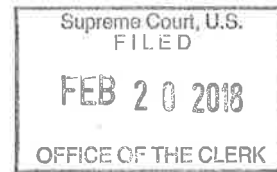


**No. 137, Original**



---

**In the  
Supreme Court of the United States**

---

**STATE OF MONTANA, Plaintiff**

**v.**

**STATE OF WYOMING**

**and**

**STATE OF NORTH DAKOTA, Defendants**

---

**FINAL MOTION OF THE SPECIAL MASTER FOR  
ALLOWANCE OF FEES AND DISBURSEMENTS**

---

BARTON H. THOMPSON, JR.  
Special Master  
Stanford Law School  
Crown Quadrangle  
559 Nathan Abbott Way  
Stanford, California 94305-8610

**February 20, 2018**

**FINAL MOTON OF THE SPECIAL MASTER FOR  
ALLOWANCE OF FEES AND DISBURSEMENTS**

MAY IT PLEASE THE COURT:

This is my Final Motion for Allowance of Fees and Disbursements. This motion covers fees and expenses incurred from January 1, 2017 through the completion and filing of my Final Report of January 10, 2018. This motion covers the resolution of several remedial issues, including the appropriate declaratory relief, and the preparation and filing of my Final Report.

During the period covered by this motion, I addressed various remedial issues that remained open, including the appropriate declaratory relief. In a memorandum opinion in December 2016, I addressed (1) damages, (2) Montana's right to fill the Tongue River Reservoir beyond 32,000 af in a water year, (3) the appropriate form of declaratory relief, (4) whether injunctive relief should be granted, and (5) the final division of costs. In the same opinion, I asked the States to confer and determine whether they could agree on the particulars of declaratory relief. The States exchanged drafts, but were unable to agree on the provisions. As a result, both Montana and Wyoming submitted separate proposals. I subsequently held a hearing on the proposals and circulate a proposed Judgment and Decree for the States' comments. After receiving the comments, I prepared and circulated a draft Final Report. After receiving comments, I finalized my Final Report and submitted it to the Court on January 10, 2018.

**Fees and Disbursements**

Appendix A hereto provides a detailed summary of my services as Special Master from January 1, 2017 through January 10, 2018. My time records show that I spent a

total of 84 hours on this case during this period (not counting administrative time, travel time, and the time spent proof reading the Final Report, for which I am not billing). As in all of my prior motions for the allowance of fees and disbursements, my hourly rate for purposes of this case is \$450, which represents a substantial discount from my normal hourly rate. My total professional fee for this period is \$37,800. In my judgment, this fee represents an appropriate master's fee for the matters handled.

Disbursements during the period covered by this Motion, which are detailed in Appendix B, total \$14,184.57, a total that is also reasonable in my judgment. The major item in these disbursements is the cost of printing and filing my Final Report. The other disbursements include costs incurred for court reporters and the cost of my travel to Denver for the hearing on declaratory relief. As in the past, I asked for and received the federal government rate for the hotel and purchased the lowest-cost economy fare.

With respect to allocation of the fees and disbursements among the parties, the parties agreed at the outset of this case that the Court would split the fees evenly between Montana and Wyoming (except to the degree that the Court ultimately awarded fees to one or the other party). Because Montana is not seeking any relief against the State of North Dakota and because North Dakota has not filed any substantive briefs or presented any oral argument, it is appropriate that North Dakota not be responsible for any share of the fees and disbursements. As I concluded in my Final Report, because both Montana and Wyoming prevailed on particular elements of Montana's claim for remedies, it also is "appropriate that each State bear its own costs for the remedies phase of the proceedings." Final Report of the Special Master, Jan. 10, 2018, at 125.

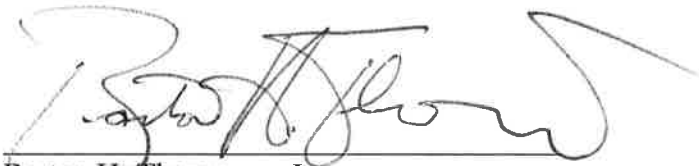
Accordingly, it is requested that the Court award the Special Master fees and disbursements in the total amount of \$51,984.57. This reflects the fees of \$37,800 and the disbursements of \$14,184.57, as outlined above. It also is recommended that this amount be divided between Montana and Wyoming in equal shares as follows:

State of Montana	\$ 25,992.28
State of Wyoming	\$ 25,992.28

I have forwarded to the parties a copy of this Final Motion for Allowance of Fees and Disbursements. I have invited the parties to submit any comments on the Motion directly to the Court and have specifically asked that they not copy me on any comments

Date: February 20, 2018

Respectfully Submitted,



Barton H. Thompson, Jr.  
Special Master

Stanford Law School  
Crown Quadrangle  
559 Nathan Abbott Way  
Stanford, California 94305-8610

## **Appendix A**

### **Details of Services Rendered by the Special Master in Montana v. Wyoming, No. 137, Original**

**January 1, 2017 – January 10, 2018**

1. Review of
  - a. Montana's Proposed Judgment and Decree of February 10, 2017, and its brief in support;
  - b. Wyoming's Proposed Decree of February 27, 2017, and its brief in support; and
  - c. Montana's Proposed Judgment and Decree of March 13, 2017, its accompanying brief, and the accompanying appendices
2. Hearing of May 1, 2017 on the appropriate declaratory relief and other remedial issues, including preparation for the hearing
3. Preparation of May 15, 2017 Discussion Draft of Judgment and Decree (including relevant legal research on precedents, appropriate terms, etc.)
4. Review of Montana's and Wyoming's comments on the Discussion Draft, as well as their reply comments
5. Review of Montana's Bill of Costs and Amended Bill of Costs, along with the supporting declarations and Montana's brief in support of its bill of costs, and of Wyoming's Notice of Non-Opposition to the Amended Bill of Costs
6. Preparation of Case Management Orders 18 and 19
7. Preparation of draft final report, including:
  - a. Legal research on the issues discussed therein;
  - b. Review of relevant trial transcripts, exhibits, and expert reports re: issues addressed in the remedies phase; and
  - c. Review of the States' various submissions relevant to the issues in the remedies phase.
8. Circulation of the draft final report to counsel for Montana, Wyoming, and North Dakota for comments
9. Review and consideration of Montana's and Wyoming's comments on the draft final report

10. Revision and finalization of the Final Report, dated January 20, 2018,  
including

- a. Incorporation where appropriate of comments submitted by counsel;
- b. Additional legal research;
- c. Additional review of the factual record; and
- d. General revisions and additions.

**Appendix B**

**Disbursements**

Costs Incurred in Filing the Second Interim Report	\$ 12090.00
Court Reporter and Transcript Charges	\$ 1172.03
Travel (May 1, 2017 hearing in Denver)	\$ 922.54
<b>Total</b>	<b>\$ 14184.57</b>