

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.

**On Exceptions To
The Second Interim Report
Of The Special Master
(Liability Issues)**

**MONTANA'S REPLY TO WYOMING'S RESPONSE IN OPPOSITION
TO MONTANA'S MOTION TO DEFER**

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September 16, 2015

**MONTANA’S REPLY TO WYOMING’S RESPONSE IN OPPOSITION
TO MONTANA’S MOTION TO DEFER**

Comes now the State of Montana and replies to Wyoming’s Response in Opposition to Montana’s Motion to Defer (“Response”) filed September 14, 2015.

Montana’s Motion to Defer (“Motion”) was filed September 2, 2015, requesting a three-month deferral to allow the parties to continue to pursue settlement, citing the Court’s suggestion in that regard.

In its Response, Wyoming does not dispute that the amount of time requested is needed to reasonably pursue the settlement possibility, but Wyoming states that:

“the resolution of the pending exceptions is largely inconsequential to [the settlement] discussions. As Montana noted in its motion, the parties are currently discussing complex technical issues regarding future operations and administration of the Yellowstone River Compact as it relates to the Tongue River. However, these discussions have little to do with whether or not the case proceeds to a remedies phase, or whether the Special Master more specifically determines the extent of Montana’s storage right in the Tongue River Reservoir.” Response at 2.

Wyoming thus implies that the question on the pending Motion is whether resolution of the Exceptions will have consequences for the settlement negotiations. On the contrary, the pertinent question on the pending Motion is the obverse, *i.e.*, whether the settlement discussions, if successful, will have consequences for the pending Exceptions. The answer to that question is affirmative. The settlement discussions, if successful, will resolve all pending questions before the Court, including those encompassed by the Exceptions. If successful, the settlement negotiations will obviate the need for a remedies phase, including resolution by the Court of the full extent of Montana’s storage right in Tongue River Reservoir and of all current controversies with regard to the “complex technical issues regarding future operations and administration of the Yellowstone River Compact.” *Ibid.*

Montana believes that all current controversies related to the Tongue River, including those concerning future Compact compliance requirements and operations, must be resolved either by

settlement or by the Special Master and ultimately the Court. It is Montana's hope that these complex matters can be resolved by the parties and that it will not be necessary to ask the Court to resolve them. They cannot be left for resolution by the Yellowstone River Compact Commission, as suggested by Wyoming. *Ibid.*; see, e.g., *Oklahoma v. New Mexico*, 501 U.S. 221, 240-241 (1991). Resolution by settlement within the Court's original jurisdiction should be given a reasonable chance before further necessitating use of the Court's power to impose a resolution.

CONCLUSION

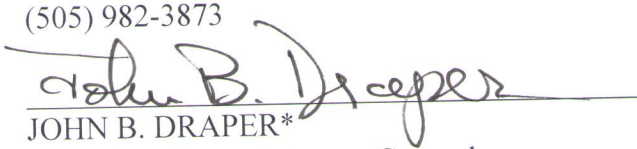
The Motion to Defer should be granted.

Respectfully submitted,

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Defendants.

Before the Honorable Barton H. Thompson, Jr.
Special Master

CERTIFICATE OF SERVICE

I certify that a copy of *Montana's Reply to Wyoming's Response in Opposition to Montana's Motion to Defer* was served electronically and by U.S. Mail on September 16, 2015, to the following:

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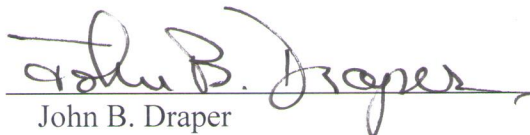
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I further certify that all parties required to be served have been served.


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