

STATE OF MONTANA
DEPARTMENT OF COMMERCE
HARD ROCK MINING IMPACT BOARD MEETING

November 30, 2023 8:30am – Dept of Commerce, Room 228-301 South Park Avenue, Helena, MT

Register in advance for this meeting:

https://mt-gov.zoom.us/webinar/register/WN_qBPZz_eRQu-ltWYh6rTU4g

After registering, you will receive a confirmation email containing information about joining the meeting.

Clint Rech, Harlowton – Financial Institution
Ray Sheldon, Huntley – Public at large
Mark Thompson, Butte – Mining Industry

Donna von Nieda, Nye – School District
Jerry Bennett, Libby – County Commissioner

Notice of Public Meeting

November 30, 2023: 8:30 a.m.

The Board will hold a meeting at 8:30 am, Thursday, November 30, 2023, at the Department of Commerce, Room 228, 301 South Park Avenue, Helena, MT. For more information or to request reasonable accommodations for a disability, please contact Community MT Division staff at (406) 841-2770 or at 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>).

Agenda:

1. Roll call
2. Housekeeping items
 - *Restroom locations*
 - *Zoom application reminders*
 - *Introduction of Commerce staff*
 - *Reminder of new members-thank outgoing members*
3. Opportunity for public comment on items not on the agenda, but within the Board's jurisdiction
4. Approval of Minutes
 - Approval of August 15, 2022 Meeting Minutes
 - *Opportunity for public comment*
 - *Board discussion*
 - *Board action (as applicable)*
5. Hard Rock Mining Impact Trust Account Annual Payments
 - *Staff Updates*
 - *Opportunity for public comment*
 - *Board discussion*
6. Review of Park City Schools Letter, Stillwater County Response Letter, Commerce Legal Opinion
 - *Staff Updates*
 - *Opportunity for public comment*
 - *Board discussion*
7. Adjournment

Hard Rock Mining Impact Board
Draft Meeting Minutes
August 15, 2022
Helena, MT

Roll Call of Board Members:

Clint Rech - Present

Donna von Nieda, Chair - Absent

Ray Sheldon - Present

Jerry Bennett - Present

Mark Thompson, Vice-Chair - Present

Montana Department of Commerce Staff Present:

Becky Anseth, Infrastructure Manager

Rachel Young, Board Officer

Renee Lemon, Division Administrator

Anita Proul, Executive Assistant

Public Present:

None

Call Meeting to Order

0:01 Vice-Chair Thompson called the meeting to order at 8:34 a.m.

0:44 Ms. Young called the roll for Board members.

Housekeeping Items

1:14 Presenter: Ms. Young

Opportunity for Public Comment

2:24 Vice-Chair Thompson asked for any public comments on items not on the agenda, but within the Board's jurisdiction.

Approval of Minutes

September 24, 2021 Hard Rock Mining Impact Board Meeting Minutes – page 2 of binder

2:50 Presenter: Ms. Young

Motion: Mr. Bennett – approve minutes

Second: Mr. Sheldon

Vice-Chair Thompson called for all in favor/opposed – motion carried

Hard Rock Mining Impact Trust Account Annual Payments

Page 4 of binder

4:07 Presenter: Ms. Young

Board Matters

9:40 Presenter: Ms. Young

Suggestion of next meeting date and location

Motion: Mr. Rech – tentatively tour MT Resources in Butte in February

***Hard Rock Mining Impact Board
Draft Meeting Minutes
August 15, 2022
Helena, MT***

Second: Mr. Bennett

Vice-Chair Thompson called for all in favor/opposed – motion carried

Adjournment

20:09 Vice-Chair Thompson called for a motion to adjourn

Motion: Mr. Rech – move to adjourn

Second: Mr. Bennett

Vice-Chair Thompson called for all in favor/opposed – motion carried

Meeting adjourned at 8:55 a.m.

DRAFT

May 23, 2023

Tyler Flaig, Natural Resources Unit Manager
Montana Department of Revenue
PO Box 5805
Helena, Montana 59604-5805

Re: 2023 Metal Mines License Tax Allocation (SMC East Boulder Project)

Dear Tyler:

Enclosed is a draft copy of the 2023 Annual Allocation of Metal Mines License Tax Revenue to Eligible Counties as specified in Section 1.12 on page 1-9 and Appendix A of the 1998 Hard Rock Mining Impact Plan Amendment for the East Boulder Project. The mineral developer has provided the following data and calculations.

Based on the CY 2022 production and receipts of the East Boulder Mine, the percentage of the revenues received that are to be allocated by the Montana Department of Revenue to each eligible county in FY 2023 is as follows:

- | | | |
|----|---------------------------|----------------|
| 1. | Sweet Grass County | 69.586% |
| 2. | Park County | 22.771% |
| 3. | Stillwater County | 7.643% |

If possible, please notify Judy Clay, Accountant, Community MT, Department of Commerce at 406.841.2703 or judy.clay@mt.gov, of the amount allocated to each eligible county by June 30, 2023.

Sincerely,



Rachel Young
Board Officer
Hard Rock Mining Impact Board
406.841.2867
Rachel.young@mt.gov

ecc: Kelli Barcus
Becky Anseth, Interim Division Administrator
Judy Clay, Community MT Accountant

May 25, 2023

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

RE: Stillwater Mine (Nye) 2023 Tax Base Sharing Report

Dear Ms. Grover:

Enclosed is Sibanye-Stillwater's 2023 Tax Base Sharing Report for the Stillwater Mine - Nye.

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

Sincerely,



Kevin Mitchum
Environmental Compliance Manager

Enclosure

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

Hard Rock Mining Impact Board

Sibanye-Stillwater
PO Box 1330
1600 E. 1st Avenue South
Columbus, MT 59019



Kevin.mitchum@sibanyestillwater.com
406.322.8820 (Office)
406.321.0027 (Cell)

SCANNED

RECEIVED

JUN 01 2023

**Department of Commerce
Community Development Division**

Stillwater Mining Company - Stillwater Mine(Nye)
2023 Tax Base Sharing Report (90-6-405 MCA)

LOCAL	SMC EMPLOYEES	CONTRACTORS	TOTAL
GOVERNMENTS	<i>Resident</i>	<i>Resident</i>	<i>Employees &</i>
	<i>Employees</i>	<i>Contractors</i>	<i>Contractors</i>
RESIDENCE			
Town of Columbus	117	19	136
Stillwater County	277	31	308
Total	394	50	444
NOTE: Impact Plan specifies Town of Columbus receives 20%.			
SCHOOLS	SMC STUDENTS	RESIDENT CONTRACTORS	TOTAL
	<i>Students</i>	<i>Students</i>	<i>SMC &</i>
	<i>Residing</i>	<i>Residing</i>	<i>Contractors</i>
	<i>In District</i>	<i>In District</i>	<i>Students</i>
HIGH SCHOOL DISTRICTS			
Absarokee	32	5	37
Columbus	53	4	57
Total	85	9	94
ELEM. SCHOOL DISTRICTS			
Absarokee	32	2	34
Columbus	69	13	82
Fishtail	4	0	4
Nye	0	0	0
Total	105	15	120



May 25, 2023

Montana Department of Revenue
Appraisal Office
Attn: Peggy Campbell
P.O. Box 888
Big Timber, MT 59011
peggycampbell@mt.gov

RE: East Boulder Mine 2023 Tax Base Sharing Report

Dear Mrs. Campbell:

Enclosed is Sibanye-Stillwater's 2023 Tax Base Sharing Report for the East Boulder Mine.

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

Sincerely,

Kevin Mitchum
Environmental Compliance Manager

Enclosure

Cc: Sweet Grass County
City of Big Timber
Sweet Grass County High School
Big Timber Grade School
Greycliff Elementary School
McLeod Elementary School
Melville Elementary School

Hard Rock Mining Impact Board

**Stillwater Mining Company - East Boulder Mine
2023 Tax Base Sharing Report (90-6-405 MCA)**

	SMC EMPLOYEES	CONTRACTORS	TOTAL
<i>RESIDENCE</i>	<i>Resident Employees</i>	<i>Resident Contractors</i>	<i>Employees & Contractors</i>
Big Timber	61	9	70
Sweet Grass County	47	6	53
Total	108	15	123
Note: Impact Plan specifies City of Big Timber receives 20%.			
SCHOOLS	SMC STUDENTS	RESIDENT CONTRACTORS	TOTAL
	Students Residing in District	Students Residing in District	SMC & Contractor Students
HIGH SCHOOL DISTRICTS			
Sweet Grass County H.S.	35	1	36
Total	35	1	36
ELEM. SCHOOL DISTRICTS			
Big Timber	39	13	52
Bridge	0	0	0
Greycliff	1	0	1
McLeod	0	0	0
Melville	0	0	0
Total	40	13	53



May 25, 2023

To: All Affected and Potentially Affected Units of Local Government

RE: East Boulder Mine – Annual Impact Monitoring Report – 2022

Enclosed is the Annual Impact Monitoring Report for East Boulder Mine – McLeod, MT. This data has been generated by Sibanye-Stillwater and includes information collected from affected school districts, contractors and internal employment records as of December 31, 2022.

Sibanye-Stillwater appreciates the cooperation received and the sharing of information for the preparation of these reports.

Sincerely,

Kevin Mitchum
Environmental Compliance Manager
Sibanye-Stillwater

Enclosure

cc: Hard Rock Mining Impact Board

Stillwater Mining Company
Impact Monitoring Report - 2022
East Boulder Mine

LOCAL GOVERNMENTS	SMC EMPLOYEES		CONTRACTORS		TOTAL IMPACT POPULATION		
	Local Employees	In-migrating Employees	Local Contractors	Other Contractors	SMC	Contractors	Total Impact
RESIDENCE							
Big Timber	31	30	4	5	85	4	89
Sweet Grass County	28	19	4	2	66	0	66
Columbus	2	8	0	0	17	0	17
Stillwater County	12	15	9	2	52	0	52
Livingston	55	36	0	1	82	0	82
Park County	41	10	0	0	32	0	32
Other	129	34	2	52	99	4	103
Total	298	152	19	62	433	8	441
(W) Single Status					54	0	54
(C) Commuting					288	66	354
Reed Point	2	0	5	0	0	0	0

SCHOOLS	SMC STUDENTS		CONTRACTORS		TOTAL IMPACT STUDENTS		
	Local Students	In-Migrating Students	Local Students	In-Migrating Students	SMC	Contractors	Total Impact
HIGH SCHOOLS							
Sweet Grass Co. H.S.	21	11	1	0	11	0	11
Columbus H.S.	1	0	0	0	0	0	0
Reed Point H.S.	1	4	1	0	4	0	4
Park H.S. (Livingston)	14	2	0	0	2	0	2
Total	37	17	2	0	17	0	17
ELEM. SCHOOLS							
Big Timber	24	15	7	2	15	2	17
Bridge	0	0	0	0	0	0	0
Greycliff	0	0	0	0	0	0	0
McLeod	0	0	0	0	0	0	0
Melville	0	0	0	0	0	0	0
Columbus	6	0	3	0	0	0	0
Reed Point	2	3	0	0	3	0	3
Livingston	15	2	0	0	2	0	2
Springdale	0	0	0	0	0	0	0
Total	47	20	10	2	20	2	22



May 25, 2023

To: All Affected and Potentially Affected Units of Local Government:

RE: Stillwater Mine – Annual Impact Monitoring Report – 2022

Enclosed is the Annual Impact Monitoring Report for Stillwater Mine – Nye, MT. This data has been generated by Sibanye-Stillwater and includes information collected from affected school districts, contractors and internal employment records as of December 31, 2022.

Sibanye-Stillwater appreciates the cooperation received and the sharing of information for the preparation of these reports.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kevin Mitchum', with a long horizontal flourish extending to the right.

Kevin Mitchum
Environmental Compliance Manager
Sibanye-Stillwater

Enclosure

cc: Hard Rock Mining Impact Board

Stillwater Mining Company
Impact Monitoring Report - 2022
Stillwater Mine - Nye

LOCAL GOVERNMENTS	SMC EMPLOYEES		CONTRACTORS		TOTAL IMPACT POPULATION		
	Local Employees	In-migrating Employees	Local Contractors	Other Contractors	SMC	Other Contractors	Total Impact
RESIDENCE							
Town of Columbus	69	48	7	12	142	8	150
Stillwater County	182	95	14	17	280	14	294
Other	652	213	10	132	606	15	621
Total	903	356	31	161	1028	37	1065
Absarokee	39	26	6	13	71	10	81

SCHOOLS	SMC STUDENTS		CONTRACTORS		TOTAL IMPACT STUDENTS		
	Local Students	In-Migrating Students	Local Students	In-Migrating Students	SMC	Other Contractors	Total Impact
HIGH SCHOOLS							
Absarokee	12	10	4	1	10	1	11
Columbus	28	13	3	0	13	0	13
Other	146	35	16	2	35	2	37
Total	186	58	23	3	58	3	61
7th & 8th Grades							
Absarokee	11	2	1	0	2	0	2
Columbus	23	11	2	0	11	0	11
Other	113	23	8	3	23	3	26
Total	147	36	11	3	36	3	39
ELEM. SCHOOLS							
Absarokee	19	2	2	0	2	0	2
Columbus	48	12	2	10	12	10	22
Fishtail	0	3	0	0	3	0	3
Nye	0	0	0	0	0	0	0
Other	165	15	21	1	15	1	16
Total	232	32	25	11	32	11	43

APPENDIX A

2023 ANNUAL ALLOCATION OF METAL MINES LICENSE TAX REVENUE TO ELIGIBLE COUNTIES

PART ONE: IDENTIFY THE TAXPAYING MINE AND THE COUNTIES IDENTIFIED IN THE APPROVED HARD-ROCK MINING IMPACT PLAN

Name of Mine: East Boulder - Stillwater Mining Company

Name of County, or Counties, in Which Ore Body, Mine and Associated Milling Facility
are Located: Sweet Grass County, Montana

Names of Affected Counties Identified in the Approved Impact Plan:
Sweet Grass County

Names of Potentially Affected Counties Identified in the Approved Impact Plan:
Park County
Stillwater County

PART TWO: DETERMINE WHICH IDENTIFIED COUNTIES ARE ELIGIBLE TO RECEIVE METAL MINES LICENSE TAX REVENUE

- A. **ECONOMIC IMPACTS RESULTING IN INCREASED EMPLOYMENT --
COUNTIES IN WHICH MINERAL DEVELOPMENT EMPLOYEES RESIDE:**
Identify each affected or potentially affected County *in which Mineral Development
Employees reside, or are expected to reside, as specified in the Impact Plan.* An
employee's place of residence is generally considered to be the *place from which the employee
commutes to the mine or mill on a daily basis*, unless the Plan specifies otherwise, such as if the
employee's normal residence is elsewhere within the impact area.

Name of County # 1: Sweet Grass County
Residence of Mineral Development Employees? Yes.

Name of County # 2: Park County
Residence of Mineral Development Employees? Yes.

Name of County # 3: Stillwater County
Residence of Mineral Development Employees? Yes.

- B. FISCAL IMPACTS RESULTING IN INCREASED COSTS -- COUNTIES WITH IDENTIFIED INCREASED COSTS:** Identify each County in which any affected unit of local government has experienced, or is expected to experience, *Increased Costs for Services or Facilities* as a result of the Mineral Development, as specified in the Impact Plan. List the County if the approved impact plan identifies an increased local government cost in any local government unit within the County.

Name of County # 1: Sweet Grass County
Increased Local Government Costs? Yes.

Name of County # 2: Park County
Increased Local Government Costs? No.

Name of County # 3: Stillwater County
Increased Local Government Costs? No.

- C. ELIGIBLE COUNTIES:** List the Counties identified in the Impact Plan that have experienced or will experience increased mineral development employment or increased local government costs, or both, as a result of the mineral development, as shown in A and B above.

Name of County # 1: Sweet Grass County
Name of County # 2: Park County
Name of County # 3: Stillwater County

Each affected or potentially affected County in which the Impact Plan identifies fiscal or economic impacts resulting in increased local government costs or increased employment is eligible to receive metal mines license tax revenue.

PART THREE: DETERMINE THE NUMBER AND PERCENTAGE OF MINERAL DEVELOPMENT EMPLOYEES IN EACH COUNTY.

- A. TOTAL NUMBER OF MINERAL DEVELOPMENT EMPLOYEES:** Identify the average number of persons employed by the developer or its contractors or subcontractors in the construction or operation of the mine or its associated milling facility during the preceding calendar year.

# Local Employees	317	% Local Employees	59.70%
# In-migrating Employees	214	% In-migrating Employees	40.30%
TOTAL # EMPLOYEES	531		100 %

B. NUMBER OF MINERAL DEVELOPMENT EMPLOYEES BY COUNTY OF RESIDENCE: Identify the *Number of Mineral Development Employees residing in each affected or potentially affected County.*

Name of County # 1: Sweet Grass County

# Local Employees	67
# In-migrating Employees	56
Total # Mineral Development Employees in County # 1:	123

Name of County # 2: Park County

# Local Employees	96
# In-migrating Employees	47
Total # Mineral Development Employees in County # 2:	143

Name of County # 3: Stillwater County

# Local Employees	23
# In-migrating Employees	25
Total # Mineral Development Employees in County # 3:	48

C. NUMBER OF MINERAL DEVELOPMENT EMPLOYEES RESIDING IN ALL ELIGIBLE COUNTIES: Add the number of employees residing in the eligible counties identified above. This total may be less than the number of mineral development employees identified in A above, because some employees, usually a relatively small number, may live outside the impact area.

of Mineral Development Employees Residing in Eligible Counties: 314

D. PERCENTAGE OF MINERAL DEVELOPMENT EMPLOYEES RESIDING IN EACH ELIGIBLE COUNTY: Calculate the *percentage of mineral development employees residing in each identified county.* Divide the number of mineral development employees residing in each eligible county (item B above) by the total number of mineral development employees residing in all eligible counties (item C above).

Name of County # 1: Sweet Grass County

123 # Min Dev Employees Residing in County # 1, divided by
314 # Min Dev Employees Residing in All Eligible Counties =
0.39172 or 39.172%

% of Mineral Development Employees Residing in County # 1 = 39.172%

Name of County # 2: Park County

143 # Min Dev Employees Residing in County # 2, divided by
314 # Min Dev Employees Residing in All Eligible Counties =
0.45541 or 45.541%

% of Mineral Development Employees Residing in County # 2 = 45.541%

Name of County # 3: Stillwater County

48 # Min Dev Employees Residing in County # 3, divided by
314 # Min Dev Employees Residing in All Eligible Counties =
0.15287 or 15.287%

% of Mineral Development Employees Residing in County # 3 = 15.287%

NOTE: These calculations should account for 100% of the mineral development employees who reside in an affected or potentially affected unit of local government identified in the impact plan.

PART FOUR: DETERMINE THE AMOUNT AND PERCENTAGE OF INCREASED COST IN EACH COUNTY.

- A. MINE-LIFE or LIFE OF MINE:** Identify the period of time considered as mine-life for purposes of these calculations. Specify the number of years included and the beginning and ending dates. [The projection of mine-life may be uncertain. If the parties to the Impact Plan prefer, they may, initially, base their calculations on a potential mine life that begins with the anticipated or actual commencement of activity under an operating permit and extends at least through the sixth full year after the year in which the mine reaches full production. As part of the annual process of adjusting the impact plan to update this Addendum, the identified mine-life period and the calculation of increased costs over time can be adjusted to reflect the most current expectations of probable mine-life.]

Mine-Life is estimated through 2065 based on current proven and probable reserves.

- B. INCREASED COSTS BY COUNTY:** List the TOTAL of All Increased Local Government Costs Identified in All Local Government Units in Each County Over the Life of the Mine. [As costs incurred during the life of the mine, include all costs identified in the impact plan for which impact payments are made in anticipation of, but prior to, actual commencement of construction, including, if identified in the impact plan, any financial assistance for preparing for and evaluating the impact plan, as authorized by 90-6-307, MCA.]

Name of County # 1: Sweet Grass County

Increased Costs to Local Government Units in County # 1: \$ 3,248,516

Name of County # 2: Park County

Increased Costs to Local Government Units in County # 2: \$ -0-

Name of County # 3: Stillwater County

Increased Costs to Local Government Units in County # 3: \$ -0-

C. TOTAL MINE-LIFE INCREASED LOCAL GOVERNMENT COSTS IDENTIFIED IN IMPACT PLAN: Add the increased costs for all eligible counties.

Total Mine-life Increased Costs in All Eligible Counties: \$ 3,248,516

D. PERCENTAGE OF INCREASED COSTS OCCURRING IN EACH ELIGIBLE COUNTY: Calculate the percentage of increased costs occurring in each identified county. Divide the increased costs in each county (section B) by the total increased costs for all eligible counties (section C).

Name of County # 1: Sweet Grass County

\$ 3,248,516 Increased Local Government Costs in County # 1, divided by
\$ 3,248,516 Increased Local Government Costs in All Eligible Counties =
1.0 or 100 %

Percentage of Increased Costs Occurring in County # 1 = 100 %

Name of County # 2: Park County

\$ -0- Increased Local Government Costs in County # 2, divided by
\$ 3,248,516 Increased Local Government Costs in All Eligible Counties =
0 or 0 %

Percentage of Increased Costs Occurring in County # 2 = 0 %

Name of County # 3: Stillwater County

\$ -0- Increased Local Government Costs in County # 3, divided by
\$ 3,248,516 Increased Local Government Costs in All Eligible Counties =
0 or 0 %

Percentage of Increased Costs Occurring in County # 3 = 0 %

NOTE: These calculations should account for 100% of the increased local government costs in all affected units of local government in all affected counties identified in the impact plan.

PART FIVE: PERCENTAGE OF METAL MINES LICENSE TAX REVENUE TO BE ALLOCATED TO EACH ELIGIBLE COUNTY: Using the data shown above, calculate the percentage of metal mines license tax revenue to be allocated to each eligible County. Add each county's cost and employment percentages and divide by two, to give equal weight to increased costs and increased employment.

NAME OF COUNTY # 1: Sweet Grass County

Increased Costs: 100 % of Total in All Eligible Counties

Increased Employment: 39.172 % of Total in All Eligible Counties

Add the two percentages: 139.172% and Divide by 2 =

***** PERCENTAGE OF REVENUE TO ALLOCATE TO COUNTY # 1: 69.586%**

NAME OF COUNTY # 2: Park County

Increased Costs: 0 % of Total in All Eligible Counties

Increased Employment: 45.541% of Total in All Eligible Counties

Add the two percentages: 45.541% and Divide by 2 =

***** PERCENTAGE OF REVENUE TO ALLOCATE TO COUNTY # 2: 22.771%**

NAME OF COUNTY # 3: Stillwater County

Increased Costs: 0 % of Total in All Eligible Counties

Increased Employment: 15.287% of Total in All Eligible Counties

Add the two percentages: 15.287% and Divide by 2 =

***** PERCENTAGE OF REVENUE TO ALLOCATE TO COUNTY # 3: 7.643%**

***** TOTAL PERCENTAGE ALLOCATED: 100 %**

NOTE: The total percentage to be allocated should equal 100 percent.

For Purposes of the Allocation of Metal Mines License Tax Revenues Received and Allocated by the Montana Department of Revenue in Calendar Year 2022, Allocation is based on the Production and Receipts of the East Boulder Mine for Reporting Periods Ending December 31 and June 30.

We, the Undersigned, Have Reviewed and Concurred in the Data and Calculations Appearing in the Attached Addendum to the Hard-Rock Mining Impact Plan,

AUTHORIZED SIGNATURES:

County # 1: Sweet Grass County Date signed 05-18-2023
[Signature], Chair, Board of County Commissioners
[Signature], Commissioner
[Signature], Commissioner

County # 2: Park County Date signed 5-30-23
[Signature], Chair, Board of County Commissioners
[Signature], Commissioner
[Signature], Commissioner

County # 3: Stillwater County Date signed 05-23-2023
[Signature], Chair, Board of County Commissioners
[Signature], Commissioner
[Signature], Commissioner

Mineral Developer [Signature] Date signed 5/12/23
(Authorized Representative of Mineral Developer)

Submitted to Hard-Rock Mining Impact Board by _____
Date submitted _____
Date received _____

Concurred in or Approved by HRMI Board: _____
(Signed: Chair, Hard-Rock Mining Impact Board)
Date of Board action: _____ Date signed _____

Submitted to Montana Department of Revenue for Board by: _____
Date submitted _____

PARK CITY SCHOOLS

DISTRICT #5 STILLWATER COUNTY
PO BOX 278, 10 2ND AVE SW
PARK CITY, MT 59063
OFFICE 406-633-2350
FAX 406-633-2913

"HOME OF THE PANTHERS"

October 10, 2023

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

Subject: Request the Mining Impact Board Require an Amendment to the Nye Impact Plan

Dear Montana Hard Rock Mining Impact Board:

Park City School District #5 (PCSD) is requesting that the Hard Rock Mining Impact Board (HRMIB) please require an amendment to the 1998 Nye Hard Rock Mining Impact Plan (NIP) as soon as possible.

Legal Basis for this Request and Amendment

1. **Amendment submittal does not appear imminent by the Stillwater County Commissioners or the Mineral Development without action by the HRMIB or other legal action.**
 - a. PCSD has completed all reasonable steps necessary to move forward with an amendment and two and a half years have now elapsed since PCSD formally requested the impacts be mitigated. *See Exhibit 1 - Attachment 9 - PCSD March 2021 Letter.*
 - b. According to a September 15, 2023 MTDEQ letter *"The Hard Rock Mining Impact Board has the legal authority under Section 2-15-1822, MCA, to act as a quasi-judicial and quasi-legislative Board to resolve legal issues and factual allegations...arising from the economic impacts of large-scale mining operations and the dispersal of impact funds to affected local government units"* See Exhibit 2
2. **Employment is forecast to increase by at least 75 person over the employment levels contemplated by the approved NIP which satisfies a legal condition that allows for an amendment. ARM 8.104.217(1)(j)(ii).**

RECEIVED



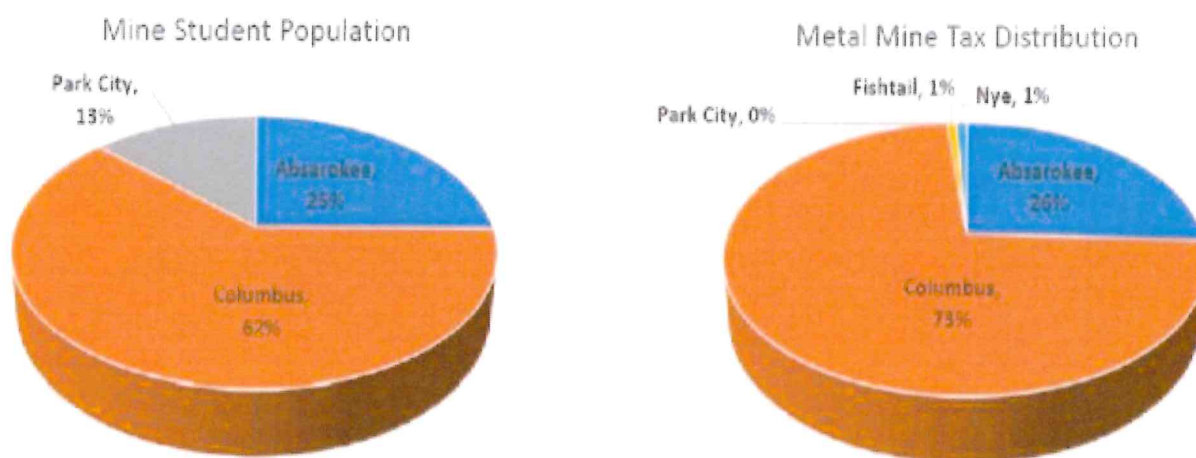
SCANNED

DEPARTMENT OF COMMERCE
COMMUNITY DEVELOPMENT DIVISION

- a. The approved NIP only forecasted 700 total employees and actual employment is planned to exceed 2,050 total employees in 2024. *See Attachment 6 of Exhibit 1.*
 - i. The employment numbers are highly correlated to revenue distribution amongst affected government units in the NIP.
 - b. A large scale mineral development is defined by MCA as 75 employees, so an increase of over 1,300 employees should be considered significant.
 - c. The legal condition allowing for an amendment under ARM 8.104.217(1)(j)(ii) was satisfied every single year since the approval of the current NIP, 25 years ago.
 - i. *See MSHA records in Attachment 7 of Exhibit 1.*
- 3. **Four conditions (B, C, D, and F) in the 1998 NIP itself have been met that each allow for an amendment. ARM 8.104.217(1)(j)(i) See pages 3-7 of the cover letter in Exhibit 1.**
- 4. **In order for the NIP to remain in compliance with the Montana Hard-Rock Mining Impact Act an amendment that includes Park City Schools should be required.**
 - a. *Exhibit 1: PCSD March 2, 2023 AM3 Petition – Nye Hard Rock Mining Impact Plan & Attachments (505 total pages)* is submitted in its entirety with this request as corroborating evidence that the Nye Impact Plan is no longer in compliance with the Montana Hard-Rock Mining Impact Act.
 - b. The Hard Rock Mining Impact Act and the companion Property Tax Base Sharing Act require money be allocated for impacted high school and elementary school districts within the county.
 - c. Park City Elementary School District and Park City High School District (PCSD) have increased costs resulting from the construction and operation of the Nye Mineral Development. *See Pages 13-1 through 14-4 of Attachment 5 of Exhibit 1 (pages 365 through 372 of the 505 total pages in Exhibit 1) for demonstration of some of the impacts.* PCSD has also incurred other impact costs not yet tabulated/calculated (e.g. in 2023 PCSD was forced to move from Class C sports to Class B sports as a direct result of student population; which included increased costs without corresponding increased revenues).
 - d. Approximately 10-15% of the Impact Students and the Mineral Development Students in Stillwater County attend Park City Schools. *See **Mine Student Population vs. Metal Mine Tax \$ Distribution** on the following page.*

Mine Student Population vs. Metal Mine Tax \$ Distribution

Stillwater County Schools



SOURCE OF MINE STUDENT POPULATION: Sybanye-Stillwater correspondence 11/7/2022

SOURCE OF TAX INFORMATION - <https://gems.opi.mt.gov/finance-data#districts>

5. In order for the NIP to remain in compliance with the Montana Hard-Rock Mining Impact Property Base Sharing Act an amendment that includes Park City Schools should be required.

- a. *Exhibit 1: PCSD March 2, 2023 AM3 Petition – Nye Hard Rock Mining Impact Plan & Attachments (505 total pages)* is submitted in its entirety with this request as corroborating evidence that the Nye Impact Plan is no longer in compliance with the Montana Hard-Rock Mining Impact Property Tax Base Sharing Act.
- b. The approved Impact Plan fails to equitably distribute property tax revenues because it distributes revenues for Mineral Development Students to Columbus, Absarokee, Fishtail and Nye Schools while ignoring Mineral Development Students at Park City Schools.
- c. PCSD has a property tax revenue disparity because, unlike other school districts, PCSD does not benefit from the additional revenue generated by the property tax of the mineral developer or development (e.g. Nye Surface Facilities and Columbus Smelter).
- d. Just because PCSD had/has less impact and mineral development students than two of the other four school districts is not a valid reason to exclude PCSD from Tax Base Sharing.

6. The NIP has not been updated for 25 years, making much of the general information inaccurate, antiquated or obsolete.

- a. Tax values, average home values (\$70,000 in the plan), school populations, and inflation are all now very inaccurate in the approved plan.
- b. The NIP is inaccurate because it does not assess the impacts of stipulations on transportation (forced busing/carpooling) on outlying communities such as Park City. *See Section 1.6 of Appendix G of Good Neighbor Agreement (GNA). Exhibit 1 – Attachment 15.*
- c. Section 12.1 of the GNA forces Sibanye-Stillwater to confine all Mine-Sponsored Housing in Stillwater County to within the city limits of Absarokee and Columbus. Impacts of Mine Sponsored Housing Restrictions on outlying communities such as Park City should be evaluated for impacts to schools in the NIP. *See Exhibit 1 – Attachment 15.*

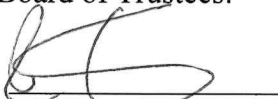
Thank you for your time. Please contact Dan Grabowska, Superintendent, if you have any questions or concerns with this submittal.

Sincerely,

Park City School District #5 Board of Trustees:



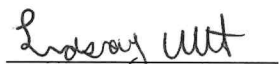
Kevin Hoffman



Amber Tilzey



Breann Streck



Lindsay Witt



Jonathan Alegria

Cc (Cover Letter Only): Sibanye-Stillwater, Stillwater County Commissioners

Attached to this Request:

Exhibit 1 - Nye Impact Plan_AM3 Petition and All Attachments PCSD_20230302

Figure 1 - Nye Mineral Development Project Site (Stillwater Mine)

Attachment 1 - PCSD Resolution Authorizing County to Submit the Petition for Amendment 3

Attachment 2 - Existing (1998, AM2) Nye Impact Plan

Attachment 3 - Existing (1998, AM2) Nye Impact Plan with Markups of Proposed AM3 Revisions

Attachment 4- Summary of the Proposed (2023, AM3) changes to Nye Impact Plan by page

Attachment 5 - Proposed (2023, AM3) Nye Impact Plan with all changes included (clean version)

Attachment 6 - Sibanye Mineral Development Employee Projections
Attachment 7 - Sibanye Mineral Development Employees Actual - MSHA LOM Records
Attachment 8 - Nye Annual Tax Base Sharing Report (2021 Report Year)
Attachment 9 - PCSD March 2021 Letter Requesting Modification to Receive MMT Revenues
Attachment 10 - PCSD December 2022 Amendment Notification Letter
Attachment 11 - OPI - Student Count Rpt -Stillwater County Schools Fall 2021 and Spring 2022
Attachment 12 - Page 24 of 1998 EIS Record of Decision - AMD 10 to DEQ Permit 00118
Attachment 13 - Pages 71-76 of May 2012 EIS_Issue 13 and Issue 14
Attachment 14 - Checklist EA ROD 2010 AMD 12 to DEQ Operating Permit 00118
Attachment 15 - Pages 30 and 57 of Good Neighbor Agreement 2016
Attachment 16 - PDF page A49 - SW County- of App A in Dept Rev 2020-22 Biennial Tax Rpt
Attachment 17 - Pages 7 and 10 and 12 of - SW County 2021 Audited Report

Exhibit 2 - MTDEQ Response and Complaint that NIP Out of Compliance_20230915



Nancy L. Rohde | Stillwater County Attorney
Ryan C. Addis | Deputy County Attorney

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October 24, 2023

VIA US MAIL AND EMAIL:

Hard Rock Mining Impact Board
MONTANA DEPARTMENT OF COMMERCE
301 S. Park Ave.
PO Box 200523
Helena, MT 59620-0523

Re: Joint Response to Dusty R. Weber's Citizen Complaint #1, dated August 23, 2023

Dear Sir or Madam:

On behalf of Stillwater Mining Company ("SMC") and Stillwater County, please accept this joint response to the Citizen Complaint ("Complaint") dated August 23, 2023, filed by Dusty R. Weber, which concerns the Hard Rock Mining Impact Plan ("Impact Plan") for the Stillwater Mine.¹ For nearly four decades, SMC and Stillwater County have worked collaboratively, and without objection, to implement and administer SMC's Impact Plan for the Stillwater Mine to mitigate any potential economic impacts of SMC's operations and ensure the needs of local communities are met. Mr. Weber's complaint lacks merit, is procedurally improper, and comes decades too late in the impact planning process. While the Hard Rock Impact Board ("Board") and/or the Montana Department of Environmental Quality ("DEQ") would be justified in summarily dismissing Mr. Weber's complaint, SMC and Stillwater County feel compelled to defend their good practices, careful planning, and dutiful implementation of Montana's Hard

¹ The issues raised in the Complaint refer to or mirror those raised by Park City School District in a letter to the Stillwater County Commissioners dated March 2, 2023, and a similar letter provided to the Hard Rock Impact Board on October 10, 2023. The March 2, 2023 letter is an attachment to the Complaint and the October 10, 2023 letter. SMC did not receive a copy of the October 10, 2023 letter from Park City School District but it was provided to the Stillwater County Commissioners. This response is directed to all three submissions, although organized based on the Complaint as that appears to be the operative document before the Board for its consideration.

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Rock Mining Impact Act and respectfully request that the Board and/or DEQ consider the following comments in addressing Mr. Weber's submission.

I. BACKGROUND OF SMC'S IMPACT PLAN.

The Hard Rock Mining Impact Act("Impact Act")² and Metal Mine Reclamation Act ("MMRA")³ require developers of large-scale hard rock mines to create an Impact Plan that identifies "any increased costs to local government units for public services and facilities which will be needed as a result of the proposed project."⁴ Generally, this Impact Plan is created in conjunction with the developer's application for a mine operating permit under the MMRA and must be in place before an operating permit can be approved.⁵ Once an impact is identified, the Plan provides for financial assistance to meet those needs for increased services.

The Stillwater Mine's first Impact Plan was approved in 1985 based on the platinum and palladium mineral development near Nye, in Stillwater County, Montana. The plan was amended twice, once in 1988, and again in 1998. The 1998 Impact Plan is still in effect today for the mine. The 1998 amendments included, among other changes, the addition of a new affected "Local Government Unit," the Absarokee Water and Sewer District, which was formed after the previous amendment. The Impact Plan currently includes nine affected Local Government Units that are contemplated for impact funds. This includes Stillwater County, Town of Columbus, Columbus Elementary School District, Columbus High School District, Absarokee Elementary School District, Absarokee High School District, Fishtail Elementary School District, Nye Elementary School District, and Absarokee Water and Sewer District.

II. MR. WEBER'S COMPLAINT IS PROCEDURALLY IMPROPER.

As a threshold issue, Mr. Weber filed his Complaint with the wrong administrative agency and improperly sought DEQ's review of SMC's Impact Plan under ARM 17.24.129. As noted by DEQ in response to Mr. Weber, DEQ lacks statutory authority to investigate or resolve issues related to SMC's Impact Plan and it cannot assume that a hard rock mining violation exists based on the allocation of Impact Plan funds. DEQ notified Mr. Weber that the Hard Rock Impact Board, not DEQ, has jurisdiction over Hard Rock Impact Plans and, therefore, it referred the Complaint to the Board.

If the Board decides to consider Mr. Weber's Complaint, it should deny his request because the Complaint: (1) seeks relief contrary to the purpose of the Impact Act; (2) is time-barred as far past the objection period set forth to handle the circumstances raised in the Complaint; and (3) improperly requests amendment of an approved plan. Amendment of an approved plan can only be sought by a governing body of the affected county or the mineral developer, not an individual or local government unit not identified in the plan. Furthermore,

² Mont. Code Ann. § 90-6-301, *et seq.*; *see also* Mont. Code Ann. § 90-6-401, *et seq.* The Impact Act works in tandem with the Hard-Rock Mining Impact Property Tax Base Sharing Act ("Tax Base Sharing Act").

³ Mont. Code Ann. § 82-4-335.

⁴ *Lincoln County v. Sanders County*, 261 Mont. 344, 346 (1993).

⁵ Mont. Code Ann. § 90-6-308.

amendment of an Impact Plan under the Act is not mandatory; rather, it is permissive at the discretion of the governing body of the affected county and mineral developer. Although these prerequisite conditions are not met, the Complaint additionally fails to allege any violation of the Impact Act, the MMRA, NEPA/MEPA, or SMC's Operating Permit.

A. The Relief Sought by Mr. Weber is Contrary to the Purpose of the Impact Act.

A mineral developer identifies and commits to pay for any increased local government capital or net operating costs that results from initial development of the mine through its Impact Plan.⁶ The Impact Plan is developed at the outset, before operation of the mine, to forecast local government costs that may result from mineral development. Those costs may precede or exceed the increase in tax base, so the Impact Plan is intended to prevent that cost from burdening the local residents and taxpayers in the short term, as operations and development begin.

The legislative history regarding the initial passage of the Impact Act similarly emphasizes the intent for Impact Plans to be directed towards the initial costs resulting from mineral development. Senator Conrad Fredricks, from Big Timber, testified that the Impact Act “is designed solely for front-end impacts which are identified and fixed at the time of approval by the hard rock mining impact board. There is no provision to handle to [sic] cost of impacts which could not be anticipated or which were overlooked by both the mineral developer and the local government until [sic]. Nor are tail-end impacts covered.”⁷ This sentiment is reflected in the Impact Act's Declaration of Necessity and Purpose, which provides:

The large-scale development of mineral deposits in the state may cause an influx of people directly related to the area of the development. This influx of people and the corresponding increase in demand for local government facilities and services may create a burden on the local taxpayer. There is a significant lag time between the time when additional facilities and services must be provided and the time when additional tax revenue is available as a result of the increased tax base. In addition, local government units in whatever jurisdiction the development is not located may receive substantial adverse economic impacts without benefit of a major increased tax base in the future. **There is therefore a need to provide a system to assist local government units in meeting the initial financial impact of large-scale mineral development.**

Mont. Code Ann. § 90-6-301 (emphasis added).

This identified purpose and the legislative history acknowledge that large-scale mining, as development *begins*, may cause an influx of people and that demand sometimes occurs before

⁶ See *Hard Rock Impact Plan Information*, Hard Rock Mining Board, <https://comdev.mt.gov/Programs-and-Boards/Hard-Rock-Mining-Impact-Board/Hard-Rock-Impact-Plan-Information>.

⁷ Conrad B. Fredricks, *Testimony Regarding House Bill No. 718*, Senate Taxation Committee, at 1 (April 6, 1981).

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

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

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

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

⁸ Mont. Code Ann. § 90-6-301; Mont. Code Ann. § 90-6-401.

⁹ Complaint at page 6.

Ultimately, it is hard to see how such a lag time between the start of operations and now would be in line with the purpose of the Impact Act. The amendment provisions were not structured to require amendment to add new local government units decades later, especially under conditions that Mr. Weber asserts were in existence not only at the time the initial Impact Plan was approved, but through both subsequent amendments. While we understand that the Park City School District has had a difficult time raising the necessary revenue it needs through its normal mechanisms, amending the Impact Plan for the Stillwater Mine is not the appropriate solution, nor, under the circumstances, a legally permissible one.

B. Park City School District Had an Obligation to Object in the 90-day Period Prior to Approval of the Plan if it Anticipated an Impact and it Failed to Do So.

When a mineral developer seeks an operating permit for large-scale mineral development, the Impact Act requires it work with Local Government Units to identify which units might be impacted and create a plan to mitigate that impact for each Affected Local Government Unit. Local Government Units are defined in the Impact Act to include a county, city, town, school district, or a number of other special districts.¹⁰ Local Government Units must ensure, along with the developer, that the Impact Plan contains accurate information on the expected impact.¹¹

The Implementation Guide created by the Hard Rock Mining Impact Board emphasizes that Local Government Units assist with the preparation of the Impact Plan and “share the legal responsibility for ensuring that the plan contains all required information, projections, and commitments.”¹² To that end, the Impact Act provides a specific remedy process if a Local Government Unit believes it is likely to experience increased capital and operating costs but has not been identified in the plan as an Affected Local Government Unit. It must raise its objection during the 90-day period after the plan is submitted to the Board.¹³ After that 90-day period, the Board notifies a developer within 10 days about whether there has been an objection from a Local Government Unit. If there has been an objection, the developer and the Local Government Unit have 30 days, or longer if provided an extension, to resolve the objection.¹⁴ If the objections are not resolved, the Board holds a hearing. Once the Board makes its findings and approves or amends the impact plan, an aggrieved party (either a Local Government Unit or the developer) may seek judicial review.¹⁵ This process is key to allow early collaboration to avoid issues after the Impact Plan has been approved and to make sure that the developer has all necessary information to develop its Impact Plan.

¹⁰ Mont. Code Ann. § 90-6-302(5).

¹¹ Mont. Code Ann. § 90-6-307.

¹² *Guide of the Implementation of the Hard-Rock Mining Impact Act and the Property Tax-Base Sharing Act*, The Hard-Rock Mining Impact Board, at viii (May 2008) (“Implementation Guide”).

¹³ Mont. Code Ann. § 90-6-307.

¹⁴ Mont. Code Ann. § 90-6-307(7).

¹⁵ Mont. Code Ann. § 90-6-307(8).

The Impact Plan will define which Local Government Units are considered Affected Local Government Units for purposes of the plan. Once it is approved, it is binding and can only be altered under the amendment provisions.¹⁶ If a Local Government Unit is not included as an *Affected* Local Government Unit, it must raise the issue during the 90-day public comment period prior to approval. This collaborative process allows the Board to conduct a hearing, and if still aggrieved, the Local Government Unit could seek judicial review following approval of the Impact Plan. Absent a timely submitted objection prior to approval of an impact plan, a Local Government Unit is not entitled to judicial review on the determination of whether it should have been included as an Affected Local Government Unit.

Here, any challenge is well beyond the 90-day limitations period set forth in the Impact Act. Aside from failing to show a new impact that would fall in line with the purpose and focus of the Impact Act, the Complaint asserts the conditions that would qualify Park City School District to be included as an Affected Local Government Unit existed at the time of the initial Impact Plan, and during each of the subsequent amendments. The Complaint states the “original 1985 plan, the amended 1988 plan, and the amended 1998 plan all *failed* to identify and commit to paying the increased local government costs of Park City Elementary School District and Park City High School District resulting from the construction and operation (and subsequent expansions in employment) of the new mineral development.”¹⁷

The initial plan, and each of the amendments were publicly noticed and the Hard Rock Impact Plan provided the requisite objection period. Park City School District did not raise its concerns, seek to be added to the Impact Plan at any of those times, and did not formally lodge any objection with the Hard Rock Impact Board. The time for them to raise the issue was within 90 days of the submission of the proposed Impact Plan, or the same objection period for either of the proposed amendments. Park City School District chose to forgo its right to challenge its lack of inclusion in the plan and missed the statutory deadline by 25-38 years, in each instance. It did not engage in the resolution processes provided for in the Impact Act, did not avail itself of a contested hearing before the Hard Rock Impact Board, and missed the deadline for seeking judicial review of the approval of the Impact Plan and each subsequent amendment. Local Government Units assist with the preparation of the Impact Plan and “share the legal responsibility for ensuring that the plan contains all required information, projections, and commitments.”¹⁸ By failing to object and seek inclusion in the plan when it asserts the conditions existed at the relevant times, Park City has waived its ability to challenge the Impact Plan now.

C. Mr. Weber Lacks Standing to Seek Amendment of an Approved Impact Plan.

The procedure for amendment of an already approved Impact Plan is similar to the process for an initial review of an Impact Plan. A petition for amendment must be submitted to

¹⁶ Mont. Code Ann. § 90-6-307(6).

¹⁷ “Citizen’s Complaint” at page 2 (emphasis in original).

¹⁸ *Guide of the Implementation of the Hard-Rock Mining Impact Act and the Property Tax-Base Sharing Act*, The Hard-Rock Mining Impact Board, at viii (May 2008) (“*Implementation Guide*”).

the Hard Rock Impact Board, and include an explanation for the need for an amendment, the associated facts and circumstances, and a description of the proposed corrective measures.¹⁹ Once a petition for amendment is submitted to the Board, it must publish notice “at least once in a newspaper of general circulation in the affected county.”²⁰ The petition can only be submitted by the mineral developer, the governing body of the affected county, or the mineral developer and the governing body of the affected county jointly. No other party has standing to initiate an amendment of an approved Impact Plan. Once submitted, the Board: (1) can approve the amendment if no objections have been submitted; (2) allow for period of resolution between the petitioner and objectors; (3) or if no resolution is reached, hold a contested hearing on the validity of the objections and amend the impact plan according to its findings.²¹

The Impact Act allows the developer or governing body of the affected county to seek amendment if one of the statutory triggers is met, or one of the conditions set out in the Impact Plan for amendment is met. While an amendment could be sought when the requisite conditions exist, whether to seek an amendment is permissive, not compulsory. The statute and the Impact Plan both specify that an amendment *may* be sought. It does not specify amendment *must* be sought when a condition for amendment might arise. This is particularly important when looking to the amendments made to the Impact Act in 1995, which changed the language specific to the objection and appeal process to insert “must” in those areas where the language was intended to be mandatory rather than permissive.²² Had amendment been a mandatory condition it would state amendment *must* be made, not *may* be made, when the conditions for amendment might exist. These textual references are particularly important where, as here, there is very little case law interpreting the Impact Act provisions.

An Affected Local Government Unit, identified and defined within the Impact Plan, can notify the Board at any time if the permittee fails to comply with its commitments in an approved Impact Plan, including any review and implementation provisions.²³ If the Affected Local Government Unit and the developer cannot resolve the dispute, the Board may hold a contested case hearing to determine whether the developer has failed to comply with its commitments in the approved Impact Plan or with the provisions of the Impact Act of Tax Base Sharing Act.

The Complaint submitted to DEQ was provided by Mr. Weber. It is improper for an individual to petition for amendment of the Hard Rock Impact Plan. The Impact Act only allows a petition for amendment to be brought by the mineral developer, or the governing body of the affected county. Here, that means that SMC, Stillwater County, or SMC and Stillwater County jointly, are the only entities able to seek amendment of the approved plan. While Stillwater County could seek an amendment on behalf of an affected government unit within its jurisdiction, a local government unit cannot unilaterally seek amendment. As a result, even if the Complaint had been submitted by Park City School District, it would still not be actionable.

¹⁹ Mont. Code Ann. § 90-6-311(2).

²⁰ Mont. Code Ann. § 90-6-311(2).

²¹ Mont. Code Ann. § 90-6-311(3) – (5).

²² ENVIRONMENT—REVISION OF ENVIRONMENTAL AND NATURAL RESOURCE FUNCTIONS OF STATE GOVERNMENT, 1995 Montana Laws Ch. 418 (S.B. 234).

²³ Mont. Code Ann. § 90-6-307.

Here, it was submitted by an individual person, Mr. Weber, in what appears to be his personal capacity. Neither Mr. Weber, nor Park City School District have standing to seek amendment to SMC's Impact Plan.

III. MR. WEBER'S COMPLAINT FAILS TO ARTICULATE A VIOLATION OF SMC'S OPERATING PERMIT OR NEPA/MEPA.

Mr. Weber's assertion that SMC is in violation of its operating permit, the National Environmental Policy Act ("NEPA"), and the Montana Environmental Policy Act ("MEPA") are similarly misplaced. It appears that Mr. Weber's argument is that SMC is in violation of its operating permit by not including Park City School District in the 1998 Impact Plan. The Complaint alleges "PCSD should be given the same opportunity to demonstrate impacts and should have the same standard of impact evaluation the Impact Plan has previously applied to other school districts." As noted above, Park City School District had the same opportunity as every other Local Government Unit to raise the issue back in 1998, and even had an obligation to raise it if it felt it was improperly excluded. But it chose not to, and has forgone its chance to challenge it now, 25 years after the last amendment. Furthermore, as noted by DEQ, Mr. Weber does not identify any violation of SMC's operating permit. SMC has an approved Impact Plan and is operating in compliance with those terms. That is what is required under the law.

The Complaint's reliance on NEPA and MEPA are similarly misplaced. NEPA and MEPA are procedural standards that set forth the process an agency, at the federal and state levels, respectively, must follow in making decisions that may impact the environment. The purpose is to ensure agencies consider the environmental impact of their actions and the public is informed of those impacts.²⁴ Compliance with these statutes resides with the agency taking the action during its decision-making process, not the operator or mineral developer. During the MEPA and NEPA processes identified in the Complaint, the agencies carried out their responsibilities under state and federal law.

The Complaint alleges SMC "is in violation of ARM 17.24.153 because Sibanye-Stillwater is not in compliance with the National Environmental Policy Act and is not in Compliance with the Montana Environmental Policy Act." But ARM 17.24.153 is the administrative rule that speaks only to *operator* compliance with the Montana Hard Rock Mining Reclamation Act. NEPA and MEPA provide the procedures that *agencies* must follow when making decisions. SMC cannot be "in violation" of NEPA and MEPA, because such compliance resides with the relevant agencies during their decision-making processes. Moreover, the provisions of MEPA and NEPA do not directly impose any obligations upon an operator in terms of determining the operator's compliance with the MMRA. Accordingly, the Complaint fails to articulate any basis for a violation under the law by conflating two separate and distinct procedural mechanisms.

²⁴ See, e.g., 40 C.F.R. § 1500.1(c); Mont. Code Ann. § 75-1-102.

IV. THE COMPLAINT SHOULD BE DISMISSED.

SMC and Stillwater County have worked collaboratively to administer SMC's Impact plan over the last 38 years. SMC is dedicated to ensuring the needs of the local communities are met and has complied with the terms of the Impact Plan. The Complaint lodged by Mr. Weber lacks standing and a challenge of this nature has long been time-barred. The purpose of the Impact Act was to focus on the "front-end" of development of hard rock mining operations and to cover those early fiscal needs. Although it does continue to provide ongoing funding to those affected local government units, the Impact Act was not intended to be used in the manner suggested by Mr. Weber's Complaint. Park City School District had an obligation, and a set time to lodge objections if it felt it should have been included in the Impact Plan. It should not be permitted to wait decades before raising a challenge to the terms of the approved plan. Furthermore, under the Hard Rock Mining Impact Act, neither Mr. Weber nor Park City School District have legal standing to seek amendment of an already approved Impact Plan.

For the foregoing reasons, we respectfully request that the Complaint be dismissed.

Sincerely,

CROWLEY FLECK PLLP

/s/ Pamela Garman

Greg Dorrington

Pamela Garman

STILLWATER COUNTY

/s/ Nancy L. Rohde

Stillwater County Attorney

On behalf of Stillwater County Commissioners

cc:

Montana DEQ, Eric Dahlgren, edahlgren@mt.gov

Dusty Weber, 7 Pinto Place, Park City, MT 59063

CROWLEY | FLECK PLLP
ATTORNEYS

P.O. BOX 2529 BILLINGS, MT 59103



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Hard Rock Mining Impact Board
Montana Department of Commerce
P.O. Box 200523
Helena, MT 59620-0523

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Montana Code Annotated 2023

TITLE 90. PLANNING, RESEARCH, AND DEVELOPMENT

CHAPTER 6. COMMUNITY IMPACT -- PLANNING AND ABATEMENT

Part 3. Hard-Rock Mining Impact

Impact Plan Amendments

90-6-311. Impact plan amendments. (1) The impact plan may provide for amendment under definite conditions specified in the plan. Also, the governing body of an affected county or the mineral developer may petition the board for an amendment to an approved impact plan if:

(a) employment at the large-scale mineral development is forecast to increase or decrease by at least 75 persons, as determined under **90-6-302(4)**, over or under the employment levels contemplated by the approved impact plan; or

(b) it becomes apparent that an approved impact plan is materially inaccurate because of errors in assessment and 2 years have not elapsed since the date the facility begins commercial production; or

(c) the governing body of an affected county and the mineral developer join in a petition to amend the impact plan.

(2) Within 10 days of receipt the board shall publish notice of the petition at least once in a newspaper of general circulation in the affected county. The petition must include:

(a) an explanation of the need for an amendment;

(b) a statement of the facts and circumstances underlying the need for an amendment; and


(c) a description of the corrective measures proposed by the petitioner.

(3) Within 60 days after notice that the petition has been received, an affected local government unit or the mineral developer must notify the board in writing if such person objects to the amendments proposed by the petitioner, specifying the reasons why the impact plan should not be amended as proposed. If no objection is received within the 60-day period, the impact plan must be amended by the board as proposed by the petitioner.

(4) If an objection is received, within 10 days of its receipt, the board shall notify the petitioner and include a copy of all objections received by the board. If the objecting party and the petitioner cannot resolve the objections within 30 days after the expiration of the 60-day period, the board shall conduct a hearing on the validity of the objections within 30 days after the failure of the parties to resolve the objections. The hearing must be held in the affected county or, if objections are received from local government units in more than one county, must be held in the county which in the board's judgment is more greatly affected. The provisions of the Montana Administrative Procedure Act apply to the conduct of the hearing.

(5) Following the hearing, the board shall make findings as to those portions of the amendments which were objected to and, if appropriate, amend the impact plan accordingly. The board shall cause the findings and impact plan, as amended, to be served on all parties. Any local government unit or the developer is entitled to judicial review, as provided by Title 2, chapter 4, part 7, in the district court for the judicial district in which the hearing was held.

History: En. Sec. 5, Ch. 489, L. 1983; amd. Sec. 7, Ch. 582, L. 1985; amd. Sec. 6, Ch. 227, L. 1991.

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8.104.217 CONTENTS OF PETITION FOR PLAN AMENDMENT

(1) Under certain circumstances the mineral developer or the governing body of an affected county (on its own behalf or on behalf of another affected government unit within the county) may petition the board to amend an approved impact plan. The requirements and procedures for petitioning to amend a plan are provided in [90-6-311](#), MCA, and a petition for an amendment must include or identify the following:

(a) when applicable, a copy of a resolution, dated and signed by the governing body of each local government unit that is requesting the amendment, authorizing the county to submit the petition for the amendment of the impact plan;

(b) date of the petition;

(c) the name of the mineral developer;

(d) county in which mineral development is located;

(e) name, address, phone number and signature(s) of each petitioner (county and/or mineral developer) ;

(f) all local government units believed by the petitioner to be affected by the proposed amendment;

(g) as required by [90-6-311](#)(2) , MCA, an explanation of the need for an amendment, a statement of the facts and circumstances underlying the need for an amendment, and a description of the corrective measures proposed by the petitioner;

(h) the costs and commitments identified in the approved plan which will be changed as a result of the proposed amendment, with the relevant pages in the plan cited;

(i) other provisions of the approved plan which may be changed by the proposed amendment, with the relevant pages cited and substitute language proposed that will make the plan consistent throughout;

(j) a statement as to which of the following is the legal basis for the petition:

(i) that the plan itself provides for amendment under certain conditions and that those conditions have been met with the conditions specified and the pages on which they are established cited. The petitioner must establish that the conditions have been met;

(ii) that employment at the large-scale mineral development is forecast to increase or decrease by at least 75 persons, as determined under [90-6-302](#)(4) , MCA, over or under the employment levels contemplated by the approved impact plan;

(iii) that the approved impact plan is materially inaccurate because of errors in assessment and that two years have not elapsed since the date the facility began commercial production with the date the facility began commercial production indicated; or

(iv) that the governing body of an affected county and the mineral developer are joining in the petition to amend the impact plan.

History: Sec. [90-6-305](#), MCA; IMP, Sec. [90-6-311](#), MCA; NEW, 1986 MAR p. 1826, Eff. 10/31/86; AMD 1994 MAR p. 2718, Eff. 10/14/94.