

No. 137, Original

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

STATE OF MONTANA, Plaintiff

v.

STATE OF WYOMING

and

STATE OF NORTH DAKOTA, Defendants

OFFICE OF THE SPECIAL MASTER

JOINT DOCUMENT PRODUCTION ORDER

December 20, 2011

1. Instructions for Production of Documents

The States of Montana and Wyoming (“States”) are ordered to produce documents in accordance with this Document Production Order (“Order”). The State with possession or control of documents that must be produced under this Order shall make such production by identifying the documents responsive to the Order, and by stating (A) the address where the documents are regularly maintained, (B) the form in which those documents are maintained (for example, whether they are on paper or in digital form, and if in digital form, the nature of the form), (C) the general quantity of such documents, and (D) the arrangements that may be made for their inspection and copying. Documents shall be bates numbered pursuant to the Case Management Plan only if the State undertaking the inspection requests that the documents be copied or reproduced. The State producing the documents may require the requesting State to bear the expense of copying or reproducing the documents. Requested copies and reproductions shall be provided within 30 days. The State producing the documents shall make a duplicate copy or reproduction for any other party or *Amici* at the request and expense of such party or *Amici*, and all duplicate sets shall bear consistent numbering. The provisions for production of documents contained in the Case Management Plan, including, but not limited to, the provisions on privilege logs, confidentiality, discovery disputes, and supplementing discovery shall apply.

2. Definitions

A. “Documents” means all written, recorded, or graphic matters, however produced or reproduced. This definition includes, but is not limited to, any and all originals, copies or drafts of any and all of the following: writings, diaries, papers, notes, letters, emails, maps, illustrations, reports, records, permits, certificates, orders, decrees, studies, data compilations, photographs, audio recordings, video recordings, electronic models, leases, licenses, deeds, instruments, cards, tapes, plans, recordings, books, booklets, magazine or newspaper articles, publications, studies, memoranda, faxes, computer programs, transcripts, and abstracts, regardless of physical forms or characteristics.

B. “Diversion” is defined as that term is defined in Article II.G of the Yellowstone River Compact.

C. “Water Rights” is defined as water rights of any kind or nature, including, but not limited to, adjudicated, non-adjudicated, federal reserved, surface, storage, instream or groundwater rights, located in the Powder, Tongue or Little Powder River surface and groundwater basins within the States of Wyoming or Montana.

3. Documents to be Produced

The States of Montana and Wyoming, through counsel, shall produce the following documents that were written, developed or created prior to February 1, 2007, and that are in the possession or control of any agency of the State. Documents must be produced for inspection and copying on or before February 1, 2012:

A. *Water Rights Documents.* All documents specifying, establishing, identifying, relating to, or listing Water Rights.

B. *Documents Related to Changes in Water Rights.* All documents showing or related to changes to Water Rights, including, but not limited to, documents showing or related to changes of priority date, quantity of use, place of use, type of use, point of diversion, means of conveyance, complaint files, and means of application, such changes to include abandonment, surrender, or elimination of rights.

C. *Documents Related to Water Uses.* All documents showing or related to water diversions, depletions or uses in the Powder, Tongue or Little Powder River surface and groundwater basins within the States of Wyoming or Montana from the date of the first establishment of appropriative water rights in each of these basins, including, but not limited to, documents related to direct diversions from surface waters, diversions into or from storage, diversions into or from underground aquifers, uses in the absence of diversions (such as instream flows, impulse power systems, or hydroelectric uses), intra-state or inter-state calls, and requests or notifications for curtailment or other regulation of Water Rights beginning on January 1, 1950.

D. *Documents Related to Groundwater.* All documents relating to the quantity, geographic extent, or movement of underground water in the Powder, Tongue or Little Powder River groundwater basins within the States of Wyoming and Montana, including, but not limited to, electronic databases, pumping records, well records or registration, groundwater models and associated documents, groundwater level data, and documents related to water and gas production from coal bed methane (“CBM”) wells, impoundments, outfalls and reinjection.

E. *Compact Administration Documents.* All documents relating to Yellowstone River Compact administration involving the Tongue, Powder or Little Powder Rivers, or Compact interpretation, beginning on January 1, 1950, including, but not limited to, historic documents, technical documents, written communications related in any way to the Yellowstone River Compact Commission (“YRCC”) or its Technical Committee, correspondence between the States, and internal memoranda.

F. *Compact Negotiation Documents.* All documents relating to the negotiation, adoption and execution of the Yellowstone River Compact or drafts thereof.

G. *Written Communications Between the States.* All documents relating to correspondence or communications in any form between the States of Montana and Wyoming regarding or relating to the Tongue, Powder or Little Powder River basins beginning on January 1, 1950, including but not limited to documents relating to correspondence or communications on Water Rights, calls, requests or notifications for curtailment or other regulation of Water Rights, shortages of water, water level or streamflow, drought, rainfall, Compact administration or interpretation, or water needs in either State.

H. *Streamflow Documents.* All documents showing, indicating, recording or relating to streamflow or water levels on the Tongue, Powder, and Little Powder Rivers or their tributaries beginning on January 1, 1950.

I. *Reservoir Operation Documents.* All documents relating in any way to the operation of dams or reservoirs located anywhere within the Tongue, Powder, or Little Powder River basins.

J. *Maps.* All maps, illustrations or other graphic representations of the Tongue, Powder, or Little Powder River basins, including, but not limited to, documents depicting, illustrating, showing or identifying Water Rights, irrigated acreage, basin plans, diversions or water use.

K. *Specific Technical Documents.* Pursuant to this Document Production Order, specific documents (such as technical studies or management plans) may be requested by either Montana or Wyoming by providing a written request to the producing State. The written request must contain the name, title, author, or other distinctive information of the document to allow the producing State to identify the requested document, and must be received no later than February 1, 2012. The States shall make reasonable efforts to locate or search for the specific documents identified, and shall provide any such documents within their custody or control, so long as the specific document falls within the documents covered by this Document Production Order. If a State determines that such specific document is not covered by this Document Production Order, that State shall notify the other State of its position, and the other State may seek that document with its own formal request for production under the Case Management Plan.

Date: December 20, 2011



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