

Appendix D

Procedures for 1945 Decree Paragraph II(b) Storage Accounting [now Paragraph II(e) of the Modified Decree]

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

BEFORE THE HONORABLE OWEN OLPIN
SPECIAL MASTER

STATE OF NEBRASKA,
Plaintiff,

v.

STATE OF WYOMING,
Defendant.

STIPULATION

PROCEDURES FOR 1945 DECREE
PARAGRAPH II. (b) STORAGE ACCOUNTING

COME NOW, the States of Nebraska, Wyoming and Colorado and the United States of America and hereby stipulate and agree, and present this Stipulation for approval by the Special Master and for his recommendation to the United States Supreme Court for an Order approving this Stipulation.

WHEREAS Paragraph II. (b) of the *1945 Decree, Nebraska v. Wyoming*, 325 U.S. 589 (1945), provides, in pertinent part:

II. Exclusive of the Kendrick Project and Seminoe Reservoir the State of Wyoming, its officers, attorneys, agents and employees, be and they are hereby severally enjoined

* * *

(b) From storing or permitting the storage of more than a total amount of 18,000 acre feet of water for irrigation purposes from the North Platte River and its tributaries above the Pathfinder Reservoir between October 1 of any year and September 30 of the following year.

WHEREAS, Paragraph IX of the *1945 Decree* requires Wyoming to prepare and maintain complete and accurate records of, among other things, waters stored pursuant to Paragraph II. (b) thereof; and

WHEREAS the State of Nebraska has alleged that Wyoming's accounting for the waters stored annually pursuant to Paragraph II. (b) of the *1945 Decree* is inadequate and incomplete; and

WHEREAS, Wyoming has denied Nebraska's allegations; and

WHEREAS, the United States has not taken a position in the outcome of this dispute between Nebraska and Wyoming over the adequacy of the accounting for Wyoming's storage in irrigation reservoirs upstream of Pathfinder Reservoir, but consents to the entry of an Order in accordance with the terms hereof; and

WHEREAS, the State of Colorado has not taken a position in the outcome of this dispute between Nebraska and Wyoming over the adequacy of the accounting for Wyoming's storage in irrigation reservoirs upstream of Pathfinder Reservoir, this Stipulation does not affect Colorado's accounting procedures, and by consenting to this Stipulation, Colorado is not admitting that such measures would be reasonable within Colorado; and

WHEREAS, the parties recognize that installation of continuous recording devices to accurately measure such storage in all of the upstream reservoirs would be extremely costly and technically difficult; and

WHEREAS, in order to reach an agreement on the accepted means of accounting for the annual storage accrual in such upstream irrigation reservoirs and to establish the procedures for such accounting in the future, Wyoming and Nebraska have agreed to the procedures contained in this agreement.

NOW, THEREFORE, the parties stipulate and agree as follows:

1. Wyoming will install or cause the installation of measuring devices on no less than the eight largest of Wyoming's irrigation reservoirs storing water from the North Platte River and its tributaries upstream of Pathfinder Reservoir. Such measuring devices shall accurately measure

the amount of annually accrued irrigation storage in each such reservoir.

2. Wyoming will report the information provided from the measuring devices on those eight reservoirs annually to the parties.

3. In addition, for reservoirs falling under Paragraph II. (b) of the Decree in excess of 25 acre feet of capacity, other than those specified in Paragraph 2 herein, Wyoming will continue its current practice of visiting each of its remaining upstream irrigation reservoirs twice per year at the approximate time of the high and low storage points for such reservoirs, in order to estimate the annual storage in each. In making its annual reports, Wyoming shall include, for each such reservoir, the permitted capacity, its storage measurements, the date on which each storage measurement was taken and the means of making each storage estimate.

4. For irrigation storage reservoirs of less than 25 acre feet of capacity, Wyoming may, at its discretion, either estimate and report the accrual storage in the manner provided in paragraph 3, above, or include a list of such reservoirs and their permitted capacities in its annual report. If in any year Wyoming chooses to report only the total permitted capacity of any such reservoirs, rather than estimating actual annual storage in accordance with Paragraph 3 of this Stipulation, each such reservoir will be assumed to have stored water for irrigation purposes to its full permitted capacity in the annual accounting of the Decree Paragraph II. (b) limitation.

5. For any new irrigation reservoir above Pathfinder Reservoir in excess of 600 acre feet of capacity, Wyoming shall require the installation of measuring devices. Such measuring devices shall accurately measure the amount of annually accrued irrigation storage in each such reservoir.

Wyoming shall include the actual storage attributable to such new reservoirs in its annual report.

6. No amendment to the *1945 Decree* is necessary to implement the terms of this Stipulation. The parties shall file a joint motion requesting the Court to enter an Order approving this Stipulation, determining that compliance with this Stipulation shall constitute compliance with the provision of Paragraphs II and IX of the *Decree* insofar as they relate to reporting on storage in Wyoming above Pathfinder, and seeking to dismiss with prejudice those parts of Count I of Nebraska's Amended Petition alleging that Wyoming has violated said Decree provisions relating to storage above Pathfinder and relating to the accounting for the same.

Dated this 12 day of September 1997

Respectfully submitted,

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