

Technical Memorandum 2.1.2

Table of Contents

2.1.2	Platte River Basin Decrees
2.1.2.1	Introduction
2.1.2.2	Decree Summaries
2.1.2.3	References

List of Appendices

Appendix 2.1.2.A Wyoming State Engineer's Office
Summary of North Platte River and Laramie River Decreases

Platte River Basin Water Plan
Technical Memorandum 2.1.2

SUBJECT: Platte River Basin Water Plan
 Section 2.1.2 – Platte River Basin Decrees

PREPARED BY: Trihydro Corporation

DATE: August 1, 2005

PURPOSE: The Platte River Basin Plan is a planning tool developed for the Wyoming Water Development Office. It presents estimated current and estimated future uses of water in Wyoming’s Platte River Basin. The Plan is not used to determine compliance with or administration of state law, federal law, court decrees, interstate compacts, or interstate agreements.

2.1.2 PLATTE RIVER BASIN DECREES

2.1.2.1 Introduction

Irrigators utilize more North Platte River water in Wyoming than do any other Wyoming users of that water. Irrigation with Platte River water has historically been the subject of legal actions between the States of Wyoming, Colorado, and Nebraska regarding apportionment of river water to irrigators in each of the states. The 1945 North Platte Decree provided the basis for North Platte irrigation water administration for much of the last half of the twentieth century. A 1986 lawsuit filed by the State of Nebraska resulted in replacing the 1945 North Platte Decree with a Modified Decree in 2001, under which Platte River irrigation water is currently being administered. In addition, apportionment of Laramie River irrigation water has been mandated on the basis of the Laramie River Decree.

2.1.2.2 Decree Summaries

On December 1, 2004, the Wyoming State Engineer’s Office (SEO) prepared a summary of North Platte River and Laramie River court decrees. The SEO decree summary is included in Appendix A of this technical memorandum.

2.1.2.3 References

Supreme Court of the United States. 2001. *Final Settlement Stipulation in State of Nebraska v. State of Wyoming*. No. 108.

Wyoming State Engineer’s Office. 2004. *Summary of North Platte River and Laramie River Court Decrees*.

APPENDIX 2.1.2.A

WYOMING STATE ENGINEER'S OFFICE

SUMMARY OF NORTH PLATTE RIVER AND LARAMIE RIVER DECREES

Summary of North Platte River and Laramie River Court Decrees

Interstate Streams Division, Wyoming State Engineer's Office
Date Completed: December 1, 2004

1. North Platte River. During the mid-1930s the state of Nebraska filed an action against the states of Colorado and Wyoming in the U.S. Supreme Court over the flows of the North Platte River. In 1945 the Court handed down a decree equitably apportioning the waters of the North Platte among the states. The decree included the following provisions:

(a) Exclusive of the Kendrick Project and Seminoe Reservoir, the State of Wyoming is enjoined from diverting water from the North Platte River above the Guernsey Reservoir and from the North Platte River and its tributaries above Pathfinder Dam, for the irrigation of more than a total 168,000 acres of land during any one irrigation season.

(b) Exclusive of the Kendrick Project and Seminoe Reservoir, the State of Wyoming is enjoined from storing more than 18,000 acre-feet of water from the North Platte River and its tributaries above the Pathfinder Reservoir for irrigation purposes during any one year.

(c) The storage rights of the Pathfinder, Guernsey, Seminoe, and Alcova reservoirs are junior to 1165 second-feet of rights for the irrigation of land in Western Nebraska, and the State of Wyoming is enjoined from storing or permitting the storage of water in these reservoir otherwise than in accordance with the rule of priority.

(d) The natural flow of the North Platte River in the section of the river between the Guernsey Dam and Tri-State Dam, or approximately the Wyoming-Nebraska state line, between May 1 and September 30 of each year, is apportioned 25% to Wyoming and 75% to Nebraska.

It also limits Colorado to the irrigation of 135,000 acres, the storage of 17,000 acre-feet of water in any one year, and the diversion of an average 6,000 acre-feet out of the North Platte River Basin annually.

By stipulation agreed upon by the three States and approved by the Supreme Court of the United States the decree was amended in 1953 as follows:

Colorado was permitted to increase its irrigated acreage to 145,000 acres and the states of Wyoming and Nebraska were permitted to store 40,000 acre-feet during any water year in Glendo Reservoir, with such storage, including holdover, never to exceed 100,000 acre-feet. The 40,000 acre-feet of storage during the year is divided 25,000 acre-feet to Nebraska and 15,000 acre-feet to Wyoming.

Nebraska filed a lawsuit in the U.S. Supreme Court on October 6, 1986 alleging that Wyoming had violated certain aspects of the 1945 Decree. The U.S. Supreme Court approved the

Final Settlement Stipulation and entered the Modified Decree on November 13, 2001. The Final Settlement Stipulation and the Modified Decree (Appendix A) include the following provisions:

(a) For the North Platte River and its tributaries, including water from hydrologically connected groundwater wells, upstream of Pathfinder Dam and between Pathfinder Dam and Guernsey Reservoir, Wyoming is enjoined from consuming more than the largest amount of water consumed for irrigation from such sources in any ten consecutive year period between 1952 and 1999, inclusive. Pursuant to the methodology approved by the parties, the largest amount of water during the ten year period noted above is 1,280,000 acre-feet upstream of Pathfinder, and 890,000 acre-feet between Pathfinder and Guernsey.

(b) Exclusive of the Kendrick Project, for the North Platte River and its tributaries upstream of Guernsey Reservoir including water from hydrologically connected groundwater wells, Wyoming is enjoined from intentionally irrigating more than a total of 226,000 acres of land during any one irrigation season. Ten years following the settlement date, this provision will be replaced with two injunctions: one intentionally irrigated limitation for the area above Pathfinder and one for the area between Guernsey and Pathfinder. The total of the two shall not exceed 226,000 acres.

(c) Exclusive of Wheatland Irrigation District, for the Laramie River and its tributaries including hydrologically connected groundwater wells downstream of Wheatland Irrigation District's Tunnel No. 2, Wyoming is enjoined from intentionally irrigating more than a total of 39,000 acres of land during any one irrigation season.

(d) In accordance with an April 20, 1993 U.S. Supreme Court opinion, Inland Lakes has the priority of December 6, 1904, and the United States has the right to accrue up to 46,000 acre-feet of water during the non-irrigation season months of October, November, and April for storage in the four Inland Lakes located in Nebraska.

(e) Analogous to the 1945 Decree, natural flow of the North Platte River in the section of the river between the Guernsey Dam and Tri-State Dam, between May 1 and September 30 of each year, is apportioned 25% to Wyoming and 75% to Nebraska.

(f) Within the area bounded by Whalen Diversion Dam on the west, 300 feet south of the Ft. Laramie Canal on the south, one mile north of the Interstate Canal on the north, and the Wyoming-Nebraska state line on the east, diversions between May 1 and September 30 for irrigation purposes from groundwater wells with water right priorities after October 8, 1945, shall be replaced or the pumping shall be regulated to prevent such diversions.

(g) Within the area bounded by Whalen Diversion Dam on the west, the Fort Laramie Canal on the south, the Interstate Canal on the north and the Wyoming-Nebraska state

line on the east, surface water diversions for irrigation purposes from the tributaries to the North Platte River shall be administered and accounted as diversions of natural flow in accordance with the equitable apportionment of natural flow, 25% to Wyoming and 75% to Nebraska in the section of the river between Guernsey and Tri-State dam. For the depletions that occur when natural flow is insufficient to meet the demands of both Wyoming and Nebraska irrigators who divert from the North Platte River at or above Tri-State Dam, Wyoming must replace the depletion amount or those irrigation rights not in priority to divert shall be regulated to prevent such diversions.

(h) By stipulation of all three states and the United States in September 1997 (Appendix D), Wyoming shall install measuring devices at no less than the eight largest irrigation reservoirs storing water from the North Platte River and its tributaries upstream of Pathfinder Reservoir, to accurately measure the annually accrued irrigation storage in each reservoir. The storage limitation injunction from the 1945 Decree is unchanged in the 2001 Modified Decree: Wyoming is enjoined from storing or permitting the storage of more than 18,000 acre-feet of water for irrigation purposes upstream of Pathfinder Reservoir exclusive of Seminoe Reservoir during any one year.

(i) By stipulation of Nebraska, Wyoming and the United States in December 1998, referred to as the 1998 Allocation Stipulation (Appendix E), the parties jointly agreed to a method of allocating storage water during periods of shortage. The Bureau of Reclamation (Reclamation) shall follow procedures and guidelines when allocating storage water from the Pathfinder and Guernsey Reservoirs, and the Inland Lakes. (See Exhibit 5 to Appendix G). During the first week in February, March, and April, the Reclamation shall advise the other parties when the current year is likely to be an “allocation year” if storage and forecasted water supplies are less than the approximate irrigation demand for the year of 1,100,000 acre-feet. With respect to water rights administration upstream of Pathfinder Reservoir before May 1st, if the Reclamation advises that the current year is a likely allocation year, the Reclamation shall be deemed to have placed a priority call for Pathfinder Reservoir, excluding the Pathfinder Modification Project. With respect to water rights administration along the mainstem of the North Platte River and the tributaries between Pathfinder Dam and Guernsey Reservoir, before May 1st, if the Reclamation advises that the current year is a likely allocation year, the Reclamation shall be deemed to have placed a priority call for Inland Lakes (April only), Guernsey, and Glendo storage rights. In both situations described above, the Wyoming State Engineer shall determine whether the calls are valid and warrant regulation upstream of the calling right. Between May 1st and September 30th during an allocation year, Wyoming will limit the cumulative diversions for irrigation purposes

from the mainstem of the North Platte River between Pathfinder Dam and the Guernsey Reservoir to 6,600 acre-feet per two week period.

(j) By an amended stipulation of all three states and the United States in March 2001, the Pathfinder Modification Stipulation (Appendix F) includes the following provisions:

(i) The capacity of Pathfinder Reservoir may be increased by approximately 54,000 acre-feet to recapture original storage space lost to sediment.

(ii) The recaptured space would store water under the existing 1904 storage right for Pathfinder Reservoir except that it could not place regulatory calls on existing upstream water rights other than the rights pertaining to Seminoe Reservoir.

(iii) Approximately 34,000 acre-feet of the 54,000 acre-feet recaptured space would be accounted for in an environmental account and operated for the benefit of endangered species and their habitat in Central Nebraska.

(iv) Wyoming has the exclusive right to contract with the Bureau of Reclamation for the use of the remaining 20,000 acre-feet of the recaptured capacity. The primary use of the 9,600 acre-feet of annual estimated firm yield from this “Wyoming Account” is to supplement Wyoming municipalities’ water right needs. The account’s other uses in prioritized order are: to serve as Wyoming’s source of replacement water required by the Modified Decree, to replace Wyoming’s excess depletions from existing water related activities under the Platte River Recovery Implementation Program (Program), or to be leased to the Program.

(k) The North Platte Decree Committee (NPDC) was created to assist in monitoring, administering, and implementing the Modified Decree and the Final Settlement Stipulation. The NPDC shall act in accordance with the NPDC Charter (Appendix G), and may modify by unanimous agreement the administrative procedures attached as Exhibits 3 through 12 to the Charter.

(l) The river carriage and reservoir loss calculations established in the 1945 Decree have been replaced with the procedures defined in Exhibit 9 to the NPDC Charter, Appendix G.

(m) Upon occurrence of ‘negative natural flow at Orin’, as defined in Exhibit 7 of the NPDC Charter, the Wyoming State Engineer will administer water rights or take other action as necessary to eliminate the negative natural flow at Orin.

(n) Within five years of the court approved settlement date, pursuant to Wyoming law, Wyoming will adjudicate the following:

(i) All unadjudicated groundwater permits for irrigation wells hydrologically

connected to the North Platte River or its tributaries above Guernsey Reservoir and wells hydrologically connected to the Laramie River or its tributaries downstream of Wheatland Tunnel #2, exclusive of the Wheatland Irrigation District.

(ii) All existing unadjudicated groundwater permits for irrigation wells within the area bounded by Whalen Diversion Dam on the west, 300 feet south of the Ft. Laramie Canal on the south, one mile north of the Interstate Canal on the north, and the Wyoming-Nebraska state line on the east.

(iii) All unadjudicated surface water permits for irrigation purposes that divert from tributaries and drains that lie within the area bounded by Whalen Diversion Dam on the west, the Ft. Laramie Canal on the south, the Interstate Canal on the north, and the Wyoming-Nebraska state line on the east.

2. Laramie River. In 1911, Wyoming started proceedings in the Supreme Court against Colorado to limit the Colorado diversions from the Laramie River. In 1922, the Supreme Court handed down its decree which allowed Colorado to divert annually for the meadow lands, 4,250 acre-feet, and by transmountain diversion 33,500 acre-feet plus "the relatively small amount of water appropriated. ..." from the headwaters of Deadman Creek, through the Wilson Supply Ditch. In 1936, the Supreme Court of the United States stated that the record showed that the "relatively small amount of water" referred to actually amounted to 2,000 acre-feet of water per annum. Therefore the total annual diversion allowed Colorado was 39,750 acre-feet. In 1939 Wyoming secured an order from the Supreme Court of the United States restraining Colorado from diverting more than the 39,750 acre-feet annually that had been allotted to her. The Supreme Court stated that this amount should be administered according to Colorado laws. By stipulation between Colorado and Wyoming in 1957 the Supreme Court decreed that only 19,875 acre-feet of water per year could be diverted from the Laramie River Basin and that 29,500 acre-feet per year could be diverted by the meadow land users for the irrigation of certain lands described by map in the stipulation.