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

AFFIDAVIT OF PATRICK T. TYRRELL IN SUPPORT OF WYOMING'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Patrick T. Tyrrell, being sworn, states:

1. I am the current Wyoming State Engineer. I have held that position since January 16, 2001, when I was appointed by Governor Jim Geringer of Wyoming. I am also the Wyoming Commissioner to the Yellowstone River Compact Commission, having been appointed on February 12, 2001. I have personal knowledge of the facts stated herein and I am competent to make this affidavit. I make this affidavit in support of Wyoming's Motion for Partial Summary Judgment.

2. Article 8, § 5 of the Wyoming Constitution gives me "general supervision of the waters of the state and of the officers connected with its distribution." Based on this

constitutional authority as well as Wyoming statutory authority, I supervise an agency with a staff of approximately 140 persons from my office in Cheyenne, Wyoming and a series of field offices throughout the State of Wyoming. This staff includes four water division superintendents, each of whom is appointed by the Wyoming Governor, one for each of the four water divisions into which Wyoming is divided, and their staffs. I am also President of the Wyoming State Board of Control, which is comprised of me and the four water division superintendents. The Board of Control adjudicates water rights in the State of Wyoming and approves changes in those water rights. In my dual capacities as State Engineer and President of the Board of Control, I am personally involved in the official creation of water rights through the issuance of permits, the adjudication of rights, changes in water rights, and the administration and regulation of water rights in the State of Wyoming.

3. The Wyoming State Engineers from 1950 to the present have been:

L.C. Bishop- April 1, 1939 to April 1, 1957 (deceased);

Earl Lloyd- April 1, 1957 to May 1, 1963 (deceased);

Floyd A. Bishop- May 1, 1963 to December 1, 1974;

George L. Christopulos- December 1, 1974 to March 16, 1987 (deceased);

Gordon W. "Jeff" Fassett- March 16, 1987 to June 15, 2000;

Richard Stockdale (acting)- June 15, 2000 to January 16, 2001;

Patrick T. Tyrrell- January 16, 2001 to present.

Each of these state engineers served as Wyoming's commissioner to the Yellowstone River Compact Commission during their tenure as state engineer, except that Richard Stockdale was denoted as acting commissioner while he was acting state engineer in the second half of 2000. Also, Earl Lloyd was not appointed as Wyoming's commissioner until 1958. Paul A. Rechard served as Wyoming's commissioner to the Yellowstone River Compact Commission in 1957, between the tenures of L.C. Bishop and Earl Lloyd.

4. During my tenure as Wyoming State Engineer and Wyoming Commissioner to the Yellowstone River Compact Commission, I have attended annual and technical meetings of the commission, reviewed and commented upon drafts of the annual commission reports and drafts of the minutes of the commission's annual meetings, and signed the cover letters to the Governors and the annual reports. I also communicated by writing and telephone with the Montana commissioners and the federal representatives who served as commission chairmen. Except for the calls on the Tongue and Powder Rivers that Montana made in 2004 and 2006 as evidenced by the letters of May 18, 2004, and July 28, 2006, Exhibits 1 and 2 to this Affidavit, I never received a call, claim, demand, or other contemporaneous notification, either orally or in writing, from a Montana commissioner, or anyone acting under his or her authority, in which they notified Wyoming that Montana water users in the Tongue or Powder River basins, or any other waters covered by the compact, suffered from a shortage of water resulting

from actions of Wyoming water users, and that Wyoming should take some action to address Montana's shortage.

5. If the State of Montana made such a call, claim, demand, or other contemporaneous notification upon Wyoming under the Yellowstone River Compact on or after January 16, 2001, and it was not made to me personally in my capacity as Wyoming's Commissioner to the Yellowstone River Compact Commission, but was instead made to any agent of the state with authority over the regulation or adjudication of any waters of the State of Wyoming, or even to the Governor of Wyoming, it should have reached me through the chain of command and proper protocols.

6. On May 18, 2004, Jack Stults, Division Administrator, Water Resources Division, Montana Department of Natural Resources and Conservation ("DNRC"), and Montana's Commissioner for the Yellowstone River Compact, wrote me a letter regarding "Call for Water under Yellowstone River Compact." A copy of that letter is attached hereto as Exhibit 1. In response, I sent a letter to Mr. Stults on May 24, 2004. A verbatim recital of my letter was attached to my March 30, 2007 affidavit in this case, which was submitted to the Supreme Court as Appendix C to Wyoming's Brief in Opposition to Motion for Leave to File Bill of Complaint. There were also various oral communications in 2004 between me and Mr. Stults, and between our staff members, regarding the Montana call, some of which are described in ¶ 8 of my March 30, 2007 affidavit in this case.

7. On July 28, 2006, Mr. Stults, in his capacity as Montana's Commissioner for the Yellowstone River Compact, wrote me a letter regarding "Call for Water under Yellowstone River Compact." He attached to that letter the Affidavits of Art Hayes, Jr. and Charles Kepper, and a table of water rights from Montana's May 20, 1914 Tongue River Decree. An accurate copy of the letter and its attachments are attached hereto as Exhibit 2. On August 9, 2006, I sent a letter responding to the July 28, 2006 letter. I directed it to Rich Moy, Acting Division Administrator, Water Resources Division, Montana DNRC, because Mr. Stults had retired. A verbatim recital of my letter was attached to my March 30, 2007 affidavit in this case, which was submitted to the Supreme Court as Appendix D to Wyoming's Brief in Opposition to Motion for Leave to File Bill of Complaint. On October 3, 2006, Mary Sexton, Montana DNRC Director and Acting Montana Commissioner to the Yellowstone River Compact, sent me a letter in reply to the August 9, 2006 letter.

8. I am responsible for administration of water rights in accordance with the prior appropriation doctrine and for regulating the delivery of water to fulfill Wyoming water rights statewide. I carry out these duties with the help of personnel of my office who are stationed throughout the state and in Cheyenne. The Tongue and Powder River basins are entirely within Wyoming Water Division II. The superintendent, hydrographers, and commissioners of Water Division II are not, and have not been during my tenure, authorized by law, or by me, to regulate or administer the waters of the Tongue and Powder River basins outside the State of Wyoming. While the staff work with Montana

water officials on occasion when adjudicating water rights for points of diversion in Wyoming that ultimately deliver water via interstate ditches for use in Montana under Article VII of the compact, the Wyoming superintendents, hydrographers and commissioners do not administer the diversion of water to those ditches and canals once the water crosses into Montana.

9. The State of Wyoming has not appropriated funds for the purpose of compensating state employees to administer water rights in the State of Montana and has not authorized its officers or employees, by statute or otherwise, to administer water rights in Montana. Unless authorized by me to cooperate with Montana water officials with respect to issues involving interstate ditches or canals, or to accompany Montana water officials on joint inspection visits of Montana facilities, Wyoming hydrographers, commissioners and superintendents should not have entered Montana to perform any official functions there, and I am not aware of that happening while I have been State Engineer and compact commissioner.

10. In 1982, 1986 and 2004, the State Board of Control amended its rules, and each time included a section on requests for regulation by holders of water rights, which notified the public of the statutes that allowed such requests and that such requests needed to be in writing. Forms for written requests were also attached to those rules. True and accurate copies of the cover sheets, the relevant rules pages, and the forms, are attached to this affidavit as Exhibits 3, 4 and 5.

Dated this 12 day of September, 2011.

Patrick T. Tyrrell

STATE OF WYOMING)
) ss
COUNTY OF LARAMIE)

The foregoing Affidavit of Patrick T. Tyrrell in Support of Wyoming's Motion for Partial Summary Judgment was subscribed and sworn to before me, a notary public, by Patrick T. Tyrrell this 12th day of September, 2011.

Witness my hand and official seal.

NANCY L. BALES - NOTARY PUBLIC
COUNTY OF LARAMIE
STATE OF WYOMING
MY COMMISSION EXPIRES 7/18/12

Notary Public

My Commission Expires: July 18, 2012

EXHIBIT 1
Tyrrell Affidavit

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

JUDY MARTZ
GOVERNOR

DIRECTOR'S OFFICE (406) 444-2074
TELEFAX NUMBER (406) 444-2684

STATE OF MONTANA

WATER RESOURCES DIVISION (406) 444-6601
TELEFAX NUMBERS (406) 444-0533 / (406) 444-5918
http://www.dnrc.state.mt.us/wrd/home.htm

1424 9TH AVENUE
PO BOX 201601
HELENA, MONTANA 59620-1601

May 18, 2004

Patrick T. Tyrrell
Wyoming State Engineer
WY State Engineer's Office
Herschler Building, 4 East
Cheyenne, Wyoming 82002

RECEIVED
MAY 21 2004
STATE ENGINEER
CHEYENNE, WY

RE: Call for Water under Yellowstone River Compact

Dear Pat:

This is the letter I mentioned would follow our telephone call regarding the current need for administration of the compact. Also, at the Yellowstone River Compact Commission meeting in April, I agreed to send you a letter stating our concerns and needs. As you know from our recent discussions, Montana is receiving insufficient water to satisfy our developed and protected pre-1950 appropriative rights. We have recently confirmed that there is a severe shortage of water in Montana in the interstate tributaries of the Yellowstone River. While the Tongue and Powder River basins are running extremely low, we are in the process of confirming the status of the other tributaries covered in the compact, and will advise as soon as we have more specific information. The following is a general summary of current conditions:

Tongue River. Rights are not currently being satisfied on the Tongue River where we have a state-owned water project with a priority date of April 19, 1937. Numerous other rights developed and recognized in the "1914- Miles City Decree" with priority dates as early as 1886, are not being met. Insufficient water is entering Montana on the Tongue River to meet any of the prior decreed rights except for partial satisfaction of the first two 1886 rights. No other valid rights are currently being met out of the 1914 decree. I have attached a copy of the "Decree of the Waters of the Tongue River," entered on May 20, 1914, for your reference. Water rights in the 1914 decree combine to a total flow rate of 431.64 cubic feet per second during the irrigation season. Current flow at the state line is a record low 159 cubic feet per second, 20% below the previous record low of 198 cubic feet per second, and well below the 986 cubic feet per second mean. The Northern Cheyenne Tribe also holds some reserved water rights on the Tongue along with some contract water with the State of Montana. We have notified them of our intention to call upon Wyoming to administer the compact waters and will apprise them of further activities between the states.

Little Powder and the Powder. Most irrigators on the Powder have valid water rights to cover their irrigated lands two or three times each season. Our initial review of the Little

Powder River and the Powder River from the state line to Broadus for this year indicates that most water rights holders will be lucky to get one irrigation on most of their land. Importantly, flows are extremely low and the water is very salty for this time of year. Further degradation of water quality due to low flows could result in a water quality not fit for irrigation. Flows north of Powderville, Montana are inconsistent to nonexistent and salt concentrations are extremely high. In other words this is the worst some folks have seen at this time of year on the Powder, and the lowest flows on record at Locate, Montana.

Big Horn The most recent streamflow records show the Big Horn running about one third of average. We have reported no calls for water as of today; however, increasing temperatures are anticipated to change flow conditions.

Clarks Fork of the Yellowstone. The flows were extremely low earlier this spring, and while flows have increased somewhat this past month, they remain well below normal and we should remain vigilant and prepare for shortages.

As Compact Commissioner for Montana, and as directed by Governor Martz, I am notifying you that this letter constitutes Montana's call, under the terms of the compact, for our valid and protected pre-1950 water rights on the Tongue River and Powder Rivers. We are calling for all pre-1950 junior water in Wyoming to satisfy our senior pre-1950 water on the Tongue and Powder Rivers. As you reported at the April technical meeting, Wyoming is currently storing 9,369 acre-feet of post-1950 water in the Tongue River drainage and 214,722 acre-feet of post-1950 water in the Powder River Basin. See attached Wyoming Reservoirs Capacity Report. We hereby request that all these stored waters be immediately released and delivered to the Montana border to begin to satisfy our valid and protected pre-1950 water rights on the Tongue and the Powder Rivers. This call is for all pre-1950 Montana prior rights in those drainages, as protected in the Compact in Article V ¶ A, and needed to satisfy the senior appropriative rights in Montana. In the Tongue the call obviously exceeds those stored waters. As noted below we need to immediately convene a meeting of the technical committee to oversee the procedure for the remaining delivery of water.

We request an immediate meeting of the technical committee to supervise the release and delivery of this water. Additionally the technical committee should develop a process for continued delivery of water to satisfy senior users throughout the summer. As we discussed, unless we all get an unprecedented amount of rain throughout the summer, this is a particularly bad year for water supply. It is essential that we work quickly and appropriately to administer our interstate waters to satisfy our users in a way that is least disruptive to water users in both states. Furthermore, the water administration should take into account that while many of those water rights users are irrigators, some are municipal water users in our cities and towns along the rivers, including the community of Miles City, Montana.

The continuation of the extreme drought seriously affects us all. The states can best serve the water needs of their citizens by developing a workable process for timely release of waters necessary to meet calls on valid pre-1950 rights in addition to providing for the compact apportionment of all waters developed after 1950. However, failing the cooperative approach, Montana is prepared to undertake whatever action we believe is in the best interests of our citizens to protect our rights that are secured in the compact. Our goal, as recognized and

affirmed in the compact, is to protect valid pre-1950 rights in both states, through cooperation between the states on behalf of the citizens of each state.

Attached is an affidavit from the President of the Tongue River Water Users Association, and other documentation to support the call. Due to the dire need, we must request that you release water or otherwise respond within a week. Thank you in advance for your cooperation on this difficult matter.

Sincerely,

Jack Stults
Division Administrator
Water Resources Division

cc. Montana Governor Martz
Wyoming Governor Freudenthal
James Kircher, Chair, Yellowstone River Compact Commission
Jeannie Whiting, Northern Cheyenne Tribe

Enc. Affidavit of Tongue River Users
1914 Decree
Wyoming Reservoirs Capacity Report
USGS Streamflow Records

RECEIVED
MAY 17 2004
D.N.R.C.

IN THE MATTER OF THE YELLOWSTONE RIVER COMPACT

AFFIDAVIT OF ART HAYES Jr.

STATE OF MONTANA)

: ss.

County of Rosebud)

I, Art Hayes Jr., being duly sworn, do hereby affirm and state as follows:

1. I am a competent adult citizen of Montana. I reside at Birney, MT. I have resided at that location since 1962 My address and telephone number are: P.O. Box 578, Birney, MT 59012, (406) 984-6260.

2. I am a farmer/rancher and I am the president of The Brown Cattle Co. which irrigates out of the Tongue River in Montana. The Brown Cattle has done so for one hundred and five years. I do so under authority of a water rights in The Brown Cattle Co.'s name, claim numbers 14A and 18 under the 1914 Decree with priority dates of 9-22-1899 and 4-1-1902 and, which are diverted near Birney, MT and, by right of contracts from the Tongue River Reservoir, a Montana State Owned Reservoir with a priority date of 1938, contract numbers: 506, 345-A-1-B, 400, 357, 323.

3. I have resided in the rural area of the Tongue River, in the vicinity of Birney, MT for sixty years. My livelihood requires a reliable water supply for irrigation, stock, and domestic use. My work and way of life depend heavily on water of a quality sufficient to meet the needs of irrigation, domestic, and stock use. For all or most of the years in which I have lived in the vicinity, I

have personally and regularly observed the river conditions throughout the irrigation season and I have more generally observed the river conditions throughout the year.

4. In addition to being a water user myself, I am President for The Tongue River Water Users Association, (TRWUA) a nonprofit water users association comprised of members with water purchase contracts for the delivery of water from the Tongue River Project. I have served in this capacity since 1991.

5. In my capacity as president for the TRWUA, I administer the water purchase contract deliveries of water by measuring actual stored water, observing snowpack, monitoring all available state and federal water data, including, United States Geologic Survey and National Resource Conservation Service, and Montana Department of Natural Resources and Conservation data for the basin, measuring inflow and outflow, and adjusting the spillway outlet in response to calls for water purchase contracts. I also honor calls for senior water rights holders.

6. As Montana is a prior appropriation state, whenever a call for water from a water right holder senior to the state project calls for water, I must honor that call, even if that means the state water rights and other junior appropriators' needs will go unfulfilled. To perform these functions I maintain close contact with the water users all up and down the Tongue River, all the way to Miles City, so that I have a good understanding of when the shortages my occur and what the needs are, especially relative to what normal river levels are. In this way I can anticipate shortages and attempt to satisfy the most senior rights while minimizing harm to the junior users whose water rights I cannot honor.

7. Based on my knowledge of the River and its users, and based on the training I received from the previous president, Herb Mobley, who performed these functions for twenty years, I try to run the dam so that there is 50 cfs of water

at Miles City. The waters of the Tongue River are included in the 1914 Miles City decree, which I use to administer the water rights.

8. On May 15, 2004, I measured the stored capacity of the dam and it is at 47,598 acre feet. This is down from 49,942 acre feet measured on April 17,2004. The inflow on May 15, 2004 is 205 cfs which is 10-20 % of average. Snowtel data from NRCS shows that the peak water flow for Tongue River occurred on May 8, 2004.

9. Because of the prolonged drought, the soil moisture content is so low that much of the run off was absorbed into the soil, and never made to the stream for delivery into the project.

10. From my experience in administering the water rights from the Tongue River dam for over 12 years, and from my training from the previous president who ran the project for over twenty years, it is my opinion and observation that there is insufficient water to meet the 1938 needs of the state project.

11. On or about April 29, 2004, I had a call from Roger Muggli, director of the Tongue-Yellowstone Irrigation District for some of his water right. Based on the current storage in the project, the amount needed to satisfy senior rights, and the lack of additional snowpack to increase inflow, I did not deliver all of the requested water.

12. Montana water rights with perfected prior appropriative dates before 1950 are not being satisfied at this time in the Tongue River Drainage. The 1938 right in the project is not being satisfied at this time, nor are other valid senior water rights dating between 1914 and 1950. Without significant additional inflows into the project, all but the very most senior water rights will go unfilled this irrigation season. The need for irrigation water is serious and immediate.

unfilled this irrigation season. The need for irrigation water is serious and immediate.

13. Water quality sufficient to meet the appropriative right purposes requires that the water delivered to the project meet Montana's water quality standards set by The Montana Board of Environmental Review for Tongue River under the Montana Water Quality Act.

FURTHER AFFIANT SAYETH NOT

DATED this 15 day of May, 2004.

Art Hayes Jr.

ART HAYES Jr.

On 15 day of May, the aforementioned affiant appeared before me and swore or affirmed that the above facts were within his or her personal knowledge and that they believed them to be true.

SUBSCRIBED AND SWORN to before me this 15 day of May 2004

M Ellc Dougall

Notary Public for the State of Montana
Residing at Birney MT
My Commission Expires 3-15-2007

DECREE OF THE WATERS OF TONGUE RIVER, Docket No. 2809, and MODIFIED AND SUPPLEMENTAL JUDGEMENT AND DECREE ENTERED ON THE 20th DAY OF MAY, 1914 – Custer County Montana.

Number	Name	Date	No. of Miners Inches	cfs
1	Jos. T. Brown L & C Company	7-6-1886	419.55	10.49
2	Miles City C & I Co. T&Y	8-9-1886	7500.00	187.50
3	Brewster Est. W. Ditch	4-19-1890	159.90	4.00
4	Jos. T. Brown L & C Company #4	7-14-1891	359.40	8.99
5	Jos. T. Brown L & C Company #2	6-1-1894	257.30	6.43
6	Fred Barringer, et al.	6-1-1895	941.30	23.53
7	R.F. Colbert	6-15-1895	133.84	3.35
8-A	Jos. T. Brown L & C Company #3	10-27-1896	59.15	1.48
8-B	Tobias Salverson	10-27-1896	75.15	1.88
8-C	George Hilbertson	10-27-1896	26.50	0.66
8-D	Peter Salverson	10-27-1896	25.50	0.64
9-A	Ball Ranch, E. Ditch	1-27-1897	1163.75	29.09
9-B	John L. Flowers	1-27-1897	49.70	1.24
10	C.M. Taintor #1	10-1-1897	83.69	2.09
11	B.F. Shreve	7-1-1898	182.35	4.56
12	Raseus O. Lee	10-1-1898	45.65	1.14
13A	Thomas Salverson	5-1-1899	24.50	0.61
13B	C.A. Randall	5-1-1899	78.86	1.97
14A	Jos. T. Brown L & C Company #5	9-22-1899	533.85	13.35
14B	Brewster Est., E. Ditch	9-22-1899	187.50	4.69
14C	Grace S. Brewster	9-22-1899	15.30	0.38
14D	P.L. Peterson	9-22-1899	26.85	0.67
15	C.M. Taintor #2	6-1-1900	81.13	2.03
16	Tongue River Est. Co. (now S-H)	12-29-1900	1781.00	44.53
17	Hunt Heirs	1-29-1901	113.20	2.83
18	Jos. T. Brown L & C Company #6	4-1-1902	276.30	6.91
19A	S.A. Hotchkiss	12-10-1902	157.10	3.93
19B	William Wolff	12-10-1902	395.00	9.88
20	Ball Ranch Co. W. Ditch	12-17-1908	314.45	7.86
21	Indian Service	3-24-1909	1200.00	30.00
22	G.B. Pope	11-22-1910	597.90	14.95
		Total	17265.67	431.64

This table does not reflect any current name changes.

ME OF THE WATERS OF TONGUE RIVER, Docket No. 2809, and MODIFIED AND SUPPLEMENTAL
JUDGEMENT AND DECREE ENTERED ON THE 20th DAY OF MAY, 1914 - Custer County
Montana.

er	Name	Date	No. of Miners Inches
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	Brewster Est. W. Ditch	4-19-1890	159.90
	Jos. T. Brown L & C Company #4	7-14-1891	359.40
	Jos. T. Brown L & C Company #2	6-1-1894	257.30
	Fred Barringer, et al.	6-1-1895	941.30
	R. F. Colbert	6-15-1895	133.84
	Jos. T. Brown L & C Company #3	10-27-1896	59.15
	Tobias Salverson	10-27-1896	75.15
	George Hilberteon	10-27-1896	26.50
	Peter Salverson	10-27-1896	25.50
	Ball Ranch, E. Ditch	1-27-1897	1163.75
	John L. Flowers	1-27-1897	49.70
	C. M. Taintor #1	10-1-1897	83.69
	B. F. Shreve	7-1-1898	182.35
	Rasmus O. Lee	10-1-1898	45.65
	Thomas Salverson	5-1-1899	24.50
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	S. A. Hotchkiss	12-10-1902	157.10
	William Wolff	12-10-1902	395.00
	Ball Ranch Co. W. Ditch	12-17-1908	314.45
	Indian Service	3-24-1909	1200.00
	G. B. Pope	11-22-1910	397.90
		Total	17,265.67

Wyoming Reservoirs

Capacity Report

Tongue River Drainage

Reservoir	Pre-1950	Post 1950	Carryover 2004
Park	7,347 AF	3,015 AF	3,388 AF
Big Horn	2,749 AF	1,876 AF	1,098 AF
Cross Creek	AF	798 AF	324 AF
Sawmill	AF	1,275 AF	0 AF
Dome	1,843 AF	188 AF	1,525 AF
Twin Lakes	1,180 AF	2,217 AF	2,606 AF
Granger	146 AF	AF	6 AF
Willits	79 AF	AF	0 AF
Martin	561 AF	AF	0 AF
Last Chance	90 AF	AF	0 AF
Weston	370 AF	AF	0 AF
	14,365 AF	9,369 AF	8,947 AF

Powder River Drainage

Reservoir	Pre-1950	Post 1950	Carryover 2004
Kearney	1,854 AF	4,470 AF	2,711 AF
Cloud Peak	3,398 AF	172 AF	0 AF
Willow Park	4,457 AF	AF	1,316 AF
Tie Hack	1,647 AF	788 AF	2,435 AF
Muddy Guard	AF	2,335 AF	556 AF
Dull Knife	AF	4,345 AF	987 AF
Lake DeSmet	37,515 AF	197,472 AF	197,132 AF
Healy	AF	5,140 AF	3,077 AF
	48,871 AF	214,722 AF	208,214 AF

USGS Internal Access
Water Resources

Data Category: Real-time
Geographic Area: Montana
go

Real-Time Data for Montana: Streamflow -- 194 site(s) found

PROVISIONAL DATA SUBJECT TO REVISION
Updated 2004-05-17 17:52:04 US/Eastern

Streamflow in Montana is monitored in cooperation with State, County, and other Federal agencies.

Temperature Converter: °F <=> °C Calculate

--- Predefined displays ---	Group table by	Select sites by number or name
Montana Streamflow Table	Major River Basin	GO

Station number	Station name	Long-term median flow 5/17	Stream-flow (ft³/s)	G he f
● UPPER MISSOURI RIVER BASIN				
06006000	Red Rock Cr ab Lakes nr Lakeview MT	47.0	28	
06012500	Red Rock R bl Lima Reservoir nr Monida MT	320	52	
06016000	Beaverhead River at Barretts MT	582	341	
06017000	Beaverhead River at Dillon MT	154	136	
06018500	Beaverhead River near Twin Bridges MT	183	114	
06019500	Ruby River ab Reservoir nr Alder MT	383	179	
06020600	Ruby River bl Reservoir nr Alder MT	390	484	
06024450	Big Hole River bl Big Lake Cr at Wisdom MT	304	8.5	
06024540	Big Hole River bl Mudd Cr nr Wisdom MT	1,054	511	
06025500	Big Hole River near Melrose MT	2,740	873	
06026210	Big Hole River near Glen MT	1,475	810	
06026500	Jefferson River near Twin Bridges MT	3,395	998	
06033000	Boulder River near Boulder MT	455	166	
06035000	Willow Creek near Harrison MT	53.0	11	
06036650	Jefferson River near Three Forks MT	2,725	739	
06036905	Firehole River near West Yellowstone MT	560	366	
06037100	Gibbon River at Madison Jct, YNP	425	209	
06037500	Madison River near West Yellowstone MT	820	654	
06038500	Madison River bl Hebgen Lake nr Grayling MT	744	450	
06038800	Madison River at Kirby Ranch nr Cameron MT	1,240	639	
06040800	Madison River ab Powerplant nr McAllister MT	734	207	
06041000	Madison River bl Ennis Lake nr Mcallister MT	1,680	1,160	

06043500	Gallatin River near Gallatin Gateway MT	1,750	850	
06048700	East Gallatin R bl Bridger C nr Bozeman MT	268	74	
06052500	Gallatin River at Logan MT	2,010	306	
06054500	Missouri River at Toston MT	7,820	1,980	
06061500	Prickly Pear Creek near Clancy MT	112	--	
06062500	Tenmile Creek near Rimini MT	82.0	20	
06065500	Missouri River bl Hauser Lake nr Helena MT	6,350	2,960	
06066500	Missouri River bl Holter Dam nr Wolf Cr MT	6,415	2,830	
06071300	Little Prickly Pear Cr at Wolf Cr MT	162	70	
06073500	Dearborn River near Craig MT	654	183	
06077200	Smith River bl Eagle Cr nr Fort Logan MT	323	214	
06078200	Missouri River near Ulm MT	8,030	3,520	
06085800	Sun River at Simms MT	480	175	
06088300	Muddy Creek near Vaughn MT	120	115	
06088500	Muddy Creek at Vaughn MT	143	162	
06089000	Sun River near Vaughn MT	1,135	606	
• LOWER MISSOURI RIVER BASIN				
06090300	Missouri River near Great Falls MT	10,020	4,660	
06090650	Lake Creek near Power MT	13.5	.00	
06090800	Missouri River at Fort Benton MT	12,800	4,790	
06091700	Two Medicine River bl South Fork nr Browning MT	1,019	963	
06093200	Badger Cr bl Four Horns Canal nr Browning MT	445	187	
06098500	Cut Bank Creek near Browning MT	370	233	
06099000	Cut Bank Creek at Cut Bank MT	443	243	
06099500	Marias River near Shelby MT	2,560	1,420	
06101500	Marias River near Chester MT	1,210	514	
06102500	Teton River bl South Fork nr Choteau MT	249	Eqp	
06108000	Teton River near Dutton MT	149	39	
06108800	Teton River at Loma MT	40.0	20	
06109500	Missouri River at Virgelle MT	11,900	5,260	
06114700	Judith River nr mouth, nr Winifred MT	205	213	
06115200	Missouri River near Landusky MT	12,950	5,860	1
06115270	2~Armells Creek nr Landusky MT	.28	.00	
06115350	2~Rock Creek near Landusky MT	.89	2.5	
06119600	Musselshell River nr Martinsdale, MT	206	59	
06120500	Musselshell River at Harlowton MT	277	55	
06123030	Musselshell River ab Mud Cr nr Shawmut MT	11.0	45	
06126050	Musselshell River near Lavina MT	208	208	
06126500	Musselshell River near Roundup MT	227	186	
06127020	Willow Cr ab LMGA Reservoir nr Roundup MT	.010	.00	
06127500	Musselshell River at Musselshell MT	187	127	
06130500	Musselshell River at Mosby MT	225	3.0	
06130650	2~Hell Creek near Jordan MT	.090	.00	-

06131000	Big Dry Creek near Van Norman MT	5.65	2.3
06132000	Missouri River below Fort Peck Dam MT	7,800	--
06132200	South Fork Milk River near Babb MT	77.0	46
06133500	N F Milk River ab ST Mary CA nr Browning MT	27.0	18
06135000	Milk River at Eastern Crossing of Int Bndry	626	672
06137400	Big Sandy Cr at Res Bndry nr Rocky Boy MT	9.70	3.7
06139500	Big Sandy Creek near Havre MT	3.75	.81
06139900	Beaver Cr at Res Bndry nr Rocky Boy MT	6.75	4.4
06140500	Milk River at Havre MT	822	864
06142400	Clear Creek near Chinook MT	13.5	17
06151500	Battle Creek near Chinook MT	32.0	4.8
06154100	Milk River near Harlem MT	567	259
06154400	Peoples Creek near Hays MT	7.30	27
06154410	Little Peoples Creek near Hays MT	6.35	1.0
06154550	Peoples Cr bl Kuhr Coulee nr Dodson MT	12.0	14
06155030	Milk River near Dodson MT	50.0	.00
06155900	Milk River at Cree Crossing nr Saco MT	128	167
06164510	Milk River at Juneberg Bridge nr Saco MT	238	197
06166000	Beaver Cr bl Guston Coulee nr Saco MT	2.35	.00
06169500	Rock Cr bl Horse Cr nr Int Bndry	6.45	26
06172310	Milk River at Tampico MT	109	172
06174500	Milk River at Nashua MT	348	118
06177000	Missouri River near Wolf Point MT	8,120	11,200
06177500	Redwater River at Circle MT	1.15	.97
06178000	Poplar River at International Boundary	9.10	56
06178500	East Poplar River at International Bndry	6.90	9.8
06181000	Poplar River near Poplar MT	77.5	143
06183450	Big Muddy Creek near Antelope MT	13.0	44
06185500	Missouri River near Culbertson MT	8,395	11,300
• YELLOWSTONE RIVER BASIN			
06186500	Yellowstone River at Yellowstone Lk Outlet YNP	925	1,230
06187915	Soda Butte Cr at Park Bndry at Silver Gate	81.0	78
06187950	Soda Butte Cr nr Lamar Ranger Station YNP	406	195
06188000	Lamar River nr Tower Falls Ranger Station YNP	2,535	1,330
06190540	Boiling River at Mammoth,YNP	29.5	26
06191000	Gardner River near Mammoth YNP	486	301
06191500	Yellowstone River at Corwin Springs MT	5,920	4,000
06192500	Yellowstone River near Livingston MT	6,110	4,230
06195600	Shields River nr Livingston MT	728	73
06200000	Boulder River at Big Timber MT	970	297
06204050	West Rosebud Creek near Roscoe MT	68.5	57
06205000	Stillwater River near Absarokee MT	1,280	511
06207500	Clarks Fork Yellowstone River nr Belfry MT	1,800	767

06208500	Clarks Fork Yellowstone River at Edgar MT	1,810	461	
06209500	Rock Creek near Red Lodge MT	148	61	
06211000	Red Lodge Cr ab Cooney Re nr Boyd MT	120	16	
06211500	Willow Creek near Boyd MT	32.0	5.6	
06214500	Yellowstone River at Billings MT	10,800	4,280	
06287000	Bighorn River near St. Xavier, MT	3,115	1,320	5
06289000	Little Bighorn River at State Line nr Wyola MT	304	106	
06290000	Pass Creek near Wyola MT	80.5	12	
06290500	Little Bighorn R bl Pass Cr nr Wyola MT	421	155	
06291500	Lodge Grass Cr ab Willow C Div nr Wyola MT	93.0	34	
06294000	Little Bighorn River near Hardin MT	448	105	
06294500	Bighorn River ab Tullock Cr nr Bighorn MT	3,800	1,410	
06295000	Yellowstone River at Forsyth MT	12,700	6,600	
06295113	Rosebud C at Reservation Bndry nr Kirby MT	11.0	.63	
06296003	Rosebud Creek at mouth near Rosebud MT	24.0	.12	
06306300	Tongue River at State Line nr Decker MT	986	165	
06307500	Tongue River at Tongue R Dam nr Decker MT	710	255	1
06307600	Hanging Woman Creek near Birney MT	1.30	.24	
06307616	Tongue R at Birney Day School Br nr Birney MT	447	252	
06307740	Otter Creek at Ashland MT	4.20	***	
06307830	Tongue R bl Brandenberg Bridge nr Ashland MT	522	243	
06308400	Pumpkin Creek near Miles City MT	1.70	.00	
06308500	Tongue River at Miles City MT	469	--	
		469	--	
		469	Eqp	
06309000	Yellowstone River at Miles City MT	14,950	7,750	
06324500	Powder River at Moorhead MT	696	142	
06326500	Powder River near Locate MT	838	34	
06327500	Yellowstone River at Glendive MT	16,800	6,870	4
06329500	Yellowstone River near Sidney MT	15,850	6,530	

• UPPER COLUMBIA RIVER BASIN

12301300	Tobacco River near Eureka MT	698	362	
12301933	Kootenai River bl Libby Dam nr Libby MT	4,005	3,970	1
12302055	Fisher River near Libby MT	1,240	504	
12304500	Yaak River near Troy MT	3,680	1,190	
12323240	Blacktail Creek at Butte MT	22.0	7.6	
12323250	Silver Bow Cr bl Blacktail Cr at Butte MT	29.0	15	
12323600	Silver Bow Creek at Opportunity MT	85.0	35	
12323700	Mill Creek at Opportunity, MT	27.0	3.6	
12323720	Willow Creek at Opportunity, MT	26.0	20	
12323750	Silver Bow Creek at Warm Springs MT	222	62	
12323760	Warm Springs Creek near Anaconda MT	82.5	72	
12323770	Warm Springs Creek at Warm Springs MT	54.0	27	

12323800	Clark Fork near Galen MT	193	89	
12323850	Lost Creek near Galen, MT	22.0	2.0	
12324200	Clark Fork at Deer Lodge MT	285	104	
12324590	Little Blackfoot River near Garrison MT	429	139	
12324680	Clark Fork at Goldcreek MT	874	422	
12325500	Flint Creek near Southern Cross MT	25.0	26	
12329500	Flint Creek at Maxville MT	119	37	
12330000	Boulder Creek at Maxville MT	94.0	58	
12331500	Flint Creek near Drummond MT	72.0	8.0	
12331800	Clark Fork near Drummond MT	1,150	396	
12332000	Middle Fork Rock Cr nr Philipsburg MT	285	183	
12334510	Rock Creek near Clinton MT	1,290	780	
12334550	Clark Fork at Turah Bridge nr Bonner MT	2,000	1,140	
12335100	Blackfoot R ab Nevada Cr nr Helmville MT	684	477	
12335500	Nevada Cr ab Reservoir, nr Helmville, MT	87.5	28	
12337800	Nevada Creek at mouth nr Helmville	50.5	20	
12338300	NF Blackfoot R ab Dry Gulch nr Ovando MT	962	732	
12340000	Blackfoot River near Bonner MT	4,185	2,460	
12340500	Clark Fork above Missoula MT	6,460	3,520	
12342500	West Fork Bitterroot River nr Conner MT	662	435	
12343400	East Fork Bitterroot River nr Conner MT	942	469	
12344000	Bitterroot River near Darby MT	2,600	1,420	
12351200	Bitterroot River near Florence MT	5,980	2,940	
12352500	Bitterroot River near Missoula MT	5,460	3,350	
12353000	Clark Fork below Missoula MT	11,750	7,040	
12354000	St. Regis River near St. Regis, MT	2,380	883	
12354500	Clark Fork at St. Regis MT	18,650	9,810	
12355000	Flathead River at Flathead British Columbia	3,425	1,980	
12355500	N F Flathead River nr Columbia Falls MT	9,480	4,970	
12358500	Middle Fork Flathead River nr West Glacier MT	9,475	4,750	
12359800	S F Flathead R ab Twin C nr Hungry Horse MT	7,260	3,570	
12362500	S F Flathead River nr Columbia Falls MT	3,464	4,590	
12363000	Flathead River at Columbia Falls MT	24,850	14,000	
12365000	Stillwater River near Whitefish MT	1,030	512	
12366000	Whitefish River near Kalispell MT	511	424	
12370000	Swan River near Bigfork MT	2,640	1,450	
12372000	Flathead River near Polson MT	22,400	14,500	
12381400	South Fork Jocko River near Arlee MT	152	109	
12388700	Flathead River at Perma MT	13,300	17,100	1
12389000	Clark Fork near Plains MT	42,300	26,800	
12389500	Thompson River near Thompson Falls MT	1,200	494	
12390700	Prospect Creek at Thompson Falls MT	760	321	

• HUDSON BAY BASIN

05014500	Swiftcurrent Creek at Many Glacier MT	389	151
05016000	Swiftcurrent Creek at Sherburne MT	334	141
05017500	St. Mary River near Babb MT	1,630	886
05018000	St. Mary Canal at Intake near Babb MT	532	599
05018500	St. Mary Canal at St. Mary Crossing near Babb MT	546	550
05020500	St. Mary River at International Boundary	1,540	480

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EXHIBIT 2
Tvrrell Affidavit

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

BRIAN SCHWEITZER
GOVERNOR

DIRECTOR'S OFFICE (406) 444-2074
TELEFAX NUMBER (406) 444-2684

STATE OF MONTANA

WATER RESOURCES DIVISION (406) 444-6601
TELEFAX NUMBERS (406) 444-0533 / (406) 444-5918
http://www.dnrc.mt.gov

1424 9TH AVENUE
PO BOX 201601
HELENA, MONTANA 59620-1601

July 28, 2006

Patrick T. Tyrrell
Wyoming State Engineer
WY State Engineer's Office
Herschler Building, 4 East
Cheyenne, Wyoming 82002

RECEIVED
JUL 31 2006
STATE ENGINEER
CHEYENNE, WY

RE: Call for Water under Yellowstone River Compact

Dear Pat:

I am writing today to request that Wyoming administer the waters of the Tongue and Powder Rivers by curtailing post-1950 diversions or storage to the extent required by the Yellowstone River Compact ("Compact") under current conditions. I was unable to contact you by telephone on Friday to let you know this was coming, but I will try again on Monday morning.

The Tongue River. As you know, the situation in the Tongue is quite dire, as noted in the accompanying affidavits of the President of the Tongue River Water Users Association and the Montana Water Commissioner for the upper part of the Tongue River. The river flow is now about one-fourth of the previously recorded low, and is supporting only the first right on the river. We were unable to fill the reservoir this year, in part, we believe, because, during the normal filling period Wyoming was in a "free river" situation and had no regulation of its post-1950 water uses. Article V. A of the Yellowstone River Compact provides that each State is entitled to satisfy its pre-1950 water rights before either state may supply its supplemental or post-1950 uses. As a practical matter, that means that the upstream state, Wyoming, cannot allow its post-1950 users to take their water if pre-1950 users in Montana are not being satisfied. Our 1938 Reservoir contract holders are not able to use the full amount of their contracts and the decreed pre-1950 users of direct flow in Montana are being seriously shorted on rights they would normally receive to finish the irrigation season. The status of the river as of July 21, 2006 is indicated in the enclosed affidavits. Flows since then have been as low as 10 cfs at the state line gage, while the Dayton Gage was at 67 cfs and the Monarch gage at 13 cfs. This is consistent with Wyoming's statement at the Compact Commission meeting in April that Wyoming does not regulate any uses on the mainstem.

As the water commissioner indicates, only the first right on the Tongue has been receiving any water. See Kepper Affidavit, ¶ 6. No other valid rights are currently being met out of the 1914 decree. I have attached a copy of the "Decree of the Waters of the Tongue River," entered on May 20, 1914, for your reference. Water rights in the 1914 decree combine to

a total flow rate of 431.64 cubic feet per second during the irrigation season. Current flow at the state line is at about 15 cubic feet per second, while the mean for this day is 234 cfs. Because the Reservoir did not fill this year, both the contract holders and the Northern Cheyenne Tribe are experiencing a shortage of storage water. The Northern Cheyenne Tribe also holds direct flow reserved water rights on the Tongue and contract water from the State of Montana that are being shorted. We have notified them of our intention to call upon Wyoming to administer the Compact waters and will apprise them of further activities between the States.

Wyoming is required by the Compact to regulate its post-1950 uses on the Tongue, including uses on the mainstem, until Montana's pre-1950 uses are satisfied. From the information provided at the April meeting, we understand that there is stored water in the headwaters of the Tongue that is post-1950 and was stored while Montana's pre-1950 uses were being shorted. If so, this water should be made available immediately to our users. See attached Wyoming Reservoirs Capacity Report.

The Powder River. As of Tuesday the 25th, there was essentially no water in the Powder River at the Moorhead gage. The gage reading is 1.1 cfs, while the mean for this day is 432 cfs. Most irrigators on the Powder have valid water rights to cover their irrigated lands two or three times each season, which would have allowed one more irrigation yet this season. Obviously, they are all shut down now until the river comes up considerably. Importantly, flows are extremely low and the water is very salty for this time of year. Degradation of water quality due to low flows results in water not fit for irrigation of some soils. Flows north of Powderville, Montana are inconsistent to nonexistent, and salt concentrations are extremely high. This is the worst some folks have seen at this time of year on the Powder in Montana.

We request an immediate meeting of the technical committee to supervise the release and delivery of this water. Additionally, the technical committee should develop a process for continued delivery of water to satisfy senior users throughout the summer. As we discussed, unless we all get an unprecedented amount of rain throughout the summer, this is a particularly bad year for water supply. It is essential that we work quickly and appropriately to administer our interstate waters to satisfy our users in a way that is least disruptive to water users in both States. Furthermore, the water administration should take into account that while many of those water rights users are irrigators, some are municipal water users in our cities and towns along the rivers, including the community of Miles City, Montana.

The continuation of the extreme drought seriously affects us all. The States can best serve the water needs of their citizens by developing a mutually workable process for timely delivery of waters necessary to meet calls on valid pre-1950 rights in addition to providing for the Compact apportionment of all waters developed after 1950. However, failing the cooperative approach, Montana is prepared to undertake whatever action we believe is in the best interests of our citizens to protect our rights that are secured in the Compact. Our first goal, as recognized and affirmed in the Compact, is to protect valid pre-1950 rights in both States, through cooperation between the States on behalf of the citizens of each State.

Although this letter in not required by the Compact, as Compact Commissioner for Montana, and as directed by Governor Schweitzer, this letter constitutes Montana's call and demand, under the terms of the Compact, for water to satisfy our valid and protected pre-1950 water rights on the Tongue and Powder Rivers.

Attached is documentation to support the call. Due to the dire need, we must request that you confirm that water will be administered as requested or otherwise respond within a week. Thank you in advance for your cooperation on this difficult matter.

Sincerely,

Jack Stults
Division Administrator
Water Resources Division
Commissioner for Montana

RECEIVED
JUL 31 2014

cc. Montana Governor Schweitzer
Wyoming Governor Freudenthal
Bill Horak, Chair, Yellowstone River Compact Commission
Jeannie Whiting, Northern Cheyenne Tribe

Enc. Affidavit of President of the Tongue River Water Users Association
1914 Decree Table

IN THE MATTER OF THE YELLOWSTONE RIVER COMPACT

RECEIVED
JUL 2 4 2006
ATTORNEY GENERALS OFFIC
HELENA, MONTANA

AFFIDAVIT OF ART HAYES JR.

STATE OF MONTANA)
: ss.
County of Rosebud)

I, Art Hayes Jr, being duly sworn, do hereby affirm and state as follows:

1. I am a competent adult citizen of Montana. I reside at Birney Montana. I have resided at that location since 1962. My address and telephone numbers are: 208 Hanging Woman Creek Road, phone (406) 984-6260.

2. I am a farmer/rancher and irrigate out of the Tongue River in Montana. My family has done so for 122 years. I do so under authority of water rights in name of The Brown Cattle Company, claim numbers 42C 145052-00 with a priority date of April 1, 1902,diverted at SW SW SW § Sec of Sec 6 Twp 6S Rge 43E Rosebud; Claim number 42B 145051-00 with a priority date of September 22, 1899,diverted at SW NE NE § Sec of Sec 13 Twp 6S Rge 42E Rosebud; claim number 42C 145047-00 with a priority date of June 1, 197, 1diverted at SE NE SW Qtr Sec of Sec 25 Twp 5S Rge 42E Rosebud; and water purchase contracts from the Tongue River Reservoir.

3. The state water purchase contract referred to above is a 1650 acre-feet contract from the Tongue River Reservoir, a Montana State owned Reservoir with a priority date of 1937.

4. I have resided in the rural area of the Tongue River, in the vicinity of Birney Montana for 44 years. My livelihood requires a reliable water supply for irrigation, stock, and domestic use. My work and way of life depend heavily on water of a quality sufficient

to meet the needs of irrigation, domestic, and stock use. For all or most of the years in which I have lived in the vicinity, I have personally and regularly observed the river conditions throughout the irrigation season and I have more generally observed the river conditions throughout the year.

5. In addition to being a water user myself, I am the President for the Tongue River Water Users Association, (TRWUA) a nonprofit water users association comprised of members with water purchase contracts for the delivery of water from the Tongue River Project. I have served in this capacity since 1991.

6. In my capacity as President for the TRWUA, I administer the water purchase contract deliveries of water by measuring actual stored water, observing snowpack, monitoring all available state and federal water data, including, United States Geologic Survey and National Resource Conservation Service, and Montana Department of Natural Resources and Conservation data for the basin, measuring inflow and outflow, and adjusting the Tongue River Dam outlet in response to calls for water purchase contracts. I also honor calls for senior water rights holders.

7. As Montana is a prior appropriation state, whenever a call for water from a water right holder senior to the state project calls for water, I must honor that call, even if that means the state water rights and other junior appropriators' needs will go unfulfilled. To perform these functions I maintain close contact with the water users all up and down the Tongue River, all the way to Miles City, so that I have a good understanding of when the shortages my occur and what the needs are, especially relative to what normal river levels

are. In this way I can anticipate shortages and attempt to satisfy the most senior rights while minimizing harm to the junior users whose water rights I cannot honor.

8. Based on my knowledge of the River and its users, and based on the training I received from the previous President, Herb Mobley, who performed these functions for twenty years, I try to run the dam so that there is 50 cfs of water at Miles City. The waters of the Tongue River are included in the 1914 Miles City decree, which I use to administer the water rights.

9. On January 18, 2006 the Tongue River Advisory Committee (an advisory group in the Northern Cheyenne compact) met in Billings, at that meeting the group looked at snowpack and projected inflows. The group concluded that because of low flows, diminishing snowpack, and expected continuation of low flows, the Reservoir would be managed to maximize storage between January and March 1, 2006. The Tongue River below the dam was staged down to its minimum 75cfs, but due to falling inflows I was not able to meet the set goal of 3000 acre-feet of storage. Between March and June, our normal period of storing, we left the outflow at its minimum to store the maximum amount of water coming down the river.

11. It is my understanding that Wyoming does not regulate its users during "free river" conditions, typically occurring during the period of year that we have a right to store water. This year, Montana was unable to fulfill its right to store its 1937 water right. Montana was short approximately 6,381 acre-feet of water. At this time, that shortage is shared between the Tongue River Reservoir contract holders and the Northern Cheyenne Tribe, although the state and the tribe do not necessarily agree on the proper method of

sharing the shortages. I do not speak for the Northern Cheyenne Tribe, but only on the basis of my personal observations and experiences in regulating the dam.

12. From my experience in administering the water rights from the Tongue River dam for over 16 years, and from my training from the previous dam manager who ran the project for over twenty years, it is my opinion and observation that there has been insufficient water this year to meet the 1937 storage right of the state project and the Federal Reserved Water right of the Northern Cheyenne Tribe.

13. June 17, 2006 is the last date that the river contained sufficient water to satisfy the 1914 Montana decreed rights in the Tongue River. By July 15, 2006 the river had dropped to a flow sufficient to satisfy only the first water right on the Tongue River.

14. To my knowledge, Montana water rights with perfected prior appropriative dates before 1950 are not being satisfied at this time in the Tongue River Drainage. The 1937 right in the project is not being satisfied at this time, nor are other valid senior water rights of the 1914 Miles City Decree and the Northern Cheyenne Tribe. Without significant additional inflows into the drainage, the project contracts and Tribe will only receive partial service and all but the very most senior water rights will receive no further water at all this irrigation season. The need for irrigation water is serious and immediate.

15. Water quality sufficient to meet the appropriative right purposes requires that the water delivered to the project meet Montana's water quality standards for B-1 Rivers under the Montana Water Quality Act.

FURTHER AFFIANT SAYETH NOT

DATED this 21 day of July, 2006.

Art Hayes Jr

ART HAYES Jr.

On 21st day of July, 2006, the aforementioned affiant appeared before me and swore or affirmed that the above facts were within his or her personal knowledge and that they believed them to be true.

SUBSCRIBED AND SWORN to before me this 21st day of July, 2006, 2006.

Lori Blaede

PRINTED NAME

Lori Blaede

Notary Public for the State of Montana
Residing at Ashland, MT
My Commission Expires August 18, 2007

IN THE MATTER OF THE YELLOWSTONE RIVER COMPACT

RECEIVED

JUL 2 4 2006

ATTORNEY GENERALS OFFICE
HELENA, MONTANA

AFFIDAVIT OF CHARLES KEPPER

STATE OF MONTANA)
: ss.
County of Rosebud)

I, Chuck Kepper, being duly sworn, do hereby affirm and state as follows:

1. I am a competent adult citizen of Montana. I reside at Birney Montana. I have resided at that location since 1993. My address and telephone numbers are: East Fork Hanging Woman Creek Road, phone (406) 984-6284. I have resided there since 2000.

2. I am a retired maintenance foreman for Shell Oil. I have no irrigations rights in Montana. For most of the years since 2000, including this year, I have been appointed a water commissioner on the Tongue River by the Honorable Judge Hegel, Montana District Court in and for the Sixteenth Judicial District in Forsyth Montana. I have attended the water commissioner training given by the Department of Natural Resources and Conservation.

3. In my capacity as water commissioner for the Tongue River, I admeasure and administer the water rights established in what is commonly referred to as the 1914 Miles City Decree, as well as the water released from the Tongue River Dam for water purchase contract holders. In some years I have performed this function for the entire stretch of the mainstem of the Tongue River from the dam to the T and Y Ditch Company at Miles City. For this year and the last three years, the Honorable Judge Hegel has appointed another commissioner to administer the Decree for the rights below the Brandenburg Bridge. That Commissioner this year is Charlie Gephardt. Charlie admeasures and administers the river

below the Brandenburg Bridge. In my capacity as Commissioner for the Upper Tongue, I work closely with Charlie to assure that only the most senior rights are satisfied in order of priority, and that our records of water deliveries are accurate.

4. In my capacity as water commissioner, I am required personally and regularly to observe the river conditions throughout the irrigation season. I have more generally observed the river conditions throughout the year since I have lived in Montana.

5. Between May 2006 when I was first appointed, and June 17, 2006, I gradually began cutting off decreed water rights of the 1914 Decree as required to satisfy any senior water right holders calling for their water. The Tongue River flow dropped below the amount of decreed water being called for on June 17, 2006, and so I began to enforce the priorities on the River on that day. On June 21, 2006, the flow at the state line was 233 cfs. That is enough to satisfy only the first six water rights of the twenty-two in the 1914 Decree.

6. On July 19, 2006, there is only 15 cfs coming into the Reservoir. That is only enough to satisfy the first right of the twenty-two in the Decree. The first right is for Nance Cattle Company, priority date July 6, 1886 for 10.49 cfs. I deliver that amount to the Nance Cattle Company headgate, and allow the remainder, less than 5 cfs, to travel downstream for the second right in the decree, T&Y Ditch Company. T& Y Ditch has an August 9, 1886 right for 187.5 cfs. Due to conveyance losses, T&Y is now receiving essentially no water at all from the Decree.

7. In our capacities as water commissioners, it is Charlie and my responsibility to assure that none of the other decreed right holders receive any more of their prior rights unless and until the River flows exceed those two first rights. If and when the River comes

up, we can allow additional users to get water in accordance with their priority date in the Decree. Until then, other than the Nance right, the only water being delivered is the water purchase contract water.

8. At this time we are delivering only a percentage of stored water to the water purchase contract holders. Because the Reservoir did not fill this year, the water purchase contract holders are sharing the shortages, so each will be delivered only a percentage of their contract rights. Those contract rights have a priority date of 1937. If there were no stored water in the system the River would be dry long before it reached Ashland, as the less than 5 cfs left after the first right is satisfied would be lost to seepage.

FURTHER AFFIANT SAYETH NOT

DATED this 21 day of July, 2006.

Charles Kepper

CHARLES KEPPER

On 21st day of July, 2006, the aforementioned affiant appeared before me and swore or affirmed that the above facts were within his or her personal knowledge and that they believed them to be true.

SUBSCRIBED AND SWORN to before me this 21st day of July, 2006.

Nanalea Gundlach

PRINTED NAME

Nanalea Gundlach

Notary Public for the State of Montana

Residing at Billings

My Commission Expires November 1, 2006

(seal)

DECREE OF THE WATERS OF TONGUE RIVER, Docket No. 2809, and MODIFIED AND SUPPLEMENTAL JUDGEMENT AND DECREE ENTERED ON THE 20th DAY OF MAY, 1914 – Custer County Montana.

Number	Name	Date	No. of Miners Inches	cfs
1	Jos. T. Brown L & C Company	7-6-1886	419.55	10.49
2	Miles City C & I Co. T&Y	8-9-1886	7500.00	187.50
3	Brewster Est. W. Ditch	4-19-1890	159.90	4.00
4	Jos. T. Brown L & C Company #4	7-14-1891	359.40	8.99
5	Jos. T. Brown L & C Company #2	6-1-1894	257.30	6.43
6	Fred Barringer, et al.	6-1-1895	941.30	23.53
7	R.F. Colbert	6-15-1895	133.84	3.35
8-A	Jos. T. Brown L & C Company #3	10-27-1896	59.15	1.48
8-B	Tobias Salverson	10-27-1896	75.15	1.88
8-C	George Hilbertson	10-27-1896	26.50	0.66
8-D	Peter Salverson	10-27-1896	25.50	0.64
9-A	Ball Ranch, E. Ditch	1-27-1897	1163.75	29.09
9-B	John L. Flowers	1-27-1897	49.70	1.24
10	C.M. Taintor #1	10-1-1897	83.69	2.09
11	B.F. Shreve	7-1-1898	182.35	4.56
12	Raseus O. Lee	10-1-1898	45.65	1.14
13A	Thomas Salverson	5-1-1899	24.50	0.61
13B	C.A. Randall	5-1-1899	78.86	1.97
14A	Jos. T. Brown L & C Company #5	9-22-1899	533.85	13.35
14B	Brewster Est., E. Ditch	9-22-1899	187.50	4.69
14C	Grace S. Brewster	9-22-1899	15.30	0.38
14D	P.L. Peterson	9-22-1899	26.85	0.67
15	C.M. Taintor #2	6-1-1900	81.13	2.03
16	Tongue River Est. Co. (now S-H)	12-29-1900	1781.00	44.53
17	Hunt Heirs	1-29-1901	113.20	2.83
18	Jos. T. Brown L & C Company #6	4-1-1902	276.30	6.91
19A	S.A. Hotchkiss	12-10-1902	157.10	3.93
19B	William Wolff	12-10-1902	395.00	9.88
20	Ball Ranch Co. W. Ditch	12-17-1908	314.45	7.86
21	Indian Service	3-24-1909	1200.00	30.00
22	G.B. Pope	11-22-1910	597.90	14.95
		Total	17265.67	431.64

This table does not reflect any current name changes.

EXHIBIT 3
Tyrrell Affidavit

THE STATE OF WYOMING

ED HERSCHLER
GOVERNOR

Board of Control

BARRETT BUILDING

CHEYENNE, WYOMING 82002

Rules and Regulations

STATE BOARD OF CONTROL

State of Wyoming

I certify that the attached is a true and correct copy of the rules of the State Board of Control relating to water rights administration adopted in accordance with W.S. 41-4-211. This Manual of Regulations supersedes all other rules and regulations previously filed by the State Board of Control.

Prior to adoption this Manual of Regulations was made available for public inspection on the 19th day of April, 1982 and a notice of intended adoption was mailed to the Attorney General and the Legislative Service office.

These revised rules have been approved by the Governor as indicated below.

The attached Manual of Regulations of the State Board of Control is effective immediately upon filing with the Secretary of State.

Signed this 24th day of May, 1982.

STATE OF WYOMING
Office of the Secretary
Filed the 27 day of May
1982 at 3:35 P.M.
THYRA THOMSON

RECEIVED
'82 MAY 27 PM 3 33
WYOMING
SECRETARY OF STATE

George L. Christopulos

George L. Christopulos, President
State Board of Control

Ed Herschler

Reviewed and Approved by
the Governor

MAY 27 1982

Section 22. Request for Regulation. Any holder of a Wyoming water right may request that the source of supply for his water rights be regulated by the state water administrators as authorized by law and in accordance with established priorities. (See W.S. 41-3-503, W.S. 41-3-504, and W.S. 41-3-111.) Requests for regulation shall be in writing. The following form may be used, or a letter which contains essentially the same information may also be used.

(See sample on following page)

A GENERAL REQUIREMENT FOR REQUESTING REGULATION IS THE MAINTENANCE OF A SATISFACTORY HEADGATE AND MEASURING DEVICE AT THE DIVERSION POINT SO AS TO ENABLE THE WATER COMMISSIONER TO DETERMINE IF THE REQUEST FOR REGULATION HAS BEEN SATISFIED. IF YOU DO NOT HAVE AN APPROVED HEADGATE AND MEASURING DEVICE PRESENTLY INSTALLED, YOUR REQUEST FOR REGULATION WILL BE SUBJECT TO REVIEW BY THE WATER COMMISSIONER AND/OR WATER DIVISION SUPERINTENDENT.

THE APPROPRIATOR IS OBLIGATED TO NOTIFY THE WATER COMMISSIONER AS NEARLY AS MAY BE POSSIBLE OF THE DATE WHEN WATER WILL NO LONGER BE USED SO THAT PROPER ADJUSTMENTS MAY BE MADE TO AVOID THE WASTE OF WATER.

REQUEST FOR REGULATION

Regulation of _____ and tributaries is requested to supply (my) (our) appropriation of water through the _____ Ditch or Reservoir under Permit No. _____, with priority of _____ until _____.
(date)

Dates _____
Signed _____ _____
_____ _____
_____ _____

Received on _____, 19_____.

_____
Water Commissioner, Dist. No. _____, Div. No. _____.

EXHIBIT 4
Tyrrell Affidavit

THE STATE OF WYOMING

ED HERSCHLER
GOVERNOR

Board of Control

HERSCHLER BUILDING

CHEYENNE, WYOMING 82002

Rules and Regulations

STATE BOARD OF CONTROL

State of Wyoming

I certify that the attached is a true and correct copy of the amended rules of the State Board of Control on the subject of water rights administration, adopted in accordance with W.S. 41-4-211 on May 15, 1986. This amendment replaces the following chapters and sections; Chapter I - New Section 11.1, Chapter II - Amended Section 3, Chapter III - Amended Sections 1, 5, and 7, Chapter IV - Amended Sections 1, 2, 3, 7, 8, 9, 10, and 11, Chapter V - Amended Sections 4, 11, 12, 14 and 16, Chapter VI - Amended Section 3, and Chapter VII - Amended Section 2.

Prior to adoption these rules were made available for public inspection for a period of 45 days commencing on December 23, 1985, and a notice of intended adoption was mailed to the Attorney General and the Legislative Service Office.

The rules have been approved by the Governor as indicated below.

The attached rules are effective immediately upon filing with the Secretary of State.

Dated May 30, 1986

George L. Christopulos
George L. Christopulos, President
State Board of Control

Dated June 3, 1986

Ed Herschler
Reviewed and Approved by the
Governor

STATE OF WYOMING } ss
Office of the Secretary
Filed the 5th day of June
1986 at 9:00 A.M.

Section 22. Request for Regulation. Any holder of a Wyoming water right may request that the source of supply for his water rights be regulated by the state water administrators as authorized by law and in accordance with established priorities. (See W.S. 41-3-503, W.S. 41-3-504, and W.S. 41-3-111.) Requests for regulation shall be in writing. The following form may be used, or a letter which contains essentially the same information may also be used.

(See sample on following page)

A GENERAL REQUIREMENT FOR REQUESTING REGULATION IS THE MAINTENANCE OF A SATISFACTORY HEADGATE AND MEASURING DEVICE AT THE DIVERSION POINT SO AS TO ENABLE THE WATER COMMISSIONER TO DETERMINE IF THE REQUEST FOR REGULATION HAS BEEN SATISFIED. IF YOU DO NOT HAVE AN APPROVED HEADGATE AND MEASURING DEVICE PRESENTLY INSTALLED, YOUR REQUEST FOR REGULATION WILL BE SUBJECT TO REVIEW BY THE WATER COMMISSIONER AND/OR WATER DIVISION SUPERINTENDENT.

THE APPROPRIATOR IS OBLIGATED TO NOTIFY THE WATER COMMISSIONER AS NEARLY AS MAY BE POSSIBLE OF THE DATE WHEN WATER WILL NO LONGER BE USED SO THAT PROPER ADJUSTMENTS MAY BE MADE TO AVOID THE WASTE OF WATER.

REQUEST FOR REGULATION

Regulation of _____ and tributaries is requested to supply (my) (our) appropriation of water through the _____ Ditch or Reservoir under Permit No. _____, with priority of _____ until _____.
(date)

Dates _____
Signed _____ _____
_____ _____
_____ _____

Received on _____, 19_____.

_____
Water Commissioner, Dist. No. _____, Div. No. _____.

EXHIBIT 5
Tyrrell Affidavit

CERTIFICATION PAGE FOR RULES

Adoption date: November 12, 2004
To guarantee review by the Secretary of State within the 60 day deadline, this package must be submitted to the Secretary of State by: January 11, 2005

GENERAL INFORMATION:

1. Agency: State Board of Control Division
State Engineer's Office
Address: 4E, Herschler Building
Cheyenne, Wyoming 82002
Agency Contact Person for these Rules: Allan Cunningham
Work Telephone: 777-6177

2. Are these new rules? ("new" - means the first set of regular rules to be promulgated by this agency after the Legislature adopted a new statutory provision or significantly amended an existing statute. Yes _____ No _X_

3. Chapter # and name of rules being created, amended or repealed:

Chapter I, Introduction to Wyoming Water Administration
Chapter II, Organization and Authority
Chapter III, General Procedures
Chapter IV, Adjudication of Proofs
Chapter V, Petition Information
Chapter VI, Contested Case Procedure
Chapter VII, Appeals and District Court Certification
Appendix A, Sample Petitions and Forms

4. Does this rule replace an existing rule? Yes _X_ No____ If yes, which chapter(s)?

Chapters I through VII.

NOTICE OF INTENDED RULEMAKING TO AG, LSO AND SECRETARY OF STATE

5. Notice of intended rulemaking containing all of the information required by W.S. 16-3-103(a) was filed with the Secretary of State on: March 18, 2004.

6. Notice of intended rulemaking and proposed rules in strike and underscore format were provided to the Legislative Service Office and courtesy copies of the notice and proposed rules were provided to the Attorney General and the Governor on: March 18, 2004.

JAN 13 2005

PUBLIC NOTICE OF INTENDED RULEMAKING:

7. Yes _X_ No ____ Notice was mailed 45 days in advance to all persons who made a timely request for advance notice. Notice was published in the Casper Star-Tribune for four consecutive weeks, March 22 and 29; April 5 and 12, 2004.

8. Yes _X_ No__ A public hearing was held on the proposed rules on May 19, 2004.

FINAL FILING OF RULES:

9. Yes _X_ No__ A disk with an exact copy of the attached rules is attached

10. Final rules with original signatures were sent to the Attorney General's office for the Governor's signature on November 17, 2004.

11. Final rules were sent to the Legislative Service Office on November 17, 2004.

CERTIFICATION BY AGENCY:

The undersigned certifies that the foregoing information is correct.

Date: November 17, 2004

Patrick T. Tyrrell, President
State Board of Control

GOVERNOR'S CERTIFICATION

I have reviewed these rules and determined that they:

(1) are within the scope of the statutory authority delegated to the adopting agency; and

(2) appear to be within the scope of the legislative purpose of the statutory authority.

Therefore, I approve the same.

1/10/05
Date Approved

Governor

STATE OF WYOMING
Office of the Secretary
Filed the 13th day of January
2005 at 2:00 P M.
Joseph B. Meyer
Secretary of State

(2) An actual rotation of water use for the lands under each appropriation is required, and each rotation period will not exceed ten days unless a longer period is agreed to by the hydrographer commissioner or water commissioner.

(3) The proposed rotation must not result in injury to any other appropriators;

(4) The rotation proposed is limited to one season;

(5) A "Notice of Intention to Rotate" must be filed with the appropriate hydrographer commissioner or water commissioner on a form provided for that purpose by the hydrographer commissioner or water commissioner;

(6) Written approval to the proposed rotation must be obtained from the appropriate hydrographer commissioner or water commissioner prior to commencement of any rotation and such approval shall be endorsed on the rotation form.

b. Requests to rotate must be delivered to the appropriate hydrographer commissioner or water commissioner on a facsimile of the appropriate form or in some other written form acceptable to the hydrographer commissioner or water commissioner which provides the same information (see sample form in Appendix A accompanying these Regulations and Instructions).

Section 24. Request for Regulation. Any holder of a water right may request that the source of supply for their water rights be regulated by the state water administrators as authorized by law and in accordance with established priorities (see W.S. 41-3-503, W.S. 41-3-504, W.S. 41-3-604 and W.S. 41-3-111). Requests for regulation shall be in writing. An appropriate form may be used, or a letter which contains essentially the same information may also be used (see sample form in Appendix A accompanying these Regulations and Instructions).

A GENERAL REQUIREMENT FOR REQUESTING REGULATION IS THE MAINTENANCE OF A SATISFACTORY HEADGATE AND MEASURING DEVICE AT THE LEGALLY-RECORDED DIVERSION POINT SO AS TO ENABLE THE HYDROGRAPHER COMMISSIONER OR WATER COMMISSIONER TO DETERMINE IF THE REQUEST FOR REGULATION HAS BEEN SATISFIED. IF YOU DO NOT HAVE AN APPROVED HEADGATE AND MEASURING DEVICE PRESENTLY INSTALLED, YOUR REQUEST FOR REGULATION WILL BE SUBJECT TO REVIEW BY THE HYDROGRAPHER COMMISSIONER OR WATER COMMISSIONER AND/OR DIVISION SUPERINTENDENT.

THE APPROPRIATOR IS OBLIGATED TO NOTIFY THE HYDROGRAPHER COMMISSIONER OR WATER COMMISSIONER PRIOR TO THE DATE WHEN WATER WILL NO LONGER BE USED SO THAT PROPER ADJUSTMENTS MAY BE MADE TO AVOID THE WASTE OF WATER.

REQUEST FOR REGULATION

Pursuant to W.S. 41-3-603, 41-3-604, 41-3-606, 41-3-304 and 41-3-111 revised statutes 1977, I hereby request Regulation of _____

_____

and tributaries and is requested to supply my (our) appropriation of water through the _____

Ditch(es) or Reservoir(s) under Permit Nos. _____

_____, with priority(s) of

_____until

_____.

Signed: _____ _____

_____ _____

_____ _____

Received on _____, 2_____.

_____

Hydrographer Commissioner or Water Commissioner

District No. _____, Division No. _____

Request approved: _____

Request denied: _____

Comments: _____

_____