

IN THE SUPREME COURT OF THE STATE OF MONTANA
CASE No. DA 23-0575

RIKKI HELD, et al.,

Plaintiffs and Appellees,

v.

THE STATE OF MONTANA, et al.,

Defendants and Appellants.

Appeal from the Montana First Judicial Court
Lewis and Clark County
The Honorable Kathy Seeley, Presiding
Court Cause No. CDV 2020-307

MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE

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I. INTRODUCTION

Pursuant to the Montana Rules of Appellate Procedure, Navajo Transitional Energy Company, LLC (“NTEC”) respectfully moves for leave to file a brief of an amicus curiae in support of Appellants State of Montana, Governor Greg Gianforte, Montana Department of Environmental Quality (“MDEQ”), Montana Department of Natural Resources and Conservation, and Montana Department of Transportation (collectively “Appellants”). M. R. App. P. 12(7) and 16. NTEC has a unique interest in this litigation that will not be presented by the current parties or other amicus. M. R. App. P. 12(7).

II. SUCCINCT ISSUE STATEMENT

Whether the Montana Supreme Court should grant NTEC’s motion for leave to file brief of an amicus curiae.

III. ARGUMENT

M. R. App. P. 12(7) provides that a motion for leave to file a brief of an amicus curiae shall “[1] identify the interest of the applicant, [2] state the reasons why a brief of an amicus curiae is desirable, [3] identify the party whose position amicus supports, [4] provide the date upon which the brief can be filed, and [5] indicate whether the other party consents to the request.”

The Montana Supreme Court has found “Ninth Circuit precedent persuasive” when deciding whether to permit a nonparty’s participation in an action. *See*

Sportsmen for I-143 v. Montana Fifteenth Judicial Dist. Court, Sheridan Cnty., 2002 MT 18, ¶ 12, 308 Mont. 189, ¶ 194, 40 P.3d 400, 403 (holding that a nonparty's interest sufficiently supported intervention). U.S. courts in the Ninth Circuit permit amicus when the movant has "unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide." *Duronslet v. Cty. of L.A.*, Case No. 2:16-cv-08933-ODW (PLAx), 2017 WL 5643144, at *2 (C.D. Cal. Jan. 23, 2017) (finding amicus brief desirable when the movant showed that its experience and expertise in the area of civil rights could provide unique perspectives).

A. NTEC is Uniquely Interested in the Outcome of this Litigation.

NTEC has three unique interests in this litigation: (1) NTEC is the owner of Montana's largest coal mine, Spring Creek Mine, which is engaged in permitting activity subject to the Montana Environmental Policy Act ("MEPA");¹ (2) NTEC received a letter indicating that Judge Seeley's decision in this matter applies retroactively to a previously Final EIS; and (3) the Court's decision may affect NTEC's ability to operate the Spring Creek Mine and therefore, its economic contributions to Montana's economy, particularly in Big Horn County, and the

¹ Spring Creek Mine is referenced throughout Judge Seeley's Findings of Fact, Conclusions of Law, and Order.

Navajo Nation.

First, NTEC owns Montana's largest coal mine, the Spring Creek Mine. It routinely engages in permitting activity subject to MEPA and it intends to continue to engage in such permitting activity throughout the life of the mine. A decision from this Court may affect the application of MEPA and the Montana Strip and Underground Mine Reclamation Act, Mont. Code Ann. §§ 82-4-201 to 82-4-254, ("MSUMRA") in past and future permitting actions at the Spring Creek Mine.

Second, on August 11, 2023, DEQ issued a MEPA Environmental Impact Statement ("EIS") for NTEC's AM5 Amendment where DEQ declined to analyze greenhouse gas emissions or impacts to the climate within the state or beyond the state's borders, citing MCA § 75-1-201(2)(a). On August 14, 2023, Judge Seeley issued her Findings of Fact, Conclusions of Law, and Order holding that MCA § 75-1-201(2)(a) unconstitutional. On September 5, 2023, a group of Non-Governmental Organizations ("NGOs") submitted a comment to DEQ regarding the AM5 Amendment arguing that Judge Seeley's decision applied retroactively to the Final EIS. A decision from this Court may affect the application of MEPA and MSUMRA in the recently approved and final AM5 Amendment at the Spring Creek Mine.

Third, NTEC is wholly owned by the Navajo Nation—a sovereign, federally recognized Indian Tribe. NTEC has a strong interest in continuing coal mining activities at the Spring Creek Mine to serve the economic, financial, social and

cultural well-being of the Navajo Nation. In addition, continued coal mining also supports significant economic contributions to Big Horn County's local economy and NTEC's other operations such as carbon sequestration at the Four Corners Power Plant, community heating programs, and solar development on reclaimed land.

B. Reasons Why a Brief of an Amicus Curiae is Desirable.

NTEC provides "unique information or perspective" beyond those of the parties because it is a member of the regulated community, an entity owned by the Navajo Nation, and received threats that Spring Creek's final AM5 Amendment may be retroactively inadequate absent a supplemental EIS. *See WildEarth Guardians v. Haaland*, 561 F. Supp. 3d 890, 905–06 (C.D. Cal. 2021) (granting motion for leave to file amicus when movant made a showing of unique local perspectives) (citations omitted). NTEC's unique perspective will provide the Court with important insight on the significant constitutional issues raised by Judge Seeley's decision.

C. Identify the Party whose Position Amicus Supports.

NTEC supports the position of the Appellants.

D. Date Upon which the Brief can be Filed.

NTEC proposes to file its amicus curiae brief ten (10) calendar days following Appellants' Opening Brief to align its arguments with Appellants and avoid duplication.

E. Whether the Other Party Consents to the Request.


On January 18, 2024, counsel for NTEC contacted counsel for Appellees and Appellants. Counsel for Appellants do not oppose NTEC's request to file a brief of amicus curiae and Counsel for Appellees did not respond to NTEC's request for their position.

IV. RELIEF REQUESTED

For the foregoing reasons, NTEC respectfully requests the Montana Supreme Court to grant its motion for leave to file a brief of an amicus curiae.

Dated this 24th day of January, 2024.

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CERTIFICATE OF SERVICE

I, Ryen L. Godwin, hereby certify that I have served true and accurate copies of the foregoing Motion - Amicus to the following on 01-24-2024:

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