

46A-17-1. Compact with Wyoming--Ratification and approval--Text of compact. Ratification and approval is hereby given to the Belle Fourche River Compact as signed at the city of Cheyenne in the state of Wyoming on the eighteenth day of February, A. D. 1943, by L. C. Bishop, the state engineer and interstate streams commissioner of the state of Wyoming, and the above-named assistant commissioners, under and in accordance with the authority of the act of the Twenty-sixth Wyoming Legislature approved on the twenty-fourth day of February, 1941, entitled "An Act relating to the appointment of Interstate Streams Commissioner and assistant Commissioners to negotiate agreements relative to interstate streams and providing for the Governor of Wyoming to notify the Governors of other states as to the appointment of said Commissioner, detailing the authority of said Commissioner," which compact was also signed by the duly authorized commissioners of the State of South Dakota and approved by the representative of the United States, which Belle Fourche River Compact is in full as follows:

BELLE FOURCHE RIVER COMPACT

The states of South Dakota and Wyoming, parties signatory to this compact (hereinafter referred to as South Dakota and Wyoming, respectively, or individually as a state, or collectively as the states), have resolved to conclude a compact as authorized under the act of Congress of February 26, 1927, chapter 216, 44 Stat. 1247, and, after negotiations participated in by the following named state commissioners, For South Dakota: M. Q. Sharpe, G. W. Morsman, S. G. Mortimer, W. D. Buchholz. For Wyoming: L. C. Bishop, Samuel McKean, L. H. Robinson, Mrs. E. E. McKean and by Howard R. Stinson, appointed as the representative of the United States of America, have agreed upon the following articles, to wit:

ARTICLE I

A. The major purposes of this compact are to provide for the most efficient use of the waters of the Belle Fourche River Basin (hereinafter referred to as the basin) for multiple purposes; to provide for an equitable division of such waters; to remove all causes, present and future, which might lead to controversies; to promote interstate comity; to recognize that the most efficient utilization of the waters within the basin is required for the full development of the basin; and to promote joint action by the states and the United States in the efficient use of water and the control of floods.

B. The physical and other conditions peculiar to the basin constitute the basis for this compact; and none of the states hereby, nor the Congress of the United States by its consent, concedes that this compact establishes any general principle or precedent with respect to any

other interstate stream.

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

ARTICLE II

As used in this compact:

A. The term, Belle Fourche River, shall mean and include the Belle Fourche River and all its tributaries originating in Wyoming.

B. The term, basin, shall mean that area in South Dakota and Wyoming which is naturally drained by the Belle Fourche River, and all its tributaries.

C. 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, and includes water lost by evaporation, and other natural causes from streams, canals, ditches, irrigated areas, and reservoirs.

D. Where the name of the state or the term, state or states, is used, these shall be construed to include any person or entity of any nature whatsoever using, claiming, or in any manner asserting any right to the use of the waters of the Belle Fourche River under the authority of that state.

ARTICLE III

It shall be the duty of the two states to administer this compact through the official in each state who is now or may hereafter be charged with the duty of administering the public water supplies, and to collect and correlate through such officials the data necessary for the proper administration of the provisions of this compact. Such officials may, by unanimous action, adopt rules and regulations consistent with the provisions of this compact.

The United States geological survey, or whatever federal agency may succeed to the functions and duties of that agency, in so far as this compact is concerned, shall collaborate with the officials of the states charged with the administration of this compact in the execution of the duty of such officials in the collection, correlation, and publication of information necessary for the proper administration of this compact.

ARTICLE IV

Each state shall itself or in conjunction with other responsible agencies cause to be established, maintained, and operated such suitable water gauging stations as it finds necessary to administer this compact.

ARTICLE V

A. Wyoming and South Dakota agree that the unappropriated waters of the Belle Fourche River as of the date of this compact shall be allocated to each state as follows: ninety percent to South Dakota; ten percent to Wyoming; provided, that allocations to Wyoming shall be exclusive of the use of these waters for domestic and stock use, and Wyoming shall be allowed unrestricted use for these purposes, except that no reservoir for such use shall exceed twenty acre-feet in capacity. For storage of its allocated water, Wyoming shall have the privilege of purchasing at cost not to exceed ten percent of the total storage capacity of any reservoir or reservoirs constructed in Wyoming for irrigation of lands in South Dakota, or may construct reservoirs itself for the purpose of utilizing such water. Either state may temporarily divert, or store for beneficial use, any unused part of the above percentages allotted to the other, but no continuing right shall be established thereby.

B. Rights to the use of the waters of the Belle Fourche River, whether based on direct diversion or storage, are hereby recognized as of the date of this compact to the extent these rights are valid under the law of the state in which the use is made, and shall remain unimpaired hereby. These rights, together with the additional allocations made under A of this article, are agreed to be an equitable apportionment between the states of the waters of the basin.

C. The waters allocated under A of this article and the rights recognized under B of this article are hereinafter referred to collectively as the apportioned water. For the purposes of the administration of this compact and determining the apportioned water at any given date within a given calendar year, there shall be taken the sum of:

(1) The quantity of water in acre-feet that passed the Wyoming-South Dakota state line during the period from January first of that year to that given date.

(2) The quantity of water in acre-feet in storage on that date in all reservoirs built in Wyoming on the Belle Fourche River subsequent to the date of this compact.

ARTICLE VI

Any person, entity, or state shall have the right to acquire necessary property rights in another state by purchase or through the exercise of the power of eminent domain for the construction, operation and maintenance of storage reservoirs and of appurtenant works, canals, and conduits required for the enjoyment of the privileges granted by article V and article VII A; provided, however, that the grantees of such rights shall pay to the political subdivisions of the state in which such works are located, each and every year during which such rights are enjoyed for such purposes, a sum of money equivalent to the average annual amount of taxes assessed against the lands and improvements thereon during the ten years preceding the use of such lands in reimbursement for the loss of taxes to said political subdivisions of the state.

ARTICLE VII

A. Either state shall have the right, by compliance with the laws of the other state, to file applications for and receive permits to construct or participate in the construction and use of any dam, storage reservoir, or diversion works in such state for the purpose of conserving and regulating the apportioned water of the other state; provided, that such right is subject to the rights of the other state to control, regulate, and use water apportioned to it.

B. Each claim hereafter initiated for storage or diversion of water in one state for use in another state shall be filed in the office of the state engineer of the state in which the water is to be stored or diverted, and a duplicate copy of the application including a map showing the character and location of the proposed facilities and the lands to be irrigated shall be filed in the office of the state engineer of the state in which the water is to be used. If a portion or all the lands proposed to be reclaimed are located in a state other than the one in which the water is to be stored or diverted, then, before approval of the application shall be granted, said application shall be checked against the records of the appropriate office of the state in which the water is to be used, and a notation shall be placed thereon by the officer in charge of such records to the effect that the land description does not indicate a conflict with existing water rights. All endorsements shall be placed on both the original and duplicate copies of all such maps filed to

the end that the records in both states may be complete and identical.

C. Appropriations may hereafter be adjudicated in the state in which the water is stored or diverted, and where a portion or all of the lands irrigated are in the other state, such adjudications shall be confirmed in the latter state by the proper authority. Each adjudication is to conform with the laws of the state where the water is stored or diverted and shall be recorded in the county and state where the water is used.

ARTICLE VIII

In case any reservoir is constructed in Wyoming, to be used principally for irrigation of lands in South Dakota, sufficient water not to exceed ten cubic feet per second shall be released at all times for stock water use.

ARTICLE IX

No reservoir hereafter built solely to utilize the water allocated to Wyoming shall have a capacity in excess of one thousand acre-feet.

ARTICLE X

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

ARTICLE XI

This compact may be terminated at any time by unanimous consent of the states, and upon such termination, all rights then established hereunder or recognized hereby shall continue to be recognized as valid by the states notwithstanding the termination of the other provisions of the compact.

ARTICLE XII

Nothing in this compact shall be construed to limit or prevent either state from instituting or maintaining any action or proceeding, legal or equitable, in any 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 XIII

Nothing in this compact shall be deemed:

A. To impair or affect any rights or powers of the United States, its agencies, or instrumentalities, in and to the use of the waters of the Belle Fourche River nor its capacity to acquire rights in and to the use of said waters;

B. To subject any property of the United States, its agencies, or instrumentalities to taxation by either state or subdivision thereof, nor to create an obligation on the part of the United States, its agencies, or instrumentalities, by reason of the acquisition, construction or operation of any property or works of whatsoever kind, to make any payments to any state or political subdivision thereof, state agency, municipality, or entity whatsoever in reimbursement for the loss of taxes;

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

ARTICLE XIV

This compact shall become operative when approved by the Legislature of each of the states, and when consented to by the Congress of the United States by legislation providing, among other things, that:

A. Any beneficial uses hereafter made by the United States, or those acting by or under its authority, within a state, of the waters allocated by this compact, shall be within the allocations hereinabove made for the use into that state and shall be taken in account in determining the extent of use within that state.

B. The United States, or those acting by or under its authority, in the exercise of rights or powers arising from whatever jurisdiction the United States has in, over and to the waters of the Belle Fourche River and all its tributaries, shall recognize, to the extent consistent with the best utilization of the waters for multiple purposes, that beneficial use of the waters within the basins is of paramount importance to development of the basin, and no exercise of such power or right thereby that would interfere with the full beneficial use of the waters shall be made except upon a determination, giving due consideration to the objectives of this compact and after consultation with all interested federal agencies and the state officials charged with the administration of this compact, that such exercise is in the best interest of the best utilization of such waters for multiple purposes.

C. The United States, or those acting by or under its authority, will recognize any established use, for domestic and irrigation purposes, of the apportioned waters which may be impaired by the exercise of federal jurisdiction in, over, and to such waters; provided, that such use is being exercised beneficially, is valid under the laws of the appropriate state and in conformity with this compact at the time of the impairment thereof, and was validly initiated under state law prior to the initiation or authorization of the federal program or project which causes such impairment.

ARTICLE XV

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

In Witness Whereof the commissioners have signed this compact in triplicate 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 of the states.

Done at the city of Cheyenne in the state of Wyoming, this eighteenth day of February, in the year of Our Lord, One Thousand Nine Hundred and Forty-three.

Commissioners for South Dakota Commissioners for Wyoming
M. Q. SHARPE L. C. BISHOP
G. W. MORSMAN SAMUEL MCKEAN
S. G. MORTIMER L. H. ROBINSON
W. D. BUCHHOLZ MRS. E. E. MCKEAN

I have participated in the negotiation of this compact and intend to report favorably thereon to the Congress of the United States. HOWARD R. STINSON, Representative of the United States of America.

Source: SL 1943, ch 283, § 1; SDC Supp 1960, § 55.5101; SDCL, § 46-30-1.