

**In the
Supreme Court of the United States**

STATE OF SOUTH CAROLINA, *Plaintiff,*

v.

STATE OF NORTH CAROLINA, *Defendant.*

Before Special Master
Kristin Linsley Myles

**DEFENDANT STATE OF NORTH CAROLINA'S
REPLY BRIEF IN SUPPORT OF
CONTINUED BIFURCATION**

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* Available at <http://www.supremecourt.gov>.

I. CMP ESTABLISHING BIFURCATION SHOULD NOT BE CHANGED

In its Brief, South Carolina asserts that North Carolina should bear the burden as the party seeking bifurcation to show that bifurcation is proper. SC Brief at 2, 10. North Carolina is not the party “seeking bifurcation.” North Carolina contends that the bifurcated schedule in the Case Management Plan entered, by agreement of the parties, on January 7, 2009 (“CMP”) should be maintained. In *THK America, Inc. v. NSK Co., Ltd.*, 151 F.R.D. 625 (N.D. Ill. 1993), the district court refused to reconsider its previous ruling with respect to bifurcation, concluding the parties are “entitled to rely on the finality of certain issues, and not be forced to combat resurrected demons.” *Id.* at 634. Having proceeded in reliance on the CMP, North Carolina should not be required to re-litigate issues previously resolved.¹

South Carolina appears to argue that bifurcation has not been decided as there were differences about Phase I. SC Brief at 6. However, the record confirms the parties disagreed only on whether South Carolina was required to prove harm caused by *specific uses* in North Carolina. *See*, North Carolina’s March 12, 2010 Brief in Support of Continued Bifurcation of the Litigation (“NC’s Brief”) at 1-4. Both parties then recognized that this dispute did not prevent bifurcation – that a second order has not been entered does not negate the record establishing bifurcation in this case.

II. DECISION TO BIFURCATION SHOULD BE DETERMINED ON CASE-BY CASE BASIS

As both Parties acknowledge in their March 12, 2010 Briefs, Rule 42(b), Fed. R. Civ. P. allows the court, at its discretion, to “order a separate trial of one or more separate issues, claims, crossclaims, counterclaims, or third party claims.” South Carolina argues against

¹ Although South Carolina now argues against bifurcation, even South Carolina anticipates that issues relating to the equitable apportionment decree (i.e. Phase II issues) will require a separate proceeding. *See, e.g.*, SC Brief at 1 (“A separate proceeding might be necessary to hammer out the details of an equitable apportionment decree.”); *see also*, SC Brief at 11 (“Any additional proceeding to frame the technicalities of a decree can be done without inconveniencing fact witnesses.”).

bifurcation by focusing on cases that decline to bifurcate. However, as one district court has recognized, the decision from another case

is of limited value because only the specific facts and circumstances of the case before the court can provide the answer to the question of whether the advantages of bifurcation outweigh the disadvantages. On the other hand, those cases discuss a number of factors relevant to a bifurcation decision, . . . which provide guidance . . .

F&G Scrolling Mouse L.L.C. v. IBM Corp., 190 F.R.D. 385, 387 (M.D.N.C. 1999) (emphasis added; citations omitted). South Carolina bases its argument against bifurcation on generalities. None of the patent cases, the personal injury cases, the antitrust cases, or other cases cited by South Carolina is compelling or persuasive. The cases cited by South Carolina do not address the complex challenges of this water rights case. North Carolina's Brief sets out in detail, the extensive discovery that could be narrowed or potentially avoided if bifurcation is continued. Some of the original jurisdiction cases dealing with water right claims, discussed in Section IV below, are much more helpful on this issue.

III. JUDICIAL ECONOMY FACTORS SUPPORT BIFURCATION

The Special Master's prior decision bifurcating the case was sound and supported by the relevant factors. South Carolina's main argument against bifurcation flows from a specific, new substantive difference between the parties on the issues in Phase I. The Special Master need not decide this substantive dispute now, but South Carolina's change of position as to whether it must prove causation three years into this litigation should give the Special Master pause and be viewed with great skepticism in deciding whether to do away with bifurcation. Indeed, it is now especially important for the Court and the parties sooner than later to get to the bottom of the question whether South Carolina can prove that it has been substantially harmed by North Carolina's uses of the River. Bifurcation will allow for limited discovery and an expedited schedule on this threshold issue. Without bifurcation, it will take years of discovery and proceedings before South Carolina will be put to its proof.

In the past, South Carolina asserted that a difference between the parties on which issues were included in each phase did not prevent bifurcation, as the two States' articulations of the Phase I issues were very similar. See detailed description of this issue set forth in NC's Brief at 1-4. Now, South Carolina has substantially altered its articulation of the issues in Phase I. South Carolina's new articulation of the threshold issue merely requires it to show 1) that in times of low water inflows there is not enough water in the basin to supply existing demand (SC Brief at 16) and 2) this lack of water harms South Carolina users (SC Brief at 17). South Carolina now claims it does not have to prove that North Carolina uses have caused its harms, as the Court can assume it is so. North Carolina strongly disagrees.

South Carolina's new theory is based on inapplicable cases between "prior appropriation" States in which the rivers at issue were fully appropriated. However, South Carolina cannot support its assertion that the facts here are comparable to those in *Nebraska v. Wyoming*, Orig. No. 6 and Orig. No. 108 or *Colorado v. New Mexico*, Orig. No. 80. Neither North Carolina nor South Carolina is a "prior appropriation" State. More important, the Catawba River, even during drought, is not fully used. For example, a comparison of the USGS gage 02146000 at Rock Hill, the gage referred to in South Carolina's complaint as the measure of water flowing into South Carolina, and the Eastover gage 02148315 about 10 miles above the confluence of the Catawba River and the Congaree River (the downstream geographic limit of South Carolina's claim), shows that there has been substantially greater flow at Eastover than at Rock Hill during relatively low flow years such as 1988 and 2002, as well as high flow years such as 1976 and 1978. Thus, unlike cases involving "prior appropriation" States in which the rivers are fully appropriated, in order for South Carolina to meet its threshold issue, it will be required to do more than simply show the amount of water flowing into the State and the amount of water used in South Carolina.

In this case, “[t]he gravamen of the complaint is that North Carolina has authorized upstream transfers of water from the Catawba River basin that exceed North Carolina’s equitable share of the river.” *South Carolina v. North Carolina*, 130 S. Ct. 854, 859 (U.S. 2010). North Carolina strongly contests South Carolina’s claim that it can make a showing on the threshold issue without proving that North Carolina has caused South Carolina’s alleged substantial harms:

The governing rule is that this Court will not exert its extraordinary power to control the conduct of one State at the suit of another, unless the threatened invasion of rights is of serious magnitude and established by clear and convincing evidence [and t]he burden on the [downstream state] to sustain the allegations on which it seeks to prevent [the upstream state] from making the proposed diversions is much greater than that generally required to be borne by one seeking an injunction in a suit between private parties.

Connecticut v. Massachusetts, 282 U.S. 660, 669 (U.S. 1931) (citations omitted). Again, the Special Master need not decide this substantive dispute now. The point is that bifurcated discovery and proof on this threshold issue will markedly shorten the time required to reach whether this case should proceed at all and, if so, its parameters.

A. Discovery will be more efficient if bifurcated.

South Carolina claims a single period of discovery and single proceeding will eliminate discovery disputes about whether a particular fact, witness or piece of evidence is relevant to Phase I or Phase II. SC Brief at 13. SC asserts “as even North Carolina conceded a year ago”. . . “[t]hose issues will be far more efficiently examined and ruled on at the end of discovery in light of a full factual record.” *Id.* However, at no time has North Carolina agreed that a single proceeding would be more efficient. Instead, the statement quoted by South Carolina relates to the parties’ agreement that specific refinement of the Phase I issues did not require a delay in establishing a bifurcated CMP.

Moreover, South Carolina simply claims without proof that bifurcated discovery for Phase I and Phase II will lead to “numerous discovery disputes and pre-trial motions in limine

that could be avoided [by having a single proceeding].” SC Brief at 13. The parties’ past practice indicates this concern is without merit. Similarly South Carolina asserts that because third party subpoenas included both Phase I and Phase II issues, North Carolina’s claim for continued bifurcation is without merit. Under the provisions of the CMP ¶4.1, the Court and parties anticipated that it might be more efficient to include requests for information regarding both phases in subpoenas. The mere fact that there has been some preliminary discovery on Phase II issues simply shows the flexibility allowed by the existing CMP. To date, this discovery has not resulted in disputes between the parties. Thus, South Carolina’s concern that bifurcated discovery will lead to judicial inefficiency is unsupported.

South Carolina’s argument also fails to take into account that the initial discovery requests were served before the CMP establishing bifurcation was entered. SC Brief at 7. South Carolina objected to answering most of the interrogatories it refers to in Footnote 2 of its brief on the grounds that a response was *premature*. See relevant portions of Plaintiff South Carolina’s Responses to Defendant North Carolina’s First Set of Interrogatories and Requests for Production of Documents attached hereto as Exhibit 3. (Exhibits 1 and 2 are attached to NC’s Brief); *see also*, relevant portions of Plaintiff South Carolina’s Supplemental Responses to North Carolina’s First Set of Interrogatories served March 2, 2010 attached as Exhibit 4. In its supplemental response South Carolina further defers its answer until some later date when it provides expert reports.

South Carolina further argues that the Phase I and Phase II issues are intertwined and for this reason bifurcated discovery is not efficient. North Carolina disagrees. By continuing bifurcation, the parties will be able to focus first on the narrow Phase I issues instead of having to undertake the many separate Phase II tasks and inquiries. See *e.g.* Phase II inquiries set forth in NC’s Brief at 6-17. Only if South Carolina meets its burden will the parties undertake the expensive and more time consuming discovery required by Phase II.

Yet, even if South Carolina meets its burden, Phase II issues will be narrowed based on the Special Master's factual findings arising from the threshold analysis and/or decisions on preliminary motions for summary judgment.

B. Phase I and II Issues are Distinct.

South Carolina claims that the litigation should be consolidated because there is a significant overlap of evidence and witnesses. SC Brief at 19 and 24. South Carolina's Brief, however, is devoid of any concrete examples of such an overlap. North Carolina's Brief details the types of issues and evidence which can be deferred to Phase II if the existing bifurcation is maintained. Deferred discovery and deferred consideration of the Phase II issues will save time and money, will conserve the Special Master's resources by allowing a focused and expedited presentation on the threshold issue, and will benefit the Court by providing a clear parsing of the issues on which proof is required. A consolidated period of discovery and trial will be extremely lengthy and will slow down resolution of the claims.

C. Witnesses Will Not Be Unduly Inconvenienced By Bifurcation.

South Carolina asserts that bifurcation should be denied because the same facts, evidence and witnesses will be in both Phases, and witnesses will be inconvenienced by having to testify twice. SC Brief at 6, 10, and 19. In support, South Carolina attached virtually identical affidavits from three potential witnesses stating a preference for testifying only once at deposition and trial. SC Brief at 20-21. These witness affidavits are misguided. If South Carolina fails to meet its threshold burden, a second deposition and/or trial testimony on Phase II issues will never take place. Even if South Carolina meets its burden, a one day deposition on Phase I issues and then later deposition on Phase II issues may be more convenient for each witness than setting aside several days for a combined deposition. If a witness has only a little information relevant to Phase II issues the parties might agree to conduct all of the deposition at one time in interests of efficiency. *See*, CMP at ¶4.1. The pace

and timing of discovery and trial should not be dictated by preferences of a few nonparty witnesses.

D. Analysis of Prejudice Factor Supports Bifurcation.

South Carolina claims there is no prejudice to North Carolina if the case is consolidated but that South Carolina will be prejudiced if bifurcation is continued. SC Brief at 23-25. North Carolina disagrees with South Carolina's assertion that it will be prejudiced on the following grounds. First, bifurcated discovery and proceedings should not be duplicative; instead, in bifurcated litigation the work is divided and the cost is spread out over time. Second, as issues are narrowed, costs are narrowed. Third, continuing bifurcation will allow for early resolution of claims if South Carolina fails to meet its threshold burden or meets it only in a limited fashion.

On the other hand, if litigation is consolidated there will be prejudice to North Carolina. Specifically, there will be delay in making a determination on threshold issues. Moreover, South Carolina's proof on threshold issues will be jumbled up with equitable apportionment issues leading to potential confusion and further delay. Finally, North Carolina will incur costs of massive Phase II discovery without learning if South Carolina can meet its threshold burden.

E. Settlement Is Not a Factor Supporting Consolidation.

South Carolina claims a single proceeding would facilitate settlement since it would provide a full understanding of relevant discoverable facts. SC Brief at 24. On the contrary, settlement would be facilitated if South Carolina would clearly quantify the substantial harms it alleges were caused by North Carolina sooner rather than later. If South Carolina is required to proceed with a threshold proof of harm and causation, North Carolina anticipates that South Carolina's expert report(s) on its alleged harm will be provided much sooner than if the case is consolidated. If the case is consolidated, it is likely that expert reports on all

issues will be pushed back (perhaps for several years). Thus, bifurcation enhances settlement possibilities and is a factor in favor of the existing bifurcated CMP.

IV. BIFURCATION IS USEFUL IN COMPLEX WATER RIGHTS CASES

In its brief, South Carolina claims “[t]he court’s review of a special master’s recommendations traditionally has benefitted from a full record developed during a single proceeding.” SC Brief at 12. South Carolina’s characterization of the case law is incorrect. South Carolina’s characterization ignores the fact that discovery and proceedings in these cases span years. Water rights cases are notoriously lengthy and have, in the past, benefitted from multiple hearings, phased discovery, and the Court’s interim review of the Special Master’s recommendations.

For example, Orig. No. 6 and Orig. No. 108 involve Nebraska’s claim that Wyoming’s diversion of the North Platte River deprived Nebraska of water to which she was equitably entitled. After initial periods of discovery, the Special Master held hearings that took place over 4 and ½ years (1936 to 1941) resulting in 65 transcript volumes. *See* Archives Record from the Nebraska Department of Justice attached as Exhibit 5 at 18. The Special Master’s recommendations resulted in a 1945 Decree (amended by stipulation in 1953) apportioning parts of the river during certain times. *Nebraska v. Wyoming*, 325 U.S. 589, 646-57 (1945). The dispute between the States continued in Orig. No 108 with Nebraska’s 1986 motion seeking to enforce the 1953 Amended Decree. For 13 years, until settlement was reached on the eve of the May 10, 2000 trial, there were periods of intensive discovery followed by hearings on threshold and other limited legal issues. Orig. No. 108, Special Master Reports, Report 10/21/2001 at 13, 15-16, and 23 (available at <http://www.supremecourt.gov>). Some issues went up on exceptions to the Court, further narrowing the issues for trial.

Orig. No. 109, involving Oklahoma’s claim that New Mexico violated the Canadian River Compact, was divided in phases: “[P]roceedings initially . . . confined to resolution of the

question of whether New Mexico has violated the Compact and . . . consideration of issues pertaining to any appropriate relief for any violation that might be found be deferred until after that determination.” Orig. No. 109, Special Master Reports, Report 10/15/1990 at 3 (available at <http://www.supremecourt.gov>).

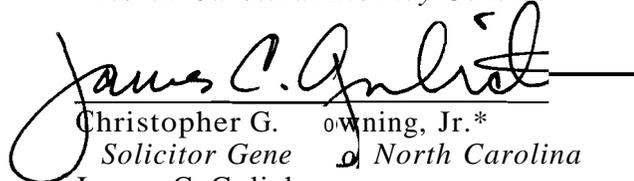
In Orig. No. 105 (claim by Kansas that Colorado materially depleted Arkansas River), the Special Master scheduled distinct discovery and trial segments including separate proceedings for liability and the remedy. Orig. No. 105, Special Master Reports, Report 7/29/1999, Vol. 1 at 11, 12, and 24-25 (Liability phase: Sept. 7, 1990 to Dec. 16, 1992); Orig. No. 105, Special Master Reports, 8/31/2000 at 1 (Remedy phase for past violations: Nov. 8, 1999 to Jan. 28, 2000); and Orig. No. 105, Special Master Reports, Report 11/13/2003 at 1 (Final phase: June 24, 2002 to Jan. 17, 2003) (Reports available at <http://supremecourt.gov>).

Colorado v. New Mexico, Orig. No. 80, began in 1978 with Colorado’s petition against New Mexico for apportionment of the Vermejo River. 459 U.S. 176, 180 (1982). Of interest here is that the evidentiary portion of the case took years (the Special Master’s first report was submitted to the Court in 1982), the issues in the case were focused by the Court on exception to the Special Master’s recommendation, the Court deferred to the Special Master on whether to hold additional hearings, and nothing in the case suggests bifurcated proceedings or multiple decisions are disfavored by the Court.

IV. CONCLUSION

North Carolina respectfully requests the Special Master continue bifurcated discovery, motions, and trial, and affirm the existing CMP.

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IN THE
SUPREME COURT OF THE UNITED STATES

No. 138, Original

STATE OF SOUTH CAROLINA,
Plaintiff,

v.

STATE OF NORTH CAROLINA,
Defendant.

**Before the Special Master
Hon. Kristin L. Myles**

**PLAINTIFF SOUTH CAROLINA'S RESPONSES TO DEFENDANT NORTH
CAROLINA'S FIRST SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF DOCUMENTS**

Pursuant to the rules of the Supreme Court of the United States and the Joint Proposed Case Management Plan ("CMP") submitted by the party States to the Special Master, including the Federal Rules of Civil Procedure as incorporated therein, Plaintiff South Carolina hereby responds to Defendant North Carolina's First Set of Interrogatories and Requests for Production of Documents (July 1, 2008) ("NC First Requests") as follows:

GENERAL OBJECTIONS

The following General Objections apply to each and every interrogatory and document request and form an integral part of South Carolina's response to each interrogatory and document request:

P.O. Box 12267
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Phone: (803) 734-2100
Fax: (803) 734-5167

4. Office of the Attorney General of South Carolina
The Honorable Henry McMaster
P.O. Box 11549
Columbia, SC 29211
Phone: (803)734-3970

5. The United States Geological Survey, National Center
12201 Sunrise Valley Drive
Reston, VA 20192
Phone: (703) 648-4000

Interrogatory No.6: Identify and describe with specificity South Carolina's knowledge of consumptive uses of the Catawba River in North Carolina and in South Carolina.

Response to Interrogatory No.6: South Carolina objects to this Interrogatory on the grounds that it is overly broad and unduly burdensome. South Carolina further objects to this Interrogatory on the ground that it is premature because discovery in this matter is ongoing and all facts that support South Carolina's claims against North Carolina may not be known by South Carolina at this time. Indeed, North Carolina has greater access to information relating to North Carolina's consumptive uses of the Catawaba River in North Carolina than does South Carolina. South Carolina also objects to the scope of this Interrogatory insofar as it is not constrained by any time limitations.

South Carolina has agreed to provide within nine months of the date the Case Management Plan is approved information on consumptive uses and other activities in North Carolina that South Carolina believes that its experts will be able to demonstrate caused one or more of the harms identified by South Carolina in its Complaint. South Carolina also agrees to provide at that time South Carolina reserves the right to supplement or amend its response at that time and on an ongoing basis.

Subject to and without waiving its general and specific objections, South Carolina states that:

1. Information regarding South Carolina's consumptive may be in the custody of the South Carolina Department of Health and Environmental Control and the South Carolina Department of Natural Resources.

2. Information regarding South Carolina's water supplies and industries taking water out of the Catawba River is available to a limited extent at the permitting office of the Department of Health and Environmental Control.

Response to Request No.8: Subject to its general objections, South Carolina will produce non-privileged documents in its possession, custody or control containing information responsive to this request.

Request No.9: Produce all documents that support South Carolina's claim that the transfers of water out of the Catawba River that the EMC has approved and the North Carolina statute has permitted are in excess of North Carolina's equitable share of the Catawba River, as set out in the Bill of Complaint.

Response to Request No.9: South Carolina specifically objects to Document Request No.9 on the ground that it is premature insofar as South Carolina has yet to quantify its "equitable share." Subject to its general objections, South Carolina will produce non-privileged documents in its possession, custody or control containing information responsive to this request.

Request No. 10: Produce all documents that support South Carolina's claim that pending before the EMC is, or was on June 7, 2007, an application by Union County to increase by 13 million gallons per day its transfers of water from the Catawba River Basin to the Rocky River Basin, as set out in the Bill of Complaint.

Response to Request No. 10: South Carolina will produce a copy of a document that purports to be a pending Inter Basin Transfer permit responsive to this request. Subject to its general objections, South Carolina will produce non-privileged documents in its possession, custody or control containing information responsive to this request.

Request No. 11: Produce all documents that support South Carolina's claim that the EMC approved for Concord and Kannapolis an IBT of up to 10 mgd from the Catawba River despite the availability of alternative sources of water from other communities in North Carolina that stood ready, willing, and able to provide that water to the Cities, as set out in the Bill of Complaint.

documents relate to the Catawba River. South Carolina stands ready to meet and confer with North Carolina to narrow the remainder of this request to an appropriate and reasonable scope.

Request No. 81: Produce all documents that were used to produce the scenarios and runs of any mathematical or computer models created to analyze impacts on the Catawba, Yadkin/Pee Dee, or Broad/Congaree River Basins of North Carolina's consumptive uses.

Response to Request No. 81: South Carolina specifically objects to Request No. 81 on the grounds that it is premature, irrelevant and unduly burdensome insofar as the request purports to seek information unrelated to the harms currently identified by South Carolina. Subject to and without waiving its general and specific objections, South Carolina will produce non-privileged documents responsive to this request, located after a reasonable search of documents in its possession, custody, or control, insofar as those documents relate to the Catawba River. South Carolina stands ready to meet and confer with North Carolina to narrow the remainder of this request to an appropriate and reasonable scope.

Request No. 82: Produce all inventories of any water uses, including consumptive water uses in the Catawba, Yadkin/Pee-Dee, and Broad/Congaree River Basins.

Response to Request No. 82: South Carolina specifically objects to Request No. 82 on the grounds that it is premature, irrelevant and unduly burdensome insofar as the request purports to seek information unrelated to the harms currently identified by South Carolina. Subject to and without waiving its general and specific objections, South Carolina will produce non-privileged documents responsive to this request, located after a reasonable search of documents in its possession, custody, or control, insofar as those

Response to Request No. 89: South Carolina specifically objects to Request No. 89 on the grounds that it is premature, irrelevant and unduly burdensome insofar as the request purports to seek information unrelated to the harms currently identified by South Carolina. South Carolina further objects to this request insofar as it purports to call for the production of publicly available material that is equally accessible to North Carolina. South Carolina further objects to Request No. 88 because the terms "water supply shortfalls" is ambiguous and insofar as it purports to instruct South Carolina to produce documents in the possession, custody or control of municipalities. South Carolina requests that North Carolina clarify what is meant by the term "water supply shortfalls." Subject to and without waiving its general and specific objections, South Carolina stands ready to produce non-publicly available, non-privileged documents sufficient to show water supply shortfalls (subject to North Carolina's clarification of this term) in the Catawba River Basin, located after a reasonable search of documents in its possession, custody, or control. South Carolina stands ready to meet and confer with North Carolina to narrow the remainder of this request to an appropriate and reasonable scope.

Request No. 90: Produce all inventories of any water withdrawal permits issued for users in the Catawba, Yadkin/Pee Dee, or Broad/Congaree River Basins.

Response to Request No. 90: South Carolina specifically objects to Request No. 90 insofar as it purports to instruct South Carolina to produce documents that do not exist, as South Carolina does not currently issue permits for surface or ground water withdrawal. South Carolina stands ready to meet and confer with North Carolina concerning this request.

Response to Request No. 105: South Carolina specifically objects to Request No. 105 insofar as it purports to instruct South Carolina to produce documents that do not exist, as South Carolina does not currently issue permits for surface or ground water withdrawal. South Carolina stands ready to meet and confer with North Carolina concerning this request.

Request No. 106: Produce all studies of groundwater use in the Catawba, Yadkin/Pee Dee, or Broad/Congaree River Basins.

Response to Request No. 106: South Carolina specifically objects to Request No. 106 on the grounds that it is premature, irrelevant and unduly burdensome insofar as the request purports to seek information unrelated to the harms currently identified by South Carolina. Subject to and without waiving its general and specific objections, South Carolina will produce non-privileged studies of groundwater use (to the extent such documents exist) in the Catawba River Basin, located after a reasonable search of documents in its possession, custody, or control. South Carolina stands ready to meet and confer with North Carolina to narrow the remainder of this request to an appropriate and reasonable scope.

Request No. 107: Produce all inventories of regulated groundwater uses in the Catawba, Yadkin/Pee Dee, or Broad/Congaree River Basins, other than those requiring a permit.

Response to Request No. 107: South Carolina specifically objects to Request No. 107 on the grounds that it is premature, irrelevant and unduly burdensome insofar as the request purports to seek information unrelated to the harms currently identified by

South Carolina. Subject to and without waiving its general and specific objections, South Carolina will produce non-privileged inventories of regulated groundwater use, other than those requiring a permit (to the extent such documents exist) in the Catawba River Basin, located after a reasonable search of documents in its possession, custody, or control. South Carolina stands ready to meet and confer with North Carolina to narrow the remainder of this request to an appropriate and reasonable scope.

Request No. 108: Produce all inventories of water conservation measures and policies for the Catawba, Yadkin/Pee Dee, or Broad/Congaree River Basins, implemented at both State and local levels.

Response to Request No. 108: South Carolina specifically objects to Request No. 108 on the grounds that it is premature, irrelevant and unduly burdensome insofar as the request purports to seek information unrelated to the harms currently identified by South Carolina. South Carolina further objects to this request insofar as it purports to call for the production of material that is in the possession, custody or control of municipalities. Subject to and without waiving its general and specific objections, South Carolina will produce non-privileged inventories of water conservation measures and policies in the Catawba River Basin, located after a reasonable search of documents in its possession, custody, or control. South Carolina stands ready to meet and confer with North Carolina to narrow the remainder of this request to an appropriate and reasonable scope.

Request No. 109: Produce the water conservation measures and policies implemented within the Catawba, Yadkin/Pee Dee, or Broad/Congaree River Basins.

Response to Request No. 109: South Carolina specifically objects to Request No. 109 on the grounds that it is premature, irrelevant and unduly burdensome insofar as the request purports to seek information unrelated to the harms currently identified by South Carolina. South Carolina further objects to this request insofar as it purports to call for the production of material that is in the possession, custody or control of municipalities. Subject to and without waiving its general and specific objections, South Carolina will produce non-privileged documents sufficient to show water conservation measures and policies in the Catawba River Basin, located after a reasonable search of documents in its possession, custody, or control. South Carolina stands ready to meet and confer with North Carolina to narrow the remainder of this request to an appropriate and reasonable scope.

Request No. 110: Produce all documents explaining how water conservation measures and policies have been implemented within the Catawba, Yadkin/Pee Dee, or Broad/Congaree River Basins during recent droughts.

Response to Request No. 110: South Carolina specifically objects to Request No. 110 on the grounds that it is premature, irrelevant and unduly burdensome insofar as the request purports to seek information unrelated to the harms currently identified by South Carolina. South Carolina further objects to this request insofar as it purports to call for the production of material that is in the possession, custody or control of municipalities. Subject to and without waiving its general and specific objections, South Carolina will produce non-privileged documents sufficient to explain how water conservation measures and policies have been implemented in the Catawba River Basin during recent droughts, located after a reasonable search of documents in its possession,

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Before the Special Master
Hon. Kristin L. Myles

PLAINTIFF SOUTH CAROLINA'S SUPPLEMENTAL RESPONSES
TO DEFENDANT NORTH CAROLINA'S
FIRST SET OF INTERROGATORIES

Plaintiff South Carolina provides the following supplemental responses to Defendant North Carolina's First Set of Interrogatories and Requests for Production of Documents (July 1, 2008) ("NC First Requests") and to North Carolina's Letter of March 2, 2010, seeking such supplementation.

GENERAL OBJECTIONS

South Carolina incorporates its General Objections from its initial responses served on July 31, 2008, which are incorporated into each and every one of the following responses.

34. Gary Williams
SCE&G Wateree Station
142 Wateree Station Road
Eastover, SC 29044
(803) 217-9000
35. Jim Landreth
SCE&G Wateree Station
142 Wateree Station Road
Eastover, SC 29044
(803) 217-9000
36. Michael Summer
SCE&G Wateree Station
142 Wateree Station Road
Eastover, SC 29044
(803) 217-9000
37. Durran Coley
28001 Marina Drive
Fort Mill, SC 29708-8346
(803) 548-3715
38. Susan Bromfield
Lake Wylie Chamber of Commerce
P.O. Box 5233
Lake Wylie, SC 29710
(803) 831-2827

Interrogatory No.6: Identify and describe with specificity South Carolina's knowledge of consumptive uses of the Catawba River in North Carolina and in South Carolina.

Supplemental Response to Interrogatory No.6: South Carolina supplements its initial response and objections to the body of NC Interrogatory No.6 by incorporating its Supplemental Response to Interrogatory No.1, above. In addition, South Carolina's current knowledge of consumptive uses within North Carolina and South Carolina is based, as a starting point, on data inputs

to the Computer Hydro Electric Operations and Planning Software ("CHEOPS") produced in discovery by Duke Energy; on the withdrawals and returns set out in Appendices C and D in the Water Supply Study, Final Report, Catawba-Wateree Hydroelectric-Relicensing Project (Apr. 2006), prepared by HDR Engineering, Inc. of the Carolinas for Duke Energy, *see* Duke 0000001 (Operations Report 4); and on the subsequent water use data compiled and reported by HDR, *see, e.g.*, Duke 0000062-74; HDR 001318-1508.¹ South Carolina also is awaiting a supplemental document and data production from HDR that South Carolina understands will contain additional materials pertaining to consumptive uses. Finally, South Carolina's experts are assessing the data concerning water use in both States, and South Carolina will serve their expert reports in accordance with future scheduling orders issued by the Special Master.

¹ As South Carolina has made clear, HDR requested that South Carolina ask North Carolina and the intervenors to agree to treat HDR's initial production as confidential pursuant to the protective order concerning HDR materials that is currently in draft. *See* Letter from S. Attaway, Counsel for South Carolina, to J. Hauser, T. Goldstein, and R. Martella, Counsel for, respectively, North Carolina, CRWSP, and Duke Energy (Jan. 22, 2010) (attaching HDR's letter requesting such treatment). Because South Carolina has not yet received any response to that letter, it has not yet transmitted those HDR documents to North Carolina or the intervenors.

ARCHIVES RECORD

RG3 Nebraska. Department of Justice

Records: 1881-1960

Approx. No. of Items: 40,000 and 30 vols.

Cu. ft. : 170

HISTORICAL NOTE

The office of the Nebraska Attorney General grew out of specific legislation authorizing the Governor to employ counsel to perform legal duties for the state. The position of an Attorney General was made elective by an Act of 1869. Opposition to the continuance of the office existed until the Constitutional Convention of 1875, but the office was included with the other constitution elective offices by that assembly.

An act creating the Department of Justice with the Attorney General as its head was created by the Legislature in 1919. This department has "general control and supervision of all actions and legal proceedings in which the State of Nebraska may be a party or be interested, and has charge and control of all legal business of all departments and bureaus of the state, or any office thereof, which requires the services of attorney or counsel in order to protect the interests of the state".

Beginning with the general election of November, 1966, the office of the Attorney General became a four-year elective position.

The Attorney General has the same powers and prerogatives in each of the counties as the county attorneys have in their respective counties. Among his other powers are the following: (1) To appear and defend actions and claims against the state; (2) To consult with and advise the county attorneys, when requested by them, in all criminal matters and in matters relating to public revenue; (3) To give, when required, without fee, his opinion in writings upon all questions of law submitted to him by the Governor, or the head of any executive department. or by the Legislature; (4) At the request of the Governor or the head of any executive department to prosecute or defend for the state all actions and proceedings, civil or criminal, relating to any matter connected with their departments; (5) To enforce the proper application of moneys appropriated by the Legislature to the various funds of the state, and prosecute breaches of trust in the administration of such funds; (6) To prepare, when requested by the Governor or other executive officers, proper drafts for contracts, forms or other writings which may be wanted for use by the state; (7) To appear for the state and prosecute and defend all actions and proceedings, civil or criminal, in the Supreme Court in which the state is interested or a party; and when requested by the Governor or the Legislature, to appear for the state and prosecute or defend any action or conduct any investigation in which the state is interested or a party, before any court, officer, board, tribunal or commission.

HISTORICAL NOTE (cont.)

The Attorney General is a member of the Board of Canvassers; Board of Pardons; State Records Board and Nebraska Commission on Inter-governmental Cooperation. (For further information see the most recent Blue Book of Nebraska).

SCOPE AND CONTENT NOTE

This record group consists of records of the Nebraska Department of Justice arranged in *two* subgroups: Subgroup One, General Records of the Department of Justice; and Subgroup Two, Records of Nebraska vs. Wyoming, Colorado, and the United States, filed as an original action in the U. S. Supreme Court, October term. 1934.

Subgroup One, General Records of the Department of Justice includes a variety of records relating to the traditional and ongoing statutory functions of the Department and the office of Attorney General. This subgroup is arranged in the following series: (1) Correspondence, 1894-1960; (2) Case files, 1910-1960; (3) Opinions, 1933-1938; (4) Financial Records, 1911-1962; (5) Appearance Dockets, 1900-1927; (6) Office Dockets, 1892-1900; (7) Corporation Records, 1896-1934; (8) Day Books, 1935-1956; (9) Deed Registers, 1922-1924; (10) Mortgage Registers, 1922-1924; and (11) Miscellany, 1881-1942.

The bulk of subgroup one consists of correspondence and case files of the Nebraska Attorney General's office. The case files, like the correspondence, are arranged chronologically but the case files are also subdivided alphabetically within four general time periods, 1910-1929; 1930-1940; 1940-1950; and 1950-1960. Cases dealing with railroad assessment and taxation during the 1920's were located after the other case files had been arranged. Therefore, these railroad cases may be found in boxes near the end of Series Two. A small number of cases overlap from one time period to another. Through this subgroup an attempt has been made to maintain the files as originally organized. Additional material within subgroup one includes financial records, various corporation records, dockets, registers and miscellany. Most of these records were transferred to the State Archives from the Department of Justice in 1968-1969. As per instructions from the Attorney General, his permission is necessary in order to gain access to the records in subgroup one. Please consult the Archivist. Subgroup one will be considered open for the periodic addition of records which may be transferred to the State Archives in accordance with the statutes relating to permanent historical or legal records.

← Subgroup Two, Records of Nebraska vs. Wyoming, Colorado, and the United States, 1934-1945, is arranged in six series: (1) Evidence and Hearing Data, 1932-1945; (2) Nebraska Canal and Irrigation District Files; (3) Correspondence, 1922-1945; (4) Transcripts of Hearings before the Special Master, 1936-1941; (5) Exhibits; and (6) Briefs and other printed data.

The records in subgroup two related to the adjudication of water rights in the North Platte River, a stream rising in Colorado and flowing through Wyoming and Nebraska. Specifically the records deal with the case of Nebraska vs. Wyoming, Colorado, Impleaded Defendant, and the United States. Intervenor. filed as an original action the U. S. Supreme

3. Obsolete
 Conf. of Am
 Gen office
 see p. 11

SCOPE AND CONTENT NOTE (cont.)

Court, October Term, 1934. The bulk of the records within this subgroup consist of evidence, correspondence, transcripts of hearings, exhibits, and printed briefs prepared or accumulated during the period of litigation, 1934-1945. Much of the data was developed during the presentation of Nebraska's case while other files deal with the Wyoming, Colorado, or the United States' arguments and are copies of evidence or exhibits accumulated by the other parties to the suit. The original order of the records has been maintained as much as possible. Series One and Series Three have been reconstructed because the original arrangement was lost. Some duplicate materials have been retained in order to have them available for removal and study by the Nebraska Attorney General. Although the final decree in Nebraska vs. Wyoming was issued in 1945, some data within this subgroup may be pertinent to contemporary issues involving intrastate and interstate water administration.

Controversy between Nebraska, Wyoming, and Colorado over the use of water from the North Platte River had existed since the early 1900's. Many Nebraska irrigation projects had been established prior to 1900 and thus were senior in right of appropriation to later Wyoming projects. In 1904, the U. S. Bureau of Reclamation built the North Platte project which included the Pathfinder reservoir in Wyoming and which irrigated some 70,000 acres in Nebraska and Wyoming. As irrigated acreage increased in the region, competition for available water became greater. Efforts to settle interstate water disputes by compact failed during the 1920's. Yet the water supply in the North Platte River remained adequate for most irrigation purposes until the following decade.

During the early 1930's, drouth severely reduced the flow of water in the North Platte and many Nebraska irrigators with appropriations senior to those in Wyoming ran short of water because of Wyoming's upstream diversions. Wyoming's refusal to release water to Nebraska senior appropriators in 1934, and the Bureau of Reclamation's intention to build another upstream reservoir with a retroactive priority date of 1904 were the immediate reasons for the Nebraska suit filed against Wyoming in the U.S. Supreme Court.

In October, 1935, the Supreme Court appointed a Special Master, Michael J. Doherty, to hear evidence, to report findings of fact and conclusions of law, and make recommendations for a decree. The following month, Wyoming succeeded in having Colorado made an impleaded defendant. Hearings before the Special Master began in July, 1936, and continued periodically until December, 1941. The Supreme Court granted the United States leave to intervene in the case in April, 1938.

Nebraska's argument rested primarily on the principle of priority appropriations. Wyoming proposed a principle of equitable apportionment combined with a principle of economic use. The United States, claimed absolute ownership, as sovereign, of all the waters.

After months of investigational work, numerous hearings, and thousands of pages of testimony, the Master made his recommendations for the settlement of the case. In a 1945 opinion, the U. S. Supreme Court generally agreed with the Master's report. Briefly, the decision recognized the principle of priority appropriation and apportioned the natural flow of the North Platte River in the Whalen to Tri-State Dam Section 25% to Wyoming and 75% to Nebraska.

SCOPE AND CONTENT NOTE (cont.)

Nebraska's case was handled by the office of the Attorney General through the appointment of a special counsel, Paul F. Good. Mr. Good had been Nebraska Attorney General when the original action was filed and was retained as special counsel for the duration of the case. Others prominent on Nebraska's behalf were William Wright, Attorney General, 1935-1937; Richard C. Hunter, Attorney General, 1937-1939; Walter R. Johnson, Attorney General, 1939-1949; ~~Ralph I. Meeker, Consulting~~ Engineer; Marion E. Ball, Hydrographer and Hydraulic Engineer; and Robert H. Willis, head of the Nebraska Bureau of Irrigation Water Power and Drainage, 1918-1951-

Correspondents include Ball, Marion E., 1939-1942; Davis, Clarence, 1922; Doherty, Michael E., 1934-1945; Good, Paul F., 1934-1945; Hunter, Richard C., 1936-1938; Johnson, Walter R., 1939-1946; Meeker, Ralph I., 1934-1944; Willis, Robert H., 1934-1944; and Wright, William, 1935-1936.

The Records in Subgroup Two were transferred to the State Archives from the Department of Justice in 1972.

DESCRIPTION

SG ONE GENERAL RECORDS OF THE DEPARTMENT OF JUSTICE

SERIES ONE CORRESPONDENCE, 1894-1960

Boxes 1-4	1939-40
5-7	1940-42
8-9	1940-44
10-11	1945-46
12-13	1947-48 (see also boxes 163 + 164) sheet 8A
14-16	1949-50
17-19	1951-52
20-22	1953-54
23-24	1955-56
25-28	1957-58
29-32	1959-60
33	Letter Press Books; 1894-1896, 1914; 3 vols. Misc. Correspondence; 1 folder Misc. Correspondence. 1950-1960

SUBGROUP ONE		
SERIES NINE	DEED REGISTERS, 1922-1924	
Vols. 1-6	1922-1924	
SERIES TEN		MORTGAGE REGISTERS, 1922-1924
Vols. 1-3	1922-1924	
SERIES ELEVEN		MISCELLANY, 1881-1942
Box 1	Blueprints	
2-4	Miscellany material	
5	Misc. printed briefs, 1935-1945	
SUBGROUP TWO		-RECORDS OF NEBRASKA vs. WYOMING, COLORADO AND THE
obsole -		UNITED STATES, 1934-1945
SERIES ONE		EVIDENCE AND HEARING DATA, 1932-1955
Box 1		
Folder 1	History of Nebraska vs. Wyoming (Memoranda), 1938-39	
2	Correspondence and index of photos, re: Aerial Survey of North Platte Basin, 1938	
3	Correspondence, re: acreage reports and water administration data, 1935-38	
4	Reports on return flow of North Platte River, 1936-40	
5	Reports and memoranda, re: ground water, 1934-41	
6	Reports, re: daily diversions from the North Plate Revier, 1931-38	
7	Correspondence, re: water administration, 1937	
8	" " " " " 1938	
9	Correspondence and reports, re: water admin., 1939	
10	" " " " " 1940	
11	" " " " " 1941	
12	List of Wyoming exhibits, 1940	
13	Map of Wyoming reservoir sites and irrigable land	
14	Horse Creek Cons. Dist. vs. Lincoln Land Co., 1934	
15	Wyoming vs. Colorado, case documents, fall, 1935	
16	Wyoming irrigation laws, 1937, 1939	
17	Wyoming diversions. 1939-40	
18	Meetings and conferences to shorten litigation including Platte River Drainage Basin Committee and National Resources Committee, 1938-39	
19	Regulation of Wyoming Tributaries, 1932-32	
20	Maps of Wyoming Canal locations	
21	Proposed compact negotiations, Nebr. and Wyoming, 1936	
22	Irrigation census of Wyoming, 1940	
23	List of Colorado projects for submission of proff, 1939	
24	Republican River Compact, 1941	
25	"Laramie River and Horse Creek investigational work". R.I. Meeker and M.E. Ball, 1937	

*Society no longer holds 562
 Contact Office for Access. (ep/bk)*

SUBGROUP TWO (cont.)

SERIES ONE (cont.)

Box 1 (cont.)

- Folder 26 "Wyoming canals, Guernsey to Wyoming-Nebraska Line", R. I. Meeker and M.E. Ball, 1939
- 27 "Report of Inspection through Platte River Drainage Basin, Aug. 1936" by Michael Doherty, Special Master
- 28 "Report of North Platte River field trip in Nebraska and Wyoming, 1934", by Wright, Good, Perry, Willis, Meeker
- Item 29 Reports of field trips and other data compiled by R. I. Meeker, 1935-37
- " 30 R. I. Meeker file of data, opinions, and compacts, Nebraska vs. Wyoming
- Folder 31 Schedule of corrections in transcript of testimony
- 32 "Report of Field Examinations in Lodgepole Creek Basin" by R. I. Meeker, 1937
- 33 "Preliminary Outline of Engineering Field Work, 1934-35" by R. I. Meeker
- 34 Misc. Irrigation papers, 1936

Box 2

- Folder 34a William Wright file (Nebr. Attorney General)
Misc. briefs, and irrigation data, 1935-36
- 35 Misc. forms for appropriation of water, Nebraska
- 36 Misc. engineering data, 1936-40
- 37 Flow record, Nebraska vs. Wyoming, 1938
- 38 River Bulletins, 1939
- 39 List of pleadings and briefs, Nebraska vs. Wyoming
- 40 Documents relating to future administration of North Platte Basin, 1941
- 41 Reports of field trips by R. I. Meeker in connection with the case, 1936-38
- 42 Interstate negotiations prior to Aug. 1, 1934 Colorado Trans-Mountain Diversion and Casper Alcova Project, 1933
- Item 43 Outline of Engineering field work, 1935 season, R. I. Meeker
- " 44 Legal Report by W. J. Burke, Dist. Counsel, Bureau of Reclamation, N.D.
- " 45 "North Platte River Water Supply, principal gauging stations, Jan. 21, 1935", by R. I. Meeker
- " 46 "North Platte River Investigational Work - Pathfinder Reservoir to Wyoming-Nebraska Line" Oct. 22, 1935
- Folder 47 Notes on Transcripts, Nebraska vs. Wyoming
- 48 Index to Exhibits, Nebraska vs. Wyoming

SUBGROUP TWO (cont.)

SERIES ONE (cont.)

Box 2 (cont.)

- Folder 49 Notes ~~and~~ Reports, including "Statement of the Intervenor, the United States, 1940"; "Engineers Stipulation, May 1942" "Engineer's Progress Reports, 1942"; and "Proposals for Settlement of the Case, 1942".
- 50 Notes and Reports, including "Findings in Adjudication of Priorities of Water Rights in Water District #36," U. S. District Court of Colorado, 1955
- 51 Notes and Reports, Misc.

Box 3

- Folder 52 Notes and Reports, Misc.
- 53 " " " "
- 54 Colorado vs. Kansas, 1943
- 55 U.S. vs. Tilley, Brief of defendants
- 56 River Bulletins, Nebraska, 1944
- 57 Irrigation Census, U.S. Bureau of Census, 1940
- 58 Memoranda, Nebraska vs. Wyoming
- 59 Memoranda and Comments on briefs, 1942
- 60 Reports and statements, re: Intervention of the United States, 1938-1941
- 62 Federal Claims to ownership of water
- 63 Index to U.S. Exhibits
- 64 Proposed Federal legislation, regional authorities
- 65 Books and Pamphlets, re: water law and legislation
- 66 List 'of Nebraska exhibits
- 67 Interstate Administration of water, North Platte River , reports and statistics
- 68 Evidence, notes, and reports, July 1936 hearing
- 69 " " " " " "
- 70 " " " " " "
- 71 Evidence, Mar. 30, 1937 hearing
- 72 Evidence, May 1937 hearing

Box 4

- Folder 73 Exhibit on 1931-36 closing orders, effects of, Oct. 1938 hearing
- 74 Notes on testimony, May 16-29, 1939, hearing and July 17-29, 1939, hearing
- 75 Notes, Jan.-Feb. 1940 hearing
- 76 Notes, October 1940 hearing
- 77 Notes, April, July, 1941 hearing
- 78 Notes, Nov.-Dec. 1941 hearing
- 79 Exhibits, Data for Rebuttal, 1940-41
- 80 Exhibits, Misc. lists, 1940-41

SUBGROUP TWO (cont.)

SERIES ONE (cont.)

Box 4 (cont.)

- Folder 81 Exhibits, U.S. Intervenor, 1941
 82 Interstate water administration prior to 1934
 83 Priority information, re: Canals and Ditches
 in Nebraska, 1936-37
 84 Nebraska response, Warren Act Decision, 1937

Box 5

- Folder 85 List of exhibits, memoranda of complaint, outlines,
 appropriation of water, 1937 (W. H. Wright file)
 86 Settlement proposals, Nebraska vs. Wyoming, 1944
 87 St. Paul Conference, 1944
 88 Preliminary findings, notes, etc.; memoranda, re:
 Proposed findings and decree
 89 Data as to exceptions to the Master's Report
 90 Notes and Decrees, 1945
 91 Published pleadings and briefs, 1934-35
 92 Modification of 1945 Decree, 1951-1953
- Item 93 Order 'Record Book 8, pps. 1-82, State Board of
 Control of Wyoming, re: adjudication of water
 rights from North Platte River, Lands in Pathfinder
 Irrigation Dist. (photostat) (oversized,
 shelved separately)
- 94 Order Record Book 8, pps. 84-1925, State Board of
 Control of Wyoming, re: adjudication of water
 rights from North Platte River, lands in Gering
 and Fort Laramie Irrigation Dist. (photostat)
 (oversized, shelved separately)
- 95 Order Record Book 8, pps. 159-172, State Board of
 Control of Wyoming, re: adjudication of water
 rights from North Platte River, lands in North-
 port irrigation dist. (photostate) (oversized,
 shelved separately)
- 96 Map - Central Nebraska Public Power and Irrigation
 District, Drawing #AB108 (2 copies)
 (shelved separately)
- 97 Birdseye Map, "The Power & Irrigation Development
 of the Platte Valley" CNPPID (shelved separately)
- 98 Chart - North Platte River, recorded average yearly
 flow, 1926-1935 period; average May to Sept.
 flow, 1926-1935 period; May to Sept. flow, 1934
 (shelved separately)
- 99 Chart - North Platte and Platte Rivers, water
 appropriations Wyoming & Nebraska. Oct. 1935
 (2 copies) (shelved separately)
- 100 Charts 1. 1929 high water year, unregulated flow,
 North Platte River, various locations
 2. 1934, Extreme low water year, unregulated
 flow, North Platte River, various
 locations

SUBGROUP TWO (con.)

SERIES ONE (cont.)

Box 5 (cont.)

- Item 100 (cont.) Charts' 3. 1931) low water year) unregulated flow) North Platte River) various locations
4. 1932) average water year, unregulated flow, North Platte River. various locations
101 (shelved separately). Casper-Alcova Permit: Land descriptions. prints and maps. Cover Letter dated 1934

SERIES TWO

NEBRASKA CANAL AND IRRIGATION DISTRICT FILES

Box 5

- Folder 1 Alfalfa Irrigation District
2 Alliance
3 Barber Canal. D-754
4 Beerline Canal
5 Belmont Canal (Bridgeport)
6 Blue Creek, A-795
7 Browns Creek D-857
8 Casper-Alcova project
9 Clear Creek Canal) D-748
10 Castle Rock Canal
11 Castle Rock vs. Steamboat
12 Central Canal, D-926
13 Chimney Rock
14 Cozad Canal
15 Dawson Canal
16 Elm Creek Canal

Box 6

- Folder 17 Empire Canal, D-858
18 Enterprise Canal) D-920
19 Finch Canal) D-964
20 Foster-Keystone Canal) D-730
21 French Canal
22 Gering Canal, A-365
23 Gothenburg Canal) 645 A&B
24 Graf Canal, D-763R & 798
25 ~~Halloway-Phelps~~ Canal, D-717
26 Hannah Canal, A-2316
27 Harper Canal. D-886
28 Hooper Canal
29 Interstate Canals
30 " "
31 Lingle Water Users Assoc.
32 Out-of-Priority Diversions) Ft. Laramie and Interstate
33 Kearney Canal canals
34 Lincoln County Canal
35 Kent-Burke Canal, A-1694
36 Keystone Canal, A662B & A-1003

SUBGROUP TWO (cont.)
 SERIES TWO (cont.)
 Box 6 (cont.)

Folder	37	Lamore Canal, 327
	38	Lisco-North River canal, D-856
	39	Lyons Canal
	40	East Lonergan Canal, D-699
	41	Loup River PPD vb. North Loup River PP&ID. 1940
	42	Misc. Canals
	43	Minatare Canal. D-919
	44	Report on 6 small Nebraska Canals. Willis & Burritt
	45	Misc. Diversions from tributaries
	46	Misc. Wyoming and Colorado ditches
	47	Mitchell Irrigation District (Wyoming)
	48	Nine Mile
	49	North Platte Canal, 635
	50	North port
	51	North River
	52	Norris Canal. A-2253
	53	Orchard-Alfalfa (South Side)
	54	Otter Creek (Cascade) D-1032
	55	Paisley Canal, D-800, A-SIS, A-1738
	56	Patrick Canal, D-725
	57	Paxton-Hershey Canal, 653
	58	Ramshore Canal, D-945
	59	Rush Creek, Canal, D-802
	60	Schermerhorn Canal
	61	Scripter Canal, A-2288
	62	Sheridan Wilson, D-710
	63	Signal Bluff
	64	Short Line Canal, D-946
	65	Six Mile Canal, 680
	66	Soehl Canal, D-697
	67	Spohn Canal, D-801
	68	Little Spring Canal. A-659
	69	Steamboat Canal. 186-350
	70	Suburban Canal, 662
	71	Sutherland-Platte
	72	Thirty-Mile Canal
	73	Tri-county Canal
Box 7	74	Tri-county, Water Study supplement
	75	Union Canal, D-763
	76	Tri-state farmers canal
	77	" " " "
	78	" " " "
	79	Western Irrigation District
	80	Wheatland project
	81	Winters Creek, D-952
	82	Copy of 1st Biennial Report. Nebr. State Board of Irrigation. 1895-96
	83	Miscellany
	84	"

SUBGROUP TWO (cont.)

SERIES THREE CORRESPONDENCE, 1922-1945
Box 7 (cont.)

Folder 1	1922-1935, Clarence Davis, William Wright, Paul Good (Nebraska Attorney-Generals) Includes Tri-county project report, 1914, and other irrigation data
1A	1935, William Wright (Nebr. Attorney Gen.) Gen. Corres.
1B	1936, " " " " " "
1C	1936, " " " " " "
2	1936, R.C. Hunter prior to becoming Nebr. Attorney Gen.
3	1937, R.C. Hunter (Nebr. Attorney Gen.) General Corres.
4	1937, " " " " " "
5	1937, " " " " " " (includes contracts)
6	1937, " " " " " " Warren Act File

Box 8

Folder 7	1938, R.C. Hunter (Nebr. Attorney Gen.) General Corres.
8	1938, " " " " " "U.S. Intervention
9	1939-44, Walter P. Johnson, (Nebr. Att. Gen.) Gen. Corres.
10	1944-46, " " " " " "
11	1934, Paul F. Good, (Nebr. Attorney Gen.) Gen. Corres.
12	1934-38, Paul F. Good (Special Counsel) General Corres.
13	1934-38, " " " " " R.I. Meeker - R. H. Willis file
14	1934-42, " " " " " M.E. Doherty, Special Master
15	1934-42, " " " " " Lee-Rose-Howell- Rogers correspondence
16	1938-41, " " " " " U.S. Intervention file
17	1939-42, " " " " " M.E. Ball-K.1. Ward correspondence
18	1939-44, " " " " " Meeker-Willis- Riddell correspondence

Box 9

Folder 19	1940-41, " " " " " Colo-Wyo Officials
20	1940-41, " " " " " Copies of M. J. Doherty Correspondence
21	1942, " " " " " Gen. Corres.
22	1942-43, " " " " " " "
23	1944-45, " " " " " " "
24	1945 " " " " " " "

SUBGROUP TWO (cont.)

SERIES FOUR	TRANSCRIPTS OF HEARINGS BEFORE THE SPECIAL MASTER, 1936-41
Box 10	Transcripts, Vol. 1, July 14, 1936 through Vol. 7, Sept. 25, 1937
11	Transcripts, Vol. 8, Sept. 27, 1937, through Vol. 17, Feb. 2, 1938
12	Transcripts, Vol. 18, Feb. 2, 1938, through Vol. 30, Feb. 18, 1939
13	Transcripts, Vol. 31, May 16, 1939, through Vol. 39, Nov. 16, 1939
14	Transcripts, Vol. 40, Nov. 16, 1939, through Vol. 48, May 29, 1940
15	Transcripts, Vol. 49, Oct. 7, 1940, through Vol. 59, Nov. 26, 1940
16	Transcripts, Vol. 60, Nov. 27, 1940, through Vol. 65, Dec. 19, 1941 Transcripts, (Partial duplicate set) Vol. 7, Sept. 20, 1937 through Vol. 9, Oct. 8, 1937
17	Transcripts (duplicate) Vol. 10, Oct. 9, 1937; Vol. 12, Dec. 1, 1937 through Vol. 21, Mar. 31, 1938
18	Transcripts, (duplicate) Vol. 22, Apr. 1, 1938-Vol. 30, Feb. 18, 1939

SERIES FIVE EXHIBITS

Box 19	<u>Nebraska Exhibits.</u> 1-135 (accordion file)	
20	<u>Nebraska Exhibits.</u> 96a, 105a-109a. 136-434 (accordion file)	
21	<u>Nebraska Exhibits.</u> (Paul Good's Copy)	
Folder 1	2-7	
2	8-13	Folder 15 255-285
3	14-18	16 286-299
4	19-22	17 300-305
5	23-82	18 306-332
6	83-93	19 333-340
7	94-99	
8	100-107a	
9	108-135	
10	136-140	
11	141-178	
12	179-214	
13	215-226	
14	227-254	

SUBGROUP TWO (cont.)
SERIES FIVE (cont.)

Box 22		<u>Nebraska Exhibits</u> (Paul Good's Copy)
Folder	20	341-371
	21	372-386
	22	387-410
	23	411-434
	24	438, 440-441, 446-449, 445a-449a, 449b
	25	453-457, 459-476, 478-480
	26	481-490
	27	491-522
Item	27A	520 (Oversized, shelved separately)
Folder	28	523-540
	29	541-560
	30	561-563
	31	564, 566-570
	31A	573-575, 578-582, 585
	31B	593-596
	31C	571 (oversized, shelved separately)
	32	597-640
	33	641-657 (including North Platte River Case, Memoranda, Wyoming to Nebraska, Mar. 5, 1941)

Box 23		<u>Nebraska Exhibits</u> (Bound Copies)
Volume	B	3-22 (Vol. A missing)
	c	23-95
	D	96-135
	E	96a, 136-284

Box 24		<u>Nebraska Exhibits</u> (Bound Copies)
Volume	F	230a, 283-434

Wyoming Exhibits

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	42A	125-127 (oversized, shelved separately)
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Box 25 Wyoming Exhibits (In Binders)

Volume 1	137-139
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Colorado Exhibits (In Binders)

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48	9-11, 15-17, U.S. Ex. 12, 13, 14 = Wyo. Ex. 17, 18, 19
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	59 .. " 575
	61 .. Wyo. Ex. II, 11a
	62 .. Nebr. Ex. 530
	63 .. " 531
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	65 .. " 533
	66 .. " 534
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	69 .. Wyo. Ex. 23-25
	70 = " 29
	71 = " 19-22
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68	188-193
69	194-204
70	204a-204d
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72	238-260
73	261-280
74	Misc. Exhibits

SERIES SIX BRIEFS AND OTHER PRINTED DATA, NEBRASKA vs. WYOMING,
COLORADO, AND THE UNITED STATES

Box 28	
Vol. 1-3	Bound copies of printed briefs, re: Nebraska vs. Wyoming and Colorado in U.S. Supreme Court
Folder 1	Brief of the State of Nebraska, Complainant; Answer Brief of Defendant, State of Wyoming, No.6 Orig.; Brief of Defendant, State of Wyoming, No.6 Orig.; Reply Brief of the State of Wyoming, Defendant; Reply Brief of the State of Nebraska, complainant, to Answer Briefs of the States of Wyoming, Colorado, and the United States filed in Sept., 1942
2	Brief of the State of Wyoming, Defendant; Answer Brief of the State of Nebraska, complainant, to Brief of the United States; Exceptions of the Defendant, State of Wyoming, to the Report of Michael J. Doherty, Special Master, No.7, Orig.;

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Folder 3 Exceptions on Behalf of the State of Nebraska, complainant, No.6 Orig., Oct. term, 1944; Brief of the State of Nebraska, Complainant, No. 6 Orig., Oct. term, 1944; Portions of the Record Contained in Appendices submitted with Briefs of Parties, Vol. I, 1-270, No.6 Orig., Oct. term, 1944; Portions of the Record contained in appendices submitted with Briefs of Parties, Vol. II, 271-796, No.6 Orig., Oct. Term, 1944

Box 29

- 4 Answer Brief of Complainant, State of Nebraska to Briefs filed on Behalf of the United States and the States of Colorado and Wyoming, No.6 Orig., Oct. 1944; Brief for the State of Colorado, Impleaded Defendant, No.6 Orig., Oct. term, 1944; Exceptions of the State of Colorado, Impleaded Defendant, to the Report, the Findings of Fact, the Conclusions of Law, and the Recommendations of the Special Master, No.6 Orig., Oct. term, 1944; Appendix to Brief of the State of Colorado, Impleaded Defendant, No.6 Orig., Oct. term, 1944; Brief in Behalf of the States of Arizona, California, Idaho, Kansas, Nevada, New Mexico, North Dakota, Texas, Utah, and Vermont as *Amici Curiae*, No. 6 Orig., Oct. term, 1944; Answer Brief for the United States, Intervenor, No.6 Orig., Oct. term, 1944; Exceptions of the United States, Intervenor, to the Report and Recommendations of the Special Master, No.6 Orig., Oct. term, 1944; Brief for the United States, Intervenor, No.6 Orig., Oct. term, 1944;
- 5 Appendices V and VI to Brief of the United States, Intervenor, No.6 Orig., Oct. term, 1944; Objections of State of Nebraska to Joint proposal for Decree filed by State of Wyoming, defendant, State of Colorado, Impleaded defendant, and United States, Intervenor, No.6 Orig., Oct. term, 1945; Complainants proposed form of Decree and Request for permission to oppose proposals of other Parties, No.6 Orig., Oct. term, 1945; Form of Decree proposed by the State of Wyoming, Defendant, the State of Colorado, impleaded defendant, and the United States, intervenor, No.6 Orig., Oct. term, 1945;

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Folder 6

Motion for leave to file bill of complaint in Equity and Bill of Complaint in Equity, No. 16 Orig., October term, 1934; Motion to dismiss bill of complainant, No. 16 orig., October term, 1934; Motion of Complainant to set for hearing, defendant's motion to dismiss. No. 16, Orig., October term, 1934; Argument of motion to dismiss, No. 16, Orig., October term, 1934; Brief of Complainant in answer to respondent's brief on motion to dismiss, No. 16 orig., October term, 1934; Reply Brief of defendant on motion to dismiss, No. 16 orig., October term, 1934; Answer to Bill of Complaint, No. 16 orig., October term, 1934; Application for Leave to file Replication, No. 13 orig., October term, 1935; Motion for the appointment of a Special Master, No. 13 orig., October term, 1935; Objection to Intervention of the Platte Valley Public Power and Irrigation District, No. 13 Orig., October term, 1935; Motion for leave to file amended and supplemental answer and amended and supplemental answer, No. 16 orig., October term, 1934. Objection of Complainant to defendant's motion for leave to file amended and supplemental answer; and argument in support of objection, No. 13, orig., October term, 1935; Opposition to objections of complainant to motion of defendant for leave to file amended and supplemental answer, No. 13 orig., October term, 1935; Answer and cross bill of the State of Colorado, No. 16, orig., October term, 1934; Replication to amended and supplemental answer of the defendant, the State of Wyoming, Replication to the answer of the State of Colorado, and answer to the cross bill of the State of Colorado, No. 13, orig., October term, 1935; Answer of the State of Wyoming to cross bill of the State of Colorado, No. 16, orig., October term, 1934; Replication to the answer of the complainant, the State of Nebraska and Replication to the answer of the defendant, the State of Wyoming respectively, to the cross bill of the State of Colorado, impleaded defendant, No. 13 orig., Oct. term, 1935; Motion of the Platte Valley Public Power and Irrigation District for leave to intervene and petition in intervention, No. 13, orig., Oct., term, 1935; Objections to the

SUBGROUP TWO (cont.)
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- Intervention of the U.S. , No.9, orig.
 Oct. term, 1937; Objections of the State of Colorado, impleaded defendant, to the motion on behalf of the U.S. for leave to file its petition of intervention and argument in support of objections, No.9 orig., Oct. term, 1937; Answer of the State of Colorado, Impleaded defendant, to the petition of intervention of the U.S. No.8 orig., Oct. term, 1938; Petition of intervention of the U.S. No.8 orig., October term, 1938; Answer of Complainant, State of Nebraska to the petition of intervention of the U.S., No 8 orig., Oct. term, 1938; Objection of Complainant, State of Nebraska to Intervention of the U. S. and brief in support thereof, No. 9 orig., October term, 1937; Reply Brief of the U.S. in support of its motion for leave to intervene, No 9 orig., October term, 1937
- 7 Opening brief for the United States, No.7, orig., October term, 1941, Vol. 1-3, 1-244
- 8 Brief of the State of Colorado, No.7 orig., October term, 1941; Second Brief of the State of Colorado, No.7 orig., October term, 1941
- 9 Answer brief for the United States, No.7 orig., October term, 1941, Vol. 1-2, 1-216; Reply brief for the United States, No.7 orig., October term, 1942
- 10 Misc. briefs: Colorado vs. the State of Kansas and the Finney Co. Water Users Association, a Corporation, No.5 orig., October term, 1942;
- 11 Misc. Briefs: Mitchell Irrigation District va. John A. Whiting, Jr. (Wyoming Supreme Court); Floyd Henton VB. State of Nebraska (Nebraska Supreme Court): Nebraska VB. Robert A. Bur1ow (Nebraska Supreme Court): John Frades VB. Stat, of Nebraska (Nebraska Supreme Court) Harold L. Ickes vs. various individuals, (U.S. Supreme Court): Mitchell Irrigation District vs. State of Nebraska, (U.S. Supreme Court, October term 1935)
- 12 Misc. briefs regarding U.S. Department of Interior and Warren Act Contract matters

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Box 30

Folder 13

Misc. Printed matter including House Document #197, 73rd Congress, 2d session, "Letter from Secretary of War transmitting...various letters' and reports regarding development of navigation water power and irrigation and flood control on the Platte River in Colorado, Wyoming, and Nebraska"; "South Platte River Compact"; and "Tabulation of Adjudicated Water Rights in Water Division No.2, 3, 4," Wyoming, Dec. 21, 1926

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Misc. Printed matter including "Tabulation of Adjudicated Water rights in Divisions No. 1-4, Jan. 1931-Dec. 1932" by E. W. Burritt, State Engineer of Wyoming; Irrigation of Agricultural Lands in Nebraska. 16th census of the U.S., 1940

15

Study of Possibilities for a Joint Investigation in the Platte River Basin, National Resources Planning Board, Regions 6 & 7, October, 1941.

16

Interstate Water Compacts. 1785-1941, compiled by National Resources Planning Board

17

Scrapbook of newspaper clippings

Box 30-31

Uncataloged, duplicate printed briefs

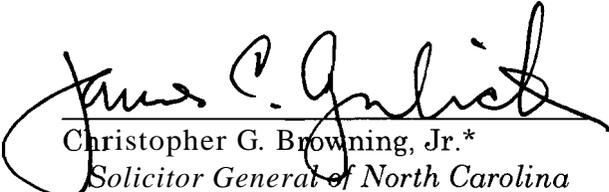
11-26-76

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served, upon the Special Master and all counsel required to be served, **DEFENDANT STATE OF NORTH CAROLINA'S REPLY BRIEF IN SUPPORT OF CONTINUED BIFURCATION** bye-mailing and by depositing the requested number of copies in the United States mail, postage prepaid, for delivery to the addresses set forth below.

Respectfully submitted, this the 9th day of April, 2010.

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