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CLERK

In The
Supreme Court of the United States

STATE OF NEBRASKA,

Plaintiff,

v.

STATES OF WYOMING AND COLORADO,

Defendants.

JOINT MOTION TO AMEND MODIFIED DECREE

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UNITED STATES OF AMERICA

November 2011

The States of Nebraska and Wyoming and the United States of America respectfully move this Court to modify section II(c) of the Modified North Platte Decree (“Modified Decree”) to include two separate intentionally irrigated acreage limitations designated by Wyoming pursuant to section II(c) of the Modified Decree.

On November 13, 2001, the Court entered the most recent Modified North Platte Decree and approved the parties’ Final Settlement Stipulation, which was dated March 13, 2001. *Nebraska v. Wyoming & Colorado*, 534 U.S. 40, 40 (2001) (mem.). Section II(c) of the Modified Decree states, in part:

Ten years after the entry of this Modified Decree, the provision that enjoins Wyoming from intentionally irrigating more than 226,000 acres upstream of Guernsey Reservoir will be replaced with two injunctions, one that limits the number of acres that can be irrigated above Pathfinder Dam and one that limits the number of acres that can be irrigated between Pathfinder Dam and Guernsey Reservoir. Wyoming has the discretion to designate the irrigated acreage limitation above Pathfinder Dam and the irrigated acreage limitation between Pathfinder Dam and Guernsey Reservoir, so long as the total irrigated acreage limitation does not exceed 226,000 acres. After Wyoming makes such designation, Nebraska, Wyoming, and the United States will so notify

the Court and the Modified Decree will be modified accordingly.

Id. at 47.

On September 6, 2011, the Governor of Wyoming, Wyoming's signatory to the 2001 Final Stipulated Settlement, sent a letter to the North Platte Decree Committee notifying the committee members of Wyoming's designation under section II(c) of the Modified Decree. *See* Appendix A. Wyoming designated 169,100 acres as its limitation for intentionally irrigated acres in Wyoming above Pathfinder Dam, and 56,900 acres as the limitation for intentionally irrigated acres in Wyoming between Pathfinder Dam and Guernsey Reservoir. Appendix A at 1. The sum of the two limitations is 226,000 acres.

The North Platte Decree Committee considered Governor Mead's letter during a meeting on October 20, 2011. The Committee approved a motion that acknowledged receipt of Wyoming's designation and recommended that the parties inform this Court of Wyoming's action and seek approval of the changes in conformity with the Modified Decree.

Therefore, Nebraska, Wyoming, and the United States move the Court to replace the first two sentences in section II(c) of the Modified Decree with the following language:

(c) From diverting or permitting the diversion of water from the North Platte River and its tributaries, including water

from hydrologically connected groundwater wells, upstream of Guernsey Reservoir for the intentional irrigation during any one irrigation season of more than 169,100 acres of land in Wyoming above Pathfinder Dam, or more than 56,900 acres of land in Wyoming between Pathfinder Dam and Guernsey Reservoir, exclusive of the Kendrick Project. The acres in these areas to be counted under these injunctions shall include the following, provided that an intentionally irrigated acre that receives water from more than one source shall be counted only once:

Respectfully submitted,

JAY JERDE

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APPENDIX A

THE STATE OF WYOMING

[Seal]

MATTHEW H. MEAD
GOVERNOR

STATE CAPITOL
CHEYENNE, WY 82002

Office of the Governor

September 6, 2011

Mr. John H. Lawson
Area Manager
Bureau of Reclamation
Wyoming Area Office
PO Box 1630
Mills, WY 82644-1630

Mr. Brian P. Dunnigan
Director
Nebraska Department
of Natural Resources
PO Box 94676
Lincoln, NE 68509-4676

Mr. Dick Wolfe
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Room 818
1313 Sherman Street
Denver, CO 80203

Mr. Patrick T. Tyrrell
Wyoming State Engineer
Herschler Building, 4-E
122 W. 25th Street
Cheyenne, WY 82002

Re: Modified North Platte Decree limitations on
acreage Wyoming may intentionally irrigate

Dear Committee Representatives:

On November 13, 2011, the United States Supreme Court entered the Modified North Platte Decree. *See Nebraska v. Wyoming & Colorado*, 534 U.S. 40 (2001) (mem.). Section II(c) of the Modified Decree states that, ten years after the Modified Decree's entry, the limitation on Wyoming intentionally irrigating more

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than 226,000 acres upstream of Guernsey Reservoir will be replaced with two separate injunctions. One injunction will govern acres irrigated above Pathfinder Dam, and the other injunction will apply to acres between Pathfinder Dam and Guernsey Reservoir. The sum of the injunctions must not exceed 226,000 acres. Wyoming has discretion to designate the acreage limitation for each injunction. The Modified Decree then requires Nebraska, Wyoming and the United States to notify the Court of the designation so the Court can modify the Modified Decree.

The Governor of Wyoming signed the 2001 Final Settlement Stipulation in the *Nebraska v. Wyoming and Colorado* lawsuit as the State of Wyoming's representative. It is in that same capacity that I hereby designate that the State of Wyoming, its officers, attorneys, agents and employees, be severally enjoined from diverting or permitting the diversion of water from the North Platte River and its tributaries, including water from hydrologically connected groundwater wells, upstream of Guernsey Reservoir for the intentional irrigation during any one irrigation season of more than a total of 169,100 acres of land in Wyoming above Pathfinder Dam, or more than a total of 56,900 acres of land in Wyoming between Pathfinder Dam and Guernsey Reservoir. The sum of both limitations is 226,000 acres.

I now request the North Platte Decree Committee to recognize Wyoming's designation and advise the

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parties to the lawsuit to approve a motion to the Court to modify the Modified Decree accordingly.

Best regards,

/s/ Matthew H. Mead

Matthew H. Mead

Governor

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Cc: Basin Electric Power Cooperative
