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# SUPREME COURT OF THE UNITED STATES

Syllabus

## KANSAS v. COLORADO

ON EXCEPTIONS TO REPORT OF SPECIAL MASTER

No. 105, Orig. Argued March 21, 1995—Decided May 15, 1995

Kansas and Colorado negotiated the Arkansas River Compact to settle disputes and remove causes of future controversies over the river's waters and to equitably divide and apportion those waters and the benefits arising from the United States' construction, operation, and maintenance of John Martin Reservoir. Under Article IV-D, the Compact is not intended to impede or prevent future beneficial development—including construction of dams and reservoirs and the prolonged or improved functioning of existing works—provided that such development does not “materially deplet[e]” stateline flows “in usable quantity or availability for use.” In this action, the Special Master recommended that the Court, among other things, find that post-Compact well pumping in Colorado has resulted in a violation of Article IV-D of the Compact; find that Kansas has failed to prove that the operation of Colorado's Winter Water Storage Program (WWSP) violates the Compact; and dismiss Kansas' claim that Colorado's failure to abide by the Trinidad Reservoir Operating Principles (Operating Principles) violates the Compact. Both Kansas and Colorado have filed exceptions.

*Held:* The exceptions are overruled. Pp. 6-21.

(a) Article IV-D permits development of projects so long as their operation does not result in a material depletion of usable flow to Kansas users. Kansas' exception to the dismissal of its Trinidad Reservoir claim fails because Kansas has not established that Colorado's failure to obey the Operating Principles resulted in such a violation. Pp. 7-10.

(b) Because Kansas failed to meet its burden of proving its WWSP claim despite being given every reasonable opportunity to do so by the Special Master, there is no support for its exception to the Special Master's conclusion on that claim. Pp. 10-11.

(c) In selecting what method should be used to determine depletions of "usable" flow, the Special Master properly rejected the Spronk method—which Kansas' exception proposes is correct—as less compatible with Kansas' hydrological model than the method ultimately adopted by the Special Master. Pp. 11-13.

(d) In ruling on Colorado's exception to the Special Master's conclusion that laches does not bar Kansas' well-pumping claim, it is not necessary to decide whether the laches doctrine applies to a case involving the enforcement of an interstate compact because Colorado has failed to prove that Kansas lacked due diligence in bringing its claim. Colorado errs in arguing that Kansas officials had sufficient evidence about increased well pumping in Colorado to determine that a Compact violation existed in 1956. The evidence available through 1985 was vague and conflicting. Pp. 13-16.

(e) This Court disagrees with both the legal and factual claims Colorado raises in its exception to the Special Master's finding that the Compact limits annual pumping by pre-Compact wells to 15,000 acre feet, the highest amount actually pumped in those years. Kansas' failure to object to the replacement of pumps or increased pumping by pre-Compact wells does not support Colorado's legal argument that the limit should be the maximum amount of pumping possible using wells existing prior to the Compact. Regardless of the parties' subsequent practice, such improvements to and increased pumping by existing wells clearly fall within Article IV-D's prohibition. In making the factual determination that 15,000 acre feet per year is the appropriate limit, the Special Master properly relied on reports by the United States Geological Survey and the Colorado Legislature, reports that have since been used by the Colorado State Engineer. Pp. 16-18.

(f) The Court agrees with the Special Master's conclusion that the 1980 Operating Plan for the John Martin Reservoir (Plan) was separately bargained for and thus there is no evidence to support the claim raised in Colorado's exception that the benefits to Kansas from the Plan were in settlement of its well claims. The Plan does not state that post-Compact well pumping in Colorado or Kansas was a cause of changes in the river's regime, and it expressly reserves the parties' rights under the Compact. Pp. 18-20.

(g) The Special Master concluded that, regardless whether the burden of proof applied to Kansas' well-pumping claim is clear and convincing evidence or preponderance of the evidence, the post-Compact well pumping in Colorado had caused material depletions of usable river flows in violation of the Compact. Thus, this Court need not resolve the issue raised by Colorado's exception: that clear and convincing evidence is the correct standard. P. 20.

Exceptions overruled, and case remanded.

REHNQUIST, C. J., delivered the opinion for a unanimous Court.