MONTGOMERY & ANDREWS

OF COUNSEL William R. Federici PROFESSIONAL ASSOCIATION ATTORNEYS AND COUNSELORS AT LAW

Post Office Box 2307 Santa Fe, New Mexico 87504-2307

J.O. Seth (1883-1963) A.K. Montgomery (1903-1987) Frank Andrews (1914-1981) Seth D. Montgomery (1937-1998)

September 20, 1999

Victor R. Ortega Gary Kilpatric Thomas W. Olson Walter J. Melendres Bruce Herr John B. Draper Nancy M. King Sarah M. Singleton Stephen S. Hamilton Galen M. Buller Edmund H. Kendrick Louis W. Rose Carolyn A. Wolf Andrew S. Montgomery Grace Philips Jennifer L. Weed Brett Olsen Emma Rodriguez Brittain* 325 Paseo de Peralta Santa Fe, New Mexico 87501

Telephone (505) 982-3873 Fax (505) 982-4289

Francis J. Lorson Chief Deputy Clerk Supreme Court of the United States One First Street, N.E. Washington, D.C. 20543

Re: <u>Kansas v. Nebraska</u>, No. 126, Original U.S. Supreme Court

Dear Mr. Lorson:

Please find enclosed the Affidavit of Douglas R. Littlefield, Ph.D., together with copies of the documents certified in the Affidavit. This is the affidavit referred to in the first footnote of Kansas' Brief in Opposition to Nebraska's Motion to Dismiss dated September 10, 1999.

Very truly yours,

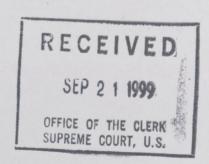
John B. Draper

JBD:dlo enclosures

cc:

(w/encl.) (Federal Express) David D. Cookson, Esq.

(w/encl.) (U.S. Mail)
Alexandra L. Davis, Esq.
Solicitor General of the United States



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,			

IN THE SUPREME COURT OF THE UNITED STATES

STATE OF KANSAS,

Plaintiff,

ν.

STATE OF NEBRASKA

AFFIDAVIT OF DOUGLAS R. LITTLEFIELD, Ph.D.

STATE OF CALIFORNIA)
) ss.
COUNTY OF ALAMEDA)

- I, Douglas R. Littlefield, having been duly sworn, do state:
- 1. I am a professional historian with degrees in history from the University of California (Ph.D., 1987) and the University of Maryland (M.A., 1979).
- 2. I have been accepted as an expert historian for purposes of providing testimony in, inter alia, Kansas v. Colorado, No. 105, Original, U.S. Supreme Court.
- 3. I have reviewed the following documents, copies of which are attached, and I hereby certify that the attachments are true and correct copies of the original documents as I found them in the source specified for each document:
 - A. January 11, 1940 Nebraska Governor R. L. Cochran Letter to E. Porter Ahrens, President of the Kansas Republican Valley Irrigation and Flood Control Association.

Source: 1939 Correspondence, Republican River Valley Conference, Series 1, Box 33, Governor Roy L. Cochran Records, Nebraska State

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Historical Society, Lincoln, Nebraska.

B. January 30, 1941 Compact Commissioner George S. Knapp Letter to Harry P. Burleigh of the U.S. Bureau of Agricultural Economics.

Source: Records of the Division of Water Resources, Kansas State Board of Agriculture, Topeka, Kansas.

C. January 31, 1941 Compact Commissioner M.C. Hinderlider Letter to Compact Commissioners George S. Knapp and Wardner G. Scott.

Source: Records of the Division of Water Resources, Kansas State Board of Agriculture, Topeka, Kansas.

D. March 17, 1941 U.S. Bureau of Reclamation Engineer in Charge of Republican River Investigations C.T. Judah Memorandum to Bureau of Reclamation Hydraulic Engineer.

Source: Box 533, File 302 - General, Republican River, Surveys and Investigations File, 1939 thru June 1943, General Administrative Files, 1930-1945, U.S. Bureau of Reclamation Records, Record Group 115, U.S. National Archives, Washington, D.C.

E. March 20, 1941 Compact Commissioner M.C. Hinderlider Letter to Colorado Governor Ralph L. Carr.

Source: Records of the Colorado State Engineer, Denver, Colorado.

F. May 21, 1941 Bureau of Reclamation Engineer J.R. Riter Memorandum to Bureau of Reclamation Chief Engineer S.O. Harper.

Source: Box 835, File 790-K, Compacts & Treaties (Colorado, Nebraska & Kansas) Republican River, thru Dec. 1942, General Correspondence Files, Straights, Records of the U.S. Bureau of Reclamation, Record Group 115, U.S. National Archives, Denver Branch, Denver, Colorado.

G. May 24, 1941 U.S. Bureau of Reclamation Chief Engineer S.O. Harper Memorandum to Commissioner of Reclamation.

Source: Box 67, File 032 - Republican River, General Administrative Files, 1930-1945, U.S. Bureau of Reclamation Records, Record Group 115, U.S. National Archives, Washington, D.C.

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	**		

H. May 31, 1941 U.S. Bureau of Reclamation Engineer in Charge of Republican River Investigations C.T. Judah Letter to Bureau of Reclamation Hydraulic Engineer.

Source: Box 533, File 302 – General, Republican River, Surveys and Investigations File, 1939 thru June 1943, General Administrative Files, 1930-1945, U.S. Bureau of Reclamation Records, Record Group 115, U.S. National Archives, Washington, D.C.

I. January 9, 1943 Compact Commissioner M.C. Hinderlider Letter to Colorado Governor Ralph L.Carr.

Source: Records of the Colorado State Engineer Office, Denver, Colorado.

J. February 5, 1943 Compact Commissioner M.C. Hinderlider Letter to Federal Representative Glenn L. Parker.

Source: Box 6, File: "Republican River - Correspondence with State Representatives," Water Resources Division, Entry 208, Interstate Compacts, Records of the U.S. Geological Survey, Record Group 57, U.S. National Archives, Washington, D.C.

Further Sayeth Affiant Naught.

DOUGLAS R. LITTLEFIELD

SUBSCRIBED AND SWORN TO before me on September 16, 1999.

Notary Public

My Commission Expires:

April Z4, 2003



January 11th, 1940.

Mr. E. Porter Ahrens Scandia, Kansas.

· Door Mr. Ahrons:

Thank you for your letter of recent date with regard to the meeting of the Governors at McCook with reference to flood control and development of the Republican River Valley.

The desire is to obtain an agreement of a compact as early as possible. A compact between states in order to be effective most be endorsed by the logislatures of each state and possibly by the national congress. It is hoped, in the meantime, that studies going on on the part of the Reclamation Service and the Army Engineers will devetail with the activities of the states, assisting the states on the one hand in agreeing upon a compact and on the other assisting the federal agencies because of the activities of the State Commissioners.

Mr. Page, Commissioner of Reclamation, stated at the Denver meeting of the Reclamation Association that a compact between states was absolutely essential as a condition precedent to any project approval on the part of the Reclamation Service.

Trusting this enswers your inquiry, I remain

Very sincerely yours,



Mr. Herry P. Burleigh, Hydraulic Regineer, Bureau of Agricultural Economics, Amerillo, Texas.

Door Mr. Burleight

We, the Republican River, meeting at Topsia on January 28, examined the tables which you submitted to us on the 27th indicating the approximate recommendations for consumptive use of mater by basins in the three states, and find that the total estimated annual consumptive use of mater is within the amount of the water supply available in the basin above Hardy, and that the proposed allocations in each of the several states fall within the amounts which the Commission may see fit to allocate to each state.

Please accept our thanks for meeting with us and supplying us with these figures.

Sincerely yours,

Geo. S. Knapp Commissioner for Kansas For the Commission

CC to M. C. Hinderlider Marcher Scott



M. C. HINDERLIDER STATE ENGINEER C. C. HEZMALHALCH DEPUTY



L. T. BURGESS CHIEF HYDROGRAPHER

W. T. BLIGHT CHIEF CLERK & DRAFTSMAN

STATE OF COLORADO ENGINEERING DEPARTMENT DENVER

January 31, 1941

SUBJECT:

Mr. George S. Knapp Republican River Compact Commissioner Topeka, Kansas

Mr. Wardner G. Scott Republican River Compact Commissioner Lincoln, Nebraska

Gentlemen:

I am enclosing draft of the minutes of the third and fourth meetings of the Republican River Compact Commission at Lincoln and Topeka, respectively.

I have included suggested changes by Mr. Knapp in the minutes covering the Lincoln meeting. As will be noted, I have signed the copies of the minutes of these two meetings and, if you approve the same, I will request that you advise me accordingly, - otherwise approval can await our next meeting on the 15th of February.

I am also enclosing some additions to the preliminary draft for a compact as suggested by Governor Carr and Attorney General Ireland.

It is my understanding that Mr. Knapp will address a letter to Engineer Burleigh of the Bureau of Agricultural Economics, advising him that the commissioners are in agreement that the estimated amount of ground water which may be developed in each of the tributary basins of the Republican River basin are within the allocations which the Commission has tentatively made.

Very truly yours,

Republican River Compact Commissioner

MCH: EP CC: R. H. Willis

Page 6 of tentative draft for compact:

Following the word "made" at the end of the paragraph near the center of the page, add this sentence:

No state shall have the right to dictate the method of distribution of the waters herein allocated to any other state.

Page 8

Insert this sentence after the first paragraph:

"Such payment to the counties in Colorado shall be in addition to the amounts required to be paid to the owners of said lands upon their purchase or condemnation under the power of eminent domain".

MEMORANDUM TO HYDRAULIC ENGINEER (C. T. Judah)

Subject: Water Facilities Area Plan, Republican River Basin, Nebraska.

- 1. Reference is made to the Hydraulic Engineer's letter of March 6, 1941, subject as above.
- 2. The report covers general farming, grazing, and irrigation practices, and the general financial conditions of residents and farmers of 13 divisions of the basin, and makes recommendations for improvements in present practices and needs in each division.
- 3. It is concluded one of the basic needs of the basin is more irrigation to stabilize agriculture in general. Irrigation of 124,935 acres of land is recommended.
- pumping units. Pumping is to be principally from wells, with some pumping from atteams with sustained sugger flows. Developments are to take place gradually over a period of several years as individual needs end desires arise. It is concluded that a gradual development of this type fits the needs of the basin much better than larger developments, that take place over relatively short periods of time.
 - 5. Facility installation costs are estimated to vary from \$15 to \$25 per acre for each installation. Total installation costs have been estimated at \$1,230,000 for 124,935 acres.

, Mater Requirements

- mated on page 250 of the report and vary from one acre-foot per acre in the eastern part of the basin to 1.75 acre-feet per acre in the west. The average duty of mater has been assumed at 2.0 acre-feet per acre for lands west of Cambridge, and 1.5 acre-feet for lands east of there to account for a general increase in precipitation. However, if the last 10 years is taken as a basis, the difference in precipitation is not large enough to account for this much difference, as will be shown.
 - 7. It is thought farm delivery requirements as used by the Bureau of Reclamation should be a comparable figure to the duty of

water figures given in the report. For comparison, water requirements at various points in the basin as recommended by the E.A.E. and the Eurosu of Reclamation are:

	1	aunua	1 1			of Recla		feet per Acr
	<u> </u>	B.A.E.	;	Average	:	Maximum	:	Miniaus
	ī		ľ	•	:			
Heigler	:	2.0	ı	2.02	I	2.44	1	1.43
McCook	:	2.0	1	1.79	:	2.37	:	0.00
Cambridge	:	2.0	:	1.77	Z	2.44	2	0.54
Esd Cloud	Į	1.5	1	1.99	:	2.55	1	1.52
Superior	:	1.5	:	1.88	:	2.69	:	1,30

8. From the above table it appears as though B.A.E. water requirements may be a little short, especially below Cambridge. Considering the period since 1930, precipitation has not been much greater below Cambridge than above, and some years it has been less.

Water Supply

- 9. In my opinion, the water supply estimate is the weakest part of the report. The following basic assumptions were made in computing the water supply available for use:
 - A. High flood flows were separated from fairly uniform or base flows. It was estimated that base or uniform flows would be 60% of the annual flow for the flashy streams entering Republican River from the South, and 80% for the more uniform flowing streams entering Republican River from the North.
 - B. Recharge would be equal to the amount of water pumped from a given sub-basin, providing recharge requirements were not more than 75% of the annual flow, which would be 125% of the base flow for south side tributaries, and 95% of the base flow for the more uniform flowing streams from the Morth.
- 10. In my opinion, assumption heavy be approached in wide sandy channels, such as those of Republican River, South Fork, and the Arickaree. Other streams in the basin have very narrow and deep channels, and it is doubtful if enough percolating surface would be

afforded for a substantial recharge. If not, some artificial means of recharge would be necessary, an item not contemplated by the B.A.E.

- 11. Mater supplies were figured on an average for the past 10 years; it was assumed ground water storage would iron out deficiencies during years of low runoff, and overdrafts could be adde up during years of runoff above normal.
- 12. Annual runoff and base flow estimates for Beaver, Sappa, and Prairie Dog Creeks were made from about two years of record on each creek. Most of the available base flow was considered as being used in the respective sub-basin. Since the estimates for average annual flows are based on too short a record for dependable estimates, and the percentage that the base flow is of the average annual flow can vary through wide limits, they are "sticking there neck out a long way" in recommending irrigation developments to use practically all the estimated base flow in these streams.
- 13. No re-use of return flow was contemplated, but was mentioned as providing a safety factor in the water supply estimate. Average return flow may amount to about 0.6 acre-foot per acre irrigated west of Cambridge and about 0.2 acre-foot per acre irrigated east of there.
- 14. An average annual draft of about 18,600 acre-feet is to be pumped from wells in the Ogallala formation, principally on the headwaters of the Arickeree (6000 k.F.) and Beaver Creek (12,000 k.F.). Rainfall is comparatively light on these drainage areas and consumptive use will be high, since a large part of the drainage area is grazing land with considerable humus in the top soil, which soaks up the water and has a tendency to hold it, causing high evaporation losses. The Ogallala lies only a few feet below the surface, and penetration of water into it would be rather slow.

Contemplated Developments

15. There is a general conflict of interests in the basin between the B.L.E. and the Bureau of Reclamation, since consumptive use of water on areas irrigated by pumping from wells will naturally deplete river flows available for developments similar to those the Bureau may contemplate. Recommended irrigation developments by the B.A.E. and probable developments by the Bureau for various sub-basins are given as follows:

	*	

-	: P	robable	:
Sub-Basin	ı Deve	lopments	i Romerks
	: <u>in</u>	Acres	¹
	B.A.E.	B. of R.	_1
Arickærse River	; ; ; 4,400	: : 2,230	: The B.A.E. proposes to irri- :gate 3,000 acres on the upper :end of this drainage area by
		• •	:pumping from wells in the
:		:	:Ogallala, most of the land
1	l	•	:recommended by them for irriga- tion lies above the Beecher
		.	:Island Dam site. All of the
•	i !	• •	:Irrigable lands in this basin
	•	•	classified by the Eureeu lie
2	;	•	:below the Beecher Island Dam si
·		r	:most of it probably at a higher relevation than considered by the
	;		:B.A.E.
•			:
			1 Most of the lands recommended
ı .		(1) (000	iby the B.A.E. lie above the Hele iPan site. Lands above St. France
South Fork :	4,580	(1) 0,000 (1) 0,000	considered by the Bureau would
	•		ite served by storage in the Hale
•	:	10,120	Reservoir, generally these lands
2	:	!	:lie at a higher elevation than :lands considered by the B.A.E.
:		i	: Irricable lands below St. Franci
•			iere badly scattered. It might b
:	:	1	possible to serve some of these
:		l .	clands with return flow from area cabove St. Francis, if that area
(1) Above St. Fra	ncis :		:is daysloped.
(2) Below St. Fra	ncis !		
· · · · · · · · · · · · · · · · · · ·			: The 2,000 acres being the new
:		=	clands in Hebraska under the Hort
North Fork	0 :	2,000	Republican Project. In addition the Eureau of Reclamation recom-
1		•	emends supplying supplemental
	•		iwater to 3,500 acres of irrigate
• -1			:lands,
:			1
Beaver Creek !	12,299		



	Probable	•	:
Sub-Basin	ments in		i herarks
	B. A. E.	: B. of R.	<u>:</u>
		•	•
Suppos Creek :	5,230	: 0	:
1		:	:
Prairie Dog Cr. ;	4,950	: 0	
		*	: About 9,000 acres of these lands
Medicine & Deer :		•	:lie above the Medicine Creek Dam
Creeks :	(1) 12,279	0	ssite, and 3,000 scres below. The
	(2) 1,200	<u>)</u> : 0	Bureau of Reclemetion land classi-
ı		•	ification shows about 1,000 acres of
:	13,479);	:irrigable lands below the dam site
:	_	:	lying in shoe-string tracts. In
:		:	: Bureau of Reclaration studies, the
:		:	:water supply of Medicine Creek is
		:	ito be used to irrigate land between
(1) Medicine Cr.:	Valley	i	:Cambridge and Oxford in the Repub-
(2) Deer Cr. Vall	s ý	:	:licen Valley.
		:	
1		:	: There are about 1,400 acres of
1		1	sirrigable lands along Red Willow
Red Willow :		1	:Cr. below the dam site. These areas
Creek :	0	1 0	care strung out and sould be expensive
			to serve. More compect lands can
Į.			the served in the Republican Valley
		1	thy using the flow of this creek, and
		:	that is what is proposed for Bureau
		:	idevalopment.
Frenchman Creek :		.	: The irrigable area under the Burea
including Stink-:		:	sof Reclamation represents the irri-
ing Water Greek :		I	sgable land classified and about the
and main stem of:		:	:amount that would be irrigated if a
Republican River:		:	:sufficient water supply is avail-
between Culbert -:		1	sable. In addition, there are about
son & Red Willows		ı	117,410 ecres of irrigated lands,
Creek	•	:	most of which used a supplemental
		•	:water supply.
(1) Franchesen & S	tinking Te	ter Valleys	•• •
(2) Republican Ri			
		•	:
	5,000	: 0-	



Sub-Basin	Prob Develo	pments	: kemerks		
		: B. of R.	-		
Main Stem Repub- lican River, a Western Section	.	: : :	1 1 2		
Benkelmen to Culbertson		; ; 3,000 ;	: The 3,000 acres lie under the :Buffalo Creek Project. Indicated :costs for this project appear to be		
Culbertson to :	; ; ;	: : :	: very high. : Given under Frenchmen Creek :		
Red Willow Cr. : to Cambridge :	9,122	5,000 : : : :	: The 5,000 acres under the Bureau of :Reclamation represents the area that :can be served by developing the avail :able water supply in Red Willow Creek :A reservoir would be required at the :Red Willow site. There are several :thousand acres of additional irrigable lands in the sub-basin.		
Cambridge to some control of the con	11,200	: : 14,000 :	: The 14,000 acres under the Bureau of Reclamation represents the areasthat can be served by developing the available water supply in Medicine Creek. A reservoir is required at the Medicine Creek site. There are other irrigable lands in this subsession.		
Eastern Section so Oxford to solution s	· · · · · ·	: : : :	: A large section of the area recon- manded by the B.A.E. would be sub- imarged if the Harlan County Reservoi were built. There are about 5,000 sacres in this section lying above the high mater line.		

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Sub-Besin	: Probable : Developments : in Acres		: :	Remerks		
	:	B.A.E.	1	B. of R.	<u>:</u>	
	2				:	
Bloomington to	:				:	
Hardy	1	20,000	:	33,000	:	The reason the B.A.E. did not
•	:	-	:	_	:1	recommend a larger area in this sec-
	:		ı		:1	tion is because they did not have
	:		:		:1	the water supply. This area lies
	·		:		: 1	inder the Bostzick Project as con-
	;		ı		: 5	idered by the Eureau of Reclamation.
	:		:		:]	in addition, there are about 100,000
	ï		:		: 6	cres of irrigable land in Kausas the
	:		:			my be taken in under the Bostwick
	ï		:		: [Project if sufficient water is aveil-
	:		:		: 8	ble.

- 16. No recommendations have been made for supplying supplemental water to constructed irrigation developments that are generally short of mater.
- 17. No recommendations have been made for artificial recharge of underground basins, nor for surface storage to assure a more uniform flow over percolating areas. It is not improbable that needs for such structures may develop with heavy drafts on ground water storage.

Econosics

- 18. It is concluded on page 291 of the report that annual irrigation charges of \$3.00 to \$3.50 per acre can be met in the western part of the basin and that they should not exceed \$3.50 except under the most favorable conditions.
- 19. In the eastern part of the besin they have recommended extreme caution be exercised when annual costs of facilities approach \$3.50 per acre.
- 20. There is some conflict in the estimated total annual charges per acre in the report; on page 307 they estimate the average annual pumping costs in the bazin at \$2.50 per acre-foot, which would amount to an average annual charge of \$5.00 per acre on lands in the eastern part of the basin and \$3.75 per acre for lands in the western part of the basin. If these figures are right, the average annual costs for

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average facilities are greater than can be met. However, this does not seem to be the general conclusion of the report.

21. An infinite number of everage annual costs can be obtained by using different types of equipment and prime movers, different fuel costs and verious everage pumping heads. Hone of these can definitely be determined at this time; a probable exception may be fuel costs. Using information given in appendix 5 of the report, and assuming the average development will irrigate 100 acres, annual costs per acre were computed using a variety of prime movers and fuel costs for pumping lifts of 25 feet, 50 feet, and deliveries of 1.5 and 2.0 acre-feet per acre. Results are given in the following tables.

PUMPING COST - TOTAL 25 FT. READ 100 Acres Par Hell

Fixed Fourtment Cost

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		•				•		•	Per Acre	
	Ξ.	•						ı		
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lesoline					•	116.8	8	:		
laturel Ga		1,133				123.8	8	1	1.24	•
atene		1,373				146.1		• • •	1.46	
يستستمن ندبن										
							el Ener		• V L. T	
Operation										
Rate i	Cost	per Agre	-Foot	; E	quipme	nt: <u>Fu</u>	ter Del:	rere	d in Acre	-F
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2 2 :	.86	. 25	: 1.1	i fi	.91		2.57	1	3.13	
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					sing C					<u>.</u>
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er Gal: F								•		
		1							2.0	
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PUMPING COST - TOTAL 25 FT. HEAD 100 Acres Per Well (Continued)

			Anme	L Cost U	sing Na	tural	Ges		<u> </u>	
056	ratio	on & Kai	ntenance	<u> </u>	Fixed	:	Total	Angual	Cost	
Price	: .:	Cost per	Acre-Po	ot E	uipzer	t: Nat	er Deli	vered :	in Acre-F	.
1000	: Fi	iel :	Other: 5	Cotal:	Cost	:		:		
Cu. Ft		1	: (). & K. : Ps	r Acre	:	1.5		2,0	
	:	:	:	:		:		2		
10¢	: Ş	.07:\$.75 1\$.82:\$	1.24	: \$	2.47	: 5	2,88	4 .
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PUMPING COST - TOTAL 50 FT. HEAD 100 Acres Per Well

·		Fixed 1	Equ	ipment Cost		
	;	Total:	Z	Depreciation, Texas,	2	inmal
Power	:	Installation		Interest, & Insurance,	;	Cost
	Į.	Cost	1	Cost per Year		Per Acre
lectric	• :	£ 1,605.00	:	§ 165.16	:	\$ 1.65
icsel.	:	3,330.00	1	<i>3</i> 65 . 00	ï	3.65
esoline	:	2,120.00	ı	229.80	1	2.30
Satural Cos	:	2,450.00	:	229.80		2.30
Sutane	1	•	t	259.40	:	2.60

PUMPING COST - TOTAL 50 FT. HEAD 100 Acres Per Well (Continued)

town 3. Co. A. Wa	And Elizabeth at 1 The control of th
	ing Electrical Energy Fixed : 60 Total Annual Cost
	quipment: Mater Pelivered in Acre-Ft.
Kw-Er. : : : Total :	Cost :
: Power : Other : O.& M.:P	er Acre: 1.5 : 2.0
1 1 1	1
16 :\$.86 : \$.25 :\$ 1.11:	\$ 1.65 \$ 3.32 \$ 3.87
12¢ : 1.29 : .25: 1.54:	1.65: 3.97: 4.73
26 : 1.72 : .25: 1.97:	1.65: 4.61: 5.59
256 : 2.15 : .25; 2.40;	1.65: 5.05 : 6.45
Annual Cont Us	ing Diesel Fuel
Operation & Maintenance :	
Price : Cost per Acre-Foet 1E	quipment: Mater Delivered in Acre-Ft.
Per Gel: : : Total:	
i Fuel: : Other : O.& E.:P	er Acre : 1.5 : 2.0
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March 20, 1941

His Expellency, Balph L. Carr Governor of Colorado Denver. Colorado

My dear Governor Carri

I have the honor to transmit herswith for your consideration and further disposition two original drafts of a compact, which it is believed equitably apportions the waters of the Republican River basin between the States of Celorado, Kansas, and Hebraska. This compact, the result of several months of investigations, study, and eight conferences between the commissioners, their legal advisors, and water users of the three states, was signed at Denver on March 19, 1941, by the three compact commissioners appointed by the Governors of the signatory states.

Since it appears that no interest of the federal government, by virtue of emership of property or of any responsibility as a result of interestate or international treaties, or obligation to Indian tribes, is involved, no representative of the government was invited to participate in the deliberations of the Commission, more to approve its findings and conclusions.

In its deliverations, the Cormission gave eareful consideration to the report of the Division Engineer, Corps of U. S. Engineers, dated February 27, 1940, to the Chief of Engineers, covering the comprehensive study by the Corps on flood control in the Republican River basin and related matters, and to pre-liminary and progress reports by the U. S. Eureau of Reclamation, which is con-

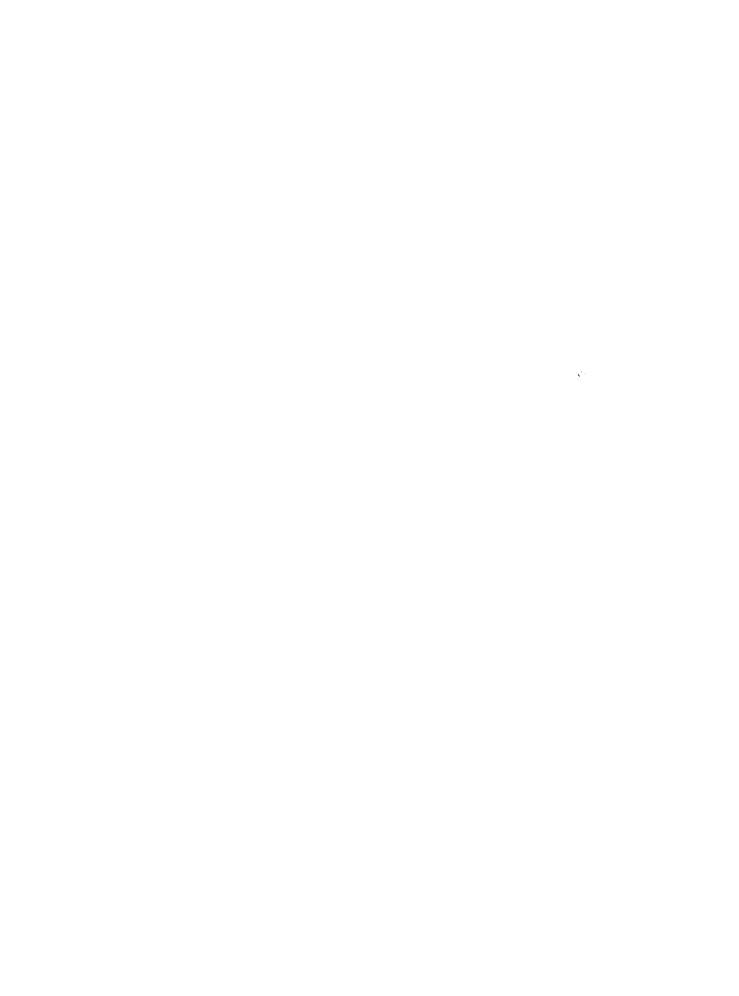
ducting a comprehensive and detailed investigation of the land and water resources of this basin; also to a voluminous report of the Bureau of Agricultural Economics of the W. S. Department of Agriculture on the underground mater resources of the Republican River basin and their availability for beneficial application to the fature development of the basin.

Thile the absence of extensive development of the natural resources of the Republican River basin tended to simplify the problem of allocations of the waters therein, the Commission was confronted with other difficult problems involving a multiplicity of primary and secondary tributary streams, which are largely dissociated in their possibilities for use, and which, due to their erratic character, will require extensive regulatory works throughout the basin.

The compact allocates to Colorado, its citizens, agencies, associations and corporations all of the surface and underground water supplies originating in Colorado within the Franchasa and Red Hillow Greek drainage basins; about 25 percent of those of the Morth Fork of the Republican; 80 per sent of those of the Aribaree River; 77 per cent of those of the Eouth Fork of the Republican; and an estimated 100 per cent of those of the Beaver Creek basin, which it is believed in the limit of consumptive use which it is practicable to make in Colorado of the unters from these stream basins.

It should be borne in mind that these allocations of water are for beneficial consumptive use and do not limit the right of Colorado, or any of its agencies, to divert and apply much greater quantities of water than the amounts allocated by the compact.

The compact, when ratified by the Legislatures of the signatory states and consented to by the Congress of the United States, provides the basis for an orderly planning of the regulation. conservation and efficient use of the waters



of the basin, unhampered by uncertainties arising out of interstate conflicts or misunderstandings.

As hereinabove stated, it is believed that the compact equitably apportions between the signatory states all the waters of the Republican River begins as commissioner for the State of Colorado, I therefore respectfully recommit that this compact be transmitted with a special message to the present General Assembly of our state for ratification.

In conclusion, I desire to express to you my deep sense of appreciation for the confidence reposed in me as the official representative of our state to carry out these important negotiations, and for the invaluable assistance from you as a result of your ripe experience in these interstate matters. I also desire to acknowledge the loyal support and valuable aid received from Attorney General Gail L. Ireland, who was my legal adviser during the final proparation of the compact, to Clifford H. Stone, Esquire, for valued suggestions; to Hr. A. G. Stiefel, assistant chief engineer of the Colorado Ester Conservation Board, who prepared the map of the Republican River hasin which is made a part of the compact, and to Senators Burt Regan and Harry M. McKinney, and Representatives C. J. Buchanan and Harold A. Tabor, who have at all times given we sympathetic and loyal support.

Titles for Senate Bill No. 42, by Senators Ragan and McKinney, and House Bill No. 185, by Representatives Buchanan and Tabor, have herstofore been introduced in the present Legislature, under which the compact, if approved by you, may be properly presented to the Legislature for final disposition.

Respectfully,

Republican River Compant Com'r for Colorado

PERMICURAL ARCHITES

Denver, Colorado, May 21, 1941.

MEMORANDUM TO CHIEF ENGINEER (J. R. Riter)

Subject: Republican River Compact - Colorado-Kansas-Hebraska.

1. Reference is made to teletype message May 12 from the Acting Commissioner as follows:

*Please comment in detail air mail re Burkes latter May 6 Republican River compact. *

- 2. The Bureau of Reclamation did not participate formally in the preparation of the compact, but from time to time as requested by the Compact Commissioners, various members of the investigation organization, especially Mr. C. T. Judah, engineer in charge of the Republican River Investigations, met with the Compact Commissioners and furnished them with available factual information, including runoff records secured by the Bureau of Reclamation. The Compact Commissioners are also furnished with copies of the Bureau's reconnaissance report of March 1940, showing potshtial development possibilities within the Republican River Basin. Several informal discussions were also held, particularly with Mr. Hinderlider, State Engineer of Colorado, in response to direct questions propounded by him regarding factual data secured from the Bureau's investigations in the Republican River Basin.
- 3. With respect to the questions propounded in paragraph 2 of the District Counsel's letter, it is believed that the following answers are applicable:
 - (a) "as to whether or not this compact was entered into with due inquiry", it is believed that this portion can be answered "yes".
 - (b) "that it represents honest exercise of judgment". This inquiry can be answered "yes".
 - (c) "and that it is equitable". This is a matter of opinion. The compact was formulated as the result of "meeting of minds" of the three interested states, and is believed to represent an honest effort toward equitable allocation of available waters.

4. Paragraph 4 of the District Counsel's letter reads in part as follows:

"If the interpretation of the compact does not present a Federal question, then the Bureau must lock to state courts for the protection of water supplies provided by it under the Federal Reclamation Law or under the Wheeler-Case Act."

This office sees no objection to such a situation, if it be true. After all, why should Bureau constructed projects have better protection of their water rights then projects otherwise constructed. If our water rights are initiated, protected and guarded in the same manner as other users, they should fare as well.

- 5. In paragraph 6 the District Counsel raises the question regarding possible conflict of trans-basin diversion with intrabasin consumptive use. He also suggests embiguity between articles I and III. Investigations made to date indicate that runoff and topography are such that there will be no feasible trans-basin diversion possibilities. The question raised is therefore moot. If future developments should indicate that trans-basin diversion is possible, it is believed that each state should determine the policy it will adopt in this matter.
- 6. In paragraph 7 the District Counsel raises the question, "Is it intended by this term (beneficial consumptive use) that the right of diversion of the waters of the basin is a right with an indefinite limit as to quantity?" The compact does not supersede the irrigation laws of the state with regard to distribution and administration of waters within the state. The beneficial consumptive use is only a measure of relative depletion of stream flow in the basin in each state.
- 7. In paragraph 8 the District Counsel raises the question regarding the allocation to Colorado from Frenchman and Red Willow Creeks, as to whether this should be a separate, independent allocation from the 54,100 acre-feet specifically set out in article III. Arithmetic gives the answer with respect to this question. The amount specified in article III to be allocated to Colorado from the North Fork of the Republican River Drainage Basin, the Arikaree River Drainage Basin, South Fork of the Republican River Drainage Basin, and Beaver Creek Drainage Basin, totals 54,100 acre-feet, and consequently the Frenchman and Red Willow waters are in addition to the 54,100 acre-feet.

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- 3. In paragraph 9 the District Counsel raises the question, "Is it intended that 'virgin water supply' and 'natural waters' shall be considered as synonymous?" The answer to this question is "yes".
- 9. In paragraph 9 the District Counsel raises the question as to whether return flow waters are embraced within the term "virgin water supply" and also asks under the compact what is the legal status of return flow waters and have they been allocated. Whether or not return flow is, by legal interpretation, a part of natural flow or otherwise is immaterial. Under the compact each state is accorded a limited "beneficial consumptive use" regardless of whether such waters are derived from virginal natural flow, captured storage water, return flow from irrigation, ground waters recovered by pumping, recovered waste water, or otherwise. In short, the compact merely defines the extent to which streams may be depleted regardless of the methods of use.
- 10. In the first part of paragraph 10 the District Counsel calls attention to the fact that the compact makes reference to "citizens, agencies, associations, and corporations of the signatory states". He raises the question "Can the United States, then, under this compact, initiate and perfect mater rights and utilize the same for the purposes of the Wheeler-Case Act?" It is not believed that this question is material, since organizations recognized by the states can secure mater rights adequate for project purposes, and the state laws of the various states do not prohibit the United States from perfecting water rights.
- II. In paragraph 10 the District Counsel also raises the following question: "....since this compact is wholly silent as to the right of the United States to construct and operate and maintain reclamation projects under either the Reclamation Law or under the Wheeler-Case Act in the Republican River Basin, can the compact, if assented to by Congress, be interpreted as a positive act of forbearance by the United States of its rights in interstate streams which were specifically reserved in Section 8 of the Reclamation Act of 1902?" Section 8 of the Reclamation Act contemplated compliance with state laws, and the Wheeler-Case law requires conformity with state laws and inter-state agreements.
- 12. In paragraph II the District Counsel makes the following statement with respect to Article V of the compact: "It seems to me that Article V is so sketchy that Colorado might possibly be able to interpret it so as to practically nullify the Supreme Court decision



in Weiland v. The Pioneer Irrigation Company, 259 U.S. 498. I do not share the fear of the District Counsel as to the effect of the compact on the Nebraska users under the Pioneer Canal. Physically the return flow from Colorado Pioneer Canal lands cannot be diverted by the Nebraska Pioneer Canal lands.

- 13. In paragraph 12 the District Counsel apparently questions the wisdom of the tax replacement provision in article VII and assumes that the attitude of the Department on Senate Bill 1410 would govern its attitude on the tax replacement provision in article VII of the compact. If the compact is approved by Congress, the taxes will need be paid regardless of the policy of the Department. Since the tax would be continuing, it becomes an annual operation and maintenance charge to be paid by the irrigators rather than by the United States in the event of Bureau constructed projects.
- 15. The District Counsel in paragraph 14 criticizes the proposed organization for administering the compact, as provided in article IX. He says, in part, as follows: "This is a fruitful source of litigation involving the interpretation of the compact..." It is believed that the organization proposed for administering the compact is as good as any organization that could be formulated. In the final analysis, each state would naturally aim to interpret the compact to the advantage of its citizens. The compact aims to permit so far as practicable each state to have charge of its own affairs. It is not believed that/different form of organization from the one suggested would prevent any litigation which may arise in the administration of the compact.
- 16. With respect to the question raised in paragraph 15 of the District Counsel's letter regarding the operation and maintenance of



gaging stations, article IX of the compact reads, in part, as follows: "....and to collect and correlate through such officials the data necessary for the proper administration of the provisions of this compact." In order to secure data necessary for the administration of the compact, it will obviously be necessary to have stream gaging stations. It is believed that the quoted provision of article IX is sufficiently broad to permit the operation of gaging stations.

- 17. With respect to the question raised in the second part of paragraph 16, it is not believed to be essential that the United States (or any other interested party) have representation in negotiation or formulation of the compacts. The only essential requirement is the acceptance by the interests involved and approval of the compact by the United States.
- 18. In paragraphs 5 and 17 of the District Counsel's letter he ventures the opinion that the compact is "sketchy in important particulars, full of ambiguity, and in general ineptly drafted." There is always a difference of opinion with regard to the proper wording of a compact, in fact, of any other document, as is evidenced by the letters which are exchanged by the various field offices of the Bureau in connection with any matters involving contracts, etc. It is believed that the compact as prepared accomplishes the purposes set forth in the preamble thereof, and that it should be ratified by Congress.

For a long of MUDICATIONS TO

UNITED STATES DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION

CUSTOMHOUSE

office of the Chief Engineer

DENVER, COLORADO

By 24, 1941.

From Chief Engineer

To

Commissioner

Subject: Republican River Compact.

.1. Reference is made to office letter of May 7, to the District Counsel's letter of May 6, and to your teletype message of May 12, reading:

"Please comment in detail air mail re Burke's letter May 6, Republican Fiver Compact."

- 2. In view of the positive position taken by District Counsel Burke that an adverse report on the Rapublican River Compact should be filed with the Congress, I have asked District Counsel Baird and Engineer Riter, who have given this matter considerable study, to incorporate their views in memoranda covering, respectively, the legal and factual questions raised by Mr. Burke. Copies of the two Demoranda are enclosed.
- 3. Without entering into a detailed discussion, I wish to state that I am in general agreement with the views set forth in the enclosed memorande. It seems to me that there are only two vital issues involved in this matter. First, is the compact as drawn detrimental to any vested interests of the United States as represented by the Bureau of Reclamation? Second, will the compact be detrimental to future development by the Bureau in the Republican River Basin? The answer to the first question obviously is "no", because the Eureau has no existing projects in this basin. The snaver to the second question is likewise "no" because there are practically no Government lands in this basin, and if any projects are constructed in the future under the Reclamation or Wheeler-Case Acts, appropriations of water for such projects will have to be made in conformity with state laws primarily for the use and benefit of the orners of the lands to be irrigated.
- 4. In view of these conditions, and the limited interest of the United States in the Republican Rivor Ecsia, I do not agree with E. Burke's contention that the compact should be rejected because

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the United States was not represented on the commission. If existing Government projects or large acreages of Government lands were located in the Republican River Basin, there would be some justification for Mr. Burke's position.

5. From a policy standpoint I feel that any attempt by the Eurean to resist the approval of this compact would be most unwise and would result in serious repercussions which would be detrimental to harmonious relations between the Eureau and the interested states.

Encls.

5, O. SARCEL

In dupl.

CC-D.C., Billings, Mont.
(with copies of two memorands)

UNITED STATES DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION Eccook, Nebraska Lay 31, 1941

From

Associate Engineer C. T. Judah

To

Hydraulic Engineer

Subject: Water Facilities Leetings held in Republican River Basin

- l. Reference is made to the Chief Engineer's letter of March 12, 1941; subject, Meeting with Mater Facilities Administration in the Republican River Besin.
- 2. The Bureau of Reclamation was represented at most meetings by Associate Engineer C. T. Judah, or where conflicting meetings were held, by Junior Engineer borris Droskin.
- 3. The planning agency for sater Facilities is required to work out development plans with the Land Use Committees in each county. County Land Use Committees were organized by the U.S. Department of Agriculture to plan and coordinate activities of the Department of Agriculture. The County agent acts as secretary for the committee.
- 4. The meetings were held by the B. A. E. primarily to acquaint the Land Use Flanning Committees with the proposed development plan, and to secure their approval or incorporate further recommendations by them in the report.
- 5. In general, meetings were poorly attended, due principally to excellent spring farming weather.
- 6. It each meeting the B. A. R. representative would outline their proposed development plan, after which the Bureau of Reclamation representative would outline the general program in the basin and particularly in the local area. Considerable interest was shown in each type of development. However, no conclusions could be drawn as to which type of development local interests preferred.



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7. Overlapping interests of both sgencies were pointed out to local interests and fundamental differences in types of developments were explained. A special effort was made to impress on local people that water supplies for both ground water pumping and for gravity stream diversions were from the same source and that new developments supplied by either source would be limited to the amount of water allocated to each state under the proposed compact.

In dupl.

CC-Commissioner (6-23-41)

M. C. HINDERLIDER STATE ENGINEER C. C. HEZMALHALCH DEPUTY



L. T. Burgess
Chief Hydrographer
W. T. Blight
Chief Clerk & Drapteman

STATE O: COLORADO ENGINEERING DEPARTMENT DENVER

January 9, 1943

SUBJECT:

Honorable Ralph L. Carr Governor of Colorado State Capitol Building Denver, Colorado

My dear Governor Carr:

I have the honor to transmit herewith, for your consideration and further disposition, an original draft of a Compact apportioning the waters of the Republican River Basin between the States of Colorado, Kansas and Nebraska, which was consummated at Lincoln, Nebraska, on December 31, 1942, by the Commissioners appointed by the Governors of the signatory States, pursuant to authority from the Legislatures of these States to negotiate an Interstate Compact to equitably apportion the waters of the Republican River Basin.

This Compact replaces the Compact which was ratified by the Legislatures of Colorado, Kansas and Nebraska, in 1941, and which, by appropriate Act, received the approval of the Congress of the United States, but which Act was vetoed by the President for the reason that he felt the Compact did not adequately recognize and protect the interests of the United States.

The Compact herewith transmitted, was negotiated pursuant to not only the aforementioned authority of the Legislatures and Governors of the signatory States, but also to Pub. 696-77th Congress, Chapter 545, 2nd Session (Senate 2604) granting authority to the States to enter into a Compact, which Act also provided for the appointment by the President of a representative of the United States to participate in said negotiations, and to make report to the Congress of the proceedings, and of any Compact entered into.

Pursuant to this authorization by Congress the President designated



Mr. Glen L. Parker, Chief Hydraulic Engineer of the United States Geological Survey, as the Federal representative, who, later by unanimous action of the three State Commissioners, was made Chairman of the Republican River Compact Commission.

The Commission held two meetings, one at Denver, Colorado, on December 2nd and 3rd, and one at Lincoln, Nebraska on December 29, 30, 31, 1942, at the conclusion of which this Compact was signed.

These two meetings of the Commission, presided over by the Federal representative, were participated in by Honorable Gail L. Ireland, Attorney General of Colorado, and Clifford H. Stone, Director of the Colorado Water Conservation Board; by representatives of the Attorneys General of Kansas and Nebraska, and also by representatives of the U.S. Departments of Agriculture, Interior and War. Also present was a representative of the National Resources Planning Board.

The draft of the Compact, herewith transmitted, does not in any way change the allocations of water to the signatory States provided for in the former Compact. The only material changes in the new draft are of a legal nature, and were made in an attempt to compose conflicts between the fundamental rights and powers of the Federal Government arising out of the navigation clause of the Constitution of the United States as interpreted by decisions of the United States Supreme Court, and the rights and vital interests of the signatory States in the consumptive use of the waters of the Republican River and its tributaries essential to the full development of the Basin.

It is believed that the Compact as signed equitably apportions between

the signatory States the waters of the Basin for beneficial multiple use purposes, recognizes and protects existing uses of waters therein, and recognizes that the most efficient utilization of the waters within the Basin is for beneficial consumptive purposes.

It is believed that this Compact, when operative, will promote the orderly development of the land and water resources of the Basin, including the regulations of destructive floods, and will protect any agency of the Federal Government in the acquirement of water rights under the laws of the signatory States, and also the authority of the Federal Government to regulate the waters of the Basin in the interest of navigation, should such need arise in the future.

The Compact allocates for beneficial consumptive use in Colorado, annually, a total of 54,100 acre feet of water from the following sources and in the following amounts:

From the North Fork of the Republican River Drainage Basin, 10,000 acre feet.

From Arickaree River Drainage Basin, 15,400 acre feet

From the South Fork of the Republican River Drainage Basin, 25,400 acre feet.

From Beaver Creek Drainage Basin, 3,300 acre feet, and, in addition, the entire water supply of the drainage basins of Frenchman and Red Willow Creeks in Colorado.

This allocation constitutes about 23 percent of the entire average annual water supply of the North Fork of the Republican River; 80 percent of that of the Arickaree River, 77 percent of that of the South Fork of the Republican River, and an estimated 100 percent of the waters of Beaver Creek Basin in Colorado, which it is believed is the limit of ultimate consumptive use which it is possible to make in Colorado of the waters of these stream basins.

These allocations include not only surface, but also sub-surface, or

underground water supplies.

It should be borne in mind that these allocations of waters are for beneficial consumptive use, and do not limit the right of Colorado or any of its people or entities to divert and apply much greater quantities of water than the amounts allocated by the Compact.

It will be noted that Article XI of the Compact includes the specific language to be used by the Congress in giving its consent to and approval of the actions of the signatory States, which constitutes a definite recognition on the part of the Congress, of the paramount importance of the use of the waters of the Basin in the development of multiple purpose projects which will involve the consumptive use of the waters therein, and also constitutes a recognition on the part of the Congress of any established use for domestic and irrigation purposes of the waters allocated by the Compact when such use is a valid one under the laws of the appropriate State.

A more detailed report will be presented later for the information of the Legislature.

In conclusion. I desire to express to you my deep sense of appreciation for the confidence reposed in me as the official representative of our State to carry out these important negotiations, and for the invaluable assistance from you, as Governor, and from Attorney General Ireland and Judge Clifford H. Stone.

Respectfully submitted,

Republican River Compact Commissioner

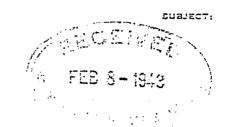
for Colorado



STATE OF COLORADO ENGINEERING DEPARTMENT DENVER

February 5, 1945

Mr. Glen L. Farker Chief Hydraulic Engineer U.S.Geological Survey North Interior Building Washington, D.C.



Dear Mr. Parker:

For your information I am enclosing two mimmeograph copies of the Republican River Compact, to which is attached my emplanatory statement and report on the Compact to our General Assembly, which I thought you might be interested in reading.

Plans have been made for the publication of the Compact, and my emplanatory statement and report, in pamphlet form, similar to that of the Rio Grande Compact, for distribution among those who may be interested in the Compact.

I would be pleased to have your observations, criticisms, etc., on my explanatory articls.

I furnished a copy of the same to Mr. Knapp and Mr. Scott. Mr. Scott has just sent me a copy of a Bill introduced in his Legislature for the ratification of the Compact, but as yet I have had no word from Mr. Knapp concerning the progress in his Legislature.

I note from last night's press reports that Constor Burke of Mebraska and Congressman Curtis, have introduced Bills in the Congress for the purpose of obtaining approval by the Congress of the Compact.

I am interested in hearing from you what progress, if any, has been made by you with interested Federal agencies in this connection.

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I might state also that I furnished Colonel Pick two copies of the enclosure, and have been advised by both Colonel Pick and Major Freeman that there is no disposition on their parts to place any obstructions in the way of obtaining the consent of the Congress. It is clearly understood, of course, that Colonel Pick is in no way obligated, as you have heretofore advised me.

We are asking the present Legislature to appropriate at least the amount of money appropriated last year for our cooperative stream gaging work, and I hope that you will be successful in obtaining your usual appropriations at least for carrying on this important work.

With best regords, I am

Sincerely yours,

MOH J

encls

FEB 8-1943

M 6 Thinkshiter
State Engineer

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