

No. 07-35266

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NORTHWEST ENVIRONMENTAL DEFENSE CENTER,

Plaintiff-Appellant,

v.

MARVIN BROWN, Oregon State Forester, in his official capacity; STEPHEN HOBBS, BARBARA CRAIG, DIANE SNYDER, LARRY GIUSTINA, CHRIS HEFFERNAN, WILLIAM HUTCHINSON, and JENNIFER PHILLIPI, members of the Oregon Board of Forestry, in their official capacities; HAMPTON TREE FARMS, INC.; STIMSON LUMBER CO.; GEORGIA-PACIFIC WEST LLC; and SWANSON GROUP, INC.,

Defendants-Appellees,

and

OREGON FOREST INDUSTRIES COUNCIL; AMERICAN FOREST AND PAPER ASSOCIATION; and TILLAMOOK COUNTY,

Intervenors-Appellees.

On Appeal from the United States District Court for the District of Oregon,
Case No. 06-1270-KI

**MOUNTAIN STATES LEGAL FOUNDATION'S MOTION FOR LEAVE
TO FILE AN AMICUS CURIAE BRIEF IN SUPPORT OF THE
PETITIONS FOR PANEL REHEARING OR REHEARING EN BANC**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1(a), the undersigned attorney for proposed Amicus Curiae, Mountain States Legal Foundation (“MSLF”), certifies that MSLF is an I.R.C. § 501(c)(3), non-profit, public interest legal foundation that has no parent companies and has never issued any stock.

DATED this 15th day of October 2010.

Respectfully submitted by:

/s/ Steven J. Lechner

Steven J. Lechner, Esq.

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COMES NOW, Mountain States Legal Foundation (“MSLF”), by and through its undersigned attorney, and hereby moves for leave to file the accompanying Amicus Curiae Brief in support of the Petitions for Panel Rehearing or Rehearing En Banc. The grounds for this Motion are as follows:

1. MSLF is a non-profit, public interest legal foundation organized under the laws of the State of Colorado. MSLF is dedicated to bringing before the courts those issues vital to the defense and preservation of private property rights, individual liberties, limited and ethical government, and the free enterprise system.

2. The issue in this appeal involves the proper interpretation and administration of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1251-1387.

3. Since its formation in 1977, MSLF has been involved in numerous cases involving the proper interpretation and administration of the CWA. *Coeur Alaska, Inc. v. Southeast Alaska Conservation Council*, ___ U.S. ___, 129 S.Ct. 2458 (2009) (amicus curiae); *National Ass’n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644 (2007) (amicus curiae); *Rapanos v. United States*, 547 U.S. 715 (2006) (amicus curiae); *Sierra Club v. El Paso Gold Mines, Inc.*, 421 F.3d 1133 (10th Cir. 2005), *cert. denied sub nom., El Paso Properties, Inc. v. Sierra Club*, 547 U.S. 1065 (2006) (amicus curiae); *Laguna Gatuna, Inc. v. United States*,

50 Fed. Cl. 336 (2001) (represented plaintiff); *Riverside Irrigation District v. Andrews*, 758 F.2d 508 (10th Cir. 1985) (represented intervenor); *National Wildlife Federation v. Gorsuch*, 693 F.2d 156 (D.C. Cir. 1982) (amicus curiae).

4. In addition, MSLF has members throughout the western United States who are engaged in timber activities. The outcome of this case may have serious consequences for these members. Indeed, if the panel's decision is allowed to stand, persons and private entities, including MSLF's members, who own, operate, and/or use a forest road for transporting timber within the jurisdiction of this Court will be exposed to potential civil liability.

5. MSLF submits that its knowledge of the CWA and its members' interest in the outcome of this case are such that the accompanying Amicus Curiae Brief would assist this Court.

6. All Appellees have consented to MSLF filing an amicus curiae brief.

7. Counsel for Appellant, Paul Kampmeier, was consulted on October 11, 2010, regarding MSLF's filing of an amicus curiae brief. Mr. Kampmeier advised that Appellant would not "take a position at this time[.]"

WHEREFORE, MSLF respectfully requests leave to file the accompanying Amicus Curiae Brief.

DATED this 15th day of October 2010.

Respectfully submitted by:

/s/ Steven J. Lechner

Steven J. Lechner, Esq.

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of October 2010, I electronically filed the foregoing AMICUS CURIAE BRIEF OF MOUNTAIN STATES LEGAL FOUNDATION IN SUPPORT OF THE PETITIONS FOR PANEL REHEARING OR REHEARING EN BANC with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that the following participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, to the following non-CM/ECF participants:

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