



**MONTGOMERY
& ANDREWS**

JEFFREY J. WECHSLER

Direct: (505) 986-2637

Email: jwechsler@montand.com

Reply To: Santa Fe Office

www.montand.com

U.S. MAIL AND EMAIL

April 13, 2012

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

**Re: *Montana v. Wyoming & North Dakota,*
No. 137, Orig., U.S. Supreme Court
Montana's Expedited Motion to Extend the Case Management
Deadlines**

Dear Special Master Thompson:

At the conclusion of the April 12, 2012 telephonic hearing on Montana's Expedited Motion to Extend the Case Management Deadlines ("Expedited Motion"), you afforded the parties the opportunity to submit a letter raising matters that were not fully addressed during the hearing. The purpose of this letter is to raise two issues that were not fully considered during the hearing or briefed in Montana's Expedited Motion, and to offer a revised proposed schedule that is consistent with your observations during the hearing. Thank you for the opportunity to provide this additional information.

First, the hearing on Montana's Expedited Motion focused largely on the discovery needs of Wyoming, and the impacts of the proposed extension on the discovery that Wyoming believes is necessary for its defense. According to Wyoming,

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REPLY TO:

325 Paseo de Peralta
Santa Fe, New Mexico 87501
Telephone (505) 982-3873 • Fax (505) 982-4289

Post Office Box 2307
Santa Fe, New Mexico 87504-2307

6301 Indian School Road NE, Suite 400
Albuquerque, New Mexico 87110
Telephone (505) 884-4200 • Fax (505) 888-8929

Post Office Box 36210
Albuquerque, New Mexico 87176-6210

the time available for discovery is so limited that it cannot abide a two month stay of discovery to accommodate Montana.

Lost in the lengthy discussion of Wyoming's discovery, however, was the impact of the schedule on the affirmative discovery needs of the State of Montana. Like Wyoming, Montana will need to take a large number of depositions, obtain additional documents, and propound additional written discovery. As explained in the Expedited Motion, Montana's legal and technical teams will have limited time and resources to devote to discovery in this case until mid-September. In evaluating the appropriate length of an extension of the case management deadlines, it is therefore relevant to consider the scope of discovery that Montana must undertake.

Wyoming has disclosed 162 individuals who are likely to have discoverable information, including information about reservoir storage, communications between the States regarding the Compact, streamflow at the stateline, the regulation of water on the Tongue and Powder Rivers, water use in Wyoming, and technical issues. See Wyoming's Initial Disclosures, Attachment A. Of those included on the list, Montana is actively considering taking the deposition of 48 individuals, including current and former Wyoming State Engineers, current and former Wyoming representatives to the Yellowstone River Compact Commission, irrigators, officials of the Wyoming Interstate Stream Division, and current and former water commissioners responsible for regulating the Tongue and Powder Rivers. Similarly, not including government entities, Wyoming has disclosed 55 miscellaneous entities and 126 CBM-related entities that are likely to have discoverable information related to disputed facts. See *id.* at Attachments C and D. Montana will need to seek discovery from some of these entities. Even if Montana only deposes and seeks information from a limited number of those individuals and sources, it is still a daunting and time-consuming task which will take over two months to complete (30+ depositions and written discovery from 15+ entities). Discovery is made even more complicated by the sheer volume of documents involved. Montana has already produced over 14,500 pages of documents to Wyoming, and it is awaiting at least that many documents from Wyoming. These documents will need to be read, organized, and analyzed. Assuming that Montana's attorneys and experts are able to turn their attention to these discovery tasks in mid-September, Montana estimates that it will take until at least the beginning of December to complete all of these tasks.

A second relevant inquiry in evaluating the length of an extension is whether the schedule will allow the two expert witnesses involved in both cases to adequately complete their technical analysis and reports. Based on the April 12th hearing, Montana understands that you intend to accommodate Montana's request for an extension, but are inclined to extend the expert report deadlines by at most two months. Specifically, Montana understands that you are considering a deadline in December for expert reports.

Montana has discussed this potential deadline further with Mr. Book, and he has once again expressed serious reservations that meeting this deadline is possible.¹ When pressed, Montana's experts reluctantly agreed that they could complete expert reports by mid-January, but no earlier.

During the hearing, you indicated that you would consider a schedule that concluded in May to be acceptable. Based on that understanding, Montana proposes the following revised schedule:

June 15, 2012	Deadline for Wyoming's renewed Motion for Partial Summary Judgment (¶ IX.C)
July 13, 2012	Deadline for Montana's Response to Wyoming's renewed motion (¶ IX.C)
July 25, 2012	Deadline for Wyoming's Response in support of its renewed motion (¶ IX.C)
August 1, 2012	Argument on Wyoming's motion
January 18, 2013	Disclosure of Montana's expert reports (¶ VII.A)
February 15, 2013	Disclosure of Wyoming's expert reports (¶ VII.B)
March 8, 2013	Disclosure of Montana's rebuttal reports (¶ VII.C)
March 22, 2013	Last day for propounding written discovery (¶ VIII.C.1.f)
April 19, 2013	Last day for depositions (¶ VIII.C.2.I)
May 24, 2013	Final day for motions

For convenience, the following table illustrates the relative deadlines under Case Management Plan No. 1 ("CMP No. 1"), the original proposal presented by Montana in its Expedited Motion, and the revised proposed deadlines that are based on the April 12th hearing:

¹ To underscore the conflict between the two cases, Mr. Book was not able to provide a second declaration to this effect because he was attending a deposition in *Kansas v. Nebraska & Colorado* with Mr. Draper that lasted all day.

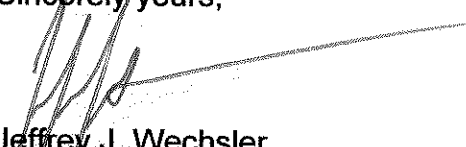
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Description of Deadline	Original Date in CMP No. 1	Date Initially Proposed in Motion	Revised Proposed Date
Deadline for Wyoming's renewed Motion for Partial Summary Judgment (§ IX.C)	June 15, 2012	October 15, 2012	June 15, 2012
Deadline for Montana's Response to Wyoming's renewed motion (§ IX.C)	July 13, 2012	November 15, 2012	July 13, 2012
Deadline for Wyoming's Response in support of its renewed motion (§ IX.C)	July 27, 2012	December 6, 2012	July 25, 2012
Argument on Wyoming's motion	Beginning of August, 2012	January, 2013	August 1, 2012
Disclosure of Montana's expert reports (§ VII.A)	October 19, 2012	February 15, 2013	January 18, 2013
Disclosure of Wyoming's expert reports (§ VII.B)	November 16, 2012	March 15, 2013	February 15, 2013
Disclosure of Montana's rebuttal reports (§ VII.C)	December 7, 2012	April 8, 2013	March 8, 2013
Last day for propounding written discovery (§ VIII.C.1.f)	December 21, 2012	April 30, 2013	March 22, 2013
Last day for depositions (§ VIII.C.2.I)	January 25, 2013	May 30, 2013	April 19, 2013
Final day for motions (§ IX.A)	March 15, 2013	June 21, 2013	May 24, 2013

While the proposed revised schedule would present serious challenges, Montana considers it to be workable. Under this proposal, the entire schedule would only be extended by 2 ½ months.

Thank you very much for your consideration.

Sincerely yours,


Jeffrey J. Wechsler
Special Assistant Attorney General
State of Montana

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cc: (Email)
Peter K. Michael, Esq.
Jennifer L. Verleger, Esq.
William M. Jay, Esq.
James J. DuBois, Esq.
Jeanne S. Whiteing, Esq.
James Joseph Dragna, Esq.
Michael Wigmore, Esq.