

Appendix G

North Platte Decree Committee Charter

NORTH PLATTE DECREE COMMITTEE

C H A R T E R

Article I.

General Purpose of the North Platte Decree Committee

The North Platte Decree Committee (NPDC) is established by the States of Nebraska, Wyoming, and Colorado, and the United States of America to assist in monitoring, administering, and implementing the Modified North Platte Decree and the Final Settlement Stipulation dated March 13, 2001.

Article II.

Membership of the NPDC

- A. The parties to the NPDC are the states of Nebraska, Wyoming, and Colorado, and the United States of America.
- B. The parties' representatives on the NPDC are:
 - 1. The Wyoming Area Manager of the United States Department of Interior, Bureau of Reclamation (Bureau) or his or her designee;
 - 2. The Director of the Nebraska Department of Natural Resources (Nebraska) or his or her designee;

3. The Wyoming State Engineer (Wyoming) or his or her designee; and
 4. The Colorado State Engineer (Colorado) or his or her designee.
- C. Each representative may designate an alternate to the NPDC by submitting the alternate's name in writing to the NPDC. An alternate may be removed or replaced at the discretion of the appointing representative.
 - D. The responsibility for chairing the NPDC shall rotate among the Bureau, Nebraska, and Wyoming representatives. A new chairperson shall be selected by those representatives at least once every two years.
 - E. Attached as Exhibit 1 to this Charter, is the mailing address for each NPDC representative for purposes of providing notice as may be required by the provisions of this Charter.

Article III.

Definitions

The following terms as used in this document are defined as:

- A. Submitted to the NPDC: A matter is deemed to have been submitted to the NPDC when a written statement requesting action or decision by the NPDC has been mailed pursuant to paragraph III.D to the

other NPDC representatives and to the NPDC office or central repository of NPDC documents established under paragraph IV.I. of this Charter.

- B. Addressed by the NPDC: A matter is deemed to be addressed by the NPDC when the NPDC has taken final action on such request or failed to reach a decision on the request after a reasonable opportunity to investigate and act on the request.
- C. Reasonable Opportunity: The NPDC will be deemed to have had a reasonable opportunity to investigate and act on a request when, at a minimum, the issue has been discussed at two consecutive meetings. If the NPDC determines that an issue requires additional investigation, the NPDC may specify a period of time that constitutes a reasonable opportunity for completion of such investigation and final action on the particular issue.
- D. Notice: Notice is deemed to have been given when a NPDC representative mails a written request via certified mail to the other NPDC representatives at the addresses listed on Exhibit 1.
- E. Modified Decree: The Decree to be entered by the United States Supreme Court on the request of the parties pursuant to the Final Settlement Stipulation in *Nebraska v. Wyoming*, No. 108, Original.
- F. Final Settlement Stipulation: The stipulation filed in *Nebraska v. Wyoming*, No. 108, Original, to which this Charter is attached. The Final Settlement Stipulation supersedes the Principles of Settlement signed by the parties on May 10, 2000.

- G. General Operating Expenses: These expenses include administrative expenses such as those incurred in the exercise of the powers and authorities described in paragraphs A2, A7, and A8, of Article V.
- H. Actual Interest: A party will be deemed to have an actual interest in a dispute if resolution of the dispute could require action by the party, result in increasing or decreasing the amount of water available to the party, affect the party's ability to monitor or administer water use or water availability, or increase the party's financial obligations.

Article IV.

Operation of the NPDC

- A. The NPDC and the administrative procedures attached hereto pursuant to Article VI will become operational when the United States Supreme Court has approved the Final Settlement Stipulation and entered the Modified Decree.
- B. A quorum of the NPDC shall be present, and business may be conducted, when the Bureau, Nebraska, and Wyoming representatives, and, as applicable, the Colorado representative, are present. Colorado may attend all meetings of the NPDC, but may vote only when the State of Colorado has an actual interest in an agenda item. Colorado shall make an initial determination whether Colorado has an actual interest in any of the agenda items and if Colorado determines that it has an actual interest in an agenda item, Colorado will provide notice of such interest at least five days prior to a regular meeting

and no later than the day before any specially-scheduled meeting. If any other representative disagrees with Colorado's initial determination that Colorado has an actual interest in an agenda item and if the issue of Colorado's actual interest cannot be resolved by agreement of all the representatives, the representatives other than Colorado may take action on the matter. No such action may be enforced against Colorado nor subject Colorado to any monetary obligation without its consent, nor shall such action be deemed an exhaustion of administrative remedies as to Colorado. If any other representative disagrees with Colorado's initial determination that Colorado does not have an actual interest in an agenda item and if the issue cannot be resolved by agreement of all the representatives, Colorado's refusal to participate shall be construed as an abstention from voting on the matter and Colorado may not thereafter assert failure to exhaust administrative remedies as to the particular matter.

- C. Proposed agendas shall be distributed by the chairperson to all NPDC representatives at least two weeks in advance of any regular meeting and as soon as possible prior to any specially-scheduled meeting.
- D. Each NPDC representative shall have one vote on each issue submitted to the NPDC. A representative may vote yes, no, or may abstain. A negative vote by any representative shall prevent the proposed action from being adopted. Abstention shall not be counted as a negative vote. Action of the NPDC shall be by formal resolution or as reflected in the approved minutes. A request for formal resolution may be made by any representative.

- E. The NPDC will meet at least twice per year at a time and place designated by the representatives. At least one meeting shall be held no later than April 15 of each year, unless the representatives agree otherwise. A second meeting shall be held in October or November of each year, unless the representatives agree otherwise. Specially scheduled meetings for emergency or other purposes shall be held if requested by any representative. The chairperson of the NPDC shall poll all of the representatives prior to setting the meeting date, time, and place of a regular or specially scheduled meeting. All representatives shall make a good faith effort to arrange a mutually agreeable date, time, and place for all meetings. A meeting may be conducted only when all representatives or their alternates are available to attend. In the event a representative requests a specially-scheduled meeting for emergency or other purposes, such meeting shall be held as soon as is reasonably possible, but in no event more than thirty days after the request is made, unless more time is agreed to by the representatives. If scheduling a meeting is not possible within thirty days of a request, the representatives may conduct a telephone conference or use other means available. If any such meeting is not held within thirty days because of the failure of any representative other than the requesting representative to attend or to agree to the date and place for the meeting, the party represented by the requesting representative shall be relieved of any obligation to submit the dispute to the NPDC for potential resolution.
- F. Minutes of each meeting will be recorded and approved by the representatives within thirty (30) days of each special or regularly scheduled meeting.

After approval, the minutes will be sent to the representatives and filed at the NPDC's office or central repository established under paragraph IV.I of this Charter.

- G. The salary and personal expenses of each representative shall be paid by the party that he or she represents. All general operating expenses incurred by the NPDC in the performance of its duties and functions shall be borne equally by the parties, unless they agree otherwise. If the NPDC undertakes a specific project or study that involves only certain parties, those parties shall share the costs of such project or study equally, unless the representatives agree otherwise. If necessary, the NPDC shall designate a depository institution to aid in such payments. The financial obligations of the parties are subject to appropriations being made available for such purposes.
- H. The NPDC Charter may be amended only by written agreement of the parties.
- I. The NPDC at its first regular meeting shall establish an office or a central repository of documents where official records of the NPDC shall be kept and where filings with the NPDC shall be made. Such office or repository may be within the offices of one of the representatives and the location may be changed from time to time by the NPDC. The NPDC shall designate the person or persons responsible for maintaining such official records and shall determine whether to pay a salary or other compensation to such person and such determination may be changed from time to time by the NPDC. Files that the NPDC no longer retains shall be archived unless the NPDC has

determined to dispose of them. Each representative shall have the right to review all documents and materials maintained by the NPDC, including all background data, computations, computer files, and related notes.

Article V.

Powers and Authorities of the NPDC

- A. The NPDC, consistent with the terms and provisions of this Charter and state and federal law, shall have the power to:
1. Adopt, amend, and revoke by-laws, rules and regulations;
 2. Appoint a secretary who shall serve such term, receive such salary or expense reimbursement, and perform such duties as the NPDC may direct;
 3. Implement dispute resolution techniques in accordance with Article VII;
 4. Employ such technical, engineering or clerical personnel as in the NPDC's judgment may be necessary for the performance of its functions under this Charter;
 5. Engage in studies of water supplies, streamflows, diversions, withdrawals, consumption, depletions, return flows, storage and the use of the waters of the North Platte River system;

6. Collect, compile, analyze, correlate, and report on data relating to water supplies, streamflows, diversions, withdrawals, consumption, depletions, return flows, storage, and the use of the waters of the North Platte River system;
7. Maintain the official records of the NPDC and of all other data and information collected and/or compiled by the NPDC;
8. Perform the administrative functions assigned to the NPDC in the Final Settlement Stipulation and the Modified Decree;
9. Review and modify the document entitled, "North Platte River Ownership and Natural Flow Accounting Procedures," which the parties have reviewed annually in the spring and modified for the current water year, as deemed appropriate. An example of this document is attached as Exhibit 2;
10. Review, and consent, or withhold consent, to proposed modifications to the document entitled, "Water Administration of the Lower Laramie River System Relating to Basin Electric Power Cooperative's Water Rights," attached as Exhibit 3. Pursuant to paragraph V.B of the Final Settlement Stipulation, Exhibit 3 cannot be modified without the consent of the NPDC and Basin Electric;
11. Revise the procedures identified in Article VI and adopt new procedures that are consistent

with the Modified Decree, the Final Settlement Stipulation, this Charter, and applicable state and federal law; and

12. Undertake such other activities as deemed appropriate by the parties and consistent with the Modified Decree and the Final Settlement Stipulation.

Article VI.

NPDC Procedures

The parties have adopted the following administrative procedures, attached hereto and incorporated herein as Exhibits 4 through 15, respectively, to assist in monitoring, administering, and implementing the Modified Decree and the Final Settlement Stipulation:

Exhibit 4: Procedure for Administration Upstream of Guernsey Reservoir Acreage Accounting

Exhibit A: Wyoming Irrigation Original Supply Well Permits as of 12/31/00 Above Pathfinder Reservoir

Exhibit B: Wyoming Irrigation Original Supply Well Permits as of 12/31/00 Between Pathfinder Dam and Guernsey Reservoir

Exhibit 5: Procedure for Administration Upstream of Guernsey Reservoir During Allocation Years

Exhibit 6: Procedure for Consumptive Use Accounting

Exhibit A: Procedures for Calculating Consumptive Use of Irrigation Water Above Guernsey Reservoir, Wyoming (with example consumptive use calculations)

Exhibit B: Procedure to Evaluate Consumptive Use Calculations Above Guernsey, Wyoming

Exhibit 7: Procedure to Eliminate Negative Natural Flow Upon Occurrence

Exhibit 8: Procedure for Reservoir and Storage Right Evaporation Losses

Exhibit 9: Procedure for River Carriage (Conveyance) Losses

Exhibit A: Source of the Values of the River Carriage Losses

Exhibit B: Distribution of River Carriage Losses

Exhibit 10: Procedure for Whalen Diversion Dam to the State Line Reach Administration of Irrigation Ground Water Rights

Exhibit A: Assumptions Used in the Development of the Well Unit Replacement Requirement

Exhibit B: Potential Methodology for
Future Estimates of Triggers

Exhibit 11: Procedure for Whalen Diversion Dam to the
State Line Reach Administration of Surface
Water Rights from Tributaries and Drains

Exhibit 12: Procedure for Lower Laramie River Basin
Acreage Accounting

Exhibit A: Wyoming Irrigation Original
Supply Well Permits as of
12/31/00 in the Lower Laramie
River Basin

Exhibit 13: Procedure for Reporting Post-2000 Irrigation
Wells Within Wheatland Irrigation District

Exhibit 14: Procedure for Reporting New Municipal,
Industrial, and Export Permits

Exhibit 15: Procedure for Reporting Permits for New
Dams, Enlargements or Groundwater
Recharge Projects

Article VII.

Dispute Resolution

- A. The NPDC will attempt to resolve any dispute submitted to the NPDC related to compliance with or administration of the Modified Decree or the Final Settlement Stipulation. If such a dispute cannot be resolved by the NPDC, the NPDC will decide

pursuant to Article IV.D whether to refer the dispute to alternative dispute resolution.

- B. Alternative dispute resolution methods to be considered by the NPDC include, without limitation:
 - a) Mediation; b) Non-binding arbitration; and c) Binding arbitration.
- C. If the NDPC [sic] has decided to refer a matter to alternative dispute resolution, but has not adopted a method and procedure after reasonable opportunity to do so as defined in Article III.C, the matter will be submitted to alternative dispute resolution administered by the American Arbitration Association or a similar organization under their rules and any supplementary procedures for complex disputes, except that no party shall be subject to binding arbitration without its consent. The method for selecting the mediator or arbitrator(s) shall be determined by the NPDC parties that have an actual interest in the dispute as defined in Article III.H.
- D. Any mediator or arbitrator(s) shall not be an employee or agent of any party to the NPDC, shall be a person knowledgeable in water resource management, and shall disclose any actual or potential conflict of interest and all current or prior contractual and other relationships with any person or entity who could be directly affected by resolution of the dispute.
- E. When the NPDC has addressed a dispute as defined in Article III.B, the parties shall be deemed to have exhausted their administrative remedies before the NPDC for the purpose of seeking leave of the United States Supreme Court to bring an action regarding

such dispute pursuant to paragraph XIII of the Modified Decree.