Review, Findings and Recommendations
On the
March 2, 2023 PCSD Amendment 3 Petition

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Introduction

Review of the issues raised in the Park City School District #5 Board of Trustees March 2, 2023 correspondence to Stillwater County Commissioners, titled PCSD Amendment 3 Petition – Nye Hard Rock Mining Impact Plan, will be addressed as the issues relate to the 1985 Nye Hard Rock Mining Impact Plan, as amended in 1988 and 1998; Tax Base Sharing issues associated with the 1998 Amended Nye Hard Rock Mining Impact Plan; distribution of Metal Mines License Tax as it relates to the 1998 Amended Nye Hard Rock Mining Impact Plan; Amendment Provisions contained in Montana Codes Annotated (MCA) and Administrative Rules of Montana (ARM) and the other issues raised in the March 2, 2023 correspondence will be reviewed and findings noted. Recommendations will be presented for the significant issues identified in the review and findings.

Issues related to statutory and regulatory requirements of Montana's Hard Rock Mining Impact Act (Title 90, Chapter 6, Part 3 MCA), Administrative Rules (8.104 Hard Rock Mining Impact Board), Hard-Rock Mining Impact Property Tax Base Sharing Act (Title 90, Chapter 6, Part 4 MCA) and the Metal Mines License Tax Act (Title 15, Chapter 37, Part 1 MCA) will be noted. The Hard Rock Mining Impact Board's Guide of Implementation of the Hard Rock Mining Impact Act and Property Tax Base Sharing Act will also be referenced where further clarification is needed.

The Hard Rock Mining Impact Board's Guide of Implementation of the Hard Rock Mining Impact Act and Tax Base Sharing Act, 2008, describes the functional connection of the Hard Rock Mining Impact Act, Hard-Rock Mining Impact Property Tax Base Sharing Act and the Metal Mines License Tax Act.

"1. The Impact Act addresses primarily the *initial* impacts of development by requiring that the developer prepare an impact plan in which it identifies and commits to pay all increased local government costs resulting from construction and operation of the new mineral development."

"2. The Tax Base Sharing Act helps those counties, municipalities and school districts that are expected to incur ongoing increased costs as a result of the mineral development. Tax base sharing the increased taxable valuation of the mineral development among the jurisdictions with increased costs and those in which the development is located, ensuring the former a source of property tax revenue to help meet *ongoing* costs resulting from the mineral development.

"3. The primary purpose of the metal mines license tax allocation to counties and through counties to school districts and other local government units, is to assist them in preparing for and dealing with the fiscal and economic impacts of a reduction in mine workforce or a mine closure."

"Through these pieces of legislation, the Legislature has tried to help local government units address the "front-end", "ongoing" and "tail-end" fiscal and economic impacts of hard rock mineral development."
Demonstrating increased costs directly resulting from construction and operation of new mineral development in the mine impact plan planning and review process or during subsequent amendments affects ongoing tax base sharing and metal mines license tax allocation.

The statutory link between the Hard-Rock Mining Impact Property Tax Base Sharing Act and the Hard-Rock Mining Impact Act is found in definitions 90-6-402 MCA cross references to 90-6-307 and 90-6-302 MCA, also found in the jurisdictional revenue disparity 90-6-403 MCA cross referenced to MCA 90-6-307 and the allocation of taxable valuation for local taxation purposes 90-6-404 MCA cross reference to 90-6-307 and 90-6-311 MCA. The statutory link between the Disposition of Metalliferous Mines License Taxes and the Hard-Rock Mining Impact Act is found in part 15-37-117 MCA cross references to part 90-6-304 and part 90-6-307 MCA. These cross references are the basis for the tax base sharing and metal mines license tax allocation associated with implementation of the Original 1985 Impact Plan and subsequent 1988 Amendment and 1998 Amendment.

The Impact Plans included in this review are the Hard Rock Mining Economic Impact Plan 1985 (Original 1985 Impact Plan), Amended Hard Rock Mining Economic Impact Plan 1988 (1988 Amendment) and the Hard Rock Mining Impact Plan Nye Expansion Project 1998 (1998 Amendment) with emphasis on the 1998 Amendment. Additional sources of information utilized in the review include: information from known Montana Hard Rock Mining Impact Board records, data from Montana Office of Public Instruction (OPI), Stillwater County records and archived Stillwater County newspaper articles on Stillwater Mine impact issues.

This review occurred between March 26, 2024 and May 30, 2024. Every effort was made to collect sufficient information to conduct a thorough review of the proposed PCSD Amendment 3 Petition. Stillwater County records as far back as the early 1980's were found in archived files and other County files. Stillwater County newspaper articles from 1984 through 1998 were also found. The Montana Office of Public Instruction provided enrolment data from 1987 through 2023 for Park City Schools. Available information was utilized in this review in addition to first hand knowledge of the mine impact planning, review and approval process for the 1985 Nye Hard Rock Mining Impact Plan and subsequent 1988 and 1998 amendments. A public information request was submitted to Montana Department of Administration for additional Hard Rock Mining Impact Board records on April 4, 2024. Not all information requested has been received by the time this report was prepared. Additional information was also requested of PCSD on April 8, 2024. No response from PCSD to date. All information received at a later date from public information requests will be provided to Stillwater County.

Review - PCSD Amendment 3 Petition – Nye Hard Rock Mining Impact Plan

(March 2, 2023, pages 1-23 with attachments)

ISSUE – Petition to Amend the Nye Hard Rock Mining Impact Plan

The Park City School District #5 Board of Trustees March 2, 2023 petition to Stillwater County Commissioners is titled *"PCSD Amendment 3 Petition – Nye Hard Rock Mining Impact Plan"*. The 23-page petition is considered more of a cover letter rather than the substance of a petition. The letter contains numerous issues and statements pertaining to the original 1985 Impact Plan, 1988 Amendment and 1998 Amendment; Amendment provisions; Property Tax Base Sharing; Metal Mines License Tax allocations; a 25 year reimbursement scheme; NEPA/MEPA; Good Neighbor Agreement and other issues. For review purposes, these issues are addressed by the general and specific topics identified in the March 2, 2023 letter. Attached to the cover letter were one figure and 18 attachments. These attachments will be reviewed individually after the review of the cover letter.

ISSUES and Statements - March 2, 2023 Letter (pages 1 – 23)

"For more than 25 years, PCSD has incorrectly been excluded from the Impact Plan. Approximately 10-15% of the Impact Students and the Mineral Development Students attend Park City Schools." (Page 1 of 23)

"The 1998 Plan Amendment is materially inaccurate because Park City Elementary School District and Park City High School District were excluded from the list of Affected Units of Local Government." (Page 5 of 23)

"The original 1985 plan, the amended 1988 plan, and the amended 1998 plan all failed to identify and commit to paying the increased local government costs of Park City Elementary School District and Park City District resulting from the construction and operation (and subsequent expansions in employment) of the new mineral development."
(Page 9 of 23)

"Just because PCSD had/has less impact students than some other school districts is not a valid reason to not mitigate impacts." (Page 10 of 23)

REVIEW COMMENTS on March 2, 2023 Letter (pages 1 – 23)

The person seeking a permit for a large-scale mineral development to submit an impact plan is clearly a statutory requirement. However, the mineral developer and the affected units of local government units are then required to insure the impact plan includes the specified contents [90-6-307 (1) MCA]. No documentation of Park City School District participation in the mine impact planning, review and approval process was found in a search of Stillwater County Commissioners Journals, archived Planning Office files, local newspapers articles or known Hard Rock Mining Impact Board meeting records from 1985 through 1998. An affected local government that has not been included in the impact plan may object to the impact plan under the provisions of the Statute if the local government clearly demonstrates that it is likely to experience increased capital and operating costs from the mineral development [90-6-307 (5) MCA]. No documentation of Park City School District objecting to the Original Impact Plan 1985 or subsequent 1988 Amendment and 1998 Amendment was found in a search of Stillwater County records, archived Planning Office files, local newspaper articles or known Hard Rock Mining Impact Board records.

Counties participate in the impact planning process as an affected unit of local government with additional requirements specified in the Hard Rock Mining Impact Act and associated Administrative Rules (Title 90, Part 6, Chapter 3 MCA and Administrative Rules Chapter 8.104. School districts and other affected units of local government also participate, review and have the opportunity to object to an Impact Plan and subsequent amendments. The authority of Counties (Title 7, Chapter 5, Part 21 MCA) is separate from the authority of school districts (Title 20, Chapter 6, Part 1 MCA). In other words, Park City School District Board of Trustees or designated representative were considered responsible to represent the interest of Park City Schools in the impact planning, review and approval process for the 1998 Amendment, not the County.

An Impact plan can be amended if it is materially inaccurate because of errors in assessment and 2 years have not elapsed since the date the facility begins commercial production [90-6-311 (1)(b) MCA, 8.104.217 (1)(iii) ARM]. The PCSD Amendment 3 Petition is being proposed 25 years after the 1998 Impact Plan Amendment was approved and over 35 years since the commencement of development at the Stillwater Mine. An amendment mechanism has been in place more than 25 years for Park City School Districts, as a potentially affected local government unit, to be considered for inclusion into the 1998 Amendment. It required Park City School Districts to demonstrate a revenue disparity and negotiate with SMC to determine the level and type of assistance needed to pay net costs.

No documentation was found in Stillwater County files or known Hard Rock Mining Impact Board records indicating Park City School Districts have demonstrated a need to increase services or facilities as a result of commencement of large-scale mineral development at the Stillwater Mine or sought to amend the approved Impact Plan for almost 25 years after the 1998 Amendment was approved. **[Note: No documentation was found to support the claim/assertion that PCSD was "excluded" from the mine impact planning process in 1985-1998.]**

ISSUES - MEPA/NEPA and GNA from March 2, 2023 letter

"The 1998 Plan Amendment is materially inaccurate because it failed/fails to assess the impacts of Mine Sponsored Housing Restrictions on outlying communities such as Park City" (Page 6 of 23)

"The 1998 Plan Amendment is materially inaccurate because it failed/fails to assess the impacts of stipulations on transportation (forced busing/carpooling) on outlying communities such as Park City"
(Page 6 of 23)

"The "Good Neighbor Agreement" (GNA) was signed on May 8, 2000."
(Page 6 of 23)

"Section 1.6 of appendix G of the GNA says "SMC shall require, as a condition of employment, bussing and/or carpooling for all employees, contractors, and subcontractors" (Page 6 of 23)

"In the Record of Decision for the 1985 Stillwater Mine Operation Plan, SMC was required to implement an employee bussing or van/carpooling program to reduce mine-related traffic....The transportation policy required all Stillwater Mine employees to participate in carpooling or bussing." (Page 6 of 23)

"Two major MEPA (joint with NEPA) approvals completed after the 1998 ROD failed to properly take a look at changes to employment or changes to socioeconomic impacts at the Mineral Development. This may be a violation of the Montana Environmental Policy Act and the National Environmental Policy Act." (Page 8 of 23)

REVIEW COMMENTS on MEPA/NEPA and GNA Issues

Assessment of impacts associated with housing restrictions and transportation are not specified items to be included in an impact plan [90-6-307 (1) MCA], 8.104.203 ARM or 8.104.217 ARM). Nevertheless, archived Stillwater County Planning Office files indicate housing and transportation studies were done for SMC and considered in the distribution of mineral and impact employment and population projections. Additional documentation of housing and transportation studies done for SMC may be in the Mining Company files. **[Note: The Park City School District claim/assertion suggesting the 1998 Plan Amendment is materially inaccurate on the basis of housing and transportation appears to be factually incorrect.]** Especially when the approved 1998 Amendment includes a reference for Additional Housing Units needed and an "Other" category for employees residing or projected to reside in areas beyond the jurisdiction of affected units of local government.

Stillwater County was not a party to the Good Neighbor Agreement or the Record of Decision referenced in the March 2, 2023 petition from Park City School District. MEPA/NEPA Records of Decision are separate documents prepared by State and Federal Agencies. The Good Neighbor Agreement is between Northern Plains Resource Council, Stillwater Protective Association, Cottonwood Resource Council and Stillwater Mining Company. As noted in Park City School District correspondence, the Good Neighbor Agreement was signed almost two years after the approval of the 1998 Amendment.

ISSUES - Tax Base Sharing from March 2, 2023 letter

"Each year, tax revenue is shared amongst school districts identified in the plan based on their percentage of Mine Development Students, while PCSD's percentage of Mine Development Students is ignored."
(Page 1 of 23)

"At the time of the 1998 Amendment and in subsequent years, Annual Employee Surveys (includes students of employees) provided sufficient evidence that PCSD had impact students within its jurisdiction"
(Page 10 0f 23)

"Since PCSD was incorrectly excluded from the 1998 Impact Plan and denied subsequent requests to revise the Impact Plan, other school districts have received 25 years of Property Tax Base Sharing revenue that should have been allocated to PCSD." (Page 16 of 23)

"In order for PCSD to be reimbursed for the past 25+ years of Property Tax Base Sharing revenue that was wrongly distributed, PCSD will receive an additional 7% of the Metal Mines License Tax revenue allocated for Elementary and High School District for the next 25 years._ PCSD would also be open to discussion other possible methods to mitigate past wrongful distributions of Property Tax Revenues." (Page 16 of 23)

REVIEW COMMENTS on Tax Base Sharing Issues

The Hard Rock Mining Impact Board prepared Guidelines for the Implementation of the Hard Rock Mining Impact Act and Property Tax Base Sharing Act, 2008. Chapter II-3 of these Guidelines address the connection of the impact plan and tax base sharing. More specifically *"An impact plan triggers property tax base sharing if it projects that a mining development will create a "jurisdictional revenue disparity"* [90-6-307, 90-6-402, 90-6-403, MCA]. The statutory definitions for "Affected local government unit" [90-6-401(1) MCA] and "Jurisdictional revenue disparity" [90-6-402(3) MCA] were considered in this review. Both definitions link tax base sharing to an approved impact plan adopted pursuant to 90-6-307 MCA. The definition of "Affected Units of Local

Government" in the 1998 Amendment *"means those units of local governments that would experience net impact costs during any one year of the SMC mining operation, or a unit of local government within which the mineral development is located."* No documentation has been found to indicate Park City School Districts demonstrated a need to increase services or facilities as a result of the commencement of the Stillwater Mine development throughout the 1998 mine impact planning and review and approval processes. **[Note: No documentation was found during this review to support the PCSD claim/assertion that PCSD was "incorrectly excluded" from the 1998 Impact Plan.]**

A large-scale mineral developer is required to prepare the Employee Surveys and submit a report of findings to the Department of Revenue [90-6-405 (1) MCA]. Mineral development students are typically verified when representatives of the mineral development meet with representatives from an affected school district and review employee records with the school enrollment records. Stillwater County Commissioners do not have access to mine employee records or individual school student enrollment records. **[Note: the Employee Surveys required for tax base sharing purposes are different than the annual Impact Monitoring Reports SMC committed to in Section 1.3 of the 1998 Plan Amendment].**

The Park City School District proposed Tax Base Sharing Worksheet, Table 2-4 contains a 7% reduction in tax base sharing of Absarokee Elementary and High School Districts, Columbus Elementary and High School Districts, Fishtail Elementary District and Nye Elementary School District, then shift the allocation to Park City Elementary and High School Districts as a method of recouping 25 years of past tax base sharing. **[Note: the .48% tax base sharing for Nye Elementary School District does not appear to consider the 20% allocation of the total increase in the taxable valuation of gross proceeds. The 20% allocation of increase in gross proceeds is also applicable to Absarokee High School District pursuant to 90-6-404 (1) MCA.]** The legality of this proposed tax base-sharing scheme is unprecedented. **[Note: The statutory formula for tax base sharing does not include mixing past metal mines license tax allocations, with interest,**

adding in past impact payments, assigning a percentage to the total, then shifting a percentage of future tax base sharing amounts from school districts that were identified in an approved impact plan as "affected units of local government" to school districts that were not in the approved 1998 Amendment.]

No other correspondence on the tax base sharing topic from Park City Schools was noted in the Stillwater County Commissioner Journals, or located in the archived Stillwater County Planning Office files prior to the March 12, 2021 letter from Park City School District Board of Trustees to Stillwater County Commissioners.

ISSUES – Metal Mines License Tax allocation - March 2, 2023 letter

"Since PCSD was incorrectly excluded from the 1998 Impact Plan and denied subsequent requests to revise the Impact Plan, other school districts have received 25 years of Metal Mines License Tax revenue that should have been allocated to PCSD." (Page 20 of 23)

"In order for PCSD to be reimbursed for the past 25+ years of Metal Mines License Tax revenue that was wrongly distributed, PCSD will receive an additional 7% of the Metal Mines License Tax revenue allocated for Elementary and High School District for the next 25 years._ PCSD would also be open to discussing other possible methods to mitigate past wrongful distributions of MMT." (Page 20 of 23)

REVIEW COMMENTS - on Metal Mines License Tax allocation

The disposition of Metal (Metalliferous) Mines License Taxes specified in 15-37-117MCA cross references an impact plan prepared and approved pursuant to 90-6-307 MCA. The legal authority for a school district to be compensated for past Metal Mines License Tax revenue (Title 15, Chapter 37, Part 1 MCA) previously distributed over 25 years to designated affected units of local government in an approved impact plan is also unprecedented.

The March 12, 2021 letter from Park City Schools to Stillwater County Commissioners includes a request for allocation of Metalliferous Mines

License Taxes. Attachment 9 contains the PCSD March 12, 2021 letter which references Title 15, Chapter 37, Part 1 on the disposition of metalliferous mines license taxes and Title 90, Chapter 6, Part 4 concerning tax base sharing. Noticeably missing from the Park City Schools March 12, 2021 letter, is a cross-references to Title 90, Chapter 6, Part 307, specifically as it relates to "Affected local government unit" in accordance with an adopted impact plan pursuant to 90-6-307. The 1998 Plan Amendment was adopted pursuant to 90-6-307 MCA. No documentation was found in Stillwater County files or known Hard Rock Mining Impact Board records to indicate Park City Schools participated in the 1998 impact planning, review or approval process and were not identified as a local government unit that will experience a need to increase services or facilities as a result of the commencement of a large-scale mineral development. **[Note: The annual allocation of metal mines license taxes follow the same statutory distribution formula for tax base sharing as specified in 15-37-117(2). The Tax Base Sharing Act was amended in 1991 to allow the option for an impact plan to modify the statutory distribution formula. The 1998 Amendment to the Impact did not modify the formula.**

ISSUES - Amendment Options

The Park City School District #5 Board of Trustees March 2, 2023 petition to Stillwater County Commissioners contains numerous references for amendment options with supporting documentation. Some of the amendment options are statutory/regulatory and some are amendment provisions from the 1998 Amendment. The various amendment options noted in the PCSD letter include:

"A1. Employment is forecast to increase by at least 75 persons over the employment levels contemplated by the approved plan, which satisfies a legal condition that allows for an amendment. ARM 8.104.217(I)(j)(ii))."
(Page 1 of 23)

"According to MCA 90-6-311(1)(a) and ARM 8.104.217(I)(j)(ii)) "if the employment of the large scale mineral development is forecast to increase by at least 75 persons, as determined under 90-6-302(4), over the employment levels contemplated by the approved impact plan the

governing of an affected county (SW County Commissioners) may petition the board (MIB) for an amendment to an approved impact plan"
(Page 2 of 23)

"The conditions for Impact Amendment listed below are found on page 3-1 of the approved (1998) Impact Plan. Only one condition needs to be me to allow for an amendment." (Page 3 of 23)

"Condition B. The annual number belonging (ANB) of In-migrating Mineral Development Students enrolled in an affected elementary or high school differs more than 15% from the number projected in this Plan Amendment." (Page 3 of 23)

"Condition C. The taxable valuation of SMC mineral development differs more than 15% from that projected in this Plan Amendment."
(Page 3 of 23)

"Condition D. An affected unit of local government or SMC may petition the Hard Rock Mining Impact Board for an amendment to this Plan Amendment if: D. 1. In-migrating employment at the SMC mineral development is forecast to increase or decrease from those levels projected in this Plan Amendment by at least 75 employees:" (Page 4 of 23)

"D2. This Plan Amendment is materially inaccurate because of errors in assessment or changes in local government budgeting or funding;"
(Page 5 of 23)

"There does not appear to be any requirement for an impacted school district to participate to have impacts mitigated or to be listed in the plan as an Affected Unit of Local Government." (Page 5 of 23)

"D3. Stillwater County and SMC join in a petition to amend this Plan Amendment. Nothing has prevented or is preventing Stillwater County and SMC joining in a petition to amend the plan." (Page 7 of 23)

"Condition F. In any given year, the actual in-migrating population or school enrollment creates a demonstrated revenue disparity for a potentially affected unit of local government. In this case, the local government will be included as an affected unit, and SMC and the local

government will determine the level and type of assistance needed to pay net costs." (Page 7 of 23

<u>REVIEW COMMENTS</u> - Amendment Options

A December 13, 2022 letter from Park City School District #5 Board of Trustees to Stillwater County Commissioners is titled Notice - The requirement allowing for an amendment to each of the Sibanye-Stillwater Mine Impact Plans has been met according to MCA 90-6-311(a). This letter is included the Park City School District petition as Attachment 10.

Review of amendment issues includes the statutory [90-6-311(1) MCA] and regulatory language (8.104.217 ARM) allowing conditions for amendments appears to be discretionary rather than mandatory. In other words, the statutory and regulatory language pertaining to amending impact plans was written with "may" rather than "shall". There is no dispute over the fact that employment at the Stillwater Mine is more than 75 persons over the employment levels contemplated in the 1998 Amendment. The amendment issue appears to be partially procedural in nature. In other words, which of the amendment options is specifically applicable to Park City School Districts current situation? Amendment conditions A, B, C, D and E of the 1998 approved Impact Plan are prefaced by *"where the changed condition or circumstance creates a revenue disparity"* (page 3-1). These amendment conditions are applicable to the affected units of local government identified in the Impact Plan and appear to be more relevant if the 1998 Amendment is to be rewritten in its entirety. Since approval of the 1998 Amendment, additional revenue disparities or amendments have not been identified or pursued by the affected units of local government. Amendment Condition F was included in the 1998 Amendment for potentially affected units of local government that demonstrate a revenue disparity created by in-migrating population or school enrollment. **[<u>Note</u>: Condition F. page 3-1, 1998 Amendment is directly relevant to Park City Schools current situation. No documentation was found to indicate PCSD made any attempt to utilize Condition F to further amend the 1998 Amendment during the past 25 years.]**

Guidance for the content and format for a Petition to Amend an Approved Hard-Rock Mining Impact Plan can be found in the Guide of the Implementation of The Hard-Rock Mining Impact Act and The Property Tax Base Sharing Act, 2008, Appendix XIV, pages 1 and 2. Most of the required information necessary to submit a petition to the Hard Rock Mining Impact Board appears to be included in the attachments to the March 2, 2023 letter, especially attachments 1 through 5. **[Note: Questions remain on the legal, procedural and factual basis of the Park City School District claim/assertion that the District meets the definition of an "affected local government unit".]** The legality of the scheme to be reimbursed for 25 years of tax base sharing funds, metal mines license tax allocations and impact payments to other affected schools previously distributed to affected local government units listed in the approved 1998 Impact Plan Amendment is also questionable.

ISSUES on Category of Other Students

" Table 2-3 (page 2-6 of the plan) includes a category "other" with 37 students for Impact Elementary Students that are not projected to reside in Columbus, Absarokee, Fishtail or Nye School Districts (i.e. un-named school districts)" (Page 15 of 23)

"So 60 of the 301 or 20% of the total Impact Students are not projected to be in the jurisdiction of any of the school districts the plan authors determined to be "affected" school districts." (Page 15 of 23)

"If the plan itself identifies 20% of the impact students as in the jurisdiction of un-named school districts then a similar percentage of mineral Development Students must also be in the jurisdiction of un-named school districts." (Page 15 of 23)

"Table 2-4 incorrectly and arbitrarily awards revenue that should go to the 20% of other/un-named school districts to the Columbus, Absarokee, Fishtail or Nye School districts." (Page 15 of 23)

REVIEW COMMENTS on Category of Other Students

The Original Impact Plan and subsequent 1988 Amendment and 1998 Amendment projected students of mine employees to live in school districts other than Absarokee, Columbus, Fishtail and Nye. However, the other school districts were not projected to have the need to increase services or facilities and demonstrate a fiscal disparity as the result of the Stillwater Mine development.

Again, the statutory [90-6-402(1) MCA] definition of "Affected local government unit" "means a local government unit that will experience a need to increase services or facilities as a result of large-scale mineral development or within which a large-scale mineral development is located in accordance with an approved impact plan adopted pursuant to 90-6-307. A definition for "Affected Units of Local Governments" was also included in the Original 1985 Impact Plan and the 1998 Amendment.

The Stillwater Mine near Nye is clearly not located in the Park City School District #5, no documentation has been found in the Stillwater County records or known Hard Rock Mining Impact Board records to indicate Park City School District #5 demonstrated the need to increase services or facilities as a result of the Stillwater Mine during the impact planning, review and approval process for the Original 1985 Impact Plan or subsequent 1988 Amendment and 1998 Amendment.

The Park City School District #5 Board of Trustees March 2, 2023 petition to Stillwater County Commissioners contains numerous statements that seem to be based on a premise that somehow Park City School was wrongly excluded from the 1998 Amendment to the Nye Hard Rock Mining Impact Plan. **[<u>Note</u>: No documentation has been found during this review to indicate the underlying premise of the PCSD petition is supported with factual information.]** The known Hard Rock Mining Impact Board records or any other relevant documentation related to the issue, do not support the claim/assertion that Table 2-4 of the 1998 Amendment incorrectly or arbitrarily awarded revenue. **[<u>Note</u>: Again, tax base sharing revenue is distributed according to the statutory formula.]** No documentation was found during this review to indicate PCSD demonstrated a need to increase services or facilities during the impact planning, review or approval process, or even participated in the process.

ISSUES – Other Requests

"PCSD is requesting that impacts to our school district be evaluated with the same standard that the plan applies to other school districts. The legal basis for this amendment is that, at a minimum, both the requirements of ARM 8.104.217 (1)(j)(i) and (ii) have been met."
(Page 1 of 23)

"PCSD would consider rescinding this application if the Mineral Development and the SCC join together to amend (re-write the entire plan and warrant in writing to PCSD that: (1) Park City Elementary School District and Park City High School District will both be included as "affected units of local government" in the amended plan; and (2) A reasonable timeline for preparation of the amendment will be established; and (3) The arguments set forth by PCSD in this application, including attachments, will be considered in good faith and integrated into the amended plan; where appropriate. (4) The 1998 East Boulder Impact Plan has similar deficiencies to those identified in this Nye Impact Plan submittal that will be addressed in a amendment to the East Boulder Impact Plan in the near future." (Page 22 of 23)

REVIEW COMENTS on Park City School District Requests

[Note: The argument can be made that Park City Elementary District and Park City High School District were evaluated with the same standard that applied to the other school districts.] Montana Hard Rock Mining Impact Act, Tax Base Sharing Act, Disposition of Metal Mines License Taxes and associated Administrative Rules apply equally to all school districts. The 1985 Nye Hard Rock Mining Impact Plan and subsequent 1988 and 1998 Amendments were prepared, reviewed and approved by the Hard Rock Mining Impact Board. All schools had the same access to the mine impact planning, review and approval process. School districts that were projected to potentially have students of mine employees attending their schools and/or live in their school district were not considered "affected units of local government" unless the need for additional services or facilities were demonstrated at the time the 1985 Nye Hard Rock Mining Impact Plan and subsequent 1988 and

1998 Amendments were prepared. This same standard applied to Reed Point Schools as well as Park City Schools. All potentially affected schools in Stillwater County have the same opportunity to demonstrate a revenue disparity created by the actual school enrollment attributed to in-migrating students as a result of the mineral development and seek an amendment as specified in Condition F, page 3-1, 1998 Amended impact Plan.

The reference to ARM 8.104.217 (1)(j)(i) that the plan itself provides for amendment under certain conditions and that those conditions have been met with the conditions specified and the pages on which they are established were cited. **[Note: Condition F, page 3-1 of the 1998 Amendment requires a potentially affected unit of local government to work with SMC to demonstrate actual in-migrating student population and school enrollment creates a revenue disparity.]** It is not clear in the March 2, 2023 correspondence whether or not mine employee related students were from employees hired locally or in-migrated into the Park City School Districts. Stillwater County Commissioners do not have direct access to mine employee records, distinction between which site they work at (Nye Mine, East Boulder Mine of Columbus Processing Facilities), whether they are related to locally hired employees or moved into the school districts within one year of being hired, whether mine related students are in elementary grades or high school, the number of mine related student distribution among each grade level, whether or not additional teachers or staff were hired directly as a result of mine impact students, whether or not additional classrooms were added directly as a result of mine impact students, any net costs directly attributed to mine impact students residing in the Park City School District. **[Note: The October 24, 2023 letter from Stillwater County Attorney and Crowley Fleck Attorneys states there are currently only three impact students in the Park City Schools, one in the Elementary School and two in high school.]**

Park City Elementary School District and Park City High School District have the same potential to be included as "affected units of local government" in the amended plan if a revenue disparity is demonstrated as a result of the mineral development. The process in 1985, 1988 and again in 1998 was for Absarokee Elementary and High

School Districts, Columbus Elementary and High School Districts, Fishtail Elementary District and Nye Elementary District was to demonstrate the need for additional services or facilities and net impact costs associated with the Stillwater Mine mineral development, negotiate with SMC and reach agreement on mitigation of net costs.

The requests set forth by Park City School District in the March 2, 2023 petition with attachments, are being reviewed and given due consideration in good faith as demonstrated by the extensive review of the petition. County Commissioners have met with representatives of Park City School District since the petition was received and have scheduled future meetings. Initial legal issues associated with the Park City School District proposed impact plan amendment have been addressed in the October 24, 2023 letter from the County Attorney and Crowley Fleck Attorneys to the Hard Rock Mining Impact Board. Additional legal review is ongoing. An item-by-item review of the multiple procedural and factual issues presented by the March 2, 2023 Petition 23-page letter with attachments in also ongoing. The request to integrate Park City School District arguments into a petition to the Hard Rock Mining Impact Board appears to be premature since all legal, procedural and factual issues have not been resolved at this time.

The 1998 East Boulder Impact Plan Amendment is a separate document from the 1998 Amended Nye Impact Plan. Any future issues associated with the 1998 East Boulder Impact Plan Amendment ought to be reviewed and decided separate from the 1998 Amended Nye Impact Plan.

Issue – Impact Plan Update

"The Plan has not been updated for 25 years, making much of the information antiquated or obsolete." (Page 14 of 23)

Review Comments on Impact Plan Update

The fact that the Impact Plan has not been updated in 25 years is not disputed. **[Note: The last amendment is in fact the 1998 Amendment.]** *"The Impact Act addresses primarily the initial impacts of development by requiring that the developer prepare an impact plan in* *which it identifies and commits to pay all increased local government costs resulting from construction and operation of the new mineral development."* The Hard Mining Impact Board describes this as front-end fiscal and economic impacts of hard-rock mineral development. (Page VI-4, Hard Rock Mining Impact Guide, 2008). PCSD Amendment 3 petition is dated March 2, 2023. **[Note: Again, for the past 25 years Park City School District has had the opportunity to meet with the mineral developer to evaluate impacts to Park City School Districts with the same standard that the plan applied to other school districts by utilizing Condition F, page 3-1, 1998 Amended impact Plan.]**

REVIEW COMMENTS on Figure 1 and Attachments 1 – 18

The Park City Schools March 2, 2023 submittal to Stillwater County Commissioners included an attached Figure 1 and 18 additional attachments. Figure 1 and the 18 attachments were either incorporated into the proposed language of PCSD Amendment 3 (AM3) or used as justification for the proposed amendment. Figure 1 and attachments 1 through 5 contain the substance for a petition. Attachments 6 through 17 are primarily supporting information. Attachment 18 is the USB drive with the entire AM3 submittal in pdf format. **[Note: The PCSD submittal is not in the format specified in 8.104.217 ARM or Appendix XIV of the Hard Rock Mining impact Board's Guide of Implementation of the Hard Rock Mining Impact Act and Property Tax Base Sharing.]**

Figure 1 is a map showing the Nye Mineral Development, Stillwater Mine, The Project Site location within the state and county and inserted on page v of the proposed amended (AM3) impact plan. **[Note: The proposed Figure 1 is not required content of an impact plan (90-6-307 MCA or 8.104.203 ARM) or an amendment petition (90-6-311 MCA or 8.104.217 ARM).]** The addition of the location of the Stillwater Mine in relation to Stillwater County does show the relative relationship of the mine site to the City of Columbus and unincorporated town sites in the County, including Park City.

Attachment 1 PCSD Resolution Authorizing County to Submit Petition for Amendment 3 is required in 8.104.217 ARM (1)(a) to be included in the contents of a petition submitted to the Hard Rock Mining Impact Board. **[Note: The Resolution is dated February 14, 2023 and signed by all five members of the Park City Board of Trustees for School District No. 5.]**

Attachment 2 - Existing (1998, AM2) Nye Impact Plan. This attachment contains the approved 1998 Amendment. **[Note: The official title of the "Existing (1998, AM2) Nye Impact Plan" is the Hard Rock Mining Impact Plan Amendment, Nye Expansion Project.]**

Attachment 3 contains the PCSD proposed changes to the approved 1998 Plan Amendment are shown in red. **[Note: Noticeably missing are the actual tables on pages marked "Insert Updated Table" in red. There also numerous pages marked "THIS PAGE NO LONGER REFLECTS THE APPROVED PERCENTAGES AFTER AM3 SEE TABLE 2-4 TAX BASE SHARING".]**

Attachment 4 contains a summary of the proposed AM3 Revisions with corresponding page numbers, a brief description of the changes proposed and comments on the changes. The current Title Page is proposed to be replaced with Amendment 3 Inclusion of Park City Schools, Prepared for Park City School District #5, By Dusty R. Weber, March 2, 2023. **[Note: The proposed cover is the first indication of the unilateral nature of proposed Amendment 3.]** Changes are proposed to the Table of Contents (pages i through v,) Executive Summary; Mitigation Summary (pages S-1 through S-4) and Introduction (pages 1-1 through 1-8). These proposed changes are primarily intended to include PCSD into the Impact Plan. However, notable changes include deleting "*Stillwater Mining Company in cooperation with affected units of local government*" and replacing it with "*Park City School District #5 (PCSD has prepared this AM3 Plan*" on page S-1 **[Note: This is another indication of the unilateral nature of proposed Amendment 3.]** and the statement that "*New information is now included in this 2023 AM3 Impact Plan about how (1) mandatory Employee Car Pooling/Bussing and (2) Mine Housing Restrictions in the Good Neighbor Agreement (GNA) may impact outlying communities. Park*

City Elementary School District and Park City High School District are added to the list of "affected units of local government" on page S-2. Adding language to include Park City Elementary and High school in the Tax Base Sharing summary on page S-3. *Adding the language "This AM3 Plan also distributes the applicable portions of the Metalliferous Mines License Tax (MMT) revenue according to the percentages shown in Table 2-4."* The proposed Table S-1 shows the distribution of Metal Mines License Tax (MMLT) to Absarokee, Columbus, Fishtail and Nye Schools from 1994 – 2022. Then totals these distributions, adds interest and also adds impact payments made by SMC to these schools to reach a total amount later used to justify the 7% included in proposed Table 2-4 for tax base sharing. **[Note: This scheme mixes impact payments made by SMC to affected schools for "up-front" costs, with MMLT allocations made for "tail-end" purposes, then uses 12.5% (PCSD claimed share) of the total amount in the calculation for future tax base sharing distributions made for "on-going" impact costs.]**

The Proposed Attachments 3 and 5 suggests deleting portions of the Introduction, Chapter 1 and replacing language with the proposed PCSD language to include Park City Elementary and Park City High School in a new amendment (AM3). Most notable proposed language includes: Mandatory Employee Car Pooling/ Busing at Mineral Development. Page 1-2. Adding the 1985 Record of Decision and Good Neighbor Agreement, page 1-2. Including Housing Restrictions in the Good Neighbor Agreement (GNA) page 1-2. **[Note: An assessment of housing and transportation are not required content of an impact plan.]** Adding Park City Elementary School District and Park City High School District to a list of Affected Units of Local Government, page 1-4. Revising the timetable for Development on page 1-5. Updating the names and Addresses for Affected Units of Local Government and adding Park City Elementary School and Park City High School to the list. Page 1-6. **[Note: the contact person named for SMC retired about 10 years ago and no new contact person is provided on page 1-6.]** The proposed inclusion of references to mandatory car pooling/ bussing and housing restrictions from the Record of Decision and Good Neighbor Agreement seems to imply housing and company sponsored transportation were not considered in the impact planning process. **[Note: Documentation found in the archived Stillwater County Planning Office files include a housing study that was**

commissioned by SMC and associated bussing options.] The references in the approved 1998 Amendment for additional housing units in Table 2-1, Rural Stillwater Co, "Other" in Table 2-2 for the distribution of impact employment and "Other" in Table 2-3 distribution of impact elementary and high school students indicate housing information and transportation were factors included in mine impact projections. Students attending Park City Schools would be included in the "Other" classification for schools projected to have impact students, but without a demonstrated need to increase services or facilities and associated net costs as a result of the Stillwater Mine mineral development.

Proposed changes to Assumptions and Projections section (pages 2-1 through 2-8) are significant. **[<u>Note</u>: Especially proposed Table 2-4.]** The comment provided in the Summary states "*This table is the most critical table tied to revenue disbursement in the entire impact plan. PCSD would also be open to discussing other possible methods to mitigate past wrongful distributions of Property Tax Revenue.*" PCSD proposed Table 2-4 contains a 7% reduction in tax base sharing of Absarokee Elementary and High School Districts, Columbus Elementary and High School Districts, Fishtail Elementary District and Nye Elementary School District, then shift the allocation to Park City Elementary and High School Districts as a method of recouping 25 years of claimed past wrongful allocations. Other notable proposed changes to section 2, includes new language to update employment projections at the Stillwater Mine is proposed on page 2-1 to include Park City Schools in the population and valuation projections on page 2-2, and revised projections for mineral development employees, mineral development employees residing in Stillwater County and secondary employment are included on page 2-12. The proposed Table 2-1 of (AM3) show the projected Mineral Employment/Contractors to be substantially greater than the 1998 Amendment by 1,354 but, the In-migrating Mine Employment/Contractors, In-migrating Secondary Employment, Total In-migrating Employment, In-migrating population, In-migrating Elem students, In-migrating HS students and additional Housing Units all to be less than what was projected in 1998.

Proposed changes to the Conditions for Impact Plan Modification (pages 3-1 through 3-4) were considered minor in the comments column with the comment *"the revisions are only to clarify the language rather than to change the conditions for an amendment."*

No changes are proposed to the Stillwater County (Section 4), the Town of Columbus (Section 5) and Absarokee Water and Sewer District (Section 12). The changes proposed column note states *"No revision to the text, added footer"* is included for pages 4-1 through 5-10 and page 12-1 with the comment column containing the statement *"out dated information, updating this page is not critical for an amendment to include PCSD in the plan, therefore not revised by PCSD. Revisions to all out dated sections of the plan should not be the responsibility or burden of an affected school district."* However, Table 2-5 is stamped "THIS PAGE NO LONGER REFLECTS THE APPROVED PERCENTAGES AFTER AM3 SEE TABLE 2-4 TAX BASE SHARING in red ink. SMC taxable valuation data is a component for projecting impact revenues and net costs to affected local government units. **[Note: Table 2-5 has not been updated in the PCSD AM3 Petition]** No clear indication of an analysis of the costs and commitments that will be changed as a result of the proposed amendment was identified during this review.

Attachment 4 does provide some clarity to the numerous pages marked "THIS PAGE NO LONGER REFLECTS THE APPROVED PERCENTAGES AFTER AM3 SEE TABLE 2-4 TAX BASE SHARING". Another note is found in the changes column for pages 6-1 through 11-4 stated *"no revisions to content of the table. Large Red Disclaimer to see Table 2-4 for approved percentages, added footer".* These are the sections of the approved 1998 Amendment that address impacts to Absarokee Elementary School (Section 6), Absarokee High School (Section 7), Columbus Elementary School (Section 8), Columbus High School (Section 9), Fishtail Elementary School (Section 10) and Nye Elementary School (Section 11). The comments column for the school sections contain the same comment *"out dated information, updating this page is not critical for an amendment to include PCSD in the plan, therefore not revised by PCSD. Revisions to all out dated sections of the plan should not be the responsibility or burden of an affected school district."* **[Note: The implications of that statement on other affected school districts is**

unclear since no analysis has been done on the affect of the Park City School Districts Amendment 3 Petition on other affected units of local government.]

Attachment 5 incorporated the red markups previously shown in Attachment 3 into what is referred to as the "clean version". The proposed new tables were included as Table S-1 Some Historical Tax Dollars Distributed to Stillwater County Schools **[Note: In addition to Metal Mines License Tax distributions since FY 1994, the dollar amounts were adjusted for inflation, impact payments from the 1985, 1988 and 1998 Impacts Plans were added to the inflation adjusted dollar amounts, then used to calculate the proposed future tax base sharing allocation to Park City Schools],** Table S-1.1 Impact Payments Under Amendment 2, 1998, Table 2-1 Mineral and Impact Employment and Population Projections **[Note: Dated 2021 numbers from the Tax Base Sharing Report and Sibanye-Stillwater Integrated Report are used as the basis for projections in PCSD AM3 Plan],** Table 2-2 Distribution of Impact Employees and Population **[Note: The note "Not Enough Info to Calc" is found in the Absarokee and Other line items.]** This table relies on assumptions and projects impact population of Columbus and Rural Stillwater County, Table 2-3 Distribution of Impact Elementary and High School Students **[Note: This table references a Sibanye email to PCSD Nov 7, 2022 as the source of information used in the Park City line item of the table],** Table 2-4 Tax Base Sharing Worksheet **[Note: This table includes the proposed 7% additional allocation for Park City Schools and was applied to future Property Tax Base Sharing disbursements],** Table 13-1 Park City Elementary School General Fund Budget with Stillwater Mining Company **[Note: This table includes over $200,000 per year in revenue for past mitigation. The SMC taxable valuation is referenced in footnote *** but, the existing Table 2-5 SMC Taxable Valuation has not been updated],** Table 13-2 shows Park City Elementary School General Fund Budget without Stillwater Mining Company, Table 14-1 Park City High School General Fund Budget with Stillwater Mining Company **[Note: This table includes over $100,000 per year in revenue for past mitigation. The SMC taxable valuation**

is referenced in footnote * but, the existing Table 2-5 SMC Taxable Valuation has not been updated]** and Table 14-2 shows Park City High School General Fund Budget without Stillwater Mining.

Numerous pages in Absarokee Elementary School, Absarokee High School, Columbus Elementary, Columbus High School, Fishtail and Nye Elementary School sections of Attachment 5 of the Proposed (2023, AM3) Nye Impact Plan with all changes included (clean version) remain stamped in red with "THIS PAGE NO LONGER REFLECTS THE APPROVED PERCENTAGES AFTER AM3 SEE TABLE 2-4 TAX BASE SHARING". Table 2-4 Tax Base Sharing Worksheet as proposed by PSCD contains a 7% reduction in tax base sharing of Absarokee Elementary and High School Districts, Columbus Elementary and High School Districts, Fishtail Elementary District and Nye Elementary School District, then shift the allocation to Park City Elementary and High School Districts as a method of recouping 25 years of past tax base sharing. **[Note: The .48% tax base sharing for Nye Elementary School District does not appear to include the 20% taxable valuation of the gross proceeds allocated to the local government unit the mineral deposit is located in pursuant to 90-6-404 (1) MCA. This is also applicable to Absarokee High School District. The red disclaimer statement is also stamped on Table 2-5 SMC Taxable Valuation.]**

The proposed Attachments 3 and 5 include a new Chapter 13, Park City Elementary School beginning on page 13-1. Sub-section 13.3 includes a reference to subsection 1.3 Monitoring of the 1998 Amendment and proposes to include students of employees/ contractors at the SMC smelter, base metals refinery and other Sibanye facilities located in Columbus. The issue of including Park City Elementary in the East Boulder Mining Impact Plan is also raised in this sub-section. **[Note: Sub-section 13.2.2 is titled Capital, but the need for capital costs is not presented. Instead, projected mineral development students are presented.]** No information is provided in Subsection 13.2 Impact Needs and Costs. Operating costs described in Subsection 13.2.1 refers to general fund budgets with and without SMC. The budget estimates with SMC for Park City Elementary School District assumes revenues for past mitigation (7% added to future tax base sharing, from prior allocations of metal mines license tax and past impact payments to other affected school districts). The proposed language in sub-section 13.3 Impact Revenues is where Park City School District is proposing to *"Additionally, in order to mitigate more than 25 years of other elementary schools receiving Park City elementary School's tax base sharing percentage, Park City Elementary District will also receive another 7% for the succeeding 25 years. Therefore, the available portion of SMC taxable valuation to be allocated to Park City Elementary District under the Tax Base Sharing Act is 20.4% (13.4% + 7%)."* **[Note: The assumptions and estimates presented Table 13-1 are questionable. No reference for the statutory or regulatory authority for the proposed tax base-sharing scheme has been provided by PCSD. The January 11, 2024 letter from Kaleva Law Office requested the County determine the propriety of the reimbursement proposal.]**

The Proposed Attachments 3 and 5 also include a new Chapter 14, Park City High School beginning on page 14-1. **[Note: Sub-section 14.1 seems to confuse Park City Elementary with Park City High School in the background information.]** The background information also includes a reference to subsection 1.3 Monitoring and proposes to include students of employees/contractors at the SMC smelter, refinery and other Sibanye facilities located in Columbus. The issue of including Park City Elementary in the East Boulder Mining Impact Plan is also raised in this sub-section. **[Note: Sub-section 14.2.2 is titled Capital, but the need for capital costs is not demonstrated. Instead, projected mineral development students are presented.]** No information is provided in Subsection 14.2 Impact Needs and Costs. Operating costs described in Subsection 14.2.1 refers to general fund budgets with and without SMC. The budget estimates with SMC for Park City High School District assumes revenues for past mitigation (7% of tax base sharing, metal mines license tax and past impact payments to other affected school districts). The proposed language in sub-section 14.3 Impact Revenues is where Park City School District is proposing to *"Additionally, in order to mitigate more than 25 years of other elementary schools receiving Park City High School's tax base sharing percentage, Park City High School District will also receive another 7% for the succeeding 25 years. Therefore, the available portion of SMC taxable* *valuation to be allocated to Park City High School District under the Tax Base Sharing Act is 17.5% (10.5% + 7%)."* **[<u>Note</u>: The assumptions and estimates presented Table 13-1 are questionable. No reference for the statutory or regulatory authority for the proposed tax base-sharing scheme has been provided.]**

Attachments 3 and 5 contain content beyond the scope of an impact plan specified in 8.104.203 ARM or the content and format specified for an amendment in 8.104.217 ARM. **[<u>Note</u>: The MEPA/NEPA, Good Neighbor Agreement issues are outside of the scope of the 1998 Amendment Nye Hard Rock Mining Impact Plan.]** The proposed Introduction section also contains language about the Record of Decision and Good Neighbor Agreement.

<u>Attachment 6</u> – Sibanye Mineral Development Employee Projections is a photocopy of a Sibanye Stillwater document. It appears to be from the Sibanye-Stillwater Integrated Report 2021. It does not appear the PCSD proposed mineral and impact employment and population projections, the distribution of impact employee and population projections, distribution of impact elementary and high school student projections in relation to current circumstances at the Stillwater Mine have been verified with Sibanye-Stillwater Mining Company. **[<u>Note</u>: This further indicates the unilateral nature of the PCSD proposed Amendment]**

<u>Attachment 7</u> – Sibanye Mineral Development Employees Actual is a photocopy of pages from Sibanye-Stillwater Integrated Report from both 2018 and 2021. Additional pages from a MSHA web site are also included in Attachment 7. **[<u>Note</u>: Again, this information is dated and ought to be verified with SMC.]**

<u>Attachment 8</u> – Nye Annual Tax Base Sharing Report (2021 Report Year) is a copy of the report with a cover letter SMC sent to Montana Department of Revenue. Copies of the report were also sent to the affected units of local identified in the1998 Plan Amendment and the Hard Rock Mining Impact Board. **[<u>Note</u>: This has been the standard practice since 1986 to comply with the requirements of 90-6-405 MCA.]**

Attachment 9 – PCSD March 2021 Letter Requesting Modification to Receive MMT Revenues. This letter references Title 15, Chapter 37, Part 117 MCA and Title 90, Chapter 6, Part 4 MCA. The March 12, 2021 letter states "PCSD does understand that MCA 15-37-117(2) allows for a different allocation plan similar to tax base sharing under Title 90, Chapter 6, Part 4." **[Note: The letter argues for a more equitable distribution that would include PCSD. The option to modify the statutory tax base sharing formula in an impact plan was passed as HB 832 into law in 1991. Reference for this option is 90-6-404(5) MCA. However, the 1998 Amendment still includes the statutory formula that was in the Original 1985 Impact Plan and the 1988 Amendment.]**

The letter also raises issues about the function of employee surveys and states, *"Also, the use of the word "initial" in MCA 90-6-405(2) provides additional evidence that Employee Surveys are intended to be used for documentation to revise the initial allocation."* The initial allocation of tax base sharing revenues relied on the projected impact numbers in the approved Impact Plan and subsequent annual tax base sharing allocations are based on the annual employee surveys as specified in Title 90, Chapter 6, Part 4 MCA. **[Note: This is how tax base sharing has been and continues to be done in Stillwater County since approval of the 1985 Impact Plan.]** The relevant connection of the Employee Survey requirement under the Tax Base Sharing Statutes to the allocation of County Metal Mines License Tax revenues to school districts is found in 15-37-117(2) MCA. This subsection of Montana Statutes refers to *"When an impact plan for a large-scale mineral development approved pursuant to 90-6-307 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under subsection (1)(e) in a manner similar to that provided for property tax sharing under Title 90, chapter 6, part 4."* The approved 1998 Amendment contains the same jurisdictional revenue disparity identified in the original 1985 Impact Plan and the annual metal mines license tax revenues have been allocated accordingly.

The letter further states, *"PCSD5 believes that no change to the Mine Impact Plan is required to mitigate this issue. This matter could be best resolved by creating a Stillwater County Mitigation Plan (or Addendum)* *that equitably distributes the applicable of the revenue already allocated to Stillwater County for schools under the approved Mine* Impact Plan." **[Note: The legality of creating a Stillwater County Mitigation Plan (or Addendum) without an amendment to an approved impact plan as proposed has not been established.]**

Attachment 10 – PCSD December 13, 2022 letter has the subject title of "Notice - The requirement allowing for an amendment to each of the Sibanye-Stillwater Mine Impact Plans has been met according to MCA 90-6-311(a)." The letter states, *"According to the definitions in MCA 90-6-402, PCSD is an "Affected local government unit" and PCSD has a long history of and currently has "Mineral development employees" and "Mineral developments students" within its jurisdiction."* There is no dispute that PCSD has "Mineral development employees" and "Mineral developments students" within its jurisdiction. However, there does not appear to be agreement that Park City School District met the definition of an affected local government unit and was not identified as such in the original Impact Plan 1985 or subsequent amendments in 1988 and 1998. **[Note: The definition used in this review is based on a need to increase services or facilities as a result of the commencement of large-scale mineral development or within which a large-scale mineral development is located in accordance with an impact plan adopted pursuant to 90-6-307.]** The mineral development clearly is not located in PCSD and Park City Schools were not identified as an affected local government unit or projected to experience a need to increase services or facilities in an adopted impact as defined in 90-6-402(1) MCA. **[Note: The legality of PCSD claim to be an "Affected local government unit" has not been established.]**

Attachment 11 – OPI – Student Count Rpt – Stillwater Cty Schools Fall 2021 and Spring 2022. The student count in the report shows total student count for Park City Elementary School grades K-8 at 206 to 209 students and High School grades 9-12 at 102 to 103 students for a total PCSD enrollment of 308 to 312 students. **[Note: Based on OPI enrollment data, the 2022 student count is less than the enrollment of 315 students in 1998.]** Information found in the Stillwater County Planning Office archived mine impact planning files indicates the 2022 enrollment of 312 students presented in Attachment 11 is less than the enrollment prior to SMC commencement of mineral development at the Stillwater Mine and less than the enrollment at the time of the 1998 Amendment. Copies of contact information for school districts within Stillwater County were also found in the old planning office files from the early 1980's, including Park City Schools. The school superintendent at the time was Ron Hatcher. School enrollment data for other schools in Stillwater County was also included in the AM3 Attachment 11.

Attachment 12 – Page 24 of the 1998 EIS Record of Decision – AMD 10 DEQ Operating Permit 00118. A joint cover letter of Custer National Forest and Montana Department of Environmental Quality on the Record of Decision (ROD) for the Stillwater Mine's Hertzler Impoundment Expansion contains an item for Montana Hard Rock Impact Act. It states *"The Stillwater mine is compliance with the Hard Rock Impact Act. SMC's Hard Rock Impact Plan, approved in 1985 and updated in 1988 and 1998 is in effect. The mitigation of economic impacts has been negotiated between SMC and Stillwater County. The activities proposed under this expansion fall within the limits set in the approved plan. However, procedures exists and would be used by Stillwater County if circumstances dictate the need for a change in the approved plan."* **[Note: It is unclear why the Attachment 12, which deals with the Hertzler Impoundment expansion, is included with a "Petition" for an amendment to an approved Hard Rock Mining Economic Impact Plan.]**

Attachment 13 – Pages 71-76 of May 2012 EIS_Issue 13 and Issue 14. This attachment contains a copy of the cover page from the May 2012 Final Environmental Impact Statement for Stillwater Mining Company's Water Management Plans and Boe Ranch LAD. The Final EIS was issued jointly by Montana Department of Environmental Quality and the US Forest Service. Issue 13 was about public participation concerns and references the Good Neighbor Agreement. Issue 14 was about the MEPA/NEPA Process and discusses effectiveness of mitigation measures. Issues are in Section 2.2.2 Issues Considered But Dismissed of the Final EIS. **[Note: It is unclear why Attachment 13, which deals with revised water management plans and Boe Ranch LAD located in Sweet Grass County, is included with a "Petition" for an amendment to an approved Impact Plan.]**

Attachment 14 – Checklist EA ROD 2010 AMD 12 to DEQ Operating Permit 00118. This attachment includes a cover letter from Montana Department of Environmental Quality dated July 23, 2010 to Stillwater Mining Company responding to a deficiency issue along with an Expanded Check list for Environment Assessment. The check list includes item 15 Demand for government services and notes, *'The proposed amendment would not add to traffic or government services already being provided."* **[Note: It is not entirely clear why Attachment 14, which deals with a Hertzler LAD Pivot #7, is included with a petition for an amendment to an approved Impact Plan.]**

Attachment 15 – Pages 30 and 57 of Good Neighbor Agreement 2016. This attachment includes a cover page from the Agreement. The cover page clearly shows the Good Neighbor Agreement is among Stillwater Mining Company and Northern Plains Resource Council, Cottonwood Resource Council and Stillwater Protective Association. Stillwater County is not a party to the Good Neighbor Agreement.
Page 30 of the Agreement contains Section 12 Mine Sponsored Housing. This section specifies *"SMC shall confine Mine-Sponsored Housing in Stillwater County to within the city limits of Absarokee and Columbus to within the city the limits of Absarokee and Columbus, Montana as extended by annexation".* **[Note: The fact that Absarokee is an unincorporated town rather than a city may be irrelevant.]** The point being made in the PCSD "Petition" seems to suggest mine-sponsored housing provisions caused SMC employees to disperse to other areas including the Park City area. Information in archived planning office files indicates company sponsored housing was considered it the impact employee and population projections, distribution of impact employees and population projections and the distribution of impact elementary and high school student projections as early as the original 1985 Impact Plan. **[Note: The fact that company sponsored housing was restricted to Absarokee and Columbus further supports the projections for most of the impact to be in those areas.]**

Page 57 of the Agreement includes language pertaining to bussing and/or carpooling as a condition of employment with SMC. The point being made in the PCSD "Petition" seems to suggest bussing/carpooling requirements caused SMC employees to disperse to other areas including the Park City area. Again, information in archived planning office files indicates transportation issue of bussing was considered in the impact employee and population projections, and the distribution of impact employees and population projections. **[Note: The fact that company sponsored transportation was considered in the impact planning projections supports the inclusion of an "Other" classification for mine related employees and their dependents residing in areas other than the listed affected local government Jurisdictions.]**

Attachment 16 – PDF page A49 - SW County of Appendix A in 2020-22 Biennial Tax Report. This Attachment shows information on Class 2 gross proceeds for Stillwater County in tax years 2021 and 2022. **[Note: The source of the information is not readily discernable on the photocopy.]**

Attachment 17 – Pages 7 and 10 and 12 of – SW County 2021 Audited Report. This Attachment includes a cover page for Stillwater County Financial Statements for the year ended June 30, 2021 prepared by Olness & Associates. Pages copied from this report include information on fund balances in the Hard Rock Mine Trust funds and the Metal Mines Tax Reserve as well as revenues for the year ended June 30, 2021. **[Note: The purpose of these funds is for impacts associated with the closure or 50% or greater reduction of workforce at the Mine.]**

Attachment 18 – USB Drive – with pdf copy of this entire AM3 submittal. **[Note: The USB was provided to Stillwater County Commissioners.]**

FINDINGS from Review of PCSD Amendment 3 Petition

The review of Park City School District Amendment 3 Petition identified recurring questions on the factual validity of information presented in the petition or the lack of documentation to support statements and assertions made in the petition. General observations on the PCSD Petition are presented, then followed by findings on factual validity questions listed below. Findings on aspects of the petition that involve procedural issues are then listed. Some aspects of the findings from the review of the petition may require further legal analysis, clarification or legal opinions; are also listed below.

FINDINGS – General Observations on PCSD AM3 Petition

- It appears Park City Schools District #5 Board of Trustees has misinterpreted the definition of an "Affected local government unit" for purposes of an impact plan and tax base sharing as demonstrated in the March 12, 2021 letter. The letter indicates having mineral development employees and mineral development students within its jurisdiction means the school district is an "Affected local government unit". The statutory definition in the Tax Base Sharing Act includes the need to increase services or facilities as a result of the commencement of large-scale mineral development, in accordance with an approved impact plan adopted pursuant to 90-6-307. Park City School District did not demonstrate the need to increase services or facilities during the Original 1985 Impact Plan and subsequent 1988 Amendment or 1998 Amendment and was not designated an "Affected local government unit" in the approved impact plans.

- The reference to equitably distribute property tax revenues is found in the necessity and purpose section of the Tax Base Sharing Act. That section (90-6-401 MCA) goes on to specify, "equitably distributed among affected local government units." The very next section defines "Affected local government unit". No documentation was found during this review to indicate Park City Schools met the fundamental definition to be considered an "Affected local government unit." Tax base sharing starts among the designated "affected local government units" after the impact plan is approved. The annual Employee Surveys then calculate the percentage allocation for each "affected local government unit" based on residency within the jurisdiction. The misinterpretation of the definition of "Affected local government unit" may be the result of the residency basis for Employee Surveys required in 90-6-405 (1) MCA, as opposed to the influx of people and corresponding increase in demand for local government facilities and services found in Title 90, chapter 6, part 3 MCA. The approved 1998 Amendment further defined "Affected Units of Local Government", "Impact Population", In-migrating Mine-Related Student" and "Impact Costs"

- The approved 1998 Amendment also included Section 3, Conditions for Impact Plan Modifications. This section includes Condition F specifically for a potentially affected unit of local government that demonstrates the actual in-migrating population or school enrollment creates a demonstrated revenue disparity to be included as an affected unit, and SMC and the local government will determine the level and type of assistance needed to pay the net costs. This amendment condition and process has been available to Park City School Districts ever since the approval of the 1998 Amendment, over 25 years ago. No documentation was found during this review to indicate Park City School Districts have pursued an amendment pursuant to Condition F.

- In the March 2, 2023 Amendment 3 Petition the Park City Schools District #5 Board of Trustees stated "PCSD is requesting that impacts to our school district be evaluated with the same standards that the plan applies to other school districts." (Page 1 of 23) and "PCSD should be afforded the same standard of impact evaluation the plan has previously applied to other school districts." (Page 22 of 23). This same standard of impact evaluation has been available to Park City Schools every year since 1998, under Amendment Condition F, Section 3, page 3-1 of the approved 1998 Amendment.

FINDINGS - Factual Validity Questions

- The underlying premise of the March 2, 2023 Petition seems to be based on the claim that Park City School Districts were somehow wrongly excluded from the 1998 Amendment to the Nye Hard Rock Mining Impact Plan, therefore are entitled to reimbursement of 12.5% of 28 years of past metal mines license tax allocations, with interest, and past impact payments made by SMC to affected school districts, with interest, then apply 7% to future tax base sharing distributions as reimbursement for 25 years. No documentation was found in Stillwater County files or known Hard Rock Mining Impact Board records to support this premise that Park City Schools were wrongly excluded from the 1998 Amendment. It appears to be more accurate to conclude Park City School Districts did not seek to be involved in the mine impact planning, review and approval process, or demonstrate the need to increase services or facilities, or indicate a net fiscal impact as a result of the Stillwater Mine development.

- The claim that *"For more than 25 years PCSD has incorrectly been excluded from the Impact Plan."* appears to be an assertion rather than a statement supported by factual information. The common meaning of excluded is to be denied access or bared from the process. No factual information was found during the review to indicate Park City School Districts were denied access or bared from the impact planning process for the Original 1985 Impact Plan, 1988 Amendment or 1998 Amendment. The impact planning, review and approval process was an open public process that Park City School Districts had the same opportunity to participate in 1985, 1988 and again in 1998 as any other school but, did not. No documentation was found during the review of Stillwater County files, local newspaper accounts of mine-impact planning issues from 1985 – 1998 or known Hard Rock Mining Impact Board records to indicate Park City School Districts requested to be included. No explanation of why Park City School Districts chose not to participate in the 1998 mine impact planning, review and approval process was found during this review. The opportunity to object to the mine impact plans was also available, but not exercised by Park City School Districts.

- After more than 30 years of operation at the Stillwater Mine, school enrollment data from Montana OPI indicates the enrollment at Park City Schools has not changed appreciably as a result of the commencement of development and operations at the Stillwater Mine. The student enrollment data further suggests Park City Schools were not impacted by operations at the Stillwater Mine after approval of the 1998 Amendment. The five-year average enrollment prior to the 1998 Amendment was 327 students and the five-year average enrollment after the 1998 Amendment was 310 students. The peak in enrollments from 2006 - 2020 appear to be possibly correlated with the major construction of the coking unit, flare and gas recovery unit and increased production at the Laurel Refinery. It was also noted during this review that more than 275 additional residential lots were established in the Park City area since 1998. The Park City area has served as a bedroom community for Laurel and Billings for some time. Regardless, the enrollment numbers for PCSD in 2023 were at the same level as the 1998 student enrollment numbers.

- No factual information was found during the review to support the assertion *"The original 1985 plan, the amended 1988 plan, and the amended 1998 plan all failed to identify and commit to paying the increased local government costs of Park City Elementary School District and Park City High School District resulting from the construction and operation (and subsequent expansion in employment) of the new mineral development."*. No documentation was found during the review of Stillwater County records, local newspaper accounts of mine impact planning issues from 1985 – 1998 or known Hard Rock Mining Impact Board records to indicate Park City School District identified the need to increase services or facilities as a result of the Stillwater Mine mineral development. The school districts identified in the original 1985 Impact Plan and subsequent 1988 Amendment and 1998 Amendment did demonstrate need and net fiscal disparities to be included as an affected unit of local government.

- The absence of a demonstrated need to increase services or facilities resulting in a net fiscal disparity to the Park City Schools during the

1998 Amendment planning, review and approval process further suggests there was no clear reason to project Park City Schools to be impacted by the Stillwater Mine development/operations or include Park City Elementary or Park City High School Districts as "Affected Local Government Units" in the 1998 Amendment.

- No documentation was found in Stillwater County files, local newspapers accounts of mine impact planning issues from 1985-1998 or known Hard Rock Mining Impact Board records that indicate Park City Elementary School District or Park City High School District made any effort to be included as an "Affected Local Government Unit" in the Original 1985 Impact Plan or subsequent 1988 Amendment and 1998 Amendment. There also was no documentation found indicating Park City School Districts objected to the Original 1985 Impact plan or subsequent 1988 and 1998 Amendments.

- The March 2, 2023 Petition seems to be more focused on gaining access to tax base sharing and metal mines license tax allocations than demonstrating the need to increase services or facilities as a result of the Stillwater Mine. The primary intent appears to be to include Park City Schools as an "affected local government units" as a means to recoup a percentage of past metal mines license tax allocations, with interest, a portion of Impact payments made by SMC to other affected schools, with interest, then receive a percentage of future tax base sharing allocations for 25 years as a reimbursement for not participating in the impact plans.

- Other assertions from the Petition also found to be unsupported by factual information include statements to the affect *the 1998 Plan Amendment is materially inaccurate because it failed/fails to assess the impacts of housing and transportation stipulations on outlying communities such as Park City.* Assessments of housing and transportation are not required content of an impact plan. Documentation was found during this review that indicates housing studies were done and company sponsored transportation was considered in the impact planning projections as early as 1984. The inclusion of Additional Housing Units in Table 2-1 Mineral and Impact Population Projections and the "Other" classification in Table

2-2 Distribution of Impact Employees and Population and Table 2-3 Distribution of Impact Elementary and High School Students further indicate housing and transportation factors were considered in mine impact planning projections.

- The assertions continue throughout the 23 pages of the PCSD March 2, 2023 Petition letter. For example, *"The approved impact Plan fails to equitably distribute revenues for Mineral Development Students to some school districts while ignoring to Mineral Development Students at other school districts."* The reference to *"equitably distribute revenue"* appears to refer to the 1991 amendment of the Hard Rock Mining Tax Base Sharing Act that allowed for the statutory distribution formula to be modified by an impact plan. The 1998 Amendment to the SMC Impact Plan did not modify the statutory formula. Stillwater County has been following the statutory formula for tax base sharing since 1985 and the annual metal mines license tax allocation follows the same formula.

- The discrepancy between Park City School District March 2, 2023 claims of as many as 31 impact students and the joint October 24, 2023 letter from Stillwater County Attorney and Crowley Fleck Attorneys representing Sibanye-Stillwater indicating only three mine impact students associated with the Stillwater Mine has not been resolved at this time. It appears Park City Schools may be either counting all student/dependents of employees at the Stillwater Mine site, regardless of their in-migrating status, or counting dependents/students of employees working at the smelter, base metals refinery and other facilities in Columbus as secondary impact, but it is not clear if they are related to local hires or in-migrating employees. These students are not included in the Employee Surveys required for Tax Base Sharing purposes. The County Commissioners are not in a position to evaluate or comment on the past, present level or future projections of student impact in the Park City School Districts. The actual total of "Mineral Development Students" and "In-migrating Mine-Related Students" as well as any future projections need to be sorted out between SMC and Park City Schools before Stillwater County Commissioners can make an informed decision on this issue.

- Information and assumptions from 2021 in Tables 2-1, Table 2-2 and Table 2-3 are based on dated information and may no longer be applicable to the current situation of mineral and impact employment and population, distribution of impact employees and population or distribution of impact elementary and high school students. The projected totals in the PCSD AM3 proposal are 323 in-migrating mineral employees/contractors and in-migrating population of 992. However, the 2022 Impact Monitoring Report indicates 182 in-migrating mineral employees/contractors and in-migrating population of 444 people. There is a discrepancy between the assumptions PCSD used for the projections and actual numbers being reported by Sibanye-Stillwater Mining Company. The County is not in a position to verify this information without input from the mineral developer.

- Additional information was requested of Park City School District #5 to verify documentation on number of in-migrating mineral development students, teachers/staff, need to increase services or facilities over the years of Stillwater Mine mineral development and operation. Also documentation of the extent Park City School District representatives engaged Sibanye-Stillwater and other affected local government units in the proposed Amendment 3. An explanation of proposed reimbursement calculations. No response has been received to date.

FINDINGS - Procedural Issues

- The Park City School District proposed Amendment 3 goes beyond inclusion of Park City Schools as an affected local government unit and contains proposed changes to projections, tax base sharing revenues and metal mines license tax allocations that impact other affected units of local government, as well as other material beyond the scope of required content of an impact plan or plan amendment. No indication of the Park City School Districts working cooperatively with SMC and other affected local government units on the proposed Amendments 3 Petition was identified during this review. The County's past practice was a more cooperative approach to mine impact planning.

- Amendment Condition F was included in the 1998 Amendment for potentially affected units of local government to be considered for inclusion in the Impact Plan, if a revenue disparity can be demonstrated. This amendment option appears to directly apply to PCSD current situation. For over 25 years Park City School Districts have had the opportunity to meet with SMC to demonstrate a revenue disparity, need to increase services or facilities as a result of the Stillwater Mine and determine the level and type of assistance needed to pay net costs as indicated in Amendment Condition F of the 1998 Amendment. No documentation was found during this review to determine why Park City School District has not pursued an amendment for the past 25 years under the 1998 Amendment Condition F. The requirements of Condition F have not been met at this time.

- The 1991 Montana Legislature modified the Tax Base Sharing Act to include *"The distribution formula specified 90-6-404 (2) through (4) may be modified by an impact plan approved as provided in 90-6-307 or amended as provided in 90-6-311, if the modification is needed in order to ensure a reasonable correspondence between the occurrence of increased costs resulting from the mineral development and the allocation of taxable valuation resulting from the mineral development."* This legislative change is found in 90-6-404 (5) MCA. The 1998 Amendment continued to utilize the statutory tax base distribution formula rather than option to modify the formula.

- Inclusion of stipulations from MEPA/NEPA and the Good Neighbor Agreement are beyond the scope of a Hard Rock Mining Impact Plan. Assessment of impacts associated with housing restrictions and transportation are not statutory or regulatory required content to be included in an Impact Plan. Nevertheless, documentation was found during this review indicating housing and transportation studies were done for SMC. The inclusion of housing and transportation factors in the projections used in prior impact plans and the 1998 Amendment is further indication of the inclusion of Additional Housing Units projections in Table 2-1 and the "Other" classification in Table 2-2 Distribution of Impact Employees and Population Projections and Table 2-3 Distribution of Impact Elementary and High School Students.

FINDINGS - Legal Clarification

- The legal authority for a school district that was not identified as an "affected local government unit" in an approved Impact Plan to be reimbursed for past metal mines license tax allocations, with interest, and past impact payments then, apply a percentage to future tax base sharing revenues at the expense of school districts that were identified as an "affected local government unit" in the approved 1998 Amendment, is questionable. Legal issues associated with the proposed scheme to recoup 12.5% of past metal mines license tax allocations with interest, plus past impact payments made by SMC to affected School Districts, then use this amount to recoup 25 years of future tax base sharing allocations by applying a fixed 7% for "past mitigation" are unprecedented.

- Different interpretations of what constitutes an "affected local government unit" as the definition relates to the Hard Rock Mining Impact Plans, Tax Base Sharing and Metal Mines Mine License Tax allocations became apparent during this review. The March 2, 2023 PCSD Amendment 3 Petition seems to imply the presence of mineral development students attending PCSD Schools alone is sufficient to qualify the School District as an "affected unit of local government" while the interpretations of "affected local government unit" identified and used in this review require a demonstrated need to increase services or facilities and result in net impact costs, in addition to mineral development students residing in the school district and attending PCSD Schools. Additional legal clarification appears to be needed to resolve the differences in interpretation.

- Legal clarification on the interpretation of definitions for "large-scale mineral development", "mineral development employees" and "mineral development students" as used in 90-6-405 MCA, may be helpful. The use of the term large-scale mineral development in Title 90, chapter 6. Part 4 cross references the definition in Title 90, chapter 4, part 3 where it is defined, "Large-scale mineral development" means the construction or operation of a hard rock mine and the associated milling facility for which a permit is applied for under 82-4-335. In the case of Stillwater Mining Company, only employees at the Stillwater Mine site are included in the Employee

Surveys required in 90-6-405 MCA, which is the basis for annual tax base sharing and metal mines license tax allocations. The employees at the smelter, base metals refinery and other company facilities in Columbus may be considered for annual impact planning monitoring purposes but, are not included in the Employee Surveys for tax base sharing purposes pursuant to the formula provided in 90-6-404 (1) (2) (3) and (4) MCA.

- The March 12, 2021 letter from Park City Schools (Attachment 9 to the Amendment 3 Petition) claims a Stillwater County Mitigation Plan (or Addendum) could be done to equitably distribute Metal Mines License Tax revenues without changing the Mine Impact Plan. No supporting information was found during this review to verify any statutory basis for this claim. This 1991 legislative change added 90-6-404 (5) MCA appears to indicate an impact plan amendment would be required to modify the previous statutory formula. Additional legal clarification on this issue would be helpful.

Analysis of Factual Validity Questions-

The following section of this review provides additional background analysis for the factual validity questions. As a result of this review, the factual validity of the following statements from the March 2, 2023 Amendment 3 Petition are questioned and the statements that appear to be unsupported by factual information were/are considered assertions.

"For more than 25 years, PCSD has incorrectly been excluded from the Impact Plan. Approximately 10-15% of the Impact Students and the Mineral Development Students attend Park City Schools." (Page 1 of 23)
"The 1998 Plan Amendment is materially inaccurate because Park City Elementary School District and Park City High School District were excluded from the list of Affected Units of Local Government." (Page 5 of 23)

"The 1998 Plan Amendment is materially inaccurate because it failed/fails to assess the impacts of Mine Sponsored Housing Restrictions on outlying communities such as Park City" (Page 6 of 23)

"The 1998 Plan Amendment is materially inaccurate because it failed/fails to assess the impacts of stipulations on transportation (forced busing/carpooling) on outlying communities such as Park City"
(Page 6 of 23)

"The original 1985 plan, the amended 1988 plan, and the amended 1998 plan all failed to identify and commit to paying the increased local government costs of Park City Elementary School District and Park City District resulting from the construction and operation (and subsequent expansions in employment) of the new mineral development."
(Page 9 of 23)

"At the time of the 1998 Amendment and in subsequent years, Annual Employee Surveys (includes students of employees) provided sufficient evidence that PCSD had impact students within its jurisdiction"
(Page 10 Of 23)

"Since PCSD was incorrectly excluded from the 1998 Impact Plan and denied subsequent requests to revise the Impact Plan, other school

districts have received 25 years of Property Tax Base Sharing revenue that should have been allocated to PCSD." (Page 16 of 23)

"Since PCSD was incorrectly excluded from the 1998 Impact Plan and denied subsequent requests to revise the Impact Plan, other school districts have received 25 years of Metal Mines License Tax revenue that should have been allocated to PCSD." (Page 20 of 23)

"In order for PCSD to be reimbursed for the past 25+ years of Metal Mines License Tax revenue that was wrongly distributed, PCSD will receive an additional 7% of the Metal Mines License Tax revenue allocated for Elementary and High School District for the next 25 years. PCSD would also be open to discussing other possible methods to mitigate past wrongful distributions of MMT." (Page 20 of 23)

[Note: Statements of "incorrectly excluded", "materially inaccurate", "failed to identify" and "wrongly distributed" were not found to be supported by factual information during this review. No documentation in known Hard Rock Mining Impact Board records, Stillwater County files, OPI enrollment data or local newspaper articles has been found to indicate PCSD demonstrated the need to increase services or facilities as a result of the Stillwater Mine during the 1984-98 mine impact planning, review and approval process; requested to be included or objected to the 1985 Impact Plan or subsequent 1988 and 1998 Amendments.]

Park City School District statements suggesting housing and transportation (busing/carpooling) were not considered in the mine impact planning process appears to be another assertion that is not supported with factual information. Documentation found in archived Planning Office files indicates housing and transportation issues were factored into the mine impact projections as early as 1984. SMC will likely have additional information on the various housing and transportation studies done over the years for the Stillwater Mine project. Also, the fact that the number of additional housing unites were included in Table 2-1 and not all employees were projected to live in the vicinity of the Nye Mine or within the county further suggests that housing and company sponsored bussing/carpooling factors were considered in the 1998 Amendment.

"Section 1.6 of appendix G of the GNA says "SMC shall require, as a condition of employment, bussing and/or carpooling for all employees, contractors, and subcontractors" (Page 6 of 23)

"In the Record of Decision for the 1985 Stillwater Mine Operation Plan, SMC was required to implement an employee bussing or van/carpooling program to reduce mine-related traffic....The transportation policy required all Stillwater Mine employees to participate in carpooling or bussing." (Page 6 of 23)

"Two major MEPA (joint with NEPA) approvals completed after the 1998 ROD failed to properly take a look at changes to employment or changes to socioeconomic impacts at the Mineral Development. This may be a violation of the Montana Environmental Policy Act and the National Environmental Policy Act." (Page 8 of 23)

[Note: The required contents for an impact plan is to evaluate the need to increase services or facilities, determine net impact costs as a result of a large-scale mineral development and provide methods to mitigate net costs. The required contents do not include an assessment of housing and bussing/car pooling. Regardless, documentation was found during this review indication housing and transportation studies were done for SMC and the projections in the 1985 Impact and subsequent 1988 and 1998 Amendment reflect that.]

"Each year, tax revenue is shared amongst school districts identified in the plan based on their percentage of Mine Development Students, while PCSD's percentage of Mine Development Students is ignored."
(Page 1 of 23)

[Note: Tax base sharing has been implemented in Stillwater County among affected local government units identified in the approved 1985 Impact Plan, 1988 Amendment and 1998 Amendment. Park City Schools were not a participant in those Impact Plans and were not considered an affected unit of local government. No documentation was found in known Hard Rock Mining Impact Board records or Stillwater County files to indicate PCSD

demonstrated the need to increase services or facilities as a result of the commencement of development and operations at the Stillwater Mine or attempted to be included in the mine impact planning, review and approval process. As a result, PCSD was not identified as an affected local government unit in the approved impact plans.]

[Note: The option to modify the statutory tax base sharing formula in an impact plan was passed as HB 832 into law in 1991. Reference for this option is 90-6-404(5) MCA. However, the 1998 Amendment includes the statutory formula that was in the Original 1985 Impact Plan and the 1988 Amendment.]

"There does not appear to be any requirement for an impacted school district to participate to have impacts mitigated or to be listed in the plan as an Affected Unit of Local Government." (Page 5 of 23)

[Note: Amendment Condition F, page 3-1 of the approved 1998 Amendment specifically provides consideration for a potentially affected government unit to be evaluated for possible inclusion into the Impact Plan. This amendment option has been available to Park City School Districts for over 25 years. No documentation was found to indicate Park City School Districts has pursued this amendments option.]

"Table 2-4 incorrectly and arbitrarily awards revenue that should go to the 20% of other/un-named school districts to the Columbus, Absarokee, Fishtail or Nye School districts." (Page 15 of 23)

[Note: Table 2-4 Tax Base Sharing Worksheet, page 2-8 1998 Amendment, shows the percentages used for the initial allocation among affected local government units and was based on actual distribution of mineral development employees associated with the Stillwater Mine residing in Columbus and Stillwater County. The percentage tax base distribution for mineral development students residing within the affected school districts in the approved Original 1985 Impact Plan and subsequent 1988 Amendment and 1998 Amendment. Since PCSD had not demonstrated the need to increase services or facilities as a result

of the Stillwater Mine or even participate in the mine impact assessment process, Park City Schools were not determined to be affected units of local government. No documentations was found to indicate PCSD attempted to be included in the impact planning process or was arbitrarily excluded.]

The statement in the March 2, 2023 petition letter, page 5 of 23, that *"The 1998 Plan Amendment is materially inaccurate because Park City Elementary School District and Park City High School District were excluded from the list of Affected Units of Local Government."* also appears to be an assertion unsupported by factual information. There was no documentation found during the review demonstrating that Park City School District was likely to experience increased capital and net operating costs from the mineral development during the mine impact planning, review and approval process. No documentation was found of any potentially affected or affected local government unit claiming the 1998 Amendment Plan was materially inaccurate because of errors in assessment within two years. The Park City School District petition letter claiming the 1998 Amendment was materially inaccurate is dated March 2, 2023, almost 25 years after the 1998 Amendment was approved.

Enrollment data for Park City Schools alone does not support the assertion that Park City Schools were wrongly excluded from the 1998 Amendment as an "affected local government unit". Enrollment information from the Montana Office of Public Instruction (OPI) indicates the number of students attending Park City Schools changes from year to year as shown in over 30 years of data. The range was between 291 and 362 students in grades K-12. The low end of the range was in 2002, four years after the 1998 Amendment. The high end of the range was in 2013, fifteen years after the 1998 Amendment and seems to be possibly correlated with the 2008-2018 timeframe of the large construction and expansion projects at the Laurel Refinery. It was also noted during this review that over 275 residential lots were recorded in the Park City area since the approval of the 1998 Amendment. The additional residential lots continue the pattern of the Park City area serving as a bedroom community for Laurel and Billings. The five-year average student enrollment prior to the 1998 Amendment was reported to be 327 students in grades K-12. In 1998 student enrollment was reported to be 315 students. **[Note: The five-year average student enrollment after the 1998 Amendment was reported to be 310 students enrolled in Park City Schools. Actual enrollment data from five years prior to the 1998 Amendment and five years after the 1998 Amendment indicates a declining enrollment. As a result, there does not appear to have been reason to project Park City Schools to be an "affected local government units" in the 1998 Amendment.]** In addition to the enrollment numbers, Park City School District had not demonstrated the need to increase services or facilities as a result of the Stillwater Mine mineral development during the mine impact planning, review or approval process for the 1998 Amendment. **[Note: The five-year average enrollment after the 1998 Amendment was less than the five-year average enrollment prior to the 1998 Amendment. More recently the 2023 enrollment for PCSD grades K-12 was reported to be at the same level as the 1998 enrollment numbers.]** No record of a demonstrated need for Park City Schools to increase services or facilities as a result of the mineral development at the Stillwater Mine was found in the Stillwater County files or known Hard Rock Mining Impact Board records during this review.

The statement that PCSD *"For more than 25 years, PCSD has been incorrectly excluded from the impact plan."* (Page 1 of 23), *"Since PCSD was incorrectly excluded from the 1998 Impact Plan and denied subsequent requests to revise the Impact Plan, other school districts have received 25 years of Property Tax Base Sharing revenue that should have been allocated to PCSD."* (Page 16 of 23) and *"Since PCSD was incorrectly excluded from the 1998 Impact Plan and denied subsequent requests to revise the Impact Plan, other school districts have received 25 years of Metal Mines License Tax revenue that should have been allocated to PCSD."* (Page 20 of 23) appears to be another assertion unsupported by factual information. No record of Park City School District participation in the mine impact planning, review and approval process for the 1998 Amendment was found during the review of Stillwater County records, archived Planning Office files, local newspapers articles or known Hard Rock Mining Impact Board records. No documentation has been found of Park City School District objecting to the 1998 Amendment. The factual information found during this review indicates Park City School District did not involve itself in the mine impact planning, review and approval process for the 1998 Amendment and the need to increase services or facilities as a result of the Stillwater Mine development and operations was not demonstrated.

A review of local newspaper archives indicates the extent of news coverage for mine impact planning issues associated with the Stillwater Mine development and operation. In 1984, prior to the Original 1985 Impact Plan, a special insert was published and included information on the local impact plan process, jurisdictional disparities and the Hard Rock Mining Impact Board. In 1985 news articles included mine impact plan stories related to the Original 1985 Impact Plan were published. In 1988 news articles also included stories related to the 1988 Amendment. In addition, the County Planning Board published annual reports in the newspaper, which included mine impact information. Representatives from Park City area were on the Planning Board but, no mention of Park City school impact issues were raised from 1987 through 1998. Again in 1998 news articles included stories covering the mine impact plan associated with the 1998 Amendment. No mention of Park City Schools being impacted was found in the local newspaper coverage of mine impact planning, review or approvals from 1984 through 1998. The first mention of Park City Schools' interest in impact planning issues found was the recent March 2024 articles. No explanation of why Park City School Districts did not get involved in the impact planning and review process from 1984 through 1998 was found during this review.

[<u>Note</u>: The enrollment data from OPI and lack of documentation of a demonstrated need to increase services or facilities for Park City Schools as a result of the Stillwater Mine development in the known Hard Rock Mining Impact Board records, Stillwater County files or local newspaper articles; plus the absence of Park City Schools participation in the 1998 mine impact planning, review and approval process does not support the Park City School Districts claim of being incorrectly excluded from the 1998 Amendment. No explanation of why Park City School District did not participate has been determined. OPI data indicates enrollment in Park City Schools declined from 1987 to 1998 and the five-year average enrollment after approval of the 1998 Amendment declined even further.]

Projections proposed by Park City School District in Tables 2-1 Mineral and Impact Employment and Population Projections, Table 2-2 Distributions of Employees and Population and Table 2-3 Distribution of Elementary and High School Students and projection of SMC taxable valuation are factually questionable. The revised tables proposed by PCSD rely on assumptions and information from 2021. Information necessary to determine the validity and accuracy of the proposed projections resides primarily with the mineral developer and other affected units of local government, not the County.

SMC committed to annual monitoring in section 1.3 of the 1998 Amendment. The annual monitoring specified in the 1998 Amendment includes a process to reconcile the number of in-migrating mineral development students attending each affected school district and the number of in-migrating mineral development students enrolled in each affected school. The impact monitoring report provided to affected schools annually is different than the Employee Surveys required for tax base sharing purposes which require the number of mineral development students residing in each affected high school district and each affected elementary school district, as well as employees residing in each affected county and municipality. The proposed Table 2-3 in Attachment 5 shows 14 impact elementary students and 7 impact high school students for a total of 21. However, the March 2, 2023 Park City School District correspondence shows 31 students in Park City Schools (page 11 of 23). Then, the October 24, 2023 joint letter from Stillwater County Attorney and Crowley Fleck Attorneys representing SMC indicate, only 3 mine impact students attend Park City Schools, one student in the Elementary School and two in the High School. It is not clear from the PCSD statement on this issue whether or not the students of employees from the Stillwater Mine have been verified as impact students with SMC. The County Commissioners are not in a position to evaluate or comment on the past, present level or future projections of student impact in the Park City School District. The actual total of "Mineral Development Students" and "In-migrating Mine-Related Students" as well as any future projections need to be sorted out between SMC and Park City School District before Stillwater County Commissioners can make an informed decision on this issue.

[Note: No documentation was found during the review to indicate Park City School representatives have involved SMC and other affected units of local government to address the validity or accuracy of the proposed projections. The past practice on the original 1985 Impact Plan and subsequent amendments was to work collaboratively with SMC and other affected units of local government to mutually agree on relevant information pertaining to the employment projections, population impact distribution estimates, distribution of impact elementary and high school students, estimated future tax revenue, net costs, financial or other assistance the developer will provide.]

Analysis of Procedural Issues

The following section of this review provides additional background analysis for procedural issues identified during the review.

The PCSD Amendment 3 Petition proposes adding monitoring requirements that include "*the number of in-migrating students with a parent or guardian employed at the SMC Smelter and other Sibanye facilities located in Columbus*" into proposed Section 13 Park City Elementary School and Section 14 Park City High School. The proposed monitoring requirement is for impact planning purposes, not to be confused with the requirement for Employee Surveys pursuant to 90-6-405(1) MCA for tax base sharing and metal mines license tax allocation purposes. The proposed language for adding monitoring requirements and including numbers of employees other than those at the mine and associated milling at facility at the Stillwater Mine site may be useful for impact planning purposes but not for Tax Base Sharing and Metal Mines License Tax Allocation purposes. The relevant definition from the Property Tax Base Sharing Act is 90-6-402 (7) MCA for "Mineral development student means a student whose parent or guardian resides within the jurisdiction of an affected local government unit as a result of employment with a large-scale mineral development or its contractors or subcontractors." The definition in 90-6-402 (4) MCA for "large Scale mineral development, for purposes of this part, is defined in 90-6-302." The definition in 90-6-302 (4) for a *"Large scale mineral development means the construction or operation of a hard-rock mine and the associated milling facility for which a permit is applied for under*

82-4-335..." The definition does not include the smelter, base metals refinery or other facilities located in Columbus.

PCSD Amendment 3 Petition proposed expanding the impact plan monitoring requirements for the total number of employees/students from the Stillwater Mine, East Boulder Mine and Columbus facilities residing in the Park City School District. The distinction between local hires and in-migrating employees is not entirely clear in the PCSD proposal. Stillwater County does not have access to SMC employee information to make the distinction on work location or in-migration status.

[<u>Note</u>: The monitoring specified on page S-4 of the approved 1998 Amendment is not statutorily required content of an impact plan, but was included to monitor actual employment, population and enrollment levels. The annual Employee Surveys specified in 90-6-405 MCA are required for tax base sharing purposes and further linked in 15-37-117 (2) for Metal Mines License Tax allocation purposes. SMC prepares both the annual Impact Monitoring Reports and the Tax Base Sharing Reports.]

The written correspondence from Park City Schools to Stillwater County Commissioners since 2021 indicates the PCSD Board of Trustees have chosen to request the County Commissioners sort out the proposed amendment issues rather than working with SMC as contemplated in Amendment Condition F of the approved 1998 Amendment. No documentation was found during the review to indicate Park City School representatives have met with SMC to address the potential application of Condition F to their current situation. The various amendment options allowed in the Hard Rock Mining Impact Act, associated Administrated Rules of Montana and the 1998 Amendment provisions were reviewed. The statement in the March 2, 2023 petition letter, page 5 of 23, that *"There does not appear to be any requirement for an impacted school district to participate in writing an amendment to have impacts mitigated or to be listed in the plan as an affected unit of local government"* is inconsistent with the reference to Condition F of the 1998 Amendment on page 7 of 23 in the same March 2, 2023 letter. Amendment Condition F is in Section 3.1 on page 3-1 of the approved 1998 Amendment. Condition F states *"In any given year, the actual in-*

migrating population or school enrollment creates a demonstrated revenue disparity for a potentially affected unit of local government. In this case, the local government will be included as an affected unit, and SMC and the local government will determine the level and type of assistance needed to pay the net costs." **[Note: Condition F was included in the 1998 Amendment for potentially affected local governments to be considered for inclusion in the Impact Plan, if the need to increase services or facilities and a revenue disparity can be demonstrated.]** Based on this amendment language, Park City School District #5 has had the opportunity to meet with SMC to demonstrate a revenue disparity and determine the level and type of assistance needed to pay net costs for the past 25 years. The potential to be included in the Nye Hard Rock Mine Impact Plan as an "affected unit of local government" and to seek an amendment has been available to Park City Schools in any given year since the approval of the 1998 Amendment to the Nye Hard Rock Mining Impact Plan. No documentation was found during the review of Stillwater County files or known Hard Rock Mining Impact Board records to indicate PCSD has pursued this amendment option.

The March 2, 2023 PCSD amendment proposal appears to be requesting Stillwater County Commissioners bypass SMC and the other affected local government units and submit the School District's petition directly to the Hard Rock Mining Impact Board. This would be a departure from past procedural practice of working cooperatively with SMC and other affected local government units on the amendments to the Impact Plan. The Park City School District proposed Amendment 3 goes beyond inclusion of Park City Schools as an affected local government unit and contains proposed changes to projections, tax base sharing revenues and metal mines license tax allocations that impact other affected units of local government. The statement "THIS PAGE NO LONGER REFLECTS THE APPROVED PERCENTAGES AFTER AM3 SEE TABLE 2-4 TAX BASE SHARING" stamped on multiple pages of the proposed amendment creates ambiguity on how it changes or negates the substance on those pages. The effect of the proposed changes on other affected school districts is unclear and was not analyzed by Park City School Districts. Attachment 4 provides a summary of the proposed changes and provides some clarification in the comments column for each proposed change. The statement *"out dated information, updating this page is not* *critical for an amendment to include PCSD in the plan, therefore not revised by PCSD. Revisions to all of the outdated sections of the plan should not be the responsibly or burden of an affected school district."* The County is not in a position to readily review and analyze the affect of the Park City School District proposed amendments may have on other affected school districts and could also argue revisions to all of the outdated sections of the plan should not be the responsibly or burden of the County as well.

[<u>Note</u>: The procedure contemplated in amendment Condition F of the approved 1998 Amendment includes SMC. The past practice for impact planning, review and approval from 1985 – 1998 included the Mineral Developer and other affected units of local government. In other words, the past practice was a collaborative process, not a unilateral approach.}

The inclusion of stipulations from MEPA/NEPA and the Good Neighbor Agreement are beyond the scope of a Hard Rock Mining Impact Plan. Assessment of impacts associated with housing restrictions and transportation are not statutory or regulatory required content to be included in an Impact Plan. Stillwater County was not a party to the Good Neighbor Agreement or the Record of Decision referenced in the March 2, 2023 correspondence from Park City School District. MEPA/NEPA Records of Decision separate documents prepared by State and Federal Agencies. The Good Neighbor Agreement is between Northern Plains Resource Council, Stillwater Protective Association, Cottonwood Resource Council and Stillwater Mining Company. As noted in Park City School District correspondence, the Good Neighbor Agreement was signed almost two years after the approval of the 1998 Amended Impact Plan. The Park City School District statement suggesting the 1998 Plan Amendment is materially inaccurate on the basis of housing and transportation was not raised within two years of approval of the 1998 as required to challenge the material accuracy of an impact plan for amendment purposes. Guidance provided by the Hard Rock Mining Impact Board further indicates the plan must contain information specifically required by statute, information necessary to the implementation of statute, and information necessary to the review and implementation of the plan. The format and substance of the plan must allow for a ready review and analysis of the plan, its several parts, and how they relate to one another (Guide of the Implementation of The Hard Rock Mining Impact Act and The Property Tax Base Sharing Act, 2008, Appendix I-B-5). The Park City School District March 2, 2023 petition goes beyond the information specifically required by statute and the format and substance of the petition does not allow for ready review and analysis of how the proposed amendment (2023 AM3) relates to other sections of the 1998 Amendment for other school districts.

[Note: The assessment of housing and transportation are not statutory or regulatory required content of an impact plan. Nevertheless, documentation found in Stillwater County files indicate housing and transportation studies were done for SMC and subsequently used in the projections included in the impact plans.]

Analysis of Legal Clarification Issues

The following section of this review provides additional background analysis for the issues potentially requiring additional legal clarification.

The most significant aspect of the Park City School District Amendment 3 Petition, identified in this review, is the proposed scheme to shift 7% of projected tax base sharing allocations away from Absarokee, Columbus, Fishtail and Nye Schools and allocate the 7% to Park City Schools in the future. Proposed Table 2-4 Tax Base Sharing Worksheet is on page 2-8 of the proposed (2023, AM3). This is Attachment 5 of the Park City School District March 2, 2023 submittal. The proposed Tax Base Sharing Worksheet shows an allocation of .48% for Nye Elementary School does not appear to be consistent with the increase allocation of taxable valuation of gross proceeds for local taxation purposes as specified in Title 90-6-404 (1).

[Note; The premise for the proposed 7% shift of tax base to Park City School District is the unsubstantiated claim of being wrongly excluded from the 1998 Amended Impact Plan. The legal authority for a school district that was not identified as an "affected local government unit" in an approved Impact Plan be reimbursed at the expense of school districts that were identified as an "affected local

government unit" in the approved 1998 Hard Rock Mining Impact Plan Amendment for the Nye Expansion Project is unprecedented.]

A distinct difference between interpretations of "affected local government unit" used in the 1998 Plan Amendment as it relates to a Hard Rock Mining Impact Plan, Tax Base Sharing and Metal Mines Mine License Tax allocations was identified during this review. The March 2, 2023 Amendment 3 Petition seems to imply the presence of mineral development students attending PCSD Schools qualifies the District as an affected unit of local government. The interpretation of "affected local government unit" relied on in this review includes a demonstrated need to increase services or facilities and net impact costs in addition to, mineral development students attending PCSD Schools. **[<u>Note</u>; Legal clarification on the definition of an affected local government unit, would be helpful.]**

The PCSD Amendment 3 Petition included the March 12, 2021 and December 13, 2022 letters as Attachments 9 and 10. The two letters appear to be included with the Petition to back up the claim that "*Park City Schools has repeatedly requested and been repeatedly been told nothing could be done, which was not true at all. An amendment was available every year since 1998*" (Page 2 of 23) March 2, 2023 Amendment 3 Petition. A total of four letters from Park City School representatives were identified during this review in addition to the March 2, 2023 petition letter. They are a letter dated March 12, 2021 request for required allocation of metalliferous mines license taxes be allocated to Park City Elementary School District and Park City High School District according to the Hard Rock Mining Impact Act. The letter states "*PCSD5 believes that no change to the Mine Impact Plan is required to mitigate this issue. This matter could be best resolved by creating a Stillwater County Mitigation Plan (or Addendum) that equitably distributes the applicable portion* of the revenue already allocated *to Stillwater County for schools under the Mine Impact Plan.*" **[<u>Note</u>: No supporting documentation or confirmation of the validity of this statement was found during this review.]** The December 13, 2022 letter containing notice of the requirement for an amendment to each of the Sibanye-Stillwater Mine Impact Plans has been met according to MCA 90-6-311(a). In this letter the amendment criteria of an increase of at least 75 employees allowing for an amendment petition, is cited. The December 13, 2022 letter also includes Park City Schools' interpretation of the definition of an "Affected local government unit" as having mineral development employees and students within its jurisdiction. **[Note: The PCSD interpretation does not include a demonstrated need to increase services or facilities and/or a net fiscal disparity.]**

Another letter dated September 1, 2023 referencing the March 2023 request and further requesting *"If the Commission is unable to submit the amendment for our school district, please advise Park City School District of your rationale by September 30, 2023."* **[Note: The September 1, 2023 letter was not on the Park City Schools letterhead and only signed by the PCSD Trustee Board Chair and one PCSD Trustee. The other letters were on Park City School letterhead and signed by the majority of the PCSD Board of Trustees.]**

The January 11, 2024 letter from Kaleva Law Office to Stillwater County Commissioners, stated *"Historically, the District worked with elected officials to address its exclusion from the 1998 NIP and had been told that the Plan was "written in blood."* The letter also states in part *"the District stands ready to cooperate in the production of information necessary for the Commission to make an informed decision regarding the need for an amendment."* and ends with *"The District requests that the Commission resolve to pursue an amendment to the 1998 NIP to include Park City School District as an impacted unit of local government on its agenda at the earliest convenient opportunity. In addition, the District further requests consideration of the propriety of reimbursement of the District for its past exclusion from the NIP."* No other written correspondence between March 2021 and January 2024 from representatives of Park City Schools to Stillwater County Commissioners has been identified in this review. **[Note: The request for "consideration of the propriety of reimbursement of the District for its past exclusion from the NIP" seems to suggest the propriety of the request is uncertain. Also, the assertion the "past exclusion" of the District appears again. This assertion of "exclusion" is not supported by any factual information found during this review. The factual information suggests PCSD did not seek to be included.]**

[Note: Legal clarification on the relevance of these four letters may have on the PCSD Amendment 3 Petition would be helpful. Especially the interpretation of the definition for an "Affected local government unit" from the December 13, 2022 letter and the statement "*PCSD5 believes that no change to the Mine Impact Plan is required to mitigate this issue. This matter could be best resolved by creating a Stillwater County Mitigation Plan (or Addendum) that equitably distributes the applicable portion* of the revenue already allocated *to Stillwater County for schools under the Mine Impact Plan."* from the March 12, 2021 letter.}

RECOMMENDATIONS on PCSD Amendment 3 Petition

1. If Park City School District #5 continues to pursue the proposed Amendment 3 petition, it is recommended the County Commissioners consider requesting the County Attorney seek a legal opinion from Montana Attorney General to determine if a school district is legally entitled to reimbursement for past Metal Mines License Tax revenue previously received pursuant to Title 15, Chapter 37, Part 1 MCA and distributed to other designated affected units of local government in an approved impact plan, with interest, plus impact payments, with interest, made to affected local government units pursuant to 90-6-307(2) MCA, then apply this amount to future Tax Base Sharing revenue distributed pursuant to Title 90, Chapter 6, Part 4 MCA at 7% for twenty five years. When, the school district requesting the reimbursement was not identified as an affected unit of local government pursuant to Title 90, Chapter 6, Part 3 MCA, did not participate in the mine impact planning and review process specified in 90-6-307 MCA, did not file an objection to the 1998 Impact Plan Amendment pursuant to 90-6-307 (5) MCA and had not sought an amendment to the approved 1998 Impact Plan Amendment for 25 years. The County Attorney and/or outside legal counsel ought to be involved in determining the validity of requesting a legal opinion from the Montana Attorney General on the circumstance presented by Park City School District #5 Board of Trustees.

2. Request an independent legal opinion on the definition of "affected local government unit" 90-6-402(1), 90-6-403 and 90-6-404 MCA as also used in 90-6-307 MCA, 15-37-117 (1)(e) and (2) MCA. More specifically, does the definition in the context of Mine Impact Plans, Tax Base Sharing and Metal Mines License Tax allocation require a demonstrated need to increase services or facilities as a result of the commencement of large-scale mineral development and be included in an approved Impact Plan as an "affected local government unit"? Can another local government unit legally claim to be an "affected local government unit" on the sole basis of dependents of mine employees residing in the school district, if the school district

has not demonstrated the need to increase services or facilities as a result of the commencement of large-scale mineral development and was not included in an approved Impact Plan?

3. Also, consider requesting an independent legal opinion to clarify the interpretation of definitions for "large-scale mineral development", "mineral development employees" and "mineral development students" as used in 90-6-405 MCA. The use of the term large-scale mineral development in Title 90, chapter 6. Part 4 cross references the definition in Title 90, chapter 4, part 3 where it is defined, "Large-scale mineral development" means the construction or operation of a hard rock mine and the associated milling facility for which a permit is applied for under 82-4-335. In the case of Stillwater Mining Company, only employees at the Stillwater Mine site are included in the Employee Surveys required in 90-6-405 MCA, which is the basis for annual tax base sharing and metal mines license tax allocations. The employees at the smelter, base metals refinery and other company facilities in Columbus are not included in the Employee Surveys for tax base sharing purposes pursuant to the formula provided in 90-6-404 (1) (2) (3) and (4) MCA.

4. Request the County Attorney and/or outside legal counsel review and provide a legal opinion on Attachment 9 of the PCSD Amendment 3 Petition, the March 12, 2021 letter titled Request for Required Allocation of Metalliferous Mines License Taxes. The letter stated, "PCSD5 believes that no change to the Mine Impact Plan is required to mitigate this issue." PCSD also claimed the MMLT "matter could best be resolved by creating a Stillwater County Mitigation Plan (or Addendum) that equitably distributes the applicable portion of the revenue already allocated to Stillwater County for schools under the approved impact plan." No statutory authority was found during this review for the PCSD claims that a MMLT Mitigation Plan could be done without an impact plan amendment. A legal opinion on whether or not there is any legal basis for the County to create a Mitigation Plan outside of the Impact Plan to distribute MMLT revenues would be beneficial.

5. It is recommended that the 1998 Impact Plan Amendment Condition F, section 3.1 on page 3-1, be considered the amendment option most applicable to the Park City School situation. Condition F states *"In any given year, the actual in-migrating population or school enrollment creates a demonstrated revenue disparity for a potentially affected unit of local government. In this case, the local government will be included as an affected unit, and SMC and the local government will determine the level and type of assistance needed to pay the net costs."* Condition F was included in the 1998 Amendment specifically for potentially affected local governments.

6. It is recommended the County Commissioners consider adopting a resolution declining the March 2, 2023 PCSD Amendment 3 Petition – Nye Hard Rock Mining Impact Plan submitted by the Park City School District #5 Board of Trustees for the following reasons:

   - There are legal questions that remain unresolved. Most notably, the legal authority for a school district that was not identified as an "affected local government unit" in an approved Impact Plan be reimbursed at the expense of school districts that were identified as an "affected local government unit" in the approved 1998 Hard Rock Mining Impact Plan Amendment for the Nye Expansion Project.

   - The uncertain legal authority of the proposed scheme that mixes prior MMLT allocations made to the affected schools with impact payments made by SMC to affected schools, identified in the approved 1998 Amendment, adds 3.5% interest, then uses 12.5% (PCSD claimed share) of the total amount in the calculation for future tax base sharing distributions to a school district that has not been identified in an approved impact plan as an "affected local government unit".

   - The March 2, 2023 PCSD Amendment 3 Petition contained statements and assertions that were not supported with factual information found during the review. Statements of "incorrectly excluded", "materially inaccurate", "failed to identify" and "wrongly distributed" are examples of statements unsupported by documentation from Statutory and Regulatory references, known Montana Hard Rock Mining Impact Board records, Montana OPI data or Stillwater County records.

- The PCSD Amendment 3 Petition contains inaccurate statements and information that is beyond the scope of required content for an amendment to an approved Impact Plan. Most notably references to MEPA/NEPA Records of Decision and the Good Neighbor Agreement.

- Factual issues pertaining to actual number of "mineral development employees", "mine related employee", "in-migrating mineral development employees", "impact population", "mineral development students" and "In-migrating mineral development students" residing in the Park City School District and enrolled in Park City Schools have not been resolved with the mineral developer. The County is not in position to access mine personnel records or student records necessary to resolve discrepancies in numbers presented in the annual Impact Monitoring Reports for impact planning purposes or the annual Employee Surveys for tax base sharing purposes.

- The PCSD Amendment 3 Petition contains the statement "THIS PAGE NO LONGER REFLECTS THE APPROVED PERCENTAGES AFTER AM3 SEE TABLE 2-4 TAX BASE SHARING' stamped in red on multiple pages of the proposed amendment, creates ambiguity. The effect of this statement on other affected school districts has not been analyzed by PCSD and the County is not in a position to do the analysis.

- The underlying premise of the March 2, 2023 Amendment 3 Petition seems to be based on the unsubstantiated claim that Park City School Districts were somehow wrongly excluded from the 1998 Amendment to the Nye Hard Rock Mining

Impact Plan, therefore is entitled to reimbursement of over 25 years worth of a percentage of tax base sharing revenues metal mines license tax allocations and past impact payments to other affected school districts. All information found during this review indicate it would be more accurate to conclude Park City School Districts were not excluded from the process, instead PCSD did not seek to be included in the mine impact planning, review and approval process.

- The Park City Schools District #5 Board of Trustees requested Park City Schools be afforded the same standard of impact evaluation the plan has previously applied to other school districts. However, the March 2, 2023 Amendment 3 Petition, proposed something different than the impact evaluation standard that applied to other affected school districts in the 1998 Amendment. In addition to mine employees and students residing in their jurisdiction, the other affected school districts had to demonstrate the need to increase services or facilities, net impact costs that are a result of the mineral development and negotiate mitigation methods with SMC. As proposed, the AM3 Petition does not include this impact evaluation process between Park City Schools and Sibanye-Stillwater Mining Company.

- Park City Schools District #5 has had the opportunity to seek an amendment for over 25 years under Amendment Condition F of the approved 1998 Amendment. Instead of pursuing Condition F, Park City School District #5 Board of Trustees submitted the proposed petition directly to the County Commissioners. In effect, bypassing the evaluation of any impact revenue disparity resulting from the need to increase services or facilities as a result of the development and operation of the Stillwater Mine.

- Additional information was requested of Park City School District #5 to verify any documentation on number of in-migrating mineral development students, teachers/staff, need to increase services or facilities over the years of Stillwater Mine mineral development and operation. Also documentation of the extent Park City School District representatives engaged Sibanye-Stillwater and other affected local government units in the proposed Amendment 3. An explanation of proposed reimbursement calculations. No response has been received from Park City School District #5 to date.

7. It is also recommended the County Commissioners be aware of the alternative tax base sharing option *"The distribution formula specified 90-6-404 (2) through (4) may be modified by an impact plan approved as provided in 90-6-307 or amended as provided in 90-6-311, if the modification is needed in order to ensure a reasonable correspondence between the occurrence of increased costs resulting from the mineral development and the allocation of taxable valuation resulting from the mineral development."* This 1991 legislative change is found in 90-6-404 (5) MCA. Also, be aware the 1998 Impact Plan Amendment kept the statutory formula used for the original 1985 Impact Plan and the 1988 Amendment, rather than the option to modify the tax base sharing distribution formula in the 1998 Amendment.

8. An alternative solution to consider is a joint petition from the County and Sibanye-Stillwater Mining Company to include Park City Elementary School District, Park City High School District, Rapelje Elementary School District, Rapleje High School District, Reed Point Elementary School District and Reed Point School District as potentially affected units of local government in the Stillwater Mine Impact Plan, in a similar format as the East Boulder Impact Plan. Then under Amendment Condition F, each potentially affected school would be afforded the same standard of impact evaluation the impact plan has applied to the affected school districts in past impact plans. If this alternative solution is pursued, an educational forum on hard rock mine impact planning, tax base sharing and metal mines license tax allocation issues for all affected and potentially affected school districts within Stillwater County is advisable since it has been over 25 years beyond the last amendment.

9. Since Park City School District representatives have sent the PCSD Amendment 3 Petition to the Montana Hard Rock Mining Impact Board, which has then discussed the issue in subsequent public meetings, it is recommended the County notify the Hard Rock Mining Impact Board of their findings and decision on the PCSD Amendment 3 Petition.