

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

MOTION TO IMPOSE TIME LIMITS ON THE PRESENTATION OF
EVIDENCE AT TRIAL

PETER K. MICHAEL*
Attorney General of Wyoming

JAY JERDE
Deputy Attorney General
JAMES KASTE
Senior Assistant Attorney General
CHRISTOPHER BROWN
Senior Assistant Attorney General
MATTHIAS SAYER
Assistant Attorney General
ANDREW KUHLMANN
Assistant Attorney General
123 Capitol Building
Cheyenne, WY 82002
(307) 777-6196

**Counsel of Record*

The State of Wyoming, in response to the State of Montana's Objection to Time Limit Proposal by the State of Wyoming, now formally moves for the Court to impose time limits on the presentation of evidence in these proceedings pursuant to Fed. R. Civ. Pro. 16 (O).

While this case is set in the highest venue, and involves sovereign states, it is a simple case, and frankly legal rather than factual issues predominate. The trial of this breach of contract case is limited to the following considerations: (1) Montana must show that its pre-1950 appropriations were unsatisfied at specific times; (2) that at those specific times Montana engaged in intrastate regulation sufficient to ensure that no post-1950 appropriations in Montana were receiving water; (3) that Montana then placed a call on Wyoming for regulation; (4) that Wyoming appropriators continued to divert water under post-1950 appropriations after the call was made; and (5) that these diversions in Wyoming caused harm to Montana's pre-1950 appropriations. The presentation of evidence that does not go to one of these elements is therefore a waste of time.

In several recent filings, it has become clear that Montana's intention in these proceedings is to filibuster these proceedings under the guise of presenting the Court with a "complete record." For example, Montana intends to put on evidence related to the history of the Compact, but such evidence has no bearing on Montana's present breach of contract claim. The Court has already interpreted the Compact, and it is time to focus on who needed and who used what water in the nine years still in issue.

Even allowing for this irrelevant testimony, Montana's estimate of the time necessary to present the evidence in this case is excessive. This is particularly true

where, as here, it appears that Montana seeks to admit as substantive exhibits the reports of its experts. As Montana is fond of pointing out neither the Special Master, nor the Court, is a jury, and therefore, with the expert reports in hand, it is unlikely that an extended direct examination of the experts will be necessary or helpful. Moreover, Montana has vastly overstated the amount of time Wyoming will likely use during cross examination. Wyoming has attached hereto what it believes to be a realistic estimate of time necessary to complete the trial of this case, even including a number of witnesses that Montana intends to call at trial who have no relevant knowledge. This trial can and should be completed before November 21, 2013.

Finally, there is nothing extraordinary about the imposition of time limits in a trial. The rules provide for them and the federal courts routinely utilize them. There is nothing special about an original action that would make the use of time limits inappropriate, as even, and perhaps especially, in original actions good sense should prevail.

WHEREFORE the State of Wyoming requests that the Court set an appropriate time limit on the presentation of the evidence by the parties, and Wyoming suggests that fifty four hours of trial time for each party will be well more than adequate and will result in the resolution of these proceedings by November 21, 2013.

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Dated this 9th day of October, 2013.

Respectfully submitted,

THE STATE OF WYOMING



James Kaste
Senior Assistant Attorney General
123 State Capitol
Cheyenne, WY 82002
307-777-6946

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing was served by electronic mail and by placing the same in the United States mail, postage paid, this 9th day of October, 2013.

Jeanne S. Whiteing
Whiteing & Smith
1628 5th Street
Boulder, CO 80302
jwhiteing@whiteinglaw.com

John B. Draper
Jeffrey Wechsler
Montgomery & Andrews
325 Paseo de Peralta
Santa Fe, NM 87501
jdraper@montand.com
jwechsler@montand.com

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

Michael Wigmore
Bingham McCutchen, LLP
2020 K Street NW
Washington, DC 20006-1806
Michael.wigmore@bingham.com

Cory J. Swanson
Montana Attorney General's Office
P.O. Box 201401
Helena, MT 59620-1401
coswanson@mt.gov

Jennifer Verleger
North Dakota Attorney General's Office
500 North Ninth Street
Bismarck, ND 58501
jverleger@nd.gov

Solicitor General of the United States
US Department of Justice
950 Pennsylvania Avenue, Room 5614
Washington, DC 20530-0001
SupremeCtBriefs@usdoj.gov

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

**STATE OF MONTANA
DRAFT WITNESS ORDER
(Draft – October 8, 2013)
(Tentative – Subject to change)**

	Witness	Estimated Time for Testimony¹	Total Hours (cumulative)	Estimated Range of Possible Dates for Testimony²
1.	John Tubbs	1 hour	1	Oct. 16
2.	Dale Book	6-8 hours	9	Oct. 16-17
3.	Chuck Dalby	1 – 2 hours	11	Oct. 17
4.	Tim Davis	2 hours	13	Oct. 17
5.	Millie Heffner	<1 hours	14	Oct. 17
6.	Mike Roberts	<1 hours	15	Oct. 22
7.	Jack Stults	3 hours	18	Oct. 22
8.	Keith Kerbel	2 hours	20	Oct. 22
9.	Gary Fritz	1 hours	21	Oct. 23
10.	Kevin Smith	3 hours	24	Oct. 23
11.	Art Hayes	3 hours	27	Oct. 23-24
12.	Gordon Aycock	2 hours	29	Oct. 24
13.	Chris Tweeten	1 hours	30	Oct. 24
14.	Jason Whiteman	1 hours	31	Oct. 24
15.	Doug Littlefield	2 hours	33	Oct. 25
16.	Rich Moy	2 hours	35	Oct. 25
17.	Mike Whitaker ³	2 hours	37	Oct. 25
18.	Carmine LoGuidice	2 hours	39	Oct. 28
19.	Bill Knapp	4 hours	43	Oct. 28
20.	Dave Schroeder	2 hours	45	Oct. 29
21.	Pat Boyd	2 hours	47	Oct. 29
22.	John Engels	<1 hours	48	Oct. 29
23.	Tana Ankney	<1 hours	48	Oct. 29
24.	Greg Benzel	1 hours	49	Oct. 29
25.	Tom Koltiska	<1hours	50	Oct. 30
26.	Rick Allen	3 hours	53	Oct. 30
27.	Alan Fjell	1 hours	54	Oct. 30
28.	Charles Gephart	2 hours	56	Oct 31
29.	Jay Nance	1 hours	57	Oct. 31
30.	Roger Muggli	3 hours	60	Oct. 31

¹ Includes estimates for cross and re-direct. Cross was estimated to be approximately the same amount of time as direct.

² Assumes approximately 6 hours of testimony per day.

³ Assumes that Wyoming will cover all testimony for Whitaker, LoGuidice, Knapp, Schroeder, Boyd, Engels, Ankney, Benzel, and Koltiska during Montana's case-in-chief, and will not re-call these witnesses.

31.	Charles Kepper	2 hours	62	Nov. 1
32.	Les Hirsch	1 hours	63	Nov. 1
33.	John Hamilton	1 hours	64	Nov. 1
34.	Art Compton	1 hours	65	Nov. 1
35.	Steve Larson	3 hours	68	Nov. 12
36.	Willem Schreuder	3 hours	71	Nov. 12
37.	Russ Levens	1 hour	72	Nov. 13
38.	John Wheaton	1 hour	73	Nov. 13
39.	Bruce Williams	1 hour	74	Nov. 13
40.	Jeremy Manley	1 hour	75	Nov. 13
41.	Richard Anderson	1 hour	76	Nov. 13
42.	Maurice Felton	<1 hour	77	Nov. 13
43.	Lonnie Wright	<1 hour		Nov. 13
44.	Bret Aye	<1 hour	78	Nov. 14
45.	Kyle Shaw	<1 hour		Nov. 14
46.	Raymond Harwood	<1 hour	79	Nov. 14
47.	Fred Mueller	<1 hour		Nov. 14
48.	Bill Carrel	<1 hour	80	Nov. 14
49.	Mark Fix	<1 hour		Nov. 14
50.	Bill White	<1 hour	81	Nov. 14
51.	John Stier	<1 hour		Nov. 14
52.	David Fisher	<1 hour	82	Nov. 14-15
53.	Gary Koltiska	<1 hour		Nov. 15
54.	David Garber	<1 hour	83	Nov. 15
55.	Ross Peterson	<1 hour		Nov. 15
56.	Dan Koltiska	<1 hour	84	Nov. 15
57.	Joe Pilch	<1 hour		Nov. 15
58.	Loren Smith	1 hour	85	Nov. 15
59.	Craig Cooper	2 hour	87	Nov. 15
60.	Mike Purcell	1 hour	88	Nov. 18
61.	Jeff Fassett	2 hours	90	Nov. 18
62.	Sue Lowry	3 hours	93	Nov. 18
63.	Patrick Tyrrell	3 hours	96	Nov. 19
64.	Doyle Fritz	4 hours	100	Nov. 19-20
65.	Bern Hinckley	4 hours	104	Nov. 20