Supreme Court, U.S.
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No. 126, Original

In the Supreme Court of the United States

STATE OF KANSAS,

Plaintiff,

v.

STATE OF NEBRASKA AND
STATE OF COLORADO,

Defendants.

On Exceptions to the Report of the Special Master

SUR-REPLY OF PLAINTIFF STATE OF KANSAS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

RULE

OTHER AUTHORITIES

INTRODUCTION

As this case now comes to the Court, there are no exceptions taken to the Master's conclusions that Nebraska (1) violated the Compact in 2005-2006 and (2) caused at least $3.7 million in harm to Kansas. The only exceptions before the Court involve (1) whether and to what extent Kansas should be awarded remedies and relief beyond the Master's recommendation of $3.7 million for actual loss[1] and (2) whether the Master correctly found a mutual mistake in the FSS accounting procedures that would justify the Court rewriting the complex, detailed interstate agreement the parties negotiated 12 years ago.

With respect to remedies and relief, Kansas seeks disgorgement in excess of the $1.8 million the Master recommends, and possibly injunctive relief as well depending on the amount of disgorgement. The United States suggests that the Court should award the $1.8 million in disgorgement the Master recommends, but not more, and that injunctive relief is not necessary. Nebraska and Colorado oppose even $1 in disgorgement, and any form of injunctive relief. Regarding the accounting procedures, Kansas contends that the extraordinary legal remedy of judicially reforming the States' complicated agreement is not warranted, while Nebraska presses the Court to rewrite the agreement to Nebraska's satisfaction, and

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[1] Nebraska does not challenge the Master's $3.7 million recommendation, and apparently is now willing to pay that amount to Kansas. *See* Neb. 7; Neb. Reply 40.

the United States suggests that the Master's conclusions are reasonable on the facts in the record.

Kansas' primary concern is that an award of $1.8 million in disgorgement is insufficient to stabilize the Compact and deter future breaches when even the Master suggested that Nebraska may have gained at least $25 million (and Kansas believes more) from its breaches in 2005-2006. Further, a primary component of Nebraska's approach to achieving compliance with the Compact over the years has been to try to rewrite the rules so that Nebraska's consumption is *calculated* to be lower, rather than taking steps to *actually reduce* its water usage. Nebraska's accounting procedures claim here is such a maneuver, and one the Court should reject.

Before turning to the legal merits of this dispute, Kansas responds to a few of Nebraska's more egregious factual misstatements and mischaracterizations. *First*, Nebraska falsely accuses Kansas of bringing this lawsuit to generate revenue. Yes, Kansas seeks money damages and disgorgement as remedies for Nebraska's established violations of the Compact, but it does so to compensate for its losses *and* to stabilize the Compact and deter future violations by Nebraska. Nebraska has proven time and again that if left unchecked it will use more water than it is entitled to under the Compact. As the predominantly upstream state, Nebraska always has the upper hand in this respect, and Kansas has very limited leverage or ability to protect its rights and interests. Yet Nebraska disparages Kansas' efforts to hold Nebraska to the Compact, mischaracterizing Kan. Stat. Ann. § 82a-1804 as somehow being the cause of or

motivation for this litigation. Neb. Reply 1. The statute had no such purpose or effect.

Second, Nebraska claims that the states "understood it would take several years" to comply with the FSS. Neb. Reply 2. The Special Master soundly rejected this position, Rep. 90-93; Rep. 93 ("I find no basis ... [in the FSS] to conclude that Nebraska has been absolved of any part of its overuse."); *see also* Rep. 106 ("the FSS created no such 'grace period' from Compact compliance *per se*"), and Nebraska concedes it exceeded its Compact allocations *every year* from 2003 through 2006. Neb. Reply 2.

Third, Nebraska makes the excuse that 2006 "was a Water-Short Year due to an unprecedented drought marked by conditions worse than the Dust Bowl." Neb. Reply 2. Yet Kansas complied with its Compact obligations in the Upper Basin that year, upstream of Nebraska. Indeed, Kansas has *never* been out of compliance with the FSS, drought conditions or not.

I. TO ENSURE THAT NEBRASKA WILL COMPLY WITH THE COMPACT, THE COURT SHOULD IMPOSE STRONGER AND MORE EFFECTIVE REMEDIES THAN THE MASTER RECOMMENDS.

A. Disgorgement Of A Significant Amount Of Nebraska's Gains Is Necessary To Stabilize The Compact And Deter Future Violations.

The Master, the United States, and Kansas all agree that Nebraska's knowing violations of the Compact warrant some amount of disgorgement. Kansas only takes exception to the *amount* of disgorgement the Master recommends—$1.8 million,

which is a "small" amount relative to Nebraska's much larger gains, gains the Master suggested were likely at least $25 million. Rep. 177, 179; Rep. Errata (dated Nov. 19, 2013); Rep. Updated Errata (dated March 25, 2014).

To be clear, the record supports disgorging *at least* $1.8 million of Nebraska's profits, and the United States supports the Master's recommended amount on this record. Kansas respectfully disagrees, however, with both the Master and the United States that $1.8 million is sufficient because that amount is simply too small to stabilize the Compact and deter future violations.

The Master's recommendation does not accurately reflect the seriousness of Nebraska's past violations or the real potential that Nebraska will violate the Compact in the future. In arriving at $1.8 million, the Master gave Nebraska far too much credit for its belated, litigation-motivated efforts to comply, and downplayed Nebraska's historically anemic attempts to comply. Even the Master acknowledged that Nebraska did not start "turning over a new leaf" until 2007, Rep. 180—*after* the Compact violations at issue here occurred, and after *four consecutive years* of Nebraska's exceeding its allocations.

The Master's ultimate recommendation effectively whitewashes Nebraska's repeated and knowing Compact violations, undervalues the difficulty of quantifying Kansas' actual losses, and discounts Nebraska's economic incentive to continue to exploit its upstream position at Kansas' expense, particularly in dry years. Disgorgement of $1.8 million, when Nebraska stands to gain upwards of $25 million, is

insufficient to stabilize the Compact and discourage Nebraska from taking advantage of its upstream position in the future.

Kansas requests that the Court provide a clear methodology for determining the appropriate amount of disgorgement in particular cases by pegging the amount of disgorgement to estimated actual loss. This is not to say that disgorgement should be a fixed amount or even a fixed ratio relative to losses in every case; rather, the facts of each case should determine the amount of disgorgement. *See Texas v. New Mexico*, 482 U.S. 124, 131 (1987) ("principles of equity" should be exercised "always with reference to the facts of the particular case") (citing *Haffner v. Dobrinski*, 215 U.S. 446, 450 (1910)). Clarifying the method by which to calculate disgorgement would greatly enhance the predictability of the remedy and maximize its deterrent effect in original cases.

Given Nebraska's knowing violations here, a disgorgement award of up to roughly $25 million (the total gain the Master suggested Nebraska may have obtained) is readily justified, and an award of $11.1 million (three times Kansas' estimated loss of $3.7 million, an amount which is uncontested in this Court) for a total award of $14.8 million, would be *entirely* appropriate, *see* Kan. 56-58, not "arbitrary and capricious," not punitive in nature, and well within this Court's equitable authority. *See Texas v. New Mexico*, 482 U.S. at 131; *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 491 (2008) ("legal codes from ancient times through the Middle Ages hav[e] called for multiple damages for certain especially harmful acts"). And Nebraska has been on notice that "the power of equity

to provide complete relief" may include "looking to upstream gain under appropriate circumstances." Special Master Littleworth's Second Report, *Kansas v. Colorado*, No. 105, Orig. (1997); *see also Texas v. New Mexico*, 482 U.S. at 132 ("the Compact ... does not prevent our ordering a suitable remedy, whether in water or money").

Any award less than or equal to the more than $25 million that Nebraska gained from its Compact violations would not be arbitrary or capricious: such a remedy would simply strip Nebraska of its ill-gotten gains, the essential purpose of the disgorgement remedy. *See Snepp v. United States*, 444 U.S. 507, 515-516 (1980) (per curiam) (because disgorgement "reaches only funds attributable to the breach" of duty, it does not "saddle" a violator "with exemplary damages out of all proportion to his gain"); Rest. (Third) Restitution § 51 cmt. k ("Disgorgement of wrongful gain is not a punitive remedy."). Even in the punitive damages context, which Kansas recognizes this case is not, the Court has stated that an "award of 'more than 4 times the amount of compensatory damages,'" *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 581 (1996) (quoting *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 23-24 (1991)), was not "grossly excessive" or "in the zone of arbitrariness" for constitutional purposes, *id.* at 568. *See also State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 413 (2003).

As in other contexts, treble damages here would effectively serve the purposes of disgorgement—to remedy past injuries where damages are uncertain and to stabilize the Compact going forward—by deterring future noncompliance. *See* Kan. 56-58. The three-to-one

ratio Kansas suggests is by no means binding when this Court exercises its equitable discretion, but that ratio would be an objective, historically grounded, and thus legitimate rule of thumb for determining a reasonable and effective amount of disgorgement in cases like this. *Cf., e.g., Am. Soc'y of Mech. Engineers, Inc. v. Hydrolevel Corp.*, 456 U.S. 556, 575 (1982) (although "treble damages were designed in part to punish past violations of the antitrust laws" they "were also designed to deter future antitrust violations"; "created primarily as a remedy for the victims of antitrust violations"); *Pfizer, Inc. v. Gov't of India*, 434 U.S. 308, 314 (1978) (purpose of Clayton Act treble damages was to deter violators and deprive them of "the fruits of their illegality," and "to compensate victims of antitrust violations for their injuries") (internal quotation marks omitted). The Master's finding that "Nebraska's gain was ... very much larger than Kansas' loss, likely by more than several multiples," Rep. 178, supports disgorging *at least* three times Kansas' loss on the facts here.

At the very least, a reasonable starting point for determining the appropriate disgorgement in this case is a 1:1 loss-to-disgorgement ratio, that is, a total award of $7.4 million—$3.7 million in damages and $3.7 million in disgorgement. *Cf. Exxon*, 554 U.S. at 515 (upholding a 1:1 ratio for punitive-to-compensatory damages under maritime law). Kansas' estimated actual losses provide a natural "baseline" for determining an amount of disgorgement in this case: Because Nebraska knowingly "exposed Kansas to a substantial risk that Nebraska's compliance measures would not ensure compliance if the weather did not cooperate," Rep. 130, the Court should reduce

Nebraska's net gains from violating the Compact (*i.e.*, Nebraska's gains *after* paying damages) by at least as much as Kansas' estimated losses. Calibrating the amount of disgorgement using Kansas' estimated losses—dollar for dollar—would be more likely to deter future violations than the fractional disgorgement the Master recommends (less than half of Kansas' actual losses).

In any event, and no matter what amount of disgorgement the Court decides to award, Kansas beseeches the Court to reiterate in its written opinion the Master's admonition to Nebraska that "in the event of a relapse after this date, Nebraska will have a difficult time parrying a request for disgorgement even in the absence of a deliberate breach," Rep. 183, because the "determination of the extent of disgorgement in an action for a breach occurring after 2007 will be made in the absence of" any benefit of the doubt being given to Nebraska. Rep. 180.

B. If The Court Does Not Order Nebraska To Disgorge A Significant Amount Of Its Gains, An Order To Comply Would Be Necessary To Deter Future Compact Violations.

Far from "introduc[ing] additional confusion into the management of the Basin," Neb. Reply 31, an order to comply would help stabilize the relationship between sovereigns and enhance the effectiveness of future litigation as a deterrent to violating the Compact. Disgorgement also would serve these purposes, and Kansas recognizes that these two remedies are interrelated. Thus, if the Court orders disgorgement of a significant portion of Nebraska's gains, that is, some

amount in the range of $3.7 million to $25 million, an order to comply may add little "to the mix," Rep. 183, and therefore be unnecessary. But if the Court chooses not to order more disgorgement than the Master recommends, an order to comply would be both necessary and appropriate. Such an order would not be "meaningless," Neb. Reply 30-31; it would signal to Nebraska the serious consequences of any future Compact violations.

In the past, Nebraska's promises to comply with the Compact and the FSS have not resulted in Nebraska actually meeting its Compact obligations. An order from this Court directing Nebraska to comply is much stronger medicine, an obligation Nebraska likely would respect.[2]

An order to comply also would enhance the tangible incentives for Nebraska's compliance by making contempt proceedings available in the event of future violations. Contempt proceedings would not provide an end-run around this Court's procedural requirements, as Colorado suggests, Colo. Reply 12, because the Court always controls the invocation and scope of its original jurisdiction. *See* Sup. Ct. R. 17. Such proceedings would, however, shift the burden to Nebraska to "show

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[2] Kansas is aware that Nebraska recently enacted legislation purporting to address water management in Nebraska, including the Republican River Basin. 2014 Neb. Laws L.B. 1098, *available at* http://nebraskalegislature.gov/FloorDocs/Current/PDF/Final/LB1098.pdf. This legislation may (and Kansas certainly hopes it does) improve Nebraska's compliance record going forward. But even with the new law, there is no downside to entering an order that Nebraska comply with its obligations under the Compact and the FSS.

cause" why it should not be held in contempt for violating the Compact. *See Wyoming v. Colorado*, 309 U.S. 572, 573 (1940); *Maggio v. Zeitz*, 333 U.S. 56, 75-77 (1948); *Lamb v. Cramer*, 285 U.S. 217, 220 (1932).

Moreover, the Court has issued orders to comply in similar interstate water disputes. For example, in *Texas v. New Mexico*, the Court ordered New Mexico to "comply with Article III(a) of the Pecos River Compact and to meet the obligation thereof by delivering water to Texas at the state line as prescribed in this Decree ...." 485 U.S. 388, 389 (1988). In *Kansas v. Colorado*, the Court "enjoined [Colorado] to comply with Article IV-D of the Arkansas River Compact by not materially depleting the waters of the Arkansas River, as defined in Article III of the Compact ...." Special Master Littleworth's Fifth And Final Report, *Kansas v. Colorado*, No. 105, Orig., Vol. II, at 2-3 (2008); *see also Kansas v. Colorado*, 556 U.S. 98 (2009). To be sure, those orders required New Mexico and Colorado to meet specific obligations imposed by the Court, but the orders also undeniably enjoined New Mexico and Colorado to comply with their compact obligations.

Under Nebraska's reasoning the Court's orders to comply in those cases were "meaningless." Neb. Reply 30-31 & n.4. While that view is in keeping with Nebraska's general disrespect for its Republican River Compact obligations, Nebraska's view is unacceptably dismissive of this Court's orders, which are more than friendly advice to the parties.

Finally, regarding the standard for determining whether injunctive relief is proper here, no one defends in this Court the Master's application of the four-part

test for preliminary injunctions. Even if the Court does not order Nebraska to comply with the Compact and the FSS, the Court's written opinion should disavow any reliance on that four-part test in this context, not least because the traditional preliminary injunction test does not fit the unique context of original jurisdiction disputes between sovereign States, as Kansas argued in its opening brief. Kan. 37-40.

II. THE COURT SHOULD REJECT THE MASTER'S RECOMMENDATION TO REWRITE THE FSS ACCOUNTING PROCEDURES, AND INSTEAD LEAVE THAT TASK TO THE RRCA.

A recurring theme over the years is that Nebraska generally does not take proactive steps to comply with the Compact and the FSS. Instead, Nebraska's patterns are to (1) take hasty, last-minute (indeed too-late) measures to the detriment of federal irrigation projects and those they serve, *see* Rep. 130-131, and (2) try to change the rules by which Nebraska's consumption is calculated to effectively lower the bar for Nebraska's compliance. Kansas' only other exception to the Master's report deals with the second pattern.

A. Reformation Is An Extraordinary Legal Remedy That Should Not Be Used In This Case.

As detailed in Kansas' opening brief, reformation is an "extraordinary remedy," *Mark Andy, Inc. v. Hartford Fire Ins. Co.*, 229 F.3d 710, 716 (8th Cir. 2000), that "will not be granted, unless the proof of mutual mistake be of the clearest and most satisfactory character," *Philippine Sugar Estates Dev. Co. v. Gov't*

of Philippine Islands, 247 U.S. 385, 391 (1918) (internal quotation and citations omitted). Reformation is only available to correct unintended drafting errors where the parties reached an agreement but "failed to express it correctly in writing." Rest. (Second) of Contracts § 155 cmt. a; *see also Schongalla v. Hickey*, 149 F.2d 687, 690 (2d Cir. 1945) (reformation is not used to change an agreement's terms, "it merely declares what those terms were"). To obtain reformation, Nebraska must show by clear and convincing evidence "not only that mistake ... exists, but exactly what was really agreed upon between the parties." *Loewenson v. London Mkt. Cos.*, 351 F.3d 58, 62-63 (2d Cir. 2003).

Reformation is unavailable here because that remedy "applies only where *both parties are mistaken* with respect to the reduction in writing." Rest. (Second) of Contracts § 155 cmt. b (emphasis added); *see also Hearne v. Marine Ins. Co.*, 87 U.S. 488, 490-91 (1874) ("The mistake must be mutual and common to both parties to the instrument. It must appear that both have done what neither intended."). Here, there is no dispute that Colorado, at least, was aware in 2002-2003 (when the FSS was negotiated and adopted) that the accounting procedures could charge Nebraska with consumption of imported water supply under some circumstances. Neb. Reply at 17-18; Tr. 676:5-677:23 (Schreüder), 678:7-679:1 (Schreüder), 717:24-718:10 (Schreüder), 721:7-16 (Schreüder), 727:12-728:3 (Schreüder), 731:5-24 (Schreüder); 2013 Tr. 125:13-127:18 (Schreüder), 176:10-177:10 (Schreüder); C01 at 4; C05 at 1. Colorado's expert explained: "[t]he Modeling Committee similarly knew that the model was nonlinear *and evaluated the contingencies of that*

in determining the current approved procedure." J8 at 1402:9-24 (Schreüder) (emphasis added).

B. The States Adopted A Reasonable Method To Avoid Counting The Consumption Of Imported Water.

Although the States were unable to measure or otherwise quantify any consumption of imported water supply in the Basin, they developed the accounting procedures and the Model to calculate what mattered under the Compact: the depletion of stream flow and the imported water supply credit. The States did not attempt to identify or quantify consumption of imported water supply, *see* J6 at 79:5-80:7 (Cookson); instead, the States agreed to give Nebraska a credit for "accretions to stream flow due to water imports from outside of the Basin." FSS § II, Rep. App. E, at E11. This was a reasonable solution to the concern that the Model's known nonlinearity could result in charging Nebraska for consumption of imported water supply under some circumstances.

Yet now, without even attempting to identify or quantify the imported water supply, the Master erroneously accepted Nebraska's and Colorado's argument (the latter joining the party belatedly, after making a side deal with Nebraska during this litigation) that the Model counts consumption of imported water as part of Nebraska's computed beneficial consumptive use because it computes more depletion when imported water is taken into account.[3]

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[3] Kansas does not concede that the current accounting procedures charge Nebraska with consumption of imported water. The Master

Importantly, the Model was not designed to calculate the consumption of imported water; rather, it was designed to account for Nebraska's potential consumption of imported water by estimating the "accretions to stream flow due to water imports," and

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assumes that Nebraska is charged with consumption of imported water based on differences between "runs" of the Model. Because the States' experts were immediately aware of the non-linear nature of the Model due to stream drying, *see* Tr. J8 at 1388:25-1389:3 (Schreüder), the fact that the Model would calculate more depletion when there is more water in the streambeds to deplete (*i.e.*, when imported water was included, or "on") was equally obvious. The States' experts knew this, accepted it, and accounted for it by giving Nebraska an imported water supply credit. *See* FSS § II, Rep. App. E, at E11; *see also* Neb. Reply at 7; J6 at 79:5-80:7 (Cookson).

The Master incorrectly concluded that imported water was being depleted from the streambeds when imported water was turned "on" in the runs of the Model. The Model's behavior in those runs, however, merely means more water entered the streambeds, but Nebraska has never proven (and it may not be possible to prove) whether that additional water comes from groundwater sources in the Basin or from imported water originating outside the Basin. Thus, the Master read too much into the differences in the runs of the Model, and jumped to the erroneous conclusion that any additional water in the streambeds with the imported water supply "on" necessarily came from sources outside the Basin. Instead, whether, and if so to what extent, imported water ever actually ends up in the streambeds was not (and is not) known. That is important because only if imported water ends up in the streambeds could it be counted as part of Nebraska's computed beneficial consumptive use. *See* FSS § II, Rep. App. E, at E9 (defining "computed beneficial consumptive use" as "*stream flow* depletion resulting from the activities of man") (emphasis added). Again, for all of these reasons, the States gave Nebraska the imported water supply credit in the FSS—to avoid charging Nebraska with the consumption of imported water.

by giving Nebraska a credit for that amount. *See* FSS § II, Rep. App. E, at E11.

Thus, Nebraska is wrong when it asserts that the procedures expand the geographic scope of the Compact by possibly counting the consumption of imported water originating outside the Basin against Nebraska's computed beneficial consumptive use. *See* Neb. Reply 12-14. The FSS accounting procedures and the Model simply reflect the States' agreed application of the Compact in response to Nebraska's development of large-scale groundwater pumping and the uncertainties of measuring the source of that water. Indeed, why would the parties have agreed to an *imported water supply credit* for Nebraska unless they intended to comply fully with the Compact by not counting the use of imported water against Nebraska?

The Court should reject the Master's recommendation to rewrite this interstate agreement, just as it has done in other cases where States negotiated a reasonable agreement to implement a Compact or other such document whose terms were uncertain. For example, in *New Hampshire v. Maine*, 426 U.S. 363 (1976), this Court considered a dispute over a state boundary that had been determined based on a 1740 decree of King George II. *Id.* at 367. Before trial, the States' attorneys general "agreed upon a settlement and jointly filed a Motion for Entry of Judgment By Consent of Plaintiff and Defendant, together with a proposed consent decree, based on a stipulated record." *Id.* at 365-366. The New Hampshire legislature opposed the settlement, and both States filed exceptions. *Id.* at 364, 365 n.3.

The Court nonetheless approved the settlement, holding that "there is nothing to suggest that the location of the 1740 boundary agreed upon by the States is wholly contrary to relevant evidence, and we therefore see no reason not to give it effect, even if we would reach a different conclusion upon the same evidence." *Id.* at 369. The Court further explained that *Vermont v. New York*, 417 U.S. 270 (1974) (a case the United States cites in this case, U.S. 32), "does not proscribe the acceptance of settlements between the States that merely have the effect, as here, of reasonably investing imprecise terms with definitions that give effect" to those terms. *New Hampshire v. Maine*, 426 U.S. at 369.

The same reasoning applies in this case. The States jointly presented the FSS accounting procedures to Master McKusick in 2003 as a reasonable settlement consistent with all of the provisions and requirements of the Compact, some of which were necessarily general or subject to interpretation (for example, the Compact does not even mention "imported water" or "groundwater pumping"). In fact, counsel for Nebraska declared in 2003 that the States' had reached "compromise language," that the imported water supply is "determined expressly or by implication," and that the imported water supply ultimately "comes out in the wash," *i.e.*, balances out. J6 at 79:5-80:7 (Cookson). Master McKusick recommended that the Court adopt the FSS and its procedures, and the Court did so.[4] There was no claim in 2003 that the parties

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[4] Unlike Nebraska and Colorado, the United States agrees with Kansas that "the RRCA Accounting Procedures ... are part of the FSS." U.S. 8.

had agreed to anything that violated the terms of the Compact.

Like the agreement in *New Hampshire v. Maine*, the FSS accounting procedures are a reasonable effort to interpret and implement the terms of a document that contained ambiguities and uncertainties (here, the Compact; there, the decree of King George II). Indeed, the FSS accounting procedures are "not wholly contrary to relevant evidence," 426 U.S. at 369; they are consistent with the evidence and "merely have the effect ... of reasonably investing imprecise terms with definitions that give effect to" the Compact. *Id.* Thus, here as in *New Hampshire v. Maine*, the States' agreement in 2002 should be honored "even if [the Court] would reach a different conclusion upon the same evidence." *Id.* And just as the Court rejected New Hampshire's subsequent, belated effort to change the terms of the boundary settlement, the Court should reject Nebraska's belated effort to change the terms of the complex, interstate agreement at issue here. *Cf. New Hampshire v. Maine*, 532 U.S. 742, 756 (2001) ("What has changed between 1976 and today is New Hampshire's interpretation of the historical evidence concerning the ... decree").

CONCLUSION

Kansas requests that the Court adopt the Master's recommendation to award disgorgement, but asks that the Court *increase the amount* to a level sufficient to stabilize the Compact and deter future violations by Nebraska. In the event the Court declines to increase disgorgement beyond the Master's recommendation, Kansas requests that the Court include in its decree an injunction directing Nebraska to comply with the Compact and the FSS. In any event, Kansas opposes the Master's recommendation that the Court rewrite the detailed accounting procedures to which the parties agreed in 2002. The proper forum for amending the accounting procedures is the RRCA, not this Court.

Respectfully submitted,

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