

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION



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RECEIVED

November 15, 2013

NOV 19 2013

Ravalli County Commissioners

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HOWARD F. RECHT - ATTORNEY
205 BEDFORD ST., SUITE C
HAMILTON, MT 59840

Subject: Objection to Application No. 76H 30063740 by USA, Dept. of Agriculture, Forest Service

Lost Horse Creek

Mr. Recht:

This letter serves as an Objection Deficiency Notice as required by ARM, 36.12.117(11). The above application was submitted pursuant the Department of Agriculture Forest Service-Montana Compact as allowed under § 85-20-1401, MCA.

Section 3. of the objection form asks how you have standing to file this objection. The present objection does not provide facts explaining how the objector has standing to object. A correct and complete objection must provide facts explaining how the person has standing to object; to have standing, a person must have property, water rights, or other interests that would be adversely affected were the application to be granted, and the objection must describe how the person's property, water rights, or interests will be adversely affected if the water right application were granted (ARM 36.12.117(9)(g)). A person has standing to file an objection if the property, water rights, or interests of the objector would be adversely affected by the proposed appropriation (§ 85-2-308(3), MCA). The present objection does not provide facts indicating a personal, particularized, and concrete injury to the property, water rights and interests of the county.

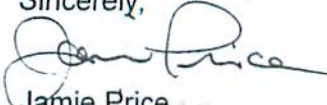
Section 5. of the objection form asks the objector to provide facts that explain why one or more of the criteria cannot be met (ARM 36.12.117(9)(f)). If the facts are not supplied, the objection cannot be deemed valid. A correct and complete objection to Forest Service instream flow applications must provide facts indicating that one or more of the following objector proofs set forth in § 85-20-1401, Article VI, sec. B.3 (a) or (b), MCA, is met. The facts provided must specifically describe why or how one or more of the objector proofs are met. The objection does not provide facts on the objector proofs as required.

Additional information on the USDA Forest Service – Montana Compact can be found at the Montana DNRC Website:

http://dnrc.mt.gov/wrd/water_rts/adjudication/forests-service_compact/default.asp

If you have any questions, please contact me.

Sincerely,



Jamie Price
DNRC, Administrative Support

Enc: Objection Copy; Objection Validity Forms

Cc: Ravalli County, 215 S. 4th St, Suite C, Hamilton, MT 59840

IMPORTANT NOTICE: This will be the only opportunity for you to provide the required information to the Department. If the information is not postmarked and submitted to the Department within 15 days of the date of this letter, the objection will be terminated. If you do not wish to submit additional information, you may choose to withdraw the objection and the Department will refund the objection fee if it is withdrawn within 15 days of the date of this letter.

638 FOREST SERVICE WATER RESERVATION OBJECTION VALIDITY FORM

ARM 36.12.117(9)+

An Objection to Application is correct and complete if it includes the following legible information.

- Yes No (a) filing fee
- Yes No (b) objector's name and mailing address
- Yes No (c) water right application number
- Yes No (d) name of the water right applicant
- Yes No Not Applicable (e) if an objector is claiming the objector's water right will be adversely affected if the application were granted, the objector must provide the department-assigned water right number. If the water right was exempt from the statewide water right filing requirements and is not on record with the department, the objector must provide the following information.
 - (i) date of first use
 - (ii) source
 - (iii) means of diversion
 - (iv) type of use (stock or domestic)
 - (v) the flow rate and volume of water used
 - (vi) the point of diversion; and
- Yes No (f) facts indicating that one of the applicable objector proofs set forth in § 85-20-1401, Article VI, sec. B.3 (a) or (b), MCA, is met. The facts provided must specifically describe why or how one of the objector proofs are met
- Yes No (g) facts explaining how the person has standing to object. To have standing, a person must have property, water rights, or other interests that would be adversely affected were the application to be granted. The objection must describe how the person's property, water rights, or interests will be adversely affected if the water reservation application were granted; and
- Yes No (h) signature of the objector or the objector's legal representative. If a representative of the objector other than objector's attorney signs the Objection to Application affidavit, the representative shall state the relationship of the representative to the objector and provide documentation demonstrating the authenticity of that relationship.

ARM 36.12.117(10) The objections checked "yes" below are deemed valid and may proceed to an administrative hearing.

Valid Objection			REQUIRED OBJECTOR PROOFS (§ 85-20-1401 Article VI, sec. B.3 (a) or (b))
Yes	No	N/A	
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	The amount of water under the wetted perimeter methodology or other methodology was not accurately measured or calculated.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	The wetted perimeter methodology or other methodology could not suitably be applied to the stream reach applied for.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	There is not an existing population of the fish species set forth in § 85-20-1401 Art. VI sec. B.1.(a)(iii)(B), MCA, identified in the application in the stream reach applied for.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	There is a proposed or projected water development project: that is feasible; reliably projected to be commenced within 10 years or within 10 years after a basin closure is removed; in which the objector has or can reasonably obtain a possessory interest (or consent) in the property where the water is to be impounded, stored, transported and put to beneficial use; for which the amount of water needed for the project is reasonable; for which water is not reasonably available from any other water source; for which the water would be unavailable if the proposed reservation was granted; that would not be feasible with water either in a lesser amount or at a different location if the reservation was granted; <u>and</u> that serves a significant public need.

Reviewer: 
 Jamie Ellis, New Appropriations Program Manager

11/14/13