

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

MONTANA ENVIRONMENTAL INFORMATION CENTER and
SIERRA CLUB,

Plaintiffs and Appellees,

v.

MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY and
WESTERN ENERGY COMPANY,

Defendants and Appellants.

**CLARK FORK COALITION'S UNOPPOSED MOTION
FOR LEAVE TO FILE
AN *AMICUS CURIAE* BRIEF**

Pursuant to Rule 12(7) of the Montana Rules of Appellate Procedure, the Clark Fork Coalition (CFC) requests leave to file an *amicus curiae* brief in support of Plaintiffs/Appellees Montana Environmental Information Center and Sierra Club. CFC has contacted counsel for Defendant/Appellants Montana DEQ and Western Energy Company and they do not oppose this motion.

CFC is prepared to file its brief on September 11, 2018, the date the Plaintiffs/Appellees' brief is due, or as soon as the Court rules on this motion.

The Clark Fork Coalition's Interest in This Appeal

Founded in 1985, the Clark Fork Coalition (CFC) is dedicated to protecting and restoring the Clark Fork watershed, a 14 million-acre area supporting 350,000 people in western Montana and northern Idaho. The CFC employs scientists, restoration specialists, and educators to implement its science-based mission. CFC's mission is geographically limited in scope, and does not extend to the waters affected by the MPDES permit at the Rosebud Mine. However, an important aspect of DEQ's decision in this case has the potential to affect every watershed in this state.

CFC has been a consistent advocate for state and federal water policies that reflect sound science and comprehensively protect water quality. Headwaters and tributary streams produce healthy ecosystems, maintain fish and wildlife habitat, and provide clean drinking water for Montanans. Moreover, the health of Montana's water resources helps sustain our two largest economic sectors – agriculture and tourism.

The issue in this case that interests the CFC is who has legal authority to define the hydrologic nature of a waterway and thus, the legal protections afforded to a waterway, and whether it is ever appropriately or properly done in the context of a pollution discharge permit.

Why an *Amicus Curiae* Brief is Desirable

DEQ changed the permit conditions for the Rosebud Mine in part by deciding that East Fork Armells Creek was an ephemeral stream rather than an intermittent stream. This decision has ramifications far beyond the Armells Creek watershed. In western Montana, for example, about 15-25% of stream channels are intermittent, and about 30% are ephemeral. CFC believes that its scientific perspective on this issue will assist the Court in its legal review of the district court's decision.

The health of downstream waters depends upon the health of upstream headwaters, tributaries, and wetlands. Because DEQ's ability to re-classify state waters could have direct, negative impacts on headwaters and tributary streams within the Clark Fork Basin, the Coalition requests the opportunity to provide the Court with additional context regarding the science of rivers and streams, and the importance of preserving a lawful process for classifying state waters based on sound science and with public input.

Respectfully submitted this 11th day of September, 2018.

By: /s/ *Andrew Gorder* _____
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion for Leave to File an *Amicus Curiae* brief was served upon the following by e-service or first-class mail, the 11th day of September 2018, as follows:

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I, Andrew Scott Gorder, hereby certify that I have served true and accurate copies of the foregoing Motion - Unopposed - Amicus - Leave to Participate to the following on 09-11-2018:

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