

IN THE SUPREME COURT OF THE STATE OF MONTANA
Cause No. DA 18-0110

**MONTANA ENVIRONMENTAL INFORMATION CENTER and
SIERRA CLUB,**

Plaintiffs and Appellees,

v.

MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY,

Defendant and Appellant,

and

WESTERN ENERGY COMPANY,

Defendant and Appellants.

**TROUT UNLIMITED'S UNOPPOSED MOTION FOR LEAVE TO
FILE AN AMICUS CURIAE BRIEF IN SUPPORT OF APPELLEES**

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Trout Unlimited, Inc. (Trout Unlimited) requests leave of this Court pursuant to Rule 12(7) of the Montana Rules of Appellate Procedure to file an *amicus curiae* brief in support of Plaintiff-Appellees, Montana Environmental Information Center and the Sierra Club (together, MEIC). Counsel for Trout Unlimited has consulted with the attorneys for all parties, and, on information and belief, represents that none of the parties are opposed to our request for leave to file an *amicus curiae* brief.

If granted leave, Trout Unlimited would appear as *amici* in support of MEIC's position that the District Court was correct in ruling that the Department of Environmental Quality (DEQ) must follow its own regulations in issuing and renewing water quality permits. Specifically, DEQ cannot arbitrarily change the classification of a creek subject to a water quality permit to ephemeral from intermittent without going through the use attainability analysis required by the Montana Water Quality Act (WQA), Admin. Rule Mont. 17.30.619 (incorporating statute) and the federal Clean Water Act (CWA), 40 C.F.R. § 131.10(g) (criteria for analysis).

Trout Unlimited comprises approximately 155,000 members nationwide and 4,000 Montana members who enjoy angling on rivers and streams across the state, and who volunteer hundreds of hours each year to restore streams, educate youth and the broader community about the benefits of healthy rivers and streams, and work to protect rivers and streamflows. While not directly supporting popular fisheries, ephemeral and intermittent streams have particular importance to maintaining water quality in downstream perennial water bodies. Pollution discharged into ephemeral and intermittent streams during heavy rains or snowmelt inevitably discharge into perennial streams. Maintaining water quality in headwater systems—which

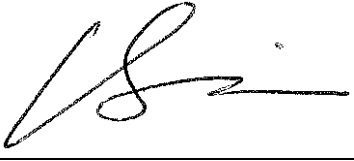
include intermittent and ephemeral streams—is key to maintaining clean drinking water and healthy habitat for blue ribbon fisheries across the State of Montana.

Trout Unlimited recognizes that the small tributaries of and perennial reaches of the East Fork of Armell’s Creek do not support blue ribbon trout fisheries. However, if DEQ can change stream classifications and permit pollution into ephemeral and intermittent reaches of East Fork Armell’s Creek without proper analysis, headwater streams across the state could be at risk of pollution, including ephemeral and intermittent streams that flow to perennial streams highly valued by our membership for their ecological and economic importance. According to the U.S. Geological Survey’s National Hydrography Dataset, about 48% of stream miles within the native historic range of trout are classified as intermittent or ephemeral, of which 59% are headwater streams.

Our members fear that a reversal to the District Court’s decision could give DEQ unfettered authority to change the classification of streams where perennial streamflow might be interrupted by drought or diversions, leading to pollution of streams across Montana. Trout Unlimited requests leave of this Court to file an *amicus curiae* brief in support of MEIC. Trout

Unlimited is prepared to file their brief on the deadline for MEIC's response brief, September 11, 2018.

Dated this 31st day of August, 2018.

By: 

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Certificate of Compliance

This document is proportionately spaced using a 14 point, Times New Roman typeface. The document is double-spaced and is 490 words.


Dated this 31st day of August, 2018.

By: _____

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Certificate of Service

This is to certify that the foregoing was duly electronically served upon the following this 31st day of August, 2018 as follows:

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CERTIFICATE OF SERVICE

I, Laura S. Ziemer, hereby certify that I have served true and accurate copies of the foregoing Motion - Unopposed - Amicus - Leave to Participate to the following on 08-31-2018:

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Dated: 08-31-2018