

MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY

No. CDV-07-614

**MONTANA ENVIRONMENTAL)
INFORMATION CENTER,)**

Plaintiff,)

vs.)

**CITY OF GREAT FALLS and)
SOUTHERN MONTANA ELECTRIC)
GENERATION AND TRANSMISSION)
COOPERATIVE, INC.,)**

Defendants,)

**MONTANA NEWSPAPER)
ASSOCIATION,)**

Intervenor.)

Judge E. Wayne Phillips

ORDER ON MOTION
FOR STAY OR INJUNCTION

By motion, Defendant and Appellant seeks a stay or injunction of this Court’s March 8, 2010 Order on Motion for Summary Judgment which released all but six documents for public review. Defendant/Appellant claims that “[i]f the stay or injunction is not granted, *irreparable* and prejudicial harm will result to Southern Montana.” Memorandum, p. 2 (emphasis original).

The Montana Rules of Appellate Procedure authorize issuance of either a stay or an injunction. M. R. App. P., Rule 22. That Rule further provides that the “. . . court

must promptly enter a written order on a motion filed under this rule and include in findings of fact and conclusions of law, or in a supporting rationale, the relevant facts and legal authority on which the district court's order is based." M. R. App. P. 22(1)(d). It should be noted that no relevant criteria for evaluating a stay request is contained in the Rule or in statute. An injunction may be granted if there is a showing of irreparable injury. *Curran v. Dept. of Highways*, 258 Mont. 105, 852 P.2d 544 (1993). Here, the Court has not set a hearing to receive evidence on irreparable harm for two reasons. First, it is not granting the motion, § 27-19-301(2), MCA (2009) and, second, the Defendant cannot show irreparable harm, as will be discussed more fully below.

As noted by this Court's March 8, 2010 Order, Defendant failed to comply with a specific Court Order in its submission of documents for review for trade secrets, attorney-client privilege, etc., Order, p. 2 citing July 28, 2009 Order of the Court. It also failed to meet the high threshold burden for restriction of public review of public documents, *Great Falls Trib. v. PSC*, 2003 MT 359, ¶ 57, 319 Mont. 38, 82 P.3d 876, Order, p. 14.

There is an important nexus between these twin failures and the Court's actual findings regarding the documents for which "privilege" was claimed. Those findings include:

1. Some documents had already been released for public review, Order, p. 3.
2. Defendant played games with its designation of "trade secrets" which required release of many documents, Order, p. 4.
3. Political commentary and hyperbole claimed as trade secret, Order, p. 9.

4. Four memos “detailing extraordinarily privileged and trade secret material such as phone numbers for making room reservations, dinner plans, and flight itinerary”, Order, p. 11.

5. A “Life Conceptualizers” memo claimed as a trade secret and attorney-client privilege but actually a “pop-Psychology Today take on individual typologies.” Order, p. 11.

6. Internet accessible information claimed as trade secret. Order, p. 10.

The substantive legal failures and these patently absurd claims of privilege demonstrate why Defendant cannot claim irreparable harm. As support for that holding, this Court reiterates that it spent over 12 hours of review to find six privileged documents out of hundreds upon hundreds upon hundreds. Those other hundreds are more than adequately represented by the individual documents cited in the March 8th Order and above. Order, pp. 13-14. Furthermore, as this Court held above, the Defendant has failed miserably to demonstrate why the Court should “spend the 24 some odd hours needed to wade through the remaining documents just to find those few which might meet the privilege.” Order, p. 14.

The Defendant has not succeeded in scaling even one small foothill let alone surmounting the high constitutional peak of the public’s right to view the workings of a government, which Lincoln so admirably described as, of the people, by the people and for the people. The Motion for Stay is **Denied**. The Motion for Injunction is **Denied**.

The Clerk of Court is directed to file this Order On Motion For Stay Or Injunction and provide copies to counsel of record.

DATED this 15th day of March 2010.

DISTRICT COURT JUDGE

Hon. E. Wayne Phillips

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