

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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Before the Honorable Barton H. Thompson, Jr.  
Special Master

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**MONTANA'S STATUS REPORT NO. 11**

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December 7, 2012

COMES NOW the State of Montana, pursuant to Section VII.D of Case Management Plan No. 1 (December 20, 2011) (“CMP No. 1”), and submits this Status Report No. 11.

1. On November 2, 2012, the States of Montana and Wyoming submitted their previous Status Reports.

2. On November 2, 2012, Montana served its Responses to Wyoming’s Second Set of Interrogatories.

3. On November 2, 2012, Montana notified Wyoming of its concerns regarding Wyoming’s Answers to Montana’s First Set of Interrogatories, First Set of Requests for Production, and First Set of Requests for Admission. The concerns were expressed in an 8-page letter and 6 page exhibit.

4. Montana is continuing its discovery from Wyoming and other efforts to meet the January 4, 2012 expert disclosure deadline.

5. Wyoming is continuing its discovery from Montana.

6. The States have exchanged correspondence regarding the sufficiency of discovery responses. Most of the documents associated with this correspondence were submitted to the Special Master in connection with the status conference held on November 30, 2012. One exception was Montana’s First Supplemental Response to Wyoming’s Second Set of Interrogatories, which is attached hereto. No remaining concern regarding the sufficiency of Montana’s Responses has been indicated by Wyoming.

7. On November 13-15, 2012, Montana took the depositions of Edith Lameres, Bill Shackelford, Pat Boyd, John Wantulok and Tom Manolis in Sheridan, Wyoming. The deposition of Deborah Reed was cancelled at Wyoming's request.

8. On November 21, 2012, Wyoming provided Wyoming's First Supplemental Answers to Montana's First Set of Interrogatories in response to Montana's letter of November 2, 2012.

9. On November 26-30, 2012, Montana took the depositions of Lisa Lindemann, John Barnes, Jeff Fassett, Pat Tyrrell, Richard Stockdale, Allan Cunningham and Sue Lowry in Cheyenne, Wyoming.

10. On November 29, 2012, Montana submitted to the Special Master continuing concerns regarding Wyoming's responses to Montana's discovery requests, including Montana's Proposed Motion to Compel and Brief in Support.

11. On November 30, 2012, the Special Master held a telephonic status conference during which the States' respective concerns regarding discovery were discussed. During the discussion of Wyoming's refusal to produce GIS map files, Wyoming agreed to provide the GIS files, resolving that issue. Montana offered to pursue further discussions with Wyoming on Montana's remaining concerns regarding the sufficiency of Wyoming's answers to Montana's interrogatories.

12. Montana is coordinating with Wyoming to schedule additional depositions of a Wyoming official and Wyoming water users during the week of December 10-14, 2012, in Sheridan, Wyoming.

13. Montana expects to be pursuing remaining discovery concerns with Wyoming.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that a copy of Montana's Status Report No. 11 was served by electronic mail on December 7, 2012, and by placing the same in the U.S. mail on December 7, 2012, on the following:

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I further certify that all parties required to be served have been served.

  
John B. Draper

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STATE OF MONTANA

v.

STATE OF WYOMING

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STATE OF NORTH DAKOTA

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BEFORE THE HONORABLE BARTON H. THOMPSON, JR.  
SPECIAL MASTER

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MONTANA'S FIRST SUPPLEMENTAL RESPONSE TO  
WYOMING'S SECOND SET OF INTERROGATORIES

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November 21, 2012

Plaintiff the State of Montana ("Montana") hereby provides its first supplemental response to Wyoming's Second Set of Interrogatories to Montana (Sept. 18, 2012) ("First Supplemental Response"). This supplemental response is being made subject to Montana's Objections to Wyoming's Second Set of Interrogatories to Montana and Wyoming's First Request for Admissions (Oct. 18, 2012) ("Montana's Objections"). In addition, Montana incorporates its answers and objections set forth in its Responses to Wyoming's Second Set of Interrogatories (Nov. 2, 2012).

Montana is submitting this First Supplemental Response in the spirit of cooperation, and denies that its original responses were insufficient in any way.

## **II. WHO DO YOU CLAIM WAS DAMAGED?**

**INTERROGATORY NO. 2-2:** For each year in which Montana claims it made a call on Wyoming, please identify the Montana water users with pre-1950 water rights who you claim were not receiving water that they were entitled to under the Compact.

**SUPPLEMENTAL ANSWER:** Montana has previously provided Wyoming with a complete list of water rights in the Tongue and Powder Basins in Montana (up-to-date information on the Tongue River Adjudication can be found at [http://dnrc.mt.gov/wrd/water\\_rts/adjudication/42C\\_tongue/default.asp](http://dnrc.mt.gov/wrd/water_rts/adjudication/42C_tongue/default.asp), and [http://dnrc.mt.gov/wrd/water\\_rts/adjudication/42B\\_tongue/default.asp](http://dnrc.mt.gov/wrd/water_rts/adjudication/42B_tongue/default.asp)). Based upon current information, in 1987, 1988, 1989, 2000, 2001, 2002, 2003, 2004, and 2006 none of the water rights with pre-1950 priority dates received a full supply. For example, as was previously disclosed to Wyoming in the Affidavit of Art Hayes, Jr., water users that did not receive water included, but were not limited to, water users



under the 1914 Miles City Decree and the T&Y Irrigation District. In addition, at least in 1988, 1989, 2001, 2002, 2004, and 2006, the Tongue River Reservoir did not reach full contents.

Relevant documents include the documents previously provided as MT10518, MT12981-MT12982, MT12984, MT12988-MT12989, MT13285, MT13286-MT13287, MT13316, WY37887, WY37889, WY37891, WY37881, WY37737, and the Declaration of Rich Moy and accompanying documents (attached as Appendix A to Montana's Brief in Opposition to Wyoming's Partial Motion for Summary Judgment). Additional relevant information concerning streamflow can be found at [http://waterdata.usgs.gov/nwis/dv/?site\\_no=06306300&agency\\_cd=USGS&referred\\_module=sw](http://waterdata.usgs.gov/nwis/dv/?site_no=06306300&agency_cd=USGS&referred_module=sw), and [http://waterdata.usgs.gov/nwis/dv/?site\\_no=06324500&agency\\_cd=USGS&referred\\_module=sw](http://waterdata.usgs.gov/nwis/dv/?site_no=06324500&agency_cd=USGS&referred_module=sw). Relevant deposition testimony can be found in the transcripts of the depositions of Keith Kerbel, Jack Stults, Rich Moy, and Marty Van Cleave.

Finally, discovery is on-going, Montana and its experts continue to investigate "Montana water users with pre-1950 water rights who . . . were not receiving water." This answer may be supplemented in accordance with the CMP or as new information becomes available.

DATED this 21st day of November, 2012.

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**CERTIFICATE OF SERVICE**

As counsel for Montana, I certify that a copy of Montana's First Supplemental Response to Wyoming's Second Set of Interrogatories was served by electronic mail on November 21, 2012, and by placing the same in the U.S. Mail on November 23, 2012 addressed to the following:

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I further certify that all parties required to be served have been served.

  
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