

SYNOPSIS OF THE CASE

2019 MT 213: 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, Intervenor, and Appellant.¹

The Montana Supreme Court has reversed a lower court decision that had ruled the Department of Environmental Quality (DEQ) had illegally issued a permit to Western Energy Company to discharge rain and snow water into the surrounding ditches and creeks from its Rosebud Coal Mine in Colstrip, Montana.

The Supreme Court sent the matter back to the District Court in Lewis and Clark County to conduct a trial to determine factual issues that must be decided before the Court can make a ruling involving the permit.

In 2012, DEQ renewed a permit (modified in 2014) for Western Energy to discharge certain pollutants contained in waters that were created by ongoing precipitation-driven events. The Montana Environmental Information Center and The Sierra Club successfully challenged the permit in the First Judicial District Court in Helena in 2016.

In overturning that decision, the Supreme Court specifically ruled that DEQ's permit did not reclassify the receiving streams and therefore the Montana Board of Environmental Review was not required to make a new stream classification for the Yellowstone River drainage. The Court also ruled that Montana law provides that DEQ could allow the mine to monitor a sample of the discharges that were representative of the precipitation water being released.

However, the Court ruled the District Court must determine whether those releases are actually representative of the mining and discharge activities that are taking place at the Mine. Further, the District Court was directed to determine whether the East Fork of Armells Creek, having previously been determined to be a pollutant-impaired stream, should be monitored with a much higher environmental standard than the current permit requires.

¹ The Court prepared this synopsis for the reader's convenience. It constitutes no part of the Court's Opinion and may not be cited as precedent.