To: 'Bowers, Kate (ENRD)'[Kate.Bowers@usdoj.gov]; Lensink, Andy[Lensink.Andy@epa.gov]
From: Rauchway, Jon
Sent: Mon 6/16/2014 3:15:42 PM
Subject: RE: Christian v. Atlantic Richfield

Sure—AR's response brief is due in 30 days, but we will be moving for a 30-day extension, which we will almost certainly get. I understand that one 30-day extension is granted by the Court as a matter of course, and plaintiffs moved for and received such an extension. So, we will likely not file our brief until August 9. It's possible we may ask for more time than that.

The Montana Supreme Court's rules for amicus briefs are pretty straightforward and user-friendly (we submitted an amicus brief in 2011 or 2012 in a statute of limitations case). I don't have the rule at my fingertips, but I think you file a motion for leave and include in it the date you propose for getting your amicus brief filed. When we did this, there were several amici and the court granted leave to every one of them. But no one opposed the motions in that case, so who knows.

Jon

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From: Bowers, Kate (ENRD) [mailto:Kate.Bowers@usdoj.gov]
Sent: Monday, June 16, 2014 8:23 AM
To: Rauchway, Jon; Andrew J. Lensink Esq. (lensink.andy@epa.gov)
Subject: RE: Christian v. Atlantic Richfield

Hi Jon – thanks for the update. We need to do a little internal coordination here, but in the meantime, could you tell me what the remainder of the briefing schedule looks like?

Regards,

Kate

From: Rauchway, Jon [mailto:Jon.Rauchway@dgslaw.com]
Sent: Thursday, June 12, 2014 6:19 PM
To: Bowers, Kate (ENRD); Andrew J. Lensink Esq. (lensink.andy@epa.gov)
Subject: Christian v. Atlantic Richfield

Hello Kate and Andy:

I just received the plaintiffs' opening brief in the mail today. In an unexpected turn, they decided to take on EPA's authority to prevent their restoration plan in this appeal. Here are some of the things they argue:

"The District Court's assumption that EPA would or could prevent a property owner from cleaning up his or her own property, using funds awarded by a jury for this purpose, is speculative and unrealistic." (at 28)

"CERCLA is entirely irrelevant to the Opportunity Citizen's common law claims, and the

District Court committed reversible error by determining that the Opportunity Citizens' claims were somehow barred because EPA did not provide advance approval for the Opportunity Citizens' damage claims." (at 30)

"The District Court's conclusion that EPA must approve a common law restoration plan before damages are even awarded cannot be reconciled with Sunburst." (at 31)

It appears the plaintiffs are hoping to use this appeal as a vehicle to induce the Montana Supreme Court to make some pronouncement on the applicability of CERCLA to common law claims in Montana. Can we set up a call to discuss this development?

Regards,

Jon

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