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COMPACT

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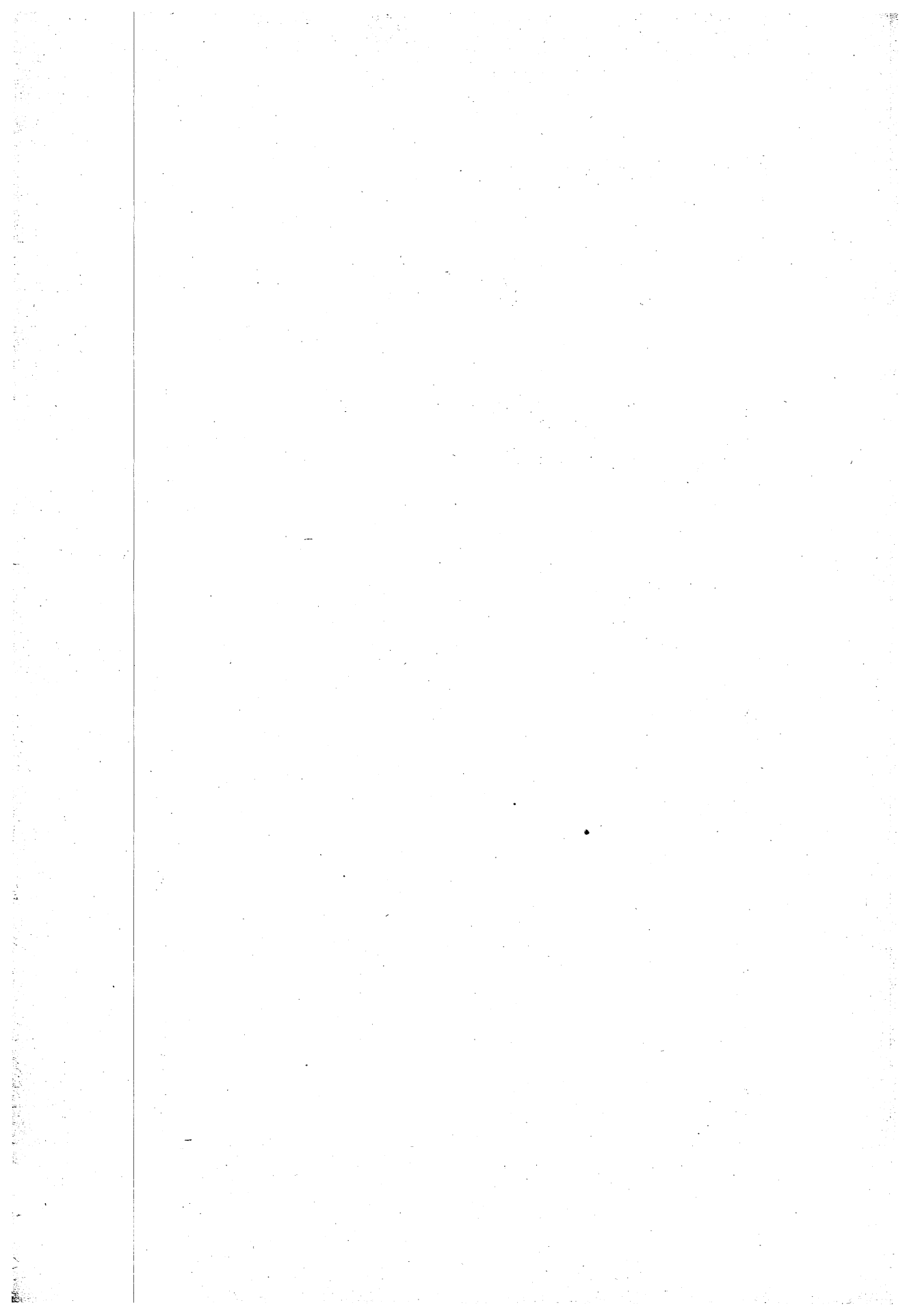
THE WATERS OF THE DELAWARE RIVER

THE COMMONWEALTH OF
PENNSYLVANIA

THE STATE OF NEW JERSEY

THE STATE OF NEW YORK

JANUARY 13, 1927



COMPACT

The Commonwealth of Pennsylvania, the State of New Jersey and the State of New York having appointed as commissioners, for the purpose of negotiating a compact with respect to the water resources of the Delaware river,

CHARLES H. MINER,
ROBERT Y. STUART,
PHILIP P. WELLS,

*For the Commonwealth of
Pennsylvania,*

WILLARD I. HAMILTON,
HENRY G. PARKER,
HARRY BACHARACH,
S. WOOD MCCLAVE,
CARROLL P. BASSETT,
F. MORSE ARCHER,
EDWARD L. YOUNG,

*For the State of
New Jersey,*

GEORGE MACDONALD,
RUDOLPH REIMER,
JEFFERSON DEMONT THOMPSON,

*For the State of
New York,*

the said commissioners, after negotiations, have agreed upon the following articles:

ARTICLE I

This compact, between the sovereign states of Pennsylvania, New Jersey and New York, is entered into to provide for the preservation of the Delaware river and, consistent with such object, to enable each of the said states to make use of a part of the waters thereof for the purpose of meeting present and reasonably prospective needs. This compact does not allocate the remaining waters nor fix any ratio or principle to govern future divisions.

ARTICLE II

Where used in this compact, singular words shall be considered as including the plural, masculine words shall be construed as including the feminine and neuter, and the following terms

and expressions shall have the meanings respectively designated for each:

(1) The term "waters of the Delaware river" means the surface waters originating within the Delaware drainage basin.

(2) The term "channel" or "channel of the Delaware river" means the bed of the Delaware river and the lands on and over which the waters of said river flow, beginning at the place where said river crosses Latitude forty-two degrees ($42^{\circ} 00'$), the northern boundary of the Commonwealth of Pennsylvania, and extending thence continuously as the said river winds and turns down to Latitude forty degrees twelve and one-half minutes ($40^{\circ} 12\frac{1}{2}'$) near Trenton Falls.

(3) The term "Delaware drainage basin" means the total area of both land and water from which the surface waters flow down to where the channel of the Delaware river crosses Latitude forty degrees twelve and one-half minutes ($40^{\circ} 12\frac{1}{2}'$).

(4) The term "Upper Basin" means that part of the Delaware drainage basin from which the surface waters flow down to where the channel of the Delaware river crosses Latitude forty-one degrees twenty-one and one-quarter minutes ($41^{\circ} 21\frac{1}{4}'$), below the mouth of the Neversink river and near the point which marks the boundary between the Commonwealth of Pennsylvania and the states of New Jersey and New York.

(5) The term "Lower Basin" means that part of the Delaware drainage basin which is not embraced within the Upper Basin.

(6) The term "tributary" or "tributary of the Delaware river" means any watercourse, the waters of which naturally flow into the channel of the Delaware river.

(7) The term "development" means making water available for use or diversion by the construction of any intake, dam or other works.

(8) The term "develop" means to make available by development.

(9) The term "point of storage" means the place on a tributary or in the channel of the Delaware river at which a dam is maintained for the purpose of creating storage.

(10) The term "point of diversion" means the place at which water is diverted from a tributary or from the channel of the Delaware river.

(11) The term "diversion" when referring to the water of a tributary means the taking or removal from that tributary of water which is not returned into the channel of the Delaware river either above the point at which the tributary enters said channel or within a distance of twelve miles below that point, measured along the center line of said channel. When referring to the channel of the Delaware river this term means the taking or removal from said channel of water which is not returned into said channel or into the Delaware river below Latitude forty degrees twelve and one-half minutes ($40^{\circ} 12\frac{1}{2}'$) within a distance of twelve miles below the place of taking or removal, measured along the center line of said channel and river.

(12) The term "divert" means to effect a diversion.

(13) The term "domestic and municipal" as applied to the use of water means the use of water by or for water-works serving the public.

(14) The term "sanitation" as applied to the use of water means the use of water for the conveyance of sewage and other wastes.

(15) The term "industry" as applied to the use of water means the use of water for manufacturing and industrial purposes, other than power, when the water used is not taken from water-works serving the public.

(16) The term "power" as applied to the use of water means all use of water, direct or indirect, for the generation of energy.

(17) The term "navigation" as applied to the use of water means the use of water for transportation and for the operation of water craft.

(18) The term "commission" means the Tri-State Delaware River Commission.

ARTICLE III

For the purposes of this compact the order of importance and public value of water shall be: (A) domestic and municipal, (B) sanitation, (C) industry and power, and (D) navigation.

ARTICLE IV

Subject to the duties and obligations imposed by this compact, any administrative department or political subdivision

authorized in that behalf by or under the laws of any signatory state, or any corporation, partnership, association or person hereafter so authorized, may exercise the rights and privileges herein conferred on such state in conformity with such other terms and conditions as that state may impose and under such further requirements as the commission may prescribe in the exercise of its authority under this compact.

ARTICLE V

Subject to the provisions of this compact, each signatory state may divert water from any tributary of the Delaware river within that state or from the channel or from both. The total quantity which may be diverted by each state in any one calendar year shall not exceed the following:

Pennsylvania—Three hundred twenty-eight and one-half ($328\frac{1}{2}$) billion gallons, which total quantity is equivalent to an average of nine hundred (900) million gallons daily.

New Jersey—Two hundred nineteen (219) billion gallons, which total quantity is equivalent to an average of six hundred (600) million gallons daily.

New York—Two hundred nineteen (219) billion gallons, which total quantity is equivalent to an average of six hundred (600) million gallons daily.

The quantities of water herein authorized to be diverted are in addition to all quantities of water which have heretofore been lawfully diverted by the normal operation of all works existing and in actual operation within each state in the Delaware drainage basin when this compact becomes effective, and the future diversion of water in quantities not exceeding those heretofore lawfully diverted by the normal operation of such works shall not be charged against the total quantity which may be diverted under authority of this article by that signatory state in which said works are located.

ARTICLE VI

Diversions allowable under Article V may be made by each signatory state from any tributary of the Delaware river within that state for use either within or without the Delaware drainage basin, subject to the following restrictions and limitations:

(1) Authority for every development shall be obtained, and every development shall be carried out, under the laws of the state in which it is located.

(2) On every tributary from which a diversion is made there shall be provided sufficient storage to insure the reserve flows required by this article.

(3) Within the Upper Basin, at all times during the months of July, August, September and October, there shall be released from storage and delivered into the tributary or into the channel of the Delaware river above the point at which the tributary enters said channel, a reserve flow equal to forty-five hundredths (0.45) of a cubic foot per second for each square mile of drainage area above the point of storage; during the remainder of the year such a reserve flow shall be maintained only on the days when the flow from the drainage area above the point of storage is less than forty-five hundredths (0.45) of a cubic foot per second for each square mile of drainage area above the point of storage.

(4) Within the Lower Basin there shall at all times be released from storage and delivered into the tributary or into the channel of the Delaware river above the point at which the tributary enters said channel a reserve flow equal to fifteen hundredths (0.15) of a cubic foot per second for each square mile of drainage area above the point of storage.

ARTICLE VII

Diversions allowable under Article V may be made by each signatory state from the channel of the Delaware river for use either within or without the Delaware drainage basin, subject to the following restrictions and limitations:

(1) All diversions shall be made in accordance with schedules which shall be prescribed from time to time by the commission. In the Upper Basin said schedules shall allow to each

diverting state at least one-third of the flow over and above the reserve flow requirements; in the Lower Basin said schedules shall allow to each diverting state at least one-half of the flow over and above the reserve flow requirements. Any schedule prescribed by the commission authorizing the diversion of more than one-third of the divertible flow in the Upper Basin or of more than one-half of the divertible flow in the Lower Basin shall not operate to create an irrevocable right to continue such excess diversion nor to prevent the commission from at any time modifying or changing any such schedule to allow to each diverting state in the Upper Basin only one-third of the divertible flow or to allow to each diverting state in the Lower Basin only one-half of the divertible flow, or to prevent the commission from at any time modifying or changing any such schedule in any other manner that may be necessary to meet the conditions existing at the time such change or modification is made.

(2) In the absence of storage at the place where the diversion is accomplished no water shall be diverted from the channel within the Upper Basin unless the flow in the channel is in excess of a reserve flow of forty-five hundredths (0.45) of a cubic foot per second per square mile of drainage area above the point of diversion. In every diversion, in the Upper Basin, made from a storage reservoir lying wholly or in part within the channel, a reserve flow equal to forty-five hundredths (0.45) of a cubic foot per second per square mile of drainage area above the point of storage shall be maintained at the point of storage at all times when the flow in the channel from the drainage area above the point of storage is greater than that amount; when the flow in the channel from the drainage area above the point of storage is less than forty-five hundredths (0.45) of a cubic foot per second per square mile, then a reserve flow equal to the flow from the drainage area above the point of storage shall be maintained in the channel at the point of storage.

(3) In the absence of storage at the place where the diversion is accomplished no water shall be diverted from the channel within the Lower Basin unless the flow in the channel is in excess of a reserve flow of twenty-four hundredths (0.24) of a cubic foot per second per square mile of drainage area above the point of diversion. In every diversion, in the Lower Basin, made from a storage reservoir lying wholly or in part within

the channel, a reserve flow equal to twenty-four hundredths (0.24) of a cubic foot per second per square mile of drainage area above the point of storage shall be maintained at the point of storage at all times when the flow in the channel from the drainage area above the point of storage is greater than that amount; when the flow in the channel from the drainage area above the point of storage is less than twenty-four hundredths (0.24) of a cubic foot per second per square mile, then a reserve flow equal to the flow from the drainage area above the point of storage shall be maintained in the channel at the point of storage.

(4) The reserve flows required under this article at every point of diversion or of storage shall be in addition to water in transit which may be flowing in the channel at such point.

(5) Every storage reservoir lying wholly or partly within the channel of the Delaware river shall at all times be operated so as not to interfere with or retard the free passage of water in transit, of the required reserve flows and, except as otherwise permitted by the schedules prescribed by the commission, of that part of the flow in the said channel which may not be diverted by the state under the authorization of which state said storage reservoir was constructed.

ARTICLE VIII

Each signatory state may authorize an appropriate department to designate as water in transit for the use of that state any or all water that has been or may hereafter be developed by storage for any purpose by or under the authorization of such state either on any tributary within said state or on the channel of the Delaware river. All water so designated shall be known as "water in transit" and may be permitted to flow into and down the channel of the Delaware river. All water which has been so designated shall be considered as having been diverted at the point of storage where it was developed and shall be charged against the total quantity of water which may be diverted by the designating state under the authority of Article V.

Water in transit may be removed from the channel of the Delaware river by or under the authority of the designating

state. The daily rate at which water in transit may be removed from the channel shall not exceed the daily rate at which it is delivered and no greater quantity of such water may be removed than shall have been delivered into the said channel. All water in transit shall be subject to the reserve flow requirements of Articles VI and VII which apply at the point of storage where said water was developed. In the case of water in transit from any development completed prior to the date when this compact becomes effective said reserve flow requirements shall, so long as the existing authorization for such development continues in effect, apply only at times when water in transit from such development is actually flowing in the channel of the Delaware river.

Every designation of water in transit made under the authority of this article shall be evidenced by the filing with the commission of a declaration setting forth the contemplated uses of said water and any such designation may at any time be withdrawn or amended without prejudice to its subsequent amendment or renewal. Notice of every amendment or renewal shall be given to the commission through the filing of a declaration, the provisions of which declaration shall not become effective until two years from the date of the filing thereof unless the commission shall, after hearing, fix an earlier date.

ARTICLE IX

With the approval of the commission each signatory state may build dams entirely or partly across the channel of the Delaware river upon such terms and conditions as the commission, after hearing, may prescribe.

All such dams shall be built so as to conform to the requirements relating to physical construction and safety in the state or states in which they are located and shall at all times be operated so as not to interfere with any diversion that is in accordance with schedules prescribed by the commission nor with any water in transit.

ARTICLE X

Notice of every development for diversion from any tributary shall be filed with the commission, prior to the beginning

of construction, by the state in which the development is located or by the holder of the authorization for such development; said notice shall include a statement of the quantity of water proposed to be diverted, the purpose of such diversion and a copy of the authority for the development.

ARTICLE XI

To evidence that the provisions of this compact are being complied with there shall be installed and maintained, in connection with every development which comes under the provisions of this compact, adequate and suitable equipment for measuring all necessary quantities and rates of water flow. Records of all water flows in connection with such developments shall be kept and furnished to the commission as the said commission may require. Said equipment shall be installed and maintained and said records shall be kept and furnished by the state or by the holder of the authorization for every such development.

ARTICLE XII

No water from the Delaware drainage basin shall be diverted for use outside the boundaries of the states signatory to this compact. Except by legislative act no signatory state may give, grant or dispose of to another signatory state, or to the holder of an authorization therefrom, any water allotted to it or developed by it under the provisions of this compact. The joint exercise by or under the authority of two or more of the signatory states of any right under this compact is hereby authorized.

ARTICLE XIII

The signatory states, recognizing the importance of conserving the sanitary quality of the waters flowing in the channel of the Delaware river so that these waters may be used as sources of domestic and municipal water supplies, agree to co-operate in carrying out a policy for maintaining said waters in a sanitary condition at least equal to that which obtains as of the date when this compact becomes effective.

ARTICLE XIV

The beneficial effects of forest covered areas on the regularization of stream flow, with attendant greater potential use of streams for domestic, industrial, navigation and other purposes, are recognized by the signatory states. Each signatory state agrees to adhere to a policy covering the establishment and maintenance of an adequate forest cover in the Delaware drainage basin and the maintenance of the highest practicable standards of protection from fire on these lands.

ARTICLE XV

Each signatory state, in the exercise of any right under this compact, may take and condemn any property necessary for the construction, maintenance and operation of any dam in or across the channel of the Delaware river. Each signatory state may also take and condemn any rights to the use of or in water, the taking or condemnation of which rights is necessary to effect any allowable diversion made under this compact from any tributary or from the channel of the Delaware river. The power of condemnation herein conferred shall be exercised in accordance with the laws of the state in which the property or the rights to be taken or condemned are located. Any such property and rights, though devoted to a public use, may be taken and condemned in favor of any public use higher in the order of importance set forth in Article III.

ARTICLE XVI

All damage to persons or property resulting from the exercise of any rights under this compact shall be determined under the rule of damages, in accordance with the procedure, and in such manner as is provided by the law of the state in which the damages are suffered. The damages suffered in the State of Pennsylvania shall be ascertained, recovered and paid as provided by the forty-first section of the act approved April twenty-ninth, one thousand eight hundred and seventy-four (Pamphlet Laws 73) and the amendments and supplements thereto or any substitute therefor in effect when the development is authorized. The damages suffered in the State of New York or in the

State of New Jersey shall be ascertained, recovered and paid as provided by any general or other now existing act applying thereto or any substitute for the same in effect when the development is authorized. The court or courts which have jurisdiction of the subject matter in the respective states shall have jurisdiction of the person of every party in interest for the purpose of notice, summons and hearing throughout all three signatory states.

ARTICLE XVII

Any property of a signatory state or of the holder of an authorization of such state, acquired in the exercise of any right or privilege under this compact, which is located in any other signatory state shall be subject to taxation as private property under the general laws of the state in which it is located.

ARTICLE XVIII

Nothing in any existing treaty or compact between any two of the signatory states shall be modified or changed or invalidated by anything herein contained except in so far as the same is repugnant to any provision of this compact.

ARTICLE XIX

The Tri-State Delaware River Commission is hereby created as a body corporate to consist of not more than three members from each of the signatory states. Each state may, by appropriate legislation, provide for the designation, appointment and tenure of its members. Until such time as a signatory state shall by legislation otherwise provide, the Governor of such state is hereby directed to designate an appropriate officer or employee and may appoint not more than two other persons to represent said state as members of the Tri-State Delaware River Commission.

Each signatory state shall have one vote in the commission. Every decision, authorization or approval of the commission shall require a unanimous vote of the states entitled to vote thereon. On matters pertaining only to the Lower Basin, the State of New York shall have no vote.

Every decision, authorization or approval rendered shall be accompanied by a certificate of the commissioners that the same is, in their judgment, in the public interest and such certificate shall state the reasons on which the decision, authorization or approval is based.

The powers and duties of the commission, in addition to those hereinbefore set forth, shall be:

(1) To make rules and regulations for the organization and the conduct of its business.

(2) To report annually to the governors for the information of the legislatures of the signatory states as to the developments under the terms of this compact and as to such other matters as may come within the purview of the commission.

(3) To report in like manner at intervals of not more than five years as to the existing and reasonably prospective needs of the signatory states and the extent to which and the manner in which each signatory state has exercised its rights under this compact.

(4) To observe the operation of all developments; to make such orders in writing after hearing as may be necessary to secure compliance with those provisions of this compact which are within the jurisdiction of the commission; and to institute any appropriate action or proceeding at law or in equity to enforce compliance with such orders and with the terms and conditions imposed in any decision, authorization or approval made by it.

(5) To require by order in writing compliance with Article XI.

(6) To make, modify and change the schedules referred to in Article VII.

(7) To make such examinations as may be necessary to ascertain the quantities of water heretofore lawfully diverted by the normal operation of all works existing and in actual operation when this compact becomes effective.

(8) The commission or any member thereof or any employee or other person duly authorized thereby is hereby empowered to enter without let or hindrance upon the lands and property upon which any development is being constructed, operated or maintained under this compact. Each state through its ap-

propriate departments shall co-operate with the commission in obtaining such data, information and records as may be necessary in the performance of its duties.

(9) Whenever, by this compact, provision is made for action by the commission after hearing, notice of such hearing shall be given to the governor of each state at least ten (10) days before the date set for such hearing.

(10) The attorney general of each signatory state or a deputy or assistant shall serve as the legal adviser of the commissioners representing that state.

(11) The commission is authorized to provide suitable offices and conveniences for the transaction of its business and to employ such technical and clerical assistance as may be necessary to enable it to carry out the duties imposed by this compact. The expenses of the commission shall be paid, share and share alike, from funds provided by each of the signatory states in such manner as the laws of the signatory states shall prescribe.

ARTICLE XX

Notwithstanding anything contained in this compact, each state may institute any action or proceeding at law or in equity for the enforcement or protection of its rights or the rights of its citizens accruing under this compact or otherwise.

ARTICLE XXI

The governors of the signatory states, upon the request of any one of them, shall each forthwith appoint a commissioner, and the said commissioners are empowered to consider and recommend modifications of this compact and upon adoption by the legislative act of each and all of said states, the Congress of the United States having consented thereto, such modifications shall be in full force and effect.

ARTICLE XXII

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

ARTICLE XXIII

The consent of the Congress of the United States to this compact shall in no wise affect any existing Federal statute.

ARTICLE XXIV

This compact may be terminated at any time by concurrent legislative action of all the signatory states. In the event of the termination of this compact all rights which may have become vested under its provisions shall remain and continue unimpaired.

ARTICLE XXV

This compact shall be submitted for adoption to the legislature of each of the signatory states at the several sessions beginning in the month of January, nineteen hundred and twenty-seven; and upon adoption by the legislative act of each and all of said states, the Congress of the United States having consented thereto, it shall be in full force and effect.

IN WITNESS WHEREOF, the commissioners have signed this compact in triplicate originals, one of which shall be deposited with the Secretary of State of each of the signatory states.

DONE at The City of New York, New York, this thirteenth day of January, in the year of our Lord, one thousand nine hundred and twenty-seven.

CHARLES H. MINER
ROBERT Y. STUART
PHILIP P. WELLS
WILLARD I. HAMILTON
HENRY G. PARKER
HARRY BACHARACH
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