

Environmental and Natural Resource Litigation Status
Dept. of Fish, Wildlife and Parks (DFWP) and the
Fish, Wildlife and Parks Commission (Commission)
March 9-10, 2016

State District Court cases:

Citizens for Balanced Use, et al. v. Maurier, Montana Seventeenth Judicial District, Blaine County, Cause No. DV-2012-1.

Plaintiffs challenged the “wild bison” status of quarantined bison out of Yellowstone National Park (YNP). The basis for their claim is found solely in the dicta language of the Montana Supreme Court decision issued in this case on another issue (see description below under Supreme Court Cases heading). The Department argued in its district court brief that Plaintiff’s claims are invalid for the following reasons: the language in the Supreme Court’s decision was incorrect and does not hold precedent in law, Plaintiffs failed to plead this matter in their original complaint and arguments, and the statute is clear that these are “wild bison.” The Court issued a decision in April 2014 ruling that YNP quarantined Yellowstone bison are wild bison.

Department of Fish, Wildlife & Parks v. Troy Wanken & Wanken Farms, 9th Judicial District, Toole County, DV-12-015.

The Department filed a Declaratory Judgment action to establish the right and scope of the administrative and public access to the Marias River Wildlife Management Area along the Lincoln Road. The Department received a partial summary judgment decision indicating that FWP has an express easement appurtenant for use of roads pursuant to a 1951 agreement. The court found that the Department has administrative access and access for short-term seasonal hunting, but that the easement “does not include unlimited public access for any purpose, including hunting and fishing.” The remaining issues in the case include further determination of the scope of the easement as well as claims by the Department that the Defendants blocked the road and counterclaims related to that same point. The case is set for a combined jury/non-jury trial in June of 2016.

Helena Hunters and Anglers (HHA) v. Maurier, MFWP, First Judicial District, Lewis & Clark County, BDV-2012-868.

Plaintiffs filed suit against the Department alleging that it violated statutory provisions to prevent species from being listed on the Endangered Species Act list. In addition, Plaintiffs argued that the Department failed to consider a Petition for rulemaking it submitted in 2012 to prohibit wolverines from being trapped while the U.S. Fish and Wildlife Service made its decision whether to place wolverine on the ESA list. In August 2014, Fish and Wildlife Service withdrew its proposed listing rule for wolverines as threatened under the ESA. As a result of that decision, this case was dismissed with prejudice in September 2014.

McGinnis Meadows Cattle & Guest Ranch LLC v. MFW; and Joe Maurier, its Director, 11th Judicial District, Flathead County, Cause No. DV-12-261D.

Plaintiff landowner filed suit in February 2012 against FWP alleging it failed to attach a radio-tracking collar to at least one wolf in each wolf pack near livestock as required by Mont. Code Ann.

§ 87-5-132(1), and associated administrative rules. FWP has actively attempted to track and attach radio tracking collars on wolves in active wolf packs but the elusive nature of wolves make it difficult. Plaintiff served first discovery requests shortly thereafter but has not prosecuted the case since. Due to Plaintiffs' failure to prosecute their case, in 2015 the Court dismissed the matter.

White vs Dickman et.al., Montana Twenty-First Judicial District, Ravalli County Cause No DV-15-88

Suit for Partition. A Stipulation in Lieu of A Rule 16(b) Scheduling Order was filed appointing appraisers for property to be divided by the parties. Appraisal reports are due soon. FWP currently leases a portion of the property to be divided and has the right of first refusal to purchase a portion of the property.

Montana Supreme Court cases:

Citizens for Balanced Use (CBU), v. Fish and Wildlife Commission, Montana Supreme Court, DA 14-0046.

The Plaintiffs filed a case in district court challenging the Fish and Wildlife Commission's (Commission) public notice and participation process as insufficient for its December 10, 2012 decision to close the wolf season in two small wolf management units outside Yellowstone National Park (YNP) near Gardiner. The Commission prevailed at the district court level because the case was moot. The fact that the 2013 legislature rendered it impossible for the situation to repeat because the Commission no longer had the authority to close units around YNP was the basis for the district court's decision. However, the district court awarded Plaintiffs attorneys fees and costs because they were able to get a preliminary injunction prior to the case becoming moot. FWP appealed the case to the Montana Supreme Court on the issue of attorneys' fees. The case was affirmed and remanded back to district court. A total of \$16,135.03 in attorneys' fees and costs were awarded to the Plaintiffs.

Citizens for Balanced Use, et al. v. Maurier, Montana Supreme Court, Montana Supreme Court, DA 12-0306.

Plaintiffs filed suit challenging the Departments movement of disease-free bison to Fort Peck and Fort Belknap Indian Reservations because the Department did not develop a management plan contemplated by Mont. Code Ann. §87-1-216(4)-(6). The Department did not apply this statute to the placement of bison upon Indian country because the language of the statute required only that a management plan be developed when placing bison on "private or public lands in Montana." The district court ruled against the Department and issued a preliminary injunction requiring the Department develop a management plan. The Department appealed the decision to the Supreme Court.

The Supreme Court issued a decision that overturned the district court decision and upheld the Departments' actions. The decision also indicated, in dicta, that there was a chance that these bison are not wildlife. Plaintiffs moved the district court to determine these quarantine bison not wildlife as a result. (See explanation of district court case above.)

Federal District Court cases:

Center for Biological Diversity v. Jewell, US District Court, District of Montana, CV 15-4-BU-SEH

Plaintiff environmental organizations challenged the US Fish and Wildlife Service's 2014 determination that listing of the Upper Missouri Distinct Population Segment of the arctic grayling is not warranted. State of Montana and FWP have intervened in support of USFWS. Plaintiffs moved to supplement the administrative record. Hearing on the motion was held by Judge Haddon on Jan. 12, 2016. Judge Haddon ruled in favor of Plaintiffs. Federal Defendant has now supplemented the record with a 2010 Upper Missouri arctic grayling population viability analysis. The following schedule is now in effect: Plaintiff's motion for summary judgment due Feb. 19, 2016; Defendant's combined opposition/cross-motion for summary judgment due April 15, 2016; Montana's combined opposition/cross-motion for summary judgment due April 22, 2016, Plaintiff's reply due May 27, Defendant's reply due June 24, Montana's reply due July 1.

Defenders of Wildlife v. US Army Corp of Engineers, US District Court, District of Montana, CV 15-00014-GF-BMM

Plaintiff sued Defendants Corps of Engineers, Bureau of Reclamation and US Fish and Wildlife Service under ESA, NEPA and other causes in a challenge to Defendants' decision to proceed with construction of a new irrigation diversion structure at Intake, MT. Judge Morris granted Plaintiff's motion for preliminary injunction on Sept. 4, 2015. The parties have now submitted, and Judge Morris has signed a Joint Stipulation to Stay Proceedings and Order. The Joint Stipulation calls for the Corps and Reclamation to conduct public scoping and complete a draft environmental impact statement by July 1, 2016. A Final EIS is to be completed by Dec. 31, 2016. Additional consultation with US Fish and Wildlife Service pursuant to Section 7(a)(2) of ESA will also be required prior to signing a record of decision.

Friends of the Wild Swan v. Vermillion, US District Court, District of Montana, Missoula Division, CV 13-66-M-DLC.

Plaintiffs filed suit in federal district court alleging that the Department is liable under the Endangered Species Act (ESA) for recreational trappers' incidental take of lynx. The Department and Commission settled the case in July of 2015. The settlement included some changes to the Commission's trapping regulations. The case was dismissed. The order dismissing the case was appealed by the Defendant-Intervenors (Montana Trappers Association, National Trappers Association, and individual trappers). Currently the appeal is stayed pending settlement discussions.

Defenders of Wildlife v. Jewell, US District Court, District of Montana, CV 14-246-M-DLC

Several Plaintiffs' environmental groups filed challenges to the US Fish and Wildlife Service's decision not to list wolverines as threatened under the ESA. Montana, along with Wyoming and Idaho, intervened on behalf of the Service to support the Service's decision. The case has been fully briefed and argument was heard in February 2016. The Court's decision is forthcoming.

Administrative Contested Case Proceedings

DFWP is involved in several contested case proceedings before DNRC. Periodically, DFWP objects to new applications for water use and applications for change of water use

that have the potential to adversely impact instream flow rights held by DFWP. DFWP typically is involved with about 10 DNRC contested case proceedings.

FWP v. Animals of Montana, Troy Hyde, permit holder, before the Department of Fish, Wildlife and Parks.

The Department 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 notice comes after 25 violations of statute and administrative rule were found involving the facility in 2015 alone. 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 is challenging the proposed permit revocation through a request for an administrative hearing before the Department. No hearing date has been set in this case.

FWP v. Bowman Administrative Contested Case

Alternative Livestock Revocation case. FWP agreed to withdraw enforcement actions against an alternative livestock facility for multiple violations in a settlement agreement during the course of an administrative proceeding that was begun in 2014. The license holder agreed to abandon its license, pay for Department costs, dispose of all alternative livestock elk after testing for chronic wasting disease, and ultimately, lower their fences, within an eight month period.

FWP v. Spoklie. Administrative Contested Case

Alternative Livestock Revocation case. A settlement where Licensee agreed to let alternative livestock license No 139 lapse and not make any effort to renew it which would accomplish License Revocation portion of the proceedings MDFWP had brought in 2016. As far as the fences are concerned, Licensee agreed to start tearing down the fences in the Spring 2016 and will continue to do so in a reasonably fast manner so that they are all down in a year.