [Act of Feb. 16, 1963, Wyo. Sess. Laws ch. 105] Neb. Rev. Stat. vol. 2A, appendix p. 771 (Reissue 1964) [Act of Oct. 26, 1962, Neb. Laws ch. 332]

Summary:

The Compact provides for only limited restrictions on Wyoming's use of the Niobrara River. Basically, these restrictions relate to:

- 1) priority dates and storage rights in Wyoming reservoirs and
- 2) priority dates and direct flow rights in the Niobrara, its tributaries and ditches.

The Compact also lays the foundation for future apportionment of the ground water in the Niobrara River Basin.

UPPER NIOBRARA RIVER COMPACT, 1962

The State of Wyoming, and the State of Nebraska, parties signatory to this compact (hereinafter referred to as Wyoming and Nebraska, respectively, or individually as a "State," or collectively as "States"), having resolved to conclude a compact with respect to the use of waters of the Niobrara River Basin, and being duly authorized by Act of Congress of the United States of America, approved August 5, 1953 (Public Law 191, 83rd Congress, 1st Session, Chapter 324, 67 Stat. 365) and the Act of May 29, 1958 (Public Law 85-427, 85th Congress, S. 2557, 72 Stat. 147) and the Act of August 30, 1961 (Public Law 87-181, 87th Congress, S. 2245, 75 Stat. 412) and pursuant to the Acts of their respective Legislatures have, through their respective Governors, appointed as their Commissioners: For Wyoming, Earl Lloyd, Andrew McMaster, Richard Pfister, John Christian, Eugene P. Wilson, H. T. Person, Norman B. Gray, E. J. Van Camp; For Nebraska, Dan S. Jones, Jr., who after negotiations participated in by W. E. Blomgren appointed by the President of the United States of America, have agreed upon the following articles:

ARTICLE I

A. The major purposes of this compact are to provide for an equitable division or apportionment of the available surface water supply of the Upper Niobrara River Basin between the States; to provide for obtaining information on groundwater and underground water flow necessary for apportioning the underground flow by supplement to this compact; to remove all causes, present and future which might lead to controversies; and to promote interstate comity.

B. The physical and other conditions peculiar to the Upper Niobrara River Basin constitute the basis for this compact; and neither of the States hereby concedes that this compact establishes any general principle or precedent with respect to any other interstate stream.

C. Either State and all others using, claiming or in any other manner asserting any right to the use of the waters of the Niobrara River Basin under the authority of that State, shall be subject to the terms of this compact.

ARTICLE II

A. The term "Upper Niobrara River" shall mean and include the Niobrara River and its tributaries in Nebraska and Wyoming west of Range 55 West of the 6th P. M.

B. The term "Upper Niobrara River Basin" or the term "Basin" shall mean that area in Wyoming and Nebraska which is naturally drained by the Niobrara River west of Range 55 West of the 6th P. M.

C. Where the name of a State or the term "State" or "States" is used, they 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 Niobrara River under the authority of that State.

ARTICLE III

It shall be the duty of the two States to 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 to collect and correlate through such officials the data necessary for the proper administration of the provisions of this compact. Such officials may, by unanimous action, adopt rules and regulations consistent with the provisions of this compact.

The States agree that the United States Geological Survey, or whatever Federal agency may succeed to the functions and duties of that agency, insofar as this compact is concerned, may collaborate with the officials of the States charged with the administration of this compact in the execution of the duty of such officials in the collection, correlation, and publication of information necessary for the proper administration of this compact.

ARTICLE IV

East State shall itself or in conjunction with other responsible agencies cause to be established, maintained, and operated such suitable water gaging stations as are found necessary to administer this compact.

ARTICLE V

A. Wyoming and Nebraska agree that the division of surface waters of the Upper Niobrara River shall be in accordance with the following provisions.

1. There shall be no restrictions on the use of the surface waters of the Upper Niobrara River by Wyoming except as would be imposed under Wyoming law and the following limitations:
 - (a) No reservoir constructed after August 1, 1957, and used solely for domestic and stock water purposes shall exceed 20 acre-feet in capacity.
 - (b) Storage reservoirs with priority dates after August 1, 1957, and storing water from the main stem of the Niobrara River east of Range 62 West of the 6th P.- M. and from the main stem of Van Tassel Creek south of Section 27, Township 32 North, Range 60 West of the 6th P. M. shall not store in any water year (October 1 of one year to September 30 of the next year) more than a total of 500 acre-feet of water.
 - (c) Storage in reservoirs with priority dates prior to August 1, 1957, and storing water from the main stem of the Niobrara River east of Range 62 West and from the main stem of Van Tassel Creek south of Section 27, Township 32 North, shall be made only during the period October 1 of one year to June 1 of the next year and at such times during the period June 1 to September 30 that the water is not required to meet the legal requirements by direct flow appropriations in Wyoming and in Nebraska west of Range 55 West. Where water is pumped from such storage reservoirs, the quantity of storage water pumped or otherwise diverted for irrigation purposes or other beneficial purposes from any such reservoir in any water year shall be limited to the capacity of such reservoir as shown by the records of the Wyoming State Engineer's Office, unless additional storage water becomes available during the period June 1 to September 30 after meeting the legal diversion requirements by direct flow appropriations in Wyoming and in Nebraska west of Range 55 West.
 - (d) Storage in reservoirs with priority dates after August 1, 1957, and storing water from the main stem of the Niobrara River east of Range 62 West and the main stem of Van Tassel Creek south of Section 27, Township 32 North, shall be made only during the period October 1 of one year to May 1 of the next year and at such times during the period May 1, and September 30 that the water is not required for direct diversion by ditches in Wyoming and in Nebraska west of Range 55 West.
 - (e) Direct flow rights with priority dates after August 1, 1957, on the main stem of the Niobrara River east of Range 62 West and Van Tassel Creek south of Section 27, Township 32 North, shall be regulated on priority basis with Nebraska rights west of Range 55 West, provided, that any direct flow rights for a maximum of 143 acres which may be granted by the Wyoming State Engineer with a priority date not later than July 1, 1961, for lands which had Territorial Rights under the Van Tassel No. 4 Ditch with a priority date of April 8, 1882, and the Van Tassel No. 5 Ditch with a priority date of April 18, 1882, shall be exempt from the provisions of this subsection (e).
 - (f) All direct flow diversions from the main stem of the Niobrara River east of Range 62 West and from Van Tassel Creek south of Section 27, Township 32 North shall at all times be limited to their diversion rates as specified by Wyoming law, and provided that Wyoming laws relating to diversion of "Surplus Water" (Wyoming Statutes, 1957, Sections 41-181 to 41-188 inclusive) shall apply only when the water flowing in the main channel of the Niobrara River west of Range 55 West is in excess of the legal diversion requirements of Nebraska ditches having priority dates before August 1, 1957.

ARTICLE VI

- A. Nebraska and Wyoming recognize that the future use of ground water for irrigation in the Niobrara River Basin may be a factor in the depletion of the surface flows of the Niobrara River, and since the data now available are inadequate to make a determination in regard to this matter, any apportionment of the ground water of the Niobrara River Basin should be delayed until such time as adequate data on ground water of the basin are available.
- B. To obtain data on ground water, Nebraska and Wyoming, with the cooperation and advice of the United States Geological Survey, Groundwater Branch, shall undertake ground water investigations in the Niobrara River Basin in the area of the Wyoming-Nebraska State line. The investigations shall be such as are agreed to by the State Engineer of Wyoming and the Director of Water Resources of Nebraska, and may include such observation wells as the said two officials agree are essential for the investigations. Costs of the investigations may be financed under the cooperative ground water programs between the United States Geological Survey and the States, and the States' share of the costs shall be borne equally by the two States.
- C. The ground water investigations shall begin within one year after the effective date of this compact. Upon collection of not more than twelve months of ground water data Nebraska and Wyoming with the cooperation of the United States Geological Survey, shall make, or cause to be made, an analysis of such data to determine the desirability or necessity of apportioning the ground water by supplement to this compact. If, upon completion of the initial analysis, it is determined that apportionment of the ground water is not then desirable or necessary, reanalysis shall be made at not to exceed two-year intervals, using all data collected until such apportionment is made.
- D. When the results of the ground water investigations indicate that apportionment of ground water of the Niobrara River Basin is desirable, the two States shall proceed to negotiate a supplement to this compact apportioning the ground water of the Basin.
- E. Any proposed supplement to this compact apportioning the ground water shall not become effective until ratified by the legislatures of the two States and approved by the Congress of the United States.

ARTICLE VII

The provisions of this compact shall remain in full force and effect until amended by action of the Legislatures of the Signatory States and until such amendment is consented to and approved by the Congress of the United States in the same manner as this compact is required to be ratified and consented to in order to become effective.

ARTICLE VIII

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

ARTICLE IX

Nothing in this compact shall be deemed:

A. To impair or affect any rights or powers of the United States, its agencies, or instrumentalities, in and to the use of the waters of the Upper Niobrara River Basin nor its capacity to acquire rights in and to the use of said waters; provided that, any beneficial uses of the waters allocated by this compact hereafter made within a State by the United States, or those acting by or under its authority, shall be taken into account in determining the extent of use within that State.

B. To subject any property of the United States, its agencies, or instrumentalities to taxation by either State or subdivision thereof, nor to create an obligation on the part of the United States, its agencies, or instrumentalities, by reason of the acquisition, construction, or operation of any property or works of whatsoever 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.

C. To subject any property of the United States, its agencies, or instrumentalities, to the laws of any State to an extent other than the extent to which these laws would apply without regard to the compact.

D. To affect the obligations of the United States of America to Indians or Indian tribes, or any right owned or held by or for Indians or Indian tribes which is subject to the jurisdiction of the United States.

ARTICLE X

Should a court of competent jurisdiction hold any part of this compact contrary to the constitution of any State or of the United States, all other severable provisions shall continue in full force and effect.

ARTICLE XI

This compact shall become effective when ratified by the Legislatures of each of the signatory States and by the Congress of the United States.

IN WITNESS WHEREOF, the Commissioners have signed this compact in triplicate original, one of which shall be filed in the archives of the United States of America and shall be deemed the authoritative original, and one copy of which shall be forwarded to the Governor of each of the signatory States.

Done at the city of Cheyenne, in the State of Wyoming, this 26th day of October, in the year of our Lord, One Thousand and Nine Hundred Sixty Two, 1962.

Commissioner for the State of Nebraska:

Dan S. Jones, Jr.

Commissioners for the State of Wyoming:

Earl Lloyd
Andrew McMaster
Richard Pfister
John Christian
Eugene P. Wilson
H. T. Person
Norman B. Gray
E. J. Van Camp

I have participated in the negotiation of this Compact and intend to report favorably thereon to the Congress of the United States.

W. E. Blomgren
Representative of the United States of America

NOTES

Congressional consent to negotiations.---By the Act of August 5, 1953 (67 Stat. 365) the Congress gave its consent to negotiations between the States of Wyoming and Nebraska. The time for negotiation was extended by the Act of May 29, 1958 (72 Stat. 147) and again by the Act of August 30, 1961 (75 Stat. 412).

Congressional consent to compact.---Act of August 4, 1969 (83 Stat. 86), from which the text of the Compact set out above is taken. Sections 2 and 3 of this Act read as follows:

Sec. 2: The right to alter, amend, or repeal this Act is reserved.

Sec. 3: Nothing in this Act shall be deemed to impair or affect any rights or powers of the United States, its agencies, instrumentalities, permittees, or licensees in, over, and to the use of the waters of the Upper Niobrara River Basin; nor to impair or affect their capacity to acquire rights in and to the use of said waters.

For legislative history, see House Report No. 91-359 (Committee on Interior and Insular Affairs); Senate Report No. 91-265 (Committee on Interior and Insular Affairs); Cong. Rec. , vol. 115 (1969); P. L. 91-52.

