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November 11, 2011

**VIA FIRST-CLASS AND ELECTRONIC MAIL**

Barton H. Thompson, Jr., Special Master  
Woods Institute  
Jerry Yang and Akiko Yamazaki Environmental  
& Energy Building - MC 4205  
473 Via Ortega  
Stanford, CA 94305  
susan.carter@stanford.edu

**Re: Montana v. Wyoming & North Dakota  
No. 137, Orig. U.S. Supreme Court  
Comments of Anadarko Petroleum Corporation on Draft  
Case Management Plan No. 1**

Dear Special Master Thompson:

Pursuant to Paragraph 3 of Case Management Order No. 9, dated November 7, 2011, Anadarko Petroleum Corporation (“Anadarko”) respectfully provides the following comments on Draft Case Management Plan No. 1.

Anadarko’s principal concern is the sentence in Section VIII.C.2(e)(i) that provides, “Counsel for Amici may not examine a deponent unless agreed to by counsel for the States in attendance at the deposition.” As was discussed with the parties in the context of developing the proposed case management plan, and as noted during our November 3, 2011 conference call, this limitation is unacceptable insofar as it is intended to limit examination of any deponent who is a representative of an amicus. The Draft Case Management Plan contemplates discovery against amici, including deposition discovery. *See* Section VIII.B.7. In instances in which a deponent is appearing as a representative of an amicus, counsel for the amicus must be permitted to examine the deponent on redirect, following the examination by counsel for the States. Anadarko is aware of no precedent for, or rationale supporting, the Draft Case Management Plan’s limitation on examination by counsel for amici in this context. Anadarko proposes that this sentence be amended to read, “Counsel for Amici may not examine a deponent unless **the witness is a current or former officer, director,**

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**employee, or representative of the Amicus, in which case counsel for that Amicus may examine the deponent, or unless** agreed by counsel for the States in attendance at the deposition.” (Proposed addition in bold and underlined.)

Anadarko’s remaining concerns relate primarily to protecting its rights where the Case Management Plan supplants the provisions of Federal Rules of Civil Procedure. We believe these concerns arise simply as a result of inadvertence, but the relevant provisions should be amended in any event. In several instances, the Case Management Plan provides the remedies available in the event of a discovery dispute in lieu of those provided by the Federal Rules of Civil Procedure. For example, Section VIII.G.1(b), concerning written discovery disputes, and Sections VIII.G.2(b) and (b)(i), concerning deposition disputes, by their terms provide remedies only to “States.” Because the Case Management Plan governs discovery among all the parties to this action, these references should be to “parties.”

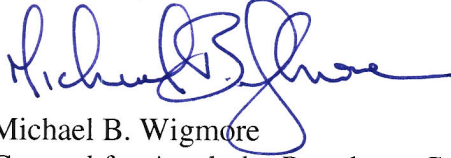
Likewise, by its terms Section VIII.C.2(e)(iii) only provides “States” the ability to seek relief from the Special Master if the proposed amount of time for a deposition is thought to be unreasonable. For the same reasons noted above, in instances where a representative of an amicus is noticed for deposition, counsel for the amicus should also have this avenue for relief available. Anadarko proposes that the third sentence of Section VIII.C.2(e)(iii) be amended to read, “In the event any other State **or counsel for the deponent** considers the proposed amount of time to be unreasonable, the dispute, if unresolved, may be referred to the Special Master pursuant to section VIII.G.1 of this CMP.” (Proposed addition in bold and underlined.)

Finally, because the Case Management Plan in some instances provides deadlines in lieu of those that would apply under the Federal Rules of Civil Procedure (or in lieu of a general timeliness requirement), and the Case Management Plan governs discovery among all parties, Anadarko believes the default deadlines applicable to amici should be the same as those agreed among the States. For example, Section VIII.C.1(c) provides that the States have 30 days to object to written discovery and 60 days to respond, unless agreed otherwise by the propounder and respondent. These same default deadlines should be considered to apply under Section VIII.C.1(d)(ii) with respect to discovery against non-States, unless agreed otherwise. For the same reason, the 30-day deadline in Section VIII.C.2(f)(i) for a subpoena to a non-State witness to produce documents in advance of a scheduled deposition should instead be 60 days.

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Please do not hesitate to contact me if you have any questions or if you require additional information. Thank you for your consideration of these matters.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Michael B. Wigmore". The signature is fluid and cursive, with a large loop at the end.

Michael B. Wigmore  
Counsel for Anadarko Petroleum Corporation

cc (via electronic mail): All counsel of record