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Attorney for Association

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

COUNTY OF MISSOULA, NATIONAL	)	Cause No. DV-11-424
WILDLIFE FEDERATION, MONTANA	)	
ENVIRONMENTAL INFORMATION	)	Hon. Ray J. Dayton
CENTER, MONTANA CHAPTER OF	)	
THE SIERRA CLUB,	)	
	)	
Plaintiffs,	)	
	)	<b>COMBINED MOTION FOR LEAVE</b>
v.	)	<b>TO FILE AMICUS BRIEF &amp;</b>
	)	<b>MEMORANDUM IN SUPPORT</b>
MONTANA DEPARTMENT OF	)	
TRANSPORTATION, an agency of the	)	
State of Montana, and JIM LYNCH, in	)	
his capacity as Director of Montana	)	
Department of Transportation,	)	
	)	
Defendants,	)	
	)	
IMPERIAL OIL RESOURCES	)	
VENTURES LIMITED,	)	
	)	
Defendant-Intervenor.	)	

The Montana Association of Oil, Gas, and Coal Counties respectfully moves the Court for an Order allowing it to file an amicus curiae brief in support of defendant Imperial Oil Resources Ventures Limited motion to dissolve or modify the preliminary injunction.

The Association, consisting of thirty four of Montana's fifty six counties, is a non-profit corporation whose purpose is to provide leadership on energy issues and promote responsible energy development for the future of Montana. Consequently, they, and the thousands of Montanans they represent, are interested in the progress of the project under scrutiny in this litigation in a fair, equitable, and lawful manner.


The Association attempted to consult with the Plaintiffs, but their counsel have not responded. It has consulted the Defendants, and they do not object.

A proposed Order and The Proposed Amicus Curiae brief, seven pages, are enclosed with this motion.

DATED this 20th day of September, 2011.

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BY

  
\_\_\_\_\_  
Jon Metropoulos

## CERTIFICATE OF SERVICE

I, Jon Metropoulos, of METROPOULOS LAW FIRM, Attorney for Association, hereby certify that on this 20<sup>th</sup> day of September, 2011, a copy of the foregoing document was served on the following persons by the following means:

           Hand Delivery  
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| 3. Robert Gentry<br>Robert Gentry Law, PLLC<br>114 W. Pine<br>Missoula, MT 59802<br><a href="mailto:Robert@robertgentrylaw.com">Robert@robertgentrylaw.com</a>  | 4. Matthew K. Bishop<br>Western Environmental Law Center<br>P.O. Box 7435<br>Missoula, MT 59807-7435<br><a href="mailto:bishop@westernlaw.org">bishop@westernlaw.org</a>    |
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MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

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COUNTY OF MISSOULA, NATIONAL WILDLIFE FEDERATION, MONTANA ENVIRONMENTAL INFORMATION CENTER, MONTANA CHAPTER OF THE SIERRA CLUB,	)	Cause No. DV-11-424
	)	
	)	Hon. Ray J. Dayton
	)	
	)	
Plaintiffs,	)	
	)	
v.	)	<b>AMICUS CURIAE BRIEF OF</b>
	)	<b>MONTANA ASSOCIATION OF</b>
	)	<b>OIL, GAS, AND COAL COUNTIES</b>
	)	<b>IN SUPPORT OF MOTION OF</b>
MONTANA DEPARTMENT OF TRANSPORTATION, an agency of the State of Montana, and JIM LYNCH, in his capacity as Director of Montana Department of Transportation,	)	<b>DEFENDANT-INTERVENOR TO</b>
	)	<b>DISSOLVE OR MODIFY</b>
	)	<b>PRELIMINARY INJUNCTION</b>
	)	
Defendants,	)	
	)	
IMPERIAL OIL RESOURCES VENTURES LIMITED,	)	
	)	
Defendant-Intervenor.	)	

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The Montana Association of Oil, Gas, and Coal Counties (Association) respectfully submits this brief supporting Defendant-Intervenor's (Imperial) request for the dissolution or modification of the preliminary injunction this Court issued July 19, 2011.

Thirty four of Montana's 56 counties are members of the Association. The Association is a non-profit corporation whose members are: Big Horn, Blaine, Carbon, Carter, Chouteau, Custer, Daniels, Dawson, Fallon, Fergus, Gallatin, Garfield, Glacier, Golden Valley, Hill, Liberty, McCone, Musselshell, Petroleum, Phillips, Pondera, Powder River, Prairie, Richland, Rosebud, Roosevelt, Sheridan, Stillwater, Sweet Grass, Toole, Treasure, Valley, Wibaux, Yellowstone.

The duly-elected commissioners from each county represent their member-counties in directing the work and actions of the Association. The purpose of the Association is to provide leadership on energy issues and promote responsible energy development for the future of Montana. In view of the fact that oil and gas production, transportation, and refining accounted in recent years for one-eighth of the value added of Montana's economic output, and most of this, \$8.3 billion, is refinery related, the economic importance of such leadership for Montanans is evident, as is the Association's interest in this litigation. *Economic and Fiscal Impacts of Montana's Oil and Gas Industry*, Scott Rickard, Ph.D., Center for Applied Economic Research, MSU-Billings, published in "The Treasure State Journal, 2010, at pages 36 to 39. Consequently, the Association follows and at times participates in legislation, rulemaking, permitting, and litigation pertaining to its members energy development interests.

As is obvious from the Association's position in this matter, its members strongly disagree with the County of Missoula arguments and apparent goals in this litigation. The result, undoubtedly intended, of Missoula County's arguments is to arrogate to itself control of issues that affect the commerce and economies as well as the use of public highways of many other representative local governments in the State, and, most

importantly, the people they serve. While the Association does not question Missoula County's right to participate in this or other litigations as it sees fit, it does object to its apparent disregard for the adverse economic impacts beyond Missoula County of its actions. Those impacts are important to many people. In light of the lack of harm this Court has found would occur should this project proceed, the Association respectfully argues that equity requires, at the least, a modification of the injunction.

### **ARGUMENT**

Plaintiffs concede the injunction now in place is unprecedented in terms of breadth and scope with respect to the use of public highways. Plaintiffs' Brief in Opposition at 2. They also concede that the Court's injunction did not rest on a finding that they would suffer irreparable harm if it was not granted. Plaintiffs' Brief at 3. Finally, they also concede, if only implicitly, that this Court has the discretion to modify this injunction and that that decision is subject to the "manifest abuse of discretion" standard. Plaintiffs' Brief at 4. Notwithstanding these concessions, Plaintiffs oppose any dilution of their victory.

The Association does not question the need for appropriate environmental review of state permitting actions and, specifically, the requirement that state agencies comply with the Montana Environmental Policy Act. Mont. Code Ann. §§75-1-101, *et seq.* The requirements of that act, however, are famously opaque in administrative implementation and disputable in litigation. Agencies often are placed in an untenable position by the malleability of MEPA and the ingenuity of litigants. This case attests to the "sued-if-you-do, sued-if-you-don't" dilemma created by the demands arising from ill-defined requirements such as "scoping" or "definition" of the project—is it permanent or not?--

“hard look,” “range of alternatives,” etc. Even though all parties here agree MEPA does not “force outcomes,” as the Plaintiffs put it, that is precisely what occurs where, as here, a savvy and zealous party determined to halt a project pores through a voluminous record to discover, or create, a trip wire. Plaintiff’s brief at 15.

In the meantime, many people unrelated to the litigation but who are hopeful of the benefits that might be derived—in employment, tax revenues, royalties, commerce, etc.—from a project being challenged on MEPA grounds must wait, sometimes interminably. They often give up hope, adversely and permanently impacted by the delaying and depressing effect on commerce of such litigation.

Equity can do better. Preliminary injunctive relief need not result in a winner take all situation.

The Association respectfully suggests that in this case equity supports another direction, particularly in light of the fact that the relief Plaintiffs insist on—closing the public highways to a particular class of users—is unprecedented. In the absence of harm to the Plaintiffs, this raises troubling questions.

The Association will not burden the Court with argument as to why the injunction should be dissolved. Imperial ably argued that point.

The Association does, however, urge the Court to favorably consider the alternative proposal Imperial has put forward for a modification of the injunction. This would very substantially reduce the scope of the project, as the Association understands it, while allowing it to move forward.

The Association must make this point clearly, for it is the reason it is here: it argues not for the benefit of Imperial, but for the benefit of the many people in its

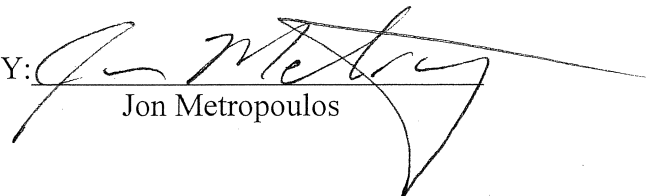
counties—perhaps thousands of Montanans—who will benefit if this project gets moving. They are employees of the refineries in Yellowstone County, as well as suppliers, and local businesses there and throughout the counties who are members of the Association.

Since the Court has found no irreparable harm would come to the Plaintiffs as a result of this project, the Association urges the Court to exercise its discretion to modify the injunction, at least, to allow the project to proceed while sorting out the matter on the merits.

DATED this 20th day of September, 2011.

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MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

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COUNTY OF MISSOULA, NATIONAL	)	Cause No. DV-11-424 Dept. No. 3
WILDLIFE FEDERATION, MONTANA	)	
ENVIRONMENTAL INFORMATION	)	Hon. Ray J. Dayton
CENTER, MONTANA CHAPTER OF	)	
THE SIERRA CLUB,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	<b>PROPOSED ORDER</b>
MONTANA DEPARTMENT OF	)	
TRANSPORTATION, an agency of the	)	
State of Montana, and JIM LYNCH, in	)	
his capacity as Director of Montana	)	
Department of Transportation,	)	
	)	
Defendants.	)	

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For good cause shown, the Court GRANTS Amicus Association Motion for Leave to Participate as Amicus Curiae. This ORDER grants Amicus Association the right to participate in the proceedings and to present arguments and file briefs on the issues made, or to be made.

IT IS ORDERED.

\_\_\_\_\_  
Ray J. Dayton  
District Judge

Date: \_\_\_\_\_