

Environmental and Natural Resource Litigation Status
Dept. of Fish, Wildlife and Parks (DFWP) and the
Fish and Wildlife Commission (Commission)

December 20, 2019

State District Court cases:

Animals of Montana, Inc., Troy Hyde, Permit Owner v. State of Montana Department of Fish, Wildlife and Parks, First Judicial District, Lewis and Clark County, Case No. DV-2015-999. After 25 violations of statute and administrative rule in 2015, FWP delivered a notice of revocation of a roadside menagerie permit to Animals of Montana, Inc., and its owner, Troy Hyde, on December 28, 2015. The violations include performing exhibitions without a permit; use of a weed whacker and hedge trimmer to persuade an uncontrollable tiger to move; inadequate, unlocked, unmarked, or overcrowded den boxes and cages; and unsanitary and inhumane housing of animals. Previous problems at the facility include numerous incidents of escaped wildlife, an Animals of Montana employee sustaining a broken arm from an attack by a brown bear, an employee being killed by a grizzly bear in an incident which was not immediately reported to officials, and convictions under the Endangered Species Act and Lacey Act for trafficking an unlawfully sold tiger across state lines. The Department has been monitoring the operations at the facility closely and has previously formally warned Animals of Montana that it needed to strictly adhere to the conditions of its permit or the permit would be revoked. Animals of Montana challenged the proposed permit revocation through a request for an administrative hearing before the Department. The hearing officer found that Animals of Montana had violated statute and conditions of its permit and revoked the permit. Animals of Montana appealed the case to the Director, who affirmed the decision of the hearing officer. Next, Animals of Montana appealed the case to district court and we are waiting for a hearing date to be set.

James Gustafson v. Habermann, et al. First Judicial District, Lewis and Clark County, Case No. DV-2019-1368. Lawsuit was filed in the 16th Judicial District, Garfield County, against the Department by Petitioners concerning a failure to respond to Petitioners' administrative challenge of the Department's decision to upgrade the water storage system and fish-cleaning station at Hell Creek State Park. Hell Creek State Park concessionaires intervened in the matter. The case was stayed for approximately 10-months while Petitioners appealed the decision to the State Parks and Recreation Board. Following the Board's dismissal of Petitioners' administrative appeal, Petitioners filed an amended complaint. The case was transferred to the First Judicial District, Lewis and Clark County. Currently there are multiple procedural motions pending with the Court.

Montana Supreme Court cases:

Thomas Flowers v. Board of Personnel Appeals, Department of Fish, Wildlife and Parks Case No. DA 19-0549. This case involves procedural issues regarding the filling of an FWP grievance. On June 28, 2018, Flowers filed a grievance against FWP regarding a reassignment of his position which became effective January 9, 2017. FWP denied the grievance as being

untimely. Flowers appealed to BOPA. Both the BOPA investigator and the BOPA hearing officer denied Flowers' grievance as untimely. Flowers did not appeal the hearing officer's recommended decision to BOPA, and instead filed a Petition for Judicial Review with the district court. The district court found that Flowers did not exhaust his administrative remedies in bringing his grievance, which is required by law, and that principles of collateral estoppel barred his appeal from moving forward. Flowers appealed to the Supreme Court and the briefing process has begun.

Federal District Court cases:

Crow Indian Tribe, et al. v. USA, et al., 9th Cir. Ct. of Appeals, Case No. 18-36030. Plaintiff environmental organizations challenged the US Fish and Wildlife Service's 2017 decision to designate the Greater Yellowstone population of grizzly bears a distinct population segment ("DPS") and remove the DPS from the Endangered Species Act list of threatened species. State of Montana and FWP intervened in support of USFWS. Judge Christensen found in favor of Plaintiffs and vacated the delisting rule. FWP joined the USFWS, ID, WY and other intervenors in appealing the decision to the 9th Circuit. Montana filed its reply brief on October 18, 2019. The matter has been fully briefed but a hearing date has not been set.

Bar K Ranch, LLC, et al. v. USA, et al., US District Court of Montana, Butte Division, Case No. CV-19-6-BU-BMM. The State of Montana, DFWP, DNRC, Madison County, the United States, BLM, and USFS were sued by neighboring landowners to the Wall Creek Wildlife Management Area, who seek a declaration that two roads which traverse the game range are either county roads, or, alternately, that they have an easement to use the roads for all purposes. The WMA was purchased with federal Pittman-Robertson dollars and is encumbered. Currently road access is seasonally closed. The case is in the discovery phase.

Montana Water Court cases:

DFWP is involved in several cases before the Montana Water Court. When the Water Court releases preliminary decrees, DFWP may object to water right claims in which claimed flow rates, volume, acres irrigated or other attributes appear to exceed actual historic use. Current cases include 41B-269 (West Side Canal Company) and 41G-R255 (Ashcraft, Duchin, Miller).