

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 IN LIMINE TO EXCLUDE AFFIDAVITS IDENTIFIED AS EXHIBITS
BY MONTANA

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 hereby moves in limine for an order excluding Montana exhibits 125 through 130, 228, 242, 276, 277, and 370. These exhibits are all affidavits that were previously submitted during the course of this case by various individuals. As a general rule affidavits are not admissible at trial. *See, e.g., Cox v. National Football League*, 29 F. Supp. 2d 463, 467 (N.D. Ill. 1998); 3 Am. Jur. 2d *Affidavits* § 19 (2004). This is true because they are by definition hearsay under Fed. R. Evid. 801 unless they fall within a recognized exception under Fed. R. Evid. 803 or 804. Accordingly, all the affidavits on Montana's exhibit list should be excluded under Fed. R. Evid. 802, which provides that hearsay is not admissible.

WHEREFORE the State of Wyoming requests that the Court enter an order excluding Montana exhibits 125 through 130, 228, 242, 276, 277, and 370.

Dated this 30th day of September, 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 30th day of September, 2013.

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

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

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