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**FILED**  
FEB -1 2023  
By  Clerk of District Court  
Deputy Clerk

*Attorneys for Plaintiffs*

MONTANA FIRST JUDICIAL DISTRICT COURT  
LEWIS AND CLARK COUNTY

RIKKI HELD, et al.,  Plaintiffs,  v.  STATE OF MONTANA, et al.,  Defendants.	Cause No. CDV-2020-307  Hon. Kathy Seeley  <b>PLAINTIFFS' MOTION IN LIMINE NO. 7: BRIEF IN SUPPORT OF MOTION RE: SELECT DOCUMENT AUTHENTICITY AND FOUNDATION</b>
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## I. INTRODUCTION

Plaintiffs Rikki Held, *et al.*, by counsel, and pursuant to the Court's Modified Scheduling Order (Doc. 145), entered June 15, 2022, respectfully submit the following brief in support of their motion *in limine*, which deems all documents listed in **Appendix A**, submitted with the Declaration of Roger Sullivan herewith, as having proper authentication and foundation and that, subject to substantive objections, such documents listed in Appendix A are admissible at trial in the above-captioned matter in accordance with the Montana Rules of Evidence. This motion involves several categories of public records produced by various Defendants in the normal course of business activities, as well as other types of official government documents produced by the State of Montana, which relate to Defendants' regulatory, permitting, and oversight activities with respect to Montana's fossil fuel-based energy system.

Specifically, this Motion applies to documents produced by:

1. Defendant Department of Environmental Quality ("DEQ") (organizational documents, coal mine permits, informational documents, air quality permits, pipeline certifications, environmental impact statements, water quality certifications & permits, records of decisions, EA checklists);
2. Defendant Department of Natural Resources & Conservation ("DNRC") (Board of Oil and Gas Conservation documents, EA checklists, right of way deeds/easements, agency correspondence, agency documents);
3. Defendant Public Service Commission ("PSC") (pipeline safety website);
4. The Office of the Governor (2007 Montana Climate Action Plan final report, letters from prior governors, reports and memoranda from the Governor's office);
5. The Montana Legislature (letters, studies, draft reports, and other documents from the Montana Environmental Quality Council); and
6. Other departments, offices, or bureaus of the State of Montana (e.g., former Montana Department of Health;<sup>1</sup> Montana Department of Commerce; Environmental Quality Council; former Montana Department and Board of Health and Environmental Sciences,<sup>2</sup> Montana Department of Fish, Wildlife & Parks; and Montana Bureau of Mines and Geology).

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<sup>1</sup> Now named the Montana Department of Public Health and Human Services.

<sup>2</sup> Now named the Montana Department of Public Health and Human Services.

The list of the documents addressed by this motion is submitted herewith, attached to the Declaration of Roger Sullivan as **Appendix A**.

This motion seeks to ensure a speedy and efficient bench trial in which the parties' limited trial time is not consumed by needless evidentiary disputes. The parties have exchanged a voluminous number of documents during discovery and, through ongoing communication, have been able to reach an agreement as to the authenticity and foundation of a number of these documents. However, despite Plaintiffs' efforts, Plaintiffs were unable to get a response from Defendants as to the authenticity, foundation, and admissibility of all of the documents in Appendix A prior to the February 1, 2023 pre-trial motion deadline. While Plaintiffs continue to believe the parties are capable of reaching a complete document stipulation as to the authenticity, foundation, and admissibility of the documents in Appendix A prior to the pre-trial conference, and while Plaintiffs are willing to withdraw this motion should the parties reach such a document stipulation prior to the pre-trial conference, Plaintiffs have filed this motion to preserve this evidentiary issue for determination, consistent with this Court's Modified Scheduling Order (Doc. 145), entered June 15, 2022.

Plaintiffs believe an order *in limine* from this Court that deems all documents listed in Appendix A submitted herewith as having proper authentication and foundation and that, subject to substantive objections, such documents are admissible at trial in the above-captioned matter in accordance with the Montana Rules of Evidence would conserve the time and resources of both the parties and the Court. The documents covered by this motion are public records which have all been produced by one or more of the Defendant agencies, or other non-party agencies, branches, departments, or offices of the State of Montana in the course of regularly-conducted business. Plaintiffs' motion is intended to facilitate resolution of time-consuming presentation of

authenticity and foundation evidence and such unwarranted objections at trial, and ultimately to secure the proper foundation necessary to allow admissibility of these relevant groups of documents, subject to various substantive objections Defendants may raise at or before trial. Despite the extensive efforts set forth in the accompanying Declaration of Roger Sullivan, to date Defendants have not agreed to the complete document stipulation requested by Plaintiffs as to the authenticity, foundation, and admissibility of the documents in Appendix A. Accordingly, at present Plaintiffs assume their motion is opposed.

## II. APPLICABLE STANDARDS

A motion *in limine* is a “request for guidance by the court regarding an evidentiary question, which the court may provide at its discretion to aid the parties in formulating trial strategy.” *Hunt v. K-Mart Corp.*, 1999 MT 125, ¶ 11, 294 Mont. 444, 981 P.2d 275; *see also Speaks v. Mazda Motor Corp.*, 118 F. Supp. 3d 1212, 1217 (D. Mont. 2015) (a motion *in limine* is a “procedural device to obtain an early and preliminary ruling on the admissibility of evidence.”).

The district court’s authority to grant or deny a motion *in limine* “rests in the inherent power of the court to admit or exclude evidence and to take such precautions as are necessary to afford a fair trial for all parties.” *City of Helena v. Lewis*, 260 Mont. 421, 425-26, 860 P.2d 698, 700 (1993) (quoting *Feller v. Fox*, 237 Mont. 150, 153, 772 P.2d 842, 844 (1989) (overruled on other grounds by *Giambra v. Kelsey*, 2007 MT 158, 338 Mont. 19, 162 P.3d 134). As part of this inherent power, the Court has “broad discretion to determine if evidence is relevant and admissible.” *Henricksen v. State*, 2004 MT 20, ¶ 64, 319 Mont. 307, 84 P.3d 38; *Kissock v. Butte Convalescent Center*, 1999 MT 322, ¶ 10, 297 Mont. 307, 992 P.2d 1271 (same); *State v. Stock*, 2011 MT 131, ¶ 17, 361 Mont. 1, 256 P.3d 899 (“[r]ulings on motions in limine are evidentiary rulings and the district court

has broad discretion to determine the relevance and admissibility of evidence.”) (citing *State v. Snell*, 2004 MT 334, ¶ 17, 324 Mont. 173, 103 P.3d 503).

“In managing documents, the court should therefore also take into account the need for effective and efficient procedures to establish the foundation for admission, which can be accomplished by stipulation,” or otherwise. Federal Judicial Center, Manual for Complex Litigation, Fourth, § 11.445, Evidentiary Foundation for Documents (2004) (<https://www.uscourts.gov/sites/default/files/mcl4.pdf>). Here, the parties have been unable to reach a stipulation as to the authenticity, foundation, and admissibility of each of the documents listed in Appendix A. Therefore, in the interests of ensuring a smooth and efficient trial, Plaintiffs respectfully ask the intervention of this Court for an order *in limine* that deems all documents listed in Appendix A as having proper authentication and foundation and that, subject to substantive objections, such documents are admissible at trial in the above-captioned matter in accordance with the Montana Rules of Evidence.

### **III. BACKGROUND ON THE PARTIES’ ATTEMPTS TO REACH A DOCUMENT STIPULATION**

As documented in the Declaration of Roger Sullivan submitted herewith, for several months Plaintiffs have been working with Defendants to try and reach a stipulation as to the various state-produced documents listed in Appendix A. On November 22, 2022, Defendants’ counsel served counsel for Plaintiffs with the amended 30(b)(6) designees and objections of Defendant DEQ. In serving DEQ’s amended 30(b)(6) designees and objections, counsel for Defendants agreed via email to stipulate to the foundation for all DEQ-related documents listed on the

“Attachment A” to Plaintiffs’ Amended and Second Amended Notice of 30(b)(6) deposition to DEQ dated November 3, 2022, and November 30, 2022, respectively). Exhibit 1.<sup>3</sup>

On December 1, 2022, counsel for Defendants informed counsel for Plaintiffs that Defendant DEQ has been “working on narrowing trial exhibits and identifying specific documents to be used at trial” and that Defendants’ counsel “anticipate stipulating to foundation on most if not all of these documents.” Exhibit 2.

On December 9, 2022, counsel for Plaintiffs sent a letter to counsel for Defendants acknowledging and appreciating Defendants’ November 22, 2022 agreement to “stipulate to the foundation for each of the documents listed in Attachment A to the DEQ Rule 30(b)(6) deposition notice.” Exhibit 3. Plaintiffs’ December 9 letter stated Plaintiffs’ intention that the parties could “come to an agreement . . . as to the authenticity and foundation of those additional documents prepared by Defendants that are relevant to the issues in the case.” Exhibit 3. Plaintiffs’ December 9 letter proposed three options to authenticate and establish foundation for those additional government documents: (1) stipulation by the parties; (2) certification pursuant to Montana Rule of Evidence 902; and (3) 30(b)(6) records custodian depositions. Exhibit 3. With respect to the first option, Plaintiffs’ December 9 letter included an Appendix A—identical to the Appendix A attached hereto—which contained “a list of documents . . . that Plaintiffs would ask Defendants to authenticate and stipulate to their admissibility.” Exhibit 3.

On December 13, 2022, counsel for Defendants responded to Plaintiffs’ December 9 letter via email, stating Defendants “believe we can stipulate to many, if not most, of these documents.” Exhibit 4. Defendants’ counsel further represented they would review Plaintiffs’ Appendix A, but would not be able to respond to Plaintiffs’ request for an answer regarding a stipulation to the

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<sup>3</sup> All Exhibits are attached to the Declaration of Roger Sullivan submitted herewith.

Appendix A documents “until after January 2, 2023” given “current caseload and preparations for the upcoming legislative session.” Exhibit 4. Plaintiffs’ counsel did not hear back from Defendants’ counsel regarding the proposed document stipulation during the week of January 2, 2023.

On January 9, 2023, Plaintiffs’ counsel emailed Defendants’ counsel, requesting Defendants inform Plaintiffs when they plan to substantively respond to Plaintiffs’ proposed stipulation. Exhibit 5. Defendants’ counsel responded via email on January 10, 2023, stating they would “touch base” with Plaintiffs concerning Defendants’ document stipulation progress “next week” [the week of January 16] and they “continue to believe we will be able to stipulate to foundation and authenticity on most if not all of the documents generated by the State.” Exhibit 6.

On January 17, 2023, having not heard from Defendants concerning the document stipulation, Plaintiffs’ counsel emailed Defendants’ counsel, suggesting the parties “touch base about progress, as well as any matters that need problem-solving regarding Defendants’ stipulation to the foundation and authenticity of documents on the list provided.” Exhibit 7. On January 20, 2023, Defendants’ counsel responded via email, stating there is not “anything more to report at this time” and Defendants’ counsel is still working through Plaintiffs’ proposed document stipulation list with the Defendant agencies. Exhibit 7.

On January 20, 2023, Plaintiffs’ counsel wrote: “It appears increasingly unlikely that Defendants will be ready to resolve the documents issue before the pre-trial motions deadline of February 1. That said, in the interest of still hoping to obviate the need for the Court to become involved, if you let us know where Defendants are on the list of documents we are asking for stipulations, then we would know where to start on the list to consider cutting.” Exhibit 8. On January 25, 2023, Defendants’ counsel responded via email, stating: “I agree we need to confer on

these matters before the final pretrial conference. I'll circle up with you after February 1, as we are focusing on meeting the motions deadline." Exhibit 9.

Despite Plaintiffs' diligent efforts over the course of several months, as of the date of this motion, Plaintiffs have not yet received confirmation from Defendants as to a final stipulation concerning all of the documents listed in Appendix A. As a result, and in the abundance of caution, Plaintiffs request an order regarding the authenticity, foundation, and admissibility of the referenced documents in Appendix A, attached hereto. Essentially, Plaintiffs' motion seeks the pre-admission into evidence of certain categories of state-produced public records, subject to any substantive objections, to ensure a fair and efficient trial.

#### **IV. ARGUMENT**

The Appendix A submitted with the Declaration of Roger Sullivan herewith is identical to the Appendix A submitted with Plaintiffs' December 9, 2022 letter to Defendants. Appendix A details a list of documents created by various Defendant agencies, or other agencies, branches, departments, or offices of the State of Montana in the course of their regularly-conducted business. In general, these documents relate to the State's regulatory, permitting, and oversight activities with respect to Montana's fossil fuel-based energy system. All of the documents listed in Appendix A were produced by the parties in the course of discovery, and many were presented as exhibits during depositions.

The documents in Appendix A can generally be divided into two categories: (1) documents created by named Defendants; and (2) documents created by non-party components of the State of Montana. As set forth below, all the documents listed in Appendix A have the proper foundation, are authentic in that they are what they purport to be, and, therefore, should be admitted into evidence at the time of trial, subject to any substantive objections.



**A. Documents Created by Named Defendants**

Appendix A, in part, contains lists of documents created by various Defendants to this action—specifically Defendant DEQ, Defendant DNRC, Defendant PSC, and the Governor’s Office.<sup>4</sup> As to these Defendants, the documents consist of: agency websites, permits issued by the agency, informational statements or materials published by the agency, agendas of meetings or hearings held by the agency, certifications and findings issued by the agency, environmental impact statements, records of decision, environmental assessment checklists, internal agency emails and correspondence, and agency reports. With respect to the Governor’s Office, the documents consist of letters written by past Governors and various reports or memoranda created by the Governor’s Office.

Each of the documents contained in Appendix A pertaining to named Defendants has the proper foundation and authentication for admissibility at trial. Foundation for documentary evidence generally requires the document be relevant to the matter at hand and be properly identified and authenticated. M.R. Evid. 901. The relevancy of the documents in Appendix A which were authored, created, or produced by named Defendants is self-evident in that the documents themselves are examples and evidence of Defendants’ regulatory, permitting, and oversight activities with respect to Montana’s fossil fuel-based energy system. In other words, the agency documents listed in Appendix A are representative of the aggregate actions identified in Plaintiffs’ Complaint which actions are alleged to have been taken by Defendants in furtherance of Montana’s fossil-fuel focused State Energy Policy and the Climate Change Exception to MEPA, such that Defendants’ aggregate actions violate several sections of Montana’s Constitution.

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<sup>4</sup> Appendix A does not contain any documents produced by Defendant Montana Department of Transportation.

As to identification and authentication, Rule 901 of the Montana Rules of Evidence provides “the requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what the proponent claims.” M.R. Evid. 901(a). Here, there is no real dispute regarding the genuine nature of any of the documents listed in Appendix A created by named Defendants. Moreover, the groups of documents created by named Defendants at issue here fall comfortably within one or more of the enumerated “examples of authentication or identification conforming with the requirements” of Rule 901, namely:

(7) Public records or reports. Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.

(8) Ancient documents or data compilation. Evidence that a document or data compilation, in any form, (A) is in such condition as to create no suspicion concerning its authenticity, (B) was in a place where it, if authentic, would likely be, and (C) has been in existence 20 years or more at the time it is offered.

M.R. Evid. 901(b)(7), (8). Further, many of the documents listed in Appendix A created by named Defendants are self-authenticating per Montana Rule of Evidence 902. *See* M.R. Evid. 902(1) (domestic public documents under seal); 902(2) (domestic public documents not under seal); 902(4) (certified copies of public records); and 902(5) (official publications).

Importantly, the documents listed in Appendix A created by named Defendants will survive on several grounds any potential hearsay objections Defendants may raise. *See* M.R. Evid. 803(6) (records of regularly conducted activity); 803(8) (public records and reports); and 803(16) (statements in ancient documents).

All of the documents listed in Appendix A created by named Defendants have been produced by the parties during discovery. Indeed, as Appendix A indicates, Defendants have

already stipulated to authenticity and foundation for a select number of DEQ-created documents.<sup>5</sup> In short, the relevance of each of the documents listed in Appendix A that were created by named Defendants in their routine course of business is obvious, and Defendants have no apparent grounds to object to their foundation or authenticity. Accordingly, while Plaintiffs hope to reach a mutually-agreeable document stipulation with Defendants prior to the pre-trial conference, all documents listed in Appendix A that were created by named Defendants should be deemed to have the necessary foundation and authenticity for admission at trial.

**B. Documents Created by Non-Parties**

Appendix A also contains a number of documents—such as government websites, fact sheets, environmental assessment checklists, internal agency memoranda, transcripts of agency hearings, fiscal year reports, letters from agency personnel to legislators, and draft and final reports—created by various departments, boards, or components of the State of Montana which are not parties to this case. Specifically, these government bodies include the former Montana Department of Health,<sup>6</sup> Montana Department of Commerce, Environmental Quality Council, former Montana Department and Board of Health and Environmental Services,<sup>7</sup> Montana Department of Fish, Wildlife & Parks, and the Montana Bureau of Mines and Geology. Appendix A also contains a handful of Montana State Legislative documents—such as letters to legislators,

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<sup>5</sup> The documents previously stipulated to by Defendants are denoted with an “X” in the “Stipulate to Authenticity” and “Stipulate to Foundation” tabs in Appendix A. These documents were listed in Attachment A to Plaintiffs’ First and Second Amended Notice of 30(b)(6) Deposition to Defendant DEQ. Via email on November 22, 2022, counsel for Defendants represented to Plaintiffs’ counsel that they “will stipulate to the foundation of all Attachment A documents.”

<sup>6</sup> Now named the Montana Department of Public Health and Human Services.

<sup>7</sup> Now named the Montana Department of Public Health and Human Services.

policy studies, and reports to the legislature—primarily created by the Montana Environmental Quality Council.<sup>8</sup>

As with the Appendix A documents created by named Defendants, each of the Appendix A documents created by non-party components of the State of Montana, which is a Defendant, has the proper foundation and authentication for admissibility at trial. There is no reasonable dispute that the documents of the non-party components of the State of Montana contained in Appendix A are genuine copies of what Plaintiffs purport them to be, averting the need for lengthy authenticity disputes at trial. *See* M.R. Evid. 901(b)(7), (8); M.R. Evid. 902(1) (domestic public documents under seal); 902(2) (domestic public documents not under seal); 902(4) certified copies of public records); and 902(5) (official publications). Furthermore, there is no reasonable dispute that the non-party State of Montana documents contained in Appendix A fall under well-recognized exceptions to the hearsay rule. *See* M.R. Evid. 803(6) (records of regularly conducted activity); 803(8) (public records and reports); and 803(16) (statements in ancient documents).

Accordingly, all documents listed in Appendix A that were created by non-party components of the State of Montana should be deemed to have the necessary foundation and authenticity for admission at trial.

## V. CONCLUSION

For the foregoing reasons, Plaintiffs request the Court enter an order *in limine* that deems all documents listed in Appendix A submitted herewith as having proper authentication and foundation and that, subject to substantive objections, such documents are admissible at trial in the above-captioned matter in accordance with the Montana Rules of Evidence.

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<sup>8</sup> The Montana Environmental Quality Council is a state legislative committee created by the 1971 Montana Environmental Policy Act. Montana Legislature, *2021-2022 Environmental Quality Council*, <https://leg.mt.gov/committees/interim/eqc/>.

DATED this 1st day of February, 2023.

/s/ Barbara Chillcott

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*Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing was delivered by email to the following on February 1, 2023:

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*/s/ Barbara Chillcott*  
Barbara Chillcott

**EXHIBIT 1**

**Fw: Held v. State, Letter re Discovery**

Nate Bellinger <nate@ourchildrenstrust.org>

Thu 12/1/2022 5:00 PM

To: Montana <montana\_list@ourchildrenstrust.org>

---

**From:** Emily Jones <emily@joneslawmt.com>

**Sent:** Thursday, December 1, 2022 2:57 PM

**To:** Roger Sullivan <rsullivan@mgarveylaw.com>; Mark Stermitz <mstermitz@crowleyfleck.com>; ssauer@crowleyfleck.com <ssauer@crowleyfleck.com>; Lang, Dia <Dia.Lang@mt.gov>; Jami Westermeyer <paralegal@joneslawmt.com>; Rose Dumont <rdumont@crowleyfleck.com>

**Cc:** Nate Bellinger <nate@ourchildrenstrust.org>; Melissa Hornbein <hornbein@westernlaw.org>; Barbara Chillcott <chillcott@westernlaw.org>; Andrea Rodgers <andrea@ourchildrenstrust.org>; Phil Gregory <pgregory@gregorylawgroup.com>; Julia Olson <julia@ourchildrenstrust.org>

**Subject:** RE: Held v. State, Letter re Discovery

Counsel,

In addition to narrowing our witnesses for trial, DEQ has been working on narrowing trial exhibits and identifying specific documents to be used at trial. We anticipate stipulating to foundation on most if not all of these documents. We intend to amend our exhibit list in the near future. As you know, DEQ had a change in general counsel during this litigation, so it has taken some time for the new attorney to get up to speed.

DEQ is working to finalize these documents in advance of the remaining DEQ depositions. However, if you would like to push back the Director's deposition to ensure you have adequate time to review these documents before deposing him, we are open to that.

We just wanted to give you an update on where we are on this issue.

Thanks,  
Emily

**Emily Jones**



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**From:** Emily Jones

**Sent:** Tuesday, November 22, 2022 2:37 PM

**To:** Roger Sullivan <rsullivan@mgarveylaw.com>; Mark Stermitz <mstermitz@crowleyfleck.com>; ssauer@crowleyfleck.com; Lang, Dia <Dia.Lang@mt.gov>; Jami Westermeyer



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**Subject:** RE: Held v. State, Letter re Discovery

Roger and all,

Attached please find DEQ's amended 30b6 designees and objections. We made some minor tweaks on which witnesses will be testifying regarding which topics. Mainly, we divided up the Attachment A documents among our 3 deponents. We are confirmed for these witnesses for their 30b6 depositions and hybrid/lay witness depositions on December 8 (Director Dorrington), December 14 (Sonja Nowakowski) and December 15 (Dave Klemp). To the extent any of the Attachment A documents were included for purposes of establishing foundation only, we will stipulate to the foundation of all Attachment A documents. Please advise which documents you intend to ask substantive questions about so we may prepare our witnesses accordingly.

Also attached please find our amended lay witness list and supplemental expert disclosure. The state agencies are withdrawing all lay and hybrid witnesses except those listed in these documents. Please advise if this reduces the number of depositions we need to complete before 1/9/2023.

DEQ is still working on getting all of the broken links updated. Once I have that information, I will promptly provide it to you. We will timely respond to your Second and Third Discovery Requests.

I believe that covers all current outstanding items, but please let me know if I missed anything.

Thanks and I hope you have a nice Thanksgiving holiday.

Emily

**Emily Jones**



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**From:** Emily Jones

**Sent:** Monday, November 14, 2022 4:47 PM

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Gregory <pgregory@gregorylawgroup.com>; Julia Olson <julia@ourchildrenstrust.org>

**Subject:** RE: Held v. State, Letter re Discovery

This all sounds good, Roger.

Thank you.

**Emily Jones**

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**From:** Roger Sullivan <[rsullivan@mcgarveylaw.com](mailto:rsullivan@mcgarveylaw.com)>  
**Sent:** Monday, November 14, 2022 2:43 PM  
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**Subject:** RE: Held v. State, Letter re Discovery

Emily and counsel for Defendants,

Thank you Emily for your prompt reply below to my letter of November 10. I understand that you are continuing to formulate responses to some of the requests in my letter and we look forward to receiving that information as soon as reasonably possible. Per Emily's email, we will agree to postpone the deposition of Daniel Lloyd (currently scheduled for November 21). We will also withdraw the deposition notice of James Brown, based on your representation that Will Rosquist will be the only PSC witness. At this point we are not canceling any other previously scheduled depositions, but we can revisit that upon receiving an amended witness list from Defendants.

Regards,



**Roger Sullivan**  
 Senior Partner  
 ☎ (406) 752-5566 📠 (406) 752-7124  
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 📍 345 First Avenue East, Kalispell, MT 59901

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**From:** Emily Jones <[emily@joneslawmt.com](mailto:emily@joneslawmt.com)>  
**Sent:** Thursday, November 10, 2022 5:08 PM  
**To:** Roger Sullivan <[rsullivan@mcgarveylaw.com](mailto:rsullivan@mcgarveylaw.com)>; [matermitz@crowleyfleck.com](mailto:matermitz@crowleyfleck.com); [ssauer@crowleyfleck.com](mailto:ssauer@crowleyfleck.com); Lang, Dia <[Dia.Lang@mt.gov](mailto:Dia.Lang@mt.gov)>; Jami Westermeyer <[paralegal@joneslawmt.com](mailto:paralegal@joneslawmt.com)>; Rose Dumont <[rdumont@crowleyfleck.com](mailto:rdumont@crowleyfleck.com)>  
**Cc:** Nate Bellinger <[nate@ourchildrenstrust.org](mailto:nate@ourchildrenstrust.org)>; Melissa Hornbein <[hornbein@westernlaw.org](mailto:hornbein@westernlaw.org)>

Barbara Chillcott <[chillcott@westernlaw.org](mailto:chillcott@westernlaw.org)>; Andrea Rodgers <[andrea@ourchildrenstrust.org](mailto:andrea@ourchildrenstrust.org)>; Philip Gregory <[pgregory@gregorylawgroup.com](mailto:pgregory@gregorylawgroup.com)>; Julia Olson <[julia@ourchildrenstrust.org](mailto:julia@ourchildrenstrust.org)>  
**Subject:** RE: Held v. State, Letter re Discovery

Roger,

I have been in communication with DEQ regarding the issues raised in your letter. As of right now, I am able to provide you the following information:

- At your request, I have had multiple discussions with DEQ about significantly paring down DEQ's hybrid witnesses and lay witnesses in an effort to reduce the number of depositions we need to take in this case. Specifically, I have asked DEQ to narrow the list to only those witnesses who are likely to actually testify at trial. DEQ has been discussing this internally at length. DEQ has another internal meeting scheduled for November 21. I believe DEQ intends to make a final decision at this meeting.
- PSC intends to withdraw all lay and hybrid witnesses except Will Rosquist. I do not believe DNRC has any changes to its lay witnesses (Shawn Thomas, Trevor Taylor, Ryan Weiss) or its 30b6 designees. I am working to confirm that.
- I intend to file amended court documents withdrawing all lay and hybrid witnesses we have decided not to use at trial, but I have been waiting for DEQ's final decision to avoid serial filings. As I stated, I expect a final decision on November 21 or shortly thereafter.
- Although we previously provided 11/21 as a date to depose Dan Lloyd, in light of DEQ's meeting to discuss withdrawing witnesses, would you be agreeable to moving this deposition until that decision is made? This may avoid an unnecessary deposition.
- DEQ is working on getting all of the broken links updated. The person working on this was on vacation last week, and there are two state holidays this week. I will provide those to you as soon as I get them from DEQ.
- Andrea previously requested that we give you deposition dates for our experts between November 15 and November 30 at the time of disclosure. We complied with this request as to Dr. Curry. You then requested to move the dates to December. I am checking on the availability of Dr. Curry for the dates requested and will let you know the time and location.
- Regarding your request for additional expert materials, I do not think your request is within the scope of Mont. R. Civ. P. 26(b)(4), which provides the only means by which expert discovery can be had. I am reviewing your second discovery requests and we will timely comply with the Montana Rules of Civil Procedure regarding objections and responses to those requests.
- We are working with court reporters to set up depositions for the remaining plaintiffs for the dates you provided. As soon as the court reporters have confirmed those, we'll send you notices. The same goes for Mr. Erickson and Mr. Jacobson.

I will continue to be in communication with you on these matters as I receive additional information.

Thanks,  
Emily

**Emily Jones**



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**From:** Roger Sullivan <[rsullivan@mcgarveylaw.com](mailto:rsullivan@mcgarveylaw.com)>  
**Sent:** Thursday, November 10, 2022 3:36 PM  
**To:** Emily Jones <[emily@joneslawmt.com](mailto:emily@joneslawmt.com)>; [matermitz@crowleyfleck.com](mailto:matermitz@crowleyfleck.com); [ssauer@crowleyfleck.com](mailto:ssauer@crowleyfleck.com); Lang, Dia <[Dia.Lang@mt.gov](mailto:Dia.Lang@mt.gov)>  
**Cc:** Nate Bellinger <[nate@ourchildrenstrust.org](mailto:nate@ourchildrenstrust.org)>; Melissa Hornbein <[hornbein@westernlaw.org](mailto:hornbein@westernlaw.org)>; Barbara Chillcott <[chillcott@westernlaw.org](mailto:chillcott@westernlaw.org)>; Andrea Rodgers <[andrea@ourchildrenstrust.org](mailto:andrea@ourchildrenstrust.org)>; Philip Gregory <[pgregory@gregorylawgroup.com](mailto:pgregory@gregorylawgroup.com)>; Julia Olson <[julia@ourchildrenstrust.org](mailto:julia@ourchildrenstrust.org)>  
**Subject:** Held v. State, Letter re Discovery

Counsel,

Please see the attached letter.



**Roger Sullivan**

Senior Partner

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**EXHIBIT 2**

**Fw: Held v. State, Letter re Discovery**

Nate Bellinger <nate@ourchildrenstrust.org>

Thu 12/1/2022 5:00 PM

To: Montana <montana\_list@ourchildrenstrust.org>

---

**From:** Emily Jones <emily@joneslawmt.com>

**Sent:** Thursday, December 1, 2022 2:57 PM

**To:** Roger Sullivan <rsullivan@mgarveylaw.com>; Mark Stermitz <mstermitz@crowleyfleck.com>; ssauer@crowleyfleck.com <ssauer@crowleyfleck.com>; Lang, Dia <Dia.Lang@mt.gov>; Jami Westermeyer <paralegal@joneslawmt.com>; Rose Dumont <rdumont@crowleyfleck.com>

**Cc:** Nate Bellinger <nate@ourchildrenstrust.org>; Melissa Hornbein <hornbein@westernlaw.org>; Barbara Chillcott <chillcott@westernlaw.org>; Andrea Rodgers <andrea@ourchildrenstrust.org>; Phil Gregory <pgregory@gregorylawgroup.com>; Julia Olson <julia@ourchildrenstrust.org>

**Subject:** RE: Held v. State, Letter re Discovery

Counsel,

In addition to narrowing our witnesses for trial, DEQ has been working on narrowing trial exhibits and identifying specific documents to be used at trial. We anticipate stipulating to foundation on most if not all of these documents. We intend to amend our exhibit list in the near future. As you know, DEQ had a change in general counsel during this litigation, so it has taken some time for the new attorney to get up to speed.

DEQ is working to finalize these documents in advance of the remaining DEQ depositions. However, if you would like to push back the Director's deposition to ensure you have adequate time to review these documents before deposing him, we are open to that.

We just wanted to give you an update on where we are on this issue.

Thanks,  
Emily

**Emily Jones**



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**From:** Emily Jones

**Sent:** Tuesday, November 22, 2022 2:37 PM

**To:** Roger Sullivan <rsullivan@mgarveylaw.com>; Mark Stermitz <mstermitz@crowleyfleck.com>; ssauer@crowleyfleck.com; Lang, Dia <Dia.Lang@mt.gov>; Jami Westermeyer

**EXHIBIT 3**



**McGarveyLaw**

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December 9, 2022

Emily Jones, Special Assistant Attorney General  
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Michael Russell, Assistant Attorney General  
Montana Department of Justice  
michael.russell@mt.gov

*Via Email Only*

Re: *Held, et al. v. State of Montana, et al.*,  
Case No. CDV-2020-307 – Discovery Matters

Dear Counsel,

As you know, there are a number of documents that have been exchanged during discovery. We note and appreciate that in Defendants' Amended DEQ 30(b)(6) Designees and Objections, dated November 22, Defendants agreed to stipulate to the foundation for each of the documents listed in Attachment A to the DEQ Rule 30(b)(6) deposition notice. That said, there remain a number of additional documents that are not included in this list. In an effort to conserve the time and resources of both the Parties and the Court, Plaintiffs would like to come to an agreement with Defendants as to the authenticity and foundation of those additional documents prepared by Defendants that are relevant to the issues in the case. Plaintiffs propose moving forward with



one of the following three options in order to authenticate and foundation the relevant government documents:

- 1) **Stipulation by the Parties:** Attached to this letter is a proposed Stipulation Regarding Authenticity and Admissibility of Documents. This proposed Stipulation includes a list of documents identified in the attached Appendix A that Plaintiffs would ask Defendants to authenticate and stipulate to their admissibility. Plaintiffs believe such a stipulation would be the least burdensome approach for all Parties, would avoid additional deposition discovery, and will conserve time and resources of all Parties.
- 2) **Certification Pursuant to Montana Rule of Evidence 902:** Alternatively, pursuant to Montana Rule of Evidence 902, the appropriate records custodian could certify that the relevant government documents are authentic. See attached an exemplar. The list of documents that Plaintiffs ask Defendants to certify as authentic would be those documents referenced in Appendix A attached to the proposed Stipulation.
- 3) **Deposition:** Finally, Plaintiffs are prepared to take Rule 30(b)(6) records custodian depositions for the Montana Department of Environmental Quality, the Montana Department of Natural Resources and Conservation, the Montana Public Service Commission, and the Montana Governor's office. If the Parties can come to agreement on the first or second option outlined above, Plaintiffs will gladly forego taking these Rule 30(b)(6) records custodian depositions. However, Plaintiffs are prepared to take the Rule 30(b)(6) records custodian depositions if the Parties cannot come to an agreement with respect to options one or two.

Most of the documents referenced in Appendix A have already been exchanged through discovery. For those documents that have not already been exchanged, Plaintiffs are producing copies of the documents at the following link: <https://ourchildrenstrust.sharefile.com/f/fo3b3048-34e8-4881-baf5-df35ccfe1c86>.

Please let us know by December 13 which of the following options Defendants would like to pursue. If Plaintiffs have not heard from Defendants by December 13, Plaintiffs will pursue option three and serve Rule 30(b)(6) records custodian depositions for the Montana Department of Environmental Quality, the

Montana Department of Natural Resources and Conservation, the Montana Public Service Commission, and the Montana Governor's office.

Yours sincerely,

Roger Sullivan

RS:kit  
Enc.

cc: Melissa Hornbein, Barbara Chillcott, Nathan Bellinger, Andrea Rodgers, Phil Gregory, Julia Olson

## Appendix A

Bates Numbers	Description of Document	Author/Agency Source	Year	Date	Type	Stipulate to Authenticity	Stipulate to Foundation	Stipulate to Admissibility
<b>Department of Environmental Quality</b>								
<b>Organizational Documents</b>								
P-0047446-P-0047448	Mission Statement and Guiding Principles: Department Goals and Objectives	Montana Department of Environmental Quality (DEQ)	2020	last visited February 5, 2020	Website			
P-0047449-P-0047451	Coal Section	Montana Department of Environmental Quality (DEQ)	2020	last visited February 5, 2020	Website			
<b>Coal Mine Permits</b>								
P-0000777-P-0000782	Signal Peak Energy LLC, Bull Mountain, Letter of Approval, Amendment 3	Montana Department of Environmental Quality (DEQ)	2016	July 12, 2016	Document	X	X	
P-0024600	Signal Peak Energy, LLC, Bull Mountain, Approval of MR281 (C1993017)	Montana Department of Environmental Quality (DEQ)	2022	January 13, 2022	Permit	X	X	
P-0042665-P-0042685	East Decker Mine: Surface Coal Mine Permit	Montana Department of Environmental Quality (DEQ)	2012	July 27, 2012	Permit			
P-0042686-P-0042705	Westmoreland Absaloka Mine: Surface Coal Mine Permit	Montana Department of Environmental Quality (DEQ)	2017	August 8, 2017	Document			
P-0047452-P-0047467	2015 DEQ approval of the AM 4 expansion of the Rosebud Strip Mine	Montana Department of Environmental Quality (DEQ)	2015	December 4, 2015	Document			
D-000020-D-000021	Written Findings for Permit Renewal, Decker Coal Company Permit C1983007	Department of Environmental Quality (DEQ) Coal & Uranium Program	2012	June 21, 2013	Document			
D-000022-D-000038	Written Findings for Amendment and Mine Plan Revision, (for Amendment 3 to its current mining and reclamation plan at the Bull Mountains Mine No. 1 (SMP C1993017))	Montana Department of Environmental Quality (DEQ), Industrial and Energy Minerals Bureau Coal Program	2013	October 1, 2013	Document			
D-000041	Findings for Permit Renewal - Decker Coal Company - West Pits (C1987001C)	Montana Department of Environmental Quality (DEQ)	2010	March 2, 2011	Document			
D-000042-D-000043	Written Findings for Permit Renewal - Western Energy Company (C1985003C)	Montana Department of Environmental Quality (DEQ)	2016	August 18, 2017	Document			
D-000044-D-000045	Written Findings for Permit Renewal - Westmoreland Savage Corporation (C1984002)	Montana Department of Environmental Quality (DEQ)	2017	December 8, 2017	Document			
D-000046-D-000047	Written Findings for Permit Renewal - Western Energy Company (C1986003A)	Montana Department of Environmental Quality (DEQ)	2017	October 12, 2017	Document			
D-000048-D-000049	Written Findings for Permit Renewal - Western Energy Company (C1984003B)	Montana Department of Environmental Quality (DEQ)	2015	December 8, 2015	Document			
D-000050-D-000068	Written Findings (for AM3 to its current mining permit at the Bull Mountains Mine No. 1 (SMP C1993017)) (Signal Peak Energy)	Montana Department of Environmental Quality (DEQ)	2016	July 2016	Document			
D-000069-D-000084	"Written Findings (AM4 Additional 49 Acres Western Energy Company, Rosebud Coal Mine Area B)"	Montana Department of Environmental Quality (DEQ)	2015	December 4, 2015	Document			

Bates Numbers	Description of Document	Author/Agency Source	Year	Date	Type	Stipulate to Authenticity	Stipulate to Foundation	Stipulate to Admissibility
D-000085-D-000101	Written Findings (Major Revision TR3 for WDA2 and Expansion of WDA1 - Bull Mountain Coal Mining Inc. C1993017)	Montana Department of Environmental Quality (DEQ)	2017	August 1, 2017	Document			
D-000102-D-000116	Written Findings (Amendment Application 00185 Savage Coal Mine - Westmoreland Savage Corp. Permit No. C1984002)	Montana Department of Environmental Quality (DEQ)	2012	December 1, 2012	Document			
D-000117-D-000118	Findings for Permit Renewal - Signal Peak Energy (C1993017)	Montana Department of Environmental Quality (DEQ)	2013	February 27, 2013	Document			
D-000121-D-000197	Written Findings (Pearson Creek Amendment, Application 00183 Spring Creek Coal Mine - Spring Creek Coal Company Permit No. 79012)	Montana Department of Environmental Quality (DEQ)	2011	June 21, 2011	Document			
D-000198-D-000199	Findings for Permit Renewal - Western Energy Company (C1986003D)	Montana Department of Environmental Quality (DEQ)	2011	March 21, 2011	Document			
D-000200-D-000201	Written Findings for Permit Renewal - Decker Coal Company (C1987001C)	Montana Department of Environmental Quality (DEQ)	2016	March 24, 2016	Document			
D-000202-D-000203	Written Findings for Permit Renewal - Westmoreland Resources, Inc. (C1985005)	Montana Department of Environmental Quality (DEQ)	2018	January 25, 2018	Document			
D-000204-D-000211	Written Findings: Major Revision TR3 for East Decker Coal Mine (C1983007)	Montana Department of Environmental Quality (DEQ)	2018	July 23, 2018	Document			
D-000212-D-000213	Written Findings for Permit Renewal - Spring Creek Coal LLC (C1979012)	Montana Department of Environmental Quality (DEQ)	2019	April 11, 2019	Document			
D-000268-D-000269	Written Findings for Permit Renewal - Signal Peak Energy, LLC (C1993017)	Montana Department of Environmental Quality (DEQ)	2018	March 30, 2018	Document			
D-000270-D-000271	Written Findings for Permit Renewal - Decker Coal Company (C1983007)	Montana Department of Environmental Quality (DEQ)	2018	June 13, 2018	Document			
D-000272-D-000273	Written Findings for Permit Renewal - Decker Coal Company (C1987001C)	Montana Department of Environmental Quality (DEQ)	2021	March 19, 2021	Document			
D-000274-D-000280	Written Findings: Major Revision for Rosebud Coal Mine Area D Westmoreland Rosebud Mining, LLC Permit ID# C1986003D	Montana Department of Environmental Quality (DEQ)	2021	November 30, 2021	Document			
D-000281-D-000287	Written Findings: Major Revision for Rosebud Coal Mine Area A Westmoreland Rosebud Mining, LLC Permit ID# C1986003A	Montana Department of Environmental Quality (DEQ)	2021	September 24, 2021	Document			
<b>Informational Documents</b>								
P-0001936-P-0001938	All Things Colstrip	Montana Department of Environmental Quality (DEQ)	2019	2019	Document			
P-0001307-P-0001446	Understanding Energy in Montana 2018	Montana Department of Environmental Quality (DEQ)	2018	2018	Document	X	X	
P-0047468-P-0047495	Instructions for Registering, Updating, or Deregistering an Oil or Gas Well Facility	Montana Department of Environmental Quality (DEQ)	2018	June 6, 2018	Document			

Bates Numbers	Description of Document	Author/Agency Source	Year	Date	Type	Stipulate to Authenticity	Stipulate to Foundation	Stipulate to Admissibility
P-0003223-P-0003314	Montana Greenhouse Gas Inventory and Reference Case Projections 1990-2020	Alison Bailie et al., Montana Department of Environmental Quality and Center for Climate Strategies	2007	September 2007	Document	X	X	
P-0003315-P-0003478	An Analysis of Climate Change Policy Issues in Montana: A Report to the 61st Montana Legislature	Sonja Nowakowski, Environmental Quality Council	2008	November 2008	Document			
P-0021268-P-0021403	Montana's Energy Policy Review - Senate Bill No. 290: A Look at Existing Policy	Sonja Nowakowski; Legislative Services Division	2010	October 2010	Document			
P-0007723-P-0007732	Montana Climate Change Advisory Committee	Montana Department of Environmental Quality (DEQ)	2006	July 9, 2006	Document	X	X	
P-0007733-P-0007737	Draft Meeting Summary - Montana Climate Change Advisory Committee - Meeting #2	Montana Department of Environmental Quality (DEQ)	2006	September 15, 2006	Document			
P-0007738-P-0007749	Draft Meeting Summary - Montana Climate Change Advisory Committee - Meeting #3	Montana Department of Environmental Quality (DEQ)	2006	December 14, 2006	Document	X	X	
P-0007840-P-0007843	2007 Climate Change Legislation	Lisa Peterson, DEQ Affairs Coordinator	2007	February 28, 2007	Document			
P-0007755-P-0007783	Montana Climate Change Advisory Committee State Level GHG Reduction Policy Options	Montana Department of Environmental Quality (DEQ)	2006	July 9, 2006	Document			
P-0007784-P-0007826	Montana Climate Change Advisory Committee Draft Meeting #1 Agenda (Slides)	Montana Department of Environmental Quality (DEQ)	2006	July 13, 2006	Document	X	X	
P-0007827-P-0007829	Draft Meeting Summary - Montana Climate Change Advisory Committee - Meeting #1	Montana Department of Environmental Quality (DEQ)	2006	July 13, 2006	Document	X	X	
P-0007844-P-0007855	Draft Meeting Summary - Montana Climate Change Advisory Committee - Meeting #5	Montana Department of Environmental Quality (DEQ)	2007	May 11, 2007	Document			
P-0008031-P-0008077	Energy, Environment and Natural Resources Task Force Issue Paper, Energy Information and Forecasting	Montana Department of Environmental Quality (DEQ)			Document			
P-0007578-P-0007579	MEPA Requirements for Certain Activities (16.2.621)	Montana Department of Environmental Quality (DEQ)	1982	January 22, 1982	Document			
P-0042664	East Decker Mine: Other Permits Obtained by Decker Coal Company to Conduct Strip Mining	Montana Department of Environmental Quality (DEQ)			Permit			
P-0030792-P-0030906	Natural Gas in Montana. In Understanding Energy in Montana	Montana Department of Environmental Quality (DEQ)	2004	October 2004	Document			
P-0034462-P-0034465	Energy: Energy Statistics; Energy Source Workbooks	Montana Department of Environmental Quality (DEQ)	2021	2021	Website			
P-0047496-P-0047500	CHS Laurel Refinery Fact Sheet, Permit No. MTHWP-14-02	Montana Department of Environmental Quality (DEQ)	2016	October 2016	Document			
P-0041959-P-0041981	DEQ, Air- "Find a Facility" List	Montana Department of Environmental Quality (DEQ)			Website			

Bates Numbers	Description of Document	Author/Agency Source	Year	Date	Type	Stipulate to Authenticity	Stipulate to Foundation	Stipulate to Admissibility
P-0047501-P-0047538	Coal Tables Workbook – 2021 Update	Montana Department of Environmental Quality (DEQ)	2021	2021	Document			
P-0047539-P-0047541	Prospecting Permitting	Montana Department of Environmental Quality (DEQ)	2020	last visited February 5, 2020	Website			
P-0047542-P-0047548	Coal EA's: Pending Applications & Environmental Assessments	Montana Department of Environmental Quality (DEQ)	2020	last visited February 5, 2020	Website			
P-0002621	Petroleum Tables Workbook 2019, Tables P3, P8, 1960-2017	Montana Department of Environmental Quality (DEQ)	2019	2019	Document			
P-0001475	Coal Tables Workbook – 2018 Update	Montana Department of Environmental Quality (DEQ)	2018	2018	Document			
D-000288-D-000377	List of Oil Well and Gas Well Facilities - Part 1	Montana Department of Environmental Quality (DEQ)		Not provided	Document			
D-000378-D-000405	List of Oil Well and Gas Well Facilities - Part 2	Montana Department of Environmental Quality (DEQ)		Not provided	Document			
D-000406-D-000531	Attachment 1B - Environmental Specifications for the Keystone XL Project in Montana	Montana Department of Environmental Quality (DEQ)	2012	April 2012	Document			
D-000590-D-000609	MAQP and TV issued (NOTE: Multiple Def. witnesses (e.g. Henrikson) are listed in this document so this should be used for all of their depositions)	Montana Department of Environmental Quality (DEQ)	2022	Created on May 17, 2022	Document			
<b>Air Quality Permits</b>								
P-0000783-P-0000808	Signal Peak Energy, LLC, Bull Mountain, Montana Air Quality Permit #3179-12	Montana Department of Environmental Quality (DEQ)	2016	January 6, 2016	Document	X	X	
P-0022862-P-0023045	CHS Inc. Laurel Refinery, Final Title V Operating Permit #OP1821-18	Montana Department of Environmental Quality (DEQ)	2020	September 29, 2020	Permit	X	X	
P-0024125-P-0024308	CHS Inc. Laurel Refinery, Final Title V Operating Permit #OP1821-19	Montana Department of Environmental Quality (DEQ)	2021	June 28, 2021	Permit	X	X	
P-0023046-P-0023182	Calumet Montana Refining, LLC, Final Title V Operating Permit #OP2161-16	Montana Department of Environmental Quality (DEQ)	2020	December 11, 2020	Permit	X	X	
P-0024309-P-0024408	Exxon Mobil Corporation Billings Petroleum Refinery, Final Title V Operating Permit #OP1564-17	Montana Department of Environmental Quality (DEQ)	2021	August 20, 2021	Permit	X	X	
P-0024409-P-0024449	Phillips 66 Company Great Falls Terminal, Final Title V Operating Permit #OP2946-12	Montana Department of Environmental Quality (DEQ)	2021	September 23, 2021	Permit	X	X	
P-0024450-P-0024497	NorthWestern Energy Mainline #1 Compressor Station, Final Title V Operating Permit #OP2428-15	Montana Department of Environmental Quality (DEQ)	2021	February 19, 2021	Permit	X	X	
P-0023183-P-0023291	Talen Montana, LLC Colstrip Steam Electric Station, Final Title V Operating Permit #OP0513-16	Montana Department of Environmental Quality (DEQ)	2020	June 2, 2020	Permit	X	X	
P-0022437-P-0022458	Express Pipeline, LLC, Montana Air Quality Permit #5121-02	Montana Department of Environmental Quality (DEQ)	2019	December 3, 2019	Permit	X	X	
P-0024499-P-0024590	NorthWestern Energy, Laurel Generating Station, Montana Air Quality Permit #5261-00	Montana Department of Environmental Quality (DEQ)	2021	September 8, 2021	Permit	X	X	

Bates Numbers	Description of Document	Author/Agency Source	Year	Date	Type	Stipulate to Authenticity	Stipulate to Foundation	Stipulate to Admissibility
P-0023393-P-00 23436	Talen Montana, LLC, Colstrip Steam Electric Station, Montana Air Quality Permit #0513-14	Montana Department of Environmental Quality (DEQ)	2020	September 28, 2020	Permit	X	X	
P-0023437-P-00 23516	Colstrip Energy Limited Partnership, Final Title V Operating Permit Renewal #OP2035-04	Montana Department of Environmental Quality (DEQ)	2020	November 30, 2020	Permit	X	X	
P-0023517-P-00 23551	TrueNorth Steel, Montana Air Quality Permit #5249-00	Montana Department of Environmental Quality (DEQ)	2020	September 24, 2020	Permit	X	X	
P-0023552-P-00 23583	NorthWestern Energy Corporation, Belfry Compressor Station, Montana Air Quality Permit #5245-00	Montana Department of Environmental Quality (DEQ)	2020	June 26, 2020	Permit	X	X	
P-0023584-P-00 23629	Malteurop North America, Inc., Great Falls Malting Plant, Montana Air Quality Permit #3238-08	Montana Department of Environmental Quality (DEQ)	2020	April 17, 2020	Permit	X	X	
P-0027530-P-00 27546	Phillips 66 Carrier LLC, Crude Oil Tank Farm, Glacier Pipeline, Montana Air Quality Permit #2757-06	Montana Department of Environmental Quality (DEQ)	2016	December 28, 2016	Permit			
P-0042706-P-00 42744	Northern Border Pipeline Compressor Station No. 1 Montana Air Quality Permit OP2979-15	Montana Department of Environmental Quality (DEQ)	2022	March 22, 2022	Permit			
P-0041982-P-00 42094	Highwood Air Quality Permit No. 3423-00	Montana Department of Environmental Quality (DEQ)	2007	May 11, 2007	Permit			
D-000326-D-00 0443	CHS Inc. Laurel Refinery, Montana Air Quality Permit #1821-32	Montana Department of Environmental Quality (DEQ)	2013	December 31, 2013	Permit			
<b>Pipeline Certifications</b>								
P-0000435-P-00 00492	In the Matter of the Application of TransCanada Keystone Pipeline, LP (Keystone) for a Certificate of Compliance under the Major Facility Siting Act: Findings Necessary for Certification and Determination	Montana Department of Environmental Quality (DEQ)	2012	March 30, 2012	Document	X	X	
D-000532-D-000 589	Findings Necessary for Certification and Determination (Keystone)	Montana Department of Environmental Quality (DEQ)	2012	March 20, 2012	Document			
<b>Environmental Impact Statements</b>								
P-0022541-P-00 22861	Final Environmental Impact Statement for the Spring Creek Mine TR1 Project	Montana Department of Environmental Quality (DEQ)	2020	March 2020	Permit	X	X	
P-0017502-P-00 17628	Roundup Power Project Final Environmental Impact Statement	Montana Department of Environmental Quality (DEQ)	2003	January 2003	Document	X	X	
P-0018783-P-00 19276	Highwood Generating Station Final Environmental Impact Statement, Volume I	Montana Department of Environmental Quality (DEQ)	2007	January 2007	Document	X	X	
P-0019277-P-00 19880	Highwood Generating Station Final Environmental Impact Statement, Volume II	Montana Department of Environmental Quality (DEQ)	2007	January 2007	Document	X	X	
P-0029652-P-00 30421	Final Environmental Impact Statement FES 08-31 for the Proposed M-Pit Mine Expansion At the Montana Tunnels Mine In Jefferson County, Montana	Montana Department of Environmental Quality (DEQ)	2008	August 2008	Document			

Bates Numbers	Description of Document	Author/Agency Source	Year	Date	Type	Stipulate to Authenticity	Stipulate to Foundation	Stipulate to Admissibility
P-0030422-P-0030791	Final Environmental Impact Statement for the Proposed Amendment 017 to Permit No. 00065 for Golden Sunlight Mine	Montana Department of Environmental Quality (DEQ)	2021	August 2021	Document			
P-0041666-P-0041958	Final Environmental Impact Statement Rosebud Mine Area B AM5	Montana Department of Environmental Quality (DEQ)	2022	May 2022	Document			
<b>Water Quality Certifications &amp; Permits</b>								
P-0023292-P-0023295	TransCanada Keystone Pipeline, LP, 401 Water Quality Certification	Montana Department of Environmental Quality (DEQ)	2020	December 31, 2020	Document	X	X	
P-0021674-P-0021689	North Border Pipeline Company, Authorization to Discharge Under the National Pollutant Discharge Elimination System	U.S. Environmental Protection Agency	2013	August 29, 2013	Document			
P-0047898-P-0047923	Montana DEQ Authorization to Discharge Under the Pollutant Discharge Elimination System, Permit No. MT0000264	Montana Department of Environmental Quality (DEQ)	2020	2020	Document			
<b>Records of Decision</b>								
P-0022459-P-0022502	Record of Decision - Rosebud Mine Area F Federal Mining Plan	Office of Surface Mining Reclamation and Enforcement	2019	June 2019	Permit			
P-0022503-P-0022522	Record of Decision & Written Findings for Rosebud Coal Mine Area F, Western Energy Company	Montana Department of Environmental Quality (DEQ)	2019	April 18, 2019	Document	X	X	
P-0028577-P-0028595	Record of Decision & Written Findings for Spring Creek Coal Mine, Spring Creek Coal, LLC	Montana Department of Environmental Quality (DEQ)	2020	March 27, 2020	Permit			
P-0042095-P-0042106	Record of Decisions for Roundup Power Project	Montana Department of Environmental Quality (DEQ)	2003	January 31, 2003	Document			
P-0042107-P-0042117	Record of Decisions for Silver Bow Generation Project	Montana Department of Environmental Quality (DEQ)	2002	March 14, 2002	Document			
D-000214-D-000233	Record of Decision & Written Findings for Rosebud Coal Mine Area F - Western Energy Company (C2011003F)	Montana Department of Environmental Quality (DEQ)	2019	April 18, 2019	Document			
D-000234-D-000252	Record of Decision & Written Findings for Spring Creek Coal Mine - Spring Creek Coal, LLC (C1979012)	Montana Department of Environmental Quality (DEQ)	2020	March 27, 2020	Document			
<b>EA Checklists</b>								
P-0027514-P-0027529	Western Energy Company, Rosebud Coal Mine Area B Environmental Assessment Checklist (C1984003B)	Montana Department of Environmental Quality (DEQ)	2015	December 3, 2015	Document			
<b>Department of Natural Resources &amp; Conservation</b>								
<b>Board of Oil and Gas Conservation Documents</b>								
P-0034876	Online Oil and Gas Information System	Montana Board of Oil & Gas Conservation	2022	2022	Website			
P-0034877-P-0034956	Annual Review 2020	Board of Oil and Gas Conservation of the State of Montana	2021	2021	Document			



Bates Numbers	Description of Document	Author/Agency Source	Year	Date	Type	Stipulate to Authenticity	Stipulate to Foundation	Stipulate to Admissibility
P-0021410-P-00 21467	Oil Well File for #1 Heberle 33-28	Board of Oil and Gas Conservation of the State of Montana	2012	October 12, 2012	Permit			
P-0018742-P-00 18782	Oil Well File for Baldwin Federal 12-15	Board of Oil and Gas Conservation of the State of Montana	2007	August 8, 2007	Permit			
P-0021743-P-00 21768	Oil Well File for Kendrick Heirs 4-6	Board of Oil and Gas Conservation of the State of Montana	2016	September 7, 2016	Permit			
P-0023296-P-00 23344	Oil Well File for Dagney 33-21 #3H	Board of Oil and Gas Conservation of the State of Montana	2020	June 17, 2020	Permit			
P-0021468-P-00 21673	Oil Well File for 71 Ranch 44-1H	Board of Oil and Gas Conservation of the State of Montana	2012	August 7, 2012	Permit			
P-0023345-P-00 23392	Oil Well File for Rowin 17-5 #3H	Board of Oil and Gas Conservation of the State of Montana	2020	July 23, 2020	Permit			
P-0020888-P-00 21004	Oil Well File for Alice 3-21H	Board of Oil and Gas Conservation of the State of Montana	2008	June 24, 2008	Permit			
P-0021005-P-00 21036	Gas Well File for Boggess-DIR 2-12	Board of Oil and Gas Conservation of the State of Montana	2008	August 5, 2008	Permit			
P-0021037-P-00 21071	Gas Well File for Bickett 3-14-34N-5W	Board of Oil and Gas Conservation of the State of Montana	2008	July 23, 2008	Permit			
P-0014260-P-00 14305	Gas Well File for Two Horseshoes 2	Board of Oil and Gas Conservation of the State of Montana	1974	November 20, 1974	Permit			
P-0015341-P-00 15367	Gas Well File for Hochsprung 6-18	Board of Oil and Gas Conservation of the State of Montana	1992	May 20, 1992	Permit			
P-0014234-P-00 14259	Gas Well File for Chapman 5	Oil Conservation Board of the State of Montana	1931	May 7, 1931	Permit			
P-0014660-P-00 14719	Gas Well File for CROFT 7-32	Board of Oil and Gas Conservation of the State of Montana	1976	September 28, 1976	Permit			
<b>EA Checklists</b>								
P-0047549-P-00 47552	Checklist Environmental Assessment, Approve Drilling Permit (Form 22) for Flynn Well 2-27-35-20, Behm Energy, Inc.	Montana Bureau of Mines and Geology	2022	September 22, 2022	Document			
P-0047553-P-00 47562	Checklist Environmental Assessment, D&H Energy Oil and Gas Pipeline Installation, OG-20298-79	Montana Department of Natural Resources and Conservation (DNRC) Trust Land Management Division	2022	Fall 2022	Document			
P-0047563-P-00 47568	Checklist Environmental Assessment, Hiland Pipeline LUL-1281 Conversion to Easement, Kinder Morgan, Inc.	Montana Department of Natural Resources and Conservation (DNRC) Eastern Land Office	2022	2022	Document			
<b>Right of Way Deeds/Easements</b>								
D-000738-D-000 742	Right of Way Deed, Easement No. D-3674A, Right of Way Application No. 4351A through Government Lot 6 and Tract U, Sec. 3, Montana	Department of Natural Resources (DNRC), Governor of Montana	2015	August 14, 2015	Document			
D-000743-D-000 746	Right of Way Deed, Right of Way Application No. 15865 through Government Lots 5, 6, 7, 11 and 22, Montana	Department of Natural Resources (DNRC), Governor of Montana	2012	January 13, 2012	Document			
<b>Agency Correspondence</b>								

Bates Numbers	Description of Document	Author/Agency Source	Year	Date	Type	Stipulate to Authenticity	Stipulate to Foundation	Stipulate to Admissibility
P-0005919-P-00 05926	Letter from Gary Wicks, Director of Department of Natural Resources and Conservation, to the Federal Power Commission	Montana Department of Natural Resources and Conservation	1972	December 1, 1972	Document			
<b>Agency Documents</b>								
P-0012080-P-00 12107	2019 Report to the Montana Legislature	Montana Department of Natural Resources & Conservation	2019	2019	Document			
P-0047569-P-00 47612	Annual Report Fiscal Year 2018 Trust Lands Management Division	Montana Department of Natural Resources & Conservation	2018	2018	Document			
P-0015302-P-00 15340	Energy and Montana, an Overview	Montana Department of Natural Resources & Conservation	1991	November 1, 1991	Document			
P-0047613-P-00 47658	Annual Report Fiscal Year 2021	Montana Department of Natural Resources (DNRC), Trust Lands Management Division	2021	August 30, 2021	Document			
P-0047659-P-00 47668	Montana Department of Natural Resources Environmental Documents Webpage listing all DNRC Environmental Documents and Permits	Montana Department of Natural Resources (DNRC)	2022	October 19, 2022	Website			
P-0047669-P-00 47671	Minerals Management	Montana Department of Natural Resources & Conservation	2020	last visited February 5, 2020	Website			
P-0047672-P-00 47673	Director's Office Montana Department of Natural Resources	Montana Department of Natural Resources (DNRC)	2022	October 11, 2022	Website			
P-0047674-P-00 47681	Department of Natural Resources and Conservation 2021 Biennium Goals and Objectives	Department of Natural Resources and Conservation, Conservation and Resource Development Division (CARDD)	2021		Document			
P-0047682-P-00 47684	Minerals Management Bureau Website, Montana Department of Natural Resources and Conservation	Minerals Management Bureau, Montana Department of Natural Resources and Conservation (DNRC)	2022	October 13, 2022	Website			
P-0047685-P-00 47697	Fiscal Year 2019 State of Montana Department of Natural Resources and Conservation, Minerals Management Bureau	Minerals Management Bureau, Montana Department of Natural Resources and Conservation (DNRC)	2019	2019	Document			
<b>Public Service Commission - Agency Documents</b>								
P-0047698-P-00 47699	Pipeline Safety	Montana Public Service Commission	2019	last visited December 23, 2019	Website			
<b>Governor's Office</b>								
P-0007512-P-00 07558	Montana Climate Change Action Plan: Final Report of the Governor's Climate Change Advisory Committee	Montana Climate Change Advisory Committee	2007	November 2007	Document			
P-0017629-P-00 17991	Appendix A: Letter From Governor Schweitzer	Governor Schweitzer, Office of the Governor	2005	December 13, 2005	Document			
P-0007999	Letter from Governor Schweitzer to Alan Gabster	Governor Schweitzer, Office of the Governor	2010	October 1, 2010	Document			
P-0008000	Letter from Governor Schweitzer to M E Nichols	Governor Schweitzer, Office of the Governor	2010	October 4, 2010	Document			

Bates Numbers	Description of Document	Author/Agency Source	Year	Date	Type	Stipulate to Authenticity	Stipulate to Foundation	Stipulate to Admissibility
P-0008001	Letter from Governor Schweitzer to Steve Kirchhoff	Governor Schweitzer, Office of the Governor	2010	September 30, 2010	Document			
P-0008014	Letter from Governor Schweitzer to Governor Mead, inviting to 1st Annual Western Wind and Transmission Leadership	Governor Schweitzer, Office of the Governor	2011	June 3, 2011	Document			
P-0008002-P-0008003	Letter from Governor Schweitzer to David Irving; Memo from Richard Oppenre Keystone XL Pipeline	Governor Schweitzer, Office of the Governor; Richard Oppen	2010	May 17, 2010	Document			
P-0008004-P-0008005	Letter from Governor Schweitzer to Greg Jergeson, Chairman, Public Service Commission re Keystone XL Pipeline	Governor Schweitzer, Office of the Governor	2010	January 20, 2010	Document			
P-0008006-P-0008007	Letter from Governor Schweitzer to Rodney Norman	Governor Schweitzer, Office of the Governor	2010	September 27, 2010	Document			
P-0008008-P-0008010	Letter from Governor Schweitzer to Elizabeth Taylor	Governor Schweitzer, Office of the Governor	2010	May 26, 2010	Document			
P-0008011-P-0008013	Letter from Governor Schweitzer to Andrew Schafer; Memo from Richard Oppen	Governor Schweitzer, Office of the Governor; Richard Oppen	2010	February 4, 2010	Document			
P-0007967-P-0007968	Letter from Governor Schweitzer to Marvin Pearson; Memo from Richard Oppen re increasing oil refining to Eastern Montana (Keystone XL Pipeline)	Governor Schweitzer, Office of the Governor; Richard Oppen	2009	December 15, 2009	Document			
P-0007969	Letter from Governor Schweitzer to Irene Zuehlesdorff	Governor Schweitzer, Office of the Governor	2009	October 26, 2009	Document			
P-0007722	Letter from Governor Schweitzer to George Dennison, President of University of Montana	Governor Schweitzer, Office of the Governor	2006	January 19, 2006	Document			
P-0007670-P-0007671	Letter from Governor Schweitzer to Richard Oppen, Director of Montana Department of Environmental Quality	Governor Schweitzer, Office of the Governor	2005	December 13, 2005	Document			
P-0007672-P-0007685	Governor Schweitzer - Department Fact Book	Governor Schweitzer, Office of the Governor	2005	2005	Document			
P-0007993-P-0007998	Governor Schweitzer - Budget Highlights, Fiscal Years 2008-2009, excerpts	Governor Schweitzer, Office of the Governor	2009	2009	Document			
P-0007686-P-0007721	Governor Schweitzer - Special Session Report	Governor Schweitzer, Office of the Governor	2005	December 2005	Document			
P-0005734	Letter from Governor Anderson to Doug Smith, Chairman of Council for Natural Resources	Governor Anderson, Office of the Governor	1970	May 1, 1970	Document			
P-0007620-P-0007659	Memo from Brace Hayden to Interested Parties re Meeting on Discussion Draft on MEPA Rule Revisions	Brace Hayden, Office of the Governor	1988	April 10, 1988	Document			
P-0005987	Letter from Governor Judge to John Quarles, U.S. Environmental Protection Agency	Governor Judge, Office of the Governor	1973	August 27, 1973	Document			

Bates Numbers	Description of Document	Author/Agency Source	Year	Date	Type	Stipulate to Authenticity	Stipulate to Foundation	Stipulate to Admissibility
P-0005784	Letter from Governor Anderson to William D. Ruckelshaus, U.S. Environmental Protection Agency	Governor Anderson, Office of the Governor	1972	January 29, 1972	Document			
P-0005785-P-0005791	Letter from Governor Anderson to Russell E. Train, President's Council on Environmental Quality	Governor Anderson, Office of the Governor	1972	March 28, 1972	Document			
P-0005814-P-0005817	Letter from Governor Anderson to Governor Kneip; Letter from Governor Kneip to Governor Anderson	Governor Anderson, Office of the Governor; Governor Kneip	1972	May 11, 1972	Document			
P-0005832-P-0005833	Letter from Governor Anderson to Fletcher Newby, Executive Director	Governor Anderson, Office of the Governor	1972	August 2, 1972	Document			
P-0006026-P-0006030	Governor Thomas Lee Judge, Letter to John Anderson, Office of the Governor, April 27, 1973.	Governor Judge, Office of the Governor	1973	April 27, 1973	Document			
D-000627-D-000628	Letter from Governor Schweitzer to Jim Peterson, President of Senate	Office of the Governor	2011	April 15, 2011				
<b>Other Montana State Government Documents</b>								
P-0003105-P-0003222	A Montana Strategy for a Livable Environment: Conference Proceedings	Montana Department of Health	1969	1969	Document			
P-0047705-P-0047715	Montana Means Energy	Montana Department of Commerce	2013	Q1, 2013	Document			
P-0007660-P-0007669	Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2001	State of Montana	2001	June 30, 2001	Document			
P-0005735-P-0005736	Memo from John S. Anderson to Lewis M. Chittim	John S. Anderson, Montana Department of Health	1970	September 21, 1970	Document			
P-0005971-P-0005985	Revised Guidelines for Environmental Impact Statements Required by the Montana Environmental Policy Act of 1971 Adopted by Environmental Quality Council, September 14, 1973	Environmental Quality Council	1973	October 9, 1973	Document			
P-0007559-P-0007571	Transcript of Continuation of Hearing - In the matter of the adoption of a rule concerning MEPA requirements for specific activities and In the matter of the adoption of a rule concerning procedures for compliance with the Montana Environmental Policy Act	Montana Department and Board of Health and Environmental Sciences	1982	January 29, 1982	Document			
P-0013996-P-0014002	Yellowstone River Fish Kill Fact Sheet - Updated September 22, 2016	Montana Fish, Wildlife & Parks	2016	September 22, 2016	Website			
P-0047549-P-0047552	Checklist Environmental Assessment, Approve Drilling Permit (Form 22) for Flynn Well 2-27-35-20, Behm Energy, Inc.	Montana Bureau of Mines and Geology	2022	September 22, 2022	Document			
<b>Montana State Legislative Documents</b>								
<b>Environmental Quality Council Documents</b>								

Bates Numbers	Description of Document	Author/Agency Source	Year	Date	Type	Stipulate to Authenticity	Stipulate to Foundation	Stipulate to Admissibility
P-0005853-P-00 05865	Letter from Fletcher E. Newby to Legislators and Legislative Candidates re Environmental Quality Council Progress Report	Fletcher Newby, Environmental Quality Council	1972	September 22, 1972	Document			
P-0005891-P-00 05893	Testimony of Fletcher Newby Presented Before the Natural Resources and Agricultural Committee of the Constitutional Convention	Fletcher Newby, Environmental Quality Council	1972	February 4, 1972	Document			
P-0015368-P-00 15424	HJR 31 Energy Study Summary Report	Montana Environmental Quality Council and Montana Department of Natural Resources and Conservation	1992	December 1992	Document			
P-0014306-P-00 14659	Montana Energy Policy Study	Environmental Quality Council	1975	June 1, 1975	Document			
P-0047716-P-00 47888	Climate Change Draft - A report to the 61st Montana Legislature September 2008	Environmental Quality Council	2008	September 2008	Document			
P-0047889-P-00 47897	Plumes of Data: Air Quality and Emergency Room Visits During Recent Montana Fire Seasons	Environmental Quality Council, Joe Kolman	2022	January 25, 2022	Document			
P-0041553-P-00 41585	EQC Administrative Rule Review Authority - Current Administrative Rules - Agency Litigations Updates, Attachment #4	Environmental Quality Council	2009	August 25, 2009	Document			
P-0015302-P-00 15340	Energy and Montana, an Overview	Montana Department of Natural Resources & Conservation	1991	November 1, 1991	Document			

**EXHIBIT 4**

Emily asked for authority that allows a party to propound RFPs related to expert discover. As you know Rule 34(a) allows a party to propound RFPs to another party for any documents within the scope of Rule 26(b). Rule 26(b) provides, in part, “[p]arties may obtain discovery regarding any non-privileged matter that is relevant to any party's claim or defense--including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter. The information sought need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.” See also *Richardson v. State*, 2006 MT 43, ¶ 46, 331 Mont. 231, 244, 130 P.3d 634, 644. Montana’s discovery rules “are written in general terms, imposing a broad duty of disclosure.” *Id.* ¶ 52, see also *Cox v. Magers*, 2018 MT 21, ¶ 15, 390 Mont. 224, 411 P.3d 1271 (discovery rules are to be “liberally construed”).

The documents we have requested are clearly relevant to Defendants’ defense, and thus fall within the scope of materials discoverable under Rule 34. If you do not intend to produce the documents we have requested, please let us know your specific objections and reasons for not producing the documents. *Richardson v. State*, 2006 MT 43, ¶ 46. It is also worth noting that Defendants propounded requests for production of documents to Plaintiffs regarding experts and Plaintiffs have fully responded to those requests. See Defendants Request for Production No. 2 and No. 3.

Thank you,  
Roger

---

**From:** Emily Jones <[emily@joneslawmt.com](mailto:emily@joneslawmt.com)>

**Sent:** Tuesday, December 13, 2022 11:18 AM

**To:** Roger Sullivan <[rsullivan@mccarveylaw.com](mailto:rsullivan@mccarveylaw.com)>; Lang, Dia <[Dia.Lang@mt.gov](mailto:Dia.Lang@mt.gov)>; Russell, Michael <[Michael.Russell@mt.gov](mailto:Michael.Russell@mt.gov)>; Jami Westermeyer <[paralegal@joneslawmt.com](mailto:paralegal@joneslawmt.com)>; Mark Stermitz <[mstermitz@crowleyfleck.com](mailto:mstermitz@crowleyfleck.com)>; Selena Z. Sauer <[ssauer@crowleyfleck.com](mailto:ssauer@crowleyfleck.com)>; Rose Dumont <[rdumont@crowleyfleck.com](mailto:rdumont@crowleyfleck.com)>

**Cc:** Barbara Chillcott <[chillcott@westernlaw.org](mailto:chillcott@westernlaw.org)>; Melissa Hornbein <[hornbein@westernlaw.org](mailto:hornbein@westernlaw.org)>; Julia Olson <[julia@ourchildrenstrust.org](mailto:julia@ourchildrenstrust.org)>; Phil Gregory <[pgregory@gregorylawgroup.com](mailto:pgregory@gregorylawgroup.com)>; Andrea Rodgers <[andrea@ourchildrenstrust.org](mailto:andrea@ourchildrenstrust.org)>; Nate Bellinger <[nate@ourchildrenstrust.org](mailto:nate@ourchildrenstrust.org)>; Kelli Knoedler <[ktorbeck@mccarveylaw.com](mailto:ktorbeck@mccarveylaw.com)>

**Subject:** RE: Held v. Montana: Foundation of Documents

Roger and all,

I am writing to follow up with you on a few matters in this case. First, please confirm whether the depositions of Sonja Nowakowski and Dave Klemp will be conducted in person or by Zoom. Please also advise whether you intend to provide courtesy copies of deposition exhibits for DEQ counsel. If you do not have hard copies for counsel, we request that you send a link to the exhibits to Catherine and Lee McKenna. If you can send the link in advance of the depositions, please send it to Catherine at [Catherine.Armstrong2@mt.gov](mailto:Catherine.Armstrong2@mt.gov). Otherwise, please send the link to Lee at [lee.mckenna@mt.gov](mailto:lee.mckenna@mt.gov) and Catherine, Mike Russell, and me.

We received your letter regarding the length of time allowed for the Rule 30(b)(6) depositions. We appreciate your representation that you intend to be efficient with the depositions scheduled to be taken this week. In light of this representation, we do not intend to seek a protective order at this time, although we reserve the right to do so if necessary.

Finally, we received your letter regarding stipulation to foundation/authenticity of numerous documents in this case. We believe we can stipulate to many, if not most, of these documents. A certification pursuant to Rule 902 may be necessary for some documents authored by non-parties. We will review and let you know if we need to obtain any certifications or if we can simply stipulate to all of the documents. Given our current caseload and preparations for the upcoming legislative session, we won't be able to get back to you on this until after January 2.

If you are waiting on a response from me on any other issues, please let me know, but I think this covers all outstanding matters.

Thank you,  
Emily

### Emily Jones



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**From:** Roger Sullivan <[rsullivan@mcgarveylaw.com](mailto:rsullivan@mcgarveylaw.com)>

**Sent:** Friday, December 9, 2022 5:15 PM

**To:** Lang, Dia <[Dia.Lang@mt.gov](mailto:Dia.Lang@mt.gov)>; Russell, Michael <[Michael.Russell@mt.gov](mailto:Michael.Russell@mt.gov)>; Emily Jones <[emily@joneslawmt.com](mailto:emily@joneslawmt.com)>; Jami Westermeyer <[paralegal@joneslawmt.com](mailto:paralegal@joneslawmt.com)>; Mark Stermitz <[mstermitz@crowleyfleck.com](mailto:mstermitz@crowleyfleck.com)>; Selena Z. Sauer <[ssauer@crowleyfleck.com](mailto:ssauer@crowleyfleck.com)>; Rose Dumont <[rdumont@crowleyfleck.com](mailto:rdumont@crowleyfleck.com)>

**Cc:** Barbara Chillcott <[chillcott@westernlaw.org](mailto:chillcott@westernlaw.org)>; Melissa Hornbein <[hornbein@westernlaw.org](mailto:hornbein@westernlaw.org)>; Julia Olson <[julia@ourchildrenstrust.org](mailto:julia@ourchildrenstrust.org)>; Phil Gregory <[pgregory@gregorylawgroup.com](mailto:pgregory@gregorylawgroup.com)>; Andrea Rodgers <[andrea@ourchildrenstrust.org](mailto:andrea@ourchildrenstrust.org)>; Nate Bellinger <[nate@ourchildrenstrust.org](mailto:nate@ourchildrenstrust.org)>; Kelli Knoedler <[ktorbeck@mcgarveylaw.com](mailto:ktorbeck@mcgarveylaw.com)>

**Subject:** Held v. Montana: Foundation of Documents

Counsel,

Please see my letter, attached, as well as the documents referenced therein.

Thank you,  
Roger





**Roger Sullivan**

Senior Partner

(406) 752-5566 (406) 752-7124

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**EXHIBIT 5**

**Subject:** Fw: Held v. State of Montana: Documents Stipulation  
**Date:** Tuesday, January 10, 2023 at 5:02:09 PM Eastern Standard Time  
**From:** Nate Bellinger  
**To:** Montana  
**Attachments:** image006.jpg, image007.png, image008.png, image009.png, image010.png, image011.png

---

**From:** Emily Jones <emily@joneslawmt.com>  
**Sent:** Tuesday, January 10, 2023 1:53 PM  
**To:** Roger Sullivan <rsullivan@mcgarveylaw.com>; Russell, Michael <michael.russell@mt.gov>; Lang, Dia <Dia.Lang@mt.gov>; Jami Westermeyer <paralegal@joneslawmt.com>; Mark Stermitz <mstermitz@crowleyfleck.com>; Selena Z. Sauer <ssauer@crowleyfleck.com>; Rose Dumont <rdumont@crowleyfleck.com>  
**Cc:** Melissa Hornbein <hornbein@westernlaw.org>; Barbara Chillcott <chillcott@westernlaw.org>; Andrea Rodgers <andrea@ourchildrenstrust.org>; Phil Gregory <pgregory@gregorylawgroup.com>; Julia Olson <julia@ourchildrenstrust.org>; Nate Bellinger <nate@ourchildrenstrust.org>; Kelli Torbeck <ktorbeck@mcgarveylaw.com>  
**Subject:** RE: Held v. State of Montana: Documents Stipulation

Roger,

We are turning to this now that discovery is nearly finished. I'll touch base with you on our progress next week. I continue to believe we will be able to stipulate to foundation and authenticity on most if not all of the documents generated by the State.

Thanks,  
Emily

## Emily Jones



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---

**From:** Roger Sullivan <rsullivan@mcgarveylaw.com>  
**Sent:** Monday, January 9, 2023 5:26 PM

To: Russell, Michael <michael.russell@mt.gov>; Lang, Dia <Dia.Lang@mt.gov>; Emily Jones <emily@joneslawmt.com>; Jami Westermeyer <paralegal@joneslawmt.com>; Mark Stermitz <mstermitz@crowleyfleck.com>; Selena Z. Sauer <ssauer@crowleyfleck.com>; Rose Dumont <rdumont@crowleyfleck.com>

Cc: Melissa Hornbein <hornbein@westernlaw.org>; Barbara Chillcott <chillcott@westernlaw.org>; Andrea Rodgers <andrea@ourchildrenstrust.org>; Phil Gregory <pgregory@gregorylawgroup.com>; Julia Olson <julia@ourchildrenstrust.org>; Nate Bellinger <nate@ourchildrenstrust.org>; Roger Sullivan <rsullivan@mcgarveylaw.com>; Kelli Knoedler <ktorbeck@mcgarveylaw.com>

**Subject:** Held v. State of Montana: Documents Stipulation

Dear Counsel,

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Thanks,  
Roger

**Roger Sullivan**  
Senior Partner  
(406) 752-5566 (406) 752-7124  
www.mcgarveylaw.com  
345 First Avenue East, Kalispell, MT  
59901

**EXHIBIT 6**

**From:** Roger Sullivan <rsullivan@mcgarveylaw.com>  
**Sent:** Tuesday, January 17, 2023 12:08 PM  
**To:** Emily Jones <emily@joneslawmt.com>; Mark Stermitz <mstermitz@crowleyfleck.com>; Selena Z. Sauer <ssauer@crowleyfleck.com>  
**Cc:** Philip Gregory <pgregory@gregorylawgroup.com>; Roger Sullivan <rsullivan@mcgarveylaw.com>  
**Subject:** RE: Held v. State of Montana: Documents Stipulation

Emily,

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Roger

**From:** Emily Jones <emily@joneslawmt.com>  
**Sent:** Tuesday, January 10, 2023 2:53 PM  
**To:** Roger Sullivan <rsullivan@mcgarveylaw.com>; Russell, Michael <michael.russell@mt.gov>; Lang, Dia <Dia.Lang@mt.gov>; Jami Westermeyer <paralegal@joneslawmt.com>; Mark Stermitz <mstermitz@crowleyfleck.com>; Selena Z. Sauer <ssauer@crowleyfleck.com>; Rose Dumont <rdumont@crowleyfleck.com>  
**Cc:** Melissa Hornbein <hornbein@westernlaw.org>; Barbara Chillcott <chillcott@westernlaw.org>; Andrea Rodgers <andrea@ourchildrenstrust.org>; Phil Gregory <pgregory@gregorylawgroup.com>; Julia Olson <julia@ourchildrenstrust.org>; Nate Bellinger <nate@ourchildrenstrust.org>; Kelli Knoedler <ktorbeck@mcgarveylaw.com>  
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**Emily Jones**



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**Sent:** Monday, January 9, 2023 5:26 PM

**To:** Russell, Michael <[michael.russell@mt.gov](mailto:michael.russell@mt.gov)>; Lang, Dia <[Dia.Lang@mt.gov](mailto:Dia.Lang@mt.gov)>; Emily Jones <[emily@joneslawmt.com](mailto:emily@joneslawmt.com)>; Jami Westermeyer <[paralegal@joneslawmt.com](mailto:paralegal@joneslawmt.com)>; Mark Stermitz <[mstermitz@crowleyfleck.com](mailto:mstermitz@crowleyfleck.com)>; Selena Z. Sauer <[ssauer@crowleyfleck.com](mailto:ssauer@crowleyfleck.com)>; Rose Dumont <[rdumont@crowleyfleck.com](mailto:rdumont@crowleyfleck.com)>

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**EXHIBIT 7**



---

**From:** Emily Jones <[emily@joneslawmt.com](mailto:emily@joneslawmt.com)>  
**Sent:** Friday, January 20, 2023 11:30 AM  
**To:** Roger Sullivan <[rsullivan@mcgarveylaw.com](mailto:rsullivan@mcgarveylaw.com)>; Mark Stermitz <[mstermitz@crowleyfleck.com](mailto:mstermitz@crowleyfleck.com)>; Selena Z. Sauer <[ssauer@crowleyfleck.com](mailto:ssauer@crowleyfleck.com)>  
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**EXHIBIT 8**

**Subject:** FW: Held v. State of Montana: Documents Stipulation  
**Date:** Friday, January 20, 2023 at 5:17:28 PM Eastern Standard Time  
**From:** Roger Sullivan  
**To:** Montana  
**CC:** Roger Sullivan, Phil Gregory  
**Attachments:** image001.jpg, image002.png, image003.png, image004.png, image005.png, image006.png

FYI

---

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**Sent:** Friday, January 20, 2023 3:16 PM  
**To:** Emily Jones <[emily@joneslawmt.com](mailto:emily@joneslawmt.com)>; Mark Stermitz <[mstermitz@crowleyfleck.com](mailto:mstermitz@crowleyfleck.com)>; Selena Z. Sauer <[ssauer@crowleyfleck.com](mailto:ssauer@crowleyfleck.com)>  
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Phil and I are generally available next week. Please advise when you, or other members of your team, can meet and confer.

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**EXHIBIT 9**

Wednesday, January 25, 2023 at 14:17:20 Eastern Standard Time

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**Subject:** Fwd: Held v. State of Montana: Documents Stipulation  
**Date:** Wednesday, January 25, 2023 at 1:27:01 PM Eastern Standard Time  
**From:** Philip Gregory  
**To:** Montana  
**Attachments:** image001.jpg, image001.jpg, image001.jpg, image002.png, image003.png, image004.png, image005.png, image006.png

Begin forwarded message:

**From:** Emily Jones <emily@joneslawmt.com>  
**Date:** January 25, 2023 at 9:59:41 AM PST  
**To:** Roger Sullivan <rsullivan@mcgarveylaw.com>, Mark Stermitz <mstermitz@crowleyfleck.com>, "Selena Z. Sauer" <ssauer@crowleyfleck.com>  
**Cc:** Philip Gregory <pgregory@gregorylawgroup.com>, "Russell, Michael" <michael.russell@mt.gov>, "Lang, Dia" <Dia.Lang@mt.gov>, Jami Westermeyer <paralegal@joneslawmt.com>  
**Subject:** RE: Held v. State of Montana: Documents Stipulation

Hi Roger,

I agree we need to confer on these matters before the final pretrial conference. I'll circle up with you after February 1, as we are focusing on meeting the motions deadline.

Thanks,  
Emily

**Emily Jones**



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