

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

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

Northern Cheyenne Tribe
c/o Jeanne Whiteing
Whiteing & Smith
1628 5th Street
Boulder, CO 80302

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

Dated this 11th day of June, 2013.

THE STATE OF WYOMING



James C. Kaste
Senior Assistant Attorney General
123 Capitol Building
Cheyenne, WY 82002
307-777-6946
james.kaste@wyo.gov

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the Notice of Issuance of Subpoena was served by electronic mail and by placing the same in the United States mail, postage paid, this 11th day of June, 2013.

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Wyoming Attorney General's Office

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SUBPOENA

GREGORY A. PHILLIPS
Attorney General of Wyoming

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(307) 777-6196

**Counsel of Record*

To: Northern Cheyenne Tribe
c/o Jeanne Whiteing
Whiteing & Smith
1628 5th Street
Boulder, CO 80302

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 August 12, 2013, in accordance with section VIII(C)(1)(e)(ii) of Case Management Plan No. 1 and Federal Rules of Civil Procedure 36(c) and 45. A copy of Case Management Plan No. 1 is enclosed.

Counsel for the State of Wyoming contacted counsel for the Northern Cheyenne Tribe prior to the issuance of this subpoena and she agreed to accept service of this subpoena on behalf of the Northern Cheyenne Tribe.

Should you choose to designate any documents, models or other tangible things as confidential, please contact counsel for the State of Wyoming regarding a non-disclosure agreement under the provisions of section VIII(F) of Case Management Plan No. 1.

DATED this 11th day of June, 2013

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

(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. Permits or leases, and any files or other documents associated with such permits or leases, for any uses of water from the Tongue River under the Northern Cheyenne Tribe's storage rights, direct flow rights, or storage contracts that were used, or for use, on the Northern Cheyenne Reservation in the years 2000-2004 or 2006.
2. Permits or leases, and any files or other documents associated with such permits or leases, for any uses of water from the Tongue River under the Northern Cheyenne Tribe's storage rights, direct flow rights, or storage contracts that were used, or for use, off the Northern Cheyenne Reservation in the years 2000-2004 or 2006.
3. Permits or leases, and the files for such permits or leases, for any groundwater wells drilled into the alluvium of the Tongue River.
4. The final Tongue River Water Model, dated 1992 and authored by GeoResearch, Inc. An alternative title might be Tongue River Water Allocation Model.
5. Any measurement data from river gages or stations on the Tongue River that the Tribe either solely or cooperatively owned or operated.