FILED
10/23/2023
Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA
Case Number: DA 23-0268

IN THE SUPREME COURT OF THE STATE OF MONTANA
No. DA 23-0268

MONTANA TROUT UNLIMITED, TROUT UNLIMITED, MONTANA ENVIRONMENTAL INFORMATION CENTER, EARTHWORKS, and AMERICAN RIVERS,

Petitioners and Appellants,

v.

MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION and TINTINA MONTANA, INC.,

Respondents and Appellees.

APPELLEE TINTINA MONTANA, INC.'S RESPONSE BRIEF

On Appeal from the Montana Fourteenth Judicial District Court
Meagher County, Hon. Michael Hayworth
Cause No. DV-2022-09

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STATEMENT OF THE ISSUES

1. Whether Conservation Objectors have standing to object to the Department of Natural Resources and Conservation's ("Department") determination to grant Tintina Montana, Inc.'s ("Tintina") Beneficial Water Use Permit ("Permit").

2. Whether the Department correctly interpreted the Montana Water Use Act ("MWUA") to determine that Tintina is not required to obtain a beneficial water use permit for groundwater that is drained from Tintina's mine workings and discharged to the alluvial aquifer without use because it is not a beneficial use of water, and is, therefore, outside the scope of the Department's permitting authority.

3. Whether the Conservation Objectors have stated a cognizable claim regarding the Department's interpretation to the MWUA.

STATEMENT OF THE CASE

Tintina submitted an application for Beneficial Water Use Permit for its Black Butte Mining Project (the "Project") to appropriate 350 acre-feet of groundwater to be used for industrial purposes. AR: 0062-0149 (Water Right Application Package—Black Butte Copper Project). Tintina also submitted a mitigation plan consisting of a "high spring flow" beneficial water use permit and a suite of change applications to existing water rights that collectively offset depletions to surface water resulting from Tintina's beneficial use of water.

AR: 0017 (Preliminary Determination to Grant Permit Application No. 41J 30116562).

In its Preliminary Determination to Grant ("PDG") Tintina's Permit, the Department analyzed the 350 acre-feet of groundwater Tintina proposed to drain from its mine works and use in the industrial operations of the Project. AR:0014. The Department determined the water drained from the mine and discharged, without use, was not an appropriation of water under the MWUA. *Id.* After the Department issued its PDG and the associated mitigation plan, the Conservation Objectors, who own no water rights of their own, filed objections alleging Tintina had failed to prove the MWUA statutory criteria for the Permit and the associated mitigation change applications. AR:0655-AR:0703 (Objections to Preliminary Determination to Grant Permit Application No. 41J 30116562).

During the pendency of proceedings, Tintina and the Conservation Objectors settled all of Conservation Objectors' objections except for the *single issue* of whether the Department's conclusion that it did not have the authority under the MWUA to require a water use permit for the portion of the water drained from the underground mine workings but not used in the industrial operations of the mine was correct as a matter of law. AR:1842-1856 (Joint Notice of Stipulation and Motion for Entry of Final Order).

After briefing on this single issue, the Hearing Examiner granted summary judgment to Tintina on the grounds that mine dewatering standing alone is neither a beneficial use of water nor a waste. AR:1872-AR:1879 (Order on Cross-Motions for Partial Summary Judgment) (hereinafter "*Hearing Examiner's Order*"). The Hearing Examiner found that rather than a beneficial use of water, mine dewatering is a manipulation of water *wholly outside the scope* of the MWUA's permitting scheme. AR:1878. As stated by the Hearing Examiner, "[i]f the presence of water is the problem and not the solution, then we are not in the realm of water rights." AR:1876.

Having lost on summary judgment, the Conservation Objectors filed a *Petition for Judicial Review* in the Montana Fourteenth Judicial District Court challenging the *Hearing Examiner's Order*. The district court affirmed by reiterating the Hearing Examiner's conclusion that under the plain language of the MWUA, mine dewatering is neither a beneficial use of water nor, pursuant to Section 85-2-505(1)(c), MCA, a "waste." *Order Denying Petition for Judicial Review and Affirming Final Agency Action* (hereinafter "*District Court Order*"), at 13-14. The district court also appropriately denied Conservation Objectors' contention that the Department's interpretation of the MWUA violated the Montana Constitution's mandate for the "administration, control, and regulation of

water rights. *Id.*, at 19. Conservation Objectors now appeal the district court's decision.

STATEMENT OF THE FACTS

Tintina filed its Permit application to obtain a protectable, junior water right, allowing it to use groundwater for industrial purposes at the Project, which is located near White Sulphur Springs, Montana in the Upper Missouri River Basin. AR:0014; AR:0064. The Upper Missouri River Basin is closed to most new surface water appropriations, but is open to appropriations of high-spring flow surface waters that are placed into storage, and certain groundwater appropriations. AR:0017-0018; Section 85-2-342, MCA. Tintina therefore filed a suite of other beneficial use permit and change applications collectively constituting a "mitigation plan" that offset adverse effects to surface water rights resulting from the new industrial appropriation. AR:0017; AR:0026-0031.

Tintina anticipates 807 acre-feet of groundwater, or less, will naturally infiltrate into its underground mine workings, and independent of any water right permit, this water will be pumped out of the underground mining operations in order to safely operate the mine. AR:0014; AR:0145; AR:0502 (Groundwater Permit Application Technical Report, 1/30/2020); AR:0639 (Environmental Assessment for Permit Application No. 41J 30116562). Water pumped from the mine is subject to the Montana Department of Environmental Quality's ("MDEQ")

jurisdiction and permitting authority under the Montana Water Quality Act ("MWQA") (Section 75-5-101, MCA, *et seq.*), and the Metal Mine Reclamation Act ("MMRA") (Section 82-4-301, MCA, *et seq.*). Of the 807 acre-feet to be drained from the mine, Tintina's Application proposed to appropriate 350 acre-feet of water, which is the amount to be applied to industrial beneficial uses in the Project. AR:0014; AR:0145; AR:0502; AR:0639. The remainder of the naturally infiltrating water is not put to beneficial use but is instead treated and discharged into alluvial aquifer infiltration galleries. *Id.*

The Department determined a water right was required for the 350 acre-feet that Tintina would appropriate and apply to a beneficial use, but the remaining mine drainage—what is at issue here—was not subject to the permitting requirement of the MWUA because there was no beneficial use. AR:0014-AR:0015. The Department also confirmed that the MDEQ regulated the portion of Tintina's mine drainage that was not beneficially used. *Id.* The Department therefore performed its statutory permit criteria analysis on the 350 acre-feet that Tintina will beneficially use in its industrial mining process and subject to the Department's permitting jurisdiction under the MWUA. AR:0014-AR:0015; AR:0049-AR:0051.

STANDARD OF REVIEW

Standing is a threshold requirement in every case. *350 Montana v. State,* 2023 MT 87, ¶ 14, 412 Mont. 273, 529 P.3d 847 (citing *Bullock v. Fox*, 2019 MT 50, ¶ 27, 395 Mont. 35, 435 P.3d 1187). This Court reviews issues of justiciability, such as standing and ripeness, de novo. *350 Montana*, ¶ 11 (citing *Reichert v. State*, 2012 MT 111, ¶ 20, 365 Mont. 92, 278 P.3d 455). The question of standing is an exception to the general rule that this Court will not address issues not properly preserved for appeal. *Armstrong v. State*, 1999 MT 261, ¶ 4, 296 Mont. 361, 989 P.2d 364.

In the judicial review of an administrative contested case proceeding under the Montana Administrative Procedures Act, the Court reviews whether the agency's interpretation of the law is correct. *Matter of Mays*, 2019 MT 219, ¶ 7, 397 Mont. 248, 448 P.3d 1096 (citing Mont. Code Ann. § 2-3-702). The Court should defer to an agency's interpretation of a statute that it administers. *Waste Mgmt. Partners of Bozeman, Ltd. v. Mont. Dep't of Pub. Serv. Regul.*, 284 Mont. 245, 249, 944 P.2d 210, 213 (1997).

Statutory language must be construed according to its plain meaning and, if the language is clear and unambiguous, no further interpretation is required. *Montana Dep't of Revenue v. Priceline.com*, 2015 MT 241, ¶ 6, 380 Mont. 352, 354 P.3d 631; *see also Clark Fork Coal. v. Tubbs, 2016 MT 229, ¶ 18, 384 Mont.*

503, 380 P.3d 771 ("Our objective in interpreting a statute is to implement the objectives the Legislature sought to achieve."). In determining the mandate given to a statute by the Legislature, the Court's role "is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted." *Id.* (citing Mont. Code Ann. § 1-2-101). Words and phrases used in a statute are to be construed according to the context in which they are found, and according to their normal usage, unless they have acquired some peculiar or technical meaning. *Tubbs*, ¶ 20 (citing Mont. Code Ann. § 1-2-106).

In reviewing a constitutional challenge to a statute, the Court presumes the statute's constitutionality, and will avoid an unconstitutional interpretation whenever possible. *Montanans for Responsible Use of School Trust v. Darkenwald*, 2005 MT 190, ¶ 22, 328 Mont. 105, 119 P.3d 27. A party challenging a statute's constitutionality bears the burden of proving the statute unconstitutional beyond a reasonable doubt and the Court should resolve any doubt about its constitutionality in favor of the statute. *Darkenwald*, ¶ 22.

SUMMARY OF THE ARGUMENT

1. Conservation Objectors do not have standing to object to Tintina's Permit because they have no particularized interest or injury that can redress under the MWUA.

2. The district court correctly concluded the Montana Constitution does not mandate the enactment of the MWUA as the *sole* statutory basis to comprehensively regulate *all* water resources in the state of Montana. Instead, the Legislature has fulfilled its constitutional mandate to regulate and manage water resources not only through the enactment of the MWUA, but also through the enactment of the Montana Environmental Policy Act ("MEPA"), Mont. Code Ann. § 75-1-101, *et seq*.; the MWQA, Mont. Code Ann. § 75-5-101, *et seq*.; and the MMRA, Mont. Code Ann. § 82-4-301, *et seq*.; all of which are administered by MDEQ.

3. The district court correctly affirmed, under a plain language reading of the MWUA, the Department's determination that Tintina's draining, treatment, and discharge of groundwater from its mine workings, without use of the water, is not subject to the MWUA's permitting scheme because mine drainage is neither a "beneficial use" of water, nor, pursuant to Mont. Code Ann. § 85-2-505(1)(c), a "waste."

4. Tintina's mine dewatering and discharge plan is not a beneficial use of water for aquifer recharge because it also runs afoul of the MWUA's statutory definition of "aquifer recharge."

5. Conservation Objectors have failed to meet their burden or assert a cognizable basis for their argument that the Department's interpretation of the MWUA is unconstitutional.

ARGUMENT

I. CONSERVATION OBJECTORS LACK STANDING.

Conservation Objectors do not have standing to object to Tintina's Permit because they have not demonstrated a particularized harm that can be redressed by the Court. Conservation Objectors attempt to tether their standing to potential adverse effects to senior water right owners, but the only interests Conservation Objectors identify are the recreational and aesthetic values of the Smith River. While injury to recreational and aesthetic values may establish standing when the challenged agency action relates to environmental protection and prevention of degradation, it is not enough to establish standing when the challenged agency action relates to the protection of senior water rights under the MWUA.

Organizations such as Conservation Objectors may have standing on behalf of their members, particularly in cases involving environmental harms. The doctrine of standing, however, is not without its parameters. Plainly, an organization has standing to bring suit on behalf of its members when: (a) at least one of its members would otherwise have standing to sue in their own right; (b) the interests the Association seeks to protect are germane to the organization's

purposes; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. *Heffernan v. Missoula City Council*, 2011 MT 91, ¶ 46, 360 Mont. 207, 255 P.3d 80; *see also Ecological Rights Found. v. Pac. Lumber Co.*, 230 F.3d 1141, 1147 (9th Cir. 2000). An organization, as representative of its members *who have been harmed*, possess standing to sue if it can show . . . at least one member would otherwise have individual standing. *Piney Run Pres. Ass'n v. Comm'rs of Carroll Cnty.*, 268 F.3d 255, 262 (4th Cir. 2001). Individual members would have standing in their own right if they have suffered an "injury in fact" that is "(a) concrete and particularized and (b) actual and imminent, not conjectural or hypothetical, . . . the injury is fairly traceable to the challenged action of the defendant; and . . . it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Id.* Causation evaluates whether the alleged injury can be traced to the defendant's challenged conduct, rather than to that of some other actor not before the court. *Ecological Rights Found.*, 230 F.3d at 1152. Thus, casual connection—in a standing context—"cannot be too speculative, or rely on conjecture about the behavior of other parties . . . ." *Id.*

In their petition for judicial review, Conservation Objectors asserted organizational standing based on declarations submitted by individual members from each of the conservation organizations. *See Petitioners' Opening Brief*,

Decls. of David Brooks, Robbert Carl, Colin Cooney, Bonnie Gestring, and Steve Gilbert. While the declarations assert interests in the Smith River watershed, those interests are explicitly limited to recreation, fishing, and aesthetics. *See e.g.*, Decl. of David Brookes, ¶ 10 ("By specifically impacting the Smith River watershed fishery, mining operations at the proposed Black Butte mine will negatively affect the recreational experience of myself and other MTU staff and members visiting, residing within or owning property within the Smith River watershed."); Decl. of Robert D. Carl III, ¶ 9 ("The specific proposed mining location could negatively impact Sheep Creek, where trout go to spawn. Any water loss due to groundwater pumping could greatly impair this area. From a commercial and economic point of view, this could be devastating, as recreation is the lifeblood of this area."); Decl. of Colin Cooney, ¶ 11 ("By specifically impacting the Smith River watershed fishery, mining operations at the proposed Black Butte mine will negatively affect the recreational experience of myself and other MTU staff and members visiting, residing within or owning property within the Smith River watershed."); Decl. of Bonnie Gestring, ¶ 12 ("The impacts of the mining operation at the proposed Black Butte Mine will negatively affect the recreational experience of myself and other Earthworks members visiting or residing within the Smith River watershed. The harm to the waters and the fish and wildlife that find refuge in them will negatively impact myself and our members.").

On its face, the harms alleged by the individual members are not redressable by this Court so as to establish standing under either the MWUA or common law standing requirements. While the MWUA provides standing to a person if "the property, water rights, or interests of the objector would be adversely affected by the proposed appropriation," (Mont. Code Ann. § 85-2-308(3)) standing is not conferred to *any* person who enjoys the stream for recreational or aesthetic reasons when the purposes of the statute is to protect senior water rights owners. *See Baxter Homeowners Ass'n, Inc. v. Angel*, 2013 MT 83, ¶ 17, 369 Mont. 398, 298 P.3d 1145; *see also Equal Rights Center v. Abercrombie & Fitch Co.*, 767 F.Supp.2d 510, 527 (holding that "the allegation does nothing to show that members of ERC have suffered any harm under the ADA. . . . the ADA grants relief to a 'person who is *being subjected to discrimination* on the basis of disability,' not to any person who 'live[s] in and enjoy[s] a community' in which discrimination might exist in some form." (emphasis in original)). However, standing under the MWUA is only established if Conservation Objectors or its members' interests are allegedly harmed by the Department's issuance of the Tintina Permit, and those harms are redressable by the court. *See Baxter*, ¶ 18; *350 Montana*, ¶ 15 ("To bring a case or controversy, a plaintiff must allege "a past, present, or threatened injury to a property or civil right," and such injury must be redressable through court action.") (internal quotations omitted); *see also*

Heffernan, ¶ 30 ("The question of standing is whether the litigant is entitled to have the court decide the merits of the dispute.").

Standing resolves the issue of whether the litigant is a *proper party* to seek adjudication of a *particular issue*. *See Mont. Trout Unlimited v. Beaverhead Water Co.*, 2011 MT 151, ¶ 27, 361 Mont. 77, 255 P.3d 179 (emphasis added). Unlike in *Trout Unlimited*, which evaluated standing in the context of an organizations' ability to submit objections in a decree adjudication proceeding, the evaluation of Conservation Objectors' standing before this Court is whether Conservation Objectors may litigate potential harms to water rights on the stream while relying only on alleged harms to their recreation and water quality interests.

As established by Conservation Objectors' members' declarations—the very documents they assert establishes standing—the injuries asserted are too attenuated from the purpose of the MWUA, i.e., the administration and protection of senior water rights. Conservation Objectors' alleged injuries relating to water quality, environmental degradation, recreation, and aesthetic values of the Smith River are wholly separate and distinct from Conservation Objectors' challenge in this case asserting that water rights are being "adversely effected," despite lacking any ownership of water rights. Conservation Objectors do not own water rights in the Smith River watershed, nor do they represent interests of private water rights holders that do own water in the Smith River watershed. Conservation Objectors'

declarations discuss harms to the *water quality* and diminished *flow for recreation*, but such statements do not establish standing to challenge the Department's decisions relating to the protection of *water rights* in the Smith River watershed.

Moreover, the stated purpose of the MWUA permitting process is for the protection of *water rights* within a basin, not for the protection of water quality or the prevention of degradation. Those protections, more akin to Conservation Objectors' asserted standing, are found within the environmental protection statutes administered by MDEQ. *See Clark Fork Coal. v. Mont. Dep't of Nat. Res. and Conservation*, 2021 MT 44, ¶¶ 50-51, 403 Mont. 225, 481 P.3d 198 (citing MEPA, MWUA, MMRA). Thus, while Conservation Objectors' alleged harms may be redressable under the MWQA and the MMRA, they are not redressable under the MWUA.

Contrary to their alleged basis for standing, Conservation Objectors argue extensively about the adverse effect to unidentified water rights of those not before this Court, none of which are held by Conservation Objectors or their members. Conservation Objectors are not the proper party, nor are its members, to seek adjudication of this particular issue under the MWUA. Conservation Objectors have, therefore, failed to establish standing to challenge the Department's determination that mine dewatering is not a beneficial use, and the Court should dismiss Conservation Objectors' appeal.

II. THE MONTANA LEGISLATURE IMPLEMENTED THE MWUA, MEPA, MWQA, AND MMRA TO ESTABLISH A COMPREHENSIVE SYSTEM FOR PROTECTING THE STATE'S WATERS.

Throughout their Opening Brief, and indeed, throughout the entirety of this litigation, Conservation Objectors have asserted that the Montana Constitution mandates the Legislature to implement the MWUA in order to establish a "comprehensive system for protecting the state's waters." *See e.g.*, *Appellants' Opening Brief*, pp. 7, 26, 37, 50. Conservation Objectors' myopic focus on the MWUA as the *sole means* to regulate the state's water resources obfuscates the relationship the Montana Constitution has with, not only the MWUA, but also MEPA, MWQU, and MMRA to collectively and comprehensively protect the state's water resources from unreasonable depletion and degradation.

The Montana Legislature enacted the MWUA to fulfill its constitutional duty to "provide for the administration, control, and regulation of *water rights*" within the state of Montana. Mont. Const. art. IX, § 3(4) (emphasis added); *see also Clark Fork Coal.*, ¶ 51. The Montana Legislature further enacted MEPA, MWQA, and MMRA to fulfill its' constitutional duty to "provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources." Mont. Const. art. IX, § 1(3); *Clark Fork Coal.*,

¶ 51. Read together, the MWUA, MEPA, MWQA, and MMRA provide for the comprehensive protection and management of the states' water resources, including evaluating the impacts of mine dewatering that are not subject to the MWUA's permitting scheme. *See District Court Order*, at 19.

This Court recently confirmed the comprehensive nature of the MWUA, MEPA, MWQA, and MMRA, collectively, for the protection and management of the states' water resources. *See generally Clark Fork Coal.*, 2021 MT 44. In *Clark Fork Coalition*, the Court was asked to determine if the MWUA violated Article IX, Section 1 of the Montana Constitution because the MWQA nondegradation standards were not included in the MWUA statutory criteria of "legal availability" under Mont. Code Ann. § 85-2-311(1). *Id.*, ¶ 45. The Court noted that if it were to view the MWUA in isolation, the narrow question would be "whether the limited scope of MWQA objections to beneficial water use permits under the MWUA is sufficient to satisfy the Legislature's constitutional environmental protection duty under Article II, Section 3 and Article IX, Section 1. *Id.*, ¶ 49. The Court further noted that Article IX, Section 1 did not entitle the objectors to any particular remedy; rather, those provisions merely required the Legislature to "provide some adequate remedy for advance environmental review and protection of the subject water use, whether within or independent of the MWUA." *Id*. The Court therefore concluded that "in light of the applicable

remedy provided by the Legislature under the MWQA and MMRA here, we need not view [the MWUA] in isolation." *Id*.

In recognizing the MWUA, MEPA, MWQA, and MMRA, collectively, established a comprehensive system for the protection of the state's waters, the Court stated: "unlike with MEPA, the MWQA, and pertinent provisions of the MMRA, the Legislature did not enact the MWUA for the primary purpose of implementing, satisfying, or tailoring it to its environmental protection duty under Montana Constitution Article II, Section 3, and Article IX, Section 1." *Id.*, ¶ 50 (citing Mont. Code Ann. §§ 85-2-101 (MWUA); 75-1-102 (MEPA); 75-5-102 (MWQA); and 82-4-301 (MMRA)). Rather, the Legislature enacted the MWUA for the specific purpose of implementing and fulfilling its separate duty under Article IX, Section 3 regarding the state's "administration, control, and regulation of water rights" under a centralized water rights administration and records system. *Id*. (citing Mont. Code Ann. § 85-2-101). And with respect to its Article IX, Section 1 duty to "prevent unreasonable depletion and degradation of natural resources," the Legislature "separately charged MDEQ with the duty and expertise to administer applicable MWQA nondegradation standards and, as specifically applicable to the mining-related water uses and impacts at issue here, the operating permit requirements of the MMRA." *Id.* (citing Mont. Code Ann. §§ 85-2-311(1)(g) and (2); 75-5-102; and 82-4-301). It is therefore clear that the

MWUA, MEPA, MWQA, and MMRA, acting in concert, establish a comprehensive system for the protection and regulation of Montana's water resources.

Here, Conservation Objectors assert the Montana Constitution mandates the MWUA to be the *sole* regulatory mechanism for comprehensively managing and protecting the state's waters. More concerning still is Conservation Objector's broader assertion that the MWUA's water right permitting process is the constitutionally mandated basis for comprehensively regulating *all* interactions with water. Such a construction expands the MWUA beyond recognition, and is reductively contrary to the extensive statutory provisions of MEPA, MWQA, MMRA, and potentially other statutes that regulate interactions with water.

In the case of Tintina's mine drainage program, the statutes administered by the Department and MDEQ act in concert to provide advance environmental review under the specifically applicable state statutes and regulations (MWUA, MEPA, MWQA, and MMRA). [AR0639-AR0650; AR1655-AR1690; Appendix A, Excerpts of Black Butte Copper Project Final Environmental Impact Statement, February 2020, p. 3.5-10 to 3.5-17].[1] Consequently, Conservation Objectors'

[1] The Black Butte Copper Project Final Environmental Impact Statement ("FEIS") was identified in the DNRC Preliminary Determination as "Information within the Department's Possession/Knowledge." *See* AR0012-0013. Conservation Objectors attached excerpts of the FEIS as an exhibit to their Motion for Partial Summary Judgment (*see* AR1480-AR1613), but did not include the MDEQ's Surface Water Quantity analysis (FEIS Section 3.5.3.1.). Tintina provides the Surface Water Quantity analysis in order to present a full record to the Court. *See*

assertion that Tintina mine drainage program has escaped advance environmental review is without merit.

III. UNDER A PLAIN READING OF THE MWUA, MINE DEWATERING IS NOT AN APPROPRIATION OF WATER FOR A BENEFICIAL USE.

The Montana Constitution distinguishes between diversions of water and diversions of water for beneficial use. Specifically, Article IX, Section 3(3) states: "All surface, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state for the use of its people and are subject to *appropriation for beneficial uses* as provided by law." Mont. Const. art. IX, § 3(3) (emphasis added). As correctly noted by the district court, this constitutional mandate has been incorporated into the MWUA, which provides: "A person may appropriate water only for a beneficial use." *District Court Order*, at 10 (citing Mont. Code Ann. § 85-2-301(1)). The MWUA defines "appropriate" to mean "to divert, impound, or withdraw, . . . , a quantity of water for a beneficial use." *District Court Order*, at 11 (citing Mont. Code Ann. § 85-2-102(1)(a)). Further, "beneficial use" means "a use of water for the benefit of the appropriator . . . ." *District Court Order*, at 11 (citing Mont. Code Ann. § 85-2-102(5)(a)). The MWUA also defines the inverse to mean "the application of water to anything but

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Appellee's App. The entire FEIS may be found online at: https://deq.mt.gov/files/Land/Hardrock/Environmental%20Reviews/BlackButteCopperMine_FEIS.pdf (last visited 10/23/2023).

a beneficial use" is a "waste." Section 85-2-102(27), MCA.

Consequently, under both the Montana Constitution and the MWUA, water may only be appropriated for beneficial use. *Tubbs*, ¶ 23 ("An appropriation refers to the amount of water one has the legal right to use as determined through the process sanction by the [MWUA]." Thus, diverted water that is not put to beneficial use is not an "appropriation of water" under the MWUA's permitting scheme.

1. Water May Only be Appropriated for Beneficial Uses.

The MWUA implements the constitutional mandate for the "administration, control, and regulation of water rights," by requiring all appropriations of water for a beneficial use to obtain a beneficial water use permit pursuant to the procedures established in the MWUA. Section 85-2-301(1), MCA ("After July 1, 1973, a person may not appropriate water except as provided in this chapter. A person may only appropriate water for a beneficial use."). In defining "beneficial use," the MWUA provides examples of beneficial use, which include the use of water for agricultural, stock water, domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses. Section 85-2-102(5), MCA. These examples of "beneficial use" show that water must be actually ***used*** in some way that benefits the appropriator.

The MWUA's definition of "beneficial use" is a codification of the long-standing common law principle that "beneficial use" is the "basis, the measure and the limit of all rights to the ***use*** of water." *McDonald v. State*, 220 Mont. 519, 530, 722 P.2d 598, 605 (1986) (emphasis added). Courts have repeatedly held the 'application' of water to a beneficial use is the touchstone of Montana water law. *See In the Matter of the Missouri River Drainage Area*, 2002 MT 216, ¶ 10, 311 Mont. 327, 55 P.3d 396; *see also Power v. Switzer*, 21 Mont. 523, 55 P. 32, 35 (1898) ("As a result, the law, crystallized in statutory form, is that an appropriation of a right to the use of running water flowing in the creeks must be for some useful or beneficial purpose, and when the appropriator, or his successor in interest, abandons and ceases to use the water for such purpose, the right ceases."); *Toohey v. Campbell*, 24 Mont. 13, 60 P. 396, 397 (1900) ("But, as every appropriation must be made for a beneficial or useful purpose, it becomes the duty of the courts to try the question of the claimant's intent by his acts and the circumstances surrounding his possession of the water, its actual or contemplated use and the purposes thereof."); *Bailey v. Tintinger*, 45 Mont. 154, 122 P. 575, 583 (1912) ("If our statute does not by express terms, it does by fair implication, require that, at the time of taking the initial steps, the claimant must have an intention to apply the water to a useful or beneficial purpose."); *Smith v. Duff*, 39 Mont. 382, 102 P. 984, 985 (1909) ("As every appropriation must be made for a

beneficial or useful purpose, it becomes the duty of the courts to try the question of the claimant's intent by his acts and the circumstances surrounding his possession of the water, its actual or contemplated use and the purposes thereof."); *Miles v. Butte Electric & Power Co.*, 32 Mont. 56, 79 P. 549, 553 (1905) ("Legislation and judicial exposition have accordingly proceeded with increasing caution to restrict appropriations to spheres of usefulness and beneficial purposes. The intention of the claimant is therefore a most important factor in determining the validity of an appropriation of water."). It is therefore beyond dispute that an appropriation of water under the MWUA must be for a "beneficial use," which is only recognized when there is an actual intent to control and affirmatively use the water so appropriated.

2. Tintina's Mine Drainage is Not a Beneficial Use of Water.

The *Hearing Examiner's Order* correctly identified that "there are certain uses of water that neither rise to the level of beneficial use nor constitute waste but rather fall into a category that is wholly beyond the scope of the MWUA's regulatory scheme . . . ." AR:1874. The Hearing Examiner's conclusion comports not only with the express terms of the MWUA, but also long-standing Department policy and precedent.

A. The Department's Dewatering Policy Establishes that Mine Dewatering is Not a Beneficial Use of Water.

On December 11, 1981, the Department adopted a written policy to address the question of whether a beneficial water use permit is required when an activity dewaters or drains a source of water and there is no intent to apply the water to a beneficial use. AR:1288-1291 (DNRC Dewatering-Drainage Policy) ("Dewatering Policy"). The Dewatering Policy expressly defines "dewatering" as:

> The process whereby water (usually groundwater) from surrounding aquifers must be removed by pumping or gravity flow so another activity can go on, such as, mining, agriculture, etc. In some cases it could mean the process of removing surface water from a reservoir, lake, or pond for the purposes of regulating the water level, draining for repairs or construction, etc.

AR: 1288.

The Dewatering Policy also provides that dewatering does not require a beneficial water use permit:

> The process of dewatering a water source does not require a Permit Application (Form 600), nor the filing of a Completion (Form 602) with the Department where there is no intent to apply any of the water to a beneficial use. There has to be a beneficial use intended for the water before the Department can have jurisdiction. The mere dewatering of a water source without a beneficial use does not constitute an appropriation; therefore, no water right can be established solely by dewatering.

Id.

The Dewatering Policy therefore confirms that there are two requirements for acquiring a water right: (1) the taking of water (i.e., the diversion of water) and (2) the application of that water to a beneficial use. AR:1289. In articulating its policy on dewatering, the Department provides examples of dewatering/drainage where a beneficial water use permit is not necessary, including: water withdrawn from a mine for the purpose of extracting some mineral; water withdrawn from a well or pit to drain an area for construction; water withdrawn for the purpose of draining a field to make it more productive; water withdrawn from a basement of a structure for the purpose of making it livable or useable; water withdrawn from a reservoir, lake, or pond for the purpose of regulating the water level, or for performing repairs or construction. AR:1289-1290.

In the case of Tintina' mine drainage, the fraction not used in the industrial operations is not put to a beneficial use, but is instead returned to the aquifer without use, and therefore the unused portion of Tintina's mine drainage falls squarely within the Department's Dewatering Policy.

B. The Cannons of Statutory Interpretation Support the Department's Dewatering Policy.

While the Constitution, the MWUA, and the Department's Dewatering Policy use the term "beneficial use," nowhere is the meaning of the term "use" defined. Under the cannons of statutory interpretation, when a word or phrase is

not defined, that word or phrase is given the natural and popular meaning in which they are usually understood. *State v. Madsen*, 2013 MT 281, ¶ 8, 372 Mont. 102, 317 P.3d 806 ("Statutory terms must be interpreted reasonably and logically, and given the natural and popular meaning in which they are usually understood."). Thus, Black's Law Dictionary defines "use" as: "[t]he application or employment of something; esp., a long-continued possession and employment of a thing for the purpose for which it is adapted, as distinguished from a possession and employment that is merely temporary or occasional." *Use*, *Black's Law Dictionary* (7th ed. 1999). Further, the common definition of the word "use" is defined as: "[t]he act of using; the application or employment of something for a purpose" and "to put into action or service." *Use*, *The American Heritage College Dictionary* (3d ed. 1993); *Use*, *Webster's New World Dictionary and Thesaurus*, 2d ed. 2002). The term "use," as it is generally understood, therefore means to put something into action or service for a purpose.

Additionally, this definition of "use," is confirmed it the examples of "beneficial use" contained in the MWUA: agriculture, stock water, domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses. Section 85-2-102(5), MCA. Each of these examples unambiguously demonstrate that beneficial use means the application or employment of water to fulfill a purpose.

In contrast, mine dewatering *is not* a beneficial use of water. *District Court Order*, at 11. In fact, it is not a use at all. Water infiltrates, unbidden, into the mine works and must be removed so that mining can occur. Thus, the presence of water in the mine works is a hinderance to the process of mining, not a benefit to it. While Tintina is benefitted by draining water from the mine, only a fraction of the drained water is put to use, while the remainder is simply discharged to the alluvial aquifer. Thus, as aptly stated in the *Hearing Examiner's Order*: "[i]f the presence of water is the problem and not the solution, then we are not in the realm of water rights." AR:1876.

C. Mine Dewatering is Not a Waste of Water.

Throughout their *Opening Brief*, Conservation Objectors contend the MWUA strictly demands that all water be defined as either beneficial use or waste. *Appellants' Opening Brief* pp. 3, 9, 25, 27-28, 33-34, 35. Conservation Objectors thus argue that if Tintina's mine dewatering program is not a beneficial use of water, then it must be impermissible waste. *Id*. Conservation Objectors' unsupported, tortured reading of the MWUA does not square with the plain language of the statute.

The MWUA clearly and unambiguously provides that water drained from a mine to permit mining operations is not a waste of water. Section 85-2-505(1)(c), MCA. Specifically, the statute provides that "no groundwater may be wasted."

Section 85-2-505(1), MCA. The statute goes on to state:

> However, in the following cases the withdrawal or use of ground water ***may not be construed as waste*** under this part:
>
> . . .
>
> (c) the disposal of ground water without further beneficial use that must be withdrawn for the sole purpose of improving or preserving the utility of land by draining the same ***or that must be removed from a mine to permit mining operations or to preserve the mine in good condition***.

Section 85-2-505(1)(c), MCA (emphasis added).

Conservation Objectors contend the phrase "without further beneficial use" dictates mine dewatering is a beneficial use. *Appellants' Opening Brief* pp. 34-36. This argument was expressly addressed, and rejected, by the Department in its well-reasoned *Kenyon-Noble* decision:

> [T]he exclusion of the disposal of groundwater incidental to mining operations from the meaning of "waste" merely bespeaks a legislative judgment that such practices should not inevitably and necessarily be curtailed in order to protect water users diverting from some sort of critical groundwater area. Indeed, there mere fact that the legislature expressly excepted such activities indicates that they are not normally to be regarded as having any inherent protection by virtue of the law of water rights.
>
> Nor does the presence of the verbiage [in 85-2-505(1)(c)] "without further beneficial use" . . . work a transformation of such practices into appropriations. Rather than referring to or modifying any disposal of

> groundwater, that language merely serves to highlight a legislative intention that waters withdrawn and subsequently used for beneficial purposes should be treated as traditional appropriations in terms of ascertaining waste in light of the scope and character of subsequent beneficial use. Subsequent use of waters withdrawn are thus not inevitably protected against waste characterization.

AR:1426-1430 (*In re Application for Beneficial Water Use Permit Application No. 24951-g41H by Kenyon-Noble* (hereinafter "*Kenyon-Noble*")).

Based on the foregoing, Conservation Objectors' binary scheme cannot stand. The Montana Constitution, the MWUA, and Department policy and precedent all support the conclusion that there are certain manipulations of water that are wholly outside the scope of the MWUA's permitting scheme. As such, mine dewatering is ***not*** an appropriation of water that requires a beneficial water use permit.

3. The Department has Consistently Interpreted the MWUA to Not Require a Beneficial Water User Permit for Dewatering.

The Department has consistently, and without exception, interpreted the MWUA to not require a beneficial water use permit for mine dewatering. In *Kenyon-Noble*, the Department held that the dewatering of a gravel pit to facilitate mining was not an appropriation of water that required a permit. AR:1420-1475. There, Kenyon-Noble applied for a beneficial water use permit for dewatering and gravel washing. AR:1436. In determining that the dewatering program was not a

beneficial use of water, the Department found that "[i]t is the absence of the water from the mining area that Applicant seeks, and this it is not the use of the water itself that is productive to the Applicant." AR:1439. The Department therefore concluded:

> It is of course apparent that drainage practices may ultimately affect the exercise of water rights. However, the pivotal issue herein is not whether the Department should be accorded the authority to assess such impacts, but rather, whether in fact such power has been delegated. Administrative agencies have only that authority expressly or by necessary implication granted to them.

AR:1452-1453 (internal citations omitted).

In a subsequent MWUA permitting proceeding, CR Kendall Corporation applied for a beneficial water use permit to operate a pump-back water treatment system that captured contaminated groundwater and pumped it into the mine's water containment system where it was disposed of through evaporation and irrigation. AR:1293-1294 (*In re Applications for Beneficial Water Use Permits 41T-104524, 41T-104526, 41T-104527 by CR Kendall Corporation* (1999)). As a threshold issue, the Department needed to determine if the diversion of water through the pump-back system for treatment of contaminated water required a beneficial water use permit. AR:1294. The Department determined:

> [The] disposal of contaminated water is not a *use of water in which a property interest* is necessary to achieve

> a legal objective (hereinafter termed a non-use of water). Consequently, such a non-use of water is not entitled to water rights protection under the prior appropriation doctrine embodied in the Montana Water Use Act of 1973 and does not fall within the jurisdiction of the DNRC permitting process.

AR: 1296-1297 (emphasis added).

The *CR Kendall* opinion went on to note that prior to the adoption of the MWUA, "an appropriator in Montana could obtain a water right in a variety of ways but an essential element of a water right has always been application of the water to beneficial use." *Id.* In support of its conclusion, the Department provided examples of diversions of water that do not involve use or require the security of a water right:

> A farmer who has a swamp on his land may dig a ditch and drain the swamp water from his land to a natural stream. Although the farmer is diverting the water, the farmer does not need a water right because the farmer is not putting the water to a beneficial use or attempting to secure a property interest in the swamp water.

AR: 1298 (citing *West Side Ditch Co. v. Bennett et al.*, 106 Mont. 422, 78 P.2d 78 (1938)).

> A gravel mining company excavating its gravel pit cannot, and is not required to, obtain a water right to pump the water out of the pit solely for dewatering the pit area.

AR:1299 (citing *Application No. 24591-G41H by Kenyon Noble Ready Mix Co.* (1981)).

> The Department of Transportation may physically move the bed and banks of a stream for the construction of a highway. Although water is being diverted from its course, the Department' jurisdiction is not invoked because the Department of Transportation is neither putting the water to beneficial use nor attempting to secure a property interest in the water.

AR1299 (citing *State Department of Highways v. Feenan*, 231 Mont. 255, 752 P.2d 182 (1988)).

In addressing the objectors' contention that the only way CR Kendall could divert water was by receiving a water right, the Department stated: "[t]his interpretation ignores the history of water rights law in Montana and the theme and thrust of the Water Use Act, i.e., water rights protect water use. Diversion for non-use are not, and never have, qualified for water rights under Montana law." AR: 1300.

Here, as in *CR Kendall*, Tintina does not seek a water right in order to protect its water use because its mine dewatering is a non-use of water for which a protectable water right is neither wanted nor necessary. The district court agreed with this conclusion, correctly stating that "water disposal is not water usage for water rights purposes." *District Court Order*, at 11 (internal quotation omitted) (citing *Hearing Examiner's Order*, p. 4 (referencing *CR Kendall*, p. 10)).

4. The Department's Conclusions Regarding Beneficial Use Are Entitled to Respectful Consideration by this Court.

Conservation Objectors contend that both the Hearing Examiner's and the district court's deference to the Department's interpretation of the MWUA is not appropriate in this case. *Appellants' Opening Brief*, p. 46. Conservation Objectors specifically assert that a state agency's "unlawful statutory interpretations are not entitled to judicial deference." *Id*. Conservation Objectors mischaracterize the relevant authority on the issue.

The DNRC issued its Dewatering Policy in 1981 and has consistently followed the reasoning established therein in its subsequent permitting actions. As noted by the Hearing Examiner:

> Given the duration and consistency of DNRC's interpretation that dewatering efforts are neither beneficial uses nor waste but rather water disposal measures that exist apart from the water rights permitting system created by the Water Use Act, and the fact that the Legislature has never acted to countermand or modify this interpretation, I am inclined to presume that DNRC has interpreted the law correctly.

AR:1876.

Contrary to Conservation Objector's arguments, the United States Supreme Court explained the difference in deference afforded by a court regarding agency regulations and agency interpretations of statute. *U.S. v. Mead*, 533 U.S. 218, 227

(2001). There, the Supreme Court held that agency interpretations of statutes not embodied in regulation are entitled to deference by the court:

> [A]gencies charged with applying a statute necessarily make all sorts of interpretive choices, and while not all of those choices bind judges to follow them, they certainly may influence courts facing questions the agencies have already answered. The well-reasoned views of the agencies implementing a statute constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance.

Id. (internal quotations omitted).

This Court has similarly held deference is appropriate when an agency is interpreting a statute it is authorized to administer. *Upper Missouri Waterkeeper v. Mont. Dep't of Env't Quality*, 2019 MT 81, ¶ 13, 395 Mont. 263, 438 P.3d 792 ("This Court affords deference to an agency's legal determination when that agency is interpreting a statute that it has been authorized by the legislature to administer."). Deference is more pronounced where the agency's interpretation has stood unchallenged for a long period of time. *Montana Power Co. v. Mont. Pub. Serv. Com'n*, 2001 MT 102, ¶ 24, 305 Mont. 260, 26 P.3d 91. In *Montana Power*, the Court stated: "it is a well-accepted rule of statutory construction that the long and continued contemporaneous and practical interpretation of a statute by the executive officers charged with its administration and enforcement constitutes an *invaluable aid in determining the meaning of a doubtful statute*." *Id.* (internal

quotations omitted) (emphasis added). And while the *Montana Power* Court determined that such agency interpretations of statute were not "binding" on the court, they are nonetheless "entitled to respectful consideration." *Montana Power Co.*, ¶ 25.

Here, the Department has followed its Dewatering Policy and the reasoning contained therein for over 41 years, which it has consistently applied in its subsequent permitting actions. This Court should therefore find the Department, the Hearing Examiner, and the district court all correctly determined mine dewatering is outside the scope of the MWUA's permitting scheme.

IV. TINTINA'S MINE DEWATERING AND DISCHARGE PLAN IS NOT A BENEFICIAL USE OF WATER FOR AQUIFER RECHARGE.

Conservation Objectors argue that Tintina's discharge of its unused mine drainage water into the Sheep Creek alluvial aquifer is a beneficial use because it replaces groundwater drained from the mine that would otherwise express to Sheep Creek. *Appellants' Opening Brief*, pp. 31-33. Conservation Objectors' argument is not only circular, it also runs afoul of the MWUA's statutory definition of "aquifer recharge."

Under the MWUA, "aquifer recharge" means: "either the controlled subsurface addition of water directly to the aquifer or controlled application of water to the ground surface *for the purpose of replenishing the aquifer to offset*

adverse effects resulting from net depletion of surface water." Section 85-2-102(3), MCA (emphasis added). Importantly, the reference in the definition to "adverse effects resulting from net depletion of surface water" is an express reference to the MWUA's requirements that new ground water appropriations for a beneficial use in closed basins include an aquifer recharge or mitigation plan when the proposed beneficial use will consume water that results in a net depletion of surface water flow. *See* Mont. Code Ann. §§ 85-2-360 to -362. More specifically, the MWUA requires such applicants to submit a hydrogeologic report to determine if the proposed appropriation could result in a net depletion of surface water. Section 85-2-360(1), (2), MCA. If the hydrologic report predicts a net depletion of surface water due to the consumption of water *by the beneficial use*, then the Department must determine if the net depletion will result in adverse effect to other senior water rights. Section 85-2-360(3)(a), MCA. If such an adverse effect exists, applicants may "mitigate" those adverse effects through an application proposing Department approval of an "aquifer recharge" plan. Section 85-2-362, MCA.

Here, any surface water depletion caused by Tintina's mine drainage that is not appropriated for beneficial use is under the jurisdiction of the MDEQ in its mine operating permit analysis pursuant to the MWQA and the MMRA. *Clark*

Fork Coal., ¶¶ 50-51; *see also* Appellee's App. MDEQ determined no such mitigation or augmentation was required. *Id*.

Currently pending before this Court, Conservation Objectors challenged MDEQ's mine operating permit analysis in *Montana Trout Unlimited, et al. v. Mont. Dep't of Env't Quality, et al.*, DA 22-0406. While Conservation Objectors challenged many of MDEQ's decisions in its mine operating permit analysis, Conservation Objectors chose not to contest MDEQ's conclusions regarding stream depletions and degradation to water quality caused by mine dewatering. Having failed to challenge MDEQ's conclusions regarding mine dewatering, Conservation Objectors should not be allowed to bootstrap a challenge to MDEQ's decision under the guise of the MWUA.

V. CONSERVATION OBJECTORS' CONSTITUTIONAL ARGUMENT IS NOT PROPERLY BEFORE THIS COURT.

Conservation Objectors vaguely assert the "Department's dewatering loophole" somehow violates the constitutional provisions for the "administration, control, and regulation of water rights." *Appellees' Opening Brief*, pp. 49-51 (apparently citing Mont. Const. art. IX, § 3). Conservation Objectors, however, fail to articulate whether this perceived "dewatering loophole" is derived from the MWUA itself or from the Department's "interpretation" of the MWUA. In either

case, Conservation Objectors have failed to articulate a cognizable constitutional challenge.

"A party challenging a statute's constitutionality bears the burden of proving the statute unconstitutional and [the Court] resolve[s] any doubt about its constitutionality in favor of the statute." *Darkenwald*, ¶ 22 (citing *Montanans for the Responsible Use of the School Trust v. State ex rel. Bd. of Land Comm'rs (Montrust I)*, 1999 MT 263, ¶ 11, 296 Mont. 402, 989 P.2d 800). "[The Court] will uphold a statute except when a party *proves it to be unconstitutional beyond a reasonable doubt*." *Id.* (emphasis added).

As noted by the district court, Conservation Objectors did not present a cognizable constitutional challenge and, thus, have not established how the district court had jurisdiction to review such challenges. *See District Court Order*, at 7, n. 7. Additionally, the district court determined that Conservation Objectors' constitutional arguments were presented in a "conclusory fashion" and were "narrowly framed," thus failing to meet their burden in this matter. *See District Court* Order, at p. 16, n. 15.

Conservation Objectors cannot simply restate their conclusory and minimal constitutional arguments with this Court. Rather, Conservation Objectors are required to prove the implicated sections of the MWUA are unconstitutional beyond a reasonable doubt. *See State v. Akhmedli*, 2023 MT 120, ¶ 2, 412 Mont.

538, 531 P.3d 562 (holding Ahkmedli's assertion that a statute constituted an unconstitutional delegation of legislative power to an administrative body was not enough to meet his burden of demonstrating the challenged statutes were unconstitutional beyond a reasonable doubt); *see also Montana Indep. Living Project v. Dept. of Transp.*, 2019 MT 298, ¶ 28, 398 Mont. 204, 454 P.3d 1216 (holding Appellants failed to prove the statute is unconstitutional beyond a reasonable doubt because the statute sets forth with reasonable clarity the limitations of the Department's discretion in administering grants).

Conservation Objectors' reliance on *Montrust I* is also minimal at best. This Court is assuredly tasked with the responsibility of rejecting agency interpretations that are unlawful and to construe statutes in a manner that avoids an unconstitutional interpretation whenever possible. *See Montrust I*, ¶ 14. However, this Court must also resolve doubts as to the constitutionality of statutes *in favor of such statute* and only so once the challenging party *proves the unconstitutionality of the statute beyond a reasonable doubt*. *Id.* (emphasis added). There is no need for this Court to evaluate the constitutionality of the alleged statutes within the MWUA, as Conservation Objectors would argue, because the Conservation Objectors have failed to meet their burden or even assert a basis for their constitutional arguments. As such, Conservation Objectors' constitutional arguments should be rejected.

CONCLUSION

For the foregoing reasons, this Court should affirm the *District Court Order*. Because Conservation Objectors' binary "beneficial use" or "waste" scheme is neither supported by the Montana Constitution nor the plain language of the MWUA, this Court should conclude the Department correctly determined Tintina's mine dewatering program is neither a beneficial use of water nor a waste of water, and is instead is a manipulation of water wholly outside the scope of the MWUA's permitting scheme.

RESPECTFULLY SUBMITTED this 23rd day of October 2023.

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

By /s/ W. John Tietz

W. John Tietz
Hallee C. Frandsen

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4), Mont.R.App.P., I certify that **APPELLEE TINTINA MONTANA, INC.'S RESPONSE BRIEF** is double spaced, is a proportionately spaced 14 point Times New Roman typeface, and contains 8,594 words.

/s/ W. John Tietz
BROWNING, KALECZYC, BERRY & HOVEN, P.C.

CERTIFICATE OF SERVICE

I, Hallee C. Frandsen, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 10-23-2023:

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Service Method: eService

Electronically Signed By: Hallee C. Frandsen
Dated: 10-23-2023