



NORTHERN ROCKIES REGIONAL OFFICE

1716 W. BABCOCK ST.
P.O. BOX 4743
BOZEMAN, MT 59772-4743
T: 406.586.9699
F: 406.586.9695

August 5, 2025

To: Chad Benson
Forest Supervisor
Libby Ranger District
Kootenai National Forest
31374 US Highway 2
Libby, MT 59923
Filed via comment portal: <https://www.fs.usda.gov/r01/kootenai/projects/62833>
Courtesy copies sent via email to: julie.hopkinson@usda.gov and
chad.benson@usda.gov

Re: Objections to Montanore Libby Exploration Project

Pursuant to 36 CFR Part 218, the Confederated Salish and Kootenai Tribes, by their undersigned attorneys, file this Objection to the June 2025 Final Environmental Assessment (FEA) and draft Decision Notice issued by Forest Supervisor Chad Benson for the Montanore Libby Exploration Project. The FEA and draft Decision Notice are contained in the USFS webpage at: <https://www.fs.usda.gov/r01/kootenai/projects/62833>. In submitting this objection, the Confederated Salish and Kootenai Tribes are joined 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 (collectively, "Objectors"). 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.

This Objection addresses the Libby Exploration Project (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.

The Objectors collectively filed comments on the Draft Environmental Assessment (DEA) on February 19, 2025, and have fully participated in the U.S. Forest Service’s (USFS) review of the project.¹ As such, they are proper objectors under Part 218. Pursuant to 36 CFR 218.8, the Objectors state that the following content of this Objection demonstrates the connections between the February 2025 comments noted above (or “previous comments”) for all issues raised herein, unless the issue or statement referenced from the FEA or associated USFS project documents arose or was made after the opportunity for comment, as detailed herein.

All of the previous comments submitted by the Objectors, including all exhibits and attachments submitted to the Forest Service by the Objectors, are hereby incorporated into this Objection and into the administrative record and submitted to the Reviewing Officer for its review and consideration.

Pursuant to 36 CFR Part 218, Montana Environmental Information Center is the lead objector, and its contact person, Derf Johnson, has information listed below. However, all Objectors are represented by their undersigned counsel and all USFS correspondence regarding this Objection should be directed to the Objectors’ attorneys at the address contained herein.

Sincerely,

Mary Costello
Executive Director
Save Our Cabinets
PO Box 152
Heron, MT 59844

Bonnie Gestring
Northwest Program Director
Earthworks
Missoula, MT 59801
bgestring@earthworks.org

Derf Johnson
Deputy Director
Montana Environmental Information Center
PO Box 1184
Helena, MT 59624

Sam Carlson
Science Director
Clark Fork Coalition
140 South 4th St. West
Missoula, MT 59801

¹ Comments on Libby Exploration Project Draft Environmental Assessment, February 19, 2025 (attached as Exhibit 1).

David Brooks
Executive Director
Montana Trout Unlimited
312 N. Higgins Ave.
Missoula, MT 59802

Jim Nash
Board President
Cabinet Resource Group
Heron, MT 59844

Michael Dolson
Tribal Chairman
Confederated Salish and Kootenai Tribes
P.O. Box 278
Pablo, MT 59855

Chris Bachman
Conservation Director
Yaak Valley Forest Council
www.yaakvalley.org
cbachman@yaakvalley.org

I. INTRODUCTION – 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 5 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 FEA and draft Decision Notice and Finding of No Significant Impact (FONSI) fail to set forth a convincing statement of reasons for not preparing an environmental impact statement (EIS), in violation of NEPA. The first and fundamental error of the draft FONSI and draft Decision Notice is that they fail to identify the applicable law or applicable factors for assessing whether to prepare an EIS. It is arbitrary for USFS to fail to identify the applicable law. Without expressly

stating what law applies, the draft FONSI appears to apply something akin to the significance factors set out in the U.S. Department of Interior’s Interim Final Rule (IFR) of NEPA regulations. *Compare* 90 Fed. Reg. 29,632, 29,648 (July 3, 2025) (“In considering the degree of effects, USDA subcomponents should consider the following, as appropriate to the specific action and in the context of the potentially affected environment: (A) Both short- and long-term effects. (B) Both beneficial and adverse effects. (C) Effects on public health and safety. (D) Economic effects. (E) Effects on the quality of life of the American people.”), *with* draft FONSI at 12 (assessing “both short- and long-term effects”; “both beneficial and adverse effects”; “effects on public health and safety”; and “effects that would violate federal, state, or local law protecting the environment”). On other hand, the draft FONSI also states that the “Decision Notice complies with the National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) regulations (40 CFR 1500 to 1508) for implementing NEPA.” Draft FONSI at 13. The FONSI, however, does not assess significance under the cited CEQ regulations. *See id.*

This is improper, inconsistent, and unlawful. First, the IFR post-dates the FEA and draft FONSI, which were issued on June 18, 2025. Second, Objectors and the more-than 2,000 public commenters submitted comments well before the IFR, in reliance on the regulations then in effect. Scoping comments were submitted in September 2022 and comments on the DEA were submitted in February 2025. Because the NEPA process began under 90 Fed. Reg. 29,632, 29,634 (July 3, 2025) (“In reaching this decision, USDA acknowledges that third parties may claim to have reliance interests in USDA’s existing NEPA procedures. But revised agency procedures will have no effect on ongoing NEPA reviews, where USDA, following CEQ guidance, has held it will continue to apply existing applications.”). The existing NEPA regulations provided the following standard for assessing significance:

- (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 (“ESA”).
- (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(d)(1)–(2). Moreover, the prior DOA implementing regulations relied on the 1978 NEPA regulations, which incorporated the 1978 NEPA implementing regulations from the CEQ. By failing to address the applicable regulations, the USFS has acted arbitrarily and inconsistently. USFS also failed to lawfully to respond to Objectors’ previous comments on this issue which remain applicable and are repeated and incorporated here:

The proposed exploration activities have the potential for significant impacts on the environment and should be analyzed via an 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."² 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, 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 Gardner 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

² BGC, Montanore Minerals Corporation Libby Exploration Project, Review of Numerical Groundwater Model Approach and Construction at 30 (2024).

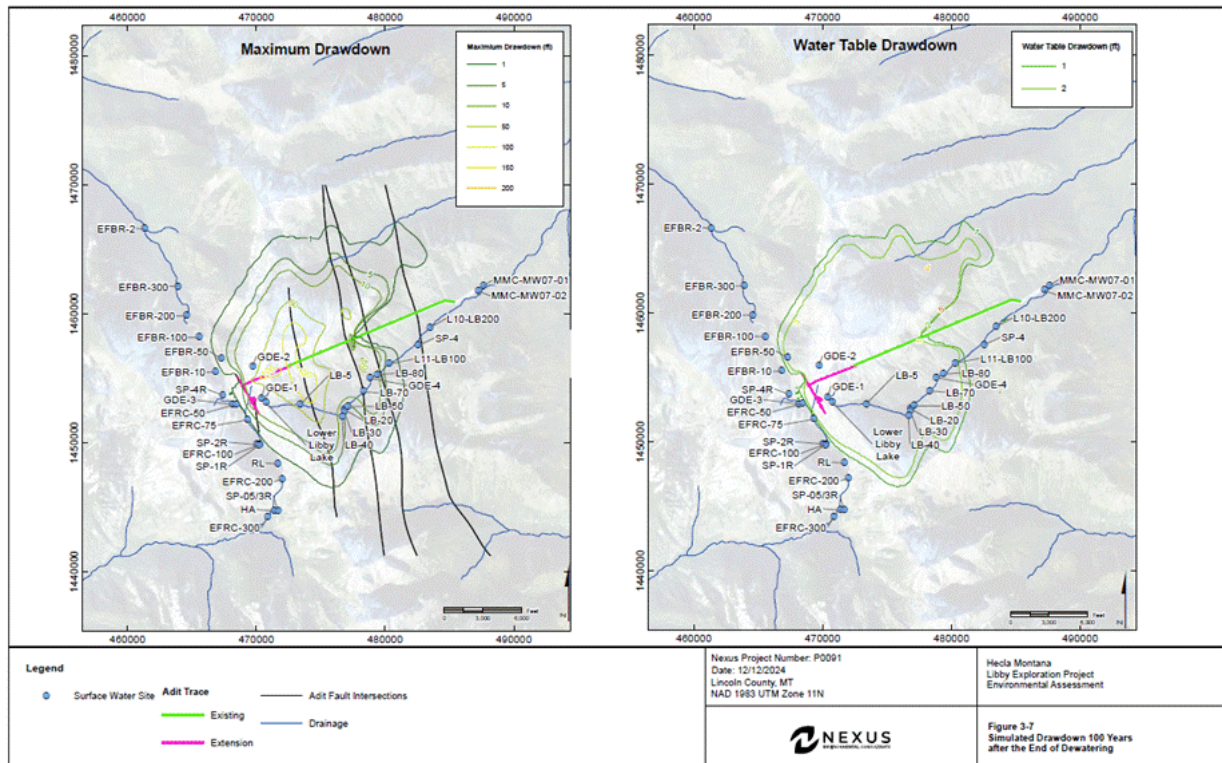


Figure 1: Draft EA fig. 3-7.

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 placer 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):

Current and Projected Potential Evapotranspiration

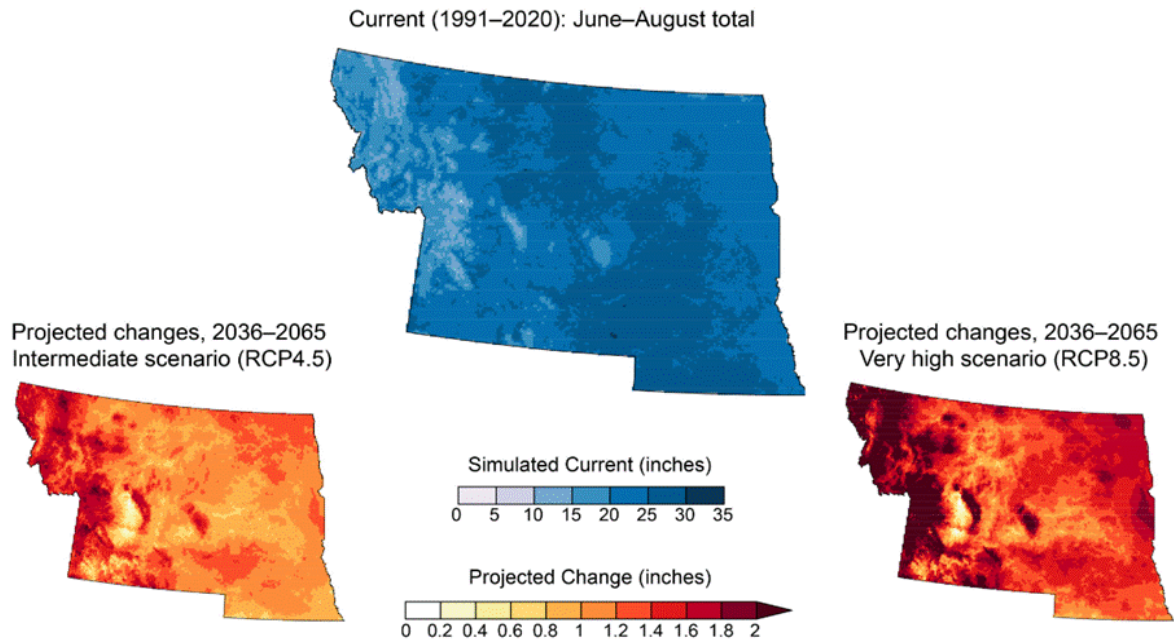


Figure 3 National Climate Assessment (2023) (Northern Great Plains)

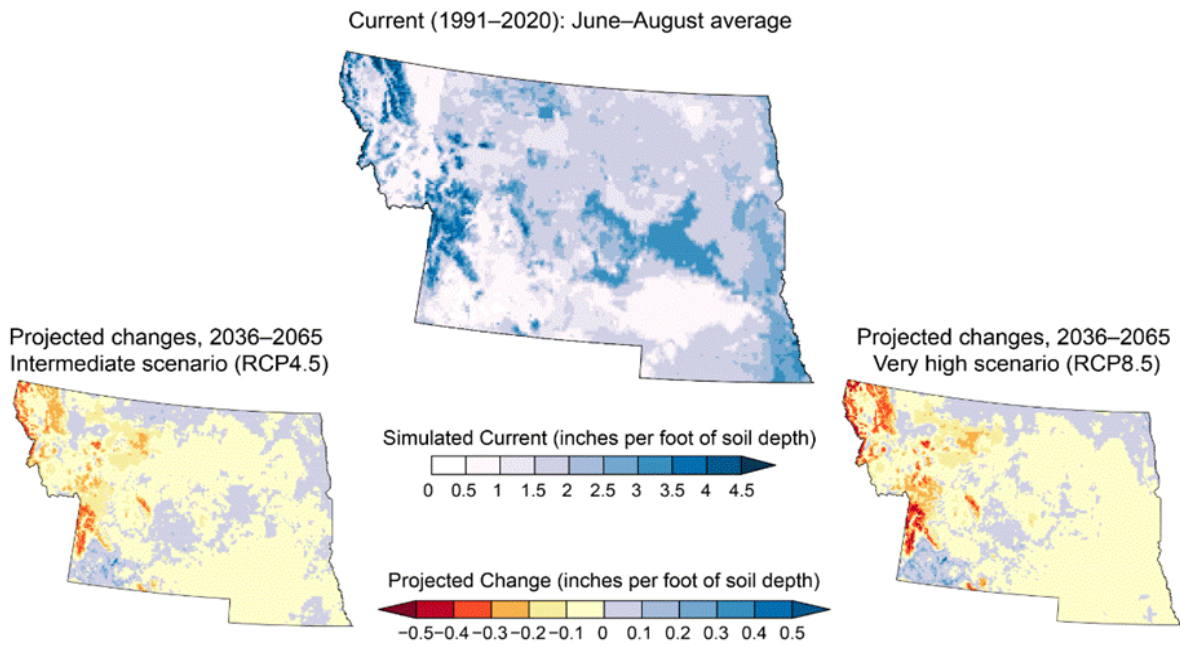


Figure 2: Id.

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.”).

GREENS CREEK MINE

ADMIRALITY ISLAND

ANGOON, AK, 99820

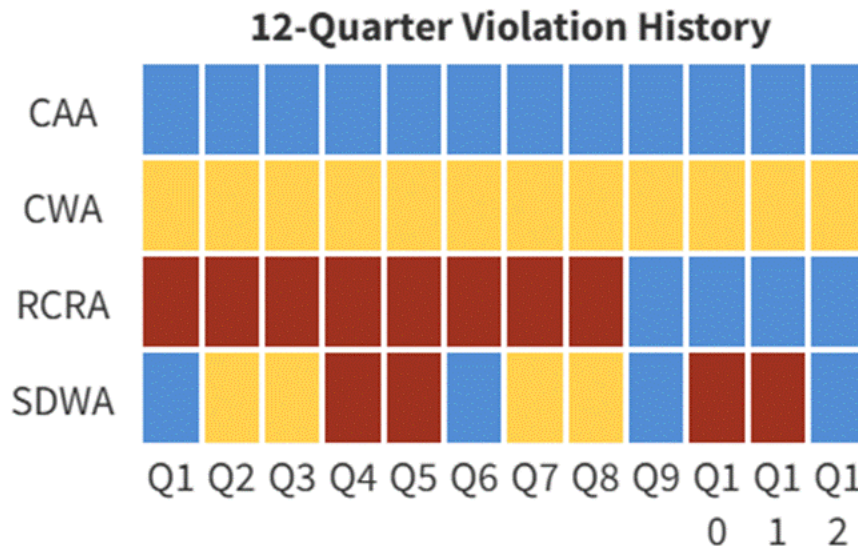


Figure 4 Detailed Facility Report | ECHO | US EPA (Greens Creek Mine), available at: <https://echo.epa.gov/detailed-facility-report?fid=110032882735>

An EIS is also warranted to consider potential violations of the law, including the Wilderness Act, the Clean Water Act (CWA), the National Forest Management Act (NFMA), 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 (SDWA), and Resource Conservation and Recovery Act (RCRA) at its Greens Creek Mine in Alaska and its Lucky Friday Mine in Idaho. [In Figures below], the yellow rectangles indicate a quarter with a violation; the red rectangles indicate significant non-compliance with the law.

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.

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	--	--

Figure 5 Detailed Facility Report | ECHO | US EPA (Greens Creek Mine), available at: <https://echo.epa.gov/detailed-facility-report?fid=110032882735>

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

LUCKY FRIDAY MINE

397 FRIDAY AVE
MULLAN, ID, 83846

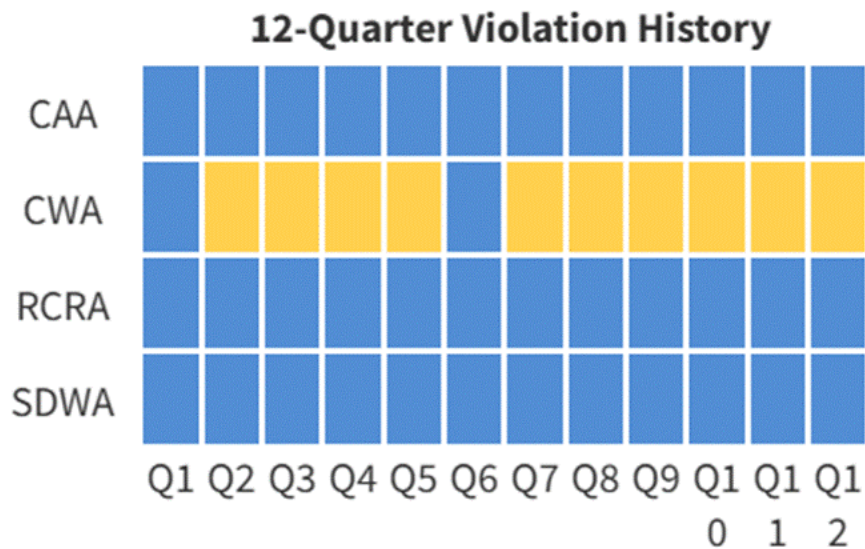


Figure 6: EPA ECHO (Lucky Friday Mine)

Detailed Facility Report | ECHO | US EPA (Lucky Friday Mine).³ There it is the same story as the Greens Creek Mine, near continuous non-compliance and significant fines:

³ See EPA, Detailed Facility Report– Lucky Friday Mine, available at: <https://echo.epa.gov/detailed-facility-report?fid=110041927378>.

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	--	--	--

Figure 7 Detailed Facility Report | ECHO | US EPA (Lucky Friday Mine), available at: <https://echo.epa.gov/detailed-facility-report?fid=110041927378>.

Additional harmful pollution impacts from another mine in the Libby area will also lead to harmful economic consequences. Indeed, the draft 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); Haggerty et al., *Headwaters Economics, Long-term effects of income specialization in oil and gas extraction: the U.S. West, 1980-2011* (2014). 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.⁴ 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.

⁴ See Andrea Peacock, *Wasting Libby: The True Story of How the WR Grace Corporation Left a Montana Town to Die* (2010); see also MT DOJ, *Natural Resource Damage Program—Libby Asbestos*, available at: <https://www.dojmt.gov/NRDP-sites/libby-asbestos/>.

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 threatened and endangered species), also require preparation of a biological opinion under the ESA. 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).

Objectors’ Comments at 5–14.

The USFS failed lawfully to respond to Objectors’ previous comments or address the issues raised. As noted, the agency has failed to identify which law applies and failed to clearly follow any identifiable legal standard in assessing significance. It is a fundamental tenet of the rule of law that the applicable law be known, identified, and followed. The USFS has failed to do so here. Further, while the Response to Comments section disclaims any obligation to consider full mining operations, it is clear that the agency has sufficient information about subsequent mining to assess the issue in this environmental review. *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.”).

With respect to the unique characteristics of the area impacted—the Cabinet Mountains Wilderness, multiple wetlands, lakes, streams, and groundwater dependent ecosystems, and the presence of historic and cultural resources—it is the presence of such unique characteristics that warrants a significance determination. *See WildEarth Guardians v. United States Dep’t of Agric. Animal & Plant Health Inspection Serv. Wildlife Servs.*, 135 F.4th 717, 735 (9th Cir. 2025) (“Wildlife Services’ reading of Section 1508.27(b)(3) deviates from the regulation’s plain text and our case law by inserting the word ‘significant.’ By its terms, the regulation instructs agencies to consider the unique characteristics of geographic areas that will be affected by the proposed action, without requiring the impacts to reach a particular threshold before the agency must consider them. The regulation’s

instruction to consider the ‘degree to which’ the action will have an impact on a particular factor applies to other intensity factors, but not to this one. 40 C.F.R. § 1508.27(b)(2), (b)(4), (b)(5), (b)(8), (b)(9); *see Polselli v. Internal Revenue Serv.*, 598 U.S. 432, 439, 143 S.Ct. 1231, 215 L.Ed.2d 410 (2023) (recognizing the assumption that drafters act intentionally when they include particular language in one section and not another). The agency’s argument that the more limited methods of PDM proposed for use in Wilderness and Wilderness Study Areas will ensure the impact is not significant answers the wrong question; the focus of this factor is not on the degree of the potential impact, but on the unique and special areas that may be impacted. *See Env’t Def. Ctr. v. Bureau of Ocean Energy Mgmt.*, 36 F.4th 850, 880 (9th Cir. 2022) (describing unique and special resources throughout the area in which the proposed action would occur, even though the proposed action would take place some distance from the nearby national park and marine sanctuary).”). Further, the Response to Comments section attempts to minimize the degree of impacts to these resources, but its effort is unsupported by the evidence. For example, the Response to Comments denies impacts to water resources by stating that “available data and groundwater modeling does not indicate that there is a connection between surface waters and the deeper groundwater system where the Project will occur.” FEA, Appendix E at 46. This is incorrect. As the BGC review notes, a “relatively small portion of the groundwater moves downward into deeper levels because of jointing and fracturing in the unweathered bedrock.”⁵ Similarly, Gurierrri (2001) found that groundwater flow to Rock Lake is from the “deeper less permeable zone” and that the “Rock Lake fault is a high permeability zone that supplies baseflow to the stream well into the dry season.” Gurierrri 2001 Report at 40. Thus “Rock Lake was given a very high likelihood of being impacted by mining because the south end of the Rock Lake deposit is proximal to the lake.” *Id.* at 44. Further, there is significant uncertainty about the degree of this connection, which the FEA obscures, with its categorical denial of any connection. *See id.* (“The characteristics of the hydraulic connection between these shallow flow systems and the deep bedrock in which the adit exists is unclear from the available field data.”); *id.* at 8 (“Rock Lake and adjacent springs [are] connected to deeper groundwater via Rock Lake fault.”); *id.* at 10 (“The faults act as conduits for flow, with an enhanced permeability relative to the surrounding country rock.”); *id.* (“The characteristics of the hydraulic connection between these shallow flow systems and the deep bedrock in which the adit exists is unclear from the available field data.”). EPA raised similar concerns in its comments. The likely connection between the shallow and

⁵ BGC, Montanore Minerals Corporation Libby Exploration Project at 11 (2024).

deep systems is also evidenced as the Troy Mine, which the FEA recognizes as an analog to the proposed Montanore Mine. Gurrieri 2001 Report at 51. The potential impact of dewatering on GDEs and other surface water in the Cabinet Mountain Wilderness could be catastrophic for wilderness values, akin to the dewatering of springs by the Stillwater Mine, identified in Gurrieri. *Id.* (noting that the dewatered spring never recovered). Gurrieri similarly noted potential catastrophic dewatering impacts to Rock Lake. *Id.* at tbl. 11. Even a low probability of a high magnitude impact necessitates preparation of an EIS. *Sierra Club v. United States Dep't of Transportation*, 125 F.4th 1170, 1183 (D.C. Cir. 2025) (“But the record reflects that transporting LNG by rail poses a low-probability but high-consequence risk of a derailment that could seriously harm the environment: A breach of one or more rail cars containing LNG could cause an explosion, an inferno, or the spread of a freezing, flammable, suffocating vapor cloud. The real possibility of such catastrophes significantly affects the quality of the human environment. For that reason, NEPA required PHMSA to prepare an EIS.”). The Response to Comments section further fails to address Objectors’ concerns about earthquakes causing catastrophic impacts, given that the Troy Mine is repeatedly held up as an analog for the Montanore Project and the Troy Mine was ultimately closed due to the impact of a relatively minor earthquake. Such potential unexamined and catastrophic impacts are a basis for preparing an EIS and for vacating the current proposed approval and starting afresh.

Further, the FEA fails to address, let alone dispel, the significant uncertainty about impacts to wilderness water resources. Multiple expert reviewers of the groundwater model note the remaining uncertainty about impacts to wilderness water resources because of limitations of the model. Third party reviewer BGC’s fundamental conclusion about the groundwater model is that it is highly uncertain: “Because of the lack of data concerning the shallow flow system, there is large uncertainty with respect to hydraulic communication between the adit extension and the surficial system.” BGC (2024) at i. The report repeatedly identifies data gaps and additional sources of uncertainty. *See id.* at 10 (“Limited information is available in areas located distant from the adit, and between the adit and ground surface.”); at 13 (“The characteristics of the hydraulic connection between these shallow flow systems and the deep bedrock in which the adit exists is unclear from the available field data.”); at 19 (“However, it should be noted that few aquifer tests were performed on the project site, so hydraulic parameters were derived mostly from literature values and calibration. This approach increases the uncertainty in the simulation results.”); at 22 (“There is, however, a lack of data for groundwater elevations adjacent to streams and springs. Thus, model predictions showing flow to

streams and springs should be considered estimates.”); at 23 (“However, the initial conditions are poorly constrained by field data; they rely heavily on hydrogeological interpretations and the simulated characteristics of the shallow flow systems that supply most water to streams.”); at 25 (“There are insufficient measurements to calibrate baseflows in the upper reaches.”); at 26 (“BGC contends that the model results of the predictive simulations for drawdowns and baseflow reductions in higher elevation streams and lakes should be considered approximate only, due to the lack of available calibration targets in bedrock near the higher elevation streams and lakes.”); at 28 (“Furthermore, the thickness and lateral extent of the faults simulated in the model includes considerable uncertainty.”). Dr. Gardner further explained how this degree of uncertainty prevents the groundwater model from making meaningful or valid predictions about impacts to surface water resources:

- “The model is uninformed by shallow groundwater and surface water responses in high elevations of the Cabinet Wilderness. Given the lack of data in these areas, it is unlikely the model can predict these responses, and the model is not well-suited to predicting these responses.”
- “To create a model with reliable predictions of shallow, high-elevation groundwater and surface water system responses, data of high elevation groundwater and surface water must be incorporated into model calibration, sensitivity analysis and validation.”
- “Unless high-elevation, shallow groundwater and surface water data are added, it is very difficult to accurately predict their response, and to quantify groundwater model predictive uncertainty.”

Gardner Report at 7; Dr. Gardner further explains that the Response to Comments fails to adequately respond to his concerns, especially regarding uncertainty. Payton Gardner, Ph.D., Response to Comment Rebuttal (attached as Exhibit 2). There is no monitoring data for shallow groundwater in the Cabinet Mountains Wilderness; the response to comments repeatedly and incorrectly states that there is no connection between the shallow groundwater and the deeper system, even though the groundwater model and the FEA recognize such connection; and the model is not scientifically capable of ruling out significant impacts to groundwater dependent ecosystems in the wilderness. *Id.* EPA raised similar concerns about the draft EA not containing information about the uncertainties associated with the model and level of confidence that could be placed in on the model results.

It is precisely in this type of situation of substantial uncertainty of potential catastrophic impacts to wilderness resources that an EIS must be prepared.

The FEA and its Response to Comments also fail to squarely address Objectors' concerns about impacts to fish and wildlife, as noted elsewhere in this objection. In fact, the degree of impacts will be significant, including reductions in core grizzly bear habitat in BMU-5 below the 60% threshold in violation of NFMA and the ESA, contribution of additional sediment to portions of Libby Creek that do not support aquatic life due to excessive sedimentation, and the synergistic impacts to aquatic life and Bull Trout from increasing water temperatures from climate change, increased sediment from the project, and increased pollution in the upper reach of Libby Creek caused by the nearly half-mile long proposed pollution mixing zone. USFS's failure to address these issues is arbitrary and capricious. Mere reference to portions of the FEA that discuss the issues generally is insufficient. *See e.g., Texas Corn Producers v. United States Env't Prot. Agency*, 141 F.4th 687, 705 (5th Cir. 2025) (failure to respond adequately to comments was arbitrary and capricious).

The Response to Comments also fails to adequately address detailed comments supported by expert analysis and studies showing the economic harm to communities that are dependent on resource extraction, including Lincoln County. Rather than addressing research bearing out the resource curse, the Response to Comments merely refers generically to the economics sections of the EA, which do not address the issue at all. This is insufficient. Indeed, if anything, the need for critical analysis of the long-term harm to rural communities from industrial development has become more urgent, as Lincoln County is not forced to address the worsening impacts of selenium pollution to the Kootenai River from coal mining in the Elk River Valley in British Columbia. As with the fallout from the W.R. Grace vermiculite mine at Zonolite Mountain, the closure of the Troy Mine, and the closure of multiple timber mills due to macroeconomic factors, further reliance on industrial development poses significant risks to the community, which the FEA and Response to Comments entirely ignore.

The Response to Comments similarly fails entirely to address Hecla's dismal record of environmental compliance, indicating consistent and repeated failures to comply with environmental standards at numerous other mines that it operates. In addition to the extensive history of violations at the Greens Creek and Luck Friday Mine, the FEA fails entirely to address that the Troy Mine, which Hecla also owns, is the source of the ongoing and decades long impairment of Lake Creek in Lincoln County: "The Final Environmental Impact Statement for the Troy Mine Revised Reclamation Plan shows mean groundwater nitrate concentrations in the vicinity of the tailings impoundment exceed the recommended nutrient criteria for the

Northern Rockies ecoregion. Because high nitrite plus nitrate concentrations are only observed at one site (LC04), it is likely the nitrate plume originating from the tailings impoundment flows in a north-northeast direction to impact this site.”⁶ Given this demonstrated history of non-compliance with environmental standards, the FEA cannot meaningfully assume, as it repeatedly does, that Hecla will comply with any environmental standards.

The FEA and Response to Comments also fail to adequately address the impacts of climate change on the permit area and the project. *See, e.g., AquAlliance v. U.S. Bureau of Reclamation*, 287 F. Supp. 3d 969, 1031 (E.D. Cal. 2018) (“The failure was not necessarily the failure to build a model based on the more general climate change information, but the failure to consider that information in any *meaningful* or logical way. This was arbitrary and capricious “fail[ure] to consider an important aspect of the problem.” *Id.* at 1234.”). The Objectors cited and submitted extensive evidence on the topic.⁷ The Response to Comments did not address the majority of these sources, and, without citation to any authority stated: “Climate change impacts to the hydrology of the area are speculative.” FEA, Appendix E at 41. This is insufficient. As noted in the cited reports, the existing climate cannot be considered the baseline for any project, given that the climate is currently changing, impacting hydrology, increasing likelihood of drought and flooding, and wildfires. If these changes are not integrated into the totality of the project analysis disastrous results may occur, as has occurred at other mine sites in Montana (such as Zortman-Landusky). The likelihood of these impacts is not “speculative” but, instead, “likely” to “very likely” that droughts will increase in severity, wildfires will increase in frequency, floods will increase, snow pack will decline, and evaporative demand will increase. National Climate Assessment (Northern Great Plains) at 25-34. At no point in the FEA or the Response to Comments does the USFS address the potential impacts from wildfire on the project. The only response with respect to increased flooding from extreme storms is

⁶ MT DEQ, Water Quality Standards Attainment Record, available at: https://deq.mt.gov/files/Water/WQPB/CWAIC/Reports/2020/MT76D002_070.pdf (2021).

⁷ *E.g.*, National Climate Assessment (2023) (Northern Great Plains); W. McCullough, W. Jepson & B. Maehl, Zortman: Dealing with Extreme Weather Events at 5, 9–11, 15–16, 19, 26–28 (2011) (attached as Exhibit 3); T. D. Pearce *et al.*, *Climate Change and Mining in Canada*, 16 Mitigation & Adaptation Strategies for Global Change 347, 357–58, 360 (2011) (attached as Exhibit 4); R. D. Williams, BLM, Climate Change – Extreme Conditions: Do Plans of Operations Need to Include an Ark? at 29–44 (2012) (attached as Exhibit 5).

the unhelpful statement that impacts “would be indistinguishable from naturally increased sediment delivery during the same storm events.” FEA at 3-26. There is no basis for this conclusion. As demonstrated in the attached materials, flooding can destroy infrastructure, which could result in fuel spills, tailings spills, and damage to or destruction of water treatment facilities. It can incapacitate the WTP as well. Further areas impacted by mining may be more vulnerable to the impacts of flooding. The FEA recognizes the mine site will contain numerous materials that could be harmful if released in a flood and the studies show that the mine’s ability to treat its pollution could be impaired by flooding as well. The same could occur because of the increased risk of wildfire. As noted, impacts to wildlife would be magnified by climate change as well. Ultimately, the worsening impacts of climate change will impact all aspects of the project and must be integrated into all analyses, from project design to analysis of impacts to design of reclamation standards. One example of how this blinkered approach impairs the FEA’s analysis: the FEA relies on baseline air quality data from 1989 to assess compliance with ambient air quality standards, but this data is entirely unrepresentative of current conditions in northwestern Montana, which have deteriorated significantly due to climate change in the past four decades. The FEA inaccurately states that “site conditions since 1989 that would affect PM10 concentrations have not changed.” FEA at 3-2. In fact, air quality conditions in northwestern Montana have deteriorated significantly due to increases in climate change driven wildfire.⁸ Mortality from climate driven wildfire smoke has been especially harmful in Montana.⁹ By ignoring these conditions, the FEA has failed to adequately explain how the increased particulate matter associated with the project will not be significant. As EPA noted, this requires an analysis of whether the project, including traffic from Libby, will affect, contribute to, or worsen Libby’s current non-attainment of National Ambient Air Quality Standards.

⁸ ALA, *State of the Air*, at 17, 23, 104 (climate change is driving a “shocking” decline in air quality due to increased particulate matter and Lincoln County is among the most polluted counties in the nation and the most polluted county in Montana for particulate matter) (attached as Exhibit 6); Burke et al., *The Contribution of Wildfire to PM2.5 Trends in the USA*, *Nature* at 766 (2023) (“recent increases in wildfire smoke have substantially slowed or reversed improvements in ambient PM2.5 concentrations throughout much of the USA”) (attached as Exhibit 7).

⁹ Law et al., *Anthropogenic Climate Change Contributes to Wildfire Particulate Matter and Related Mortality in the United States*, *Communications Earth & Environment* (2025) (attached as Exhibit 8).

The FEA fails to address this issue and the Response to Comments fails to adequately address Objectors' concerns. The USFS must fully address and disclose the impacts of climate change on all aspects of the project in order to ensure "ensure the professional integrity, including scientific integrity" of its NEPA analysis. 42 U.S.C. 4332(2)(D).

In addition to the foregoing, the USFS has failed to adequately consider the outpouring of public interest in and opposition to this project. The FEA acknowledges that over 2,000 comments from individuals and organizations were submitted on this project. FEA at 4-1, 4-2. While the FEA fails to disclose the percentage of commenters that were opposed to the project, it is clear that opposition is widespread.¹⁰ The opposition is based on longstanding concerns about adverse environmental impacts and social impacts of this proposed operation. Lincoln County is unjustly burdened by pollution from past and ongoing mining operations, including asbestos poisoning from the W.R. Grace's Zonolite Mountain Mine and selenium pollution in Lake Koocanusa and the Kootenai River from coal mining in British Columbia.

For the foregoing reasons, the draft FONSI is unsustainable, unlawful, and arbitrary. The USFS has failed to make a convincing statement of reasons for not preparing an EIS. Given the applicable significance factors, including, as noted below, impacts to the interest, rights, and historical and cultural properties of the Confederated Salish and Kootenai Tribes, the USFS must prepare an EIS for the Libby Exploration Project.

III. NEPA ISSUES THAT REQUIRE REVIEW

Montanore Mine Operations Are a Connected Action

While the Response to Comments disclaims any obligation to consider full mining operations (including full mine development), it is clear that the agency has sufficient information about subsequent mining to assess the issue in this environmental review. *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."). USFS possesses an abundance of information on which it

¹⁰ See List of 223 Individual Signatories in Opposition to Libby Exploration Project. (attached as Exhibit 9).

can assess the impacts of full mine development and must therefore do so. Furthermore, the utility of the proposed project is only worthwhile in connection to full mine development, which Hecla has long been promoting to investors.

A. Geotechnical Issues/Subsidence

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

As detailed in Objectors' previous comments the Forest Service's analysis of geotechnical and subsidence issues is deficient. According to the DEA, 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. DEA 3-70. The DEA references a 2007 report and states that the overburden above the Libby Adit is thick (several hundred to 3,000 feet) and strong, DEA at 3-15, which would reduce maximum subsidence measured at the surface, Agapito Associates 2007. However, the 2019 DSEIS for the Montanore Evaluation Project, indicated that subsidence is possible. DSEIS at 35. It stated that, "The most susceptible section would be the first 200 to 300 feet where the cover over the adit is thinner."¹¹ EPA raised similar concerns. 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.¹² Efforts to reclaim the surface disturbance from these subsidence impacts were mixed. Reclamation of at least one subsidence area was considered unsuccessful years later. *Id.* at 2-25. A 3.1 earthquake in 2012 caused further damage to the tunnels, and ultimately the mine closed.¹³ The Forest Service should update its analysis of potential geotechnical issues and subsidence impacts associated with the proposed Libby Exploration Project, analyze the potential

¹¹ U.S. Forest Service, Draft Supplemental Environmental Impact Statement, Montanore Evaluation Project, June 2019.

¹² U.S. Forest Service, Troy Mine Revised Reclamation Plan, Final Environmental Impact Statement, June 2012.

¹³ Flathead Beacon, "Troy Mine Stabilizes, Remains Closed," (Dec. 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/>.

impacts of subsidence, and identify specific mitigation measures to prevent these impacts (which EPA also recommended). It should also specify that no authorization to drill within 500' of the surface would occur without new NEPA analysis.

In response, the FEA states that the risk of subsidence is discussed in the EA in Section 3.3.2.1. FEA, Appendix E at 47. One of the objectives of the Proposed Action is to collect geotechnical data to better understand the geology surrounding the ore body. The FEA states that geotechnical impacts including the risk of seismic events are discussed in Section 3.3.2.1. Subsidence, Contaminants: Geochemical and geotechnical impacts are described in Sections 3.3.2.1 and 3.14.3.1 of the FEA. FEA, Appendix E at 51. The FEA further asserts that a substantial amount of time has passed since the adit was opened and the lack of observed subsidence is evidence of the stable nature of the area. FEA, Appendix E at 59.

This response is inadequate because it fails to address the issues that were raised in Objectors' previous comments, including the necessity of a current review of geotechnical and subsidence risks and mitigation measures to address potential impacts.

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

Objectors' previous comments specify the inadequacy of analysis on the effectiveness of plugs: The FEA states that "[u]pon 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." FEA at 2-16. 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 FEA 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 USFS 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.”¹⁴ 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.” *Id.* It appears from the FEA 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 FEA should provide data and analysis to demonstrate that there is a viable mitigation strategy in perpetuity.

In response to Objectors’ previous comments, the FEA states that “as described in Section 2.1.10 of the EA, the main plug would be engineered for the site-specific conditions at the time of the plug installation which is anticipated to occur nine years after the Project begins.” FEA, Appendix E at 62. It is not possible to speculate on the design of the plug since future conditions are unknown and plugging technologies may change.

This response is insufficient. NEPA mandates that federal agencies analyze the potential environmental impacts of their proposed actions and consider how to lessen those impacts. Mitigation measures are a key component of this analysis, and agencies must consider various approaches to reduce or eliminate adverse environmental effects. Analysis of the three plugging options is essential to understanding whether the impacts can be effectively mitigated and reclamation will succeed. No such analysis occurred here, even though the portal plug installed by Noranda in 1995 was apparently not effective at preventing seepage into alluvial groundwater. *See Piteau, 2023.*

The FEA defers this analysis and plug design until mine closure on the pretense that plugging technology may change. This is inappropriate because the FEA must demonstrate that mitigation is currently available to effectively retain water and prevent seepage, not defer this analysis until after operations are complete. The potential for impacts are highlighted in the FEA, which states that as part of site monitoring during years 12 to 16 of the Project, MMC *would monitor the*

¹⁴ Werner, Pete, Memorandum to Lynn Haggarty, Montanore Mine Project EIS Coordinator, “Long-Term Effectiveness of Constructed Low Permeability Bulkheads,” January 16, 2014.

portal area for signs of leakage. FEA at 2-16 (emphasis added). It isn't enough to monitor for impacts after they've occurred. NEPA requires that the agency take a hard look at the potential impacts of the proposal now, and provide the requisite data and analysis to substantiate assertions that mitigation measures will adequately protect water resources from seepage in perpetuity.

B. Climate Change

New analysis was added in the FEA, which was not included in the Draft EA, and therefore not subject to NEPA review. *See* Piteau 2025. The reference document, Piteau 2025, was also not provided as a supporting document with the FEA. The FEA may not rely on or reference materials that are not available to the public.

The USFS was required to acknowledge and address “anticipated climate-related changes to the environment” in its FEA. 40 C.F.R. 1502.15(b), 15(a)(7); 90 Fed. Reg. at 29,645 (prior CEQ rules continue to apply to ongoing projects); *National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change*, 88 Fed. Reg. 1196, 1198 (Jan. 9, 2023) (“Climate change analysis is a critical component of environmental reviews and integral to Federal agencies managing and addressing climate change.”). The FEA failed entirely to do this. The one sentence statement that climate impacts to hydrology are “speculative” in the response to comments is insufficient. FEA, Appendix E at 41. If information is incomplete, the agency must nevertheless provide the information that is generally accepted in the scientific community. 40 C.F.R. 1502.15(b). Objectors submitted substantial information about climate change impacts on the environment in the project area, including impacts to soil moisture, evapotranspiration, reduced snowpack, and impacts to fish and wildlife. The Final EA ignores this information entirely, as does the response to comments.

C. Fish and Aquatic Life

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*). The 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 (FWS) pursuant to the Endangered Species Act of 1973, as amended. Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for Bull Trout in the Coterminous

United States, 64 Fed. Reg. 58910 (Nov. 1 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 Libby Exploration Project on these species needs to be evaluated far more extensively than the minimal information presented in the FEA.

In comments on the DEA, Objectors raised several concerns regarding the DEA's failure to fully analyze and characterize the impacts that the Libby Exploration Project would have on fish and aquatic life. However, as noted in this objections section on water quality and further below, the USFS's FEA failed to provide any data or consideration on the potential direct, indirect, cumulative, and synergistic effects to fish and aquatic life due to alterations in flow, temperature, water quality, and climate change. The USFS dismissed these concerns in the Response to Comments by relying upon narrow and flawed analyses that suggest minimal or de-minimis impacts for each of these factors, but also fail to account for the landscape level changes associated with dewatering, polluting, and temperature changes to the water and climate.

Additionally, the Forest Service has added new information and analysis to the Final EA, including monitoring data from USEPA (2019), temperature objectives from USFWS (2010) and new data and analysis from ERO (2018) that were not available for public review and comment during the DEA stage, as required by NEPA. This information must be made available to the public. USFS cannot rely on it if it is not.

1. The USFS fails to adequately analyze the potential loss of flow in Libby Creek, East Fork Rock Creek, nor East Fork Bull River and its impact on native trout populations

As noted in Objectors' previous comments on the DEA, and which was not remedied in the FEA, the USFS makes no attempt to model or quantify the flow reductions in Libby Creek, East Fork Rock Creek, nor East Fork Bull River. Gregory, 2025. Based upon tenuous assumptions, the USFS instead predicts that the "Impacts from dewatering on surface waters and stream flow that support bull trout and other aquatic species habitat are anticipated to be negligible." FEA at 3-7. The characterization of streamflow reductions as negligible was further refuted in the previous comments submitted by Objectors on the DEA, but the USFS made no attempt to investigate or address these concerns. Gardner, 2025.

In particular, Dr. Gardner suggested that reductions in flow will be significant upstream from the adit in the higher reaches of the stream. Dr. Gregory also notes that, “During spring high flows, groundwater drawdown would presumably not have a perceptible impact to surface water availability. The same may be true during early summer. However, inflow from springs and groundwater seepage supply the majority of stream inflow during late summer and fall and all stream inflow during the winter ...” *Id.* The FEA failed to evaluate or consider the “time of year during which such reductions would qualify as negligible and would not result in any perceptible impact to surface water availability.” *Id.*

Notably, other engineering aspects of the Libby Exploration Project will increase demand on surface flows in Libby Creek. The FEA states that MMC would use its groundwater right with a *year-round* diversion and/or its surface water right with a diversion between April 1 and December 19 for any required water usage. FEA at 2-13. Table 3-7 identifies water rights to divert 1.4 af/yr of surface water from Libby Creek via a ditch and 50.97 af/yr of surface water from Libby Creek via a headgate. FEA at 3-19.

It doesn’t appear that the FEA considers the potential impacts of diverting this surface water from Libby Creek, and the associated potential impacts to aquatic life including fish and fish habitat. The synergistic effects of groundwater drawdown, temperature changes, and surface water diversion could seriously compromise the water conditions necessary for bull trout and other native trout species. Removal of this surface water could be especially significant during periods of low flows or when temperatures in Libby Creek are dangerously warm for bull trout.

Groundwater seepage is vitally important to the ecology of native bull trout and cutthroat trout. As noted by Dr. Gregory, “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.” However, the USFS failed to analyze the reductions in flow in terms of the impacts that may occur on fish, instead simply concluding that such reductions would be “negligible.” FEA at 3-7.

2. The USFS fails to adequately analyze the changes in temperature in Libby Creek due to discharges from the WTP and its impact on native trout and aquatic life

As noted in Objectors' previous comments on the DEA, and which was not adequately remedied in the FEA, 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." Gregory, 2025. The USFS provided an additional set of data points on previous temperature data points in concluding that "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." FEA at 3-56.

The FEA notes that the "WTP effluent temperature averaged 56.5°F between March 2008 and December 2017. The monthly average over the period did not vary by more than 1°F. None of the average monthly temperatures were greater than or equal to 59°F. Maximum effluent temperature was 58.1°F from December through February and 58.6°F from July through September. ERO 2018. Based on MMC's discharge monitoring reports, minimum daily effluent temperatures averaged 57.2°F and maximum daily effluent temperatures averaged 57.8°F between March 2017 and July 2019 (USEPA 2019). Data from 2007 through 2017 on effluent discharge rates and temperature, stream temperatures and flow, and air temperatures near the WTP discharges at the project area were analyzed (ERO 2018). The effect of WTP groundwater discharges on temperature differences of more than 1°F between a site upstream of the discharge (LB-200) and a site downstream of the discharge (LB-300) appears to be negligible and would continue to be negligible during the Project. Libby Creek stream temperature differences between sites upstream of the WTP groundwater discharges and downstream of those discharges appear to be influenced by a variety of factors including streamflow and air temperatures." FEA at 3-56.

The USFS data points note that discharges from the WTP will consistently average 56.5°F for the entire year. While this temperature conforms with the maximum temperature needed for adequate adult holding habitat for bull trout, it's well above the maximum temperature of 48°F needed for spawning and rearing habitat. The USFS attempts to minimize this significant and disparate temperature difference by suggesting that "The effect of WTP upstream of the discharge (LB-200)

and a site downstream of the discharge (LB-300) appears to be negligible and would continue to be negligible during the project....” and that stream temperatures “appear to be influenced by a variety of factors including streamflow and temperatures.” FEA at 3-56. However, the USFS fails to account for potentially significant reductions in streamflow due to groundwater drawdown, which was not quantified characterized by the USFS and will undoubtedly have a correlating and synergistic effect when coupled with discharges from the WTP on stream temperatures in Libby Creek.

3. The USFS downplays the water quality impacts associated with the Libby Exploration Project

As noted in Objectors’ previous comments on the DEA and discussed more extensively in other sections of this Objection, there are major water quality concerns associated with the Libby Exploration Project. The USFS asserts that “Due to water quality monitoring and water treatment, negligible water quality impacts to aquatic species are anticipated.” FEA, Appendix A at Table 1. As discussed more extensively in the water quality section of this Objection, the Libby Exploration Project will significantly increase water pollution in Libby Creek, both before and after the mixing zone.

While the USFS notes that the waters of Libby Creek will dilute nutrient and metal loads downstream of the discharge point, this factor does not negate the local effect of these pollutants. Water is not required to meet water quality criteria at the discharge location, but rather 3,400 feet downstream at the compliance point (LB-300). This is an important consideration, as the upstream portion of the mixing zone is within the bull trout stronghold area, where critical habitat is unimpaired and bull trout are isolated from nonnative competitors by a waterfall barrier. In this critical area, there is no guarantee or even expectation that water quality criteria will be met. Pollutants such as nitrogen, phosphorous, aluminum, antimony, cadmium, chromium, copper, iron, lead, nickel, and zinc could all impact bull trout in this area. While USFS states that acute aquatic life standards must be met, chronic standards do not have to be met in the mixing zone. Further, as noted by EPA, the discharge limits cited by USFS exceed applicable water quality standards, indicating that the discharge permit will not prevent violations or impacts to aquatic life.

Noting that these pollutants could have a significant impact on native trout in the Action Area, it is alarming that the USFS has also failed to account for other impacts likely to occur from the Libby Exploration Project, including potentially significant reductions in streamflow due to groundwater drawdown and surface

water diversion, increased temperatures, increased competition from nonnative fish, and climate change, all of which will undoubtedly have a correlating and synergistic effect when coupled with discharges from the WTP on stream pollutants in Libby Creek.

4. The USFS fails to evaluate or account for the potential benefits to nonnative fish species populations and its impacts on bull trout populations

As noted in Objectors' previous comments on the DEA, and which was not adequately remedied in the FEA, the USFS failed to consider or analyze the benefits to nonnative trout species and corresponding impacts to native trout. Although the USFS acknowledges the potential benefits to nonnative species, it dismisses these impacts 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." FEA, Appendix A at Table 1.

For example, stream temperature and temperature changes contribute to the competitive advantage of some species over others, which could result in the replacement of native bull trout and cutthroat trout by nonnative brook trout within the temperature tolerance range of all species. As noted previously, the USFS fails to account for potentially significant reductions in streamflow due to groundwater drawdown, which was not quantified characterized by the USFS and will undoubtedly have a correlating and synergistic effect when coupled with discharges from the WTP on stream temperatures in Libby Creek. Coupled with the predictable consequences of climate change, stream temperatures in the Project Area could be significant.

These temperature impacts can be critical to native species' persistence. As noted by Dr. Gregory, this is an especially important consideration in the Libby Creek and Rock Creek drainages, both of which contain nonnative brook trout in sympatry with native bull trout and/or cutthroat trout¹⁵ and nonnative coastal rainbow trout in sympatry with redband trout. Redband trout and coastal rainbow trout are not differentiated on Montana's fish reports website¹⁶, however, USDA

¹⁵ MT FWP, Survey and Inventory Search– Bull Trout and Cutthroat Trout, available at: <https://myfwp.mt.gov/fishMT/reports/surveyreport>.

¹⁶ MT FWP, Survey and Inventory Search– Redband Trout, available at: <https://myfwp.mt.gov/fishMT/reports/surveyreport>.

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, coupled with groundwater drawdown, decreased surface flows, and climate impacts through cumulative and synergistic effects, needs to be closely examined to assess the effect it may have on competition between native and nonnative fishes. The USFS failed to conduct this analysis.

5. The USFS downplays the impacts to bull trout and bull trout habitat due to the synergistic and cumulative impacts associated with the Libby Exploration project and climate change

The cumulative impacts from the Libby Exploration Project on native fish species and habitat could be significant. The proposed action will result in decreased flows, decreased groundwater inflows, decreased temperature buffering upstream from the project discharge point, water quality impacts, and temperature impacts downstream from the project discharge. The cumulative and synergistic effects of these impacts on bull trout and cutthroat trout populations in the analysis are substantial. Gregory, 2025.

Notably, bull trout and westslope cutthroat trout 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. As noted by Dr. Gregory, 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. Gregory, 2025. These predictions show *marked* decreases in the distribution of both species

in the analysis area. Included in Figure 8 below is bull trout distribution under this analysis.

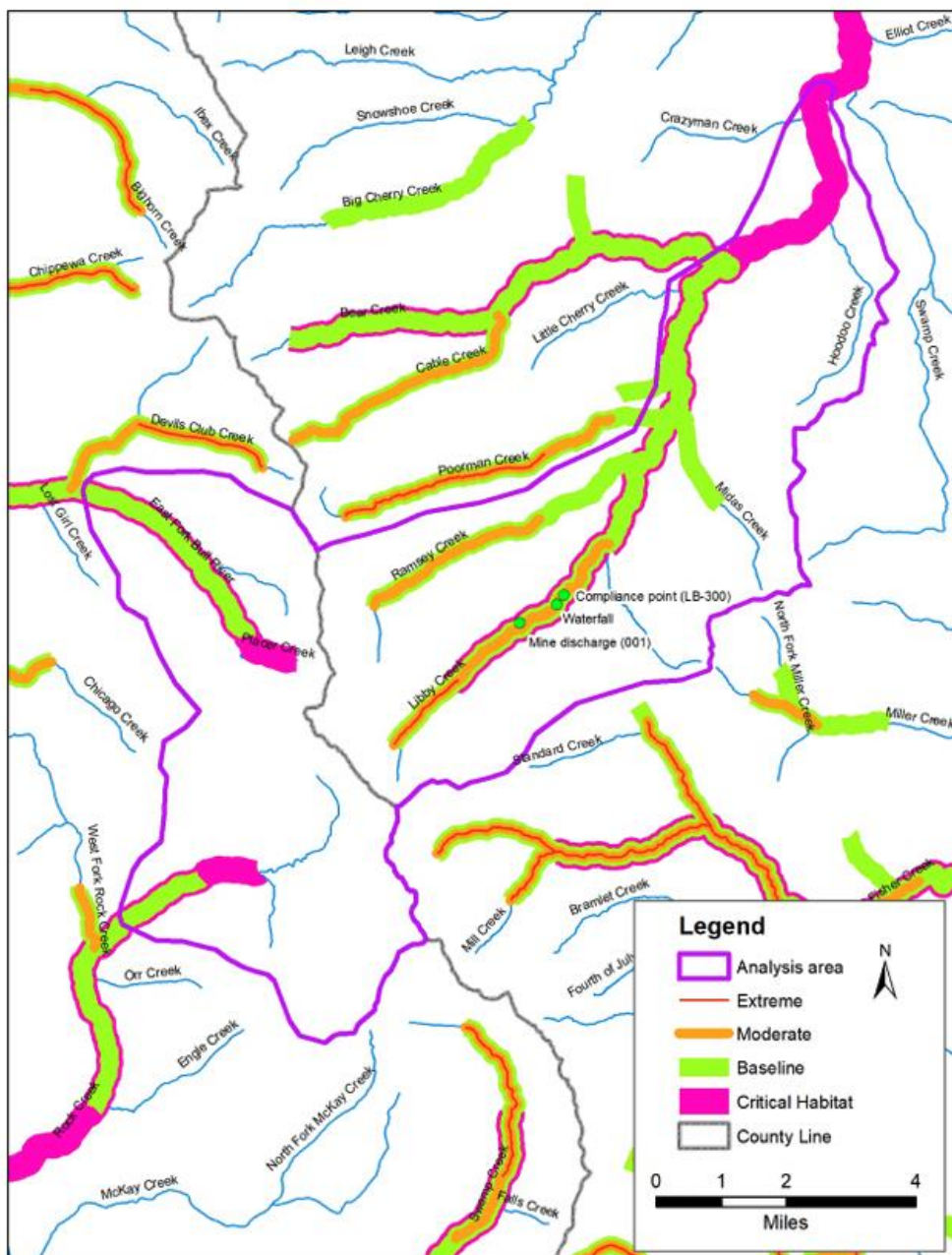


Figure 8 Bull Trout baseline and probabilistic distribution in the analysis area and vicinity under moderate and extreme climate change conditions (Isaak et al. 2022). Moderate climate change conditions represent an increase in mean August stream temperatures of 1° C, a summer stream discharge decrease of 25%, and an increase in the average number of days with high winter flows from 3 to 6 days. Extreme climate change conditions were represented by changing the baseline conditions to reflect a 2° C increase in mean August stream temperatures, a 50% decrease in summer flows, and an increase in the average number of days with winter high flows to 9 days (Isaak et al. 2022). Areas of bull trout Critical Habitat are also shown as designated by the US Fish and Wildlife Service.

Montana is projected to continue to warm in all geographic locations, seasons, and under all emission scenarios throughout the 21st century.¹⁷ 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, but precipitation is projected to decrease in summer.

As noted by Dr. Gardner, the extensive research in this area demonstrates that 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.

In the FEA, the USFS acknowledges the impacts that climate change poses to the Action Area, stating that “Available information indicates that air temperature in the area has increased during the past century and will continue to increase through this century. The effects of this on streams in the area are likely to include increased stream temperature and earlier timing of peak streamflow. The latter effect has begun but no evidence was found that stream temperature increases or effects to bull trout have occurred in the Action Area. ... Increasing stream temperature during this century does, however, appear likely and it is reasonable to conclude that this will decrease the amount of available bull trout habitat in the area (Kline 2024).” FEA at 3-85. Despite the recognition that climate change will cause significant changes to the Action Area, the USFS fails to characterize or evaluate the compounding nature, cumulative impacts, and synergistic effects that climate change will have on the Action Area when coupled with the predicted impacts of the Libby Exploration Project.

¹⁷ Whitlock C., Cross W., Maxwell B., Silverman N., Wade A.A. 2017. 2017 Montana Climate Assessment. Bozeman and Missoula MT: Montana State University and University of Montana, Montana Institute on Ecosystems. 318 p., available at: <https://montanacclimate.org/sites/default/files/thumbnails/image/2017-Montana-Climate-Assessment-lr.pdf>

D. Water Quality

1. The FEA should provide more information about waste storage mitigation and take a hard look at the potential impacts to groundwater and surface water.

As outlined in Objectors' previous comments, the FEA states that the expanded WRSA #1 would be lined with PVC and the WRSA #2 would be lined with HDPE. According to the previous SDEIS, the WRSA #1 PVC liner from the expansion would tie into the existing PVC liner. 2019 SDEIS at 58. The FEA fails to clarify whether that is proposed here, and fails to 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 FEA should also analyze the potential for failure/seepage/leaks at the seam, where liners are most vulnerable. PVC liners are prone to weathering, show poor resistance to UV, and exhibit poor performance at high and low temperatures.¹⁸ Liners are particularly prone to failure at seams/welds. The FEA 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 FEA 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 FEA must provide data on the efficacy of proposed mitigation measures, and consider other potentially more effective mitigation options. The FEA 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.

In response to Objectors' previous comments, the FEA states that the effects analysis is based on the expectation that the Proposed Action will be implemented

¹⁸ BT Liners, "Which geomembrane materials work best for mining applications," webpage accessed February 16, 2025, available at: <https://www.bttl liners.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 & Y. Chen, *Geomembranes in Mining Works*, Geosynthetics Asia, 2012, https://library.geosyntheticssociety.org/wp-content/uploads/resources/proceedings/122021/THEME_3.pdf.

as proposed and that the use of liners as described in the Proposed Action are a common occurrence. FEA, Appendix E at 67. It states that when installed as designed, the risk of failure is negligible. It further states that there is no reason to assume that the liner systems would fail.

This response is insufficient because the Plan of Operations (PoO) and FEA fail to include engineering designs or any design for the proposed WRSAs and associated liners, which are typically provided in PoOs for NEPA analysis.¹⁹ As a result, there is no means to determine whether the liners will be implemented as designed. The FEA fails to provide even basic information, such as the thickness of the proposed PVC or HDPE liners for the WRSAs, which is necessary to determine the durability and life expectancy of the proposed PVC and HDPE liners. The FEA also fails to respond to the question about whether the new liner will tie into the old liner at WRSA #1. The FEA fails to provide supporting data for its assertion that the risk of failure is negligible.

NEPA requires agencies to determine the effectiveness of proposed mitigation, yet the FEA fails to analyze the long-term effectiveness of using a PVC liner for one WRSA versus an HDPE liner for the other WRSA and provides no rationale for its decision to use varying mitigation measures. This analysis is necessary to determine the potential for long-term impacts to water resources and ESA-listed species from liner failure at the proposed project.

The FEA added a paragraph that states that HDPE and PVC liners have lifespans measured in hundreds of years when used in conditions similar to the Project area that have low soil temperatures and when not exposed to direct sunlight (the liners referenced would be covered by waste rock). FEA, Appendix E at 45. It also asserts that impacts from leachate on geomembranes are unlikely and years of testing indicate that leachate does not compromise the integrity of geomembranes. This response is inadequate because the FEA provides no supporting data for any of these assertions.

This response is also inadequate because the proposed plan for the WRSAs in both the DEA and FEA differs from the January 4, 2023 approved amendment (22-

¹⁹ Montanore Minerals Corporation, Exploration Plan of Operations, Libby Exploration Project, Lincoln County, Montana, Prepared for U.S. Department of Agriculture, December 19, 2024, Update June 13, 2025. Available on the Kootenai National Forest Project Webpage, <https://www.fs.usda.gov/r01/kootenai/projects/62833>; <https://usfs-public.app.box.com/v/PinyonPublic/file/1900047145656> (attached as Exhibit 10).

001) to the MTDEQ Operating Permit (00150), which includes installation of geosynthetic barrier covers over the WRSAs during reclamation, which isn't mentioned in the Plan of Operations (now revised to June 2025), the DEA or the FEA. The January 2023 approved amendment from MTDEQ states that MMC will install a barrier (geosynthetic) cover over the WRSAs during reclamation and prior to placement of topsoil.²⁰ The December 2022 amendment states that the geosynthetic cover is necessary to prevent long-term water treatment.²¹ The Draft and Final EA also fail to provide designs and engineering specs for the cover system, and fail to analyze the effectiveness of this mitigation measure to prevent the need for long term water treatment. The December 2022 plan amendment, approved in January 2023, also proposes a different reclamation plan for the WRSAs, stating that MMC will grade final slopes of the WRSAs to be a *maximum of 3 Horizontal:1 Vertical*, whereas the FEA and PoO propose to reclaim the WRSA with final slopes of the WRSAs regraded to slopes of 2H:1V or less. *Id.*, p. 5; PoO at 48. The Forest Service must include a reclamation plan that specifies the contours of the reclaimed WRSAs, including the ultimate footprint.

With the conflicting state and federal reclamation plans and lack of engineering designs and other basic information for the WRSAs, the FEA fails to conform with NEPA requirements. The USFS should initiate a new NEPA process with a plan of operations and reclamation plan that are consistent with those submitted to the Montana DEQ, and the necessary analysis to demonstrate that mitigation and reclamation measures are sufficient.

2. Temperature

As detailed in Objectors' previous comments, the potential effects of increased water temperature have not been adequately analyzed. According to the FEA, "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." FEA at 3-56. Objectors can find

²⁰ MT DEQ, Approval of Minor Revision 22-001, Modification to Underground Drift Layout, and Modification to Surface Facilities, Montanore Mineral Corp, Operating Permit No. 00150, January 4, 2023 (attached as Exhibit 11).

²¹ Permittee: Montanore Minerals Corporation, Operating Permit #00150, Location: Libby, Lincoln County, Date, May 2022, Revised August 2022, Revised December 2022. Provided by Montana DEQ in response to Public Information Request (attached as Exhibit 12).

no data or analysis in the FEA 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.²² 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).²³ 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).”²⁴

In response to Objectors’ previous comments, the FEA states that additional text has been added to the EA in Section 3.9.2.1 to support the summary that the WTP discharge is expected to have a negligible temperature effect on bull trout and bull trout critical habitat in Libby Creek, including the isolated population of bull trout upstream of Libby Creek falls. FEA, Appendix E at 44. The added language in the FEA states that Montana has an aquatic life standard in surface water that restricts substantial increases or decreases in stream temperature, depending on the naturally occurring range of temperature within the stream. FEA at 3-56. For bull trout, water temperatures ranging from 36°F to 59°F (2° to 15°C) are needed, with adequate thermal refugia available for temperatures at the upper end of this range. USFWS 2010. Inland Native Fish Strategy has a temperature Riparian Management Objective that includes “maximum water temperatures below 59°F

²² MT DEQ, Montana Pollution Discharge Elimination System Fact Sheet, Permit No. MT0032158, Table A.1, November 2024.

²³ 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.

²⁴ 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.

within adult holding habitat and below 48°F within spawning and rearing habitats.” WTP effluent temperature averaged 56.5°F between March 2008 and December 2017. The monthly average over the period did not vary by more than 1°F. None of the average monthly temperatures were greater than or equal to 59°F. Maximum effluent temperature was 58.1°F from December through February and 58.6°F from July through September. ERO 2018. Based on MMC’s discharge monitoring reports, minimum daily effluent temperatures averaged 57.2°F and maximum daily effluent temperatures averaged 57.8°F between March 2017 and July 2019. USEPA 2019.

This response is deficient for multiple reasons. First, the USFS has added new information and analysis to the FEA, including monitoring data from USEPA (2019), temperature objectives from USFWS (2010) and new data and analysis from ERO (2018) that were not available for public review and comment as required by NEPA. Second, the FEA identifies a temperature Riparian Management Objective but appears to omit other bull trout temperature tolerance recommendations. For example, the 2013 BIOP stated that successful *incubation of bull trout embryos* requires water temperatures below 8°C (46.4°F). Third, the FEA asserts that “[n]one of the average monthly temperatures were greater than or equal to 59°F (e.g., the stated maximum temperature tolerance for adult holding habitat), FEA at 3-56, but ignores the stated maximum tolerance range of 48°F *within spawning and rearing habitats*.” The minimum and maximum effluent temperatures identified in the USEPA (2019) exceed the specified tolerance range of 48°F. Fourth, the draft MDPEs permit prepared by MTDEQ includes information on effluent characteristics for Outfall 001, which identify a maximum daily temperature (summer) of 16.7 degrees Celsius (62 degrees F) and an average of 14.2 (57.56 degrees F) in summer, which appear to differ with the USEPA (2019) data. Fifth, the USFS appears to rely on MTDEQ to protect bull trout and bull trout habitat, yet the USFS has an obligation to minimize impacts under FLPMA and ESA.

As outlined in Objectors’ previous comments, the FEA 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 FEA should provide temperature data and require temperature monitoring in this stream reach to ensure that temperatures within the mixing zone are within the tolerance range for bull trout spawning. The FWS 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.*” BiOp at 124. 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.” *Id.* at 101.

In response to Objectors’ previous comments, the FEA states that, additional text has been added to the EA in Section 3.9.2.1 to support the summary that the WTP discharge is expected to have a negligible temperature effect on bull trout and bull trout critical habitat in Libby Creek, including the isolated population of bull trout upstream of Libby Creek falls. FEA, Appendix E at 44. The FEA added the following language:

Data from 2007 through 2017 on effluent discharge rates and temperature, stream temperatures and flow, and air temperatures near the WTP discharges at the project area were analyzed (ERO 2018). The effect of WTP groundwater discharges on temperature differences of more than 1°F between a site upstream of the discharge (LB-200) and a site downstream of the discharge (LB-300) appears to be negligible and would continue to be negligible during the Project. Libby Creek stream temperature differences between sites upstream of the WTP groundwater discharges and downstream of those discharges appear to be influenced by a variety of factors including streamflow and air temperatures. The pattern of temperature differences during 2017 was similar to 2007, when no discharges occurred, and to 2009, when discharge volume was three times greater. Stream temperatures were lower than the 48°F spawning threshold after mid-September at both the upstream and downstream sites during 2009 and 2017 (ERO 2018). As such, WTP discharge is expected to have a negligible temperature effect on bull trout and bull trout critical habitat in Libby Creek, including the isolated population of bull trout upstream of Libby Creek falls.

FEA at 3-56.

This response is insufficient. First, the FEA has added new temperature information and analysis from ERO (2018) which was not included or referenced in the DEA, and therefore not available to the public for review in the DEA as required by NEPA. Second, the information in ERO (2018) relies on stream and air temperature data that is outdated (from 8-15 years ago). The FEA must rely on current data and analysis given the changing climate. Third, the USFS fails to respond to the issue outlined in the 2013 BA, which states that baseline conditions for temperature in Libby Creek are already functioning at risk. The USFS asserts that stream temperatures were lower than the 48°F spawning threshold after mid-September, yet the 48°F threshold is a spawning *and rearing* temperature threshold. Bull trout rear in the summer months. Therefore, the temperature in the summer months must also be considered. Fourth, the analysis fails to provide temperature data or analysis for Libby Creek within the mixing zone, but instead refers to temperature data from LB 300, which is ½ mile downstream and does not address potential impacts to bull trout and bull trout habitat within the mixing zone.

As stated in Objectors' detailed comments, the FEA 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 FEA 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 FEA response is inadequate for the reasons stated above, and because it fails to respond to concerns about impacts of groundwater discharges to the hyporheic zone and areas of groundwater upwellings, which are important elements for successful bull trout spawning.

As stated in Objectors' previous comments, the FEA 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. This is a critical flaw in the monitoring program, especially for the effects on resident bull trout. This may be the one long term genetic source for pure strain of bull trout in the Kootenai Basin.

In response, the FEA states that, “Additional text has been added to the EA in Section 3.9.2.1 to support the summary that the WTP discharge is expected to have a negligible temperature effect on bull trout and bull trout critical habitat in Libby Creek, including the isolated population of bull trout upstream of Libby Creek falls.” FEA, Appendix E at 44. It further states in the monitoring plan that, “Monitoring of surface water and groundwater is required by existing permits: Montana Pollutant Discharge Elimination System MT0030279 and Department of Environmental Quality Operating Permit #00150,” and that, “Locations and frequency of monitoring are subject to change based on permitting requirements as permits are reissued, revised, or new permits acquired.” FEA, Appendix B at 5. The Monitoring Plan also states that temperature of treated water will be monitored at Outfall 001. Stream temperature of Libby Creek will be monitored at LB-200 which is upstream of the Libby Adit. FEA, Appendix B at 11. Groundwater temperature will be monitored at the two monitoring wells (MW-07-01 and MW-07-02) downgradient of Outfall 001.

This response is inadequate because, as stated in our comments, the existing MPDES MT0030279 places no limits on temperature for outfalls 001, 002 or 003. Temperature limitations at Outfall 001 are particularly important because the FEA states that MMC would use Outfall 001 (percolation pond) *for all discharges* from the project area. FEA at 2-11 (emphasis added). Outfall 002 (drain field) would be covered by the WRSA #1 expansion and MMC would not construct or operate Outfall 003 (end of pipe discharge from percolation pond to Libby Creek) because it has not been needed in the past and is not needed for proposed dewatering and treatment activities.

As detailed in Objectors’ previous comments , the FEA fails to provide baseline or current data to characterize instream surface water temperatures in this reach of Libby Creek. ERO 2011 Baseline Surface Water Quality report (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 does not include current temperature data for LB-200 (upstream), LB-300 (downstream) or the groundwater monitoring sites 07-01 and 07-02. Newfields (2024) at 11.

In response, the FEA states that, Proposed Action effects on water temperature are described in Section 3.9.2.1 of the FEA. The Monitoring Plan for the Project includes measuring temperature at locations downstream and upstream of the Project. FEA, Appendix B at 6. This is inadequate because it fails to address Objector’s comments on baseline data.

3. Nutrient and metal loading

As outlined in the Objectors' previous comments, the proposed limitations on the loading of nutrients and metals are grossly inadequate for the protection of the high-quality waters of Libby Creek from significant degradation. In response to the Objectors' comments, the FEA provides additional predictions and estimations of future water quality in Section 3.4.2.1. FEA, Appendix E at 66–67. This is an inadequate response to the Objectors' concerns, as predictions and estimations are no substitute for clear and protective limitations on effluent concentrations and loads for nutrients and metals. Objectors therefore maintain that the consequences of the substantial increases in pollutant concentrations have not been adequately assessed, and that the insufficiency of the limitations on pollutant loads will lead to significant degradation.

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. 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 FEA 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 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.

Even for the summer period of July 1 to September 30 when a seasonal total nitrogen standard of 0.275 mg/L is in place, increasing total N concentrations from ambient concentrations up to this standard will constitute significant degradation of water quality and will alter the aquatic ecosystem. According to data presented in the 2023 Mixing Zone Application, the median total nitrogen content of Libby Creek above the mixing zone for this period is less than or equal to 0.2 mg/L, and at most 5% of samples have a total N of 0.275 mg/L (calculated as Total Kjeldahl N + Nitrate + Nitrate where Total N is not given, and using the detection limit where measurements are below detect to produce a conservative value). Wastewater discharge would therefore increase the median nitrogen concentration in Libby Creek during this summer period by 35% or greater.

Relying on the seasonal total phosphorus standard of 0.025 mg/L is inadequate and does not ensure the protection of water quality and aquatic life in Libby Creek. Elevating Libby Creek to this concentration would constitute a substantial increase above the maximum observed value of 0.18 mg/L, and a four-fold increase above the median summer concentration of 0.005 mg/L (calculated using the detection limits where measurements are below detect for a conservative value, the actual increase will be greater). In the absence of clear, consistent, and protective limitations on effluent P loads, the increase in phosphorus concentration in Libby Creek is clearly significant.

The FEA states in Section 3.4.2.1 that ‘Proposed nitrogen and phosphorous concentration limits for protection against undesirable aquatic life ranged up to 30 µg/L total phosphorous and up to 1,210 µg/L total nitrogen (Suplee and Watson 2013)’, FEA at 3-25, yet this statement is not relevant to Libby Creek. These values represent the maximum values identified in a broad literature search that Suplee and Watson (2013) describe as extending beyond the Northern Rockies Ecoregion. Based on research conducted within the Northern Rockies Ecoregion, Suplee and Watson (2013) recommend maximum concentration limits of 0.025 mg/L total P and 0.275 mg/L total N that are adopted as the maximum seasonal N and P concentration standards for Libby Creek. Increasing median summertime concentrations of this small, high-quality headwater system by >35% for N and >400% for P all the way up to the maximum concentration standards constitutes a dramatic and significant change in the water quality and cannot be dismissed as negligible.

The permitted metal concentrations and loading rates indicated in the FEA 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.

Ecosystem response to large changes in nutrient and metal concentrations are non-linear and driven directly by the increased concentrations of individual pollutants as well as by changes in the relative amounts of different nutrients or pollutants. Common examples of interactions include ecological sensitivity to changes in the stoichiometric ratios of carbon and nutrients (e.g., C:N:P), and biogeochemical interactions and feedbacks between metals, water hardness, and biota that can alter the pH of the system and the solubility and toxicity of metals. In many cases, the proposed nutrient and metal loads dwarf the ambient concentrations in Libby Creek, indicating the likelihood of substantial alteration or degradation of Libby Creek, even if the resulting in-stream concentrations remain below water quality standards. 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 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 and degraded 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 impacts of nutrient and metal loading associated with this project will directly impact important habitat that is not present further downstream.

The FEA 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’. FEA at 2-17. Ensuring that this project fully supports the beneficial uses of Libby Creek, meets the ecological needs of native species, and does not degrade this high-quality resource 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. The FEA meets none of these requirements, and instead relies on an incomplete, unprotective, and obsolete MPDES permit. Objectors would welcome updated standards for effluent quality under a future MPDES permit, but vague and intangible references to the possibility of an updated permit, or to broader changes in Montana's approach to nutrient standards, are insufficient. As currently described, the loading of nutrients and metals into Libby Creek will result in substantial degradation of water quality and alteration of the aquatic ecosystem, and the FEA is incorrect to dismiss these impacts as 'negligible'.

4. Stormwater

The FEA and Response to Comments failed to adequately address Objectors' concerns regarding stormwater, which are repeated here:

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.

Objectors' Comment Letter at 37–39. As further noted by EPA: “The Draft EA states that the water treatment plant (WTP; also identified as a ‘water treatment plan’ in the EA’s List of Acronyms and Abbreviations, so we recommend correcting this) would treat 165 gpm (or more during the first three to four weeks of dewatering) of pumped adit water (Section 2.1.3.4), as well as stormwater (Section 2.1.11.5) and runoff from the WRSAs (Section 3.3.2.1). The Draft EA does not describe how much stormwater and WRSA runoff is expected. This information and the basis for and the uncertainties associated with the adit pumping rate are needed to support the EA conclusion that the 500-gpm WTP would have sufficient capacity to treat all the contact water generated from the proposed project.” EPA Comment Letter at 2–11. The FEA does not remedy this shortcoming either. It is especially salient because, as noted, the increased magnitude of storm events due to climate change. Without greater detail, it is impossible to determine whether the WTP will be able to effectively treat all water pollution from the project, especially when storm events occur.

5. Sewage

As outlined in Objectors' previous comments, the FEA fails to address sewage management and disposal at the site. It fails to describe the current or predicted volume of sewage; adequate descriptions of how it will be stored, treated and disposed; or when the proposed system improvements would occur. The FEA should disclose the potential impacts of constructing the proposed subsurface systems. Further, if effluent will be disposed on site via subsurface drip fields or by other disposal methods, the FEA 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 FEA cannot defer to another state or local permitting process.

In response to the Objectors' previous comments, the FEA states that it updated Section 3.4.2.1 to address sewage. FEA, Appendix E at 60. The updated section in the FEA states that:

“MMC would use a septic system consisting of septic tanks for primary treatment, followed by discharge to a leach field. An analysis was completed to calculate trigger values for nitrate and phosphorus levels using MDEQ nondegradation analysis guidance (MDEQ 2015). A previous analysis indicated that a level 2 septic system could accommodate 260 employees and not result in significant increase of nitrate and phosphorus (Geomatrix 2010). The trigger value calculations were updated for a total of 35 employees which is the maximum number of employees expected under the Proposed Action. The nitrate calculation result was 0.008 mg/L which is below the trigger value of 0.01 mg/L. The phosphorus calculation result was 0.0006 mg/L which is below the trigger value of 0.001 mg/L. These results indicate that the increases in nitrate and phosphorus are nonsignificant. Sanitary wastes would not have a measurable effect on surface water or groundwater quality.”

FEA at 3-25.

This response is inadequate because it introduces new data and analysis that were not included for public review under NEPA in the DEA. It references MDEQ (2015) and Geomatrix (2010), which were not cited, nor provided as a supporting document for public review in the DEA. It further introduces new trigger value calculations for a total of 35 employees, which were not provided for public review or comment in the DEA, and therefore not subject to NEPA review as required. It also fails to analyze the impacts of constructing the subsurface leach field, and the specifics for when the system would be installed. The FEA acknowledges that septic field installation may affect surface water flows, FEA at 3-81, impair water quality, FEA at 3-85, and aquatic habitat, FEA at 3-89, but it fails to provide any analysis of those potential impacts for this project. It also fails to provide analysis for the cumulative effects of nutrient discharges on water quality and aquatic life from the septic system in addition to discharges from the WTP, which are in close proximity.

6. Nuisance Algae

As detailed in Objectors’ previous comments, according to the FEA, 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. FEA, Appendix B at 11. However, the FEA 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

FEA 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.

The FEA states that proposed water management is based on the existing MPDES permit because it is the current permit for the site. FEA, Appendix E at 64. As discussed in Section 2.1.11.4 of the FEA, updated effluent limits are anticipated and the WTP would be updated if necessary to comply with any new limits. Water quality monitoring will occur as required in the MPDES Permit. As noted in Section 2.1.11.4 of the FEA, the water quality parameters would be updated if permit requirements change. Section 3.4.1.4 of the FEA describes the current condition of upper Libby Creek and its reason for impairment which is not related to pollutants. The FEA further states that impacts to water are discussed in Section 3.4.2.1, 3.13.2.1, and 3.14.4.1 of the EA, FEA, Appendix E at 66, and that text was added to the FEA to discuss impacts of nitrogen and phosphorus on algae growth in Sections 3.4.2.1 and 3.9.2.1. The added language to Section 3.4.2.1 states that:

“The Project could increase concentrations of nitrogen and phosphorus in Libby Creek. Nutrient concentrations are predicted to increase relative to receiving water quality but predicted concentrations would not exceed aquatic life standards during 7Q10 flow or during annual low flow (80% exceedance flow) because of treatment and low ambient concentrations. Additionally, complete and nearly instantaneous mixing of existing discharges has been documented by monitoring of the effects of existing discharges from Outfall 001 on Libby Creek, therefore, nutrient concentrations in discharges are expected to rapidly mix with the receiving water (Hydrometrics 2023). The current total nitrogen effluent limit is 0.275 mg/L during 7Q10 flow although this may change as MDEQ is required by Senate Bill 358 to adopt rules related to narrative nutrient standards. Until the narrative nutrient standards are adopted, nutrients are to be regulated in permits consistent with the intent of Senate Bill 358 and the narrative standards (General Prohibitions) in ARM 17.30.637. Effluent total nitrogen concentrations may be higher between October 1 and June 30 as the numeric nutrient standards are only applicable between July 1 and September 30. Additional reagents can be used in the WTP if necessary to enhance nitrogen removal to meet applicable water quality standards. Higher total nitrogen concentrations between October 1 and June 30 would not lead to nuisance algal growth. Low temperatures in winter and high-flow events during spring runoff tend to mute the local effects of

eutrophication. Plant growth slows dramatically in the fall and winter, and spring high-flow events prevent nuisance algal mats from developing (Suplee et al. 2008). The discharge would not create a nuisance or render receiving waters harmful or injurious to humans, fish or other aquatic life. The maximum nutrient concentrations of treated water under the Proposed Action are anticipated to be below state of Montana water quality standards (Hydrometrics 2023). Suplee and Watson (2013) provide a summary of the scientific literature regarding the nitrogen and phosphorous concentrations predicted to protect against growth of undesirable aquatic life. Proposed nitrogen and phosphorous concentration limits for protection against undesirable aquatic life ranged up to 30 µg/L TP and up to 1,210 µg/L TN (Suplee and Watson 2013). The projected concentrations in Libby Creek are below these protective concentrations; thus, the mixing zone for nitrogen and phosphorus is not expected to produce undesirable aquatic life and would be in compliance with the existing narrative standards (General Prohibitions) in ARM 17.30.637.”

FEA at 3-25. The Final EA also added language to Section 3.9.2.1, which states that:

“Nutrient concentrations are predicted to increase relative to receiving water quality but predicted concentrations would not exceed aquatic life standards during 7Q10 flow or during annual low flow (80% exceedance flow). The discharge would not create a nuisance or render receiving waters harmful or injurious to fish or other aquatic life. Due to the existing low nutrient concentrations in Libby Creek and the requirements that discharge limits be modified if necessary to protect beneficial uses, the potential for nutrient increases resulting from discharge of treated water to Libby Creek to affect aquatic life and fisheries is negligible. 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.”

FEA at 3-56.

The response to Objectors’ previous comments are inadequate for multiple reasons. (1) Although the monitoring plan included requirements for sampling periphyton and chlorophyll-a three times a year, FEA, Appendix B at 11, the FEA

still fails to provide baseline data. Therefore, there is no baseline data upon which to measure increases in nuisance algae as a result of increased nutrients. (2) The FEA added new information in Section 3.4.2.1 on nutrient levels and nuisance algae from Suplee (2008) and Suplee and Watson (2013), yet these documents were not provided during the DEA for public review and comment, as required by NEPA. (3) The FEA cites a recommended concentration limit from Suplee and Watson (2013) for Total Nitrogen of up to 1,210 µg/l as adequately protective against nuisance algal growth. FEA at 3-25. This is highly misleading and inappropriate to apply to Libby Creek. This is the highest recommended concentration from a literature review for streams in other ecoregions, not the Northern Rockies ecoregion where Libby Creek is located (See Suplee and Watson, Table ES-1). The FEA fails to address the significant nutrient issues as described in the nutrient section above. (4) There is considerable uncertainty about how nutrients will be managed in Montana and at this site under Senate Bill 358 as described in the FEA. (5) The FEA fails to consider the cumulative effects on nutrients from Outfall 001 and the septic leach field, and it fails to take a hard look at the potential increases in temperature from discharges and climate change. (6) The USFS cannot rely on the State of Montana, and the potential for a revised MPDES permit, to analyze the potential impacts of nutrients on bull trout and bull trout habitat and to ensure that the proposed action doesn't result in an increase of nuisance algae that impairs bull trout and bull trout habitat. It has its own obligations under NEPA, FLPMA and the ESA, which it has failed to fulfil.

E. Water Use/Dewatering/Hydrologic Impacts

The FEA 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.

As stated in Objectors' comments on the DEA, the USFS 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. Without this information, the public has insufficient information on which to provide meaningful comment on the potential impacts to water resources and aquatic life.

The FEA is deficient because it also fails to address these issues. The FEA identifies water rights to divert 1.4 af/yr of surface water from Libby Creek via a ditch and 50.97 af/yr (flow rate of 40.9 gpm) of surface water from Libby Creek via a headgate diversion. FEA at 3-19, 2-12. The FEA also states that MMC would use its groundwater right with a year-round diversion and/or its surface water right with a

diversion between April 1 and December 19 for any required water usage. FEA at 2-13. Yet, the FEA fails to take a hard look at the potential impacts of diverting this surface water from Libby Creek, and the associated potential impacts to aquatic life including fish and fish habitat. It also fails to provide a site-wide water balance to specify how water will be managed. The FEA states that “The impacts from the Proposed Action to surface water and groundwater described above would have negligible impacts on other water users in the analysis area because negligible impacts to surface water and groundwater quantity and quality are expected. FEA at 3-26. However, it fails to provide data and analysis to support this assertion.

The FEA also states that the locations of the points of diversion for the identified water rights in the analysis area are shown on Figure 3-4, yet Figure 3-4 does not include this information. FEA at 3-19. Thus, it fails to provide basic information that is necessary to understand the potential impacts of these diversions on Libby Creek. A review of the DNRC water rights query website identifies the headgate surface water diversion in Libby Creek upstream of the proposed surface activities and the ditch diversion in Libby Creek adjacent to the proposed surface activities.

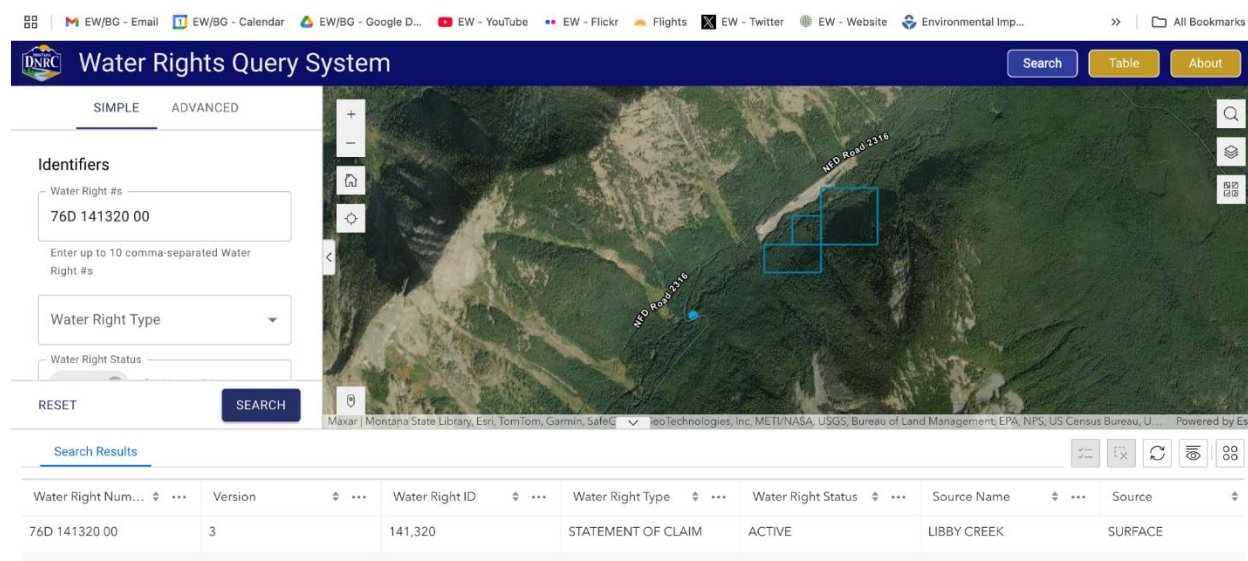


Figure 9 Screenshot from DNRC water rights query website, query for water rights 76D 73018 00, 76D 141319 00, 76D 141320 00, August 1, 2025. Diversion locations are depicted by blue dots.

The DNRC water rights website also identifies a preliminary decree issued by DNRC that corrected the flow rate for the surface water diversion for water right

76D 14132 00 from 44.9 gpm to 1 cfs (448.8 gpm).²⁵ The FEA Table 2-5 should be corrected to provide the accurate flow rate for this diversion (448.8 gpm not 44.9 gpm) and the FEA should analyze the impacts of these diversions, including the cumulative effects to water, aquatic life and aquatic habitat from other reduced flows, warmer water from a changing climate, increased sediment load, and increased pollutants from the proposed project and mixing zone. FEA at 2-12.

The FEA 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. FEA at 2-13. The FEA fails to remedy the lack of information, specifically the location, extent of piping, or analysis of the potential impacts associated with the installation of this infrastructure, given the location of 76D 141320 00, which is a water right to surface water in Libby Creek diverted from a headgate upstream of surface activities. (See screenshot of DNRC water rights query website above, with the blue dot as the point of diversion).

F. Geochemistry

As stated in Objectors' previous comments, MMC is currently discharging water that flows into the 14,000-foot adit developed primarily in the Prichard Formation. The FEA 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.²⁶ 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 FEA 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 FEA should analyze the potential for water quality changes

²⁵ Montana Water Court, Case 76D-0238-R-2023, Montanore Minerals Corp, Order Correcting Clerical Order on Abstract, Water Right # 76D 14132 00, January 24, 2023 (attached as Exhibit 13).

²⁶ Ann Maest, PhD, "Technical Review Memorandum, Evaluation of Geochemical Issues in the Montanore Project, Supplemental Draft Environmental Impact Statement, December 21, 2011.

and determine whether additional water treatment technology is necessary to prevent adverse impacts, and specify when it will be implemented.

The FEA's response to Objectors' comments states that for lead leaching contamination, the location of the proposed adit extension and drifts in relation to the barren lead zone are described in Section 3.3.2.1 of the FEA. FEA, Appendix E at 51, 63. Impacts of acid rock drainage and metal leaching are described in Section 3.3.2.1 of the FEA. The exact extent of the altered waste zones is unknown at this time. One of the objectives of the Proposed Action is to collect data to better understand the geology surrounding the ore body and collect geochemical and geotechnical information. The FEA also states that Section 3.4.2.1 of the EA was updated to describe the expected metal and nutrient concentrations in discharged water and the methods used to estimate future water quality. FEA at 66. This response is inadequate because it fails to adequately address the Objectors' previous comments.

G. Noise

As detailed in Objectors' previous comments, the FEA fails to provide baseline data to characterize ambient noise levels. It references data from Big Sky Acoustics (2006), which provided ambient noise levels measured in Ramsey Canyon, Little Cherry Creek and the Troy Mine, but it does not include current or historic ambient noise measurements for the Libby Exploration Project site. The FEA also fails to quantify the potential increase in noise levels from the proposed project. It states 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." FEA at 2-21. However, it concedes that "Backup beepers may exceed 55 dBA 250 feet from the project area boundary." The FEA fails to quantify the number and type of construction vehicles, and the noise levels and numbers of backup beepers. The FEA 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, FEA at 2-12, and the increased noise from the installation of pumps and piping for water diversions, FEA at 2-13. The FEA 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)." FEA at 3-70. However, the FEA only cites an online noise calculator, it fails to provide the assumptions and parameters inserted into the calculator and the results. The FEA 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.

The FEA fails to remedy these issues. It fails to provide baseline ambient noise data for the Libby Exploration Site to characterize existing conditions. It continues to reference noise data from a 2006 report for other locations, but not the proposed project area. It lists the noise levels for individual pieces of equipment at varying distances, but fails to quantify total noise levels at the site and in places where there are key noise receptors throughout the area, including along the Libby Creek corridor. According to the objections filed by the Libby Placer Mining Company, the generators and ventilators can be heard plainly 1.5 miles away.²⁷ The FEA states that the Proposed Action would increase noise levels within the analysis area for years 1 to 11 of the Project due to construction activity at the project area and increased traffic. FEA at 3-29. Yet, it fails to calculate the potential total increased noise at the site. Instead, it lists noise levels for individual pieces of equipment. It asserts that vegetation will mute the potential noise, and cites the results of an online noise tool calculator. However, it fails to provide the data, assumptions or results that were used to support this conclusion. The FEA cites the monitoring plan as sufficient to reduce noise below a certain level. FEA, Appendix B. The monitoring plan states that MMC will take *periodic* noise measurements with a sound level meter 250 feet from the Project area boundary to assess noise levels while surface equipment is operating. FEA, Appendix B at 18. It states that if results show that equipment noise levels exceed 55 A-weighted decibels over an hour, MMC will take corrective actions to reduce noise levels such as inspecting or repairing mufflers, silencers, and covers on equipment. This is insufficient because “periodic” is vague and fails to specify whether monitoring will occur once a week, once a day or once a month. It’s also deficient because the 250-foot distance is based on the distance of operations to the Forest Service Road (2316), yet the FEA fails to consider the effects of increased noise on wildlife along the Libby Creek corridor, which in some locations appears to be 100-feet from operations. It also fails to provide any rationale for selecting 55 A-weighted decibels over an hour as the noise limit for the proposed action, and fails to take a hard look at the potential increase of varying noise levels on noise receptors, particularly wildlife.

²⁷ Libby Placer Mining Company, Libby Exploration Project Objections, July 29, 2025 (attached as Exhibit 14).

H. Wildlife

As noted in Objectors' previous comments, the USFS's environmental analyses of the proposed project insufficiently evaluate potential impacts on wildlife in the project area and therefore do not comply with NEPA requirements. The FEA pays scant attention to wildlife impacts in general or dismisses impacts as insignificant with little supporting documentation. Much of the wildlife mortality associated with the project is predicted to come from: 1) vehicle collisions; 2) disturbance and displacement from habitat due to increased human activity, noise, and lighting; and 3) increased hunting and trapping pressure. FEA at 3-75. Poaching, although not considered, will also likely increase. The FEA further dismisses any impacts to wildlife from dewatering of streams and lakes as negligible despite failing to quantify the extent of groundwater drawdown. FEA at 3-75.

There are several listed species under the ESA that would be impacted by the proposed project including the grizzly bear, North American wolverine, Canada lynx, and bull trout. As stated in more detail in the ESA section below, due to the potential impacts to listed species, a full environmental impact statement and updated biological opinions for both terrestrial and aquatic species are necessary.

There are also several sensitive species that may potentially be impacted by the proposed project including: 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. Montana Natural Heritage - SOC Report.

The FEA analyzes only a few sensitive species and without great depth. FEA at 3-76, 3-77, 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. FEA at Appendix D, 1-4. However, the FEA does not provide sufficient data to explain this

determination, despite requests for such in Objectors' comments. While the FEA consistently states that the proposed project "could affect" these species or that "impacts could occur", it does not include any quantification of those effects to support the determination that they will not be significant. FEA at 3-76, 3-77.

The FEA further states 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.

FEA at Appendix D, 4. 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 proposed project 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 may also exceed temperatures that cold water fish can tolerate, and climate change could exacerbate this problem. The FEA determined that groundwater drawdown is not anticipated to impact the habitat of Black Swift and Harlequin Duck. FEA at Appendix D, 1–2. For similar reasons as stated above, the FEA does not contain sufficient data to support this conclusion.

As the FEA acknowledges, the project could impact Cutthroat Trout, Redband Trout, and Westslope Cutthroat Trout, though the FEA does not specify to what significance. FEA at 3-76. If these impacts occur in the project area, Harlequin Duck and Black Swift also could be affected. Other key species that may occur in the project area include the Pileated Woodpecker, Olive-sided Flycatcher, Bald Eagle, Northern Goshawk, gray wolf, black bear, bobcat, mountain lion, mountain goat, moose, and elk among others. As described above, the proposed project may cause impacts due to habitat loss and fragmentation; disturbance; increased hunting, trapping, and poaching; and dewatering of streams and lakes to these key species as well. Though the FEA acknowledges many of the species-specific risks to

these animals, it then claims that the impacts to the species will be “similar to those described for general wildlife species” without the data or research to support such a contention. FEA at 3-75, 3-76.

Further, the USFS’s analysis is inadequate across several species regarding the evaluated impacts from traffic on NFSR 231 and NFSR 2316. First, the USFS claims that MMC will implement a transportation plan, a wildlife plan, and several measures (“ACEPM”s) to reduce traffic-related mortalities to grizzly bears and other species. FEA at 3-60. The USFS then describes the measures including work practices, reporting programs, trainings, and more. FEA at 3-60. However, the FEA does not include any details on which party will be monitoring adherence to MMC’s ACEPMs, whether they are voluntary or mandatory, or what sort of consequences there are to MMC or the project should the company be found out of compliance. Despite Objectors’ previous comments raising these questions, the USFS declined to provide more details on ACEPM accountability in the FEA and associated documents. These concerns are especially salient because, as noted in Objectors’ previous comments, MMC has a long and documented history of non-compliance with environmental requirements. The FEA and response to comments fail to address or consider the company’s long history of failing to comply with environmental obligations.

When further discussing project traffic and the threats it poses, the Forest Service states that the proposed actions would increase human activity and traffic by four percent during the first 11 years. FEA at 3-75. However, the FEA does not include any data or sources here to explain where the four percent number came from. A four percent increase in traffic is very likely an underestimate for a project of this magnitude. Additionally, when discussing measures to mitigate this statistic, the USFS cites trip consolidation but does not provide details on the extent to which this measure would mitigate the increase in traffic. FEA at 3-75. The FEA does not include any quantitative numbers for the number of trips MMC will be making per day or any other data point that would be necessary to both calculate the four percent statistic they cite and to determine the amount of mitigation possible through trip consolidation.

The traffic section of the FEA also lists speed limits for project-related vehicles and monitoring of big game animals killed by vehicle collisions for the duration of the project as two measures to mitigate the impacts of project-related traffic on wildlife. FEA at 2-20, 2-22. However, the USFS does not detail how this speed limit will be enforced and what accountability measures, if any, will exist for vehicles that exceed this limit. As noted in Objectors’ previous comments, the USFS

does not have adequate law enforcement personnel for this enforcement. The USFS also does not specify what mitigation measures will be implemented if the number of big game animals killed by vehicle collisions exceeds an acceptable threshold as determined by USFS and MFWP. Because these measures were not included in the FEA, the public does not have the chance to review them and provide comment on their efficacy. If the USFS is going to rely on mitigation measures in its analysis, it must disclose to the public what those mitigation measures are.

Additionally, the USFS lists road closures of NFSR 231 and NFSR 2316 from April 1 to May 15. FEA at 3-30. However, despite citing this as a beneficial mitigation factor for wildlife mortality, the road closures do not apply to project and administrative vehicles. FEA at 3-30. Brief, seasonal road closures that are open to project-related and administrative use traffic should not be considered closed roads for the purposes of mitigation. Further, the FEA does not include any measures to prevent snow mobiles from accessing these roads by entering under the gates, a known occurrence associated with snow mobile use. The USFS does not have the law enforcement officers or measures to effectively prevent snow mobile use through the gated road closure. As such, the use of gated road closures should not be classified as mitigation unless traffic is actually restricted. Further, as noted earlier, road closures have repeatedly proven ineffective in the Kootenai National Forest and the project area.

When conducting its wildlife analysis under NEPA, the USFS also failed to include several important issues entirely. First, the FEA fails to address or even acknowledge the potential increase in poaching that will occur as a result of the proposed project. Poaching has consistently been shown to increase in association with mining projects due to development and expanded access by humans and vehicles.²⁸ Bear conflicts and misidentification will also increase with more people in the project area, some of whom are unused to living in bear country. Likewise, increased food attractants will also be a contributing factor to increased bear conflicts. There is no evidence in the FEA to indicate that the USFS considered these significant issues in its analysis.

Additionally, the USFS failed to consider the impacts of the rest of the mining actions expected to follow this exploration project. The full mining operation is a foreseeable activity that should be considered in its entirety. The threats listed

²⁸ See e.g., de Haes & Lucas. 2024. Environmental Impacts of Extraction and Processing of Raw Materials for the Energy Transition. PBL Netherlands Environmental Agency. 22.

above, including dewatering, human activity and vehicle activity would all increase and compound as the entire mining project develops. These effects should be considered in this present analysis, and the FEA fails to do so.

In response to extensive comments addressing concerns about the USFS's wildlife analysis across subject areas, the FEA Response to Comments section only includes one paragraph. This does not constitute the reasoned response and decision making required by the Administrative Procedure Act ("APA") or NEPA. To make matters worse, the paragraph essentially redirects the reader to the sections of the FEA addressing wildlife, sections that, despite extensive comments, are largely identical to that of the DEA. In sum, the USFS's FEA contains many if not all of the same deficiencies that the DEA contained despite commenters highlighting these inadequacies through public engagement. As a result, the USFS must vacate these documents and conduct new and additional wildlife analysis consistent with applicable federal and state law.

I. Public Access & Wilderness Values

The Cabinet Mountains Wilderness (CMW) is one of America's first Wilderness areas to be created with the passage of the original Wilderness Act of 1964. This designation by the U.S. Congress recognizes and requires a specific set of management criteria in order to maintain Wilderness values. The USFS recognizes this mandate in Section 3.12.1.1 of the FEA, which states that "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." FEA at 3-68. Although the FEA acknowledges the management mandate of the Wilderness Act, it then entirely fails to evaluate, consider, and account for the major and deleterious impacts that will occur when allowing for the industrialization of lands directly adjacent to Wilderness with the approval of the Libby Exploration Project.

First, the USFS failed to consider the "reasonably close causal relationship" between the Libby Exploration Project and the full build-out of the Montanore Mine. See *Department of Transportation v. Public Citizen*, 541 U. S. 752, at 767. The Libby Exploration Project and the Montanore Mine are a single project in both time and place. The existing adit considered in the Libby Exploration Project will be subsequently used by the Montanore project for access to the ore body, and any exploration activities are clearly designed to facilitate mining at the site. Further, the USFS has demonstrated clear legal authority over the evaluation and

permitting of previous iterations of the Montanore Mine. As such, the USFS is required to evaluate the full build-out of the Montanore mine and its potential impacts to Wilderness values, including air and water pollution, noise, and impacts to wildlife.

In its response to Objectors' comments, the USFS justifies its failure to consider full mine build out and its impacts to Wilderness by stating that:

The proposed Project does not meet the criteria for connected actions in USFS NEPA regulations as it does not automatically trigger another action, can proceed independently of other actions, and does not depend on a larger action (such as a mine) for its justification. The EA analyzes the Libby Exploration Project, any mining activity is out of the scope of this analysis and would be subject to further NEPA if proposed in the future.

FEA, Appendix E at 69. However, this conclusion does not address the cumulative and indirect impact evaluation requirements under NEPA and the evidence in front of USFS that these projects are entirely interdependent and causal.

Notably, Hecla has conducted extensive exploration activities to date at the site,²⁹ and has received previous approvals from both the state of Montana and federal government.³⁰ Hecla again clearly aims for full mine build out, stating that "Upon successful completion of the EA process 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."³¹ Additionally, the price of copper, the mine metal being pursued by Hecla, is at an historic high, likely boosting the economics of a fully operating mine.

²⁹ "Inferred resource at Libby reported at a minimum thickness of 15 feet and an NSR cut-off value of \$31.50/ton NSR; Metallurgical recoveries: 88% for silver and 92% copper. Resources adjusted based on mining restrictions as defined by U.S. Forest Service, Kootenai National Forest, Montana DEQ in December 2015 'Joint Final EIS, Montanore Project' and the February 2016 U.S Forest Service - Kootenai National Forest 'Record of Decision, Montanore Project'."

³⁰ Henline, B., Montanore Decisions Signed, The Western News (Feb. 16, 2016), available at: <https://thewesternnews.com/news/2016/feb/16/montanore-decisions-signed-12/>.

³¹ See Hecla Mining. (2025). Form 10-K for the year ending December 31, 2024. Retrieved from the SEC's EDGAR database.

Based upon these considerations, representatives of Hecla have recently stated their intent to move forward with full mine buildout: “With all of that, we’re very optimistic that these projects will be developed”³² “Placing the Libby Exploration Project on the FAST-41 dashboard and hopefully moving towards approval of our plan of operations is a significant step towards Hecla unlocking the value of this project.”³³

Regarding direct disturbances within the Wilderness boundary proper, the USFS argues that “[t]he Proposed Action would not result in surface disturbance of NFS lands. All surface disturbance would occur on previously disturbed areas on private land (Section 3.2.2.1). As described in Section 3.7, there would be no impact to the scenic integrity of the analysis area landscape.” FEA, Appendix E at 69. Further, the USFS states that:

The impact of groundwater drawdown was modeled using a substantial dataset and is described in the EA in Sections 3.4.2.1 and 3.14.4.1. No drawdowns within the precision of the groundwater model are predicted to occur at groundwater dependent ecosystems, lakes, or springs at the end of dewatering. The EA and groundwater model analyzed the maximum impacts of groundwater drawdown which are experienced once dewatering ceases. Impacts from dewatering are described in Sections 3.4.2.1 and 3.14.4.1 of the EA.

Id. However, as noted in Objectors’ previous comments, the USFS failed to fully consider or evaluate the potential impacts of dewatering and its implications for ground and surface water within the Wilderness boundary.

To reiterate, the industrialization of an area directly adjacent to and underneath the CMW is not compatible with a wilderness experience. It is clear that 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. These concerns are only exacerbated

³² Adams, D., Despite Long Road Ahead, Hecla Officials Remain Committed to Mining Projects in Lincoln County, The Western News (Feb. 21, 2020), available at: <https://thewesternnews.com/news/2020/feb/21/despite-long-road-ahead-hecla-officials-12/>.

³³ Franz, J., Trump signs executive order to expedite permitting of Lincoln County mine, Montana Free Press, (Apr. 21, 2025), available at: <https://montanafreepress.org/2025/04/21/trump-signs-executive-order-to-expedite-permitting-of-lincoln-county-mine/>.

with the potential construction of a fully operating mine, a reasonably foreseeable consequence associated with the permitting of the Libby Exploration Project. The CMW 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. Part of providing this protection is assuring that NEPA is fully complied with by examining the reasonably foreseeable consequences of the Libby Exploration Project, including full mine buildout.

J. Cultural Resources

As noted in Objectors' previous comments, through Article 3 of the 1855 Hellgate Treaty, 12 Stat. 975, the Confederated Salish and Kootenai Tribes (CSKT or Tribes) 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. This area, encompassing Libby Creek and the now Kootenai National Forest, is essential to the CSKT, not only for harvesting wildlife, food, and medicines, but also as the heart of our spiritual way of life. The proposed project would have a direct effect on all these elements associated with tribal lifeways.

CSKT raised concerns about bull trout and other native fish, and relatedly to CSKT's treaty reserved rights to take and harvest those fish, noting that a treaty-reserved right to fish is meaningless if there are not adequate fish to take. Additionally, CSKT raised concerns about impacts to sacred sites located near the Libby Exploration Adit, noting that the CSKT have historically opposed development projects that could harm traditional cultural resources, prevent tribal members from participating in their traditional religion, 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.

The 2015 Forest Plan for the Kootenai National Forest also includes several relevant goals and components related to American Indian Rights and Interests. In particular, the Forest Plan includes the following goal, objective, and components:

GOAL-AI-01: Respect Indian tribal self-government and sovereignty, honor tribal Treaty and other rights through protection or enhancement of such and meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments. Manage the Forest to address and be sensitive to traditional American Indian religious beliefs and practices.

FW-DC-AI-01: The KNF recognizes and maintains culturally significant species and the habitat necessary to support healthy, sustainable, and harvestable plant and animal populations to ensure that rights reserved by Tribes in the Hellgate Treaty of 1855 are protected or enhanced.

FW-DC-AI-02: The KNF recognizes, ensures, and accommodates Tribal member access to the Forest for the exercise of treaty rights and cultural uses consistent with laws, policies, and regulations.

FW-DC-AI-03: The KNF recognizes and protects traditional cultural areas associated with the traditional beliefs of a Tribe about its cultural history.

FW-OBJ-AI-03: Over the life of the Plan, the outcome is ongoing government-to-government and staff consultation for each federally recognized Tribe with historical or treaty interests in KNF lands, through a cooperatively established tribal consultation protocol.

The FEA correctly acknowledges these reserved treaty rights, and that the Kootenai National Forest is part of the Tribes' traditional territory, and that the KNF Libby District is considered a "usual and accustomed place" where the CSKT have reserved rights to take fish. FEA at 3-5. The FEA also correctly acknowledges that the federal government has consultation responsibilities to ensure the Tribes' reserved rights are protected. FEA at 3-5. However, apart from these acknowledgements, the FEA fails to address the Tribes' concerns raised in the previous comments, nor provide any assurance that the Tribes' reserved rights, cultural resources, or ability to practice and participate in the Tribes' traditional religion will actually be protected. Additionally, the FEA and the actions proposed are not consistent with the 2015 Forest Plan, and the goals, objectives, and components related to American Indian Rights and Interests.

In particular, for all of the reasons explained in this Objection, and specifically those in Sections III. D, E, F, I, and IV. A, B, C, and D, the Response to Comments section fails to adequately address the water quality, sedimentation, dewatering and other impacts to bull trout and other native fisheries, and impacts to other wildlife raised in Objectors' previous comments. Because the FEA fails to adequately address these concerns, the FEA also fails to address the concerns CSKT has raised regarding the negative impacts to the Tribes' treaty fishing, hunting, and gathering rights, and cultural resources.

Further, the FEA and Response to Comments fail to adequately address CSKT's concerns about impacts on spiritual sites and Tribal members' ability to

practice their traditional religion. CSKT religion is based on our relationship to nature, society, and the spiritual world. We are very dependent on the land and our spiritual relationship with it. A vast majority of Salish and Kootenai people still participate in their traditional religion and have a profound sacred attachment to the land. The freedom to practice our religion and our continued existence as a people depend on our ability to maintain a relationship to these lands, such as the Three Brothers site, which was not acknowledged anywhere in the Response to Comments, as well as the surrounding area. Our religion is at the heart of our sovereignty as Indian people. The USFS, under the American Religious Freedom Act (“AIRFA”), as a federal agency, has a responsibility to ensure that tribal spiritual places will be kept in their natural condition and that our religious practices are not interfered with. Many sacred places have already been lost to us by the land management policies of federal agencies. We must protect what remains. It is at these places that we seek spiritual guidance, perform ceremonies, and gather our medicinal plants. Our continued well-being and sovereignty, which are dependent on these specific landscapes, such as the mountains, the rivers, the lakes, the trees, and even the rocks, depend on them in their natural condition.

Additionally, because these concerns have not been addressed, the FEA and proposed action are also inconsistent with the 2015 Forest Plan, specifically GOAL-AI-01, FW-DC-AI-01, FW-DC-AI-02, and FW-DC-AI-03. These goal and components of the Forest Plan state that the Forest Plan and all actions allowed under it will protect and enhance tribal treaty rights, maintain culturally significant species and the habitat necessary to support healthy, sustainable, and harvestable plant and animal populations, ensure and accommodate Tribal member access to exercise their fishing, hunting and gathering treaty rights, and cultural practices, and to protect traditional cultural areas associated with CSKT’s traditional beliefs about the Tribes’ cultural history. Appendix A of the FEA asserts that the FEA and proposed action are consistent with the 2015 Forest Plan because the USFS consulted with CSKT and has determined that impacts will be negligible.

However, as noted above, the concerns related to bull trout, native fisheries, and wildlife were not adequately addressed in the FEA. Objectors included comments that raised considerable concerns about water quality, sedimentation, and dewatering impacts on bull trout and other native fisheries, and impacts to wildlife. The FEA has not adequately addressed those concerns, and thus the FEA is not consistent with the Forest Plan requirements listed above. CSKT also raised concerns about impacts to our spiritual way of life and ability to practice and participate in our traditional religion. However, the FEA largely dismisses these

concerns, stating there will be no impact. This is not consistent with the Forest Plan, which states that the KNF protects “traditional cultural areas as associated with the traditional beliefs of a Tribe about its cultural history.” CSKT’s traditional beliefs about our cultural history require protection of our cultural landscape in its natural condition. To maintain the integrity of this cultural landscape, we must ensure not only our continued access to these places, but that these places stay intact and in their natural condition, or as natural as possible. We have an obligation—a generational responsibility—to see that the spiritual integrity of these places is not disturbed. This exploratory mining proposal would have a direct effect on the landscape that would be detrimental to the natural, spiritual, and cultural resources that currently exist there. The FEA is not responsive to these concerns and is inconsistent with the Forest Plan’s requirement to protect CSKT’s traditional cultural areas associated with our traditional beliefs.

The FEA appears to imply that because the USFS has consulted with the Tribes, they have complied with the elements of the Forest Plan concerning American Indian Rights and Interests. However, the Forest Plan requires more than consultation with the Tribes. The Forest Plan requires the “protection and enhancement” of treaty rights, and recognition and maintenance of “culturally significant species and the habitat necessary to support healthy, sustainable, and harvestable plant and animal populations” to “ensure” that the Tribes’ treaty rights are “protected and enhanced.” The Forest Plan also requires that KNF “recognizes and protects” the “traditional cultural areas” that are associated and determined by CSKT’s “traditional beliefs” about CSKT’s “cultural history.”

Similarly, the FEA fails to recognize that the federal government has not only a consultation responsibility, but also a trust and treaty responsibility to protect and honor CSKT’s treaty rights. Consultation is an important component of the federal government’s responsibility to Tribes, but that responsibility extends to protecting, enhancing, and honoring the Tribes’ treaty rights.

The FEA incorrectly and summarily asserts that impacts to CSKT’s treaty rights and cultural resources will be negligible, despite considerable evidence provided in Objectors’ previous comments and throughout this Objection that demonstrates the impacts will likely be significant and detrimental. For all these reasons, the FEA and Response to Comments regarding Cultural Resources are insufficient and in violation of the federal government’s trust and treaty responsibilities and are inconsistent with the 2015 Forest Plan.

K. Cumulative Effects—Placer Mining

As outlined in Objectors' previous comments, 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. This includes the two new placer mining operations that are proposed in the Libby Creek drainage, immediately downstream of the proposed Libby Adit Project.³⁴ The FEA 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. FEA at 3-64. 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 evaluate the potential cumulative impacts of the proposed Libby Exploration Project and the proposed and existing Libby Creek Placer Mining Operations.

In response, the FEA states that the cumulative effects analysis was updated to include consideration of proposed mineral projects on Libby Creek. FEA, Appendix E at 42. Additional information was added to Table 3-28 Past Present and RFFAs, which states that two placer projects have been proposed in Libby Creek, including the Ponderosa Placer Exploration project for a total of three acres of disturbance proposed and creation of 0.54 miles of road, and the Northwest

³⁴ U.S. Forest Service, Libby Creek Mining Operations, Scoping Document, May 2024. See <https://www.fs.usda.gov/r01/kootenai/projects/65512>.

Montana Gold Prospectors Ace Placer for a total of one acre of disturbance proposed. FEA at 3-79; USFS 2024f.

This response is deficient. Despite the additional minimal description of the two proposed placer exploration projects in Table 3-28, the FEA omits any description of the existing disturbance and operations at the two placer facilities. It also fails to take a hard look at the cumulative effects of the proposed new placer exploration activities in conjunction with the proposed action, as stated in Objectors' previous comments.

For cumulative effects of noise, the FEA states that, "[d]epending on the timing of RFFAs such as timber harvest, noise from equipment may be cumulatively greater in the CESA. Many of the RFFAs would use the same roads as the Proposed Action. Cumulative noise levels would be unlikely to exceed 55 dBA beyond 250 feet from the project area. The Proposed Action in combination with current and RFFAs would have negligible cumulative impacts on noise levels." FEA at 3-83.

This response is insufficient because it fails to make any effort to consider the potential impacts of noise from the two proposed placer operations, which include road construction, excavation of pits, additional traffic, and the use of a trommel to process gravels 1-3 cubic yards of material per hour during operations for a 3-year period. It fails to provide any data on noise levels associated with these two new projects, or analysis to support the assertion that cumulative noise levels would be unlikely to exceed 55 dBA beyond 250 feet from the project area.

For grizzly bears, the FEA states that the Proposed Action would incrementally increase disturbance to grizzly bears in the CESA due to additional noise, human activity, and increased vehicle traffic. Within the CESA, BMU 5 is 97 percent NFS lands and the BORZ is 65 percent NFS lands. The large percentage of federal land ownership in the CESA suggests that future state or private activities that may affect grizzly bear are likely to be few and limited in scope. Cumulative effects from activities on NFS lands are expected to be negligible because proposed activities would be subject to Section 7 consultation and would be designed to limit impacts to grizzly bear. The Proposed Action would not result in the physical disturbance of grizzly bear habitat. ACEPMs would limit impacts from noise and traffic. Cumulative effects from the Proposed Action, combined with past, present, and RFFAs are anticipated to be negligible. FEA at 3-86.

This is insufficient because it fails to take a hard look at the potential cumulative impacts of the two placer mining operations, which are located in BMU

5, and no data or analysis from Section 7 consultation has been provided for public review for the two placer mining operations.

For bull trout, the FEA states that RFFAs that could impair surface water quality would have the potential to affect bull trout and designated critical habitat but not to the extent that those impacts would be measurable when considered in conjunction with the Proposed Action. Cumulative effects from the Proposed Action, combined with past, present, and RFFAs are anticipated to be negligible to minor, and temporary. FEA at 3-85.

This is inadequate because it fails to describe the proximity of the two new proposed placer mining projects to the Libby Exploration Project and Libby Creek, and it fails to include any analysis of the cumulative effects of the two new proposed placer operations on bull trout and bull trout habitat, despite the track record of impacts to water quality and aquatic habitat from placer mining in Libby Creek, which is designated as impaired with probable sources including placer mining. FEA at 3-17. Additionally, it provides no data or analysis to support the conclusion that cumulative effects are anticipated to be negligible to minor, and temporary.

IV. ENDANGERED SPECIES ACT

As noted in Objectors' previous comments, the USFS's analysis of the proposed project's impact on threatened and endangered species is insufficient and noncompliant with the ESA and corresponding regulations. Section 7 of the ESA directs each agency to ensure, in consultation with the FWS, 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 FWS 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 FWS 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 USFS 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).

The FEA states that Biological Assessments (BA) have been completed that evaluate the potential effect of the Proposed Action on listed aquatic and terrestrial species, including “measures the KNF believes are needed to minimize or compensate for effects.” FEA at 3-37. However, both the BAs for listed aquatic and terrestrial species were not made publicly available despite a request for them in Objectors’ previous comments and, more recently, formal FOIA requests (FOIA Tracking # 2025-FS-R1-08755-F and #2025-FS-R1-08556-F). This failure to include the BAs as an appendix to the FEA or provide them separately to requesting parties, while nonetheless relying upon them as authorities, deprives the public of a meaningful opportunity to comment. Moreover, given the potential for significant impacts to several listed species, both aquatic and terrestrial, updated biological opinions (BiOps) beyond the 2015 bull trout document should be prepared prior to any further actions.

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 proposed 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. FEA at 3-57. As noted in Objectors’ previous comments, this increased disturbance around the project site could increase the risk of habituation, which increases mortality risk for grizzlies. The USFS’s DEA did 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. DEA at 3-55. However, despite highlighting this inadequacy, the FEA failed to further address the issue and in fact failed to update or edit its response to this concern at all. At a minimum, the USFS must

evaluate the risks of the project with increased mortality for grizzlies including the following habituation-related 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.³⁵ 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.³⁶ 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.
- Third, the increased risk of habituation also increases mortality risk to bears due to possible mistaken identification killings by bear hunters in the area. These hunting activities take place in the project area and along the access road.

The FEA 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. FEA at 3-57, 3-59. While the USFS dismisses this loss of habitat as negligible, the loss of any core habitat is a potential risk to grizzly bears. The FEA acknowledges that the increased activity associated with the exploration project will adversely affect 269 acres of core habitat, causing displacement or disturbance of bears. FEA at 3-59. The FEA minimizes this impact as affecting only 0.6% of the core habitat in BMU 5. FEA at 3-59. According to the FEA “the amount of remaining core habitat in BMU 5

³⁵ Herrero, S., et al., 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).

³⁶ Richardson, L. et al., 2014. The economics of roadside bear viewing. *Journal of Environmental Management*. 140, p. 102–10. <https://doi.org/10.1016/j.jenvman.2014.01.051>.

would still be above the research benchmarks and still meet KNF Plan standards.” FEA at 3-59. This analysis, however, is not correct. The current core habitat encompasses 42,431 acres, which amounts to 60% of the total BMU 5 acreage and meets the minimum requirement of the forest plan. FEA at 3-39. This percentage puts the total BMU 5 acreage at 70,718 acres. Accordingly, a reduction of 269 acres would reduce the core percentage to 59.6% of the total BMU 5 acreage, below the forest plan standard and in violation of the forest plan, NFMA, and the ESA. Though Objectors’ previous comments drew attention to the DEA’s inadequate analysis of grizzly bear habitat, the USFS refused to alter or supplement this section of the FEA in any way. As it stands, the proposed project is not compliant with federal standards and the USFS has not offered sufficient mitigation measures or alternatives to remedy this violation.

This reduction in core is all the more harmful to grizzly bears because ineffective road closures in BMU 5 effectively increase the open motorized road density (OMRD). Grizzly bears face numerous human-caused threats to their populations, especially habitat loss and fragmentation. Designated Wilderness areas should provide secure habitat and serve as a safeguard from harassment and displacement caused by human activities. The project area is in BMU 5, and roads used for transport, NFSR 231 and NFSR 2316, bisect the Cabinet Face BORZ into BMU 5. Based on USFS 2024 bear year data, 37 barriers and gates intended for road closure were monitored. Ten of these gates were found to be ineffective, and evidence of illegal use was present at least one barrier.³⁷ This equates to 25% of the barriers or gates being ineffective for their intended purpose of grizzly bear security. Based on 2023 bear year data 4 road restriction devices in BMU 5 were ineffective, with illegal use at 2. FEA at 3-44. The FEA does not identify the ineffective closure devices or the supposedly closed roads that are receiving illegal use. This raw data information must be disclosed and analyzed to assure the scientific integrity of the FEA, because it affects whether BMU 5 is meeting OMRD standards. It also undermines the FEA’s reliance on compliance with Forest Plan standards to justify its decision not to prepare an EIS or a BiOp. It further forecloses any ability to determine whether forest plan standards are being complied with.

Photo and hair-snagging efforts by FWS documented grizzly bear presence in BMU 5 every year between 2002 and 2023. Between 2019 and 2023, 20 unique

³⁷ USDA Forest Service. (2025). *Libby Exploration Project Final Environmental Assessment*. USDA Forest Service, Northern Region, Kootenai National Forest, Lincoln County, Montana. P. 3-44, available at: <https://usfs-public.app.box.com/v/PinyonPublic/file/1900047138456>.

bears were recorded in BMU 5, of which five adults were known to be dead by 2023. Additionally, females with young have been documented in BMU 5 every year between 2003 and 2022.³⁸

Increased human access to backcountry areas, primarily through resource extraction roads, leads to more human-bear conflicts, resulting in higher bear mortality rates in both hunted and non-hunted populations.³⁹ In addition to direct fatalities caused by roads, the perceived risks from human presence may reduce bears' foraging efficiency,⁴⁰ and disrupt their activity patterns and movements⁴¹, which can diminish the overall effectiveness of their habitat.

³⁸ Kasworm, W.F., et al., 2024. Cabinet-Yaak grizzly bear recovery area 2023 research and monitoring progress report. U.S. Fish and Wildlife Service, Missoula, Montana. https://www.fws.gov/sites/default/files/documents/2024-10/cabyaak_grizzly_annual_report_2023_final-lr-100124.pdf.

³⁹ Falcucci, A., Ciucci, P., Maiorano, L., Gentile, L., & Boitani, L. (2009). Assessing habitat quality for conservation using an integrated occurrence-mortality model. *Journal of Applied Ecology*, 46, 600–609. <https://doi.org/10.1111/j.1365-2664.2009.01634.x>; McLellan, B.N. (2015). Some mechanisms underlying variation in vital rates of grizzly bears on a multiple use landscape. *The Journal of Wildlife Management*, 79, 749–765. <https://doi.org/10.1002/jwmg.896>; Nielsen, S., Herrero, S., Boyce, M.S., Mace, R.D., Benn, B., Gibeau, M.L., & Jevons, S. (2004). Modelling the spatial distribution of human-caused grizzly bear mortalities in the Central Rockies ecosystem of Canada. *Biological Conservation*, 120, 101–113. <https://doi.org/10.1016/j.biocon.2004.02.020>.

⁴⁰ Hertel, A.G., Zedrosser, A., Mysterud, A., Støen, O.-G., Steyaert, S.M. J.G., & Swenson, J.E. (2016). Temporal effects of hunting on foraging behavior of an apex predator: Do bears forego foraging when risk is high? *Oecologia*, 182, 1019–1029. <https://doi.org/10.1007/s00442-016-3729-8>.

⁴¹ Martin, J., Basille, M., Moorter, B. Van., Kindberg, J., & Swenson, J.E. (2010). Coping with human disturbance: Spatial and temporal tactics of the brown bear (*Ursus arctos*). *Canadian Journal of Zoology*, 883, 875–883. <https://doi.org/10.1139/Z10-053>; McLellan, B. N., & Shackleton, D. M. (1989). Grizzly bears and resource-extraction industries: Habitat displacement in response to seismic exploration, timber harvesting and road maintenance. *Journal of Applied Ecology*, 26, 371–380. <https://doi.org/10.2307/2404067>.

Grizzly bears avoid otherwise selected high-quality habitats when they are associated with roads.⁴² In a review of the impacts on grizzly bears from recreation, Fortin et al. (2016) concluded that displacement of grizzlies from high-quality habitat may result in reduced reproduction and survival through increased energetic costs and decreased nutritional intake.⁴³

Ultimately, the USFS concluded in its terrestrial BA that the proposed project “may affect, not likely to adversely affect” grizzly bears, but it has not provided the BA or its analysis to the public for scrutiny or comment and must do so prior to any further actions on this project. FEA at 3-37. The USFS must also consult with FWS 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 PoO for the entire 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 PoO for the construction and development of a mine at the Libby Exploration site would be submitted for approval.”⁴⁴ Given the company’s stated intention to use its

⁴² Wielgus, R.B., and P.R. Vernier. 2003. Grizzly bear selection of managed and unmanaged forests in the Selkirk Mountains. *Canadian Journal of Forest Research* 33:822–829.

⁴³ Fortin, J.K., K.D. Rode, G.V. Hilderbrand, J. Wilder, S. Farley, C. Jorgensen, and B.G. Marcot. 2016. Impacts of human recreation on brown bears (*Ursus arctos*): a review and new management tool. *PLoS One* 111:e0141983.

⁴⁴ 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.

exploration data to pursue full-scale mining, the USFS 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 FWS pursuant to the ESA. Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for Bull Trout in the Coterminous United States, 64 Fed. Reg. 58910 (Nov. 1, 1999). The 2014 Aquatic BiOp states that the segment of Libby Creek that is the receiving waters for Outfalls 001-003 “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.” As discussed at length above under the Fish and Aquatic life section addressing NEPA concerns, the DEA and subsequent FEA fail to adequately acknowledge and address the full impact of the proposed activity on threatened bull trout. The proposed project threatens bull trout populations and habitat through numerous avenues including, but not limited to, changes to water quality, stream flows, temperature, habitat, food availability, groundwater upwellings, hyporheic zones and connectivity. FEA at 3-55. The USFS’s analysis is inadequate under the ESA for many of the same reasons it is inadequate under NEPA, as described above.

While the USFS endorsed aquatic BA ultimately concluded that the proposed project “may affect, not likely to adversely affect” bull trout and bull trout designated habitat, it has not provided the BA or its analysis to the public for review or comment and must do so prior to any further actions on this project. FEA at 3-37. Further, the claims and analysis that the USFS has provided lack sufficient data and citations to be verified. The Objectors’ previous comments highlighted an example of this concern regarding the DEA’s claim that the proposed project will not affect the relationship between bull trout and non-native fish in the project area. The USFS attempted to provide citations for this claim in the FEA but in doing so admits that “changes to habitat or water quality can cause increased numbers of non-native fish.” FEA at 3-57. The FEA also acknowledges that “when they co-occur, [non-native fish] could possibly become numerically dominant.” FEA at 3-57. The FEA denies that any potential changes to habitat and water quality will be significant enough to impact this ecosystem balance but fails to provide a citation to support this claim. FEA at 3-57 and fails to acknowledge that the reach of Libby Creek directly impacted by and adjacent to this proposed project provides the best remaining bull through habitat along Libby Creek.

Moreover, the USFS's response to comments fails to address the majority of Objectors' extensive comments on bull trout. This is especially apparent with respect to impacts from sedimentation and climate change. Regarding sediment, the Response to Comments section notes that the increase in traffic and road maintenance associated with the project will result in "increase in sediment input to Libby Creek." FEA, Appendix E at 44. The FEA then discounts these impacts as a "negligible increase" in sediment because roads currently contribute only 0.17% of the sediment load in the creek. FEA at 3-55. This analysis, however, fails to recognize that the portion of Libby Creek downstream of the project and of the impacted roads is currently impaired for excessive sedimentation and not fully supporting aquatic life.⁴⁵ Similarly, the upper reach of Libby Creek is impaired and not supporting aquatic life due to substrate alteration and alteration in streamside covers. Thus, if existing conditions are already harmful, in part, due to excessive sedimentation, adding more sediment cannot be negligible. Further, doing so is inconsistent with the USFS's obligations in its Organic Act, which prohibits the agency from violating water quality standards. *Save our Cabinets v. United States Dep't of Agric.*, 254 F. Supp. 3d 1241, 1250 (D. Mont. 2017); 36 C.F.R. § 228.8(b). If current conditions in Libby Creek violate water quality standards due to excessive sediment, adding still more sediment to the creek will also violate water quality standards.

Similarly, if existing conditions make Libby Creek incapable of supporting its designated beneficial use of supporting aquatic life, aggravating that condition will not be harmless or "negligible" to aquatic life, including bull trout. These impacts will be detrimental to bull trout recovery. *Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, 524 F.3d 917, 930 (9th Cir. 2008) ("However, an agency may not take action that will tip a species from a state of precarious survival into a state of likely extinction. Likewise, even where baseline conditions already jeopardize a species, an agency may not take action that deepens the jeopardy by causing additional harm."). Similarly, the USFS's Response to Comments fails to consider the cumulative and synergistic impacts of the project and climate change on aquatic life, including bull trout. While the FEA acknowledges that climate change will "decrease the amount of available bull trout habitat in the area," FEA at 3-85, it fails to address if and how these impacts will compound those of the project. Especially pertinent impacts include the existing impairment of Libby Creek, the

⁴⁵ MT DEQ, Water Quality Standards Attainment Record for unit MT76D002_062, (April, 2021), available at: https://deq.mt.gov/files/Water/WQPB/CWAIC/Reports/2020/MT76D002_062.pdf.

critical importance of the non-hybridized population of bull trout above Libby Creek falls, and the likelihood that the project will be permitted to maintain a mixing zone of approximately 3,400 feet in upper Libby Creek. While the USFS's response to comments dismisses the impacts of the mixing zone on the supposed basis that "discharges within mixing zones are not allowed to impair existing beneficial uses," FEA, Appendix E at 64, that is incorrect as a matter of law. The Montana Water Quality Act prohibits discharges that violate "acute standards for aquatic life" within a mixing zone that will "impair existing beneficial uses," ARM 17.30.507(1)(b). There is no prohibition on discharges that exceed chronic standards for aquatic life in mixing zones. *Id.* Accordingly, under this reasoning, MMC would be permitted to discharge pollution into the mixing zone that would violate chronic aquatic life standards. The FEA erred by failing to consider these impacts together with the impacts of the project, the degraded baseline, and the worsening impacts of climate change.

In addition to the inadequacy of the USFS's FEA, the 2014 Aquatic BiOp is outdated and no longer fully accurate. The USFS should produce an updated BiOp that contains complete analysis including, but not limited to, the foreseeable impacts on bull trout 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 BA for Lynx should have been included in the FEA to allow the public to make adequately informed comments.

Further, the FEA acknowledges that there is substantial lynx habitat in the project analysis area, amounting to 23,565 acres. The FEA notes:

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.

FEA at 3-50. However, despite this, the FEA states that there are no reliable population estimates of Canada Lynx and that the population in the analysis area is unknown. FEA at 3-50. The USFS offers a rough estimate of the number of lynx in the area based on an assumption that, "the density of Canada lynx are evenly distributed within suitable habitat." FEA at 3-50. An assumption for which the

USFS does not offer any source or data to support despite offering sources to support similar assumptions for other listed species. FEA at 3-52.

The FEA acknowledges that lynx in the analysis area may be subject to disturbance and displacement from existing project activities. FEA at 3-50. In addition, vehicular collisions and incidental take from trapping are likely to increase with the project. Yet, as noted in Objectors' previous comments, without baseline data on the occurrence of lynx, it is impossible to quantify risks to the population. The FEA acknowledges that the probability that a lynx is subject to human disturbance or risk of vehicle collision from Project activities and traffic is difficult to detect or measure. FEA at 3-58. Despite this uncertainty, the USFS endorsed terrestrial BA concluded that the proposed project "may affect, not likely to adversely affect" lynx and their habitat. FEA at 3-37. The USFS has not provided the terrestrial BA or its analysis to the public for scrutiny or comment and must do so prior to any further actions on this project.

The full mine associated with the Libby Exploration project is predicted to have even greater and longer-term impacts on Lynx. These include, but are not limited to, 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 also have significant impacts on habitat and travel and dispersal capabilities. The evaluation addit 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. As noted above, the USFS's current analysis and FEA do not address or acknowledge any impacts of subsequent mining actions. Further analysis for the proposed project should therefore include the full scope of the Montanore mine project and its impacts on lynx populations and habitat. *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 ESA in November 2023 due to its small and isolated population, degradation of habitat, and sensitivity to human disturbance. The FEA acknowledges that the project analysis area contains maternal, primary, male dispersal, and female dispersal habitats and that USFWS has documented sightings of wolverine in the area in recent decades. FEA at 3-52. The proposed project threatens to have several impacts including, but

not limited to, altered 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. Despite these acknowledged threats to the wolverine populations, the USFS endorsed terrestrial BA concluded that the proposed project “may affect, not likely to adversely affect” wolverines. FEA at 3-37. However, the USFS has not provided the BA or its analysis to the public for scrutiny or comment and must do so prior to any further actions on this project.

The FEA, much like the DEA, dismisses impacts to wolverine from the increased project activity on two USFS 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. FEA at 3-61. However, despite highlighting this in Objectors’ previous comments, the FEA still 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.⁴⁶ 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. FEA, Appendix B at 13.

The FEA 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. FEA at 3-61. 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

⁴⁶ 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).

related within the disturbance area.⁴⁷ It is also unclear from the FEA whether the project will be associated with additional plowing, or whether the plowing will remain the same as current levels. Without this clarity, the FEA fails to adequately evaluate the impacts of plowing on wolverine.⁴⁸

The FEA further 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. FEA at 3-62. But the FEA does not define which “prey” or “foraging opportunities” it is referencing. Nor does the FEA seem to account for the highly localized ways that wolverine adapt to local food availability.⁴⁹ This imprecision in the analysis makes it difficult to evaluate possible impacts of the proposed project and may underestimate the potential effects on wolverine.

⁴⁷ 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*.

⁴⁸ 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.

⁴⁹ 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.

There are also several inaccuracies in the FEA in its description of wolverine that suggest the analysis was not thorough and may underestimate the impacts on the species. First, the FEA'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. FEA at 3-52. The only known breeding pairs are located in MT, ID, WY, and the Cascades in WA.⁵⁰ This description should be updated to accurately reflect the distribution described in the proposed listing, which is a much smaller area than the FEA suggests. Second, the density estimates in the FEA extrapolate from studies done in the 1970's. FEA at 3-52. Because the FEA relies on outdated studies, these estimates are likely to be inaccurate and the estimates are quite high when compared to more 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 FEA 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.⁵¹ 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,

⁵⁰ See, e.g. Moqanaki et al, 2023. Wolverine density distribution reflects past persecution and current management in Scandinavia. *Ecography*.

⁵¹ 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.

seasonality, and potential foraging opportunities caused by industrial development.⁵²

- 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.⁵³

The USFS'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. Despite pointing out these inaccuracies from the DEA in Objectors' initial comments, the FEA did not correct them or attempt to add any support to its initial claims. FEA at 3-52.

Finally, as with the other listed species, the USFS must also consult with the FWS 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). Given the potential for

⁵² 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 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...")

⁵³ *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.")

significant impacts to wolverine this consultation should result in a full and up-to-date BiOp on the listed terrestrial species affected, including the wolverine.

V. RECLAMATION AND CLOSURE

A. Financial Assurance

As detailed by the Objectors' previous comments, NEPA analysis should include a draft financial assurance calculation associated with the proposed project. The EPA 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."⁵⁴

In the response to the Objectors' comments, the FEA states that the financial assurance amount and mechanism have no bearing on the environmental effects analysis presented in the EA. FEA, Appendix E at 62–63. MMC is required to comply with the decision made by the USFS and any permit stipulations included in the decision. Additionally, they are required to follow all other state and federal laws and regulations. The FEA states that the site would be reclaimed and closed over a three-year period, with post-reclamation monitoring occurring for up to five years thereafter. FEA at 3-37. For the purposes of the FEA analysis, reclamation is assumed to be successful as proposed. Additional details about reclamation, standards, and timing are provided in the PoO.

This response is inadequate. Reclamation and closure costs are not only a significant factor for calculating the capital costs of the proposed project and associated costs for water treatment and other mitigation features, but they are also a potential major liability to the public and to the environment if the costs are not properly calculated and managed and the company becomes insolvent. This means reclamation and closure costs could have a major potential social and environmental impact. As EPA noted in its comments: "Understanding reclamation is critical to informing the public and decision-makers of the financial risk to the public posed by conditions at the site, and the viability of the reclamation/closure

⁵⁴ EPA letter to KNF and DEQ, Comments on Draft Environmental Impact Statement for the Montanore Project (CEQ #20090048), July 29, 2009.

activities is an important factor in determining potentially significant environmental impacts of this Project.” EPA, Ref: 8EJC-NE, Comment Letter for Montanore Libby Exploration Project Environmental Assessment (Mar. 25, 2025) (attached as Exhibit15). This type of hubris is why the necessary reclamation was not completed and long-term social and environmental impacts have occurred at the Beal Mountain, Zortman Landusky, Kendall, Montana Tunnels, and other major mines in Montana.

B. More detailed information on reclamation plans.

As outlined in Objectors’ previous comments, the FEA fails to adequately describe or analyze the proposed reclamation plan. The existing soil stockpile originates from past operations and has therefore been sitting onsite for an extensive period of time. The FEA 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 FEA should consider the potential effects to water quality and bull trout critical habitat of unsuccessful reclamation/revegetation efforts.

The USFS again fails to provide a meaningful response to these concerns. FEA, Appendix E at 62. The reclamation plan fails to provide fundamental information necessary to demonstrate that there will be a sufficient quality and quantity of soils to complete reclamation and ensure revegetation success and to prevent adverse impacts to surface waters and aquatic habitat. The PoO states that approximately 15,200 cubic yards are stockpiled at the site from previous surface disturbance activities, but it doesn’t quantify how much topsoil and growth medium are needed to reclaim the site and ensure revegetation success - information that is fundamental to any reclamation plan. In fact, the acknowledges the scarcity of soils, stating that “[b]ecause soil is limited, MMC will cover all areas with the available growth media, *but soil may have limited thickness.*” PoO at 44, emphasis added.

The PoO provides some limited information about soil depth for the Waste Rock Storage Areas, stating that MMC will place 12 to 24 inches of topsoil on the flat surfaces and 6 to 12 inches for sloped surfaces. PoO at 46. However, it fails to provide any information about the depth of topsoil and growth media for the remaining mine features, including the waste rock sump, parking area, roads, building area, portal, etc. It also fails to provide any data to indicate that 6 inches of topsoil for sloped surfaces is adequate for reclamation success.

Importantly, the FEA and PoO fail to demonstrate that the available stockpiled soils are suitable for reclamation purposes, given the lengthy period of time these soils have been stockpiled. It is well established that stockpiling can lead to significant changes in topsoil physical and biological properties that can be detrimental to reclamation. According to the PoO, the suitability of soil material or growth media to be used for reclamation was determined from physical and chemical data collected during the baseline soils survey. PoO at 44. It further states that the results of these analyses for alluvial soil at the Libby Adit Site show 5 to 55 percent rock fragments with low to high water holding capacity, and slow to rapid permeability. It states that soil with more than 50 percent rock fragments are generally considered unsuitable for reclamation. This response is inadequate because the supporting baseline data was not provided in the DEA, FEA or the PoO, therefore it is impossible to determine what percent of the baseline soils survey were identified as suitable for reclamation (e.g., less than 50% rock fragments, etc.). More importantly, the baseline soil survey is outdated, and the quality of the stockpiled soil will have degraded over time. A current analysis of the soils stockpile is needed to determine the quality and quantity of available soils, a detailed reclamation plan is necessary to quantify the volume and depth of soils necessary to achieve reclamation success for the entire site.

The reclamation plan must also be amended to include the geosynthetic barriers for the WRSAs as identified in the January 4, 2023 amendment (22-001) to the MTDEQ Operating Permit (00150), which was not included in the reclamation included in the DEA or FEA analyzed in this Objection.

VI. EXTRALATERAL RIGHTS

Objectors' previous comments raised concerns about the potential for proposed activities outside of MMC's extralateral rights. The MMC's PoO states that, "MMC will not complete mineral exploration drilling for any mineral resource outside of its extralateral rights. PoO at 24, 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. As specified in Objectors' previous comments: 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). As noted in Objectors’ previous comments, the FEA must identify an alternative that does not include mineral extraction, 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).

In response to Objector’s comments, the FEA states only that the proposed exploration activities would occur on private land and underneath KNF-administered lands, including the Cabinet Mountains Wilderness, consistent with United States mining laws and regulations at 36 CFR 228. MMC’s valid existing rights were established prior to wilderness designation. FEA, Appendix E at 60.

This is inadequate because the FEA and FONSI fail to describe how the USFS will ensure that proposed operations stay within the boundaries of its extralateral rights and private mineral estate and preclude the excavation/removal of mineral resources outside of its extralateral rights and mineral estates. The only depiction of the extralateral rights boundary in the FEA is Figure 2-4, FEA at 2-9, and Figure 3-3 in the PoO, which is an extremely simplified schematic that fails to identify the proposed adit extension in relation to the various ore zones, nor identify the location and extent of the proposed drilling in relation to the extralateral rights boundaries. The groundwater modeling report provides a schematic of the ore zones in relation to the adit which indicates that the proposed adit extension could extend through the lower zone of the Revett formation outside of the extralateral rights boundary. Giteau 2025, at 9. Without adequately detailed engineering drawings and monitoring activities to verify, it is impossible to ascertain from the FEA, PoO and FONSI that the proposed activities are consistent with the US mining laws and regulations.

The FEA and FONSI also fail to identify a monitoring plan that describes how the USFS will ensure that exploration drilling is in compliance with the mining law. The USFS identified monitoring plans for this purpose in the 2015 Montanore Mine FEIS:

To ensure MMC only mined ore within its valid existing rights and that the underground mine development adhered to required buffer zone boundaries, the Plan of Operations and DEQ operating permit would include requirements for underground monitoring. MMC would fund and facilitate biannual surveys of the underground workings that would be completed by an independent qualified mine surveyor. The surveyor would be selected and directed by the agencies through an agreement with MMC. The surveyor would have no financial interest in the Montanore Project. The agencies may also require more frequent surveys and/or as-built drawings if discrepancies arose. MMC would provide mine access, logistical support, and all information required by the surveyor to complete independent inspections and resulting documentation for the identified tasks. This would include all company-conducted mine surveys of the underground workings. After completing the monitoring survey, the independent surveyor would submit maps of the workings to the agencies and would report any underground disturbances that crossed the established extralateral rights boundary, entered into designated buffer zones, or deviated from agency approved mine design.⁵⁵

This monitoring plan is not included in the current plan or FONSI requirements. The USFS has failed to show why it has abandoned this necessary requirement to ensure compliance with applicable mining laws and regulations.

VII. CLEAN WATER ACT AND MONTANA WATER QUALITY ACT

As expressed in Objectors' previous comments, the USFS's analysis of the Montana Water Quality Act (MWQA) and the CWA is also deficient. The FEA impermissibly relies on state permitting decisions including the Montana DEQ's 2006 MPDES permit for the company. The USFS cannot rely on the 2006 MPDES permit because it does not cover the activities contemplated by the company's PoO at issue in the FEA; 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

⁵⁵ USDA., U.S. Forest Service, Final Environmental Impact Statement Montanore Project, Volume 1, March 2015. p. 157.

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 USFS 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 FEA. Despite Objectors' previous comments criticizing such dependence, the FEA maintains 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. FEA at 2-17, 3-25.⁵⁶ However the 2006 operative permit authorizes only "the discharge of wastewater associated with...*previously authorized* exploration activity only...".⁵⁷ In other words, DEQ's 2006 MPDES permit does not analyze the activities related to Montanore's PoO analyzed in the USFS's FEA. 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.⁵⁸ Given the outdated scope of the 2006 MPDES permit, the USFS cannot rely on that permit to ensure compliance with state water quality standards.

Second, the USFS'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

⁵⁶ 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 Env't Info. Ctr. v. Montana DEQ*, 2020 MT 288, 402 Mont. 128, 476 P.3d 32.

⁵⁷ DEQ Invites Public Comment on Wastewater Permitting Actions for the Montanore Mine, available at: <https://deq.mt.gov/News/pressrelease-folder/Montanore-permit-24-11> (Nov. 1, 2024).

⁵⁸ MT 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-DPER-MT0032158.pdf>.

permit to remain in effect until the new permit was issued.⁵⁹ 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 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.”⁶⁰ Given the impending issuance of a new permit, which will undoubtedly include additional analysis not undertaken in the 2006 permit, the USFS cannot rely on the 2006 permit’s analysis to support its conclusion in the FEA that state water quality standards will be met. FEA at 3-25. In the USFS’s Response to Comments the USFS acknowledges that the permit is outdated and “updated effluent limits are anticipated.” FEA, Appendix E at 65. However, notwithstanding this acknowledgement, the USFS merely states that it will update the WTP, SWPPP, and monitoring, if necessary, without offering details on a timeline or procedure for doing so. FEA, Appendix E at 64–65.

Further, even if there was an active MPDES permit issued by DEQ related to the activities contemplated in the FEA, 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 USFS cannot rely on it to satisfy its NEPA obligations here. Despite raising this objection in Objectors’ previous comments, the USFS declined to acknowledge or address it in its response to comments covering the MPDES permit. FEA, Appendix E at 64–65.

⁵⁹ 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).

⁶⁰ DEQ Invites Public Comment on Wastewater Permitting Actions for the Montanore Mine, available at: <https://deq.mt.gov/News/pressrelease-folder/Montanore-permit-24-11> (Nov. 1, 2024).

Finally, the Organic Act requires the USFS “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 USFS’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 maintain and protect fisheries and wildlife habitat.” *Id.* at 1170. *See also Hells Canyon Presv. 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 USFS 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. *See Friends of Pinto Creek v. U.S. E.P.A.*, 504 F.3d 1007, 1012 (9th Cir. 2007) (explaining "no permit may be issued to a new discharger if the discharge will contribute to the violation of water quality standards"); 40 C.F.R. § 122.4(d), (i). As the FEA notes, Montana DEQ has classified two segments of Libby Creek downstream from Outfalls 001-004 as impaired pursuant to § 303 of the CWA. 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. DEQ defines physical substrate alterations as "a non-pollutant listing commonly linked to sediment impairment."⁶¹ DEQ acknowledges in the FEA that streams impaired because of

⁶¹ MT DEQ, Kootenai-Fisher Project Area Metals, Nutrients, Sediment, & Temperature TMDLs, (May 2014) at 5-25, available at: <https://deq.mt.gov/Files/Water/WQPB/CWAIC/TMDL/K01-TMDL-04a.pdf>.

sedimentation/siltation require a TMDL. FEA at 3-17. However, the agency's water quality standards report ultimately limits the pollution categories to "dewatering or habitat modification" and denies the need for a TMDL. 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. Despite noting this violation in Objectors' previous comments, the FEA continues to deny the need for a sediment-related TMDL in unit MT76D002_061 of Libby Creek. FEA at 3-17. Further, the USFS's Response to Comments fails to address the TMDL issue at all. FEA, Appendix E.

DEQ has acknowledged that stream assessment unit MT76D002_062, which is immediately downstream of unit MT76D002_061 and Outfalls 001-004, is impaired due to existing sediment pollution and is subject to a sediment TMDL. As the proposed project contributes sediment-related pollution to the upstream portion of Libby Creek, it also naturally flows downstream to unit MT76D002_062 as well. Further, as of September 23, 2013, DEQ had identified 11 existing permitted point sources with the potential to contribute sediment to the impaired segment of Libby Creek. However, the stream's 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. The regulations implementing the CWA mandate that when a new project will contribute to the violation of water quality standards the state or agency must demonstrate before the close of the comment period that:

- (1) There are sufficient remaining pollutant load allocations to allow for the discharge; and
- (2) The existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards. The Director may waive the submission of information by the new source or new discharger required by paragraph (i) of this section if the Director determines that the Director already has adequate information to evaluate the request.

An explanation of the development of limitations to meet the criteria of this paragraph (i)(2) is to be included in the fact sheet to the permit under § 124.56(b)(1) of this chapter.

40 C.F.R. § 122.4(i). In the absence of plans that provide for compliance with the applicable water quality standards, DEQ's authorization of additional sediment pollution that will affect the impaired segment of Libby Creek violates the CWA, Organic Act, and agency regulations.

As outlined by Gardner (2025), there is also considerable uncertainty about the dewatering effects of the proposed action on hydrologically connected rivers, streams, and other waterbodies within the Wilderness Area. The DEA failed to demonstrate that the proposed plan will comply with the nondegradation protections afforded Outstanding Resource Waters. In response to concerns about nondegradation protections in Objectors' previous comments, the USFS's response to comments points to Section 3.4.2.1 of the FEA. FEA, Appendix E at 67. However, the text in this section addressing nondegradation was unchanged from the original draft assessment and fails to correct or address its inadequacies. FEA at 3-19–3-20. As a result of this noncompliance at the state level, the USFS's FEA also violates 33 U.S.C. §1341.

Though Objectors' previous comments extensively highlighted the transgressions detailed above, the FEA fails to remedy them and its response to comments insufficiently addresses them. FEA at 63–68. Despite the assertion in the USFS's FONSI that the actions proposed are "consistent with federal, state, and local laws," the FEA's outdated and inadequate analysis necessarily refutes this claim. FONSI at 12. To remedy these inadequacies, the USFS must vacate these documents and remand the project for further review consistent with applicable federal, state, and local law.

VIII. FOREST PLAN CONSISTENCY

The Objectors' previous comments included detailed analyses of the proposal's failure to comply with forest plan standards. The Response to Comments section in the FEA failed entirely to address these concerns, which are therefore restated and incorporated here:

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. 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:

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.

LMP	Description	Rationale for Project Consistency	Comment
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.

LMP	Description	Rationale for Project Consistency	Comment
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).

LMP	Description	Rationale for Project Consistency	Comment
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.

LMP	Description	Rationale for Project Consistency	Comment
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.

Further, while Appendix A of the FEA includes a matrix that purports to demonstrate compliance with forest plan standards, the analysis overlooks significant problems and shortcomings.

- GOAL-WTR-01 aims to “maintain or improve watershed conditions ... to provide water quality ... conditions that support ecological functions and biological uses.” Appendix A cites groundwater modeling to demonstrate compliance with this goal, but overlooks the FEA’s admission that the project will contribute additional sediment to upper Libby Creek and lower Libby Creek, both of which are not supporting beneficial uses due to excessive sediment conditions. It is irrational to conclude that adding more sediment to

a system suffering from excessive sediment will “maintain or improve” conditions, when it will do the opposite. It will worsen conditions.

- FW-DC-WTR-02 provides that “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 narrative aquatic species and maintain the physical integrity of their habitats.” Appendix A mentions nutrient and metal concentrations, but fails entirely to acknowledge that receiving waters do not meet water quality standards for sediment and that the project will increase the delivery of sediment to upper and lower segments of Libby Creek. Moreover, the FEA shows that the project will drawdown the water table in the wilderness, which would affect multiple groundwater dependent ecosystems and lakes. FEA at 3-21–3-23. It is thus demonstrably not the case that water quality meets water quality standards and that flow conditions will maintain the physical integrity of surface and groundwater.
- FW-GDL-WTR-01 provides that “management activities in impaired watersheds ... with approved TMDLs are designed to comply with the TMDL. Management activities in watersheds with streams on the 303(d) list are designed to maintain or improve conditions relative to the cause for impairment and will not cause a decline in water quality or further impair beneficial uses.” Appendix A states that there are no TMDL in upper Libby Creek, but ignores that lower Libby Creek has a TMDL and is currently impaired for sediment. The USFS cannot ignore this TMDL or impairment. The standard refers to “watersheds” not specific segments. There is no doubt that sediment from upper Libby Creek moves downstream. Nor is it disputed that the project will deliver additional sediment to Libby Creek. Thus, the project does not comply with this standard. Increased sediment does not “maintain or improve” conditions in Libby Creek with respect to sediment. Moreover, the upper reach of the stream is also impaired for sediment, even though DEQ has not required a TMDL for the impairment. The project does not comply with this forest standard.
- GOAL-RIP-01 requires the USFS to “maintain or improve riparian areas in order to support the ecological functions.” Appendix A acknowledges that the project may cause “potential increases in sediment delivery to Libby Creek,” but suggests that it would be “negligible.” The standard, however, does not permit progressive worsening of riparian areas. It requires maintenance or improvement. Increased sediment to a watershed that is already impaired for excessive sediment is not maintenance or improvement.
- FW-DC-RIP-01 requires “Riparian Habitat Conservation Areas (RHCA)s have health, functioning riparian systems, and associated habitats that support well-distributed native and desired non-native plant, vertebrate, and

invertebrate communities.” Appendix A asserts that the project complies with this standard because the groundwater model indicates that baseflow will not be reduced. This ignores that the model shows drawdown in multiple GDEs and the headwaters of Libby Creek. It also ignores the project’s contribution to the already impaired condition of the Libby Creek watershed.

- FW-DC-RIP-02 requires “Riparian and aquatic ecosystems, including stream channel integrity, channel processes, and sediment regimes function characteristically for a given landscape and climatic setting.” Appendix A acknowledges that the project may increase sediment to the stream, but dismisses the increase as negligible because roads account for only a small fraction of sediment delivery to the system. But this ignores that Libby Creek is already impaired due to excessive sediment and riparian conditions. There is no evidence that this standard is met. The watershed’s sediment regime and riparian conditions are not functioning as they should and this project will only worsen the conditions.
- FW-DC-RIP-03 provides that “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.” Appendix A states that this standard will be met because “treatment will ensure that water quality standards are not exceeded.” This ignores, however, that the draft discharge permit would allow a nearly one-half mile long mixing zone in upper Libby Creek in which the stream would not be free from chemical contaminants and excess nutrients. The proposed mixing zone would violate this forest standard. Moreover, the USFS’s unchecked reliance on Hecla’s supposed environmental compliance, which is unwarranted given Hecla’s long history of violating water quality standards, as noted.
- GOAL-AQS-01 requires the agency to “maintain or improve the distribution of native aquatic and riparian-dependent species and contribute to the recovery of threatened and endangered aquatic species.” Appendix A states the project is “neutral” with respect to this standards because changes to aquatic conditions are expected to be negligible. But this simply soft-pedals the known impacts of the project that will distinctly not maintain or improve conditions for bull trout. In addition to increasing sediment delivery to an impaired stream and permit violations of chronic aquatic life standards in an over half-mile long mixing zone, the project will cause these impacts in a reach that is both critical to bull trout because it is isolated from non-native competitors and a reach that is threatened by increased water temperatures from climate change currently and in coming decades. USFS has not demonstrated compliance with this goal.

- FW-DC-AQS-01 provides for conditions that ensure long-term health native fish populations and short-term native fish populations that “thrive and expand” and that “depressed populations increase in numbers.” Appendix A acknowledges that the project will cause “minor” “adverse effects” to Libby Creek, but asserts that these adverse effects would, somehow, be “neutral.” This is not reasoned decision-making. Further, it ignores that Libby Creek is already impaired and not fully supporting aquatic life and the project will only worsen that condition. Worsening an existing impairment is distinctly not neutral and does not support thriving conditions. Further, the USFS ignores the harm from the project’s huge mixing zone, increases in water temperature from climate change, and demonstrated drawdown in highest reaches of Libby Creek. *See* FEA at 3-21–3-23.
- FW-DC-AQS-05 requires that “habitat conditions improve in occupied bull trout streams.” This standard cannot be met given the increased pollution and contribution to Libby Creek’s impaired status from the project, along with increased pollution in the headwaters of the stream (from the project’s mixing zone) and groundwater drawdown.
- GOAL-WL-01 aims to manage “wildlife habitat ... to promote the diversity of species and communities and to contribute toward the recovery of threatened and endangered terrestrial wildlife species.” Appendix A states, incorrectly, that all disturbance will occur on private land with no “disturbance of KNF surface resources.” This is incorrect. The FEA acknowledges that noise and light from the project will disturb over 200 acres of grizzly bear core habitat in BMU-5. FEA at 3-58. This disturbance extends well into public land. It also impairs grizzly bear core, reducing the amount of effective core area in BMU-5 below forest plan standards (reducing core below 60% in BMU-5). This is one of the most important BMUs in the Cabinet Yaak Ecosystem, which regularly is home to female bears with cubs. This reduction of effective core habitat distinctly will not contribute to “recovery” of grizzly bears.
- FW-DC-WL-02 and 03 require the USFS to make habitat available to “accommodate species requiring large home ranges” and to further “recovery” by assuring that “security habitat” is available. Appendix A contends that these standards are met because core and open road density standards are met for grizzly bears. But that ignores that the project will impair over 200 acres of core habitat and that open road density is certainly higher than reported because road closures in BMU-5 and the adjacent BORZ zone have not been effective. The core reduction reduces effective core below forest plan standards. Further, proposed mitigation, via road closures, are not likely to be effective, given the USFS plans only to use gates to close roads. Gate closures have not been effective in the area.
- FW-DC-WL-04 provides that “all grizzly BMUs have low levels of disturbance to facilitate denning activities, spring use, limit displacement, and reduce

human/bear conflict and potential mortality. Spring, summer, and fall forage is available for the grizzly bear. Appendix A recognizes that there will be disturbance of spring, summer, and fall range. Further, the project will reduce effective core habitat below forest plan standards. The USFS also relies on supposed effectiveness of seasonal road closures, even though the FEA recognizes that such closures are regularly not effective in the area. The USFS has not demonstrated compliance with this standard.

- FW-DC-WL-05 provides that “recovery of the grizzly bear is promoted by motorized access management within the ... Cabinet-Yaak recovery zone[].” Appendix A states that the project would not “change the existing conditions for core habitat, OMRD, or TMRD, within BMU 5 or secure habitat or open or total linear miles within the Cabinet Face BORZ. Current conditions meet or exceed .. the Forest Plan Standard.” This is incorrect. The FEA acknowledges that the project will impair over 200 acres of core habitat, which will bring conditions in BMU 5 below the 60% threshold and forest plan standard. Moreover, it is far from clear that OMRD standards are met, given the FEA’s acknowledgement that road closures in BMU 5 and the Cabinet Face BORZ are not effective and that use of closed roads is ongoing. The FEA does not provide data about what extend to roads that should be closed are currently in use. The USFS has not demonstrated compliance with this standard. For this same reason, the USFS has not demonstrated compliance with FW-STD-WL-02 or FW-GDL-WL-01.

In addition to the inadequacies depicted above. The FEA is further inconsistent with forest plan standards with regards to Tribal rights and interests. Objectors highlighted this issue in more detail in the Cultural Resources section of this document but also reiterate and incorporate these concerns again here.

IX. NEW INFORMATION

The FEA includes extensive new information and analysis that was not included in the DEA, and not available for public review and comment as required under NEPA. The new information and analysis include temperature data and analysis, threatened species information and impacts analysis, climate change sensitivity runs, scientific analysis for nutrient criteria, discharge permit data, and other information, as included in the following reports:

ERO Resources Corp. 2018. Memorandum from Richard Trenholme to Lynn Hagarty and Craig Towery (Kootenai National Forest). Montanore Project Evaluation Phase Temperature Analysis. March 6, 2018.

Kline, Ed. 2024. Biological Assessment for Threatened, Endangered, and Proposed Aquatic Species and Designated Aquatic Critical Habitat on the Montanore Minerals Corp. Libby Exploration Project. October 24, 2024.

Piteau Associates. 2025. Technical Memorandum RE: Climate Change Sensitivity Runs. June 16, 2025.

Suplee, M., V. Watson, A. Varghese, and J. Cleland. 2008. Scientific and Technical Basis of the Numeric Nutrient Criteria for Montana's Wadeable Streams and Rivers. November 2008.

Suplee, M. and V. Watson. 2013. Scientific and Technical Basis of the Numeric Nutrient Criteria for Montana's Wadeable Streams and Rivers: Update 1. Montana Department of Environmental Quality. May 2013.

United States Environmental Protection Agency (U.S. EPA). 2019. ICIS-NPDES Permit Limit and Discharge Monitoring Report (DMR) Data Sets. Previously, but no longer, available at: <https://echo.epa.gov/tools/datadownloads/icis-npdes-dmr-and-limit-data-set>.

United States Fish and Wildlife Service (USFWS) 2010. Crosswalk between the Bull Trout Matrix of Pathways and Indicators (MPI) and Primary Constituent Elements (PCEs) of Proposed Critical Habitat.

United States Fish and Wildlife Service (USFWS). 2025. Letter from Benjamin Conard for Amity Bass, Field Office Supervisor, to Chad Benson, Forest Supervisor. February 28, 2025.

United States Forest Service (USFS). 2022. Scoping Summary Libby Exploration Project Environmental Assessment, U.S. Department of Agriculture, Kootenai National Forest, Libby Ranger District. December 14, 2022.

United States Forest Service (USFS). 2024a. Letter from Chad Benson, Forest Supervisor to Amity Bass, Field Supervisor Montana Ecological Services US Fish and Wildlife Service regarding transmittal of Biological Assessments for the Libby Exploration Project. December 19, 2024.

United States Forest Service (USFS). 2024f. Libby Creek Mining Operations Scoping Document. Kootenai National Forest, Libby Montana. May 2024.

The FEA also references new information from Geomatrix 2010, but the full citation is not included in the reference section, and the supporting document was not provided for public review. FEA at 3-25. Objectors requested many of the

supporting documents from the KNF and, at their direction,⁶² submitted a FOIA request,⁶³ but the documents were not provided before the end of the public comment period.

In addition, the USFS project webpage provided a new PoO, updated to June 2025, with the FEA which was not provided for public review during the DEA period.⁶⁴ The DEA cited a December 17, 2024 plan, but the plan that was provided on the webpage at the time was dated December 19, 2024.⁶⁵ The 2024 PoO was deleted from the Forest Service project webpage, so the only PoO now provided by the Forest Service to the public is the 2025 updated plan.⁶⁶ The revised 2025 plan omits the content of the monitoring plan in Appendix B, which previously described the monitoring program that MMC would implement during the 16-year life of the Project, environmental monitoring proposed by MMC and reporting requirements.⁶⁷

Furthermore, as noted above, the December 2022 plan amendment approved by MTDEQ in January 2023, includes a substantively different reclamation plan for the waste rock that's removed from the underground adit. It incorporates a cover system for the WRSAs, which is not included in the PoO and FEA. It also requires different criteria for recontouring. It states that MMC will grade final slopes of the WRSAs to be a *maximum of 3 Horizontal:1 Vertical*, whereas the FEA and PoO propose to reclaim the WRSA with final slopes of the WRSAs reggraded to slopes of 2H:1V or less. PoO at 48. The USFS must include a reclamation plan that is consistent with that of MTDEQ, specifies the contours of the reclaimed WRSAs, including the ultimate footprint, and the cover system and incorporates engineering designs to demonstrate that it will fit within the existing footprint.

Without this information, the public cannot ensure the “scientific integrity” of the FEA’s analysis. 42 U.S.C. § 4332(2)(D). USFS may not tier to or incorporate by reference materials that are not reasonably available to the public. 40 C.F.R.

⁶² See e-mail from Julie Hopkinson, Forest Minerals Program Manager, to Bonnie Gestring, Earthworks, July 15, 2025 (attached as Exhibit 16).

⁶³ See FOIA request submitted via USDA Public Access Portal (attached as Exhibit 17)

⁶⁴ See Exhibit 10, Montanore Minerals Corporation, Exploration Plan of Operations.

⁶⁵ *Id.*

⁶⁶ See July 22, 2025 screenshots of USFS project webpage, with the revised June 13, 2025 Plan of Operations (attached as Exhibit 18).

⁶⁷ Exhibit 10, Montanore Minerals Corporation, Exploration Plan of Operations.

§ 151.12 (“Agencies shall not incorporate material by reference unless it is reasonably available for review, such as on a publicly accessible website, by potentially interested persons throughout the time allowed for comment or public review.”).

Finally, EPA also submitted a comment letter in response to the USFS’s DEA. Objectors submitted a FOIA request for this comment letter but only received it at the very last minute, just one day before the August 5th deadline for objections. However, EPA’s comments amplify several of the concerns detailed above, including but not limited to issues such as water quality, aquatic life, air quality, noise, traffic, mitigation factors, and reclamation.⁶⁸ Accordingly, Objectors reiterate EPA’s concerns and incorporate the comment letter in its entirety. Objectors specifically emphasize EPA’s comments with respect to violations of water quality standards:

The MPDES permit concentration-based effluent limits (Table 2-3) are greater than the MDEQ WQS for all the parameters (Table 2-4). Therefore, it is not clear from the information in the Draft EA that the WTP discharge meets WQS and that water quality in Libby Creek will not be adversely impacted by discharges from the Project. The EPA considers a violation of WQS a significant impact under NEPA. In the Final EA, we recommend including an explanation of how effluent limits that are greater than the WQS are still protective of the WQS that apply to Libby Creek.

Id. at 5. This is further evidence that the project violates the Clean Water Act, the Organic Act, and Forest Plan Standards, all of which, as noted above, prohibit projects from violating water quality standards. Objectors further emphasize EPA’s comments regarding potential impacts to groundwater dependent ecosystems, which is consistent with and furthers the points raised by Objectors above:

GDE-1 may be more significantly impacted by any expansion adit dewatering near Upper Libby Lake than other spring discharge points. The regional topography shown in Figure 3-4 suggests that gravity may drive flow from the upper lake into the “shallow discontinuous groundwater system” mentioned above that supports baseflow to GDE-1.

It is unclear how the potential intersection of the Upper Libby Lake with the adit expansion was considered under the groundwater modeling effort when the adit dewatering proposed

⁶⁸ Exhibit 15, EPA, Ref: 8EJC-NE.

may significantly impact the hydrologic balance currently supporting the Upper Lake and GDE-1 compared to model scenarios which assume uniform drawdown rates surrounding all spring discharge points. The dewatering could also potentially change hydraulic conductivity within any currently inundated geologic units and macropores (i.e., faults and fractures) that exist between the proposed adit extension and the Upper Libby Lake. In the Final EA, we recommend discussing Upper Libby Lake in greater detail in Section 3.4.2 of the EA and acknowledging potential impacts to alpine ponds and GDE-1 not captured due to potential groundwater model sources of error in the wetlands and Waters of the U.S. impacts reported in Section 3.11.2. We also recommend discussing the magnitude of the potential impacts to the Upper Libby alpine pond in these sections. This should help inform and support determinations regarding the significance of impacts to these water resources.

Id. at 7–8. This reflects the points made above and made by Dr. Gardner and in other reports (such as Gurrieri (2005)).

EPA's points regarding Clean Air Act compliance are equally troubling and important because the emissions from the mine site and the traffic generated by the project will impact air quality in Libby, which already fails to meet National Ambient Air Quality Standards.

X. CONCLUSION AND REMEDIES

In conclusion, as detailed above and in previous comments submitted by the Objectors, the FEA and draft Decision Notice and FONSI fail to fully comply with numerous federal and state laws, regulations, policies, and other requirements. As such, the Regional Office must vacate and remand both documents and order the correction of all errors noted herein. The USFS cannot approve any of the action alternatives described in the FEA, or any action alternative at all that the applicant may propose, unless and until all laws, etc., noted herein are complied with. Please direct all communications regarding this Objection to the undersigned attorneys.

Sincerely,

/s/ Shiloh Hernandez
Shiloh Hernandez
Earthjustice

T:406.586.9692
shernandez@earthjustice.org

On behalf of *Cabinet Resource Group*,
Clark Fork Coalition,
Confederated Salish and Kootenai Tribes,
Earthworks,
Montana Environmental Information Center,
Save Our Cabinets,
Montana Trout Unlimited,
Yaak Valley Forest Council