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## TECHNICAL MEMORANDUM

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**SUBJECT: Snake/Salt River Basin Plan  
Summary of Interstate Compacts and Court Decrees**

**PREPARED BY:** Gordon W. “Jeff” Fassett, P.E.  
Fassett Consulting, LLC.

**DATE:** May 3, 2002

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### **Introduction:**

Wyoming is a headwater state; its mountain ranges are often the highest elevation source of water for many of the most significant rivers in the western United States. Wyoming straddles a portion of the continental divide and is a primary contributing source of water to the Colorado River (via the Green, Blacks Fork and Little Snake Rivers), the Missouri River (via the Clarks Fork, Big Horn/Wind, Powder, Tongue, Belle Fourche, Cheyenne, Niobrara, North Platte and Laramie Rivers) and the Columbia River (via the Snake and Salt River), the basins of interest in this river basin plan. As such, the waters originating in Wyoming are shared by water users in many surrounding downstream states.

As a result of more rapid development and population growth in downstream states, an upstream state is critically interested in protecting its long-term right and ability to develop the waters of a shared interstate river, for the future. Soon after the turn of the century, upstream states were concerned that the “first in time, first in right” doctrine, uniformly adopted for intrastate distribution of water, would be applied across state lines to the detriment of “junior” or later developing upstream water uses. To address these concerns and circumstances, legal processes were established over the past ninety years to provide for the orderly allocation and protection of the use, rights and privileges of the waters of streams and rivers that flow across state lines.

There are two basic ways the rights and allocations of water sources shared between states are established. The first is a result of litigation between states that is resolved by a decree of the Courts of the United States that equitably apportions the shared water resources between the states. The second way is established cooperatively through an interstate compact, which is an agreement between the participating states, with the consent of Congress, dividing the waters of an interstate stream. Wyoming has many such arrangements for the interstate rivers and streams leaving our borders, including the Snake and Salt River basins. The rights of Wyoming and Idaho to the waters of Teton Creek and South Leigh Creek, on the west side of the Teton Mountain Range, have been settled by a decree of the District Court of the United States for the District of

Wyoming, and the rights to the waters of the Snake and Salt River watersheds are included in the Snake River Compact. Both of these important documents are discussed herein.

The primary purpose of an interstate compact or a decree of the Court is the equitable division or apportionment of stream flow among participating states. These legal protections provide the long-term certainty of access to the available water resources for the slower developing state and the security for the downstream state that all of the upstream resources will not be depleted. Often, the basis for the division is the amount of historic and potential future use of water in the river basin of interest, but of course, there is no hard rule to follow in a negotiated agreement. An integral part of these documents or decisions is also the method of measurement or accounting of the agreed allocations of water. Often, this is an amount of consumptive use for a variety of beneficial purposes or a percentage of available water supply at a designated point of measurement.

### **The Snake River Compact:**

Congress, by the Act of June 3, 1948, provided their consent to Wyoming and Idaho negotiating a compact over the waters of the Snake River. The Snake River Compact, negotiated by the representatives of both states with participation of a representative of the United States, was signed on October 10, 1949. The compact divided the waters of the Snake and Salt River watersheds between the states of Idaho and Wyoming. This agreement was subsequently ratified by the State of Idaho on February 11, 1950, by the State of Wyoming on February 20, 1950 and by an act of Congress on March 21, 1950.

The compact recognizes, without restriction, all existing water rights in Wyoming and Idaho established prior to July 1, 1949. It permits Wyoming unlimited use of water for domestic and stock watering purposes, providing stock water reservoirs shall not exceed 20 acre-feet in capacity. The compact allocates to Wyoming, for all future uses, the right to divert or store 4% of the Wyoming-Idaho state line flow of the Snake River. Idaho is entitled to the remaining 96% of the flow. The use of water is limited to diversions or storage within the Snake River drainage basin unless both states agree otherwise. The compact also provides preference for domestic, stock and irrigation use of the water over storage for the generation of power.

The historical perspective of this seemingly “un-equitable” division of water, was the fact that the majority of the existing and potential future use of water was in Idaho. In 1949, the lack of arable land for irrigation and the high percentage of federal land (national parks, national forests and wildlife reserves) in the Wyoming portion of the basin, were factors in the negotiations. As documented in this planning report, Wyoming’s demands for water have, even after 50 years, been well within the allocations provided the state under the compact.

One unique aspect of the Snake River Compact, compared to other compacts to which Wyoming is a party, is a requirement that calls for Wyoming to provide Idaho replacement storage for one-third of any usage after the first 2% is put to beneficial use. Early estimates of these replacement storage quantities, based upon the average state line flow, are 33,000 acre-feet. A valuable technical result, provided elsewhere in this planning report, is the update of Wyoming’s current use of water in the basin. This will provide the state and water users with an

important component of information for future development and project planning. Another Technical Memorandum for this river basin plan will describe the details of the State of Wyoming's contract for storage space in Palisades Reservoir to meet this unique replacement storage provision of the Snake River Compact.

A full copy of the Snake River Compact for the reader's further interest is attached hereto as Appendix A.

### **The Roxanna Decree:**

The Roxanna Decree is a shorthand name for a United State District Court decision resolving an interstate dispute between water users in Wyoming and Idaho diverting from Teton Creek and South Leigh Creek. The District Court for the District of Wyoming docket Equity No. 2447, Roxanna Canal Co., a Corporation, et al. v. Daniels, et al. entered its decision and decree on February 4, 1941. This decree adopted a stipulation of agreement entered into by the water user parties to the case located within Wyoming and Idaho, dated March 20, 1940.

The stipulation generally sets forth that Wyoming water users shall be unlimited in their diversions from Teton Creek and its tributaries until the measured flow of the creek diminishes to 170 cubic feet per second (cfs). After that, the Wyoming water users are limited to a diversion of 1 cfs for each 50 acres of irrigated land. When the flow further reduces to 90 cfs, the flow of Teton Creek and its tributaries is divided equally between the Wyoming and Idaho water users.

For South Leigh Creek, the stipulation generally provides the appropriators in Wyoming the unlimited diversion of water from South Leigh Creek until the natural flow of the creek diminishes to a total of 16 cfs, after which time the Wyoming water users are permitted to divert one-half of the streamflow and Idaho water users can divert the balance.

The decree provides for the installation and use of proper measuring devices in canals and along the stream as needed for the administration of the decree by the Wyoming and Idaho water officials in each state. The stipulation and decree also specify certain details for the handling of several named irrigation canals and other local implementation matters.

A copy of the stipulation and the Court's Roxanna Decree for the reader's further interest is attached hereto as Appendix B.

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## **APPENDIX A**

### **The Snake River Compact**

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## **SNAKE RIVER COMPACT, 1949**

Signatory States: Idaho and Wyoming

Rivers Controlled: The Snake River from its headwaters to the Wyoming-Idaho boundary and all tributaries flowing into it within the boundaries of Wyoming. The Salt River and all its tributaries.

Ratifications:

Wyo. Stat. 41-509 (1957) [Act of Feb. 20, 1950, Wyo. Sess. Laws p.3]

Idaho Code 42-3401 (Supp. 1969) [Act of Feb. 11, 1950, Idaho Sess. Laws p.4]

Summary:

The Compact recognizes, without restrictions, all existing rights in Wyoming as of the date of the Compact. It permits Wyoming unlimited use for domestic and stock uses provided that stock water reservoirs shall not exceed 20 acre-feet in capacity. It permits Wyoming to divert (not deplete) for new developments, either for supplemental or original supply, 4% of the Wyoming-Idaho State line flow of the Snake River.

Use of the water is limited to diversions within the Snake River drainage basin unless both states agree otherwise.

The Compact gives preference to domestic, stock and irrigation uses of the water over storage for the generation of power.

## **SNAKE RIVER COMPACT, 1949**

The States of Idaho and Wyoming, parties signatory to this compact, have resolved to conclude a compact as authorized by the Act of June 3, 1948 (62 Stat. 294), and after negotiations participated in by the following named State commissioners:

For Idaho:

Mark R. Kulp, Boise  
N. V. Sharp, Filer  
Charles H. Welteroth, Jerome  
Roy Marquess, Paul  
Ival V. Goslin, Aberdeen  
R. Willis Walker, Rexburg  
Alex O. Coleman, St. Anthony  
Leonard E. Graham, Rigby  
Charles E. Anderson, Idaho Falls  
A. K. Van Orden, Blackfoot

For Wyoming:

L. C. Bishop, Cheyenne  
E. B. Hitchcock, Rock Springs  
J. G. Imeson, Jackson  
David P. Miller, Rock Springs

Carl Robinson, Afton  
Ciril D. Cranney, Afton  
Clifford P. Hansen, Jackson  
Clifford S. Wilson, Driggs, Idaho  
Lloyd Van Deburg, Jackson  
and by R. J. Newell, representative of the United States of America, have agreed upon the following articles, to-wit:

#### ARTICLE I

- A. The major purposes of this compact are to provide for the most efficient use of the waters of the Snake River for multiple purposes; to provide for equitable division of such waters; to remove causes of present and future controversies; to promote interstate comity; to recognize that the most efficient utilization of such waters is required for the development of the drainage area of the Snake River and its tributaries in Wyoming and Idaho; and to promote joint action by the States and the United States in the development and use of such waters and the control of floods.
- B. Either State using, claiming or in any manner asserting any right to the use of the waters of the Snake River under the authority of either State shall be subject to the terms of this compact.

#### ARTICLE II

As used in this compact:

- A. The term "Snake River" as distinguished from terms such as "Snake River and its tributaries" shall mean the Snake River from its headwaters to the Wyoming-Idaho boundary and all tributaries flowing into it within the boundaries of Wyoming, and the Salt River and all its tributaries.
- B. The terms "Idaho" and "Wyoming" shall mean, respectively, the State of Idaho and the State of Wyoming, and except as otherwise expressly provided, either of those terms or the term "State" or "States" used in relation to any right or obligation created or recognized by this compact shall include any person or entity of any nature whatsoever, including the United States.
- C. The term "domestic use" shall mean the use of water by an individual or by a family unit or household for drinking, cooking, laundering, sanitation and other personal comforts and necessities; and for the irrigation of a family garden or orchard not exceeding one-half acre in area.
- D. The term "stock water use" shall mean the use of water for livestock and poultry.
- E. The term "established Wyoming rights" shall mean Snake River water rights that have been validly established of record in Wyoming prior to July 1, 1949, for use in Wyoming.

#### ARTICLE III

- A. The waters of the Snake River, exclusive of established Wyoming rights and other uses coming within the provisions of C of this Article III, are hereby allocated to each State for storage or direct diversion as follows:

To Idaho .....	96 percent
To Wyoming .....	4 percent

subject to the following stipulations and conditions as to the four per cent allocated to Wyoming:

1. One-half may be used in Wyoming by direct diversion or by storage and subsequent diversion without provision being made for replacement storage space.

2. The other one-half may be diverted for direct use or stored for later diversion and use on the condition that there shall have been provided for reimbursement of Idaho users replacement storage space to the extent of one-third of the maximum annual diversion in acre-feet but not in excess, however, of one-third of half the total hereby allocated to Wyoming. Until this total replacement storage space has been made available, provision for meeting its proportionate part of this total shall be a prerequisite to the right to use water in Wyoming for any irrigation project authorized after June 30, 1949, for construction by any Federal agency.

B. The amount of water subject to allocation as provided in A of this Article III shall be determined on an annual water-year basis measured from October 1 of any year through September 30 of the succeeding year. The quantity of water to which the percentage factors in A of this Article III shall be applied through a given date in any water year shall be, in acre-feet, equal to the algebraic sum of:

1. The quantity of water, in acre-feet, that has passed the Wyoming state line in the Snake River to the given date, determined on the basis of gaging stations to be established at such points as are agreed on under the provisions of B of Article VI.
2. The change during that water year to the given date in quantity of water, in acre-feet, in any existing or future reservoirs in Wyoming which water is for use in Idaho.
3. The quantity of water, in acre-feet, stored in that water year and in storage on the given date for later diversion and use in Wyoming, under rights having a priority later than June 30, 1949.
4. One-third of the quantity of water, in acre-feet, excluding any storage water held over from prior years, diverted, under rights having a priority later than June 30, 1949, in that water year to the given date:
  - (a) from the Snake River for use that year on lands in Wyoming, and
  - (b) from tributaries of the Salt River for use that year on lands in Idaho.

C. There are hereby excluded from the allocations made by this compact:

1. Existing and future domestic and stock-water uses of water; provided, that the capacity of any reservoir for stockwater shall not exceed 20 acre-feet.;
2. Established Wyoming rights; and
3. All water rights for use in Idaho or any tributary of the Salt River heading in Idaho which were validly established under the Laws of Idaho prior to July 1, 1949; and all such uses and rights are hereby recognized.

#### ARTICLE IV

No water of the Snake River shall be diverted in Wyoming for use outside the drainage area of the Snake River except with the approval of Idaho; and no water of any tributary of the Salt River heading in Idaho shall be diverted in Idaho for use outside the drainage area of said tributary except with the approval of Wyoming.

#### ARTICLE V

Subject to the provisions of this compact, waters of the Snake River may be impounded and used for the generation of electrical power, but such impounding and use shall be subservient to the use of such waters for domestic, stock and irrigation purposes, and shall not interfere with or prevent their use for such preferred purposes. Water impounded or diverted in Wyoming exclusively for the generation of electrical power shall not be charged to the allocation set forth in Article III of this compact.

#### ARTICLE VI

A. It shall be the duty of the two States to administer this compact through the official in each State who is now or may hereafter be charged with the administration of the public water supplies, and to collect and correlate through such officials the data necessary for the proper administration of the provisions of this compact. Such officials may, by unanimous action, adopt rules and regulations consistent with the provisions of this compact.

B. The States shall in conjunction with other responsible agencies cause to be established, maintained and operated such suitable water gaging stations as they find necessary to administer this compact. The United States Geological Survey, or whatever Federal agency may succeed to the functions and duties of that agency, so far as this compact is concerned, shall collaborate with officials of the States charged with the administration of this compact in the execution of the duty of such officials in the collection, correlation and publication of information necessary for its proper administration.

C. In the case of failure of the administrative officials of the two States to agree on any matter necessary to the administration of this compact, the Director of the United States Geological Survey, or whatever official succeeds to his duties, shall be asked to appoint a Federal representative to participate as to the matters in disagreement, and points of disagreement shall be decided by a majority vote.

#### ARTICLE VII

A. Either State shall have the right to file applications for and receive permits to construct or participate in the construction and use of any dam, storage reservoir or diversion works in the other State for the purpose of conserving and regulating its allocated water and to perfect rights thereto. Either State exercising this right shall comply with the laws of the other State except as to any general requirement for legislative approval that may be applicable to the granting of rights by one State for the diversion or storage of water for use outside of that State.

B. Each claim or right hereafter initiated for storage or diversion of water in one State for use in the other State shall be filed in the office of the proper official of the State in which the water is to



be stored or diverted, and a duplicate copy of the application, including a map showing the character and location of the proposed facilities and the lands to be irrigated, shall be filed in the office of the proper official of the State in which the water is to be used. If a portion or all the lands proposed to be reclaimed are located in a State other than the one in which the water is to be stored or diverted, then, before approval, said application shall be checked against the records of the office of the State in which the water is to be used, and a notation shall be placed thereon by the officer in charge of such records as to whether or not he approves the application. All endorsements shall be placed on both the original and duplicate copies of all such applications and maps filed to the end that the records in both States may be complete and identical.

## ARTICLE VIII

A. Neither State shall deny the right of the United States, and, subject to the conditions hereinafter contained, neither State shall deny the right of the other State to acquire rights to the use of water, or to construct or participate in the construction and use of diversion works and storage reservoirs with appurtenant works, canals and conduits in one State for the purpose of diverting, conveying, storing or regulating water in one State for use in the other State, when such use is within the allocation to such State made by this compact.

B. Either State shall have the right to acquire such property rights as are necessary to the use of water in conformity with this compact in the other State by donation, purchase or through the exercise of the power of eminent domain. Either State, upon the written request of the Governor of the other State, for the benefit of whose water users property is to be acquired in the State to which such written request is made, shall proceed expeditiously to acquire the desired property either by purchase at a price satisfactory to the requesting State, or, if such purchase cannot be made, then through the exercise of its power of eminent domain and shall convey such property to the requesting State or such entity as may be designated by the requesting State; provided, that all costs of acquisition and expense of every kind and nature whatsoever incurred in obtaining the requested property shall be paid by the requesting State at the time and in the manner prescribed by the State requested to acquire the property.

C. Should any facility be constructed in either State by and for the benefit of the other State, as above provided, the construction, repair, replacement, maintenance and operation of such facility shall be subject to the laws of the State in which the facility is located, except that, in the case of a reservoir constructed in either State for the benefit of the other State, the proper officials of the State in which the facility is located shall permit the storage and release of any water to which the other State is entitled under this compact.

D. Either State having property rights in the other State acquired as provided in B of this Article VIII shall pay to the political subdivisions of the State in which such property rights are located, each and every year during which such rights are held, a sum of money equivalent to the average annual amount of taxes assessed against those rights during the ten years preceding the acquisition of such rights in reimbursement for the loss of taxes to said political subdivision of the State, except that this provision shall not be applicable to interests in property rights the legal title to which is in the United States. Payments so made to a political subdivision shall be in lieu of any and all taxes by that subdivision on the property rights for which the payments are made.

## ARTICLE IX

The provisions of this compact shall not apply to or interfere with the right or power of either State to regulate within its boundaries the appropriation, use and control of waters allocated to such State by this compact.

#### ARTICLE X

The failure of either State to use the waters, or any part thereof, the use of which is allocated to it under the terms of this compact, shall not constitute a relinquishment of the right to such use to the other State, nor shall it constitute a forfeiture or abandonment of the right to such use.

#### ARTICLE XI

In case any reservoir is constructed in one State where the water is to be used principally in the other State, sufficient water not to exceed five cubic feet per second shall be released all times, if necessary for stock-water use and conservation of fish and wildlife.

#### ARTICLE XII

The provisions of this compact shall remain in full force and effect unless amended or terminated by action of the legislatures of both States and consented to and approved by the Congress of the United States in the same manner as this compact is required to be ratified and approved to become effective; provided, that in the event of such amendment or termination all rights theretofore established hereunder or recognized hereby shall continue to be recognized as valid by both States notwithstanding such amendment or termination.

#### ARTICLE XIII

Nothing in this compact shall be construed to limit or prevent either State from instituting or maintaining any action or proceeding, legal or equitable, for the protection of any right under this compact or the enforcement of any of its provisions.

#### ARTICLE XIV

A. Nothing in this compact shall be deemed:

1. To affect adversely any rights to the use of waters of the Snake River, including its tributaries entering downstream from the Wyoming-Idaho state line, owned by or for Indians, Indian tribes and their reservations. The water required to satisfy these rights shall be charged against the allocation made to the State in which the Indians are located.
2. To impair or affect any rights or powers of the United States, its agencies or instrumentalities, in and to the use of the waters of the Snake River nor its capacity to acquire rights in and to the use of said waters.
3. To apply to any waters within the Yellowstone National Park or Grand Teton National Park.
4. To subject any property of the United States, its agencies or instrumentalities to taxation by either State or subdivisions thereof, nor to create an obligation on the part of the United States, its agents or instrumentalities, by reason of the acquisition, construction or operation of any property or works of whatsoever kind, to make any payments to any

State or political subdivisions thereof, State agency, municipality or entity whatsoever in reimbursement for the loss of taxes.

5. To subject any works of the United States used in connection with the control or use of waters which are the subject of this compact to the laws of any State to an extent other than the extent to which these laws would apply without regard to this compact.

B. Notwithstanding the provisions of A of this Article, any beneficial uses hereafter made by the United States, or those acting by or under its authority, within either State, of the waters allocated by this compact shall be within the allocations hereinabove made for use in that State and shall be taken into account in determining the extent.

#### ARTICLE XV

This compact shall become operative when approved by legislative enactment by each of the States, and when consented to by the Congress of the United States.

#### ARTICLE XVI

Wyoming hereby relinquishes the right to the allocation of stored water in Grassy Lake Reservoir, as set forth in Wyoming's reservoir permit No. 4631 Res. and evidenced by certificate No. R-1, page 318, and all claims predicated thereon.

IN WITNESS WHEREOF the Commissioners have signed this compact in quadruplicate, one of which shall be filed in the archives of the Department of State of the United States of America and shall be deemed the authoritative original, and of which a duly certified copy shall be forwarded to the Governor of each of the States. Done at the City of Cheyenne, in the State of Wyoming, this 10th day of October, in the year of Our Lord, One Thousand Nine Hundred and Forty-Nine.

Commissioners for Idaho  
MARK R. KULP  
N. V. SHARP  
CHARLES H. WELTEROTH  
ROY MARQUESS  
IVAL V. GOSLIN  
R. WILLIS WALKER  
LEX O. COLEMAN  
LEONARD E. GRAHAM  
CHARLES E. ANDERSON  
A. K. VAN ORDEN

Commissioners for Wyoming  
L. C. BISHOP  
E. B. HITCHCOCK  
J. C. IMESON  
DAVID P. MILLER  
CARL ROBINSON  
CIRIL D. CRANNEY  
CLIFFORD P. HANSEN  
CLIFFORD S. WILSON  
LLOYD VAN DEBURG

I have participated in the negotiations of this compact and intend to report favorably thereon to the Congress of the United States.

R. J. NEWELL  
Representative of the United States of America

NOTES

Congressional consent to negotiations.---By the Act of June 3, 1948 (62 Stat. 294), the Congress gave its consent to the negotiation of a Snake River compact by the States of Idaho and Wyoming. The consent was given "upon condition that one suitable person, who shall be appointed by the President of the United States, shall participate in said negotiations as the representative of the United States and shall make report to Congress of the proceedings and of any compact entered into." The Act also provided that any compact agreed upon shall not be effective until ratified by the legislatures of the States and "approved" by the Congress and that "nothing in this Act shall apply to any waters within the Yellowstone National Park or Grand Teton National Park or shall establish any right or interest in or to any lands within the boundaries thereof or in subsequent additions thereto."

Congressional consent to compact.---The "consent and approval" of the Congress was given the Snake River Compact by the Act of March 21, 1950 (64 Stat. 29), from which the text of the compact above set out is taken. Section 2 of this Act "expressly reserved" the "right to alter, amend, or repeal this Act."

For legislative history, see S. 3159, 81st Congress; House Report 1743 (Committee on Public Lands), 81st Congress; 96 Cong. Rec. 2573-2575, 3063-3065 (1950); P.L. 464, 81st Congress.

Presidential and Budget Bureau comments on compact.---In connection with the negotiations of the Yellowstone River compact, the President expressed his views on certain provisions of the Snake River compact in a letter to the Federal representative dated May 3, 1950, to which was attached a memorandum from the Director of the Bureau of the Budget dated April 21, 1950. The two documents read as follows:

"May 3, 1950

"MY DEAR MR. NEWELL: The purpose of this letter is to call your attention to a problem of growing concern and, in the solution of which, the Federal Representatives assigned to interstate water compact commissions are in a position to perform a valuable public service. I refer to the somewhat recent tendency to incorporate in interstate water compacts questionable or conflicting provisions imposing restrictions on use of waters by the United States, such as appear in the Snake River Compact enactment which I approved on March 21, 1950 (Public Law 464, 81st Congress, 2nd Session).

"In this particular case, the possibility of misinterpretation of certain apparently conflicting provisions was not considered to be serious enough to warrant withholding approval of the enrolled enactment of the Congress (S. 3159). Such provisions however, if followed as precedent for general application, may jeopardize the prospect of consent and approval of compacts by the Federal Government because of the far reaching effects such provisions might have upon the interests of the United States. This matter is further discussed in a memorandum to me from the Director of the Bureau of the Budget, a copy of which is enclosed for your information and guidance.

"I fully realize how difficult it is to resolve the numerous complex jurisdictional and other problems encountered in reaching agreement upon the allocation of waters of an interstate stream. At the same time, I am impressed with the importance of insuring that compact provisions reflect as clearly as possible a recognition of the respective responsibilities and

prerogatives of the United States and the affected States. I can assure you that any efforts made by you and the other compact commissioners with whom you have occasion to collaborate in eliminating or correcting this area of possible conflict, will be appreciated.

"Sincerely yours,

"Harry S. Truman"

"April 21, 1950

"Memorandum for the President:

"Analysis of the enrolled enactment granting the consent and approval of the Congress to the Snake River Compact, prior to your approval on March 21, 1950, (Public Law 464, 81st Congress, 2nd Session), revealed the possibility of misinterpretation of certain apparently conflicting provisions, which did not appear to be serious enough in this particular case to provide a sound basis for recommending disapproval of the bill, but which, if followed as precedent for general application, might have far reaching effects upon the interests of the United States. The conflicts arise primarily between specific provisions imposing restrictions upon uses of water by the United States for power and other purposes, and the general savings clause in Article XIV. This article provides that nothing in the compact shall be deemed to impair or affect any rights or powers of the United States in and to the use of the waters of the Snake River nor its capacity to acquire rights in and to the use of said waters. By reason of such conflicts, doubts may arise as to the extent of the control which the States concerned may exercise over the rights, interests and structures owned or built by the United States on the river. The resulting possibility of confusion thus tends to defeat one of the basic purposes of the compact, of settling the respective rights and interests of the Federal and State Governments in, over and to the river.

"The Committee on Public Lands of the House of Representatives, in its report on the bill (S. 3159) recorded its interpretation of the term "beneficial uses" appearing in Article XIV-B, as not regarded by the Committee as including the use and control of water by the United States by reason of its power with respect to navigable waters under the commerce clause of the Constitution (H. R. Report No. 1743, 81st Congress, 2nd Session). It is also significant that the Congress saw fit to include in the enactment a provision (Section 2) expressly preserving to the United States the right to alter, amend, and repeal the Act at any time.

"Somewhat similar provisions appear in the proposed Cheyenne River Compact now pending before Congress (H. R. 3336 and S. 1211) and in the Republican River Compact approved May 26, 1943, and the Belle Fourche River Basin Compact approved February 26, 1944. In approving each of these latter enactments, President Roosevelt issued a statement emphasizing that the procedure prescribed by the bill for exercise of the powers of the Federal Government, would not be entirely satisfactory in all circumstances and that these compacts should not serve as precedents, particularly for streams where there appears to be a possible need for Federal comprehensive multiple purpose development or where opportunities for important electric power projects are present. Likewise the Snake River Compact should not serve as a precedent.

"In its report in S. 3159 the Public Lands Committee of the Senate expressed the view that the compact method is the logical and proper manner to settle interstate water controversies. With this view I am in accord but I am also mindful that compact provisions, which are subject to misinterpretation or leave in doubt the respective rights and interests of the United States and the affected States, serve to impair these rights. It is obvious therefore, that the compact method places upon the compact commissioners the important responsibility of drawing compacts in specific and unequivocal language, devoid of all possible ambiguity, and which do not attempt to define, limit or otherwise determine the extent of the powers to be exercised by the United States which is a matter for determination by the Congress through Federal legislation as required.

"The importance of insuring that future compacts more adequately reflect a clear recognition of the respective responsibilities and prerogatives of the United States and the affected States, I believe is readily apparent. In formulating provisions of interstate water compacts, which impose restrictions upon use by the United States of waters in the streams concerned, the responsibility for protecting the rights and interests of the United States rests in the first instance upon those appointed to represent the Federal Government in negotiations with the State compact commissions. The Federal Representatives also are in a position to assist the compact commission in avoiding further use of questionable or conflicting provisions similar to the aforementioned, in order to minimize the possibility of disapproval of the compact by the State legislatures or the Federal Government, or the later possibility of prolonged and costly litigation.

"F. J. Lawton  
"Director"

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## **APPENDIX B**

### **The Roxanna Decree**

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**ROXANNA CANAL Co., A CORPORATION, et al. v. DANIELS, et al.  
Equity 2447 (United States District Court for the District of Wyo., Feb. 4,  
1941).**

Teton and South Leigh Creeks, 1941

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
DISTRICT OF WYOMING  
IN EQUITY NO. 2447

SECOND STIPULATION AND DECREE

It is hereby stipulated and agreed by and between the above named plaintiffs and defendants in the above entitled suit that the following shall be the basis of a decree to be entered in the above entitled cause, and the Court is hereby authorized to enter a decree fixing the rights of the several parties, plaintiff and defendant, in accordance with the terms of this stipulation.

That for the purpose of effecting a compromise and agreement, and to terminate the pending litigation, and to definitely establish the rights of the parties litigant, it is hereby agreed that the appropriators and water users in the State of Wyoming, who divert and use the waters of Teton Creek shall be permitted to use as much water from said stream as they can apply to a beneficial use until the total stream flow of said Teton Creek and its tributaries in the State of Wyoming shall recede to one hundred seventy (170) cubic feet per second of time; that in the determination of said stream flow all diversions in Wyoming, including the Grand Teton Canal, shall be and constitute a part of the said stream flow in determining the total of the said stream flow; that when the said stream flow of the said Teton Creek, and its tributaries in Wyoming, shall recede to said one hundred seventy (170) cubic feet per second of time, the Wyoming users; who divert water above the diversion of the Grant Teton Canal, shall thereafter be limited and permitted to divert one cubic foot per second of time for each fifty (50) acres of land (being one miner's inch per acre) for Wyoming lands of the said users in the State of Wyoming, and to continue to be so regulated until the flow of the said Teton Creek, and its tributaries in Wyoming, including all the Wyoming diversions, diminishes to ninety (90) cubic feet per second of time, after which time the stream flow of the said Teton Creek, and its tributaries, is to be divided between the Wyoming and Idaho areas for the benefit of their appropriators, on a fifty-fifty basis, that is, ---that Wyoming shall be entitled to divert one-half of said stream flow and one-half of said stream flow shall be permitted to flow down said stream for Idaho. It being understood and agreed that all ditches diverting in Wyoming, and now having legal appropriations of water in Wyoming and/or Idaho, to be supplied from the one-half of said stream flow awarded to Wyoming, excepting therefrom the Grand Teton Canal which, for the sake of this agreement, although having its diversion works in the State of Wyoming, is to be considered as an Idaho appropriation, and if entitled under the laws of the State of Idaho to any of the stream flow of Teton Creek, shall be supplied from any portion or percentage herein agreed as to the portion or percentage to which Idaho shall be entitled for the benefit of its appropriators.

It is agreed by the Wyoming users that what is known as the Southside Canal, which canal supplies water to both states, Wyoming and Idaho, appropriators along the boundary line of the states, and which has been granted Wyoming permit No. 7420 for the diversion of water from



Teton Creek, in Wyoming, is to be considered as a Wyoming diversion and the users in both Wyoming and Idaho supplied with water from it to be furnished and supplied from the part or portion of the stream flow of said Teton Creek awarded Wyoming.

It is agreed that the waters of South Leigh Creek shall be distributed as follows,--- the Wyoming appropriators may divert as much of the stream flow of South Leigh Creek as they can apply to a beneficial use upon their lands until the natural flow of said stream, at the Idaho-Wyoming boundary line, including all diversions from said stream above said boundary line, diminishes to a total of sixteen (16) cubic feet per second of time, at which time the Wyoming users shall be permitted and may divert one-half of the stream flow of said South Leigh Creek, the balance to flow down said stream for Idaho users.

The determination of the amount of the stream flow of the said streams, and the diversion of the waters thereof, as between the states, as herein agreed, shall be under the supervision and direction of the Commissioner of Reclamation of the State of Idaho, and the State Engineer of the State of Wyoming.

The distribution of water among the users of Wyoming of the part or portion of the waters of said streams which they shall be entitled to shall be under the direction and supervision of the State Engineer of Wyoming, or other proper Wyoming officer; the distribution among and to Idaho users of the part or portion herein to which they may be entitled of said stream flow shall be under the direction and supervision of the Commissioner of Reclamation of Idaho, or other proper Idaho officer.

It is hereby agreed that all diversions within the State of Wyoming shall install diversion works and measuring devices, approved by the State Engineer of Wyoming, on all ditches and canals to make possible accurate measurements and proper administration and distribution of the waters of said creeks.

Dated this 20th day of March, 1940.

(Names and signatures of plaintiffs and defendants in Equity No. 2447 listed in original copy at this point, omitted.)

Now, therefore, the said first stipulation filed January 10, 1938 is hereby adopted as proof of the rights of the said parties plaintiff and defendant, and the second stipulation filed July 6, 1940, is approved, confirmed and adopted as a part of this decree; and the Court being fully informed and advised in the premises,---

It is ordered, adjudged, and decreed that,---

The waters of Teton Creek, a tributary of Teton River, Idaho, an interstate stream, shall be distributed to the appropriators and water users in the State of Wyoming and they shall be permitted to use all the waters from said Teton Creek as they can apply to beneficial use, until the total stream flow of said Teton Creek and its tributaries in the State of Wyoming shall recede to one hundred seventy (170) cubic feet per second of time; that in the determination of said stream flow all diversions in Wyoming, including the Grand Teton Canal, shall be and constitute a part of the said stream flow in determining the total of the said stream flow; that when the said stream flow of the said Teton Creek, and its tributaries in Wyoming shall recede to one hundred seventy

(170) cubic feet per second of time, the Wyoming users, who divert water above the diversion of the Grand Teton Canal, shall thereafter be limited and permitted to divert one cubic foot per second of time for each fifty (50) acres of land (being one miner's inch per acre) for Wyoming lands of the said users in the State of Wyoming, and to continue to be so regulated until the flow of the said Teton Creek, and its tributaries in Wyoming, including all the Wyoming diversions, diminishes to ninety (90) cubic feet per second of time, after which time the stream flow of the said Teton Creek, and its tributaries, is to be divided between the Wyoming and Idaho areas for the benefit of their appropriators, on a fifty-fifty basis, that is, ---that Wyoming shall be entitled to divert one-half of said stream flow and one-half of said stream flow shall be permitted to flow down said stream for Idaho. It being understood and agreed that all ditches diverting in Wyoming, and now having legal appropriations of water in Wyoming and/or Idaho, to be supplied from the one-half of said stream flow awarded to Wyoming, excepting therefrom the Grand Teton Canal, which for the sake of this decree, although having its diversion works in the State of Wyoming, is to be considered as an Idaho appropriation, and if entitled under the laws of the State of Idaho to any of the stream flow of Teton Creek, shall be supplied from any portion or percentage herein agreed as the portion or percentage to which Idaho shall be entitled for the benefit of its appropriators.

It is further decreed that what is known as the Southside Canal, which canal supplies water to both Wyoming and Idaho appropriators along the boundary line of the States, and which has been granted Wyoming permit No. 7420\* for the diversion of water from Teton Creek, in Wyoming, is to be considered as a Wyoming diversion and the users in both Wyoming and Idaho supplied with water from it are to be furnished and supplied from the part or portion of the stream flow of said Teton Creek awarded Wyoming.

It is ordered, adjudged, and decreed that the waters of South Leigh Creek shall be distributed as follows,---the Wyoming appropriators may divert as much of the stream flow of South Leigh Creek as they can apply to a beneficial use upon their lands until the natural flow of said stream, at the Idaho, Wyoming boundary line, including all diversions from said stream above said boundary line, diminishes to a total of sixteen (16) cubic feet per second of time, at which time the Wyoming users shall be permitted and may divert one-half of the stream flow of said South Leigh Creek, the balance to flow down said stream for Idaho users.

The determination of the amount of the stream flow of the said streams, and the division of the waters thereof, as between the states, as herein decreed, shall be under the supervision and direction of the Commissioner of Reclamation of the State of Idaho, and the State Engineer of the State of Wyoming.

The distribution of water among the users of Wyoming of the part or portion of the waters of said streams which they shall be entitled to shall be under the direction and supervision of the State Engineer of Wyoming, or other proper Wyoming officer; the distribution among and to Idaho users of the part or portion herein to which they may be entitled of said stream flow shall be under the direction and supervision of the Commissioner of Reclamation of Idaho, or other proper Idaho officer.

It is decreed that all diversions within the State of Wyoming shall install diversion works and measuring devices, approved by the State Engineer of Wyoming, on all ditches and canals to

make possible accurate measurements and proper administration and distribution of the waters of said creeks.

That in carrying out this decree and the distribution of the waters of said streams, the part or portion of said stream flow to which the water users and appropriators in the State of Wyoming shall be entitled shall be distributed in accordance with the rights of priority, as fixed and determined by the Board of Control, or Court of the State of Wyoming.

That the distribution of the water of said creeks to which the appropriators and water users of the State of Idaho shall be entitled under this decree shall be distributed to the Idaho users by the proper officer of the State of Idaho according to the rights and priorities as fixed by the Courts of the State of Idaho.

That the rights fixed and decreed to the parties who have joined in the foregoing stipulations, or their predecessors in interests, either by the Board of Control of the State of Wyoming or the Courts of Wyoming, and by the Courts of the State of Idaho are hereby recognized and decreed as binding upon all of the parties who have signed the foregoing stipulation as the same affects the quantity of stream flow and dates of priorities of said creeks as awarded to the Wyoming appropriators and users and the Idaho appropriators and users.

The Court retains jurisdiction of this cause for a period of one year for the purpose of making any correction to the decree or the determining of the rights of any parties who may have an interest in the waters of said streams who are not now parties to this action and desire to become parties hereto.

Each party shall, pay his own costs.

Done in open court this 4th day of February 1941.

(Signed) T. BLAKE KENNEDY  
Judge