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MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY

<p>RIKKI HELD, et al.,</p> <p style="text-align: right;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>STATE OF MONTANA, et al.,</p> <p style="text-align: right;">Defendants.</p>	<p style="text-align: center;">Cause CDV 20–307 Hon. Kathy Seeley</p> <p style="text-align: center;"><b>DEFENDANTS’ RESPONSE TO PLAINTIFFS’ UNOPPOSED MOTION AND BRIEF FOR (1) CERTIFICATION OF ORDERS AS FINAL FOR PURPOSES OF INTERLOCUTORY APPEAL; AND (2) STAY OF ISSUE OF ATTORNEYS’ FEES AND COSTS</b></p>
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## **INTRODUCTION**

Defendants do not oppose the relief sought in Plaintiffs’ “Motion and Brief for (1) Certification of Orders as Final for Purposes of Interlocutory Appeal; and (2) Stay of Issue of Attorneys’ Fees and Costs” (“Motion”). However, Defendants do disagree, in part, with Plaintiffs’ proposed Order. Defendants submit this Response to state their specific reasons for seeking Rule 54(b) certification, to provide clarity on their position and relevant objections, and to propose a more concise and neutral Order (attached as Exhibit A) reflecting the same. The Court should certify this matter for interlocutory appeal pursuant to Mont. R. Civ. P. 54(b) and adopt Defendants’ proposed Order (Ex. A) as explained further below.

## **ARGUMENT**

### **I. Reasons for Rule 54(b) Certification.**

Defendants agree with Plaintiffs that Rule 54(b) certification is appropriate and that the applicable legal factors are satisfied here. Defendants support this relief because it will facilitate a more efficient final decision on the issues in dispute, it will provide for speedier resolution of the regulatory uncertainty resulting from the Court’s ruling, and Rule 54(b) certification is appropriate and well-supported in this matter.

### **II. Defendants’ Position and Objections.**

Defendants further submit this Response to clarify its position and relevant objections. Particularly with respect to the Court’s ruling addressing Senate Bill 557/§ 75-1-201(6)(a)(ii), MCA (“SB 557”), Defendants strongly object to any assertion that they consented, whether expressly or implicitly, to any amendment of the pleadings to conform to the evidence presented at trial pursuant to Mont. R. Civ. P. 15(b)(2). Plaintiffs raised issues related to SB 557 at trial for the first time, without having pleaded any claims related to SB 557 or providing Defendants any

notice that any issues related to SB 557 would be tried. (*See* Doc. 384.) Defendants did not—through their briefing related to the bench memorandum or otherwise—expressly or implicitly consent or “open the door” to trying the question of the constitutionality of SB 557, which was never raised by Plaintiffs at any time prior to trial. Nor was it included in the Final Pre-Trial Order, which provides that it “shall supersede the pleadings as to the remaining issues and govern the course of the trial in this cause...” (Doc. 384 at 38.) It further states that all pleadings shall be amended to conform to the Final Pre-Trial Order. (*Id.*) By its express language, the issues identified in the Final Pre-Trial Order were the only issues to be tried at trial. Defendants seek appellate review of the Court’s ruling on SB 557, and that should be reflected in the Court’s Order as well.

### **III. The Court Should Adopt Defendants’ Proposed Order.**

Plaintiffs’ proposed Order (Doc. 411.1) is not only unnecessarily repetitive and one-sided, but it also fails to identify critical additional rulings for which Defendants seek appellate review. Those rulings include the Court’s Orders on Defendants’ Motions for Clarification (Docs. 158, 217), the Court’s Order denying Defendants’ Rule 35(a) Motion for Independent Medical Examination (Doc. 225), and the Court’s Order (Doc. 381) denying Defendants Motions in Limine Nos. 2 and 3. (*See* Ex. A at 13). The Court should therefore adopt Defendants’ more concise and complete proposed Order.

### **CONCLUSION**

For all of the reasons stated above, the Court should certify this matter for interlocutory appeal pursuant to Mont. R. Civ. P. 54(b) and adopt Defendants’ proposed Order reflecting the same.

DATED this 13th day of September, 2023.

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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 20–307 Hon. Kathy Seeley</p> <p><b>ORDER GRANTING UNOPPOSED MOTION FOR: (1) CERTIFICATION OF ORDERS AS FINAL FOR PURPOSES OF INTERLOCUTORY APPEAL; AND (2) STAY OF ISSUE OF ATTORNEYS’ FEES AND COSTS</b></p>
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**INTRODUCTION**

The Parties have moved this Court for an order certifying its Findings of Fact, Conclusions of Law, and Order filed August 14, 2023, (Doc. 405), together with the Court’s prior Orders ancillary thereto and referenced therein, as final for purposes of interlocutory appeal under Rule 54(b), Mont. R. Civ. P., and Rule 6(6), Mont. R. App. P., excluding only the issues of Plaintiffs’ entitlement to and amount of attorneys’ fees and costs, and for an order staying the issues of Plaintiffs’ claimed entitlement to and amount of attorneys’ fees and costs pending the Montana Supreme Court’s ruling on the merits of the interlocutory appeal.

The Parties represent that they have conferred and agree that there is no just reason for delay in this Court certifying as final for purposes of interlocutory appeal its Findings of Fact, Conclusions of Law, and Order filed August 14, 2023 (Doc. 405), together with the Court’s prior Orders ancillary thereto and referenced therein, excluding only the issue of entitlement to

and amount of attorneys' fees and costs. The Parties further agree that such an order furthers judicial economy and public policy by permitting swift and efficient adjudication of the merits in this case of statewide concern without expending the further time and resources that will attend the determination of Plaintiffs' request for attorneys' fees and costs.

Although the Parties have together moved for certification, “[p]arties cannot stipulate certification of an order under M. R. Civ. P. 54(b),” *Rogers v. Lewis & Clark Cnty.*, 2020 MT 230, ¶ 10, 401 Mont. 228, 472 P.3d 171, and so this Court must exercise its discretion to determine whether to grant or deny the Parties' motion. *See Roy v. Neibauer*, 188 Mont. 81, 85, 610 P.2d 1185, 1188 (1980).

### **LEGAL STANDARDS**

Montana Rule of Civil Procedure 54(b) provides:

- (1) When an action presents more than one claim for relief -- whether as a claim, counterclaim, crossclaim, or third-party claim -- or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.
- (2) Any order or other decision granted pursuant to Rule 54(b)(1) must comply with the certification of judgment requirements of Montana Rule of Appellate Procedure 6(6).

Montana Rule of Appellate Procedure 6(6) provides:

Certification of a judgment as final for purposes of appeal. Notwithstanding the provisions of section (5)(a) of this rule, a district court may direct the entry of final judgment as to an otherwise interlocutory order or judgment, only upon an express determination that there is no just reason for delay, pursuant to M. R. Civ. P. 54(b). In so doing, the district court must balance the competing factors present in the case to determine if it is in the interest of sound judicial administration and public policy to certify the judgment as final, and the court shall, in accordance with existing case law, articulate in its certification order the factors upon which

it relied in granting certification, to facilitate prompt and effective review. A certification order failing to meet these requirements shall be subject to summary dismissal pursuant to rule 4(4)(b).

If a district court directs an entry of final judgment under Rule 54(b), Mont. R. Civ. P., then, following the filing of a notice of appeal with the Montana Supreme Court, the Montana Supreme Court will review the district court's certification order and determine whether the certification order complies with Rule 54(b), Mont. R. Civ. P., and Rule 6(6), Mont. R. App. P., and will either enter an order allowing the appeal to proceed or declining to allow the appeal to proceed. Mont. R. App. P. 4(4)(b).

As set forth in *Roy*, 188 Mont. at 87, 610 P.2d at 1189, the factors normally considered for a Rule 54(b) certification include: (1) the relationship between the adjudicated and unadjudicated claims; (2) the possibility that the need for review might or might not be mooted by future developments in the district court; (3) the possibility that the reviewing court might be obliged to consider the same issue a second time; (4) the presence or absence of a claim or counterclaim which could result in a set-off against the judgment sought to be made final; and (5) miscellaneous factors such as delay, economic and solvency considerations, shortening the time of trial, triviality of competing claims, expense, and the like.

In sum, this Court has “the discretion . . . to grant . . . a Rule 54(b) certification.” *Weinstein v. Univ. of Mont.*, 271 Mont. 435, 439, 898 P.2d 101, 104 (1995). To do so, the Court must make two separate determinations. *Rogers*, ¶ 13. First, the Court must “‘expressly determine[ ] that there is no just reason for delay,’ as required by M. R. Civ. P. 54(b) and M. R. App. P. 6(6).” *Id.* (citations omitted). Second, the Court must address the five-factor test set by the Montana Supreme Court. *Id.* The burden is on the moving party to sway the Court that Rule 54(b)

certification is appropriate. *Satterlee v. Lumberman's Mut. Cas. Co.*, 2007 MT 325, ¶ 15, 340 Mont. 176, 178 P.3d 689.

## **BACKGROUND**

Plaintiffs are sixteen Montana youth who filed a Complaint for declaratory and injunctive relief against the State of Montana, the Governor, Montana Department of Environmental Quality, Montana Department of Natural Resources and Conservation, Montana Department of Transportation, and Montana Public Service Commission, challenging the constitutionality of the fossil fuel-based provisions of Montana's State Energy Policy Act, Mont. Code Ann. § 90-4-1001(l)(c)-(g); a provision of the Montana Environmental Policy Act ("MEPA"), Mont. Code Ann. § 75-1-201(2)(a) ("MEPA Limitation"), which constricted Defendants' consideration of the impacts of greenhouse gas (GHG) emissions or climate change in their environmental review of fossil fuel projects; and the aggregate acts of the State in implementing and perpetuating a fossil fuel-based energy system pursuant to these statutory provisions. Plaintiffs alleged the State's implementation of these provisions causes and contributes to climate change, harming them in violation of their rights under Article II, Sections 3, 4, 15, and 17; Article IX, Sections 1 and 3 of the Montana Constitution; and the Public Trust Doctrine. (Doc. 1 ¶¶ 3-4).

On August 4, 2021 (Doc. 46), the Court partially granted and partially denied Defendants' motion to dismiss, allowing Plaintiffs' claims requesting declaratory relief and attendant injunctive relief (i.e., claims for relief # 1-5) to move forward. The Parties engaged in extensive discovery and motions practice throughout 2022, with the Court twice clarifying that Plaintiffs' requests for declaratory relief and attendant injunctive relief (i.e., claims for relief # 1-5) remained live. (*See* Doc. 405 at 4-6).



On June 10, 2022, Defendants filed a Petition for Writ of Supervisory Control (OP 22-0315), requesting the Montana Supreme Court exercise supervisory control and “dismiss Request for Relief 5 from this case.” On June 14, 2022, the Montana Supreme Court denied the Petition. (OP 22-0315).

On May 23, 2023, following the legislature’s repeal of the challenged provisions of the Energy Policy Act, the Court issued an Order on Defendants’ Motions to Partially Dismiss for Mootness and for Summary Judgment. (Doc. 379). As to Defendants’ Motion to Partially Dismiss for Mootness (Doc. 343), the Court granted Defendants’ motion and dismissed without prejudice Plaintiffs’ claims involving the State Energy Policy Goal Statements, the former § 90-4-1001, MCA, and Defendants’ aggregate acts taken pursuant to and in furtherance of the same on redressability and prudential standing grounds. (Doc. 379 at 3-4). The Court denied Defendants’ motion for summary judgment and allowed Plaintiffs’ MEPA claims to proceed to trial. (Doc. 379 at 20-26; Doc. 405 at 8).

On June 2, 2023, Defendants filed an Emergency Petition for Writ of Supervisory Control with the Montana Supreme Court (OP 23-0311), requesting again that the Montana Supreme Court exercise supervisory control and reverse this Court’s denial of the State’s motion for summary judgment. The State also asked the Montana Supreme Court to stay the trial set to begin June 12, 2023. On June 6, 2023, the Montana Supreme Court denied the Emergency Petition for Writ of Supervisory Control. (OP 23-0311).

On June 7, 2023, this Court entered the Final Pre-Trial Order governing this proceeding. (Doc. 384). In addition to “supersed[ing] the pleadings as to the remaining issues and govern[ing]

the course of the trial of this case,” (Doc. 384 at 38), the Court’s Final Pre-Trial Order denied Defendants’ Motion to Dismiss MEPA Claims (Doc. 376). (Doc. 384 at 38; Doc. 405 at 9).

Trial commenced June 12, 2023, and concluded June 20, 2023. Plaintiffs presented testimony from twenty-four witnesses, and Defendants presented testimony from three witnesses. (Doc. 405 at 9). The Court admitted one hundred sixty-eight of Plaintiffs’ exhibits and four of Defendants’ exhibits. (Doc. 405 at 9).

On June 19, 2023, in support of their oral motion for directed verdict, Defendants filed a Bench Memorandum on the Constitutional and Procedural Limits of the Montana Environmental Policy Act. (Doc. 396). On June 25, 2023, Plaintiffs filed a response. (Doc. 402). This briefing discussed SB 557 and the newly-enacted § 75-1-201(6)(a)(ii), MCA, although Plaintiffs pleaded no claims relating to SB 557 or § 75-1-201(6)(a)(ii), MCA, nor did they otherwise raise any such claims or issues prior to trial.

After a seven-day trial, this Court issued its Findings of Fact, Conclusions of Law, and Order (Doc. 405) on August 14, 2023, ruling in favor of Plaintiffs on their constitutional claims against the MEPA Limitation, § 75-1-201(2)(a), MCA. The Court entered its Conclusions of Law, and further “address[ed] the constitutionality of Mont. Code Ann. § 75- 1-201(6)(a)(ii)[.]” (Doc. 405 at 86, 102). Defendants object to the Court conforming the pleadings to the evidence pursuant to Mont. R. Civ. P. 15(b)(2), for the purpose of addressing the constitutionality of Mont. Code Ann. § 75- 1-201(6)(a)(ii).

The Court ultimately issued a judgment in favor of Plaintiffs (Doc. 405 at 102), acknowledged Plaintiffs’ Complaint had requested an award of reasonable attorneys’ fees and costs (Doc. 1 at 104), and, pursuant to Rule 54(d), Mont. R. Civ. P., ordered Plaintiffs to submit

their motion for attorneys' fees and costs and documentation in support thereof by August 28, 2023.

Thereafter, the Parties requested a status conference with the Court at which time their respective counsel represented they had conferred and agreed that there is no just reason for delay in this Court certifying as final for purposes of interlocutory appeal its Findings of Fact, Conclusions of Law, and Order filed August 14, 2023 (Doc. 405), together with the Court's prior Orders ancillary thereto and referenced therein, and staying the issue of entitlement to and amount of attorneys' fees and costs. On August 24, 2023, Plaintiffs filed an Unopposed Motion for Extension of Time to File Attorneys' Fees and Costs (Doc. 406), requesting an extension of time to file the attorneys' fees and costs motion and supporting documentation and to allow time for the Parties to draft and submit a joint motion for certification of the Court's orders for interlocutory appeal. The Court granted Plaintiffs' Unopposed Motion on August 25, 2023. (Doc. 408).

On September 7, 2023, Plaintiffs filed their unopposed motion for an order certifying the Court's Findings of Fact, Conclusions of Law, and Order filed August 14, 2023, (Doc. 405), together with the Court's prior Orders ancillary thereto and referenced therein, as final for purposes of interlocutory appeal, and for an order staying the issues of Plaintiffs' claimed entitlement to and amount of attorneys' fees and costs pending the Montana Supreme Court's ruling on the merits of the interlocutory appeal. Thereafter, Defendants filed their Response to Plaintiffs' motion for certification setting forth their reasons in support of certification and submitting their own proposed Order.

## ANALYSIS

The Parties maintain that an order from this Court certifying its August 14, 2023 Order (Doc. 405), together with the Court's prior Orders ancillary thereto and referenced therein, excluding only the issues of entitlement to and amount of attorneys' fees and costs, as final for purposes of interlocutory appeal furthers judicial economy by permitting swift and efficient adjudication of the merits in this case of statewide concern without expending the further time and resources that could attend the determination of Plaintiffs' request for attorneys' fees and costs.

The Parties further assert that there is no just reason for the Court's delay in certifying the otherwise interlocutory August 14, 2023 Order (Doc. 405), together with the Court's prior Orders ancillary thereto and referenced therein, excluding only the issues of entitlement to and amount of attorneys' fees and costs, as final for purposes of interlocutory appeal under Rule 54(b)(1), Mont. R. Civ. P. The Parties argue that, given the constitutional issues of statewide concern presented here, and after a balancing of the competing factors, it is in the interest of sound judicial administration and public policy for the Court to certify these orders as final for purposes of interlocutory appeal.

In addition, the Parties argue that prompt interlocutory review of the merits of this case by the Montana Supreme Court is necessary given other cases currently pending before the Supreme Court present overlapping legal questions and related issues. The Parties believe that timely resolution of the merits, and delayed resolution of Plaintiffs' claimed entitlement to and amount of attorneys' fees and costs, will best serve the Parties and the litigants of related cases, and will advance the interests of sound public policy and judicial economy. *See, Montana Env't Info. Ctr. v. Montana Dep't of Env't Quality*, DA 23-0225 (appeal docketed April 17, 2023)

(involving the constitutionality of the MEPA Limitation, § 75-1-201(2)(a), MCA); *Forward Montana v. State*, DA 22-0639 (appeal docketed November 14, 2022) (involving the availability of attorneys’ fees under the Private Attorney General Doctrine and Uniform Declaratory Judgments Act, § 27-8-313, MCA, against the State); and *Barrett v. State*, DA 22-0586 (appeal docketed October 13, 2022) (involving availability of attorneys’ fees under the Private Attorney General Doctrine and whether § 25-10-711(1)(b), MCA, is applicable when fees are sought pursuant to the Private Attorney General Doctrine).

**A. The Court concludes that no just reason exists to delay the Montana Supreme Court’s consideration of the merits**

Having reviewed Plaintiffs’ Unopposed Motion, Defendants’ Response and the *Roy* factors, the Court agrees this is the “infrequent harsh case” meriting a favorable exercise of discretion and certification. *Kohler v. Croonenberghs*, 2003 MT 260, ¶ 16, 317 Mont. 413, 77 P.3d 531. There is no denying this case presents constitutional issues of statewide concern. The Court’s August 14, 2023 Order (Doc. 405) and prior Orders made several rulings on a range of important constitutional issues and questions.

The Court’s August 14, 2023 Order (Doc. 405) made findings of fact and conclusions of law that relate directly to several of Montanans’ fundamental rights, and in particular their right to a clean and healthy environment under Article II, Section 3, and Article IX, Section 1, Montana Constitution. The Court’s August 14, 2023 Order (Doc. 405), struck down as facially unconstitutional § 75-1-201(2)(a), MCA, and § 75-1- 201(6)(a)(ii), MCA, and permanently enjoined their enforcement, thereby affecting the environmental review process for Montana’s regulatory agencies and regulated industry.

The Court agrees with the Parties that it is in the interest of sound judicial administration and public policy to certify the judgment as final and that there is no just reason for delay in

doing so—particularly considering other cases currently pending before the Montana Supreme Court presenting overlapping legal questions and related issues. The Court agrees with the Parties that timely resolution of the merits and delayed resolution of Plaintiffs’ claimed entitlement to and amount of attorneys’ fees and costs will best serve the Parties, the litigants of related cases, and judicial economy. *See Montana Env’t Info. Ctr. v. Montana Dep’t of Env’t Quality*, No. DA 23-0225 (appeal docketed April 17, 2023) (involving the constitutionality of the MEPA Limitation, § 75-1-201(2)(a), MCA); and *Forward Montana v. State*, No. DA 22-0639 (appeal docketed November 14, 2022) (involving the availability of attorneys’ fees under the Private Attorney General Doctrine and Uniform Declaratory Judgments Act, § 27-8-313, MCA, against the State).

**B. The Court concludes that Plaintiffs’ unopposed motion satisfies the five-factor test utilized by the Montana Supreme Court**

The Parties set forth distinct yet complementary reasons for seeking certification on the basis of which the Court concludes the Parties have carried their burden of establishing the presence of the factors considered for a Rule 54(b) certification. *Roy*, 188 Mont. at 87, 610 P.2d at 1189.

**1. The relationship between the adjudicated and unadjudicated claims**

Analyzing the *Roy* factors, Plaintiffs contend the relationship between the adjudicated and unadjudicated claims is not such that they must be heard together on appeal because the sole remaining unadjudicated claim in this case is Plaintiffs’ request for attorneys’ fees and costs—the adjudication of which is not necessary, essential, or relevant to the merits of Plaintiffs’ constitutional claims, except insofar as they will be affected by the Supreme Court’s decision on the merits. The Court agrees.

**2. The possibility that the need for review might or might not be mooted by future developments in the district court**

Plaintiffs further submit there is no possibility that the need for review might be mooted by future developments in this Court. Again, the Court agrees. The merits of the substantive claims have been fully adjudicated.

**3. The possibility that the reviewing court might be obliged to consider the same issue a second time**

If certification is granted, there is no possibility the Montana Supreme Court will have to consider the same issue a second time. To the contrary, there is a significant possibility that the Montana Supreme Court might be obliged to consider the fundamental constitutional issues raised in this case for a second time based on similar claims raised in other cases currently pending on appeal. *See Montana Env't Info. Ctr. v. Montana Dep't of Env't Quality*, No. DA 23-0225 (appeal docketed April 17, 2023).

**4. The presence or absence of a claim or counterclaim which could result in a set-off against the judgment sought to be made final**

The record before the Court demonstrates there are no claims or counterclaims which could result in a set-off against the judgment sought to be made final because all of the claims the Parties seek to certify are declaratory or injunctive in nature. The issue of Plaintiffs' claimed entitlement to and amount of attorneys' fees and costs have no bearing on the outcome of the underlying merits claims.

**5. Prudential reasons support entering a Rule 54(b) certification order**

The Court recognizes that a broad array of individuals and entities have an interest in the expeditious consideration of the merits of this case by the Montana Supreme Court. The Court is satisfied the Parties' requested certification and stay would further judicial economy and public policy by allowing the constitutional issues raised here, which are all but guaranteed to

recur, to proceed on appeal while the Montana Supreme Court clarifies the law of attorneys' fees under the Private Attorney General Doctrine and Uniform Declaratory Judgments Act in Montana. *See Forward Montana v. State*, No. DA 22-0639 (appeal docketed November 14, 2022); *see also Barrett v. State*, No. DA 22-0586 (appeal docketed October 13, 2022) (concerning availability of attorneys' fees under the Private Attorney General Doctrine).

In sum, having weighed the various factors set forth in *Roy* and considered the Parties' mutual interest in obtaining rulings, this Court expressly determines there is no just reason for delay in certifying as final for purposes of interlocutory appeal pursuant to Rule 54(b), Mont. R. Civ. P. and Rule 6(6), Mont. R. App. P., its August 14, 2023 Order (Doc. 405), together with the Court's prior Orders ancillary thereto and referenced therein, excluding only the issues of Plaintiffs' entitlement to and amount of attorneys' fees and costs. The Court has balanced the competing factors present in this case and has determined it is in the interest of sound judicial administration and public policy to certify these specific rulings, which involve fundamental constitutional issues of statewide import.

FOR GOOD CAUSE SHOWN,

The following rulings, all of which are conclusions of law, declarations of rights, and invalidation of statutes, are certified as final and suitable for appeal:

**Order dated August 14, 2023 (Doc. 405)**

1. Finding in favor of Plaintiffs on all remaining claims.

**Order dated August 4, 2021 (Doc. 46)**

1. Granting Defendants' Motion to Dismiss (Doc. 11) with respect to Requests for Relief # 6, 7, 8, and 9; and



2. Denying Defendants' Motion to Dismiss (Doc. 11) with respect to Requests for Relief # 1, 2, 3, 4, and 5.

**Order dated June 30, 2022 (Doc. 158)**

1. Clarifying that Plaintiffs' Request for Relief No. 5 was not dismissed by Doc. 46.

**Order dated September 22, 2022 (Doc. 217)**

1. Holding that Plaintiffs' surviving Requests for Relief do not violate the political question doctrine and are justiciable controversies.

**Order dated October 14, 2022 (Doc. 225)**

1. Denying Defendants' Rule 35(a) Motion for Independent Medical Examination or, in the Alternative, Motion to Strike Opinions and Testimony of Dr. Lise Van Susteren (Doc. 162).

**Order dated May 23, 2023 (Doc. 379)**

1. Granting Defendants' Motion to Partially Dismiss for Mootness (Doc. 339) as to Plaintiffs' claims concerning the State Energy Policy, § 90-4-1001(1)(c)-(g), MCA, (repealed March 16, 2023, via HB 170); and
2. Denying Defendants' Motion for Summary Judgment (Doc. 290).

**Order dated June 1, 2023 (Doc. 381)**

1. Denying Defendants' Motions in Limine Nos. 2 and 3.

**Order dated June 7, 2023 (Doc. 384)**

1. Denying Defendants' Motion to Dismiss MEPA Claims (Doc. 376).

IT IS FURTHER ORDERED that the issues of Plaintiffs' claimed entitlement to and amount of attorneys' fees and costs are hereby STAYED pending the Montana Supreme Court's ruling on the merits of the interlocutory appeal. Should the Montana Supreme Court decline to enter an order allowing the interlocutory appeal to proceed pursuant to Rule 4(4)(b), Mont. R.

App. P., Plaintiffs shall file their motion for attorneys' fees and costs and supporting documentation with this Court within fourteen (14) days of the date of the Montana Supreme Court's order declining to allow the appeal to proceed.

IT IS SO ORDERED.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

**ELECTRONICALLY SIGNED AND DATED BELOW**

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## CERTIFICATE OF SERVICE

I, Michael D. Russell, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Answer Brief to Motion to the following on 09-13-2023:

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Electronically signed by Dia Lang on behalf of Michael D. Russell

Dated: 09-13-2023