

February 19, 2025

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Re: Comments on Libby Exploration Project Draft Environmental Assessment

Thank you for the opportunity to comment on the Draft Environmental Assessment for the proposed Libby Exploration Project.

These comments are submitted on behalf of the Confederated Salish and Kootenai Tribes. In addition, these comments are submitted by the following non-governmental conservation organizations, including Save Our Cabinets, Earthworks, Montana Trout Unlimited, Montana Environmental Information Center, Cabinet Resource Group, Yaak Valley Forest Council and the Clark Fork Coalition. These non-profit organizations have a long history of working to protect clean water and healthy landscapes in the region, and collectively represent people who live, work, and recreate within the area.

These comments address the Libby Exploration Project, which is proposed in an area of significant cultural, social, and ecological importance. The Cabinet Mountains, including the area impacted by the project, have significant cultural and historic importance to the Confederated Salish and Kootenai Tribes.

It is also adjacent to and will tunnel beneath the Cabinet Mountains Wilderness, one of the first Wilderness Areas established by Congress. The Cabinet Mountains Wilderness represents just 4% of the Kootenai National Forest, yet this small but important refuge supplies some of the purest waters in the lower 48 states and provides critical habitat for bull trout and grizzly bear – threatened species under the Endangered Species Act.

The proposed project has the potential for significant impacts to Outstanding Resource Waters, federally designated wilderness and threatened species, including grizzly bears and bull trout, which merit an Environmental Impact Statement.

Please see our detailed comments below. We also include technical comments from fisheries biologist, Jim Gregory, and hydrologist, Dr. Payton Gardner.

Sincerely,

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I. THE LIBBY EXPLORATION PROJECT

The Libby Adit Project would occur over 16 years. The Project would consist of two years of dewatering and rehabilitation of approximately 7,000 feet of the existing Libby Adit. Following dewatering, the construction and exploration phase would last up to six years and include extension of the Libby Adit by approximately 4,200 feet and construction of lateral drifts to conduct exploration activities. Montanore Minerals Corporation (MMC) would construct an inclined adit extension to above the currently defined mineral resource and lateral drifts. Beginning 400 feet from the bottom of the existing Libby Adit, MMC would construct a 4,200-foot inclined drift toward the mineralized zone. When the incline reaches 400 feet above the general centerline of the upper mineral resource zone, MMC would transition to lateral drifts that would parallel the dip of the mineral resource. Lateral drifts would total no more than 6,300 feet of underground workings (2600 feet to the southeast and 1,000 feet to the northwest. Muck bays and drill stations would be established at various intervals along the drifts. MMC would drill from the drill stations downward into the mineral resource or lateral into other structures as necessary to collect a suite of underground data. Sumps would be established, where needed, to temporarily store adit water. The location and number of sumps would depend on the amount of inflow encountered. Sump water would be pumped to the surface to the Water Treatment Plant (WTP). MMC would conduct mineral exploration from approximately 35 underground drill stations located in drifts above the mineralized zone.

Surface activities include:

- Waste Rock Storage Area (WRSA) #1 would be expanded by approximately 1.3 acres, increasing the storage capacity to 77,000 cubic yards (yd³). The expanded area would be lined with a polyvinyl chloride (PVC) liner.
- WRSA #2 would be constructed on an area of approximately 2.7 acres with a storage capacity of approximately 87,000 yd³. The area would be high-density polyethylene (HDPE) lined.
- A Waste Rock Sump would be constructed with a storage capacity of 360,000 gallons. The sump would be double lined with an 80-mil HDPE liner and include a leak detection system.
- Existing soil stockpiles would be relocated above WRSA #1 to accommodate construction of WRSA #2. The WTP has a design capacity of 500 gallons per minute (gpm).
- A lined stormwater pond collects water from the project area. Discharge from the WTP flows to a percolation pond that serves as Outfall 001 under MMC's MPDES permit. The existing culvert outlet and catchment basin are located within the proposed footprint of WRSA #2 and MMC would extend the culvert beyond the footprint of WRSA #2.
- There are two existing 3,000-gallon diesel storage tanks in the project area. Two 250-gallon double-walled day tanks are located on site: one at the WTP and the other in the

maintenance shop area. As fuel storage requirements increase for the Project, MMC would install two aboveground 20,000-gallon double-walled fuel tanks within covered concrete-floored areas.

- MMC operates three Tier 3 225 kilowatt (kW) electrical generators, which provide enough power to maintain the site including maintaining the static water elevation in the Libby Adit. While the adit is dewatered, MMC would upgrade the existing generators with newer, more efficient Tier 4 generators.
- Beginning in 2007, the USFS has annually approved a request from MMC that allows motorized access from U.S. Highway 2 (U.S. 2) during the seasonal closure, road maintenance, and snowplowing on segments of NFSR 231 and NFSR 2316 to maintain project area access year-round.

II. SIGNIFICANT IMPACTS REQUIRE AN EIS

The proposed exploration activities have the potential for significant impacts on the environment and should be analyzed via an Environmental Impact Statement (EIS), rather than an EA. As a threshold matter, the proposed exploration activities are interdependent and connected actions for the potential development of a full-scale mining operation (discussed *infra*), which raises myriad major environmental and social impacts and must be addressed through an EIS. Regardless of the full build-out of the mine, the exploration activities proposed pose significant impacts that must be analyzed through an EIS. These impacts include exploration activities that have the potential to affect threatened species, discharges in critical habitat for threatened bull trout, exploration activities adjacent to, and extending under, a federally designated Wilderness Area, and the potential for dewatering effects to result in impacts to the overlying Outstanding Resource Waters.

“An EIS must be prepared if substantial questions are raised as to whether a project ... may cause significant degradation of some human environmental factor.” *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1212 (9th Cir. 1998) (internal citation omitted).

In considering whether an adverse effect of the proposed action is significant, agencies shall examine both the context of the action and the intensity of the effect. In assessing context and intensity, agencies should consider the duration of the effect. Agencies may also consider the extent to which an effect is adverse at some points in time and beneficial in others (for example, in assessing the significance of a habitat restoration action's effect on a species, an agency may consider both any short-term harm to the species during implementation of the action and any benefit to the same species once the action is complete). However, agencies shall not offset an action's adverse effects with other beneficial effects to determine

significance (for example, an agency may not offset an action's adverse effect on one species with its beneficial effect on another species).

(1) Agencies shall analyze the significance of an action in several contexts. Agencies should consider the characteristics of the geographic area, such as proximity to unique or sensitive resources or communities with environmental justice concerns. Depending on the scope of the action, agencies should consider the potential global, national, regional, and local contexts as well as the duration, including short-and long-term effects.

(2) Agencies shall analyze the intensity of effects considering the following factors, as applicable to the proposed action and in relationship to one another:

(i) The degree to which the action may adversely affect public health and safety.

(ii) The degree to which the action may adversely affect unique characteristics of the geographic area such as historic or cultural resources, parks, Tribal sacred sites, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

(iii) Whether the action may violate relevant Federal, State, Tribal, or local laws or other requirements or be inconsistent with Federal, State, Tribal, or local policies designed for the protection of the environment.

(iv) The degree to which the potential effects on the human environment are highly uncertain.

(v) The degree to which the action may adversely affect resources listed or eligible for listing in the National Register of Historic Places.

(vi) The degree to which the action may adversely affect an endangered or threatened species or its habitat, including habitat that has been determined to be critical under the Endangered Species Act of 1973.

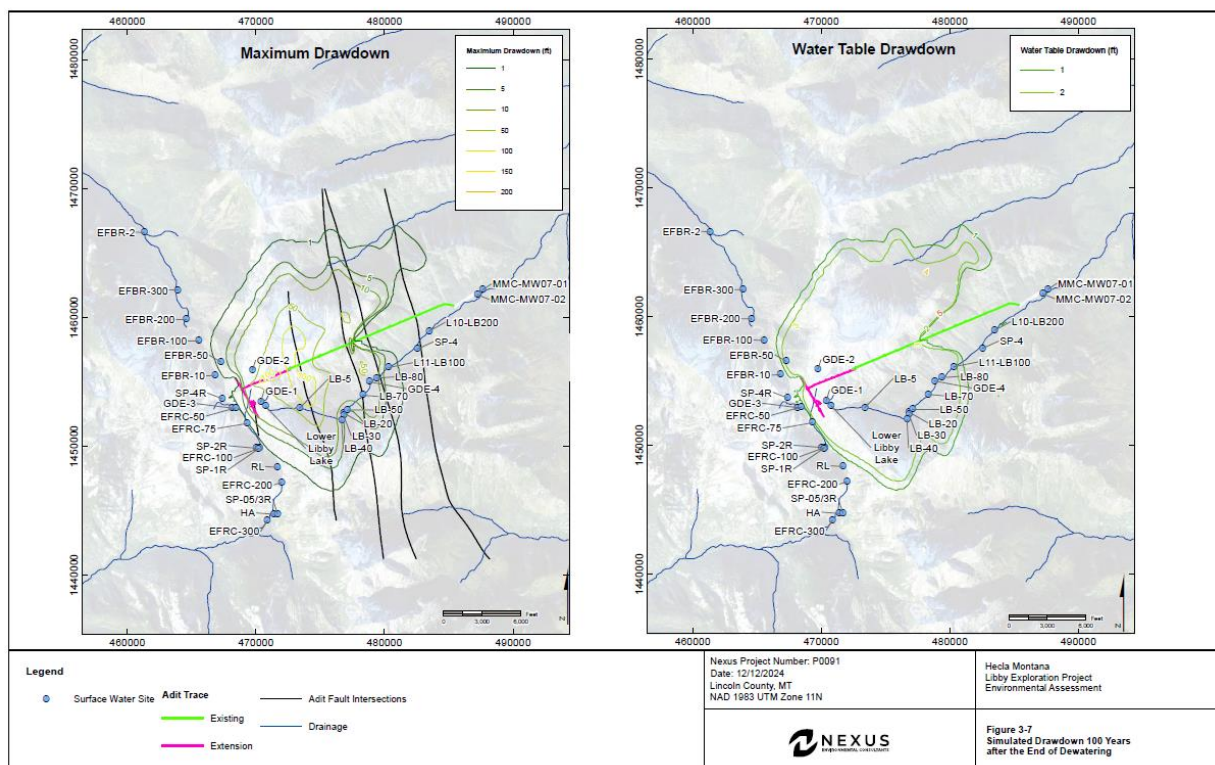
(vii) The degree to which the action may adversely affect communities with environmental justice concerns.

(viii) The degree to which the action may adversely affect rights of Tribal Nations that have been reserved through treaties, statutes, or Executive Orders.

40 C.F.R. § 1501.3; *see also* 36 C.F.R. § 220.5 (providing that an EIS is normally required for “Proposals that would substantially alter the undeveloped character of an inventoried roadless area or a potential wilderness area,” such as “Approving a plan of operations for a mine that would cause considerable surface disturbance in a potential wilderness area.”).

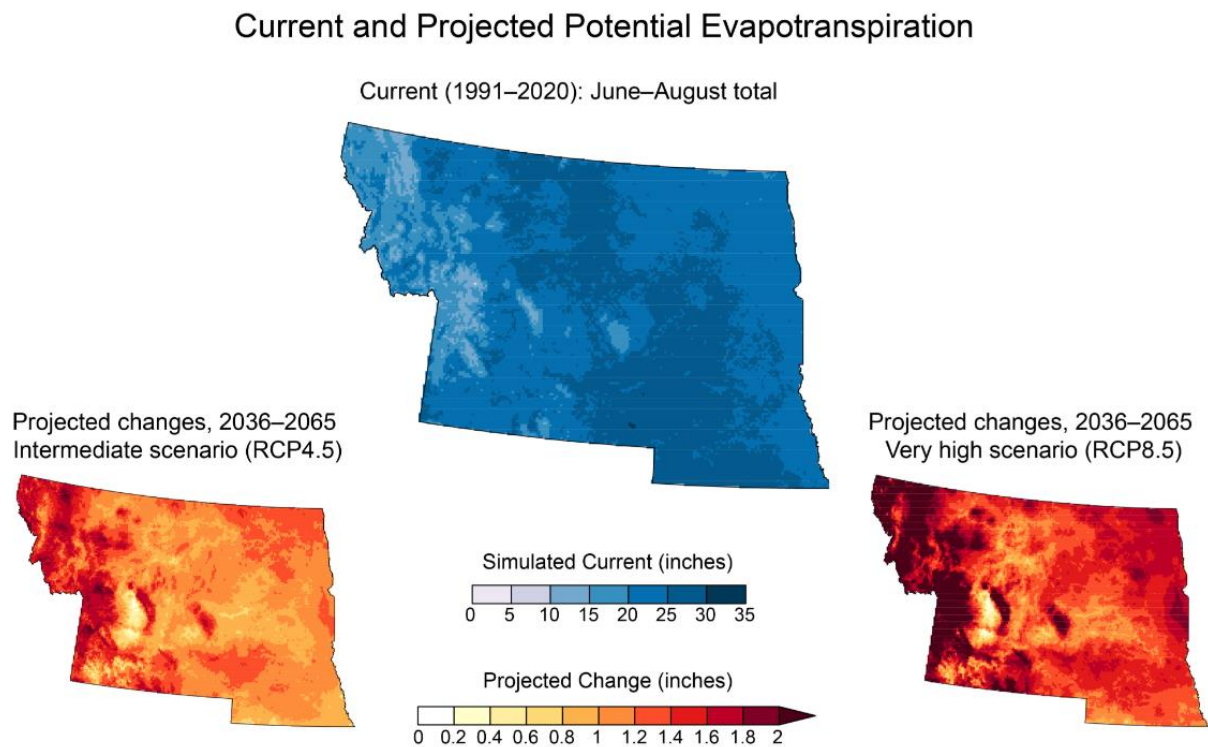
Here, numerous significance factors are implicated, requiring preparation of an EIS. The project is occurring in an area of significant cultural, social, and ecological importance. The Cabinet Mountains, including the area impacted by the project, have significant cultural and historic importance to the Confederated Salish and Kootenai Tribes. It is also adjacent to and will tunnel beneath the Cabinet Mountains Wilderness, an area that must remain “untrammeled by man” and must be managed so as to preserve its natural conditions.” 16 U.S.C. § 1131(c). The Wilderness must not be affected by the “imprint of man’s work.” *Id.* The affected area is also inhabited by multiple threatened and endangered species, including grizzly bear, wolverine, lynx, and bull trout. Bull trout critical habitat will be impacted, as will core grizzly bear habitat. Wetlands, rivers, streams, outstanding resource waters, and groundwater dependent ecosystems may be impacted. Further, there is significant uncertainty regarding the potential for significant and potentially catastrophic impacts to wilderness and surface waters in the wilderness. For example, the BGC review of the project’s groundwater model (Piteau 2023) notes that “[b]ecause of the lack of data concerning the shallow flow system, there is *large uncertainty* with respect to hydraulic communication between the future adit extension and the surface system.” BGC, Montanore Minerals Corporation Libby Exploration Project, Review of Numerical Groundwater Model Approach and Construction at 30 (2024). This uncertainty and risk of catastrophic harm is further demonstrated, as noted, by the subsidence and surface damage that occurred at the Troy Mine, which has been considered an “analogue” to the proposed Montanore Mine. Even if there is a low probability of surface harm to the wilderness and wilderness lakes, the impacts could be catastrophic (i.e., the dewatering of wilderness lakes or streams), which warrants preparation of an EIS. Indeed, such impacts were one reason that the previous iteration of this project was overturned: *Save Our Cabinets v. United States Dep’t of Agric.*, 254 F. Supp. 3d 1241, 1253 (D. Mont. 2017). This uncertainty of potential to surface waters in the wilderness, which are outstanding resource waters that may not be degraded, Admin. R. Mont. 17.30.705(2)(c), is further demonstrated by the report of Dr. Payton Gardner (attached), which notes that the cumulative shortcomings of the groundwater model developed by Piteau is unreliable for predicting impacts to surface waters in the Cabinet Mountains

Wilderness: “Because model calibration is entirely dominated by low-elevation observations, high-elevation predictions are subject to even larger uncertainties (BCG 2024). Thus, predictive error at high-elevation, shallow locations is likely significantly higher than the calibration error, and predictions made by the model for high-elevation locations speculative at best, and it wouldn’t be best practice to rely on these model results.” Dr. Gardner identifies numerous additional errors in the groundwater model that preclude it from making any reliable predictions about impacts to outstanding resource waters in the wilderness. *See Attached Report.* Accordingly, approval of the project without a valid analysis of impacts to outstanding resource waters would violate the Clean Water Act and the Forest Service’s Organic Act. *Save Our Cabinets*, 254 F. Supp. 3d at 1258. This point is underscored by the fact that the draft EA identifies significant drawdown in multiple outstanding resource waters, lakes, and groundwater dependent ecosystems in the wilderness (*see* Mont. Code Ann. §75-5-103(23)), which is impermissible.



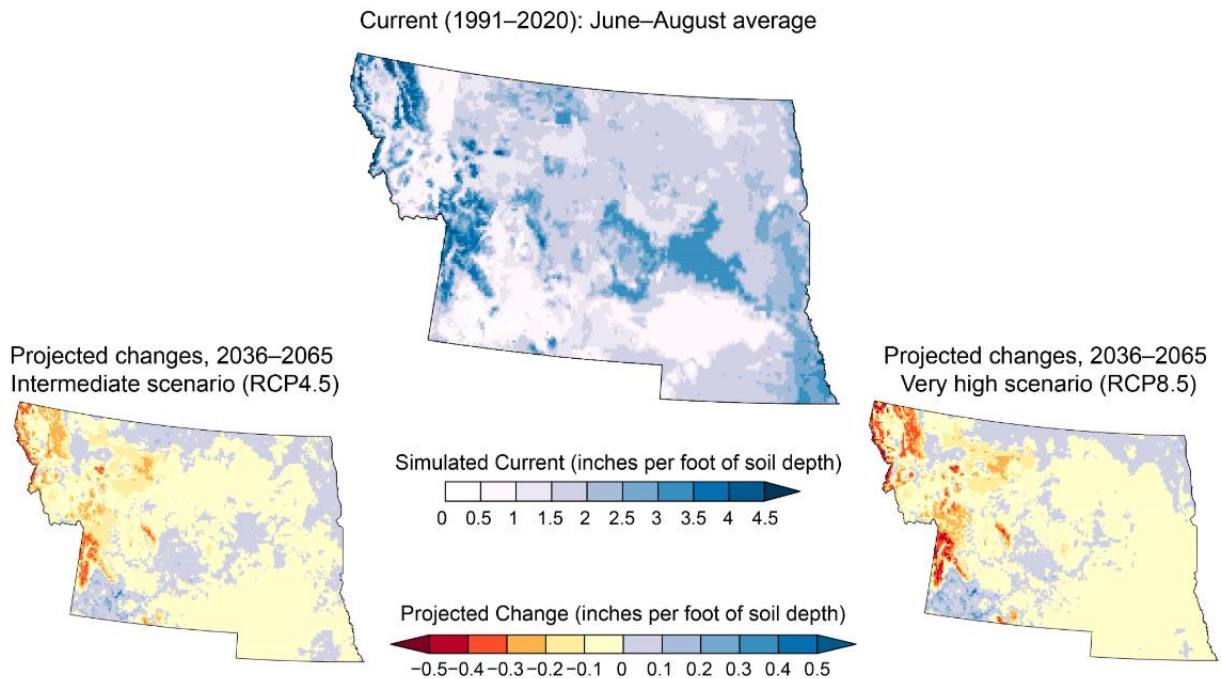
Similarly, the project and increased traffic associated with it will negatively impact the Howard Lake Campground and Libby Creek National Gold Panning Area, neither of which is discussed at all in the draft EA. It further threatens to impact hunting and fishing treaty rights of Confederated and Salish Kootenai Tribes. An EIS is also necessary to assess the cumulative effects and effects of connected actions, including full mine development and combined impacts to all resources associated with multiple proposed pacer mining activities. An EIS is also necessary to assess the impacts of climate change (which are not adequately assessed in the

draft EA). In particular, the impacts to hydrology, which, as noted, will persist for at least 100 years must be evaluated in light of studies showing that the northern rockies and the Cabinet Mountains in particular will become significantly drier in the future, due to increased evapotranspiration (due to higher temperatures) and decreased soil moisture (also due to higher temperatures):



See National Climate Assessment (2023) (Northern Great Plains) (attached).

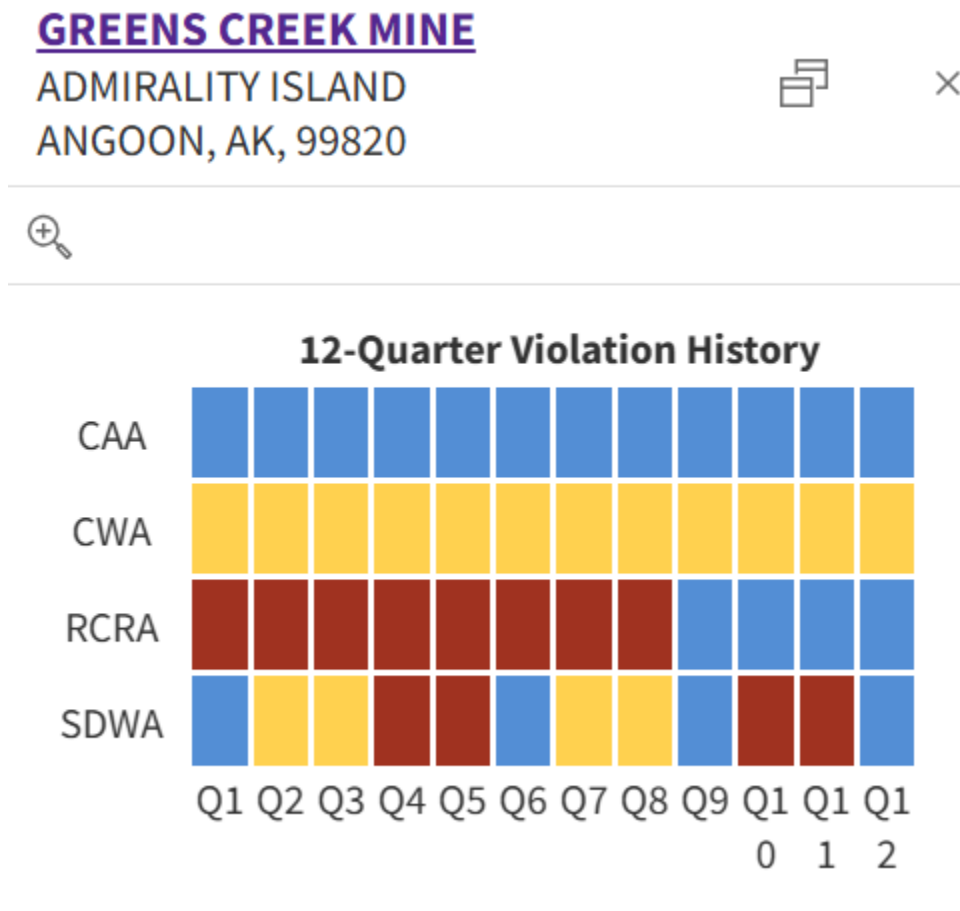
Current and Projected Soil Moisture



Id. The draft EA also fails entirely to discuss the potential for environmental damage and safety concerns due to increased likelihood of wildfire, which is projected to increase substantially in the area. There are no escape routes in the event of a catastrophic wildfire, nor is there any indication of what could happen if the project site is destroyed by wildfire (which could cause significant release of pollutants). *See id.* (“Wildfire numbers and fire-season length increased from the 1970s to the 2000s by 889% and 85 days, respectively, in western Montana and Wyoming forests, with most ignited by lightning strikes rather than humans. Historically, snow cover prevented winter wildfires and increased fuel moisture conditions during snowmelt followed by spring precipitation. However, early spring snowmelt has been correlated with increased fire activity. From 1950 to 2010, the number of snow-cover days declined within the region, increasing wildfire activity due to drying fuels, which can lead to changes in flash flooding and debris flow.”).

An EIS is also warranted to consider potential violations of the law, including the Wilderness Act, the Clean Water Act, the National Forest Management Act, and the Montana Metal Mine Reclamation Act (MMRA). In particular, the MMRA prohibits issuance of a permit to any person who “currently in violation in this state of any law, rule, or regulation of this state or of the United States pertaining to air quality, water quality, or mined land reclamation.” Mont. Code Ann. § 82-4-335(9). Hecla has been in near constant violation of multiple environmental laws for the past three years, including the CWA, Safe Drinking Water Act, and Resource Conservation and Recovery Act (RCRA) at its Greens Creek Mine in Alaska and its Lucky

Friday Mine in Idaho. The yellow rectangles indicate a quarter with a violation; the red rectangles indicate significant non-compliance with the law.



[Detailed Facility Report | ECHO | US EPA](#) (Greens Creek Mine).¹

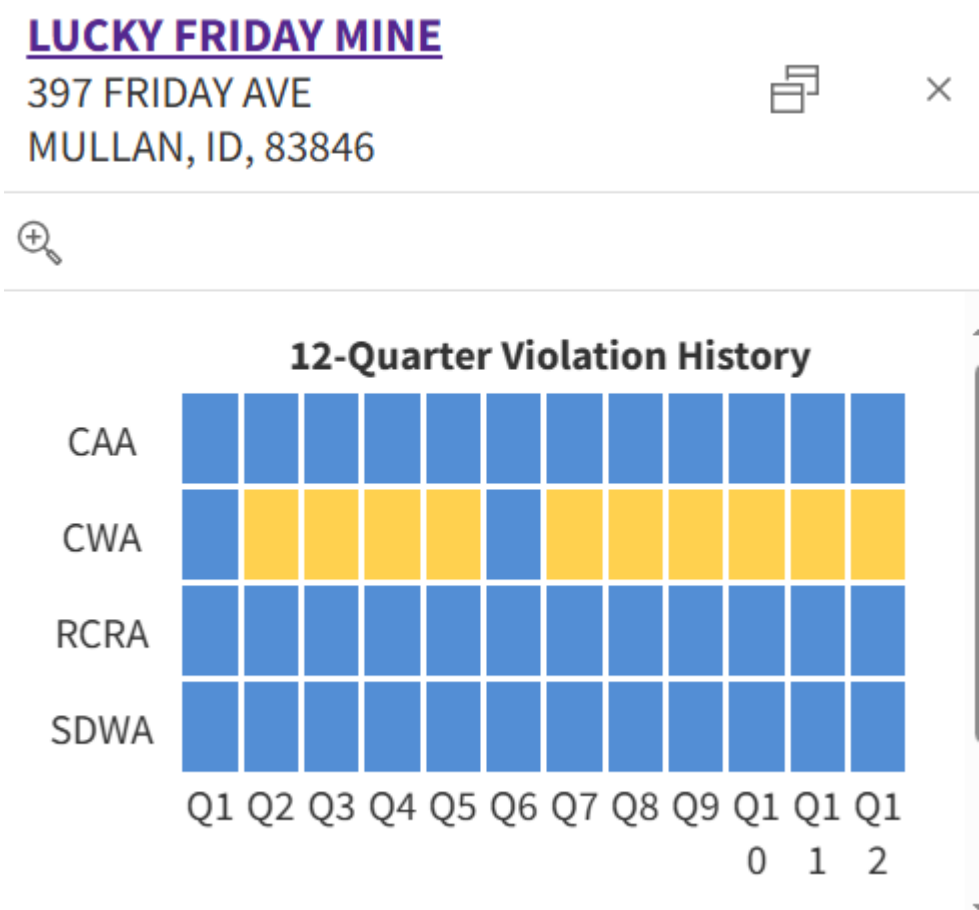
A closer look reveals 28 informal enforcement actions at Hecla's Greens Creek Mine in the past three years, 12 quarters with significant violations, and 28 quarters of non-compliance with environmental laws. In this circumstance, not only is an EIS warranted, but the EA may not simply assume compliance with environmental laws. On the contrary, the EA must assume regular non-compliance with the law. This is especially the case, given Hecla's similarly dismal track record of environmental compliance at its Lucky Friday Mine, in Mullan, Idaho.

¹ See <https://echo.epa.gov/detailed-facility-report?fid=110032882735>

Enforcement and Compliance Summary

Statute	Compliance Monitoring Activities (5 years)	Date of Last Compliance Monitoring Activity	Compliance Status	Qtrs with NC (of 12)	Qtrs with Significant Violation	Informal Enforcement Actions (5 years)	Formal Enforcement Actions (5 years)	Penalties from Formal Enforcement Actions (5 years)
CAA	4 ⓘ	03/28/2024	No Violation Identified	0	0	5	--	--
CWA	3	05/30/2024	Violation Identified	12	0	3	--	--
RCRA	--	08/20/2019	No Violation Identified	8	8	1	2	\$143,124
SDWA	--	--	No Violation Identified	8	4	17	--	--

EPA’s compliance summary for the Lucky Friday Mine similarly shows a history of non-compliance:



[Detailed Facility Report | ECHO | US EPA](#) (Lucky Friday Mine).² There it is the same story as the Greens Creek Mine, near continuous non-compliance and significant fines:

Enforcement and Compliance Summary

Statute ↓	Compliance Monitoring Activities (5 years) ↓	Date of Last Compliance Monitoring Activity ↓	Compliance Status ↓	Qtrs with NC (of 12) ↓	Qtrs with Significant Violation ↓	Informal Enforcement Actions (5 years) ↓	Formal Enforcement Actions (5 years) ↓	Penalties from Formal Enforcement Actions (5 years)
CAA	--	--	No Violation Identified	0	0	--	--	--
CWA	1	04/06/2021	Violation Identified	11	0	--	1	\$174,300
RCRA	1	07/20/2021	No Violation Identified	0	0	1	--	--
SDWA	--	--	No Violation Identified	0	0	--	--	--

Additional harmful pollution impacts from another mine in the Libby area will also lead to harmful economic consequences. Indeed, the EA fails to grapple with the negative impacts of resource-dependent communities, which would result from the proposal. Lincoln County has suffered significantly and continues to suffer from the boom and bust economics of mining. The “resource curse” has long been known. Communities that are dependent on natural resources tend to stagnate. *E.g.*, Sachs & Warner, *The Curse of Natural Resources* 45 *European Economic Rev.* 827 (2001) (attached); Haggerty et al., *Headwaters Economics, Long-term effects of income specialization in oil and gas extraction: the U.S. West, 1980-2011* (2014) (attached). Lincoln County has seen two major mines boom and bust in the past 30 years, the Zonolite Mountain Mine and the Troy Mine. The former poisoned the communities of Libby and Troy and continues to cause impacts to this day. *See* Andrea Peacock, *Wasting Libby: The True Story of How the WR Grace Corporation Left a Montana Town to Die* (2010); *see also* [Libby Asbestos – Montana Department of Justice](#).³ While the brief economic benefits of these mines have gone, the environmental impacts continue to devastate the communities. Similarly, selenium pollution from coal mines in Canada are polluting the major river in Lincoln County, the Kootenai River. The draft EA must disclose to the public the long-term negative economic and environmental impacts of hard rock mining on the community.

In short, it is clear that the impacts of the proposed project may be significant, warranting preparation of an EIS. These same factors, and as elaborated below (regarding impacts to

² See <https://echo.epa.gov/detailed-facility-report?fid=110041927378>

³ Available at <https://www.dojmt.gov/NRDP-sites/libby-asbestos/>

threatened and endangered species), also require preparation of a biological opinion under the Endangered Species Act. 50 C.F.R. § 402.14(a), (b).

Further, the draft EA impermissibly relies on a biological assessment that has not been made available to the public. The draft EA may not rely and effectively incorporate the analysis of a document that is not “reasonably available” to the public. The biological assessment has not been made available, as such the EA may not rely on this document without first disclosing it to the public for review and comment. 36 C.F.R. § 220.7(a).

III. NEPA ISSUES THAT REQUIRE REVIEW

A. The EA Improperly Fails to Review the Reasonably Foreseeable Impacts of Future Mine Development.

The EA improperly limits its analysis to only the immediate environmental impacts of the evaluation phase of the Montanore Project, even though impacts from full-mine development are reasonably foreseeable, well-known to Hecla and the Forest Service, and definitively connected to the Proposed Action. Under NEPA, “[t]he scope of [an agency’s] analysis of environmental consequences ... must be appropriate to the action in question.”⁴ The statute directs agencies to analyze all “reasonably foreseeable environmental effects of the proposed agency action.”⁵ Thus, while the Forest Service is not currently considering *authorizing* the complete Montanore Project, it must consider the effects of that complete project, including full-mine development, as an indirect effect of the evaluation phase, a cumulative effect, and a connected action.

The history of the Montanore Project demonstrates the reasonable foreseeability of full-mine development and its impacts. Critically, in both 2008 and 2015, the Forest Service evaluated the Project’s four phases of development—Evaluation, Construction, Operations, and Closure—in a single EIS. The Forest Service explained: “In 2008, the [Kootenai National Forest] decided the best approach for disclosing the environmental effects of the Libby Adit evaluation activities was to consider this activity as the initial phase of the overall Montanore Project in the Montanore Project EIS.”⁶ The Forest Service repeated this approach in its 2015 EIS and, in 2016, the Service signed a Record of Decision authorizing the entire Project. In separate cases, the U.S. District Court for the District of Montana concluded that the authorization violated the

⁴ *Kern v. U.S. Bureau of Land Mgmt.*, 284 F.3d 1062, 1072 (9th Cir. 2002).

⁵ 42 U.S.C. § 4332(C).

⁶ U.S. Dep’t of Agric., Forest Service Northern Region, Kootenai National Forest, Draft Supplemental Env’t Impact Statement, Montanore Evaluation Project, at 5 (June 2019), https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd639723.pdf.

Organic Act, the Clean Water Act, and the National Forest Management Act,⁷ and the Endangered Species Act.⁸ And as a result of the Service’s “substantial” Endangered Species Act violations, the Court in 2017 invalidated that Record of Decision.⁹

To revive its Project after these legal setbacks, Hecla has proposed a new Plan of Operations for exploration activities only. While some aspects of the evaluation phase are different in Hecla’s latest proposal, it nonetheless remains true that it is just the first (though in its own right, significant) step in developing the long-planned Montanore Project. The fact that the company now seeks piecemeal, rather than comprehensive, approval does not serve to sever the exploration phase from the remainder of the Project. As the Montana district court previously recognized, “because the phases of the [Montanore] Project are interdependent parts of the same proposal, they are required to be discussed in the same EIS.”¹⁰

There is no indication that Hecla might suddenly abandon or substantially change its plans after decades of effort by the company and its predecessor to develop a full-scale mine. And further, having already analyzed the impacts of the Montanore Project’s full scope in 2008 and 2015 (however inadequately), the Forest Service has sufficient information about full-scale mining to consider its impacts, at least at a general level, now.

In these circumstances, NEPA’s requirement that the Forest Service must evaluate the “reasonably foreseeable environmental effects of the proposed agency action” requires consideration of the complete Project, including mine development.¹¹ Under the analogous Endangered Species Act framework for agency consultation, the Montana federal district court held that the U.S. Fish and Wildlife Service’s decision to evaluate only the evaluation phase of Montanore’s sister project, the Rock Creek Mine, was unlawful.

Given the procedural baggage here, at least two of these factors weigh in favor of a finding that Phase II is “reasonably certain” to occur. There are two decades of agency analysis that considered full mine operations part and parcel of the same project as the evaluation adit. Indeed, there are thousands of pages of documents outlining and approving full-scale mining operations in detail. The agencies’ own documentation over the past twenty years therefore contains “clear and

⁷ *Save Our Cabinets v. United States Dep’t of Agric.*, 254 F. Supp. 3d 1241, 1271 (D. Mont. 2017).

⁸ *Save Our Cabinets v. United States Fish & Wildlife Serv.*, 255 F. Supp. 3d 1035 (D. Mont. 2017).

⁹ *Save Our Cabinets, Earthworks v. United States Fish & Wildlife Serv.*, No. CV 15-69-M-DWM, 2017 WL 2829679, at *2 (D. Mont. June 29, 2017).

¹⁰ *Save Our Cabinets v. U.S. Dep’t of Agric.*, 254 F. Supp. 3d at 1263.

¹¹ 42 U.S.C. § 4332(C).

substantial information” showing that mine operations are “reasonably certain” to occur.¹²

The court explained that these circumstances—which are virtually indistinguishable from those present for the Montanore Project—“distinguish[] this case from other ‘mineral exploration projects’” that lack concrete plans for future mining.¹³

NEPA regulations provide more specific direction to agencies to ensure the statute’s mandates and purposes are met. With respect to the timing and scope of NEPA review, the regulations provide that “[a]gencies should integrate the NEPA process with other planning and authorization processes *at the earliest reasonable time* to ensure that agencies consider environmental effects in their planning and decisions, to avoid delays later in the process, and to head off potential conflicts.”¹⁴ And the regulations explain that reasonably foreseeable effects include not only the proposed action’s direct effects, but also indirect and cumulative impacts.¹⁵ “Indirect effects ... are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.”¹⁶ “Cumulative effects... are effects on the environment that result from the incremental effects of the action when added to the effects of other past, present, and reasonably foreseeable actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.”¹⁷

Here, the impacts of full-mine development not only flow directly from the Montanore Project taken as a whole, they are also properly considered as indirect and cumulative impacts of the project’s first, exploration phase. Importantly, “projects need not be finalized before they are reasonably foreseeable.”¹⁸ Instead, “NEPA requires that an EIS engage in reasonable forecasting. Because speculation is implicit in NEPA, we must reject any attempt by agencies to shirk their responsibilities under NEPA by labeling any and all discussion of future environmental effects as crystal ball inquiry.”¹⁹ As described above, the Forest Service’s prior (albeit unlawful) review and authorization of the entire Montanore Project demonstrates that such reasonable forecasting of the Project’s impacts is feasible here, and must be completed in an EIS for the full project before exploration is authorized.

¹² *Ksanka Kupaqa Xa’lcin v. United States Fish & Wildlife Serv.*, 534 F. Supp. 3d 1261, 1273 (D. Mont. 2021) (addressing ESA compliance for Rock Creek mining project).

¹³ *Id.* (citing *Chilkat Indian Vill. of Klukwan v. Bureau of Land Mgm’t*, 825 F. App’x 425, 429 (9th Cir. 2020)).

¹⁴ 40 C.F.R. § 1501.2 (emphasis added).

¹⁵ 40 C.F.R. § 1508.1(i)(4) (defining “effects”)

¹⁶ *Id.* § 1508.1(i)(2).

¹⁷ *Id.* § 1508.1(i)(3).

¹⁸ *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1078–79 (9th Cir. 2011).

¹⁹ *Id.* (citations and alterations omitted).

The phases of the Montanore Project also are “connected actions” under the NEPA regulations, which emphasize the NEPA principle that agencies must “evaluate, in a single review, proposals or parts of proposals that are related closely enough to be, in effect, a single course of action.”²⁰ Agencies cannot avoid a determination that an action will have significant environmental impacts by “segmenting an action into smaller component parts.” *Id.* “This longstanding principle” prohibiting agencies from improperly segmenting their actions “is relevant not only when agencies are preparing EISs, but also when agencies determine whether to prepare an EA” and stretches back through decades of NEPA implementation.²¹ The requirement seeks “to prevent an agency from dividing a project into multiple actions, each of which individually has an insignificant environmental impact, but which collectively have a substantial impact.”²²

It is true that particular, site-specific impacts may be better understood following the exploration phase and submission of a plan of operations for the full mine. But in these circumstances, “an earlier EIS analysis will not have been wasted effort, for it will guide the [site-specific] analysis and, to the extent appropriate, permit ‘tiering’ ... to the EIS in order to avoid wasteful duplication.” *Kern*, 284 F.3d at 1072

Because the environmental consequences of the Montanore Project as a whole—including full-mine development—are reasonably foreseeable impacts of the Project’s evaluation phase, NEPA requires the Forest Service to consider the Project’s full impacts in a single EIS at this stage.

B. Geotechnical/Subsidence

1. The EA fails to take a hard look at the potential geotechnical issues and subsidence risks associated with the proposed Libby Project.

According to the EA (p. 3-70), “The KNF’s analysis concluded that subsidence breaching the surface to form sinkholes or otherwise affect the surface is unlikely due to the strength of overlying rock layers, size of the excavation, and mining depth.” The EA (p. 3-15) references a 2007 report and states that, “The overburden above the Libby Adit is thick (several hundred to 3,000 feet) and strong which would reduce maximum subsidence measured at the surface (Agapito Associates 2007).” However, the 2019 DSEIS for the Montanore Evaluation Project

²⁰ 40 C.F.R. § 1501.3(b).

²¹ 89 Fed. Reg. 35,442, 35,462 (May 1, 2024) (citing *Fath v. Texas DOT*, 924 F.3d 132, 137 (5th Cir. 2018) (“Agencies generally should not segment, or divide artificially a major Federal action into smaller components to escape the application of NEPA to some of its segments.”) (quotations omitted)).

²² *Great Basin Mine Watch v. Hankins*, 456 F.3d 955, 969 (9th Cir. 2006) (internal quotations omitted).

(p. 35), indicated that subsidence is possible. It stated that, “The most susceptible section would be the first 200 to 300 feet where the cover over the adit is thinner.”²³

Hecla’s Troy mine, which the agencies often describe as an analogue, has experienced a number of subsidence events, which were not predicted during the permitting process.²⁴ Efforts to reclaim the surface disturbance from these subsidence impacts were mixed. Reclamation of at least one subsidence area was considered unsuccessful years later.²⁵ A 3.1 earthquake in 2012 caused further damage to the tunnels, and ultimately the mine closed.²⁶

The Forest Service should update its analysis of potential geotechnical issues and subsidence impacts associated with the proposed Libby Exploration Project, analyze the potential impacts of subsidence, and identify specific mitigation measures to prevent these impacts. It should also specify that no authorization to drill within 500’ of the surface would occur without new NEPA analysis.

2. The EA fails to take a hard look at the effectiveness of mitigation measures related to geotechnical issues/dewatering.

The Plan of Operations (POO) proposes to drill into *key potential water-bearing locations* within the Libby Adit.²⁷ The POO states that “All drifts and drill stations will remain at least 300 feet from the Rock Lake Fault and 1,000 feet from Rock Lake (Figure 3-3).” However, the diagram (POO, Figure 3-2) indicates that drilling will extend through the Rock Creek fault. Please clarify whether drilling will extend through the Rock Creek fault, and at how many drill stations.

The EA fails to take a hard look at the potential impacts of intercepting major water bearing locations (*see* Gardner (2025)), nor does it provide supporting evidence to demonstrate that mitigation would be effective to prevent impacts to surface/groundwater once that occurred.

As stated in the 2007 Gurrieri memo on the risks of hydrologic impacts to surface waters from the Libby Exploration Project, “Generally, one is sure of a mining impact only when a

²³ US Forest Service, Draft Supplemental Environmental Impact Statement, Montanore Evaluation Project, June 2019.

²⁴ US Forest Service, Troy Mine Revised Reclamation Plan, Final Environmental Impact Statement, June 2012.

²⁵ *Id.* p. 2-25

²⁶ Flathead Beacon, “Troy Mine Stabilizes, Remains Closed,” December 28, 2012. Available at: <https://flatheadbeacon.com/2012/12/28/troy-mine-stabilizes-remains-closed/#:~:text=A%20small%20earthquake%20on%20Dec.%2020%20followed,States%20Geological%20Survey%20reported%20a%203.1%20magnitude>; Flathead Beacon, “Two years after Troy Mine Shut Down, Cleanup Begins,” June 18, 2017. Available at: <https://flatheadbeacon.com/2017/06/18/two-years-troy-mine-shut-cleanup-begins/>

²⁷ EA at 2-7.

catastrophic event occurs like a perennial spring or stream drying up.”²⁸ It further warns that, “Mitigation is necessary to reduce the potential for surface impacts. However, it should be noted that once the head distributions and flow dynamics in a fractured bedrock aquifer are disrupted by mining, it is very difficult if not impossible to restore the aquifer to its original condition. In other words, there may be irreversible surface impacts from the project for which no practical mitigation exists.”²⁹

At the Stillwater underground mine in Montana, the permitting process failed to identify the potential for significant hydrologic impacts from the extension of the adit, nor mitigate the impacts. As described in Gurrieri (2001):³⁰

The Stillwater mine began operations in 1986. After completing about 4,000 feet of the adit a large inflow of water was encountered that peaked at 884 gpm on May 25, 1988. Overlying the adit is a small 60-acre watershed containing a perennial stream called No Name Creek. The stream was fed by a spring at an elevation of 5800 feet. At the same time the large adit inflow was encountered, No Name Creek began to dry up. By July 1988, the stream and another spring ceased to flow and have remained dry ever since. In 1994, three springs in the upper Nye Creek basin were rendered dry by continued development under Nye Creek.

The EA also fails to provide supporting evidence to demonstrate that mitigation would be effective. The EA (p. 2-10) states that MMC would use grouting, which it states has been successful in the past. Piteau (2024) references a significant grouting program that was completed in the original adit between February 1990 and 1991. Yet, this grouting effort required 47 grout curtains, took more than one year to complete, and only reduced adit inflows by 58%.

The EA fails to provide supporting data or a mitigation plan to demonstrate that grouting could provide timely short or long-term mitigation that would prevent the rapid loss of water from hydrologically connected water resources, particularly those within the Wilderness Areas. These waters are designated as Outstanding Resource Waters and afforded protections against degradation.

The Montanore Mine DSEIS and FEIS analyzed potential mitigation measures, including grouting. In the response to comments, the SDEIS identified significant uncertainties over long-

²⁸ Gurrieri, Joe., Memo to Ray TeSoro, “Summary of the discussions of the Libby Exploration Project,” 2007.

²⁹ *Id.*

³⁰ Guerrieri, Joe., Montana Department of Environmental Quality, Rock Creek Project EIS: Technical Report, Hydrology and Chemistry of Wilderness Lakes and Evaluation of Impacts from Underground Mining, Cabinet Mountains Wilderness, Montana, February 2001.

term viability, stating that “the effectiveness of grouting over the long term (i.e., 100 years or more) is uncertain. Fracture grouting of storage facilities typically uses a design life of 50 years, and the effectiveness of grouting may decrease beyond 50 years.”³¹ Thus, grouting can only be considered an uncertain temporary mitigation rather than permanent mitigation to prevent impacts to the wilderness hydrologic system, as it must.

In addition, the EA (P. 2-16) states that “Upon closure, the Libby Adit would be plugged and sealed to minimize the potential for degradation of groundwater quality by eliminating the inflow or outflow of water through the adit.” It states that MMC would install two plugs. The main plug would be in the Libby Adit near the bedrock/colluvial contact approximately 600 feet from the adit opening. This plug would act as a *water-retaining structure* and would be engineered based on site-specific requirements. It states that a variety of plugging methods are available and MMC would utilize methods consistent with industry standards such as a *pressure-grouted bulkhead* or polyurethane foam or polyurea silicate mixed with waste rock and interlaced with heavy gauge wire.

The EA fails to specify the type of plug that will be used, and provide engineering specs and data on the long-term viability of this mitigation measure. A 2014 memo by a Forest Service engineer raised concerns and uncertainties about the long-term effectiveness of hydraulic barriers as mitigation at Montanore, “Much of the information pertaining to the use of hydraulic barriers in underground mining comes from applications in operating coal mines (NIOSH 2008, Bur. Mines 1985, EPA 1977). There is limited information on functionality of hydraulic barriers once mining is completed however there are no data on design life of these structures.”³² It further stated that “The service life of concrete and grout is variable depending on the materials used in the concrete and grout mixes, construction specifications, and environmental conditions. As a result, there is no documented consensus on design life due to the multitude of variables affecting bulkhead longevity.”³³ It appears from the EA that the proposed grouting to mitigate groundwater inflows and the proposed adit plug are required to prevent impacts to surface and/or groundwater resources in perpetuity. If the adit is ultimately plugged, the inability to monitor the success or to remediate potentially ineffective grouting/plugging raises considerable uncertainty about its near and long-term functionality as an effective and reliable mitigation system. The EA should provide data and analysis to demonstrate that there is a viable mitigation strategy in perpetuity.

C. Climate Change

³¹ US Forest Service, Draft Supplemental Environmental Impact Statement, Montanore Evaluation Project, June 2019, p. M-336.

³² Werner, Pete, Memorandum to Lynn Haggarty, Montanore Mine Project EIS Coordinator, “Long-Term Effectiveness of Constructed Low Permeability Bulkheads,” January 16, 2014.

³³ *Id.*

1. The EA fails to consider the effects of climate change on mine infrastructure and the potential consequences of inadequately designed infrastructure.

Montana is projected to continue to warm in all geographic locations, seasons, and under all emission scenarios throughout the 21st century. By mid-century, Montana temperatures are projected to increase by approximately 4.5-6.0°F (2.5-3.3°C) depending on the emission scenario. These state-level changes are larger than the average changes projected globally and nationally. Across the state, precipitation is projected to increase in winter, spring, and fall; precipitation is projected to decrease in summer.

Recent experience shows that abnormally high levels of precipitation and ensuing flooding can destroy waste dumps, seepage capture systems, and mine access roads; cause impoundments to overflow and dams to be breached; and push water treatment costs over-budget or cause releases of untreated water.³⁴ These impacts underscore the need to analyze the potential impacts of climate change on mine infrastructure and analyze potential mitigation measures.³⁵

The EA fails to provide engineering specs for stormwater facilities, diversion ditches, culverts, waste rock storage areas and ponds, nor does it provide data on whether this infrastructure is designed to withstand a 10 year; 25 year or 100-year storm event. This information is necessary to understand the potential impacts of the proposed project, and whether mitigation measures will effectively minimize these impacts.

The EA should consider the likelihood that an extreme precipitation event will exceed the design parameters for mine infrastructure, resulting in more frequent untreated releases and degrading water quality, and exacerbate the flashy rain on snow events that already contribute to habitat problems for bull trout in Libby Creek. The increased frequency and severity of storm events related to climate change could contribute to these problems, and should be analyzed in the NEPA process.

D. Fish and Aquatic Life

³⁴ See W. McCullough, W. Jepson & B. Maehl, Zortman: Dealing with Extreme Weather Events at 5, 9-11, 15-16, 19, 26-28 (2011); T. D. Pearce *et al.*, *Climate Change and Mining in Canada*, 16 Mitigation & Adaptation Strategies for Global Change 347, 357-58, 360 (2011).

³⁵ R. D. Williams, BLM, Climate Change – Extreme Conditions: Do Plans of Operations Need to Include an Ark? at 29-44 (2012).

1. The EA fails to provide adequate data and analysis on the potential direct, indirect and cumulative impacts to fish and fish habit, including threatened and sensitive species from alterations in flow, temperature, and climate change.

The basis for much of the assumed minimal project-related impacts to native fish is based on three statements in the Environmental Assessment (USDA Forest Service 2024). 1)

“Groundwater inflow to underground workings is predicted to cause negligible streamflow reductions in Libby Creek, East Fork Rock Creek, and East Fork Bull River.” 2) “Downstream of where the Water Treatment Plant discharge enters Libby Creek there would be a minor increase in flow and a minor beneficial effect during low flow conditions.” 3) “Discharge from the WTP is expected to have a negligible temperature effect ... because the maximum effluent temperature has been within the tolerance range for aquatic species and effluent temperature may be slightly cooler when the adit is extended.”

The assumption behind these statements seems to be that if changes in flow are minimal and changes in temperature are within the thermal tolerance of the species present, the effect will be minimal. While this seems logical on its face, the reality is much more complicated. Negligible reductions in flow may be discountable, but when those reductions are decreases or elimination of groundwater inflow, they become important. Likewise, changes in temperature that are within the tolerance limit of a species may affect the species little, unless those temperatures are outside of life-history requirements. These are hard to determine as the Environmental Assessment (USDA Forest Service 2024) does not quantify flow reductions, but does indicate that groundwater drawdown would occur. With respect to temperature changes causing minimal effect, no data to support this claim were given or cited; no indication of the aquatic life and fisheries to which this statement refers were designated, and no critical thermal range was specified.

Several species of fish are present in the analysis area, including native bull trout (*Salvelinus confluentus*), interior redband trout (*Oncorhynchus mykiss gairdneri*), and westslope cutthroat trout (*Oncorhynchus clarki lewisi*), as well as non-native competitors, including coastal rainbow trout (*O. mykiss*) and brook trout (*S. fontinalis*). Native fish in the analysis area are generally at risk across much of their range. In 1999, Bull trout within the coterminous United States were listed as threatened by the U.S. Fish and Wildlife Service pursuant to the Endangered Species Act of 1973, as amended (Act) (64 FR 58910; 1 November 1999). Westslope cutthroat trout are on the Forest Service sensitive species list and are ranked S2 Imperiled in Montana (Aquatic sensitive species list Forest Service-Region 1, February 2011). Interior redband trout are also on the Forest Service sensitive species list and are ranked S1 Critically Imperiled in Montana (Aquatic sensitive species list Forest Service-Region 1, February 2011). As such, the effect of the proposed action on these species needs to be evaluated more extensively than the cursory way presented in the Environmental Assessment (USDA Forest Service 2024).

In two places in the Environmental Assessment (USDA Forest Service 2024), it states, “Discharge from the WTP is expected to have a negligible temperature effect on the aquatic life and fisheries in Libby Creek because the maximum effluent temperature has been within the

tolerance range for aquatic species and effluent temperature may be slightly cooler when the adit is extended.”

The temperature of water discharged into Libby Creek was not provided but will undoubtedly often differ from stream temperature, as stream temperatures vary throughout the day and year, while mine-related discharge will likely be relatively more constant. Actual discharge temperatures were not given, making this potential analysis difficult. Temperature effects of the discharge need to be evaluated for each fish species, life stage, and season rather than simply being evaluated as being within the thermal tolerance range of aquatic species.

The temperature tolerance range for trout found in the analysis area streams is much wider than their temperature requirements during specific life-history periods such as spawning, incubation, rearing, and growth. Additionally, temperature changes during specific seasons such as summer and winter can also affect fish populations.

Juvenile fishes can have a narrower thermal niche and lower temperature fluctuation tolerance than adults. For example, juvenile bull trout are rarely found where mean summer temperatures exceed 12 °C (Dunham et al. 2003; Isaak et al. 2010), whereas adult bull trout sometimes occupy habitats as much as 5–10 °C warmer (Howell et al. 2010). Similar patterns are evident with cutthroat trout (Schrank et al. 2003; Peterson et al. 2013). Therefore, temperature changes that are well within the temperature tolerance range for these species could have substantial effects on various life stages.

Additionally, seasonal changes in water temperature can also affect trout populations. For example, the injection of warmer water during the winter can have some beneficial impacts, but it can also result in the formation of frazil ice, resulting in less stable conditions downstream (Lindstrom and Hubert 2004). Frazil and anchor ice can affect fish in small groundwater-influenced areas, filling them with ice and excluding fish numerous times throughout the winter during severe temperature drops (Brown 1999). Groundwater areas may remain ice-free, and thus conducive to survival, but a lack of surface ice cover makes them susceptible to frazil ice formation during cold snaps, especially if the area kept warm is small (Brown 1999). Frazil ice conditions have been shown to cause cutthroat trout to evacuate those habitats (Simpkins et al. 2000).

The Environmental Assessment (USDA Forest Service 2024) states, “Benefits to non-native fish species populations and resulting effects to bull trout populations are expected to be negligible as a result of the Project because changes to habitat and water quality as a result of the Project are expected to be negligible or minor and not of sufficient magnitude or duration to affect the balance of fish species assemblages.”

Here again, no data were presented or cited to support this claim. Stream temperature and temperature changes contribute to the competitive advantage of some species over others, which can result in the replacement of native bull trout and cutthroat trout by non-native brook trout within the temperature tolerance range of all species. For example, bull trout populations are more susceptible to invasion and displacement by brook trout at warmer temperatures (Paul and Post 2001; Rieman et al. 2006), but again within their range of temperature tolerance. Bull trout

have also been seen to hybridize with brook trout where they overlap (Kanda et al. 2002). Brook trout also have a competitive advantage over cutthroat trout at warmer temperatures (Dunham et al. 2002; McMahon et al. 2007).

Redband trout also have the potential to be affected by the proposed action. The Environmental Assessment (USDA Forest Service 2024) generally states that impacts to redband trout would be similar to those of Westslope cutthroat trout and bull trout. However, management of this species is problematic because the specific thermal requirements for redband trout are not well understood (Rodnick et al. 2004). As such, it is difficult to determine if the effects to redband trout would be similar to Westslope cutthroat trout and bull trout. However, as with Westslope cutthroat trout and bull trout, it is possible that temperature changes due to mine discharge or reductions in groundwater inflow could similarly affect the relationship between non-native coastal rainbow trout and native redband trout. More analysis for this species is needed.

Stream temperature impacts the project may have on native/non-native species interactions, within their temperature tolerance, can be critical to native species persistence. This is an especially important consideration in the Libby Creek and Rock Creek drainages, both of which contain non-native brook trout in sympatry with native bull trout and/or cutthroat trout (<https://myfwp.mt.gov/fishMT/reports/surveyreport>) and non-native coastal rainbow trout in sympatry with redband trout. Redband trout and coastal rainbow trout are not differentiated on Montana's fish reports website (<https://myfwp.mt.gov/fishMT/reports/surveyreport>), however, USDA Forest Service (2024) lists redband trout as present in the analysis area, and coastal rainbow trout are also presumably present. The effect of the project on stream temperature needs to be closely examined to assess the effect it may have on competition between native and non-native fishes.

The Environmental Assessment (USDA Forest Service 2024) states, "Groundwater inflow to underground workings is predicted to cause negligible streamflow reductions in Libby Creek, East Fork Rock Creek, and East Fork Bull River." It also states (USDA Forest Service 2024), "Impacts from predicted groundwater drawdown would be negligible and not result in any perceptible impact to surface water availability."

The magnitude of the negligible streamflow reductions spoken of in the Environmental Assessment (USDA Forest Service 2024) was not quantified and was refuted by Dr. Payton Gardner (Gardner, 2025), who suggested that reductions in flow will be significant upstream from the adit in the higher reaches of the stream. The Environmental Assessment (US Forest Service 2024) gives no indication of the time of year during which such reductions would qualify as negligible and would not result in any perceptible impact to surface water availability. During spring high flows, groundwater drawdown would presumably not have a perceptible impact to surface water availability. The same may be true during the summer. However, inflow from springs and groundwater seepage supply the majority of stream inflow during late summer and fall and all stream inflow during winter, as snowmelt does not occur during winter. Therefore, during these seasons, reductions in streamflow due to groundwater drawdown may be substantial. More details need to be provided to support the statement that "groundwater drawdown would not have any perceptible impact on surface water availability."

Whether or not groundwater inflow causes flow reductions that are perceptible in a flow volume context, the type of flow lost would presumably be groundwater seepage into the stream. Reduction in stream flow through groundwater draw-down suggests that water will seep out of the stream or that seepage into the stream will be reduced or eliminated. This seepage is vitally important to the ecology of native bull trout and cutthroat trout. Groundwater seepage functions to buffer stream temperature during summer and winter (Adams and Bjornn 1997; Kaandorp et al. 2019), influences where fish spawn (Gamett 2002; Bean 2014), affects winter habitat (Griffith and Smith 1993; Power et al. 1999) and influences how ice develops in streams (Brown 1999). In each of these situations, groundwater seepage influences the survival of native fish. Therefore, these reductions in flow need to be analyzed in terms of their impacts on fish rather than just simply their reductions in streamflow. Moreover, the environmental analysis requires a seep ecology study.

Groundwater seepage influences the temperature of streams and rivers by providing a relatively cool input in summer and warm input in winter. Because of this, groundwater seepage can be a determining factor in the provision of suitable water temperatures for aquatic biota (Kaandorp et al. 2019). For example, bull trout persisted in a pool in the Weiser River basin when the surface water in a pool was 20 °C because the temperature at 1 m depth was 17.0 °C due to colder groundwater entering the pool (Adams and Bjornn 1997). Groundwater has also been seen to moderate stream water temperature in the Flathead River basin (Bean 2014).

Bull trout have been seen to select spawning areas with groundwater upwelling (Bean 2014; Baxter and McPhail 2011) and that upwelling provides a reproductive advantage in terms of increased survival of young (Baxter and McPhail 2011). In the Little Lost River drainage, juvenile bull trout, which constitute evidence of spawning, were present in all stream basins where the minimum groundwater temperature was less than 4.1°C, but were not present in any stream basins where the minimum groundwater temperature was only 2 °C warmer (Gamett 2002).

Native cutthroat trout juveniles have been found during winter concealed in clean boulder substrate along the edge of the South Fork of the Snake River and benefitted from the interstitial water that was about 0.5 °C warmer than the river (Griffith and Smith, 1993). Although there was no specific search for groundwater, the river was regulated at below normal flows during the study, suggesting groundwater influx (Power et al. 1999). Power (et al. 1999) explained that stream flow becomes subterranean in some sections of rivers and streams during winter, and only small pockets of upwelling groundwater are available to fish. In these areas, groundwater is essential for the winter survival of fish (Power et al. 1999; Nagrodski et al. 2012). Winter aggregations of cutthroat trout have been observed in small areas of warm groundwater discharge (Power 1999), but aggregations were less common in long stream sections warmed by groundwater (Brown and MacKay 1995).

Groundwater inflow also affects the development of anchor ice, which then influences the behavior and presumably survival of fish Brown et al. (2011). Cutthroat trout, in reaches influenced by anchor ice, made substantial movements 6 times more often during winter, and moved 30 times farther than cutthroat trout in reaches free of anchor ice (Brown 1999). Other

researchers have found that both bull trout and cutthroat trout moved more often in streams affected by anchor ice than in streams with stationary ice cover (Jakober et al. 1998).

Lastly, reductions in groundwater inflow have been shown to cause some stream reaches within the analysis area to go dry (Gardner, 2025). This is most likely to occur upstream from the waterfall in the bull trout stronghold area, which is also an area designated as Critical Habitat by the US Fish and Wildlife Service (**Figure 1**). Reductions in groundwater inflow that cause streams to go dry impact native fish species by stranding desiccation and reductions in available habitat.

The Environmental Assessment (USDA Forest Service 2024) states, “Downstream of where the Water Treatment Plant discharge enters Libby Creek there would be a minor increase in flow and a minor beneficial effect during low flow conditions. Due to water quality monitoring and water treatment, negligible water quality impacts to aquatic species are anticipated.”

Again, this “analysis” is overly simplistic or absent. As outlined above, groundwater inflow and water temperature play more critical roles than are apparent based on water quantity and thermal temperature tolerance. The amount of inflow, where and how it will be released, its temperature relative to the stream temperature throughout the year, and the effect these will have on the ecology of native fish and the interactions of native/non-native fish species need to be examined.

Further, if the wastewater treatment plant adds 300-500gpm (approx. 1cfs) from mine operations to normal winter in-stream flow, the warm waters will influence winter fish and invertebrate survival due to increased energy use/habitat/prey changes from natural systems, which is not beneficial. During summer the warmer waters will also increase energy use/habitat/prey changes from natural system, which again, is not beneficial. Due to climate change, as noted, cool summer waters are extremely important going forward.

The Environmental Assessment (USDA Forest Service 2024) states, “The Proposed Action could incrementally increase impacts to bull trout or bull trout critical habitat because of road use and maintenance, dewatering and extension of the Libby Adit, discharge of treated water, stormwater management, and accidental release of hazardous materials.”

This statement overlooks the fact that water is not required to meet water quality criteria at the discharge location, but rather 3400 feet downstream at the compliance point (LB-300), after the waters of Libby Creek have diluted it. The upstream portion of this mixing zone, where mixing is still incomplete, is within the bull trout stronghold area, where bull trout are isolated from nonnative competitors by a waterfall barrier (**Figure 1**). In this critical area, there is no guarantee or even expectation that water quality criteria will be met. Pollutants such as nitrogen, total phosphorous, nitrate, aluminum, antimony, cadmium, chromium, copper, iron, lead, nickel, and zinc could all impact bull trout in this area.

The Environmental Assessment (USDA Forest Service 2024) states, “The Proposed Action could incrementally increase impacts to bull trout or bull trout critical habitat because of road use and maintenance, dewatering and extension of the Libby Adit, discharge of treated water, stormwater management, and accidental release of hazardous materials.”

The impacts to native fish from the proposed action include decreased flow, decreased groundwater inflow, decreased temperature buffering upstream from the project discharge point, and water quality and temperature impacts downstream from the project discharge. The cumulative effects of these impacts on bull trout and cutthroat trout populations in the analysis area are substantial. Additionally, avoiding these impacts is especially critical given the threats these species face from climate change. Bull Trout (**Figure 1**) and Westslope cutthroat trout (**Figure 2**) population distribution is already predicted to decline in the analysis area based simply on climate change, and the areas most affected by the project are also the most important thermal refugia for native fish.

Scientists have repeatedly called for resource managers to consider climate change in their decision-making and resource management. The Rocky Mountain Research Station has mapped predictions of changes in bull trout and cutthroat trout distribution due to water temperature increases from climate change (Isaak et al. 2015, Isaak et al. 2022). These predictions show marked decreases in the distribution of both species in the analysis area (**Figure 1-Figure 2**). Particularly concerning is the fact that mine discharge impacts will be present in Libby Creek upstream from the waterfall, a bull trout stronghold area where brook trout are not present (<https://myfwp.mt.gov/fishMT/reports/surveyreport>) and an area of potential bull trout distribution shrinkage due to temperature (**Figure 2**).

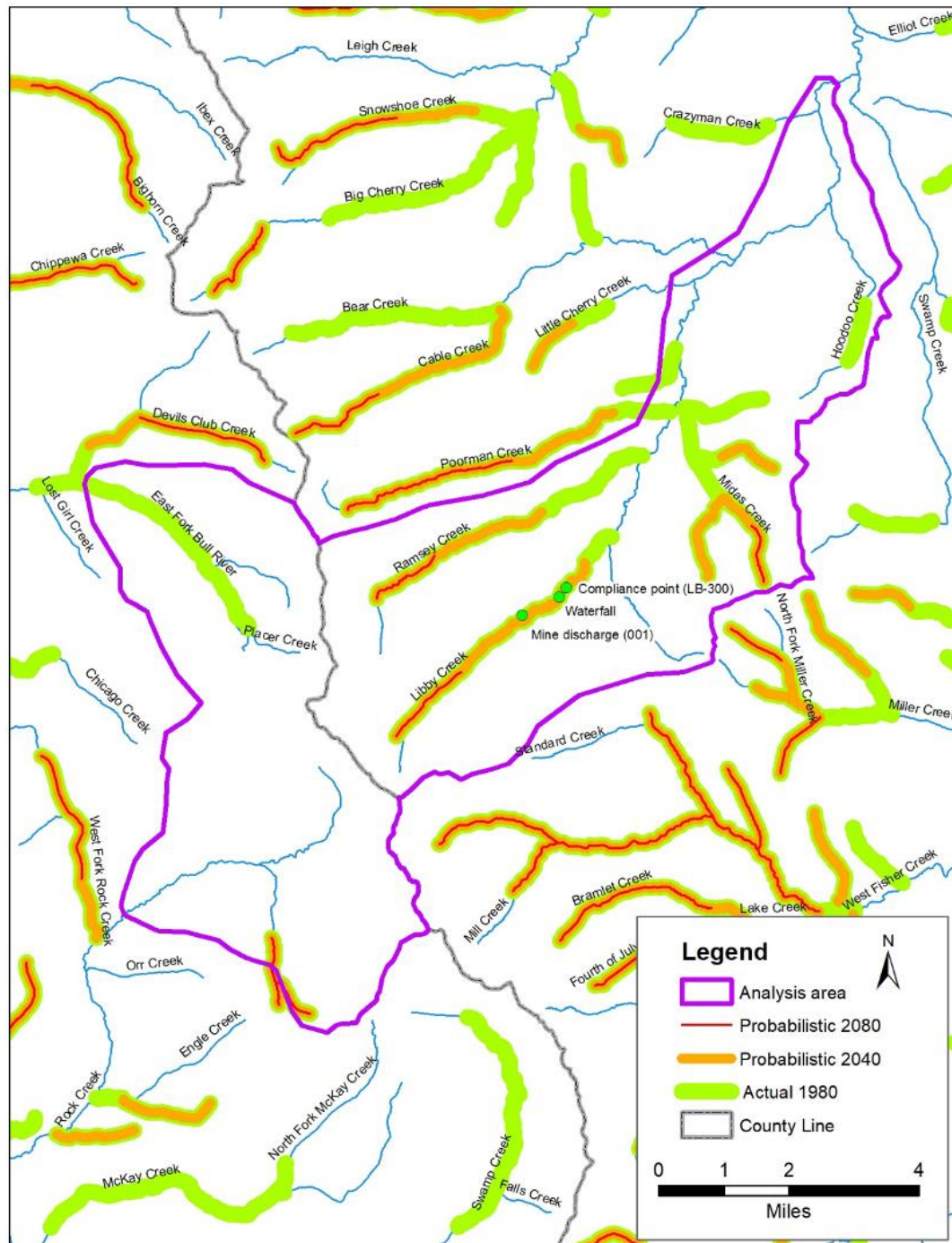
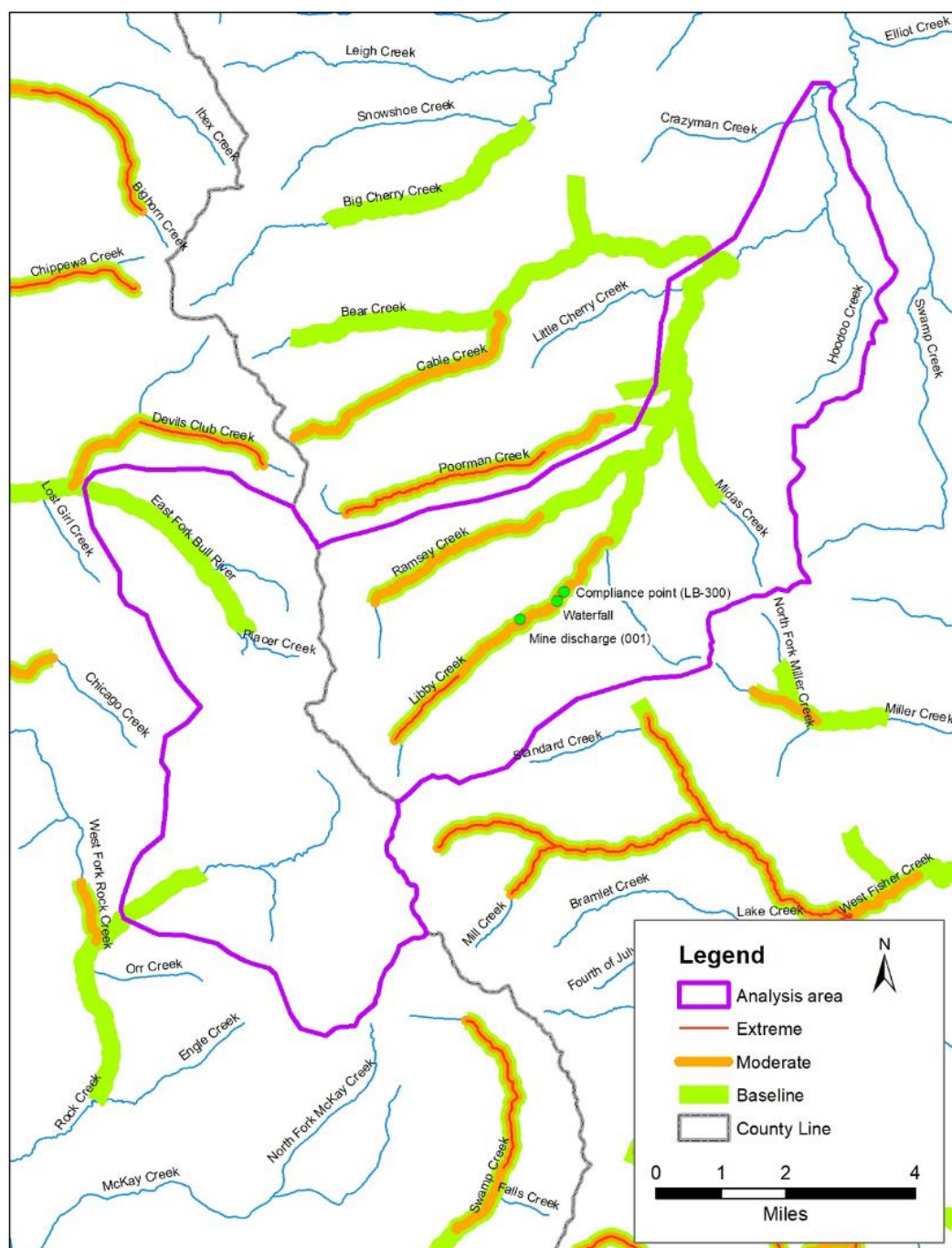


Figure 1. Cutthroat Trout actual distribution in 1980 and probabilistic distribution in 2040 and 2080 based on climate change scenarios (Isaak et al. 2015).



decrease in summer flows, and an increase in the average number of days with winter high flows to 9 days (Isaak et al. 2022).

Montana is projected to continue to warm in all geographic locations, seasons, and under all emission scenarios throughout the 21st century. By mid-century, Montana temperatures are projected to increase by approximately 4.5-6.0°F (2.5-3.3°C), depending on the emission scenario. These state-level changes are larger than the average changes projected globally and nationally. Across the state, precipitation is projected to increase in winter, spring, and fall; precipitation is projected to decrease in summer. Given this, an analysis of the cumulative effects of project impacts and climate change is warranted.

As demonstrated by the extensive research in this area, the implications of climate change on salmonids, including bull trout, are profound. Rieman et al. (2007) predicted that climate warming could result in 18 to 92 percent loss of thermally suitable habitat for bull trout. Wenger et al. (2011) used a hydrological model to predict the effects of changes in the flow regime and stream temperatures resulting from climate change on cutthroat trout, brook trout, brown trout, and rainbow trout. These species were predicted to lose between 35 and 77 percent of their current habitat due to increased temperatures beyond the species' thermal limits, negative biotic interactions, and increases in winter flood frequency.

Jones et al. developed a spatial stream temperature model to predict stream temperatures throughout the Flathead River Basin, estimate thermal regimes for bull trout habitats, and predict thermal changes under a range of future climate warming scenarios. Model results can be used to focus conservation and management efforts on populations of concern, by identifying critical habitats and assessing thermal changes at a local scale.

Isaak et al. (2010) employed spatially explicit, spatial statistical models to retrospectively estimate the effects of climate change and wildfire on stream temperatures and critical bull trout habitats in the Boise River Basin in central Idaho. The models estimated that from 1993 to 2006 bull trout lost 11–20% of headwater spawning and rearing streams.

Williams et al. (2009), examined how increased summer temperatures, uncharacteristic winter flooding, and increased wildfires are likely to affect broad-scale population persistence among three subspecies of cutthroat trout *Oncorhynchus clarkii*. Those results suggest that as much as 73% of the habitat currently occupied by Bonneville cutthroat trout (*O. c. utah*), 65% of that occupied by Westslope cutthroat trout, and 29% of that occupied by Colorado River cutthroat trout (*O. c. pleuriticus*) will be at high risk from one or more of these three factors.

2. The EA also fails to analyze the potential impacts to fish and other aquatic life from increases in metal loading in Libby Creek.

As noted below, discharges from the proposed project will significantly increase metal concentrations, particularly copper, in Libby Creek. The potential impacts to aquatic life from increases in copper and other metals must also be analyzed. A scientific literature review and

several studies have identified the following impacts of copper, including sublethal effects, on salmonids and other aquatic life.³⁶

Very slight increases in copper (Cu) concentrations (5-25 parts per billion) inhibit olfaction in coho and Chinook salmon and rainbow trout, with potential to inhibit recognition of predators, prey, mates, kin, and natal streams (Hansen et al. 1999a, Hansen et al. 1999b, Sandahl et al. 2007, Baldwin et al. 2011, McIntyre et al. 2012). Chinook salmon and rainbow trout avoid Cu contaminated waters altogether, except after long-term sublethal Cu exposure, after which their avoidance response may be impaired (Hansen et al. 1999a, Meyer and Adams 2010). Avoidance can lead to degradation of spawning patterns and resulting genetic diversity which are essential to maintaining overall population structure and sustainability. Adult spawning migrations are delayed or interrupted in Cu contaminated streams, downstream smolt migration is likewise delayed, and osmoregulation of smolts in seawater is impaired (Lorz and McPherson 1976, Schreck and Lorz 1978, Hecht et al. 2007). Copper-exposed salmon are also more vulnerable to predation (Sandahl et al. 2007, McIntyre et al. 2012). Indirect effects of Cu to salmonid food webs are also likely at low concentrations.

These reviews also identify studies that document adverse effects of Cu on freshwater algae, zooplankton, mussels, and other invertebrates, which could result in reduced prey abundance and quality to support fish growth and reproduction.

3. The EA fails to provide baseline data to characterize existing fish populations and fish habitat.

The EA fails to provide current baseline data to characterize existing conditions in the Project Area. For bull trout, the EA (p. 3-38) references bull trout redd surveys conducted from 1988 to 2009 in the Libby Creek watershed, and bull trout density data from 2003 through 2017. This information is outdated, and fails to characterize current conditions for important ESA-listed species.

It should further be noted that the bull trout population adjacent the project due being located upstream of Libby Creek Falls, is a rare, if not unique, pure strain source of Bull Trout genetics that seed the rest of the Kootenai River. Most if not all other bull trout in Libby creek (perhaps even within the Kootenai watershed) are hybridized. Many tens of millions of dollars are spent annually to create these genetic refuges for pacific salmon, cutthroat trout, Rainbow trout, etc.

³⁶ Woody, Carol Ann, Copper: Effects on Freshwater Food Chains and Salmon: A Literature Review, August 2007; Price, Michael, H.H., Sub-lethal metal toxicity effects on salmonids: a review, December 17, 2013. McIntyre, et. al., “Low level copper exposure increases visibility and vulnerability of juvenile coho salmon to cutthroat trout predators,” 2012.

Impacts to this population could be significant, further warranting preparation of an EIS and biological opinion.

E. Water Quality

- 1. The EA should provide more information about waste storage mitigation and take a hard look at the potential impacts to groundwater and surface water from liner failure.**

The EA states that the expanded WRSA #1 would be lined with PVC and the WRSA #2 would be lined with HDPE. According to the 2019 SDEIS (p. 58), the WRSA #1 PVC liner from the expansion would tie into the existing PVC liner. The EA should clarify whether that is proposed here, and provide professional engineering designs for the WRSA expansions, and other engineered elements in the plan of operations. If the new liner will be tied into the old liner, the EA should also analyze the potential for failure/seepage/leaks at the seam. PVC liners are prone to weathering, show poor resistance to UV, and exhibit poor performance at high and low temperatures.³⁷ Liners are particularly prone to failure at seams/welds. The EA should provide more information about the potential for failure in joining an old PVC liner with a new PVC liner, and whether there are more effective alternatives.

The EA should also explain why a PVC liner is used for one WRSA and an HDPE liner for the other. It should specify what thickness will be used, the lifespan for the proposed liners, and the potential for degradation over time. Given the proximity to water, the EA must provide data on the efficacy of proposed mitigation measures, and consider other potentially more effective mitigation options. The EA should also provide information on the existing WRSA, whether they were lined, the date at which they were lined, expected lifespan for existing liners and data on liner integrity, and potential for degradation/tears over time that could release seepage into ground and/or surface water. This information is necessary to understand the potential for seepage from waste rock stored adjacent to Libby Creek.

Furthermore, the EA must acknowledge that, given Hecla's long record of non-compliance with the Clean Water Act and other environmental law, the mine will violate pollution limits. Further, the WTP is directly upstream/upgradient of the sump and waste rock storage locations

³⁷ BT Liners, "Which geomembrane materials work best for mining applications," webpage accessed February 16, 2025. Available at: <https://www.btliners.com/which-geomembrane-materials-work-best-for-mining-applications>; Agru, "PVC Liner vs. HDPE Liner in Environmental Applications, Webpage accessed February 16, 2025. Available at: <https://agruamerica.com/comparing-pvc-liner-and-hdpe-liner/>; A. Bouazza and Y. Chen, "Geomembranes in Mining Works," Geosynthetic Asia, 2012. Available at: https://library.geosyntheticssociety.org/wp-content/uploads/resources/proceedings/122021/THEME_3.pdf

which most surely will leak at some point. The EA must assess, but fails to do so, the impacts of significant CWA non-compliance on aquatic life, including Bull Trout.

2. Temperature

According to the EA, “Discharge from the WTP is expected to have a negligible temperature effect on the aquatic life and fisheries in Libby Creek because the *maximum effluent temperature has been within the tolerance range for aquatic species* and effluent temperature may be slightly cooler when the adit is extended.”³⁸ We can find no data or analysis in the EA to support this conclusion. This assertion is also contradicted by information in the draft 2024 MPDES permit, which identifies actual maximum effluent temperatures during summer for Outfalls 001 of 16.7 degrees Celsius and estimates of maximum daily winter and summer effluent temperatures for exploration activities at Outfall 001 of 16.7 and 16.8 degrees Celsius.³⁹ These measured and estimated effluent temperatures for Outfall 001 exceed the specified tolerance range for bull trout. The 2013 Biological Assessment raised these same concerns, and stated that successful incubation of bull trout embryos requires water temperatures below 8°C and rearing habitat requirements for juvenile bull trout include cold summer water temperatures (15°C).⁴⁰ The 2014 BIOP specifically identified discharges as a threat to bull trout in Libby Creek.

“The temperature of the discharge of mine and adit water during the evaluation, construction and operations phases is expected to be between 56° and 65°F (KNF BA 2013) which exceeds the temperature thresholds of bull trout spawning, egg incubation, and rearing, and for generally preferred water temperatures of bull trout (see BO section III. B., Habitat Characteristics).”⁴¹

The EA appears to rely on groundwater mixing to mitigate effluent temperatures, but no data or analysis is provided to demonstrate that temperatures are mitigated in Libby Creek from the discharge point to LB-300 (e.g., the mixing zone). The EA should provide temperature data and require temperature monitoring in this stream reach to ensure that temperatures within the

³⁸ EA at 3-54.

³⁹ Montana Department of Environmental Quality, Montana Pollution Discharge Elimination System Fact Sheet, Permit No. MT0032158, Table A.1, November 2024. Available at: <https://deq.mt.gov/files/Water/WQInfo/Documents/2024%20Public%20Notices/PN-MT-24-11/2024-FS-MT0032158.pdf>

⁴⁰ Kootenai National Forest, Biological Assessment for Threatened, Endangered and Proposed Aquatic Species and Designated Aquatic Critical Habitat on the Montanore Minerals Corp. Montanore Project, February 5, 2013, p. 20.

⁴¹ U.S. Fish and Wildlife Service, Final Biological Opinion on the Effects to Bull Trout and Bull Trout Critical Habitat from the Implementation of Proposed ACtions Associated with the Plan of Operations for the Montanore Minerals Corporation Copper/Silver Mine, March 31, 2014.

mixing zone are within the tolerance range for bull trout spawning. The EA must also consider the potential effects on stream temperatures in Libby Creek of large discharge volumes, particularly during the initial 3-4 week period when adit dewatering rates of up to 500 gpm are expected to occur. The EA should analyze the potential for these discharges to occur during various seasons and at various stream flows. It should also analyze the potential for these discharges to Libby Creek via the groundwater to adversely affect the hyporheic zone and areas of groundwater upwellings, which are particularly important for bull trout spawning.

The U.S. Fish and Wildlife Service emphasized the importance of the bull trout population at this location. Libby Creek above Libby Creek Falls provides spawning and rearing habitat for an isolated population of “resident” bull trout. The stream segment upstream of the falls is designated bull trout critical habitat and is currently occupied by bull trout—indeed, FWS explained that this area “has numerous [bull trout] spawning areas” and hosts a local bull trout population that is among “*the most resilient ... that occupy the entire Libby Creek watershed.*”⁴²

The BIOP also stated that, “At best, baseline condition for stream temperature in Libby Creek is “functioning at risk” for bull trout (see Table 4) and warmer augmented water would worsen this habitat attribute, likely creating a condition of “functioning at an unacceptable risk” for bull trout. As discussed elsewhere, significantly warming the stream water during bull trout spawning and egg incubation times may have unintended adverse impacts to bull trout reproduction.”⁴³

The EA also fails to demonstrate that the existing MPDES permit adequately protects aquatic species, including bull trout, because it requires no monitoring requirements for measuring effluent temperatures at Outfall 001, nor does it provide any temperature limitations for Outfall 001.⁴⁴ This is a critical flaw in the monitoring program, especially for the effects on resident bull trout and obvious in the case of the 003 outfall which most surely will increase summer/winter stream temperature. This may be the one long term genetic source for pure strain of bull trout in the Kootenai Basin.

The EA also fails to provide baseline or current data to characterize instream surface water temperatures in this reach of Libby Creek.⁴⁵ ERO 2011 Baseline Surface Water Quality report

⁴² BIOP at 124

⁴³ BIOP at 101

⁴⁴ Montana Department of Environmental Quality, Authorization to Discharge Under the Montana Pollutant Discharge Elimination System, Permit No. MT0030279. March 21, 2006. Available at:

<https://deq.mt.gov/files/Water/WQInfo/Documents/MT0030279/MT0030279PER.pdf>

⁴⁵ ERO 2011 Baseline Surface Water Quality report (2011) does not include baseline temperature data for LB 200 or 300, the monitoring station upstream and downstream of the proposed discharge site, respectively. Newfields (2024, p. 11) also does not include current

(2011) does not include baseline temperature data for the monitoring station upstream (LB 200) and downstream (LB 300) of the proposed discharge site, respectively. Similarly, Newfields (2024, p. 11) does not include current temperature data for LB-200 (upstream), LB-300 (downstream) or the groundwater monitoring sites 07-01 and 07-02.

The Forest Service must take a hard look at the potential effects of discharges on instream temperatures and aquatic life, and not defer to the State of Montana's MPDES permitting process. The EA should include monitoring stations that measure temperature in Libby Creek in closer proximity to the discharge point, and identify mitigation measures to minimize impacts to aquatic life, including bull trout, such as water treatment technologies that preclude the need for a mixing zone.

3. Nutrient and Metal Loading

The limitations on the loading of nutrients and metals expressed in the EA are grossly inadequate for the protection of the high quality waters of Libby Creek from significant degradation. This project will cause dramatic increases in the concentrations of these pollutants in Libby Creek and uncertain consequences for the aquatic ecosystem that have not been adequately assessed.

Data presented in the 2023 Mixing Zone Application indicate that the median concentration of inorganic nitrogen at the L-200 site upstream of the project area is 0.14 mg/l and the median load of inorganic nitrogen is 6.5 lbs/day.⁴⁶ The proposed project will produce effluent with average monthly inorganic nitrogen concentrations of up to 2.5 mg/l at a loading rate of up to 15 lbs/day, which will more than triple the median inorganic nitrogen concentration of Libby Creek.

Under low flow conditions, the effect of the proposed nitrogen loading would be even more dramatic. While the median streamflow at the upstream L-200 site is around 8.4 cfs, flows of 3 cfs or lower were observed in 1-in-5 of the flow measurements included in the Mixing Zone Application. Under these common low flow conditions, the proposed loading rate limit of 15 lbs/day will lead to an astounding 10-fold increase in inorganic nitrogen concentrations.

The relationship between the permitted inorganic nitrogen concentrations and loads presented in the EA indicates that the maximum permitted load of 15 lbs/day requires a pumping rate of around 500 gpm, which corresponds to the maximum capacity of the water treatment plant but is higher than the anticipated average pumping rate. Even at this anticipated average pumping

temperature data for LB-200 (upstream), LB-300 (downstream) or the groundwater monitoring sites 07-01 and 07-02.

⁴⁶ Hydrometrics, Inc, Application for Mixing Zone in Groundwater and Surface Water, Montanore Mineral Corporation Libby Exploration Project. June 2023.

rate of 165 gpm, the effluent released at the permitted average monthly inorganic nitrogen concentration would contribute 4.85 lbs/day of inorganic nitrogen to Libby Creek, which will increase median inorganic nitrogen concentrations by a factor of 1.75, and quadruple inorganic nitrogen concentrations under low flow conditions (<3 cfs). Across the range of observed streamflow and anticipated effluent flow, the nitrogen loads associated with this project will shatter the bounds of anything that could be considered a non-significant increase.

While the limitations on inorganic nitrogen in effluent associated with the proposed project are inadequate, limitations on phosphorus are entirely absent. The dramatic increase in nutrient loading associated with this project will fundamentally alter the aquatic ecosystem due to changes in the absolute amounts of the nutrients, and the associated stoichiometric shifts in the relative availability of nutrients. Understanding the extent and severity of the degradation of the water quality and aquatic health of Libby Creek requires careful analysis of the consequences of both nitrogen and phosphorus loading, yet the Environmental Assessment presents no such analysis.

The permitted metal concentrations and loading rates indicated in the EA will also significantly increase the amount of metals in Libby Creek. Under median streamflow conditions, the indicated loading rates of copper and lead would nearly double the ambient concentrations in Libby Creek, while the indicated loading rate of chromium would nearly triple the ambient concentration. Similar to the dynamics previously described for inorganic nitrogen, the magnitude of these effects will depend on the effluent pumping rate and will be magnified under common low flow conditions.

The nutrient and metal loads to Libby Creek will be diluted downstream, but this factor does not negate the local effect of these pollutants. Much of Libby Creek downstream of the project area is affected by historical placer mining activities, which have compromised the sediment regime, degrading the quality of habitat for native species such as bull trout. In contrast, the section of Libby Creek adjacent to and immediately downstream of the project area has not been degraded by placer mining and provides critical habitat for native species. This area is especially important to bull trout, as the local population has been protected from competition or hybridization with non-native trout by Libby Creek Falls, located a short distance downstream of the project area. Therefore, the nutrient and metal loading associated with this project will directly impact important habitat that is not present further downstream.

The Environmental Assessment states in section 2.1.11.4 that ‘*the Project would upgrade the WTP and/or implement additional BMPs to ensure continued compliance with future permit discharge requirements*’. Ensuring that this project fully supports the beneficial uses of Libby Creek, meets the ecological needs of native species, and complies with state nondegradation rules requires a comprehensive description of the permit effluent limitations, a concrete plan for MMC to meet these limitations, and a careful assessment of the resulting effects on the water

quality and aquatic ecosystem of Libby Creek. In its current form, the Environmental Assessment meets none of these requirements, and instead relies on an obsolete, incomplete, and unprotective MPDES permit.

4. Stormwater

According to the EA, “Sediment delivery to Libby Creek associated with the project area during storms greater than the 100-year/24-hour storm event could possibly increase but is expected to have a negligible effect because it would be indistinguishable from naturally increased sediment delivery during the same storm events.” We can find no data or analysis in the EA to support this conclusion. Analysis and conclusions in the EA provide no quantification of sediment delivery, and rely upon the outdated MPDES Permit No. 0030279 that has been administratively extended for nearly 14 years and under which no stormwater turbidity or metals monitoring is required. The EA should include results of in-stream TSS, turbidity, and metals monitoring and reporting (if any) at the project site conducted since 2006 for storm events. Such monitoring would need to have been in-stream samples collected above and below the project area to confirm the “indistinguishable” assertion regarding sediment in the EA, to confirm that metals were not discharged with stormwater, and to confirm that BMPs have been effective in mitigating potential aquatic impacts.

Likewise, regarding potential sediment delivery to Libby Creek from roads due to increased traffic and increased road maintenance activities, the EA concludes that there would be “negligible increases in sediment input.” This conclusion is based on a 10-year-old road sediment modeling and analysis report by ERO Resources Corp. that estimated NSFR 231 contributed less than 1 percent of total sediment delivery to Libby Creek compared to streambank erosion and upland sources. However, the ERO report then **assumed** similar proportions applied to NFSR 2316 without conducting any specific quantitative analysis of sediment delivery from NFSR 2316 that abuts the project area. Further, the EA purports that run-on from upgradient of the project area is routed to an existing diversion ditch along NFSR 2316 and drains toward an existing culvert which then conveys non-contact stormwater to a small catchment basin on the southern side of the project area. This catchment area is not described nor displayed on the project map, and its adequacy to prevent contact with the project site is not analyzed.

As noted previously, the EA fails to provide engineering specs for stormwater facilities, diversion ditches, culverts, waste rock storage areas and ponds, nor does it provide data on whether this infrastructure is designed to withstand a 10-year, 25-year, 50-year or 100-year storm event. Given the fact that impervious surfaces occupy nearly 80 percent of the project site, this data is necessary to understand potential impacts if precipitation events exceed design parameters and whether mitigation measures will be effective. Per the EA, the annual rate of precipitation for watersheds in the study area averages nearly 75 inches, summer thunderstorms

can produce substantial precipitation, and early fall rain events in late September and October exceeding one inch are regularly recorded. The EA should provide data on how many 100-year storm events have occurred since 2006 (minimally), and whether there have been multiple 100-year storm events in any given year.

The EA fails to take a hard look at BMP effectiveness and stormwater discharges at the project site, and defers to the 2018 SWPPP referenced in MMC's Exploration Plan of Operations, but the neither the Plan of Operations nor the 2018 SWPPP provide detailed designs or diagrams of stormwater BMPs or specific BMPs designed for implementation at the currently proposed project site. The 2018 SWPPP was "updated" in 2023 and the 2023 update is merely a reiteration of the 2018 SWPPP and specifically notes the "very limited site activities at the current time", that it is only a plan for the "care and maintenance status" at the project site, and also fails to display stormwater outfalls and specific BMPs designed for implementation at the currently proposed project despite an assertion that "when the Libby Adit evaluation program is initiated, all site controls will be evaluated based upon developing conditions as warranted."

Likewise, the existing MPDES Permit No. 0030279 is only for adit dewatering at the project site per MDEQ's draft EA for a new potential MPDES permit. Also, per MDEQ, a SWPPP must contain a narrative evaluation of the appropriateness of stormwater management practices that divert, infiltrate, reuse, or otherwise manage stormwater runoff such as to reduce the discharge of pollutants, and should be periodically evaluated (once per year minimum). While the EA asserts that a SWPPP is in place that assures adherence to the terms and conditions of the project's MPDES permit, the 2018 SWPPP and 2023 SWPPP update do not demonstrate such adherence and the EA does not provide any data on BMP effectiveness monitoring. Absent monitoring, merely inspecting and maintaining BMPs does not prove their effectiveness.

Of particular note and concern is the "Water Quality Waiver of Turbidity" displayed in Table 1-2 of MMC's Exploration Plan of Operations. This waiver is not discussed in the Plan's narrative, nor is it disclosed or analyzed whatsoever in the EA.

The proposed project will increase the volume of and extent of WRSAs nearly nearly fourfold, from approximately 37,000 cy to 164,000 cy, and from 1.2 acres to 4.0 acres, respectively. There is no data in the EA to determine whether the proposed expansion of the waste rock sump has sufficient capacity to capture seepage and runoff from the WRSAs, especially during precipitation events; whether there are additional BMPs in place surrounding the WRSAs; whether the volume of co-mingled WRSA water, other project site stormwater, and adit dewatering would overwhelm treatment at the WTP; and whether there is sufficient capacity to handle WTP water to the groundwater percolation pond at Outfall 001.

The fate of Outfall 001 groundwater is directly tied to Libby Creek, and there has been no instream monitoring at the project site under the existing MPDES Permit No. 0030279; therefore, adherence to state water quality standards and the MPDES permit cannot be

determined. The EA also fails to analyze whether the assimilative capacity of Libby Creek would be diminished due to a potential decline in Libby Creek groundwater-supported baseflow. Further, the existing MPDES permit allows a direct discharge of stormwater to Libby Creek via Outfall 003 if needed, and the 2023 updated SWPPP also states the potential use of Outfall 003 “during or following storm events that overflow Outfall 001”. This is in direct conflict with statements in the MMC Exploration Plan of Operations and the EA that claim Outfall 003 will not be constructed or used.

The Forest Service must take a hard look at the potential effects of stormwater discharges on instream water quality and aquatic life, and not defer to the State of Montana’s MPDES permitting process or to the unproven assertions in the MMC Exploration Plan of Operations and SWPPP.

5. Sewage

The EA fails to address sewage management and disposal at the site, yet it appears that it could be considerable. The 2019 SDEIS (p. 60) for the Montanore Evaluation Adit predicted discharges of 585 gallons per day of sewage effluent.

The EA (p. 2-14) states that proposed improvements include installation of additional tanks, lines, feeders, and pumps to improve capacity and treatment effectiveness, and that sewage system improvements would comply with state and local permitting requirements. However, the EA fails to describe the current or predicted volume of sewage; descriptions of how it will be stored, treated and disposed; or when the proposed system improvements would occur.

The 2022 Plan of Operations (p. 33) states that new sewage system improvements may include installation of a new 3,000-gallon combined septic/pump tank, recirculation pump and transfer pump *to subsurface drip field* (or equal), 400 linear feet effluent force main, one 1,000 gallon drain back dose pump chamber, and pressure dosed *subsurface drip absorption area comprised of 11,150-foot drip lines* with system appurtenances.

The EA should disclose the potential impacts of constructing these subsurface systems. Further, if effluent will be disposed on site via subsurface drip fields as indicated in the POO (p. 33), or by other disposal methods, the EA should provide data and analysis for potential direct, indirect and cumulative impacts to surface and groundwater and aquatic life. It should also analyze the potential for spills or other unanticipated releases. The EA cannot defer to another state or local permitting process.

6. Nuisance Algae

According to the EA (Libby Exploration Plan, p. 11), qualitative periphyton and chlorophyll-a will be collected at monitoring stations along Libby Creek three times during the summer period

to assess if nuisance algae is present. However, the EA fails to provide baseline data to quantify existing periphyton and chlorophyll-a levels. Without that data, increases in periphyton and chlorophyll-a (i.e., nuisance algae) resulting from increased nutrients from the proposed project, cannot be effectively measured. The EA also fails to analyze the potential for nuisance algae resulting from increased nutrients from proposed discharges and warmer temperatures, nor does it analyze the potential impacts of nuisance algae on other aquatic life.

F. Water Use/Dewatering

- 1. The EA fails to describe the potential impacts to surface and/or groundwater from diverting water associated with water rights for mine purposes, and it fails to provide a site-wide water balance.**

The EA (p. 10) states that MMC would use an existing water well (Water Right 76D 73018 00) as a water source for drilling purposes. Drilling activities are significant, with an estimated 50,000 feet (9 miles) of drilling proposed. Yet, the EA fails to quantify how much water it will use/divert for drilling, nor does it analyze the potential impacts to groundwater and/or surface water from using/diverting this water. The EA should include a site-wide water balance to quantify and analyze water use/water management at the site. Without this information, the public has insufficient information on which to provide meaningful comment.

- 2. The EA fails to provide information about the necessary infrastructure associated with pumping water for exploration purposes.**

The EA (p. 2-13) states that “MMC may also install the necessary infrastructure (such as pumps and piping) within existing and proposed disturbed areas required to appropriate water as authorized for water rights 76D 141319 00 and 76D 141320 00.”

The EA should specify the location and type of infrastructure, and whether the installation of pumps and piping will require a 310 Permit, or otherwise potentially disturb riparian or stream habitat. It should also estimate the amount of sediment that might be released into Libby Creek as a result of construction.

G. Geochemistry

MMC currently is discharging water that flows into the 14,000-foot adit developed primarily in the Prichard Formation. The EA fails to analyze the potential for water quality changes as the evaluation project extends into other rock formations, which include the Revett Formation (ore, barren lead, chalcopyrite, pyrite and sphalerite). According to geochemist, Dr. Ann Maest, one of the biggest concerns from a water quality perspective for the Montanore Project is leaching

of lead from the barren lead zone and the potential to leach acid, as described in more detail in her 2011 analysis of geochemical issues at Montanore.⁴⁷ As a result, water quality from the other portions of the evaluation adit may be significantly different from the existing water quality from the Pritchard zone.

The EA indicates that additional water treatment technology may be used if water quality changes, however it is inappropriate to wait until changes occur before requiring additional treatment technology, given installation times. The EA should analyze the potential for water quality changes, and determine whether additional water treatment technology is necessary to prevent adverse impacts, and specify when it will be implemented.

H. Noise

The EA fails to provide baseline data to characterize ambient noise levels. It references data from Big Sky Acoustics (2006), which provides outdated ambient noise levels measured in Ramsey Canyon, Little Cherry Creek and the Libby Mine, but it does not include current or historic ambient noise measurements for the Libby Exploration Project site.

The EA also fails to quantify the potential increase in noise levels from the proposed project. It states (p. 2-21) that “MMC would operate all surface equipment so that sound levels would not exceed 55 A-weighted decibels (dBA), measured 250 feet from the project area boundary, for continuous periods exceeding an hour.” However, it concedes that “Backup beepers may exceed 55 dBA 250 feet from the project area boundary.” The EA fails to quantify the number and type of construction vehicles, and the noise levels and numbers of backup beepers. The EA also fails to quantify noise levels from the installation and operation of considerably more water treatment equipment, including the installation of a Moving Bed Biological Reactor (EA at 2-12), and the increased noise from the installation of pumps and piping for water diversions (EA at 2-13).

The EA (p. 3-70) asserts that “With the forested vegetation surrounding the project area, noise levels from construction activity are anticipated to be reduced to 55 dBA or less at 250 feet which is approximately the distance from NFSR 2316 to the project area (Noise Tools 2024).” However, the EA only cites an online noise calculator, it fails to provide the assumptions and parameters inserted into the calculator and the results. The EA should also consider the potential impacts of increased noise along Libby Creek, which is in close proximity to the proposed activities, and where wildlife can be expected to travel.

⁴⁷ Ann Maest, PhD, “Technical Review Memorandum, Evaluation of Geochemical Issues in the Montanore Project, Montana, Supplemental Draft Environmental Impact Statement, December 21, 2011.

I. Wildlife

Overview:

In general, the EA pays scant attention to wildlife impacts, or dismisses impacts as insignificant with little supporting documentation. Much of the wildlife mortality associated with the project is predicted to come from vehicle collisions; disturbance and displacement from habitat due to increased human activity, noise, and lighting; and increased hunting and trapping pressure. Poaching, although not considered, also likely will increase. Impacts to wildlife from dewatering of streams and lakes are unknown as the extent of groundwater drawdown has not been quantified, and have been dismissed outright in the EA.

Listed Species:

Listed species that would be impacted include grizzly bear, North American wolverine, Canada lynx, and bull trout. An EIS is warranted due to impacts to listed species.

Sensitive Species:

Sensitive species (*Montana Natural Heritage - SOC Report*) that could be impacted include: Townsend's big-eared bat, Little brown myotis, fisher, Veery, Brown Creeper, Evening Grosbeak, Black Swift, Pileated Woodpecker, Cassin's Finch, Harlequin Duck, Varied Thrush, Clark's Nutcracker, Black-backed Woodpecker, Boreal Chickadee, Flammulated Owl, Pacific Wren, Northern alligator lizard, Western toad, Northern leopard frog, Coeur d'Alene salamander, Westslope cutthroat trout, Redband trout, torrent sculpin, and other species including invertebrates such as Western bumble bee, Western pearlshell, and Monarch butterfly.

The EA briefly mentions only a few sensitive species (EA, Appendix D). They are Black Swift, Coeur d'Alene salamander, Harlequin Duck, Little brown myotis, Northern leopard frog, Redband trout, Westslope cutthroat trout, and Western toad. No mention is made of the torrent sculpin. A determination was made that the project "may impact individuals or habitat but Will Not Likely Result in a Trend Toward Federal Listing or Reduced Viability for the Population or Species" for Little brown myotis, Redband trout, Westslope cutthroat trout, Western toad, and Western pearlshell. No detailed data are provided to explain the determination, but it is stated that "At the end of the proposed dewatering and at 10 and 100 years after the end of dewatering, no drawdowns within the precision of the groundwater model are predicted to occur at any GDEs, lakes, or springs. There is no baseflow change predicted for East Fork Rock Creek or East Fork Bull River. A 0.1 percent decline in Libby Creek groundwater- supported baseflow is predicted at the end of dewatering, followed by a 3.8 percent increase in baseflow by 10 years after the end of dewatering. Due to water quality monitoring and water treatment, negligible water quality impacts from metals or nutrients are anticipated."

The USFS does not have enough data to make this determination. The risks to groundwater dependent ecosystems and hydrologically connected surface waters cannot be adequately predicted given that the PoO calls for drilling into key potential water-bearing locations. In addition, the discharge into groundwater hydrologically connected to Libby Creek will contain nitrates from blasting and metals that will impact spawning grounds, and require a half mile mixing zone for dilution. This effluent also may exceed temperatures that cold water fish can tolerate, and climate change could exacerbate this problem.

Likewise, the determination of “Groundwater drawdown is not anticipated to affect surface water quantity or quality; therefore, the Proposed Action would not impact habitat” was made for Black Swift and Harlequin Duck without enough data to support this conclusion.

In conclusion, Appendix D (Biological Evaluation) states that “Dewatering activities are anticipated to have negligible effects on surface water quantity and quality,” but the extent of dewatering and drawdowns is unknown. Therefore, this assertion is unsupported, and the extent to which individual species will be impacted is not quantifiable. Impacts to Cutthroat Trout, Redband Trout, Westslope Cutthroat Trout could be significant. If they occur in the project area, Harlequin Duck and Black Swift also could be impacted. While the EA does not consider cumulative impacts, the full mine is a foreseeable activity that should be considered, and it is predicted to cause significant dewatering. More data are needed on the discharge into Libby Creek, as the analysis is tied to an old discharge permit that will be withdrawn.

Other Key Species:

Other key species that may occur in the project area include Pileated Woodpecker, Olive-sided Flycatcher, Bald Eagle, Northern Goshawk, gray wolf, black bear, bobcat, mountain lion, mountain goat, moose, and elk among others. Impacts may occur from habitat loss and fragmentation; disturbance; increased hunting, trapping, and poaching; and dewatering of streams and lakes.

Impacts from Traffic on NFSR 231 and NFSR 2316:

On Page 3-57 it is stated that “MMC would implement a transportation plan to minimize traffic and set speed limits, a wildlife plan and the ACEPMs described in Section 2.1.11 to reduce human-caused mortality risk to grizzly bear and other species. ACEPMs include, but are not limited to, consolidating trips to reduce the amount of traffic accessing the project area, maintaining fencing around the project area, following food storage orders and guidelines, carcass removal along NFSR 231 and NFSR 2316, establishing a reporting program for observations, incidents and mortalities, implementing employee awareness training, and adhering to speed limits of 25 mph or less along NFSR 231 and NFSR 2316 for Project employees. These ACEPMs are designed to further reduce risks and disturbance from the Project on grizzly bears, further reducing potential impacts to individuals.”

Who would monitor adherence to these ACEPMs? Are they voluntary or mandatory? If they are mandatory and MMC is out of compliance, what are the consequences to the company? Can project activities be halted if the company is out of compliance?

In Section 3.13.2.1 (pg. 3-74) it is stated: “The Proposed Action would increase the amount of human activity and traffic in the analysis area during the first 11 years of Project activity. Traffic levels would increase by approximately four percent along NFSR 231 and NFSR 2316. Increased traffic use of NFSR 231 and NFSR 2316 may increase the risk of wildlife mortality through vehicle collisions. Conversely, disturbance effects from increased traffic and activity may deter individual animals, reducing the likelihood that animals would be at risk of vehicle collision.”

How was the 4% increase in traffic calculated? This seems like a small increase for a project of this scale, and is likely underestimated. How much will project traffic be reduced through trip consolidation? How many trips per day will be made by MMC personnel? Will the number of trips be documented?

Page 2-22 states that MMC would limit speeds for all Project-related vehicles to 25 miles per hour (mph) or less along NFSR 231 and NFSR 2316. How would this be enforced? What will happen if vehicles are exceeding the 25-mile speed limit? The Forest Service does not have adequate law enforcement personnel for enforcement.

On Pg 2.19 it is stated: “MMC would monitor the number of big game animals killed by vehicle collisions along NFSR 231 and NFSR 2316 for the duration of the Project and report findings annually to the USFS and MFWP. The numbers of animals killed by vehicle collisions would be reviewed by the USFS, in cooperation with MFWP, and if necessary, mitigation measures would be developed and implemented to reduce mortality risks.”

What are the mitigation measures that would be implemented, and what evidence is there that they would work? A bear management specialist was hired for the Rock Creek Project, but this measure was ineffective in reducing human-caused mortality of grizzly bears.

On Page 3-28 it is stated that “NFSR 231 and 1.4 miles of NFSR 2316 would continue to be plowed in the winter, eliminating opportunities for snowmobile and cross-country skiing on the plowed portions of NFSR 231 and NFSR 2316. Snowplowing would improve winter access in areas where permitted. Except for MMC and USFS traffic, all motor vehicle use, including over-snow vehicles, would be restricted on a 2.3-mile portion of NFSR 231 and a 2.2-mile portion of NFSR 2316. The closure would affect 2.3 miles of NFSR 231 and all 2.2 miles of NFSR 2316 seasonally from April 1 to May 15. In addition, NFSR 4778 and spurs would be seasonally closed to all traffic from April 1 to June 15 affecting 9.6 miles of road. Nonmotorized access would remain available, thus, opportunities for solitude and primitive

recreation could improve during the seasonal closures. After reclamation and closure, seasonal access changes would cease.”

The EA, pg 3-48 states: “Non-motorized access is maintained during gate closures. NFSRs 231 and 2316 are plowed in winter for access to the project area, which improves winter recreation access to areas off these roads but eliminates snowmobile and cross-country ski use of these segments.”

Seasonal road closure that are open to project-related and administrative use traffic should not be considered closed roads. Additionally, snowmobiles are known to go beneath gates. Plowing forest service roads leads to encroachment by snowmobiles underneath gates, which effectively nullifies their use as mitigation. How will snowmobile use be prevented?

The use of gated road closures is questionable mitigation unless traffic is actually restricted. The Forest Service does not have enough law enforcement officers or FPOs to even monitor current encroachment onto gated roads by snowmobiles and other ORVs.

Hunting, Trapping, and Poaching:

There will be increased hunting and trapping pressure as a result of the project, and more incidents of mistaken identity (grizzly vs. black bears). No mention of poaching is made in the EA. It is a common occurrence for poaching to increase in association with mining projects. Bear conflicts also will increase with more people in the project area, some of whom are inexperienced in living in bear country. Food attractants will inevitably be an issue in increased bear conflicts.

Lynx:

The Biological Assessment for Lynx should have been included in the EA to allow the public to make adequately informed comments.

Page 3-47 of the EA states: “The analysis area for Canada lynx consists of Lynx Analysis Unit (LAU) 14504 – Crazy and the portion of NFSR 231 that is outside of the LAU boundary. The analysis area contains habitat components for year-round use for Canada lynx (USFS 2015). The project area is located in LAU 14504 and portions of NFSR 231, NFSR 2316, NFSR 4778, and spurs are within LAU 14504 (Figure 3-19).” The EA then goes on to say that there are no reliable population estimates of Canada Lynx and that the population in the analysis area is unknown.

On Page 3-48, the EA acknowledges that lynx in the analysis area may be subject to disturbance and displacement from existing project activities. In addition, vehicular collisions and incidental take from trapping are likely to increase with the project. Yet, without baseline data on the

occurrence of lynx, it is impossible to quantify risks to the population. Thus, the Forest Service has failed to fully analyze impacts to a listed species and failed to minimize impacts.

The full mine is predicted to have even greater and longer-term impacts on Lynx. These may include loss and degradation of habitat and food sources, increased mortality from vehicular collisions, and the risk of incidental take from trapping. Cumulative impacts from the full mine would have significant impacts on habitat and travel and dispersal capabilities. A cumulative impacts analysis of this listed species should be included in an EIS. The evaluation adit is not a standalone project from the full mine. In the Opinion and Order (Case 9:19-cv-00020-DWM Document 131 Filed 04/14/21), the Court ruled that the agencies unlawfully segregated the Rock Creek mine project, concluding that Phase II should have been addressed as an “effect” of that action. The analysis for the Libby Exploration adit should therefore include a cumulative effects analysis to include the full Montanore mine project.

J. Public Access/Wilderness Values

Section 3.12.1.1 of the EA states “The USFS manages wilderness areas to protect the four qualities of wilderness character based on Section 21 of the Wilderness Act: untrammeled, natural, undeveloped, and outstanding opportunities for solitude or a primitive and unconfined type of recreation.”

The CMW is a popular destination for hikers and backpackers and draws visitors from local communities in Sanders and Lincoln counties, but also from metropolitan areas including Spokane, Coeur d’ Alene, Sandpoint, Missoula, and beyond. Visitors come seeking those qualities that make up wilderness character. Post-Covid, visitation numbers have increased with more visitors seeking a wilderness experience in the CMW. Diminishing the wilderness characteristics from any portion of the wilderness will increase visitation pressure on other portions of the wilderness not directly impacted by the project. Many of the trails in the CMW are already experiencing overuse (e.g., St. Paul and Rock Lake trails among others), and this situation could worsen if wilderness visitors are displaced by the Libby Exploration project.

On page 3-69, it is stated that the proposed action would not directly affect wilderness character. We disagree. There is no question that the visual and auditory disturbances will diminish the wilderness experience for visitors expecting a natural, undeveloped and primitive wilderness experience. In section 3.7.2.1 (pg. 3-32) of the EA, it is acknowledged that the project area would be visible to hikers in the CMW from various mountain peaks and viewpoints. On page 3-70, it is stated that noise from the project area may be discernible on a quiet day from the CMW. One would expect most days in the wilderness would be quiet! Noise from industrial operations is inconsistent with maintaining wilderness character. The EA states that impacts will be temporary, and yet the project is slated for over 15 years.

The EA, on page 3-69, states that no drawdowns within the precision of the groundwater model are predicted to occur within the CMW at any GWDs, lakes, or springs. “Within the precision of the groundwater model” acknowledges that these models are only as accurate as the data that is input into the model. The project involves extending the existing adit, constructing new lateral adits, and drilling into key potential water-bearing locations. Disturbing a fractured bedrock aquifer can have irreversible surface impacts (Gurrieri 2007 memo). Of particular concern is the proximity of the adit to the Libby Lakes.

Land subsidence is an additional risk to the CMW. The 2019 DSEIS for the Montanore Evaluation Project indicated that subsidence is possible, and it has occurred multiple times at the Troy mine, an analog for the Montanore project.

If dewatering and/or drainage of wilderness waterbodies or subsidence were to occur, this would have serious implications for the integrity of the CMW, affecting not only the natural ecology, but visitor perception and experience.

We are concerned about nitrogen and sulfur deposition in the Libby Lakes, and the impacts this could have on the geochemistry of these fragile lakes. The airshed within the wilderness is a Class I airshed, imparting special air quality and visibility protection. The EA does not address these protections. Will the project be in compliance with the Clean Air Act? The EA does not address any remedial actions that could be taken to protect the Libby Lakes and the airshed.

Industrialization is not compatible with a wilderness experience, and the project will have immediate, and potentially serious long-term consequences for the CMW and for those who desire to experience those characteristics that make wilderness unique. The Cabinet Mountains Wilderness should have the highest level of protection imparted by the Wilderness Act. It is the responsibility of the Kootenai National Forest to ensure that the CMW is afforded this level of protection.

J. Cultural Resources

For thousands of years, the Confederated Salish and Kootenai Tribe’s (CSKT or Tribes, “we”/“our”) three tribes, the Ksanka (Kootenai), Séliš (Salish), and Qlispé (Upper Pend d’Oreille), thrived in our traditional homeland situated in what is now Montana, Idaho, Washington, Wyoming and British Columbia, subsisting off of healthy native fisheries, plants, and wildlife.

In 1855, under the Hellgate Treaty, 12 Stat. 975, the Tribes ceded over 20 million acres of our traditional territory and reserved a permanent homeland on the 1.3 million-acre Flathead Reservation in western Montana. Under the Treaty, the United States guaranteed the Tribes that the Flathead Reservation would be set aside for our “exclusive use and benefit.” “[T]he

Reservation was a natural paradise for hunting and fishing.” *Conf. Salish and Kootenai Tribes v. United States*, 437 F.2d 458, 478 (Ct. Cl. 1971).

Through Article 3 of the Hellgate Treaty, the Tribes also reserved “the exclusive right of taking fish in all the streams running through or bordering” the Reservation and “the right of taking fish at all usual and accustomed places” throughout the Tribes’ entire traditional territory, including the entire Kootenai National Forest.

Despite the promises made, the United States has often failed to live up to the terms of the Hellgate Treaty including diminishing our land base by opening the Flathead Reservation to non-Indian homesteading and allotment of Tribal lands, constructing massive irrigation systems on Reservation lands that contaminate and dewater our streams and native fisheries and fish habitat, and sanctioning unmeasurable damages to water and water-related resources throughout our traditional territory. Industry, including mining, also played a large role in displacing our people from our homelands. After we were removed from these lands, industry and mining went on to cause significant harm to much of our traditional territory.

For thousands of years our people relied on the fish native to our homelands for nutritional and cultural sustenance. Today, a history of federal actions (or inactions), including widespread mining and industrial activity, have led once abundant and reliable runs of native fish to be listed under the Endangered Species Act (bull trout, Kootenai River white sturgeon) or considered for listing (westslope cutthroat trout). In response, CSKT has undertaken significant and costly efforts to protect the remaining fisheries, restore fish and wildlife habitat, protect water rights, and improve water quality, long working to remediate these harms to protect our ancestral territory and our Treaty fishing, hunting, and gathering rights in these lands and waterways. Our efforts to protect the cultural and sacred resources located in our traditional territory including the Kootenai National Forest, and the water and lands they depend upon for survival, are no exception.

Both the Ksanka (Kootenai) and Qlispé (Upper Pend d’Oreille) have significant historical and cultural ties to the Cabinet Mountain region. The north half of the Cabinets, including Libby Creek, drain toward the Kootenai River, in Salish called Sq̓s̓éwłkʷ (Kootenai waters), while the south half of the Cabinets drain toward the lower Clark Fork, the Qlispé “Road to the West,” called Nč̓łʷumnétkʷ (Bighorn Sheep Waters). The Kootenai have broader place names for areas such as the Libby region called gAqswaq.

The Kootenai National Forest is the center of the traditional homelands of our Kootenai people and is the very heart of our spiritual way of life. These lands are the source of our tribal creation stories, and contain ancestral cultural areas that many of our tribal people still utilize today. Our Kootenai elders continued to maintain the cultural ties to the landscape and pass on traditional stories. A significant story to the Kootenais, that ties directly to this landscape, involves the

three brothers: Hawk (ginmaj), falcon (kaqzixazigtidt), and woodpecker (magka). These three brothers were put on the mountain by creator to watch over the people, to keep them safe while traveling, and to keep all sickness away. The protection of the three brothers' site is critical to maintaining the health and wellbeing of our people. Any disturbance to this place would be detrimental to that.

In addition to the numerous culturally significant landscapes within and nearby the location of the Libby Exploration Adit, including several sacred sites, the entire Kootenai National Forest is part of CSKT's traditional territory, and thus contains usual and accustomed places where the Tribes fished and hunted. The CSKT has historically opposed development projects that could harm traditional cultural resources or threaten the health and viability of treaty-reserved natural resources, such as bull trout or any of the many fish, wildlife, and plant species the Tribal members rely upon when exercising their treaty-reserved fishing, hunting, and gathering rights.

Libby Creek is critical habitat for threatened bull trout, which are a treaty protected resource, as noted above. The CSKT are particularly concerned about impacts to bull trout, and dispute the draft EA's assertion that "impacts to America Indian Rights from the Proposed Action would be negligible." In fact, the impacts to bull trout, one of our treaty protected resources, are likely to be significant. This Libby Exploration Project would very likely increase the threat to bull trout, as explained in the section of these comments on bull trout, and this project will further frustrate efforts to recover this treaty-protected resource. A treaty-reserved right to fish bull trout is meaningless if there are no bull trout to fish.

The bull trout population adjacent to the mine, especially that area above the Adit and above Libby Creek Falls is particularly important for several reasons. This population is isolated/protected by Libby Creek Falls from invasive species competition (habitat, food, etc.) and from genetic impurity in lower river trout hybrid stocks.

Many millions are spent trying to create isolated situations like this for many North American trout and salmon populations. This resident and pure strain population is very important and unique, and the Libby Creek habitat above and adjacent to the mine has created this unique population. The natural isolation and protection of this bull trout population is very valuable and the bull trout habitat in Libby Creek is the most important bull trout habitat and water volume within Libby Creek. It is critical that this habitat be protected and preserved in as natural and healthy state as possible. Any impacts to this habitat, including changes in water flow, temperature (too much warmth), and copper coming from the mine via ground water or from outfall 003 directly are extremely concerning.

Under NEPA, when considering whether an action may "significantly affect the quality of the human environment," an agency must consider, among other things: Unique characteristics of the geographic area such as proximity to historic or cultural resources (40 CFR 1508.27(b)(3)). Additionally, the federal government, including the U.S. Forest Service, has both a trust and treaty responsibility to protect and honor CSKT's treaty rights. As explained, the unique

characteristics of Libby Creek, which have resulted in perhaps the only resident and pure strain of bull trout in the area, are extremely important. Their proximity to the mine, and the high likelihood of harm to this unique and critical habitat, and thus to the bull trout population there, require the USFS to undertake an EIS. Additionally, the proximity of the mine to the many sacred and cultural sites of the Ksanka (Kootenai) and Q̓lispé (Upper Pend d'Oreille) located in the Cabinet Mountains means there is a high likelihood of significant impacts to these sites. Given the high risk of harm to bull trout in Libby Creek, and to other sacred and cultural resources in the area, we urge the USFS to conduct an EIS in order to comply with NEPA and to honor the agency's trust and treaty responsibilities to CSKT.

L. Cumulative Effects

The NEPA obligation to consider cumulative impacts extends to all “past,” “present,” and “reasonably foreseeable” future projects. *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1214-15 (9th Cir. 1998); *Kern v. BLM*, 284 F.3d 1062, 1076 (9th Cir. 2002); *Hall v. Norton*, 266 F.3d 969, 978 (9th Cir. 2001) (finding cumulative analysis on land exchange for one development failed to consider impacts from other developments potentially subject to land exchanges); *Great Basin Mine Watch v. Hankins*, 456 F.3d 955, 971-974 (9th Cir. 2006) (requiring “mine-specific ... cumulative data,” a “*quantified assessment* of their [other projects] combined environmental impacts,” and “objective quantification of the impacts” from other existing and proposed mining operations in the region)(emphasis added).

Thus, the USFS must consider the cumulative impacts from all past, present, and reasonably foreseeable future projects in the region (e.g. logging, energy development, recreation activities, grazing, mineral operations, etc.) on water and air quality including ground and surface water quantity and quality, recreation, cultural/religious, wildlife, transportation/traffic, scenic and visual resources, etc.

1. Placer mining operations

Two new placer mining operations are proposed in the Libby Creek drainage, immediately downstream of the proposed Libby Adit Project.⁴⁸ The EA (Table 3-26) fails to specify these proposed placer exploration projects as Reasonably Foreseeable Future Actions (RFFA), nor does it analyze the potential cumulative effects of the proposed new placer operations and existing placer operations. According to the 2024 Proposed Action, Ponderosa Placer Exploration would disturb 3 acres of land, dig a maximum of 12 test pits over 3 years, construct 3 ponds in order to access and store water, and create 0.54 miles of temporary road within BMU

⁴⁸ U.S. Forest Service, Libby Creek Mining Operations, Scoping Document, May 2024. See <https://www.fs.usda.gov/project/?project=65512>

5.⁴⁹ The Northwest Montana Gold Prospectors (NWMGP) Ace Placer would disturb land adjacent to their current operation, including a new access route and test dig site. Material will be hauled from each test pit to the trommel for processing. The plan proposes to process 1-3 cubic yards of gravel per hour during operations for a 3-year period. Operators plan to use an excavator and dump truck.

The noise, light, traffic, surface disturbance and human activity from the proposed placer activities along the Libby Creek corridor may be considerable, resulting in potential impacts to aquatic and terrestrial wildlife, including threatened bull trout, grizzly bears, and wolverine, which must be analyzed as a cumulative effect. Impacts from placer exploration and/or mining to water quality and quantity, riparian vegetation, aquatic insects, fish and fish habitat and other resources may be significant and include the release of sediment, alteration of stream channels, stream velocity, scouring characteristics, stream length, pool-riffle ratio, ground-water/surface-water relationships, ground-water recharge characteristics, water temperature; and changes in the stream bottom material, including changes in composition which may change the rate of intergravel water flow, deposition of fine material and gravel on riffle areas, and changes in bedload movement. The NEPA analysis must analyze the potential cumulative impacts of the proposed Libby Exploration Project and the proposed and existing Libby Creek Placer Mining Operations.

2. The Libby Creek Recreational Gold Panning Area

The EA should also consider the cumulative effects to water, fish and wildlife from ongoing activities at the Libby Creek Recreational Gold Panning Area, which promotes recreational gold panning activities in Libby Creek. Recreational gold panning can disturb and harm fish habitat, increase turbidity, generate noise, increase human activity and otherwise disturb fish and wildlife.

3. Climate change (temperature, etc.)

As stated above, Montana is projected to continue to warm in all geographic locations, seasons, and under all emission scenarios throughout the 21st century.⁵⁰ By mid-century, Montana temperatures are projected to increase by approximately 4.5-6.0°F (2.5-3.3°C) depending on the emission scenario.⁵¹ These state-level changes are larger than the average changes projected globally and nationally. They have profound implications for water quality and quantity, fish

⁴⁹ *Id.*

⁵⁰ Cathy Whitlock et. al., “2017 Montana Climate Assessment, September 2017. <https://live-mca-site.pantheonsite.io/sites/default/files/thumbnails/image/2017-Montana-Climate-Assessment-lr.pdf>

⁵¹ *Id.*

and wildlife and their habitat (See other sections). The Forest Service Rocky Mountain Research Station has modeled predictions of water temperature increases as a result of climate change in the Cabinet Mountains Wilderness Area at this interactive website.⁵² It projects instream temperature increases in Libby Creek by 2040, which roughly aligns with the timeline of the project. The EA must consider the potential cumulative effects of climate change, including temperature, in conjunction with the proposed project.

IV. ENDANGERED SPECIES ACT

Section 7 of the ESA directs each agency to ensure, in consultation with the Fish and Wildlife Service, that “any action authorized, funded, or carried out by such agency ... is not likely to jeopardize the continued existence of any endangered species or threatened species” or cause the “destruction or adverse modification” of habitat designated as “critical” for such species. 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.01(b). The formal consultation process culminates in the issuance of a biological opinion, in which the Fish and Wildlife Service must determine—based on “the best scientific and commercial data available,” 16 U.S.C. § 1536(a)(2)—whether the proposed action will jeopardize the survival and recovery of a protected species. 16 U.S.C. § 1536; 50 C.F.R. § 402.02. An agency action “jeopardizes” a protected species if it “reasonably would be expected, directly or indirectly,” to reduce appreciably the species’ likelihood of survival and recovery “by reducing the reproduction, numbers, or distribution of the species.” 50 C.F.R. § 402.02. The Fish and Wildlife Service also must determine whether the proposed action will destroy or adversely modify a protected species’ designated critical habitat. 50 C.F.R. § 402.14(g)(4); 16 U.S.C. §§ 1532(5)(4), 1533(a)(3)(A). The Forest Service has an independent obligation under the ESA to ensure that its action is not likely to jeopardize the survival or recovery of a listed species or destroy or adversely modify designated critical habitat and “[a]rbitrarily and capriciously relying on a faulty Biological Opinion violates this duty.” 16 U.S.C. § 1536(a)(2); *Wild Fish Conservancy v. Salazar*, 628 F.3d 513, 532 (9th Cir. 2010) (quotation omitted); *Save Our Cabinets v. United States Fish & Wildlife Serv.*, 255 F. Supp. 3d 1035, 1043–44 (D. Mont. 2017).

While the EA states that a Biological Assessment (BA) has been completed that evaluates the potential effect of the Proposed Action on listed species, including measures the KNF believes are needed to minimize or compensate for effects, this BA was not made publicly available. Draft EA at 3-36. The KNF states that it intended to submit the Biological Assessments to the USFWS for review and consultation in December 2024. However, the BA was not referenced in the EA, nor provided to the public for review. This failure to include or reference the BA in the EA deprives the public of a meaningful opportunity to comment. Moreover, given the potential for significant impacts to several listed species, a biological opinion should have been prepared.

⁵²<https://usfs.maps.arcgis.com/apps/webappviewer/index.html?id=bf3ff38068964700a1f278eb9a940dce>

a. Grizzly Bear

The Cabinet-Yaak population of grizzly bears is the most vulnerable population of grizzlies in the United States. But for translocations of bears from other ecosystems, the Cabinet Mountains population would be extinct. This population faces numerous stressors and, in current baseline conditions, has been unable to meet recovery objectives. Libby Creek is known habitat for grizzly bears.

The Project will involve increased access to the project site during the winter and increased activity at the project site year around, resulting in a larger zone of influence around the project site. EA at 3-55. This increased disturbance around the project site could increase the risk of habituation, which increases mortality risk for grizzlies. The Forest Service's EA does not adequately analyze this increased risk—dismissing the threat of habituation as “unlikely” based on the “vegetation and topography” of the area, without thoroughly evaluating the potential for bears to be attracted to the site and the consequences of that attraction. EA at 3-55. At a minimum, the Forest Service must evaluate the risks of the project with increased mortality for grizzlies including the following risks.

- First, there is a potential for the habituation (loss of normal bear avoidance response) of grizzly bears to human activities along the access road and at the project site due to the continual nature of human activities over the life of the project.⁵³ Habituation can increase mortality risk to those habituated bears because they do not avoid humans and human presence such as fleeing approaching vehicles along a road. Intensive management efforts are necessary to mitigate the risks of habituation.⁵⁴ Here, the mortality risk of habituation is magnified because the project area and the access road to the project site are not in an area where grizzly bear interactions can be carefully managed.
- Second, the increased human activity at the site increases the possibility of food conditioning of bears. Food-conditioned bears are at a higher risk to habituation, which, in turn, increases their risk of lethal removal.

⁵³ Herrero, S., T. Smith, T.D. Debruyne, K.A. Gunther, and C.A. Matt. 2005. Brown bear habituation to people: safety, risks and benefits. *Wildlife Society Bulletin* 33:362-373. [https://doi.org/10.2193/0091-7648\(2005\)33\[362:FTFBBH\]2.0.CO;2](https://doi.org/10.2193/0091-7648(2005)33[362:FTFBBH]2.0.CO;2)

⁵⁴ Richardson, L., T. Rosen, K. Gunther, and C. Schwartz. 2014. The economics of roadside bear viewing. *Journal of Environmental Management*. 140, pp. 102-110. <https://doi.org/10.1016/j.jenvman.2014.01.051>

- Third, the increased risk of habituation also increases mortality risk to bears due to possible mistaken identification killing by bear hunters in the area. These hunting activities take place in the project area and along the access road.

The EA also anticipates a loss of core habitat in the project area, with the introduction of 24-hour noise and disturbance at the site, but dismisses this risk based on its unsupported conclusions that the level of human disturbance and disruption of core area would be “low,” noting that some of the impacts would be offset by seasonal reductions in motorized human disturbance. EA at 3-55, 3-66. While the Forest Service dismisses this loss of habitat as negligible, the loss of any core habitat is a potential risk to grizzly bears. The Forest Service should evaluate the potential risks of this loss of habitat on grizzlies in the area.

The Forest Service must also consult with the Fish and Wildlife Service regarding impacts to grizzly bears and in so doing must not segment its analysis, but consider both phases (exploration and foreseeable operations) of the Montanore Mine, as the court explained in *Ksanka Kupaqa Xa'lcin v. United States Fish & Wildlife Serv.*, 534 F. Supp. 3d 1261, 1271 (D. Mont. 2021) (“Fish and Wildlife Service was required to prepare a comprehensive biological opinion considering all the information it had available to it, including information regarding the environmental impact of Phase II. The failure to do so was arbitrary and capricious in violation of the ESA.”). While the company has removed its Plan of Operations for the Montanore mine, it has indicated to shareholders that the company has every intention of continuing to move forward with mining after the exploration project is completed. As noted in its 2023 update on operations at Montanore, the company explained that it had withdrawn its Montanore Plan of Operations to focus on the Libby Exploration project, and shared that “[u]pon successful completion of the EA process [for the Libby Exploration Project] under the NEPA, and if subsequent data collection and analysis activities suggest development of a mine is feasible, then it is anticipated that a new Plan of Operations for the construction and development of a mine at the Libby Exploration site would be submitted for approval.”⁵⁵ Given the company’s stated intention to use its exploration data to pursue full-scale mining, the Forest Service should consult with FWS to evaluate the foreseeable impacts of mining on grizzlies.

b. Bull Trout

In 1999, native bull trout (*Salvelinus confluentus*) were listed within the coterminous United States as threatened by the U.S. Fish and Wildlife Service pursuant to the Endangered Species Act of 1973, as amended (Act) (64 FR 58910; 1 November 1999). The 2014 Aquatic BiOp states that the segment of Libby Creek that is the receiving waters for Outfalls 001-003 “has

⁵⁵ 2023 Company Overview, Hecla Mining Company, HL-10 (available at https://s29.q4cdn.com/244919359/files/doc_financials/2023/ar/HMC_2023_ACO-10K_040924.pdf).

numerous [bull trout] spawning areas” and hosts a local bull trout population that is among “the most resilient ... that occupy the entire Libby Creek watershed.” As discussed above, NEPA review must consider the direct, indirect and cumulative impacts of the proposed activity on threatened bull trout, including, but not limited to, changes to water quality, stream flows, temperature, habitat, food availability, groundwater upwellings, hyporheic zones and connectivity. This review must also include foreseeable impacts from full-scale mining at the Montanore mine site. *Ksanka Kupaqa Xa'lcin v. United States Fish & Wildlife Serv.*, 534 F. Supp. 3d 1261, 1271 (D. Mont. 2021).

c. Lynx

The Biological Assessment for Lynx should have been included in the EA to allow the public to make adequately informed comments.

Page 3-47 of the EA states: “The analysis area for Canada lynx consists of Lynx Analysis Unit (LAU) 14504 – Crazy and the portion of NFSR 231 that is outside of the LAU boundary. The analysis area contains habitat components for year-round use for Canada lynx (USFS 2015). The project area is located in LAU 14504 and portions of NFSR 231, NFSR 2316, NFSR 4778, and spurs are within LAU 14504 (Figure 3-19). The EA then goes on to say that there are no reliable population estimates of Canada Lynx and that the population in the analysis area is unknown.

On Page 3-48, the EA acknowledges that lynx in the analysis area may be subject to disturbance and displacement from existing project activities. In addition, vehicular collisions and incidental take from trapping are likely to increase with the project. Yet, without baseline data on the occurrence of lynx, it is impossible to quantify risks to the population. Thus, the Forest Service has failed to fully analyze impacts to a listed species and failed to minimize impacts.

The full mine is predicted to have even greater and longer-term impacts on Lynx. These may include loss and degradation of habitat and food sources, increased mortality from vehicular collisions, and the risk of incidental take from trapping. Cumulative impacts from the full mine would have significant impacts on habitat and travel and dispersal capabilities. A cumulative impacts analysis of this listed species should be included in an EIS. The evaluation adit is not a standalone project from the full mine. In the Opinion and Order (Case 9:19-cv-00020-DWM Document 131 Filed 04/14/21), the Court ruled that the agencies unlawfully segregated the Rock Creek mine project, concluding that Phase II should have been addressed as an “effect” of that action. The analysis for the Libby Exploration adit should therefore include a cumulative effects analysis to include the full Montanore mine project. *Ksanka Kupaqa Xa'lcin v. United States Fish & Wildlife Serv.*, 534 F. Supp. 3d 1261, 1271 (D. Mont. 2021).

d. Wolverine

The wolverine was listed as a threatened species under the Endangered Species Act in November 2023 because of its small and isolated population, degradation of habitat, and sensitivity to human disturbance. Impacts from the project may include impacts on prey and foraging opportunities, injury or mortality by vehicle strike, increased competition for food sources as a result of plowing, and other impacts from extractive industry infrastructure. According to MTFWP, the agency has documented sightings of wolverine in the analysis area. EA at 3-50.

The EA dismisses impacts to wolverine from the increased project activity on two Forest Service roads, NFSRs 231 and 2316, based on the agency's conclusion that it is difficult to detect and measure wolverine movement on these roads at any given time. EA at 3-59. However, the EA fails to recognize the increased risk of wolverine being attracted to the roads—which they may otherwise have avoided—by roadkill from Project-related traffic. Roadkill can be a significant attractant for a wolverine, luring it to the roadside where it could be struck by a vehicle or encounter other animals.⁵⁶ While MMC notes that it will implement a Wildlife Management Awareness Plan that directs MMC employees to remove roadkill, there is no specification about how quickly roadkill will be removed, which would impact the risk to wolverine. Appendix B at 10.

The EA also incorrectly assumes that the seasonal closure of another forest service road, NFSR 4778, would offset the effects of snowplowing and year-round access on NFSRs 231 and 2316. EA at 3-59. But road closures will not likely bring any benefit to wolverine, which habitually avoid places associated with disturbance even if that disturbance is temporarily halted, unless there is a likely food source related within the disturbance area.⁵⁷ It is also unclear from the EA whether the project will be associated with additional plowing, or whether the plowing will

⁵⁶ Carrion as an attractant is recorded throughout the wolverine literature. Studies by Mattison et al 2016 (Mattison, J, et al. 2016. Predation or scavenging? Prey body condition influences decision making in a facultative predator, the wolverine. *Ecosphere* V7(8)) and Van Dijk et al 2008 (Van Dijk et al. 2008. Foraging strategies of wolverines within a predator guild. *Canadian Journal of Zoology* V 86:pp 966-975) are particularly illustrative. Both these studies are from Scandinavia and both find that the reliance on carrion seems more pronounced in the winter. They also further explore the questions of how wolverines interact with other predators on the landscape, including the tension between wolves providing carrion and wolves being a risk to wolverines (Van Dijk), and wolverines and lynx as both supports and competitors for kills and carrion (Mattison).

⁵⁷ See, e.g. Scrafford et al 2017. Wolverine habitat selection in response to anthropogenic disturbance in the western Canadian boreal forest. *Forest Ecology and Management*.

remain the same as current levels. Without this clarity, the EA fails to adequately evaluate the impacts of plowing on wolverine.⁵⁸

The EA also concludes that, while the project may “chang[e] the distribution of potential foraging opportunities” and “prey,” that disturbance would be relatively short and wolverine would be able to adjust to these temporary changes. EA at 3-60. But the EA does not define which “prey” or “foraging opportunities” it is referencing. Nor does the EA seem to account for the highly localized ways that wolverine adapt to local food availability.⁵⁹ This imprecision in the analysis makes it difficult to evaluate possible effects and may underestimate the potential effects on wolverine.

There are also a handful of inaccuracies in the EA in its description of wolverine that suggest the analysis was not thorough and may underestimate the impacts on the species. First, the EA’s description of the historical distribution of wolverine, which states that wolverines are found in WA, OR, ID, MT, WY, CA, NV, UT, and CO, is incorrect. EA at 3-50. The only known breeding pairs are located in MT, ID, WY, and the Cascades in WA.⁶⁰ This description should be updated to accurately reflect the distribution described in the proposed listing, which is a much smaller area than the EA suggests. Second, the density estimates in the EA extrapolate from studies done in the 1970’s. EA at 3-50. Because the EA relies on outdated studies, these estimates are likely to be inaccurate and the estimates are quite high when compared to more

⁵⁸ See, e.g. Scrafford et al, 2024. Wolverine density, survival, and population trends in the Canadian boreal forest. *Journal of Wildlife Management*. (This study references wolverines killed by wolves who were using roads to hunt ungulates. Given that deep snow excludes other predators from wolverine habitat, plowing roads in winter likely increases the risk of other predators penetrating further into wolverine habitat. This increases both competition for food sources and the likelihood of a lethal encounter with a larger predator.). Chow Fraser et al, 2022. (Landscape change shifts competitive dynamics between declining, at-risk wolverines 2 and range-expanding coyotes, compelling a new conservation focus. *Biological Conservation*, v266) shows that wolverines come into competition with coyotes when linear infrastructure creates pathways into wolverine habitat for coyotes. This shows that even smaller carnivores can be a challenge to wolverines when human activities allow them greater access to wolverine habitat.

⁵⁹ Variation in wolverine diets and foraging strategies are recorded across the literature. See, eg, Mattison et al 2016, which details changes in foraging strategy depending on how lynx are hunting and scavenging, Van Dijk et al 2008, which looks at seasonal variations between hunting and scavenging, and Koskela 2103, which finds variation in foraging strategies between wolverines in different parts of Finland, concluding: “These results support the predictions of the optimal foraging theory, suggesting that wolverines opportunistically utilize the food source that is most energy-efficiently available.” It is difficult to predict which food sources wolverines will use, and how, because they will adapt to what is available in a way that can be dynamic.

⁶⁰ See, e.g. Moqanaki et al, 2023. Wolverine density distribution reflects past persecution and current management in Scandinavia. *Ecography*.

recent density calculations in Scandinavian studies. This leaves the question of how many wolverines would be affected by this project, and how important each of those wolverines is to the population, unanswered. Finally, the EA does not appear to reference any of the studies on wolverines in Canada, including studies that represent the best available science on wolverine responses to extractive industry infrastructure.⁶¹ The scientific literature on wolverine responses to extractive industries include several observations that should be evaluated by the Forest Service in relation to wolverine impacts from this project. These include:

- Wolverine responses to road use in areas experiencing resource extraction are complex, highly localized, and impacted by several variables, including the potential for increased predation from wolves that may use roads, seasonality, and potential foraging opportunities caused by industrial development.⁶²
- The opportunities created by extractive industry infrastructure for additional foraging for wolverine may attract wolverine to roads they might have otherwise avoided which, in turn, increase the risk of wolverine mortality alongside high-traffic areas. Such variables as the introduction of borrow pits, which may attract prey, or the likelihood of additional prey visiting or living in the area must be evaluated to understand the risk of roads on wolverine.⁶³

⁶¹ See e.g. Scrafford, M. 2017. Wolverine (*Gulo gulo luscus*) movement, habitat selection, and foraging in a landscape with resource extraction. Dissertation submitted to the Department of Biological Sciences, University of Alberta. See also Fisher et al. 2013. Wolverines (*Gulo gulo luscus*) on the Rocky Mountain slopes: natural heterogeneity and landscape alteration as predictors of distribution.

⁶²Scrafford, M. 2017. Wolverine (*Gulo gulo luscus*) movement, habitat selection, and foraging in a landscape with resource extraction. Dissertation submitted to the Department of Biological Sciences, University of Alberta at 17 (“The aversion of wolverines to roads is well reported by researchers (Rowland et al. 2003; May et al. 2006; Copeland et al. 2007; Lofroth et al. 2007). While we found evidence of road avoidance, we also found that roads can be attractive to wolverines. Wolverines avoided low-traffic winter roads in summer and winter seasons. We attribute this avoidance to predation risk from wolves that use these roads for movement (Whittington et al. 2005; Dickie et al. 2016)...Contrarily, we found that wolverines were attracted to all-season road sections with borrow pits. We would suggest the reward of foraging opportunities at borrow pits outweighs the risk of encountering humans along all-season roads that generally have greater traffic volume... .”)

⁶³ *Id.* at 19 (“Our results provide evidence that wolverines take risks for foraging opportunities, such as using areas of active harvest, cutblocks, or road-side habitats such as borrow pits. Road-side habitats could prove to be a population sink (e.g., Battin 2004) for wolverines in landscapes with high levels of traffic...Such mortality events could contribute to a long-term reduction in wolverine populations if reproduction or immigration could not keep pace with mortality.”)

The Forest Service's evaluation must better evaluate these impacts, given the location of this project in documented wolverine habitat, the use of increased plowing to facilitate road access by the company during the winter, and the increase in traffic as a result of the project.

And finally, as with the other listed species, the Forest Service must also consult with the Fish and Wildlife Service regarding impacts to wolverine and in so doing must not segment its analysis, but consider both phases (exploration and foreseeable operations) of the Montanore Mine, as the court explained in *Ksanka Kupaqa Xa'lcin v. United States Fish & Wildlife Serv.*, 534 F. Supp. 3d 1261, 1271 (D. Mont. 2021).

V. RECLAMATION AND CLOSURE

1. The EA should provide a draft financial assurance calculation.

NEPA analysis should include a draft financial assurance calculation associated with the proposed project. The U.S. Environmental Protection Agency has repeatedly raised this issue on the proposed Montanore Project:

“Given the history of adverse environmental effects resulting from some hardrock mines and the expenditure of public funds used in some cases to address environmental problems caused by mining, EPA believes it is necessary to analyze these factors in the DEIS. Financial assurance could make the difference between a project sufficiently managed over the long-term by the site operator and an unfunded/under-funded post closure site that becomes an unreclaimed liability for expenditure of public funds.”⁶⁴

2. The EA should provide more detailed information on reclamation.

The EA fails to adequately describe or analyze reclamation plans. The existing soil stockpile originates from past operations, and has therefore been sitting onsite for an extensive period of time. The EA should disclose the quantity and quality of these soils, and whether adequate topsoil and growth media are available to meet reclamation requirements for successful revegetation. Given the proximity to surface waters, and the potential for unsuccessful revegetation/reclamation efforts to result in erosion and sediment runoff into Libby Creek, the EA should consider the potential effects to water quality and bull trout critical habitat.

VI. EXTRALATERAL RIGHTS

The MMC Plan of Operations (POO) (p. 24) states that, “MMC will not complete mineral

⁶⁴ U.S. EPA letter to KNF and DEQ, Comments on Draft Environmental Impact Statement for the Montanore Project (CEQ #20090048), July 29, 2009.

exploration drilling for any mineral resource outside of its extralateral rights (Figure 3-3). However, it then states that mineral resources encountered outside of MMC's extralateral rights for which removal is reasonably incident for access or other approved exploration activities either will be stored underground or on private land surface. MMC will locate the eastern extralateral right boundary.

The EA includes a map (Figure 2-4) and description of the two mining claims and the area covered under the stated extralateral rights. However, it fails to describe how the Forest Service will ensure that underground mining operations stay within the boundaries of its extralateral rights. The EA must identify an alternative that does not include the mining of material, or any other use, outside of its extralateral rights. At a minimum, because extralateral rights are limited to the actual economically valuable minerals, they do not encompass "access or other evaluation activities." 30 U.S.C. §26 (extralateral rights apply only to "veins, lodes, and ledges" of valuable minerals).

Regardless of whether Montanore returns the ore that it excavated outside of its extralateral rights, federal mining and public land law do not allow any activities within a withdrawn area, such as the Cabinet Mountains Wilderness Area. *See National Wildlife Federation v. Burford*, 835 F.2d 305, 308 (D.C. Cir. 1987) ("A withdrawal withholds land from operation of one or more of the general land and mineral disposal laws, including the 1872 Mining Law"). Withdrawn lands are no longer available for mining. *Lara v. Sec'y of Interior*, 820 F.2d 1535, 1542 (9th Cir. 1987) (recognizing "the right to prospect for minerals ceases on the date of withdrawal"); *Kosanke v. U.S. Dept. of Interior*, 144 F.3d 873, 874 (D.C. Cir. 1998) ("[L]ands withdrawn from mineral entry are no longer considered to be within the public domain and therefore are not subject to the statutory rights enumerated in the General Mining Law"). "Mining claims located on lands not open to appropriation are null and void ab initio." *Mount Royal Joint Venture v. Kempthorne*, 477 F.3d 745, 757 (D.C. Cir. 2007). "[A] mining claim is void *ab initio* when it is located on land which at the date of location was included in an application for withdrawal which has been noted on the land records." *Shiny Rock Mining Corp. v. United States*, 825 F.2d 216, 219 (9th Cir.1987).

Thus, the Forest Service cannot approve any activities in or under the designated Wilderness Area, beyond the current extent of MMC's existing and limited extralateral rights. The EA should specify how the Forest Service will ensure that MMC is operating within the limits of the expressed extralateral rights.

VII. CLEAN WATER ACT AND MONTANA WATER QUALITY ACT

The Forest Service's analysis of the Montana Water Quality Act (MWQA) and the Clean Water Act (CWA)—which relies on state permitting decisions including the state Department of Environmental Quality's 2006 MPDES permit for the company—is also deficient. The Forest

Service cannot rely on the 2006 MPDES permit because it does not cover the activities contemplated by the company's Plan of Operations at issue in the EA; will be replaced with a superseding permit in the near future; and because Ninth Circuit legal precedent does not permit a federal agency to rely on state analysis, such as the 2006 MPDES permit, to satisfy the federal agency's own legal duty to ensure compliance with state and federal water quality standards.

First, the Forest Service cannot rely on the 2006 MPDES permit to support its water quality analysis because that permit does not cover the activities at issue in the EA. The EA states that the proposed project will use its approved MPDES permit (MT0030279) originally issued in 2006, to treat water from the proposed project and maintain compliance with Montana water quality standards. EA at 2-11; *id.* at 3-19.⁶⁵ But the 2006 operative permit authorizes only “the discharge of wastewater associated with...*previously authorized* exploration activity only...”⁶⁶ In other words, DEQ's 2006 MPDES permit does not analyze the activities related to Montanore's Plan of Operations analyzed in the Forest Service's EA. Indeed, a draft of an updated MPDES permit for the site released in November 2024, which evaluated “the new Libby Exploration Project,” contemplated significant additional stormwater outfalls from the 2006 permit.⁶⁷ Given the scope of the 2006 MPDES permit, the Forest Service cannot rely on that permit to ensure compliance with state water quality standards.

Second, the Forest Service's reliance on the 2006 MPDES permit is further undermined by the state's and company's imminent plans to replace that permit with a new permit. Both the company and DEQ have already made binding agreements to replace the 2006 permit with a new permit. In November 2022, in a settlement of a legal dispute, MMC and DEQ agreed that the company would submit an application for a new permit for future discharges, with the 2006-issued permit to remain in effect until the new permit was issued.⁶⁸ DEQ and MMC have already begun the new permit process. Recently, in November 2024, DEQ issued public notice of its intent to terminate the 2006 permit and replace it with the new permit. Two weeks after

⁶⁵ The 2006-issued permit has been the operative MPDES permit for the Libby Creek Adit discharges and reclamation since November 2020, when the Montana Supreme Court vacated a prior MPDES permit issued in 2017. *See Montana Environmental Information Center et. al. v. Montana Department of Environmental Quality*, Available at: https://earthjustice.org/sites/default/files/files/opinion_-_published_0.pdf.

⁶⁶ Montana DEQ, [DEQ Invites Public Comment on Wastewater Permitting Actions for the Montanore Mine](#) (Nov. 1, 2024).

⁶⁷ Montana DEQ, Draft Environmental Analysis for proposed permit MT0032158, (Nov. 2024) available at <https://deq.mt.gov/files/Water/WQInfo/Documents/2024%20Public%20Notices/PN-MT-24-11/2024-DEA-MT0032158.pdf>

⁶⁸ Stipulated Mot. for Order of Dismissal, ¶¶6–9, *In the Matter of: Appeal and Request for Hearing by Montanore Minerals Co. Re. Issuance of MPDES Permit No. MT0030279, Libby Montana* (Mont. Board of Env'tl. Rev. Cause No. BER 2022-01 WQ) (November 22, 2022).

issuing this notice, DEQ paused all public review to correct an error in the notice. The agency subsequently reported that, after notifying the company of its decision to pause the permitting process, the agency learned that the company planned “to submit additional information that may change DEQ’s permitting analysis.”⁶⁹ Given the impending issuance of a new permit, which will undoubtedly include additional analysis not undertaken in the 2006 permit, the Forest Service cannot rely on the 2006 permit’s analysis to support its conclusion in the EA that state water quality standards will be met. EA at 3-19.

Further, even if there was an active MPDES permit issued by DEQ related to the activities contemplated in the EA, the Ninth Circuit has made clear that “[a] non-NEPA document—let alone one prepared and adopted by a state government—cannot satisfy a federal agency’s obligations under NEPA.” *S. Fork Band Council Of W. Shoshone Of Nevada v. U.S. Dep’t of Interior*, 588 F.3d 718, 726 (9th Cir. 2009) (citing *Klamath–Siskiyou Wildlands Center v. BLM*, 387 F.3d 989, 998 (9th Cir.2004)); see also *Kern v. U.S. Bureau of Land Mgmt.*, 284 F.3d 1062, 1073 (9th Cir. 2002) (Agency “tiering to a document that has not itself been subject to NEPA review is not permitted, for it circumvents the purpose of NEPA”). Because a state MPDES permit is not subject to NEPA review, the Forest Service cannot rely on it to satisfy its NEPA obligations here.

Finally, the Organic Act requires the Forest Service “to regulate [the] occupancy and use [of national forests] and to preserve the forests thereon from destruction.” 16 U.S.C. § 551. The Organic Act also requires that those persons “prospecting, locating, and developing the mineral resources [on a national forest] . . . must comply with the rules and regulations covering such national forests.” 16 U.S.C. § 478.

Under the Organic Act and Part 228A regulations, the agency must “maintain and protect fisheries and wildlife which may be affected by the operations.” 36 C.F.R. § 228.8(e). These impacts also violate the Forest Service’s duties to “minimize adverse environmental impacts on National Forest surface resources.” 36 C.F.R. § 228.8. The Organic Act and Part 228A regulations “further require that mining operators comply with applicable state and federal water quality standards including the Clean Water Act; [and] take all practicable measures to maintain and protect fisheries and wildlife habitat.” *Save Our Cabinets v. U.S. Dep’t of Agric.*, 254 F. Supp. 3d 1241, 1249-50 (D. Mont. 2017). “The operator also has a separate regulatory obligation to ‘take all practicable measures to maintain and protect fisheries and wildlife habitat which may be affected by the operations.’ 36 C.F.R. § 228.8(e).” *Rock Creek All. v. Forest Serv.*, 703 F. Supp. 2d 1152, 1164 (D. Mont. 2010) (mine approval violated Organic Act and 228 regulations by failing to protect water quality and fisheries). “Under the Organic Act the Forest Service must ...require [the project applicant] to take all practicable measures to

⁶⁹ Montana DEQ, [DEQ Invites Public Comment on Wastewater Permitting Actions for the Montanore Mine](#) (Nov. 1, 2024).

maintain and protect fisheries and wildlife habitat.” *Id.* at 1170. *See also Hells Canyon Pres. Council v. Haines*, 2006 WL2252554, *4-5 (D. Or. 2006)(Forest Service failed to protect fisheries and ensure compliance with water quality standards).

The CWA, Organic Act, and agency regulations preclude USFS from approving aspects of a mining operation that would violate federal or state water quality standards.

“Under the Clean Water Act Section 313, the Forest Service cannot authorize mining operations that do not comply with state and federal water quality regulations, including a state’s antidegradation policy. 33 U.S.C. § 1323(a).” *Save Our Cabinets v. U.S. Dept. of Agriculture*, 254 F.Supp.3d 1241, 1249 (D. Mont. 2017)(USFS approval of mining project violated duties under CWA and Organic Act to ensure compliance with water quality standards). *See also Hells Canyon Presv. Council v. Haines*, 2006 WL2252554, *4-5 (D. Or. 2006)(USFS mine approvals violated state CWA standards).

Further, *Save Our Cabinets* rejected the argument by USFS that it was not responsible for ensuring that its decision to approve a mine’s long-term dewatering of area streams would not violate water quality standards. The court rebuffed USFS’s argument “that reliance on Montana DEQ’s decisions constitutes compliance with Clean Water Act requirements.” 254 F.Supp.3d at 1251, holding that “[a]pproval of the Project would violate the Clean Water Act and the Organic Act as the approval violates Montana’s nondegradation standards.” *Id.* at 1246. “[T]he data before the Court shows noncompliance for future stages of the Project. Approval of the Project despite the violation of Montana’s water quality standards is arbitrary and capricious.” *Id.* at 1254-55.

The Forest Service must independently ensure that all Montana and federal water quality standards are met for the proposed project. The agency cannot do so here because there is an existing total maximum daily load (TMDL) for Libby Creek and there is no evidence in the record indicating that there are sufficient waste load allocations (WLAs) to allow the project to contribute any additional sediment to the stream. Montana DEQ has classified two segments of Libby Creek downstream from Outfalls 001-004 as impaired pursuant to § 303 of the Clean Water Act. This designation restricts DEQ’s ability to authorize new discharges that will affect water quality in these stream segments. Specifically, DEQ (and hence the U.S. Forest Service) cannot lawfully authorize new discharges to stream assessment unit MT76D002_061 because (1) DEQ has not developed a TMDL for this segment, and (2) the discharges authorized in the Proposed Permit will cause a decline in water quality for parameters by which the water body is impaired. Agencies need to address mine effects on Libby Creek MTFWP stream rehabilitation completed in recent years that attempted to mitigate placer mining effects on Libby Creek.

DEQ has determined that stream assessment unit MT76D002_061, which is the inventoried segment immediately downstream of Outfalls 001-004, does not fully support aquatic life due to

alterations in stream-side or littoral vegetative covers and physical substrate habitat alterations—a sediment-related source of impairment. For stream assessment unit MT76D002_061, a TMDL is “required but not complete.” Until DEQ completes a TMDL for this impaired segment of Libby Creek, it may not issue MPDES permits authorizing discharges that will affect water quality there. Indeed, the federal district court for Montana has in the past enforced a prohibition against the issuance of MPDES permits affecting impaired waterways for which—like stream assessment unit MT76D002_061—a TMDL is required but not complete. A panel of the U.S. Court of Appeals for the Ninth Circuit affirmed that action by the district court, concluding that the ban was necessary to satisfy the requirements of 40 C.F.R. § 122.4.82 Under this authority, the discharges to Libby Creek authorized in the Proposed Permit are unlawful.

Stream assessment unit MT76D002_062, which also is downstream of Outfalls 001-004, is impaired due to existing sediment pollution and is subject to a sediment TMDL. As of September 23, 2013, DEQ had identified 11 permitted point sources with the potential to contribute sediment to the impaired segment of Libby Creek. However, the TMDL document does not contain compliance plans for these sources that will bring the impaired stream segment into compliance with applicable water quality standards, and the commenting organizations are not aware of any such plans established elsewhere by DEQ. In the absence of plans that provide for compliance with the applicable water quality standards, DEQ may not authorize additional sediment pollution that will affect the impaired segment of Libby Creek.

As outlined by Gardner (2025), there is considerable uncertainty about the dewatering effects of the proposed action on hydrologically connected rivers, streams, and other waterbodies within the Wilderness Area. The EA fails to demonstrate that the proposed plan will comply with the nondegradation protections afforded Outstanding Resource Waters.

For this same reason, the U.S. Forest Service cannot comply with 33 U.S.C. §1341.

VIII. FOREST PLAN CONSISTENCY

The EA fails to demonstrate that the POO will be consistent with the 2015 Forest Plan. MTDEQ announced its intent to terminate the existing MPDES Permit MT0030279, and issue a new MPDES permit (MT0032158) to replace the 2006 permit.⁷⁰ As outlined in the comments above (Section E (Water Quality)), the 2006 MPDES permit is outdated, unprotective, and likely to result in significant impacts. Thus, the EA fails to demonstrate that the POO will be consistent with the 2015 Forest Plan, including but not limited to the following water quality components:

⁷⁰ *Id.*

FW-DC-WTR-02: Water quality meets applicable state water quality standards and fully supports beneficial uses. Flow conditions in watersheds, streams, lakes, springs, wetlands and groundwater aquifers fully support beneficial uses and meet the ecological needs of native and desirable non-native aquatic species and maintain the physical integrity of their habitats.

FW-DC-RP-03 - Water quality provides stable and productive riparian and aquatic ecosystems. Streams and lakes are free of chemical contaminants and do not contain excess nutrients. Sediment levels are within reference conditions, supporting salmonid spawning and rearing, and cold water biota requirements.

The EA also fails to demonstrate that the potential impacts to fish and fish habitat from the POO will be consistent with the 2015 Forest Plan, as outlined in Table 1 (below) and described in more detail in Gregory (2025).

Table 1 outlines how the proposed action will or will not affect various criteria of the Kootenai National Forest Land Management Plan.

LMP	Description	Rationale for Project Consistency	Comment
GOAL-AQS-01	Maintain or improve the distribution of native aquatic and riparian-dependent species and contribute to the recovery of threatened and endangered aquatic species.	The Project would be neutral toward achieving this goal. Benefits to non-native fish species populations and resulting effects to native species are expected to be negligible as a result of the Project because changes to habitat and water quality as a result of the Project are expected to be negligible and not of sufficient magnitude or duration to affect the balance of species assemblages.	The analysis provided was related to changes in thermal tolerance but needs to be more comprehensively analyzed regarding thermal needs of native species' life history stages. Analysis is also needed regarding temperature changes and how those changes might affect native vs. non-native fish interactions.

FW-DC-AQS-01	Over the long term, habitat contributes to the support of well-distributed self-sustaining populations of native and desired non-native aquatic species (fish, amphibians, invertebrates, plants, and other aquatic-associated species). In the short term, stronghold populations of native fish continue to thrive and expand into neighboring unoccupied habitats, and depressed populations increase in numbers. Available habitat supports genetic integrity and life history strategies of native fish, macroinvertebrates, and amphibian populations.	The Proposed Action would cause minor adverse effects in Libby Creek and negligible effects in Midas Creek, Ramsey Creek, East Fork Rock Creek, and East Fork Bull River. Traffic and possibly a slight increase in frequency of road maintenance activities associated with the access road are predicted to cause a minor increase in sediment input to Libby Creek and negligible increases in sediment input to Midas Creek and Ramsey Creek. Groundwater inflow to underground workings is predicted to cause negligible streamflow reductions in Libby Creek, East Fork Rock Creek, and East Fork Bull River. Downstream of where the Water Treatment Plant discharge enters Libby Creek there would be a minor increase in flow and a minor beneficial effect during low flow conditions. Due to water quality monitoring and water treatment, negligible water quality impacts to aquatic species are anticipated. Overall, the project would be neutral toward this desired condition.	The assumption of negligible streamflow reductions in three streams needs to be analyzed in terms of the effects current groundwater upwelling has on stream temperature and how changes in upwelling might impact native fish, not just in terms of volume reductions. Minor increases in flow in Libby Creek need to be analyzed regarding temperature changes to native species' life history stages, and how those temperature changes might affect native fish and native vs. non-native fish interactions.
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FW- DC- AQS-02	Non-native fish species are not expanding into waterbodies that support native fish on NFS lands. Impacts of non-native fish species on native salmonids, such as hybridization or displacement, are minimized to the extent possible. Aquatic ecosystems are free of invasive species such as zebra mussels, New Zealand mud snails, quagga mussels, bullfrogs, and Eurasian milfoil.	The Proposed Action would have negligible impacts on waterbodies in the analysis area. Benefits to non-native fish species populations and resulting effects to native fish populations are expected to be negligible as a result of the Project because changes to habitat and water quality as a result of the Project are expected to be negligible or minor and not of sufficient magnitude or duration to affect the balance of fish species assemblages.	Changes in groundwater input changes temperature during parts of the year and has the potential to influence fish habitat. Additionally, temperature changes, from changes in groundwater input and from discharged mine water have the potential to benefit brook trout which have been seen to hybridize with bull trout (Kanda et al. 2002) and out-compete brook trout, especially at higher temperatures (Dunham et al. 2002; McMahon et al. 2007).
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FW-DC-AQS-04	Bull trout. Recovery and delisting of bull trout is the long-term desired condition. Bull trout population trends toward recovery through cooperation and coordination with USFWS, tribes, state agencies, other federal agencies, and interested groups. Recovery is supported through accomplishment of Bull Trout Recovery Plan tasks under Forest Service jurisdiction. On NFS lands spawning, rearing, and migratory habitat is widely available and inhabited. Bull trout have access to historic habitat and appropriate life history strategies (e.g., resident, fluvial, and adfluvial) are supported.	The KNF has prepared a Biological Assessment and consulted with USFWS on impacts to bull trout. The Proposed Action would cause minor adverse effects in Libby Creek and negligible effects in Midas Creek, Ramsey Creek, East Fork Rock Creek, and East Fork Bull River. Traffic and possibly a slight increase in frequency of road maintenance activities associated with the access road are predicted to cause a minor increase in sediment input to Libby Creek and negligible increases in sediment input to Midas Creek and Ramsey Creek. Groundwater inflow to underground workings is predicted to cause negligible streamflow reductions in Libby Creek, East Fork Rock Creek, and East Fork Bull River. Downstream of where the Water Treatment Plant discharge enters Libby Creek there would be a minor increase in flow and a minor beneficial effect to bull trout habitat availability during low flow conditions. Due to water quality monitoring and water treatment, negligible	The assumption of negligible streamflow reductions in three streams needs to be analyzed in terms of the effects current groundwater upwelling has on stream temperature and how changes in upwelling might impact native fish, not just in terms of volume reductions. Minor increases in flow in Libby Creek need to be analyzed regarding temperature changes to native species' life history stages, and how those temperature changes might affect native fish and native vs. non-native fish interactions.
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GA- DC- WTR- LIB-05	Populations of interior redband and westslope cutthroat are secure from hybridization by non-native fishes and expand their distribution.	The Proposed Action may impact redband trout and westslope cutthroat trout in Libby Creek but would not likely contribute to a trend toward federal listing. The effects to these species would be the same as those described for bull trout. Benefits to non-native fish species populations and resulting effects to redband and westslope cutthroat populations are expected to be negligible as a result of the Project because changes to habitat and water quality as a result of the Project are expected to be negligible and not of sufficient magnitude or duration to affect the balance of fish species assemblages.	The assumption of negligible streamflow reductions in three streams needs to be analyzed in terms of the effects current groundwater upwelling has on stream temperature and how changes in upwelling might impact native fish, not just in terms of volume reductions. Minor increases in flow in Libby Creek need to be analyzed regarding temperature changes to native species' life history stages, and how those temperature changes might affect native fish and native vs. non-native fish interactions.
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CONCLUSION

For the foregoing reasons, the draft EA is inadequate and USFS should prepare an EIS. If you have any questions about these comments, please do not hesitate to contact us.

Sincerely,

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On behalf of Cabinet Resource Group,

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Environmental Information Center,
Save Our Cabinets, Montana Trout Unlimited,
Yaak Valley Forest Council*