

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

STATE OF WYOMING'S REQUEST FOR
MODIFICATION OF CASE MANAGEMENT ORDER

Defendant State of Wyoming submits this request for modification of the Special Master's Case Management Order No. 1 as follows:

1. Paragraph 7 of Case Management Order No. 1 provides that the parties may request a modification of the order on or before December 3, 2008.

2. Paragraph 4 of Case Management Order No. 1 provides that the States of Wyoming and Montana will each be allowed 30 minutes for oral argument of Wyoming's motion to dismiss. The order also provides 20 minutes for argument by the United States, which joins Montana in opposing Wyoming's motion. As the order now stands, the

movant, Wyoming, is given significantly less time to argue the motion than the 50 minutes provided to the parties opposing the motion.

3. Since this is an original action, the Special Master may establish schedules, including time allotments for oral argument, at his discretion, as noted in the paragraph 1 of Case Management Order No. 1.

4. Wyoming's Motion to Dismiss Bill of Complaint addresses five major issues that Montana asserts in its Bill of Complaint: (1) Montana's implicit allegations that the Yellowstone River Compact ("YRC") contains depletion, interstate prior appropriation and daily divertible flow features; (2) Wyoming's operation of reservoirs; (3) Wyoming's irrigation of new acreage after 1950; (4) the conversion of irrigation of some Wyoming acreage to sprinkler systems; and (5) whether the YRC was intended to cover the use of groundwater. If Wyoming and Montana were to divide the 30 minute allotments for oral argument equally among these five issues, they would each only have six minutes of discussion on each issue, including answers to the Special Master's questions.

5. The parties, *amici*, and the Special Master will expend considerable time and expense to travel to Denver for the oral arguments. As a dispositive motion, Wyoming's Motion to Dismiss Bill of Complaint has important ramifications for the litigation of this action. It could eliminate the case entirely, or eliminate some of the issues. Wyoming would not have filed the motion if it did not believe it had merit. Moreover, this is the first substantive motion for the Special Master's consideration, so there may well be preliminary questions on background issues that will require discussion. For these

reasons, Wyoming requests that the Special Master either, (1) provide an hour to both Wyoming and Montana for their arguments, or (2) if Montana is not provided additional time, and Anadarko Petroleum is not allowed to participate in oral argument, provide Wyoming 50 minutes to balance the 50 minutes that the order currently provides to Montana and the United States collectively. The United States and Montana are aligned for purposes of Wyoming's motion. The United States' brief on the motion is entitled: "Brief for the United States as Amicus Curiae in Opposition to the Motion to Dismiss." Anadarko Petroleum has informed Wyoming that it intends to seek some oral argument time. Since, in contrast to the United States, Anadarko supports Wyoming's positions on the motion, Wyoming suggests that the Special Master take into consideration his disposition of Anadarko's request in balancing the times provided for the parties and *amici*.

6. Wyoming also suggests that the Special Master reserve the flexibility to allow some additional time to any of the parties or *amici* based on how the argument unfolds. In keeping with the manner in which dispositive motions are generally argued in federal courts, Wyoming also requests that it be permitted to reserve a portion of its hour for rebuttal of the arguments of Montana and the United States.

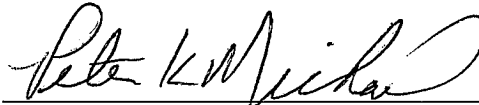
7. Wyoming has informed Montana of its intent to seek modification of the time allotted for oral argument under Case Management Order No. 1. Montana has informed Wyoming that it takes no position on Wyoming's first suggestion in paragraph 5 above that Wyoming and Montana each be given an hour instead of 30 minutes. Montana has

further informed Wyoming that it objects to Wyoming's alternative suggestion in paragraph 5 above that Wyoming be given 50 minutes if Montana is given 30 minutes and the United States is given 20 minutes.

WHEREFORE, the State of Wyoming respectfully requests that the Special Master modify Case Management Order No. 1 to allow counsel for Wyoming and Montana to argue for one hour each, or in the alternative, that Wyoming's 30 minutes be extended to 50 minutes. Also, Wyoming requests that it be permitted to reserve a portion of its time for rebuttal following the arguments of Montana and the United States.

Dated this 3rd day of December, 2008.

THE STATE OF WYOMING



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the State of Wyoming's Request for Modification of Case Management Order was served by electronic mail and placing the same in the United States mail, postage paid, this 3rd day of December, 2008, to the following:

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