

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. 12

September 19, 2013

CASE MANAGEMENT ORDER NO. 12

For the purposes of the proceedings before the Special Master, IT IS HEREBY ORDERED THAT:

1. Pre-Trial Memoranda and Briefs

The State of Montana has asked about the nature and timing of the requirements of paragraph 7 of Case Management Order No. 11, and the State of Wyoming has expressed its views on the questions. Final pre-trial memoranda will remain due on September 23, 2013. Each party's pretrial memorandum, at a minimum, should identify the party's general contentions, all major issues of fact and law that need to be resolved, the expected time that the party will require to present its case-in-chief, and the party's witnesses and exhibits (unless identified separately). Each party's pre-trial memorandum also should identify which state that party believes has the burden of proof on each of the issues of fact that is identified, and why. Legal citations can be included if useful and relevant, but are not required.

Pre-trial briefs will be optional and will be due on Friday, October 4.

2. Notice and Issues of Liability

One issue that should be resolved prior to the start of trial is the question of whether Montana can establish liability for those years in which I have found that Montana did not provide notice to Wyoming. As discussed in my memorandum opinion on Wyoming's motion for summary judgment, Montana's opposition papers suggest that Montana currently plans to present evidence of liability in at least some of those years. However, as I noted in the memorandum opinion, the logic for requiring proof of some form of notice for purposes of damages or other relief arguably extends also to the question of whether proof of notice is required in order to establish liability. In its pre-trial memorandum, Montana should clearly state the years for which it plans to try to prove liability at trial. If these years include years in which I have previously concluded that Montana did not provide notice, a motion *in limine* would seem the appropriate vehicle for determining whether evidence should be admitted for those years.

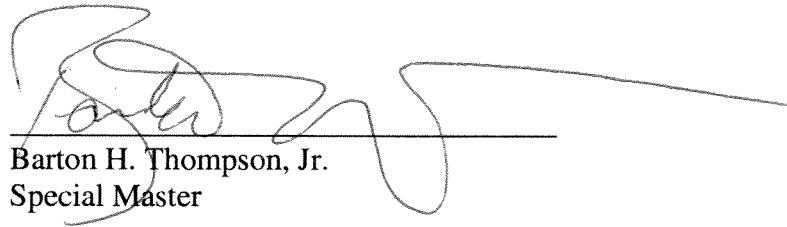
3. Deposition of Tom Koltiska

Both Montana and Wyoming have consented to the deposition of Tom Koltiska prior to the start of trial. Pursuant to paragraph 1 of Case Management Order No. 11, I approve taking the deposition.

4. Status Conference on September 27, 2013

A telephonic status conference is currently scheduled for Friday, September 27, 2013 at 9:30 a.m. Mountain Time. Counsel for the States of Montana and Wyoming should notify me by the close of the work day on Tuesday, September 24, of any issues that they would like to discuss at that time. If neither party has anything to discuss, it is likely that the status conference will be cancelled.

Date: September 19, 2013



Barton H. Thompson, Jr.
Special Master

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