

No. 137, ORIGINAL

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

STATE OF MONTANA, PLAINTIFF

V.

STATE OF WYOMING

AND

STATE OF NORTH DAKOTA, DEFENDANTS

BEFORE THE HONORABLE BARTON H. THOMPSON, JR.

SPECIAL MASTER

**MOTION AND STIPULATION TO CORRECT TRANSCRIPT OF
HEARING ON STATE OF WYOMING'S MOTION TO DISMISS**

Plaintiff State of Montana, Defendant State of Wyoming, Defendant State of North Dakota, and the United States as Amicus Curiae, through their undersigned counsel, stipulate and request that the Special Master order that the court reporter who transcribed the February 3, 2009 hearing on Wyoming's Motion to Dismiss revise and reissue the transcript of that hearing with the corrections listed below. Most of the errors were obviously phonetic, and some arose from the specific terminology of the case. The court reporter had difficulty hearing some of the argument due to problems with the sound system in the

courtroom, which together resulted in some transcription errors that these parties have jointly identified. It is possible that the accuracy of the transcript will be important in any future proceedings before the Special Master or before the Supreme Court. These stipulating parties believe that correction of the transcript is in the interest of justice. These stipulating parties all attended or participated in oral argument at the hearing and have reviewed the transcript to arrive at these agreed corrections. The proposed corrections are as follows:

1. Page 16, line 24: "interstate" should be changed to "intrastate."
2. Page 20, line 23: "water" should be changed to "water year."
3. Page 20, line 25: "avertable" should be changed to "divertible."
4. Page 21, line 5: "avertable" should be changed to "divertible."
5. Page 21, line 18: "avertable" should be changed to "divertible."
6. Page 22, lines 2, 3, 6: "avertable" should be changed to "divertible."
7. Page 26, line 22: "interstate" should be changed to "intrastate."
8. Page 40, line 20: "ex-cannon" should be changed to "extant."
9. Page 41, lines 1-2: "time and memorial" should be changed to "time immemorial."
10. Page 42, line 20: "avertable" should be changed to "divertible."
11. Page 43, line 11: "avertable" should be changed to "divertible."
12. Page 44, line 9: "service water" should be changed to "surface water."
13. Page 44, line 22: "eluvial" should be changed to "alluvial."
14. Page 45, line 7: "service water" should be changed to "surface water."
15. Page 45, line 17: "power" should be changed to "Powder."
16. Page 48, line 25: "views" should be changed to "use."

17. Page 49, line 16: "stayed" should be changed to "stated," in each instance on that line.
18. Page 50, line 11: "weren't exercised" should be changed to "warrants exercise."
19. Page 50, line 19: "350" should be changed to "pre-50."
20. Page 50, line 24: "stay" should be changed to "state."
21. Page 51, line 14: "were" should be changed to "are."
22. Page 52, line 12: "exceed" should be changed to "accede."
23. Page 56, line 5: "the basic" should be changed to "case of."
24. Page 56, line 7: "workout" should be changed to "wharf out."
25. Page 56, line 19: "workout" should be changed to "wharf out," in each instance on that line.
26. Page 60, line 10: "counting" should be changed to "accounting."
27. Page 62, line 2: "hydrologic" should be changed to "hydrologically."
28. Page 62, line 24: "pertinent" should be changed to "appurtenant" and "agency" should be changed to "acres."
29. Page 65, line 2: "avertable" should be changed to "divertible."
30. Page 65, lines 12 and 18: "avertable" should be changed to "divertible."
31. Page 73, line 22: "irrigating neighbors" should be changed to "irrigated acres."
32. Page 76, line 10: "deregulation" should be changed to "the regulation."
33. Page 77, line 1: "law" should be changed to "line."
34. Page 77, line 9: "inter se se" should be changed to "inter sese."

35. Page 79, lines 15, 16: "kind it appropriated change" should be changed to "can an appropriator change?"
36. Page 80, line 9: "views" should be changed to "use."
37. Page 80, line 12: "affected" should be changed to "effected."
38. Page 80, line 21: "inexplicably" should be changed to "inextricably."
39. Page 81, line 3 "Will" should be changed to "Wiel."
40. Page 81, line 19: "views" should be changed to "use."
41. Page 88, line 23: "now" should be changed to "not."
42. Page 91, line 12: "includes" should be changed to "concludes."
43. Page 91, line 14: "service flows" should be changed to "surface flows."
44. Page 91, line 23: "would" should be changed to "would not."
45. Page 94, line 1: "Ms." should be changed to "Mr."
46. Page 94, line 2: "Mr." should be changed to "James."
47. Page 94, line 12: "reached" should be changed to "pleaded"
48. Page 95, line 10: "text of" should be changed to "text and."
49. Page 96, line 14: "serves" should be changed to "asserts."
50. Page 97, line 15: "provision" should be changed to "of appropriation."
51. Page 98, line 2: "intermeshed" should be changed to "injured."
52. Page 100, line 23: "avertable" should be changed to "divertible."
53. Page 101, line 2: "avertable" should be changed to "divertible."
54. Page 101, line 7: "convertible" should be changed to "divertible."
55. Page 102, line 3: "affect" should be changed to "effect."
56. Page 103, line 16: "Ms." should be changed to "Mr."
57. Page 105, lines 2 and 8: "Ms." should be changed to "Mr."

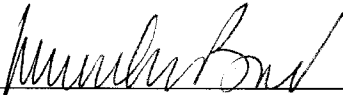
58. Page 105, line 13: "letter" should be changed to "level."
59. Page 105, line 21: "allegations" should be changed to "appropriations."
60. Page 106, line 2: "impervious" should be changed to "appurtenant."
61. Page 106, line 20: "Ms." should be changed to "Mr."
62. Page 107, line 15: "avertable" should be changed to "divertible."
63. Page 108, lines 18 and 20: "diversion" should be changed to "virgin."
64. Page 109, line 22: "Ms." should be changed to "Mr."
65. Page 111, lines 8 and 13: "Ms." should be changed to "Mr."
66. Page 112, line 1: "Ms." should be changed to "Mr."
67. Page 112, line 10: "or not" should be stricken.
68. Page 112, line 25: "I am leery on" should be changed to "I am leery of."
69. Page 113, line 17: "Ms." should be changed to "Mr."
70. Page 119, line 16: "avertable" should be changed to "divertible."
71. Page 122, line 5: "was erase" should be changed to "was not erase."
72. Page 122, line 23: "avertable" should be changed to "divertible."
73. Page 123, line 9: "stay" should be changed to "state," in each instance in that line.
74. Page 123, line 16: "avertable" should be changed to "divertible."
75. Page 124, line 6: "stay" should be changed to "stated."
76. Page 124, line 8: "stay" should be changed to "stated."
77. Page 126, line 20: "avertable" should be changed to "divertible."
78. Page 128, line 20: "amalgam to" should be changed to "amalgam of."
79. Page 132, line 8: "Ms." should be changed to "Mr."

Further, on page 56, line 18: "inventory" is probably wrong but the speaker does not know what it should be. On page 98, line 23: "technological" is probably wrong, but the speaker does not know what it should be.

WHEREFORE, the State of Montana, the State of Wyoming, the State of North Dakota, and the United States respectfully request that the Special Master order the correction of the transcript as outlined above.

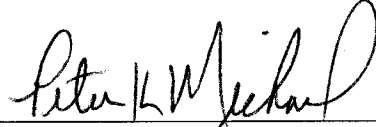
Dated this 22nd day of June, 2009.

THE STATE OF MONTANA




Sarah A. Bond
Counsel of Record
Montana Attorney General's Office
215 N. Sanders
P.O. Box 201401
Helena, MT 59620-1401
406-444-5894

THE STATE OF WYOMING



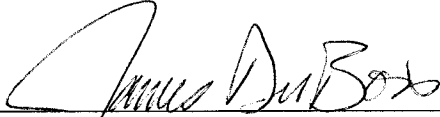
Peter K. Michael
Counsel of Record
Senior Assistant Attorney General
123 Capitol Building
Cheyenne, WY 82002
307-777-6946

THE STATE OF NORTH DAKOTA



Todd A. Sattler
Counsel of Record
Assistant Attorney General
500 North Ninth Street
Bismarck, ND 58501
701-328-3640

THE UNITED STATES OF AMERICA



James J. DuBois
Office of the Solicitor
United States Department of Justice
Environment and Natural Resources
Division Natural Resource Section
1961 Stout Street, 8th Floor
Denver, CO 80294
303-844-1375

CERTIFICATE OF SERVICE

I hereby certify that I served a true and accurate copy of MOTION AND STIPULATION TO CORRECT TRANSCRIPT OF HEARING ON STATE OF WYOMING'S MOTION TO DISMISS by e-mail and first class mail to:

Barton H. Thompson, Jr.
Susan Carter, Assistant
Jerry Yang and Akiko Yamazaki
Environ & Energy Bld., MC-4205
473 via Ortega
Stanford, CA 94305-4205
susan.carter@stanford.edu

James J. DuBois, Esq.
Office of the Solicitor
United States Department of Justice
Env. and Nat Res Div Natural Res Section
1961 Stout Street, 8th Floor
Denver, CO 80294
james.dubois@usdoj.gov

Peter K. Michael, Counsel of Record
Jay Jerde
David J. Willms
Wyoming Attorney General's Office
123 Capitol Building
Cheyenne, WY 82002
pmicha@state.wy.us
jjerde@state.wy.us
dwillm@state.wy.us

William M. Jay
Assistant to Solicitor General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001
william.m.jay@usdoj.gov

Todd Adam Sattler, Counsel of Record
North Dakota Attorney General's Office
500 North Ninth Street
Bismarck, ND 58501
tsattler@nd.gov

James Joseph Dragna
Michael Wigmore
355 South Grand Avenue Suite 4400
Los Angeles, CA 90071
michael.wigmore@bingham.com

Jeanne S. Whiteing
Whiteing & Smith
1136 Pearl Street, Suite 203
Boulder, CO 80302
jwhiteing@whiteingsmith.com

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