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# SUPREME COURT OF THE UNITED STATES

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No. 5 ORIGINAL.—OCTOBER TERM, 1952.

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THE STATE OF NEBRASKA, Complainant,

v.

THE STATE OF WYOMING, Defendant,

and

THE STATE OF COLORADO, Impleaded Defendant,

THE UNITED STATES OF AMERICA, Intervener.

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Order Modifying and Supplementing Decree  
of October 8, 1945.

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[June 15, 1953.]

The parties to this cause having filed a stipulation, dated January 14, 1953, and a joint motion for approval of the stipulation and to modify and supplement the decree entered on October 8, 1945 (325 U. S. 665) and the Court being fully advised:

The stipulation dated January 14, 1953, is approved; and

IT IS ORDERED that the decree of October 8, 1945, is hereby modified and supplemented as follows:

1. In paragraph I (a) of the decree the figure "145,000" is substituted for the figure "135,000."

2. Paragraph XIII is amended by striking the first sentence and substituting for it the following:

Any of the parties may apply at the foot of this decree for its amendment or for further relief, except

that for a period of five years from and after [the date of the entry of this order to be inserted by the Court] the State of Colorado shall not institute any proceedings for the amendment of the decree or for further relief. In the event that within said period of five years any other party applies for an amendment of the decree or for further relief, then the State of Colorado may assert any and all rights, claims or defenses available to it under the decree as amended.

3. Two new paragraphs, as follows, are added to the decree:

XVI. Whatever claims or defenses the parties or any of them may have in respect to the application, interpretation or construction of the Act of August 9, 1937 (50 Stat. 564-595) shall be determined without prejudice to any party arising because of any development of the Kendrick Project occurring subsequent to October 1, 1951.

XVII. When the Glendo Dam and Reservoir are constructed, the following provisions shall be effective:

(a) The construction and operation of the Glendo Project shall not impose any demand on areas at or above Seminoe Reservoir which will prejudice any rights that the States of Colorado or Wyoming might have to secure a modification of the decree permitting an expansion of water uses in the natural basin of the North Platte River in Colorado or above Seminoe Reservoir in Wyoming.

(b) The construction and operation of Glendo Reservoir shall not affect the regimen of the natural flow of the North Platte River above Pathfinder Dam. The regimen of the natural flow of the North Platte River below Pathfinder Dam shall not be changed, except that not more than 40,000 acre feet of the natural flow of the North Platte River and its tribu-

taries which cannot be stored in upstream reservoirs under the provisions of this decree may be stored in the Glendo Reservoir during any water year, in addition to evaporation losses on such storage, and, further, the amount of such storage water that may be held in storage at any one time, including carryover storage, shall never exceed 100,000 acre feet. Such storage water shall be disposed of in accordance with contracts to be hereafter executed, and it may be used for the irrigation of lands in the basin of the North Platte River in western Nebraska to the extent of 25,000 acre feet annually, and for the irrigation of lands in the basin of the North Platte River in southeastern Wyoming below Guernsey Reservoir to the extent of 15,000 acre feet annually, provided that it shall not be used as a substitute for storage water contracted for under any existing permanent arrangements. The above limitation on storage of natural flow does not apply to flood water which may be temporarily stored in any capacity allocated for flood control in the Glendo Reservoir, nor to water originally stored in Pathfinder Reservoir which may be temporarily re-stored in Glendo Reservoir after its release from Pathfinder and before its delivery pursuant to contract; nor to water which may be impounded behind Glendo Dam, as provided in the Bureau of Reclamation Definite Plan Report for the Glendo Unit dated December 1952, for the purpose of creating a head for the development of water power.

(c) Paragraph III of the decree is amended to read as follows:

III. The State of Wyoming, its officers, attorneys, agents and employees, be and they are hereby severally enjoined from storing or permitting the storage of water in Pathfinder, Guernsey, Seminoe, Alcova and Glendo Reservoirs otherwise than in ac-

prepared plans for, and has proposed the construction of, a new reservoir on the North Platte River near the town of Glendo, Wyoming, and (4) since 1940 the water supply of the North Platte River basin has been in excess of that which occurred during the period 1931-1940.

Whereas, the State of Colorado represents that the irrigated acreage in Jackson County, Colorado, in the year 1952 is 134,467 acres and that the Jackson County ranchers need to put additional land under irrigation in order to maintain their existing economy, but cannot safely engage in any project for the irrigation of additional land for fear of violation of the 1945 Decree.

Whereas, the parties have carried on extensive negotiations concerning the claim by Colorado for modification of the Decree in the course of which negotiations Colorado has repeatedly asserted that it must press for modification of the Decree because if it does not do so, it fears that it will be met with the objection that it has sat back and done nothing while the uses of water under the Kendrick project are established by the storage of water and the application of such stored water to the irrigation of Kendrick Project lands.

Whereas, the State of Nebraska takes the position that all matters growing out of the provisions of the Act of August 9, 1937 (50 Stat. 564-595) are matters which cannot affect the rights of the State of Nebraska as previously determined by the court, and that by the approval of this stipulation it is understood that the State of Nebraska does not recede from this position and does not concede that any developments on the Kendrick Project can ever affect the rights or position of the State of Nebraska.

Whereas, the State of Nebraska contends that there has been no substantial amount of increase in the flow of water into Nebraska through the North Platte River since the date of the entry of the Decree herein; and that the State of Colorado has not since said date increased its acreage of

land under irrigation from the North Platte River to the limit permitted by said Decree.

Whereas, the State of Wyoming takes the position that the Act of August 9, 1937 (50 Stat. 564-595) confers no right on the State of Colorado to increased water uses within the natural basin of the North Platte River in Colorado superior to any right to store or to divert water for the Kendrick Project in Wyoming; and the State of Wyoming, by the approval of this stipulation, does not concede the validity of any claim by Colorado based upon the said Act of August 9, 1937, or waive any right to oppose any claim by Colorado based thereon; and further, the State of Wyoming, by the approval of this stipulation, does not recognize, and it is Wyoming's position, that Colorado has no equitable right, as against Wyoming, to increased water uses in Colorado.

Whereas, the parties hereto desire to recognize the present conditions of water supply in the North Platte basin, but do not desire in any way to retreat from the legal positions taken by them based upon conditions considered by the Court in previous proceedings in this case.

Whereas, the construction of the Glendo Reservoir would provide storage for regulating flows in the North Platte River at Glendo to supply water for the irrigation of lands in the basin of the North Platte River in western Nebraska, and to supply water for the irrigation of lands in the basin of the North Platte River in southeastern Wyoming below Guernsey Reservoir, and would provide additional regulation of natural flow and storage water below Alcova Reservoir, and would improve efficiency in irrigation operations and would permit additional power production.

Whereas, it is expected that after recognizing all existing rights and other rights provided for in this stipulation in and to the use of North Platte River water, the natural flow waters impounded in Glendo Reservoir will be used to supply annually 25,000 acre feet of water for the irrigation of

lands in the basin of the North Platte River in western Nebraska, and to supply annually 15,000 acre feet of water for the irrigation of lands in the basin of the North Platte River in southeastern Wyoming below Guernsey Reservoir; provided, however, that it is not contemplated that the regimen of the natural flow of the North Platte River above Pathfinder Reservoir will be changed by the operation of Glendo Reservoir, or that the regimen of the natural flow of the North Platte River below Pathfinder Reservoir will be changed by such operations, except to the extent necessary to provide for such additional supply, and to permit operations in accordance with the provisions of Article XVII hereinafter set forth.

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED that after this stipulation becomes effective, the parties will file a joint motion with the United States Supreme Court, to which this stipulation shall be attached, requesting the Court to approve this stipulation and to modify and supplement the existing Decree of October 8, 1945, in the following particulars:

1. In Article I (a) of the Decree the figure "145,000" shall be substituted for the figure "135,000."

2. The following new Articles shall be added at the foot of the Decree:

#### XVI.

Whatever claims or defenses the parties or any of them may have in respect to the application, interpretation or construction of the Act of August 9, 1937 (50 Stat. 564-595) shall be determined without prejudice to any party arising because of any development of the Kendrick Project occurring subsequent to October 1, 1951.

#### XVII.

In the event that Glendo Reservoir is constructed, the following provisions shall be effective:

(a) The construction and operation of the Glendo Project shall not impose any demand on areas at or above Seminoe Reservoir which will prejudice any rights that the States of Colorado or Wyoming might have to secure a modification of the Decree permitting an expansion of water uses in the natural basin of the North Platte River in Colorado or above Seminoe Reservoir in Wyoming.

(b) The construction and operation of Glendo Reservoir shall not affect the regimen of the natural flow of the North Platte River above Pathfinder Dam. The regimen of the natural flow of the North Platte River below Pathfinder Dam shall not be changed, except that not more than 40,000 acre feet of the natural flow of the North Platte River and its tributaries which cannot be stored in upstream reservoirs under the provisions of the Decree may be stored in the Glendo Reservoir during any water year, in addition to evaporation losses on such storage, and, further, the amount of such storage water that may be held in storage at any one time, including carryover storage, shall never exceed 100,000 acre feet. Such storage water shall be disposed of in accordance with contracts to be hereafter executed, and it may be used for the irrigation of lands in the basin of the North Platte River in Western Nebraska to the extent of 25,000 acre feet annually, and for the irrigation of lands in the basin of the North Platte River in southeastern Wyoming below Guernsey Reservoir to the extent of 15,000 acre feet annually, provided that it shall not be used as a substitute for storage water contracted for under any existing permanent arrangements. The above limitation on storage of natural flow does not apply to flood water which may be temporarily stored in any capacity allocated for flood control in the Glendo Reservoir, nor to water originally stored in Pathfinder Reservoir which may be temporarily re-stored in Glendo Reservoir after its release from Pathfinder and before its delivery pursuant

ment, as may be decided upon from day to day by the manager of the government reservoirs, with such adjustments to be made by said manager from time to time as may be necessary to make as accurate a segregation as is possible.

