

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**

WYOMING'S RENEWED MOTION FOR PARTIAL SUMMARY JUDGMENT

Defendant State of Wyoming, through counsel, hereby renews its motion for partial summary judgment that it originally filed on September 12, 2011. The Special Master permitted the renewal of the motion in paragraph IX.C. of Case Management Plan No. 1. Since Wyoming filed its original motion, the parties have engaged in discovery. Wyoming served interrogatories on Montana, and in several of those interrogatories sought the identity of persons who Montana asserted had made calls for curtailment of diversions in Wyoming in order to make additional water available to Montana water users on the Tongue, Powder and Little Powder Rivers. Montana provided initial answers

to those interrogatories and, after communication between counsel, provided supplemental answers. Wyoming submits copies of those answers it cited to support this renewed motion.

Among others, Wyoming has taken the depositions of Orrin Ferris, Gary Fritz and Jack Stults, who were Montana's Yellowstone River Compact Commissioners between 1974 and early August, 2006; Richard Moy, whose declaration Montana submitted in opposition to Wyoming's initial motion for partial summary judgment; and Keith Kerbel, a former Montana state employee who Montana contends made calls for curtailment upon a Wyoming state employee. Wyoming attaches various relevant pages from the depositions of Moy, Fritz, Stults and Kerbel, in support of its renewed motion. Wyoming has also delivered complete, electronic copies of each cited deposition to the Special Master for his convenience.

Wyoming relies on the same grounds that it asserted in its original motion and supporting brief and incorporates those two documents by this reference. Wyoming also continues to rely on the affidavits, exhibits to those affidavits, and the annual reports of the Yellowstone River Compact Commission upon which it relied in support of its original motion. Wyoming incorporates those materials by this reference. However, based on Montana's identification of persons it claims to have made calls for curtailment, the testimony that they gave in their depositions, and on the Special Master's written opinion on the initial motion, Wyoming has determined that there are several additional

issues meriting treatment in a supporting brief, and Wyoming submits such a brief with this renewed motion.

Dated this 15th day of June, 2012.

THE STATE OF WYOMING



Peter K. Michael
Counsel of Record
Chief Deputy Attorney General
123 Capitol Building
Cheyenne, WY 82002
307-777-6946

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the Wyoming's Renewed Motion for Partial Summary Judgment was served by e-mail and U.S. Mail, postage paid to the below parties, this 15th day of June, 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

William M. Jay
Assistant to Solicitor General
US Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001
William.m.jay@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