

Final Version

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF MONTANA
IN AND FOR THE COUNTY OF LEWIS AND CLARK

STATE OF MONTANA, ex rel., THE
MONTANA POWER COMPANY, et al.,

Relators-Plaintiffs,

-vs-

THE BOARD OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE
OF MONTANA, et al.,

Respondents-Defendants.

Cause No. 49348

STIPULATION

IT IS HEREBY STIPULATED by and between the Board of Natural Resources and Conservation (Board), The Department of Natural Resources and Conservation (DNRC), the Department of Health and Environmental Sciences (DHES), the Northern Plains Resource Council (NPRC), the Rosebud Protective Association (RPA), the Genie Land Company (Genie), Genie May Garfield (Garfield), Rosebud Board of County Commissioners, and The Montana Power Company (MPC) on behalf of the consortium of utilities constructing Colstrip 3 and 4, as follows:

1. MPC agrees to drill one monitoring well into the Lebo shale. This well shall be located east of the Section 5 and 6 sludge pond and between MPC's existing monitoring system and the MPC-Genie property line. It is agreed that if MPC deepens an existing monitoring well into the Lebo shale, this condition is satisfied. Geophysical logs from such well will be provided to the parties.

2. MPC agrees to construct a series of alluvial monitoring wells on Cow Creek and the South Cow Creek drainages.

3. All well site locations, depths and monitoring, management or interception plans provided for in this Stipulation shall be mutually agreed upon by the parties.

4. All drilling, sampling and monitoring provided for in this Stipulation shall be conducted by DHES and MSU Reclamation Research through a contractor selected by Genie,

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and in accordance with Paragraph 11 of this Stipulation. It is agreed that MPC shall, at its expense, construct, operate and maintain any management or interception plan developed under paragraphs 6 or 7 of this Stipulation.

5. It is agreed that because of the potential for bad weather, the first priority for installation of monitoring wells as herein provided will be in the Cow Creek drainage.

6. If the monitoring of Cow Creek does not show an abrupt increase derived from bedrock strata underlying the alluvium in specific electrical conductivity (SC) or boron as measured by any of the series of monitoring wells between the MPC-Genie property line and the Stinking Spring, then MPC agrees to manage the quantity of groundwater flow in the Cow Creek alluvial system.

7. If the monitoring of Cow Creek shows an abrupt increase derived from bedrock strata underlying the alluvium in specific electrical conductivity (SC) or boron as measured by any of the series of monitoring wells between the MPC-Genie property line and the Stinking Spring, then MPC will intercept the bad quality water at the Stinking Spring or any other point where an adequate interception system can be constructed.

8. It is agreed that whenever feasible any management or interception plan implemented under paragraphs 6 or 7 of this Stipulation shall be located on MPC's property. MPC further agrees that any management or interception system developed under paragraphs 6 or 7 of the Stipulation shall not result in a discharge to Rosebud Creek or its tributaries under an MPDES permit without the written consent of all affected landowners.

9. If MPC complies with all terms and conditions of this Stipulation, such compliance constitutes full compliance with both the first and second sentences of Condition 12(d) of the

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Colstrip 3 and 4 Certificate for the Section 4 and 6 sludge pond.

10. If management of water quantity as provided in this Stipulation degrades water quality in Cow Creek below the Stinking Spring, it is agreed MPC may discontinue pumping or develop alternative management techniques as necessary to prevent degradation of water quality below Stinking Spring. (Further, in order that Genie Land Company has stock water available for its operation during the term of this agreement, Genie Land Company shall, after execution of this Stipulation, install at the expense of MPC a demonstrated adequate water source which includes a necessary distribution system when needed on Genie's property for use as replacement stock water. Location, installation and management of this source shall be under the exclusive control of Genie Land Company. Costs for such source and system shall be provided and agreed to by MPC prior to installation.) This Stipulation does not relieve MPC from replacing stock water supply on Genie Land Company property caused by contamination or shortage by reason of the operation of the Colstrip Units.

11. MPC agrees to pay all monitoring, drilling and sampling costs of the budget incurred in implementing this Stipulation. the Board, DHEs, /MSU Research Reclamation Unit, the ^{agreed} ~~contractor~~ and MPC shall agree to a budget and plan for operation and implementation of the drilling, monitoring and sampling provided for in this Stipulation. The Montana State University, office of Vice President in charge of Research shall handle and distribute the funds required by the budget. Any unexpended funds received from MPC will be refunded ~~by the Board.~~

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12. All monitoring data collected under this Stipulation will be distributed to the parties. All management or interception plans developed under this Stipulation will be submitted to the parties prior to implementation of these plans.

13. In addition to the drilling, monitoring and sampling program previously described in this Stipulation, MPC agrees to

pay for and implement a monitoring program for Pony Creek, Genie's and Garfield's existing water supply sources.

14. All monitoring under this Stipulation will be conducted as follows:

(A) All water quality parameters will be sampled and analyzed quarterly for the first 2 years of this Stipulation and thereafter once annually; and

(B) Specific electrical conductivity (SC), boron and water levels in wells or flows from springs will be monitored quarterly.

15. It is agreed the parties will annually review the monitoring, management or interception data collected under this Stipulation to determine what adjustments, if any, should be made in the monitoring, management or interception program.

16. The appeal and cross appeal (Supreme Court Cause No. 83-463) of the District Court's decision in State of Montana, ex rel., Montana Power Company, et al., v. Board of Natural Resources and Conservation, et al., Cause No. 49348, First Judicial District, will be dismissed with prejudice upon execution of this Stipulation by all parties.

17. Genie, Garfield and MPC agree to give the parties necessary access to their property to implement the terms of this Stipulation. The MSU Reclamation Research Unit, DHES and MPC agree to give advance notice to Genie and Garfield before entering their respective properties under this Stipulation. The MSU Reclamation Research Unit, DHES and MPC further agree to abide by the wishes of Genie and Garfield concerning the use of access roads and gates, including the timing of such use, in obtaining access under this Stipulation. If Genie or Garfield do not provide the MSU Reclamation Research Unit, DHES and MPC with necessary access as provided in this paragraph, MSU Reclamation Research Unit, MPC and DHES shall be excused from performing those drilling, monitoring, sampling, management or interception functions that

cannot be performed because of the failure of Genie or Garfield to provide necessary access as herein provided.

18. It is agreed that the monitoring program for the Section 5 and 6 sludge pond as set forth in this Stipulation and as previously submitted to DHES and DNRC by MPC satisfies the monitoring conditions of the Colstrip 3 and 4 Certificate except as to any disputes that may arise concerning the implementation of and compliance with this Stipulation. However, nothing in this Stipulation shall be construed as preventing DHES from requiring additional monitoring to be conducted in order to determine compliance with the Montana Water Quality Act, Section 75-5-101, et. seq., MCA.
*Paragraph continued on bottom of page. *RK GMC Ems*

19. Nothing in this Stipulation shall be construed as an admission by MPC that it has caused or will cause any damage to water quality or water quantity in the area surrounding the Section 5 and 6 sludge pond.

20. Nothing in this Stipulation shall be construed as a waiver by DHES of its authority to administer and enforce the Montana Water Quality Act, Section 75-5-101, et. seq., MCA, and the rules adopted under the Act, or any other act or rule within the jurisdiction of DHES.

21. Nothing in this Stipulation shall be construed as a waiver of any right, remedy, argument, defense, jurisdictional claim or other assertion that may be made by any of the parties under any applicable law or constitutional provision except as expressly set forth in this Stipulation.

22. This Stipulation is effective on the date all parties have executed this agreement as hereinafter provided and terminates upon mutual consent of the parties.

BOARD OF NATURAL RESOURCES AND CONSERVATION

By *[Signature]* 1-20-84 Date

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

By *[Signature]* 1-20-84 Date

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*Furthermore, nothing in this Stipulation shall be construed as preventing DNRC or the Board from requiring additional monitoring to be conducted in order to determine compliance with the Major Facility Siting Act, Section 75-20-101, et seq., MCA, or the Colstrip 3 and 4 Certificate of Environmental Compatibility and Public Need.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

By _____ Date

NORTHERN PLAINS RESOURCE COUNCIL

By Joni Kelley, Chairman NPRC January 18, 1984 Date

ROSEBUD PROTECTIVE ASSOCIATION

By Genie May Garfield, R.P.A. Pres. 1/8/84 Date

GENIE LAND COMPANY

By Patricia Howard Sec. Genie 1/8/84 Date

GENIE MAY GARFIELD

By Genie May Garfield 1/8/84 Date

THE MONTANA POWER COMPANY

By J.P. McShane 1/19/84 Date

MSU RESEARCH RECLAMATION UNIT

By _____ Date

BOARD OF COUNTY COMMISSIONERS-ROSEBUD COUNTY

By E. McCaffrey 1/11/84 Date