

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING**

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UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
NORTHERN ARAPAHO TRIBE and)	
EASTERN SHOSHONE TRIBE,)	
)	
Plaintiff-Intervenors,)	
)	
v.)	Civil Action No. 10-cv-0093-ABJ
)	
JOHN HUBENKA, et al.)	
)	
Defendants.)	
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**JOINT MOTION FOR ORDER
AMENDING MEMORANDUM OPINION FILED OCTOBER 22, 2014,
AND AMENDING JUDGMENT FILED OCTOBER 22, 2014,
AND MOTION FOR STATUS CONFERENCE**

Plaintiff United States of America, Plaintiff Intervenors Northern Arapaho Tribe and Eastern Shoshone Tribe, and Defendants John Hubenka and LeClair Irrigation District jointly move for entry of the attached Order Amending Memorandum Opinion Filed October 22, 2014, and entry of the attached Amended Judgment entered October 22, 2014. The parties jointly request the Court to enter the proposed order and proposed judgment in order to effect a settlement intended to resolve the appeals of this litigation, separate litigation in this Court

between Diamond State Insurance Company and LeClair Irrigation District, Civil No. 12-CV-0137-ABJ, and litigation among the Northern Arapaho Tribe, the Eastern Shoshone Tribe, John Hubenka, LeClair Irrigation District and others in Shoshone and Arapaho Tribal Court, Civil Action Nos. CV-10-0080 and CV-11-0075. The parties further request that the Court set a status conference in this case, and **not enter** the proposed Order and proposed Amended Judgment until after completion of the public comment period required by 28 U.S.C. § 50.7. As further grounds for this motion, the parties state:

1. On May 17, 2010, the United States commenced this civil action under section 309(b) and (d) of the Clean Water Act, 33 U.S.C. § 1319(b) and (d), to obtain injunctive relief and civil penalties against Defendant John Hubenka for the discharge of pollutants into waters of the United States in Fremont County, Wyoming, arising from the construction of four dikes in the Wind River.
2. The Northern Arapaho Tribe and the Eastern Shoshone Tribe intervened as Plaintiffs. LeClair Irrigation District was subsequently added as a Defendant.
3. The case was tried to the Court commencing January 30, 2012.
4. On October 22, 2014, the Court filed its Memorandum Opinion Stating Findings of Fact and Conclusions of Law (“Memorandum Opinion”). ECF Doc. # 250. It entered judgment requiring Mr. Hubenka and LeClair Irrigation District to “comply forthwith all obligations imposed upon them in the Court’s Memorandum Opinion.” ECF Doc. # 251.
5. Mr. Hubenka and LeClair Irrigation District each appealed from the Court’s judgment, and also appealed the Court’s award of costs to the United States, the Northern Arapaho Tribe

and the Eastern Shoshone Tribe. U.S. Court of Appeals for the Tenth Circuit, Case Nos. 14-8086, 14-8091, 14-8093.

6. The appeals were referred to the Tenth Circuit's Mediation Office. Following a year of negotiations, the parties have entered into a Master Settlement Agreement. The purpose of the Master Settlement Agreement is to resolve the appeals of this litigation, the separate related litigation between Diamond State Insurance Company and LeClair Irrigation District, Civil No. 12-CV-0137-ABJ, and the related litigation in Tribal Court.
7. As part of the Master Settlement Agreement, the parties negotiated a proposed order to amend the order included in the Memorandum Opinion. The proposed order provides for appropriate injunctive relief in the form of restoration activities associated with Dike # 1 that will be performed by the Northern Arapaho Tribe using funds paid by LeClair's insurer, as well as appropriate injunctive relief to be performed by Mr. Hubenka associated with Dikes #2, 3, and 4. The proposed amended order also modifies the civil penalties assessed against LeClair and Mr. Hubenka. A copy of the proposed Order Amending Memorandum Opinion Filed October 22, 2014, is attached to this motion as Exhibit A.
8. If the Court enters the proposed order and the parties comply with certain other terms of the Master Settlement Agreement, the parties will dismiss the pending appeals of this litigation, the claims between LeClair and Diamond State Insurance Company, and the claims in Tribal Court.

9. If the Court files the proposed Order Amending the Memorandum Opinion Filed October 22, 2014, the parties also request the Court to enter the proposed Amended Judgment, attached to this motion as Exhibit B.
10. If the Court elects not to enter an Order Amending Memorandum Opinion Filed October 22, 2014, in either the form submitted by the parties or in a form that is otherwise acceptable to all Parties, then the parties are not obligated to take further steps to resolve this or any of the related cases, and this case will be returned to the U.S. Court of Appeals for the Tenth Circuit for such further proceedings as may be necessary.
11. The parties further request that the Court **not** sign or enter the proposed Order at this time. In accordance with the requirements of 28 C.F.R. § 50.7, the proposed Order should not be signed or entered by the Court until after the Department of Justice provides an opportunity to persons who are not named as parties to the action to comment on the proposed Order. *Id.* The Department of Justice will receive and consider any written comments relating to the proposed Order. The United States will then provide an appropriate notice to the Court regarding entry of the Order Amending Memorandum Opinion. *Id.*
12. In addition, the parties request that the Court set a status conference on either August 29, August 30, or August 31, 2016, or on a date in September as soon as is convenient for the Court. A status conference will allow the parties to answer any questions the Court may have regarding this motion and proposed Order Amending Memorandum Opinion.

Wherefore, at this time, the Court should set a status conference on either August 29, August 30, or August 31, 2016, or on a date in September as soon as is convenient for the Court for the

purpose of considering the proposed Order Amending Memorandum Opinion filed October 22, 2014, and the Amended Judgment.

Respectfully submitted this 11th day of July 2016.

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