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. JOHN TUBBS, in his official capacity as Director of the State of Montana's Department of National Resources and Conservation; and THE MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION (DNRC), an agency of the State of Montana, Respondents.	Cause No. BDV-2010-874 SECOND **MODIFIED STIPULATON**

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 (hereinafter "the Act");

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;

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;

WHEREAS, on April 21, 2011, House Bill 602 (HB 602) was signed into law. HB 602 directs the Water Policy Interim Committee (WPIC) to conduct an interim study on exempt wells and recommend policy direction and necessary legislation to guide Montana's policy regarding exempt wells. HB 602 also prohibits DNRC from adopting rules to implement the provisions of 85-2-306 (3), MCA, before October 1, 2012;

WHEREAS, in accordance with paragraph 10 of this Stipulation, the Parties exchanged written correspondence regarding how HB 602 may affect DNRC's obligations under this Stipulation, met and conferred on October 4, 2011, to resolve any outstanding issues and disputes, and jointly agreed to modify the original Stipulation and Order of Dismissal in accordance with paragraph 9.

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

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), by October 1, 2013, or as soon as practicable within the requirements of the Montana Administrative Procedure Act but by no later than December 31, 2013.

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 DNRC's rulemaking process.

4. Dismissal. Any action to enforce this Modified 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.

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

6. This Modified 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 Modified Stipulation. This Modified Stipulation includes and embodies the entire terms and conditions of the agreement between the Parties.

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

8. This Modified 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.

9. The terms of this Modified Stipulation shall become effective upon signing by both Parties. In the event of a disagreement between the Parties concerning any aspect of this Modified 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 Modified Stipulation or for other specific relief.

10. 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.

Signed this 15th day of May, 2013.

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