No. 108, Original

In the Supreme Court of the United States

OCTOBER TERM, 1986

STATE OF NEBRASKA, PLAINTIFF

v.

STATE OF WYOMING, ET AL.

ON PETITION FOR AN ORDER ENFORCING DECREE AND FOR INJUNCTIVE RELIEF

ANSWER OF THE UNITED STATES

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The United States, in response to the petition of the State of Nebraska to enforce the provisions of the Decree of October 8, 1945 (as amended on June 15, 1953) and for injunctive relief, states as to each averment of the petition:

1. The averments of paragraph 1 are admitted.

2. In response to the averments of paragraph 2, the United States avers that the Decree is an apportionment of the natural flow of the Platte River, one which places "a restraint on the storage of water in Pathfinder, Guernsey, Seminoe, and Alcova Reservoirs, so as to protect the Nebraska lands served by the French Canal and the State Line Canals" (*Nebraska* v. *Wyoming*, 325 U.S. 589, 630 (1945)) as well as Nebraska lands served by the Interstate Canal and the Ft. Laramie Canal (*id.* at 633). Except as so averred, the United States is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 2 of the petition.

3. In response to the averments of paragraph 3(d), the United States admits that the State of Wyoming has filed suit against it and Department of the Interior officials to enjoin them from continued diversion of North Platte waters in Wyoming through the Interstate Canal for storage at the Inland Lakes of Nebraska, based on the allegation that the United States is without Wyoming water rights and must obtain Wyoming water rights for storage water at the Inland Lakes. Except as so admitted, the United States is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 3 of the petition.

4. The averments of paragraph 4 are admitted to the extent that they pertain to the averments of paragraph 3(d) of the petition. The United States is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of paragraph 4 of the petition.

5. The United States is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 5 of the petition.

6. The United States is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 6 of the petition.

7. The averments of paragraph 7 are conclusions of law to which no response is required.

8. The United States admits that the portions of the Decree of October 8, 1945, as modified on June 15, 1953, are as quoted in paragraph 8 of the petition.

AFFIRMATIVE DEFENSES AND ADDITIONAL AVERMENTS

1. The United States, through the Bureau of Reclamation, operates the North Platte Project which, *inter alia*, provides irrigation water in Wyoming and Nebraska. For project purposes, the United States obtained water rights

from the State of Wyoming to divert and store the natural flow of the North Platte River, in part for delivery of water to the Inland Lakes of Nebraska for irrigation of lands in Nebraska.

2. The operation of the North Platte Project is in accordance with Federal reclamation law and laws authorizing appropriations for construction of the project. The diversion of winter water flows to the Inland Lakes has been in effect since the inception of project operations in 1915 and during the time of previous litigation that led to this Court's Decree of October 8, 1945. The diversion of winter water flows was recognized in the accompanying decision (325 U.S. at 646, 649 n.2). Accordingly, Wyoming is precluded and estopped from challenging this mode of operation in this proceeding.

3. Any modification of the decree must accommodate the contractual rights and obligations of the United States and the North Platte Irrigation Districts concerning management and operation of the North Platte Project.

4. Any modification of the decree should accommodate the habitat requirements of migrating birds, including whooping cranes and other threatened and endangered birds along the Platte River in Nebraska, and at the North Platte Wildlife Refuge at the Inland Lakes.

WHEREFORE, the United States respectfully prays that the Court issue an order protecting the rights of the United States in the North Platte Project and the interests of the United States in the Platte River System, and for such other and further relief as the Court may deem just and proper.

Respectfully submitted.

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