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7 MONTANA TWENTIETH JUDICIAL DISTRICT COURT, LAKE COUNTY

8 FLATHEAD JOINT BOARD OF
CONTROL and JERRY LASKODY,
9 BOONE COLE, TIM ORR, TED HEINS,
BRUCE WHITE, SHANE ORIEN, WAYNE
10 BLEVINS AND GENE POSIVIO, all
members of the Flathead Joint Board of
11 Control,

12 Plaintiffs,

13 vs.

14 MEMBERS OF THE MONTANA 64TH
LEGISLATURE, a legislative body
15 comprised of Members of the Senate and
House of Representatives; AUSTIN
16 KNUDSEN, Speaker of the House; DEBBY
BARRETT, President of the Senate; STATE
17 OF MONTANA; STEPHEN C. BULLOCK,
Governor, State of Montana; TIMOTHY
18 FOX, Montana Attorney General;
REPRESENTATIVE DANIEL SALOMON,
19 representing Montana House District 93;
REPRESENTATIVE GREG HERTZ,
20 representing Montana House District 12;
REPRESENTATIVE GEORGE KIPP, III,
21 representing Montana House District 15;
SENATOR CLIFF LARSON, representing
22 Montana Senate District 57; SENATOR LEA
WHITFORD, representing Montana Senate
23 District 8; and JOHN DOES 1 - 10.

24 Defendants.

Cause No. DV-15-73

Judge: James A. Manley

**PLAINTIFFS' REPLY TO
DEFENDANTS' MOTION TO
CHANGE VENUE**

1 COME NOW Plaintiffs with their Reply to Defendants' Motion to Change Venue and
2 state as follows:

3 **INTRODUCTION**

4 On April 20, 2015, the Plaintiffs filed their Verified Complaint in the Montana
5 Twelfth Judicial District Court, Lake County. The Complaint specifically set forth the basis
6 for venue in Lake County pursuant to § 25-2-117, MCA and § 25-2-126, MCA. On April 22,
7 2015, the Defendants filed their Motion to Change Venue based on their allegation that Lake
8 County is not a proper venue for this case and that the Montana First Judicial District Court,
9 Lewis and Clark County, is "the only proper venue." Defendants' motion is not well taken.

10 **1. VENUE IS PROPER PURSUANT TO § 25-2-117, MCA, § 25-2-125**
11 **MCA, AND § 25-2-126, MCA BECAUSE SOME OF THE**
12 **DEFENDANTS RESIDE IN LAKE COUNTY, SOME OF THE**
13 **PLAINTIFF'S CAUSE OF ACTION AROSE IN LAKE COUNTY,**
AND SOME OF THE PLAINTIFFS ARE RESIDENTS OF LAKE

14 Defendants first argue that venue should be changed pursuant to § 25-2-201 (1),
15 MCA, because Lake County is purportedly not a proper venue for this action. However, as
16 set forth in the Verified Complaint, Representatives and Senators who either reside in or
17 represent constituents located in Lake County are named as Defendants. Complaint, p. 3, ¶3.
18 Pursuant to § 25-2-117, MCA, venue is accordingly proper in Lake County for all of the
19 Defendants because it is a proper venue for those Defendants who reside in and represent
20 constituents located in Lake County.

21 More importantly, Plaintiff, Flathead Joint Board of Control owns property in and
22 maintains its principal office in Lake County, and individual Plaintiffs, Jerry Laskody, Boone
23 Cole, Tim Orr, Ted Heins, Bruce White, Shane Orien, Wayne Blevins, and Gene Posivio,

1 reside and own property in either Lake or Sanders County, Montana. Complaint, p. 2, ¶1,
2 p. 3, ¶2. Consequently, Lake County is also a proper venue pursuant to § 25-2-126 (1), MCA
3 because in an action brought by a Montana resident against the State of Montana, the
4 plaintiff's residence is also a proper place of trial.

5 Defendant also argues that proper venue is in Lewis and Clark County because this is
6 an action against public officers, and pursuant to § 25-2-125, MCA, proper venue "is where
7 the cause or some part of the cause of action arose." Defendants' Brief, p. 2. Defendants cite
8 *Cabinet Resources Group v. Montana Dept. of State Lands*, 189 Mont. 349, 616 P.2d 310
9 (1980) for the propositions that: 1) the cause of action, for purposes of a declaratory
10 judgment action seeking to compel a public officer to take, or refrain from, a certain action,
11 is where the alleged acts complained of occurred or will occur; and 2) that "Lewis and Clark
12 County is the only proper venue when the action is against a public officer undertaking an
13 official action." Defendants' Brief, p. 2-3. According to Defendants, because all of the
14 public officers' actions in this matter have been taken or will be taken in Helena, the proper
15 venue pursuant to § 25-2-125, MCA is Lewis and Clark County. Defendants' arguments are
16 simply wrong.

17 The Montana Supreme Court clarified its holding in *Cabinet Resources Group* in two
18 subsequent cases, and has specifically held that not only the decision made by the public
19 official, but the place where the effect of the decision is felt, must be considered when
20 determining where the cause of action arose under § 25-2-125, MCA. In *Ford v. Department*
21 *of Fish, Wildlife, and Parks*, 208 Mont. 132, 676, P.2d 207 (1984), the plaintiff sought a writ
22 of mandamus challenging an agency decision to demote and transfer the plaintiff. The Court
23 specifically addressed the *Cabinet Resources Group* case, and reasoned that:

1 It is not the mandamus aspect of the case, but the fact that the
2 challenged state action concerns and will affect a person and a
3 position in Missoula that controls here. It is not the mere
 making of the order, but the place where it is put in operation,
 that determines where the cause of action arose.

4 *Ford*, 208 Mont. at 137, 676 P.2d at 210. The Court held that although the decision to
5 demote and transfer the plaintiff was made in Lewis and Clark County, Missoula County was
6 a proper place for trial pursuant to § 25-2-105, MCA (re-codified at § 25-2-125, MCA)
7 because the position of employment to which he claimed he was entitled and from which he
8 was demoted was in Missoula County. Therefore, the Court held that at least part of the
9 action arose in Missoula County, and even though Lewis and Clark County was a proper
10 venue, Missoula County was also a proper county of venue.

11 In *I.S.C. Distributors, Inc.*, the plaintiff filed a complaint in Gallatin County for
12 damages and injunctive relief against ten state employees who worked for the Montana
13 Department of Administration. The Plaintiff alleged that the defendants unlawfully changed
14 the date for submission for proposals to sell computers to the Department, illegally
15 considered evaluation criteria which were not set forth in the request for proposals, and acted
16 arbitrarily when they awarded the contract to vendors other than the plaintiff. The
17 defendants moved for change of venue to Lewis and Clark County because plaintiff's claim
18 arose in Lewis and Clark County and none of the defendants resided in Gallatin County. The
19 district court determined that venue was proper in Gallatin County pursuant to § 25-2-125,
20 MCA, and the defendants appealed.

21 On appeal, the Montana Supreme Court cited the *Ford* decision, and reasoned that it
22 was "not only the decision to award the contract, but the place where the effect of the
23 decision is felt, which must also be considered." *I.S.C. Distributors, Inc.*, 259 Mont. at 464,
24

1 856 P.2d at 980. Although the defendants' decision to award the contract occurred in Lewis
2 and Clark County, the testing and evaluation of equipment in conjunction with the contract
3 awards was undertaken in Gallatin County, the plaintiff's principal place of business was in
4 Gallatin County, the plaintiff's business suffered damages to its business as a result of the
5 decision, and if plaintiff would have been awarded the contract, some of the goods that
6 would have been purchased from plaintiff under the contract would have been delivered in
7 Gallatin County. Thus, the alleged wrongful conduct of the defendants would have an
8 impact on Gallatin County, and some of the plaintiff's cause of action arose in Gallatin
9 County. Consequently, the Court held that Gallatin County was a proper venue pursuant to
10 § 25-2-125, MCA and the Court's previous decision in *Ford*.

11 Similarly, in this case, it is not only the action of the State, its public officers and the
12 legislature that must be considered, but also the place where the effect of the decision is felt.
13 As alleged in Plaintiffs' Verified Complaint, the Flathead Joint Board of Control is
14 headquartered in Lake County, and some of the individual Plaintiffs are located in Lake
15 County. Complaint, p. 2, ¶1, p. 3, ¶2. Moreover, Plaintiffs' Verified Complaint states that if
16 this Court fails to issue the requested temporary restraining order and preliminary injunction,
17 this will "result in immediate and irreparable damage and harm to the Plaintiffs and
18 landowners served by the FJBC." Complaint, p. 11, ¶42. Consequently, the alleged
19 wrongful conduct of the defendants, namely passing SB 262 by less than a 2/3 vote in
20 violation of Mont. Const. Art. II, § 18, and signing, executing, and implementing SB 262,
21 would clearly have an impact on the Flathead Joint Board of Control, the individual plaintiffs
22 who reside in Lake County, and other irrigators located in Lake County. Therefore, pursuant
23
24

1 to § 25-2-125, MCA, *Ford*, and *I.S.C. Distributors, Inc.*, Lake County is a proper venue for
2 this matter, and Defendants' Motion to Change Venue must be denied.

3 **2. THE CONVENIENCE OF WITNESSES AND THE ENDS OF**
4 **JUSTICE DO NOT REQUIRE VENUE TO BE CHANGED TO**
5 **LEWIS AND CLARK COUNTY.**

6 Finally, Defendants argue that the convenience of witnesses and the ends of justice
7 require change of venue pursuant to § 25-2-201 (3), MCA. However, this argument is
8 supported by only cursory statements to the effect that "all named defendants currently reside
9 for purposes of venue," "that is where all official acts subject to this litigation have taken
10 place," and that is "where the 'alleged wrongful' law will be enacted." Defendants' Brief,
11 p. 2, 4. However, Defendants disregard the fact that some of the Defendants reside in or
12 represent constituents located in Lake County. Complaint, p. 3, ¶3. More important, the
13 Flathead Joint Board of Control and some of the individual Plaintiffs reside in Lake County.
14 Complaint, p. 2, ¶1, p. 3, ¶2. Finally, the Montana Supreme Court has recognized a "goal of
15 providing a forum which is practical and convenient for the plaintiff." *Ford*, 208 Mont. at
16 135, 676 P.2d at 209. Therefore, the ends of justice and convenience of witnesses support
17 venue in Lake County, and not Lewis and Clark County. Defendants' Motion to Change
18 Venue must be denied.

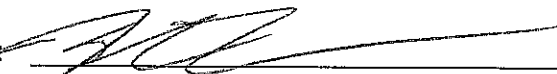
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1 CONCLUSION

2 Based upon the foregoing, Plaintiffs respectfully request that this Court deny
3 Defendants' Motion to Change Venue.

4 DATED this 24th day of April, 2015.

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8 ROCKY MOUNTAIN LAW PARTNERS, PLLP

9
10 By: 
11 Bruce A. Fredrickson
12 Kristin L. Omgvig
13 Attorneys for Plaintiffs
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CERTIFICATE OF SERVICE

I, Bruce A. Fredrickson, one of the attorneys of ROCKY MOUNTAIN LAW PARTNERS, PLLP, do hereby certify that on the 24th day of April, 2015, I served a true and correct copy of the foregoing document upon the person(s) named below, at the address set out below, either by mailing, hand delivery, or Federal Express, in a properly addressed envelope, postage prepaid, or by telecopying a true and correct copy of said document.

TIMOTHY C. FOX Attorney General	<input checked="" type="checkbox"/>	U.S. Mail (first class postage)
ALAN JOSCELYN Deputy Attorney General	<input type="checkbox"/>	Federal Express
DALE SCHOWENGERDT Solicitor General	<input type="checkbox"/>	Hand-Delivery
215 North Sanders P.O. Box 201401 Helena, MT 59620-1401	<input type="checkbox"/>	Telefacsimile
	<input checked="" type="checkbox"/>	Other: Via E-Mail

