

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
**HARD ROCK MINING IMPACT BOARD MEETING**  
**October 10, 2019 9:00am – Helena, Montana**  
**301 South Park Avenue, Room 228**

Keith Kelly, Helena – Financial Institution  
John Rogers, Clancy – Public at large  
Mark Thompson, Butte – Mining Industry

Donna von Nieda, Nye – School District  
Jane Weber, Great Falls – County Commissioner

**Notice of Public Meeting**

The Board will be meeting at 9:00am, Thursday, October 10, 2019 at the Montana Department of Commerce (301 South Park, Room 228) Helena, MT. For more information or to request reasonable accommodations for a disability, please contact Community Development Division staff at (406) 841-2770 or at [DOCCDD@mt.gov](mailto:DOCCDD@mt.gov) before the meeting. Conference call information for this meeting is also available on the Hard Rock Mining Impact Board website (<http://comdev.mt.gov/Boards/HRMI/Meetings> ).

Call in information: 1.877.273.4202

Access code: 437383983

**Agenda:**

1. Call to order
2. Roll call
3. Opportunity for public comment on items not on the agenda, but within the Board's jurisdiction
4. Approval of Minutes
  - a. Approval of November 15, 2018 Meeting Minutes
    - *Opportunity for public comment*
    - *Board discussion*
    - *Board action (as applicable)*
  - b. Approval of May 31, 2019 Meeting Minutes
    - *Opportunity for public comment*
    - *Board discussion*
    - *Board action (as applicable)*
5. Sandfire Resources America, Black Butte Copper Project Draft Financial Guaranty
  - *Staff updates*
  - *Opportunity for public comment*
  - *Board discussion*
  - *Board action (as applicable)*
6. Hard Rock Mining Impact Trust Account Annual Payments
  - *Staff updates*
  - *Opportunity for public comment*
  - *Board discussion*
  - *Board action (as applicable)*
7. Opportunity for public comment
8. Adjournment

**Hard Rock Mining Impact Board**

**Draft Meeting Minutes**

**November 15, 2018**

Department of Commerce 301 South Park Ave, Helena, MT

**Board Members Present**

Chair Donna von Nieda, Vice-chair Mark Thompson, Jane Weber, Keith Kelly, and John Rogers

**Montana Department of Commerce Staff Present**

Jennifer Olson, Division Administrator; A.C. Rothenbuecher, Operations Manager; Anne Pichette, Administrative Officer; Amy Barnes, Attorney; and Bonnie Martello, Paralegal.

**Public Present by Phone**

|               |                         |
|---------------|-------------------------|
| Dane Ogle     | Meagher County          |
| John Beaudry  | J Beau Consulting, LLC. |
| Maureen Davey | Stillwater County       |

**Public Present**

Nancy Schlepp Tintina Montana/Sandfire Resources America

**Welcome – Call to order**

Ms. von Nieda called to order the Hard Rock Mining Impact Board at 8:30 a.m.

**Roll call**

Ms. Pichette called the roll for board members. The following board members were present: Chair von Nieda, Vice-chair Thompson, Keith Kelly, John Rogers, and Jane Weber.

**Opportunity for Public Comment**

- Maureen Davey commented on ballot issue.

**Board Selection of Chairperson and Vice Chairperson**

- Ms. Pichette presented the agenda items for the board to elect a Chair and Vice-chair. Due to new appointments no Chair or Vice-chair was currently in place for the board.

**Action by the Board:** Ms. Weber nominated Ms. von Nieda for Chair. Mr. Thompson seconded. All in voted in favor. Ms. Weber moved to nominate Mr. Thompson for Vice-chair. Mr. Kelly seconded. All in favor.

**Approval of Minutes (October 14, 2016)**

- Chair von Neida called for a discussion from the board regarding the minutes and any comments from the public.

**Action by the Board:** Mr. Kelly moved to approve. Ms. Weber seconded. Motion passed.

**Orientation updates**

- Commerce staff presented a review of the October 2018 updated Orientation Handbook for Montana's Boards, Councils and Commissions.

**Hard Rock Mining Impact Board**

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**November 15, 2018**

Department of Commerce 301 South Park Ave, Helena, MT

**Email and Security Training Session**

- Ms. Martello reviewed the process to assist the Board with ease of transition to the State email access and clarified what areas had been challenging through a PowerPoint presentation. Cyber Security Training was conducted, as this training must be completed annually by each board member.

**Discussion of Hard Rock Mining Impact Board Correspondence**

- Commerce staff presented copies of the two pieces of correspondence Commerce sent on behalf of the board to relevant parties regarding the responsibilities after the submission of a hard-rock mining impact plan.
- Vice-chair Thompson asked why the letters were listed as “informal”.
- Ms. Olson responded with clarification it was not a required notice.

**Hard Rock Mining Impact Trust Account Annual Payments**

- Commerce staff presented a copy of the correspondence Commerce sent to Montana Department of Revenue regarding the HRMI Trust Account payments.
- Chair von Neida asked if the board needed to review and approve this payment.
- Commerce staff stated this is notification to the board regarding the communication Commerce is to provide to Revenue.

**Opportunity for Public Comment**

- Maureen Davey provided inquiry into the status of the previous work the board was completing regarding the revision to existing HRMI Guide.

**Board Matters**

- The board discussed the next meeting to be in May and provided potential options for a meeting.
- Ms. Pichette will email options to the board to finalize a date. And reminded the board to reply only to her and not reply to all so the board could follow the proper Open Public Meeting protocols.
- Chair von Neida requested that the next meeting include an agenda item regarding the revision of the existing HRMI Guide.

**Other Comments/Questions**

- None

**Adjournment**

With no other business, the meeting was adjourned with the meeting ending approximately at 10:00 a.m.

**Hard Rock Mining Impact Board  
Draft Meeting Minutes  
May 31st, 2019**

Department of Commerce 301 South Park Ave, Helena, MT

**Board Members Present**

Chair Donna von Nieda, Vice-chair Mark Thompson, Jane Weber, Keith Kelly, and John Rogers

**Montana Department of Commerce Staff Present**

Jennifer Olson, Division Administrator; A.C. Rothenbuecher, Operations Manager; Anne Pichette, Administrative Officer; Amy Barnes, Attorney; and Anita Proul, Executive Assistant.

**Public Present by Phone**

No public present by phone

**Public Present**

|                |  |
|----------------|--|
| Nancy Schlepp  | Tintina Montana/Sandfire Resources America |
| Dan Burmeister | Burmeister Enterprises                     |

**Welcome – Call to order**

Chair von Nieda called to order the Hard Rock Mining Impact Board at 9:13 a.m.

**Roll call**

Ms. Pichette called the roll for board members. The following board members were present: Chair von Nieda, Vice-chair Thompson, Keith Kelly, John Rogers, and Jane Weber.

- Chair von Nieda welcomed visitors in the room and welcomed Commerce Director, Tara Rice

**Opportunity for Public Comment on Items Not on the Agenda, but within the Board’s Jurisdiction**

- No public comments present or on phone

**Approval of Minutes**

- Ms. Pichette explained that three sets of meeting minutes needed to be approved.
  - September 11, 2018 – a transcript and only need be acknowledged for acceptance.
  - December 10, 2018 – minutes that action can be taken on
  - November 15, 2018 – Ms. Olson explained the lack of a recording of the meeting which normally serves as the permanent record. The minutes were created from notes taken during meeting. Board has following options: Board can choose to amend as necessary and take action or take no action; latter is recommendation

**Action by the Board:**

- Chair von Neida acknowledged September 11, 2018 minutes.
- Chair von Neida asked for a motion to approve December 10, 2018 minutes. Mr. Kelly moved to approve. Ms. Weber seconded. Chair von Nieda assumed motion.
- Chair von Neida asked for discussion from board on November 15 minutes
  - Ms. Weber indicated since Dane Ogle, John Beaudry, and Maureen Davey were present at meeting they should be given the opportunity to review for comments

**Hard Rock Mining Impact Board**

**Draft Meeting Minutes**

**May 31st, 2019**

Department of Commerce 301 South Park Ave, Helena, MT

- Ms. Olson confirmed that board staff would reach out to individuals mentioned to have minutes reviewed
- Chair von Nieda assumed concurrence by rest of board to go with Ms. Weber's recommendation to not take any action pending communication with the individuals mentioned

**Commerce updates**

- Ms. Pichette reviewed the documents that were available for the board
  - Copy of Allocation letter to the MT Dept. of Revenue
  - Packet of documents from Dan Burmeister – Mr. Burmeister present in audience
- Ms. Pichette informed board that IT assistance was available for anyone having difficulties getting into their state email

Chair von Nieda asked if the board had any questions on items presented by Ms. Pichette

- Vice-Chair Thompson asked what was being asked of board after reviewing packet from Mr. Burmeister
- Ms. Rothenbuecher replied that Mr. Burmeister requested that the information be presented to the board and that the board should reach out to Mr. Burmeister with any questions or requests of action he might have
- Vice-Chair Thompson asked Chair von Nieda if Mr. Burmeister would like to address board. Chair von Nieda confirmed Mr. Burmeister did request to make a public comment and asked if the board concurred to allow Mr. Burmeister opportunity for public comment – board concurred
- Mr. Burmeister spoke, explained connection to the Stillwater Mine, the impact plan, and his packet
- Chair von Nieda paused Mr. Burmeister and confirmed with Ms. Barnes that the board was only able to receive public comment and take no action as this was not on the agenda
- Discussion between Ms. Barnes and Mr. Burmeister regarding his project and specific needs
- Chair von Neida commented that the role of the board is one of oversight of the impact plan, not approving or disapproving funding
- Suggestion by Mr. Rogers referring Mr. Burmeister to board staff or legal counsel to help determine if there is/is not a role for the board regarding Mr. Burmeister's situation and/or advise board. Chair von Nieda specifically referred Mr. Burmeister to legal counsel
- Vice-Chair Thompson requested if this project comes back in front of the board that there is representation from the local government unit and the mine developer
- Chair von Neida asked if any other comments, none provided, thanked Mr. Burmeister and moved to next agenda item

**Sandfire Resources America, Black Butte Copper Project Impact Plan**

- Chair von Nieda opened floor for public comment

**Opportunity for Public Comment**

- Nancy Schlep with Sandfire Resources present to answer any questions board may have

**Discussion of Impact Plan**

- Ms. Pichette discussed plan and modifications

**Hard Rock Mining Impact Board**

**Draft Meeting Minutes**

**May 31st, 2019**

Department of Commerce 301 South Park Ave, Helena, MT

- Previously approved extension
- Chair von Neida asked if in receipt of official written agreement or financial agreement
- Ms. Barnes confirmed MDOC received written guarantee in the form of a letter. Financial guarantee provided by developer in the form of an escrow agreement
- Chair von Neida asked if the board needs to take any action on the escrow agreement at this time
- Ms. Barnes indicated modifications need to be reviewed. If met, then action can be taken.

**Action by the Board:**

Mr. Thompson made a motion to approve the Black Butte Copper Project Impact Plan with modifications. Ms. Weber seconded motion. Motion passed.

**Discussion of Escrow Agreement**

- Chair von Neida asked Ms. Olson if they are at the place to look at the escrow agreement.
  - Ms. Olson replied no as that is a further next step.
- Ms. Olson did reference that a jurisdictional revenue disparity is noted in the plan and now that the plan is approved, it would be wise and advised that the Board acknowledge the jurisdictional revenue disparity as it causes an action to be carried out.
  - Action to promptly notify the developer, affected local government, and Department of Revenue of revenue disparity

**Opportunity for Public Comment**

None provided

**Action by the Board:**

Mr. Rogers made a motion to recognize jurisdictional revenue disparity in the approved impact plan. Mr. Kelly seconded. Motion carried as presented. Chair von Neida directed staff to notify within 30 days.

**Further Discussion**

Vice-Chair Thompson asked the Chair what action in the future the Board needs to take on the escrow agreement? Chair von Neida deferred to Ms. Olson.

- Two next steps
  - Approved impact plan starts the 30-day period of the written guarantee
  - Within 30 days the written guarantee needs to be received by the Department of Commerce
  - A financial guarantee also needs to be submitted
  - Subsequent to this the Board needs to take an action to take public comment and approve the financial guarantee
- Important point of interest, the financial guarantee must be approved prior to any mining work beginning

Vice-Chair Thompson asked the Chair, for the purposes of narrowing down next meeting, could the Board ask Ms. Schelpp when mining may begin. Chair von Neida called on Ms. Schelpp

- Ms. Schelpp
  - Expecting record of decision in third quarter of this year
  - Hoping to be in construction right after that
- Ms. Schelpp indicated that she thought they had submitted everything that was needed and asked for clarification on what would be needed differently from them?

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Chair von Neida deferred to Ms. Barnes

- Ms. Barnes indicated that the written guarantee and financial guarantee were submitted before the impact plan was approved and recommended to request developer to resubmit to guarantee the approved impact plan
- Ms. Schlepp asked question on jurisdictional revenue disparity and what it was
- Ms. Barnes indicated disparity between White Sulphur Springs (city) and the county
- Mine located in the county jurisdiction, not city, there is a jurisdictional revenue disparity between the two and since they are within the same category it triggers the tax base sharing act
- Ms. Olson advised Ms. Schlepp to make some grammatical corrections on the written guarantee before they resubmit
- Chair von Neida confirmed that the financial and written guarantees are to be dated after today's board meeting
- Ms. Weber asked Chair von Neida if she could ask a procedural question of Ms. Schlepp - Is there an appeal period for public after a decision is made by DEQ? Do they still anticipate that being within third quarter or possibly fourth quarter? 45-day period for appeal?
  - Ms. Schlepp answered but also indicated that Vice-Chair Thompson might have better answer – understanding is that money must be in the escrow account within 30 days of getting record of decision and that is the trigger point
  - Thinks there is a 90-day appeal period
- Vice-Chair Thompson indicated that DEQ will issue the final EIS, then period of 30 days, then they can issue record of decision, and then time period after when appeal can be filed

**Opportunity for public comment**

Mr. Rogers proposed moving the final opportunity for public comment up to before the work session.

Chair von Neida opened floor to public comment

- Mr. Burmeister asked if there was a time frame for an additional meeting to address the items that were brought up at the current meeting.
- Chair von Neida confirmed with Mr. Burmeister that they referred him to legal counsel to determine if his concerns fell within the board's jurisdiction and that the board would take direction from legal counsel

**Hard Rock Mining Impact Guide work session**

Chair von Neida explained that the previous board felt the guide was difficult to read through because of all the citations and many examples, some of which were no longer applicable or difficult to read

- A lot to digest with regard to changes

Three different activities that the board undertook in changing the guide

- Footnote all the references to the Montana Code Annotated (MCA) in one document in the back called footnotes
- Formatting changes/improvements suggested
- Feeling some examples were not relevant or causing the document to be unnecessarily long and moving them to an appendices

Regarding what you see at the beginning, a preface and introduction, it was felt it was redundant and much that could be incorporated together to make reading of and guiding purpose of document much clearer

**Hard Rock Mining Impact Board**

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Chair von Neida asked of board – do they like the direction/intention the prior board was moving or leave the guide as is?

Maybe make improvements to guide in a step by step and not do all of it today, Ms. Weber thought this was a good idea

Mr. Rogers suggested a disclaimer at the beginning for public to know the guide is not law

- Vice Chair Thompson and Ms. Weber agreed
- Chair von Neida asked if legal counsel could craft something

Vice-Chair Thompson asked who the target audience was, Chair von Neida confirmed it was developers and counties/public entities

Chair von Neida asked, in general as a board, do we like the idea of moving forward and cleaning up, clarifying, and streamlining - board verbalized agreement

No substantive changes until more streamlined – simpler language

**Action by the Board:**

Accept footnote streamlining – moving to back

Examples addressed individually – reduced to simple language or possibly deleted

- Hi-light all examples

Work sessions via webinar

- Chapter by chapter
- One-hour max
- Monthly suggested
- Start in July

Contact/address information be updated by staff as needed

Accept all changes prior to old chapter two

Correct/adjust footers and pagination

**Opportunity for public comment**

Ms. Schlepp suggested one place/page with all the necessary deadlines

**Adjournment**

Chair von Neida entertained a motion to adjourn. Ms. Weber made a motion to adjourn, Vice-Chair Thompson seconded, meeting adjourned at approximately 12:35 p.m.

## ESCROW AGREEMENT

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2019, between Tintina Montana Inc., of 17 E. Main St., White Sulphur Springs, MT 59645 , hereafter referred to as (Developer); and Helena Abstract and Title Company of 314 Fuller Ave., (PO Box 853), Helena, MT 59601 (59624) hereafter referred to as (the Escrow Agent); and Meagher County, Montana at political subdivision, County Courthouse , White Sulphur Springs, Montana 59645, and the Montana Hard-Rock Mining Impact Board, an agency of the State of Montana, Helena, Montana, hereafter referred to as “the Board.”

### WITNESSETH:

WHEREAS, the Developer is developing mineral properties in Meagher County, Montana, and desires to establish an escrow account with the Escrow Agent to comply with the terms and conditions of the Hard-Rock Mining Impact Act, Sections 90-6301, et seq., MCA;

WHEREAS, the Escrow Agent agrees to the establishment of the escrow account and to the holding and disbursement of such funds in accordance with the terms of this agreement; and

WHEREAS, the Board has accepted this escrow agreement in satisfaction of the requirement of Section 90-6-309(3), MCA, that a large-scale mineral developer guarantee that property tax prepayments called for by an approved hard-rock mining impact plan, including any approved amendment to the impact plan, will be paid as needed for expenditures created by the impacts of the mineral development.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. Establishment of Account. The Developer will deposit in an escrow account with the Escrow Agent the sum of Four Hundred and Thirty Seven Thousand and no 1/100's Dollars (\$437,000.00), as the initial deposit of impact funds. The fund balance will be reviewed on a quarterly basis, or more frequently if necessary, and the Developer will replenish the fund as required to meet its commitments under the Impact Act. The escrow account will hold funds pledged as tax prepayments (and other commitments for donations and grants).
2. Duration of the Escrow Account. The initial funds will be deposited by the Developer in the escrow account within 30 business days of the date the Developer receives its operating permit from the Montana Department of Environmental Quality. The parties estimate that the initial funding date will be approximately June 17, 2019. The escrow account will continue to exist until the impact period terminates or until the Developer's tax prepayment commitments specified in the impact plan have been met, whichever is later, as certified by the Board. Before the end of the impact period and before approving the termination of the escrow account, the Board will notify Developer and the affected jurisdictions that the account is to be terminated and that within 30 days the affected jurisdictions must notify the Board of any pending claims or anticipated requests for tax prepayments from that account or forfeit the right to receive payment from the account.
3. Fees Paid to the Escrow Agent. The Developer agrees to pay the Escrow Agent the sum of Four Hundred and Fifty and no/100's Dollars (\$450.00) as an initial setup charge

for the escrow account, and the sum of Fifteen and no/100's Dollars (\$15.00) for each disbursement made from the escrow account. The Escrow Agent will bill the Developer for its services and the Developer will pay the Escrow Agent within 30 days of Invoice.

4. Interest Bearing Account. The escrow account not bear interest. Funds will be deposited in The Escrow Agent's Non-interest bearing account at Valley Bank of Helena, a Division of Glacier Bank. If the Developer at some point in the future requests an interest bearing account the Developer must provide all information required under Federal anti-money laundering regulations. Additional fees and cost to set-up associated with setting up Interest bearing trust account would be borne by the Developer. All interest earned thereby will be the property of the Developer and may be withdrawn by the Developer at any time. Otherwise, the Escrow Agent will not withhold monies or make payments from the account except as authorized herein for payments to the affected jurisdictions identified in paragraph 5 below made in accordance with the impact plan or as directed by the Board in resolution of disputes, or to the Developer as directed by the Board at such time as the Board determines that the Developer is released from further obligations under this agreement.
5. Affected Jurisdictions. The following governmental and public agencies are eligible to receive tax prepayments for potential prepayments from this account in accordance with the impact plan: (List here the local government units listed in the impact plan. Example below.)
  - (a) Meagher County, Montana
  - (b) White Sulphur Springs, Montana
  - (c) Meagher county School District #8
6. Maximum Allowable Payments. Each of the affected jurisdictions above is entitled to receive impact assistance payments up to the maximum amount shown below:

HARD ROCK MINING IMPACT PLAN, BLACK BUTTE COPPER PROJECT, WHITE SULPHUR SPRINGS, MONTANA
7. Procedures of Distribution of Impact Plan Payment. The following procedures will be followed by the parties for the application and distribution of payments from the escrow account:
  - (a) The affected jurisdiction will submit a written request to the Developer with a copy to the Escrow Agent and the Board, providing the information specified on the "Request for Payment" in writing delivered by US Mail, Certified with Return receipt.
  - (b) For each request for an impact payment for which a maximum amount is specified above, the Escrow Agent shall make disbursements directly to the County Treasurer, Meagher County Courthouse, White Sulphur Springs, Montana, to be deposited in the impact fund of the affected jurisdiction. These payments will be made no sooner than 10 days but within 20 days of the Escrow Agent's receipt of the funding request, except as

provided below.

(c) With 20 days of its receipt of a fund request, the Developer may object in writing to the Escrow Agent, the Board and the affected jurisdiction, questioning all or a portion of the request. If an objection is made, the Escrow Agent will not disburse that portion of the requested payment to which an objection has been made until the Escrow Agent has been notified in writing by the Board that the dispute has been resolved by the parties or that a final decision has been made by the Board. The Escrow Agent will make payment in resolution of the dispute as is directed by the Board.

(d) In the event that an affected jurisdiction submits a request for payment for a purpose or an amount that appears not to be authorized by the impact plan, the Developer or the Board may object in writing to all affected parties within 20 days of receipt of notice of the payment request. Upon receipt of such an objection, the Escrow Agent will withhold the requested payment until it is notified in writing by the Board that the dispute has been resolved by the parties or that a final decision has been made by the Board. The Board will authorize only such impact payments as are specified in or provided for by the Impact plan, or an approved amendment to the impact plan.

(e) When any payment is made by the Escrow Agent to an affected jurisdiction, the Escrow Agent will notify the Developer and the Board of the payment, providing the information on payment disbursement in writing delivered by US Mail, Certified with Return Receipt

(f) It is understood and agreed that all payments and other items will be mailed by ordinary first class mail or by federal wire transfer. The Escrow Agent is not responsible for any loss or damage caused by the U.S. Postal Service. If a check issued by HA&TCo is lost or delayed in the mail, there is up to a 7 day waiting period from the date of issuance of the check and the date of re-issue and stop payment on the original check.

8. Notices. Any notices required to be given pursuant to the terms of this agreement will be delivered personally or mailed by first class mail, postage prepaid, to the parties at the following addresses:

(a) Developer : Tintina Montana, Inc., 17 E. Main St., White Sulphur Springs, MT 59645

(b) Escrow Agent Representative Helena Abstract and Title Company Attn: William C. Gowen, V.P. PO Box 853, Helena, MT 59624-0853.

(c) Meagher County Commission, County Courthouse , White Sulphur Springs, Montana 59645

(d) Administrative Officer, Hard-Rock Mining Impact Board, Montana Department of Commerce, 301 South Park Avenue, P. O. Box 200523, Helena, MT, 59620.

9. The Escrow Agent's Duties. In performing its duties under this escrow agreement, the Escrow Agent's liabilities and responsibilities will be limited and defined as follows:

(a) The Escrow Agent need not inquire into the authorization, execution, genuineness, accuracy, validity, legality or binding effect of any notices delivered

to it pursuant to this escrow agreement, so long as such document appears on its face to meet any requirements set forth in this escrow agreement, and purports to be signed by a proper person identified in the appended list of authorized signatures.

- (b) The Escrow Agent may employ attorneys for the reasonable protection of this escrow agreement and itself. Should the Escrow Agent be made a defendant in any suit by any party to this escrow agreement, or any other party, the cost of such suit, including attorney's fees, may be received from the Developer.
- (c) The Escrow Agent shall not be obligated to take any action which, in the opinion of its counsel, may be unlawful or unduly expose the Escrow Agent to the risk of liability, and the Escrow Agent shall otherwise be entitled to rely on the advice of its counsel with respect to legal matters.

10. Amendment or Termination. This agreement may be amended or terminated only upon the written consent of the three parties hereto and as provided in paragraph 2. The Developer hereby acknowledges that if, for any reason, this agreement fails to guarantee adequately the tax prepayments required of the Developer under the impact plan or its approved amendment, the Developer remains responsible for making these payments under Section 90-6-307, MCA.

11. CERTIFICATION: Under penalties of perjury, the Developer does hereby certify that: 1) The Federal Tax Identification number (FEIN) provided by the Developer to Escrow Agent is the correct **Taxpayer Identification Number(s)**, and 2) It not subject to backup withholding because: (a) It is exempt from backup withholding, or (b) It have not been notified by the Internal Revenue Service (IRS) that it is subject to backup withholding as a result of a failure to report all interest or dividends, or (c): the IRS has notified it is no longer subject to backup withholding,

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

TINTINA MONTANA INC., DEVELOPER

By: \_\_\_\_\_  
\_\_\_\_\_ as \_\_\_\_\_

HELENA ABSTRACT AND TITLE COMPANY, Escrow Agent

By: \_\_\_\_\_  
William C. Gowen, Vice President

MEAGHER COUNTY (MONTANA) COMMISSION

By: \_\_\_\_\_  
\_\_\_\_\_, Commission Chairman

HARD-ROCK MINING IMPACT BOARD

By: \_\_\_\_\_  
Board Chairman

# Montana Code Annotated 2017

TITLE 90. PLANNING, RESEARCH, AND DEVELOPMENT  
CHAPTER 6. COMMUNITY IMPACT -- PLANNING AND ABATEMENT  
Part 3. Hard-Rock Mining Impact

## Tax Prepayment -- Large-Scale Mineral Development

**90-6-309. Tax prepayment -- large-scale mineral development.** (1) After permission to commence operation is granted by the appropriate governmental agency and upon request of the governing body of a county in which a facility is to be located, a person intending to construct or locate a large-scale mineral development in this state shall prepay property taxes as specified in the impact plan. This prepayment must exclude the 6-mill university levy established under **15-10-108** and may exclude the mandatory county levies for the school BASE funding program established in **20-9-331** and **20-9-333**.

(2) The person who is to prepay under this section is not obligated to prepay the entire amount established in subsection (1) at one time. Upon request of the governing body of an affected local government unit, the person shall prepay the amount shown to be needed from time to time as determined by the board.

(3) The person who is to prepay shall guarantee to the hard-rock mining impact board, through an appropriate financial institution, as may be required by the board, that property tax prepayments will be paid as needed for expenditures created by the impacts of the large-scale mineral development.

(4) When the mineral development facilities are completed and assessed by the department of revenue, they are subject during the first 3 years and thereafter to taxation as all other property similarly situated, except that in each year after the start of production, the local government unit that received a property tax prepayment shall provide for repayment of prepaid property taxes in accordance with subsection (5).

(5) A local government unit that received all or a portion of the property tax prepayment under this section shall provide for tax crediting as specified in the impact plan. The tax credit allowed in any year may not, however, exceed the tax obligation of the developer for that year, and the time period for tax crediting is limited to the productive life of the mining operation.

**History:** En. Sec. 10, Ch. 617, L. 1981; amd. Sec. 4, Ch. 489, L. 1983; amd. Sec. 6, Ch. 582, L. 1985; amd. Sec. 48, Ch. 11, Sp. L. June 1989; amd. Sec. 55, Ch. 633, L. 1993; amd. Sec. 7, Ch. 57, L. 2009.



**Rule: 8.104.214**

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Rule Title: FINANCIAL GUARANTEE OF TAX PREPAYMENTS

Department: [COMMERCE](#)  
Chapter: [HARD-ROCK MINING IMPACT BOARD](#)  
Subchapter: [Procedural Rules](#)



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Latest version of the adopted rule presented in Administrative Rules of Montana (ARM):

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**8.104.214 FINANCIAL GUARANTEE OF TAX PREPAYMENTS**

(1) The financial guarantee required of a developer by [90-6-309\(3\)](#), MCA, to assure that property tax prepayments will be paid as needed by local government units must, at a minimum, meet the following requirements:

(a) The guarantee must cover the total amount of money the developer has committed to prepay with adequate provisions for any conditional payments provided for in the impact plan. Both the total amount covered by the guarantee and the specific purpose of each prepayment must be specified with sufficient clarity that it can be determined that the guarantee corresponds with and is sufficient to meet all prepayment commitments in the approved impact plan;

(b) The guarantee must make the money accessible to the board in the event of a default on the part of the developer or the need for the board to resolve a dispute between the developer and an affected local government unit; and

(c) The funds contained in the guarantee mechanism must be protected from all uses not specified in or provided for by an approved impact plan or an approved amendment to the plan.

(d) The guarantee must be provided through a financially sound third-party financial institution that is acceptable to the board and in which the developer does not have a significant financial interest.

(2) The financial guarantee must be submitted to the board in sufficient time that it may be approved by the board and be in place before mining activities under an operating permit issued by the Department of Environmental Quality commence or prior to the time an affected local government unit must incur a financial obligation in implementation of the approved impact plan and in anticipation of revenues protected by the financial guarantee, whichever occurs first.

History: [90-6-305](#), MCA; [IMP, 90-6-309](#), MCA; [NEW](#), 1986 MAR p. 1826, Eff. 10/31/86; [AMD](#), 1994 MAR p. 2718, Eff. 10/14/94; [AMD](#), 2008 MAR p. 945, Eff. 5/9/08.

| MAR Notices              | Effective From             | Effective To | History Notes   |
|--------------------------|----------------------------|--------------|---|
| <a href="#">8-104-66</a> | 5/9/2008                   | Current      | History: <a href="#">90-6-305</a> , MCA; <a href="#">IMP, 90-6-309</a> , MCA; <a href="#">NEW</a> , 1986 MAR p. 1826, Eff. 10/31/86; <a href="#">AMD</a> , 1994 MAR p. 2718, Eff. 10/14/94; <a href="#">AMD</a> , 2008 MAR p. 945, Eff. 5/9/08. |
|                          | <a href="#">10/14/1994</a> | 5/9/2008     | History: Sec. <a href="#">90-6-305</a> , MCA; <a href="#">IMP</a> , Sec. <a href="#">90-6-309</a> , MCA; <a href="#">NEW</a> , 1986 MAR p. 1826, Eff. 10/31/86; <a href="#">AMD</a> , 1994 MAR p. 2718, Eff. 10/14/94.                          |

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For questions about the organization of the ARM or this web site, contact [sosarm@mt.gov](mailto:sosarm@mt.gov).

Upon receipt of the developer's written guarantee, the Board notifies the DEQ that the plan has been approved and the guarantee received.

*Authority: 90-6-307, MCA; ARM 8.104.211; Board policy.*

- c. If the plan requires the developer to prepay taxes, the developer must guarantee to the Board, through a third-party financial institution, that the required prepayments will be made as needed. The financial guarantee must be acceptable to the Board.

The developer submits the proposed financial guarantee to the Board for review and approval. The financial guarantee must be reviewed, approved and fully executed before activities under an operating permit issued by the DEQ commence, or prior to the time the affected local government unit incurs financial obligations in the implementation of the approved impact plan, whichever occurs first.

When the financial guarantee has been approved and executed, the Board notifies the DEQ that the developer has met the requirements of the Impact Act and that the approved plan is ready to be implemented. The developer is then in compliance with the requirements of 82-4-335(5), MCA.

*Authority: 82-4-335(5) and 90-6-309(3), MCA; ARM 8.104.214.*

- d. When the Board identifies a jurisdictional revenue disparity in an approved impact plan, the Board notifies the developer, the affected local government units, and the DOR. The developer, local government units and DOR implement the Tax Base Sharing Act as described in Appendix XIII.

*Authority: 90-6-403, MCA.*

## **5. IMPLEMENTATION OF AN APPROVED IMPACT PLAN: IMPACT FUND AND IMPACT PAYMENTS**

Most of the procedures necessary to implement an impact plan will depend on the plan itself. The plan may impose significant expectations and requirements on the affected local government units that are to prepare for and provide the services and facilities

approved impact plan only if requested to do so by an affected local government unit.

*Authority: 82-4-335, MCA; 90-6-307, MCA; Board policy.*

- c. If the Board determines that the developer has failed to comply with its commitments in the approved plan or with the review and implementation requirements of the Impact and Tax Base Sharing Acts, the Board must notify the DEQ.

*Authority: 82-4-335, MCA; 90-6-307, MCA; ARM 8.104.211.*

- d. If notified by the Board that a permittee is not complying with its written guarantee, its commitments including the payment schedule provided in the approved plan, or with the review and implementation requirements in Title 90, Parts 3 and 4, the DEQ must suspend the developer's operating permit.

*Authority: 82-4-335, MCA; 90-6-307, MCA.*

- e. The permit remains suspended until the Board provides the DEQ with written notice that the permittee is again in compliance, at which time the DEQ reinstates the developer's operating permit.

*Authority: 82-4-335, MCA; 90-6-307, MCA; ARM 8.104.211.*

- f. If the developer fails to prepay taxes or make other payments encompassed by the financial guarantee in a timely manner, the Board may draw upon the financial guarantee to make the required payments.

*Authority: 90-6-309, MCA; ARM 8.104.211 and 8.104.214.*

## **9. IMPACT PLAN WAIVERS FOR LARGE-SCALE PERMITTEES**

- a. Each mineral developer that applies for and receives a hard-rock mine operating permit on or after May 18, 1981, must send periodic employee reports to the DEQ, as required by the Department.

Both in the planning process and in the plan itself, the developer and affected local governments should consider the lead-time local governments may require in order to make additional facilities and services available when they are needed. For example, the local government may need to apply for state or federal grants or loans to upgrade community facilities or services. They may also wish to consider whether, in some instances, temporary measures would provide an acceptable transition to the permanent provision of additional facilities or services, without diminishing the existing or needed level or quality of service.

In summary, the severity and cost of potential impacts depends largely on the relative size, the number and the needs of the in-migrating population; the rate and duration of in-migration; where in-migrants reside; and the existing ability of affected communities to meet the increased demand for housing, services and facilities. The severity and cost of actual impacts also depends on the willingness and ability of the developer, the affected local government units, and the communities to work together in preparing and implementing appropriate growth management and impact mitigation strategies, including the impact plan.

**5. Financial or Other Assistance from the Developer [90-6-307(1)(d), MCA; ARM 8.104.203(4)]**

The impact plan must identify:

**the financial or other assistance the developer will give to local government units to meet the increased need for services. [90-6-307(1)(d), MCA]**

In preparing the plan, the developer and affected local government units identify the increased capital and operating costs of needed services and facilities, specifying the "project year" or "impact year" in which the cost is expected to occur. They also estimate, by year and by local government fund, the revenues that are expected to result from the mineral development without any increase in property taxes or service fees. The difference between the increased mine-generated operating revenue and the mine-generated operating cost is the net operating cost. In the plan, the developer must commit to pay all increased capital and net operating costs resulting from the mineral development. [90-6-307(1) and (2), MCA; ARM 8.104.203(4)]

The developer and local governments may have to evaluate alternatives for providing and financing the needed facilities and services. If the capacity or condition of a facility or the level of a service is inadequate to meet existing needs, or to meet needs as projected

without the mine, the developer and affected local government unit may have to apportion fiscal responsibilities between them.

The plan identifies any non-financial assistance the developer will provide. For example, the developer might assume full or partial responsibility for upgrading and maintaining the county access road to the mine, conforming to applicable standards and requirements. Or, the developer might provide additional communications equipment and joint training opportunities for county emergency services personnel. Or, in order to contain costs by encouraging concentrated rather than sprawl development or to ensure the timely availability of employee housing or developed housing sites, the developer might develop a new subdivision in a location compatible with the local growth policy and planning and zoning requirements.

In some cases, developers have chosen to assist nonprofit organizations that provide quasi-governmental services, such as rural fire protection and emergency medical services. These are services which a local government unit could provide but which are, instead, provided by volunteer entities, often with some financial assistance from a local government unit. Assistance to quasi-governmental, nonprofit organizations has included shared emergency medical training opportunities, donation of equipment, grants, and mutual aid agreements. Whether provided directly or through an affected local government unit, such assistance helps the non-profit entity to upgrade its training and equipment, while preparing and compensating it for emergency services rendered on behalf of the developer or the in-migrating population. Impact payments to a nonprofit service provider are voluntary, but the developer may commit to them in the plan. Impact payments to the local government unit that assists a nonprofit entity financially may be required by the plan, if the local government unit expects to incur increased costs to enable the non-profit entity to provide additional services needed as a result of the mineral development.

**6. Developer's Commitment to Pay All Increased Capital and Net Operating Costs and the Schedule of Payment [90-6-307(2), MCA; ARM 8.104.203(4)]**

In the impact plan, the developer must commit itself:

**to pay *all of the increased capital and net operating cost* to local government units that will be a result of the development, as identified in the impact plan, either from tax prepayments, as provided in 90-6-309, special facility impact bonds, as provided in 90-6-310, or other funds obtained from the developer, and shall provide a time schedule**

**F. AFTER THE PLAN IS APPROVED: WRITTEN AND FINANCIAL GUARANTEES AND ENFORCEMENT OF COMMITMENTS**

**1. Written Guarantees.** [82-4-335(5), 90-6-307(9) and (11), MCA]

After the plan is approved, the developer must submit a written guarantee to the Board and to the DEQ, stating that the developer will comply with all commitments made in the approved plan. When the Board receives the written guarantee, it will notify the DEQ and, if applicable, will inform the DEQ that the impact plan approval process will be complete when the developer's financial guarantee has been executed as required.

**2. Financial Guarantee.** [90-6-309(3), MCA; ARM 8.104.214]

If the approved plan requires the developer to prepay property taxes, the developer must provide the Board with a financial guarantee to assure that tax prepayments will be made as required by the plan. The financial guarantee must be made through a *third-party financial institution*. The guarantee must meet the basic criteria contained in ARM 8.104.214 and must be reviewed and approved by the Board. [90-6-309(3), MCA; ARM 8.104.214]

After approving the financial guarantee, the Board will notify the DEQ that the impact plan approval process is complete, provided that the developer executes the financial guarantee as required. The financial guarantee must be approved and fully executed before any activities under the mine's operating permit commence or prior to any expense being incurred by an affected local government unit in its implementation of the approved impact plan, *whichever occurs first*. [82-4-335 (5) and (6), 90-6-307(2), MCA; ARM 8.104.214(2)]

The Board will determine on a case-by-case basis what constitutes an appropriate mechanism for the third-party financial guarantee. Appendix IX provides two sample financial guarantees, a letter of credit and an escrow agreement. The plans they serve range from a plan in which all identified impact costs were expected to occur within a fifteen month period to a complex and substantially amended plan with a number of contingency provisions and an implementation period in excess of ten years.

As a quirk of legislative evolution, the Act requires a financial guarantee only for the developer's tax prepayment commitments. [90-6-309(3), MCA] However, to ensure a consistent effect, financial guarantees have also encompassed grants and contributions

when they constitute a significant part of the developer's financial obligation. Facility impact bonds require a separate guarantee as part of the bonding process, which is entered into between the governing body and the developer during the plan implementation phase. [90-6-310(2), MCA]

**3. Enforcement of Commitments.** [82-4-335(5) and (6), 90-6-307(14) and (15), MCA; ARM 8.104.211(3)]

The developer's compliance with its commitments in the impact plan and with the requirements of the Impact and Tax Base Sharing Acts are requirements of the statutes under which the DEQ issues the developer's operating permit. [82-4-335(5), MCA] If the developer fails to meet its commitments in the approved plan or written guarantee, or to comply with the requirements of the Impact Act or Tax Base Sharing Act, the Board is required to notify the DEQ, and the DEQ must then suspend the developer's operating permit until notified by the Board that the developer is again complying with all commitments and statutory requirements.

## **G. SUMMARY**

Large-scale mineral developers and affected local government units must comply with the applicable impact plan preparation, review and implementation requirements and expectations of the Impact Act and the Property Tax Base Sharing Act. Both the developer and the local governing bodies are legally responsible for the content and implementation of the plan. Evaluation of the proposed impact plan during the formal 90-day review period is the responsibility of the affected governing body with the assistance of local government personnel and the affected public.

The impact plan is to identify all increased capital, operating and net operating costs for local government services and facilities needed as a result of the mineral development. [90-6-307(1)(c) and (2), MCA] In the plan the developer must commit to pay all identified, increased capital and net operating costs to affected local government units. [90-6-307(2), MCA] If the plan calls for tax prepayments, including prepayments to prepare for or evaluate the plan, it must also provide for tax crediting. [90-6-307(3), 90-6-309(4) and (5), MCA] Tax crediting is limited to the productive life of the mine and must not have the effect of shifting the increased cost over time to the non-developer local taxpayer. [90-6-301, 90-6-307(1) and (2), 90-6-309(4) and (5), MCA]

**B. BEFORE THE PLAN IS IMPLEMENTED: WRITTEN AND FINANCIAL GUARANTEES** [82-4-335(5), 90-6-307, 90-6-309, MCA; ARM 8.104.214]

After the plan is approved, but before it may be implemented, the developer must provide two guarantees. First, the developer must submit a *written guarantee* to both the Board and the DEQ [82-4-335(5), 90-6-307(9) and (11), MCA]. As a result of modification, negotiation or adjudication, the approved plan may differ from the plan the developer originally submitted for review. In the written guarantee, the developer reaffirms its commitment to fulfill its responsibilities under the approved plan and, in particular, to make impact payments within the time schedule specified in the plan. The DEQ may not release the mine's operating permit until the impact plan has been approved and both the Board and the DEQ have received the developer's written guarantee. [82-4-335(5), MCA] As a statutory condition of the operating permit, the developer must then comply with its commitments in the approved plan and with the requirements of the Impact and Tax Base Sharing Acts. [82-4-335, MCA]

In addition to the written guarantee, if the plan requires the developer to prepay property taxes, the developer must provide a *financial guarantee* to the Board to ensure that if the developer were to default on its commitment to prepay taxes as provided by the plan, the Board would be able to make the required payments in the developer's stead. [90-6-309(3), MCA] The financial guarantee must cover all tax prepayment commitments and may encompass grants and contributions. [90-6-309(3), MCA; ARM 8.104.214]

The developer enters into the financial guarantee through a third-party financial institution. [90-6-309(3), MCA; ARM 8.104.214] The Board evaluates and approves each proposed guarantee to ensure that it meets the basic criteria established by the Board in its administrative rules. [90-6-309(3), MCA; ARM 8.104.214] The approved guarantee must be in place before activities under the permit commence or before an affected local government unit needs to incur expenses in implementing the impact plan, whichever occurs first. [ARM 8.104.214] When the financial guarantee has been fully executed, the Board notifies the DEQ that the developer has met its pre-permit requirements under the Impact Act.

Appendices IX-A and IX-B provide examples of two types of financial guarantees, a letter of credit and an escrow agreement.

**C. TIMING**

Based on how long it will take local governments to have facilities and services in place when they are needed as a result of the development, the plan should identify the specific

## APPENDIX IX FINANCIAL GUARANTEE REQUIREMENTS

When an approved impact plan specifies that the mineral developer will make property tax prepayments to meet impact costs, the developer must also provide the Hard-Rock Mining Impact Board with a financial guarantee. The guarantee is made through a third party financial institution and must be acceptable to the Board. [90-6-309(3), MCA]

The purpose of the financial guarantee is to ensure that the tax prepayment commitments in the approved impact plan can be met, regardless of the continued willingness or ability of the developer to meet its commitments. [90-6-301, MCA; 90-6-307(1) and (2), MCA; 90-6-309(3), MCA] The financial guarantee is a safeguard, ensuring that the burden of local government costs resulting from the development and identified in an approved impact plan is not shifted to the local taxpayer. The guarantee ensures that affected local government units will be able to meet financial obligations arising from their good-faith implementation of an approved plan, whether these obligations are incurred because of actual impact needs or anticipated needs identified in the plan. [90-6-301; 90-6-307(1) and (2); and 90-6-309(3), MCA]

Most often, a financial guarantee takes the form of a letter of credit. In one instance, when the few identified impact costs occurred during a brief impact period, an escrow account, subject to specific restrictions, served as the financial guarantee.

The Board has concluded that, at a minimum, a financial guarantee must exhibit the following characteristics or criteria:

1. The financial guarantee must be made through a reputable third-party financial institution in which the developer has no major financial interest.
2. The financial guarantee must cover the total amount of money the developer has committed to prepay at any given time, including all unmet prepayment commitments encompassed by the approved plan, its adjustments or amendments. For the adjustment provisions of an approved plan to work smoothly, the guarantee should provide reasonable additional capacity for the increased prepayments that may result from conditional "if...then" payments or adjustments.
3. The financial guarantee is made by the developer to the Board and only the Board may authorize disbursements of money through the guarantee mechanism. Release of funds or termination of the guarantee must occur

only as established in the guarantee document approved by the Board or upon authorization of the Board.

4. The money provided through the guarantee must be protected from all uses not specified or provided for in an approved impact plan, an approved amendment, or an acknowledged adjustment. (An acknowledged adjustment means that the affected parties have notified the Board in writing that they concur in the specified adjustment and the Board has acknowledged receipt of the written, signed adjustment, confirming that the adjustment is consistent with the terms of the plan and with the criteria for adjustments.)

In the guarantee document, or an accompanying document, both the total amount covered by the guarantee and the amount and purpose of each prepayment specified in the plan must be identified with sufficient clarity that the Board can readily determine that the guarantee corresponds with and is sufficient to all prepayment commitments in the approved impact plan or its amendment.

The financial guarantee must be fully executed before any activities commence under the operating permit or prior to any expense being incurred by an affected local government unit in its implementation of the approved impact plan, whichever occurs first. [82-4-335(5), MCA; 90-6-307(15), MCA; 90-6-309(3), MCA; ARM 8.104.214] The Board will notify the DEQ after approving the financial guarantee. When the financial guarantee is fully executed, the Board will notify DEQ that the impact plan approval process will be complete when the developer executes the financial guarantee.

**APPENDIX IX - A**  
**SAMPLE FINANCIAL GUARANTEES**

**A. LETTER OF CREDIT.** The following sample letter of credit may be modified to fit individual impact plans. The letter of credit, modified as appropriate, may serve as a financial guarantee insuring that tax prepayments will be provided to pay for services and facilities when and where needed according to the impact plan.

**LETTER OF CREDIT**

NAME OF BANK  
MAILING ADDRESS  
CITY, STATE, ZIP CODE

DATE ISSUED: \_\_\_\_\_  
IRREVOCABLE DOCUMENTARY CREDIT NO. \_\_\_\_\_

**BENEFICIARY:**  
Hard-Rock Mining Impact Board  
Montana Department of Commerce  
301 South Park Avenue  
Helena, MT 59601

**APPLICANT:**  
Developer (Corporation) on behalf of  
(Mining Company), (Company Address),  
(City, State, Zip Code)

**EXPIRES ON:** (Date impacts are expected to cease)

We hereby issue in your favor our Irrevocable Standby Letter of Credit No. \_\_\_\_\_ which is available by your drafts drawn on us at sight up to an amount of \$ (Total Amount of Tax Prepayments). Your draft must be accompanied by your signed and dated statement referring to (Bank Name) and (Letter of Credit No. \_\_\_\_\_) as follows:

The undersigned, a duly appointed member of the Hard-Rock Mining Impact Board, acting in his/her official capacity, hereby certifies that: (Mining Company) has failed to pay the Montana Hard-Rock Mining Impact Board the amount of (Tax Prepayment Amount Due) Dollars (\$\_\_\_\_\_), lawful money of the United States for the use and benefit of the governing body of an affected local government unit, the property tax prepayments for expenditures created by the impacts of the large-scale mineral development to be constructed or located within the State of Montana by the (Mining Company), as required by Section 90-6-309, MCA, and by the property tax prepayment schedule contained in the Hard-Rock Mining Impact Plan dated (Date of Plan) prepared by (Mining Company) and approved as of (Plan Approval Date).

A draft from the Board may be presented and negotiated until the above sum is paid, until the Bank has obtained approval from the Board to release this letter, or until the letter terminates on (Specified Date at End of Impact Period), whichever occurs sooner, at which time this obligation will be null and void.

**PARTIAL DRAWINGS ARE PERMITTED**

All drafts must be marked: "drawn under (Name of Bank, Credit No. \_\_\_\_\_)" (indicate the name and date of this Standby Letter of Credit) and the amount drawn will be endorsed by us.

Unless otherwise expressly stated, this Standby Letter of Credit is subject to the Uniform Customs and Practices for Commercial Documentary Credits (1983 Revision) International Chamber of Commerce Publication No. 400. We hereby engage with the drawers, endorsers and bona fide holders of the drafts drawn under and in compliance with the terms of this Standby Letter of Credit that these drafts will be duly honored by the above drawee.

NAME OF BANK

Authorized Signature

Date

**B. ESCROW AGREEMENT.** The following sample escrow agreement may be modified to fit individual impact plans. The escrow agreement, with appropriate modifications, may serve as the required financial guarantee insuring that tax prepayments will be provided to pay for services and facilities when and where needed according to the impact plan.

ESCROW AGREEMENT

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, between (Mineral Developer), of (Town), (State), hereafter referred to as (Developer); and (Financial Institution) of (Town), (State), hereafter referred to as (the Bank); and the Montana Hard-Rock Mining Impact Board, an agency of the State of Montana, Helena, Montana, hereafter referred to as "the Board."

WITNESSETH:

WHEREAS, the Developer is developing mineral properties in \_\_\_\_\_ County, Montana, and desires to establish an escrow account with the Bank to comply with the terms and conditions of the Hard-Rock Mining Impact Act, Sections 90-6301, et seq., MCA;

WHEREAS, the Bank agrees to the establishment of the escrow account and to the holding and disbursement of such funds in accordance with the terms of this agreement; and

WHEREAS, the Board has accepted this escrow agreement in satisfaction of the requirement of Section 90-6-309(3), MCA, that a large-scale mineral developer guarantee that property tax prepayments called for by an approved hard-rock mining impact plan, including any approved amendment to the impact plan, will be paid as needed for expenditures created by the impacts of the mineral development.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. Establishment of Account. The Developer will deposit in an escrow account with the Bank the sum of (Amount of Tax Prepayment) (\$\_\_\_\_\_), as the initial deposit of impact funds. The fund balance will be reviewed on a quarterly basis, or more frequently if necessary, and the Developer will replenish the fund as required to meet its commitments under the Impact Act. The escrow account will hold funds pledged as tax prepayments (and other commitments for donations and grants).

2. Duration of the Escrow Account. The initial funds will be deposited by the Developer in the escrow account within \_\_\_\_\_ business days of the date the Developer receives its operating permit from the Montana Department of Environmental Quality. The parties estimate that the initial funding date will be approximately \_\_\_\_\_, 19\_\_\_\_. The escrow account will continue to exist until the impact period terminates or until the Developer's tax prepayment commitments specified in the impact plan have been met, whichever is later, as certified by the Board. Before the end of the impact period and before approving the termination of the escrow account, the Board will notify Developer and the affected jurisdictions that the account is to be terminated and that within \_\_\_\_\_ days the affected jurisdictions must notify the Board of any pending claims or anticipated requests for tax prepayments from that account or forfeit the right to receive payment from the account.

3. Fees Paid to the Bank. The Developer agrees to pay the Bank the sum of \$\_\_\_\_\_ as an initial setup charge for the escrow account, and the sum of \$\_\_\_\_\_ for each disbursement made from the escrow account. The Bank will bill the Developer for its services and the Developer will pay the Bank within \_\_\_\_\_ days of the date of invoice.

4. Interest Bearing Account. The escrow account will bear interest and all interest earned thereby will be the property of the Developer and may be withdrawn by the Developer at any time. Otherwise, the Bank will not withhold monies or make payments from the account except as authorized herein for payments to the affected jurisdictions identified in paragraph 5 below made in accordance with the impact plan or as directed by the Board in resolution of disputes, or to the Developer as directed by the Board at such time as the Board determines that the Developer is released from further obligations under this agreement.

5. Affected Jurisdictions. The following governmental and public agencies are eligible to receive tax prepayments or potential prepayments from this account in accordance with the impact plan: (List here the local government units listed in the impact plan. Example below.)

- (a) \_\_\_\_\_ County
- (b) \_\_\_\_\_ Town
- (c) \_\_\_\_\_ High School District # \_\_\_\_\_
- (d) \_\_\_\_\_ Elementary School District # \_\_\_\_\_
- (e) \_\_\_\_\_ Elementary School District # \_\_\_\_\_

6. Maximum Allowable Payments. Each of the affected jurisdictions above is entitled to receive impact assistance payments up to the maximum amount shown below:

(Specific to individual impact plan)

7. Procedures of Distribution of Impact Plan Payment. The following procedures will be followed by the parties for the application and distribution of payments from the escrow account:

- (a) The affected jurisdiction will submit a written request to the Developer with a copy to the Bank and the Board, providing the information specified on the "Request for Payment" form appended to this escrow agreement as Attachment A.
- (b) For each request for an impact payment for which a maximum amount is specified above, the Bank shall make disbursements directly to the County Treasurer, \_\_\_\_\_ County Courthouse, \_\_\_\_\_, Montana, to be deposited in the impact fund of the affected jurisdiction. These payments will be made no sooner than \_\_\_\_\_ days but within \_\_\_\_\_ days of the Bank's receipt of the funding request, except as provided below.
- (c) With \_\_\_\_\_ days of its receipt of a fund request, the Developer may object in writing to the Bank, the Board and the affected jurisdiction, questioning all or a portion of the request. If an objection is made, the Bank will not disburse that portion of the requested payment to which an objection has been made until the Bank has been notified in writing by the Board that the dispute has been resolved by the parties or that a final decision has been made by the Board. The Bank will make payment in resolution of the dispute as is directed by the Board.
- (d) In the event that an affected jurisdiction submits a request for payment for a purpose or an amount that appears not to be authorized by the impact plan, the Developer or the Board may object in writing to all affected parties within \_\_\_\_\_ days of receipt of notice of the payment request. Upon receipt of such an objection, the Bank will withhold the requested payment until it is notified in writing by the Board that the dispute has been resolved by the parties or that a final decision has been made by the Board. The Board will authorize only such impact payments as are specified in or provided for by the impact plan, or an approved amendment to the impact plan.
- (e) When any payment is made by the Bank to an affected jurisdiction, the Bank will notify the Developer and the Board of the payment, providing the information specified on the "Payment" form appended to this escrow agreement as Attachment B.

8. Notices. Any notices required to be given pursuant to the terms of this agreement will be delivered personally or mailed by first class mail, postage prepaid, to the parties at the following addresses:

- (a) Developer (Name and Address)
- (b) Bank Representative (Name and Address)
- (c) Administrative Officer, Hard-Rock Mining Impact Board, Montana Department of Commerce, 301 South Park Avenue, P. O. Box 200523, Helena, MT 59620.

9. The Bank's Duties. In performing its duties under this escrow agreement, the Bank's liabilities and responsibilities will be limited and defined as follows:

- (a) The Bank need not inquire into the authorization, execution, genuineness, accuracy, validity, legality or binding effect of any notices delivered to it pursuant to this escrow agreement, so long as such document appears on its face to meet any requirements set forth in this escrow agreement, and purports to be signed by a proper person identified in the appended list of authorized signatures.
- (b) The Bank may employ attorneys for the reasonable protection of this escrow agreement and itself. Should the Bank be made a defendant in any suit by any party to this escrow agreement, or any other party, the cost of such suit, including attorney's fees, may be received from the Developer.

10. Amendment or Termination. This agreement may be amended or terminated only upon the written consent of the three parties hereto and as provided in paragraph 2. The Developer hereby acknowledges that if, for any reason, this agreement fails to guarantee adequately the tax prepayments required of the Developer under the impact plan or its approved amendment, the Developer remains responsible for making these payments under Section 90-6-307, MCA.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

DEVELOPER

BY: \_\_\_\_\_

Title: \_\_\_\_\_

BANK

BY: \_\_\_\_\_

Title: \_\_\_\_\_

HARD-ROCK MINING IMPACT BOARD

BY: \_\_\_\_\_

Board Chairman

**MONTANA DEPARTMENT of COMMERCE  
MONTANA HARD ROCK MINING IMPACT BOARD**

To: Montana Department of Revenue

Date: October 2019

Re: Hard Rock Mining Impact Trust Account Annual Payments

As required by sections 90-6-304, MCA and 90-6-331, MCA, the Hard Rock Mining Impact Board must pay the following amounts from the state special revenue fund #02049 to the respective County Treasurers. The below provides the following breakout of the payments to be made to the impacted local governments.

| <u>COUNTY</u> | <u>MINE</u>           | <u>ALLOCATION</u>   |
|---------------|-----------------------|---------------------|
| Granite       | Potentate Mining      | \$ 67.45            |
| Jefferson     | Apollo Gold           | \$ 0.93             |
| Jefferson     | Elkhorn Goldfields    | \$ 0.93             |
| Jefferson     | Golden Sunlight       | \$ 12,174.11        |
| Jefferson     | Bear Creek Placer     | \$ 83.35            |
| Meagher       | Black Butte           | \$ 15.96            |
| Silver Bow    | MT. Resources         | \$ 82,968.89        |
| Stillwater    | Stillwater Nye Mining | \$ 68,271.28        |
| Sweet Grass   | Stillwater E. Boulder | \$ 64,755.48        |
| Sweet Grass   | Stillwater Nye Mining | <u>\$ 40,285.49</u> |
|               | Total                 | \$ 268,623.87       |

The total amount of this payment is \$268,623.87. The responsibility center is #602003.

As required by section 90-6-331, MCA, each county must deposit the entire amount into the county hard-rock trust reserve account established as provided by 7-6-2225, MCA.

Sweet Grass County has two metal mines license tax paying mines and must maintain a separate hard-rock trust reserve account for each mine. On the advice for the warrant to Sweet Grass County, please note the amount attributable to each mine.

Jefferson County has two metal mines license tax paying mines and must maintain a separate hard-rock trust reserve account for each mine. On the advice for the warrant to Jefferson County, please note the amount attributable to each mine.

Montana Department of Revenue  
 Business and Income Taxes Division  
 MML Expanded Distribution Report

Run Date: September 24, 2019  
 Filing Period: June 30, 2018

| County                | Customer Name                            | Name of Mine            | Qtr        | School District | Gross Value             | Merchantable Value      | Taxable Value (Merc. - \$250,000 Exempt) | Tax Due               | Tax Paid              | General Fund 47.0%    | Hard Rock Mine Impact 2.5% | H-R Min Rec Debt Serv Fund 8.5% | Rec & Dev Grants Spec Rev Acct 7.0% | County 35.0%          |
|-----------------------|--|-------------------------|------------|-----------------|-------------------------|-------------------------|--|-----------------------|-----------------------|-----------------------|----------------------------|---------------------------------|-------------------------------------|-----------------------|
| BROADWATER            | MARK RUNKLE BLACK FRIDAY VENTURE         | Black Friday            | 06/30/2018 |                 | \$0.00                  | \$0.00                  | -\$250,000.00                            | \$0.00                | \$0.00                | \$0.00                | \$0.00                     | \$0.00                          | \$0.00                              | \$0.00                |
| <b>County Totals:</b> |  |                         |            |                 |                         |                         |  |                       |                       |                       |                            |                                 |                                     | <b>\$0.00</b>         |
| JEFFERSON             | APOLLO GOLD                              | Montana Tunnels Mine    | 06/30/2018 | 1               | \$0.00                  | \$0.00                  | -\$250,000.00                            | \$50.00               | \$50.00               | \$23.50               | \$1.25                     | \$4.25                          | \$3.50                              | \$17.50               |
| JEFFERSON             | BEAR CREEK PLACER LLC                    | MITCHEL CREEK           | 06/30/2018 | 27              | \$214,932.00            | \$214,932.00            | -\$35,068.00                             | \$50.00               | \$50.00               | \$23.50               | \$1.25                     | \$4.25                          | \$3.50                              | \$17.50               |
| JEFFERSON             | ELKHORN GOLDFIELDS INC                   | Elkhorn Goldfields      | 06/30/2018 |                 | \$0.00                  | \$0.00                  | -\$250,000.00                            | \$50.00               | \$50.00               | \$23.50               | \$1.25                     | \$4.25                          | \$3.50                              | \$17.50               |
| JEFFERSON             | GOLDEN SUNLIGHT MINES INC                | Golden Sunlight         | 06/30/2018 |                 | \$20,627,705.00         | \$20,554,323.00         | \$20,304,323.00                          | \$359,064.99          | \$359,064.99          | \$168,760.55          | \$8,976.62                 | \$30,520.52                     | \$25,134.55                         | \$125,672.75          |
| <b>County Totals:</b> |  |                         |            |                 |                         |                         |  |                       |                       |                       |                            |                                 |                                     | <b>\$125,725.25</b>   |
| MADISON               | MOEN BUILDERS INC                        | High Up                 | 06/30/2018 | 34              | \$0.00                  | \$0.00                  | -\$250,000.00                            | \$0.00                | \$0.00                | \$0.00                | \$0.00                     | \$0.00                          | \$0.00                              | \$0.00                |
| MADISON               | MOEN BUILDERS INC                        | Strawberry              | 06/30/2018 | 18              | \$0.00                  | \$0.00                  | -\$250,000.00                            | \$0.00                | \$0.00                | \$0.00                | \$0.00                     | \$0.00                          | \$0.00                              | \$0.00                |
| <b>County Totals:</b> |  |                         |            |                 |                         |                         |  |                       |                       |                       |                            |                                 |                                     | <b>\$0.00</b>         |
| MEAGHER               | OLDCASTLE MATERIALS CEMENT HOLDINGS, INC | BLACK BUTTE             | 06/30/2018 |                 | \$0.00                  | \$0.00                  | -\$250,000.00                            | \$0.00                | \$0.00                | \$0.00                | \$0.00                     | \$0.00                          | \$0.00                              | \$0.00                |
| <b>County Totals:</b> |  |                         |            |                 |                         |                         |  |                       |                       |                       |                            |                                 |                                     | <b>\$0.00</b>         |
| SILVER BOW            | MONTANA RESOURCES, LLP                   | Continental Mine        | 06/30/2018 | 1               | \$144,351,345.00        | \$129,137,029.00        | \$128,887,029.00                         | \$2,332,855.22        | \$2,332,855.22        | \$1,096,441.95        | \$58,321.38                | \$198,292.69                    | \$163,299.87                        | \$816,499.33          |
| <b>County Totals:</b> |  |                         |            |                 |                         |                         |  |                       |                       |                       |                            |                                 |                                     | <b>\$816,499.33</b>   |
| STILLWATER            | STILLWATER MINING COMPANY                | Stillwater (Still)      | 06/30/2018 | varies          | \$118,479,606.00        | \$109,037,349.00        | \$108,787,349.00                         | \$1,743,773.00        | \$1,743,773.00        | \$819,573.31          | \$43,594.33                | \$148,220.71                    | \$122,064.11                        | \$610,320.55          |
| <b>County Totals:</b> |  |                         |            |                 |                         |                         |  |                       |                       |                       |                            |                                 |                                     | <b>\$610,320.55</b>   |
| SWEET GRASS           | STILLWATER MINING COMPANY                | East Boulder            | 06/30/2018 | varies          | \$104,310,085.00        | \$95,997,070.00         | \$95,747,070.00                          | \$1,535,227.00        | \$1,535,227.00        | \$721,556.69          | \$38,380.68                | \$130,494.30                    | \$107,465.89                        | \$537,329.45          |
| SWEET GRASS           | STILLWATER MINING COMPANY                | Stillwater (Sweetgrass) | 06/30/2018 | varies          | \$64,613,588.00         | \$59,464,195.00         | \$59,214,195.00                          | \$950,977.00          | \$950,977.00          | \$446,959.19          | \$23,774.43                | \$80,833.05                     | \$66,568.39                         | \$332,841.95          |
| <b>County Totals:</b> |  |                         |            |                 |                         |                         |  |                       |                       |                       |                            |                                 |                                     | <b>\$870,171.40</b>   |
| <b>Grand Totals:</b>  |  |                         |            |                 | <b>\$452,597,261.00</b> | <b>\$414,404,898.00</b> | <b>\$411,404,898.00</b>                  | <b>\$6,922,047.21</b> | <b>\$6,922,047.21</b> | <b>\$3,253,362.19</b> | <b>\$173,051.18</b>        | <b>\$588,374.01</b>             | <b>\$484,543.30</b>                 | <b>\$2,422,716.52</b> |

Montana Department of Revenue  
 Business and Income Taxes Division  
 MML Expanded Distribution Report

Run Date: September 24, 2019

Filing Period: December 31, 2018

| County                | Customer Name                            | Name of Mine            | Qtr        | School District | Gross Value             | Merchantable Value      | Taxable Value (Merc. - \$250,000 Exempt) | Tax Due               | Tax Paid              | General Fund 47.0%    | Hard Rock Mine Impact 2.5% | H-R Min Rec Debt Serv Fund 8.5% | Rec & Dev Grants Spec Rev Acct 7.0% | County 35.0%          |
|-----------------------|--|-------------------------|------------|-----------------|-------------------------|-------------------------|--|-----------------------|-----------------------|-----------------------|----------------------------|---------------------------------|-------------------------------------|-----------------------|
| GRANITE               | POTENTATE MINING LLC                     | Eureka Gulch            | 12/31/2018 |                 | \$474,626.00            | \$473,368.00            | \$223,368.00                             | \$3,612.97            | \$3,612.97            | \$1,698.10            | \$90.32                    | \$307.10                        | \$252.91                            | \$1,264.54            |
| <b>County Totals:</b> |  |                         |            |                 |                         |                         |  |                       |                       |                       |                            |                                 |                                     | <b>\$1,264.54</b>     |
| JEFFERSON             | APOLLO GOLD                              | Montana Tunnels Mine    | 12/31/2018 | 1               | \$0.00                  | \$0.00                  | -\$250,000.00                            | \$0.00                | \$0.00                | \$0.00                | \$0.00                     | \$0.00                          | \$0.00                              | \$0.00                |
| JEFFERSON             | BEAR CREEK PLACER LLC                    | MITCHEL CREEK           | 12/31/2018 | 27              | \$492,116.00            | \$482,273.00            | \$232,273.00                             | \$4,414.20            | \$4,414.20            | \$2,074.67            | \$110.36                   | \$375.21                        | \$308.99                            | \$1,544.97            |
| JEFFERSON             | ELKHORN GOLDFIELDS INC                   | Elkhorn Goldfields      | 12/31/2018 |                 | \$0.00                  | \$0.00                  | -\$250,000.00                            | \$0.00                | \$0.00                | \$0.00                | \$0.00                     | \$0.00                          | \$0.00                              | \$0.00                |
| JEFFERSON             | GOLDEN SUNLIGHT MINES INC                | Golden Sunlight         | 12/31/2018 |                 | \$18,391,239.00         | \$18,313,712.00         | \$18,063,712.00                          | \$293,019.39          | \$293,019.39          | \$137,719.11          | \$7,325.48                 | \$24,906.65                     | \$20,511.36                         | \$102,556.79          |
| <b>County Totals:</b> |  |                         |            |                 |                         |                         |  |                       |                       |                       |                            |                                 |                                     | <b>\$104,101.76</b>   |
| MADISON               | MOEN BUILDERS INC                        | High Up                 | 12/31/2018 | 34              | \$0.00                  | \$0.00                  | -\$250,000.00                            | \$0.00                | \$0.00                | \$0.00                | \$0.00                     | \$0.00                          | \$0.00                              | \$0.00                |
| MADISON               | MOEN BUILDERS INC                        | Strawberry              | 12/31/2018 | 18              | \$0.00                  | \$0.00                  | -\$250,000.00                            | \$0.00                | \$0.00                | \$0.00                | \$0.00                     | \$0.00                          | \$0.00                              | \$0.00                |
| <b>County Totals:</b> |  |                         |            |                 |                         |                         |  |                       |                       |                       |                            |                                 |                                     | <b>\$0.00</b>         |
| MEAGHER               | GCC THREE FORKS LLC                      | Black Butte Iron Mine   | 12/31/2018 | 2               | \$297,225.00            | \$297,225.00            | \$47,225.00                              | \$854.77              | \$854.77              | \$401.74              | \$21.37                    | \$72.66                         | \$59.83                             | \$299.17              |
| MEAGHER               | OLDCASTLE MATERIALS CEMENT HOLDINGS, INC | BLACK BUTTE             | 12/31/2018 |                 | \$0.00                  | \$0.00                  | -\$250,000.00                            | \$0.00                | \$0.00                | \$0.00                | \$0.00                     | \$0.00                          | \$0.00                              | \$0.00                |
| <b>County Totals:</b> |  |                         |            |                 |                         |                         |  |                       |                       |                       |                            |                                 |                                     | <b>\$299.17</b>       |
| SILVER BOW            | MONTANA RESOURCES, LLP                   | Continental Mine        | 12/31/2018 | 1               | \$133,063,109.00        | \$116,642,104.00        | \$116,392,104.00                         | \$2,111,222.08        | \$2,111,222.08        | \$992,274.38          | \$52,780.55                | \$179,453.88                    | \$147,785.55                        | \$738,927.73          |
| <b>County Totals:</b> |  |                         |            |                 |                         |                         |  |                       |                       |                       |                            |                                 |                                     | <b>\$738,927.73</b>   |
| STILLWATER            | STILLWATER MINING COMPANY                | Stillwater (Still)      | 12/31/2018 | varies          | \$130,905,113.00        | \$119,613,138.00        | \$119,363,138.00                         | \$1,913,053.00        | \$1,913,053.00        | \$899,134.91          | \$47,826.33                | \$162,609.51                    | \$133,913.71                        | \$669,568.55          |
| <b>County Totals:</b> |  |                         |            |                 |                         |                         |  |                       |                       |                       |                            |                                 |                                     | <b>\$669,568.55</b>   |
| SWEET GRASS           | STILLWATER MINING COMPANY                | East Boulder            | 12/31/2018 | varies          | \$132,231,371.00        | \$120,877,962.00        | \$120,627,962.00                         | \$1,933,282.00        | \$1,933,282.00        | \$908,642.54          | \$48,332.05                | \$164,328.97                    | \$135,329.74                        | \$676,648.70          |
| SWEET GRASS           | STILLWATER MINING COMPANY                | Stillwater (Sweetgrass) | 12/31/2018 | varies          | \$82,542,827.00         | \$75,457,408.00         | \$75,207,408.00                          | \$1,206,841.00        | \$1,206,841.00        | \$567,215.27          | \$30,171.03                | \$102,581.49                    | \$84,478.87                         | \$422,394.35          |
| <b>County Totals:</b> |  |                         |            |                 |                         |                         |  |                       |                       |                       |                            |                                 |                                     | <b>\$1,099,043.05</b> |
| <b>Grand Totals:</b>  |  |                         |            |                 | <b>\$498,397,626.00</b> | <b>\$452,157,190.00</b> | <b>\$448,907,190.00</b>                  | <b>\$7,466,299.41</b> | <b>\$7,466,299.41</b> | <b>\$3,509,160.72</b> | <b>\$186,657.49</b>        | <b>\$634,635.45</b>             | <b>\$522,640.96</b>                 | <b>\$2,613,204.79</b> |