

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 OBJECTION TO TIME LIMIT PROPOSAL
BY STATE OF WYOMING**

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October 9, 2013

On October 8, 2012, Wyoming proposed to the Special Master a limit of fifty-four hours for each party to “use as it sees fit.” Montana objects to this proposal for the following reasons.

1. Montana’s estimate for its case-in-chief is seven to ten days for the presentation of direct testimony (excluding cross-examination and re-direct) as set forth in its Final Pre-Trial Memorandum, filed on September 23, 2013. Seven to ten days with six hours of testimony each day is forty-two to sixty hours for the presentation of direct testimony in the case-in-chief. Fifty-four hours, including cross-examination, redirect examination and rebuttal, is not sufficient.

2. The Supreme Court, in original actions, “has always been liberal in allowing full development of the facts.” *United States v. State of Texas*, 339 U.S. 707, 715 (1950); *Kansas v. Colorado*, 185 U.S. 125, 147 (1902) (Court will not proceed until all the facts are before it). Fifty-four hours total, including cross-examination and redirect, will not result in full development of the facts. Montana’s current list of witnesses, which it has shared with Wyoming, includes thirty-five witnesses. Its estimate of seven to ten days for direct testimony for its case-in-chief was a fair estimate of the time necessary to present its case.

3. Wyoming has previously rejected other suggestions that would have streamlined the proceedings, including the use of pre-filed testimony and resolving objections to exhibits prior to trial.

4. Wyoming did not raise this issue in June when the State’s submitted their stipulated form of Case Management Order No. 11. The fifty-four hour suggestion, made little more than one week before trial is scheduled to begin, is too late. It is unfair to Montana to impose such a stringent limitation at this point in the final preparation for trial.

5. Limitations on presentation of evidence at trial of this nature are highly unusual and in this circumstance would be extraordinary. Wyoming cannot demonstrate any reason for the Special Master to take this extraordinary action.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of Montana's Objection to Time Limit Proposal by State of Wyoming was served electronically, and by U.S. Mail on October 9, 2013, to the following:

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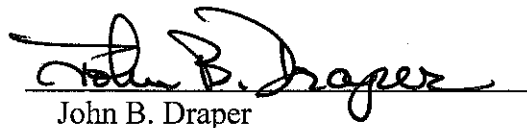
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I further certify that all parties required to be served have been served.


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