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Subtotal is Not a Total - Tax Base Sharing and MMT Percentages are in Violation of the approved Nye Impact Plan

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Dusty Weber <dustyrweber29@gmail.com>

Feb 17, 2024, 2:16 PM

to mark.thompson, clint.rech, donna.vonnieda, ray.sheldon, jerry.bennett, Rachel.Young, Randy, sriveland, thamilton, jruffatto, Kevin, Breann, Dan

Dear Mine Impact Board:

Please see the attached letter and supporting evidence.

Please make a determination whether the Tax Base Sharing and MMT Percentages are being calculated according to the approved plan.

This submission seems apropos given the SWC Commissioners latest last minute meeting agenda where they are obviously moving to approve a biased resolution to exclude Park City from the Impact Plan.

The MINE and SWC have made conclusions (Oct 24, 2023 Letter) based on manipulated data, false narratives and incorrect understanding of the approved impact plan, the plans definitions, and with no need to provide actual evidence or include affected parties in the process.

This has been a shameful process from the onset and it is my hope that Park City School District and Park City Taxpayers do not tolerate this obvious bias any further.

Sincerely,

Dusty Weber
Park City, **Stillwater County**, Montana

One attachment • Scanned by Gmail

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February 17, 2024

Hard Rock Mining Impact Board
PO Box 200523
301 S Park Avenue
Helena, MT 59601

Submitted by email to: mark.thompson@mt.gov; clint.rech@mt.gov; donna.vonnieda@mt.gov ray.sheldon@mt.gov; jerry.bennett@mt.gov; rachel.young@mt.gov;

Subject: **Subtotal Denominator Error: Property Tax Base Sharing and MMT percentages are not being calculated and distributed according to the approved (1998) Nye Mining Impact Plan**

Dear Montana Hard Rock Mining Impact Board:

I am respectfully requesting that the Hard Rock Mining Impact Board (MIB) please determine whether or not the approved 1998 Nye Hard Rock Mining Impact Plan (PLAN) is being correctly followed when calculating percentages for Property Tax Base Sharing and associated Metal Mine Tax (MMT) distribution.

STATEMENTS FOR REVIEW:

1. According to the approved 1998 Nye Hard Rock Mining Impact Plan, Property Base Sharing percentages for schools are allocated with the total number of Mineral Development Students residing in Stillwater County as the denominator.

    a. (**Attachment 1**, Page 2-7 of approved (1998) Nye Mine Impact Plan)
    Note: Tax base sharing allocations are based on the percentage of total, mineral, development employees and total, mineral development students, not just inmigrating mineral development employees and students...
    ...Likewise for schools, the tax base sharing percentage for each elementary school (or high school) district is based on the number of mineral development elementary (or high school) students residing in the district ***as a percentage of the total number of mineral development students residing in Stillwater County.***

2. Sibanye-Stillwater (MINE) is either inadvertently or intentionally manipulating the data to make it appear that the total number of mineral development students residing in Stillwater County is being used. However we know from the MINE's own admissions (October 24, 2023 Letter admitting PCSD has Nye Mineral Development Students) that only a subtotal of the mineral development students residing in Stillwater County is repeatedly being used.

3. The Stillwater County Commissioners (SWC) are either inadvertently or intentionally ignoring the correct method of calculation in the PLAN by repeatedly only using a subtotal of the mineral development students residing in Stillwater County when handing out millions of dollars of Property Tax Base Sharing Valuations and MMT revenues to the schools named

in the PLAN. (**Attachment 2** - Nye Annual Tax Base Sharing Report_Rpt Yr 2021_20220524)

a. In order to be in compliance with the approved PLAN, the total number of mineral development students residing in Stillwater County must be used as the total.

  i. Both SWC and the MINE have made public admissions (October 24, 2023 Letter) that PCSD has Nye Mineral Development Students (whether defined as In-migrating or not) within its jurisdiction.

    1. See **Attachment 3**, the bottom of page 4 of 9 in the October 24, 2023 letter).

      a. However, even in their admissions (without providing any corroborating evidence, likely in an effort to make PCSD numbers appear lower than they are), it appears SWC and the MINE are incorrectly defining an in-migrating mineral development student… their statement about *"employees who began residing in Park City within one year of starting work at the Stillwater Mine"* is not applicable…. The correct definition of in-migrating mineral development student is dependent on the definition of an In-migrating Mineral Development Employee; which (page 2-5 of PLAN), is "*employee who establishes residence in Stillwater County within one year prior to, or anytime after, his date of hire."*

    2. See **Attachment 4**, Email R. Weimer (MINE) to D. Grabowska (PCSD), which corroborates that PCSD has had considerably high numbers of Mineral Development Students within its jurisdiction in Stillwater County that have been incorrectly omitted from PLAN calculations. This also corroborates that if PCSD were included in the PLAN would certainly mean PCSD would receive a percentage of the distributed tax valuation and tax revenues.

  ii. PCSD is located in Stillwater County, Montana.

b. Because of this **"subtotal denominator error",** the named school districts in the PLAN are being assigned higher percentages than should be allocated to them according the PLAN.

  i. What makes this ***error*** even more egregious is that the MINE and SWC have worked together behind closed doors, hidden records (e.g. historical school surveys; let's finally see them all; what are they hiding?), refused to involve PCSD in the process or opportunity to question MINE or SWC assertions. Additionally, the MINE and SWC absurdly didn't even have the courtesy to show evidence for their hand wringing conclusions in their October 24, 2023 letter.

1. Now that the previous talking points, like, "the triggers haven't been met for an amendment" or "Park City chose not to be in the original plan, nothing we can do" have now been debunked, the evolved approach from the Mine and SWC is now apparently *"you can't make us change the PLAN"*.

2. The obvious bias is getting embarrassing for the MINE and for SWC.

ii. I respectfully ask that this extra percentage of tax valuation and tax revenue that annually is being incorrectly handed out in violation of the approved PLAN be held in escrow until such time as this error can be corrected and properly allocated according to an approved impact plan.

Thank you for your time. Please contact me if you have any questions about this submittal.

Sincerely,

Dusty R. Weber
7 Pinto Place
Park City, MT 59063
dustyrweber29@gmail.com

Cc: Sibanye-Stillwater, Stillwater County Commissioners, PCSD, MTDEQ

Attached to and included in this submittal:
Attachment 1 - Page 2-7 of approved (1998) Nye Mine Impact Plan
Attachment 2 - Nye Annual Tax Base Sharing Report (2021 Report Year)
Attachment 3 - Page 4 of 9 form the October 24, 2023 Joint Letter from SWC & MINE to MIB
Attachment 4 - Email MINE to PCSD with Mine Employee and Student Populations

2.3.2 Tax Base Sharing; Taxable Valuation

Table 2-4 shows how the tax base sharing ratios were derived. *Note: Tax base sharing allocations are based on the percentage of* ***total mineral development employees and total mineral development students,*** *not just inmigrating mineral development employees and students.* Table 2-4 shows that the current total number of mineral development employees are added to the projected total mineral development employees resulting from the expansion.

The tax base sharing percentages are calculated based on the percentage of total number of mineral development employees in Stillwater County residing in each jurisdiction. Of the mineral development employees living in Stillwater County, 29% live in Columbus, and 71% in the unincorporated area of Stillwater County. Likewise for schools, the tax base sharing percentage for each elementary school (or high school) district is based on the number of mineral development elementary (or high school) students residing in the district as a percentage of the total number of mineral development students residing in Stillwater County.

Table 2-5 shows the projected taxable valuation of the SMC mineral development, and its distribution among units of local government based on tax base sharing. The SMC taxable valuation is allocated according to the tax base sharing percentages shown in Table 2-4.

Section A, Total SMC T.V., of Table 2-5, shows the total SMC taxable valuation in 1996-97, and the projected total SMC taxable valuation resulting after the mine expansion, and includes the taxable valuation of the mine property, equipment, and gross proceeds, (which is allocated under tax base sharing) and the smelter and base metals refinery in Columbus. Because the smelter/base metals refinery is located in Stillwater County, the Town of Columbus, the Columbus Elementary School District and the Columbus High School District, the taxable valuation of those facilities are included as part of the SMC taxable valuation for each of those four taxing jurisdiction. Sections B, C, and D of Table 2-5 show the additional SMC taxable value and total taxable valuation with SMC for each affected unit of local government.

Note: SMC has applied for a permit to construct a new tailings impoundment on the Hertzler Ranch. The market value of the proposed tailings is estimated at approximately $23 million. The impoundment will be classified as property tax class five, air and water pollution control, which carries a tax rate of 6%, unless SMC applies for the 3% rate for pollution control equipment. The taxable valuation of the tailings impoundment is expected to be approximately $690,000. The impoundment is planned for 1999 or 2000 and has not been included in the projected SMC taxable valuation in this Plan Amendment. However, affected units of local government very likely will realize this added taxable valuation in 1999 or 2000 as a result of this planned facility.

May 24, 2022

Montana Department of Revenue
Appraisal Office
Attn: Cindy Grover
P.O. Box 359
Columbus, MT 59019

RE: Stillwater Mine (Nye) 2022 Tax Base Sharing Report

Dear Ms. Grover:

Enclosed is Sibanye-Stillwater's 2022 Tax Base Sharing Report for the Stillwater Mine - Nye.

The Tax Base Sharing Report is formatted to readily calculate percentages among the affected units of local government. Please remember the allocation for the Town of Columbus is set at 20% in the Impact Plan. See Section 5.3 of the 1998 Hard Rock Mining Impact Plan Amendment.

Sincerely,

Kevin Mitchum
Environmental Compliance Manager

Enclosure

Cc: Stillwater County
Town of Columbus
Absarokee Schools
Columbus Schools
Fishtail Elementary
Nye Elementary

Hard Rock Mining Impact Board

RECEIVED
MAY 26 2022
Department of Commerce
Community Development Division

Stillwater Mining Company - Stillwater Mine(Nye)
2022 Tax Base Sharing Report (90-6-405 MCA)

LOCAL GOVERNMENTS	SMC EMPLOYEES	CONTRACTORS	TOTAL
	Resident Employees	*Resident Contractors*	*Employees & Contractors*
RESIDENCE			
Town of Columbus	113	29	142
Stillwater County	277	30	307
Total	***390***	***59***	***449***

NOTE: Impact Plan specifies Town of Columbus receives 20%.

SCHOOLS	SMC STUDENTS	RESIDENT CONTRACTORS	TOTAL
	Students Residing In District	*Students Residing In District*	SMC & Contractors Students
HIGH SCHOOL DISTRICTS			
Absarokee	18	5	23
Columbus	56	6	62
Total	***74***	***11***	***85***
ELEM. SCHOOL DISTRICTS			
Absarokee	38	4	42
Columbus	84	8	92
Fishtail	3	2	5
Nye	0	0	0
Total	***125***	***14***	***139***

According to the approved Impact Plan (pg 2-7 of plan), the correct denominator (i.e. total) to use in the calculation is the *total number of mineral development students residing in Stillwater County.* NOT the total number of mineral development students residing in Stillwater County in named school districts. D. Weber 2/7/24

5/24/2022

the new individuals are situated and paying taxes in that jurisdiction for those services.[8] The Impact Act was passed as preparational, not retrospective.

The Complaint argues that Park City Elementary School District and Park City High School District should be added to SMC's Impact Plan as Affected Local Government Units because they have increased costs resulting from the Stillwater Mine development. The Complaint points to the alleged "[f]ailure of the 25 year old impact plan to identify all affected government units or failure of the approved impact plan to provide for mitigation of documented and known impacts resulting from the mineral development.". The Complaint also alleges that in 2023, the Park City School District "was forced to move from Class C sports to Class B sports as a direct result of student population; which included increased costs without corresponding increased revenues."[9]

The type of retroactive action proposed by Mr. Weber is contrary to the purpose of the Impact Act and is not supported by its provisions. There is simply no mechanism in the Impact Act to address costs that may arise decades after implementation of an approved plan or may have been overlooked in the initial approval process. For example, whether Park City School District moved to compete in Class B sports, from Class C, 38 years after the mine began operating is simply not the nature of cost intended to be covered by the Impact Act. As noted by Senator Fredricks, the Impact Plan covers initial costs "identified and fixed at the time of approval" of the plan because it focuses on those ascertainable, known costs on the front end of development.

The example of the Park City School District changing from Class C sports to Class B sports in 2023 serves only to highlight the improper nature of the Complaint. In order to be considered an Affected Local Government Unit, there has to be some correlation between in-migrating employees and increased operation costs the Local Governmental Unit seeks to be covered. Although it seems like a stretch to say that this shift—occurring 38 years after the development of the mine began is a cost associated with *beginning* mine operation—the number of in-migrating students in 2023 does not support the finding. Based on the 2023 employee survey conducted by SMC, there were only three employees who began residing in Park City within one year of starting to work at the Stillwater Mine and now have children attending school within the Park City School District. Two of these employees each have one student enrolled in Park City High School. Those employees moved to Park City in 2004, and 2015, respectively. One employee currently has a student enrolled in Park City Elementary School. That employee moved to Park City in 2011. The addition of one in-migrating employee in 2004, one in 2015, and one in 2017, now totaling two in-migrating high school students and one elementary school student is not sufficient to demonstrate the type of costs contemplated by the Impact Act. It is hard to believe the switch from Class C to Class B sports happened because of two high school students who have resided in Park City since 2015 and 2017.

[8] Mont. Code Ann. § 90-6-301; Mont. Code Ann. § 90-6-401.
[9] Complaint at page 6.

From: **Randy Weimer** [redacted]
Date: Mon, Nov 7, 2022 at 10:43 AM
Subject: Re: mine changes
To: Dan Grabowska [redacted]

Morning Dan --

Sorry this request and information fell through the cracks. Appreciate the follow-up email. Below is the information you requested. We changed up our reporting process about 5 years ago so only presenting the last 4 years of reporting for consistency (apples to apples comparison). Hope this helps. If you have any questions please let me know - call (406-[redacted]) or email.

These are the number of Sibanye-Stillwater employees that live in the Park City School District and which operation they work at. That's important as related to which Hard Rock Mine Impact Plan applies. Keep in mind the folks that work in Columbus do not fall under a Plan. It only applies to mines. If we can't make is any more confusing than it already is. As you can see, the majority of employees that live in the School District work at the Stillwater Mine (Nye). Therefore the Stillwater Mine Impact Plan seems most applicable.

	Work Location	Number of Employees
Year 2021	Nye	42
	Columbus	13
	East Boulder	5
Year 2020	Nye	49
	Columbus	13
	East Boulder	5
Year 2019	Nye	44
	Columbus	12
	East Boulder	5
Year 2018	Nye	38
	Columbus	11
	East Boulder	4

Below is a comparison of student numbers with relationships to Sibanye-Stillwater Employees.

		Total
2021	Absarokee	59
	Columbus	145
	Park City	31
2020	Absarokee	63
	Columbus	154
	Park City	39
2019	Absarokee	64
	Columbus	144
	Park City	40
2018	Absarokee	86
	Columbus	141
	Park City	44

This is information we solicit from our employees on an annual basis - where do you live and if you have any school age children, what school do they attend (k-12). We assume that the information provided by our employees is true and accurate.

Again, hope this helps. Thanks again for the follow-up.

Randy