

Merrimack River Flood Control Compact

The governor and council, on behalf of this state, are authorized to enter into and execute a compact substantially in the following form with the Commonwealth of Massachusetts, by and through the commissioners or duly authorized representatives appointed or who may be appointed under or by virtue of a law of the legislature of the state of New Hampshire, and the legislature hereby signifies in advance its approval and ratification of such compact, so entered into, such approval and ratification to be effective as set forth in this compact:

Whereas, the federal government exercises jurisdiction over the nation's navigable rivers and their tributaries through passage of the Flood Control Act of 1936 and various other amendments to that act; and

Whereas, these acts provide for construction by the United States of dams for flood control and, where feasible, in addition to flood control, for storage of water to be used for irrigation, recreation or hydroelectric power or for any of these purposes; and

Whereas, the Merrimack is an interstate river and control of major floods on it can be obtained only by the construction of dams by the United States under authorization of the above-mentioned acts; and

Whereas, the Commonwealth of Massachusetts and the state of New Hampshire recognize that it is in the interest of their general welfare that the United States construct in the Merrimack River Valley a comprehensive system of local protection works and dams and reservoirs to control floods and prevent loss of life and property, the disruption of orderly processes and the impairment of commerce between the said 2 states; and

Whereas, the United States has constructed dikes, flood walls and other local protection works at Nashua in the state of New Hampshire and at Haverhill, Lowell and Fitchburg in the Commonwealth of Massachusetts, and dams and reservoirs for the storage of flood waters at Franklin Falls, Peterborough and at Webster in the state of New Hampshire, and has prepared designs for dikes and flood walls and other local protection works at Lawrence and North Andover in the Commonwealth of Massachusetts; and

Whereas, the Congress has at various times authorized construction by the United States of other dams and reservoirs for the storage of flood waters in the Commonwealth of Massachusetts and in the state of New Hampshire and has more recently instructed the Corps of Engineers to determine what additional local protection works and dams and reservoirs are required for a comprehensive system to control floods in the Merrimack River and its tributaries; and

Whereas, it is believed that such a comprehensive flood control system should include dams and reservoirs controlling flood runoff from approximately 30 percent of the total drainage area of the Merrimack River Basin and strategically located in reference to characteristics of tributaries and to damage centers; and

Whereas, dams and reservoirs to control 30 percent of flood runoff will be located in the state of New Hampshire and the major benefits from such dams and reservoirs will accrue to the Commonwealth of Massachusetts; and

Whereas, construction by the United States of additional dams and reservoirs in the state of New Hampshire to complete such a comprehensive flood control system will remove from the tax rolls of local governments of the state of New Hampshire such property as is acquired by the United States and may work other hardships against the people of New Hampshire; and

Whereas, it is highly desirable that any flood control dam and reservoir constructed by the United States in the Merrimack River Valley have the approval of the state of New Hampshire and the Commonwealth of Massachusetts and that the Commonwealth of Massachusetts benefiting from construction of such dam and reservoir make reimbursement for such loss of taxes and for such hardships; and

Whereas, a comprehensive system for the prevention of destructive floods and for water resources utilization in the Merrimack River Valley can best be accomplished by cooperation between the Commonwealth of Massachusetts and the state of New Hampshire and by and through a common and joint agency of said 2 states;

Now, therefore, the said Commonwealth of Massachusetts and the state of New Hampshire do enter into the following compact, to wit:

Article I

The principal purposes of this compact are: (a) to promote interstate comity among and between the signatory states; (b) to provide adequate storage capacity for impounding the waters of the Merrimack River and its tributaries for the protection of life and property from floods; and (c) to provide a joint or common agency through which the signatory states, while promoting, protecting and preserving to each the local interest and sovereignty of the respective signatory states, may more effectively cooperate in accomplishing the object of flood control and water resources utilization in the basin of the Merrimack River and its tributaries.

Article II

There is created "The Merrimack River Valley Flood Control Commission," referred to in this compact as the "commission," which shall consist of 6 members, 3 of whom shall be residents of the Commonwealth of Massachusetts and one of whom shall be a resident of the Merrimack Valley, and 3 of whom shall be residents of the state of New Hampshire.

The members of the commission shall be chosen by their respective states in such manner and for such term as may be fixed and determined from time to time by the law of each of said states, respectively, by which they are appointed. A member of the commission may be removed or suspended from office as provided by the law of the state from which he shall be appointed, and any vacancy occurring in the commission shall be filled in accordance with the laws of the state in which such vacancy exists.

A majority of the members of each state shall constitute a quorum for the transaction of business, the exercise of any powers or the performance of any duties, but no action of the commission shall be binding unless at least 2 members from each state shall vote in favor of such action.

The compensation of members of the commission shall be fixed, determined, and paid by the state which they respectively represent. All necessary expenses incurred in the performance of their duties shall be paid from the funds of the commission.

The commission shall elect from its members a chairman, vice-chairman, clerk and treasurer. Such treasurer shall furnish to the commission, at its expense, a bond with corporate surety, to be approved by the commission, in such amount as the commission may determine, conditioned for the faithful performance of his duties.

The commission shall adopt suitable bylaws and shall make such rules and regulations as it may deem advisable not inconsistent with laws of the United States, of the signatory states or with any rules or regulations lawfully promulgated thereunder.

The commission shall make an annual report to the governor and legislature of each of the signatory states, setting forth in detail the operations and transactions conducted by it pursuant to this compact.

The commission shall keep a record of all its meetings and proceedings, contracts and accounts, and shall maintain a suitable office, where its maps, plans, documents, records and accounts shall be kept, subject to public inspection at such times and under such regulations as the commission shall determine.

Article III

The commission shall constitute a body, both corporate and politic, with full power and authority: (1) to sue and be sued; (2) to have a seal and alter the same at pleasure; (3) to appoint and employ such agents and employees as may be required in the proper performance of the duties committed to it and to fix and determine their qualifications, duties and compensation; (4) to enter into such contracts and agreements and to do and perform any and all other acts, matters and things as may be necessary and essential to the full and complete performance of the powers and duties hereby committed to and imposed upon it and as may be incidental thereto; and (5) to have such additional powers and duties as may hereafter be delegated to or imposed upon it from time to time by the action of the legislature of either of said states, concurred in by the legislature of the other state and by the Congress of the United States.

The commission shall make, or cause to be made, such studies as it may deem necessary, in cooperation with the Corps of Engineers and other federal agencies, for the development of a comprehensive plan for flood control and for utilization of the water resources of the Merrimack River Valley.

The commission shall not pledge the credit of the signatory states or either of them.

Article IV

The state of New Hampshire in which is located the site of each of the following dams and reservoirs agrees to the construction by the United States of each such dam and reservoir in accordance with authorization by the Congress:

(1) At West Hopkinton on the Contoocook River, controlling a drainage area of approximately 426 square miles, and near East Weare, on the north branch of the Piscataquog River, controlling a drainage area of approximately 64 square miles, and providing flood control storage for approximately 6 inches of runoff over both said drainage areas; and

(2) Near Loudon on the Soucook River, controlling a drainage area of approximately 77 square miles and providing flood control storage for approximately 6 inches of runoff over said drainage area.

Article V

The Commonwealth of Massachusetts agrees to reimburse the state of New Hampshire 70 percent of the amount of taxes lost by reason of acquisition and ownership by the United States of lands, rights or other property therein for the flood control dams and reservoirs at Franklin Falls, Blackwater and West Peterborough, and for construction in the future of any flood control dam and reservoir specified in Article IV, and also for any other flood control dam and reservoir constructed in the future by the United States in the Merrimack River Valley.

Annually, not later than November 1 of each year, the commission shall determine the loss of taxes resulting to political subdivisions of the state of New Hampshire by reason of acquisition and ownership therein by the United States of lands, rights or other property in connection with each flood control dam and reservoir for which provision for tax reimbursement has been made in the preceding paragraphs. Such losses of taxes as determined by the commission shall be based on the tax rate then current in each such political subdivision and on the average assessed valuation for a period of 5 years prior to the acquisition by the United States of such property; provided, that whenever a political subdivision wherein a flood control dam and reservoir or portion thereof is located shall have made a general revaluation of property subject to the annual municipal taxes of such subdivision, the commission may use such revaluation for the purpose of determining the amount of taxes for which reimbursement shall be made in the paragraph next above. Using the percentage of payment agreed to in said paragraph, the commission shall then compute the sum, if any, due from the Commonwealth of Massachusetts to the state of New Hampshire and shall send notice to the treasurer of the Commonwealth of Massachusetts setting forth in detail the sums, if any, to be paid to New Hampshire in reimbursement of tax losses due from the Commonwealth of Massachusetts to the state of New Hampshire.

The Commonwealth of Massachusetts, on receipt of formal notification from the commission of the sum which it is to pay in reimbursement for tax losses, shall, not later than July 1 of the following year, make its payment for such tax losses to the state of New Hampshire, except that in case of the first annual payment for tax losses at any dam or reservoir such payment shall be

made by the Commonwealth of Massachusetts not later than July 1 of the year in which the next regular session of its legislature is held.

Payment by the Commonwealth of Massachusetts of its share of reimbursement for taxes in accordance with formal notification received from the commission shall be a complete and final discharge of all liability of the Commonwealth of Massachusetts to the state of New Hampshire for each flood control dam and reservoir within the State of New Hampshire for the time specified in such formal notification. The state of New Hampshire shall have full responsibility for distributing or expending all such sums received, and no agency or political subdivision shall have any claim against the Commonwealth of Massachusetts, nor against the commission relative to tax losses covered by such payments.

Whenever the Commonwealth of Massachusetts and the state of New Hampshire shall agree, through the commission, on a lump sum payment in lieu of annual payments and such lump sum payment has been made and received, the requirement that the commission annually shall determine the tax losses, compute sums due from the Commonwealth of Massachusetts and send notice of such sums to the treasurer of the Commonwealth of Massachusetts shall no longer apply to the 2 states with respect to any flood control dam and reservoir for which lump sum payment has been made and received.

The Commonwealth of Massachusetts agrees to pay the state of New Hampshire its respective share in reimbursement, as determined by the commission under the procedure following, for economic losses and damages occurring by reason of ownership of property by the United States, for construction and operation of a flood control dam and reservoir at any site specified in Article IV, and for any other flood control dam and reservoir constructed hereafter by the United States in the Merrimack River Valley, provided, that no reimbursement shall be made for speculative losses and damages or losses or damages for which the United States is liable.

On receipt of information from the chief of engineers that request is to be made for funds for the purpose of preparing detailed plans and specifications for any flood control dam and reservoir proposed to be constructed in the Merrimack River Valley, including those specified in Article IV, the commission shall make an estimate of the amount of taxes which would be lost to and of economic losses and damages which would occur in political subdivisions of the state of New Hampshire in which such dam and reservoir would be located, wholly or in part, by reason of acquisition and ownership by the United States of lands, rights or other property for the construction and operation of such flood control dam and reservoir and shall decide whether the flood control benefits to be derived in the signatory states from such flood control dam and reservoir, both by itself and as a unit of a comprehensive flood control plan, justifies, in the opinion of the commission, the assumption by a signatory state of the obligation to make reimbursement for loss of taxes and for economic losses and damages. Such estimate and decision shall thereafter be reviewed by the commission at 5-year intervals until such time as the United States shall have acquired title to the site of such flood control dam or plans for its construction are abandoned. The commission shall notify the governor, the members of the United States Senate and the members of the United States House of Representatives from each signatory state and the chief of engineers as to the commission's decision and as to any change in such decision.

On receipt of information from the chief of engineers that any flood control dam and reservoir is to be constructed, reconstructed, altered or used for any purpose in addition to flood control, including those flood control dams and reservoirs previously constructed and those specified in Article IV, the commission shall make a separate estimate of the amount of taxes which would be lost to and of economic losses and damages which would occur in political subdivisions of the signatory state in which such dam and reservoir would be located, wholly or in part, by reason of acquisition and ownership by the United States of lands, rights or other property for the construction and operation of such dam and reservoir in excess of the estimated amount of taxes which would be lost and of the economic losses and damages which would occur if the dam were constructed and operated for flood control only and the commission shall decide the extent to which, in its opinion, the signatory states would be justified in making reimbursement for loss of taxes and for economic losses and damages in addition to reimbursement for such dam and reservoir if constructed and used for flood control only. Such estimate and decision shall thereafter be reviewed by the commission at 5-year intervals until such time as such dam and reservoir shall be so constructed, reconstructed, altered or used or plans for such construction, reconstruction, alterations or use are abandoned. The commission shall notify the governor, the members of the United States Senate and the members of the United States House of Representatives from each signatory state as to the commission's decision and as to any change in such decision.

Within 30 days after acquisition by the United States of the site of any flood control dam, the commission shall proceed to make a final determination of economic losses and damages occasioned by such dam and reservoir. The commission shall not include in such determination either speculative losses and damages or losses and damages for which the United States is liable.

The commission shall compute the share the Commonwealth of Massachusetts shall pay to the state of New Hampshire by multiplying the sum of such losses and damages, as previously determined, by the percentage of flood control benefits which the Commonwealth of Massachusetts receives of the flood control benefits resulting from the dam and reservoir.

The commission shall send a notice to the treasurer of the Commonwealth of Massachusetts, setting forth in detail the sum, if any, the Commonwealth of Massachusetts is to pay to the state of New Hampshire in reimbursement for economic losses and damages and shall also send such notice to the treasurer of the state of New Hampshire.

The Commonwealth of Massachusetts, on receipt of such formal notification by the commission, shall pay its share of such economic losses or damages to the state of New Hampshire. Full payment by the Commonwealth of Massachusetts of the sum specified in such formal notification from the commission as to the amount of economic losses and damages for which the Commonwealth of Massachusetts is to make reimbursement shall be a complete and final discharge of all liability by the Commonwealth of Massachusetts to the state of New Hampshire for economic losses and damages for each flood control dam and reservoir within the said state designated in such formal notification. The state of New Hampshire shall have full responsibility for distributing or expending all such sums received, and no agency, political subdivision, private

person, partnership, firm, association nor corporation shall have any claim against the Commonwealth of Massachusetts, nor against the commission relative to such economic losses and damages.

The state of New Hampshire may, in agreement with the commission and the chief of engineers, acquire title or option to acquire title to any or all lands, rights or other property required for any flood control dam and reservoir within its boundaries, and transfer such titles or options to the United States. Whenever the fair cost to said signatory state for such titles or options, as determined by the commission, is greater than the amount received therefor from the United States, the Commonwealth of Massachusetts shall pay its share of such excess cost to said state of New Hampshire, such share to be determined by the commission in accordance with procedure contained in this compact for determining reimbursement for economic losses and damages.

Whenever the commission shall not agree, within a reasonable time or within 60 days after a formal request from the governor of the state of New Hampshire or the Commonwealth of Massachusetts, concerning reimbursement for loss of taxes or for economic losses and damages at any flood control dam and reservoir previously or hereafter constructed by the United States in the Merrimack River Valley, or concerning the extent, if any, to which reimbursement shall be made for additional loss of taxes and for additional economic losses and damages caused by construction, reconstruction, alteration or use of any such dam for purposes other than flood control, the governor of each signatory state shall designate a person from his state as a member of a board of arbitration, hereinafter called the board, and the members so designated shall choose one additional member who shall be chairman of such board. Whenever the members appointed by the governors to such board shall not agree within 60 days on such additional member of the board, the governors of such signatory states shall jointly designate the additional member. The board shall by majority vote decide the question referred to it and shall do so in accordance with the provisions of this compact concerning such reimbursement. The decision of the board on each question referred to it concerning reimbursement for loss of taxes and for economic losses and damages shall be binding on the commission and on each signatory state, notwithstanding any other provision of this compact.

Article VI

Nothing contained in this compact shall be construed as a limitation upon the authority of the United States.

Article VII

The signatory states agree to appropriate for compensation of agents and employees of the commission for office, administrative, travel and other expenses on recommendation of the commission subject to limitations as follows: The Commonwealth of Massachusetts obligates itself to not more than \$17,500 for the first year and to not more than \$14,000 in any one year thereafter; the state of New Hampshire obligates itself to not more than \$7,500 the first year and to not more than \$6,000 in any one year thereafter.

Article VIII

Should any part of this compact be held to be contrary to the constitution of either signatory state or of the United States, all other parts of the compact shall continue to be in full force and effect.

Article IX

This compact shall become operative and effective when ratified by the Commonwealth of Massachusetts and the state of New Hampshire, and approved by the Congress of the United States. Notice of ratification shall be given by the governor of each state to the governor of the other state and to the President of the United States, and the President of the United States is requested to give notice to the governors of the Commonwealth of Massachusetts and the state of New Hampshire of approval by the Congress of the United States.

484:8 Procedure for Notification and Recordation of Compact.

The said agreement or compact, when ratified by the legislature of each of said states and approved by the Congress of the United States, shall thereupon become operative and effective. The governor is authorized and directed forthwith to notify the governor of the Commonwealth of Massachusetts and the President of the United States that the state of New Hampshire on its part has approved and ratified said compact or agreement. Upon its execution in triplicate by the commissioners or representatives of each of said states as aforesaid, a duly executed original of the compact shall be filed in the office of the secretary of state of New Hampshire, together with the original notice of ratification received from the governor of Massachusetts, and such notice, if any, as may be received from the President or the Congress of the United States, signifying the approval of such Congress to the compact.

484:9 Appointment of Commission.

Within 30 days after the aforesaid agreement or compact shall have become effective as provided in RSA 484:8, the governor shall, with the advice and consent of the council, appoint 3 members of the Merrimack River Valley Flood Control Commission, one of whom shall serve until March 1, 1958, one of whom shall serve until March 1, 1959 and one of whom shall serve until March 1, 1960. In the month of February 1958, and each year thereafter, the governor, by and with the advice and consent of the council, shall appoint one member of the said commission, whose term of office shall be 3 years from and after March 1 of the year in which he is appointed.

484:10 Vacancies.

If a vacancy occurs in the commission, the governor shall, with the advice and consent of the council, appoint a member to serve only for the unexpired term. Any member of the commission shall be eligible for reappointment.

484:11 Compensation.

Each commissioner designated or appointed by the governor and council, if he holds no salaried state office, shall be paid by the state as compensation the sum of \$30 for each day's service performed in connection with his duties as such commissioner but not to exceed \$600 in any fiscal year. Such compensation shall be paid by the state treasurer, upon warrant of the governor, with the advice and consent of the council, upon bills approved by the chairman or vice chairman and treasurer of the commission. All commissioners shall be entitled to their actual expenses incurred in the performance of their duties as such.

484:12 Designation of Alternate.

Each commissioner designated or appointed under this compact may appoint an alternate member to serve in his place at meetings of the commission that he is unable to attend; provided, however, that whenever a member is a state employee, his alternate shall also be a state employee. All such appointments shall be made in writing, with written notification to the commission identifying the alternate member. Alternate members shall receive no compensation. Each commissioner may not appoint more than one alternate, and at no meeting shall one alternate represent more than one commissioner.

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