

**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 EXPERT DESIGNATION**

GREGORY A. PHILLIPS  
Attorney General of Wyoming

PETER K. MICHAEL\*  
Chief Deputy Attorney General

JAY JERDE  
Deputy Attorney General

JAMES KASTE  
Senior Assistant Attorney General

CHRISTOPHER BROWN  
Senior Assistant Attorney General

DAVID J. WILLMS  
Senior Assistant Attorney General

MATTHIAS SAYER  
Assistant Attorney General

ANDREW KUHLMANN  
Assistant Attorney General

123 Capitol Building  
Cheyenne, WY 82002  
(307) 777-6196

*\*Counsel of Record*

The State of Wyoming, through counsel, and in accordance with Case Management Plan No. 1, hereby designates the following experts who may be called to testify on behalf of the State of Wyoming at the trial of this matter. The testimony of any expert designated herein may be offered either live or by trial deposition.

- 1. Bern Hinckley  
Hinckley Consulting  
419 South 5th Street  
Laramie, WY 82070  
(307) 745-0066**

Mr. Hinckley is a Principal with Hinckley Consulting in Laramie, Wyoming, a consulting firm providing specialized expertise in groundwater resource evaluation and management, and technical studies in support of water rights investigations and litigation. He holds a bachelors degree in Geology and Geophysics from Princeton University and a Master's degree in Applied Earth Sciences from Stanford University. Mr. Hinckley is a Registered Professional Geologist in Wyoming, Idaho, and Nebraska and is a member of the American Water Resources Association, Association of Groundwater Scientists and Engineers, Engineers Without Borders, Wyoming Geological Association, Wyoming Water Association, Wyoming Water Well Association, and the Geological Society of America.

Mr. Hinckley was asked to review certain portions of the reports prepared by Dale Book, Charles Dalby, Steven Larson, and Kevin Smith with respect to the facts compiled, the methodologies employed, and the conclusions presented. Mr. Hinckley prepared a report summarizing his opinions in this matter, which is available at <http://www.prinmath.com/yellowstone/>, and incorporated herein by reference. Mr.

Hinckley's report is based upon his review of the reports submitted by the State of Montana, the information disclosed during discovery, and based upon his education, training, and experience. While Mr. Hinckley's report provides a comprehensive discussion of his opinions, in general, it is expected that Mr. Hinckley will provide, but not be limited to, the following testimony at trial:

- Variations in the demand for storage accruals and foregone opportunities for storage preclude use of the storage contents of the Tongue River Reservoir as an indicator of negative impact from diversions of water in Wyoming under priorities junior to January 1, 1950.
- The model of direct-flow demands to satisfy Montana appropriations with priorities senior to January 1, 1950, developed by Mr. Book inflates the actual demands of those appropriations and provides no useful substitute for a contemporaneous call for priority regulation.
- Groundwater produced in association with coalbed methane in Wyoming augments streamflow through direct discharge and recharges groundwater aquifers to a much greater degree than modeled by Mr. Larson.
- Tongue River depletions due to Wyoming uses under post-1950 priorities at times when Montana uses under pre-1950 appropriations are not being satisfied are insignificant, and may be less than zero.

The above designation of Mr. Hinckley's testimony and the contents of his report are intended to give the Court and counsel notice of Mr. Hinckley's expected testimony at trial, and are not intended to be a verbatim recitation of his expected testimony at trial.

It is expected that Mr. Hinckley's deposition will be taken, at which time counsel will have an opportunity to learn additional details of Mr. Hinckley's opinions and explore the bases for his expected testimony. Mr. Hinckley may testify at trial about all matters reasonably covered in his expert report, his deposition, as well as those matters described in this designation. It is expected that Mr. Hinckley will review Plaintiff's rebuttal reports, as well as the trial testimony of Plaintiff's witnesses, and he may be asked to comment thereon for the Special Master. To the extent rebuttal testimony may be warranted and permissible on subject matter within Mr. Hinckley's expertise, he may be called upon to give rebuttal testimony.

**2. Doyl Fritz  
WWC Engineering  
149 Terra Avenue  
Sheridan, WY 82801  
(307) 672-0761**

Mr. Fritz is a founding Principal and former President of Western Water Consultants, Inc. (now doing business as WWC Engineering). Mr. Fritz holds a Bachelor of Science degree in Civil Engineering from the University of Wyoming and a Master of Science degree in Civil Engineering from Arizona State University. Mr. Fritz is a licensed Professional Engineer in the States of Wyoming and Colorado. He is a Life Member of the American Society of Civil Engineers and the American Council of Engineering Companies. He possesses over 40 years of experience in civil engineering, with specialized experience in water rights, hydrology, and hydraulics.

Mr. Fritz has been asked to review the report of Mr. Dale Book, as well as conduct an independent review of water use in the Wyoming portion of the Tongue River basin.

Based upon his review of Mr. Book's report, the information disclosed during discovery, Mr. Fritz's own analysis of all existing data regarding water use in the Wyoming portion of the Tongue River basin, and based upon his education, training, and experience Mr. Fritz prepared a report summarizing his opinions in this matter. Mr. Fritz's report is available at <http://www.primath.com/yellowstone/>, and is incorporated herein by reference. While Mr. Fritz's report provides a comprehensive discussion of his opinions, in general, it is expected that Mr. Fritz will provide, but not be limited to, the following testimony at trial:

- Detailed descriptions of the regulatory procedures that were followed within the Wyoming portion of the Tongue River basin during the water years 2004, 2005, and 2006, as well as a discussion of the water years 1987-1989 and 2000-2002.
- Post-1950 water rights are a small portion of total water rights in Wyoming.
- Wyoming has a well-established system of regulating water rights under the doctrine of prior appropriation; the regulation system makes it very difficult for a senior appropriator to be injured by any junior appropriator, whether post-1950 or earlier.
- There is sufficient direct flow in most streams to satisfy all active irrigation for only a brief time during the spring runoff in most years.
- When streams go on regulation, diversions are generally cut back to appropriations dating from the early 1900s and earlier.

- According to the expert report prepared for the State of Montana by Dale E. Book, P.E., impacts resulting from post-1950 diversions in Wyoming on pre-1950 rights in Montana during the years in question are small. A closer and proper examination reveals that even these alleged impacts are significantly over-stated.
- The impacts alleged by Mr. Book are expressed as annual totals and annual averages; there is no explanation as to how annual figures relate to real-time stream regulation by prior appropriation such as is practiced by Wyoming and described in Section 3 of this report. Accordingly, it is not possible to completely or accurately assess the significance or validity of the alleged impacts.

The above designation of Mr. Fritz's testimony and the contents of his report are intended to give the Court and counsel notice of Mr. Fritz's expected testimony at trial, and are not intended to be a verbatim recitation of his expected testimony at trial. It is expected that Mr. Fritz's deposition will be taken, at which time counsel will have an opportunity to learn additional details of Mr. Fritz's opinions and explore the bases for his expected testimony. Mr. Fritz may testify at trial about all matters reasonably covered in his expert report, his deposition, as well as those matters described in this designation. It is expected that Mr. Fritz will review Plaintiff's rebuttal reports, as well as the trial testimony of the Plaintiff's witnesses, and he may be asked to comment thereon for the Special Master. To the extent rebuttal testimony may be warranted and permissible on

subject matter within Mr. Fritz's expertise, he may be called upon to give rebuttal testimony.

**3. Willem Schreüder  
Principia Mathematica Inc.  
445 Union Blvd. Suite 230  
Lakewood, CO 80228  
(303) 716-3573**

Dr. Schreüder is the President and principal scientist at Principia Mathematica Inc. Dr. Schreüder holds a PhD in Applied Mathematics in Computational Fluid Dynamics from the University of Stellenbosh, South Africa, and a PhD in Computer Science in Parallel Systems from the University of Colorado at Boulder, and has nearly thirty years of professional experience in mathematical modeling and data analysis. He specializes in basin scale groundwater models, largely concentrating on constructing complex models to evaluate effects of well pumping on stream flows.

Dr. Schreüder was asked to prepare an expert report in response to the reports prepared by Steven P. Larson and Dale E. Book. Based upon this review of those reports, the information disclosed during discovery, and based upon his education, training, and experience, Dr. Schreüder prepared a report summarizing his opinions in this matter. Dr. Schreüder's report is available at <http://www.prinmath.com/yellowstone/>, and is incorporated herein by reference. In general, it is expected that Dr. Schreüder will provide, but not be limited to, the following testimony at trial:

- The results of both Mr. Larson and Mr. Book are unreliable, and the impacts from coal bed methane (CBM) pumping on Tongue River stream flow are indistinguishable from zero.

- The 2002 Bureau of Land Management Environmental Impact Statement Groundwater Model ("Model") used by Mr. Larson and Mr. Book was not designed for calculation of stream depletions to the Tongue River, was not calibrated to stream flows, the head calibration near the Tongue River is poor, and the Model does not represent the appropriate mechanisms such as evapotranspiration from groundwater needed to reliably predict impacts to stream flows.
- The manner in which CBM pumping was modeled for Mr. Larson's Report does not accurately represent the spatial or temporal distribution of CBM well pumping.
- Mr. Book overstates the annual impact of CBM pumping on the Tongue River by taking the maximum instantaneous depletion at the end of the years 2004 and 2006 and applying it over the entire year.
- Mr. Larson overestimates the fraction of the CBM pumping in Wyoming that is returned to the groundwater flow system by failing to account for potential evapotranspiration from groundwater.
- Areas along stream valleys contain cottonwood trees and other phreatophytes that can use groundwater. Also, deep rooted crops like alfalfa can also use groundwater. Therefore, the potential for evapotranspiration salvage along the Tongue River and its tributaries is large. Since the Model does not consider the buffering effect that this competing mechanism has on stream depletions,



the simulated results grossly overestimate accretions and depletions to the Tongue River from CBM pumping in Wyoming.

- Given that simulated depletions would be dramatically reduced in magnitude if evapotranspiration from groundwater were appropriately represented in the Model, and that uncertainty in the recharge fraction could change the impacts from depletions to accretions, the impacts to the Tongue River from CBM pumping in Wyoming are indistinguishable from zero.

The above designation of Dr. Schreüder's testimony is intended to give the Court and counsel notice of Dr. Schreüder 's expected testimony at trial, and is not intended to be a verbatim recitation of his expected testimony at trial. It is expected that Dr. Schreüder 's deposition will be taken, at which time counsel will have an opportunity to learn additional details of Dr. Schreüder's opinions and explore the bases for his expected testimony. Dr. Schreüder may testify at trial about all matters reasonably covered in his expert report, his deposition, as well as those matters described in this designation. It is expected that Dr. Schreüder will review Plaintiff's rebuttal reports, as well as the trial testimony of the Plaintiff's witnesses, and he may be asked to comment thereon for the Special Master. To the extent rebuttal testimony may be warranted and permissible on subject matter within Dr. Schreüder's expertise, he may be called upon to give rebuttal testimony.

- 4. Pat Tyrrell**  
**Wyoming State Engineer's Office**  
**122 W. 25th St.**  
**Herschler Building 4E**  
**Cheyenne, WY 82002**  
**(307) 777-6176**

Mr. Tyrrell is the Wyoming State Engineer, and has held that position since 2001. Mr. Tyrrell may testify about any information or actions he had knowledge of, or opinions he has formed as the State Engineer. These include, but are not limited to, opinions about regulation of water rights in Wyoming, Board of Control actions, irrigated acreage, Wyoming's water activities in the Tongue River basin, technical data related to administration of surface water, groundwater, and reservoirs in the Tongue River basin, all matters related to the compact, and all operations of the State Engineer's office. Mr. Tyrrell may testify at trial about all matters reasonably covered in his deposition. It is expected that Mr. Tyrrell will review the trial testimony of Plaintiff's witnesses, and he may be asked to comment thereon for the Special Master. To the extent rebuttal testimony may be warranted and permissible on subject matter within Mr. Tyrrell's expertise, he may be called upon to give rebuttal testimony.

- 5. Jeff Fassett**  
**HDR Engineering**  
**1720 Carey Avenue, Suite 612**  
**Cheyenne, WY 82001**

Mr. Fassett is a former Wyoming State Engineer. Mr. Fassett may testify about any information or actions he had knowledge of, or opinions he formed when he was employed by the State Engineer's Office. These include, but are not limited to, opinions about regulation of water rights in Wyoming, Board of Control actions, irrigated acreage,

and groundwater, all matters related to the compact, and all operations of the State Engineer's office. Mr. Fassett may testify at trial about all matters reasonably covered in his deposition. Mr. Fassett may review the trial testimony of Plaintiff's witnesses, and he may be asked to comment thereon for the Special Master. To the extent rebuttal testimony may be warranted and permissible on subject matter within Mr. Fassett's expertise, he may be called upon to give rebuttal testimony.

**6. Sue Lowry  
Wyoming State Engineer's Office  
122 W. 25th St.  
Herschler Building 4E  
Cheyenne, WY 82002  
(307) 777-5927**

Ms. Lowry is the Interstate Streams Administrator for the Wyoming State Engineer's Office. Ms. Lowry may provide testimony in regards to information or actions she has knowledge of, and opinions formed as a result of her employment with the State Engineer's office that includes, but is not limited to, technical data and information related to Wyoming's activities in the Tongue or Powder River basins, a history of Compact Commission actions, and information related to Technical Committee of Compact Commission. Ms. Lowry may testify at trial about all matters reasonably covered in her deposition. It is expected that Ms. Lowry will review the trial testimony of Plaintiff's witnesses, and she may be asked to comment thereon for the Special Master. To the extent rebuttal testimony may be warranted and permissible on subject matter within Ms. Lowry's expertise, she may be called upon to give rebuttal testimony.

**7. Pat Boyd**  
**Wyoming State Engineer's Office**  
**1833 South Sheridan Avenue**  
**Sheridan, WY 82801**  
**(307) 674-7012**

Mr. Boyd is a hydrographer-commissioner in Wyoming's Water Division II, which includes all of Wyoming's portion of the Tongue River basin. Mr. Boyd may testify to information or actions he has knowledge of, and opinions he has formed during his time working for the Wyoming State Engineer's Office related to regulation and condition of specific rivers and streams in the Tongue river basin for surface water, reservoirs, and groundwater. Information regarding regulation may include, but not be limited to, methods and accuracy of stream flow measurement, actions taken to regulate, and conditions that trigger regulation. Mr. Boyd may also testify and provide opinions regarding return flows, irrigated acreage, augmentation of water supplies, reservoir usage, abandonment, consumptive use, irrigation patterns and methods, changes to water rights, and any other opinions formed through his training and work experience for the Wyoming State Engineer's Office. Mr. Boyd may testify at trial about all matters reasonably covered in his deposition. It is expected that Mr. Boyd will review the trial testimony of Plaintiff's witnesses, and he may be asked to comment thereon for the Special Master. To the extent rebuttal testimony may be warranted and permissible on subject matter within Mr. Boyd's expertise, he may be called upon to give rebuttal testimony.

**8. Mike Whitaker  
26095 Old Highway 87  
Kaycee, WY 82639  
(307) 738-2269**

Mr. Whitaker is the former Superintendent of Wyoming's Water Division II, which includes all of Wyoming's portion of the Tongue River basin, and a former hydrographer-commissioner in Division II. Mr. Whitaker may testify to any information or actions he had knowledge of, and opinions he held during his time working for the Wyoming State Engineer's Office related to regulation and condition of specific rivers and streams in the Tongue river basin for surface water, reservoirs, and groundwater. Information regarding regulation may include, but not be limited to, methods and accuracy of stream flow measurement, actions taken to regulate, and conditions that trigger regulation. Mr. Whitaker may also testify and provide opinions regarding return flows, irrigated acreage, augmentation of water supplies, reservoir usage, abandonment, consumptive use, irrigation patterns and methods, changes to water rights, and any other opinions formed through his training and work experience for the Wyoming State Engineer's Office. Mr. Whitaker may testify at trial about all matters reasonably covered in his deposition. Mr. Whitaker may review the trial testimony of Plaintiff's witnesses, and he may be asked to comment thereon for the Special Master. To the extent rebuttal testimony may be warranted and permissible on subject matter within Mr. Whitaker's expertise, he may be called upon to give rebuttal testimony.

**9. David Schroeder  
Wyoming State Engineer's Office  
1833 South Sheridan Avenue  
Sheridan, WY 82801  
(307) 674-7012**

Mr. Schroeder is a hydrographer-commissioner in Wyoming's Water Division II, which includes all of Wyoming's portion of the Tongue River basin. Mr. Schroeder may testify to any information or actions he has knowledge of, and opinions he has formed during his time working for the Wyoming State Engineer's Office related to regulation and condition of specific rivers and streams in the Tongue river basin for surface water, reservoirs, and groundwater. Information regarding regulation may include, but not be limited to, methods and accuracy of stream flow measurement, actions taken to regulate, and conditions that trigger regulation. Mr. Schroeder may also testify and provide opinions regarding return flows, irrigated acreage, augmentation of water supplies, reservoir usage, abandonment, consumptive use, irrigation patterns and methods, changes to water rights, and any other opinions formed through his training and work experience for the Wyoming State Engineer's Office. If deposed, Mr. Schroeder may testify at trial about all matters reasonably covered in his deposition. It is expected that Mr. Schroeder will review the trial testimony of Plaintiff's witnesses, and he may be asked to comment thereon for the Special Master. To the extent rebuttal testimony may be warranted and permissible on subject matter within Mr. Schroeder's expertise, he may be called upon to give rebuttal testimony.

**10. Dave Pelloux**  
**Wyoming State Engineer's Office**  
**1833 South Sheridan Avenue**  
**Sheridan, WY 82801**  
**(307) 674-7012**

Mr. Pelloux is a hydrographer-commissioner in Wyoming's Water Division II, which includes all of Wyoming's portion of the Tongue River basin. Mr. Pelloux may testify to any information or actions he has knowledge of, and opinions he has formed during his time working for the Wyoming State Engineer's Office related to regulation and condition of specific rivers and streams in the Tongue river basin for surface water, reservoirs, and groundwater. Information regarding regulation may include, but not be limited to, methods and accuracy of stream flow measurement, actions taken to regulate, and conditions that trigger regulation. Mr. Pelloux may also testify and provide opinions regarding return flows, irrigated acreage, augmentation of water supplies, reservoir usage, abandonment, consumptive use, irrigation patterns and methods, changes to water rights, and any other opinions formed through his training and work experience for the Wyoming State Engineer's Office. If deposed, Mr. Pelloux may testify at trial about all matters reasonably covered in his deposition. It is expected that Mr. Pelloux will review the trial testimony of Plaintiff's witnesses, and he may be asked to comment thereon for the Special Master. To the extent rebuttal testimony may be warranted and permissible on subject matter within Mr. Pelloux's expertise, he may be called upon to give rebuttal testimony.

**11. Bill Knapp**  
**Wyoming State Engineer's Office**  
**1833 South Sheridan Avenue**  
**Sheridan, WY 82801**  
**(307) 674-7012**

Mr. Knapp is the Assistant Superintendent and a hydrographer-commissioner in Wyoming's Water Division II, which includes all of Wyoming's portion of the Tongue River basin. Mr. Knapp may testify to any information or actions he has knowledge of, and opinions he has formed during his time working for the Wyoming State Engineer's Office related to regulation and condition of specific rivers and streams in the Tongue river basin for surface water, reservoirs, and groundwater. Information regarding regulation may include, but not be limited to, methods and accuracy of stream flow measurement, actions taken to regulate, and conditions that trigger regulation. Mr. Knapp may also testify and provide opinions regarding return flows, irrigated acreage, augmentation of water supplies, reservoir usage, abandonment, consumptive use, irrigation patterns and methods, changes to water rights, and any other opinions formed through his training and work experience for the Wyoming State Engineer's Office. Mr. Knapp may testify at trial about all matters reasonably covered in his deposition. It is expected that Mr. Knapp will review the trial testimony of Plaintiff's witnesses, and he may be asked to comment thereon for the Special Master. To the extent rebuttal testimony may be warranted and permissible on subject matter within Mr. Knapp's expertise, he may be called upon to give rebuttal testimony.



**12. Carmine LoGuidice  
Wyoming State Engineer's Office  
1833 South Sheridan Avenue  
Sheridan, WY 82801  
(307) 674-7012**

Mr. LoGuidice is the current Superintendent of Wyoming's Water Division II, and a former hydrographer-commissioner in that division, which includes all of Wyoming's portion of the Tongue River basin. Mr. LoGuidice may testify to any information or actions he has knowledge of, and opinions he has formed during his time working for the Wyoming State Engineer's Office related to regulation and condition of specific rivers and streams in the Tongue river basin for surface water, reservoirs, and groundwater. Information regarding regulation may include, but not be limited to, methods and accuracy of stream flow measurement, actions taken to regulate, and conditions that trigger regulation. Mr. LoGuidice may also testify and provide opinions regarding return flows, irrigated acreage, augmentation of water supplies, reservoir usage, abandonment, consumptive use, irrigation patterns and methods, changes to water rights, and any other opinions formed through his training and work experience for the Wyoming State Engineer's Office. Mr. LoGuidice may testify at trial about all matters reasonably covered in his deposition. It is expected that Mr. LoGuidice will review the trial testimony of Plaintiff's witnesses, and he may be asked to comment thereon for the Special Master. To the extent rebuttal testimony may be warranted and permissible on subject matter within Mr. LoGuidice's expertise, he may be called upon to give rebuttal testimony.

**13. Kim French**  
**Wyoming State Engineer's Office**  
**1833 South Sheridan Avenue**  
**Sheridan, WY 82801**  
**(307) 674-7012**

Ms. French is a coalbed methane reservoir inspector for the Wyoming State Engineer's Office. Ms. French may testify to any information or actions she has knowledge of, and opinions she has formed during her time working for the Wyoming State Engineer's Office related to reservoirs in the Tongue River basin, including, but not limited to those reservoirs storing water discharged in the production of coal bed methane. Ms. French may testify at trial about all matters reasonably covered in her deposition. It is expected that Ms. French will review the trial testimony of Plaintiff's witnesses, and she may be asked to comment thereon for the Special Master. To the extent rebuttal testimony may be warranted and permissible on subject matter within Ms. French's expertise, she may be called upon to give rebuttal testimony.

**14. Lisa Lindemann**  
**Wyoming State Engineer's Office**  
**122 W. 25th St.**  
**Herschler Building 4E**  
**Cheyenne, WY 82002**  
**(307) 777-5927**

Ms. Lindemann is the Groundwater Administrator for the Wyoming State Engineer's Office. Ms. Lindemann may testify to any information or actions she has knowledge of, and opinions she has formed during her time working for the Wyoming State Engineer's Office related to, but not limited to, groundwater permitting in Wyoming, groundwater conditions in the Tongue River basin, and geologic conditions of

the Tongue River basin. Ms. Lindemann may testify at trial about all matters reasonably covered in her deposition. It is expected that Ms. Lindemann will review the trial testimony of Plaintiff's witnesses, and she may be asked to comment thereon for the Special Master. To the extent rebuttal testimony may be warranted and permissible on subject matter within Ms. Lindemann's expertise, she may be called upon to give rebuttal testimony.

**15. John Barnes**  
**JR Barnes Consulting, LLC**  
**502 Dayshia Lane**  
**Cheyenne, WY 82007**  
**307-630-8982**

Mr. Barnes is the former Surface Water Administrator for the Wyoming State Engineer's Office. Mr. Barnes may testify to any information or actions he had knowledge of, or opinions he formed as a result of his employment for the Wyoming State Engineer's Office related to, but not limited to, surface water permitting, changes in water rights, reservoirs, abandonments, exchanges, temporary water use agreements, trans-basin diversions, and the Yellowstone River Compact. Mr. Barnes may testify at trial about all matters reasonably covered in his deposition. Mr. Barnes may review the trial testimony of Plaintiff's witnesses, and he may be asked to comment thereon for the Special Master. To the extent rebuttal testimony may be warranted and permissible on subject matter within Mr. Barnes's expertise, he may be called upon to give rebuttal testimony.

**16. Allan Cunningham**  
**Wyoming State Board of Control**  
**122 W. 25th St.**  
**Herschler Building 4E**  
**Cheyenne, WY 82002**  
**(307) 777-5927**

Mr. Cunningham is the Board of Control Administrator for the Wyoming Board of Control. Mr. Cunningham may testify to any information or actions he has knowledge of and opinions he has formed during his time working for the Wyoming State Engineer's Office including, but not limited to, surface and groundwater adjudication procedures before the Board of Control, reservoir permitting, changes in water rights, abandonments, exchanges, temporary water use agreements, and trans-basin diversions. Mr. Cunningham may testify at trial about all matters reasonably covered in his deposition. It is expected that Mr. Cunningham will review the trial testimony of Plaintiff's witnesses, and he may be asked to comment thereon for the Special Master. To the extent rebuttal testimony may be warranted and permissible on subject matter within Mr. Cunningham's expertise, he may be called upon to give rebuttal testimony.

**17. Expert Witnesses Designated by Other Parties**

Defendant reserves the right to call as an expert witness each and every expert designated by any other party in this case.

**18. Rebuttal or Impeachment Evidence**

Defendant reserves the right to call expert witnesses to provide rebuttal or impeachment evidence that may be permitted under the Rules.

**19. Supplementation**

As additional witnesses become known during the course of discovery this designation may be supplemented as may be permitted by the Rules. Defendant reserves the right to call any person deposed prior to trial by any party to testify as to all matters within their personal knowledge and expertise concerning the issues of this case.

DATED this 2nd day of April, 2013.

THE STATE OF WYOMING



---

GREGORY A. PHILLIPS  
Attorney General of Wyoming

PETER K. MICHAEL\*  
Chief Deputy Attorney General

JAY JERDE  
Deputy Attorney General  
JAMES KASTE  
Senior Assistant Attorney General  
CHRISTOPHER BROWN  
Senior Assistant Attorney General  
DAVID J. WILLMS  
Senior Assistant Attorney General  
MATTHIAS SAYER  
Assistant Attorney General  
ANDREW KUHLMANN  
Assistant Attorney General  
123 Capitol Building  
Cheyenne, WY 82002  
(307) 777-6196

*\*Counsel of Record*

## CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of WYOMING'S EXPERT DESIGNATION was served by electronic mail and by placing the same in the United States mail, postage paid, this 2nd day of April, 2013.

JEANNE S. WHITEING  
WHITEING & SMITH  
1628 5<sup>TH</sup> STREET  
BOULDER, CO 80302  
[JWHITEING@WHITEINGLAW.COM](mailto:JWHITEING@WHITEINGLAW.COM)

JOHN B. DRAPER  
JEFFREY WECHSLER  
MONTGOMERY & ANDREWS  
325 PASEO DE PERALTA  
SANTA FE, NM 87501  
[JDRAPER@MONTAND.COM](mailto:JDRAPER@MONTAND.COM)  
[JWECHSLER@MONTAND.COM](mailto:JWECHSLER@MONTAND.COM)

JAMES J. DUBOIS  
UNITED STATES DEPARTMENT OF JUSTICE  
ENVIRONMENTAL AND NATURAL RESOURCES  
DIVISION OF NATURAL RESOURCES SECTION  
999 18TH ST. #370 SOUTH TERRACE  
DENVER, CO 80202  
[JAMES.DUBOIS@USDOJ.GOV](mailto:JAMES.DUBOIS@USDOJ.GOV)

MICHAEL WIGMORE  
BINGHAM MCCUTCHEN, LLP  
2020 K STREET NW  
WASHINGTON, DC 20006-1806  
[MICHAEL.WIGMORE@BINGHAM.COM](mailto:MICHAEL.WIGMORE@BINGHAM.COM)

CORY J. SWANSON  
MONTANA ATTORNEY GENERAL'S OFFICE  
P.O. BOX 201401  
HELENA, MT 59620-1401  
[COSWANSON@MT.GOV](mailto:COSWANSON@MT.GOV)

JENNIFER VERLEGER  
NORTH DAKOTA ATTORNEY GENERAL'S  
OFFICE  
500 NORTH NINTH STREET  
BISMARCK, ND 58501  
[JVERLEGER@ND.GOV](mailto:JVERLEGER@ND.GOV)

SOLICITOR GENERAL OF THE UNITED STATES  
US DEPARTMENT OF JUSTICE  
950 PENNSYLVANIA AVENUE, ROOM 5614  
WASHINGTON, DC 20530-0001  
[SUPREMECTBRIEFS@USDOJ.GOV](mailto:SUPREMECTBRIEFS@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](mailto:SUSAN.CARTER@STANFORD.EDU)

  
Wyoming Attorney General's Office