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Wyoming's Response to the US and Tribes, Volume X, Appendices C, D, E & F

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WYOMING'S RESPONSE TO THE UNITED STATES'
AND TRIBES' PROPOSED FINDINGS OF FACT, CONCLUSIONS OF
LAW, INTERLOCUTORY DECREE AND
SUPPORTING BRIEFS

VOLUME X

Appendices C, D, E & F

case # 4993

File # 328

4730

Box 22

FILED

4993

5/14

1982

Margaret W. Hampton

CLERK

DEPUTY

IN THE DISTRICT COURT OF THE
FIFTH JUDICIAL DISTRICT
STATE OF WYOMING

IN RE: THE GENERAL ADJUDICATION)
OF ALL RIGHTS TO USE WATER IN)
THE BIG HORN RIVER SYSTEM AND)
ALL OTHER SOURCES, STATE OF)
WYOMING)

CIVIL NO. 4993

VOLUME 10

- Appendix C - Wyoming's Response to the United States' Proposed Conclusions of Law
- Appendix D - Wyoming's Response to the Tribes' Proposed Conclusions of Law
- Appendix E - Wyoming's Response to the United States' Proposed Interlocutory Decree
- Appendix F - Wyoming's Response to the Tribes' Additional Provisions in the United States' Proposed Interlocutory Decree

APPENDIX C

Wyoming's Response to the United States' Proposed Conclusions of Law

Introduction

In its review of the Proposed Conclusions of Law submitted by the United States, the State of Wyoming has determined that certain of these require specific response. Such Conclusions are set forth verbatim on a page, with Wyoming's response thereto on the page or pages immediately following. The lack of a response herein shall not be construed as an admission to the accuracy or relevance of any proposed provision.

UNITED STATES PROPOSED CONCLUSIONS OF LAW

1. The boundaries of the Wind River Indian Reservation are as agreed by the parties in the "Stipulation Concerning the Boundaries of the Wind River Indian Reservation" filed with the Court in this case.

Wyoming's Response:

1. Although the exterior boundaries were stipulated, the major parties also provided, at page 14 of the stipulation that:

The parties reserve their rights to challenge the validity, priority date, purposes, quantity of water and any other characteristic of any water rights which may be claimed in the above-described area.

This stipulation shall not affect the jurisdiction of any parties over lands within the exterior boundaries of the Reservation.

UNITED STATES PROPOSED CONCLUSIONS OF LAW

2. At the creation of the Wind River Reservation by the Treaty of Fort Bridger on July 3, 1868, a reserved water right vested, in a quantity to meet the present and future needs of the Wind River Indian Reservation and to provide a permanent home for the Indians there. The reserved right extends to the surface and groundwater resource of the Wind River Indian Reservation. This includes the right to use the most accessible and least expensive water source. The priority date for that reserved right is July 3, 1868.

Wyoming's Response:

2. There is absolutely no evidence in the Record that Congress intended to reserve water for the Reservation in 1868. To the contrary, the unrefuted evidence, including the existence of and events surrounding the Wyoming Act of Admission (1890), the 1905 Act (which required the acquisition of water rights under state law) and the 1914 Indian Appropriations Act (in which Congress refused to grant reserved rights) conclusively demonstrates the lack of that intent. Ward v. Race Horse, supra; Merrill v. Bishop, supra. See generally Wyoming's Proposed Findings of Fact and Conclusions of Law 3-1 et seq. and support therefor.

Reserved rights do not extend to ground water. See Wyoming's Proposed Findings of Fact and Conclusions of Law 36-1 et seq. Nothing in the authorities enunciates any "right to use the most accessible and least expensive water source."

The 1868 priority date applies only to a very limited category of lands. See Wyoming's Proposed Findings of Fact and Conclusions of Law 28-1 et seq.

UNITED STATES PROPOSED CONCLUSIONS OF LAW

3. The reserved water right of the Wind River Reservation is that amount of water required for the development for beneficial use of the human and natural resources on the reservation. Development of those resources will assure the existence of the reservation as a permanent tribal homeland.

Wyoming's Response:

3. If a reserved right exists at all for the Wind River Indian Reservation, it exists only for the Reservation's primary purpose, United States v. New Mexico, supra, which is purely agricultural in nature, Shoshone v. United States, supra.

UNITED STATES PROPOSED CONCLUSIONS OF LAW

4. The proper measurement of the reserved water right is that quantity of water which is necessary to make the Wind River Indian Reservation a permanent homeland for the Shoshone and Arapahoe Indians. The right includes that amount of water sufficient to serve the needs of all of the practicably rigable acreage, livestock operation, mineral development and associated industrial activities, municipal, commercial and domestic purposes, instream flows for preservation of optimum fish habitat, and to preserve aesthetic and wildlife areas.

Wyoming's Response:

4. The amount of any reserved right is the amount of water necessary to satisfy the "minimal needs" of the Reservation and to ensure that the primary agricultural purpose is not "entirely derated." Cappaert v. United States, supra; United States v. New Mexico, supra. It is important to remember that even if no reserved right exists for the Reservation, it is not without water. Pursuant to congressional directive, the United States obtained water rights from 1905 through 1915 for the irrigation of 145,000 acres of Reservation land.

UNITED STATES PROPOSED CONCLUSIONS OF LAW

5. The admission of Wyoming into the Union by the Act of July 10, 1890, (26 Stat. 222) did not affect the preexisting reserved water rights of the Wind River Reservation in any way.

Wyoming's Response:

5. This proposed finding begs the question of whether Congress ever intended to reserve water for the Reservation. Furthermore, the conclusion proposed by the United States is directly contrary to the principles announced by the United States Supreme Court in Ward v. Race Horse, supra.

UNITED STATES PROPOSED CONCLUSIONS OF LAW

6. The Tribes are entitled to a reserved water right for those lands outside of the stipulated boundaries of the Wind River Indian Reservation known as Arapahoe Ranch and Padlock Ranch and described in Article IV of the decree, that have been purchased and are held in trust by the United States for the Shoshone and Arapahoe Indians. The priority to water for those lands is the dates on which the lands were purchased, April 10, 1941, and July 14, 1948. The Tribes also are entitled to the state awarded water rights and priority dates appurtenant to the those lands which are set forth in Article IV of the decree.

Wyoming's Response:

6. Aside from the obvious evidentiary problem concerning acquisition of the Arapahoe and Padlock Ranches, as well as the other lands north of Owl Creek for which evidence was submitted by the United States, there is no United States or Wyoming Supreme Court decision supporting the award of a reserved right for non-reserved, acquired lands. The absence of such authority is obviously the result of another inability to show congressional intent to reserve water when the executive purchases land.

UNITED STATES PROPOSED CONCLUSIONS OF LAW

7. Wyoming's constitution, which was accepted, ratified and confirmed by Congress upon Wyoming's admission to the Union, did not affect the preexisting reserved water rights of the Wind River Reservation in any way. Indeed, Wyoming's constitution expressly disclaims "all right and title . . . to all lands owned or held by any Indians or Indian tribes . . . and that said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States" As has already been concluded, Indian reservation lands have as an incident of title a reserved right to water to fulfill the purposes of the reservation. Wyoming's constitutional disclaimer underscores the immunity from state jurisdiction enjoyed by all Indian reservations in the United States except as that immunity has been specifically modified by Congress.

Wyoming's Response:

7. The argument advanced by the United States with respect to Wyoming's constitutional disclaimer (which applies only to land) is directly contrary to the decision of the Tenth Circuit (within which Wyoming is located) Court of Appeals in Jicarilla Apache Tribe v. United States, 601 F.2d 1116 (10th Cir.), cert. denied, 444 U.S. 995 (1979), and is an attempt to lure the Master into reaching conclusions which may adversely affect the Court's subject matter jurisdiction. See Wyoming's Motion of Reservation and Certification (filed Apr. 13, 1982).

UNITED STATES PROPOSED CONCLUSIONS OF LAW

8. The Act of March 3, 1905, (33 Stat. 1016) opening a portion of the reservation to settlement did not affect the reserved rights of the Wind River Reservation. Article X of the 1905 Act expressly provides that nothing in it "shall be construed to deprive the . . . Indians . . . of any benefits to which they are entitled under existing treaties or agreements, not inconsistent with the provisions of this agreement." Article III of the 1905 Act provides that the United States will perform such acts as

are required by the statutes of the State of Wyoming in securing water rights from said State for the irrigation of such lands as shall remain the property of said Indians, whether located within the territory intended to be ceded by this agreement or within the diminished reserve.

The latter provision did not abrogate the reserved water rights of the reservation created by the Treaty of Fort Bridger in 1868 and protected by Article X of the 1905 Act. ^{20/}

^{20/} This conclusion is not disputed by the State of Wyoming:

"Wyoming admits that the priority date for any reserved water right found by the Court to exist for those portions of the Wind River Reservation which were never disestablished or patented to non-Indians is July 3, 1868." Wyoming's Brief in Support to its Response to the claims for Water Rights of the United States and the Shoshone and Arapahoe Tribes 52.

If Article III has no effect on reserved water rights on the unopened reservation, then logic compels that Article III has no different effect on the opened reservation. In fact, there was no difference in the United States position with respect to implementing Article III on the opened and unopened

Wyoming's Response:

8. The suggestion that the 1905 Act does not affect any reserved rights which Congress may have intended to create is directly contrary to the controlling precedent of Merrill v. Bishop, supra.

UNITED STATES PROPOSED CONCLUSIONS OF LAW

9. The opening of the reservation by the 1905 Act did not make the opened lands public lands. They remained Indian lands. Article IX of the 1905 Act expressly provides that the United States was to act as trustee of the lands and oversee their disposal for the benefit of the Indians. The 1905 Act itself did not affect the Indians' interest in the opened lands. While the lands remained undisposed of the Indians continued to enjoy the full beneficial interest in them subject only to the possibility of their being sold, at which time the Indians would become the beneficiaries of the proceeds. Prior to the 1905 Act the Tribes possessed both sovereign and proprietary interest in those lands. After the 1905 Act they retained their sovereign interest only until the lands were reacquired in trust at which time the Tribes' proprietary interest was reunited with the land. As stipulated by the parties, the reservation includes all lands, whether Indian or non-Indian owned, within the exterior boundaries of the reservation.

Wyoming's Response:

9. This conclusion is directly contrary to the controlling precedent of Moss v. State, 471 P.2d 333 (Wyo. 1970), and Merrill v. Bishop, supra, as well as footnote 24 in Rosebud Sioux Tribe v. Kniep, 430 U.S. 584, 601 (1977).

UNITED STATES PROPOSED CONCLUSIONS OF LAW

10. All tribal and allotted lands held in trust by the United States on the Wind River Indian Reservation whether or not located in the opened portion of the reservation, have a reserved water right with a priority of July 3, 1868, when the reservation was established by the Treaty of Fort Bridger.

Wyoming's Response:

10. This conclusion is utterly unsupported by the Record (which involved only a small portion of said lands) and is in direct conflict with the controlling precedent of Merrill v. Bishop, supra.

UNITED STATES PROPOSED CONCLUSIONS OF LAW

11. All lands that have been sold out of Indian ownership but have been reacquired and are presently held in trust by the United States for the Tribes or members of the Tribes of the Wind River Indian Reservation have a reserved water right with a priority of the date of the reservation. Any water rights acquired pursuant to state law and conveyed in the reacquisition remain in effect.

Wyoming's Response:

11. This conclusion is wholly without evidentiary basis since no evidence was submitted showing that Congress intended to reserve water (assuming it had the power to do so) when it purchased lands that were in private ownership. The conclusion is also contrary to the controlling precedent of Merrill v. Bishop, supra.

APPENDIX D

Wyoming's Response to the Tribes' Proposed Conclusions of Law

Introduction

In its review of the Proposed Conclusions of Law submitted by the Tribes, the State of Wyoming has determined that certain of these require specific response. Such Conclusions are set forth verbatim on a page, with Wyoming's response thereto on the page or pages immediately following. The lack of a response herein shall not be construed as an admission to the accuracy or relevance of any proposed provision.

TRIBES' PROPOSED CONCLUSIONS OF LAW

The Shoshone and Arapahoe Tribes propose the following conclusions of law with respect to their reserved water rights pertinent to the Wind River Indian Reservation: 1/

1/ The Tribes propose again with slight modification, the proposed conclusions of law filed on or about August 29, 1980, with respect to the earlier trial on Reservation purposes, boundaries and priority dates, which were conducted in April and June of 1980. The proposed conclusions are identical to those filed in the earlier submission with the exception of those portions deleted or underlined in Proposed Conclusion No. 2.

TRIBES' PROPOSED CONCLUSIONS OF LAW

1. The boundaries of the Wind River Reservation encompass the lands described in article 2 of the Treaty of July 3, 1868, 15 Stat. 673, less the lands described by the Lander purchase of 1874, 18 Stat. 291, and the Thermopolis purchase of 1897, 30 Stat. 93. The boundaries of the Wind River Reservation, and the land included within those boundaries are recorded in the "Stipulation Concerning the Boundaries of the Wind River Reservation" filed by the parties with the court in this case.

Wyoming's Response:

1. This conclusion is, in reality, a finding of fact, which ignores the effect of the 1905 Act as well as the controlling precedent of Moss v. State, 471 P.2d 333 (Wyo. 1970) and footnote 24 of Rosebud Sioux Tribe v. Kniep, 430 U.S. 584, 601 (1977).

TRIBES' PROPOSED CONCLUSIONS OF LAW

2. The Tribes are entitled to a reserved water right with a priority date of July 3, 1868, sufficient to serve the needs of all land and mineral interests ~~currently~~ owned in fee or in trust by the Tribes or by members of the Tribes, the practicably irrigable acreage; livestock operations; mineral development and associated industrial activities; municipal, commercial and domestic purposes; preservation of groundwater resources; and instream flows for the preservation of fisheries and aesthetic areas, as all are associated with land and other natural resources ^{2/} owned in fee or in trust by the Tribes or by members of the Tribes or their direct descendants, ^{3/} within the stipulated boundaries of the Wind River Reservation.

^{2/} See note 1 supra.

^{3/} Id.

Wyoming's Response:

2. This Conclusion is directly contrary to controlling precedent in Merrill v. Bishop, supra, and Moss v. State, supra, as well as the decisions of the United States Supreme Court in Ward v. Race Horse, supra, Cappeart v. United States, supra, and U. S. v. New Mexico, supra. See Wyoming's Response to United States' Proposed Conclusions of Law.

TRIBES' PROPOSED CONCLUSIONS OF LAW

3. The Tribes are entitled to a reserved water right with a priority date of July 3, 1868, sufficient to serve all lands within the Reservation now owned by non-Indians, which the Tribes may reasonably be expected to reacquire except for lands, owned by non-Indians, within the Riverton Reclamation Project.

Wyoming's Response:

3. There is no evidence in the Record or any decision of the United States or Wyoming Supreme Courts which supports this Conclusion.

TRIBES' PROPOSED CONCLUSIONS OF LAW

4. The Tribes are entitled to all of the State certified rights with the associated priority dates, as shown in Article IV of the Decree in this case, as well as a reserved water right with priority dates as of the date of acquisition by the United States for the Tribes with respect to all lands comprising the Arapahoe Ranch which are located outside the stipulated Reservation boundaries. These lands are held in trust status and administered in the same manner by the Bureau of Indian Affairs as the Wind River Reservation. The off-Reservation Arapahoe Ranch lands are legally described in four separate tracts as follows:

Tract 1 acquired on July 14, 1948 (which is the reserved right priority date) (Deed Nos. 1378 and 1379):

Lot 3, the south one half of Lot 4, and Lot 5 of Section 15; Lot 1 and the south one half of Lot 2 of Section 16; Lots 1, 2, 3, 4 and 5, the S 1/2 SW 1/4 NE 1/4, S 1/2 NE 1/4 SW 1/4, and S 1/2 SW 1/4 SW 1/4, Section 20; Lots 1 and 2, Section 21; Lot 1 Section 29; and Lots 1 and 2 of Section 30; all in Township, 43 North, Range 99 West, Sixth Principal Meridian, Hot Springs County, Wyoming.

Tract 2 acquired on April 10, 1941 (which is the reserved right priority date) (Deed No. 1362):

SW 1/4, Section 2; S 1/2 SW 1/4, S 1/2 SE 1/4, NE 1/4 SE 1/4, Section 3; S 1/2 NW 1/4, SW 1/4, S 1/2 SE 1/4, NW 1/4 SE 1/4, Section 4; NE 1/4, N 1/2 NW 1/4, SE 1/4 NW 1/4, NE 1/4 SE 1/4, Lots 1, 2, 3, 4 and 5, Section 5; NE 1/4 NE 1/4, Lots 1, 2, 3, and 4, Section 6; Lot 1, Section 8; N 1/2 NE 1/4, NE 1/4 SW 1/4 and Lot 1 of Section 9; N 1/2 NW 1/4, N 1/2 NE 1/4, Section 10; N 1/2 NW 1/4 Section 11; all in Township 43 North, Range 97 West, 6th Principal Meridian, Hot Springs County, Wyoming;

TRIBES' PROPOSED CONCLUSIONS OF LAW

S 1/2 SE 1/4, E 1/2 SW 1/4, Lots 3 and 4, Section 31; S 1/2 SW 1/4, Section 32; all in Township 44 North, Range 97 West, 6th Principal Meridian, Hot Springs County, Wyoming. S 1/2 SW 1/4, S 1/2 SE 1/4, Section 23; NE 1/4, NW 1/4, SE 1/4, NW 1/4 SW 1/4, Section 26; E 1/2 NE 1/4, NE 1/4 SE 1/4, Section 27; NE 1/4 SW 1/4, N 1/2 SW 1/4, SW 1/4 SW 1/4, N 1/2 SE 1/4, Lot 1, 2 and 3, Section 35; E 1/2 SE 1/4, Section 36; Township 44 North, Range 98 West, 6th Principal Meridian, Hot Springs County, Wyoming. Lots 1, 2, 3, and 4 Section 1; Lot 1 and 2, Section 2: Township 43 North, Range 98 West, 6th Principal Meridian, Fremont County, Wyoming.

Tract 3 acquired on August 25, 1941 (which is the reserved right priority date) (Deed No. 1366):

E 1/2 NE 1/4, E 1/2 SW 1/4, SE 1/4, Lots 3 and 4, Section 23; N 1/2 NE 1/4, NE 1/4 NW 1/4, Lots 1, 2, 3 and 4, Section 26; Township 42 North, Range 96 West, 6th Principal Meridian, Hot Springs County, Wyoming.

Tract 4 acquired on August 25, 1941 (which is the reserved right priority date) (Deed No. 1366):

SW 1/4, W 1/2 SE 1/4, Section 23; NW 1/4 SE 1/4 and Lot 1, less the railroad right-of-way, Section 26; Township 42 North, Range 96 West, 6th Principal Meridian, Hot Springs County, Wyoming.

Wyoming's Response:

4. This conclusion is in violation of the parties' stipulation, dated January 24, 1980, in which all such certificates were provisionally confirmed. Furthermore, it represents an undisguised double-dip, resulting in receipt by the Reservation of both reserved rights and state-awarded water rights. The United States has made an election of substantive rights by choosing to obtain, from 1905 through 1915, state-awarded rights for 145,000 acres of Reservation land, the majority of which rights are uncanceled and the remainder of which were the subject of extensions requested by the United States until 1963, even after Congress refused to create a reserved right for the Reservation in 1914. See generally Wyoming's Proposed Findings of Fact and Conclusions of Law 37-1 et seq. Finally, if the United States is correct in the argument in its Proposed Conclusion of Law 7, the State and its courts are utterly without jurisdiction to grant, maintain or recognize said state-awarded rights.

TRIBES' PROPOSED CONCLUSIONS OF LAW

5. The Tribes are entitled to a reserved water right that assures them the use of replenishable groundwater so that they may exercise the right to the use of minable groundwater, if they so choose, and the right to prevent such mining by anyone else. This reserved right to sufficient groundwater in the Tribes is to satisfy the following purposes:

a. to maintain current groundwater levels in all aquifers and to prevent mining of groundwater by any person or entity other than the Tribes;

b. to sustain existing groundwater well production by the Tribes, their members, direct descendants, lessees and contractees; and

c. to provide groundwater resources for future water needs of the Wind River Reservation.

Wyoming's Response:

5. This conclusion is supported by neither the evidence nor the decisions of the United States Supreme Court. Cappaert v. United States, supra.

TRIBES' PROPOSED CONCLUSIONS OF LAW

6. In the event of insufficient availability of water to serve any part of the Tribes' reserved water rights, the Tribes are legally entitled to choose which of their rights to exercise and which not to exercise.

Wyoming's Response:

6. This conclusion highlights a major weakness in the evidence of the United States and Tribes -- water availability. If, having the most senior right in the river, the Tribes expect water shortages, how can they be granted a reserved right for water which even they are not certain will be naturally available for their use?

TRIBES' PROPOSED CONCLUSIONS OF LAW

7. There are two relevant tests for practicably irrigable acreage. One is whether the lands in question and the proposed irrigation projects are similar to other lands and projects actually in operation in the West which have sustained long-term irrigation. The second is whether the projects are shown to be feasible under a benefit-cost analysis. If the lands studied in this case meet either test, they are practicably irrigable.

Wyoming's Response:

7. This conclusion is not in accordance with the stipulation of the parties. Wyo. Exh. JK-1; Tr. 13160-13164.

TRIBES' PROPOSED CONCLUSIONS OF LAW

8. Each adjudicated water right pursuant to Wyoming law is an official acknowledgement by the State that irrigation works have been constructed and that water has been beneficially applied to the land specified in the certificate of adjudication. A certificate is therefore prima facie proof that the land is irrigable. This may be refuted by a showing that (1) the land is not currently in irrigation and (2) the land is not capable of being restored to irrigation.

Wyoming's Response:

8. This Conclusion is unsupported by the evidence. The testimony of Mr. Christopulos, the President of the Board of Control, shows that the tests for practicably irrigable acres (as suggested by the Tribes in Proposed Conclusion of Law 7, supra) as well as the definition to which the parties stipulated, are neither considered nor applied by the Board of Control when such a Certificate is granted. See Wyoming's Proposed Conclusion of Law 10A-4.

APPENDIX E

Wyoming's Response to the United States' Proposed Interlocutory Decree

Introduction

In its review of the Proposed Interlocutory Decree submitted by the United States, the State of Wyoming has determined that certain of these require specific response. Such provisions are set forth verbatim on a page, with Wyoming's response thereto on the page or pages immediately following. The lack of a response herein shall not be construed as an admission to the accuracy or relevance of any proposed provision.

UNITED STATES PROPOSED DECREE

ARTICLE I

Definitions

For purpose of this decree:

(A) "Diversion requirement" means the amount of water necessary to be diverted from naturally occurring streams or from groundwater sources to supply the consumptive beneficial uses for the Indian water rights.

(B) "Indian water rights" means water rights reserved by the Treaty of Fort Bridger, July 3, 1868, and held in trust by the United States of America, for the benefit of the Shoshone and Arapahoe Indian Tribes of the Wind River Indian Reservation, as quantified, described, and set forth in Article II, Sections 1-6, and Article III, Sections 1 and 2 of his decree.

(C) "Beneficial use" means the use of water for any purpose from which benefits are derived. Such use includes but is not limited to: municipal purposes, domestic purposes, irrigation, development of hydroelectric power, industrial and mineral development, instream flows for preservation of fishery habitat, preservation of aesthetic and wildlife areas, livestock consumption and stock pond evaporation.

(D) "Fishery flow" means the optimum mean monthly flow which will produce maximum fish habitat in a given stream reach.

(E) "Aesthetics and wildlife flow" means 100 percent of the naturally occurring water in the lakes and streams in the areas depicted on United States Exhibit WRIR C-6, which is hereby incorporated by reference and made a part of this decree.

(F) "Natural flow" means all water in the rivers, streams, seeps, springs and naturally occurring lakes which is unimpaired by man-made diversions and affected only by natural influences.

UNITED STATES PROPOSED DECREE

(G) "Livestock water requirements" means the diversion requirement necessary to satisfy the needs of livestock or evaporated from stockponds maintained for livestock watering purposes on the Wind River Indian Reservation.

(H) "Agricultural water requirements" means the diversion requirement to supply the net irrigation requirements of the crops and associated distribution, conveyance, and on-farm losses.

(I) "Mineral and Industrial water requirements" means the diversion requirement necessary to satisfy the needs of the various industries listed in Article II, Section 4 below.

(J) "Municipal water requirements" means the diversion requirement necessary to satisfy the personal water needs for the Indian population of Ft. Washakie, Riverton, Ethete, Boulder Flat, Arapahoe, Pavillion and remaining rural areas of the Wind River Indian Reservation for domestic, commercial and light industrial use.

(K) "Mean monthly flow (MMF)" means the average flow, expressed in cubic feet per second, continuously available throughout a given month.

(L) "Stream reach" means that section of river or stream designated in United States Exhibit WRIR C-281 which is hereby incorporated by reference and made a part of this decree and described in Article II, Section 6 below which depicts the section of river or stream throughout which fishery flows are required.

(M) "Diversion" means (1) the act of taking of water from a stream or other body of water into a canal, pipe, or other conduit; (2) a man-made structure for taking water from a stream or other body of water.

UNITED STATES PROPOSED DECREE

(N) "Non-Consumptive use" means the use of water in a way that does not reduce a supply. Examples include hunting, fishing, boating, and swimming, instream flows and preservation of natural lake levels.

(O) The boundaries of the Wind River Indian Reservation have been stipulated to by the parties. That stipulation is attached hereto as Appendix 1.

Wyoming's Response to United States'
Proposed Interlocutory Decree
for the Wind River Indian Reservation

General

The Interlocutory Decree proposed by the United States is unsupported by the Record and contrary to decisions of the United States and Wyoming Supreme Courts.

Art. I Definitions

A. "Diversion Requirement"

1. No Supreme Court decision permits reserved rights in ground water. Cappaert v. United States, supra, holds only that reserved rights in surface water may be protected from withdrawals of hydraulically connected ground water.
2. No evidence was presented in this case to show that the uses set forth in proposed decree are "beneficial."

B. "Indian Water Rights"

As discussed in Wyoming's Response Brief, supra, Indian reserved water rights do not exist in Wyoming. Congress in 1890, and again in 1905, expressly provided that water rights for the Wind River Indian Reservation be obtained under Wyoming State Law and in 1914, Congress refused to recognize or create a reserve water right for the Reservation.

C. "Beneficial Use"

1. The uses described herein, except perhaps irrigation, do not fall within the primary agricultural purposes of the Reservation and, in accordance with the decisions of the United States Supreme Court, water for these uses must be obtained under state law. With respect to irrigation, however, the United States has already obtained Wyoming water rights for the irrigation of 145,000 acres. Consequently, the reserved right sought here is utterly unnecessary to meet the "minimal needs" of the Reservation or to ensure that the primary purpose of the Reservation is not "entirely defeated."
2. There is no evidence, whatsoever, that supports the granting of a decree for the "development of hydroelectric power."

D. "Fishery Flow"

A decree for "optimum" flows for the production of "maximum" fish habitat:

1. Bears no relation to any established historic conditions, and
2. Hardly seems fashioned to meet "minimal needs" or to assure that the Reservation's primary agricultural purpose is not "entirely defeated."

E. "Aesthetics and Wildlife Flow"

Rights for the above purposes:

1. Are unsupported by the evidence insofar as wildlife flows are concerned.
2. There is no credible evidence in the record that 100% of the flows are necessary to safeguard the Reservation's "minimal need" or ensure that its primary agricultural purpose is not "entirely defeated."
3. The reference to "naturally occurring water" constitutes a term which is undefined by the evidence herein and, therefore, suggests a decree that is so ambiguous as to be unenforceable and of no effect.

F. "Natural Flow"

There is no evidence whatsoever in the Record herein as to the natural flow of any of the listed sources except for a few major river and stream segments.

G. "Livestock Water Requirements"

There is no evidence whatsoever in the Record concerning the location, size or source of supply, let alone the land status, of stockpounds on the Reservation.

H. "Agricultural Water Requirements"

[No Response]

I. "Mineral and Industrial Water Requirements"

The needs referred to have not been established by competent evidence in the Record herein.

J. "Municipal Water Requirements"

[No Response]

K. "Mean Monthly Flow"

[No Response]

L. "Stream Reach"

[No Response]

M. "Diversion"

[No Response]

N. "Non-consumptive Use"

Uses described in this definition are wholly unsupported by any competent evidence in the Record herein.

O. "Boundaries"

No reserved water right may be awarded for lands located outside the stipulated boundaries of the Reservation.

P. "Areas" or "Units"

The definition is so ambiguous that it may not be used in an enforceable decree.

Q. [No Response]

UNITED STATES PROPOSED DECREE

ARTICLE II

IT IS ORDERED, ADJUDGED, AND DECREED that the United States has reserved, by virtue of the Treaty of Fort Bridger, July 3, 1868, and for the benefit of the Shoshone and Arapahoe Tribes of the Wind River Reservation, the right to divert water, or to have water diverted, in the amounts set forth herein, and from the streams set forth herein, and further that said right has a priority date of July 3, 1863, and the United States or the Shoshone and Arapahoe Tribes shall have the right to prevent the diversion of water from said streams by persons whose priority date does not predate July 3, 1868, if said diversion would interfere or prevent the United States or the Shoshone and Arapahoe Tribes from fully enjoying and utilizing the rights herein granted and recognized.

UNITED STATES PROPOSED DECREE

Section 1

AGRICULTURAL WATER REQUIREMENTS

PRIORITY DATE: July 3, 1868

| <u>Description</u> | <u>Water Right Acreage (acres)</u> | <u>Average Annual Diversion (AF/acre)</u> | <u>Annual Diversion Requirement (acre-feet)</u> | <u>Source of Water Supply (description)</u> |
|------------------------------------|------------------------------------|---|---|---|
| 1. PROJECT LANDS | | | | |
| A. Project Lands - Future | | | | |
| 1. North Crowheart Unit | 38,773 | 3.81 | 147,767 | Wind River |
| 2. South Crowheart Unit | 4,695 | 4.29 | 20,137 | Wind River |
| 3. Arapahoe Unit | 3,808 | 4.39 | 16,720 | N.F. Popo Agie River |
| 4. Bighorn Flats Unit | 1,702 | 2.79 | 4,748 | Wind River |
| 5. Bighorn Flats Unit | 968 | 2.55 | 2,464 | Little Wind River |
| 6. Riverton East Unit | 157 | 3.16 | 496 | Little Wind River |
| 7. Riverton East Unit | 272 | 3.16 | 861 | Big Horn River |
| 8. Riverton East Unit | 3,385 | 4.78 | 16,179 | Big Horn River |
| 9. Owl Creek Unit | 245 | 3.49 | 855 | S.F. Owl Creek |
| Subtotals | <u>54,005</u> | | <u>210,227</u> | |
| B. Project Lands - Historic | | | | |
| 1. Ray Unit | 9,898 | 5.32 | 52,657 | Little Wind River and Tributaries |
| Ray Unit | 28 | 4.21 | 118 | Little Wind River and Tributaries |
| 2. Coolidge Unit | 7,829 | 4.95 | 38,753 | Little Wind River and Tributaries |
| Coolidge Unit | 200 | 5.00 | 1,001 | Little Wind River and Tributaries |
| 3. Sub Agency Unit | 3,162 | 5.26 | 16,632 | Little Wind River and Tributaries |
| Sub Agency Unit | 306 | 5.00 | 1,531 | Little Wind River and Tributaries |
| 4. Dinwoody Bench Unit | 5,496 | 12.06 | 66,281 | Wind River and Tributaries |
| Dinwoody Bench Unit | 492 | 4.18 | 2,056 | Wind River and Tributaries |
| 5. Wind River "A" Unit | 1,118 | 12.06 | 13,483 | Wind River |
| 6. Johnstown Unit | 654 | 6.94 | 4,539 | Wind River |
| Johnstown Unit | 190 | 5.00 | 951 | Wind River |
| 7. Lefthand Unit | 2,148 | 6.90 | 14,821 | Wind River |

UNITED STATES PROPOSED DECREE

| <u>Description</u> | <u>Water Right Acreage (acres)</u> | <u>Average Annual Diversion (AF/acre)</u> | <u>Annual Diversion Requirement (acre-feet)</u> | <u>Source of Water Supply (description)</u> |
|-----------------------------|------------------------------------|---|---|---|
| 8. LeClair Unit | 1,371 | 5.48 | 7,513 | Wind River |
| 9. Midvale Unit | 569 | 5.58 | 3,175 | Wind River |
| Subtotals | 33,461 | | 223,511 | |
| TOTAL PROJECT LANDS | 87,466 | | 433,738 | |
| 2. NON-PROJECT LANDS | | | | |
| A. Wind River Basin | | | | |
| 1. East Fork Wind River | 310 | 5.06 | 1,568 | E.F. Wind River |
| 2. Dinwoody Creek | 171 | 5.57 | 953 | and/or Tributaries Dinwoody Creek |
| 3. Meadow Creek | 166 | 5.43 | 901 | and/or Tributaries Meadow Creek |
| 4. Meadow Creek | 179 | 5.51 | 986 | and/or Tributaries Meadow Creek |
| 5. Meadow Creek | 160 | 5.09 | 814 | and/or Tributaries Meadow Creek |
| 6. Dry (Pasup) Creek | 1,977 | 5.31 | 10,498 | and/or Tributaries Dry (Pasup) Creek |
| 7. Dry (Pasup) Creek | 56 | 5.20 | 291 | and/or Tributaries Dry (Pasup) Creek |
| 8. Dry (Pasup) Creek | 115 | 5.06 | 581 | and/or Tributaries Dry (Pasup) Creek |
| 9. Crow Creek | 2,927 | 5.31 | 15,542 | and/or Tributaries Crow Creek |
| 10. Crow Creek | 36 | 5.40 | 194 | and/or Tributaries Crow Creek |
| 11. Crow Creek | 154 | 5.29 | 815 | and/or Tributaries Crow Creek |
| 12. Dry Creek | 183 | 5.54 | 1,014 | and/or Tributaries Dry Creek |
| 13. Dry Creek | 4 | 5.57 | 22 | and/or Tributaries Dry Creek |
| 14. Willow Creek | 60 | 5.57 | 334 | and/or Tributaries Willow Creek |
| 15. Willow Creek | 7 | 5.06 | 35 | and/or Tributaries Willow Creek |
| 16. Bull Lake Creek | 26 | 5.40 | 140 | and/or Tributaries Bull Lake Creek |
| 17. Bull Lake Creek | 37 | 5.37 | 199 | and/or Tributaries Bull Lake Creek |

UNITED STATES PROPOSED DECREE

| <u>Description</u> | <u>Water Right Acreage (acres)</u> | <u>Average Annual Diversion (AF/acre)</u> | <u>Annual Diversion Requirement (acre-feet)</u> | <u>Source of Water Supply (description)</u> |
|-----------------------------------|------------------------------------|---|---|---|
| 18. Main Stem Wind River | 1,338 | 5.54 | 7,413 | Wind River |
| 19. Main Stem Wind River | 487 | 5.77 | 2,810 | Wind River |
| 20. Main Stem Wind River | 213 | 5.51 | 1,174 | Wind River |
| Subtotals | <u>8,606</u> | | <u>46,284</u> | |
| B. Little Wind River Basin | | | | |
| 1. N.F. Little Wind River | 485 | 5.49 | 2,663 | N.F. Little Wind River and/or Tributaries |
| 2. N.F. Little Wind River | 1,776 | 5.14 | 9,129 | N.F. Little Wind River and/or Tributaries |
| 3. N.F. Little Wind River | 357 | 5.03 | 1,795 | N.F. Little Wind River and/or Tributaries |
| 4. S.F. Little Wind River | 107 | 4.94 | 529 | S.F. Little Wind River and/or Tributaries |
| 5. S.F. Little Wind River | 781 | 5.11 | 3,991 | S.F. Little Wind River and/or Tributaries |
| 6. S.F. Little Wind River | 44 | 5.09 | 224 | S.F. Little Wind River and/or Tributaries |
| 7. Main Stem Little Wind River | 1,191 | 5.94 | 7,075 | Main Stem Little Wind River |
| 8. Sage Creek | 1,029 | 5.57 | 5,732 | Sage Creek and/or Tributaries |
| 9. Sage Creek | 776 | 5.51 | 4,276 | Sage Creek and/or Tributaries |
| 10. Crooked Creek | 69 | 5.26 | 363 | Crooked Creek and/or Tributaries |
| 11. Crooked Creek | 3 | 5.57 | 17 | Crooked Creek and/or Tributaries |
| 12. Trout Creek | 228 | 5.46 | 1,245 | Trout Creek and/or Tributaries |

UNITED STATES PROPOSED DECREE

| <u>Description</u> | <u>Water Right Acreage (acres)</u> | <u>Average Annual Diversion (AF/acre)</u> | <u>Annual Diversion Requirement (acre-feet)</u> | <u>Source of Water Supply (description)</u> |
|-----------------------------|------------------------------------|---|---|---|
| 13. Trout Creek | 63 | 5.11 | 322 | Trout Creek and/or Tributaries |
| 14.. Spring Creek | 178 | 4.97 | 885 | Spring Creek and/or Tributaries |
| 15. Bighorn Draw | 139 | 4.94 | 687 | Bighorn Draw and/or Tributaries |
| 16. Mill Creek | 47 | 5.57 | 262 | Mill Creek and/or Tributaries |
| Subtotals | <u>7,273</u> | | <u>39,195</u> | |
| C. Big Horn River Basin | | | | |
| 1. Main Stem Big Horn River | 126 | 5.94 | 749 | Big Horn River |
| 2. Cottonwood Creek | 942 | 5.89 | 5,548 | Cottonwood Creek and/or Tributaries |
| 3. Muddy Creek | 2,901 | 5.43 | 15,752 | Muddy Creek and/or Tributaries |
| 4. Muddy Creek | 1,194 | 5.60 | 6,686 | Muddy Creek and/or Tributaries |
| 5. Muddy Creek | 186 | 5.63 | 1,047 | Muddy Creek and/or Tributaries |
| 6. Five Mile Creek | 518 | 5.57 | 2,885 | Five Mile Creek and/or Tributaries |
| Subtotals | <u>5,867</u> | | <u>32,667</u> | |
| D. Popo Agie River Basin | | | | |
| 1. N.F. Popo Agie River | 422 | 5.40 | 2,279 | N.F. Popo Agie and/or Tributaries |
| 2. N.F. Popo Agie River | 112 | 5.43 | 608 | N.F. Popo Agie and/or Tributaries |

UNITED STATES PROPOSED DECREE

| <u>Description</u> | <u>Water Right Acreage (acres)</u> | <u>Average Annual Diversion (AF/acre)</u> | <u>Annual Diversion Requirement (acre-feet)</u> | <u>Source of Water Supply (description)</u> |
|------------------------------|------------------------------------|---|---|---|
| 3. Main Stem Popo Agie River | 40 | 5.40 | 216 | Main Stem Popo Agie River |
| 4. Main Stem Popo Agie River | 74 | 5.74 | 425 | Main Stem Popo Agie River |
| Subtotals | <u>648</u> | | <u>3,528</u> | |
| E. Owl Creek Basin | | | | |
| 1. S.F. Owl Creek | 1,529 | 5.46 | 8,348 | S.F. Owl Creek and/or Tributaries |
| 2. S.F. Owl Creek | 75 | 5.51 | 413 | S.F. Owl Creek and/or Tributaries |
| 3. S.F. Owl Creek | 64 | 5.57 | 356 | S.F. Owl Creek and/or Tributaries |
| 4. Main Stem Owl Creek | 434 | 5.40 | 2,343 | Main Stem Owl Creek |
| 5. Mud Creek | 754 | 5.43 | 4,094 | Mud Creek and/or Tributaries |
| 6. Mud Creek | 185 | 5.29 | 979 | Mud Creek and/or Tributaries |
| 7. Mud Creek | 40 | 5.37 | 215 | Mud Creek and/or Tributaries |
| Subtotals | <u>3,081</u> | | <u>16,748</u> | |
| TOTAL NON-PROJECT | 25,465 | | 138,422 | |
| TOTAL CLAIM | <u>112,936 acres</u> | | <u>572,160 acre-feet</u> | |

UNITED STATES PROPOSED DECREE

Section 2

LIVESTOCK WATER REQUIREMENTS

PRIORITY DATE: July 3, 1868

| <u>Description</u> | <u>Annual Water Requirement (acre-feet)</u> | <u>Sources of Water Supply (description)</u> |
|-------------------------------------|---|--|
| 1. Wind River/Big Horn River Basins | 870 | Wind and Big Horn Rivers and/or their Tributaries |
| 2. Little Wind River Basin | 870 | Little Wind River and/or Tributaries |
| 3. Popo Agie River | 60 | Popo Agie River and/or Tributaries |
| 4. Owl and Red Canyon Creeks | 930 | Owl and Red Canyon Creeks and/or their Tributaries |
| TOTAL | <u>2,730</u> acre-feet | |

Section 3

MUNICIPAL WATER REQUIREMENTS.

PRIORITY DATE: July 3, 1868

| <u>Service Area</u> | <u>Annual Water Requirement (acre-feet)</u> | <u>Source of Water Supply (description)</u> |
|---------------------|---|---|
| 1. Riverton | 39 | Wind River |
| 2. Fort Washakie | 972 | Little Wind River and/or Tributaries |
| 3. Ethete | 549 | Little Wind River |
| 4. Boulder Flat | 56 | Popo Agie River and/or Tributaries |
| 5. Riverton | 39 | Groundwater |
| 6. Arapahoe | 331 | Groundwater |
| 7. Pavillion | 4 | Groundwater |
| 8. Other Areas | 236 | Groundwater |
| TOTAL | <u>2,226</u> acre-feet | |

UNITED STATES PROPOSED DECREE

Section 4

INDUSTRIAL AND MINERAL DEVELOPMENT
WATER REQUIREMENTS

PRIORITY DATE: July 3, 1868

| <u>Mineral</u> | <u>Use</u> | <u>Annual Diversion Requirement (acre-feet)</u> | <u>Source of Water Supply (description)</u> |
|----------------|--|---|---|
| 1. Oil | Secondary Recovery | 5,550 | Groundwater |
| 2. Oil | Secondary Recovery | 1,030 | Groundwater/Wind River ^{1/} |
| 3. Natural Gas | Sweetening and Dehydrating Plant | 6 | Groundwater |
| 4. Natural Gas | Sulfuric Acid Plant | 95 | Groundwater |
| 5. Natural Gas | Anhydrous Ammonia Plant | 4,250 | Groundwater/Wind River ^{1/} |
| 6. Coal | In-Situ Gasification Plant | 2,800 | Groundwater |
| 7. Coal | Dust Control/ Reclamation at Power Plant | 25 | Groundwater |
| 8. Coal | 150 MW Power Plant | 2,490 | Groundwater/Wind River ^{1/} |
| 9. Gypsum | Surface Reclamation for Mining | 10 | Groundwater |
| 10. Gypsum | Wallboard Manu- facturing Plant | 300 | Groundwater/Wind River ^{1/} |
| 11. Uranium | Dust Control/Incidental Purposes at Plant | 15 | Groundwater |
| 12. Uranium | Uranium Processing Plant | 475 | Groundwater/Crow Creek ^{1/} |

^{1/} 9370 acre-feet of the mineral and industrial water requirements can be served from either surface or groundwater. The remaining requirements are to be furnished from groundwater.

UNITED STATES PROPOSED DECREE

| <u>Mineral</u> | <u>Use</u> | <u>Annual Diversion Requirement (acre-feet)</u> | <u>Source of Water Supply (description)</u> |
|----------------|--------------------------------------|---|---|
| 13. Phosphate | Minining Operation | 5 | Groundwater |
| 14. Phosphate | Beneficiation/Wet Acit Processing | 825 | Groundwater/Wind ^{2/} River |
| TOTALS | | <u>17,876</u> acre-feet | |

^{2/} 9370 acre-feet of the mineral and industrial water requirements can be served from either surface or groundwater. The remaining requirements are to be furnished from groundwater.

Wyoming's Response:

Article II

1. Only the United States may enforce such a water right.
2. No such right may be granted for lands which have been allotted or which have not been continuously held in trust by the United States since July 3, 1868.
3. The United States has failed to meet its burden of proof with respect to the agricultural water requirements set forth therein.

UNITED STATES PROPOSED DECREE

ARTICLE III

It is further ORDERED, ADJUDGED and DECREED, that the United States has reserved, by virtue of the Treaty of July 3, 1868, and for the benefit of the Shoshone and Arapahoe Tribes, the right to prevent any person, having a priority date later than July 3, 1868, from diverting or attempting to divert any of the waters in the following reaches of the following streams as set out in Sections 1 and 2 of the Article. Provided further that said rights to prevent diversions or attempts to divert may be exercised by the United States or by the Shoshone and Arapahoe Tribes.

UNITED STATES PROPOSED DECREE

Section 1

PRIORITY DATE: July 3, 1868

AESTHETICS AND WILDLIFE FLOWS

| <u>Description</u> | <u>Annual Diversion Requirement (acre-feet)</u> |
|---|---|
| 1. All streams/creeks within aesthetics boundary. ^{3/} | All Natural Flows |
| 2. All natural lakes. | Water to Maintain Average Historic Lake Levels |

^{3/} All affected streams and creeks are depicted on United States Exhibit WRIR C-7. The requirement for the total natural flow within the aesthetics area is non-consumptive in nature.

UNITED STATES PROPOSED DECREE

Section 2

PRIORITY DATE: July 3, 1868

FISHERY FLOWS

Stream Reach 1 -- Wind River (above Dinwoody Creek)

| | <u>MMF (cfs)</u> |
|-----------|------------------|
| January | 173 |
| February | 172 |
| March | 176 |
| April | 258 |
| May | 320 |
| June | 320 |
| July | 320 |
| August | 320 |
| September | 320 |
| October | 320 |
| November | 246 |
| December | 199 |

Stream Reach 2 -- Wind River (between Dinwoody and Bull Lake Creeks)

| | <u>MMF (cfs)</u> |
|----------|------------------|
| January | 201 |
| February | 200 |
| March | 207 |
| April | 284 |

UNITED STATES PROPOSED DECREE

| <u>Stream Reach 2 Continued</u> | <u>MMF (cfs)</u> |
|---------------------------------|------------------|
| May | 500 |
| June | 500 |
| July | 500 |
| August | 500 |
| September | 500 |
| October | 444 |
| November | 302 |
| December | 239 |

Stream Reach 3 -- Wind River (between Bull Lake Creek and Diversion Dam)

| | <u>MMF (cfs)</u> |
|-----------|------------------|
| January | 254 |
| February | 249 |
| March | 258 |
| April | 371 |
| May | 500 |
| June | 500 |
| July | 500 |
| August | 500 |
| September | 500 |
| October | 500 |
| November | 365 |
| December | 291 |

UNITED STATES PROPOSED DECREE

Stream Reach 4 -- Wind River (between Diversion Dam and Little Wind River confluence -- two study sites)

| | <u>MMF (cfs)</u> |
|-----------|------------------|
| January | 256 |
| February | 250 |
| March | 260 |
| April | 325 |
| May | 325 |
| June | 325 |
| July | 325 |
| August | 325 |
| September | 325 |
| October | 325 |
| November | 325 |
| December | 293 |

Stream Reach 5 -- Wind River (below Little Wind River to boundary of Boysen Reservoir Withdrawal Area)

| | <u>MMF (cfs)</u> |
|-----------|------------------|
| January | 393 |
| February | 384 |
| March | 396 |
| April | 500 |
| May | 500 |
| June | 500 |
| July | 500 |
| August | 500 |
| September | 500 |
| October | 500 |

UNITED STATES PROPOSED DECREE

Stream Reach 7 Continued MMF (cfs)

| | |
|-----------|-----|
| August | 207 |
| September | 123 |
| October | 82 |
| November | 56 |
| December | 49 |

Stream Reach 8 -- Bull Lake Creek (above Bull Lake)

| | <u>MMF (cfs)</u> |
|-----------|------------------|
| January | 29 |
| February | 31 |
| March | 29 |
| April | 47 |
| May | 215 |
| June | 215 |
| July | 215 |
| August | 215 |
| September | 180 |
| October | 83 |
| November | 45 |
| December | 33 |

Stream Reach 9 -- Bull Lake Creek (below Bull Lake)

| | <u>MMF (cfs)</u> |
|----------|------------------|
| January | 30 |
| February | 33 |
| March | 31 |
| April | 50 |

UNITED STATES PROPOSED DECREE

| <u>Stream Reach 9 Continued</u> | <u>MMF (cfs)</u> |
|---------------------------------|------------------|
| May | 255 |
| June | 255 |
| July | 255 |
| August | 255 |
| September | 178 |
| October | 76 |
| November | 41 |
| December | 32 |

Stream Reach 10 -- North Fork Little Wind River (below North Fork Canyon)

| | <u>MMF (cfs)</u> |
|-----------|------------------|
| January | 19 |
| February | 20 |
| March | 20 |
| April | 26 |
| May | 80 |
| June | 80 |
| July | 80 |
| August | 80 |
| September | 69 |
| October | 35 |
| November | 23 |
| December | 20 |

UNITED STATES PROPOSED DECREE

Stream Reach 11 -- South Fork Little Wind River (below Washakie Reservoir)

| | <u>MMF (cfs)</u> |
|-----------|------------------|
| January | 22 |
| February | 25 |
| March | 23 |
| April | 31 |
| May | 110 |
| June | 110 |
| July | 110 |
| August | 91 |
| September | 72 |
| October | 41 |
| November | 28 |
| December | 23 |

Stream Reach 12 -- Little Wind River (above Popo Arie River confluence)

| | <u>MMF (cfs)</u> |
|-----------|------------------|
| January | 49 |
| February | 51 |
| March | 51 |
| April | 71 |
| May | 75 |
| June | 75 |
| July | 75 |
| August | 75 |
| September | 75 |
| October | 75 |

UNITED STATES PROPOSED DECREE

Stream Reach 11 -- South Fork Little Wind River (below Washakie Reservoir)

| | <u>MMF (cfs)</u> |
|-----------|------------------|
| January | 22 |
| February | 25 |
| March | 23 |
| April | 31 |
| May | 110 |
| June | 110 |
| July | 110 |
| August | 91 |
| September | 72 |
| October | 41 |
| November | 28 |
| December | 23 |

Stream Reach 12 -- Little Wind River (above Popo Agie River confluence)

| | <u>MMF (cfs)</u> |
|-----------|------------------|
| January | 49 |
| February | 51 |
| March | 51 |
| April | 71 |
| May | 75 |
| June | 75 |
| July | 75 |
| August | 75 |
| September | 75 |
| October | 75 |

UNITED STATES PROPOSED DECREE

| | |
|----------|----|
| November | 61 |
| December | 52 |

Stream Reach 13 -- North Fork Popo Agie River (below North Fork Canyon)

| | <u>MMF (cfs)</u> |
|-----------|------------------|
| January | 17 |
| February | 16 |
| March | 15 |
| April | 26 |
| May | 77 |
| June | 77 |
| July | 77 |
| August | 77 |
| September | 52 |
| October | 34 |
| November | 23 |
| December | 19 |

Stream Reach 14 -- Popo Agie River (below the North and Middle Forks and above Little Wind River confluence)

| | <u>MMF (cfs)</u> |
|----------|------------------|
| January | 48 |
| February | 46 |
| March | 46 |
| April | 94 |
| May | 172 |
| June | 172 |
| July | 172 |

UNITED STATES PROPOSED DECREE

| | |
|----------------------------------|------------------|
| August | 172 |
| September | 140 |
| <u>Stream Reach 14 Continued</u> | |
| | <u>MMF (cfs)</u> |
| October | 91 |
| November | 63 |
| December | 53 |

Stream Reach 15 -- Dinwoody Creek (below Dinwoody Lakes)

| | |
|-----------|------------------|
| | <u>MMF (cfs)</u> |
| January | 15 |
| February | 14 |
| March | 14 |
| April | 21 |
| May | 110 |
| June | 110 |
| July | 110 |
| August | 110 |
| September | 95 |
| October | 38 |
| November | 21 |
| December | 16 |

Stream Reach 16 -- Crow Creek (above Crow Creek Canyon)

| | |
|----------|------------------|
| | <u>MMF (cfs)</u> |
| January | 3 |
| February | 3 |
| March | 3 |
| April | 6 |
| May | 12 |
| June | 12 |
| July | 12 |

UNITED STATES PROPOSED DECREE

| <u>Stream Reach 16 Continued</u> | <u>MMF (cfs)</u> |
|----------------------------------|------------------|
| August | 12 |
| September | 7 |
| October | 5 |
| November | 4 |
| December | 3 |

Wyoming's Response:

Article III

There is no evidence in the Record that the United States reserved a right to prevent the diversion of water from the enumerated streams. In fact, the diversions proposed by the United States in Article II, supra, are from those very streams and will reduce the flow in those streams below the levels listed.

UNITED STATES PROPOSED DECREE

ARTICLE IV

ADDITIONAL AGRICULTURAL USES FOR TRUST LANDS OUTSIDE
THE STIPULATED BOUNDARIES OF THE WIND RIVER
INDIAN RESERVATION ^{4/}

It is further ORDERED, ADJUDICATED and DECREED that the United States, as trustee for the Shoshone and Arapahoe Tribes, has a reserved water right to divert waters in the amounts set out below as "Average Annual Diversion", with the priority dates set out below as "Reserved Right Priority Date"; said right, however, shall not be construed as an abrogation, limitation, condition, or impairment of the rights the United States or the Shoshone and Arapahoe Tribes have under State law to divert water in the amount authorized by State law and with the priority date set out in the column headed "State Awarded Priority Date".

^{4/} Boundary Stipulation attached hereto as Appendix 1.

UNITED STATES PROPOSED DECREE

SECTION 1

ARAPAHOE RANCH
MERRILL LAND PURCHASE
LANDS NORTH OF SOUTH FORK OF OWL CREEK

PRIORITY DATE: July 14, 1948

WATER SOURCE: South Fork of Owl Creek

| ATCH | PERMIT | PROOF | ACRES | STATE | RESERVED | AVERAGE |
|---------|--------|-------|-------|------------|----------|-------------|
| | NO. | NO. | | AWARDED | RIGHT | ANNUAL |
| | | | | PRIORITY | PRIORITY | DIVERSION |
| | | | | DATE | DATE | (ACRE FEET) |
| yper #4 | 11707 | 14032 | 64 | 05-16-1912 | 7-14-48 | 350 |
| lggs | 6621 | 14024 | 27 | 06-20-1904 | 7-14-48 | 147 |
| yper #3 | 10719 | N/A | 9.4 | None | 7-14-48 | 50 |

UNITED STATES PROPOSED DECREE

SECTION 2

PADLOCK RANCH PURCHASE
LANDS NORTH OF MAINSTEM OF OWL CREEK

PRIORITY DATE: April 10, 1941

WATER SOURCE: Owl Creek

| DITCH NAME | PERMIT NO. | PROOF NO. | ACRES | STATE AWARDED PRIORITY DATE | RESERVE RIGHTY PRIORITY DATE | AVERAGE ANNUAL DIVERSION (ACRE FEET) |
|--------------------|------------|-----------|--------|-----------------------------|------------------------------|--------------------------------------|
| Sliney & Mikkelson | Terr. | 3526 | 122.63 | 10-1884 | 4-10-41 | 662 |
| Sliney & Mikkelson | Terr. | 3526 | 32.0 | 10-1884 | 4-10-41 | 173 |
| Sliney & Mikkelson | Terr. | 3527 | 222.63 | 10-1884 | 4-10-41 | 1202 |
| Padlock | Terr. | 3534 | 224.35 | 06-1887 | 4-10-41 | 1212 |
| Dewitt | 2306 | 6271 | 17.0 | 10-04-1899 | 4-10-41 | 92 |
| Sliney No. 1 | 4038 | 8350 | 160.0 | 07-11-1902 | 4-10-41 | 864 |
| Sliney No. 1 | 4038 | 8351 | 160.0 | 07-11-1902 | 4-10-41 | 864 |
| Rothwell Enl. of | | | | | | |
| Sliney No. 1 | 2125E | 15024 | 85.0 | 09-17-1909 | 4-10-41 | 459 |
| Rothwell Enl. of | | | | | | |
| Sliney No. 1 | 2125E | 15024 | 233.0 | 09-17-1909 | 4-10-41 | 1258 |
| Padlock | Terr. | 3533 | 252.0 | 06-1887 | 4-10-41 | 1361 |
| Padlock | Terr. | 3534 | 41.0 | 06-1887 | 4-10-41 | 221 |
| Padlock | Terr. | 3534 | 285.44 | 06-1887 | 4-10-41 | 1541 |
| Padlock | None | None | 24.0 | None | 4-10-41 | 130 |
| Sliney No. 1 | None | None | 12.0 | None | 4-10-41 | 65 |
| Padlock | None | None | 5.9 | None | 4-10-41 | 32 |
| Padlock | None | None | 43.1 | None | 4-10-41 | 231 |
| Sliney No. 1 | None | None | 44.0 | None | 4-10-41 | 236 |

Wyoming's Response:

Article IV

There is no evidence in the Record to support this award. In addition, there is no decision of the United State Supreme Court which authorizes such an award. Finally, all such state-awarded certification rights have been provisionally approved.

UNITED STATES PROPOSED DECREE

ARTICLE V

Any water rights listed herein may be exercised only for beneficial uses.

Wyoming's Response:

Article V

The rights granted, if any, may be exercised only to fulfill the primary agricultural purpose of the Reservation.

UNITED STATES PROPOSED DECREE

ARTICLE VI

The foregoing references to a quantity of water necessary to supply the diversion requirements for irrigation, municipal and industrial, mineral, and livestock, shall constitute the means of determining the quantity of Indian water rights but shall not constitute a restriction to those uses indicated above. If all or part of the Indian water rights decreed herein are used other than for the uses indicated above, the total diversion shall not exceed the diversion requirements set forth above.

Wyoming's Response:

Article VI

Any change in the water rights granted must be strictly in accordance with Wyoming law, to which the United States subjected itself in the McCarran Amendment.

UNITED STATES PROPOSED DECREE

ARTICLE VII

In the event that there is insufficient water in the Big Horn River system and its tributaries to fulfill the Indian water rights set forth in Article II, Sections 1-6 and Article III, Section 1, and Article IV, Section 1, of this decree, the available water supply shall be applied to such of those Indian water rights as can be served pursuant to determination of the Joint Business Council of the Shoshone and Arapahoe Tribes or its designated representative, in consultation with the Secretary of the Interior or his designated representative.

Wyoming's Response:

Article VII

1. Since water availability is a requirement for a reserved right, if there is inadequate water available, no reserved right exists.
2. Such a reserved right extends only to those surface waters touching unallotted lands continuously held in trust by the United States since July 3, 1868, and does not extend to all the "water in the Big Horn River system and its tributaries."

UNITED STATES PROPOSED DECREE

ARTICLE VIII

In the event that any additional land within the stipulated reservation boundaries, (stipulation attached hereto as Appendix 1), not held in trust as of February 19, 1982, (the date of the close of evidence in this trial) but which is subsequently reacquired in trust by the United States for the benefit of the Shoshone and Arapahoe Indian Tribes, such land upon proof that it meets any of the bases upon which reserved water rights have been determined in this case shall be added to the decreed totals listed above.

Wyoming's Response:

Article VIII

The decree herein is a final adjudication and no amendments or modifications thereto may be made except in accordance with the Wyoming Rules of Civil Procedure.

UNITED STATES PROPOSED DECREE

ARTICLE IX

Any of the parties to this adjudication may apply at the foot of this decree for its amendment or for further relief. The court retains jurisdiction of this suit for the purpose of any order, directions, or modification of the decree, or any supplementary decree, that may at any time be deemed proper in relation to the subject matter in controversy. Nothing herein shall abridge the rights of the United States, the Shoshone or Arapahoe Indian Tribes that they may have under applicable federal law.

Wyoming's Response:

Article IX

The decree herein is a final adjudication and no amendments or modifications thereto may be made except in accordance with the Wyoming Rules of Civil Procedure.

APPENDIX F

Wyoming's Response to the Tribes'
Additional Provisions in the United States'
Proposed Interlocutory Decree

Introduction

In its review of the Proposed Interlocutory Decree submitted by the Tribes, the State of Wyoming has determined that certain of these require specific response. Such provisions are set forth verbatim on a page, with Wyoming's response thereto on the page or pages immediately following. The lack of a response herein shall not be construed as an admission to the accuracy or relevance of any proposed provision.

TRIBES PROPOSED DECREE

TRIBES' ADOPTION AND PROPOSED AMENDMENT OF
UNITED STATES' PROPOSED INTERLOCUTORY DECREE

The Shoshone and Arapahoe Tribes hereby adopt the United States' Proposed Interlocutory Decree, but propose to amend it in the following particulars:

1. Substitute the following for sections 1, 2, 3 and 4 of Article II of the United States' proposed decree, in order to account for the Tribes' additional claims:

TRIBES PROPOSED DECREE

Section 1

AGRICULTURAL WATER REQUIREMENTS

PRIORITY DATE: July 3, 1868

| <u>Description</u> | <u>Water Right Acreage (acres)</u> | <u>Average Annual Diversion (AF/acre)</u> | <u>Annual Diversion Requirement (acre-feet)</u> | <u>Source of Water Supply (description)</u> |
|--|------------------------------------|---|---|---|
| 1. PROJECT LANDS | | | | |
| A. Project Lands - Future | | | | |
| 1. North Crowheart Unit | 39,773 | 3.81 | 147,767 | Wind River |
| 2. South Crowheart Unit | 4,695 | 4.29 | 20,137 | Wind River |
| 3. Stagner Ridge | 897 | 3.13 | 2,810 | Wind River |
| 4. Bighorn Flats Unit | 1,702 | 2.79 | 4,743 | Wind River |
| 5. Bighorn Flats Extension | 9,073 | 2.46 | 22,349 | Wind River (Bull Lake Creek Tributary) |
| 6. Arapahoe Unit | 3,808 | 4.39 | 16,720 | N.E. Popo Agie River |
| 7. Bighorn Flats Unit | 968 | 2.55 | 2,464 | Little Wind River |
| 8. Riverton East Unit | 157 | 3.16 | 496 | Little Wind River |
| 9. Riverton East Unit | 272 | 3.16 | 861 | Big Horn River |
| 10. Riverton East Unit | 3,385 | 4.78 | 16,179 | Big Horn River |
| 11. Owl Creek Unit | 245 | 3.49 | 855 | S.E. Owl Creek |
| Subtotals | 63,975 | | 235,386 | |
| B. Project Lands - Historic (Excluding Indian-Owned Fee Land) | | | | |
| 1. Ray Unit | 9,898 | 5.32 | 52,657 | Little Wind River & Tributaries |
| Ray Unit | 28 | 4.21 | 118 | Little Wind River & Tributaries |
| 2. Coolidge Unit | 7,829 | 4.95 | 38,753 | Little Wind River & Tributaries |
| Coolidge Unit | 200 | 5.00 | 1,000 | Little Wind River & Tributaries |
| 3. Subagency Unit | 3,162 | 5.26 | 16,632 | Little Wind River & Tributaries |
| Subagency Unit | 306 | 5.00 | 1,531 | Little Wind River & Tributaries |

TRIBES PROPOSED DECREE

| Description | Water Right Acreage (acres) | Average Annual Diversion (AF/acre) | Annual Diversion Requirement (acre-feet) | Source of Water Supply Description |
|---|-----------------------------|------------------------------------|--|------------------------------------|
| 4. Dinwoody Bench Unit | 5,496 | 12.06 | 66,281 | Wind River & Tributaries |
| Dinwoody Bench Unit | 492 | 4.18 | 2,056 | Wind River & Tributaries |
| 5. Wind River "A" Unit | 1,118 | 12.06 | 13,482 | Wind River |
| 6. Johnstown Unit | 654 | 6.94 | 4,539 | Wind River |
| Johnstown Unit | 190 | 5.00 | 951 | Wind River |
| 7. LeChand Unit | 2,248 | 6.90 | 14,821 | Wind River |
| 8. LeClair Unit | 1,371 | 5.48 | 7,513 | Wind River |
| 9. Midvale Unit | 569 | 5.58 | 3,175 | Wind River |
| Subtotals | 33,461 | | 223,511 | |
| TOTAL PROJECT LANDS | 97,436 | | 452,897 | |
| 2. NONPROJECT LANDS (EXCLUDING INDIAN-OWNED FEE LAND) | | | | |
| A. Wind River Basin | | | | |
| 1. East Fork Wind River | 310 | 5.06 | 1,562 | E.F. Wind River &/or Tributaries |
| 2. Dinwoody Creek | 171 | 5.57 | 953 | Dinwoody Creek &/or Tributaries |
| 3. Meadow Creek | 166 | 5.43 | 901 | Meadow Creek &/or Tributaries |
| 4. Meadow Creek | 179 | 5.51 | 986 | Meadow Creek &/or Tributaries |
| 5. Meadow Creek | 160 | 5.09 | 814 | Meadow Creek &/or Tributaries |
| 6. Dry (Pasup) Creek | 1,977 | 5.31 | 10,493 | Dry (Pasup) Creek &/or Tributaries |
| 7. Dry (Pasup) Creek | 56 | 5.20 | 291 | Dry (Pasup) Creek &/or Tributaries |
| 8. Dry (Pasup) Creek | 115 | 5.06 | 581 | Dry (Pasup) Creek &/or Tributaries |
| 9. Crow Creek | 2,927 | 5.31 | 15,542 | Crow Creek &/or Tributaries |
| 10. Crow Creek | 36 | 5.40 | 194 | Crow Creek &/or Tributaries |
| 11. Crow Creek | 154 | 5.29 | 815 | Crow Creek &/or Tributaries |
| 12. Dry Creek | 193 | 5.54 | 1,074 | Dry Creek &/or Tributaries |
| 13. Dry Creek | 4 | 5.57 | 22 | Dry Creek &/or Tributaries |

TRIBES PROPOSED DECREE

| <u>Description</u> | <u>Water Right Acreage (acres)</u> | <u>Average Annual Diversion (AF/acre)</u> | <u>Annual Diversion Requirement (acre-feet)</u> | <u>Source of Water Supply Description</u> |
|--|------------------------------------|---|---|---|
| 4. Dinwoody Bench Unit | 5,496 | 12.06 | 66,291 | Wind River & Tributaries |
| Dinwoody Bench Unit | 492 | 4.18 | 2,056 | Wind River & Tributaries |
| 5. Wind River "A" Unit | 1,118 | 12.06 | 13,483 | Wind River |
| 6. Johnstown Unit | 654 | 6.94 | 4,539 | Wind River |
| Johnstown Unit | 190 | 5.00 | 951 | Wind River |
| 7. Lefthand Unit | 2,148 | 6.90 | 14,821 | Wind River |
| 8. LeClair Unit | 1,371 | 5.42 | 7,513 | Wind River |
| 9. Midvale Unit | 569 | 5.58 | 3,175 | Wind River |
| Subtotals | 33,461 | | 223,511 | |
| TOTAL PROJECT LANDS | 97,436 | | 452,897 | |
| 2. NONPROJECT LANDS (EXCLUDING INDIAN-OWNED FEE LAND) | | | | |
| A. Wind River Basin | | | | |
| 1. East Fork Wind River | 310 | 5.06 | 1,568 | E.F. Wind River &/or Tributaries |
| 2. Dinwoody Creek | 171 | 5.57 | 953 | Dinwoody Creek &/or Tributaries |
| 3. Meadow Creek | 166 | 5.43 | 901 | Meadow Creek &/or Tributaries |
| 4. Meadow Creek | 179 | 5.51 | 986 | Meadow Creek &/or Tributaries |
| 5. Meadow Creek | 160 | 5.09 | 814 | Meadow Creek &/or Tributaries |
| 6. Dry (Pasup) Creek | 1,977 | 5.31 | 10,493 | Dry (Pasup) Creek &/or Tributaries |
| 7. Dry (Pasup) Creek | 56 | 5.20 | 291 | Dry (Pasup) Creek &/or Tributaries |
| 8. Dry (Pasup) Creek | 115 | 5.06 | 581 | Dry (Pasup) Creek &/or Tributaries |
| 9. Crow Creek | 2,927 | 5.31 | 15,542 | Crow Creek &/or Tributaries |
| 10. Crow Creek | 36 | 5.40 | 194 | Crow Creek &/or Tributaries |
| 11. Crow Creek | 154 | 5.29 | 815 | Crow Creek &/or Tributaries |
| 12. Dry Creek | 193 | 5.54 | 1,074 | Dry Creek &/or Tributaries |
| 13. Dry Creek | 4 | 5.57 | 22 | Dry Creek &/or Tributaries |

DOCUMENT

TRIBES PROPOSED DECREE

| <u>Description</u> | <u>Water Right Acreage (acres)</u> | <u>Average Annual Diversion (AF/acre)</u> | <u>Annual Diversion Requirement (acre-feet)</u> | <u>Source of Water Supply (description)</u> |
|--------------------------------|------------------------------------|---|---|---|
| 14. Willow Creek | 60 | 5.57 | 334 | Willow Creek &/or Tributaries |
| 15. Willow Creek | 7 | 5.06 | 35 | Willow Creek &/or Tributaries |
| 16. Bull Lake Creek | 26 | 5.40 | 140 | Bull Lake Creek &/or Tributaries |
| 17. Bull Lake Creek | 37 | 5.37 | 199 | Bull Lake Creek &/or Tributaries |
| 18. Main Stem Wind River | 1,338 | 5.54 | 7,413 | Wind River |
| 19. Main Stem Wind River | 497 | 5.77 | 2,810 | Wind River |
| 20. Main Stem Wind River | 213 | 5.51 | 1,174 | Wind River |
| Subtotals | 8,606 | | 46,284 | |
| Little Wind River Basin | | | | |
| 1. N.F. Little Wind River | 485 | 5.49 | 2,663 | N.F. Little Wind River &/or Tributaries |
| 2. N.F. Little Wind River | 1,776 | 5.14 | 9,129 | N.F. Little Wind River &/or Tributaries |
| 3. N.F. Little Wind River | 357 | 5.03 | 1,795 | N.F. Little Wind River &/or Tributaries |
| 4. S.F. Little Wind River | 107 | 4.94 | 529 | S.F. Little Wind River &/or Tributaries |
| 5. S.F. Little Wind River | 781 | 5.11 | 3,991 | S.F. Little Wind River &/or Tributaries |
| 6. S.F. Little Wind River | 44 | 5.09 | 224 | S.F. Little Wind River &/or Tributaries |
| 7. Main Stem Little Wind River | 1,191 | 5.94 | 7,075 | Main Stem Little Wind River |
| 8. Sage Creek | 1,029 | 5.57 | 5,712 | Sage Creek &/or Tributaries |
| 9. Sage Creek | 776 | 5.51 | 4,276 | Sage Creek &/or Tributaries |
| 10. Crooked Creek | 69 | 5.26 | 363 | Crooked Creek &/or Tributaries |
| 11. Crooked Creek | 3 | 5.57 | 17 | Crooked Creek &/or Tributaries |

TRIBES PROPOSED DECREE

| <u>Description</u> | <u>Water Right Acreage (acres)</u> | <u>Average Annual Diversion (AF/acre)</u> | <u>Annual Diversion Requirement (acre-feet)</u> | <u>Source of Water Supply (description)</u> |
|------------------------------|------------------------------------|---|---|---|
| 12. Trout Creek | 228 | 5.46 | 1,245 | Trout Creek &/or Tributaries |
| 13. Trout Creek | 63 | 5.11 | 322 | Trout Creek &/or Tributaries |
| 14. Spring Creek | 178 | 4.97 | 885 | Spring Creek &/or Tributaries |
| 15. Highorn Draw | 139 | 4.94 | 687 | Highorn Draw &/or Tributaries |
| 16. Mill Creek | 47 | 5.57 | 262 | Mill Creek &/or Tributaries |
| Subtotals | 7,273 | | 39,195 | |
| Big Horn River Basin | | | | |
| 1. Main Stem Big Horn River | 126 | 5.94 | 749 | Big Horn River |
| 2. Cottonwood Creek | 942 | 5.89 | 5,548 | Cottonwood Creek &/or Tributaries |
| 3. Muddy Creek | 2,901 | 5.43 | 15,752 | Muddy Creek &/or Tributaries |
| 4. Muddy Creek | 1,194 | 5.60 | 6,686 | Muddy Creek &/or Tributaries |
| 5. Muddy Creek | 186 | 5.63 | 1,047 | Muddy Creek &/or Tributaries |
| 6. Five Mile Creek | 518 | 5.57 | 2,885 | Five Mile Creek &/or Tributaries |
| Subtotals | 5,867 | | 32,667 | |
| Popo Agie River Basin | | | | |
| 1. N.F. Popo Agie River | 422 | 5.40 | 2,279 | N.F. Popo Agie &/or Tributaries |
| 2. N.F. Popo Agie River | 112 | 5.43 | 608 | N.F. Popo Agie &/or Tributaries |
| 3. Main Stem Popo Agie River | 40 | 5.40 | 216 | Main Stem Popo Agie River |
| 4. Main Stem Popo Agie River | 74 | 5.74 | 425 | Main Stem Popo Agie River |
| Subtotals | 648 | | 3,528 | |

TRIBES PROPOSED DECREE

| <u>Description</u> | <u>Water Right Acreage (acres)</u> | <u>Average Annual Diversion (AF/acre)</u> | <u>Annual Diversion Requirement (acre-feet)</u> | <u>Source of Water Supply (Description)</u> |
|---|------------------------------------|---|---|---|
| Owl Creek Basin | | | | |
| 1. S.F. Owl Creek | 1,529 | 5.46 | 8,348 | S.F. Owl Creek &/or Tributaries |
| 2. S.F. Owl Creek | 75 | 5.51 | 413 | S.F. Owl Creek &/or Tributaries |
| 3. S.F. Owl Creek | 64 | 5.57 | 356 | S.F. Owl Creek &/or Tributaries |
| 4. Main Stem Owl Creek | 434 | 5.40 | 2,343 | Main Stem Owl Creek |
| 5. Mud Creek | 754 | 5.43 | 4,094 | Mud Creek &/or Tributaries |
| 6. Mud Creek | 195 | 5.29 | 979 | Mud Creek &/or Tributaries |
| 7. Mud Creek | 40 | 5.37 | 215 | Mud Creek &/or Tributaries |
| Subtotals | 3,081 | | 16,748 | |
| TOTAL NONPROJECT EXCLUDING INDIAN-OWNED FEE LAND) | 25,475 | | 133,422 | |
| INDIAN-OWNED FEE LANDS (PROJECT AND NONPROJECT) DESCRIPTION BY TRACT | | | | |
| Big Horn River Basin | | | | |
| 2 | 6 | 4.75 | 28 | Big Horn River |
| 3 | 311 | 4.15 | 1,291 | Wind River |
| 6 | 63 | 4.75 | 299 | Wind River |
| 8 | 139 | 4.75 | 660 | Wind River |
| 9 | 250 | 4.15 | 1,032 | Wind River |
| 10 | 152 | 4.75 | 712 | Wind River |
| 11 | 226 | 4.75 | 1,073 | Wind River |
| 12 | 22 | 4.75 | 105 | Wind River |
| 13 | 115 | 4.75 | 546 | Wind River |
| 14 | 159 | 4.15 | 661 | Wind River |
| 15 | 121 | 4.36 | 523 | Wind River |
| 16 | 333 | 4.75 | 1,581 | Big Horn River |
| 17 | 213 | 4.75 | 1,012 | Wind River |
| 18 | 24 | 4.15 | 100 | Wind River |
| 19 | 27 | 4.15 | 112 | Wind River |

TRIBES PROPOSED DECREE

| <u>Description</u> | <u>Water Right Acreage (acres)</u> | <u>Average Annual Diversion (AF/acre)</u> | <u>Annual Diversion Requirement (acre-feet)</u> | <u>Source of Water Supply (Description)</u> |
|--------------------|------------------------------------|---|---|---|
| 34 | 57 | 4.15 | 237 | Wind River |
| 37 | 91 | 4.15 | 336 | Wind River |
| 38 | 32 | 4.75 | 152 | Wind River |
| 44 | 18 | 4.75 | 86 | Wind River |
| 45 | 172 | 4.75 | 817 | Wind River |
| 46 | 77 | 4.75 | 366 | Wind River |
| 47 | 327 | 4.15 | 1,357 | Big Horn River |
| 52 | 145 | 4.75 | 689 | Big Horn River |
| 54 | 286 | 3.92 | 1,092 | Wind River |
| 63 | 11 | 4.75 | 52 | Big Horn River |
| 64 | 6 | 4.75 | 28 | Big Horn River |
| 65 | 79 | 4.75 | 370 | Big Horn River |
| 66 | 52 | 4.75 | 247 | Big Horn River |
| 67 | 8 | 4.15 | 33 | Wind River |
| 69 | 30 | 4.15 | 332 | Wind River |
| 37 | 13 | 4.36 | 78 | Wind River |
| 88 | 264 | 4.36 | 1,151 | Wind River |
| 91 | 153 | 4.75 | 727 | Wind River |
| 96 | 80 | 4.15 | 332 | Wind River |
| 97 | 80 | 4.15 | 332 | Wind River |
| 101 | 20 | 4.75 | 95 | Wind River |
| 104 | 45 | 4.75 | 214 | Wind River |
| 105 | 28 | 4.75 | 133 | Wind River |
| 106 | 9 | 4.15 | 37 | Wind River |
| 109 | 112 | 4.75 | 532 | Wind River |
| 110 | 641 | 4.36 | 2,795 | Wind River |
| 112 | 25 | 4.36 | 109 | Wind River |
| 125 | 79 | 4.75 | 370 | Wind River |
| 20 | 92 | 4.36 | 401 | Dry Creek |
| 21 | 134 | 4.36 | 584 | Dry Creek |
| 24 | 243 | 4.36 | 1,059 | Dry Creek |
| 29 | 172 | 4.36 | 750 | Dry Creek |
| 30 | 293 | 4.15 | 1,216 | Dry Creek |
| 31 | 57 | 4.36 | 249 | Dry Creek |
| 32 | 107 | 4.36 | 467 | Dry Creek |
| 34 | 64 | 4.36 | 279 | Dry Creek |
| 39 | 340 | 4.36 | 1,482 | Dry Creek |
| 40 | 50 | 4.36 | 218 | Dry Creek |
| 41 | 41 | 4.36 | 179 | Dry Creek |
| 42 | 32 | 4.75 | 133 | Dry Muddy Creek |
| 43 | 5 | 4.75 | 24 | Nevadick Springs Draw |
| 48 | 89 | 4.36 | 388 | Nevadick Springs Draw |
| 77 | 8 | 4.36 | 35 | Meadow Creek |
| 78 | 8 | 4.36 | 35 | Meadow Creek |
| 79 | 16 | 4.36 | 70 | Meadow Creek |
| 17 | 104 | 4.36 | 456 | Red Creek & Springs |
| 19 | 57 | 4.36 | 249 | Soudur or Warm Springs |
| 35 | 1 | 4.75 | 4 | Willow Creek |

TRIBES PROPOSED DECREE

| <u>Section</u> | <u>Water Right Acreage (acres)</u> | <u>Average Annual Diversion (AF/acre)</u> | <u>Annual Diversion Requirement (acre-feet)</u> | <u>Source of Water Supply (description)</u> |
|--------------------------|------------------------------------|---|---|---|
| 78 | 30 | 4.36 | 131 | Willow Creek |
| 86 | 143 | 4.36 | 623 | Willow Creek |
| 121 | 65 | 4.36 | 283 | Willow Creek & Meadow Creek |
| Totals | 7,991 | | 34,929 | |
| Little Wind Basin | | | | |
| 1 | 79 | 4.75 | 375 | Little Wind River |
| 16 | 32 | 4.75 | 152 | Little Wind River |
| 26 | 29 | 4.75 | 138 | Little Wind River |
| 28 | 17 | 4.75 | 81 | Little Wind River |
| 41 | 25 | 4.75 | 119 | Little Wind River |
| 57 | 9 | 4.75 | 43 | Little Wind River |
| 58 | 179 | 4.75 | 850 | Little Wind River |
| 70 | 67 | 4.75 | 318 | Little Wind River |
| 71 | 28 | 4.75 | 133 | Little Wind River |
| 73 | 31 | 4.75 | 147 | Little Wind River |
| 74 | 29 | 4.75 | 138 | Little Wind River |
| 75 | 30 | 4.75 | 142 | Little Wind River |
| 76 | 107 | 4.75 | 508 | Little Wind River |
| 81 | 77 | 4.75 | 366 | Little Wind River |
| 95 | 20 | 4.75 | 95 | Little Wind River |
| 119 | 20 | 4.75 | 95 | Little Wind River |
| 124 | 17 | 4.75 | 81 | Little Wind River |
| 23 | 73 | 4.75 | 347 | W.S. Little Wind |
| 48 | 28 | 4.75 | 133 | W.S. Little Wind |
| 49 | 40 | 4.75 | 190 | W.S. Little Wind |
| 50 | 31 | 4.75 | 147 | W.S. Little Wind |
| 59 | 36 | 4.75 | 171 | W.S. Little Wind |
| 60 | 40 | 4.75 | 190 | W.S. Little Wind |
| 63 | 79 | 4.75 | 375 | W.S. Little Wind |
| 72 | 39 | 4.75 | 185 | W.S. Little Wind |
| 77 | 33 | 4.75 | 157 | W.S. Little Wind |
| 82 | 9 | 4.75 | 43 | W.S. Little Wind |
| 83 | 60 | 4.75 | 285 | W.S. Little Wind |
| 84 | 7 | 4.75 | 33 | W.S. Little Wind |
| 85 | 40 | 4.75 | 190 | W.S. Little Wind |
| 88 | 40 | 4.75 | 190 | W.S. Little Wind |
| 92 | 39 | 4.75 | 185 | W.S. Little Wind |
| 94 | 33 | 4.75 | 157 | W.S. Little Wind |
| 101 | 5 | 4.75 | 24 | W.S. Little Wind |
| 102 | 18 | 4.75 | 86 | W.S. Little Wind |
| 103 | 18 | 4.75 | 86 | W.S. Little Wind |
| 104 | 20 | 4.75 | 95 | W.S. Little Wind |

DOCUMENT

TRIBES PROPOSED DECREE

| <u>Description</u> | <u>Water Right Acreage (acres)</u> | <u>Average Annual Diversion (AF/acre)</u> | <u>Annual Diversion Requirement (acre-feet)</u> | <u>Source of Water Supply (description)</u> |
|---|------------------------------------|---|---|---|
| 32 | 115 | 4.75 | 546 | S. F. Little Wind & Little Wind River |
| 116 | 202 | 4.75 | 960 | Sage Creek |
| 119 | 152 | 4.75 | 722 | Sage Creek & St. Lawrence Creek |
| Subtotals | 1,986 | | 9,434 | |
| C. Popo Agie River | | | | |
| 114 | 20 | 4.75 | 95 | Popo Agie River |
| Subtotals | 20 | | 95 | |
| D. Owl Creek Basin | | | | |
| 99 | 83 | 4.75 | 394 | Owl Creek |
| 100 | 394 | 4.75 | 1,872 | Owl Creek |
| Subtotals | 477 | | 2,266 | |
| TOTAL INDIAN-OWNED FEE LANDS | 10,374 | | 46,724 | |
| TOTAL AGRICULTURAL WATER REQUIREMENT WITHOUT 20% CONTINGENCY FACTOR | 133,275 | | 644,043 | |
| INCREASE OF AGRICULTURAL WATER REQUIREMENT BY 20% CONTINGENCY FACTOR (BY DRAINAGE) | | | | |
| 1. Wind River Basin | | | 464,803 | |
| 2. Little Wind Basin | | | 194,737 | |
| 3. Big Horn Basin | | | 63,033 | |
| 4. Popo Agie Basin | | | 24,412 | |
| 5. Owl Creek Basin | | | 23,343 | |
| TOTAL AGRICULTURAL WATER REQUIREMENT INCLUDING 20% CONTINGENCY FACTOR | | | 772,352 | |

TRIBES PROPOSED DECREE

Section 2

LIVESTOCK WATER REQUIREMENTS

PRIORITY DATE: July 3, 1868

| <u>Description</u> | <u>Annual Water Requirement (acre-feet)</u> | <u>Sources of Water Supply (description)</u> |
|-------------------------------------|---|--|
| 1. Wind River/Big Horn River Basins | 370 | Wind and Big Horn Rivers &/or their Tributaries |
| 2. Little Wind River Basin | 370 | Little Wind River &/or Tributaries |
| 3. Popo Agie River | 60 | Popo Agie River &/or Tributaries |
| 4. Owl and Red Canyon Creeks | 930 | Owl and Red Canyon Creeks &/or their Tributaries |
| TOTAL | <hr/> 2,730 acre-feet | |

TRIBES PROPOSED DECREE

Section 3

MUNICIPAL WATER REQUIREMENTS

PRIORITY DATE: July 3, 1868

| <u>Service Area</u> | <u>Annual Water Requirement (acre-feet)</u> | <u>Source of Water Supply (description)</u> |
|---------------------|---|---|
| 1. Riverton | 46.8 | Wind River |
| 2. Fort Washakie | 1,166.4 | Little Wind River &/or Tributaries |
| 3. White | 658.8 | Little Wind River |
| 4. Boulder Flat | 67.2 | Popo Agie River &/or Tributaries |
| 5. Riverton | 46.8 | Groundwater |
| 6. Arapahoe | 397.2 | Groundwater |
| 7. Pavilion | 4.2 | Groundwater |
| 8. Other Areas | <u>253.2</u> | Groundwater |
| TOTAL | 2,671.2 acre-feet | |

TRIBES PROPOSED DECREE

Section 4

INDUSTRIAL AND MINERAL DEVELOPMENT
WATER REQUIREMENTS

PRIORITY DATE: July 3, 1868

| <u>Mineral</u> | <u>Use</u> | <u>Annual Diversion Requirement (acre-feet)</u> | <u>Source of Water Supply (description)</u> |
|----------------|---|---|---|
| 1. Oil | Secondary Recovery | 5,550 | Groundwater |
| 2. Oil | Secondary Recovery | 1,030 | Groundwater/Wind River <u>1/</u> |
| 3. Oil | Future Secondary Recovery | 7,900 | Groundwater |
| 4. Natural Gas | Sweetening and Dehydrating Plant | 6 | Groundwater |
| 5. Natural Gas | Sulfuric Acid Plant | 95 | Groundwater |
| 6. Natural Gas | Anhydrous Ammonia Plant | 4,250 | Groundwater/Wind River <u>1/</u> |
| 7. Coal | In-Situ Gasification Plant | 2,800 | Groundwater |
| 8. Coal | Dust Control/Reclamation at Power Plant | 25 | Groundwater |
| 9. Coal | 150 MW Power Plant | 2,490 | Groundwater/Wind River <u>1/</u> |
| 10. Gypsum | Surface Reclamation for Mining | 10 | Groundwater |
| 11. Gypsum | Wallboard Manufacturing Plant | 300 | Groundwater/Wind River <u>1/</u> |
| 12. Uranium | Dust Control/Incidental Purposes at Plant | 15 | Groundwater |
| 13. Uranium | Uranium Processing Plant | 475 | Groundwater/Crow Creek <u>1/</u> |
| 14. Phosphate | Mining Operation | 5 | Groundwater |
| 15. Phosphate | Beneficiation/Wet Acid Processing | 325 | Groundwater/Wind River <u>1/</u> |
| TOTALS | | 25,776 acre-feet | |

1/ 9,370 acre-feet of the mineral and industrial water requirements can be served from either surface or groundwater. The remaining requirements are to be furnished from groundwater.

Wyoming's Response to the Tribes'
Adoption and Proposed Amendment of
United States' Proposed Interlocutory Decree

1. Wyoming incorporates herein its Response to the United States' Proposed Interlocutory Decree.

TRIBES PROPOSED DECREE

2. Renumber Articles V through IX in the United States' proposed decree as Articles VI through X and add a new Article V, as follows:

Wyoming's Response:

2. With respect to the substitutions proposed by the Tribes for Article II, there is no competent evidence in the Record to support the increased diversion requirements, to show that there is water available to satisfy said increased diversions, to show that additional future projects or Indian-owned fee land constitute "practicably irrigable acres," or to show that such increases as well as the contingency factor (for which there is no evidence in the Record) are necessary to meet the "minimal need" of the Reservation or that without said water the primary agricultural purpose of the Reservation will be "entirely defeated."

TRIBES PROPOSED DECREE

ARTICLE V

MAINTENANCE OF GROUNDWATER LEVELS

It is further ORDERED, ADJUDGED and DECREED, that the United States as trustee and the Shoshone and Arapahoe Tribes as holders of full beneficial rights are entitled to a reserved water right that assures them the use of replenishable groundwater so that they may exercise the right to the use of minable groundwater, if they so choose, and the right to prevent such mining by anyone else. This reserved right to sufficient groundwater in the Tribes is to satisfy the following purposes:

- a. to maintain current groundwater levels in all aquifers and to prevent mining of groundwater by any person or entity other than the Tribes;
- b. to sustain existing groundwater well production by the Tribes, their members, direct descendants, lessees and contractees; and
- c. to provide groundwater resources for future water needs of the Wind River Reservation.

Wyoming's Response:

3. With respect to the new Article V proposed by the Tribes, there is neither evidence of record which supports the new Article nor any decision of the United States Supreme Court which authorizes such an extension of the reserved right doctrine.