

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

CASE MANAGEMENT ORDER NO. 8

August 19, 2011

CASE MANAGEMENT ORDER NO. 8

For the purposes of the proceedings before the Special Master, IT IS HEREBY ORDERED THAT:

1. Cancellation of September 29, 2011 Status Conference

The telephonic status conference previously set for September 29, 2011 is cancelled.

2. September 30, 2011 Hearing

The Special Master will hold a hearing at 8 a.m. on Friday, September 30, 2011, in the Byron White Courthouse in Denver, Colorado on the following two issues:

(A) Can the State of Montana claim damages or other relief for prior years if it did not notify the State of Wyoming that it was not receiving sufficient water from the Yellowstone River system to meet the needs of its pre-1950 appropriators? This motion will deal only with what notice Montana needed to provide Wyoming in prior years in order to claim damages or other relief under the Yellowstone River Compact (the "Compact") in this proceeding and not with what procedure might or should be established by the Supreme Court in the future to protect Montana's rights under the Compact.

(B) Can the State of Montana raise claims under Article V(B) of the Yellowstone River Compact in this action other than in support of or as a corollary to claims on behalf of pre-1950 appropriators under Article V(A) of the Compact?

Approximately one and one-half hours will be allotted to each issue. The amount of time that each party and amicus will have to argue each issue will be announced the day prior to the hearing and will depend on the number of amici, if any, requesting permission to participate in the argument.

2. Briefing Schedule for Issue 2(A)

On or before Monday, September 12, 2011, the State of Wyoming shall file a Motion for Partial Summary Judgment to preclude the State of Montana from claiming damages or other relief in any years in which Montana did not notify the State of Wyoming that its pre-1950 appropriators were not receiving adequate water. Notwithstanding the statement of the issue in Paragraph 2(A) of this Order, the State of Wyoming shall be free to frame the issue as it deems appropriate. In its motion, Wyoming shall identify those years in which it contends Montana cannot claim damages or other relief for failure to notify Wyoming of inadequate water. Along with its motion, the State of Wyoming shall file supporting factual affidavits and a brief in support of its motion. The affidavits should set out the nature of any notice(s) that Wyoming received from Montana regarding the adequacy of water crossing the border between Wyoming

and Montana, or Montana's ability to meet the needs of its pre-1950 appropriators, and the years in which Wyoming received such notice(s).

The State of Montana shall file its opposition brief, along with any supporting factual affidavits, on or before Friday, September 23, 2011. If Montana disagrees with Wyoming regarding which years Montana provided notice(s) to Wyoming regarding the adequacy of water flowing across the border or the ability to meet the needs of pre-1950 appropriators, Montana's affidavits should set out the nature of the notice(s) that it provided Wyoming and the years in which it provided the notice(s). The State of North Dakota, if it wishes to file a brief in support of or opposition to Wyoming's motion, along with any amicus that wishes to file a brief in support of or opposition to the motion, shall also file its briefs on or before September 23, 2011.

The State of Wyoming may file a reply brief on or before Wednesday, September 28, 2011.

3. Briefing Schedule for Issue 2(B)

On or before Monday, September 12, 2011, the State of Montana shall file a statement identifying any claims that it may wish to make under Article V(B) of the Compact, along with a brief in support of its right to raise such claims in this proceeding. Montana shall be as specific as possible in identifying such claims.

On or before Friday, September 23, 2011, the State of Wyoming shall file its opposition brief. The State of North Dakota, if it wishes to file a brief in support of or opposition to Montana's right to bring the claims that it identifies under Article V(B) of the Compact, along with any amicus that wishes to file a brief in support or opposition, also shall file its brief on or before September 23, 2011.

The State of Montana may file a reply brief on or before Wednesday, September 28, 2011.

4. Oral Argument by North Dakota and Amici Curiae

On or before Wednesday, September 28, 2011, the State of North Dakota will notify the Special Master if it wishes to participate in the oral argument on either of the two issues set out in Paragraph 12. On or before the same time, any amicus curiae wishing to participate in the oral argument shall notify the Special Master. If notification is not received by this time, the Special Master will assume that North Dakota and/or an amicus does not wish to participate in the oral argument.

5. Status Conference

At the conclusion of the hearings set out in Paragraph 2 on September 30, 2011, the Special Master will hold a status conference of the parties. The principal focus of the

status conference will be the discussion and adoption of the draft Case Management Plan, which the Special Master will circulate under separate cover.

6. Format of Briefs

Briefs on the issues to be heard at the September 30 hearing shall be double-spaced and comply with Case Management Order No. 1. No initial or opposition brief shall exceed 30 pages, exclusive of the table of contents and authorities and of any affidavits filed in support of the brief. No reply or amicus brief shall exceed 15 pages.

9. Requests for Modification or Supplementation

Any requests for modification or supplementation of this Case Management Order should be submitted to the Special Master on or before Friday, August 26, 2011.

Date: August 19, 2011



Barton H. Thompson, Jr.
Special Master

Woods Institute
Jerry Yang & Akiko Yamazaki Environment
& Energy Building – MC 4205
473 Via Ortega
Stanford, California 94305