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MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
YELLOWSTONE COUNTY

LAUREL CARED, Plaintiff, vs. STATE OF MONTANA, Defendant.	Cause No.: DV-56-2026-0000855-DK Judge: Hon. Ed Zink **DEFENDANT'S REPLY BRIEF IN FURTHER SUPPORT OF MOTION TO DISSOLVE PRELIMINARY INJUNCTION**

The Montana Board of Investments and Department of Public Health and Human Services respectfully request the District Court expeditiously dissolve the Preliminary Injunction issued by the Court in its Order Granting in Part Preliminary Injunction (August 26, 2026) (Doc. 35). The Board of Investments and Department of Public Health and Human Services complied with the District Court's Preliminary Injunction Order and Plaintiff, despite requesting that the Preliminary Injunction be left in place, "*does not oppose dissolution of the existing injunction* insofar as that

injunction pertains to the prior environmental assessment." *See* Pl.'s Resp. to Defs.' Mot. to Dissolve Injunction (Oct. 2, 2026) (emphasis added) (Doc. 48).

I. The Montana Board of Investments and Department of Public Health and Human Services complied with the District Court's Preliminary Injunction Order.

The District Court issued an Order remanding the Final Environmental Assessment addressing the State of Montana's proposed Forensic Mental Health Facility to the Montana Board of Investments and Department of Public Health and Human Services and requiring: (1) additional investigation and explanation, and revisions to the Final Environmental Assessment, as to all water supply issues; and (2) additional reasonable opportunity, consistent with the Montana Environmental Policy Act, for the public to participate in the State's decision-making process. *See* Order Granting in Part Preliminary Injunction 23, *et seq.* (Doc. 35) (Preliminary Injunction Order).

In response, the Montana Board of Investments and Department of Public Health and Human Services "expeditiously but diligently":

(1) Investigated all Environmental Assessment sections, and related information, addressing water supply issues (*see e.g.* MT4908-4958; 3979-3980[1]);

(2) Consulted with professional engineers concerning water supply issues, who also provided further technical analysis on water supply issues (*see e.g.* MT4902-4905);

(3) Consulted with the Montana Department of Environmental Quality, the regulator of public water supply systems, and the Department of Natural Resources and Conservation, the regulator of water rights, concerning water supply issues (*see e.g.* MT4930-4932; 4953; 3980);

(4) Reviewed the City of Laurel annexation moratorium process for information material to water supply issues (*see e.g.* MT4932-4934; 3979);

(5) Revised the Final Environmental Assessment sections addressing water supply issues to provide additional explanation and technical analysis of water supply issues (*see* MT4908-4958);

[1] "MT[---]" citations refer to MT[---] numbered documents filed with the Court in various notices of filing of record. Leading zeros are removed.

(6) Expanded upon the applicable Finding and Conclusion in the revised Final Environmental Assessment (MT4955-4956);

(7) Posted (August 31, 2026) the revised Final Environmental Assessment, including Appendices, to the hb5.mt.gov website for public review and comment (*see* MT3982);

(8) Provided public notice (September 1, 4, 8, 11, and 15, 2026) of a public comment period (September 1 - September 8, 2026 (extended to September 15, 2026)) and a public hearing (September 8, 2026, 1:00-3:00 p.m., in Billings, Montana) on the revised Final Environmental Assessment and Forensic Mental Health Facility (*see* MT3678-3681; 5779-5782; 6539-6542);

(9) Received and reviewed written public comment;

(10) Attended and considered comments made at the public hearing;

(11) Further evaluated water supply, and other, issues based on applicable public comment (*see e.g.* MT6231-6232);

(12) Further considered the Proposed Action, Findings and Conclusions, and Agency Determination (*see e.g.* MT6231-6232); and

(13) Issued a Final Environmental Assessment confirming the Agency Determination (MT5930-6233).

See Defs.' Br. in Supp. of Mot. to Dissolve Preliminary Injunction (Sept. 18, 2026) (Doc. 46).

Plaintiff *does not dispute any* of this. *See* Pl.'s Resp. to Defs.' Mot. to Dissolve Injunction (Doc. 48). No factual predicate exists supporting the continuation of the Preliminary Injunction. The Montana Board of Investments and Department of Public Health and Human Services complied with the District Court's Preliminary Injunction Order. *See* Defs.' Br. in Supp. of Mot. to Dissolve Preliminary Injunction (Doc. 46). Plaintiff *does not contest* otherwise. *See* Pl.'s Resp. to Defs.' Mot. to Dissolve Injunction (Doc. 48). No legal predicate exists supporting the continuation of the Preliminary Injunction. Where a party demonstrates a significant change either in factual conditions or in law rendering the original basis for an injunction inapplicable, the injunction should be dissolved. *See* Mont. R. Civ. P. 60(b); *Horne v. Flores*, 557 U.S. 433, 447 (2009); *Agostini v. Felton*, 521 U.S. 203, 215 (1997).

And it should be dissolved expeditiously. The Court's "intention" was for preliminary injunctive relief to "be as *short-lived as reasonably possible*," and to be "a *temporary pause* on construction of the [Forensic Mental Health] Facility." Preliminary Injunction Order 22 (emphasis added) (Doc. 35). "It is certain that the State will suffer some amount of economic harm should construction of the Facility be temporarily paused," and the "local economy will also be impacted negatively in some way." *Id*. at 21. The "need for increased mental health services for the underserved population areas in central and eastern Montana is acute and urgent." *Id*. at 20.

The Montana Board of Investments and Department of Public Health and Human Services respectfully request the Court expeditiously dissolve the Preliminary Injunction. The Board of Investments and Department of Public Health and Human Services complied with the Court's Preliminary Injunction Order, no factual or legal predicate exists to continue the Preliminary Injunction, and Plaintiff does not oppose dissolution of the Preliminary Injunction.

II. There is no basis to "leave the existing injunction in place."

Notwithstanding Plaintiff's non-opposition to the dissolution of the Preliminary Injunction and Plaintiff having been provided the relief afforded by the Preliminary Injunction, Plaintiff requests the Court "leave the existing injunction in place" until Plaintiff can try for another one. *See* Pl.'s Resp. to Defs.' Mot. to Dissolve Injunction (Doc. 48). There is no basis to leave a preliminary injunction, now lacking any factual or legal predicate, in place.

Because the Montana Board of Investments and Department of Public Health and Human Services complied with the Preliminary Injunction Order, no basis exists upon which: (1) to find that Plaintiff is more likely than not to prevail on the merits of its complaint given the uncontroverted facts in the record and applicable law; (2) to conclude that Plaintiff would suffer irreparable harm; (3) to conclude relief is in the public interest; or (4) to consider the implications

and make findings on the local and state economy. *See* Mont. Code Ann. § 75-1-201(5)(c)(iii). And continuing the existing injunction is certainly not (5) "narrowly tailored" to "ensure, to the extent possible, that the project or as much of the project as possible can go forward while also providing the relief [now provided] to which [Plaintiff] has been determined entitled [and now been provided]." *See* Mont. Code Ann. § 75-1-201(5)(c)(iii)(C).

Plaintiff speaks of an injunction as if it is of little consequence and can simply be extended without factual or legal basis for some indeterminate "limited period" or "brief continuation" while Plaintiff tries for another one. *See* Pl.'s Resp. to Defs.' Mot. to Dissolve Injunction (Doc. 48). An injunction is, and is here, of *significant* consequence. It is an "extraordinary" remedy "never awarded as a right" (nor certainly as a matter of mere "request"). *See Kalarchik v. State*, 2026 MT 76, ¶ 23, 427 Mont. 333, 346, 587 P.3d 784, 794 ("A preliminary injunction is an extraordinary remedy never awarded as a right" and requires Plaintiff to "establish" the necessary factors); Mont. Code Ann. § 75-1-201(c)(iii), (d) (specifying requirements Plaintiff must prove for an injunction).

The State *is* being damaged, both economically and, more critically, in addressing the acute and urgent need to provide forensic mental health care services. *See* Preliminary Injunction Order 20, 21 ("The Court finds the need for increased mental health services for the underserved population areas in central and eastern Montana is acute and urgent." "It is certain that the State will suffer some amount of economic harm should construction of the Facility be temporarily paused.") (Doc. 35). Recognizing this, the Montana Board of Investments and Department of Public Health and Human Services acted "expeditiously but diligently" in complying with, and providing Plaintiff the relief afforded by, the Court's Preliminary Injunction Order. *See* Defs.' Br. in Supp. of Mot. to Dissolve Preliminary Injunction (Doc. 46).

No amount of continued delay is inconsequential. *Any* additional delay significantly risks a lost construction *season*, not merely lost days or weeks.[2] The relief *now afforded to* Plaintiff "call[ed] for a *temporary* pause on construction of the [Forensic Mental Health] Facility." Preliminary Injunction Order 19 (emphasis added) (Doc. 35). The relief was intended to "be *as short-lived as is reasonably possible*." *Id*. at 22 (emphasis added). Any additional delay at this point is not consistent with meeting the "acute and urgent" need for increased mental health services, is not "temporary," and is not "reasonabl[e]."

Conclusion

The Montana Board of Investments and Department of Public Health and Human Services complied with the District Court's Preliminary Injunction Order, further investigating, explaining, and clarifying Forensic Mental Health Facility water issues, providing the public a reasonable opportunity to participate in the State's decision-making process, and considering applicable public comment in reevaluating the environmental analysis, Findings and Conclusions, and Agency Determination. Plaintiff does not dispute any of this. No factual or legal predicate exists for the Preliminary Injunction. Nor does Plaintiff oppose dissolution of the Preliminary Injunction. The Board of Investments and Department of Public Health and Human Services respectfully request the Court expeditiously dissolve the Preliminary Injunction.

A proposed order dissolving the Preliminary Injunction is filed contemporaneously for the Court's consideration.

Dated this 5th day of October 2026.

CROWLEY FLECK PLLP

By _/s/ Christopher C. Stoneback_____
Christopher C. Stoneback
Mason T. Dumars

[2] *See* Declaration of Executive Director of Montana Board of Investments attached as **Exhibit A**.

Attorneys for Montana Board of Investments

JACKSON, MURDO & GRANT, P.C.

By /s/ Rob Cameron
Rob Cameron
Attorney for Montana Department of Public Health and Human Services

CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 35, I disclose that I used Microsoft Word's Copilot feature to edit this brief for spelling, grammar, and typographical errors. I certify that every citation to law and the record has been verified as accurate.

DATED this 5th day of October 2026

CROWLEY FLECK PLLP

By /s/ Christopher C. Stoneback
Christopher C. Stoneback
Mason T. Dumars
Attorneys for Montana Board of Investments

CERTIFICATE OF SERVICE

I, the undersigned representative for the law firm of Crowley Fleck PLLP, hereby certify that on this 5th day of October 2026, I electronically filed the foregoing document to the Clerk of the Court which will send notification to all Registrants below.

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Exhibit A

Declaration of Board of Investments Executive Director

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MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
YELLOWSTONE COUNTY

LAUREL CARED, Plaintiff, vs. STATE OF MONTANA, Defendant.	Cause No.: DV-56-2026-0000855-DK Judge: Hon. Ed Zink **DECLARATION OF EXECUTIVE DIRECTOR OF MONTANA BOARD OF INVESTMENTS**

1. I am Dan Villa the Executive Director of the Montana Board of Investments.

2. I am a Montana resident, over the age of 18, and competent to testify.

3. All facts stated herein are within my personal knowledge and are known to me in my capacity as Executive Director of the Montana Board of Investments.

EXHIBIT A

4. I am familiar with the scheduling, budgeting, and construction requirements for the Forensic Mental Health Facility.

5. Projects such as the Forensic Mental Health Facility require complex coordination among numerous contractors, subcontractors, suppliers, and equipment operators. These entities schedule labor, equipment, and materials months in advance and cannot keep personnel or resources available indefinitely where Facility construction timeframes are uncertain.

6. Contractors and subcontractors previously committed to the Facility did so with an understanding of the timelines shared in the Environmental Assessment. They also have other contracts and, without mobilization soon, will be forced to "bump" or could be unwilling to keep the contract if construction of the Facility is not expeditiously authorized to proceed.

7. The loss of contractors and subcontractors, and also the need to reconfigure work plans and work progression, will result in increased construction costs, completion delays, and continued delays in the criminal justice system.

8. The Facility's current schedule requires completion of excavation and foundation work before sustained freezing temperatures occur.

9. If the work cannot be completed before winter conditions arrive, or if contractors or subcontractors are no longer available or willing to perform this work due to delays, those activities will have to be postponed until Spring of 2027, significantly delaying completion of the Forensic Mental Health Facility and its services.

10. Harm was estimated at $8,229.60 per day, but this has already increased. "Harm" in this instance was calculated using the June 2026 BLS Producer Price Index for New Health Care Building Construction times the construction contract costs plus the cost of housing 32 patients at the current legislatively authorized daily county jail rate divided by 365.

11. The BLS Producer Price Index for August increased to 5.035% from June's 3.376%, increasing the daily delay cost to $10,242.10. Based on the September 2 Federal Reserve Beige Book, construction costs are likely to increase rather than decrease.

12. The building permit for the Facility was granted on August 20, 2026, before the Preliminary Injunction was issued, and construction was anticipated to start in early September 2026. Construction can commence as soon as authorized, but contractors and engineers are currently on "hold" pending resolution of the Preliminary Injunction.

13. Delay also exacerbates the acute shortage of forensic mental health care capacity. It risks persons in need of mental health care being denied the ability to receive it; it risks due process concerns; and it strains local jails and the criminal justice system.

Pursuant to Mont. Code Ann. § 1-6-105, I declare under the penalty of perjury that the foregoing is true and correct.

Dated this 5th day of October 2026.

/s/ Dan Villa
Executive Director
Montana Board of Investments

CERTIFICATE OF SERVICE

I, Christopher Clark Stoneback, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Reply Brief to the following on 10-05-2026:

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Electronically signed by Mary Burns on behalf of Christopher Clark Stoneback
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