

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION



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Environmental Quality Council
Legislative Environmental Policy Office
State Capitol Building
1301 East 6th Avenue, Room 171
PO Box 201704
Helena, Montana 59620-1704

To the Environmental Quality Council:

The Department of Natural Resources and Conservation submits the attached Litigation Report for your review. The report contains information specific to the legal division in the department with enforcement and compliance responsibilities.

Should you have any questions or comments, please contact our department at (406) 444-2074.

Sincerely,

A handwritten signature in blue ink that reads "Amanda Kaster".

Amanda Kaster, Director
Montana Department of Natural Resources and Conservation

WATER RESOURCES DIVISION LITIGATION

December 2019 – December 2021

City of Bozeman v. DNRC & Utility Solutions – 18th Judicial District-Gallatin/Montana Supreme Court
Petition for judicial review of a DNRC final order granting an application to change a water right by Utility Solutions following an objection and a contested case hearing. Order issued affirming DNRC Final Order. City of Bozeman appealed from the district court's Order. The Montana Supreme Court affirmed DNRC's Final Order in *City of Bozeman v. Montana DNRC, et. al*, 2020 MT 214.

DeBuff v. DNRC – Montana Water Court /Montana Supreme Court
Petition for judicial review of a DNRC final order denying an application for a new beneficial water use permit after show cause hearing. Water Court reversed DNRC Final Order. DNRC appealed the Water Court's order. The Montana Supreme Court affirmed in part, reversed in part, and remanded to DNRC for further proceedings in *DeBuff v. Montana DNRC*, 2021 MT 68.

Flathead Lakers et al v. DNRC and Montana Artesian Water Co. – 1st Judicial District - L&C County
Petition for judicial review of a DNRC final order granting a beneficial water use permit following objections and a contested case hearing. The district court reversed DNRC's Final Order and DNRC and Montana Artesian appealed. The Montana Supreme Court reversed the district court and remanded for further proceedings in *Flathead Lakers v. Montana DNRC*, 2020 MT 132. On September 30, 2021, the district court issued its Order on Remand in which it reversed DNRC's Final Order. DNRC is evaluating the merits of an appeal.

Water for Flathead's Future et al v. DNRC and DEQ – 11th Judicial District - Flathead County
Complaint alleging DNRC and DEQ did not comply with MEPA when issuing respective permits for Montana Artesian Water Co. The district court issued an Order in which it concluded DNRC did not comply with MEPA. The district court has not yet decided the remedy for the MEPA violation beyond remand to DNRC to accept public comment. DNRC is evaluating the merits of an appeal.

Clark Fork Coalition, et al v. DNRC & RC Resources – 1st Judicial District - Lewis & Clark County/Montana Supreme Court
Petition for judicial review of a DNRC final order granting a beneficial water use permit following objections and a contested case hearing. The district court reversed DNRC's final order and remanded in April 2019. DNRC appealed. The Montana Supreme Court reversed the district court and affirmed DNRC's Final Order in *Clark Fork Coalition v. Montana DNRC*, 2021 MT 44.

Matter of Applications to Change Water Right No. 41H-30018777 by Rall, – 18th Judicial District - Gallatin County
Petition for judicial review of a DNRC final order denying an application for a change authorization for multiple water rights following objections and a contested case hearing. Oral argument scheduled for January of 2022.

Willow Creek Water Users Association v. DNRC – 18th Judicial District - Gallatin County (CV 5591)
Dispute over the potential transfer of the Willow Creek State Project from DNRC to the Willow Creek Water Users (WCWUA). WCWUA filed petition for appointment of water mediator. Parties mediated without success and matter is closed in September 2020.

Willow Creek Water Users Association v. DNRC – 18th Judicial District - Gallatin County (DV 17-899BX)
Dispute over costs related to DNRC feasibility/engineering study into Willow Creek Dam spillway filed by the Willow Creek Water Users (WCWUA). The matter is stayed pending an updated feasibility study.

Hamlin Construction v. State of Montana, et al – 1st Judicial District Court - Lewis & Clark County
Multi-agency litigation involving flood plains in Red Fox subdivision. The claims against DNRC were dismissed in November of 2020.

Centennial Livestock v. DNRC et al – Montana Water Court (MAPA 2020-01)

Petition for judicial review of a DNRC final order granting a change application with conditions following an objection and a contested case hearing. Water Court concluded that the condition was not valid and remanded to DNRC.

Alberda, et al v. Thomas – 18th Judicial District Court – Gallatin County (Judge McElyea)

Illegal water use enforcement action brought by water commissioner, Gallatin County Attorney and DNRC for illegal diversion and water use. Preliminary injunction entered enjoining individual from future diversions from ditch and interfering with water commissioner.

TRUST LANDS DIVISION LITIGATION

December 2019 – December 2021

DNRC, et al v. Greenfields Irrigation District – 1st Judicial District - Lewis & Clark County/Montana Supreme Court

DNRC/State filed complaint against Greenfields Irrigation District over water related fees. On August 22, 2019, court granted DNRC's motion for summary judgment. GID appealed and DNRC cross-appealed. The parties stipulated to dismissal of the appeal in 2021.

DNRC, et al v. Avista – 1st Judicial District - Lewis & Clark County/Montana Supreme Court

Declaratory judgment action filed by DNRC to resolve dispute over "most favored nations clause" and Avista rental obligations for hydropower site lease. On October 26, 2021, the district court entered summary judgment in DNRC's favor and concluded MFNC does not require a reduced rental rate or refund. Avista appealed. A briefing schedule is not in place yet.

Bar K Ranch v. DNRC et al – United State District Court of Montana - Great Falls Division

Bar K ranch filed a federal quiet title action against BLM, FWS, DFWP, and DNRC for allegedly public/county roads passing through various parcels in Madison County which provide Ranch and public recreation access. The court granted DNRC summary judgment in 2021.

Andersons v. State of Montana, DNRC – Montana Bankruptcy Court

Andersons filed a lawsuit on Montana's First Judicial District against DNRC alleging DNRC unlawfully cancelled Andersons former agricultural and grazing leases for non-payment. Andersons seeking reinstatement of leases and damages. Litigation was removed to Montana Bankruptcy Court where DNRC's motion to remand is pending.

Gallatin County, et al v. Montana – 18th Judicial District - Gallatin County

Litigation over Bear Canyon Road which was settled in 2020.

Richards v. DNRC – 4th Judicial District - Missoula County

Richards filed a lawsuit contesting cancellation of leases and valuation of improvements. District court dismissed Richards claims and he appealed. The case was settled on November 30, 2021, and the Richards' appeal to the Montana Supreme Court was dismissed with prejudice on December 14, 2021.

Williams v. DNRC – 1st Judicial District - Broadwater County

Former agricultural lessee filed a lawsuit against DNRC challenging DNRC's decision to turn the property over to a new lessee, and challenging DNRC's valuation process used to determine compensation for various agriculture-related fencing and equipment remaining on the leasehold. As of January 2022, the district court is still considering motions to dismiss.

Taylor et al. v. Garfield County, et al – 16th Judicial District - Garfield County

Landowners adjacent to a road passing near the intersection of Garfield, Rosebud, and Custer counties filed a lawsuit alleging the road was privately owned. DNRC intervened in the case to ensure protection of access to State trust land and access for emergency services in a relatively remote area. As of January 2022, Garfield County and Plaintiff landowners were planning a mediation for the Spring of 2022 to discuss slight rerouting of the road, while ensuring DNRC and public access to the State trust land at issue.

Equitable Financial Life v. Hallinstad et al – 17th Judicial District - Blaine County

Equitable Financial filed a foreclosure action on a farming operation which also included DNRC grazing leases. Equitable's financial interests at issue in the action have been handled through separate bankruptcy proceedings which are complete.

FORESTRY DIVISION

December 2019 – December 2021

Native Ecosystems Council and Alliance for the Wild Rockies v. Erickson, et al., Cause No. 9:17-cv-00053-DLC – United State District Court of Montana

Appealed to 9th Circuit. Litigation over the Smith Shields Forest Health Project on the Custer-Gallatin NF challenging the categorical exclusion for landscape-scale insect and disease designations for Montana under Section 602(d) of the Healthy Forest and Restoration Act (HFRA) of 2003 (16 U.S.C. 6591a). Amicus brief filed by DNRC in support of project. Project affirmed in district court. The Ninth Circuit affirmed the district court ruling on March 20, 2020.

Native Ecosystems Council, et al. v. Marten, Cause No.: 17-cv-00047-M-DLC-JCL; 18-cv- 35653 – United State District Court of Montana/9th Circuit Court of Appeals

Litigation over the Telegraph Project on the Helena NF. Amicus brief filed by DNRC in support of the federal government's Motion for Summary Judgment. In an Order dated January 6, 2020, the 9th Circuit granted the federal government's request for a voluntary remand to re-evaluate the wildland-urban interface designation.

Native Ecosystem Council & Alliance for the Wild Rockies v. Marten, et al., Cause No. 17-cv-00153-DWM – United State District Court of Montana/9th Circuit Court of Appeals

Litigation over Moose Creek Vegetation Project on Helena-Lewis & Clark NF (Farm Bill CE). Amicus brief filed by DNRC in support of project. Summary judgement in favor of the Forest Service. 9th Circuit denied request for injunction. Ninth Circuit heard oral arguments from the parties on November 8, 2019 and, in an unpublished Memorandum, dated April 7, 2020, affirmed the district court's ruling in favor of the Forest Service.

Helena Hunters and Anglers Assoc. v. Marten, Cause No. 19-cv-00047-DLC – United State District Court of Montana/9th Circuit Court of Appeals (consolidated with ***Alliance for Wild Rockies v. Marten, Cause No. 19-cv-00106***)

Litigation over Tenmile-South Helena Project on Helena-Lewis & Clark NF alleging NFMA/NEPA/HFRA/Roadless Rule violations. DNRC filed an Amicus Brief in support of the federal project on January 17, 2020. Appealed to the 9th Circuit Court of Appeals and appeal dismissed on December 28, 2020.

Alliance for the Wild Rockies v. Lannom, CV-21-51-M-DLC-KLD – United States District Court of Montana
Litigation over the Horsefly Vegetation Project in Meagher County on the Helena-Lewis and Clark
National Forest. DNRC filed an Amicus Brief in support of the Project on December 7, 2021. The
federal defendants will file their Reply in Support of their Motion for Summary Judgment on
January 25, 2022.