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MONTANA TWENTY-SECOND JUDICIAL DISTRICT, STILLWATER COUNTY

BEARTOOTH FRONT COALITION, )  
LAZY Y DIAMOND BAR LP, LANA )  
and CHARLES J. SANGMEISTER, )  
WILLIAM A. and CAROLYN F. HAND, )  
and MARGARET BARRON and )  
DOXEY RAY HATCH, )

Plaintiffs,

v.

BOARD OF COUNTY  
COMMISSIONERS, STILLWATER  
COUNTY, and HEIDI STADEL, in her  
capacity as Clerk and Recorder of  
Stillwater County,

Defendants.

Cause No.: DV-18-12

**DEFENDANTS' BRIEF IN  
SUPPORT OF CROSS-MOTION  
FOR SUMMARY JUDGMENT  
AND RESPONSE IN  
OPPOSITION TO PLAINTIFFS'  
MOTION FOR SUMMARY  
JUDGMENT, AND REQUEST  
FOR HEARING**

COME NOW the Defendants, Board of County Commissioners,  
Stillwater County, and Heidi Stadel, in her capacity as Clerk and Recorder of  
Stillwater County (hereinafter "Defendants"), by and through their attorneys,  
Bethany A. Gross of the Budd-Falen Law Offices, LLC, and Nancy L. Rohde,  
Stillwater County Attorney, and hereby submit their brief in support of their  
Cross-Motion for Summary Judgment, and respond in opposition to the

Plaintiffs' Motion for Summary Judgment, and Request for Hearing ("Motion for Summary Judgment").

## **I. INTRODUCTION**

At issue in this case is whether petitioners must take into account mineral ownership when gathering signatures to meet the "60% of affected real property owners" threshold of MCA § 76-2-101 (the Part 1 citizen-initiated zoning statute") in order for county commissioners to consider adoption of a planning and zoning district for the purpose of regulating oil and gas development. In this case, such petitioners must in fact take mineral ownership into account. Plaintiffs Beartooth Front Coalition, Lazy Diamond Bar, LP, Lana and Charles Sangmeister, William and Carolyn Hand, and Margaret and Doxie Hatch ("Plaintiffs") failed to meet the "60% of affected real property owners" threshold of MCA § 76-2-101 because they omitted gathering signatures from mineral owners in a proposed citizen-initiated zone that clearly "affects" real property mineral owners.

In their Brief in Support of Plaintiffs' Motion for Summary Judgment and Request for Mandamus (hereinafter "Plaintiffs' Brief"), Plaintiffs allege that the term "real property owners" in MCA § 76-2-101, precludes mineral owners. Therefore, Plaintiffs allege they are entitled to mandamus relief that Defendants Stillwater County Commissioners be ordered to consider adoption of the zoning district proposed by Plaintiffs. As set forth below, mineral owners are "real property owners" whose interests would be "affected" by the planning and zoning district proposed by Plaintiffs.

Real property owners may or may not be "affected" by a proposed zoning district depending on the proposed zoning district's purpose. For example, a proposed zoning district's purpose may be to prohibit liquor stores within so many feet of a school. In that case, mineral owners are not "affected" and may be excluded from the petition signature-gathering process. Pursuant to Montana law, the mineral estate is the dominant estate and has the right to reasonable use of the surface in the production of the mineral. Burlington Res. Oil & Gas Co., LP v. Lang & Sons Inc., 2011 MT 199, ¶ 26, 361 Mont. 407, 412, 259 P.3d 766, 770. Therefore, regulating the surface will affect a mineral owner's rights to reasonable use of the surface in production of its minerals. Here, Plaintiffs have stated that the only purpose for their proposed zoning district is to regulate oil and gas and they seek to regulate no other land use. See Exhibit C at 4. Clearly, this would directly "affect" mineral owners' real property interests, therefore they are considered "affected real property owners" under MCA § 76-2-101 for the zoning district Plaintiffs propose. As such, Defendants should be granted summary judgment on the issue that "affected real property owners" under MCA § 76-2-101 includes mineral owners in this case.

Since the petition that Plaintiffs submitted to Defendants for creation of an approximate 83,000 acre zoning district regulating oil and gas development omitted affected mineral owners thereby failing to reach the "60% of affected real property owners" threshold of MCA § 76-2-101, they are not entitled to mandamus relief. Accordingly, Defendants' Cross-Motion for

Summary Judgment should be granted and Plaintiffs' Motion for Summary Judgment should be denied.

## **II. STATEMENT OF FACTS**

1. Located in South Central Montana, Stillwater County is home to just under 9,500 residents. Agriculture and mining drive the economic base for the County as a whole, as well as supporting services and retail trade. See [www.stillwatercountymt.gov](http://www.stillwatercountymt.gov) (last visited October 12, 2018).

2. Plaintiffs, Petitioners for a proposed Part 1 citizen-initiated zoning district of approximately 83,000 acres, allege that they do not seek to ban oil and gas development within their proposed district; and rather seek to regulate it to lessen impacts on local ranchers. See Plaintiffs' Brief at ¶ 2. Yet, Plaintiffs publicize their position to the public through their regularly-updated blog with articles such as "Don't Bakken the Beartooths" and other articles urging readers to write the Bureau of Land Management in an effort to stop federal leasing; and with links to a Facebook page entitled "No Fracking the Beartooth Front." See Exhibit A.

3. Plaintiffs allege that the purpose of their petition was very similar to the purpose of a previous Part 1 citizen-initiated zone adopted by Stillwater County in 1979. See Plaintiffs' Notice of Errata at 2. On November 7, 1979, Stillwater County adopted the "West Fork Stillwater Planning and Zoning Ordinance," which was a Part 1 citizen-initiated zoning for the West Fork Stillwater Planning and Zoning District. See Plaintiffs' Brief at Exhibit 2. The District was divided into two zones, Zone A and Zone B. Zone A permitted

uses including agriculture, recreation and oil and gas production. Zone B permitted all uses permitted in Zone A, plus recreational home sites. All other uses would potentially require a conditional use permit. Id. The West Fork Stillwater Planning and Zoning District is substantially different than the Part 1 citizen-initiated zoning district proposed by Plaintiffs. Here, Plaintiffs seek to create a zoning district to only regulate oil and gas development, whereas the West Fork Stillwater Planning and Zoning District permitted uses such as oil and gas development, and all other uses would have required a conditional use permit.<sup>1</sup>

4. When Plaintiffs submitted their petition to Stillwater County, Plaintiffs also included information regarding the regulations they would seek for the proposed district. Plaintiffs provided this information to potential signatories when collecting signatures for the petition. See Exhibit C. Plaintiffs represented to the people they were seeking signatures from that they would propose regulations for the district which would require a permit from Stillwater County and payment of fees before any oil and gas exploration or development commenced. Upon application for a permit, a public hearing would be held whereby an applicant must demonstrate that the oil and gas activity will not cause a potentially significant adverse impact on nearby properties and property values, residents, air quality, groundwater, soil, wildlife, fish, streams, and wetlands. See Exhibit C at 11.

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<sup>1</sup> Plaintiffs' proposed zone would completely overlap the boundaries of the West Fork Stillwater Planning and Zoning District.

5. In addition, a permit from the County as suggested by Plaintiffs would impose terms and conditions including landscaping for containment of possible discharges and spills; lighting restrictions; monitoring of groundwater and surface water, including periodic testing within specified distances of the well head and the surface line above any horizontal or directional well bore; monitoring and periodic testing of odors, smoke, dust, airborne particles, vibration, glare, heat, and noise; monitoring and regulation of vehicle traffic and routes; a well pad location that minimizes visual intrusion in the landscape; prohibition of holding ponds for drilling and waste materials; and restoration of property upon termination of activity. See Exhibit C at 11.

6. Plaintiffs allege that on January 30, 2018, Defendants Commissioners “voted” to accept Defendant Clerk and Recorder's determination that the petition submitted by Plaintiffs failed to meet the required 60% threshold when mineral interests were taken into account; and also denied Plaintiffs' petition by a unanimous vote. See Plaintiffs' Brief, at 2, 7 (¶ 12), 9-10. Plaintiffs' allegation is incorrect. Rather Defendant Clerk and Recorder had deemed the petition as invalid based upon advice of the County Attorney and therefore never forwarded the petition to the Commissioners for consideration on the merits of the petition. See Plaintiffs' Brief at Exhibits 6, 7 and 8.

7. As shown on Exhibit 8 to Plaintiffs' Brief, during the January 30, 2018 public meeting, Defendants Commissioners voted to file Defendant

Clerk and Recorder's January 24, 2018 letter informing Defendants Commissioners of the invalidity of Plaintiffs' petition. See id. At no time during this meeting did Defendants Commissioners vote to accept Defendant Clerk and Recorder's determination, or vote to deny Plaintiffs' petition. See id. Voting to file an item into the record does not constitute acceptance of Defendant Clerk and Recorder's determination, nor does it act as a denial of Plaintiffs' petition.

8. Plaintiffs allege that Defendant Clerk and Recorder violated Stillwater County's procedures for handling Part 1 citizen-initiated zoning petitions by failing to prepare an affidavit to the Defendants Commissioners concerning her determination that the petition did not meet the signature requirement. See Plaintiffs' Brief at ¶ 13. However, those procedures do not require the Clerk and Recorder to prepare an affidavit advising the County Commissioners that the Clerk and Recorder made such a determination. See Plaintiffs' Brief at Exhibit 1 (Exhibit A, Zoning Petitions). In any event, Defendant Clerk and Recorder did send Defendants Commissioners a letter informing them of the invalidity of Plaintiffs' petition on January 24, 2018. See Plaintiffs' Brief at Exhibit 7.

9. Anyone has the ability to determine who mineral owners are.<sup>2</sup> See Exhibit D at 2. Determining mineral ownership requires review of records contained within the County Records and abstract records, beginning with

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<sup>2</sup> Plaintiffs imply that petitioners would need to determine royalty interest owners as well. See Plaintiffs' Brief at ¶¶ 16-17. However, royalty interest owners are not real property owners, and Defendants do not take that position.

the patent from the United States and following the chain of title through subsequent deeds, etc.<sup>3</sup> Id. In addition, Plaintiffs could have posted public notices in public places and/or newspapers requesting to hear from mineral owners regarding Plaintiffs' petition to supplement their search for affected mineral owners.

10. Mr. Patrick Padon, a professional Independent Landman who has investigated mineral ownership along the Beartooth Front, identified mineral owners in approximately ninety-five days, with a total expense of \$47,500.00. See Exhibit D at 3. In comparison, Plaintiffs took between 2014 and 2017 to submit a final petition to the County, during which they would have had sufficient time to complete a mineral owner review. Mr. Padon also contacted the identified mineral owners to seek their interest in potentially leasing their minerals. See id. at 2-3.

11. Plaintiffs' proposed zoning district size of approximately 83,000 acres is substantially larger than any Part 1 zoning district in Montana. See Exhibit B (information compiled from review of county ordinances, published online, last visited October 12, 2018). For instance, out of the other Part 1 citizen-initiated zoning districts, the closest in size to the number of acres proposed by Plaintiffs would be the Gallatin Canyon/Big Sky Planning and

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<sup>3</sup> Plaintiffs cite Swaim for the proposition that petitioners should not be forced to "hunt out" all mineral rights holders, and argue that a database such as the Montana Cadastral is necessary to determine mineral owners. See Plaintiffs' Brief at 18, 22-23. However, that case held that it was proper to rely on county records to determine who freeholders of a district are. See Swaim v. Redeem, 101 Mont. 521, 55 P.2d 1, 5 (1936) (emphasis added). Accordingly, Plaintiffs defeat their own argument that a database of mineral owners is necessary to determine who mineral owners are.



Zoning District in Gallatin County. Id. The Gallatin Canyon/Big Sky Planning and Zoning District is approximately 72,960 acres, however, 44,160 acres are public land. In effect, only 28,800 acres are subject to regulation by the Planning and Zoning District. Id.

12. MCA § 76-2-101 does not provide the method of counting multiple real property owners of a single tract, nor does it provide any requirements or method for the County to verify signatures produced. Such methods must be provided by the county, such as Stillwater County has done. See Plaintiffs' Brief at Exhibit 1 (Exhibit A, Zoning Petitions). Just as one surface parcel may have multiple subsurface mineral owners, one surface parcel may also have multiple surface owners (i.e. joint tenants or tenants-in-common, corporations, etc.). Stillwater County can apply the same rules to multiple mineral owners that it has applied to multiple surface owners.<sup>4</sup>

13. Plaintiffs allege that Defendants merely speculated that the petition Plaintiffs submitted was invalid because it did not consider mineral estate signatures. See Plaintiffs' Brief at 19. It was not necessary for Defendants to know beforehand the total number of surface and mineral owners so as to deem Plaintiffs' petition invalid in this case. Defendant Clerk and Recorder determined that out of the total number of surface owners,

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<sup>4</sup> As Plaintiffs noted in their Response to Defendants' Motion to Dismiss, and Request for Hearing, subsequent to the filing of Plaintiffs' suit, Defendants agreed with Plaintiffs to defer action on proposed new rules for zoning petition requirements pending the outcome of this litigation. See Plaintiffs' Response to Defendants' Motion to Dismiss, and Request for Hearing at 7; see also Plaintiffs' Brief at 20. As it remains to be seen what final form proposed new rules may or may not take, Plaintiffs arguments with regards to proposed new rules are premature and should be disregarded. See Plaintiffs' Brief at 20.

Plaintiffs had enough signatures to constitute 60%. See Plaintiffs' Brief at Exhibit 5 (emphasis added). Not every surface owner is a mineral owner and several mineral owners do not own any surface. See e.g., Plaintiffs' Brief at Exhibit 11. Plaintiffs would have had to submit more signatures than they did to constitute "60% of affected real property owners" under MCA § 76-2-101 to include both surface owners and mineral owners.

### **III. STANDARD OF REVIEW**

Pursuant to Rule 56(c)(3) of the Montana Rules of Civil Procedure, when a party seeks summary judgment on all or a part of a claim, the judgment sought should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue to any material fact and that the movant is entitled to judgment as a matter of law. M. R. Civ. P. 56(c)(3); see also Sprunk v. First Bank Sys., 252 Mont. 463, 465, 830 P.2d 103, 104 (1992). The initial burden is on movant to establish that no genuine issues of material fact exist, after which the burden shifts to the non-moving party to establish the existence of genuine issues of material fact. See Sprunk, 252 Mont. at 465, 830 P.2d at 104.

Applying the arbitrary and capricious standard, Plaintiffs allege that Defendants Commissioners arbitrarily and capriciously denied Plaintiffs' petition. See Plaintiffs' Brief, at 2, 7, 9-10. As noted above, the petition was never forwarded to the Defendants Commissioners for consideration, so there was no decision by the Defendants Commissioners on the petition. See Plaintiffs' Brief at Exhibits 6, 7 and 8. To the extent Plaintiffs may be arguing

that the decision of Defendant Clerk and Recorder (deeming Plaintiffs' petition invalid) is arbitrary and capricious, Defendant Clerk and Recorder's reliance on the advice of the County Attorney is not arbitrary or capricious. In any event, "affected real property owners" in this case include mineral owners because that is part of the real property impacted by the proposed zone. Therefore, it is not arbitrary or capricious to determine that Plaintiffs' petition was invalid because it failed to reach the threshold of 60% of real property owners in this case. Plaintiffs have failed to meet their burden and their Motion for Summary Judgment should be denied and Defendants' Cross-Motion for Summary Judgment should be granted.

#### **IV. ARGUMENT**

The term "affected real property owners" in this case under MCA § 76-2-101 includes mineral owners. Legislative intent regarding the meaning of "real property owners" is not limited to the surface in this case because it is modified by the word "affected", and no case law exists for Plaintiffs' assertion that the term "real property owners" under MCA § 76-2-101 precludes mineral owners.

Plaintiffs go too far in claiming that it is too difficult to determine who mineral owners are, and even if it were so, such matter would be an issue for the legislature and not for a court to decide on summary judgment. A court's role is to "ascertain and declare what is in terms or in substance contained [within a statute], not to insert what has been omitted or to omit what has been inserted." MCA § 1-2-101. Correcting practical deficiencies of a statute

is a matter for the legislature, and it is not the court's prerogative to rewrite a statute. See Montana Fish, Wildlife & Parks v. Trap Free Montana Pub. Lands, 2018 MT 120, ¶ 17, 391 Mont. 328, 333, 417 P.3d 1100, 1104. Further, it is for the legislature to pass upon the wisdom of a statute, not for the courts. See Rohlfs v. Klemenhausen, LLC, 2009 MT 440, ¶ 20, 354 Mont. 133, 139, 227 P.3d 42, 47. By operation of their Motion for Summary Judgment, Plaintiffs improperly ask the Court to step in the legislature's shoes and read MCA § 76-2-101 to apply more narrowly than the statutory language the legislature chose to use. Therefore, Defendants' Cross-Motion for Summary Judgment should be granted and Plaintiffs' Motion for Summary Judgment should be denied.

**A. MINERAL OWNERS ARE REAL PROPERTY OWNERS**

When interpreting a statute, the intention of the legislature is to be pursued, and legislative intent is to be ascertained in the first instance from the plain meaning of the words used by the legislature. See State Dep't of Revenue v. Alpine Aviation, Inc., 2016 MT 283, ¶ 11, 385 Mont. 282, 285, 384 P.3d 1035, 1037. If a statute's language is clear and unambiguous, no further interpretation is required. See Small v. Bd. of Trustees, Glacier Cty. Sch. Dist. No. 9, 2001 MT 181, ¶ 21, 306 Mont. 199, 204, 31 P.3d 358, 362.

**i. The term "real property owners" is not ambiguous.**

While the term "real property owners" is not defined under the Part 1 citizen-initiated zoning statutes, the term "real property" is not ambiguous

and is commonly understood. For instance, a dictionary definition of "real property" includes:

n. 1) all land, structures, firmly attached and integrated equipment (such as light fixtures or a well pump), anything growing on the land, and all "interests" in the property which may be the right to future ownership (remainder), right to occupy for a period of time (tenancy or life estate) the right to drill for oil, the right to get the property back (a reversion) if it is no longer used for its current purpose (such as use for a hospital, school or city hall), use of airspace (condominium) or an easement across another's property. Real property should be thought of as a group of rights like a bundle of sticks which can be divided. It is distinguished from the other type of property, personal property, which is made up of movable items.

Real Property Definition, The Free Dictionary, [https://legal-](https://legal-dictionary.thefreedictionary.com/Real+property+law)

[dictionary.thefreedictionary.com/Real+property+law](https://legal-dictionary.thefreedictionary.com/Real+property+law) (last visited October 12,

2018). Another definition defines "real property" as "property including land, and all appurtenances, buildings, crops, mineral and water rights that are a part of it." Real Property Definition, Legal Dictionary,

<https://legaldictionary.net/real-property/> (last visited October 12, 2018). In

addition, the term "owner" is defined as "one who has the right to possess, use, and convey something; a person in whom one or more interests are

vested." Black's Law Dictionary 548 (4<sup>th</sup> pocket ed. 2011). The term "own" is defined as "to rightfully have or possess as property; to have legal title to."<sup>5</sup>

Id. Clearly, owners under these definitions of this kind of defined property include those who own minerals.

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<sup>5</sup> Severed mineral owners have title to their mineral interests which is recorded in the county records.

Moreover, Montana statutes provide general definitions of terms used throughout the Montana Code. The term "real property" is defined as "lands, tenements, hereditaments, and possessory title to public lands." MCA § 1-1-205(4). As the Montana Supreme Court has stated, "lands" as a word in the law includes minerals and the term "minerals" includes oil and gas. See Texas Pac. Coal & Oil Co. v. State, 125 Mont. 258, 260, 234 P.2d 452, 453 (1951). Montana statutes also define "real estate" under the tax code as including 1) the possession of, claim to, ownership of, or right to the possession of land; 2) all mines, minerals, and quarries in and under the land; 3) all timber belonging to individuals or corporations growing or being on the lands of the United States; and 4) all rights and privileges appertaining to mines, minerals, quarries, and timber. MCA § 15-1-101(s) (emphasis added). Therefore, mineral owners are statutorily defined as real property owners in Montana.

There is no reason to believe that the legislature intended a specialized or technical meaning of "affected real property owners" different than the commonly understood definitions. Indeed, as Plaintiffs have acknowledged, supporters of the amendment of MCA § 76-2-101 to "real property owners" were of the opinion that the term "real property owners" is a defined and generally understood term. See Plaintiffs' Brief at 16 (citing House Bill 486—Generally Revise Land Use and Planning Laws: Hearing on HB 486 Before the H. Subcomm. on Local Government, 61<sup>st</sup> Leg., Reg. Sess. at 1 (Mont. 2009)). Split estates and oil and gas development have been recognized in Montana

since 1953 when the legislature passed the Montana Oil and Gas Conservation Act and established the Montana Board of Oil and Gas Conservation. See Montana Wildlife Federation v. Montana Board of Oil and Gas Conservation, 2012 MT 128, ¶ 6, 280 P.3d 877, 880 (Mont. 2012). If the legislature had intended to limit the meaning of "real property owners" to refer only to surface owners in MCA § 76-2-101, it could easily have used the term "surface owners" or other similar terms instead.

Other jurisdictions support the proposition that the term "real property owners" is not ambiguous. For instance, a Wyoming case analyzed the effect of a quiet title judgment which decreed that defendants in that case had "no right, title, interest or estate 'whatsoever' in or to said real property." Clay v. Mountain Valley Mineral Ltd. P'ship, 2015 WY 84, ¶ 31, 351 P.3d 961, 970 (Wyo. 2015) (emphasis added). The Wyoming Supreme Court held in that case that the plain meaning of the decree's language clearly quieted title to the plaintiffs because both the surface and minerals unambiguously fall within the definition of right, title, interest and estate in or to said real property. See id. Clearly, defining "real property" as including mineral interests is generally accepted and unambiguous.

- ii. **Even if the term "real property owners" could be considered ambiguous, nothing indicates that the legislature intended "real property owners" to only refer to surface owners.**

Alternatively, even assuming that the term "real property owners" is ambiguous, mineral owners are considered "real property owners," which does not render MCA § 76-2-101 meaningless. The Part 1 citizen-initiated

zoning statutes can be read differently than Plaintiffs suggest. For instance, Plaintiffs allege that because the Part 1 citizen-initiated zoning statutes require that a zoning district be no smaller than 40 acres, surface owners must have been intended because only surface rights are measured in acres. See Plaintiffs' Brief at 14; see also MCA § 76-2-101(3). This is patently untrue, and as Plaintiffs' own Exhibit 11 demonstrates, minerals are commonly measured in acres. See Plaintiffs' Brief at Exhibit 11 (attaching a "mineral ownership report covering 320 acres" (emphasis added)).

Plaintiffs' allegation that the Part 1 zoning statutes' authorization to create a development plan refers only to surface activities is also similarly unavailing. See Plaintiffs' Brief at 14. MCA § 76-2-104 provides for development of zoning districts in which it shall be lawful, and within others it shall be unlawful to carry on certain trades, industries, or callings; and in which future uses of the land shall be limited. See MCA § 76-2-104(2) (emphasis added). "Trades," "industries" and "callings" may all refer to the oil and gas industry. With regards to "uses of land" in the statute, "lands" as a word in the law includes minerals and "minerals" includes oil and gas. See Texas Pac. Coal & Oil Co., 125 Mont. at 260, 234 P.2d at 453. Therefore, "uses of the land" also refers to mineral development.

This makes sense when comparing the authorization to enact zoning regulations under Part 2 county-initiated zoning to the authorization under Part 1 citizen-initiated zoning. Both types of zoning refer to regulations on "buildings" and "use of land." Compare MCA § 76-2-104(2) with MCA § 76-2-



202(1)(a). Applying Plaintiffs' reasoning would lead to the erroneous conclusion that both Part 1 citizen-initiated zoning and Part 2 county-initiated zoning only contemplate surface activities. This conclusion is erroneous because Part 2 county-initiated zoning contemplates zoning of mineral development in MCA § 76-2-209. In MCA § 76-2-209 entitled "Effect on Natural Resources" (Part 2 county-initiated zoning) a county may not completely prohibit oil and gas development. See MCA § 76-2-209(1). In contrast, MCA § 76-2-109 entitled "Effect on Natural Resources" (Part 1 citizen-initiated zoning) omits any prohibitions on completely prohibiting oil and gas development, which would presumably leave that possibility open under Part 1 citizen-initiated zoning. See MCA § 76-2-109. Therefore the only conclusion that could be drawn from the language used in MCA § 76-2-104(2) and MCA § 76-2-109 is that Part 1 citizen-initiated zoning leaves open the possibility that mineral development could be completely prohibited, whereas Part 2 county-initiated zoning does not.

Ultimately, Plaintiffs' reliance on the language used in MCA § 76-2-104(2) and MCA § 76-2-109 fails to support their allegation that "real property owners" could only refer to surface owners under the Part 1 citizen-initiated zoning statutes. Plaintiffs attempt to characterize Defendants' position as reading the Part 1 citizen-initiated zoning statutes to contain a requirement that no planning district shall regulate lands for oil and gas development. See Plaintiffs' Brief at 14. While Defendants have taken the position that such regulation has been preempted by the Montana Board of

Oil and Gas Conservation's authority, Plaintiffs mischaracterize Defendants' arguments here. Defendants are not arguing that Part 1 citizen-initiated zoning statutes should be read to provide that no citizen-initiated planning district can regulate lands for oil and gas development. Rather, Defendants are arguing that when such planning districts are proposed, mineral owners must be included on a petition since their valuable real property interests are at stake. See Exhibits E-I.

**iii. Case law unequivocally supports the proposition that mineral interests are real property interests.**

Plaintiffs attempt to distinguish the case law that holds that fractional mineral interests are interests in real property, and allege that in other contexts, mineral interests are included under the term "real property." See Plaintiffs' Brief at 13 and 15. However, Plaintiffs provide no meaningful distinction on why mineral interests should be treated as real property in certain contexts but not others. See Plaintiffs' Brief at 15. In Libby Placer Min. Co., the Montana Supreme Court held that a mineral interest (which had been obtained through eminent domain) could not revert to the former owner under MCA § 70-30-321(3) upon the current owner's abandonment of mining operations because the mineral interest was a fee simple interest in real property. See Libby Placer Min. Co. v. Noranda Minerals Corp., 2008 MT 367, ¶ 50, 346 Mont. 436, 448, 197 P.3d 924, 932.

Under MCA § 70-30-321(3), abandonment of a condemned interest reverts back to the former owner unless the condemned interest is a "fee simple interest." MCA § 70-30-321(3). Thus the question in Libby Placer

Min. Co. was whether a condemned mineral interest could be considered a fee simple interest which therefore could not revert upon abandonment. See Libby Placer Min. Co., 2008 MT 367, ¶ 34, 346 Mont. at 443, 197 P.3d at 929; see also MCA § 70-30-321(3).

The Montana Supreme Court's examination of mineral interests as real property interests was not limited to the eminent domain context, and the materials that the Montana Supreme Court cited in its discussion pertained to classification of mineral interests as real property interests generally. For instance, the Montana Supreme Court described four characteristics of real property: 1) duration (infinite as in fee simple or limited); 2) right to possession (present, future, or no right); 3) degree of beneficial enjoyment conferred on the owner (such as ownership of property with a security interest); and 4) type of ownership (by one or more people). Libby Placer Min. Co., 2008 MT 367, ¶ 35, 346 Mont. at 443, 197 P.3d at 929 (citing Richard R. Powell, Powell on Real Property vol. 1, § 11.01 (Michael Allan Wolf ed., Lexis 2007)). Mineral interests fit all four of these characteristics. See Libby Placer Min. Co., 2008 MT 367, ¶¶ 35-43, 346 Mont. at 443-446, 197 P.3d at 929-931.

Further, the Montana Supreme Court stated:

A grantee of the minerals underlying the land becomes the owner of them; his or her interest is not a mere mining privilege. The minerals thus severed become a separate corporeal hereditament. Their ownership is attended with all the attributes and incidents peculiar to ownership of land, and they may be embraced in the terms "land" or "real property" in a subsequent conveyance. Mineral interests are treated as real property interests, and are subject to the rules related to real property. The duration of a

mineral interest is like that of common law estates, namely, in fee simple, in fee simple determinable, for life, or for a fixed term of years. "Mineral interests" are interests in real estate which are vested immediately when created and which remain vested for whatever term is stipulated.

Libby Placer Min. Co., 2008 MT 367, ¶ 39, 346 Mont. at 445, 197 P.3d at 931 (citing 53A Am.Jur.2d Mines and Minerals § 159) (emphasis in original omitted; emphasis added). Clearly, mineral interests are real property in all contexts and not in just certain contexts as Plaintiffs allege. Notably, Plaintiffs cite no case law or other authority which does not treat mineral interests as real property, and Defendants are not aware of any that exist.

It is also important to note that Montana is an ownership-in-place state. See McDonald v. Unirex, Inc., 221 Mont. 156, 158, 718 P.2d 316, 317 (1986). The "ownership-in-place" theory is that minerals, as long as they remain in the ground, are a part of the realty. Stokes v. Tutvet, 134 Mont. 250, 255, 328 P.2d 1096, 1099 (1958) (emphasis added). As such, the minerals belong to the owner of the land, and are a part of it as long as the minerals are on it or in it, or subject to the owner's control. Id. When the minerals escape to another's land, or come under another's control, the title of the former owner is gone. When the minerals are produced on the surface, they become personal property and belong to the owner of the well. Id. In contrast, the non-ownership-in-place (or exclusive right) theory is that generally mineral rights involve the right to enter and explore upon the land and when minerals are produced they become personal property. See McDonald, 221 Mont. at 158, 718 P.2d at 317.

Montana being an ownership-in-place theory state supports the proposition that "real property owners" would include mineral owners. Minerals in-place in the ground are part of the realty belonging to the owner of those minerals. This is more than a right of entry to land in order to develop and produce minerals, and is another context in which minerals are real property. Clearly, limiting the term "real property owners" to surface owners as Plaintiffs suggest would contravene well-settled and generally-applied law in Montana.

Moreover, case law in other jurisdictions clearly supports that mineral owners are "real property owners." The Wyoming Supreme Court has held that "[b]oth mineral and surface estates are 'real property' under [Wyoming] law" in determining that a decree quieting title to "real property" quieted title to both the mineral and surface estates. See Clay, 2015 WY 84, ¶ 26, 351 P.3d at 969. In another quiet title action, the Supreme Court of North Dakota similarly stated that a person dealing with real property is charged with notice of a properly recorded instrument affecting title, and that "'a mineral interest' is a real property interest . . ." Schulz v. Hauck, 312 N.W.2d 360, 361 (N.D. 1981) (quoting Texarco Oil Co. v. Mosser, 299 N.W.2d 191, 194 (N.D. 1980)).

In applying the ownership-in-place theory of mineral ownership, the Colorado Court of Appeals, Division II, stated that "[i]t is axiomatic that ownership of land includes underlying soil or earth and that, while in place, minerals are real property." Smith v. El Paso Gold Mines, Inc., 720 P.2d 608,

609 (Colo. App. 1985). The Texas Thirteenth Court of Appeals, in determining whether an owner of an undivided interest in a gas unit could compel partition of that interest stated that generally a joint owner of an interest in real property may compel partition of that interest, and that mineral interests are interests in real property. MCEN 1996 P'ship v. Glassell, 42 S.W.3d 262, 263 (Tex. App. 2001). Even in a non-ownership-in-place state, the Supreme Court of California has held that a perpetual right to drill minerals (i.e. a profit A prendre of unlimited duration) is a "freehold interest, an estate in fee, and real property or real estate." Gerhard v. Stephens, 68 Cal. 2d 864, 880-81, 442 P.2d 692, 706 (1968) (emphasis added). Clearly, case law in Montana and in other jurisdictions unequivocally supports that owners of "real property" include owners of "minerals."

**iv. Plaintiffs' attempt to read the word "affected" out of MCA § 76-2-101 should be rejected.**

As stated above, the role of the court in Montana is to give meaning to every word within a statute. MCA § 1-2-101 states that "[i]n the construction of a statute, the office of the judge is simply to ascertain and declare what is in terms of substance contained therein not to . . . omit what has been inserted." See The Clark Fork Coalition et al v. Tubbs et al, 384 Mont. 503 (Mont. 2016). In this case the statute in question adds the adjective "affected" when describing "real property owners." The term "affect" is defined at "to act upon; influence; enlarge or abridge." Real Property Definition, The Free Dictionary, <https://legal-dictionary.thefreedictionary.com/affect> (last visited October 22, 2018). "Affect," when used as a verb means "To have an

influence on; to impress or to move; to produce a change in something or someone.” <http://web.ku.edu/~edit/affect.html> (last visited October 22, 2018). In this case, the word “affected” is used to describe “real property owners” in MCA § 76-2-101 and its inclusion by the legislature must be given some meaning. Plaintiffs interpret MCA § 76-2-101 to mean that 60% of surface owners in a proposed zoning district is all that is required by the statute, essentially rendering the term "affected" meaningless. Plaintiffs’ attempt to read the word “affected” out of MCA § 76-2-101 should be rejected by the Court.

#### **V. CONCLUSION**

As set forth above, mineral owners are "affected real property owners" under MCA § 76-2-101 in this case. Due to that fact, Defendant Clerk and Recorder did not act arbitrarily or capriciously in relying on the advice of the County Attorney to deem Plaintiffs' petition invalid as failing to achieve 60% of affected real property owners. Neither did Defendants Commissioners act arbitrarily or capriciously in not considering a petition that was invalid and was never forwarded to them to consider. Therefore, Plaintiffs are not entitled to declaratory or mandamus relief, and Defendants should be granted summary judgment on the issue that "affected real property owners" under MCA § 76-2-101 in this case includes mineral owners.

WHEREFORE, Defendants' Cross-Motion for Summary Judgment should be granted and Plaintiffs' Motion for Summary Judgment should be denied.

RESPECTFULLY SUBMITTED this 30th day of October, 2018.



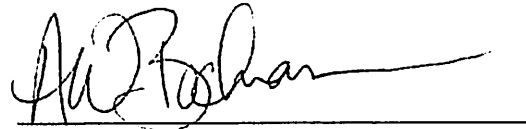
Bethany A. Gross (MT Bar #44197891)  
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*Attorney for Defendants*

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I caused a true and correct copy of the foregoing to be deposited in the United States Mail, postage prepaid, and delivered via electronic mail on this 30th day of October, 2018 to the following:

David K.W. Wilson, Jr.  
Morrison, Sherwood, Wilson & Deola  
401 North Last Chance Gulch  
P.O. Box 557  
Helena, MT 59624  
[kwilson@mswdlaw.com](mailto:kwilson@mswdlaw.com)





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*Attorneys for Defendants*

MONTANA TWENTY-SECOND JUDICIAL DISTRICT, STILLWATER COUNTY

BEARTOOTH FRONT COALITION, )  
LAZY Y DIAMOND BAR LP, LANA )  
and CHARLES J. SANGMEISTER, )  
WILLIAM A. and CAROLYN F. HAND, )  
and MARGARET BARRON and )  
DOXEY RAY HATCH, )

Plaintiffs,

v.

BOARD OF COUNTY )  
COMMISSIONERS, STILLWATER )  
COUNTY, and HEIDI STADEL, in her )  
capacity as Clerk and Recorder of )  
Stillwater County, )

Defendants.

Cause No.: DV-18-12

**DEFENDANTS' INDEX OF  
EXHIBITS IN SUPPORT OF  
CROSS-MOTION FOR  
SUMMARY JUDGMENT**

**EXHIBITS**

A. Preserve the Beartooth Front Blog Posts: "Don't Bakken the Beartooths" December 30, 2013; "Action Alert: Please Write by September 20 to Keep BLM from Selling Oil Leases in Stillwater County" September 18, 2017; "Thanks to All Who Wrote: BLM Will NOT Sell Leases on Beartooth Front Next Week" March 5, 2018; "An Excellent Letter" November 21, 2013;

Screenshot of Link on Blog to Facebook Page; Screenshot of Facebook Page "No Fracking the Beartooth Front."

B. Spreadsheet of information regarding zoning districts identified by Plaintiffs in their Brief in Support of Plaintiffs' Motion for Summary Judgment and Request for Mandamus at 18, obtained from the county websites, last visited October 12, 2018.

C. Proposed Stillwater County Beartooth Front District Submission to the County Commissioners of Stillwater County, Montana November 10, 2015.

D. Affidavit of Patrick Padon

E. Affidavit of Keith Martin

F. Affidavit of Terry Ekwortzel

G. Affidavit of Robert Kirch<sup>1</sup>

H. Affidavit of Henry Baly

I. Affidavit of Robert McKinsey

---

<sup>1</sup> When Mr. Robert Kirch printed his Affidavit, the formatting was inexplicably changed and cut off a portion of the text appearing at the bottom of the page. Since there was insufficient time to correct the formatting and resubmit the Affidavit, the original Affidavit with the changed formatting signed by Robert Kirch is included with the unsigned Affidavit with unchanged formatting in Exhibit G to provide clarity.

# **EXHIBIT A**

## Preserve the Beartooth Front

*Thoughts about drilling in Montana*

---

### Don't Bakken the Beartooths

Posted on December 30, 2013 by davidjkatz

Fans of *Breaking Bad* no doubt appreciated the irony when Walter White of Lockwood was recently sentenced to 12 years for his part in a conspiracy to distribute methamphetamines in the Bakken oil fields. But his conviction was not part of a fantasy TV drama, it was a symptom of a very real problem — the explosion of crimes related to drugs and violence that oil and gas drilling has brought to western North Dakota and eastern Montana.

It's no mystery why the proliferation of drilling brings crime with it. You bring in thousands of men to work in the fields, house them in "man camps" because there's no place for them to live locally, pay them large salaries, and you've got a substantial crime problem. Hangers on come to the camps to provide vices to young men with money: drugs and prostitution mostly, but in an environment that is mostly men and few women, rape and domestic violence increase as well.

"It's following the money," said Michael W. Cotter, the U.S. attorney for Montana. "I hate to call the cartels entrepreneurs, but they're in the business to make money. There's a lot of money flying around that part of Montana and North Dakota."

Sgt. Kylan Klauzer, an investigator in Dickinson where violent crime is up nearly 500% over five years, said, "It feels like the modern-day Wild West."

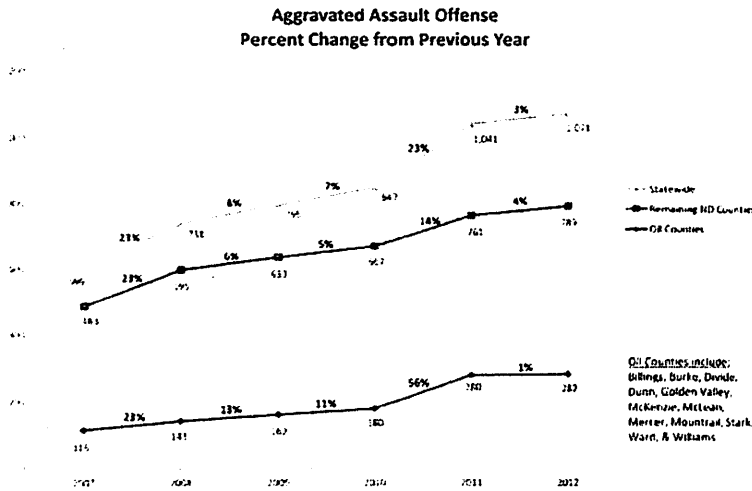
Domestic violence shelters are filling up, the residue of troubled migrations.

*Families arrived hoping for \$20-an-hour jobs, but discovered that modest homes rent for \$2,000 and everything from gasoline to dinner costs more. The stresses of life piled up. Alcohol and drugs added to the problem. Old patterns of domestic abuse crossed state lines.*

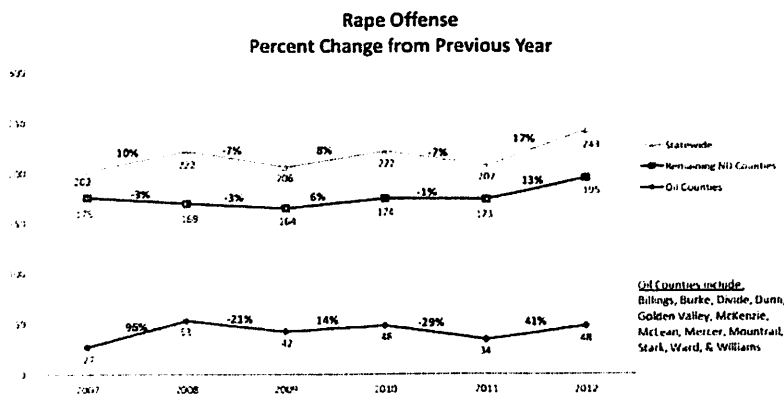
#### **ND officials try to sugar coat the story**

North Dakota Attorney General Wayne Stenehjem tried to put a calm face on it last summer when he released crime statistics comparing the state's oil counties with the rest of the state, saying that there wasn't much proportional difference between the two. That's ridiculous. The numbers he released speak for themselves, and if he looked only at towns like Williston and Dickinson, which are right at the center of the boom, the comparison would be even more stark.

Aggravated assault was up 56% in the oil counties form 2010-11, and 14% statewide;



Rape has nearly doubled in the oil counties in the five years from 2007-12 while increasing only slightly in the



non-oil counties:

According to a recent article in the Billings Gazette, prisons in the area, designed to be filled over a period of years, are overflowing:

- The Dawson County jail, one of the region’s largest, with 24 beds and four holding cells, was at or near capacity all but two months during 2013.
- In Sidney, the 24-bed jail maxed out in July and began housing overflow inmates in a separate wing normally reserved for juveniles. Two days after Christmas, inmates there numbered 29. The juvenile wing was again occupied by adults.
- In Williston, the new 116 bed facility is at capacity. Inmates are being shipped as far away as Helena.
- In Roosevelt County, Montana, where arrests were up 855 percent in five years, Sheriff Freedom Crawford says his jail is so full that he is ticketing and releasing offenders for minor crimes like disorderly conduct. Why? “I don’t have nowhere to put them,” Crawford says.

If you’ve got the stomach for it, you can find for yourselves the stories of the abduction and murder of a 43 year old Sidney teacher, the rape of an 83 year old Dickinson woman, or the disappearance of a 30 year old Dickinson

man putting in water and sewer pipes.

### No new money coming

Because of the federal sequester and local funding cuts, you won't see money pouring in for more law enforcement personnel or more jails. According to [Michael Cotter](#), US attorney for Montana, which experienced \$672,000 in Department of Justice sequestration cuts in 2013,

*The decrease in funds will result in a decrease in agents and officers investigating cases, a decrease in cases prosecuted at local and federal levels and a decrease in criminals brought to justice. Lives of the folks living in Eastern Montana will be negatively affected.*

### Don't let it happen in Red Lodge

This didn't have to happen. Public officials like Williston Mayor [Ward Koeser](#) will tell you, "if you're going to be an oil town, that's what you're going to have."

Nonsense. It is the responsibility of public officials to protect the public safety. You can't have an [oil and gas tax holiday](#), which deprives local counties of revenues it desperately needs, and expect them to build jails and hire law enforcement personnel. It is irresponsible for our senators, state and local officials to stand by and let Red Lodge get turned into Dickinson, North Dakota. If they're going to bring in the engines of economic growth, they've got to find a way to protect the land and the residents so you've got a viable community when the boom turns to bust.

What has happened in North Dakota and eastern Montana is about to happen on the Beartooth. Oil permits are starting to be issued, and energy companies are promising to turn this area into another Bakken.

Don't be complacent. It's time to stand up and say, "Don't Bakken the Beartooths."

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#### Related

A visit to the front in the war against rural America  
In "Community Organization, Politics and History"

Running on Fumes in North Dakota  
In "Bakken"

Oil prices continue to fall: why it is happening and what it means  
In "Bakken"



#### About davidjkatz

The Moses family has lived on the Stillwater River since 1974, when George and Lucile Moses retired and moved to the Beehive from the Twin Cities. They're gone now, but their four daughters (pictured at left, on the Beehive) and their families continue to spend time there, and have grown to love the area. This blog started as an email chain to keep the family informed about the threat of increased fracking activity in the area, but the desire to inform and get involved led to the creation of this blog.

[View all posts by davidjkatz](#) →

This entry was posted in [Bakken](#) and tagged [Bakken](#), [Beartooths](#), [Crime](#). Bookmark the [permalink](#).

## 6 Responses to *Don't Bakken the Beartooths*



**Maggie says:**

January 1, 2014 at 2:39 pm

Sad. Elected officials.....protect your citizens. Not your pockets! Maggie

[Reply](#)

Pingback: [Montana Petroleum Forum at the Elks in Red Lodge, January 30 | Preserve the Beartooth Front](#)

Pingback: [A visit to the front in the war against rural America | Preserve the Beartooth Front](#)

Pingback: [Repost: A visit to the front in the war against rural America | Preserve the Beartooth Front](#)

Pingback: [Oil and gas: 10 lessons for 2015 | Preserve the Beartooth Front](#)

Pingback: [Oil and gas: 10 lessons for 2015, for Montana, ND, OK, TX, OH, PA & WV](#)

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**Preserve the Beartooth Front**

*Blog at WordPress.com.*

## Preserve the Beartooth Front

Thoughts about drilling in Montana

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### An excellent letter

Posted on November 21, 2013 by [davidkatz](#)

I saw this link posted on the No Fracking Facebook [page](#), and wanted to pass it along. It's a November 7 [letter](#) from Mary Johnson, who lives in Red Lodge but lived in North Dakota for 25 years and knows firsthand what the Bakken transformation was like.

She focuses not on environmental issues, but on the impact of drilling on the quality of life in the area. We've touched on these issues in this blog, but nothing says it better than someone who's been there. What she describes — increases in crime, traffic, road repair, cost of living, taxes, waste dumping, squatting, demands on underconstructed infrastructure — are sobering when you imagine them along Highway 78.

She concludes with an admonition that all of us who care about the Beartooth Front need to take seriously:

*I'm saying, weigh the impact on our community and keep asking questions that address the negatives. There's a price to pay for unregulated, reckless, hurried oil extraction. Believe me, you don't want "something like the Bakken" here.*

What happened in the Bakken could have been avoided with proper foresight and vigilance on the part of citizens and the North Dakota legislature. If you care, you need to be in action. You should:

- Join the [Northern Plains Resource Council](#) through either the [Carbon County Resource Council](#) or the [Stillwater Protective Association](#). Membership is just a few dollars a month. The NPRC does a great job of providing information and galvanizing action on this and other environmental issues.
- Consider making a special contribution to the [Beartooth Front Defense Fund](#). The oil and gas lobby is VERY well funded and they're not afraid to spend to impose their will at the federal, state and local level. Your contribution will be used to fund legal, public relations and communications work to preserve this area.
- Like the Facebook page [No Fracking the Beartooth Front](#). They do a great job of presenting related information.

Anything this valuable is worth fighting for. Stop watching and get into action. Now.

**Update:** Follow up letter [here](#).

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Don't 'Bakkenize' Montana's Beartooth Front  
in "Community Organization, Politics and  
History"

New study on fracking provides key lessons  
for local action  
in "Community Organization, Politics and  
History"

What's wrong with the Montana Board of Oil  
and Gas Conservation  
in "Community Organization, Politics and  
History"



**About davidjkatz**

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[View all posts by davidjkatz →](#)

This entry was posted in [Shared Letters and Posts](#) and tagged [Bakken](#), [Beartooth Front](#), [Carbon County Resource Council](#), [Fracking](#), [Northern Plains Research Council](#), [Stillwater Protective Association](#). Bookmark the [permalink](#).

**One Response to *An excellent letter***



**mtxdoc** says:

November 21, 2013 at 8:32 pm

body{font-size:10pt;font-family:arial,sans-serif;background-color:#ffffff;color:black;}p{margin:0px;}

Sorry about the spam filter. Took care of that. Thanks for the new post. David Lehnherr

[Reply](#)

## Preserve the Beartooth Front

Thoughts about drilling in Montana

### ACTION ALERT: Please write by September 20 to keep BLM from selling oil leases in Stillwater County

Posted on September 18, 2017 by davidjkatz

The Bureau of Land Management is proposing to sell three oil and gas leases in Stillwater County in March, 2018. Two are in Dean (MTM 105431-HW, MTM 79010-8R) and one is on East Fiddler Creek (MTM 79010-JJ). A public comment period is now open. Please make your voice heard by sending in comments about the lease by **Wednesday, September 20.**

Your comment is critical. The last time a lease was considered in Dean, it wound up being deferred, partly because there were 40 letters sent to BLM opposed to drilling.

Comments should be emailed to: [BLM\\_MT\\_Billingsfo\\_Lease\\_EA@blm.gov](mailto:BLM_MT_Billingsfo_Lease_EA@blm.gov)

#### Background: The BLM leasing process



The Billings BLM Field Office (click to enlarge)

The BLM leasing process is governed by a resource management plan (RMP) and associated environmental impact statement (EIS). Together they provide a framework for managing BLM-administered lands and federal minerals. Stillwater County is part of the Billings BLM field office combined with the Pompeys Pillar National Monument, and are managed under an RMP that was revised in 2015.

The RMP guides management of approximately 434,000 acres of BLM land and 1.8 million acres of federal mineral estate managed by BLM for Big Horn, Carbon, Golden Valley, Musselshell, Stillwater, Sweet Grass, Wheatland and Yellowstone counties in Montana, and portions of Big Horn County, Wyoming.

**This recent revision is important, since the RMP is only updated every 25 years or so. Changes to the RMP, along with the clear direction of the Trump Administration to remove regulation that block drilling, make it more likely that these leases will be approved than it was in 2014, the last team BLM leases were considered in Stillwater County.**

#### Lease sales

Leases on BLM land are put up for sale when there is a request from a company that wants to exploit mineral resources. The process is governed by the National Environmental Policy Act (NEPA), which requires federal agencies to integrate environmental values into their decision making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions.



To meet NEPA requirements federal agencies prepare a detailed statement known as an environmental assessment. EPA reviews and comments on environmental assessments prepared by other federal agencies, maintains a national filing system for all assessments, and assures that its own actions comply with NEPA.

The environmental assessment involves two steps:

1. **Public Scoping:** This step involves the community in determining whether there are environmental impacts that need to be considered. These impacts might include:
  - Significant natural resources such as ecosystems and threatened and endangered species;
  - Commercial and recreational fisheries;
  - Current recreational uses of the land and waterways;
  - effects on water users;
  - Effects of potential controls on current lake and waterway uses such as flood risk management, commercial and recreational navigation, recreation, water supply, hydropower and conveyance of effluent from wastewater treatment plants and other industries; and
  - Statutory and legal responsibilities relative to use of land and water.
2. **Preliminary environmental assessment:** Public review of preliminary environmental assessment. This process takes 30 days before the final environmental assessment.

Given the change in environment at BLM, there is a current push to evaluate these leases without the full EIS process.

### Talking points to consider

In making your comments, you might want to consider some of these points. The first is most important.

- **Public process.** A 15 day scoping period is inadequate for Dean and surrounding communities to properly evaluate this leases. There are significant issues that must be evaluated, and **a full environmental impact statement is required**. There are environmental and social and economic impacts that a lease decision will impose on this community that must be properly evaluated.
- **Yellowstone Cutthroat Trout Suitable Recovery Habitat.** A thorough assessment of the Yellowstone Cutthroat Trout (YCT) habitat in parcels MTM 79010-8R, MTM 79010-JJ, and MTM 105431-HW should be conducted. As a priority wildlife species, yellowstone cutthroat trout warrant specific and strong action to protect and enhance not only existing habitat, but also potential YCT habitat. The high elevation waters of these parcels along the Beartooth Mountain Front are suitable to support coldwater fish like the YCT, and therefore should be opportunistically managed for YCT residency whether or not Meadow, Fishtail, Fiddler, and/or West Rosebud Creek are YCT-bearing waters at this time.

Considering BLM's regulation requiring No Surface Occupancy (NSO) within ½ mile of YCT habitat, the BLM should analyze whether any oil and gas development could occur within or near these parcels without violating this requirement. We note that there has been excavation on a drill location very near the boundary of MTM 105431 HW and MTM 79010-8R. Two branches of Meadow Creek flow directly through these two parcels, and downstream from the lease parcel the two branches combine and the stream flows adjacent to the margin of the drill location excavation. Meadow Creek flows into Fishtail Creek about one mile east of lease parcel MTM 105431 HW creating another potential impact area. Similarly to the two adjacent parcels, the East Fork of Fiddler Creek flows through MTM 79010-JJ, which flows into West Rosebud Creek.

- Maintenance of soil and wetland resources. Beyond concerns for the yellowstone cutthroat trout, the BLM should consider soil and wetland resources of these parcels. As previously indicated, Meadow Creek runs through parcels MTM 105431-HW and MTM 79010-8R, while East Fork of Fiddler Creek flows through MTM 79010-JJ and these parcels should be considered for their resource value. Furthermore, the land in these parcels as historically agricultural land, has significant resource value in maintaining healthful and productive soils. The value of the surface as productive rangeland should be evaluated in detail by the BLM before any oil and gas development is considered.
- Historic preservation of the unincorporated township of Dean and surrounding ranch structures. As mentioned by the BLM in the proposed deferral in leasing of parcel MTM 105431-HW and MTM 79010-8R, the parcels include the unincorporated township of Dean. As a pioneer village with a history stretching back to the 19<sup>th</sup> century, the Dean site is potentially important to the history of both homesteading and mining in the area. BLM should evaluate the historic resources represented by the Dean townsite, the Dean schoolhouse, and adjacent ranches as historic properties subject to compliance with the National Historic Preservation Act.

In addition, the geologic feature adjacent to Dean on the west, Fishtail Butte is a site sacred to Native Americans, specifically the Crow Indians. Crow oral histories indicate that this is a historic vision quest site attributable to the important Crow chief, Medicine Crow. BLM should analyze this area as a potential Traditional Cultural landscape.

- Socioeconomic impact on the Township of Dean and surrounding properties. The BLM should consider socioeconomic impacts to the modern unincorporated township of Dean. Over the past several years, the surrounding area has experienced a transition from a primarily ranching community to a mixed amenity-based pattern of land ownership, intermixed with the traditional ranching community. The BLM should consider how oil and gas development could harm the new and developing community center Dean has become. Specifically, BLM should consider impacts to surrounding property values that are currently supported by unimpeded views and the aesthetics represented by the absence of light pollution and the spectacular viewshed of the Beartooth Mountains—one of the most iconic viewsheds of the Northern Rocky Mountain Front and even the nation.

The impact of industrial development should be considered in light of the positive economic impact of a new social group of property owners that are important to this immediate area, providing low impact increases to the tax base and general prosperity of the community. Additionally, the BLM should fully evaluate how the visual, auditory, and interference in the amenity values would affect Dean's commercial base. The BLM should analyze how a well pad site located on or near (see above comment regarding cutthroat trout habitat)




parcel MTM 105431-HW and MTM 79010-8R within view of Dean would impact its status as a community center.

- Adjacent oil and gas leases. As noted above, SPA is aware that BLM lease parcel MTM 105431-HW is adjacent to other non-federal minerals and private oil and gas leases that have already seen the establishment of a pad for a presumed drilling location. The potential for drainage problems notwithstanding, BLM should make its decision based on impacts to the resources mentioned above. Other methods exist to address drainage besides a positive lease decision, even with NSO imposed, on a parcel that affects the important resource values already stated above.

Thanks for sending your comments. Public feedback plays a big part in these decisions. Again, comments should be emailed to: [BLM\\_MT\\_Billingsfo\\_Lease\\_EA@blm.gov](mailto:BLM_MT_Billingsfo_Lease_EA@blm.gov)

Thanks to Cameron Clevidence at [Northern Plains Resource Council](#) for his help in putting together this post.

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Related

Action Alert: Public comment period on BLM oil and gas lease sale in Stillwater County ends April 9  
In "Community Organization, Politics and History"

Important update: Lease of BLM parcel near Dean  
In "Community Organization, Politics and History"

Ryan Zinke is at it again: BLM offers 118 Montana parcels for December oil and gas lease  
In "BLM leases"



About davidjkatz

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[View all posts by davidjkatz](#) →

This entry was posted in [Community Organization](#) and tagged [action alert](#), [BLM](#), [Bureau of Land Management](#), [oil and gas leases](#), [public comment](#). Bookmark the [permalink](#).

### 5 Responses to ACTION ALERT: Please write by September 20 to keep BLM from selling oil leases in Stillwater County



**KnoxAnn Armijo** says:  
September 18, 2017 at 11:15 am

I will do it. It is like being run over by a semi. BLM is an agency without its purpose

Sent from my iPhone

[Reply](#)

10/29/2018 ACTION ALERT: Please write by September 20 to keep BLM from selling oil leases in Stillwater County | Preserve the Beartooth Front

Pingback: [Thanks to all who wrote: BLM will NOT sell leases on Beartooth Front next week | Preserve the Beartooth Front](#)

Pingback: [Victories for Climate, Public Lands This Month – ClimateWest](#)

Pingback: [Why is Stillwater County spending tens of thousands of dollars on high priced out of state lawyers? | Preserve the Beartooth Front](#)

Pingback: [Ryan Zinke is at it again: BLM offers 118 Montana parcels for December oil and gas lease | Preserve the Beartooth Front](#)

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**Preserve the Beartooth Front**

*Blog at WordPress.com.*

## Preserve the Beartooth Front

Thoughts about drilling in Montana

### Thanks to all who wrote: BLM will NOT sell leases on Beartooth Front next week

Posted on March 5, 2018 by davidjkatz

Good news for those of us working to maintain the balance between oil and gas development and the natural beauty and agricultural economy of the Beartooth Front.

Three leases in the Beartooth Foothills will not be put up for sale as planned next week, the BLM announced today. The parcels were scheduled to be part of an online auction on March 13.

Special thanks are due to those of you who wrote to the BLM last September to urge that these leases not be sold.



The BLM has decided to defer the rights to explore for oil and gas on 26 parcels and on a portion of two additional parcels, totaling about 17,300 acres. These parcels are located near the city of Livingston, and in the foothills surrounding the Absaroka and Beartooth mountain ranges in Montana.

"We help put people to work, contribute to local economies, and help make America safe through energy independence by providing for responsible oil and gas development. We're also good neighbors. When federal, state and local residents and elected officials expressed specific concerns, we listened,"  
 Jon Raby, Acting State Director, BLM  
 Montana-Dakotas.

BLM tweet, March 5, 2018

The BLM had proposed offering 109 parcels covering nearly 63,500 acres in an online auction to be held March 12 and 13. The scattered parcels stretch across Central Montana from the Canadian border to the Wyoming state line. The BLM has decided to defer the rights to explore for oil and gas on 26 parcels and on a portion of two additional parcels, totaling about 17,300 acres. These parcels are located near the city of Livingston, and in the foothills surrounding the Absaroka and Beartooth mountain ranges in Montana. Three parcels, totaling about 2100 acres, were part of the planned auction. All were in southern Stillwater County.

The remaining 83 parcels covering nearly 46,200 acres in Montana are being offered for oil and gas leasing through a competitive online auction. Information on the parcels including details on how to register in advance as a bidder is available at [EnergyNet.com](http://EnergyNet.com).

Map of deferrals in the March lease sale. Click on map for more detail.



The BLM awards oil and gas leases for a period of 10 years, and for as long thereafter as there is production in paying quantities. The revenue from the sale of federal leases, as well as the 12.5 percent royalties collected from the production of those leases, is shared between the federal government and the states.

## Lease sales

Leases on BLM land are put up for sale when there is a request from a company that wants to exploit mineral resources. The process is governed by the [National Environmental Policy Act \(NEPA\)](#), which requires federal agencies to integrate environmental values into their decision making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions.




To meet NEPA requirements federal agencies prepare a detailed statement known as an environmental assessment. EPA reviews and comments on environmental assessments prepared by other federal agencies, maintains a national filing system for all assessments, and assures that its own actions comply with NEPA.

The environmental assessment involves two steps:

1. Public Scoping: This step involves the community in determining whether there are environmental impacts that need to be considered. These impacts might include:
  - Significant natural resources such as ecosystems and threatened and endangered species;
  - Commercial and recreational fisheries;
  - Current recreational uses of the land and waterways;
  - effects on water users;
  - Effects of potential controls on current lake and waterway uses such as flood risk management, commercial and recreational navigation, recreation, water supply, hydropower and conveyance of effluent from wastewater treatment plants and other industries; and
  - Statutory and legal responsibilities relative to use of land and water.
2. Preliminary environmental assessment: Public review of preliminary environmental assessment. This process takes 30 days before the final environmental assessment.

**More information:** [ACTION ALERT: Please write by September 20 to keep BLM from selling oil leases in Stillwater County](#)

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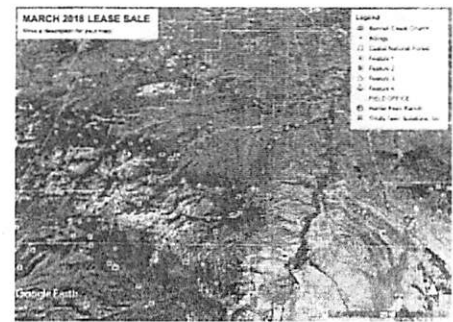
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## Related

Ryan Zinke is at it again: BLM offers 118 Montana parcels for December oil and gas lease

ACTION ALERT: Please write by September 20 to keep BLM from selling oil leases in Stillwater County

Important update: Lease of BLM parcel near Dean



Click on map to download BLM parcel maps for potential lease sales



In "BLM leases"

In "Community Organization"

In "Community Organization, Politics and History"



**About davidjkatz**

The Moses family has lived on the Stillwater River since 1974, when George and Lucile Moses retired and moved to the Beehive from the Twin Cities. They're gone now, but their four daughters (pictured at left, on the Beehive) and their families continue to spend time there, and have grown to love the area. This blog started as an email chain to keep the family informed about the threat of increased fracking activity in the area, but the desire to inform and get involved led to the creation of this blog.

[View all posts by davidjkatz](#) →

This entry was posted in [Community Organization](#) and tagged [action alert](#), [BLM leases](#). Bookmark the [permalink](#).

**5 Responses to *Thanks to all who wrote: BLM will NOT sell leases on Beartooth Front next week***



**Randy says:**

March 6, 2018 at 8:16 am

Ok so is the lawsuit put off then? And what did I miss when the land has not be leased yet "We" were going to sue someone?  
Thanks

[Reply](#)



**[davidjkatz](#) says:**

March 6, 2018 at 9:40 am

Two different issues.

The BLM leases are federally owned. A determination was made last year to lease three parcels for drilling in Stillwater County. That would have opened them up for drilling, but that's not going to happen.

The lawsuit was filed by Stillwater County landowners who are trying to set up a zone, but have been blocked by the county commissioners.

[Reply](#)



**suttondmd@netzero.net says:**

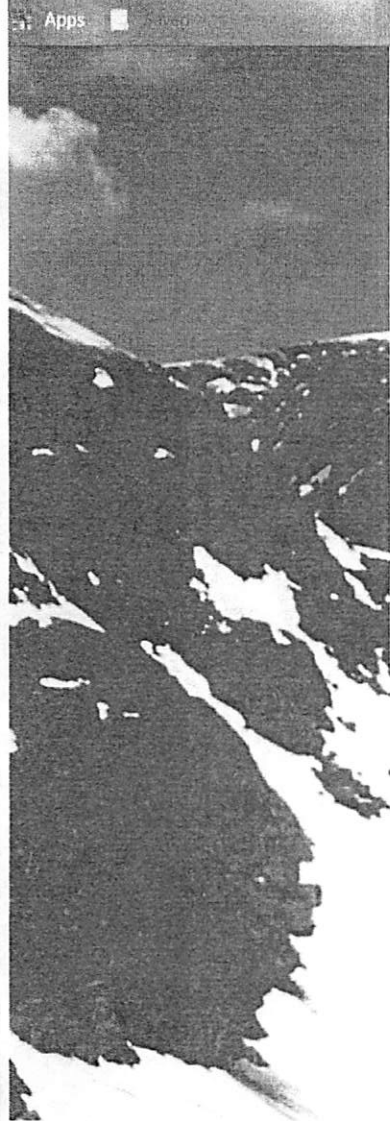
March 8, 2018 at 7:08 pm

some good news for a change, thanks for the update and blog... dave

[Reply](#)

Pingback: [Last chance to tell the Stillwater Commissioners how you feel about proposed zoning policy | Preserve the Beartooth Front](#)

Pingback: [Ryan Zinke is at it again: BLM offers 118 Montana parcels for December oil and gas lease | Preserve the Beartooth Front](#)



thousands of men to work in the fields, house them in "man camps" because there's no place for them to live locally, pay them large salaries, and you've got a substantial crime problem. Hangers on come to the camps to provide vices to young men with money: drugs and prostitution mostly, but in an environment that is mostly men and few women, rape and domestic violence increase as well.

"It's following the money," said Michael W. Cotter, the U.S. attorney for Montana. "I hate to call the cartels entrepreneurs, but they're in the business to make money. There's a lot of money flying around that part of Montana and North Dakota."

Sgt. Kylan Klauzer, an investigator in Dickinson where violent crime is up nearly 500% over five years, said, "It feels like the modern-day Wild West."

Domestic violence shelters are filling up, the residue of troubled migrations.

*Families arrived hoping for \$20-an-hour jobs, but discovered that modest homes rent for \$2,000 and everything from gasoline to dinner costs more. The stresses of life piled up. Alcohol and drugs added to the problem. Old patterns of domestic abuse crossed state lines.*

#### ND officials try to sugar coat the story

North Dakota Attorney General Wayne Stenehjem tried to put a calm face on it last summer when he released crime statistics comparing the state's oil counties with the rest of the state, saying that there wasn't much proportional difference between the two. That's ridiculous. The numbers he released speak for themselves, and if he looked only at towns like Williston and Dickinson, which are right at the center of the boom, the comparison would be even more stark.

Aggravated assault was up 56% in the oil counties form 2010-11, and 14% statewide;

really feel?

- Action reminder: Montana Board of Oil and Gas hearing on Monday, September 17
- Beartooth landowners file motion for summary judgment in zoning lawsuit
- Action Alert: Your voice needed on new Montana Board of Oil and Gas Conservation chemical disclosure rule

#### Blog Archives

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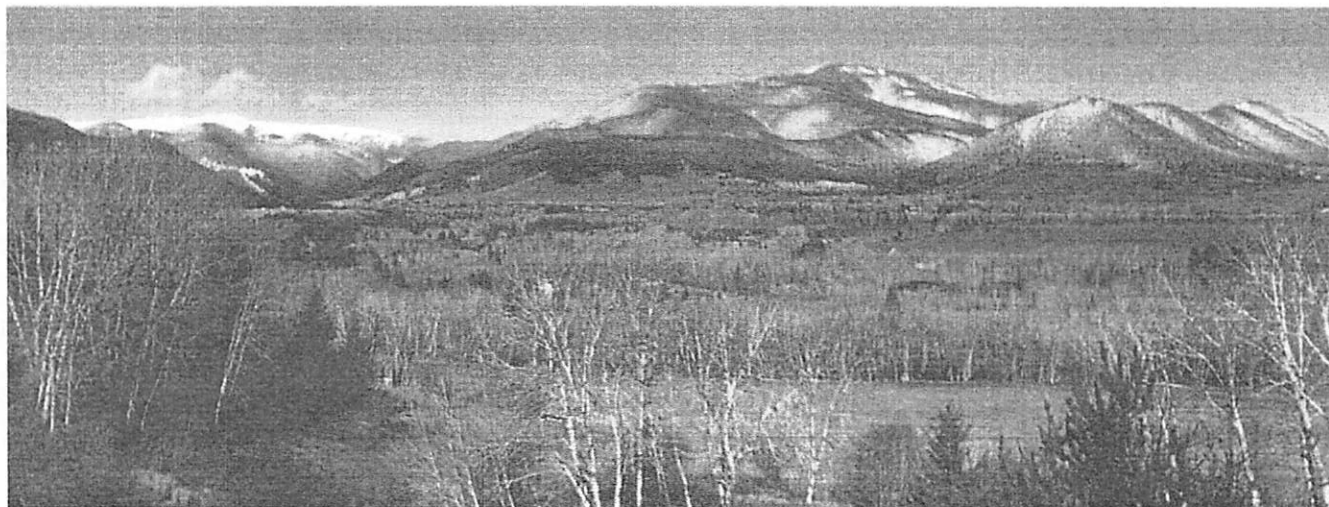


# No Fracking the Beartooth Front

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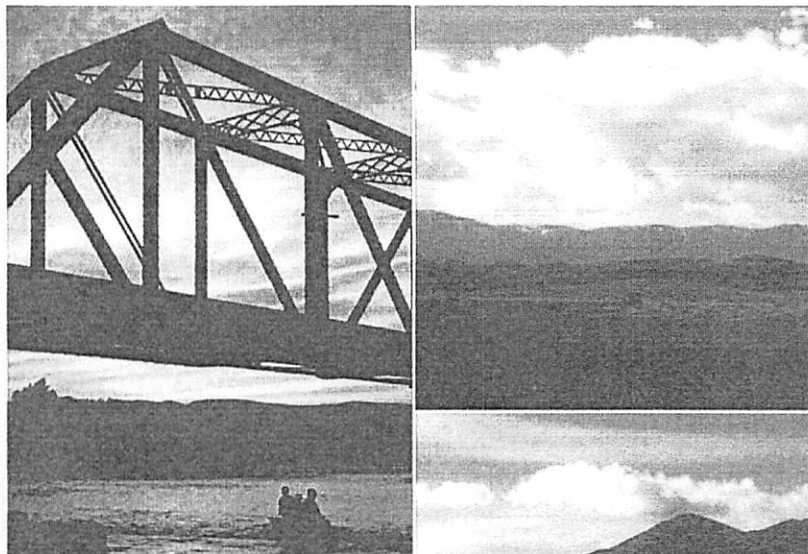
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**EXHIBIT B**

## EXHIBIT B

Statute Reference	County/Zoning District	Description of Land	Created (Year)	Land Use	Other
76-2-204	<b>Dawson County (2)</b>				
Part 1	Highland Park Subdivision	Lots 1-9, Block 6	1962	Residential	
Part 1	Forest Park Zoning		1964	Residential	
76-2-104	<b>Park County (6)</b>				
Part 1	Cokedale District	~1300 acres	1999	Residential	
Part 1	Cokedale West District	~600 acres	2006	Residential/Agriculture	
Part 1	Cooke City-Silver Gate-Colter Paso District		1997	Residential/Commercial	Res. No 466 passed 7/8/93 mining, exploration, reclamation and all related activities are exempt from requirements
Part 1	East Yellowstone District	~2500 acres	1997	Residential Agricultural On Site Gravel	
Part 1	O-Rea Creek District	~2700 acres	2002	Residential Agricultural Forest	Mining, quarrying, drilling, boring, exploring or removal of oil, gas or other hydrocarbons, stone, gravel, earth or any other minerals
Part 1	Paradise Valley District	~1300 acres	2004	Residential Commercial Agricultural	
Part 1	<b>Gallatin County (22)</b>				
Part 1	Bear Canyon	~1300 acres	1987	Agriculture with land development considerations	
Part 1	Bozeman Pass	~21,760 acres	2005	Agricultural, Rural Residential, Public Lands	2.01.6 Natural resource conditional use. Sec. 4.04 to 4.05
Part 1	Bridger Canyon	~51,500 acres	2005	Agricultural Residential,	2.03.6 Natural resource conditional use.

## EXHIBIT B

Statute Reference	County/Zoning District	Description of Land	Created (Year)	Land Use	Other
				Public Lands	Sec. 4.04 to 4.05
Part 2	East Gallatin	~5,760 acres	2006	Agricultural, Rural Residential, Commercial	Conditional use, permit, mineral extraction and oil and gas
Part 1	Four Corners	~25,000 acres	2009	Rural Residential and Agricultural, Low Density, Mineral, Commercial	Public lands, open cut operation conditional use
Part 1	Gallatin Canyon/ Big Sky	~72,960 acres, of which 44,160 are public land	1996	Residential, Commercial, Planned Unit, Community Resource	Sec. 41 natural resources development conditional use permit
Part 2	Gallatin County/ Bozeman Area Donut	~37,000 acres	1999	Agricultural, Residential, Commercial	3.07 Natural Resources Notes 76-2-209 may not prevent
Maybe Part 2	Hebgen Lake	~14,720 acres	1995	Residential, Planned Unit, Commercial	Resource Development District
Part 1	Hyalite	~3900 acres	1970	Residential, Commercial, Open Space	3.6 Effect on Nat. Res. 76-2-109 not apply to grazing, horticulture, agriculture, timber
Part 2	Middle Cottonwood	~10,300 acres	1996	Natural Resources, Agricultural, and Residential	
Part 2	North Gallatin Canyon	~5800 acres	2009		
Part 2	Reese Creek	~22,500 acres	2006		
Part 2	River Rock (Royal Village)	~320 acres	1978	Residential, Commercial	
Part 2	South Cottonwood Canyon	~2300 acres	2005		
Part 1	South Gallatin		1994		Map unclear

## EXHIBIT B

Statute Reference	County/Zoning District	Description of Land	Created (Year)	Land Use	Other
Part 1	Springhill		1990		Map unclear
Part 1	Sypes Canyon #1	~200 acres	1979	Residential	
Part 1	Sypes Canyon #2	~320 acres	1979	Agricultural, Residential, Public, Recreational	
Part 1	Trail Creek	~9000 acres	1991	Agricultural and Residential, Planned Unit	
Does not specify how zone formed	Wheatland Hills	~200 acres	1979	Residential	
Part 1	Zoning District #1	~160 acres	1970	Rural Residential, Residential	
Part 1	Zoning District #6	~320 acres	1979	Agricultural, Residential, Forest, Recreational, Public	
Part 1	<b>Yellowstone County (7)</b>				
Part 1	Echo Canyon Area District 12	~2400 acres	1970	Residential, Agricultural	
Part 1	Special Zoning District 14	~19,840 acres	1977	Agricultural	
Part 1	Special Zoning District 15	~60 acres	1985	Residential	
Part 1	Special Zoning District 16	~14,880 acres	1986	Agricultural, Residential	
Part 1	Pleasant Hollow Trail District 17	~960 acres		Agricultural and Residential, Residential	
Part 1	Special Zoning District 18			Agricultural, Subdivision, Residential, Recreation, Commercial	

## EXHIBIT B

Statute Reference	County/Zoning District	Description of Land	Created (Year)	Land Use	Other
Part 1	Broadview	~130 acres		Residential, Commercial	
Part 1	<b>Stillwater County (1)</b>				
Part 1	West Fork Stillwater District	~4144 acres	1979	Agricultural, Recreational, Oil and Gas	No limitations on oil and gas sites 76-2-109
Part 1	<b>Flathead County (1)</b>				
Part 1	Egan Slough	~1150 acres	2002	Agricultural, Residential	
Part 1	<b>Missoula County (31)</b>				
Part 1	#4	~1921 acres	1957	Agricultural, Residential	
Part 1	#6	~ 1 city block	1958	Use (i.e., bars, nightclubs prohibited)	
Part 1	#7	~ 18 city block	1958	Residential, Commercial, Agriculture	
Part 1	#8	~7680 acres	1958	Residential	
Part 1	#8A	~40 acres	2008	Residential	
Part 1	#9	~640 acres		Agricultural, Residential	
Part 1	#10	~1200 acres	1973	Residential	
Part 1	#12	~looks like city blocks	1971	Residential	
Part 1	#12A	~4 city blocks	1974	Residential, Agricultural, Education, Public Use	
Part 1	#13	~20 city blocks	1959	Residential, Agricultural, Public Use	
Part 1	#14	~4 city blocks	1959	Residential, Agricultural, Public Use	



## EXHIBIT B

Statute Reference	County/Zoning District	Description of Land	Created (Year)	Land Use	Other
Part 1	#18	~40 acres	1959	Residential, Commercial	
Part 1	#25A	~640 acres	1970	Residential, Noncommercial recreational	
Part 1	#26				Does not load on website
Part 1	#31	~480 acres	1971	Residential, Agricultural	
Part 1	#32	~560 acres	1972	Residential	
Part 1	#33	~500 acres	1972	Residential, Agricultural, Park, Timber, Condo	
Part 1	#34	~400 acres	1973	Residential	
Part 1	#35	~400 acres	1973	Residential, Agricultural, School, Church, Public	
Part 1	#36	~400 acres	1973	Residential	
Part 1	#37	~400 acres	1974	Residential	
Part 1	#38	~400 acres	'974	Residential, Home Office	
Part 1	#39	~400 acres	1975	Residential, School, Church	
Part 1	#40	~400 acres	1976	Residential, Parks	
Part 1	#41	~400 acres	1984	Residential, Agricultural, Timber	
Part 1	#41A	~400 acres	1984	Residential, Agricultural, Golf Course	
Part 1	#41B	~400 acres	1984	Residential, Agricultural, Timber	
Part 1	#42	~400 acres	1997	Residential, Commercial	

## EXHIBIT B

Statute Reference	County/Zoning District	Description of Land	Created (Year)	Land Use	Other
Part 1	#43	~400 acres	2002	Residential	
Part 1	#44	~400 acres	2003	Residential, Agricultural, Home Office	
Part 1	#46	~400 acres	2007	Residential, Agricultural, Conditional Use	
Part 1	<b>Ravalli County (41)</b>				
Part 1	Alvista/Bowman Road	~1290 acres	1991	Residential, Agricultural	
Part 1	Canton	~230 acres	2007	1 owner of several tracts appears to be subdivision	
Part 1	Canyon Paradise Heights	~785 acres	1992	Residential, Agricultural	
Part 1	Curlew	~440 acres	1977	Present Agricultural, Residential, Limited Agricultural, No industry	
Part 1	Doran Addition	~172 acres	1978	Present Agricultural, Limited Agricultural	
Part 1	Eagle Watch	~670 acres	1991	Mobile, Light Industrial & Local Business, Livestock Animals	
District #1	Florence Area	~85 acres	1975	Residential	
Part 1	Fricke Property	~50 acres	1977	Residential, Agricultural	
Part 1	Fruitland Farms	~40 acres	1977	Residential, Agricultural	
Part 1	Hawk Property	~60 acres	1978	Residential, Low Density	
Part 1	Hensler Property	~210 acres	1978	Residential, Low Density	
Part 1	Hensler Property 2	~1480 acres	1978	Residential, Low Density	
Part 1	Holly Lane	~125	1986	Agricultural, Residential	

## EXHIBIT B

Statute Reference	County/Zoning District	Description of Land	Created (Year)	Land Use	Other
Part 1	Joost	~200 acres	1978	Agricultural, Low Density Residential	
Part 1	Kennedy Pines	~1800 acres	1977	Agricultural, Residential	
Part 1	Lay Property	~120 acres	1978	Low Density Residential	
Part 1	Lower Lost Horse	~450 acres	1994	Residential, Agricultural, Care Facilities	
Part 1	Lower Sunset Beach	~640 acres	1993		
Part 1	Mitlower Road & Hwy 93	~800 acres	1993	Residential, agricultural	
Part 1	Mountain View Orchards	~240 acres	1994	Residential, Agricultural, Core Facilities	
Part 1	North Illinois Beach	~620	1992	Rural Agricultural, Residential	
Part 1	Old Corvallis Road-Eastside Hwy	~800 acres	1977	Agricultural, Residential	
Part 1	Rivalli County Airport Voluntary Zoning District	~420 acres	2015	Airport, Light Industry, Tech, Agricultural, Mineral Development	
Part 1	Rickets Meadows	~50 acres	2007	Rural, Residential	
Part 1	Rippling Woods	~245 acres	2006	Residential, Controlled livestock	
Part 1	Riverview Orchards	~900 acres	1977	Agricultural, Residential	
Part 1	Roaring Lion	~1200 acres	1978	Residential	
Part 1	Rossi	~1200 acres	1978	Residential, Limited agriculture	
Part 1	Sawtooth Creek Ranch	~60 acres	1994	Residential, Agriculture	

## EXHIBIT B

Statute Reference	County/Zoning District	Description of Land	Created (Year)	Land Use	Other
Part 1	Sheafman Creek	~650 acres	1976	Agricultural, Residential	
Part 1	South Shoshone Loop	~410 acres	1993	Residential, Agricultural, Care Facilities	
Part 1	Stewart Property	~40 acres	1978	Low Density Residential, Agricultural	
Town not County	Stevensville Outside	~400 acres	1996		Amendment to Town of Stevensville Master Plan, allow for town growth/development pattern
Part 1	Sunset Orchards No. 4	~450 acres	1978	Low Density Residential, Agricultural	
Part 1	Torp-Norgaard	~90 acres	1978	Residential, Agricultural	
Part 1	Upper Mill Creek	~400 acres	1998	Residential, Agricultural	
Part 1	Wagner Lane	~50 acres	1983	Residential, Agricultural	
Part 1	Willow Creek	~100 acres	1978	Residential, Agricultural	
Part 1	Willow Creek No. 2	~2780 acres	1978	Residential, Agricultural	
Part 1	Yerian-Mihara	~110 acres	2006	Residential, Agricultural	

# **EXHIBIT C**



**Proposed Stillwater County Beartooth  
Front District**

**Submission to the County  
Commissioners of Stillwater County,  
Montana**

**November 10, 2015**

Proposed Stillwater County Beartooth Front District

Submission Documents

Table of contents

1. "Submission of Petition to Stillwater County Commissioners Regarding Creation of Planning and Zoning District Pursuant to § 76-2-101, Montana Code Annotated"
2. "PETITION FOR CREATION OF CITIZEN-INITIATED ZONING DISTRICT WITH PLANNING & ZONING COMMISSION, September 12, 2014"
3. Map of Proposed District (not in this notebook)
4. "Borders and Acreage of Proposed Stillwater County Beartooth Front District"
5. Documents distributed to each property owner solicited:
  - "Proposed Stillwater County Beartooth Front District, For Distribution to Landowners Within the Proposed District, August 12, 2014"
  - Petition dated September 12, 2014 (above)
6. Signature sheets (in other notebooks)
7. Affidavits regarding signature sheets
8. "Reference Materials Regarding Selected Possible Impacts of Oil and Gas Activity"
9. Written submissions of testifying experts
10. Copy of October 13, 2014, letter to Ms. Nancy Rhode (regarding signature matters)
11. Copy of December 15, 2014, letter of Susan B. Swimley letter (regarding authority of Montana counties to regulate oil and gas activity if regulations avoid direct conflicts with state law and avoid preemption by state)

Submission of Petition

to

Stillwater County Commissioners

Regarding Creation of Planning and Zoning District

Pursuant to § 76-2-101, Montana Code Annotated

1. Submission of Petition. The many signatories to the attached Petition hereby respectfully exercise their right, pursuant to § 76-2-101, Montana Code Annotated (“M.C.A.”), to petition the Stillwater County Commissioners (“Commissioners”) to (1) create a planning and zoning district referred to as the “Stillwater County Beartooth Front District” (“District”) and (2) appoint a planning and zoning commission for the District.

A very large grassroots effort was undertaken to contact and educate property owners within Stillwater County, and the attached Petition has been signed by the necessary number of property owners as required by § 76-2-101, M.C.A.

The signature sheets represent the support of the many Stillwater County property owners within our proposed district. This demonstrates how broad-based the support is for the Petition, and it reflects the legitimate concern of the signers regarding the potential harms from oil and gas activity that may result if adequate safeguards and enforcement are not in place within the proposed district.

Attached are the two documents that were provided (prior to signing of the Petition signature sheet) to each person who has signed the petition: (1) the document titled “Proposed Stillwater County Beartooth Front District, For Distribution to Landowners Within the Proposed District, August 12, 2014” and (2) PETITION FOR CREATION OF CITIZEN-INITIATED ZONING DISTRICT WITH PLANNING & ZONING COMMISSION, September 12, 2014.

This Petition reflects important Montana values: (1) volunteer efforts to support local communities and (2) self-determination regarding land use.

2. Petition Complies with M.C.A. According to § 76-2-101(2), M.C.A., a planning and zoning district may not be created in an area that has been zoned by an incorporated city pursuant to §§ 76-2-310 and 76-2-311. None of the area subject to the Petition has been so zoned.

According to § 76-2-101(3), M.C.A., a district must include an area of not less than 40 acres. The District subject to this Petition exceeds 40 acres.

According to § 76-2-101(5), M.C.A., if real property owners representing 50% of the titled property ownership in the district protest the establishment of the district within 30 days of its creation, the



Commissioners may not create the district. Real property owners representing more than 50% of the titled property ownership in the District have signed this Petition.

3. Petition Seeks Regulation of Only Oil and Gas Activity within District. The Petition seeks adoption by the Commissioners of regulations regarding any oil and gas activity within the District (but only to the portion of land that is devoted to oil and gas activity). The Petition seeks to regulate no other land use, and the Petition does not seek to ban any type of oil and gas activity (such as hydraulic fracturing) within the District.

4. Petition is in Accordance with Stillwater County Growth Policy and Montana Constitution. This Petition seeks action (1) in accordance with the Stillwater County Growth Policy (adopted 2007) and to further the health, safety, and general welfare of the people of the District pursuant to § 76-2-104, M.C.A., and (2) to advance the right of the people in the proposed district to a clean and healthful environment under Article II, Section 3, and Article IX, Section 1 of the Montana Constitution 1972.

5. No levy required. § 76-2-102(3) provides that the finances necessary for the planning and zoning commission “must be paid from a levy on the taxable value of all taxable property within the district.” We propose that the County adopt regulations that would include a fee structure (with the fee to be paid by the applicant for a permit) that would reimburse the County for all County expenses reasonably related to issuance of a permit for oil and gas activity. Accordingly, (1) the County would incur no expense subject to § 76-2-102(3) and (2) no levy would be required.

6. Goal to Avoid Cost Shifting. Oil and gas activity involves significant burdens and costs (that are caused, and properly should be absorbed, by the oil and gas operator), some of which may be shifted to others, such as the local government and nearby property owners. As to this Petition, the combination of the proposed fee structure (to be paid by a person seeking to undertake oil and gas activity) and the regulations would minimize cost-shifting away from the oil and gas operator to either the County or other property owners. Accordingly, the Petition is not “anti-job” or “anti-oil and gas activity.” Instead, the Petition seeks to fairly allocate those costs to the oil and gas operator who enjoys the benefits of the oil and gas activity.

7. Finding of Public Interest or Convenience. Pursuant to § 76-2-101, M.C.A., the Commissioners must make a finding of whether it is in the public interest or convenience to (1) create the District and (2) appoint a planning and zoning commission for the District. The Petition seeks the adoption of regulations to protect important public interest or convenience values within the District. Consistent with Section 3 of the Stillwater County Growth Policy 2007, the Petition seeks to maintain the rural residential and agricultural character of the District. Stillwater County and the District enjoy a unique quality of life marked by rural lifestyle; ranching traditions; pristine air, rivers, and streams; and stunning day and night views of the Beartooth Mountains in their natural state, and this Petition seeks adoption of regulations requiring that oil and gas activity be conducted in a responsible manner within the District to (1) preserve public health, (2) protect private property, (3) protect and improve public infrastructure and public services, (4) protect surface and ground water, (5) protect air quality, (6) protect soil quality, and (7) maintain the quality of life by preserving the rural residential and agricultural character of the

area. The Appendix "Resources Regarding Possible Impacts of Oil and Gas Activity" contains relevant information, and Petitioners respectfully request that the Commissioners consider the items in this Appendix in their deliberations regarding this Petition.

8. Petitioners Prepared to Assist County. The Petitioners are prepared to assist the County in dealing with this Petition in offering draft resolutions and other documents for the consideration by the Commissioners regarding implementation of the Petition, including (a) creation of the District, (b) creation of the Planning and Zoning Commission for the District, (c) adoption of regulations regarding oil and gas activity within the District.

9. Signature Matters. The relevant Montana Code provisions relating to citizen-initiated zoning (Title 76, Ch. 2., Part 1, Montana Code Annotated) prescribe no rules with respect to signatures in support of a petition. Some counties have adopted ordinances regarding citizen-initiated zoning, but it appears that Stillwater County has not adopted any such ordinance. Accordingly, it is the understanding of the Petitioners that there is no applicable statute regarding signature matters with respect to our Petition.

When some of the petitioners first met with the Commissioners on October 9, 2014, to advise you of our plans to seek signatures in support of a Petition, we requested guidance as to signature matters. Several of our group wrote a letter dated October 13, 2014, to the Office of the Stillwater County Attorney, with a copy to each Commissioner. A copy of that letter is attached. We received no response to that letter. Shortly after sending that letter, one of our group left a telephone message for Ms. Rohde asking about the subject of the letter, but Ms. Rohde did not return that telephone call. Absent any specific guidance from the County, we have moved ahead in good faith in what we believe is a cautious and painstaking manner to ensure that the signatures are valid and accurately reflect the large number of landowners who support our Petition.

Because of the lack of applicable law with respect to signatures and because of the lack of assistance from Stillwater County with respect to signature matters, we ask that our group be provided the opportunity to rectify any not-legally-significant signature issues that the Clerk and Recorder may identify in the process of verifying the signatures in the signature sheets submitted with the Petition. Our group has worked very diligently over a period of more than a year to collect signatures from this very large number of property owners who desire creation of a zoning district. We believe that it would be grossly unfair (and it would frustrate the expressed desires of the property owners) if the Clerk were to apply unnecessarily rigid and restrictive rules in verifying signatures. We believe that we should be permitted to rectify signatures deemed by the Clerk not to be satisfactory because of the application of highly technical rules, including (1) minor discrepancies between the signature and the proper legal name of record for the property, (2) signatures of lawful representatives of separate legal entities (such as corporations, partnerships, limited liability companies, etc.), and (3) signatures of lawful representatives of other legal relationships (such as an executor of a decedent, a trustee of a trust, etc.). The unwillingness of the County to provide guidance at a prior time when signature matters could have been addressed should not result in unfair consequences with respect to the many property owners who have expressed in good faith their desire to support the Petition.

10. Petitioners Request Opportunity to Participate. If the Commissioners seek any assistance from County officials or others regarding this Petition, the Petitioners request that they be informed thereof and have a reasonable opportunity to participate in, or comment upon, any such Commissioners' communications and any such assistance received. A great amount of time and effort already have been expended in the petition process, and the Petitioners should be fully involved in the consideration by the Commissioners of this Petition. Petitioners also request copies of all correspondence or email that references this Petition, the Regulations, or the subject of oil and gas development.

11/09/15

PETITION FOR CREATION OF CITIZEN-INITIATED ZONING DISTRICT  
WITH PLANNING & ZONING COMMISSION

September 12, 2014

Pursuant to § 76-2-101, M.C.A., the undersigned persons ("Petitioners") hereby petition, as more fully described below, the Stillwater County Board of County Commissioners for the (1) creation of a planning and zoning district and (2) appointment of a planning and zoning commission for the district consisting of seven members.

Consistent with Section 3 of the Stillwater County Growth Policy 2007, this Petition seeks to maintain the rural residential and agricultural character of the proposed district. Stillwater County enjoys a unique quality of life marked by rural lifestyle; ranching traditions; pristine air, rivers, and streams; and stunning day and night views of the Beartooth Mountains in their natural state, and this Petition asks that coal bed methane activity and oil and gas activity (collectively, "Oil and Gas Activity") be conducted in a responsible manner within the proposed district to (1) preserve public health, (2) protect private property, (3) protect and improve public infrastructure and public services, (4) protect surface and ground water, (5) protect air quality, (6) protect soil quality, and (7) maintain the quality of life by preserving the rural residential and agricultural character of the area.

This Petition seeks action (1) in accordance with the Stillwater County Growth Policy (adopted 2007) and to further the health, safety, and general welfare of the people of the District pursuant to § 76-2-104, M.C.A., and (2) to advance the right of the people in the proposed District to a clean and healthful environment under Article II, Section 3, and Article IX, Section 1 of the Montana Constitution 1972.

Proposed District

Name of District. Petitioners propose as the name of the District: the Stillwater County Beartooth Front District ("District").

Area of District. Petitioners propose that the area of the District be composed of the properties listed in Appendix A and as depicted on the Maps constituting Appendix B.

Acreage of District. The proposed District is an area that consists of not less than 40 acres [include approximate area after collection of signatures].

Petitioners Represent at Least 60% of the Affected Real Property Owners. Petitioners represent at least 60% of the affected real property owners in the proposed District.

Proposed District Not Zoned by Incorporated City. No part of the proposed District has been zoned by an incorporated city pursuant to §§ 76-2-310 and 76-2-311, M.C.A.

Public Interest or Convenience. Creation of the proposed District is in the public interest or

## Borders and Acreage of Proposed Stillwater County Beartooth Front District

The borders of the proposed District were formulated with reference to the Nye-Bowler Lineament. This is an area mapped by the Bureau of Land Management (BLM) for its recent Resource Management Plan revision that contains geology demonstrated to have producible oil and gas. The BLM did not identify lands within the Forest Service (FS) boundaries that could be considered within the Lineament, FS lands are not included within the proposed District. Thus, the Lineament covers private lands roughly from Limestone to the Bowler Flats at the west border of the Pryor Mountains. The proposed District is limited to lands within Stillwater County.

As reflected on the map, the district boundary encompasses approximately 83,000 Acres. Within the boundary are other federal and state lands which were eliminated from the proposed District and are of the following approximate acreages:

Bureau of Land Management	980 ACRES
Montana Fish Wildlife and Parks	147.1 ACRES
MT Dept. of Natural Resources & Conservation	2,441.9 ACRES

Net Acreage in Proposed District: approximately 79,500 acres.

In summary, included within the proposed District were all private surface interests in land within the boundary, and excluded was land belonging to the federal government through BLM and land belonging to the State of Montana.

Proposed Stillwater County Beartooth Front District  
For Distribution to Landowners Within the Proposed District

August 12, 2014

Our situation. The oil and gas industry has acquired oil and gas leases or owns mining rights over many acres in Carbon and Stillwater Counties. New technology, hydraulic fracturing ("fracking"), consumes very large amounts of water, and the large amount of waste material from fracking has been associated with serious problems to nearby fresh water sources for both domestic and agricultural use.

Many landowners do not own all of their mining rights either because (1) the mining rights were retained by the federal government on some homestead patents or (2) the mining rights were separately sold or transferred at some prior time. If you do not own all of the mining rights, you have a "split estate," which means that you own the surface rights, and someone else owns and controls the mining rights. The owner of the mining rights has powerful rights to develop the minerals even if you do not want your surface estate disturbed.

Modern oil and gas drilling is 24/7 large-scale industrial activity involving large and noisy equipment, many truck trips, and large amounts of water (fracking requires as many as 5 to 10 million gallons per well, depending on how many times the well is fracked).

Owners of the mining rights may profit from oil and gas activity, and workers may obtain good jobs, but there are other costs that come along with oil and gas activity that may be shifted to you, your neighbors, and Stillwater County:

- Pollution of our ground water and surface water
- Depletion of water historically dedicated to agricultural and domestic use
- Air pollution due to flaring of wellhead gas and venting of other contaminants
- Soil pollution that could adversely impact our agriculture
- Adverse health consequences to us, our animals, and other agricultural products
- Decline in value of nearby properties
- Cost shifting to the taxpayers of Still water County (you!) of costs associated with oil and gas activity including road and bridge damage, increased crime and the related increase in public safety expenses, and education costs for the children of workers who move to Stillwater County
- Skyrocketing housing costs in the area due to the influx of workers who support the oil and gas activity
- Fundamental changes to the nature and quality of our rural and agricultural life style in Stillwater County

Why we need local action. The stakes are high because of the many adverse consequences that can result from oil and gas activities. Federal rules contain many exemptions from clean water and clean air laws for oil and gas activities, and the federal rules are not strong enough to protect you, your water, and your

property. The Montana Board of Oil and Gas Conservation is not concerned with protecting you, your water, or your property. The Board is dedicated solely to development and conservation of oil and gas. The best way for us to deal with this situation is local action with the Stillwater County Board of County Commissioners.

What we want to do. We propose to create a zoning district (hereinafter referred to as the Stillwater County Beartooth Front District, or District). Such a district would continue to allow any landowner to develop the landowner's mineral rights, but would establish rules to protect us and our property from the potential adverse impacts that could result from these oil and gas activities: (1) coalbed methane exploration and development and (2) oil and gas exploration and development, including fracking. Stillwater County enjoys a unique quality of life marked by rural lifestyle; ranching traditions; clean air, rivers, and streams; and stunning day and night views of the Beartooth Mountains in their natural state, and we want the County Commissioners to permit landowners to protect and preserve their quality of life and their property. With inadequate protection of our ownership rights under state or federal law, our best option for local control is creating a zoning district under Part 1, Chapter 2, Title 76, Montana Code Annotated.

The District. The District will be an area of land within which at least 60% of the real property owners in the area desire to be included.

Landowner petition to County Commissioners. To create the District, landowners within the District will Petition the Board of County Commissioners to create (1) a citizen-initiated District and (2) a seven-member Planning Commission only for that District.

Development pattern and proposed rules for oil and gas activities. After creation of the District and the Planning Commission, the Planning Commission will adopt a "Development Pattern" for the District that describes the special character of the area and the goals for protecting the area during oil and gas activities. Next, the Planning Commission will work with landowners within the zoning District to draft proposed rules to implement the Development Pattern. The Planning Commission will forward the Development Pattern and proposed rules to the Stillwater County Board of County Commissioners for adoption.

1. Goal. The goal of the proposed rules is to maintain the rural residential and agricultural character of the District, and the rules will (1) maintain our quality of life and our health, (2) protect our surface and ground water, (3) require that any oil and gas activity be done in a responsible manner according to the highest and best management practices, and (4) protect and improve public infrastructure and public services.

2. Scope of rules. The proposed rules will apply only to (1) coalbed methane exploration and development and (2) oil and gas exploration and development, including fracking. The rules will not apply to lands used for grazing, horticulture, agriculture, or the growing of timber, and the rules do not include any other restriction on land use.

For example, if land is used for agricultural purposes, the rules would not apply, but if the owner converts some portion of that land to use for coalbed methane or oil and gas activities, the rules

- (1) would apply to the portion of the land used for coalbed methane or oil and gas activities but
- (2) would not apply to the portion of the land used for agricultural purposes.

The rules also would exempt oil and gas activities that exist prior to adoption of the rules.

3. Permit required for oil and gas activity. The rules would require a permit from Stillwater County before any oil and gas exploration or development may begin within the District. The permit application process requires an applicant to submit (1) a preliminary application plus a processing fee and (2) a final application, including an Impact Assessment, plus a processing fee. A public hearing must be conducted for each application. The applicant must demonstrate that the oil and gas activity will not cause a potentially significant adverse impact on nearby properties (and property values), residents, air quality, groundwater, soil, wildlife, fish, streams, and wetlands.

4. Permit may impose limitations or conditions. A permit may impose one or more of the following limitations or conditions: landscaping for containment of possible discharges and spills; lighting restrictions; monitoring of groundwater and surface water, including periodic testing within specified distances of (1) the well head and (2) the surface line above any horizontal or directional well bore hole; monitoring of odors, smoke, dust, airborne particles, vibration, glare, heat, and noise, including periodic testing; monitoring and regulation of vehicle traffic and routes; a well pad location that minimizes visual intrusion in the landscape; prohibition of holding ponds for drilling and waste materials; and restoration of the property upon termination of the activity.

5. Highest and Best Management Practices. The proposed rules would require the use of Highest and Best Management Practices (HBMP), as those HBMP exist at the time of an application for a permit. HBMP are those practices, procedures, equipment, design features, work practices, operating standards, and technology that best achieve (1) the goals of the Regulation and (2) the maximum degree of reduction of adverse impacts to air quality, water quality and quantity, and private property, taking into account and balancing the energy, environmental, public health, economic, and other private and public benefits and costs.

We also propose that the Stillwater County Board of County Commissioners authorize a five-member advisory committee of landowners within the District to make non-binding recommendations to the Planning Commission regarding: (1) an application or petition under the proposed rules, (2) any proposed change to the properties within the District, (3) any proposed amendment to the rules, (4) any alleged violation of the rules, and (5) the meaning of Highest and Best Management Practices at the time of any application under the rules.

If approved by the Planning Commission, the proposed rules will be submitted for consideration of adoption by the Stillwater County Board of County Commissioners. Adoption of the rules by the Stillwater County Board of County Commissioners is necessary before the rules become effective.



## Proposed Stillwater County Beartooth Front District

### Reference Materials Regarding Selected Possible Impacts of Oil and Gas Activity

#### I. Background Regarding Recent Studies

Improvements in drilling technology that have enabled oil and gas booms in eastern Montana, North Dakota and elsewhere have changed the relationship between communities and oil and gas operations. Whereas drilling once occurred primarily in remote areas, these new technologies have brought oil and gas wells into close contact with people. By the summer of 2013, according to the *Wall Street Journal*, "at least 15.3 million Americans live within a mile of a well that has been drilled since 2000".

Because these changes have been recent, scientific research is just beginning to help us understand the impact of putting people close to oil and gas operations. According to a "Compendium of Scientific, Medical, and Media Findings" published by Concerned Health Professionals of New York and Physicians for Social Responsibility, "Our knowledge base is very young. The study citation database...shows that over half of the available studies on the adverse impacts of shale and tight gas development have been published since January 2014. In 2014, 192 peer-reviewed studies on these impacts were published. In the first six months of 2015, 103 studies appeared" (a peer-reviewed document has been reviewed by other professionals in the subject matter area and tends to carry greater authority as compared to a non-peer-reviewed document). (Retrieved from <http://concernedhealthny.org/wp-content/uploads/2012/11/PSR-CHPNY-Compendium-3.0.pdf>.) What these studies show is that oil and gas development, in close proximity to communities, may cause substantial harm regarding water quality, air quality, and human health.

We believe that such studies are relevant to the consideration by the Stillwater County Commissioners of whether granting the Petition dated September 12, 2014, is in the public interest or convenience.

This document provides a brief listing of recently-published peer-reviewed and other scientific studies identifying the potential for impacts of oil and gas drilling in the following areas:

- a. Water quality
- b. Air quality
- c. Possible consequences of faulty wellpad engineering
- d. Noise, light, and related human stress
- e. Agriculture and soil quality
- f. Other public health issues

#### II. Water Quality

A. June 16, 2015 – A University of Texas research team documented widespread drinking water contamination throughout the Barnett Shale region in northern Texas. The study, which analyzed 550 water samples from public and private water wells, found elevated levels of 19 different hydrocarbon

compounds associated with oil and gas drilling (including the carcinogen benzene and the reproductive toxicant, toluene), detections of methanol and ethanol, and strikingly high levels of 10 different metals.

Source: Hildenbrand, Z. L., Carlton, D. D., Fontenot, B. E., Meik, J. M., Walton, J.L., Taylor, J. T., Schug, K.A. (2015) "A comprehensive analysis of groundwater quality in the Barnett Shale region". *Environmental Science & Technology*, 49(13), 8254-62. doi: 10.1021/acs.est.5b01526

B. June 5, 2015 – The U.S. Environmental Protection Agency's (EPA) 600-page draft report on the potential impacts of fracking for drinking water resources confirmed specific instances of drinking water contamination linked to drilling and fracking activities. The report also identified potential mechanisms, both above and below ground, by which drinking water resources can be contaminated by fracking. In some cases, drinking water was contaminated by spills of fracking fluid and wastewater. In other cases, "[b]elow ground movement of fluids, including gas ... have contaminated drinking water resources." The EPA investigators documented 457 fracking-related spills over six years but acknowledged that they do not know how many more may have occurred. Of the total known spills, 300 reached an environmental receptor such as surface water or groundwater.

Source: U.S. EPA. (2015). "Assessment of the potential impacts of hydraulic fracturing for oil and gas on drinking water resources" (External review draft). U.S. Environmental Protection Agency, Washington, DC, EPA/600/R-15/047, 2015. Retrieved from <http://cfpub.epa.gov/ncea/hfstudy/recordisplay.cfm?deid=244651>

### III. Air Quality

A. April 15, 2015 – In a review of scientific literature, Colorado researchers demonstrated that four common chemical air pollutants from drilling operations—benzene, toluene, ethylbenzene, and xylene (BTEX)—are endocrine disruptors commonly found in ambient air that have the ability to interfere with human hormones at low exposure levels, including at concentrations well below EPA recommended exposure limits. Among the health conditions linked to ambient level exposures to the BTEX family of air pollutants: sperm abnormalities, reduced fetal growth, cardiovascular disease, respiratory dysfunction, and asthma.

Source: Bolden, A. L., Kwiatkowski, C. F., & Colborn, T. (2015). "New look at BTEX: are ambient levels a problem?" *Environmental Science & Technology*, 49, 5261-76. doi: 10.1021/es505316f

B. March 26, 2015 – Working with citizen volunteers, a team led by Oregon State University researchers installed passive air samplers in the backyard properties of residents living within three miles of petroleum wells in rural Ohio. They found levels of polycyclic aromatic hydrocarbons that surpassed those measured in downtown Chicago, were ten times higher than those found in other rural areas without drilling operations, and exceeded the EPA's maximum acceptable risk level for cancer. Using standard EPA methodologies, researchers determined that the excess lifetime cancer risk for residents living nearest the wells was about 45 percent higher than for residents living farthest from them and three times higher than the EPA's acceptable risk level of 1 in 10,000.

Source: Lockwood, D. (2015, April 8). "Fracking activities pollute nearby air with carcinogenic hydrocarbons". *Chemical & Engineering News*. Retrieved from <http://cen.acs.org/articles/93/web/2015/04/Fracking-Activities-Pollute-Nearby-Air.html>

C. October 21, 2014 – Using a mobile laboratory designed by the National Oceanic and Atmospheric Administration (NOAA), a research team from the University of Colorado at Boulder, the NOAA Earth System Research Laboratory, and the Karlsruhe Institute of Technology looked at air pollution from drilling operations in Utah's Uintah Basin. The researchers found that drilling and fracking emit large amounts of volatile organic air pollutants, including benzene, toluene, and methane, all of which are precursors for ground-level ozone (smog). Multiple pieces of equipment on and off the well pad, including condensate tanks, compressors, dehydrators, and pumps, served as the sources of these emissions. This research shows that drilling activities are the cause of the extraordinarily high levels of winter smog in the remote Uintah basin—which regularly exceed air quality standards and rival that of downtown Los Angeles.

Source: Warneke, C., Geiger, F., Edwards, P. M., Dube, W., Pétron, G., Kofler, J, Roberts, J. M. (2014). "Volatile organic compound emissions from the oil and natural gas industry in the Uintah Basin, Utah: oil and gas well pad emissions compared to ambient air composition". *Atmospheric Chemistry and Physics*, 14, 10977-10988. doi: 10.5194/acp-14-10977-2014

#### IV. Possible Consequences from Faulty Wellpad Engineering

A. July 9, 2015 – As part of a larger examination of the potential health and environmental impacts of oil and gas drilling in California, the California Council on Science and Technology (CCST) documented cases of well failures triggered by underground movements that caused well casings to shear. Sheared well casings can allow gas and fluids from the drilling zone to migrate to overlying aquifers. The CCST team identified several mechanisms by which casing shears can occur in California as oil wells age: surface subsidence, heaving, reservoir compaction, and earthquakes. Prolonged drought can also damage the integrity of well casings: as groundwater levels fall, landforms can sink and contribute to casing shear.

Source: Stringfellow, W. T., Cooley H., Varadharajan, C., Heberger, M., Reagan, M. T., Domen, J.K., Sandelin, W., Houseworth, J. E. (2015, July 9). Volume II, Chapter 2: "Impacts of well stimulation on water resources". In: *An Independent Scientific Assessment of Well Stimulation in California*. California Council on Science and Technology, Sacramento, CA. Retrieved from <http://ccst.us/publications/2015/vol-II-chapter-2.pdf>

B. June 30, 2014 – A study published in *Proceedings of the National Academy of Sciences* by a Cornell University research team projected that over 40 percent of shale gas wells in Northeastern Pennsylvania will leak methane into groundwater or the atmosphere over time. Analyzing more than 75,000 state inspections of more than 41,000 oil and gas wells in Pennsylvania since 2000, the researchers identified high occurrences of casing and cement impairments inside and outside the wells. A comparative analysis showed that newer, unconventional (horizontally fracked) shale gas wells were leaking at six times the rate of conventional (vertical) wells drilled over the same time period. The leak rate for unconventional wells drilled after 2009 was at least six percent, and rising with time. In the state's northeastern counties

between 2000-2012, over nine percent of shale gas wells drilled leaked within the first five years. The study also discovered that over 8,000 oil and gas wells drilled since 2000 had not received a facility-level inspection. This study helps explain the results of earlier studies that documented elevated levels of methane in drinking water aquifers located near drilling and fracking operations in Pennsylvania and points to compromised structural integrity of well casings and cement as a possible mechanism.

Source: Ingraffea, A., Wells, M., Santoro, R., & Shonkoff, S. (2014). "Assessment and risk analysis of casing and cement impairment in oil and gas wells in Pennsylvania, 2000–2012". Proceedings of the National Academy of Sciences. Retrieved from <http://www.pnas.org/content/early/2014/06/25/1323422111.abstract>

C. June 4, 2015 – As part of a draft assessment of the impact of drilling on drinking water, the U.S. EPA examined cases of water contamination across the United States and concluded that "construction issues, sustained casing pressure, and the presence of natural faults and fractures can work together to create pathways for fluids to migrate toward drinking water resources." Fracking older wells poses additional risks, the draft study notes, because aging itself "can contribute to casing degradation, which can be accelerated by exposure to corrosive chemicals, such as hydrogen sulfide, carbonic acid, and brines"

Source: U.S. Environmental Protection Agency (2015, June 30). Assessment of the Potential Impacts of Hydraulic Fracturing for Oil and Gas on Drinking Water Resources, executive summary (draft). Retrieved from [http://www2.epa.gov/sites/production/files/2015-06/documents/hf\\_es\\_erd\\_jun2015.pdf](http://www2.epa.gov/sites/production/files/2015-06/documents/hf_es_erd_jun2015.pdf)

#### V. Noise, Light, and Related Human Stress

A. July 9, 2015 - As part of its assessment of potential health impacts, the California Council of Science and Technology looked at the impacts of noise and light pollution from oil and gas operations in California. The researchers noted that a number of activities associated with drilling and fracking generated noise levels greater than that considered dangerous to public health. Noise is a biological stressor that can aggravate or contribute to the development of hypertension and heart problems. In California, noise from well stimulation was associated with both sleep disturbance and cardiovascular disease in a dose-response relationship. Exposure to artificial light at night has been linked to breast cancer in women.

Source: Shonkoff, S.B.C., Jordan, P., Hays, J., Stringfellow, W.T., Wettstein, Z.S., Harrison, R., Sandelin, W., & McKone, T.E. (2015, July 9). Volume II, Chapter 6: Potential impacts of well stimulation on human health in California. In: An Independent Scientific Assessment of Well Stimulation in California. California Council on Science and Technology, Sacramento, CA. Retrieved from <http://ccst.us/publications/2015/vol-II-chapter-6.pdf>

#### VI. Agriculture and Soil Quality

A. April 24, 2015 – Unconventional technologies in gas and oil extraction facilitated the drilling of an average of 50,000 new wells per year in North America over the past 15 years. An interdisciplinary study

published in *Science* demonstrated that the accumulating land degradation has resulted in continent-wide impacts, as measured by the reduced amount of carbon absorbed by plants and accumulated as biomass. This is a robust metric of essential ecosystem services, such as food production, biodiversity, and wildlife habitat, and its loss “is likely long-lasting and potentially permanent.” The land area occupied by well pads, roads, and storage facilities built during this period is approximately three million hectares, roughly the land area of three Yellowstone National Parks. The authors concluded that new approaches to land use planning and policy are “necessary to achieve energy policies that minimize ecosystem service losses.”

Source: Allred, B. W., Kolby Smith, W., Tridwell, D., Haggerty, J. H., Running, S. W., Naugle, D. E., & Fuhlendorf, S. D. (2015). “Ecosystem services lost to oil and gas in North America”. *Science*, 348 (6233), 401-402.

B. January 26, 2015 – Two Colorado scientists performed a detailed analysis of vegetative patterns – followed chronologically – over a selected group of well pads in Colorado managed by the U.S. Bureau of Land Management, including two undisturbed reference sites. They documented the disturbance of plant and soil systems linked to contemporary oil and gas well pad construction, and found that none of the oil and gas well pads included in the study returned to pre-drilling condition, even after 20 to 50 years. Full restoration may require decades of intensive effort.

Source: Minnick, T. J. & Alward, R. D. (2015). Plant–soil feedbacks and the partial recovery of soil spatial patterns on abandoned well pads in a sagebrush shrubland. *Ecological Applications* 25(1), 3-10.

## VII. Other Public Health Issues

A. July 15, 2015 – A study by University of Pennsylvania and Columbia University researchers found that drilling activity was associated with increased rates of hospitalization in Pennsylvania. During a period of dramatic increase in drilling and fracking activity between 2007 and 2011, inpatient prevalence rates surged for people living near shale gas wells. Cardiology inpatient prevalence rates were significantly associated with number of wells per zip code and their density, while neurology inpatient prevalence rates were significantly associated with density of wells. Hospitalizations for cancer, skin conditions, and urological problems also rose significantly.

Source: Schlanger, Z. (2015, July 15). Living near fracking wells linked to increased hospitalization rates. *Newsweek*. Retrieved from <http://www.newsweek.com/living-near-fracking-wells-linked-increased-hospitalization-rates-354093>

B. June 3, 2015 – A University of Pittsburgh study linked drilling to low birthweight in three heavily drilled Pennsylvania counties. The more exposure a pregnant woman had to gas wells, the higher her risk for a smaller-than-normal baby. Exposure was determined as proximity and density of wells in relation to the residence of the pregnant woman. Compared to mothers whose homes had the fewest surrounding gas wells, mothers whose homes were nearest to a high density of wells were 34 percent more likely to have babies who were “small for gestational age,” meaning they weighed significantly less

than expected for the number of weeks of pregnancy. Low birth weight is a leading cause of infant mortality.

Source: Preidt, R. (2015, June 3). 'Fracking' linked to low birth weight babies, WebMD. Retrieved from <http://www.webmd.com/parenting/baby/news/20150603/fracking-linked-to-low-birth-weight-babies>

# **EXHIBIT D**

Bethany A. Gross (MT Bar #44197891)  
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*Attorneys for Defendants*

MONTANA TWENTY-SECOND JUDICIAL DISTRICT, STILLWATER COUNTY

BEARTOOTH FRONT COALITION,  
LAZY Y DIAMOND BAR LP, LANA  
and CHARLES J. SANGMEISTER,  
WILLIAM A. and CAROLYN F. HAND,  
and MARGARET BARRON and  
DOXEY RAY HATCH.

Plaintiffs,

v.

BOARD OF COUNTY  
COMMISSIONERS, STILLWATER  
COUNTY, and HEIDI STADEL, in her  
capacity as Clerk and Recorder of  
Stillwater County,

Defendants.

Cause No.: DV-18-12

**AFFIDAVIT OF PATRICK J.  
PADON IN SUPPORT OF  
DEFENDANTS' CROSS-  
MOTION FOR SUMMARY  
JUDGMENT**

I, Patrick J. Padon, declare under penalty of perjury that the following facts are true and correct to the best of my information and belief:

1. I, Patrick J. Padon, am over the age of 18 years.
2. I have worked as a professional Landman in the oil and gas industry for 20 years. Currently, I work as an Independent Landman. I am third generation Landman. With my Grandfather being an executive/trustee



with Warren Petroleum of Tulsa Oklahoma. My father and his brother were a contract Landman that came to the Rocky Mountain region in the early 1940's with Gulf Oil. I also have two older siblings in the business for over thirty years. I have a nephew in the business. I have worked extensively throughout Montana, Wyoming, North Dakota, South Dakota, Nebraska, Colorado, Idaho and Washington.

3. As a professional Independent Landman, I conduct mineral title reviews whereby I identify mineral interest owners and their acreage of minerals owned in parcels of land. I contract on behalf of oil and gas companies who may be interested in developing an area for mineral production.

4. Anyone has the ability to determine who mineral interest owners are by reviewing the deeds and other conveyances recorded with the relevant county where the subject property is located.

5. Mineral title review begins with the patent from the United States and following the chain of title through subsequent deeds and other similar instruments until the last recorded document evidencing ownership of the current owner is reached.

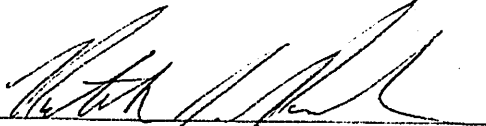
6. On three different occasions I have been hired to do Mineral Ownerships in Stillwater County of Montana. My most recent work along the Beartooth Front was February, 2012 to September, 2012. I conducted a mineral title review as well as Leasing the interests discovered along the Beartooth Front on behalf of an oil and gas company interested in that area for oil and gas leasing and development.

7. It took me, approximately ninety-five days to conduct that mineral title review covering approximately 13,000 acres.
8. The total cost of that mineral title review was \$47,500.00.
9. Once I identified the current mineral interest owners, I contacted them to gauge their interest in potentially leasing their minerals to the interested oil and gas company. The title run at this time frame was very manageable and straight forward. It is very possible to do a mineral title search for the area in question.

I declare under the penalty of perjury that the foregoing is true and correct.

FURTHER AFFIANT SAYETH NAUGHT.

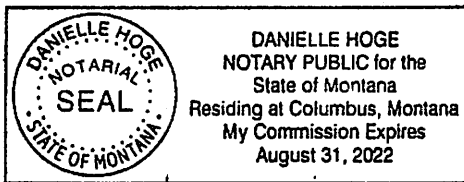
RESPECTFULLY SUBMITTED this 30th day of October, 2018.

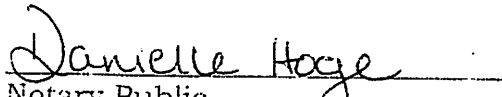
  
 Patrick J. Padon

STATE OF MONTANA )  
 ) ss.  
 COUNTY OF Stillwater )

The foregoing instrument was acknowledged before me this 30th day of October, 2018, by Patrick J. Padon.

Witness my hand and official seal.



  
 Notary Public

# **EXHIBIT E**

Bethany A. Gross (MT Bar #44197891)  
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*Attorneys for Defendants*

MONTANA TWENTY-SECOND JUDICIAL DISTRICT, STILLWATER COUNTY

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BOARD OF COUNTY  
COMMISSIONERS, STILLWATER  
COUNTY, and HEIDI STADEL, in her  
capacity as Clerk and Recorder of  
Stillwater County,

Defendants.

Cause No.: DV-18-12

**AFFIDAVIT OF KEITH  
MARTIN IN SUPPORT OF  
DEFENDANTS' CROSS-  
MOTION FOR SUMMARY  
JUDGMENT**

I, Keith Martin, declare under penalty of perjury that the following facts are true and correct to the best of my information and belief:

1. I, Keith Martin, am over the age of 18 years.
2. I am a rancher in Nyc, Montana. My family and I have lived and ranched in this area going back to 1947.

3. My property lies just outside the boundaries of the zoning district proposed by Plaintiffs in this case, however, both me and my wife owns minerals that are located within the proposed zone.

4. My grandfather passed those minerals on to me, my brothers and my sister through a trust, which I managed until the trust was dissolved and the mineral rights were allocated between me and my siblings.

5. The minerals I own are located in Township 5 South, Range 16 East, Section 14: NE $\frac{1}{4}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ NW $\frac{1}{4}$ , NW $\frac{1}{4}$ SW $\frac{1}{4}$ ; Section 15: NE $\frac{1}{4}$ , N $\frac{1}{2}$ NW $\frac{1}{4}$ ; Section 16: N $\frac{1}{2}$ NE $\frac{1}{4}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$ ; and Section 9: SE $\frac{1}{4}$ SE $\frac{1}{4}$ .

6. In the past those minerals have been leased and I received payments. Those minerals are not currently leased, but I would be willing to lease them again if approached with such an opportunity.

7. I did not sign Plaintiffs' petition to create the zoning district, nor do I support the creation of a zoning district encompassing my minerals whose purpose is to regulate oil and gas.

8. Regulation of oil and gas development is regulated by the State, and changes to State regulations should be done through the State legislature.

9. I feel that if a zoning district to regulate oil and gas were to be created, I would suffer a negative impact to my mineral rights. Too many restrictions will prevent oil and gas companies from considering the area for any development, thereby preventing me from making use of my mineral

rights. Therefore, Plaintiffs' proposed zone would infringe on my property rights.

10. Many of the people who signed Plaintiffs' petition are small tract owners who do not own enough land to support a drill site. Yet, those small tract owners seek to exert control over other, larger landowners several miles away.

11. Many of the other people who signed Plaintiffs' petition are summer-home owners who do not reside within the area year-round. As such, they represent outside interests more so than landowners such as me who have lived and ranched in this area for generations.

I declare under the penalty of perjury that to the best of my knowledge the foregoing is true and correct.

FURTHER AFFIANT SAYETH NAUGHT.

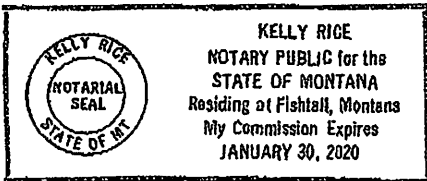
EXECUTED this 25 day of October, 2018.

*Keith Martin*  
\_\_\_\_\_  
Keith Martin

STATE OF MONTANA            )  
  )ss.  
COUNTY OF STILLWATER    )

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of October, 2018, by Keith Martin.

Witness my hand and official seal.



*Kelly Rice*  
\_\_\_\_\_  
Notary Public

# **EXHIBIT F**

Bethany A. Gross (MT Bar #44197891)  
BUDD-FALEN LAW OFFICES, LLC  
300 East 18<sup>th</sup> Street  
Post Office Box 346  
Cheyenne, Wyoming 82003-0346  
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(307) 637-3891 Facsimile  
[bethany@buddfalen.com](mailto:bethany@buddfalen.com)

Nancy L. Rohde  
Stillwater County Attorney  
P.O. Box 179  
Columbus, MT 59019  
406-322-4333 - Telephone  
406-322-4688 - Facsimile

*Attorneys for Defendants*

MONTANA TWENTY-SECOND JUDICIAL DISTRICT, STILLWATER COUNTY

BEARTOOTH FRONT COALITION,  
LAZY Y DIAMOND BAR LP, LANA  
and CHARLES J. SANGMEISTER,  
WILLIAM A. and CAROLYN F. HAND,  
and MARGARET BARRON and  
DOXEY RAY HATCH,

Plaintiffs,

v.

BOARD OF COUNTY  
COMMISSIONERS, STILLWATER  
COUNTY, and HEIDI STADEL, in her  
capacity as Clerk and Recorder of  
Stillwater County,

Defendants.

Cause No.: DV-18-12

**AFFIDAVIT OF TERRY  
EKWORTZEL IN SUPPORT OF  
DEFENDANTS' CROSS-  
MOTION FOR SUMMARY  
JUDGMENT**

I, Terry Ekwortzel, declare under penalty of perjury that the following facts are true and correct to the best of my information and belief:

1. I, Terry Ekwortzel, am over the age of 18 years.
2. I am a rancher in Nye, Montana on the Ekwortzel Ranch. My family and I have lived here since homesteading in 1896.



3. My property lies within the boundaries of the zoning district proposed by Plaintiffs in this case including my mineral rights.

4. The minerals I own are located in Township 4 South, Range 16 East, Sections 28, 29, 31 and 32 described as follows: (Parcel 1) Tract A on Plat No. 169765, Excepting therefrom Tract B on Certificate of Survey No. 279853; Tracts A and C on Certificate of Survey No. 279853; Tract D on Plat No. 169765, Excepting therefrom Tract D on Certificate of Survey No. 279853; Tract E on Certificate of Survey No. 279853; and Tract C on Plat No. 169765. For Parcel 2: Township 4 South, Range 16 East, Section 32: Tract in NE $\frac{1}{4}$ SW $\frac{1}{4}$  as shown on Plat No. 169765; and Section 31: Tract in Lots 3 and 4, SE $\frac{1}{4}$ SW $\frac{1}{4}$ , SW $\frac{1}{4}$ SE $\frac{1}{4}$  as shown on Plat No. 181815 and Tract on Plat No. 202077, Excepting therefrom Plat No. 202451. For Parcel 3: Township 4 South, Range 16 East, Section 31: Tract in SW $\frac{1}{4}$ SE $\frac{1}{4}$  as shown on Plat No. 197939.

5. In the past those minerals were leased and my family received mineral lease payments. Those minerals are not currently leased, but I would be willing to lease them again if approached with such an opportunity.

6. I did not sign Plaintiffs' petition to create the zoning district, nor do I support the creation of a zoning district encompassing my minerals whose purpose is to regulate oil and gas.

7. I feel that if a zoning district to regulate oil and gas were to be created, my land and mineral rights would be devalued. Regulations on top of what is already regulated by the State will prevent oil and gas companies

from considering the area for any development, thereby preventing me from making use of my mineral rights and infringing on my property rights.

8. My family and I feel pretty small and helpless when it comes to the money living on our mountain sides. There are only four original real working family ranches left in our beautiful valley that is now being considered "Recreational Land."

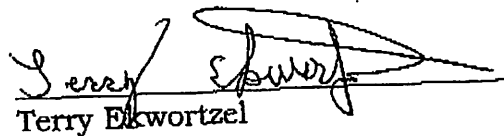
9. These individuals, such as the people who signed Plaintiffs' petition, with the time and money on their hands make life even harder for us. We work too much and have too little money to fight back and protect our way of life. It is incredibly frustrating and I fully understand the phrase "getting squeezed out."

10. Nevertheless, our ranch and property rights are very important to us as a way to preserve our heritage and way of life.

I declare under the penalty of perjury that to the best of my knowledge the foregoing is true and correct.

FURTHER AFFIANT SAYETH NAUGHT.

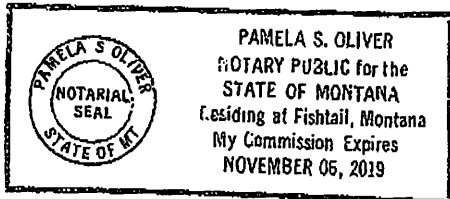
EXECUTED this 26 day of October, 2018.

  
Terry Edwartzel

STATE OF MONTANA )  
 ) ss.  
COUNTY OF STILLWATER )

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of October, 2018, by Terry Ekwortzel.

Witness my hand and official seal.



Pamela S. Oliver  
Notary Public

# **EXHIBIT G**

ATTN. <sup>112</sup> B. Gross  
A. Bachman

Bethany A. Gross (MT Bar #44197891)  
BUDD-FALEN LAW OFFICES, LLC  
300 East 18<sup>th</sup> Street  
Post Office Box 346  
Cheyenne, Wyoming 82003-0346  
(307) 632-5105 Telephone  
(307) 637-3891 Facsimile  
bethany@buddfalen.com

Nancy L. Rohde  
Stillwater County Attorney  
P.O. Box 179  
Columbus, MT 59019  
406-322-4333 - Telephone  
406-322-4688 - Facsimile

Attorneys for Defendants

MONTANA TWENTY-SECOND JUDICIAL DISTRICT, STILLWATER COUNTY

BEARTOOTH FRONT COALITION,	)	Cause No.: DV-18-12
LAZY Y DIAMOND BAR, L.P., LANA	)	
and CHARLES J. SANGMEISTER,	)	<b>AFFIDAVIT OF ROBERT KIRCH IN</b>
WILLIAM A. and CAROLYN F. HAND,	)	<b>SUPPORT OF DEFENDANTS'</b>
and MARGARET BARRON and	)	<b>CROSS-MOTION FOR SUMMARY</b>
DOXEY RAY HATCH,	)	<b>JUDGMENT</b>
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
BOARD OF COUNTY	)	
COMMISSIONERS, STILLWATER	)	
COUNTY, and HEIDI STADEL, in her	)	
capacity as Clerk and Recorder of	)	
Stillwater County,	)	
	)	
Defendants.	)	
—	)	

I, Robert Kirch, declare under penalty of perjury that the following facts are true and correct to the best of my information and belief:

1. I, Robert Kirch, am over the age of 18 years.
2. I am a rancher in Nye, Montana. My family and I have lived and ranched in this area for generations.
3. The ranch property is currently in a trust, of which I am the trustee. The ranch property lies within the area of the zoning district proposed by Plaintiffs in this case.
4. The legal description for the ranch land and minerals is Township 5 South, Range 16 East, Section 2: W $\frac{1}{2}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ ; Section 3: S $\frac{1}{4}$ SE $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$ , S $\frac{1}{4}$ SW $\frac{1}{4}$ , NE $\frac{1}{4}$ , NE $\frac{1}{4}$ SE $\frac{1}{4}$ , less Certificate of Survey No. 352646 and Highway 419; Section 16: N $\frac{1}{2}$ NE $\frac{1}{4}$ , SW $\frac{1}{2}$ NE $\frac{1}{4}$ ; Section 9: E $\frac{1}{2}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ SE $\frac{1}{4}$ ; Section 10: NE $\frac{1}{4}$ , NW $\frac{1}{4}$ , NW $\frac{1}{4}$ SW $\frac{1}{4}$ , less Highway 419; and Section 11: NW $\frac{1}{4}$ , NW $\frac{1}{4}$ SW $\frac{1}{4}$ , a portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$  and SW $\frac{1}{4}$ SW $\frac{1}{4}$  lying North of

~~Chrome Road, 1888 Highway 419.~~

5. In the past those minerals have been leased and my grandfather was able to pay off the property taxes for the ranch from the mineral lease payments received. Those minerals are not currently leased, but I would be willing to lease them again if approached with such an opportunity.

6. The people who approached me and presented me with Plaintiffs' petition were not clear as to what they were trying to do in creating the zoning district. It seemed as though they were trying to prohibit oil and gas development in the area. I did not sign Plaintiffs' petition to create the zoning district.

7. I do not support the creation of a zoning district encompassing my minerals whose purpose is to regulate oil and gas.

8. I would suffer a negative impact to my mineral rights if a zoning district were created to regulate oil and gas. Too many restrictions will prevent oil and gas companies from considering the area for any development. Oil and gas companies must keep tight budgets, so if they cannot build roads or make other uses of the surface, they will go somewhere else. This would prevent me from making use of my mineral rights.

9. Many of the people who signed Plaintiffs' petition are new to the area or are summer-home owners who do not reside within the area year-round. Those people who signed the petition represent outside interests more so than landowners such as me who have lived and ranched in this area for generations.

I declare under the penalty of perjury that to the best of my knowledge the foregoing is true and correct.

FURTHER AFFIANT SAYETH NAUGHT.

EXECUTED this 29 day of October, 2018.

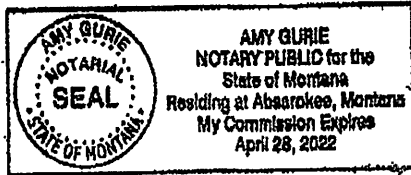
Robert Kirch  
Robert Kirch

STATE OF MONTANA        )  
  )ss.  
COUNTY OF STILLWATER    )

The foregoing instrument was acknowledged before me this 29 day of October, 2018, by Robert Kirch.

Witness my hand and official seal.

Amy Gurie  
Notary Public



Bethany A. Gross (MT Bar #44197891)  
BUDD-FALEN LAW OFFICES, LLC  
300 East 18<sup>th</sup> Street  
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(307) 637-3891 Facsimile  
[bethany@buddfalen.com](mailto:bethany@buddfalen.com)

Nancy L. Rohde  
Stillwater County Attorney  
P.O. Box 179  
Columbus, MT 59019  
406-322-4333 - Telephone  
406-322-4688 - Facsimile

*Attorneys for Defendants*

MONTANA TWENTY-SECOND JUDICIAL DISTRICT, STILLWATER COUNTY

BEARTOOTH FRONT COALITION,  
LAZY Y DIAMOND BAR LP, LANA  
and CHARLES J. SANGMEISTER,  
WILLIAM A. and CAROLYN F. HAND,  
and MARGARET BARRON and  
DOXEY RAY HATCH,

Plaintiffs,

v.

BOARD OF COUNTY  
COMMISSIONERS, STILLWATER  
COUNTY, and HEIDI STADEL, in her  
capacity as Clerk and Recorder of  
Stillwater County,

Defendants.

Cause No.: DV-18-12

**AFFIDAVIT OF ROBERT  
KIRCH IN SUPPORT OF  
DEFENDANTS' CROSS-  
MOTION FOR SUMMARY  
JUDGMENT**

I, Robert Kirch, declare under penalty of perjury that the following facts are true and correct to the best of my information and belief:

1. I, Robert Kirch, am over the age of 18 years.
2. I am a rancher in Nye, Montana. My family and I have lived and ranched in this area for generations.

3. The ranch property is currently in a trust, of which I am the trustee. The ranch property lies within the area of the zoning district proposed by Plaintiffs in this case.

4. The legal description for the ranch land and minerals is Township 5 South, Range 16 East, Section 2: W $\frac{1}{2}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ ; Section 3: S $\frac{1}{2}$ SE $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$ , S $\frac{1}{2}$ SW $\frac{1}{4}$ , NE $\frac{1}{4}$ , NE $\frac{1}{4}$ SE $\frac{1}{4}$ , less Certificate of Survey No. 352646 and Highway 419; Section 16: N $\frac{1}{2}$ NE $\frac{1}{4}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$ ; Section 9: E $\frac{1}{2}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ SE $\frac{1}{4}$ ; Section 10: NE $\frac{1}{4}$ , NW $\frac{1}{4}$ , NW $\frac{1}{4}$ SW $\frac{1}{4}$ , less Highway 419; and Section 11: NW $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ , a fraction of the NW $\frac{1}{4}$ SW $\frac{1}{4}$  and SE $\frac{1}{4}$ SW $\frac{1}{4}$  lying North of Chrome Road, less Highway 419.

5. In the past those minerals have been leased and my grandfather was able to pay off the property taxes for the ranch from the mineral lease payments received. Those minerals are not currently leased, but I would be willing to lease them again if approached with such an opportunity.

6. The people who approached me and presented me with Plaintiffs' petition were not clear as to what they were trying to do in creating the zoning district. It seemed as though they were trying to prohibit oil and gas development in the area. I did not sign Plaintiffs' petition to create the zoning district.

7. I do not support the creation of a zoning district encompassing my minerals whose purpose is to regulate oil and gas.

8. I would suffer a negative impact to my mineral rights if a zoning district were created to regulate oil and gas. Too many restrictions will



prevent oil and gas companies from considering the area for any development. Oil and gas companies must keep tight budgets, so if they cannot build roads or make other uses of the surface, they will go somewhere else. This would prevent me from making use of my mineral rights.

9. Many of the people who signed Plaintiffs' petition are new to the area or are summer-home owners who do not reside within the area year-round. Those people who signed the petition represent outside interests more so than landowners such as me who have lived and ranched in this area for generations.

I declare under the penalty of perjury that to the best of my knowledge the foregoing is true and correct.

FURTHER AFFIANT SAYETH NAUGHT.

EXECUTED this \_\_ day of October, 2018.

\_\_\_\_\_  
Robert Kirch

STATE OF MONTANA            )  
  )ss.  
COUNTY OF STILLWATER    )

The foregoing instrument was acknowledged before me this \_\_ day of October, 2018, by Robert Kirch.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

# **EXHIBIT H**

Bethany A. Gross (MT Bar #44197891)  
BUDD-FALEN LAW OFFICES, LLC  
300 East 18<sup>th</sup> Street  
Post Office Box 346  
Cheyenne, Wyoming 82003-0346  
(307) 632-5105 Telephone  
(307) 637-3891 Facsimile  
[bethany@buddfalen.com](mailto:bethany@buddfalen.com)

Nancy L. Rohde  
Stillwater County Attorney  
P.O. Box 179  
Columbus, MT 59019  
406-322-4333 - Telephone  
406-322-4688 - Facsimile

*Attorneys for Defendants*

MONTANA TWENTY-SECOND JUDICIAL DISTRICT, STILLWATER COUNTY

BEARTOOTH FRONT COALITION,  
LAZY Y DIAMOND BAR LP, LANA  
and CHARLES J. SANGMEISTER,  
WILLIAM A. and CAROLYN F. HAND,  
and MARGARET BARRON and  
DOXEY RAY HATCH,

Plaintiffs,

v.

BOARD OF COUNTY  
COMMISSIONERS, STILLWATER  
COUNTY, and HEIDI STADEL, in her  
capacity as Clerk and Recorder of  
Stillwater County,

Defendants.

Cause No.: DV-18-12

**AFFIDAVIT OF HENRY  
BRALY IN SUPPORT OF  
DEFENDANTS' CROSS-  
MOTION FOR SUMMARY  
JUDGMENT**

I, Henry Braly, declare under penalty of perjury that the following facts are true and correct to the best of my information and belief:

1. I, Henry Braly, am over the age of 18 years.
2. I own Braly Land Co. LLC, known in Montana as Braly Land LLC,

which owns minerals on two parcels of land within the area where Plaintiffs

in this case have proposed a zoning district that would regulate oil and gas development.

3. The legal description for the minerals is Section 31: SE1/4NW1/4 NE1/4SW1/4 SW1/4NE1/4 N1/2SE1/4 Section32: NW1/4SW1/4 described as Tract Bon Plat No. 169765 And: Buffalo Jump Ranch, Lower Portion Lot 97 shown on Certificate of Survey No. 209938

4. Those minerals are not currently leased, but I would be willing to lease them if approached with such an opportunity.

5. I did not sign Plaintiffs' petition to create the zoning district, nor do I support the creation of a zoning district encompassing my minerals whose purpose is to regulate oil and gas.

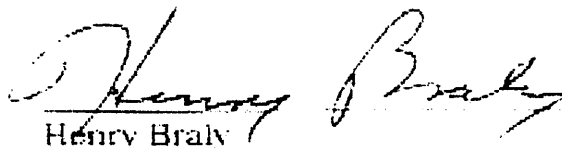
6. I would suffer a negative impact to my mineral rights if a zoning district were created to regulate oil and gas. My mineral rights would be negatively impacted because they would no longer be marketable thus becoming worthless!

7. In my opinion this would be an illegal taking of value from my property.

I declare under the penalty of perjury that to the best of my knowledge the foregoing is true and correct.

FURTHER AFFIANT SAYETH NAUGHT.

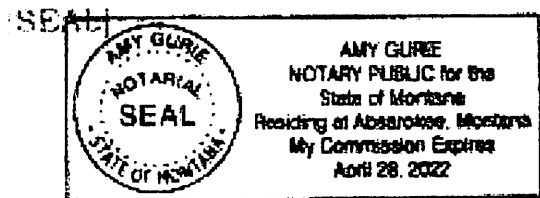
EXECUTED this 26<sup>th</sup> day of October, 2018.


  
Henry Braly

STATE OF Montana )  
 )ss.  
COUNTY OF Stillwater )

The foregoing instrument was acknowledged before me this 26th day of October, 2018, by Henry Braly.

Witness my hand and official seal.



  
Notary Public  
My commission expires: April 28, 2022

# **EXHIBIT I**

Bethany A. Gross (MT Bar #44197891)  
BUDD-FALEN LAW OFFICES, LLC  
300 East 18<sup>th</sup> Street  
Post Office Box 346  
Cheyenne, Wyoming 82003-0346  
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(307) 637-3891 Facsimile  
[bethany@buddfalen.com](mailto:bethany@buddfalen.com)

Nancy L. Rohde  
Stillwater County Attorney  
P.O. Box 179  
Columbus, MT 59019  
406-322-4333 - Telephone  
406-322-4688 - Facsimile

*Attorneys for Defendants*

MONTANA TWENTY-SECOND JUDICIAL DISTRICT, STILLWATER COUNTY

BEARTOOTH FRONT COALITION, )  
LAZY Y DIAMOND BAR LP, LANA )  
and CHARLES J. SANGMEISTER, )  
WILLIAM A. and CAROLYN F. HAND, )  
and MARGARET BARRON and )  
DOXEY RAY HATCH, )

Plaintiffs,

v.

BOARD OF COUNTY )  
COMMISSIONERS, STILLWATER )  
COUNTY, and HEIDI STADEL, in her )  
capacity as Clerk and Recorder of )  
Stillwater County, )

Defendants.

Cause No.: DV-18-12

**AFFIDAVIT OF ROBERT  
McKINSEY IN SUPPORT OF  
DEFENDANTS' CROSS-  
MOTION FOR SUMMARY  
JUDGMENT**

I, Robert McKinsey, declare under penalty of perjury that the following facts are true and correct to the best of my information and belief:

1. I, Robert McKinsey, am over the age of 18 years.
2. I am a long-time rancher in Nye, Montana. My family and I have lived here for many years since my grandparents homesteaded the ranch in the early 1900s.

3. My property lies within the boundaries of the zoning district proposed by Plaintiffs in this case including my mineral rights.

4. The legal description for the ranch land and minerals is Township 4 South, Range 15 East, Section 17: (Parcel 1) SE $\frac{1}{4}$ SW $\frac{1}{4}$ , SW $\frac{1}{4}$ SE $\frac{1}{4}$ ; and Section 20: E $\frac{1}{2}$ NW $\frac{1}{4}$ , W $\frac{1}{2}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$ .

5. In the past those minerals were leased by my father and we received mineral lease payments. Those minerals are not currently leased, but I would be willing to lease them again if approached with such an opportunity.

6. I did not sign Plaintiffs' petition to create the zoning district, nor do I support the creation of a zoning district encompassing my minerals whose purpose is to regulate oil and gas.

7. I feel that if a zoning district to regulate oil and gas were to be created, I would suffer a serious impact to my mineral rights. When I was approached by people wanting my signature on their petition, it appeared that the regulations they would seek for their proposed zone would be too restrictive and would prevent oil and gas companies from considering the area for any development. This would prevent me from making use of my mineral rights and would infringe on my property rights.


8. To me, the petitioners' recent efforts seem to be another attempt to force out long-time agricultural families such as myself. There are only a few large ranches left in this valley and more value is being placed on the land for recreation than for agriculture.



I declare under the penalty of perjury that to the best of my knowledge  
the foregoing is true and correct.

FURTHER AFFIANT SAYETH NAUGHT.

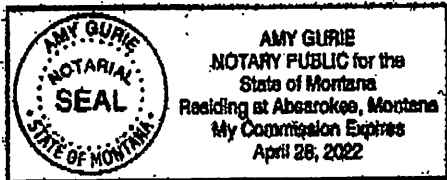
EXECUTED this 26 day of October, 2018.


  
Robert McKinsey

STATE OF MONTANA            )  
  )ss.  
COUNTY OF STILLWATER    )

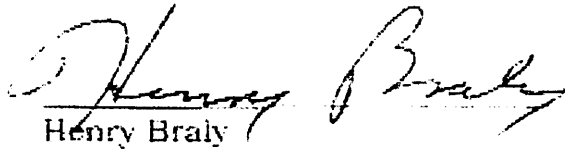
The foregoing instrument was acknowledged before me this 26 day of October,  
2018, by Robert McKinsey.

Witness my hand and official seal.



  
Notary Public

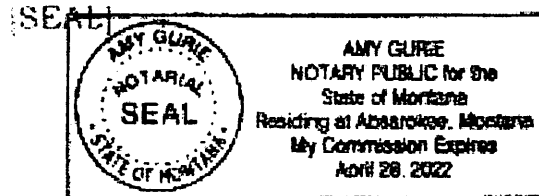
EXECUTED this 26<sup>th</sup> day of October, 2018.

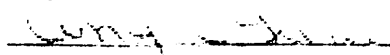
  
Henry Braly

STATE OF Montana )  
 )ss.  
COUNTY OF Stillwater )

The foregoing instrument was acknowledged before me this 26th day of October, 2018, by Henry Braly.

Witness my hand and official seal.



  
Notary Public  
My commission expires: April 28, 2022