

**No. 137, ORIGINAL**

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**IN THE  
SUPREME COURT OF THE UNITED STATES**

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**STATE OF MONTANA, Plaintiff**

**V.**

**STATE OF WYOMING**

**AND**

**STATE OF NORTH DAKOTA, Defendants**

---

**BEFORE THE HONORABLE BARTON H. THOMPSON, JR.  
SPECIAL MASTER**

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**AFFIDAVIT OF FRANCIS PATRICK BOYD IN SUPPORT OF WYOMING'S MOTION  
FOR SUMMARY JUDGEMENT**

Frances Patrick Boyd, being sworn, states;

1. I became employed by the Wyoming State Engineer's office in 1997 as a Hydrographer Commissioner. I am currently the Hydrographer Commissioner for Districts 5 and 6 within Water Division II in Wyoming. I have knowledge of the facts set forth herein either from my own personal knowledge or from the records of Division II, and am competent to testify thereto.

2. The Hydrographer Commissioners within Division II do not use trigger-flows to determine when junior water rights should be regulated without regard to actual demand by senior water rights. Instead, and after years of experience which were related

to me when I began work as a Hydrographer Commissioner, we know that certain flow amounts likely indicate that regulation is imminent, although these flow amounts may change over time. Once these flows occur we know that we need to begin communicating with the water users within our Districts to ensure that senior appropriators are receiving the direct flow water they can put to beneficial use and to ensure that junior appropriators receive the stored water they have ordered if any. We know that there is an actual demand for the available direct flow water at the various headgates at all times after the streams go into regulation, and that the appropriators are receiving that water in priority, through constant communications with our appropriators and personal observations. These constant communications often preempt the need for appropriators to make formal calls because the appropriators are generally assured that the stream is being regulated in priority and that their neighbors are not receiving water that they are not entitled to or have no intention to use. Division II Hydrographer Commissioners would not and do not shepherd water to appropriators that are out of priority or that do not have a present intention and actual ability to put the water to beneficial use.

3. When the Hydrographer Commissioners within Division II indicate that a stream typically remains in regulation until the end of the water year that just means that the stream remains within our control. The exact distribution of water made by the Hydrographer Commissioner to the various appropriators while the stream is in regulation may change frequently depending on demand and the available water supply. Stating that the stream remains in regulation does not mean that we deliver water to

