

ARKANSAS RIVER BASIN COMPACT

ARKANSAS-OKLAHOMA, 1972, WITH

SUPPLEMENTAL INTERPRETIVE

COMMENTS

SUPPLEMENT NO, 1

ARKANSAS RIVER COMPACT COMMISSION

**MARCH 16, 1970
REVISED MARCH 3, 1972**

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Approved by the

ARKANSAS RIVER COMPACT COMMITTEE

FOR ARKANSAS:

**S. Keith Jackson
Committee Member
John Luce
Committee Member
(alternate)**

FOR OKLAHOMA:

**Glade R. Kirkpatrick
Committee Member
Milton Craig
Committee Member
(alternate)**

FOR UNITED STATES OF AMERICA:

**Trigg Twichell
Federal Representative and Chairman of Committee**

March 16, 1970

Revised March 3, 1972

PREFACE

In 1955, the Congress of the United States by Public Law 97, 84th Congress, 1st Session, granted consent to the States of Arkansas and Oklahoma to negotiate and enter into a Compact for the apportionment of the waters of the Arkansas River and its tributaries between the two States. With this authorization and the appointment of a Federal Representative to act as Chairman, the States created the Arkansas-Oklahoma Arkansas River Compact Committee on March 14, 1956, for the purpose of drafting a proposed Compact for the apportionment of the waters of the Arkansas River and its tributaries as they affect those States.

From the beginning the Committee was deliberate in its operations. Two important subcommittees: engineering and legal, were appointed early for the purpose of assembling, analyzing, and interpreting essential engineering and legal data needed by the Compact Committee.

The engineering subcommittee made hydrologic studies which were utilized in determining that portion of the Arkansas River Basin that should be covered by the interstate Compact, analyzed the quantity, quality, and mode of occurrence of the water resources of the area in question and made long-range estimates of the quantities of water that would be needed by the States in future years, recognizing existing water rights and water uses.

The legal committee researched existing Interstate Water Compacts and continuously advised the Compact Committee on legal matters that related to Compact negotiations.

The work of these subcommittees and their reports were invaluable to the Compact committee in reaching its unanimous agreement of the proposed Compact.

The Federal Representative employed a consulting engineer in the field of interstate compacts, and received legal counsel from the U.S. Department of Justice on matters that were of concern to the Federal agencies.

The Arkansas River Compact Committee approved its first formal interstate Compact draft March 16, 1970.

The State of Arkansas ratified this Compact draft through its Act No. 16, 1971, as passed by the Arkansas General Assembly and signed by Governor Dale Bumpers, January 26, 1971.

The State of Oklahoma ratified the interstate Compact draft through H. B. No. 1326, as passed by the Oklahoma Legislature and signed by Governor David Hall, April 24, 1971. This ratification, however, carried the following amendment:

"SECTION 2. This ratification is subject to the State of Oklahoma and the State of Arkansas, acting through their duly authorized compact representatives, amending said 'Arkansas River Basin Compact' in the particulars as set forth hereinafter, and further, that ratification of said amendment of said compact by the Legislature of the State of Arkansas. Said amendment being expressed as follows:

"The following language shall be added to Article VI, Section A of said compact, to-wit: 'Provided however that nothing contained in this compact or its ratification by Arkansas or Oklahoma shall be interpreted as granting either State or the parties hereto the right or power of eminent domain in any manner whatsoever outside the borders of its own state.'"

The Arkansas River Compact Committee unanimously approved the Oklahoma amendment as an appropriate clarification statement in the Compact. The Federal member of the Committee was formally advised that the Federal agencies had no objections to this amendment.

The State of Arkansas adopted the State of Oklahoma's amendment to the Arkansas River Compact draft through Act No. 40, as passed by the Arkansas General Assembly and signed by Governor Dale Bumpers, February 17, 1972.

The Arkansas River Basin Compact, Arkansas-Oklahoma, 1972, as revised March 3, 1972, contains the amendment as approved by both States and corrections of typographical errors found in the March 16, 1970 draft.

ARKANSAS RIVER BASIN COMPACT
ARKANSAS-OKLAHOMA, 1972

with
SUPPLEMENTAL INTERPRETIVE COMMENTS
Prepared by the Compact Committee

Compact

The State of Arkansas and the State of Oklahoma, acting through their duly authorized Compact representatives, S. Keith Jackson of Arkansas and Glade R. Kirkpatrick of Oklahoma, after negotiations participated in by Trigg Twichell, appointed by the President as the representative of the United States of America, pursuant to and in accordance with the consent to such negotiations granted by an Act of Congress of the United States of America (Public Law 97, 84th Congress, 1st session), approved June 28, 1955, have agreed as follows respecting the waters of the Arkansas River and its tributaries:

Comment

On November 25, 1969, the authorized representatives of the States of Arkansas and Oklahoma approved the language of a draft of a Compact relating to the apportionment of the waters of the Arkansas River Basin originating in the two States between Muskogee, Oklahoma, and Van Buren, Arkansas; including Spavinaw Creek, a tributary to the Grand River upstream from Muskogee; and except the Canadian River above Eufaula Dam, a tributary to the Arkansas River between Muskogee and Van Buren.

The Compact is the result of negotiations between the parties over a period of years. The Compact Committee had the cooperation and advice of all interested Federal agencies, including the counsel of representatives of the United States Department of Justice. Its activities were supported by the water resources agencies of the States. In addition, extensive studies were conducted for the benefit of the Committee by the engineering departments of the University of Arkansas and Oklahoma State University under the federal Water Resources Research program.

These interpretive comments on the approved draft of November 25, 1969, have been prepared so that members of the respective legislatures, congressional committees, Federal agencies, and subsequent Compact administrators might be fully appraised of the intent of the Compact negotiating Committee with regard to each Article of the Compact.

ARTICLE I

Compact

The major purposes of this Compact are:

- A. To promote interstate comity between the States of Arkansas and Oklahoma;
- B. To provide for an equitable apportionment of the waters of the Arkansas River between the States of Arkansas and Oklahoma and to promote the orderly development thereof;
- C. To provide an agency for administering the water apportionment agreed to herein;
- D. To encourage the maintenance of an active pollution abatement program in each of the two States and to seek the further reduction of both natural and man-made pollution in the waters of the Arkansas River Basin; and
- E. To facilitate the cooperation of the water administration agencies of the States of Arkansas and Oklahoma in the total development and management of the water resources of the Arkansas River Basin.

Comment

Article I is self-explanatory.

ARTICLE II

Compact

As used in this Compact:

- A. The term "State" means either State signatory hereto and shall be construed to include any person or

persons, entity or agency of either State who, by reason of official responsibility or by designation of the Governor of that State, is acting as an official representative of that State.

- B. The term "Arkansas-Oklahoma Arkansas River Compact Commission," or the term "Commission" means the agency created by this Compact for the administration thereof.
- C. The term "Arkansas River Basin" means all of the drainage basin of the Arkansas River and its tributaries from a point immediately below the confluence of the Grand-Neosho River with the Arkansas River near Muskogee, Oklahoma, to a point immediately below the confluence of Lee Creek with the Arkansas River near Van Buren, Arkansas, together with the drainage basin of Spavinaw Creek in Arkansas, but excluding that portion of the drainage basin of the Canadian River above Eufaula Dam.
- D. The term "Spavinaw Creek Sub-basin" means the drainage area of Spavinaw Creek in the State of Arkansas.
- E. The term "Illinois River Sub-basin" means the drainage area of Illinois River in the State of Arkansas.
- F. The term "Lee Creek Sub-basin" means the drainage area of Lee Creek in the State of Arkansas and the State of Oklahoma.
- G. The term "Poteau River Sub-basin" means the drainage area of Poteau River in the State of Arkansas.
- H. The term "Arkansas River Sub-basin" means all areas of the Arkansas River Basin except the four sub-basins described above.
- I. The term "water year" means a twelve-month period beginning on October 1, and ending September 30.
- J. The term "annual yield" means the computed annual gross runoff from any specified sub-basin which would have passed any certain point on a stream and would have originated within any specified area under natural conditions, without any man-made depletion or accretion during the water year.
- K. The term "pollution" means contamination or other alterations of the physical, chemical, biological or radiological properties of water or the discharge of any liquid, gaseous, or solid substances into any waters which creates, or is likely to result in a nuisance, or which renders or

is likely to render the waters into which it is discharged harmful, detrimental or injurious to public health, safety, or welfare, or which is harmful, detrimental or injurious to beneficial uses of the water.

Comment

This is the Article of specific definition of terms as they apply to this Compact.

Subsections A and B are self-explanatory.

Subsection C defines the "Arkansas River Basin" as it pertains to this Compact. (See figure 1). It isolates that portion of the overall Arkansas River drainage basin in which the States of Arkansas and Oklahoma are primarily and mutually concerned. All of the area above the gaging station on the main stem of the Arkansas River near Muskogee, Oklahoma, and the Eufaula Dam in the Canadian River except the Spavinaw Creek Basin in the State of Arkansas, has been excluded from consideration.

The intent of the Committee has been to deal with the water originating within the area delineated by this definition and no attempt has been made to define the rights, if any, of either State in waters originating outside the defined area which might flow into and through the area in the main stem of the Arkansas River or the Canadian River.

Waters of the Arkansas River Basin originating above Muskogee and Eufaula Dam have been allocated in part by Compacts between the States of Kansas and Oklahoma, and in the upper reaches of the basin between the States of Colorado and Kansas. The State of Arkansas was not a party to either of those Compacts, and the State of Oklahoma was not a party to the Colorado-Kansas Compact. Waters originating above

Eufaula Dam have been allocated in part by Compact between the States of New Mexico, Oklahoma and Texas; and the State of Arkansas was not a party to that Compact.

Both States recognize that storage has been constructed in the State of Oklahoma above Muskogee for the impounding and release of water to aid navigation in both the States of Oklahoma and Arkansas; and that such waters will in whole or in part flow through the Compact area. It is recognized also that power releases from reservoirs upstream of Muskogee will flow through the Compact area in the main stem of the Arkansas River, and may be subject to diversions and/or impoundment and use in either State. Flood control releases from upstream reservoirs will fall in the same category as power releases.

The drainage area in the State of Arkansas of Spavinaw Creek, a tributary of the Neosho River, has been included in this Compact area. The portion of Spavinaw Creek Basin lying in the State of Oklahoma was included in the physical delineation of the Grand-Neosho River Basin in the Kansas-Oklahoma Arkansas River Basin Compact. In the Kansas-Oklahoma Compact, Spavinaw Creek was excluded from the conservation storage limitation provisions which were the basis of that Compact.

The Spavinaw Creek Sub-basin has been included in this Compact, even though it is not directly tributary to the rest of the Compact area, because (1) the headwaters are in the State of Arkansas and the stream flows into the State of Oklahoma as is the case with all the other tributaries under consideration; (2) the rights of the State of Arkansas were not considered in the Kansas-Oklahoma Compact; and (3) the State of Oklahoma already has substantial development and interest in water supply of the stream.

The lower cutoff point of the Compact area has been placed immediately below the confluence of Lee Creek with the Arkansas River near Van Buren, Arkansas. Lee Creek is the farthest downstream tributary having headwaters in the State of Arkansas and flowing into the State of Oklahoma. It re-enters the State of Arkansas and flows into the Arkansas River in that State. There is interest in the Van Buren-Fort Smith area in Lee Creek as a source of municipal water supply.

Subsections D through H define the various sub-basins which, for purposes of this Compact, have been designated on Spavinaw Creek, Illinois River, Lee Creek and Poteau River, as well as for the Arkansas River main stem. These sub-basins differ from the sub-basins outlined in the Report of the Engineering Advisory Committee, dated January 1969, except for Lee Creek Sub-basin which remains consistent with the original report. It also differs from the Engineering Committee's original recommendations to the Compact Committee concerning the delineation of sub-basins. (See figure 1):

Subsection I is self-explanatory.

Subsection J defines "annual yield," which is a term basic to the allocations of this Compact. It refers to the runoff originating within any area and which would occur under unaltered natural conditions, i.e., where there would be no artificial man-made depletions of, or additions to, the original supply and no regulation of that supply.

The only time this could be measured absolutely would be before any facilities to utilize, import or impound water were constructed. After the first such facility is introduced, the measurement becomes something of an approximation relative to how accurately depletions can be computed

and their ratio to water yield. An excellent opportunity exists in this Compact area to establish relationship of "annual yield" and runoff at key points or with precipitation, or a combination of runoff and precipitation. This is true since depletions are small in relation to the average yield of this basin.

Subsection K is self-explanatory.

ARTICLE III

Compact

- A. The physical and other conditions peculiar to the Arkansas River Basin constitute the basis of this Compact, and neither of the States hereby, nor the Congress of the United States by its consent hereto, concedes that this Compact establishes any general principle with respect to any other interstate stream.
- B. By this Compact, neither State signatory hereto is relinquishing any interest or right it may have with respect to any waters flowing between them which do not originate in the Arkansas River Basin as defined by this Compact.

Comment

Subsection A confirms the principle that each Compact area has its own special problems and solutions thereto, and cannot provide per se the solutions for other compacting areas.

Subsection B is an affirmation of the principle of equitable apportionment between States of the water of interstate streams (Kansas v. Colorado, 206 U.S. 46; Colorado v. Kansas, 320 U.S. 383).

ARTICLE IV

Compact

The States of Arkansas and Oklahoma hereby agree upon the following apportionment of the waters of the Arkansas River Basin:

- A. The State of Arkansas shall have the right to develop and use the waters of the Spavinaw Creek Sub-basin subject to the limitation that the annual yield shall not be depleted by more than fifty percent (50%).
- B. The State of Arkansas shall have the right to develop and use the waters of the Illinois River Sub-basin subject to the limitation that the annual yield shall not be depleted by more than sixty percent (60%).
- C. The State of Arkansas shall have the right to develop and use all waters originating within the Lee Creek Sub-basin in the State of Arkansas, or the equivalent thereof.
- D. The State of Oklahoma shall have the right to develop and use all waters originating within the Lee Creek Sub-basin in the State of Oklahoma, or the equivalent thereof.
- E. The State of Arkansas shall have the right to develop and use the waters of the Poteau River Sub-basin subject to the limitation that the annual yield shall not be depleted by more than sixty percent (60%).
- F. The State of Oklahoma shall have the right to develop and use the waters of the Arkansas River Sub-basin subject to the limitation that the annual yield shall not be depleted by more than sixty percent (60%).

Comment

This Article apportions the available water resources of the Basin between the two States. Although large quantities of good quality water are available in the Basin, flows fluctuate widely, and provisions for storage will be essential to any substantial development of water use.

The record of Compact negotiations will show that early consideration was given to the possibility of writing a compact based on allocation of conservation storage. Near the end of negotiations and after careful deliberation and study, the consideration of conservation storage allocations was dropped and it was agreed to make allocations on the basis of percentages of annual yield.

It is realized that problems of deficient low flows presently exist and will no doubt continue in the future. Base flows of tributary streams in the Basin are generally low and most streams recede to no flow during dry periods. It is anticipated that future developments of storage facilities will provide for low flow augmentation but it is considered infeasible to specify minimum flows for any stream system. Release of flows from the system of major reservoirs presently constructed and planned for flood control, hydroelectric power and navigation should assure the maintenance of adequate flows throughout the main stem of the Arkansas River in the Compact area.

The percentages of annual flows apportioned between the States are based on the assumptions that the "upstream" State should generally have first call on available waters. Engineering studies have shown it is generally infeasible to develop over sixty percent (60%) of the long-term yield of any Basin in this area.

The division of water is on the basis that forty percent (40%) of the annual yield would be delivered from the upstream State. Exceptions to this have been made in the cases of Spavinaw and Lee Creek Basins.

The City of Tulsa has developed 96,000 acre-feet of conservation storage on lower Spavinaw Creek in the State of Oklahoma for municipal water supply. These reservoirs collect flows from 386 square miles, of which 120 square miles are in the State of Arkansas. In recognition of these existing developments, it was agreed to limit the State of Arkansas allocation to fifty percent (50%) of the annual yield from the area in that State.

The Lee Creek Basin roughly parallels the Arkansas-Oklahoma state-line. The drainage area is approximately sixty percent (60%) in the State of Arkansas and forty percent (40%) in the State of Oklahoma. The main stem rises in the State of Arkansas, but some small tributaries in the upper reaches rise in the State of Oklahoma and flow into the State of Arkansas. The main stem first crosses the Arkansas-Oklahoma stateline at mile 24.6, and then flows back into the State of Arkansas at mile 9.0, crossing and recrossing the stateline until entering the State of Arkansas for the last time at mile 7.6. This watershed is an excellent source of water for the Fort Smith metropolitan area, including nearby areas in the State of Oklahoma, and for which there is a large potential need for future water supplies. In order to permit the full development of this Basin, it was agreed that waters of this Basin be allocated on the basis of origin. This will permit either State to fully develop, use and consume a quantity of water equal to the total annual yield of the Lee Creek Basin in each State.

Each State recognizes that waters are now being transported from one basin to another and that these transbasin diversions could increase in the future. It is also recognized that such transbasin diversion of water is a charge against the apportionment to the respective States.

ARTICLE V

Compact

- A. On or before December 31 of each year, following the effective date of this Compact, the Commission shall determine the stateline yields of the Arkansas River Basin for the previous water year.

- B. Any depletion of annual yield in excess of that allowed by the provisions of this Compact shall, subject to the control of the Commission, be delivered to the downstream State, and said delivery shall consist of not less than sixty percent (60%) of the current runoff of the basin.
- C. Methods for determining the annual yield of each of the sub-basins shall be those developed and approved by the Commission.

Comments

Subsection A provides for the computation of "annual yield" before the end of the calendar year, while the computation itself is based on data available for the water year ending September 30 of that same calendar year. This means that necessary hydrologic data (such as stream flow, water quality, precipitation, etc.) will be required in less than three months after the end of the water year.

Subsection B provides for adjustment of annual depletions so that a depletion in excess of the allocation to either State during the previous water year shall be delivered (restored to the downstream State) as soon as practicable consistent with proper water management.

It is anticipated that each State should control its water management so that consumptive-use depletions will not exceed its allocation. Excess stream-flow depletions, which would be a withholding of water by any means (consumptive uses or storage) could possibly occur in low yield years, but could be made up in subsequent periods of high runoff.

No provisions are made in this Compact for credits for over-deliveries nor for continuing debits for under-deliveries. As a practical manner the water resources of the area are of such a magnitude, and the physical conditions limiting storage facilities are such that complete utilization of the allocated quantities might never be reached.

The allocations are of such magnitude in relation to these factors that the States essentially will be unrestricted in the control and use of the water resources of the Compact area. The Compact does, however, protect against the possibility of either State encroaching upon the rights of the other at some future time when maximum utilization could be approached. (There is a distinct possibility in this area that such a condition might never occur). Or, in a period of extreme drought, it would provide an equitable distribution of a limited water supply.

Subsection C is intended as a directive for determining annual yield. Appendix I attached to these comments outlines procedures for this purpose. Present depletions are small in relation to the original yield and an opportunity exists to establish correlations of yield at agreed-to points in both States. As developments occur in the future, it may be necessary to refine procedures and make arrangements for the collection of additional basic data. It is anticipated that a technical advisory group will be available to the Commission and will develop adequate procedures and make recommendations for the collection of necessary basic data as required for the proper administration of the Compact.

ARTICLE VI

Compact

- A. Each State may construct, own and operate for its needs water storage reservoirs in the other State; provided, however, that nothing contained in this Compact or its ratification by Arkansas or Oklahoma shall be interpreted as granting either State or the parties hereto the right or power of eminent domain in any manner whatsoever outside the borders of its own State.

- B. Depletion in annual yield of any sub-basin of the Arkansas River Basin caused by the operation of any water storage reservoir either heretofore or hereafter constructed by the United States or any of its agencies, instrumentalities or wards, or by a State, political sub-division thereof, or any person or persons shall be charged against the State in which the yield therefrom is utilized.
- C. Each State shall have the free and unrestricted right to utilize the natural channel of any stream within the Arkansas River Basin for conveyance through the other State of waters released from any water storage reservoir for an intended downstream point of diversion or use without loss of ownership of such waters; provided, however, that a reduction shall be made in the amount of water which can be withdrawn at point of removal, equal to the transmission losses.

Comment

This Article recognizes the possibilities of special problems arising and sets forth general provisions for handling some of these problems.

In Subsection A, the Committee recognizes that storage capacity may be constructed by one State in the other and that the Compact creates no bar to such construction. Each State, either individually or the two States jointly, may construct, own and operate for their needs water storage reservoirs in either State.

Subsection B makes it quite clear that depletions resulting from storage constructed at any point in the Basin by the United States, the States or individuals shall be charged against the State in which the benefits of the depletion are realized. Although the Compact is silent as to what part the Commission might take in the event that storage is constructed in one State for the benefit of the other State, it is the view of the Committee that such matters would be worked out at State level so long as the provisions of the Compact are complied with.

Subsection C allows either State to use the channel as a conveyor to transport water from a structure in one State to a point in the other State where it can be used. The only restriction is that a carriage or transmission loss will be charged against the State utilizing the natural channel in the other State. The amount of such transmission loss will be determined by the Compact Commission whenever the need arises.

ARTICLE VII

Compact

The States of Arkansas and Oklahoma mutually agree to:

- A. The principle of individual State effort to abate man-made pollution within each State's respective borders, and the continuing support of both States in an active pollution abatement program;
- B. The cooperation of the appropriate State agencies in the States of Arkansas and Oklahoma to investigate and abate sources of alleged interstate pollution within the Arkansas River Basin;
- C. Enter into joint programs for the identification and control of sources of pollution of the waters of the Arkansas River and its tributaries which are of interstate significance;
- D. The principle that neither State may require the other to provide water for the purpose of water quality control as a substitute for adequate waste treatment;
- E. Utilize the provisions of all Federal and State water pollution laws and to recognize such water quality standards as may be now or hereafter established under the Federal Water Pollution Control Act in the resolution of any pollution problems affecting the waters of the Arkansas River Basin.

Comment

The States recognize that there is no serious interstate pollution problem in the Basin at present; and that the States are obligated to maintain adequate water quality in the Arkansas River Basin through

whatever means is available to them. An important provision is that neither State may require the other to provide water for the purpose of water quality control as a substitute for adequate waste treatment.

Through active pollution abatement programs the States hope to avoid the conflict over future problems, but have provided that, if necessary, they may utilize the provisions of the Federal Water Pollution Control Act in cases which cannot be resolved within the provisions of the Compact.

ARTICLE VIII

Compact

- A. There is hereby created an interstate administrative agency to be known as the "Arkansas-Oklahoma Arkansas River Compact Commission." The Commission shall be composed of three Commissioners representing the State of Arkansas and three Commissioners representing the State of Oklahoma, selected as provided below; and, if designated by the President or an authorized Federal agency, one Commissioner representing the United States. The President, or the Federal agency authorized to make such appointments, is hereby requested to designate a Commissioner and an alternate representing the United States. The Federal Commissioner, if one be designated, shall be the Chairman and presiding officer of the Commission, but shall not have the right to vote in any of the deliberations of the Commission.

- B. One Arkansas Commissioner shall be the Director of the Arkansas Soil and Water Conservation Commission, or such other agency as may be hereafter responsible for administering water law in the State. The other two Commissioners shall reside in the Arkansas River drainage area in the State of Arkansas and shall be appointed by the Governor, by and with the advice and consent of the Senate, to four-year staggered terms with the first two Commissioners being appointed simultaneously to terms of two (2) and four (4) years, respectively.

- C. One Oklahoma Commissioner shall be the Director of the Oklahoma Water Resources Board, or such other agency as may be hereafter responsible for administering water law in the State. The other two Commissioners shall reside within the Arkansas River drainage area in the State of Oklahoma and shall be appointed by the Governor, by and with the advice and consent of the Senate, to four-year staggered terms, with the first two Commissioners being appointed simultaneously to terms of two (2) and four (4) years, respectively.
- D. A majority of the Commissioners of each State and the Commissioner or his alternate representing the United States, if they are so designated, must be present to constitute a quorum. In taking any Commission action, each signatory State shall have a single vote representing the majority opinion of the Commissioners of that State.
- E. In the case of a tie vote on any of the Commission's determinations, orders, or other actions, a majority of the Commissioners of either State may, upon written request to the Chairman, submit the question to arbitration. Arbitration shall not be compulsory, but on the event of arbitration, there shall be three arbitrators:
- (1) One named by resolution duly adopted by the Arkansas Soil and Water Conservation Commission, or such other State agency as may be hereafter responsible for administering water law in the State of Arkansas; and
 - (2) One named by resolution duly adopted by the Oklahoma Water Resources Board, or such other State agency as may be hereafter responsible for administering water law in the State of Oklahoma; and
 - (3) The third chosen by the two arbitrators who are selected as provided above.

If the arbitrators fail to select a third within sixty (60) days following their selection, then he shall be chosen by the Chairman of the Commission.

- F. 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 shall be borne equally by the two States and shall be paid by the

Commission out of the "Arkansas-Oklahoma Arkansas River Compact Fund," initiated and maintained as provided in Article IX(B)(5) below. The States hereby mutually agree to appropriate sums sufficient to cover its share of the expenses incurred in the administration of this Compact, to be paid into said fund. Disbursements shall be made from said fund in such manner as may be authorized by the Commission. Such funds shall not be subject to the audit and accounting procedures of the States; however, all receipts and disbursements of funds handled by the Commission shall be audited by a qualified independent public accountant at regular intervals, and the report of such audit shall be included in and become a part of the annual report of the Commission, provided by Article IX(B)(6) below. The Commission shall not pledge the credit of either State and shall not incur any obligations prior to the availability of funds adequate to meet the same.

Comment

This Article creates the administrative agency which will administer the terms of this Compact after it becomes effective through ratification by the States and approval by the Congress. The provisions are similar to those adopted in a number of other interstate stream compacts.

The Article provides for three members for each of the signatory States as Commission members and staggers the terms of those members in order to insure some degree of continuity in its membership.

Subsection D defines a quorum and provides that each State shall have only one vote which represents the majority decision of each State in conducting the business affairs of the Commission.

Subsection E sets forth arbitration procedures for the Commission in the event of a tie vote on important matters. Arbitration is not to be compulsory but is provided in the event that some matter of extreme concern to one of the States requires such action.

Subsection F sets forth the procedure for paying the salaries and expenses of the Commissioners and costs incurred by the Commission in the administration of the Compact. This subsection together with Article IX(B)(5) creates a Compact fund which is essential to flexibility of operation. It also provides for auditing procedures and the report of such audit.

ARTICLE IX

Compact

- A. The Commission shall have the power to:
- (1) Employ such engineering, legal, clerical and other personnel as in its judgment may be necessary for the performance of its functions under this Compact;
 - (2) Enter into contracts with appropriate State or Federal agencies for the collection, correlation, and presentation of factual data, for the maintenance of records and for the preparation of reports;
 - (3) Establish and maintain an office for the conduct of its affairs;
 - (4) Adopt and procure a seal for its official use;
 - (5) Adopt rules and regulations governing its operations. The procedures employed for the administration of this Compact shall not be subject to any Administrative Procedures Act of either State, but shall be subject to the provisions hereof and to the rules and regulations of the Commission; provided, however, all rules and regulations of the Commission shall be filed with the Secretary of State of the signatory States;
 - (6) Cooperate with Federal and State agencies and political subdivisions of the signatory States in developing principles, consistent with the provisions of this Compact and with Federal and State policy, for the storage and release of

water from reservoirs, both existing and future within the Arkansas River Basin, for the purpose of assuring their operation in the best interests of the States and the United States;

- (7) Hold hearings and compel the attendance of witnesses for the purpose of taking testimony and receiving other appropriate and proper evidence and issuing such appropriate orders as it deems necessary for the proper administration of this Compact, which orders shall be enforceable upon the request by the Commission or any other interested party in any court of competent jurisdiction within the county wherein the subject matter to which the order relates is in existence, subject to the right of review through the appellate courts of the State of situs. Any hearing held for the promulgation and issuance of orders shall be in the county and State of the subject matter of said hearing;
- (8) Make and file official certified copies of any of its findings, recommendations or reports with such officers or agencies of either State, or the United States, as may have any interest in or jurisdiction over the subject matter. Findings of fact made by the Commission shall be admissible in evidence and shall constitute prima facie evidence of such fact in any court or before any agency of competent jurisdiction. The making of findings, recommendations, or reports by the Commission shall not be a condition precedent to instituting or maintaining any action or proceeding of any kind by a signatory State in any court, or before any tribunal, agency or officer, for the protection of any right under this Compact or for the enforcement of any of its provisions;
- (9) Secure from the head of any department or agency of the Federal or State government such information, suggestions, estimates and statistics as it may need or believe to be useful for carrying out its functions and as may be available to or procurable by the department or agency to which the request is addressed;
- (10) Print or otherwise reproduce and distribute all of its proceedings and reports; and
- (11) Accept, for the purposes of this Compact, any and all private donations and gifts and Federal grants of money.

B. The Commission shall:

- (1) Cause to be established, maintained and operated such stream, reservoir or other gaging stations as may be necessary for the proper administration of this Compact;
- (2) Collect, analyze and report on data as to stream flows, water quality, annual yields and such other information as is necessary for the proper administration of this Compact;
- (3) Continue research for developing methods of determining total basin yields;
- (4) Perform all other functions required of it by the Compact and do all things necessary, proper or convenient in the performance of its duties thereunder;
- (5) Establish and maintain the "Arkansas-Oklahoma Arkansas River Compact Fund," consisting of any and all funds received by the Commission under the authority of this Compact and deposited in one or more banks qualifying for the deposit of public funds of the signatory States;
- (6) Prepare and submit an annual report to the Governor of each signatory State and to the President of the United States covering the activities of the Commission for the preceding fiscal year, together with an accounting of all funds received and expended by it in the conduct of its work;
- (7) Prepare and submit to the Governor of each of the States of Arkansas and Oklahoma an annual budget covering the anticipated expenses of the Commission for the following fiscal year; and
- (8) Make available to the Governor or any State agency of either State or to any authorized representative of the United States, upon request, any information within its possession.

Comment

Article IX sets forth the powers and duties of the administrative Commission. It provides the Commission with the necessary latitude and flexibility for carrying out the provisions and purposes of the Compact.

Subsection A enumerates the powers of the Commission while Subsection B sets out certain specific duties of the Commission. Other duties not specifically stated in Subsection B are implied in the inherent powers granted in Subsection A.

Subsection A(2) enables the Commission to obtain data which is important to the Commission's work and findings. Most of the data useful to the Commission will be gathered by other agencies. However, there could be times when necessary engineering or other data is not gathered by any other agency, and it might be desirable for the Commission to collect the data.

Subsection A(6) gives the Commission the power to cooperate directly and closely with Federal agencies in its administrative activities as they relate to interstate phases of project operation. This subsection deals with all types of storage and release of water whether it is under Federal or State control. Essentially it gives the Commission the power to manage the water resources of the Basin in the best possible manner.

In Subsection A(9) "secure" means that the Commission may obtain information, of whatever nature, by request or purchase if necessary, and is not intended to infer that the Commission will have the power to obtain such information by adverse means from any agency or such information as any agency is prevented by law from releasing. It is not the intent of the subsection that the Commission shall compete with other data collecting agencies of either State or Federal government, but rather that the Commission will utilize these available sources to the extent possible. It is necessary this Commission be given authority to do such work when it is not able to obtain needed information from other agencies due to budget or personnel limitations.

Subsections B(6) and (7) provide for annual reports and annual budgets to be submitted to the respective Governors of the signatory States and to the President of the United States, but sets no date for the submission of these reports. Therefore, it is incumbent upon the Compact Commission to set such a date in the rules and regulations of the Commission. This provides some flexibility in the preparation of the annual report permitting the date to be changed if and when it should become necessary.

All other subsections are self-explanatory.

ARTICLE X

Compact

- A. The provisions hereof shall remain in full force and effect until changed or amended by unanimous action of the States acting through their Commissioners and until such changes are ratified by the legislatures of the respective States and consented to by the Congress of the United States in the same manner as this Compact is required to be ratified to become effective.
- B. This Compact may be terminated at any time by the appropriate action of the legislature of both signatory States.
- C. In the event of amendment or termination of the Compact, all rights established under the Compact shall continue unimpaired.

Comment

This Article affirms the rather obvious fact that no action can be taken to modify the provisions of the Compact without unanimous action of the States and until the changes are ratified by the legislatures and the Congress. It also recognizes the right to terminate by the appropriate action of the States, and the protection of vested rights in the case of such an event.

ARTICLE XI

Compact

Nothing in this Compact shall be deemed:

- A. To impair or affect the powers, rights or obligations of the United States, or those claiming under its authority in, over and to the waters of the Arkansas River Basin;
- B. To interfere with or impair the right or power of either signatory State to regulate within its boundaries the appropriation, use and control of waters within that State not inconsistent with its obligations under this Compact.

Comment

This Article is a general declaration whereby the States disclaim any intention of impairing or affecting the powers, rights, or obligations of the United States, as they apply to the Arkansas River Basin.

It clearly states that the Compact is not intended to interfere with or impair the rights or powers of either signatory State to regulate the waters within its own boundaries.

ARTICLE XII

Compact

If any part or application of this Compact should be declared invalid by a court of competent jurisdiction, all other provisions and applications of this Compact shall remain in full force and effect.

Comment

This Article is self-explanatory.

ARTICLE XIII

Compact

- A. This Compact shall become binding and obligatory when it shall have been ratified by the legislature of each

State and consented to by the Congress of the United States, and when the Congressional Act consenting to this Compact includes the consent of Congress to name and join the United States as a party in any litigation in the United States Supreme Court, if the United States is an indispensable party, and if the litigation arises out of this Compact or its application, and if a signatory State is a party thereto.

- B. The States of Arkansas and Oklahoma mutually agree and consent to be sued in the United States District Court under the provisions of Public Law 87-830 as enacted October 15, 1962, or as may be thereafter amended.
- C. Notice of ratification by the legislature of each State shall be given by the Governor of that State to the Governor of the other State, and to the President of the United States, and the President is hereby requested to give notice to the Governor of each State of consent by the Congress of the United States.

IN WITNESS WHEREOF, the authorized representatives have executed three counterparts hereof each of which shall be and constitute an original, one of which shall be deposited with the Administrator of General Services of the United States, and one of which shall be forwarded to the Governor of each State.

DONE at the City of Tulsa, State of Oklahoma, this 3rd day of March, A.D., 19 72.

Comment

The Committee wishes to stress the importance of this Article. The utilization of the water resources of this Basin is in large part dependent upon storage facilities. Regulatory works are needed to control and to put the water to use. This area is a single unit within a larger area, the Arkansas-Red-White River Basins in which the pattern of development has been well established. It is now being and must in the future be achieved largely with the assistance and cooperation of the United States government. It is the hope of this Committee that there will be no need to exercise the consent authority which is sought in this Article. As a practical matter, however, should interstate litigation arise out of

the Compact or its application in which the United States is an indispensable party, no satisfactory solution can be reached unless the United States is made a party thereto.


The members of the Arkansas-Oklahoma Arkansas River Compact Committee agree March 3, 1972, that the foregoing statement expresses the intent of the Committee with regard to the draft of the Arkansas-Oklahoma Arkansas River Basin Compact dated November 25, 1969.


FOR ARKANSAS:


FOR OKLAHOMA:


S. Keith Jackson
Committee Member


Glade R. Kirkpatrick
Committee Member


John Luce
Committee Member
(Alternate)


Milton Craig
Committee Member
(Alternate)

Approved: 
Trigg Twichell, Representative
United States of America

Attest: 
Willard B. Mills, Secretary

ARKANSAS RIVER BASIN COMPACT

ARKANSAS-OKLAHOMA

APPENDIX I

Computation of Annual Yield

Article II J of the Arkansas River Compact - Arkansas-Oklahoma described "annual yield," which is a term basic to the allocations of this Compact. It refers to the runoff which would occur from any specified area under unaltered natural conditions - i.e., where there would be no artificial man-made depletions of or additions to the original supply and no regulation of that supply.

The only time this could be measured absolutely would be before any facilities to utilize, import or impound water were constructed; and before any of man's activities altered rainfall-runoff relations. Land management practices, while possibly significant for some areas, are difficult to evaluate and will be disregarded, at this time, in the computations to meet the requirements for the administration of this Compact. The accuracy of annual yield determinations will be dependent upon how accurately depletions, and their ratio to total water yield, can be computed. Fortunately, present depletions for most of the compact area are small in relation to the original yield and, until such time that additional developments are made, only reasonable estimates will suffice to assure that terms of the Compact are being met.

Basically, the determinations that are required are as follows:
(1) the measurement or computation of the actual runoff from each of the several "sub-basins" as defined by the Compact for each water

year; (2) the computation of the corresponding total depletions and/or accretions in each of the respective sub-basins; (3) the sum of items (1) and (2) to obtain the "annual yield" for each basin; and (4) multiply item (3) by 100 minus the percent depletion allowed in Article IV of the Compact; and (5) compute deficiency, if any, by comparing item (4) with item (1). The following outlines procedures for computing each of these items:

Item 1. Reliable estimates to meet this requirement can be readily made for the several sub-basins on the basis of the existing (1970) stream-gaging stations. (See figure 1 for location of stations). All of the larger streams draining from the State of Arkansas into the State of Oklahoma are gaged in or near the stateline, and acceptable estimates for the total outflow from each sub-basin can be made on the basis of these records plus estimated flows from ungaged areas.

The computation of actual runoff from the Arkansas River Sub-basin will need to take into account both the inflow and outflow from the area. This computation can be made by application of the following equation:

$$Q_A = Q_V - \sqrt{Q_M} + Q_W + Q_2 + Q_3 + Q_4$$

in which

Q_A = Total annual discharge originating from the Arkansas River Sub-Basin.

Q_V = Total annual discharge of the Arkansas River immediately below the mouth of Lee Creek presently measured at Van Buren gaging station.

Q_M = Total annual discharge of the Arkansas River immediately below the mouth of the Grand Neosho River, presently measured at the Muskogee gaging station.

Q_W = Total annual discharge of the Canadian River at Eufaula Dam, presently measured at Whitefield gaging station.

Q_2 = Total annual outflow from the Illinois River Sub-basin.

Q_3 = Total annual outflow from the Lee Creek Sub-basin.

Q_4 = Total annual outflow from the Poteau River Sub-basin.

Item 2. The total annual depletion in each sub-basin will be the sum of the following:

- (a) Total stream diversions minus return flows.
- (b) Depletions and/or accretions by major reservoirs.
- (c) Evaporation losses from other than major reservoirs.
- (d) Pumpage of ground water from alluvium aquifers.

The following comments relate to each of the above:

(a) Reliable data on this item are not generally available at this time but will need to be firmed up as development of the area's resources progresses. The principal items will be diversions for irrigation and for municipal and industrial water supplies. In the case of small irrigation uses, satisfactory estimates of consumption can be made on basis of acres and types of crops irrigated. Withdrawals for municipal and industrial uses are generally available but estimates of return flows may be necessary. So long as these diversions are small in relation to total runoff no high degree of accuracy will be required.

(b) Depletions caused by major reservoirs will probably be most significant. The depletion from such reservoirs for a given period will be the difference between inflow and outflow and can be determined from the following (all terms expressed in acre-feet):

The inflow, I, at damsite that would have occurred if reservoir had not been in place, can be computed by the following:

$$I = O \pm \Delta S + E + D - P + p,$$

in which

O = Outflow as measured at gaging station below dam, or from gate and spillway ratings.

ΔS = Change in storage volume at beginning and end of period.

P = Precipitation on reservoir surface.

p = Runoff that would have occurred from area covered by reservoir, computed by a derived rainfall-runoff factor, c times P, or cP.

E = Evaporation from reservoir surface.

D = Direct diversions from reservoir storage, not included in outflow; seepage from reservoir may also be a factor and, if not included in measured outflow as at gaging station below dam, should be estimated.

As the depletion is inflow minus outflow, this can be written:

$$I - O = -P + p + \Delta S + E + D.$$

(c) Evaporation from small lakes, such as those not designed for water supply, including flood-detention structures, farm ponds, and recreation lakes, may be estimated on basis of average water surface area and appropriate data from evaporation-pan records.

(d) Pumpage from stream alluviums may cause appreciable depletions in stream flow. This is not believed to be a factor at the present (1969) time, but could conceivably be in the future for some stream reaches.

CONCLUSION

The Arkansas River Compact Commission, with the assistance of a Technical Advisory Group, should include, as part of their annual

report, information on basin yields and depletions. Until such time as available data reveal that allocations between the States for any of the several sub-basins is in prospect of not being met, only generalized information will be adequate. As additional developments occur, the Commission should take steps to assure that the collection of basic data will be adequate to meet the needs of administration. As a minimum, the Commission should require the installation of instrumentation at such new reservoirs as will permit accurate determination of sub-basin inflow-outflow records.

Although allocations are to be based on annual yields, to be determined by December 31 of each year, current records will be required in the event provisions of Article V(B) need to be met, i.e., the delivery of sixty percent of current runoff to make up a deficiency.

The Commission should make continuing studies of the hydrology of the Basin for improvements or expansions in the collection of basic data as are needed to meet the changing needs for the administration of the Compact.

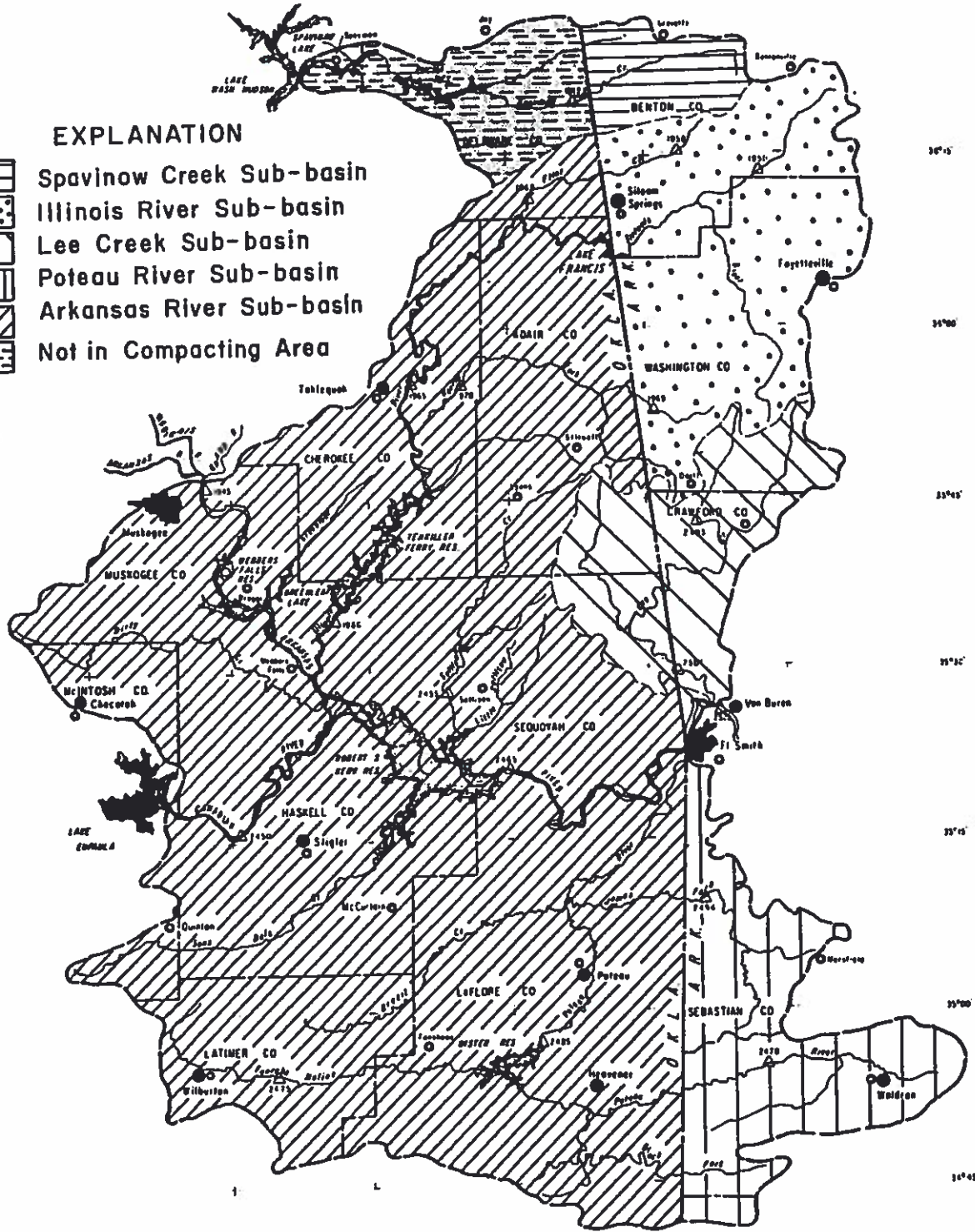
FIGURE 1
 ARKANSAS-OKLAHOMA ARKANSAS RIVER COMPACT AREA

- CITIES
- PRECIPITATION STATIONS
- △ GAGING STATIONS



EXPLANATION

- Spavinow Creek Sub-basin
- Illinois River Sub-basin
- Lee Creek Sub-basin
- Poteau River Sub-basin
- Arkansas River Sub-basin
- Not in Compacting Area



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Revised March 3, 1972
 NOVEMBER 25, 1969