

CHAPTER 61-23 YELLOWSTONE RIVER COMPACT

61-23-01. Ratification of Yellowstone River Compact between the states of Montana, North Dakota, and Wyoming. The legislative assembly of the state of North Dakota hereby approves and ratifies the compact designated as the "Yellowstone River Pact", dated at the city of Billings, state of Montana, on the eighth day of December 1950. Signed by I. A. Acker, Einar H. Dahl, and J. J. Walsh as the state representatives of the state of North Dakota on a compact commission between the states of Montana, North Dakota, and Wyoming, which compact is as follows:

YELLOWSTONE RIVER COMPACT

The state of Montana, the state of North Dakota, and the state of Wyoming, being moved by consideration of interstate comity, and desiring to remove all causes of present and future controversy between said states and between persons in one and persons in another with respect to the waters of the Yellowstone River and its tributaries, other than waters within or waters which contribute to the flow of streams within the Yellowstone National Park, and desiring to provide for an equitable division and apportionment of such waters, and to encourage the beneficial development and use thereof, acknowledging that in future projects or programs for the regulation, control, and use of water in the Yellowstone River basin the great importance of water for irrigation in the signatory states shall be recognized, have resolved to conclude a compact as authorized under the Act of Congress of the United States of America, approved June 2, 1949 [Public Law 83, 81st Congress, First Session], for the attainment of these purposes, and to that end, through their respective governments, have named as their respective commissioners:

For the state of Montana: Fred E. Buck, A. W. Bradshaw, H. W. Bunston, John Herzog, John M. Jarussi, Ashton Jones, Chris Josephson, A. Wallace Kingsbury, P. F. Leonard, Walter M. McLaughlin, Dave M. Manning, Joseph Muggli, Chester E. Onstad, Ed F. Parriott, R. R. Renne, Keith W. Trout;

For the state of North Dakota: I. A. Acker, Einar H. Dahl, J. J. Walsh;

For the state of Wyoming: L. C. Bishop, Earl T. Bower, J. Harold Cash, Ben F. Cochrane, Ernest J. Goppert, Richard L. Greene, E. C. Gwillim, E. J. Johnson, Lee E. Keith, N. V. Kurtz, Harry L. Littlefield, R. E. McNally, Will G. Metz, Mark M. Partridge, Alonzo R. Shreve, Charles M. Smith, Leonard F. Thornton, M. B. Walker who, after negotiations participated in by R. J. Newell, appointed as the representative of the United States of America, have agreed upon the following articles, to wit:

ARTICLE I.

- A. Where the name of a state is used in this compact, as a party thereto, it shall be construed to include the individuals, corporations, partnerships, associations, districts, administrative departments, bureaus, political subdivisions, agencies, persons, permittees, appropriators, and all others using, claiming, or in any manner asserting any right to the use of the waters of the Yellowstone River system under the authority of said state.
- B. Any individual, corporation, partnership, association, district, administrative department, bureau, political subdivision, agency, person, permittee, or appropriator authorized by or under the laws of a signatory state, and all others using, claiming, or in any manner asserting any right to the use of the waters of the Yellowstone River system under the authority of said state, shall be subject to the terms of this compact. Where the singular is used in this article, it shall be construed to include the plural.

ARTICLE II.

- A. The state of Montana, the state of North Dakota, and the state of Wyoming are hereinafter designated as "Montana", "North Dakota", and "Wyoming", respectively.
- B. The terms "commission" and "Yellowstone River compact commission" mean the agency created as provided herein for the administration of this compact.
- C. The term "Yellowstone River basin" means areas in Wyoming, Montana, and North Dakota drained by the Yellowstone River and its tributaries, and includes the area in Montana known as Lake Basin, but excludes those lands lying within Yellowstone National Park.
- D. The term "Yellowstone River system" means the Yellowstone River and all of its tributaries, including springs and swamps, from their sources to the mouth of the Yellowstone River near Buford, North Dakota, except those portions thereof which are within or contribute to the flow of streams within the Yellowstone National Park.
- E. The term "tributary" means any stream which in a natural state contributes to the flow of the Yellowstone River, including interstate tributaries and tributaries thereof, but excluding those which are within or contribute to the flow of streams within the Yellowstone National Park.
- F. The term "interstate tributaries" means the Clarks Fork, Yellowstone River; the Bighorn River (except Little Bighorn River); the Tongue River; and the Powder River, whose confluences with the Yellowstone River are respectively at or near the city (or town) of Laurel, Big Horn, Miles City, and Terry, all in the state of Montana.
- G. The terms "divert" and "diversion" mean the taking or removing of water from the Yellowstone River or any tributary thereof when the water so taken or removed is not returned directly into the channel of the Yellowstone River or of the tributary from which it is taken.
- H. The term "beneficial use" is herein defined to be that use by which the water supply of a drainage basin is depleted when usefully employed by the activities of man.
- I. The term "domestic use" shall mean the use of water by an individual, or by a family unit or household for drinking, cooking, laundering, sanitation, and other personal comforts and necessities; and for the irrigation of a family garden or orchard not exceeding one-half acre in area.
- J. The term "stock water use" shall mean the use of water for livestock and poultry.

ARTICLE III.

- A. It is considered that no commission or administrative body is necessary to administer this compact or divide the waters of the Yellowstone River basin as between the states of Montana and North Dakota. The provisions of this compact, as between the states of Wyoming and Montana, shall be administered by a commission composed of one representative from the state of Wyoming and one representative from the state of Montana, to be selected by the governors of said states as such states may choose, and one representative selected by the director of the United States geological survey or whatever federal agency may succeed to the functions and duties of that agency, to be appointed by the director at the request of the states to sit with the commission and who shall, when present, act as chairman of the commission without vote, except as herein provided.
- B. The salaries and necessary expenses of each state representative shall be paid by the respective state; all other expenses incident to the administration of this compact not borne by the United States shall be allocated to and borne one-half by the state of Wyoming and one-half by the state of Montana.

- C. In addition to other powers and duties herein conferred upon the commission and the members thereof, the jurisdiction of the commission shall include the collection, correlation, and presentation of factual data, the maintenance of records having a bearing upon the administration of this compact, and recommendations to such states upon matters connected with the administration of this compact, and the commission may employ such services and make such expenditures as reasonable and necessary within the limit of funds provided for that purpose by the respective states, and shall compile a report for each year ending September thirtieth and transmit it to the governors of the signatory states on or before December thirty-first of each year.
- D. The secretary of the army; the secretary of the interior; the secretary of agriculture; the chairman, federal power commission; the secretary of commerce, or comparable officers of whatever federal agencies may succeed to the functions and duties of these agencies, and such other federal officers and officers of appropriate agencies of the signatory states having services or data useful or necessary to the compact commission, shall cooperate, ex officio, with the commission in the execution of its duty in the collection, correlation, and publication of records and data necessary for the proper administration of the compact; and these officers may perform such other services related to the compact as may be mutually agreed upon with the commission.
- E. The commission shall have power to formulate rules and regulations and to perform any act which they may find necessary to carry out the provisions of this compact, and to amend such rules and regulations. All such rules and regulations shall be filed in the office of the state engineer of each of the signatory states for public inspection.
- F. In case of the failure of the representatives of Wyoming and Montana to unanimously agree on any matter necessary to the proper administration of this compact, then the member selected by the director of the United States geological survey shall have the right to vote upon the matters in disagreement and such points of disagreement shall then be decided by a majority vote of the representatives of the states of Wyoming and Montana and said member selected by the director of the United States geological survey, each being entitled to one vote.
- G. The commission herein authorized shall have power to sue and be sued in its official capacity in any federal court of the signatory states, and may adopt and use an official seal which shall be judicially noticed.

ARTICLE IV. The commission shall itself, or in conjunction with other responsible agencies, cause to be established, maintained, and operated such suitable water gaging and evaporation stations as it finds necessary in connection with its duties.

ARTICLE V.

- A. Appropriative rights to the beneficial uses of the water of the Yellowstone River system existing in each signatory state as of January 1, 1950, shall continue to be enjoyed in accordance with the laws governing the acquisition and use of water under the doctrine of appropriation.
- B. Of the unused and unappropriated waters of the interstate tributaries of the Yellowstone River as of January 1, 1950, there is allocated to each signatory state such quantity of that water as shall be necessary to provide supplemental water supplies for the rights described in paragraph A of this article V, such supplemental rights to be acquired and enjoyed in accordance with the laws governing the acquisition and use of water under the doctrine of appropriation, and the remainder of the unused and unappropriated water is allocated to each state for storage or direct diversions for beneficial use on new lands or for other purposes as follows:

1. Clarks Fork, Yellowstone River
 - a. To Wyoming 60%
 - To Montana 40%
 - b. The point of measurement shall be below the last diversion from Clarks Fork above Rock Creek.

2. Bighorn River (Exclusive of Little Bighorn River)
 - a. To Wyoming 80%
 - To Montana 20%
 - b. The point of measurement shall be below the last diversion from the Bighorn River above its junction with the Yellowstone River, and the inflow of the Little Bighorn River shall be excluded from the quantity of water subject to allocation.

3. Tongue River
 - a. To Wyoming 40%
 - To Montana 60%
 - b. The point of measurement shall be below the last diversion from the Tongue River above its junction with the Yellowstone River.

4. Powder River (Including the Little Powder River)
 - a. To Wyoming 42%
 - To Montana 58%
 - b. The point of measurement shall be below the last diversion from the Powder River above its junction with the Yellowstone River.

- C. The quantity of water subject to the percentage allocations, in paragraph B 1, 2, 3, and 4 of this article V, shall be determined on an annual water year basis measured from October first of any year through September thirtieth of the succeeding year. The quantity to which the percentage factors shall be applied through a given date in any water year shall be, in acre-feet, equal to the algebraic sum of:
 1. The total diversions, in acre-feet, above the point of measurement, for irrigation, municipal, and industrial uses in Wyoming and Montana developed after January 1, 1950, during the period from October first to that given date;
 2. The net change in storage, in acre-feet, in all reservoirs in Wyoming and Montana above the point of measurement completed subsequent to January 1, 1950, during the period from October first to that given date;
 3. The net change in storage, in acre-feet, in existing reservoirs in Wyoming and Montana above the point of measurement, which is used for irrigation, municipal, and industrial purposes developed after January 1, 1950, during the period October first to that given date;
 4. The quantity of water, in acre-feet, that passed the point of measurement in the stream during the period from October first to that given date.

D. All existing rights to the beneficial use of waters of the Yellowstone River in the states of Montana and North Dakota, below Intake, Montana, valid under the laws of these states as of January 1, 1950, are hereby recognized and shall be and remain unimpaired by this compact. During the period May first to September thirtieth, inclusive, of each year, lands within Montana and North Dakota shall be entitled to the beneficial use of the flow of waters of the Yellowstone River below Intake, Montana, on a proportionate basis of acreage irrigated. Waters of tributary streams, having their origin in either Montana or North Dakota, situated entirely in said respective states and flowing into the Yellowstone River below Intake, Montana, are allotted to the respective states in which situated.

E. There are hereby excluded from the provisions of this compact:

1. Existing and future domestic and stock water uses of water:

Provided, that the capacity of any reservoir for stock water so excluded shall not exceed 20 acre-feet;

2. Devices and facilities for the control and regulation of surface waters.

F. From time to time the commission shall reexamine the allocations herein made and upon unanimous agreement may recommend modifications therein as are fair, just and equitable, giving consideration among other factors to:

Priorities of water rights;

Acreage irrigated;

Acreage irrigable under existing works; and

Potentially irrigable lands.

ARTICLE VI. Nothing contained in this compact shall be so construed or interpreted as to affect adversely any rights to the use of the waters of Yellowstone River and its tributaries owned by or for Indians, Indian tribes, and their reservations.

ARTICLE VII.

A. A lower signatory state shall have the right, by compliance with the laws of an upper signatory state, except as to legislative consent, to file application for and receive permits to appropriate and use any waters in the Yellowstone River system not specifically apportioned to or appropriated by such upper state as provided in article V; and to construct or participate in the construction and use of any dam, storage reservoir, or diversion works in such upper state for the purpose of conserving and regulating water that may be apportioned to or appropriated by the lower state: Provided, that such right is subject to the rights of the upper state to control, regulate, and use the water apportioned to and appropriated by it; and provided further, that should an upper state elect, it may share in the use of any such facilities constructed by a lower state to the extent of its reasonable needs upon assuming or guaranteeing payment of its proportionate share of the cost of the construction, operation, and maintenance. This provision shall apply with equal force and effect to an upper state in the circumstances of the necessity of the acquisition of rights by an upper state in a lower state.

B. Each claim hereafter initiated for an appropriation of water in one signatory state for use in another signatory state shall be filed in the office of the state engineer of the signatory state in which the water is to be diverted, and a duplicate copy of the application or notice shall be filed in the office of the state engineer of the signatory state in which the water is to be used.

- C. Appropriations may hereafter be adjudicated in the state in which the water is diverted, and where a portion or all of the lands irrigated are in another signatory state, such adjudications shall be confirmed in that state by the proper authority. Each adjudication is to conform with the laws of the state where the water is diverted and shall be recorded in the county and state where the water is used.
- D. The use of water allocated under article V of this compact for projects constructed after the date of this compact by the United States of America or any of its agencies or instrumentalities, shall be charged as a use by the state in which the use is made: Provided, that such 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 lower signatory state shall have the right to acquire in an upper state by purchase, or through exercise of the power of eminent domain, such lands, easements, and rights of way for the construction, operation, and maintenance of pumping plants, storage reservoirs, canals, conduits, and appurtenant works as may be required for the enjoyment of the privileges granted herein to such lower state. This provision shall apply with equal force and effect to an upper state in the circumstance of the necessity of the acquisition of rights by an upper state in a lower state.

ARTICLE IX. Should any facilities be constructed by a lower signatory state in an upper signatory state under the provisions of article VII, the construction, operation, repairs, and replacements of such facilities shall be subject to the laws of the upper state. This provision shall apply with equal force and effect to an upper state in the circumstance of the necessity of the acquisition of rights by an upper state in a lower state.

ARTICLE X. No water shall be diverted from the Yellowstone River basin without the unanimous consent of all the signatory states. In the event water from another river basin shall be imported into the Yellowstone River basin or transferred from one tributary basin to another by the United States of America, Montana, North Dakota, or Wyoming, or any of them jointly, the state having the right to the use of such water shall be given proper credit therefor in determining its share of the water apportioned in accordance with article V herein.

ARTICLE XI. The provisions of this compact shall remain in full force and effect until amended in the same manner as it is required to be ratified to become operative as provided in article XV.

ARTICLE XII. This compact may be terminated at any time by unanimous consent of the signatory states, and upon such termination all rights then established hereunder shall continue unimpaired.

ARTICLE XIII. Nothing in this compact shall be construed to limit or prevent any state from instituting or maintaining any action or proceeding, legal or equitable, in any federal court or the United States Supreme Court, for the protection of any right under this compact or the enforcement of any of its provisions.

ARTICLE XIV. The physical and other conditions characteristic of the Yellowstone River and peculiar to the territory drained and served thereby and to the development thereof, have actuated the signatory states in the consummation of this compact, and none of them, nor the United States of America by its consent and approval, concedes thereby the establishment of any general principle or precedent with respect to other interstate streams.

ARTICLE XV. This compact shall become operative when approved by the legislature of each of the signatory states and consented to and approved by the Congress of the United States.

ARTICLE XVI. Nothing in this compact shall be deemed:

- (a) To impair or affect the sovereignty or jurisdiction of the United States of America in or over the area of waters affected by such compact, any rights or powers of the United States of America, its agencies, or instrumentalities, in and to the use of the waters of the Yellowstone River basin nor its capacity to acquire rights in and to the use of said waters;
- (b) To subject any property of the United States of America, its agencies, or instrumentalities to taxation by any state or subdivision thereof, nor to create an 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 whatsoever kind, to make any payments to any state or political subdivision thereof, state agency, municipality, or entity whatsoever in reimbursement for the loss of taxes; and
- (c) To subject 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 these laws would apply without regard to the compact.

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

ARTICLE XVIII. No sentence, phrase, or clause in this compact or in any provision thereof, shall be construed or interpreted to divest any signatory state or any of the agencies or officers of such states of the jurisdiction of the water of each state as apportioned in this compact.

In Witness Whereof the commissioners have signed this compact in quadruplicate original, one of which shall be filed 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 signatory state.

Done at the city of Billings in the state of Montana, this 8th day of December, in the year of our Lord, one thousand nine hundred and fifty.

Commissioners for the state of Montana:

Fred E. Buck, A. W. Bradshaw, H. W. Bunston, John Herzog, John M. Jarussi, Ashton Jones, Chris Josephson, A. Wallace Kingsbury, P. F. Leonard, Walter M. McLaughlin, Dave M. Manning, Joseph Muggli, Chester E. Onstad, Ed F. Parriott, R. R. Renne, Keith W. Trout.

Commissioners for the state of North Dakota:

I. A. Acker, Einar H. Dahl, J. J. Walsh.

Commissioners for the state of Wyoming:

L. C. Bishop, Earl T. Bower, J. Harold Cash, Ben F. Cochrane, Ernest J. Goppert, Richard L. Greene, E. C. Gwillim, E. J. Johnson, Lee E. Keith, N. V. Kurtz, Harry L. Littlefield, R. E. McNally, Will G. Metz, Mark M. Partridge, Alonzo R. Shreve, Charles M. Smith, Leonard F. Thornton, M. B. Walker.

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

R. J. Newell,

Representative of the United States of America"

61-23-02. Compact not binding until approved by other states and the Congress of the United States - Governor to give notice of ratification. Said compact shall not be binding or obligatory upon any of the high contracting parties thereto unless and until the same shall have been approved by the legislature of each of the said states and by the Congress of the United States. The governor of North Dakota shall give notice of the ratification and approval of said compact by the thirty-second legislative assembly of the state of North Dakota to the governors of each of the remaining signatory states and to the president of the United States.