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

BEFORE THE HONORABLE BARTON H. THOMPSON JR. SPECIAL MASTER

REQUEST OF ANADARKO PETROLEUM CORPORATION FOR MODIFICATION OF CASE MANAGEMENT ORDER AND FOR DIVIDED ARGUMENT

Dave Owens Associate general counsel Natalie Eades Anadarko Petroleum Corporation P.O. Box 1330 Houston, TX 77251 JAMES J. DRAGNA*
*Counsel of Record
BINGHAM MCCUTCHEN LLP
355 South Grand Ave., Ste. 4400
Los Angeles, CA 90071
(213) 680-6436

MICHAEL B. WIGMORE DAVID B. SALMONS ROBERT V. ZENER BINGHAM MCCUTCHEN LLP 2020 K Street, NW Washington, DC 20006 (202)373-6000

Counsel for Amicus Anadarko Petroleum Corporation

Amicus Anadarko Petroleum Corporation ("Anadarko") submits this request for modification of the Special Master's Case Management Order No. 1 and for divided argument to permit Anadarko to participate in the oral argument scheduled for February 3, 2009, on the State of Wyoming's motion to dismiss. Wyoming supports this request, and the Solicitor General has indicated that it takes no position on it. The State of Montana has indicated that it opposes the request, as it opposed Anadarko's participation as an amicus. In support of this request, Anadarko states as follows:

- 1. The Special Master's Case Management Order No. 1 scheduled a hearing on Wyoming's motion to dismiss on Tuesday, February 3, 2009, and provided that Wyoming and Montana will each have 30 minutes for oral argument. The Order further provided that the United States as amicus curiae will have 20 minutes in addition to the time allotted to Montana to argue in opposition to Wyoming's motion. Thus, under the current Order, the Special Master has allotted 30 minutes for argument in support of the motion to dismiss and 50 minutes for arguments in opposition to the motion.
- 2. In a separate filing, Wyoming has requested that the time allotted to both parties be increased in light of the complexity of the issues and other factors. Here, Anadarko, with Wyoming's support, asks that Anadarko, which filed an amicus brief in support of Wyoming's motion to dismiss, be allowed to participate in the hearing and be allotted 20 minutes of argument time—the same amount of time granted to amicus United States to oppose the motion.

3. Anadarko has a direct interest in this controversy and in the proper resolution of the motion to dismiss. The Compact is more than just a contract among the States, it is federal law, and its interpretation could have a substantial impact on Anadarko's interests.

Anadarko is an independent oil and gas exploration and production company with extensive oil and gas leaseholds in the areas surrounding the Powder River in Wyoming. In order to develop these leaseholds, Anadarko engages in coalbed natural gas production. Among other assertions, the Complaint alleges that Wyoming has violated Montana's rights under the Compact by "allow[ing] the pumping of groundwater associated with coalbed methane production in the Tongue and Powder River Basins " Compl. ¶11. If Montana were to prevail, Anadarko's ability to produce natural gas from coal beds in the area of the Powder River could be adversely affected.

Moreover, a principal issue in the motion to dismiss is whether the Compact covers groundwater. Anadarko addressed this issue extensively in its amicus brief. It also explained the unique nature of the groundwater at issue in coalbed natural gas production, and why such groundwater should not be considered covered by the Compact even if the Compact is read to cover some groundwater. Anadarko is in a unique position to address this aspect of the complaint and motion to dismiss, and its participation in the hearing will likely aid the Special Master's consideration of the issues.

WHEREFORE, Anadarko respectfully requests that the Special Master modify Case Management Order No. 1 to allot 20 minutes of argument time to counsel for Anadarko in support of Wyoming's motion to dismiss.

Dated this 3rd day of December, 2008.

Respectfully submitted,

Dave Owens Associate general counsel Natalie Eades Anadarko Petroleum Corporation P.O. Box 1330 Houston, TX 77251 JAMES J. DRAGNA*
*Counsel of Record
BINGHAM MCCUTCHEN LLP
355 South Grand Ave., Ste. 4400
Los Angeles, CA 90071
(213) 680-6436

MICHAEL B. WIGMORE
DAVID B. SALMONS
ROBERT V. ZENER
BINGHAM MCCUTCHEN LLP
2020 K Street, NW
Washington, DC 20006
(202)373-6000

Counsel for Amicus Anadarko Petroleum Corporation

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of Request of Anadarko Petroleum Corporation for Modification of Case Management Order and for Divided Argument was served by first class mail, postage paid and by electronic mail, as noted, this 3rd day of December, 2008, to the following:

Barton H. Thompson Jr.
Susan Carter, Assistant
Jerry Yang and Akiko Yamazaki
Environment & Energy Building, MC-4205
473 via Ortega
Stanford, CA 94305-4205
(650) 736-8668
susan.cater@stanford.edu

Governor Brian D. Schweitzer Office of the Governor Montana State Capitol Bldg. P.O. Box 200801 Helena MT 59620-0801 (406) 444-3111

Attorney General Mike McGrath
Sarah A. Bond (counsel of record)
Jennifer Anders
Montana Attorney General's Office
215 North Sanders, P.O. Box 201401
Helena, MT 59620-1401
(406) 444-5894
sbond@mt.gov
janders@mt.gov

John B. Draper
Montgomery & Andrews
325 Paseo de Peralta
Santa Fe, NM 87501
(505) 986-2525
jdraper@montand.com
Counsel for Montana

Governor John Hoeven Office of Governor State of North Dakota 600 East Boulevard Avenue Bismarck, North Dakota 58505-0001 (701) 328-2200

Attorney General Wayne Stenehjem Office of Attorney General State Capitol 600 E. Boulevard Ave., Dept. 125 Bismarck, ND 58505 (701) 328-2210

Todd Adam Sattler (counsel of record)
North Dakota Attorney General's Office
500 North Ninth Street
Bismarck, ND 58501
(701) 328-3640
tsattler@nd.gov
Counsel for North Dakota

Governor David Freudenthal Office of the Governor State Capitol 200 West 24th Street Cheyenne, WY 82002-0010 (307) 777-7434 Attorney General Bruce A. Salzburg
Peter Michael (counsel of record)
Jay Jerde
David J. Willms
Wyoming Attorney General's Office
123 Capitol Building
Cheyenne, WY 82002
(307) 777-6196
pmicha@state.wy.us
Counsel for Wyoming

James Dubois
U.S. Dept. of Justice
Environment and Natural Resources
Division Natural Resources Section
1961 Stout Street, 8th Floor
Denver, CO 80294
(303) 844-1375
james.dubois@usdoj.gov

William M. Jay Solicitor General United States Department of Justice 950 Pennsylvania Avenue, N.W. Washington, DC 20530-0001 (202) 514-1375 william.m.jay@usdoj.gov Counsel for the United States

Jeanne S. Whiteing
Whiteing & Smith
1136 Pearl Street, Suite 203
Boulder, CO 80302
jwhiteing@whiteingsmith.com
Counsel for N. Cheyenne

Sandra Franço

A/72770808.2