Appendix E

Stipulation Among the State of Wyoming, The State of Nebraska, and the United States Relating to the Allocation of Water during Periods of Shortage

No. 108, Original

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 AMONG THE STATE OF WYOMING, THE STATE OF NEBRASKA, AND THE UNITED STATES RELATING TO THE ALLOCATION OF WATER DURING PERIODS OF SHORTAGE

WHEREAS, the State of Wyoming claims in its Amended Petition filed on February 18, 1994, that the United States is violating the equitable apportionment established by the Court in the 1945 Decree in *Nebraska v.*

Wyoming, 325 U.S. 665 (1945), as modified, 345 U.S. 981 (1953), by allocating storage in a manner which (a) upsets the equitable balance on which the apportionment of natural flow was based, (b) results in the allocation of natural flow contrary to the provisions of the Decree and contrary to the equitable apportionment and (c) promotes inefficiency and waste of water contrary to federal and state law,

WHEREAS, the United States denies the claims of the State of Wyoming and maintains that the United States allocates storage water in a manner that does not upset the equitable balance on which the apportionment of natural flow was based and is fully consistent with the 1945 Decree, as amended, and all other laws, and

WHEREAS, the undersigned parties desire to resolve this matter by jointly agreeing to a method of allocation of water during periods of shortage;

NOW THEREFORE IT IS STIPULATED AND AGREED THAT:

A. Decree Modification.

No modification of the Decree to implement this agreement is necessary.

B. Allocation Method.

The Bureau of Reclamation, under its existing contractual authorities, shall utilize the following procedures and guidelines when allocating storage water from Pathfinder Reservoir, Guernsey Reservoir, and the Inland Lakes during periods of shortage:

1. Assessment of the Need to Allocate Storage:

a. At the beginning of each new water year (October 1), the Bureau of Reclamation shall determine the amount of water stored in the reservoirs, assess probable inflow conditions and contrast forecasted water supply against approximate irrigation demand for the year of 1,100,000 acre-feet to make an initial assessment of the likelihood of the need to allocate storage during the subsequent irrigation season. The Bureau shall advise the States of Wyoming and Nebraska by October 31 as to whether there may be a need to allocate storage.

b. During the first week of February, March, April, May, and June of a water year, the Bureau of Reclamation shall determine the amount of water stored and the forecasted inflow through July, based on snowmelt runoff forecasts, and contrast the forecasted supply against the approximate irrigation demand of 1,100,000 acre-feet to further assess the need to allocate storage during the subsequent irrigation season. The Bureau shall advise whether there may be a need to allocate storage within 7 days of the first of each month, using the following criteria:

(1) If the forecasted supply is 900,000 acre-feet or less, the Bureau will advise that an allocation is expected.

(2) If the forecasted supply is between 900,000 and 1,100,000 acre-feet, the Bureau will advise that there may be a need for an allocation, based an existing data.

The methodology for determining the "forecasted supply" is described in a Technical Appendix, attached hereto.

2. Declaration of an Allocation of Storage Water

An allocation will be declared if, at the time of the first release of Guernsey Ownership or Pathfinder Ownership for delivery by diversion at or above Tri-State Diversion Dam, the forecasted supply is less than 1,100,000 AF.

3. Supply to be Allocated

The supply to be initially allocated upon the date of allocation is the sum of:

1. The Pathfinder Ownership;

2. The Guernsey Ownership;

3. The contents of the Inland Lakes (Lake Alice, Little Lake Alice, Lake Winters Creek, and Lake Minatare);

4. Project water from drains (Akers Draw, Sheep Creek, Dry Spotted Tail, Wet Spotted Tail, and Tub Springs);

5. Diversions that occur on days when natural flow is released from Guernsey Dam for the North Platte Project between May 1 and the date of the initial allocation; and

6. Storage delivered to the State Line for North Platte Project contractors below Tri-State Diversion Dam during the period of May 1 to the date of the initial allocation. The initial allocation will be made as described in the technical appendix.

4. Storage Water Allocation - Percentages

When an allocation is declared and the supply in item 3 above is allocated, the initial allocation shall be made as described in Technical Appendix II A and subsequent allocations of increased supplies shall be made as described in II B.

5. Storage Water Allocation to Contractors

The determination as to how each state's allocation in paragraph 4 above shall be apportioned to the contractors in the respective states shall be made by the Bureau of Reclamation, in consultation with the respective contractors and state officials and in accordance with the individual contracts. The process of the initial allocation and subsequent allocations of increased supplies is given in detail in the technical appendix.

6. Reallocation Of Unused Storage Water

If a particular contractor advises the Bureau of Reclamation in writing it will not utilize its entire allocation, the Bureau of Reclamation, in consultation with the contractor and the appropriate state officials, will allocate that quantity of water to all other contractors in the same state. If the remaining contractors in the state determine they do not need the water, the Bureau of Reclamation, in consultation with the appropriate state officials, may allocate that quantity of water to all contractors in the other state.

7. Carryover and Utilization of Unused Storage Water

Any storage water allocated to, but not utilized by any contractor during an allocation period shall be considered project water and distributed in the typical manner the following irrigation season, unless the Bureau of

Reclamation again declares the need to allocate water. In the event of consecutive allocation years, any contractor may carry over from the unused portion of its allocation to the following consecutive allocation year, the greater of the remaining balance carried over from the previous year's allocation or the water saved during the current year. The technical appendix contains an example of the carryover process.

DATED this 17th day of December, 1998

Respectfully submitted,

FOR THE STATE OF WYOMING:

/s/ Gay V. Woodhouse
GAY V WOODHOUSE
Attorney General of Wyoming

/s/ Thomas J. Davidson
THOMAS J. DAVIDSON
Deputy Attorney General
Counsel of Record for the State of Wyoming
123 Capitol
Cheyenne, Wyoming 82002

/s/ James R. Montgomery
JAMES R. MONTGOMERY
Special Assistant Attorney General for Wyoming
Moses, Wittemyer, Harrison & Woodruff, P.C.
P.O. Box 1440
Boulder, Colorado 80306-1440

FOR THE STATE OF NEBRASKA:

/s/ Don Stenberg
DON STENBERG
Attorney General of Nebraska
2115 State Capitol
Lincoln, Nebraska 68509-8920

/s/ Richard A. Simms
RICHARD A. SIMMS
Counsel of Record for *the* State of Nebraska
226 Galisteo Street
P.O. Box 280
Santa Fe, New Mexico 87501

FOR THE UNITED STATES OF AMERICA:

/s/ Andrew F. Walch
ANDREW F. WALCH
CHARLES W. FINDLAY
U.S. Department of Justice
Environment and Natural Resources Division
General Litigation Section
999 18th Street, Suite 945
Denver, Colorado 80202

TECHNICAL APPENDIX

I. "Forecasted Supply"

The method of determining the forecasted water supply will be achieved as follows:

OCTOBER - The sum of:

1. The end of September Pathfinder Ownership less storage in the municipal and environmental accounts.

2. The capacity of the Guernsey Ownership (45,612 AF).

3. The 30-year average inflow above Pathfinder for the months of October through July.

4. The 30-year average inflow of the Pathfinder to Guernsey reach for the months of May through July.

FEBRUARY - The sum of

1. The end of January Pathfinder Ownership less storage in the municipal and environmental accounts.

2. The capacity of the Guernsey Ownership (45,612 AF).

3. The 30-year average inflow to the basin above Pathfinder for the months of February and March.

4. The most probable forecasted inflow to the basin above Pathfinder for the April through July period.

5. The most probable forecasted inflow to the Pathfinder to Glendo basin for the April through July period minus the 30-year average April inflow for the Pathfinder to Glendo basin.

MARCH - The sum of:

1. The end of February Pathfinder Ownership less storage in the municipal and environmental accounts.

2. The capacity of the Guernsey Ownership (45,612 AF).

3. The 30-year average inflow of the basin above Pathfinder for March.

4. The most probable forecasted inflow to the basin above Pathfinder for the April through July period.

5. The most probable forecasted inflow to the Pathfinder to Glendo basin for the April through July period minus the 30-year average April inflow for the Pathfinder to Glendo basin.

APRIL - The sum of:

1. The end of March Pathfinder ownership less storage in the municipal and environmental accounts.

2. The end of March Guernsey Ownership.

3. The most probable forecasted inflow to the basin above Pathfinder for the April through July period.

4. The most probable forecasted inflow for the Pathfinder to Glendo basin for the April through July period minus any forecasted April inflow in excess of the quantity necessary to complete filling of the Guernsey Ownership.

MAY - The sum of

1. The end of April Pathfinder Ownership less storage in the municipal and environmental accounts.

2. The end of April Guernsey Ownership

3. The most probable forecasted inflow for the April through July inflow period for the basin above Pathfinder minus the inflow which occurred in April.

4. The most probable forecasted inflow for the Pathfnder to Glendo basin for the April through July period minus the inflow which occurred in April.

JUNE - The sum of:

1. The end of May Pathfinder Ownership less storage in the municipal and environmental accounts.

2. The end of May Guernsey Ownership.

3. The most probable forecasted inflow for the April through July inflow period for the basin above Pathfinder minus the inflow which occurred in April and May.

4. The most probable forecasted inflow for the Pathfinder to Glendo basin for the April through July period minus the inflow which occurred in April and May.

II. Allocation Procedures

A. Initial Allocation

The supply to be initially allocated upon the date of allocation is the sum of:

1. The Pathfinder Ownership less storage in the municipal and environmental accounts minus any unused allocations carried from a previous year as described in Paragraph II.C. minus 3% estimated evaporation loss and 2% estimated river carriage loss.

2. The Guernsey Ownership minus 3% estimated evaporation loss and 2% estimated river carriage loss.

3. The contents of Lake Alice, Little Lake Alice, Lake Winters Creek, and Lake Minatare forty-eight hours after the release from Guernsey Reservoir of the last of the Inland Lakes water that is being transferred from storage in Glendo and Guernsey Reservoirs to storage in the Inland Lakes and minus a holdover of 6,000 acre-feet.

4. 10,000 acre-feet of project water estimated to be available from the Nebraska Drains (Akers Draw,

Sheep Creek, Dry Spotted Tail, Wet Spotted Tail, and Tub Springs).

5. Diversions that occur on days when natural flow is released from Guernsey Dam for the North Platte Project lands diverting at or above Tri-State Diversion Dam between May 1 and the date of the allocation.

6. Storage delivered to the State Line for North Platte Project contractors below Tri-State Diversion Dam during the period of May 1 to the date of the allocation (Because of their location outside of the critical reach of the North Platte Decree, contractors below Tri-State Diversion Dam cannot call for natural flow from sources above Tri-State Diversion Dam, but they may order and receive storage water prior to the initial allocation.).

The above supply shall be allocated to provide a total of 18.1 percent to contractors in Wyoming and a total of 81.9 percent to contractors in Nebraska. This is each contractor's "initial allocation." Percentage allocations will be rounded to the nearest acre-foot so that the sum of the state's individual contractors' allocations will equal the totals for each state.

Immediately after the initial allocation each contractor's initial balance will be adjusted as follows:

- From the Goshen, Lingle, Hill, Gering-Fort Laramie, and Gering allocations subtract each contractor's respective diversion that occurs on days when natural flow is released from Guernsey Dam between May 1 and the date of the allocation. If Gering-Fort Laramie received more water than requested, the diversion charge assessed to the district will be reduced by any release of the excess at

Gering-Fort Laramie's first wasteway, adjusted for conveyance loss. If Gering received more water than requested, the diversion charge assessed to the district will be reduced by any release of the excess at Gering's first wasteway, adjusted for conveyance loss.

- From the Rock Ranch allocation subtract its diversion that occurs on days when natural flow is released from Guernsey Dam between May 1 and the date of the allocation for lands served under its Warren Act contract.

- From Pathfinder's allocation subtract its diversion, not including the diversion of Inland Lakes water, that occurs on days when natural flow is released from Guernsey Dam between May 1 and the date of the allocation. In addition, subtract the contents of the four Inland Lakes less holdover as defined in section II-A-3 of this Technical Appendix.

- From the Farmers and Northport allocations subtract the water delivered to the State Line for them on days when natural flow is released from Guernsey Dam between May 1 and the date of the allocation. Also, subtract any project water diverted from drains identified in II-A-4, above, on days when natural flow is released from Guernsey Dam between May 1 and the date of allocation. If Northport received more water than requested, the charge assessed to Northport will be reduced by any release of the excess at Northport's first wasteway, adjusted for conveyance loss.

- From the Beerline, Browns Creek, Central, and Chimney Rock allocations subtract the deliveries of storage to the State Line for each respective

contractor between May 1 and the date of the allocation.

In addition, if any contractor carried over water from a previous allocation year as described in Paragraph II.C., that amount of water carried over will be added to their allocation to compute their weekly balance for the first week.

B. Subsequent Allocations

Subsequent allocations of increased supply will be made weekly. Usage of drain water by Northport or Farmers during the week will be deducted from the previous drain estimate to provide the remaining estimated drain water. At the end of the weekly period, the "useable supply" will be the sum of the Pathfinder Ownership less storage in the municipal and environmental accounts minus estimated evaporation and conveyance losses, the Guernsey Ownership minus estimated evaporation and conveyance losses, the remaining estimated drain water, and estimated storage water in transit in the river.

The following water deliveries or diversions will be subtracted from each contractor's weekly balance to determine their "remaining balance":

- For Goshen, Lingle, Hill, Gering-Fort Laramie, Pathfinder, and Gering subtract their diversions for the week. If Gering-Fort Laramie received more water than requested, the diversion charge assessed to the district will be reduced by any release of the excess at Gering-Fort Laramie's first wasteway, adjusted for conveyance loss. If Gering received more water than requested, the diversion charge assessed to the district will be reduced by any release of the excess at Gering's first wasteway, adjusted for conveyance loss.

- For Rock Ranch subtract its total diversion less natural flow diversions for non-Warren Act contract lands.

- For Farmers and Northport subtract the water delivered to the State Line for them and their usage of drain water for the week. If Northport received more water than requested, the charge assessed to Northport will be reduced by any release of the excess at Northport's first wasteway, adjusted for conveyance loss.

- For Beerline, Browns Creek, Central, and Chimney Rock subtract the storage deliveries to the State Line for each respective contractor for the week.

The useable supply minus the sum of the contractors' remaining balances is the "system increase" for the week. The system increase is allocated 18.5% to Wyoming and 81.5% to Nebraska and allocated to the individual contractors using percentages determined by the Bureau of Reclamation in consultation with the respective contractors and state officials. Percentage allocations of the system increase will be rounded to the nearest acre-foot so that the totals allocated to the contractors equal the total weekly system increase.

The end of week allocation balances for the contractors will be the sum of each contractor's remaining balance plus their respective allotment of the system increase. This end of week balance becomes their "weekly balance" for the following weekly allocation period.

If a contractor uses its entire allocation balance, no more storage will be released for them.

C. Carryover

Any storage water allocated to, but not utilized by any contractor during an allocation period shall be considered project water and distributed in the typical manner the following irrigation season, unless the Bureau of Reclamation again declares the need to allocate water. In the event of consecutive allocation years, any contractor may carry over from the unused portion of its allocation to the following consecutive allocation year, the greater of the remaining balance carried over from the previous year's allocation or the water saved during the current year. A contractor's "water saved" in a given allocation year will be the contractor's end of season remaining balance of the current year minus the contractor's carryover from the previous allocation year.

Carryover Example:

Year 1 is not an allocation year, therefore, there are no carryover balances for individual contractors.

Year 2 is an allocation year. There is no carryover balance from the previous year. The contractor's ending balance is 500 acre-feet (AF). The water saved in the current year is 500 (ending balance) – 0 (carryover) = 500 AF. As 500 AF is greater than 0, the contractor's carryover into year 3 would be 500 AF. However, year 3 is not an allocation so there are no carryover balances.

Year 3 is not an allocation year, so there are no carryover balances for individual contractors.

Year 4 is an allocation year. There is no carryover from the previous year. The contractor's ending balance is 300 AF. The water saved in the current year is 300 - 0 = 300 AF. As 300 is greater than 0, the carryover into year 5 would be 300 AF.

Year 5 is an allocation year. The contractor's carryover from the previous year is 300 A.F. The contractor's ending balance is 800 AF. The water saved in the current year is 800 - 300 = 500. As 500 is greater than 300, the carryover into year 6 is 500 AF.

Year 6 is an allocation year. The contractor's carryover from the previous year is 500 AF. The contractor's ending balance is 900 AF. The water saved in the current year is 900 - 500 = 400 AF. As 500 is greater than 400, the carryover into year 7 is 500 AF.

Year 7 is an allocation year. The contractor's carryover from the previous year is 500 AF. The contractor's ending balance is 1,050 AF. The water saved in the current year is

1,050 - 500 = 550 AF. As 550 is greater than 500, the carryover into year 8 is 550 AF.

Year 8 is an allocation year. The contractor's carryover from the previous year is 550 AF. The contractors ending balance is 400 AF. The water saved is zero, since the contractor used a portion of its carryover. The greater of the contractor's remaining balance carried from the previous year (400 AF) and the water saved in the current year (0 AF) is 400 AF. The carryover to year 9 would be 400 AF.

Example of One Diversion Serving Multiple Districts where District B has requested 200 cfs:

1. District A diverts 600 cfs and delivers 200 cfs to District B, which is equal to District B's requested delivery. District B is charged 200 cfs, and District A is charged 400 cfs.

2. District A diverts 600 cfs and delivers 210 cfs to District B. Although it is more than requested, District B accepts the water. District B is charged 210 cfs, and District A is charged 390 cfs.

3. District A diverts 600 cfs and delivers 210 cfs to District B. District B requested only 200 cfs and releases the 10 cfs excess into its first wasteway. District B is charged 200 cfs, and District A is charged 400 cfs.

4. District A diverts 600 cfs, and a rain event occurs which results in 240 cfs being delivered to District B. District B releases 20 cfs at its first wasteway. District B is charged 220 cfs, and District A is charged 380 cfs.

None of the above examples have been adjusted for conveyance losses which may apply.

Farmers and Northport examples, where Northport's requested delivery from Farmers is 200 cfs:

1. Farmers orders 500 cfs at the State Line for the Tri-State Canal and diverts 50 cfs from the drains. Farmers delivers 200 cfs to Northport. Northport is charged 200 cfs, and Farmers is charged 350 cfs.

2. Farmers orders 500 cfs at the State Line for the Tri-State Canal and diverts 50 cfs from the drains. Farmers delivers 150 cfs to Northport. Northport is charged 150 cfs, and Farmers is charged 400 cfs.

3. Farmers orders 500 cfs at the State Line for the Tri-State Canal and diverts 50 cfs from the drains. Farmers delivers 225 cfs to Northport, and Northport accepts the water. Northport is charged 225 cfs, and Farmers is charged 325 cfs.

4. Farmers orders 500 cfs at the State Line for the Tri-State Canal and diverts 50 cfs from the drains. Farmers delivers 225 cfs to Northport, and wastes 25 cfs at its first wasteway. Northport is charged 200 cfs, and Farmers is charged 350 cfs.

5. Farmers orders 500 cfs at the State Line for the Tri-State Canal and diverts 50 cfs from the drains. A rain event occurs and Farmers delivers 250 cfs to Northport. Northport wastes 25 cfs at its first wasteway. Northport is charged 225 cfs, and Farmers is charged 325 cfs.

6. Farmers orders 500 cfs at the State Line for the Tri-State Canal and diverts 50 cfs from the drains. Farmers delivers 0 cfs to Northport. Northport is charged 0 cfs, and Farm is charged 550 cfs.

None of the above examples have been adjusted for conveyance losses which may apply.