

1 FRED VAN VALKENBURG
2 MISSOULA COUNTY ATTORNEY
3 D. James McCubbin, Deputy
4 200 W. Broadway
5 Missoula, MT 59802
6 406-258-4737
7 jmccubbin@co.missoula.mt.us
8 Attorneys for Missoula County
9

10 MONTANA FOURTH JUDICIAL DISTRICT COURT,
11 MISSOULA COUNTY

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

18 vs.)

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

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

Cause. No. DV-11-424

Dept. No. 3

Hon. Ray J. Dayton

MISSOULA COUNTY'S
RESPONSE TO MOTION FOR
LEAVE TO FILE AMICUS BRIEF
OF MT ASSOCIATION OF OIL,
GAS, AND COAL COUNTIES

//

1 COMES NOW Plaintiff Missoula County, by and through counsel, and
2 responds to the Motion For Leave To File Amicus Brief filed by the
3 Montana Association Of Oil, Gas, And Coal Counties (Association).

4 The Montana Supreme Court has found that Montana Rules of Civil
5 Procedure and the Uniform District Court Rules neither provide for nor
6 prohibit the use of briefs by amicus curiae in the district courts. The Court
7 has stated that "[t]he right to be heard as amicus curiae is within the
8 discretion of the court." *Eberl v. Scofield*, 244 Mont. 515, 520 (Mont. 1990),
9 citing *State v. Bonner* (1950), 123 Mont. 414, 421, 214 P.2d 747, 751.
10 Furthermore, the Montana Supreme Court has held that "[t]he statements
11 of an amicus curiae are to be weighed and tested like other evidence".
12 *State v. Bonner* (1950), 123 Mont. 414, 420-21, 214 P.2d 747, 751.

13 Missoula County objects to the proposed amicus brief of the
14 Association because it is untimely, does not present any admissible
15 evidence, and does not even propose to present meaningful discussion of
16 the legal issues.

17 The Association did not seek to be a part of these well-publicized
18 proceedings when the substance of the Plaintiffs' motion for preliminary
19 injunction was being considered by the Court. Furthermore, the motion is
20 brought less than two business days prior to the hearing upon the motion
21 which it seeks to comment upon.* The motion is untimely, and can only

21 * In fact, counsel for the Association did not even attempt to contact the
22 undersigned until the day the motion was filed, and although the
23 undersigned left detailed messages with Mr. Metropoulos' assistant and on
24 his voice mail, the motion was apparently such a rush job that he did not
25 even have time to check his messages and note the County's objection
26 before filing the motion. Furthermore, although the certificate of service
indicates the motion should have been faxed on September 20, 2011, in

1 serve to cause the various parties and the Court to incur further
2 unnecessary costs.

3 Where “[t]he statements of an amicus curiae are to be weighed and
4 tested like other evidence”, the Court should only allow amicus to appear
5 where they have proposed to present information that may properly be
6 considered by the Court. That is not the case here. The Association does
7 not seek to present any admissible evidence. Further, as noted by the
8 Association itself in its proposed brief, “The Association will not burden the
9 Court with argument as to why the injunction should be dissolved.” Rather,
10 the Association merely seeks to interject its political position into this
11 litigation. There being no legitimate input even proposed by the
12 Association, the Court should exercise its discretion to deny the
13 Association’s motion and should reject the proposed amicus curiae brief.

14 Wherefore, Missoula County requests that the Association’s motion
15 be denied.

16 Respectfully submitted this 21st day of September, 2011.

17 MISSOULA COUNTY

18 By: 
19

20 D. James McCubbin
21 Deputy County Attorney
22
23

24 fact it was not transmitted until sent by email on September 21, 2011, the
25 day before the hearing.
26

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 2nd day of September, 2011, to:

David Ohler
Montana Department of
Transportation
2701 Prospect Avenue
PO Box 201001
Helena, MT 59620-1001

Stephen Brown
Garlington, Lohn, & Robinson
P.O. Box 7909
Missoula, MT 59807-7909

Ryan W. Sudbury
Sudbury Law Office PLLC
405 S. 1st St. W.
Missoula MT 59801

Ranald McDonald, Managing Atty
John Harrison, Staff Attorney
Tribal Legal Department
Confederated Salish and Kootenai
Tribes of the Flathead Reservation
P.O. Box 278
Pablo, MT 59855

Thomas France
NATIONAL WILDLIFE
FEDERATION
240 North Higgins, Suite 2
Missoula, MT 59802

Robert Gentry
ROBERT GENTRY LAW, PLLC
114 W. Pine St.
Missoula, MT 59802

David K.W. Wilson, Jr.
MORRISON, MOTL & SHERWOOD
401 North Last Chance Gulch
Helena, MT 59601

Summer Nelson
SUMMER NELSON LAW OFFICE,
PLLC
114 W. Pine St.
Missoula, MT 59802

Hon. Ray J. Dayton
800 S. Main St.
Anaconda, MT 59711

