

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 22-0064

MONTANA ENVIRONMENTAL
INFORMATION CENTER and SIERRA CLUB,

Plaintiffs and Appellees,

v.

WESTMORELAND ROSEBUD MINING, LLC,
f/k/a WESTERN ENERGY CO., NATURAL
RESOURCE PARTNERS, L.P.,
INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 400, and NORTHERN
CHEYENNE COAL MINERS ASSOCIATION,

O R D E R

Respondent-Intervenors
and Appellants.

Respondent-Intervenors and Appellants Westmoreland Rosebud Mining, LLC, f/k/a Western Energy Co., Natural Resource Partners, L.P., International Union of Operating Engineers, Local 400, and Northern Cheyenne Coal Miners (“Westmoreland”) moved this Court to stay the January 28, 2022 Order on Remedy and Stay of the Sixteenth Judicial District Court, Rosebud County, until this matter is resolved on appeal.¹ Plaintiffs and Appellees Montana Environmental Information Center and Sierra Club (“MEIC”) opposed Westmoreland’s motion, and in their response to Westmoreland’s motion to stay asserted that this matter should be dismissed as it is not properly before this Court on appeal. However, MEIC did not file a separate motion to dismiss this appeal.

Westmoreland now moves this Court for leave to file a brief to address what it characterizes as a “de facto motion to dismiss.” Westmoreland explains that since reply

¹ We have amended the caption in this appeal to reflect the current name, Westmoreland Rosebud Mining, LLC, of the entity formerly known as Western Energy Co.

briefs to motions are generally not allowed under M. R. App. P. 16 and M. R. App. P. 22, it can only address the argument raised in MEIC's response brief with leave of Court. Westmoreland contends that if MEIC had filed a motion to dismiss, the appellate rules would have permitted Westmoreland to respond to that motion; Westmoreland argues that under general notions of equity and fairness, it should not be deprived of the ability to respond because MEIC filed a "stealth" motion to dismiss within its response to a different motion. As an exhibit to its motion for leave, Westmoreland has filed its proposed response to MEIC's assertion that this appeal should be dismissed.

We agree that Westmoreland should be given the opportunity to respond to MEIC's argument that this Court should dismiss Westmoreland's appeal as premature.

IT IS THEREFORE ORDERED that the motion for leave to file a response brief is GRANTED.

IT IS FURTHER ORDERED that the Response to MEIC's De Facto Motion to Dismiss Appeals, included as an exhibit to Westmoreland's Motion for Leave to File Attached Response to De Facto Motions to Dismiss Appeals, shall be FILED in this appeal.

The Clerk is directed to serve a copy of this Order upon all counsel of record.