

Appendix C

Amendment of the 1953 Order to Provide for Use of Glendo Storage Water

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1996

STATE OF NEBRASKA, Plaintiff,

v.

STATE OF WYOMING, et al., Defendant.

BEFORE THE HONORABLE OWEN OLPIN
SPECIAL MASTER

STIPULATION

AMENDMENT OF THE 1953 ORDER
TO PROVIDE FOR USE OF GLENDO STORAGE
WATER

COME NOW, the States of Nebraska,
Wyoming, Colorado and the United States of America and
hereby stipulate and agree to the amendment of the *1953
Order Modifying and Supplementing Decree of October 8,
1945*, and present this Stipulation, hereinafter referred to as

the *Glendo Stipulation*, for approval by the Special Master and for his recommendation to the United States Supreme Court for entry of an Order approving this *Glendo Stipulation* and amending the 1945 *Decree*, in accordance with the terms hereof.

WHEREAS, on January 14, 1953, the parties to this proceeding entered into a stipulation, hereinafter referred to as the *1953 Stipulation*, in part, to provide for the construction, operation and limitations on the use of water stored in a proposed North Platte River reservoir known as Glendo Reservoir; and

WHEREAS, the *1953 Order Modifying and Supplementing Decree of October 8, 1945, Nebraska v Wyoming*, U.S. Supreme Court, No. 5 Original (October 8, 1945), hereinafter referred to as the *1953 Order*, adopted the 1953 Stipulation of the parties and modified and supplemented the *1945 Decree* to, among other things, allow for the construction and operation of Glendo Reservoir on the North Platte River in Wyoming, and provided for the use of the waters stored therein; and

WHEREAS, pursuant to the *1953 Stipulation*, the 1953 Order authorized the use of 15,000 acre-feet of water stored in Glendo Reservoir for Wyoming and 25,000 acre-feet of water stored in Glendo Reservoir for Nebraska and imposed certain limitations on the States of Nebraska and Wyoming in the use of the storage waters from Glendo Reservoir; and

WHEREAS, the *1953 Stipulation* limited Nebraska's use of the 25,000 acre-feet of Glendo storage water to use for irrigation purposes in the basin of the North Platte River in western Nebraska, and limited Wyoming's use of the 15,000 acre-feet of Glendo storage water to use for irrigation purposes in southeastern Wyoming below

Guernsey Reservoir; and

WHEREAS, the *1953 Stipulation* further limited Nebraska's and Wyoming's use of the Glendo storage water in that it prohibited the use of such water as a substitute for storage water contracted under any existing permanent arrangement; and

WHEREAS, in the present controversy between the parties, Nebraska has claimed that Wyoming and the United States have violated the limitations on Wyoming's use, previously stipulated by the parties and incorporated in the *1953 Order*, and Wyoming has claimed that Nebraska and the United State have violated the limitations on Nebraska's use, previously stipulated by the parties and incorporated in the *1953 Order*; and

WHEREAS, the operation of Glendo Reservoir for approximately the last 40 years has demonstrated that certain restrictions imposed on the parties by virtue of the *1953 Stipulation* are not necessary, but instead operate as an impediment to the efficient use of the waters stored therein; and

WHEREAS, new contracts and renewal of existing contracts with the Bureau of Reclamation for the use of storage waters in Glendo Reservoir will require compliance by the Bureau of Reclamation with the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA) and other federal laws; and

WHEREAS, while Nebraska, Wyoming and the United States do not believe that any revisions to the federal authorization for the Glendo project are necessary to implement this *Glendo Stipulation*, Nebraska and Wyoming have agreed to work cooperatively with the United States Department of Interior to secure such revisions, if any should

become necessary; and

WHEREAS, the proposal contained herein for the operation and use of storage waters in Glendo Reservoir does not affect Colorado's apportionment under the *1945 Decree* or the *1953 Order*, and neither Colorado nor the United States opposes the adoption of this *Glendo Stipulation* by the Court.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, following execution of this *Glendo Stipulation* by each of the parties, the parties will file a joint motion with the Special Master to recommend the entry of an Order by the United States Supreme Court approving this *Glendo Stipulation* and modifying the *1945 Decree*, as amended in the *1953 Order*, as follows:

1. Article XVII(b) of the *1945 Decree*, which was added thereto in the *1953 Order Modifying and Supplementing Decree of October 8, 1945*, shall be deleted and the following substituted:

- (b) The operation of Glendo Reservoir shall not affect the regimen of the natural flow of the North Platte River except that no 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 this decree may be stored in 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 executed or to be

hereafter executed in compliance with federal law, and may be used, in accordance with the terms of this paragraph XVII(b), for any beneficial purpose in Nebraska within the Platte River Basin to the extent of 25,000 acre-feet annually and for any beneficial purpose in Wyoming within the Platte River Basin to the extent of 15,000 acre-feet annually. The above limitation on storage of natural flow does not apply: 1) to flood water which may be temporarily stored in any capacity allocated for flood control in the Glendo Reservoir; 2) 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; 3) to Inland Lakes account water temporarily stored in accordance with the U.S. Supreme Court's Order of April 20, 1993; or 4) to water which may be impounded behind Glendo Dam, as provided in the Bureau of Reclamation Definite Plan Report for the Glendo Unit, Wyoming dated December 1952, as revised through December 1959 (Glendo Definite Plan Report) for the purpose of creating a head for the development of water power.

2. With Glendo Reservoir storage supplies, each state may substitute or supplement quantities of storage water obtained under other contractual arrangements. Subject to contractual arrangements with the United States Bureau of Reclamation, including any required Endangered Species Act and NEPA compliance, each state shall also enjoy unrestricted use of its respective storage allocation in Glendo Reservoir, so long as

the use is below Glendo Reservoir and within the Platte River Basin.

3. Glendo Reservoir storage water may be consumptively used in Wyoming by exchange or other means, upstream of Glendo Reservoir under the terms of this paragraph. For every two acre-feet of Glendo storage water diverted upstream of Glendo Reservoir pursuant to such an exchange, all of which may be fully consumed, an additional acre-foot of Wyoming's Glendo storage allocation shall be contracted as the same time for storage and release from Glendo Reservoir and passed through Guernsey Reservoir to the North Platte River. Except as may be modified in accordance with paragraph 4 below, or by agreement of the parties, such additional water shall be released from the reservoir at the same time and at a rate proportionate to the diversion of the water contracted for use upstream from Glendo Reservoir during the irrigation season. During the non-irrigation season, due to operational constraints of the outlets at Guernsey Reservoir, such additional water will be held in the Glendo account and be released prior to May 1st as may be operationally practical. Except as provided in paragraph 4 below, once released, such additional water shall be considered natural flow water for purposes for the 75:25 apportionment specified in Paragraph V of the *1945 Decree*.

4. If the valid exercise or enforcement of federal law or authority requires Wyoming or a water user within Wyoming to cause the release of a portion of Wyoming's Glendo allocation for environmental purposes downstream of Glendo Reservoir, the additional water contracted and released under paragraph 3 above, may be dedicated to and used for that purpose. Any water released pursuant to such requirement shall not be considered natural flow but shall be administered and protected as storage water in accordance with state law within both Wyoming and Nebraska until used for its intended purposes.

5. Storage water in Glendo Reservoir from either state's allocation may be used for fish and wildlife purposes downstream of Glendo Reservoir under contractual arrangements with the United States Bureau of Reclamation, subject to approval of Wyoming for contracts for water from Wyoming's storage allocation and subject to approval of Nebraska for contracts for water from Nebraska's storage allocation. Any water released pursuant to such agreement shall not be considered natural flow but shall be administered and protected as storage water in accordance with state law within both Wyoming and Nebraska until used for its intended purposes.

IT IS FURTHER STIPULATED AND AGREED, that no other modification of the *1945 Decree* is required to implement the terms of this *Glendo Stipulation*, and that Nebraska and Wyoming will work together and jointly cooperate with the United States Department of Interior to implement this agreement and to secure revisions to the federal authorization for Glendo Reservoir, if necessary.

IT IS FURTHER STIPULATED AND AGREED, that upon entry of an order adopting this *Glendo Stipulation* and amending the *1945 Decree* in accordance with the terms hereof, Nebraska will move to dismiss, with prejudice, Count II of its Amended Petition in this case and Wyoming will move to dismiss, with prejudice, its second and third counterclaims and its second and third cross claims herein.

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DATED this 8 day of April, 1998
Respectfully submitted,

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