

MAY 26 1965

JOHN F. DAVIS, CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965.

No. **26**, Original

THE STATE OF KANSAS,
Plaintiff,

vs.

THE STATE OF COLORADO,
Defendant.

MOTION FOR LEAVE TO FILE COMPLAINT
and
COMPLAINT

✓ ROBERT C. LONDERHOLM
Attorney General of Kansas

✓ CHARLES N. HENSON, JR.
Assistant Attorney General of Kansas
Statehouse
Topeka, Kansas

Attorneys for Plaintiff.

9/24

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THE STATE OF KANSAS,
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THE STATE OF COLORADO,
Defendant.

MOTION FOR LEAVE TO FILE COMPLAINT

The State of Kansas, by its Attorney General, asks leave of the Court to file its complaint against the State of Colorado submitted herewith.

ROBERT C. LONDERHOLM
Attorney General of Kansas

CHARLES N. HENSON, JR.
Assistant Attorney General of Kansas,
Attorneys for Plaintiff.

May 24, 1965.

STATEMENT IN SUPPORT OF MOTION

This is an action by the State of Kansas against the State of Colorado proposed to be instituted in this Court under authority of Article III, Section 2 of the Constitution of the United States and 28 U.S.C. §1251. The purpose of the proposed action is to enforce and restrain the breach by the State of Colorado of the compact between the State of Kansas and the State of Colorado concerning the waters of the Arkansas River and their control, conservation and utilization for irrigation and other beneficial purposes. The State of Colorado, through its Game, Fish and Parks Department, now is constructing a dam and reservoir on Clay Creek, a tributary of the Arkansas River, about four miles southeast of Lamar, Colorado. The State of Kansas contends that the dam as presently being constructed and as it will function will result in a material depletion in usable quantity or availability for use to the water users in Kansas of the waters of the Arkansas River in violation of the compact between the States.

ROBERT C. LONDERHOLM

Attorney General of Kansas

CHARLES N. HENSON, JR.

Assistant Attorney General of Kansas

Attorneys for Plaintiff.

May 24, 1965.

IN THE
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OCTOBER TERM, 1965.

No., Original

THE STATE OF KANSAS,
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THE STATE OF COLORADO,
Defendant.

COMPLAINT

The State of Kansas, by its Attorney General, brings this suit in equity against the State of Colorado, and for its cause of action states:

I.

The jurisdiction of this Court is invoked under Article III, Section 2 of the Constitution of the United States and 28 U.S.C. §1251 (a) (1).

II.

The Arkansas River originates in the mountains of central Colorado, and flows in a general southeasterly direction, through the foothills and the high plains of eastern Colorado

and western Kansas. Apportionment of the waters of this River between users in Colorado and Kansas has been the subject of considerable litigation in this Court. The Congress of the United States gave the parties its consent to negotiate and enter into an interstate compact and subsequently the parties negotiated and entered into a compact concerning the waters of the Arkansas River and their control, conservation and utilization for irrigation and other beneficial purposes, and to settle existing disputes and remove causes of future controversy between the citizens of one and citizens of the other state. This compact was ratified by the Congress and approved by the President, and now is in full force and effect. It is attached to this complaint as Exhibit I and made a part hereof. The terms of this compact define the waters of the Arkansas River as the waters originating in the natural drainage basin of the Arkansas River, including its tributaries, upstream from the state line of Kansas and Colorado. The compact provides that it is not intended to impede or prevent future beneficial development of the Arkansas River basin in Colorado and Kansas by state agencies which may involve construction of dams, reservoirs and other works for the purposes of water utilization and control, as well as the improved or prolonged functioning of existing works. However, it is further provided that the waters of the Arkansas River, as defined in the compact, shall not be materially depleted in usable quantity or availability for use to the water users in Colorado and Kansas under the compact by such future development or construction.

III.

A map of the geographical area involved in this controversy is attached to this complaint as Exhibit II and made a part hereof. Clay Creek is a part of the natural drainage basin of the Arkansas River, and is a tributary of the River, entering the River 31 miles upstream from the state

line. The confluence of Clay Creek and the Arkansas River is seven miles downstream from the City of Lamar, Colorado, and 29 miles downstream from the John Martin Reservoir. The drainage basin of Clay Creek extends 33 miles south of the Arkansas River. It has a maximum width of about 12.5 miles, an average width of seven miles, and encompasses an area of 228 square miles. The upper boundary of the basin lies at an elevation of 4750 feet above mean sea level. The mouth of Clay Creek lies at an elevation of 3562 feet above mean sea level. The total fall in elevation in the Clay Creek drainage basin is 1188 feet, averaging 36 feet per mile. Annual rainfall over the basin averages 15 inches. Clay Creek ordinarily is a dry, sandy stream bed above the Fort Bent Canal crossing, receiving water only from run-off. Below the Canal crossing, seepage from the Canal results in an additional minimal stream flow in the Creek, of little significance. Significant stream flow occurs in Clay Creek only for short periods after rainfall over all or a portion of its drainage basin. Few measurements of flow in Clay Creek have been made, but available records for 1957 and 1959-1962 indicate an annual run-off in those years ranging from 800 acre feet to 6400 acre feet of water.

IV.

At its meeting on March 26, 1963, the Arkansas River Compact Administration received an oral proposal from the City of Lamar, Colorado, for construction of a dam and reservoir on Clay Creek. This proposal was received by the Administration at its meeting on July 9, 1963, and referred to its engineering committee for study as to its effect on the usable flow of water in the Arkansas River. No further action has been taken by the Administration in regard to this proposal, and construction of the dam and reservoir project has neither been approved nor disapproved by the Administration.

V.

On February 16, 1965, the State of Colorado, through its Game, Fish and Parks Department, entered into a contract for the construction of the dam and reservoir on Clay Creek contemplated in the proposal presented to the Compact Administration on July 9, 1963. Construction is now in progress. The dam being constructed is located four miles upstream from the confluence of Clay Creek and the Arkansas River and immediately upstream from the Fort Bent Canal crossing of Clay Creek. This dam, when completed, will control the run-off from a drainage area of 222 square miles, or 97% of the total drainage area of Clay Creek. The dam being constructed will consist of an earth embankment with a spillway 100 feet wide and with an outlet pipe 48 inches in diameter. Streambed elevation at the dam site is approximately 3628 feet above mean sea level. The top of the dam will be 42 feet above streambed at an elevation of 3670 feet above mean sea level. The water surface in the reservoir formed by the dam at spillway level will be 32 feet above streambed at an elevation of 3660 feet above mean sea level. The reservoir will have a storage capacity of 2898 acre feet of water at spillway level and a surface area of 286 acres. Evaporation of water from the reservoir will range from 43 inches to 62 inches of water annually. Releases of water from storage in the reservoir will be subject to seepage losses in the four miles between the dam and the mouth of Clay Creek of 240 cubic feet per second or 480 acre feet per day.

VI.

Except for the spillway, which will allow release of water only under extreme conditions, the discharge of water through the dam being constructed on Clay Creek will be limited to the quantity that can flow through the 48 inch outlet pipe. This flow will range from about 120 cubic

feet per second to about 350 cubic feet per second, depending on the level of water in the reservoir. There are five irrigation ditches in Colorado diverting water from the Arkansas River between the mouth of Clay Creek and the state line. These ditches have a combined capacity of 180 cubic feet per second and combined decreed rights under the law of Colorado of 283.5 cubic feet per second. There are eight irrigation ditches in Kansas diverting water from the Arkansas River between the state line and the City of Garden City, Kansas. These ditches have a combined capacity and vested rights under the law of Kansas of 1150 cubic feet per second.

VII.

When water occurs in Clay Creek with any burden of delivery to the Arkansas River, the quantity that will be discharged through the 48 inch outlet pipe in the dam being constructed will not be sufficient even to meet stream-bed losses by infiltration and the Colorado diversions. In the absence of water available in John Martin Reservoir or from tributaries of the River with which to meet Kansas water needs, such construction will result in the waters of the Arkansas River being materially depleted in usable quantity and availability for use by water users in the State of Kansas, in violation of the compact between the States. Since the compact between the States has been in effect, water has been available in John Martin Reservoir to meet Kansas needs throughout the irrigation season in only three years—1950, 1951, and 1958.

VIII.

The State of Kansas has been attempting to resolve this controversy with the State of Colorado since construction of the dam began in February, 1965. In an attempt to exhaust all possible methods of resolving this controversy

under the terms of the compact, during the week of May 10, 1965, the Kansas commissioners of the Compact Administration requested that a special meeting of the Administration be called at the earliest possible date to consider the violation of the compact provisions by the State of Colorado. The State of Kansas intended to propose arbitration of this controversy, pursuant to Article VIII (D) of the compact, provided that the State of Colorado would halt construction of the dam and reservoir project during the arbitration process. Such arbitration, under the compact provisions, would require the consent of the State of Colorado. The commissioners of the State of Colorado were not immediately available for such a meeting of the Compact Administration and such a meeting cannot be held before June, 1965. There is no assurance that the State of Colorado would consent to arbitration, that construction of the dam and reservoir project would be halted pending the outcome of arbitration, or that the result of arbitration would be observed by the State of Colorado.

IX.

Construction and operation by the State of Colorado of the dam and reservoir project as above described will result in a violation of Article IV (D) of the compact between the States and cause irreparable injury to the State of Kansas, for which there is no adequate remedy at law.

WHEREFORE, plaintiff prays: (1) That a decree be entered enjoining the State of Colorado from construction and, or operation of the dam and reservoir now being constructed on Clay Creek in a manner that will materially deplete the waters of the Arkansas River in usable quantity and availability for use by water users of the State of Kansas. (2) That a decree be entered requiring the State of Colorado provide for outflow through the dam being constructed sufficient to allow water from Clay Creek us-

able by water users in the State of Kansas to reach said users. (3) For such other relief as this Court may deem proper and necessary.

ROBERT C. LONDERHOLM
Attorney General of Kansas

CHARLES N. HENSON, JR.
Assistant Attorney General of Kansas
Attorneys for Plaintiff.

EXHIBIT I

Arkansas River Compact

The State of Colorado and the State of Kansas, parties signatory to this Compact (hereinafter referred to as "Colorado" and "Kansas," respectively, or individually as a "state," or collectively as the "states") having resolved to conclude a compact with respect to the waters of the Arkansas river, and being moved by considerations of interstate comity, having appointed commissioners as follows:

HENRY C. VIDAL, GAIL L. IRELAND, and HARRY B. MENDENHALL, for Colorado; and

GEORGE S. KNAPP, EDWARD F. ARN, WILLIAM E. LEAVITT, and ROLAND H. TATE, for Kansas;

and the consent of the Congress of the United States to negotiate and enter into an interstate compact not later than January 1, 1950, having been granted by Public Law 34, 79th Congress, 1st Session, and pursuant thereto the President having designated Hans Kramer as the representative of the United States, the said commissioners for Colorado and Kansas, after negotiations participated in by the representatives of the United States, have agreed as follows:

ARTICLE I

The major purposes of this Compact are to:

A. Settle existing disputes and remove causes of future controversy between the states of Colorado and Kansas, and between citizens of one and citizens of the other state, concerning the waters of the Arkansas river and their control, conservation and utilization for irrigation and other beneficial purposes.

B. Equitably divide and apportion between the states of Colorado and Kansas the waters of the Arkansas river and their utilization as well as the benefits arising from the construction, operation and maintenance by the United States of John Martin Reservoir Project for water conservation purposes.

ARTICLE II

The provisions of this Compact are based on (1) the physical and other conditions peculiar to the Arkansas river and its natural drainage basin, and the nature and location of irrigation and other developments and facilities in connection therewith; (2) the opinion of the United States Supreme Court entered December 6, 1943, in the case of *Colorado v. Kansas* (320 U. S. 383) concerning the relative rights of the respective states in and to the use of waters of the Arkansas river; and (3) the experience derived under various interim executive agreements between the two states apportioning the waters released from the John Martin Reservoir as operated by the Corps of Engineers.

ARTICLE III

As used in this Compact:

A. The word "state line" means the geographical boundary line between Colorado and Kansas.

B. The term "waters of the Arkansas river" means the waters originating in the natural drainage basin of the Arkansas river, including its tributaries, upstream from the state line, and excluding waters brought into the Arkansas river basin from other river basins.

C. The term "state-line flow" means the flow of waters of the Arkansas river as determined by gaging stations located at or near the state line. The flow as determined by such stations, whether located in Colorado or Kansas, shall be deemed to be the actual state-line flow.

D. "John Martin Reservoir Project" is the official name of the facility formerly known as Caddoa Reservoir Project, authorized by the Flood Control Act of 1936, as amended, for construction, operation and maintenance by the War Department, Corps of Engineers, later designated as the Corps of Engineers, Department of the Army, and herein referred to as the "Corps of Engineers." "John Martin Reservoir" is the water storage space created by "John Martin Dam."

E. The "flood control storage" is that portion of the total storage space in John Martin Reservoir allocated to flood control purposes.

F. The "conservation pool" is that portion of the total storage space in John Martin Reservoir lying below the flood control storage.

G. The "ditches of Colorado Water District 67" are those ditches and canals which divert water from the Arkansas river or its tributaries downstream from John Martin Dam for irrigation use in Colorado.

H. The term "river flow" means the sum of the flows of the Arkansas and the Purgatoire rivers into John Martin Reservoir as determined by gaging stations appropriately located above said Reservoir.

I. The term "the Administration" means the Arkansas River Compact Administration established under Article VIII.

ARTICLE IV

Both states recognize that:

A. This Compact deals only with the waters of the Arkansas river as defined in Article III.

B. This Compact is not concerned with the rights, if any, of the state of New Mexico or its citizens in and to the use in New Mexico of waters of Trinchera creek or other tributaries of the Purgatoire river, a tributary of the Arkansas river.

C. (1) John Martin Dam will be operated by the Corps of Engineers to store and release the waters of the Arkansas river in and from John Martin Reservoir for its authorized purposes.

(2) The bottom of the flood control storage is presently fixed by the Chief of Engineers, U. S. Army, at elevation 3,851 feet above mean sea level. The flood control storage will be operated for flood control purposes and to those ends will impound or regulate the streamflow volumes that are in excess of the then available storage capacity of the conservation pool. Releases from the flood control storage may be made at times and rates determined by the Corps of Engineers to be necessary or advisable without regard to ditch diversion capacities or requirements in either or both states.

(3) The conservation pool will be operated for the benefit of water users in Colorado and Kansas, both upstream and downstream from John Martin Dam, as provided in this Compact. The maintenance of John Martin Dam and appurtenant works may at times require the

Corps of Engineers to release waters then impounded in the conservation pool or to prohibit the storage of water therein until such maintenance work is completed. Flood control operation may also involve temporary utilization of conservation storage.

D. This Compact is not intended to impede or prevent future beneficial development of the Arkansas river basin in Colorado and Kansas by federal or state agencies, by private enterprise, or by combinations thereof, which may involve construction of dams, reservoirs and other works for the purposes of water utilization and control, as well as the improved or prolonged functioning of existing works: *Provided*, That the waters of the Arkansas river, as defined in Article III, shall not be materially depleted in usable quantity or availability for use to the water users in Colorado and Kansas under this Compact by such future development or construction.

ARTICLE V

Colorado and Kansas hereby agree upon the following basis of apportionment of the waters of the Arkansas river:

A. Winter storage in John Martin Reservoir shall commence on November 1st of each year and continue to and include the next succeeding March 31st. During said period all water entering said reservoir up to the limit of the then available conservation capacity shall be stored: *Provided*, That Colorado may demand releases of water equivalent to the river flow, but such releases shall not exceed 100 c.f.s. (cubic feet per second) and water so released shall be used without avoidable waste.

B. Summer storage in John Martin Reservoir shall commence on April 1st of each year and continue to and

include the next succeeding October 31st. During said period, except when Colorado water users are operating under decreed priorities as provided in paragraphs F and G of this Article, all water entering said reservoir up to the limit of the then available conservation capacity shall be stored: *Provided*, That Colorado may demand releases of water equivalent to the river flow up to 500 c.f.s., and Kansas may demand releases of water equivalent to that portion of the river flow between 500 c.f.s. and 750 c.f.s., irrespective of releases demanded by Colorado.

C. Releases of water stored pursuant to the provisions of paragraphs A and B of this Article shall be made upon demands by Colorado and Kansas concurrently or separately at any time during the summer storage period. Unless increases to meet extraordinary conditions are authorized by the Administration, separate releases of stored water to Colorado shall not exceed 750 c. f. s., separate releases of stored water to Kansas shall not exceed 500 c. f. s., and concurrent releases of stored water shall not exceed a total of 1,250 c. f. s.: *Provided*, That when water stored in the conservation pool is reduced to a quantity less than 20,000 acre-feet, separate releases of stored water to Colorado shall not exceed 600 c. f. s., separate releases of stored water to Kansas shall not exceed 400 c. f. s., and concurrent releases of stored water shall not exceed 1,000 c. f. s.

D. Releases authorized by paragraphs A, B and C of this Article, except when all Colorado water users are operating under decreed priorities as provided in paragraphs F and G of this Article, shall not impose any call on Colorado water users that divert waters of the Arkansas river upstream from John Martin Dam.

E. (1) Releases of stored water and releases of river flow may be made simultaneously upon the demands of either or both States.

(2) Water released upon concurrent or separate demands shall be applied promptly to beneficial use unless storage thereof downstream is authorized by the Administration.

(3) Releases of river flow and of stored water to Colorado shall be measured by gaging stations located at or near John Martin Dam and the releases to which Kansas is entitled shall be satisfied by an equivalent in state-line flow.

(4) When water is released from John Martin Reservoir appropriate allowances as determined by the Administration shall be made for the intervals of time required for such water to arrive at the points of diversion in Colorado and at the state line.

(5) There shall be no allowance or accumulation of credits or debits for or against either state.

(6) Storage, releases from storage and releases of river flow authorized in this Article shall be accomplished pursuant to procedures prescribed by the Administration under the provisions of Article VIII.

F. In the event the Administration finds that within a period of fourteen (14) days the water in the conservation pool will be or is liable to be exhausted, the Administration shall forthwith notify the State Engineer of Colorado, or his duly authorized representative, that commencing upon a day certain within said fourteen (14) day period, unless a change of conditions justifies cancellation or modification of such notice, Colorado shall administer the decreed rights of water users in Colorado Water District 67 as against each other and as against all rights now or hereafter decreed to water users diverting upstream from John Martin Dam on the basis of relative priorities in the same manner in which their respective priority rights were administered

by Colorado before John Martin Reservoir began to operate and as though John Martin Dam had not been constructed. Such priority administration by Colorado shall be continued until the Administration finds that water is again available in the conservation pool for release as provided in this Compact, and timely notice of such finding shall be given by the administration to the State Engineer of Colorado or his duly authorized representative: *Provided*, That except as controlled by the operation of the preceding provisions of this paragraph and other applicable provisions of this Compact, when there is water in the conservation pool the water users upstream from John Martin Reservoir shall not be affected by the decrees to the ditches in Colorado Water District 67. Except when administration in Colorado is on a priority basis the water diversions in Colorado Water District 67 shall be administered by Colorado in accordance with distribution agreements made from time to time between the water users in such District and filed with the Administration and with the State Engineer of Colorado or, in the absence of such agreement, upon the basis of the respective priority decrees, as against each other, in said District.

G. During periods when Colorado reverts to administration of decreed priorities, Kansas shall not be entitled to any portion of the river flow entering John Martin Reservoir. Waters of the Arkansas river originating in Colorado which may flow across the state line during such periods are hereby apportioned to Kansas.

H. If the usable quantity and availability for use of the waters of the Arkansas river to water users in Colorado Water District 67 and Kansas will be thereby materially depleted or adversely affected, (1) priority rights now decreed to the ditches of Colorado Water District 67 shall not hereafter be transferred to other water districts in Colorado

or to points of diversion or places of use upstream from John Martin Dam; and (2) the ditch diversion rights from the Arkansas river in Colorado Water District 67 and of Kansas ditches between the state line and Garden City shall not hereafter be increased beyond the total present rights of said ditches, without the Administration, in either case (1) or (2), making findings of fact that no such depletion or adverse effect will result from such proposed transfer or increase. Notice of legal proceedings for any such proposed transfer or increase shall be given to the Administration in the manner and within the time provided by the laws of Colorado or Kansas in such cases.

ARTICLE VI

A. (1) Nothing in this Compact shall be construed as impairing the jurisdiction of Kansas over the waters of the Arkansas river that originate in Kansas and over the waters that flow from Colorado across the state line into Kansas.

(2) Except as otherwise provided, nothing in this Compact shall be construed as supplanting the administration by Colorado of the rights of appropriators of waters of the Arkansas river in said state as decreed to said appropriators by the courts of Colorado, nor as interfering with the distribution among said appropriators by Colorado, nor as curtailing the diversion and use for irrigation and other beneficial purposes in Colorado of the waters of the Arkansas river.

B. Inasmuch as the Frontier Canal diverts waters of the Arkansas river in Colorado west of the state line for irrigation uses in Kansas only, Colorado concedes to Kansas and Kansas hereby assumes exclusive administrative control over the operation of the Frontier Canal and its headworks for such purposes, to the same extent as though said works

were located entirely within the state of Kansas. Water carried across the state line in the Frontier Canal or any other similarly situated canal shall be considered to be part of the state line flow.

ARTICLE VII

A. Each state shall be subject to the terms of this Compact. Where the name of the state or the term "state" is used in this Compact 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 Arkansas river under the authority of that state.

B. This Compact establishes no general principle or precedent with respect to any other interstate stream.

C. Wherever any state or federal official or agency is referred to in this Compact such reference shall apply to the comparable official or agency succeeding to their duties and functions.

ARTICLE VIII

A. To administer the provisions of this Compact there is hereby created an interstate agency to be known as the Arkansas River Compact Administration herein designated as "the Administration."

B. The Administration shall have power to:

(1) Adopt, amend and revoke bylaws, rules and regulations consistent with the provisions of this Compact;

(2) Prescribe procedures for the administration of this Compact: *Provided*, That where such procedures involve the operation of John Martin Reservoir Project they shall be subject to the approval of the District Engineer in charge of said project;

(3) Perform all functions required to implement this Compact and to do all things necessary, proper or convenient in the performance of its duties.

C. The membership of the Administration shall consist of three representatives from each state who shall be appointed by the respective governors for a term not to exceed four years. One Colorado representative shall be a resident of and water-right owner in Water Districts 14 or 17, one Colorado representative shall be a resident of and water-right owner in Water District 67, and one Colorado representative shall be the Director of the Colorado Water Conservation Board. Two Kansas representatives shall be residents of and water-right owners in the counties of Finney, Kearny or Hamilton, and one Kansas representative shall be the chief state official charged with the administration of water rights in Kansas. The President of the United States is hereby requested to designate a representative of the United States, and if a representative is so designated he shall be an ex officio member and act as chairman of the Administration without vote.

D. The state representatives shall be appointed by the respective governors within thirty days after the effective date of this Compact. The Administration shall meet and organize within sixty days after such effective date. A quorum for any meeting shall consist of four members of the Administration: *Provided*, That at least two members are present from each state. Each state shall have but one vote in the Administration and every decision, authorization or other action shall require unanimous vote. In case of a divided vote on any matter within the purview of the Administration, the Administration may, by subsequent unanimous vote, refer the matter for arbitration to the Representative of the United States or other arbitrator or arbitrators, in which event the decision made by such

arbitrator or arbitrators shall be binding upon the Administration.

E. (1) The salaries, if any, and the personal expenses of each member shall be paid by the government which he represents. All other expenses incident to the administration of this Compact which are not paid by the United States shall be borne by the states on the basis of 60 percent by Colorado and 40 percent by Kansas.

(2) In each even numbered year the Administration shall adopt and transmit to the governor of each state its budget covering anticipated expenses for the forthcoming biennium and the amount thereof payable by each state. Each state shall appropriate and pay the amount due by it to the Administration.

(3) The administration shall keep accurate accounts of all receipts and disbursements and shall include a statement thereof, together with a certificate of audit by a certified public accountant, in its annual report. Each state shall have the right to make an examination and audit of the accounts of the Administration at any time.

F. Each state shall provide such available facilities, equipment and other assistance as the Administration may need to carry out its duties. To supplement such available assistance the Administration may employ engineering, legal, clerical and other aid as in its judgment may be necessary for the performance of its functions. Such employees shall be paid by and be responsible to the Administration, and shall not be considered to be employees of either state.

G. (1) The Administration shall co-operate with the chief official of each state charged with the administration of water rights and with federal agencies in the systematic determination and correlation of the facts as to the flow and diversion of the waters of the Arkansas river and as

to the operation and siltation of John Martin Reservoir and other related structures. The Administration shall co-operate in the procurement, interchange, compilation and publication of all factual data bearing upon the Administration of this Compact without, in general, duplicating measurements, observations or publications made by state or federal agencies. State officials shall furnish pertinent factual data to the Administration upon its request. The Administration shall, with the collaboration of the appropriate federal and state agencies, determine as may be necessary from time to time, the location of gaging stations required for the proper administration of this Compact and shall designate the official records of such stations for its official use.

(2) The Director, U. S. Geological Survey, the Commissioner of Reclamation and the Chief of Engineers, U. S. Army, are hereby requested to collaborate with the Administration and with appropriate state officials in the systematic determination and correlation of data referred to in paragraph G (1) of this Article and in the execution of other duties of such officials which may be necessary for the proper administration of this Compact.

(3) If deemed necessary for the administration of this Compact, the Administration may require the installation and maintenance, at the expense of water users, of measuring devices of approved type in any ditch or group of ditches diverting water from the Arkansas river in Colorado or Kansas. The chief official of each state charged with the administration of water rights shall supervise the execution of the Administration's requirements for such installations.

H. Violation of any of the provisions of this Compact or other actions prejudicial thereto which come to the attention of the Administration shall be promptly investi-

gated by it. When deemed advisable as the result of such investigation, the Administration may report its findings and recommendations to the state official who is charged with the administration of water rights for appropriate action, it being the intent of this Compact that enforcement of its terms shall be accomplished in general through the state agencies and officials charged with the administration of water rights.

I. Findings of fact made by the Administration shall not be conclusive in any court or before any agency or tribunal but shall constitute prima facie evidence of the facts found.

J. The Administration shall report annually to the Governor of the States and to the President of the United States as to matters within its purview.

ARTICLE IX

A. This Compact shall become effective when ratified by the Legislature of each State and when consented to by the Congress of the United States by legislation providing substantially, among other things, as follows:

Nothing contained in this Act or in the Compact herein consented to shall be construed as impairing or affecting the sovereignty of the United States or any of its rights or jurisdiction in and over the area or waters which are the subject of such Compact: *Provided*, That the Chief of Engineers is hereby authorized to operate the conservation features of the John Martin Reservoir Project in a manner conforming to such Compact with such exceptions as he and the Administration created pursuant to the Compact may jointly approve.

B. This Compact shall remain in effect until modified or terminated by unanimous action of the states and in

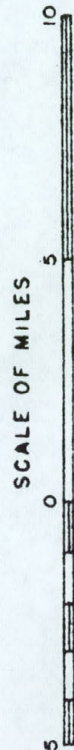
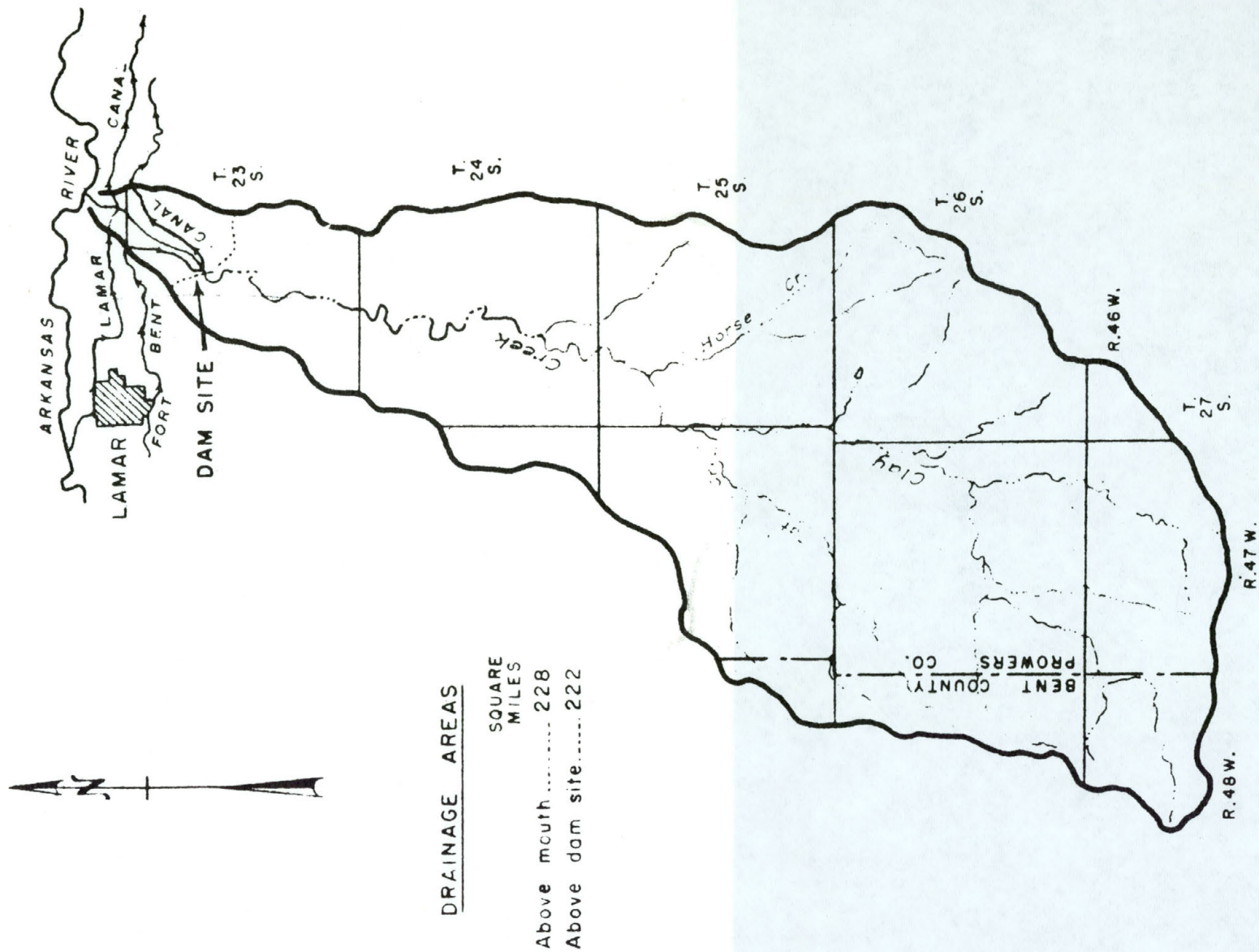
the event of modification or termination all rights then established or recognized by this Compact shall continue unimpaired.

IN WITNESS WHEREOF, The commissioners have signed this Compact in triplicate original, one of which shall be forwarded to the Secretary of State of the United States of America and one of which shall be forwarded to the governor of each signatory State.

DONE in the City and County of Denver, in the state of Colorado, on the fourteenth day of December, in the Year of our Lord One Thousand Nine Hundred and Forty-eight.

EXHIBIT II

Exhibit II



CLAY CREEK
DRAINAGE BASIN

2001-1-80

2001-1-80

DEPT. OF THE ARMY
WASHINGTON, D.C.

