

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. 15**

TIMOTHY C. FOX  
Attorney General of Montana  
CORY J. SWANSON  
Assistant Attorney General  
ANNE YATES  
BRIAN BRAMBLETT  
Special Assistant Attorney General  
215 North Sanders  
Helena, Montana 59620-1401

JOHN B. DRAPER\*  
JEFFREY J. WECHSLER  
Special Assistant Attorneys General  
MONTGOMERY & ANDREWS, P.A.  
Post Office Box 2307  
Santa Fe, New Mexico 87504-2307  
(505) 982-3873  
*\*Counsel of Record*

April 5, 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. 15.

1. On March 1, 2013, the State of Montana submitted its previous Status Report No. 14.

2. During the month of March, Wyoming took the depositions of 31 Montana Tongue River water users in Miles City, Montana and Sheridan, Wyoming.

3. On March 14, 2013, Montana served its Responses to Wyoming’s Third Set of Interrogatories to Montana. On March 29, 2013, Montana served its Responses to Wyoming’s Second Requests for Production of Documents to Montana.

4. On April 2, 2013, Wyoming filed its Expert Designation. Wyoming’s Expert Designation identifies 16 expert witnesses. Pursuant to CMP No. 1, §§ VII.B.2 and VII.C.3(b), and Federal Rule of Civil Procedure 26(a)(2), for each expert witness that was employed to provide expert testimony, Wyoming was required to provide a written expert report, backup data and “a complete statement of all opinions the witness will express.” Fed. R. Civ. Pro. 26(a)(2)(B)(i). Wyoming served expert reports, data and “complete statement[s]” for 3 of the 16 designated experts.

For other expert witnesses, Wyoming was required to disclose “a summary of the facts and opinions to which [each] witness is expected to testify.” Fed. R. Civ. Pro. 26(a)(2)(C)(ii). Wyoming’s Expert Designation fails to provide the substance of any opinion, or the specific facts that its 13 Rule 26(a)(2)(C) experts are expected to testify to as required by the Federal Rules of Civil Procedure. Accordingly, Montana anticipates filing an objection to Wyoming’s Expert Designation as permitted by CMP No. 1.

5. Unless stricken or otherwise removed from Wyoming's Expert Designation, Montana will need to take the deposition of each of the 16 expert witnesses identified by Wyoming, including individuals that were previously deposed on factual issues. *See, e.g.*, CMP No. 1, § VII.C.2(j). Wyoming has offered three days in April for the depositions of its three Rule 26(a)(2)(B) experts. Montana is in the process of determining whether those days will work for its counsel and experts. Montana will also be inquiring about available deposition dates for Wyoming's 13 Rule 26(a)(2)(C) experts.

6. In addition, Montana anticipates that it will need to take a number of depositions of Wyoming water users with usage related to Wyoming's three expert reports. Montana will contact Wyoming regarding these additional depositions as soon as possible.

7. Montana anticipates that it will be propounding a new set of written discovery in the month of April.

Respectfully submitted,

TIMOTHY C. FOX  
Attorney General of Montana  
CORY J. SWANSON  
Assistant Attorney General  
ANNE YATES  
BRIAN BRAMBLETT  
Special Assistant Attorneys General  
Helena, Montana 59620-1401

---

JOHN B. DRAPER\*  
MURRAY J. WECHSLER  
Special Assistant Attorneys General  
MONTGOMERY & ANDREWS, P.A.  
Post Office Box 2307  
Santa Fe, New Mexico 87504-2307  
(505) 982-3873  
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**CERTIFICATE OF SERVICE**

I certify that a copy of Montana's Status Report No. 15 was served electronically, and by placing the same in the U.S. mail on April 5, 2013, to the following:

Peter K. Michael  
Chief Deputy Attorney General  
Jay Jerde  
Christopher M. Brown  
David Willms  
Matthias Sayer  
Andrew Kuhlmann  
James C. Kaste  
The State of Wyoming  
123 Capitol Building  
Cheyenne, WY 82002

James Joseph Dragna  
Bingham, McCutchen LLP  
355 South Grand Avenue Suite 4400  
Los Angeles, CA 90071  
[jim.dragna@bingham.com](mailto:jim.dragna@bingham.com)

Michael Wigmore  
Bingham McCutchen LLP  
2020 K Street NW  
Washington, DC 20006-1806  
[michael.wigmore@bingham.com](mailto:michael.wigmore@bingham.com)

[peter.michael@wyo.gov](mailto:peter.michael@wyo.gov)  
[jjerde@wyo.gov](mailto:jjerde@wyo.gov)  
[chris.brown@wyo.gov](mailto:chris.brown@wyo.gov)  
[matthias.sayer.wyo.gov](mailto:matthias.sayer.wyo.gov)  
[david.willms@wyo.gov](mailto:david.willms@wyo.gov)  
[andrew.kuhlmann@wyo.gov](mailto:andrew.kuhlmann@wyo.gov)  
[james.kaste@wyo.gov](mailto:james.kaste@wyo.gov)

Jeanne S. Whiteing  
Attorney at Law  
1628 5<sup>th</sup> Street  
Boulder, CO 80302  
[jwhiteing@whiteinglaw.com](mailto:jwhiteing@whiteinglaw.com)

Solicitor General of the United States  
U. S. Department of Justice  
950 Pennsylvania Avenue, N.W., Room 5614  
Washington, D.C. 20530-0001  
[SupremeCtBriefs@usdoj.gov](mailto:SupremeCtBriefs@usdoj.gov)

Barton H. Thompson, Jr., Special Master  
Susan Carter, Assistant  
Jerry Yang and Akiko Yamazaki  
Environment & Energy Building, MC-4205  
473 Via Ortega  
Stanford, CA 94305-4205  
(Original and 3 copies)  
[susan.carter@stanford.edu](mailto:susan.carter@stanford.edu)

Jennifer L. Verleger  
Assistant Attorney General  
North Dakota Attorney General's  
Office  
500 North 9th Street  
Bismarck, ND 58501-4509  
[jverleger@nd.gov](mailto:jverleger@nd.gov)

James DuBois  
United States Department of Justice  
Environmental and Natural Resources  
Division of Natural Resources Section  
999 18<sup>th</sup> St. #370 South Terrace  
Denver, CO 80202  
[james.dubois@usdoj.gov](mailto:james.dubois@usdoj.gov)

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

  
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Jeffrey J. Wechsler