

Syllabus

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 Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

MONTANA *v.* WYOMING ET AL.

ON EXCEPTION TO REPORT OF SPECIAL MASTER

No. 137, Orig. Argued January 10, 2011—Decided May 2, 2011

Article V(A) of the Yellowstone River Compact ratified by Montana, Wyoming, and North Dakota provides: “Appropriative rights to the beneficial uses of the water of the Yellowstone River System existing in each signatory State as of January 1, 1950, shall continue to be enjoyed in accordance with the laws governing the acquisition and use of water under the doctrine of appropriation.” 65 Stat. 666. Montana filed a bill of complaint, alleging that Wyoming breached Article V(A) by allowing its upstream pre-1950 water users to switch from flood to sprinkler irrigation, which increases crop consumption of water and decreases the volume of runoff and seepage returning to the river system. Thus, even if Wyoming’s pre-1950 users divert the same quantity of water as before, less water reaches downstream users in Montana. Concluding that the Compact permits more efficient irrigation systems so long as the conserved water is used to irrigate the same acreage watered in 1950, the Special Master found that Montana’s increased-efficiency allegation failed to state a claim. Montana has filed an exception.

Held: Because Article V(A) of the Compact incorporates the ordinary doctrine of appropriation without significant qualification, and because in Wyoming and Montana that doctrine allows appropriators to improve their irrigation systems, even to the detriment of downstream appropriators, Montana’s increased-efficiency allegation fails to state a claim for breach of the Compact under Article V(A). Pp. 4–19.

(a) Background appropriation law principles do not support Montana’s position. The doctrine of appropriation provides that rights to water for irrigation are perfected and enforced in order of seniority, starting with the first person to divert water from a natural stream and apply it to a “beneficial use.” Once perfected, that water right is

Syllabus

senior to any later appropriators' rights and may be fulfilled entirely before the junior appropriators get any water. However, junior appropriators do acquire rights to the stream basically as it exists when they find it. Under this no-injury rule, junior users may, subject to the fulfillment of the senior users' existing rights, prevent senior users from enlarging their rights to the junior users' detriment. Here, the question is whether a switch to more efficient irrigation with less return flow is within Wyoming's pre-1950 users' existing appropriative rights or is an improper enlargement of that right. Although the law of return flows is an unclear area of appropriation doctrine, the Special Master correctly concluded that Wyoming's pre-1950 users may switch to sprinkler irrigation. Pp. 4–16.

(1) A change in irrigation methods does not appear to run afoul of the no-injury rule in Montana and Wyoming, which generally concerns changes in the location of the diversion and the place or purpose of use. Thus, an appropriator may increase his consumption by changing to a more water-intensive crop so long as he makes no change in acreage irrigated or amount of water diverted. Ordinary, day-to-day operational changes or repairs also do not violate the rule. Consumption can even be increased by adding farm acreage, if that was part of the plan from the start, and diligently pursued through the years. Irrigation system improvements seem to be the same sort of changes. This view is consistent with the fact that by 1950 both States had statutes regulating certain changes to water rights, but neither required farmers to take official action before adjusting irrigation methods. Cases in both States frequently describe the no-injury rule as applying to changes in point of diversion, purpose of use, and place of use. The abundance of litigation over such changes—and the absence of any litigation over the sort of change at issue here—strongly implies that irrigation efficiency improvements were considered within the scope of the original appropriative right. Pp. 8–10.

(2) The doctrine of recapture—which permits an appropriator who has diverted water for irrigation to recapture and reuse his own runoff and seepage before it escapes his control or his property—also supports treating irrigation efficiency improvements as within the original appropriative right. Montana and Wyoming cases appear to apply this basic doctrine without any qualification based on whether the return flow would re-enter the original stream or not. By using sprinklers instead of flood irrigation, Wyoming's pre-1950 water users effectively recapture water. The sprinklers reduce loss from seepage and runoff and are simply different mechanisms for increasing the volume of water available to crops without changing the amount of diversion. Pp. 10–15.

Syllabus

(3) This conclusion is consistent with the view of water law scholars who have considered the question presented in this case. Pp. 15–16.

(b) Also unpersuasive is Montana’s argument that, if background appropriation law principles do not support its position, Article V(A)’s “beneficial use” definition nonetheless restricts the scope of pre-1950 appropriative rights to the net volume of water that was actually being consumed in 1950. Pp. 16–19.

(1) “Beneficial use” is “that use by which the water supply of a drainage basin is depleted when usefully employed by the activities of man.” 65 Stat. 665. Montana contends that the term means the *amount* of depletion, and thus any activity increasing Wyoming’s pre-1950 depletions beyond pre-1950 levels exceeds Article V(A)’s scope. Pp. 16–17.

(2) Nothing in the Compact’s definition suggests such an interpretation. A plain reading indicates that “beneficial use” is a *type* of use that depletes the water supply. This view is supported by the circumstances in the signatory States when the Compact was drafted. At that time, Wyoming had a statutory preference for irrigation, a depletive use, over power generation, a nondepletive use. It thus it makes sense for the Compact to protect irrigation uses that were legislatively favored and represented the predominant use of the Yellowstone River system. Montana’s reading, by contrast, would drastically redefine the term. The amount of water put to “beneficial use” has never been defined by net water consumption. In irrigation, that amount has always included a measure of necessary loss, *e.g.*, runoff or evaporation. If the Compact’s definition were meant to drastically redefine “beneficial use,” this Court would expect far more clarity. Moreover, if the Compact effected a dramatic reframing of ordinary appropriation principles, the rest of Article V(A), which expressly states that “the laws governing the acquisition and use of water under the doctrine of appropriation” control, would make little sense. Pp. 17–18.

(3) If Article V(A) were intended to guarantee Montana a set quantity of water, it could have done so plainly, as done in other compacts, *e.g.*, the Colorado River Compact of 1922. Pp. 18–19.

Exception overruled.

THOMAS, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, GINSBURG, BREYER, ALITO, and SOTOMAYOR, JJ., joined. SCALIA, J., filed a dissenting opinion. KAGAN, J., took no part in the consideration or decision of the case.