10/17/2018

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 18-0110

No. DA 18-0110

IN THE

Supreme Court of the State of Montana

MONTANA ENVIRONMENTAL INFORMATION CENTER, and SIERRA CLUB,

Plaintiffs/Appellees,

VS.

MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY,

Defendant/Appellant

AND

WESTERN ENERGY COMPANY,

Defendant-Intervenor/Appellant.

ON APPEAL FROM THE MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY, HON. KATHY SEELEY, PRESIDING CASE NO. CDV-12-1075

AFFIDAVIT OF VICTORIA A. MARQUIS

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Attorneys for Defendant-Appellant Montana Department of Environmental Quality

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STATE OF MONTANA )

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() county of Yellowstone )
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Victoria A. Marquis, counsel of record in the above matter, and pursuant to Rule 26(2), Mont. R. Civ. P., submits the following Affidavit under oath.

- 1. Western Energy received the automatic extension under Rule 26(1), making their Reply Brief due on or before October 25, 2018.
 - 2. Western Energy's Reply Brief was first due on September 25, 2018.
- 3. Western Energy requests that the due date for filing Reply Briefs be extended to January 11, 2019.
- 4. The extension is necessary because on October 9, 2018,
 Westmoreland Coal Company and certain of its affiliates (collectively,
 the "Debtors"), filed voluntary petitions for relief under chapter 11 of title 11 of the
 United States Code, 11 U.S.C. §§ 101—1532 (the "Bankruptcy Code"), in the
 United States Bankruptcy Court for the Southern District of Texas. Appellant,
 Western Energy Company, is among the affiliates filing a petition for relief.
 Debtors' chapter 11 cases are pending before the Honorable Judge David R. Jones,
 United States Bankruptcy Judge, and are being jointly administered under the lead
 case *In re Westmoreland Coal Company*, Case No. 18-(35672) (DRJ) (the
 "Chapter 11 Cases"). Pleadings filed in these Chapter 11 Cases may be obtained

by visiting the website http://www.donlinrecano.com/westmoreland maintained by the Debtors' noticing and claims agent, Donlin Recano & Company, Inc.

- 5. Counsel for Western Energy anticipates that Western Energy will be able to continue pursuing this appeal. However, in order to assure compliance with various provisions of the Bankruptcy Code and to coordinate with bankruptcy counsel, Western Energy respectfully requests that the Court grant Western Energy and the Department of Environmental Quality until January 11, 2019 to file their Reply Brief. Western Energy has exercised, and will continue to exercise, diligence throughout the extension to ensure proper compliance with the Bankruptcy Code, appropriate coordination with bankruptcy counsel, and completion of the Reply Brief. The Chapter 11 Cases have created substantial need for the extension.
- 6. Western Energy has sought Appellee MEIC and Sierra Club's position and they concur in the request stating:

Appellees do not oppose Western Energy's motion. Appellees do not believe that the automatic bankruptcy stay applies to this case, but they see no harm in Western Energy's asking the bankruptcy to confirm this. Appellees may file papers in the bankruptcy proceeding indicating their support for allowing the instant case to proceed.

Western Energy has sought Appellant DEQ's position, and DEQ does not oppose the extension.

DATED this 17th day of October, 2018.

Victoria A. Marquis Holland & Hart LLP

Counsel for Appellant
Western Energy Company

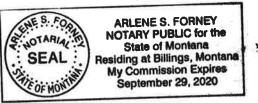
STATE OF MONTANA)

)ss.

County of Yellowstone

This record was acknowledged before me on October 17, 2018, by

Victoria A. Marquis.



(Signature of notarial officer)

[Affix seal/stamp as close to signature as possible]

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