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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-2020-307</p> <p>Hon. Kathy Seeley</p> <p>PLAINTIFFS' UNOPPOSED MOTION TO COMPLETE THE HELD v. STATE OF MONTANA RECORD</p>
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INTRODUCTION

Pursuant to Montana Rule of Appellate Procedure 8(6), Plaintiffs file this Unopposed Motion to Complete the *Held v. State of Montana* Record. During Plaintiffs' review of the record currently before the Supreme Court, Plaintiffs noticed that the Supreme Court only has partial copies of some of the exhibits that are part of the trial record. The incomplete exhibits in the record before the Supreme Court are: P23, P37, P82, P223, P224 to P229, P231 to P260, and P262 to P301. This is the only part of the record that is incomplete.

Plaintiffs bring this motion to complete the record to ensure the Supreme Court has a complete copy of all the exhibits that are part of the trial record. Specifically, Plaintiffs request that the District Court transmit a complete copy of the aforementioned exhibits to the Montana Supreme Court. To accomplish this, Plaintiffs are prepared to submit to this Court a thumb drive containing a complete copy of exhibits P23, P37, P82, P223, P224 to P229, P231 to P260, and P262 to P301 for this Court to transmit to the Supreme Court to be included in the *Held v. State of Montana* record.

Plaintiffs have conferred with Defendants, and Defendants do not oppose Plaintiffs' Motion to Complete the *Held v. State of Montana* Record.

STANDARD

Montana Rule of Appellate Procedure 8(6) provides in pertinent part that:

If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the district court, on motion of a party or upon its own motion, either before or after transmission of the record to the supreme court, may order that the omission or misstatement be corrected and, if necessary, that a supplemental record be certified and transmitted.

M. R. App. P. 8(6). Montana Rule of Appellate Procedure 8(6) clearly provides that the District Court may supplement the Supreme Court record upon motion by a party, even after the record has been transmitted.

RELEVANT BACKGROUND

This Court held a seven-day trial from June 12 to June 20, 2023, during which the Court admitted one hundred and sixty-eight of Plaintiffs' exhibits and four of Defendants' exhibits. Doc. 405 at 9. Additional exhibits were offered but not admitted. Prior to the commencement of trial, counsel for Plaintiffs presented the Court and Defendants with physical binders containing the exhibits Plaintiffs planned to introduce at trial. Some of the exhibits contained in the binders only included the first few pages of the exhibits due to the voluminous length of the documents. Counsel for Plaintiffs provided the Court and Defendants with complete copies of all the exhibits in the binders in an electronic format, including complete copies of the exhibits for which only the first few pages were included in the physical binders. Counsel for Plaintiffs emailed the Court and Defendants an electronic copy of the exhibits on June 9, 2023. See Exhibit A. Defendants also received the exhibits during discovery, and did not object to receiving complete copies of the voluminous trial exhibits in an electronic format.

Complete copies of the following exhibits were moved into evidence at trial even though the physical binders only contained the first few pages of the exhibits: P23, P37, P82, P223, P224 to P229, P231 to P260, and P262 to P301. Plaintiffs did not include full copies of these exhibits in the physical binders given their voluminous length – in total these exhibits are approximately 8,500 pages. All of these exhibits were admitted into the record, with the exception of P37 which was refused. Doc. 392 (admitting P82); Doc. 394 (P37 offered and refused); Doc. 398 (admitting P224, P225, P226, P227, P228, P229, P231, P232, P236, P238, P244, P247, P248, P250, P252, P253,

P254, P257, P259, P260, P262, P263, P264-P301); Doc 399 (admitting P23, P223, P233, P234, P235, P237, P239, P240, P241, P242, P243, P245, P246, P249, P251, P255, P256, P258). The exhibits admitted into evidence were admitted in full. *Compare* Doc. 391 (admitting in part P45 and P116).

With the exception of P244,¹ each of these admitted exhibits were cited to and relied on in this Court's August 14th Order. *See* August 14 Order at 19 (citing P23); *id.* at 40 (citing P82); *id.* at 19 (citing P223); *id.* at 72 (citing P262, P263); *id.* at 74 (citing P224-P226, P229, P231, P232, P237); *id.* at 77 (citing P227, P236, P238, P243, P245, P247, P248, P250, P252, P253, P255-P260, P264); *id.* at 78 (citing P254); *id.* at 79 (citing P228, P233-P235, P239-P242, P246, P249, P251, P264-P301).

On September 18, 2023, this Court certified its August 14 Order, as well as several ancillary orders, as final for purposes of interlocutory appeal. Doc. 417. On September 29, 2023, Defendant State of Montana filed its notice of appeal to the Montana Supreme Court. Docs. 418, 420. On October 2, 2023, Defendants Governor Greg Gianforte, Department of Environmental Quality, Department of Natural Resources and Conservation, and Department of Transportation filed a separate notice of appeal to the Montana Supreme Court. *Held v. State of Montana*, DA 23-0575, Notice of Appeal (Mont. Sup. Ct. Oct. 2, 2023). On October 17, 2023, the Supreme Court accepted this Court's certification order and "ordered that this appeal may proceed." *Held v. State of Montana*, DA 23-0575, Order, *2 (Mont. Sup. Ct. Oct. 17, 2023).

On November 7, 2023, the parties received notice from the District Court that the trial exhibits had been transmitted to the Montana Supreme Court. Doc. 430. Also on November 7,

¹ This is the 1971 version of MEPA. Even though P244 was not cited to in the Court's August 14 Order, it is still part of the trial record.

2023, the parties received notice from the Supreme Court that “1-Very Large Box” containing exhibits was received by the Supreme Court. *Held v. State of Montana*, DA 23-0575, Notice of Filing (Mont. Sup. Ct. Nov. 7, 2023). Neither the District Court nor the Supreme Court notices described the contents of the box of exhibits transmitted. On November 15, 2023, the parties received notice from the Supreme Court that the electronic District Court record had been received by the Montana Supreme Court. Doc. 431.

DISCUSSION

After receiving notices from the Supreme Court and the District Court that the exhibits and record had been transmitted to the Supreme Court, counsel for Plaintiffs went to the Supreme Court to review the contents of the record and ensure it was complete. Upon review of the record, Plaintiffs’ counsel realized that the record currently before the Supreme Court contains only the partial copies of exhibits P23, P37, P82, P223, P224 to P229, P231 to P260, and P262 to P301 that were contained in the physical binders. The Supreme Court does not have complete copies of these exhibits in either physical or electronic format.

Exhibits P23, P37, P82, P223, P224 to P229, P231 to P260, and P262 to P301 are clearly material to the pending appeal given the Court’s citation to and reliance on them in the August 14 Order. The exhibits are also relied on by Plaintiffs’ experts in their trial testimony. To ensure the Supreme Court has a complete copy of all the exhibits that are part of the trial record, exhibits that are material and were relied on by the Court in its August 14 Order and by Plaintiffs’ experts, Plaintiffs request that, consistent with Montana Rule of Appellate Procedure 8(6), the District Court transmit complete copies of P23, P37, P82, P223, P224 to P229, P231 to P260, and P262 to P301 to the Supreme Court. Plaintiffs are prepared to present this Court with a physical thumb drive containing a complete electronic copy of exhibits P23, P37, P82, P223, P224 to P229, P231

to P260, and P262 to P301.² Plaintiffs request that the District Court would then transmit the thumb drive, containing a complete copy of exhibits P23, P37, P82, P223, P224 to P229, P231 to P260, and P262 to P301, to the Montana Supreme Court to complete the *Held v. State of Montana* record before the Supreme Court.

CONCLUSION

For the foregoing reasons, and to ensure the Supreme Court has a full and complete copy of all exhibits in the record for Defendants' ongoing appeal, Plaintiffs respectfully request that the District Court complete the Supreme Court record by transmitting a thumb drive, to be provided by Plaintiffs, containing a complete copy of exhibits P23, P37, P82, P223, P224 to P229, P231 to P260, and P262 to P301 to the Supreme Court. Plaintiffs submit that this is the most efficient method to transmit this part of the record. If the District Court would prefer Plaintiffs to print complete physical copies of exhibits P23, P37, P82, P223, P224 to P229, P231 to P260, and P262 to P301, which would amount to roughly 8,500 pages, Plaintiffs are willing to do that, in addition to providing a complete copy of the exhibits on the thumb drive. Transmittal of a complete copy of the aforementioned exhibits will complete the record before the Supreme Court. A proposed Order is submitted herewith.

RESPECTFULLY SUBMITTED this 1st day of December, 2023.

/s/ Barbara Chillcott
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² Plaintiffs are simultaneously serving a copy of the exhibits to Defendants.

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EXHIBIT A

Case: DV-25-2020-0000307-BF - Rikki Held, et al. vs. State of Montana, et al.

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Fri 6/9/2023 4:20 PM

To: Farrah Looney <flooney@lccountymt.gov>

Cc: Thane Johnson (Thane.Johnson@mt.gov) <thane.johnson@mt.gov>; Russell, Michael <michael.russell@mt.gov>; Roger Sullivan <rsullivan@mcgarveylaw.com>; Barbara Chillcott <chillcott@westernlaw.org>; Nate Bellinger <nate@ourchildrenstrust.org>; Lang, Dia <Dia.Lang@mt.gov>; Susan Carey <susan@ourchildrenstrust.org>

Farrah,

Plaintiffs will bring a complete set of Plaintiff's proposed exhibits for the Court on Monday morning in three ring binders. A few of Plaintiffs' exhibits were lengthy, some exceeding 350 pages. In order to save resources and space, only the cover page will be provided in hardcopy for these documents. Complete copies of all of Plaintiffs' exhibits, along with Plaintiffs' Updated Exhibit List (just filed) can be found here: <https://ourchildrenstrust.sharefile.com/f/foee5a7f-85cd-4c75-b20d-c2f0dd4ec7cd>

The Updated Exhibit List removes numerous exhibits from the original list and indicates that many issues concerning objections have been resolved with the cooperation of Defendants.

Due to the size of these files, you will receive an invitation from ShareFile, a secure file sharing system momentarily. You will need to follow that link first to create a login before you can download the files. Please let me know if you need any assistance with accessing the electronic files.

Finally, we also will be providing the binders and the link to counsel for Defendants.

Regards,

Phil

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CERTIFICATE OF SERVICE

I, Barbara L Chillcott, hereby certify that I have served true and accurate copies of the foregoing Motion - Motion to the following on 12-01-2023:

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Dated: 12-01-2023