
NO. 137, ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

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

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TRANSCRIPT OF TELEPHONIC PROCEEDINGS

Thursday, September 5, 2013

Reported by: Kathleen A. Powell, CSR No. 2778

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21 REPORTER'S TRANSCRIPT OF PROCEEDINGS, taken
22 telephonically on Thursday, September 5, 2013, before
23 me, Kathleen A. Powell, CSR No. 2778, beginning at the
24 hour of 9:00 a.m. in the city of San Diego, County of
25 San Diego, State of California.

1 San Diego, CA, Thursday, September 5, 2013, 9:00 a.m.

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3 TRANSCRIPT OF TELEPHONIC PROCEEDINGS

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5 SPECIAL MASTER THOMPSON: So this is a status
6 conference in Number 137 Original in the Supreme Court
7 of the United States, Montana versus Wyoming, and I'm
8 hoping that the status conference does not have to be
9 particularly long. My list is not long, but I want to
10 be sure I handle any issues that anyone wants to raise.

11 So why don't we start out with appearances for
12 the various parties and amici and so Mr. Draper from
13 Montana.

14 MR. DRAPER: Good morning, Your Honor. This is
15 John Draper. We also have on the phone with us this
16 morning Cory Swanson, Deputy Attorney General from
17 Montana, Jay Weiner, Assistant Attorney General, Jeff
18 Wechsler and Donna Omerod from my office in Santa Fe and
19 I would ask that the persons from the Department of
20 Natural Resources and Conservation in Helena identify
21 themselves for the record.

22 MR. BRAMBLETT: Yeah. We have Brian Bramblett
23 Anne Yates and Kevin Peterson on the line.

24 SPECIAL MASTER THOMPSON: Okay. Thank you.
25 Next, Mr. Kaste, Wyoming.

1 MR. KASTE: Thank, Your Honor. This is James
2 Kaste. I'm here with Chris Brown, Andrew Kuhlmann and
3 our paralegal, Jessica Curless.

4 MR. DRAPER: Thank you. So Ms. Verleger, are
5 you on the line for North Dakota?

6 Okay. I've just been told by Ms. Carter that
7 she was not able to make the conference call this
8 morning and said that she would certainly catch up after
9 the phone call.

10 So next, for the United States, Mr. Dubois, are
11 you on the line? Is there anyone else for the United
12 States?

13 Okay. Then Northern Cheyenne Tribe, Ms.
14 Whiteing? According to Ms. Carter she couldn't make it
15 either. So is there someone on the line for Anadarko
16 Petroleum?

17 MR. WIGMORE: Yes, Your Honor. Mike Wigmore,
18 Bingham McCutchen for Anadarko.

19 SPECIAL MASTER THOMPSON: Okay. Welcome.

20 So my agenda is just one or two follow-ups from
21 the hearing last week. Then I wanted to talk about the
22 draft case management order number 11, which I
23 circulated last week and then I wanted to talk about
24 potential trial personnel, following up on that very
25 short conversation that we had at the end of the hearing

1 last Thursday and then after that, if anyone else has
2 some additional matters, we can add those to the agenda.

3 First of all, just very quickly in follow-up to
4 the hearing last week, Mr. Kaste, I got your submission
5 that you sent in on Friday and that provided me the
6 information I needed on Wyoming's behalf, so I thank you
7 for getting that in. And Mr. Draper, I assume I'll get
8 something from Montana by tomorrow?

9 MR. DRAPER: Yes, that's right, Your Honor.

10 SPECIAL MASTER THOMPSON: Okay. Thanks. Then
11 what I will do once I've taken a look at all of that is
12 to see whether or not I can, say early next week, at
13 least advise you which way I'm likely to go on those two
14 motions so that again you have as much opportunity to --
15 or as advance notice regarding whether or not we're
16 going to trial as I can provide.

17 So anything else in just follow-up up to the
18 hearing of last week?

19 MR. KASTE: Nothing from Wyoming, Your Honor.

20 MR. DRAPER: Nothing from Montana, Your Honor.

21 SPECIAL MASTER THOMPSON: Okay. Great. Thank
22 you.

23 So next then the draft case management order
24 number 11. Again, I circulated that last week. As you
25 can tell, what I did was I started with the case

1 management order that the two parties had agreed to and
2 kept most of that language and then where there was some
3 disagreements, as you'll see, I've resolved them in ways
4 which were not necessarily what either party was asking
5 for, but which I think will make for the cleanest
6 possible trial. So are there any questions or comments
7 on the case management order?

8 MR. DRAPER: Your Honor, this is John Draper.
9 I had a couple of clarifying questions with regard to
10 the sequestration provision if one of the parties should
11 invoke that rule. I wanted to confirm my assumption
12 that once a witness has testified, that then they would
13 be -- of course this assumes that one of the states does
14 invoke the rule -- but assuming that once a witness has
15 testified, then after that time, that person would be
16 allowed to attend trial given the likely public interest
17 of the proceeding and the fact that the witness had
18 already testified. Is that correct?

19 SPECIAL MASTER THOMPSON: Well, I'll confess I
20 had not focused on that particular question. My initial
21 impression is assuming that there is no chance that that
22 witness would be re-called to the stand for any reason,
23 that that should seem acceptable. But Mr. Kaste, what
24 are your thoughts?

25 MR. KASTE: I have essentially the same

1 thoughts, so long as they will not be re-called for
2 rebuttal, I don't think I have any concerns and so long
3 as they limit their communications with those witnesses
4 that is remain to testify. We all know that you can get
5 around a sequestration order outside the courtroom and,
6 you know, so long as they don't do that, I think that's
7 the way to interpret that.

8 SPECIAL MASTER THOMPSON: Okay. Then, you
9 know, I think that on that particular point then why
10 don't we agree that again, once somebody has testified
11 and they are not going to be re-called to the stand,
12 then it is permissible for them to be in the courtroom
13 and that I think for purposes of witnesses on behalf of
14 both Montana and Wyoming, I will assume that both
15 attorneys will act in good faith to ensure that their
16 witnesses are not communicating with each other
17 regarding their testimony.

18 MR. DRAPER: Very good, Your Honor. This is
19 John Draper.

20 The other question I had with respect to the
21 witnesses or the people who can be designated to assist
22 and advise counsel, those -- for different parts of the
23 trial, those can be different people, I would assume.
24 Is that your understanding?

25 SPECIAL MASTER THOMPSON: So here is the way

1 that I intended that provision to be implemented and if
2 that's a problem, then again, we can discuss it. My
3 hope was that as a general matter, that in this portion
4 of the trial, in other words, the trial on questions of
5 liability, that both sides would be entitled to
6 designate two witnesses for purposes of the entire trial
7 who they would want to advise them and who would
8 therefore be able to be there in the courtroom for
9 advising purposes and of course, to the degree that
10 somebody is not going to be a witness, you are entitled
11 to have other advisers in the courtroom.

12 I recognize that it might be that for purposes
13 of a particular portion of the trial, that it might be
14 that the two people who you designated would not be
15 enough and that there might be a need, for example, for
16 a third or a fourth person advising you on a particular
17 aspect of it. And that's why I provided that basically
18 for good cause shown, that the number could be expanded.

19 But I wanted to start out by limiting it to two
20 because I have no idea how many total witnesses there
21 are going to be, but obviously the larger the number,
22 the more it defeats the sequestration effort.

23 So I just wanted to have control over the
24 number beyond that two, and so what I would suggest is
25 that both sides, in choosing the two, choose people who

1 they really do expect to be there for most of the trial
2 advising them. It might very well be an expert. It
3 might very well be someone from your key water agency.

4 But I recognize, again, that for a particular
5 portion, it might be that you would want to have
6 somebody else there and on that, you would need to ask
7 permission and so long as I do not see that permission
8 being abused, I would be relatively open to those
9 requests. But I would want to hear both side's
10 perspective before ruling on each of those individual
11 motions.

12 MR. DRAPER: Thank you, Your Honor.

13 SPECIAL MASTER THOMPSON: Mr. Kaste, does that
14 sound fine to you?

15 MR. KASTE: Yeah, I think it does. I think
16 more than likely what we would have from Wyoming is
17 Mr. Terrell (phonetic) for the predominance of the
18 trial, although his schedule does in the allow him to be
19 there for the whole thing. Mr. Hinkley for the entire
20 trial, and the only thing I can envision where we'd want
21 to have perhaps another person is when Mr. Larson
22 testifies, we'd like to have our groundwater modeler
23 listen to that, and I'm not sure we'd need to have
24 anybody else in the courtroom for any particular portion
25 in advance of their testimony. So that would probably

1 work out fine for us so long as we could have the
2 groundwater modeler listen to the groundwater testimony
3 from their expert.

4 SPECIAL MASTER THOMPSON: Okay. My intention
5 is to be sure that both sides have the opportunity to be
6 advised during the trial by people who can help them and
7 making sure that the evidence is presented effectively
8 and, you know, have the opportunity to advise you on the
9 cross-examination, while at the same time making sure
10 that the purpose of the sequestration is observed.

11 So again, I trust both you and Mr. Draper not
12 to try to abuse that. So my guess is this will work out
13 fine.

14 Any other questions on the case management
15 order?

16 MR. KASTE: This is Mr. Kaste. I have one I
17 think. With regard to the provision of exhibits in
18 advance of trial, obviously the shipping costs
19 associated with that go down dramatically if we're able
20 to do that electronically on either a thumb drive or
21 disk, depending on the size of the exhibits.

22 Do you have a preference with regard to the
23 format of the exhibits that are provided both to the
24 court and to yourself in advance of trial?

25 SPECIAL MASTER THOMPSON: I have not thought of

1 that question either. I certainly do not see any
2 problem with the exhibits that would be sent here to
3 Stanford being electronic. Because the major purpose of
4 those exhibits that I want to maintain here at Stanford
5 is, number one, will be some weekends, for example, when
6 I'm not in Montana and if for any reason I needed to
7 reference any of those, I would want to have them
8 available to me. That's fine on computer.

9 Furthermore, that's a version of all the
10 proposed exhibits that I know will be safe and therefore
11 available to the Supreme Court when it gets back to the
12 court. The court, however, generally does not require
13 that all of the trial exhibits, certainly not all of the
14 proposed trial exhibits, be sent to them along with the
15 special report. And they just want to make sure they're
16 available in case they want to reference particular
17 exhibits.

18 So again, I think that an electronic version
19 there should be fine. And in fact, I'm just looking at
20 Ms. Carter who told me a couple weeks ago that I'd run
21 out of filing cabinet space, so I'm sure she would
22 actually like it better that way.

23 And then for the exhibits in Montana, I
24 certainly would like one copy of those to be in our
25 copy, but I think that the other could again be in the

1 form of a thumb drive or we might even be able to set up
2 some other system to load them directly onto a computer.

3 Does that sound -- I guess I'm seeking general
4 guidance. Does this respond to your concern, Mr. Kaste,
5 and do either you or Mr. Draper have any thoughts on
6 whether that sounds like the right proposal?

7 MR. KASTE: This is James. It sounds fine to
8 me. I think providing you in advance of your travels an
9 electronic copy is going to make it easier to travel
10 with those in hand, and I'm happy to give a hard copy to
11 the court in advance and I'm happy to do whichever, I
12 just want to make sure they come in a format that is
13 feasible and efficient for you and the court.

14 And one hard copy and one electronic copy for
15 the court up in Billings is probably a good way to go.
16 We'll have the means at our disposal to make more copies
17 if we need them, but we won't have a giant mountain
18 there for the clerk to deal with in the interim.

19 SPECIAL MASTER THOMPSON: Yeah, so Stanford's
20 copy, let's assume for the moment, would definitely be
21 electronic. Mr. Draper, your thoughts?

22 MR. DRAPER: Your Honor, that sounds generally
23 perfectly fine. If -- as Mr. Kaste suggested, you might
24 want to have a thumb drive for -- while you're
25 traveling, maybe we should sent you two at Stanford so

1 you could have one there for safekeeping as you
2 mentioned and one you could easily carry with you if you
3 wanted to.

4 THE COURT: Yeah. That's actually -- that's a
5 good suggestion. Although what I think I'm going to do
6 is see what the capacity of my iPad is with the notion
7 that that might be the best way of traveling with some,
8 in which case, I would probably just load them directly
9 here, not worrying about having a separate drive. But
10 let me investigate that and for the moment, you can
11 assume that you'll need to provide one hard copy to the
12 court in Montana and then the others can be in the form
13 of thumb drives.

14 But let me just sort of check a little more on
15 the technology and I might vary that. But I think at
16 the moment, that sounds like the best option.

17 MR. KASTE: Very good.

18 SPECIAL MASTER THOMPSON: Anything else on the
19 draft case management order from any of the -- or either
20 of the parties who is on the line?

21 Okay. Then why don't we turn to the trial
22 personnel and so let me just go down what I see at the
23 moment. The first is is that Ms. Carter was able to
24 find a court reporter who will be available for the
25 entire trial and Ms. Carter is she confirmed?

1 Okay. So Ms. Carter was just telling me in
2 case you couldn't hear her over the line that we did
3 confirm with the court reporter yesterday and that she's
4 going to be contacting counsel regarding your particular
5 needs in the way of transcripts.

6 And just in case she hasn't contacted them yet,
7 what's her name?

8 Bonnie Bray (phonetic.)

9 MR. KASTE: This is James. We responded
10 directly to Bonnie yesterday and introduced ourselves,
11 and told her to please call us with any questions she
12 may have. I haven't yesterday heard from her, but I
13 appreciate you giving us her name in advance.

14 SPECIAL MASTER THOMPSON: Okay. Great. Then
15 as I said, the second thing is just as a clerk of the
16 court to make sure that all the papers get properly
17 filed and everything goes smoothly, Judge Thomas gave me
18 the names of three retired assistant or deputy clerks of
19 the court from the district court there in Montana. One
20 of whom has recently retired and therefore should be
21 fairly familiar with all of the equipment and the
22 courtrooms and so I planned to contact them in the order
23 that Judge Thomas recommended them and see about their
24 availability for the period of the trial and what the
25 cost might be and so unless there is any objection, I

1 will proceed to do that. I will not hire anyone until
2 I'm able to, number one, get information to make sure
3 that they're not doing anything else at the moment that
4 might pose any type of conflict, and that equally
5 importantly provide me with information about what the
6 charge would be and I will then send that information to
7 both Montana and Wyoming to approve before I do
8 anything. Does that sound fine on that front?

9 MR. DRAPER: That's fine with Montana, Your
10 Honor.

11 MR. KASTE: And Wyoming.

12 SPECIAL MASTER THOMPSON: Okay. And then the
13 final thing I mentioned was just on the procedural side,
14 since I've not tried a case before, I thought that if I
15 see that there will be at least some procedural
16 questions that come up in the process, that I might want
17 to get some advice from, I'm assuming if it's fine with
18 counsel, my first source for information would be to
19 talk to the federal district court judges who are there
20 in the building in Billings with the notion that they're
21 probably the most expert and furthermore, I don't think
22 they would charge anything for their expertise.

23 But then in talking particular to Judge Thomas,
24 I thought it might be useful to have somebody who could
25 help me on procedural matters. It might be that I would

1 never need that help, but at least it would be
2 available. He recommended his former clerk, Randy
3 Tanner, whose resume I sent around yesterday. In
4 looking at it, I immediately recognized that of course
5 one of the problems is that he is somebody who has -- is
6 currently working in Montana and went to the University
7 of Montana, but Judge Thomas thought that he would be
8 exceptionally good and told me that I should at least
9 ask before I wrote Randy Tanner off because Judge Thomas
10 thought he would just be excellent in this type of a
11 role.

12 So your thoughts on Mr. Tanner or just
13 generally having somebody in reserve of that nature.

14 MR. DRAPER: Your Honor, this is John Draper.
15 The general idea sounds fine. I have not had chance to
16 review the resume that you sent out, but I haven't heard
17 that any of us know this person.

18 SPECIAL MASTER THOMPSON: If I remember,
19 Attorney General Fox wanted to know the name also
20 because he knows several of Judge Thomas' former clerks.
21 So that's something else that you'll probably want to
22 check with.

23 MR. DRAPER: Okay. Yeah. I haven't had a
24 chance to check with the Attorney General about that.

25 SPECIAL MASTER THOMPSON: So Mr. Kaste, it's

1 more your -- put it this way, I would have thought you
2 might have been the most concerned.

3 MR. KASTE: I have had a chance to review the
4 young man's resume and he appears to be a very
5 impressive young man. I don't have any concerns about
6 the fact that he may hail from and went to school in
7 Montana, other than you get a much less comprehensive
8 education there at the University of Montana as compared
9 to the University of Wyoming.

10 My only concern with him is the fact that he is
11 a young man. I have no problem with you using him as a
12 resource. I do prefer, when you can get them, the
13 seasoned district judges, I just think they're going to
14 be -- they're going to have seen it all and in that
15 vein, there's a possibility that we thought of here and
16 we have done nothing to explore it, but our former chief
17 district judge, William Downs, Bill Downs, retired from
18 the bench in the last couple of years and I think he's
19 still in Casper and he does mediations and that sort of
20 thing. He's kind of -- he's kicking around, but I don't
21 think he's staying too busy and, you know, if there was
22 a person that you wanted to set up an arrangement with
23 that could be available to you and not so busy doing
24 their other work in private practice, and this young man
25 who used to be a former clerk, he's got to earn a living

1 and I'm sure Boom Carlburg expects him to devote his
2 full attention to their work, maybe Judge Downs might be
3 a good resource. He was a very respected attorney here
4 of course before taking the district court bench and of
5 course he is from Wyoming, but he's a person that might
6 be amenable to assisting if you reached out to him. And
7 I don't necessarily have an opinion one way or the
8 other. I just wanted to float it. If you feel you have
9 your bases covered with the judges that are currently
10 there in the building in Billings and with, on occasion,
11 to reach out to Mr. Tanner, that's fine with me too.
12 But I thought I'd offer it up just in case.

13 SPECIAL MASTER THOMPSON: Okay. That's an
14 interesting suggestion, Mr. Kaste, and in fact, another
15 possibility is that Judge Thomas, when I last talked to
16 him, told me that on a confidential basis, that he
17 thought, and so of course I have everyone on the line
18 now, but I think I can do this without revealing
19 anything, that there might also be a federal district
20 court judge up in Montana who might be retiring. So
21 it's possible there might be somebody else also.

22 MR. KASTE: Judge Malloy, is he still working
23 kind of working full time? I know he's taken senior
24 status, and I suppose he's not in the Billings building.

25 SPECIAL MASTER THOMPSON: Yeah. Let me do some

1 snooping on this and at the moment, I won't pursue
2 Mr. Tanner until I get a better sense of what the other
3 options might be in terms of a former federal district
4 court judge who I might be able to turn to if there was
5 no one immediately in the building.

6 So I think that's a nice suggestion. Let me
7 check on that.

8 In the meantime, though, you know, if there's
9 any additional asking internally that you want to do on
10 Mr. Tanner, go ahead and do that. What I'll try and do
11 is get back in touch with everybody in a couple of days
12 with any additional names including, perhaps Judge
13 Downs. So let me just check on that. But that's a nice
14 suggestion. Because I agree from my standpoint the
15 other thing that, you know, was a little bit of a worry
16 was that Mr. Tanner, obviously has had a two-year
17 clerkship on the federal district judge in Montana, but
18 he is young.

19 MR. KASTE: He's clearly smarter than everybody
20 on my end of the phone based on his resume, but ... he
21 has a fantastic resume.

22 SPECIAL MASTER THOMPSON: Okay. So that's all
23 of it for my purposes. I guess the other thing that I
24 was -- I was thinking about and you saw me talk a little
25 bit about it in the email that you got from me last

1 Friday, is thinking about the payment on this. My guess
2 is is that what I might do -- well, I'll be interested
3 in your thoughts on how to cover the cost particularly
4 on the court reporter and the clerk of the court. And I
5 could probably go ahead, pay for those and then bill
6 them through my motion to the Supreme Court. If I did
7 that, I might want to break things down a little bit
8 more and perhaps do one motion for fees at the very
9 start of trial and then maybe one at the end of trial,
10 just so that I make sure that I don't run out of cash
11 and payment. I have no idea how much. I'm hoping it's
12 not that much, but I might be able to do that.

13 MR. DRAPER: Your Honor, this is John Draper.
14 One thing that I've seen done in previous cases is the
15 special master can require the parties to deposit a
16 certain amount with the special master for, you know,
17 payment purposes, subject to ultimately being approved
18 by the court.

19 SPECIAL MASTER THOMPSON: Yeah, I know that
20 that's been done. In fact, sometimes all fees and
21 disbursements are handled in that particular fashion.
22 As I said, I'm relatively open on this and I can
23 continue to do it by motions to the court, if that is
24 the preference of either state.

25 But again, if I did that, I would simply

1 probably submit my motions a little bit more frequently.

2 So Mr. Kaste, I don't know if you have any
3 thoughts or if you want to check with your bean
4 counters, your terminology.

5 MR. KASTE: Yeah. Well, I appreciate you
6 sending us the order on Friday and that helps us a lot
7 in terms of our accounting. I think it probably would
8 make sense for us to handle the bills for the court
9 reporter and the clerk directly. That probably just
10 means that we need to have those two individuals fill
11 out some paperwork for us in advance to get -- you have
12 to be an approved vendor in our system. That's one
13 little form that has your tax ID and that kind of thing
14 and just get them in our system and then you don't have
15 to put out any funds in advance to take care of those
16 expenses. We would be billed directly by those two
17 individuals in the same way that we have, you know, by
18 the court reporters throughout the course of these
19 proceedings and I think that might be the easiest way to
20 take care of those other two folks and then you can
21 submit your proposed orders for the court at your
22 leisure.

23 I think we probably have -- we can estimate
24 what your orders are likely to look like through the
25 remainder of the case now that we know where we stand up

1 to this point and we can make the appropriate
2 arrangements in our bookkeeping to deal with that. I
3 think it would be pretty easy for us to deal with those
4 individuals directly so long as we got put in contact
5 with them and we are in contact already with Ms. Bray,
6 so we'd just need to know the identity of the clerk and
7 what their rate will be and get them in our system.
8 That should work out fine.

9 SPECIAL MASTER THOMPSON: I mean that would be
10 fine. Mr. Draper, do you think Montana would be open to
11 that procedure?

12 MR. DRAPER: Conceptually -- this is John
13 Draper -- we would be. I think we have to check a few
14 bases to be sure we could set that up.

15 MR. SWANSON: Your Honor, this is Cory Swanson
16 with the Montana Attorney General's office. I think we
17 would be fine with either method. I think it would make
18 more sense since these individuals will be working for
19 you if, in fact, their expenses and fees were included
20 in an assessment from you and I believe our office would
21 be able to either do an assessment on a regular basis to
22 keep the cash flow in the black, or we could do as
23 Mr. Draper had suggested, an assessment in advance of
24 the trial and with a few day's notice of which method
25 you prefer and all that, we should be able to shepherd

1 that through and make that happen.

2 SPECIAL MASTER THOMPSON: So it would obviously
3 be easier for me in a variety of ways if the two
4 attorneys -- I'm sorry, the court reporter and clerk of
5 the court could be paid for by the two states either by
6 direct billing or by some type of a prearranged fund.
7 And so what I would ask is that the two sides consult on
8 this with each other and talk about whether or not there
9 is a system that would work best for the two states and
10 again, I'm willing to entertain a wide variety,
11 including if it turns out to the best for me to do it.
12 But it would certainly be easier for me if the two
13 states handled this in terms of the actual payment, even
14 though, of course, the clerk of the court in particular
15 would be working for me.

16 So that's what I would ask and if, you know, if
17 you need me to, I can become involved again, but I think
18 this is largely a question of what might work for both
19 states while at the same time making my accounting a lot
20 easier.

21 MR. KASTE: This is James. Cory, do you want
22 us to contact you on that matter?

23 MR. SWANSON: Yeah, that's fine. I'll want
24 John in our conversation too, but I think we can work
25 that out. We just want to ensure, Your Honor, that

1 there is some kind of accountability that they're
2 performing what you want them to do, et cetera, in terms
3 of our payment, and that you're basically approving
4 their work performed, et cetera, before we pay. That's
5 the only concern that we'd have on my end from my
6 accounting folks.

7 SPECIAL MASTER THOMPSON: No, I understand
8 entirely, and I think again there is a variety of ways
9 of handling that. Obviously the prearranged fund would
10 be one, but the other process would be, you know, a
11 system where they submit their statements either to both
12 you and me at the same time and I have to approve it
13 before it is paid or it's submitted to me initially, I
14 approve it and then send it to you and the payment goes
15 from you.

16 So I think there's a variety of ways of dealing
17 with that. I understand entirely what your thoughts are
18 on that and I appreciate that aspect of it. Okay?

19 And what I would just suggest is that, you
20 know, again, I'll be finding in the case next week what
21 way I'll be headed on the summary judgment motions and
22 then I'll handing down at least a memoranda opinion on
23 the 16th, so if sometime by the end of the 16th, say by
24 the 20th, if that makes sense, by the 20th, if you could
25 advise me whether or not you've reached an agreement on

1 how to pay for the court reporter and the clerk of the
2 court, then that would be great and if you want, we can
3 talk some more at that particular stage.

4 My guess is at this stage, it's just what works
5 best for both of the two states. Anything else on that
6 front?

7 MR. DRAPER: Your Honor, this is John Draper.
8 That should be fine from our point of view.

9 SPECIAL MASTER THOMPSON: Okay. Great. And so
10 then another question that I have is would it be useful
11 at all to have another status conference late this month
12 just to make sure that any questions that might be
13 coming up in connection with the trial, assuming that we
14 have a trial, have -- there's an opportunity to answer
15 those?

16 MR. DRAPER: Your Honor, this is John Draper.
17 I think that thought is a good one. I think if there
18 are enough issues that need to get settled that it may
19 be good to have a status conference at some point.

20 MR. KASTE: This is Mr. Kaste. I don't know of
21 any issues that need to be resolved that have not other
22 than the ones presented for summary judgment and so my
23 position would be I'm kind of busy working on all these
24 other deadlines. In the absence of a specific issue
25 that arises, I don't know that another case status

1 conference would be necessary in advance of the final
2 pretrial. Now, certainly something could arise that
3 would necessitate a call, but I'm not aware of anything
4 at that moment.

5 SPECIAL MASTER THOMPSON: Okay. So here's what
6 I'll propose, I'm just going to ask Ms. Carter to just
7 find a time now that looks like it's convenient for the
8 parties in late September and what I will have her do,
9 you know, two or three days before that is unless I have
10 some specific items that I know that I want to address,
11 Ms. Carter will simply query both Wyoming and Montana to
12 see whether or not there is anything urgent that has to
13 be addressed. If there's nothing urgent, we'll just
14 cancel that. But if there are some matters that need to
15 be addressed, at least we then know we have a date and a
16 time that works for people. Okay? But I agree with
17 you, Mr. Kaste, no reason to have a meeting if we don't
18 have anything to discuss. But at least let's have
19 something scheduled so we don't have any problem if we
20 need to schedule something.

21 Okay. Anything else?

22 MR. KASTE: Do you want to pick a date for that
23 now?

24 SPECIAL MASTER THOMPSON: No. I think what
25 I'll probably do is just have her email you and just

1 pick a couple dates and times.

2 Anything else?

3 MR. KASTE: Nothing further from Wyoming.

4 MR. DRAPER: Nothing further from Montana, Your
5 Honor.

6 THE COURT: Thank you, Mr. Draper. Okay. Then
7 I'll let you all get back to your other work and I hope
8 you have great days.

9 MR. KASTE: Thank you, Your Honor.

10 MR. DRAPER: Thank you, Your Honor.

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12 (Whereupon, 9:45 a.m., the proceedings were
13 concluded.)

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1 STATE OF CALIFORNIA)
2 :
3 COUNTY OF SAN DIEGO)

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5 I, Kathleen A. Powell, CSR No. 2778, hereby certify
6 that I reported in shorthand the above proceedings on
7 Thursday, September 5, 2013 at 401 West A Street, Suite
8 750, in the City of San Diego, County of San Diego,
9 State of California; and I do further certify that the
10 above and foregoing pages, numbered from 5 to 29,
11 inclusive, contain a true and correct transcript of all
12 said proceedings.

13 DATED: September 8, 2013

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17 _____
18 KATHLEEN A. POWELL
19 CSR NO. 2778

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