



**THE ATTORNEY GENERAL  
OF TEXAS**

AUSTIN 11, TEXAS

June 13, 1951

**PRICE DANIEL**  
ATTORNEY GENERAL

Hon. H. A. Beckwith, Chairman  
Board of Water Engineers  
Austin, Texas                      Opinion No.V-1189

Re: Authority of Interstate  
Compact Commissioner to  
compact with respect to  
use of water.

Dear Sir:

Your request for an opinion reads as follows:

"We respectfully request an opinion as to the meaning of the word 'use' as same appears in the Canadian, Red and Sabine Rivers Compact Authorization Act (Acts of the 51st Legislature, 1949, Chapter 380, Page 716). Section 1 of the Act reads as follows:

"Section 1. The Governor of this State shall, with the advice and consent of the Senate, appoint some qualified person Interstate Compact Commissioner to represent the State of Texas in Conferences with duly appointed Compact Commissioners for other affected States, and a representative of the government of the United States appointed by the President for such purpose, to negotiate an agreement with each of the affected States respecting the use, control and disposition of the waters of the Canadian, Red and Sabine Rivers and their tributaries."  
*/Emphasis added/*

"The same language 'use, control and disposition' is contained in the authorization act creating a Compact Commissioner for Texas as to the Pecos River Compact. (See Acts 49th Legislature, 1945, Chapter 159, Pages 206-207.)

Hon. H. A. Beckwith - Page 2 -V-1189

"We desire to know whether a Compact Commissioner can lawfully compact so as to place limitations upon the internal beneficial use of waters apportioned to Texas, or whether his authority is limited to obtaining the equitable share of physical amount of the waters due Texas."

Standing alone, the language of the Act in question is broad enough to authorize negotiation and agreement by the Interstate Compact Commissioner respecting internal use of water. It must be presumed, however, that the Legislature intended to grant authority only to the extent which it could legally do so, - in short, that the authority conferred extended only to constitutional means of accomplishment.

Compacts between States do not become binding until adopted by the Legislatures of the States with the consent of Congress. U.S. Const., Art. I, Sec. 10, par.3. Since a compact to become effective must be enacted into law, it would seem that the language of the act appointing a compact commissioner is relatively unimportant since his acts have no force until ratified by the Legislature, in which event any excess of authority is cured by ratification. This practical aspect of the problem is persuasive of the fact that the Legislature will ordinarily intend to confer upon compact commissioners the same authority which it would have to make agreements covering the same subject matter. Unless a contrary intent clearly appears, the act should be so construed. In our opinion, the language of the Acts in question must be construed as granting to the Commissioners authority to make agreements to the same extent as the Legislature could respecting the use, control, and disposition of the waters of the Pecos, Canadian, Red, and Sabine Rivers. But in no event do the Acts grant authority in excess of legislative authority, and in all events the negotiations and agreements of the Commissioners are of no effect until and unless approved by the Legislature.

Just as in the case of any legislative act, the only restriction with respect to legislative authority to enact compacts must be found in the State and Federal Constitutions. State ex rel. Baird v.

Hon. H. A. Beckwith - Page 3 - V-1189

Joslin, 227 Pac.543 (Kan. Sup.1924); La Plata River & Cherry Ditch Co. v. Hinderlider, 25 P.2d 187 (Colo. Sup. 1933); State ex rel. Dyer v. Sims, 71 S.Ct.557 (1951).

Your question has been generally stated without reference to any particular limitation upon use. Therefore, our reply must likewise be general. Insofar as a compact may place unconstitutional limitations upon the internal beneficial use of water, it must fail. Each limitation must be separately construed with this in mind. A limitation in itself is not invalid. Hinderlider v. La Plata River & Cherry Creek Ditch Co., 304 U.S. 92 (1938), reversing 70 P.2d 849 (Colo. Sup.1937).

It may be stated as a general proposition in settling controversies between States, whether through compact or by decision of the United States Supreme Court, that the primary object is to secure an equitable apportionment of water between the States. Kansas v. Colorado, 206 U.S.46 (1907); Hinderlider v. La Plata River & Cherry Creek Ditch Co., supra. In arriving at this apportionment, it has been said by Justice Holmes in New Jersey v. New York, 283 U.S.336, 343 (1931), that "the different traditions and practices in different parts of the country may lead to varying results but the effort always is to secure an equitable apportionment without quibbling over formulas." To arrive at equitable apportionment, if it is necessary or desirable to compact with reference to internal beneficial use of water, such an agreement would be permissible so long as no constitutional provisions are violated. For example, if equitable apportionment is arrived at under a formula placing restrictions upon storage capacity, a provision which fixes the amount of allowable storage within a state by restricting storage to certain uses would be a means of arriving at equitable apportionment under the formula and would be valid if within constitutional limits.

#### SUMMARY

The Texas Compact Commissioner has authority to compact with respect to internal beneficial use of water

Hon. H. A. Beckwith - Page 4 - V-1189

so long as his agreements are within constitutional limits. His agreements are not binding in any event unless and until approved by the Legislature.

Yours very truly

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