

105TH CONGRESS
1ST SESSION

S. J. RES. 32

Granting the consent of Congress to the Apalachicola-Chattahoochee-Flint
River Basin Compact.

IN THE SENATE OF THE UNITED STATES

JUNE 27, 1997

Mr. SHELBY (for himself, Mr. SESSIONS, Mr. COVERDELL, Mr. MACK, Mr. CLELAND, and Mr. GRAHAM) introduced the following joint resolution; which was read twice and referred to the Committee on the Judiciary

JOINT RESOLUTION

Granting the consent of Congress to the Apalachicola-
Chattahoochee-Flint River Basin Compact.

1 *Resolved by the Senate and House of Representatives*

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

3 **SECTION 1. CONGRESSIONAL CONSENT.**

4 Congress consents to the Apalachicola-Chattahoo-

5 chee-Flint River Basin Compact entered into between the

6 States of Alabama, Florida, and Georgia. The compact is

7 substantially as follows:

1 “APALACHICOLA-CHATTAHOOCHEE-FLINT RIVER BASIN
2 COMPACT

3 “The States of Alabama, Florida, and Georgia and
4 the United States of America hereby agree to the following
5 compact which shall become effective upon enactment of
6 concurrent legislation by each respective State legislature
7 and the Congress of the United States.

8 “SHORT TITLE

9 “This Act shall be known and may be cited as the
10 ‘Apalachicola-Chattahoochee-Flint River Basin Compact’
11 and shall be referred to hereafter in this document as the
12 ‘ACF Compact’ or ‘Compact.’

13 “ARTICLE—I

14 “COMPACT PURPOSES

15 “This Compact among the States of Alabama, Flor-
16 ida and Georgia and the United States of America has
17 been entered into for the purposes of promoting interstate
18 comity, removing causes of present and future controver-
19 sies, equitably apportioning the surface waters of the
20 ACF, engaging in water planning, and developing and
21 sharing common data bases.

22 “ARTICLE—II

23 “SCOPE OF THE COMPACT

24 “This Compact shall extend to all of the waters aris-
25 ing within the drainage basin of the ACF in the States
26 of Alabama, Florida and Georgia.

1 “ARTICLE—III

2 “PARTIES

3 “The parties to this Compact are the States of Ala-
4 bama, Florida and Georgia and the United States of
5 America.

6 “ARTICLE—IV

7 “DEFINITIONS

8 “For the purposes of this Compact, the following
9 words, phrases and terms shall have the following mean-
10 ings:

11 “(a) ‘ACF Basin’ or ‘ACF’ means the area of
12 natural drainage into the Apalachicola River and its
13 tributaries, the Chattahoochee River and its tribu-
14 taries, and the Flint River and its tributaries. Any
15 reference to the rivers within this Compact will be
16 designated using the letters ‘ACF’ and when so ref-
17 erenced will mean each of these three rivers and
18 each of the tributaries to each such river.

19 “(b) ‘Allocation formula’ means the methodol-
20 ogy, in whatever form, by which the ACF Basin
21 Commission determines an equitable apportionment
22 of surface waters within the ACF Basin among the
23 three States. Such formula may be represented by a
24 table, chart, mathematical calculation or any other

1 expression of the Commission’s apportionment of
2 waters pursuant to this compact.

3 “(c) ‘Commission’ or ‘ACF Basin Commission’
4 means the Apalachicola-Chattahoochee-Flint River
5 Basin Commission created and established pursuant
6 to this Compact.

7 “(d) ‘Ground waters’ means waters within a
8 saturated zone or stratum beneath the surface of
9 land, whether or not flowing through known and
10 definite channels.

11 “(e) ‘Person’ means any individual, firm, asso-
12 ciation, organization, partnership, business, trust,
13 corporation, public corporation, company, the United
14 States of America, any State, and all political sub-
15 divisions, regions, districts, municipalities, and pub-
16 lic agencies thereof.

17 “(f) ‘Surface waters’ means waters upon the
18 surface of the earth, whether contained in bounds
19 created naturally or artificially or diffused. Water
20 from natural springs shall be considered ‘surface wa-
21 ters’ when it exits from the spring onto the surface
22 of the earth.

23 “(g) ‘United States’ means the executive branch
24 of the government of the United States of America,

1 and any department, agency, bureau or division
2 thereof.

3 “(h) ‘Water Resource Facility’ means any facil-
4 ity or project constructed for the impoundment, di-
5 version, retention, control or regulation of waters
6 within the ACF Basin for any purpose.

7 “(i) ‘Water resources,’ or ‘waters’ means all
8 surface waters and ground waters contained or oth-
9 erwise originating within the ACF Basin.

10 “ARTICLE—V

11 “CONDITIONS PRECEDENT TO LEGAL VIABILITY OF THE
12 COMPACT

13 “This Compact shall not be binding on any party
14 until it has been enacted into law by the legislatures of
15 the States of Alabama, Florida and Georgia and by the
16 Congress of the United States of America.

17 “ARTICLE—VI

18 “ACF BASIN COMMISSION CREATED

19 “(a) There is hereby created an interstate adminis-
20 trative agency to be known as the ‘ACF Basin Commis-
21 sion.’ The Commission shall be comprised of one member
22 representing the State of Alabama, one member represent-
23 ing the State of Florida, one member representing the
24 State of Georgia, and one non-voting member representing
25 the United States of America. The State members shall

1 be known as ‘State Commissioners’ and the Federal mem-
2 ber shall be known as ‘Federal Commissioner.’ The ACF
3 Basin Commission is a body politic and corporate, with
4 succession for the duration of this Compact.

5 “(b) The Governor of each of the States shall serve
6 as the State Commissioner for his or her State. Each
7 State Commissioner shall appoint one or more alternate
8 members and one of such alternates as designated by the
9 State Commissioner shall serve in the State Commis-
10 sioner’s place and carry out the functions of the State
11 Commissioner, including voting on Commission matters,
12 in the event the State Commissioner is unable to attend
13 a meeting of the Commission. The alternate members
14 from each State shall be knowledgeable in the field of
15 water resources management. Unless otherwise provided
16 by law of the State for which an alternate State Commis-
17 sioner is appointed, each alternate State Commissioner
18 shall serve at the pleasure of the State Commissioner. In
19 the event of a vacancy in the office of an alternate, it shall
20 be filled in the same manner as an original appointment.

21 “(c) The President of the United States of America
22 shall appoint the Federal Commissioner who shall serve
23 as the representative of all Federal agencies with an inter-
24 est in the ACF. The President shall also appoint an alter-
25 nate Federal Commissioner to attend and participate in

1 the meetings of the Commission in the event the Federal
2 Commissioner is unable to attend meetings. When at
3 meetings, the alternate Federal Commissioner shall pos-
4 sess all of the powers of the Federal Commissioner. The
5 Federal Commissioner and alternate appointed by the
6 President shall serve until they resign or their replace-
7 ments are appointed.

8 “(d) Each State shall have one vote on the ACF
9 Basin Commission and the Commission shall make all de-
10 cisions and exercise all powers by unanimous vote of the
11 three State Commissioners. The Federal Commissioner
12 shall not have a vote, but shall attend and participate in
13 all meetings of the ACF Basin Commission to the same
14 extent as the State Commissioners.

15 “(e) The ACF Basin Commission shall meet at least
16 once a year at a date set at its initial meeting. Such initial
17 meeting shall take place within ninety days of the ratifica-
18 tion of the Compact by the Congress of the United States
19 and shall be called by the chairman of the Commission.
20 Special meetings of the Commission may be called at the
21 discretion of the chairman of the Commission and shall
22 be called by the chairman of the Commission upon written
23 request of any member of the Commission. All members
24 shall be notified of the time and place designated for any
25 regular or special meeting at least five days prior to such

1 meeting in one of the following ways: by written notice
2 mailed to the last mailing address given to the Commission
3 by each member, by facsimile, telegram or by telephone.
4 The Chairmanship of the Commission shall rotate annu-
5 ally among the voting members of the Commission on an
6 alphabetical basis, with the first chairman to be the State
7 Commissioner representing the State of Alabama.

8 “(f) All meetings of the Commission shall be open
9 to the public.

10 “(g) The ACF Basin Commission, so long as the ex-
11 ercise of power is consistent with this Compact, shall have
12 the following general powers:

13 “(1) to adopt bylaws and procedures governing
14 its conduct;

15 “(2) to sue and be sued in any court of com-
16 petent jurisdiction;

17 “(3) to retain and discharge professional, tech-
18 nical, clerical and other staff and such consultants
19 as are necessary to accomplish the purposes of this
20 Compact;

21 “(4) to receive funds from any lawful source
22 and expend funds for any lawful purpose;

23 “(5) to enter into agreements or contracts,
24 where appropriate, in order to accomplish the pur-
25 poses of this Compact;

1 “(6) to create committees and delegate respon-
2 sibilities;

3 “(7) to plan, coordinate, monitor, and make
4 recommendations for the water resources of the
5 ACF Basin for the purposes of, but not limited to,
6 minimizing adverse impacts of floods and droughts
7 and improving water quality, water supply, and con-
8 servation as may be deemed necessary by the Com-
9 mission;

10 “(8) to participate with other governmental and
11 non-governmental entities in carrying out the pur-
12 poses of this Compact;

13 “(9) to conduct studies, to generate information
14 regarding the water resources of the ACF Basin,
15 and to share this information among the Commis-
16 sion members and with others;

17 “(10) to cooperate with appropriate State, Fed-
18 eral, and local agencies or any other person in the
19 development, ownership, sponsorship, and operation
20 of water resource facilities in the ACF Basin; pro-
21 vided, however, that the Commission shall not own
22 or operate a federally-owned water resource facility
23 unless authorized by the United States Congress;

24 “(11) to acquire, receive, hold and convey such
25 personal and real property as may be necessary for

1 the performance of its duties under the Compact;
2 provided, however, that nothing in this Compact
3 shall be construed as granting the ACF Basin Com-
4 mission authority to issue bonds or to exercise any
5 right of eminent domain or power of condemnation;

6 “(12) to establish and modify an allocation for-
7 mula for apportioning the surface waters of the ACF
8 Basin among the States of Alabama, Florida and
9 Georgia; and

10 “(13) to perform all functions required of it by
11 this Compact and to do all things necessary, proper
12 or convenient in the performance of its duties here-
13 under, either independently or in cooperation with
14 any State or the United States.

15 “ARTICLE—VII

16 “EQUITABLE APPORTIONMENT

17 “(a) It is the intent of the parties to this Compact
18 to develop an allocation formula for equitably apportioning
19 the surface waters of the ACF Basin among the States
20 while protecting the water quality, ecology and biodiversity
21 of the ACF, as provided in the Clean Water Act, 33
22 U.S.C. Sections 1251 et seq., the Endangered Species Act,
23 16 U.S.C. Sections 1532 et seq., the National Environ-
24 mental Policy Act, 42 U.S.C. Sections 4321 et seq., the
25 Rivers and Harbors Act of 1899, 33 U.S.C. Sections 401

1 et seq., and other applicable Federal laws. For this pur-
2 pose, all members of the ACF Basin Commission, includ-
3 ing the Federal Commissioner, shall have full rights to no-
4 tice of and participation in all meetings of the ACF Basin
5 Commission and technical committees in which the basis
6 and terms and conditions of the allocation formula are to
7 be discussed or negotiated. When an allocation formula
8 is unanimously approved by the State Commissioners,
9 there shall be an agreement among the States regarding
10 an allocation formula. The allocation formula thus agreed
11 upon shall become effective and binding upon the parties
12 to this Compact upon receipt by the Commission of a let-
13 ter of concurrence with said formula from the Federal
14 Commissioner. If, however, the Federal Commissioner
15 fails to submit a letter of concurrence to the Commission
16 within two hundred ten (210) days after the allocation for-
17 mula is agreed upon by the State Commissioners, the Fed-
18 eral Commissioner shall within forty-five (45) days there-
19 after submit to the ACF Basin Commission a letter of
20 nonconcurrence with the allocation formula setting forth
21 therein specifically and in detail the reasons for non-
22 concurrence; provided, however, the reasons for non-
23 concurrence as contained in the letter of nonconcurrence
24 shall be based solely upon Federal law. The allocation for-
25 mula shall also become effective and binding upon the par-

1 ties to this Compact if the Federal Commissioner fails to
2 submit to the ACF Basin Commission a letter of non-
3 concurrence in accordance with this Article. Once adopted
4 pursuant to this Article, the allocation formula may only
5 be modified by unanimous decision of the State Commis-
6 sioners and the concurrence by the Federal Commissioner
7 in accordance with the procedures set forth in this Article.

8 “(b) The parties to this Compact recognize that the
9 United States operates certain projects within the ACF
10 Basin that may influence the water resources within the
11 ACF Basin. The parties to this Compact further acknowl-
12 edge and recognize that various agencies of the United
13 States have responsibilities for administering certain Fed-
14 eral laws and exercising certain Federal powers that may
15 influence the water resources within the ACF Basin. It
16 is the intent of the parties to this Compact, including the
17 United States, to achieve compliance with the allocation
18 formula adopted in accordance with this Article. Accord-
19 ingly, once an allocation formula is adopted, each and
20 every officer, agency, and instrumentality of the United
21 States shall have an obligation and duty, to the maximum
22 extent practicable, to exercise their powers, authority, and
23 discretion in a manner consistent with the allocation for-
24 mula so long as the exercise of such powers, authority,
25 and discretion is not in conflict with Federal law.

1 “(c) Between the effective date of this Compact and
2 the approval of the allocation formula under this Article,
3 the signatories to this Compact agree that any person who
4 is withdrawing, diverting, or consuming water resources
5 of the ACF Basin as of the effective date of this Compact,
6 may continue to withdraw, divert or consume such water
7 resources in accordance with the laws of the State where
8 such person resides or does business and in accordance
9 with applicable Federal laws. The parties to this Compact
10 further agree that any such person may increase the
11 amount of water resources withdrawn, diverted or
12 consumed to satisfy reasonable increases in the demand
13 of such person for water between the effective date of this
14 Compact and the date on which an allocation formula is
15 approved by the ACF Basin Commission as permitted by
16 applicable law. Each of the State parties to this Compact
17 further agree to provide written notice to each of the other
18 parties to this Compact in the event any person increases
19 the withdrawal, diversion or consumption of such water
20 resources by more than 10 million gallons per day on an
21 average annual daily basis, or in the event any person,
22 who was not withdrawing, diverting or consuming any
23 water resources from the ACF Basin as of the effective
24 date of this Compact, seeks to withdraw, divert or
25 consume more than one million gallons per day on an aver-

1 age annual daily basis from such resources. This Article
 2 shall not be construed as granting any permanent, vested
 3 or perpetual rights to the amounts of water used between
 4 January 3, 1992 and the date on which the Commission
 5 adopts an allocation formula.

6 “(d) As the owner, operator, licensor, permitting au-
 7 thority or regulator of a water resource facility under its
 8 jurisdiction, each State shall be responsible for using its
 9 best efforts to achieve compliance with the allocation for-
 10 mula adopted pursuant to this Article. Each such State
 11 agrees to take such actions as may be necessary to achieve
 12 compliance with the allocation formula.

13 “(e) This Compact shall not commit any State to
 14 agree to any data generated by any study or commit any
 15 State to any allocation formula not acceptable to such
 16 State.

17 “ARTICLE—VIII

18 “CONDITIONS RESULTING IN TERMINATION OF THE
 19 COMPACT

20 “(a) This Compact shall be terminated and thereby
 21 be void and of no further force and effect if any of the
 22 following events occur:

23 “(1) The legislatures of the States of Alabama,
 24 Florida and Georgia each agree by general laws en-

1 acted by each State within any three consecutive
2 years that this Compact should be terminated.

3 “(2) The United States Congress enacts a law
4 expressly repealing this Compact.

5 “(3) The States of Alabama, Florida and Geor-
6 gia fail to agree on an equitable apportionment of
7 the surface waters of the ACF as provided in Article
8 VII(a) of this Compact by December 31, 1998, un-
9 less the voting members of the ACF Basin Commis-
10 sion unanimously agree to extend this deadline.

11 “(4) The Federal Commissioner submits to the
12 Commission a letter of nonconcurrence in the initial
13 allocation formula in accordance with Article VII(a)
14 of the Compact, unless the voting members of the
15 ACF Basin Commission unanimously agree to allow
16 a single 45 day period in which the non-voting Fed-
17 eral Commissioner and the voting State Commis-
18 sioners may renegotiate an allocation formula and
19 the Federal Commissioner withdraws the letter of
20 nonconcurrence upon completion of this renegoti-
21 ation.

22 “(b) If the Compact is terminated in accordance with
23 this Article it shall be of no further force and effect and
24 shall not be the subject of any proceeding for the enforce-
25 ment thereof in any Federal or State court. Further, if

1 so terminated, no party shall be deemed to have acquired
2 a specific right to any quantity of water because it has
3 become a signatory to this Compact.

4 “ARTICLE—IX

5 “COMPLETION OF STUDIES PENDING ADOPTION OF
6 ALLOCATION FORMULA

7 “The ACF Basin Commission, in conjunction with
8 one or more interstate, Federal, State or local agencies,
9 is hereby authorized to participate in any study in process
10 as of the effective date of this Compact, including, without
11 limitation, all or any part of the Alabama-Coosa-
12 Tallapoosa/Apalachicola-Chattahoochee-Flint River Basin
13 Comprehensive Water Resource Study, as may be deter-
14 mined by the Commission in its sole discretion.

15 “ARTICLE—X

16 “RELATIONSHIP TO OTHER LAWS

17 “(a) It is the intent of the party States and of the
18 United States Congress by ratifying this Compact, that
19 all State and Federal officials enforcing, implementing or
20 administering other State and Federal laws affecting the
21 ACF Basin shall, to the maximum extent practicable, en-
22 force, implement or administer those laws in furtherance
23 of the purposes of this Compact and the allocation formula
24 adopted by the Commission insofar as such actions are
25 not in conflict with applicable Federal laws.

1 “(b) Nothing contained in this Compact shall be
2 deemed to restrict the executive powers of the President
3 in the event of a national emergency.

4 “(c) Nothing contained in this Compact shall impair
5 or affect the constitutional authority of the United States
6 or any of its powers, rights, functions or jurisdiction under
7 other existing or future laws in and over the area or wa-
8 ters which are the subject of the Compact, including
9 projects of the Commission, nor shall any act of the Com-
10 mission have the effect of repealing, modifying or amend-
11 ing any Federal law. All officers, agencies and instrumen-
12 talities of the United States shall exercise their powers and
13 authority over water resources in the ACF Basin and
14 water resource facilities, and to the maximum extent prac-
15 ticable, shall exercise their discretion in carrying out their
16 responsibilities, powers, and authorities over water re-
17 sources in the ACF Basin and water resource facilities in
18 the ACF Basin in a manner consistent with and that effec-
19 tuates the allocation formula developed pursuant to this
20 Compact or any modification of the allocation formula so
21 long as the actions are not in conflict with any applicable
22 Federal law. The United States Army Corps of Engineers,
23 or its successors, and all other Federal agencies and in-
24 strumentalities shall cooperate with the ACF Basin Com-
25 mission in accomplishing the purposes of the Compact and

1 fulfilling the obligations of each of the parties to the Com-
 2 pact regarding the allocation formula.

3 “(d) Once adopted by the three States and ratified
 4 by the United States Congress, this Compact shall have
 5 the full force and effect of Federal law, and shall super-
 6 sede State and local laws operating contrary to the provi-
 7 sions herein or the purposes of this Compact; provided,
 8 however, nothing contained in this Compact shall be con-
 9 strued as affecting or intending to affect or in any way
 10 to interfere with the laws of the respective signatory
 11 States relating to water quality, and riparian rights as
 12 among persons exclusively within each State.

13 “ARTICLE—XI

14 “PUBLIC PARTICIPATION

15 “All meetings of the Commission shall be open to the
 16 public. The signatory parties recognize the importance and
 17 necessity of public participation in activities of the Com-
 18 mission, including the development and adoption of the
 19 initial allocation formula and any modification thereto.
 20 Prior to the adoption of the initial allocation formula, the
 21 Commission shall adopt procedures ensuring public par-
 22 ticipation in the development, review, and approval of the
 23 initial allocation formula and any subsequent modification
 24 thereto. At a minimum, public notice to interested parties

1 and a comment period shall be provided. The Commission
2 shall respond in writing to relevant comments.

3 “ARTICLE—XII

4 “FUNDING AND EXPENSES OF THE COMMISSION

5 “Commissioners shall serve without compensation
6 from the ACF Basin Commission. All general operational
7 funding required by the Commission and agreed to by the
8 voting members shall obligate each State to pay an equal
9 share of such agreed upon funding. Funds remitted to the
10 Commission by a State in payment of such obligation shall
11 not lapse; provided, however, that if any State fails to
12 remit payment within 90 days after payment is due, such
13 obligation shall terminate and any State which has made
14 payment may have such payment returned. Costs of at-
15 tendance and participation at meetings of the Commission
16 by the Federal Commissioner shall be paid by the United
17 States.

18 “ARTICLE—XIII

19 “DISPUTE RESOLUTION

20 “(a) In the event of a dispute between two or more
21 voting members of this Compact involving a claim relating
22 to compliance with the allocation formula adopted by the
23 Commission under this Compact, the following procedures
24 shall govern:

1 “(1) Notice of claim shall be filed with the
2 Commission by a voting member of this Compact
3 and served upon each member of the Commission.
4 The notice shall provide a written statement of the
5 claim, including a brief narrative of the relevant
6 matters supporting the claimant’s position.

7 “(2) Within twenty (20) days of the Commis-
8 sion’s receipt of a written statement of a claim, the
9 party or parties to the Compact against whom the
10 complaint is made may prepare a brief narrative of
11 the relevant matters and file it with the Commission
12 and serve it upon each member of the Commission.

13 “(3) Upon receipt of a claim and any response
14 or responses thereto, the Commission shall convene
15 as soon as reasonably practicable, but in no event
16 later than twenty (20) days from receipt of any re-
17 sponse to the claim, and shall determine if a resolu-
18 tion of the dispute is possible.

19 “(4) A resolution of a dispute under this Article
20 through unanimous vote of the State Commissioners
21 shall be binding upon the State parties and any
22 State party determined to be in violation of the allo-
23 cation formula shall correct such violation without
24 delay.

1 “(5) If the Commission is unable to resolve the
2 dispute within 10 days from the date of the meeting
3 convened pursuant to subparagraph (a)(3) of this
4 Article, the Commission shall select, by unanimous
5 decision of the voting members of the Commission,
6 an independent mediator to conduct a non-binding
7 mediation of the dispute. The mediator shall not be
8 a resident or domiciliary of any member State, shall
9 not be an employee or agent of any member of the
10 Commission, shall be a person knowledgeable in
11 water resource management issues, and shall dis-
12 close any and all current or prior contractual or
13 other relations to any member of the Commission.
14 The expenses of the mediator shall be paid by the
15 Commission. If the mediator becomes unwilling or
16 unable to serve, the Commission by unanimous deci-
17 sion of the voting members of the Commission, shall
18 appoint another independent mediator.

19 “(6) If the Commission fails to appoint an inde-
20 pendent mediator to conduct a non-binding medi-
21 ation of the dispute within seventy-five (75) days of
22 the filing of the original claim or within thirty (30)
23 days of the date on which the Commission learns
24 that a mediator is unwilling or unable to serve, the
25 party submitting the claim shall have no further ob-

1 ligation to bring the claim before the Commission
2 and may proceed by pursuing any appropriate remedies,
3 including any and all judicial remedies.

4 “(7) If an independent mediator is selected, the
5 mediator shall establish the time and location for the
6 mediation session or sessions and may request that
7 each party to the Compact submit, in writing, to the
8 mediator a statement of its position regarding the
9 issue or issues in dispute. Such statements shall not
10 be exchanged by the parties except upon the unani-
11 mous agreement of the parties to the mediation.

12 “(8) The mediator shall not divulge confidential
13 information disclosed to the mediator by the parties
14 or by witnesses, if any, in the course of the medi-
15 ation. All records, reports, or other documents re-
16 ceived by a mediator while serving as a mediator
17 shall be considered confidential. The mediator shall
18 not be compelled in any adversary proceeding or ju-
19 dicial forum to divulge the contents of such docu-
20 ments or the fact that such documents exist or to
21 testify in regard to the mediation.

22 “(9) Each party to the mediation shall maintain
23 the confidentiality of the information received during
24 the mediation and shall not rely on or introduce in
25 any judicial proceeding as evidence:

1 “(a) Views expressed or suggestions made
2 by another party regarding a settlement of the
3 dispute;

4 “(b) Proposals made or views expressed by
5 the mediator; or

6 “(c) The fact that another party to the
7 hearing had or had not indicated a willingness
8 to accept a proposal for settlement of the dis-
9 pute.

10 “(10) The mediator may terminate the non-
11 binding mediation session or sessions whenever, in
12 the judgment of the mediator, further efforts to re-
13 solve the dispute would not lead to a resolution of
14 the dispute between or among the parties. Any party
15 to the dispute may terminate the mediation process
16 at any time by giving written notification to the me-
17 diator and the Commission. If terminated prior to
18 reaching a resolution, the party submitting the origi-
19 nal claim to the Commission shall have no further
20 obligation to bring its claim before the Commission
21 and may proceed by pursuing any appropriate rem-
22 edies, including any and all judicial remedies.

23 “(11) The mediator shall have no authority to
24 require the parties to enter into a settlement of any
25 dispute regarding the Compact. The mediator may

1 simply attempt to assist the parties in reaching a
2 mutually acceptable resolution of their dispute. The
3 mediator is authorized to conduct joint and separate
4 meetings with the parties to the mediation and to
5 make oral or written recommendations for a settle-
6 ment of the dispute.

7 “(12) At any time during the mediation proc-
8 ess, the Commission is encouraged to take whatever
9 steps it deems necessary to assist the mediator or
10 the parties to resolve the dispute.

11 “(13) In the event of a proceeding seeking en-
12 forcement of the allocation formula, this Compact
13 creates a cause of action solely for equitable relief.
14 No action for money damages may be maintained.
15 The party or parties alleging a violation of the Com-
16 pact shall have the burden of proof.

17 “(b) In the event of a dispute between any voting
18 member and the United States relating to a State’s non-
19 compliance with the allocation formula as a result of ac-
20 tions or a refusal to act by officers, agencies or instrumen-
21 talities of the United States, the provisions set forth in
22 paragraph (a) of this Article (other than the provisions
23 of subparagraph (a)(4)) shall apply.

1 “(c) The United States may initiate dispute resolu-
2 tion under paragraph (a) in the same manner as other
3 parties to this Compact.

4 “(d) Any signatory party who is affected by any ac-
5 tion of the Commission, other than the adoption or en-
6 forcement of or compliance with the allocation formula,
7 may file a complaint before the ACF Basin Commission
8 seeking to enforce any provision of this Compact.

9 “(1) The Commission shall refer the dispute to
10 an independent hearing officer or mediator, to con-
11 duct a hearing or mediation of the dispute. If the
12 parties are unable to settle their dispute through
13 mediation, a hearing shall be held by the Commis-
14 sion or its designated hearing officer. Following a
15 hearing conducted by a hearing officer, the hearing
16 officer shall submit a report to the Commission set-
17 ting forth findings of fact and conclusions of law,
18 and making recommendations to the Commission for
19 the resolution of the dispute.

20 “(2) The Commission may adopt or modify the
21 recommendations of the hearing officer within 60
22 days of submittal of the report. If the Commission
23 is unable to reach unanimous agreement on the reso-
24 lution of the dispute within 60 days of submittal of
25 the report with the concurrence of the Federal Com-

1 missioner in disputes involving or affecting Federal
2 interests, the affected party may file an action in
3 any court of competent jurisdiction to enforce the
4 provisions of this Compact. The hearing officer’s re-
5 port shall be of no force and effect and shall not be
6 admissible as evidence in any further proceedings.

7 “(e) All actions under this Article shall be subject to
8 the following provisions:

9 “(1) The Commission shall adopt guidelines
10 and procedures for the appointment of hearing offi-
11 cers or independent mediators to conduct all hear-
12 ings and mediations required under this Article. The
13 hearing officer or mediator appointed under this Ar-
14 ticle shall be compensated by the Commission.

15 “(2) All hearings or mediations conducted
16 under this article may be conducted utilizing the
17 Federal Administrative Procedures Act, the Federal
18 Rules of Civil Procedure, and the Federal Rules of
19 Evidence. The Commission may also choose to adopt
20 some or all of its own procedural and evidentiary
21 rules for the conduct of hearings or mediations
22 under this Compact.

23 “(3) Any action brought under this Article shall
24 be limited to equitable relief only. This Compact

1 shall not give rise to a cause of action for money
2 damages.

3 “(4) Any signatory party bringing an action be-
4 fore the Commission under this Article shall have
5 the burdens of proof and persuasion.

6 “ARTICLE—XIV

7 “ENFORCEMENT

8 “The Commission may, upon unanimous decision,
9 bring an action against any person to enforce any provi-
10 sion of this Compact, other than the adoption or enforce-
11 ment of or compliance with the allocation formula, in any
12 court of competent jurisdiction.

13 “ARTICLE—XV

14 “IMPACTS ON OTHER STREAM SYSTEMS

15 “This Compact shall not be construed as establishing
16 any general principle or precedent applicable to any other
17 interstate streams.

18 “ARTICLE—XVI

19 “IMPACT OF COMPACT ON USE OF WATER WITHIN THE
20 BOUNDARIES OF THE COMPACTING STATES

21 “The provisions of this Compact shall not interfere
22 with the right or power of any State to regulate the use
23 and control of water within the boundaries of the State,
24 providing such State action is not inconsistent with the
25 allocation formula.

1 “ARTICLE—XVIII

2 “EFFECT OF OVER OR UNDER DELIVERIES UNDER THE
3 COMPACT

4 “No State shall acquire any right or expectation to
5 the use of water because of any other State’s failure to
6 use the full amount of water allocated to it under this
7 Compact.

8 “ARTICLE—XIX

9 “SEVERABILITY

10 “If any portion of this Compact is held invalid for
11 any reason, the remaining portions, to the fullest extent
12 possible, shall be severed from the void portion and given
13 the fullest possible force, effect, and application.

14 “ARTICLE—XX

15 “NOTICE AND FORMS OF SIGNATURE

16 “Notice of ratification of this Compact by the legisla-
17 ture of each State shall promptly be given by the Governor
18 of the ratifying State to the Governors of the other partici-
19 pating States. When all three State legislatures have rati-
20 fied the Compact, notice of their mutual ratification shall
21 be forwarded to the Congressional delegation of the signa-
22 tory States for submission to the Congress of the United
23 States for ratification. When the Compact is ratified by
24 the Congress of the United States, the President, upon
25 signing the Federal ratification legislation, shall promptly

1 notify the Governors of the participating States and ap-
2 point the Federal Commissioner. The Compact shall be
3 signed by all four Commissioners as their first order of
4 business at their first meeting and shall be filed of record
5 in the party States.”.

6 **SEC. 2. INCONSISTENCY OF LANGUAGE.**

7 The validity of the compacts consented to by this Act
8 shall not be affected by any insubstantial difference in
9 their form or language as adopted by the States.

10 **SEC. 3. RIGHT TO ALTER, AMEND, OR REPEAL.**

11 The right to alter, amend, or repeal this joint resolu-
12 tion is hereby expressly reserved.

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