

IN THE SUPREME COURT OF THE STATE OF MONTANA

Case No. DA 22-0064

---

MONTANA ENVIRONMENTAL INFORMATION CENTER and SIERRA CLUB,

Plaintiffs / 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,

Respondent-Intervenors / Appellants.

---

MONTANA ENVIRONMENTAL INFORMATION CENTER and SIERRA CLUB,

Petitioners / Appellees,

v.

MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY,

Respondent / Appellant,

and

MONTANA BOARD OF ENVIRONMENTAL REVIEW, 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,

Respondents.

---

MONTANA ENVIRONMENTAL INFORMATION CENTER and SIERRA CLUB,

Plaintiffs / Appellees,

v.

MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY,  
MONTANA BOARD OF ENVIRONMENTAL REVIEW,

Respondents,

and

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,

Respondent-Intervenors / Appellants.

---

**UNOPPOSED RULE 26(1) JOINT MOTION FOR EXTENSION OF TIME  
TO FILE REPLY BRIEFS**

---

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

---

John C. Martin  
Holland & Hart LLP  
645 S. Cache Street, Suite 100  
P.O. Box 68  
Jackson, Wyoming 83001-0068  
(307) 734-4509  
jcmartin@hollandhart.com

Kyle A. Gray  
Holland & Hart LLP  
401 North 31st Street, Suite 1500  
P.O. Box 639  
Billings, Montana 59103-0639  
(406) 252-2166  
kgray@hollandhart.com

Samuel R. Yemington  
Holland & Hart LLP  
2515 Warren Ave, Suite 450  
Cheyenne, Wyoming 82001  
(307) 778-4207  
sryemington@hollandhart.com

*Attorneys for Intervenor-Respondent/  
Appellant Westmoreland Rosebud  
Mining LLC, et al.*

Nicholas A. Whitaker  
Jeremiah Langston  
Staff Attorneys  
Department of Environmental Quality  
P.O. Box 200901  
Helena, Montana 59620-0901  
(406) 444-2544  
nicholas.whitaker@mt.gov  
jeremiah.langston2@mt.gov

*Attorneys for Respondent/Appellant  
Montana Department of  
Environmental Quality*

Amy D. Christensen  
J. Stuart Segrest  
Christensen & Prezeau, PLLP  
24 W. 6th Avenue, Suite 501  
Helena, Montana 59601  
(406) 442-3690  
amy@cplawmt.com  
stuart@cplawmt.com

*Attorneys for Respondent/Appellant  
Montana Board of Environmental  
Review*

Pursuant to Montana Rule of Appellate Procedure 26(1), Respondent-Intervenors/Appellants Westmoreland Rosebud Mining LLC, Natural Resource Partners, L.P., International Union of Operating Engineers, Local 400, and Northern Cheyenne Coal Miners Association (collectively, “Westmoreland”), Respondent/Appellant Montana Department of Environmental Quality (“DEQ”), and Respondent/Appellant Montana Board of Environmental Review (“BER”) (collectively, “Joint Movants”) respectfully request a 31-day<sup>1</sup> extension of time until December 19, 2022 in which to prepare, serve, and file their reply briefs in the above-entitled matter.<sup>2</sup> This is the first motion for extension of time for the reply briefs which are presently due on November 18, 2022.

The reasons this motion should be granted are as documented in the declarations of counsel filed together with this motion. As described in the accompanying declarations, an extension of time is necessary to adequately and comprehensively reply to the legal and factual issues first raised in response brief.

---

<sup>1</sup> A 30-day extension falls on Sunday December 18, 2022; as such, Joint Movants request a 31-day extension.

<sup>2</sup> BER – which is participating on judicial review in a limited capacity – does not seek an extension out of necessity; however, in the interest of consistency and for the convenience of the Court, BER requests its reply brief have the same deadline as DEQ and Westmoreland’s reply briefs.

Counsel for Plaintiffs and Appellees Montana Environmental Information Center and Sierra Club have been contacted concerning this motion and they do not object.

A proposed order granting Joint Movants' motion is filed concurrently. For these reasons and those stated in the accompanying declarations, Joint Movants respectfully request that this motion be granted.

Respectfully submitted this 11th day of November, 2022.

/s/ Samuel R. Yemington  
SAMUEL R. YEMINGTON  
*Counsel for Appellants/Respondent-  
Intervenors Westmorland Rosebud Mining  
LLC, Natural Resource Partners, L.P.,  
International Union of Operating Engineers,  
Local 400, Northern Cheyenne Coal Miners  
Association*

/s/ Jeremiah Langston  
JEREMIAH LANGSTON  
*Counsel for Respondent/Appellant Montana  
Department of Environmental Quality*

/s/ J. Stuart Segrest  
J. STUART SEGREST  
*Counsel for Respondent/Appellant Montana  
Board of Environmental Review*

**DECLARATION OF SAMUEL R. YEMINGTON IN SUPPORT OF  
UNOPPOSED RULE 26(1) JOINT MOTION FOR 31-DAY EXTENSION OF  
TIME TO FILE REPLY BRIEFS**

---

I, Samuel R. Yemington, declare under penalty of perjury as follows:

1. I am counsel of record for 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 (collectively, “Westmoreland”) in the above-captioned matter.

2. This matter is substantively and procedurally complex. The mining permit at issue in this matter was the subject of a six-year scientific and technical review by the Montana Department of Environmental Quality (“DEQ”) and a three-year contested case proceeding before the Montana Board of Environmental Review (“BER”), the latter of which culminated in an 87-page order (the “Board’s Order”).

3. This judicial review of the Board’s Final Order implicates the same scientific and technical questions of law and fact on issues such as salinity, impairment, and aquatic life that the Parties litigated in the contested case proceeding.

4. On November 4, 2022, Montana Environmental Information Center filed its lengthy response brief totaling approximately 15,000 words. The Parties’ reply briefs are currently due on November 18, 2022. An extension of time is

necessary for DEQ and Westmoreland to prepare a reply brief that adequately and comprehensively addresses the many (and intricate) legal and factual issues first raised in MEIC's response brief. Accordingly, Westmoreland and DEQ jointly request an additional 31 days, up to and including Monday, December 19, 2022, to reply to MEIC's response brief.

6. BER – which is participating on judicial review in a limited capacity – does not seek an extension out of necessity; however, in the interest of consistency and for the convenience of the Court, BER requests its reply brief have the same deadline as DEQ and Westmoreland.

7. MEIC does not oppose the relief requested herein.

Pursuant to § 1-6-105, MCA, I declare under penalty of perjury and the laws of the State of Montana that the foregoing is true and correct.

Executed this 11th day of November 2022.

Washington, D.C.  
Place

  
\_\_\_\_\_  
Samuel R. Yemington  
HOLLAND & HART LLP

*Attorney for Appellants/Respondent-Intervenors  
Westmorland Rosebud Mining LLC, Natural  
Resource Partners, L.P., International Union of  
Operating Engineers, Local 400, Northern  
Cheyenne Coal Miners Association*

## DECLARATION OF JEREMIAH LANGSTON

Pursuant to § 1-6-105, MCA, I, Jeremiah Langston, hereby declare as follows:

1. I am a licensed, practicing attorney in the State of Montana. I am currently employed as a staff attorney by the Montana Department of Environmental Quality (“DEQ”) and am assigned to this case.

2. DEQ’s reply brief in this appeal is presently due November 18, 2022. I am requesting a 31-day extension of time until December 19, 2022.

3. Due to my existing workload, I have not had time to sufficiently review Petitioner/Appellants Montana Environmental Information Center’s and Sierra Club’s 76-page answer brief.

5. I will work diligently to complete the matter in the time requested, if not before.

6. Opposing counsel has been contacted about this motion and does not object.

7. I hereby declare under penalty of perjury under the laws of the United States of America and the State of Montana that the foregoing is true and correct.

Respectfully submitted this 11th day of November, 2022.

By: Jeremiah Langston  
JEREMIAH LANGSTON



## **CERTIFICATE OF SERVICE**

I, Samuel R. Yemington, hereby certify that I have served true and accurate copies of the foregoing Motion - Unopposed to the following on 11-11-2022:

John C. Martin (Attorney)

P.O. Box 68

645 S. Cache Street

Suite 100

Jackson WY 83001

Representing: International Union of Operating Engineers, Local, Natural Resource Partners, L.P.,  
Northern Cheyenne Coal Miners Association, Westmoreland Rosebud Mining LLC

Service Method: eService

Kyle Anne Gray (Attorney)

P.O. Box 639

Billings MT 59103

Representing: International Union of Operating Engineers, Local, Natural Resource Partners, L.P.,  
Northern Cheyenne Coal Miners Association, Westmoreland Rosebud Mining LLC

Service Method: eService

Amy D. Christensen (Attorney)

The Montana Club Building

24 West 6th Avenue

Suite 501

Helena MT 59601

Representing: Montana Board of Environmental Review

Service Method: eService

Jeremiah Radford Langston (Govt Attorney)

1520 E 6th Ave.

Helena MT 59601

Representing: Environmental Quality, Montana Department of

Service Method: eService

Nicholas A. Whitaker (Attorney)

Department of Environmental Quality

Director's Office

1520 E Sixth Avenue

Helena MT 59601

Representing: Environmental Quality, Montana Department of

Service Method: eService

Shiloh Silvan Hernandez (Attorney)

313 East Main Street

PO Box 4743

Bozeman MT 59772

Representing: Montana Environmental Information Center, Sierra Club

Service Method: eService

Roger M. Sullivan (Attorney)

345 1st Avenue E

MT

Kalispell MT 59901

Representing: Montana Environmental Information Center, Sierra Club

Service Method: eService

Derf L. Johnson (Attorney)

PO Box 1184

Helena MT 59624

Representing: Montana Environmental Information Center, Sierra Club

Service Method: eService

Robert L. Sterup (Attorney)

315 North 24th Street

,

Billings MT 59101

Representing: Talen Montana, LLC

Service Method: eService

J. Stuart Segrest (Attorney)

The Montana Club Building

24 West 6th Avenue

Suite 501

Helena MT 59601

Representing: Montana Board of Environmental Review

Service Method: eService

Walton Davis Morris (Attorney)

1901 Pheasant Lane

Charlottesville VA 22901

Representing: Montana Environmental Information Center, Sierra Club

Service Method: E-mail Delivery

Electronically signed by Trisa DiPaola on behalf of Samuel R. Yemington

Dated: 11-11-2022