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8 **MONTANA TWENTY-SECOND JUDICIAL DISTRICT COURT, CARBON COUNTY**

9 _____)
10 CARBON CONSERVATION DISTRICT,)

11)
12 Plaintiff,)

13 vs.)

14 STILLWATER CONSERVATION)
15 DISTRICT,)

16 Defendant.)
17 _____

Cause No. **DV 25-40**

Judge: **Matthew J. Wald**

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER**

18 This matter came before the court when Plaintiff Carbon Conservation District (“CCD”)
19 filed its *Complaint* against Defendant Stillwater Conservation District (“SCD”) on May 21, 2025,
20 seeking a declaration that SCD was acting beyond its statutory authority in undertaking to
21 manage and administer the Armstrong Creek Restoration Project (“the Project”), a United States
22 Forest Service (“USFS”) project on federal and private property lying within CCD’s boundaries.
23 On that same day, CCD filed a *Noticed Application for Temporary Restraining Order,*
24 *Preliminary Injunction, and Order to Show Cause*, requesting to grant the TRO and issue an order
25 to show cause why a preliminary injunction should not issue. *See* Dkts. 2, 3. The Court granted a
26 TRO on May 27, 2025. *See* Dkt. 6. SCD responded to CCD’s Motion on June 10, 2025. *See* Dkt.
27 10. CCD submitted a reply in support of its motion on July 1, 2025. *See* Dkt. 23. The Court
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1 originally set a hearing to show cause why a preliminary injunction should not issue on June 11,
2 2025. Due to scheduling conflicts, the hearing was continued to July. By Stipulation, the TRO
3 was amended to permit SCD to perform certain functions necessary to pay third-party vendors on
4 the Project. *See* Dkt. 19. On June 19, 2025, SCD filed a *Motion to Dismiss* under Mont. R. Civ. P.
5 12(b)(7) for failure to join an indispensable party, the USFS; CCD filed a *Response* in opposition
6 on July 7, 2025. The show cause hearing was held on Monday July 7, 2025, and continued on
7 Wednesday, July 9, 2025. The Court heard live witness testimony received exhibits, and
8 considered affidavits and declarations submitted with the parties' briefs. The Court also received
9 the complete deposition transcript of Lucas Osborne ("Osborne"), the President of
10 HydroSolutions, Inc. and the lead engineer on the Project. The Court ordered the parties to submit
11 proposed findings of fact, conclusions of law, and order by no later than July 23, 2025. SCD filed
12 a *Reply Brief in Support of Motion to Dismiss* on July 21, 2025, which motion the Court will
13 address by separate order.

14 Pursuant to Mont. R. Civ.P. Rule 52(a), the Court enters these *Findings of Fact*,
15 *Conclusions of Law, and Order* concerning Plaintiffs' *Motion for Preliminary Injunction*. If any
16 finding may be determined a conclusion of law, or if any conclusion stated may be determined a
17 finding of fact, it shall be deemed so.

18 **FINDINGS OF FACT**

19 The Court received testimony from numerous witnesses, including in the courtroom, via
20 deposition, and through submitted affidavits, as well as documentation pursuant to § 27-19-303,
21 MCA. The witness testimony was not consistent on every point. After considering all the
22 testimony and judging the credibility of the witnesses, the Court makes the following findings of
23 fact:
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1 **A. The Entities**

- 2 1. CCD is a conservation district created under §75-15-101, *et seq.*, MCA, with
3 boundaries including all of Carbon County, Montana.
4
5 2. SCD is a conservation district created under §75-15-101, *et seq.*, MCA, with
6 boundaries including portions of Stillwater County, Montana.¹

7 **B. The Flooding, and conservation district roles in relation thereto**

- 8 3. In June of 2022, areas of Montana, including Carbon and Stillwater Counties,
9 experienced catastrophic flash flooding which destroyed and damaged property and
10 infrastructure.
11
12 4. In the wake of the flooding, federal monies were made available for private
13 landowners to repair damage to their properties through the Emergency Watershed
14 Protection (“EWP”) program.
15
16 5. EWP projects require a local entity to serve as sponsor in order to provide funding to
17 affected landowners (who must contribute a 25% match to the federal funds).
18
19 6. One function performed by conservation districts, such as the parties, is to issue so-
20 called “310 permits” to private landowners who are planning to construct work that
21 physically alters or modifies the bed or banks of a perennial stream in their county. As
22 a result of the 2022 floods, the number of 310 permit applications in Carbon and
23 Stillwater Counties increased dramatically, as landowners sought to protect their
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27 ¹ No evidence was offered as to the precise location of SCD’s boundaries; SCD did not dispute that its boundaries do
28 not include any lands within Carbon County, Montana.

1 homes, ranches, infrastructure, and critical roads and bridges from further damage,
2 balancing landowners' needs with conservation principles.

3 7. Less populated conservation districts, such as the parties, employ minimal staff. Prior
4 to the 2022 floods, both CCD and SCD employed a single employee, the
5 Administrator. The temporary increase in 310 applications overwhelmed these
6 districts in terms of the amount of worker hours required to process these permit
7 applications.
8

9 8. At the time of the flooding, CCD's longtime administrator was in ill health, and died a
10 short time thereafter.
11

12 9. Due to CCD's administrator's ill health, SCD administrator Sharon Flemetis
13 ("Flemetis") had stepped in to assist CCD prior to the flooding. After CCD's
14 administrator's death, Flemetis served as administrator for both CCD and SCD.
15

16 10. As a result of CCD's administrator's absence, CCD did not at the time of the flooding
17 have a SAM number, which was required for a conservation district to serve as a
18 sponsor for an EWP project.

19 11. Because CCD did not have a SAM number, and wanted to ensure that Carbon County
20 citizens had expeditious access to funding, CCD asked SCD to act as sponsor for EWP
21 projects in both Carbon and Stillwater Counties.
22

23 12. CCD and SCD Board minutes from July of 2022 denote that the board of each entity
24 approved of this arrangement.

25 13. The East Rosebud Lake area of Carbon County was hit particularly hard by the 2022
26 floods. The flood destroyed homes and washed out bridges and roads. Helicopters
27 were required to evacuate people to safety.
28

- 1 14. The East Rosebud Lake Association (“ERLA”) owns 106 acres of private land
2 surrounding the entirety of East Rosebud Lake. The ERLA private land was granted to
3 Major Henry J. Armstrong in 1894-95 and predates the creation of USFS land adjacent
4 to the ERLA land. ERLA is organized as a Montana corporation, and ERLA
5 stockholders own 68 individual homes or cabins located on the ERLA land.
6
- 7 15. Armstrong Creek runs through the USFS land generally to the north of the ERLA land
8 and then passes through the ERLA land on its way to East Rosebud Lake.
9
- 10 16. The 2022 floods caused Armstrong Creek to avulse from (i.e., “jump”) its historic
11 banks at a point located on USFS land upstream and generally to the north of the
12 ERLA property. That avulsion caused Armstrong Creek to form a series of braids
13 through the alluvial fan area on ERLA land, thereby damaging and destroying private
14 cabins. The flood washed out bridges and roads. In the alluvial fan area of the ERLA
15 property, the avulsed Armstrong Creek flood water also raised the groundwater,
16 thereby damaging or destroying private wells and septic systems.
17
- 18 17. Members of ERLA immediately created a Flood Remediation Committee that was
19 authorized to work with engineers and hydrologists to prepare and implement a
20 comprehensive remediation plan. ERLA also applied for numerous 310 permits and
21 emergency work permits through Fletmetis as CCD’s acting Administrator to
22 temporarily keep the flood waters from overflowing the new channel and away from
23 their homes.
24
- 25 18. Since 2022, ERLA members have completed the initial emergency work in the
26 summer of 2022. This included deepening the newly formed channel of Armstrong
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1 Creek, to keep the flow of water away from their homes and toward the East Rosebud
2 Creek where it exits the lake.

3 19. ERLA then engaged an engineering firm, HydroSolutions, Inc., to investigate and
4 develop longer-term flood recovery and mitigation plans.

5 20. Initially, ERLA sought federal funding through an EWP grant for work to be
6 undertaken on the private ERLA land. When ERLA applied for these EWP funds in
7 2022, SCD was handling all EWP projects on behalf of CCD as the projects' sponsor.

8 21. Any restoration of Armstrong Creek would require work not only on the private
9 ERLA land, but also on the USFS land where Armstrong Creek jumped its banks.
10 Because Armstrong Creek breached its banks on USFS land upstream from ERLA's
11 property, it would have been pointless for ERLA to pursue only the EWP funds for
12 work on its own property without first knowing how the USFS intended to remedy the
13 upstream breached portion of Armstrong Creek. For this reason, ERLA members also
14 lobbied Congress to appropriate federal funds for the reconstruction of Armstrong
15 Creek. Ultimately, in 2023 Congress appropriated \$16.9 million for the USFS's
16 remediation efforts in the Custer-Gallatin National Forest. Of these funds, \$5 million
17 was specifically appropriated for the USFS to undertake remediation efforts of
18 Armstrong Creek.

19 22. Both the EWP funds and the federal grant required that a local sponsor or
20 "cooperator" manage the project. The local sponsor can be a public or private
21 organization that meets the requirements for processing federal grant funds. In the
22 spring of 2023, SCD was already the local sponsor for the EWP portion of the Project.
23 SCD offered to be the local sponsor for both the EWP funding of the Project and the
24

1 federal grant portion. Other potential local sponsors included Carbon County,
2 Stillwater County, and Trout Unlimited. Because HydroSolutions was the engineer for
3 both the EWP portion of the Project and the federal portion of the Project, the
4 HydroSolutions' invoices were to be split out based on work performed on the private
5 land (EWP federal funding) versus work performed on the USFS land (federal
6 funding).
7

8 23. Flemetis claims that, at CCD's February 2023 meeting, CCD agreed—without taking
9 a vote—to allow SCD to administer the Project. This was disputed by the minutes of
10 the meeting, multiple CCD board members present at the meeting, as well as current
11 CCD Administrator Aimee Bailey. The Court finds based on the evidence proffered
12 thus far that CCD did not request nor agree to SCD administering the Project.
13

14 24. Flemetis claims she kept CCD's board aware of the Project developments; this
15 testimony was contradicted by the affidavits and testimony of CCD Board members
16 and Bailey, indicating SCD provided no information on the Project or developments
17 and frustration from the lack of such information. No CCD board minutes were
18 proffered which denote discussion of the Project.
19

20 25. Prior to CCD's September 14, 2023 Board meeting, CCD's board members testified
21 that they informed Flemetis her position would be phased out by year-end as Bailey,
22 who had been hired in the spring of 2023 after being hired on a temporary basis
23 through Montana Department of Natural Resources and Conservation ("DNRC")
24 funding in February of 2023, was ready to step into the position.
25

26 26. On October 11, 2023, CCD terminated Flemetis' employment with CCD.
27

28 27. Flemetis remains administrator for SCD.

1 **C. The Good Neighbor Agreement**

2 28. The \$5 million federal portion of the Project was finalized in the fall of 2023 in a
3 contract between the USFS and SCD as local sponsor, known as the “Good Neighbor
4 Agreement” (“the Agreement”).
5

6 29. In the Agreement, SCD represented it had authority to enter into the Agreement.

7 30. Although the majority of the \$5,000,000 paid to SCD in the Agreement was to go to
8 design, engineering, and construction, the Agreement budgets payment to SCD of over
9 \$450,000, broken out as follows:
10

- 11 a. \$252,862.50 to be paid to the SCD administrator;
- 12 b. \$51,800 to be paid to SCD for travel expenses, including \$13,000 for
13 mileage, and the remainder for board stipends, vehicle rentals, fuel, and
14 insurance;
15 c. \$1,800 for software; and
16 d. \$144,862.14 to SCD for indirect costs.
17

18 31. The appendix to the Agreement outlining SCD’s work states that SCD’s work includes
19 obtaining landowner agreements; contracting for engineering for the project; obtaining
20 permits; submission of quality assurance; solicitation of bids; making status reports;
21 awarding of bids; and conducting construction inspections.
22

23 32. Generally, SCD in its role as local sponsor was to act as intermediary between the
24 USFS and the engineers who are designing and managing the project. SCD as local
25 sponsor was to obtain and manages the permits required for the project, as outlined in
26 the Statement of Work. SCD as local sponsor is responsible for hiring and paying
27 engineers and other vendors approved by the USFS, according to federal requirements.
28

- 1 33. As of the time the TRO issued in this matter, only design work had been completed for
2 the Project. Although the design plan had been submitted to various agencies for
3 approval, SCD did not offer any testimony establishing the timeline for agencies to
4 either approve, disapprove, or seek modifications to the design plan.
5
- 6 34. The next step in the Project is for the HydroSolutions engineers to create final
7 Construction Drawings (i.e., the 100% design plan), which HydroSolutions expected
8 to complete during the summer/ fall of 2025.
9
- 10 35. Construction is estimated to begin in the summer of 2026.
- 11 36. The Project also requires approval from certain permitting agencies. Because this is a
12 government project with federal funds, the Montana state permitting agency is the
13 Montana Department of Fish, Wildlife, and Parks (“FWP”), rather than a county
14 conservation district. FWP was processing a so-called “SR-124 stream permit” (under
15 the Montana Stream Protection Act, §87-5-501, *et seq.*, MCA) application for the
16 Project when this lawsuit was filed. After the *Complaint* in this case was filed and the
17 TRO issued, FWP has halted work on the required SR-124 stream permit.
18
- 19 37. The FWP SR-124 stream permit (and all other permits) must be in place before
20 HydroSolutions can prepare and the USFS can review and approve the final
21 Construction Drawings.
22
- 23 38. CCD representatives testified that they do not necessarily want to terminate the
24 federally funded Project but have concerns about SCD acting as local sponsor without
25 authorization from CCD and want a “seat at the table” at the very least, as the Project
26 is within CCD’s geographic boundary.
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- 1 39. The Agreement includes terms for modifying the Agreement by mutual consent and
2 for terminating the Agreement. The period of performance for the Agreement is from
3 July 2023 through September 2028.
4
- 5 40. The language of the Agreement indicates that USFS and SCD could agree to amend
6 the Agreement to remove SCD or add another local sponsor. Due to a lack of
7 information and communication by USFS since the lawsuit was initiated, the only
8 information as to the views of USFS as to that step is a letter to CCD in April 2025
9 stating that “transferring the agreement to another entity is not practical” and that it
10 “remains committed to working within the terms of the agreement with SCD to
11 advance the project.” (*Def. Ex. 16*, p. 2).
12
- 13 41. The USFS further stated in its letter that “[t]his appears to be a dispute between the
14 two conservation districts” and recommended that they seek assistance from the
15 DNRC to resolve the dispute. (*Def. Ex. 16*, p. 2).
16
- 17 42. After learning about SCD’s involvement in the Armstrong Creek restoration in
18 September of 2024, Bailey attempted to attend meetings regarding the project, but
19 SCD’s administrator forbade her from attending.
20
- 21 43. Beginning in September of 2024, CCD also began trying to obtain a copy of the
22 Agreement governing SCD’s involvement. CCD first approached the USFS, and was
23 informed that it would need to obtain the Agreement from SCD directly.
24
- 25 44. CCD requested a copy of the Agreement from SCD in December of 2024, but SCD
26 rejected that request a month later on the basis that CCD had not included a signature
27 on the request.
28

- 1 45. CCD submitted another request and, after some delay, SCD offered to produce the
2 Agreement only if redacted, and only if CCD agreed to pay \$74 for a copy of the 37-
3 page Agreement.
4
- 5 46. CCD ultimately obtained a copy of the Agreement from DNRC in late January of
6 2025; SCD never produced the Agreement to CCD.
- 7 47. After reviewing the Agreement, on February 18, 2025 CCD sent SCD a cease-and-
8 desist letter.
- 9 48. SCD's chairman responded by stating that SCD had authority based on a 2022 letter
10 from CCD's chairman to NRCS explaining that SCD was undertaking the EWP
11 projects noted above.
12
- 13 49. SCD tabled consideration of a response, and did not respond to CCD. Subsequently,
14 CCD filed the instant litigation.
- 15 50. CCD's board members testified that SCD failed to keep CCD apprised of the status of
16 EWP projects going on in Carbon County after Flemetis was dismissed from CCD,
17 leading to confusion about whether projects were being undertaken lawfully under the
18 EWP program, or without proper 310 permitting.
19
- 20 51. The design engineer for an EWP project for Fromberg testified via declaration that
21 SCD's administration of that particular project led to a project that was not completed
22 to design, and which is at a greater risk of failing if flooding occurs in the future, and
23 also maintained that Flemetis's administration of that project did not meet standards
24 one would expect for a public works project.
25
- 26 52. SCD's chairman, Robert Van Oosten, acknowledged that he awarded contracts for
27 EWP projects in Carbon and Stillwater Counties to SCD's own board members.
28

1 53. Bailey testified that, after Flemetis left CCD, Bailey discovered that Flemetis had
2 failed to maintain financials for CCD, including failing to file quarterly tax returns for
3 at least a year, leading to CCD incurring significant penalties.

4
5 54. At times, CCD's representatives have suggested that SCD or Flemetis is being
6 overpaid by the USFS under the Agreement. The Agreement includes a budget of
7 more than \$450,000 for potential administration expenses, but Flemetis testified that
8 SCD may spend considerably less than the budgeted amount. SCD does not
9 automatically receive the budgeted amount under the Agreement, but rather is
10 reimbursed for the cost of its own employees' wages, benefits, and expenses
11 (calculated as a percentage of wages). For its nearly two years of work under the
12 contract, SCD has been reimbursed less than \$35,000 to date. (*Def. Ex. 13-14.*) No
13 evidence was presented that the USFS contractual payment amount is unreasonable.

14
15 55. Representatives of ERLA who secured the Congressional funding for the Project
16 testified that they had been told that the funding for the Project will be lost if the
17 Project is canceled or if SCD can no longer perform its contractual obligations as the
18 local sponsor under the Agreement. However, there was no testimony or information
19 from any representative of USFS indicating the effect on the project if SCD was
20 unable to act as the local sponsor.
21

22
23 From the foregoing Findings of Fact, this Court now makes the following:

24 CONCLUSIONS OF LAW

25 "The grant or denial of injunctive relief is a matter within the broad discretion of the
26 district court based on applicable findings of fact and conclusions of law." *Planned Parenthood*
27 *of Mont. v. State*, 2024 MT 227, ¶ 10, 418 Mont. 226, 557 P.3d 471 (*quoting Davis v. Westphal*,
28

1 2017 MT 276, ¶ 10, 389 Mont. 251, 405 P.3d 73). A District Court’s decision to grant an
2 injunction will not be overturned absent manifest abuse of the court’s discretion. *Shammel v.*
3 *Canyon Resources Corp.*, 2003 MT 372, ¶¶ 1-12, 319 Mont. 132, 82 P.3d 912. In evaluating an
4 application for a preliminary injunction, the Court may generally consider affidavits in addition to
5 live testimony. § 27-19-303(2), MCA; see also *Flynt Distrib. Co. v. Harvey*, 734 F.2d 1389, 1394
6 (9th Cir. 1984) (explaining relaxed evidentiary standards in context of preliminary injunction
7 given urgency of obtaining relief, and making a prompt determination).
8

9 **A. Standards for Preliminary Injunction**

10 For a court to grant a preliminary injunction, an applicant must establish that “(1) they are
11 likely to succeed on the merits; (2) they will suffer irreparable harm in the absence of preliminary
12 relief; (3) the balance of equities tips in the applicant’s favor; and (4) the order is in the public
13 interest. *Stephenson v. Lone Peak Pres., LLC*, 2025 MT 148, ¶ 13 (citing. § 27-19-201(1), MCA).
14 The Montana Legislature and the Montana Supreme Court have made clear that the preliminary
15 injunction test is conjunctive. § 27-19-201(b), MCA; *Stephenson*, ¶ 13. Furthermore, the
16 Legislature amended the statute in 2025 expressly “to clarify that when ‘conducting the
17 preliminary injunction analysis, the court shall examine the four criteria in subsection (1)
18 independently. The court may not use a sliding scale test, the serious question test, flexible
19 interplay, or another federal circuit modification to the criteria.” *Stephenson*, ¶ 13 (quoting § 27-
20 19-201(4)(b), MCA). “The purpose of a preliminary injunction is to preserve the status quo and
21 minimize harm to all parties pending full trial or resolution on the merits.” *Stephenson*, ¶ 14
22 (citing *Flying T Ranch, LLC v. Catlin Ranch, LP*, 2022 MT 162, ¶ 33 and quoting *Yockey v.*
23 *Kearns Props., LLC*, 2005 MT 27, ¶ 18) (internal quotation marks omitted). The status quo
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1 remains “the last actual, peaceable, noncontested condition that preceded the pending
2 controversy.” *Stephenson*, ¶ 14. (quotation omitted).

3 **B. Preliminary injunction is appropriate.**

4 1. Likelihood of Success on the Merits

5 To demonstrate likelihood of success on the merits under § 27-19-201(1)(a), the applicant
6 “must present a prima facie case but need not show a certainty of winning.” *Cross v. State*, 2024
7 MT 303, ¶ 33, 419 Mont. 290, 560 P.3d 637. “Prima facie means literally at first sight or on first
8 appearance but subject to further evidence or information.” *Cross*, ¶ 33 (quoting *Weems v. State*,
9 2019 MT 98, ¶ 18, 395 Mont. 350, 440 P.3d 4).

10 In considering the “likelihood of success on the merits,” the Court must be mindful of
11 exactly what relief was requested in the pleadings. Here, the core issue is a declaratory action
12 wherein CCD is asking the Court to determine the legal authority of SCD to operate within CCD
13 boundaries without CCD’s consent. Conservation districts are creations of statute. §§ 76-15-101
14 *et seq.*, MCA. As such, each conservation district’s authority extends only so far as its statutory
15 authorization. *See, e.g. Great N. Utils. Co. v. Pub. Serv. Comm’n*, 88 Mont. 180, 203, 293 P. 294,
16 298 (1930); § 76-15-103(3), MCA (defining conservation districts as “a governmental
17 subdivision of this state and a public body corporate and politic organized in accordance with this
18 chapter, for the purposes, with the powers, and subject to the restrictions set forth in this chapter.”
19 Once a conservation district has been created, it becomes a governmental subdivision of the state,
20 and a public body, corporate and politic, exercising public powers. § 76-15-215, MCA. The
21 district’s operations and activities are governed by the district’s board of supervisors. *See* § 76-
22 15-313, MCA. Montana Code makes clear that the operations and activities of conservation
23 districts are limited to those activities and operations occurring on those lands and waters lying
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1 within a district's boundaries. Specifically, with respect to entering into agreements with another
2 governmental agency, Montana Code authorizes a conservation district to do so—but only for
3 lands and waters “within the district.” § 76-15-403(3), MCA. And, as to agreements with the
4 United States, a conservation district is statutorily authorized to manage and administer projects
5 undertaken by the United States only insofar as the project is “within the district boundaries.” §
6 76-15-403(5)-(6), MCA. Likewise, a conservation district may only act as agent for the United
7 States for projects “within its boundaries.” § 76-15-403(7), MCA.

8
9 The Agreement's terms facially call for SCD to cooperate on, administer, and manage a
10 project on both federal and private property lying within Carbon County, and therefore outside
11 SCD's territory. As such, SCD may only do so if it has the consent of CCD. § 76-15-318, MCA.
12 A conservation district may only act with the concurrence of the majority of its supervisors. § 76-
13 15-313(2), MCA. Montana law requires a conservation district board to keep a record of all
14 proceedings, including resolution, regulations, and orders issued. §76-15-315, MCA. Moreover,
15 Montana requires that boards such as CCD and SCD must keep minutes of meetings which
16 include *inter alia*, “the substance of all matters proposed, discussed or decided.” § 2-3-212(2)(c),
17 MCA. While Flemetis testified that CCD agreed to allow SCD to manage the Project at a
18 February 2023 meeting, CCD's minutes do not support this, and the affidavits and testimony of
19 CCD's board members likewise do not support that CCD agreed to allow SCD to manage the
20 Project. SCD's refusal to provide CCD any information about the project, including a copy of the
21 Agreement, supports the opposite conclusion, because if CCD had specifically authorized SCD to
22 enter into the Agreement there would be no reason for SCD to refuse to provide information to
23 CCD on the very project that SCD claims was authorized by CCD. In addition, CCD's actions in
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1 requesting that SCD cease and desist work upon the project supports CCD’s claim that it did not
2 authorize SCD to enter into the Agreement.

3 SCD alternately argues that CCD cannot stop SCD from acting because the Agreement
4 covers federal land. While in *Ambler v. Flathead Conservation District*² the Court found that a
5 conservation district did not have authority to regulate an activity occurring entirely on land for
6 which the United States exercised sovereignty and dominion, that case is inapplicable here. First,
7 the testimony established that the Project will be conducted on both federal and privately-owned
8 property, making *Ambler* inapposite. Second, SCD’s actions in administering and cooperating
9 with the USFS are activities specifically contemplated by statute—and § 76-15-403(3), (5), (6)
10 and (7) specifies that SCD may only undertake such actions within its boundaries. As a creation
11 of statute, SCD has only those powers granted to it by statute—it may not simply expand its
12 powers by claiming additional authority outside the scope of its statutory authority. *See, e.g.*
13 *Great N. Utils. Co. v. Pub. Serv. Comm’n*, 88 Mont. 180, 293 P. 294, 298 (1930); § 76-15-103(3),
14 MCA.

15 SCD additionally argues that § 76-15-611, MCA allows it to administer the project within
16 CCD’s boundaries and without CCD’s consent. This statute states that the provisions of *that part*
17 of the Code do not apply to the United States or its agencies except where the United States
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19 ² 2025 WL 402050 (concluding that “Montana ceded exclusive jurisdiction over all land within Glacier National
20 Park—including private inholdings— to the United States subject only to the reservation of concurrent state
21 jurisdiction for purposes of service of process and taxation, and the United States accepted the cession subject to the
22 same reservations. Although it presumably could have, Montana did not reserve concurrent jurisdiction to enforce
23 state environmental laws and regulations.” As such, a conservation district created under statute had no authority to
24 enforce state environmental statutes and regulations upon such lands).

1 desires to take part. *Id.* That Code part, however, addresses handling of “project areas,”
2 described in that Code part, which are not at issue here; thus, this statute likely is inapplicable to
3 the matter before the Court. *See* Mont. Code Ann. Title 76, Chapter 15, Part 6.

4
5 Another of SCD’s arguments is that CCD is not likely to prevail on the merits because of
6 the validity of the motion to dismiss for failure to join an indispensable party. Even if the Court
7 were to agree and grant that motion, that would not be a finding on the merits; although it would
8 certainly render moot the issue of this preliminary injunction.

9
10 SCD finally argues that CCD waived this claim by knowing that the Project existed. At
11 this point, however, the Court does not need to consider SCD’s defenses prior to a final
12 determination on the merits. *See Porter v. K & S P'ship*, 192 Mont. 175, 177-78, 627 P.2d 836,
13 837 (1981) (reasoning that it would be "premature" to consider defenses on preliminary
14 injunction appeal before a final determination from the trial court). The Court finds that here
15 CCD has presented a prima facie case demonstrating a likelihood of success on the merits.

16 17 2. Irreparable Harm

18 "Perhaps the single most important prerequisite for the issuance of a preliminary injunction
19 is a demonstration that if it is not granted, the applicant is likely to suffer irreparable harm before a
20 decision on the merits can be rendered." *Montanans Against Irresponsible Densification, LLC v.*
21 *State*, 2024 MT 200, ¶ 15, 418 Mont. 78, 555 P.3d 759 (citation omitted) (*MAID*). A party seeking
22 a preliminary injunction must establish that it is likely – not just a mere possibility or speculation
23 – that it will suffer irreparable harm barring a preliminary injunction. *Winter v. Nat. Res. Def.*
24 *Council, Inc.*, 555 U.S. 7, 22, 129 S.Ct. 365, 172 L.Ed.2d 249 (2008) (“[A] preliminary injunction
25 will not be issued simply to prevent the possibility of some remote future injury.”). *see also*
26 *Stephenson*, ¶ 38. To meet the “irreparable harm” requirement, the plaintiff must establish that an
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1 injury is both imminent and not theoretical. *See Heideman v. S. Salt Lake City*, 348 F.3d 1182,
2 1189 (10th Cir. 2003); accord *Winter*, 555 U.S. at 22. “[M]oney damages are not considered
3 irreparable harm” because they may be recovered without resorting to a preliminary injunction.
4 *Flying T Ranch v. Catlin Ranch, LP*, 2022 MT 162, ¶ 19, 409 Mont. 478, 515 P.3d 806. However,
5 “harm is irreparable if legal remedies, like an award for damages, are an inadequate remedy.” *Cross*
6 *v. State*, 2024 MT 303, ¶ 47, 419 Mont. 290, 560 P.3d 637 (internal citation omitted).

8 CCD has made a prima facie showing that SCD is acting *ultra vires*, has excluded CCD
9 from the design of the project, and seeks to exclude CCD from the project’s construction as well.
10 While due to the nature of the Agreement CCD has no absolute right as a conservation district to
11 administer the Project just because it is within CCD boundaries, it does have an inherent interest
12 in ensuring that conservation projects within those boundaries are not administered by other
13 Montana conservation districts in contravention of statutory authority.

15 If it is ultimately determined that SCD is acting outside of its statutory authority,
16 continuing to do so during the pendency of the litigation is irreparable harm to CCD, as any legal
17 remedy after the fact would be inadequate. *Cross*, ¶ 47. Moreover, monetary damages have not
18 been requested, are likely not available to CCD, and no authority has been offered to indicate that
19 such damages are available. Governmental subdivisions may sue each other for injunctive and
20 declaratory relief. *See Rosebud Cnty v. Dep’t of Revenue*, 257 Mont. 306, 309-310, 849 P.2d 177,
21 179 (1993). However, the Montana Supreme Court has held that “one governmental subdivision
22 may not sue another for damages” because, in effect, the state is suing itself and the same
23 taxpayers would have to pay as would benefit. *Dist. No. 55 v. Musselshell Cnty*, 245 Mont. 525,
24 528-29, 802 P.2d 1252, 1254-55 (1990). Thus, even if CCD’s potential loss here could be
25 construed as economic in nature, an injury that has not been pled by CCD in any event, monetary
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1 loss still could constitute irreparable harm because the damages would be unrecoverable under
2 Montana law. *See American Federation of Government Employees, AFL–CIO v. U.S.*, 104
3 F.Supp.2d 58, 76 (D.D.C.2000) (finding “irreparable harm” where the plaintiffs were likely to be
4 prevented from recovering damages by federal back pay statute); *National Trust for Historic*
5 *Preservation v. FDIC*, 1993 WL 328134, at *3 (D.D.C. May 7, 1993) (finding “irreparable harm”
6 where no remedy was available at law).

7
8 Ultimately, the issue here is that SCD is a conservation district, created and limited by
9 statute, that is administering a project within CCD’s district, allegedly without statutory authority
10 or CCD’s consent. CCD has moved for a preliminary injunction to ensure that SCD does not
11 continue to act outside of its statutory authority. Monetary damages, even if such damages were
12 pled as part of CCD’s request for relief, would not remedy the effect of SCD acting outside the
13 scope of its statutory authority as there is a prohibition on monetary damages between
14 governmental units. If SCD is allowed to continue to administer the Project, the continuing harm
15 to CCD cannot be redressed after the determination of the merits. Accordingly, the Court finds
16 that under this element an injunction is necessary to ensure that any relief granted is not illusory
17 (e.g. if SCD completes the project before the Court reaches final determination in this matter).

20 3. Public Interest and Balance of the Equities

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22 Next, a preliminary injunction applicant must establish that “the balance of equities” and
23 “public interest” tips in their favor. § 27-19-201(1)(c), MCA.; *Winter*, 555 U.S. at 20, 129 S. Ct.
24 at 374. Or, in other words, “[b]efore issuing a preliminary injunction, courts must balance the
25 competing claims of injury and must consider the effect on each party of the granting or
26 withholding of the requested relief.” *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 866 (9th
27 Cir. 2017). The parties do not dispute that, where a governmental entity is involved, it is
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1 appropriate for the Court to consider these elements together. *Minard Run Oil Co. v. U.S. Forest*
2 *Service*, 670 F.3d 236, 256 (3rd Cir. 2011) (internal quotation marks omitted); *Nken v. Holder*,
3 556 U.S. 418, 435, 129 S. Ct. 1749, 1762 (2009). “Balancing the equities’ when considering
4 whether an injunction should issue, is lawyers’ jargon for choosing between conflicting public
5 interests.” *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 329 n.10, 102 S. Ct. 1798, 72 L. Ed. 2d
6 91 (1982) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 609-610, 72 S. Ct.
7 863, 96 L. Ed. 1153 (1952) (concurring opinion)). “In exercising their sound discretion, courts of
8 equity should pay particular regard for the public consequences in employing the extraordinary
9 remedy of injunction.” *Stephenson*, ¶ 47 (quoting *Mercer v. Montana Dep’t of Pub. Health &*
10 *Hum. Servs.*, 2025 MT 9, ¶ 29).

13 Here, the Court must consider the countervailing concerns of statutory enforcement and
14 the interest of ERLA members in restoration of their properties as well as the public good in
15 general. On one hand, “[e]nsuring that government agencies comply with the law and interpret
16 the statutes they administer uniformly and fairly serves the public interest.” *Aluminum Extrusions*
17 *Fair Trade Comm. v. United States*, 607 F.Supp.3d 1332, 1343 (Ct. Int’l Trade 2022) (citation
18 omitted); *see also, e.g. Lands Council v. Cottrell*, 731 F.Supp.2d 1074, 1092 (D.Id. 2010) (finding
19 public interest weighed against rewarding USFS for failing to perform statutory duties); *Montana*
20 *Wilderness Association v. Fry*, 408 F.Supp.2d 1032, 1038 (D. Mont. 2006), (“the public interest is
21 best served when the law is followed”). On the other hand, the ERLA members have a desire to
22 restore and protect their properties. The ERLA members are not parties to this lawsuit; however,
23 they are members of the public. The Court heard testimony regarding the severe impact of the
24 2022 flooding on the ERLA cabin owners. The 2022 flood inflicted severe property damage upon
25 the ERLA cabins, and the cabins continue to be negatively impacted by residual flooding and
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1 increased groundwater. Yet there is no evidence that either CCD, CCD in conjunction with SCD,
2 or another private entity that ERLA, CCD, SCD, or USFS finds appropriate could not step into
3 the role of local sponsor. This possibility does not seem unrealistic given that the Project is
4 clearly in its planning stages, and that, looking at the small amount of billing for work done in the
5 last two years in context of the budgeted amount in the Agreement, even SCD has done little
6 administrative work on the Project thus far. It also would not be in the public interest or benefit
7 ERLA, as members of the public, for the Project to continue into major construction phases while
8 this litigation is pending only to be halted should the Court ultimately find for CCD on the merits.
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11 Intertwined with this is any injury SCD could claim from an injunction issuing—which
12 would be limited to a loss of the monetary benefits from conducting the administrative work.
13 However, such injury is purely economic, and economic harm is not an adequate basis for
14 denying injunctive relief. *See, e.g. WildEarth Guardians v. Zinke*, 368 F.Supp.3d 41, 84 n.35
15 (D.D.C. 2019) (citation omitted) (“the risk of economic harm from procedural delay and
16 industrial inconvenience ‘is the nature of doing business . . .’”).
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18 “The public interest factor ‘is another way of inquiring whether there are policy
19 considerations that bear on whether’ to grant an injunction.” *Cross*, ¶ 53 (internal citation omitted).
20 Though recognizing the necessity of the Project and the critical timelines, the Court cannot ignore
21 that CCD has presented a prima facie case that SCD is acting outside the scope of its statutory
22 authority in administering the Project. Notably, the USFS has not put forth a definitive opinion on
23 the issue, other than that it “remains committed” to working with SCD but also considers this
24 dispute as one between SCD and CCD for them to work out – according to the letter that is the sole
25 communication from USFS on this issue, despite CCD court filings indicating clear attempts to
26 gain further information from USFS. The Court concludes that if injunctive relief does not issue,
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1 SCD potentially is continuing an *ultra vires* act, CCD will have no role in a project being partially
2 administered by another conservation district but wholly within CCD's boundaries, contrary to
3 statutory grants of power, and potentially leaving CCD unable to fulfill its statutory mandates due
4 to the complete inability to gain any information about the Project from SCD. Considering that no
5 construction on the Project will commence until the summer of 2026 in any case, the Court finds
6 in balancing the equities that the public interest is best served in assuring that any actions taken by
7 SCD within the territory of CCD comply with the statutory law, and a preliminary injunction must
8 issue. The Court finds that CCD has made the requisite showing for each of the elements required
9 to grant a preliminary injunction.
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11

12 **C. An injunction is necessary to maintain the status quo.**

13 "Upon the requisite showing, a preliminary injunction is issued to maintain the status quo
14 pending trial, which has been defined as " 'the last actual, peaceable, noncontested condition
15 which preceded the pending controversy.' ... " *Sandrock v. DeTienne*, 2010 MT 237, ¶ 16, 358
16 Mont. 175, 243 P.3d 1123. Here, a preliminary injunction serves to maintain the status quo until
17 the Court can make a merits determination. It is the position of CCD that it has not acquiesced to
18 SCD taking any actions within CCD's territory other than the EWP projects previously agreed to
19 and authorized. As such, the last peaceable, noncontested condition here was SCD not acting in
20 Carbon County except for sponsorship of EWP projects specifically agreed to by both CCD and
21 SCD. Moreover, even had CCD known of the Project, the parties do not dispute that the Project
22 remains in the design phase, has not been put out to bid, and construction has not commenced.
23
24 Allowing SCD to continue in its role administering the Project pending a merits determination
25 would be inconsistent with the purpose of a preliminary injunction—to preserve the "last actual,
26 peaceable, noncontested condition [that] preceded the pending controversy." *Stephenson*, ¶ 14.
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1 Accordingly, issuance of a preliminary injunction will serve to preserve this status quo pending
2 full resolution of the matter on the merits.

3 **D. Undertaking waived**

4 Although an undertaking is typically required under Montana law when a preliminary
5 injunction is issued, § 25-1-402, MCA provides that, in a civil action where a state entity is a
6 party, no undertaking, bond, or security may be required of the state entity. *See Petition of*
7 *Burnham*, 217 Mont. 513, 515-16, 705 P.2d 603, 605 (1985) (finding governmental entity exempt
8 from requirement to file an undertaking pursuant to statute). Based on the foregoing, as well as
9 that SCD chose not to raise any argument to the contrary, the Court finds that an undertaking will
10 be waived.
11

12 **E. Specificity of relief**

13 This preliminary injunction is issued only in regard to SCD's administration of projects
14 within the boundaries of CCD absent explicit authorization by CCD, pending a determination of
15 the merits of the declaratory action. It does not specifically bar the Armstrong Creek Project from
16 going forward in some form and is not intended to do so, although the Court recognizes that the
17 TRO and now temporary injunction has had and will have an obvious immediate impact on that
18 Project for the near future unless an alternate local sponsor can soon be found or agreement
19 reached between the two parties to this litigation. There is little doubt based on the evidence
20 provided to the Court thus far that there appears to be legitimate and substantial flood damage to
21 the project area, including the private property of ERLA. The Court wishes to emphasize that
22 granting this preliminary injunction does not in any way imply that the Armstrong Creek Project
23 is not necessary or important, as the question of how best to address that flood damage is not
24 before this Court at all and not the legal issue before the Court. Further, if at any point in this
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1 litigation the parties can reach accord as to a method to allow the Project to go forward with SCD
2 remaining as the local sponsor in some fashion, the Court will immediately lift the preliminary
3 injunction upon such stipulation of the parties.
4

5 Therefore, based upon the forgoing Findings of Fact and Conclusions of Law, the Court
6 enters the following

7 **ORDER**


8 For the foregoing reasons,

9 **IT IS HEREBY ORDERED** that CCD's *Motion for Preliminary Injunction* is
10 GRANTED, and SCD or its agents are enjoined from administering, managing, or otherwise
11 taking part in projects within CCD's territory, until such time as the Court makes a determination
12 on the merits of CCD's claims and on whether a permanent injunction should issue.
13

14 This Order excludes acts necessary for SCD to conclude the actions contemplated in this
15 Court's Order Modifying Temporary Restraining Order, and excludes Emergency Watershed
16 Protection program projects where CCD authorized SCD to act as sponsor.
17

18 **IT IS FURTHER ORDERED** that an undertaking is waived, pursuant to § 25-1-402,
19 MCA.

20 **DATED** this 26th day of September, 2025.

21
22 
23 **MATTHEW J. WALD, District Judge**

24 cc: Jacqueline R. Papez
25 Shane P. Coleman
26 Emily Cross
27 Daniel Beierwaltes

28 **CERTIFICATE OF SERVICE**

The foregoing was duly served by Email upon the parties or their
attorneys of record at their last known email address on
September 26, 2025. By A.V. Left Hand