

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

NEBRASKA v. WYOMING ET AL.

ON PETITION FOR ORDER ENFORCING DECREE AND FOR INJUNCTIVE RELIEF

No. 108, Orig. Argued January 13, 1993—Decided April 20, 1993

To resolve a dispute among Nebraska, Wyoming, Colorado, and the United States over water rights to the North Platte River, this Court entered a decree in 1945 imposing restrictions on storage and diversion by the upstream States, Colorado and Wyoming; establishing priorities among federal reservoirs and certain Nebraska canals; and apportioning 75% of the natural flow of the river's so-called "pivotal reach" during the irrigation season to Nebraska and 25% to Wyoming. *Nebraska v. Wyoming*, 325 U. S. 589. Initiating this original action in 1986, Nebraska petitioned the Court for an enforcement order and injunctive relief under the decree's "reopener" provision, alleging that Wyoming was violating or threatening to violate the decree by virtue of developments on two North Platte tributaries, Deer Creek and the Laramie River, and objecting to certain of Wyoming's actions with respect to the Inland Lakes in Nebraska. Wyoming answered and counterclaimed, arguing, essentially, that Nebraska was circumventing the decree by demanding and diverting water from above the Tri-State Dam for uses below Tri-State that are not recognized in the decree. All four parties have moved for summary judgment on one or more issues, and the Special Master has filed his First and Second Interim Reports recommending disposition of those motions and the intervention motions of certain *amici*. Exceptions have been filed by, *inter alios*, the three States.

Held:

1. No exceptions having been filed to the Master's recommendation that the Court deny the intervention motions, that recommendation is adopted. P. 4.
2. The Master's recommended dispositions of the summary judgment motions are adopted, and the parties' exceptions are overruled. Pp. 4-18.

NEBRASKA v. WYOMING

Syllabus

(a) Although not strictly applicable, Federal Rule of Civil Procedure 56(c) and this Court's precedents construing it serve as useful guides to the summary judgment principles governing the case. Such judgment is appropriate under the Rule's terms when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. In determining whether a material factual dispute exists, the evidence is viewed through the prism of the controlling legal standard, which will be markedly different depending on the type of proceedings. To the extent that the proceedings involve an application for *enforcement* of rights already recognized in a decree, as is the case here with respect to the Inland Lakes question, the plaintiff need not show injury. See, e.g., *Wyoming v. Colorado*, 309 U. S. 572, 581. However, if the plaintiff seeks *modification* of the decree to cover questions not decided in the original proceedings, as is the case with regard to Nebraska's tributary development claims, a showing of substantial injury must be made to warrant relief. Cf., e.g., *Idaho ex rel. Evans v. Oregon*, 462 U. S. 1017, 1027. Pp. 4-7.

(b) Summary judgment is granted to Nebraska and the United States on their requests for determinations that the decree entitles the federal Bureau of Reclamation to continue its longstanding diversion and storage practices with respect to the Inland Lakes, and that the lakes have the same December 6, 1904, priority date as other original components of the Bureau's North Platte Project. The Court implicitly settled the lakes' priority in the prior litigation. See, e.g., 325 U. S., at 646, 649, and n. 2. And even if the issue was not previously determined, Wyoming's arguments are foreclosed by its postdecree acquiescence in the Bureau's administration of the lakes. Cf. *Ohio v. Kentucky*, 410 U. S. 641, 648. Thus, Wyoming's motion for partial summary judgment that the Inland Lakes do not have storage rights under either state law or the decree is denied. Pp. 7-10.

(c) Wyoming's and Nebraska's motions for summary judgment with respect to their rights to Laramie River waters are denied. The Court rejects Wyoming's contention that those waters were completely apportioned between itself and Colorado by this Court's 1922 Laramie River decree. *Wyoming v. Colorado*, 259 U. S. 419, 496. Although Paragraph XII(d) of the 1945 decree expressly left undisturbed "[t]he apportionment heretofore made," the 1922 decree did not apportion *all* the Laramie's waters; it dealt only with flows down to and including a facility upstream of the new Laramie developments that Nebraska's petition challenges. Also rejected is Nebraska's claim that the 1945 decree's

NEBRASKA v. WYOMING

Syllabus

apportionment of pivotal reach waters includes Laramie flows that historically reached the North Platte. That decree did not restrict Wyoming's use of the Laramie or require it regularly to deliver a specified amount of Laramie water to the North Platte confluence, and, since 1945, neither Nebraska nor the United States has requested that Wyoming account for diversions above the confluence. Because the 1945 decree therefore did not decide the fate of the excess Laramie Waters, affording Nebraska injunctive relief would constitute a modification of the decree. Unless Nebraska comes forward with evidence sufficient to establish that some project on the Laramie poses a threat of injury serious enough to warrant such a modification, summary judgment should be granted to Wyoming. Pp. 10-13.

(d) Wyoming's motion for summary judgment on Nebraska's challenge to a proposed new storage reservoir on Deer Creek is denied. It is unclear whether decree Paragraph X exempts from further review Wyoming's diversion of North Platte water for ordinary and usual municipal use. The Court need not adopt a definitive interpretation of Paragraph X, because the Deer Creek Project may not qualify as such a use. Furthermore, proof that the project will cause Nebraska substantial injury—which is necessary because the decree does not currently restrict Wyoming's use of Deer Creek, and a new injunction would constitute a modification of the decree—may depend on the way Wyoming administers the project, particularly with regard to its priority with the Inland Lakes. Pp. 13-16.

(e) Although most of Wyoming's, Nebraska's, and Colorado's requested rulings with respect to the below Tri-State issues are too theoretical and insufficiently developed to be susceptible of summary resolution at this time, partial summary judgment is granted to Nebraska on its request for a determination that the decree does not impose absolute ceilings on diversions by canals taking in the pivotal reach. Decree Paragraph V, which sets forth the apportionment of the pivotal reach, makes no mention of diversion ceilings and expressly states that Nebraska is free to allocate its share among its canals as it sees fit. Similarly, although Paragraph IV limits the extent to which Nebraska canals diverting in the pivotal reach may stop federal reservoirs in Wyoming from storing water, it does not place any restrictions on the quantities of water those canals may actually divert. Pp. 16-17. Motions for leave to intervene denied, motions for summary judgment granted in part and denied in part, and exceptions to Special Master's Interim Reports overruled.

O'CONNOR, J., delivered the opinion for a unanimous Court.