

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

OFFICE OF THE SPECIAL MASTER

CASE MANAGEMENT ORDER NO. 10

April 17, 2012

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Having reviewed Montana's "Expedited Motion for Extension of Case Management Deadline" and its letter of April 13, 2012, and having heard the arguments of counsel at the telephonic hearing of April 12, 2012, I have decided to modify the schedule for discovery as set out below. This Order balances the need to move forward on this matter with Montana's legitimate concern that it not be prejudiced by its council's involvement in *Nebraska v. Wyoming*. The Order sets a deadline for Montana's disclosure of its expert reports that is earlier than the date requested by Montana. At the moment, however, good cause has not been shown for a lengthier postponement of that disclosure date. Because trial in *Nebraska v. Wyoming* has not yet occurred, any argument that Montana's experts cannot meet this new deadline is highly speculative. At this point, there is nothing to suggest that the new deadlines set forth below are not manageable.

IT IS THEREFORE ORDERED THAT Case Management Plan No. 1 ("CMP") is amended and supplemented as follows:

1. Wyoming's Renewed Motion for Partial Summary Judgment (CMP ¶ IX.C)

If Wyoming chooses to renew its Motion for Partial Summary Judgment (preclusion of Liability for 1952-2003 and 2005), Wyoming shall file its renewed motion on or before Friday, June 15, 2012. Montana shall file its response on or before Friday, July 13, 2012. Wyoming shall file its reply on or before Monday, July 23. The hearing on the renewed motion shall be held on Friday, July 27, 2012, at a location to be determined.

2. Partial Stay of Discovery

a. The parties should seek to avoid scheduling new discovery, including depositions and answers to written discovery, for the period from July 15 through September 15, 2012, if (a) the discovery reasonably requires the personal involvement of Mr. Draper, Mr. Wechsler, or other attorneys or experts involved in *Kansas v. Nebraska*, and (b) the discovery can be delayed without prejudice to any party. The parties shall meet and confer prior to June 1, 2012, to agree on what discovery can occur during this period. The parties shall work in good faith to permit appropriate discovery to go forward while also ensuring that Montana is not prejudiced by the involvement of its counsel and experts in *Kansas v. Nebraska*. The parties shall bring any disagreement remaining after they meet and confer to the attention of the Special Master by joint letter on or before June 1, 2012 setting out the details of the disagreement, and the Special Master will promptly schedule a telephonic hearing to resolve the disagreement.

b. If subsequent to June 1, 2012, the parties shall disagree on what discovery can be conducted pursuant to this paragraph, the parties shall meet and confer to try to resolve

the disagreement. If they are unable to do so, they shall immediately bring the disagreement to the attention of the Special Master by joint letter setting out the details of the disagreement, and the Special Master will promptly schedule a telephonic hearing to resolve the disagreement.

3. Disclosure of Expert Reports & Objections to Expert Witness Disclosures (CMP §§ VII & VIII.C.3)

a. Montana shall disclose its expert reports and other exhibits no later than Friday, January 4, 2013. On or before January 18, 2013, Wyoming shall file with the Special Master its objections, if any, to the adequacy of Montana's expert witness disclosures.

b. Wyoming shall disclose its expert reports and other exhibits no later than Friday, February 1, 2013. The Special Master may postpone this date, upon a motion by Wyoming, if he finds that Wyoming needs additional time for good cause shown. On or before February 15, 2013, Montana shall file with the Special Master its objections, if any, to the adequacy of Wyoming's expert witness disclosures.

c. Montana shall disclose its rebuttal expert reports and other exhibits no later than Friday, February 22, 2013. The Special Master may postpone this date, upon a motion by Montana, if he finds that Montana needs additional time for good cause shown. On or before March 4, 2013, Wyoming shall file with the Special Master its objections, if any, to the adequacy of Montana's rebuttal expert witness disclosures.

4. Last Day for Propounding Written Discovery (CMP § VIII.C.1.g)

All written discovery shall be propounded no later than Friday, March 8, 2013.

5. Last Day for Depositions (CMP § VIII.C.2.1)

All depositions shall be completed no later than Friday, April 12, 2013.

6. Final Day for Motions (CMP § IX.A)

Motions may be filed at any time up and until Friday, May 10, 2013.

7. Other Provisions to Remain in Effect

All other provisions of the CMP shall remain in effect, except to the degree that they incorporate dates modified by this order. The parties shall continue to file progress reports with the Special Master on the first Friday of each month. Montana's progress report should also include an update on the proceedings in *Kansas v. Nebraska* that are potentially relevant to the schedule in this case.


8. Future Requests for Extensions of Deadlines

Any party may move for an extension of dates set forth in the CMP or this Order for good cause shown. Any such motion, however, must be accompanied by declarations setting out what efforts have been and are being made to meet the deadline and why, despite such best efforts, an extension is still required.

9. Requests for Modification or Supplementation

Any requests for modification or supplementation of this Case Management Order should be submitted to the Special Master on or before Friday, April 20, 2012.

Date: April 17, 2012



Barton H. Thompson, Jr.
Special Master

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