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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

NATIVE ECOSYSTEMS COUNCIL,
MONTANA ECOSYSTEMS DEFENSE
COUNCIL,

Plaintiffs,

v.

FAYE KRUEGER, Regional Forester of
Region One of the U.S. Forest Service,
UNITED STATES FOREST SERVICE,
an agency of the U.S. Department of
Agriculture, and UNITED STATES FISH
& WILDLIFE SERVICE, an agency of
the U.S. Department of Interior,

Defendants.

Case No. CV 14-196-M-DLC

**DECLARATION OF RONALD J.
ALLES, CITY MANAGER, CITY
OF HELENA**

Declarant, RONALD J. ALLES, in accordance with the requirements of 28 U.S.C.

§ 1746, hereby declares as follows:

1 1. I am over 18 years of age. I have personal knowledge of the matters set forth
2 below in this Declaration and I am competent to testify as a witness before the Court in
3 this proceeding.

4 2. I am the City Manager for the City of Helena. I serve as the Chief Administrative
5 Officer of the City of Helena and am responsible to the City Commission for the
6 administration of all city affairs as required by the City Charter, law, ordinance or
7 resolution. My duties include the direction, supervision and administration of all City
8 Departments, including but not limited to the City of Helena Department of Public
9 Works.

10 3. The City of Helena Department of Public Works is responsible for operating and
11 maintaining our municipal water supply system. Our water utility provides water for
12 various municipal uses (i.e., drinking, fire suppression, irrigation, etc.) to our
13 approximately 30,000 citizens, as well as to all state, federal and local government
14 institutions inside our municipal boundaries. There are approximately 11,500 metered
15 connections to our municipal water system.

16 4. The City of Helena's primary water supply source is Tenmile Creek, located west
17 of Helena. The City of Helena owns the first and second priority decreed water rights
18 from Tenmile Creek, with priority dates of 1864 and 1865. Those water rights (and the
19 other rights it has in Tenmile Creek tributaries) provide the raw water supply for the
20 City's treatment facility located on Tenmile Creek off U.S. Highway 12. The City has
21 conducted water treatment operations at that location since the early 1900's, and the
22

1 present Tenmile Water Treatment Plant is capable of treating approximately 9 million
2 gallons per day.

3 5. That water source provides approximately eighty percent (80%) of the total
4 volume of treated water that the City uses on an annual basis for the purposes outlined
5 above. The Tenmile is presently the only source of water the City of Helena uses for
6 nine (9) months of the year, and is also presently the only source of water the City has to
7 provide water to the federal and state installations (medical and military) located at Fort
8 Harrison for fire suppression and consumption purposes. At peak times during the year,
9 the City augments the Tenmile supply with purchases of Missouri River water from the
10 Bureau of Reclamation, and that water is then treated at the City's Missouri River
11 Treatment Plant.

12 6. In addition to the Tenmile Plant itself, the City of Helena also operates and
13 maintains two other critical pieces of infrastructure in the Tenmile watershed, namely
14 the Red Mountain Flume and Chessman Reservoir. The Red Mountain Flume is a
15 constructed channel that conveys water from Tenmile Creek tributaries to Chessman
16 Reservoir, which is the main storage reservoir supplying the Tenmile Plant. The flume
17 is a constructed channel approximately 5 miles long, with roughly half of that (2.7
18 miles) located on National Forest property and the balance located on private property.
19 Chessman Reservoir is located entirely on National Forest property, is approximately
20 114 acres in size, and stores approximately 550,000,000 gallons of water. The Flume
21 and the Reservoir have been elements of the City's municipal water supply
22 infrastructure in the Tenmile since the acquisition of that system in the early 1900's.

1 7. The project being challenged by the Plaintiffs is extremely small in scale and is
2 narrowly targeted at reducing the direct and immediate wildfire risks to the City's
3 municipal water infrastructure caused by the proximity of extensive tree mortality in the
4 stands around Chessman Reservoir and adjacent to the 2.7 mile section of the flume
5 located on National Forest property. The City of Helena has already worked
6 collaboratively with the private landowners on the other 2.1 miles of flume section to
7 accomplish significant reductions in the dead trees and fuel loading along that section,
8 and the portion of the challenged project relating to the Flume here seeks only to
9 accomplish that same objective on National Forest property. The entire Upper Tenmile
10 Creek watershed consists of approximately 26,300 acres -- the Red Mountain Flume
11 component of the challenged project (Fuel Break Treatment) seeks to treat 158 of those
12 acres -- .6 % of the landscape.

13 8. The Chessman Reservoir component of the challenged project also seeks to reduce
14 the potential for a high-severity wildfire next to the Reservoir and thus reduce the
15 probability of post-wildfire ash and sediment delivery into the Reservoir. This
16 component would involve the removal of all dead and dying trees and the reduction of
17 surface and ladder fuels in the approximately 332 acres surrounding the reservoir --
18 approximately 1.2% of the entire acreage in the Upper Tenmile Creek watershed.

19 9. The importance of our Tenmile water source and the integrity of our water supply
20 infrastructure to the City of Helena and its citizens cannot be overstated, and the
21 potential harm to the City of Helena and its citizens from wildfire damage to that
22 infrastructure likewise cannot be overstated. In October of 2007, a natural resources

1 consulting firm (Northwest Management, Inc.) was engaged by the City to study and
2 report on the conditions of the City's forest lands in the Tenmile watershed. That study
3 reported (pp. 22-23) that:

4 "The combined effects of past fire suppression, heavy fuel loads, an extended
5 drought period and an active mountain pine beetle infestation have put forests on
6 the City of Helena lands, as well as adjoining National Forest and private lands in
7 the Tenmile Creek drainage, at significant risk of a catastrophic wildfire. The
8 combined effects of a large scale forest fire in the Upper Tenmile Creek drainage
9 could potentially threaten a major source of Helena municipal water supply. If
10 such a fire were to occur, infrastructure associated with the City of Helena water
11 delivery system and residences in the Upper Tenmile drainage would be
12 threatened with destruction. Impacts to the Upper Tenmile Creek watershed
13 would also likely include a significantly increased potential for soil erosion,
14 decrease in water quality due to sedimentation and a loss of forested wildlife
15 habitat."

16 The study also stated (p. 4) that "[i]t is important to note that Helena National Forest
17 lands border, and in most cases surround, the City of Helena lands which are the focus of
18 this assessment" and that "[a] dedicated, coordinated and cooperative effort with the
19 Helena National Forest will be required to adequately address many of the wildfire
20 hazard and forest health issues described in this report."

21 10. The City has also undertaken specific studies and modeling of fire behavior in
22 the forested landscape that the City extends into on its southern boundaries. That

1 modeling shows the speed with which a very typical wildfire in the type of heavy fuel
2 conditions we have now could move into and through the City of Helena, and the
3 catastrophic damage that such a wildfire would inflict.

4 [http://www.helenamt.gov/fileadmin/user_upload/City_Fire_Dept/Documents/South
5 Hills_Update_2009_web_site.pdf](http://www.helenamt.gov/fileadmin/user_upload/City_Fire_Dept/Documents/South_Hills_Update_2009_web_site.pdf)

6 11. The City very narrowly escaped that type of situation in 2009 when a wildfire
7 broke out on McDonald Pass southwest of Helena. Fire officials advised that the fire
8 posed an immediate risk of progressing through the Tenmile drainage and into the City of
9 Helena given the right conditions. Fortunately, those conditions did not arise, and the fire
10 was ultimately able to be controlled.

11 12. The recent examples of catastrophic wildfire damage to municipal watersheds
12 and infrastructure in Colorado, New Mexico and Arizona show the potential for
13 staggering harms, and the Forest Service's intention in undertaking the current project
14 here is straightforward -- to reduce the likelihood of the same fate befalling the City of
15 Helena and its citizens.

16 13. The City has specifically gathered and compiled photographic materials and
17 information for the public to demonstrate both (1) how similar infrastructure protection
18 measures have performed around a municipal reservoir in Colorado and (2) the on-the-
19 ground difference between those sections of the Flume on private land that have already
20 been treated versus the much more dangerous conditions still existing on the National
21 Forest section of the Flume. Those PowerPoint materials from October 2013 can be
22 viewed at:

1 <http://www.helenamt.gov/tmcwp/related-documents.html>

2 The City has also worked collaboratively with local stakeholders to create a short film
3 with an overview of the City's water sources and all of the ongoing projects to protect
4 them. That film can be viewed at:

5 https://www.youtube.com/watch?v=16n_x_HJX3o

6 **POTENTIAL HARM – PROJECT DELAY AND WILDFIRE**

7 14. If the current project is enjoined and delayed through litigation, the significant
8 risk of destruction for both the Flume and the Reservoir from catastrophic wildfire will
9 drag into at least one more fire season, if not two or three more fire seasons. A
10 catastrophic, high-severity wildfire in the areas sought to be treated would destroy the
11 timber plank trestles of the Flume, as well as the exposed and metal components of the
12 Flume and its gates. That type of wildfire would also denude all of the area sought to be
13 treated around the Reservoir, creating severe post-fire erosion and sediment/ash delivery
14 into the Reservoir.

15 15. That level of destruction would render both the Reservoir and the Flume
16 unusable for a period of at least several years, and the City would lose its Tenmile water
17 supply for that same period of time.

18 16. During 2013, the Tenmile Plant produced approximately 1.4 billion gallons of
19 water, and the Missouri River Plant produced approximately .5 billion gallons of water
20 to augment the City's supply during the peak summer months. During those peak times,
21 the City's total production can reach or exceed 14.2 million gallons per day. Again, the
22

1 Reservoir itself has the potential of providing over a third of that entire volume, i.e., 550
2 million gallons.

3 17. The City's Missouri River Plant is presently capable of consistent production in
4 the range of 9.5 million gallons per day. The loss of the Tenmile source during peak
5 production periods would result in a shortfall of at least 4.7 million gallons per day of
6 treated water supply to the City and its citizens during the peak summer months.
7 Systemic shortfalls of that magnitude would likely necessitate significant water use
8 restrictions. Those shortfalls would also result in the substantial loss of revenues to the
9 City's water utility, revenues that are necessary to operate, maintain and improve the
10 utility infrastructure. The estimated loss of revenue from those shortfalls would be
11 \$1,600,000 per year.

12 18. The impacts of the loss of the Tenmile and the consequences of a transition to
13 exclusive reliance on the Missouri River Plant are not, however, simply limited to a
14 volumetric reduction in the quantity of treated water and the accompanying loss of
15 revenues. As noted above, the Tenmile source is the only present supply of water for
16 consumption and fire suppression purposes at the Department of Veterans' Affairs
17 medical facilities and the Reserve Component military facilities at Fort Harrison.

18 19. The City's system is not presently configured to supply Missouri River water to
19 the Fort Harrison facilities. In order to reconfigure our system to allow for that, we
20 estimate costs in the range of at least \$2,500,000 to install the necessary additional
21 pumps and interconnect structures.

1 20. Another adverse impact of any transition to exclusive reliance on Missouri River
2 water is the significantly higher electricity costs associated with treating and distributing
3 the water from that source. The Tenmile source is a highly energy-efficient supply, with
4 the ability to gravity feed all of the raw water into the Plant as well as gravity feed the
5 treated water from the Plant into the City. The Missouri source, on the other hand,
6 requires extensive pumping to convey the water.

7 21. The cost differential for the two water sources is very high. The City's electricity
8 cost for Tenmile water is approximately \$38 per million gallons, whereas the electricity
9 cost for Missouri River water is approximately \$306 per million gallons. Thus, any loss
10 of the Tenmile source would result in significantly higher water rates for all Helena
11 water users (i.e., low income, high income, residential, commercial, etc.) from an energy
12 cost perspective alone.

13 22. In addition to those higher energy costs, any full transition to use of only
14 Missouri River water over any extended period of time would also require additional
15 pump capacity and a new Low Zone reservoir. The estimated cost for those additional
16 infrastructure items is \$7,250,000.

17 23. The loss of the Flume and Reservoir infrastructure to wildfire would also result
18 in direct hard-dollar replacement and restoration costs. Our estimated cost for replacing
19 and restoring the Flume structure is approximately \$5,000,000, and our estimated cost of
20 replacing and restoring the Reservoir structure is approximately \$10,000,000. During
21 the time necessary to replace and restore those pieces of infrastructure, our Tenmile
22

1 Plant and its associated feed lines and transmission lines – representing an estimated
2 \$30,000,000 investment by our rate-paying citizens – would sit idle.

3 **POTENTIAL HARM – PROJECT DELAY AND NO WILDFIRE**

4 24. Even if no wildfire were to occur during any injunction-based delay of the
5 project, the City is still exposed to both actual and threatened harm to the Flume and
6 Reservoir infrastructure. The immediate proximity of the dead and dying trees to the
7 Flume structure on the National Forest Property already creates present maintenance
8 issues when those trees fall over, upon and into the Flume structure. The impact of
9 those maintenance issues can range from small to large, including the potential need to
10 cease using the Flume temporarily to allow for repairs.

11 25. The actual and threatened harm to the Reservoir infrastructure in the absence of
12 wildfire is even more significant to the City. The immediate proximity of all of the dead
13 and dying trees to the fencing around the Reservoir already creates multiple instances
14 where the fence is damaged and/or rendered ineffective by the trees that fall on it. Each
15 of those instances involves direct costs to the City in the form of mobilization, labor and
16 materials to make the necessary repairs. I have attached a pair of photographs of the
17 condition of some of the fencing taken just last month as Exhibit “A”.

18 26. Even more importantly, however, the integrity of the fence around the Reservoir
19 is critical to the maintenance of the City’s source water protection measures. Damage to
20 the fence can allow grazing livestock to enter the perimeter of the Reservoir, and thus
21 allow for the introduction of *Cryptosporidium* into the Reservoir environment. If the
22 City cannot establish and maintain a consistently effective fence around the Reservoir

1 (and thus demonstrate its ability to control the livestock-based *Cryptosporidium* threat),
2 it could potentially be required by the Montana Department of Environmental Quality to
3 implement ultraviolet disinfection measures for the water from the Reservoir. Our
4 estimated cost for that additional treatment method is approximately \$1,500,000, all of
5 which would be borne by Helena citizens.

6 **COMMUNITY AWARENESS, COLLABORATIVE PLANNING AND**
7 **DIRECT ACTION GESTURES BY THE CITY**

8 27. The cumulative effects of the pine beetle infestation, extended drought and past
9 fire suppression efforts in our Tenmile watershed became painfully obvious to the City
10 and its citizens in the mid-2000's, and the City has since been actively and aggressively
11 engaged in pro-active planning and action to address those conditions and the clear risk
12 they pose for a catastrophic wildfire in that watershed.

13 28. For example, the City Commission created the Ten Mile Watershed
14 Collaborative Committee (TMWCC) in the fall of 2008, with the charge to develop
15 recommendations to address the interrelated issues arising from the threat of
16 uncontrolled wildfire to the watershed. The membership of that Committee was as
17 follows:

- 18 ■ Helena City Fire Chief;
- 19 ■ City Commission Member;
- 20 ■ County Commission Member;
- 21 ■ Helena National Forest Supervisor;
- 22 ■ Helena National Forest District Ranger;
- Helena National Forest Timber Management Officer;

- 1 ■ Helena National Forest Fire Management Officer;
- 2 ■ Representative of the Alliance for the Wild Rockies¹;
- 3 ■ Representative of the Montana Wilderness Association;
- 4 ■ Representative of the City of Helena Water Treatment Division;
- 5 ■ Representative of the Timber Industry;
- 6 ■ City of Helena Parks Department Natural Resources Coordinator;
- 7 ■ Representative of Lewis & Clark County Planning Department;
- 8 ■ Representative of Montana Department of Environmental Quality;
- 9 ■ Representative of Montana Department of Natural Resources & Conservation;
- 10 ■ Representative of Lewis & Clark County Disaster & Emergency Services;
- 11 ■ Representative of the Tri-County Fire Safety Working Group;
- 12 ■ Representative of the Baxendale Fire District;
- 13 ■ Representative of the Community of Rimini;
- 14 ■ Representative of the Helena Citizens Council; and
- 15 ■ Two local citizens

16 29. The TMWCC worked very quickly and collaboratively over the course of late
17 2008 and early 2009 and by June of 2009 was able to present the Helena City
18 Commission with a specific set of recommendations, agreed upon by all members of the
19 TMWCC. One of the specific recommendations advanced by the TMWCC was to
20

21 ¹ Steve Kelly, Director of the Plaintiff Montana Ecosystems Defense Council, is actually a
22 member of the Board of Directors of this particular organization. As outlined below, the
Alliance for the Wild Rockies joined in the consensus recommendation made by the TMWCC
for the type of work being proposed for the Flume sections in this case.

1 undertake the type of protective measures for the Flume that are presently contemplated
2 as part of the challenged project.

3 30. During that same time period, the City of Helena pursued and secured Federal
4 Emergency Management Agency (FEMA) Pre-Disaster Mitigation grant funding to
5 undertake hazard tree and fuel reduction measures in those areas adjacent to the Flume on
6 private property. The City ultimately received \$312,831 in FEMA grant funding,
7 matched that with City funds in the amount of \$104,277 and has since completed – on the
8 ground – removal of dead tree and fuel loading in 92% of the area next to the Flume
9 locations on the 2.1 mile section of private property. Again, all that the Flume
10 component of the current project seeks to do is implement the very same type of
11 treatment along those sections of the Flume located on National Forest property.

12 31. In addition to the TMWCC efforts and its FEMA grant-funded protection
13 activities on the ground next to its Flume infrastructure on private property, the City has
14 also actively developed a website component dedicated exclusively to issues and
15 activities relating to its Tenmile water source:

16 <http://www.helenamt.gov/tmcwp.html>

17 The degree of outreach and public awareness effort on the part of the City of Helena with
18 respect to the issues facing its Tenmile water source has been unrivaled by any other
19 aspect of municipal affairs in the last few years. Any suggestion that there has not been
20 sufficient opportunity for public comment on and participation in the discussions
21 concerning our Tenmile water source is inaccurate. To the best of my knowledge and
22 belief, neither of the Plaintiff organizations have sought to be part of any collaborative

1 planning or dialogue with respect to the City's efforts to protect its water source in the
2 Tenmile.

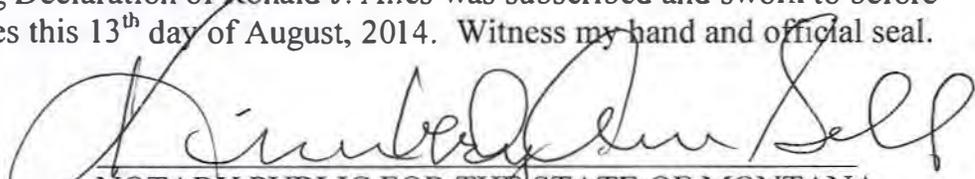
3 FURTHER THIS DECLARANT SAYETH NOT.

4 Dated this 13th day of August, 2014.

5 
6 Ronald J. Alles, City Manager

7 STATE OF MONTANA)
8 County of Lewis & Clark) : ss.

9 The foregoing Declaration of Ronald J. Alles was subscribed and sworn to before
10 me by Ronald J. Alles this 13th day of August, 2014. Witness my hand and official seal.

11 
12 NOTARY PUBLIC FOR THE STATE OF MONTANA
13 Printed Name: Kimberly Ann Sell
14 My Commission Expires: 4/30/2015

(SEAL)

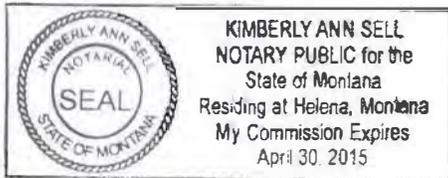


EXHIBIT “A”



07.10.2014 10:55



07.10.2014 11:42