

Michael B. Wigmore
Direct Phone: 202.373.6792
Direct Fax: 202.373.6001
michael.wigmore@bingham.com

September 23, 2011

VIA ELECTRONIC AND FIRST-CLASS MAIL

Special Master Barton H. Thompson, Jr.
Stanford University
Yang and Yamazaki Building
473 Via Ortega, MC: 4205
Stanford, CA 94305

**Re: Response of Anadarko Petroleum Corporation to
Montana's Brief On Its Right To Raise Article V(B)
Claims And Statement Of Its Article V(B) Claims**

Dear Special Master Thompson:

Pursuant to Case Management Order No. 8, Amicus Curiae Anadarko Petroleum Corporation ("Anadarko") submits this letter in response to Montana's Brief On Its Right To Raise Article V(B) Claims And Statement Of Its Article V(B) Claims, filed September 12, 2011. In lieu of filing a separate brief, Anadarko refers to and incorporates the relevant sections of its prior brief on this issue, and that of the United States, to reiterate that Montana has not stated a claim under Article V.B of the Yellowstone River Compact (the "Compact") in its Bill of Complaint.

As Anadarko argued previously, "Montana relies exclusively on Article V.A—the Compact's only provision relating to pre-1950 rights." Motion of Anadarko Petroleum Corporation for Leave to File Amicus Brief and Amicus Brief in Support of Respondent State of Wyoming, Apr. 25, 2008 at 4. "Montana has not alleged that Wyoming has used more than its proportional share of the waters actually allocated by the Compact in Articles V.B and V.C. It has therefore failed to state a claim upon which relief can be granted." *Id.* at 18.

Likewise, the United States concluded that Montana may proceed only under Article V(A). *See* Brief for the United States as Amicus Curiae in Opposition to the Motion to Dismiss, May 1, 2008 at 20-21. As the United States argued, Montana's "theory that even if Wyoming is not violating Montana's pre-1950 rights, it is (or may be) violating post-1950 rights" constitutes a "new, freestanding allegation" that "would not be appropriately introduced at this stage of the litigation." *Id.* at 20. "Montana's motion for leave to commence this action repeatedly asserted that Montana's first-tier rights under Article V(A) were at issue," and, "[a]s Montana recognizes . . . , it is limited to the theory it advanced in seeking leave to file the action, unless it seeks and obtains leave to file an amended bill of complaint, which is sparingly granted

Boston
Hartford
Hong Kong
London
Los Angeles
New York
Orange County
San Francisco
Santa Monica
Silicon Valley
Tokyo
Walnut Creek
Washington

Bingham McCutchen LLP
2020 K Street NW
Washington, DC
20006-1806

T 202.373.6000
F 202.373.6001
bingham.com

Special Master Barton H. Thompson, Jr.
September 23, 2011
Page 2

in original actions.” *Id.* at 20 n. 9 (citing *Nebraska v. Wyoming*, 515 U.S. 1, 8 (1995)).

As a result, Montana cannot at this point raise claims under Article V(B) of the Compact.

Respectfully submitted,



Michael B. Wigmore
Attorney for Anadarko Petroleum Corporation

cc: (via e-mail)
John Draper
Jennifer Anders
Jennifer Verleger
Peter Michael
William Jay
James DuBois
Jeanne Whiteing