

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. 13**

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February 1, 2013

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. 13.

1. On January 4, 2013, the State of Montana submitted its previous Status Report No. 12.

2. On January 4, 2013, Montana also disclosed the following experts and reports:

- a. Dale E. Book, P.E., *Evaluation of Yellowstone River Compact, Analysis of Article V(A), Tongue River*
- b. Steven P. Larson, *Groundwater Pumping Impacts on the Tongue River in Montana*
- c. Dr. Richard G. Allen, P.E., *Calculation of Evapotranspiration in the Tongue River Basin of Wyoming, 2004 and 2006*
- d. Kevin B. Smith, P.E., *Tongue River Reservoir, History and Operations*
- e. Charles E. Dalby, *Tongue River Basin, Surface Water Hydrology*

3. By letter dated January 8, 2013, Wyoming requested materials related to Montana's expert reports.

4. On January 12, 2013, Montana filed a Notice of Posting of Expert Backup and Designation of Confidential Documents. Expert Backup materials were made available to the parties electronically. In its January 8, 2012 letter, Wyoming also requested additional materials beyond those that are required to be provided as part of an expert designation. To the extent that those materials exist, Montana agreed to provide them separately.

5. Also on January 12, 2013, Montana filed an Expedited Motion for Protective Order relative to 75 subpoenas for the production of documents served on

Montana water users between December 26, 2012, and January 11, 2013. Montana maintained that the subpoenas did not comply with Case Management Plan No. 1.

6. On January 14, 2013, the Special Master held a status conference and heard argument from Montana and Wyoming regarding Montana's Expedited Motion for Protective Order.

7. Following the status conference on January 14, 2013, Montana received from Wyoming a copy of the cover letter that accompanied the subpoenas for documents.

8. On January 15, 2013, the Special Master issued a Memorandum Opinion on Montana's Expedited Motion for Protective Order.

9. During the month of January, Wyoming has taken the following depositions:

- a. Jim Robinson, planner with the Water Management Bureau of the Water Resources Division, Montana Department of Natural Resources and Conservation (MDNRC);
- b. Tim Davis, Administrator of the Water Resources Division, MDNRC;
- c. Russell Levens, hydrologist with the Water Management Bureau of the Water Resources Division, MDNRC;
- d. Mary Sexton, former Director of the MDNRC;
- e. Kevin Smith, Bureau Chief of the State Water Projects Bureau, Water Resources Division, MDNRC;
- f. John Tubbs, current Director of the MDNRC and former Administrator of the Water Resources Division, MDNRC;
- g. Chuck Dalby, hydrologist with the Water Management Bureau, Water Resources Division, MDNRC;
- h. Art Hayes, Jr., President of the Tongue River Water Users Association.

10. On January 16, 2013, the parties submitted a Joint Letter to the Special Master proposing an extension of the case management deadlines. The Special Master has not yet ruled on this proposal.

11. On January 22, 2013, Montana provided Wyoming with copies of letters it sent water users on the Tongue River who had been issued subpoenas for documents by Wyoming.

12. Over the course of the month, the Montana Attorney General's office has received numerous inquiries from water users who were served with subpoenas for the production of documents issued by Wyoming. Pursuant to the Special Master's ruling of January 15, 2013, Montana has instructed these subpoena recipients to contact James Kaste with the Wyoming Attorney General's office if they need more time to respond to the subpoenas.

13. Wyoming has provided Montana with Bates-Stamped copies of documents received from Montana water users in response to the subpoenas issued by Wyoming between December 26, 2012, and January 11, 2013. Mr. Hayes provided such documents to Wyoming at his deposition, both of his own and of certain Montana Water Commissioners.

14. Montana has arranged for Wyoming to take the deposition testimony of three water commissioners and two water users in Miles City, Montana, during the first week of February. Montana has also arranged for Wyoming to take the deposition testimony of two of its experts, Dale Book and Steve Larson, in Denver, Colorado, the second week of February.

15. Wyoming has indicated its intention to take the deposition testimony of every water user on the Tongue River (approximately 75 individuals and entities). Montana is considering the possibility of requesting a protective order from the Special Master.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that a copy of Montana's Status Report No. 13 was served electronically, and by placing the same in the U.S. mail on February 1, 2013, to the following:

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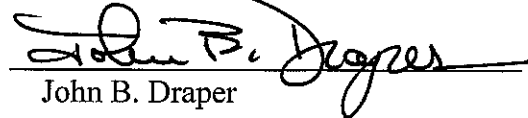
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I further certify that all parties required to be served have been served.

  
John B. Draper