

IN THE SUPREME COURT OF THE STATE OF MONTANA
No. DA 25-0808

GATEWAY CONSERVATION ALLIANCE,

Plaintiff and Appellant,

v.

STATE OF MONTANA and MONTANA DEPARTMENT OF
ENVIRONMENTAL QUALITY,

Defendants and Appellees,

and

TMC, INC.,

Intervenor Defendant and Appellee.

**OPPOSED MOTION FOR LEAVE TO APPEAR
AS AMICI CURIAE**

On Appeal from the Montana Eighteenth Judicial District Court,
Gallatin County, Cause No. DV-16-2024-0000838,
Honorable Peter B. Ohman presiding

Appearances

E. Lars Phillips
Shiloh Hernandez
Emma Shahabi
Earthjustice
P.O. Box 4743
Bozeman, MT 59772-4743
(406) 586-9699
laphillips@earthjustice.org
shernandez@earthjustice.org
eshahabi@earthjustice.org

*Counsel for Amici Curiae
Montana Environmental
Information Center and Park
County Environmental Council*

Samuel J. King
Jeremiah Langston
Kaitlin Whitfield
MONTANA DEPARTMENT OF
ENVIRONMENTAL QUALITY
P.O. Box 200901
Helena, MT 59620-0901
(406) 444-2544
samuel.king@mt.gov
jeremiah.langston2@mt.gov
kaitlin.whitfield@mt.gov

*Counsel for Appellee Montana
Department of Environmental
Quality*

David K.W. Wilson, Jr.
Robert Farris-Olsen
MORRISON SHERWOOD WILSON
DEOLA, PLLP
401 N. Last Chance Gulch
Helena, MT 59601
(406) 442-3261
kwilson@mswdlaw.com
rfolsen@mswdlaw.com

Graham J. Coppes
Emily F. Wilmott
Anders K. Newbury
FERGUSON AND COPPES, PLLC
P.O. Box 8359
Missoula, MT 59807
(406) 532-2664
graham@montanawaterlaw.com
emily@montanawaterlaw.com
anders@montanawaterlaw.com

*Counsel for Appellant Gateway
Conservation Alliance*

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

Counsel for Intervenor TMC, Inc.

Pursuant to Mont. R. App. P. 12(7), Montana Environmental Information Center and Park County Environmental Council (collectively “*amici*”) respectfully move for leave to file a brief as *amici curiae* in support of Appellant. If granted, *amici* will file their brief no later than May 15, 2026, the date on which Appellants’ Reply Brief is due.

I. Statement of Interest

Proposed *amicus* Montana Environmental Information Center (“MEIC”) is a nonprofit environmental advocate founded in 1973 by Montanans concerned with protecting and restoring Montana’s natural environment. MEIC has thousands of members and supporters in Montana with a unique interest in the preservation and restoration of Montana’s environment. MEIC has a long history of working with the Legislature and state agencies and within Montana’s court system to protect and restore Montana’s natural environment. MEIC also regularly informs the public about environmental issues and assists individuals and local organizations facing environmental problems by providing information, organizing and tactical advice, and technical assistance on environmental issues in Montana that often include

either participation in the Montana Administrative Procedure Act (“MAPA”) process or claims asserted under the Uniform Declaratory Judgments Act (“UDJA”). MEIC itself frequently participates in MAPA process and asserts claims under the UDJA to vindicate provisions of Montana’s Constitution, including the right to a clean and healthful environment and the right to participate. MEIC’s interest in this case is focused on ensuring that both MAPA and the UDJA are interpreted in a manner consistent with Montana’s unique constitutional right to a clean and healthful environment and right to meaningfully participate in agency decisions.¹

Proposed *amicus* Park County Environmental Council (“PCEC”) is a nonprofit community organization based in Livingston, Montana, that aims to protect and enhance the quality of life in Park County by

¹ This Court has permitted proposed *amici* MEIC to participate as *amicus curiae* in many other cases, including those involving constitutional challenges to statutes. E.g., *Held v. State*, 2024 MT 312, 419 Mont. 403, 560 P.3d 1235; *Cnty. Ass'n for N. Shore Conservation, Inc. v. Flathead Cnty.*, 2019 MT 147, 396 Mont. 194, 445 P.3d 1195; *Bitterrooters for Plan., Inc. v. Montana Dep't of Env't Quality*, 2017 MT 222, 388 Mont. 453, 401 P.3d 712; *Heffernan v. Missoula City Council*, 2011 MT 91, 360 Mont. 207, 255 P.3d 80; *Sunburst Sch. Dist. No. 2 v. Texaco, Inc.*, 2007 MT 183, 338 Mont. 259, 165 P.3d 1079; *Mont. Wildlife Fed'n v. Sager*, 190 Mont. 247, 620 P.2d 1189 (Mont. 1980).

working with community members to preserve and restore their rivers, wildlife, and landscapes. PCEC's vision is to create resilient ecosystems, communities, and economies in Park County by advocating for open lands and clean air and water. To do so, PCEC has engaged in both MAPA processes and has asserted claims under the UDJA to challenge laws that violate the guarantees of a clean and healthful environment, adequate remedies to prevent unreasonable degradation, and the right of public participation found in Montana's Constitution: Mont. Const. art. II, § 3; Mont. Const. art. IX, § 1; Mont. Const. art. II, § 8. *E.g.*, *Park Cnty. Env't Council v. Mont. Dep't of Env't Quality*, 2020 MT 303, 402 Mont. 168, 477 P.3d 288.

II. Desirability of Amicus Brief

Through their briefing to this Court, Appellees and, in particular, *Amicus* Montana Contractors Association, have presented a sweeping misinterpretation of this Court's decision in *City of Great Falls v. Int'l Ass'n of Fire Fighters*, 2024 MT 302, 419 Mont. 262, 560 P.3d 621. For example, *Amicus* Montana Contractors Association argues that *Great Falls* imposed a "new administrative standard" that requires exhaustion of "all administrative remedies pursuant to MAPA,

including any questions of constitutional law.” Br. of *Amicus Curiae* Mont. Contractors Association at 6–7. The proposed *amici* seek leave from this Court to contextualize this Court’s decision in *Great Falls* and explain the consequences that would flow from adopting the interpretation offered by Appellees and *Amicus* Montana Contractors Association.

The proposed *amici* have significant interest in this litigation that neither the current parties nor the other *amici* represent. The proposed *amici* are environmental organizations which have a vested interest in upholding Montana’s constitutional right to a clean and healthful environment, Mont. Const. art. II, § 3, and Montana’s constitutional right to participate. Mont. Const. art. II, § 8. The proposed *amici* have a deep interest in ensuring that key statutory mechanisms that bind agencies tasked with making decisions in compliance with these rights—in particular, MAPA and the UDJA—are interpreted in a manner that complies with the separation of powers and the State’s obligations under the Montana Constitution.

Further, the proposed *amici* routinely participate in agency-led decision-making processes, including those governed by MAPA, which

significantly impact Montana's environment and their members' health and quality of life. Proposed *amici* also routinely litigate against the state and state agencies to ensure compliance with Montana's Constitution through claims asserted under the UDJA.

Given their experience, proposed *amici* will provide essential context to assist the Court's decision which has the potential to significantly impact their ability to vindicate provisions of Montana's Constitution. Their brief would provide context and relevant history to assist this Court's interpretation of MAPA and explain the far reaching consequences of, and inherent problems with, Appellee's interpretation of MAPA; why this Court's decision in *City of Great Falls v. Int'l Assoc. of Firefighters*, 2024 MT 302, 419 Mont. 262, 560 P.3d 621, must be read narrowly; and provide the Court with a unique insight to the harms that would occur if the District Court's ruling is affirmed based on their participation in proceedings before the Montana Board of Environmental Review. The arguments in the proposed *amicus curiae* brief are not duplicative and will offer a unique perspective that will assist the Court in its decision.

III. Statement of Support

Proposed *amici* support Appellant Gateway Conservation Alliance.

IV. Timing

If granted, proposed *amici* will file their brief no later than May 15, 2026, the date on which Appellants' Reply Brief is due.

V. Parties' Positions Regarding the Motion

Counsel for Appellant Gateway Conservation Alliance do not oppose this motion. Counsel for Appellees State of Montana and Montana Department of Environmental Quality as well as counsel for Intervenor Defendant and Appellee TMC, INC. oppose this motion.

Conclusion

For the foregoing reasons, Montana Environmental Information Center and Park County Environmental Council respectfully request leave to appear as *amici curiae* in support of Appellant.

DATED this 8th day of May, 2026.

/s/ E. Lars Phillips
E. Lars Phillips
Shiloh Hernandez
Emma Shahabi
Earthjustice
P.O. Box 4743

Bozeman, MT 59772-4743
(406) 586-9699
laphillips@earthjustice.org
shernandez@earthjustice.org
eshahabi@earthjustice.org

*Counsel for Amici Curiae
Montana Environmental
Information Center and Park
County Environmental Council*

CERTIFICATE OF SERVICE

I, E. Lars Phillips, hereby certify that I have served true and accurate copies of the foregoing Motion - Opposed to the following on 05-08-2026:

Robert M. Farris-Olsen (Attorney)
401 N. Last Chance Gulch
Helena MT 59601
Representing: Gateway Coservation Alliance
Service Method: eService

Emily Wilmott (Attorney)
425 E Spruce
Missoula MT 59802
Representing: Gateway Coservation Alliance
Service Method: eService

Anders K. Newbury (Attorney)
P.O. Box 8359
Missoula MT 59807
Representing: Gateway Coservation Alliance
Service Method: eService

Graham J. Coppes (Attorney)
425 East Spruce Street
PO Box 8359
Missoula MT 59807
Representing: Gateway Coservation Alliance
Service Method: eService

David Kim Wilson (Attorney)
401 North Last Chance Gulch
Helena MT 59601
Representing: Gateway Coservation Alliance
Service Method: eService

Jeremiah Radford Langston (Govt Attorney)
1520 E 6th Ave.
Helena MT 59601
Representing: Montana Department of Environmental Quality
Service Method: eService

Kaitlin Elizabeth Whitfield (Govt Attorney)
1520 E 6TH AVE
HELENA MT 59601-4541
Representing: Montana Department of Environmental Quality
Service Method: eService

Samuel James King (Govt Attorney)
1520 E 6TH AVE
HELENA MT 59601-4541
Representing: Montana Department of Environmental Quality
Service Method: eService

Aislinn W. Brown (Govt Attorney)
1227 11TH AVE
PO Box 202501
HELENA MT 59620
Representing: State of Montana
Service Method: eService

Mark L. Stermitz (Attorney)
101 E. Front Street
Suite 301
Missoula MT 59802
Representing: TMC, Inc.
Service Method: eService

Austin Miles Knudsen (Govt Attorney)
215 N. Sanders
Helena MT 59620
Representing: State of Montana
Service Method: eService

Brian P. Thompson (Attorney)
PO Box 1697
Helena MT 59624
Representing: Montana Contractors' Association
Service Method: eService

Hallee C. Frandsen (Attorney)
PO Box 1697
800 N. Last Chance Gulch, Ste. 101
Helena MT 59624
Representing: Montana Contractors' Association
Service Method: eService

Electronically Signed By: E. Lars Phillips
Dated: 05-08-2026