

2021 Kansas Statutes

82a-528. **Arkansas river basin compact.** The legislature hereby ratifies the compact, designated as the "Arkansas river compact," between the states of Oklahoma and Kansas signed in the city of Wichita, state of Kansas, on the thirty-first day of March, 1965, by Geo. R. Benz and Frank Raab as representatives for the state of Oklahoma, Robert L. Smith and Warden L. Noe as representatives for the state of Kansas, and Trigg Twichell as representative of the United States of America, which said compact is as follows:

ARKANSAS RIVER BASIN COMPACT, KANSAS-OKLAHOMA

The state of Kansas and the state of Oklahoma, acting through their duly authorized compact representatives, Robert L. Smith and Warden L. Noe, for the state of Kansas, and Geo. R. Benz and Frank Raab, for the state of Oklahoma, after negotiations participated in by Trigg Twichell, appointed by the president as the representative of the United States of America, and in accordance with the consent to such negotiations granted by an act of congress of the United States of America, approved August 11, 1955 (public law 340, 84th congress, 1st session), have agreed as follows respecting the waters of the Arkansas river and its tributaries:

Article I

The major purposes of this compact are: A. To promote interstate comity between the states of Kansas and Oklahoma:

- B. To divide and apportion equitably between the states of Kansas and Oklahoma the waters of the Arkansas river basin 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.

Article II

As used in this compact: A. The term "state" shall mean 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 "Kansas-Oklahoma Arkansas river commission" or the term "commission" means the agency created by this compact for the administration thereof;

C. The term "Arkansas river" means that portion of the Arkansas river from a point immediately below the confluence of the Arkansas and Little Arkansas rivers in the vicinity of Wichita, Kansas, to a point immediately below the confluence of the Arkansas river with the Grand-Neosho river near Muskogee, Oklahoma;

D. The term "Arkansas river basin" means all of the drainage basin of the Arkansas river as delimited above, including all tributaries which empty into it between the upstream and downstream limits;

E. The term "waters of the Arkansas river and its tributaries" means the waters originating in the Arkansas river basin;

F. The term "conservation storage capacity" means that portion of the active storage capacity of reservoirs, including multipurpose reservoirs, with a conservation storage capacity in excess of 100 acre-feet, available for the storage of water for subsequent use, but it excludes any portion of the storage capacity allocated to flood and sediment control and inactive storage capacity allocated to other uses;

G. The term "new conservation storage capacity" means conservation storage capacity for which construction is initiated after July 1, 1963, and storage capacity not presently

allocated for conservation storage which is converted to conservation storage capacity after July 1, 1963, in excess of the quantities of declared conservation storage capacity as set forth in the storage table attached to and made a part of the minutes of the twenty-fourth meeting of the compact committee dated September 1, 1964, and as filed and identified to this compact in the offices of the secretaries of state of the respective states;

H. 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.

Article III

The physical and other conditions peculiar to the Arkansas river basin constitute the basis for 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.

Article IV

A. For the purpose of apportionment of water between the two states, the Arkansas river basin is hereby divided into major topographic subbasins as follows: (1) The Grand-Neosho river subbasin; (2) the Verdigris river subbasin; (3) the Salt Fork river subbasin; (4) the Cimarron river subbasin; and (5) the mainstem Arkansas river subbasin which shall consist of the Arkansas river basin, excepting the Grand-Neosho river, Verdigris river, Salt Fork river, and Cimarron river subbasins.

B. The two states recognize that portions of other states not signatory to this compact lie within the drainage area of the Arkansas river basin as herein defined. The water apportionments provided for in this compact are not intended to affect nor do they affect the rights of such other states in and to the use of the waters of the basin.

Article V

The state of Kansas shall have free and unrestricted use of the waters of the Arkansas river basin within Kansas subject to the provisions of this compact and to the limitations set forth below:

A. New conservation storage capacity in the Grand-Neosho river subbasin within the state of Kansas shall not exceed 650,000 acre-feet plus an additional capacity equal to the new conservation storage in said drainage basin in Oklahoma excepting storage on Spavinaw creek;

B. New conservation storage capacity in the Verdigris river subbasin within the state of Kansas shall not exceed 300,000 acre-feet plus an additional capacity equal to the new conservation storage in said drainage basin in Oklahoma, excepting navigation capacity allocated in Oologah reservoir;

C. New conservation storage capacity in the mainstem Arkansas river subbasin within the state of Kansas shall not exceed 600,000 acre-feet plus an additional capacity equal to the new conservation storage in said drainage basin in Oklahoma;

D. New conservation storage capacity in the Salt Fork river subbasin within the state of Kansas shall not exceed 300,000 acre-feet plus an additional capacity equal to the new conservation storage in said drainage basin in Oklahoma;

E. New conservation storage capacity in the Cimarron river subbasin within the state of Kansas shall not exceed 5,000 acre-feet, provided that new conservation storage capacity in excess of that amount may be constructed if specific project plans have first been submitted to and have received the approval of the commission.

Article VI

The state of Oklahoma shall have free and unrestricted use of the waters of the Arkansas river basin within Oklahoma subject to the provisions of this compact and to the limitations set forth below:

New conservation storage capacity in the Cimarron river subbasin within the state of Oklahoma shall not exceed 5,000 acre-feet provided that new conservation storage capacity in excess of that amount may be constructed if specific project plans have first been submitted to and have received the approval of the commission.

Article VII

A. The commission shall determine the conditions under which one state may construct and operate for its needs new conservation storage capacity in the other state. The construction or utilization of new conservation storage capacity by one state in the other state shall entitle the state whose storage potential is reduced by such construction to construct an equal amount of new conservation storage in a subbasin agreeable to the commission.

B. New conservation storage capacity constructed by the United States or any of its agencies, instrumentalities or wards, or by a state, political subdivision thereof, or any person or persons shall be charged against the state in which the use is made.

C. Each state has the unrestricted right to replace within the same subbasin, any conservation storage capacity made unusable by any cause.

D. In the event reallocation of storage capacity in the Arkansas river basin in Oklahoma should result in the reduction of that state's new conservation storage capacity, such reallocation shall not reduce the total new conservation storage capacities available to Kansas under Article V; provided that a subsequent reinstatement of such storage capacity shall not be charged as an increase in Oklahoma's new conservation storage capacity.

Article VIII

A. In the event of importation of water to a major subbasin of the Arkansas river basin from another river basin, or from another major subbasin within the same state, the state making the importation shall have exclusive use of such imported waters.

B. In the event of exportation of water from a major subbasin for use in another major subbasin or for use outside the Arkansas river basin within the same state, the limitations of Article V and VI on new conservation capacity shall apply against the subbasin from which the exportation is made in the amount of the storage capacity actually used for that purpose within the exporting subbasin or, in the event of direct diversion of water without storage, on the basis of five acre-feet of conservation storage capacity for each acre-foot of water on the average so diverted annually.

C. Any reservoir storage capacity which is required for the control and utilization of imported waters shall not be accounted as new conservation storage.

D. Should a transbasin diversion of waters of the Arkansas river basin be made in one state for the use and benefit of the other state or both states, the commission shall determine a proper accounting of new conservation storage capacities in each state in accordance with the above principles and with the project uses to be made in that state.

Article IX

The states of Kansas 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 Kansas and Oklahoma to investigate and abate sources of alleged interstate pollution within the Arkansas river basin whenever such matters are called to their attention by the commission;

C. Enter into joint programs for the identification and control of sources of natural pollution within the Arkansas river basin which the commission finds 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 the federal water pollution control act in the resolution of any pollution problems which cannot be resolved within the provisions of this compact.

Article X

A. There is hereby created an interstate administrative agency to be known as the "Kansas-Oklahoma Arkansas river commission." The commission shall be composed of three commissioners representing each of the states of Kansas and Oklahoma who shall be appointed by the governors of the respective states and, if designated by the president, one commissioner representing the United States. The president is hereby requested to designate a commissioner and an alternate representing the United States. The federal commissioner, if one be designated, shall be the presiding officer of the commission, but shall not have the right to vote in any of the deliberations of the commission.

B. One Kansas commissioner shall be the state official who now or hereafter shall be responsible for administering water law in the state; the other two commissioners shall reside in the Arkansas river basin in Kansas and shall be appointed to four-year staggered terms.

C. One Oklahoma commissioner shall be the state official who now or hereafter shall be responsible for administering water law in the state; the other two commissioners shall reside in the Arkansas river basin in Oklahoma and shall be appointed to four-year staggered terms.

D. A majority of the commissioners of each state and the commissioner or his alternate representing the United States, if 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. 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 "Kansas-Oklahoma Arkansas river commission fund." Such fund shall be initiated and maintained by equal payments of each state into the fund. Disbursements shall be made from said fund in such manner as may be authorized by the commission. Such fund 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.

Article XI

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 the 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 rules and regulations governing its operations;

(5) Cooperate with federal agencies in developing principles, consistent with the provisions of this compact and with federal policy, for the storage and release of water from all-federal capacities of federal 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;

(6) Permit either state, with the consent of the proper operating agency, to impound water, for such periods of time deemed necessary or desirable by the commission, in available reservoir storage capacity which is not designated as conservation or new conservation storage capacity for subsequent release and use for any purpose approved by the commission;

(7) Hold hearings and take testimony and receive evidence at such times and places as it deems necessary;

(8) 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;

(9) Print or otherwise reproduce and distribute all of its proceedings and reports.

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 the compact;

(2) Collect, analyze and report on data as to stream flows, water quality, conservation storage, and such other information as is necessary for the proper administration of the compact;

(3) 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;

(4) 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;

(5) Prepare and submit to the governor of each of the states of Kansas and Oklahoma an annual budget covering the anticipated expenses of the commission for the following fiscal year;

(6) Make available to the governor or any state agency of either state or to any authorized representatives of the United States, upon request, any information within its possession.

Article XII

A. Recognizing the present limited uses of the available water supplies of the Arkansas river basin in the two states and the uncertainties of their ultimate water needs, the states of Kansas and Oklahoma deem it imprudent and inadvisable to attempt at this time to make final allocations of the new conservation storage capacity which may ultimately be required in either state, and, by the limitations on storage capacity imposed herein, have not attempted to do so. Accordingly, after the expiration of 25 years following the effective date of this compact, the commission may review any provisions of the compact for the purpose of amending or supplementing the same, and shall meet for the consideration of such review on the request of the commissioners of either state: Provided, That 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 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 legislatures of both signatory states.

C. In the event of amendment or termination of the compact, all rights established under the compact shall continue unimpaired.

Article XIII

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.

Article XIV

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.

Article XV

This compact shall become binding and obligatory when it shall have been ratified by the legislatures 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. 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 in the archives of the department of state of the United States, and one of which shall be forwarded to the governor of each state.

Done at the City of Wichita, state of Kansas, this 31st day of March, A.D. 1965.

Approved: Robert L. Smith, Warden L. Noe,

Compact Representatives for the state of Kansas.

Geo. R. Benz, Frank Raab,

Compact Representatives for the state of Oklahoma.

Twigg Twitchell,

Representative of the United States.

History: L. 1966, ch. 16, § 1 (Special Session); June 10.