

No. 137, ORIGINAL

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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

---

NOTICE OF PRODUCTION AND ISSUANCE OF SUBPOENAS

GREGORY A. PHILLIPS  
Attorney General of Wyoming

PETER K. MICHAEL\*  
Chief Deputy Attorney General

JAY JERDE  
Deputy Attorney General  
JAMES KASTE  
Senior Assistant Attorney General  
CHRISTOPHER BROWN  
Senior Assistant Attorney General  
DAVID J. WILLMS  
Senior Assistant Attorney General  
123 State Capitol  
Cheyenne, WY 82002  
(307) 777-6196  
*\*Counsel of Record*

Notice is hereby given that the undersigned has issued Subpoenas for the production of documents to:

<p>Helm Hereford Ranch c/o Gerhard Helm 127 Helm Scenic Cir Miles City, MT 59301-6271</p> <p>Helm Hereford Ranch c/o Gerhard Helm 1000 Palmer St., Apt 503 Miles City, MT 59301-3431</p>	<p>Bart Meged 696 Tongue River Rd Miles City, MT 59301-6240</p>
<p>Raymond Muggli 558 Tongue River Rd Miles City, MT 59301-6243</p> <p>Raymond Muggli 151 Palisades Blvd, Apt. 105 Miles City, MT 59301-8759</p>	<p>Robert &amp; Marilyn Thaden 137 Morning Star Ln Miles City, MT 59301-9126</p>
<p>Leonard Muggli 558 Tongue River Rd Miles City, MT 59301-6243</p>	<p>Hugo Muggli 614 Tongue River Rd Miles City, MT 59301-6240</p>
<p>John &amp; Victoria Hamilton 7207 Tongue River Rd Miles City, MT 59301-6251</p> <p>John &amp; Victoria Hamilton 3401 Tongue River Rd Miles City, MT 59301</p> <p>John &amp; Victoria Hamilton 104 Sprandel Ln Miles City, MT 59301-5526</p>	<p>Kyle and Gail Shaw 2142 Tongue River Rd Miles City, MT 59301-6234</p>
<p>Thomas Revpelle Ball Ranch Co. 3880 Tongue River Rd. Miles City, MT 59301</p>	<p>Gary &amp; Jay Ochsner 1577 Highway 59 S Miles City, MT 59301-8816</p>

<p>Maurice Felton  Felton Angus Ranch, Inc.  591 Brandenburg Rd.  Miles City, MT 59301</p>	<p>Daniel &amp; Robert Stokes  407 S. Custer  Miles City, MT 59301</p>
<p>Alfred Leatherberry  3705 Batchelor St.  Miles City, MT 59301-5789</p> <p>Alfred Leatherberry  309 N. 9th St. Apt 2  Miles City, MT 59301-3309</p>	<p>Ted &amp; Ruth Hirsch  1840 Tongue River Rd  Miles City, MT 59301-6274</p>
<p>John &amp; Deborah Crimmings  1576 MT 59 South  Miles City, MT 59301</p>	<p>John &amp; Katherine Bouton  1376 MT 59 S  Miles City, MT 59301</p>
<p>Gregory &amp; Linda Losinski  1508 Highway 59 S  Miles City, MT 59301</p>	<p>Triple T Outfitting, LLC  Attn: Todd S. Steadman  611 S Haynes Ave  Miles City, MT 59301</p>
<p>Duane and Carolyn Mathison  976 Highway 59 S  Miles City, MT 59301-8819</p>	<p>Boyd C. Blum  Margaret A Blum Trustee  1120 Highway 59 S.  Miles City, MT 59301-8808</p>
<p>Bret and Tanna Aye  171 Harvest Ln  Miles City, MT 59391</p>	<p>Miles City Town &amp; Country Club Inc.  c/o Rick Flotkoetter  Pro/Club Manager  4th and Eagle  Miles City, MT 59301</p>
<p>City of Miles City Municipal  c/o Mayer Chris Grenz  17 S. 8th St.  Miles City, MT 59301</p> <p>City of Miles City Municipal  c/o Mayer Chris Grenz  506 Mississippi  Miles City, MT 59301</p>	<p>Range Riders Museum  435 LP Anderson Rd  Miles City, MT 59301</p>

William Swan 2573 Tongue River Rd. Miles City, MT 59301	Bobby & Saudra Hays 105 S. Stacy Ave Miles City, MT 59301-4727
Richard & Jane Anderson 6707 Moon Creek Rd Miles City, MT 59301	Lance & Linda Tonn 1214 Highway 59 S Miles City, MT 59301
Hardesty Tract Homeowners Association David Pratt 25 Broken Bow Ln Miles City, MT 59301	Keith Harwood 31 Road 605 Miles City, MT 59301-6427
Raymond Harwood 7100 Moon Creek Rd Miles City, MT 59301-6254	Arlo and Ruth Nansel 315 S. Cottage Grove Ave Miles City, MT 59301

The time and place for the production are set forth in the Subpoenas, a true copy of which is attached hereto.

This Notice is given pursuant to the provisions of Rules 34(c) and 45(b)(1), Federal Rules of Civil Procedure.

Dated this 31st day of December, 2012.

THE STATE OF WYOMING



James C. Kaste  
Senior Assistant Attorney General  
123 State Capitol  
Cheyenne, WY 82002  
307-777-6946

## CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the *Notice of Production and Issuance of Subpoenas* was served by electronic mail and by placing the same in the United States mail, postage paid, this 31st day of December, 2012.

Jeanne S. Whiteing  
Whiteing & Smith  
1628 5<sup>th</sup> Street  
Boulder, CO 80302  
[jwhiteing@whiteinglaw.com](mailto:jwhiteing@whiteinglaw.com)

Jennifer Anders  
Montana Attorney General's Office  
P.O. Box 201401  
Helena, MT 59620-1401  
[janders@mt.gov](mailto:janders@mt.gov)

John B. Draper  
Jeffrey Wechsler  
Montgomery & Andrews  
325 Paseo de Peralta  
Santa Fe, NM 87501  
[jdraper@montand.com](mailto:jdraper@montand.com)  
[jwechsler@montand.com](mailto:jwechsler@montand.com)

Jennifer Verleger  
North Dakota Attorney General's Office  
500 North Ninth Street  
Bismarck, ND 58501  
[jverleger@nd.gov](mailto:jverleger@nd.gov)

James J. Dubois  
United States Department of Justice  
Environmental and Natural Resources  
Division of Natural Resources Section  
999 18th St. #370 South Terrace  
Denver, CO 80202  
[James.dubois@usdoj.gov](mailto:James.dubois@usdoj.gov)

Solicitor General of the United States  
US Department of Justice  
950 Pennsylvania Avenue, Room 5614  
Washington, DC 20530-0001  
[SupremeCtBriefs@usdoj.gov](mailto:SupremeCtBriefs@usdoj.gov)

Michael Wigmore  
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2020 K Street NW  
Washington, DC 20006-1806  
[Michael.wigmore@bingham.com](mailto:Michael.wigmore@bingham.com)

Barton H. Thompson Jr.  
Susan Carter, Assistant  
Jerry yang and Akiko Yamazaki  
Environment & Energy Building, MC-4205  
473 via Ortega  
Stanford, CA 94305-4205  
[Susan.carter@stanford.edu](mailto:Susan.carter@stanford.edu)

  
Wyoming Attorney General's Office

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Attorney General of Wyoming

PETER K. MICHAEL\*  
Chief Deputy Attorney General

JAY JERDE  
Deputy Attorney General  
JAMES KASTE  
Senior Assistant Attorney General  
CHRISTOPHER BROWN  
Senior Assistant Attorney General  
DAVID J. WILLMS  
Senior Assistant Attorney General  
123 State Capitol  
Cheyenne, WY 82002  
(307) 777-6196  
*\*Counsel of Record*

To: Helm Hereford Ranch  
c/o Gerhard Helm  
127 Helm Scenic Cir  
Miles City, MT 59301-6271

Helm Hereford Ranch  
c/o Gerhard Helm  
1000 Palmer St., Apt 503  
Miles City, MT 59301-3431

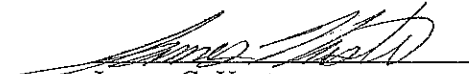
You are hereby commanded to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below:

Full, complete and legible or audible copies of the documents or objects listed in Exhibit "A," which is attached hereto.

Compliance with this subpoena can be made by mailing copies of the requested documents to Wyoming Attorney General's Office, Water and Natural Resource Division Attn: James Kaste, 123 State Capitol, Cheyenne, WY 82002, for receipt on or before January 21, 2013.

DATED this 31st day of December, 2012

Issuing Officer's Signature



James C. Kaste

An attorney, as officer of the Court, may issue and sign a Subpoena on behalf of a Court in which the attorney is authorized to practice (Rule 45, Federal Rules of Civil Procedure)

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PROOF OF SERVICE

---

Served Date: \_\_\_\_\_ Place: \_\_\_\_\_

Served on (Print Name) \_\_\_\_\_ Manner of Service: \_\_\_\_\_

Served by (Print Name) \_\_\_\_\_ Title: \_\_\_\_\_

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DECLARATION OF SERVER

---

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the proof of service is true and correct.

Executed on \_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Server

\_\_\_\_\_  
Address of Server



## STATEMENT REQUIRED BY FED. R. CIV. P. 45(a)(1)(A)(iv)

### (c) PROTECTING A PERSON SUBJECT TO A SUBPOENA.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

#### (2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

#### (3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person—except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

### (d) DUTIES IN RESPONDING TO A SUBPOENA.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

#### (2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) **CONTEMPT.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

## EXHIBIT "A"

1. All documents in your possession, custody, or control which reflect your water rights, including rights to surface water, groundwater, or stored water.
2. All documents in your possession, custody, or control which reflect the acres you had under irrigation, the means of diversion to those acres, and the diversions of water you made to those acres during the years 1987-1989, 2000-2004 and 2006, including the dates when those diversions occurred, how much water was diverted, and the source of supply for those diversions whether they were from surface water, groundwater, or storage.
3. All documents in your possession, custody, or control reflecting communications with anyone from the Montana Department of Natural Resources and Conservation, with anyone from the Montana Attorney General's Office, with any other attorney or employee of the State of Montana or its agencies, with any other water user or irrigator, with any water commissioner, or with any other person regarding your actual water use and/or right to use water during the years 1987-1989, 2000-2004 and 2006, including communications that related to the use of water by neighboring irrigators in either the State of Montana or the State of Wyoming or communications related to this lawsuit.
4. All documents in your possession, custody, or control reflecting any calls or requests for regulation that may have been made by you or any other water user during the years 1987-1989, 2000-2004 and 2006 on any source of supply in which you have a water right.
5. All documents in your possession, custody, or control reflecting any action or agreement by or between yourself and any other water user(s) to share a shortage of water with or without regard to priority during the years 1987-1989, 2000-2004 and 2006.

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SPECIAL MASTER

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**SUBPOENA**

GREGORY A. PHILLIPS  
Attorney General of Wyoming

PETER K. MICHAEL\*  
Chief Deputy Attorney General

JAY JERDE  
Deputy Attorney General  
JAMES KASTE  
Senior Assistant Attorney General  
CHRISTOPHER BROWN  
Senior Assistant Attorney General  
DAVID J. WILLMS  
Senior Assistant Attorney General  
123 State Capitol  
Cheyenne, WY 82002  
(307) 777-6196  
*\*Counsel of Record*

To: Bart Meged  
696 Tongue River Rd  
Miles City, MT 59301-6240

You are hereby commanded to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below:

Full, complete and legible or audible copies of the documents or objects listed in Exhibit "A," which is attached hereto.

Compliance with this subpoena can be made by mailing copies of the requested documents to Wyoming Attorney General's Office, Water and Natural Resource Division Attn: James Kaste, 123 State Capitol, Cheyenne, WY 82002, for receipt on or before January 21, 2013.

DATED this 31st day of December, 2012

Issuing Officer's Signature



James C. Kaste

An attorney, as officer of the Court, may issue and sign a Subpoena on behalf of a Court in which the attorney is authorized to practice (Rule 45, Federal Rules of Civil Procedure)

---

PROOF OF SERVICE

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Served Date: \_\_\_\_\_ Place: \_\_\_\_\_

Served on (Print Name) \_\_\_\_\_ Manner of Service: \_\_\_\_\_

Served by (Print Name) \_\_\_\_\_ Title: \_\_\_\_\_

---

DECLARATION OF SERVER

---

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the proof of service is true and correct.

Executed on \_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Server

\_\_\_\_\_  
Address of Server

## STATEMENT REQUIRED BY FED. R. CIV. P. 45(a)(1)(A)(iv)

### (c) PROTECTING A PERSON SUBJECT TO A SUBPOENA.

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(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

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## **EXHIBIT "A"**

1. All documents in your possession, custody, or control which reflect your water rights, including rights to surface water, groundwater, or stored water.
2. All documents in your possession, custody, or control which reflect the acres you had under irrigation, the means of diversion to those acres, and the diversions of water you made to those acres during the years 1987-1989, 2000-2004 and 2006, including the dates when those diversions occurred, how much water was diverted, and the source of supply for those diversions whether they were from surface water, groundwater, or storage.
3. All documents in your possession, custody, or control reflecting communications with anyone from the Montana Department of Natural Resources and Conservation, with anyone from the Montana Attorney General's Office, with any other attorney or employee of the State of Montana or its agencies, with any other water user or irrigator, with any water commissioner, or with any other person regarding your actual water use and/or right to use water during the years 1987-1989, 2000-2004 and 2006, including communications that related to the use of water by neighboring irrigators in either the State of Montana or the State of Wyoming or communications related to this lawsuit.
4. All documents in your possession, custody, or control reflecting any calls or requests for regulation that may have been made by you or any other water user during the years 1987-1989, 2000-2004 and 2006 on any source of supply in which you have a water right.
5. All documents in your possession, custody, or control reflecting any action or agreement by or between yourself and any other water user(s) to share a shortage of water with or without regard to priority during the years 1987-1989, 2000-2004 and 2006.

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**BEFORE THE HONORABLE BARTON H. THOMPSON, JR.**

**SPECIAL MASTER**

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**SUBPOENA**

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Attorney General of Wyoming

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Chief Deputy Attorney General

JAY JERDE  
Deputy Attorney General  
JAMES KASTE  
Senior Assistant Attorney General  
CHRISTOPHER BROWN  
Senior Assistant Attorney General  
DAVID J. WILLMS  
Senior Assistant Attorney General  
123 State Capitol  
Cheyenne, WY 82002  
(307) 777-6196  
*\*Counsel of Record*



To: Raymond Muggli  
558 Tongue River Rd  
Miles City, MT 59301-6243

Raymond Muggli  
151 Palisades Blvd, Apt. 105  
Miles City, MT 59301-8759

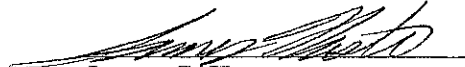
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Issuing Officer's Signature



James C. Kaste

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PROOF OF SERVICE

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Served Date: \_\_\_\_\_ Place: \_\_\_\_\_

Served on (Print Name) \_\_\_\_\_ Manner of Service: \_\_\_\_\_

Served by (Print Name) \_\_\_\_\_ Title: \_\_\_\_\_

---

DECLARATION OF SERVER

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I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the proof of service is true and correct.

Executed on \_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Server

\_\_\_\_\_  
Address of Server

## STATEMENT REQUIRED BY FED. R. CIV. P. 45(a)(1)(A)(iv)

### (c) PROTECTING A PERSON SUBJECT TO A SUBPOENA.

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(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

#### (3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person—except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

### (d) DUTIES IN RESPONDING TO A SUBPOENA.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

#### (2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

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(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) *CONTEMPT.* The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

## **EXHIBIT "A"**

1. All documents in your possession, custody, or control which reflect your water rights, including rights to surface water, groundwater, or stored water.

2. All documents in your possession, custody, or control which reflect the acres you had under irrigation, the means of diversion to those acres, and the diversions of water you made to those acres during the years 1987-1989, 2000-2004 and 2006, including the dates when those diversions occurred, how much water was diverted, and the source of supply for those diversions whether they were from surface water, groundwater, or storage.

3. All documents in your possession, custody, or control reflecting communications with anyone from the Montana Department of Natural Resources and Conservation, with anyone from the Montana Attorney General's Office, with any other attorney or employee of the State of Montana or its agencies, with any other water user or irrigator, with any water commissioner, or with any other person regarding your actual water use and/or right to use water during the years 1987-1989, 2000-2004 and 2006, including communications that related to the use of water by neighboring irrigators in either the State of Montana or the State of Wyoming or communications related to this lawsuit.

4. All documents in your possession, custody, or control reflecting any calls or requests for regulation that may have been made by you or any other water user during the years 1987-1989, 2000-2004 and 2006 on any source of supply in which you have a water right.

5. All documents in your possession, custody, or control reflecting any action or agreement by or between yourself and any other water user(s) to share a shortage of water with or without regard to priority during the years 1987-1989, 2000-2004 and 2006.

No. 137, ORIGINAL

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IN THE  
SUPREME COURT OF THE UNITED STATES

---

STATE OF MONTANA, Plaintiff

V.

STATE OF WYOMING

AND

STATE OF NORTH DAKOTA, Defendants

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BEFORE THE HONORABLE BARTON H. THOMPSON, JR.

SPECIAL MASTER

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**SUBPOENA**

GREGORY A. PHILLIPS  
Attorney General of Wyoming

PETER K. MICHAEL\*  
Chief Deputy Attorney General

JAY JERDE  
Deputy Attorney General  
JAMES KASTE  
Senior Assistant Attorney General  
CHRISTOPHER BROWN  
Senior Assistant Attorney General  
DAVID J. WILLMS  
Senior Assistant Attorney General  
123 State Capitol  
Cheyenne, WY 82002  
(307) 777-6196  
*\*Counsel of Record*

To: Robert & Marilyn Thaden  
137 Morning Star Ln  
Miles City, MT 59301-9126

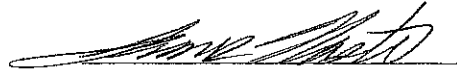
You are hereby commanded to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below:

Full, complete and legible or audible copies of the documents or objects listed in Exhibit "A," which is attached hereto.

Compliance with this subpoena can be made by mailing copies of the requested documents to Wyoming Attorney General's Office, Water and Natural Resource Division Attn: James Kaste, 123 State Capitol, Cheyenne, WY 82002, for receipt on or before January 21, 2013.

DATED this 31st day of December, 2012

Issuing Officer's Signature

A handwritten signature in black ink, appearing to read "James C. Kaste", written over a horizontal line.

James C. Kaste

An attorney, as officer of the Court, may issue and sign a Subpoena on behalf of a Court in which the attorney is authorized to practice (Rule 45, Federal Rules of Civil Procedure)

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PROOF OF SERVICE

---

Served Date: \_\_\_\_\_ Place: \_\_\_\_\_

Served on (Print Name) \_\_\_\_\_ Manner of Service: \_\_\_\_\_

Served by (Print Name) \_\_\_\_\_ Title: \_\_\_\_\_

---

DECLARATION OF SERVER

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I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the proof of service is true and correct.

Executed on \_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Server

\_\_\_\_\_  
Address of Server

## STATEMENT REQUIRED BY FED. R. CIV. P. 45(a)(1)(A)(iv)

### (c) PROTECTING A PERSON SUBJECT TO A SUBPOENA.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

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(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

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No. 137, ORIGINAL

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IN THE  
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STATE OF MONTANA, Plaintiff

V.

STATE OF WYOMING

AND

STATE OF NORTH DAKOTA, Defendants

---

BEFORE THE HONORABLE BARTON H. THOMPSON, JR.

SPECIAL MASTER

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**SUBPOENA**

GREGORY A. PHILLIPS  
Attorney General of Wyoming

PETER K. MICHAEL\*  
Chief Deputy Attorney General

JAY JERDE  
Deputy Attorney General

JAMES KASTE  
Senior Assistant Attorney General

CHRISTOPHER BROWN  
Senior Assistant Attorney General

DAVID J. WILLMS  
Senior Assistant Attorney General

123 State Capitol  
Cheyenne, WY 82002

(307) 777-6196

*\*Counsel of Record*

To: Leonard Muggli  
558 Tongue River Rd  
Miles City, MT 59301-6243

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DATED this 31st day of December, 2012

Issuing Officer's Signature



James C. Kaste

An attorney, as officer of the Court, may issue and sign a Subpoena on behalf of a Court in which the attorney is authorized to practice (Rule 45, Federal Rules of Civil Procedure)

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PROOF OF SERVICE

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Served Date: \_\_\_\_\_ Place: \_\_\_\_\_

Served on (Print Name) \_\_\_\_\_ Manner of Service: \_\_\_\_\_

Served by (Print Name) \_\_\_\_\_ Title: \_\_\_\_\_

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DECLARATION OF SERVER

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I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the proof of service is true and correct.

Executed on \_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Server

\_\_\_\_\_  
Address of Server

## STATEMENT REQUIRED BY FED. R. CIV. P. 45(a)(1)(A)(iv)

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No. 137, ORIGINAL

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**SUBPOENA**

GREGORY A. PHILLIPS  
Attorney General of Wyoming

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To: Hugo Muggli  
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Issuing Officer's Signature



James C. Kaste

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PROOF OF SERVICE

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Served Date: \_\_\_\_\_ Place: \_\_\_\_\_

Served on (Print Name) \_\_\_\_\_ Manner of Service: \_\_\_\_\_

Served by (Print Name) \_\_\_\_\_ Title: \_\_\_\_\_

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DECLARATION OF SERVER

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I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the proof of service is true and correct.

Executed on \_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Server

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Address of Server

## STATEMENT REQUIRED BY FED. R. CIV. P. 45(a)(1)(A)(iv)

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(e) *CONTEMPT.* The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

## **EXHIBIT "A"**

1. All documents in your possession, custody, or control which reflect your water rights, including rights to surface water, groundwater, or stored water.
2. All documents in your possession, custody, or control which reflect the acres you had under irrigation, the means of diversion to those acres, and the diversions of water you made to those acres during the years 1987-1989, 2000-2004 and 2006, including the dates when those diversions occurred, how much water was diverted, and the source of supply for those diversions whether they were from surface water, groundwater, or storage.
3. All documents in your possession, custody, or control reflecting communications with anyone from the Montana Department of Natural Resources and Conservation, with anyone from the Montana Attorney General's Office, with any other attorney or employee of the State of Montana or its agencies, with any other water user or irrigator, with any water commissioner, or with any other person regarding your actual water use and/or right to use water during the years 1987-1989, 2000-2004 and 2006, including communications that related to the use of water by neighboring irrigators in either the State of Montana or the State of Wyoming or communications related to this lawsuit.
4. All documents in your possession, custody, or control reflecting any calls or requests for regulation that may have been made by you or any other water user during the years 1987-1989, 2000-2004 and 2006 on any source of supply in which you have a water right.
5. All documents in your possession, custody, or control reflecting any action or agreement by or between yourself and any other water user(s) to share a shortage of water with or without regard to priority during the years 1987-1989, 2000-2004 and 2006.

No. 137, ORIGINAL

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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

---

**SUBPOENA**

GREGORY A. PHILLIPS  
Attorney General of Wyoming

PETER K. MICHAEL\*  
Chief Deputy Attorney General

JAY JERDE  
Deputy Attorney General  
JAMES KASTE  
Senior Assistant Attorney General  
CHRISTOPHER BROWN  
Senior Assistant Attorney General  
DAVID J. WILLMS  
Senior Assistant Attorney General  
123 State Capitol  
Cheyenne, WY 82002  
(307) 777-6196  
*\*Counsel of Record*

To: John & Victoria Hamilton  
7207 Tongue River Rd  
Miles City, MT 59301-6251

John & Victoria Hamilton  
3401 Tongue River Rd  
Miles City, MT 59301

John & Victoria Hamilton  
104 Sprandel Ln  
Miles City, MT 59301-5526


You are hereby commanded to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below:

Full, complete and legible or audible copies of the documents or objects listed in Exhibit "A," which is attached hereto.

Compliance with this subpoena can be made by mailing copies of the requested documents to Wyoming Attorney General's Office, Water and Natural Resource Division Attn: James Kaste, 123 State Capitol, Cheyenne, WY 82002, for receipt on or before January 21, 2013.

DATED this 31st day of December, 2012

Issuing Officer's Signature



James C. Kaste

An attorney, as officer of the Court, may issue and sign a Subpoena on behalf of a Court in which the attorney is authorized to practice (Rule 45, Federal Rules of Civil Procedure)

---

PROOF OF SERVICE

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Served Date: \_\_\_\_\_ Place: \_\_\_\_\_

Served on (Print Name) \_\_\_\_\_ Manner of Service: \_\_\_\_\_

Served by (Print Name) \_\_\_\_\_ Title: \_\_\_\_\_

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DECLARATION OF SERVER

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I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the proof of service is true and correct.

Executed on \_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Server

\_\_\_\_\_  
Address of Server

## STATEMENT REQUIRED BY FED. R. CIV. P. 45(a)(1)(A)(iv)

### (c) PROTECTING A PERSON SUBJECT TO A SUBPOENA.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

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(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

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**SUBPOENA**

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Attorney General of Wyoming

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JAY JERDE  
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JAMES KASTE  
Senior Assistant Attorney General  
CHRISTOPHER BROWN  
Senior Assistant Attorney General  
DAVID J. WILLMS  
Senior Assistant Attorney General  
123 State Capitol  
Cheyenne, WY 82002  
(307) 777-6196  
*\*Counsel of Record*

To: Kyle and Gail Shaw  
2142 Tongue River Rd  
Miles City, MT 59301-6234

You are hereby commanded to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below:

Full, complete and legible or audible copies of the documents or objects listed in Exhibit "A," which is attached hereto.

Compliance with this subpoena can be made by mailing copies of the requested documents to Wyoming Attorney General's Office, Water and Natural Resource Division Attn: James Kaste, 123 State Capitol, Cheyenne, WY 82002, for receipt on or before January 21, 2013.

DATED this 31st day of December, 2012

Issuing Officer's Signature

  
James C. Kaste

An attorney, as officer of the Court, may issue and sign a Subpoena on behalf of a Court in which the attorney is authorized to practice (Rule 45, Federal Rules of Civil Procedure)

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PROOF OF SERVICE

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Served Date: \_\_\_\_\_ Place: \_\_\_\_\_

Served on (Print Name) \_\_\_\_\_ Manner of Service: \_\_\_\_\_

Served by (Print Name) \_\_\_\_\_ Title: \_\_\_\_\_

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DECLARATION OF SERVER

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I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the proof of service is true and correct.

Executed on \_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Server

\_\_\_\_\_  
Address of Server

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**SUBPOENA**

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JAMES KASTE  
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DAVID J. WILLMS  
Senior Assistant Attorney General  
123 State Capitol  
Cheyenne, WY 82002  
(307) 777-6196  
*\*Counsel of Record*

To: Thomas Revpelle  
Ball Ranch Co.  
3880 Tongue River Rd.  
Miles City, MT 59301

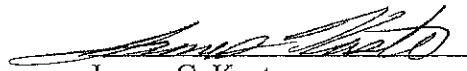
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Issuing Officer's Signature



James C. Kaste

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PROOF OF SERVICE

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Served Date: \_\_\_\_\_ Place: \_\_\_\_\_

Served on (Print Name) \_\_\_\_\_ Manner of Service: \_\_\_\_\_

Served by (Print Name) \_\_\_\_\_ Title: \_\_\_\_\_

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DECLARATION OF SERVER

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Executed on \_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Server

\_\_\_\_\_  
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3. All documents in your possession, custody, or control reflecting communications with anyone from the Montana Department of Natural Resources and Conservation, with anyone from the Montana Attorney General's Office, with any other attorney or employee of the State of Montana or its agencies, with any other water user or irrigator, with any water commissioner, or with any other person regarding your actual water use and/or right to use water during the years 1987-1989, 2000-2004 and 2006, including communications that related to the use of water by neighboring irrigators in either the State of Montana or the State of Wyoming or communications related to this lawsuit.

4. All documents in your possession, custody, or control reflecting any calls or requests for regulation that may have been made by you or any other water user during the years 1987-1989, 2000-2004 and 2006 on any source of supply in which you have a water right.

5. All documents in your possession, custody, or control reflecting any action or agreement by or between yourself and any other water user(s) to share a shortage of water with or without regard to priority during the years 1987-1989, 2000-2004 and 2006.

No. 137, ORIGINAL

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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

---

**SUBPOENA**

GREGORY A. PHILLIPS  
Attorney General of Wyoming

PETER K. MICHAEL\*  
Chief Deputy Attorney General

JAY JERDE  
Deputy Attorney General

JAMES KASTE  
Senior Assistant Attorney General

CHRISTOPHER BROWN  
Senior Assistant Attorney General

DAVID J. WILLMS  
Senior Assistant Attorney General

123 State Capitol  
Cheyenne, WY 82002  
(307) 777-6196

*\*Counsel of Record*

To: Gary & Jay Ochsner  
1577 Highway 59 S  
Miles City, MT 59301-8816

You are hereby commanded to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below:

Full, complete and legible or audible copies of the documents or objects listed in Exhibit "A," which is attached hereto.

Compliance with this subpoena can be made by mailing copies of the requested documents to Wyoming Attorney General's Office, Water and Natural Resource Division Attn: James Kaste, 123 State Capitol, Cheyenne, WY 82002, for receipt on or before January 21, 2013.

DATED this 31st day of December, 2012

Issuing Officer's Signature

  
James C. Kaste

An attorney, as officer of the Court, may issue and sign a Subpoena on behalf of a Court in which the attorney is authorized to practice (Rule 45, Federal Rules of Civil Procedure)

---

PROOF OF SERVICE

---

Served Date: \_\_\_\_\_ Place: \_\_\_\_\_

Served on (Print Name) \_\_\_\_\_ Manner of Service: \_\_\_\_\_

Served by (Print Name) \_\_\_\_\_ Title: \_\_\_\_\_

---

DECLARATION OF SERVER

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I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the proof of service is true and correct.

Executed on \_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Server

\_\_\_\_\_  
Address of Server

## STATEMENT REQUIRED BY FED. R. CIV. P. 45(a)(1)(A)(iv)

### (c) PROTECTING A PERSON SUBJECT TO A SUBPOENA.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person—except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

### (d) DUTIES IN RESPONDING TO A SUBPOENA.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) *CONTEMPT.* The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

## EXHIBIT "A"

1. All documents in your possession, custody, or control which reflect your water rights, including rights to surface water, groundwater, or stored water.

2. All documents in your possession, custody, or control which reflect the acres you had under irrigation, the means of diversion to those acres, and the diversions of water you made to those acres during the years 1987-1989, 2000-2004 and 2006, including the dates when those diversions occurred, how much water was diverted, and the source of supply for those diversions whether they were from surface water, groundwater, or storage.

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BEFORE THE HONORABLE BARTON H. THOMPSON, JR.

SPECIAL MASTER

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**SUBPOENA**

GREGORY A. PHILLIPS  
Attorney General of Wyoming

PETER K. MICHAEL\*  
Chief Deputy Attorney General

JAY JERDE  
Deputy Attorney General

JAMES KASTE  
Senior Assistant Attorney General

CHRISTOPHER BROWN  
Senior Assistant Attorney General

DAVID J. WILLMS  
Senior Assistant Attorney General

123 State Capitol  
Cheyenne, WY 82002  
(307) 777-6196

*\*Counsel of Record*



To: Maurice Felton  
Felton Angus Ranch, Inc.  
591 Brandenburg Rd.  
Miles City, MT 59301

You are hereby commanded to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below:

Full, complete and legible or audible copies of the documents or objects listed in Exhibit "A," which is attached hereto.

Compliance with this subpoena can be made by mailing copies of the requested documents to Wyoming Attorney General's Office, Water and Natural Resource Division Attn: James Kaste, 123 State Capitol, Cheyenne, WY 82002, for receipt on or before January 21, 2013.

DATED this 31st day of December, 2012

Issuing Officer's Signature



James C. Kaste

An attorney, as officer of the Court, may issue and sign a Subpoena on behalf of a Court in which the attorney is authorized to practice (Rule 45, Federal Rules of Civil Procedure)

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PROOF OF SERVICE

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Served Date: \_\_\_\_\_ Place: \_\_\_\_\_

Served on (Print Name) \_\_\_\_\_ Manner of Service: \_\_\_\_\_

Served by (Print Name) \_\_\_\_\_ Title: \_\_\_\_\_

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DECLARATION OF SERVER

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I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the proof of service is true and correct.

Executed on \_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Server

\_\_\_\_\_  
Address of Server

## STATEMENT REQUIRED BY FED. R. CIV. P. 45(a)(1)(A)(iv)

### (c) PROTECTING A PERSON SUBJECT TO A SUBPOENA.

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(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

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BEFORE THE HONORABLE BARTON H. THOMPSON, JR.

SPECIAL MASTER

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**SUBPOENA**

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Attorney General of Wyoming

PETER K. MICHAEL\*  
Chief Deputy Attorney General

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Senior Assistant Attorney General  
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Senior Assistant Attorney General  
DAVID J. WILLMS  
Senior Assistant Attorney General  
123 State Capitol  
Cheyenne, WY 82002  
(307) 777-6196  
*\*Counsel of Record*

To: Daniel & Robert Stokes  
407 S. Custer  
Miles City, MT 59301

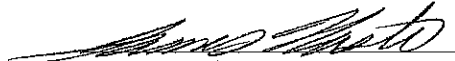
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DATED this 31st day of December, 2012

Issuing Officer's Signature



James C. Kaste

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PROOF OF SERVICE

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Served Date: \_\_\_\_\_ Place: \_\_\_\_\_

Served on (Print Name) \_\_\_\_\_ Manner of Service: \_\_\_\_\_

Served by (Print Name) \_\_\_\_\_ Title: \_\_\_\_\_

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DECLARATION OF SERVER

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I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the proof of service is true and correct.

Executed on \_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Server

\_\_\_\_\_  
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## **EXHIBIT "A"**

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**SUBPOENA**

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PETER K. MICHAEL\*  
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DAVID J. WILLMS  
Senior Assistant Attorney General  
123 State Capitol  
Cheyenne, WY 82002  
(307) 777-6196  
*\*Counsel of Record*

To: Alfred Leatherberry  
3705 Batchelor St.  
Miles City, MT 59301-5789

Alfred Leatherberry  
309 N. 9th St. Apt 2  
Miles City, MT 59301-3309

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Issuing Officer's Signature

  
James C. Kaste

An attorney, as officer of the Court, may issue and sign a Subpoena on behalf of a Court in which the attorney is authorized to practice (Rule 45, Federal Rules of Civil Procedure)

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PROOF OF SERVICE

---

Served Date: \_\_\_\_\_ Place: \_\_\_\_\_

Served on (Print Name) \_\_\_\_\_ Manner of Service: \_\_\_\_\_

Served by (Print Name) \_\_\_\_\_ Title: \_\_\_\_\_

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DECLARATION OF SERVER

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I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the proof of service is true and correct.

Executed on \_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Server

\_\_\_\_\_  
Address of Server

## STATEMENT REQUIRED BY FED. R. CIV. P. 45(a)(1)(A)(iv)

### (c) PROTECTING A PERSON SUBJECT TO A SUBPOENA.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

#### (2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

#### (3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person—except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

### (d) DUTIES IN RESPONDING TO A SUBPOENA.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

#### (2) *Claiming Privilege or Protection.*

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(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) **CONTEMPT.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(e)(3)(A)(ii).

## EXHIBIT "A"

1. All documents in your possession, custody, or control which reflect your water rights, including rights to surface water, groundwater, or stored water.
2. All documents in your possession, custody, or control which reflect the acres you had under irrigation, the means of diversion to those acres, and the diversions of water you made to those acres during the years 1987-1989, 2000-2004 and 2006, including the dates when those diversions occurred, how much water was diverted, and the source of supply for those diversions whether they were from surface water, groundwater, or storage.
3. All documents in your possession, custody, or control reflecting communications with anyone from the Montana Department of Natural Resources and Conservation, with anyone from the Montana Attorney General's Office, with any other attorney or employee of the State of Montana or its agencies, with any other water user or irrigator, with any water commissioner, or with any other person regarding your actual water use and/or right to use water during the years 1987-1989, 2000-2004 and 2006, including communications that related to the use of water by neighboring irrigators in either the State of Montana or the State of Wyoming or communications related to this lawsuit.
4. All documents in your possession, custody, or control reflecting any calls or requests for regulation that may have been made by you or any other water user during the years 1987-1989, 2000-2004 and 2006 on any source of supply in which you have a water right.
5. All documents in your possession, custody, or control reflecting any action or agreement by or between yourself and any other water user(s) to share a shortage of water with or without regard to priority during the years 1987-1989, 2000-2004 and 2006.

**NO. 137, ORIGINAL**

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**IN THE  
SUPREME COURT OF THE UNITED STATES**

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**STATE OF MONTANA, Plaintiff**

**V.**

**STATE OF WYOMING**

**AND**

**STATE OF NORTH DAKOTA, Defendants**

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**BEFORE THE HONORABLE BARTON H. THOMPSON, JR.**

**SPECIAL MASTER**

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**SUBPOENA**

GREGORY A. PHILLIPS  
Attorney General of Wyoming

PETER K. MICHAEL\*  
Chief Deputy Attorney General

JAY JERDE  
Deputy Attorney General

JAMES KASTE  
Senior Assistant Attorney General

CHRISTOPHER BROWN  
Senior Assistant Attorney General

DAVID J. WILLMS  
Senior Assistant Attorney General

123 State Capitol  
Cheyenne, WY 82002  
(307) 777-6196

*\*Counsel of Record*

To: Ted & Ruth Hirsch  
1840 Tongue River Rd  
Miles City, MT 59301-6274

You are hereby commanded to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below:

Full, complete and legible or audible copies of the documents or objects listed in Exhibit "A," which is attached hereto.

Compliance with this subpoena can be made by mailing copies of the requested documents to Wyoming Attorney General's Office, Water and Natural Resource Division Attn: James Kaste, 123 State Capitol, Cheyenne, WY 82002, for receipt on or before January 21, 2013.

DATED this 31st day of December, 2012

Issuing Officer's Signature

  
James C. Kaste

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3. All documents in your possession, custody, or control reflecting communications with anyone from the Montana Department of Natural Resources and Conservation, with anyone from the Montana Attorney General's Office, with any other attorney or employee of the State of Montana or its agencies, with any other water user or irrigator, with any water commissioner, or with any other person regarding your actual water use and/or right to use water during the years 1987-1989, 2000-2004 and 2006, including communications that related to the use of water by neighboring irrigators in either the State of Montana or the State of Wyoming or communications related to this lawsuit.

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SPECIAL MASTER

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**SUBPOENA**

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Attorney General of Wyoming

PETER K. MICHAEL\*  
Chief Deputy Attorney General

JAY JERDE  
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JAMES KASTE  
Senior Assistant Attorney General

CHRISTOPHER BROWN  
Senior Assistant Attorney General

DAVID J. WILLMS  
Senior Assistant Attorney General

123 State Capitol  
Cheyenne, WY 82002

(307) 777-6196

*\*Counsel of Record*

To: John & Deborah Crimmings  
1576 MT 59 South  
Miles City, MT 59301

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(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

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(i) expressly make the claim; and

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(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) *CONTEMPT.* The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

## **EXHIBIT "A"**

1. All documents in your possession, custody, or control which reflect your water rights, including rights to surface water, groundwater, or stored water.
2. All documents in your possession, custody, or control which reflect the acres you had under irrigation, the means of diversion to those acres, and the diversions of water you made to those acres during the years 1987-1989, 2000-2004 and 2006, including the dates when those diversions occurred, how much water was diverted, and the source of supply for those diversions whether they were from surface water, groundwater, or storage.
3. All documents in your possession, custody, or control reflecting communications with anyone from the Montana Department of Natural Resources and Conservation, with anyone from the Montana Attorney General's Office, with any other attorney or employee of the State of Montana or its agencies, with any other water user or irrigator, with any water commissioner, or with any other person regarding your actual water use and/or right to use water during the years 1987-1989, 2000-2004 and 2006, including communications that related to the use of water by neighboring irrigators in either the State of Montana or the State of Wyoming or communications related to this lawsuit.
4. All documents in your possession, custody, or control reflecting any calls or requests for regulation that may have been made by you or any other water user during the years 1987-1989, 2000-2004 and 2006 on any source of supply in which you have a water right.
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**NO. 137, ORIGINAL**

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**IN THE  
SUPREME COURT OF THE UNITED STATES**

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**STATE OF MONTANA, Plaintiff**

**V.**

**STATE OF WYOMING**

**AND**

**STATE OF NORTH DAKOTA, Defendants**

---

**BEFORE THE HONORABLE BARTON H. THOMPSON, JR.**

**SPECIAL MASTER**

---

**SUBPOENA**

GREGORY A. PHILLIPS  
Attorney General of Wyoming

PETER K. MICHAEL\*  
Chief Deputy Attorney General

JAY JERDE  
Deputy Attorney General  
JAMES KASTE  
Senior Assistant Attorney General  
CHRISTOPHER BROWN  
Senior Assistant Attorney General  
DAVID J. WILLMS  
Senior Assistant Attorney General  
123 State Capitol  
Cheyenne, WY 82002  
(307) 777-6196  
*\*Counsel of Record*

To: Gregory & Linda Losinski  
1508 Highway 59 S  
Miles City, MT 59301

You are hereby commanded to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below:

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Compliance with this subpoena can be made by mailing copies of the requested documents to Wyoming Attorney General's Office, Water and Natural Resource Division Attn: James Kaste, 123 State Capitol, Cheyenne, WY 82002, for receipt on or before January 21, 2013.

DATED this 31st day of December, 2012

Issuing Officer's Signature

  
James C. Kaste

An attorney, as officer of the Court, may issue and sign a Subpoena on behalf of a Court in which the attorney is authorized to practice (Rule 45, Federal Rules of Civil Procedure)

---

PROOF OF SERVICE

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Served Date: \_\_\_\_\_ Place: \_\_\_\_\_

Served on (Print Name) \_\_\_\_\_ Manner of Service: \_\_\_\_\_

Served by (Print Name) \_\_\_\_\_ Title: \_\_\_\_\_

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DECLARATION OF SERVER

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I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the proof of service is true and correct.

Executed on \_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Server

\_\_\_\_\_  
Address of Server



## STATEMENT REQUIRED BY FED. R. CIV. P. 45(a)(1)(A)(iv)

### (c) PROTECTING A PERSON SUBJECT TO A SUBPOENA.

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(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

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(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

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(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

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(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

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(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

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## **EXHIBIT "A"**

1. All documents in your possession, custody, or control which reflect your water rights, including rights to surface water, groundwater, or stored water.

2. All documents in your possession, custody, or control which reflect the acres you had under irrigation, the means of diversion to those acres, and the diversions of water you made to those acres during the years 1987-1989, 2000-2004 and 2006, including the dates when those diversions occurred, how much water was diverted, and the source of supply for those diversions whether they were from surface water, groundwater, or storage.

3. All documents in your possession, custody, or control reflecting communications with anyone from the Montana Department of Natural Resources and Conservation, with anyone from the Montana Attorney General's Office, with any other attorney or employee of the State of Montana or its agencies, with any other water user or irrigator, with any water commissioner, or with any other person regarding your actual water use and/or right to use water during the years 1987-1989, 2000-2004 and 2006, including communications that related to the use of water by neighboring irrigators in either the State of Montana or the State of Wyoming or communications related to this lawsuit.

4. All documents in your possession, custody, or control reflecting any calls or requests for regulation that may have been made by you or any other water user during the years 1987-1989, 2000-2004 and 2006 on any source of supply in which you have a water right.

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NO. 137, ORIGINAL

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IN THE  
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STATE OF MONTANA, Plaintiff

v.

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AND

STATE OF NORTH DAKOTA, Defendants

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BEFORE THE HONORABLE BARTON H. THOMPSON, JR.

SPECIAL MASTER

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**SUBPOENA**

GREGORY A. PHILLIPS  
Attorney General of Wyoming

PETER K. MICHAEL\*  
Chief Deputy Attorney General

JAY JERDE  
Deputy Attorney General  
JAMES KASTE  
Senior Assistant Attorney General  
CHRISTOPHER BROWN  
Senior Assistant Attorney General  
DAVID J. WILLMS  
Senior Assistant Attorney General  
123 State Capitol  
Cheyenne, WY 82002  
(307) 777-6196  
*\*Counsel of Record*

To: Triple T Outfitting, LLC  
Attn: Todd S. Steadman  
611 S Haynes Ave  
Miles City, MT 59301

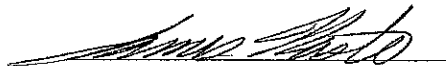
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DATED this 31st day of December, 2012

Issuing Officer's Signature

  
James C. Kaste

An attorney, as officer of the Court, may issue and sign a Subpoena on behalf of a Court in which the attorney is authorized to practice (Rule 45, Federal Rules of Civil Procedure)

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PROOF OF SERVICE

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Served Date: \_\_\_\_\_ Place: \_\_\_\_\_

Served on (Print Name) \_\_\_\_\_ Manner of Service: \_\_\_\_\_

Served by (Print Name) \_\_\_\_\_ Title: \_\_\_\_\_

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DECLARATION OF SERVER

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I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the proof of service is true and correct.

Executed on \_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Server

\_\_\_\_\_  
Address of Server

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**No. 137, ORIGINAL**

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**SUBPOENA**

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Senior Assistant Attorney General  
123 State Capitol  
Cheyenne, WY 82002  
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To: Duane and Carolyn Mathison  
976 Highway 59 S  
Miles City, MT 59301-8819

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PROOF OF SERVICE

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Served Date: \_\_\_\_\_ Place: \_\_\_\_\_

Served on (Print Name) \_\_\_\_\_ Manner of Service: \_\_\_\_\_

Served by (Print Name) \_\_\_\_\_ Title: \_\_\_\_\_

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DECLARATION OF SERVER

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Executed on \_\_\_\_\_  
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Signature of Server

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(e) *CONTEMPT.* The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

## **EXHIBIT "A"**

1. All documents in your possession, custody, or control which reflect your water rights, including rights to surface water, groundwater, or stored water.

2. All documents in your possession, custody, or control which reflect the acres you had under irrigation, the means of diversion to those acres, and the diversions of water you made to those acres during the years 1987-1989, 2000-2004 and 2006, including the dates when those diversions occurred, how much water was diverted, and the source of supply for those diversions whether they were from surface water, groundwater, or storage.

3. All documents in your possession, custody, or control reflecting communications with anyone from the Montana Department of Natural Resources and Conservation, with anyone from the Montana Attorney General's Office, with any other attorney or employee of the State of Montana or its agencies, with any other water user or irrigator, with any water commissioner, or with any other person regarding your actual water use and/or right to use water during the years 1987-1989, 2000-2004 and 2006, including communications that related to the use of water by neighboring irrigators in either the State of Montana or the State of Wyoming or communications related to this lawsuit.

4. All documents in your possession, custody, or control reflecting any calls or requests for regulation that may have been made by you or any other water user during the years 1987-1989, 2000-2004 and 2006 on any source of supply in which you have a water right.

5. All documents in your possession, custody, or control reflecting any action or agreement by or between yourself and any other water user(s) to share a shortage of water with or without regard to priority during the years 1987-1989, 2000-2004 and 2006.

No. 137, ORIGINAL

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IN THE  
SUPREME COURT OF THE UNITED STATES

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STATE OF MONTANA, Plaintiff

v.

STATE OF WYOMING

AND

STATE OF NORTH DAKOTA, Defendants

---

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

---

**SUBPOENA**

GREGORY A. PHILLIPS  
Attorney General of Wyoming

PETER K. MICHAEL\*  
Chief Deputy Attorney General

JAY JERDE  
Deputy Attorney General  
JAMES KASTE  
Senior Assistant Attorney General  
CHRISTOPHER BROWN  
Senior Assistant Attorney General  
DAVID J. WILLMS  
Senior Assistant Attorney General  
123 State Capitol  
Cheyenne, WY 82002  
(307) 777-6196  
*\*Counsel of Record*

To: Boyd C. Blum  
Margaret A Blum Trustee  
1120 Highway 59 S.  
Miles City, MT 59301-8808

You are hereby commanded to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below:

Full, complete and legible or audible copies of the documents or objects listed in Exhibit "A," which is attached hereto.

Compliance with this subpoena can be made by mailing copies of the requested documents to Wyoming Attorney General's Office, Water and Natural Resource Division Attn: James Kaste, 123 State Capitol, Cheyenne, WY 82002, for receipt on or before January 21, 2013.

DATED this 31st day of December, 2012

Issuing Officer's Signature



James C. Kaste

An attorney, as officer of the Court, may issue and sign a Subpoena on behalf of a Court in which the attorney is authorized to practice (Rule 45, Federal Rules of Civil Procedure)

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PROOF OF SERVICE

---

Served Date: \_\_\_\_\_ Place: \_\_\_\_\_

Served on (Print Name) \_\_\_\_\_ Manner of Service: \_\_\_\_\_

Served by (Print Name) \_\_\_\_\_ Title: \_\_\_\_\_

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DECLARATION OF SERVER

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I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the proof of service is true and correct.

Executed on \_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Server

\_\_\_\_\_  
Address of Server

## STATEMENT REQUIRED BY FED. R. CIV. P. 45(a)(1)(A)(iv)

### (c) PROTECTING A PERSON SUBJECT TO A SUBPOENA.

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#### (2) *Command to Produce Materials or Permit Inspection.*

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(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

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(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person—except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

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(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

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### (d) DUTIES IN RESPONDING TO A SUBPOENA.

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(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

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(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) *CONTEMPT.* The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).



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No. 137, ORIGINAL

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BEFORE THE HONORABLE BARTON H. THOMPSON, JR.

SPECIAL MASTER

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**SUBPOENA**

GREGORY A. PHILLIPS  
Attorney General of Wyoming

PETER K. MICHAEL\*  
Chief Deputy Attorney General

JAY JERDE  
Deputy Attorney General  
JAMES KASTE  
Senior Assistant Attorney General  
CHRISTOPHER BROWN  
Senior Assistant Attorney General  
DAVID J. WILLMS  
Senior Assistant Attorney General  
123 State Capitol  
Cheyenne, WY 82002  
(307) 777-6196  
*\*Counsel of Record*

To: Bret and Tanna Aye  
171 Harvest Ln  
Miles City, MT 59391


You are hereby commanded to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below:

Full, complete and legible or audible copies of the documents or objects listed in Exhibit "A," which is attached hereto.

Compliance with this subpoena can be made by mailing copies of the requested documents to Wyoming Attorney General's Office, Water and Natural Resource Division Attn: James Kaste, 123 State Capitol, Cheyenne, WY 82002, for receipt on or before January 21, 2013.

DATED this 31st day of December, 2012

Issuing Officer's Signature



James C. Kaste

An attorney, as officer of the Court, may issue and sign a Subpoena on behalf of a Court in which the attorney is authorized to practice (Rule 45, Federal Rules of Civil Procedure)

---

PROOF OF SERVICE

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Served Date: \_\_\_\_\_ Place: \_\_\_\_\_

Served on (Print Name) \_\_\_\_\_ Manner of Service: \_\_\_\_\_

Served by (Print Name) \_\_\_\_\_ Title: \_\_\_\_\_

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DECLARATION OF SERVER

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I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the proof of service is true and correct.

Executed on \_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Server

\_\_\_\_\_  
Address of Server

## STATEMENT REQUIRED BY FED. R. CIV. P. 45(a)(1)(A)(iv)

### (c) PROTECTING A PERSON SUBJECT TO A SUBPOENA.

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No. 137, ORIGINAL

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BEFORE THE HONORABLE BARTON H. THOMPSON, JR.

SPECIAL MASTER

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**SUBPOENA**

GREGORY A. PHILLIPS  
Attorney General of Wyoming

PETER K. MICHAEL\*  
Chief Deputy Attorney General

JAY JERDE  
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JAMES KASTE  
Senior Assistant Attorney General  
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Senior Assistant Attorney General  
DAVID J. WILLMS  
Senior Assistant Attorney General  
123 State Capitol  
Cheyenne, WY 82002  
(307) 777-6196  
*\*Counsel of Record*

To: Miles City Town & Country Club Inc.  
c/o Rick Flotkoetter, Pro/Club Manager  
4th and Eagle  
Miles City, MT 59301

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DATED this 31st day of December, 2012

Issuing Officer's Signature

  
James C. Kaste

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PROOF OF SERVICE

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Served Date: \_\_\_\_\_ Place: \_\_\_\_\_

Served on (Print Name) \_\_\_\_\_ Manner of Service: \_\_\_\_\_

Served by (Print Name) \_\_\_\_\_ Title: \_\_\_\_\_

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DECLARATION OF SERVER

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I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the proof of service is true and correct.

Executed on \_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Server

\_\_\_\_\_  
Address of Server

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**SUBPOENA**

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DAVID J. WILLMS  
Senior Assistant Attorney General  
123 State Capitol  
Cheyenne, WY 82002  
(307) 777-6196  
*\*Counsel of Record*

To: City of Miles City Municipal  
c/o Mayor Chris Grenz  
17 S. 8th St.  
Miles City, MT 59301

City of Miles City Municipal  
c/o Mayor Chris Grenz  
506 Mississippi  
Miles City, MT 59301

You are hereby commanded to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below:

Full, complete and legible or audible copies of the documents or objects listed in Exhibit "A," which is attached hereto.

Compliance with this subpoena can be made by mailing copies of the requested documents to Wyoming Attorney General's Office, Water and Natural Resource Division Attn: James Kaste, 123 State Capitol, Cheyenne, WY 82002, for receipt on or before January 21, 2013.

DATED this 31st day of December, 2012

Issuing Officer's Signature



James C. Kaste

An attorney, as officer of the Court, may issue and sign a Subpoena on behalf of a Court in which the attorney is authorized to practice (Rule 45, Federal Rules of Civil Procedure)

---

PROOF OF SERVICE

---

Served Date: \_\_\_\_\_ Place: \_\_\_\_\_

Served on (Print Name) \_\_\_\_\_ Manner of Service: \_\_\_\_\_

Served by (Print Name) \_\_\_\_\_ Title: \_\_\_\_\_

---

DECLARATION OF SERVER

---

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the proof of service is true and correct.

Executed on \_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Server

\_\_\_\_\_  
Address of Server

## STATEMENT REQUIRED BY FED. R. CIV. P. 45(a)(1)(A)(iv)

### (c) PROTECTING A PERSON SUBJECT TO A SUBPOENA.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or

regularly transacts business in person—except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

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(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

### (d) DUTIES IN RESPONDING TO A SUBPOENA.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) **CONTEMPT.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

## EXHIBIT "A"

1. All documents in your possession, custody, or control which reflect your water rights, including rights to surface water, groundwater, or stored water.
2. All documents in your possession, custody, or control which reflect the acres you had under irrigation, the means of diversion to those acres, and the diversions of water you made to those acres during the years 1987-1989, 2000-2004 and 2006, including the dates when those diversions occurred, how much water was diverted, and the source of supply for those diversions whether they were from surface water, groundwater, or storage.
3. All documents in your possession, custody, or control reflecting communications with anyone from the Montana Department of Natural Resources and Conservation, with anyone from the Montana Attorney General's Office, with any other attorney or employee of the State of Montana or its agencies, with any other water user or irrigator, with any water commissioner, or with any other person regarding your actual water use and/or right to use water during the years 1987-1989, 2000-2004 and 2006, including communications that related to the use of water by neighboring irrigators in either the State of Montana or the State of Wyoming or communications related to this lawsuit.
4. All documents in your possession, custody, or control reflecting any calls or requests for regulation that may have been made by you or any other water user during the years 1987-1989, 2000-2004 and 2006 on any source of supply in which you have a water right.
5. All documents in your possession, custody, or control reflecting any action or agreement by or between yourself and any other water user(s) to share a shortage of water with or without regard to priority during the years 1987-1989, 2000-2004 and 2006.



No. 137, ORIGINAL

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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

---

**SUBPOENA**

GREGORY A. PHILLIPS  
Attorney General of Wyoming

PETER K. MICHAEL\*  
Chief Deputy Attorney General

JAY JERDE  
Deputy Attorney General

JAMES KASTE  
Senior Assistant Attorney General

CHRISTOPHER BROWN  
Senior Assistant Attorney General

DAVID J. WILLMS  
Senior Assistant Attorney General

123 State Capitol  
Cheyenne, WY 82002

(307) 777-6196

*\*Counsel of Record*

To: Range Riders Museum  
435 LP Anderson Rd  
Miles City, MT 59301

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DATED this 31st day of December, 2012

Issuing Officer's Signature

  
James C. Kaste

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Served by (Print Name) \_\_\_\_\_ Title: \_\_\_\_\_

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(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

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(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

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## EXHIBIT "A"

1. All documents in your possession, custody, or control which reflect your water rights, including rights to surface water, groundwater, or stored water.

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No. 137, ORIGINAL

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IN THE  
SUPREME COURT OF THE UNITED STATES

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STATE OF MONTANA, Plaintiff

V.

STATE OF WYOMING

AND

STATE OF NORTH DAKOTA, Defendants

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BEFORE THE HONORABLE BARTON H. THOMPSON, JR.

SPECIAL MASTER

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**SUBPOENA**

GREGORY A. PHILLIPS  
Attorney General of Wyoming

PETER K. MICHAEL\*  
Chief Deputy Attorney General

JAY JERDE  
Deputy Attorney General  
JAMES KASTE  
Senior Assistant Attorney General  
CHRISTOPHER BROWN  
Senior Assistant Attorney General  
DAVID J. WILLMS  
Senior Assistant Attorney General  
123 State Capitol  
Cheyenne, WY 82002  
(307) 777-6196  
*\*Counsel of Record*

To: William Swan  
2573 Tongue River Rd.  
Miles City, MT 59301

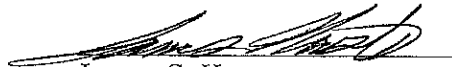
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Issuing Officer's Signature



James C. Kaste

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Served Date: \_\_\_\_\_ Place: \_\_\_\_\_

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JAMES KASTE  
Senior Assistant Attorney General  
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Senior Assistant Attorney General  
DAVID J. WILLMS  
Senior Assistant Attorney General  
123 State Capitol  
Cheyenne, WY 82002  
(307) 777-6196  
*\*Counsel of Record*

To: Bobby & Saudra Hays  
105 S. Stacy Ave  
Miles City, MT 59301-4727

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(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person—except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

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(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

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(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) **CONTEMPT.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

## EXHIBIT "A"

1. All documents in your possession, custody, or control which reflect your water rights, including rights to surface water, groundwater, or stored water.
2. All documents in your possession, custody, or control which reflect the acres you had under irrigation, the means of diversion to those acres, and the diversions of water you made to those acres during the years 1987-1989, 2000-2004 and 2006, including the dates when those diversions occurred, how much water was diverted, and the source of supply for those diversions whether they were from surface water, groundwater, or storage.
3. All documents in your possession, custody, or control reflecting communications with anyone from the Montana Department of Natural Resources and Conservation, with anyone from the Montana Attorney General's Office, with any other attorney or employee of the State of Montana or its agencies, with any other water user or irrigator, with any water commissioner, or with any other person regarding your actual water use and/or right to use water during the years 1987-1989, 2000-2004 and 2006, including communications that related to the use of water by neighboring irrigators in either the State of Montana or the State of Wyoming or communications related to this lawsuit.
4. All documents in your possession, custody, or control reflecting any calls or requests for regulation that may have been made by you or any other water user during the years 1987-1989, 2000-2004 and 2006 on any source of supply in which you have a water right.
5. All documents in your possession, custody, or control reflecting any action or agreement by or between yourself and any other water user(s) to share a shortage of water with or without regard to priority during the years 1987-1989, 2000-2004 and 2006.

No. 137, ORIGINAL

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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

---

**SUBPOENA**

GREGORY A. PHILLIPS  
Attorney General of Wyoming

PETER K. MICHAEL\*  
Chief Deputy Attorney General

JAY JERDE  
Deputy Attorney General  
JAMES KASTE  
Senior Assistant Attorney General  
CHRISTOPHER BROWN  
Senior Assistant Attorney General  
DAVID J. WILLMS  
Senior Assistant Attorney General  
123 State Capitol  
Cheyenne, WY 82002  
(307) 777-6196  
*\*Counsel of Record*



To: Richard & Jane Anderson  
6707 Moon Creek Rd  
Miles City, MT 59301

You are hereby commanded to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below:

Full, complete and legible or audible copies of the documents or objects listed in Exhibit "A," which is attached hereto.

Compliance with this subpoena can be made by mailing copies of the requested documents to Wyoming Attorney General's Office, Water and Natural Resource Division Attn: James Kaste, 123 State Capitol, Cheyenne, WY 82002, for receipt on or before January 21, 2013.

DATED this 31st day of December, 2012

Issuing Officer's Signature



James C. Kaste

An attorney, as officer of the Court, may issue and sign a Subpoena on behalf of a Court in which the attorney is authorized to practice (Rule 45, Federal Rules of Civil Procedure)

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PROOF OF SERVICE

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Served Date: \_\_\_\_\_ Place: \_\_\_\_\_

Served on (Print Name) \_\_\_\_\_ Manner of Service: \_\_\_\_\_

Served by (Print Name) \_\_\_\_\_ Title: \_\_\_\_\_

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DECLARATION OF SERVER

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I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the proof of service is true and correct.

Executed on \_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Server

\_\_\_\_\_  
Address of Server

## STATEMENT REQUIRED BY FED. R. CIV. P. 45(a)(1)(A)(iv)

### (c) PROTECTING A PERSON SUBJECT TO A SUBPOENA.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

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(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

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(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) *CONTEMPT.* The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

## **EXHIBIT "A"**

1. All documents in your possession, custody, or control which reflect your water rights, including rights to surface water, groundwater, or stored water.

2. All documents in your possession, custody, or control which reflect the acres you had under irrigation, the means of diversion to those acres, and the diversions of water you made to those acres during the years 1987-1989, 2000-2004 and 2006, including the dates when those diversions occurred, how much water was diverted, and the source of supply for those diversions whether they were from surface water, groundwater, or storage.

3. All documents in your possession, custody, or control reflecting communications with anyone from the Montana Department of Natural Resources and Conservation, with anyone from the Montana Attorney General's Office, with any other attorney or employee of the State of Montana or its agencies, with any other water user or irrigator, with any water commissioner, or with any other person regarding your actual water use and/or right to use water during the years 1987-1989, 2000-2004 and 2006, including communications that related to the use of water by neighboring irrigators in either the State of Montana or the State of Wyoming or communications related to this lawsuit.

4. All documents in your possession, custody, or control reflecting any calls or requests for regulation that may have been made by you or any other water user during the years 1987-1989, 2000-2004 and 2006 on any source of supply in which you have a water right.

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No. 137, ORIGINAL

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IN THE  
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STATE OF MONTANA, Plaintiff

V.

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AND

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BEFORE THE HONORABLE BARTON H. THOMPSON, JR.

SPECIAL MASTER

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**SUBPOENA**

GREGORY A. PHILLIPS  
Attorney General of Wyoming

PETER K. MICHAEL\*  
Chief Deputy Attorney General

JAY JERDE  
Deputy Attorney General  
JAMES KASTE  
Senior Assistant Attorney General  
CHRISTOPHER BROWN  
Senior Assistant Attorney General  
DAVID J. WILLMS  
Senior Assistant Attorney General  
123 State Capitol  
Cheyenne, WY 82002  
(307) 777-6196  
*\*Counsel of Record*

To: Lance & Linda Tonn  
1214 Highway 59 S  
Miles City, MT 59301

You are hereby commanded to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below:

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Compliance with this subpoena can be made by mailing copies of the requested documents to Wyoming Attorney General's Office, Water and Natural Resource Division Attn: James Kaste, 123 State Capitol, Cheyenne, WY 82002, for receipt on or before January 21, 2013.

DATED this 31st day of December, 2012

Issuing Officer's Signature



James C. Kaste

An attorney, as officer of the Court, may issue and sign a Subpoena on behalf of a Court in which the attorney is authorized to practice (Rule 45, Federal Rules of Civil Procedure)

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PROOF OF SERVICE

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Served Date: \_\_\_\_\_ Place: \_\_\_\_\_

Served on (Print Name) \_\_\_\_\_ Manner of Service: \_\_\_\_\_

Served by (Print Name) \_\_\_\_\_ Title: \_\_\_\_\_

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DECLARATION OF SERVER

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I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the proof of service is true and correct.

Executed on \_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Server

\_\_\_\_\_  
Address of Server

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No. 137, ORIGINAL

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STATE OF MONTANA, Plaintiff

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BEFORE THE HONORABLE BARTON H. THOMPSON, JR.

SPECIAL MASTER

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**SUBPOENA**

GREGORY A. PHILLIPS  
Attorney General of Wyoming

PETER K. MICHAEL\*  
Chief Deputy Attorney General

JAY JERDE  
Deputy Attorney General  
JAMES KASTE  
Senior Assistant Attorney General  
CHRISTOPHER BROWN  
Senior Assistant Attorney General  
DAVID J. WILLMS  
Senior Assistant Attorney General  
123 State Capitol  
Cheyenne, WY 82002  
(307) 777-6196  
*\*Counsel of Record*

To: Hardesty Tract Homeowners Association  
David Pratt  
25 Broken Bow Ln  
Miles City, MT 59301

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Issuing Officer's Signature

  
James C. Kaste

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PROOF OF SERVICE

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Served Date: \_\_\_\_\_ Place: \_\_\_\_\_

Served on (Print Name) \_\_\_\_\_ Manner of Service: \_\_\_\_\_

Served by (Print Name) \_\_\_\_\_ Title: \_\_\_\_\_

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DECLARATION OF SERVER

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I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the proof of service is true and correct.

Executed on \_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Server

\_\_\_\_\_  
Address of Server

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(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) **CONTEMPT.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

## EXHIBIT "A"

1. All documents in your possession, custody, or control which reflect your water rights, including rights to surface water, groundwater, or stored water.
2. All documents in your possession, custody, or control which reflect the acres you had under irrigation, the means of diversion to those acres, and the diversions of water you made to those acres during the years 1987-1989, 2000-2004 and 2006, including the dates when those diversions occurred, how much water was diverted, and the source of supply for those diversions whether they were from surface water, groundwater, or storage.
3. All documents in your possession, custody, or control reflecting communications with anyone from the Montana Department of Natural Resources and Conservation, with anyone from the Montana Attorney General's Office, with any other attorney or employee of the State of Montana or its agencies, with any other water user or irrigator, with any water commissioner, or with any other person regarding your actual water use and/or right to use water during the years 1987-1989, 2000-2004 and 2006, including communications that related to the use of water by neighboring irrigators in either the State of Montana or the State of Wyoming or communications related to this lawsuit.
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5. All documents in your possession, custody, or control reflecting any action or agreement by or between yourself and any other water user(s) to share a shortage of water with or without regard to priority during the years 1987-1989, 2000-2004 and 2006.

No. 137, ORIGINAL

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IN THE  
SUPREME COURT OF THE UNITED STATES

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STATE OF MONTANA, Plaintiff

v.

STATE OF WYOMING

AND

STATE OF NORTH DAKOTA, Defendants

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BEFORE THE HONORABLE BARTON H. THOMPSON, JR.

SPECIAL MASTER

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**SUBPOENA**

GREGORY A. PHILLIPS  
Attorney General of Wyoming

PETER K. MICHAEL\*  
Chief Deputy Attorney General

JAY JERDE  
Deputy Attorney General  
JAMES KASTE  
Senior Assistant Attorney General  
CHRISTOPHER BROWN  
Senior Assistant Attorney General  
DAVID J. WILLMS  
Senior Assistant Attorney General  
123 State Capitol  
Cheyenne, WY 82002  
(307) 777-6196

\**Counsel of Record*

To: Keith Harwood  
31 Road 605  
Miles City, MT 59301-6427

You are hereby commanded to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below:

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Compliance with this subpoena can be made by mailing copies of the requested documents to Wyoming Attorney General's Office, Water and Natural Resource Division Attn: James Kaste, 123 State Capitol, Cheyenne, WY 82002, for receipt on or before January 21, 2013.

DATED this 31st day of December, 2012

Issuing Officer's Signature



James C. Kaste

An attorney, as officer of the Court, may issue and sign a Subpoena on behalf of a Court in which the attorney is authorized to practice (Rule 45, Federal Rules of Civil Procedure)



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PROOF OF SERVICE

---

Served Date: \_\_\_\_\_ Place: \_\_\_\_\_

Served on (Print Name) \_\_\_\_\_ Manner of Service: \_\_\_\_\_

Served by (Print Name) \_\_\_\_\_ Title: \_\_\_\_\_

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DECLARATION OF SERVER

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I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the proof of service is true and correct.

Executed on \_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Server

\_\_\_\_\_  
Address of Server

## STATEMENT REQUIRED BY FED. R. CIV. P. 45(a)(1)(A)(iv)

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(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or

regularly transacts business in person—except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

### (d) DUTIES IN RESPONDING TO A SUBPOENA.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

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(i) expressly make the claim; and

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(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) **CONTEMPT.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

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SPECIAL MASTER

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**SUBPOENA**

GREGORY A. PHILLIPS  
Attorney General of Wyoming

PETER K. MICHAEL\*  
Chief Deputy Attorney General

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Deputy Attorney General  
JAMES KASTE  
Senior Assistant Attorney General  
CHRISTOPHER BROWN  
Senior Assistant Attorney General  
DAVID J. WILLMS  
Senior Assistant Attorney General  
123 State Capitol  
Cheyenne, WY 82002  
(307) 777-6196

\**Counsel of Record*

To: Raymond Harwood  
7100 Moon Creek Rd  
Miles City, MT 59301-6254

You are hereby commanded to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below:

Full, complete and legible or audible copies of the documents or objects listed in Exhibit "A," which is attached hereto.

Compliance with this subpoena can be made by mailing copies of the requested documents to Wyoming Attorney General's Office, Water and Natural Resource Division Attn: James Kaste, 123 State Capitol, Cheyenne, WY 82002, for receipt on or before January 21, 2013.

DATED this 31st day of December, 2012

Issuing Officer's Signature



James C. Kaste

An attorney, as officer of the Court, may issue and sign a Subpoena on behalf of a Court in which the attorney is authorized to practice (Rule 45, Federal Rules of Civil Procedure)

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PROOF OF SERVICE

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Served Date: \_\_\_\_\_ Place: \_\_\_\_\_

Served on (Print Name) \_\_\_\_\_ Manner of Service: \_\_\_\_\_

Served by (Print Name) \_\_\_\_\_ Title: \_\_\_\_\_

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DECLARATION OF SERVER

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I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the proof of service is true and correct.

Executed on \_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Server

\_\_\_\_\_  
Address of Server

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**SUBPOENA**

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Attorney General of Wyoming

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Chief Deputy Attorney General

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DAVID J. WILLMS  
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123 State Capitol  
Cheyenne, WY 82002  
(307) 777-6196  
*\*Counsel of Record*

To: Arlo and Ruth Nansel  
315 S. Cottage Grove Ave  
Miles City, MT 59301

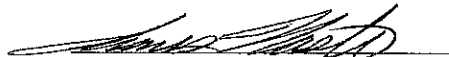
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PROOF OF SERVICE

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Served Date: \_\_\_\_\_ Place: \_\_\_\_\_

Served on (Print Name) \_\_\_\_\_ Manner of Service: \_\_\_\_\_

Served by (Print Name) \_\_\_\_\_ Title: \_\_\_\_\_

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Executed on \_\_\_\_\_  
Date

\_\_\_\_\_  
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