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MONTANA TWENTIETH JUDICIAL DISTRICT COURT, LAKE COUNTY

FLATHEAD JOINT BOARD OF CONTROL, ET AL.,	Cause No. DV-15-73
Plaintiffs	<b>BRIEF IN SUPPORT OF MOTION TO CHANGE VENUE</b>
v.	
MEMBERS OF THE 64TH LEGISLATURE, ET AL.,	
Defendants.	

This case presents a complaint seeking an injunction against the Governor, the Attorney General, and the entire Legislature (collectively “the State”). Specifically, the complaint seeks to enjoin the State from “implementing SB 262.” Compl. at 12. As such, all action that will be taken will occur in Lewis and Clark County. Additionally, the ends of justice are promoted by a change to Lewis and Clark County where all named

defendants currently reside for purposes of venue, because that is where all official acts subject to this litigation have taken place. Montana Code Annotated §§ 25-2-201(1) and (3) thus require a change of venue.

There is “no question that Lewis and Clark County is a proper venue for this case.” *BNSF v. State*, 2010 MT 46, ¶ 11, 355 Mont. 296, 228 P.3d 1115. As this Petition is an action against public officers, Mont. Code Ann. § 25-2-125 provides that proper venue “is the county where the cause or some part of the cause of action arose.”

According to the Montana Supreme Court, “the cause of action” for purposes of a declaratory judgment seeking to compel a public official to take, or refrain from, a certain action, such as not enacting a law, arises where the alleged acts complained of occurred or will occur. *Cabinet Resource Group v. Montana Dept. of State Lands*, 189 Mont. 349, 354-55, 616 P.2d 310, 312-13 (1980) (determining that “the cause of action” took place in Lewis and Clark County, where the alleged wrongful permit was issued by a state agency, as opposed to Lincoln County where the permitted project was to take place).

In this case, the conduct complained of and the relief requested against the Defendants, all of whom are State actors, concerns only the passage and implementation of SB 262, which will occur solely in Helena. As such, the proper venue is Lewis and Clark County. In any case, as described in the State’s opposition to the *ex parte* application for TRO, filed earlier today, Congress and the Tribe must ratify the CSKT Water Compact before it is effective, Compact at 57; Art. VII.A.1, which will likely take years. There is, thus, no action that is occurring or will occur in the near several years in

Lake County. All actions taken by any of the defendants to implement the law will occur in Helena.

Moreover, Lewis and Clark County is the only proper venue regardless of Plaintiffs' residence or whether the law may ultimately affect water rights in Lake County. In *Cabinet Resource Group*, ASARCO argued that the proper venue was where the physical manifestation of the public official's order would occur--in that case Lincoln County where the mine in question was located. 189 Mont. at 353, 616 P.2d at 312. The Supreme Court disagreed, however, citing several cases holding that the only proper venue, when a plaintiff seeks to compel an action by a public official, is where the public official resides, because it "is at that place where he officially [acts]." *Id.* at 355, 616 P.2d at 313.

Here, all action relating to the law will occur or have occurred in Helena as noted above. And while an action against the State of Montana or a political subdivision may be brought in "the county of the plaintiff's residence," Mont. Code Ann. § 25-2-126, the Supreme Court has made clear that Lewis and Clark County is the only proper venue when the action is against a public officer undertaking an official action, as is the case here. *Cabinet Resource Group* at 355, 616 P.2d at 313; Mont. Code Ann. § 25-2-125. Thus, for purposes of venue, all 152 defendants reside in Helena.

Montana Code Annotated, §§ 25-2-125 and -201(1), therefore require that venue for purposes of this complaint be transferred to Lewis and Clark County. Additionally, the convenience of witnesses and the ends of justice require venue to be changed to

Lewis and Clark County, where the "alleged wrongful" law will be enacted and implemented and where all defendants reside for purposes of venue.

Respectfully submitted, April 22, 2015.

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By: \_\_\_\_\_



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**CERTIFICATE OF SERVICE**

I hereby certify that I caused a true and correct copy of the foregoing to be mailed and emailed to:

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