

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.

BRIEF OF *AMICUS CURIAE* CLARK FORK COALITION

Appearances:

Kirsten Bowers
Edward Hayes
Montana Department of
Environmental Quality
1520 East Sixth Ave.
P.O. Box 200901
Helena, MT 59620-0901

*Attorneys for Defendant/Appellant
Montana Department of
Environmental Quality*

Shiloh Hernandez
Matthew Bishop
Laura King
Western Environmental Law Center
103 Reeder's Alley
Helena, MT 59601

*Attorney for Plaintiffs/Appellees
Montana Environmental
Information Center and Sierra Club*

John C. Martin
Holland & Hart LLP
975 F Street NW, Suite 900
Washington, DC 20004

William W. Mercer
Victoria A. Marquis
Holland & Hart LLP
401 N. 31st Street, Suite 1500
P.O. Box 639
Billings, MT 59103-0639

*Attorneys for Defendant/Appellant
Western Energy Company*

Laura S. Ziemer
Patrick A. Byorth
Meg K. Casey
Trout Unlimited
321 East Main Street, Suite 411
Bozeman, MT 59715
*Attorneys for Amicus Curiae
Trout Unlimited*

Andrew Gorder
Clark Fork Coalition
140 S. 4th St. W, Unit 1
Missoula, MT 59801

*Attorney for Amicus Curiae
Clark Fork Coalition*

Steven T. Wade
W. John Tietz
M. Christy McCann
Browning, Kaleczyc, Berry &
Hoven P.C.
800 N. Last Chance Gulch, Ste. 101
P.O. Box 1697
Helena, MT 59624

*Attorneys for Amici Curiae
Treasure State Resource
Association of Montana, Montana
Petroleum Association, Montana
Coal Council, and Montana Mining
Association*

TABLE OF CONTENTS

TABLE OF AUTHORITIES	II, III
STREAM CLASSIFICATION AUTHORITY: THE CRUX OF THIS APPEAL	1
EPHEMERAL STREAMS, INTERMITTENT STREAMS, AND HEADWATERS.....	2
WATER USE CLASSIFICATION IN MONTANA.....	5
STREAM CLASSIFICATION IN MONTANA.....	6
DEQ LACKS THE AUTHORITY TO CHANGE A STREAM’S CLASSIFICATION	8
CONCLUSION	13
CERTIFICATE OF COMPLIANCE	15
CERTIFICATE OF SERVICE.....	16

TABLE OF AUTHORITIES

CASES

<i>California Ass’n of Sanitation Agencies v. State Water Res. Control Bd.</i> , 208 Cal. App. 4th 1438 (2012).....	11
<i>Idaho Mining Ass’n, Inc. v. Browner</i> , 90 F. Supp. 2d 1078 (D. Idaho 2000)	5
<i>MC, Inc. v. Cascade City-Cty. Bd. of Health</i> , 2015 MT 52, 378 Mont. 267, 343 P.3d 1208.....	10
<i>N. Cheyenne Tribe v. Mont. Dept. of Env’tl. Quality</i> , 2010 MT 302, 356 Mont. 296, 234 P.3d 51.....	5

STATUTES

Mont. Code Ann. § 75-5-101(2)	10
Mont. Code Ann. § 75-5-103.....	7, 9
Mont. Code Ann. § 75-5-211	5
Mont. Code Ann. § 75-5-301(1)	6
Mont. Code Ann. § 75-5-302.....	7, 9, 11
Mont. Code Ann. § 75-5-307.....	7, 9
Mont. Code Ann. § 75-5-307(2)	7, 11
Mont. Code Ann. § 75-5-402.....	5
33 U.S.C. § 1313.....	5
33 U.S.C. § 1342.....	5

RULES

A.R.M. 17.30.101.....	5
A.R.M. 17.30.602(10).....	2
A.R.M. 17.30.602(13).....	2
A.R.M. 17.30.606(1).....	7, 9
A.R.M. 17.30.611(1)(c)	1
A.R.M. 17.30.615.....	1, 7, 9
A.R.M. 17.30.615(1)(c), (d).....	8
A.R.M. 17.30.622-17.30.629.....	7
A.R.M. 17.30.629(1).....	8
A.R.M. 17.30.637(4).....	1, 9
A.R.M. 17.30.650-17.30.658.....	7
A.R.M. 17.30.652.....	8
A.R.M. 17.30.653.....	8
A.R.M. 17.30.1201.....	5

REGULATIONS

40 C.F.R. 131.3(b).	6
40 C.F.R. 131.10(a).....	6

OTHER AUTHORITIES

A.V. Zale, et al., <i>The Physicochemistry, Flora and Fauna of Intermittent Prairie Streams: A Review of the Literature</i> (March 1989).	4
<i>Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence</i> 80 Fed. Reg. 2100 (Jan. 15, 2015)	2, 3
EPA, <i>The Ecological and Hydrological Significance of Ephemeral and Intermittent Streams in the Arid and Semi-Arid American Southwest</i> (Nov. 2008)	2, 3
Montana FWP, <i>Dewatering Concern Areas</i> (May 2005), available at http://fwp.mt.gov/fwpDoc.jsp?id=38105	11
Linda K Vance. <i>Geographically Isolated Wetlands and Intermittent/Ephemeral Streams in Montana: Extent, Distribution, and Function</i> (2009)	3
Richard B. Alexander, <i>The Role of Headwater Streams in Downstream Water Quality</i> (Feb. 2007).....	3
U.S. Geological Survey, <i>National Hydrography Dataset</i> (2018), available at https://nhd.usgs.gov/	3

The Montana Department of Environmental Quality (“DEQ”) appealed an order of the First Judicial District Court invalidating a pollution discharge permit issued by the DEQ for the Rosebud Mine. The Clark Fork Coalition (“Coalition”) was granted leave on September 12, 2018 to file an *amicus curiae* brief in this matter.

I. Stream Classification Authority: The Crux of This Appeal

As noted by the district court in the order on appeal, “The record before this Court is not consistent as to the classification of waters involved.” Memorandum and Order on Judicial Review at 18 (March 4, 2016). “While much of the record lists waters as ‘C-3’ pursuant to Administrative Rule of Montana 17.30.611(1)(c), DEQ also states that the waters are ephemeral pursuant to Administrative Rule of Montana 17.30.615 and .637(4).” *Id.*

The different water quality standards applicable to ephemeral and intermittent streams mean that those classification decisions are critical for protecting waterways. These decisions are especially important for headwater streams that can support the health of aquatic ecosystems throughout entire watersheds. Given the potential consequences of DEQ being able to make these crucial classification decisions, the Clark Fork Coalition appears as *amicus* to help the Court answer the central question in this case: Whether DEQ has the authority to change a stream’s classification from intermittent to ephemeral (or vice versa),

especially in the context of an MPDES permitting process. The Coalition believes the answer is no, and that the district court's decision should be affirmed.

A. Ephemeral Streams, Intermittent Stream, and Headwaters

An ephemeral stream “flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice and whose channel bottom is always above the local water table.” A.R.M.

17.30.602(10). In contrast, an intermittent stream is “a stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface run-off and ground water discharge.” A.R.M.

17.30.602(13).

Although not defined in Montana statutes or regulations, headwaters are an important additional designation of waterways. *See* EPA, *The Ecological and Hydrological Significance of Ephemeral and Intermittent Streams in the Arid and Semi-Arid American Southwest* 6 (Nov. 2008) (hereinafter *Intermittent Streams*). EPA defines headwaters as the “low order, small stream at the top of a watershed,” and emphasizes that they may be ephemeral, intermittent, or perennial. *Id.*

The importance of headwaters to healthy watersheds transcends their status as ephemeral, intermittent, or perennial streams. *Id.* at 6-8. Headwaters streams are the smallest parts of river and stream networks, but comprise the majority of river miles in the United States. *Connectivity of Streams and Wetlands to Downstream*

Waters: A Review and Synthesis of the Scientific Evidence 80 Fed. Reg. 2100 (Jan. 15, 2015) (hereinafter *Connectivity*). As such, headwaters and tributary streams are essential to maintaining the chemical, physical, and biological integrity of downstream waters. *Intermittent Streams* at 6.

As scientific understanding of headwaters has increased, so has the recognition of the profound influence that these small streams have on shaping downstream water quantity and water quality. *See, e.g.,* Richard B. Alexander, *The Role of Headwater Streams in Downstream Water Quality* 41-59 (Feb. 2007). Headwaters streams, regardless of their size or frequency of flow, are connected to downstream waters and strongly influence their function. *Connectivity*, 80 Fed. Reg. 2100 at ES-2.

In Montana, headwaters are both ephemeral and intermittent. By some estimates, as much as 80% of all stream miles in Montana are either ephemeral or intermittent in nature. U.S. Geological Survey, National Hydrography Dataset (2018), available at <https://nhd.usgs.gov/>. In central and eastern Montana, it is estimated that more 60% of streams are ephemeral, and nearly 30% of streams are intermittent. Linda K Vance. *Geographically Isolated Wetlands and Intermittent/Ephemeral Streams in Montana: Extent, Distribution, and Function* (2009). In some areas of central and eastern Montana, there are no perennial streams at all. *Id.* In western Montana, an estimated 30 percent of stream channels

are ephemeral, and 15 to 25 percent of reaches are intermittent. *Id.* East Fork Armells Creek, a receiving water for discharges under the Rosebud Mine permit, is a headwaters tributary of the Yellowstone River. Admin. R. at 768, 913.

Importantly, ephemeral and intermittent waterways are not devoid of life simply because they do not sustain year-round flows. To the contrary, all tributary streams, including perennial, intermittent, and ephemeral streams, are physically, chemically, and biologically connected to downstream rivers. *Connectivity*, 80 Fed. Reg. 2100 at ES-2. Headwaters streams maintain the biological health of downstream waters through “the dispersal and migration of aquatic and semiaquatic organisms, including fish, amphibians, plants, microorganisms, and invertebrates, that use both upstream and downstream habitats during one or more stages of their life cycles.” *Id.* Fish, amphibians and macroinvertebrates can subsist in pools in ephemeral and intermittent channels even during dry periods. A.V. Zale, et al., *The Physicochemistry, Flora and Fauna of Intermittent Prairie Streams: A Review of the Literature* vi (March 1989).

Despite fluctuation in stream flows, intermittent and ephemeral streams are critical to fish and wildlife populations, particularly in areas “where perennial streams are rare and widely separated.” *Id.* Accordingly, industrial discharges to these streams can be “highly deleterious to these sensitive habitats [...] and significantly degrade[] the quality of adjacent terrestrial habitats.” *Id.*

B. Water Use Classification in Montana

Clean water cases in Montana are governed by both the Montana Water Quality Act (“WQA”), Mont. Code Ann. §§ 75-5-101 *et seq.*, and the federal Clean Water Act (“CWA”), 33 U.S.C. §§ 1251 *et seq.* The goal of the CWA is to eliminate the discharge of pollutants and restore and maintain the chemical, physical, and biological integrity of the nation’s waters. *N. Cheyenne Tribe v. Mont. Dept. of Env’tl. Quality*, 2010 MT 302, ¶ 21, 356 Mont. 296, 234 P.3d 51 (citing 33 U.S.C. §1251(a)). In support of this goal, the CWA requires a discharge permit for point source discharges into regulated waterways. 33 U.S.C. § 1342. Montana administers its own permit program – the Montana Pollution Discharge Elimination System (“MPDES”) program – which is administered by the DEQ. Mont. Code Ann. §§ 75-5-402, 75-5-211; A.R.M. 17.30.101, 17.30.1201.

The CWA requires states to adopt and submit to the EPA water quality standards for intrastate waters. 33 U.S.C. § 1313. As a general rule, all waters in the United States are presumed to support aquatic life and recreational uses, i.e., they are fishable and swimmable. *Idaho Mining Ass’n, Inc. v. Browner*, 90 F. Supp. 2d 1078, 1092 (D. Idaho 2000). Water quality criteria are “elements of [s]tate water quality standards, expressed as constituent concentrations, levels, or narrative statements, representing a quality of water that supports a particular use.

When criteria are met, water quality will generally protect the designated use.” 40 C.F.R. § 131.3(b).

Each state must specify appropriate water uses to be achieved and protected on a given waterway. 40 C.F.R. 131.10(a). The classification of state waters “must take into consideration the use and value of water for public water supplies, protection and propagation of fish, shellfish and wildlife, recreation in and on the water, agricultural, industrial, and other purposes including navigation. . .” *Id.* Water *uses* are distinct from water *classification*. As the federal CWA regulations make clear, water uses come first. Water classifications must protect those uses.

C. Stream Classification in Montana

Montana law authorizes the Board of Environmental Review (“BER”) to classify streams, not DEQ. Mont. Code Ann. § 75-5-301(1). The BER “shall . . . establish the classification of all state waters in accordance with their present and future most beneficial uses, creating an appropriate classification for streams that, due to sporadic flow, do not support an aquatic ecosystem that includes salmonid or nonsalmonid fish” *Id.* The legislature mandates that the stream classification comport with “present and future most beneficial uses,” while authorizing the BER to create a separate classification for ephemeral streams that do not support an aquatic ecosystem that includes fish. *Id.*

Importantly, Montana law requires the BER to hold a public hearing before classifying streams or otherwise modifying water quality standards. Mont. Code Ann. § 75-5-307; A.R.M. 17.30.606(1). The BER must allow for adequate public input, and must consider facts presented by members of the public, the DEQ, and the Water Pollution Control Advisory Council. Mont. Code Ann. §§ 75-5-302, 75-5-307(2). The requirement for public participation in the classification process recognizes that stream classification and use designation can affect water quality and beneficial uses throughout an entire watershed.

Montana classifies streams using an alphanumeric ranking system: A-1, B1 through B-3, C-1 through C-3, D-1 and D-2, E-1 through E-5, F-1, and G-1. *See* A.R.M. 17.30.622-17.30.629; 17.30.650-17.30.658. The receiving waters at issue in the challenged Rosebud Mine discharge permit are classified as C-3, which requires them to be “suitable for bathing, swimming, and recreation, and growth and propagation of non-salmonid fishes and associated aquatic life, waterfowl, and furbearers.” A.R.M. 17.30.629(1).

Ephemeral streams are classified by law as either E-1 or E-2. Mont. Code Ann. § 75-5-103; A.R.M. 17.30.615. In other words, ephemeral waters cannot be C-3 waters.

Ephemeral waters classified as E-1 have “flows that are *periodically* augmented by discharges from point sources,” while those classified as E-2 have

“flows that are augmented by *continuous* discharges from point sources.” A.R.M. 17.30.615(1)(c), (d) (emphasis added). The determination is entirely fact-based.

Importantly, when a stream is classified as E-1 or E-2, the DEQ is not required to protect and support aquatic life. “Waters classified E-1 are to be maintained suitable for agricultural purposes, secondary contact recreation and wildlife,” while those classified E-2 are to be maintained for agriculture, some recreation, and wildlife. A.R.M. 17.30.652. “Because of habitat, low flow, hydro-geomorphic and other physical conditions these waters are marginally suitable for aquatic life.” A.R.M. 17.30.653.

II. DEQ Lacks the Authority to Change A Stream’s Classification.

The receiving waters for the Rosebud Mine include multiple tributaries of the Yellowstone River, including East Fork Armells Creek. The DEQ does not dispute that all of those waters are classified as C-3, which means they must be maintained “suitable for bathing, swimming, and recreation, and growth and propagation of non-salmonid fishes and associated aquatic life.” A.R.M. 17.30.629(1). Nonetheless, DEQ maintains that it may “recognize” streams as ephemeral, thereby categorically exempting them from certain water quality standards, including protections for aquatic life, during the permitting process. In this, DEQ is wrong. It has no such authority.

In support of its argument, the DEQ relies on a regulation that says “[e]phemeral streams are subject to [various general provisions] but not to the specific water quality standards of A.R.M. 17.30.620 to 17.30.629 [including C-3 standards].” A.R.M. 17.30.637(4). This regulation hardly strengthens DEQ’s position. It is because ephemeral streams are exempt from certain water quality standards that the decision as to who can classify them as ephemeral in the first place must be rooted in law.

The DEQ insists it has not changed the classification of the receiving streams. DEQ Brief at 13, *citing* Admin. R. at 80, 930. However, an ephemeral stream cannot be a C-3 water; it must be E-1 or E-2. Mont. Code Ann. § 75-5-103; A.R.M. 17.30.615. By proclaiming a heretofore intermittent stream suddenly ephemeral, DEQ indirectly and immediately changes the water’s classification, thereby diminishing the protections required to support aquatic life. Moreover, it does so without any notice or public participation. This kind of unilateral decision making not only flouts the law, it creates unpredictability for all water users. If the DEQ can change a stream from intermittent to ephemeral without any public process, it is just as able to change a stream from ephemeral to intermittent.

Only the BER is granted the authority to change stream classifications. Mont. Code Ann. § 75-5-302; Mont. Code Ann. § 75-5-307; ARM 17.30.606(1).

This protects all water users by ensuring that a change in classification of one part of a stream is considered, and on an evidentiary record.

Moreover, the DEQ's position runs contrary to the stated purpose of the Montana Water Quality Act to "protect[], maintain[], and improv[e] the quality ... of water for public water supplies, wildlife, fish and aquatic life, agriculture, industry, recreation, and other beneficial uses." Mont. Code Ann. § 75-5-101(2). Indeed, if the DEQ is allowed to "exempt" streams from the protective water quality standards so long as it continues to recognize (in name only) the BER's listed classification, water quality would not be protected, maintained or improved. *See, e.g., MC, Inc. v. Cascade City-Cty. Bd. of Health*, 2015 MT 52, ¶ 14, 378 Mont. 267, 343 P.3d 1208 (affirming that courts "must read and construe each statute as a whole so as to avoid an absurd result and to give effect to the purpose of the statute").

Notably, the DEQ's interpretation of its authority allows for stream reclassification without scientific data or public input. Individual discharge permit decisions are made on a case-by-case basis, whereas stream classification and use designations affect many more people than the individual permittee. As noted by a California intermediate appeals court:

A decision on a waterbody's uses applies to the waterbody as a whole, rather than to a specific permittee. Beneficial use decisions are, thus, more appropriately made in a basin planning, rather than a permit, action.

California Ass'n of Sanitation Agencies v. State Water Res. Control Bd., 208 Cal. App. 4th 1438, 1456 (2012) (emphasis added).

Changing the classification of a stream to ephemeral has significant implications for downstream users. When the stream is also a headwaters stream, the implications extend to the entire watershed. A public hearing with proper notice affords all interested parties the opportunity to participate, and ensures that the board makes a decision based on factual findings supported by the record. Accordingly, all affected individuals must have the opportunity to weigh in and present evidence regarding the nature and appropriate classification of streams. Mont. Code Ann. §§ 75-5-302, 75-5-307(2).

Allowing the DEQ to make *ad hoc* determinations that streams are “ephemeral,” without scientific data or public oversight, puts headwaters streams across the state at significant risk. For example, hundreds of streams across Montana are considered “chronically dewatered” by the Department of Fish, Wildlife & Parks (“FWP”). FWP, *Dewatering Concern Areas* (May 2005), available at <http://fwp.mt.gov/fwpDoc.jsp?id=38105>. By the DEQ’s logic, it could simply proclaim stretches of these dewatered creeks “ephemeral,” and thereby unilaterally exempt them from important water quality standards.

The DEQ's approach also potentially allows consumptive water users and industrial dischargers to improperly influence the classification of receiving waters. Indeed, the Administrative Record in this case indicates that East Fork Armell's Creek may have been dewatered in reaches from groundwater pumping associated with the Rosebud Mine. *See, e.g.*, Admin. R. at 915 (describing extensive groundwater pumping associated with the mine); and 1540 ("... at least one observed part of the stream was once obliterated by the mine"). Based in part on the impacts of this dewatering, the DEQ apparently saw fit to bypass the required process and ignore the C-3 classification standards for the creek. If upheld, the DEQ's approach would set a dangerous precedent for regulating water quality on headwaters streams.

Finally, even assuming for the sake of argument that DEQ has the authority to downgrade water quality protections for ephemeral streams during the MPDES permitting process – which it does not – its decision to do so here was arbitrary because the DEQ had inconsistent data to support its conclusion that many of the receiving sources at issue, including East Fork Armells Creek, are ephemeral. Admin. R. at 10-11. As the district court noted, the DEQ arbitrarily relied on certain reports that the receiving waters were ephemeral and rejected its own evidence to the contrary. Memo. & Or. at 18-19 (Mar. 14, 2016). In short, the

DEQ cannot opine that a waterway is ephemeral when it possesses objective, scientific evidence that the waterway is *not* ephemeral.

Conclusion

Montana's stream classification process has significant implications for how waterways – and their designated beneficial uses – are protected. Proper classification is particularly important for headwaters streams, which have a profound influence on shaping downstream water quantity and water quality. As such, the protections afforded to upstream tributary waterways will necessarily affect the health of downstream waters.

Montana law grants the BER the sole authority to classify or reclassify waterways. There is no legal mechanism that allows the DEQ to change a stream's classification or its protected uses. The legislature has recognized that public participation in the BER's classification process is important because these determinations have the potential to affect water quality and water users throughout the entire watershed. Accordingly, Montana law requires the BER to give notice and hold a public hearing before classifying or reclassifying a stream, or if water quality standards are otherwise established or modified.

The district court found that the DEQ unlawfully reclassified the receiving waters, including the East Fork Armells Creek, as “ephemeral” during the discharge permitting process. The district court correctly held that a stream's

classification cannot be changed without compliance with applicable law and must include the required public process. The district court's ruling on this issue is properly grounded in state law and should be affirmed.

Respectfully submitted this 12th day of September, 2018.

/s/ Andrew Gorder

Andrew Gorder
140 S. 4th Street West, Unit 1
Missoula, MT 59801
(406) 546-0539 ext. 202
andrew@clarkfork.org

Certificate of Compliance

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that the foregoing brief is:

- printed with a proportionally spaced typeface of 14 points;
- double-spaced;
- contains 1-inch margins all around; and
- is under 5,000 words.

DATED this 12th day of September, 2018.

By: /s/ Andrew Gorder
Andrew Gorder

Certificate of Service

This is to certify that the foregoing *Amicus Curiae Brief* was duly served upon the following at their addresses, by e-service or first-class mail, the 12th day of September, 2018, as follows:

Kirsten Bowers
Edward Hayes
Montana Department of
Environmental Quality
1520 East Sixth Ave.
P.O. Box 200901
Helena, MT 59620-0901
*Attorneys for Defendant/Appellant
Montana Department of
Environmental Quality*

Shiloh Hernandez
Matthew Bishop
Laura King
Western Environmental Law Center
103 Reeder's Alley
Helena, MT 59601
*Attorney for Plaintiffs/Appellees
Montana Environmental Information
Center and Sierra Club*

Laura S. Ziemer
Patrick A. Byorth
Meg K. Casey
Trout Unlimited
321 East Main Street, Suite 411
Bozeman, MT 59715
*Attorneys for Amicus Curiae
Trout Unlimited*

/s/ Andrew Gorder
Andrew Gorder

John C. Martin
Holland & Hart LLP
975 F Street NW, Suite 900
Washington, DC 20004

William W. Mercer
Victoria A. Marquis
Holland & Hart LLP
401 N. 31st Street, Suite 1500
P.O. Box 639
Billings, MT 59103-0639
*Attorneys for Defendant/Appellant
Western Energy Company*

Steven T. Wade
W. John Tietz
M. Christy McCann
Browning, Kaleczyc, Berry & Hoven
P.C.
800 N. Last Chance Gulch, Ste. 101
P.O. Box 1697
Helena, MT 59624
*Attorneys for Amici Curiae Treasure
State Resource Association of
Montana, Montana Petroleum
Association, Montana Coal Council,
and Montana Mining Association*

CERTIFICATE OF SERVICE

I, Andrew Scott Gorder, hereby certify that I have served true and accurate copies of the foregoing Brief - Amicus to the following on 09-12-2018:

Kirsten Hughes Bowers (Attorney)
1520 E. 6th Ave.
P.O. 200901
Helena MT 59620
Representing: Environmental Quality, Montana Department of
Service Method: eService

Matthew Kellogg Bishop (Attorney)
Western Environmental Law Center
103 Reeder's Alley
Helena MT 59601
Representing: Montana Environmental Information Center, Sierra Club
Service Method: eService

Shiloh Silvan Hernandez (Attorney)
103 Reeder's Alley
Helena MT 59601
Representing: Montana Environmental Information Center, Sierra Club
Service Method: eService

Laura Helen King (Attorney)
103 Reeder's Alley
Helena MT 59601
Representing: Montana Environmental Information Center, Sierra Club
Service Method: eService

William W. Mercer (Attorney)
401 North 31st Street
Suite 1500
PO Box 639
Billings MT 59103-0639
Representing: Western Energy Company
Service Method: eService

Mary Christina Surr McCann (Attorney)
201 W. Railroad St., Suite 300

Missoula MT 59802

Representing: Treasure State Resource Association of Montana, Montana Petroleum Association (MPA), Montana Coal Council, Montana Mining Assoc., et al., Montana Association of Oil, Gas, and Coal Counties, Rosebud County

Service Method: eService

Victoria A. Marquis (Attorney)

401 North 31st Street

Suite 1500

P.O. Box 639

Billings MT 59103-0639

Representing: Western Energy Company

Service Method: eService

Laura S. Ziemer (Attorney)

317 North Ida Avenue

Bozeman MT 59715

Representing: Trout Unlimited, Montana Council of

Service Method: eService

John C. Martin (Attorney)

25 S. Willow Street

P.O. Box 68

Jackson WY 83001

Representing: Western Energy Company

Service Method: Conventional

Edward Hayes (Attorney)

P.O. Box 200901

Helena MT 59620-0901

Representing: Environmental Quality, Montana Department of

Service Method: Conventional

William John Tietz (Attorney)

800 N. Last Chance Gulch, Suite 101

P.O. Box 1697

Helena MT 59624-1697

Representing: Treasure State Resource Association of Montana, Montana Petroleum Association (MPA), Montana Coal Council, Montana Mining Assoc., et al., Montana Association of Oil, Gas, and Coal Counties, Rosebud County

Service Method: Conventional

Steven T. Wade (Attorney)

800 N. Last Chance Gulch, Suite 101

P.O. Box 1697

Helena MT 59624-1697

Representing: Treasure State Resource Association of Montana, Montana Petroleum Association (MPA), Montana Coal Council, Montana Mining Assoc., et al., Montana Association of Oil, Gas, and Coal Counties, Rosebud County

Service Method: Conventional

Patrick Arthur Byorth (Attorney)

321 E. Main Street, Suite 411

Bozeman MT 59715

Representing: Trout Unlimited, Montana Council of

Service Method: Conventional

Megan Casey (Attorney)

Trout Unlimited

321 E Main St

Bozeman MT 59715

Representing: Trout Unlimited, Montana Council of

Service Method: Conventional

Electronically Signed By: Andrew Scott Gorder

Dated: 09-12-2018