

1 BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
2 STATE OF MONTANA

3
4 IN THE MATTER OF THE CIVIL
5 PENALTY IMPOSED AGAINST
6 MONTANA TROUT UNLIMITED

7 FINDINGS OF FACT, CONCLUSIONS OF LAW,
8 ORDER, AND MEMORANDUM OPINION

9 These informal contested case proceedings were filed before the Commissioner
10 of Political Practices (Commissioner) to consider the appeal of the principal
11 referenced above. Pursuant to the provisions of § 5-7-306, MCA, the principal
12 appealed the Commissioner's assessment of a civil penalty resulting from its late
13 filing of a lobbying disclosure report. The principal filed a written Waiver of
14 Hearing waiving its right to an in-person hearing, and submitted a written statement
15 for the Commissioner's consideration.

16 Based on the written submissions of the principal, the documents of record in
17 the Commissioner's file, and the applicable law, the Commissioner makes the
18 following findings of fact, conclusions of law, and order.

19 **FINDINGS OF FACT**

- 20 1. Montana Trout Unlimited is a principal registered with the Commissioner.
21 2. The 2003 Montana Legislature passed House Bill 38 and the governor signed
22 it into law. The law took effect on February 18, 2003. House Bill 38, now codified
23 at § 5-7-306, MCA, establishes civil penalties that are required to be assessed
24 against any person who fails to file lobbying disclosure reports within the time
25 required by law.
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1 3. The initial lobbying disclosure report for Montana Trout Unlimited was
2 required to be filed no later than February 15, 2011.

3 4. On February 8th and again on February 14th, the office of the Commissioner
4 sent an email to all principals, including Montana Trout Unlimited. The email
5 advised principals that an initial lobbying financial disclosure report was required to
6 be filed by February 15, 2011. The email referenced the appropriate form that was
7 required to be filed, known as a form L-5, and noted that it was available for
8 download on the Commissioner's website.

9 5. Montana Trout Unlimited failed to file its L-5 on or before February 15,
10 2011.

11 6. On February 17, 2011, Mark Aagenes, lobbyist for Montana Trout Unlimited
12 called the office of the Commissioner of Political Practices, to see if the principal
13 had filed the L5 by the February 15, 2011, deadline. He was told that Montana
14 Trout Unlimited was not on the list of organizations that was late.

15 7. Approximately a week later, Mr. Aagenes came into the office of the
16 Commissioner of Political Practices and was again told that Montana Trout
17 Unlimited was in compliance.

18 8. On Thursday, March 3, 2011, the lobbyist for Montana Trout Unlimited
19 approached the Commissioner of Political Practices confused about who filed the L-
20 5 that was due on February 15th. He said that though he had initially thought he
21 was late with his report, he had been told that Montana Trout Unlimited was in
22 compliance, and was confused about who had filed for his principal.

23 9. Research into reports filed showed that a clerical error left Montana Trout
24 Unlimited's name off of the list of organizations missing reports, and therefore the
25 information given to the lobbyist on February 17th, and again a week later, was
26 incorrect.

27 10. On Thursday, March 3, 2011, Montana Trout Unlimited filed their initial

1 lobbying disclosure report, 11 business days after the deadline.

2 11. On Friday, March 11, 2011, the lobbyist for Montana Trout Unlimited was
3 hand-delivered a letter from the Commissioner of Political Practices assessing a
4 \$550 civil penalty, pursuant to §5-7-306(1), MCA.

5 12. On Friday, March 11, 2011, Mark Aagenes, on behalf of Montana Trout
6 Unlimited, signed a waiver of hearing provided for in §5-7-306(3), MCA.

7 13. On Monday, March 14, 2011, Mark Aagenes sent written statement for the
8 Commissioner's consideration.

9 **CONCLUSIONS OF LAW**

10 1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-604
11 and 5-7-306, MCA.

12 2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

13 3. § 5-7-306, MCA, provides:

14 **Civil penalties for delays in filing -- option for hearing --**
15 **suspension of penalty.** (1) In addition to any other penalties or
16 remedies established by this chapter, a person who fails to file a report
17 within the time required by this chapter is subject to a civil penalty of
or until the penalties reach a maximum of \$2,500 for each late report.

18 The person against whom a penalty is assessed may request an informal contested
19 case hearing before the Commissioner. At the hearing, the Commissioner is
20 required to consider any factors or circumstances in mitigation, and may reduce or
21 waive the civil penalty. § 5-7-306(3), MCA.

22 4. § 5-7-208(2)(a), MCA, requires a lobbying disclosure report to be filed with
23 the Commissioner "by February 15th of any year the legislature is in session" and
24 the report must include "all payments made in that calendar year prior to February
25 1." If payments are not made during a reporting period, the report shall state that
26 fact. § 5-7-208(4), MCA.

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MEMORANDUM OPINION

Information offered in a written statement by Mark Aagenes provided testimony establishing circumstances in mitigation that would justify reduction of the civil penalty. Mr. Aagenes claims, and this office confirms, that a clerical error and inaccurate information was the cause of the delay in filing from February 17 to March 4, 2011. However, Montana Trout Unlimited did not file their lobbying report on February 15 as required, and even if they had received correct information the report in question would have been two business days late.

I urge principals to carefully review and understand the statutory filing requirements to ensure that they comply with the law and to avoid the assessment of civil penalties in the future.

ORDER

THEREFORE, IT IS HEREBY ORDERED that Montana Trout Unlimited shall pay a civil penalty of \$100 to this office no later than April 15, 2011.

DATED this _____ day of March, 2011.

Jennifer L. Hensley
Commissioner of Political Practices

NOTICE: This is a final decision in a contested case. You have the right to seek judicial review of this decision pursuant to the provisions of Mont. Code Ann. §§ 2-4-701 through 2-4-711.

CERTIFICATE OF SERVICE

1 I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF FACT,
2 CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be hand-delivered to:

3 Mark Aagenes
4 Montana Trout Unlimited

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6 DATED: March ____, 2011

7 _____
8 Mary Baker
9 Program Supervisor

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