

Exhibit F

Montana's First Supplemental 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 FIRST SUPPLEMENTAL RESPONSES TO
WYOMING'S FIRST SET OF INTERROGATORIES

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May 4, 2012

Exhibit F

Plaintiff the State of Montana ("Montana") hereby provides its first supplemental responses to Defendant's First Interrogatories to Plaintiff (Feb. 3, 2012) ("First Supplemental Responses"). These supplemental 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"). In addition, Montana incorporates its answers and objections set forth in its Responses to Wyoming's First Set of Interrogatories (March 19, 2012).

Montana is submitting these First Supplemental Responses in the spirit of cooperation, and denies that its original responses were insufficient in any way.

Montana understands these interrogatories to be strictly limited to Montana's Article V(A) claims and answers them with the same limitation.

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.

FIRST SUPPLEMENTAL RESPONSES TO INTERROGATORIES

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.

SUPPLEMENTAL ANSWER TO INTERROGATORY 2: Montana experts are in the process of evaluating, analyzing, and processing available data, and Montana anticipates that it will produce an expert report that is responsive to Interrogatory No. 2 as required by Case Management Plan No. 1 ("CMP No. 1"). In addition, information responsive to Interrogatory No. 2 is contained in records and documents that have already been produced in response to the Joint Document Production Order ("JDPO") or Defendant's First Request for Production to Plaintiff ("First RFP"), including, but not necessarily limited to, Permits and Water Rights documents in Montana, available at www.dnrc.mt.gov/wrd/water_rts/, documents provided to Wyoming on DVDs identified as MT 09095 through MT 09102; available flow data, (*see* Montana's answer to Interrogatory No. 39); hydrographer reports produced in Wyoming beginning in 1980; Wyoming's water rights permits and related documents; and related records

in Wyoming showing diversions, storage, water use, and regulation or the lack thereof.

In further response to Interrogatory No. 2, Montana states as follows:

a. Montana is in the process of investigating the years in which Wyoming violated the Compact, and is currently focused on water short years since 1950, including 1981, 1982, 1985, 1987, 1988, 1989, 1992, 1994, 1998, 2000, 2001, 2002, 2003, 2004 and 2006.

b. Without admitting that subpart 2(b) seeks information that is relevant, Montana states that the State of Wyoming, and not individual "Wyoming water users," is responsible for compliance with the Compact. Wyoming causes a violation when it allows water to be diverted for post-1950 uses at a time when Montana is not receiving sufficient water to satisfy its pre-1950 uses. Montana is in the process of investigating the post-1950 users in Wyoming that were diverting water in the years identified above. In general, information on Wyoming water users and diversions is more readily available to Wyoming than Montana.

c. through e.

It is the State of Montana, and not individual "Montana water users," that has rights under the Compact. Without admitting that the injury to individual "Montana water users" is a relevant inquiry at this stage of the proceedings, Montana states that water users in Montana were injured by not receiving sufficient water to satisfy their Water Rights.

f. Montana's claims are based on "water consumed by water uses in Wyoming" to the extent that water was used to satisfy post-1950 rights in Wyoming at a time when Montana was not receiving sufficient water to satisfy its pre-1950 rights.

g. See response to subpart b, *supra*.

h. See response to subparts c through e, *supra*.

i. through m.

See response to subparts b and c through e, *supra*.

n. and o.

Wyoming has denied that it had any obligation to curtail Wyoming Water Rights to comply with Article V(A) for decades. Montana is in the process of identifying particular documents responsive to these subparts, and will supplement this response as required by CMP No. 1.

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;

accordance with CMP No. 1.

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.

SUPPLEMENTAL ANSWER TO INTERROGATORY 31: In 1981, 1982, 1985, 1987, 1988, 1989, 1992, 1994, 1998, 2000, 2001, 2002, and 2003 employees of the State of Montana made verbal calls or requests for water directly to employees of the State of Wyoming. Individuals making the calls in 1981, 1982, 1985, 1987, 1988, and 1989 included Rich Moy and

Keith Kerbel; individuals making calls in 1992, 1994 and 1998 included Keith Kerbel and Jack Stults; individuals making calls in 2000, 2001, 2002 and 2003 included Rich Moy, Keith Kerbel, and Jack Stults. Calls were made to Mike Whitaker, Sue Lowry, Jeff Fassett, Pat Tyrrell, and possibly others. In each instance, the State of Montana made it clear that it needed water from Wyoming to satisfy pre-1950 uses in Montana.

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.

SUPPLEMENTAL ANSWER TO INTERROGATORY 32: Montana and its experts are in the process of evaluating “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.” Documents that contain information responsive to Interrogatory No. 32 include “Hydrogeologic Framework and Estimates of Ground-Water Volumes in Tertiary and Upper Cretaceous Hydrogeologic Units in the Powder River Basin, Wyoming,” available at pubs.usgs.gov/sir/2005/, the documents identified as MT 04889 through 05346, and numerous documents listed on Wyoming’s Response to the Joint Document Production Order (Feb. 1, 2012).

INTERROGATORY 38: Identify all groundwater wells from which groundwater was withdrawn in the Tongue River, Powder River, and Little Powder River basins in Montana during water years 2004, 2005 and 2006, and for each such groundwater well state:

- a. The location of each well by legal description, GPS coordinates, or other

identifying characteristics or mapping;

- b. The purpose for which each well withdrew groundwater in those water years;
- c. The depth to which each well is drilled or permitted to be drilled, or both if available;
- d. The permitted capacity of each well;
- e. The actual capacity of each well;
- f. The quantity of water, in acre-feet, each well pumped during each such water year (2004, 2005 and 2006);
- g. The permit number of each well;
- h. The priority date of each well.

SUPPLEMENTAL ANSWER TO INTERROGATORY 38: Montana is in the process of investigating the groundwater wells from which water was withdrawn in 2004, 2005, and 2006. This Interrogatory will be supplemented in accordance with CMP No. 1.

INTERROGATORY 43: Did Montana regulate any water rights on the segment of the Tongue River between the point where it crosses the Montana/Wyoming state line and the point where it enters Tongue River Reservoir at the high water mark of the reservoir's pool in water years 2004, 2005, or 2006? If your answer is anything but an unqualified "No," please state:

- a. The date(s) when such regulation occurred in each year;
- b. As to each regulation that was initiated by a water rights holder, the identity of such water rights holders, and the permit number, priority date, quantity of such water rights holders, and the permit number, priority date, quantity of appropriation, point of diversion, and place of use of the water rights of the initiating water rights holders;
- c. The employees, agents or representatives of the State of Montana who took action

with respect to each such regulation.

d. A description of actions taken by the employees, agents or representatives of the State of Montana.

SUPPLEMENTAL ANSWER TO INTERROGATORY 43: Regulation that took place in Montana in 2004, 2005 and 2006 is reflected in water commissioner documents identified as MT 9919 through 10049 that have already been provided to Wyoming.

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.

SUPPLEMENTAL ANSWER TO INTERROGATORY 58: To the extent that communications with Wyoming are within the scope of their position, employees of the DNRC are, or were, authorized to act on behalf of Montana to make a call, demand or other notification requesting water from Wyoming under the Compact. At a minimum, this would include the Regional Manager in Billings, the Water Management Bureau Chief, the Water Resources Division Administrator, Surface Water Hydrologists and Hydrogeologists working on the Tongue and Powder Rivers, the State Water Projects Bureau Chief, DNRC Director, and other employees working on issues related to the Compact or the YRCC. Individuals have held, or currently hold, the authority to make a call, demand, or other notification requesting water during the time that they were, or are, employed by DNRC in their respective positions.


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, purpose or type of use, and place of use or land application obtained after January 1, 1950 by any holder of a water right within the Tongue River, Powder River, and Little Powder River basins of Montana which right has a priority date earlier than January 1, 1950.

SUPPLEMENTAL ANSWER TO INTERROGATORY 61: Please see the database run attached hereto that identifies the responsive water rights. Information on water rights in Montana is available on Montana's water rights database at http://dnrc.mt.gov/wrd/water_rts/records_unit. Montana has also provided water rights information to Wyoming in documents identified as MT 09095 to 09102.

DATED this 4th day of May, 2012.

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A handwritten signature in black ink that reads "John B. Draper". The signature is written in a cursive style and is positioned above a horizontal line.

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VERIFICATION

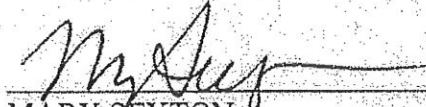
STATE OF MONTANA)

: ss.

County of Lewis and Clark)

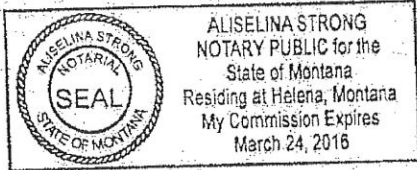
MARY SEXTON, being first duly sworn, deposes and says:

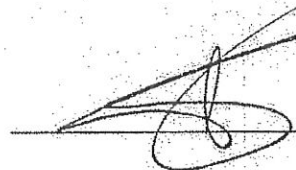
I am the Director of the Montana Department of Natural Resources and Conservation. I have reviewed Montana's First Supplemental Responses to Wyoming's First Set of Interrogatories, and I hereby confirm that they have been prepared under my direction and are true and correct to the best of my knowledge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



MARY SEXTON

Subscribed and sworn to before me this 4th day of May, 2012 by Mary Sexton.





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STATE OF WYOMING

and

STATE OF NORTH DAKOTA

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of Montana's First Supplemental Responses to Wyoming's First Set of Interrogatories were emailed and placed in the U.S. Mail to counsel listed below, this 4th day of May, 2012.

In addition, a copy of this Certificate of Service was mailed and emailed to all those listed below this 4th day of May, 2012.

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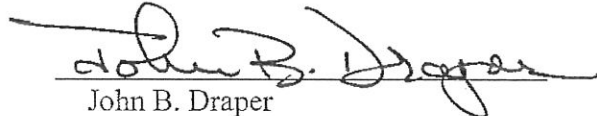
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I further certify that all parties required to be served have been served.


John B. Draper