

No. 137, ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

STATE OF MONTANA, Plaintiff

v.

STATE OF WYOMING

AND

STATE OF NORTH DAKOTA, Defendants

BEFORE THE HONORABLE BARTON H. THOMPSON, JR.

SPECIAL MASTER

NOTICE OF ISSUANCE OF SUBPOENA TO PRODUCE DOCUMENTS OF ART
HAYES, JR. IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE TONGUE RIVER
WATER USERS' ASSOCIATION

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 Capitol Building
Cheyenne, WY 82002
(307) 777-6196
**Counsel of Record*

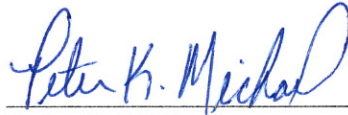
Notice is hereby given that the undersigned has issued a Subpoena for the production of documents to:

Art Hayes, Jr.,
President of Tongue River Water Users' Association
208 Hanging Woman Creek Road
Birney, MT 59012

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

Dated this 7th day of September, 2012.

THE STATE OF WYOMING



Peter K. Michael
Counsel of Record
Chief Deputy Attorney General
Christopher Brown
Senior Assistant Attorney General
123 Capitol Building
Cheyenne, WY 82002
307-777-6946
peter.michael@wyo.gov
chris.brown@wyo.gov

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of Notice of Issuance of Subpoena to Produce Documents of Art Hayes, Jr. in his Official Capacity as President of the Tongue River Water Users' Association, was served by electronic mail and by placing the same in the United States mail, postage paid, this 7th day of September, 2012.

Jeanne S. Whiteing
Whiteing & Smith
1628 5th Street
Boulder, CO 80302
jwhiteing@whiteinglaw.com

Jennifer Anders
Montana Attorney General's Office
P.O. Box 201401
Helena, MT 59620-1401
janders@mt.gov

John B. Draper
Jeffrey Wechsler
Montgomery & Andrews
325 Paseo de Peralta
Santa Fe, NM 87501
jdraper@montand.com
jwechsler@montand.com

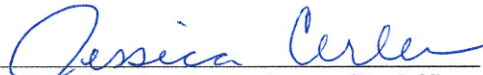
Jennifer Verleger
North Dakota Attorney General's Office
500 North Ninth Street
Bismarck, ND 58501
jverleger@nd.gov

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

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

Michael Wigmore
Bingham McCutchen, LLP
2020 K Street NW
Washington, DC 20006-1806
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


Wyoming Attorney General's Office

No. 137, ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

STATE OF MONTANA, Plaintiff

v.

STATE OF WYOMING

AND

STATE OF NORTH DAKOTA, Defendants

BEFORE THE HONORABLE BARTON H. THOMPSON, JR.

SPECIAL MASTER

SUBPOENA TO PRODUCE DOCUMENTS OF ART HAYES IN HIS OFFICIAL
CAPACITY AS PRESIDENT OF THE TONGUE RIVER WATER USERS'
ASSOCIATION

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 Capitol Building
Cheyenne, WY 82002
(307) 777-6196

**Counsel of Record*

To: Art Hayes
208 Hanging Woman Creek Road
Birney, MT 59012

COMES NOW the Defendant, State of Wyoming, and pursuant to Rule 45, Federal Rules of Civil Procedure, herewith commands you to produce and make available for inspection and/or copying, at the time, date, and place set forth below, any and all documents, electronically stored information, files or notes in his private possession as President of the Tongue River Water Users' Association, or in the possession of the Tongue River Water Users' Association relating to (1) the administration of water rights on the Tongue, Powder and Little Powder Rivers and their tributaries, (2) the Yellowstone River Compact, (3) the water rights of Tongue River Reservoir (4) the operation of Tongue River Reservoir, and (5) the deliveries of storage water from Tongue River Reservoir.

Place:

208 Hanging Woman Creek Road
Birney, MT 59012

Date and Time:

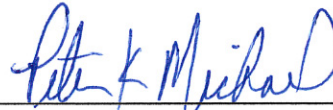
September 17, 2012 beginning at
approximately 1:00 p.m. through
September 18, 2012.

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: Sept. 7, 2012

CLERK OF COURT

OR



Signature of Clerk or Deputy Clerk

Attorney's Signature

The name, address, e-mail and telephone number of the attorney representing The State of Wyoming, who issues or requests this subpoena, are:

Peter K. Michael, Chief Deputy Attorney General, 123 Capitol Building, Cheyenne, WY 82002, (307) 777-6946, peter.michael@wyo.gov

Christopher Brown, Senior Assistant Attorney General, 123 Capitol Building, Cheyenne, WY 82002, (307) 777-6946, chris.brown@wyo.gov

FEDERAL RULE OF CIVIL PROCEDURE 45 (C), (D), AND (E) (EFFECTIVE 12/1/07)

(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

(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

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.

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)(i).