

PARK COUNTY CLERK  
OF DISTRICT COURT  
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FILED  
BY *Orlene Hunzart*  
DEPUTY

**MONTANA SIXTH JUDICIAL DISTRICT COURT, PARK COUNTY**  
No. DV-11-77

**PARK COUNTY STOCKGROWERS  
ASSOCIATION, INC., on behalf of its members,**

Judge E. Wayne Phillips

Petitioner, and

**MONTANA FARM BUREAU FEDERATION,**

Petitioner-Intervenor,

vs.

**MONTANA DEPARTMENT OF LIVESTOCK,  
an agency of the State of Montana; MONTANA  
DEPARTMENT OF FISH, WILDLIFE AND PARKS,  
an agency of the State of Montana; STATE OF  
MONTANA; DR. MARTIN ZALUSKI, in his  
capacity as Montana State Veterinarian; and  
BRIAN SCHWEITZER, as Governor of the  
State of Montana,**

**ORDER ON  
INTERVENTION, MOTION  
FOR HEARING, AND  
TRANSLATION OF MOTION**

Respondents, and

and

**BEAR CREEK COUNCIL, GREATER  
YELLOWSTONE COALITION, and  
NATURAL RESOURCES DEFENSE COUNCIL,**

Respondent-Intervenors.)

**PARK COUNTY,**

Petitioner, and

vs.

1 MONTANA FARM BUREAU FEDERATION, )  
 2 )  
 3 Petitioner-Intervenor, )  
 4 vs. )  
 5 THE STATE OF MONTANA, FISH, WILDLIFE )  
 6 AND PARKS, an agency of the State of Montana; )  
 7 and THE DEPARTMENT OF LIVESTOCK, )  
 8 an agency of the State of Montana, )  
 9 Respondents, )  
 10 and )  
 11 BEAR CREEK COUNCIL, GREATER )  
 12 YELLOWSTONE COALITION, and )  
 13 NATURAL RESOURCES DEFENSE COUNCIL, )  
 14 )  
 15 Respondent-Intervenors.)

13 Western Watersheds Project and Buffalo Field Campaign have moved to  
 14 intervene by Right, Rule 24(a), Mont. R. Civ. P., or by Permission, Rule 24(b),  
 15 Mont. R. Civ. P. Park County and Park County Stockgrowers have objected.  
 16 Based on the documents received by this Court, no other party has objected.

17  
 18 Of particular interest is that proposed Intervenors seek to participate  
 19 only in “the remedies stage of the proceedings.” Br., p. 2. Given the nature of  
 20 the two Complaints, what aspect of this case does not address remedies, of one  
 21 sort or another?

22 Intervention by Right has a four-factor analysis; the application must:

- 23  
 24 (1) be timely; (2) show an interest in the subject matter  
 25 of the action; (3) show that the protection of the interest  
 26 may be impaired by the disposition of the action; and (4)  
 show that the interest is not adequately represented by  
 an existing party.

1 *Sportsmen for I-143 v. Mont. 5<sup>th</sup> Jud. Dist. Ct.*, 2002 MT 18, § 7, 308 Mont. 189,  
2 40 P.3d 400.

3  
4 Timeliness. Objectors rightly question the timeliness of the application.  
5 Original filing occurred May 6, 2011. Intervention by like-minded organizations  
6 was granted June 20, 2011. Pursuant to Order, expert witness disclosure  
7 occurred July 29, 2011. However, the discovery deadline is September 1, 2011  
8 and motions deadline (including briefing) is October 14, 2011.

9  
10 While the delay is somewhat unconscionable, the Court does not find a  
11 high degree of prejudice to the existing parties. What prejudice might be  
12 present could be cured.

13 Subject Matter Interest. The Affidavit of proposed Intervenors shows  
14 adequate interest to allow intervention by Right.

15 Impairment of Interest. Again, adequate grounds were established to  
16 show there could be impairment of interest.

17  
18 Representations of Interest. This is likely the more important factor.  
19 Given the nature of migrating buffalo and the problems from the spread of  
20 brucellosis, the Court was originally hard pressed to find any interest in this  
21 matter which could not or would not be more than adequately addressed by  
22 Respondent Intervenor organizations. However, under the Principle of  
23 Pluralistic Democracy, different viewpoints create different pressure points that  
24 result in unique organizational structures. Such is certainly the case with the  
25 long-running controversy over migrating bison. Proposed Intervenors cite a  
26

1 federal lawsuit and a much more specific set of value goals in their particular  
2 pluralistic spectrum. *Clark Fork Coalition v. MT Dep't of Environ. Quality*, 200  
3 Mont. 176, § 10, 338 Mont. 205, 164 P.3d 902. Given this, the Court can see  
4 additional litigation if their perspectives are not added here, a fundamental  
5 reason for intervention by Right. *Est. of Schwenke v. Bechtold*, 252 Mont. 127,  
6 133. The Motion to Intervene by Right is **Granted**.

7  
8 The expert witness deadline for all parties/Intervenors is extended until  
9 **September 1, 2011**.

10  
11 Current Respondent-Intervenors have filed a Motion for Judgment on the  
12 Pleadings. A hearing prior to the currently scheduled October 27 - 28, 2011  
13 has been requested with the goal/hope of narrowing matters which are to be  
14 considered. Unfortunately, this Court's calendar precludes any hearing prior to  
15 October 27, 2011. Motion for hearing prior to that is **Denied**.

16  
17 At the October 27, 2011 hearing, the Court will first hear the Motion for  
18 Judgment on the Pleadings with the hope/goal of thus more efficiently  
19 addressing issues.

20 As the Motion for Judgment on the Pleadings requires consideration of  
21 matters outside the pleadings, the Court hereby translates it to one for  
22 Summary Judgment. All parties/Intervenors are hereby notified that any facts,  
23 evidence or argument shall be presented at the October 27, 2011 hearing.

24  
25 The Clerk of Court is directed to file this Order On Intervention, Motion  
26 For Hearing, And Translation of Motion and provide copies to counsel of  
record.

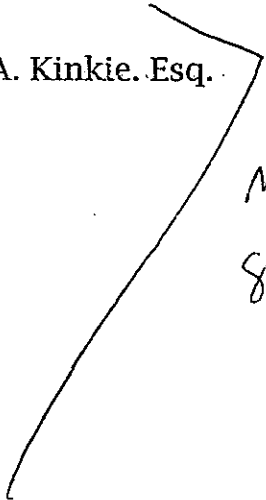
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DATED this 8 day of August 2011.



**DISTRICT COURT JUDGE**  
Hon. E. Wayne Phillips  
P. O. Box 1124  
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- c: John E. Bloomquist, Esq. and Rachel A. Kinkie, Esq.
- c: Brett Linneweber, Esq.
- c: Ann Brodsky, Esq.
- c: Norman C. (Clyde) Peterson, Esq.
- c: Rebecca J. Dockter, Esq.
- c: Hertha Lund, Esq.
- c: Timothy J. Preso, Esq.



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