



ORIGINAL

FILED

03/30/2022

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 22-0064

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 22-0064, DA 22-0067, and DA 22-0068

MONTANA ENVIRONMENTAL
INFORMATION CENTER and SIERRA CLUB,

Plaintiffs and Appellees,

v.

WESTERN ENERGY CO., NATURAL
RESOURCE PARTNERS, L.P.,
INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 400, and NORTHERN
CHEYENNE COAL MINERS ASSOCIATION,

Respondent-Intervenors and Appellants.

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State of Montana

MONTANA ENVIRONMENTAL
INFORMATION CENTER and SIERRA CLUB,

Plaintiffs and Appellees,

v.

MONTANA DEPARTMENT OF
ENVIRONMENTAL QUALITY,

Respondent and Appellant,

ORDER

MONTANA ENVIRONMENTAL
INFORMATION CENTER and SIERRA CLUB,

Plaintiffs and Appellees,

v.

MONTANA DEPARTMENT OF
ENVIRONMENTAL QUALITY,

Respondents,

and

WESTERN ENERGY CO., NATURAL
RESOURCE PARTNERS, L.P.,
INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 400, and NORTHERN
CHEYENNE COAL MINERS ASSOCIATION,

Respondent-Intervenors and Appellants.

Before the Court are three appeals from Orders issued in Cause No. DV-2019-34 in the Sixteenth Judicial District Court, Rosebud County.

On October 29, 2021, the District Court issued an Order on Petition (“Merits Order”) that reversed the approval of a mining permit, referred to as the “AM4” permit, by the Montana Board of Environmental Review, and remanded the matter to the Montana Department of Environmental Quality (DEQ) to review the AM4 permit application consistent with the District Court’s rulings.

Shortly after the court issued the Merits Order, both DEQ and Respondent-Intervenors Western Energy Co., Natural Resource Partners, L.P., International Union of Operating Engineers, Local 400, and Northern Cheyenne Coal Miner’s Association (collectively “Westmoreland”) moved the District Court for clarification of the Merits Order and to stay the Merits Order pending appeal, pursuant to M. R. App. P. 22(1). As the prevailing parties, Plaintiffs and Appellees Montana Environmental Information Center and Sierra Club (collectively “MEIC”) moved the District Court for attorney fees and costs from DEQ. Upon completion of briefing on the motion for clarification, the District Court issued its Order on Remedy and Stay (“Stay Order”) on January 28, 2022, in which it clarified that the Merits Order was a vacatur of the AM4 permit, and denied staying the vacatur pending appeal, but delaying the vacatur until April 1, 2022, to “allow [Westmoreland] to wind down operations in AM4, and avoid or mitigate potential negative impacts.” Pursuant to stipulation of the parties, the District Court stayed the briefing

schedule of MEIC's motion for attorney fees and costs while MEIC and DEQ negotiated a settlement of the amount of attorney fees and costs that DEQ will owe if MEIC prevails on appeal.

On February 4, 2022, Westmoreland filed its first Notice of Appeal in what is this Court's Cause No. DA 22-0064. Therein, Westmoreland stated it was appealing from the Stay Order pursuant to M. R. App. P. 6(1), 6(3)(e), and 6(3)(h).

On February 8, 2022, DEQ filed its Notice of Appeal in what is this Court's Cause No. DA 22-0067. Therein, DEQ stated it was appealing from both the Merits Order and the Stay Order pursuant to M. R. App. P. 6(3)(e).

Also on February 8, 2022, Westmoreland filed its second Notice of Appeal in what is this Court's Cause No. DA 22-0068. In that Notice, Westmoreland stated it was appealing from the Merits Order, the Stay Order, and "all previous orders and rulings excepted or objected to which led up to and resulted in judgment," pursuant to M. R. App. P. 6(1).

In each of the appeals, the respective Appellants filed motions for relief under Rule 22(2) to stay the vacatur of the AM4 permit pending resolution of the appeals. In DA 22-0068, Westmoreland also filed a motion to suspend the appellate rules under Rule 29. MEIC opposed these motions, and in its responsive briefs asserted that each of these appeals should be dismissed because they are premature.

When a district court denies a request for a stay under Rule 22(1), a stay from this Court may be sought under Rule 22(2). The party must "demonstrate good cause for the relief requested, supported by affidavit." M. R. App. P. 22(2)(a)(i). However, Rule 22 motions for relief are brought to this Court upon appeal of a final judgment. The Merits Order is not a final judgment because the District Court has not yet ruled on MEIC's motion for attorney fees and costs, *see* M. R. App. P. 4(1)(a), and thus, the appeals are premature.

However, if the Appellants must wait until resolution of the fee issue between DEQ and MEIC to file their appeals, any potential relief by way of a Rule 22(2) motion for stay pending appeal may come too late. Under the District Court's orders, the permit will be

vacated on April 1, 2022. This Court may stay an appeal pending resolution of an unresolved issue by the district court. *State v. Collins*, No. DA 21-0527, Order (Mont. Jan. 4, 2022); *In re Marriage of Johnson*, 252 Mont. 258, 260, 828 P.2d 388, 390 (1992). The Court deems it appropriate to maintain the status quo pending consideration of Appellants' Rule 22(2) motion for stay pending appeal, following entry of a final judgment by the District Court. Therefore,

IT IS ORDERED that the appeals in Cause Nos. DA 22-0064, DA 22-0067, and DA 22-0068 are STAYED pending entry of final judgment by the District Court. Briefing in the appeals is also stayed and will be resumed upon entry of a final judgment, in accordance with the schedule set forth in the Rules of Appellate Procedure.

IT IS FURTHER ORDERED that this case is REMANDED to the District Court for resolution of attorney costs and fees and entry of final judgment within 45 DAYS of this Order.

IT IS FURTHER ORDERED that Appellants shall notify the Court of entry of final judgment within 5 DAYS of entry, at which time the stay of the appeals entered herein shall be VACATED without further order of this Court, and the appeals shall proceed in accordance with the Rules of Appellate Procedure.

IT IS FURTHER ORDERED that Appellees are granted 30 DAYS following entry of final judgment to submit their Responses to Appellants' Rule 22 motions for a stay, previously filed herein, pursuant to Rule 22(2)(b), and to include reference to any further developments relevant to the stay request. Appellants are granted 14 DAYS following Appellees' Responses to submit reply briefs on the motion for a stay pending appeal, not to exceed 10 pages in text. M. R. App. P. 22(2)(a)(iv).

IT IS FURTHER ORDERED that vacatur of the AM4 permit is STAYED pending this Court's resolution of Appellants' Rule 22 motions.

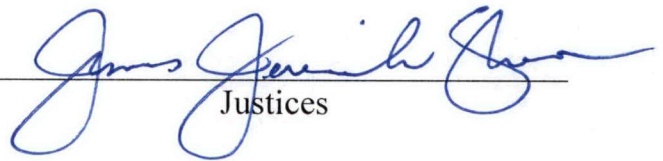
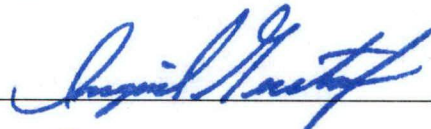
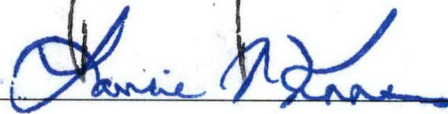
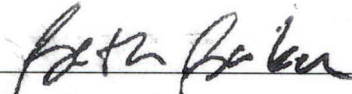
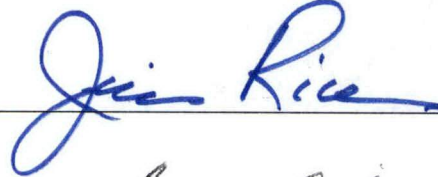
Consideration of consolidation of the appeals or other procedural requirements will be undertaken following entry of final judgment.

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Dated this ^{4th}30 day of March, 2022.



Chief Justice



Justices