


**FILED**

MAY 16 2022

AUSTIN KNUDSEN  
Montana Attorney General  
DAVID M.S. DEWHIRST  
*Solicitor General*  
TIMOTHY LONGFIELD  
*Assistant Attorney General*  
P.O. Box 201401  
Helena, MT 59620-1401  
Phone: 406-444-2026  
david.dewhirst@mt.gov  
timothy.longfield@mt.gov

ANGIE SPARKS Clerk of District Court  
By  Deputy Clerk

EMILY JONES  
*Special Assistant Attorney General*  
Jones Law Firm, PLLC  
115 N. Broadway, Suite 410  
Billings, MT 59101  
Phone: 406-384-7990  
emily@joneslawmt.com

*Attorneys for Defendants*

MONTANA FIRST JUDICIAL DISTRICT COURT  
LEWIS AND CLARK COUNTY

<p>RIKKI HELD, ET AL.,  PLAINTIFFS,  v.  STATE OF MONTANA, ET AL.,  DEFENDANTS.</p>	<p>Cause CDV-2020-307 Hon. Kathy Seeley  <b>BRIEF IN SUPPORT OF MOTION TO MODIFY SCHEDULING ORDER OR, IN THE ALTERNATIVE, FOR A SCHEDULING CONFERENCE AND REQUEST FOR EXPEDITED RULING</b></p>
---	--

**INTRODUCTION**

This Court's December 27, 2021, Scheduling Order (Doc. 61) severely impedes the State's ability to present an adequate defense in this important case involving many complex legal and scientific issues. *See generally* (Doc. 1.) Even at this early

stage in discovery, it is apparent that both parties need more time. There are many reasons why this Court should extend the current scheduling order, including but not limited to: (1) the numerous factual and legal issues Plaintiffs raise in their *104-page* Complaint (Doc. 1); (2) the factual, scientific, and legal complexity of those issues; (3) ambiguity about what claims remain viable in this case after the Court's Order on Defendants' Motion to Dismiss, *see* (Docs. 46, 76); (4) the many plaintiffs involved in this case; (5) the high number of expected lay witnesses the parties have already disclosed; and (6) the numerous State Agencies named as Defendants. Accordingly, Defendants respectfully request that this Court grant their Motion for an extension of all deadlines in this case.

#### PROCEDURAL BACKGROUND

On March 13, 2020, Plaintiffs filed a 104-page Complaint seeking sweeping injunctive relief that would amount to a judicial overhaul of Montana's environmental policy. *See* (Doc. 1.)<sup>1</sup> Defendants moved to dismiss Plaintiffs' claims just over one month later. *See* (Docs. 11, 12). The Court issued a ruling on that Motion on August 4, 2021, granting it in part and denying it in part. *See* (Doc. 46.) The Court concluded that Plaintiffs' claims for injunctive relief presented non-justiciable political questions but allowed Plaintiffs' claims for declaratory relief to move forward. *See*

---

<sup>1</sup> The United States Supreme Court twice noted—in a similar federal lawsuit directed by Our Children's Trust—that the “breadth of respondents' claims is striking ... and the justiciability of those claims presents substantial grounds for difference of opinion.” *See Juliana v. United States*, 947 F.3d 1159, 1165, 1169 (9th Cir. 2020) (citing *United States v. Dist. Court for Dist. of Or.*, 139 S. Ct. 1, (2018) and *In Re United States*, 139 S. Ct. 452 (2018)).

(*id.* at 17, 21–22); *but see* State’s Mot. for Clarification (Doc. 76) (noting an apparent clerical error in the Court’s Order that could create ambiguity about the continued viability of one claim for injunctive relief).

On September 17, 2021, Defendants filed their Answer to Plaintiffs’ Complaint. (Doc. 54.) The Court held a Scheduling Conference on December 17, 2021. At the conference, Plaintiffs and Defendants each proposed case schedules, but the Court adopted neither. Instead, it entered the current Scheduling Order on December 27, 2021. (Doc. 61.)

#### ARGUMENT

##### **I. The Court’s Scheduling Order severely prejudices the State’s ability to defend this case.**

The Scheduling Order set the following deadlines:

- Plaintiffs’ expert disclosures: May 18, 2022;
- Defendants’ expert disclosures: June 1, 2022;
- Rebuttal expert disclosures: June 15, 2022;
- Close of discovery: July 15, 2022;
- All pretrial motions fully briefed: September 12, 2022;
- Settlement conference: October 12, 2022;
- Final pre-trial conference: January 19, 2023;
- Start of ten-day trial: February 6, 2023.

(Doc. 61.)

A Court’s Scheduling Order may be modified “only for good cause and with the judge’s consent.” M. R. Civ. P. 16(b)(4); (Doc. 61, ¶ 12). “Good cause is generally

defined as a ‘legally sufficient reason’ and referred to as the ‘burden placed on a litigant ... to show why a request should be granted or an action excused.’” *Brookins v. Mote*, 2012 MT 283, ¶ 29, 367 Mont. 193, 292 P.3d 347 (quotations omitted). “[G]ood cause’ is a flexible standard” that will “necessarily depend upon the totality of the facts and circumstances of a particular case.” *Id.* . For several reasons, there is good cause for modifying the current Scheduling Order.<sup>2</sup>

First, this is a massive, complex, document-intensive, and expert-intensive case. Plaintiffs have filed a 104-page complaint containing 253 paragraphs of allegations brought by fifteen plaintiffs. (Doc. 1.) They have named six Montana state agencies as defendants. (*Id.* .) Plaintiffs’ claims are factually, legally, and scientifically complex. Among other things, these claims directly implicate:

- the past, present, and future global climate, *see generally* (Doc. 1);
- Montana’s statewide energy policy and its implementation over decades, *see, e.g.* (Doc. 1, ¶¶ 121–142);
- the alleged effect of Montana’s statewide energy policy on the global climate, *see, e.g.*, (Doc. 1, ¶¶ 106–120);
- the alleged effect of global climate issues on Montana, *see, e.g.*, (Doc. 1, ¶¶ 143–176);
- the allegedly unique impact of global climate issues on children, *see, e.g.*, (Doc. 1, ¶¶ 178–84);
- numerous factual allegations supporting the fifteen plaintiffs’ claims that all of this causes them harm, *see, e.g.*, (Doc. 1, ¶¶ 14–81.);

---

<sup>2</sup> *See* attached Proposed Order.

- the interplay of MEPA and the State Energy Policy with Montana's other substantive environmental statutes;
- the interplay of the two challenged statutes with several provisions of Montana's constitution, *see* (Doc. 1, Request for Relief, ¶ 1.)

Also, the parties only recently disclosed nearly sixty (60) lay witnesses.

Neither party has yet disclosed experts, but it is expected Plaintiffs and Defendants will have 2–4 experts each. Plaintiffs have already disclosed nearly 8,000 pages of discovery documents, and given that six state agencies are named defendants, many more documents are likely to be at issue.<sup>3</sup> Given all of this, it is simply impossible to conduct the number of depositions required for this case by the current discovery deadline of July 15, 2022. “The purpose of discovery is to promote the ascertainment of truth and the ultimate disposition of the lawsuit” in accordance with the truth by “assuring the mutual knowledge of all relevant facts gathered by both parties which are essential to proper litigation.” *Cox v. Magers*, 2018 MT 21, ¶ 15, 390 Mont. 224, 411 P.3d 1271 (internal citations omitted). Adequate discovery is not possible under the current schedule.

Additionally, an ambiguity in the Court's Motion to Dismiss Order (Doc. 46, 19–22) creates confusion as to which of Plaintiffs' claims the Court dismissed and which remain viable. *See* (Docs. 75, 76) (pointing out the ambiguity in the Court's

---

<sup>3</sup> The parties filed lay witnesses and exhibits lists on April 18, 2022 as required. The State has served one set of discovery requests on Plaintiffs, to which Plaintiffs have responded. Plaintiffs have served one set of discovery requests on Defendants, and Defendants' responses are due May 20, 2022. No party has missed any discovery deadlines. *See* (Doc. 61, ¶ 12) (“Any request for extension must be in writing setting forth the discovery accomplished and the reason for any uncompleted deadline.”)

Order and asking for clarification). The State has filed a Motion for Clarification on this matter but until the Court rules on the State's Motion, the parties won't even know what claims remain in controversy. This presents additional good cause for continuing the current case schedule. *Brookins*, ¶ 29.

Finally, the current Scheduling Order severely prejudices Defendants' ability to present a full defense in this case. Due process requires that every defendant receive a "full opportunity...to defend" itself against a lawsuit. *Bates v. Neva*, 2013 MT 246, ¶ 16, 371 Mont. 466, 308 P.3d 114 (quotations omitted). Defendants—like any other litigant—are entitled to sufficient time to conduct discovery and prepare their case for trial. The current truncated case schedule makes this impossible. *Id.* All parties agree that the issues in this case are critical. Accordingly, they merit a case schedule that allows for enough discovery to establish an adequate factual record and for all parties to present their best case for trial. *See id.* ¶ 14("It is axiomatic that due process is flexible and calls for such procedural protections as the particular situation demands.") (internal citations omitted).

#### CONCLUSION

Adequate discovery on these important and complicated issues cannot occur with the truncated case schedule now in place. As demonstrated above, good cause exists to extend all case deadlines. For these reasons, Defendants respectfully request that the Court adopt the proposed schedule submitted by Defendants, or in the alternative, hold a scheduling conference to set a new case schedule. Mont. R. Civ. P. 16(b)(4). Defendants respectfully request an expedited ruling on this Motion.

DATED this 12th day of May, 2022.

AUSTIN KNUDSEN  
Montana Attorney General

DAVID M.S. DEWHIRST  
*Solicitor General*



---

TIMOTHY LONGFIELD  
*Assistant Attorney General*  
P.O. Box 201401  
Helena, MT 59620-1401  
timothy.longfield@mt.gov

EMILY JONES  
*Special Assistant Attorney General*  
Jones Law Firm, PLLC  
115 N. Broadway, Suite 410  
Billings, MT 59101  
emily@joneslawmt.com  
*Attorneys for Defendants*

CERTIFICATE OF SERVICE

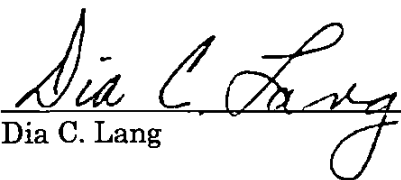
I certify a true and correct copy of the foregoing was delivered by email to the following:

Roger M. Sullivan  
Dustin A. Leftridge  
rsullivan@mcgarveylaw.com  
dlefridge@mcgarveylaw.com

Melissa A. Hornbein  
Barbara Chillcott  
hornbein@westernlaw.org  
chillcott@westernlaw.org

Nathan Bellinger  
nate@ourchildrenstrust.org

Date: May 12, 2022

  
Dia C. Lang