

To: The Flathead Conservation District

Offices

133 Interstate Lane

Kalispell MT 59901

From: Barbara Ludwig 841 7th Avenue West Kalispell MT 59901

The information given in the Inter Lake on June 6th was pretty typical of what has been happening with this whole McDonald Creek/Ambler project situation: A small notice on the back page of the paper, and a long list of instructions about scheduling for a meeting, and how to access and submit information.....none of which worked when I attempted to bring it up on my computer. A poor way to treat such an important situation.

So, I am hoping that this personal letter will serve. My husband and I have lived in the Flathead Valley for 60 years. We are avid supporters of Glacier Park. During that time, our family had many reunions right on the McDonald Creek.....in the cabins which are still there and available for rent. Also, during all these years, we have cherished our quiet kayaking times on the creek itself. We taught our only grand daughter to kayak on that creek. Quiet, happy, good times. We have been fortunate to be able to spend time on the creek during every season of the year.....until the recent reservation system basically put a stop to our summer kayaking there. We accepted that.....and understand it.

You can imagine our shock to see a three story house going up in one of the the quietest place of all in that area. The people who somehow managed to buy that lot, after more than a hundred years, are obviously not people who care, or are considerate of, the very fragile state of that particular piece of land. They claim to be building a private home, but it looks more as if they are planning to have it be a several story VRBO.....which is an added insult to an already bad situation. More sewage, more garbage, more noise, and any space for parking is practically nonexistent.

In addition, "ignorance of the law" may or may not apply in this case. These people didn't get the most important permit, just went ahead with that house in one heckuva hurry.....I would be willing to bet some serious money that they knew about the streambed law, but figured if they got the house up, they'd be 'excused.'

Please don't let this happen. That house needs to come down, and the bank needs to be restored to its original state. Maybe it will serve as a lesson to others who care so little about keeping what is best about so many places in our area of Montana, so this kind of situation won't happen again.

My husband and I plan to be at the public hearing on August 25. It would be more than helpful if you would put that information out, several times, when that date is closer, so that those of us who feel most strongly can be there.

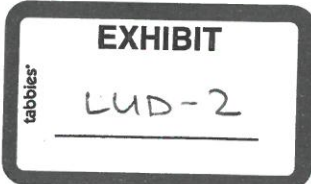
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JUN 12 2023

Flathead CD

Barbara Ludwig

Robert Ludwig



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JUN 19 2023
Flathead CD

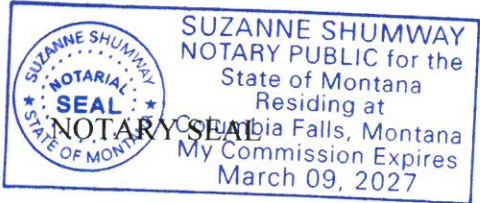
BEFORE THE FLATHEAD CONSERVATION DISTRICT
BOARD OF SUPERVISORS

IN THE MATTER OF THE DECLARATORY)
RULING BY THE FLATHEAD) VERIFICATION
CONSERVATION DISTRICT) STATEMENT
)
RE: MCDONALD CREEK (AMBLER))

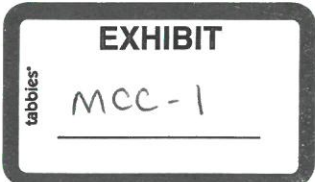
I, Barbara Ludwig, being duly sworn, deposes and says that the attached data and/or information is true and to the best of my knowledge.

Barbara Ludwig
Signature

Subscribed and sworn to me this 16th day of June, 2023.



Suzanne Shumway
Print Name: Suzanne Shumway
NOTARY PUBLIC for the State of Montana
Residing at Columbia Falls, Montana
My Commission Expires March 9, 2027



BEFORE THE FLATHEAD CONSERVATION DISTRICT BOARD OF SUPERVISORS

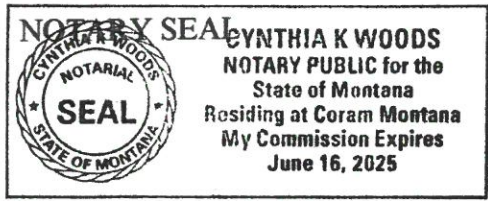
IN THE MATTER OF THE DECLARATORY)
RULING BY THE FLATHEAD) VERIFICATION
CONSERVATION DISTRICT) STATEMENT
RE: MCDONALD CREEK (AMBLER))

I, Mary T. McClelland, being duly sworn, deposes and says that the attached data and/or information is true and to the best of my knowledge.

Mary T. McClelland
Signature

Subscribed and sworn to me this 12 day of June, 2023.

Cynthia K Woods
Print Name: Cynthia K Woods
NOTARY PUBLIC for the State of Montana
Residing at Coram, Montana
My Commission Expires June 16, 2025



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Flathead CD

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JUN 14

Flathead CD

EXHIBIT

MCC-2

From: Mary T. McClelland, 500 Sloan Lane, West Glacier, MT 59936
marytreemcclelland@gmail.com (815) 482-7404

June 12, 2023

To: Hearing Officer Laurie Zeller, Flathead Conservation District Office, 133 Interstate Lane, Kalispell, MT, 59901

Re: Statement for Public Comment for the Declaratory Ruling on Lower McDonald Creek Ambler Violation per the Adopted Rules for the Flathead Conservation District to Implement the *Natural Streambed and Land Preservation Act* (MCA Title 75, Chapter 7)

I am submitting this comment for the record of the Declaratory Hearing scheduled for August 25, 2023.

I grew up in the National Park system as the child of a National Park employee and spent my childhood in Yellowstone and Glacier National Parks. I have continued to be a visitor and advocate for the health and welfare of our national parks. I have witnessed resident and visitor reverence and respect for the natural resources and unique and rare ecosystems in the parks. Most visitors and residents conduct themselves with commitment to maintain and protect those ecosystems and natural resources for all people and future generations. We demonstrate commitment to these values in our actions. I have also witnessed self-interest and disregard for those qualities and values due a national park. What has occurred in this case, intentional or not, is the latter. I would like to present my position that the Flathead Conservation District has lawful jurisdiction to administer the Natural Streambed and Land Preservation Act and request your careful consideration.

1. In all matters up to this point, the property owners have claimed that although this property is within the NPS boundary, the 0.05 acres is 'in-holder' private land under Flathead County zoning regulations. The property owners claim they obtained permission from the County to "do what you want with the land without restriction." In the County's defense, this claim is based on a flimsy unsigned email (at least the copy in the Exhibits is unsigned) from a Level 1 Planner (who had only been on the job a few months, per the staff listing at the time). No supporting correspondence from before or after this email, between any person of authority from the County with Stacy Ambler is provided [Exhibits FCD-42, 44, 46, 48, 50, 53, 55, 57, 59, 61, 63, 65, 67, 69, 71, 73].
2. It is the responsibility of Montana Conservation Districts to require, review, grant and issue permits *in advance* of any building near a streambank [Exhibit FCD-6 Adopted Rules (2020), Rule 2.1 and 2.2, Policy; [Exhibit FCD-76; Exhibit FCD-80]. Not yet included in the record, please see attached photos from November 1, 2022, showing the extreme streambank excavation and disregard for the integrity of the creek and creekbank, without any effort made to discover if such activity might be permitted. [Lower McDonald Creek November 1, 2022 #1, #2, #3]. A quick google search easily comes up with Streambank Protection Law in MT. As California residents and real estate people, Amblers should know of the multiple California Streambank protection laws and know to check for similar Montana laws.

3. It is the responsibility of owners to obtain a permit for *consideration* of a project is by law required in advance of any building activity. To try to obtain a permit after the streambank destruction and construction has occurred, claiming the FCD should have presented “data or analysis” [Exhibit FCD-2, page 2 paragraph 1] is immaterial. The FCD is not the owner. The FCD, based on the Adopted Rules definitions point out the violation is straightforward [Exhibit FCD-76] and states the finding to be “House under construction on the immediate bank of McDonald Creek. Streambank was excavated to create a pad for construction.” In [Exhibit FCD-6 Adopted Rules (2020)] Rule 4 Definition of “Disturbance” is the “Physical alteration or modification means human actions resulting in the placement, removal, or disturbance of materials of any nature or character” and is not permitted. The FCD supervisors have made the determination that if this building is not removed, they will have allowed the strategy of ‘build what you want’ in hopes of getting away with it. This creates a disastrous precedent for Montana’s natural streams whether in or out of the National Park. The construction work on the immediate bank of McDonald Creek is within the jurisdiction of the FCD.

4. In [Exhibit FCD-6 Adopted Rules (2020)] p.15, the supervisors shall determine the purpose of the project.
 - a. This is where the description of the building by the applicants is misleading. Over and above the assault on the creek bank, the information the FCD was given after the complaints were filed, was that this was a ‘home’. When in fact this building would easily be a commercial venture as a short-term rental, of which the Amblers already have others in Flathead County. This is relevant because [Exhibit FCD-6], Rule 10.2.a. states “the purpose of the project must be known.” Had it been known; *the project would have had more scrutiny by all the agency overseers the owners avoided before starting and during construction and it is no secret this construction would have been denied a permit. The FCD does not grant permits to violate the Streambank Protection Act.*
 - b. In that same light, whatever kind of dwelling unit this was going to be, [Exhibit FCD-6 Adopted Rules (2020)] it would have required specific standards that cannot be accomplished with the structure that has been illegally built, so there is no way to secure a 310 permit after construction. For example:
 Project Standards, J. Dwelling Units (p44)
 - 1) Findings: Buildings represent concentrations of human activities. Such activities are essentially land based with people entering the aquatic environment only for relatively short periods of time for recreational purposes. Buildings are potentially harmful through creation of impervious surfaces, increasing surface storm runoff into the stream and possible sewer leakage.
 - 2) Standards: Buildings or portions thereof, over the bed or immediate banks¹ of a stream, are prohibited. This includes roof overhangs, drip lines, balconies, bay windows, and chimneys. **The district recommends structures be set at least twenty (20) feet back from the immediate (highest) bank of the stream (not the high-water mark²).**

5. In [Exhibit FCD-2, page 1 paragraph 2] it says, “The Amblers notified Glacier National Park of their intent to build in 2021. Glacier National Park did not require any permits and authorized the Amblers to connect their residence to the Apgar Village water and sewer

system.” The owners say they kept the Park informed and were given water/septic hook up. Nowhere do they say what authority by name gave that permission, exactly when permission was granted nor any exact dates of any kind about when the work took place. Nor have they provided the FCD anything in writing, nor have they defined what exactly they told the Park they were building, and if they did, who was that and with what authority was this arrangement made? The Park has reported to the press more than once that the Amblers were told they needed to follow state and county regulations – *like everyone else*. **Thus, Glacier National Park informed the Amblers that the State and County has jurisdiction in this situation.** Had the Amblers sought proper permits, they would have found they were required to apply for a 310 permit and federal branch of streambank protections (the Army Corp of Engineers) would have also been consulted and required a Section 404 Permit). None of this happened.

6. Requesting time for an expert to “...gather, analyze and present relevant information and scientific data” [Exhibit FCD-2, page 1 paragraph 1] on the creek to attempt to ‘prove’ no damage has been done or will occur in the future, without a baseline or an inspection of the natural state of the creek in this location, is unscientific and after the fact cannot be substantiated. If this was important to the owners who claim to value the sensitivity of the site, the creek and the park – and who state they contacted the County in 2019 [Exhibit FCD-2, page 1 paragraph 2], “about building on their property” – they would have had this expert research done in the 4 years they had to investigate the relevant laws and precautions.
7. Regarding Ambler response [Exhibit FCD-51] to my complaint [Exhibit FCD-12], I have the following observations I wish to bring to your attention.
 - a. Paragraph 2: The response denies my observation that the building was “quickly built”. It is immaterial to the public how long they waited for their contractor to be available. From the public perspective, this building went up during the Park’s most infrequently visited time, over the holidays and winter season in a matter of a couple of months.
 - b. Paragraph 2: The winter barrel claimed to be used for heat for workers that is the ‘standard’ on most winter builds, misses the point. The complaint is about burning construction garbage within the park and the debris³ that went into the creek from the burning. It may be a standard on private land in some places, but it is certainly not standard in the park. (National parks often have specific guidelines to ensure the conservation of the park’s resources and to prevent any harm to the ecosystem). Yet the Park did not assert jurisdiction over the construction activity to halt the burning of construction waste.
 - c. Paragraph 3: The Amblers claim “We have been planning this build for several years and in all our research at the County and the Park we were never made aware of this [FCD 310] permit.” It’s just a little hard to believe that the owners, both being professionals, with their long history here, and a local builder – that none of them would care enough to investigate how to best protect the natural flowing creek they intended to build into and take advantage of- with a simple google search. The very first thing in a search list is “Stream Permitting” and in the first couple of lines states “*must apply for a 310 permit through the local conservation district.*” Click on the

link and the Flathead Conservation District and the message is clear, "If you are planning to work in or near a stream, you must get a 310 permit first. **It's Free. It's the Law.**"

- d. Paragraph 5: The response to my complaint says, "We have had no intent to avoid or ignore any necessary steps needed in this build. It has been done with integrity, which in this case, means doing the right thing even if no one is looking. We love this home and there is no way we would jeopardize any part of it by ignoring a free permit." On the contrary, it is clear the build was done at a time and in a manner in hopes that no one was looking. *Actions have spoken louder than words.* The solution at hand is as FCD has determined - remove, repair, start over.

This creek is a premier fishing spot and wildlife setting, a tributary to a Wild and Scenic River, and the site of unique natural habitat events such as the 1964 flood and the 1939-1993 Bald Eagle concentrations.

I respectfully request that you carefully evaluate the evidence presented by concerned members of the public trying to protect the integrity of a culturally, historically and ecologically important creek in a National Park that belongs to everyone.

I am grateful for the opportunity to submit this comment and appreciate your consideration of my perspective.

Thank you for your attention to this matter as Hearing Officer.

Sincerely,

Mary T. McClelland

Footnotes:

1. [Exhibit FCD-6 Adopted Rules (2020)]. Definition "Immediate banks" means the area above the mean high-water mark and directly adjacent to the stream, which when physically altered or modified has the potential to affect the state of a stream.
2. [Exhibit FCD-6 Adopted Rules (2020)]. Definition "Mean high-water mark" means the line that water impresses on the land for sufficient periods to cause physical characteristics that distinguish the area below the line from above it. Characteristics of the area below the line include, when appropriate, deprivation of the soil of substantially all terrestrial vegetation and destruction of its agricultural value.
3. [Exhibit FCD-6 Adopted Rules (2020)]. Definition "Debris" means any vegetation, refuse material, or in-stream sand and gravel, created by the development of the project.

Lower McDonald Creek November 1, 2022 #1

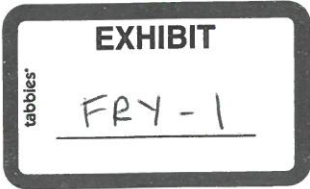


Lower McDonald Creek November 1, 2022 #2



Lower McDonald Creek November 1, 2022 #3





BEFORE THE FLATHEAD CONSERVATION DISTRICT BOARD OF SUPERVISORS

IN THE MATTER OF THE DECLARATORY)
RULING BY THE FLATHEAD) VERIFICATION
CONSERVATION DISTRICT) STATEMENT
RE: MCDONALD CREEK (AMBLER))

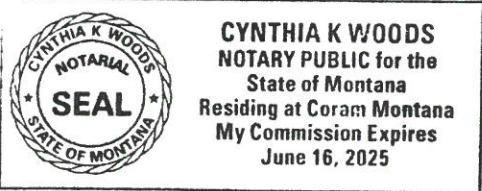
I, STEPHEN J. FRYE, being duly sworn, deposes and says that the attached data and/or information is true and to the best of my knowledge.

Signature [Handwritten Signature]

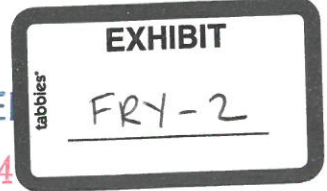
Subscribed and sworn to me this 12 day of June, 2023.

CYNTHIA K WOODS
Print Name: Cynthia K Woods
NOTARY PUBLIC for the State of Montana
Residing at Coram, Montana
My Commission Expires June 16, 2025

NOTARY SEAL



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JUN 14

Flathead CD

June 12, 2023

Dear Hearing Officer Zeller,

I am writing to submit this comment for the record of the Declaratory Hearing scheduled for August 25, 2023 concerning the 74 McDonald Creek Lane construction project.

First, I agree with the Flathead Conservation District’s March 13, 2023, conclusion and subsequent determinations. I also echo other public comments received detailing how the Amber’s Project is an ongoing violation of the Flathead Conservation District Adopted Rules. In addition to those comments, I would like to add a jurisdictional argument to the record on how the Amber’s Project plainly violates the State of Montana’s policy and legislative intent – beyond the FCD’s Adopted Rules.

The construction project violates several sections of the Montana Code Annotated 2021, Title 75 including but not limited to Chapter 7-103 Definitions, -105 Application of flood plain management, -111 Notice of Project, -112 Procedures for considering projects, -122 Public Nuisance and -125 Jurisdiction.

The Montana Legislature enacted The Natural Streambed and Land Preservation Act of 1975 (“NSLPA”) to protect and preserve “natural rivers and streams and the lands and property **immediately adjacent** to them in their natural or existing state.” The goal of the NSLPA is to prevent unreasonable depletion and degradation of natural resources. The NSLPA does this by prohibiting Projects unless authorized by the “written consent of the supervisors.”

McDonald Creek flows from Lake McDonald to the Middle Fork of the Flathead River which makes it a Stream as defined by the NSLPA. Therefore, McDonald Creek, its bed, and its **immediate banks** are protected from any **unauthorized** physical alteration or modification that results in a change in the state of its natural, perennial-flow, its bed, or its immediate banks. This violation is straightforward, there was no Notice of a Project or approval by the Board of Supervisors before the Ambler’s Project began. The law is clear, the Ambler’s property, structure, and Project is subject to the NSLPA. It is also clear that the Ambler’s unauthorized Project does not protect or preserve McDonald Creek in its natural or existing state. So, as declared by the state law, the Ambler’s Project is a **public nuisance**. Therefore, the only issues left to be discussed are penalties and prompt restoration.

Simply put, an e-mail entitled “Setbacks” from a Flathead County employee (not the Flathead County Board of County Commissioners), regarding zoning restrictions is **NOT** the “written consent” of the Flathead Conservation District Board of Supervisors.

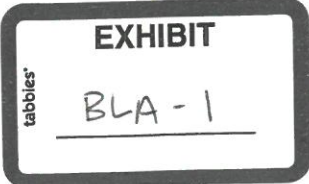
I have maintained a full time residence in West Glacier since 1992 with a few months absence during the winter months of 2018-2023. For thirty years plus I worked as a career employee in the National Park Service including assignments in Glacier, Yellowstone, North Cascades and Katmai National Parks. I continue to be a visitor and advocate for the health and welfare of our national parks. I have witnessed resident and visitor reverence and respect for the natural resources and unique and rare ecosystems in the parks and visitor and resident conduct themselves with

commitment to maintain and protect them for all people and future generations. And I believe these same values are enshrined in our state law. Thank you for your attention to this travesty of disregard for our natural resources.

Sincerely,

A handwritten signature in blue ink that reads "Stephen J. Frye". The signature is written in a cursive style with a large, stylized 'S' and 'F'.

Stephen J. Frye, 602 Wild River Drive, West Glacier, MT 59936



BEFORE THE FLATHEAD CONSERVATION DISTRICT BOARD OF SUPERVISORS

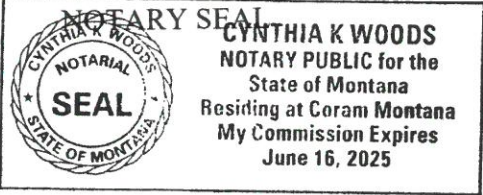
IN THE MATTER OF THE DECLARATORY)
RULING BY THE FLATHEAD) VERIFICATION
CONSERVATION DISTRICT) STATEMENT
RE: MCDONALD CREEK (AMBLER))

I, ELIZABETH A. BLACKER, being duly sworn, deposes and says that the attached data and/or information is true and to the best of my knowledge.

Signature [Handwritten Signature]

Subscribed and sworn to me this 12 day of June, 20 23.

Cynthia K Woods
Print Name: CYNTHIA K WOODS
NOTARY PUBLIC for the State of Montana
Residing at Coram, Montana
My Commission Expires June 16, 2025

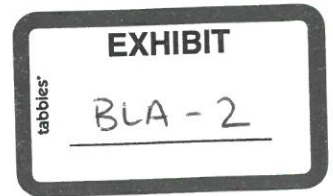


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Flathead CD



June 12, 2023

Dear Hearing Officer Zeller,

I am writing to submit this comment for the record of the Declaratory Hearing scheduled for August 25, 2023 concerning the 74 McDonald Creek Lane construction project located in a fragile undisturbed ecological niche of McDonald Creek within a riparian area and floodplain. A proper review would have incorporated state requirements and the provisions of the Clean Water Act.

Initially, I agree with the Flathead Conservation District's March 13, 2023, conclusion and subsequent determinations. I also echo other public comments received detailing how the Amber's Project is an ongoing violation of the Flathead Conservation District Adopted Rules. In addition to those comments, I would like to add a jurisdictional argument to the record on how the Amber's Project plainly violates the State of Montana's policy and legislative intent – beyond the FCD's Adopted Rules.

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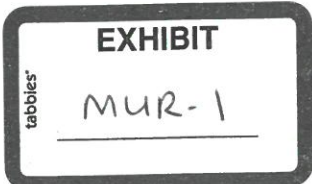
I have lived in West Glacier full time since 1992 with a few months absence during the winter months of 2018-2023. For thirty years I worked and retired as a full time career employee from the National Park Service including assignments in Glacier and Yellowstone National Parks. I continue to be a visitor and advocate for the health and welfare of our national parks. I have witnessed resident and visitor reverence and respect for the natural resources and unique and rare ecosystems in the parks and visitor and resident conduct themselves with commitment to maintain and protect them for all people and future generations. And I believe these same

values are enshrined in our state law. Thank you for your attention to this travesty of disregard for our natural resources.

Sincerely,

A handwritten signature in blue ink, appearing to read "Elizabeth A. Blacker". The signature is fluid and cursive, with a long horizontal stroke at the end.

Elizabeth A. Blacker, 602 Wild River Drive, West Glacier, MT 59936



BEFORE THE FLATHEAD CONSERVATION DISTRICT BOARD OF SUPERVISORS

IN THE MATTER OF THE DECLARATORY)
RULING BY THE FLATHEAD) VERIFICATION
CONSERVATION DISTRICT) STATEMENT
RE: MCDONALD CREEK (AMBLER))

I, Carole S. Murphy, being duly sworn, deposes and says that the attached data and/or information is true and to the best of my knowledge.

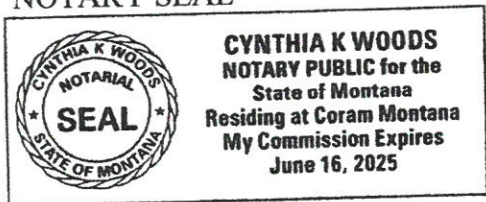
RICHARD MURPHY

Signature [Handwritten Signature]

Subscribed and sworn to me this 15 day of June, 2023.

Cynthia K Woods
Print Name: CYNTHIA K WOODS
NOTARY PUBLIC for the State of Montana
Residing at Coram, Montana
My Commission Expires June 16, 2025

NOTARY SEAL



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Flathead CD

Richard and Carole Murphy

1270 Belton Stage Rd

West Glacier, MT 59936

734-476-4690

June 14, 2023

EXHIBIT

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MUR-2

Hearing Officer Laurie Zeller
Flathead Conservation District Office
133 Interstate Lane
Kalispell, MT, 59901

Statement for Public Comment for the Declaratory Ruling on Lower McDonald Creek
Ambler Violation per the Adopted Rules for the Flathead Conservation District to Implement
the Natural Streambed and Land Preservation Act (MCA Title 75, Chapter 7)

Dear Hearing Officer Zeller:

This comment is for the record of the Declaratory Hearing scheduled for August 25, 2023.

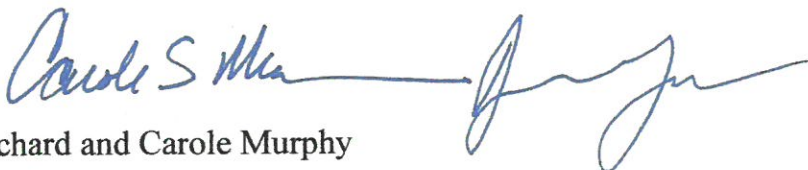
We are home owners in West Glacier, frequent visitors of the Apgar area, kayak the Lower McDonald Creek about twice a year, and volunteer for Glacier National Park (GNP). Due to our various duties as volunteers, we are acutely aware of the potential for damage caused by a house built and occupied so close to the stream and so close to the edges of the property.

We pick up litter in the park including trash we find when kayaking Lower McDonald Creek. As seen in our initial complaint FL-2023-007C, p.5, it is easy to inadvertently drop things, like the construction pencil, off of the deck. Whether the Amblers or guests are using the home, with decks so close to the stream, lightweight items could be blown off the decks and into the water.

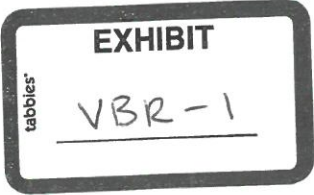
We also see invasive plant species along the banks. Given our work volunteering to eradicate these weeds, we are aware that these non-natives easily escape and propagate on GNP property. Given the large footprint of the Amber build and the small size of their lot, it would be easy for any landscaping to encroach on the land around them. The Lower McDonald Creek is a great conduit for spreading those seeds to the banks of the Flathead River, a Wild and Scenic River.

Finally, regarding jurisdiction, referencing our initial complaint FL-2023-007C, pages 11 and 12, the Flathead County GIS Department (map p.11) and the Property Record Card (p.12) demonstrate that they are building on Flathead County land. This means they pay property taxes for schools, state university and school aid, soil & water conservation, state forester, 911, noxious weed control, county planning, etc. This all points to being accountable to State of Montana and Flathead County laws including the Natural Streambed and Land Preservation Act (MCA Title 75, Chapter 7) and the Flathead Conservation District's role in administering that law.

Thank you for consideration of our comments in your work on this important issue.



Richard and Carole Murphy



BEFORE THE FLATHEAD CONSERVATION DISTRICT BOARD OF SUPERVISORS

IN THE MATTER OF THE DECLARATORY)
RULING BY THE FLATHEAD) VERIFICATION
CONSERVATION DISTRICT) STATEMENT
RE: MCDONALD CREEK (AMBLER))

I, Victoria Syd Rink, being duly sworn, deposes and says that the attached data and/or information is true and to the best of my knowledge.

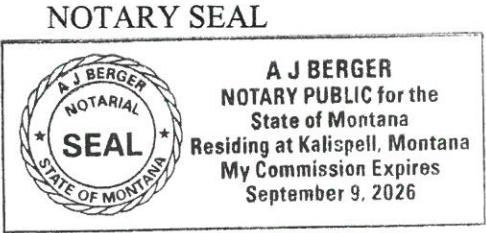
Signature [Handwritten Signature]

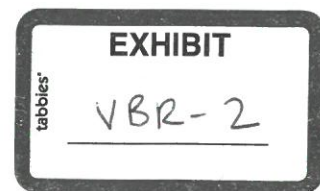
RECEIVED JUN 16 2023 Flathead CD

Subscribed and sworn to me this 16 day of June, 2023.

AJ Berger
Print Name:
NOTARY PUBLIC for the State of Montana
Residing at Kalispell, Montana
My Commission Expires 9-9-26

[Handwritten Signature]





Flathead Conservation District
133 Interstate Lane
Kalispell, Montana 59901

June 15, 2023

To Whom it May Concern:

As a lifelong citizen of Flathead County, it is unconscionable that John and Stacy Ambler are attempting to disregard the laws of the land by pleading ignorance, hardship, or investment.

They must be held accountable to the Natural Streambed and Land Preservation Act, like everyone else, that protects the sensitive and timeless treasures of Glacier National Park. Salmon spawn where they have sunk their foundations, the scenic viewshed is destroyed, they are polluting the pristine waters flowing from the pure glaciers, springs, and lake.

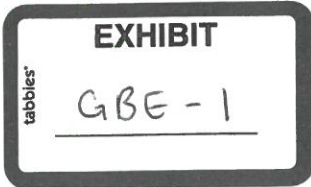
To not hold them accountable to the Natural Streambed and Land Preservation Act is a blatant stealing from the American people to whom Glacier Park belongs.

Thank you for considering my views.

A handwritten signature in black ink that reads "Victoria Byrd Rinck".

Victoria Byrd Rinck

RECEIVED
JUN 16 2023
Flathead CD



BEFORE THE FLATHEAD CONSERVATION DISTRICT BOARD OF SUPERVISORS

IN THE MATTER OF THE DECLARATORY)
RULING BY THE FLATHEAD) VERIFICATION
CONSERVATION DISTRICT) STATEMENT
)

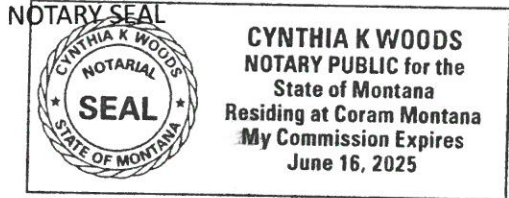
RE: MCDONALD CREEK (AMBLER)

I, Marilyn Byrd-Egging, being duly sworn, deposes and says that the attached data and/or information is true and to the best of my knowledge.

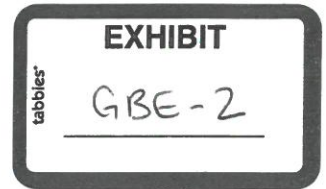
Marilyn Byrd-Egging
Signature

Subscribed and sworn to me this 16 day of Coram, 2023.

Cynthia K Woods
Print Name: CYNTHIA K WOODS
NOTARY PUBLIC for the State of Montana
Residing at Coram, Montana
My Commission Expires June 16, 2025



RECEIVED
JUN 16 2023
Flathead CD



June 14, 2023

Laurie Zeller
Flathead Conservation District
133 Interstate Lane
Kalispell, MT 59901

Dear Laurie,

I am writing in regards to the home being built along McDonald Creek in Glacier National Park. I was born and raised in Martin City as a member of the large Byrd family. Our family has always been in awe of the beauty, the waters, the flora and fauna of Glacier. We currently reside in Iowa but travel at least two times a year to be with family who still reside here as well as to explore, hike, swim, and float the creeks and rivers....but mostly to renew our spirits amidst the grandeur of Glacier. As a young girl in the 50's, we regularly visited McDonald Creek to see the salmon spawning while the bald eagles stood watching from the tall trees, and we often would witness black and grizzly bear fishing the spawning salmon.

Upon our return last fall, we were deeply concerned about the beginnings of some construction so close to the stream, but we knew nothing about what was coming to be. When we returned the middle of May to see a full-blown, three-story private home being built we were deeply chagrined that the Park administration had allowed anyone to build so close to the stream as to possibly impact the stream flow, the wildlife and the integrity of the Glacier National Park's World Biosphere designation.

After doing some research, we feel this building disregards the 1975 Natural Streambed and Land Preservation Act. The jurisdiction of the Flathead Conservation District should apply to this parcel of land and the activity on it. We are concerned the natural flow of this stream will be changed because of the proximity of concrete structures to the seasonal flow of the stream, the spawning, (even though much less than in the past) will be impacted as will the lives of the eagle and the bear and other species who stroll the shores of McDonald Creek. We also own land close to a stream nearby and we are definitely NOT allowed to impact the banks of the stream or its flow, nor build so close to it.

Glacier National Park is everyone's National Park, as well as a World Biosphere site and is an International Peace Park; to impede the hiking along it, as well as the life within it is unacceptable. If every "inholder" decided to ignore the state laws and build next to McDonald Creek, citizens, (each of whose tax dollars support the Park), will be unable to view a major stream in the park as well as a tributary to the Wild and Scenic Middle fork river.

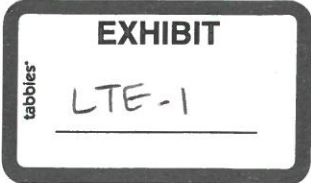
If we have laws and statutes, everyone should abide by them.

Most sincerely,

Gabriela Byrd-Egging

A handwritten signature in black ink that reads "Gabriela Byrd-Egging". The signature is written in a cursive style.

RECEIVED
JUN 16 2023
Flathead CD



BEFORE THE FLATHEAD CONSERVATION DISTRICT BOARD OF SUPERVISORS

IN THE MATTER OF THE DECLARATORY)
RULING BY THE FLATHEAD) VERIFICATION
CONSERVATION DISTRICT) STATEMENT
)

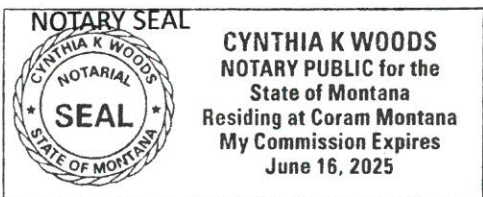
RE: MCDONALD CREEK (AMBLER)

I, Louis T. Eggins, being duly sworn, deposes and says that the attached data and/or information is true and to the best of my knowledge.

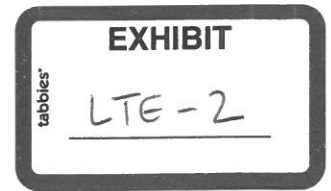
[Handwritten signature of Louis T. Eggins]
Signature

Subscribed and sworn to me this 16 day of June, 2023.

[Handwritten signature of Cynthia K Woods]
Print Name: CYNTHIA K. WOODS
NOTARY PUBLIC for the State of Montana
Residing at Coram, Montana
My Commission Expires June 16, 2025



RECEIVED
JUN 16 2023
Flathead CD



June 14, 2023

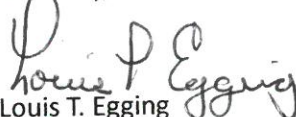
Flathead Conservation District
133 Interstate Lane
Kalispell, MT 59901

To Whom it may concern -

I am writing in regards to the structure being built along McDonald Creek in Glacier National Park. Upon reading the information of the FCD website pertaining to this structure, I feel this building ignores the 1975 Natural Streambed and Land Preservation Act of Montana. It seems to me the jurisdiction of the Flathead Conservation District should apply to this parcel of land and any activity on it. I am concerned the natural flow of this stream will be impacted due to the proximity of concrete structures to the seasonal flow of the stream. I own land close to a stream here in Montana and know that I would never be allowed to impact the banks of the stream or its flow, nor build so close to it.

Glacier National Park is not only a National Park, but has been designated a World Biosphere site, as well as an International Peace Park; to impede the hiking along it, as well as the life within its waters seem to me to be unacceptable. Any structure so close to the wild and scenic streambed is bound to, over time, give off pollutants that will affect not only the stream itself but the waters McDonald Creek merges with. I ask that the FCD give careful consideration to this matter, please.

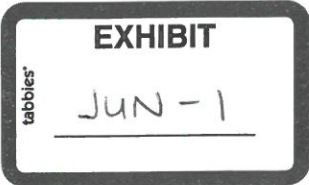
Sincerely,


Louis T. Egging

RECEIVED

JUN 16 2023

Flathead CD



BEFORE THE FLATHEAD CONSERVATION DISTRICT BOARD OF SUPERVISORS

IN THE MATTER OF THE DECLARATORY)
RULING BY THE FLATHEAD) VERIFICATION
CONSERVATION DISTRICT) STATEMENT
RE: MCDONALD CREEK (AMBLER))

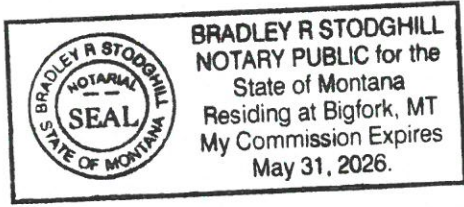
I, Monica Jungster, being duly sworn, deposes and says that the attached data and/or information is true and to the best of my knowledge.

Monica Jungster
Signature

Subscribed and sworn to me this 19 day of June, 2023.

BRADLEY R STODGHILL
Print Name:
NOTARY PUBLIC for the State of Montana
Residing at Bigfork, Montana
My Commission Expires May 31, 2026

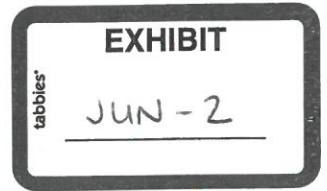
NOTARY SEAL



RECEIVED
JUN 19 2023
Flathead CD

RECEIVED
JUN 19 2023
Flathead CD

Monica Jungster
PO Box 50
West Glacier, Mt 59936
406-261-3747



Montana House Gift Shop – Owner
198 Apgar Loop Rd. Apgar
Glacier National Park Est 1960

Re: Statement for Public Comment period June 6th-20th for the Declaratory Ruling on Lower McDonald Creek Violation per the Adopted Rules for the Flathead Conservation District to implement the *Natural Streambed and Land Preservation Act* (MCA Title 75, Chapter 7)

My comments are submitted for the record of the Hearing for Declaratory Ruling scheduled for August 25, 2023.

Preliminary History and a personal perspective.

My family moved to Apgar Village in 1960 to a lot about 400 feet from the Petitioners lot. For the past 63 years I have lived and worked in Apgar Village. At that time Apgar was a special place to grow up and with friends I explored the outdoor world of Apgar that we had the privilege to be part of. It was a community mix of Park Service families, “In-holders” like us and summer residents. Park visitation for 1960 was approximately 600,000 visitors. In recent years visitation has topped 3 million. I have watched the process of “continuous change” as decades passed, and I have described that in my own words here.

In the past 63 years in Glacier Park there have been floods, wildfires, social changes in addition to agency policy and regulation changes. The history of Apgar started prior to 1910 when the area became a National Park. Prior to 1910 there were original settlers because of the Homestead Act. When Glacier National Park was established as with other Parks, there was some private properties already there. One can look at the subdivisions around Lake McDonald and see Apgar, Upper Lake McDonald, Kelly Camp and others up the North Fork. There was everything from tourist accommodations to

mining claims, trappers and a few outlaws. This ownership mix has seen evolving changes in policies, laws and jurisdictions.

In the early 1960's I remember a sense of community between the "locals and Park Service. Some Park families still lived in Apgar and there were a dozen kids to play with. By the end of the 1960's into the 1970's the Park policy focus toward In-holders was "the purchase of private properties" and Park employees had moved to Park Headquarters. Some of us that grew up in Apgar or were Park families still live close by and submitted comments over this matter.

I remember the 1964 Flood very clearly. The Hungry Horse News put out an honorary edition about the 1964 flood last spring and I have included a picture. In 1964 I watched Lower McDonald Creek flow backwards into Lake McDonald taking out huge sections of the riverbank on the side that the Ambler house now sits. A rental cabin floated down to the new Camas Bridge where Park blasted it apart. **(Exhibit MJ 1-1)**

Part of Mrs. Powell's white house was hanging over where the riverbank had washed away, and other pictures are in Park Archives. The old wood bridge that connected Apgar to the Grist Road homes was gone and Lake McDonald filled up to just under the 2nd story of the Village Inn Motel. As I walk along the creek now, I still see trees falling on that side of the creek and an open cut area eroded close to the Camas bridge.

The 0.05 acres the Amblers own is likely all that is left of the private lot that had Mrs. Powell's house hanging off the bank in 1964.

The Petitioners seek a declaratory ruling on FCDs determination.

- 1) that the Petitioners property is jurisdictional and therefore a violation occurred.
- 2) that the structure be removed and that the Petitioners obtain a permit to do so.
- 3) that Petitioners were denied adequate time to gather, analyze and present relevant information and scientific data.

1. The Petitioners (Ambler's) property on lower McDonald Creek is under the jurisdiction of the State of Montana via the Flathead Conservation District which oversees "310" stream law permits. See DNRC and FCD websites.

See State of Montana Attorney General's opinion – FCD file

My Comments: Private In-holder properties in Apgar and around Lake McDonald in Glacier Park are guided by the Flathead County Growth Policy which is a non-regulatory document compliant with Montana State Law. The jurisdiction of McDonald Creek is not a county matter. It is under the jurisdiction of the State of Montana, Department of Natural Resources and Conservation, Flathead Conservation District.

Google will pull up "310" Law in a few seconds.

(Flathead County Growth Policy, State Law)

The history of jurisdiction over private land in Glacier National Park has a long and colorful history starting with the Homestead Act of 1862 which sent people to stake their claims. Then Glacier National Park was created in 1910. The Fire of 1929 substantially burned-out Apgar Village and the Park sent its first Agent to purchase lands from those owners to *"try and purchase all Lake front property. He wasn't too successful."*

(Horace Chadbourne, Kelly Camp 1925 – "The History of Apgar")

So by the earliest days of Glacier Park there already was a conflict of interest between private property owners and Washington Directors in their role under the "Organic Act" that governs the purpose of National Parks.

A World War II concept of imminent domain jurisdiction by the Federal Government was still used to obtain part of Grist property for the new Camas Road in the early 1960's. By the 1970's the Park policy of getting private property was funded by Congress for the purchase of "lifetime leases" and purchase from a willing seller. A Park In-holder Association was formed that worked on behalf of in-holders for private property rights in National Parks which evolved into private property rights and jurisdiction issues on all public lands.

The Duncan property at the head of Lake McDonald and the McFarland property up the North Fork are just two examples of past Park and in-holder relations issues over management practices and jurisdiction.

The Duncan family was denied access through Park lands to their private property. The retired Glacier Park Chief Ranger who “posted the sign” is now my neighbor and remembers that situation. The McFarland access to private property issue with the Park is a history of changes in policy, practice and understanding from 1976 to 2007 with Court cases. This progression of history defines current policies that come from Department of Interior to Regional Directors and Park Superintendents.

November 2006 was the year when a “meteorological pineapple express” affected Glacier Park and again the water was very high at the Apgar end of Lake McDonald and in lower McDonald Creek. The Bridge at upper McDonald Creek above Lake McDonald was damaged and according to GNP Supt Mick Holm the Park policy at the time was “to wait for State permits before repairing the bridge”. (*Exhibit MJ 1-2 emphasis added MJ*) That was State jurisdiction and then at some point in 2007 that policy was changed according to a recent personal conversation I had with a Biologist at Montana Fish Wildlife & Parks (FWP). The policy that changed was that the State ceded jurisdiction of what is known as the 124 permits (issued to government entities by the State of Montana) to the Park inside the Park. It did not cede the jurisdiction of 310 permits (issued to private entities by the State of Montana) inside the Park in this change. This policy change lets the Park skip the 124 Permit process. (and use “categorical exclusion”) That occurred either during or after Superintendent Holm’s bridge issue. That policy or memorandum should be available from Glacier Park or FWP. News articles indicate the Park was dealing with both the bridge repairs and re-building of Going To The Sun Road. (GTSR)

After Kelly Camp was mostly burned out in 2018 and the Park used “categorical exclusion” as the way to install phone and electrical line in the road to that area without an ES and now some early park buildings there were listed as “historic”. In 2022 the concept of Park jurisdiction over access to private property was different from past times

and the Park changed its bridge project on upper McDonald creek using “categorical exclusion” after in-holder concerns were expressed regarding access to the private properties at the head of Lake McDonald along with Park needs for “Administrative and wildfire protection”. The concerns and desires were varied in the public comments that are on record at Park.

As all private landowners in Montana have certain “rights of private property and the responsibilities that come with that”, it was up to the Amblers to be responsible for what was required regarding their building project on private property on lower McDonald Creek. Public records indicate they were told by Glacier Park to follow “County and State regulations”. They did not. An unsigned email from a County Planner that showed lack of professional knowledge regarding who had jurisdiction in Apgar for a streambank project and a State 310 permit is not “due diligence”. Glacier Park management has made clear at recent in-holder meetings and press releases that “Park doesn’t have jurisdiction over private property”. Regarding Kelly Camp building projects after the 2018 wildfire the Park made it clear that “building projects follow “County, State and Federal rules and for Kelly Camp residents “County Septic regulations”. Hungry Horse News 1-9-2019. **(Exhibit MJ 1-3 emphasis added MJ)**

The Daily Interlake article 10-1-2021 “Private home in Glacier National Park for sale at \$12M” has quotes by the In-holder who is respectful in her building plan **(Exhibit MJ 1-4-page 2 emphasis added MJ)** and from the a “park spokesperson” that new building must comply with “state and local building guidelines, planning and approvals.” **(Exhibit MJ 1-4-page 3 emphasis added MJ)**

Contact Gina Kerzman Public Relations Officer – Glacier National Park

There have been frequent news articles and messaging from Glacier Park Management that has said In-holders should check out jurisdictions and regulations for new building projects. If County doesn’t have jurisdiction, then the State of Montana does and the DNRC, DEQ and Department of Labor and Industry can be easily contacted.

2. The Ambler building on lower McDonald creek is in violation of the State "310 law as they did not get the 310 permit before starting their project. My testimony above clearly suggests that the Park does not believe it has jurisdiction over streambed and land preservation activities on properties owned by private citizens within Glacier Park boundaries and that the State of Montana does have jurisdiction. Thus, it is clear that a 310 permit is also required to remove it. Mitigation is not an option.

My Comments: As the requirements of the "310" permit was never followed in the first place, what is already built is questionable and concerning as far any building codes and certainly site plan. The distance of the building to McDonald Creek is concerning and residents regularly checked this spring even as it was a light run off year. In 2022 there was flooding in Flathead County and in Glacier Park with the Quarter Circle Bridge on McDonald creek closed due to flooding. The level of water at the Ambler building location would have been substantially higher than 2023 and they had an opportunity to research the river level in their years of ownership.

The Adopted Rules for the Flathead Conservation District have been an excellent guide to address the many concerns I have regarding the Ambler building project on lower McDonald Creek. *(Mary McClelland has covered Rules very well in her comments)*

As the typical standards and process for a building project on a stream bank was not followed, neither the public nor State Inspectors/Supervisors know what was built on a very sensitive stream location in a National Park. I see pictures of a cement slab, big rocks that are meant to hold the bank in place for building, electrical wires hanging out, two drainpipes that allow water flow from somewhere on building site into McDonald creek, and a roof that indicates to me that the Apgar snow load will slide into the creek and on bank. All these facts, concerns and more would have been addressed had the 310 permit rules been followed.

Part of what is holding the bank from eroding that is in front of the Ambler building are the past remains of beaver harvested trees. There is a long-established beaver house

just downstream from Camas bridge and beavers have traveled for years up and down McDonald creek as well as into Lake McDonald to harvest food along the shore by the Park dock in Apgar. The beaver house goes through periods of use and then high water damages the house enough to send beavers somewhere else. I don't know the status of beaver house currently. The Park and residents may know more. One can make an estimate of the level of lower McDonald creek by when the beaver house is covered with water and low areas to the west of creek are flooded.

3. Since Mrs. Powell's house was destroyed in the 1964 flood no one has built a structure on the lot the Petitioners purchased in 2019. They had ample time to research the lot and to investigate County and State regulations including a 310 permit before and after their purchase of it in 2019.

The Petitioners have stated their connection to Kelly Camp so they would be aware Glacier Park requirements for "county and state regulations" and that jurisdiction does not belong to Glacier Park as already noted. I tend to think that "in-holders will certainly talk and share information" just like any group of friends, neighbors and relatives.

In years past I attended Park/In-holder meetings about the In-holder septic systems that leaked into Lake McDonald and non-compliance issues. In 2023 someone at the Park allowed the Petitioners to connect to Park Sewer system in Apgar. I don't know who made that decision as that is not a typical past practice kind of decision by the Park. It was still likely within the Park's management jurisdiction. However, just because the Park allowed the Petitioners to connect to the Park septic in Apgar that did not relieve them of getting the required state 310 permit and the reality that permit should be denied.

In 1964 a major flood occurred in Glacier National Park and there have been lesser floods since. 1967 was the first major Park wildfire I experienced until the Roberts Fire in 2003 when all the Lake McDonald area could have burned. It didn't that time and unfortunately, Kelly Camp did burn in 2018.

This is the world that Park In-holders have the privilege to live, choose to and are responsible for the decisions we make when we are here.

My 63 years has led me to conclude:

- 1) The Flathead Conservation District has jurisdiction to administer the Streambed and Land Preservation Act.
- 2) That had the 310 permit been applied for by the Petitioners it would have been denied.
- 3) That the Petitioners had adequate time to research Jurisdiction, apply for a 310 permit and provide adequate supporting information.

Respectfully,



Monica Jungster

The water just rose and rose

Hungry Horse News June 28, 2022

By WILLIAM SPENCE

Note: The following story was done the 50th anniversary of the flood. There are minor edits and additions have been made.

Fifty-eight years ago the waters rose and rose until they became the largest flood in Flathead County's recorded history.

When torrential rains poured on top of a heavy mountain snowpack June 8-9 of 1964, it caused, by some measures, one of the most powerful flash floods in the United States.

Water poured down both sides of the Continental Divide, tearing out roadways and rail lines and ripping away bridges. Three dams failed. Another was over-topped. At least 100 people died and more than 2,200 homes and buildings were damaged or destroyed in seven counties and a dozen communities in Montana.

Nothing remotely like it had happened before, ever since white settlers first moved into the Flathead in the mid-1800s.

As of May 1, gauges across



Damage in Apgar — The Mercantile cabin floating down McDonald Creek, 1964 flood. J. Mohlenrich, photographer. (NPS archives)

Northwest Montana were registering snow depths as much as 75 percent above average.

Four days later, after storms dumped up to 13 inches of snow across the western half of the state,

it was already the second-snowiest May on record, with more snow in the forecast. At least two new record lows were set during the month, and it wasn't until just before Memorial Day weekend that the high tempera-

tures broke 70 degrees.

On May 7, National Weather Service climatologist Richard Dightman issued the following warning: "We aren't in trouble until we get a sudden warming and the pack melts all at once. How do we don't look for that to happen rarely does snowmelt by itself flooding. But if we get rain on it ... then we're in trouble."

The warning received little attention.

IT STARTED RAINING in the afternoon, June 7.

It wasn't too bad down in the valley — a half-inch or so outside the airport.

But in the mountains it was worse. In the mountains it was worse: Essex got 11 inches in 30 hours. Marias Pass on the Continental Divide got 15.5 inches by Monday night.

Climatologists later determined that three storm systems had collided over the Northern Rockies. Storms from the east and north

Exhibit

MS 1-1

Hungry Horse News



Glacier National Park
Montana

West Side Flooding Repairs Update

Subscribe (<https://www.nps.gov/feeds/getNewsRSS.htm?id=glac>) 
(<https://www.nps.gov/feeds/getNewsRSS.htm?id=glac>) | [What is RSS](#)

Date: March 2, 2007

Contact: Amy Vanderbilt, 406-888-5838

WEST GLACIER, MONT. – Sandry Construction of Bigfork / Kalispell and its subcontractor, Crux Subsurface of Spokane, WA, is completing storm damage repairs to the second of three winter work locations on or near Glacier National Park's Going-to-the-Sun (Sun) Road, Park Superintendent Mick Holm reports.

"Bridge and road damage was sustained during the flooding of Upper McDonald Creek during the November 7-8, 2006, "Pineapple Express" storm. The access road and the bridge across Upper McDonald Creek at the head of Lake McDonald remain closed to all use until the work site is cleared of potential hazards, which is expected by March 9, 2007. At that time non-motorized winter access (cross country skiing and snowshoeing) will resume across the bridge and along the road to Kelly Camp," said Holm. The bridge repairs could not begin until all required permits were signed and received from the State of Montana. Permits were received in mid-February and work began that day. Work has involved bridge stabilization through the boring and installation of micro-piles to replace damaged pilings and restoration of rip-rap at each abutment.

Sun Road repairs are completed at Red Rock Point. Repairs are still being negotiated at the third location (milepost 19.25 from West Glacier,) approximately three miles past Avalanche Creek. When work begins at milepost 19.25, plowing of one lane of the Going-to-the-Sun Road will again occur. Nevertheless, one lane will remain snow-covered for cross country skiing and snowshoeing. Sandry Construction works Mondays through Fridays during daylight hours. For safety reasons, pedestrian access will be prohibited in the plowed lane during work hours. When work is not occurring, hikers and bicyclists can travel on the plowed lane. Signs will indicate when closures are in effect and caution should be exercised.

"The plowing of one lane was necessary to allow access to the Sun Road work sites and to stock pile materials for the repairs. Skiers and snowshoers are welcome to utilize the snow-covered lane but are asked to continue to abide by work zone restrictions," stated Holm. He added, "West side winter motorized vehicle access is unaffected by the road work to the west side. Vehicles can travel 11.5 miles on the Sun Road from West Glacier to Lake McDonald Lodge."

exhibits
MS 1-2

Last updated: February 24, 2015

@media (max-width: 767.98px){ .d-mobile-block { display: block !important; } }

On a sunny day in December the North Lake McDonald Road is quiet. Chickadees flit in the trees that weren't burned to a crisp by last summer's Howe Ridge Fire in Glacier National Park.

Five months after the 14,500-acre blaze, the foot of Glacier's iconic Mount Stanton is littered with black and downed trees. The fire burned hot here, right down to the foot of Lake McDonald.

It also burned most of the structures in Kelly's Camp, an enclave of private summer cabins at the end of the road that date back as far as the early 1900s. Three cabins survived the fire. The rest did not.

Shortly after the fire, many residents, who have long family ties to the land, indicated they would rebuild.

But there promises to be several challenges along the way.

Water was collected from a nearby creek and a small hydroelectric system provided electricity. Both were damaged by the fire. The creek itself was also razed — it's now exposed to the elements with no shade to keep the water cool.

In addition, a small bridge that goes over the creek, and provides access to the Kelly's Camp properties was also damaged by the fire. The bridge is passable by foot, but will likely have to be replaced at some point. The wooden planks show obvious signs of charring.

Homeowners will also have to meet Flathead County sewer regulations before they can rebuild. They also need a permit from Glacier Park.

Under county regulations, the existing septic system can only be used again if it previously had a valid permit.

If it doesn't, it will have to meet the modern regulations, which provide for setbacks from neighboring properties and specific regulations designed to protect the groundwater and water bodies, in this case, Lake McDonald.

The groundwater in some places near Kelly's camp bubbles up to the surface.

Under Glacier's regulations, "No person shall construct, rebuild or alter any water supply or sewage disposal system without a written permit issued by the superintendent. The Superintendent will issue such permit only after receipt of written notification from the appropriate federal, state, or county officer that the plans for such system comply with state or county standards. There shall be no charge for such permits."

A

Additionally, under Park regulations, people cannot live in a structure that doesn't have a working and approved septic and water system.

"No person shall occupy any building or structure intended for human habitation, or use, unless such building is served by water supply and sewage disposal systems that comply with the standards prescribed by state and county laws and regulations applicable in the county within whose exterior boundaries such building is located," the regulations state.

The regulations also allow for the Park to inspect septic systems from time to time, "in order to determine whether such system complies with the state and county standards: Provided, however, That inspection shall be made only upon consent of the occupant of the premises or pursuant to a warrant."

Park spokeswoman Lauren Alley said the Park could be open to extending utilities like electrical power to Kelly's Camp. She also said that some landowners do have water rights. Right now, however, things are in the preliminary stages, she noted.

"Moving forward, the Park would likely work with interested landowners to do any necessary compliance and issue a special use permit to allow for water collection based on an existing water right - if that was the route a landowner wanted to pursue," she said.

The Park Service is still working on an investigation into the fire. Some homeowners were critical of the Park Service after the blaze and openly wondered why it wasn't put out sooner.

Park Superintendent Jeff Mow at the time said the Park asked for a helicopter the night it started, but the Park was told one wasn't available. The region saw several fires the night Howe Ridge started, all of them by a lightning storm that passed through.

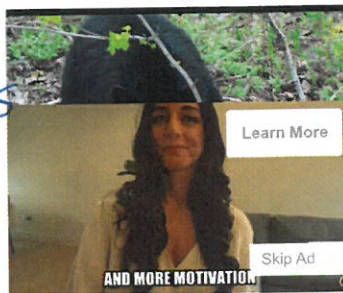
The next day, Howe Ridge blossomed and then turned into a firestorm by evening, burning down to the shores of Lake McDonald.

Human losses aside, there are silver linings from the blaze.

The views from the flanks of Mount Stanton were opened up by the fire. The post fire landscape in Glacier usually comes with a host of wildflowers that bloom for several success years after a blaze.

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MS 1-3

Private home in Glacier National Park for sale at \$12M

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This house just west of Lake McDonald in Glacier National Park is up for sale with an asking price of \$12 million. (Glacier Sotheby's International Realty)

By **CHAD SOKOL & MACKENZIE REISS**

Daily Inter Lake | October 1, 2021 12:00 AM

One of the few remaining private properties within the bounds of Glacier National Park is up for sale with an asking price of \$12 million.

The [Glacier Bear Retreat](#), a pair of recently built houses on nearly an acre of land just west of Lake McDonald, is currently used for ultra-high-end vacation rentals, with rates starting at \$11,000 per week during the peak summer months.

Exhibits

ms - 1-4 page 1

"The biggest amenity is it's almost an acre, privately surrounded by the park on all four sides, with Fish Creek and Apgar Creek flowing through and converging on the property," said [Gail Lynne Goodwin](#), an entrepreneur and developer who purchased the property in 2013.

Goodwin said [the property at 348 Grist Road](#) was once owned by Milo Apgar, the early settler who lent his name to the nearby Apgar Village. Apgar sold it to a park ranger named Dwight Grist, who built a home there and passed it on to his children.

Originally about 7 acres, the property shrank when the park used eminent domain to make room for construction of the Camas Road in the 1960s, Goodwin said.

"I bought it from Mr. Grist's son, who at the time was living between Paris and Dubai and was in his 70s," she said.

THE HOUSE that Grist built was in disrepair and occupied by small critters after sitting abandoned for more than four decades, Goodwin said. By the time she learned about it, the property had been listed for sale for a year with no offers.

"That blew me away," she said. "So I put it under contract that day, because I realized location is what makes this property so valuable — not the house that seemed to be falling apart."

Goodwin — who also owns the luxurious [Snow Bear Chalets](#) on Whitefish's Big Mountain — declined to say what she paid for the Grist property in 2013. But according to luxury real estate website Mansion Global, the listing price was just \$369,000.

Within about a year, the old one-story Grist house was replaced with a three-floor, 3,200-square-foot house with four bedrooms and three and a half bathrooms. Goodwin said she had a basement dug to add space without expanding the building's footprint.

"We did everything we could to try to just save and restore the old home, but it was just too far gone," she said. "So we tore down the house and built a new foundation on the existing footprint and built at the same location, so we didn't have to tear down trees or do anything like that. We could be as respectful as possible."

Exhibits

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B

A 500-square-foot guest house featuring two more bedrooms and another bathroom was added last summer.

OPPORTUNITIES TO buy property within a national park are exceedingly rare, even for those who can afford it.

Scott Darkenwald, a broker with Glacier Sotheby's International Realty, said the last time a property comparable to Goodwin's was sold within Glacier National Park was 32 years ago.

"You're buying this property, but along with it, you get over a million acres that you don't have to buy — and it's Glacier Park. To me, that makes it incredibly unique," Darkenwald said. "It really is like a jewel inside of this incredible park."

When the park was established in 1910, its boundaries trapped more than 13,000 acres of land previously claimed by homesteaders. Now, according to Goodwin, there are only about 125 privately owned tracts scattered throughout the park, encompassing fewer than 300 acres.

The Department of the Interior buys up those parcels, known as inholdings, for conservation when it can. But, as Goodwin put it, "They don't have the money."

The National Park Service doesn't place any restrictions on the Grist property. It's subject to the same building and zoning requirements as any other home in Flathead County. B

"The owner of this privately held real estate, while within a national park legislative boundary, can bequeath or sell their property," a park spokesperson said in an email. "Additionally, any new planned development on this parcel must comply with state and local building guidelines, planning and approvals." C

LOCATION MAY be everything, but Goodwin hasn't skimped on amenities.

The ground floor of the main house has a master bedroom with a reading nook, as well as a decked-out kitchen adjacent to a screened-in porch with a barbecue grill. The finished basement has a media room and a pool table, and the second story has a play area for kids. There's also a serene outdoor seating area, and a garage perfect for storing bikes and kayaks.

The property even has fast Wi-Fi.

Exhibits

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The main house also has a secret "meditation area" in the top of a round turret, the ceiling of which is painted like the night sky and adorned with constellations of twinkling fiber-optic lights. The space is accessible only through a bookcase — filled with original copies of "Nancy Drew" and "Hardy Boys" mystery books — that becomes a door with the click of a remote control and opens into a hidden staircase.

"It's a pretty special spot," Goodwin said. "Most guests that stay there, we do not give access to that room. They don't even know it's there."

While the property is a short walk from Apgar Village, Darkenwald said one would hardly notice the busy tourist hub beyond the thickets of trees separating the sites. He noted the property also is fairly close to the airport in Kalispell, and said it could attract a buyer from outside the U.S.

"When you say that something is a one-of-a-kind property — everybody says that, but this one really is," Darkenwald said. "It really is an opportunity for someone to buy a legacy property to hand down to future generations."

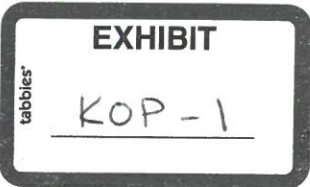
It's also a lucrative way to generate rental income, as Goodwin has done since her family no longer stays at the property very often.

"We love being up there. It's just, we're grandparents, and our kids and our grandkids are in the two coastal areas — not here — and we find that we just don't use it enough. And that's why we're selling it," Goodwin said. "It's a very, very hard decision because a piece of my heart will always live in that home, in that space."

Assistant editor Chad Sokol may be reached at 406-758-4439 or csokol@dailyinterlake.com. Reporter Mackenzie Reiss may be reached at mreiss@dailyinterlake.com.

Exhibits

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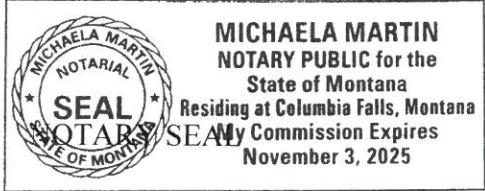
BEFORE THE FLATHEAD CONSERVATION DISTRICT BOARD OF SUPERVISORS

IN THE MATTER OF THE DECLARATORY)
RULING BY THE FLATHEAD) VERIFICATION
CONSERVATION DISTRICT) STATEMENT
RE: MCDONALD CREEK (AMBLER))

I, Michael G. Kopitzke, being duly sworn, deposes and says that the attached data and/or information is true and to the best of my knowledge.

Signature [Handwritten Signature]

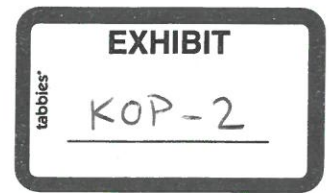
Subscribed and sworn to me this 20 day of June, 2023.



Michaela Martin / Michaela Martin
Print Name:
NOTARY PUBLIC for the State of Montana
Residing at _____, Montana
My Commission Expires _____

RECEIVED
JUN 20 2023
Flathead CD

Michael and Kelly Kopitzke
P.O. Box 533
1460 Grizzly Spur
West Glacier, MT 59936
Cell: 406-544-1464
Email: mkopitzke@montana.com



RECEIVED

JUN 20 2023

Flathead CD

June 19, 2023

Laurie Zeller, Hearings Officer
Flathead County Conservation District Office
133 Interstate Lane
Kalispell, MT 59901

REF: Public Comment for the Declaratory Ruling on Lower McDonald Creek - Ambler Violation
Our Complaint #FL-2023-13C

Dear Ms. Zeller:

I am submitting this comment for the record of the Declaratory Hearing scheduled for August 25, 2023.

Our family moved to the Flathead Valley in 1954 and my wife's family homesteaded the Lake Five area in 1916. Our extended family still owns 67 acres less than 5 miles from the entrance of Glacier National Park. Our family has a commitment to maintain and protect those ecosystems and natural resources for all people and future generations. We have also witnessed self-interest and disregard for those qualities and values due to its being a national park. I would like to present my position that the Flathead Conservation District has lawful jurisdiction to administer the Natural Streambed and Land Preservation Act and request your careful consideration.

It is the responsibility of the owners to obtain a permit for *consideration* of a project which is by law required in advance of any building activity. Trying to obtain a permit after the streambank destruction and construction has occurred is not permitted. The FCD supervisors have made the determination that if this building is not removed, they will have allowed the strategy of 'build what you want' in hopes of getting away with it. This creates a disastrous precedent for Montana's natural streams whether in or out of the National Park. The construction work on the immediate bank of McDonald Creek is within the jurisdiction of the FCD.

A court case that we were involved in, Friends of Lake Five, INC vs. Flathead County Commissioner, Cause No. 15-2020-000306, 03/28/2022 (Exhibit A) was heard by Judge Amy Eddy and her Findings of Fact, Conclusions of Law and Order are very applicable to this case. Like the McDonald Creek matter, the developer in the FLFI case was from out of state and has extensive experience in real estate in various states.

In Judge Eddy's ruling she stated the FLFI case provides a cautionary example of the dangers of developing property without a valid permit to do so – conduct which is driving time consuming and litigation before the courts.

She continues, while the developer testified, she developed the property in good faith ignorance of the various regulations this is not the first time the developer developed property – both in Canada and Montana for this exact purpose. Judge Eddy was unconvinced that the developer thought she could develop her property without the proper access and permits. The developer continued to develop her property once she was notified that she needed permits. Judge Amy Eddy went on to state her concerns of the pervasive attitude in Flathead County stated the following “The ask for forgiveness instead of permission approach, which fosters by a regulatory review process that is primarily complaint driven, is not legal sufficient in this matter”. The developer also applied for a permit for residential use and the courts found that it was a commercial operation.

The similarities to the Ambler’s situation:

- The Ambler’s have significant experience developing properties in several locations and we find it hard to believe a reasonable person would not know what the regulations were in effect.
- The Ambler’s stated that the structure was a home or single-family residence, however the structure will be used for commercial purposes, i.e. short term rental.
- The Ambler’s built the structure without the proper permit and continued to build on the structure after the complaints were filed by local citizens.
- The Ambler’s are asking for forgiveness instead of permission therefore, the removal of the structure is of their own devices.

Judge Eddy’s order states that all construction on the property shall cease immediately, the developer shall restore the Property to the previously unaltered condition and based on the evidence you should come to the same conclusion in the Declaratory Ruling on Lower McDonald Creek Ambler Violation.

We also concur with all the points made by Mary T. McClelland in the “Statement for Public Comment for the Declaratory Ruling on Lower McDonald Creek Ambler Violation per the Adopted Rules for the Flathead Conservation District to Implement the *Natural Streambed and Land Preservation Act* (MCA Title 75, Chapter 7)” she submitted for your consideration.

Respectfully Submitted:



Michael and Kelly Kopitzke

Amy Eddy
DISTRICT COURT JUDGE
Flathead County Justice Center
920 South Main
Kalispell, MT 59901
(406) 758-5667

MONTANA ELEVENTH JUDICIAL DISTRICT COURT
FLATHEAD COUNTY

THE FRIENDS OF LAKE FIVE, INC., and
WARD E. "MICK" TALEFF,

Plaintiffs/Petitioners,

vs.

FLATHEAD COUNTY COMMISSION;
FLATHEAD COUNTY, MONTANA; and

Defendants/Respondents,

SUSAN DIETZ, Individually and Trustee of
G&M TRUST,

Intervenor Defendant/Respondent.

Cause No. DV-20-306(A)

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This action arises from Flathead County's grant of Major Land Use Permit FCMU 19-01 ("the Permit") to G&M Trust that was issued on February 28, 2020. On March 4, 2020, the Plaintiffs commenced this lawsuit petitioning this Court for appellate review on the Amended Stipulated Record of the Permit. Following discovery and pretrial motions, the hearing on the *First Amended Complaint and Petition for Appellate Review, Injunctive and Declaratory Relief* came before the Court on September 8, 2021. Clif Hayden appeared on behalf of The Friends of Lake Five, Inc., Ward "Mick" Taleff appeared *pro se* as an Intervenor, Susan Swimley and Tara DePuy appeared on behalf of the Flathead County Commission and Flathead County, Montana; and Connor Walker appeared on behalf of Susan Dietz and the G&M Trust.

The Court noted the hearing was a "mixed" one, with the issues involving issuance of the Permit being limited to the record, while issues involving the relief sought by the Petitioner were factual and legal. The Court heard testimony from Jean Pinski, Lee Pinski, Mike Kopitzke, Mark Mussman, Susan Dietz and Bruce Boody. Karyn Sherwood's Affidavit filed in this matter was stipulated by the parties to be admissible as her testimony. In addition, numerous exhibits were admitted.

This case provides a cautionary example of the dangers of developing property without a valid permit to do so—conduct which is driving time consuming and expensive litigation before the Courts. While Ms. Dietz testified she developed the property in good faith ignorance of the various regulations, this is not the first time Ms. Dietz has developed property—both in Canada and Montana—for this exact purpose. The Court is unconvinced Ms. Dietz thought she could develop a 70-person capacity commercial resort without legal access, permits for building or septic, or in consideration of lakeshore protection. This conclusion is supported by Ms. Dietz’s lack of communication with regulatory agencies during the permitting process, continuing to develop the property without a permit after she was on notice she needed one, and then continuing to develop the property beyond the scope of the permit which was obtained. The “ask for forgiveness instead of permission approach,” which can be fostered by a regulatory review process that is primarily complaint driven, is not legally sufficient in this matter.

Having considered the evidence, the Court now enters its Findings of Fact, Conclusions of Law and Judgment and Order as follows:

FINDINGS OF FACT

1. Petitioner, the Friends of Lake Five, Inc. ("FLFI"), is a Montana nonprofit corporation located and conducting business in Flathead County, Montana.
2. Flathead County Commission, Flathead County, Montana (County) is a political subdivision of the State of Montana.
3. Susan Dietz and G&M Trust (collectively G&M Trust) own real property located in Flathead County, Montana.
4. On June 25, 2018, G&M Trust purchased from the Estate of James Sherwood, the real property commonly known as 1449 and 1453 Grizzly Spur Road, West Glacier, Flathead County, Montana (collectively "The Properties") from Karen Sherwood (Sherwood). (SR 000708).
5. The Properties are legally described as:

Parcel A: that portion of Government Lot One (1) of Section Nine (9), Township Thirty-one North (T31N), Range Nineteen West (R19W) described as Tract 1 of Certificate of Survey 13305, and Parcel B: that portion of Government Lot One (1) and Government Lot Two (2) of Section Nine (9), Township Thirty-one North (T31N), Range Nineteen West (R19W) described as Tract 2 of Certificate of Survey 13305. (Stipulated Record (SR) 000967, hereafter "Tract 1" and "Tract 2").
6. Certificate of Survey 13305 created the Property’s two “Tracts” through boundary line adjustment exemption from subdivision review. Certificate of Survey 13305 states on it’s the face:

I, James Webster Sherwood, II, further certify that the purposes of this division of land (Tract 2) is to acquire additional land to become a part of a parcel that has no sanitary restrictions imposed on it, and no structures requiring sewer or water will be erected on the additional acquired parcel; therefore the division is exempt from review by the Montana Department of Health and Environmental Sciences pursuant to Section 17.36.605(2)(a), ARM, and I further certify that the purpose of this division of land (Tract 1) is to create a parcel of land in which no structure requiring water or sewage disposal will be erected. Therefore, this division of land is exempt from review by the Montana Department of Health and Environmental Science pursuant to Section 17.36.605(2)(e), ARM.

7. The Properties abut Lake Five south of West Glacier, Flathead County, Montana. (SR 001109).
8. The real property was originally developed by Dr. McGregor in the 1930s, which transferred on his death to his daughter, Shirley, and her husband, Jim McFarland (McFarland). The McFarlands owned the real estate from the mid1950s until 1995 when it was sold to James Sherwood. (J.Pinski, 2/18/2020, SR 000975).
9. In 2018, after the death of James Sherwood, Mrs. Karen Sherwood (Sherwood), as Trustee, sold the Properties to Susie Dietz. (J.Pinski, 2/18/2020, SR 000975; P.Bd.Trans. SR 000645, at (01:21:44)1; see also ROA #88, p.2, ¶2, K. Stmt. Under Penalty of Perjury, Admitted by Stipulation 9/8/21 Trial, 9/8/2021 J.Pinski Trial Testimony).
10. Dietz and G&M Trust seek to develop the property into the Whistle Stop Retreat.
11. In 1998, The Ridenour Living Trust and James Sherwood rebounded their abutting Lots at Lake Five through boundary line adjustment procedures. (Certificate of Survey (COS) 13305, SR 000967).
12. As a part of the exemption BLA process, James Sherwood and Edna Ridenour declared "that the purpose of this division of land (Tract 1) is to create a parcel of land in which no structure requiring water or sewage disposal will be erected." (COS 13305, SR 000967).
13. During the Sherwood's ownership of Tract 1, no structures or other improvements were present. (J. Pinski 2/26/20 [00:13:14], SR 001021; ROA #88, p.2, ¶2, K. Sherwood Stmt.)
14. Tract 2 of the Properties contained all of the following improvements prior to purchase by G&M Trust:
 - a. A single family residence consisting of two bedrooms, kitchen, pantry, living room and an attic;
 - b. A washhouse/studio containing a single open space and behind a privacy panel a washing, machine, dryer and toilet;
 - c. Two cabins containing one bedroom, sitting area and bathroom;

- d. A garage;
- e. A potting shed; and
- f. A boat house.

(J.Pinski, SR 000645 [01:21:15]; see also, ROA #88, p.2, ¶2, K. Sherwood Stmt.; 9/8/2021 J.Pinski Trial Testimony).

- 15. The Sherwoods and their predecessors used the main house and two original cabins for the Sherwood Family and occasionally a family member slept on the floor of the washhouse/artist studio. (ROA #88, p.2, ¶2, K. Sherwood Stmt.)
- 16. The Tract 2 improvements were historically used by family members and their guests only. (SR 001109.) The Sherwoods never rented the residences or cabins. (ROA #88, p.3, ¶6, K. Sherwood Stmt).
- 17. Prior to G&M Trust's purchase, occupancy of Tract 2 was 8 persons—one (1) two-bedroom residence (4 persons) and two (2) one bedroom guest cabins (4 persons). (ROA 88, p. 3, ¶7).
- 18. In 2019, G&M Trust began remodeling the Tract 2 single family residence and cabins, along with construction of two dwelling units on Tract 1. (SR 000629 [00:38:55]).
- 19. Post G&M Trust purchase Tract 2 improvements are:
 - a. The "Main House" sleeping 14 guests in two queen size bedrooms, a third bedroom with a twin bunk bed and twin trundle bed, a living room with sleeper sofa and a "newly remodeled upstairs" with 5 twin beds, along with a kitchen and one full bath;
 - b. Three Cabins:
 - (i) Artist Studio sleeping 5 guests in a queen bed loft and five twin beds, 3/4 bath, laundry room and living room;
 - (ii) Cardinal Cabin king bedroom, living room and 3/4 bath; and
 - (iii) Quelle Barn—two queen bedrooms, livingroom sleeper sofa, full bath and kitchen.
 - c. A boat house.

(SR 00015-00017, 000563-00567).

- 20. After purchase of the Properties, G&M Trust constructed dwelling structures on Tract 1 - a "Caboose" and a "Fire Tower." Both structures are guest cabins with kitchen and bath facilities. (SR 000016, 000467 and 000566).
- 21. G&M Trust intends for each Tract to contain a single-family dwelling plus five guest cabins. (SR 000425, 000467, 000485 and 000573).

22. Although an undocumented alleged rental was reported to the County, no documented rentals appear before the County's inspection July 24, 2019, in the Amended Stipulated Record. (SR 000044, 000049, 000070 and 000526).
23. In addition to lodging services, G&M Trust offers concierge service, rental of a 2017 18.5-foot Glastron ski boat, separate rental of the boat house and stabling of guest owned horses, along with parties and events hosted by guests. (SR 000017, 000564-000569 and 000708-000709).
24. G&M Trust acknowledged 1449 Grizzly Spur Road (Tract 2) was being changed from residential to commercial use. (SR 000048).
25. On July 2, 2019, Michael and Kelly Kopitzke filed a complaint with Flathead County alleging that the "Whistle Stop Retreat" was creating a commercial development which violated maximum occupancy for the sewer system, constructing buildings in violation of building regulations, zoning, plat restrictions, easement and property use restrictions filed of record and dwelling densities. (SR 000001-000002). On July 30, 2019, Flathead County issued violation FZT-19-27 instructing G&M Trust to cease construction, advertising and renting the Properties pending application and approval of the County Commissioners and Flathead County Environmental Health based upon the Complaint and County's inspection of the Properties. (SR 000035-000036).
26. On July 30, 2019, MDEQ sent G&M Trust a letter for violating Title 76, Chapter 4, of the sanitation restrictions imposed on Tract 1 of Certificate of Survey 13305 by constructing buildings requiring water and sewer service. (SR 000053- 000054, 000057 and 000995; ROA 26, p. 3, ¶12).
27. On October 22, 2019, G&M Trust filed Major Land Use Application FCMU-19-01 ("Application") requesting major change in land use and zoning review by Flathead County pursuant to Canyon Area Land Use Regulatory System. 4/14/19 ("CALURS"). (SR 000467-000485 and 000753-000771).
28. G&M Trust's Application proposed a new "single-family residence, 3 small cabins, shop, lake storage, RV Station, Caboose Guest (2), Fire Tower Guest" on Tract 1. (SR 000467).
29. G&M Trust's Permit Application contained no water or sewer service analysis for the proposed change of use of the Properties. (SR 000467-000485).
30. G&M Trust's proposes to use the structures as "short-term/vacation (less than 30-day) rentals in an area with a high demand for such uses" which, along with the residences, will be made available as "seasonal nightly vacation rentals." (SR 000757 and 000759; Interlake 12/27/19 Article on Lake Five, App.113, p.5, see also, MCLUAC Min. 11/20/2019, (Trans. CC96)).

31. The sole access to the Properties is the Grizzly Spur Road, a private road traveling from Blankenship Road to a dead end along the shoreline of Lake Five. (M. Kopitzke, MCLAUC Trans. SR 000401 [01:04:54 SR 000404; 12/5/19 SR 000516. PB Min. 01/08/2020, SR 000437).
32. The real property upon which the relevant portions of Grizzly Spur Road is located are currently owned by Jack Downes, Burlington Northern Santa Fe Railroad (BNSF), G&M Trust (previously James Sherwood) and the Swanberg Family Trust. (M. Kopitzke, SR 000147, Trail Ex. 50-A, SR 0001128, SR 000437, M. Kopitzke Trial 9/8/2021; MCLAUC Trans. S.R. 000386 [00:43:02]).
33. In late 1997, the owners of real properties upon which Grizzly Spur is located created four easements granting use of the road sections located upon their properties to the other property owners abutting. (PB Mtg. 01/08/2020 SR 000576-000587).
34. Excepting the easement granted by BNSF (SR 000581-000584), each of the 1997-1998 easements among the Grizzly Spur property owners providing access is restricted to the owner's family and their guests, along with a bar for use for commercial purposes. (SR 000576-000588). Starting at Blankenship Road, the first portion of Grizzly Spur Road is subject to an easement agreement between Dian M Cox, a prior owner, and James Sherwood. (SR 000404, 000487-000489).
35. The Cox easement provides that "the easement granted herein is for access solely for residential purposes, and not for commercial purposes or for subdivisions into smaller lots, and may be used only by the members of one family per tract." (SR 000579).
36. The second portion of Grizzly Spur Road, located on property owned by the BNSF, has no similar restriction. (SR 000581).
37. The third portion of Grizzly Spur Road is crossing the Ridenour Trust Property and is subject to easement providing "This easement shall be used solely for access for residential purposes. This easement shall not be used for any commercial purposes and not to serve smaller tracts created by division of the existing tracts of land, except smaller tracts created solely for use or ownership by the children, grandchildren or other descendants of the Grantees or their spouses and children, and the use by guests of the persons named in this paragraph." (SR 000490, 000586).
38. The final portion of Grizzly Spur Road at issue crossing Tracts 1 and 2 easement provides: This easement shall be used solely for access for residential purposes. This easement shall not be used for any commercial purposes and not to serve smaller tracts created by division of the existing tracts of land, except smaller tracts created solely for use or ownership by the children, grandchildren or other descendants of the Grantees or their spouses and children, and the use by guests of the persons named in this paragraph. (SR 000586).

39. Grizzly Spur Road is located in part within Lake Five in the Lakeshore Zone. (SR 000667-000668 [37:56], 001006, 001116, Fig. 4, 001128). Prior to and at the Planning Board Meeting, G&M Trust represented to the County that it was obtaining a new easement and had begun construction of the alternative access. (SR 000424 and 000486).
40. G&M Trust's site plans filed prior to the January 08, 2021, planning meeting locate the new road passing near recognized wetlands. (SR 001128, 000977, 000644, 000653 [61:46:54]).
41. As constructed, G&M Trust's proposed new access to the Planning Department shows it abuts recognized wetlands. (SR 000978-000979).
42. G&M Trust's new road is located on the Ridenour property accessed from Grizzly Spur Road. (SR 000977 (Inset)).
43. The County ordered "[b]ulb-outs shall be placed along Grizzly Spur at approximately 300 foot intervals within the easement and as shown on the site plan dated February 26, 2020." (SR 001125).
44. Coram Fire Department requested construction of an alternate access road or widening of Grizzly Spur Road to a two-lane road. (SR 000005).
45. On November 20, 2019, the Middle Canyon Land Use Advisory Committee (MCLUAC) considered G&M Trust's Major Land Use Permit Application.
46. MCLUAC recommended that Flathead County deny approval of the Major Land Use Permit, FCMU 19-01, citing infrastructure concerns (road, egress, easements, watershed), clustering business communities as defined in CALURS, critical wildlife corridor, unique wetlands along the creek, and Flathead Basin Commission concerns with the septic and historic nature of the area. (SR 000510).
47. On December 23, 2019, the Flathead County Zoning and Planning Staff issued a report recommending approval of G&M Trust's Permit Application to the Flathead County Planning Board. (SR 000802-000803).
48. On January 8, 2020, the Flathead County Planning Board recommended approval of Major Land Use Permit, FCMU 19-01, by Flathead County Commission. (SR 000435).
49. On February 26, 2020, the County Commissioners considered G&M Trust's Permit for approval. (SR 001126).
50. Prior to its "County Commission Meeting," the County Commission held a "public comment" time in which it required all public comments to the commission, whether on or off the agenda, for that meeting be given prior to the Commissioners' Meeting. (SR 001023 [01:16:02]).

51. During the portion of its Commission Meeting, Flathead County reviewed G&M Trusts application, the Commission restricted participation to its Planning Staff, G&M Trust and the G&M Trust's landscape planner. (P. Holmquist SR 001023 [00:21:16], 001046, 001056).
52. During the Commission Meeting, G&M Trust presented an amended site plan to the Commissioners. (SR 001047). The Commissioners and Planning Staff examined the submission which changed the proposed road access for the project. The Commissioners sought additional information from G&M Trust's Representatives. (SR 001044-001047, 001069).
53. The proposed change in access appears to have been to alleviate the various concerns raised in prior meetings. As demonstrated in the record, the proposed access raised additional questions.
54. The changes were not available during public comments. No public comments were allowed regarding the changes offered or amended on the application during the Commission Meeting. (SR 001023-001024).
55. On February 28, 2020, the County Commission issued its written decision on Major Land Use Permit FCMU 19-01 which was subsequently amended on March 4, 2020. (SR 001122-001125).
56. As granted, G&M's Permit allows it to construct new improvements in violation of the "No Facilities" restriction, the road easement restrictions and without regard to the requirements of Lake Five's Lakeshore Protection Zone. The Permit effectively increases the property's existing guest accommodation capacity of 16 persons (1 two-bedroom home for 4 persons and 3 guest cabins for 12 persons) to a capacity in excess of 70 persons (2 three-bedroom homes for 12-18 persons, RV parking pads with 2 homes for 4-6 persons, 10 two-bedroom guest cabins for 40 persons (vacation rentals), an undefined caretaker loft in a barn for 2 persons, and 2 entertainment pavilions of unstated capacity.
57. The permit application's final site map shows all of the docks as "existing." In fact, the docks were constructed and installed without a construction permit during the 3 years preceding G&M's lakeshore and change of use permit applications. Further, prior to G&M's modification, an "L" shaped dock was located in front of the main residence, and a "T" shaped dock/deck was attached to the front of the artist studio cabin, both adjacent to Tract 2. Tract 1 had no docks or platforms.
58. Condition #12 to the County's approval of the Permit required any significant change in activity or alteration of structures outside the approved application to be subject to additional review and approval. However, following issuance of the permit, without any Flathead County review or approval, G&M expanded the occupancy of the original residence on Tract 2, converting it from a house with 2 bedrooms and 1 bath for 4

persons, to a 3-bedroom house with a loft, capable of housing between 14 and 18 persons. Dietz/G&M violated wetland protection regulations in creating a new road and without a permit. Dietz/G&M deviated from the Permit site plan approved by Flathead County in violation of applicable regulations without any adverse action being taken by Flathead County.

59. After purchase, G&M Trust removed, replaced and relocated existing docks and swim platforms for Tract 2. (SR 1158).
60. Prior to purchase, an "L" shaped dock was located in front of the main residence and a "T" shaped dock was attached to the front of the artist studio, both on Tract 2. (SR 000972-000975).
61. Tract 1 did not include any docks or platforms. (SR 000972-000975).
62. G&M Trust constructed a dock and swim deck for Tract 1 along with cutting a path in the land to access the dock and created a fire pump pad within the Lakeshore Zone. (SR 001109).
63. G&M Trust filed no application prior to is construction of improvements within 20 feet of Lake Five's highwater mark. (SR 001166, 001186, 001057, 001052).
64. Flathead County requested G&M Trust apply for an "after the-fact" Lakeshore Zone permit applications which it processed administratively.
65. Flathead County issued after the fact Lakeshore Permits FLP-20-18 and FLP-20-(SR 001158-001160, 001186-001188).
66. Lake Five is a wildlife corridor for grizzly bears, elk, deer and mountain lions as well as serves as wintering grounds. (SR 000209, 000225-000226, 000289-000293 and 000334).
67. The Flathead River drainage, within which Lake Five is located, is one of three primary breeding habits for loons in Montana with local nesting habitat being restricted to lakes in the Middle Fork drainage, including Lake Five.
68. In 2008, the Montana Department of Fish Wildlife and Parks had prepared an Environmental Assessment concerning the development of a proposed fishing access site on Like Five. Regarding water, the Environmental Assessment addressed issues on turbidity, surface runoff, contamination risk and designated floodplain impact. The Environmental Assessment noted that public access sometimes results in increased pollution, noise, vandalism, fire threat, safety hazards, dust, weeds, trespass and theft. The Environmental Assessment further noted that increased motorboat access would increase the threat of water safety hazards.
69. Prior to the County's ultimate approval of G&M's permit, the Montana Department of

Fish, Wildlife and Parks (“FWP”) advised the County that Canadian lynx and grizzly bear habitats would be affected by the proposed change in use and would result in increased human and grizzly encounters.

70. On September 30, 2020, Flathead County and its Commissioners “rescinded” Major Land Use Application FCMU-19-01 (Permit) acknowledging that “use of Grizzly Spur Road is restricted by a recorded easement which provides that the easement granted herein is for access solely for residential purposes, and not for commercial purposes or for subdivision into smaller lots and may be used only by members of one family per tract.”
71. Recognizing the deed restriction is an impediment to its use of its property, after this litigation was filed and after this Court entered a preliminary injunction, G&M on October 21, 2020, recorded an *Easement Agreement* from Downes that describes the allowed use as follows:

Grantee may choose to utilize the Grantee Property for the short-term rental of up to two homes and ten guest cabins. The Easement is expressly not for the purpose of access to high-traffic developments such as: an RV park, clubhouse, resort, lodge, dude ranch, or event venue. Grantor and Grantee mutually intend that this Easement will limit access to the Grantee Property within the limits in its proposed Major Land Use permit, including a maximum of two residential homes and ten guest cabins, with one home and five cabins on each lot.
72. Regardless of the *Downes Easement Agreement*, the easement for access through the Ridenour property maintains the “one family for residential purposes” easement restriction. Moreover, the proposed use of the property is more expansive than that outlined in the *Downes Easement Agreement*.
73. There is no evidence in the record to support the apparent argument of G&M/Dietz that in drafting the earlier easements in 1997 the parties were prescient enough to anticipate how the County would define “residential” use in its revisions in 2019 to CALURS. Any such interpretation is unreasonable, especially in view of the drafters’ choice of the expression “one family” rather than solely relying on the term “residential.”

Based on the foregoing findings of fact, the Court hereby concludes:

CONCLUSIONS OF LAW

1. To the extent relevant to the matters addressed herein, the legal conclusions stated in the Findings of Fact are incorporated herein. Also, to the extent any of the foregoing factual findings are more appropriately considered a conclusion of law, they are incorporated herein.
2. This Court has original jurisdiction and venue is proper as the original Petition was filed within 30 days of a final written decision by Flathead County, the real property, persons

and Lake Five affected by the proposed development and the County's grant of permits are all situated in Flathead County, Montana. *See* Mont. Code Ann. §§2-3-114,3-5-302, 25-2-126, 27-8-201, 75-7-215, 76-2-110 and 76-2-201 -228.

3. The Montana Administrative Procedural Act (MAPA) does not apply. Flathead County is not subject to MAPA under the enactment of zoning, such as CALURS which was enacted pursuant to §76-2-201 through 228, MCA. MAPA excludes political subdivision of the State of Montana from the definition of agency. 2-4-102(2)(b), MCA. (Doc. 70).
4. Flathead County is not subject to MAPA pursuant to Montana Sanitation in Subdivision under §76-4-101 through 135, MCA. If Plaintiffs and Intervenor Taleff has sued the Montana Department of Environmental Quality, which is subject to rule making under MAPA, for the enforcement of their sanitation complaints in this matter, then possibly MAPA could have applied under that matter. Section 76-4-102(5), MCA defines "Department" as Department of Environmental Quality (DEQ). The original Complaint contained MAPA claims which were abandoned in the Amended Complaint. (Doc. 70).
5. The Environmental Health Services Division provides sewage system permits pursuant to the Flathead County Regulations for On-site Sewage Treatment Systems. Amended Stipulated Record 001210-001233. Those Regulations are adopted, regulated and enforced by the Flathead City-County Board of Health which statutorily is separate and distinct from the County Commission. The County Commission does not adopt, regulate or enforce sewage system permits. The Flathead City-County Board of Health is not a named party in this litigation. (Doc. 70).
6. Flathead County has no jurisdiction over the sanitation restriction imposed on Certificate of Survey 13305. The sanitation restriction is governed by Title 76, Chapter 4 of the Montana Code Annotated and is administered by the Montana Department of Environmental Quality. The County did not cite G&M Trust for violating the sanitation restriction on Certificate of Survey 13305 as it has no jurisdiction to do so and the County did not reject G&M Trust's post violation compliance proposals for water and sewer as the County has no jurisdiction to do so. (Doc. 70).
7. The Property was not required to and did not submit an application for subdivision approval consistent with the Montana Subdivision and Platting Act. The Montana Subdivision and Platting Act, Title 76, Chapter 3, does not apply to zoning or the issuance of Major Land Use Permit FCMU 19-01. (Doc. 70).
8. Pursuant to 76-2-227(3), MCA an appeal from zoning matters arising out of 76-2-201, et seq. zoning is a "writ of certiorari" which is an appeal on the record, with 76-2-227(4), MCA granting the district court the authority to take evidence.
9. The regulations applicable to these properties are the CANYON AREA LAND USE REGULATORY SYSTEM (CALURS) adopted December 29, 1994, as amended April

11, 2019, which are regulations are based upon, and carry out, the goals and policies of "The Canyon Plan." §1.1 CALURS.

10. CALURS is primarily a residential zoning system which exempts single family dwellings from regulatory review. §3.1 & 6.2 CALURS.
11. CALURS defines a single family dwelling is "a building set or constructed upon a permanent foundation designed with living quarters for occupancy by one family only, having a minimum structural width of 14 feet, and containing one dwelling unit on a lot" §7.33 CALURS (emphasis added). Single family dwellings are further defined for the Middle Canyon Region which includes Lake Five and Tracts 1 and 2, as "Single family dwellings (1 dwelling per lot/tract of record when consistent with the 'Exemptions' provisions of these Regulations)." §6.2 CALURS, (emphasis added).
12. G&M Trust's proposal of one single family residence per tract plus five guest cabins violates the single family dwelling review exemptions because it exceeds the 1 dwelling per tract/lot restriction.
13. Under CALURS, "[Uses] lawfully existing prior to the adoption of these regulations are considered "non-conforming" or "grandfathered" uses.... this provision allows a nonconforming use to continue in the manner and to the extent that it existed or was being used at the time of adoption of these regulations." §2.8 CALURS, §2.07, Flathead County Zoning Regulations (FCZR).
14. To be grandfathered under zoning requirements, the real property must be identified along with the use being continued. The Trusts application statement of "certain existing uses" fails to identify the use being claimed or location the Properties.
15. The County issued the Permit allowing "grandfathered uses" without identification of the real property, structure and claimed use of the structure to be grandfathered.
16. The Tract 2 main house and original two guest cabins were constructed in the 1930's prior to adoption of the regulations are excluded from single family dwelling restriction of one dwelling per tract/lot.
17. Conversion to, or use of, the Artist Studio on Tract 2 as dwelling is barred by the one dwelling per tract/lot restriction.
18. G&M is barred from adding any new guest cabins, cabooses, barns with lofts or other dwellings to Tract 2 by the one dwelling restriction per tract/lot restriction for single family dwellings.
19. Conversion of the Artist Studio to a residential dwelling is also barred because change in the use or nature of nonconforming structures within the lakeshore zone is prohibited.

§1.4 LLRFC & §2.5 LLRFC (Lake and Lakeshore Regulations of Flathead County Montana.

20. The County approved a change in use of the Properties to a multi-unit resort development offering overnight accommodations for 70 people plus their guests. G&M Trust's change in use of the real property to commercial income production terminated any "grandfathered" use.
21. Simultaneous use of Tract 1 for a single-family residence and five guest cabins is barred because the "single family residence" definition restricts Tract 1 to one dwelling per tract/lot. §6.2.C., §7.33 CALURS.
22. Subject to other applicable restrictions, G&M may have up to 10 guest cabins on its 22 acres because CALURS authorizes one guest cabin per two acres of real property.
23. Overnight vacation rental of a guest cabin is defined as a "residential use."
24. Overnight vacation rental of a guest cabin as a residential use is a different issue from the use of multiple dwelling structures in the same development.
25. As CALURS contains no residential exception provision allowing multiple units on the same tract of land or in the same development, the Canyon Plan and the FCZR provide the applicable use standards. §1.1 CALURS
26. The Canyon Plan categorizes development of future tourist resorts, lodging, in rural areas like Lake Five was a commercial land use which is to be compatible with the area. (SR 000238, 0002480).
27. Flathead County's standard zoning regulations define projects with 5 or more units as a motel. (P.05.140 FCZR).
28. "Development" of property is any construction of a structure use of, or occupancy of a parcel of land which intensifies land use for OTHER THAN agricultural purposes." §7.10 CALURS. 21. Under CALURS, the definition of "commercial use" is "any use of land for transactional disposition of any article, commodity, substance, or service." §7.6 CALURS. Here, the transaction being conducted on the land is leasing of overnight lodging in exchange money. (See, §7.31 CALURS).
29. The Permit issued allows for two (2) single family three-bedroom homes (12 persons) with RV parking pads (4-6 persons) for each home, ten (10) two-bedroom guest cabins (40 persons), and an undefined caretaker barn loft (2 persons), along with two (2) entertainment pavilion of unstated capacity to be located on the Properties.
30. G&M Trust's lodging for approximately 70 guests, boat rentals, pavilions and events is a commercial tourist resort facility.

31. G&M deviated from subdivision conditions filed on the face of COS 13305 without prior approval from a reviewing authority. §76-4-130, (MCA 2019).
32. G&M Trust erected the Fire Tower and Caboose improvements on Tract 1 in violation of COS 13305 restrictions without obtaining a certificate of survey amendment (COSA) for buildings requiring water supply and disposal of sewage. §76-4-125 MCA.
33. Grizzly Spur Road is a private access easement with restrictions barring use of the property for the commercial uses proposed by the G&M Trust which are open to the public rather than limited to family and family member occupancy.
34. The private easement restrictions upon Grizzly Spur Road are controlling. "Whenever the provisions of this [CALURS] regulatory system are at variance with other lawfully adopted rules, regulations, deed restrictions or covenants (e.g., Flathead County Subdivision Regulations, Flathead County Lake & Lakeshore Protection Regulations, ..., private covenants, etc.) the provision setting the greater restriction or higher standard shall apply." CALURS § 1.6.
35. Use of Grizzly Spur Road for purposes other than family and guest is barred by the easements for the Jack Downes, Ridenour Trust and G&M Trust properties. Commercial use is expressly forbidden by the easements.
36. Flathead County was aware of the easement restrictions against commercial development on the proposed access.
37. CALURS requires wetlands analysis of proposed road improvements within 50' of Lake Five and application of environmental standards along with County Road standards. §§ 4.1.E.3 & 4.1.F.15 CALURS.
38. The County failed to identify proper road access and require proper regulatory natural resource protection and road construction standards for an access road within 50' of wetlands.
39. The "bulb-out" construction condition of the Permit on Grizzly Spur Road is within 50' feet of Lake Five. The new road abuts wetlands construction is within 50' of wetlands and Lake Five in violation of natural resource protection regulations. §§ 4.1.E.3 & 4.1.F.15 CALURS.
40. Flathead County conducted no review and set no condition for the proposed road construction's impact on wildlife, habitat, open space or water quality, nor standards of construction. Neither the County nor G&M Trust have addressed remediation of the now abandoned new road construction or its impact on Lake Five Wetlands.
41. Flathead County's grant of the permit was arbitrary, capricious and unlawful in the absence of access meeting and complying with County road construction, natural

recourse protection standards and the existing private access road to the property limiting access to members of a single family owning each of the two lots within the property.

42. Flathead County conducted no review and set no condition for the proposed road construction's impact on wildlife, habitat, open space or water quality, nor standards of construction.
43. Flathead County acted arbitrarily, capriciously and unlawfully because it failed to properly review and set conditions for protection of wildlife, habitat, open space and water quality impacts resulting from the 70 plus guest vacation-resort on Lake Five
44. G&M Trust's Application requests grandfathered "use" status for "certain aspects" of the proposal involving existing "buildings and uses" located on the Properties without identification of the specific improvements or identifying the uses to be grandfathered.
45. Regardless of whether parties and events are tied to rental over overnight vacation lodging, events—i.e. weddings, reunions are commercial in nature, including boat rentals.
46. CALURS required Flathead County to conduct a full and simultaneous review of the change in use application and water and sewer requirements to determine occupancy capacity of the Properties. §3.2 CALURS (2019). Flathead County made no such determination, findings or conditions.
47. CALURS requires determination of maximum occupancy for major change in uses and maximum occupancy is based on determination of sanitary sewer capacity of the property. §4.1.0 & I CALURS.
48. Flathead County made no determination of maximum occupancy for the Properties when it approved the Major Change in Use Permit allowing a twelve-unit resort offering overnight accommodations for 70 plus guests.
49. The County acted arbitrarily and capriciously by approving a major change of use the Properties to house up to 70 people without determining sanitary the sanitary sewer capacity.
50. CALURS restricts guest cabins designs to being "small detached dwelling unit that is rented for temporary occupancy much like a motel unit" with "a log cabin or rustic wood-type appearance that may include kitchen facilities and generally 1 or 2 bedrooms." §7.13 CALURS (4/14/2019).
51. G&M Trust's Caboose and Fire Towers are neither log cabin nor rustic and do not meet design standards.
52. This Court does not have the authority or jurisdiction in this action to declare short-term rentals as commercial. The Montana Supreme Court has consistently held, the Court's

role in statutory construction "is to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted." *Huether v. District Court*, 2000 MT 158, P13, 300 Mont. 212, P13, 4 P.3d 1193, P13 (citing § 1-2-101, MCA). *Kiely Constr. L.L.C. v. City of Red Lodge*, 2002 MT 241, ¶ 75, 312 Mont. 52, 78, 57 P.3d 836, 852.

53. CALURS, as amended on April 11, 2019, defines short-term rentals as: Short-term Rental Housing is defined as a residential use in a dwelling unit designed for such use for periods of time less than 30 days. Short-term Rental Housing may be referred to as vacation rentals or resort dwelling units. CALURS §4.1.12, Amended Stipulated Record 180A. The Court recognizes that short-term rental looks and feels like commercial activity. However, CALURS clearly sets forth that short-term rental use is residential. Therefore, for purposes of zoning, the short-term rental is a residential use.
54. Had G&M Dietz merely converted the existing Tract 2 structure into short-term rentals, this use may have been suitable. However, G&M Trust instead converted the entire use of Tract 1 and 2 into a commercial development that eclipsed mere short-term rentals.
55. G&M Trust removed, remodeled, reconstructed and constructed docks, swim platforms and other improvements without lakeshore construction permit within 20 feet highwater mark of Lake Five's lakeshore protection zone.
56. G&M Trust's docks, platforms and Lakeshore Zone improvements serve multiple dwellings on Properties and not permitted by lakeshore regulations.
57. The County was aware G&M Trust's lake shore zone improvements served multiple residences and dwellings.
58. Construction of improvements serving multiple residences, buildings and rentals require submission to the commission and a hearing. §3.5.A. LLRFC.
59. Flathead County Lakeshore Regulations exclude from administrative review construction of improvements in the Lakeshore Zone serving multiple dwellings.
60. This Court has jurisdiction to hear and decide various issues arising from the Lakeshore Act, including "a complaint and petition of a governing body or an interested person for an order to restore a lake to its previous condition" and "a petition of an interested person for review of a final action of a governing body upon an application for a permit." *Cnty. Ass'n for N. Shore Conservation, Inc. v. Flathead Cty.*, (2019) 396 Mont. 194, 17 202-203, 445 P.3d 1195, 1200, quoting, §75-7-215(1)-(2), MCA.
61. The County violated the Lakeshore Protection Regulations by administratively issuing after-the-fact construction permits approving of construction work occurring within 20 feet of the average high water on Lake Five which the County knew serve multiple residences, buildings.

62. Flathead County arbitrarily, capriciously and unlawfully approved multiple lakeshore construction permits for the same and additional changes in violation of statutory and regulatory requirements. See, Mont. Code Ann. § 75-7-208; §§ 4.1, 4.2 & 4.3 LLRFC.
63. The February 26, 2020, regularly scheduled County Commission Meeting was a public meeting, 2-2-203, MCA, and required the public to have reasonable opportunity for meaningful participation. "The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law." Mont. Const., Art. II § 8 Similarly, "no person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions," Mont. Const., Post Trial Findings of
64. Art. II § 9. The public be allowed a reasonable opportunity for meaningful participation in the process. §2-3-101, et seq., MCA.
65. "The public's right to participate requires more than simply an "uninformed opportunity to speak." *Bryan v. Yellowstone Cnty. Elementary Sch. Dist. No. 2*, 2002 MT 264, 44, 312 Mont. 257, 60 P.3d 381. 56. Reasonable opportunity for participation and comment includes all changes and amendments to the matter under consideration by the government entity.
66. Flathead County violated the public's right to know and meaningful participation in its approval of the G&M Trust Permit. Late acceptance of the documents, lack of opportunity to review the changes and no opportunity to comment on the changes is not meaningful participation in government.
67. FLFI is entitled to recovery of its cost and attorneys' fees incurred while pursuing the objections and enforcement of Montana Constitutional public rights to know and participate and fees of bringing and pursuing this action under Montana law.
68. The County's issuance of the Change in Use Permit and Lakeshore Construction Permits were arbitrary and capricious.
69. FLFI is entitled to attorneys' fees. A person alleging a deprivation of rights who prevails in an action brought in district court to enforce the person's rights under Article II, section 8, of the Montana constitution may be awarded costs and reasonable attorney fees." 2-3-114 (2), MCA, *see also*, *Citizens for Balanced Use v. Mont. Fish*, 2014 MT 214110, 376 Mont. 202, 206, 331 P.3d 844, 846.
70. G&M Trust's additional easement over the Downes property is of no effect because the use provided directly conflicts with the pre-existing restrictive easements of the same easement in the same location. "The general rule is that the owner of the servient tenement may make use of the land in any lawful manner that he or she chooses, provided that such use is not inconsistent with and does not interfere with the use and

right reserved to the dominant tenement or estate." *Mason v. Garrison*, 2000 MT 78, 747, 299 Mont. 142, 156, 998 P.2d 531, 540 (citing *Gabriel v. Wood* (1993), 261 Mont. 170, 176, 862 P.2d 42, 45- 46).

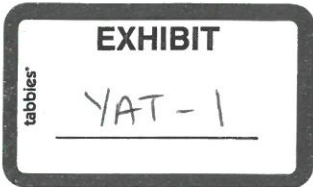
71. The Standard of review for Flathead County Commission's permit decision is, based on the record as a whole, whether the decision is arbitrary, capricious, or unlawful. §76-3-625, MCA. *Englin v. Bd. of County Comm'rs*, 2002 MT 115, 310 Mont. 1, 48 P.3d 39. 63. In light of the above findings of fact and conclusions, Flathead County's decision to issue G&M Trust a major change in use permit lacks substantial support in the Amended Stipulated Record. *MM&I, LLC v. Bd. of County Comm'rs of Gallatin County*, 2010 MT 274, P30, 358 Mont. 420, 427-428, 246 P.3d 1029, 1035.
72. In view of facts in the Amended Stipulated Record under the Canyon Plan, CALURS and FCZR, the County Commission's decision is random, unreasonable, and seemingly unmotivated on the record before it. *MM&I, LLC*, ¶39.
73. Grandfathered rental use of Tract 2 is not supported by substantial credible evidence in the Amended Stipulated Record. Neither G&M Trust nor the County identified the use or the specific property upon the use was to have occurred. The substantial credible evidence viewing the entire amended stipulated record indicates the historical use of the Properties was family and guest as stated in the staff report. (SR 001109).
74. A single reference to an alleged rental receipt not for which no copy appears in the stipulated record not credible. Dr. Dietz' testimony bed tax records were submitted the County lacks credibility because the amended stipulated record contains no reference such records and contains no copies of any State of Montana Bed Tax report.
75. An abuse of discretion is the standard review for a decision of the County Planning Department. *Powell County v. Country Vill., LLC*, 2009 MT 294, P8, 352 Mont. 291, 293, 217 P.3d 508, 510-511. This standard can only be applied to a decision which the department possessed the authority to make. Flathead County Planning had no authority to administratively review lakeshore zone improvements serving multiple dwellings. Accordingly, the decision was made without lawful basis.
76. The Court may award attorneys' fees "under the Montana UDJA when the district court, in its discretion, "deems such an award necessary or proper."" *Citizens for a Better Flathead v. Bd. of Cnty. Comm'rs*, 2016 MT 325, P61, 385 Mont. 505, 528, 386 P.3d 567, 583 (citing *Trs. of Ind. Univ. v. Buxbaum*, 2003 MT 97, 42, 46, 315 Mont. 210, 69 P.3d 663. 68). As Certificate of Survey 13305 clearly barred construction of buildings requiring water and sewer on Tract 1 prior to the start of construction, and Grizzly Road easements restricted use of both Tracts 1 and 2 to family and guests only, a permanent injunction against use of the Properties for commercial purposes is appropriate, along with an award of attorneys' fees to FLFI.

ORDER

Based on the foregoing findings of fact and conclusions of law, the Court hereby orders as follows:

1. The Major Change in Use Permit to G&M Trust is void;
2. All construction on the Property, in or out of the lakeshore zone, shall cease immediately. G&M Trust shall restore the Property to its previous unaltered condition, and, to that end, shall remove from: Tract 1 the caboose; the fire tower, and the swim docks and restore the lakeshore by removal of the "fire hydrant pad" and restoration of the walking trail; and Tract 2 the improvements shall be restored to their condition at purchase by the G&M Trust, other than repair work that does not require a permit.
3. The Court hereby grants a permanent injunction preventing construction or expansion of use or conversion of the Property to commercial uses, including but not limited to, overnight vacation resort accommodations, absent G&M Trust or its successors obtaining legal access and compliance with all State and local regulation, including CALURS, Flathead County Lakeshore Regulations, and Flathead County Zoning regulations.
4. FLFI is granted its attorney's fees, expenses and costs incurred in defending its right of participation.
5. FLFI counsel shall file an affidavit of fees and costs within 14 calendar days of the date of this order. Flathead County and G&M Trust shall respond within 14 days calendar days of service. FLFI may reply within 10 calendar days, where upon the Court will issue its decision.

DATED AND ELECTRONICALLY SIGNED AS NOTED BELOW.



BEFORE THE FLATHEAD CONSERVATION DISTRICT
BOARD OF SUPERVISORS

IN THE MATTER OF THE DECLARATORY)
RULING BY THE FLATHEAD) VERIFICATION
CONSERVATION DISTRICT) STATEMENT
RE: MCDONALD CREEK (AMBLER))

I, Richard E. YATES, being duly sworn, deposes and says that the attached data and/or information is true and to the best of my knowledge.

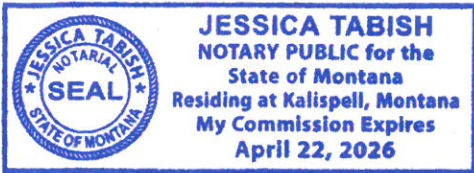
Richard E. Yates
Signature

Subscribed and sworn to me this 20 day of June, 2023.

[Signature]

Print Name:
NOTARY PUBLIC for the State of Montana
Residing at Kalispell, Montana
My Commission Expires 04/22/2026

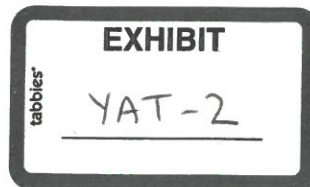
NOTARY SEAL



RECEIVED

JUN 20 2023

Flathead CD



June 17, 2023

To: Hearing Officer, Flathead Conservation District, 133 Interstate Lane, Kalispell, MT 59901

From: Rick Yates, 660 Armory Road, Whitefish, MT 59937

Subject: Illegal construction of Ambler structure on Lower McDonald Creek

These comments are submitted for the record of the Declaratory Hearing on the Lower McDonald Creek Ambler Violation scheduled for August 25, 2023. This, in addition to original complaint, exhibit FCD-11.

For the past 40 years or so, I have recreated and worked in the Apgar area of Glacier National Park during all seasons and in times of high and low water flow in McDonald Creek. During the 1980s, when Bald Eagles gathered at Lower McDonald Creek in autumn, I often performed daily counts of eagles perched on the trees lining the creek above and below Apgar Bridge for the park service. For weekly eagle counts, I floated the entirety of the creek many times. Kokanee Salmon spawned in the pristine gravels of the creek and eagles captured dying salmon all along those clear waters from Lake McDonald to Quarter Circle Bridge. The era of Kokanee spawning in Lower McDonald Creek may be a bygone event, but who is to say that conditions will not change and Kokanee will never return? One thing is certain, degradation of the streambank, streamside vegetation, and water quality will help prevent the likelihood of any such natural phenomenon occurring in the future. And isn't the future the reason why we have a 310 Law and a Flathead Conservation District? We will not likely lose our exceptional water quality in the Flathead System all at once. We will lose it in increments. This Ambler abomination constitutes a huge incremental loss to one of our natural stream channels in the Flathead River system and in Glacier National Park.

The attached photos were taken January 28, 2023 by myself from Grist Road (Photo A) and Apgar Bridge (Photo B) in Glacier National Park. The Ambler structure is an obvious eyesore that now dominates the natural views of Lower McDonald Creek from these public use areas. The Ambler's obvious excavation into the natural streambank is a spike into the very heart of both water quality and Montana Streambed Law.

Thank you for the opportunity to provide comments as a concerned citizen and water user.

Rick Yates

A handwritten signature in black ink that reads "Rick Yates". The signature is written in a cursive style with a long, sweeping underline.

RECEIVED

JUN 20 2023

Flathead CD

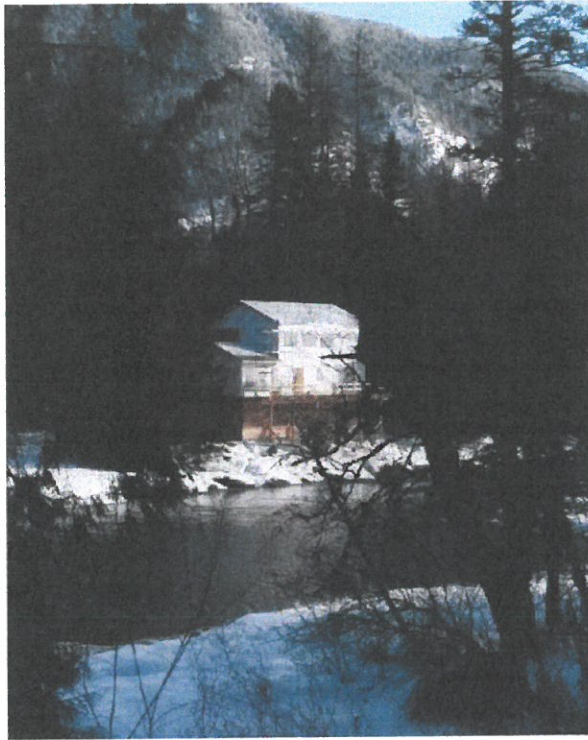
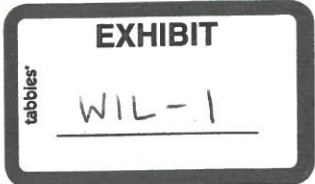


Photo A



Photo B



BEFORE THE FLATHEAD CONSERVATION DISTRICT BOARD OF SUPERVISORS

IN THE MATTER OF THE DECLARATORY)
RULING BY THE FLATHEAD) VERIFICATION
CONSERVATION DISTRICT) STATEMENT
RE: MCDONALD CREEK (AMBLER))

I, Rebecca Williams, being duly sworn, deposes and says that the attached data and/or information is true and to the best of my knowledge.

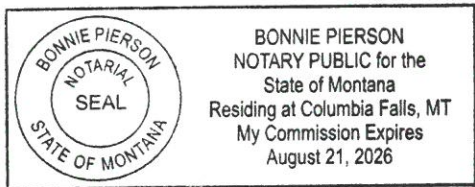
Signature: Rebecca Williams

As a National Park Service Ranger Naturalist/Interpreter in Glacier National Park for 41 years, I spent 30 years stationed at Apgar, much of that time conducting activities along Lower McDonald Creek or volunteering for five years with a bald eagle research project centered on the creek banks. During the summer the interpretive staff conducted daily walks along the creek for the general public; in spring, fall and winter McDonald Creek was, and still is, the setting for school field trips. Over the decades, many thousands of students from the Flathead Valley and beyond have learned about stream, forest and fire ecology and benefited from their experiences beside the creek. Many of those same students have returned frequently with friends and family to expand on their personal connections to the stream. All park visitors and human and wildlife residents, and McDonald Creek itself, deserve to be protected from those who, instead of developing a sense of place, have instead adopted a super-sized sense of entitlement, to build a "house of hubris" directly on the streambank. Remove the house, restore the streambank.

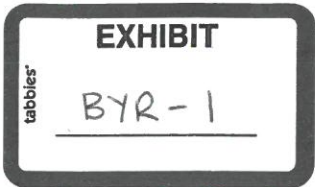
Subscribed and sworn to me this 20th day of June, 2023.

Bonnie Pierson
Print Name:
NOTARY PUBLIC for the State of Montana
Residing at Columbia Falls, Montana
My Commission Expires 08/21/2026

NOTARY SEAL



RECEIVED
JUN 20 2023
Flathead CD



BEFORE THE FLATHEAD CONSERVATION DISTRICT BOARD OF SUPERVISORS

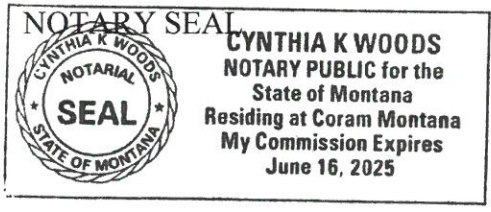
IN THE MATTER OF THE DECLARATORY)
RULING BY THE FLATHEAD) VERIFICATION
CONSERVATION DISTRICT) STATEMENT
RE: MCDONALD CREEK (AMBLER))

I, Gerard Byrd, being duly sworn, deposes and says that the attached data and/or information is true and to the best of my knowledge.

Signature [Handwritten Signature]

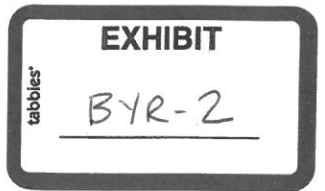
Subscribed and sworn to me this 19 day of June, 2023.

Cynthia K Woods
Print Name: CYNTHIA K. WOODS
NOTARY PUBLIC for the State of Montana
Residing at Coram, Montana
My Commission Expires June 16, 2025



RECEIVED
JUN 29 2023
Flathead CD

June 19, 2023



From: Gerard Byrd
PO Box 260124
Martin City, MT 59926

To: Hearing Officer Laurie Zeller
Flathead Conservation Office
133 Interstate Lane
Kalispell, MT 59901

Re: Statement for Public Comment for the Declaratory Ruling on Lower McDonald Creek Amber violation per the Adopted Rules for the Flathead Conservation District to Implement the Natural Streambed and Land Preservation Act (MCA Title 75, Chap 7)

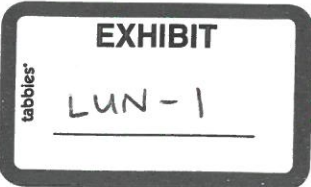
I am submitting this comment for the record ~~for~~ the Declaratory Hearing Aug. 25, 23.

I grew up in Martin City MT and have lived here my whole life. Much of my childhood was spent enjoying Glacier National Park, particularly along Lower McDonald Creek. I raised my children to appreciate and respect the same area with countless float trips between its banks. And they have continued the tradition with their children. It is so sad for all of us to see the condo-type building on the banks of this beautiful stream.

I respectfully request you use your jurisdiction to enforce the Natural Streambed and Land Preservation Act. While one can appreciate the impact of removing the building on the owner, one MUST consider the larger impact on the greater whole: erosion of the stream bed, impact on fish and other stream life, impact on birds, particularly eagles & other wildlife, potential pollution from sewer, and the detrimental visual impact on this pristine stream.

Thank-you for considering the impact on this pristine ecosystem as well as the countless people who have enjoyed it and the future generations who will.

A handwritten signature in cursive script, appearing to read "Gerard Byrd".



BEFORE THE FLATHEAD CONSERVATION DISTRICT BOARD OF SUPERVISORS

IN THE MATTER OF THE DECLARATORY)
RULING BY THE FLATHEAD) VERIFICATION
CONSERVATION DISTRICT) STATEMENT
RE: MCDONALD CREEK (AMBLER))

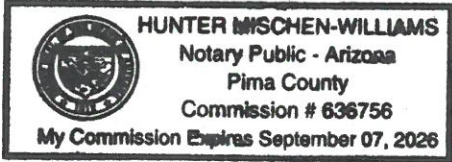
I, Grace Helen Lundgren, being duly sworn, deposes and says that the attached data and/or information is true and to the best of my knowledge.

Grace Helen Lundgren
Signature

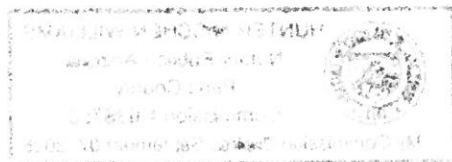
Subscribed and sworn to me this 13th day of July, 2023.

NOTARY SEAL

Hunter Mischen-Williams
Print Name: Hunter Mischen-Williams
NOTARY PUBLIC for the State of Arizona
Residing at Tucson, Arizona
My Commission Expires Sep 7th, 2026



RECEIVED
JUL 19 2023
Flathead CD



RECEIVED

JUL 19 2023

Flathead CD

EXHIBIT

tabbles

LUN-2

July 13 2023

To: Hearing officer Laurie Zeller, Flathead Conservation District Office Kalispell MT

From: Grace Helen Lundgren

Dear Hearing Officer Zeller:

I am writing to submit this comment for your record prior to the August 25 2023 Declaratory Hearing concerning the Lower McDonald Creek Ambler 310 Violation.

I am a Whitefish born, Belton/West Glacier raised daughter of one of the 4 original West Glacier Mercantile (1946) partners. In high school I was employed as secretary to the Mercantile bookkeeper partner which involved work in both West Glacier and Apgar. In addition to having the honor of serving international tourists, the Park Headquarters employees and many of the original in-holders from both the since recognized Kelly Camp Historic District and Apgar Historic District of Lake McDonald were among our honored customers. The names that come to mind include the Wheelers, the Hoags, the Walshes, the Grubers, and so many more.

The Flood of 1964 was well documented by Mel Ruder in his award -winning special edition of the Hungry Horse News. His photographs tell the story. Monica Jungster of the Montana House has now submitted her comments to the FCD based on her important memories of that time in Apgar and along McDonald Creek.

(I would be amiss if I left unsaid that the greatest impact with tragic consequences were experienced by the people of the Blackfeet Reservation. Their story is not forgotten.)

During that event, the Middle Fork of the Flathead River claimed the home of the Dan Lundgren Jr. family, the home of the Dan Lundgren Sr. family, and flooded out the West Glacier river cabins. In Apgar, as was noted by Ms. Jungster, Lower McDonald Creek reversed flow for a time, eventually claiming one of our Apgar Village cabins on the same side of the streambed very close to the current violation. Our 5th-6th grade teacher Myrtice Powell's house on the Creek was left hanging over the creekbed. The West Glacier bridge buckled under the weight of the high water and massive debris; the old Belton Bridge was left with only its remaining arch but became for a time the default entrance to GNP. The power of the natural flow of water and what happens quickly to streambeds and riverbeds was never more evident than during that time. It cannot be overstated. To do so would be cavalier, especially when the issue at hands sits on a riparian wetland bank.

In 1986 the Secretary of the Interior Donald Paul Hodel recognized the four West Glacier Mercantile partners with a Citation for Public Service entitled **"In recognition of their superior public service to Glacier National Park and their commitment to those ideals represented by the Park."** The award says in part "Having the flexibility to develop and work their lands as private landholders, they nevertheless chose to become strong advocates of Park values and chose not to move toward the eclectic concepts often found in gateway communities to our

national parks.....for their tremendous support to the mission and conservation of Glacier National Park, David Thompson, and Conrad, Everett and Daniel Lundgren are granted the Public Service Award of the Department of the Interior.”

The period of service was 1946 to 1986....4 decades. And now, 4 decades later, here we are.

I will submit a copy of the entire Citation to the FCD for the record. Thank you for its inclusion. It is submitted not to bring attention to my family but to recognize that the National Park Service and the Department of the Interior found a shared value in the contributions and partnership of these Flathead County citizens.

Because the purpose of the August 25 meeting is to address jurisdiction, and the Ambler's attorney had noted a lack of comments that have addressed the NSLPA, the subject is now well addressed in the July comment period from Stephen Frye.

A few other irregularities come to mind. The 310 that has now been submitted is obviously many months post-build. In the body of the application, there is no contractor listed. The projected use is 'home' which is very different from short-term rental, especially if the host is not local. The language varies between present language and future language (“Current Condition - consists of a partially constructed home”) (Brief Description - The “home will be constructed.”) The consultation from Confluence dated June 9 2023 stated “did not excavate or disturb the streambed or banks.” The FCD onsite inspection dated 2-17-23 stated “poured a significant concrete retaining wall into the creekbed.” and March 16 2023 “the streambed was excavated to create a pad for construction.” Four months separate these statements.

It brings up many questions, one of which isif a construction is not threatened by a flowing stream, why then is a retaining wall necessary?

Please note the photograph submitted by Mary T. McClelland dated Nov 1 2022 #2, taken prior to both previous statements. In this image, there is what appears to be clear streambed involvement and perhaps debris incursion into the Creek. An expert examination of this photo would be valuable.

The Montana Code Annotated (MCA) Title 75/Chapter 7 Part 1, the NSLPA law, requires of any individual **proposing work** in or near a perennial stream to apply for a 310 permit through their conservation district. The **Flathead Conservation District administers the 310 law within Flathead County** outside of the 1946 Kalispell City limits. Nowhere does it say ‘except for Glacier National Park’.

I agree that the Flathead Conservation District had and still has jurisdiction over this matter. I also agree the District got it right the first time on March 13 2023 – that a 310 violation occurred and the appropriate remediation was rendered. To decide otherwise would set a precedent that would not only be dangerous to McDonald Creek but to the values and history of Glacier National Park itself.

With respect

Grace Helen Lundgren 1288 S Via Estrella Blanca Tucson AZ 85713

Grace Helen Lundgren



THE SECRETARY OF THE INTERIOR
WASHINGTON

CITATION
FOR PUBLIC SERVICE

DAVID THOMPSON, CONRAD LUNDGREN, EVERETT LUNDGREN, DANIEL LUNDGREN

In recognition of their superior public service to Glacier National Park and their commitment to those ideals represented by the Park.

Mr. Thompson and the Lundgrens, having recognized the business opportunities available in assisting visitors to Glacier National Park, and having acquired interests in land on the western edge of the Going-to-the-Sun Road serving Glacier National Park, began development of a visitor services complex in 1946. Recognizing the inherent values of the architectural themes already present in the Park and along the Great Northern Railway, these partners established design standards and architectural themes for the village of West Glacier which not only were strongly supportive of Park themes, but reminiscent of the historic values contained therein. Having the flexibility to develop and work their lands as private landholders, they nevertheless chose to become strong advocates of Park values and chose not to move toward the eclectic concepts often found in gateway communities to our national parks. Not only were they able to successfully implement such a concept in 1946, but they have, for over 41 years, been able to maintain and to further enhance those values. Given the many opportunities present over that span of years, the partners have consistently sheltered the west entrance to Glacier National Park and have remained steadfast in their belief that the aesthetically pleasing village of West Glacier is of far greater value to them as individuals rather than the additional funds which might have come through different forms of development. Setting the stage in this fashion for virtually all visitors to Glacier National Park has been of consistent benefit and value to the operation and to the enhancement of our communication with the visitors. This strong support is now being continued by the families of the partners involved and, given the values represented by these families, can be expected to continue in the future. For their tremendous support to the mission and conservation of Glacier National Park, David Thompson, and Conrad, Everett, and Daniel Lundgren are granted the Public Service Award of the Department of the Interior.

Ronald Paul Hodel
Secretary of the Interior

EXHIBIT
tabbies
MCC-3

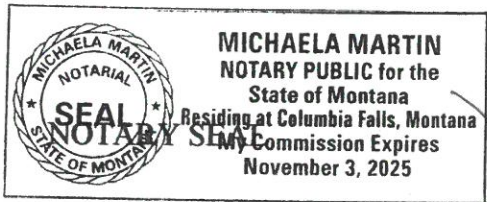
BEFORE THE FLATHEAD CONSERVATION DISTRICT
BOARD OF SUPERVISORS

IN THE MATTER OF THE DECLARATORY)
RULING BY THE FLATHEAD) VERIFICATION
CONSERVATION DISTRICT) STATEMENT
RE: MCDONALD CREEK (AMBLER))

I, Mary T. McClelland, being duly sworn, deposes and says that the attached data and/or information is true and to the best of my knowledge

Mary T. McClelland
Signature

Subscribed and sworn to me this 20 day of July, 2023.



Michaela Martin / Michaela Martin
Print Name:
NOTARY PUBLIC for the State of Montana
Residing at _____, Montana
My Commission Expires _____

RECEIVED
JUL 20 2023
Flathead CD



RECEIVED

JUL 20 2023

Flathead CD

From: Mary T. McClelland, 500 Sloan Lane, West Glacier, MT 59936
marytreemcclelland@gmail.com (815) 482-7404

July 20, 2023

To: Hearing Officer Laurie Zeller, Flathead Conservation District Office, 133 Interstate Lane, Kalispell, MT, 59901

Re: Rebuttal comment for the Declaratory Ruling on Lower McDonald Creek Ambler Violation per the Adopted Rules for the Flathead Conservation District to Implement the *Natural Streambed and Land Preservation Act* (MCA Title 75, Chapter 7)

Thank you for the opportunity to submit this comment for the record of the Declaratory Hearing scheduled for August 25, 2023.

In [Exhibit PET – 4] for the first couple of pages, the attorney representing Amblers (Owners) is not contesting the egregious assault on McDonald Creek, instead, their defense is to question the Conservation District jurisdiction to protect the creek, and that Owners have somehow been given a free pass to do what they want.

To say that Flathead Conservation District (FCD) has no jurisdiction, is to say that Owners are in a category all their own, where no agency or entity has jurisdiction over what they have done? (See [Exhibit MCC – 2, #5]. The 310 law in Montana states, “Any private, nongovernmental individual or entity that proposes to work in or near a stream on public or private land.” must apply for a 310 before any actions are taken. [see more explanations about why this is necessary can be found on the FCD website – and projects may require any one of a dozen other permits depending on IF THE PROJECT is approved.]

If Owners had permission and correspondence with the park informing them of their ‘plan’, it is not documented and has never been confirmed. Had they done that, the park would certainly have required an Army Corps of Engineers review and an Environmental Assessment as is required for all work in, around or over open water, lakes, rivers, creeks within the park. Saying the FCD doesn’t have jurisdiction is not a get out of jail free card.

Despite Owners’ attorney representing that “the Park allowed the Owners to construct their residence and hook it up to the Apgar sewer and water system.” [Exhibit PET – 4] paragraph 9, I would like to point out that **the Park did not permit or approve the structure that has been built**. The Owners have produced no evidence to support this claim. Moreover, the **ONLY** thing the Park has done is to allow hook up to water and sewer. That did not grant them a license to build whatever they wanted without regard or respect for the integrity of the creek and creek bank – no matter where the creek is.

Had the Owners consulted with the park they would have been told – according to the General Management Plan (GMP) -that the park's policy is to preserve the natural and undeveloped character of its streams and waterways, as well as to protect their ecological integrity. As such, construction of structures in or near park streams is discouraged.

The GMP states that the park will only permit the construction of structures in or near park streams if they are "essential for visitor use and enjoyment or for the protection of park resources." Additionally, any construction must be designed and located to minimize impacts on the park's natural and cultural resources. None of this took place on the schedule of construction.

The GMP also states that any construction that involves the alteration of a stream bank or channel must be designed to minimize erosion, sedimentation, and other impacts on the stream and its ecosystem. Additionally, the GMP requires that all construction projects must be consistent with the park's water quality and fish and wildlife protection plans and follow proper permitting with other agencies.

Because of the hurried way this construction took place and at this time of year, the Owners did not discuss any of these finer points with any of the agencies, obviously, including the park.

The County has similar goals in the County Growth Policy Chapter 8 – which includes unzoned areas. Goal 35 is to "Protect and preserve water resources within the Flathead watershed for the benefit of current residents and future generations."

The Owners' attorney writes in [Exhibit PET – 4] paragraph 11, complaining that the complaints filed did not address the elements of NSLPA. The complainants are not attorneys – they are regular citizens who know the value of this creek and the nature of the violation. Complainants turned to the agency with jurisdiction [Mont. Code Ann. § 75-7-125 of the Natural Streambed and Land Preservation Act and Flathead Conservation District (FCD) Adopted Rules] to follow the law.

Also in [Exhibit PET – 4] paragraph 11, is reference to no complainant talking specifically about "the project's effects on soil erosion and sedimentation; alternative solutions that are reasonably practical that would reduce the disturbance to the stream and its environment and better accomplish the purpose of the project; whether the proposed project will create harmful flooding or erosion problems upstream or downstream; the effects on stream channel alteration; the effects on streamflow, turbidity, and water quality caused by materials used or by removal of ground cover; and the effect on fish and aquatic habitat." This is rather ironic, that the Owners and construction company carried on without ANY evidence of effort to establish a baseline for any of these stream features, and are now accusing the complainants for not including that detail.

[Exhibit PET – 4] paragraph 12, continues, that determinations made at the time of FCD inspection were unfair because it was winter. It didn't take a genius to see what had been done, even with snow on the ground, even without the data and hydrological tests. The paragraph goes on to say it was improper to not allow for technical review after the fact to support an unsubmitted 310 permit. This claim that there wasn't enough time to complete tests is disingenuous. According to the FCD 310 Permit Description, "the process of submitting a 310 application (which includes the application itself, drawings, photos, description of the project) could be completed in 14 days" in advance of a project. None of this was done.

The Owners have had approximately 178 days from notification of the first complaint filed with FCD, to provide the data they think will somehow prove they didn't disturb the creek or creek

bank. They have had approximately 1,529 days since they purchased the property to research regulations. How is that not “adequate time to gather, analyze and present relevant information and scientific data”?

They didn't do it then, and they only did it now because they were caught proceeding without proper preparation and consideration of the site. They had four years to research and inquire and learn about the creek they claim to respect. But instead, they chose the route to maximize personal gain at the expense of the creek and the park natural resources it holds. No amount of testing will be able to justify the offense.

[Exhibit PET – 4] paragraph 12 cries foul that the 310 permit the FCD was requesting to remove the structure was based only on the complaints and FCD team report. I'd like to point out that had the Owners presented a 310 application to the FCD in advance of their project, there would have been ample time to attempt to influence their application and modify building plans, collect data, whatever, and take advantage of the advice of experts and professionals and the experienced supervisors on the FCD. The advantage would have saved them a lot of time and money – to have designed a structure with consideration of the very important creek. This is what the Conservation District is for – to help landowners conduct their projects without damaging the natural resource they are altering.

Owners told the county they were “building a small cabin”. (See attachment, page 1, email from Stacey Ambler (Owner) to the county planning and zoning office on May 13th, 2019.)

And yet, this structure used every possible inch of the property, has 3 stories and 3 decks sitting in the bank of McDonald Creek – hardly a “small cabin”.

A small cabin with a properly conducted plan and consideration of its location, would not have created this mess or the temptation to attempt a post hoc ergo propter hoc 310 permit to rationalize a structure that has been built in violation.

At the 310 Meeting on March 13th, 2023 [Exhibit FCD-84], there was considerable discussion among the FCD board members about the ‘outrageous’ aspects of this agenda item (it had no ID number because no permit had been applied for). The board gave the owners the broadest allowance of considerations, especially with no application in front of them, only official complaints filed with descriptions of what had occurred. One of the considerations that would not ordinarily have been granted was the Owners’ attorney who asked for more time. That the Owners had “retained a highly experienced engineer” that could conduct “significant analysis and hydraulic modeling that could determine the potential impacts of this structure on stream function”. **This request of course, neglects the fact of having already built a structure in a grossly excavated streambank within a National Park that has far more value and component parts than the ‘stream function’.** Nobody but the owners had responsibility to investigate IN ADVANCE of applying for a permit, the things they claim haven't been provided [Exhibit FCD 84- p4]. In the first paragraph where Owners’ attorney says, “no one has produced the data necessary for them to conclude or make decisions with respect to their agreement with the district’s findings of jurisdiction,” no one but the Owners had that responsibility. The fact that there is “little existing data in terms of stream flow, location of mean highwater mark, no floodplain map for that area to designate 100-year floodplain elevation” ---all of this is

immaterial. And yet, the Owners are being afforded a declaratory hearing on a permit they never applied for, on an illegally excavated streambank.

The Owners' attorney seems to be defending their deliberate violation as a strategy because they somehow planned they wouldn't have to follow the law like everyone else. It is convenient regulatory maneuvering to try and circumvent and avoid having to pay the price of careless, incomplete homework in advance of their project. Owners do not get a special privilege to do this while everyone else building along waters in Montana **and** their home state of California are held to standards that preserve the integrity of the land and water.

In honor of career conservationist Gordon Ash, a highly respected professional and longtime FCD serving board member who worked hard until his last days--- I would like to point out something he said when Owners' attorney asked for more time to conduct these special hydrological tests [Exhibit FCD-84]. He said, "yes, it was a violation, and that additional analysis would definitely be appreciated, but it would be directed towards the 310-permit application that would be necessary to remove the structure as identified." In other words, the owners do not get special privilege to build what they want without any review and advice from knowledgeable and respected experts in the field and then expect to hire a professional to rationalize a building that would not have been approved no matter what the hydrologist report said, before or after structure had been ^{built} ~~built~~ - because the build is a straightforward violation of the *Natural Streambed and Land Preservation Act*.

May 2019 correspondence between S.Ambler (owner) & L.Mooney (FC planning technician) 1
acquired by FOIA regarding the 74 McDonald Creek Lane, Apgar property (McClelland
attachment July 20th public rebuttal comment)

The emails below are the result of a Freedom of Information inquiry at the Flathead County Planning Office. This short sequence is the only thing on record between any County representative and the Amblers, between May 2019 and the present.

From: Stacy Ambler <stacyinsd@gmail.com>
Sent: Monday, May 13, 2019 11:45 AM
To: Planning.Zoning <Planning.Zoning@flathead.mt.gov>
Subject: Setbacks

Hi there,

My husband and I opened escrow on a small piece of property in West Glacier and are wondering what the setbacks are for building a small cabin. If I email you the plat map (no address available) would you be able to help with this?

Regards,
Stacy Ambler
619-917-8801

From: Laura Mooney
Sent time: 05/13/2019 12:00:20 PM
To: 'stacyinsd@gmail.com' <stacyinsd@gmail.com>
Subject: RE: Setbacks

Hi Stacy,

Yes, I will do my best to help out if you are able to send me a plat map so I can try to identify the parcel in question.

Thank you!

Laura Mooney

Planning Technician
Flathead County Planning & Zoning
40 11th Street West, Suite 220
Kalispell, MT 59901
406.751.8200

From: Stacy Ambler <stacyinsd@gmail.com>
Sent: Monday, May 13, 2019 12:39 PM
To: Laura Mooney <lmooney@flathead.mt.gov>
Subject: Re: Setbacks

Thank you for the quick reply! It's the highlighted triangle piece located in Apgar.

<image001.png>

May 2019 correspondence between S.Ambler (owner) & L.Mooney (FC planning technician) 2
acquired by FOIA regarding the 74 McDonald Creek Lane, Apgar property (McClelland
attachment July 20th public rebuttal comment)

On May 13, 2019, at 12:43 PM, Laura Mooney <lmooney@flathead.mt.gov> wrote:
Thanks Stacy! After looking at the plat map you sent me, turns out I will need a little more
information. I can search a property in a few ways: by current owners name, address, subdivision,
assessor number or try and find it by the nearest road. Are you able to provide me with any
information so that I can search by one of those ways? A lot of times on a plat map, there is an
assessor number listed. It's usually about seven numbers. If not, any additional information could
help.

Thanks again!

Laura

On Mon, May 13, 2019 at 12:57 PM <stacyinsd@gmail.com> wrote:
Sellers name is Betty Schultz. Let me see what else I can find
Sent from my iPhone

From: Stacy Ambler <stacyinsd@gmail.com>
Sent: Monday, May 13, 2019 2:07 PM
To: Laura Mooney <lmooney@flathead.mt.gov>
Subject: Re: Setbacks

On Mon, May 13, 2019 at 1:19 PM Laura Mooney <lmooney@flathead.mt.gov> wrote:
Perfect! I was able to find that parcel. The tract of land that we're speaking about (2EBCA -
Apgar) is an un-zoned property within Flathead County. That means that we do not regulate the use
of the land (or any un-zoned property). Essentially, you can do what you want with the land
without restriction. There are no setback or height requirements, no minimum lot size, etc. The
county does not have a building department either, so no permits would be needed there. One other
agency you may want to check with before purchasing the land, is Environmental Health. They will
let you know what types/size of dwellings that septic/water would be supported there. If you
haven't contacted them yet, here is there number: 406-751-8130. Please let me know if you have any
more questions!

Thank you,

Laura

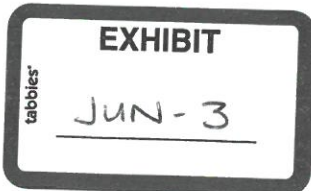
From: Stacy Ambler <stacyinsd@gmail.com>
Sent: Monday, May 13, 2019 2:23 PM
To: Laura Mooney <lmooney@flathead.mt.gov>
Subject: Re: Setbacks

Well this is wonderful news! Thank you so much for the additional information. I will check with
them.

May 2019 correspondence between S.Ambler (owner) & L.Mooney (FC planning technician) 3
acquired by FOIA regarding the 74 McDonald Creek Lane, Apgar property (McClelland
attachment July 20th public rebuttal comment)

From: Laura Mooney
Sent time: 05/13/2019 02:28:44 PM
To: 'Stacy Ambler' <stacyinsd@gmail.com>
Subject: RE: Setbacks
Attachments: image001.png

You're welcome! They may need additional information as I did to find this parcel. Since there isn't an address, they might be able to pull it up quickly with this assessor number: 0378700.



BEFORE THE FLATHEAD CONSERVATION DISTRICT BOARD OF SUPERVISORS

IN THE MATTER OF THE DECLARATORY)
RULING BY THE FLATHEAD) VERIFICATION
CONSERVATION DISTRICT) STATEMENT
RE: MCDONALD CREEK (AMBLER))

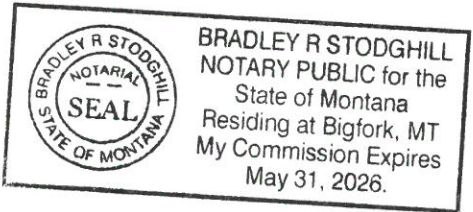
I, Monica S. Jungster being duly sworn, deposes and says that the attached data and/or information is true and to the best of my knowledge.

Monica S. Jungster
Signature

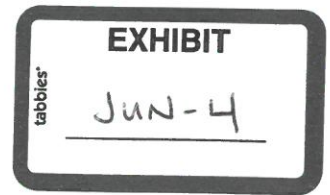
Subscribed and sworn to me this 20 day of July, 2023.

Bradley R Stodghill
Print Name: BRADLEY R STODGHILL
NOTARY PUBLIC for the State of Montana
Residing at Bigfork, Montana
My Commission Expires May 31, 2026

NOTARY SEAL



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Flathead CD



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JUL 20 2023
Flathead CD

Monica Jungster
PO Box 50
West Glacier, Mt. 59936
Montana House Gift Shop – Owner
198 Apgar Loop Rd. Apgar
Glacier National Park Est 1960

Re: Statement for Rebuttal Comment period July 6th – 20th for the Declaratory Ruling on Lower McDonald Creek Violation per the adopted Rules for the Flathead Conservation District to implement the *Natural Streambed and Land Preservation Act* (MCA Title 75, Chapter 7)

A brief history: The area that includes Apgar inside Glacier National Park has a long and interesting history with changing ownership, jurisdiction, and agreements. It was the Territory of Montana in 1864, a Forest Reserve in 1897, The State of Montana in 1889 and Glacier National Park on May 11, 1910. Legislative History of Establishment says that the start to create GNP was in 1907, approved in Congress and sent to President Taft who signed on May 11, 1910. (**Exhibit MJ 1-1-23** Through the Years in GNP, An Administrative History, Chapter II, pages 3,4 (emphasis added MJ))

Apgar: “The first buildings here were homesteads, but by 1892 settlers Milo Apgar and Charlie Howe were offering rental cabins, meals, pack horses, guided tours and boat trips for visitors who arrived in Belton the Great Northern Railway.”

“There was no bridge across the Middle Fork until 1897. Guests rowed across the river. About 1895 a rugged dirt road connected the river to the foot of Lake McDonald.”

“Settlement in the surrounding area predates the park’s establishment in 1910. It was quickly patented and much of it is still privately owned today.” (**Exhibit MJ 1-2-23**, www.nps.gov/glac/learn/education/west_side_history.htm (emphasis added MJ))

The Commercial Abstract Title Co document A – 5966-3 is a window into the history of land ownership and jurisdiction in the Apgar area. There were homestead settlers like Milo Apgar and Charlie Howe who became private landowners prior to when Glacier National Park was created in 1910. While the names have changed over the years, much of Apgar is still privately owned. In over 100 years there have been changes in how people view their world that require attempting to understand what they thought and needed. Pages in the Commercial Abstract Title Co document describe “easements for wagons”, “next to the barn” and “water rights for mining” which would have been “water rights registered with the State of Montana”. (**Exhibit MJ 1-3-23** pages A, B, C, 1,2 dated 1908 and filed in 1908, & 1914 Commercial Abstract & Title Co. Kalispell, Mt No A-5996-3 emphasis added MJ)

My rebuttal is submitted for the record of the Hearing for Declaratory Ruling scheduled for August 25, 2023.

1. “The FCD should dismiss this matter because it has no jurisdiction over the Ambler property.” (Exhibit PET – 4, page 1 second paragraph)

According to the document that defines Glacier National Park in the USC: "Nothing herein contained shall affect any valid claim, location, locator, or entry existing under the land laws of the United States before May 11, 1910, or the rights of any such claimant, locator, or entryman to the full use and enjoyment of his land." That is, the USC should not affect any private land as it was before it became Glacier National Park.

The USC excerpt above is the definition of private properties inside the area set aside as Glacier National Park that were homesteaded and patented prior to the establishment of the park on May 11, 1910. Those that remain are properties located in Flathead County in the State of Montana. (**Exhibit MJ 1-3-23** USC Title 16, Chapter 1, subchapter XX – Glacier National Park, 161 (emphasis added MJ))

The concept of federal jurisdiction over private and state lands is further described later in USC Title 16. It describes what authority the Secretary of Interior must uphold regarding the park mandate. "After January 26, 1931, no permit, license, lease or other authorization for the use of land within the Glacier National Park, Montana, for the erection and maintenance of summer homes or cottages shall be granted or made." As time passes, there are continual revisions and additions to Park Policy and Procedure: The Foundation Document for Glacier National Park is dated 2016, Water Compact for National Parks and State of Montana was only ratified in 1993. There are Directors Orders on use, sale of resources, Executive orders and legislation that continue to define what a Secretary of the Interior can or cannot do. (**Exhibit MJ 1-3-23, XX** - USC Title 16, Chapter 1, subchapter XX – Glacier National Park, 162a (emphasis added MJ))

The State of Montana ratified its agreement with the Federal Government over the land that it ceded to Glacier National Park as described in MCA 2-1-202. The state also "reserves the right to tax persons and corporations and their franchises and property within the territory. The State reserves jurisdiction in the enforcement of state laws relating to the duties of the department of livestock and the department of environmental quality, **and the enforcement of any regulations promulgated by the departments in accordance with the laws of the state.**" The Petitioners overlooked the word "and" in their citation of MCA 2-1-202 which is pursuant to Article 1, section 8, paragraph 17, of the constitution of the United States. (**Exhibit MJ 1-4-23** MCA 2-1-202 emphasis MJ)

2. "The Montana law ceding Glacier National Park expressly includes private lands within the Park, referring to the land within the boundaries which may later be included in the park and the property of private individuals and corporations within the park. MCA 2-1-205. But, even if the statute did not specifically cede jurisdiction over private property within the park, when a state does not expressly retain jurisdiction over privately owned land within a national park, the United States' exclusive jurisdiction extends to private property within the boundaries of the park." (Exhibit PET – 4, page 2, second paragraph)

The State of Montana has not ceded jurisdiction of any property in the Apgar area as shown in the following: My own property is one example and recently there have been other properties sold, built upon following County and State regulations (I hope) as they

were told to do by Glacier National Park. The Montana House has been bought and sold within my family since 1994, become a Corporation in the State of Montana and paid County property taxes every year. Currently Flathead County has the “structure fire suppression jurisdiction” as noted 7/6/23 at a recent community fire meeting.

The Patent on the date May 21, 1908 reads: “Patent is from The United States of America to The Heirs of Milo B Apgar and that Pursuant to the Act of Congress approved the 20th of May, 1862 to Secure Homesteads to actual Settlers on the Public Domain and the Acts supplemental thereto, there is granted by the United States unto the said Heirs or Devisees of Milo B Apgar, and to their heirs and assigns, forever: The location of the property, accrued water rights for mining, agriculture and other purposes, local customs, laws and decisions of the Courts along with a right of way reserved from lands for ditches or canals constructed by the authority of the United States”. It states, “signed by” President, Theodore Roosevelt, by Assistant Secretary and Recorder of the General Land Office (Recorded Volume 780, page 366.) A similar document was issued to Charles Howes sic, also dated May 21, 1908 but not recorded until March 12, 1914. The Apgar Patent is filed before Glacier Park and the Howes Patent is filed afterward. **(Exhibit MJ 1-5-23 Commercial Abstract Title Co. Kalispell Mt A-5996-3 (pages A,B,C 2,3 emphasis MJ)**

The State of Montana has been very active within boundaries of GNP as shown by the following: **(Exhibit MJ 1-5-23 Commercial Abstract of Title Co. A-5996-3 (pages 6-12) end with decisions rendered by a Judge J.E. Erickson – District court of the Eleventh Judicial District of the State of Montana, and in and another case in the County of Flathead in 1911 under T.A. Thompson, District Judge. (Exhibit MJ 1-5-23 Commercial Abstract Title document A-5996-3 (pages 10,11,12 emphasis MJ))**

Page 18 of the Commercial Abstract and Title document show a right of way is given by Charles Howes and wife Maggie for a Quit Claim Deed in 1902 for a right of way for a public County Road across part of their land for “being the road known as the road from Belton to the Kintla Lake Oil fields”. **(Exhibit MJ 1-5-23 Commercial Abstract Title document A-5996-3 (page 18 emphasis MJ))**

Parcels of the original Milo Apgar property were bought and sold in the 1920's, 30's until the last entry is the Abstractors Certificate dated 1949 on page 73. **(Exhibit MJ 1-1-23 Commercial Abstract Title document A-5996-3 (page 73 emphasis MJ))** My parents purchased lot #6 on the map on page 69b in 1959. **(Exhibit MJ 1-5-23 Commercial Abstract Title document A-5996-3 (page 69b emphasis MJ))**

3. “The 310 Law administered by conservation districts in Montana was enacted in 1975 as “The Natural Streambed and Land Preservation Act of 1975” (the “NSLPA” or the “Act). MCA 75-7-101. Because the NSPLA was enacted long after the State ceded Glacier National Park to the United States and was not and could not have been expressly reserved, the NSPLA does not apply to lands within the Park, just like the tax laws invalidated in Yellowstone Park Transportation Co V Gallatin County 31 F.2d 644, 645 (9th Cir 1929)” (Exhibit PET-4 page 2 paragraph 5)

OPINIONS OF THE ATTORNEY GENERAL - Volume NO. 37, Opinion No 15, Soil and Water Conservation-Conservation Districts revised codes of Montana, 1947 Title 26 ch15.

In the Opinions of the Attorney General, he gave an opinion to the Valley County Conservation District question: "Does the Montana Natural Streambed and Land Preservation Act of 1975 (Title 26, chapter 15, R.C.M. 1947) apply to projects constructed on state, federal or Indian Reservation lands?"

The Opinion as written describes to me that MCA 75-7-101 is an update and clarification of existing stream protection law. As it complements state statutes it became part of the chain of continued improvement. It covers State, Federal, and Indian lands. However, the bottom of page 57 The Streambed Act, "on the other hand, applies to projects undertaken by any natural person, corporation, firm, partnership, association, or other legal entity" not covered by section 26-1502, quoted above. Page 60, paragraph 4 of the Attorney General's Opinion is clear that "If an agency merely authorizes a project as by issuing a permit, lease or easement, the project is still private and is covered by the Streambed Act." (**Exhibit MJ 1-6-23** Opinions of the Attorney General Vol No. 37, Opinion No. 15 (pages 56-62 emphasis MJ)

The DNRC web site for "310 permits make clear three things. 1. "Who must apply: Any private, nongovernmental individual or entity that proposes to work **in or near a stream on public or private land**. 2. Activities requiring a permit: Any activity that physically alters or modifies the bed or banks of a perennially flowing stream. 3. Applications, Procedures/Timeline: A person planning a project must contact a conservation district office to obtain a permit application prior to any activity in or near a perennial flowing stream. **(Exhibit MJ 1-7-23** Mt Dept DNRC Stream Permitting 310 Law (pages 1,2 emphasis MJ)

The Petitioner's project is a "nonfederal project on private land surrounded by federal lands." The NSLPA does not conflict with or supersede any federal regulations and nearby lands.

MCA 75-7-101 that covers the "310 law" was enacted by necessity in a world that is constantly changing such as the 1964 flood, that the quality of streams was a priority, and local control was important. Things had changed a great deal since 1910.

4. "To the extent that the FCD wants to know the position of the United States regarding jurisdiction in the park, it is set forth in the federal cases listed above and many others whether the United States defended its jurisdiction. The United States also recognizes and asserts its exclusive jurisdiction over lands within the park through federal laws and regulations. Federal Law provides that "Glacier National Park shall be under the exclusive control of the Secretary of the Interior", whose duties include enacting regulations governing land within the park. 16 USC 162. The Secretary of the Interior regulates the National Park System, including both land and water within the parks, through the Director of the National Park Service 54 USC 100101 and 100501."

The American Land Rights Association is a good support reference for private property rights litigation within federal lands including Glacier National Park.

While it is not in the jurisdiction of this Hearing to determine the Secretary of Interior's parameters in "regulating both land and water" he cannot just do what he wants.

The Foundation Document for Glacier National Park content page lists Core Components, Dynamic Components, Contributors and Appendixes. Page 26 lists laws, Executive Orders and Regulations that apply to the FRV, and NPS Policy-level Guidance. From Treaties, Mandates, to the Clean Water Act of 1972 as amended, to Executive Order 13112, planning and managing Glacier National Park is a continual and evolving process with many procedures and policies. Glacier National Park exists in an ever evolving natural and legislative landscape. **(Exhibit MJ 1-8-23** NPS Dept of Interior Foundation Document – Glacier National Park (pages 1,26 emphasized MJ)

The State Did Not Cede Jurisdiction or Regulation over Water Rights, by MSU Extension.

"What is a Water Right?" "All water in Montana is owned by the State for the benefit of its people. Individual water users have the right to use the waters of the State if they hold or are covered under a valid water right. The term "water right" in this document refers to the rights established both before and after 1973, which was an important year for water rights in Montana. There are also important federal and Indian reserved water rights recognized in Montana, which are not explicitly covered in this document. The 1972 Montana Constitution provides the foundation for Montana water law. Specifically, Article IX, Section 3 **(Exhibit MJ 1-9-23** Water Rights in Montana: An Overview – MSU Pamphlet MT201709HR (pages 1,2 emphasis MJ)

State Jurisdiction is further confirmed in MCA 85-20-401 United States Park Service – Montana Compact. Title 85, Water Use – Chapter 20. Water Compacts – Part 4. United States Park Service -Montana Compact.

85-20-401 The Compact entered by the state of Montana and the United States National Park Service and filed with the secretary of state of the state of Montana under the provisions of 85-2-702 was ratified on May 12, 1993. The Compact is as follows. (Exhibit **(MJ 1-10-23 MCA** 85-20-401 US National Park Service, Montana Compact (pages 1-4 emphasis MJ)

Whereas, the State of Montana, in 1979 pursuant to title 85, chapter 2 of MCA commenced a general adjudication of the rights to use the water within the State of Montana including all federal reserved and appropriative water rights.

Article 1 – Definitions of interest:

14. "Department" means the Montana Department of Natural Resources and Conservation or its successor.

16. "Glacier National Park" or "GNP" means those lands located in Montana that were acquired pursuant to or withdrawn and reserved by the Act of May 11, 1910, Act of February 27, 1915; Act of April 11, 1972.

35. "State" means the State of Montana and all officers, agents, departments, and political subdivisions. For purposes of notification or consent, "State" means the Director of the Montana DNRC or his or her designee. (**MJ 1-10-23 MCA 85-20-401 US National Park Service, Montana Compact** (pages 1-4

This Compact determined Glacier National Park's right to "consumptive use" of State of Montana water.

I understand that National Parks and other federal entities have a need for water to meet public responsibilities and compact agreements provide that. The Glacier National Park Compact quantifies the following reserved water rights in the Saint Mary, Two Medicine, Cut Bank, Milk and North and Middle Forks Flathead River basins for Glacier National Park. It includes consumptive use rights, including future uses, for campgrounds, patrol cabins, general use, stations, backcountry use, and other facilities. Instream Flow rights for streams within or bordering the park and Lake Level rights for the maintenance of natural water levels within the park. (**Exhibit MJ 1-11-23 MCA 85-20-401 Glacier National Park – State of Montana water rights compact** (pages 1,2 emphasis MJ)

The 1972 Montana Constitution is a good starting point for understanding State water rights and agreements regarding the Petitioners issue at hand. After 1972 there is the "310 law" in 1975, the Attorney General's Opinion on that in 1977 and the US National Park Service – Montana Compact that was started in 1979 and ratified in 1993. We had more information and different needs for State water than in 1889 or 1910 and legislation followed those needs.

As all water in Montana is owned by the State and that Glacier Park's Compact with the State of Montana gives it a "reserved water right" for use of water within Glacier Park, all my above rebuttal indicates to me that the Flathead Conservation District has jurisdiction over lower McDonald Creek and the "310 permit" that would be required for the Ambler house as it would be for any other streamside project in Montana.

Respectfully,



Monica Jungster

GLACIER

Through The Years In Glacier National Park An Administrative History



CHAPTER II: NATIONAL PARK MOVEMENT

EARLY LAND WITHDRAWALS

We are more or less familiar with the history of forest conservation in the United States—how the forests were stripped from one region after another, until a few far-sighted men began to wonder what was to happen when all these areas were denuded, and decided to do something about it. The result was a demand for withdrawal of certain forested areas from unregulated public entry and the wholesale cutting of timber. This movement, indirectly, led to the establishment of Glacier National Park.

The first effort towards withdrawal of the lands included in the park occurred in 1885, when a bill was introduced into the Senate of the United States "To establish a Forest Reservation on the headwaters of the Missouri River and headwaters of the Clark's Fork of the Columbia River." The bill evidently did not go far, but it did start a movement ending in the setting aside of the forested areas in the northern Rocky Mountains; for on March 3, 1891, Congress passed an act authorizing the president to set aside forest reserves in the forested lands of the nation, to be administered by the Department of the Interior. **This area in western Montana was designated as a forest reserve but little was done with it until 1897.**

On February 22 of that year, largely through the initiative of the United States Forest Commission, of which Charles S. Sargent was chairman, the Lewis and Clark Forest Reserve was formed. This reserve included all of what is now Glacier National Park, the Kootenai, Blackfeet, Flathead, and Lewis and Clark National Forests, that portion north of the Great Northern Railroad being called the North Division and that south of the railroad, the South Division.

With the formation of the Forest Reserves also came the demand for personnel to administer and protect them, and in 1900 President Theodore Roosevelt appointed one of his former "Rough Riders," Frank Herrig, as forest ranger to patrol the country drained by the North Fork of the Flathead River. As far as the records show, Herrig was the first Federal officer to be placed in charge of any area included in the park. Those who knew Herrig described him as an imposing figure who generally rode a big bay horse, decked out with a silver-mounted bridle and martingale. He wore high-topped boots, a big "44" strapped on his belt and a 45-70 rifle in a scabbard on his saddle. He always wore his large ranger's badge in plain sight, and his constant companion was a large Russian wolfhound.

Exhibit

MS 1-1-23

pages 3,4 emphasis added



Frank Liebig

Frank Liebig

The next forest ranger to be appointed to the park area was Frank Liebig who was appointed on June 1, 1902, for the district that included what is now all of the north end of Glacier National Park. He was assigned to "look for fires, timber thieves, which were plentiful along the Great Northern Railway, and to look for squatters and game violators." [27] When given his badge by the Forest Supervisor, along with a double-bitted axe, a crosscut saw and a box of ammunition for his rifle, he was told to "Go to it and good luck. The whole country is yours, from Belton to Canada and across the Rockies to the prairie or Waterton Lake and the foot of St. Mary Lake." [28] Operating out of his ranger station at the head of Lake McDonald, Liebig remained in sole charge of the entire area, until the time it was made a park in 1910. His hobby was bird taxidermy and the best of his work during that time is now a part of the Glacier National Park collection.



Lake McDonald Ranger Station—
1905

Lake McDonald Ranger Station — 1905

In 1905 the Forest Reserves were taken out of the Department of the Interior and the Forest Service was set up under the Department of Agriculture. With the establishment in 1910, of Glacier National Park the Forest Service again turned this area of some 1,500 square miles back to the Department of the Interior in whose hands it has since remained.

ESTABLISHMENT OF THE PARK

When we think about the origin of areas such as this and other National Parks, we naturally ask the question, "When did this park idea originate, and who was responsible for it?" Often this question is hard to answer because we do not know the thoughts that may have run through the minds of the early explorers and travelers, but we do have written records of the ideas of these men.

Action toward Establishment of the Park

Contrary to the general belief that George Bird Grinnell first thought of this as a national park, we have the record in the Fort Benton "River Press" in 1883 of a letter from Lieutenant John T. Van Orsdale in which he makes the following statement: "I sincerely hope that publicity now being given to that portion of Montana will result in drawing attention to the scenery which surpasses anything in Montana or adjacent territories. A great benefit would result to Montana if this section could be set aside as a national park. . ." In this letter he was referring to the area that is now included in the park and through which he and Lieutenant Woodruff traveled some ten years before.

George Bird Grinnell, at that time editor of the magazine "Forest and Stream," first came to the area of the park in 1885 and again in 1887, and thereafter almost yearly as long as he was able. To Grinnell goes the credit, and justly so, for swinging public opinion in favor of making this area into a national park, and also for promoting the legislation that made it possible. During his visits in 1885 and 1887 he explored the St. Mary and Swiftcurrent Valleys and named many of the features within them. It must have been during these trips that he began to formulate his own ideas of what should become of the area, for it was while on one of his trips into the upper reaches of the St. Mary Valley in 1891 that he made an entry in his notebook to the effect that this area should become a national park. And what is more, he immediately set about to do something about it.

Grinnell's first public attempt to do this was through an article in the "Century Magazine" of September, 1901, entitled, "The Crown of the Continent," in which he described in glowing terms the beauties of the area and suggested that a movement be started to set aside the area around St. Mary Lake as a National Park.

Grinnell then went a step further and was instrumental in getting the noted writer, Emerson Hough, to come to the area and write a series of articles for "Forest and Stream" magazine. Hough made two trips to the area in 1902, one in February and one in August, both times guided into the back country by James Willard Schultz, who was also sending articles to Grinnell.

These articles created considerable interest in the area, and the local, and some national, newspapers began to take it up. Finally, through pressure exerted by Grinnell and others, the necessary legislation was drawn up and the Congressional mill began to grind.

Legislative History of Establishment

The actual start of legislative action to form Glacier National Park took place on December 11, 1907, when United States Senator T. H. Carter of Montana introduced a bill into the Senate to set aside the area as a national park. The bill being considered by the Senate was found to have several undesirable clauses in it and the bill was sent back to Carter for rewriting.

Senator Carter immediately revised the bill as suggested and again presented it to the Senate on February 24, 1908. The Committee on Public Lands approved the bill, with amendments, and it was sent to the floor of the Senate where it was approved and passed. On May 16, it was then sent to the House of Representatives, where Congressman Charles N. Pray, Montana's only member of the House, took it under his wing and guided it through the Committee on Public Lands, of which he was a member. Although this committee reported it back to the House with the recommendation that it be passed as amended by the Senate, no action was taken on it and the bill died.

On June 26, 1909, Carter introduced the bill to the Senate for the third time. This time it lay in the Public Lands Committee until January 25, 1910, when it was reported out by Senator Dixon

of Montana. It was brought up on the floor of the Senate and agreed to on February 9. From there it again went to the House of Representatives, where it was finally agreed to with further amendments. Taking the lead, Congressman Pray, along with several other members, fought very strongly to get the bill through the House.

The Senate then objected to the amendments written in by the House, and a Conference Committee was appointed to iron out the differences. The committee reached a compromise and the bill was again presented to the House and agreed to without a record vote. On the same day it was presented to the Senate, who also agreed to it. From there the bill went to **President Taft who affixed his signature to it on May 11, 1910, bringing Glacier National Park into existence.**

Ten days after the approval of the bill, on May 21, 1910, the first appropriation for Glacier National Park was presented to the Senate, and approved as part of the Sundry Civil Appropriations Act for the fiscal year 1911, approved on June 25. This Act carried an item, "For improvement of Glacier National Park, Montana, for construction of trails and roads, \$50,000." Glacier National Park was on its own.

It is interesting to note the opposition to the bill to establish the park. Grazing and lumber interests, the ones that would seem most likely to object, showed little interest in it. Mining activity had almost completely died out, so there was little objection there. But certain local groups, mainly from Kalispell, cried out loud and long that it was a scheme of the Great Northern Railway to prevent other roads from entering the region. Their contention was that the railroad had persuaded Senator Carter to put up the bill so that no other railroads could use the passes to the north of them not realizing, of course, that there were no passes to the north that were suitable for a railroad to use. The truth of the matter was that the late Louis W. Hill, Sr., then president of the Great Northern, was foremost among the sponsors of the bill, hoping with Senator Carter, Congressman Pray, George Bird Grinnell and others to create a public recreational area for Montana which would attract tourists and subsequently a source of passenger traffic and new income dollars for the state. Opposition also came from legislators who contended that it was not the function of the government to dabble in recreation.

After passage of the bill seemed certain the opposition interests began to back track and explain their reasons for it. The following excerpt from an editorial in the Kalispell Daily Inter Lake attempted to clarify their stand on the matter: "The establishment of the park is not a calamity. The original opposition was due mainly to personal interests, such as a loss of hunting grounds, locking up of the area, no settling on the North Fork, etc." There was much 'to do' about it until the bill was changed to suit the people. One principal fear was of military control.

Regarding the final passage of this bill in the House of Representatives, Congressman Pray is reported to have made the statement that one of the biggest helps he had in getting the bill through was the weather. It was so extremely hot that day that many of the Congressmen were not present and Pray, who was instrumental in guiding it through the house, was able to muster enough supporters to pass it on the floor, or at least bring the remainder around to his way of thinking.

On March 10, 1909, the eleventh assembly of the Montana Legislature passed a resolution favoring the establishment of Glacier National Park, but no record has been found that this resolution was ever presented to or placed in the records of either House of Congress of the United States. **By an Act of February 11, 1911, the twelfth assembly of the Legislature of the State of Montana ceded exclusive jurisdiction over Glacier National Park to the United States,** reserving to themselves only the right of taxation and the right to serve criminal process for acts committed outside the boundaries of the park. A few days later Senator Carter introduced a bill in the Senate of the United States to accept the cession of the park, but the bill was not reported out of committee and died there. It was not until 1914, by an act approved on August

22, that the Congress accepted from the State of Montana exclusive jurisdiction over the park, as specified by the state.

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Last Updated: 15-Jan-2004



A Brief History of the West Side of Glacier National Park

Early tourists arrived at Belton Station via Great Northern Railway. In the late 1800s, the west entrance to what is now Glacier was shrouded and tree-lined with towering, ancient western red cedars. **There was no bridge across the Middle Fork until 1897. Guests were rowed across the river. It was not until about 1895 that a rugged dirt road connected the river to the foot of Lake McDonald.** From there, guests would board George Snyder's steamboat for the trip up the lake to the Snyder Hotel. It took most of the day to reach the hotel, if all the equipment ran smoothly. After a night at the hotel, visitors could ride horseback into the mountains.

Apgar

The first buildings here were homesteads, but the early trappers, loggers, and miners quickly realized the opportunities of tourism. By 1892, settlers Milo Apgar and Charlie Howe were offering rental cabins, meals, pack horses, guided tours, and boat trips for visitors who arrived in Belton on the Great Northern Railway. Frank Geduhn offered cabins and services at the head of the lake.

Settlement in the surrounding area predates the park's establishment in 1910. Land was quickly patented and much of it is still privately owned today. The National Park Service purchases this land as it becomes available and sellers are willing.

A big fire in 1929 swept through the Apgar area, burning the dense forest and some buildings. Apgar's appearance changed, but its spirit and function remained the same, which was a port of entry for trips into the roadless wilderness.

Lake McDonald

The Kootenai Indian name for the lake translates as "Sacred Dancing" and is believed to refer to ceremonies the Kootenai's performed at the foot of the lake. It is commonly thought that the present name of Lake McDonald was named after trader Duncan McDonald, who carved his name on a tree nearby in 1878.

In 1895 George Snyder, who also ran the steamboat shuttle, built the two-story frame Snyder Hotel at the head of the lake and ran it for nine years. In 1906 John and Oliver Lewis purchased the Snyder Hotel, moved it back behind the building site and turned it into a general store. They contracted an architectural firm from Spokane, Washington, to design a new hotel "worthy of the park" and historically significant in being an independent enterprise, separate from the developments of the Great Northern Railway.

Lewis Glacier Hotel (Lake McDonald Lodge)

The new lodge was built during the winter of 1913-1914 with locally available materials, native stone and western red cedar. Without any railroad or road service to the building site, building supplies were hauled from Belton to the foot of Lake McDonald and ferried by boat in the summer or skidded ten miles across the lake ice in winter. Luck was with Lewis since Lake McDonald froze solid during the winter of 1913. On the average, it only freezes every four or five years.

Lewis' hotel design was in keeping with the Great Northern's Swiss design of a stone ground floor, wood frame construction and alpine detailing on the shutters and balconies. Although a comparatively small structure of 65 rooms, the lodge is as luxurious as the Great Northern hotels.

◀ Current ▶

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16 USC CHAPTER 1, SUBCHAPTER XX: GLACIER NATIONAL PARK

From Title 16—CONSERVATION

CHAPTER 1—NATIONAL PARKS, MILITARY PARKS, MONUMENTS, AND SEASHORES

SUBCHAPTER XX—GLACIER NATIONAL PARK

§161. Establishment; boundaries; trespassers; claims and rights under land laws not affected; reclamation projects; indemnity selections of lands

The tract of land in the State of Montana particularly described by metes and bounds as follows, to wit: Commencing at a point on the international boundary between the United States and the Dominion of Canada at the middle of the Flathead River; thence following southerly along and with the middle of the Flathead River to its confluence with the Middle Fork of the Flathead River; thence following the north bank of said Middle Fork of the Flathead River to where it is crossed by the north boundary of the right-of-way of the Great Northern Railroad; thence following the said right-of-way to where it intersects the west boundary of the Blackfeet Indian Reservation; thence northerly along said west boundary to its intersection with the international boundary; thence along said international boundary to the place of beginning, is reserved and withdrawn from settlement, occupancy, or disposal under the laws of the United States, and dedicated and set apart as a public park or pleasure ground for the benefit and enjoyment of the people of the United States under the name of "The Glacier National Park." All persons who shall locate or settle upon or occupy the same, or any part thereof, except as hereinafter provided, shall be considered trespassers and removed therefrom. Nothing herein contained shall affect any valid claim, location, or entry existing under the land laws of the United States before May 11, 1910, or the rights of any such claimant, locator, or entryman to the full use and enjoyment of his land. The United States Reclamation Service may enter upon and utilize for flowage or other purposes any area within said park which may be necessary for the development and maintenance of a Government reclamation project. No lands within the limits of Glacier National Park belonging to or claimed by any railroad or other corporation having or claiming before May 11, 1910, the right of indemnity selection by virtue of any law or contract whatsoever shall be used as a basis for indemnity selection in any State or Territory whatsoever for any loss sustained by reason of the creation of Glacier National Park.

(May 11, 1910, ch. 226, §1, 36 Stat. 354; Jan. 26, 1931, ch. 47, §5, 46 Stat. 1043.)

EDITORIAL NOTES

REFERENCES IN TEXT

The land laws of the United States, referred to in text, are classified generally to Title 43, Public Lands.

Herein, referred to in text, means act May 11, 1910, ch. 226, 36 Stat. 354, which is classified to this section and section 162 of this title.

CODIFICATION

In sentence beginning "Nothing herein contained", the words "before May 11, 1910" were inserted to give effect to the preceding word "existing", and in the last sentence the words "having or claiming before May 11, 1910" are a translation of the words "now having or claiming" of the original text.

AMENDMENTS

1931—Act Jan. 26, 1931, struck out provision that right of way through the valleys of the North and

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 and

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"(3) subject to any terms and conditions that the Secretary of the Interior determines to be necessary."

EXECUTIVE DOCUMENTS

CHANGE OF NAME

The Reclamation Service, established in July 1902, changed to the Bureau of Reclamation on June 20, 1923, then to the Water and Power Resources Service on Nov. 6, 1979, and then back to the Bureau of Reclamation on May 18, 1981. See 155 Dep't of the Interior, Departmental Manual 1.1 (2008 repl.); Sec'y Hubert Work, Dep't of the Interior, Order (June 20, 1923); Sec'y Cecil D. Andrus, Dep't of the Interior, Secretarial Order 3042, §§1, 4 (Nov. 6, 1979); Sec'y James G. Watt, Dep't of the Interior, Secretarial Order 3064, §§3, 5 (May 18, 1981).

§161a. Part of Waterton-Glacier International Peace Park

For the purpose of permanently commemorating the long-existing relationship of peace and good will existing between the people and Governments of Canada and the United States and upon the enactment by the proper authority of the Canadian Government of a similar provision respecting the Waterton Lakes National Park in the Province of Alberta, and upon the proclamation of the President of the United States, who is authorized to issue such a proclamation, the Glacier National Park in the State of Montana shall become a part of an international park to be known as the Waterton-Glacier International Peace Park. (May 2, 1932, ch. 157, §1, 47 Stat. 145.)

§161b. Designation for purposes of administration, promotion, development, and support

For purposes of administration, promotion, development, and support by appropriations that part of the said Waterton-Glacier International Peace Park within the territory of the United States shall be designated as the Glacier National Park. (May 2, 1932, ch. 157, §2, 47 Stat. 145.)

§161c. Addition of land; establishment of fish hatchery

The Secretary of the Interior is authorized to administer as a part of the Glacier National Park, in the State of Montana, subject to all laws and regulations applicable thereto, the lands, or interests in lands, within the State of Montana, in township 28 north, range 20 west, Montana meridian, which may be acquired by the United States for the establishment by the National Park Service of a fish hatchery for restocking the waters of the said park. (July 31, 1939, ch. 395, 53 Stat. 1142.)

§161d. Elimination of fish hatchery; transfer of administration of hatchery to Fish and Wildlife Service

The property at Creston, Montana, acquired by the United States for the establishment of a fish hatchery for restocking the waters of Glacier National Park and administered as a part of the park pursuant to section 161c of this title, together with the improvements and equipment utilized in connection with the hatchery,

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§3, 70 Stat. 1120. See section 742b of this title.

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For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§161e. Additional lands, buildings, or other real and personal property

The Secretary of the Interior is authorized to acquire, and the State of Montana is authorized to convey to the United States, without regard to the requirements contained in section 11 of the Act approved February 22, 1889 (25 Stat. 676), any lands, interests in lands, buildings, or other property, real and personal, owned by the State of Montana within the boundaries of Glacier National Park. The aforesaid properties may be acquired from the State of Montana by the Secretary of the Interior for such consideration as he may deem advisable, when the acquisition of such property would, in his judgment, be in the best interests of the United States.

(Mar. 16, 1948, ch. 133, 62 Stat. 80.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 11 of the Act approved February 22, 1889 (25 Stat. 676), referred to in text, was not classified to the Code.

§162. Control; regulations; leases; sale and removal of timber

Glacier National Park shall be under the exclusive control of the Secretary of the Interior, whose duties it shall be, as soon as practicable, to make and publish such rules and regulations not inconsistent with the laws of the United States as he may deem necessary or proper for the care, protection, management, and improvement of the same, which regulations shall provide for the preservation of the park in a state of nature so far as is consistent with the purposes of this section and section 161 of this title, and for the care and protection of the fish and game within the boundaries thereof. Said Secretary may, in his discretion, execute leases to parcels of ground not exceeding ten acres in extent at any one place to any one person or company, for not to exceed twenty years, when such ground is necessary for the erection of buildings for the accommodation of visitors, and to parcels of ground not exceeding one acre in extent and for not to exceed twenty years to persons who have heretofore erected or whom he may hereafter authorize to erect summer homes or cottages; he may also sell and permit the removal of such matured,¹ or dead or down timber as he may deem necessary or advisable for the protection or improvement of the park.

(May 11, 1910, ch. 226, §2, 36 Stat. 354.)

¹ So in original.

§162a. Summer homes and cottages

After January 26, 1931, no permit, license, lease, or other authorization for the use of land within the Glacier National Park, Montana, for the erection and maintenance of summer homes or cottages shall be granted or made: *Provided, however,* That the Secretary of the Interior may, in his discretion, renew any permit, license, lease, or other authorization for such purpose granted or made prior to January 26, 1931.

(Jan 26 1931 ch 47 §2 46 Stat 1012)

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§164. Eliminating private holdings of lands; timber or public lands of equal value in exchange

The Secretary of the Interior, for the purpose of eliminating private holdings within the Glacier National Park and the preservation intact of the natural forest along the roads in the scenic portions of the park, both on patented and park lands, is empowered, in his discretion: (1) To obtain for the United States the complete title to any or all of the lands held in private or State ownership within the boundaries of said park within townships 32 and 33 north, ranges 18 and 19 west of Montana principal meridian, by the exchange of dead, decadent, or matured timber of approximately equal values that can be removed from any part of the park without injuriously affecting the scenic beauty thereof; or, upon the approval of the Secretary of Agriculture, the timber to be selected or exchanged may be taken from the Government lands within the metes and bounds of the national forests within the State of Montana, or, (2) to obtain for the United States the complete title to any or all of the lands held in private ownership within the boundaries of said park by accepting from the owners of such privately owned lands complete relinquishment thereof and by granting and patenting to such owners, in exchange therefor, in each instance, like public land of equal value situate in the State of Montana, after due notice of the proposed exchange has been given by publication for not less than thirty days in the counties where the lands proposed to be exchanged or taken in exchange are located.
(Mar. 3, 1917, ch. 164, §1, 39 Stat. 1122; Feb. 28, 1923, ch. 144, §1, 42 Stat. 1324.)

EDITORIAL NOTES

CODIFICATION

Section is based on section 1 of act Mar. 3, 1917, and section 1 of act Feb. 23, 1923; subdivision (1) being from the former and subdivision (2) being from the latter act. Of the language preceding subdivision (1), that portion from the beginning of the section to the word "and" was common to both of the sections aforesaid, while the remaining portion was derived from section 1 of act Mar. 3, 1917.

§165. Value of lands sought to be exchanged

For purposes of subdivision (2) of section 164 of this title the value of all patented lands within said park, including the timber thereon, offered for exchange, and the value of other lands of the United States elsewhere situate, to be given in exchange therefor, shall be ascertained in such manner as the Secretary of the Interior may direct; and the owners of such privately owned lands within said park shall, before any exchange is effective, furnish the Secretary of the Interior evidence satisfactory to him of title to the patented lands offered in exchange; and lands conveyed to the Government under this section and subdivision (2) of section 164 of this title shall be and remain a part of the Glacier National Park.
(Feb. 28, 1923, ch. 144, §2, 42 Stat. 1324.)

§166. Exchange of timber for private holdings; valuations

For purposes of subdivision (1) of section 164 of this title the value of all patented lands within said park, including the timber thereon, offered for exchange, and the value of the timber on park lands, or on Government lands within the metes and bounds of the national forests within the State of Montana, proposed to be given in exchange for such patented lands, shall be ascertained in such manner as the Secretary of the Interior and the Secretary of Agriculture may jointly in their discretion direct, and all expenses incident to ascertaining such values shall be paid by the owners of said patented lands. Such owners shall, before any exchange is effective, furnish the Secretary of the Interior evidence satisfactory to him of title to the patented lands offered in exchange; and if the value of timber on park lands or on the Government lands in the national forests within the State of Montana exceeds the value of the patented lands deeded to the Government in exchange, such excess shall be paid to the Secretary of the Interior by the owners of the patented lands

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CODIFICATION

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Subsecs. (a) and (b) of this section constitute sections 1 and 2, respectively, of act Aug. 8, 1946.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§168. Repealed. May 24, 1949, ch. 139, §142, 63 Stat. 109

Section, act Aug. 22, 1914, ch. 264, §2, 38 Stat. 699, related to Park as part of judicial district of Montana. See sections 106 and 131 of Title 28, Judiciary and Judicial Procedure.

§169. Repealed. June 25, 1948, ch. 646, §39, 62 Stat. 992, eff. Sept. 1, 1948

Section, act Aug. 22, 1914, ch. 264, §3, 38 Stat. 699, related to applicability of criminal laws. See section 13 of Title 18, Crimes and Criminal Procedure.

§170. Hunting and fishing; regulations; punishment

All hunting or the killing, wounding, or capturing at any time of any bird or wild animal, except dangerous animals when it is necessary to prevent them from destroying human lives or inflicting personal injury, is prohibited within the limits of said park; nor shall any fish be taken out of the waters of the park in any other way than by hook and line, and then only at such seasons and in such times and manner as may be directed by the Secretary of the Interior. The Secretary of the Interior shall make and publish such rules and regulations as he may deem necessary and proper for the management and care of the park and for the protection of the property therein, especially for the preservation from injury or spoliation of all timber, mineral deposits other than those legally located prior to May 11, 1910, natural curiosities, or wonderful objects within said park, and for the protection of the animals and birds in the park from capture or destruction, and to prevent their being frightened or driven from the park. He shall make rules and regulations governing the taking of fish from the streams or lakes in the park. Possession within said park of the dead bodies, or any part thereof, of any wild bird or animal shall be prima facie evidence that the person or persons having the same are guilty of violating this Act. Any person or persons, or stage or express company, or railway company, who knows or has reason to believe that they were taken or killed contrary to the provisions of this Act and who receives for transportation any of said animals, birds, or fish so killed, caught, or taken, or who shall violate any of the other provisions of this Act, or any rule or regulation that may be promulgated by the Secretary of the Interior with reference to the management and care of the park or for the protection of the property therein, for the preservation from injury or spoliation of timber, mineral deposits, other than those legally located prior to May 11, 1910, natural curiosities, or wonderful objects within said park, or for the protection of the animals, birds, or fish in the park, or who shall within said park commit any damage, injury, or spoliation to or upon any building, fence, hedge, gate, guidepost, tree, wood, underwood, timber, garden, crops, vegetables, plants, land, springs, mineral deposits other than those legally located prior to May 11, 1910, natural curiosities, or other matter or thing growing or being thereon, or situated therein, shall be deemed guilty of a misdemeanor and shall be subject to a fine of not more than \$500, or imprisonment not exceeding six months, or both, and be adjudged to pay all costs of the proceedings.

(Aug. 22, 1914, ch. 264, §4, 38 Stat. 700.)

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title. For complete classification of this Act to the Code, see Tables.

§§172 to 177. Repealed. June 25, 1948, ch. 646, §39, 62 Stat. 992, eff. Sept. 1, 1948

Section 172, acts Aug. 22, 1914, ch. 264, §6, 38 Stat. 700; June 28, 1938, ch. 778, §1, 52 Stat. 1213, related to appointment and jurisdiction of commissioner. See provisions covering United States magistrate judges in section 631 et seq. of Title 28, Judiciary and Judicial Procedure.

Section 173, act Aug. 22, 1914, ch. 264, §7, 38 Stat. 701, related to arrest, confinement, and bail.

Section 174, act Aug. 22, 1914, ch. 264, §8, 38 Stat. 701, related to process. See section 3053 of Title 18, Crimes and Criminal Procedure, rule 4 of Federal Rules of Criminal Procedure, Title 18, Appendix, and rule 4 of Federal Rules of Civil Procedure, Title 28, Appendix, Judiciary and Judicial Procedure.

Section 175, acts Aug. 22, 1914, ch. 264, §9, 38 Stat. 701; June 28, 1938, ch. 778, §1, 52 Stat. 1213, related to commissioner's [now magistrate judge] salary.

Section 176, act Aug. 22, 1914, ch. 264, §11, 38 Stat. 701, related to fines and costs.

Section 177, act Aug. 22, 1914, ch. 264, §10, 38 Stat. 701, related to certification and payment of fees, costs, and expenses.

§178. Hotel regulations

Any hotel erected on the land sold and conveyed to the Glacier Park Hotel Company under authority of the Act of March 2, 1917, chapter 147, Thirty-ninth Statutes, page 994, shall be operated by the said Glacier Park Hotel Company, its successors and assigns under such rules and regulations as the Secretary of the Interior may prescribe for the conduct and operation of hotels within the Glacier National Park. (Mar. 2, 1917, ch. 147, 39 Stat. 994.)

EDITORIAL NOTES

CODIFICATION

Section is from a proviso at the end of act Mar. 2, 1917. The preceding part of the act authorized the Secretary of the Interior to sell certain described lands to the hotel company mentioned herein and was omitted as temporary and executed.

§179. Donations of buildings and other property

The Secretary of the Interior is authorized, in his discretion, to accept buildings, moneys, or other property which may be useful in the betterment of the administration and affairs of the Glacier National Park under his supervision, and which may be donated for park purposes. He may accept patented lands or rights-of-way over patented lands in the Glacier National Park that may be donated for park purposes. (July 1, 1916, ch. 209, §1, 39 Stat. 308; June 12, 1917, ch. 27, §1, 40 Stat. 151.)

EDITORIAL NOTES

CODIFICATION

The first sentence of this section is from section 1 of act June 12, 1917, and the last sentence from section 1 of act July 1, 1916.

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related to commissioner's [now magistrate judge] salary.

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Section 176, act Aug. 22, 1914, ch. 264, §11, 38 Stat. 701, related to fines and costs.

Section 177, act Aug. 22, 1914, ch. 264, §10, 38 Stat. 701, related to certification and payment of fees, costs, and expenses.

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EDITORIAL NOTES

CODIFICATION

The first sentence of this section is from section 1 of act June 12, 1917, and the last sentence from section 1 of act July 1, 1916.

§180. Repealed. Dec. 16, 1930, ch. 14, §1, 46 Stat. 1028

Section, act Mar. 4, 1911, ch. 285, §1, 36 Stat. 1421, made provision for the proceeds of leases and other revenues to be covered into the Treasury.

§§181, 181a. Omitted

EDITORIAL NOTES

CODIFICATION

Sections 181, 181a, act May 2, 1932, ch. 155, §§1, 2, 47 Stat. 144, relating to the grant by the State of Montana to the United States of concurrent police jurisdiction over the territory in the rights-of-way of the

MCA Contents / TITLE 2 / CHAPTER 1 / Part 2 / 2-1-202 Jurisdiction ov...

Montana Code Annotated 2021

TITLE 2. GOVERNMENT STRUCTURE AND ADMINISTRATION

CHAPTER 1. SOVEREIGNTY AND JURISDICTION

Part 2. Cession and Retrocession of Jurisdiction

Jurisdiction Over Lands Purchased By United States -- Reservation Of Rights To State

2-1-202. Jurisdiction over lands purchased by United States -- reservation of rights to state. Pursuant to Article I, section 8, paragraph 17, of the constitution of the United States, consent to purchase is hereby given and exclusive jurisdiction is ceded to the United States over and with respect to any lands within the limits of this state that are acquired by the complete purchase by the United States for any of the purposes described in paragraph 17 of the constitution of the United States. The jurisdiction must continue as long as the lands are held and occupied by the United States for the described purposes. The state reserves the right to serve and execute civil or criminal process lawfully issued by the courts of the state within the limits of the territory over which jurisdiction is ceded in any suits or transactions for or on account of any rights obtained, obligations incurred, or crimes committed in this state, within or outside of the territory. The state also reserves the right to tax persons and corporations and their franchises and property within the territory. The state and its inhabitants and citizens reserve the right to fish and hunt and the right of access, ingress, and egress to and through the ceded territory to all persons owning or controlling livestock for the purpose of watering the livestock. The state reserves jurisdiction in the enforcement of state laws relating to the duties of the department of livestock and the department of environmental quality, and the enforcement of any regulations promulgated by the departments in accordance with the laws of the state. Jurisdiction does not vest until the United States, through the proper officers, files an accurate map or plat and description by metes and bounds of the lands in the office of the county clerk and recorder of the county in which the lands are situated. If the lands are within the corporate limits of any city, the map or plat must also be filed in the office of the city clerk of the city. The filing of the map constitutes acceptance of the jurisdiction by the United States as ceded.

History: En. Sec. 1, p. 52, L. 1893; re-en. Sec. 43, Pol. C. 1895; re-en. Sec. 24, Rev. C. 1907; re-en. Sec. 25, R.C.M. 1921; re-en. Sec. 25, R.C.M. 1935; amd. Sec. 1, Ch. 155, L. 1939; amd. Sec. 102, Ch. 349, L. 1974; R.C.M. 1947, 83-108(part); amd. Sec. 1, Ch. 418, L. 1995.

Created by LAWS

Exhibit

MS 1-4-23
MCA 2-1-202

Commercial Abstract and Title Company

INCORPORATED UNDER THE LAWS OF THE STATE OF MONTANA
KALISPELL, MONTANA



F. O. WILLIAMS, President

RACHEL M. OSHEIM, SEC'Y-TREAS.

No. A-5966--3.

Abstract of Title

TO

All that portion of Lot Three (3) West of Government Highway
in Section Twenty-three (23) Township Thirty-two (32) North of
Range Nineteen (19) West, M.P.M. Montana.

* * * * *

Prepared at the request of Jessie A. Haworth.

* * * * *

Exhibit

M5-1-5-23
pages A, B, C



Commercial Abstract and Title Company

The United States of America.

-TO-

The Heirs or devisees of Milo
B. Apgar.

PATENT.

Dated May 26th, 1908.

Filed June 22nd, 1908 at 11:15 A. M.

Recorded in Book 84 of Patents,
Page 334.

###

Pursuant to the Act of Congress approved 20th May, 1862,
"To Secure Homesteads to Actual Settlers on the Public Domain," and the
Acts supplemental thereto,

There is granted by the United States unto the said Heirs or
Devisees of Milo B. Apgar, and to their heirs and assigns, Forever:

Lots one and two of Section fourteen and the Lot four of Sec-
tion twenty-three in Township thirty two north of Range nineteen west
of the Montana Meridian, Montana, containing one hundred forty and
thirty-hundredths acres, according to the Official Plat of the survey
of the said land, returned to the General Land Office by the Surveyor
General.

Subject to any vested and accrued water rights for mining, agri-
cultural, manufacturing, or other purposes, and rights to ditches and
reservoirs used in connection with such water rights, as may be recog-
nized and acknowledged by the local customs, laws and decisions of Courts
and also subject to the right of the proprietor of a vein or lode to
extract and remove his ore therefrom, should the same be found to pene-
trate or intersect the premises hereby granted, as provided by law. And
there is reserved from the lands hereby granted, a right of way thereon
for ditches or canals constructed by the authority of the United States.

(Signed) By the President: Theodore Roosevelt,

By A. S. Stump, Assistant Secretary.

(GENERAL LAND OFFICE SEAL) H. W. Sanford, Recorder of the General Land
Office.

Recorded Vol. 780, Page 366.

The United States of America,

To

Charles Howes.

P A T E N T

Dated May 21, 1908

Filed March 12, 1914 at 1:30 P. M.

Recorded in Book 84 of

Patents Page 559.

Pursuant to the Act of Congress approved 20th May, 1862,
"To Secure Homesteads to Actual Settlers on the Public Domain,"
and the Acts supplemental thereto,

There is granted by the United States unto the said Charles
Howes, and to his heirs and assigns forever, the

Lots one, two and three, the south half of the northeast
quarter, and the northwest quarter of the southeast quarter of
section twenty-three in Township thirty two north of Range
nineteen West of the Montana Meridian, Montana, containing one
hundred eighty-two and forty-six hundredths acres, according
to the Official Plat of the survey of the said land returned to
the General Land Office by the Surveyor General.

Subject to any vested and accrued water rights for mining,
agricultural, manufacturing, or other purposes, and rights to
ditches and reservoirs used in connection with such water rights,
as may be recognized and acknowledged by the local customs, laws,
and decisions of Courts, and also subject to the right of the
proprietor of a vein or lode to extract and remove his ore
therefrom, should the same be found to penetrate or intersect
the premises hereby granted, as provided by law. And there is
reserved from the lands hereby granted, a right-of-way thereon
for ditches or canals constructed by the authority of the United
States.

(General Land Office Seal)

By The President:
Theodore Roosevelt,
H.W. Sanford, Recorder of the
General Land Office.
By A.S. Stump, Assistant Secy.

Commercial Abstract and Title Company

INCORPORATED UNDER THE LAWS OF THE STATE OF MONTANA
KALISPELL, MONTANA



F. O. WILLIAMS, President

RACHEL M. OSHEIM, SEC'Y-TREAS.

No. A-5966--3.

Abstract of Title
TO

All that portion of Lot Three (3) West of Government Highway
in Section Twenty-three (23) Township Thirty-two (32) North of
Range Nineteen (19) West, M.P.M. Montana.

* * * * *

Prepared at the request of Jessie A. Haworth.

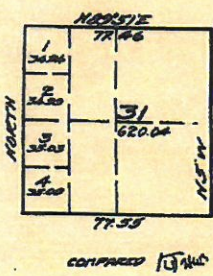
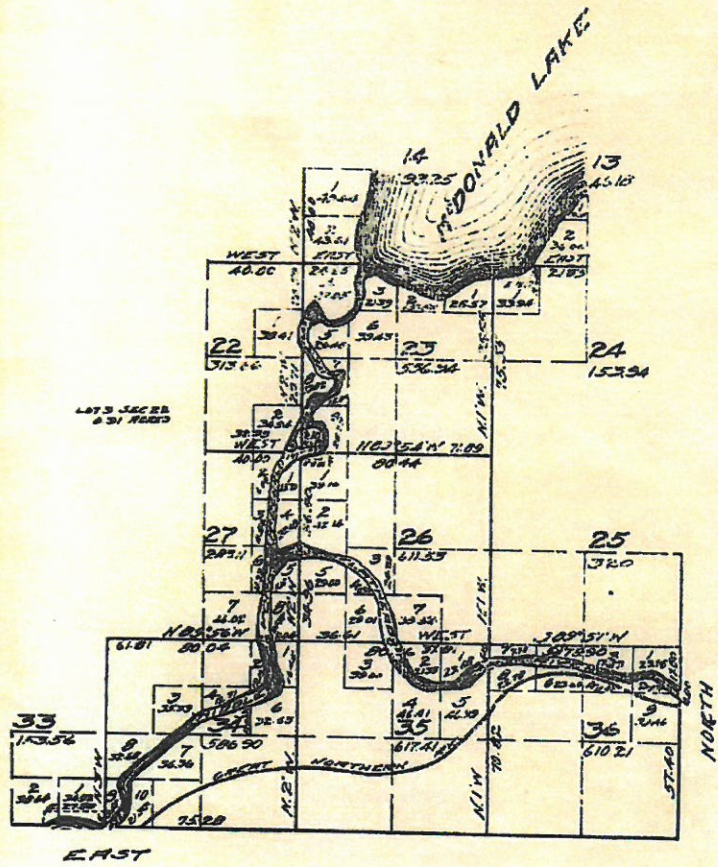
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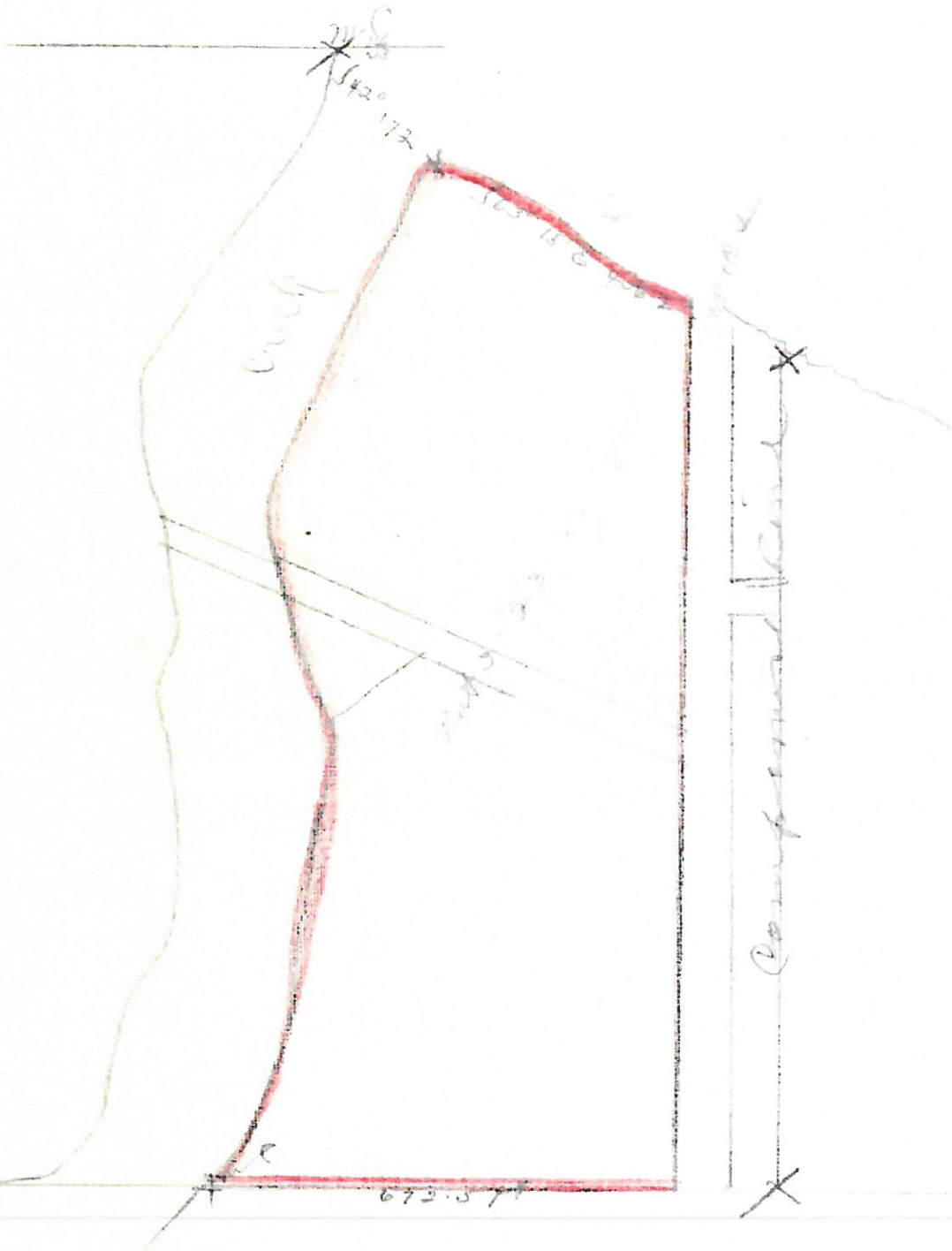
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M5-1-5-23
pages A, B, C
2, 3

M

TOWNSHIP 32 NORTH, RANGE 19 WEST





Commercial Abstract and Title Company

The United States of America.

-TO-

The Heirs or Devisees of Milo
B. Apgar.

PATENT.

Dated May 26th, 1908.

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Recorded in Book 84 of Patents,
Page 334.

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There is granted by the United States unto the said Heirs or
Devisees of Milo B. Apgar, and to their heirs and assigns, Forever:

Lots one and two of Section fourteen and the Lot four of Sec-
tion twenty-three in Township thirty two north of Range nineteen west
of the Montana Meridian, Montana, containing one hundred forty and
thirty-hundredths acres, according to the Official Plat of the survey
of the said land, returned to the General Land Office by the Surveyor
General.

Subject to any vested and accrued water rights for mining, agri-
cultural, manufacturing, or other purposes, and rights to ditches and
reservoirs used in connection with such water rights, as may be recog-
nized and acknowledged by the local customs, laws and decisions of Courts
and also subject to the right of the proprietor of a vein or lode to
extract and remove his ore therefrom, should the same be found to pene-
trate or intersect the premises hereby granted, as provided by law. And
there is reserved from the lands hereby granted, a right of way thereon
for ditches or canals constructed by the authority of the United States.

(Signed) By the President: Theodore Roosevelt,

By A. S. Stump, Assistant Secretary.

(GENERAL LAND OFFICE SEAL) H. W. Sanford, Recorder of the General Land
Office.

Recorded Vol. 780, Page 366.

The United States of America,

To

Charles Howes.

P A T E N T

Dated May 21, 1908

Filed March 12, 1914 at 1:30 P. M.

Recorded in Book 84 of

Patents Page 559.

Pursuant to the Act of Congress approved 20th May, 1862,
"To Secure Homesteads to Actual Settlers on the Public Domain,"
and the Acts supplemental thereto,

There is granted by the United States unto the said Charles
Howes, and to his heirs and assigns forever, the

Lots one, two and three, the south half of the northeast
quarter, and the northwest quarter of the southeast quarter of
section twenty-three in Township thirty two north of Range
nineteen West of the Montana Meridian, Montana, containing one
hundred eighty-two and forty-six hundredths acres, according
to the Official Plat of the survey of the said land returned to
the General Land Office by the Surveyor General.

Subject to any vested and accrued water rights for mining,
agricultural, manufacturing, or other purposes, and rights to
ditches and reservoirs used in connection with such water rights,
as may be recognized and acknowledged by the local customs, laws,
and decisions of Courts, and also subject to the right of the
proprietor of a vein or lode to extract and remove his ore
therefrom, should the same be found to penetrate or intersect
the premises hereby granted, as provided by law. And there is
reserved from the lands hereby granted, a right-of-way thereon
for ditches or canals constructed by the authority of the United
States.

(General Land Office Seal)

By The President:

Theodore Roosevelt,

H.W. Sanford, Recorder of the
General Land Office.

By A.S. Stump, Assistant Secy.

VOLUME NO. 37

OPINION NO. 15

SOIL AND WATER CONSERVATION - Conservation Districts, Natural Streambed and Land Preservation Act; PUBLIC LANDS - Natural Streambed and Land Preservation Act; INDIANS - Reservations, Natural Streambed and Land Preservation Act, REVISED CODES OF MONTANA, 1947 - Title 26, ch. 15.

- HELD: 1. The Montana Natural Streambed and Land Preservation Act (sections 26-1510 through 26-1523, R.C.M. 1947) is not applicable to projects undertaken by the federal government either on or off federal lands unless the Congress consents to such regulation.
2. The Act is applicable to non-federal projects on federal lands unless a specific act of Congress preempts state regulation, or unless the state regulation inherently conflicts with applicable federal regulation. Preemption questions in such instances must be considered on a case-by-case basis as they arise.

Exhibit
M.S. 1-6-23
Opinion as emphasized
page 60 19

3. The Act is applicable to private projects (as defined by section 26-1512, R.C.M. 1947) on state lands. State or local projects (as defined by section 26-1502, R.C.M. 1947) are regulated by the Fish and Game Commission under sections 26-1501 through 26-1509, R.C.M. 1947.
4. The Act does not apply to Indian projects within Indian reservations. The Act does apply to non-Indian projects on non-Indian lands within Indian reservations to the extent that the Act does not conflict with tribal self-government. Answers to such questions of conflict will have to be answered on a case-by-case basis as they arise.

24 March 1977

Valley County Conservation District
219 Second Avenue South
Glasgow, Montana 59230

Green Mountain Soil and Water
Conservation District
P.O. Box 461
Thompson Falls, Montana 59873

Gentlemen:

You have requested my opinion on the following question:

Does the Montana Natural Streambed and Land Preservation Act of 1975 (Title 26, chapter 15, R.C.M. 1947) apply to projects constructed on state, federal or Indian Reservation lands?

The Natural Streambed and Land Preservation Act (sections 26-1510 through 26-1523, R.C.M. 1947) was enacted in 1975 to protect and preserve streams in Montana through local control. The Streambed Act provides for local approval of projects which physically alter or modify the bed and banks of a natural perennial flowing stream. The Streambed Act complements pre-existing statutes, sections 26-1501 through 26-1509, R.C.M. 1947, which empower the Fish and Game Commission to approve stream modification projects undertaken by an "agency of the state government, county, municipality, or other subdivision of the state of Montana." (Section 26-1502.) The Streambed Act, on the other hand, applies to projects undertaken by "any natural person, corporation, firm, partnership, association, or other legal entity" not covered by section 26-1502, quoted above.

OPINIONS OF THE ATTORNEY GENERAL

The applicability of the Streambed Act to state, federal and reservation lands involves complex legal issues which are best addressed by considering each type of project separately.

1. Federally-construed projects on federal lands. In the first place, it is doubtful that the Legislature intended for the Act to apply to projects constructed by the federal government. Such projects are clearly not covered by pre-existing statutes, which apply only to activities by state and local government entities (section 26-1502). As noted above, the Act itself applies to activities by "any natural person, corporation, firm, partnership, association or other legal entity." (Section 26-1512.) If the federal government is to be covered, it must be as an "other legal entity." The ejusdem generis rule of statutory construction, however, would lead to the conclusion that "other legal entity" refers back to entities similar to those already listed--natural persons, corporations, firms, partnerships and associations. Governmental entities in general would appear to be excluded. Further, the pre-existing statutes, which the Legislature clearly intended to cover governmental activities (even if only state government), do not cover federal activities. In fact, a specific directive was included (section 26-1508) requiring the Fish and Game Commission to "observe and report" on federal activities and to formally notify federal agencies of the State's objections to any project. If the State were exerting regulatory authority over the federal projects such a requirement would be entirely superfluous. If the Streambed Act itself were intended to regulate federal projects, the Legislature would have repealed section 26-1508 when the Act was enacted in 1975. This analysis leads to a conclusion that as an initial matter, the Legislature never intended to regulate federally-constructed projects whether they occur on federal or non-federal land.

Even if the Act were construed to apply to federally-constructed projects, it is doubtful that state regulation could be upheld as a matter of constitutional law. The federal Constitution and statutes are the supreme law of the land, state constitutions and statutes notwithstanding. (Constitution, Art. VI, cl.2.) It has long been held that the states have no power to retard, impede, burden or control the operations of laws enacted by Congress in execution of its constitutionally-delegated powers (McCulloch v. Maryland, 17 U.S. 315). See also, Arizona v. California,

283 U.S. 423, 451 (1930); Mann v. U.S., 347 F.2d 970, 975 (9th Cir. 1965). The importance to a state of its own law is immaterial if it conflicts with a federal law. (Free v. Bland, 369 U.S. 663, 666 (1962).) Congress can authorize state regulation of federal functions, but such authorization must be clear and unequivocal and cannot be implied. (Kentucky v. Ruckleshaus, 497 F.2d 1172 (6th Cir. 1974); Mayo v. U.S., 319 U.S. 441, 448 (1943).)

Thus, the general rule is that if an activity is undertaken by the federal government it is not subject to state regulation or control unless Congress specifically invites that regulation and control.

2. Non-federal projects on federal lands. Projects undertaken by either state governmental entities (section 26-1502) or by "persons" as defined in section 26-1512 are subject to the Act (or the pre-existing statutes). With certain narrow exceptions not applicable here, state police power as exercised through the Act is not excluded from federal lands simply because of their federal ownership. It should be remembered, however, especially with regard to activities on federal land, that Federal law may be preemptive of state regulation. Just last year, the Supreme Court held (Kleppe v. New Mexico, 44 U.S.L.W. 4878, 4882 (1976)) that a state:

[U]ndoubtedly retains jurisdiction over federal lands within its territory, but Congress equally surely retains the power to enact legislation respecting those lands pursuant to the Property Clause (of Article IV of the Constitution)... . And when Congress so acts, the federal legislation necessarily overrides conflicting state laws under the Supremacy Clause (of Article IV of the Constitution).

The mere existence of federal law does not necessarily preempt state regulation. The Supreme Court held in Florida Avocado Growers v. Paul, 373 U.S. 132, 142 (1963):

The test of whether both federal and state regulations may operate or the state regulation must give way, is whether both regulations can be enforced without impairing the federal superintendence of the field, not whether they are aimed at similar or different objectives.

Federal law should not be deemed preemptive of state regulation except for "persuasive reasons" such as a showing that compliance with both is a physical impossibility or where Congress evidences a clear intent to preempt state control (*Id.*) State law will fall only where it stands as an obstacle to the "accomplishment and execution of the full purposes and objectives of Congress." Perez v. Campbell, 402 U.S. 637, 649 (1971).

Thus the mere location of a non-federal project on federal land alone does not preempt state regulation under the Streambed Act. However, if there is a federal law with which the Streambed Act would conflict under the tests discussed above, then the state regulation must give way. It is not within the scope of this opinion to attempt to wade through the many federal laws which may apply to projects covered by the Streambed Act so as to raise a preemption question. If specific issues arise as to specific projects and federal laws, these can be addressed by separate opinions.

3. Non-federal activities on state-owned lands. This heading would encompass projects undertaken both by private individuals and by state governmental agencies. The latter are clearly covered by section 26-1502 which gives the Fish and Game Commission regulatory authority over activities conducted by an agency of "state government, county, municipality, or other subdivision of the state of Montana." Privately constructed projects on state lands are clearly regulated by the Streambed Act (26-1512(2)).

It may at times be difficult to determine whether a given project is state or private, since there may be state involvement in a private project. If an agency merely authorizes a project as by issuing a permit, lease or easement, the project is still private and is covered by the Streambed Act. If, however, the project is being directed and controlled by the agency for state or public benefit then it is a state project and comes within Fish and Game Commission jurisdiction.

4. Non-federal projects constructed within an Indian Reservation. The question of whether the Streambed Act applies within Indian reservations is a difficult and complex one, and any answers given herein may have to be modified since the law in this area is constantly being refined.

First, as to projects constructed by Indians within the reservation, the Streambed Act does not apply. It was recently held that local land use regulation is inapplicable to Indian use of Indian lands, even where Congress has granted the state civil jurisdiction over the reservation under "Public Law 280" (18 U.S.C., section 1162) (Santa Rosa Band v. Kings County, 532 F.2d 655 (9th Cir. 1975).) See also, Bryan v. Itasca County, 44 U.S.L.W. 4832 (1976).

Regardless of whether the Streambed Act might be applied to Indian projects under Public Law 280 (25 U.S.C., sections 1321-1326) it is sufficient to note that the State of Montana has not acted thereunder to assume civil jurisdiction over any reservation.

Second, projects constructed by non-Indians on non-Indian land within a reservation may be regulated under the Streambed Act if the tribe does not regulate such activities itself. According to Williams v. Lee, 358 U.S. 217 (1959), a state may regulate on-reservation non-Indian activities up to the point that doing so would interfere with tribal self-government. This is a determination which will have to be made in individual instances depending upon the tribal ordinances involved.

THEREFORE, IT IS MY OPINION:

1. The Montana Natural Streambed and Land Preservation Act (sections 26-1510 through 26-1523, R.C.M. 1947) is not applicable to projects undertaken by the federal government either on or off federal lands unless the Congress consents to such regulation.
2. The Act is applicable to non-federal projects on federal lands unless a specific act of Congress preempts state regulation, or unless the state regulation inherently conflicts with applicable federal regulation. Preemption questions in such instances must be considered on a case-by-case basis as they arise.
3. The Act is applicable to private projects (as defined by section 26-1512, R.C.M. 1947) on state lands. State or local projects (as defined by section 26-1502, R.C.M. 1947) are regulated by the Fish and Game Commission under sections 26-1501 through 26-1509, R.C.M. 1947.

OPINIONS OF THE ATTORNEY GENERAL

4. The Act does not apply to Indian projects within Indian reservations. The Act does apply to non-Indian projects on non-Indian lands within Indian reservations to the extent that the Act does not conflict with tribal self-government. Answers to such questions of conflict will have to be answered on a case-by-case basis as they arrive.

Very truly yours,

MIKE GREELY
Attorney General

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MontGuide

MT201709HR New 12/17

Water Rights in Montana: An Overview

by Adam Sigler, Water Quality Associate Specialist, MSU Extension; and Brad Bauer, former Gallatin County Natural Resource Agent, MSU Extension

All water in Montana is owned by the State for the benefit of its people. Individual water users have the right to use the waters of the State if they hold or are covered under a valid water right. A basic understanding of water rights is essential for people who want to play a part in the effective management of water resources.

Background

Development of conveyance systems for water use helped define civilizations like the Roman, Egyptian, and Inca Empires. Closer to home, archeological evidence indicates that early Puebloan people in the Four Corners region of the United States (US) relied on irrigation for farming and developed significant water conveyance systems as early as 200 BC. Similarly, the construction of water conveyance systems played an important role in the development of the western US. As early as the nineteenth century, demand for water often outpaced supply, creating the need for a method for allocating water. The primary legal framework adopted throughout the western US was the prior appropriation doctrine, often summarized as "first in time, first in right." Under this system, the earliest water users have the highest priority (senior) water rights. This means that in times of shortage, senior water right holders are entitled to all of their water before more junior water right holders are entitled to any of their water. Under the prior appropriation doctrine, a person does not have the right to use water simply because it flows through their property. They must have a water right, and this is an important difference from the doctrine of riparian water rights commonly used in the eastern US.

What is a Water Right?

All water in Montana is owned by the State for the benefit of its people. Individual water users have the right to use the waters of the State if they hold or are covered under a valid water right. The term "water right" in this document refers

The **prior appropriation doctrine**, or doctrine of prior appropriation, is the legal basis for water rights and use in Montana and across most of the western US. It establishes that those who first put water to beneficial use have the highest priority to continue to use water in times of shortage. "First in Time, First in Right"

to rights established both before and after 1973, which was an important year for water rights in Montana (described in the following sections). There are also important federal and Indian reserved water rights recognized in Montana, which are not explicitly covered in this document. Water rights have a set of "elements" that define the water right. The elements of a water right are:

1. **Source** – surface water sources include streams, rivers, some springs, and lakes. Wells and some springs have groundwater as the source.
2. **Point of Diversion** – this is where water is first diverted from the source. For surface water, this can be the dam or headgate. For stock water or instream flow, this may be a reach of a stream. For groundwater pumped from a well or a developed spring, it is the location of the wellhead or the place where the spring is developed.
3. **Purpose (Beneficial Use)** – this is the designated beneficial use of the water right. These beneficial uses include, but are not limited to: irrigation, stock water, municipal, industrial, domestic, recreational uses, instream flow, hydropower, fish and wildlife, aquifer storage and recovery, and mitigation.
4. **Place of Use** – place where the water is put to beneficial use, identified by legal land description (township, range, and section).
5. **Flow and Volume (Quantity)** – Flow rate is the maximum rate at which water can be diverted from a source. Volume is the maximum amount of water that can be diverted in a calendar year. The maximum flow rate is typically defined in cubic feet per second (cfs) and volume is described in acre-feet. Some water rights, such as for stock water use, may not specify a flow rate or volume, but are generally limited to the amount historically used. Most pre-1973 water rights do not specify a volume, but all of these water rights are limited to the amount historically used, defined by the beneficial use.

6. **Period of Use** – period of the year during which the water is allowed to be used.
7. **Period of Diversion** – the period of the year that water is diverted from the source, which may differ from the period of use, if water is stored.
8. **Priority Date** – the date the water was first put to beneficial use.

Water right holders are required to operate within the confines of these elements as specified in their water right. One generally cannot change source, quantity, period of use, period of diversion, or priority date. If the owner of a water right wishes to change the point of diversion, place of use, purpose (beneficial use), or place of storage (including adding storage), they must apply for and be granted a change authorization (“change in use”) through the Montana Department of Natural Resources and Conservation (DNRC). This change process is intended to protect other water users from harm.

A water right is a property right to use (but not own) water in Montana, as affirmed by the Montana Constitution, the Montana Supreme Court, and by State law. Because it is a property right, a water right can be sold, leased, and/or severed from the property where it has historically been put to beneficial use. If a change in ownership, severance, or a lease of a water right would result in the change in any of the basic elements of the water right, the water right holder must apply for and receive a change authorization from the DNRC.

As with all property rights, there are responsibilities that go with them. Water right holders have the legal responsibility to ensure ownership and contact information are correct and up-to-date with the DNRC. Points of diversion and means of conveyance need to be maintained and must be operating in order to protect the right. Because most water sources

are over-appropriated in Montana, water rights must be put to actual beneficial use to be protected from challenges of abandonment. Another cornerstone of the prior appropriation doctrine is “use it or lose it.”

Rationing of Scarce Water and Enforcement

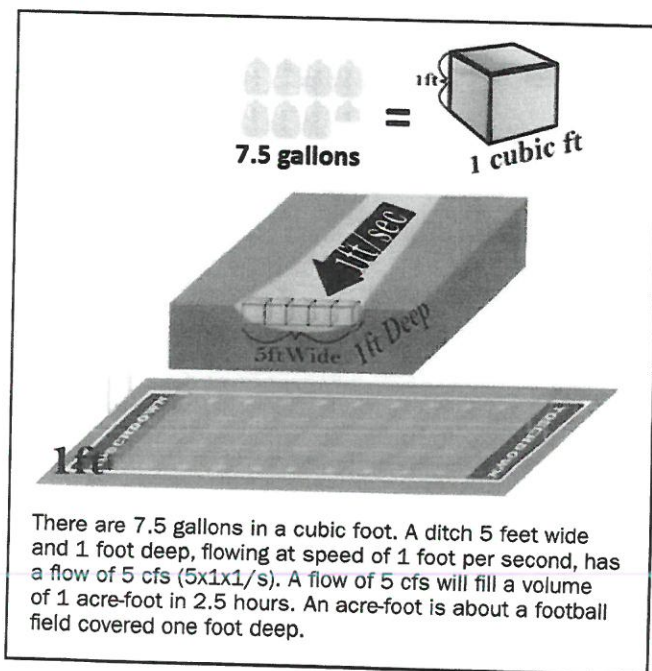
In Montana, no one beneficial use (e.g. agriculture, municipal, domestic, wildlife/fisheries) takes priority over the others. It is the relative seniority of water rights laid out by the prior appropriation doctrine (“first in time, first in right”) that is used to ration scarce water. The earlier the priority date specified on the water right, the more “senior” it is. A water right with an 1889 priority date is senior to a water right with an 1892 or 1915 priority date. When flows get low, the more senior water right owner (1889 in this example) is entitled to use their water first and can “make a call” on upstream water users with later (junior) priority dates. Making a “call” means that a senior water user requests that a junior user stop using water so the senior user can get their water. The process leaves it to individual water users to protect and enforce their water rights.

In times of water shortage or in areas where distribution is contentious, water users can petition the District Court to appoint a Water Commissioner to enforce distribution of water according to rights as recognized by the District Court or Water Court. If a water user is using water illegally, one can either contact the DNRC, or can file an action in District Court.

Legal Framework for Water Rights in Montana

The 1972 Montana Constitution provides the foundation for Montana water law. Specifically, Article IX, Section 3 sets forth that:

1. All existing rights to the use of any waters for any useful or beneficial purpose are hereby recognized and confirmed.
2. The use of all water that is now or may hereafter be appropriated for sale, rent, distribution, or other beneficial use, the right of way over the lands of others for all ditches, drains, flumes, canals, and aqueducts necessarily used in connection therewith, and the sites for reservoirs necessary for collecting and storing water shall be held to be a public use.
3. All surface, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law.
4. The legislature shall provide for the administration, control, and regulation of water rights and shall establish a system of centralized records, in addition to the present system of local records.



Expanding on these provisions of the Montana Constitution, the Montana Legislature adopted the Montana Water Use Act in 1973. The act provides a statutory framework for the adjudication of water rights that existed prior to 1973, changes of use for existing water rights, the creation of a centralized water right recording system, and a system to create and regulate water use permits issued after 1973.

Water Rights Established Before July 1, 1973 (Adjudication)

The Montana Water Use Act created a statutory framework for adjudication of water rights that existed prior to 1973. The process of "adjudication," in the context of water rights, started when the Montana Supreme Court issued an order in 1979 requiring all persons with water rights having priority dates earlier than July 1, 1973, file "claims" describing the use of their water. If a water user did not file a claim for their pre-1973 water on or before April 30, 1982, their water right was considered abandoned; however, there are some exemptions, including for stock watering directly from a stream or river. Filed claims were then examined by DNRC for completeness and accuracy and all information was entered into a database, summaries of which can be retrieved as "abstracts." Any discrepancies noted by the DNRC were reported to the claimants and appear on the water right abstracts as "issue remarks." Water users were (and still are where adjudication is ongoing) then given an opportunity to object to claims, including their own, if they felt the information contained within a claim was not correct. The Water Court hears these objections and decides on these issues. When all of the objections and issue remarks for a particular basin are resolved, the Water Court issues decrees setting forth the particular elements of every recorded water right in that basin. The adjudication process is ongoing throughout the state with different basins at different stages in the process. To find out where in the process your water rights may be, see the DNRC map linked on the Extension page or contact the Water Court or your regional DNRC office.

Water Uses Established On or After July 1, 1973 (New Appropriations)

New appropriations are water rights issued on or after July 1, 1973, and include "water use permits" and "groundwater certificates." New appropriations do not undergo review in the adjudication process. Anyone seeking a new appropriation must submit a form and fee to the DNRC. The form must describe all water right elements listed above. For permitting, an applicant must demonstrate that the new use will not adversely affect other users and must address a number of other statutory criteria (including physical and legal availability or historic use, beneficial use, adequacy of diversion, and possessory interest in the place of use). The DNRC will initially review the application to determine

whether it is correct and complete before analyzing the criteria to determine whether the application can be granted. The public is allowed an opportunity to object to the application if they can show that the change in use or new appropriation may adversely affect their property, water rights, or interest. Water is in very limited supply or not legally available in some areas of Montana, making getting a new water right difficult. Small groundwater uses (35 gpm or less for up to 10 acre-feet per year) are an exception to the permitting process, so no public notice and no criteria analysis are required. A person wanting to obtain a water right for a small groundwater use is required to complete and file a form with the DNRC after putting the water to use. If one is developing multiple exemptions (wells, pits, developed springs) up to 10 acre-feet within a small area, some restrictions are in place.

For Further Information

This document is intended to provide a general overview of water rights in Montana and is not intended to offer legal advice. For specific questions on water rights, contact the following entities and/or see the additional information resources.

- For questions on changes to existing water rights, permits, or general information on water rights, contact your regional DNRC office <http://dnrc.mt.gov/divisions/water/water-rights/water-resources-regional-offices> or visit <http://dnrc.mt.gov/divisions/water/water-rights> where a "Water Rights in Montana" booklet and many other resources are available.
- For concerns about water rights claims and the adjudication process, contact the Water Court <http://courts.mt.gov/water>
- For issues or concerns about water distribution controversies, contact your district court <http://courts.mt.gov/locator>
- For technical legal issues, contact an attorney who is practiced in water rights law

Additional resources

- The Constitution of the State of Montana http://leg.mt.gov/bills/mca_toc/CONSTITUTION.htm
- Montana Code Annotated (MCA) Title 85 - Montana Water Use Act http://leg.mt.gov/bills/mca/title_0850/chapters_index.html
- Administrative Rules of Montana (ARM) <http://www.mtrules.org/gateway/ChapterHome.asp?Chapter=36.12>
- MSU Extension – weblinks to various water-rights-related resources <http://waterquality.montana.edu/resources/waterrights>

Acknowledgements and Reviewers

This publication has been approved by representatives of the following groups/agencies, who recommend its reading by those with basic questions about water rights in Montana:

- MT Department of Natural Resources and Conservation (DNRC)
- Association of Gallatin Agricultural Irrigators (AGAI)
- One Montana
- Trout Unlimited (TU)
- two attorneys from the Water Law Section of the State Bar of Montana
- Extension colleagues with Montana State University, and members of the public

Common Montana Water Right Terms

Abstract: a document outlining the elements of a water right (e.g. Statement of Claim, permit, or groundwater certificate).

Acre-foot: enough water to cover one acre of area, one foot deep.

Adjudication: assessment of pre-July 1, 1973, water rights claims by the DNRC and Water Court.

Adverse effect: impairment to an existing water right.

Change in use: a modification to any of the elements of a water right that requires approval by the DNRC (point of diversion, place of use, purpose, or place of storage).

cfs: cubic feet per second; one cfs is equal to 448 gallons per minute (gpm); a garden hose running full-blast might run 10 gpm.

Closed basin: a drainage area where all available water is claimed with existing water rights and new water rights are limited.

Controlled Groundwater Area: an area where special restrictions on groundwater use are in place.

Conveyance system: canals, ditches, pipes, natural channels, etc. that move water from the source to the place of use.

Decreed rights: a water right issued by a court upon adjudication for an area (typically a basin or a stream).

Exempt well: a popular term for groundwater use that uses less than 35 gpm and less than 10 acre-feet per year and that is exempt from the permitting process if certain conditions are met. (see also groundwater certificate, a type of water right)

Groundwater certificate: a water right established on or after July 1, 1973, for a well, a groundwater pit, or a developed spring that is exempt from the permitting process if certain conditions are met. (see also "exempt well")

Historic use: the amount of water that was actually applied to a beneficial use in the past.

Instream flows: water protected in a stream for beneficial uses such as preservation of fish or wildlife habitat.

Junior water right: water right with a use that started later in time and has a lower priority relative to senior rights.

Making a "call": when a senior water right holder asks a junior user to stop using water so the senior right holder can get their water first.

Miner's inch (mi): a statutory measure of flow rate. The definition varies by state, but in Montana, 40 mi are equal to 1 cfs.

Mitigation: a mechanism for using existing water rights to offset adverse effects resulting from a new water use.

Senior water right: water right with a use that started earlier and has higher priority relative to junior rights.

Statement of Claim: an existing water right originated before July 1, 1973, and generally established by putting water to beneficial use.

Stock use: beneficial use of water for livestock.

Water use permit: a water right established on or after July 1, 1973.



This MontGuide should not be used as a legal reference; for legal matters refer directly to the Montana Code Annotated, the Administrative Rules of Montana, and/or your own legal counsel.

To order additional publications, please contact your county or reservation MSU Extension office, visit our online catalog at <https://store.msuextension.org> or e-mail orderpubs@montana.edu

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EXTENSION

File under: Agriculture and Natural Resources (Water)
New December 2017 1217SA



NATIONAL PARK SERVICE Compact

85-20-401 MCA

In 1993, a water rights compact with the National Park Service for the Yellowstone and Glacier national parks and Big Hole National Battlefield was passed by the Montana Legislature. The 1995 Montana Legislature ratified a compact for the remaining two Park Service units, Little Bighorn Battlefield National Monument and Bighorn Canyon National Recreation Area, completing Park Service negotiations in Montana. The two compacts were consolidated by the Montana Legislature into a single compact that provides water for instream flow, park facilities and residences, irrigation, and a separate right to water for emergency fire suppression. The compact also provides for water rights to preserve the resources and hydrothermal features in Yellowstone National Park. The Montana Water Court issued a final decree for this compact in April 2005 (Case # WC-94-1) and issued its Certification and Final Judgment in April 2016.

Yellowstone National Park:

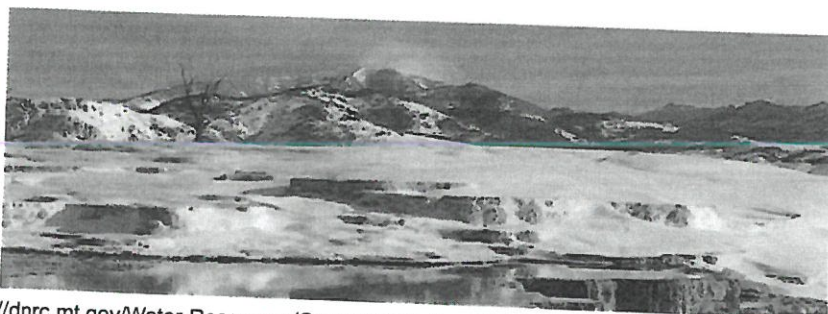


Exhibit
 MS-1-10-23
 85-20-401 MCA





SEARCH



Yellowstone Controlled Groundware Area Permit Process

Glacier National Park:



The Compact quantifies the following reserved water rights in the Saint Mary, Two Medicine, Cut Bank, Milk, and North and Middle Fork Flathead River basins for Glacier National Park:

- **Consumptive use rights**, including future uses, for campgrounds, patrol cabins, general area use, stations, backcountry use, and other facilities.
- **Instream Flow** rights for streams within or bordering the park.
- **Lake Level** rights for the maintenance of natural water levels within the park.

Little Bighorn Battlefield National Monument:



2

MCA Contents / TITLE 85 / CHAPTER 20 / Part 4 / 85-20-401 United State...

Montana Code Annotated 2021

Exhibit

M3+10-23

MT Compact & MP

TITLE 85. WATER USE

CHAPTER 20. WATER COMPACTS

Part 4. United States Park Service-Montana Compact

United States National Park Service-Montana Compact Ratified

85-20-401. United States National Park Service-Montana compact ratified. The compact entered into by the state of Montana and the United States National Park Service and filed with the secretary of state of the state of Montana under the provisions of **85-2-702** on May 12, 1993, is ratified. The compact is as follows:

WATER RIGHTS COMPACT

STATE OF MONTANA

UNITED STATES OF AMERICA, NATIONAL PARK SERVICE

This Compact is entered into by the State of Montana and the United States of America to settle for all time any and all claims to water for certain lands administered by the National Park Service within the State of Montana at the time of the effective date of this Compact.

A Compact between the State of Montana and the United States of America regarding water rights for National Park Service lands was executed January 31, 1994. The parties were unable to finalize agreement on quantification of the water rights for Bighorn Canyon National Recreation Area and the Little Bighorn Battlefield National Monument prior to the completion of the Compact executed January 31, 1994. This Compact is the final agreement regarding the water rights attributable to these two NPS Units.

RECITALS

WHEREAS, in 1979 the United States filed in the United States District Court for the District of Montana several actions to adjudicate, inter alia, its rights to water with respect to Glacier National Park, see United States v. Aageson, No. CV-79-21-GF; United States v. Abell, No. CV-79-33-M; and United States v. AMS Ranch, Inc., No. CV-79-22-GF.

WHEREAS, the State of Montana, in 1979 pursuant to Title 85, Chapter 2 of the Montana Code Annotated, commenced a general adjudication of the rights to the use of water within the State of Montana including all federal reserved and appropriative water rights;

WHEREAS, **85-2-703**, MCA, provides that the state may negotiate settlement of claims by the federal government to non-Indian reserved waters within the State of Montana;

WHEREAS, the United States wishes to quantify and have decreed the amount of water necessary to fulfill the purposes of the existing National Park Service units in the State of Montana, including those reserved water rights necessary to preserve Glacier National Park and Yellowstone National Park unimpaired for future generations;

WHEREAS, the United States, in quantifying its reserved water rights recognizes the need to accommodate the interests of the state and its citizens by providing for the development and use of water in the vicinity of the Park units to the extent that it is possible to do so without materially affecting the rights and interests of the

United States;

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. §§ 516-17 (1968);

WHEREAS The Secretary of the Interior, or a duly designated official of the United States Department of the Interior, has authority to execute this Compact on behalf of the United States Department of Interior pursuant to 43 U.S.C. § 1457 (1986, Supp. 1992);

NOW THEREFORE, the State of Montana and the United States agree as follows:

ARTICLE I DEFINITIONS

For purposes of this Compact only, the following definitions shall apply:

- (1) "Abstract" means the copy of the document entitled "Abstract of National Park Service Water Rights" referenced in this Compact as Appendix 1 [and] the copy of the document entitled "Abstract of National Park Service Water Rights - BCNRA and LBBNM" referenced in this Compact as Appendix 2.
- (2) "Big Hole National Battlefield" or "BHNB" means those lands located in Montana that were acquired pursuant to, or withdrawn and reserved by Executive Order No. 1216 of June 23, 1910; Presidential Proclamation No. 2339 of June 29, 1939, 53 Stat. 2544; and Act of May 17, 1963, 77 Stat. 18.
- (3) "Bighorn Canyon National Recreation Area" or "BCNRA" means those lands located in Montana that were acquired pursuant to, or designated as such by Act of October 15, 1966, 80 Stat. 913.
- (4) "Bureau" means the Montana Bureau of Mines and Geology or its successor.
- (5) "Category 1 stream" means a stream that headwaters on the reserved land administered by the National Park Service.
- (6) "Category 1a stream" means a stream that headwaters on the reserved land administered by the National Park Service and which, in part, carries water that drains non-federal land within the boundaries of the same reserved land.
- (7) "Category 2 stream" means a stream that headwaters in a Wilderness Area in Montana outside the respective Park unit which flows into the reserved land administered by the National Park Service, and which is not the source for a consumptive use water right recognized under state law on the effective date of this Compact and drains a hydrologic basin that contains only federal land.
- (8) "Category 3 stream" means a stream that headwaters in Montana outside the reserved land administered by the National Park Service that flows into the reserved land and is the source for consumptive use water rights recognized under state law on the effective date of this Compact.
- (9) "Category 4 stream" means a stream that is treated individually due to special circumstances.
- (10) "Consumptive use" means use of surface water not considered a non-consumptive use under (26) and use of groundwater which is shown to be hydrologically connected to surface water pursuant to Article II.
 - (a) "Current consumptive use", when referring to water rights recognized under state law only, means all consumptive use water rights recognized under state law with a priority date before January 1, 1993 [with respect to BHNB, GNP, or YNP and] on or before the effective date of the compact [with respect to BCNRA and LBBNM].

- (b) "Future consumptive use", when referring to a water right recognized under state law only, means a consumptive use water right recognized under state law with a priority date on or after January 1, 1993 [, with respect to BHNB, GNP, or YNP and] after the effective date of the compact [with respect to BCNRA and LBBNM].
- (11) "Credible information" means credible evidence sufficient to support a prima facie basis for the theory asserted.
- (12) "Crow Tribal Water Rights" means those senior reserved water rights and any aboriginal water rights held by the United States in trust for the Crow Tribe which are being quantified as part of the general adjudication of water rights in Montana.
- (13) "Curtailment" means action pursuant to this Compact to reduce or shut-off diversions by a junior water user to satisfy the senior instream flow right of the National Park Service.
- (14) "Department" means the Montana Department of Natural Resources and Conservation or its successor.
- (15) "Effective date of this Compact" means the date of the ratification of the Compact by the Montana legislature, written approval by the United States Department of the Interior, or written approval by the United States Department of Justice, whichever is later.
- (16) "Glacier National Park" or "GNP" means those lands located in Montana that were acquired pursuant to, or withdrawn and reserved by the Act of May 11, 1910, 36 Stat. 354; Act of February 27, 1915, 38 Stat. 814; and Act of April 11, 1972, 86 Stat. 120.
- (17) "Grant Kohrs Ranch National Historic Site" means those lands acquired by the United States and designated as such pursuant to Public Law 92-406, August 25, 1972.
- (18) "Groundwater" means water that is beneath the ground surface.
- (19) (a) "Hydrologically connected" for the purposes of Articles II and III, means groundwater that is connected to surface water such that appropriation at the proposed rate will cause a calculable reduction in surface water flow. A "calculable reduction in surface water flow" means a theoretical reduction based on credible information as opposed to a measured reduction.
- (b) "Hydrologically connected" for the purposes of Article IV, means groundwater that is considered to be connected to the hydrothermal system within the reserved land of Yellowstone National Park based on scientific evidence according to the procedures in Article IV.
- (20) "Hydrothermal system" means the groundwater system, including cold water recharge, transmission and warm water discharge that is hydrologically connected to the hydrothermal features within the reserved land of Yellowstone National Park.
- (21) "Hydrothermal discharge water" means groundwater with a temperature in excess of 59 degrees Fahrenheit that is hydrologically connected to the hydrothermal system within the reserved land of Yellowstone National Park.
- (22) "Hydrothermal feature" means a surface manifestation of a hydrothermal system, including but not limited to: hot springs, geysers, mud pots, and fumaroles.
- (23) "Instream flow" means the water that the parties agree shall remain in the stream in satisfaction of the United States' reserved water right for the purposes of the reserved land.
- (24) "Little Bighorn Battlefield National Monument" or "LBBNM" means those lands located in Montana that were acquired pursuant to or withdrawn and reserved by Presidential Proclamation of December 7, 1886, and by Act of March 22, 1946, 60 Stat. 59.

(25) "Nez Perce National Historical Park" means those lands in Montana acquired and added to the Nez Perce National Historical Park by Congress on October 30, 1992, pursuant to Public Law 102-576.

(26) (a) "Non-consumptive use" when applied to a mining or hydropower use for which a water right is recognized under state law with a priority date on or after January 1, 1993, [with respect to BHNB, GNP, or YNP and] after the effective date of this compact [with respect to BCNRA and LBBNM], means an appropriation that does not cause a net loss in the surface source of supply, and where substantially all of the diverted water becomes return flow with little or no delay between the time of diversion and the time of return, and without adverse effect on the quantity or quality of water necessary to fulfill the purposes of the reserved land.

(b) "Non-consumptive use" when applied to a water right recognized under state law other than a mining or hydropower use with a priority date on or after January 1, 1993, [with respect to BHNB, GNP, or YNP and] after the effective date of this compact [with respect to BCNRA and LBBNM], or a water right recognized under state law with a priority date before January 1, 1993, [with respect to BHNB, GNP, or YNP and] on or before the effective date of this compact [with respect to BCNRA and LBBNM], means a water right considered to be non-consumptive by the decree, permit or law authorizing the use.

(27) "Parkman Sandstone" means the unit as defined in Moulder, E.A., Klug, M.F., Morris, D.A., and Swenson, F.A. (1960) "Geology and Ground-Water Resources of the Lower Little Bighorn River Valley Big Horn County, Montana," USGS Water Supply Paper 1487, where it occurs along the Little Bighorn River and its tributaries between the Montana-Wyoming line and the Little Bighorn Battlefield National Monument.

(28) "Parties" means the State of Montana and the United States.

(29) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, or any other entity, but does not include the United States.

(30) "Quaternary Alluvium" means the unit as defined in Moulder, E.A., Klug, M.F., Morris, D.A., and Swenson, F.A. (1960) "Geology and Ground-Water Resources of the Lower Little Bighorn River Valley Big Horn County, Montana," USGS Water Supply Paper 1487, where it occurs along the Little Bighorn River and its tributaries between the Montana-Wyoming line and the Little Bighorn Battlefield National Monument.

(31) "Quaternary Terrace Deposits" means the unit as defined in Moulder, E.A., Klug, M.F., Morris, D.A., and Swenson, F.A. (1960) "Geology and Ground-Water Resources of the Lower Little Bighorn River Valley Big Horn County, Montana," USGS Water Supply Paper 1487, where it occurs along the Little Bighorn River and its tributaries between the Montana-Wyoming line and the Little Bighorn Battlefield National Monument.

(32) "Recognized under state law" when referring to a water right or use means a water right or use protected by state law, but does not include state recognition of a federal or tribal reserved water right.

(33) "Return flow" means the portion of water diverted from a source that is returned to the same source, at or near the point of diversion.

(34) "Scientific evidence" means geologic, geophysical, geochemical and hydrologic information.

(35) "State" means the State of Montana and all officers, agents, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent, "state" means the Director of the Montana Department of Natural Resources and Conservation or his or her designee.

(36) "Technical Oversight Committee" or "TOC" means the scientific committee established by Article IV of this Compact.

(37) "Tributary to" means surface water that originates in the same hydrologic basin or subbasin as the stream referred to and which contributes water to the same stream.

Part 4. United States Park Service-Montana Compact

United States National Park Service-Montana Compact Ratified

85-20-401. United States National Park Service-Montana compact ratified. The compact entered into by the state of Montana and the United States National Park Service and filed with the secretary of state of the state of Montana under the provisions of **85-2-702** on May 12, 1993, is ratified. The compact is as follows:

WATER RIGHTS COMPACT
STATE OF MONTANA
UNITED STATES OF AMERICA, NATIONAL PARK SERVICE

This Compact is entered into by the State of Montana and the United States of America to settle for all time any and all claims to water for certain lands administered by the National Park Service within the State of Montana at the time of the effective date of this Compact.

A Compact between the State of Montana and the United States of America regarding water rights for National Park Service lands was executed January 31, 1994. The parties were unable to finalize agreement on quantification of the water rights for Bighorn Canyon National Recreation Area and the Little Bighorn Battlefield National Monument prior to the completion of the Compact executed January 31, 1994. This Compact is the final agreement regarding the water rights attributable to these two NPS Units.

RECITALS

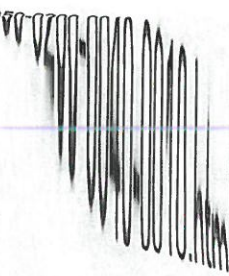
WHEREAS, in 1979 the United States filed in the United States District Court for the District of Montana several actions to adjudicate, *inter alia*, its rights to water with respect to Glacier National Park, see United States v. Aageson, No. CV-79-21-GF; United States v. Abell, No. CV-79-33-M; and United States v. AMS Ranch, Inc., No. CV-79-22-GF.

WHEREAS, the State of Montana, in 1979 pursuant to Title 85, Chapter 2 of the Montana Code Annotated, commenced a general adjudication of the rights to the use of water within the State of Montana including all federal reserved and appropriative water rights;

WHEREAS, **85-2-703**, MCA, provides that the state may negotiate settlement of claims by the federal government to non-Indian reserved waters within the State of Montana;

WHEREAS, the United States wishes to quantify and have decreed the amount of water necessary to fulfill the purposes of the existing National Park Service units in the State of Montana, including those reserved water rights necessary to preserve Glacier National Park and Yellowstone National Park unimpaired for future generations;

WHEREAS, the United States, in quantifying its reserved water rights recognizes the need to accommodate the interests of the state and its citizens by providing for the development and use of water in the vicinity of the Park units to the extent that it is possible to do so without materially affecting the rights and interests of the



United States;

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. §§ 516-17 (1968);

WHEREAS The Secretary of the Interior, or a duly designated official of the United States Department of the Interior, has authority to execute this Compact on behalf of the United States Department of Interior pursuant to 43 U.S.C. § 1457 (1986, Supp. 1992);

NOW THEREFORE, the State of Montana and the United States agree as follows:

ARTICLE I

DEFINITIONS

For purposes of this Compact only, the following definitions shall apply:

- (1) "Abstract" means the copy of the document entitled "Abstract of National Park Service Water Rights" referenced in this Compact as Appendix 1 [and] the copy of the document entitled "Abstract of National Park Service Water Rights - BCNRA and LBBNM" referenced in this Compact as Appendix 2.
- (2) "Big Hole National Battlefield" or "BHNB" means those lands located in Montana that were acquired pursuant to, or withdrawn and reserved by Executive Order No. 1216 of June 23, 1910; Presidential Proclamation No. 2339 of June 29, 1939, 53 Stat. 2544; and Act of May 17, 1963, 77 Stat. 18.
- (3) "Bighorn Canyon National Recreation Area" or "BCNRA" means those lands located in Montana that were acquired pursuant to, or designated as such by Act of October 15, 1966, 80 Stat. 913.
- (4) "Bureau" means the Montana Bureau of Mines and Geology or its successor.
- (5) "Category 1 stream" means a stream that headwaters on the reserved land administered by the National Park Service.
- (6) "Category 1a stream" means a stream that headwaters on the reserved land administered by the National Park Service and which, in part, carries water that drains non-federal land within the boundaries of the same reserved land.
- (7) "Category 2 stream" means a stream that headwaters in a Wilderness Area in Montana outside the respective Park unit which flows into the reserved land administered by the National Park Service, and which is not the source for a consumptive use water right recognized under state law on the effective date of this Compact and drains a hydrologic basin that contains only federal land.
- (8) "Category 3 stream" means a stream that headwaters in Montana outside the reserved land administered by the National Park Service that flows into the reserved land and is the source for consumptive use water rights recognized under state law on the effective date of this Compact.
- (9) "Category 4 stream" means a stream that is treated individually due to special circumstances.
- (10) "Consumptive use" means use of surface water not considered a non-consumptive use under (26) and use of groundwater which is shown to be hydrologically connected to surface water pursuant to Article II.
 - (a) "Current consumptive use", when referring to water rights recognized under state law only, means all consumptive use water rights recognized under state law with a priority date before January 1, 1993 [, with respect to BHNB, GNP, or YNP and] on or before the effective date of the compact [with respect to BCNRA and LBBNM].

- (b) "Future consumptive use", when referring to a water right recognized under state law only, means a consumptive use water right recognized under state law with a priority date on or after January 1, 1993 [, with respect to BHNB, GNP, or YNP and] after the effective date of the compact [with respect to BCNRA and LBBNM].
- (11) "Credible information" means credible evidence sufficient to support a prima facie basis for the theory asserted.
- (12) "Crow Tribal Water Rights" means those senior reserved water rights and any aboriginal water rights held by the United States in trust for the Crow Tribe which are being quantified as part of the general adjudication of water rights in Montana.
- (13) "Curtailement" means action pursuant to this Compact to reduce or shut-off diversions by a junior water user to satisfy the senior instream flow right of the National Park Service.
- (14) "Department" means the Montana Department of Natural Resources and Conservation or its successor.
- (15) "Effective date of this Compact" means the date of the ratification of the Compact by the Montana legislature, written approval by the United States Department of the Interior, or written approval by the United States Department of Justice, whichever is later.
- (16) "Glacier National Park" or "GNP" means those lands located in Montana that were acquired pursuant to, or withdrawn and reserved by the Act of May 11, 1910, 36 Stat. 354; Act of February 27, 1915, 38 Stat. 814; and Act of April 11, 1972, 86 Stat. 120.
- (17) "Grant Kohrs Ranch National Historic Site" means those lands acquired by the United States and designated as such pursuant to Public Law 92-406, August 25, 1972.
- (18) "Groundwater" means water that is beneath the ground surface.
- (19) (a) "Hydrologically connected" for the purposes of Articles II and III, means groundwater that is connected to surface water such that appropriation at the proposed rate will cause a calculable reduction in surface water flow. A "calculable reduction in surface water flow" means a theoretical reduction based on credible information as opposed to a measured reduction.
- (b) "Hydrologically connected" for the purposes of Article IV, means groundwater that is considered to be connected to the hydrothermal system within the reserved land of Yellowstone National Park based on scientific evidence according to the procedures in Article IV.
- (20) "Hydrothermal system" means the groundwater system, including cold water recharge, transmission and warm water discharge that is hydrologically connected to the hydrothermal features within the reserved land of Yellowstone National Park.
- (21) "Hydrothermal discharge water" means groundwater with a temperature in excess of 59 degrees Fahrenheit that is hydrologically connected to the hydrothermal system within the reserved land of Yellowstone National Park.
- (22) "Hydrothermal feature" means a surface manifestation of a hydrothermal system, including but not limited to: hot springs, geysers, mud pots, and fumaroles.
- (23) "Instream flow" means the water that the parties agree shall remain in the stream in satisfaction of the United States' reserved water right for the purposes of the reserved land.
- (24) "Little Bighorn Battlefield National Monument" or "LBBNM" means those lands located in Montana that were acquired pursuant to or withdrawn and reserved by Presidential Proclamation of December 7, 1886, and by Act of March 22, 1946, 60 Stat. 59.

(25) "Nez Perce National Historical Park" means those lands in Montana acquired and added to the Nez Perce National Historical Park by Congress on October 30, 1992, pursuant to Public Law 102-576.

(26) (a) "Non-consumptive use" when applied to a mining or hydropower use for which a water right is recognized under state law with a priority date on or after January 1, 1993, [with respect to BHNB, GNP, or YNP and] after the effective date of this compact [with respect to BCNRA and LBBNM], means an appropriation that does not cause a net loss in the surface source of supply, and where substantially all of the diverted water becomes return flow with little or no delay between the time of diversion and the time of return, and without adverse effect on the quantity or quality of water necessary to fulfill the purposes of the reserved land.

(b) "Non-consumptive use" when applied to a water right recognized under state law other than a mining or hydropower use with a priority date on or after January 1, 1993, [with respect to BHNB, GNP, or YNP and] after the effective date of this compact [with respect to BCNRA and LBBNM], or a water right recognized under state law with a priority date before January 1, 1993, [with respect to BHNB, GNP, or YNP and] on or before the effective date of this compact [with respect to BCNRA and LBBNM], means a water right considered to be non-consumptive by the decree, permit or law authorizing the use.

(27) "Parkman Sandstone" means the unit as defined in Moulder, E.A., Klug, M.F., Morris, D.A., and Swenson, F.A. (1960) "Geology and Ground-Water Resources of the Lower Little Bighorn River Valley Big Horn County, Montana," USGS Water Supply Paper 1487, where it occurs along the Little Bighorn River and its tributaries between the Montana-Wyoming line and the Little Bighorn Battlefield National Monument.

(28) "Parties" means the State of Montana and the United States.

(29) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, or any other entity, but does not include the United States.

(30) "Quaternary Alluvium" means the unit as defined in Moulder, E.A., Klug, M.F., Morris, D.A., and Swenson, F.A. (1960) "Geology and Ground-Water Resources of the Lower Little Bighorn River Valley Big Horn County, Montana," USGS Water Supply Paper 1487, where it occurs along the Little Bighorn River and its tributaries between the Montana-Wyoming line and the Little Bighorn Battlefield National Monument.

(31) "Quaternary Terrace Deposits" means the unit as defined in Moulder, E.A., Klug, M.F., Morris, D.A., and Swenson, F.A. (1960) "Geology and Ground-Water Resources of the Lower Little Bighorn River Valley Big Horn County, Montana," USGS Water Supply Paper 1487, where it occurs along the Little Bighorn River and its tributaries between the Montana-Wyoming line and the Little Bighorn Battlefield National Monument.

(32) "Recognized under state law" when referring to a water right or use means a water right or use protected by state law, but does not include state recognition of a federal or tribal reserved water right.

(33) "Return flow" means the portion of water diverted from a source that is returned to the same source, at or near the point of diversion.

(34) "Scientific evidence" means geologic, geophysical, geochemical and hydrologic information.

(35) "State" means the State of Montana and all officers, agents, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent, "state" means the Director of the Montana Department of Natural Resources and Conservation or his or her designee.

(36) "Technical Oversight Committee" or "TOC" means the scientific committee established by Article IV of this Compact.

(37) "Tributary to" means surface water that originates in the same hydrologic basin or subbasin as the stream referred to and which contributes water to the same stream.

Part 4. United States Park Service-Montana Compact

United States National Park Service-Montana Compact Ratified

85-20-401. United States National Park Service-Montana compact ratified. The compact entered into by the state of Montana and the United States National Park Service and filed with the secretary of state of the state of Montana under the provisions of **85-2-702** on May 12, 1993, is ratified. The compact is as follows:

WATER RIGHTS COMPACT
STATE OF MONTANA
UNITED STATES OF AMERICA, NATIONAL PARK SERVICE

This Compact is entered into by the State of Montana and the United States of America to settle for all time any and all claims to water for certain lands administered by the National Park Service within the State of Montana at the time of the effective date of this Compact.

A Compact between the State of Montana and the United States of America regarding water rights for National Park Service lands was executed January 31, 1994. The parties were unable to finalize agreement on quantification of the water rights for Bighorn Canyon National Recreation Area and the Little Bighorn Battlefield National Monument prior to the completion of the Compact executed January 31, 1994. This Compact is the final agreement regarding the water rights attributable to these two NPS Units.

RECITALS

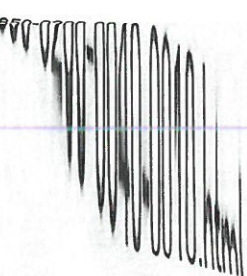
WHEREAS, in 1979 the United States filed in the United States District Court for the District of Montana several actions to adjudicate, inter alia, its rights to water with respect to Glacier National Park, see United States v. Aageson, No. CV-79-21-GF; United States v. Abell, No. CV-79-33-M; and United States v. AMS Ranch, Inc., No. CV-79-22-GF.

WHEREAS, the State of Montana, in 1979 pursuant to Title 85, Chapter 2 of the Montana Code Annotated, commenced a general adjudication of the rights to the use of water within the State of Montana including all federal reserved and appropriative water rights;

WHEREAS, **85-2-703**, MCA, provides that the state may negotiate settlement of claims by the federal government to non-Indian reserved waters within the State of Montana;

WHEREAS, the United States wishes to quantify and have decreed the amount of water necessary to fulfill the purposes of the existing National Park Service units in the State of Montana, including those reserved water rights necessary to preserve Glacier National Park and Yellowstone National Park unimpaired for future generations;

WHEREAS, the United States, in quantifying its reserved water rights recognizes the need to accommodate the interests of the state and its citizens by providing for the development and use of water in the vicinity of the Park units to the extent that it is possible to do so without materially affecting the rights and interests of the



United States;

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. §§ 516-17 (1968);

WHEREAS The Secretary of the Interior, or a duly designated official of the United States Department of the Interior, has authority to execute this Compact on behalf of the United States Department of Interior pursuant to 43 U.S.C. § 1457 (1986, Supp. 1992);

NOW THEREFORE, the State of Montana and the United States agree as follows:

ARTICLE I DEFINITIONS

For purposes of this Compact only, the following definitions shall apply:

- (1) "Abstract" means the copy of the document entitled "Abstract of National Park Service Water Rights" referenced in this Compact as Appendix 1 [and] the copy of the document entitled "Abstract of National Park Service Water Rights - BCNRA and LBBNM" referenced in this Compact as Appendix 2.
- (2) "Big Hole National Battlefield" or "BHNB" means those lands located in Montana that were acquired pursuant to, or withdrawn and reserved by Executive Order No. 1216 of June 23, 1910; Presidential Proclamation No. 2339 of June 29, 1939, 53 Stat. 2544; and Act of May 17, 1963, 77 Stat. 18.
- (3) "Bighorn Canyon National Recreation Area" or "BCNRA" means those lands located in Montana that were acquired pursuant to, or designated as such by Act of October 15, 1966, 80 Stat. 913.
- (4) "Bureau" means the Montana Bureau of Mines and Geology or its successor.
- (5) "Category 1 stream" means a stream that headwaters on the reserved land administered by the National Park Service.
- (6) "Category 1a stream" means a stream that headwaters on the reserved land administered by the National Park Service and which, in part, carries water that drains non-federal land within the boundaries of the same reserved land.
- (7) "Category 2 stream" means a stream that headwaters in a Wilderness Area in Montana outside the respective Park unit which flows into the reserved land administered by the National Park Service, and which is not the source for a consumptive use water right recognized under state law on the effective date of this Compact and drains a hydrologic basin that contains only federal land.
- (8) "Category 3 stream" means a stream that headwaters in Montana outside the reserved land administered by the National Park Service that flows into the reserved land and is the source for consumptive use water rights recognized under state law on the effective date of this Compact.
- (9) "Category 4 stream" means a stream that is treated individually due to special circumstances.
- (10) "Consumptive use" means use of surface water not considered a non-consumptive use under (26) and use of groundwater which is shown to be hydrologically connected to surface water pursuant to Article II.
 - (a) "Current consumptive use", when referring to water rights recognized under state law only, means all consumptive use water rights recognized under state law with a priority date before January 1, 1993 [, with respect to BHNB, GNP, or YNP and] on or before the effective date of the compact [with respect to BCNRA and LBBNM].

(b) "Future consumptive use", when referring to a water right recognized under state law only, means a consumptive use water right recognized under state law with a priority date on or after January 1, 1993 [, with respect to BHNB, GNP, or YNP and] after the effective date of the compact [with respect to BCNRA and LBBNM].

(11) "Credible information" means credible evidence sufficient to support a prima facie basis for the theory asserted.

(12) "Crow Tribal Water Rights" means those senior reserved water rights and any aboriginal water rights held by the United States in trust for the Crow Tribe which are being quantified as part of the general adjudication of water rights in Montana.

(13) "Curtailement" means action pursuant to this Compact to reduce or shut-off diversions by a junior water user to satisfy the senior instream flow right of the National Park Service.

(14) "Department" means the Montana Department of Natural Resources and Conservation or its successor.

(15) "Effective date of this Compact" means the date of the ratification of the Compact by the Montana legislature, written approval by the United States Department of the Interior, or written approval by the United States Department of Justice, whichever is later.

(16) "Glacier National Park" or "GNP" means those lands located in Montana that were acquired pursuant to, or withdrawn and reserved by the Act of May 11, 1910, 36 Stat. 354; Act of February 27, 1915, 38 Stat. 814; and Act of April 11, 1972, 86 Stat. 120.

(17) "Grant Kohrs Ranch National Historic Site" means those lands acquired by the United States and designated as such pursuant to Public Law 92-406, August 25, 1972.

(18) "Groundwater" means water that is beneath the ground surface.

(19) (a) "Hydrologically connected" for the purposes of Articles II and III, means groundwater that is connected to surface water such that appropriation at the proposed rate will cause a calculable reduction in surface water flow. A "calculable reduction in surface water flow" means a theoretical reduction based on credible information as opposed to a measured reduction.

(b) "Hydrologically connected" for the purposes of Article IV, means groundwater that is considered to be connected to the hydrothermal system within the reserved land of Yellowstone National Park based on scientific evidence according to the procedures in Article IV.

(20) "Hydrothermal system" means the groundwater system, including cold water recharge, transmission and warm water discharge that is hydrologically connected to the hydrothermal features within the reserved land of Yellowstone National Park.

(21) "Hydrothermal discharge water" means groundwater with a temperature in excess of 59 degrees Fahrenheit that is hydrologically connected to the hydrothermal system within the reserved land of Yellowstone National Park.

(22) "Hydrothermal feature" means a surface manifestation of a hydrothermal system, including but not limited to: hot springs, geysers, mud pots, and fumaroles.

(23) "Instream flow" means the water that the parties agree shall remain in the stream in satisfaction of the United States' reserved water right for the purposes of the reserved land.

(24) "Little Bighorn Battlefield National Monument" or "LBBNM" means those lands located in Montana that were acquired pursuant to or withdrawn and reserved by Presidential Proclamation of December 7, 1886, and by Act of March 22, 1946, 60 Stat. 59.

(25) "Nez Perce National Historical Park" means those lands in Montana acquired and added to the Nez Perce National Historical Park by Congress on October 30, 1992, pursuant to Public Law 102-576.

(26) (a) "Non-consumptive use" when applied to a mining or hydropower use for which a water right is recognized under state law with a priority date on or after January 1, 1993, [with respect to BHNB, GNP, or YNP and] after the effective date of this compact [with respect to BCNRA and LBBNM], means an appropriation that does not cause a net loss in the surface source of supply, and where substantially all of the diverted water becomes return flow with little or no delay between the time of diversion and the time of return, and without adverse effect on the quantity or quality of water necessary to fulfill the purposes of the reserved land.

(b) "Non-consumptive use" when applied to a water right recognized under state law other than a mining or hydropower use with a priority date on or after January 1, 1993, [with respect to BHNB, GNP, or YNP and] after the effective date of this compact [with respect to BCNRA and LBBNM], or a water right recognized under state law with a priority date before January 1, 1993, [with respect to BHNB, GNP, or YNP and] on or before the effective date of this compact [with respect to BCNRA and LBBNM], means a water right considered to be non-consumptive by the decree, permit or law authorizing the use.

(27) "Parkman Sandstone" means the unit as defined in Moulder, E.A., Klug, M.F., Morris, D.A., and Swenson, F.A. (1960) "Geology and Ground-Water Resources of the Lower Little Bighorn River Valley Big Horn County, Montana," USGS Water Supply Paper 1487, where it occurs along the Little Bighorn River and its tributaries between the Montana-Wyoming line and the Little Bighorn Battlefield National Monument.

(28) "Parties" means the State of Montana and the United States.

(29) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, or any other entity, but does not include the United States.

(30) "Quaternary Alluvium" means the unit as defined in Moulder, E.A., Klug, M.F., Morris, D.A., and Swenson, F.A. (1960) "Geology and Ground-Water Resources of the Lower Little Bighorn River Valley Big Horn County, Montana," USGS Water Supply Paper 1487, where it occurs along the Little Bighorn River and its tributaries between the Montana-Wyoming line and the Little Bighorn Battlefield National Monument.

(31) "Quaternary Terrace Deposits" means the unit as defined in Moulder, E.A., Klug, M.F., Morris, D.A., and Swenson, F.A. (1960) "Geology and Ground-Water Resources of the Lower Little Bighorn River Valley Big Horn County, Montana," USGS Water Supply Paper 1487, where it occurs along the Little Bighorn River and its tributaries between the Montana-Wyoming line and the Little Bighorn Battlefield National Monument.

(32) "Recognized under state law" when referring to a water right or use means a water right or use protected by state law, but does not include state recognition of a federal or tribal reserved water right.

(33) "Return flow" means the portion of water diverted from a source that is returned to the same source, at or near the point of diversion.

(34) "Scientific evidence" means geologic, geophysical, geochemical and hydrologic information.

(35) "State" means the State of Montana and all officers, agents, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent, "state" means the Director of the Montana Department of Natural Resources and Conservation or his or her designee.

(36) "Technical Oversight Committee" or "TOC" means the scientific committee established by Article IV of this Compact.

(37) "Tributary to" means surface water that originates in the same hydrologic basin or subbasin as the stream referred to and which contributes water to the same stream.



August 20, 2023

Flathead Conservation District
133 Interstate Lane
Kalispell MT 59901

Dear Supervisors,

In a Flathead Beacon quote from a letter to the Flathead County Conservation District Board of Supervisors, signed by the Amblers, they state, "We understand the majesty and history of Glacier National Park (GNP) and we respect this special place."

I do not understand how the Amblers can state this and then go ahead and build a house on McDonald Creek in Glacier National Park that belongs to everyone.

In my opinion this is disrespectful to 'this special place' - in a pristine and unique place located in GNP.

I question how someone who respected 'this special place' could build anything in the creek, whether it is a house or a short term rental.

I grew up in Apgar village and my respect to 'this special place' looks a lot different from theirs.

Ignoring all of the State and County regulations shows no respect to me. I hope they are held accountable for their disregard.

Respectfully,

Karen Hileman

Karen Hileman

P O Box 151
West Glacier
Mt 59936

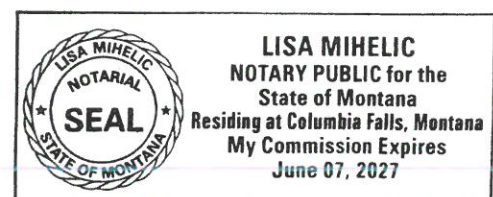
State of Montana
County of Flathead

This instrument was signed and sworn to before me

on Aug 21, 2023 by Karen Hileman
(Name of Signer)

Lisa Mihelic
(Notary)

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Flathead CD



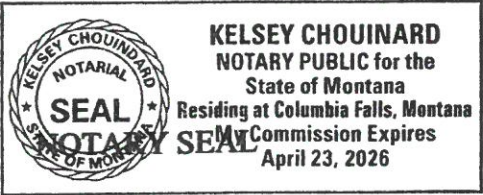
BEFORE THE FLATHEAD CONSERVATION DISTRICT
BOARD OF SUPERVISORS

IN THE MATTER OF THE DECLARATORY)
RULING BY THE FLATHEAD) VERIFICATION
CONSERVATION DISTRICT) STATEMENT
)
RE: MCDONALD CREEK (AMBLER))

I, KARIN CONNELLY, being duly sworn, deposes and says that the attached data and/or information is true and to the best of my knowledge.

Karin Connelly
Signature

Subscribed and sworn to me this 23 day of August, 2023.



Kelsey Chouinard
Print Name: Kelsey Chouinard
NOTARY PUBLIC for the State of Montana
Residing at Columbia Falls, Montana
My Commission Expires 04.23.2026

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AUG 25 2023
Flathead CD

From Karin Connelly, 615 Sloan Lane, West Glacier, Montana 59936, 406-888-5585
connelly@aboutmontana.net

To Hearing Officer Laurie Zeller, Flathead Conservation District Office, 133 Interstate Lane,
Kalispell, Montana 59901

Statement for Public comment for the Declaratory Ruling on Lower McDonald Creek Ambler
Violation per the Adopted Rules for the Flathead Conservation District to implement the Natural
Streambed and Land Preservation Act (MCA Title 75 Chapter 7)

My comments are in consideration of two main objections to the building in question. The first is
the construction of structures in the National Park and the second is the degradation of the
creekbed of Lower McDonald Creek.

I can't argue that Glacier National Park is a pristine environment untouched by humans, but that
does not suggest that anyone can do anything in the Park. Aesthetic considerations don't have
much monetary value, but without them the Park wouldn't have much to offer. The first time I
saw the building from the bridge over McDonald Creek, I was astonished. How could such a
building be constructed with so little regard for the natural resources it intruded on? How could
the privilege of "inholding" create such an affront to the Park and its visitors? There may be
nothing illegal about disregard for ecosystems—but that's too bad. Inholders who set bad
examples for others to follow are contributing to the degradation of an environment that is
already experiencing stress.

But aside from being an eyesore, streambank degradation is the more actionable issue. Clearly
the Owners should have applied for a permit. It seems doubtful that a permit would have been
granted, if they had proposed what they have done. But they should have applied, and with a
background in real estate they should have known better. Because of the damage to the
streambank, and probably further erosion if the building is not removed, I encourage the
Flathead Conservation District to exert its authority to remedy the damage. Although removal of
the structure will initially cause further damage, restoration of the streambank will eventually
repair what's been done. And McDonald Creek will once more be a healthy environment for
animals and other visitors.

Thank you for your attention to this matter.

Sincerely

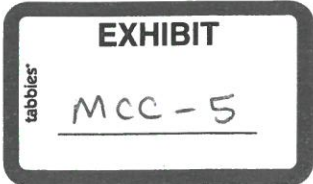
Karin Connelly August 23, 2023

Karin Connelly

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Flathead CD



BEFORE THE FLATHEAD CONSERVATION DISTRICT BOARD OF SUPERVISORS

IN THE MATTER OF THE DECLARATORY)
RULING BY THE FLATHEAD) VERIFICATION
CONSERVATION DISTRICT) STATEMENT
RE: MCDONALD CREEK (AMBLER))

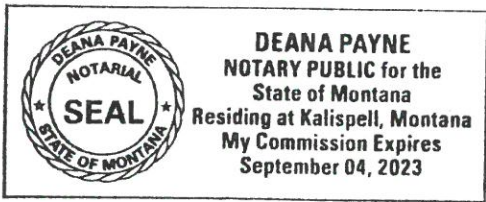
I, Mary T. McClelland, being duly sworn, deposes and says that the attached data and/or information is true and to the best of my knowledge.

[Handwritten signature of Mary T. McClelland]
Signature

Subscribed and sworn to me this 20th day of August, 2023.

[Handwritten signature of Deana Payne]
Print Name:
NOTARY PUBLIC for the State of Montana
Residing at _____, Montana
My Commission Expires _____

NOTARY SEAL



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AUG 25 2023
Flathead CD

From: Mary T. McClelland, 500 Sloan Lane, West Glacier
marytreemcclelland@gmail.com (815)

To: Hearing Officer Laurie Zeller, Flathead Conservation District Office, 133 Interstate Lane,
 Kalispell, MT, 59901

Re: Comment for the Declaratory Ruling on Lower McDonald Creek Petitioners' Violation per
 the Adopted Rules for the Flathead Conservation District to Implement the *Natural Streambed
 and Land Preservation Act* (MCA Title 75, Chapter 7)

I am submitting this comment for the record of the Declaratory Hearing August 25, 2023.

Many relevant and important facts have been submitted during the public comment periods,
 bringing into focus the disregard for the sensitivity of this location, as well as ethical and legal
 transgressions that demand attention and action.

In honor of career conservationist Gordon Ash, a highly respected professional and longtime
 FCD serving board member who worked hard until his last days--- I would like to point out
 something he said when the Petitioners' attorney asked for more time to conduct special
 hydrological tests [Exhibit FCD-84]. Gordon said, "yes, it was a violation, and that additional
 analysis would definitely be appreciated, but it would be directed towards the 310-permit
 application that would be necessary to remove the structure as identified."

In other words, the Petitioners do not get special privilege to build what they want without any
 review or advice from knowledgeable and respected experts in the field and then expect to hire a
 hydrologist to rationalize a structure that would not have been approved no matter what the
 hydrologist report said, because what has been built is in direct violation of the *Natural
 Streambed and Land Preservation Act*.

The Petitioners did not obtain any assistance with any permitting agency to learn about the
 property before excavating McDonald Creek bank and building possibly the largest structure
 they could fit on the property.

Below are a few more points for your consideration.

Parking at the 74 McDonald Creek property

- The triangular property according to the Flathead County plat map is 2309 SF.
- The illegal building according to a publicly available property report is 2178 SF.
 (Certificate/survey #17376 10)
- **The structure occupies 94.33% of the triangular shaped property.**
 - The west side of the triangle is now in the creek bank (approximately 54 feet in length),
 and the south side of the triangle is on the decline of and in the creek bank
 (approximately 29.9 feet in length)
 - That leaves one side of the triangle on level ground accessible for parking (approximately
 69.3 feet).

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- The average car footprint is 98 SF and the only property not built on is an approximate 131 SF. Any cars parked there would have to fit in an impossible rectangle of 1.9 by 69.3 feet. (So, several cars could fit if they were less than 1.9 ft long or 1.9 ft wide)

Why is this important?

- Because with no plan for parking, it places one more burden on the park, the people who live in Apgar and the visitor already struggling for parking places and cramping an already taxed wildfire and health safety situation.
- Because with no plan for parking, it demonstrates a complete disregard for where it is and the short and long-term impacts of this structure.
- The absurdity of the parking for this structure is just added insult to injury to the McDonald Creek bank and the *Natural Streambed and Land Preservation Act*.

Communications with the County

- There has been no mention of (by the Petitioners or their attorney) and no record (Freedom of Information Act) of any visit to the Planning and Zoning Office. Had they made that visit, they would have been directed to pamphlets for building in the county, one that states "Additional permits may be required from state and federal agencies, depending on the scope of work.... Information is available on-line, but the applicant is responsible for determining the need and securing the permits required." (Lake and Lakeshore Protection pamphlet)
- The only record of communication with the County is an email exchange in 2019 (Exhibit MCC - 4] which asks a Planning Office technician "what the setbacks are for building a small cabin." The technician suggests before purchasing that the Petitioners check with "Environmental Health. They will let you know what types/size of dwellings that septic/water would be supported there." There is no record of follow up or contact with Department of Environmental Quality or any other County offices.

Why is this important?

- Had Petitioners made this effort they may also have learned that the Flathead County Growth Policy Chapter 8 has guidelines for citizens to follow -including for unzoned areas - to protect places for the future. Goal 35 is to "Protect and preserve water resources within the Flathead watershed for the benefit of current residents and future generations."
- The Petitioners may also have been directed to other agencies with interests in protections when building near open water. Although they differ in detail, all 50 states have regulations about building near lakeshores, rivers, creeks, and streams.

Communications with the Flathead Conservation District

- The first policy in the Adopted Rules for the Flathead Conservation District pertaining to the Natural Streambed and Land Preservation Act is:
 - "It is the policy of the Flathead Conservation District that the natural rivers and streams, and the lands and property immediately adjacent to them within the Flathead Conservation District, are to be protected and preserved to be available

From: Mary T. McClelland, 500 Sloan Lane, West Glacier, MT 59936
marytreemccllland@gmail.com (815) 482-7404

in their natural or existing state, and to prohibit unauthorized projects, and in so doing to keep soil erosion and sedimentation to a minimum, except as may be necessary and appropriate after due consideration of all factors involved.”

Why is this important?

- Because the McDonald Creek violation:
 - Is immediately adjacent to/in the creek bank/bed
 - Does not protect and preserve the creek’s natural state
 - Is an unauthorized project
 - Has had no consultation or discussion with any of the agencies about how to avoid soil erosion and sedimentation of the natural resource

Communications with the Park

On April 5th, 2023 the Hungry Horse News reported Glacier’s spokesperson said “the couple was told when they inquired about building the home that they needed to comply with all state and county laws and regulations.” – *like everyone else*.

The Petitioners’ attorney has represented in [Exhibit PET – 4] paragraph 9, that “the Park allowed the Owners to construct their residence and hook it up to the Apgar sewer and water system.” However, the **Park did not permit or approve or allow the specific structure that has been built – the park has only reported that Owners needed to comply with all the state and county laws and regulations because it was private property.** The Owners have produced no evidence in writing of any conversation with the park about anything.

The park’s policy is to preserve the natural and undeveloped character of its streams and waterways, as well as to protect their ecological integrity – even in heavy visitor use areas. As such, construction of structures in or near park streams is discouraged.

The General Management Plan and the Land Protection Plan in Glacier state that any construction that involves the alteration of a stream bank or channel must be designed to minimize erosion, sedimentation, and other impacts on the stream and its ecosystem. And it requires that all construction projects must be consistent with the park’s water quality and fish and wildlife protection plans **and follow proper permitting with other agencies.**

Why is this important?

No written record of any Owner communication with the park has been presented. The Owners circumvented the proper and expected communications that the Park should be able to expect **and has had from other in holder property owners for decades.**

Ultimately, what the park did or did not do is immaterial to this Hearing. The Owners of this property are alone responsible for the violation and culpable for the damages done -to the Creek, -to the people of the County, State and National Park where laws are in place to protect McDonald Creek and the surrounding area.

Streambank Protection laws in CA and MT

The Petitioners reside in California, and one of them is a real estate broker. It would be a fair assumption and expectation that a broker would have knowledge of streambank protections in the County in which their permanent home is, as well as a place they have spent 40 years visiting.

What are the Streambank Protections in California and in San Diego County?

- **The California Porter-Cologne Act** provides both immediate and long-term authority for the protection of the physical integrity of river and stream environments.
- **California Fish and Game Code Section 5937:** This law prohibits the removal, damage, or destruction of vegetation along the banks of streams, lakes, or other bodies of water that support fish and wildlife.
- **California Water Code Section 13387:** This law requires property owners to obtain permits before conducting any activities that could potentially harm or impact streambanks or other waterways.
- **California Environmental Quality Act (CEQA):** Like NEPA but at the state level, CEQA requires state agencies to assess and mitigate the environmental impacts of projects, including construction near streambanks.
- **San Diego County Code of Regulatory Ordinances, Section 87.0301:** This regulation requires property owners to obtain a permit before conducting any grading, excavating, or other activities within 50 feet of a streambed or wetland.
- **San Diego County Code of Regulatory Ordinances, Section 87.0304:** This regulation prohibits any activities that could cause erosion or sedimentation within 50 feet of a streambed or wetland.
- **San Diego County General Plan:** The county's general plan outlines land use policies, including regulations related to development near streams and water bodies.
- **San Diego County Code:** Specific sections of the county code might address development near water bodies, erosion control, and environmental protection.
- **San Diego Regional Water Quality Control Board:** This board enforces water quality regulations and may require permits for construction activities near water bodies.

Fines and other penalties are routinely applied to those who violate these guidelines, from Stop Work Orders, Code Compliance Actions, Permit Revocation, Liens to **Structure Removal**.

Why is this important?

- The Petitioners state they have been coming here for 40 plus years and “understand the majesty and history of Glacier and respect this special place.” Why then does that respect for this special place include evading the law? Had the Owners presented a 310 application to the FCD in advance of their project, there may have been a way to modify building plans, collect data, to take advantage of the advice of experts and professionals and the experienced supervisors on the FCD about the feasibility, practicality, and appropriateness of a structure.

From: Mary T. McClelland, 500 Sloan Lane, West Glacier, MT 59936
marytreemcclelland@gmail.com (815) 482-7404

- Designing a structure may be possible with consideration of the very important creek and the assistance of agencies entrusted to protect it in its natural state. This is what the Conservation District is for – to help landowners conduct their projects without damaging the natural resource. And this is even more important within a national park.

Regarding Petitioners' response [Exhibit FCD-51] to complaint [Exhibit FCD-12], the following points are worth emphasizing:

- [Exhibit FCD-51] Paragraph 3: The Petitioners state, "We have been planning this build for several years and in all our research at the County and the Park we were never made aware of this {FCD 310} permit."
 - The very first link (out of 8.5 million results) in a Google Search list for 'building by a stream in Montana' is:
"Any individual or corporation proposing construction in a perennial stream must apply for a 310 permit through the local conservation district, followed by the link [Stream Permitting – DNRC](#)"
 - Click on the link and the Flathead Conservation District message is clear, "If you are planning to work in or near a stream, you must get a 310 permit first. **It's Free. It's the Law.**"
 - It's the law in Montana, and it's the law in California. In fact, it's the law in every state. (USDA, NRCS)
- [Exhibit FCD-51] Paragraph 5: The Petitioners said, "We have had no intent to avoid or ignore any necessary steps needed in this build. It has been done with integrity, which in this case, means doing the right thing even if no one is looking. We love this home and there is no way we would jeopardize any part of it by ignoring a free permit."
 - *Actions have spoken louder than words. The construction was done when no one was looking.*
 - *The point is not that it is a 'free' permit. The point is it is the law.*

There is no dispute that the Owners may have a right to build what they described as 'a small cabin' on the land they own. What is in question is the way it has been done. The best way to proceed with integrity and do the right thing is to comply with the Conservation District's finding -- remove the structure, properly restore the streambank, start over.

"Your right to swing your arm ends just where the other man's nose begins", is a quote attributed to Supreme Court Justice Oliver Wendell Holmes Jr., suggesting that swinging your arm is acceptable until it impacts another person's space. In the case of the McDonald Creek property, rights extend to the boundaries of Owners' property ONLY UNTIL those rights begin to negatively affect the natural environment on a streambank. This highlights the importance of recognizing and respecting the collective interests of the County, the Conservation District, the park and the *Natural Streambed and Land Preservation Act* – a law that was passed to strike a balance between individual rights and natural streambed and land preservation for today and future generations.

From: Mary T. McClelland, 500 Sloan Lane, West Glacier, MT 59936
marytreemcclelland@gmail.com (815) 482-7404

Finally, I'd like to mention two poems by retired teacher, tireless Glacier backcountry volunteer ranger and local author Bob Muth, resident of the Flathead for nearly 60 years.

The book is entitled **The Meaning of McDonald Creek** (published in 2019). It is full of the mystery and miracles of the natural world in and around Glacier National Park, and our human interaction with it.

**Walking Up and Down the World Along
McDonald Creek**

Lion tracks
In the snow.

Mountains at home
In the clouds.

Trees that aren't
Just trees soothed
By the winter rain.

A hundred
Wing-chanting
Goldeneyes
Lift from the creek,
Circle once,
And return.

A lone beaver
Notices me
And dives,
Leaving no trace.

If I built a fire here,
And read
Han-shan's poems
In its light,

I think I could
Wait forever
For the moon to rise
Above dripping pine
And the lion's return.

McDonald Creek Unleashed

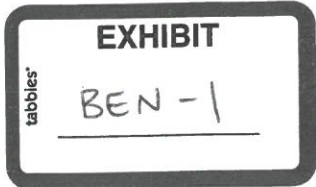
When the mountains
Begin to ring with
Green things and
The snow begins
Its journey home,
McDonald Creek
Comes to an infallible
Sense of its wildness.

Meanwhile, you long
To understand
Creek literacy
And its beautiful rage
Before it fades
Like the distant
Music that is always
Struggling to find
New ways
To be heard.

From: Mary T. McClelland, 500 Sloan Lane, West Glacier, MT 59936
marytreemcclelland@gmail.com (815) 482-7404



Outlet to Lake McDonald, view up McDonald Creek to lake before Village Inn. March, 1943
Image courtesy of the Glacier National Park Archives.jpg



August 18, 2023

Flathead Conservation District
133 Interstate Lane
Kalispell MT 59901

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Greetings,

After reading comments in the newspapers of the owners trying to put blame on the Park, State and County agencies I am reminded that the bottom line it is the property owners responsibility to thoroughly investigate and find out what is permitted on their property.

Knowing how sensitive of an area that they were building on, for the Amblers not to do their own research as to what the State of Montana allows with building in the proximity of a waterway is not acceptable.

There is no excuse as to how simple it would have been to have found out this information. Instead, they took an approach of ignoring the protection for the stream and land, and did what they wanted to do.

I encourage you to hold them responsible.

Thank you,

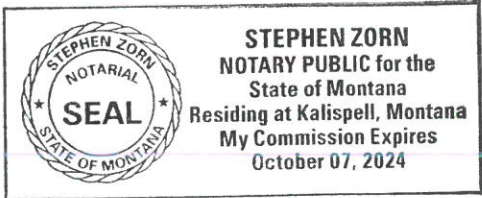
Tom Bengtson

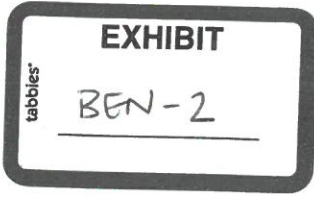
204 Highline Blvd
P O Box 386
West Glacier MT 59936

State of Montana
County of Flathead

This instrument was signed and sworn to before me
on August 21, 2023, by Tom Bengtson
(Name of Signer)

(Notary)





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August 19, 2023

133 Interstate Lane
Flathead Conservation District
Kalispell MT 59901

Thank you for this opportunity to comment on the structure on lower McDonald Creek in Apgar.

Honestly, I am not sure how this happened-

...with an experienced contractor and homebuilders who claim they respect the land on which they built.

The Ambler's lack of seeking out proper permits from Flathead County and the State of Montana. Plus building on the bank of a pristine creek in a National Park in violation to Montana Natural Streamed and Land Preservation Act, the Montana Stream protection Act, and the Montana Floodplain and Floodway Management Act, is unthinkable and unacceptable.

It is my hope that these owners will not be rewarded (by allowing this building to remain) for the lack of respect to laws that are in place for the good of our land and streams and future generations.

Thank you,

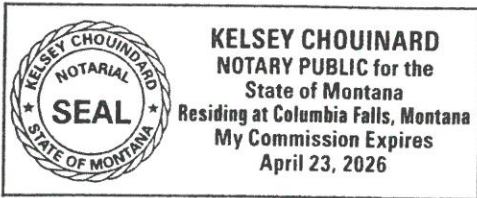
Sharon Bengtson

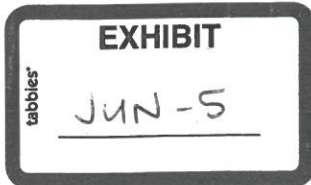
204 Highline Blvd
P O Box 386
West Glacier MT 59936

State of Montana
County of Flathead

This instrument was signed and sworn to before me
on Aug 19, 2023 by Sharon Bengtson
(Name of Signer)

Kelsey Chouinard
(Notary)





BEFORE THE FLATHEAD CONSERVATION DISTRICT BOARD OF SUPERVISORS

IN THE MATTER OF THE DECLARATORY)
RULING BY THE FLATHEAD) VERIFICATION
CONSERVATION DISTRICT) STATEMENT
RE: MCDONALD CREEK (AMBLER))

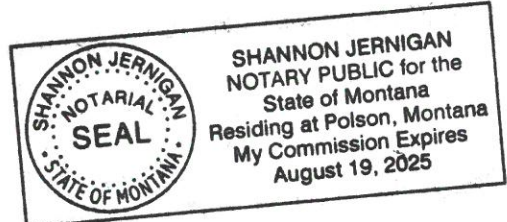
I, Monica Jungster, being duly sworn, deposes and says that the attached data and/or information is true and to the best of my knowledge.

Monica Jungster
Signature

Subscribed and sworn to me this 23 day of August, 2023.

Shannon Jernigan Alhanna JG
Print Name:
NOTARY PUBLIC for the State of Montana
Residing at Polson, Montana
My Commission Expires 8.19.25

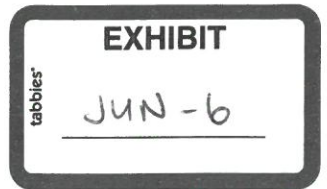
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AUG 25 2023
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SHANNON, EDWARD
NOTARY PUBLIC
State of Michigan
My term expires on
August 31, 2024
August 31, 2024





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AUG 25 2023
Flathead CD

Monica Jungster - resident
535 Sloan Lane, PO Box 50
West Glacier, Mt. 59936
and
Montana House Gift Shop - Owner
198 Apgar Loop Rd. Apgar
Glacier National Park, Est 1960

Re: Statement for the public comment period on August 25, 2023, for the Declaratory Ruling on Lower McDonald Creek Violation per the adopted Rules for the Flathead Conservation District to implement the *Natural Streambed and Land Preservation Act* (MCA Title 75, Chapter 7)

My name is Monica Jungster. I live at 535 Sloan Lane, West Glacier and own the Montana House at 198 Apgar Loop Rd, Apgar, Glacier National Park. I am here today to participate in the public comment and information section regarding only the question of jurisdiction regarding the Petitioners request for a declaratory hearing.

For the past 63 years I have lived and worked in Apgar Village. It is where I grew up and later where I became owner of a family business. I distinctly remember the 1964 flood and watched lower Lake McDonald Creek flow backwards into Lake McDonald and take out huge sections of the riverbank on the side where the Petitioner's house now sits. The small parcel of land that the Petitioners own is likely all that is left of the private lot where Mrs. Powell's house was hanging off the bank in 1964. (**Exhibit MJ 1-1-8-23-** list of previously submitted pictures from 1964 Flood in Park Archives)

The history of jurisdiction over private land inside Glacier National Park starts with the Homestead Act of 1862. Glacier Park was created in 1910 and private properties were acknowledged according to the agreement between the State of Montana and the Federal Government and found under Appendixes in the Foundation Document, Glacier National Park, Montana Appendix A: Enabling Legislation and Legislative Acts for Glacier National Park -1910 Enabling Legislation for GNP, chapter 226, page 58. This document is a good

baseline for the management of Glacier National Park including private property rights and obligations. "Nothing herein contained shall affect any valid claim, location, locator or entry existing under the land laws of the United States before May 11, 1910, or the rights of any such claimant, locator or entry man to the full use and enjoyment of his lands". That is, the United States Code (USC) should not affect any private land as it was before it became Glacier National Park. USC 16, Chapter 1, Subchapter XX: Glacier National Park 161. (Exhibit MJ 1-2- 8-23 page 58,1,57 emphasis added MJ)

The State of Montana has not ceded jurisdiction of any private property in Apgar village to Glacier National Park. Properties have been bought and sold in Apgar since Milo Apgar homesteaded there before 1910. My property is one example of changes of ownership within a family. Montana House is a corporation registered in the State of Montana and has paid County taxes since 1960. Currently Flathead County has the "structure fire suppression jurisdiction for Apgar" as noted at the July 6, 2023, community wildfire meeting. Agencies attending were Park Service, Forest Service, DNRC and Flathead County OES. That means that the Coram-West Glacier volunteer fire department will send its structure fire trucks into Apgar if there is a structure fire, not the National Park Service.

The State of Montana has been very active within the boundaries of GNP as shown in The Commercial Abstract Title Co Report A-5966-3 shows decisions rendered by Judge J.E. Erikson District Court of the Eleventh Judicial District of the State of Montana in the County of Flathead in 1911. District Judge T.A Thompson is also listed. (Exhibits MJ 1-5-23 on July 20, 2023)

A pamphlet by Montana State University Extension Service: "Water Rights in Montana: An Overview" clarifies ownership of water in the State of Montana, water rights, and that there are important "federal and Indian reserved water rights" recognized in Montana such as the United States Park Service – Montana Compact. MCA 85-20-401. (Exhibit MJ 1-3-8-23 pages 1,2,3,4 emphasis added MJ)

The National Park Service has legal requirements and responsibilities to manage National Parks under the "Organic Act." Private property owners inside Glacier National Park also have constitutional "rights and responsibilities," and the State of Montana has constitutional responsibilities and obligations over private property. That is what governs our actions.

The question of jurisdiction over private property inside Glacier National Park has been addressed in the following interviews and publications.

November 2006 was the year of a "meteorological pineapple express" that greatly affected Glacier Park. There was damage to the bridge on upper McDonald creek and according to Glacier Park Superintendent Mick Holm the Park policy was "to wait for State permits before repairing the bridge" as quoted in article in Hungry Horse News. (Exhibit MJ 1-2 on June-20-23 emphasis added MJ)

A quote from a Hungry Horse News article January 9, 2019, regarding Kelly Camp re-building projects after the 2018 wildfire. The park made it clear that "building projects follow "County, State and Federal rules". (Exhibit MJ 1-3 on June 20, 2023, emphasis added MJ) Glacier Park management has made it clear at land-owner meetings and press releases that the park doesn't have jurisdiction over private property.

The Daily Interlake article on October 1, 2021, regarding the former Grist property building project included a statement by “a park spokesperson that a new building must comply with state and local building guidelines, planning and approvals.” (Exhibit MJ 1-4 page 3 on June 20, 2023)

An April 5, 2023, Hungry Horse News article by Chris Peterson states: “The Amblers never applied for or received a free 310 permit when they began construction. They previously claimed they didn’t know they needed one. But Glacier Park spokeswoman Gina Kerzman said last week the couple was told when they inquired about building the home that they needed to comply with all state and county laws and regulations”. (**Exhibit MJ 1-4-8-23** emphasis added MJ)

As the Petitioners have family and property connections to Kelly Camp at the upper end of Lake McDonald, they should have been aware that park management required Flathead County review of septic permits and new building plans. That requirement would have carried over to their purchase of property and building plans on lower McDonald Creek under the Natural Streambed and Land Preservation Act. (MCA Title 75, chapter 7)

The question of jurisdiction has been answered by Glacier National Park that they do not have jurisdiction over private land inside Glacier National Park since its inception. Jurisdiction falls to the State of Montana as noted in MCA 2-1-202. County regulations would be subservient under State law. Hence the above quotes I listed all say follow “county and state regulations.” County Planning covers some items under its Growth Policy that is overseen by a Director, Planning Board, and County Commissioners. However, stream protection is under the State of Montana Conservation Districts and a Board of Supervisors.

A reputable contractor should understand the building codes and permits required in Flathead County. A Planning Director should know about the 310-permit law as members of the Planning Board attend Conservation District meetings. Past Park Superintendents certainly knew about State jurisdiction over Montana Stream Protection inside Glacier Park. Citizens can find that information on the Internet. I did that.

I conclude based upon what I have seen and read that the Flathead Conservation District has jurisdiction over lower McDonald Creek and that a “310 permit” would be required for the Petitioner’s house as it would be for any other streamside project in Montana. While I can see that procedures were not followed adequately, that does not change the jurisdiction of the Flathead Conservation District who followed their rules, procedure, and took the appropriate action.

In closing, the Montana State Constitution, Part II Declaration of Rights, Section 3 Inalienable Rights States in part:

“All persons are born free and have certain inalienable rights....in enjoying these rights all persons recognize corresponding responsibilities.” (Exhibit MJ 1-5-8-23 emphasis added MJ)

It appears that some responsibilities were overlooked by the Petitioners.

Respectfully,

A handwritten signature in blue ink that reads "Monica Jungster". The signature is written in a cursive, flowing style.

Monica Jungster

DI_830: 1964 Flood - Damage to Apgar Bridge. Shows high water and eroded approach to bridge. NPS photograph by J. Mohlhenrich. Image courtesy of Glacier National Park Archives.

DI_837: 1964 Flood - Damage along McDonald Creek. View downstream showing house perched above eroded bank. Photographer unknown. Image courtesy of Glacier National Park Archives.

DI_838: 1964 Flood - Damage along McDonald Creek. Shows house propped above receded creek and eroded bank. Photographer unknown. Image courtesy of Glacier National Park Archives.

DI_839: 1964 Flood - Damage along McDonald Creek. View of damaged buildings along creek. Photographer unknown. Image courtesy of Glacier National Park Archives.

DI_840: 1964 Flood - Damage along McDonald Creek. View upstream towards damaged buildings. Photographer unknown. Image courtesy of Glacier National Park Archives.

DI_842: 1964 Flood - Damage in Apgar. Mercantile cabin floating down creek, only roof visible. NPS photograph by J. Mohlhenrich. Image courtesy of Glacier National Park Archives.

DI_843: 1964 Flood - Damage along McDonald Creek. Collapsed Mercantile cabin and one floating down creek. NPS photograph by J. Mohlhenrich. Image courtesy of Glacier National Park Archives.

DI_844: 1964 Flood - Damage along McDonald Creek. Collapsed Mercantile cabin. NPS photograph by J. Mohlhenrich. Image courtesy of Glacier National Park Archives.

DI_845: 1964 Flood - Flooded McDonald Creek. Debris on creek at height of flood. NPS photograph by J. Mohlhenrich. Image courtesy of Glacier National Park Archives.

HPF_1431: Flood damage, McDonald Creek debris jam at bridge, Apgar. Swollen creek jammed with logs, sticks, and an almost submerged building, June 10, 1964. Photograph by John J. Palmer. Image courtesy of Glacier National Park Archives.

HPF_9780: Flood damage at Apgar, 1964. Shows buildings immersed in water. Photographer unknown. Image courtesy of Glacier National Park Archives.

Exhibit

MS 1-1-8-73

Appendixes

Appendix A: Enabling Legislation and Legislative Acts for Glacier National Park

1910 Enabling Legislation for Glacier National Park

<p>May 11, 1910. [S. 2777.] [Public, No. 171.]</p>	<p>CHAP. 226.—An Act To establish “The Glacier National Park” in the Rocky Mountains south of the international boundary line, in the State of Montana, and for other purposes.</p>
<p>The Glacier National Park, Mont. Land set apart as. Description.</p>	<p><i>Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,</i> That the tract of land in the State of Montana particularly described by metes and bounds as follows, to wit: Commencing at a point on the international boundary between the United States and the Dominion of Canada at the middle of the Flathead River; thence following southerly along and with the middle of the Flathead River to its confluence with the Middle Fork of the Flathead River; thence following the north bank of said Middle Fork of the Flathead River to where it is crossed by the north boundary of the right of way of the Great Northern Railroad; thence following the said right of way to where it intersects the west boundary of the Blackfeet Indian Reservation; thence northerly along said west boundary to its intersection with the international boundary; thence along said international boundary to the place of beginning, is hereby reserved and withdrawn from settlement, occupancy, or disposal under the laws of the United States, and dedicated and set apart as a public park or pleasure ground for the benefit and enjoyment of the people of the United States under the name of “The Glacier National Park;” and all persons who shall locate or settle upon or occupy the same, or any part thereof, except as hereinafter provided, shall be considered trespassers and removed therefrom: <i>Provided, That nothing herein contained shall affect any valid existing claim, location, or entry under the land laws of the United States or the rights of any such claimant, locator, or entryman to the full use and enjoyment of his land: Provided further,</i> That rights of way through the valleys of the North and Middle forks of the Flathead River for steam or electric railways may be acquired within said Glacier National Park under filings or proceedings heretofore or hereafter made or instituted under the laws applicable to the acquisition of such rights over or upon the unappropriated public domain of the United States, and that the United States Reclamation Service may enter upon and utilize for flowage or other purposes any area within said park which may be necessary for the development and maintenance of a government reclamation project: <i>And provided further,</i> That no lands within the limits of said park hereby created belonging to or claimed by any railroad or other corporation now having or claiming the right of indemnity selection by virtue of any law or contract whatsoever shall be used as a basis for indemnity selection in any State or Territory whatsoever for any loss sustained by reason of the creation of said park.</p>
<p>Removal of trespassers.</p>	<p>and removed therefrom: <i>Provided, That nothing herein contained shall affect any valid existing claim, location, or entry under the land laws of the United States or the rights of any such claimant, locator, or entryman to the full use and enjoyment of his land: Provided further,</i> That rights of way through the valleys of the North and Middle forks of the Flathead River for steam or electric railways may be acquired within said Glacier National Park under filings or proceedings heretofore or hereafter made or instituted under the laws applicable to the acquisition of such rights over or upon the unappropriated public domain of the United States, and that the United States Reclamation Service may enter upon and utilize for flowage or other purposes any area within said park which may be necessary for the development and maintenance of a government reclamation project: <i>And provided further,</i> That no lands within the limits of said park hereby created belonging to or claimed by any railroad or other corporation now having or claiming the right of indemnity selection by virtue of any law or contract whatsoever shall be used as a basis for indemnity selection in any State or Territory whatsoever for any loss sustained by reason of the creation of said park.</p>
<p>Provisions. Valid rights not affected.</p>	<p><i>Provided, That nothing herein contained shall affect any valid existing claim, location, or entry under the land laws of the United States or the rights of any such claimant, locator, or entryman to the full use and enjoyment of his land: Provided further,</i> That rights of way through the valleys of the North and Middle forks of the Flathead River for steam or electric railways may be acquired within said Glacier National Park under filings or proceedings heretofore or hereafter made or instituted under the laws applicable to the acquisition of such rights over or upon the unappropriated public domain of the United States, and that the United States Reclamation Service may enter upon and utilize for flowage or other purposes any area within said park which may be necessary for the development and maintenance of a government reclamation project: <i>And provided further,</i> That no lands within the limits of said park hereby created belonging to or claimed by any railroad or other corporation now having or claiming the right of indemnity selection by virtue of any law or contract whatsoever shall be used as a basis for indemnity selection in any State or Territory whatsoever for any loss sustained by reason of the creation of said park.</p>
<p>Rights of way for railways.</p>	<p>That rights of way through the valleys of the North and Middle forks of the Flathead River for steam or electric railways may be acquired within said Glacier National Park under filings or proceedings heretofore or hereafter made or instituted under the laws applicable to the acquisition of such rights over or upon the unappropriated public domain of the United States, and that the United States Reclamation Service may enter upon and utilize for flowage or other purposes any area within said park which may be necessary for the development and maintenance of a government reclamation project: <i>And provided further,</i> That no lands within the limits of said park hereby created belonging to or claimed by any railroad or other corporation now having or claiming the right of indemnity selection by virtue of any law or contract whatsoever shall be used as a basis for indemnity selection in any State or Territory whatsoever for any loss sustained by reason of the creation of said park.</p>
<p>Reclamation projects.</p>	<p>and that the United States Reclamation Service may enter upon and utilize for flowage or other purposes any area within said park which may be necessary for the development and maintenance of a government reclamation project: <i>And provided further,</i> That no lands within the limits of said park hereby created belonging to or claimed by any railroad or other corporation now having or claiming the right of indemnity selection by virtue of any law or contract whatsoever shall be used as a basis for indemnity selection in any State or Territory whatsoever for any loss sustained by reason of the creation of said park.</p>
<p>No indemnity selections allowed corporations.</p>	<p>That no lands within the limits of said park hereby created belonging to or claimed by any railroad or other corporation now having or claiming the right of indemnity selection by virtue of any law or contract whatsoever shall be used as a basis for indemnity selection in any State or Territory whatsoever for any loss sustained by reason of the creation of said park.</p>
<p>Regulations for protection, etc.</p>	<p>SEC. 2. That said park shall be under the exclusive control of the Secretary of the Interior, whose duty it shall be, as soon as practicable, to make and publish such rules and regulations not inconsistent</p>

Exhibit
MS 1-2-8-23
page 58, 1, 57
emphasis added MS

NATIONAL PARK SERVICE • U.S. DEPARTMENT OF THE INTERIOR



Foundation Document

Glacier National Park

Montana

October 2016



Waterton-Glacier International Peace Park
Biosphere Reserve
World Heritage Site

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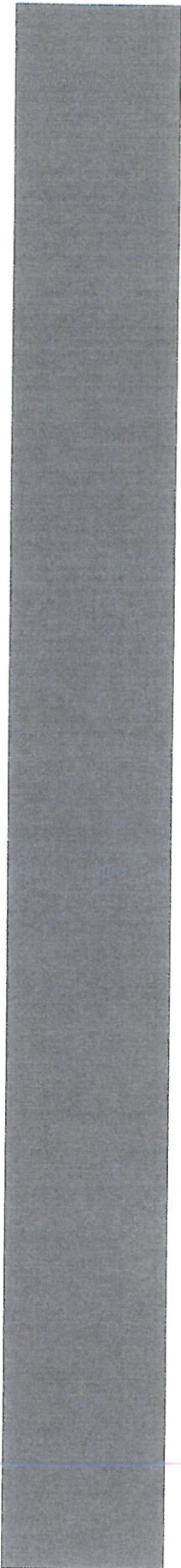
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Part 3: Contributors

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Water Rights in Montana: An Overview

by Adam Sigler, Water Quality Associate Specialist, MSU Extension; and Brad Bauer, former Gallatin County Natural Resource Agent, MSU Extension

All water in Montana is owned by the State for the benefit of its people. Individual water users have the right to use the waters of the State if they hold or are covered under a valid water right. A basic understanding of water rights is essential for people who want to play a part in the effective management of water resources.



MontGuide

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Background

Development of conveyance systems for water use helped define civilizations like the Roman, Egyptian, and Inca Empires. Closer to home, archeological evidence indicates that early Puebloan people in the Four Corners region of the United States (US) relied on irrigation for farming and developed significant water conveyance systems as early as 200 BC. Similarly, the construction of water conveyance systems played an important role in the development of the western US. As early as the nineteenth century, demand for water often outpaced supply, creating the need for a method for allocating water. The primary legal framework adopted throughout the western US was the prior appropriation doctrine, often summarized as “first in time, first in right.” Under this system, the earliest water users have the highest priority (senior) water rights. This means that in times of shortage, senior water right holders are entitled to all of their water before more junior water right holders are entitled to any of their water. Under the prior appropriation doctrine, a person does not have the right to use water simply because it flows through their property. They must have a water right, and this is an important difference from the doctrine of riparian water rights commonly used in the eastern US.

What is a Water Right?

All water in Montana is owned by the State for the benefit of its people. Individual water users have the right to use the waters of the State if they hold or are covered under a valid water right. The term “water right” in this document refers

The **prior appropriation doctrine**, or doctrine of prior appropriation, is the legal basis for water rights and use in Montana and across most of the western US. It establishes that those who first put water to beneficial use have the highest priority to continue to use water in times of shortage. “First in Time, First in Right”

to rights established both before and after 1973, which was an important year for water rights in Montana (described in the following sections). There are also important federal and Indian reserved water rights recognized in Montana, which are not explicitly covered in this document. Water rights have a set of “elements” that define the water right. The elements of a water right are:

1. **Source** – surface water sources include streams, rivers, some springs, and lakes. Wells and some springs have groundwater as the source.
2. **Point of Diversion** – this is where water is first diverted from the source. For surface water, this can be the dam or headgate. For stock water or instream flow, this may be a reach of a stream. For groundwater pumped from a well or a developed spring, it is the location of the wellhead or the place where the spring is developed.
3. **Purpose (Beneficial Use)** – this is the designated beneficial use of the water right. These beneficial uses include, but are not limited to: irrigation, stock water, municipal, industrial, domestic, recreational uses, instream flow, hydropower, fish and wildlife, aquifer storage and recovery, and mitigation.
4. **Place of Use** – place where the water is put to beneficial use, identified by legal land description (township, range, and section).
5. **Flow and Volume (Quantity)** – Flow rate is the maximum rate at which water can be diverted from a source. Volume is the maximum amount of water that can be diverted in a calendar year. The maximum flow rate is typically defined in cubic feet per second (cfs) and volume is described in acre-feet. Some water rights, such as for stock water use, may not specify a flow rate or volume, but are generally limited to the amount historically used. Most pre-1973 water rights do not specify a volume, but all of these water rights are limited to the amount historically used, defined by the beneficial use.

Exhibit

MS 13-8-23 ?
pages 1, 2, 3, 4
emphasis added MS

6. **Period of Use** – period of the year during which the water is allowed to be used.
7. **Period of Diversion** – the period of the year that water is diverted from the source, which may differ from the period of use, if water is stored.
8. **Priority Date** – the date the water was first put to beneficial use.

Water right holders are required to operate within the confines of these elements as specified in their water right. One generally cannot change source, quantity, period of use, period of diversion, or priority date. If the owner of a water right wishes to change the point of diversion, place of use, purpose (beneficial use), or place of storage (including adding storage), they must apply for and be granted a change authorization (“change in use”) through the Montana Department of Natural Resources and Conservation (DNRC). This change process is intended to protect other water users from harm.

A water right is a property right to use (but not own) water in Montana, as affirmed by the Montana Constitution, the Montana Supreme Court, and by State law. Because it is a property right, a water right can be sold, leased, and/or severed from the property where it has historically been put to beneficial use. If a change in ownership, severance, or a lease of a water right would result in the change in any of the basic elements of the water right, the water right holder must apply for and receive a change authorization from the DNRC.

As with all property rights, there are responsibilities that go with them. Water right holders have the legal responsibility to ensure ownership and contact information are correct and up-to-date with the DNRC. Points of diversion and means of conveyance need to be maintained and must be operating in order to protect the right. Because most water sources

are over-appropriated in Montana, water rights must be put to actual beneficial use to be protected from challenges of abandonment. Another cornerstone of the prior appropriation doctrine is “use it or lose it.”

Rationing of Scarce Water and Enforcement

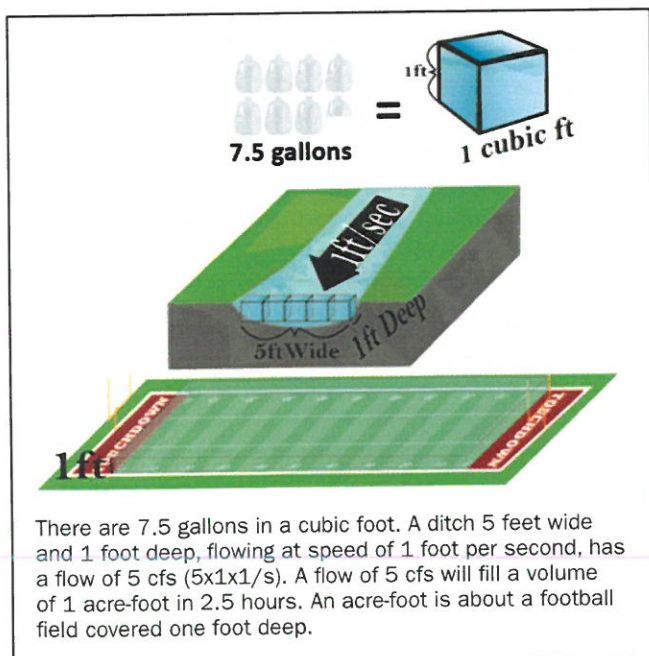
In Montana, no one beneficial use (e.g. agriculture, municipal, domestic, wildlife/fisheries) takes priority over the others. It is the relative seniority of water rights laid out by the prior appropriation doctrine (“first in time, first in right”) that is used to ration scarce water. The earlier the priority date specified on the water right, the more “senior” it is. A water right with an 1889 priority date is senior to a water right with an 1892 or 1915 priority date. When flows get low, the more senior water right owner (1889 in this example) is entitled to use their water first and can “make a call” on upstream water users with later (junior) priority dates. Making a “call” means that a senior water user requests that a junior user stop using water so the senior user can get their water. The process leaves it to individual water users to protect and enforce their water rights.

In times of water shortage or in areas where distribution is contentious, water users can petition the District Court to appoint a Water Commissioner to enforce distribution of water according to rights as recognized by the District Court or Water Court. If a water user is using water illegally, one can either contact the DNRC, or can file an action in District Court.

Legal Framework for Water Rights in Montana

The 1972 Montana Constitution provides the foundation for Montana water law. Specifically, Article IX, Section 3 sets forth that:

1. All existing rights to the use of any waters for any useful or beneficial purpose are hereby recognized and confirmed.
2. The use of all water that is now or may hereafter be appropriated for sale, rent, distribution, or other beneficial use, the right of way over the lands of others for all ditches, drains, flumes, canals, and aqueducts necessarily used in connection therewith, and the sites for reservoirs necessary for collecting and storing water shall be held to be a public use.
3. All surface, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law.
4. The legislature shall provide for the administration, control, and regulation of water rights and shall establish a system of centralized records, in addition to the present system of local records.



Expanding on these provisions of the Montana Constitution, the Montana Legislature adopted the Montana Water Use Act in 1973. The act provides a statutory framework for the adjudication of water rights that existed prior to 1973, changes of use for existing water rights, the creation of a centralized water right recording system, and a system to create and regulate water use permits issued after 1973.

Water Rights Established Before July 1, 1973 (Adjudication)

The Montana Water Use Act created a statutory framework for adjudication of water rights that existed prior to 1973. The process of “adjudication,” in the context of water rights, started when the Montana Supreme Court issued an order in 1979 requiring all persons with water rights having priority dates earlier than July 1, 1973, file “claims” describing the use of their water. If a water user did not file a claim for their pre-1973 water on or before April 30, 1982, their water right was considered abandoned; however, there are some exemptions, including for stock watering directly from a stream or river. Filed claims were then examined by DNRC for completeness and accuracy and all information was entered into a database, summaries of which can be retrieved as “abstracts.” Any discrepancies noted by the DNRC were reported to the claimants and appear on the water right abstracts as “issue remarks.” Water users were (and still are where adjudication is ongoing) then given an opportunity to object to claims, including their own, if they felt the information contained within a claim was not correct. The Water Court hears these objections and decides on these issues. When all of the objections and issue remarks for a particular basin are resolved, the Water Court issues decrees setting forth the particular elements of every recorded water right in that basin. The adjudication process is ongoing throughout the state with different basins at different stages in the process. To find out where in the process your water rights may be, see the DNRC map linked on the Extension page or contact the Water Court or your regional DNRC office.

Water Uses Established On or After July 1, 1973 (New Appropriations)

New appropriations are water rights issued on or after July 1, 1973, and include “water use permits” and “groundwater certificates.” New appropriations do not undergo review in the adjudication process. Anyone seeking a new appropriation must submit a form and fee to the DNRC. The form must describe all water right elements listed above. For permitting, an applicant must demonstrate that the new use will not adversely affect other users and must address a number of other statutory criteria (including physical and legal availability or historic use, beneficial use, adequacy of diversion, and possessory interest in the place of use). The DNRC will initially review the application to determine

whether it is correct and complete before analyzing the criteria to determine whether the application can be granted. The public is allowed an opportunity to object to the application if they can show that the change in use or new appropriation may adversely affect their property, water rights, or interest. Water is in very limited supply or not legally available in some areas of Montana, making getting a new water right difficult. Small groundwater uses (35 gpm or less for up to 10 acre-feet per year) are an exception to the permitting process, so no public notice and no criteria analysis are required. A person wanting to obtain a water right for a small groundwater use is required to complete and file a form with the DNRC after putting the water to use. If one is developing multiple exemptions (wells, pits, developed springs) up to 10 acre-feet within a small area, some restrictions are in place.

For Further Information

This document is intended to provide a general overview of water rights in Montana and is not intended to offer legal advice. For specific questions on water rights, contact the following entities and/or see the additional information resources.

- For questions on changes to existing water rights, permits, or general information on water rights, contact your regional DNRC office <http://dnrc.mt.gov/divisions/water/water-rights/water-resources-regional-offices/> or visit <http://dnrc.mt.gov/divisions/water/water-rights> where a “Water Rights in Montana” booklet and many other resources are available.
- For concerns about water rights claims and the adjudication process, contact the Water Court <http://courts.mt.gov/water>
- For issues or concerns about water distribution controversies, contact your district court <http://courts.mt.gov/locator>
- For technical legal issues, contact an attorney who is practiced in water rights law

Additional resources

- The Constitution of the State of Montana http://leg.mt.gov/bills/mca_toc/CONSTITUTION.htm
- Montana Code Annotated (MCA) Title 85 - Montana Water Use Act http://leg.mt.gov/bills/mca/title_0850/chapters_index.html
- Administrative Rules of Montana (ARM) <http://www.mtrules.org/gateway/ChapterHome.asp?Chapter=36.12>
- MSU Extension – weblinks to various water-rights-related resources <http://waterquality.montana.edu/resources/waterrights>

Acknowledgements and Reviewers

This publication has been approved by representatives of the following groups/agencies, who recommend its reading by those with basic questions about water rights in Montana:

- MT Department of Natural Resources and Conservation (DNRC)
- Association of Gallatin Agricultural Irrigators (AGAI)
- One Montana
- Trout Unlimited (TU)
- two attorneys from the Water Law Section of the State Bar of Montana
- Extension colleagues with Montana State University, and members of the public

Common Montana Water Right Terms

Abstract: a document outlining the elements of a water right (e.g. Statement of Claim, permit, or groundwater certificate).

Acre-foot: enough water to cover one acre of area, one foot deep.

Adjudication: assessment of pre-July 1, 1973, water rights claims by the DNRC and Water Court.

Adverse effect: impairment to an existing water right.

Change in use: a modification to any of the elements of a water right that requires approval by the DNRC (point of diversion, place of use, purpose, or place of storage).

cfs: cubic feet per second; one cfs is equal to 448 gallons per minute (gpm); a garden hose running full-blast might run 10 gpm.

Closed basin: a drainage area where all available water is claimed with existing water rights and new water rights are limited.

Controlled Groundwater Area: an area where special restrictions on groundwater use are in place.

Conveyance system: canals, ditches, pipes, natural channels, etc. that move water from the source to the place of use.

Decreed rights: a water right issued by a court upon adjudication for an area (typically a basin or a stream).

Exempt well: a popular term for groundwater use that uses less than 35 gpm and less than 10 acre-feet per year and that is exempt from the permitting process if certain conditions are met. (see also groundwater certificate, a type of water right)

Groundwater certificate: a water right established on or after July 1, 1973, for a well, a groundwater pit, or a developed spring that is exempt from the permitting process if certain conditions are met. (see also "exempt well")

Historic use: the amount of water that was actually applied to a beneficial use in the past.

Instream flows: water protected in a stream for beneficial uses such as preservation of fish or wildlife habitat.

Junior water right: water right with a use that started later in time and has a lower priority relative to senior rights.

Making a "call": when a senior water right holder asks a junior user to stop using water so the senior right holder can get their water first.

Miner's inch (mi): a statutory measure of flow rate. The definition varies by state, but in Montana, 40 mi are equal to 1 cfs.

Mitigation: a mechanism for using existing water rights to offset adverse effects resulting from a new water use.

Senior water right: water right with a use that started earlier and has higher priority relative to junior rights.

Statement of Claim: an existing water right originated before July 1, 1973, and generally established by putting water to beneficial use.

Stock use: beneficial use of water for livestock.

Water use permit: a water right established on or after July 1, 1973.



This MontGuide should not be used as a legal reference; for legal matters refer directly to the Montana Code Annotated, the Administrative Rules of Montana, and/or your own legal counsel.

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removal case



The Ambler home along McDonald Creek inside Glacier National Park. (Chris Peterson/Hungry Horse News)

By
CHRIS PETERSON

Hungry Horse News
|
April 5, 2023 3:00 PM

Exhibit
MS 1-4-8-23
emphasis added MS

The Ambler couple who built a private home along the banks of McDonald Creek inside Glacier National Park have petitioned the Flathead County Conservation District for a declaratory ruling — another step in the regulatory process that could see the matter eventually go before a district court judge.

The conservation district board previously found that John and Stacy Ambler of San Diego built a home along McDonald Creek in violation of Montana Natural Streambed and Land Preservation Act, also known as the 310 law.

Under the rules for a declaratory ruling, the Amblers are allowed to present their case and the district, in turn, appoints a hearing officer, which may be one of the supervisors. A quorum of other supervisors must also be present.

The hearing is scheduled for April 10. The hearing officer then has 60 days to make a recommendation to the supervisors for their approval and adoption, though that can be extended if need be.

The ruling itself — consisting of findings of fact and conclusions of law — must be made by a concurrence of a majority of the board. Only those supervisors present during the hearing can participate in the decision.

If the Amblers are unsatisfied with the ruling, they can then petition Flathead County District Court for a review within 30 days. If they disagree with the ruling of the district court judge, they can appeal to the Montana Supreme Court within 60 days.

The legal wrangling could mean the home, which is largely built but has no siding, could remain along the banks of the pristine stream for months more, if not years.

Crews have since boarded up the windows.

On Feb. 27, representatives of the conservation board, along with the owners and a Montana Fish, Wildlife and Parks biologist examined the home, which is about 20 feet from the creek.

The board determined the stream bank had been excavated in violation of the 310 law.

In addition to ordering the removal of the home, the board also required the Amblers to obtain a 310 permit — the permit that's necessary to do any sort of work near a stream in Montana — to tear the home down.

The Amblers never applied, or received, a free 310 permit when they began construction. They previously claimed they didn't know they needed one.

But Glacier Park spokeswoman Gina Kerzman said last week the couple was told when they inquired about building the home that they needed to comply with all state and county laws and regulations.

Under the initial board ruling, the Amblers were given until Nov. 1 to remove the home by the board.

The home is located on a slight bend in McDonald Creek in Apgar. It is one of the few private parcels left in Glacier National Park. Private land in Glacier

Montana Code Annotated 2021

THE CONSTITUTION OF THE STATE OF MONTANA

ARTICLE II. DECLARATION OF RIGHTS

Part II. DECLARATION OF RIGHTS

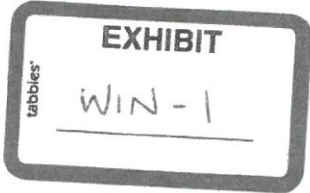
Inalienable Rights

Section 3. Inalienable rights. All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.

Created by **LAWSON**

Exhibit
MS 1-5-8-23
emphasis added MS 3

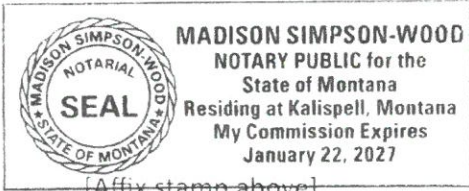
MONTANA NOTARIAL CERTIFICATE
SIGNATURE WITNESSING



State of Montana
County of Flathead

The attached record, Flathead Conservation, consisting of 1 pages was
(Description of record) Letter

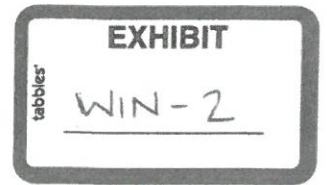
signed before me on August 21, 2023 by Leslie Ann Windauer
(Date) (Name of signer(s))



Madison Simpson-Wood
(Notary's Signature)

RECEIVED
AUG 25 2023
Flathead CD

This certificate is to be attached to the record described above. Any evidence that it has been detached or removed may render the notarization invalid or unacceptable.



August 20, 2023

Flathead Conservation District
133 Interstate Lane
Kalispell, MT 59901

Dear Board Members,

I am writing this letter with much sadness, confusion, and consternation regarding the house on Mc Donald Creek. I don't know if permits were requested or not from the county or the park service, but it does concern me that neither entity accepts or denies the request nor takes responsibility for the construction of the structure. Both entities have strict guidelines for building, including sewer hookup, and the fact that no one in either department even raised a question as to what was happening undermines the very codes that protect people and our environment. I would also trust that a respectable builder would verify a permit before beginning construction, however the homeowner has the final responsibility to meet ALL criteria.

It too, concerns me that the people who are building this type and size structure have so little regard for the aesthetics of our pristine area. It's bad enough that the public must look at this obtrusive structure but worse is that the water, vegetation, and wildlife are compromised because someone took advantage of a changing park administration, lackadaisical permitting system and disregard of the very codes that are in place to protect the environment especially in a national park.

It is a shame that significant time and money have been invested by the homeowners due to a possible oversight and yet it is in a national park where we have a responsibility to preserve the entire environment for ALL to enjoy.

Thank you for your time and effort in resolving this unfortunate issue.

Leslie Windauer
Leslie Windauer
837 2nd Ave W
Kalispell MT 59901

RECEIVED
AUG 25 2023
Flathead CD

