

No. 137, Original

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In the  
**Supreme Court of the United States**

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STATE OF MONTANA, Plaintiff

v.

STATE OF WYOMING

and

STATE OF NORTH DAKOTA, Defendants

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**DECISION & ORDER OF THE SPECIAL MASTER  
ON WYOMING'S MOTION TO COMPEL**

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BARTON H. THOMPSON, JR.  
Special Master  
Jerry Yang & Akiko Yamazaki Environment  
& Energy Building  
473 Via Ortega  
MC: 4205  
Stanford, California 94305

**July 2, 2013**

**DECISION & ORDER OF THE SPECIAL MASTER  
ON WYOMING'S MOTION TO COMPEL**

Having reviewed Wyoming's Motion to Compel, dated June 10, 2013, and Montana's Response, dated June 26, 2013, and having heard arguments regarding Wyoming's motion, IT IS HEREBY ORDERED THAT:

1. Absent evidence of bad faith or questions of sufficiency, motions to compel a party to admit a request for admission are inappropriate where a party has denied the request. See *Equal Employment Opportunity Comm'n v. High Speed Enterprise, Inc.*, 2010 U.S. Dist. LEXIS 111265 (D. Ariz. 2010); *United States v. Operation Rescue Nat'l*, 111 F. Supp. 2d 948, 967-68 (S.D. Ohio 1999); *Foretich v. Chung*, 151 F.R.D. 3 (D.D.C. 1993). Wyoming's motion to compel Montana to admit specific requests for admission is therefore denied, although Montana should modify any of its answers to Wyoming's requests for admission that it believes should be re-evaluated or clarified in light of Wyoming's motion. In this regard, Montana already has agreed to amend its response to Wyoming's Requests for Admission Nos. 2-2, 2-4, and 2-6. See Montana's Response, p. 12.

2. In connection with Wyoming's requests for admission regarding documents "evidencing a call on Wyoming" in 1987-1989 and 2000-2003, Montana shall state whether it has documents that, for any of those years, constitute a call in themselves, memorialize a call, or state that a call was made. If Montana has any such documents, it also shall supplement its answers to Wyoming's related requests for production.

3. In connection with Wyoming's Request for Production No. 6 and Interrogatory No. 6 regarding the regulation of post-1950 water rights by Montana officials, Montana shall identify any specific instances of which it is aware in which a Montana official or employee, including water commissioners, ordered or required a pre-1950 surface water right holder to curtail or reduce production. For any such instance, Montana also shall identify what pre-1950 surface water right was involved, the reason for the curtailment or reduction, and the timing, and Montana shall produce any supporting documents in its possession. I recognize that Montana claims that, in 2000-2002, 2004, and 2006, water commissioners generally "worked with all Montana water users in the Tongue River

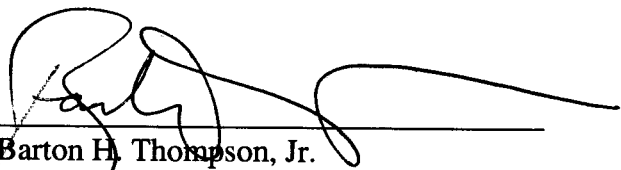
Basin to ensure that they were not taking more water than they were entitled” and that the “work of the Water Commissioners benefitted all water rights with a pre-1950 priority date.” Montana’s Response to Wyoming’s Third Set of Interrogatories, pp. 5-6.

Montana must supplement its answers, however, if it is aware of and can identify specific instances of curtailments or reductions as described above.

4. Montana shall supplement its response to Wyoming’s Interrogatory No. 8 (regarding harm to Montana pre-1950 water rights) to clarify whether it is stating that *all* pre-1950 water rights in Montana were harmed during the years 1987-1989, 2000, and 2003. If Montana instead believes that only some pre-1950 water rights were harmed during any of those years, it shall, to the extent that it has any relevant information regarding which rights were harmed and when, (1) identify those rights and when the injury occurred, and (2) produce any documents in its possession, custody, or control regarding the injury.

5. Montana shall supplement its answers in compliance with this Decision & Order no later than Friday, July 12.

Date: July 2, 2013



Barton H. Thompson, Jr.  
Special Master

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