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MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY

MONTANA ENVIRONMENTAL INFORMATION CENTER, NATURAL RESOURCES DEFENSE COUNCIL, MARY ANNE MERCER, DAVID KATZ, ANNE MOSES, JACK and BONNIE MARTINELL, WILLIS WEIGHT, and DAVID LEHNHERR, Plaintiffs, v. MONTANA BOARD OF OIL AND GAS CONSERVATION, Defendant.	Case No. **COMPLAINT FOR DECLARATORY RELIEF**

INTRODUCTION

1. This case concerns the rights of Montana citizens to access information about the chemicals used for hydraulic fracturing, or "fracking," of oil and gas wells in their communities and on or near their property. Under rules promulgated by the Montana Board of Oil and Gas Conservation (the "Board") in 2011, oil and gas operators may withhold from the Board and the public the specific chemical ingredients of fracking fluids the Board authorizes for use in Montana until after fracking operations are complete. This framework deprives landowners of their ability to effectively determine the baseline quality of water sources on their land—critically undermining their ability to establish the source of any subsequent contamination—and their opportunity to investigate the health and environmental risks that fracking may pose. Further, even after fracking occurs, the Board's rules give oil and gas operators complete discretion to withhold from the public, and the Board itself, any fracking chemical information the operators claim—based on no evidence—to be a trade secret. As a result, the Board has approved numerous chemicals for fracking in our state without knowing what the chemicals are, and the chemicals' identities are shielded even from landowners on whose property those chemicals are used. By contrast, just across the border in Wyoming, operators are required to disclose the specific ingredients of their fracking fluids to a state official before they are approved for use and operators may withhold chemical information from the public only if they can demonstrate to the state that the information constitutes a legitimate trade secret under state law.

2. Plaintiffs Montana Environmental Information Center, Natural Resources Defense Council, Mary Anne Mercer, David Katz, Anne Moses, Jack and Bonnie Martinell, Willis Weight, and David Lehnherr seek reasonable access to information about fracking chemicals

authorized for use in our state—and in some cases in plaintiffs' or their members' own backyards. The individually named plaintiffs and the organizational plaintiffs' members are Montana landowners, mineral interest owners, farmers and ranchers, and public health professionals who live, own property, work, recreate, raise crops and livestock, and provide medical care to individuals in regions of the state where fracking is or is likely to be used. Plaintiffs seek fracking chemical information so they and their members can understand the risks fracking operations may pose to property, human health, and the environment and take steps to safeguard their water supplies.

3. To that end, on July 25, 2016, Plaintiffs petitioned the Board pursuant to Mont. Code Ann. § 2-4-315 to amend the Board's fracking chemical disclosure rules, Admin. R. Mont. 36.22.608, 36.22.1016 (petition attached as Ex. A). In their rulemaking petition, Plaintiffs specifically requested that the Board amend these rules to require that oil and gas operators disclose the chemical ingredients of fracking fluids they plan to use before fracking occurs, which is essential for nearby landowners to conduct effective baseline testing of their water supplies and investigate the potential risks of planned operations. Plaintiffs also asked the Board to require operators who claim the chemical ingredients of their fluids are trade secrets—and therefore exempt from disclosure—to provide information demonstrating that the chemicals at issue satisfy the definition of trade secrets under Montana law, and for the Board to make an independent determination of trade secret status before allowing operators to avoid disclosure requirements. Plaintiffs' petition concerned only disclosure of chemical information and made no request for the Board to restrict or limit the practice of fracking.

4. Plaintiffs argued in their petition that the existing rules' failure to provide for pre-fracking chemical disclosure and permissive framework for exempting trade secrets from

disclosure requirements needlessly deprive the public of important chemical information and violate the Montana Constitution. Plaintiffs supported their petition with peer-reviewed scientific research substantiating public concern over the safety of fracking chemicals as well as evidence from the Board's own records demonstrating that disclosures under the current rules are often incomplete and fail to provide key information to landowners. Plaintiffs also explained that the reforms requested in their petition already are in place in Wyoming and argued there is no legitimate reason why Montanans should have less access to chemical information than their neighbors.

5. Nevertheless, on September 23, 2016, the Board issued a decision denying Plaintiffs' rulemaking petition (decision attached as Ex. B). The Board's decision does not address Plaintiffs' constitutional or policy arguments or Plaintiffs' factual evidence supporting the need for regulatory reform. Instead, the decision states that the Board denied the petition because (1) a then-pending Montana Supreme Court case challenging a separate provision of the Board's fracking rules concerning notice of fracking operations, not chemical disclosure, "need[ed] to run its course before the Board initiates any changes to" its chemical disclosure rules; (2) adopting the requested reforms allegedly could deprive the Board of authority to protect legitimate trade secrets and "could potentially expose the Board or staff to liability issues"; (3) the Board was "uncertain about [a] new federal trade secret law and the impact it may have on anything the Board does" respecting the petition; and (4) in the Board's view, a "decision this complicated" should be made by the legislature, "not by the seven members of the Board serving as governor appointees." Ex. B.

6. As explained more fully below, the Board's reasons for denying Plaintiffs' rulemaking petition are factually erroneous, unsupported, and irrational, and cannot sustain the

challenged decision. Further, reform of the Board's fracking chemical disclosure rules, Admin. R. Mont. 36.22.608, 36.22.1016, is necessary because the existing rules violate the Montana Constitution's non-delegation principle and its protections for citizens' fundamental right to know and right to a clean and healthful environment. To remedy the Board's irrational decision and safeguard their constitutional rights, Plaintiffs seek relief from this Court.

JURISDICTION AND VENUE

7. Plaintiffs bring this action pursuant to the Uniform Declaratory Judgments Act, Mont. Code Ann. §§ 27-8-201, 202; the Montana Administrative Procedure Act, Mont. Code Ann. § 2-4-506; and the Montana Constitution, art. II, §§ 3, 9, 17; art. III, § 1; and art. IX, § 1. See Core-Mark Int'l v. Mont. Bd. of Livestock, 2014 MT 197, 376 Mont. 25, 329 P.3d 1278 (exercising jurisdiction over challenge to agency denial of rulemaking petition); see also Carbon Cty. Res. Council v. Mont. Bd. of Oil and Gas Conservation, 2016 MT 240, 385 Mont. 51, 380 P. 3d 798 (exercising jurisdiction over challenge to constitutionality of Board regulation).

8. Venue is proper in this district because plaintiff Montana Environmental Information Center is headquartered in this district, Mont. Code Ann. §§ 2-4-506(4); 25-2-126(1), and defendant Montana Board of Oil and Gas Conservation is an agency of the State of Montana, see id. § 25-2-126(1).

PARTIES

9. Plaintiff Montana Environmental Information Center ("MEIC") is a member-supported advocacy and public education organization based in Helena, Montana, that is dedicated to protecting and restoring Montana's natural environment. Founded in 1973, MEIC is a Montana non-profit corporation representing approximately 5,000 members from across Montana and the United States. MEIC has worked extensively to address the impacts of water

and air pollution in Montana, including from oil and gas development. MEIC also has advocated for decades to uphold Montanans' constitutional rights to a clean and healthful environment and to know about government operations and decision-making. MEIC members live, work, recreate, own property, and farm and ranch in areas of Montana where fracking has occurred or is likely to occur.

10. Plaintiff Natural Resources Defense Council ("NRDC") is a non-profit conservation organization that uses law, science, and the support of its 298,200 members, including more than 1,500 members in Montana, to protect the planet's wildlife and wild places, and to ensure a safe and healthy environment. Its mission is to safeguard the Earth: its people, its plants and animals and the natural systems on which all life depends. NRDC and its members have a longstanding interest in protecting clean water and the health of communities, and have advocated for stronger protections from the adverse impacts of fracking for landowners and the environment. NRDC is headquartered in New York City, with additional domestic offices in Bozeman, Montana; Washington, D.C.; Chicago; and San Francisco. NRDC members live, work, own property, recreate, and provide medical care to individuals in areas of Montana where fracking has occurred or is likely to occur.

11. Plaintiff Mary Anne Mercer, DrPH, was born and raised outside of Sidney, Montana. Dr. Mercer's family continues to operate the ranch where she grew up, and Dr. Mercer has a financial interest in the ranch and oil drilling operations there, which have included fracking. In addition, Dr. Mercer owns a ranch property near Roberts, Montana, where she spends approximately three months each year. Dr. Mercer is a member of the faculty of the University of Washington School of Public Health, Department of Global Health, in Seattle, Washington, where she specializes in maternal and child health. Dr. Mercer signed the

rulemaking petition to reform the Montana Board of Oil and Gas Conservation's fracking chemical disclosure rules in July 2016 and testified in support of the petition at a public hearing before the Board in order to gain greater access to fracking chemical information. Dr. Mercer desires greater access to fracking chemical information as requested in the petition so she can conduct effective baseline testing of the water quality on her property before fracking occurs in the area and so she can meaningfully investigate the risks of harm to her health, her family's health, her property, and the environment from fracking operations on or near her property and her family's property near Roberts and Sidney, Montana.

12. Plaintiffs David Katz and Anne Moses, husband and wife, have an ownership interest in property on the Stillwater River near Nye, Montana, where they spend several weeks each year. The property has been in Ms. Moses's family for more than forty years; her parents lived there full-time until their deaths approximately ten years ago. Mr. Katz and Ms. Moses, along with their adult children and extended family, collectively spend significant portions of the spring, summer, and fall there each year. Oil and gas drilling has occurred in Stillwater County, including outside of Nye several miles from the Moses family property. Mr. Katz and Ms. Moses signed the rulemaking petition to reform the Board's fracking chemical disclosure rules in July 2016 to gain greater access to fracking chemical information that is essential for them to protect the water resources on their property from fracking operations in the area, meaningfully investigate the risks of planned fracking operations, engage in the public process surrounding authorization of fracking, and safeguard their investment in their family property.

13. Plaintiffs Jack and Bonnie Martinell, husband and wife, are residents of Carbon County, Montana. The Martinells own land outside of Belfry, Montana, on which they reside and operate a chemical-free produce farm and orchard. There is a long history of oil and gas

development in the area surrounding the Martinells' property, and in 2014 Energy Corporation of America drilled a test well approximately 1.5 miles from the Martinells' property and received authorization from the Board to chemically treat that well; this development followed an announcement by Energy Corporation of America's Chief Executive that the company intended "to bring something like the Bakken" oil boom to the Beartooth Front area of Montana where the Martinells live and farm. Jack and Bonnie Martinell signed the rulemaking petition to reform the Board's fracking chemical disclosure rules in July 2016, and Ms. Martinell testified in support of the petition at a hearing before the Board, in order to gain greater access to fracking chemical information. The Martinells' produce business depends upon maintaining the quality of their soil and water and avoiding contamination of either. Accordingly, they seek information about the chemicals proposed for use in fracking in their area so they can conduct effective baseline testing of their water supplies, understand the risks of proposed fracking operations, and monitor their water and soil for contamination.

14. Plaintiff Willis Weight, Ph.D., P.E., is a Professor of Engineering at Carroll College in Helena, Montana, where he leads the Environmental Engineering program. Previously, Dr. Weight served for twenty years on the faculty of Montana Tech in Butte, Montana, where he taught graduate-level courses in geology, groundwater monitoring, and contaminant modeling. Since 1989, Dr. Weight also has operated a consulting business, providing groundwater studies for landowners and expert witness support in a variety of water cases. In 2015, Dr. Weight co-authored a white paper with the support of the Montana Farmers Union titled "Fracking in Montana: Asking Questions, Finding Answers," for which he served as the expert author regarding the water quantity, water quality, and air quality impacts of fracking. Dr. Weight signed the rulemaking petition to reform the Montana Board of Oil and

Gas Conservation's fracking chemical disclosure rules in July 2016 to secure greater access to fracking chemical information for the public and for the benefit of his own work. Dr. Weight requires access to detailed information about the chemicals proposed for use in specific fracking operations so he can develop comprehensive studies of the baseline quality of water sources on his clients' property before fracking occurs on or near their land.

15. Plaintiff David Lehnherr, M.D., resides outside of Red Lodge, Montana, and works as a radiologist in Billings, Montana. Dr. Lehnherr also serves as a volunteer with Carbon County Search and Rescue. Dr. Lehnherr desires access to specific information about chemicals proposed for use in the area around his home so he can conduct effective baseline testing of his well-water quality, which he depends upon for drinking and other domestic uses. He also desires access to information about fracking chemicals used in the Red Lodge Valley and the areas where he volunteers as a first responder so he can investigate and understand the exposure risks he faces from fracking-related air pollution and chemicals he may encounter at the scene of an emergency. Dr. Lehnherr's interests in safeguarding his water supplies, property values, and health are harmed by limitations on public disclosure of fracking chemicals pursuant to the challenged Board regulations.

16. As described, plaintiffs signed the petition to amend the Board's fracking chemical disclosure rules that is the subject of this litigation in order to gain greater access to information about the chemicals used for fracking in Montana—including in fracking operations on or near their own property or that of their members—so they and their members may take appropriate steps to safeguard their private property rights, health, and livelihood from the risks associated with fracking. Plaintiffs and their members are adversely affected by the Board's

decision denying their rulemaking petition, which restricts Plaintiffs' access to fracking chemical information.

17. Defendant Montana Board of Oil and Gas Conservation is an agency of the State of Montana that is administratively attached to the Department of Natural Resources and Conservation. The Board "has broad authority over the issuance of permits to drill for and the regulation of oil and gas." Mont. Wildlife Fed'n v. Mont. Bd. of Oil & Gas Conservation, 2012 MT 128, ¶ 6, 365 Mont. 232, 280 P.3d 877 (citing Mont. Code Ann. § 82-11-111). The Board "has regulatory control over the drilling of oil and gas wells and is authorized to take measures to prevent waste of oil and gas resources, to prevent contamination of or damage to surrounding land or underground strata, and to promote environmentally sound development of oil and gas in Montana." Id. ¶ 8 (citing Mont. Code Ann. § 82-11-111).

FACTUAL BACKGROUND

I. HYDRAULIC FRACTURING CHEMICALS

18. Hydraulic fracturing, or fracking, is a technique to enable or enhance oil and gas production by injecting fluids containing water and chemical additives into oil- or gas-bearing formations under sufficient pressure to fracture the formations and release trapped oil and gas.

19. The use of fracking in Montana is widespread. According to the Board's staff, between 4,000 and 7,000 wells have been fracked in Montana in 132 different fields. In 2015, 65% of oil production and 39% of natural gas production in Montana involved fracking.

20. Chemical additives generally constitute a small percentage of the overall fracking fluid volume. However, because more than one million gallons of fluids typically are used to frack a single well, thousands of gallons of chemicals may be stored at a drilling site and pumped into the ground to complete a single fracking job.

21. After fracking is completed, substantial quantities of the chemical-laced fluid return to the surface; this "flowback water" frequently is stored in open containment ponds that pose significant risks of leaks or failures. As much as one-third of the fluid can remain underground after drilling is completed, threatening soil and groundwater pollution.

22. Fracking chemicals can contaminate water supplies through surface spills or underground migration of fracking fluids. Chemical releases also may occur during transport of fracking fluids to a well site, chemical mixing and other pre-fracking operations at the site, fracking itself, escape of flowback water that returns to the surface after fracking, and flowback water storage and disposal. Individuals also may be exposed to fracking chemicals in the form of air pollution.

23. Many of the chemicals known to be used for fracking are dangerous to human health. Numerous fracking chemicals are toxic or endocrine-disrupting and some are known human carcinogens. Peer-reviewed scientific studies have documented adverse health effects in people who live or use water supplies near fracking operations, including elevated incidence of miscarriage, stillbirth, preterm birth, low birth weight, male and female infertility, birth defects, skin and respiratory problems, and hospitalization.

24. This growing body of research has generated widespread public concern over the safety of fracking chemicals and demands for greater public access to chemical information. But with more than 750 chemicals known to be used for fracking—and persistent efforts by some industry actors to conceal information about the chemical ingredients of fracking fluids based on intellectual property claims—significant knowledge gaps regarding the risks of fracking chemical exposure remain in the medical community and the public at large.

II. THE BOARD'S FRACKING CHEMICAL DISCLOSURE RULES

25. In response to public concern over the safety of fracking chemicals, in 2011 the Board adopted regulations requiring some public disclosure of chemicals approved for fracking in Montana. See Admin. R. Mont. 36.22.608, 36.22.1015-1016. Plaintiffs seek amendments to those rules to correct fundamental flaws in the existing disclosure framework, ensure landowners can access chemical information that is critical for safeguarding their water supplies and investigating the risks of planned fracking operations, and bring the Board's rules into compliance with the Montana Constitution.

A. Pre-Fracking Disclosure Requirements

26. Montana law does not require oil and gas operators to conduct or fund baseline water quality testing in the vicinity of planned fracking operations. Accordingly, nearby landowners generally must conduct their own testing to establish the baseline quality of their water supplies before fracking occurs. To do so effectively, landowners require comprehensive information about the chemical ingredients of fracking fluids planned for use in their area. This is necessary because it is generally impracticable to conduct "complete" water quality testing that would reveal every substance present in a water sample; instead, landowners must generate a list of the specific chemicals planned for use on or near their land so they can conduct testing to establish the absence of those chemicals in their water supplies before fracking occurs. Establishing a "clean" baseline with respect to the specific chemicals fracking may introduce into the environment is critical for a landowner to later establish the source of any contamination that might occur as a result of fracking. This is particularly true in areas with a long history of oil and gas development or multiple active wells, where testing for a generic list of common

fracking-fluid constituents or other chemicals associated with oil and gas development could not generate data that would establish the specific source of any contamination.

27. Under the Board's existing disclosure rules, oil and gas well owners, operators, and service companies (collectively, "oil and gas operators" or "operators") generally must provide to the Board as part of their application for a permit to drill generic information about the proposed fracking fluid. Admin. R. Mont. 36.22.608(1), (3). Specifically, operators must disclose "the trade name or generic name of the principle [sic] components or chemicals" of the fluid planned for use, an estimate of the total fluid volume and the volume of the principal fluid components and inert substances, and information about well construction. Admin. R. Mont. 36.22.608(3).

28. This required disclosure of the trade name or generic name of fracking fluid components may—and commonly does—consist solely of an inscrutable list of industry labels for fluid additive products, such as "DWP-621" or "Slick Frac," see Ex. C (sample pre-fracking disclosures); disclosure of the specific chemical ingredients of those additive products and each chemical's unique Chemical Abstract Service, or "CAS," number is not required before fracking occurs. As Plaintiffs explained in their petition and supporting comments, the generic information that must be disclosed under the Board's existing rules for pre-fracking disclosure is effectively useless for affected landowners: it does not supply the information necessary for landowners either to conduct effective baseline testing of their water supplies before fracking occurs or to investigate the risks planned operations may pose to their property, health, and environment.

29. Further, the rules give operators discretion to provide, in lieu of information about the planned fracking treatment for the well at issue, "a copy of a final design of well treatment

actually used for similar wells and which reflects the likely design for the well to be permitted," or "a prefiled generic design submitted for specific geologic formations, geographic areas, or well types likely to be used in a particular well." Admin. R. Mont. 36.22.608(4). In these circumstances, operators need not disclose even the trade name or generic name of all chemical ingredients that are ultimately used in fracking a specific well.

30. Moreover, for "wildcat" or exploratory wells "or when the operator is unable to determine that hydraulic fracturing, acidizing, or other chemical treatment will be done to complete the well," the operator may withhold from the Board and the public even generalized information about planned fracking chemical use until just 48 hours before fracking occurs—affording insufficient time for landowners to conduct baseline water quality testing or investigate the risks associated with the chemicals planned for use. Admin. R. Mont. 36.22.608(2).

31. For all wells not classified as wildcat or exploratory, the rules contain no requirement that operators make chemical disclosures to the Board by a date certain in advance of fracking operations. Further, while the Board posts chemical disclosure information on its publically available website as a matter of practice, the rules contain no requirement that the Board make chemical disclosures available to the public by a date certain in advance of fracking operations.

B. Post-Fracking Disclosure Requirements and the Trade Secret Exemption

32. After fracking is complete, operators must provide to the Board or post on the publically accessible "FracFocus" website (www.fracfocus.org) more detailed information about the chemical ingredients of their fracking fluids. This disclosure must include a description of the types or purposes of the chemical additives used (such as friction reducer, pH adjusting agent, or surfactant) and the unique chemical ingredient name and CAS number "for each

ingredient of the additive used." Admin. R. Mont. 36.22.1015(2)-(4). When provided, this information would allow a person to identify the specific chemicals used to frack a particular well—but too late for affected landowners to conduct baseline water quality testing for those chemicals.

33. However, operators are not required to provide this information even to state regulators in all circumstances. Rather, operators may withhold from the Board—and therefore the public—the identity of any fracking chemical that they claim is entitled to trade secret protection under Montana law. Admin. R. Mont. 36.22.1016(1). The Board's disclosure rules provide that, for chemical information that qualifies as a trade secret, the operator may withhold from disclosure the specific chemical name and associated CAS number and instead "identify the trade secret chemical or product by trade name, inventory name, chemical family name, or other unique name"—which information would not allow the Board or public to identify the specific chemical at issue— "and the quantity of such constituent(s) used." Id.

34. The Board's disclosure rules incorporate the definition of protectable trade secrets from the Uniform Trade Secrets Act, which has been adopted in Montana. See id.; Mont. Code Ann. § 30-14-402. That statute provides trade secret protection only for information that demonstrably (1) "derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use"; and (2) "is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." Mont. Code Ann. § 30-14-402(4).

35. The Board's disclosure rules, however, do not require operators seeking confidentiality protection to provide the Board with evidence demonstrating that the chemical information at issue actually satisfies the statutory definition of a trade secret. The rules also do

not require the Board to make a determination that a trade secret claim is bona fide before allowing operators to take advantage of the exemption from disclosure. Instead, the rules provide automatic confidentiality protection for any chemical information an operator claims—based on no evidence—to be a trade secret. See Admin. R. Mont. 36.22.1016(1).

36. The disclosure rules do contain limited exceptions from this blanket trade secret protection, which apply when disclosure of proprietary chemical information is necessary to respond to a spill or release, for a medical professional to diagnose or treat an individual patient who may have been exposed to the chemical, or to respond to a medical emergency. Admin. R. Mont. 36.22.1016(2)-(4). However, in such circumstances oil and gas operators are required to disclose the relevant chemical information only to the Board or responsible medical professional, and the individuals receiving that information may be compelled to sign confidentiality agreements barring further disclosure. Id. In other words, these emergency exceptions do not ensure public disclosure of chemical information, even to a landowner on or near whose property a spill or other emergency occurs.

37. As Plaintiffs explained to the Board in their petition and supporting comments, operators in Montana routinely invoke the disclosure rules' trade secret exemption, sometimes withholding the identities of more than one-third of the chemicals used to frack a well. See Ex. D (sample post-fracking chemical disclosures).

III. PLAINTIFFS' RULEMAKING PETITION

38. Plaintiffs, as part of a coalition of Montana landowners, mineral owners, farmers and ranchers, and public health professionals, petitioned the Board on July 25, 2016, to amend the provisions of the Board's fracking chemical disclosure rules that address pre-fracking disclosure requirements and operators' entitlement to trade secret protection, Admin. R. Mont.

36.22.608, 36.22.1016. See Ex. A; Mont. Code Ann. § 2-4-315 (authorizing any interested person to petition an agency for promulgation, amendment, or repeal of a rule and prescribing procedures for agency's action on petition).

39. Regarding pre-fracking chemical disclosure, Plaintiffs asked the Board to amend Admin. R. Mont. 36.22.608 to require as part of an operator's application for a permit to drill disclosure of the specific chemical ingredients, and associated CAS numbers, of the fracking fluid planned for use. Ex. A at 8, 18. Plaintiffs further requested that, in amending this provision, the Board require that this chemical information be submitted to the Board and made available to the public at least 45 days before fracking occurs. Id. at 18.

40. Plaintiffs explained in their petition and supporting comments that these amendments are necessary to afford landowners timely access to chemical information they need to conduct effective baseline testing of their water supplies and to investigate the potential risks of planned fracking operations. Plaintiffs also noted that Wyoming law already requires oil and gas operators to disclose the specific chemical ingredients of fracking fluids planned for use before fracking is authorized in that state, undermining any claim that detailed pre-fracking chemical disclosure is impracticable or unreasonably burdensome and underscoring the inequity of the Board's existing rules.

41. Regarding the rules' trade secret exemption, Plaintiffs asked the Board to amend Admin. R. Mont. 36.22.1016 to (1) require that operators seeking to withhold alleged trade secret chemical information provide to the Board a written justification demonstrating that the information at issue qualifies as a trade secret under Montana law; and (2) provide that the Board shall review all requests for trade secret protection and issue a final determination as to whether

that protection is justified under state law before the operator may take advantage of the trade secret exemption. Ex. A at 18-19.

42. Plaintiffs explained in their petition and comments that they do not seek to eliminate the disclosure rules' trade secret exemption or compel the disclosure of legitimate proprietary information. However, Plaintiffs argued, the existing framework for addressing alleged trade secrets improperly grants operators unfettered discretion to evade disclosure requirements based on wholly unsubstantiated trade secret claims, while landowners and other citizens must bear the risk of exposure to unidentified chemicals. Further, because the Board's existing rule provides no incentive for operators to limit trade secret claims to the narrow universe of chemicals that actually qualify as such under state law, there likely is an expanding set of chemicals being used for fracking in Montana whose identity is unknown to the public or the Board. In addition, Plaintiffs in their petition again pointed out that the reforms they seek already are in place in Wyoming, where state regulations require operators to substantiate trade secret claims and the state regulator must determine the validity of such claims before granting an exemption from chemical disclosure requirements.

43. Plaintiffs' petition further argued that, by granting oil and gas operators sole discretion to dictate which chemicals are exempt from disclosure as trade secrets, with no oversight by the Board, the existing disclosure rules violate the Montana Constitution's non-delegation principle and its protections for citizens' fundamental right to know and right to a clean and healthful environment. Ex. A at 11-17.

44. With their petition, Plaintiffs provided to the Board (1) examples of pre-fracking disclosures accepted under the Board's current rules, which illustrate the lack of specific chemical information made available to the public before fracking occurs, see Ex. C; (2) an

example of a pre-fracking disclosure in which an operator voluntarily provided the Board the chemical names and CAS numbers for all ingredients of the fracking fluid planned for use, which illustrates the feasibility of implementing Plaintiffs' proposal that operators disclose specific chemical information before fracking occurs; (3) examples of post-fracking disclosures accepted under the Board's current rules, which reflect widespread invocation of the trade secret exemption, see Ex. D; (4) a mark-up of the Board's existing disclosure rules with the petitioners' proposed amendments shown in red; (5) a transcript from the June 2011 public hearing convened to consider the Board's existing fracking chemical disclosure rules; and (6) thirteen published scientific articles documenting the risks of contamination and adverse human health effects from the use of fracking chemicals.

IV. THE BOARD'S CHALLENGED DECISION

45. Pursuant to Mont. Code Ann. § 2-4-315, the Board had sixty days following submission of Plaintiffs' petition to either deny the petition in writing or initiate rulemaking proceedings.

46. The Board convened a public hearing on the rulemaking petition on September 22, 2016—two days before the Board's statutory deadline to make a decision on the petition—at the Board's office in Billings.

47. At the hearing, counsel for the petitioners and five of the individual petitioners provided testimony to the Board in support of the rulemaking petition. The testifying petitioners—who individually or with their families have interests in property in areas ranging from Red Lodge east to the Sidney area—included farmers, ranchers, a physician, and a public health expert. These individuals testified to their concerns about the impact of fracking chemical exposure on their health and the health of their patients, relatives, and neighbors; their land and

water supplies; and their livelihood. They also explained to the Board that greater access to chemical information as proposed in the rulemaking petition is essential for them to protect their interests. In conjunction with their oral testimony, the petitioners provided to the Board written summaries of their testimony and supporting documentation. The Board received additional written comments in support of the petition from other petitioners and concerned members of the public who could not attend the hearing.

48. A single witness testified in opposition to the rulemaking petition—Montana Petroleum Association Executive Director Alan Olson. As grounds for rejecting the petition, Mr. Olson testified only that the Board should deny the rulemaking petition because an unidentified lawsuit pending before the Montana Supreme Court challenged unspecified aspects of the Board's fracking regulations concerning public notice.

49. On information and belief, the Board did not receive any written comments opposing the petition.

50. Following discussion among the Board members and statements by the Board's staff, the Board voted unanimously to deny the rulemaking petition.

51. The following day, the Board issued a written decision stating the reasons for its determination to deny the rulemaking petition, as required by Mont. Code Ann. § 2-4-315. See Ex. B. The Board provided four reasons for denying Plaintiffs' rulemaking petition: (1) "The pending Supreme Court decision on the Board's current rule needs to run its course before the Board initiates any changes to said rule"; (2) "The Board is being asked to adopt what is essentially a Wyoming rule, and our laws are different from those of Wyoming. The Board may not be able to protect trade secrets, and it could potentially expose the Board or staff to liability issues"; (3) "The Board is uncertain about the new federal trade secret law and the impact it may

have on anything the Board does today"; and (4) "A decision this complicated and with such broad implications should be made as part of the legislative process and not by the seven members of the Board serving as governor appointees." Id. The Board's decision cited no evidence and provided no further explanation or response to the arguments raised in Plaintiffs' petition or supporting comments. See id.

FIRST CAUSE OF ACTION
(Arbitrary, Capricious, and Unsupported Decision)

52. Plaintiffs hereby reallege and reincorporate Paragraphs 1 through 51.

53. Under Mont. Code Ann. § 2-4-315, a decision of the Board denying a rulemaking petition must be based on record evidence. Further, in denying a rulemaking petition the Board must "articulate a satisfactory explanation for its action, including a rational connection between the facts found and the choice made." Clark Fork Coal. v. Mont. Dep't of Envtl. Quality, 2008 MT 407, ¶ 47, 347 Mont. 197, 197 P.3d 482. A Board decision that is arbitrary, capricious, or not supported by substantial evidence is invalid and must be set aside. Id. ¶ 21.

54. In the challenged decision, the Board failed to articulate a satisfactory explanation for its action, rationally consider relevant information, and establish a rational connection between the facts found and the choice to deny Plaintiffs' rulemaking petition. Because each of the Board's four reasons for denying the petition is arbitrary, capricious, and not supported by substantial evidence, the Board's decision should be set aside.

A. The Board's First Reason: Pending Supreme Court Decision

55. The Board's first reason for denying Plaintiffs' rulemaking petition—that "[t]he pending Supreme Court decision on the Board's current rule needs to run its course before the Board initiates any changes to said rule," Ex. B—is arbitrary and unsupported and cannot sustain the challenged decision.

56. The then-pending Supreme Court case on which the Board relied, Carbon County Resource Council v. Montana Board of Oil and Gas Conservation ("CCRC"), 2016 MT 240, 385 Mont. 51, 380 P.3d 798, did not provide a reasonable basis for denying Plaintiffs' petition because the case could not have affected the fracking chemical disclosure requirements at issue in the petition nor the Board's authority to undertake the rulemaking process Plaintiffs requested.

57. CCRC presented an as-applied constitutional challenge to the Board's "48-hour notice rule," which requires oil and gas operators intending to hydraulically fracture an exploratory oil or gas well to notify the Board of their intent to do so at least 48 hours in advance of such operations. Admin. R. Mont. 36.22.608(2). The CCRC plaintiffs raised a single merits issue on appeal to the Supreme Court, arguing that the Board's application of the 48-hour notice rule in approving fracking of an exploratory oil and gas well in Carbon County in 2013 violated the plaintiffs' constitutional right to participate, Mont. Const. art. II, § 8, because the 48-hour notice rule does not provide for public notice that fracking will occur and allegedly provides for inadequate public participation in the Board's decisions to authorize fracking. See Ex. E at 1, 14-15 (Appellants'/Plaintiffs' Op. Br., Carbon Cty. Res. Council v. Mont. Bd. of Oil and Gas Conservation, Case No. DA 15-0163 (filed Jan. 25, 2016)).

58. Accordingly, the CCRC appeal did not raise any issues concerning the Board's regulatory requirements for public disclosure of fracking chemicals—the subject of Plaintiffs' rulemaking petition in this case. And Plaintiffs' rulemaking petition does not raise any issues concerning public participation in the Board's decisions to authorize fracking nor the adequacy of public notice when such decisions occur—the subject of the CCRC appeal. In short, the CCRC appeal presented no overlapping issues with Plaintiffs' rulemaking petition. Therefore, there was no conceivable way that the Supreme Court's then-pending decision in CCRC could

have affected the chemical disclosure rules at issue in Plaintiffs' rulemaking petition nor affected the Board's authority to undertake the rulemaking process Plaintiffs seek.

59. To the extent that the Board concluded the then-pending CCRC appeal deprived the Board of discretion to grant Plaintiffs' rulemaking petition, the Board abused its discretion and acted arbitrarily and capriciously. See Clark Fork Coal., ¶ 43 ("An agency that has authority to act but fails to exercise that authority based upon a false belief that there is no such authority abuses its discretion.") (quotation omitted).

60. To the extent that the Board denied Plaintiffs' rulemaking petition because it determined that the then-pending CCRC appeal could affect the issues raised in Plaintiffs' petition and therefore rendered rulemaking in response to the petition imprudent, the Board failed rationally to consider relevant information about the distinct nature of the issues raised in the CCRC appeal and to articulate a reasoned basis for its decision. Accordingly, the Board's decision should be set aside. See id. ¶¶ 21, 47.

B. The Board's Second Reason: Alleged Inability to Protect Trade Secrets and Fear of Liability

61. As its second reason for denying Plaintiffs' rulemaking petition, the Board stated: "The Board is being asked to adopt what is essentially a Wyoming rule, and our laws are different from those of Wyoming." Ex. B. Based on those alleged differences, the Board claimed that if it adopted Plaintiffs' requested rule changes, "[t]he Board may not be able to protect trade secrets, and it could potentially expose the Board or staff to liability issues." Ex. B.

62. The Board's second reason for denying the rulemaking petition reflects a misunderstanding of Montana law and Plaintiffs' petition. The Board's speculation that it "may not be able to protect trade secrets" under Plaintiffs' proposed reforms is wrong because Montana law empowers—and indeed requires— the Board to withhold from public disclosure

legitimate trade secret information; the regulatory changes Plaintiffs seek would not and could not abrogate this principle of Montana constitutional and statutory law. See Great Falls Tribune v. Mont. Pub. Serv. Comm'n, 2003 MT 359, ¶ 39, 319 Mont. 38, 82 P.3d 876 (holding that constitutional right-to-know does not require disclosure of trade secrets protected under Uniform Trade Secrets Act); Mont. Code Ann. § 2-6-1002(11) (Montana Public Records Act exempting from definition of "public information" accessible to the public any "confidential information that must be protected against public disclosure under applicable law"). Further, contrary to the Board's apparent conclusion, in this respect Montana and Wyoming law are in accord. See Wyo. Stat. Ann. § 16-4-203(d)(v) (exempting from disclosure under public records laws trade secrets and confidential commercial information).

63. Accordingly, Plaintiffs made clear in their petition and supporting comments that they are not asking the Board to abolish the disclosure rules' trade secret exemption or compel disclosure of bona fide trade secrets. Instead, they have asked the Board to amend its rules to ensure that only demonstrably legitimate trade secret information is shielded by the exemption. See Ex. A at 9; Ex. F at 2-3 (comments of petitioners' counsel in support of rulemaking petition: "To be clear, petitioners are not seeking to abolish the trade secret exemption or compel disclosure of legitimate proprietary information … Adopting the proposed changes would not remove the trade secret exemption, but instead would ensure that only operators legally entitled to take advantage of the exemption actually get to do so . . . .").

64. The Board's second reason for denying Plaintiffs' rulemaking petition is arbitrary and unlawful because the Board articulated no reasoned basis for its speculation that adopting Plaintiffs' proposed regulatory reforms would deprive the Board of authority to protect legitimate trade secrets or expose the Board or staff to "liability issues," Ex. B. Clark Fork Coal.

¶ 21. Further, the Board acted arbitrarily by misinterpreting Montana law to conclude that the Board would lack authority to protect trade secrets if it granted Plaintiffs' rulemaking petition. See id. ¶ 43 ("[A]n agency, vested with discretion, abuses that discretion when it behaves as if it has no other choice than the one it has taken") (quotation omitted).

C. The Board's Third Reason: Uncertainty About the Impact of New Federal Trade Secret Law

65. The Board's third reason for denying Plaintiffs' rulemaking petition is that "[t]he Board is uncertain about the new federal trade secret law and the impact it may have on anything the Board does today." Ex. B.

66. At the outset, this rationale is arbitrary and unlawful because it rests on unsubstantiated speculation that a new federal law "may have" an impact on the Board's action concerning the rulemaking petition, id. See, e.g., Ariz. Cattle Growers' Ass'n v. U.S. Fish & Wildlife Serv., 273 F.3d 1229, 1247 (9th Cir. 2001) ("speculation is not a sufficient rational connection to survive judicial review" under the arbitrary-and-capricious standard).

67. Further, examination of the relevant federal law establishes that it does not affect the Board's authority to grant Plaintiffs' rulemaking petition. The federal statute at issue is the Defend Trade Secrets Act of 2016, Pub. L. No. 114-153, 130 Stat. 376 (114th Cong. May 11, 2016), codified at various sections of 18 U.S.C. ch. 90. The Act is concerned with corporate espionage and accordingly provides a federal civil cause of action for trade secret misappropriation by business competitors. See 18 U.S.C. § 1836(b)(1), (c); S. Rep. No. 114-220 at 3, 5, 114th Cong., 2d. Sess. (Mar. 7, 2016); H.R. Rep. No. 114-529 at 1-2, 114th Cong., 2d Sess. (Apr. 26, 2016). The Act does not address disclosure of fracking chemical information, or any other commercial information, pursuant to state or federal regulatory requirements or the protection of alleged trade secret information in that context. Importantly, the Act expressly

does not prohibit any otherwise lawful activities by state governments, affect lawful disclosures under the federal Freedom of Information Act, or preempt state remedies for trade secret misappropriation. See 18 U.S.C. §§ 1833(a)(1), 1838; S. Rep. No. 114-220 at 10; H.R. Rep. No. 114-529 at 5-6, 14. Moreover, the Defend Trade Secrets Act is intended to conform to the Uniform Trade Secrets Act, which governs the scope of trade secret protection in Montana. See S. Rep. No. 114-220 at 3, 10; H.R. Rep. No. 114-529 at 2, 13-14.

68. Therefore, the Board's reliance on the federal Defend Trade Secrets Act to deny Plaintiffs' rulemaking petition reflects an irrational determination that the Act displaced or constrained the Board's authority to grant the petition and a failure to rationally evaluate relevant evidence—including the text and history of the federal law on which the Board relied. Accordingly, the Board's third reason for denying Plaintiffs' rulemaking petition is unlawful and cannot sustain the challenged decision. See Core-Mark, ¶ 20 (court conducting arbitrary-and-capricious review "must determine whether the agency considered the relevant information") (quotation omitted); Clark Fork Coal., ¶ 43.

D. The Board's Fourth Reason: Decision Should be Made by the Legislature

69. As its fourth and final reason for denying Plaintiffs' rulemaking petition, the Board stated: "A decision this complicated and with such broad implications should be made as part of the legislative process and not by the seven members of the Board serving as governor appointees." Ex. B.

70. To the extent the Board's decision reflects a determination that the Legislature alone possesses authority to address the issues raised in Plaintiffs' rulemaking petition, that determination is unsupported. The Board determined in 2011 that it possesses authority to regulate fracking chemical disclosure and has exercised such authority since that time. Further,

the Supreme Court has recognized the Board's broad authority "to take measures to … prevent contamination of or damage to surrounding land or underground strata, and to promote environmentally sound development of oil and gas in Montana." Mont. Wildlife Fed'n, ¶ 8. The challenged decision articulates no basis for a contrary conclusion.

71. To the extent the Board's decision instead reflects a preference that the Legislature address the issues raised in Plaintiffs' rulemaking petition, that preference is not a lawful basis for denying the petition. "[C]hoosing not to act, is an act in and of itself" and must be rationally justified by consideration of the relevant factors and evidence in the record. Columbia Falls Elementary School Dist. No. 6 v. State, 2005 MT 69, ¶ 48, 326 Mont. 304, 109 P.3d 257 (Nelson, J., concurring); accord Clark Fork Coal., ¶ 43. Here, Plaintiffs presented to the Board a number of factual, policy, and legal arguments that amendment of the Board's rules for pre-fracking chemical disclosure and exemption for alleged trade secrets is necessary—including arguments that, as explained below, the Board's existing framework for shielding alleged trade secrets from disclosure violates the Montana Constitution. Expressing a preference that the Legislature deal with these issues—which indisputably fall within the Board's own regulatory jurisdiction—does not constitute a reasoned basis for denying Plaintiffs' rulemaking petition and, in so doing, failing even to consider and address Plaintiffs' arguments. See Massachusetts v. EPA, 549 U.S. 497, 532-34 (2007) (overturning EPA's decision to deny rulemaking petition based on EPA's preference not to regulate greenhouse gas emissions and holding it was arbitrary for EPA to refuse, without explanation, to determine whether allegations in petition compelled regulatory action). This is particularly true where, as here, the Board determined in 2011 that it is necessary and appropriate for the Board to regulate fracking chemical disclosure and has now reversed course without explanation.

72. Further, for the Court to accept as a valid basis for denying a rulemaking petition an agency's unexplained judgment that the issues presented are too "complicated" and significant would allow agencies to shirk their regulatory responsibilities whenever they deem it politically expedient not to act—even where, as here, doing so leaves in place rules that violate fundamental rights protected by the Montana Constitution.

73. At a minimum, with respect to all four reasons that are the basis for the challenged decision, the Board failed to explain or justify why it should not have at least initiated rulemaking proceedings in response to Plaintiffs' petition. That step would have allowed the Board to fully consider an appropriate regulatory response to the issues raised in the petition in light of any valid countervailing concerns but would not have obligated the Board to adopt the specific regulatory reforms Plaintiffs proposed.

74. In sum, in denying Plaintiffs' rulemaking petition the Board failed to articulate a satisfactory explanation for its action, rationally consider relevant information, or establish a rational connection between the facts found and the choice made. Accordingly, the Board's decision is arbitrary, capricious, and unlawful and should be set aside. Core-Mark, ¶¶ 20, 38; Clark Fork Coal., ¶¶ 21, 47.

SECOND CAUSE OF ACTION
(Declaratory Judgment; Regulation Violates Mont. Const. Art. II, § 9 (Right to Know))

75. Plaintiffs hereby reallege and reincorporate Paragraphs 1 through 74.

76. The Montana Constitution guarantees citizens' fundamental "right to know." Mont. Const. art. II, § 9. The purpose of this constitutional guarantee is "to provide the public information to enable citizens to determine the propriety of governmental actions." Great Falls

Tribune v. Great Falls Public Schools, 255 Mont. 125, 129, 841 P.2d 502, 504 (1992) (citing Mountain States v. Dep't of Pub. Serv. Reg., 194 Mont. 277, 285, 634 P.2d 181, 186-87 (1981)).

77. The constitutional right-to-know provision does not mandate disclosure of bona fide trade secrets, but it creates an express presumption in favor of public access to information and places the burden of establishing trade secret status on the entity seeking to withhold information from public disclosure. Mont. Const. art. II, § 9; Great Falls Tribune v. Mont. Pub. Serv. Comm'n, ¶¶ 54-55. It further requires that the agency considering a trade secret claim undertake a fact-specific inquiry to determine whether the alleged trade secret information in fact qualifies as such under state law. Great Falls Tribune v. Mont. Pub. Serv. Comm'n, ¶ 54.

78. The framework for exempting trade secrets under the Board's current disclosure rules contravenes the fundamental purpose of the constitutional right-to-know provision and violates the specific requirements established by the Supreme Court to implement that right when alleged trade secret information is at issue. First, by granting automatic confidentiality protection to any and all chemical information operators claim, without justification, to be a trade secret, the existing disclosure rules impermissibly relieve operators of their burden "to establish prima facie proof that the information is a discernible property right entitled to protection." Id. ¶ 60. Second, the existing rules impermissibly relieve the Board of its concomitant obligation to "make an independent determination whether the [ingredients of hydraulic fracturing fluids] are in fact property rights which warrant" protection as trade secrets. Id. ¶ 57. More fundamentally, by automatically exempting all alleged trade secret chemical information from disclosure, the existing rules deprive the public of information that is necessary "to determine the propriety of governmental actions," Great Falls Tribune v. Great Falls Public Schools, 255 Mont. at 129, 841 P.2d at 504 (citation omitted)—specifically, whether the Board is improperly allowing oil and

gas operators to withhold chemical information that is not a trade secret under state law and whether the Board is authorizing use of fracking chemicals that pose unacceptable risks to human health, property, or the environment.

THIRD CAUSE OF ACTION
(Declaratory Judgment; Regulation Violates Non-Delegation Principle, Mont. Const. Art. II, § 17; Art. III, § 1)

79. Plaintiffs hereby reallege and reincorporate Paragraphs 1 through 78.

80. The Montana Constitution embodies a non-delegation principle, which limits the government's ability to cede decision-making powers to private parties. See Mont. Const. art. II, § 17 (due process); art. III, § 1 (separation of powers); Williams v. Bd. of Cty. Comm'rs, 2013 MT 243, ¶ 45, 371 Mont. 356, 308 P.3d 88 (citing due process guarantee as source of non-delegation principle); In re Petition to Transfer Territory, 2000 MT 342, ¶¶ 13-15, 303 Mont. 204, 15 P.3d 447 (citing separation of powers provision as source of non-delegation principle). A statute that delegates to a private party "absolute discretion" to determine legal rights or status violates the non-delegation principle. Ingraham v. Champion Int'l, 243 Mont. 42, 48, 793 P.2d 769, 772 (1990). Further, to be valid, a delegation to a private party must include a "legislative bypass" provision by which a politically accountable body may override the exercise of the delegated power in the interests of the public. Williams, ¶ 53.

81. The framework for shielding alleged trade secrets from public disclosure under the Board's existing rules violates these constitutional requirements by providing oil and gas operators unfettered discretion to determine whether fracking chemical information covered by the disclosure rule constitutes trade secrets, without any oversight by the Board. The rules provide an automatic exemption from disclosure requirements for any chemical information the operator asserts—based on no evidence—to be a trade secret; operators are not required to justify

trade secret claims and the rules do not require the Board to review trade secret claims and rule on their legitimacy before allowing an exemption from disclosure requirements. See Admin. R. Mont. 36.22.1016(1). As a consequence, operators have the first, last, and only word on which fracking chemicals are exempt from public disclosure under state law, which violates the non-delegation principle.

FOURTH CAUSE OF ACTION
(Declaratory Judgment; Regulation Violates Mont. Const. Art. II, § 3, Art. IX, § 1 (Clean and Healthful Environment))

82. Plaintiffs hereby reallege and reincorporate Paragraphs 1 through 81.

83. The Montana Constitution guarantees citizens' fundamental right to a clean and healthful environment and imposes on both citizens and state government an obligation to maintain and improve the environment. Mont. Const. art. II, § 3; art. IX, § I. These constitutional provisions "provide … protections which are both anticipatory and preventive," not merely a remedy for environmental harm after it has occurred. Mont. Envtl. Info. Ctr. v. Dep't of Envtl. Quality, 1999 MT 248, ¶ 77, 296 Mont. 207, 988 P.2d 1236. Further, the Constitution's clean and healthful environment provisions are "not intend[ed] to merely prohibit that degree of environmental degradation which can be conclusively linked to ill health or physical endangerment," but instead demand "adequate remedies for degradation of the environmental life support system" and laws that will "prevent unreasonable degradation of natural resources." Id.

84. Because the constitutional right to a clean and healthful environment is fundamental, "any statute or rule which implicates that right" is valid only if it demonstrably advances "a compelling state interest and … is closely tailored to effectuate that interest and is

the least onerous path that can be taken to achieve the State's objective." Id. ¶ 63 (emphasis in original).

85. As a response to public concern over the environmental and health risks posed by fracking chemicals and an exercise of the Board's authority to protect land and water resources from the adverse effects of oil and gas development, the Board's fracking chemical disclosure rules implicate Plaintiffs' fundamental right to a clean and healthful environment.

86. However, the disclosure rules' trade secret exemption, Admin. R. Mont. 36.22.1016(1), violates that right and the principles established for its implementation because the exemption does not employ the least onerous approach to achieving the Board's objective of protecting legitimate trade secret information. Instead, the exemption provides impermissibly overbroad protection by shielding from disclosure not only chemical information that legitimately constitutes a trade secret under Montana law, but also any chemical information that an oil and gas operator claims—based on no evidence—to constitute a trade secret.

REQUEST FOR RELIEF

THEREFORE, Plaintiffs respectfully request that this Court:

1. Declare that the Board's September 23, 2016, decision denying Plaintiffs' petition to amend the Board's fracking chemical disclosure rules, Admin. R. Mont. 36.22.608, 36.22.1016, was arbitrary, capricious, and unlawful;

2. Declare that the Board's rule governing trade secret protection for fracking chemicals, Admin. R. Mont. 36.22.1016(1), violates Plaintiffs' constitutional right to know, Mont. Const. art. II, § 9;

3. Declare that the Board's rule governing trade secret protection for fracking chemicals, Admin. R. Mont. 36.22.1016(1), violates the Montana Constitution's non-delegation principle, Mont. Const. art. II, § 17; art. III, § 1;

4. Declare that the Board's rule governing trade secret protection for fracking chemicals, Admin. R. Mont. 36.22.1016(1), violates Plaintiffs' constitutional right to a clean and healthful environment, Mont. Const. art. II, § 3; art. IX, § 1;

5. Set aside the Board's September 23, 2016, decision denying Plaintiffs' rulemaking petition and remand this matter to the Board with instructions that the Board promptly reconsider Plaintiffs' petition in a manner consistent with this Court's opinion and governing law;

6. Require the Board to pay Plaintiffs their reasonable fees, costs, and expenses, including attorneys fees, associated with this litigation; and

7. Grant Plaintiffs such additional relief as the Court may deem just and proper.

Respectfully submitted this 13th day of January, 2017.

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