

Update on Interstate Water Rights INTERSTATE STREAM COMPACTS

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Governor's Water Conference
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WHY COMPACT

- State needs to know how much water available to use by citizens
- Reliable hydrograph
 - falling onto state
 - flowing into state
- How much committed to state in perpetuity
- Avoid planning for other state's demand
- Cannot plan if no control over other state growth

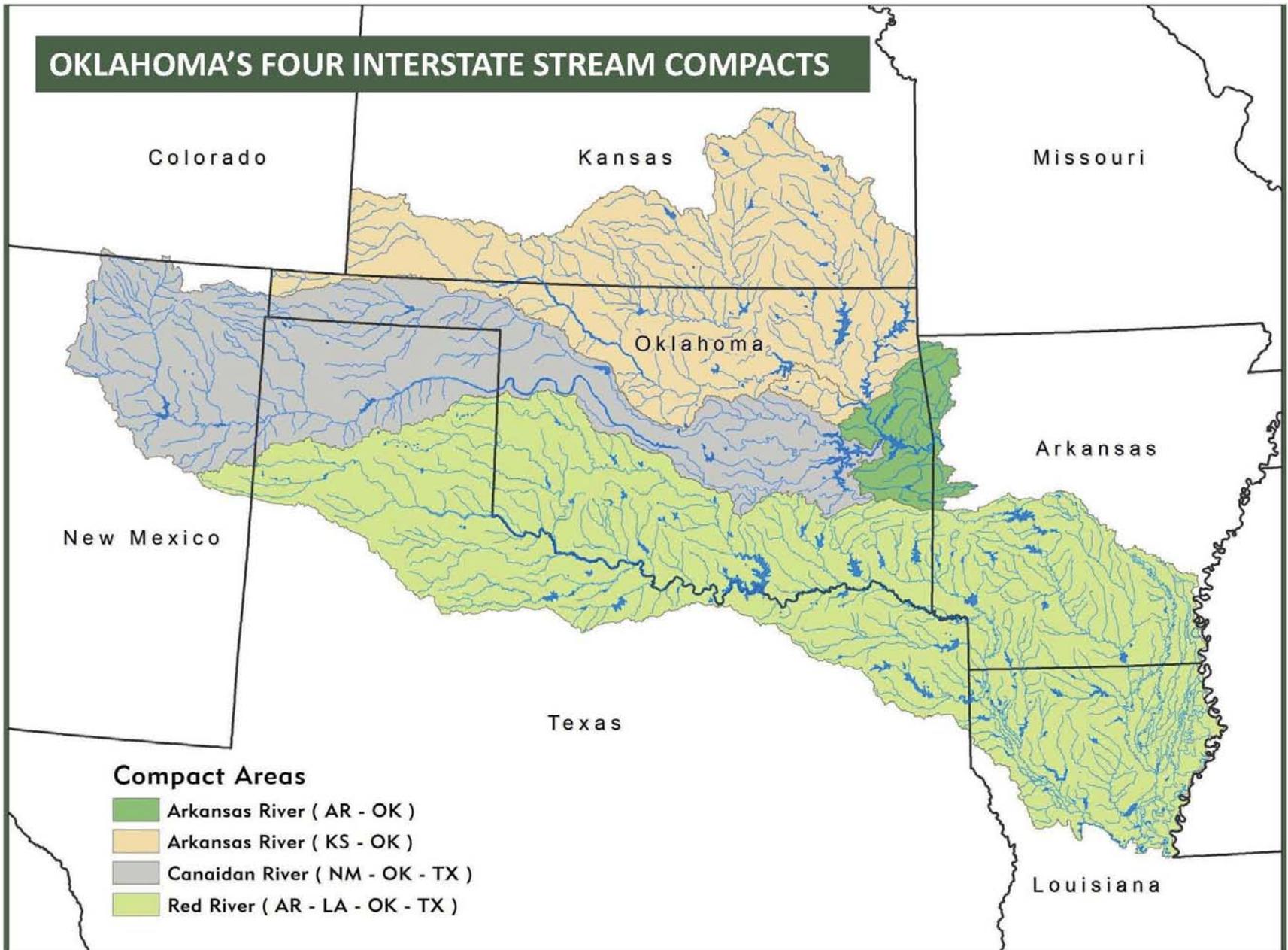
INTERSTATE STREAM COMPACTS

- U.S. Constitution Article 1, Section 10, Cl. 3
- Approval to negotiate
- Negotiating committee – members from states
- Engineers and lawyers advise Comm'ee
- Input from federal agencies incl. DOJ
- Final draft approved by Negot. Comm., then to each State legislature for approval

INTERSTATE STREAM COMPACTS

- After States approve, then to Congress
- Approval by Congress = federal law
- Supreme Law of the Land - Art. VI, Cl. 2
- Oklahoma – party to four compacts
 - Canadian River (1950) 82 O.S. Sec. 526
 - Kansas-Okla. Ark. River (1965) 82 O.S. Sec. 1401
 - Arkansas-Okla. Ark. River (1970) 82 O.S. Sec. 1421
 - Red River (1980) 82 O.S. Sec. 1431

OKLAHOMA'S FOUR INTERSTATE STREAM COMPACTS



INTERSTATE STREAM COMPACTS

- Compact Apportionments (27)
 - agreed division of water between the States
- “Equitable apportionment”
 - Original jurisdiction – Kan. v. Colo. 206 U.S. 46 (1907):
no more war between states
 - costly, unknown, unclear and uncertain outcome
- Congressional apportionment
 - Boulder Canyon Project Act of 1928
 - Hoover Dam and water for Arizona, California and Nevada

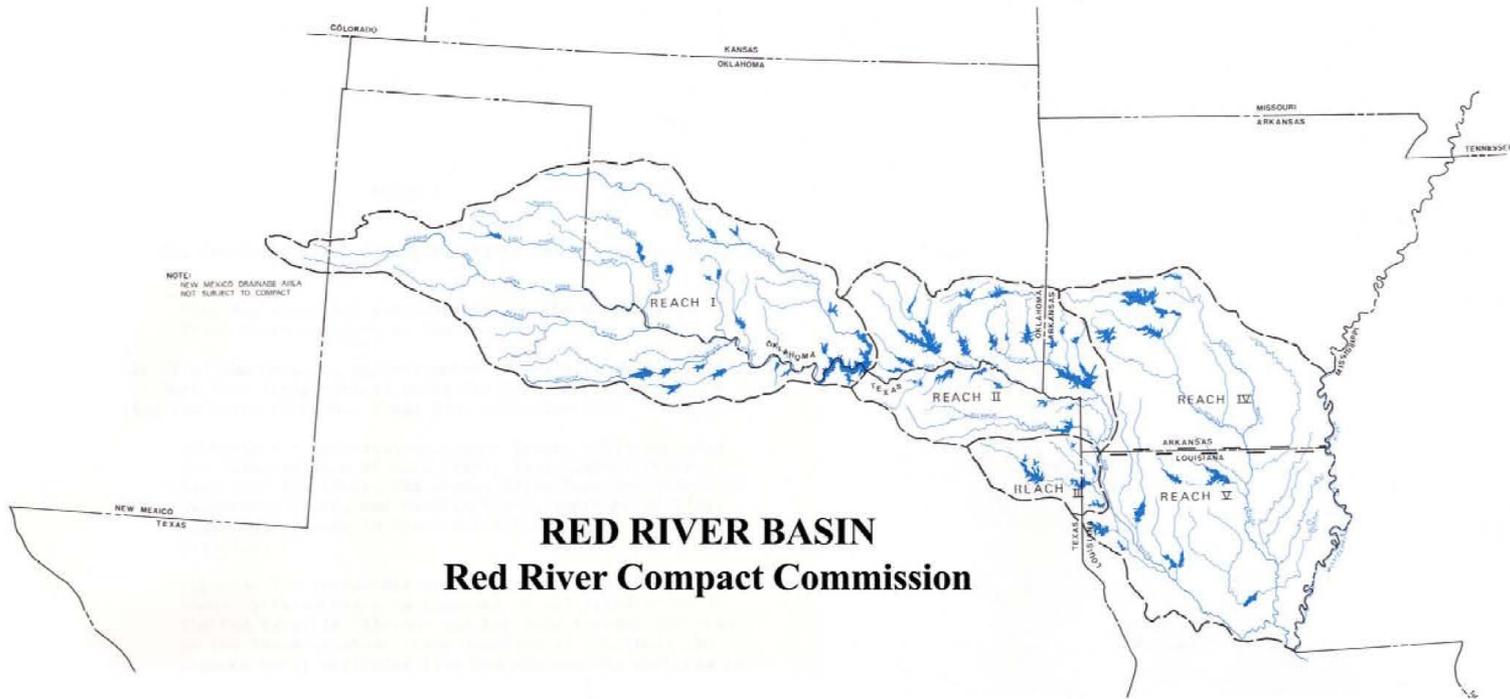
COMPACTS AND COMMERCE

- U.S. Const. Art. 1, Sec. 8, Cl. 3 – Congress shall have Power To regulate Commerce among the several States
- *Sporhase v. Nebraska*, 458 U.S. 941 (1982)
 - water is an article of interstate commerce
- Congress approves compact = federal law (*Texas v. New Mexico*, 462 U.S. 554 (1983))
 - *Tarrant Regional Water District v. Herrmann*
 - *Hugo and Irving v. Nichols*

EFFECTS OF COMPACTS

- Binding on citizens – *Hinderlider v. La Plata River & Cherry Ditch Co.*, 304 U.S. 92 (1938)
- Compact is contract as well as federal law, so extrinsic evidence can be reviewed for negotiation history to determine intent – *Oklahoma v. New Mexico*, 501 U.S. 221 (1991)
- Breach of compact – suit lies in original and exclusive jurisdiction of U.S.S.C.

Red River Compact



REACH 1

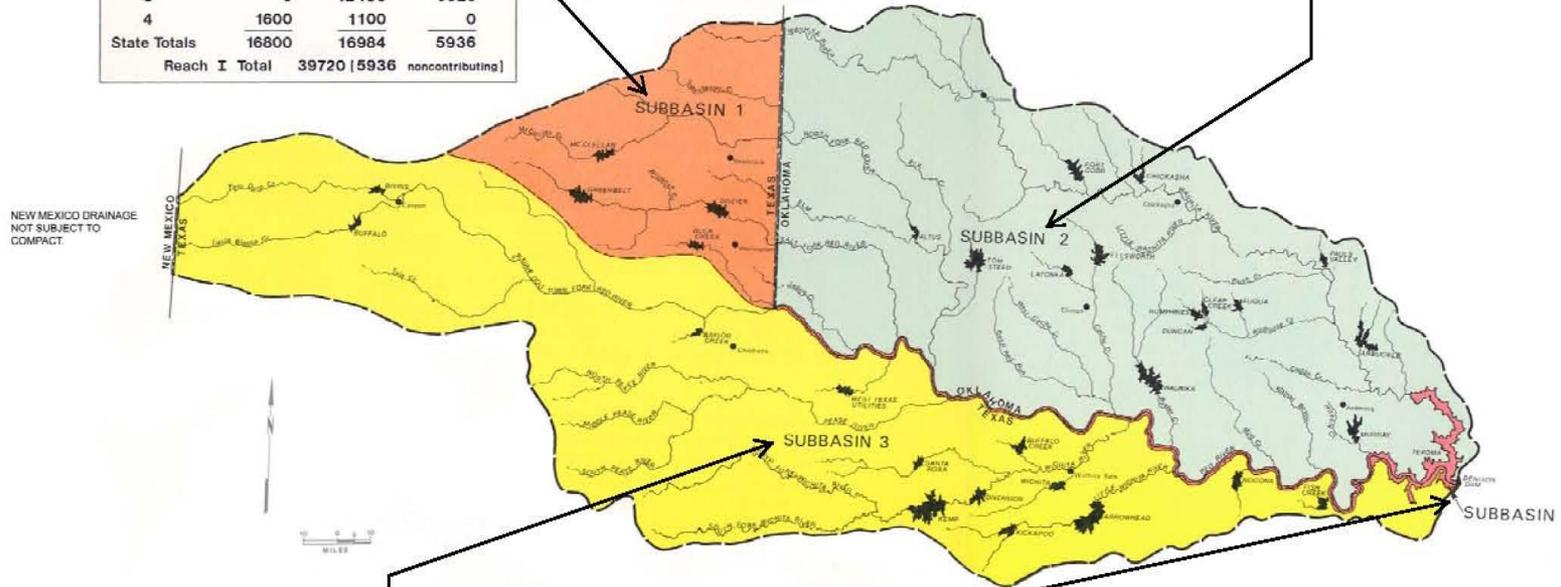
"The annual flow within this subbasin is hereby apportioned sixty (60) percent to Texas and forty (40) percent to Oklahoma." Sec. 4.01(b).

"The State of Oklahoma shall have free and unrestricted use of the water of this subbasin." Sec. 4.02(b).

REACH I
APPROXIMATE DRAINAGE AREAS
[in square miles]

SUBBASIN	OKLAHOMA		TEXAS	
	contributing	non-contributing	contributing	non-contributing
1	0	3484	608	0
2	15200	0	0	0
3	0	12400	5328	0
4	1600	1100	0	0
State Totals	16800	16984	5936	0
Reach I Total	39720	[5936 noncontributing]		

REACH I Red River Compact Commission



"The State of Texas shall have free and unrestricted use of the water of this subbasin." Sec. 4.03(b).

"The storage of Lake Texoma and flow from the mainstem of the Red River into Lake Texoma is apportioned as follows: (1) Oklahoma 200,000 acre-feet and Texas 200,000 acre-feet, which quantities shall include existing allocations and uses; and (2) Additional quantities in a ratio of fifty (50) percent to Oklahoma and fifty (50) percent to Texas." Sec. 4.04(b).

REACH 1

Upstream from Denison Dam/Texoma

- Subbasin 1 – 60/40 split Texas and Okla.
- Subbasin 2 – Free and unrestricted to Okla.
- Subbasin 3 – Free and unrestricted to Tx.
- Subbasin 4 – Mainstem of Red River and Lake Texoma
50/50 split Texas and Okla.

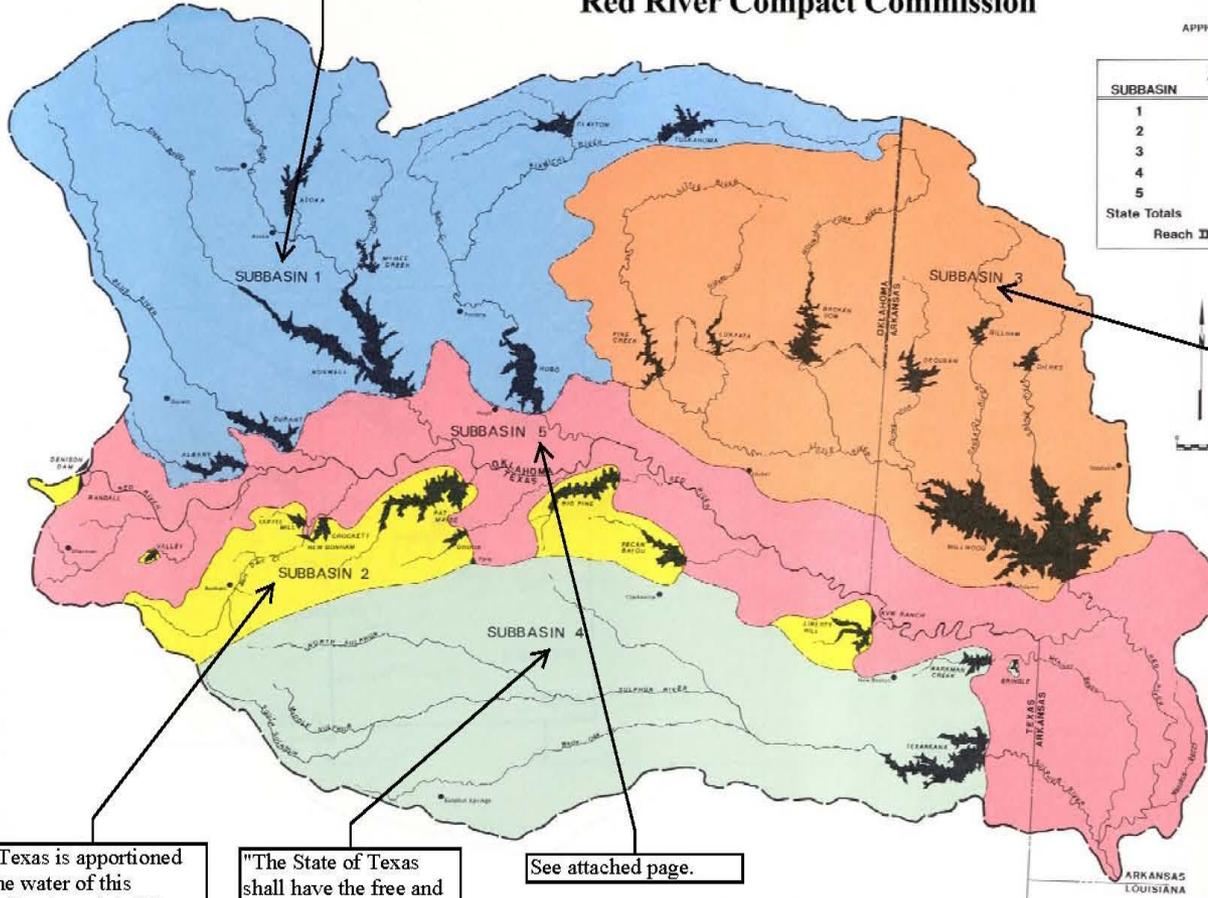
REACH 2

"Oklahoma is apportioned the water of this subbasin and shall have unrestricted use thereof." Sec. 5.01(b).

REACH II Red River Compact Commission

REACH II
APPROXIMATE DRAINAGE AREAS
[in square miles]

SUBBASIN	ARKANSAS	OKLAHOMA	TEXAS
1	0	4765	0
2	0	0	930
3	1996	2148	0
4	0	0	3480
5	1561	858	1485
State Totals	3557	7771	5895
Reach II Total	17223		



"Texas is apportioned the water of this subbasin and shall have unrestricted use thereof." Sec. 5.02(b).

"The State of Texas shall have the free and unrestricted use of the water of this subbasin." Sec. 5.04(b).

See attached page.

"The States of Oklahoma and Arkansas shall have free and unrestricted use of the water of this subbasin within their respective states, subject, however, to the limitation that Oklahoma shall allow a quantity of water equal to 40 percent of the total runoff originating below the following [enumerated] existing, authorized or proposed last downstream major damsites in Oklahoma to flow into Arkansas." §Sec. 5.03(b).

REACH 2

- Subbasin 1 – above named dams in Oklahoma; free and unrestricted to Okla.
- Subbasin 2 – above named dams in Texas; free and unrestricted to Texas
- Subbasin 3 – 60/40 split Oklahoma and Arkansas
- Subbasin 4 – above named dams in Texas; free and unrestricted use to Texas
- Subbasin 5 – mainstem and tributaries downstream from listed dams

REACH 2

Subbasin 5

- States have “equal rights to the use of runoff originating in Subbasin 5 and undesignated water flowing into Subbasin 5”
- As long as flow of the Red River at Ark.-La. state boundary is 3,000 cubic feet per second or more
- No State is entitled to more than 25% of water in excess of 3,000 c.f.s.

REACH 2

Subbasin 5

- Tarrant Regional Water District says – “equal rights” to use of runoff and undesignated flow includes “right of access” to put pumps anywhere in subbasin 5 (incl. in Okla.)
- Disregard Okla.-Tex. political boundary; subbasin 5 boundary controls?
- Red River Boundary Compact approved by both States and Congress Oct. 2000 – south “vegetation line” is political boundary; Oklahoma law controls north

REACH 2

Subbasin 5

- “No state guarantees to maintain a minimum low flow to a downstream state”
- Subbasin 5 - “upstream states cooperate in assuring reliable flows to Arkansas and Louisiana” where there are few storage lakes

Red River Compact

WATER QUALITY

- Distinguishes “natural deterioration” and “pollution” from human activities
- States agree to cooperate with federal agencies to alleviate natural pollution – U.S. Army Corps of Engineers Chloride Control Project

Red River Chloride Control



Estelline Springs, Texas
Area V



Truscott Brine Lake

Red River Compact

WATER QUALITY

- “Dilution is not the solution to pollution”
- “No state guarantees to maintain a minimum low flow to a downstream state”

INTERSTATE WATER QUALITY

- *Arkansas v. Oklahoma*, 503 U.S. 91 (1992)
 - Clean Water Act requires states to promulgate water quality standards
 - EPA required to review and approve state standards or promulgate federal standards
 - Upon EPA approval, state standards become federal standards applicable at state line