

FILED MAY 12 2011  
SHIRLEY E. FAUST, CLERK  
By *[Signature]* Deputy

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

COUNTY OF MISSOULA, NATIONAL )  
WILDLIFE FEDERATION, MONTANA )  
ENVIRONMENTAL INFORMATION )  
CENTER, MONTANA CHAPTER OF THE )  
SIERRA CLUB, )

Plaintiffs, )

v. )

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, and )

IMPERIAL OIL RESOURCES VENTURES )  
LIMITED, )

Defendant-Intervenor. )

Cause No.: DV-11-424  
Dept. No. 3

**ORDER DENYING NON-PROFIT  
ORGANIZATION PLAINTIFFS'  
EXPEDITED MOTION TO  
MODIFY TEMPORARY  
RESTRAINING ORDER**

Pending before the Court is Non-Profit Organization Plaintiffs' Expedited Motion to Modify the Temporary Restraining Order. Non-Profit Organization Plaintiffs are asking the Court to modify the Temporary Restraining Order (TRO) by enjoining only the Montana Department of Transportation (MDT) and waiving the bond requirement. Defendant MDT and Defendant-Intervenor Imperial Oil Resources Ventures Limited oppose the Motion. The Court deems itself sufficiently advised on the matter and now issues its ruling.

Section 27-19-306, MCA, is dispositive of this matter.

(2)(a) If a party seeks an injunction or restraining order against an industrial operation or activity, the judge shall require a written undertaking to be filed by the applicant. [...]

(2)(b) As used in subsection (2)(a), "industrial operation or activity" includes but is not limited to construction, mining, timber, and grazing operations.

Mont. Code Ann. § 27-19-306(2)(a-b) (2009) (emphasis added). Under the plain language of the statute, the Court must require a written undertaking for the enjoining of any industrial operation or activity. Non-Profit Organization Plaintiffs argue they sought to restrain MDT's permitting of the Kearsarge Module Transport Project (KMTP) rather than the industrial activity itself. Notwithstanding this argument, it is clear Plaintiffs seek to restrain activity relating to the KMTP including construction work. The request that the TRO be amended to supposedly restrain the MDT only, similarly ignores the reality of the situation, i.e., the impact of the restraint.

To the extent that any discretion may be left to this Court, given the mandatory nature of the statute, the court concludes that the best exercise of that discretion is to deny the motion to modify and to leave the bond requirement in place.

THEREFORE, Non-Profit Organization Plaintiffs' Expedited Motion to Modify Temporary Restraining Order is **DENIED**.

DATED this 12<sup>th</sup> day of May, 2011.



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Ray J. Dayton  
District Court Judge

**ORDER DENYING NON-PROFIT ORGANIZATION PLAINTIFFS' EXPEDITED MOTION TO MODIFY TEMPORARY RESTRAINING ORDER**