

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

STATE OF WYOMING'S 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. 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 15th day of September, 2009.

THE STATE OF WYOMING



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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the STATE OF WYOMING'S ANSWER TO BILL OF COMPLAINT was served by electronic mail and placing the same in the United States mail, postage paid, this 15th day of September, 2009, to the following:

Christian D. Tweeten
Jennifer Anders
Montana Attorney General's Office
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401
janders@mt.gov

John B. Draper
Montgomery & Andrews
325 Paseo de Peralta
Santa Fe, NM 87501
jdraper@montand.com

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


James Dubois
U.S. Dept. of Justice
Environment and Natural Resources
Division Natural Resources Section
1961 Stout Street, 8th Floor
Denver, CO 80294
james.dubois@usdoj.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

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

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



Wyoming Attorney General's Office