

**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**

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

**SPECIAL MASTER**

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**STATE OF WYOMING'S AMENDED ANSWER TO BILL OF COMPLAINT**

The State of Wyoming, through counsel, answers the State of Montana's Bill of Complaint as follows:

1. Admit.
2. Admit.
3. It is unclear what Montana means by the phrase "equitably divided" in the first sentence, and it may be used to state a legal conclusion rather than make a factual allegation. Wyoming therefore denies the allegation that the waters of the Tongue and Powder Rivers have been equitably divided by the Yellowstone River Compact. Wyoming admits the allegation in the first sentence that certain waters of the Tongue and

Powder Rivers have been apportioned by the Yellowstone River Compact among the States of Wyoming and Montana. Wyoming denies the allegation in the first sentence that the Compact apportions waters of the Tongue and Powder Rivers to North Dakota. Admit the allegations in the remaining sentences of paragraph 3.

4. Without information sufficient to form a belief as to the truth of the allegation.

5. Admit that certain surface waters within the Tongue and Powder River surface water basins are part of the Yellowstone River System as the term “Yellowstone River System” is defined in the Yellowstone River Compact. Deny that all “waters” of the Tongue and Powder River Basins are part of the Yellowstone River System. Admit that the surface waters of the Tongue and Powder River Basins are located within the Yellowstone River Basin as defined in Article II of the Compact. To the extent Montana intends to allege that underground water located under the surface area of the Tongue and Powder River surface water basins are part of the Yellowstone River Basin as defined in Article II of the Compact, Wyoming lacks information sufficient to form a belief as to the truth of that allegation.

6. Deny.

7. Deny the first two sentences. Admit that Article V allocates water of the Tongue and Powder Rivers by specified percentages but deny that the allocation is of “any remaining water.”

8. Deny.

9. Admit that since January 1, 1950 Wyoming has allowed construction and use of new and expanded storage facilities in the Tongue and Powder River Basins. Deny that such allowance is in violation of Montana's rights under Article V of the Compact.

10. Admit that since January 1, 1950, Wyoming has allowed new acreage to be put under irrigation in the Tongue and Powder River Basins. Deny that such allowance is in violation of Montana's rights under Article V of the Compact.

11. Admit that since January 1, 1950, Wyoming has allowed the construction and use of groundwater wells for irrigation and for other uses and has allowed the pumping of groundwater associated with coalbed methane production in the Tongue and Powder River Basins. Deny that such allowance is in violation of Montana's rights under Article V of the Compact.

12. Without information sufficient to form a belief as to the truth of the allegation that since January 1, 1950, Wyoming has allowed the consumption of water on existing irrigated acreage in the Tongue and Powder River Basins to be increased. Deny that the occurrence or allowance of such an increase was, or would be, in violation of Montana's rights under Article V of the Compact.

13. Deny.

14. Deny.

15. Deny.

16. Deny.

17. Deny.

18. Deny.

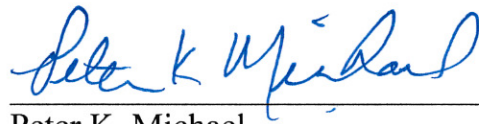
**Affirmative Defenses**

The Bill of Complaint fails to state a claim upon which relief may be granted. Montana's claims are barred, in whole or in part, by the doctrine of laches. Montana has failed to mitigate its damages, if any it has, in whole or in part. The State of Wyoming reserves the right to assert additional affirmative defenses that may become apparent as this case proceeds.

WHEREFORE, the State of Wyoming requests that the Bill of Complaint be dismissed, that Montana take nothing thereby, and that the Court grant Wyoming such other and further relief as is just.

Dated this 30 day of July, 2012.

THE STATE OF WYOMING



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## CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of STATE OF WYOMING'S AMENDED ANSWER TO BILL OF COMPLAINT was served by Federal Express to the Special Master and United States mail, postage paid to the below parties, this 30<sup>th</sup> day of July, 2012.

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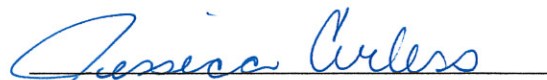
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