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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 D. 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, Ethere, 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 stockponds 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, 1863

<u>Description</u>	<u>Water Right Acreage (acres)</u>	<u>Average Annual Diversions (AF/acre)</u>	<u>Annual Diversions 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	54,005		210,227	
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	8,606		46,284	
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	7,273		39,195	
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	5,867		32,667	
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	648		3,528	
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	3,081		16,748	
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 Acid Processing	825	Groundwater/Wind ^{2/} River
TOTALS		17,876	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 5 Continued MMF (cfs)

November 500

December 439

Stream Reach 6 -- Wind River (Wind River Canyon)

MMF (cfs)

January 399

February 390

March 444

April 500

May 500

June 500

July 500

August 500

September 500

October 500

November 500

December 444

Stream Reach 7 -- East Fork Wind River (below Wiggins Fork)

MMF (cfs)

January 45

February 43

March 45

April 95

May 207

June 207

July 207

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

Stream Reach 9 Continued MMF (cfs)

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 Arle 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

Stream Reach 16 Continued MMF (cfs)

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

ITCH	PERMIT	PROOF		STATE	RESERVED	AVERAGE
	NO.	NO.	ACRES	AWARDED	RIGHT	ANNUAL
				PRIORITY	PRIORITY	DIVERSION
				DATE	DATE	(ACRE FEET)
per #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	38,773	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	7,329	4.95	36,753	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	66,291	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	2,248	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		452,397	
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

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	66,291	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	5.48	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	1,568	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

TRIBES PROPOSED DECREE

Description	Water Right Acreage (acres)	Average Annual Diversion (AF/acre)	Annual Diversion Requirement (acre-feet)	Source of Water Supply (description)
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	7,073	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

Description	Water Right Acreage (acres)	Average Annual Diversion (AF/acre)	Annual Diversion Requirement (acre-feet)	Source of Water Supply (description)
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. Highhorn Draw	139	4.94	687	Highhorn 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	513	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

Description	Water Right Acreage (acres)	Average Annual Diversion (AF/acre)	Annual Diversion Requirement (acre-feet)	Source of Water Supply (description)
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		138,422	
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	350	4.15	1,452	Wind River
10	152	4.75	722	Wind River
11	226	4.75	1,078	Wind River
12	22	4.75	292	Wind River
13	115	4.75	346	Wind River
14	169	4.15	701	Wind River
15	121	4.36	528	Wind River
29	333	4.75	2,636	Big Horn River
30	213	4.75	1,012	Wind River
31	24	4.15	290	Wind River
32	37	4.15	237	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	81	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	3.82	1,092	Wind River
63	11	4.75	52	Big Horn River
64	6	4.75	28	Big Horn River
65	73	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
108	112	4.75	532	Wind River
110	641	4.36	2,795	Wind River
112	25	4.36	109	Wind River
125	78	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	185	Dry Creek
42	32	4.75	132	Dry Muddy Creek
43	5	4.75	24	Maverick Springs Draw
44	39	4.36	388	Maverick Springs Draw
47	8	4.36	35	Meadow Creek
49	16	4.36	70	Meadow Creek
57	104	4.36	453	Meadow Creek
58	57	4.36	249	Red Creek & Springs
59	1	4.75	13	Soundup or Warm Springs
				Willow Creek

TRIBES PROPOSED DECREE

Division	Water Right Acreage (acres)	Average Annual Diversion (AF/acre)	Annual Diversion Requirement (acre-feet)	Source of Water Supply (description)
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	N.E. Little Wind
48	28	4.75	133	N.E. Little Wind
49	40	4.75	190	N.E. Little Wind
50	31	4.75	147	N.E. Little Wind
59	36	4.75	171	N.E. Little Wind
60	40	4.75	190	N.E. Little Wind
63	79	4.75	375	N.E. Little Wind
111	39	4.75	185	N.E. Little Wind
112	33	4.75	157	N.E. Little Wind
113	9	4.75	43	N.E. Little Wind
114	60	4.75	285	N.E. Little Wind
115	7	4.75	33	N.E. Little Wind
116	40	4.75	190	N.E. Little Wind
117	40	4.75	190	N.E. Little Wind
118	39	4.75	185	N.E. Little Wind
119	33	4.75	157	N.E. Little Wind
120	5	4.75	24	N.E. Little Wind
121	13	4.75	62	N.E. Little Wind
122	13	4.75	62	N.E. Little Wind
123	20	4.75	95	N.E. Little Wind

TRIBES PROPOSED DECREE

Description	Water Right Acreage (acres)	Average Annual Diversion (AF/acre)	Annual Diversion Requirement (acre-feet)	Source of Water Supply (description)
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	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. Whetse	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>283.2</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.