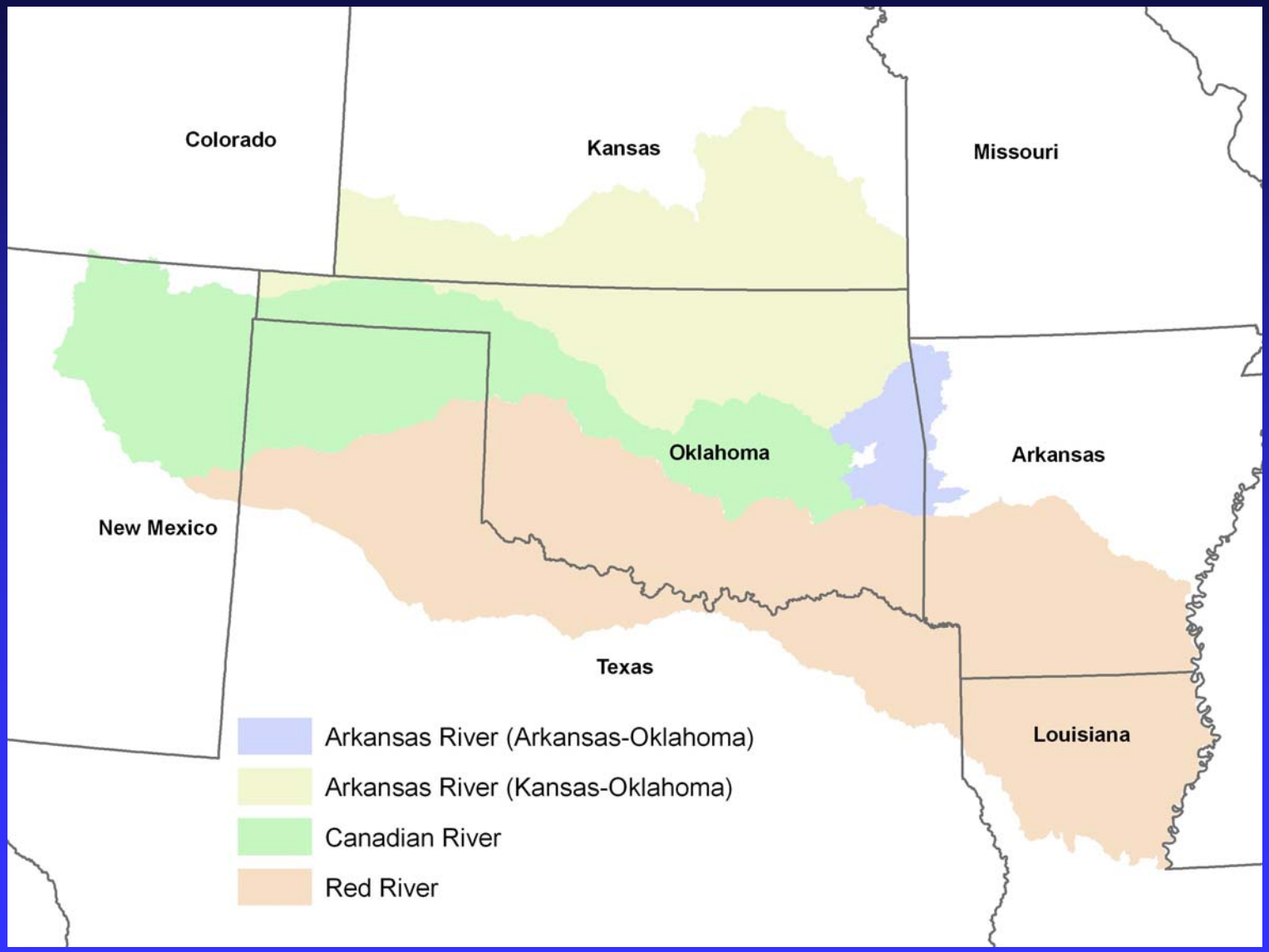
Interstate Stream Compacts



Options to Divide Interstate Water

- Equitable Apportionment
  - By United States Supreme Court
  - Article III, Sec. 2, U.S. Constitution – Supreme Court original jurisdiction in all cases in which a state shall be a party
  - Colo. v. New Mexico, 467 U.S. 310 (1984) – NM prior downstream use upheld; Colo. had not put water to use

Options to Divide Interstate Water

- Congressional Apportionment
  - By United States Congress
  - Colorado River Boulder Canyon Project Act (Hoover Dam construction)

Options to Divide Interstate Water

- Interstate Compact Between States
  - U.S. Constitution Article 1, Section 10 – "No State, shall without the Consent of Congress, . . . Compact with another State . . ."
  - Compact is a contract
  - Compact is federal law

Why Compact?

- Upstream States have physical advantage to withhold and use water, but . . .
- If downstream States use water, rights may vest to detriment of upstream State
- Having some control over destiny through negotiation
  - leaving substantial economic future to a whole region to five of nine guys in black robes (U.S. Supreme Court) may not be attractive

Interstate Stream Compacts – Steps to Negotiate

- Consent from Congress to negotiate
- Each State appoints negotiation commission
  - Engineering/Technical committee
  - Legal committee
  - Federal Commissioner oversight
- Compact language approved as “final draft”
- Each State legislature approves as state law
- Final compact language presented to Congress for final, formal “Consent” and enacted as federal law

Compact Basics

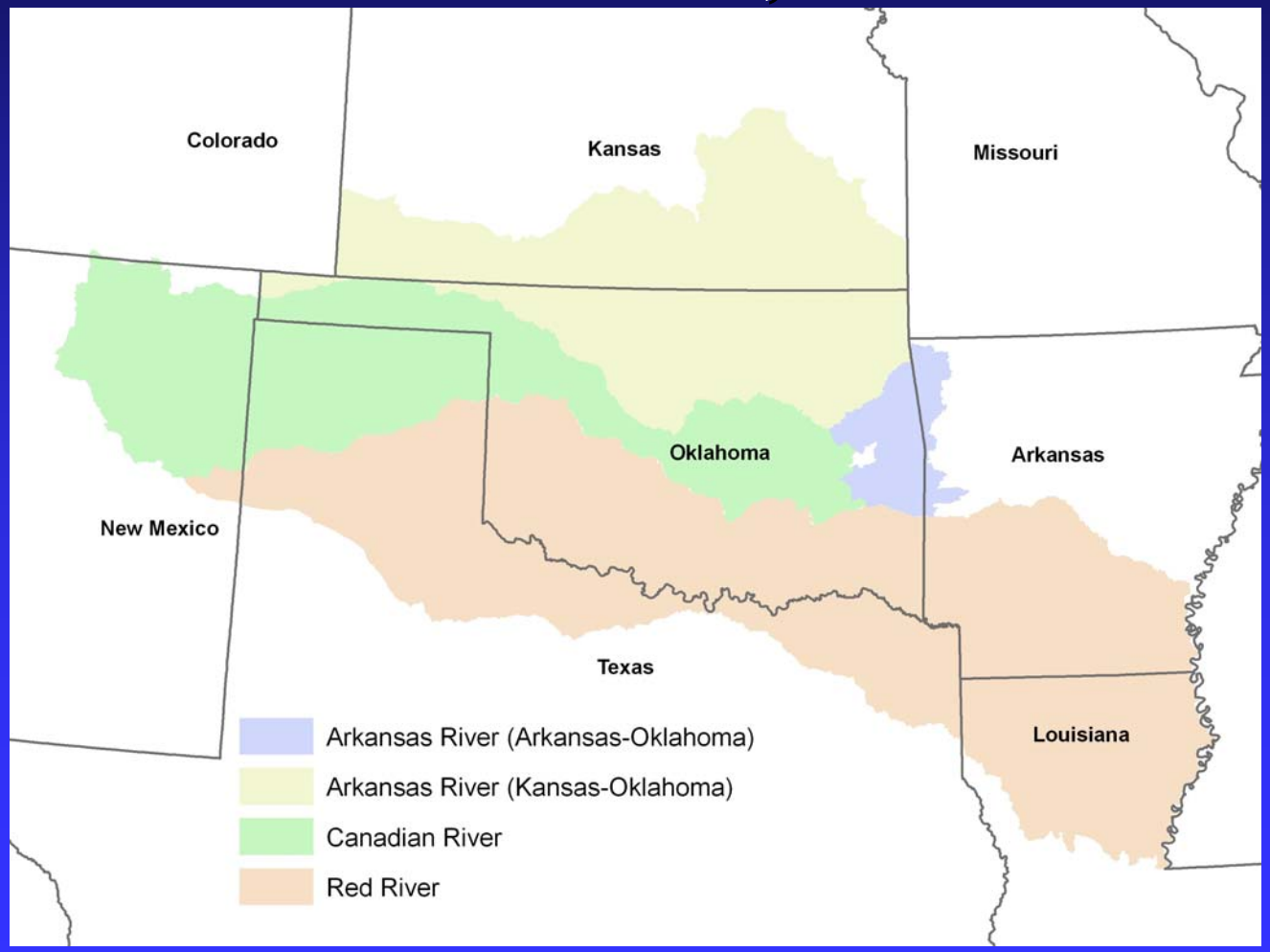
- Purposes stated
- Apportionment provisions
- Creation of Commission to administer
  - Commission consists of equal number of State representatives appointed as each State law says (usually Governor appoints)
  - Federal Commissioner appointed by President – no vote, but chairs
  - Unanimous approval required for action
  - Commission meets at least annually
- Compacts can affected existing State issued water rights

Canadian River Compact

- Canadian River – Texas, New Mexico
  - 82 O.S. Sec. 526.1
  - Oldest - negotiated, approved, and consented to in 1950
  - Different than failed attempt in 1926
  - Apportions water by limitation on storage
  - Primary motivation – Congress would not fund Lake Meredith in Texas Panhandle until the three States agreed to divide the waters
  - Each State has one Commissioner – Les Kamas, rancher from Freedom for Oklahoma

Canadian River Compact

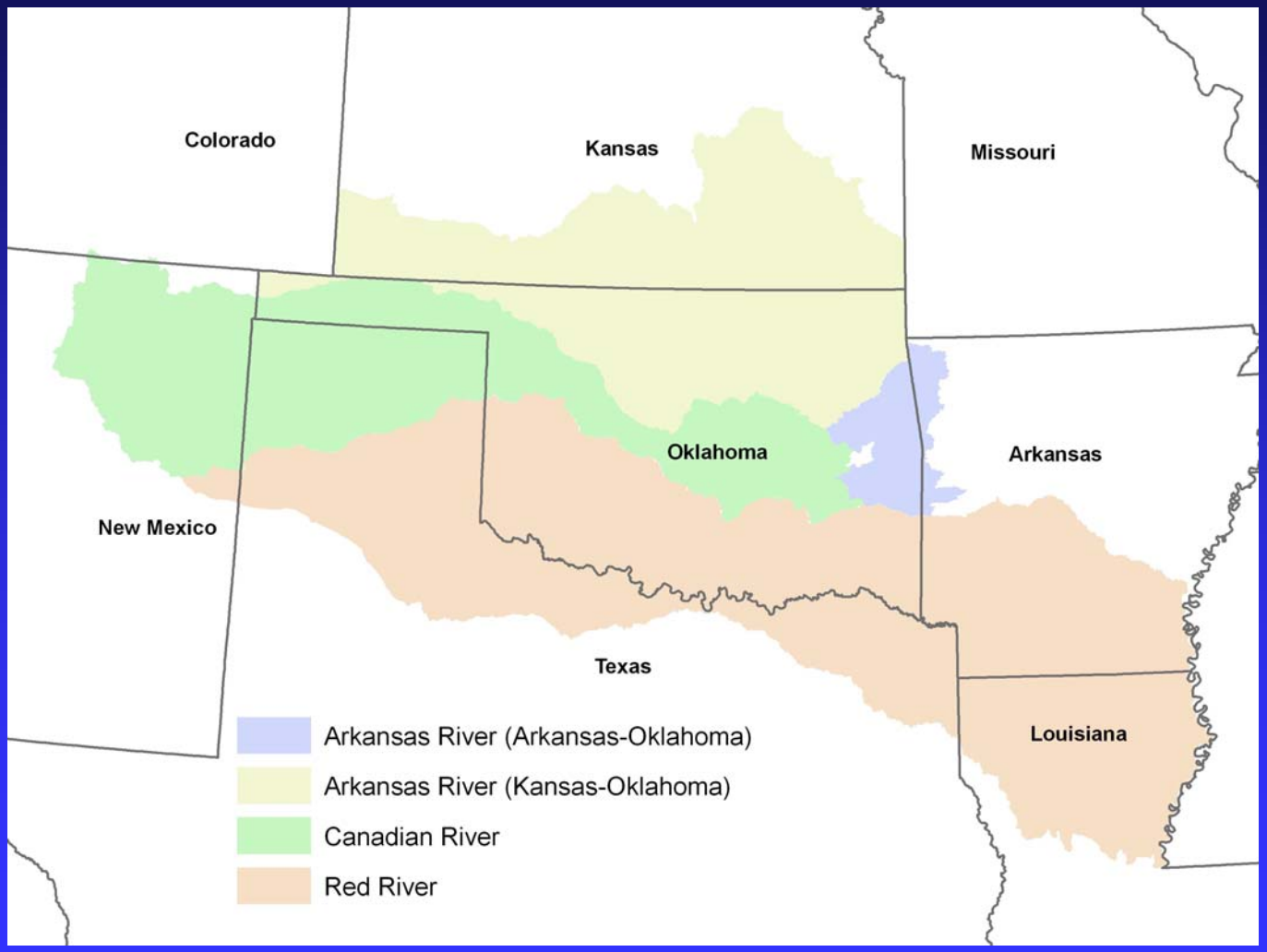
- Canadian River – Texas, New Mexico



Kan-Ok Ark River Compact

- Kansas-Oklahoma Arkansas River
  - 82 O.S. Sec. 1401
  - Approved 1965
  - Apportions water by limitations on storage
  - States agree to cooperate in pollution abatement
  - Three Commissioners from each State
    - One ex-officio Director of OWRB
    - Two appointed by Governor – Ross Kirtley of Kingfisher and one vacant

Kan-Ok Ark River Compact



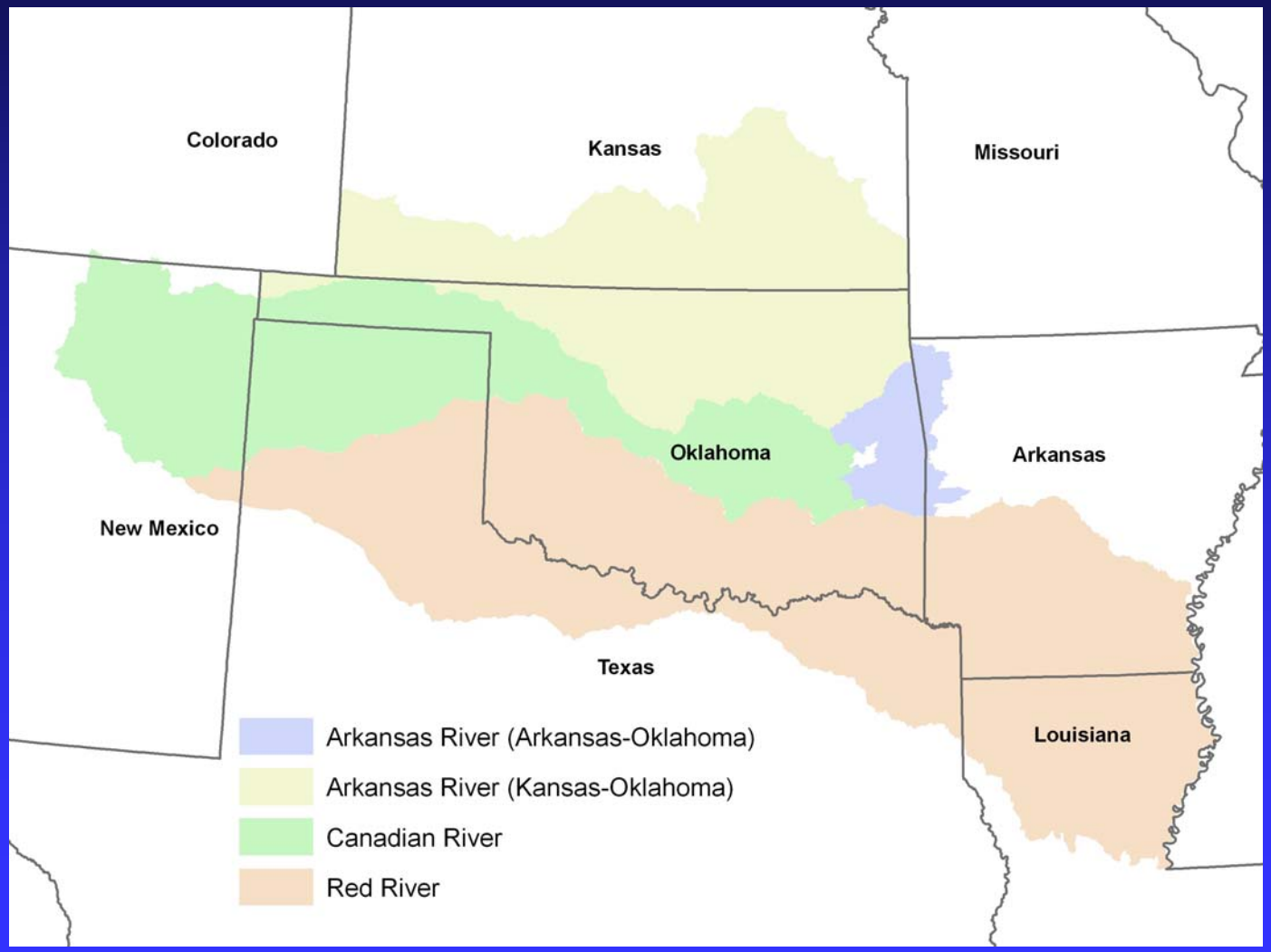
Ark-Ok Ark River Compact

- Arkansas-Oklahoma Arkansas River
  - 82 O.S. Sec. 1421
  - Approved 1970
  - Apportions flow by subbasins, most 60/40 split from rough watershed area
    - Arkansas cannot deplete more than 60% of annual yield
  - States agree to use Water Quality Standards established under Clean Water Act to resolve pollution problems

Ark-Ok Ark River Compact

- Arkansas-Oklahoma Arkansas River
  - Three Commissioners for each State
    - Ex-officio Director of OWRB
    - Gary Sherrer
    - Secretary of Environment Miles Tolbert

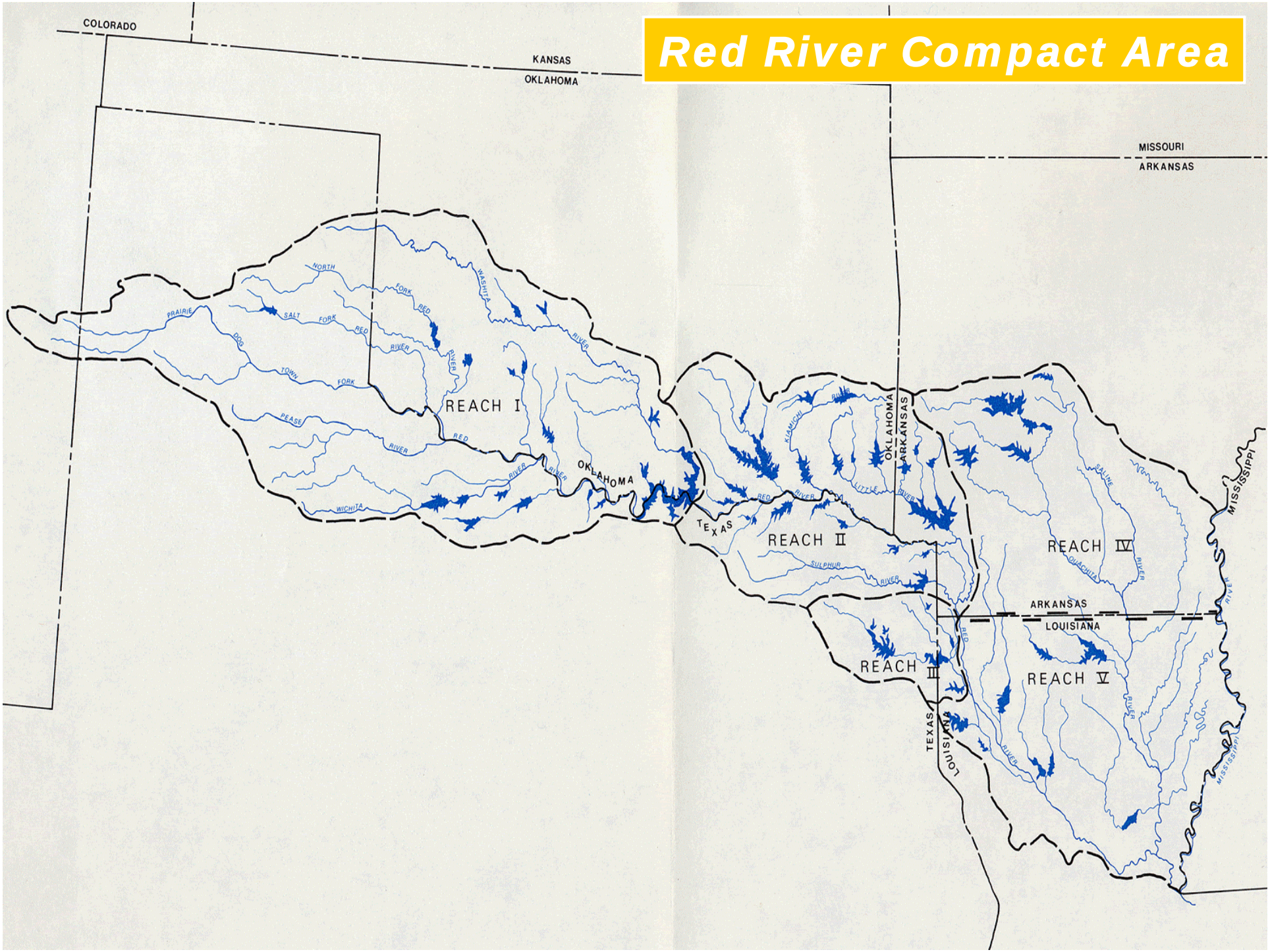
Ark-Ok Ark River Compact

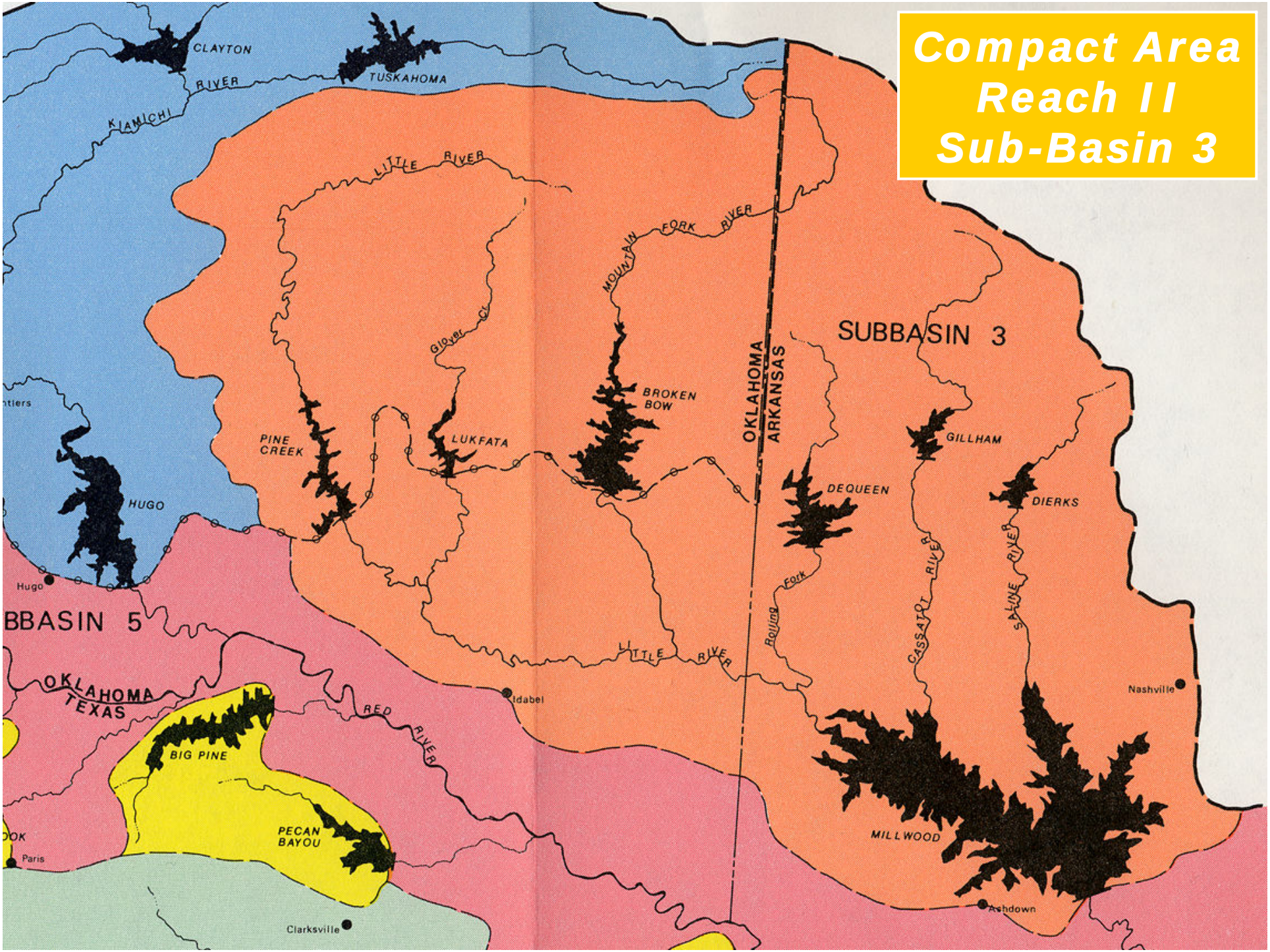


Red River Compact

- States of Texas, Oklahoma, Arkansas and Louisiana – negotiations took 25 years
- Approved by States 1978, Congress 1980
- Apportions water and storage in five Reaches in differing ways
  - 60/40 annual flow or 60/40 runoff
  - 50/50 storage and flow
  - Unrestricted use above identified dam sites
  - Equal rights to use of runoff originating in subbasin, subject to cubic feet per second flow conditions
- Naturally occurring salinity and other pollution

Red River Compact Area




Compact Area
Reach II
Sub-Basin 3
CLAYTON
TUSKAHOMA
KIAMICHI
RIVER
LITTLE RIVER
MOUNTAIN FORK RIVER
Glover Cr.
SUBBASIN 3
OKLAHOMA
ARKANSAS
BROKEN BOW
PINE CREEK
LUKFATA
GILLHAM
DEQUEEN
DIERKS
HUGO
Hugo
BBASIN 5
OKLAHOMA
TEXAS
Rolling Fork
CASSATOT RIVER
SALINE RIVER
LITTLE RIVER
Idabel
Nashville
RED RIVER
BIG PINE
PECAN BAYOU
MILLWOOD
Paris
Clarksville
Ashdown

Red River Compact

- Two Commissioners for each State (total of eight State Commissioners and one non-voting Federal Commissioner/Chair
  - Ex-officio Director of OWRB and Charles Dobbs of Altus

Other Compact Basics

- Binding Contract and Federal law – cannot amend or terminate without the agreement of all States, and Federal law change
- Most Compacts say each State may regulate water use within its boundaries “consistent with the Compact”
- Most Compacts say that the Compact does not affect any federal rights or authorities or those claiming under the federal government

Other Compact Basics

- Rules of Compact Commissions can lead to significant debate, controversy and negotiations
  - Unanimous vote allows a state to veto
- State sanctioned action that violates Compact can lead to lawsuit by one State against another before U.S. Supreme Court
- Millons, perhaps billions $$ at stake

State of Oklahoma

OWRB

WATER RESOURCES BOARD

the water agency

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