

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
LITIGATION SUMMARY (DECEMBER 2016- DECEMBER 2017)

WATER RESOURCES LITIGATION

Atlantis Water Solutions. LLC v. DNRC, Cause No.: BDV-2015-486, First Judicial District, Lewis and Clark County. Petition for judicial review filed by Atlantis Water Solutions challenging denial of water marketing permit application. Denial of the application was affirmed by the District Court on August 1, 2016.

Matter of Application No. 411-30025802 To Change Water Right No. 41L-72578 by City of Cut Bank, Cause No.: DV-2015-77, Ninth Judicial District, Glacier County. Petition for Judicial Review filed by the Blackfeet Tribe on the DNRC grant of an authorization to change the place of storage for a water reservation out of Cut Bank Creek. On December 8, 2017, the District Court affirmed the determination that DNRC had jurisdiction to process and grant the change application.

Indian Springs Ranch Water and Sewer, LLC v. DNRC, Cause No.: DV-2016-216, Nineteenth Judicial District, Lincoln County. Petition for judicial review filed by Indian Springs Ranch Water and Sewer, LLC, challenging denial of beneficial water use permit application for groundwater. Briefing is complete and oral argument was conducted in July 2017. The parties are currently waiting on a decision from the District Court.

In the Matter of Applications to Change Water Right No. 41H-30004451 by Constance Cowett; No. 41H-2356200 by Charles and Amelia Kelly; No. 41H-30018777 by David and Cora Rall, Cause No.: DV-08-704C, Eighteenth Judicial District, Gallatin County (pending). Judge Cybulski (Glendive) assigned. Clarice Dryer and Steve Kelly intervened. Petition for Judicial Review on DNRC denial of an application for a change authorization for multiple water rights. Multiple motions were filed and are still pending and awaiting action of the Court. No scheduling order is in place and substantive briefing on the Petition for Judicial Review has not yet occurred.

CFC v. Tubbs, SCT Cause No.: DA 15-0746 (attorney fees). The Supreme Court concluded that the District Court erred when it concluded DNRC was not entitled to quasi-judicial immunity from \$197,000 attorney fee claim; and, that the district court abused its discretion when it held DNRC liable for attorney fees pursuant to the private attorney general doctrine.

Willow Creek Water Users' Association, SCT Case No. OP17-0719. The Court granted our motion to vacate its previous order requiring mediation. DNRC is awaiting response of

Association at to our motion to dismiss for lack of subject matter jurisdiction and due process. DNRC taking this up on a writ of supervisory control and/or certiori.

TRUST LANDS LITIGATION

Revocable Living Trust of Stip v. State of Montana, Cause No. DA 11-110, Seventh Judicial District, Richland County. Quiet title action concerning three islands within a drilling and spacing unit composed of Sections 17 and 20 in Township 22 North, Range 59 East, MPM in Richland County, Montana. XTO is holding oil & gas royalties in suspense pending the outcome of this quiet title action to define the ownership of several parcels of land. A three-day trial was held February 28 through March 2, 2017, after which the District Court quieted title of the disputed parcel to the State of Montana.

Montana v. Greenfields Irrigation District, Cause No.: BDV-2016-999, First Judicial District, Lewis and Clark County. On December 2, 2016, the Department and the Office of the Attorney General filed a Complaint for Declaratory Judgment requesting relief from the \$500 an acre arbitrary, capricious, and unlawful payment requested by the Irrigation District. An agreement was made related to the State's motion for preliminary injunction. Parties are exchanging discovery. Greenfields has filed a counter-claim.

PLWA v. The State of Montana, Cause No.: DV-14-2012-0085DK, Tenth Judicial District, Fergus County. Public Land/Water Access Association Inc. sued the State of Montana and others regarding public access to the Mabee Road. The State granted Fergus County an easement for the public use of the disputed portion of Mabee Road on State Section 36. Trial on January 22nd.

NorthWestern Corporation d/b/a NorthWestern Energy v. The Board of Land Commissioners, and the Montana Department of Natural Resources and Conservation, Cause No.: DDV-2016-497, First Judicial District, Lewis and Clark County. NorthWestern Energy filed a Petition for Declaratory Judgment in the First Judicial District Court for Lewis and Clark County on June 15, 2016. The Petition sought declaratory judgment finding that NorthWestern, as current lessee of certain State of Montana oil and gas leases, is not responsible for any royalty payments that a prior lessee failed to pay to the Department under the terms of the applicable leases. The Court granted the State's motion.

Gallatin County, Montana, through its Board of County Commissioners v. State of Montana Cause and Elizabeth Kelley and Gallatin County, Montana Intervenor, v. Elizabeth Francis Bunker, et al., Cause No.: DV-12-707AX, Eighteenth Judicial District, Gallatin County. County's petition to declare Bear Canyon Road running through State school trust lands a County road route pursuant to Mont. Code Ann. § 7-14-2662, intentional trespass, and related damages consolidated with private party's action to quiet title to a strip of land in Bear Canyon that is in largely the same location as the disputed road. Cross motions for

summary judgment are fully briefed. On August 9, 2017, there is a hearing on the parties' cross Motions for Summary Judgment before Judge Rienne McElyea. Parties are discussing settlement.

Gallatin County v. State of Montana, Cause No.: DV 16-327C, Eighteenth Judicial District, Gallatin County. Attorney General served with Complaint for Declaratory Judgment filed by Gallatin County on April 18, 2016. Gallatin County sought declaration that the state is responsible for paying rural improvement district assessments levied on school trust lands. Complaint requested payment of all delinquent assessments, penalties, interests, costs and attorney fees. DNRC filed a counter-claim. The County's case was dismissed with prejudice, DNRC can still pursue counterclaims.

Putz Trust Estate, Joyce Ragland, Trustee v. DNRC, Cause No.: DV-2017-28, Seventeenth Judicial District, Valley County. The District Court set aside a Default Judgment that was granted by an administrative judge related to a lease cancellation. The cancellation matter is remanded to the DNRC for decision on the merits. Petitioner seeks attorney fees and costs.

FORESTRY/FIRE MANAGEMENT LITIGATION

Mountain West Farm Bureau Mutual Insurance Company v. Robert S. Fite v. Intervenors (DNRC et al.), Cause No.: ADV-2013-240, First Judicial District, Lewis and Clark County, (Corral Fire interpleader action). DNRC is an intervening party for purposes of its statutory right to claim reimbursable costs for fire suppression. The balance of the intervenor party roster and unrepresented non-parties are casualty loss claimants. The present status is the recent appointment of a Special Master who will begin the process set out by the Court's January 25, 2016 Order. The pool of available funds is \$1.8 million less any common fund attorney's fees that may be awarded in the future in this case stemming from another suit now consolidated in this matter. The parties have all submitted their claims to the Special Master, who issued a recommended distribution of funds. Two parties filed with the court objections to the recommended distribution of funds, and the court is now considering the matter and will issue an order hopefully early in the new year.

FEDERAL LITIGATION

Native Ecosystems Council and Alliance for the Wild Rockies v. Erickson, et al., Cause No.: 9:17-cv-00053-DLC, US Dist. Court Montana. Litigation over the Smith Shields Forest Health Project 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).

Native Ecosystems Council, et al. v. Marten, Cause No.: CV 17-47-M-DLC-JCL, US Dist. Ct., Montana. Amicus brief which supported the federal government's Motion for Summary Judgment. Through the Forests in Focus Initiative, DNRC contributed \$125,000 to the installation of the Golden Anchor Bridge which will provide safe travel along one of the critical haul routes of the Telegraph project, which is located on the Helena National Forest. The bridge replacement project helped restore the Little Blackfoot floodplain and improve recreation opportunities for the public. Project is adjacent to Tenmile - South Helena project and the outcome of this case could have implications on the Tenmile South Project.