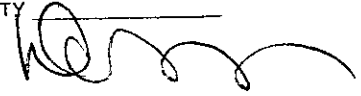


**FILED**

JUL 31 2023

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**MONTANA FIRST JUDICIAL DISTRICT COURT  
BROADWATER COUNTY**

UPPER MISSOURI WATERKEEPER,  
TANYA & TOBY DUNDAS, SALLY &  
BRADLEY DUNDAS, CAROLE &  
CHARLES PLYMALE, and CODY  
McDANIEL,

Plaintiffs,

v.

BROADWATER COUNTY and the  
MONTANA DEPARTMENT OF  
NATURAL RESOURCES and  
CONSERVATION,

Defendants,

and

71 RANCH, LP,

Intervenor.

Cause No.: BDV-2022-38

**INTERVENOR'S  
DECLARATORY JUDGMENT  
MOTION ORDER**

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1 Before the Court is 71 Ranch, LP's June 4, 2023, Declaratory  
2 Judgment Motion. Plaintiffs and the Department of Natural Resources and  
3 Conservation (DNRC) have responded to 71 Ranch's motion. The motion is  
4 fully briefed. No party requested oral arguments.

#### 5 DISCUSSION

6 71 Ranch requests this Court issue a declaratory judgment  
7 "establishing and confirming the Combined Appropriation Guidance  
8 ("Guidelines") established by the Montana Department of Natural Resources  
9 ("DNRC"), is valid and in conformance with Montana Law, and accordingly,  
10 DNRC's interpretation of the Montana Water Use Act is correct." DNRC  
11 supports 71 Ranch's motion although, much to the Court's appreciation, clarified  
12 some of 71 Ranch's characterization or interpretation of the Guidelines.  
13 Plaintiffs oppose 71 Ranch's motion on several grounds, including, but not  
14 limited to, that 71 Ranch seeks an impermissible advisory opinion from this  
15 Court relative to the Guidelines. In this regard, the Court agrees with Plaintiffs.

16 The Montana Supreme Court has consistently cautioned district  
17 courts from issuing advisory opinions. *Plan Helena, Inc. v. Helena Reg'l Airport*  
18 *Auth. Bd.*, 2010 MT 26, ¶ 9, 355 Mont. 142, 226 P.3d 567. "The judicial power of  
19 Montana's courts is limited to justiciable controversies." *Chipman v. Nw.*  
20 *Healthcare Corp.*, 2012 MT 242, ¶ 19, 366 Mont. 450, 288 P.3d 193. To fall  
21 within a court's adjudicatory power, a controversy must be "real and  
22 substantial..., admitting of specific relief through decree of conclusive character,  
23 as distinguished from an opinion advising what the law would be upon a  
24 hypothetical state of facts, or upon an abstract proposition." *Plan Helena*, ¶ 9  
25 (citing authority). While 71 Ranch's declaratory request as to DNRC Guidelines

1 may arise in the future, it is not presently before the Court in this proceeding, and  
2 such a requested ruling on the Guidelines would simply amount to an advisory  
3 opinion.

4           Moreover, it appears to the Court that DNRC Guidelines do not  
5 have the independent force and effect of substantive law. The Guidelines' text  
6 appears to provide general reference and interpretation value to DNRC  
7 employees, and perhaps even to concerning private and/or public community  
8 members. In addition, the Guidelines do not appear to have gone through  
9 Montana's rigid and required rule making process (i.e., notice and opportunity to  
10 comment upon). For 71 Ranch and DNRC to seek a judicial declaration as to the  
11 Guidelines' legal validity and Montana law conformity as well as a judicial  
12 stamp of approval relative to "DNRC's interpretation of the Montana Water Use  
13 Act" amounts to nothing more than an invitation for this Court to issue an  
14 advisory opinion which this Court respectfully declines.

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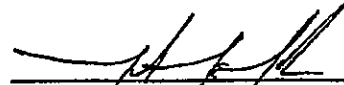
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**ORDER**

For the above reasons, it is hereby **ORDERED, ADJUDGED** and  
**DECREED** that 71 Ranch, LP's declaratory judgment motion is **DENIED**.

**ORDERED** this 31<sup>st</sup> day of July 2023.

  
\_\_\_\_\_  
MICHAEL F. McMAHON  
District Court Judge

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