

A N A L Y S I S

(WYOMING vs. COLORADO)

The recent decision of the Supreme Court of the United States in the Case of Wyoming vs. Colorado may be tersely interpreted as follows:

(1) Where two adjoining states each recognizing and applying the general principles of prior appropriation for the intrastate distribution of waters, the same fundamental principles of justice and equity will be applied in the allocation of the waters of a stream common to both such states;

(2) Water may be diverted and carried out of the watershed of a stream for use upon lands situate in the drainage area of another stream, where such diversions are recognized and permitted, by local law, and such diversions are permissible wherever the general principles of prior appropriation are applied;

(3) The fact that one state may make a higher beneficial use of the waters of an interstate stream and may obtain a greater crop return from such use than would be

obtained from the use of the same waters in the other state, will not constitute a factor in determining the relative rights of the two states to the use of water of an interstate stream, where the general principles of prior appropriation are applied;

(4) Where storage facilities are necessary to conserve the surplus waters of a stream in order to obtain the greatest use therefrom, the lower state cannot compel the upper state to construct such works as a prerequisite to diversions of water (within the upper state) which would otherwise materially diminish the supply to the lower state ^{and} which is there required to supply prior appropriations. Conservation within practical limits comports with the spirit of the doctrine of prior appropriation and that doctrine "lays on each of these states a duty to exercise her right reasonably and in a manner calculated to conserve the common supply". And in a case where the upper state may obtain water at the sources at all times the lower state may be called upon to conserve the excess supplies of the river in making allocation of the waters of the stream between the two states; and

(5) In allocating the waters of an interstate stream, in such cases, the average annual dependable flow will be ascertained after elimination of the flows

which occur in rare and extreme and high years, the allocation may be made upon the basis of the average annual flow so obtained.

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