

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 22-0064, DA 22-0067, DA 22-0068, DA 22-0281

MONTANA ENVIRONMENTAL INFORMATION CENTER and SIERRA CLUB,

Petitioners-Appellees,

vs.

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

Respondent-Intervenor-Appellant,

and

MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY,

Respondent-Appellant,

and

MONTANA BOARD OF ENVIRONMENTAL REVIEW,

Respondent-Appellant.

MONTANA ENVIRONMENTAL INFORMATION CENTER AND SIERRA CLUB'S UNOPPOSED MOTION TO CONSOLIDATE APPEALS

On appeal from the Montana Sixteenth Judicial District Court, Rosebud County,
Cause No. DV 19-34, the Honorable Katherine M. Bidegaray, Presiding

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Pursuant to this Court’s order from March 30, 2022, and Montana Rule of Appellate Procedure 4(3)(b), Petitioners-Appellees Montanan Environmental Information Center and Sierra Club (together, “Conservation Groups”) move this Court to consolidate the various appeals associated with this case, Cause Nos. DA 22-0064, DA 22-0067, DA 22-0068, and DA 22-0281. Undersigned counsel has contacted counsel for Respondent-Appellant Montana Department of Environmental Quality (DEQ), Respondent-Intervenors and Appellants Western Energy Co. et al. (collectively, “WRM”), and Respondent-Appellant Montana Board of Environmental Review (BER). DEQ and BER do not oppose this motion. WRM does not oppose consolidation; however, WRM disagrees with Conservation Groups’ characterization of the appeals, and, as such, does not join this motion.

On March 30, in an order resolving various pending motions filed across three separate appeals (Cause Nos. DA 22-0064, DA 22-0067, and DA 22-0068) from the same underlying case (*Montana Environmental Information Center v. Montana Department of Environmental Quality (MEIC v. DEQ)*, No. DV 19-34 (Mont. 16th Jud. Dist. Ct.)), this Court stated that “[c]onsideration of consolidation of the appeals or other procedural requirements will be undertaken following entry of final judgment.” *Mont. Env’t Info. Ctr. v. W. Energy Co.*, Nos. DA 22-0064, DA 22-0067, DA 22-0068, slip op. at 4 (Mont. Mar. 30, 2022). Rule 4(3)(b) provides that “[a]ppeals or cross-appeals may be consolidated by order of the supreme court

upon its own motion or upon motion of a party or parties.” Consolidation of appeals is appropriate if, among other things, it “would be both efficient and equitable for the disposition of the appeals.” *Chem One, Ltd. v. M/V RICKMERS GENOA*, 660 F.3d 626, 642 (2d Cir. 2011).

Here, consolidation of appeals in Cause Nos. DA 22-0064, DA 22-0067, DA 0068, and DA 22-0281 will promote the efficient and equitable resolution of these appeals. The several appeals filed by DEQ and WRM from various interlocutory orders issued by the district court in *MEIC v. DEQ*, No. DV 19-34 (Mont. 16th Jud. Dist. Ct.), resulted in a surfeit of duplicative and overlapping briefing. Following entry of final judgment by the district court in *MEIC v. DEQ*, BER filed its appeal in Cause No. DA 22-0281 on May 26, 2022. Consolidation of these four appeals arising from the same underlying action will prevent unnecessary duplication, while ensuring that that appeals by DEQ, WRM, and BER follow the same schedule for briefing and any hearing, and are resolved concurrently. As such, consolidation is efficient, equitable, and warranted.

Conservation Groups respectfully request that this Court consolidate the appeals in Cause Nos. DA 22-0064, DA 22-0067, DA 22-0068, and DA 22-0281.

Pursuant to Montana Rule of Appellate Procedure 16(1) a proposed order is filed herewith.

Dated this 27th day of May, 2022.

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CERTIFICATE OF SERVICE

I, Shiloh Silvan Hernandez, hereby certify that I have served true and accurate copies of the foregoing Motion - Unopposed to the following on 05-27-2022:

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