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**BEFORE THE MONTANA DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION**

DAVID HATTER AND MELISSA HATTER, Petitioners.	Petitioners' Response to Appeal of Decision
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David and Melissa Hatter, (hereafter, "Petitioners") submit this response to the Montana Shooting Sports Association's (hereafter, "MSSA") appeal of the *Department Decision on Petition for Closure of State Lands* dated July 1, 2026 (the "Decision"). MSSA's appeal is mostly extraneous rambling. The Department should affirm the Decision.

ARUGMENT

I. MSSA DOES NOT ARGUE THAT THE DECISION WAS UNSUPPORTED BY ADEQUATE EVIDENCE.

MSSA's appeal omits any argument that the record lacked evidence to support the Decision or that the Decision was arbitrary and capricious. In fact, the appeal does not mention the word "evidence" even once. For that reason, MSSA has waived any such argument, and the DNRC need not consider that issue. *See Loney v. Milodragovich, Dale & Dye, P.C.*, 273 Mont. 506, 512, 905 P.2d 158, 162 (1995) (refusing to consider an argument that was not raised in the opening brief on appeal because "an appellant is prohibited from raising new issues in a reply

brief.”).

And, any such argument would lack merit. Petitioners submitted a 200-page Petition, consisting primarily of evidence in the form of witness declarations under the penalty of perjury and relevant documents, including photographs, videos, and audio recordings. Petitioners also submitted a report prepared by the forensic engineering firm, Nederveld Inc., to evaluate the safety conditions on the State Land and map the effective range of two calibers representative of those likely discharged on the State Land. In addition, Petitioners provided oral and written comment at the informal hearing. Even if MSSA did argue that the Decision lacked evidentiary support, that would be obviously wrong.¹

Because MSSA’s appeal fails to even argue that the Department’s decision was not supported by the evidence, the Department should affirm.

II. MSSA IGNORES THE ACTUAL PETITION PROCESS AT ISSUE.

MSSA poses a hypothetical in which the DNRC receives a petition to “ban Muslims or Christians, or Blacks or Native Americans, from using public lands.” *See* MSSA’s Appeal. MSSA misses the mark. The DNRC has a well-documented process for citizen petitions. The reasons for which a closure can be granted are listed at ARM § 36.25.1207(3), which states:

(1) The department may close specific tracts of State Trust Land to recreational use through the process described in (7) for any of the following reasons:

(a) damage attributable to recreational use diminishes the income generating potential of the State Trust Lands;

* * *

(h) protection of public safety; and

¹ Petitioners will address the sufficiency of the evidence in more detail in their “argument,” which they understand the Department’s rules require them to submit separately.

* * *

(k) an imminent threat, caused by potential substantial public use, of immediate, irreparable property damage or bodily injury on the state tract or adjacent land.

Petitioners submitted their Petition pursuant to subsections (a), (h), and (k). Petitioners explained that the use of the State Land for a public shooting range and for recreational shooting is causing damage that diminishes the income-generating potential of the State Land, derogates public safety, and creates an imminent threat of immediate, irreparable property damage and bodily injury.

The Department's evaluation should be, and is, limited only to the framework prescribed by the Administrative Rules of Montana. Positing religious and ethnic hypotheticals is not a well-reasoned argument for reversal.

III. THE DEPARTMENT SHOULD DISREGARD CONSTITUTIONAL FEARMONGERING.

MSSA summarily concludes that “the DNRC lacks the authority to ban the use of firearms on public land.” *See* MSSA's Appeal. MSSA's statement is wrong legally and factually.

A. Legal issues.

The Montana Constitution establishes the Board of Land Commissioners (“Board”), which has the authority to direct, control, lease, exchange, and sell state school lands and other public lands granted to the state. Mont. Const., Art. X § 4. By statute, the Board exercises general authority, direction, and control over the care, management, and disposition of these state lands. *See* M.C.A. § 77-1-202.

The DNRC is charged with managing and administering state trust lands under the direct supervision and direction of the Board. *Advocates for Educ., Inc. v. Mont. Dep't of Natural Res. & Conservation*, 2004 MT 230 (2004); M.C.A. 77-1-301; ARM § 36.25.1201. The DNRC possesses the authority to make management decisions to protect the best interests of the State.

ARM § 36.25.103; *Grenz v. Mont. Dep't of Nat. Res. & Conservation*, 2011 MT 17, ¶ 23, 359 Mont. 154, 248 P.3d 785. The Montana Supreme Court has continuously recognized that the Board possesses “**large discretionary power**” over state trust lands necessary for the performance of its duties. *Grenz*, ¶ 24; *Babcock*, 147 Mont. at 52, 409 P.2d at 811; *Friends of the Wild Swan v. Dep't of Natural Res. & Conservation*, 2005 MT 351, ¶ 10, 330 Mont. 186, 127 P.3d 394 (emphasis added).

While state lands are generally open to public recreational use, this right of general recreation is subject to compensation to the trust. M.C.A. § 77-1-202.

MSSA cites no case for the proposition that the Department lacks authority to restrict target shooting on a particular state land parcel. But, MSSA argues, the Decision somehow runs afoul with the right to keep and bear arms. *See* MSSA's Appeal. MSSA ignores basic case law. The right to keep and bear arms, like most constitutional rights, is not unlimited. *State v. Maine*, 2011 MT 90, ¶ 29, 360 Mont. 182, 255 P.3d 64 (“[M]ost constitutional rights are not absolute.”); *see also e.g. State v. Hartsoe*, 2011 MT 188, ¶ 22, 361 Mont. 305, 258 P.3d 428 (the due process right to appear before a jury free from physical restraints “is not absolute”); *cf. District of Columbia v. Heller*, 554 U.S. 570, 595, 128 S. Ct. 2783, 2799 (2008) (“Like most rights, the right secured by the Second Amendment is not unlimited.”). For instance, it goes without saying that an incarcerated individual does not have the right to keep or bear arms while incarcerated. *See State v. Fadness*, 2012 MT 12, ¶ 31, 363 Mont. 322, 268 P.3d 17.

MSSA argues, however, that the Department has intruded on the right to keep and bear arms because the Department heard evidence, weighed the evidence and rendered its Decision curtailing target shooting on the subject parcel. While MSSA's argument is difficult to follow, it is clearly legally wrong.

MSSA’s argument is non-sequitur given the DNRC possesses the authority to make management decisions to protect the best interests of the State. ARM § 36.25.103; *Grenz v. Mont. Dep’t of Nat. Res. & Conservation*, 2011 MT 17, ¶ 23, 359 Mont. 154, 248 P.3d 785; *See* M.C.A § 77-1-202. MSSA relies on *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 1, 142 S. Ct. 2111, 2117 (2022), which held a state could not prevent law-abiding citizens from publicly carrying handguns because they had not demonstrated a special need for self-defense.

The Department need not turn to the two-part historical framework of *Bruen* because, as discussed *infra*, the Department’s decision does not touch the right to keep and bear arms. Instead, the Department’s decision is a product of its “**large discretionary power**” over state trust lands necessary for the performance of its duties. *Grenz*, ¶ 24 (emphasis added). Even so, the Department noted in its decision that constitutional questions are best decided by a judicial body. *See e.g. Flowers v. Mont. Dept. of Fish, Wildlife and Parks*, 2020 MT 150, ¶ 15 (“Constitutional questions are properly decided by a judicial body, not an administrative official, under the constitutional principle of separation of powers.” (internal citations omitted)).

MSSA’s reliance on *Bruen* is misplaced as the facts here and framework of the Montana Administrative Rules make *Bruen* a non-factor in the Departments decision making process.

B. Factual issues.

Nothing about the Department’s decision affects the peoples right to keep and bear arms. The Department’s Decision prohibits recreational target shooting. Other forms of recreational use will not be affected by this restriction, including hunting during the applicable hunting seasons. Under the Department’s decision a person can:

- Walk the subject parcel carrying a firearm.
- Carry and discharge firearms on the subject parcel in the lawful pursuit of

hunting.

- Use a firearm to defend life or property on the subject parcel.

Because firearms can still be carried and utilized, the Decision does not even implicate the right to keep and bear arms.

MSSA thus resorts to mischaracterization, routinely using the phrase “shooting ban,” as if it can thereby morph the Decision into something it is not. But, no matter how many times MSSA says otherwise, it remains true that citizens are still free to keep and bear arms on the subject property – they just cannot target shoot there.

In Montana there are legitimate firearm discharge prohibitions at many of the state of Montana fishing accesses.² Those regulations are *actual shooting bans*, but MSSA seems to have no quarrel with such permissible regulations.

Even so, firearm regulation on state trust lands in other states is permissible. For example, target practice and non-hunting-related shooting are strictly prohibited on Colorado State Trust Lands unless explicitly authorized by management. *See* Code of Colorado Regulations (2 CCR 406-9, Chapter W-9).

Given this factual framework, the Department should affirm its decision.

IV. ENFORCEMENT ARGUMENTS ARE NOT A BASIS FOR REVERSAL.

MSSA cites no case, nor any concrete evidence, for the proposition that the argued lack of ability to enforce the Decision is a basis for reversal. Indeed, Petitioners submitted evidence at the hearing directly countering this argument. Kipp Halvorsen lives in the immediate vicinity of the parcels subject to the Logan Petition. Halvorsen Decl. ¶ 1. Mr. Halvorsen attested that since

² One of the many examples of a year-round “discharge ban” is Sheep Mountain FAS. Petitioners have included a link to the FWP website that hosts all the state of Montana fishing sites which currently have discharge bans. *See* <https://myfwp.mt.gov/fishMT/fas/39753470> Detail.

the closure described in the Logan Petition, he has not personally observed a single person shooting on the closed parcel. Halvorsen Decl. ¶ 7.

Mr. Halvorsen's declaration offers clear evidence that closures such as the Decision are effective. People generally adhere to the Department's closures. To suggest otherwise is counter to the evidence.

CONCLUSION

For the foregoing reasons, the Department should affirm the Decision.

DATED August 7, 2026.

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