

Colorado should bring suit forthwith asking equitable apportionment of the waters ~~of the waters~~ of the North Platte, against Wyoming and Nebraska and the Federal officials controlling construction of the Casper-Alcova project.

The Supreme Court has established the rule that each State through which an interstate stream flows is entitled to an equitable portion of the benefits of the waters of such stream and that established appropriations of water are a factor to be considered in arriving at an equitable apportionment.

The same Court has twice decided that in making an apportionment of the water of the Laramie River, a tributary of the North Platte, first consideration will be given the protection of established appropriations by both Colorado and Wyoming and will only authorize use of residue water by new projects.

That the Supreme Court has original and complete jurisdiction to determine such cases is conclusively decided.

The Casper-Alcova project is being constructed by the United States for the State of Wyoming under authority recently obtained by Reclamation officials from the State of Wyoming. The project is of such magnitude that use of water by its works for power and other purposes will establish an appropriation of all the remaining waters of the North Platte River which originate above Alcova and includes all unappropriated Colorado water flowing into the North Platte. If the rule announced and applied by the Court in the Laramie River case, is to obtain in respect of interstate apportionment of the waters of the North Platte, the appropriation hereafter perfected by use of water by the Casper-Alcova project would as effectively prevent further diversions and uses within Colorado as would be accomplished by permanent occupation for such purposes of North Park by the United States for the benefit of Wyoming and without the consent of Colorado.

An appropriation of water under Wyoming laws becomes effective

as of the date fixed by the permit issued by the State Engineer. That official has issued permits to the United States authorizing the Casper-Alcova project and fixing the priority dates of that project under Wyoming laws. In other words, the project has become an actual injury rather than a mere threat.

Interstate equitable apportionment may be made either by interstate agreement or by decisions of the Supreme Court in original suit. Prolonged negotiations have failed to result in compact. Suit alone provides a remedy.

It is important that suit demanding present apportionment of the water of the North Platte, in respect of the rights of Colorado, be prosecuted forthwith rather than at some future date for the following reasons, among others:

1. Presumably, any such interstate suit would be determined upon the basis of the status which exists at the time the action is commenced.

2. Under the rule followed in *Wyoming vs. Colorado*, the Court first would apportion water to each State sufficient to protect the appropriations established and perfected within each State prior to and at the time of commencement of suit. Probably this would not include projects not yet constructed though authorized, but even this is a matter of conjecture.

3. It is imperative that the State threatened with devastating injury by the United States for benefit of a sister State not only should protest vigorously and repeatedly but should wholly exhaust every means of protection available and Colorado probably would be guilty of fatal laches by failing to institute suit at once and to prosecute the suit with vigor.

4. If suit is delayed the Casper-Alcova project will have become an established institution with perfected appropriations of water, at tremendous cost and with full knowledge by Colorado and the Court probably would dismiss any future suit.

5. The Court has recently decided its jurisdiction to protect the threatened State by making all uses and rights of the threatening project subject to the right of the complaining State to demand and to receive an equitable portion of the water of the stream, in the case of Arizona vs. California, et al., which was brought to avoid the foregoing objections (1), (2), & (3).

6. A situation similar to the North Platte was before the Court in Arizona vs. California and is still fresh in the minds of the Judges.

7. It will be impossible to finance any Colorado project from the North Platte without previous determination of interstate rights and this requires immediate and decisive action by Colorado.

8. Ample grounds for such a suit exist such as legal effect of permitting the project to proceed without apportioning the waters; the preferment of one State to the permanent injury of another State; the non-navigable character of the river, etc.

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