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EDITOR'S NOTE

The Constitution of the United States of America establishes original jurisdiction with the U.S. Supreme Court respecting controversies between two or more states.[1] Placing this jurisdiction with the Court reflects the importance the drafters of the Constitution placed on providing a means for states to resolve their disputes. This jurisdiction has been invoked periodically since the Court decided *Kansas v. Colorado*[2] in 1902, in order to resolve disputes respecting uses of interstate rivers. In the words of Chief Justice Fuller:

> [W]hen one of our States complains of the infliction of such wrong or the deprivation of such rights by another State, how shall the existence of cause of complaint be ascertained, and be accommodated if well founded? The States of this Union cannot make war upon each other. They cannot "grant letters of marque and reprisal." They cannot make reprisal on each other by embargo. They cannot enter upon diplomatic relations and make treaties.[3]

Such litigation is unique in a number of respects: (1) the Supreme Court is both the forum of first and last resort; (2) its parties are sovereign governments; and (3) there is often the question of what law to apply.

Wyoming is currently involved in original jurisdiction litigation with the State of Montana concerning uses of the Tongue and Powder Rivers.[4] As a headwaters state, Wyoming is no stranger to original jurisdiction actions, having initiated

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[1] U.S. CONST., art. III, § 2.

[2] 185 U.S. 125 (1902).

[3] *Id.* at 144.

[4] The first issue in this litigation has been resolved by the U.S. Supreme Court. *See* Montana v. Wyoming & North Dakota, 131 S. Ct. 1765 (2011).

such an action against Colorado respecting uses of the Laramie River[5] and having twice been sued by Nebraska in the U.S. Supreme Court respecting uses of the North Platte.[6]

The *Wyoming Law Review* is pleased to publish two commentaries addressing recent U.S. Supreme Court cases involving interstate river disputes. The following commentaries provide valuable insights respecting the unique nature of such litigation, considerations respecting the Court's willingness to take these cases, judicial approaches when addressing disputes between governments, and the critical role of special masters.

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[5] Wyoming v. Colorado, 298 U.S. 573 (1936) (addressing the decree issued regarding the restraint of diversions from the Laramie River in Wyoming v. Colorado, 259 U.S. 419 (1922), *decree vacated by* 353 U.S. 953 (1957)).

[6] Nebraska v. Wyoming & Colorado, 534 U.S. 40 (2001) (modifying the decree originally set forth in Nebraska v. Wyoming & Colorado, 325 U.S. 665 (1945), *as modified by* 345 U.S. 981 (1953)).