



TO: Andres Haladay, Hearing Examiner,  
Board of Environmental Review

FROM: Hillary Houle, Board Secretary  
P.O. Box 200901  
Helena, MT 59620-0901

DATE: February 7, 2017

SUBJECT: Board of Environmental Review Case No. BER 2017-02 OC

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW	
OF THE STATE OF MONTANA	
IN THE MATTER OF: APPEAL VIOLATIONS OF THE OPENCUT MINING ACT BY WAGONER FAMILY PARTNERSHIP, D/B/A WAGONER'S SAND AND GRAVEL, AT RIVER GRAVEL PIT, FLATHEAD COUNTY, MONTANA (OPENCUT NO. 1798; FID 2512)	Case No. BER 2017-02 OC

The BER has received the attached request for hearing.

Please serve copies of pleadings and correspondence on me and on the following DEQ representatives in this case.

Rebecca Convery  
 Legal Counsel  
 Department of Environmental Quality  
 P.O. Box 200901  
 Helena, MT 59620-0901

John Arrigo  
 Division Administrator  
 Enforcement Division  
 Department of Environmental Quality  
 P.O. Box 200901  
 Helena, MT 59620-0901

Attachments

Cory R. Gangle, Esq.  
 David W. Garfield, Esq.  
 GANGLE LAW FIRM, PC  
 Lambros Building  
 3011 American Way  
 P.O. Box 16356  
 Missoula, Montana 59808  
 Office: (406) 273-4304  
 Fax: (406) 437-9115  
 Email: cory@ganglelaw.net

Filed with the  
**MONTANA BOARD OF**  
**ENVIRONMENTAL REVIEW**  
 This 7 day of February, 2017  
 at 11:00 o'clock A.m.  
 By: Hillary Howe

*Attorneys for Plaintiff*

**BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
 OF THE STATE OF MONTANA**

VIOLETIONS OF THE OPENCUT	)	<b>Docket No. OC-17-03</b>
MINING ACT BY WAGONER FAMILY	)	
PARTNERSHIP, D/B/A WAGONER'S	)	<b>NOTICE OF APPEAL AND REQUEST</b>
SAND AND GRAVEL, AT RIVER	)	<b>FOR HEARING</b>
GRAVEL PIT, FLATHEAD COUNTY,	)	
MONTANA	)	
(OPENCUT NO. 1798; FID 2512)	)	
_____	)	

**Notice of Appeal and Request for Hearing**

COMES NOW the Operator under Permit No. 1798, Wagoner Family Partnership d/b/a Wagoner's Sand and Gravel (hereinafter referred to as "Wagoner"), and through its counsel of record, respectfully submits this Notice of Appeal of the Montana Department of Environmental Quality's (hereinafter referred to as "DEQ") Notice of Violation and Administrative Compliance and Penalty Order. Wagoner also request a hearing pursuant to Mont. Code Ann. § 82-4-441.

**Basis for Appeal and Reasons for Request for Hearing**

Wagoner respectfully requests a hearing upon the following reasons:

1. The contract for mining entered by Wagoner in 1973, and later unilaterally converted to Permit No. 1798 by DEQ, specified, through a series of amendments, that Wagoner's estimated date for completion or reclamation would be December 2015. The word "estimated" does not imply a drop-dead date, but rather refers to a "rough or approximately calculation only." *Black's Law Dictionary* 494 (5<sup>th</sup> Ed. West 1979). Pursuant to Mont. Code Ann. § 82-4-434(3)(k), the operating plan is supposed to specify that reclamation "will be completed within a specified length of time." (Emphasis added). DEQ allowed the operating plan at issue in this case to have an unspecified, or more accurately, an "estimated" time of completion. Therefore, DEQ's assertion that Permit No. 1798 expired is incorrect, and DEQ's Notice of Violation is improper.

2. DEQ did not formally "order the operator to cease mining" as required by Mont. Code Ann. § 82-4-434(4) until September 22, 2016. Accordingly, the DEQ's penalty assessment is improper and invalid, as outlined by the following facts:

- (a) On December 31, 2015, Wagoner submitted an application to DEQ to amend Permit No. 1798. Specifically, Wagoner sought to extend the completion and reclamation date, and also to include additional acreage for their mining operations.
- (b) On January 11, 2016, DEQ sent Wagoner a notice of non-compliance, stating that the application was "so incomplete as to prohibit meaningful review..." DEQ was improperly treating the request for a minor amendment like it was a brand new permit application.

- (c) DEQ's January 11, 2016 letter gave Wagoner two options: either (1) submit a completed application within 30 days to amend the permit, or (2) cease mining and reclaim the site.
- (d) Wagoner complied with DEQ's option to submit a completed application to amend Permit No. 1798. Since January 2016, Wagoner has been doing everything within its power, including retaining a consultant to assist them, to address any concerns raised by DEQ with the request for a simple amendment.
- (e) Upon information and belief, on August 9, 2016, DEQ "observed" Wagoner conducting mining operations under Permit No. 1798.
- (f) On August 16, 2016, DEQ sent Wagoner a letter stating they were in violation of the Opencut Mining Reclamation Act allegedly because they were conducting mining operations after the permit had expired. Wagoner contends DEQ's allegations are erroneous and that the permit had *not* expired, because DEQ allowed Wagoner to use the term "estimated" in lieu of a specific date for completion or reclamation. However, relevant to this case, the letter did not require Wagoner to cease and desist mining under Mont. Code Ann. § 82-4-434(4).
- (g) Upon receiving DEQ's August 16, 2016 notice of violation for conducting mining operations on August 9, 2016, Wagoner voluntarily ceased all operations.

- (h) According to Mont. Code Ann. § 84-4-434(4), 30 days after DEQ's August 16, 2016 "written notice," DEQ had the right to "order [Wagoner] to cease mining."
- (i) On September 22, 2016, DEQ wrote Wagoner a letter stating their application for an amendment to Permit No. 1978 was complete. This letter also stated, for the first time: "**NOTE: Under MCA 82-4-4, Opencut operations cannot continue at this site until an approved permit issue issued. No further Opencut operations can be conducted until the Opencut Mining Section finishes reviewing your application; determines it is acceptable and issues an approved amendment.**"
- (j) Mont. Code Ann. § 85-4-434(4) states that "if reclamation according to the plan of operation has not been completed in the time specified, the department, after 30 days' written notice, shall order the operator to cease mining and if the operator does not cease, may issue an order to reclaim, a notice of violation, or an order of abatement or may institute an action to enjoin further operation and may sue for damages for breach of the conditions of the permit, for payment of the performance bond, or for both." (Emphasis added). As stated above, Wagoner ceased operations after DEQ's August 16, 2016 notice of violation.
- (k) Because Wagoner ceased operations in a timely manner, then it is improper for DEQ to assess penalties for a violation that did not occur.

3. DEQ has never submitted a proper Order which would authorize assessment of penalties, as outlined below:

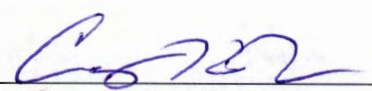
- (a) Wagoner timely submitted an application to amend Permit No. 1978 and has been working with DEQ to perfect this application.
- (b) DEQ gave Wagoner the option to pursue amendment on January 11, 2016 in its Notice of Violation. DEQ stated “if the requirements of items A through B, and alternatively C are not undertaken with diligence, and completed in their entirety, the Department will forward the matter to the Department’s Enforcement Division, which has the authority to issue administrative orders....”
- (c) DEQ also advised Wagoner that “this letter does not constitute a ‘final decision of the Department’ or an administrative order...”
- (d) Accordingly, Wagoner has pursued, and continues to pursue, amendment of Permit No. 1798.
- (e) On August 16, 2016 Wagoner received a “Violation Letter” from DEQ. This letter specifically states it was not an administrative order.
- (f) Wagoner ceased mining operations following receipt of the August 16, 2016 “Violation Letter.” Wagoner has also continued pursuing an amendment to Permit No. 1798.
- (g) Therefore, it is improper for DEQ to assess a penalty for failing to reclaim the mining site when DEQ allowed Wagoner to pursue an amendment to the permit, and it is improper for DEQ to assess a penalty against Wagoner for continuing mining operations when Wagoner timely ceased such operations.



4. Pursuant to Mont. Code Ann. § 82-4-441(5)(b), Wagoner respectfully requests a hearing on the above entitled matter.

DATED this 2<sup>nd</sup> day of February, 2017.

GANGLE LAW FIRM, PC.  
*Attorneys for Wagoner*

By:   
Cory R. Gangle, Esq.

**CERTIFICATE OF SERVICE**

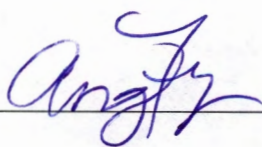
The undersigned certifies that the foregoing document was served upon the following individuals by the means designated below this 2<sup>nd</sup> day of February, 2017

- CM/ECF
- U.S. Mail
- Fed Ex
- Hand-Delivery
- Facsimile
- Email

Board Secretary  
Board of Environmental Review  
1520 East Sixth Avenue  
P.O. Box 200901  
Helena, MT 59620-0901

- CM/ECF
- U.S. Mail
- Fed Ex
- Hand-Delivery
- Facsimile
- Email

John L. Arrigo  
Enforcement Division  
Department of Environmental Quality  
P.O. Box 200901  
Helena, MT 59620-0901

By: 



TO: Andres Haladay, Hearing Examiner,  
Board of Environmental Review

FROM: Hillary Houle, Board Secretary  
P.O. Box 200901  
Helena, MT 59620-0901

DATE: February 23, 2017

SUBJECT: Board of Environmental Review Case No. BER 2017-03 WQ

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

IN THE MATTER OF: THE NOTICE OF  
APPEAL AND REQUEST FOR HEARING BY  
MONTANORE MINERALS CORPORATION  
REGARDING ISSUANCE OF MPDES PERMIT  
NO. MT0030279, LIBBY, MONTANA

Case No. BER 2017-03 WQ

The BER has received the attached request for hearing.

Please serve copies of pleadings and correspondence on me and on the following DEQ representatives in this case.

Kurt Moser  
Legal Counsel  
Department of Environmental Quality  
P.O. Box 200901  
Helena, MT 59620-0901

Jon Kenning  
Bureau Chief  
Water Protection Bureau  
Department of Environmental Quality  
P.O. Box 200901  
Helena, MT 59620-0901

Attachments



HOLLAND & HART LLP



**William W. Mercer**  
Phone (406) 896-4607  
Fax (406) 252-1669  
WWMercer@hollandhart.com

February 16, 2017

Electronically Filed with the Montana Board of  
Environmental Review

This 16 day of February, 2017

at 4:54 o'clock p.m.

By: 

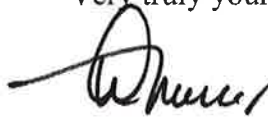
Hillary Houle  
Secretary, Board of Environmental Review  
Montana Department of Environmental Review  
PO Box 200901  
Helena, MT 59620-0901

Re: Notice of Appeal, Permit No. MPDES Permit No. MT0030279

Dear Ms. Houle:

Enclosed is the original Notice of Appeal on behalf of Montanore Minerals Corporation,  
MPDES Permit No. MT0030279.

Very truly yours,



William W. Mercer  
of Holland & Hart LLP

WWM:asf  
Enclosure

cc: Jon Kenning, Bureau Chief (via e-mail and First Class Mail)  
Kirk R. Moser (via e-mail and First Class Mail)

9571166\_1

**Holland & Hart** LLP

Phone [406] 252-2166 Fax [406] 252-1669 [www.hollandhart.com](http://www.hollandhart.com)

401 North 31st Street Suite 1500 Billings, MT 59101 Mailing Address P.O. Box 639 Billings, MT 59103-0639

Aspen Boulder Carson City Colorado Springs Denver Denver Tech Center Billings Boise Cheyenne Jackson Hole Las Vegas Reno Salt Lake City Santa Fe Washington, D.C. 

William W. Mercer  
Brianna C. McClafferty  
Holland & Hart LLP  
401 North 31st Street  
Suite 1500  
P. O. Box 639  
Billings, Montana 59103-0639  
Telephone: (406) 252-2166  
Fax: (406) 252-1669  
wwmerc@hollandhart.com  
bcmclafferty@hollandhart.com

ATTORNEYS FOR MONTANORE MINERALS  
CORPORATION

**BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA**

<p><b>IN THE MATTER OF:</b></p> <p><b>THE NOTICE OF APPEAL AND REQUEST FOR HEARING BY MONTANORE MINERALS CORPORATION REGARDING ISSUANCE OF MPDES PERMIT NO. MT0030279</b></p>	<p><b>CAUSE NO. BER 2017-____-WQ</b></p> <p><b>NOTICE OF APPEAL</b></p>
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Pursuant to Mont. Code Ann. § 75-5-403(2) and Admin R. Mont. § 17.30.1370(4), Montanore Minerals Corporation appeals the Montana Pollutant Discharge Elimination System (“MPDES”) permit issued by the Montana Department of Environmental Quality (“DEQ”). The Board of Environmental Review has authority to hear contested case appeals of DEQ’s MPDES permitting decisions, such that the Board may affirm, modify, or reverse a permitting action of DEQ.

**I. Permit Provisions**

The Permittee appeals the following sections of the Permit:

1. Part I(A);

2. Part I(B)(1)(b);
3. Part I(B)(2)(b);
4. Part I(C)(1), including Table 3; and
5. Part I(C)(2), including Table 4.

## II. **Basis for Appeal**

The Permittee objects to the permit on multiple grounds, some of which apply to several sections within the permit.

1. DEQ has applied an improper interpretation or application of previously granted mixing zones to Outfalls 001, 002 and 003. This basis for appeal applies to Part I(A).

2. Inconsistent with state and federal law, the Permit deems the Permittee's entire facility a "zero discharge" facility at the point that either milling operations commence or construction of the tailings impoundment is complete. This misstates the law regarding permitted discharges given that the zero discharge standard does not apply to all water sources throughout the entire mine and mill facility. This basis for appeal applies to Part I(B)(1)(b), Part I(B)(2)(b), Part I(C)(1)(b), Part I(C)(2)(b) and any other section within the permit that requires the facility to be a "zero discharge" facility.

3. DEQ has improperly set the final numeric effluent limitation for Total Dissolved Solids ("TDS") for Outfalls 001, 002 and 003 by (1) the misapplication of the Board of Health and Environmental Sciences 1992 Order ("BHES Order"); (2) application of a limit not required by the applicable water quality standards or required to advance their purposes; (3) the miscalculation of background concentrations; and (4) inclusion of a permit term inconsistent with previous permits and the interim limits of the permit at issue in this appeal. This basis for appeal applies to Part I(C)(1), including Table 3, and Part I(C)(2), including Table 4.

4. DEQ has improperly set the final numeric effluent limitation for Total Inorganic Nitrogen (“TIN”) for Outfalls 001, 002 and 003. This basis for appeal applies to Part I(C)(1), including Table 3, and Part I(C)(2), including Table 4.

5. DEQ has improperly set final numeric effluent limitations for Outfalls 001, 002, and 003 by failing to accurately account for and properly apply background concentrations as contemplated by Montana law and by failing to consider and apply trigger values in application of non-significance criteria. This basis for appeal applies to Part I(C)(1), including Table 3, and Part I(C)(2), including Table 4.

6. DEQ has improperly set the final numeric effluent limitation for Manganese for Outfalls 001, 002 and 003. No standards for Manganese exist, and thus no reasonable potential to violate a Manganese standard exists. DEQ therefore has no basis to set a numeric effluent limitation. This basis for appeal applies to Part I(C)(1), including Table 3 and Part I(C)(2), including Table 4.

7. DEQ has improperly set the final numeric effluent limitation for Chromium for Outfalls 001, 002 and 003. Under the DEQ-7 standards, two types of Chromium standards exist, including a separate standard for each Chromium and Hexavalent Chromium. DEQ has applied the more stringent standard to all Chromium based upon the BHES Order, although such a limit is not consistent with the data before the BHES. This basis for appeal applies to Part I(C)(1), including Table 3, and Part I(C)(2), including Table 4.

DATED this 16th day of February, 2017.



---

William W. Mercer  
Brienne C. McClafferty  
Holland & Hart LLP  
401 North 31st Street  
Suite 1500  
P. O. Box 639  
Billings, Montana 59103-0639

ATTORNEYS FOR MONTANORE MINERALS  
CORPORATION

**CERTIFICATE OF MAILING**

This is to certify that the foregoing was mailed to the following persons by e-mail and United States mail, postage prepaid on the date herein.

Hillary Houle (**original**)  
Secretary, Board of Environmental Review  
Montana Department of Environmental Review  
PO Box 200901  
Helena, MT 59620-0901  
HHoule@mt.gov

U.S. Mail  
 Overnight Mail  
 Hand Delivery  
 Facsimile  
 E-Mail

Kirk R. Moser  
Montana Department of Environmental Quality  
1520 East Sixth Avenue  
P.O. Box 200901  
Helena, MT 59620-0901  
KMoser2@mt.gov

U.S. Mail  
 Overnight Mail  
 Hand Delivery  
 Facsimile  
 E-Mail

Jon Kenning, Bureau Chief  
Montana Department of Environmental  
Quality  
Water Protection Bureau  
PO Box 200901  
Helena, MT 59620-0901  
jkenning@mt.gov

U.S. Mail  
 Overnight Mail  
 Hand Delivery  
 Facsimile  
 E-Mail

Dated this 16th day of February, 2017.





**From:** [Arlene Forney](#)  
**To:** [Houle, Hillary](#); [Moser, Kurt](#); [Kenning, Jon](#)  
**Cc:** [Bill Mercer](#); [Brianne McClafferty](#)  
**Subject:** Notice of Appeal, Permit No. MPDES Permit No. MT0030279  
**Date:** Thursday, February 16, 2017 4:54:44 PM  
**Attachments:** [image003.png](#)  
[2017-02-16 Letter to Hillary Houle, Secretary, Board of Environmental Review.pdf](#)  
[2017-02-16 Notice of Appeal, Permit No. MPDES Permit No. MT0030279.pdf](#)

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Attached is a copy of the Notice of Appeal, Permit No. MPDES Permit No. MT0030279. The original and copies will be sent out according to the certificate of service. Please let me know if you are unable to open this attachment.

*Arlene S. Forney*  
*Assistant to William W. Mercer*  
406.896.4637  
[afortney@hollandhart.com](mailto:afortney@hollandhart.com)



**CONFIDENTIALITY NOTICE:** This message is confidential and may be privileged. If you believe that this email has been sent to you in error, please reply to the sender that you received the message in error; then please delete this e-mail. Thank you.



TO: Andres Haladay, Hearing Examiner,  
Board of Environmental Review

FROM: Hillary Houle, Board Secretary  
P.O. Box 200901  
Helena, MT 59620-0901

DATE: February 24, 2017

SUBJECT: Board of Environmental Review Case No. BER 2017-04 SUB

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

IN THE MATTER OF: APPEAL GLACIER  
RANCH SUBDIVISION PWSID #MT0004700  
PHASE 4 REVIEW OF PUBLIC WATER AND  
SEWER MAIN EXTENSIONS EQ#17-1391,  
SOMERS, MONTANA.

Case No. BER 2017-04 SUB

The BER has received the attached request for hearing.

Please serve copies of pleadings and correspondence on me and on the following DEQ representatives in this case.

Aaron Pettis  
Legal Counsel  
Department of Environmental Quality  
P.O. Box 200901  
Helena, MT 59620-0901

Jon Dilliard  
Bureau Chief  
Public Water Supply  
Department of Environmental Quality  
P.O. Box 200901  
Helena, MT 59620-0901

Attachments



Filed with the

MONTANA BOARD OF  
ENVIRONMENTAL REVIEW

This 23 day of February 2017  
at 5:00 o'clock P.m.  
By: Hillary Houle

February 20, 2017

Ms. Hillary Houle  
Secretary, Board of Environmental Review  
Department of Environmental Quality  
1520 East Sixth Avenue  
P.O. Box 200901  
Helena, MT 59620-0901

**RE: REQUESTED APPEAL — GLACIER RANCH SUBDIVISION – PWSID#MT0004700  
PHASE 4 REVIEW OF PUBLIC WATER AND SEWER MAIN  
EXTENSIONS  
EQ#17-1391**

Dear Ms. Houle,

APEC Engineering, Inc (APEC), not on the behalf of Mr. Buddy Evenson nor Mr. Travis Steindorf, has prepared the following request for appeal as detailed by Ms. Deanna Fischer's letter dated February 8, 2016. We believe this letter is intended to be dated for February 8, 2017.

1. APEC Engineering provided a hand delivered hard copy to Ms. Emily Gillespie on August 2, 2016 in the Kalispell DEQ office. Ms. Gillespie mentioned that the decision was made to have a reviewer in Helena completed the review. Please see attached email labeled "August 2nd".

APEC Engineering received comments dated December 20, 2016. This is 140 days after the project was submitted. Please see attached letter labeled "First Response".

ARM 17.36.106, defines such terms on when a response is required, even if the submittal is incomplete.

Sincerely,

**APEC ENGINEERING INC.**

Justin D. Ahmann, P.E.  
Director of Engineering

c: APEC file

## Justin Ahmann

---

**From:** Gillespie, Emily <egillespie@mt.gov>  
**Sent:** Wednesday, August 03, 2016 8:28 AM  
**To:** Justin Ahmann  
**Cc:** Kujawa, Jim  
**Subject:** RE: Glacier Ranch Phase IV

Justin,

I believe this review will be Jim Kujawa's, with his background at this subdivision. I will be forwarding the plans you dropped off yesterday to Jim. Please contact him regarding fees. Thanks.

Emily J. Gillespie, PE  
Montana DEQ  
406.755.8979

---

**From:** Justin Ahmann [mailto:justin@apec-mt.com]  
**Sent:** Wednesday, August 03, 2016 8:17 AM  
**To:** Gillespie, Emily  
**Subject:** Glacier Ranch Phase IV

Hello Emily,

Could you estimate the fees for phase IV. Once we have that amount, the developer will drop off a check.

-Justin

**Justin D. Ahmann, PE, PEng, CFM® | APEC Engineering Inc.**

75 Somers Road  
Somers, Montana 59932  
Phone: (406) 755-1333  
Mobile: (712) 790-3145  
Fax: (406) 755-1310  
Email: [justin@apec-mt.com](mailto:justin@apec-mt.com)  
Please visit: <http://www.apec-mt.com>

"August 2nd"



Montana Department  
of Environmental Quality

Marc Liechti

Justin D. Ahmann PE

APEC Inc.

75 Somers Road

Somers, MT 59932

December 20, 2016

Owner "?"

Glacier Ranch LLC

755 N. Main Street

Kalispell, MT 59901

Buddy Evenson

Evenson Technologies, Inc.

40 Ann Marie Lane

Kalispell, MT 59901

RE: Glacier Ranch Subdivision  
Phase 4, Rewrite  
Flathead County  
EQ #17-1391

Dear Applicant:

The application for the above referenced subdivision was received by this office and reviewed in accordance with ARM Title 17, Chapter 36. This is to inform you that the material submitted for the above referenced proposal is incomplete for our review purposes. The deficiencies are noted on the attached sheet.

Because of the inadequate information, the Department hereby denies the proposed division. Until the information required by law and regulation is submitted to this office and found to be adequate, we cannot produce a statement that the subdivision is free of sanitary restriction. The time period for review, specified in ARM Section 17.36.106 (1) (b), will commence again upon your re-submittal of material which addresses the deficiencies.

If you wish to challenge the Department's denial of certification, you may request a hearing before the Board of Environmental Review or the Department, pursuant to Section 76-4-126, MCA and the Montana Administrative Procedures Act.

You may submit the necessary information for our review. If you do so, please use the submittal title noted above to assure that the information is placed with your particular proposal.

If you have any questions on the above, please feel free to call me at the Permitting and Compliance Division at 444-2825.

Sincerely,

James P. Kujawa PE

Subdivision Section, Water Quality Division

C: file, Flathead County Sanitarian

"First Response"

December 20, 2016

RE: Glacier Ranch Subdivision  
Phase 4, Rewrite  
Flathead County  
EQ #17-1391

**ADDITIONAL INFORMATION**

1. The total fees received for the review of this submittal was \$4,800.00 on 10/28/2016. The fees were not calculated correctly. The enclosed fee calculation sheet shows the required subdivision fees of \$5,221.00 for this submittal.

Please remit the remaining **\$421.00** subdivision fees.

Note that the fee sheet only includes five connections. This is because there were 19 water and sewer connections approved in the previous COSA. Also note that the above fees do not include fees for waivers or deviations that may be required as a result of this review. In addition there is a discrepancy in the lengths of pipe proposed, which may change the final fees. This will be addressed further in this letter.

2. ARM 17.36.102(1) states that to initiate review of a subdivision under 76-4-125, MCA, a person must submit a complete application, signed by the owner of the subdivision or an authorized representative, to the department.

A signed application was submitted but the printed name of the person who signed it was not included. The signature cannot be read. Please submit the printed name of the person who signed the application as it must be written on the COSA when it is issued.

3. ARM 17.36.103 (1) States that in addition to the completed application form required by ARM 17.36.102, the following information must be submitted to the reviewing authority as part of a subdivision application: (n) a copy of the plat, certificate of survey, deed, or other document that is consistent with the document that will be, or has been, filed with the county clerk and recorder for the proposed subdivision;

A copy of the preliminary plat was not received with this application. Here's the issue: this rewrite is not a rewrite of the whole subdivision. As noted in an earlier correspondence, that would require the signature of all property current property owners in the original subdivision. This is only a rewrite of Phase 4.

With regard to Phasing, the original EQ#05-1558 approved the subdivision in total, for 158 lots. The area (now referred to Phase 4) was 19 lots: Lots 12 through 16 were proposed for condominiums and Lots 17A & B through 23A & B were proposed for common wall townhouses.

The EQ#09-2439 rewrite was also for 158 lots and it also approved the same use for the 19 lots, but there still was no phasing of the subdivision when it was approved on May 20, 2009.



Item #3 – continued

The first notice of Phasing was when as-builts were received from WGM in November of 2009. Page C101 shows five phase, all of the lots exactly the same as previously proposed, except for Phase 4. On Page C101, Phase 4 has 34 lots and the configuration of the lots is completely changed.

This leads to the question as to what has actually been filed for this subdivision. It would not be the first time that changes have been made between preliminary and final platting, which often results in COSA being out of compliance with what actually exists. To that end, please submit a copy of the plat that has been filed for the Glacier Ranch Subdivision.

With regard to the changes to Phase 4: there are five additional lots proposed, and boundary lines have been changed for the 19 other lots. This requires a new plat to be filed for the changes to that phase. Please submit a copy of the new preliminary plat.

4. ARM17.36.103 (1) States that in addition to the completed application form required by ARM 17.36.102, the following information must be submitted to the reviewing authority as part of a subdivision application: (o) a copy of applicable letters of approval or denial from local government officials;

This "Phase" as originally approved was 19 multi-family and townhouse residential lots. Now the rewrite proposes 24 lots and it will require a new plat. Is this property required to go back through planning or zoning? Please submit verification from the county that this property is not required to go back through planning or zoning; and, if it is required to go through planning or zoning, please submit copies of comments and/or approval letters from the commissioners and planning board in accordance with the Platting and Subdivision Act pursuant to 76-3-622 MCA and 76-3-604 MCA. The Department cannot issue an approval for any application until comments and approval letters are received from the county.

5. ARM17.36.103 (1) States that in addition to the completed application form required by ARM 17.36.102, the following information must be submitted to the reviewing authority as part of a subdivision application: (p) for an application that is not subject to review by a local reviewing authority under 76-4-104, MCA, a certification from the local health officer having jurisdiction that the design for non-public water supply and wastewater disposal facilities complies with applicable laws and regulations of local government;

As of the date of this letter the Department has not received comments or an approval letter from the Flathead County Sanitarian's Office. This is a reminder that copies of the application, all documents and any subsequent correspondence must be submitted to the County Sanitarian's Office.

Now, the original subdivisions water supply and wastewater treatment system was proposed to be owned and operated by a water and sewer district. If the district remains in effect, then the sanitarian's approval is not necessary.

If the district is dissolved, note that some County Sanitarian's do not issue an approval until the Department completes its review. A draft copy of the Certificate of Subdivision Approval (COSA) will be forwarded to the Sanitarian at that time.

6. ARM 17.36.104(2) states the following information must be provided on the layout document (a) the name of the subdivision, and the county, section, township and range (b) a north arrow and scale (c) the boundaries, dimensions and total area of each lot (d) identifier or number for each lot (e) location of existing and proposed easements (f) locations of existing and proposed roads (g) locations and sizes of existing and proposed storm water structures (culverts, ponds, dry wells, etc.) (h) locations of drainage ways (i) name and affiliation of the person who prepared the lot layout (j) information in Table 1 for specific water supply and wastewater systems.

Lot layouts were not received with this application. Page C102 would almost suffice for lot layouts but the well isolations zones for the public wells and the mixing zones for the replacement drainfields were not shown. Please review all of the lot layout requirements in this section and Table 1 and submit new copies of the lot layouts.

7. ARM17.36.328(2)states that unless a waiver is granted pursuant to ARM 17.36.601, the reviewing authority may not approve the connection of a proposed subdivision to an existing public system unless: (a) the existing public system is approved by the department and is in compliance with the provisions of Title 75, chapter 6, part 1, MCA, and ARM Title 17, chapters 30 and 38; (b) the managing entity of the public system certifies to the reviewing authority, on a form acceptable to the department, that: (i) the system has an adequate capacity to meet the needs of the subdivision; (ii) the connections are authorized; (iii) the system is in compliance with ARM Title 17, chapter 38, and all other applicable department regulations; and(iv) the appropriate water rights exist for this connection; and (c) the applicant submits to the reviewing authority the name and public water supply ID (PWSID) number of the public system.

The Appendix submitted with this application attest to the capacity of the systems. All of the requirements of this rule are met except 2(b)(ii). Please submit a letter from the district stating that the connections to the systems are authorized.

8. Department Circular DEQ-1, Chapter 1, §1.2.1 states that plans for waterworks improvements must be legible and must provide the following: a. suitable title; b. name of municipality or other entity or person responsible for the water supply; c. area or institution to be served; d. scale, in feet; e. north point; f. datum used; g. boundaries of the municipality or area to be served; h. date and name of the designing engineer; i. ink imprint of registered professional engineer's seal and signature; j. location and size of existing water mains; and k. location and nature of any existing water works structures and appurtenances affecting the proposed improvements noted on one sheet.

Department Circular DEQ-4, Chapter 4 §4.1.4. states that force mains must be designed in accordance with the requirements of Department Circular DEQ-2. §4.1.5. states that alternative wastewater collection systems must be designed in accordance with the requirements of Department Circular DEQ-2. This would include grinder pump systems, septic tank effluent pump systems, and small diameter gravity systems. Certification and as-built plans are required in accordance with Appendix D.

ARM 17.36.103(1) states that in addition to the completed application form required by ARM 17.36.102, the following information must be submitted to the reviewing authority as part of a subdivision application:(c) if public or multiple-user water supply or wastewater systems are proposed, one copy of the design report and one set of plans and

Item #8 - continued

specifications may be submitted until the plans are approvable, after which three copies of final plans and specifications must be submitted;

ARM 17.36.103(1) states that in addition to the completed application form required by ARM 17.36.102, the following information must be submitted to the reviewing authority as part of a subdivision application: (b) plans and specifications for water supply, wastewater treatment, and storm water systems;

There are a few issues on the plans that need to be addressed:

- The plans show a 3-inch force main connecting to an existing 2-inch force main. How is this to be done? If there is a reducer specify it on the plans and profiles and add a detail to the details sheet.
- The profile view of the force main specifies DR11 while the plan view specifies DR9. Please select one and correct the other.
- Add the environment-one grinder detail to the plans.
- The design report states that there will be 930-feet of 10-inch water main but the plans only show 631-feet. Please explain the discrepancy and add additional plan sheets if necessary. This may also affect fees and only 631-feet was accounted for in the fee sheet.

Please submit three copies of stamped and signed plans when the changes are incorporated.

9. ARM17.36.314(2) states that the applicant shall submit documentation in the application indicating commitment to retain a professional engineer to provide certification that the system was built in conformance with the plans and specifications approved by the reviewing authority.

The PE retention letter submitted with this application was for Phase III. Please submit a letter of intent stating that a PE will be retained for Phase 4 in accordance with the requirement of this rule.

10. ARM 17.36.104(2) the following information must be provided on the lot layout document: (g) locations and sizes of existing and proposed storm water structures (culverts, ponds, dry wells, etc.)

ARM17.36.310(1) the applicant shall submit a storm drainage plan to the reviewing authority. The plan must conform to the requirements of either (2) or (3).

ARM17.36.310(2) Except as provided in (3), a storm drainage plan must be designed in accordance with department Circular DEQ-8.(a) for lots proposed for uses other than as single-family dwellings, a storm drainage plan submitted under (2) must be prepared by a registered professional engineer.

This proposal has five new lots and 19 reconfigured lots. Please submit the required stormwater plan.

Subdivision Review Fee Calculation Checklist

SUBDIVISION NAME: Glacier Ranch Subdivision, Phase 4, R/W

EQ#17-1391

Choose type of lots, water system, wastewater system, nondegradation, and other components as necessary

TYPE OF LOTS

	Unit	Unit cost	Number of Units	Total (unit cost x no. of units)
Subdivision lot	lot or parcel	\$125	24	\$3,000
Condominium, townhouse, trailer court, RV campground	unit or space	\$50		\$0
Resubmittal fee - previously approved lot/boundaries not changed	lot or parcel	\$75		\$0

TYPE OF WATER SYSTEM

Individual or shared water supply system (existing/proposed)	unit	\$85		\$0
Multiple user water system (non-public) <i>*plus \$105 per hour for review in excess of 4 hours</i>	unit*	\$315		\$0
	hour	\$105	If Required	To be invoiced
	new distributing system	lineal foot	\$0.25	
connection to distribution system	lot/unit	\$70		\$0
Public water system				
DEQ 1 or DEQ 3 Water System	component		per 17.38.106	To be invoiced
new distribution system	lineal foot	\$0.25	631.00	\$158
connection to distribution system	lot or structure	\$70	5.00	\$350

TYPE OF WASTEWATER SYSTEM

Existing systems	unit	\$75		\$0
New gravity fed system	drainfield	\$95		\$0
New dosed systems, elevated sand mound, ET systems, intermittent sand filter, ETA system, recirculating sand filter, recirculating trickling filter, aerobic treatment unit, nutrient removal, and whole house subsurface drip irrigation <i>*plus \$105 per hour for review in excess of 2 hours</i>	design*	\$190		\$0
	drainfield	\$50		\$0
	hour	\$105	If Required	To be invoiced
Gray water reuse, holding tanks, sealed pit privies, unsealed pit privies, seepage pits, waste segregation systems, experimental systems <i>*plus \$105 per hour for review in excess of 2 hours</i>	unit	\$95		\$0
	hour	\$105	If Required	To be invoiced
	unit*		Per Type Above	
New multiple user wastewater system (non-public) <i>*plus \$105 per hour for review in excess of 4 hours</i>	hour	\$105	If Required	To be invoiced
	new collection system	lineal foot	\$0.25	\$0
	connection to system	lot/unit	\$70	\$0
Public wastewater system				
Treatment System	component		per 17.38.106	To be invoiced
new collection system	lineal foot	\$0.25	894.00	\$224
connection to system	lot/structure	\$70	5.00	\$350

OTHER

Deviation from Circular <i>*plus \$105 per hour for review in excess of 2 hours</i>	request*	\$200		\$0
	hour	\$105	If Required	To be invoiced
Waiver from Rules <i>*plus \$105 per hour for review in excess of 2 hours</i>	request*	\$200		\$0
	hour	\$105	If Required	To be invoiced
Reissuance of original approval statement	request	\$60		\$0
Review of revised lot layout document	request	\$125		\$0
Municipal Facilities Exemption Checklist	request	\$100		\$0
Nondegradation review - nonsignificance determinations				
individual/shared	drainfield	\$60		\$0
<i>*plus \$105 per hour for review in excess of 2 hours</i>	hour	\$105	If Required	To be invoiced
	multiple-user	lot/structure	\$30	\$0
<i>*plus \$105 per hour for review in excess of 2 hours</i>	hour	\$105	If Required	To be invoiced
	source specific mixing zone	drainfield	\$200	\$0
public	drainfield		per 17.38.106	To be invoiced
Storm drainage plan review - plan exempt from DEQ-8	lot	\$40		\$0
Storm drainage plan review - DEQ-8 review	design*	\$180	1.00	\$180
	lot	\$40	24	\$960
	<i>*plus \$105 per hour for review in excess of 30 minutes per lot</i>	hour	\$105	If Required
Preparation of environmental impact statements/EAs	actual		If Required	To be invoiced
<b>Total Review Fee</b>				<b>\$5,221</b>