

IN THE SUPREME COURT OF THE STATE OF MONTANA

Case Nos. DA 24-0656 and DA 25-0072

TROUT UNLIMITED,

Appellant, Cross-Appellee and Objector,

v.

PETRICH FAMILY LIMITED PARTNERSHIP,

Appellee, Cross-Appellant and Claimant.

TROUT UNLIMITED,

Appellant, Cross-Appellee and Objector,

v.

JAMES R. MELIN,

Appellee, Cross-Appellant and Claimant,

BRIEF OF *AMICUS CURIAE* CLARK FORK COALITION

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Trout Unlimited appealed two holdings from the Water Court adjudicating water rights on Mill Creek held by Petrich Family Limited Partnership and James R. Melin. Petrich and Melin filed cross-appeals. The Clark Fork Coalition (“Coalition”) was granted leave on Feb. 12, 2025 to file an *amicus curiae* brief in this matter.

I. The Law Governing Implied Claims: The Crux of This Appeal

The Water Court orders that resulted in this appeal involved disputes over many elements of the underlying water rights, but the crux of the appeal, and the issue of interest to the Coalition as *amicus*, relates to the generation of so-called “implied” water right claims. An implied claim is defined as “a claim authorized by the water court to be separated and individually identified when a statement of claim includes multiple rights.” Rule 2(a)(33), W.R.C.E.R.

Both the Water Court and this Court have previously recognized the practical necessity of implied water right claims in the context of the adjudication process. See e.g. *In re Foss*, Case 76HF-580, 2013 Mont. Water LEXIS 17, *31 (“*Foss*”); *Hoon v. Murphy*, 2020 MT 50, ¶ 47, 460 P.3d 849, 399 Mont. 110. However, there are critical limitations on the generation of implied claims designed to head off abuse and protect other water users who could be impacted by the unlawful expansion of a water right. *Foss* at *33; *In re Eliasson Ranch Company*, Case 40A-115, 2004 Mont. Water LEXIS 2, *6 (“*Eliasson*”). One of

these limitations is that the Water Court’s recognition of an implied claim cannot result in a change to historic water use or increase the historic burden to other water users. *Foss* at *33.

The Water Court orders on appeal are the product of disputes over water rights from the same source – Mill Creek – that were defined by the same underlying decree as “high water” or “flood water” claims and were thus limited to defined annual period of use: May 1 to July 15. After receiving objections to the claims during the adjudication process, the claimants requested generation of implied irrigation claims to recognize an *extended* period of use to allow them to divert water outside the defined boundaries of their decreed rights. In both cases, the Water Court relied on witness testimony to create new implied “use” claims and assigned them arbitrary, junior priority dates. The Coalition believes the outcome of these cases highlights the need for legal clarity on the law of implied claims.

Further, because the Water Court’s unchecked ability to recognize implied water rights that expand the period of use for water rights could have direct, negative impacts on rivers and streams within the Clark Fork Basin and instream water rights held by the Coalition, the Coalition appears as *amicus* to help the Court answer one of the central questions in this case: Whether the Water Court properly applied the correct legal test governing the generation of implied water

right claims? The Coalition believes the answer is no, and that the Water Court's decision on this issue should be reversed and remanded.

A. Over-Appropriation and the Mill Creek Decrees

The Water Court orders at issue sought to quantify the water rights for Mill Creek, a key tributary to the Yellowstone River and a source of vital spawning habitat for Yellowstone cutthroat trout. Like many major tributaries in Montana, Mill Creek is over-appropriated, meaning that water right claims exceed physically available supplies. As a result of irrigation withdrawals, the creek is also categorized as chronically dewatered by the Montana Department of Fish, Wildlife & Parks ("FWP"). FWP, *Dewatering Concern Areas* (May 2005) (available at: <https://myfwp.mt.gov/getRepositoryFile?objectID=38105>).

Due to water shortages and disputes between its users, historical water rights on Mill Creek have been the subject of two comprehensive district court decrees. The first was in the 1938 Park County District Court case, *Sallie A. Allen, et al. v. N.F. Wampler, et al.*, Cause No. 7583 (Mont. Sixth Jud. Dist., June 1, 1938) ("Allen Decree"). The Allen Decree involved the adjudication of numerous, senior rights to divert water from Mill Creek.

In 1964, the District Court issued a supplemental water rights decree in the case *Gerald F. Petrich, et al. v. Archibald and Margret E Allen, et al.*, Cause No. 11616 (Mont. Sixth Jud. Dist., Park County, July 22, 1964) ("Petrich Decree").

The Petrich Decree was based on a finding by the District Court that Mill Creek had an amount of un-decreed water available between May 1 and July 15 each season. The Court decreed these “excess” or “flood waters” to various water users on several ditches. Based on the evidence, the District Court decreed several Mill Creek rights to the plaintiffs. All these new claims were appropriated based on excess surface water available during peak flows each season. The District Court found that these flood waters only existed from May 1 - July 15 each year, and the parties stipulated to this express limitation on their diversions. These flood water claims form the basis of the disputed implied claims.

B. The Water Use Act and the Genesis of Implied Water Right Claims

Implied water right claims are not a creature of the Water Use Act, nor are they explicitly authorized by statute. Instead, implied claims represent a “practical solution to errors commonly found in claims filed as part of the general adjudication process.” *Foss* at *31. This general adjudication process began with the filing of statements of claim.

Following the passage of the Montana Water Use Act in 1973, all water users with historical (pre-1973) water rights were required to file statements of claim describing the elements of their existing rights by a prescribed deadline. Mont. Code Ann. § 85-2-226. Failure to timely file a statement of claim was taken as proof of abandonment. *In Matter of Yellowstone River*, 253 Mont. 167, 175, 832

P.2d 1210, 1214 (1992) (“All water claimants were provided more than ample notice and given expanded opportunity to file a claim. Section 85-2-226, MCA, makes clear that failure to file in a timely fashion establishes that the water right claimant has abandoned their right.”).

The origin of implied water right claims is unclear but appears to begin with the water right claim examination process undertaken by the Montana Department of Natural Resources & Conservation (“DNRC”). The initial water right claim filing process was confusing for many claimants and mistakes were made. “A common mistake in claim filing was inclusion of more than one water right in a single claim. Implied claims are a mechanism for dealing with this problem.” *Foss* at *32.

To correct filing mistakes, the DNRC’s Water Right Claim Examination Rule 35 establishes a process for implied claim generation. Rule 35, W.R.C.E.R. The process begins “[w]henver a single claim appears to contain more than one water right....” Rule 35(a), W.R.C.E.R. DNRC’s rules require the Department to secure written authorization from the Water Court for an implied claim. *Id.* The Department’s rules identify two specific situations where a statement claim will be examined for potential implied claims: 1) where a claim describes multiple sources of water [Rule 11(b)]; and 2) where a claim describes multiple priority dates [Rule 13(e)].

In 1994, the Water Court took the position that its authority to generate implied claims is untethered to DNRC's claim examination process. See *Musselshell River Below Roundup Basin*. 1994 Mont LEXIS 18; 2001 ML 5027 at *44. ("Even though DNRC did not request review for purposes of an implied claim, the rules allow a claimant to secure an implied claim when it is clear from the claim that the claimant has more than one water right. The Water Court has power to create implied claims when a claim appears to contain more than one right."). In the following years, the practice surrounding implied claims shifted away from the DNRC's claim review, and implied claims became a tool wielded by the claimants' themselves, who have actively sought implied claims directly from the Water Court to correct filing errors, remedy filing oversights, or (as here) combat objections received after the issuance of Preliminary Decrees.

The most cogent summary of the Water Court's rationale for creating implied claims is found in *In re Claimants Lee E. Foss*, Case 76HF-580, 2013 Mont. Water LEXIS 17. In that case, the Water Court established a three-part test that has since guided considerations of implied claims:

First, the implied claim must be justified by some evidence in the claim form or the documents attached thereto, although supplemental evidence can be used to explain or clarify the claim and its contents. Second, evidence must exist of actual historic use corroborating the implied claim. Third, the creation of the implied claim should not result in a change to historic water use or increase the historic burden to other water users. The burden to meet these criteria rests on the person seeking recognition of an implied claim.

Foss, 2013 Mont. Water LEXIS 17, *32.

In short, implied claims are only generated by the Water Court in very specific instances, and the Water Court's implied claim authority is subject to important limitations. Without these limitations, both senior and junior water users on the impacted water source may suffer adverse effects or diminishments to their water rights. As described below, the Water Court orders subject to this appeal failed to adhere to the boundaries established in *Foss* by generating implied "use" claims for extended irrigation use outside the boundaries of the claimants' decreed water rights.

1. The Evidence Before the Court Suggests the Claimants' Only Intended to File a Single, Decreed Water Right with their Statements of Claim

Under *Foss*, the generation of an implied claim is appropriate only where information supporting the claim can be found within the statement of claim itself or supporting documentation submitted with and attached to the original statement of claim. *Foss* at *32; *In re Adjudication of the Existing Rights to the Use of All the Water*, Case 76F-1, 2010 Mont. Water LEXIS 2, *18; *Eliasson* at **4-5 ("[t]he purpose of [the implied claim] review is to determine whether the *claimant intended* to claim two water rights even though only one claim was filed") (emphasis added).

The Water Court’s orders in both *Petrich* and *Melin* found that by listing an exaggerated period of use that exceeded the boundaries of their decreed water rights on their respective statements of claim, the claimants had satisfied the first prong of the *Foss* test. *Petrich v. Trout Unlimited*, Case No. 43B-0354-R-2021, Findings of Fact and Conclusions of Law at 10 (Oct. 10, 2024) (“*Petrich*”); *Melin v. Trout Unlimited*, Case No. 43B-0148-R-2020 at 18 (Jan. 21, 2025) (“*Melin*”). In *Petrich*, for example, the Court reasoned that “[b]y describing both decreed rights and use rights on the same statement of claim, the claim forms each identify at least two claims, because as described below, the claims have different priority dates.” *Petrich* at 10.

The Water Court’s holding is flawed because there was not substantial evidence that either claimant *intended* to describe anything other than a single decreed water right on their statements of claim. *Hoon v. Murphy*, 2020 MT 50, ¶ 48, 399 Mont. 110, 460 P.3d 849 (“The intent of an appropriator has been described by this Court as “a most important factor in determining the validity of an appropriation of water.” *Toohey v. Campbell*, 24 Mont. 13, 17, 60 P. 396, 397 (1900) (quoting *Power v. Switzer*, 21 Mont. 523, 530, 55 P. 32, 35 (1898)). Here, the intent of the appropriators cannot be separated from the 1964 Decree for which they petitioned, and which was expressly limited to high water that was only available “between May 1 and July 15.” *Petrich* at 9; *Melin* at 17. Every other

element (flow rate, priority date, point of diversions, place of use, etc...) listed on the claimants' statements of claim is identical to the elements of the *decreed* water right that the claimants intended to file. The claimants offered no evidence of any intent to describe both senior decreed rights and junior use rights. Contrary to the Water Court's findings, simply misrepresenting the prescribed limitations on the period of use of their decreed claims does not mean that the claimants intended to appropriate multiple water rights or describe multiple claims upon filing. *Toohey v. Campbell*, 24 Mont. 13, 17, 60 P. 396, 397 (1900).

Indeed, neither claimant listed multiple priority dates for their alleged "use" rights because they apparently sought to extend the boundaries of their decreed rights. The Water Court ultimately assigned the implied claims arbitrary priority dates because the claimants failed to offer any proof of first use of these use rights, beyond vague assertions that they were used prior to 1973. *Petrich* at 10 ("Petrich did not offer proof of the date water use began after the Northside Ditch was built, other than it was done historically."); *Melin* at 19 ("Melin did not offer proof of the date water use began ... other than it was done historically"). In a twist of judicial logic, the Court then found that these arbitrarily assigned but "potentially different priority dates" were enough to satisfy the first prong of the *Foss* test. *Melin* at 18 (emphasis added). This finding constitutes reversible error.

Many water users filed their statements of claim based on the appropriations of others that occurred over a century ago and were defined by historical District Court decrees to which they were never a party. Accordingly, mistakes could be made in describing these rights on a claim form. This is not the case for Petrich or Melin, who personally or (whose immediate predecessors personally) petitioned for the Petrich Decree allocating unappropriated high waters of Mill Creek, were bound by the terms of that decree, and filed their statements of claim based on the *very same decreed rights*. Accordingly, the evidence in front of the Water Court did not support a finding of multiple water rights on a single statement of claim as required under *Foss*.

2. Vague Evidence of Unlawful Expanded Water Use of a Decreed Water Right Cannot Be Used to Corroborate an Implied Claim

The second prong of *Foss* dictates that substantial credible evidence must exist of actual historic use corroborating the implied claim. Here, both claimants offered self-serving testimony that generally described that they diverted their decreed water rights without regard to the defined period of use that applied under the 1964 Petrich Decree. *Petrich* at 10; *Melin* at 19. However, the Water Court expressly found that neither claimant offered “proof of the date water use began after the Northside Ditch was built, other than it was done historically.” *Id.* Due to the lack of substantial evidence of first use for these supposedly unique “use”

claims, the Water Court assigned arbitrary dates of June 30, 1973 (the day before the WUA took effect). *Id.* But implied claims are not a consolation prize to be awarded to a claimant who *almost* meets his burden of proof. The Water Court should have rejected the request for implied claims for lack of this evidence.

The core issue with Water Court’s findings corroborating historical use is that it was clear that any testimony as to pre-1973 use of water by either of the claimants was related to their decreed water rights for high water. In essence, claimants offered only that at some point prior to 1973, they used their decreed rights outside the boundaries of their prescribed period of use. Even accepting for the sake of argument that this testimony alone was sufficient to substantiate historical use – which it was not – this is not evidence of separate water rights but of *unlawful expanded* water use beyond the express limitations of the Petrich Decree. More to the point, if the claimants had actually intended to appropriate new and separate “use” rights for Mill Creek for their early or late-season uses, it’s unclear why they felt bound by *any of the other* existing limitations of their decreed rights, such as flow rate or place of use. In light of the above, the Water Court erred in finding the claimants had satisfied the second prong of *Foss*.

3. The Water Court Erred in Finding that the Generated Implied Claims Will Not Increase the Burden on an Over-Appropriated Stream

The third prong of the *Foss* test dictates a finding of substantial credible evidence that the creation of the implied claim will not result in a change to historic water use or increase the historic burden to other water users. *Foss*, 2013 Mont. Water LEXIS 17*, 32. As noted by the Water Court in its orders, the Court “does not recognize implied claims that expand a water right or that circumvent the Water Use Act claim filing requirements.” *Petrich* at 9, *Melin* at 17 (citing *In re Climbing Arrow Ranch Inc.*, Case 41F-A19, 2019 Mont. Water LEXIS 1 (Order Adopting Master’s Report)).

Nonetheless, the Water Court found that generating implied claims to extend the period of use for *Petrich* and *Melin*’s claims would not increase the burden on the source because the generated implied claims were assigned junior priority dates corresponding with the passage of the WUA. *Petrich* at 11, *Melin* at 15 (“Assigning the most junior priority dates available for pre-1973 existing rights avoids conflicts with other Mill Creek water users holding existing rights with periods of use and diversion outside the May 1 to July 15 period litigated and decreed in the *Petrich Decree*.”).

The Water Court’s reasoning blurs the crucial line between recognition of truly unique, “use” rights and *expansion* of an existing right. As noted above, every

other element (flow rate, priority date, point of diversions, place of use) on these implied claims is identical to the elements of the decreed water rights on which they are based. This is because each claim is based on a *single* historical appropriation, and there is no evidence of the claimants' intent to appropriate anything more. As a matter of law, the expansion of a decreed water right increases the burden on the source. *Parrot Ditch Co. v. Ashcraft*, 2024 MT 272, ¶ 35, 419 Mont. 93, 558 P.3d 1138 (“a water user may not expand a decreed right by subsequently extending water use to additional lands not under actual or contemplated use at the time the water was decreed.”) (citations omitted).

Even assuming for the sake of argument that unique “use” claims were intentionally appropriated by the claimants, the Water Court’s holding that the implied claims would not increase to the burden on the source failed to account for the total increase in water use associated with these sanctioned use rights, regardless of their junior priority. See *In re Adjudication of the Existing Rights to the Use of All the Water*, Case 76F-1, 2010 Mont. Water LEXIS 2, *17 (citing *Quigley v. McIntosh*, 110 Mont. 495, 505-506, 103 P.2d 1067 (1940) (Pre- 1973 expansions of an existing water right may be permissible but “if such changes increase the flow rate or volume diverted from the source, or increase the burden on the source, there may be a problem.”). Other than excess flood waters, Mill Creek was fully appropriated as of 1938 Allen Decree. The Petrich Decree

allocated new rights for high flows, but those rights were limited to May 1 to July 15. The Water Court's orders fail to explain how extending these high-water claims to the full irrigation season will not increase the burden on the source.

Moreover, the Water Court failed to account for the practical and administrative burdens that these implied claims will place on senior water users who seek to defend their water rights as well as junior waters whose rights will be diminished. The Water Court ignored the practical difficulties of how these implied claims that serve to book-end the underlying high-water claims will actually be administered. A senior's increased obligation to make call is in itself both a practical and economic burden, and the Court cannot gloss over the on-the-ground implications of requiring senior users to increasingly police their senior rights or drastically increase the number of days a water commissioner must be employed to administer water. Likewise, a junior user's diminishment of his water right due to altered conditions on the source is also a burden because junior users are entitled to the conditions when they arrive on the source. *Hohenlohe v. State*, 2010 MT 203, ¶ 43, 357 Mont. 438, 450, 240 P.3d 628, 636, (citing *Spokane Ranch & Water Co. v. Beatty*, 37 Mont. 342, 351, 96 P. 727, 731 (1908)).

Finally, this Court should carefully scrutinize the Water Court's findings related to burden on the source because, unlike to the motion to amend process, the generation of implied claims does not require broad notice to other water users or

interested parties who could be adversely impacted. See *In re Circle S Ranch, Inc.*, Case 41P-108, 2019 Mont. Water LEXIS 8, at *7 (Water Court required statutory notice on claimant’s “motion to modify” water right claims that could have resulted in adverse effect).

II. The Court’s Holding Will Fuel Efforts to Expand Period of Use

In the *Petrich* and *Melin* decisions, the Water Court created new, “implied” water right claims on Mill Creek—an already over-appropriated and chronically dewatered stream. There is no dispute that the claims at issue were previously decreed by in the Petrich Decree as “high water” claims, i.e. claims that were appropriated based on excess surface water available during peak flows each season. Because the waters of Mill Creek were already fully appropriated via an existing decree on the source, the Petrich Decree limited the two irrigation claims to a period of diversion and period of use spanning from May 1 to July 15 of each year to correspond to times when excess water was available, i.e., during peak flows.

As explained above, the Water Court’s decision to generate these implied claims will increase the burden on Mill Creek water users, but it has ramifications far beyond the Mill Creek watershed. In the Clark Fork Basin, for example, water right claims on the majority of tributary streams exceed available water supplies, and over 900 miles of streams and rivers have been categorized as chronically

dewatered by Montana FWP. FWP, *Dewatering Concern Areas* (May 2005). The impacts of climate change and prolonged drought are already further stressing these finite resources as our watersheds suffer from reductions in snowpack, an earlier peak in spring runoff and reduced late-summer water availability in snowmelt-dominated watersheds. See Cathy Whitlock, Wyatt F. Cross, Bruce Maxwell, Nick Silverman, Alisa A. Wade, Institute on Ecosystems, *Executive Summary, 2017 Montana Climate Assessment*, 14. “Projections suggest these patterns are very likely to continue into the future as temperatures increase.” *Id.*

Changing patterns in water availability have not gone unnoticed by Montana’s agricultural water users. As runoff-dependent streams have begun to flow earlier in the season, many irrigators have questioned whether the designated periods of use for their water rights are actually prescriptive, as opposed to “flexible” guidelines that can be altered at will. Indeed, during the Legislative Interim Water Policy Committee’s recent *Study of Climate and Water Rights*, the sole policy discussion related to water rights focused on period of use of an irrigation water right and whether this element could be altered to take advantage of early season flows and warmer temperatures. See Jason Mohr, Water Policy Interim Committee (“WPIC”), *Climate and Water Rights*, (Aug. 1, 2020) (available at: <https://archive.legmt.gov/committees/interim/past-interim-committees/2019-2020/2019wpic/>). Montana DNRC’s answer to WPIC was clear:

“[D]epartment policy does not allow a user to change a period of use outside the originally defined water right. *A water user would need to apply for a new water right with the earlier period of diversion or use or file a change application*” *Id.* (emphasis added); see Mont. Code Ann. §§ 85-2-311, -402. Broader reviews of water policy in the West have likewise cautioned against adopting revisions that would allow water users to shift their periods of use to adapt to changes in seasonal runoff. See Karrigan S. Börk and John Mensik, *Adapting Seasonal Water Rights*, 48 Wm. & Mary Env’t L. & Pol’y Rev. 483, 544 (2024) (“Even a wholesale shift of all water rights within a given water system back by a month to reflect the changes in runoff date would illegally advantage some users and disadvantage others”).

Given the appropriately high bar set for an expanded period of use under the Water Use Act, the Coalition is concerned with the implications of Water Court’s holding in *Petrich* and *Melin*. At best, the Water Court’s ruling in this case will further diminish the viability of other existing water rights on Mill Creek, including instream Murphy Rights and instream reservations held by FWP. At worst, the Court’s holding will encourage other irrigators to seek similar implied claims to approve gradual (or drastic) pre- or post-1973 expansions of their water use, further exacerbating chronic dewatering issues on streams statewide and adversely affecting other waters users – including the Coalition. As explained

further below, this risk is significant given that: 1) some water users exaggerated the extent of their water rights when they were originally filed; and 2) most water rights are decreed without a volume limitation to limit historical use.

A. Period of Use is a Critical Limitation on Historical Water Use

Montana's comprehensive adjudication process is necessary because not all water right claims accurately reflect historical use. See *In Matter of Yellowstone River*, 253 Mont. 167, 179-180, (Abandonment statute "is a reasonable means of compelling comprehensive participation, extinguishing duplicative and exaggerated rights, and ridding local records of stale, unused water claims."); *Matter of Water Court Procedures*, 1995 Mont. Water LEXIS 7, *31 ("[W]ater rights should not be granted for use on lands that have never been irrigated or with flow rates that have never been diverted. The Water Court does not wish to issue bogus or exaggerated claims."). While the adjudication process will not be perfect, the Water Court has a duty to evaluate the evidence and adjudicate the key elements of a water right as defined by its historical (pre-1973) use.

Among other elements, the WUA requires the Water Court to adjudicate "the inclusive dates during which the water is used each year." Mont. Code Ann. § 85-2-234(6)(h). These dates represent the period of diversion and period of use of a water right. Maintenance of a defined and enforceable period of use for irrigation water rights is especially important given that the majority of irrigation water

rights have been adjudicated *without* a volume that dictates the total amount water historically put to beneficial use. *In re Eldorado Coop Canal Co.*, 2016 MT 94, ¶ 20, 383 Mont. 205, 369 P.3d 1034 (volume permissible but not required as an element of a water right).

Indeed, if an irrigator's period of use is "flexible" and subject to expansion via the generation of implied claims that extend the defined period of use, the end result will be adverse effect to other water users. *In re Adjudication of the Existing Rights to the Use of All the Water*, Case 76F-1, 2010 Mont. Water LEXIS 2, *17 (citing *Quigley v. McIntosh* (1940), 110 Mont. 495, 505-506, 103 P.2d 1067) (Pre-1973 expansions of an existing water right may be permissible but "if such changes increase the flow rate or volume diverted from the source, or increase the burden on the source, there may be a problem.").

The Water Court failed to acknowledge or explain how the generation of implied claims to book-end the historical decreed period of use of the *Petrich* and *Melin* claims will not result in adverse effect by expanding the diverted and consumed volume of water under the claimants' rights. This is particularly true of the implied claims for *late-season* uses, which are in direct contrast with the *Petrich* Decree's express limitations to high-water conditions: i.e. the only time that unappropriated waters were available on Mill Creek. In the end, senior users

will be burdened with higher administrative and management costs, while junior users will see their water rights further whittled down to nothing.

CONCLUSION

The generation of implied water right claims in the context of the adjudication requires a careful balancing act to ensure that water rights are accurately decreed, claim filing deadlines are followed and that other water users will not be adversely impacted by expansions to existing water rights. In the cases below, the Water Court's holding that generated implied claims failed to follow the guidelines established in *Foss* and was not properly grounded in state law. Accordingly, the Court's holdings on this issue should be reversed and remanded.

Respectfully submitted this 7th day of April, 2025.

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Certificate of Compliance

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that the foregoing brief is:

- printed with a proportionally spaced typeface of 14 points;
- double-spaced;
- contains 1-inch margins all around; and
- is under 5,000 words.

DATED this 7th day of April, 2025.

By: /s/ Andrew Gorder
Andrew Gorder

Certificate of Service

This is to certify that the foregoing *Amicus Curiae Brief* was duly served upon the following at their addresses, by e-service or first-class mail, the 7th day of April 2025, as follows:

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I, Andrew Scott Gorder, hereby certify that I have served true and accurate copies of the foregoing Brief - Amicus to the following on 04-07-2025:

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