

Opinion No. 48-5152

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TO: John H. Bliss State Engineer Commissioner for New Mexico Rio Grande Compact
Commission Box 277 Santa Fe, New Mexico

{*150} This letter is in response to your recent request for an opinion of this office as to whether the Rio Grande Compact Commission has the authority under the present compact to enter into a proposed resolution to discontinue certain gaging stations and substitute therefor new stations, new periods of flow, and new tabulations for the purpose of measuring New Mexico's obligation to deliver water in the Rio Grande into Elephant Butte Reservoir.

The resolution adopted by the Rio Grande Compact Commission on February 24, 1948 provides in part as follows:

- (a) That because of change of physical conditions, reliable records of the amount of water passing San Marcial are no longer obtainable at the stream gaging station at San Marcial and that the same should be abandoned for Compact purposes.
- (b) That the need for concurrent records at San Marcial and San Acacia no longer exists and that the gaging station at San Acacia should be abandoned for Compact purposes.
- (c) That it is desirable and necessary that the obligations of New Mexico under the Compact to deliver water in the months of July, August, September, should be scheduled.
- (d) That the change in gaging stations and substitution of the new measurements as hereinafter set forth will result in substantially the same results so far as the rights and obligations to deliver water are concerned, and would have existed if such substitution of stations and measurements had not been so made.

Thereafter follows the measurements and schedules to be substituted, based on a calendar year rather than on a nine month period as provided in the original compact.

Article 5 of the Rio Grande Compact (Note to 77-3303, New Mexico Statutes Annotated, 1941 Compilation) provides as follows:

"If at any time it should be the unanimous finding and determination of the commission that because of changed physical conditions, or for any other reasons, reliable records are not obtainable, or can not be obtained, at any of the streamgaging stations herein referred to, such stations may, with the unanimous approval of the commission, be abandoned, and with such approval another station, or other stations, shall be

established and new measurements shall be substituted which, in the unanimous opinion of the commission, will result in substantially the same results, so far as the rights and obligations to deliver water are concerned, as would have existed if such substitution of stations and measurements had not been so made."

Article 13 of the Rio Grande Compact (Note to 77-3303, New Mexico Statutes Annotated, 1941 Compilation) provides as follows:

"At the expiration of every five-year period after the effective date of this compact, the commission may, by unanimous consent, review any provisions hereof which are not substantive *{*151}* in character and which do not affect the basic principles upon which the compact is founded, and shall meet for the consideration of such questions on the request of any member of the commission; provided, however, that the provisions hereof shall remain in full force and effect until changed and amended within the intent of the compact by unanimous action of the commissioners, and until any changes in this compact are ratified by the legislatures of the respective states and consented to by the Congress, in the same manner as this compact is required to be ratified to become effective."

It should be noted that Article 5 of the Compact is a specific provision which gives the Commission, by a unanimous finding, the authority to abandon any stream-gaging stations and approve other stations and to establish new measurements, provided such measurements will result in substantially the same results insofar as the rights and obligations to deliver water are concerned.

Article 13, on the other hand, is a general provision which provides that the Commission may, by unanimous consent, review any provisions of the compact which are not substantive in character and which do not affect the basic principles upon which the compact is founded, provided no such changes shall be made until the changes are ratified by the legislatures of the respective states.

It is a settled rule of construction that where there is in the same statute a specific provision and also a general one which in its most comprehensive sense would include matters embraced in the former, the specific provision must control and the general provision must be taken to affect only such cases within its general language as are not within the language of the specific provision. (50 Am. Jur. 371, Sec. 367; 59 C.J. p. 999, sec. 596.)

In view of the above rule and in view of the language of Article 5 of the compact, it is our opinion that the Commission has the power to make the changes in gaging stations and in measurements of flow as proposed in their resolution of February 24, 1948.

The only difficulty centers around the inclusion of the July, August and September flow in computing New Mexico's obligation to deliver water when those months were specifically excluded in the original compact. However, again in view of the rule announced above and of the specific provisions in Article 5 of the compact and in view

of the further fact that the change will result in substantially the same results, we have concluded that this change is also permissive.

We might add that Honorable Irwin S. Moise and Honorable M. A. Threet, Special Assistant Attorneys General and attorneys for the Interstate Streams Commission, one of whom was present at the meeting at which the resolution was approved, have concluded that the changes are directly within the authority provided by Article 5 of the compact and have recommended its approval.