

SOUTH DAKOTA *v.* NEBRASKA ET AL.

ON BILL OF COMPLAINT

No. 72, Orig. Findings and decree entered June 28, 1982

The Report of the Special Master is received and ordered filed.

This matter comes before this Court on Stipulation by each of the parties hereto: the State of South Dakota, by and through its Attorney General, Mark Meierhenry; the State of Nebraska, by and through its Attorney General, Paul L. Douglas; the Intervenors, by and through themselves and their attorney, Everett A. Bogue.

FINDINGS AND DECREE

IT IS THE FINDING OF THIS COURT THAT:

1. The parties have concluded that it is in the best interest of each of them to avoid litigation and multiple exercises of sovereignty and jurisdiction, encourage the optimum beneficial use of the river, its facilities and its waters, and remove all causes of controversy between said parties with respect to the location of the boundary between the States and, therefore, to settle and to terminate this dispute by agreement and compromise and submission of the boundary between the State of South Dakota and the State of Nebraska with respect to Rush Island in the future to a Joint State Boundary Commission.

2. In the furtherance of the best interests of each of the parties, it is agreed that that land known as "Elk/Rush Island," subject of this lawsuit, is now, and has been, within the boundary of the State of Nebraska and subject to its jurisdiction.

3. The State of South Dakota has agreed to cede to the Intervenors any right or title it may have in the subject property known as "Elk/Rush Island," more fully described in Appendix A attached to the Stipulation; and the State of South

Dakota specifically recognizes the Judgment of the District Court of Cedar County, Nebraska, dated November 7, 1958, which quieted title to the above identified land in Clyde Gill and others, predecessors of the Intervenor, which action can be found in the records of Cedar County District Court of Nebraska, Case No. 5628, Docket 24, Page 13.

4. The State of South Dakota has further agreed to dismiss an action to quiet title filed in the Circuit Court of Yankton, South Dakota, regarding this subject property.

5. The States of Nebraska and South Dakota have agreed to submit the determination of future boundary changes with regard to "Elk/Rush Island" but not to the title to the premises therein, to a Joint State Boundary Commission appointed by the elected officials of these respective States for the Commission's determination from the date of that determination forth.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that pursuant to the above Stipulations and Findings:

1. That the land known as "Elk/Rush Island," the subject of this litigation, be and the same is within the boundary of the State of Nebraska, and subject to its jurisdiction;

2. That the State of South Dakota hereby cedes to the Intervenor any right or title it may have to the subject property known as "Elk/Rush Island" as more fully described in Appendix A attached hereto;

3. That the States of Nebraska and South Dakota will submit the determination of the future boundary changes, if any, with regard to "Elk/Rush Island," but not to the title of the premises thereto, to a Joint State Boundary Commission appointed by the elected officials of these respective States for the Commission's determination from the date of that determination forth;

4. That the State of South Dakota and the State of Nebraska will proceed to effectuate any and all other requirements agreed to in the Stipulation to the extent that conditions and circumstances permit; and

5. Each party shall bear its own costs.

APPENDIX A

Rush Island in the Missouri River, said island being a part of Sections 5, 6 and 7, Township 33, Range 1, East, Cedar County, Nebraska, according to the original Government Survey and which is more fully and particularly described in the Surveyor's record No. 5, Page 70 as follows: Commencing at the Section corner of Sections 7 and 8, in Township 33, Range 1, East, Cedar County, Nebraska, as is located by the survey recorded in Surveyor's Record, Volume 4, page 29 of the records of Cedar County, Nebraska, thence running due north from this corner 5060 feet to the point of beginning, thence running 710 feet north 81 degrees east, thence 805 feet north 68 degrees east, thence 942 feet north 59 degrees east, thence 326 feet north 88 degrees east, thence 874 feet north 84 degrees east, thence 362 feet south 54 degrees east, thence 305 feet north 58 degrees east, thence 1140 feet north 65 degrees east, thence 1315 feet north 5 degrees east, thence 805 feet north 60 degrees west, thence 1800 feet north 69 degrees west, thence 1225 feet north 72 degrees west, thence 2080 feet north 79 degrees west, thence 1390 feet north 57 degrees west, thence 1160 feet north 86 degrees west, thence 582 feet south 84 degrees west, thence 1090 feet south 55 degrees west, thence 1980 feet south 89 degrees west, thence 688 feet south 47 degrees west, thence 1400 feet south 20 degrees west, thence 1415 feet south 55 degrees west, thence 865 feet south 78 degrees east, thence 588 feet south 87 degrees east, thence 2220 feet south 72 degrees east, thence 2530 feet south 78 degrees east, thence 1890 feet south 62 degrees east, thence 425 feet south 71 degrees east to the point of beginning, containing 994 acres more or less, all in Township 33, Range 1 East in Cedar County, Nebraska, and that intervenors are the record owners thereof.