

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF

1 Michael Reisner
 Staff Attorney
 2 Northern Plains Resource Council
 2401 Montana Avenue, Suite #200
 3 Billings, MT 59101
 Telephone: 406-248-1154
 4 Fax: 406-248-2110

WILLIAM S. MONTGOMERY
 CLERK OF DISTRICT COURT

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5 Attorney for: Northern Plains Resource Council, Stillwater Protective Association

John Massey

7 MONTANA FIRST JUDICIAL DISTRICT, LEWIS AND CLARK COUNTY

9 NORTHERN PLAINS RESOURCE COUNCIL (non-profit
 10 corporation); and Stillwater Protective
 11 Association (non-profit corporation),
 12 Plaintiff,
 13 vs.

Cause No. ADV 9900103

COMPLAINT FOR DECLARATORY AND
 INJUNCTIVE RELIEF

14 MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY:
 15 AND MARK SIMONICH (Director).
 16 Defendant

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18 I. INTRODUCTORY STATEMENT

19 1. This is an action for declaratory and injunctive relief. Plaintiffs challenge the decision of
 20 the Montana Department of Environmental Quality (DEQ) to approve Stillwater Mining Company's
 21 (SMC) Hertzler Tailings Impoundment Expansion and Revised Mine Waste Management Plan (Amendment
 22 010 to SMC's Operating Permit #00118).

23 2. This action arises under and alleges violations of the Montana Environmental Policy Act
 24 (MEPA), MCA 75-1-101 et seq. (1997) and the DEQ's implementing administrative rules, ARM
 25 17.4.601-636; the Montana Metal Mine Reclamation Act (MMRA), MCA 82-4-301 et seq. (1997) and the
 26 DEQ's implementing administrative rules, ARM 17.24.101-189 (1997); and the Montana Administrative
 27 Procedure Act (MAPA), MCA 2-4-101-711(1997); and the Montana Constitution Article II Section 3
 28 (Inalienable Rights) and Article IX Section 1 and 2 (Environmental and Natural Resources).

1 3. Plaintiffs seek an order declaring the Defendants in violation of the NEPA, the MMRCA, the
2 MAPA, and the Montana Constitution. Plaintiffs request that the proposed order remain in effect
3 until the Defendants prepare a supplemental Environmental Impact Statement that discloses and
4 assesses all reasonably foreseeable indirect, synergistic, and cumulative impacts of the proposed
5 action on the environment and otherwise complies with the NEPA and until the Defendants comply
6 with the MMRCA. Plaintiffs seek an order permanently enjoining the Defendants from implementing
7 the decision and enjoining the SMC from proceeding with its proposed expansion as approved by
8 the Defendants until the Court determines that the Defendants have complied with all applicable
9 statutes and implementing rules. Such an order is necessary to preserve the status quo, to
10 prevent illegal agency action, and to prevent irreparable injury to the environment.

11 12 II. JURISDICTION AND VENUE

13 4. Jurisdiction over this action is conferred by the Montana Administrative Procedure Act, MCA,
14 the Montana Environmental Policy Act, and the Metal Mine Reclamation Act.

15 5. Venue is properly vested in this Court pursuant to MCA 25-2-126.

16 III. PARTIES

17 6. Plaintiff Northern Plains Resource Council (NPRC) is a registered non-profit corporation
18 located in Billings, Montana. NPRC has members who personally live, work, own real property,
19 ranch and farm, and recreate and enjoy the areas of the Stillwater Valley that are adversely
20 affected by the SMC's operations at issue herein. NPRC's members also use and enjoy the
21 resources of the Stillwater River that are adversely affected by SMC's proposed expansion.
22 NPRC's members' livelihood, enjoyment of their real property, and recreational and aesthetic use
23 of the area are directly and adversely affected by the approved mine expansion and will continue
24 to be adversely affected in the future. NPRC and its members have participated extensively in
25 the Defendant's NEPA process regarding SMC's proposed expansion. NPRC and its members attended
26 and testified at the scoping meeting, attended and testified at public hearings, met with DEQ
27 personnel, and reviewed and submitted detailed comments on the Draft Environmental Impact
28 Statement. NPRC brings this action in its own name and on behalf of its members. NPRC's mailing
29 address is 2401 Montana Avenue #200, Billings, MT 59101.

1 7. Plaintiff Stillwater Protective Association (SPA) is a registered non-profit corporation
2 located in Stillwater County, Montana. SPA has members who personally live, work, own real
3 property, ranch and farm, and recreate and enjoy the areas of the Stillwater Valley that are
4 adversely affected by the SMC's operations at issue herein. SPA's members also use and enjoy the
5 resources of the Stillwater River that are adversely affected by SMC's proposed expansion.
6 SPA's members' livelihood, enjoyment of their real property, and recreational and aesthetic use
7 of the area are directly and adversely affected by the approved mine expansion and will continue
8 to be adversely affected in the future. SPA and its members have participated extensively in the
9 Defendant's MEPA process regarding SMC's proposed expansion. SPA and its members attended and
10 testified at the scoping meeting, attended and testified at public hearings, met with DEQ
11 personnel, and reviewed and submitted detailed comments on the Draft Environmental Impact
12 Statement. SPA brings this action in its own name and on behalf of its members. SPA's mailing
13 address is 7-O. Box 106, Absarokee, MT 59001.

14 8. Defendant Department of Environmental Quality is an administrative agency of the State of
15 Montana. Defendant Mark Simonich is the Director of the DEQ and is sued here in his official
16 capacity as head of the agency whose actions are challenged. As one of the joint lead agencies,
17 the Defendants are responsible for ensuring that the Final Environmental Impact Statement and
18 Record of Decision comply with both the National Environmental Policy Act, MEPA and associated
19 rules and regulations, ARM 17.4.627(3).

20 21 IV. HISTORY AND CHRONOLOGY OF EVENTS AT THE STILLWATER MINE

22 Background on Stillwater Complex

23 9. SMC's Stillwater Mine is located in the Stillwater River valley and approximately 1.5 miles
24 from the Absaroka-Beartooth Wilderness Area and approximately 25 miles from Yellowstone National
25 Park. The mine is located in the Stillwater Complex, a mineralized zone running approximately 28
26 miles in length and ranging from 1-3 miles in width. The complex crosses both the Stillwater and
27 Boulder River Valleys and contains vast mineral reserves of chrome, copper, nickel, platinum,
28 palladium, silver, gold, and other lesser known ores. The Stillwater Complex is estimated to
29 hold over 225 million troy ounces of platinum-group metals.

1 10. Hard-Rock mining is a historical fact in this area, especially at the headwaters of the
2 Stillwater River Valley. Between 1941 and 1961, Anaconda and American Chrome Company mined the
3 complex for chrome ore. These large-scale mining operations resulted in devastating
4 environmental impacts because of inadequate reclamation and water quality safeguards.
5 Consequently, a 12-mile stretch of the Stillwater River near the project area is impaired by
6 heavy metal pollution. Starting in the 1960s, several companies initiated large scale
7 exploration for platinum group metals. In 1985, SMC applied for an operating permit to develop
8 the Stillwater Mine.

9 11. In 1986, the Department of State Lands (now Montana Department of Environmental Quality) and
10 USDA Forest Service, Custer National Forest (CNF) approved the original plan of operations after
11 completing the NEPA/MEPA review process (Operating permit #00118). The original plan of
12 operations limited SMC to a production cap of 1,000 tons per day (TPD), limited development to
13 the west side of the Stillwater River, and provided for a permit area of 550 acres. The FEIS
14 stated that the impacts of the mine development would have no greater impact on surface or ground
15 water than exploration activities. The record of decision also required SMC to bus its employees
16 to the mine site to mitigate impacts.

17 12. Since being permitted in 1986, the DEQ and CNF have approved nine proposed amendments to the
18 original plan of operations:

19 Amendment 001 was approved in June of 1986 and relocated mine and mill facilities. No increase in
20 permit area or disturbed acreage was permitted.

21 Amendment 002 was approved in September of 1986 to allow the excavation of a sand borrow area for
22 construction purposes. No increase in permit area was permitted but there was an increase in
23 disturbed acreage that was reclaimed.

24 Amendment 003 was approved in January of 1987 to allow excavation of a second sand borrow area
25 for construction purposes. No increase in permit area was permitted but there was an increase in
26 disturbed acreage that was reclaimed.

27 Amendment 004 was approved in February of 1987 to relocate the southern portion of the tailings
28 impoundment toe dike. No increase in permit area or disturbed acreage was permitted.

29

1 Amendment 005 was approved in March of 1989 and was the first major amendment to the original
2 plan of operations. The agencies determined that the proposed action would not have significant
3 impacts on the human environment and consequently did not prepare an EIS. The amendment allowed
4 SMC to develop an additional 6 adits and 1 mine shaft on the east side of the Stillwater River.
5 The amendment increased the permit area size to 1.158 acres and increased disturbed acreage by 72
6 acres. Rather than continuing to require SMC to bus employees to the mine site, the agencies
7 required SMC to implement a voluntary carpooling system.

8 Amendment 006 was approved in July of 1989 and allowed the construction of a temporary sand
9 slurry pipeline connecting the east and west sides of the mine site. No increase in permit or
10 disturbed area was allowed.

11 Amendment 007 was approved in November of 1990 and allowed for the construction of three
12 Stillwater Valley Ranch percolation ponds. The amendment allowed a permit area increase of 27
13 acres and increased disturbed acreage by 7 acres.

14 Amendment 008 was approved in September of 1992. This amendment increased the production cap
15 from 1,000 to 2,000 tpd and approved an expansion of support facilities and the tailings
16 impoundment. After initially determining that the proposed expansion did not require the
17 preparation of an EIS, the agencies changed their position after considerable public comment.
18 The amendment allowed employment at the mine to increase from 460 to 525 full-time employees to
19 meet the increased production demands. SMC also petitioned the State of Montana for a petition
20 to change ambient water quality for total dissolved solids, ammonia, nitrates, and several metals
21 in both surface and groundwater. This amendment increased the disturbed acreage by 35 acres.

22 Amendment 009 was approved in February of 1996 to allow the construction of a tunnel underneath
23 the Stillwater River to connect the east and west sides of the mine site. In a scoping letter
24 dated June 8, 1995, the DEQ recognizes that possible future actions are reasonably foreseeable:
25 "[S]MC proposed to construct a haulageway at depth under the river. SMC contemplates a second
26 phase which would involved additional mining at depth, should core drilling results indicate the
27 continuity of the ore body. [D]ue to the nature of the ore body, SMC can be expected to submit an
28 application for mining of additional reserves and for additional tailings impoundment capacity at
29 some point in the future." Rather than comply with its NEPA mandate to evaluate the cumulative

1 effects of past, present, and reasonably foreseeable future projects, the DEQ concludes that
2 "these activities are as yet undefined and unproposed and therefore would be outside the scope of
3 [our] analysis." After this amendment the total permit area is 1,340 acres (a 240% increase over
4 the originally permitted acres) with 255 acres permitted for disturbance.

5
6 V. STATEMENT OF FACTS REGARDING THE CURRENT ADMINISTRATIVE PROCESS

7 13. In April of 1996, less than 2 months after the approval of Amendment 009, SMC submitted a
8 proposed amendment to dramatically expand its operations at the Stillwater Mine site to provide
9 it with the flexibility to respond to market demand. The proposed amendment would eliminate the
10 current 3,000 tpd production cap and allow SMC to continue mining platinum group metals for 30
11 more years. Specifically, the proposed amendment would allow:

12 A. The construction of a new 100+ acre tailings impoundment on the Hertzler Ranch
13 approximately 8 miles down the Stillwater Valley from the current mine site. This new impoundment
14 would increase SMC's capacity for storing tailings by 15 million tons.

15 B. The installation of a slurry pipeline system to transport tailings and other mine
16 process wastes to the new tailings impoundment.

17 C. The expansion of waste rock storage areas to the east side of the Stillwater River.
18 These new storage areas would increase SMC's storage capacity for waste rock by 17.5 million
19 tons.

20 D. The relocation of the land application disposal system for mine wastewater from its
21 current location on the east side of the Stillwater River near the mine site to the Hertzler
22 Ranch (8 miles away) and the Stratton Ranch (1.5 miles away), including the construction of
23 necessary pipelines.

24 14. Consequently, the DEQ and CNF initiated the NEPA/NEPA process mid-1996 and held a scoping
25 meeting in September of 1996 in Absarokee, Montana. SPA and NPRC members participated in the
26 scoping process by providing both oral and written testimony.

27 15. In March of 1998, the agencies released the Draft Environmental Impact Statement (DEIS) for
28 public review and comment. SPA and NPRC members reviewed the DEIS and submitted detailed
29 comments. SPA and NPRC also hired Jim Kuipers, a mining engineer with the Center for Science in

1 Public Participation, to review and submit comments on the DEIS. Mr. Kuipers' comments focused
2 on mine waste water treatment alternatives, the Hertzler tailings impoundment, paste tailings
3 technology, and reclamation and bonding issues.

4 16. On November 12, 1998, DEQ Director Mark Simonich signed the Record of Decision approving
5 SMC's proposed amendment to expand its operations at the Stillwater Mine. This amendment brings
6 the total permit area to 2,253 acres (a 400% increase over the original 550 permitted acres).
7 Specifically, the Record of Decision approves:

8 A. The elimination of the production cap at the Stillwater Mine.

9 B. The development of the 100+ acre Hertzler Tailings Impoundment and associated water
10 management facilities (an additional 730 permitted acres).

11 C. The development of water management facilities at the Scratton Ranch (an additional
12 162 permitted acres).

13 D. The construction of a slurry pipeline system to transport tailings and other mine
14 process wastes to the new tailings impoundment and water management facilities.

15 17. In mid-December 1999, Black Rock Joint Venture announced plans to develop a mine within five
16 years in the Stillwater Complex near Nye, Montana just south of SMC's Stillwater Mine. The mine
17 would tap nickel, copper, cobalt, and platinum group metals within the same 26-mile ore body
18 currently being mined by SMC. The Company has already started collecting baseline data to use in
19 the environmental impact statement process.

20 18. In letters dated December 24, 1998 and January 26, 1999, the Environmental Protection Agency
21 disapproved several provisions of the Montana Water Quality Act. The EPA concluded that these
22 disapproved provisions violated the federal Clean Water Act and implementing EPA regulations.
23 Specifically, the EPA disapproved Section 75-5-401(1)(b) of the Montana Water Quality Act. This
24 provision exempts from the state of Montana's nondegradation policy the surface discharge of
25 ground water that is unaltered from its ambient quality. The DEQ utilized this categorical
26 exemption for 'unaltered groundwater' to establish the effluent limitations for SMC's Montana
27 Pollution Discharge Elimination System (MPDES) permit. SMC's renewed MPDES permit became
28 effective in August of 1998. NPRC and SPA participated extensively in this process.
29

1 19. After reviewing the FEIS and Record of Decision, SPA and NPRC members decided to initiate
2 this action because the Defendants have violated the NEPA, MORA, NAPA, and Montana Constitutional
3 right to a clean and healthful environment.

4
5 V. CLAIMS FOR RELIEF

6 COUNT I (MONTANA ENVIRONMENTAL POLICY ACT)

7 20. Plaintiffs incorporate by reference all previous allegations in this complaint.

8 21. Defendants' approval of SNC's proposed expansion constitutes a state action that may
9 significantly affect the quality of the human environment. Consequently, the Defendants must
10 prepare an Environmental Impact Statement pursuant with the NEPA, MCA 75-1-101, et seq.

11 22. The DEQ has adopted rules to implement the NEPA through the establishment of administrative
12 procedures. ARM 17.4.601-636 The Defendants must comply with these procedures 'to the fullest
13 extent possible' prior to reaching a final decision on a proposed action covered by NEPA. ARM
14 17.4.601-603.

15 23. NEPA was adopted to implement the Montana Constitution provision requiring the maintenance
16 of a clean and healthful environment. Article IX, Section 1, Montana Constitution (1972) and to
17 preserve Montana citizens' inalienable right to a clean and healthful environment, Article II,
18 Section 3, Montana Constitution (1972).

19 24. NEPA embodies the fundamental right of Montana citizens to know and participate in
20 government decision-making. Article II, Section 9, Montana Constitution (1972).

21 25. NEPA is an environmental full disclosure law and its mandate requiring state agencies to
22 prepare environmental impact statements serves two distinct purposes. First, the mandate ensures
23 that an agency, in reaching its decision, will have available and will carefully consider
24 detailed information concerning environmental impacts. Second, the mandate guarantees that the
25 relevant information will be made available to the larger audience that may also play a role in
26 both the decision-making process and the implementation of that decision.

27 26. These twin informative purposes foster environmental informed decision-making and public
28 participation.

29

1 27. In approving SMC's proposed expansion, the DEQ has cloaked itself in ignorance and ignored
2 significant potential adverse environmental impacts the proposed expansion will have on the land,
3 air, water, and community of the Stillwater Valley. In doing so, the DEQ has engaged in
4 environmentally uninformed decision-making and prevented the public from meaningfully
5 participating in the NEPA process. This is the precise type of state agency action the Montana
6 Legislature made unlawful by enacting NEPA.

7 28. The DEQ failed to fully develop and evaluate a reasonable range of alternatives to the
8 proposed action and consequently the FEIS is inadequate.

9 A. Under ARM 17.4.603(2)(b), the DEQ is required to consider alternatives that are
10 realistic, technologically available, and that represent a course of action that bears a logical
11 relationship to the proposal being evaluated.

12 B. Under ARM 17.4.603(a), alternatives include an alternative approach or course of
13 action that would appreciably accomplish the same objectives or results as the proposed action or
14 design parameters, mitigation, or controls other than those incorporated into a proposed action
15 by an applicant or by an agency prior to preparation of a DEIS.

16 C. The purpose and need of SMC's proposed expansion is to permit a flexible and
17 integrated waste management plan providing for long-term management of the disposal of tailings,
18 waste rock, and other wastes generated by the Stillwater Mine. FEIS at 3-2.

19 D. SPA and NRC submitted written and oral comments suggesting that the DEQ fully develop
20 an alternative requiring SMC to implement past technology that is both economically and
21 technologically feasible. The implementation of this best available technology will not only
22 reduce the impacts on the environment but also meets SMC's stated purpose and need. The DEQ's
23 superficial discussion dismissing past technology as a reasonable alternative in the FEIS, is
24 arbitrary and capricious and indicates a DEQ predisposition to SMC's proposal.

25 E. The DEQ's failure to fully develop an alternative for the Hertzler Impoundment
26 requiring SMC to implement past technology is arbitrary and capricious and an abuse of
27 discretion under the NEPA and Montana Administrative Procedure Act.

28 F. The DEQ's decision to approve SMC's proposed expansion based upon this inadequate
29 development of alternatives violates NEPA and ARM 17.4.607(5).

1 29. The Defendants violated the NEPA and implementing rules by failing to adequately disclose
2 and assess the indirect, synergistic, and cumulative impacts of SMC's proposed expansion on the
3 human environment. Consequently, the FEIS resulting from this flawed process is inadequate
4 because it does not contain a reasonably thorough discussion of the potential impacts of the
5 proposal and its alternatives.

6 30. The Defendants violated the NEPA because they failed to adequately address the cumulative
7 impacts of past, present, and reasonably foreseeable mining and mineral-related development in
8 the Stillwater Complex. The NEPA requirement to disclose and assess cumulative impacts is
9 especially important considering the fact that the DEQ decision provides SMC with a 30-year
10 solution to its waste disposal needs. After only 10 years of production at production rates much
11 lower than will occur under SMC's proposed expansion, SMC has exhausted its tailings impoundment,
12 waste rock storage areas, and land application and disposal facilities. At accelerated production
13 rates, it is reasonably foreseeable that SMC will need additional tailings impoundments and waste
14 disposal facilities. Specifically, the DEQ ignored the potential cumulative impacts of the
15 following:

- 16 A. The recently proposed Black Rock Joint Venture Mine in the Stillwater Valley.
- 17 B. Proposed oil and gas exploration, leasing, and development in the Stillwater Valley.
- 18 C. Additional subdivisions and other related development in the Stillwater Valley.
- 19 D. Development of the Beartooth Ranch into a work camp for SMC employees and

20 subcontractors.

21 31. Significant new circumstances and information bearing on SMC's proposed expansion and its
22 impacts have arisen that change the basis for the DEQ's approval. The decision of the DEQ to
23 allow SMC to implement its expansion, without preparing a supplemental EIS that considers this
24 new information and circumstances, violates NEPA, ARM 17.4.621(1). These new circumstances and
25 information include, but are not limited to:

- 26 A. Black Rock Joint Venture's proposal to develop a new mine in the Stillwater Complex
27 near Nye, Montana in the Stillwater Valley.
- 28 B. The Environmental Protection Agency's disapproval of several provisions of the Montana
29 Water Quality Act for violating the federal Clean Water Act.

1 C. Oil and gas development in the Stillwater River Valley.

2 32. The DEQ violated NEPA by failing to properly disclose the potential conflicts of interest of
3 Greystone, the subcontractor responsible for preparing the DEIS and FEIS, ARM 17.4.635(2).

4 Without this disclosure, SPA and NPRC members cannot be confident that the assessment of
5 environmental impacts of SMC's proposed expansion is scientifically objective. This procedural
6 requirement is especially important considering the dramatic increase in the value of SMC's stock
7 over the past two years.

8 33. The DEQ violated NEPA by failing to adequately disclose and assess the potential adverse
9 impacts of eliminating the production cap on water quantity and quality. Accelerated mining
10 increases the probability of subsurface water interception and increases the potential impacts on
11 surface and ground water resources.

12 34. The DEQ violated NEPA by failing to adequately disclose and assess the potential impacts of
13 the proposed expansion on air quality in the Stillwater River valley.

14 35. The DEQ violated NEPA by failing to adequately disclose and assess the potential impacts of
15 increased work force on road maintenance and construction costs and highway safety.

16 36. The DEQ violated NEPA by failing to adequately discuss the long-term implications of
17 increased nitrate and phosphate levels on the Stillwater River. The DEQ also violated NEPA by
18 failing to consider significant new scientific information regarding the impacts of nutrient
19 pollution on aquatic ecosystems.

20 37. The DEQ violated NEPA by failing to adequately discuss the potential socio-economic impacts
21 of the proposed expansion. The FEIS fails to adequately discuss the potential impacts of
22 removing the production cap to allow "SMC to respond to market conditions." The DEQ must assess
23 how fluctuations in production levels and resulting changes in the work force will impact local
24 property taxes and local goods and services including police, fire, schools, emergency care.

25 38. The DEQ violated NEPA by failing to adequately evaluate potential conflicts with local land
26 use laws and the special petition zoning district in the Stillwater Valley.

27 39. The DEQ violated NEPA by failing to disclose and discuss potential conflicts between SMC's
28 NPDES permit and the federal Clean Water Act.

29

1 40. The DEQ has engaged in illegal tiering under NEPA by tiering the discussion of potential
2 environmental impacts to documents that are outdated and out of print. Tiered documents must be
3 reasonably available for public review so that members of the public can meaningfully participate
4 in the NEPA process. The DEQ's tiering the discussion of potential impacts to water quality to
5 the 1992 FEIS violated NEPA. The entire discussion regarding water quality impacts in the 1992
6 FEIS is premised on the assumption that SMC would be granted its petition to modify ambient water
7 quality.

8 41. The DEQ has violated NEPA by inadequately discussing potential mitigation measures that
9 could eliminate or substantially reduce the impacts of the expansion on the human environment.
10 For example, the DEQ has failed to explain why SMC is not being required to bus employees to the
11 Stillwater mine when it is requiring SMC to bus its employees at its East Boulder Mine site in
12 neighboring Sweet Grass County, Montana.

13 42. The DEQ has violated NEPA by failing to prepare a programmatic Environmental Impact
14 Statement disclosing and assessing the potential cumulative impacts of all past, present, and
15 reasonably foreseeable mineral exploration and development of the Stillwater Complex, ARM
16 17.4.607(15). The preparation of a programmatic EIS is the only means of adequately and
17 meaningfully assessing the environmental impacts of mining exploration and development activity
18 in the Stillwater Complex. The DEQ's current incremental and artificially segmented approach to
19 evaluating the impacts of mineral exploration and development of the Stillwater Complex violates
20 the NEPA.

21
22 **COUNT II (METAL MINE RECLAMATION ACT)**

23 43. Plaintiffs incorporate by reference all previous allegations in this complaint.

24 44. The Defendants violated the MMRA and implementing rules by approving SMC's proposed
25 expansion.

26 45. The Metal Mine Reclamation Act requires the reclamation of all lands disturbed, and further
27 requires sufficient measures to prevent pollution of water and degradation of adjacent lands.

28 MCA 82-4-334(8). The reclamation bond and plan for the proposed expansion will not meet these
29 requirements.

1 46. The reclamation plan must also provide measures to prevent objectionable post-mining ground
2 water discharges. MCA §2-4-336(10).

3 47. By failing to utilize the best currently available paste technology, the DEQ has violated
4 the MMRA because it has not adequately ensured complete reclamation of the mine.

5 5. The MMRA also requires reclamation to the extent feasible. MCA §2-4-336(7).

6 48. Feasibility is a dynamic concept that must change over time and is dependent on the
7 development and implementation of new technology.

8 49. By approving a 30-year operating permit and reclamation plan without any required periodic
9 review to assess and implement new developing technologies, the DEQ has violated MMRA provision
10 requiring reclamation to the extent feasible.

11

12 COURT III (MONTANA CONSTITUTIONAL RIGHT TO CLEAN AND HEALTHFUL ENVIRONMENT)

13 50. The decision of the DEQ to approve the SMC's proposed expansion violates the MONTANA
14 Constitutional Right to a clean and healthful environment, Article II, Section 3, Montana
15 Constitution (1972).

16

VI. PRAYER FOR RELIEF

17 Plaintiffs respectively request that the Court:

18 1. Declare that the Defendants' decision approving the SMC's proposed Hertzler Impoundment
19 Expansion and Revised Mine Waste Management Plan violates the NEPA and implementing rules.

20 2. Declare that the Defendants' actions as set forth above violate the MMRA and implementing
21 rules.

22 3. Declare that the Defendants' actions as set forth above violate the MAFPA, MMRA, and NEPA.

23 4. Enjoin the Defendants from implementing the Record of Decision unless and until the
24 Defendants comply with NEPA and the MMRA

25 5. Enjoin the SMC from proceeding with its proposed expansion as approved by the Defendants
26 until such time that the Court determines that the Defendants have complied with all applicable
27 state and federal laws.

28 6. Award Plaintiffs their reasonable fees, costs, expenses, and disbursements associated with
29 this litigation.

AMENDED COMPLAINT

CHRISTOPHER K. WILLIAMS
Attorney at Law
225 East Mendenhall Street
Bozeman, MT 59715
Telephone: (406) 586-4339

Attorney for Plaintiffs.

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DEPT.

MONTANA FIRST JUDICIAL DISTRICT, LEWIS AND CLARK COUNTY

NORTHERN PLAINS RESOURCE COUNCIL,)
a non-profit corporation;)
STILLWATER PROTECTIVE ASSOCIATION,)
a non-profit corporation,)

Plaintiffs,)

vs.)

MONTANA DEPARTMENT OF)
ENVIRONMENTAL QUALITY; MARK)
SIMONICH, in his official capacity)
as Director of the Montana)
Department of Environmental)
Quality,)

Defendants.)

Cause No. DV 9900103

AMENDED COMPLAINT

INTRODUCTION

1. Plaintiffs challenge the decision of Defendant Montana Department of Environmental Quality (DEQ) to approve Stillwater Mining Company's (SMC) Hertzler Tailings Impoundment Expansion and Revised Mine Waste Management Plan (Amendment 010 to SMC's Operating Permit #00118).

2. Plaintiffs allege that DEQ's approval of SMC's proposed mine expansion violates: (1) Montana Environmental Policy Act (MEPA), Mont. Code Ann. Sections 75-1-101 to 75-20-1205 (1997); (2) DEQ's implementing administrative rules, Mont. Admin. R. 17.4.601-636

(1997); (3) Metal Mine Reclamation Act (MMRA), Mont. Code Ann. Sections 82-4-301 to -446, (1997); (4) DEQ's implementing administrative rules, Mont. Admin. R. 17.24.101-189 (1997); and (5) Montana Constitution, Article II, Section 3 (Inalienable Rights) and Article IX, Sections 1 and 2 (Environmental and Natural Resources) (1972).

3. Plaintiffs seek an order finding Defendants in violation of the aforementioned administrative rules, statutes, and constitutional provisions. Plaintiffs further request an order directing Defendants to comply with the aforementioned regulations, statutes, and constitutional provisions. Finally, Plaintiffs seek an order enjoining implementation of Amendment 010 until such compliance has occurred.

PARTIES

4. Plaintiff Northern Plains Resource Council (NPRC) is a registered non-profit corporation located in Billings, Montana.

5. Plaintiff Stillwater Protective Association (SPA) is a registered non-profit corporation located in Stillwater County, Montana.

6. Plaintiffs' members personally live, work, own real property, ranch and farm, and recreate and enjoy the Stillwater Valley and the Stillwater River. Defendants' violations of the aforementioned administrative rules, statutes, and constitutional provisions directly and adversely affects Plaintiffs' members' livelihood, enjoyment of real property, and recreational and aesthetic use of the Stillwater Valley and Stillwater River.

7. Plaintiffs and their members participated extensively in Defendants' MEPA review of Amendment 010, specifically: attending and testifying at the scoping meeting; attending and testifying at public hearings; meeting with DEQ personnel; and reviewing and submitting detailed comments on the Draft EIS.

8. Defendant DEQ is an administrative agency of the State of Montana. Defendant Mark Simonich is the Director of the DEQ and is named here in his official capacity as head of the agency whose actions are challenged. Defendants are responsible for ensuring that the Final EIS (FEIS) and Record of Decision (ROD) comply with the aforementioned regulations, statutes, and constitutional provisions.

FACTUAL BACKGROUND

History of Stillwater Mine

9. The Stillwater Mine is located in the Stillwater Valley approximately 1.5 miles from the Absaroka-Beartooth Wilderness Area and 25 miles from Yellowstone National Park. The mine falls within the Stillwater Complex, a mineralized zone running approximately 28 miles in length and ranging from 1-5 miles in width. The Stillwater Complex crosses both the Stillwater and Boulder River Valleys and contains approximately 225 million troy ounces of platinum-group metals.

10. The Stillwater River Valley has a history of hard rock mining. Between 1941 and 1961, Anaconda and American Chrome Company mined the Stillwater Complex for chrome ore. These large-scale mining operations resulted in devastating environmental impacts due to

inadequate reclamation and water quality safeguards. Consequently, heavy metal pollution impairs a 12-mile stretch of the Stillwater River near SMC's proposed expansion area. In the 1960s, several additional companies initiated extensive exploration for platinum-group metals in the Stillwater Complex.

11. In 1985, SMC applied for an operating permit to develop the Stillwater Mine. In 1986, upon completion of the MEPA review process, the Montana Department of State Lands (DEQ's predecessor) and USDA Forest Service, Custer National Forest (CNF) approved SMC's original operating plan (Operating Permit #00118). Operating Permit #00118 required that SMC: cap production at 1,000 tons per day (tpd); limit development to the west side of the Stillwater River; and confine development to an established 550-acre area. The FEIS for Operating Permit #00118 stated that SMC's development should have no greater impact on surface or ground water than SMC's exploration activities. The ROD further required SMC to bus its employees to the mine site.

12. Since 1986, the DEQ and CNF have approved nine amendments to Operating Permit #00118:

A. Amendment 001 (approved in June, 1986). This amendment allowed SMC to relocate mine and mill facilities, but prohibited increases in permit area or disturbed acreage;

B. Amendment 002 (approved in September, 1986). This amendment allowed SMC to excavate a sand borrow area for construction purposes. The amendment prohibited an increase in permit area but allowed an increase in disturbed acreage

contingent upon reclamation;

C. Amendment 003 (approved in January, 1987). This amendment allowed SMC to excavate a second sand borrow area for construction purposes. The amendment prohibited an increase in permit area but allowed an increase in disturbed acreage contingent upon reclamation;

D. Amendment 004 (approved in February, 1987). This amendment allowed SMC to relocate the southern portion of its tailings impoundment toe dike, but prohibited increases in permit area or disturbed acreage;

E. Amendment 005 (approved in March, 1989). This amendment was the first major amendment to Operating Permit #00118. DEQ and CNF determined that the proposed action did not necessitate an EIS. The amendment allowed SMC to develop 6 additional adits and 1 mine shaft on the east side of the Stillwater River. The amendment increased the permit area to 1,158 acres and enlarged allowable disturbed acreage by 72 acres. The amendment further authorized SMC to implement a car pooling system in lieu of its former bussing system;

F. Amendment 006 (approved in July, 1989). This amendment allowed SMC to construct a temporary sand slurry pipeline connecting the east and west sides of the mine site, but prohibited increases in permit area or disturbed acreage;

G. Amendment 007 (approved in November, 1990). This amendment allowed SMC to construct three percolation ponds,

increasing the permit area by 27 acres and the allowable disturbed acreage by 7 acres;

H. Amendment 008 (approved in September, 1992). This amendment raised the production cap from 1,000 to 2,000 tpd and approved expansion of support facilities and the tailings impoundment. The amendment further allowed employment to increase from 460 to 525 full-time employees to meet the increased production demands. Disturbed acreage increased by 35 acres. Initially, DEQ and CNF determined that the proposed expansion did not necessitate an EIS. The agencies changed their position after considerable public comment; and

I. Amendment 009 (approved in February, 1996). This amendment allowed SMC to construct a tunnel underneath the Stillwater River to connect the east and west sides of the mine site. After this amendment, the total permit area encompassed 1,340 acres (a 240% increase over the original permitted acres) with 255 acres approved for disturbance.

Amendment 010 -- Proposed Mine Expansion

13. In a scoping letter dated June 8, 1995, DEQ recognized reasonably foreseeable SMC actions:

[S]MC proposes to construct a haulageway at depth under the river. SMC contemplates a second phase which would involve additional mining at depth, should core drilling results indicate the continuity of the ore body. [D]ue to the nature of the ore body, SMC can be expected to submit an application for mining of additional reserves and for additional tailings impoundment capacity at some point in the future.

14. In April of 1996, less than 2 months after the approval of

Amendment 009, SMC submitted a proposed amendment to dramatically expand its operations at the Stillwater Mine (Amendment 010). Amendment 010 sought: (1) elimination of the current 2,000 tpd production cap and (2) continuance of the mining of platinum-group metals for 30 more years through various expansions to the current mine site.

15. DEQ and CNF subsequently initiated the MEPA review process for Amendment 010, conducting a scoping meeting in September of 1996 in Absarokee, Montana. Plaintiffs' members participated in the scoping process by providing both oral and written testimony.

16. In March of 1998, the agencies released a Draft EIS (DEIS) for public review and comment. Plaintiffs' members reviewed the DEIS and submitted detailed comments.

17. In October of 1998, DEQ and CNF issued the FEIS for Amendment 010.

18. Based upon the findings of the FEIS, Mark Simonich signed the ROD approving Amendment 010 in November, 1998. Amendment 010 brings the total permit area to 2,253 acres (a 400% increase over the original permitted acres). Specifically, the ROD approves:

- A. The elimination of the 2,000 tpd production cap;
- B. The construction of a 100+ acre tailings impoundment on the Hertlzer Ranch (8 miles from the current mine site) and associated water management facilities (an additional 730 permitted acres);
- C. The development of water management facilities at the Stratton Ranch (1.5 miles from the current mine site) (an

additional 182 permitted acres); and

D. The construction of a slurry pipeline system to transport tailings and other mine process wastes to the new tailings impoundment and water management facilities.

19. In December of 1998, Black Rock Joint Venture announced plans to develop a mine in the Stillwater Complex south of SMC's mine and began collecting baseline data to use in its EIS process.

20. Section 75-5-401(1)(b) of the Montana Water Quality Act (WQA) exempts certain discharges from Montana's nondegradation policy, including surface discharge of unaltered groundwater. In August of 1998, DEQ relied upon this "unaltered groundwater" exemption in granting SMC's Montana Pollution Discharge Elimination System (MPDES) permit. See Statement of Basis of Permit #MT-0024716 at 4.

21. The FEIS findings for Amendment 010 relied in part on SMC compliance with WQA, specifically a valid MPDES permit.

22. In December of 1998 and January of 1999, the federal Environmental Protection Agency (EPA) disapproved portions of Section 75-5-401(1)(b), including the "unaltered groundwater" exemption. See Letter dated 1/26/99 to Marc Racicot, Governor of Montana from Jack W. McGraw, Deputy Administrator, EPA Region 8 at 8-9. SMC's MPDES permit relied upon this disapproved exemption for validity. In turn, Defendants premised certain FEIS findings on the validity of SMC's MPDES permit.

CLAIMS FOR RELIEF

COUNT I -- INADEQUATE ENVIRONMENTAL IMPACT STATEMENT

23. Plaintiffs incorporate herein all the above paragraphs.

24. Defendants' approval of SMC's Amendment 010 constitutes a state action that significantly affects the quality of the human environment. Consequently, Defendants must prepare an EIS pursuant to MEPA, Sections 75-1-101 to 75-20-1205 (1997).

25. An EIS must address: 1) the environmental impact of the proposed action; 2) any adverse environmental effects that cannot be avoided if the proposal is implemented; 3) alternatives to the proposed action; 4) any regulatory impacts on private property rights; 5) the relationship between local short-term uses of the human environment and the maintenance and enhancement of long-term productivity; and 6) any reversible and irretrievable commitments of resources involved in the proposed action if it is implemented. Mont. Code Ann. Section 75-1-201(1)(b)(iv).

26. Defendant DEQ has adopted administrative rules to implement MEPA. Mont. Admin. R. Sections 17.4.601-636 (1997). Defendants must comply with these regulations "to the fullest extent possible" prior to reaching a final decision on a proposed action covered by MEPA. Mont. Admin. R. Sections 17.4.601-602 (1997).

27. Defendants failed to fully develop and evaluate reasonable alternatives to SMC's proposed expansion in Amendment 010. Mont. Admin. R. Sections 17.4.616-619 (1997).

28. Defendants failed to adequately address the cumulative impacts of past, present, and future actions related to Amendment 010 in the Stillwater Complex. Mont. Admin. R. 17.4.616-619 (1997).

29. Defendants failed to adequately disclose and assess potential adverse impacts posed by Amendment 010, including without

limitation:

- A. The effects on water quantity and quality arising from the elimination in production caps;
- B. The effects of proposed expansion on air quality;
- C. The effects of increased work force on road maintenance, construction costs, and highway safety; and
- D. The socio-economic effects of the proposed expansion.

Mont. Admin. R. 17.4.608, 616-619 (1997).

30. Defendants failed to adequately evaluate potential conflicts with local land use laws. Mont. Admin. R. 17.4.608, 616-619 (1997).

31. Defendants failed to disclose and discuss potential conflicts between SMC's MPDES permit and the federal Clean Water Act. Mont. Admin. R. 17.4.616-619 (1997).

32. Defendants failed to create a supplemental EIS that considered new information and circumstances that arose prior to final agency decision. Mont. Admin. R. 17.4.621 (1997).

33. Defendants failed to accurately disclose the conflicts of interest of the contractor who prepared the DEIS and FEIS for Amendment 010. Mont. Admin. R. 17.4.635(2) (1997).

34. Defendants improperly tiered previously prepared EIS documents into the Amendment 010 review process. Mont. Admin. R. 17.4.625 (1997).

COUNT II -- FAILURE TO PREPARE A PROGRAMMATIC REVIEW

35. Plaintiffs incorporate herein all the above paragraphs.

36. Defendants failed to prepare a programmatic review of

contemplated agency-initiated actions, programs, and policies in the Stillwater Complex. Mont. Admin. R. 17.4.628 (1997).

COUNT III -- INADEQUATE AMENDMENT TO THE RECLAMATION PLAN

37. Plaintiffs incorporate herein all the above paragraphs.

38. Amendment 010 increases the permit area and expands the allowable disturbed acreage set forth in SMC's Operating Permit #00118.

39. The MMRA and its implementing administrative rules charge Defendants with amending SMC's original reclamation plan to provide for rehabilitation of degradation resulting from SMC's proposed expansion. Mont. Code Ann. Section 82-4-337 (1997); Mont. Admin. R. 17.24.119 (1997).

40. Defendants' amendments to SMC's reclamation plan fail to provide for adequate rehabilitation of SMC's proposed expansion activities.

41. Defendants failed to adequately increase the performance bond to ensure rehabilitation of degradation resulting from SMC's mining expansion pursuant to Mont. Code Ann. Section 82-4-338 (1997) and Mont. Admin. R. 17.24.140 (1997).

COUNT IV -- VIOLATION OF CONSTITUTIONAL RIGHT
TO A CLEAN AND HEALTHFUL ENVIRONMENT

42. Plaintiffs incorporate herein all the above paragraphs.

43. The Montana Constitution provides all Montana citizens certain "inalienable rights," including the right to a "clean and healthful environment." Article II, Sections 1-3 (1972).

43. Defendants' failure to prepare an adequate EIS, an adequate

programmatic review, and an adequate amended reclamation plan violate Plaintiffs' constitutional right to a clean and healthful environment.

PRAYER FOR RELIEF

Plaintiffs respectively pray that the Court:

1. Enter a declaratory judgment that Defendants' approval of SMC's Amendment 010 violates MEPA and its implementing administrative rules as set forth above.
2. Enter a declaratory judgment that Defendants' failure to conduct a programmatic review violates MEPA and its implementing administrative rules as set forth above.
3. Enter a declaratory judgment that Defendants' amendment to SMC's reclamation plan violates MMRA and its implementing administrative rules as set forth above.
4. Enter a declaratory judgment that Defendants' MEPA, MMR, and implementing administrative rules violations deny Plaintiffs' constitutional right to a clean and healthful environment.
5. Enter an order directing Defendants to: remedy the deficiencies in the FEIS for Amendment 010; conduct a programmatic review of mining activities in the Stillwater Complex; and provide for adequate rehabilitation and bonding in SMC's amended reclamation plan.
6. Enjoin Defendants from implementing Amendment 010 unless and until Defendants fully comply with MEPA, MMRA, and the implementing administrative rules as set forth above.
7. Award Plaintiffs their costs, expenses, and attorney fees.

8. Grant Plaintiffs such further relief as may be appropriate.

DATED this 7th day of April, 1999.



Christopher K. Williams
Attorney for Plaintiffs