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9 MONTANA FOURTH JUDICIAL DISTRICT COURT,
10 MISSOULA COUNTY

11 COUNTY OF MISSOULA,)
12 NATIONAL WILDLIFE)
13 FEDERATION, MONTANA)
14 ENVIRONMENTAL INFORMATION)
15 CENTER, SIERRA CLUB,)
16 Plaintiffs,)

17 vs.)

18 MONTANA DEPARTMENT OF)
19 TRANSPORTATION, an agency of)
20 the State of Montana, and JIM)
21 LYNCH, in his capacity as Director)
22 of Montana Department of)
23 Transportation,)
24 Defendants,)

25 IMPERIAL OIL RESOURCES)
26 VENTURES LIMITED,)
Defendant-Intervenor.)

Cause. No. DV-11-424

) Dept. No. 3

) Hon. Ray J. Dayton

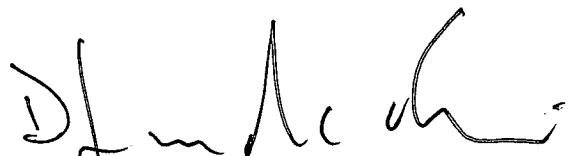
) MISSOULA COUNTY'S
) RESPONSE TO MOTION TO
) MODIFY TEMPORARY
) RESTRAINING ORDER

1 COMES NOW Plaintiff Missoula County, by and through counsel, and
2 responds to the Non-profit Organization Plaintiffs' Expedited Motion to
3 Modify Temporary Restraining Order.

4 Missoula County does not object to a waiver of bonding for the
5 remaining plaintiffs, and agrees that it would be appropriate for the Court to
6 waive any such bonding requirement as an exercise of the Court's inherent
7 discretion, in the interests of justice. However, Missoula County does not
8 join in the other plaintiffs' motion, because Missoula County is not subject
9 to the bonding requirement, and is satisfied with the Court's Order.

10 Missoula County expressly disagrees with any implication by the
11 other plaintiffs that the language of MCA §27-19-306(4) may establish an
12 independent cause of action. This statute merely provides that it "does not
13 prohibit . . . filing an action for any claim for relief otherwise available. . . ."
14 The plain meaning of this statute is that any claim for relief must already be
15 "otherwise available", and this statute clearly does not itself establish any
16 cause of action for "wrongful injunction". No known case has ever applied
17 this statute to establish a cause of action. Missoula County disagrees with
18 the contention that the statute may present any potential liability or
19 damages claim exposure for any of the plaintiffs.

20 Respectfully submitted this 4th day of May, 2011.

21 

22 D. James McCubbin
23 Deputy County Attorney

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing was provided in electronic form, and mailed, postage prepaid first class, this 4th day of May, 2011, to:

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