

FILED

FEB 28 2023

ANGIE SPARKS, Clerk of District Court  
By *[Signature]* Deputy Clerk

Melissa Hornbein  
Barbara Chillcott  
Western Environmental Law Center  
103 Reeder's Alley  
Helena, MT 59601  
(406) 708-3058  
hornbein@westernlaw.org  
chillcott@westernlaw.org

Roger Sullivan  
Dustin Leftridge  
McGarvey Law  
345 1st Avenue East  
Kalispell, MT 59901  
(406) 752-5566  
rsullivan@mcgarveylaw.com  
dlefridge@mcgarveylaw.com

Nathan Bellinger (*pro hac vice*)  
Andrea Rodgers (*pro hac vice*)  
Julia Olson (*pro hac vice*)  
Our Children's Trust  
1216 Lincoln Street  
Eugene, OR 97401  
(413) 687-1668  
nate@ourchildrenstrust.org  
andrea@ourchildrenstrust.org  
julia@ourchildrenstrust.org

Philip L. Gregory (*pro hac vice*)  
Gregory Law Group  
1250 Godetia Drive  
Redwood City, CA 94062  
(650) 278-2957  
pgregory@gregorylawgroup.com

*Attorneys for Plaintiffs*

MONTANA FIRST JUDICIAL DISTRICT COURT  
LEWIS AND CLARK COUNTY

<p>RIKKI HELD, et al.,</p> <p>Plaintiffs,</p> <p>v.</p> <p>STATE OF MONTANA, et al.,</p> <p>Defendants.</p>	<p>Cause No. CDV-2020-307</p> <p>Hon. Kathy Seeley</p> <p><b>PLAINTIFFS' MOTION <i>IN LIMINE</i> NO. 5: REPLY BRIEF IN SUPPORT OF MOTION RE: DR. JUDITH CURRY'S EXPERT TESTIMONY</b></p>
---	--

## I. INTRODUCTION

Plaintiffs moved to exclude and/or limit the scope of Dr. Judith Curry's expert testimony<sup>1</sup> at trial on the grounds that Dr. Curry lacks the necessary knowledge, skill, experience, training, or education to proffer expert testimony on a number of topics she covers in her Expert Report. In their Opposition (Doc. 291), Defendants do not even attempt to demonstrate Dr. Curry is qualified to provide expert testimony in any of the following areas raised by Plaintiffs' Motion *in Limine*:

- A. Energy Transition and Montana's Renewable Energy Resources and Capacity.
- B. Engineering and Electric Power Systems.
- C. Government Energy Policy or the Law.
- D. Economics and Greenhouse Gas Accounting.
- E. Montana's Environment and Montana Climate Change Impacts.
- F. Children's Mental Health, Psychology, Psychiatry, Children's Physical Health, Medicine, or Social Sciences.
- G. Glaciology, Mountain Snow Hydrology, Fish Biology, Forest Management, or Forest Fire Science.

In addition, nothing in Defendants' Opposition demonstrates that Dr. Curry's methodologies in any of these fields, which involved her purported Google research expertise or "wicked science," are based on a reliable scientific method. As a result, this Court should also order that any opinions based on Google research in fields outside Dr. Curry's area of qualified expertise or theories of "wicked science" should be excluded at trial. Doc. 291 at 11-16.

Finally, Defendants do not dispute that they *did not name Dr. Curry as a rebuttal expert* to any of Plaintiffs' experts pursuant to the court-ordered deadline to disclose witnesses, or that her Expert Report was prepared without a thorough and detailed review of the Expert Reports of Plaintiffs' experts. *See* Defendants' Rebuttal Expert Witness Disclosure (Doc. 242), November 30, 2022; Doc. 291 at 16.

---

<sup>1</sup> As set forth in Defendants' original and supplemental Expert Witness Disclosures (Docs. 228, 236), dated, respectively, October 31 and November 22, 2022. Dr. Curry's expert report is attached as Ex. 2 to the Dec. of Julia Olson (Doc. 268.5).

For all of these reasons, Dr. Curry's trial testimony should be limited to the four corners of her Expert Report, should not be allowed as rebuttal testimony, should be limited to the topics for which this Court finds she has the necessary knowledge, skill, experience, training, or education to proffer expert, as opposed to lay, testimony, and her testimony should be excluded where Dr. Curry did not apply reliable scientific methodology.

## II. APPLICABLE STANDARDS

There are two standards that govern here. The first, on which Defendants focus in their Opposition, is the motion *in limine* standard, which is to "prevent the introduction of evidence which is irrelevant, immaterial, or unfairly prejudicial." *Cooper v. Hanson*, 2010 MT 113, ¶ 38, 356 Mont. 309, 234 P.3d 59 (internal citations omitted). However, given that Plaintiffs' Motion *in Limine* No. 5 pertains to whether the Court should exclude certain *expert witness* testimony, the standard set forth in Montana Rule of Evidence 702 governs. Rule 702 requires this Court to determine "(1) whether the expert field is reliable, (2) whether the expert is qualified, and (3) whether the qualified expert reliably applied the reliable field to the facts." *McClue v. Safeco Ins. Co.*, 2015 MT 222, ¶ 16, 380 Mont. 204, 354 P.3d 604 (internal citation omitted). In deciding on the admissibility of the testimony of Dr. Curry, the Court must determine "(1) that the subject matter requires expert testimony, and (2) that the witness qualifies as an expert *in the particular area on which the witness intends to testify*." *State v. Harris*, 2008 MT 213, ¶ 8, 344 Mont. 208, 186 P.3d 1263 (emphasis added). The burden is on Dr. Curry and Defendants to establish Dr. Curry is qualified as an expert in *each particular area* for which she provides opinions in her expert report. *Hulse v. State*, 1998 MT 108, ¶ 48, 289 Mont. 1, 961 P.2d 75. There is a two-pronged standard to determining the admissibility of the challenged expert testimony, as explained by the *Hulse* Court:

The Commission Comments to Rule 702, M.R.Evid., note that the rule sets forth two standards. First, the subject matter must be one that requires expert testimony. Expert testimony is required in areas not within the range of ordinary training or intelligence. **Second, the particular witness must be qualified as an expert to give an opinion in the particular area of the testimony. Thus, Rule 702, M.R.Evid., implicitly requires a foundation showing that the expert has special training or education and adequate knowledge on which to base an opinion.**

*Hulse*, ¶ 48 (citing *Durbin v. Ross*, 276 Mont. 463, 477-78, 916 P.2d 758, 767 (1996)) (emphasis added). *Accord*, *Cottrell v. Burlington N. R. Co.*, 261 Mont. 296, 301, 863 P.2d 381, 384 (1993). In addition to demonstrating her qualifications as an expert, “before a trial court admits scientific expert testimony, there must be a preliminary showing that the expert’s opinion is premised on a reliable methodology.” *Hulse*, ¶ 53 (citing *State v. Moore*, 268 Mont. 20, 42, 885 P.2d 457, 471 (1994)). The dispute here centers on the *Hulse* Court’s second prong regarding Dr. Curry’s qualifications and Defendants’ lack of any preliminary showing of a reliable methodology in the particular areas of expert report testimony identified below. Defendants have not met their burden of establishing the required foundation for Dr. Curry to opine on the challenged areas of proffered expert testimony.

Finally, when Defendants complain that “Plaintiffs make no effort to dispute the relevance, validity, or reliability of that data, all sources of which Dr. Curry specifically cited via endnotes,” Doc. 291 at 15, Defendants misunderstand the purpose of Plaintiffs’ Motion *in Limine* No. 5 and M. R. Evid. 702. Plaintiffs need not evaluate every reference Dr. Curry cites for its relevance, validity, or reliability. This Motion *in Limine* is not a referendum on the scientific rigor of the authors of those references. Citation to a reference does not make one an expert in the area covered by the reference. Rather, Motion *in Limine* No. 5 is about whether Dr. Curry is an expert qualified to opine on the particular areas of science in which others have performed scientific research, and whether she applied a reliable methodology. The qualifications of her sources cannot be attributed

to Dr. Curry. Defendants needed to demonstrate Dr. Curry's qualifications as an expert, which would have, in part, involved citation to her own publications—not those of other scientists—and Defendants failed to do so over a dozen particular areas as explained in the following sections.

### **III. ARGUMENT**

The Parties agree expert testimony is required on an array of scientific factual issues present in this case. Climate science, however, is not a single field of expertise. Understanding the effects of climate change on children involves more than one particular area of expertise. Dr. Curry's Expert Report includes her opinions on more than a dozen particular areas of expertise for which Defendants have not established her qualifications as an expert nor, in several instances below, a proper methodology for applying reliable scientific method to the facts. Curry Report, Doc. 268.5, Ex. 2, Appendix A. The Court should not permit a witness to testify about scientific facts that are outside an expert's area of expertise because it would be unfairly prejudicial to Plaintiffs' case and immaterial to the Court's ability to make findings of fact based on reliable scientific evidence using a reliable scientific method by a qualified expert.

Defendants could have disclosed expert witnesses qualified to provide expert opinion on the energy transition, Montana's renewable energy resources and capacity, electric power systems, government energy policy, economics, greenhouse gas accounting, Montana's environment and climate change impacts in Montana, glaciology, mountain snow hydrology, fish biology, forest management, forest fire science, children's mental and physical health and the related fields of psychology, psychiatry, medicine, or social sciences. Instead, they chose to have Dr. Curry prepare a single expert report covering these vastly diverse areas of science for which she is admittedly unqualified to opine as an expert. Plaintiffs here summarize Defendants' lack of response,

concessions, and failures to establish Dr. Curry's qualifications to provide expert opinion in the following particular areas requiring scientific expertise, as raised in Plaintiffs' motion.

**A. Energy Transition and Montana's Renewable Energy Resources and Capacity.**

Defendants rely *exclusively* on Dr. Curry's work at her company CFAN as "endow[ing] her with significant expertise directly relevant to the conclusions in her Report," in the particular areas of energy transition and Montana's renewable energy resources.<sup>2</sup> Doc. 291 at 14. Defendants do not provide any other support for Dr. Curry having the requisite knowledge, skill, experience, training, or education to provide expert opinion on Montana's renewable energy resources, capacity, portfolio, land use, or energy transition. *Id.* Dr. Curry's work at CFAN for clients outside of Montana, work which Plaintiffs subpoenaed in connection with Dr. Curry's deposition but which was not produced in discovery and which Defendants claim to be irrelevant,<sup>3</sup> does not qualify her to provide expert opinions in this particular area of scientific inquiry in Montana.

---

<sup>2</sup> In their Opposition, Defendants point to the work CFAN does as a company: "CFAN – a company that 'supports the energy sector with extended-range probabilistic forecasts of temperature extremes, severe convective weather, hurricanes, fire weather and renewable energy[]' whose 'climate scenario projections and impact assessments support power plant siting and investment decisions, insurance decisions, electric power demand, and severe weather vulnerability.'" Doc. 291 at 14. However, Defendants do not cite any evidence that Dr. Curry herself does this work. Further, in discovery, Defendants and Dr. Curry refused to produce work CFAN does in these areas for its clients. Thus, Defendants and Dr. Curry made the conscious decision to prevent Plaintiffs and this Court from accessing CFAN's "climate scenario projections and impact assessments" on which Defendants now assert Dr. Curry's expertise. *Id.* Defendants cannot choose to preclude discovery of an aspect of an expert's work, making it unavailable to Plaintiffs or this Court, and then attempt to cite that work as evidence of the expert's "significant expertise directly relevant to the conclusions in her Report." *Id.* Importantly, this Court cannot rely on assertions about the confidential work Dr. Curry does at CFAN without any supporting evidence.

<sup>3</sup> In discovery, Defendants took the following positions: "CFAN's regional climate scenarios do not serve as the basis for any of the arguments presented in Dr. Curry's Expert Report." Defs.' Resp. to Interrog. No. 30; *see also* Defs.' Resp. to Req. for Produc. No. 43: ". . . CFAN's electric utility clients and any interactions that CFAN has with them . . . do not serve as a basis for Dr. Curry's expert opinions in this matter." Defendants cannot have it both ways. They cannot say that Dr. Curry's supposed work producing regional climate scenarios are the basis for her qualifications as an expert, but that they do not serve as the basis for anything in her Expert Report. Plaintiffs did

Defendants do not disagree that Dr. Curry has never conducted any “climate scenario projections” or “extended-range probabilistic forecasts of temperature extremes, severe convective weather, hurricanes, fire weather and renewable energy” involving Montana, and did not do so to support her opinions in her Expert Report. Doc. 291 at 14. Defendants do not dispute that Dr. Curry has no specialized training, education, or peer-reviewed publications on the energy transition or renewable energy potential in Montana. Defendants do not dispute that Dr. Curry relied heavily on her “assistant” to prepare the renewable energy portion of her Expert Report. Because Dr. Curry has never studied atmospheric or weather-related science in Montana, has no CFAN clients for whom she has done work in Montana, had never reviewed the scientific literature on climate change in Montana until the weeks preceding submission of her Expert Report, has never conducted her own analysis or model run on the feasibility of renewable energy in Montana (as she presumably would for CFAN clients), and has never visited Montana, she lacks expertise in these particular areas of science and cannot render qualified scientific opinions at trial. Curry Dep. 78:3-20, 120:3-5 (Doc. 268.5, Ex. 3). In addition, Dr. Curry does not proffer a reliable scientific methodology for these sections of her Expert Report. Thus, the Court should exclude Dr. Curry’s opinions in these particular areas where she lacks expertise, and makes no preliminary showing of a reliable methodology at Expert Report (Doc. 268.5, Ex. 2) section 3.3 at 22-26, section 3.1-3.2 at 16-22, and section 5 at 28-29. *Hulse*, ¶ 48, ¶ 53; *Harris*, ¶ 8.

---

not move to compel production of these documents based on Defendants’ written assurances that they did not intend to rely on them to support Dr. Curry’s Expert Report, which includes her qualifications in addition to her testimony at trial. Plaintiffs took Defendants at their word as set forth in their discovery responses and should not suffer prejudice for relying on Defendants’ claims that CFAN’s work would not serve as a basis for anything in Dr. Curry’s report. “Trust me, I’m an expert in this particular area, but I won’t show you my work,” does not meet the standard in Rule 702. *Hulse*, ¶ 48 (requiring a “showing,” not a “telling”).

**B. Engineering and Electric Power Systems.**

Defendants concede “Dr. Curry is not an expert in a number of discrete fields (e.g. engineering, . . .) in which she neither claims nor needs to be an expert.” Doc. 291 at 13. Defendants do not dispute Dr. Curry’s admission of no “specialized training in how electric power systems operate.” Curry Dep. 76:6-14 (Doc. 268.5, Ex. 3). If she is not an expert in engineering and electric power systems, she cannot testify as such an expert. Thus, the Court should exclude Dr. Curry’s opinions in these particular areas where she lacks expertise at Expert Report (Doc. 268.5, Ex. 2) section 3 at 16-22, section 3.3.3 at 25-26, and section 5 at 28-29. *Hulse*, ¶ 48; *Harris*, ¶ 8.

**C. Government Energy Policy or the Law.**

Defendants concede “Dr. Curry is not an expert in a number of discrete fields (e.g. . . . law . . .) in which she neither claims nor needs to be an expert.” Doc. 291 at 13. If she is not an expert in law and policy, she cannot testify as one. Thus, the Court should exclude Dr. Curry’s opinions in these particular areas where she lacks expertise at Expert Report (Doc. 268.5, Ex. 2) section 3.3.2-3.3.3 at 23-26 and section 5 at 28-29. *Hulse*, ¶ 48; *Harris*, ¶ 8.

**D. Economics and Greenhouse Gas Accounting.**

Defendants concede “Dr. Curry is not an expert in a number of discrete fields (e.g. . . . economics . . .) in which she neither claims nor needs to be an expert.” Doc. 291 at 13. Defendants do not dispute that “Dr. Curry has no knowledge of the amount of emissions that result from the fossil fuels extracted but not combusted in Montana. Curry Dep. 76:15-22, 121:4-15.” Doc 268 at 9. If she is not an expert in economics and greenhouse gas accounting, she cannot provide expert testimony in those particular areas.

Defendants requested Dr. Curry include a section of her Expert Report (Doc. 268.5, Ex. 3 at 30:6-31:6) on whether Montana’s greenhouse gas emissions are meaningful. Without

understanding Montana's greenhouse gas emissions profile, which requires an accurate accounting, Dr. Curry is not qualified to opine on this topic and, at minimum, fails to use an accurate scientific methodology to determine Montana's contribution to global climate change. Thus, the Court should exclude Dr. Curry's opinions in these particular areas where she lacks expertise or a demonstrated reliable scientific methodology at Expert Report (Doc. 268.5, Ex. 2) section 2.2.2 at 12-13, section 3.3.3 at 25-26, section 4 at 26-27, and section 5 at 28-29. *Hulse*, ¶ 48, ¶ 53; *Harris*, ¶ 8.

**E. Montana's Environment and Montana Climate Change Impacts.**

Defendants' proffer of Dr. Curry's qualifications to provide expert testimony on Montana's environment and its climate change impacts amounts to one unsupported sentence: "Dr. Curry is highly qualified to opine on climate science, which would certainly include analyzing climate data and studies specific to Montana, or any other place." Doc. 291 at 14 (no citations). Defendants instead rely on Bob Dylan, illustrating their flippant response to the need for qualified scientific opinion to support fact-finding in this case. Doc. 291 at 13. "Climate science" is not one "particular area" of science, but is made up of many different areas of scientific expertise. Within the global field of climate science, Dr. Curry describes her research as "including climate dynamics of the Arctic, climate dynamics of extreme weather events, cloud microphysics and climate feedbacks, climate sensitivity and scenarios of future climate variability, and reasoning about climate uncertainty." Curry Report at 1 (Doc. 268.5, Ex. 2). Portions of section 2.2 of Dr. Curry's Expert Report appear to fall within this area of expertise. However, Defendants do not proffer any argument to support, and Dr. Curry has not established, that she has any qualifications to opine on climate change impacts on the ground in Montana. Defendants do not dispute her testimony under oath that she has never conducted any research on climate change in Montana, has never studied

the climate of Montana, has never engaged in her own research on the climate of Montana, has never published a peer-reviewed paper on the climate in Montana, and has never reviewed any scientific publications on the climate in Montana until she prepared her Expert Report, where she summarized information she found through Google. Curry Dep. 78:3-79:14, 261:18-262:16 (Doc. 268.5, Ex. 3). Defendants do not offer any preliminary showing that Dr. Curry used a reliable methodology in researching climate impacts in Montana. Thus, the Court should exclude Dr. Curry's opinions in these particular areas where she lacks expertise, and any reliable methodology, at Expert Report section 1 at 2-8 and section 5 at 28-29. *Hulse*, ¶ 48, ¶ 53; *Harris*, ¶ 8.

**F. Children's Mental Health, Psychology, Psychiatry, Children's Physical Health, Medicine, or Social Sciences.**

Defendants do not attempt to mount a defense to Dr. Curry's admitted lack of expertise in the fields of children's mental health, psychology, psychiatry, children's physical health, medicine, or social sciences. Doc. 291 at 16 ("The list of Plaintiffs' meritless arguments goes on, none of which rise to a level worth addressing."). Defendants' failure to proffer any evidence of Dr. Curry's qualifications to offer this testimony should be taken as an admission that her testimony should be excluded as lay testimony. Thus, the Court should exclude Dr. Curry's opinions in these particular areas where she testified she lacks expertise at Expert Report (Doc. 268.5, Ex. 2) section 2 at 8-9, section 2.2.2 at 12-13, section 2.3 at 13-16, and section 5 at 28-29. *Hulse*, ¶ 48; *Harris*, ¶ 8.

**G. Glaciology, Mountain Snow Hydrology, Fish Biology, Forest Management, and Forest Fire Science.**

Defendants also do not attempt to mount a defense as to Dr. Curry's admitted lack of expertise in the fields of glaciology, mountain snow hydrology, fish biology, forest management, and forest fire science, and Defendants cite no evidence of Dr. Curry's supposed expertise in these areas. Doc. 291. The most Defendants argue is that "Dr. Curry is not an expert in a number of

discrete fields (e.g. . . . fish biology, etc.) in which she neither claims nor needs to be an expert in order for her expert testimony to be reliable and admissible.” Doc. 291 at 13. If she is not an expert in fish biology, or any of these other particular areas of expertise, Dr. Curry cannot testify about these areas as a qualified expert. Defendants are wrong that Dr. Curry need not be an expert “in order for her expert testimony to be reliable and admissible.” *Id*; *Hulse*, ¶ 48. Noticeably, Defendants cite no authority for this audacious assertion. Thus, the Court should exclude Dr. Curry’s opinions in these particular areas where she lacks expertise at Expert Report (Doc. 268.5, Ex. 2) section 1.2 at 3-8, section 3.1.1 at 17, section 1.1 at 2, and section 3.3.3 at 26. *Hulse*, ¶ 48; *Harris*, ¶ 8.

#### **H. Dr. Curry is Not Designated as a Rebuttal Expert.**

Contrary to Defendants’ argument, Plaintiffs do not request that “any testimony from Dr. Curry that may conflict with Plaintiffs’ experts” be excluded. Doc. 291 at 16. Rather, Plaintiffs seek to avoid being prejudiced by Dr. Curry taking the stand as a “rebuttal expert witness” when she was not so designated and when she testified under oath that (1) she had not read any of Plaintiffs’ expert reports carefully until preparing for her deposition, and (2) her subsequent review of all of Plaintiffs’ expert reports, including rebuttal reports, did not alter the opinions in her Expert Report. Dr. Curry should be prevented from bringing in rebuttal testimony based on her late review of the testimony or reports of Plaintiffs’ experts. Defendants had a deadline for producing rebuttal experts and Dr. Curry was not identified as a rebuttal expert. *See* Doc. 242. That is Defendants’ choice, and they should live with it. Plaintiffs are the ones who would be prejudiced if Defendants produced no written rebuttal report and did not designate an individual as a rebuttal expert and then were permitted to introduce rebuttal testimony by an individual, such as Dr. Curry, at trial.

### **I. Testimony Relying on CFAN Research Should Be Excluded.**

The Court should also exclude any testimony by Dr. Curry related to the research and reports she has prepared at CFAN because Dr. Curry and Defendants have refused to produce those CFAN reports, claiming the reports are confidential, and Defendants are not relying on them.<sup>4</sup> Given Dr. Curry's unwillingness to produce information Defendants now claim is relevant to supporting her expertise and qualifications and her underlying knowledge at trial, neither Defendants nor Dr. Curry should be permitted to rely on that information as evidence of Dr. Curry's purported expertise or to bolster Dr. Curry's trial testimony. Plaintiffs again requested these documents on January 24, 2023, and Defendants have not fully responded to Plaintiffs' original subpoena or follow-up request, have not produced most of the requested documents, and have not produced a privilege log. Plaintiffs alerted Defendants that there is a protective order in place in this case and any confidential material of Dr. Curry, such as the CFAN reports, could be subject to that protective order. Pls.' Letter to Defs.' Jan. 24, 2023; Doc. 76. Defendants cannot rely upon, or present testimony at trial based on, evidence they chose to refuse to produce in discovery.

### **IV. CONCLUSION**

As set forth above, Dr. Curry is not a qualified expert in the following particular areas of science and her testimony in these areas should be excluded at trial: the Energy Transition (section 3.3 at 22-26; section 5 at 28-29), Montana's renewable energy resources (section 3.1-3.2 at 16-22; section 5 at 28-29), engineering and electric power systems (section 3 at 16-22; section 3.3.3 at 25-26; section 5 at 28-29), government energy policy (section 3.3.2-3.3.3 at 23-26; section 5 at 28-

---

<sup>4</sup> There is a Protective Order in this case. Doc. 76. Any confidentiality concerns could be addressed by designating the CFAN documents as "confidential" under the Protective Order. Defendants did not designate a single Curry-related document as "confidential" under the Protective Order.

29), law (section 5 at 28-29), economics (section 2.2.2 at 12-13; section 3.3.3 at 25-26), greenhouse gas accounting in Montana (section 4 at 26-27; section 5 at 28-29), Montana's environment and the impact of climate change in Montana (section 1 at 2-8; section 5 at 28-29), children's mental health (section 2 at 8-9; section 2.3 at 13-16; section 5 at 28-29), psychology, psychiatry, children's health and medicine (section 2.2.2 at 12-13; section 5 at 28-29), social sciences (section 2.2.2 at 12-13; section 5 at 28-29), glaciology (section 1.2 at 7-8), mountain snow hydrology (section 1.2 at 3-8; section 3.1.1 at 17), fish biology (section 1.1 at 2), forest management (section 1.2 at 8), forest fire science (section 1.2 at 8; section 3.3.3 at 26); "wicked science" (section 5 at 28 and throughout Report), and the meta data of Google searches (throughout her Expert Report). Moreover, Dr. Curry does not provide a reliable methodology for providing expert opinion in the particular areas described above, which is a secondary basis for excluding her testimony.

DATED this 28th day of February, 2023.

/s/ Barbara Chillcott

Barbara Chillcott

Melissa Hornbein

Western Environmental Law Center

103 Reeder's Alley

Helena, MT 59601

(406) 708-3058

hornbein@westernlaw.org

chillcott@westernlaw.org

Roger Sullivan

Dustin Leftridge

McGarvey Law

345 1st Avenue East

Kalispell, MT 59901

(406) 752-5566

rsullivan@mcgarveylaw.com

dleftridge@mcgarveylaw.com

Nathan Bellinger (*pro hac vice*)

Andrea Rodgers (*pro hac vice*)

Julia Olson (*pro hac vice*)

Our Children's Trust  
1216 Lincoln Street  
Eugene, OR 97401  
(413) 687-1668  
nate@ourchildrenstrust.org  
andrea@ourchildrenstrust.org  
julia@ourchildrenstrust.org

Philip L. Gregory (*pro hac vice*)  
Gregory Law Group  
1250 Godetia Drive  
Redwood City, CA 94062  
(650) 278-2957  
pgregory@gregorylawgroup.com

*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 28, 2023:

AUSTIN KNUDSEN  
*Montana Attorney General*  
215 North Sanders  
P.O. Box 201401  
Helena, MT 59620-1401  
Phone: 406-444-2026  
Fax: 406-444-3549

MICHAEL RUSSELL  
THANE JOHNSON  
*Assistant Attorneys General*  
215 North Sanders  
P.O. Box 201401  
Helena, MT 59620-1401  
Telephone: (406) 444-2026  
michael.russell@mt.gov  
thane.johnson@mt.gov

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

MARK L. STERMITZ  
Crowley Fleck PLLP  
305 S. 4th Street E., Suite 100  
Missoula, MT 59801  
Phone: 406-523-3600  
mstermitz@crowleyfleck.com

SELENA Z. SAUER  
Crowley Fleck PLLP  
1667 Whitefish Stage Road  
Kalispell, MT 59901  
ssauer@crowleyfleck.com

/s/ Barbara Chillcott  
Barbara Chillcott