



Environmental and Natural Resource Litigation Status
Dept. of Fish, Wildlife and Parks (FWP),
Fish and Wildlife Commission (Commission), and
State Parks and Recreation Board (Board)

January 10, 2022

State District Court cases:

Trap Free Montana; Wolves of the Rockies v State of Montana, First Judicial District Court, Lewis and Clark County, Case No. BDV 2021-1261: On December 23, 2021, FWP and the Commission were served with a summons and complaint asking the court declare the wolf hunting regulations allowing night hunting of wolves on private land with artificial light, infrared imaging, thermal imaging, or night vision scopes invalid; removal of the prohibition of using aerial assistance for wolf hunting was improper; and enjoin the use of such until the regulations are in compliance with Montana law. FWP will be filing an answer to the complaint in February.

Shawn Titeca v. State of Montana, Sixth Judicial District Court, Sweet Grass County, Case No. DV-2020-05: In February, Shawn Titeca, the landowner adjacent to FWP's Boulder Forks Fishing Access Site (FAS) south of Big Timber, filed a lawsuit against FWP concerning his use of a road across the FAS to access his property. Parties met for mediation on November 30, 2021 and reached settlement in principle and the details of the agreement are being finalized.

Thomas d/b/a Hell Creek Marina v Williams, et al, First Judicial District Court, Lewis and Clark County, Case No. ADV-2020-2067: Clint and Deb Thomas, who run the concession operation at Hell Creek State Park, filed a lawsuit against FWP alleging FWP violated its concession agreement in several ways and raises claims for breach of contract, breach of implied covenant of good faith, promissory estoppel, and negligent misrepresentation. FWP answered the Complaint. There are no pending deadlines in this matter at this time.

United Property Owners of Montana, Inc. v. Montana Department of Fish, Wildlife and Parks, Tenth Judicial District Court, Fergus County, Case No. DV-2020-30: United Property Owners of Montana (UPOM) filed suit claiming the Department's Record of Decision (ROD) and Final Programmatic Environmental Impact Statement (Final EIS) on bison conservation and management violated provisions of the Montana Environmental Policy Act and the Montana Administrative Procedures Act. UPOM asserted FWP acted arbitrarily and capriciously by adopting the Final EIS as it failed to take a hard look at the cumulative environmental impacts of bison restoration. UPOM also argues that FWP lacks the statutory authority to restore wild bison and seeks declaratory and injunctive relief to permanently enjoin implementation of the existing Final EIS and ROD. The parties settled the case whereas rendering the Final EIS and the ROD vacated and declared null and void. In addition, FWP agreed to not undertake a Final EIS

process similar to that at issue in this case for a period of 10 years from the date of the agreement, unless the species Plains bison (*Bison bison bison*) is listed as an endangered or threatened species under the Federal Endangered Species Act of 1973, as amended. The case was dismissed in April of 2021.

Montana Supreme Court

Animals of Montana v. Montana Department of Fish, Wildlife and Parks, Case DA-20-0065: Animals of Montana (AOM) was a roadside menagerie located in Gallatin County. In 2015, FWP documented 25 violations of rule and law committed by AOM and subsequently issued AOM a Notice of Revocation of Permit and an Opportunity for Hearing. A hearing was held before a hearings examiner who found that FWP factually proved 22 of the 25 violations. The matter was appealed, per MAPA, to Director Williams who issued a final decision notice that AOM's permit to operate a roadside menagerie was to be revoked without right of renewal. AOM filed a Petition for Judicial Review in District Court in Gallatin County and the case was then transferred to Lewis and Clark District Court. In January 2020, the Court issued their Order on the Petition affirming FWP's final decision to revoke the permit. AOM appealed the decision to the Montana Supreme Court. The Supreme Court upheld the decision. Since then, Animals of Montana has divested itself of the animals which it no longer can lawfully own, and is no longer an operating roadside menagerie.

Federal District Court cases:

Gardipee et al. v. State of Montana, US District Court of Montana, Missoula Division, Case No. CV 21-95-M-DLC: Four individuals filed an application for temporary restraining order, preliminary injunction, and a complaint alleging they are disabled and that FWP and Commission are violating the Americans with Disabilities Act, the Rehabilitation Act of 1973, and the Montana Constitution by prohibiting their use of crossbows during Montana's archery-only season, which is limited by statute to use of bow and arrow. Similarly to the law, the Commission's definition of archery equipment does not include crossbows, which are mechanically a fundamentally different type of hunting equipment. A hearing on the temporary restraining order and preliminary injunction was held on August 30, 2021. On September 3, 2021, Judge Dana Christensen issued an order denying the motion for preliminary injunction. FWP has filed an answer to the complaint and the case is currently in the discovery process with a final trial not to occur until March 6, 2023.

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. The 9th Circuit affirmed Judge Christensen's order in all respects, with the exception of the order requiring the Fish and Wildlife Service to conduct a "comprehensive review" of the remnant grizzly population. The 9th Circuit remanded the case

for the district court to order further examination of the delisting's effect on the remnant grizzly population. Judge Christenson issued his order on September 1, 2020, to that effect.

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 (Bureau of Land Management and the Forest Service), were sued by neighboring landowners to the Wall Creek Wildlife Management Area (WMA), 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. FWP, in conjunction with federal agencies, has seasonally closed the roads to and through the WMA for decades, with the purpose of protecting elk winter range. The court ruled in favor of the United States' motions for summary judgment and concluded that there was no county road running to the WMA. Instead, the roads that exist were federally owned, meaning that the federal government could enact seasonal closures and enforce access limitations. The court did not rule on the status of the road running through the WMA itself because it was not necessary to find against the Plaintiffs and dismissed the case in July 2021. While the Plaintiffs could pursue state claims against FWP to flush out the ownership of the WMA section of road, that is highly unlikely and would not impact access to the WMA or elk winter range so long as the federal closure is maintained.

Montana Water Court cases:

DFWP is involved in several cases before the Montana Water Court. Current cases include 41B-269 (West Side Canal Company) and 41H-76-R-2021 (Glen Lake).