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Counsel for Plaintiffs

MONTANA FIRST JUDICIAL DISTRICT
LEWIS AND CLARK COUNTY

THE CLARK FORK COALITION, a non-profit)
organization with senior water rights;)
KATRIN CHANDLER, an individual with senior)
water rights; BETTY J. LANNEN, an individual)
with senior water rights; POLLY REX, an)
individual with senior water rights; and JOSEPH)
MILLER, an individual with senior water rights,)

Plaintiffs,)

vs.)

JOHN TUBBS, in his official capacity as)
Director of The Montana Department of National)
Resources and Conservation; and THE)
MONTANA DEPARTMENT OF NATURAL)
RESOURCES AND CONSERVATION, an)
agency of the State of Montana,)

State-Defendants,)

MONTANA WELL DRILLERS ASSOC.,)

Defendant-Intervenors.)

CIV No. BDV-2010-874

UNOPPOSED
MOTION TO
WITHDRAW
STIPULATED
AGREEMENT AND
RE-OPEN CASE

Plaintiffs, the Clark Fork Coalition *et al.*, respectfully submit this unopposed motion to withdraw the stipulated agreement and re-open this matter for further proceedings. In support of this unopposed motion, Plaintiffs state as follows:

1. On September 14, 2010, Plaintiffs filed a petition for declaratory and injunctive relief against the above listed State-Defendants (hereinafter “the Department”) pursuant to the Montana Administrative Procedure Act (MAPA), § 2-4-702 to § 2-4-704, MCA for violations of the Montana Water Use Act, § 85-2-306(3)(a), MCA.

2. On November 8, 2010, this Court granted the Montana Well Drillers Association’s unopposed motion to intervene.

3. On November 10, 2010, the Plaintiffs and the Department reached an agreement in this matter and filed a stipulation and order of dismissal that was signed and approved by this Court. *See* Exhibit (Ex.) A. Pursuant to the stipulated agreement, Plaintiffs agreed to dismiss this civil action in exchange for an agreement from the Department to initiate and complete rulemaking “within fifteen (15) months of this Court’s order adopting the stipulation.” Ex. A at ¶ 1. The terms of the stipulated agreement were adopted by this Court and incorporated into the order dismissing this case. Ex. A at 6.

4. On December 5, 2011, Plaintiffs and the Department agreed to modify the stipulated agreement in order to give the Department more time to complete rulemaking. Under the modified agreement, the Department agreed to initiate and complete rulemaking by December 31, 2012. Ex. B at ¶ 1.

5. On May 15, 2013, Plaintiffs agreed to modify the stipulated agreement, once again, in order to give the Department more time to complete rulemaking. *See* Ex. C. Under the second modified agreement, the Department agreed to initiate and complete rulemaking by December 31, 2013. Ex. C at ¶ 1.

6. On January 21, 2014, Plaintiffs were provided a copy of a letter from the Department to the Environmental Quality Council (EQC). *See* Ex. E. In the letter, the Department states that it will no longer seek to complete the rulemaking required by the stipulated agreement: “It is futile for the Department to continue to pursue rulemaking at this point and to do so would be a misuse of limited state resources. The Department has no option but to withdraw its proposed rule and await what is likely to be the inevitable litigation that will follow.” Ex. E at 3.

7. On February 12, 2014, Plaintiffs sent a letter informing the Department of its non-compliance with the stipulated agreement, *see* Ex. D, and invoking the dispute resolution provision found in paragraph 9 of the second modified stipulation. *See* Ex. C at ¶ 9.

8. On February 25, 2013, Plaintiffs and the Department met to discuss the disagreement and came to an agreement on the best approach moving forward.

9. Pursuant to paragraph 9 in the stipulated agreement, if Plaintiffs and the Department are unable to resolve a disagreement regarding the terms and conditions of the stipulated agreement, then either party may file a motion with this Court “for other specific relief.” Ex. C at ¶ 9.

10. This unopposed motion to withdraw the stipulated agreement and re-open this case is a motion “for other specific relief” pursuant to paragraph 9 of the stipulated agreement.

11. Plaintiffs contacted the Department regarding this motion. The Department does not oppose this motion. Moreover, to the extent the time periods in paragraph 9 of the stipulation may be construed as a pre-requisite to filing this motion, the Department has consented to waive any remaining time of the 60 days that may be unexpired so Plaintiffs may file this motion.

12. Plaintiffs contacted counsel for Defendant-Intervenors, the Montana Well Drillers Association, regarding this motion. Defendant-Intervenors do not oppose this motion.

WHEREFORE, Plaintiffs respectfully request this Court: (1) grant this unopposed motion to withdraw the stipulated agreement and re-open this matter

for further proceedings; and (2) order the Parties to meet within 30 days of this Court's order granting this motion and submit a joint case management plan with specific dates and deadlines for filing the administrative record (or re-filing), filing motions objecting to or seeking to supplement the record, amending the complaint, and briefing the merits.

Respectfully submitted this 10th day of March, 2014.

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of March, 2014, I sent, via U.S. Mail, a copy of this filing to all of counsel of record in this matter. A courtesy copy of the document was also sent via e-mail.

Matthew K. Bishop