EXHIBIT 1
2-22 DATE 2-22-13
HB HB 5101

MONTANA FIRST JUDICIAL DISTRICT COURT,
LEWIS AND CLARK COUNTY

THE CLARK FORK COALITION, a non-profit organization with senior water rights; KATRIN CHANDLER, an individual with senior water rights; BETTY J. LANNEN, an individual with senior water rights; POLLY REX, an individual with senior water rights; and JOSEPH MILLER, an individual with senior water rights, Plaintiffs, vs. MARY SEXTON, in her official capacity as Director an agency of the State of The Montana Department of National Resources and Conservation; and THE MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION (DNRC), an agency of the State of Montana, Respondents.	CIV No. BDV-2010-874 **STIPULATION AND ORDER OF DISMISSAL**

WHEREAS, on September 14, 2010, the above listed Plaintiffs filed a *"Petition for Declaratory and Injunctive Relief"* ("Petition") against the Respondents (hereinafter "Department" or "DNRC") pursuant to the Montana Administrative Procedure Act ("MAPA"), § 2-4-702 to § 2-4-704, Mont. Code Ann. (MCA) for review of the Department's *Declaratory Ruling* in the matter of *Petition for Declaratory Ruling and Request to Amend Rule 36.12.101(13)* (August 17, 2010) ("Declaratory Ruling");

WHEREAS, the Department timely filed a Notice of Appearance in the petition for judicial review of the Declaratory Ruling portion of the Petition and maintains that remainder of the Petition was not properly served and is not properly part of this case, and that this action is otherwise moot;

WHEREAS, Plaintiffs maintain that DNRC's 1993 administrative rule defining the term "combined appropriation" (Admin. R. Mont. 36.12.101 (13)) as two or more ground water developments that are "physically manifold" together is contrary to the intent of the Montana Water Use Act, §85-2-306 (3)(a), MCA;

WHEREAS, Plaintiffs and DNRC (collectively "the Parties") agree the intent of the Montana Water Use Act's exception to the permit requirement under § 85-2-306 (3)(a), MCA, is to give small ground water users (i.e., those appropriating less than 35 gallons per minute, not to exceed 10 acre-feet/ year) the ability to appropriate small amounts of water without having to obtain a permit;

WHEREAS, the Parties agree that it was never the intent of the Montana Water Use Act to allow a single large consumptive water user (i.e., those exceeding the 35 gpm or 10 acre-feet/ year) utilizing one large ground water system or multiple wells or developed springs to qualify for an exception from the Act's permitting requirements;

WHEREAS, due to increased demands to use the small ground water use exception under §85-2-306(3)(a), MCA, – especially in closed basins – and the new and creative ways large consumptive water users are seeking to qualify for an exception under the Montana Water Use Act, DNRC recognizes that the 1993 administrative rule defining "combined appropriation" in Admin R. Mont. Rule 36.12.101 (13) needs to be amended, broadened, and updated; and

WHEREAS, the Department agreed in the Declaratory Ruling to initiate new rulemaking regarding Admin R. Mont. Rule 36.12.101.(13), and it is in the interests of judicial economy and the Parties to avoid further expenditure of time and resources in litigation.

NOW THEREFORE, the Parties hereby stipulate and agree to the following:

1. Rulemaking. DNRC agrees to initiate and complete formal rulemaking within its authority and control to amend the current administrative rule defining "combined appropriation," Admin. R. Mont. Rule 36.12.101 (13), within fifteen (15) months of this Court's

Order adopting this Stipulation.

2. Guiding Principles. The following guiding principles will govern all actions DNRC agrees to take under this stipulation: (A) DNRC agrees that any amended rule defining the term "combined appropriation" will be broader than and not be limited solely to wells or developed springs that are physically manifold or connected together; and (B) DNRC agrees that it will consider in amending the rule defining "combined appropriation" cumulative or collective impacts to the water resource (s) resulting from multiple, unconnected wells or developed springs that appropriate water from a single source aquifer and for a single project (the Parties recognize that the word "project" may need to be clarified, changed, and/or defined as part of the rulemaking process), to the extent it is within DNRC's authority.

3. Plaintiffs agree to participate in the DNRC's rulemaking process.

4. 2011 Legislature. The Parties recognize and agree that if the 2011 Montana Legislature adopts new legislation defining the term "combined appropriation" or removes the term from the Montana Water Use Act, before completion of new rulemaking as described herein, DNRC's obligations under this Stipulation will expire.

5. Dismissal. The Parties agree that this action shall be dismissed based upon the terms of this Stipulation. Any action to enforce this Stipulation or challenge a new, amended rule defining "combined appropriation" under §85-2-306(3)(a) would require a new and different action from the current petition for judicial review, record review in this case.

6. Nothing in this Stipulation shall constitute or be interpreted as an admission of fact or law by any Party.

7. This Stipulation shall be binding on, and inure to the benefit of, the Parties and their respective legal representatives, successors, and assigns. The undersigned representatives of each Party certify that they are fully authorized by the Party or Parties they represent to execute this Stipulation. This Stipulation includes and embodies the entire terms and

conditions of the agreement between the Parties.

8. Nothing in this Stipulation affects the legal rights or obligations of Plaintiffs or DNRC in other civil actions, settlement agreements or consent decrees.

9. This Stipulation can only be modified upon written agreement of all Parties. If any Party realizes that it has breached or intends to breach this agreement, it shall promptly notify all other Parties in writing.

10. The terms of this Stipulation shall become effective upon entry of an Order by this Court adopting the Stipulation and granting the Dismissal. In the event of a disagreement between the Parties concerning any aspect of this Stipulation and its implementation, the dissatisfied Party shall provide the other Party with written notice of the dispute and a request for negotiations. The Parties shall meet and confer in order to attempt to resolve the dispute within 30 days of the written notice, or such time thereafter as is mutually agreed. If the Parties are unable to resolve the dispute within 60 days of such meeting, then either Party may file a motion with this Court to enforce the terms of the Stipulation or for other specific relief.

11. Each Party shall bear its own costs, fees, and expenses, including attorneys fees, arising in any manner from this dispute and each releases the other, its attorneys, employees, agents and assigns from any liability for such costs, fees and expenses and from any damages, known or unknown, liquidated or unliquidated, arising in any manner from the dispute.

Respectfully submitted this 8th day of November, 2010

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ADOPTION OF STIPULATION AND ORDER OF DISMISSAL

THIS MATTER having come before the Court upon the Parties' request for entry of this Stipulation and Order of Dismissal, and the Court having fully reviewed the matter, it is hereby

FOUND that the terms and provisions of the Stipulation in its entirety are fair, reasonable, and equitable; and it is therefore

ORDERED that the foregoing terms and conditions of the Stipulation are adopted by the Court and made an Order of this Court.

IT IS FURTHER ORDERED that the *Petition for Declaratory and Injunctive Relief*, Cause No. BDV-2010-874, in the above-entitled matter, is dismissed *with prejudice*.

DATED this _____ day of November 2010.

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HON. JEFFREY M. SHERLOCK
JUDGE, DEPT. 2, FIRST JUDICIAL DISTRICT
LEWIS AND CLARK COUNTY

c: All parties of record.