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KANSAS-NEBRASKA BIG BLUE RIVER COMPACT

GOVERNMENT

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HEARING

BEFORE THE

SUBCOMMITTEE ON

WATER AND POWER RESOURCES

OF THE

COMMITTEE ON

INTERIOR AND INSULAR AFFAIRS

UNITED STATES SENATE

NINETY-SECOND CONGRESS

SECOND SESSION

ON

H.R. 8116 and S. 1726

BILLS TO CONSENT TO THE KANSAS-NEBRASKA BIG BLUE RIVER COMPACT

FEBRUARY 23, 1972



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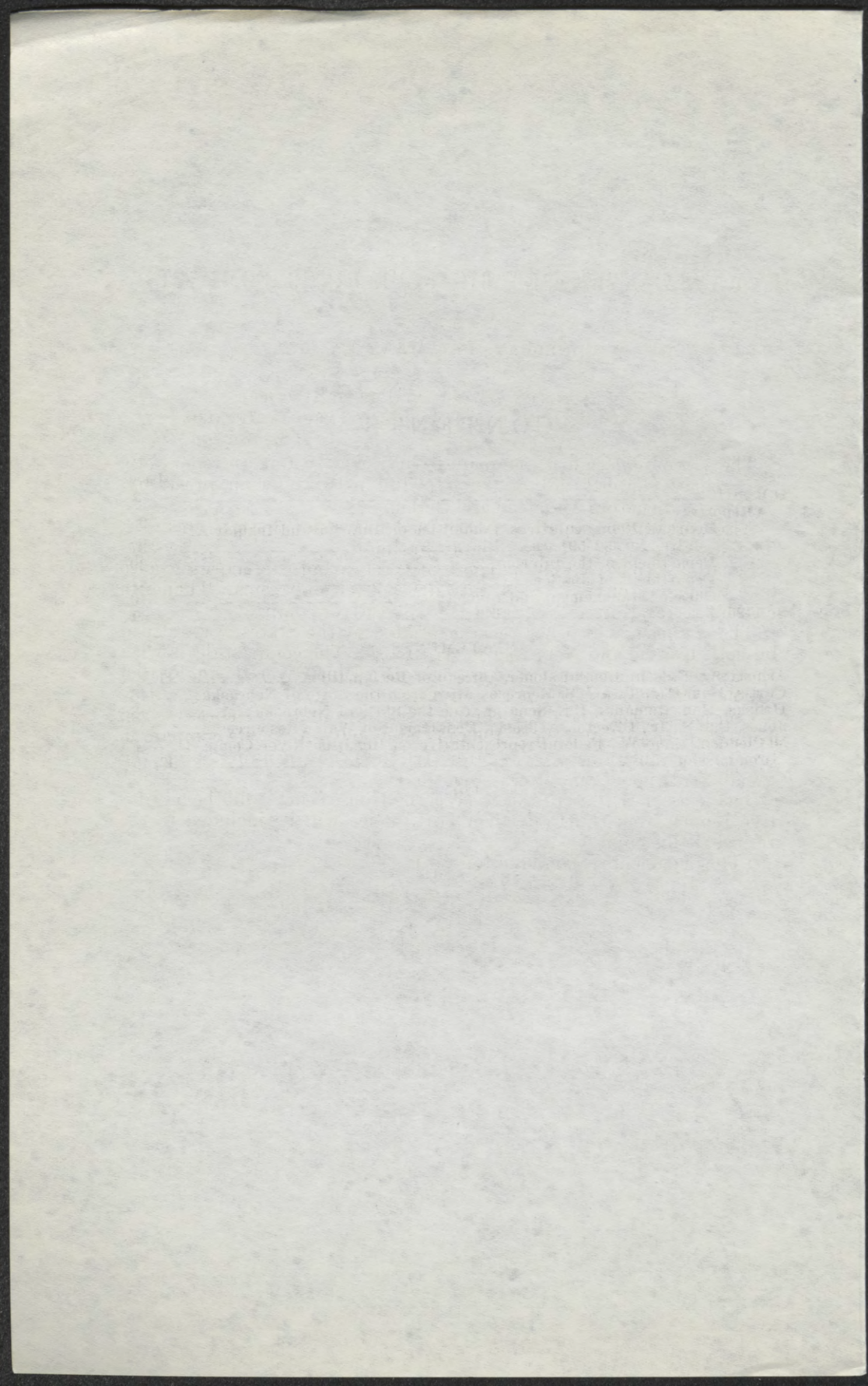
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KANSAS-NEBRASKA BIG BLUE RIVER COMPACT

WEDNESDAY, FEBRUARY 23, 1972

U.S. SENATE,
SUBCOMMITTEE ON WATER AND POWER RESOURCES,
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 3110, New Senate Office Building, Senator Clinton P. Anderson, presiding.

Present: Senators Anderson and Bellmon.

Also present: Daniel A. Dreyfus, professional staff member, Thomas Nelson, Jr, assistant minority counsel.

Senator ANDERSON. The purpose of the hearing this morning is to take testimony on H.R. 8116, introduced by Congressman Thone, to consent to the Kansas-Nebraska Big Blue River compact.

The compact, which has been negotiated by the States, was ratified by both Kansas and Nebraska in April 1971. The compact deals with the apportionment of the waters of the Big Blue River Basin, located in southern Nebraska and northern Kansas.

Consent to negotiate the compact was granted to Nebraska and Kansas by the act of June 3, 1960 (74 Stat. 160). A Senate companion bill, S. 1726, introduced by Senator Hruska, is now pending before the Senate Judiciary Committee.

The texts of H.R. 8116 and S. 1726, the House report and the legislative report from the Department of Justice will be included in the record at this point.

(The documents referred to follow:)

(1)

1 detrimental, or injurious to public health, safety, or welfare,
2 or that are harmful, detrimental or injurious to beneficial uses
3 of the water;

4 “1.7 The term “water project” means any physical
5 structure or any man-made changes which affect the quantity
6 or quality of natural water supplies or natural streamflows
7 and which are designed to bring about greater beneficial use
8 of the water resources of an area;

9 “1.8 The term “natural flow” means that portion of
10 the flow in a natural stream that consists of direct runoff
11 from precipitation on the land surface, ground-water infil-
12 tration to the stream, return flows to the natural stream from
13 municipal, agricultural, or other uses, and releases from
14 storage for no designated beneficial use;

15 “1.9 The term “inactive water appropriation” means
16 a water right that is subject to cancellation or termination
17 for non-use.

18 “ARTICLE II—DESCRIPTION OF THE BASIN

19 “2.1 The Big Blue River, a tributary of the Kansas
20 River, drains an area of 9,696 square miles in south central
21 Nebraska and north central Kansas. About 75 percent of
22 the Big Blue River Basin is in Nebraska, and the remainder
23 is in Kansas. The Big Blue River and its principal trib-
24 utary, the Little Blue River, join near Blue Rapids,
25 Kansas. From there, the Big Blue River flows generally

1 in by Elmo W. McClendon, appointed by the President as
2 the representative of the United States of America, and in
3 accordance with the consent to such negotiations granted by
4 an Act of Congress of the United States of America, ap-
5 proved June 3, 1960, Public Law 489, 86th Congress, 2nd
6 Session, have agreed that the major purposes of this Com-
7 pact concerning the waters of the Big Blue River and its
8 tributaries are:

9 “A. To promote interstate comity between the States
10 of Nebraska and Kansas;

11 “B. To achieve an equitable apportionment of the
12 waters of the Big Blue River Basin between the two
13 States and to promote orderly development thereof; and

14 “C. To encourage continuation of the active pollu-
15 tion-abatement programs in each of the two States and
16 to seek further reduction in both natural and man-made
17 pollution of the waters of the Big Blue River Basin.

18 “To accomplish these purposes, the said States have
19 agreed as set forth in the following Articles.

20 “ARTICLE I—DEFINITIONS

21 “As used in this Compact:

22 “1.1 The term “State” shall mean either State signa-
23 tory hereto, and it shall be construed to include any person,
24 entity, or agency of either State who, by reason of official

1 responsibility or by designation of the Governor of the State,
2 is acting as an official representative of the State;

3 “1.2 The term “Kansas-Nebraska Big Blue River
4 Compact Administration,” or the term “Administration,”
5 means the agency created by this Compact for the adminis-
6 tration thereof;

7 “1.3 The term “Big Blue River Basin” means all of
8 the drainage basin of the Big Blue and Little Blue Rivers
9 in Nebraska and Kansas downstream to the confluence of
10 the Big Blue River with the Kansas River near Manhat-
11 tan, Kansas;

12 “1.4 The term “Big Blue River Basin in Nebraska”
13 means all of the drainage basin of the Big Blue River in
14 Nebraska and is exclusive of the drainage basin of the Little
15 Blue River in Nebraska;

16 “1.5 The term “minimum mean daily flow” means the
17 minimum mean flow for any one calendar day;

18 “1.6 The term “pollution” means contamination or
19 other undesirable alteration of any of the physical, chemical,
20 biological, radiological, or thermal properties of the waters
21 of the basin, or the discharge into the waters of the basin
22 of any liquid, gaseous, or solid substances that create or are
23 likely to result in a nuisance, or that render or are likely to
24 render the waters into which they are discharged harmful,

1 on that official. The advisory member from each State may
2 serve in any capacity within the Administration. He shall
3 reside in the Big Blue River Basin portion of the State he
4 represents.

5 “The Governor of each State shall appoint the advisory
6 member from that State for a term of 4 years. This appoint-
7 ment shall be made within 90 days after the effective date of
8 this Compact.

9 “3.3 ADMINISTRATION GOVERNMENT. The Adminis-
10 tration shall hold its first meeting within 120 days after the
11 effective date of this Compact, and it shall meet at least an-
12 nually thereafter. The Federal member, if one be designated,
13 shall serve as Chairman, without vote. If no Federal repre-
14 sentative is appointed, the Administration shall select a Chair-
15 man, in addition to such officers as may be provided for in
16 the rules and regulations, to serve at the will of the Admin-
17 istration. A meeting quorum shall consist of the ex officio
18 members from both States, or their designated representa-
19 tives. Each State shall have but one vote, cast by the ex
20 officio member or his representative. All actions must be
21 approved by both ex officio members or their representatives.
22 Minutes of each meeting shall be kept, and they shall be
23 available for public inspection.

24 “3.4 ADMINISTRATION POWERS AND DUTIES. The
25 Administration shall have the power to adopt rules and regu-

1 lations consistent with the provisions of this Compact, to
2 enforce such rules and regulations, and to otherwise carry out
3 its responsibilities. It may institute action in its own name in
4 courts of competent jurisdiction to compel compliance with
5 the provisions of this Compact and with the rules and regu-
6 lations it adopts.

7 “The Administration is hereby authorized to employ
8 the technical and clerical staff necessary to carry out its
9 functions, and to maintain the office and appurtenances nec-
10 essary to conduct its business. It may employ attorneys, en-
11 gineers, or other consultants. It may purchase equipment
12 and services necessary to its functions.

13 “The Administration shall publish an annual report
14 including a review of its activities and financial status. It
15 may also prepare and publish such other reports and publi-
16 cations as it deems necessary.

17 “In order to provide a sound basis for carrying out
18 the apportionment provisions of this Compact, the Admin-
19 istration shall cause to be established such stream-gaging
20 stations, ground-water observation wells, and other data-
21 collection facilities as are necessary for administering this
22 Compact; and it shall install such other equipment and col-
23 lect such data therefrom, for a period of not less than 5 years,
24 as are necessary or desirable for evaluating the effects of
25 pumping of wells on the flows of the Big Blue and Little

1 Blue Rivers at the Kansas-Nebraska State line. The well area
2 to be considered is described in Article V, paragraph 5.2.

3 "The Administration shall have authority to accept
4 funds from local, State, and Federal sources. It may enter
5 into cooperative agreements and contribute funds to sup-
6 port such data-collection and analysis programs as are nec-
7 essary for administration of the Compact.

8 "ARTICLE IV—RESPONSIBILITY OF EACH STATE

9 "4.1 EXPENSES OF ADMINISTRATION. Each State and
10 Federal member of the Administration shall receive such
11 compensation and such reimbursement for travel and sub-
12 sistence as are provided by the government he represents,
13 and he shall be paid by that government.

14 "4.2 BUDGET. Each year, the Administration shall pre-
15 pare a properly documented budget covering the anticipated
16 expenditures of the Administration for the following fiscal
17 period. Each State shall make provision in its budget for
18 funds to pay its share of the expenses of the Administration,
19 which shall be divided equally between the States of Kansas
20 and Nebraska. The Administration shall establish a fund to
21 which each State shall contribute equally and from which
22 the expenses of the Administration shall be paid.

23 "4.3 RECORDS AND INFORMATION. The State of Kan-
24 sas and the State of Nebraska shall cooperate with the Ad-
25 ministration and furnish to it such records, information, plans,

1 data, and assistance as may be reasonably available; and
2 they shall keep the Administration advised of Federal activi-
3 ties in connection with planning, design, construction, opera-
4 tion, and maintenance of water-resource projects in the Big
5 Blue River Basin.

6 “Any local, public, or private agency collecting water
7 data or planning, designing, constructing, operating, or
8 maintaining any water project or facility in the Big Blue
9 River Basin shall keep the Administration advised of its
10 investigations and of any proposed changes and additions
11 to existing projects and facilities, and it shall submit plans
12 for new projects to the Administration for review of those
13 project aspects affecting surface-water flowage and quality.

14 “ARTICLE V—APPORTIONMENT OF WATERS OF THE BIG
15 BLUE RIVER BASIN

16 “5.1 PRINCIPLES OF APPORTIONMENT.—The physical
17 and other conditions peculiar to the Big Blue River Basin
18 constitute the basis for this apportionment, and neither of the
19 signatory States hereby, nor the Congress of the United
20 States by its consent hereto, concedes that this apportion-
21 ment establishes any general principle with respect to any
22 other interstate stream.

23 “The States of Kansas and Nebraska subscribe to the
24 principle of including storage capacity for low-flow regulation
25 in reservoirs constructed by the U.S. Bureau of Reclamation

1 and the U.S. Army Corps of Engineers, and to the principle
 2 of such administration as is required to assure that water
 3 released from storage for low-flow regulation shall remain
 4 available in the stream to accomplish its intended purpose.

5 “5.2 NEBRASKA APPORTIONMENT.—The State of Ne-
 6 braska shall have free and unrestricted use of the waters of
 7 the Little Blue and Big Blue River Basins in Nebraska, such
 8 use to be in accordance with the laws of the State of Nebras-
 9 ka, subject to the limitations set forth below.

10 “(a) Water appropriations of record in the Little Blue
 11 and Big Blue River Basins in Nebraska on November 1,

12 “(b) During the period, May 1–September 30 the
 13 process of laws in effect in that State.

14 “(b) During the period, May 1–September 30 the
 15 State of Nebraska shall regulate diversions from natural flow
 16 of Streams in the Little Blue and Big Blue River Basins by
 17 water appropriators junior to November 1, 1968, in order to
 18 maintain minimum mean daily flows at the state-line gaging
 19 stations (which are now located at Fairbury and Barneston,
 20 respectively, but which may be relocated at such other places
 21 as may be designated state-line gaging stations by the Ad-
 22 ministration) during each month as follows:

Little Blue River		Big Blue River	
May -----	45 cfs	May -----	45 cfs
June -----	45 cfs	June -----	45 cfs
July -----	75 cfs	July -----	80 cfs
August -----	80 cfs	August -----	90 cfs
September -----	60 cfs	September -----	65 cfs

1 ““When such action is necessary to maintain the above
2 schedule of flows, the State of Nebraska shall:

3 “(1) Limit diversions by natural-flow appropri-
4 tors in Nebraska in accordance with their water appro-
5 priations;

6 “(2) Close, in reverse order of priority, natural-
7 flow appropriations with priority dates subsequent to
8 November 1, 1968, including rights to store water in
9 the conservation-storage zones of reservoirs;

10 “(3) Enjoin all persons not holding valid natural-
11 flow appropriations from taking water during periods
12 when the exercise of junior natural-flow appropriations
13 is being restricted;

14 “(4) Regulate, in the same manner that diversion
15 of natural flows is regulated, withdrawals of water from
16 irrigation wells installed after November 1, 1968, except
17 equivalent wells drilled to replace wells installed before
18 that date, in the alluvium and valley side terrace deposits
19 within one mile from the thread of the river and between
20 the mouth of Walnut Creek and the Kansas-Nebraska
21 State line on the Little Blue River and between the
22 mouth of Turkey Creek and the Kansas-Nebraska State
23 line on the Big Blue River (as delineated on Exhibits A
24 and B of Supplement No. 1 to the Report of the Engi-
25 neering Committee) provided that, if the regulation of

1 such wells fails to yield any measurable increases in
2 flows at the state-line gaging stations as determined by
3 the investigations to be undertaken under Article III,
4 paragraph 3.4, the regulation of such wells shall be dis-
5 continued. Determination of the effect on streamflow of
6 the pumping of such wells shall rest with the administra-
7 tion.

8 “Delivery of water under the terms of this article shall
9 be deemed to be in compliance with its provisions when the
10 amounts passing the state-line gaging stations are substan-
11 tially equivalent to the scheduled amounts. Minor irregulari-
12 ties in flow shall be disregarded.

13 “(c) The storage capacity provided in reservoirs in
14 the Little Blue River Basin in Nebraska shall be limited to
15 a total of 200,000 acre-feet. Similarly, the storage capacity
16 in reservoirs in the Big Blue River Basin in Nebraska shall
17 be limited to 500,000 acre-feet. These limitations are ex-
18 clusive of storage capacity that may be found necessary for
19 regulation and use of waters imported into these basins in
20 Nebraska; exclusive of storage capacity in small reservoir
21 projects where the storage of water for subsequent use is
22 less than 200 acre-feet; exclusive of storage capacity allo-
23 cated to sedimentation and flood control; and exclusive of
24 storage capacity allocated to, and from which water is re-
25 leased to accomplish low-flow augmentation for improv-

1 ment of water quality, for fishery, wildlife, or recreation pur-
2 poses, or for meeting the flow schedules at the Kansas-
3 Nebraska State line as set out in Article V, paragraph 5.2.

4 “5.3 KANSAS APPORTIONMENT. The State of Kansas
5 shall have free and unrestricted use of all waters of the Big
6 Blue River Basin flowing into Kansas from Nebraska in
7 accordance with this Compact, and of all waters of the basin
8 originating in Kansas, excepting such waters as may, in the
9 future, flow from Kansas into Nebraska.

10 “5.4 TRANSBASIN DIVERSION. In the event of any im-
11 portation of water into the Big Blue River Basin by either
12 State, the State making the importation shall have exclusive
13 use of such imported water, including identifiable return
14 flows therefrom. Neither State shall authorize the exporta-
15 tion from the Big Blue River of water originating within
16 that basin without the approval of the administration.

17 “ARTICLE VI—WATER QUALITY CONTROL

18 “6.1 The States of Kansas and Nebraska mutually
19 agree to the principle of individual State efforts to control
20 natural and man-made water pollution within each State and
21 to the continuing support of both States in active water pollu-
22 tion control programs.

23 “6.2 The two States agree to cooperate, through their
24 appropriate State agencies, in the investigation, abatement,
25 and control of sources of alleged interstate pollution within the

1 Big Blue River Basin whenever such sources are called to
2 their attention by the Administration.

3 “6.3 The two States agree to cooperate in maintaining
4 the quality of the waters of the Big Blue River Basin at or
5 above such water quality standards as may be adopted, now
6 or hereafter, by the water pollution control agencies of the
7 respective States in compliance with the provisions of the
8 Federal Water Quality Act of 1965, and amendments
9 thereto.

10 “6.4 The two States agree to the principle that neither
11 State may require the other to provide water for the pur-
12 pose of water quality control as a substitute for adequate
13 waste treatment.

14 “ARTICLE VII—GENERAL PROVISIONS

15 “7.1 RIGHT TO STORE WATER IN UPPER STATE. The
16 right of the State of Kansas or of any person, corporation,
17 local agency, or entity in Kansas to construct or participate
18 in the future construction and use of any storage reservoir
19 or diversion works in the Big Blue and Little Blue Basins
20 of Nebraska for the purpose of regulating water to be used
21 in Kansas shall never be denied: *Provided*, That such right
22 is subject to the laws of the State of Nebraska and that any
23 such storage for use by Kansas shall be excluded from the
24 limitations on storage under Article V, paragraph 5.2 (c).

25 “Releases of water from storage provided by Kansas

1 interests in the State of Nebraska shall not be counted
2 toward meeting the minimum flow requirements at the State
3 line under the provisions of paragraph 5.2 (b).

4 “7.2 DISCLAIMER. Nothing contained in this Compact
5 shall be deemed:

6 “1. To impair, extend, or otherwise affect any
7 right or power of the United States, its agencies, or its
8 instrumentalities involved herein;

9 “2. To subject to the laws of the States of Kansas
10 and Nebraska any property or rights of the United
11 States that were not subject to the laws of those States
12 prior to the date of this Compact;

13 “3. To interfere with or impair the right or power
14 of either signatory State to regulate within its boundaries
15 the appropriation, use, and control of waters within that
16 State consistent with its obligations under this Compact.

17 “7.3 INVALIDITY IN PART. Should a court of compe-
18 tent jurisdiction hold any part of this Compact to be contrary
19 to the constitution of either signatory State or to the Con-
20 stitution of the United States, all other severable provisions
21 of this Compact shall continue in full force and effect.

22 “7.4 FUTURE REVIEW. After the expiration of 5 years
23 following the effective date of this Compact, the Admin-
24 istration may review any provision hereof; and it shall meet
25 for such review whenever a member of the Administration

1 from either State requests such review. All provisions hereof
2 shall remain in full force and effect until changed and
3 amended within the intent of the Compact by unanimous
4 action of the Administration, and until such changes in this
5 Compact are ratified by the Legislatures of the respective
6 States and are consented to by the Congress of the United
7 States, in the same manner that this Compact is required to
8 be ratified and consented to before it becomes effective.

9 “7.5 TERMINATION. This Compact may be terminated
10 at any time by appropriate action of the Legislatures of
11 both signatory States. In the event of amendment or termina-
12 tion of the Compact, the water-resource developments made
13 in compliance with, and reliant upon, this Compact shall
14 continue unimpaired.

15 “ARTICLE VIII—RATIFICATION

16 “8.1 This Compact shall become binding and obliga-
17 tory when it shall have been ratified by the Legislature of
18 each State and consented to by the Congress of the United
19 States and when the Congressional Act consenting to this
20 Compact includes the consent of Congress to name and join
21 the United States as a party in any litigation in the United
22 States Supreme Court, if the United States is an indispen-
23 sable party and if the litigation arises out of this Compact
24 or its application, and if a signatory State is a party thereto.

25 “8.2 Notice of ratification by the Legislature of each

1 State shall be given by the Governor of that State to the
 2 Governor of the other State and to the President of the
 3 United States, and the President is hereby requested to give
 4 notice to the Governor of each State of the consent by the
 5 Congress of the United States.'

6 "IN WITNESS WHEREOF the authorized representa-
 7 tives have executed three counterparts hereof, each of which
 8 shall be and constitute an original, one of which shall be
 9 deposited with the Administrator of General Services of
 10 the United States, and one of which shall be forwarded to
 11 the Governor of each State.

12 "Done at Lincoln, Nebraska, this 25th day of January
 13 1971.

14 "Keith S. Krause

15 "KEITH S. KRAUSE

16 "Commissioner for the State of Kansas

17 "Dan S. Jones, Jr.

18 "DAN S. JONES, Jr.

19 "Commissioner for the State of Nebraska

20 "APPROVED:

21 "Elmo W. McClendon

22 "ELMO W. MCCLENDON

23 "Representative of the United States of America"

24 SEC. 2. To carry out the purposes of Article VIII of the
 25 Compact, the Congress hereby consents to have the United

1 States named and joined as a party in any litigation in the
2 United States Supreme Court, if the United States is an
3 indispensable party and if the litigation arises out of the
4 Compact or its application, and if a signatory State is a
5 party thereto.

6 SEC. 3. The right to alter, amend, or repeal this Act
7 is expressly reserved.

Passed the House of Representatives November 15,
1971.

Attest:

W. PAT JENNINGS,

Clerk.

92D CONGRESS
1ST SESSION

S. 1726

IN THE SENATE OF THE UNITED STATES

APRIL 30, 1971

Mr. HRUSKA (for himself, Mr. CURTIS, Mr. DOLE, and Mr. PEARSON) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To consent to the Kansas-Nebraska Big Blue River Compact.

1 *Be it enacted by the Senate and House of Representa-*

2 *tives of the United States of America in Congress assembled,*

3 That the Congress consents to the Kansas-Nebraska Big Blue

4 River Compact which is substantially as follows:

5 "KANSAS-NEBRASKA BIG BLUE RIVER COMPACT

6 "PREAMBLE

7 "The State of Kansas and the State of Nebraska, acting

8 through their duly authorized Compact representatives, Keith

9 S. Krause for the State of Kansas and Dan S. Jones, Jr., for

10 the State of Nebraska, after negotiations participated in by

11 Elmo W. McClendon, appointed by the President as the

1 representative of the United States of America, and in
2 accordance with the consent to such negotiations granted
3 by an Act of Congress of the United States of America,
4 approved June 3, 1960, Public Law 489, 86th Congress,
5 2nd Session, have agreed that the major purposes of this
6 Compact concerning the waters of the Big Blue River and
7 its tributaries are:

8 “A. To promote interstate comity between the
9 States of Nebraska and Kansas;

10 “B. To achieve an equitable apportionment of the
11 waters of the Big Blue River Basin between the two
12 States and to promote orderly development thereof; and

13 “C. To encourage continuation of the active pollu-
14 tion-abatement programs in each of the two States and
15 to seek further reduction in both natural and man-made
16 pollution of the waters of the Big Blue River Basin.

17 “To accomplish these purposes, the said States have
18 agreed as set forth in the following Articles.

19 “ARTICLE I—DEFINITIONS

20 “As used in this Compact:

21 “1.1 The term “State” shall mean either State signatory
22 hereto, and it shall be construed to include any person, entity,
23 or agency of either State who, by reason of official respon-
24 sibility or by designation of the Governor of the State, is act-
25 ing as an official representative of the State;

1 “1.2 The term “Kansas-Nebraska Big Blue River Com-
2 pact Administration,” or the term “Administration,” means
3 the agency created by this Compact for the administration
4 thereof;

5 “1.3 The term “Big Blue River Basin” means all of the
6 drainage basin of the Big Blue and Little Blue Rivers in
7 Nebraska and Kansas downstream to the confluence of the
8 Big Blue River with the Kansas River near Manhattan,
9 Kansas;

10 “1.4 The term “Big Blue River Basin in Nebraska”
11 means all of the drainage basin of the Big Blue River in Ne-
12 braska and is exclusive of the drainage basin of the Little
13 Blue River in Nebraska;

14 “1.5 The term “minimum mean daily flow” means
15 the minimum mean flow for any one calendar day;

16 “1.6 The term “pollution” means contamination or
17 other undesirable alteration of any of the physical, chemi-
18 cal, biological, radiological, or thermal properties of the
19 waters of the basin, or the discharge into the waters of the
20 basin of any liquid, gaseous, or solid substances that create
21 or are likely to result in a nuisance, or that render or are
22 likely to render the waters into which they are discharged
23 harmful, detrimental, or injurious to public health, safety,
24 or welfare, or that are harmful, detrimental, or injurious to
25 beneficial uses of water;

1 “1.7 The term “water project” means any physical
2 structure or any man-made changes which affect the quan-
3 tity or quality of natural water supplies or natural stream-
4 flows and which are designed to bring about greater bene-
5 ficial use of the water resources of an area;

6 “1.8 The term “natural flow” means that portion of
7 the flow in a natural stream that consists of direct runoff
8 from precipitation on the land surface, ground-water infil-
9 tration to the stream, return flows to the natural stream
10 from municipal, agricultural, or other uses, and releases
11 from storage for no designated beneficial use;

12 “1.9 The term “inactive water appropriation” means a
13 water right that is subject to cancellation or termination for
14 non-use.

15 “ARTICLE II—DESCRIPTION OF THE BASIN

16 “2.1 The Big Blue River, a tributary of the Kansas River,
17 drains an area of 9,696 square miles in south central
18 Nebraska and north central Kansas. About 75 percent of the
19 Big Blue River Basin is in Nebraska, and the remainder is in
20 Kansas. The Big Blue River and its principal tributary, the
21 Little Blue River, join near Blue Rapids, Kansas. From
22 there, the Big Blue River flows generally southward to join
23 the Kansas River near Manhattan, Kansas, as shown on
24 Exhibit A.

25 “2.2 Much of the upper portion of the basin in Nebraska

1 is underlain with sands and gravels that supply large quanti-
2 ties of water to irrigation wells. The lower portion of the
3 basin in Nebraska and that portion of the basin in Kansas
4 lack significant ground-water supplies except within the
5 major stream valleys.

6 "ARTICLE III—ORGANIZATION OF COMPACT

7 ADMINISTRATION

8 "3.1 ADMINISTRATION AGENCY. There is hereby
9 established an interstate administrative agency, to be
10 known as the "Kansas-Nebraska Big Blue River Compact
11 Administration," to administer the Compact.

12 "3.2 ADMINISTRATION MEMBERSHIP. The Adminis-
13 tration shall be composed of one ex officio member and one
14 advisory member from each State, plus a Federal member
15 to be appointed by the President if he so desires. The ex
16 officio member from each State shall be the official charged
17 with the duty of administering the laws of his State per-
18 taining to water rights. Said official shall designate a rep-
19 resentative who may serve in his place at meetings of the
20 Administration. All actions taken by the designated rep-
21 resentative in the transaction of the business of the Admin-
22 istration shall be in the name of the official he represents
23 and shall be binding on that official. The advisory member
24 from each State may serve in any capacity within the

1 Administration. He shall reside in the Big Blue River
2 Basin portion of the State he represents.

3 “The Governor of each State shall appoint the advisory
4 member from that State for a term of 4 years. This appoint-
5 ment shall be made within 90 days after the effective date
6 of this Compact.

7 “3.3 ADMINISTRATION GOVERNMENT. The Adminis-
8 tration shall hold its first meeting within 120 days after the
9 effective date of this Compact, and it shall meet at least an-
10 nually thereafter. The Federal member, if one be designated,
11 shall serve as Chairman, without vote. If no Federal repre-
12 sentative is appointed, the Administration shall select a
13 Chairman, in addition to such officers as may be provided for
14 in the rules and regulations, to serve at the will of the Ad-
15 ministration. A meeting quorum shall consist of the ex officio
16 members from both States, or their designated representa-
17 tives. Each State shall have but one vote, cast by the ex
18 officio member or his representative. All actions must be ap-
19 proved by both ex officio members or their representatives.
20 Minutes of each meeting shall be kept, and they shall be
21 available for public inspection.

22 “3.4 ADMINISTRATION POWERS AND DUTIES. The Ad-
23 ministration shall have the power to adopt rules and regula-
24 tions consistent with the provisions of this Compact, to en-
25 force such rules and regulations, and to otherwise carry out

1 its responsibilities. It may institute action in its own name in
2 courts of competent jurisdiction to compel compliance with
3 the provisions of this Compact and with the rules and regula-
4 tions it adopts.

5 “The Administration is hereby authorized to employ the
6 technical and clerical staff necessary to carry out its functions,
7 and to maintain the office and appurtenances necessary to
8 conduct its business. It may employ attorneys, engineers, or
9 other consultants. It may purchase equipment and services
10 necessary to its functions.

11 “The Administration shall publish an annual report in-
12 cluding a review of its activities and financial status. It may
13 also prepare and publish such other reports and publications
14 as it deems necessary.

15 “In order to provide a sound basis for carrying out the
16 apportionment provisions of this Compact, the Administra-
17 tion shall cause to be established such stream-gaging stations,
18 ground-water observation wells, and other data-collection
19 facilities as are necessary for administering this Compact;
20 and it shall install such other equipment and collect such
21 data therefrom, for a period of not less than 5 years, as are
22 necessary or desirable for evaluating the effects of pumping
23 of wells on the flows of the Big Blue and Little Blue Rivers
24 at the Kansas-Nebraska state line. The well area to be con-
25 sidered is described in Article V, paragraph 5.2.

1 ““The Administration shall have authority to accept
2 funds from local, State, and Federal sources. It may enter into
3 cooperative agreements and contribute funds to support such
4 data-collection and analysis programs as are necessary for
5 administration of the Compact.

6 “ARTICLE IV—RESPONSIBILITY OF EACH STATE

7 “4.1 EXPENSES OF ADMINISTRATION. Each State and
8 Federal member of the Administration shall receive such
9 compensation and such reimbursement for travel and subsist-
10 ence as are provided by the government he represents, and
11 he shall be paid by that government.

12 “4.2 BUDGET. Each year, the Administration shall pre-
13 pare a properly documented budget covering the anticipated
14 expenditures of the Administration for the following fiscal
15 period. Each State shall make provision in its budget for
16 funds to pay its share of the expenses of the Administration,
17 which shall be divided equally between the States of Kansas
18 and Nebraska. The Administration shall establish a fund to
19 which each State shall contribute equally and from which
20 the expenses of the Administration shall be paid.

21 “4.3 RECORDS AND INFORMATION. The State of Kansas
22 and the State of Nebraska shall cooperate with the Admin-
23 istration and furnish to it such records, information, plans,
24 data, and assistance as may be reasonably available; and they
25 shall keep the Administration advised of Federal activities in

1 connection with planning, design, construction, operation,
2 and maintenance of water-resource projects in the Big Blue
3 River Basin.

4 “Any local, public, or private agency collecting water
5 data or planning, designing, constructing, operating, or main-
6 taining any water project or facility in the Big Blue River
7 Basin shall keep the Administration advised of its investiga-
8 tions and of any proposed changes and additions to existing
9 projects and facilities, and it shall submit plans for new proj-
10 ects to the Administration for review of those project aspects
11 affecting surface-water flowage and quality.

12 “ARTICLE V—APPORTIONMENT OF WATERS OF THE BIG
13 BLUE RIVER BASIN

14 “5.1 PRINCIPLES OF APPORTIONMENT. The physical
15 and other conditions peculiar to the Big Blue River Basin
16 constitute the basis for this apportionment, and neither of the
17 signatory States hereby, nor the Congress of the United
18 States by its consent hereto, concedes that this apportionment
19 establishes any general principle with respect to any other
20 interstate stream.

21 “The States of Kansas and Nebraska subscribe to the
22 principle of including storage capacity for low-flow regula-
23 tion in reservoirs constructed by the U.S. Bureau of Recla-
24 mation and the U.S. Army Corps of Engineers, and to the
25 principle of such administration as is required to assure that

1 water released from storage for low-flow regulation shall re-
 2 main available in the stream to accomplish its intended pur-
 3 pose.

4 “5.2 NEBRASKA APPORTIONMENT. The State of Ne-
 5 braska shall have free and unrestricted use of the waters of
 6 the Little Blue and Big Blue River Basins in Nebraska, such
 7 use to be in accordance with the laws of the State of Ne-
 8 braska, subject to the limitations set forth below.

9 “(a) Water appropriations of record in the Little Blue
 10 and Big Blue River Basins in Nebraska on November 1,
 11 1968, that were then inactive, shall be cancelled by due proc-
 12 ess of laws in effect in that State.

13 “(b) During the period May 7–September 30, the State
 14 of Nebraska shall regulate diversions from natural flow of
 15 streams in the Little Blue and Big Blue River Basins by
 16 water appropriators junior to November 1, 1968, in order
 17 to maintain minimum mean daily flows at the state-line
 18 gaging stations (which are now located at Fairbury and
 19 Barneston, respectively, but which may be relocated at
 20 such other places as may be designated state-line gaging
 21 stations by the Administration) during each month as fol-
 22 lows:

“Little Blue River		“Big Blue River	
May -----	45 cfs	May -----	45 cfs
June -----	45 cfs	June -----	45 cfs
July -----	75 cfs	July -----	80 cfs
August -----	80 cfs	August -----	90 cfs
September -----	60 cfs	September -----	65 cfs

1 “‘When such action is necessary to maintain the above
2 schedule of flows, the State of Nebraska shall:

3 “‘(1) Limit diversions by natural-flow appropria-
4 tors in Nebraska in accordance with their water appropria-
5 tions;

6 “‘(2) Close, in reverse order of priority, natural-
7 flow appropriations with priority dates subsequent to
8 November 1, 1968, including rights to store water in the
9 conservation-storage zones of reservoirs;

10 “‘(3) Enjoin all persons not holding valid natural-
11 flow appropriations from taking water during periods
12 when the exercise of junior natural-flow appropriations
13 is being restricted;

14 “‘(4) Regulate, in the same manner that diversion
15 of natural flows is regulated, withdrawals of water from
16 irrigation wells installed after November 1, 1968, except
17 equivalent wells drilled to replace wells installed before
18 that date, in the alluvium and valley side terrace deposits
19 within one mile from the thread of the river and between
20 the mouth of Walnut Creek and the Kansas-Nebraska
21 state line on the Little Blue River and between the mouth
22 of Turkey Creek and the Kansas-Nebraska state line on
23 the Big Blue River (as delineated on Exhibits A and B
24 of Supplement No. 1 to the Report of the Engineering

1 Committee) provided that, if the regulation of such wells
2 fails to yield any measurable increases in flows at the
3 state-line gaging stations as determined by the investiga-
4 tions to be undertaken under article III, paragraph 3.4,
5 the regulation of such wells shall be discontinued. De-
6 termination of the effect on streamflow of the pumping
7 of such wells shall rest with the Administration.

8 “Delivery of water under the terms of this article shall
9 be deemed to be in compliance with its provisions when the
10 amounts passing the state-line gaging stations are sub-
11 stantially equivalent to the scheduled amounts. Minor ir-
12 regularities in flow shall be disregarded.

13 “(c) The storage capacity provided in reservoirs in the
14 Little Blue River Basin in Nebraska shall be limited to a
15 total of 200,000 acre-feet. Similarly, the storage capacity in
16 reservoirs in the Big Blue River Basin in Nebraska shall be
17 limited to 500,000 acre-feet. These limitations are exclusive
18 of storage capacity that may be found necessary for regula-
19 tion and use of waters imported into these basins in Ne-
20 braska; exclusive of storage capacity in small reservoir proj-
21 ects where the storage of water for subsequent use is less
22 than 200 acre-feet; exclusive of storage capacity allocated
23 to sedimentation and flood control; and exclusive of storage
24 capacity allocated to, and from which water is released to
25 accomplish, low-flow augmentation for improvement of water

1 quality, for fishery, wildlife, or recreation purposes, or for
2 meeting the flow schedules at the Kansas-Nebraska state
3 line as set out in Article V, paragraph 5.2.

4 “5.3 KANSAS APPORTIONMENT. The State of Kansas
5 shall have free and unrestricted use of all waters of the Big
6 Blue River Basin flowing into Kansas from Nebraska in
7 accordance with this Compact, and of all waters of the basin
8 originating in Kansas, excepting such waters as may, in the
9 future, flow from Kansas into Nebraska.

10 “5.4 TRANSBASIN DIVERSION. In the event of any im-
11 portation of water into the Big Blue River Basin by either
12 State, the State making the importation shall have exclusive
13 use of such imported water, including identifiable return flows
14 therefrom. Neither State shall authorize the exportation from
15 the Big Blue River of water originating within that basin
16 without the approval of the Administration.

17 “ARTICLE VI—WATER QUALITY CONTROL

18 “6.1 The States of Kansas and Nebraska mutually agree
19 to the principle of individual State efforts to control natural
20 and man-made water pollution within each State and to the
21 continuing support of both States in active water pollution
22 control programs.

23 “6.2 The two States agree to cooperate, through their
24 appropriate State agencies, in the investigation, abatement,
25 and control of sources of alleged interstate pollution within

1 the Big Blue River Basin whenever such sources are called
2 to their attention by the Administration.

3 “6.3 The two States agree to cooperate in maintaining
4 the quality of the waters of the Big Blue River Basin at or
5 above such water quality standards as may be adopted, now
6 or hereafter, by the water pollution control agencies of the
7 respective States in compliance with the provisions of the
8 Federal Water Quality Act of 1965, and amendments thereto.

9 “6.4 The two States agree to the principle that neither
10 State may require the other to provide water for the purpose
11 of water quality control as a substitute for adequate waste
12 treatment.

13 “ARTICLE VII—GENERAL PROVISIONS

14 “7.1 RIGHT TO STORE WATER IN UPPER STATE. The
15 right of the State of Kansas or of any person, corporation,
16 local agency, or entity in Kansas to construct or participate
17 in the future construction and use of any storage reservoir
18 or diversion works in the Big Blue and Little Blue Basins of
19 Nebraska for the purpose of regulating water to be used in
20 Kansas shall never to denied; provided, that such right is
21 subject to the laws of the State of Nebraska and that any
22 such storage for use by Kansas shall be excluded from the
23 limitations on storage under Article V, paragraph 5.2 (c).

24 “Releases of water from storage provided by Kansas
25 interests in the State of Nebraska shall not be counted toward

1 meeting the minimum flow requirements at the State line
2 under the provisions of paragraph 5.2 (b).

3 “7.2 DISCLAIMER. Nothing contained in this Compact
4 shall be deemed:

5 “1. To impair, extend, or otherwise affect any right
6 or power of the United States, its agencies, or its instru-
7 mentalities involved herein;

8 “2. To subject to the laws of the States of Kansas
9 and Nebraska any property or rights of the United States
10 that were not subject to the laws of those States prior to
11 the date of this Compact;

12 “3. To interfere with or impair the right or power
13 of either signatory State to regulate within its boundaries
14 the appropriation, use, and control of waters within that
15 State consistent with its obligations under this Compact.

16 “7.3 INVALIDITY IN PART. Should a court of competent
17 jurisdiction hold any part of this Compact to be contrary to
18 the constitution of either signatory State or to the Constitu-
19 tion of the United States, all other severable provisions of this
20 Compact shall continue in full force and effect.

21 “7.4 FUTURE REVIEW. After the expiration of 5 years
22 following the effective date of this Compact, the Administra-
23 tion may review any provisions hereof; and it shall meet for
24 such review whenever a member of the Administration from
25 either State requests such review. All provisions hereof shall

1 remain in full force and effect until changed and amended
2 within the intent of the Compact by unanimous action of
3 the Administration, and until such changes in this Compact
4 are ratified by the Legislatures of the respective States and
5 are consented to by the Congress of the United States, in
6 the same manner that this Compact is required to be ratified
7 and consented to before it becomes effective.

8 “7.5 TERMINATION. This Compact may be terminated
9 at any time by appropriate action of the Legislatures of both
10 signatory States. In the event of amendment or termination
11 of the Compact, the water-resource developments made in
12 compliance with, and reliant upon, this Compact shall con-
13 tinue unimpaired.

14 “ARTICLE VIII—RATIFICATION

15 “8.1 This Compact shall become binding and obligatory
16 when it shall have been ratified by the Legislature of each
17 State and consented to by the Congress of the United States
18 and when the Congressional Act consenting to this Compact
19 includes the consent of Congress to name and join the United
20 States as a party in any litigation in the United States Su-
21 preme Court, if the United States is an indispensable party
22 and if the litigation arises out of this Compact or its appli-
23 cation, and if a signatory State is a party thereto.

24 “8.2 Notice of ratification by the Legislature of each
25 State shall be given by the Governor of that State to the

1 Governor of the other State and to the President of the
 2 United States, and the President is hereby requested to give
 3 notice to the Governor of each State of the consent by the
 4 Congress of the United States.'

5 "IN WITNESS WHEREOF the authorized represent-
 6 atives have executed three counterparts hereof, each of which
 7 shall be and constitute an original, one of which shall be
 8 deposited with the Administrator of General Services of the
 9 United States, and one of which shall be forwarded to the
 10 Governor of each State.

11 "Done at Lincoln, Nebraska, this 25th day of January
 12 1971.

13 "Keith S. Krause

14 "KEITH S. KRAUSE

15 "Commissioner for the State of Kansas

16 "Dan S. Jones, Jr.

17 "DAN S. JONES, Jr.

18 "Commissioner for the State of Nebraska

19 "APPROVED:

20 "Elmo W. McClendon

21 "ELMO W. MCCLENDON

22 "Representative of the United States of America"

23 SEC. 2. The right to alter, amend, or repeal this Act is
 24 expressly reserved.

CONSENTING TO THE KANSAS-NEBRASKA BIG BLUE RIVER COMPACT

OCTOBER 27, 1971.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. JOHNSON of California, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany H.R. 8116]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 8116) to consent to the Kansas-Nebraska Big Blue River compact, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Page 17, after line 23, add a new section 2 renumbering the present section 2 to section 3:

SEC. 2. To carry out the purposes of article VIII of the compact, the Congress hereby consents to have the United States named and joined as a party in any litigation in the U.S. Supreme Court, if the United States is an indispensable party and if the litigation arises out of the compact or its application, and if a signatory State is a party thereto.

H.R. 8116 was introduced by Mr. Thone, for himself, Mr. Martin, Mr. McCollister, Mr. Sebelius, Mr. Roy, Mr. Winn, and Mr. Shriver.

PURPOSE OF LEGISLATION

The purpose of H.R. 8116 is to give the consent of Congress to the Kansas-Nebraska Big Blue River compact which has been negotiated between the States of Kansas and Nebraska. Consent to negotiate the compact was granted by the act of June 3, 1960.

BACKGROUND

Negotiations leading to the Kansas-Nebraska compact on the Big Blue River were participated in by a representative of the United States appointed by the President for this purpose. The compact was

executed by the negotiators on January 25, 1971, and was subsequently ratified by the legislatures of the signatory States in April 1971, by unanimous votes.

DISCUSSION OF LEGISLATION

Section 1 of H.R. 8116 presents the verbatim text of the compact, comprised of eight articles. The first four articles set forth definitions, a physical description of the Big Blue River Basin, and provide for organization and operation of an interstate agency for administration of the compact.

Articles V, VI, and VII contain the substantive provisions of the compact. They provide for apportionment of the flow of the Big Blue River system, set forth principles for preservation of water quality, and establish limits on storage of water in Nebraska. Article VIII sets forth procedures for ratification.

Section 2 of the bill as reported by the committee expressly grants the consent of Congress for the United States to be joined as a party litigant in any action growing out of the compact for which one or more of the signatory States is a party and for which the Supreme Court is the court of original jurisdiction. This section is made necessary by the terms of article VIII of the compact which provides that the compact shall be binding and obligatory only when the consenting act contains the above-described consent.

Section 3 expressly reserves the right to alter, amend or repeal the act.

COMMITTEE AMENDMENTS

Section 2 of H.R. 8116 was added to the bill by committee amendment to accomplish the objectives discussed in the immediately foregoing section of this report.

COSTS

The only Federal costs associated with enactment of H.R. 8116 will be those associated with the salary and expenses of the Federal member of the Kansas-Nebraska Big Blue River compact, should the President elect to appoint one. Such expenses are usually nominal and rarely exceed \$1,000 per year.

COMMITTEE RECOMMENDATIONS

On the basis of a voice vote, the Committee on Interior and Insular Affairs unanimously recommends that H.R. 8116, as amended, be enacted.

EXECUTIVE COMMUNICATIONS

Reports of the Department of the Interior and the Office of Management and Budget recommending enactment of H.R. 8116 are set forth in full below.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., October 5, 1971.

HON. WAYNE N. ASPINALL.

Chairman, Committee on Interior and Insular Affairs, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for the views of this Department concerning H.R. 8116, a bill, to consent to the Kansas-Nebraska Big Blue River compact.

We recommend that the bill be enacted.

H.R. 8116 would give congressional consent to the Kansas-Nebraska Big Blue River compact which is designed to apportion the waters of the Big Blue River Basin between Kansas and Nebraska, to promote the orderly development of these waters and to reduce pollution. The Big Blue River drains an area of 9,696 square miles in south central Nebraska and north central Kansas and flows generally from north to south.

The compact creates the Kansas-Nebraska Big Blue River Compact Administration to administer the compact and specifies its functions. The administration is to be composed of one ex-officio member and one advisory member from each State together with a nonvoting Federal member to serve as chairman. The ex-officio member of each State is that State's official in charge of administering water rights. The basin waters in Nebraska are allocated to it, subject to certain limitations to assure specified streamflows into Kansas. All Kansas water rights, regardless of priority dates, are junior to Nebraska water appropriations in existence on November 1, 1968. Nebraska undertakes to impose certain controls on water users junior to that date and to limit water use to assure certain streamflows at the Kansas-Nebraska State line during periods of low flow. Limits are placed on storage capacity of reservoirs upstream of the State line. If water is imported into the basin, the importing State is given unrestricted use of such water. The compact recognizes the importance of maintaining the basin's water quality and the two States agree to cooperate toward this end.

We note particularly the recognition by the compacting States of fish and wildlife protection purposes set forth in section 5(c) dealing with storage capacity of reservoirs and in section 6.3 providing that the States will cooperate in maintaining water quality standards, which must recognize fish, wildlife, and recreational purposes. In addition, the agreement to abate pollution will also require actions to protect fish and wildlife and recreational uses of the basin waters as beneficial uses thereof.

We also note as a technical matter that section 8.1 of the compact (page 16 of the bill) provides in effect that it will become effective only if the consenting congressional act includes a consent to join the United States as a party in litigation arising out of the compact in certain circumstances. H.R. 8116 contains no such specific consent, however, and to remedy this we recommend that section 2 of the bill

be renumbered section 3 and a new section 2 be added after line 23, page 17 as follows:

SEC. 2. To carry out the purposes of article VIII of the compact, the Congress hereby consents to have the United States named and joined as a party in any litigation in the U.S. Supreme Court, if the United States is an indispensable party and if the litigation arises out of the compact or its application, and if a signatory State is a party thereto.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

NATHANIEL REID,
Assistant Secretary of the Interior.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., October 6, 1971.

HON. WAYNE N. ASPINALL,

Chairman, Committee on Interior and Insular Affairs, U.S. House of Representatives, House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your letter of September 22, 1971, requesting a report on H.R. 8116, a bill to consent to the Kansas-Nebraska Big Blue River compact.

The Department of the Interior, in its report to you on H.R. 8116, recommends that the bill be enacted, subject to one technical amendment. We concur in Interior's views in this regard.

Accordingly, the Office of Management and Budget would have no objection to the enactment of this legislation, if amended as recommended by Interior.

Sincerely,

WILFRED H. ROMMEL,
Assistant Director for Legislative Reference.

OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., February 15, 1972.

HON. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs, U.S. Senate, Washington,
D.C.

DEAR SENATOR: This is in response to your request for the views of the Department of Justice on the House-passed version of H.R. 8116, a bill "To consent to the Kansas-Nebraska Big Blue River Compact."

Congress, by the Act of June 3, 1960, 74 Stat. 160, granted its consent to the States of Kansas and Nebraska to negotiate and enter into a compact relating to the interests of the States in the waters of the Big Blue River and its tributaries and providing for equitable apportionment of those waters and for related matters. H.R. 8116 is the consent legislation for the compact which was drafted under the congressional authorization and signed by the authorized representatives of Kansas, Nebraska and the United States on January 25, 1971.

Article VIII, § 8.1 of the compact, which deals with ratification, provides that the compact will become binding and obligatory when it is "consented to by the Congress of the United States and when the Congressional Act consenting to this Compact includes the consent of Congress to name and join the United States as a party in any litigation in the United States Supreme Court, if the United States is an indispensable party and if the litigation arises out of this Compact or its application, and if a signatory State is a party thereto." Section 2 of the bill contains appropriate language consenting to such suits against the United States.

The Department of Justice has no objection to enactment of this legislation.

We note that there is a typographical error in line 12 of page 10. The words in that line should be deleted and the words "1968, that were then inactive, shall be cancelled by due" inserted in lieu thereof.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

RICHARD G. KLEINDIENST,
Deputy Attorney General.

Senator ANDERSON. Our first witness is Mr. Ellis Armstrong, Commissioner, Bureau of Reclamation.

Mr. ARMSTRONG. Thank you, Mr. Chairman.

STATEMENT OF ELLIS L. ARMSTRONG, COMMISSIONER,
BUREAU OF RECLAMATION

Mr. ARMSTRONG. Mr. Chairman, I have Mr. James Ingels who is Regional Director of region 7 in whose area Kansas-Nebraska are located with me. Mr. Elmo McClendon who is the Federal representative on the Big Blue River compact is here and will give a statement which is very similar to mine.

Mr. Chairman, with your permission, I would like to just include my statement in the record with one or two additional comments that I'd like to make.

Senator ANDERSON. That is very fine. Go ahead.

Mr. ARMSTRONG. I would like to point out that we support the compact. We think it is a very fine document, I'd like to point out as a technical matter that section 8.1 of the compact provides in effect that it will be binding only if the consenting congressional act includes a consent to join the United States as a party in litigation arising out of the compact in certain circumstances.

H.R. 8116 contains no such specific consent. However, to remedy this, the House Interior and Insular Affairs Committee renumbered

section 3 and a new section 2 was added beginning on line 24, page 17 as follows:

Section 2. To carry out the purposes of Article VIII of the compact, the Congress hereby consents to have the United States named and joined as a party in any litigation in the United States Supreme Court, if the United States is an indispensable party and if the litigation arises out of the compact or its application, and if a signatory State is a party thereto.

So on this basis, we recommend your favorable consideration of H.R. 8116 as amended by the House of Representatives.

Senator ANDERSON. Does that change in any way the text of the compact?

Mr. ARMSTRONG. No, this makes the legislation tie in specifically with the compact.

Senator ANDERSON. The House-passed bill ties in with the compact?

Mr. ARMSTRONG. Yes, the House amended to include this so we support it on that basis.

Senator BELLMON. I have no questions, Mr. Chairman.

May I ask a question? Is there in existence, irrigation districts able to accept the water and equitably distribute it and divide it? I notice that this compact does cover the diversion of water for irrigation purposes.

Mr. INGELS. That is for present irrigation purposes and planned irrigation purposes.

Senator BELLMON. Is there presently an irrigation system in existence?

Mr. INGELS. Several are being considered for development.

Senator BELLMON. This does not in any way interfere with their operation?

Mr. INGELS. No, it fits into this operation.

Senator BELLMON. It is intended that if irrigation expands that there will be an equitable way to divide the water between the States of Kansas and Nebraska, is this true?

Mr. INGELS. True.

Senator BELLMON. What is the distribution, 75-75 or is it to be established by the compact?

Mr. INGELS. It's at the State line.

Senator BELLMON. I notice according to your testimony that 25 percent of the drainage area is in Kansas, I believe.

Mr. ARMSTRONG. Twenty-five percent in Kansas, 75 percent in Nebraska.

Senator BELLMON. This bill does not divide the water.

Mr. ARMSTRONG. Could we have Mr. McClendon testify?

Mr. McCLENDON. May I answer this, Mr. Chairman.

STATEMENT OF MR. ELMO W. McCLENDON, FEDERAL REPRESENTATIVE ON BIG BLUE RIVER COMPACT COMMISSION

My name is Elmo W. McClendon and I was a Federal representative on the Big Blue River Commission. The compact does apportion the water within the State of Nebraska and Kansas. The basis for this apportionment is the compact provision that certain minimum flows as specified in the compact will be maintained at the State line between the State of Nebraska and the State of Kansas during the period May 1-September 30.

Nebraska then has free use of all water originating in Nebraska above those minimum flow requirements that are specified at the State line.

Senator ANDERSON. Above?

Mr. McCLENDON. Yes, those minimum flows amount to something on the order of 45 c.f.s. in May and up to 80 or 90 c.f.s. in August. That the State of Nebraska agrees to maintain at the State line by controlling the junior irrigator appropriators in Nebraska to assure that this amount of water will be available at the State line for use in the State of Kansas.

So it does not apportion the flow in any percentage but does provide for the amount of flow that will go from Nebraska into Kansas.

Senator ANDERSON. I have some problems about this. Originally there was a bill introduced and carried through the earlier and signed by the President which involved water of the Colorado River.

Mr. McCLENDON. I am not sure I understood the question, sir.

Senator BELLMON. Does this have anything to do with waters of the Colorado River?

Mr. McCLENDON. No, sir, it does not. This Big Blue River Basin is entirely within the States of Kansas and Nebraska. It is a tributary of the Kansas River which enters the Missouri River near Kansas City.

Mr. ARMSTRONG. It is toward the eastern part of Kansas and Nebraska. You will notice on the map that Lincoln is just a little east of the upper part of the drainage area.

Senator ANDERSON. We have had some arguments recently about interfering with Indians water rights. Does this in any way touch any Indians in the area?

Mr. McCLENDON. No, sir.

Senator BELLMON. I assume from what you have said and from the map that you display that any irrigation out of the Tuttle Creek Dam and Reservoir would be in Kansas.

Mr. McCLENDON. That is correct.

Senator BELLMON. There is no water moving from the reservoir back into Nebraska?

Mr. McCLENDON. No, sir, entirely in the State of Kansas.

Senator BELLMON. I am assuming this compact is agreeable to both States, otherwise it wouldn't be before us.

Mr. McCLENDON. Yes, both State legislatures have passed the bill for this. In fact unanimously passed the bill giving State approval to the compact.

Both of the compact commissioners from the State have filed statements with their respective Senators recommending that this compact, or that the bill giving the consent of the Congress to this compact be approved.

Mr. ARMSTRONG. The specific acts were signed, Senator, by the Governors of both Kansas and Nebraska last April.

Senator BELLMON. Mr. Chairman, I have no further questions.

Senator ANDERSON. At the time the compact was approved, was there any discussion about how effective it would be and how helpful it would be? Were there newspaper stories that they robbed the Indians, interfering with their water rights.

Mr. ARMSTRONG. Mr. Chairman, there are no Indians at all in this area so we don't have this problem.

Senator ANDERSON. You have seen the news stories recently about how the Indians were robbed?

Mr. ARMSTRONG. Yes, sir, I have been right in the middle of that problem. Fortunately we don't have that problem here.

Senator ANDERSON. We thought we didn't have it either.

Mr. McCLENDON. Since we have covered some of my statement here, I have prepared a statement which I would like to submit for the record and I join Commissioner Armstrong in recommending enactment of the bill. I am joined in this recommendation by Messrs. Dan S. Jones, Jr., and Keith Krause, the compact commissioners from Nebraska and Kansas, as I stated earlier, who have submitted statements to their respective Senators in support of this bill.

They could not be present here today but speaking with them yesterday by phone, they asked that I note that they would have appeared and supported this, had the opportunity presented itself.

Senator ANDERSON. And you do appear on that basis alone?

Mr. McCLENDON. Yes, and as Federal representative I recommend that this bill be enacted.

Senator BELLMON. One further question. How far down the stream is it till this river crosses another State line?

Mr. McCLENDON. This river does not cross another State line. It hits the Kansas River just at Manhattan, at the lower part of the map and on downstream to Kansas City; is probably on the order of 100 miles or so.

Senator BELLMON. Is there any reason to fear that the State of Missouri or other downstream States will object to the terms of this compact? In other words, are they going to require a flow in the river?

Mr. McCLENDON. The compact provision, whereby a minimum flow was to be maintained at the State line, this particular provision was provided because the State of Kansas wanted to assure that Tuttle Creek Reservoir would continue to receive sufficient flows from Nebraska that it could operate satisfactorily to maintain minimum flows in the lower Blue and also in the Kansas River.

So this was considered by the compact commission at the time the compact was provided. There is one other stipulation in the compact, which also bears on this and that is the compact provides that there will be limits on the amount of storage that can be built, reservoir storage that can be built in the State of Nebraska.

This limits the storage in the Little Blue Basin to 200,000 acre-feet for conservation purposes and the storage in the Big Blue River Basin stream to 500,000 acre-feet. These limits were put there specifically to assure that Nebraska didn't build so many reservoirs in their State that they would take an inordinate share of the water and then not permit it to come down into Kansas and to the Tuttle Creek Reservoir so the provisions of the compact do assure that there will be sufficient inflows into Tuttle Creek for Tuttle Creek to do its job of maintaining minimum flows on the lower Blue and Kansas River.

When you get to Kansas City and the Kansas River intersects the Missouri River, the flow of the Kansas River at that point is only a small fraction of the flow of the Missouri, probably on the order of 10-20 percent, so a slight change in its magnitude of flow on the Blue would not cause any significant change in the flow of the Missouri River at Kansas City.

Therefore, I would not think that Missouri would object to the compact.

Senator BELLMON. I am not sure anyone here can answer the question. Under the terms of the National Environmental Protection Act is it necessary that the compact file an environmental statement?

Mr. ARMSTRONG. Senator, I wouldn't think so. Of course before any structure is built it would be necessary but the compact itself is just an agreement as to what can be done in the future. When something is done, then a statement will need to be filed.

Senator BELLMON. Personally, I can't see how the compact could have a negative effect on environment but I was curious if this possibility had been considered.

Mr. McCLENDON. In the negotiations on the compact, of course these negotiations went on for the period of the last 10 or 12 years and during most of this negotiating period, the Environmental Protection Act was not in force and in fact the Commissioners signed the compact a year ago this past January.

So our activity with respect to preparation of the compact precedes most of the period of consideration of environmental impacts, but I would agree with Mr. Armstrong, I would not think this is a major Federal action that would require an impact statement, the compact itself.

Certainly the construction of any projects in accordance with the compact would at that time require statements.

Senator BELLMON. Mr. Chairman, if it's in order, I would now ask our staff to evaluate the compact and see if there is a need for an environmental statement.

Senator ANDERSON. I think that evaluation should be made. A problem that never arose before now arises.

Senator BELLMON. I have no further questions.

Senator ANDERSON. Will you see to it the staff checks?

The meeting is closed.

(Whereupon, at 10:30 a.m., Wednesday, February 23, the hearing was concluded and the subcommittee was recessed, to reconvene at the call of the Chair.)

(The prepared statements of Mr. Armstrong, Mr. McClendon, Mr. Jones referred to in the testimony, also statements by Senators Curtis and Hruska follow:)

STATEMENT OF ELLIS L. ARMSTRONG, COMMISSIONER, BUREAU OF RECLAMATION,
ON H.R. 8116

Mr. Chairman and members of the Subcommittee, it is a pleasure to appear before you today to recommend enactment of H.R. 8116, which would grant consent of the Congress to the Kansas-Nebraska Big Blue River Compact.

This compact was negotiated pursuant to the consent granted by the Congress by its Act of June 3, 1960 (Public Law 489, 86th Congress, Second Session). Compact negotiations were completed with the signing of the Compact on January 25, 1971, by the duly authorized representatives for the States of Kansas and Nebraska and for the United States. Messrs. Keith S. Krause and Dan S. Jones, Jr., are the Big Blue River Compact Commission members for Kansas and Nebraska, respectively. Mr. Elmo W. McClendon is the Federal Representative on the Big Blue River Compact. He is here today and will present a statement. The compact was promptly ratified early last year by the legislators of the two concerned States. The specific Acts were signed by the Governors of Kansas and Nebraska on April 2 and April 5, 1971, respectively.

Enactment of this bill will assure the equitable apportionment, distribution, and use of the waters of the Big Blue River and its tributaries between the

States of Nebraska and Kansas. In addition, it will encourage the continuation of the active pollution abatement programs in each of the two States and seek the further reduction of both natural and man-made pollution.

The Big Blue River Basin as indicated on this map is the third largest basin contributing to the flows of the Kansas River, draining an area of about 10,000 square miles in South-Central Nebraska and North-Central Kansas.

Seventy-five percent of the Big Blue Basin is in Nebraska. The principal tributary of the Big Blue merges with it near Blue Rapids, Kansas, near the head waters of the Tuttle Creek Reservoir. Outflows from the reservoirs join the Kansas River near Manhattan, Kansas.

The compact apportions the waters of the basin such that during the period May 1 to September 30, the State of Nebraska shall regulate diversions from natural flow of streams in the Little Blue and Big Blue River basins by water appropriations junior to November 1, 1968, in order to maintain specified minimum daily flows at the State line gauging stations. In addition, it limits with some exclusions the amount of storage capacity that can be provided by reservoirs constructed in Nebraska. It also provides for regulation of withdrawals of water from irrigation wells installed after November 1, 1968, along specified reaches of the Big and Little Blue Rivers in Nebraska if such proves to be necessary after the further investigations listed in the compact.

The compact would create the "Kansas-Nebraska Big Blue River Compact Administration" to administer the compact. This administration would have the power to adopt rules and regulations consistent with the provisions of the compact, and to enforce such rules and regulations to carry out its responsibilities.

As a technical matter, we note that section 8.1 of the Compact (page 16 of the bill) provides in effect that it will become effective only if the consenting Congressional Act includes a consent to join the United States as a party in litigation arising out of the Compact in certain circumstances. H. R. 8116 contained no such specific consent, however, and to remedy this the House Interior and Insular Affairs Committee renumbered section 3 and a new section 2 was added after line 23, page 17 as follows:

SEC. 2. To carry out the purposes of Article VIII of the Compact, the Congress hereby consents to have the United States named and joined as a party in any litigation in the United States Supreme Court, if the United States is an indispensable party and if the litigation arises out of the compact or its application, and if a signatory State is a party thereto.

The Big Blue River Compact will serve to further the orderly development and use of the waters of the basin, while assuring continued streamflows for environmental and water quality purposes. I, therefore, recommend your favorable consideration of H.R. 8116 as amended by the House of Representatives.

STATEMENT OF ELMO W. McCLENDON, FEDERAL REPRESENTATIVE ON
BIG BLUE RIVER COMPACT COMMISSION

Mr. Chairman, as the appointed Federal Federal representative on the Big Blue River Compact Commission and as a representative of those Federal departments concerned with the development and use of the water resources of the Big Blue River Basin, I am pleased to recommend enactment of a bill which would grant consent of the Congress to the Kansas-Nebraska Big Blue River Compact. I am joined in this recommendation by Messrs. Dan S. Jones, Jr. and Keith S. Krause, Compact Commissioners from Nebraska and Kansas, who have submitted statements to their respective senators in support of this bill.

The compact, which has been under negotiation for over 10 years, was signed by the Commission members on January 25, 1971. The compact was promptly ratified early last year by the legislators of the two concerned states. The specific Acts were signed by the Governors of Kansas and Nebraska on April 2 and April 5, 1971, respectively.

Enactment of this bill will assure the equitable apportionment, distribution, and use of the waters of the Big Blue River and its tributaries between the states of Nebraska and Kansas. In addition, it will encourage the continuation of the active pollution abatement programs in each of the two states and seek the further reduction of both natural and man-made pollution.

The Big Blue River Basin is the third largest basin contributing to the flows of the Kansas River, draining an area of about 10,000 square miles in South-Central Nebraska and North-Central Kansas. Seventy-five percent of the Big Blue Basin is in Nebraska. The Big and Little Blue Rivers, the two principal

tributaries, merge near Blue Rapids, Kansas, near the head waters of the Tuttle Creek Reservoir. Outflows from the reservoir join the Kansas River near Manhattan, Kansas.

Tuttle Creek Reservoir, constructed by the Corps of Engineers on the Big Blue River near its confluence with the Kansas River is the only existing major storage and streamflow regulation feature in the basin. Several potential sites for major conservation storage and flood control structures have been identified within the basin and are currently under study by the Bureau of Reclamation and the Corps of Engineers. Several Department of Agriculture watershed projects have been completed or authorized in the basin. Under present conditions of development most of the water of the Little Blue and Big Blue Rivers leaves the basin. Any major additional consumptive use of the streamflow will be dependent on construction of upstream reservoir storage, particularly in Nebraska.

The Compact apportions the waters of the basin such that during the period May 1 to September 30 the state of Nebraska shall regulate diversions from natural flow of streams in the Little Blue and Big Blue River Basins by water appropriators junior to November 1, 1968, in order to maintain specified minimum mean daily flows at the state line gaging station.

In addition, it limits with some exclusions the amount of storage capacity that can be provided by reservoirs constructed in Nebraska. It also provides for regulation of withdrawals of water from irrigation wells installed after November 1, 1968, along specified reaches of the Big and Little Blue Rivers in Nebraska, if such proves to be necessary after the further investigations listed in the compact.

The Compact would create the "Kansas-Nebraska Big Blue River Compact Administration" to administer the compact. This administration would have the power to adopt rules and regulations consistent with the provisions of the compact, and to enforce such rules and regulations to carry out its responsibilities.

The Big Blue River Compact will serve to further the orderly development and use of the waters of the basin, while assuring continued streamflows for environmental and water quality purposes. I therefore recommend your favorable consideration of consent legislation to the Big Blue River Compact.

STATEMENT OF DAN S. JONES, JR., DIRECTOR, NEBRASKA DEPARTMENT
OF WATER RESOURCES

My name is Dan S. Jones, Jr. I am Director of the Nebraska Department of Water Resources, and I have served as the Nebraska member of the Big Blue River Compact Commission throughout the more than ten years of compact negotiations which were authorized by P.L. 489 of the 86th Congress. I am appearing in support of H.R. 8116.

The Big Blue River is a main tributary of the Kansas River. It drains 9,700 square miles of which about 75 percent is in south central Nebraska and 25 percent is in north central Kansas. The mean annual runoff at the mouth is 1,240,000 acre-feet. The river is largely uncontrolled except for the Tuttle Creek Reservoir near the mouth. The base flows of the basin's streams are used for irrigation and to some extent for municipal supplies in Kansas. The upper portion of the basin in Nebraska is underlain with water-bearing sands and gravels which supply the numerous irrigation wells and the municipal needs therein. Storage reservoirs are needed to control the frequent floods that occur throughout the basin and to make the water available for the irrigation of lands which have no other supply and to recharge the ground water aquifers which are becoming depleted.

The main purpose of the compact is to apportion the water between the two states so that each state is assured of an equitable supply and so that the water and land resources of the basin may be developed within the limits of the terms of the compact without objections.

Briefly, the compact which was agreed to by the commissioners on January 25, 1971, contains a description of the basin; provides for an organization known as a Compact Administration, to administer the compact; contains a formula for the apportionment of the basin's waters; and recognizes the need for water quality control. It also contains a disclaimer with respect to the impairment of any rights or powers of the United States. It provides a method whereby the compact may be terminated.

The heart of the compact is Article V, the Apportionment of Waters of the Big Blue River Basin. The apportionment takes into account the historic flows of the basin's streams, the existing water rights and possible future developments

and water requirements in both states, based upon studies made by federal and state agencies.

I believe that the apportionment of water and the terms of the compact are fair and equitable and that under the compact the water resources of the basin can be developed without any interstate controversy.

The compact commission was ably assisted by representatives of federal and state departments and agencies and local organizations having an interest in the subject. The language of the compact was cleared with all such agencies before it was signed by the commission members.

In the Nebraska Legislature no one appeared to oppose the bill to ratify the compact, and it was passed without a dissenting vote on April 1, 1971. The bill was signed by Governor J. James Exon on April 5, 1971, and it became effective on August 27, 1971.

I thank you for the privilege of appearing before you, and I hope that you will act favorably on H.R. 8116.

STATEMENT OF HON. CARL T. CURTIS, A U.S. SENATOR FROM THE
STATE OF NEBRASKA

Mr. Chairman, I am here to urge approval of this compact. The Big Blue River drains approximately 7,000 square miles in Nebraska and whatever is done in this basin affects an important segment of our state. It will not be my purpose to go into detail about the compact. The 86th Congress, by Public Law 489, authorized the entering into of the compact. The appropriate state officials have carried on the negotiations.

I have the utmost confidence in Mr. Dan S. Jones, Jr., the Director of the Nebraska Department of Water Resources. Mr. Jones has been in charge of the negotiations for the State of Nebraska. He appeared before the House Committee last October urging that Congress ratify the compact.

After the compact was completed, it was duly ratified by the Legislature of Nebraska. A unanimous vote was taken in the legislature on April 1, 1971. It was signed by the governor on April 5, 1971 and became effective August 27, 1971.

Mr. Chairman, I am here to urge that the Congress give its approval to this compact.

STATEMENT OF HON. ROMAN HRUSKA, A U.S. SENATOR FROM THE STATE OF
NEBRASKA

Mr. Chairman and Members of the Subcommittee: May I first express my appreciation for this opportunity to express my interest in the Big Blue River Compact.

The Big Blue River is the third largest basin contributing to the Kansas River, drains an area of 9,969 square miles of Kansas and Nebraska. 75 percent of the Big Blue Basin is in Nebraska.

The enactment of this bill would assure the equitable apportionment, distribution, and use of the waters of the Big Blue River and its tributaries between the states of Nebraska and Kansas, and resolving their differing goals by achieving mutual planning and development.

This compact was negotiated pursuant to the consent of Congress, granted on June 3, 1960, Public Law 86-489, and ratified by the respective Legislators and signed by their Governors, and now the approval of Congress is sought to make it effective. In my State of Nebraska no one appeared before the Legislature to object the approval of this compact.

The main purpose of the compact is to proportion water between the two states. It will encourage the continuation of the active pollution abatement programs and seek further reduction of pollution. It will aid in the development of flood control and conservation storage for the many farmers along the river.

Also, I am submitting the statement of Dan S. Jones, Jr., Director of Nebraska Water & Power Resources at his request.

I hope that this bill is passed expeditiously.