

**DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION  
LITIGATION SUMMARY (September 2011-FEBRUARY 2014)**

**State District Court**

*Water Issues:*

**In The Matter Of Application No. 411-30025802 To Change Water Right No. 41L-72578 by City of Cut Bank**, Cause No. DV-11-13, 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. The case was remanded to the DNRC to make findings regarding jurisdiction to approve the change. DNRC appointed a hearings officer from Agency Legal Services to hear the case. The case has been briefed and the hearing has been held. A decision is pending.

**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.

**Montana DNRC v. Catlin Ranch LP**, Cause No. DV-08-30, Montana Fourteenth Judicial District. This was an enforcement action and Declaratory Judgment Action on illegal use of pivot irrigation without an approved change authorization for a change in place of use. Defendant alleged salvage water. The case settled just prior to trial in 2012. Defendant was required to file a change application with the Department and the previous court ruling regarding the use of alleged salvage water was withdrawn.

**DNRC v. Neal Bouma and Harold Poulsen**, Cause No. CDV-10-1043, Montana Eighth Judicial District, Cascade County. Enforcement action filed by DNRC for illegal on-stream ponds (no water right). Defendant Poulsen settled for payment of a fine under §85-2-114, MCA. Defendant Bouma was required by the district court to pay a fine under §85-2-114, MCA and to remove the dams.

**DNRC v. Bar C Inc.**, Cause No. DV-29-11-73, Fifth Judicial District, Madison County DNRC filed a complaint for injunction of illegal water use. Case settled with a consent decree in 2012 requiring Bar C to file a permit application.

**Michael Cok and Kathleen Cok v. DNRC**, Case No. DV-12-4A, Montana Eighteenth Judicial District Gallatin County. Petition for Judicial Review for termination of an application for a

change authorization for failure to be correct and complete. Case voluntarily dismissed by Plaintiff prior to any briefing.

**Daniel French v. DNRC**, Cause No. DV-11-90, Tenth Judicial District, Fergus County. Petition for Judicial Review on DNRC denial of an application for a permit for well for failure to prove water physically available, among other things. Denial was upheld by the District Court in 2012.

Trust Land Issues:

**Revocable Living Trust of Stip v. State of Montana**, Cause No. 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.

**Gallatin County v. State of Montana**, Cause No. DV-12-707A, Eighteenth Judicial District, Gallatin County. Complaint for Declaratory Judgment concerning the ownership and jurisdiction of the Bear Canyon Road upon State trust lands and a Tort Claim for intentional and negligent trespass. Gallatin County v. Montana has been consolidated with Kelley v. Bunker et al. and State of Montana, Cause No. DV-12-863B, Mont. Eighteenth Judicial District Court, Gallatin County (Complaint to quiet title to the Cooper Flume). There is a consolidated caption with a new case number: "12-707AX."

**Salmond Ranch Co., Inc. v. Known Persons v. Montana DNRC and State Board of Land Commissioners**, Cause No. DV-12-45, Ninth Judicial District, Teton County. Quiet title action to determine whether there is a route of public access as granted by Frank Salmond across Sections 2, 3, and 10, in Township 23 North, Range 8 West, MPM, in Teton County, Montana.

**Montrust v. State of Montana (Montrust III)**, Cause No. BDV-2012-39, First Judicial District, Lewis and Clark County. Constitutional challenge to SB 409, Rule "3B" rentals, and cabin site rental rates under SB 409. On April 5, 2012 the Court issued a Preliminary Injunction enjoining the implementation of SB 409 and the SB 409 administrative rules.

**Graham v. State, et al.**, DV-05-191C, Eleventh Judicial District, Flathead County. Quiet title action regarding artificially avulsed land in Whitefish River. Summary Judgment reversed by Supreme Court for evidentiary hearing. Trial held 2/2014. Decision pending. MDT participated.

**DNRC v. Stan Kuipers**, DV-2011-72, Tenth Judicial District, Fergus County. Breach of timber sale contract. Efforts at settlement failed. Motion for summary judgment filed and Kuipers did not respond. Judgment entered by the Court in favor of DNRC for approximately \$95,000 and prejudgment interest.

**Stewart-Hunt v. DNRC**, DV-05-1125, Missoula County. Petition for Judicial Review regarding a lease cancellation. Settlement was reached.

Forestry:

**DNRC v. Timothy D. Ray**, DV-04-57, Third Judicial District Court, Powell County. Streamside Management Zone fine of roughly \$50,000, affirmed by a hearing examiner. Complaint filed. Awaiting service of Complaint on Mr. Ray. Tim Ray has moved from Deer Lodge to Spokane or Idaho, and a decision will be made as to what further action will be taken.

**DNRC v. Lynn Davis**, DV-11-1023, Missoula County. Fire suppression costs for two fires. DNRC settled on one of the fires and are receiving payment. Other fire issue is pending.

**Montana Supreme Court**

Water Issues:

**Bostwick v. DNRC**, Cause No. DV- 09-1196C, Eighteenth Judicial District, Gallatin County, affirmed 2013 MT 48. Petition for Judicial Review on DNRC denial of an application for a new water permit based on depletions to the Gallatin River adversely affecting Department of Fish Wildlife and Park's winter in-stream flow reservation. DFWP objected to the permit application and then withdrew their objection. District Court upheld DNRC's general analysis on permit criteria but reversed DNRC on the denial of the permit reasoning that DFWP's withdrawal of the objection indicated that DFWP's instream flow rights were met, regardless of the reservation amount. Bostwick appealed the grant of the permit by the district court, challenging the condition requiring mitigation water during irrigation season. DNRC cross-appealed the holding on the meaning of DFWP's withdrawal of its objection. The Supreme Court affirmed the District Court.

**Town of Manhattan v. DNRC** Case No. DV-09-872c, Montana Eighteenth Judicial District Gallatin County, affirmed 2012 MT 81. Petition for Judicial Review on termination of municipal change application for failure to provide information on historic use of water rights to be changed. District Court upheld termination and Supreme Court affirmed. Held that DNRC can request historic use information for an application to change a water right.

Trust Land:

**Northern Plains Resources Council et al. v. Montana Board of Land Commissioners et al.**, 2012 MT 234. Constitutional Challenge to Otter Creek coal leases and MEPA exemption. Leases upheld.

**DNRC v. ABBCO, et al**, Cause No DV-06-52, Seventh Judicial District Court, Richland County, affirmed 2012 MT 187. Quiet title action to riparian lands on the Missouri River near Sidney, Montana. Supreme Court held that the islands were school trust lands.

Tort Claims:

**Long v. DNRC**, 2013 MT 170N. Former employee wrongful discharge suit. Case dismissed with prejudice because Plaintiff failed to appear for her deposition. Plaintiff ordered to pay approximately \$15,000 plus interest in attorneys' fees.

**Weaver v. DNRC**, 2013 MT 247. Suit for negligent fire suppression on the Ryan Gulch Fire in 2000. Supreme Court upheld jury verdict for \$730,000.

**Federal Court**

**Friends of the Wild Swan et al v. Jewell et al.**, CV-13-61-M-DWM, United State District Court for the District of Montana, Missoula. Friends of the Wild Swan and Montana Environmental Information Center filed a complaint for declaratory and injunctive relief against the US Fish and Wildlife Service on March 18, 2013. The Complaint challenged USFWS' approval of the Habitat Conservation Plan prepared by the DNRC for forest management activities on state trust lands in western Montana, and the Service's issuance of an incidental take permit for these activities. Plaintiffs claimed among other things that these actions violated the ESA by failing to ensure against jeopardy to ESA listed species including Grizzly Bear and Bull Trout, and failing to adequately mitigate the effects of the DNRC's management activities on these species. The suit could potentially impact DNRC management activities on more than 500,000 acres of state trust land. The Department obtained Land Board approval to intervene in the litigation as a co-defendant with USFWS on May 20, 2013, and filed a motion to intervene which was approved on July 1 2013. Briefing on summary judgment is scheduled to be complete on May 16, 2014.