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The Model Interstate Water Compact

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The Model Interstate Water Compact

The Utton Center Model Interstate Water Compact

State Bar Center, State Bar of New Mexico

Albuquerque, New Mexico

7 June 2007

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Article I: Compact Purposes, Water Subject to Compact and Signatory Parties

- The Model Compact effects an equitable apportionment of the surface water flows and hydrologically connected subsurface waters of the Utton River and its tributaries located with the states that are parties to the Compact.
- Water resources management and water quality protection programs are established.
- Signatory parties include the aforementioned states and the United States of America as well as Indian Tribes and Pueblos having interests in the waters of the Utton River.

Article II: Effective Date and Duration of Compact

- The Model Compact becomes effective after it has been ratified by each of the signatory parties and Congressional consent legislation has been enacted.
- It is expected that the consent legislation will contain a waiver of the sovereign immunity of the United States in order to allow for the enforcement of Compact obligations and to determine the effect of federal legislation.
- The initial term of the Model Compact is 25 years.

Article II: Effective Date and Duration of Compact (continued)

- Signatory parties may withdraw from the Compact upon two years notice to the remaining signatory parties.
- If the Compact is not renewed or if signatory parties withdraw, valid rights established under the Compact are preserved as are environmental protection obligations assumed by the signatory parties. The Compact may be modified by the signatory parties utilizing essentially the same procedures that led to ratification of the Compact and Congressional consent.

Article III: Definitions

- Sixteen terms are defined for use in the Model Compact:
 - Advisory Committee
 - Base apportionments
 - Chargeability
 - Commission
 - Conjunctive use
 - Council
 - Dispute resolution

Article III: Definitions (continued)

- Division of Scientific Analysis
- Perfected water right
- Reasonable beneficial use
- Safe annual yield
- Species and habitat protection
- Subsurface water
- Supplemental apportionments
- Water Quality Protection Program
- Water Resources Management Program.

Article IV: The Utton River Basin Commission

- The Utton River Basin Commission is established to supervise implementation and enforcement of the Model Compact.
- The Commission is comprised of the governors of the signatory states, a single Tribal representative and a single federal representative.
- The Commission is authorized to exercise those powers needed to implement and enforce the Model Compact.

Article IV: The Utton River Basin Commission (continued)

- The Commission is responsible for the equitable, efficient and sustainable use of water apportionments and for management of the Compact's Water Resources Management and Water Quality Protection Programs.
- The Commission is required to establish rules for meetings of the Commission, Council, Division of Scientific Analysis and Advisory Committee. It is anticipated that all meetings of the Advisory Committee will be open to the public.

Article IV: The Utton River Basin Commission (continued)

- The Commission is authorized to establish voting requirements for the Commission.
- Decisions of the Council and the Division of Scientific Analysis are by majority vote and may be appealed to the Commission.
- Decisions of the Commission are considered to be final agency action.

Article V: Interstate Water Apportionments

- The base apportionment to each signatory state is that quantity of water needed (1) to maintain stream flows as needed to fulfill the requirements of applicable federal, state and tribal laws, (2) to maintain a healthy and productive Basinwide ecosystem and (3) to provide additional flows as needed to satisfy the requirements of all perfected water rights derived from federal, state or tribal law.
- These apportionments are expressed as a percentage of the estimated safe annual yield of the Basin.

Article V: Interstate Water Apportionments (continued)

- Within three years of the effective date of the Compact, (1) any state may petition the Commission to increase the base apportionment to include water rights that have been perfected during that time period and (2) the Commission shall complete an investigation of standards and procedures applied by the signatory parties for determining “reasonable beneficial use” for various uses throughout the Basin.
- To the maximum extent practicable, each state shall make reasonable beneficial use of its apportionment pursuant to the Commission recommendations and shall have primary responsibility for enforcing those recommendations.

Article V: Interstate Water Apportionments (continued)

- Failure of a state to make reasonable beneficial use of its apportionment authorizes the Commission to reduce a state's base or supplemental apportionment and to make such water available for apportionment to other signatory parties.
- The Commission may provide supplemental apportionments of available supplies in excess of the base apportionments on five year increments to each state according to terms and conditions and at a price to be determined by the Commission.
- The terms and conditions shall include water conservation requirements.

Article V: Interstate Water Apportionments (continued)

- Base and supplemental apportionments may be transferred according to terms and conditions to be promulgated by the Commission.
- Also within three years of the effective date of the Compact, each state is required to implement a measurement system for the extraction and consumptive use of subsurface waters hydrologically connected to Basin surface flows.
- Such subsurface flows are to be charged to each state's base or supplemental apportionment in amounts and for appropriate time periods as determined by the Commission.

Article V: Interstate Water Apportionments (continued)

- If future availability of water deviates substantially from the estimated safe annual yield so that base or supplemental apportionments cannot be satisfied, the Commission is authorized to make appropriate equitable reductions of the perfected use rights portions of the apportionments.
- The Commission is required to develop (1) criteria for the allocation of such shortages among the signatory states and (2) specific triggers for the implementation of such use curtailments.

Article V: Interstate Water Apportionments (continued)

- Unless the states agree on another formula, unanticipated impacts on water use resulting from federal environmental programs result in the Commission allocating the burden of such programs pro rata among all of the Basin states based on their respective shares of the total Basin apportionments.

Article VI: Water Quality Protection Program

- The Commission is authorized (1) to establish and enforce water quality standards and wasteload allocations and (2) to enforce National Pollution Discharge Elimination System (NPDES) permits under the Clean Water Act for the interstate portion of the Utton River Basin.
- The Commission is also authorized to assume jurisdiction to abate existing interstate pollution and to control or prevent future pollution whenever it determines that pollution originating within or flowing through or along a signatory state or Indian reservation threatens to affect adversely the interstate waters of the Basin.

Article VI: Water Quality Protection Program (continued)

- In such situations, the Commission is authorized to establish both (1) reasonable chemical, physical and biological guidelines for water quality for various uses and (2) standards of treatment of wastes.
- The Commission is also authorized (1) to adopt rules, regulations and standards to abate existing pollution and prevent or control future pollution, (2) to require such treatment of wastes or alteration of land use practices contributing to interstate pollution and (3) to initiate appropriate enforcement actions.

Article VII: Water Resources Management Program

- Proposed water resource development projects, major new surface diversions or subsurface water extractions, interstate transfers and related operational guidelines are subject to review and approval by the Commission.
- Within two years of the effective date of the Compact, the signatory parties are required to submit to the Commission (1) a five year estimate of water requirements for specific projects or categories of uses, including adequate stream flows, (2) the assumptions underlying such estimates, (3) estimated water supplies available to meet these requirements and (4) plans to supplement such supplies.

Article VII: Water Resources Management Program (continued)

- Based on these submissions, the Commission is required to develop a Basinwide water resources management program establishing construction or implementation priorities for the components of the proposed state programs.
- The Commission is also required (1) to study and encourage the conjunctive use of both natural and artificial water storage facilities and subsurface aquifers for the storage and management of Basin waters without regard to the ownership or location of such facilities and (2) to develop plans for the location of such facilities.

Article VII: Water Resources Management Program (continued)

- Federal or state operating agencies are obligated to seek legislative modification of the authorized purposes of their facilities if the proposed conjunctive use of such facilities conflicts significantly with an authorized project purpose and the conflict cannot be resolved by agreement.
- After consultation with the U.S. Army Corps of Engineers, the Commission is authorized to construct and operate flood control projects.
- The Commission is also authorized to establish standards governing the uses of land within the Basin that are subject to flooding.

Article VIII: Enforcement of Compact Obligations and Resolution of Other Disputes

- The Commission is authorized to enforce compact obligations when it is alleged that a signatory party is (1) not maintaining required stream flows, (2) impermissibly exceeding its Compact apportionment or (3) permitting point source discharges or non-point source land use practices that violate Commission approved interstate water quality standards.
- The signatory party may concede or contest the allegations.

Article VIII: Enforcement of Compact Obligations and Resolution of Other Disputes (continued)

- Concession and implementation of a Commission approved remedial plan limits the potential liability of the signatory party.
- A dispute resolution proceeding (including mediation or arbitration as appropriate) may be initiated by the Commission if the allegations are disputed.
- Initiation of litigation by a signatory party is precluded during a dispute resolution proceeding.

Article VIII: Enforcement of Compact Obligations and Resolution of Other Disputes (continued)

- Failure to resolve the dispute authorizes the Commission to (1) suspend the voting rights of the alleged offending party, (2) suspend any ongoing or planned implementation of Commission projects or programs benefiting that party or (3) seek injunctive relief to remedy the alleged violation and allow the signatory states to seek damages for such violation.
- Completion of the dispute resolution proceeding constitutes final agency action.

Article IX: Interagency Coordination and Public Participation

- Given that one of the primary purposes of the Model Compact is interagency coordination, the Commission, Council and Division are responsible for maintaining liaison with their respective constituencies and, when possible, for obtaining consensus regarding disputed issues.
- The Commission is required to appoint a “multi-interest, multi-disciplinary” Advisory Committee including qualified public representatives and representatives of governmental entities having activities in the Basin.

Article IX: Interagency Coordination and Public Participation (continued)

- The Commission is also required to maintain a public information program including an annual report, reports on the use/condition of Basin waters, reports on budgetary/financial matters and reports of Commission activities and Advisory Committee meetings.
- These reports are to be made available in multiple electronic and print formats.

Article X: Budgeting and Funding

- The Commission is required to adopt annual capital and operating budgets.
- The capital budget is to include:
 - All capital projects the Commission proposes to undertake or continue.
 - A statement of the estimated cost of each project.
 - A statement of the method of financing each project.

Article X: Budgeting and Funding (continued)

- The operating budget is to include:
 - Estimated expenses for administration, operation, maintenance and repairs for each project.
 - An allocation of cost for each project.
 - Estimated revenues from charges for supplemental apportionments and all other sources

Article X: Budgeting and Funding (continued)

- Following Commission adoption of the operating budget, the signatory parties are to be notified of the amounts due under existing cost sharing agreements for each project and the amount required to balance the operating budget.
- Failure of any signatory party to pay its assessment authorizes the Commission to suspend the delinquent party's voting rights and any ongoing or planned implementation of Commission projects or programs, including supplemental apportionments, benefiting the delinquent party.

Article X: Budgeting and Funding (continued)

- An annual audit, to be performed by a qualified certified public accountant, is required as is an audit by the General Accounting Office of Commission financial transactions.
- As with all Commission records, the annual audits are to be made available for inspection by any signatory party.

Article XI: Relationship of Compact to Existing Law

- Provisions of the Model Compact supercede present or future state or tribal laws that are irreconcilably inconsistent with the Compact.
- Present federal laws or regulations that are irreconcilably inconsistent with the Compact are superceded by the Compact.

Article XI: Relationship of Compact to Existing Law (continued)

- Future federal laws, regulations and judicial or administrative decisions that are irreconcilably inconsistent with the Compact may supercede the Compact and authorize the Commission by a majority vote of the signatory state members to terminate the Compact.
- The Commission is authorized to determine the extent to which federal laws regarding the making of contracts, conflicts-of-interest, financial disclosure, open meetings, advisory committees, disclosure of information, judicial review and related matters are applicable to Commission, Council and Division activities.

Article XI: Relationship of Compact to Existing Law (continued)

- Federal courts have exclusive jurisdiction to review any action of the Commission or challenge to any provision of the Model Compact.
- Except where expressly provided in the Compact or by unanimous vote of the Commission, nothing in the Model Compact is intended to affect adversely any interstate water allocation or other right that a signatory state may have been awarded by a U.S. Supreme Court decree in an equitable apportionment or interstate compact action prior to the effective date of the Compact.