

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

COPY



STEVE BULLOCK
GOVERNOR

DIRECTOR'S OFFICE (406) 444-2074
TELEFAX NUMBER (406) 444-2684

STATE OF MONTANA

WATER RESOURCES DIVISION (406) 444-6601
TELEFAX NUMBERS (406) 444-0533 / (406) 444-5918
<http://www.dnrc.mt.gov>

1424 9TH AVENUE
PO BOX 201601
HELENA, MONTANA 59620-1601

RECEIVED

December 5, 2013

DEC 10 2014

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

Ravalli County Commissioners

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Subject: Objection to Application No. 76H-30063745 by USA Dept. of Agriculture Forest Service (Boulder 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.

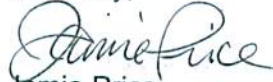
Section 5. of the objection form asks the objector to provide facts that explain why one or more of the criteria cannot be met (ARM 36.12.117(9)(f)). If the facts are not supplied, the objection cannot be deemed valid. A correct and complete objection to Forest Service instream flow applications must 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 **Jamie Ellis** at **406-444-9754**.

Sincerely,



Jamie Price

DNRC, Administrative Support

Enc: Objection Copy; Objection Validity Form

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 Ells* 12/4/13
 Jamie Ells, New Appropriations Program Manager



OBJECTION TO APPLICATION

FILING FEE: \$25.00

Use this form when objecting to an application for a water use permit, change authorization or forest service water reservation.

Use one form for each application to which you are objecting. Individual water right owners must file separate objections.

THIS FORM MUST BE RECEIVED OR POSTMARKED ON OR BEFORE THE DEADLINE SPECIFIED IN THE PUBLIC NOTICE.

Submit form and filing fee to:
Montana Department of Natural Resources and Conservation
1424 9th Avenue, PO Box 201601, Helena, MT 59620-1601

RECEIVED

NOV 25 2013

D.N.R.C.

FOR DEPARTMENT USE ONLY

Postmarked Date	<u>11-21-13</u>
Date Received	<u>11-25-13</u>
Rec'd By	<u>JDC</u>
Fee Rec'd	<u>25.00</u>
Check No.	<u>149111</u>
Refund	_____

<input type="checkbox"/> Permit	<input type="checkbox"/> Change	<input checked="" type="checkbox"/> Water Reservation
Obj #	<u>66571</u>	
Reviewed by	<u>JDC</u>	
Date	<u>11-25-13</u>	

1. NAME OF OBJECTOR Ravalli County Montana

Mailing Address 215 S 4th St, Suite A

City Hamilton

State MT

Zip

59840

Home Phone 406-375-6750

Other Phone _____

2. TO WHAT APPLICATION ARE YOU OBJECTING? Number 76H 30063745

Applicant Name U.S. Forest Service

3. HOW DO YOU HAVE STANDING TO FILE THIS OBJECTION? - A person has standing if his or her property, water rights, or interests would be adversely affected by the proposed appropriation. Explain your interest and how it would be adversely affected.

Ravalli County represents the interests of the citizens of the County; County is a political subdivision of the State, which owns the water in the State; County has an interest in the use of natural resources within the County. See attached

4. WILL YOUR WATER RIGHT BE AFFECTED? If so, provide the water right number.

(W) Statement of Claim No. _____

(P) Permit to Appropriate Water No. _____

(C) Certificate of Water Right No. _____

(D) Powder River Final Decree No. _____

(M/R) Reservation of Water No. _____

(E) Exempt Water Right No. _____

(F) Non-recorded Water Right (For a filing not on record with the DNRC, complete the information below).

Type of Use Stock Domestic Date of First Use _____

Groundwater (For example, well or developed spring)

Instream Surface water Source _____

Amount Used Flow Rate _____ Gallons Per Minute Volume _____ Acre-Feet

Point of Diversion _____ 1/4 _____ 1/4 _____ 1/4 Section _____, Twp _____ N S, Rge _____ E W

County _____

Lot/Tract _____ Block _____ Subdivision Name _____

5. WHY ARE YOU FILING AN OBJECTION?

Statute requires that an objector provide facts that explain how or why one or more of the application criteria cannot be met. If facts are not supplied, the objection cannot be deemed valid.

If an Administrative Hearing is held on the application you will be limited to only those criteria on which you specifically file an objection and to those objections that are deemed valid. For further information, see the Administrative Rules pertaining to filing a water right objection. (ARM 36.12.117)

Complete information for only A) or B), not both, if objecting to a permit or change application. Attach a separate sheet and provide the following information:

1. The application number, applicant name, and your name.
2. The corresponding numbers shown below to clearly indicate on which criteria you are objecting.
3. For each criterion on which you are objecting, provide facts explaining why you do not believe the criterion can be met.

A) Objection To Permit Application – For each box that is checked, provide facts explaining why one or more of the criteria in § 85-2-311, MCA, cannot be met.

- 1. Physical Availability – Provide facts showing why water cannot be considered physically available.
- 2. Legal Availability – Provide facts showing why the water cannot be considered legally available.
- 3. Adverse Effect – Provide facts showing how this proposed use will adversely affect your water right.
- 4. Diversion Works – Provide facts showing why the construction of the project may not be adequate.
- 5. Beneficial Use – Provide facts showing why the use (purpose) or flow rate and volume may not be considered beneficial.
- 6. Possessory Interest – Provide facts showing the applicant does not have possessory interest in the place of use.

B) Objection To Change Application – For each box that is checked, provide facts explaining why one or more of the criteria in § 85-2-402, MCA, cannot be met.

- 1. Adverse Effect - Provide facts showing how this proposed change will adversely affect your water right or interest or how the historic use of the water right proposed for change is different than described in the application.
- 2. Diversion Works - Provide facts showing why the construction of the project may not be adequate.
- 3. Beneficial Use - Provide facts showing why the use (purpose) or the flow rate and volume may not be considered beneficial.
- 4. Possessory Interest - Provide facts showing the applicant does not have possessory interest in the place of use.

Water Quality Objections - Refer to § 85-2-311(1)(f), (g), or (h) and § 85-2-311(2), MCA, for Permit Applications. For Change Applications, see § 85-2-402(2)(f) or (g) and § 85-2-402(3), MCA.

Complete information if objecting to a Forest Service water reservation application. Attach a separate sheet and provide the following information:

1. The application number, applicant name, and your name.
2. The corresponding letters shown below to clearly indicate on which criteria you are objecting.
3. For each criterion on which you are objecting, provide facts explaining why you do not believe the criterion can be met. The specific statute pertaining to the requirements can be found at § 85-20-1401(vi), MCA. An objector to a forest service instream flow application must prove by a preponderance of evidence one or more of the following (A-D):
 - (A) The amount of water under the wetted perimeter methodology or other methodology was not accurately measured or calculated;
 - (B) The wetted perimeter methodology or other methodology could not suitably be applied to the stream reach applied for;
 - (C) There is not an existing population of the fish species set forth in § 85-20-1401(vi)(b.1)(a)(iii)(b), MCA, in the stream reach applied for; or

(D) There is a proposed or projected water development project: that is feasible; projected to be commenced within ten (10) years or within ten (10) years after a basin closure is removed; in which the objector can reasonably obtain a possessory interest in the diversion and place of 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; and that serves a significant public need.

6. ARE YOU REPRESENTED BY COUNSEL? YES NO

Name Howard F. Recht, Deputy Attorney
Mailing Address 205 Bedford St, Suite C
City Hamilton State MT Zip 59840
Phone 406-375-6750

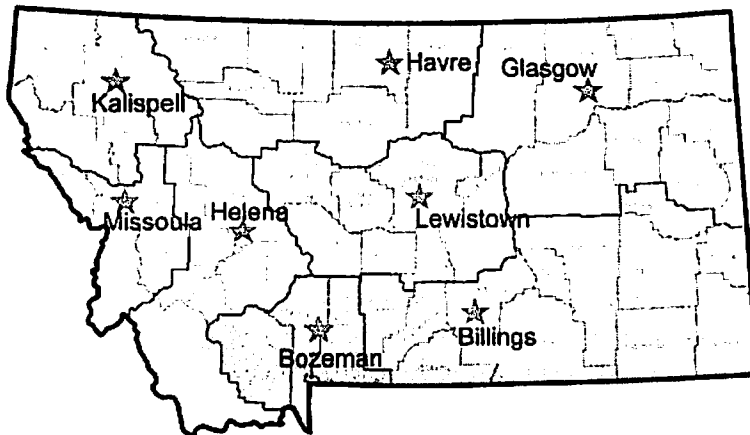
7. PERSON PREPARING THIS FORM, if different from objector

Name Same
Mailing Address _____
City _____ State _____ Zip _____
Phone _____

8. OBJECTOR'S SIGNATURE - Only an objector whose signature appears below will be allowed to participate in an administrative hearing. (See ARM 36.12.117(5)) If you are represented by counsel, counsel may sign.

SIGNATURE [Signature] DATE 19 Nov 2013
SIGNATURE [Signature] DATE 11-19-13
SIGNATURE [Signature] DATE 11-19-13

MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
Water Resources Division - Water Rights Bureau
1424 9th Avenue, PO Box 201601, Helena, MT 59620-1601 406-444-6610
WEBSITE: <http://dnrc.mt.gov/wrd/>



Ravalli County, a political subdivision of the state of Montana, has standing and objects to application number 30063745, Basin 76H, filed by the U.S. Forest Service on Boulder Creek, on the following grounds that are in addition to those set forth in the Objection to Application filed by Ravalli County:

1. Ravalli County has political jurisdiction over land and resources within the County.
2. In a public meeting, the citizens of the County expressed overwhelming support for the County to object to the Forest Service's application for in-stream water rights in the closed basin. Thus, the County is acting as the citizens' political representative.
3. Under Federal law, the Forest Service is obligated to coordinate with the County regarding the use and management of natural resources. The Forest Service has failed to do this in any meaningful way regarding this application.
4. The County has an obligation under its Natural Resource Policy to preserve and protect the natural resources within the County, including surface and ground water. The application of the Forest Service affects both surface and ground water, as the two are interconnected. See policies attached. Water rights affecting the headwaters of streams within the Bitterroot basin not only affect the flow within the Bitterroot River, but are also hydraulically connected to wells and other groundwater resources. The County has a beneficial interest in several wells within the County, as do private citizens (See attached list). The County also has a beneficial interest and is a water user on the Daly Ditch Irrigation System, which has a water right from the Bitterroot River. See attached.
5. The award of a reserved water right to the United States government violates Article IX, Section 3, of the Montana constitution in that there is no support in the application to conclude that the water is being sought for the use of the people of the state.
6. The award of a reserved water right to the United States government violates Article IX, Section 3, of the Montana constitution in that the application seeks to transfer property of the state to the federal government without just compensation.
7. Any award pursuant to the application potentially pre-empts the rights of the people to put public waters to a beneficial use for the people of the state in violation of Article IX, Section 3, of the Montana constitution. The effect of the application, if granted, would be to cede control of any future appropriation or change of use to the Federal government.
8. The award of a reserved water right to the United States government violates the equal protection clauses of the Montana and U.S. constitutions in that no other person or entity, public or private, has a right to apply for a water right in a closed basin.
9. The charging of a \$25.00 fee to file an objection violates the Montana constitution's guarantee of the right to know and participate in the actions of governmental agencies, as provided under Article II, Sections 8 and 9.
10. The flow rate on Boulder Creek indicates that the volume of water sought by the applicant is not available much of the year.
11. The claim will not further the alleged purpose of the water right in that, even if awarded, the water right will have no effect on the fishery.
12. It is the responsibility of the applicant to prove that water sought is available and not allocated, and that the water right sought will further the objective to preserve the fishery. No such proof has been provided. In fact, the water right if awarded will not enhance or preserve the fishery.

RESOLUTION NO. 2978

RESOLUTION ADOPTING THE RAVALLI COUNTY
NATURAL RESOURCE USE POLICY

WHEREAS, the Ravalli County Board of Commissioners on April 26th, 2012, received and had a public meeting on a draft proposal from a citizen group requesting the county to review and adopt a Natural Resource Plan; and

WHEREAS, the Ravalli County Board of Commissioners held ten more public meetings on the draft plan on May 24th and 29th, July 23rd, August 6th and 20th, September 17th, October 1st, 15th & 29th, and November 8th and, based on the document and amendments to the document, voted 4-0 to adopt the plan.

WHEREAS, the Board of County Commissioners are the elected representatives of the citizens of Ravalli County; and

WHEREAS, it is in the best interests of the people of Ravalli County for the Board of County Commissioners to have a plan to manage the natural resources on Government managed land in Ravalli County;

NOW, THEREFORE, BE IT RESOLVED that the Ravalli County Board of County Commissioners hereby adopts Resolution Number 2978 establishing the Ravalli County Natural Resource Use Plan.

PASSED AND ADOPTED THIS 21ST DAY OF NOVEMBER, 2012.
BOARD OF RAVALLI COUNTY COMMISSIONERS

Suzy Foss
Suzy Foss, Chairman

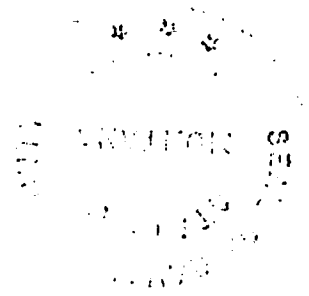
Greg Chilcott
Greg Chilcott, Member

J.R. Iman
J.R. Iman, Member

Ron Stoltz
Ron Stoltz, Member

Jeff Burrows
Jeff Burrows, Member

Attest: Regina Plattenberg
Clerk & Recorder



Attached: 2012 Bitterroot Valley Natural Resource Use Policy
30 pages

RETURN