

IN THE SUPREME COURT OF THE STATE OF MONTANA

Case No. DA 23-0575

RIKKI HELD; LANDER B., by and through his guardian Sara Busse; BADGE B., by and through his guardian Sara Busse; SARIEL SANDOVAL; KIAN T., by and through his guardian Todd Tanner; GEORGIANNA FISCHER; KATHRYN GRACE GIBSON-SNYDER; EVA L., by and through her guardian Mark Lighthiser; MIKA K., by and through his guardian Rachel Kantor; OLIVIA VESOVICH; JEFFREY K., by and through his guardian Laura King; NATHANIEL K., by and through his guardian Laura King; CLAIRE VLASES; RUBY D., by and through her guardian Shane Doyle; LILIAN D., by and through her guardian Shane Doyle; TALEAH HERNÁNDEZ,

Plaintiffs/Appellees,

v.

STATE OF MONTANA, GOVERNOR GREG GIANFORTE, MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY, MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION, and MONTANA DEPARTMENT OF TRANSPORTATION,

Defendants/Appellants.

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

DECLARATION OF DALE SCHOWENGERDT

Appearances:

Austin Knudsen
Montana Attorney General
Michael D. Russell
Thane Johnson
Assistant Attorneys General
MONTANA DEPARTMENT OF
JUSTICE
PO Box 201401
Helena, MT 59620-1401
Telephone: (406) 444-2026
michael.russell@mt.gov
thane.johnson@mt.gov

Emily Jones
Special Assistant Attorney General
JONES LAW FIRM, PLLC
115 N. Broadway, Suite 410
Billings, MT 59101
Telephone: (406) 384-7990
emily@joneslawmt.com

Mark L. Stermitz
CROWLEY FLECK PLLP
305 S. 4th Street E., Suite 100
Missoula, MT 59801-2701
Telephone: (406) 523-3600
mstermitz@crowleyfleck.com

Selena Z. Sauer
CROWLEY FLECK PLLP
PO Box 759
Kalispell, MT 59903-0759
Telephone: (406) 752-6644
ssauer@crowleyfleck.com

Attorneys for Defendant-Appellant State of Montana

Dale Schowengerdt
LANDMARK LAW PLLC
7 West 6th Avenue, Suite 518
Helena, MT 59601
Telephone: (406) 457-5496
dale@landmarklawpllc.com

Lee M. McKenna
MONTANA DEQ
PO Box 200901
Helena, MT 59620-0901
Telephone: (406) 444-6559
lee.mckenna@mt.gov

*Attorneys for Appellants-Defendants Governor Gianforte, Department of
Environmental Quality, Department of Natural Resources and Conservation,
and Montana Department of Transportation*

Roger Sullivan
Dustin Leftridge
MCGARVEY LAW
345 1st Avenue East

Melissa Hornbein
Barbara Chillcott
WESTERN ENVIRONMENTAL LAW CENTER
103 Reeder's Alley

Kalispell, MT 59901
Telephone: (406) 752-5566
rsullivan@mcgarveylaw.com
dleftridge@mcgarveylaw.com

Nathan Bellinger (pro hac vice)
Andrea Rodgers (pro hac vice)
Julia Olson (pro hac vice)
OUR CHILDREN'S TRUST
1216 Lincon Street
Eugene, OR 97401
Telephone: (413-687-1668
nate@ourchildrenstrust.org
andrea@ourchildrenstrust.org
julia@ourchildrenstrust.org

Helena, MT 59601
Telephone: (406) 708-3058
hornbein@westernlaw.org
chillcott@westernlaw.org

Philip L. Gregory (pro hac vice)
GREGORY LAW GROUP
1250 Godetia Drive
Redwood City, CA 94062
Telephone: (650) 278-2957
pgregory@gregorylawgroup.com

Attorneys for Plaintiffs/Appellees

I declare under the penalty of perjury that:

1. I am an attorney for Appellants the Department of Environmental Quality, Department of Natural Resources and Conservation, Department of Transportation, and Governor Gianforte in the above captioned appeal. I have primary drafting responsibility for the state agencies' and Governor's reply brief in this appeal.
2. Appellants' reply brief is currently due March 27, 2024. Appellants are requesting a 30-day extension of time until April 26, 2024.
3. This extension is necessary for several reasons. First, Appellees' filed a 75-page, 17,442 word response, which will require additional time to review and reply to that a typical response of 10,000 words.

4. Second, Appellants reply brief requires coordination among many parties. Appellants are working to ensure there is not unnecessary duplication in their replies, and that all arguments are fully covered so that this Court can make a decision based on a complete discussion of the issues and the large record in this case. In addition, I represent three state agencies and the Governor's office. Coordinating review of the draft brief between that many parties requires additional time to ensure that the agencies' interests are being fully and accurately communicated to the Court.

5. Third, there are an unusually high number of amicus briefs in this case. Motions to participate as amici are still being filed in support of Appellees. It is unclear when those motions will be exhausted, but what is clear is that the amicus briefs will be filed well after Appellees' response was filed. Appellants need additional time to review and analyze those amicus briefs and potentially address arguments in Appellants' reply briefs.

6. I am also under deadline in several other cases, including a complex appeal at the Ninth Circuit, *BNSF Railway Co. v. Center for Asbestos Related Disease*, No. 23-35507. I represent Appellee BNSF Railway Company in that case, and the brief is due at the Ninth Circuit on March 29, 2024. The case involves an appeal of a False Claims Act judgment against the Center for Asbestos

Related Disease after a 12-day jury trial, and requires evaluation of a very large record. I have several other briefs due in the weeks following that appeal brief.

7. I have a substantial need for a 30-day extension to draft and file the reply brief in this matter so that I can file a brief for Appellant state agencies and the Governor's office discussing the important issues in this case in a way that is thorough and helpful to the Court in evaluating and deciding this appeal.

I declare under the penalty of perjury that the foregoing is true and correct.

Dated: March 19, 2024.

/s/ Dale Schowengerdt