

# Exhibit A

Montana's Responses to Wyoming's First Set of  
Interrogatories

No. 137, Original

◆  
In the  
SUPREME COURT OF THE UNITED STATES

◆  
STATE OF MONTANA

v.

STATE OF WYOMING

and

STATE OF NORTH DAKOTA

◆  
BEFORE THE HONORABLE BARTON H. THOMPSON, JR.  
SPECIAL MASTER

◆  
MONTANA'S RESPONSES TO  
WYOMING'S FIRST SET OF INTERROGATORIES

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March 19, 2012

Exhibit A

Plaintiff the State of Montana ("Montana") hereby responds to Defendant's First Interrogatories to Plaintiff (Feb. 3, 2012). Responses are being made subject to Montana's Objections to Defendant's First Interrogatories to Plaintiff and Defendant's First Request for Production to Plaintiff (March 5, 2012) ("Montana's Objections"), and subject to further objections as specified below.

### DEFINITIONS

The following definitions are to be used by Plaintiff in interpreting the Interrogatories set forth below:

"Plaintiff" or "You" shall mean and refer to the State of Montana, as well as its agents, assigns, attorneys, representatives, and any other person or entity acting or purporting to act on its behalf.

"Defendant" shall mean and refer to the State of Wyoming, as well as its agents, assigns, attorneys, representatives, and any other person or entity acting or purporting to act on its behalf.

The term "beneficial use" shall have the same definition as that term is given in the Yellowstone River Compact.

"Compact" shall mean the Yellowstone River Compact.

The conjunctions "and" and "or" as used herein shall be construed both conjunctively and disjunctively, and each shall include the other throughout these interrogatories.

The terms "regarding," "referring," or "relating" shall mean comprising, reflecting, containing, pertaining, indicating, showing, evidencing, describing, disclosing, mentioning, or bearing upon.

The term "divert" or "diversion" shall have the same definition as those terms are given in the Yellowstone River Compact, and shall also include the pumping or release of groundwater from an underground source to the surface.

The term "document" shall mean written, printed, typed, graphic or photographic matter of any kind or nature, however produced or reproduced, and all mechanical, magnetic, electromagnetic and electronic sound recordings or written transcripts thereof, however produced or reproduced, and including without limitation, all originals no matter how or by whom prepared, all drafts of these whether used or not, and all copies of the original. The term "document" shall likewise include "writings," "recordings," or "photographs" (original, drafts, and copies) as those terms are defined and used in Fed. R. Evid. 1001 and Fed. R. Civ. P.34.

The term "identify," when used with respect to a document, or the description or identification of a document, means that Plaintiff is to describe the nature and substance of the document with sufficient particularity to enable that document to be precisely identified. Plaintiff's document identification must include the date and document control number, if any, that the document bears, the name and address of the document's custodian(s), and the names and address of each person who has a copy of the document.

The term "identify" or "identity," when used with respect to communications, means to state whether the communication was in person, by telephone, or in writing; the names of the persons who were involved in, participated in, heard, authored, or received any part of the communication; the date and time of the communication; where the communication occurred; and the substance of what was communicated by each person who participated in the communication.

The terms "regulate" and "regulation" shall mean any act intentionally undertaken by an official, employee, or agent of a state, to regulate the quantity of water available to one or more holders of water rights or available to any other water users who lack water rights, including, but not limited to, physical acts, orders, administrative proceedings, or litigation initiated by the official, employee or agent.

The term "water year" shall mean the 365 day period running from October 1 of one calendar year through September 30 of the following calendar year, the date of such water year being the date of the calendar year commencing on January 1 within that water year.

### INSTRUCTIONS FOR INTERROGATORIES

In accordance with Case Management Order No. 1, Defendant hereby requests that you answer the following Interrogatories within forty-five (45) days of service. You are further advised that these Interrogatories are intended as continuing, requiring you to promptly respond by supplemental responses, setting forth any information within the scope of the Interrogatories that may be acquired by you, your agents, attorneys, or representatives, following your original answers.

1. Every word written in the singular shall be construed as plural, and every word written in the plural shall be construed as singular where necessary to facilitate complete answers.

2. Your answer to each interrogatory should include all knowledge within your custody, possession, or control, including, but not limited to, all documents in the possession of your advisors, associates, agents, or employees. Where facts are set forth in your answers or portions thereof are supplied upon information and belief, rather than actual knowledge, so state, and specifically describe or identify the source or sources of such information and belief. If any estimate can be reasonably made in place of unknown information, set forth your best estimate, clearly designated as such, and describe the basis upon which the estimate is made. If you cannot answer an interrogatory in full after exercising due diligence to secure the information requested, so state, and answer to the fullest extent possible, specifying your inability to answer the remainder and stating whatever information or knowledge you have concerning the answered portion.

3. To the extent that you object to any interrogatory, set forth the reasons for your objection. If you claim privilege as grounds for not answering any interrogatory in whole or in part, describe the factual basis for your claim of privilege, including relevant dates and persons involved in sufficient detail so as to permit the special master or Court to adjudicate the validity of the claim. If you object in part to any interrogatory, answer the remainder completely.

4. A request for a description of the "substance of" or "content of" a meeting, telephone conference, or other event including a call for regulation includes, but is not limited to, the following:

- a. the date of the event;
- b. the location of the event;
- c. the person(s) who attended or participated in such event;
- d. the purpose of the event; and
- e. the substance of the discussions held during the event.

## **RESPONSES TO INTERROGATORIES**

**INTERROGATORY 1:** Please state the full name, address, and job title of each individual who assisted in answering these interrogatories or who was the source of any information used in answering these interrogatories.

### **ANSWER TO INTERROGATORY 1:**

In addition to counsel, the following individuals assisted in answering these interrogatories: *insert additional names.*

Kevin Smith, Hydrologist, DNRC  
Chuck Dalby, Bureau Chief-Water Projects

All of the individuals listed above may be contacted through counsel.

**INTERROGATORY 2:** In paragraph 8 of Montana's Bill of Complaint, you allege that "Wyoming refuses to curtail consumption of the waters of the Tongue and Powder Rivers in excess of Wyoming's consumption of such waters existing as of January 1, 1950, whenever the amount of water necessary to satisfy Montana's uses of such waters existing as of that date is not passing the Wyoming-Montana Stateline." Please state all facts supporting this claim, including, but not limited to:

- a. The dates of any Wyoming violations of the Compact you are pursuing under paragraph 8;
- b. The Wyoming water users who caused violations of the Compact you are pursuing under paragraph 8;
- c. The Montana water users who suffered injury as a result of violations you are pursuing under paragraph 8;
- d. The nature of the injury suffered by Montana water users as a result of the violations you are pursuing under paragraph 8;
- e. How the violations you are pursuing under paragraph 8 caused injury to Montana water users;
- f. The extent to which violations you are pursuing under paragraph 8 are based on the quantity of water consumed by water uses in Wyoming;
- g. The points of diversion and places of use where Wyoming water users caused the violations you are pursuing under paragraph 8;
- h. The identity of all Montana water users injured by the violations, including the

legal description, GPS coordinates, or other identifying characteristics or mapping of the location of their point(s) of diversion;

i. The permit numbers of the water rights impaired by the violations;

j. The priority dates of the water rights impaired by the violations;

k. The legal purposes of the water rights impaired by the violations;

l. The quantity of water, in terms of flow and storage, whichever is applicable, that may be legally diverted or stored by the water rights impaired by the violations.

m. To the extent that Montana claims crop loss as an injurious effect, identify the number of acres affected for each user injured and the particular crops damaged or otherwise affected for each user injured.

n. The identity of documents relating to each specific instance of Wyoming's refusal to curtail consumption;

o. The identity of all documents relating to the factual basis of the violations you are pursuing under paragraph 8.

**ANSWER TO INTERROGATORY 2:** Montana objects to Interrogatory No. 2 on the grounds specified in Montana's Objections. In particular, Montana objects to Interrogatory No. 2 to the extent that it seeks expert analysis, work product and testimony prior to the date designated for disclosure of expert reports in Case Management Plan ("CMP") No. 1, and Montana further objects to Interrogatory No. 2 on the grounds that it seeks information that is more readily available to Wyoming than to Montana.

Subject to, and without waiving these objections, Montana states that as explained by the Special Master, "the Compact requires Wyoming to ensure that new diversions in Wyoming do not prevent sufficient water from reaching the border to enable Montana to satisfy its pre-1950 appropriations." First Interim Report at 15 (Feb. 10, 2010) ("FIR"). The State of Wyoming



violated the Compact because at least in 2004 and 2006, and possibly other years, Montana did not receive enough water to satisfy its pre-1950 uses at a time that Wyoming was allowing water to be used in Wyoming for post-1950 uses. Montana further states that information responsive to Interrogatory No. 2 is contained in records and documents that have already been produced or will be produced in response to the Defendant's First Request Production to Plaintiff ("First RFP"). Finally, Montana, is in the process of investigating its claims, which date back to January 1, 1950, and it will supplement this response in accordance with the CMP.

**INTERROGATORY 3:** In paragraph 9 of Montana's Bill of Complaint, you allege that "Since January 1, 1950, Wyoming has allowed construction and use of new and expanded water storage facilities in the Tongue and Powder River Basins, in violation of Montana's rights under Article V of the Compact." Please state all facts supporting this claim, including, but not limited to:

- a. The identity by name (and if not by name, by a legal description, GPS coordinates, or identifying characteristics or mapping) of the Wyoming reservoirs Montana alleges have been used or constructed in violation of Montana's rights under the Compact;
- b. A description of how Wyoming's use or construction of each reservoir you identified in the previous subsection violated Montana's rights;
- c. The dates of the violations;
- d. The identity of each person who has personal knowledge of the facts supporting this claim;
- e. The identity of all documents relating to the violations;
- f. The identity of all Montana water users injured by the violations, including the legal description, GPS coordinates, or other identifying characteristics or mapping of the location of their point(s) of diversion;

- g. How each Montana water user has been injured by the violations;
- h. The amount of water that each injured Montana water user would have received at his, her or its point of diversion but for Wyoming's alleged violations;
- i. The permit numbers of the water rights impaired by the violations;
- j. The priority dates of the water rights impaired by the violations;
- k. The legal purposes of the water rights impaired by the violations;
- l. The quantity of water, in terms of flow and storage, whichever is applicable, that may be legally diverted or stored by the water rights impaired by the violations;
- m. To the extent that Montana claims crop loss as an injurious effect, identify the number of acres affected for each user injured and the particular crops damaged or otherwise affected for each user injured.

**ANSWER TO INTERROGATORY 3:** Montana objects to Interrogatory No. 3 on the grounds specified in Montana's Objections. In particular, Montana objects to Interrogatory No. 3 to the extent that it seeks expert analysis, work product and testimony prior to the date designated for disclosure of expert reports in CMP No. 1, and Montana further objects to Interrogatory No. 3 on the grounds that it seeks information that is more readily available to Wyoming than to Montana.

Subject to, and without waiving these objections, Montana incorporates by reference its answer and objections to Interrogatory No. 2. Montana further states that a listing of the Wyoming reservoirs at issue in this case is contained in each of the most recent Yellowstone River Compact Commission Annual Reports, and that listing includes information about pre- and post-Compact storage in Wyoming. As explained by the Special Master, "Article V(A) of the Compact . . . proscribes diversions of water into storage facilities in Wyoming for new beneficial uses beginning after January 1, 1950 if those diversions prevent adequate water from reaching

pre-1950 appropriators in Montana.” FIR 42. The State of Wyoming violated the Compact because at least in 2004 and 2006, and possibly other years, Montana did not receive enough water to satisfy its pre-1950 uses at a time that Wyoming was allowing water to be stored in Wyoming for post-1950 uses.

Information responsive to Interrogatory No. 3 is contained in records and documents that have already been produced or will be produced in response to the First RFP. Finally, Montana is in the process of investigating its claims and it will supplement this response in accordance with the CMP.

**INTERROGATORY 4:** In paragraph 10 of Montana's Bill of Complaint, you allege that "Since January 1, 1950, Wyoming has allowed new acreage to be put under irrigation in the Tongue and Powder River Basins, in violation of Montana's rights under Article V of the Compact." Please state all facts supporting this claim, including, but not limited to:

- a. The identity by name of those individuals in Wyoming that have put new acreage under irrigation in Wyoming since January 1, 1950 in violation of the Compact;
- b. The location and dimensions, by legal description, GPS coordinates, or mapped representations, of any new Wyoming acreage within the scope of this claim;
- c. A description of the method(s) through which the acreage described in the previous subsection was located and delineated;
- d. A description of what Montana means by the phrase "new acreage" in this claim;
- e. A description of who such new acreage under irrigation in Wyoming violated Montana's rights;
- f. The dates of the violations;
- g. The identity of each person who has personal knowledge of the facts supporting this claim;

- h. The identity of all documents relating the violations;
- i. The identity of all Montana water users injured by the violations and the legal descriptions, GPS coordinates, or mapped representation, of the location of their point(s) of diversion;
- j. The permit numbers of the water rights impaired by the violations;
- k. The priority dates of the water rights impaired by the violations;
- l. The legal purposes of the water rights impaired by the violations;
- m. The quantity of water, in terms of flow and storage, whichever is applicable, that may be legally diverted or stored by the water rights impaired by the violations.
- n. To the extent that Montana claims crop loss as an injurious effect, identify the number of acres affected for each user injured and the particular crops damaged or otherwise affected for each user injured.

**ANSWER TO INTERROGATORY 4:** Montana objects to Interrogatory No. 4 on the grounds specified in Montana's Objections. In particular, Montana objects to Interrogatory No. 4 to the extent that it seeks expert analysis, work product and testimony prior to the date designated for disclosure of expert reports in CMP No. 1, and Montana further objects to Interrogatory No. 4 on the grounds that it seeks information that is more readily available to Wyoming than to Montana.

Subject to, and without waiving these objections, Montana states that as explained by the Special Master "Article V(A) clearly protects pre-1950 appropriations in Montana from irrigation of new acreage in Wyoming if that irrigation prevents sufficient water from reaching the pre-1950 users." FIR 40-41. The State of Wyoming violated the Compact because at least in 2004 and 2006, and possibly other years, Montana did not receive enough water to satisfy its pre-1950 uses at a time that Wyoming was allowing water to be used for irrigation on post-1950

acreage.

Information responsive to Interrogatory No. 4 is contained in records and documents that have already been produced or will be produced in response to the First RFP. Finally, Montana is in the process of investigating its claims and it will supplement this response in accordance with the CMP.

**INTERROGATORY 5:** In paragraph 11 of Montana's Bill of Complaint, Montana alleges that "Since January 1, 1950, Wyoming has allowed the construction and use of groundwater wells for irrigation and for other uses and has allowed the pumping of groundwater associated with coalbed methane production in the Tongue and Powder River Basins, in violation of Montana's rights under Article V of the Compact." Please state all facts supporting this claim, including, but not limited to:

- a. The identity by name of those individuals or entities that Wyoming has allowed to use groundwater wells since January 1, 1950 and thereby caused a violation of the Compact;
- b. The facility name and location, by legal description, GPS coordinates, or map representation, of the specific wells from which Wyoming has allowed persons or entities to use water in Wyoming since January 1, 1950 and thereby caused a violation of the Compact;
- c. A description of how each use of groundwater wells by persons or entities in Wyoming violated Montana's rights under the Compact;
- d. The date of each use of groundwater wells in Wyoming that violated Montana's Rights under the Compact;
- e. The identity of each person who has personal knowledge of facts supporting this claim;
- f. The identity of all documents relating to the violations;
- g. The identity of each Montana water user injured by the violations;

h. The legal description, GPS coordinates, or map representation of the location of the point(s) of diversion and place of use of any Montana water use impaired by the alleged violations;

i. The permit numbers of the water rights impaired by the violations;

j. The priority dates of the water rights impaired by the violations;

k. The legal purposes of the water rights impaired by the violations;

l. The quantity of water, in terms of flow and storage, whichever is applicable, that may be legally diverted or stored by the water rights impaired by the violations;

m. To the extent that Montana claims crop loss as an injurious effect, identify the number of acres affected for each user injured and the particular crops damaged or otherwise affected for each user injured.

**ANSWER TO INTERROGATORY 5:** Montana objects to Interrogatory No. 5 on the grounds specified in Montana's Objections. In particular, Montana objects to Interrogatory No. 5 to the extent that it seeks expert analysis, work product and testimony prior to the date designated for disclosure of expert reports in CMP No. 1, and Montana further objects to Interrogatory No. 5 on the grounds that it seeks information that is more readily available to Wyoming than to Montana.

Subject to, and without waiving these objections, Montana states that as explained by the Special Master "[t]he Compact protects pre-1950 appropriators from interference by at least some forms of groundwater pumping that dates from after January 1, 1950 where the groundwater is hydrologically interconnected to the surface channels of the Yellowstone River and its surface tributaries." FIR 51. The State of Wyoming violated the Compact because at least in 2004 and 2006, and possibly other years, Montana did not receive enough water to satisfy its pre-1950 uses at a time that Wyoming was allowing hydrologically interconnected

groundwater to be pumped for post-1950 uses.

Information responsive to Interrogatory No. 5 is contained in records and documents that have already been produced or will be produced in response to the First RFP. Finally, Montana is in the process of investigating its claims and it will supplement this response in accordance with the CMP.

**INTERROGATORY 6:** In paragraph 12 of Montana's Bill of Complaint, Montana alleges that "Since January 1, 1950, Wyoming has allowed the consumption of water on existing irrigated acreage in the Tongue and Powder River Basins to be increased in violation of Montana's rights under Article V of the Compact." Please state whether Montana presently intends to pursue this claim for relief. If your answer is anything other than an unqualified 'No,' please state all facts supporting this claim, including, but not limited to:

- a. The location of each alleged violation in Wyoming by property owner or operator, legal description, GPS coordinates, or map representation;
- b. The quantity of the "increase" in consumption that caused the violation;
- c. The method(s) Montana used to identify and quantify that increase;
- d. The dates of the violations;
- e. The identity of any witnesses with personal knowledge of facts supporting the violations;
- f. The identity of all documents relating to the violations;
- g. The identity of Montana water users injured by the violations;
- h. The legal description, GPS coordinates, or map representation of the location of the point(s) of diversion and place of use of any Montana water use impaired by the alleged violations.

**ANSWER TO INTERROGATORY 6:** Montana objects to Interrogatory No. 6 on the

grounds specified in Montana's Objections. Montana does not intend to pursue this claim for relief to the extent it is barred by the First Interim Report of the Special Master and the Opinion of the Court on exceptions to the FIR. Discovery is on-going and Montana will supplement this response in accordance with the CMP.

**INTERROGATORY 7:** In paragraph 13 of Montana's Bill of Complaint, Montana alleges that "By undertaking and allowing the aforementioned actions, the State of Wyoming has depleted and is threatening further to deplete the waters of the Tongue and Powder Rivers allocated to the State of Montana under Article V of the Compact." With respect to this allegation:

a. Please explain the circumstances under which a Wyoming depletion of "the waters of the Tongue and Powder Rivers" constitutes a violation of the Yellowstone River Compact;

b. Please explain what "waters of the Tongue and Powder Rivers" are alleged to have been "allocated to the State of Montana" under the terms of Article V(A) of the Yellowstone River Compact;

c. Please state all facts supporting this claim, including, but not limited to:

i. The volume, location and period of time of any such depletion that can be attributed to:

1) The construction and expansion of water storage facilities in the Tongue and Powder River Basins;

2) New acreage put under irrigation in the Tongue and Powder River Basins;

3) The construction and use of groundwater wells for irrigation and other uses including coalbed methane in the Tongue and Powder River Basins;



Interrogatory No. 9 on the grounds that it seeks information that is more readily available to Wyoming than to Montana.

Subject to, and without waiving these objections, Montana incorporates its answers and objections to Interrogatory Nos. 2-8. Montana further states that Wyoming refused to acknowledge that it had any obligations under Article V(A) of the Compact, and Wyoming refused to take any actions necessary to ensure that Montana received sufficient water to satisfy Montana's Article V rights.

Information responsive to Interrogatory No. 9 is contained in records and documents that have already been produced or will be produced in response to the First RFP. Finally, Montana is in the process of investigating its claims and it will supplement this response in accordance with the CMP.

**INTERROGATORY 10:** Please describe the processes for individuals or entities to make a call for priority regulation from January 1, 1950 to the present on a river or stream in the Tongue River, Powder River, or Little Powder River basins in Montana, including descriptions of:

- a. The legally acceptable methods for initiating a call for regulation;
- b. The agency of the State of Montana, or type of person or entity, to whom the person seeking regulation would communicate to initiate the process for priority regulation;
- c. The positions of the persons or entities employed by, or acting for, the State of Montana, that would take some action in response to calls for priority regulation;
- d. The process through which calls for regulation would be evaluated before making such regulation, including any conditions under which a call for regulation would be refused;
- e. How quickly regulation would be initiated after a call for regulation was made;

f. The length of a stream or river segment that would remain under priority regulation after a call was made, and the process through which regulation would be lifted;

g. How those individuals administering regulation would determine which water users to regulate after a call was made, and any limitations on extending regulation to any and all appropriations over the full extent of the basin topographically upstream of the calling right;

h. Documents that would be created relating to a call, and where they would be kept.

**ANSWER TO INTERROGATORY 10:** Montana objects to Interrogatory No. 10 on the grounds specified in Montana's Objections. In particular, Montana objects to Interrogatory No. 10 as vague and ambiguous due to the use of the phrase "make a call for priority regulation." This Answer assumes that there is no water commissioner on the source because calls would not occur where water is already administered in priority. *See* Title 85, Chapter 5, MCA.

Subject to, and without waiving these objections, Montana states that in Montana, a senior appropriator may make a call on a junior appropriator requesting that he or she stop diverting water. A senior may make a call on any junior water right holder (not simply the most junior on the source in priority), subject to the futile call doctrine. A call may be in writing or verbal between the senior and the junior. A senior is not required to report a call to the Montana Department of Natural Resources and Conservation ("DNRC") and the DNRC does not regulate calls between seniors and juniors. DNRC does not maintain any repository for documentation of calls or enforcement of calls between the senior and the junior. Compliance with a call is voluntary, subject to a private action in district court. A senior may take a junior to district court and seek an injunction if the junior water right holder fails to heed a valid call. *See also* 89-815, R.C.M. (repealed 1973).

**INTERROGATORY 11:** Describe any processes from January 1, 1950 to the present by which any surface water body or groundwater well in the Tongue River, Powder River, and

b. The specific location of the headgate, pump, or other diversion mechanism of those water rights identified in your response to subsection a. to this interrogatory.

**ANSWER TO INTERROGATORY 29:** Montana is not currently aware of any such rights.

**INTERROGATORY 30:** Identify all the water rights and the individual holders of those rights with priority dates prior to January 1, 1950 within the Tongue River, Powder River, and Little Powder River basins of Montana that did not receive sufficient water to satisfy their full water rights at any time during water years 2004, 2005, and 2006. For these water rights, please state:

- a. The names and addresses of the individuals or entities who held the water rights;
- b. The legal description, GPS coordinates, or other means of locating their points of diversion;
- c. The permitted diversion rates in cubic feet per second;
- d. The location where the water was to be applied;
- e. The purpose of the water's application;
- f. The total acreage, if any, where the water was to be applied.

**ANSWER TO INTERROGATORY 30:** Montana object to Interrogatory No. 30 on the grounds specified in Montana's Objections. In particular, Montana objects to the extent the Interrogatory seeks expert analysis, work product and testimony prior to the date specified for disclosure of expert reports in the CMP.

In addition, information responsive to Interrogatory No. 30 is contained in records and documents that have already been produced or will be produced in response to the First RFP.

**INTERROGATORY 31:** Is the State of Montana aware of any fact, observation, document, or item of evidence that tends to show that in any year(s) other than 2004 or 2006,

agents, employees or other representatives of the State of Montana, or any holder of a Montana water right, or any agent, employee or representative of a holder of a Montana water right notified or made a regulatory call to any employee, agent or representative of the State of Wyoming that one or more Montana water users with water rights within the Tongue River, Powder River, or Little Powder River basins were not being fully satisfied. If your answer is anything other than an unqualified "No," then for each and every such fact, observation, document and item of evidence, state:

- a. The dates such notifications or calls occurred;
- b. For each such notification or call, whether it was given to the employee, agent or representative for the State of Wyoming orally or in writing;
- c. For each such notification or call, the identity, including job title, of the person who notified the employee, agent or representative of the State of Wyoming;
- d. For each such notification or call, the identity, including job title, of the employee, agent or representative of the State of Wyoming who received the notification;
- e. A summary of the substance of each such notification, including what action was requested.

**ANSWER TO INTERROGATORY 31:** Montana objects to the Interrogatory on the grounds specified in Montana's Objections. In particular, this Interrogatory is vague and ambiguous because of the phrase "notified or made a regulatory call" and because it is unduly burdensome. Subject to those objections, please see the Declaration of Richard M. Moy, dated September 22, 2011, Attached as App. A To Montana's Brief in Opposition to Wyoming's Motion for Partial Summary Judgment, Letter dated June 5, 2002, from Roger Muggli et al to Att'y Gen. McGrath, copying the Wyoming State Engineer and the documents produced and to be produced to Wyoming pursuant to the Joint Document Order and the First RFP. *See also*

Answer to Interrogatory 12. Montana will supplement this response as necessary

**INTERROGATORY 32:** Please delineate the geographic (horizontal) and stratigraphic (vertical) boundaries of groundwater aquifers that Montana believes to contain waters that are subject to Article V(A) of the Compact, and provide a detailed description of the facts, observations, documents, or items of evidence used as a basis for establishing those boundaries.

**ANSWER TO INTERROGATORY 32:** Montana objects to Interrogatory No. 32 on the grounds specified in Montana's Objections. In particular, Montana objects to Interrogatory No. 32 to the extent that it seeks expert analysis, work product and testimony prior to the date designated for disclosure of expert reports in CMP No. 1, and Montana further objects to Interrogatory No. 32 on the grounds that it seeks information that is more readily available to Wyoming than to Montana.

**INTERROGATORY 33:** Identify any controlled groundwater areas within the Tongue River, Powder River, and Little Powder River basins in Montana as provided by M.C.A. § 85-2-506 and describe all limitations, restrictions, conditions, reporting, moratoriums, policies, or other requirements that differentiate each such area from areas of Montana where a controlled groundwater area has not been established.

**ANSWER TO INTERROGATORY 33:** Powder River Controlled Ground Water Area, Final Order, [http://www.dnrc.mt.gov/wrd/water\\_rts/cgwa/powder\\_riverbasin/powder\\_final\\_order.asp](http://www.dnrc.mt.gov/wrd/water_rts/cgwa/powder_riverbasin/powder_final_order.asp).

**INTERROGATORY 34:** Please state whether all groundwater withdrawn, pumped, or released in the Tongue River, Powder River, and Little Powder River basins in Montana, including groundwater pumped in association with coalbed methane development, requires a water rights permit from the State of Montana. If a permit is not required for any withdrawal, pumping, or release of groundwater, what facts or standards allow a person or entity to do so

d. Flows released for the period requested were for established beneficial uses as described in the underlying water rights.

**INTERROGATORY 58:** Does Montana intend to assert that in this litigation that any individual other than its Yellowstone River Compact Commissioner had or has authority to act on behalf of the State of Montana to make a call, demand or other notification requesting that any employee, agent or representative of the State of Wyoming, one or more of Wyoming's water users with water rights within the Tongue River, Powder River, and Little Powder River basins of Wyoming, or any other individual or entity residing or doing business in Wyoming, curtail the use or diversion of surface, groundwater, or stored water within the Tongue River, Powder River, and Little Powder River basins of Wyoming? If your answer is anything other than an unqualified "No," please identify all such individuals who had such authority to act on behalf of the State of Montana between January 1, 1950 and the present, and with respect to each such individual, state:

- a. The dates when each individual held the authority;
- b. The manner in which each individual was authorized to exercise the authority;
- c. The dates when each individual exercised the authority;
- d. A description of how each individual exercised the authority;
- e. The identity of all individuals with personal knowledge relating to any exercise of this authority;
- f. The identity of any documents relating to the creation of the authority or the exercise of the authority.

**ANSWER TO INTERROGATORY 58:** Montana objects to Interrogatory No. 58 on the grounds specified in Montana's Objections. In particular, Montana objects to Interrogatory No. 58 as overly burdensome, and further objects to Interrogatory No. 58 as vague and

ambiguous due to the use of terms “authority” and “notification.”

Subject to and without waiving this objection, Montana incorporates its answers and objections to Interrogatory No. 10. In addition, as explained in the Memorandum Opinion of the Special Master on Wyoming’s Motion for Partial Summary Judgment (Notice Requirements for Damages) (Dec. 20, 2011), “notice need not have contained any specific information . . . [n]or must any particular Montana official have provided the notice.” *Id.* at 7.

**INTERROGATORY 59:** With respect to any water rights within the Tongue River, Powder River, and Little Powder River basins of Montana with priority dates earlier than January 1, 1950, describe the procedures available between January 1, 1950 and the present under which the holders of such rights could validly change their point of diversion, purpose or type of use, and place of use or land application.

**ANSWER TO INTERROGATORY 59:** Montana objects to Interrogatory No. 59 on the grounds specified in Montana’s Objections. In particular, Montana objects to Interrogatory No. 59 as vague and ambiguous due to the use of the term “procedures.” Subject to, and without waiving these objections, Montana states that after June 30, 1973, *see* Mont. Code Ann. §§ 85-2-102(6), 85-2-401 and -402; prior to July 1, 1973 *see* § 89-303, RCM (1947).

**INTERROGATORY 60:** Since January 1, 1950, have any water rights within the Tongue River, Powder River, and Little Powder River basins of Montana with priority dates earlier than January 1, 1950 changed their point of diversion, purpose or type of use, and place of use or land application in a manner that was legally recognized by the State of Montana or its water courts?

**ANSWER TO INTERROGATORY 60:** Yes.

**INTERROGATORY 61:** If your answer to the previous interrogatory is anything but an unqualified “No,” please identify all documents relating to any changes in point of diversion,

Subject to, and without waiving these objections, Montana incorporates its answers and objections to Interrogatory No. 63.

DATED this 19th day of March, 2012.

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Attorney General of Montana

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A handwritten signature in black ink, appearing to read "John B. Draper", written over a horizontal line.

JOHN B. DRAPER\*  
JEFFREY J. WECHSLER  
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VERIFICATION

I am Mary Sexton, the Director of the Montana Department of Natural Resources and Conservation. I have reviewed Montana's Responses to Wyoming's First Set of Interrogatories, and I hereby confirm that they have been prepared under my direction and are true and correct to the best of my knowledge and belief.

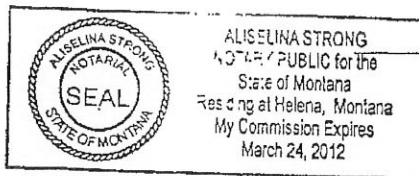
  
\_\_\_\_\_  
Mary Sexton


STATE OF MONTANA )  
 ) ss  
COUNTY OF LEWIS AND CLARK )

Subscribed and sworn to before me this 19<sup>th</sup> day of March, 2012 by Mary Sexton.

(SEAL)

My Commission Expires:  
\_\_\_\_\_



  
\_\_\_\_\_  
Notary Public

No. 137, Original

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In the  
SUPREME COURT OF THE UNITED STATES

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STATE OF MONTANA

v.

STATE OF WYOMING

and

STATE OF NORTH DAKOTA

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of Montana's Responses to Wyoming's First Set of Interrogatories were emailed and placed in the U.S. Mail to counsel listed below, this 19th day of March, 2012.

In addition, a copy of this Certificate of Service was mailed and emailed to all those listed below this 19<sup>th</sup> day of March, 2012.

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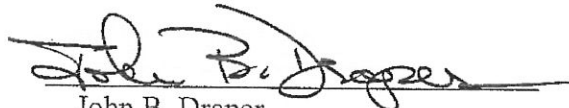
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I further certify that all parties required to be served have been served.

  
John B. Draper