

Beneficial Water Use: Montana Court Addresses Challenge to Mining Company Application



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04/18/2019

A Montana court addressed a challenge to a mining company's application for a Beneficial Water Use Application. See *Clark Fork Coalition, Rock Creek Alliance, Earthworks, and Montana Environmental Center v. Montana Department of Natural Resources and Conservation and RC Resources, Inc.*, CDV-2018-150.

The Montana First Judicial District Court of Lewis and Clark County ("Court") addressed a challenge to a Final Order of the Montana Department of Natural Resources ("DNRC") to a beneficial water use permit ("Permit") that had been granted to RC Resources ("RC"). See

The application filed by RC was to appropriate groundwater for its mining operations.

Clark Fork Coalition and other groups (collectively "Clark Fork") challenged DNRC's granting of the permit.

The Montana Court addressed Clark Fork's argument that a legal availability objection was available because of a misinterpretation of the term "legal demands" as described in the Montana Code. Clark Fork contended that the phrase "existing legal demands" includes existing water rights. However, they also argued that the phrase does not exclude impacted streams in the Cabinet Mountain Wilderness. The groups contended that the permit would cause the depletion of such streams by the subsequent pumping for mining operations.

The Court noted that affected streams include Clean Water Act Outstanding Resource Waters. An impact on ground water quality was deemed relevant to an impact on a Clean Water Act Outstanding Resource Water.

The Court concludes that dewatering an Outstanding Resource Water is a known legal demand on the water to be appropriated in the appeal. As a result, it concludes that it must be included in the analysis of legal availability of water prior to issuing a permit granting an appropriation to RC.

The Court decides that the previously issued Final Order on the application of the permit should be reversed. Consequently, it is remanded to DNRC for further consideration consistent with the Court's order.

A copy of the Order can be downloaded [here](#).