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IN THE SUPREME COURT OF THE UNITED STATES

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|-------------------------------|---|----------------|
| STATE OF MONTANA, |) | |
| Plaintiff, |) | |
| vs. |) | No. 220137 ORG |
| STATE OF WYOMING and STATE OF |) | |
| NORTH DAKOTA, |) | |
| Defendants. |) | |
| _____ |) | |

REPORTER'S TRANSCRIPT OF PROCEEDINGS
TELEPHONIC STATUS HEARING
AUGUST 5, 2009

Reported by Veronica Thompson, CSR 6056, RPR, CRR

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19 REPORTER'S TRANSCRIPT OF PROCEEDINGS

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1 WEDNESDAY, AUGUST 5, 2009, 9:04 A.M.

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3 SPECIAL MASTER THOMPSON: Why don't we go
4 ahead and start out by having identification of counsel.
5 And so why don't -- we always start out with the State
6 of Montana as plaintiff.

7 MS. BOND: Thank you, your Honor. This is
8 Sarah Bond for Assistant Attorney General for the State
9 of Montana. And on the phone with me are John Draper
10 and Jeff Wechsler from Montgomery & Andrews in Santa Fe,
11 New Mexico.

12 SPECIAL MASTER THOMPSON: Thank you.

13 And next, who is representing State of Wyoming
14 today?

15 MR. MICHAEL: Your Honor, Peter Michael,
16 Senior Assistant Attorney General.

17 I have with me Marion Yoder, Senior Assistant
18 Attorney General; Luke Esch, Assistant Attorney General,
19 Kaycee McMullin, our paralegal, and Kevin Walton, our
20 summer intern.

21 SPECIAL MASTER THOMPSON: Welcome, all, again.
22 Next, State of North Dakota.

23 MR. SATTLE: Good morning, Judge. This is
24 Todd Sattler. I'm an Assistant Attorney General in
25 North Dakota.

1 SPECIAL MASTER THOMPSON: And then turning to
2 amicus, first of all, United States.

3 MR. JAY: Good morning, your Honor. William
4 Jay, Assistant to the Solicitor General, US Department
5 of Justice, United States.

6 And with me on the phone is my colleague James
7 Dubois also with the US Department of Justice.

8 SPECIAL MASTER THOMPSON: So, Mr. Dubois, how
9 is it in Denver today?

10 MR. DUBOIS: Hot but lovely, your Honor.

11 SPECIAL MASTER THOMPSON: Okay. I have to
12 give a speech in Boulder tomorrow. Is the weather
13 supposed to stay nice?

14 MR. DUBOIS: Bring your shorts. It's going to
15 be hot and sunny with afternoon thunder showers. It's
16 pretty much been the pattern for the last week or two.

17 SPECIAL MASTER THOMPSON: Next, counsel for
18 Anadarko.

19 MR. SALMONS: Yes, your Honor, it's Michael
20 Wigmore and David Salmons for Anadarko Petroleum
21 Corporation.

22 SPECIAL MASTER THOMPSON: Okay. Thank you.
23 And so am I forgetting anyone on the line?

24 Okay. Well, let me go over what I would plan
25 to have as the agenda today, and let's see if you have

1 any comments.

2 First of all, I want to talk about the letter
3 briefs regarding the memorandum opinion; second of all,
4 the motion to intervene; third, the filing of the first
5 report to the Supreme Court; fourth, the answer of the
6 defendants to the complaint of Montana; fifth of all,
7 beginning to develop a case management plan for this
8 proceeding; and then sixth, any other items that you
9 have.

10 Does that sound like a reasonable order to
11 take those issues?

12 Okay.

13 MS. BOND: Your Honor, could you actually
14 repeat those?

15 SPECIAL MASTER THOMPSON: I'll go back over a
16 little bit slower.

17 The first, I want to talk a little bit about
18 the letter briefs regarding the memorandum opinion.

19 MS. BOND: Okay.

20 SPECIAL MASTER THOMPSON: Second, to talk
21 about Anadarko's motion to intervene. Then the third
22 item will be the first interim report to the U.S.
23 Supreme Court.

24 MS. BOND: Okay.

25 SPECIAL MASTER THOMPSON: The fourth item will

1 be the answer of the State of Wyoming and the State of
2 North Dakota to the complaint of Montana. And then
3 fifth will be development of a case management plan to
4 govern the rest of the proceedings. And then, finally,
5 sixth, if there are other items that any of you would
6 like to discuss, we can then cover those.

7 MS. BOND: Thank you.

8 SPECIAL MASTER THOMPSON: Okay. So then going
9 back to the letter briefs regarding the memorandum
10 opinions, I want to thank everyone for, again, a great
11 job on those papers. I found them quite valuable.
12 Particularly appreciate both Montana and Wyoming
13 pointing out corrections that need to be made in the
14 text of the memorandum opinion.

15 Looking over Montana and Wyoming's letter
16 briefs, it appears as if there are three issues that I
17 need to address.

18 The first, which is an issue Montana raises,
19 is the question of the portion of the memorandum opinion
20 dealing with increases in consumption on existing acres.
21 Second of all, a point that Wyoming raises, a question
22 of whether or not I should clarify Paragraph 3 of the
23 conclusions regarding the consumption-depletion concept.
24 And then the third item is Wyoming's request that I
25 eliminate the passage from the memorandum opinion

1 dealing with the storage facilities on the interstate
2 tributaries.

3 On those, the first two items, the question of
4 increases in consumption and the consumption-depletion
5 concept, both of those, what I will do is I'll -- within
6 the next two weeks -- and I'll even give you a date --
7 by August 17, I will issue a supplemental opinion
8 dealing with those two specific issues.

9 This morning, though, I would like to talk for
10 a moment about the third issue, the question of
11 interstate tributaries.

12 So as I understand Wyoming's argument in the
13 letter brief, it is -- basically, first involved that
14 resolution of that particular question was not necessary
15 with respect to Wyoming's motion to dismiss and was not
16 raised by Wyoming in its motion to dismiss and,
17 therefore, brought second that Wyoming did not have an
18 opportunity to brief those issues. And there's also a
19 suggestion that there might be factual issues that would
20 need to be resolved.

21 So let me start out by just asking counsel for
22 Montana, are you arguing within your complaint that
23 storage of water in any of the storage facilities other
24 than the ones on the tributaries is involved? In other
25 words, are you willing to stipulate that the only issue

1 is with respect to the storage facilities on the
2 tributaries?

3 MS. BOND: You mean the interstate
4 tributaries?

5 SPECIAL MASTER THOMPSON: Yes.

6 MS. BOND: This is Sarah Bond from Montana.

7 No. We haven't done discovery on that.

8 Actually, the official Commission minutes reflect that
9 neither state actually has a handle on all the
10 reservoirs in the basin.

11 It is our position -- I think that that's what
12 we briefed in the complaint.

13 To back up, we named a number of tributaries
14 of which we are aware and which have been reported on in
15 the official record of the Yellowstone Compact
16 Commission for years and which in that report they have
17 clearly delineated post- and pre-'50 storage also.

18 And it is our position that the compact is a
19 complete apportionment of the entire basin. And pending
20 discovery, though, those are the reservoirs that we have
21 knowledge of that we believe there has been some injury
22 from storing during the time when we are filling
23 something in our state. But also that the term
24 "interstate tributaries," by the plain language of the
25 compact, includes the word "tributaries," and that

1 includes everything in the basin as defined in
2 Article 2E, and that, therefore, you know, potentially
3 pending discovery, it would involve other reservoirs in
4 the basin.

5 Also, with respect to the issue at the motion
6 to dismiss stage, we think the legal resolution of this
7 issue does not require further factual development
8 because if it's a legal issue and, you know, they are
9 where they are, and we think if they're anywhere in the
10 basin, they are subject to the allocation and
11 apportionment.

12 SPECIAL MASTER THOMPSON: Right. I understand
13 that. So that's helpful.

14 So if you actually -- you may well not have a
15 copy of the Bill of Complaint --

16 MS. BOND: We do.

17 SPECIAL MASTER THOMPSON: -- in front of you,
18 but Paragraph 9 of the Bill of Complaint is the one that
19 deals with the storage facilities.

20 So even -- even if the -- even if the Special
21 Master had ruled that storage facilities on the
22 interstate tributaries were not covered, you would still
23 have had arguments under Paragraph 9 with respect to
24 potentially those storage facilities on the main stem of
25 the Tongue and Powder Rivers.

1 In other words, that particular question would
2 not have resolved the question of whether or not you
3 still had an argument under Paragraph 9.

4 MS. BOND: That's correct, that's correct.

5 SPECIAL MASTER THOMPSON: Yeah.

6 MS. BOND: I mean, we mentioned the one -- the
7 injuries that we knew about, and we did, in part, brief
8 in our reply, I believe, the fact that the interstate
9 tributaries of the Tongue -- or the tributaries of the
10 interstate tributaries of the Tongue come in just above
11 the border. And so to accept Wyoming's definition, you
12 eliminate virtually the entire basin in Wyoming, but we
13 only mentioned in the briefings that support the
14 complaint the reservoirs we were aware of.

15 SPECIAL MASTER THOMPSON: Right. Okay. So
16 the taking of this particular issue -- you know, I
17 understand Wyoming's argument that it was not necessary
18 for me to reach that particular question.

19 I also have sympathy for Wyoming's argument
20 that since it did not specifically raise that in its
21 motion to dismiss that it did not have an opportunity
22 to -- well, I'll fully brief that particular point.

23 I also think that it's very important to
24 resolve that particular issue as early as possible
25 because it obviously addresses a significant portion of

1 Montana's case. It was an issue that was raised by
2 Wyoming in its original opposition to the filing of the
3 Bill of Complaint. And it might very well be resolvable
4 as a purely legal issue, as I suggested in the
5 memorandum opinion.

6 So with that as background, I wonder whether
7 the best approach at this stage might be to suggest that
8 Montana file a partial motion for summary judgment on
9 this particular issue, and then we can have briefs filed
10 on this particular issue and resolve it.

11 Wyoming, obviously, would be free in its
12 opposition to that motion to argue that it is not
13 appropriate for summary judgment.

14 Thoughts on that?

15 MR. MICHAEL: Your Honor, this is Steve
16 Michael.

17 MS. BOND: I wonder if we could hear from --
18 that sounds fair to me. I think -- my recollection of
19 when you raised the issue at the oral argument was that
20 Wyoming was reserving the point but didn't argue it
21 extensively in the -- in the oral argument and didn't
22 re-argue -- I guess they sort of dropped it after
23 that -- they referenced it the first time, and nobody
24 has briefed it again. So I guess it does make sense to
25 me that there would be further briefing on it certainly

1 prior to any ruling from the Special Master since we
2 have not done additional briefing other than our
3 response in the reply brief to that issue.

4 SPECIAL MASTER THOMPSON: Yeah, the -- let me
5 just say, having gone back over all of the various
6 papers and at the hearing I can see where there's some
7 confusion as to what the various parties thought they
8 were agreeing to so that you have Wyoming raise it
9 initially before the Supreme Court in its opposition to
10 the filing of the Bill of Complaint. They did not raise
11 it in their briefs. I did ask the question at the
12 hearing.

13 I had meant to ask the question of whether or
14 not I should resolve it as part of the motion to
15 dismiss, but I can understand why Mr. Michael might have
16 thought that, instead, I was talking about whether or
17 not it would need to be resolved at some point during
18 the proceedings.

19 Mr. Michael, your thought?

20 MR. MICHAEL: Yeah, thank you, your Honor.

21 Let me just backtrack a little bit. I think
22 that you've done an excellent job of -- I think that's
23 what happened in terms of the hearing, in terms of the
24 discussion.

25 But I want to put it in context a little bit

1 even -- even -- our exchange that we had at that
2 hearing, because I think -- one of the reasons that I
3 mentioned I thought that this issue was going to have to
4 be resolved was that a lot of our motion to dismiss was
5 based on our beliefs that the compact -- that a lot of
6 the argument we were making was under 5B of the compact,
7 Article 5B, and that really the way that the allocations
8 were made was under 5B. And, in fact, the split of
9 post-'50 water resolved the -- any issues about 5A.

10 Obviously, you've ruled against us on that
11 issue. We understand that, but -- so when I answered
12 that question that I thought we were going to have to
13 decide -- you were eventually going to have to decide
14 what interstate tributaries -- what that definition
15 means, what it covers, I was really thinking in terms of
16 5B, the 5B allocation of the percentage allocations.

17 And now that you've issued your memorandum
18 opinion suggesting that Montana has some protection
19 pretty much exclusively under 5A with respect to their
20 pre-'50 rights and then they have the other protection
21 under 5B, which is the percentage allocations proposed
22 to be right, that I now ask a question as to whether
23 this is -- this issue of what interstate tributaries
24 actually means for the purposes of 5B will ever come up
25 in this case under the way that you've laid out your

1 decision. And let me explain that just a little bit
2 further.

3 My understanding of your decision with regard
4 to 5A is -- very simple example, I think you discussed
5 it on page 21 and 20 of your memorandum opinion, is that
6 if a -- Montana posts pre-'50 water right on, say --
7 let's just use an example, the Tongue River, say, in
8 July of some year is not receiving water, and they make
9 a call to Wyoming and say, "Look, if you've got some" --
10 "We've looked at all our post-'50s and they're not
11 taking water. So we want to know, Wyoming, whether you
12 have any post-'50s that are diverting water that could
13 be used by our pre-'50 irrigator."

14 My understanding of your ruling is that that
15 would be resolved in a typical prior appropriation
16 fashion, and if there was a post-'50 Wyoming user and
17 that water would satisfy that Montana user or at least
18 partially satisfy, that Wyoming would have to shut down
19 that post-'50 user for that day and for whatever --
20 however many days were necessary to make sure that the
21 Doctrine of Appropriations applied across states lines.
22 That's my understanding of your interpretation of 5A and
23 that.

24 Now, let's talk about what Wyoming -- the way
25 I read your decision and the way I read 5A, because it

1 does -- 5A doesn't use the phrase "interstate
2 tributaries." It talks about the water in the
3 Yellowstone River system.

4 My understanding would be that it wouldn't
5 matter where the Wyoming appropriator was on the Tongue River, whether he was on
6 the Tongue itself or whether he was diverting from a
7 tributary, such as Goose Creek or Little Goose Creek or
8 was trying to store water at that time in a reservoir
9 way up in the headwaters of the Tongue River.
10

11 My understanding of your ruling would be that
12 the Doctrine of Appropriation would be applied in
13 typical fashion, and if the appropriator in Montana can
14 show that he'll receive that water, then we would
15 regulate the stream that way.

16 In that case, under 5A, the definition of
17 interstate tributaries is not significant because it's
18 not used in that section. And under your ruling,
19 Montana would be able to make that call throughout the
20 basin under 5A.

21 Now, under 5B when we talk about dividing
22 waters on an annual cumulative divertible flow basis
23 between post-'50 rights in Montana and post-'50 rights
24 in Wyoming, then the definition of interstate
25 tributaries becomes important.

1 We disagree. I disagree with -- Wyoming
2 disagrees with your ruling on that. Obviously, you've
3 mentioned it hasn't been briefed on, you know, possible
4 plain meaning of the compact and maybe other
5 interpretive guides or interpretive methodologies, but
6 I'm not so sure that this case is going forward at this
7 point on 5B at all given your ruling.

8 And if it's not, I question whether we're
9 going to have to cross that bridge and answer the
10 question of what interstate tributaries are. That's one
11 point I would make putting it in context. So I'm
12 reacting to your letter opinion -- or your memorandum
13 opinion as to whether that issue is ever going to come
14 up. I'm not sure it will. So let me go maybe one step
15 further.

16 Now, I thought it would come up when we spoke
17 at the hearing in February because I thought, Well, this
18 case is heading in the direction of divertible flow, as
19 Montana's theory of the case, but I think you've given
20 them another theory, which is the 5A theory. And it
21 seems to me that's where this case is headed on their
22 claims for relief.

23 If I could go one step further, your
24 suggestion just a minute ago was the partial summary
25 judgment suggestion, and I do have a concern with that,

1 and here's my concern.

2 At this point what's happened is Wyoming has
3 filed a motion to dismiss. That motion to dismiss, like
4 any motion to dismiss, is based on the pleadings. It's
5 not based on discovery. And a motion to dismiss is
6 appropriate if language, for example, of a compact is
7 unambiguous. And I -- and I know, and you know, and I
8 think we all agree at this point, that the United States
9 Supreme Court has said that original cases are a little
10 bit different. We don't hold people entirely to the
11 pleadings. If there is reliable documentation with
12 respect to interpretation of the document, we can look
13 at that early on, even before their summary judgment,
14 even before there's discovery. And I understand that --
15 that, but I think this issue of what the meaning of the
16 interstate tributaries is, is not necessarily going to
17 be decided -- my theory is that the plain meaning of the
18 contract defines it.

19 And I have an argument about the definitions,
20 if you need the definition of tributary compared to the
21 definition of interstate tributaries. I won't bore you
22 with the argument. This isn't the time; this isn't the
23 place.

24 But if we -- if we filed a motion to dismiss
25 and said it was unambiguous and asked for a ruling on

1 that, that would be appropriate at this stage. If you
2 denied that, we could renew that motion later, but it
3 would not be a motion to dismiss; it would be a motion
4 for summary judgment. And at that point we would
5 present more information.

6 If you had said, "No, I think it's ambiguous,"
7 then maybe the actions of the parties, the performance
8 of the contract or compact, all those other interpretive
9 things that come in when a clause is ambiguous would
10 come into play.

11 Now, here's the difficulty with that. If we
12 get to the summary judgment stage, that typically, in my
13 mind, certainly in my litigation experience, is that
14 summary judgment occurs after discovery has occurred,
15 after the parties have had a chance to test the facts.

16 And I happen to believe that if you were to
17 find that the term "interstate tributaries" is
18 ambiguous, that some discovery could shed some light on
19 that. There might be some pretty good arguments we have
20 that the drafters had good reason not to bother to do a
21 count of all the divertible flow being taken throughout
22 the water year of every little tributary that goes into
23 the main stems -- the four main stems.

24 So there's an argument that has some factual
25 basis to it, and that could be a proper argument if

1 it's -- if you found it was ambiguous.

2 But at this point we never actually -- never
3 actually included in our motion to dismiss, as you
4 pointed out a moment ago, an argument about what
5 interstate tributaries means.

6 And I really do go back to my first point.

7 I think that it's possible it may not be
8 something you have to decide in this case given what
9 you've done so far. And assuming what you've done so
10 far goes through the Court and becomes a ruling of the
11 Court, based on your interim report and even the failure
12 of the parties to take exception or the Court overruling
13 those exceptions.

14 So I hope -- you know, I covered those two
15 points. And if you have any questions, certainly let me
16 know if I've been unclear about anything, but I do think
17 that there is a lot of meat to the bones of leaving this
18 to a later day, and I think a very quick motion for
19 partial summary judgment would be wrong procedurally at
20 this point.

21 MS. BOND: Can I make just one --

22 SPECIAL MASTER THOMPSON: Miss Bond, you
23 certainly may.

24 MS. BOND: I guess put that way, that seems
25 like that makes sense to me.

1 The only other point that I would like to
2 raise is that while our -- the case is -- in the
3 memorandum opinion is focusing on, as we have primarily
4 focused on in our pleadings so far, 5A, the interstate
5 tributary issue is implicated in the question of
6 supplemental rights, which is 5B, Clause 1, and just
7 note that, in our view, 5B, Clause 1, which is not
8 subject to the percentage allocation of 5B, Clause 2 is
9 very significant here because, in our view, the
10 three-tier part -- the three-tier structure of the
11 compact, 5A being the home base and 5B, Clause 1 is also
12 just limited to interstate tributaries, and then 5B,
13 Clause 2 is also interstate tributaries, although we
14 feel that the word "tributary" is defined and that plain
15 language controls.

16 But just -- the point is that if -- in our
17 view of the structure of those three tiers, interstate
18 tributaries would be implicated in the 5B, Clause 1
19 claims as well. And while our injury might be so far
20 that we have already identified limited to 5A claims,
21 the 5A claims are one side of a coin of which the 5B,
22 Clause 1, claims are very closely connected because they
23 are the same acres. And so that then implicates the
24 supplemental rights issue.

25 But that said, I guess I have to agree with

1 Pete that given that we don't know where all the
2 reservoirs in the system are, so long as the Special
3 Master has agreed that we have stated a claim generally
4 with respect to storage, we are comfortable with moving
5 forward on discovery and then submitting a motion for --
6 well, submitting further briefing on this issue at a
7 later date.

8 On the other hand, I kind of see the point of
9 potential savings and judicial efficiency if the Special
10 Master is going to rule storage on interstate
11 tributaries is irrelevant. That would -- that would
12 potentially, I suppose, expose some -- some discovery.

13 In any event, I guess my bottom line is
14 because neither party briefed this more extensively than
15 was first summarily briefed in the -- Wyoming's
16 opposition brief and our reply to that prior to any
17 specific ruling one way or the other on the interstate
18 tributaries issue as a legal matter, I think additional
19 briefing of some sort is appropriate.

20 I would want to think through more the
21 appropriate procedural nature of whether it's couched as
22 a summary judgment thing or how -- you know, any
23 additional characterization of just briefing of the
24 legal issue.

25 SPECIAL MASTER THOMPSON: So, Mr. Michael,

1 just going back to your two points for a moment, with
2 respect to the first point, one of the things that I
3 have tried to be careful about so far is trying as best
4 as possible to resolve the issues that Montana raises in
5 its complaint about protection of pre-January 1, 1950,
6 rights in Montana without unnecessarily making legal
7 judgments regarding the particular operation of Article
8 5B. In other words, I recognize that there are not only
9 issues with respect to the pre-January 1, 1950, rights
10 that are involved in this particular complaint, but
11 presumably in applying the compact, it's always possible
12 that the parties will have various disputes regarding
13 rights that postdate January 1, 1950. And I'm trying as
14 much as possible to address the first set of issues
15 without unnecessarily becoming involved in the second
16 set of issues.

17 So is your first point, in part, regarding
18 that? That one of the things that concerns you about
19 the memorandum opinion right now is that it appears to
20 get into issues with respect to Article 5B that under
21 the general approach of the memorandum opinion it
22 doesn't need to?

23 MR. MICHAEL: I think that's exactly right.
24 In fact -- you know, that was -- I noted that myself
25 when reading your memorandum opinion that you were very

1 careful, and in discussion of groundwater and various
2 places, very careful not to move into 5B when you felt
3 it wasn't necessary.

4 And what I'm trying to clarify here is that,
5 you know, I did make the comment at the hearing, and I
6 reread the transcript about that, that I thought that it
7 would probably become necessary to deal with this, but
8 it was under our -- our belief that the only way Montana
9 could state a claim was under B based on the
10 percentages.

11 And now that the focus has really shifted back
12 to 5A, and you've, you know, intentionally done that, as
13 you just said, and I picked up on that, that's exactly
14 right. That's why I think this particular issue, which
15 really does fall under B, is one that, as I say, could
16 be -- may not become an issue. And as you point out,
17 this is a generality about the compact. There could be
18 any number of other disputes at some other time that
19 aren't part of this case, and you obviously don't want
20 to deal with those.

21 SPECIAL MASTER THOMPSON: So let me -- let me
22 then suggest the following. As I said, I will, on or
23 before August 17, issue just a supplemental opinion
24 responding to the letter briefs that Montana and Wyoming
25 have filed.

1 After you've had a chance to look at that
2 memorandum opinion, if Montana believes that any type of
3 a partial summary judgment motion is appropriate, then
4 they should feel free to file it. It might be after
5 reading the opinion you do not believe that it's
6 necessary or you do not believe that you need to -- we
7 need to resolve those questions at this point in time.

8 Mr. Michael, I agree with you entirely, that
9 to the degree that the language of the compact on a
10 particular issue is ambiguous that, obviously, the
11 parties would want to wait until after discovery,
12 perhaps, to bring a motion for summary judgment. But
13 particularly if Montana's argument on a particular issue
14 is that the -- that the compact is unambiguous and,
15 therefore, secondary materials are unnecessary in
16 resolving it, then I think that would be appropriate for
17 a motion for partial summary judgment.

18 Again, you could, in your opposition, always
19 say that you think it's clear and Montana's wrong or
20 that it's ambiguous and, therefore, it's not an
21 appropriate stage to resolve the question. But I want
22 to encourage all the parties that if they believe that
23 something can be resolved at an early stage without
24 discovery that a motion for partial summary judgment
25 might be an appropriate way to proceed forward.

1 But why don't -- why don't people wait until
2 you see the memorandum opinion or the supplemental
3 opinion on August 17, and then you can decide whether or
4 not a motion on this particular issue would be
5 appropriate. Okay?

6 MS. BOND: Sounds fine.

7 MR. MICHAEL: Very good.

8 SPECIAL MASTER THOMPSON: So, next, the motion
9 to intervene of Anadarko. So I know that I told the
10 parties that we would wait until after a motion was
11 filed to provide for briefing, but I wonder whether or
12 not Montana or Wyoming have any initial reactions to the
13 motion.

14 MS. BOND: This is Sarah for Montana.

15 No. I think, you know, we're all just kind of
16 waiting for the United States Supreme Court to hear the
17 Carolina case. And I don't personally think the -- it's
18 our position that the Carolina case is factually
19 distinguishable, but still there may be further
20 indication from the Supreme Court about its -- whether
21 it's going to change its earlier approach to allowing or
22 disallowing intervention by citizens of the states in
23 the original case. Just that we would need some
24 additional time to deal with Anadarko's motion.

25 And also note for future reference in the --

1 our later discussion about the timing here is that I
2 think once the Special Master has provided his first
3 interim report to the Court, I think as a -- as a
4 historic matter, the case -- the Courts have treated
5 further proceedings before the Special Master as
6 suspended pending the decision from the Court in this
7 case.

8 So I'm not sure how we're going to work out
9 the timing so that we're not waiting forever to move
10 forward, but I -- just something to keep in mind in
11 terms of briefing Anadarko's motion that while I think
12 everybody kind of wants to wait at least for the
13 argument in the Carolina case, I'm not sure how long we
14 want to wait or how -- what the best way of meshing all
15 these pending issues here is, given that once the
16 Special Master revises his memorandum opinion into a
17 first interim report to the Court, we really can't do
18 anything more until the Court issues a decision, I don't
19 think.

20 I actually would invite John, who has the most
21 experience, at least on Montana's side, from -- but from
22 original jurisdiction actions to later on talk about
23 that, but that's kind of in the back of my mind. I'm
24 not sure how to work those things all out, how to mesh
25 those things all together without having to wait

1 forever.

2 MR. WIGMORE: Your Honor, this is Michael
3 Wigmore. If I could just respond --

4 SPECIAL MASTER THOMPSON: Yes.

5 MR. WIGMORE: -- briefly?

6 Our preference would be to have the Court rule
7 on our motion as soon as possible and to include that
8 ruling in the first interim report to the Court, as was
9 done in the South Carolina, North Carolina case.

10 As Miss Bond noted, that case is factually
11 distinguishable and the parties that moved to intervene
12 in that case made arguments based on grounds that are
13 distinguishable from Anadarko's, namely, the opposition
14 by the United States in that case -- while the Special
15 Master in that case allowed intervention, the opposition
16 of the United States to the first interim report noted
17 that the rights of the private parties in that case
18 necessarily were subsidiary to the resolution of the
19 compact issues at the Supreme Court. And it was these
20 types of intermural, intrastate disputes that the Court
21 has not allowed -- or at least previously has not
22 allowed intervention of private parties in original
23 jurisdiction water actions.

24 In our case we have an issue that necessarily
25 has to be addressed by the Court, namely, whether or not

1 our waters are compacted at all. And, therefore, it is
2 not one of these intramural disputes, once the Court
3 resolves the interstate compact issues, how intrastate
4 rights are thereafter allocated.

5 So our preference would be to establish, as
6 part of the case management order, a briefing on
7 Anadarko's motion to intervene and to set it at a time
8 frame that would allow the Special Master to rule on the
9 motion and include that ruling in your first interim
10 report to the Court.

11 SPECIAL MASTER THOMPSON: Thank you.

12 Mr. Michael from Wyoming?

13 MR. MICHAEL: Yes, your Honor. I don't want
14 to get into an argument on the motion itself, and I'll
15 try to stay away from that, but I think -- I
16 certainly -- when I read the motion, I agreed with what
17 Anadarko said. I agreed with the points they made. And
18 I would like to have a chance to, you know -- I think
19 it's a good idea that Mr. Wigmore just mentioned. I
20 think it should be done sooner versus later. And I
21 think, you know, there is a big difference between an
22 intervenor and amicus, and that's why they're filing the
23 motion.

24 And I believe it would be helpful, the parties
25 very much so, on the groundwater issues, to have the

1 factual, technical expertise and those kind of -- you
2 know, the information that Anadarko could lend to both
3 parties and the Special Master on those issues.

4 So, again, maybe I'm drifting into the merits
5 of it, but I would certainly like a chance to say why we
6 agree with Anadarko in writing if you set a briefing
7 schedule.

8 SPECIAL MASTER THOMPSON: Okay. Mr. Jay,
9 thoughts from the United States?

10 MR. JAY: Your Honor, William Jay for the
11 United States.

12 Our first -- our first concern, of course, is
13 that the proceedings before the Special Master and
14 proceedings before the Court move forward as efficiently
15 as possible so that legal issues can be resolved
16 definitively, and then whatever is left for factual
17 development can proceed in that phase in good order.

18 So our reaction to how to handle the motion to
19 intervene in which, you know, we have, at most, an
20 amicus interest, of course, as in the South Carolina
21 case, our reaction to how to handle that motion depends
22 on how the Special Master intends to handle further
23 proceedings before him once the first report is filed.
24 Because, as Miss Bond said, at the very least, what the
25 Supreme Court says in that South Carolina versus North

1 Carolina case is going to be instructive, likely not
2 dispositive, because this is, after all, a compact
3 action and not an equitable apportionment action, but
4 instructive for the Special Master's handling of this
5 motion.

6 And if it's the Special Master's intent to
7 file the first report and then conduct no further
8 proceedings or, you know, perhaps require an answer but
9 not move forward with a case management plan until after
10 exceptions, if any, are filed to the first report on the
11 motion to dismiss, then I guess our question would be
12 what the harm would be for waiting for the Supreme
13 Court's ruling in South Carolina versus North Carolina
14 as well, which, after all, is going to be argued the
15 first Monday in October, the first case of the term.

16 And, you know, one can never predict how long
17 the Supreme Court will take with these things, but the
18 fact that the case is set for that early in the term
19 augers well for an early decision. So -- if, however,
20 the Special Master wants to move forward even after the
21 first report is filed but before exceptions are filed,
22 briefs, and, if necessary, argued, then we can certainly
23 understand why Anadarko would want to take part or have
24 its party or amicus status resolved before discussion
25 about case management and discovery begin in earnest.

1 So I guess our position is it depends on how
2 the Special Master plans to handle --

3 SPECIAL MASTER THOMPSON: Yeah. No. I
4 appreciate that, Mr. Jay. In fact, let me tell you what
5 I was -- was initially thinking, is that once the first
6 interim report to the Supreme Court is filed, that I
7 would both want the defendants to, well, file their
8 answers, but in addition to that, to have the parties
9 meet and confer to begin to work out a case management
10 plan for this particular proceeding.

11 I don't think it would be appropriate until
12 the Supreme Court has had an opportunity to take a look
13 at the first report and decide whether or not to hold
14 oral arguments on any portion and consider exceptions,
15 to move into a discovery phase, but just looking at a
16 variety of recent proceedings, including the proceeding
17 in South Carolina versus North Carolina has taken the
18 parties a while to work out a case management plan. And
19 I would love to be in a position so that once this comes
20 back from the Supreme Court, assuming that the Supreme
21 Court doesn't decide to dismiss the proceeding, that we
22 can then move forward quite expeditiously.

23 And I don't see any reason why we couldn't
24 begin to work out the details of a case management plan,
25 recognizing that some of the details of it might change

1 if the Supreme Court issues an opinion in this case.

2 Let me then go back to the various parties and
3 ask their thoughts on that because, obviously,
4 developing case management plan, it would be valuable to
5 resolve the motion to intervene ahead of time.

6 MS. BOND: Your Honor, from Montana, this is
7 Sarah.

8 I guess I -- we support the Court's and the
9 other parties' desire to move this case along
10 efficiently, and I guess -- I guess, in that light,
11 agree that further briefing on this issue so that it may
12 be included in the first interim report makes sense now
13 so that when the Court does act, it can act on all of
14 these issues and we are not having to go back to these
15 type of procedural in term issues before we can really
16 get into the nitty-gritty of discovery and moving
17 forward. And we would support and appreciate the
18 Special Master's desire to have the parties do what we
19 can to move the case along even while we can't really do
20 anything officially and during the time that the matter
21 is pending before the Supreme Court.

22 So that -- that general approach sounds like
23 it makes sense, that we would brief this, and then the
24 Master would be able to include a decision on this issue
25 in his first interim report so that it could be decided

1 by the Supreme Court along with the other motion to
2 dismiss issue.

3 SPECIAL MASTER THOMPSON: Thoughts from other
4 parties or amicus on that plan?

5 So I think what I'm suggesting now is that we
6 would move forward on briefing and hearing Anadarko's
7 motion to intervene, and I would expect that in
8 connection with that motion to intervene, that the
9 parties, to the degree that they want to brief the
10 points, would address both the questions of whether or
11 not Anadarko's motion is appropriate under the standard
12 that was set out by the Special Master in South Carolina
13 versus North Carolina. But also the -- the standard
14 that the Solicitor General suggested was appropriate in
15 its filing on -- or in that particular case, which is
16 the standard set out in the New Jersey versus New York
17 case of whether an intervenor whose state is already a
18 party can show a compelling interest in its own right,
19 which interest is not properly represented by the state
20 or any other appropriate standard that that party
21 believes I should be using to resolve the motion.

22 In other words, I think that it will help me
23 to brief that as broadly as possible.

24 MR. MICHAEL: Your Honor, this is Pete Michael
25 from Wyoming.

1 I think your suggestion there is excellent in
2 terms of giving us a roadmap to, you know, look at both
3 standards, and then you're in a good pretty position
4 when the South Carolina case comes down to take that
5 into consideration, exactly what the stare decicis might
6 limit you to, and we'll have briefed that both ways. So
7 I think that's a great suggestion.

8 And I agree with Miss Bond that we ought to,
9 you know, go ahead and get cracking briefing on the
10 intervention. I don't have any problem with that at
11 all.

12 And I would suggest a little bit further on
13 the -- on the idea of filing answers and then meeting
14 and conferring while we're waiting for the Court to rule
15 on any exceptions. I think that's definitely something
16 we would do. I'm optimistic, based on conversations
17 Miss Bond and I have already had, that we'll be able to
18 get, as suggested, a case management plan fairly quickly
19 to you after the Court has acted in whatever way it may
20 act on your report. It's mainly going to be a timing
21 issue at that point given, you know, the scope of the
22 case, how much time will Montana need to prepare to do
23 its initial discovery, those sort of things.

24 That, obviously, will vary depending on how
25 big of a case we have on our hands after the Court is

1 done with your report. But other than that, I think we
2 can come up with a pretty good plan, and we would
3 definitely want to work on that during that time frame.

4 SPECIAL MASTER THOMPSON: Great. I'm pleased
5 to hear that you think that you and Montana might very
6 well be able to agree to a case management plan easier
7 than two states that share the same name.

8 MS. BOND: Your Honor, we've been very -- I
9 can't speak highly enough of the professionalism and
10 courteousness that has been displayed by the State of
11 Wyoming in this case, and I'm also optimistic that we'll
12 have no problem moving the case forward in a
13 professional and courteous fashion.

14 SPECIAL MASTER THOMPSON: Okay. Certainly
15 that has been obvious in all the proceedings that I've
16 seen so far.

17 So let me ask, is there anyone then who has
18 any concerns or opposition to what I've just suggested?

19 So what I would like to do is to try to find
20 the time, probably in the middle of September, to
21 actually hear the motion. And I have not checked on
22 availability of the courtroom in Denver, but I would
23 have Susan Carter do that and then get back to counsel
24 and see whether or not we can find a date, as I say, in
25 the middle of September to hear that particular motion,

1 and we will do that right away. We'll try and get that
2 resolved this week.

3 What I'll then suggest is that if we are
4 talking about, say, a motion during the -- or a hearing
5 during the week of -- of -- let me get my calendar
6 here -- say, like the 14th of September, what I'll want
7 is to, going back from that, have the reply briefs due
8 the week before and the -- and the -- any opposition or
9 statement of non-opposition filed the week before that,
10 so I want to make sure that --

11 MS. BOND: I'm sorry, your Honor.

12 SPECIAL MASTER THOMPSON: I'm sorry.

13 MS. BOND: Could you repeat those dates for me
14 again?

15 SPECIAL MASTER THOMPSON: Yeah. So I'm just
16 sort of looking at this. If we, for example, can get it
17 set for the week of September 14, then what I would want
18 would be to have any opposition papers as well as any
19 statements of non-opposition filed on the 31st of
20 August.

21 MS. BOND: We have -- I will be out --

22 SPECIAL MASTER THOMPSON: Ah.

23 MS. BOND: -- most of the rest of the month,
24 as will be my co-counsel John Draper. So I'm -- I
25 hate -- I'm not trying to be -- slow this thing up, but

1 I think that this matter deserves some substantive
2 briefing. The Court should have the benefit of the best
3 briefing we can do. And, obviously, this is very
4 problematic. So if we could get --

5 SPECIAL MASTER THOMPSON: When do you -- where
6 are you going, and when do you get back?

7 MS. BOND: I'm going to a wedding.

8 SPECIAL MASTER THOMPSON: Okay.

9 MS. BOND: I'm going to various family
10 obligations, things that I have to do, and I will be --
11 I will not be able to look at this much until the last
12 week in August from the very beginning. So if we could
13 defer briefing, boy, to have -- have the -- Anadarko has
14 filed briefs; so the next briefs to be filed are our
15 responses. Is that --

16 SPECIAL MASTER THOMPSON: That's right. What
17 if we said -- what if I said the 7th of September?

18 MS. BOND: John -- I'm also a little bit
19 handicapped because John and Jeff are in Santa Fe and
20 I'm here in Helena.

21 Does that 7th work for you, guys?

22 MR. DRAPER: This is John Draper, your Honor.

23 I'll be getting back right at the end of
24 August from my son's wedding in England; so I'm going to
25 be suffering from some jetlag. So the 7th might be a

1 little bit early. If we could have just a little bit
2 more time there.

3 MS. BOND: Maybe the 11th, which would be that
4 Friday of that same week?

5 MR. DRAPER: That would be fine.

6 SPECIAL MASTER THOMPSON: Okay. And then we
7 would do the reply then on the 18th of September. And
8 then I would be looking for -- I'll ask Susan Carter to
9 look for an opportunity to set a hearing either the week
10 of the 21st or the 28th.

11 MR. JAY: Your Honor, this is William Jay for
12 the United States.

13 SPECIAL MASTER THOMPSON: Yes.

14 MR. JAY: We'll contemplate a bad -- a
15 submission from us or, I suppose, any other amicus on
16 this motion, would you want those -- our submission at
17 the same time as the parties'?

18 SPECIAL MASTER THOMPSON: Yes, please.

19 MR. JAY: I have -- I'm not arguing, but I am
20 second chairing and arguing in the Supreme Court on
21 September 9. This is a special sitting the Court has on
22 the McCain-Feingold campaign finance case.

23 SPECIAL MASTER THOMPSON: So if I did the
24 14th...

25 MR. JAY: It's better than the 11th.

1 SPECIAL MASTER THOMPSON: Okay.

2 MS. BOND: Oh, is this for the first round of
3 briefing?

4 SPECIAL MASTER THOMPSON: Yes.

5 MS. BOND: Okay.

6 SPECIAL MASTER THOMPSON: We're now -- you now
7 get an extra weekend, too.

8 MS. BOND: Yea.

9 SPECIAL MASTER THOMPSON: Which you probably
10 didn't want.

11 MS. BOND: No, I don't, but if that's what the
12 United States needs, we really would appreciate the
13 United States briefing and think that would be
14 instructive for the Court.

15 SPECIAL MASTER THOMPSON: I think
16 particularly, given the United States' participation in
17 the South Carolina versus North Carolina case, that it
18 would be valuable to have their views also.

19 So why don't we say then the 14th for
20 opposition papers and any other statements, and then the
21 21st would be Anadarko's reply.

22 MS. BOND: Okay, your Honor.

23 SPECIAL MASTER THOMPSON: Okay. And so then
24 it looks like we're probably going to be talking about
25 the 28th or the first week in October for the hearing.

1 MR. MICHAEL: Your Honor, this is Pete
2 Michael. I've got a Wyoming elk license and opening day
3 is October 1.

4 MS. BOND: Uh-oh.

5 SPECIAL MASTER THOMPSON: Okay. We won't do
6 it on October 1.

7 MR. MICHAEL: I'd really like to get up there
8 a day or two. It's not in Cheyenne. There's not a lot
9 of elk here, but if we could have -- the alternative is
10 I can have one of my co-counsel attend and then argue
11 this and we can work around it, so...

12 SPECIAL MASTER THOMPSON: Why don't we do
13 this. Why don't I start out by having Susan Carter just
14 find out availability for, you know, sort of a two- or
15 three-week range in there, and then she will send a
16 notice out and find out from the parties.

17 MR. WIGMORE: Your Honor, this is Mike Wigmore
18 again.

19 To the extent it helps, we can commit -- if
20 any of the oppositions come in on the 14th, we can
21 commit to doing our reply on the 18th, if it helps to --
22 you know, so this doesn't continue to slide along.

23 SPECIAL MASTER THOMPSON: That would be very
24 helpful, and I appreciate that, Mr. Wigmore.

25 MS. BOND: Well, this is Sarah from Montana.

1 The other -- we might want to keep in mind is
2 October 1, apparently they're arguing the Carolina case.
3 It might be instructive to have the transcript of
4 that -- questions in that before we have our hearing.

5 MR. JAY: This is William Jay.

6 It's October 5.

7 MS. BOND: Oh, okay. The 5th.

8 SPECIAL MASTER THOMPSON: Okay. Let me -- as
9 I say, we will check out a variety of dates, and I will
10 take all of those views, which I think are quite
11 helpful, into account.

12 We obviously want to, I think all of us, not
13 only me, but also the parties, want to move this along
14 quickly.

15 At the same time, it's an important motion,
16 and so I want to get -- I want to have as good of a
17 briefing as possible and also have any other useful
18 information that would be relevant here.

19 In the meantime what I will do is -- and this
20 gets to the first report to the Supreme Court. I will,
21 after issuing the supplemental opinion on or before
22 August 17, I will put together all of the remainder of
23 the first report, so then I can get that out as soon as
24 I resolve the motion to intervene.

25 MR. MICHAEL: Your Honor, Peter Michael. I

1 have a quick question for you.

2 It occurs to me -- I believe that Anadarko,
3 when they filed their motion to intervene, filed it in
4 published Supreme Court format. I may be wrong about
5 that, but that raises the question, what format would
6 you like in this briefing?

7 MR. WIGMORE: Your Honor, just to clarify, I
8 mean, we actually did it on 8-1/2x11, but just kind of
9 filed, for purposes of the caption, the Supreme Court
10 form. So it wasn't Supreme Court --

11 MR. SALMONS: It wasn't a printed brief.

12 SPECIAL MASTER THOMPSON: It was not a printed
13 brief, and so you can assume, for purposes of all
14 motions or proceedings in this case, that you can again
15 file it on 8-1/2x11 paper pursuant to that first case
16 management order.

17 MR. WIGMORE: Very good. Thank you.

18 SPECIAL MASTER THOMPSON: Okay. So any -- so
19 that takes us then through the various letter briefs
20 regarding the memorandum opinion, the motion to
21 intervene, and also the first interim report to the
22 Supreme Court.

23 Does anyone have anything else to address on
24 those particular questions?

25 Okay.

1 Then, as I said, what I would -- what I would
2 ask is that, first of all, as the -- that both Wyoming
3 and North Dakota file answers to Montana's complaint.
4 And I was going to suggest 30 days after I issued my
5 supplemental opinion, but I realize now that's going to
6 put you right in the middle of when you're likely to be
7 also filing various documents with respect to the motion
8 to intervene; so...

9 And this is not something that, given we're
10 going to be filing a first interim report that there's
11 any immediate rush on.

12 Do any of the parties have a date that they
13 would like to suggest doing that by?

14 MR. MICHAEL: Your Honor, this is Pete
15 Michael.

16 I don't anticipate filing the answer to be all
17 that difficult or time-consuming; so I'm not -- I don't
18 think you need concern yourself with our -- our book
19 briefing on the intervention motion. Whatever time
20 you'd like, we can get that done.

21 SPECIAL MASTER THOMPSON: Okay. Why don't we
22 do 30 days from the date that I issue the supplemental
23 opinion?

24 MR. MICHAEL: Which is August 17. Is that
25 correct?

1 SPECIAL MASTER THOMPSON: Which will -- why
2 don't you say 30 days from August 17 even if I file it
3 earlier.

4 MR. MICHAEL: Okay.

5 SPECIAL MASTER THOMPSON: And I guess that
6 would then be what? September -- why don't you go
7 ahead. Why don't you just say September 18.

8 MR. MICHAEL: Very good.

9 SPECIAL MASTER THOMPSON: Okay. And then
10 finally on the case management plan, what I would
11 request is that -- and this is really getting ahead of
12 ourselves a bit because you aren't going to really begin
13 this till I rule on the motion to intervene.

14 But what I would ask is the parties meet and
15 confer during the period of time that the Supreme Court
16 is considering the first interim report and address the
17 questions of, No. 1, what legal and factual issues still
18 need to be resolved, what type of discovery the parties
19 contemplate, and what, if any, rules need to be issued
20 in connection with that. That's both with respect to
21 any factual discovery, and also any expert witnesses,
22 reports, depositions.

23 Whether or not, third, there are ways after --
24 or limited to earlier, even before the conclusion of
25 discovery, that some motions -- I'm sorry. Some issues

1 might be resolvable through summary judgment and then
2 thoughts as to an overall schedule.

3 And I'll try and flush that out a little bit
4 more in a later broad case management order.

5 One of the questions I would also like the
6 parties to consider as part of that is what exactly will
7 need to be resolved as part of this particular case by
8 me and what might be appropriately addressed through the
9 Compact Commission for some other process.

10 And what I am -- you know, what I am thinking
11 here is, you know, is the question of let's take
12 groundwater for a moment, whether or not there might be
13 ways through this proceeding of resolving rules that
14 could be applied with respect to groundwater without
15 necessarily having to get into the facts of each and
16 every groundwater well that might be out there.

17 And that type of question would be something
18 that could be addressed by the Commission or another
19 body at later stages to the degree they come up.

20 Those are just some initial thoughts on that.

21 And my hope would be during the period of time
22 that the first interim report is before the Supreme
23 Court, that the parties could meet and confer on those
24 issues. What I will probably -- I'll request is that we
25 don't put the entire proceeding on hold, but that we

1 continue to have occasional status conferences just so
2 that you can let me know how the parties are proceeding.

3 Any initial thoughts or questions on that?

4 MS. BOND: This is Sarah from Montana.

5 That makes sense to me, your Honor, but I'm
6 confused a little bit about trying to, not having done
7 this before, get in my mindset how I expect the timeline
8 will go so I can make sure my client is aware of that.
9 And I can't find in these next things to happen when you
10 expect the first interim report to actually go to the
11 Court.

12 We have briefing and argument on the motion to
13 intervene, I guess would be sometime in October in
14 Denver presumably.

15 And before that, they would be -- the
16 defendants would be filing answers, according to my
17 notes, on the 18th of September, but then -- and then it
18 would be -- so it would be sometime, at least on this
19 schedule, obviously, after October when the memorandum
20 opinion and the supplemental memorandum opinion would be
21 able to be turned into a first interim report, including
22 the...

23 THE REPORTER: I'm sorry. Including the...?

24 MS. BOND: I'm sorry for mumbling. I know I'm
25 talking too fast.

1 -- which would also then include a resolution
2 of the motion to intervene that would have been heard in
3 October. And all of those things then would be put
4 together for a first interim report at some point during
5 the winter.

6 Is that your expectation, your Honor?

7 SPECIAL MASTER THOMPSON: Well, I'm hoping
8 that I can -- can do this even faster than that. So,
9 again, my hope is that -- or my plan will be that I will
10 take the memorandum opinion and the supplemental
11 opinion, and I will turn those over into a draft of the
12 first interim report to the Supreme Court prior to the
13 time that I hear Anadarko's motion.

14 MS. BOND: Okay.

15 SPECIAL MASTER THOMPSON: I will then
16 expeditiously address Anadarko's motion and incorporate
17 that into the draft of the first interim report I've
18 already prepared.

19 MS. BOND: Okay.

20 SPECIAL MASTER THOMPSON: So -- you know, so I
21 would -- I would fully expect that I will, by the end of
22 October, have a draft of that first interim report. And
23 then the question is simply how fast I can get that
24 printed up and filed with the Supreme Court.

25 MR. WIGMORE: Your Honor, this is Mike Wigmore

1 again.

2 Just be clear that, you know, certainly our
3 offer -- we can try and file our reply expeditiously if
4 it would help move the hearing along in the September
5 time frame. But if the hearing isn't going to be
6 scheduled until October, we'd certainly welcome a more
7 luxurious schedule, I guess, for replying.

8 SPECIAL MASTER THOMPSON: I understand that
9 entirely.

10 MR. WIGMORE: Thank you.

11 SPECIAL MASTER THOMPSON: I understand that
12 offer is only good to the degree I can get this heard at
13 the end of September.

14 MR. WIGMORE: Thank you.

15 SPECIAL MASTER THOMPSON: Okay?

16 So any other thoughts or questions or other
17 matters?

18 MR. MICHAEL: None from Wyoming, your Honor.

19 MS. BOND: Montana here --

20 SPECIAL MASTER THOMPSON: Okay. So what I
21 would propose then is unless people think there will be
22 a need for another status meeting of this nature, that
23 what we plan to do is to have a brief meeting at the end
24 of the hearing on Anadarko's motion and a brief status
25 conference then to discuss the next steps. And at that

1 point I can give you a more specific time frame on the
2 filing of the first interim report.

3 MS. BOND: Oh, that makes sense.

4 Is Susan going to be looking at Denver again?

5 SPECIAL MASTER THOMPSON: Yes.

6 MS. BOND: Okay.

7 SPECIAL MASTER THOMPSON: I assume that worked
8 out well for the parties?

9 MS. BOND: It did for Montana, your Honor.

10 SPECIAL MASTER THOMPSON: And Wyoming is even
11 closer.

12 MR. MICHAEL: Yes. Very close.

13 SPECIAL MASTER THOMPSON: Okay. Well, then
14 Susan will get in touch with all of you before the end
15 of the week on potential dates. And hopefully we'll be
16 able to find a date that works for everyone and
17 compresses this time frame as much as possible.

18 Okay. So if there's nothing else, then I'll
19 let all of you get back to your conferences and your
20 days.

21 For those of you who are headed off to
22 weddings, I hope you all enjoy them and have good
23 vacations.

24 (The proceedings concluded at 10:14 a.m.)

25 * * *

1 REPORTER'S CERTIFICATE

2
3 I, Veronica S. Thompson, Certified Shorthand
4 Reporter for the State of California, do hereby certify
5 that the foregoing proceedings were telephonically had
6 before me; that the proceedings were reported
7 stenographically by me; and that the foregoing is a true
8 record of the proceedings had at that time.

9 I further certify that I am a disinterested
10 person and am in no way interested in the outcome of
11 said action, or connected with or related to any of the
12 parties in said action, or to their respective counsel.

13 The dismantling, unsealing, or unbinding of
14 the transcript will render the reporter's certificate
15 null and void.

16 Witness my hand dated August 12, 2009.

17
18 _____
19 Veronica S. Thompson
20 CSR 6056, RPR, CRR
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