

INTERSTATE WATER COMPACTS

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I. Nature of Compacts

Interstate compacts are agreements or contracts between two or more states. The legal authority for interstate compacts is found in Article I, Section 10 of the United States Constitution. A compact, enacted in accordance with the Constitution, can address any number of interstate disputes, including issues of water quality and water allocation.

Historically, the two most common methods of interstate water allocation have been through compacts and litigation. Litigation has proven to be a very slow, expensive and risky means to resolve interstate disputes. Compacts, on the other hand, allow states to negotiate so as to achieve a result that best suits its needs. While this is not a quick process, it does tend to be slightly less time-consuming than litigation. Negotiating a compact also tends to be significantly less expensive than litigation.

Once a compact is agreed to, each state must have the document adopted as state law. In addition, to be valid, the compact must be ratified by Congress. Because of this process, compacts enjoy a dual legal status as both state and federal law.

II. Nebraska Interstate Water Compacts

The State of Nebraska has entered into a number of compacts in order to provide a firm water supply for its citizens. The following is a list of those compacts and a brief description of each compact.

A. South Platte River Compact: This compact was entered into between Nebraska and Colorado in 1923. According to this compact, certain Colorado irrigators are to be regulated for the benefit of Nebraska when certain events occur. Unfortunately, the compact fails to regulate large upstream water users in Colorado. As a result, the South Platte generally has flows into Nebraska that are quite low.

B. Republican River Compact: This compact was entered into between Nebraska, Colorado and Kansas in 1942. The compact has been subject to much criticism because it divides the waters of the Republican River among the states based upon a complex, inaccurate accounting method. As a result of this accounting method, the waters are, in effect, divided in an ex post facto fashion. This method does not leave any clear options for regulation of users available to upstream states. In addition, it probably doesn't reflect the intent of the original negotiators.

C. Wyoming-Nebraska Upper Niobrara Compact: This compact was signed by Nebraska in 1962. Its intent was to divide the waters of the Upper Niobrara River and engage in a study with Wyoming of the surrounding ground water. Unfortunately, no funding for such a study has ever been approved and virtually no activity has occurred regarding this compact.

D. Blue River Basin Compact: This compact was entered into between Nebraska and the State of Kansas in 1971. While the focus of this compact is to divide the waters of the Blue Rivers between Nebraska and Kansas, it is unique for several reasons. First, it requires Nebraska, under certain circumstances, to regulate ground water irrigators for the benefit of Kansas water users. (Thus far Nebraska has not needed to exercise that authority). Second, this compact addresses water quality concerns. Recently, water quality concerns of Kansas were addressed at a compact meeting. Those concerns focused on high levels of atrazine found in waters entering Kansas. In accordance with the compact, Nebraska is taking action to rectify the problem.