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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 PLAINTIFFS' RESPONSE BRIEF IN OPPOSITION TO DEFENDANTS' MOTION TO STAY PROCEEDINGS [HEARING REQUESTED]
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INTRODUCTION

Defendants' Motion to Stay Proceedings should be denied for several reasons. The Motion to Stay is untimely and procedurally deficient as it fails to comply with the Court's Scheduling Order and the Local Rules. Even if this Court addresses the Motion to Stay on the merits, it should be denied because Defendants fail to satisfy their heavy burdens of presenting evidence of hardship or inequity absent a stay and their judicial economy arguments are contrary to binding Montana precedent. Additionally, the court's order in *MEIC v. DEQ*, which was issued on April 6, after Defendants' Motion to Stay was filed, does not address whether Section 75-1-201(2)(a), MCA (the Climate Change Exception to MEPA) is facially unconstitutional, one of the issues that will be tried in the instant case. Therefore, there is no justification for a stay.

As explained in Plaintiffs' response to Defendants' Motion for Summary Judgment, there are numerous factual disputes implicated in Plaintiffs' claims about the constitutionality of Section 75-1-201(2)(a), MCA, which must be resolved at trial. Doc. 299 at 16-19.¹ Nevertheless, a mere two months from trial, Defendants try yet again to delay adjudication of Plaintiffs' important constitutional claims by seeking an indefinite stay.

STANDARD OF REVIEW

The party requesting a stay "must make out a clear case of hardship or inequity in being required to go forward[.]" *Flying T Ranch, LLC. v. Catlin Ranch, LP.*, 2020 MT 99, ¶ 16, 400 Mont. 1, 462 P.3d 218 (citing *Henry v. Dist. Ct. of the Seventeenth Jud. Dist.*, 198 Mont. 8, 13, 645 P.2d 1350, 1353 (1982)). Only in "rare circumstances will a litigant in one cause be compelled

¹ Defendants' Motion to Stay Proceedings only seeks to stay the adjudication of Plaintiffs' claims that Section 75-1-201(2)(a) is unconstitutional. Accordingly, this response is limited to that narrow issue. For reasons explained in Plaintiffs' opposition to Defendants' Motion to Partially Dismiss, which will be timely filed, Plaintiffs' other claims remain justiciable and should also be resolved at trial starting June 12, 2023.

to stand aside while a litigant in another settles the rule of law that will define the rights of both.” *Henry*, 198 Mont. at 13 (citing *Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936)); *but see Landis*, 299 U.S. at 255 (“[S]ome courts have stated broadly that, irrespective of particular conditions, there is no power by a stay to compel an unwilling litigant to wait upon the outcome of a controversy to which he is a stranger.”). The burdens of proving that a stay is necessary “lay heavily” on the moving party. *Landis*, 299 U.S. at 256.

ARGUMENT

I. Defendants’ Motion to Stay Proceedings Is Untimely and Procedurally Deficient

Defendants’ Motion to Stay Proceedings (Defs.’ Mot. to Stay) should be denied as untimely and procedurally deficient. This Court’s Scheduling Order clearly states that all pretrial motions must be filed by February 1, 2023. Doc. 145 ¶ 5. The Scheduling Order also states that the “schedule shall not be modified except by leave of Court upon a showing of good cause.” *Id.* ¶ 7. Defendants offer no explanation whatsoever, let alone good cause, to justify the filing of their Motion to Stay over two months after the deadline in the Scheduling Order, and a mere two months before trial is set to commence. The case Defendants use to argue a stay is justified, *MEIC v. DEQ*, was filed 18 months ago. *See* Ex. B to Defs.’ Mot. to Stay. Defendants had ample opportunity to file their Motion to Stay Proceedings within the timeframe dictated by the Scheduling Order.²

Further, when Defendants filed their untimely Motion to Stay, the moving papers were not accompanied by a request for leave to file the motion after the February 1, 2023 deadline for filing pre-trial motions, there was no showing of good cause justifying Defendants’ filing after the

² Moreover, for a significant period of time the same attorney (Timothy Longfield of the Montana Attorney General’s office) represented the defendants in both cases.

motions cut-off date, and there was no proposed order. *See* Doc. 145 ¶ 7.³ Defendants' attempt to flout this Court's Scheduling Order,⁴ without providing any justification for their untimely filing, should be rejected and their Motion to Stay Proceedings should be summarily denied. *Kershaw v. Mont. Dep't of Transp.*, 2011 MT 170, ¶ 26, 361 Mont. 215, 257 P.3d 358 (upholding district court order rejecting a motion filed after the deadline set by the court's scheduling order).⁵

II. Defendants Present No Evidence of Hardship or Inequity to Justify a Stay

In addition to the untimeliness and procedural improprieties of Defendants' Motion to Stay Proceedings, the Motion fails to present *any* evidence of hardship or inequities Defendants will experience if a stay is not granted—which is their burden. Filed over three years ago, this case is on the eve of trial; the Parties have completed all discovery and all pre-trial briefing. All that remains is trial, set to begin on June 12. Arrangements for lodging, travel, and other logistics for the trial team and more than two dozen out of town witnesses and youth Plaintiffs have been made, not to mention that all of these individuals have planned their summers around this trial. Conversely, having to defend a case at trial is not a hardship or inequity for the Attorney General that warrants an indefinite stay, as Defendants seek here. *See, e.g., F.T.C. v. Standard Oil Co. of Cal.*, 449 U.S. 232, 243 (1980). Defendants' failure to provide the requisite evidence of hardship or inequity, a threshold requirement, is fatal to their Motion to Stay.

³ Compare Doc. 339 at 4 (Defs.' Mot. to Partially Dismiss for Mootness, explaining good cause for untimely filing).

⁴ This is not the first time Defendants failed to comply with the Scheduling Order. *See* Doc. 332 at 2, n.2 ("Defendants apologize" for failing to comply with the Scheduling Order's requirements for summary judgment briefing.).

⁵ *See also* Doc. 145 ¶ 7 ("Failure to comply with the Scheduling Order could result in sanctions . . ."); Mont. R. Civ. P. 16(f) ("[T]he court may issue any just orders . . . if a party or its attorney . . . fails to obey a scheduling or other pretrial order" which may include sanctions and ordering the party to pay expenses and attorneys' fees.).

While Defendants will not experience any hardship that would justify a stay, the sixteen youth Plaintiffs here would experience significant prejudice if their case was stayed indefinitely. Plaintiffs are experiencing ongoing and worsening climate injuries with each passing year. Doc. 299 at 2-3; *see also* Intergovernmental Panel on Climate Change, *Summary for Policymakers, in Synthesis Report of the IPCC Sixth Assessment Report (AR6) 25 (2023)*⁶ (“Climate change is a threat to human well-being and planetary health (*very high confidence*). There is a rapidly closing window of opportunity to secure a liveable and sustainable future for all (*very high confidence*).”); *id.* (“Without urgent, effective, and equitable mitigation and adaptation actions, climate change increasingly threatens ecosystems, biodiversity, and the livelihoods, health and wellbeing of current and future generations. (*high confidence*).”). Plaintiffs’ already grave injuries are exacerbated each time Defendants approve fossil fuels projects and ignore how those projects worsen the climate crisis and harm them and future generations. Doc. 299 at 16-17.

III. Defendants’ Judicial Economy Arguments Are Not Supported by Montana Precedent and Do Not Justify a Stay

Defendants’ only argument in support of their request for a stay is one of judicial economy. This argument has been rejected by Montana’s Supreme Court. *See, e.g., Henry*, 198 Mont. at 13-14, 645 P.2d at 1352-53 (denying motion for stay and rejecting judicial economy arguments); *Flying T Ranch, LLC.*, ¶ 17 (rejecting request for stay even where issues between two cases could be duplicative because there was no demonstrated hardship or inequity). The lone case Defendants cite in support of their judicial economy argument actually undermines their position. In *State ex rel. Ryder v. District Court of Fifteenth Judicial District In & For Roosevelt County*, the Montana Supreme Court found a stay was appropriate because the two civil cases pending involved *the*

⁶ Available at https://report.ipcc.ch/ar6syr/pdf/IPCC_AR6_SYR_SPM.pdf.

exact same parties, counsel, and evidence. 148 Mont. 56, 57-58, 417 P.2d 89, 90-91 (1966). Importantly, the Court added: “This is not a situation where one plaintiff is made to wait while the outcome of another plaintiff’s suit is determined. Mrs. Grandahl and her counsel chose to file these actions separately.” *Id.* at 59. Unlike the situation in *State ex rel. Ryder*, here there are different parties, different counsel, and different evidence. Moreover, this *is* a situation where the sixteen youth Plaintiffs in this matter would be made to await the outcome of another plaintiff’s suit—a scenario the Montana Supreme Court expressly noted was not present in *State ex rel. Ryder*. Plaintiffs here should not be forced to await the outcome of a different case that they did not file, especially when the other case was filed a year and a half *after* Plaintiffs’ case.

IV. The Court’s Order in *MEIC v. DEQ* Did Not Address the Constitutionality of the Climate Change Exception to MEPA

The recently issued order from Thirteenth Judicial District in *MEIC v. DEQ* addressed plaintiffs’ various statutory claims, but *did not* address the question in this case, whether Section 75-1-201(2)(a), MCA, is facially unconstitutional. Instead, the court in *MEIC v. DEQ* ruled that DEQ misinterpreted the statute and “remanded back to the DEQ for further analysis . . . consistent with MEPA and their constitutional responsibilities to the citizens of the State of Montana.” *MEIC v. DEQ*, No. DV 21-1307, slip op. at 29, 34 (Mont. 13th Dist. Ct. Apr. 6, 2023) (Defs.’ Notice of Supp. Auth. (Apr. 10, 2023)). According to the court, “[t]he constitutional issues are not yet ripe for consideration.” *Id.* at 34.

Here, Defendants’ Motion to Stay was premised on the (erroneous) assumption that the Thirteenth Judicial District would address the constitutionality of the Climate Change Exception to MEPA. Defs.’ Mot. to Stay at 2 (arguing that because both this case and *MEIC v. DEQ* challenged the constitutionality of Section 75-1-201(2)(a), MCA, a stay was appropriate). However, because the Thirteenth Judicial District *did not* address the constitutionality of the

Climate Change Exception to MEPA, there is no longer any justification for Defendants' request to stay proceedings. Moreover, the Thirteenth Judicial District's order is not binding on the First Judicial District. *See Krakauer v. State*, 2016 MT 230, ¶ 41, 384 Mont. 527, 381 P.3d 524 (disagreeing with the argument that a district court order under a certain set of facts "create[s] binding precedent" in subsequent cases); *United States v. Articles of Drug Consisting of 203 Paper Bags*, 818 F.2d 569, 572 (7th Cir. 1987) (a district court decision is not binding on other district courts). As such, resolution of the constitutionality of the Climate Change Exception to MEPA *in this case* is still necessary.

Defendants may now argue that the instant case should still be stayed pending appeals to the Montana Supreme Court. Defs.' Mot. to Stay 2 (arguing this case should be stayed until the *MEIC v. DEQ* case is "fully decided"). But whether *MEIC v. DEQ* is appealed to the Montana Supreme Court, which at this point is pure conjecture, is irrelevant. The facial constitutionality of Section 75-1-201(2)(a), MCA, was not decided by the district court and, therefore, will not be decided on appeal, if one is filed by defendants.

Finally, as is apparent in the Thirteenth Judicial District's order, *MEIC v. DEQ* is a different case than the instant matter. The plaintiffs in *MEIC v. DEQ* argued first and foremost that defendants' MEPA analysis of a single air quality permit was deficient for various reasons and should be set aside on statutory grounds. *See* Ex. A to Defs.' Mot. to Stay at 11-16 (First Cause of Action). Here, the instant case is not a challenge to a single permit, but addresses the "aggregate acts" that have occurred without a review of climate impacts under the Montana Environmental Policy Act. *See* Doc. 1 ¶¶ 118-19. Additionally, in this case, Plaintiffs argue Section 75-1-201(2)(a), MCA, violates their rights to a clean and healthful environment *as well as* other constitutional rights, including their rights to seek safety, health, and happiness; their rights to

individual dignity and equal protection; and their rights to public trust resources. Doc. 1 ¶¶ 221, 236-38, 248-51; Prayer for Relief ¶ 1. Plaintiffs in *MEIC v. DEQ* brought only a clean and healthful environment claim to accompany their statutory claims. In short, Defendants’ unsupported claim that *MEIC v. DEQ* is “functionally identical” to the present case is simply not supported by the pleadings. Defs.’ Mot. to Stay at 2.

On the eve of their June 12th trial, in a case filed over three years ago, these sixteen youth Plaintiffs should not be forced to stand aside to await the hypothetical appeal of a case filed after their case, by different plaintiffs, especially because the facial constitutionality of Section 75-1-201(2)(a), MCA, was not addressed by the Thirteenth Judicial District. Unlike the situation in *MEIC v. DEQ*, the constitutional issues here are ripe, and should be decided at trial, with the benefit of a fully developed factual record.⁷

CONCLUSION

Defendants’ request for a stay should be denied as untimely and procedurally deficient. Even if considered on the merits, their Motion for Stay should be denied because Defendants fail to show any hardship or inequity. Further, judicial economy does not justify a stay. Finally, the order from the Thirteenth Judicial District *MEIC v. DEQ* does not address constitutionality of the Climate Change Exception to MEPA and is not binding precedent in this case. Accordingly, Defendants’ Motion to Stay Proceedings must be denied, and trial should commence as planned on June 12, 2023.

DATED this 12th day of April, 2023.

/s/ Barbara Chillcott
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⁷ Notably, the instant proceeding is consistent with the Montana Supreme Court’s directive in *Barhaugh v. State*, 361 Mont. 537, 264 P.3d 518 (2011).

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