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**MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY**

CITIZENS FOR A BETTER FLATHEAD,
a Montana Nonprofit Corporation; NORTH
SHORE WATER ALLIANCE, a Montana
Nonprofit Corporation; ELLA THREE,
LLC, a Montana Limited Liability
Company; and BRUCE YOUNG,
individually,

Petitioners,

v.

MONTANA DEPARTMENT OF
NATURAL RESOURCES AND
CONSERVATION,

Respondent,

and

LAKESIDE COUNTY WATER &
SEWER DISTRICT,

Intervenor.

Cause No.: BDV-2026-211

**ORDER ON PENDING
MOTIONS**

1 Objections to Application No. 76LJ 30165067 by [Intervenor] incorrect
2 and incomplete, thereby wholly or partially terminating Petitioners’
3 ability to participate in the contested case proceedings provided under
4 Title 2 Chapter 4 Part 6, MCA and Section 85-2-309, MCA.

5 2. Petitioners bring this case to protect its and its members’ interests in
6 the fundamental right to participate in agency decision-making, due
7 process of water users, and the lawful administration of Montana’s water
8 resources.

9 3. This case challenges [Respondent’s] decision to wholly deny certain
10 Petitioners’ objections to [Intervenor’s] Application No. 76LJ 30165067
11 and completely exclude [the] Petitioners from participating in the
12 administrative process despite meeting the standing requirements under §
13 85-2-308(4), MCA.

14 4. This case also challenges [Respondent’s] decision to arbitrarily deny
15 portions of certain Petitioners’ objections to [Intervenor’s] Application
16 No. 76LJ 30165067 and severely limit their participation in the
17 administrative process to the permit criteria they deemed “correct and
18 complete” under ARM 36.12.117.

19 5. This case further challenges the validity of ARM 36.12.117(11)’s
20 objection deficiency response deadline of 15 business days for violating
21 water users’ due process rights to participate in the permitting process.

22 6. Finally, this case challenges [Respondent’s] arbitrary and capricious
23 determination that Petitioner CBF did not have standing to assert its
24 objections to the §85-2-311 permit criteria and participate in the
25 contested case proceedings.

Petitioners requested the following relief:

A. Determine and declare that [Respondent’s] final decision to terminate
Petitioners’ objections and deny their participation in the contested case
proceedings was and is unlawful, arbitrary and capricious;

1 B. Determine and declare that the [Respondent’s] denial and termination
2 of Petitioners’ objections as applied to their participation in the
3 permitting of Beneficial Water Use Permit No. 76LJ-
4 3016507 infringes on Petitioners and their members constitutional and
5 statutory right to know and participate as plead herein;

6 C. Reinstate all of Petitioners’ objections and allow them to participate in
7 the administrative proceedings Before the Department of Natural
8 Resources and Conservation of the State of Montana In the Matter of
9 Application For Beneficial Water Use Permit No. 76LJ 30165067 By
10 [Intervenor];

11 D. Award Petitioners their reasonable fees, costs, and expenses, including
12 attorney’s fees, associated with this litigation, under the Uniform
13 Declaratory Judgements Act, the Private Attorney General Doctrine, as
14 otherwise provided by Montana law; and

15 E. Grant Petitioners such additional relief as the Court may deem just and
16 proper.

17 **FACTUAL BACKGROUND¹**

18 44. On April 3, 2025, Lakeside County Water and Sewer District
19 submitted its Application for Beneficial Water Use No. 76LJ 30165067
20 (the “Application”) to the Kalispell Regional Office of the DNRC.

21 45. The Application proposes to divert groundwater at 430 GPM up to
22 249.42 AF annually from two existing production wells². The proposed
23 appropriation is to serve a resort development and private golf course of
24 over 350 dwellings south of Lakeside, that includes commercial uses for
25 associated amenities including a restaurants/bar, club house, spa, fitness
and maintenance facilities. Ex. B.

46. On August 6, 2025, DNRC provided notice of opportunity to provide
public comments on the Application and Petitioners submitted their
comments by the September 5, 2025, deadline.

¹ As asserted in the Petition.

² The two production wells were drilled in 2007 but, as the Court understands, were never put into beneficial use.

1 47. Petitioners raised comments on the Application’s permit criteria as it
2 related to physical availability, legal availability, adverse effect,
3 beneficial use, possessory interest water quality and effect on effluent.

4 48. The DNRC subsequently considered 11 out of the 14 public
5 comments in their updated Preliminary Determination and ultimately
6 “determined that no modifications to the analyses of whether the criteria
7 were met were required in response to the considered comments.” Ex. B,
8 PDG at 2.

9 49. On October 29, 2025, the DNRC noticed the period for submitting
10 objections to the updated PDG setting the deadline for November 28,
11 2025.

12 50. Petitioner CBF raised, among other issues, the following objections
13 to the Application:

14 **a. As it relates to physical availability, DNRC relied on an**
15 **outdated aquifer test to justify fluctuations in the pumping flow**
16 **rates and granting variances from the testing requirements of**
17 **ARM 36.12.121 and -123.**

18 The applicant requested and was granted a variance as the
19 applicant could not supply groundwater levels for PWS-2 for “at
20 least two days prior to the start of the 72-hour test on PWS-1.”
21 This variance does not provide reasoning for the fluctuations,
22 which are based on calculations from 2007. Moreover, PWS - 2
23 “had fluctuations of up to 9.4% from the average pumping rate of
24 160 gpm at the beginning of the test dated August 28, 2007.”...
25 DNRC calls this a “slight fluctuation,” but an increase of 4.4%
from the average pumping rate of 5%, when coupled with the
proposed 430 gpm all-inclusive pumping rate, can alter the
evidence of water volume availability and evaluation of the offsite
impacts.

Ex. C.

1 **b. DNRC mischaracterizes the availability of water in Flathead**
2 **Lake and ignores the trending impacts from climate change**
3 **and drought.**

4 [W]e object to the analysis provided by the preliminary
5 determination to grant (PDG) that Flathead Lake “is managed to
6 keep a full pool of water during the late spring and summer
7 months”... [and that] “records show that Selis Ksanka Qlispe
8 Dam's reservoir, Flathead Lake, consistently obtains a full pool
9 status each year.” However, Energy Keepers, Inc. which monitors
10 and operates the dam, in conjunction with federal sources, asserts
11 that the lake levels have been lower the past three years (2023,
12 2024, 2025) than traditionally, stating that the area has been
13 experiencing drought.

14 Ex. C.

15 **c. DNRC’s legal availability analysis fails to quantify surface**
16 **water sources previously considered hydraulically connected,**
17 **such as Stoner Creek and Forrey Creek.**

18 Moreover, the analysis claims that Stoner Creek is not
19 hydraulically connected to the Belt Supergroup source aquifer.
20 (Full Application, p. 41; Technical Analysis Report Part A, p. 21).
21 However, the LCWSD environmental assessment for water right
22 76LJ30063687 denotes "Stoner Creek is also hydraulically
23 connected to the fractured bedrock aquifer due to localized
24 structural features (faults) and stratigraphy." (LCWSD Water Right
25 76LJ3003687 EA (2013), p.2). DNRC should explain this
contradicting information...

The analysis concludes that there is limited site-specific evidence
available “that would indicate pumping from the proposed wells
would ultimately reduce discharge to Forrey Creek,” yet allowed a
variance on pump testing despite groundwater level information
availability being limited. (Id.) DNRC did not analyze Tacklin
Creek or provide justification for such lack, even as these were

1 brought up in objecting comments.

2 Ex. C at pp. 6-7.

3
4 **d. DNRC inexplicably excludes CSKT's reserved water rights in**
5 **their proposed year-round depletion calculations and legal**
6 **availability, while arbitrarily citing to the pending adjudication to**
7 **justify its lacking adverse effects analysis.**

8 DNRC acknowledges the CSKT's reserved water right claims, but
9 does not provide a calculation showing how the proposed year round
10 depletion of 131.2 GPM accruing to Flathead Lake affects
11 the specific flow requirements for downstream fisheries/habitat
12 and SKQ Dam requirements mandated by FERC Licenses No.5,
13 representing senior water rights claims. CSKT has senior water
14 rights claims as representatives of federal entities. DNRC has a
15 duty to analyze how these rights and their uses, identified in
16 treaties or otherwise, will not be harmed by the large appropriation
17 of water.

18 *Id.*

19 DNRC has not and likely will not consult with or provide
20 quantitative analysis of the CSKT water rights. The Department
21 provides only an assumption that the conclusion of the basin's
22 adjudication and water availability studies will be favorable to the
23 granting position it has taken on this water right. The Department does
24 little more than acknowledge a reservation of rights by the Tribe, but
25 does not provide further justification showing no adverse impact will
occur from such a grant.

Ex. C at 11.

e. Neither the applicant nor Department provided evidence or
analysis as to how the permit will be in substantial accordance
with the classification of water set for the source of supply...[Nor
have either] supplied information on the discharge permit
obtained by Lakeside County Water and Sewer District for the
wastewater treatment discharge plant.

1 Ex. C at 14.

2 51. This initial objection also included two expert Memorandums on the
3 hydrogeologic analysis and sufficiency of the associated Groundwater
4 Pollution Control Permit for [Intervenor] as it relates to water quality
5 impacts and an expert report on the ecological impacts, uncertainties and
6 risks (i.e. increased nitrogen and phosphorus to surface water) to the
7 underlying aquifer and proposed sewer district project receiving
8 wastewater from the proposed appropriation. Ex. D, E, and F. Likewise,
9 CBF's addendum to their objection cited to over twenty peer reviewed
10 articles and reports in support of their theories that the Application did
11 not meet the required permit criteria under § 85-2-311, MCA.

12 52. Similarly, Petition[er] Young objected to physical availability, legal
13 availability, adverse effect and water quality. See Ex. G. In his initial
14 objection, Young identified his two water rights as being affected,
15 including his surface water right 76LJ 21606900 on Stoner Creek.

16 53. On December 23, 2025, DNRC issued an Objection Deficiency
17 Notice to Petitioners CBF stating the following deficiencies in
18 Petitioner's objections:

19 a. As to standing, "[n]o water right numbers were provided, nor
20 was there an explanation of how the property rights would be
21 adversely affected if the permit were issued." Ex H.

22 b. Under physical availability, DNRC found that "[n]o facts were
23 provided to support the objector's statement that fluctuation of
24 the pumping rate invalidated the determination of physical
25 availability."

26 c. DNRC found that CBF's objections to the legal availability
27 analysis for Tacklin creek and Wiley slough failed to "provide
28 any facts or evidence to support the assertion that the
29 determination of depleted surface water sources is incorrect."

30 d. DNRC dismissed CBF's legal availability objections related to

1 CSKT's reserved rights as lacking clarity and requested
2 clarifying information about which water rights are being referred
3 to.

4 54. This letter indicated that Petitioner had only met the correct and
5 complete criteria for an objection to possessory interest permit criteria by
6 providing "facts showing the applicant does not have possessory interest
7 in the place of use." See Ex. H.

8 54. This letter indicated that Petitioner had only met the correct and
9 complete criteria for an objection to possessory interest permit criteria by
10 providing "facts showing the applicant does not have possessory interest
11 in the place of use." See Ex. H.

12 55. The DNRC found CBF's objection "did not include information
13 necessary for it to be considered correct and complete" and proceeded to
14 state that "objection materials must include an explanation of how the
15 facts provided support the objector's contention that the criteria have not
16 been met." The DNRC's letter did not identify or provide further
17 guidance on exactly what material would suffice to meet this evidentiary
18 threshold.

19 56. The DNRC found Young's objection did not provide facts or
20 evidence to support his assertions that the Application did not meet
21 physical availability, legal availability, adverse effect and water quality
22 criteria. DNRC specifically requested that Young provide a signature
23 as the original form had not been signed. Ex. I.

24 57. Petitioners NSWA and Ella Three also received Deficiency Letters
25 from the DNRC that found their objections were incomplete as it related
to physical availability, legal availability, adverse effect, adequacy of
diversion, beneficial use and water quality. See Exs J and K. DNRC's
validity ruling at this time found that Ella Three had provided facts
sufficient to show that applicant did not meet the possessory interest
requirement.

58. On January 23, 2026, Petitioners submitted supplemental responses to

1 DNRC.

2 59. On February 20, 2026, Petitioners received a Validity Ruling letter
3 from the DNRC stating that pursuant to ARM 236.12.117(9), CBF's
4 objection had included all the correct and complete criteria of -117(9)(a)-
5 (f) and (h), but had not met the standing requirement under sub (g), while
6 Young's validity form indicated that his objection had met (a)-(e), (g)
7 and (h), but had not provided facts indicating that the application does
8 not meet one or more of the applicable criteria in sub (f). See Exs. L and
9 M.

10 60. Despite finding CBF had a valid objection to the possessory interest
11 in its initial validity letter, the February 20, 2026, Validity Ruling now
12 indicated that CBF did not meet that permit criteria. Compare Ex. H at
13 pp. 4 v. Ex. L at pp. 2.

14 61. DNRC's validity ruling on CBF's objection only addressed the issue
15 of standing finding:

16 The objection states that Citizens for a Better Flathead have water
17 rights and property interests near the proposed appropriation. The
18 objection identified four water rights, but did not provide an
19 explanation of how these water rights would be adversely affected.
20 The objection states that Citizens for a Better Flathead have
21 general interests of water quality and preservation of members
22 across the valley but did not explain how members' water quality,
23 property rights, or interests would be adversely affected if the
24 permit were issued.

25 62. The DRNC's letter then proceeded to find that none of CBF's
objections were invalid because despite identifying four of their
members' water rights the objection "did not provide an explanation of
how these water rights would be adversely affect." See Ex. L. DNRC
concluded that Petitioner's objection did "not provide facts indicating a
injury to the property, water rights, and interest of Citizens for a Better
Flathead or members." See Ex. L.

1 63. NSWA and Ella Three were allowed to proceed and participate in the
2 contested case proceeding. NSWA participation was limited to
3 possessory interest criteria (Ex. O), while Ella Three received a valid
4 objection ruling for physical availability and possessory interest. Ex. N.

5 64. Despite physical availability being a component of legal availability
6 and adverse effects analysis, DNRC arbitrarily found that Ella Three had
7 established a valid objection to physical availability, but denied the
8 remaining objections to legal availability and adverse effects.

9 65. Notably, DNRC stated that, despite acknowledging cumulative
10 effects of growth and “known changes rebut the assumption that aquifer
11 parameters measured in 2007 for the fractured bedrock formation remain
12 representative today[,]” Ella Three’s adverse effect objection “does not
13 provide any evidence that the [DNRC’s] analysis or conclusions are
14 incorrect.” Ex. N.

15 **DISCUSSION**

16 **Stay Motion**

17 Petitioners seek a stay under Mont. Code Ann. § 2-4-702(3)
18 (702(3)). Specifically, they claim that “staying the administrative proceedings in
19 Application for Beneficial Water Use No. 76LJ 30165067 ... is necessary to
20 prevent potential for irreparable harm to [them] and the public, by violation of
21 constitutional rights, but also more pragmatically because the administrative case
22 is speeding towards trial without them.” They argue, in relevant part, that:

23 a stay must be issued to (1) protect Petitioners’ constitutional right to
24 participate in agency decision-making, (2) allow for Petitioners to protect
25 their rights under the Montana Water Use Act (“MWUA”) and Mont.
26 Const. Art. IX, § 3(3), and (3) to allow the agency to correct its errors of
27 law as demanded by the most basic principles of administrative
28 exhaustion.

29 Intervenor’s claim that Petitioners are not entitled to seek 702(3)

1 relief is absolutely without merit. A simple review of Petitioners’ Petition reveals
2 that they are seeking their requested judicial review relief under Mont. Code Ann.
3 2-4-702. Intervenor’s argument to the contrary is baseless.

4 In relevant part, 702(3) provides “the reviewing court may order a
5 stay upon terms that it considers proper following notice to the affected parties
6 and an opportunity for hearing . . .” Mont. Code Ann. 2-4-702(3) (2025). The
7 Montana Supreme Court addressed 702(3) in *Brackman v. Bd. of Nursing*, 250
8 Mont. 368, 820 P.2d 1314 (1991). There, in affirming the district court's decision
9 to stay enforcement of the Board's final order, the *Brackman* Court declined to
10 adopt factors or a test to guide district courts in deciding a motion for a stay
11 under 702(3). Instead, it explained:

12 Standards for judicial review of certain aspects of administrative
13 decisions are specifically set forth under § 2-4-704, MCA, but the
14 consideration of a motion for stay pending judicial review is not one of
15 the areas listed there. No authority is cited for the idea that the standards
16 for issuing preliminary injunctions apply. The legislature has not seen fit
17 to limit the discretion of the district courts in deciding motions for stays
under § 2-4-702(3), MCA. We decline to adopt the suggested restrictions
upon the discretion of district courts in deciding such motions.

18 *Id.*, 250 Mont. at 371. In this regard, it appears that the *Brackman* Court
19 specifically rejected applying the federal preliminary injunction test since it
20 would be repugnant to 702(3)’s legislative intent. As such, this Court will not
21 undertake such a “federal” review of Petitioners’ stay request. Notwithstanding,
22 however, the Court certainly understands that a stay of the underlying
23 administrative proceeding does not resolve the merits of Petitioner’s Petition. See
24 e.g., *Four Rivers Seed Co. v. Circle K Farms, Inc.*, 2000 MT 360, ¶ 12, 303
25 Mont. 342, 16 P.3d 342 (citing *Knudson v. McDunn*, 271 Mont. 61, 65, 894 P.2d

1 295, 298 (1995)). Certainly, it would be a manifest error for this Court to
2 determine the ultimate merits of this judicial review proceeding at this “stay”
3 stage. See e.g., *Yockey v. Kearns Props., LLC*, 2005 MT 27, ¶ 18, 326 Mont. 28,
4 106 P.3d 1185. (citations omitted) (emphasis added).

5 Instead, this Court, in exercising its 702(3) discretion, will analyze
6 Petitioner’s stay request as it would when considering a Rule 22(1)(a)(i), M.R.
7 App. P. stay request. See *City of Helena v Montana Public Policy Center et al.*,
8 Mont. 1st Jud. Dist., BDV 2026-154 (Order Denying Ms. Boldman’s Stay Motion
9 Pending Appeal) (May 27, 2026).

10 (1) whether the stay applicant has made a strong showing that [it] is likely to
11 succeed on the merits; (2) whether the applicant will be irreparably injured
12 absent a stay; (3) whether issuance of the stay will substantially injure the
13 other parties interested in the proceeding; and (4) where the public interest
lies.

14 *Id.*, p. 2 citing *State v. Philip Morris, Inc.*, 2007 Mont. Dist. Lexis 600, *3 (Mont.
15 1st Jud. Dist. (Dec. 11, 2007) (No. CDV-1997-306) (citing *Hilton v. Braunskill*,
16 481 U.S. 770, 776 (1987)).

17 Merits Success Inquiry

18 Based upon the present record, this Court agrees with Petitioners that
19 there appears to be significant and material factual and legal deficiencies
20 intertwined and connected with Respondent’s unilateral decision to forever
21 muzzle Petitioners’ public comments and objections (as well as participation in
22 the underlying contested case proceeding) to the updated Preliminary
23 Determination relative to Intervenor’s application. As such, Petitioners have
24 made a strong showing that they are likely to succeed on the merits in this
25 judicial review proceeding against Respondent and Intervenor³.

³ In determining the stay merits, this Court has no authority “to determine finally matters that may arise [in the
judicial review proceeding.” *Caldwell v Sabo*, 2013 MT 240, ¶ 19, 371 Mont. 328, 308 P.3d 81 (citing authority).

1 **Irreparable Injury Inquiry**

2 Based upon the present record, Petitioners have more than sufficiently
3 established that they (and others similarly situated) will be irreparably injured
4 and harmed (e.g. denial of participation in government is not capable of adequate
5 remedy) if a stay of the underlying contested case administrative proceeding is
6 not imposed.

7 **Substantial Injury to Other Parties Inquiry**

8 Based upon the present record, Respondent, and Intervenor will not be
9 substantially injured by a stay of the underlying contested case administrative
10 proceeding. Certainly, this Court has a duty to minimize injury or damage to
11 Petitioners, Respondent and Intervenor. *Porter v. K & S Partnership*, 192 Mont.
12 175, 182, 627 P.2d 836, 840 (1981) (“[I]t is the court’s duty to minimize the
13 injury or damage to all parties to the controversy.”). Staying
14 the administrative proceeding will, as Petitioners note, “promote judicial and
15 administrative economy for all (including Intervenor) by preventing the very
16 real threat the agency being required to hold multiple and duplicitous contested
17 case proceedings before the Hearing Examiner if Petitioners’ objections are
18 reinstated.” In addition, the fear by any party in having to undergo multiple
19 administrative hearings should Petitioners prevail on their Petition might be
20 abated.

21 While a stay may delay the underlying contested case proceeding,
22 such a delay will not substantially injure or harm Respondent or Intervenor. The
23 Court certainly understands and appreciates that Intervenor would like to proceed
24 as quickly as possible to getting shovels in the ground on its project.

Moreover, this Court’s stay analysis “‘is not intended to express and does not express any opinion about the ultimate merits’ of the underlying [contested administrative proceeding or this judicial review proceeding].” *Id.* (citing authority)

1 Notwithstanding, however, a stay will allow sufficient time for Petitioners to try
2 to remove the muzzle which Respondent allegedly placed on them. In this regard,
3 they attempted to enforce and protect substantial constitutional rights concerning
4 the updated Preliminary Determination relative to Intervenor’s application which
5 Respondent allegedly took heroic efforts to silence and/or ignore.

6 **Public Interest Inquiry**

7 Based upon the present record, the Court absolutely agrees with
8 Petitioners that there is significant public interests and rights at issue (e.g. public
9 participation in government is a fundamental constitutional right, and there are
10 concerns relative to constitutionally protected water rights) concerning the
11 updated Preliminary Determination relative to Intervenor’s application. There is
12 unquestionably tremendous and overwhelming public rights and interest at stake
13 in this proceeding.

14 **Stay Motion Order**

15 Based upon the present record and the reasons stated above, **IT IS**
16 **HEREBY ORDERED** that Petitioners’ Stay Motion must, and shall be,
17 **GRANTED.**

18 **IT IS FURTHER ORDERED** that pursuant to Mont. Code Ann. § 2-
19 4-702(3), the administrative proceedings in Application for Beneficial Water Use
20 No. 76LJ 30165067 are **HEREBY STAYED** pending the final decision
21 (including any Montana Supreme Court decision subject to Mont. Code Ann. §§
22 2-4-711(1) and/or 2-4-711(2)) on Petitioner’s Petition in this proceeding.

23 **Change of Venue Motion**

24 This Court agrees with Intervenor’s arguments that under Mont. Code
25 Ann. § 2-4-702(2)(e)(iii) Flathead County is the controlling venue for Petitioners’

1 Petition. Since only one petition was filed on behalf of multiple aggrieved
2 parties, the provisions of Mont. Code Ann. § 2-4-702(2)(ii) are not applicable
3 under controlling statutory interpretation principles despite Petitioners’
4 arguments to the contrary. Accordingly, the Eleventh Judicial District is the only
5 proper county for venue for this proceeding.

6 **Venue Motion Order**

7 Based upon the reasons stated above, **IT IS HEREBY ORDERED**
8 that Intervenor’s Change of Venue Motion must, and shall be, **GRANTED**.

9 **IT IS FURTHER ORDERED** that until, and if, an Eleventh Judicial
10 District Judge assumes this case, the undersigned will continue to preside over
11 this proceeding despite it being venued in Flathead County for judicial economy,
12 efficiency, and continuity.

13 **Administrative Record Supplementation Motion**

14 The Court agrees with Petitioners that the present administrative
15 record should be supplemented before the Respondent under Mont. Code Ann. §
16 2-4-703. In this regard, Petitioners have convinced this Court that:

17 the internal thought processes and explanation of the agency
18 employees about why and how they made the decisions they did is, by
19 definition, relevant and “material” to the legal question of whether
20 those ultimate decisions were arbitrary and capricious. And second, it
21 is undisputed that Petitioners have never had the opportunity to
22 question these witnesses because they were universally denied that
23 opportunity by the agency when their objections were terminated.
24 There is no better cause or reason for seeking leave of court to
25 supplement an administrative record, than when the movant has been
denied that exact opportunity by the agency opposing
supplementation.

That evidence is material because it goes directly to whether the

1 agency decision was made upon unlawful procedure, violated
2 Petitioners' statutory and constitutional participation rights, and
3 resulted in a materially incomplete administrative record. There is also
4 good reason the evidence was not presented below: the failure to
5 present it was caused by DNRC's own conduct. Montana law does not
6 allow an agency to prevent a party from developing or presenting
7 material issues and then rely on the resulting silence in the record as a
8 basis to defeat judicial review. See *Arlington v. Miller's Trucking,*
9 *Inc.*, 2012 MT 89; *Whitehall Wind v. Montana Public Service*
10 *Commission*, 2010 MT 2.

11 Accordingly, it is hereby **ORDERED** that within forty-five days from
12 the date of this Order limited evidentiary proceedings before Respondent shall
13 take place to permit the sworn testimony or depositions of all identified (by
14 Petitioners' counsel) Respondent employees who worked on the Intervenor's
15 application and Respondent's decision regarding the categorical exclusion of all
16 public participation on, but not limited to, standing and the legal availability
17 criterion. Thereafter, Respondent is **ORDERED** to file the additional evidence,
18 and "any modified findings, conclusions, or decision with this Court and the
19 Flathead County Clerk of Court's Office, for inclusion in the administrative
20 record." Mont. Code Ann. § 2-4-703 (2025).

21 **IT IS FURTHER ORDERED** that counsel in this proceeding shall
22 meet and confer within ten days from the date of this Order to establish revised
23 briefing deadlines and thereafter file the proposed dates with this Court so that an
24 order to extend the previously established briefing deadlines can be issued.

25 **ORDER**

Based on the foregoing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Petitioners' Stay Motion is **GRANTED**;

