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**MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY**

Cause No. BDV-2010-874

**ORDER ON MOTION
TO STAY COURT'S ORDER ON
PETITION FOR JUDICIAL
REVIEW**

THE CLARK FORK COALITION, a
non-profit organization with senior
water rights; KATRIN CHANDLER,
an individual with senior water rights;
BETTY J. LANNEN, an individual
with senior water rights; POLLY REX,
an individual with senior water rights;
and JOSEPH MILLER, an individual
with senior water rights

Petitioners,

v.

JOHN E TUBBS, in his capacity as
Director on the Montana Department of
Natural Resources and Conservation,
and THE MONTANA DEPARTMENT
OF NATURAL RESOURCES AND
CONSERVATION, an executive
branch agency of the State of Montana,

Respondents

v.

MONTANA WELL DRILLERS
ASSOCIATION,

Intervenors,

WATER POLICY INTERIM
COMMITTEE 2015-16

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v.
MONTANA ASSOCIATION OF
REALTORS and MONTANA
BUILDING INDUSTRY
ASSOCIATION,

Intervenors,

MOUNTAIN WATER COMPANY,

Intervenor.

On October 17, 2014, this Court entered its Order on Petition for Judicial Review. That decision was appealed on December 23, 2014 by Intervenor Montana Well Drillers Association (MWDA). MWDA now seeks a stay on two aspects of the aforementioned order.

In its order, this Court directed the Montana Department of Natural Resources and Conservation (DNRC) to engage in rule making consistent with the Court's decision. The Court also reinstated DNRC's 1987 rule to replace the 1993 rule, which the Court found defective.

Montana Rule of Appellate Procedure 22 allows a district court to issue a stay in an appeal. The parties generally agree with the standard to be applied in determining whether a stay should be issued. (See MWDA's Mot. Stay Ct.'s Or. Pet. J. Review, at 8 (Feb. 23, 2015); Petr's Resp. Opp'n MWDA's Mot. Stay Ct.'s Or., at 2 (Mar. 27, 2015).)

A stay is an "intrusion into the ordinary processes of administration and judicial review," *Virginia Petroleum Jobbers Assn. v. FPC*, 104 U.S. App. D.C. 106, 259 F.2d 921, 925 (CADC 1958) (per curiam), and accordingly "is not a matter of right, even if irreparable injury might otherwise result to the appellant," *Virginian R. Co. v. United States*, 272 U.S. 658, 672, 47 S. Ct. 222, 71 L. Ed. 463 (1926). The parties and the public, while entitled to both careful review and a meaningful decision,

1 are also generally entitled to the prompt execution of orders that the
2 legislature has made final.

3 *Nken v. Holder*, 556 U.S. 418, 427 (2009).

4 The party requesting a stay the burden of showing that the circumstances
5 justify an exercise of that discretion.

6 The fact that the issuance of a stay is left to the court's discretion
7 "does not mean that no legal standard governs that discretion. . . . [A]
8 motion to [a court's] discretion is a motion, not to its inclination, but to
9 its judgment; and its judgment is to be guided by sound legal
10 principles." As noted earlier, those legal principles have been distilled
11 into consideration of four factors: "(1) whether the stay applicant has
12 made a strong showing that he is likely to succeed on the merits; (2)
13 whether the applicant will be irreparably injured absent a stay; (3)
14 whether issuance of the stay will substantially injure the other parties
15 interested in the proceeding; and (4) where the public interest lies."
16 There is substantial overlap between these and the factors governing
17 preliminary injunctions . . . not because the two are one and the same, but
18 because similar concerns arise whenever a court order may allow or
19 disallow anticipated action before the legality of that action has been
20 conclusively determined.

21 *Id.* at 434 (citations omitted).

22 Using the above principles, the Court will not place a stay on that portion
23 of its order which reinstated DNRC's 1987 rule. There has been no showing that
24 MWDA is "likely to succeed on the merits," and the Court does not see how MWDA
25 will be irreparably injured absent a stay. MWDA suggests that it may have trouble
advising its customers as to the proper standard applicable to their various wells, but
the Court does not see this as an irreparable injury.

In addition, a stay could substantially injure other parties interested in the
proceedings. At the hearing, the Court reviewed evidence that other parties to this
proceeding, specifically Mountain Water Company of Missoula and the Montana
Department of Fish, Wildlife and Parks, have been adversely affected by the 1993 rule.
To place a stay on this portion of the Court's order would continue that damage.

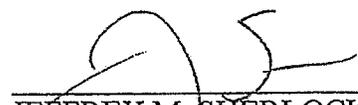
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1 Finally, the Court does not see how placing a stay on the portion of its
2 order reinstating the 1987 rule is in the public interest. The Court feels its decision
3 clearly served the public interest.

4 As to that portion of this Court's order which required DNRC to engage
5 in rule making, the Court will effect a stay until the matter is disposed of by the
6 Montana Supreme Court. The Court is primarily concerned with the argument by
7 MWDA that this matter conceivably could become moot pending the appeal depending
8 on the exact rule enacted by DNRC. An issue may become moot when a court cannot
9 grant meaningful relief or restore the parties to their original position. *Plain Grains*
10 *L.P. v. Cascade Co. Comm'rs*, 2010 MT 155, ¶ 34, 357 Mont. 61, 238 P.3d 332. The
11 Clark Fork Coalition notes that the last time DNRC was engaged in making the rules
12 with which we are here concerned, it took approximately three years from beginning to
13 end. While this may or may not be the time frame with which we are here concerned,
14 there is no good way to judge how long the DNRC rule making could take. With the
15 reinstatement of the 1987 rule, this Court does not feel that any of the parties or the
16 public will be harmed by a stay concerning the rule making portion of this Court's
17 order.

18 Based on the above, IT IS HEREBY ORDERED, ADJUDGED, AND
19 DECREED that this Court's Order on Petition for Judicial Review dated
20 October 17, 2014 will not be stayed concerning this Court's reinstatement of DNRC's
21 prior 1987 rule. However, that portion of the order which required DNRC to engage in
22 rule making will be stayed pending a decision by the Montana Supreme Court.

23 DATED this 8 day of May 2015.

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JEFFREY M. SHERLOCK
District Court Judge

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pcs: Laura King/Matthew Bishop
Kevin R. Peterson/Anne W. Yates
Abigail J. St. Lawrence
Stephen R. Brown
Ryan K. Mattick

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NANCY SWEENEY
CLERK DISTRICT COURT

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Deputy

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JUN 16 2015

Client _____
COURT 67122-002

**MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY**

THE CLARK FORK COALITION, a non-profit organization with senior water rights; KATRIN CHANDLER, an individual with senior water rights; BETTY J. LANNEN, an individual with senior water rights; POLLY REX, an individual with senior water rights; and JOSEPH MILLER, an individual with senior water rights,

Plaintiffs,

v.

JOHN E. TUBBS, in his official capacity as Director of the Montana Department of Natural Resources and Conservation; and THE MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION (DNRC), an agency of the State of Montana.

State-Defendants,

MONTANA WELL DRILLERS ASSOCIATION,

Intervenors,

Cause No. BDV-2010-874

**ORDER ON MOTION FOR
ATTORNEY FEES AND COSTS**

1 MONTANA ASSOCIATION OF
2 REALTORS and MONTANA
3 BUILDING ASSOCIATION,

4 Intervenor,

5 and

6 MOUNTAIN WATER COMPANY,

7 Proposed Intervenors.

8 Before the Court is Petitioner Clark Fork Coalition's motion for attorney
9 fees and costs under the private attorney general doctrine from Defendant State of
10 Montana, Department of Natural Resources and Conservation.

11 **FACTS**

12 Montana's constitution requires the legislature to "provide for the
13 administration, control, and regulation of water rights" and to "establish a system of
14 centralized records." Mont. Const. art. IX, § 3(4). Following the 1972 Constitutional
15 Convention, the 1973 legislature passed the Montana Water Use Act to "implement
16 Article IX, section 3(4), of the Montana constitution. Mont. Code Ann. § 85-2-101(2).
17 The Act requires that water appropriators obtain a permit from DNRC. Mont. Code
18 Ann. § 85-2-302. However, some appropriators are exempted from the permit
19 requirement. Mont. Code Ann. § 85-2-306. This exempt well statute provides that a
20 permit is not required when appropriating ground water in low volumes unless it is a
21 "combined appropriation." Mont. Code Ann. § 85-2-306(3). DNRC's rule defines
22 combined appropriation as "an appropriation of water from the same source aquifer by
23 two or more groundwater developments, that are physically manifold into the same
24 system." Admin. R. Mont. 36.12.101(13). That is, a permit was required for one large

25 ////

1 well serving 100 homes, but no permit was required for 100 small wells each serving
2 one home, even if the amount of water appropriated was the same or greater.

3 In 2009, Clark Fork petitioned DNRC to declare its definition of
4 combined appropriation invalid and to initiate rule making to revise it. Joining Clark
5 Fork in its petition was Montana Fish Wildlife and Parks, Missoula County, Mountain
6 Water Company, the Brown Cattle Company, Northern Plains Resource Council,
7 Bozeman City Engineer, Stillwater Protective Association, Tongue River Water Users
8 Association, Trout Unlimited, and fourteen ranchers with senior water rights.
9 Opposing the petition was the Montana Well Driller's Association, the Montana
10 Building Association, and the Montana Association of Realtors.

11 In August 2010, after briefing and a hearing, DNRC denied the petition
12 but indicated its intent to rule make on the issue. In September 2010, Clark Fork and
13 others filed this case — a petition for judicial review of DNRC's denial. In November
14 2010, the parties signed a stipulated agreement to broaden the definition of combined
15 appropriation by rule making within the next fifteen months, thereby narrowing the
16 exempt well statute's loophole. By December, the parties had modified the agreement
17 to extend the rule making deadline to July 2013 because House Bill 602 directed the
18 Water Policy Interim Committee (WPIC) to study exempt wells and prohibited DNRC
19 from rule making on the issue until October 2012. In May 2013, the deadline was
20 extended until October 1, 2013, but no later than December 31, 2013. In August 2013,
21 DNRC proposed a new rule. The overwhelming majority of comments were positive,
22 but WPIC expressed concern. DNRC withdrew the proposed rule in November 2013,
23 revised the language, and proposed a new rule in December. The Environmental
24 Quality Council objected to the revised proposed rule, in effect delaying any rule
25 making which might occur. Mont. Code Ann. § 2-4-305(9), § 2-4-306(4).

1 DNRC withdrew the proposed rule and informed Clark Fork that no
2 more attempts at rule making would be made. Clark Fork contacted DNRC about its
3 violation of the agreement, and the parties agreed to withdraw the stipulation and
4 reopen the petition for judicial review. DNRC claims that its cooperation in the
5 process is manifest, given its voluntary agreement to allow reopening the case when
6 "Plaintiffs were not eligible to re-file a new petition given the time limitations for
7 filing a petition for judicial review." (DNRC Resp. Pls.' Mot. & Memo. Att'y Fees, at
8 7 (Feb. 23, 2015).) ~~DNRC forgets that there is an eight-year statute of limitations for~~
9 ~~breach of contract and that~~ ^{However,} the parties' agreement provides both for renewed
10 challenges to the initial rule and court enforcement of the agreement. (Stip. & Ord.
11 Dismissal, at 3-4 (Nov. 10, 2010).)

12 In October 2014, Clark Fork prevailed in the petition, resulting in the
13 definition of combined appropriation being declared invalid because it conflicted with
14 Montana Code Annotated § 85-2-306 and the general purpose of the Water Use Act,
15 which includes effectuation of Montana Constitution, article IX, § 3(4).

16 ANALYSIS

17 Clark Fork seeks approximately \$197,000 in attorney fees and costs
18 under Montana Rule of Civil Procedure 54(d) and as allowed by the private attorney
19 general doctrine. DNRC counters that it is entitled to quasi-judicial immunity and that
20 Clark Fork has failed to prove the elements necessary to support a private attorney
21 general award of fees. As a preliminary matter, this Order only concerns Clark Fork's
22 entitlement to fees and costs, not the amount.

23 **Quasi-Judicial Immunity**

24 DNRC argues that its role as hearing examiner gives it quasi-judicial
25 immunity from any fee claim. Clark Fork counters that DNRC is not immune from

1 liability or fees under Montana law and that immunity only applies to the hearing
2 officer's quasi-judicial actions, not DNRC's failure to promulgate a rule which
3 complies with the Water Use Act.

4 Although this petition is procedurally an appeal from the hearing
5 officer's decision, the actual issue does not concern his action, but simply the
6 correctness of his legal conclusions about the ultimate question — the propriety of
7 DNRC's rule. Indeed, this suit concerns a rule which DNRC promulgated as an
8 *administrative* agency pursuant to *legislative* authorization. No judicial or quasi-
9 judicial bodies were involved at any point in the creation of the rule. While the hearing
10 officer's decision about the rule is indubitably quasi-judicial, DNRC's administrative/
11 quasi-legislative role promulgating the rule is not and does not benefit from immunity.

12 Furthermore, to hold otherwise would create a system of perverse
13 incentives in which complainants would be forced to not participate in the
14 administrative process but instead skip the agency and directly file a declaratory
15 judgment in which they could recover fees. This makes little sense and encourages
16 litigation at the expense of Montana's right of participation. Mont. Const. art. II, § 8.

17 **Private Attorney General Doctrine**

18 “A party in a civil action is generally not entitled to fees absent a specific
19 contractual or statutory provision.” *In re Dearborn Drainage Area*, 240 Mont. 39, 42,
20 782 P.2d 898, 899 (1989). However, the Montana Supreme Court has adopted an
21 exception — the private attorney general doctrine from *Serrano v. Priest*, 569 P.2d
22 1303 (1977). *Montanans for the Responsible Use of the Sch. Trust v. State ex rel. Bd.*
23 *of Land Comm'rs*, 1999 MT 263, ¶ 66, 296 Mont 402, 989 P.2d 800 (“*Montrust*”).

24 The elements considered in Montana are: “1) the strength or societal
25 importance of the public policy vindicated by the litigation; 2) the necessity for private

1 enforcement and the magnitude of the resultant burden on the plaintiff; and 3) the
2 number of people standing to benefit from the decision, *id.*, and an additional factor
3 added later: (4) whether the award would be unjust. *Finke v. State ex rel. McGrath*,
4 2003 MT 48, ¶ 33, 314 Mont. 314, 65 P.3d 576.

5 Awards under the private attorney general doctrine are recent and rare,
6 having been upheld on appeal only twice. Of those two cases, one is of particular
7 importance to this Court's analysis because it concerned a citizen challenge to a water
8 law statute effectuating a constitutional mandate. *Bitterroot River Protective Ass'n v.*
9 *Bitterroot Conserv. Dist.*, 2011 MT 51, 359 Mont. 393, 251 P.3d 131 ("*BRPA III*").

10 ***Societal Importance of Public Policy***

11 Clark Fork argues that protecting Montana's water resources and senior
12 water rights are public policies of great importance enshrined in the Montana
13 Constitution and protected by the Water Use Act. DNRC counters that no
14 constitutional interest was vindicated because the case concerned statutory
15 interpretation and not a constitutional challenge.

16 When adopting the private attorney general doctrine, the Montana
17 Supreme Court expressed concern that this element could "thrust [courts] into the role
18 of making assessments of the relative strength or weakness of public policies further
19 by their decisions and of determining at the same time which public policy should be
20 encouraged by an award of fees, and which not—a role closely approaching that of the
21 legislative function." *Am. Cancer Soc'y v. State*, 2004 MT 376, ¶ 21, 325 Mont. 70,
22 103 P.3d 1085 (quoting *Serrano*, 569 P.2d at 1314). In response, the Court allows fees
23 "only in litigation vindicating constitutional interests." *Id.* In *Baxter v. State*, 2009
24 MT 449, 354 Mont. 234, 224 P.3d 1211, the Court overturned the district court's
25 award of fees. That case dealt with a challenge to the applicability of the homicide

1 statute to physician-assisted death. The district court concluded that to apply the
2 statute in such a case violated dignity and privacy provisions of the Montana
3 constitution. The Montana Supreme Court affirmed the decision, but vacated the
4 constitutional rationale, concluding that the statute's language simply did not apply to
5 physician-assisted death. That is, no constitutional provision was even remotely
6 implicated in the final decision. Likewise, in *American Cancer Society*, the Court
7 concluded that private attorney general fees were inappropriate because the decision's
8 rationale rested on the statute having "no force and effect," not because it violated the
9 constitution. *Am. Cancer Soc'y*, ¶ 18.

10 However, even issues of primarily statutory interpretation can qualify for
11 fees under the private attorney general doctrine if constitutional concerns are
12 "integrated into the rationale underlying the decision." *BRPA III*, ¶ 25. As in this case,
13 the party against whom the fees were awarded in *BRPA III* argued that they were
14 inappropriate because the case was primarily one of statutory interpretation. There, the
15 Court concluded that "the statutes at issue . . . directly implemented constitutional
16 provisions." *Id.*, ¶ 23. The law in question there was "one of 'a comprehensive set of
17 laws' enacted by the Legislature to 'accomplish the goals of the constitution,' . . .
18 which requires legislative" action to accomplish the mandates of the constitution. *Id.*

19 Quoting its prior decision from the merits stage, the Court concluded:

20 Our interpretation of the statute was expressly premised upon its
21 constitutional purpose:

22 The 310 Law is intended to "protect the use of water for any
23 useful or beneficial purpose as guaranteed by The Constitution of
24 the State of Montana." Section 75-7-102(2), MCA. Further, the
25 Law's purpose is to fulfill the constitutional directive to "prevent
unreasonable depletion and degradation of natural resources."
Section 75-7-102(1), MCA; Mont. Const. art. IX, § 1(3). To
allow the volume of water flowing in the Mitchell which is not
consumed by appropriative uses to simply cede from the
jurisdiction of the Law designed to protect the state's waters

1 would be to fail “to protect the use of water for any useful or
2 beneficial purpose,” and would be an “unreasonable depletion” of
a state resource.

3 *Id.* (quoting *Bitterroot River Protective Ass’n v. Bitterroot Conserv. Dist.*, 2008 MT
4 377, 346 Mont. 507, 198 P.3d 219 (“*BRPA II*”). *BRPA III* is astoundingly similar to
5 this case. Both concern the invalidation of codified water law because it fails to satisfy
6 a constitutional mandate for legislative action to enact the constitution’s mandate.

7 This Court’s order on the petition began its analysis with the purpose of
8 the Water Use Act:

9 Article IX, section 3(4), of the Montana Constitution provides:
10 “[t]he legislature shall provide for the administration, control, and
regulation of water rights and shall establish a system of centralized
11 records, in addition to the present system of local records.” In enacting
the Constitution, the Water Use Act declares its purpose to be:
12 [T]o implement [Article IX, section 3(4)] of the Montana
Constitution which requires that the legislature provide for the
13 administration, control and regulation of water rights and establish
a system of centralized records of all water rights. The legislature
14 declares that this system of centralized records recognizing and
establishing all water rights is essential for the documentation,
15 protection, preservation, and future beneficial use and
development of Montana’s water for the state and its citizens and
16 for the continued development and completion of the
comprehensive state water plan.

17 (Ord. Pet. J. Review, at 5 (Oct. 17, 2014).) The Order concludes, “DNRC’s
18 administrative rule 36.12.101(13) conflicts with the general purpose of Montana’s
19 Water Use Act. . . .” (*Id.*, at 13.) The purpose, as stated by the legislature, includes
20 “establish[ing] a system of centralized records of all water rights” and that such a
21 system “is essential for the documentation, protection, preservation, and future
22 beneficial use and development of Montana’s water.”

23 Put more simply, the constitution mandates that the legislature keep track
24 of water rights. The legislature passed the Water Use Act to breath life into that
25 mandate. However, DNRC’s rule conflicted with the statute which codifies the

1 protections guaranteed in the constitution. While decided on statutory grounds, this
2 Courts' Order is explicit in integrating the constitutional rationale underlying the
3 decision.

4 ***Necessity and Burden of Private Enforcement***

5 Clark Fork argues that the public constitutional issues in this case would
6 not have been vindicated without its private enforcement action, which involved a
7 substantial burden. DNRC counters that the necessity of private enforcement is
8 "questionable," citing its power to address exempt well issues through other
9 administrative powers and because it had already agreed to do rule making.

10 "Where a private suit is brought against a governmental agency or
11 official, the necessity of private enforcement is often obvious. A governmental agency
12 cannot be expected to bring suit against itself. In such situations, private citizens must
13 'guard' the guardians.'" *Comm. to Defend Reprod. Rights v. A Free Pregnancy*
14 *Center*, 229 Cal. App. 3d 633, 639, 280 Cal. Rptr. 329, 333 (1991). It is not clear who
15 else DNRC would have vindicate these rights which the DNRC itself has not managed
16 to do in the last five years. Additionally, DNRC's reference to other administrative
17 remedies to exempt well problems does not obviate the invalidity of the rule in
18 question. Finally, DNRC's claim that it "already agreed to do rule making," is of little
19 value given the DNRC's repeated failure to achieve that goal even while under a
20 "frequently extended" agreement to do so.

21 ***Population Benefitting from Decision***

22 Clark Fork argues that "all Montanans benefit from this order" because it
23 extends to all water rights holders and any Montanan who uses water. DNRC counters
24 that "it is not clear that many people will actually benefit from this decision," arguing
25 that there is "no evidence that exempt wells will automatically adversely affect another

1 water right,” and that this petition focused solely on the use of exempt wells in
2 subdivisions. As a preliminary matter, although subdivisions have been used often in
3 this case as an example of the perils of the exempt well loophole, even a cursory
4 review of the petition reveals that the claim made and relief sought are not limited to
5 subdivisions.

6 Just as in *BRPA III*, this Court’s order “clarifie[s] the status of other
7 public waters.” *BRPA III*, ¶ 34. There, the Montana Supreme Court noted that the
8 district court “found the case to be of ‘statewide importance to all Montanans.’” *Id.*
9 Here, DNRC admits in its own brief that “[t]he Department determined that the issue
10 raised was of statewide importance.” (DNRC Resp. Pls.’ Mot. & Memo. Att’y Fees
11 Resp., at 4.) Unlike *BRPA III*, which only concerned the statute’s applicability to one
12 body of water, this case rules on a definition applicable statewide. This Court’s
13 decision benefits all Montanans who are constitutionally guaranteed “a system of
14 centralized records,” for the “administration, control, and regulation of water rights.”
15 Mont. Const. Art. IX, § 3(4).

16 *Justness of Award*

17 Finally, the Montana Supreme Court added a fourth element to those it
18 adopted from *Serrano*: whether an award of fees would be unjust. *Finke*, ¶ 33. There,
19 the Court concluded that “it would be unjust to force the Counties to pay for the
20 unconstitutional actions of the Legislature,” when the defendant “neither fashioned nor
21 passed the unconstitutional law.” *Id.* Here, DNRC would not be paying for the act of
22 another, but for its own failure to promulgate a valid rule.

23 CONCLUSION

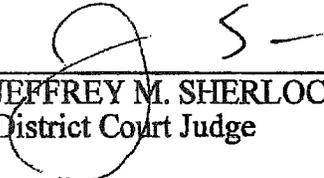
24 DNRC does not enjoy immunity because it was sued in its administrative
25 capacity as a rule maker, not for the acts of its quasi-judicial hearing officer. Clark

1 Fork qualifies for attorney fees under the private attorney general doctrine because it
2 bore a significant and necessary burden to vindicate all Montanans' constitutional
3 water rights in a suit against the party which created the invalid rule.

4 For the foregoing reasons, Clark Fork Coalition's motion is GRANTED.
5 Clark Fork is directed to file a statement concerning the attorney fees and costs it
6 requests in this case within fourteen days of the date of this order. Within fourteen
7 days thereafter, DNRC shall inform the Court if it disagrees with the amount, rates, or
8 hours sought by Clark Fork. If any such objection exists, the Court will schedule a
9 hearing on the disputed attorney fees and costs.

10 DATED this 12 day of June 2015.

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JEFFREY M. SHERLOCK
District Court Judge

pcs: Matthew K. Bishop/Laura King
Kevin R. Peterson/Anne W. Yates
Ryan K Mattick
Abigail J. St. Lawrence
Stephen R. Brown

T/JMS/clark fork coalition v tubbs ord mot atty fees costs.wpd

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JUL 10 2015

Client _____
File 67122-2

**MONTANA FIRST JUDICIAL DISTRICT COURT,
LEWIS AND CLARK COUNTY**

THE CLARK FORK COALITION, a non-profit
organization, KATRIN CHANDLER, an individual,
BETTY J. LANNEN, an individual, and JOSEPH
MILLER, an individual,

Petitioners

-vs-

JOHN TUBBS, in his capacity as Director on the
Montana Department of Natural Resources and
Conservation and THE MONTANA DEPARTMENT
OF NATURAL RESOURCES AND
CONSERVATION, an executive branch agency of the
State of Montana,

Respondents,

-vs-

MONTANA WELL DRILLERS ASSOCIATION,
Intervenors

-vs-

MONTANA ASSOCIATION OF REALTORS
and MONTANA BUILDING INDUSTRY
ASSOCIATION,

Intervenors.

Cause No. BDV-2010-874

Judge: Hon. Jeffery M. Sherlock

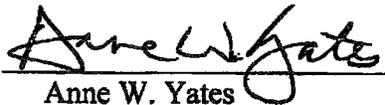
MOTION TO STAY
PROCEDURAL SCHEDULE
FOR ATTORNEYS' FEES AND
COSTS

Comes now the Montana Department of Natural Resources and Conservation and moves this Court for a stay of the procedural schedule until September 18, 2015. This stay is warranted for the good cause shown in the accompanying Brief in Support. The Department's Objection to Attorneys' Fees and costs would be due September 18, 2015. Plaintiffs support this Motion for Stay.

Respectfully Submitted this 6th day of July 2015.

DEPARTMENT OF NATURAL
RESOURCES & CONSERVATION
1625 Eleventh Avenue
Helena, Montana 59620-1601

COUNSEL FOR DNRC

By: 

Anne W. Yates
Special Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I mailed a true and accurate copy of the foregoing THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION MOTION FOR STAY OF PROCEDURAL SCHEDULE FOR ATTORNEYS' FEES AND COSTS, postage prepaid, by U.S. Mail, this 10th day of July 2015, to the following:

Mathew K. Bishop
Laura King
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Helena, Montana 59601

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Legal Secretary

Original filed:

Nancy Sweeney
Clerk of District Court
First Judicial District
228 Broadway, Rm 104
P.O. Box 158
Helena, MT 59624-0158

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Moore, O'Connell & Reffing

MONTANA FIRST JUDICIAL DISTRICT COURT,
LEWIS AND CLARK COUNTY

JUL 10 2015

Client _____

File 67122-2

THE CLARK FORK COALITION, a non-profit organization, KATRIN CHANDLER, an individual, BETTY J. LANNEN, an individual, and JOSEPH MILLER, an individual,

Petitioners

-vs-

JOHN TUBBS, in his capacity as Director on the Montana Department of Natural Resources and Conservation and THE MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION, an executive branch agency of the State of Montana,

Respondents,

-vs-

MONTANA WELL DRILLERS ASSOCIATION,
Intervenors

-vs-

MONTANA ASSOCIATION OF REALTORS
and MONTANA BUILDING INDUSTRY
ASSOCIATION,

Intervenors.

Cause No. BDV-2010-874

Judge: Hon. Jeffery M. Sherlock

ORDER ON STAY OF
PROCEDURAL SCHEDULE
FOR ATTORNEYS' FEES AND
COSTS

IT IS HEREBY ORDERED that the Department's *Motion for Stay of Procedural Schedule for Attorneys' Fees and Costs* is GRANTED. The Department shall serve and file any Objection to Statement of Attorneys' Fees and Costs on or before September 18, 2015, if settlement as to the amount of attorneys' fees and costs is not reached between the parties.

DATED this ____ day of _____ 2015.

Honorable Jeffrey M. Sherlock

- c. Anne W. Yates
- Kevin R. Peterson
- Matthew Bishop
- Laura King
- Abigail St. Lawrence
- Ryan Mattick
- Stephen Brown

Rm

NANCY SWEENEY
CLERK DISTRICT COURT

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Counsel for Petitioners

MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY

THE CLARK FORK COALITION, a non-profit
organization, *et al.*

Petitioners,

vs.

JOHN TUBBS, in his official capacity as
Director of The Montana Department of Natural
Resources and Conservation, *et al.*,

State-Respondents,

MONTANA WELL DRILLERS ASSOC. *et al.*,

Intervenors.

Civ No. BDV-2010-874

STATEMENT
CONCERNING
ATTORNEYS' FEES
AND COSTS

RECEIVED by
Moore, O'Connell & Refling

JUN 29 2015

Client _____
File 67122-001

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INTRODUCTION

10 In accordance with this Court's June 12, 2015 order granting Petitioners'
11 (hereinafter "the Clark Fork Coalition's") motion for attorney fees and costs under the
12 private attorney general doctrine from State-Defendant, the Department of Natural
13 Resources and Conservation (DNRC), the Clark Fork Coalition hereby submits this
14 statement on the amount of fees and costs requested in this matter. For the reasons
15 detailed below, the Clark Fork Coalition respectfully requests \$229,465 in fees and costs
16 in this matter.¹

STATEMENT

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A. The Clark Fork Coalition's request for attorneys' fees is reasonable.

In Montana, courts consider seven factors "under the facts of each case" when determining whether a request for attorneys' fees is reasonable. *Bitterroot River Protective Assoc. v. Bitterroot Conservation Dist.*, 2011 MT 51, ¶44, 359 Mont. 393, 251 P.3d 131 (citing *Plath v. Schonrock*, 2003 MT 21, ¶ 36, 314 Mont. 101, 64 P.3d 984). These factors include: (1) the amount and character of the services rendered; (2) the labor, time and trouble involved; (3) the character and importance of the litigation in which the services were rendered; (4) the amount of money or the value of the property to be affected; (5) the professional skill and experience called for; (6) the attorneys'

¹ This \$229,465 figure represents a \$32,511 increase from the "fair estimate" of approximately \$196,954 in fees and costs included in the Clark Fork Coalition's November 19, 2014 motion. As detailed in this statement, this increase is the result of: (1) an upward adjustment of Ms. King's hourly rate to \$140-160 based on prevailing market rates for young associates in Helena, see Exhibit C at ¶ 6; and (2) consistent with *Bitterroot River Protective Assoc. v. Bitterroot Conservation Dist.*, 2011 MT 51, 359 Mont. 393, 251 P.3d 131, the additional attorney time incurred briefing entitlement to private attorney general fees in this matter. The Clark Fork Coalition's \$229,465 figure does not include the additional attorney time incurred while preparing this statement.

1 character and standing in their profession; and (7) the results secured by the services of
2 the attorneys. *Plath*, ¶ 36 (citations omitted).

3 These seven *Plath* factors are guidelines for the court to consider. They “are not
4 exclusive; the trial court may consider other factors as well.” *Plath*, ¶ 36. Courts may
5 also employ the “lodestar approach” when determining the appropriate amount of
6 attorney fees, which is arrived at by taking the number of hours reasonably expended
7 and multiplying it by a reasonable hourly rate. *Plath*, ¶ 37 (citations omitted); *see also*
8 *Laudert v. Richland Cnty. Sheriff's Dep't*, 2001 MT 287, ¶ 17, 307 Mont. 403, 38 P.3d
9 790 (discussing and applying lodestar approach); *Edwards v. Cascade Cnty.*, 2009 MT
10 229, ¶ 18, 351 Mont. 360 (same). Application of the *Plath* factors and the underlying
11 “lodestar approach” to this case reveals the Clark Fork Coalition’s requested fee award
12 is reasonable.

13 The first *Plath* factor is the amount and character of the services provided. *Plath*,
14 ¶ 36. Here, the amount and character of the services rendered in this case were
15 substantial but reasonable and necessary to achieve the results obtained. As reflected in
16 the attached time sheets, *see* Exhibit (Ex.) A (attachment) and Ex. B (attachment), work
17 on this matter began back in 2008, over six years ago, and involved an extensive
18 administrative process (petition, briefing, and hearing), settlement negotiations and
19 modifications, and briefing and arguing the matter at the district court level. Because this
20 case proceeded as a petition for judicial review pursuant to § 2-4-501, MCA and § 2-4-
21 702, MCA, the Clark Fork Coalition was required to exhaust their administrative
22 remedies, *see* § 2-4-702(1)(a), MCA, which they did. This administrative process was a
23 time-consuming and labor intensive process, but important.

24 Petitions for judicial review are confined to the administrative record, § 7-4-704,
25 MCA, so time spent preparing the record, i.e., reviewing and compiling the relevant

1 legislative and regulatory history and data and reports on exempt wells and use of the
2 “loophole” in Montana, getting declarations from petitioners, and reviewing the best
3 available science on impacts and alternatives, is critical to the underlying case (the Clark
4 Fork Coalition compiled and relied on twenty-eight exhibits during the administrative
5 process). Indeed, in these types of “record review” cases, the entire district court case is
6 premised on evidence included in the record and work done during the administrative
7 process. This time is therefore compensable. As explained by the Supreme Court, where
8 administrative proceedings are “intimately tied” to and “necessary” for the resolution of
9 judicial action, such proceedings should be considered “part and parcel of the action for
10 which fees may be awarded.” *Sullivan v. Hudson*, 490 U.S. 877, 888 (1989); *see also*
11 *New York Gaslight Club v. Carey*, 447 U.S. 54 (1980) (awarding fees for administrative
12 work because exhaustion of administrative remedies was required).

13 The second *Plath* factor is the labor, time, and trouble involved. *Plath*, ¶ 36. As a
14 general rule, courts should “defer to the winning lawyer’s professional judgment as to
15 how much time he was required to spend on the case.” *Moreno v. City of Sacramento*,
16 534 F.3d 1106, 1112 (9th Cir. 2008).

17 Here, as discussed *supra*, this case required a significant amount of labor, time
18 and trouble including : (a) evaluating other cases and approaches to close the exempt
19 well loophole (that failed) and researching Montana water law and the “combined
20 appropriation” issue, including both the legislative and regulatory history; (b)
21 researching the need (and how best) to exhaust administrative remedies, including
22 review of the available literature, data, and papers on the exempt well loophole and
23 preparing a thorough administrative record sufficient to prevail on the merits; (c)
24 negotiating a stipulated agreement with DNRC, extending the deadlines for that
25 agreement (on two occasions), and then having to re-open the case and dissolve the

1 agreement; and (d) engaging in two rounds of briefing and two hearings (at both the
2 administrative and district court level).

3 Notably, in preparing this statement for fees and costs, Mr. Bishop and Ms. King
4 carefully reviewed their respective time sheets for this matter, exercised sound billing
5 judgment, and omitted over 200 hours of time they considered to be excessive,
6 redundant, or otherwise unnecessary. *See* Ex. A (attachment); Ex. B (attachment). In
7 addition, Mr. Bishop and Ms. King also removed time logged by legal interns, time on
8 administrative tasks, and time by other WELC attorneys who reviewed the papers. Given
9 the significant amount of time, effort, and labor this six year case required, the Clark
10 Fork Coalition's request for reimbursement for of 1,274 hours of attorney time is
11 reasonable. *See* Ex. C at ¶ 3 (total hours expended in this six year case are reasonable);
12 Ex. D at ¶ 9 (same).

13 The third *Plath* factor is the character and importance of the litigation. *Plath*, ¶
14 36. As recognized by this Court in its October 17, 2014 order on petition for judicial
15 review and June 12, 2015 order granting private attorney general fees, bringing and
16 prevailing in this case against DNRC was of critical importance to Montana's water
17 resources (both ground and surface), existing water rights holders in Montana, and
18 ensuring state agency compliance with state law, including the Montana constitution. As
19 this Court recognized: "the [Montana] constitution mandates that the legislature keep
20 track of water rights. The legislature passed the Water Use Act to breathe life into that
21 mandate. However, DNRC's rule conflicted with the statute which codifies the
22 protections guaranteed in the constitution." June 12, 2015 Order at 8-9.

23 Indeed, as a result of this litigation, water permits, which ensure water is
24 physically and legally available for appropriation before new uses are approved, are now
25 required for all large consumptive water uses, including in closed basins regardless of

1 whether or not two or more wells are “physically manifold” together. As such, the
2 massive exempt well “loophole” created by DNRC’s narrow definition of “combined
3 appropriation” is now closed, thereby protecting Montana’s water resource and existing
4 water rights holders. This is significant.

5 The fourth *Plath* factor is the amount of money or the value of the property
6 affected by the Court’s decision. *Plath*, ¶ 36. In Montana, our precious water resources,
7 including our rivers and streams and limited groundwater resources – all of which
8 belong to the citizens of this state, *see* Mont. Const. Art. IX, § 3(3) – are priceless. No
9 amount of money or monetary value can be placed on ensuring our water resources are
10 properly managed, protected, and preserved for future generations. *See* Mont. Const.
11 Art. IX, § 3(4); § 85-2-101(2), MCA (purpose of the Montana Water Use Act).

12 The fifth and sixth *Plath* factors pertain to the professional skill and experience
13 called for in this case and the attorneys’ character and standing in their profession.
14 *Plath*, ¶ 36. These types of cases are complex, time-consuming, and labor intensive and
15 require specialized knowledge in administrative and natural resource (water) law. As
16 explained by Sarah McMillan, co-counsel for plaintiffs in the *Bitterroot River Protective*
17 *Assoc.* matter, these types of cases “are complex and difficult to prosecute, in part
18 because state agencies like DNRC (as well as federal agencies) are afforded
19 considerable deference. These cases are also time consuming, requiring counsel to
20 research and understand the legal theories and importantly, build an administrative
21 record for DNRC and the Court to review.” Ex. D at ¶ 9..

22 As detailed in the attached declarations and as revealed by the timesheets, Mr.
23 Bishop and Ms. King are members in good standing of the state bar and respected
24 attorneys in the field of administrative and natural resource law who brought their
25 experience and skill to this matter. Ex. A at ¶ 10; Ex. B at ¶ 8; Ex. C at ¶ 4; Ex. D at ¶

1 10.

2 Mr. Bishop has practiced administrative, natural resource, and environmental law
3 exclusively for more than sixteen years and is currently the director of the Western
4 Environmental Law Center's (WELC's) Northern Rockies Office in his hometown of
5 Helena, Montana. WELC provides pro bono or, in limited circumstances, reduced or
6 nominal fee representation to organizations, communities, and individuals working in
7 the public interest. Ex. A at ¶ 7. As director of WELC's Northern Rockies Office, Mr.
8 Bishop is an "experienced litigator in environmental and natural resource cases, well
9 respected, and among a small class of specialists in this type of litigation." Ex. C at ¶ 4;
10 see also Ex. D at ¶ 10 (same). Over the years, Mr. Bishop has litigated over thirty-five
11 natural resource cases involving water (quantity and quality), wildlife, and public land
12 management and obtained a favorable outcome for his clients (via a court order or court
13 approved settlement) in over seventy-five percent of those cases. See Ex. A at ¶ 8 (listing
14 cases and outcomes).

15 Mr. Bishop is requesting an hourly rate of \$220 -\$280 in this matter, depending
16 on the year in which the work was undertaken. See Ex. A (attachment). This is a
17 reasonable request given Mr. Bishop's over sixteen years of experience and reputation in
18 the natural resource law community. Ex. A at ¶ 8; see also Ex. C at ¶ 6 (Mr. Bishop's
19 "requested rate of \$220-280 per hour is reasonable in this case and comparable to market
20 rates for similarly experienced attorneys in Montana."); Ex. D at ¶ 11 (same); *Native*
21 *Ecosystems Council v. Weldon*, 921 F.Supp. 2d 1069, 1078 (D. Mont. 2013)
22 (recognizing Mr. Bishop as an "experienced practitioner of environmental law").² The

23
24 ² In *Weldon*, Tim Bechtold, an attorney with two years less experience than Mr.
25 Bishop, was awarded \$280 an hour for work performed in 2012. 921 F.Supp. 2d at 1079.
This is the same rate Mr. Bishop is requesting for work performed in 2014 and 2015.

1 rate requested by Mr. Bishop in this case is also lower than rates Mr. Bishop recently
2 negotiated and obtained in other matters in federal court. *See* Ex. A at ¶ 13.

3 Ms. King joined WELC's Helena office in September, 2013. Ex. B. at ¶ 7. Ms.
4 King focuses her time on environmental, administrative, and natural resource law
5 exclusively and worked with Mr. Bishop on this case. Ex. B. at ¶¶ 1-2. Prior to joining
6 WELC, Ms. King was the senior editor of the Harvard Environmental Law Review and a
7 research assistant at Harvard's environmental law clinic. Ex. B at ¶ 6. She also taught
8 environmental law at Boston College and contributed over 1600 pro bono hours on
9 environmental matters while in law school, including work on water quality and quantity
10 issues in Montana. *Id.* at ¶ 5.

11 Ms. King is requesting an hourly rate of \$140-160 in this matter, depending on
12 the year the work was done. This is reasonable and below the market rate charged by
13 new associates at law firms in Helena. *See* Ex. C at ¶ 6 ("my firm charges \$150-175 for
14 their work and one associate was awarded fees of \$200 per hour in 2014"); Ex. D at ¶ 11
15 (Ms. King's rates of \$140-160 "are appropriate for her level of experience.").

16 Finally, in assessing the reasonableness of a fee award, courts consider the results
17 secured. *Plath*, ¶ 36. As discussed *supra* and recognized by this Court in its October 17,
18 2014 order on the merits and June 12, 2015 order granting the Clark Fork Coalition's
19 motion for attorneys' fees and costs under the private attorney general doctrine, the
20 results secured in this case are significant and important to all Montanans. "The Court's
21 decision benefits all Montanans who are constitutionally guaranteed 'a system of
22 centralized records,' for the 'administration, control, and regulation of water rights.'" *June 12, 2015 Order* at 10 (citing Mont. Const. Art. IX, § 3(4)).
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1 **B. Petitioners request for costs is reasonable.**

2 As reflected in WELC's expense report, *see* Ex. A (attachment), the Clark Fork
3 Coalition seeks a total of \$1,466.43 in expenses in this matter. This figure includes a
4 court filing fee, legal research on Westlaw, postage and delivery, and printing charges.
5 Ex. A (attachment).

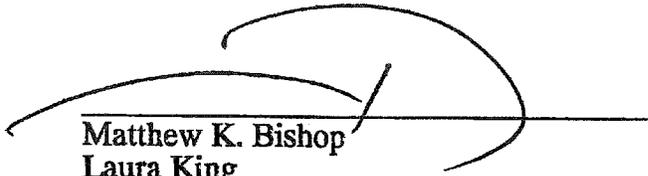
6 **CONCLUSION**

7 For the forgoing reasons, Petitioners respectfully request an award of \$229,465 in
8 reasonable attorneys' fees and costs in this matter. This figure is summarized as follows:

<u>Attorney</u>	<u>Rate(s)</u>	<u>Hours</u>	<u>Fee total</u>
Matthew Bishop	\$220-\$280	786.5	\$173,311
Laura King	\$140-\$160	488.1	\$54,688
Total Fees			\$227,999
Total Costs			\$1,466
GRAND TOTAL (Fees and Costs)	=		\$229,465

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15 In its June 12, 2015 order, this Court stated that if DNRC "disagrees with the
16 amount, rates, or hours sought" the Court will "schedule a hearing on the disputed
17 attorney fees and costs." Order at 11. The Parties (the Clark Fork Coalition and DNRC)
18 have agreed to explore settlement of this request for fees and costs. As such, in order to
19 accommodate the settlement talks, and due to briefing deadlines in other matters as well
20 as an upcoming family vacation (that was scheduled back in 2014), the Clark Fork
21 Coalition respectfully requests any future hearing in this matter, if necessary, be set for
22 sometime after August 31, 2015.
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1 Respectfully submitted this 26th day of June, 2015.

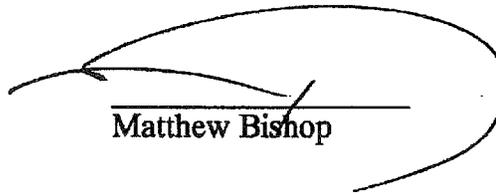
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12 king@westernlaw.org

13 Counsel for the Clark Fork Coalition *et al.*

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CERTIFICATE OF SERVICE

11 I hereby certify that on this 26th day of June, 2015, I sent, via U.S. Mail, a copy of
12 this filing to all of counsel of record in this matter.

13
14 
15 Matthew Bishop

MONTANA FIRST JUDICIAL DISTRICT
LEWIS AND CLARK COUNTY

THE CLARK FORK COALITION, a non-profit
organization, *et al.*

Petitioners,

vs.

JOHN TUBBS, in his official capacity as
Director of The Montana Department of National
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Intervenors.

STATE OF MONTANA

COUNTY OF LEWIS AND CLARK

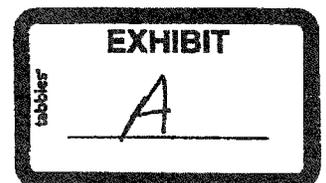
Civ No. BDV-2010-874

AFFIDAVIT OF
MATTHEW K.
BISHOP

I, MATTHEW K. BISHOP, being first duly sworn, state as follows:

1. I served as lead counsel in this matter and am submitting this declaration in support of Petitioners' motion for attorneys' fees and costs in this matter.

2. In my capacity as lead counsel in this matter, I conducted and/or supervised all work on this case. This includes, but is not limited to, researching and developing the legal theories, meeting and discussing the matter with the clients (and keeping them updated on the progress of the case), drafting the original petition for declaratory ruling



and request to amend rule 36.12.101 (13) submitted to DNRC, preparing the record and exhibits for the petition, drafting the briefs and attending the hearing at the administrative level, researching various legal claims and theories, reviewing all relevant documents contained in the administrative record for the litigation, negotiating and modifying a stipulated agreement with DNRC, attending various interim legislative committee hearings, assisting with briefing the matter in district court, helping Ms. King prepare for the hearing, and assisting with drafting Petitioners' motion and supporting memorandum for fees and costs. Work on this matter began back in November, 2008 (over six years ago).

3. In preparing Petitioners' motion for fees and costs, I compiled all the hours spent on this matter by myself. My time sheets, *see Attachment*, contain all of my time spent on this matter. My time and the expense records for this matter were kept contemporaneously and accurately reflect the actual time spent and expenses incurred in this case. I recorded my time using a computer program called Timeslips. The Western Environmental Law Center (WELC) has a financial officer who manages and reviews our time and expense entries. WELC is audited each year and our accounting practices meet or exceed industry standards.

4. In exercising sound billing judgment, I carefully reviewed my time sheets and omitted excessive, redundant, and otherwise unnecessary time, including but not limited to time spent attending interim committee hearings, time spent discussing the matter and

legal theories with a legal intern (and all intern time), time spent on travel and meetings with clients, time on media contacts and time spent on certain communications with clients and opposing counsel. In my opinion, the total hours, expenses, and award sought in this matter over a six year period is reasonable.

5. In my experience practicing public-interest environmental law at WELC, I know that cases of this type are very time consuming, complex, difficult, and risky given the deference courts afford agencies (state and federal). I also know that people who seek attorneys to take these kinds of cases often do not have the resources to hire a private attorney and have a hard time finding able and experienced attorneys such as the ones in our firm willing to take such cases on a pro bono basis. WELC has a large and active docket of cases, but we must still turn many prospective cases away each year because we simply cannot meet the demand for representation by attorneys who specialize in the practice of public-interest environmental law.

6. I obtained a B.A. in History from Whitman College in 1993 and received my J.D. from Vermont Law School in 1998. I chose to attend law school – and enroll in Vermont Law School’s environmental law program in particular – for the sole purpose of studying and practicing public-interest environmental and natural resource law. While attending law school, I took classes on administrative law, federal natural resource law, water law (both quantity and quality), environmental law, and pollution control law. I also participated in an environmental moot court competition, completed two independent

research and writing projects on issues of natural resource law, and graduated in the top 25% of my class.

7. I joined WELC's Southwest Office in Taos, New Mexico as a staff attorney in October, 1998. I am now Director of WELC's Northern Rockies Office in Helena, Montana where I practice public-interest environmental, administrative, and natural resource law exclusively. Consistent with our mission, WELC provides pro bono or, in limited instances, reduced and nominal fee representation to organizations, communities, and individuals working in the public interest.

8. Since joining WELC in 1998, I have represented clients in numerous environmental and natural resource cases and matters pursued under various federal and state environmental statutes, including National Environmental Policy Act (NEPA), National Forest Management Act (NFMA), Clean Water Act, Endangered Species Act, Wild and Scenic Rivers Act, National Historic Preservation Act (NFMA), Federal Land Policy Management Act (FLPMA), the Montana Water Use Act, Nevada water law, and the Administrative Procedures Act. These cases include the following:

Friends of the Wild Swan v. Vermillon, 13-CV-66-M-DLC (D. Mont. February 10, 2015)(successful settlement requiring changes to trapping in lynx habitat, final approval from commission pending).

National Trust for Historic Preservation v. Suazo, 2015 WL 1432632 (D. Ariz. 2015)(successful challenge to Sonoran Monument plan allowing target shooting).

Friends of the Wild Swan v. Weber v. Christiansen, 767 F.3d 936 (2014) (unsuccessful challenge to timbers sales on South Fork of the Flathead).

The Clark Fork Coalition v. Tubbs, Cause No. BDV-2010-874 (1st Judicial Dist. Montana Oct. 17, 2014) (successful challenge to exempt well rule, appeal pending).

The New Mexico Off-Highway Vehicle Alliance v. Forest Service, 1:12-cv-01272-WJ-GBW (D. N.M. July 25, 2014) (successful defense of travel plan for Santa Fe National Forest) (co-counsel).

Friends of the Wild Swan v. Ashe, 18 F.Supp.3d 1077 (D. Mont. 2014) (successful challenge to U.S. Fish and Wildlife Service's delay in preparing recovery plan for threatened lynx).

The Pryors Coalition v. Weldon, 551 Fed. Appx. 426 (9th Cir. 2014) (unsuccessful challenge to Forest Service's travel plan for Pryor Mountains).

Montana Wilderness Association v. Connell, 725 F.3d 988 (9th Cir. 2013) (successful challenge to BLM management plan for Missouri Breaks National Monument).

The New Mexico Off-Highway Vehicle Alliance v. Forest Service, 540 Fed. Appx. 877 (10th Cir. 2013) (successful appeal of district court order denying conservation groups intervention) (co-counsel).

Helena Hunters & Anglers v. Maurier, No. BDV-2012-868 (1st Judicial District, Montana, 2013)(successful challenge enjoining Montana from authorizing recreational trapping of wolverines).

Western Watersheds Project v. Buchanan, No. 11-cv-354J (D. Wy. 2012)(successful settlement directing Forest Service to remove fencing and corral to protect pronghorn migration).

Friends of the Wild Swan v. USFS, 875 F. Supp. 2d 1199 (D. Mont. 2012)(successful challenge to authorization of timber sale in lynx critical habitat).

Russell Country Sportsmen v. USFS and MWA, 668 F. 3d 1037 (9th Cir. 2011)(successful defense of Forest Service's travel plan in Little Belt mountains).

WildEarth Guardians v. Steve Guertin et al., 10-cv-1959-AP (D. Col. 2011) (successful settlement requiring rule to list lynx in New Mexico).

Alliance for the Wild Rockies v. Cottrell, 632 F. 3d 1127 (9th Cir. 2011)(successful challenge to salvage sale)(co-counsel).

Amigos Bravos v. U.S. Department of Energy, CV-08-137 (D. N.M. 2011)(successful settlement requiring clean up of Los Alamos, permit, and funds for clients).

River Runners for Wilderness v. Martin, 593 F. 3d 1064 (9th Cir. 2010)(unsuccessful challenge to plan for Grand Canyon)(co-counsel).

Great Basin Water Network v. State Engineer, 243 P. 3rd 912 (Nev. 2010)(successful challenge large appropriation of water for Las Vegas)(co-counsel).

Helena Hunters & Anglers v. Tidwell, 841 F. Supp. 2d 1129 (D. Mont. 2009) (successful challenge to authorization of biathlon project).

Wildlands CPR v. Tidwell, CV-09-75-M-DWM (D. Mont. 2009)(successful settlement directing analysis).

NICAN v. U.S. Department of Transportation, 545 F. 3d 1147 (9th Cir. 2008) (mixed result in challenge to highway project).

WildEarth Guardians v. Hall, 08-cv-00676 - RMU (D.D.C. 2008) (successful settlement directing 12-month finding on lynx).

Center for Native Ecosystems v. Wildlife Services, No. 03-1152 (D. N.M. 2008)(mixed result via stipulated settlement agreement)

Forest Guardians v. Forsgren, 478 F. 3d 1149 (10th Cir. 2007) (unsuccessful challenge to Forest Service's failure to consult on lynx).

Center for Biological Diversity v. Norton, CV-01-WM-435 (D. Col. 2005)(unsuccessful challenge dismissed on standing grounds).

Coalition of Arizona et.al. v. U.S. Fish & Wildlife Service & Defenders of Wildlife, CV-03-00508 (D. N.M. 2004) (successful defense of Mexican gray wolf reintroduction program).

Arizona Wildlife Federation v. Golden, CV-02-0997-PHX-RCB (D.Ariz. 2004) (successful settlement directing analysis and protection of seasonal wetlands).

Amigos Bravos v. Greene, CV-00-1615 (D.D.C. 2003) (unsuccessful challenge to EPA approval of voluntary TMDL).

Center for Biological Diversity et. al., v. Veneman, 335 F.3d 849 (9th Cir. 2003) (successful challenge directing consideration of 57 wild and scenic rivers), *amended opinion*, 394 F. 3d 1108 (settlement reached following remand).

Amigos Bravos v. Norton, CIV-01-1021-MV-JHG (D. N.M. 2002) (successful settlement requiring removal and reclamation of gravel mining operation on rim of the Rio Grande Gorge).

Grand Canyon Trust v. FAA, 290 F. 3d 339 (D.C. Cir. 2002)(successful challenge to agency decision to expand airport near Zion NP)(co-counsel).

Center for Biological Diversity v. Andre, CV-01-1106-WPJ (D. N.M. 2002) (unsuccessful challenge to timber sale, no appeal as sale was cancelled).

American Rivers, et.al. v. Towns, CV-01-921-JAT (D. Ariz. 2001) (successful settlement directing plan for Verde Wild and Scenic River, clean up river area, and interim protection).

Amigos Bravos v. EPA, 236 F.3d 621 (10th Cir. 2001), *vacated on mootness grounds*, 2001 WL 267206 (March 19, 2001) (successful challenge, eventually results permit for discharges from waste rock).

New Mexico Cattle Growers Assoc. et al. v. U.S. Fish and Wildlife Service, et al. and Defenders of Wildlife et al., Civ. No. 98-0367 (D.N.M. Oct. 28, 1999) (successful defense of Mexican wolf reintroduction program).

9. In addition to the matters listed above, I am currently developing or litigating seven additional matters (all in federal court).

10. I am currently a member in good standing and admitted to practice in Montana, New Mexico (inactive stats), and Oregon (inactive status). I am also admitted to practice

before the United States District Court for the Districts of Montana, Arizona (pro hac vice), Colorado and New Mexico, and the United States Court of Appeals for the Ninth, Tenth, and D.C. Circuits.

11. I have spoken at numerous seminars that qualify as Continuing Legal Education (CLE) for attorneys. I typically speak on at least one panel every year at the Public Interest Environmental Law Conference (PIELC) at the University of Oregon School of Law in Eugene, Oregon. I also spoke on exempt wells at PIELC and at the Seminar Group's Montana Water Law conference in Helena in 2010 and testified as a legal expert on the Clean Water Act at a State of New Mexico Water Quality Control Commission (WQCC) hearing.

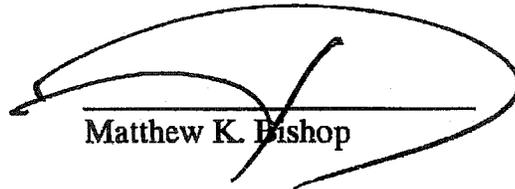
12. Based on my specialty and experience in environmental, administrative, and natural resource law over the last sixteen years, the skills needed for this case, the rates I have obtained in other matters (via settlement), and rates other attorneys in Montana with similar experience have sought and obtained in similar cases, I am seeking an hourly rate between \$220 - \$280 an hour in this matter, depending on the year the work was undertaken. *See Attachment.*

13. I believe these requested rates are reasonable and consistent with (if not lower than) the market rates of attorneys with similar skills and experience in Montana. These rates are also lower than rates I have obtained in federal court in Montana via settlement. For example, in *Friends of the Wild Swan v. Ashe*, 18 F.Supp.3d 1077 (D. Mont. 2014)

we recently reached an agreement on attorneys' fees and costs with the U.S. Department of Justice based on a rate of \$300 an hour for work I performed in 2014. In *Montana Wilderness Association v. Connell*, 725 F.3d 988 (9th Cir. 2013) we reached an agreement on attorneys' fees and costs based on a rate of \$280 an hour for work I performed in 2013.

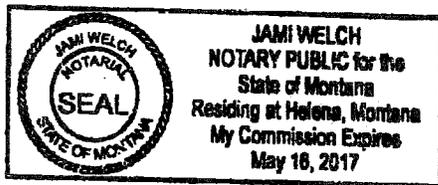
FURTHER AFFIANT SAYETH NOT,

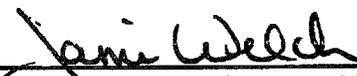
DATED this 24th day of June, 2015.


Matthew K. Bishop

SUBSCRIBED AND SWORN TO before me by

Matthew K. Bishop this 24 day of June, 2015.




Notary Public for the State of Montana
My commission expires:

Date	Attorney	Description	Rate	Time	Omit	Amount
11/19/2008	Bishop	Researching exempt well statute and legis. history	220	3.60		792.00
11/21/2008	Bishop	Researching exempt well issue - stat/reg, legis. history	220	2.50		550.00
12/2/2008	Bishop	prep for call w/ clients re: exempt well (.9), conf. call (.8), follow up (.2)	220	1.90		418.00
12/12/2008	Bishop	Researching - montana water law (2.8) and reading cases (2)	220	4.80		1,056.00
12/17/2008	Bishop	call w/ TD re: rulemaking	220	0.40		88.00
1/7/2009	Bishop	Researching exempt well cases (1.2), reviewing the file, including hydro reports (2) corresp. w/ clients (1)	230	4.20		966.00
9/16/2009	Bishop	File Review - reviewing letter/comments from client/DNRC (1), reading reports (.8)	230	1.80		414.00
9/21/2009	Bishop	File Review - prep for meeting w/ TU (2) reading reports, old comments, and researching best legal approach (2.9)	230	4.90	2.00	667.00
9/22/2009	Bishop	prep for and travel to/from boz for meeting w/ TU re: rule challenge	230	6.50	6.50	-
9/23/2009	Bishop	Researching legal approach (1.7), reading MCA, ARM (1), getting info. on wells from DNRC (2)	230	4.70		1,081.00
9/24/2009	Bishop	Researching exempt well impacts issue and reading DNRC report	230	1.80		414.00
9/25/2009	Bishop	Researching legal approach (3), prep for and meeting w/ TD from Mt. Smarth G. re: lawsuit (2)	230	5.00	2.00	690.00
9/30/2009	Bishop	Researching MCA for petition (1.5), printing docs and orgnizing files (2.5) in prep for petition (3.8)	230	7.80		1,794.00
10/1/2009	Bishop	researching MCA, legis. history and rule history for petition (6), case law research (.6), meeting w/ intern re: issues (.5) and call/follow up w/ DNRC re: water rights (1)	230	8.10	1.50	1,518.00
10/2/2009	Bishop	drafting petition - background section re: const./MCA (7), meeting w/ TD re: petition (1.5)	370	8.50	1.50	2,590.00
10/5/2009	Bishop	drafting petition (5.5), reading cases/background re: water rights/permitting in montana (2.2)	230	7.70		1,771.00
10/6/2009	Bishop	drafting petition (4), reading cases re: MCA (1.2), meeting w/ intern re: issues and his legal research for petition (2.2)	230	7.40	2.20	1,196.00
10/7/2009	Bishop	drafting petition (5.2)- research for petition (2)	230	7.20		1,656.00
10/8/2009	Bishop	drafting, editing, and revising petition (6), call w/ potential client re: issues (.2)	230	6.20		1,426.00
10/9/2009	Bishop	editing petition (3), corresp. w/ clients re: issues/approach (.9)	230	3.90		897.00
10/16/2009	Bishop	call w/ TD and LZ re: next steps (1), research and prep for call (1)	230	2.00	2.00	-
10/21/2009	Bishop	Miscellaneous - corresp. w/ TD re: dec. and review of petition	230	1.20		276.00
10/29/2009	Bishop	Researching issues and reviewing file for petition to DNRC	230	3.90		897.00
10/30/2009	Bishop	reading WPIC testimony (2.1), researching issues (3), and drafting petition (2)	230	7.10		1,633.00
11/2/2009	Bishop	drafting petition	230	6.30		1,449.00
11/3/2009	Bishop	drafting petition (3.8) reading studies (2)	230	5.80		1,334.00
11/4/2009	Bishop	drafting DNRC petition	230	7.20		1,656.00
11/5/2009	Bishop	drafting petition(5.4), researching legis. history/rule history (2.4), reading DNRC study (1)	230	8.80		2,024.00
11/10/2009	Bishop	drafting/editing petition (3.6), corresp. w/ declarants (2.2)	230	5.80		1,334.00
11/11/2009	Bishop	editing petition (5.6) and preparing exhibits (2), call w/ petitioners (1)	230	8.60		1,978.00
11/13/2009	Bishop	preparing the exhibits and decs (2.1) and editing petition (too long) (6)	230	6.10		1,403.00
11/16/2009	Bishop	editing petition	230	2.40		552.00
11/17/2009	Bishop	editing petition (1), meeting w/ petitioners (1)	230	2.00		460.00
11/18/2009	Bishop	editing petition (3.5) and preparing exhibits/copies (2)	230	5.50		1,265.00
11/20/2009	Bishop	editing petition (3), corresp. re: dec from gallatin valley (1.2)	230	4.20		966.00
11/23/2009	Bishop	travel to/from Manhattan, MT to meet and get dec from Joe Miller (4.7), meeting w/ JM and mom (2)	230	6.70	4.70	460.00
11/24/2009	Bishop	final edits of petition/prep for printing	230	5.20		1,196.00
11/30/2009	Bishop	meeting w/ press (.8), call w/ clients re: press and filing (1) and prep for filing (copies etc..) (2), researching DNRC procedure/next steps (1.4)	230	5.20	1.80	782.00

12/1/2009	Bishop	meeting w/ DNRC staff re: petition and prep for same (2), corresp. w/ clients re: filing, follow up (1.6)	230	3.60		828.00
12/15/2009	Bishop	researching next steps, including MAPA issues	230	3.80		874.00
12/23/2009	Bishop	call from attorney - Peter Scott - re: exempt well petition/issues, follow up	230	1.00	1.00	-
1/5/2010	Bishop	Miscellaneous - prep for and attending meeting w/ Tim D. re: definition	240	2.00	2.00	-
1/15/2010	Bishop	follow up call w/ clients re: options/next steps	240	1.50		360.00
2/1/2010	Bishop	Research - follow up on legis. history	240	1.00		240.00
2/19/2010	Bishop	Researching rule history (1.9), prep for and meeting w/ MFWP (2)	240	3.90		936.00
2/23/2010	Bishop	Miscellaneous - meeting w/ SB from TU (1.5) researching history/issues (.4)	240	1.90	1.50	96.00
3/8/2010	Bishop	Researching leg history at law library	240	4.80		1,152.00
3/10/2010	Bishop	prep for and attending WPIC hearing, follow up meeting w/ clients	240	4.30	4.30	-
3/16/2010	Bishop	research for opening brief (2), corresp. re: next steps (.2)	240	2.20		528.00
3/17/2010	Bishop	Research for exempt well petition - how loophole used etc..	240	2.30		552.00
3/19/2010	Bishop	Research - follow up on legis. history	240	3.80		912.00
3/22/2010	Bishop	Research fo exempt well brief - stat construction - mt. and USSC	240	2.90		696.00
3/23/2010	Bishop	Research for opening brief	240	2.40		576.00
3/26/2010	Bishop	drafting opening brief (3.1), reading cases (1.1)	240	4.20		1,008.00
3/29/2010	Bishop	drafting opening brief (1), reading cases (1.9), research at law library for brief (3)	240	5.90		1,416.00
3/30/2010	Bishop	drafting opening brief	240	4.70		1,128.00
4/1/2010	Bishop	drafting opening brief	240	3.00		720.00
4/7/2010	Bishop	drafting opening brief	240	5.80		1,392.00
4/8/2010	Bishop	drafting opening brief (5) and reading cases re: same (2.1)	240	7.10		1,704.00
4/9/2010	Bishop	drafting brief (3), researching remedy issues and reading cases (4.1)	240	7.10		1,704.00
4/12/2010	Bishop	meeting w/ MSLA county commission (1), to/from MSLA (4), follow up w/ clients (.5)	240	5.50	5.50	-
4/13/2010	Bishop	editing brief	240	1.00		240.00
4/14/2010	Bishop	editing/finalizing brief	240	7.20		1,728.00
4/16/2010	Bishop	final edits and prep for filing	240	5.00		1,200.00
5/3/2010	Bishop	Miscellaneous - meeting w/ TD re: brief, file review	240	1.20	1.20	-
5/10/2010	Bishop	reading briefs and statements to DNRC in prep. for reply	240	2.50		600.00
5/12/2010	Bishop	reading briefs/statements of position to outlining issues raised (2.8), prep of reply (2)	240	4.80		1,152.00
5/13/2010	Bishop	drafting reply brief	240	4.70		1,128.00
5/17/2010	Bishop	drafting reply brief	240	3.90		936.00
5/20/2010	Bishop	call w/ clients (1), corresp. re: issues and follow up w/ TD (.5)	240	1.50		360.00
5/24/2010	Bishop	drafting reply brief	240	6.80		1,632.00
5/25/2010	Bishop	drafting reply brief	240	5.90		1,416.00
5/26/2010	Bishop	drafting reply (2) and researching cases for reply (4.3)	240	6.30		1,512.00
5/28/2010	Bishop	drafting/editing reply brief, corresp. w/ TU and other pet.	240	7.10		1,704.00
6/3/2010	Bishop	editing reply brief, corresp. w/ SM, call w/ TU, finalizing for filing	240	4.20		1,008.00
6/15/2010	Bishop	prep for hearing by reviewing file, reading briefs and docs in AR	240	7.90		1,896.00
6/16/2010	Bishop	prep for hearing	240	7.50		1,800.00
6/17/2010	Bishop	prep for hearing, corresp. w/ clients	240	5.80		1,392.00
7/15/2010	Bishop	corresp. and follow up w/ JC from WPIC re: issues/briefs, review of ex. 25	240	1.90	1.90	-
8/6/2010	Bishop	meeting w/ TD re: exempt well	240	1.20	1.20	-
8/18/2010	Bishop	reading DNRC decision (1), corresp and call w/ clients (5), evaluating next steps (5)	240	6.50		1,560.00
8/19/2010	Bishop	researching appeal of DNRC decision under MAPA	240	5.70		1,368.00
8/23/2010	Bishop	drafting complaint (5.7), call w/ MFWP (.5), corresp. w/ clients (.6)	240	6.80		1,632.00
8/25/2010	Bishop	drafting complaint	240	7.10		1,704.00
8/26/2010	Bishop	drafting complaint (1) and reviewing record (7.5)	240	8.50		2,040.00
8/27/2010	Bishop	reviewing the record	240	7.20		1,728.00
8/30/2010	Bishop	editing complaint (3) and corresp. w/ attorney re: issues/complaint (.3)	240	3.30		792.00
8/31/2010	Bishop	drafting and editing complaint	240	5.60		1,344.00

9/1/2010	Bishop	editing complaint (1), corresp w/ attorneys/clients re: complaint (1.9)	240	2.90		696.00
9/2/2010	Bishop	call w/ attorney re: complaint	240	0.90		216.00
9/7/2010	Bishop	prep for WPIC hearing	240	2.30	2.30	-
9/8/2010	Bishop	prep for and attending WPIC hearing (3), editing complaint and compiling service list (2.1)	240	5.10	3.00	504.00
9/14/2010	Bishop	editing and filing complaint (3), meeting w/ clerk (.2), follow up w/ clients (.5)	240	3.50		840.00
9/22/2010	Bishop	prep for panel at Mt. water law conf.	240	2.30	2.30	-
9/23/2010	Bishop	prep for and attending Mt. water law conf., presentation re: exempt wells	240	8.50	8.50	-
9/24/2010	Bishop	prep for meeting w/ DNRC re: lawsuit (2.3) follow up and drafting agreement (4)	240	6.30		1,512.00
9/29/2010	Bishop	corresp. w/ clients re: settlement	240	0.70		168.00
9/30/2010	Bishop	drafting proposed settlement/stay (1.4), corresp. w/ clients (.6)	240	2.00		480.00
10/5/2010	Bishop	settlement corresp. w/ clients (.5), editing terms (1.5)	240	2.00		480.00
11/4/2010	Bishop	corresp. re: settlement w/ DNRC and clients	240	2.20		528.00
11/5/2010	Bishop	settlement corresp.	240	1.10		264.00
11/8/2010	Bishop	call w/ clients re: settlement (1), prep for call (.2)	240	1.20		288.00
2/24/2011	Bishop	update on legis. session, HB 433, call re: new bill	250	2.90	2.90	-
3/9/2011	Bishop	reviewing HB, re: wells, call re: legis. efforts	250	0.90	0.90	-
4/15/2011	Bishop	corresp. re: HB 602	250	0.90	0.90	-
5/17/2011	Bishop	Research re: HB 602 and next steps	250	1.40	1.40	-
5/24/2011	Bishop	researching next steps/options (3.3), prep for conf. call (.4)	250	3.70		925.00
5/26/2011	Bishop	corresp. w/ DNRC re: exempt well/settlement and HB 602	250	0.60		150.00
5/27/2011	Bishop	corresp. w/ DNRC and clients re: next steps	250	1.10		275.00
6/13/2011	Bishop	corresp. w/ client and DNRC re: next steps	250	0.70		175.00
6/20/2011	Bishop	meeting w/ CFC re: WPIC	250	1.90	1.90	-
6/22/2011	Bishop	meeting w/ BH re: WPIC	250	0.60	0.60	-
7/25/2011	Bishop	reading new, proposed rule	250	1.00	1.00	-
8/3/2011	Bishop	reviewing file and settlement w/ DNRC (1.4), APA and statute review (2), drafting letter to DNRC re: compliance (2.5)	250	5.90		1,475.00
8/5/2011	Bishop	reviewing/editing letter to DNRC (1.8) and follow up w/ clients re: same (.2)	250	2.00		500.00
8/10/2011	Bishop	prep for (2) and attending hearing on DNRC rule (2), and drafting comment on rule (1.2)	250	5.20		1,300.00
9/2/2011	Bishop	prep for WPIC hearing on exempt wells	250	1.80	1.80	-
9/6/2011	Bishop	reading letter from DNRC (.1), corresp. w/ clients re: same and next steps (1.8)	250	1.90		475.00
9/13/2011	Bishop	prep for and attending WPIC hearing on exempt wells	250	5.40	5.40	-
9/22/2011	Bishop	drafting reply letter to DNRC (2.7), reviewing agency response (.3), editing letter (.7)	250	3.70		925.00
9/23/2011	Bishop	drafting/editing letter to DNRC	250	0.90		225.00
9/26/2011	Bishop	reviewing stipulation (.9), researching next steps in light of HB 602 (2.5) corresp. w/ client re: same (.5)	250	3.90		975.00
9/29/2011	Bishop	corresp with client re: meeting w/ DNRC	250	1.40		350.00
10/4/2011	Bishop	prep for (3.7) and attending settlement meeting w/ DNRC re: modification to stip and next steps (1.5) follow up w/ clients (.5)	250	5.70		1,425.00
11/1/2011	Bishop	modifying agreement post HB602 (2) corresp. w/ clients re: same (1.6)	250	3.60		900.00
11/2/2011	Bishop	reviewing file/history of case	250	2.70		675.00
12/5/2011	Bishop	modifying agreement (1.2), corresp. w/ clients re: same (.8)	250	2.00		500.00
1/10/2012	Bishop	prep for and attending WPIC hearings, follow up w/ client	260	8.50	8.50	-
1/12/2012	Bishop	call w/ TD re: horse creek rule (.7), follow up w/ clients (.7)	260	1.40	1.40	-
7/6/2012	Bishop	call w/ clients (1.5), prep for same (2), WPIC review and reading LC8004 (1)	260	4.50	4.50	-
9/28/2012	Bishop	prep for and call re: WPIC, next steps, settlement	260	1.60	0.80	208.00
10/1/2012	Bishop	prep for call	260	1.70	1.70	-
5/8/2013	Bishop	corresp. w/ client and DNRC re: change to settlement (1.6), file review re: same (1)	270	2.60		702.00

5/9/2013	Bishop	modifying settlement (.4), corresp. w/ DNRC and client re: same (1.4)	270	1.80		486.00
9/6/2013	Bishop	reviewing proposed rule and corresp w/ clients re: same	270	1.20	1.20	-
9/12/2013	Bishop	reviewing terms of stip and reading WPIC letter (1) and meeting w/ LK re: the same (.5), corresp w/ clients CFC (1.6)	270	3.10		837.00
9/13/2013	Bishop	meeting w/ LK (.9) and call w/ BH re: proposed rule, next steps, and stip. (.5) reading petition and outlining issues for comments (2.5)	270	3.90		1,053.00
9/18/2013	Bishop	reviewing and editing comments on proposed rule	270	0.80	0.80	-
9/19/2013	Bishop	comments on proposed rule	270	1.50	1.50	-
1/10/2014	Bishop	corresp w/ client and TU re: stip and DNRC non-compliance (1.3), researching next steps (2)	280	3.30	1.30	560.00
1/21/2014	Bishop	researching next steps and Montana APA options (5), corresp. w/ clients re: same (1.1)	280	6.10		1,708.00
2/5/2014	Bishop	research for and drafting letter re: non-compliance w/ settlement	280	5.20		1,456.00
2/6/2014	Bishop	drafting letter to DNRC re: non-compliance	280	2.00		560.00
2/11/2014	Bishop	call w/ client and prep for same re: letter	280	3.00		840.00
2/25/2014	Bishop	prep for (1.5) and attending settlement meeting w/ DNRC (.5)	280	2.50		700.00
2/27/2014	Bishop	corresp. w/ client re: next steps, corresp. with counsel	280	0.50		140.00
3/7/2014	Bishop	drafting motion to withdrawal stip and re-open case	280	2.90		812.00
3/10/2014	Bishop	finalizing and filing motion to re-open (1), corresp. w/ clients re: same (1)	280	2.00		560.00
3/17/2014	Bishop	reviewing legal issues (1.3) and documents in file/record (2)	280	3.30		924.00
3/20/2014	Bishop	Researching petitions for j. review (4) and meeting w/ LK (.8)	280	4.80		1,344.00
3/25/2014	Bishop	Researching standard of review, Chevron	280	2.70		756.00
3/31/2014	Bishop	research and review file for opening brief (1.1), review scheduling/timing and corresp w/ client re: same (1)	280	2.10		588.00
4/4/2014	Bishop	scheduling conf. (.5) and meeting w/ LK re: matter/next steps (.8)	280	1.30		364.00
4/23/2014	Bishop	review of admin. record for opening brief	280	4.10		1,148.00
4/24/2014	Bishop	drafting opening brief (4.7) and legal research and AR review for same (3)	280	7.70		2,156.00
4/25/2014	Bishop	drafting opening brief and legal research for same (6.1), reviewing AR (1)	280	7.10		1,988.00
4/27/2014	Bishop	drafting opening brief (6.6) and legal research for same (2)	280	8.60		2,408.00
4/28/2014	Bishop	reviewing and editing brief (10 pages too long)	280	4.70		1,316.00
4/29/2014	Bishop	editing opening brief	280	4.20		1,176.00
5/1/2014	Bishop	finalizing edits to opening brief (4.5), corresp. w/ client re: same (.2)	280	4.70		1,316.00
5/2/2014	Bishop	editing (4.2) and prep for and filing of opening brief (1)	280	5.20		1,456.00
6/2/2014	Bishop	reviewing state and intervenor briefs (1), drafting motion for ext. of time (.5)	280	1.50		420.00
6/11/2014	Bishop	reading state's and intervenors' response briefs (2), outlining issues and taking notes re:same (1), dealing w/ intervenor response and scheduling issues (.1)	280	3.10		868.00
6/17/2014	Bishop	outlining issues for reply	280	4.10		1,148.00
6/18/2014	Bishop	editing LK's draft reply (4.3) and researching cases re: same (5)	280	9.30		2,604.00
6/19/2014	Bishop	drafting/editing reply brief (5.7) and legal research for same (2)	280	7.70		2,156.00
6/20/2014	Bishop	editing reply brief	280	4.00		1,120.00
9/18/2014	Bishop	reading papers and briefs and record in prep for hearing	280	5.60		1,568.00
9/19/2014	Bishop	prep for hearing by reading and outlining issues for LK (3.9), drafting questions (1), preparing timeline (2)	280	6.90		1,932.00
9/22/2014	Bishop	prepping LK for hearing by preparing notes on harm, regs (3.), moot court and meeting w/ LK (3.7)	280	6.70		1,876.00
9/23/2014	Bishop	prep for hearing (1), attending hearing and meeting w/ clients post hearing re: options/next steps (3.5)	280	4.50		1,260.00
10/19/2014	Bishop	reading decision (.5) and corresp. w/ clients re: same (1.1)	280	1.60		448.00
10/27/2014	Bishop	Researching potential for fees/costs under private AG	280	2.1		588.00
10/28/2014	Bishop	Researching fee options, private AG etc.	280	1.5		420.00
10/29/2014	Bishop	drafting fee motion	280	1		280.00
11/4/2014	Bishop	researching options re: fees (.2) and drafting memo (.1)	280	0.3		84.00
11/5/2014	Bishop	researching stay options (1.8) and corresp w/ LK and BH re: fees/timing/next steps (1)	280	2.8		784.00

11/17/2014	Bishop	drafting and research for fee memo (2.6), researching montana rates (2.1), corresp w/ attorneys re: rates (.5), researching admin. work (.5)	280	4.7		1,316.00
11/18/2014	Bishop	drafting and legal research for fee memo	280	6.7		1,876.00
11/19/2014	Bishop	research for and drafting fee memo (5.1), drafting and filing fee motion (1.5)	280	6.6		1,848.00
11/20/2014	Bishop	drafting and research for fee memo (4.1), reading private AG cases (2)	280	6.1		1,708.00
11/21/2014	Bishop	drafting memo for fees (2.9), drafting declaration for memo (1)	280	3.9		1,092.00
11/24/2014	Bishop	drafting fee memo (5.3) and legal research for same (2.5)	280	7.8		2,184.00
11/26/2014	Bishop	drafting and editing fee motion	280	1.5		420.00
12/1/2014	Bishop	drafting brief and research for same (3.5), reading e-mail from DNRC and research in response to threat of sanctions (2), corresp. with WELC and counsel re: same (.9)	280	6.4		1,792.00
12/2/2014	Bishop	additional research in response to sanction threat (1.5), drafting response and filing response to request to "summarily deny" fee request (1.5)	280	3		840.00
12/4/2014	Bishop	researching issues (.5) and drafting memo (2.9), call w/ board member re: sanction threat (.5)	280	3.9		1,092.00
12/5/2014	Bishop	drafting memo and legal research for same (1.5), sanction research (1), corresp. w/ ESG re: threat/next steps (.5)	280	3		840.00
12/29/2014	Bishop	reviewing rules re: timing/procedure after call from RM	280	1.5	1.50	-
1/5/2015	Bishop	reviewing next steps, fee motion	280	0.6		168.00
1/15/2015	Bishop	editing and finalizing fee brief (5.1), legal research re: private AG updates/cases (2)	280	7.1		1,988.00
1/16/2015	Bishop	revising and editing fee brief (6.7), reading cases (1)	280	7.7		2,156.00
2/26/2015	Bishop	review and editing fee reply for LK	280	4.8		1,344.00
3/12/2015	Bishop	editing and revising reply in support of fee motion	280	5.2		1,456.00
3/17/2015	Bishop	reading motion for stay pending appeal, drafting notes to Laura	280	1.7	1.70	-
3/27/2015	Bishop	reviewing and editing response to motion for stay pending appeal	280	3.5	1.70	504.00
		For Professional Services:		786.50	102.30	173,311.00

Court Fees		
9/9/2010	MasterCard - Bishop	123.66
Legal Research		
11/30/2008	West Law	25.00
2/1/2009	West Law	25.00
10/31/2009	West Law	25.00
11/30/2009	West Law	25.00
11/30/2009	West Law	25.00
12/31/2009	West Law	25.00
3/31/2010	West Law	25.00
3/31/2010	West Law	25.00
4/30/2010	West Law	25.00
6/25/2010	West Law	25.00
6/30/2010	West Law	25.00
8/31/2010	West Law	25.00
11/30/2010	West Law	25.00
12/31/2010	West Law	25.00
8/31/2011	West Law	25.00
1/31/2014	West Law	25.00
4/30/2014	West Law	25.00
5/31/2014	West Law	25.00
6/30/2014	West Law	25.00
9/30/2014	West Law	25.00
10/31/2014	West Law	25.00
11/30/2014	WestLaw	25.00
12/31/2014	WestLaw	25.00
2/25/2015	West Law - Matt Bishop	25.00
2/25/2015	West Law - Laura King	25.00
2/28/2015	West Law - L King, M Bishop	25.00
3/31/2015	West Law - L King	25.00
		675.00
Postage and Delivery		
1/31/2008	Expense Report - Bishop	21.60
2/19/2008	MasterCard - Bishop	21.60
4/27/2010	Expense Report	19.80
9/9/2010	MasterCard - Bishop	29.41
10/20/2010	MasterCard - Bishop	4.63
1/23/2015	Expense Report - King	4.76
2/6/2015	Expense report - L King	2.80
2/24/2015	Expense report - L King	5.60

5/1/2015	Reimbursement LKing	2.80
		113.00
Reproduction/Printing		
4/19/2010	MasterCard - Bishop	20.00
10/20/2013	MasterCard - Bishop	138.44
1/21/2008	MasterCard - Bishop	10.00
1/31/2008	Expense Report - Bishop	120.45
9/9/2010	MasterCard - Bishop	38.88
12/18/2009	MasterCard - Bishop	219.60
3/25/2010	Expense Report - Bishop	7.40
		554.77
Supplies & Expenses		
Telephone		
Travel, Meals & Lodging		
	Total Case Expenses	1,466.43

in this matter began in September, 2013.

3. In preparing Petitioners' motion for fees and costs, I compiled all the hours spent on this matter by myself. My time sheets, *see* Attachment, contain all of my time spent on this matter. My time and the expense records for this matter were kept contemporaneously and accurately reflect the actual time spent and expenses incurred in this case. I recorded my time using a computer program called Timeslips. The Western Environmental Law Center (WELC) has a financial officer who manages and reviews our time and expense entries. WELC is audited each year and our accounting practices meet or exceed industry standards.

4. In exercising sound billing judgment, I carefully reviewed my time sheets and omitted excessive, redundant, and otherwise unnecessary time, including but not limited to time spent discussing the matter and legal theories with a legal intern (and all intern time) and time spent in meetings with clients.

5. I obtained a B.A. in English from the University of California at Berkeley in 2002 and received my J.D. from Harvard Law School in 2013. I chose to attend law school for the sole purpose of studying and practicing public-interest environmental and natural resource law. While attending law school, I took classes on environmental law, federal natural resource law, and water law. I also taught an environmental law course at Boston College, was a senior editor of the Harvard Environmental Law Review, and acted as research assistant for the director of Harvard's environmental law clinic. I have

published articles in the Harvard Environmental Law Review and the Journal of Environmental Law and Litigation and have presented at the Public Interest Environmental Law Conference.

6. At graduation, I was recognized for contributing over 1600 pro bono hours towards environmental law matters, both through Harvard's environmental law clinic and during two summers at a nonprofit law firm in Montana that specializes in environmental law. These 1600+ hours were spent on cases and matters pursued under various federal and state environmental statutes, and included work on water quality and quantity issues. For example, I drafted an amicus brief in a Clean Water Act case before the United States Supreme Court, worked on litigation to protect Montana streams and native fish, and engaged in litigation in Montana state court involving Montana statutes.

7. After graduating from law school, I was awarded a fellowship supporting work in public service. I joined WELC's Northern Rockies office in Helena, Montana as a legal fellow in September, 2013. In November, 2014, I became a staff attorney in WELC's Northern Rockies Office. At WELC, I practice public-interest environmental and natural resource law exclusively, with a focus on litigation under federal statutes such as the National Environmental Policy Act, the Endangered Species Act, the Administrative Procedures Act, and the Federal Land Policy and Management Act.

8. I was admitted to the California bar in December 2013 and the Montana bar in April 2014. Since becoming an attorney, I have been the lead counsel in three matters:

McClelland v. National Park Service, 1:14-cv-1171 (D.D.C. 2014) (successful settlement under the Freedom of Information Act involving federal ownership of a parcel in/on the Flathead River).

WildEarth Guardians et al. v. Kraayenbrink et al., 1:14-cv-00488 (D. Idaho) (pending challenge to the federal government's approval of a wolf killing derby on public lands)

Powder River Basin Resource Council v. BLM, 1:15-cv-00695 (D.D.C. 2015) (pending challenge under the Freedom of Information Act involving communications between oil and gas companies and the federal government)

9. In addition to the matters listed above, I have co-counseled or assisted on numerous matters, including:

Friends of the Wild Swan v. Ashe, 18 F.Supp.3d 1077 (D. Mont. 2014) (successful challenge to U.S. Fish and Wildlife Service's delay in preparing recovery plan for threatened lynx).

The Clark Fork Coalition v. Tubbs, Cause No. BDV-2010-874 (1st Judicial Dist. Montana Oct. 17, 2014) (successful challenge to exempt well rule, appeal pending).

National Trust for Historic Preservation v. Suazo, 2015 WL 1432632 (D. Ariz. 2015) (successful challenge to Sonoran Monument plan allowing target shooting).

10. I am currently admitted to practice in Montana and California. I am also admitted to practice before the United States District Court for the District of Montana and the United States Court of Appeals for the Ninth Circuit.

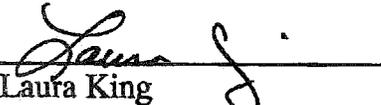
11. Based on my specialty in environmental and natural resource law, the rate I obtained in the *McClelland v. NPS* case (\$320 via settlement), the rate I obtained in the *Friends of the Wild Swan v. Ashe* case (\$175 via settlement), and the rates other attorneys in Montana with similar experience have sought and obtained in similar cases, I am

seeking an hourly rate between \$140 - \$160 an hour, depending on the year the work was undertaken. See Attachment.

12. I believe these requested rates are reasonable and consistent with (if not lower than) the market rates of attorneys with similar skills and experience in Montana. These rates are also lower than the rates I obtained in federal court via settlement.

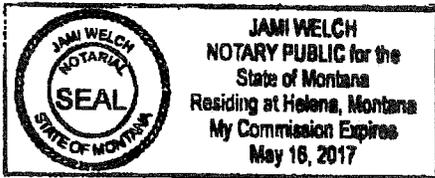
FURTHER AFFIANT SAYETH NOT,

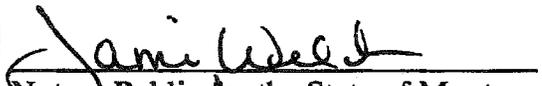
DATED this 24th day of June, 2015.


Laura King

SUBSCRIBED AND SWORN TO before me by

Laura King this 24 day of June, 2015.




Notary Public for the State of Montana
My commission expires:

Date	Attorney	Description	Rate	Time	Omit	Amount
9/13/2013	King	Drafting comment letter for DNRC rulemaking.	140	5.50	5.50	-
9/16/2013	King	Drafting comment letter for DNRC rulemaking.	140	7.80	7.80	-
9/17/2013	King	Writing comment letter on DNRC rulemaking.	140	8.70	8.70	-
9/18/2013	King	Comment letter on DNRC rulemaking.	140	8.60	8.60	-
9/19/2013	King	Drafting comment letter on DNRC rulemaking.	140	1.00	1.00	-
4/3/2014	King	Opening brief: legal research (caselaw).	150	0.60		90.00
4/3/2014	King	Opening brief: legal research (secondary sources, including Sax, et al., Legal Control of Water Resources).	150	1.00		150.00
4/3/2014	King	Opening brief: Brainstorming core theory for case.	150	0.50		75.00
4/3/2014	King	Opening brief: Factual research.	150	0.50		75.00
4/3/2014	King	Opening brief: Review of hearing record, including transcript.	150	0.70		105.00
4/3/2014	King	Opening brief: Review of record, including underlying petition.	150	1.80		270.00
4/3/2014	King	Opening brief: Review of local rules for filing.	150	0.20		30.00
4/3/2014	King	Opening brief: legal research (secondary sources -- statutory construction).	150	0.40		60.00
4/3/2014	King	Opening brief: legal research (secondary sources -- review of agency decisions).	150	1.20		180.00
4/4/2014	King	Opening brief: Reviewing MCA 2-4-305(6).	150	0.20		30.00
4/4/2014	King	Opening brief: Discussing standard of review for case with Attorney M. Bishop. Reviewing standard of review in 331 Mont. 483.	150	0.30		45.00
4/4/2014	King	Opening brief: Reviewing standard of review in Clark Fork Coalition case.	150	0.20		30.00
4/4/2014	King	Opening Brief: Reviewing Attorney M. Bishop's outline for brief.	150	0.20		30.00
4/4/2014	King	Opening brief: caselaw research (on the proposition that the state is the final arbiter of its own laws).	150	1.30		195.00
4/4/2014	King	Opening brief: caselaw research (plain language and canons of construction).	150	2.30		345.00
4/4/2014	King	Opening brief: Brainstorming plain language argument.	150	0.60		90.00
4/4/2014	King	Opening brief: Reading deference cases from the U.S. Supreme Court.	150	1.40		210.00
4/4/2014	King	Opening brief: Reading Chevron case.	150	0.30		45.00
4/4/2014	King	Opening brief: Researching cases on deference to agency's interpretation of its own rule.	150	1.00		150.00
4/7/2014	King	Opening brief: Rulemaking history research.	150	1.10		165.00
4/7/2014	King	Opening brief: Review definition of "well" in statute.	150	0.10		15.00
4/7/2014	King	Opening brief: Research & draft section on policy issue that litigation is costly to stop impairment, involves a shifted burden.	150	0.80		120.00
4/7/2014	King	Opening brief: Researching history/purpose of water code.	150	1.30		195.00
4/7/2014	King	Opening brief: Researching history/purpose of exemption.	150	1.10		165.00
4/7/2014	King	Opening brief: Reading MT water code.	150	0.50		75.00
4/7/2014	King	Opening brief: Research and draft section on the fact that "appropriation" is a term of art in water law.	150	0.50		75.00
4/7/2014	King	Opening Brief: Reading opening briefs of State of WA, Dept of Ecology v. Campbell & Gwinn.	150	0.80		120.00
4/7/2014	King	Opening Brief: Reading State of WA, Dept of Ecology v. Campbell & Gwinn.	150	0.40		60.00
4/8/2014	King	Opening brief: Researching MT and other law for the proposition that you can't import new meanings into a statute.	150	0.90		135.00
4/8/2014	King	Opening brief: Researching the fact that there are not just quantity issues but health/safety issues as well.	150	0.50		75.00
4/8/2014	King	Opening brief: Generating hypotheticals and comparisons for amount of water that could be used under the loophole.	150	0.50		75.00
4/8/2014	King	Opening brief: Visited law library and MT state library for help with water rights query system.	150	1.50		225.00
4/8/2014	King	Opening brief: MT case law research on statutory construction. In particular looking for caselaw on not inserting what has been omitted.	150	0.50		75.00

4/9/2014	King	Opening brief: caselaw research (Montana cases on statutory construction).	150	2.50		375.00
4/9/2014	King	Opening brief: Drafting plain language section.	150	2.00		300.00
4/10/2014	King	Opening brief: Further research on and drafting standard of review section.	150	1.60		240.00
4/11/2014	King	Opening brief: Drafting "background" section of brief.	150	1.80		270.00
4/11/2014	King	Opening brief: Reading and taking notes for "background" section of brief.	150	1.30		195.00
4/11/2014	King	Opening brief: Outlining "background" section of brief (with case cites).	150	1.90		285.00
4/12/2014	King	Opening brief: Reading and taking notes for "purpose" section of brief.	150	1.90		285.00
4/12/2014	King	Opening brief: Outlining "purpose" section of brief (with case cites).	150	1.70		255.00
4/12/2014	King	Opening brief: Drafting "purpose" section of brief.	150	1.50		225.00
4/12/2014	King	Opening brief: Drafting and filing motion to substitute counsel.	150	0.90		135.00
4/14/2014	King	Opening brief: Drafting "issue statement" -- overall issue in brief.	150	1.30		195.00
4/14/2014	King	Opening brief: outlining "good for Montana" policy arguments.	150	1.10		165.00
4/15/2014	King	Opening brief: outlining "constitutional" section of brief.	150	1.20		180.00
4/15/2014	King	Opening brief: nonlinear outlining for legislative history section of brief.	150	1.70		255.00
4/15/2014	King	Opening brief: Record review.	150	3.00		450.00
4/16/2014	King	Opening brief: Record review.	150	2.60		390.00
4/17/2014	King	Opening brief: Outline for plain language (filling in gaps - case cites, etc.)	150	1.10		165.00
4/17/2014	King	Opening brief: Drafting brief from outlines.	150	7.20		1,080.00
4/18/2014	King	Opening brief: Drafting opening brief.	150	2.40		360.00
4/19/2014	King	Opening brief: Revising opening brief draft, adding case cites.	150	2.60		390.00
4/20/2014	King	Opening brief: Revising opening brief, fixing formatting.	150	5.60		840.00
4/21/2014	King	Opening brief: Integrate "good for Montana" arguments into "relief section."	150	0.40		60.00
4/21/2014	King	Opening brief: Revise introduction.	150	1.80		270.00
4/21/2014	King	Opening brief: Resolve various formatting and presentation issues, including adding footnotes and replacing citations to the record.	150	1.30		195.00
4/22/2014	King	Opening brief: Revise "legislative history" section after colleague review of brief.	150	0.60		90.00
4/22/2014	King	Opening brief: Checking citations to Administrative Record.	150	1.60		240.00
4/23/2014	King	Opening brief: Review of MT citation format. Fix all MT cites.	150	2.80		420.00
4/23/2014	King	Opening Brief: Call with Jamie Price at DNRC re: presentation of record to court	150	0.20		30.00
4/30/2014	King	Opening Brief: Corrected formatting for MT cites (.5); Made edits for space and clarity (1); Added argument about meaning of "appropriation" and added supporting cite (.8); Made changes throughout to reflect revision of the statute in the 2013 legislature (.8); added comments explaining changes (.5); wrote email to Attorney M. Bishop explaining changes and previewing some suggested new arguments (.5).	150	4.10		615.00
5/1/2014	King	Miscellaneous: discussed case strategy and briefing with Attorney M. Bishop	150	1.00		150.00
5/30/2014	King	Reading, making notes on, and researching issues raises in Realtor's Brief.	150	1.70		255.00
6/2/2014	King	Reviewing and taking notes on Department of Natural Resources and Conservation's response brief in preparation for our reply.	150	1.50		225.00
6/2/2014	King	Preparing and filing motion for extra time.	150	1.50		225.00
6/3/2014	King	Research on standard of review issue for reply brief.	150	2.80		420.00
6/3/2014	King	Reviewed and took notes on Well Drillers' response brief in preparation for our reply brief.	150	1.50		225.00
6/3/2014	King	Talked to Attorney M. Bishop about approach to our reply brief.	150	0.50		75.00
6/3/2014	King	Second close reading of state's response brief in preparation for our reply brief.	150	1.50		225.00

6/4/2014	King	Research on litigation positions/ post-hoc rationalizations for reply brief.	150	1.00		150.00
6/4/2014	King	Review of our opening brief in preparation for reply brief.	150	1.00		150.00
6/4/2014	King	Close reading of Well Drillers' brief in preparation for our reply brief.	150	1.50		225.00
6/4/2014	King	Close reading of Realtors' response brief in preparation for our reply brief.	150	1.00		150.00
6/4/2014	King	Doing research on best practices for briefing in preparation for our reply brief.	150	0.80		120.00
6/4/2014	King	Double check page limit for reply brief.	150	0.10		15.00
6/4/2014	King	Finish close reading of state brief in preparation for our reply brief.	150	0.80		120.00
6/5/2014	King	Finish close reading of Well Drillers' brief in preparation for reply brief.	150	1.00		150.00
6/5/2014	King	For reply brief: Research on MT and other caselaw on proposition that the court is better equipped to decide questions of law than the agency.	150	1.30		195.00
6/5/2014	King	For reply brief: Research and drafting Standard of Review section.	150	2.00		300.00
6/5/2014	King	Finish close reading of Realtors' brief in preparation for reply brief.	150	1.00		150.00
6/5/2014	King	Look at sample reply briefs in preparation for writing our reply brief.	150	0.20		30.00
6/6/2014	King	Drafting reply brief (standard of review section).	150	3.40		510.00
6/6/2014	King	Drafting reply brief (weaving in additional material from MT state cases file).	150	1.00		150.00
6/6/2014	King	Drafting reply brief (weaving in additional material from my draft opening brief).	150	1.00		150.00
6/9/2014	King	Drafting reply brief (standard of review section).	150	5.40		810.00
6/10/2014	King	Drafting reply brief (standard of review section).	150	3.80		570.00
6/10/2014	King	Research/drafting for reply brief (SB19 issue).	150	3.10		465.00
6/11/2014	King	Research/drafting of reply brief ("acquiescence" to administrative rule issue).	150	4.20		630.00
6/11/2014	King	Drafting reply brief (adding "cause of action" section to standard of review section).	150	1.00		150.00
6/11/2014	King	Drafting reply brief (finishing standard of review section).	150	1.00		150.00
6/11/2014	King	Reading Mountain Water Company's brief.	150	0.90		135.00
6/12/2014	King	Drafting reply brief (plain language arguments -- including 1987 Amendment; substituting "combined" does not make sense)	150	3.30		495.00
6/12/2014	King	Drafting reply brief (policy argument: the rule is so narrow that it guts the statute)	150	0.50		75.00
6/12/2014	King	Drafting reply brief (subsequent history cannot overcome plain text; arguments from SWANCC and Decker cases)	150	2.00		300.00
6/12/2014	King	Drafting reply brief (argument: both rules have endured "legislative review")	150	0.40		60.00
6/13/2014	King	Drafting reply brief (introductory section including broad points/concessions/narrow question for the court).	150	0.80		120.00
6/13/2014	King	Drafting reply brief (legislative history section).	150	3.00		450.00
6/13/2014	King	Drafting reply brief (argument: there is a hierarchy of sources for statutory construction, and subsequent legislative history is far down the list)	150	1.00		150.00
6/14/2014	King	Drafting reply brief (legislative history section).	150	4.20		630.00
6/14/2014	King	Drafting reply brief (mootness question -- footnote).	150	0.80		120.00
6/14/2014	King	Drafting reply brief ("concise statement" -- footnote)	150	1.30		195.00
6/14/2014	King	Drafting reply brief (equal protection issue)	150	1.10		165.00
6/16/2014	King	Drafting reply brief (reviewing notes and responding to additional arguments posed in the three response briefs).	150	6.90		1,035.00
6/17/2014	King	Drafting reply brief (making adjustments to order, inclusion of arguments)	150	4.00		600.00
6/17/2014	King	Drafting reply brief (reviewing Sherlock order with eye to formatting).	150	0.40		60.00
6/17/2014	King	Drafting reply brief (reviewing for clarity, transitions, etc.)	150	3.50		525.00

6/17/2014	King	Drafting reply brief (citation formatting -- MT cites, etc.)	150	1.80		270.00
6/18/2014	King	Reply brief: research cases, statutes for argument that subdivision is one project.	150	2.00		300.00
6/18/2014	King	Reply brief -- creating table of authorities in Microsoft Word.	150	2.00		300.00
6/19/2014	King	Finalizing reply brief (table of contents, table of authorities, cover page, proofreading, reviewing response briefs to ensure that we have not missed arguments).	150	10.10		1,515.00
6/20/2014	King	Finalizing reply brief (headings, specific grounds of error under 2-4-704, appropriate reference to H.B., response to argument about aquifers layered vertically, response to arguments about absurd result).	150	7.00		1,050.00
7/16/2014	King	Drafting and filing notice of appearance by phone.	150	2.50		375.00
9/2/2014	King	Consult w/ Attorney M. Bishop re: hearing prep	150	0.40		60.00
9/15/2014	King	Hearing Prep: Reviewing all briefs	150	3.50		525.00
9/15/2014	King	Hearing prep: call to attorney S. Brown for Mountain Water Company re: sharing floor time (.1); check J. Sherlock schedule, plan court visit (.1)	150	0.20		30.00
9/16/2014	King	Hearing prep: Standard of review issue.	150	3.30		495.00
9/16/2014	King	Hearing prep: Observe J. Sherlock summary judgment motion.	150	1.00		150.00
9/16/2014	King	Hearing prep: Reviewing all briefs	150	1.00		150.00
9/17/2014	King	Discussion w/ Attorney M. Bishop re: hearing prep	150	0.30		45.00
9/17/2014	King	Hearing prep	150	5.30		795.00
9/18/2014	King	Conversation w Attorney M. Bishop re: hearing strategy.	150	0.30		45.00
9/18/2014	King	Hearing prep: Plain language (2), legislative history (1.5).	150	3.50		525.00
9/19/2014	King	Hearing prep: working on presentation (4.5), moot and discussion with attorney M. Bishop (2)	150	6.50		975.00
9/20/2014	King	Hearing prep: preparing notecards responding to attorney M. Bishop's "tough questions."	150	5.90		885.00
9/21/2014	King	Hearing prep	150	3.50		525.00
9/22/2014	King	Hearing prep	150	10.00		1,500.00
9/23/2014	King	Hearing	150	2.00		300.00
10/1/2014	King	Update to Hilary Johnson on exempt well hearing.	150	0.30		45.00
10/27/2014	King	Draft "Notice of Entry of Order" (1.2); Conversation with M. Bishop re: rules (timing of post-judgment motions/actions) (.2); Emails from/to M. Bishop and from S. McMillan re: same (.3).	150	1.70		255.00
10/27/2014	King	Research on fees in exempt well case -- timing of fee motion; conversation and emails to Matt re: same.	150	3.00		450.00
10/28/2014	King	Review of motion for entry of judgment (.3); discussion with M. Bishop re: same (.2); prepared motion and mailing materials (1); filed motion (.3); emailed/mailed motion to co-counsel (.2); read and researched reply email re: no atty fees in petition for judicial review (.5).	150	2.50		375.00
11/5/2014	King	Research DNRC claim that order is stayed and emails to Barbara Hall (client, Clark Fork Coalition) and attorney M. Bishop re: same.	150	1.00	1.00	-
11/7/2014	King	Reading Kelly Nokes' memo on fees in exempt well case. Reading Brief in Mitchell Slough case (Bitterroot River Protective Association)	150	1.20		180.00
11/10/2014	King	Feedback to Kelly Nokes on memo on fees in exempt well case. Research re: constitutional requirement for fee award.	150	1.20		180.00
11/10/2014	King	Reading Mitchell Slough briefs. Research on caselaw re: amount of award, i.e. Plath factors and related caselaw, and briefing and opinion in Mitchell Slough case. -- Email to attorney M. Bishop re: same.	150	0.80		120.00
11/18/2014	King	1. Research into whether time spent on administrative process is recoverable. 2. Research into private attorney general doctrine	150	2.10		315.00
11/20/2014	King	Review of timeslips to date for fee motion.	150	0.50		75.00
11/21/2014	King	Drafting declaration for fee motion.	150	2.30		345.00
12/16/2014	King	Fee motion.	150	0.50		75.00
12/17/2014	King	Review fee motion. Develop arguments re: benefit to Montanans.	150	2.00		300.00

12/18/2014	King	Research re: Uniform Declaratory Judgment Act.	150	5.00	5.00	-
12/19/2014	King	Research re: Uniform Declaratory Judgment Act Drafting fee brief on UDJA claim.	150	0.50	0.50	-
1/5/2015	King	Conversation with M. Bishop re: appeal, motion to stay.	160	0.30	0.30	-
1/5/2015	King	Phone call with B. Hall and M. Bishop re: the exempt well working group, the appeal filed by Realtors and Well Drillers, and other news and next steps.	160	0.70	0.70	-
1/6/2015	King	-Conversation with Attorney M. Bishop re: UDJA claim (.5) - Research on UDJA claim (3.5)	160	4.00	4.00	-
1/8/2015	King	Research on UDJA claim	160	2.00	2.00	-
1/9/2015	King	Research: SCOTUS and 9th Circuit caselaw on private attorney general doctrine (2 hours) Research: UDJA claim (.5 hours) Email to and conversation with M. Bishop re: caselaw for fee brief and next steps (.5 hours)	160	3.00	2.50	80.00
1/10/2015	King	Exempt well fee brief: adding material on evolution of private attorney general doctrine in California, and developing arguments re: why the court's decision benefits Montanans.	160	3.50		560.00
1/12/2015	King	Research re: UDJA Research re: caselaw in 9th Circuit and SCOTUS on private attorney general doctrine	160	6.50	3.25	520.00
1/13/2015	King	Research re: California law on private attorney general doctrine and drafting footnote re: same.	160	4.50		720.00
1/14/2015	King	Drafting section of fee brief re: why the court's decision benefits all Montanans.	160	6.50		1,040.00
1/21/2015	King	Fee memo briefing: making language more concise	160	3.00		480.00
1/22/2015	King	Editing fee brief, adding material re: court's recognition that public policies vindicated are grounded in the constitution, review of record re: impacts, editing material re: impacts.	160	6.10		976.00
1/23/2015	King	Fee brief: Reviewing cases on "equitable" prong of fee analysis; proofreading; filing; service.	160	7.00		1,120.00
2/2/2015	King	Exempt Well Appeal: Review of Supreme Court Notice of Transcript, including briefing deadline; discussion with M. Bishop re: same; research re: briefing stay pending resolution of fee matter at district court; emails to opposing counsel re: same. Research re: filing requirements in MT Supreme Court.	160	2.50	2.50	-
2/4/2015	King	Drafting motion to stay briefing and researching rules.	160	1.50	1.50	-
2/5/2015	King	Drafting motion to stay briefing and researching rules.	160	3.00	3.00	-
2/6/2015	King	Drafting motion to stay briefing and researching rules. (4) Two phone conversations with Ryan Mattick re: motion to stay briefing and motion to stay judgment pending appeal (.3) Filing at MT Supreme Court (.5) Completing Service (.7)	160	5.50	5.50	-
2/10/2015	King	Research on stay pending appeal	160	2.00	2.00	-
2/17/2015	King	Consideration of request for extension from opposing counsel and response to same (.3) Review of order from court re: new deadline for opening brief - calendar date (.1)	160	0.40	0.40	-
2/20/2015	King	Review of HB 519 and emails with B. Chilcott re: same	160	0.30	0.30	-
2/23/2015	King	Review of Motion to Stay Court's Order. Drafting Request for Extension of Time. Conversation with M. Bishop re: strategy.	160	1.00	1.00	-
2/24/2015	King	Drafting, implementing M. Bishop's edits on, filing, and serving motion for extension of time for reply on question of entitlement to attorney fees (2) Drafting, implementing M. Bishop's edits on, filing, and serving motion for extension of time for reply on motion for stay of court's order (2.8) Reading and brainstorming responses to DNRC's response on question of entitlement to attorney fees (1.4)	160	6.20	2.80	544.00
2/25/2015	King	Drafting reply brief on fee entitlement, claim: "quasi-judicial immunity"	160	7.00		1,120.00
2/26/2015	King	Briefing fee reply - claim: quasi-judicial immunity	160	7.00		1,120.00
2/27/2015	King	Drafting reply on fees -- quasi-judicial immunity claim	160	7.00		1,120.00
3/2/2015	King	Drafting reply in support of fee motion (quasi-judicial immunity section)	160	0.50		80.00

3/3/2015	King	Drafting fee reply (quasi-judicial immunity; research – waiver) (3.8)	160	3.80		608.00
3/5/2015	King	Drafting fee reply (quasi-judicial immunity)	160	1.00		160.00
3/7/2015	King	Drafting fee reply (quasi-judicial immunity)	160	1.10		176.00
3/9/2015	King	Fee reply – quasi-judicial immunity doctrine (5.4 hours), societal importance prong of PAGD (.8)	160	6.20		992.00
3/10/2015	King	Exempt well fee reply – PAGD fees warranted in statute based cases; closing loophole an important matter of public policy (7.1)	160	7.10		1,136.00
3/11/2015	King	Drafting fee reply – private enforcement against DNRC was necessary; all Montanans benefitted; an award against DNRC would not be unjust; conclusion (12.8)	160	12.80		2,048.00
3/12/2015	King	Briefing fee reply (responding to M. Bishop's edits, cite check, proofreading) and filing and serving the reply with the court.	160	8.00		1,280.00
3/13/2015	King	Response to motion to stay court's order pending appeal: reading motion and brainstorming/researching response (3.5)	160	3.50	3.50	-
3/16/2015	King	Response to motion for stay of court's order – research – factors for stay – irreparable harm (1.5 hour)	160	1.50	1.50	-
3/17/2015	King	Response to motion for stay of court's order – briefing (research and briefing on stay pending appeal in MT, 9th Cir., and Sup. Ct; Well Drillers are not likely to prevail on merits; irreparable harm) (6.5 hours)	160	6.50	6.50	-
3/18/2015	King	Response to motion for stay of court's order – briefing (irreparable harm) (5.1 hours)	160	5.10	5.10	-
3/19/2015	King	Response to motion for stay of court's order – briefing (irreparable harm) (2)	160	2.00	2.00	-
3/20/2015	King	Response to motion for stay of court's order – briefing (irreparable harm) (7.8 h)	160	7.80	7.80	-
3/21/2015	King	Response to motion for stay of court's order – briefing (the Well Drillers' "right to appeal" will not be irreparably harmed) (3.5 hours).	160	3.50	3.50	-
3/23/2015	King	Drafting response to motion to stay court's order (balance of equities) (6.2)	160	6.20	6.20	-
3/24/2015	King	Motion for Stay of Court's Order – Response – harm to members, balance of the equities, public interest	160	6.20	6.20	-
3/25/2015	King	Response to Motion for Stay of Court's Order – Balance of Equities	160	2.50	2.50	-
3/26/2015	King	Drafting motion in opposition to stay of court's order – balance of equities and public interest, editing, and cite checking	160	8.50	8.50	-
3/27/2015	King	Motion for stay of court's order: Research on and drafting footnote on MCA 2-4-711 (.8) Printing, signing, and filing with court opposition to motion for stay of court's order (.6) Service of opposition to motion for stay of court's order (.7) Reviewing and implementing M. Bishop's edits on brief (1.8) Proofreading brief (.3)	160	4.20	4.20	-
4/21/2015	King	Reviewing reply brief (to our motion for stay of court's order at district court)	160	0.50	0.50	-
4/27/2015	King	Revision of Exempt Well Project Page (.5)	160	1.30	1.30	-
4/28/2015	King	Email update to client B. Chillcott re: appeal, HB 519, fee question (.2)	160	0.20	0.10	16.00
5/12/2015	King	-Emails with A. St. Lawrence re: need for notice of submittal on attorney fee motion and notice to Supreme Court re: status of pending motion for stay of briefing (.3) -Research (.3) and drafting notice of submittal (.5), and email to M. Bishop for filing (.1)	160	1.20		192.00
5/13/2015	King	-Service of notice of submittal of motion for attorneys' fees and costs by email and mail (.8) -Review of court's order on motion for stay of court's order (.4), email to M. Bishop re: same (.1), email to WELC attorneys re: same (.3), email with B. Sweeny re: press on same (.1) - Email with Erik S.G. re: engagement of Trout Unlimited (.1) Total = 1.5 hours	160	1.50	1.00	80.00
		For Professional Services:		488.10	130.25	54,688.00

2012 MT 128, and *Clark Fork Coalition v. DEQ*, 2012 MT 240. As this list illustrates, I have represented the lead Plaintiff in this matter, the Clark Fork Coalition, numerous times over the years.

3. I have reviewed the briefing in this case, the Court's order, the Western Environmental Law Center's (WELC's) time sheets, including the number of hours expended in this case and the requested hourly rates, and Matthew Bishop's and Laura King's declarations in this matter. In my opinion, the total hours, expenses, and hourly rates sought in this case by Mr. Bishop and Ms. King are reasonable. I am familiar with this type of case and the skill and time it required to litigate. The Petitioners' success required the participation of counsel well versed in natural resource and administrative law issues and counsel who understood the importance of building a strong administrative record.

4. I am personally familiar with the expertise, experience, and reputation of Matthew Bishop and WELC. He is an experienced litigator in environmental and natural resources cases, well respected, and among a small class of specialists in this type of litigation. I know that these types of cases against state agencies are expensive, time consuming, complex, and can be difficult to litigate. Mr. Bishop and the other attorneys at WELC are some of the few attorneys with expertise willing to take such cases on a pro bono basis. The availability of such attorneys is limited in Montana. I know that people who seek attorneys to take these kinds of cases often do not have the resources to hire a private attorney and have a hard time finding able and experienced attorneys such as the ones from the WELC willing to take such cases on pro bono basis.

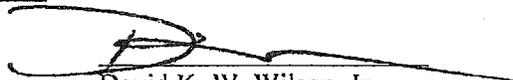
5. I believe these requested rates sought in this case by Mr. Bishop and Ms. King are

reasonable and consistent with (if not lower than) the market rates of attorneys with similar skills and experience in Montana. In 2011, the Montana Supreme Court upheld an award of \$300 per hour for Jack Tuholske, an experienced environmental attorney, for work performed between 2003 and 2009, see *Bitterroot River Protective Association v. Bitterroot Conservation District*, 2011 MT 51, ¶¶ 39,45, 359 Mont. 393, 251 P.3d 131. In the same case, the Montana Supreme Court also upheld an award of \$200 per hour for Sarah McMillan, an environmental attorney, for work performed between 2003 and 2009. See *id.* Ms. McMillan graduated from law school in 2000.

6. Given the Montana Supreme Court's decision and Mr. Bishop's extensive, 16 years of environmental and natural resource law experience, I believe his requested rate of \$220-280 per hour in this case is reasonable and comparable to market rates for similarly experienced attorneys in Montana. I also believe that Ms. King's requested rate of \$140-160 per hour is reasonable. Ms. King's rate is below the market rate charged by new associates at my firm. New associates at my firm charge \$150-175 for their work and one associate was awarded fees of \$200 per hour in 2014 by Magistrate Strong.

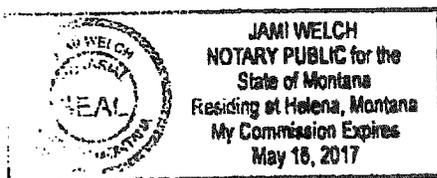
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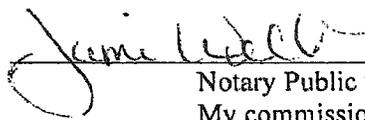
DATED this 24 day of June, 2015.


David K. W. Wilson, Jr.

SUBSCRIBED AND SWORN TO before me by

David K. W. Wilson, Jr. this 24 day of June, 2015.




Notary Public for the State of Montana
My commission expires:

MONTANA FIRST JUDICIAL DISTRICT
LEWIS AND CLARK COUNTY

THE CLARK FORK COALITION, a non-profit
organization, *et al.*

Petitioners,

vs.

JOHN TUBBS, in his official capacity as
Director of The Montana Department of National
Resources and Conservation, *et al.*,

State-Respondents,

MONTANA WELL DRILLERS ASSOC. et al.,

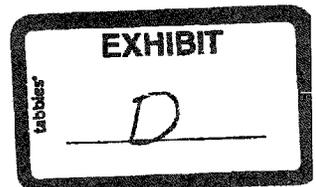
Intervenors.

Civ No. BDV-2010-874

AFFIDAVIT OF
SARAH MCMILLAN

I, SARAH MCMILLAN, hereby state and declare as follows:

1. I am submitting this declaration in support of the Petitioners' motion for attorneys' fees and costs in this matter.
2. I am an attorney with 15 years of experience in Montana, having received my J.D. from the University of Montana School of Law in 2000. I attended law school for the sole purpose of studying and preparing to practice public-interest environmental law. While attending law school, I took classes on administrative law, federal natural resource law, environmental law, pollution control, and watershed protection. I graduated in the top 5% of my class.



3. I started practicing environmental law in Missoula, Montana in September 2001 and shortly thereafter joined Tuholske Law Office, an environmental public interest private firm. I continued in private practice until I joined Western Environmental Law Center (WELC) in October of 2007, where I remained until June 2011. I am now the Senior Attorney for WildEarth Guardians, an organization dedicated to the protection and restoration of wildlands, wildlife, wild rivers, and health of the West. I practice exclusively environmental law.

4. Since beginning practice in 2001, I have represented clients in a wide variety of environmental cases and matters pursued under federal and state environmental statutes, including NEPA, MEPA, NFMA, Clean Water Act, Endangered Species Act, NHPA, FLPMA, state and federal constitutional provisions, the Administrative Procedures Act, and MAPA. These cases include the following:

Russell Country Sportsmen v. USFS and MWA, 668 F. 3d 1037 (9th Cir. 2011)(successful defense of travel plan in Little Belt mountains)

Helena Hunters & Anglers v. Tidwell, 841 F. Supp. 2d 1129 (D. Mont. 2009) (successful challenge to authorization of biathlon project).

Wildlands CPR v. Tidwell, CV-09-75-M-DWM (D. Mont. 2009)(successful settlement directing analysis).

MEIC v. BLM (CV-08-178-M-DWM, District of Montana). (settlement directing BLM to perform analysis).

NWF v. Department of Agriculture (2:08-cv-1004-CJJ, Western District of Washington, Seattle Division). (Successful challenge to amendments to Conservation Reserve Program).

Northern Plains Resource Council v. BLM; Northern Cheyenne v. BLM, 2005 Lexis 4678 (D. Mont. 2005). (Successful challenge of EIS, resulting in injunction).

Montana Wilderness Assoc. v. USFS, 146 F. Supp. 2d 1118, affirmed in part, reversed in part, 314 F.3d 1146 (9th Cir. 2003); reversed and remanded 124 S. Ct. 2870; (case successfully settled in 2007 after remand pursuant to *Norton v. SUWA*).

Alliance for the Wild Rockies v. USFWS, (04-1813-JO, District of Oregon, Portland Division). (Successful challenge to bull trout critical habitat designation).

State of Wyoming v. U. S. Dep't of Interior, 360 F. Supp. 2d 1214 (D. Wyo. 2005), *aff'd*, 442 F.3d 1262 (10th Cir. 2006). (Intervened to help FWS defend denial of Wyoming's petition to delist gray wolf).

Northern Plains Resource Council v. Fidelity Exploration and Production Company, 325 F.3d 1155 (9th Cir. 2003), *cert. denied*, 540 U.S. 967 (2003). (Successful challenge to permitless discharge of coal bed methane waste water).

Friends of Bull Lake v. Beasley, 2003 Lexis 25218 (D. Mont. 2003). (Successful challenge of illegal placement of dredge and fill materials in Bull Lake, resulting in injunction and \$100,000 civil penalty against the developer).

Missoula County et al. v. MDT (DV-11-424, Montana Fourth Judicial Dist. Court, (successful challenge to adequacy of DOT's analysis -summary Judgment granted Feb. 17, 2012).

Spoklie v. State of Montana, 411 F. 3d 1051 (9th Cir. 2005). (Intervened to assist the State of Montana in defending game farm law against constitutional claims challenges). See also *Kafka v. Montana Dep't Fish, Wildlife & Parks*, 2008 MT 460; *Buhmann v. State*, 2008 MT 465; *Spoklie v. Mont. Dep't of Fish Wildlife and Parks*, 2002 MT 228; *Sportsmen for I-143 v. Montana Fifteenth Judicial District Court*, 2002 MT 18.

Bitterroot River Protection Assoc. v. Bitterroot Conservation Dist., 2008

MT 377. (Successful litigation to prevent privatization of Mitchell Slough and ensure protection of the stream).

5. In addition to the matters listed above, I am currently litigating several matters in federal courts (in Washington D.C., Arizona, Montana, and the Ninth Circuit), and am developing matters for likely filing in the next several months.

6. I am admitted to practice in state courts in Montana, in United States District Courts for the Districts of Montana, Colorado and Washington D.C., and in the United States Courts of Appeals for the Ninth and Tenth Circuits. I have also appeared pro hac vice in the United States District Court for the Districts of Wyoming, Arizona, and Idaho.

7. I have spoken at numerous seminars that qualify as Continuing Legal Education (CLE) for attorneys, have guest-lectured for environmental law courses at the University of Montana, and have taught an environmental law course for Vermont Law School.

8. At the Petitioners' request, I reviewed the papers filed in this case, including the briefs submitted (opening and reply), the Court's October 17, 2014, order, WELC's time sheets, including the number of hours expended in this case and the requested hourly rates for Matthew Bishop and Laura King, and Mr. Bishop's and Ms. King's declarations in this matter.

9. I am familiar with this particular case, having been engaged while employed at WELC during the earlier administrative stage, and understand the legal experience and skill it required to pursue at both the administrative level and in court. These types of cases are complex and difficult to prosecute, in part because state agencies like DNRC (as

well as federal agencies) are afforded considerable deference. These cases are also time consuming, requiring counsel to research and understand the legal theories and importantly, build an administrative record for DNRC and the Court to review. The attorneys at WELC, including Mr. Bishop and Ms. King, are natural resource and administrative law specialists and, in my opinion, the total hours (including hours expended in an effort to recover legal fees), expenses, and hourly rates sought in this case by Mr. Bishop and Ms. King are reasonable.

10. I am personally familiar with the expertise, experience, and reputation of Matthew Bishop, Laura King, and the other attorneys at WELC. Mr. Bishop is an experienced litigator in environmental and natural resources cases. He is well respected in the legal community and among only a handful of attorneys in Montana specializing in natural resource law. Mr. Bishop and Ms. King and the other attorneys at WELC are among the few attorneys with expertise willing to take such cases on a pro bono basis. The availability of such attorneys is limited in Montana. As the senior attorney for WildEarth Guardians, I regularly seek legal counsel for environmental litigation. I know that people who seek attorneys to take these kinds of cases often do not have the resources to hire a private attorney and have a hard time finding able and experienced attorneys such as the ones from the WELC who are willing to take such cases on pro bono basis.

11. I believe the rates sought in this case by Mr. Bishop and Ms. King are

reasonable and consistent with (if not lower than) the market rates of attorneys with similar skills and experience in Montana. I recovered fees in the Mitchell Slough litigation at the rate of \$200/hour for work in 2005-2009. This included some time for the work to recover fees, as is common in environmental fee recovery situations. Matthew Bishop has been practicing longer than I have and his rates of \$220-\$280 for work performed more recently- in years 2008-2014 - are reasonable in this market. Laura King is a newer attorney and her rates of \$140-\$160 are appropriate for her level of experience.

FURTHER AFFIANT SAYETH NOT
DATED this 25th day of June, 2015.


Sarah K. McMillan

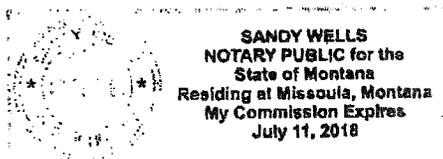
STATE OF MONTANA)

:
SS.

COUNTY OF MISSOULA)

On this 25 day of June, 2015, before me the undersigned Notary Public, personally appeared Sarah K. McMillan, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



NOTARY PUBLIC for the State of Montana
Residing at Missoula, Montana.
My commission expires: