

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



MONTANA'S STATUS REPORT NO. 3

STEVE BULLOCK
Attorney General of Montana

JENNIFER ANDERS
ANDREW HUFF
Assistant Attorneys General
215 North Sanders
Helena, Montana 59620-1401

JOHN B. DRAPER*
JEFFREY J. WECHSLER
Special Assistant Attorneys General
MONTGOMERY & ANDREWS, P.A.
Post Office Box 2307
Santa Fe, New Mexico 87504-2307
(505) 982-3873
**Counsel of Record*

April 6, 2012

COMES NOW the State of Montana, pursuant to Section VII.D of Case Management Plan No. 1 (December 20, 2011) (“CMP No. 1”), and submits this Status Report No. 3.

I. Discovery

1. On March 5, 2012, Montana served its Objections to Defendant’s First Interrogatories to Plaintiff and Defendant’s First Request for Production to Plaintiff on all of the parties, and filed a corresponding Certificate of Service.

2. On March 19, 2012, Montana served its Responses to Wyoming’s First Set of Interrogatories on all of the parties, and filed a corresponding Certificate of Service.

3. On March 26 through 28, 2012, Montana reviewed the remainder of the documents disclosed by Wyoming pursuant to the Joint Document Production Order (“JDPO”). These documents were located in Cheyenne, Laramie, Casper, and Sheridan. Montana requested numerous documents pursuant to the JDPO, and Wyoming is in the process of bates-numbering and copying those documents.

4. On April 3, 2012, Wyoming sent a letter to Montana raising certain concerns about Montana’s Responses to Wyoming’s First Set of Interrogatories. Although Montana maintains that its answers and objections to the interrogatories were proper and complete, in an attempt to address Wyoming’s concerns, Montana has agreed to provide supplemental responses to the extent possible.

5. Montana has copied and bates-numbered approximately 14,500 pages of documents that Wyoming requested pursuant to the JDPO or that were responsive to Wyoming's First Request for Production to Plaintiff. Those documents have been copied onto 6 discs and 1 audiotape which will be mailed to Wyoming today for delivery on Monday, April 9, 2012. Accompanying the documents will be an index that lists each of the documents and the corresponding bates-number. Montana will also serve a privilege log identifying the documents that it claims are protected from disclosure.

6. In March, Montana located additional, previously undisclosed, documents that are responsive to the JDPO. A supplemental disclosure pursuant to the JDPO will be served on Wyoming today. Bates-numbered copies of all of the non-privileged supplemental documents will be included on the discs that will be mailed to Wyoming.

7. Wyoming will be taking the following depositions in the coming weeks in Montana:

April 18, 2012:	Rich Moy in Helena
April 23, 2012:	Keith Kerbel in Billings
April 24, 2012:	Orrin Farris in Billings (morning only)
April 25, 2012:	Jack Stults in Helena
April 26, 2012:	Gary Fritz in Helena (morning only)

8. Montana intends to serve written discovery on Wyoming within the next two weeks.

II. Request for Extension of the Case Management Deadlines

9. John Draper of Montgomery & Andrews, Counsel of Record for Montana, is also Counsel of Record for the State of Kansas in *Kansas v. Nebraska*, No. 126 Orig.

On March 23, 2012, the Special Master in *Kansas v. Nebraska* informed the parties that the trial in that matter would be held during the month of August, 2012. Preparation for the trial is expected to demand the full attention of counsel during the months of July, August and September.

10. In addition to counsel, Montana's two primary expert witnesses in this case are also heavily involved in the *Kansas v. Nebraska* case. Both of those witnesses have informed counsel that, given their responsibilities in the *Kansas* trial, it will not be possible for them to prepare their expert reports in accordance with the current deadlines.

11. As a result, Montana intends to file an expedited motion to adjust the case management deadlines. The motion will be filed on Tuesday, April 10, 2012.

12. Montana has consulted with Wyoming on this issue, and while the two States have not reached an agreement, both States concur that the issue should be resolved as quickly as possible. Accordingly, Montana requests that the Special Master hold a telephonic status conference as soon as possible after the motion is filed. Based on its discussions with counsel, Montana understands that Wyoming will be prepared to discuss the scheduling issues at the telephonic status conference.

13. More specifically, if the Special Master and parties are available, Montana requests a status conference on either the afternoon of Wednesday, April 11 or the afternoon of Thursday, April 12. Montana will inquire about the availability of other parties on those dates, and will inform the Special Master.

Respectfully submitted,

STEVE BULLOCK
Attorney General of Montana

JENNIFER ANDERS
ANDREW HUFF
Assistant Attorneys General
215 North Sanders
Helena, Montana 59620-1401

JOHN B. DRAPER*
JEFFREY J. WECHSLER
Special Assistant Attorneys General
MONTGOMERY & ANDREWS, P.A.
Post Office Box 2307
Santa Fe, New Mexico 87504-2307
(505) 982-3873
**Counsel of Record*

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of Montana's Status Report No. 3 was served by electronic mail on April 6, 2012, and by placing the same in the United States mail, postage paid, on April 7, 2012, to counsel of record. This Certificate of Service was served by electronic mail on April 6, 2012, and by placing the same in the United States mail, postage paid, on April 7, 2012, to the following:

Peter K. Michael
Jay Jerde
David Willms
Andrew Kuhlmann
The State of Wyoming
Senior Assistant Attorney General
123 Capitol Building
Cheyenne, WY 82002
pmicha@state.wy.us

James Joseph Dragna
Michael Wigmore
Bingham, McCutchen LLP
355 South Grand Avenue Suite 4400
Los Angeles, CA 90071
michael.wigmore@hingham.com

Jeanne S. Whiteing
Attorney at Law
1628 5th Street
Boulder, CO 80302
jwhiteing@whiteinglaw.com

Charles M. Carvell
Assistant Attorney General
North Dakota Attorney General's Office
500 North 9th Street
Bismarck, ND 58501-4509
ccarvell@nd.gov

William M. Jay
Solicitor General
United State Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001
william.m.jay@usdoj.gov

James 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

Barton H. Thompson, Jr., Special Master
Susan Carter, Assistant
Jerry Yang and Akiko Yamazaki
Environment & Energy Building, MC-4205
473 Via Ortega
Stanford, CA 94305-4205
(Original and 3 copies by U.S. Mail)
susan.carter@stanford.edu

I further certify that all parties required to be served have been served.



Jeffrey J. Wechsler