



DNRC Headquarters
1539 Eleventh Avenue
Helena, MT 59601

**DEPARTMENT FINAL AGENCY DECISION ON APPEAL OF HATTER PETITION FOR CLOSURE OF STATE
LANDS**

August 28, 2026

On July 1, 2026, the Department of Natural Resources and Conservation (DNRC or Department) issued a decision (hereafter Hatter Decision) to grant with modifications the Petition filed by David and Melissa Hatter (Petitioner) requesting a permanent recreational use closure of the following parcel of state trust land located along Axtell Anceney Road (Axtell Parcel) in Gallatin County, Montana:

Township 3 South, Range 4 East
Section 6: Gov. Lots 3-7, SE4NW4, SE4, E2SW4

The Hatter Decision restricted the discharge of firearms for target shooting on the Axtell Parcel, but did not close the lands to other forms of recreation, the possession of firearms, or the discharge of firearms for hunting or self-defense. On July 4, 2026, Montana Shooting Sports Association (MSSA) submitted an Appeal of Decision, followed by an addendum filed on July 7, 2026.



On July 28, 2026, DNRC determined that the appeal would proceed by written argument and issued a scheduling order for the Petitioner's response and written argument pursuant to ARM 36.25.1207(7). Petitioner filed a response to the appeal on August 7, 2026. Both MSSA and Petitioner filed timely written arguments.¹ This matter was submitted for the Director's review on August 20, 2026.

MSSA's appeal raises several issues but is primarily focused on whether the proposed action would violate the Second Amendment rights of its membership. The following is a Final Agency Decision issued under ARM 36.25.1207(7) in response to that appeal.

First, MSSA does not meaningfully challenge the Hatter Decision's determination that the intense, congested, and disorganized nature of the recreational target shooting at the Axtell Parcel: "constitutes an imminent threat of immediate, irreparable property damage or bodily injury"; "poses a great threat to property damage and personal injury as a result of stray bullets carrying long distance"; that "[s]hooting in in the direction of existing homes and farm outbuildings means bullets have a significant chance of ultimately impacting in those areas and creating a safety hazard"; and "is a threat to public safety." *Hatter Decision*, pp. 13 – 16.² MSSA provides no support for its attempt to question the

¹ MSSA filed "MSSA's Reply to Petitioners' Response to Appeal" (hereafter MSSA's Reply) on August 9, 2026, which is being treated as written argument pursuant to the scheduling order. Petitioner filed a Written Argument on August 18, 2026.

² e.g., see *MSSA Reply to Petitioner's Response to Appeal*, p.5: ("MSSA does not deny that DNRC may have legitimate concerns about littering, unsafe conduct, property damage, wildfire, or conflicts among land users. The constitutional question is not whether those concerns are genuine or important. The question is whether government may respond to those concerns by restricting protected conduct consistently with the constitutional standard...."). See also *MSSA Reply*, p. 2: ("MSSA has never asserted that no problems exist on the subject property. To the contrary, MSSA expressly stated in its Appeal: "MSSA does not hold that there is no potential or actual problem that wants resolution."").

causal relationship between target shooting and the extensive evidence regarding safety and resource damage concerns. *MSSA's Reply*, p. 2. The evidence regarding fall zone mapping conducted by a forensic engineering firm, documented bullet strikes on adjacent property, impacts to livestock, shooting caused wildfire, statements of the public regarding fear for personal safety, and nighttime shooting are uncontroverted. *Hatter Decision*, pp. 4-9, 13 – 16. As such, the restriction on recreational target shooting is consistent with Montana statute, ARM 36.25.1207 and is supported by substantial competent evidence. With this in mind, MSSA's constitutional arguments regarding the Hatter Decision are addressed below.

MSSA is correct that the Department, as an agency of state government, is responsible for accurately and fairly applying the law, and that obviously must include the Constitution, which protects our most fundamental and cherished rights. Nevertheless, pursuant 77-1-804(6)(a), MCA, the legislature has authorized enactment of rules “to **impose restrictions** on general recreational activities, including the **discharge of weapons**, camping, open fires, vehicle use....” The Department must rely on the constitutionality of that statute as “it is the **exclusive power** of the courts to determine if an act of the legislature is unconstitutional” and “the laws enacted by the legislators are presumed constitutional unless proven otherwise beyond a reasonable doubt.”³

³ *Merlin Myers Revocable Trust v. Yellowstone County*, 311 Mont. 194, 200, 53 P.3d 1268 (2002). See also *Jarussi v. Board of Trustees of School Dist. No. 28, Lake County*, 204 Mont. 131, 136, 664 P.2d 316 (1986): “Constitutional questions are properly decided by a judicial body, not an administrative official, under the constitutional principle of separation of powers. Art. III, Section 1, 1972 Mont. Const.” See also *Espinoza v. Montana Department of Revenue*, 2018 MT 306, ¶ 44, 393 Mont. 446, 435 P.3d 603: (“an agency may only adopt rules to ‘implement, interpret, make specific, or otherwise carry out the provisions of a statute....’ (citing 2-4-305(6), MCA). An agency cannot transform an unconstitutional statute into a constitutional statute with an administrative rule. It is the Legislature's responsibility to craft statutes in compliance with Montana's

This is not to suggest that agencies do not have an obligation to apply the law accurately and fairly, and of course that includes concerns over constitutional law. Indeed, the Second Amendment is not a “second class right”;⁴ it is a fundamental right. Although DNRC relies on the constitutionality of 77-1-804(6), MCA, in authorizing it to restrict firearm use on state trust lands, the Department will nevertheless address the constitutional concerns raised by MSSA on appeal directly.

MSSA correctly points out that in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 142 S.Ct. 2111 (2022), the United States Supreme Court clarified the analytical framework by which the right to bear arms must be considered.⁵ In *Bruen*, the Court determined that a New York law that made it a crime to possess “any firearm” without a license, whether inside or outside the home, was a violation of the Second Amendment. Under the New York law, to obtain the license for possessing a firearm *at home*, a person was required to convince a “licensing officer” that, among other things, the person was of good moral character, had no history of crime or mental illness, and that no cause existed for the denial of the license. *Id.* at 21. And under the same New York law, to obtain a license to possess a firearm *outside* the person’s home or place of business, an applicant had to secure a separate license, which required the applicant to make a showing that there was a special need for self-protection distinguishable from that of the general community. *Id.* In striking down the New York law, the Supreme Court adopted the

Constitution). See also Art. III, Section 1, Mont. Const: “the power of the government of this state is divided into three distinct branches--legislative, executive, and judicial. No person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted.”

⁴ See, *MSSA’s Appeal*, p. 1.

⁵ *Id.*, pp. 1-2.

following analytical approach: If the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct unless the government can demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. *Id.* at 17. In other words, MSSA correctly argues in its appeal⁶ that *Bruen* rejects the two-step process (which included the means-end scrutiny) that sometimes was applied in the Second Amendment context. *Id.* at 19. Instead, the Court held that if the Second Amendment's plain text covers an individual's conduct, the government must show the firearms regulation is part of the historical tradition that "delimits the outer bounds of the right to keep and bear arms." *Id.*

Nevertheless, the Hatter Decision's restriction on the discharge of firearms on the Axtell Parcel of land is not precluded by the *Bruen* framework. The first issue is whether "the Second Amendment's plain text" covers the conduct. The "plain text" of the Second Amendment is: "...the right of the people to **keep and bear** Arms, shall not be infringed." The Supreme Court has said the 'normal and ordinary' meaning of this language is that it guarantees the individual right to **possess** and **carry** weapons in the case of confrontation and that the right does not depend on service in the militia. *Id.* at 20. Unlike the New York law struck down in *Bruen*, the Hatter Decision at issue in this matter does not restrict the right to "possess and carry" weapons. It does not require a license or special training or create other governmental interference of any form with regard to possession or carry of firearms. Rather, the restriction merely restricts the **discharge** of firearms for the particular purpose of target shooting due to the safety concerns that are unique to the Axtell Parcel,

⁶ *Id.*, p. 2.

as exhaustively documented in the record throughout the petition process. So, the restriction in question does not fall within the “plain text” of the Second Amendment protection of the right to “keep and bear Arms”. Thus, the restricted activity does not trigger the rest of the *Bruen* analysis.

Nevertheless, assuming for the sake of argument⁷ that the restriction on discharge of firearms for the purpose of target shooting on the Axtell Parcel *is* an action encompassed within the plain text of a right to “keep and bear Arms”, the Hatter Decision’s target shooting restriction in response to well-documented public safety and resource concerns is consistent with “this Nation’s historical tradition of firearm regulation”. *Id.* at 17. At the time the Second Amendment was adopted, and at the ratification of the 14th Amendment, there were indeed restrictions on the discharge of firearms in specific areas where doing so created unacceptable danger or disruption to the public.⁸ And even if these examples are not a ‘dead ringer’, they need not be. As explained by the Supreme Court:

Why and how the regulation burdens the right are central to this inquiry. For example, if laws at the founding regulated firearm use to address particular problems, that will be a strong indicator that contemporary laws imposing similar restrictions for similar reasons fall within a permissible category of regulations. Even

⁷ *Id.*

⁸ See, *Heller* at 684-685, Breyer, Dissenting: “Boston in 1746 had a law prohibiting the “discharge” of “any Gun or Pistol charged with Shot or Ball in the Town” on penalty of 40 shillings, a law that was later revived in 1778. See Act of May 28, 1746, ch. X, Acts and Laws of Mass. Bay, p. 208; An Act for Reviving and Continuing Sundry Laws that are Expired, and Near Expiring, 1778 Mass. Sess. Laws ch. V, pp. 193, 194. Philadelphia prohibited, on penalty of five shillings (or two days in jail if the fine were not paid), firing a gun or setting off fireworks in Philadelphia without a “governor’s special license.” See Act of Aug. 26, 1721, § IV, in 3 Stat. at Large of Pa. 253–254 (J. Mitchell & H. Flanders comm’rs 1896). And New York City banned, on penalty of a 20–shilling fine, the firing of guns (even in houses) for the three days surrounding New Year’s Day... See also An Act for preventing Mischief being done in the Town of Newport, or in any other Town in this Government, 1731 Rhode Island Session Laws, pp. 240 – 241 (prohibiting, on penalty of five shillings for a first offense and more for subsequent offenses, the firing of “any Gun or Pistol ... in the Streets of any of the Towns of this Government, or in any Tavern of the same, after dark, on any Night whatsoever.... Furthermore, several towns and cities (including Philadelphia, New York, and Boston) regulated, for fire safety reasons, the storage of gunpowder, a necessary component of an operational firearm....”).

when a law regulates arms-bearing for a permissible reason, though, it may not be compatible with the right if it does so to an extent beyond what was done at the founding. And when a challenged regulation does not precisely match its historical precursors, it still may be analogous enough to pass constitutional muster. The law must comport with the principles underlying the Second Amendment, but it need not be a “dead ringer” or a “historical twin”.⁹

In short, the second prong of the *Bruen* analysis does not prohibit the Department from restricting the discharge of firearms on the Axtell Parcel for purposes of target shooting for the well-documented safety and resource concerns identified during this petition process. Montana law expressly authorizes the imposition of restrictions on the discharge of firearms:

- Under 77-1-804(6), MCA rules adopted under the recreational use regulations “may impose restrictions on general recreational activities, including the discharge of weapons....”
- Under 45-8-343, MCA it is unlawful to discharge a firearm within the limits of any town or city except for approved shooting ranges and/or in the case of a ‘justified use of force’.
- Under 87-3-106, MCA hunting is prohibited in designated fire-danger areas.
- Under 77-1-118, MCA use of exploding targets on state trust land is prohibited when the DNRC determines that fire danger is high, very high, or extreme.¹⁰
- Under ARM 12.12.113, the FWP may close public use sites, or portions thereof, to the discharge of weapons when the director determines there is an undue hazard to human safety, or to protect property and public resources.
- Under ARM 36.25.1204, a recreationist may not discharge a firearm on state trust land within ¼ mile of an inhabited dwelling.

⁹ *United States v. Rahimi*, 602 U.S. 680, 692, 144 S.Ct. 1889 (2024).

¹⁰ MSSA appears to concede this is a constitutionally valid restriction on the discharge of firearms. *MSSA’s Reply*, 3-8.

There are many more examples, including general prohibitions against discharging firearms—such as bans on firing into crowds or reckless endangerment. Generally, governments retain the authority to regulate where, when, and how firearms are discharged to protect the public, provided those rules do not entirely extinguish the practical right of self-defense, a point which MSSA acknowledges.¹¹ See *District of Columbia v. Heller*, 554 U.S. 570, 627, 128 S.Ct. 2783 (2008)(“... nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale.... [and noting that these examples are not exhaustive].”)

MSSA raises the case of *Ezell v. City of Chicago*, 651 F.3d 684 (7th Cir. 2011) as an example where a discharge of firearms (for training purposes) may be protected by the Second Amendment to some extent. MSSA’s *Reply*, p. 4. In *Ezell*, the 7th Circuit held that plaintiff was likely to prevail on the merits in their challenge to a particular city ordinance that mandated firing-range training as prerequisite to lawful gun ownership yet also prohibited all firing ranges in the city. In that case the court found that “the right to possess firearms for protection implies a corresponding right to acquire and maintain proficiency in their use; the core right wouldn’t mean much without the training and practice that makes it effective.” *Ezell* at 704. Although the 7th Circuit decision is not binding in Montana, this

¹¹ See, MSSA’s *Reply*, p.3: (“MSSA does not contend that DNRC can never impose any restriction upon firearm discharge on state lands. The more precise issue is whether the authority granted by § 77-1-804 and implemented through administrative rules authorizes this particular restriction consistently with superior constitutional law.”). See also MSSA’s *Reply*, p. 4: (“MSSA does not contend that § 77-1-118 proves DNRC lacks all other authority concerning firearm discharge. Section 77-1-804 demonstrates otherwise.”).

line of reasoning does indeed suggest that if a government were to completely ban the discharge of firearms or firearms training in a manner that would render the core rights protected in the Second Amendment essentially meaningless, such regulation would be unconstitutional. Indeed, in *Heller*, the Supreme Court held that a city's requirement that firearms in the home be rendered and kept inoperable at all times made it impossible for citizens to use them for the core lawful purpose of self-defense and thus was unconstitutional. See, *Heller* at 630.

Nevertheless, in *Ezell*, the City's firing range ban was not merely regulatory; it prohibited the law-abiding responsible citizens of Chicago from engaging in target practice in the controlled environment of "a safely sited and properly equipped firing range" anywhere within its jurisdiction. *Ezell* at 706. And lawful possession of firearms was premised on the very range training it forbade all across the city. The *Ezell* court found that such a blanket ban was a "serious encroachment" on the right to maintain proficiency in firearm use and thus an encroachment on the "meaningful exercise of the core right to possess firearms for self-defense." *Id.* at 708.

The facts in the instant case are very different. There is no blanket ban on target shooting on state trust land: The DNRC restriction on firearm use being appealed by MSSA is specific to the Axtell Parcel of state trust land that is subject to well-documented public safety and resource damage concerns unique to that location. And the firearm restriction on the Axtell Parcel is not absolute: a recreationist can still carry a firearm, hunting with a

firearm is still allowed, and the restriction is subject to being re-evaluated in 2028.¹² And, although the Hatter Decision did not explicitly clarify, the restriction on firearm use does not and hereby shall not apply to possession of a firearm on the Axtell Parcel or the discharge of a firearm in the case of ‘justified use of force’. Moreover, unlike *Ezell* the target shooting restriction does not frustrate lawful ownership or possession of firearms. Finally, the Hatter Decision does not impose a blanket ban on firearms training across an entire jurisdiction; it applies to 455.47 acres of the over 5.2 million acres of state trust land managed by DNRC. And, the Decision has no impact on the right of gun owners to visit private target shooting facilities. In short, to the extent that *Ezell* suggests that a blanket ban on firearms training could violate the Second Amendment, that case does not impact the Hatter Decision here because no such blanket ban is being imposed by the Department’s action.

Therefore, following the methodology under *Bruen*, the “plain text” of the Second Amendment, which protects the right to “keep and bear arms” does not encompass the act of discharging a firearm for the purposes of target shooting on the Axtell Parcel, but even if it did, a restriction on the discharge of firearms at a specific location due to well-documented safety and resource concerns specific to that location is consistent with this Nation’s historical tradition of firearm regulation. Moreover, the Department’s restriction is not tied to lawful possession or carry of firearms and does not impose the sort of blanket ban across a jurisdiction that was found to undermine the core principle of self-defense in

¹² MSSA concedes “that people may continue to walk upon the parcel, hunt, carry firearms, and engage in other recreational activity.” *MSSA’s Reply*, p. 3.

Ezell. Consequently, the Department's Hatter Decision does not violate the MSSA's Second Amendment rights. And, for similar reasons, it does not violate MSSA's rights under the Montana Constitution either.¹³

The Department finds that the evidence and basis for the Department's action to restrict target shooting on the Axtell Parcel due to an imminent threat of immediate, irreparable property damage or bodily injury in response to a citizen-initiated request is well justified on the record for the reasons explained in the Hatter Decision and in petitioners' filings in this appellate proceeding.¹⁴ The resource damage was extensively documented in the Hatter Decision; MSSA questions whether recreational shooting is the cause of the damage,¹⁵ but for the reasons stated in the Hatter Decision, the Department finds that there is compelling evidence that target shooting has significantly contributed to the resource damage problem on the Axtell Parcel. Moreover, the decision to restrict target shooting is also based on the well-documented public safety concerns regarding the intensity and dangerous manner in which the target shooting has been occurring on the

¹³ See, *State v. Fadness*, 2012 MT 12, ¶ 31, 363 Mont. 322, 268 P.3d 17: ("Similarly, Article II, Section 12 provides that "[t]he right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons." **Like most constitutional rights, this right is not unlimited.** *State v. Maine*, 2011 MT 90, ¶ 29, 360 Mont. 182, 255 P.3d 64 ("[M]ost constitutional rights are not absolute.")... In fact, in proposing Article II, Section 12 at the 1972 Constitutional Convention, the Bill of Rights Committee noted "that the statutory efforts to regulate the possession of firearms have been at the federal level and are, therefore, not subject to state Constitutional provisions. In addition, it is urged—and requires no citation—that the right to bear arms is subject to the police power of the state." Montana Constitutional Convention, Comments on the Bill of Rights Committee Proposal, Feb. 22, 1972, vol. II, p. 634; see also Montana Constitutional Convention, Verbatim Transcript, Mar. 8, 1972, pp. 1725–42, Mar. 9, 1972, pp. 1832–42 (twice rejecting a proposal to add "nor shall any person's firearms be registered or licensed" to Article II, Section 12, with several opponents of this language arguing that the decision to adopt registration and licensing requirements is a legislative, rather than constitutional, matter)."

¹⁴ See, *Petitioners' Written Argument*, pp. 4-8: (describing the considerable evidence that has been submitted in support of their concerns).

¹⁵ See, *MSSA's Reply*, p. 2.

Axtell Parcel, which the Department finds in this review is also strong and convincing for the reasons stated in the Decision. Although MSSA disagrees¹⁶ about whether a restriction will effectively resolve these issues, the evidence established that similar restriction on a different parcel imposed last year has been effective according to the affidavit of the landowner at that location. See, *Petitioners' Response to Appeal*, pp. 6-7: (discussing Halvorsen Decl. ¶ 7: that since the closure described in the Logan Petition, Halvorsen has not personally observed a single person shooting on the closed parcel). Moreover, the restriction will be re-evaluated in 2028 to determine its efficacy.

In reaching its decision, the Department did consider the importance of lawful recreational target shooting on the Axtell Parcel. *Hatter Decision*, p. 16. DNRC is respectful of all forms of recreational use of state trust land including recreational target shooting and is currently processing a shooting range application in the area.¹⁷ However, DNRC believes that due to the painstakingly documented safety and resource concerns on the Axtell Parcel, a restriction on target shooting on the Axtell Parcel is appropriate at this time.

The evidence and basis for the Department's action in response to a citizen-initiated request is well justified on the record explained in the Decision and in petitioners' filings in this appellate proceeding. The Hatter Decision is hereby AFFIRMED, and incorporated into this Final Agency Decision, with a clarification that the restriction on target shooting does

¹⁶ *Id.* at p. 7.

¹⁷ As noted in the Decision, DNRC is presently considering an application from FWP for an 86.40-acre easement for the purpose of development of a formal safely sited and properly equipped firing range on state trust lands approximately 20-miles north of this site.

not restrict possession of a firearm or the use of a firearm for 'justified use of force' under Title 45, Chapter 3, MCA, on the Axtell Parcel. This restriction is not necessarily perpetual; as noted in the Decision, it will be reviewed when the Axtell Parcel comes back up for lease in 2028.

DATED: August 28, 2026

By: 

Director, Amanda Kaster

Montana Department of Natural Resources
and Conservation
1539 Eleventh Avenue,
Helena, MT 59601