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Clerk, U.S. District Court
District of Montana
Great Falls Division

Attorneys for Montana Petroleum Association, Treasure State Resources
Association, Montana Association of Oil Gas and Coal Counties, and Montana
Contractors Association

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS

NORTHERN PLAINS RESOURCE
COUNCIL, et al.,

Plaintiffs,

v.

U.S. ARMY CORPS OF ENGINEERS, et al.,
Defendants,

TC ENERGY CORPORATOIN, et al.

Intervenor/Defendants,

STATE OF MONTANA,

Intervenor/Defendant,

AMERICAN GAS ASSOCIATION, et al.,

Intervenor/Defendants.

Case No. CV 19-44-GF-BMM

**MOTION OF MONTANA
PETROLEUM
ASSOCIATION, TREASURE
STATE RESOURCES
ASSOCIATION, MONTANA
ASSOCIATION OF OIL GAS
AND COAL COUNTIES,
AND MONTANA
CONTRACTORS
ASSOCIATION FOR LEAVE
TO FILE AMICUS BRIEF
LOCAL RULE 7.5**

INTRODUCTION

The Montana Petroleum Association (“MPA”), the Treasure State Resources Association (“TSRA”), the Montana Association of Oil Gas and Coal Counties (“MAOGCC”), and the Montana Contractors Association (“MCA”) (hereinafter collectively referred to as the “MT Trade Groups”) move the Court pursuant to Local Rule 7.5 for leave to file an amicus curiae brief in support of Defendant the United State Army Corps of Engineers (“Corps”) et al., as well as the Defendant-Intervenors. The State of Montana, the CWP 12 Coalition, and TC Energy/TransCanada do not oppose this motion. Counsel for The United States Army Corps of Engineers have indicated the Defendant does not oppose this motion unless this motion causes a delay in the litigation schedule. Plaintiffs have informed counsel for the MT Trade Groups that they reserve the right to oppose this motion.

Plaintiffs seek declaratory and injunctive relief arguing the Corps’ action of utilizing Nationwide Permit 12 (“NWP 12”) as approval for the Keystone XL Pipeline according to Section 404 of the Clean Water Act (“CWA”) is a violation of the CWA as well as the National Environmental Policy Act (“NEPA”). Plaintiffs seek a declaration from this court that NWP 12 is facially unenforceable across the country for all projects and uses.

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AMICUS STANDARD

Although there is no federal rule or statute governing participation by amicus curiae at the district court level, *see United States v. Gotti*, 755 F. Supp. 1157, 1158 (E.D.N.Y 1991), a federal district court has the inherent authority to invite participation by amicus curiae to assist the court in its proceedings. *United States v. Louisiana*, 751 F.Supp. 608, 620 (E.D. La. 1990). The decision to invite or accept participation by an amicus is solely within the discretion of the court. *Id.* Generally, courts have exercised great liberality in permitting an amicus curiae to file a brief in a pending case and there are no strict prerequisites that must be established prior to qualifying for amicus status; one seeking to appear as amicus must merely make a showing that his participation is useful to or otherwise desirable by the court. *Id.*

While there is no generally applicable Federal Rule of Civil Procedure regarding participation of an amicus, Local Rule of Procedure 7.5(2)(b) provides that a motion for leave to file as an amicus must:

- (A) comply with L.R. 7.1(b) and (c) and be limited to 3250 words;
- (B) include, if the amicus is a corporation, a disclosure statement like that required of parties by Fed. R. Civ. P. 7.1(a);
- (C) state why the amicus is interested in the matter; and
- (D) state why an amicus brief is desirable and relevant, including why the parties cannot adequately address the matter.

STATEMENT OF INTEREST

The MPA is a statewide non-profit voluntary trade association with its offices located in Helena, Montana. The MPA consists of more than 150 diverse members, including “upstream,” “midstream,” and “downstream” companies operating in the petroleum industry.¹ The MPA’s membership includes other businesses that participate in the petroleum industry in some fashion. The MPA’s mission is to maintain a positive business climate for Montana’s petroleum industry, and foster public awareness of its many economic and ecological contributions to the state and nation. The MPA aims to be the premier voice in Montana’s oil and gas industry, particularly on land use and environmental policy. MPA members of all types regularly utilize and depend upon the facilities across the nation constructed pursuant to NWP 12 and predecessor permit programs. For MPA members, this concern is primarily petroleum transportation facilities serving the Montana petroleum industry and providing MPA members with access to markets across the state and nation. However, MPA members also depend upon other uses of NWP 12 including electrical facilities, non-pipeline transportation corridors, and water facilities. The Plaintiffs seek to prohibit and invalidate each

¹ “Upstream” refers to companies engaged in the activities of exploration, production, and capture of crude petroleum; “midstream” refers to companies engaged in the transportation of crude petroleum from point to point; and “downstream” refers to companies engaged in the refining and distribution of petroleum products.

and every instance of NWP 12's use across the county regardless of purpose, use, and actual environmental impact. That the plaintiffs seek to invalidate the entire NWP 12 permit program has the potential to hamper MPA members' access to markets across the nation and to significantly harm the petroleum industry and MPA members. Without NWP 12, projects to install and maintain pipelines and other infrastructure necessary to the transportation and refining of petroleum products would be delayed and more costly.

MPA members rely upon the installation, maintenance, and operation of the numerous pipelines and other facilities across the United States for the success of their businesses. MPA is in a unique position, not otherwise occupied by any of the parties in the lawsuit, to communicate to the court regarding the importance of these facilities and NWP 12 to the Montana petroleum industry as a whole. Neither the Corps, individual companies, the NWP 12 Coalition, nor the State of Montana are in a position to argue on behalf of the broader Montana petroleum industry. If NWP 12 is invalidated nationwide, a wide swath of MPA members, and not just individual companies, will be negatively impacted. Significant economic interests that impact far more than individual companies are at stake.

The MAOGCC is a Montana non-profit corporation composed of 34 Montana counties and a number of Montana municipalities, Montana school districts, and resource industry representatives. Much of the taxes supporting the

individual government entities constituting the MAOGCC come directly from natural resource and related industries that rely upon NWP 12 to construct and maintain energy related infrastructure. Additionally, the individual members of the MAOGCC have a strong interest in seeing that the individuals, businesses, and schools within their jurisdictions have reliable and affordable access to water and power. Companies regularly operating in the counties constituting MAOGCC regularly use NWP 12 permits to install infrastructure providing services to the people, businesses, and institutions located in the MAOGCC jurisdictions. MAOGCC is in a unique position to communicate to the court about the importance of NWP 12 to jurisdictions constituting the MAOGCC.

TSRA is a statewide, non-profit trade association with its office located in Helena, Montana. TSRA was formally incorporated as a Montana non-profit corporation in 1976. TSRA currently represents approximately 89 members, many of whom conduct or work for large industrial or agricultural operations in Montana. TSRA's membership includes labor unions, small and large industrial operations, as well as mining, forest, and agricultural operations. TSRA's mission is to provide information about the potential impact of proposed legislative and regulatory changes to members, elected officials, and the public; to develop coalitions to engage in legislative or regulatory developments important to members; and to provide a vehicle to help members be informed and involved in

regulatory developments. The TSRA, with its broad and varied membership including agriculture, unions, and industrial operations offers a unique perspective of the importance of NWP 12 to the broader economy of Montana.

The MCA is a non-profit trade association formed under the laws of the State of Montana with its offices located in Helena, Montana. The MCA is the Montana chapter of the Associated General Contractors of America. MCA's members consist entirely of construction companies and contractors operating in the State of Montana. The MCA's mission is to advocate for the construction industry, provide training and support to member contractors, and to work closely with government organizations on contractor issues. MCA members are regularly hired to construct the infrastructure and facilities that are installed pursuant to NWP 12. If NWP 12 is invalidated as is sought by the plaintiffs, MCA members stand to lose significant revenue due the cancelation or delaying of infrastructure projects that would have otherwise been realized.

**ISSUES ON WHICH THE MT TRADE GROUPS WISH TO SUBMIT AN
AMICUS BRIEF**

The MT Trade Groups wish to brief the court on arguments regarding the propriety of the Corps' actions, the numerous petroleum and non-petroleum facilities installed under NWP 12 relied upon by the MT Trade Groups and their partners and communities across the state and country, and the impact NWP 12


facilities have on Montana businesses, communities, and the economy writ large. The MT Trade Groups also wish to brief the court in regards to the importance and impact NWP 12 has upon the future operation and maintenance of already installed and operating facilities.

TIMING

If leave of this Court is granted, the MT Trade Groups are prepared to file their Amicus Curiae brief within two days of this Court granting such leave.

DATED this 21st day of February, 2020.


BROWNING, KALECZYC, BERRY & HOVEN, P.C.

By 
Brian P. Thompson

Attorneys for Montana Petroleum Association, Treasure State Resources Association, Montana Association of Oil Gas and Coal Counties, and Montana Contractors Association

CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7.1(d)(2)(E), I certify that **MOTION OF MONTANA PETROLEUM ASSOCIATION, TREASURE STATE RESOURCES ASSOCIATION, MONTANA ASSOCIATION OF OIL GAS AND COAL COUNTIES, AND MONTANA CONTRACTORS ASSOCIATION FOR LEAVE TO FILE AMICUS BRIEF LOCAL RULE 7.5**, is double spaced, is a proportionately spaced 14 point typeface, and contains 1,428 words.



Brian P. Thompson

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of February, 2020, a true copy of the foregoing was served by first-class mail, postage prepaid to the following parties:

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