Gilbert, Sharona

From: Derf Johnson <djohnson@meic.org>
Sent: Monday, July 13, 2026 4:27 PM
To: DEQ AEMD Coal
Subject: [EXTERNAL] Objections to AM6 Acceptability Determination for Spring Creek Mine
Attachments: 7.13.26 - Objections - AM6 Acceptability Determination.pdf

To Whom it May Concern:

Attached are formal objections to DEQ's Acceptability Determination for NTEC's Amendment Application (AM6) for the Spring Creek Coal Mine, Surface Mining Permit No. C1979012.

Additionally, 18 exhibits accompany these comments. These exhibits are included via the dropbox link below.

https://www.dropbox.com/scl/fo/d12syxvvcr6691ycdia0l/APLZxY13eYjWHlWBmA7B290?rlkey=n56qkv22mk1b16u294zsl1dwv&st=eqhidfbz&dl=0 [dropbox.com]

Please send a response confirming receipt. Additionally, I will drop off a flash drive containing the exhibits at the DEQ headquarters before 5:00 PM today.

If you have any questions, please don't hesitate to reach out.

Best,

Derf

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Montana Department of Environmental Quality
Attn: Eric Dahlgren
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Helena, MT 59601

Submitted Electronically to deqcoal@mt.gov

RE: Conservation Organizations Objections to DEQ's Acceptability Determination for NTEC's Amendment Application AM6 for Spring Creek Coal Mine, Surface Mining Permit Permit No. C1979012.

To whom it may concern:

These comments are submitted on behalf of the Montana Environmental Information Center, Center for Biological Diversity, Wildearth Guardians, the Western Environmental Law Center, and the Sierra Club, concerning the Montana Department of Environmental Quality (DEQ's) Acceptability Determination for the Navajo Transitional Energy Company's (NTEC) Amendment Application AM6 (hereinafter "AM6") for Spring Creek Coal Mine, Surface Mining Permit Permit No. C1979012.

Under AM6, DEQ seeks to authorize NTEC to coal strip mine an additional 520 acres of land in Big Horn County in order to mine approximately 40 million tons of coal. This is a landscape of ecological, recreational, and cultural value. If approved, AM6 would have immense implications for water quality, wildlife, and climate change.

As discussed below we find serious legal and factual deficiencies throughout the application materials and acceptability determination. The DEQ must comply with Montana's Constitution, the Montana Environmental Policy Act (MEPA), the federal Surface Mine Control and Reclamation Act and Montana Surface and Underground Mine Reclamation Act (MEPA), the U.S. Clean Water Act and Montana Water Quality Act, Montana's Public Records Act, and other applicable state and federal law. These obligations must be met in full before any project approval is issued.

I. Climate Change

At a time when Montana likely broke the state temperature record for the all-time high, with Forsyth reaching an unprecedented 118 degrees fahrenheit, DEQ continues to fail to fully grasp, comprehend, or analyze the serious nature of the climate crisis and the role of the agency in permitting massive fossil fuel projects that contribute to greenhouse gas emissions. DEQ must acknowledge the dangerous climate impacts of continued large-scale mining at the Spring Creek

Mine and the need for rapid and significant reductions in greenhouse gas (GHG) emissions. The draft EA's attempts to minimize the significance of the foreseeable GHG emissions from the largest source in Montana is simply not credible: if the emissions from the Spring Creek Mine are not significant, then no amount of greenhouse gases could be significant. The current draft EA's analysis is not faithful to or compliant with the Montana Environmental Policy Act (MEPA), and allowing continued large scale coal mining at the Spring Creek Mine is not consistent with Montana's right to a clean and healthful environment or the State of Montana's obligation to "maintain and improve" a clean and healthful environment. Mont. Const. Art. II, § 2, Art. IX, § 1.

The principal flaws in the draft EA's climate change analysis are (1) that it minimizes the danger that climate change poses to Montana's environment and Montanans; (2) it ignores the significance of GHG emissions from the Spring Creek Mine; (3) if fails to fairly compare the costs of the GHG emissions to supposed benefits of continued mining (the cost of the emissions will greatly exceed the benefits of the mine expansion); and (4) it fails to contextualize the emissions against the hard physics that demand rapid and significant GHG emissions, especially from the most significant pollution sources, like Spring Creek.

The draft EA for the project recognizes that climate change is harming Montanan's health: "The Montana Climate Assessment (Whitlock, 2017) discussed similar climate impacts, and includes a special report, 2021 Climate Change and Human Health in Montana, that provides comprehensive data on Montana's current health profile, including how populations' health may be impacted (Adams, 2021). Those health-related impacts on Montanans may include increased risk of heat exhaustion, heat stroke, and worsening of chronic conditions such as respiratory diseases, cardiovascular issues, and kidney disease (Adams, 2021). Poor air quality may result from increased wildfires, creating harmful breathing conditions (Adams, 2021). Additionally, water quality may be impacted due to increased risk of flood that could contaminate water sources, contributing to water-borne illness and decrease in species that communities rely on for subsidence." Draft EA at 65-66. But even this minimizes impacts. Climate change is already causing significant mortality, which will only worsen if GHG emissions are not reduced. Indeed, climate change threatens virtually all foundations of a clean and healthful environment, including public health, nutrition, conflict, agricultural collapse, drought and floods, and impacts that are beginning to exceed the ability to adapt. A more severe and pervasive threat to Montanans' health environment could scarcely be imagined. *See* IPCC, Assessment Report 6, Working Group II, Climate Change 2022, Impacts, Adaptation, and Vulnerability, Technical Summary (2023) (attached as Exhibit 1).

- Climate change has already harmed human physical and mental health (very high confidence). In all regions, health impacts often undermine efforts for inclusive development. Women, children, the elderly, Indigenous People, low-income

households and socially marginalised groups within cities, settlements, regions and countries are the most vulnerable (high confidence).

- Increasing temperatures and heatwaves have increased mortality and morbidity (very high confidence), with impacts that vary by age, gender, urbanisation and socioeconomic factors (very high confidence). A significant proportion of warm-season heat-related mortality in temperate regions is attributed to observed anthropogenic climate change (medium confidence), with fewer data available for tropical regions in Africa (high confidence). For some heatwave events over the last two decades, associated health impacts have been partially attributed to observed climate change (high confidence). Highly vulnerable groups experiencing health impacts from heat stress include anyone working outdoors and, especially, those doing outdoor manual labour (e.g., construction work, farming). Potential hours of work lost due to heat have increased significantly over the past two decades (high confidence). Some regions are already experiencing heat stress conditions at or approaching the upper limits of labour productivity (high confidence).
- Climate change has contributed to malnutrition in all its forms in many regions, including undernutrition, overnutrition and obesity, and to disease susceptibility (high confidence), especially for women, pregnant women, children, low-income households, Indigenous Peoples, minority groups and small-scale producers (high confidence). Extreme climate events have been key drivers in rising undernutrition of millions of people, primarily in Africa and Central America (high confidence). For example, anthropogenic warming contributed to climate extremes induced by the 2015–2016 El Niño, which resulted in severe droughts, leading to an additional 5.9 million children in 51 countries becoming underweight (high confidence). Undernutrition can in turn increase susceptibility to other health problems, including mental health problems, and impair cognitive and work performance, with resulting economic impacts (very high confidence). Children and pregnant women experience disproportionate adverse health and nutrition impacts (high confidence).
- About 3.3 billion people are living in countries with high human vulnerability to climate change (high confidence).
- Climate variability and extremes are associated with more prolonged conflict through food price spikes, food and water insecurity, loss of income and loss of livelihoods (high confidence), with more consistent evidence for low intensity organised violence within countries than for major or international armed conflict (medium confidence.
- Economic losses of climate change arise from adverse impacts on inputs, such as crop yields (very high confidence), water availability (high confidence) and outdoor labour productivity due to heat stress (high confidence). Greater

economic losses are observed for sectors with high direct climate exposure, including regional losses to agriculture, forestry, fisheries, energy and tourism (high confidence). Many industrial and service sectors are indirectly affected through supply disruptions, especially during and following extreme events (high confidence). Costs are also incurred from adaptation, disaster spending, recovery and rebuilding of infrastructure (high confidence)

- Climate change will increasingly add pressure on food production systems, undermining food security (high confidence). With every increment of warming, exposure to climate hazards will grow substantially (high confidence), and adverse impacts on all food sectors will become prevalent, further stressing food security (high confidence). Regional disparity in risks to food security will grow with warming levels, increasing poverty traps, particularly in regions characterised by a high level of human vulnerability (high confidence).
- Climate change will increasingly add pressure on terrestrial food production systems with every increment of warming (high confidence). Some current global crop and livestock areas will become climatically unsuitable depending on the emissions scenario (high confidence; 10% globally by 2050, by 2100 over 30% under SSP-8.5 versus below 8% under SSP1-2.6). Compared to 1.5°C global warming level, 2°C global warming level will even further negatively impact food production where current temperatures are already high as in lower latitudes (high confidence). Increased and potentially concurrent climate extremes will increase simultaneous losses in major food-producing regions (medium confidence). The adverse effects of climate change on food production will become more severe when global temperatures rise by more than 2°C (high confidence).
- Water-related risks are projected to increase at all warming levels, with risks being proportionally lower at 1.5°C than at higher degrees of warming (high confidence). Regions and populations with higher exposure and vulnerability are projected to face greater risks than others (medium confidence). Projected changes in the water cycle, water quality, cryosphere changes, drought and flood will negatively impact natural and human systems (high confidence).
- Water-related risks are projected to increase with every increment in warming level, and the impacts will be felt disproportionately by vulnerable people in regions with high exposure and vulnerability (high confidence). About 800 million to 3 billion people at 2°C and about 4 billion at 4°C warming are projected to experience different levels of water scarcity (medium confidence), leading to increased water insecurity. At 4°C global warming by the end of the century, approximately 10% of the global land area is projected to face simultaneously increasing high extreme streamflow and decreasing low extreme streamflow, affecting over 2.1 billion people (medium confidence). Globally, the

greatest risks to attaining global sustainability goals come from risks to water security (high confidence).

- Projected cryosphere changes will negatively impact water security and livelihoods, with higher severity of risks at higher levels of global warming (high confidence). Glacier mass loss, permafrost thaw and decline in snow cover are projected to continue beyond the 21st century (high confidence). Many low elevation and small glaciers around the world will lose most of their total mass at 1.5°C warming (high confidence).
- Drought risks and related societal damage are projected to increase with every degree of warming (medium confidence). Under RCP6.0 and SSP2, the population that is projected to be exposed to extreme to exceptional low total water storage will reach up to 7% over the 21st century (medium confidence). Under RCP8.5, aridity zones could expand by one-quarter of the 1990 area by 2100. In southern Europe, more than a third of the population will be exposed to water scarcity at 2°C, and the risk doubles at 3°C, with significant economic losses (medium confidence).
- Climate change will increase the number of deaths and the global burden of non-communicable and infectious diseases (high confidence). Over nine million climate-related deaths per year are projected by the end of the century, under a high emissions scenario and accounting for population growth, economic development and adaptation. Health risks will be differentiated by gender, age, income, social status and region (high confidence).
- Migration patterns due to climate change are difficult to project as they depend on patterns of population growth, adaptive capacity of exposed populations and socioeconomic development and migration policies (high confidence). In many regions, the frequency and/or severity of floods, extreme storms and droughts is projected to increase in coming decades, especially under high emissions scenarios, raising future risk of displacement in the most exposed areas (high confidence). Under all global warming levels, some regions that are presently densely populated will become unsafe or uninhabitable, with movement from these regions occurring autonomously or through planned relocation (high confidence).
- Under an inequality scenario (SSP4) by 2030, the number of people living in extreme poverty will increase by 122 million from currently around 700 million (medium confidence). Future climate change may increase involuntary displacement, but severe impacts also undermine the capacity of households to use mobility as a coping strategy, causing high exposure to climate risks, with consequences for basic survival, health and well being (high confidence). The COVID-19 pandemic is expected to increase the adverse consequences of climate

change since the financial consequences have led to a shift in priorities and constrain vulnerability reduction (medium confidence).

- Compound hazards increasing with global warming include increased frequency of concurrent heatwaves and droughts (high confidence), dangerous fire weather (medium confidence) and floods (medium confidence), resulting in increased and more complex risks to agriculture, water resources, human health, mortality, livelihoods, settlements and infrastructure.
- Limits to adaptation will be reached in more systems, including, for example, coastal communities, water security, agricultural production and human health, as global warming increases (medium confidence). Hard limits beginning at 1.5°C are also projected for coastal communities reliant on nature-based coastal protection (medium confidence). Adaptation to address the risks of heat stress, heat mortality and reduced capacities for outdoor work for humans face soft and hard limits across regions that become significantly more severe at 1.5°C and are particularly relevant for regions with warm climates (high confidence). Beginning at 3°C, hard limits are projected for water management measures, leading to decreased water quality and availability, negative impacts on health and well-being, economic losses in water and energy-dependent sectors and potential migration of communities (medium confidence).
- The potential for reaching adaptation limits fundamentally depends on emissions reductions and mitigating global warming (high confidence).
- Overshoot substantially increases risk of carbon stored in the biosphere being released into the atmosphere due to increases in processes such as wildfires, tree mortality, insect pest outbreaks, peatland drying and permafrost thaw (high confidence). These phenomena exacerbate self-reinforcing feedbacks between emissions from high-carbon ecosystems (which currently store around 3030–4090 GtC) and increasing global temperatures. Complex interactions of climate change, land use change, carbon dioxide fluxes and vegetation changes, combined with insect outbreaks and other disturbances, will regulate the future carbon balance of the biosphere, processes incompletely represented in current Earth system models. The exact timing and magnitude of climate–biosphere feedbacks and potential tipping points of carbon loss are characterised by large uncertainty, but studies of feedbacks indicate increased ecosystem carbon losses can cause large future temperature increases (medium confidence).

In short, it is not that climate change “may” affect people. It is already having effects and they are severe and harmful: “Widespread and severe loss and damage to human and natural systems are being driven by human-induced climate changes increasing the frequency and/or intensity and/or duration of extreme weather events, including droughts, wildfires, terrestrial and marine heatwaves, cyclones (high confidence) and flood (low confidence). Extremes are

surpassing the resilience of some ecological and human systems and challenging the adaptation capacities of others, including impacts with irreversible consequences (high confidence). Vulnerable people and human systems and climate-sensitive species and ecosystems are most at risk (very high confidence)." *Id.* at 47. "Climate-related extremes have affected the productivity of agricultural, forestry and fishery sectors (high confidence). Droughts, floods, wildfires and marine heatwaves contribute to reduced food availability and increased food prices, threatening food security, nutrition and livelihoods of millions of people across regions (high confidence). Extreme events caused economic losses in forest productivity and crops and livestock farming, including losses in wheat production in 2012, 2016 and 2018, with the severity of impacts from extreme heat and drought tripling over the last 50 years in Europe (high confidence). Forests were impacted by extreme heat and drought impacting timber sales, for example, in Europe (high confidence). Marine heatwaves, including well-documented events along the west coast of North America (2013–2016) and east coast of Australia (2015–2016, 2016–2017 and 2020), have caused the collapse of regional fisheries and aquaculture (high confidence). Human populations exposed to extreme weather and climate events are at risk of food insecurity with lower diversity in diets, leading to malnutrition and increased risk of disease (high confidence)." *Id.*

Notably, Montana has the highest average annual mortality rate due to wildfire smoke in the United States over the past two decades, costing the state over $1.2 billion each year, a tragic result of the worsening effects of climate change. Beverly Law et al., *Anthropogenic Climate Change Contributes to Wildfire Particulate Matter and Related Mortality in the United States*, 6 Communications Earth & Environment 336 (2025) (attached as Exhibit 2); *see also id.* Supplementary Data (attached as Exhibit 3); Marshall Burke et al., *The Contribution of Wildfire PM2.5 Trends in the United States*, 622 Nature 761 (2023) (attached as Exhibit 4). Indeed, the science indicates that unabated climate change will cause a tripling of wildfire pollution in the United States, especially the northwestern United States (including Montana), causing still greater smoke-related related mortality. Yuanyu Xie et al., *Tripling of Western US Particulate Pollution from Wildfires in a Warming Climate*, PNAS Vol. 119, No. 14 (2022) (attached as Exhibit 5).

Needless to say, a major contribution to a problem that kills dozens of Montanans every year is not insignificant and does not maintain or protect a clean and healthful environment. It is a major violation of Montanans' most fundamental constitutional and human rights. The draft EA must fully disclose the severe current impacts of climate change that will only worsen if GHG emissions are not promptly and rapidly reduced.

DEQ must also fully disclose the economic costs of GHG emissions. Mont. Code Ann. § 75-1-201(1)(a)(iv). The social cost of GHGs is the best means of disclosing this information. The U.S. Department of Interior and Office of Surface Mining recently validated and employed this

methodology to demonstrate the overwhelming negative economic costs of continued mining at the Spring Creek Mine:

> The social cost of carbon (SC-CO2), social cost of nitrous oxide (SC-N2O), and social cost of methane (SC-CH4), collectively referred to as the "social cost of greenhouse gases" (SC-GHG) are estimates of the monetized damages associated with incremental increases in GHG emissions each year.
>
> On January 20, 2021, President Biden issued EO 13990, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis. Section 1 of EO 13990 establishes an Administration policy to, among other things, listen to the science; improve public health and protect our environment; ensure access to clean air and water; reduce GHG emissions; and bolster resilience to the impacts of climate change. Section 2 of the EO calls for Federal agencies to review existing regulations and policies issued between January 20, 2017, and January 20, 2021, for consistency with the policy articulated in the EO and to take appropriate action.
>
> 4.4.5.2.1 Social Cost of Greenhouse Gases Analysis Published in the Draft EIS
> Consistent with EO 13990, the CEQ issued interim National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change (2023 GHG Guidance).b The guidance recommends that agencies provide additional context for GHG emissions, including through the use of the best available SC-GHG estimates, to translate climate impacts into the more accessible metric of dollars, allow decision-makers and the public to make comparisons, help evaluate the significance of an action's climate change effects, and better understand the tradeoffs associated with an action and its alternatives.
> At the time of the publication of the draft EIS in September 2024, the best available estimates of the SC-GHG were the interim estimates developed by the Interagency Working Group (IWG) on the SC-GHG. Select estimates are published in the Technical Support Document (IWG 2021) and the complete set of annual estimates are available on the Office of Management and Budget's website.
>
> The SC-GHG estimates published in the draft EIS followed the IWG's recommendations and are available in Appendix B of this final EIS.
>
> 4.4.5.2.2 Updated Social Cost of Greenhouse Gases Analysis
>
> In November 2023, the EPA published its Report on the Social Cost of Greenhouse Gases: Estimates Incorporating Recent Scientific Advances (EPA 2023). This report provides updated estimates of the SC-GHGs that reflect advancements in the

scientific literature on climate change and its economic impacts and incorporates recommendations made by the National Academies of Science, Engineering, and Medicine (National Academies 2017). The methodologies used in the report allow for a more holistic treatment of uncertainty than in past estimates by the EPA.

The SC-GHG estimates include the value of all future climate change impacts (both negative and positive), including changes in net agricultural productivity, human health effects, property damage from increased flood risk, changes in the frequency and severity of natural disasters, disruption of energy systems, risk of conflict, environmental migration, and the value of ecosystem services. Uncertainty in the starting rate is addressed by using three near-term target rates (1.5%, 2.0%, and 2.5%) based on multiple lines of evidence on observed real market interest rates. This approach results in dynamic discount rate paths and is consistent with the National Academies (2017) recommendation to use three sets of Ramsey parameters that reflect a range of near-term certainty-equivalent discount rates and are consistent with theory and empirical evidence on consumption rate uncertainty.

In October 2024, DOI issued a determination that the EPA report estimates of SC-GHG constitute the best available science for the purposes of Departmental decision-making and/or analysis and directed all DOI bureaus to immediately begin calculating SC-GHG using those estimates.

In accordance with the DOI memorandum, the updated SC-GHG estimates presented in this final EIS were calculated using the EPA report. It should be noted that SC-GHG estimates do not include the contribution from terminal emissions because the emissions were based on CO2e reported in the 2021 Westshore Terminal Air Emissions Inventory (EnviroChem 2021). Emissions for CO2, CH4, and N2O were not included in the report and, therefore, could not be entered into the EPA's SC-GHG workbook to calculate SC-GHGs.

4.4.5.3 Alternative 1 – Proposed Action

Under the Proposed Action, the SCM would mine the remaining 39.9 Mt of mineable Federal coal within the LBA1 tracts through 2039 at an annual rate based on the LOM mining sequence (see Table 2.2-2). The SC-GHGs associated with estimated emissions from future potential development are reported in Table 4.4-19. These estimates represent the present value (from the perspective of future market and nonmarket costs associated with CO2, CH4, and N2O emissions). Estimates were calculated using EPA Workbook for Applying SC-GHG Estimates v1.0.1 (EPA 2024l) along with the ton of CO2, CH4, and N2O emissions for each

> year. The estimates assume emissions will start in 2024 and end in 2039, based on the current mining plan.

U.S. Dep't of Interior & U.S. Office of Surface Mining, Spring Creek Mine Mining Plan Modification for Federal Coal Leases MTM 94378 and MTM 110693: Final Environmental Impact Statement at 4-20 to 4-21 (2025) (attached as Exhibit 6). The conclusion: continued mining will cause between $8 billion and $24 billion in harm to the public each year, vastly outstripping any benefits from the mine. The public and decision-makers must be informed that this project is equivalent to burning the public's money (to benefit NTEC).

DEQ must also include a carbon budget analysis. The impact of the mine expansion is not comprehensible unless DEQ discloses current GHG concentrations, what concentrations are considered safe, and how the proposed emissions affect the remaining carbon budget. DOI and OSM included this very analysis in the EIS for the Spring Creek Mine. *Id.* at 4-20. In short, "[t]he emissions reductions needed to keep global emissions within this carbon budget would require dramatic reductions in all United States sectors, as well as from the rest of the world." *Id.* It is hard to see how continued large-scale emissions from the Spring Creek Mine are consistent with "dramatic reductions" in emissions from "all United States sectors." The science is clear: continued large-scale emissions are not consistent with a clean and healthful environment. Moreover, given the current severe cumulative impacts associated with GHG emissions, it is not rational for the draft EA to conclude that cumulative effects are not significant.

II. The application and draft EA fail to lawfully assess impacts to water

A. The draft EA fails to address salinity impacts to the Tongue River which is already impaired for excessive salinity.

Both MSUMRA and MEPA require analysis of cumulative impacts, including to water. MCA 82-4-227(3); ARM 17.24.405(6); MCA 75-1-208(11), 220. The Tongue River and Tongue River Reservoir are subject to stringent water quality standards for electrical conductivity (EC) and sodium adsorption ration (SAR). ARM 17.30.670. Moreover, the Tongue River is currently impaired and not attaining water quality standards for salinity. DEQ, Tongue River Salinity Watershed Modeling Report at 1 (2024) ("Two segments within Montana are currently on Montana's 303(d) list of impaired waters due to elevated levels of salinity, which impacts the agricultural uses along the Tongue River.") (attached as Exhibit 7); *see generally id.* Communities along the Tongue River have long voiced their frustration with the state's failure to remedy the salinity problems in the Tongue River. *See, e.g.*, Amanda Eggert, *In Southeast Montana, a History of Coal Mining Haunts Farmers and Ranchers*, Montana Free Press (June 22, 2026), *available at* In southeast Montana, a history of coal mining haunts farmers and ranchers.

Here, the draft EA fails to rationally address the cumulative impacts of salinity to the Tongue River and Tongue River Reservoir. The EA states inaccurately that cumulative impacts are not expected to the Tongue River Reservoir "because of the incorporation of flood control and sediment control ponds upstream and downstream of both the SCM and West Decker Mine during operation, storm water best management practices by the mines, and the small total area of disturbance compared to the total drainage of the Tongue River Reservoir." Draft EA at 25. This ignores the fact that spoils groundwater from the mine will ultimately discharge into the Tongue River Reservoir, as the draft EA acknowledges. *Id.* at 21 ("Groundwater typically flows to the east and discharges to the Tongue River Reservoir east of SCM."). DEQ has long known that the reservoir seasonally floods the pits of the Decker Mines:

> Due to proximity of mine pits to the Tongue River Reservoir and the extensive, highly conductive clinker that lies between the reservoir and the mine pits, the West Decker pits have periodically had problems with water inflow. Inflow into pits, particularly at West Decker, increased since June 1999, when completed Tongue River dam and spillway reconstruction allowed the reservoir to fill to an operational stage of 3428 feet. To limit inflow and facilitate safer working conditions in pits near the reservoir, Decker Coal Company selectively placed buried earthen barriers ("dikes") between some of the pits and the reservoir. Typically, these dikes consist of compacted overburden material, are about 180 feet wide, and are placed from the base of the most permeable rock to a height above the operational stage of the reservoir. Between 5,000 and 6,000 linear feet of dike structures have been emplaced between the reservoir and Pit 16 East at West Decker. In the Pit 12 area at West Decker, there are approximately 1,600 feet of diked pit end wall.

DEQ, Decker Area Groundwater Cumulative Hydrologic Impact Assessment (CHIA), Spring Creek Mine, East and West Decker Mines (2015) (attached as Exhibit 8). It is clear that there is a direct groundwater connection between mine spoils and the reservoir. The East and West Decker pits are in many places approximately 100 meters from the Tongue River Reservoir. (In similar circumstances, DEQ has previously required discharge coverage under the Montana Water Quality Act. Further, DEQ has already concluded that upon resaturation of spoils, polluted and highly saline water will discharge into the reservoir, increasing the salinity load of the reservoir and the Tongue River:

> Groundwater flow through the Decker and Spring Creek mines represents a small contribution to the total flow of the Tongue River. When nonnal flow direction is re-established, groundwater will move from upland areas through the spoils aquifer and toward the Tongue River. Using mass balance calculations, estimated post-mine ground-water flow rates and estimated river flow rates, Van Yoast and

> Thompson (1982) made simplified calculations of expected changes in Tongue River water quality from spoils aquifer discharges. The method lacks precision, but gives a rough estimate of impacts to Tongue River water quality from the East and West Decker mines and the Spring Creek mine.
>
> Based on flow frequency curves for the Tongue River at a gauging station near the Montana-Wyoming state line, a flow rate of250 cubic feet per second (cfs) was equaled or exceeded 50% of the time for the water years 1961 through 1981. Using the methodology and estimated spoils water concentrations ofVanVoast and Thompson (1982), an increase of27 mg/l TDS would be expected in Tongue River water quality when the river was flowing at a rate of 250 cfs. Higher river flow rates would result in a smaller increase in the TDS concentration and lower flow rates would result in a higher TDS concentration. Median TDS concentration of 137 samples collected at the Tongue River dam monitoring site, 1978-1997, is 383 mg/l (Decker Coal Company, 1978 -1997). TDS concentrations ranged between 136 and 1,800 mg/I. TDS contribution from the mines during median river flow would raise the median TDS concentration of the river to 410 mg/I. This increase would not change current water uses and was therefore determined to be an insignificant increase.
>
> United States Geological Survey (U.S.G.S.) samples for the years 1976 -1981 (as reported in VanVoast and Thompson, 1982) from the Tongue River at the Wyoming-Montana state line (n=70) and downstream at the dam (n=62), were as high as 800 mg/I TDS two percent or less of the time. When stream flows are as low as 50 cfs, which occurs approximately one percent ofthe time, theoretical increases in TDS from spoils water would be 332 mg/1. If increased concentrations during low flow coincided with a time of high TDS concentrations in the river, totals could reach or exceed 1100 mg/1. Concentrations ofthis level are unlikely and would be of short duration. Recreational, stock and irrigation uses of the Tongue River are not expected to be impacted by mining.

Id. at 22-23. (Even NTEC's hired consultant, Michael Nicklin, calculates in the PHC that the mine will increase salinity in the Tongue River. PHC at 59. The analysis, however, is dubious, given that it does not assess cumulative impacts, does not assess impacts at low flows, and does not recognize that salinity conditions in the river already exceed water quality standards in multiple locations, and that according to DEQ's salinity modeling salinity impacts from mining in the reservoir will impacts impaired reaches downstream.); *see also* Skye Keeshin et al., *Factors Influencing Water Quality in Surface Water and Alluvial Groundwaters Downgradient of a Reclaimed Surface Coal Mine in the Powder River Basin of Southeastern Montana, USA*, 33 Hydrogeology Journal 715 (2025) (attached as Exhibit 18) (noting that pollution plume

migration downgradient 40 years after mining "is likely delaying downgradient water quality impacts"). The cumulative salinity load to the Tongue River is further impacted by surface water discharges from these three mines, as DEQ has also noted. Discharges from the Decker Mine alone have measurable impacts on salinity (including EC and SAR) in the Tongue River of approximately 5% to 8%. DEQ, DEQ, Tongue River Salinity Watershed Modeling Report at 75 (2024) ("Removal of all coal mine discharges in the watershed reduced daily SC by an average of 4.7% in subbasin 7 throughout the 2005 to 2013 model period. This represents approximately a 35 µS/cm reduction of SC and 0.10 units of SAR (8%) (Table 7-4; Appendix J). The largest reductions occur in winter of 2009 and spring of 2010 (Figure 7-7). This scenario also resulted in eliminating the two 2010 average irrigation season monthly standard exceedances compared to baseline conditions in subbasin 7; however, the 2013 average irrigation season monthly standard exceedances remain (Table 7-4)."). Notably, the Salinity Modeling Report did not include salinity from groundwater discharges to the reservoir. Studies have long indicated that coal mining in the Tongue River basin would impact water quality and increase salinity. *E.g.*, Woessner et al., The Impacts of Coal Strip Mining on the Hydrogeologic System of the Northern Great Plains: Case Study of Potential Impacts on the Northern Cheyenne Reservation (1979) (attached as Exhibit 9) ("Strip mining in the Northern Great Plains Region will have a long-term impact on groundwater and surface-water quality. Evaluation of a hypothetical 9 • 106-t/yr. mine in the Tongue River Valley leads to the conclusion that the impacts of a single mine on groundwater quality are significant, but that the impacts on surface-water quality are small. The cumulative impact from the extensive mining which is likely to occur in the Tongue River Valley of the Powder River Basin will be, though, a significant deterioration in surface water quality on the long term. This deterioration will last for centuries.").

DEQ can and must assess the impacts of salinity to the Tongue River from both surface and groundwater discharges from the cumulative mining operations at Spring Creek and Decker, using the salinity modeling that it has already prepared for the Tongue River (and the still incomplete total maximum daily load). It would be arbitrary and capricious for DEQ to fail to use its own, off-the-shelf salinity model to assess the cumulative impacts of continued mining at Spring Creek.

In short, scientists and the public have long worried about the impacts of industrial development on the Tongue River. The draft EA's analysis of salinity impacts to the Tongue River and the Tongue River Reservoir is insufficient. It ignores DEQ's own prior analyses and it ignores the concerns of the public. Continued addition of measurable increases in salinity to the Tongue River constitutes material damage. Moreover unpermitted discharges to the Tongue River Reservoir from spoils from the Decker and Spring Creek Mines violate the federal Clean Water Act and the Montana Water Quality Act. Additionally, the spoils water quality that DEQ acknowledges will be discharged into the Tongue River Reservoir exceeds applicable water quality standards and is therefore unlawful. ARM 17.30.690 ("No person may violate the

numeric water quality standards or the criteria for determining nonsignificant changes in water quality identified in (2) through (6).... For the Tongue River Reservoir, the monthly average numeric water quality standard for EC is 1000 µ S/cm and no sample may exceed an EC value of 1500 µ S/cm. The monthly average numeric water quality standard for SAR is 3.0 and no sample may exceed an SAR value of 4.5.").

Additionally, with respect to material damage, DEQ must assure that the determination is premised on impacts of the entire Spring Creek mine operation, not simply the incremental addition of the AM6 expansion. MCA, § 82-4-227(3); ARM 17.24.405(6)(c). This must include an analysis of whether mining operations will extend the duration of poor water quality and whether the Spring Creek Mine will contribute to water quality impacts from the Decker mines.

B. DEQ may not approve the AM6 expansion without first issuing a lawful MPDES discharge permit for a new discharger.

The AM6 expansion and the Spring Creek Mine are "new source coal" mines pursuant to federal regulations because the mine began construction or experienced a major alteration after 1984. 40 C.F.R. § 434.11(j); *see* DEQ, Fact Sheet, Rosebud Mine AM5 expansion (attached as Exhibit 10). Because it is a new source coal mine, DEQ may not issue a permit for the mine or the expansion unless DEQ first determines that the discharges will not cause or contribute to a violation of water quality standards. 40 C.F.R. § 122.4(d), (i); *Friends of Pinto Creek v. U.S. E.P.A.*, 504 F.3d 1007, 1016 (9th Cir. 2007). To determine whether the mine's discharges will contribute to impairments of the Tongue River, DEQ must use the salinity model that it has already developed for the river. *See* Tongue River Salinity Watershed Modeling Report (2024). If the mine will contribute to an increase in salinity, which the PHC confirms (PHC at 56-59), DEQ may only permit the expansion if it first completes the TMDL for the Tongue River and then determines that there are sufficient waste load allocations for the Spring Creek Mine. Until DEQ does so, however, it may not permit the mine expansion. ARM 17.24.405(6)(a), (c); *id.* 17.24.633.

C. Data collection and monitoring requirements

MSUMRA prohibits approval of a mine expansion unless the operator can demonstrate to a statistically significant degree that the mine's cumulative impacts will not cause material damage. MCA § 82-4-227(3); *id.* § 82-4-203(35). To be able to make such a determination, the operator must use a scientifically accepted significance standard, using at least a 95% confidence level. To allow DEQ to determine significance at this standard, NTEC must provide adequate baseline information and assure adequate future monitoring. ARM 17.24.645, 646. Such monitoring must be sufficient to determine changes to meet statistical standards. Quarterly monitoring, yielding a mere four data points per year, is not sufficient to detect anything but the most dramatic degradation of water quality. Instead of imposing quarterly monitoring

requirements, DEQ must impose continuous monitoring, which is feasible, convenient, and inexpensive with modern monitoring technology.

D. Sodium chloride use must cease

DEQ must also take a hard look at the long term impacts to surface and groundwater from NTEC's continued use of magnesium chloride for dust control. *See* PHC at 71. Use of magnesium chloride has caused significant spikes in chloride and salts in water courses adjacent to other coal mines (the Rosebud strip-mine), as DEQ knows (and has previously considered material damage). While the PHC minimizes the impacts as "not expected to increase chloride concentrations in shallow groundwater." *Id.* This is not encouraging. NTEC has apparently used this salt-based dust suppressant for "decades." *Id.* The PHC indicates that chloride concentrations in spoils have increased by over 300%, which is the greatest increase of any pollutant documented. *Id.* tbl. 24. Accordingly, DEQ must evaluate and disclose continued magnesium chloride use at the Spring Creek Mine, including such analysis in its evaluation of impacts and increased salinity to the Tongue River and groundwater.

E. Buffer Zones and Baseline Monitoring

DEQ may not approve a mine expansion unless the proponent first demonstrates compliance with MSUMRA and all applicable regulations. ARM 17.24.406(1)(a). This includes the Buffer Zone Rule, which protects intermittent and perennial streams and stream reaches. *Id.* 17.24.651(1). Moreover, DEQ must ensure that the permittee conducts sufficient baseline monitoring to correctly characterize all water resources, including springs and seeps. *Id.* 17.24.304(1)(f). With respect to springs, the applicant must submit "descriptions of surface drainage systems sufficient to identify, in detail, the seasonal variations in water quantity and quality including, but not limited to: minimum, maximum, and average discharge conditions which identify critical low flow and peak discharge rates of streams and springs." *Id.* 17.24.304(f)(ii)(B)(I).

It appears from the permit application that the spring at wetland site W3 within the channel of a tributary of South Fork Pearson Creek is potentially subject to the Buffer Zone Rule. Unfortunately, the baseline monitoring for this site is entirely inadequate and not compliant with baseline requirements of MSUMRA. Rather than being monitored on a seasonal basis to identify maximum, minimum, and average flow conditions, NTEC admits that the spring has not been monitored at all:

> One potential spring/seep site was identified during the AM6 Aquatic Resources Inventory (Appendix L2D) at survey site W3 within an unnamed tributary to the South Fork of Pearson Creek (in the Northeast ¼ of the Northeast ¼ of Section 1, T9S, R39E). Site W3 was not previously monitored by SCM and has been added

to the active surface water monitoring sites beginning in 2026. W3 is shown on Plates L-1A and L-1B and listed in Table 17.

PHC at 18. MSUMRA requires monitoring to occur prior to permit approval. NTEC must either remove this area from the expansion or DEQ must deny the expansion until the necessary seasonal monitoring occurs.

III. Reclamation

The draft EA fails to take a hard look at the feasibility of reclamation. DEQ may not issue a permit unless the applicant can affirmatively demonstrate that reclamation can be accomplished. MCA 82-4-227(1); ARM 17.24.405(6)(a). Reclamation means returning the land to a state that is capable of supporting all the uses that it could support prior to mining. MCA 82-4-203(48) ("'Reclamation' means backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, planting, revegetation, and other work conducted on lands affected by strip mining or underground mining under a plan approved by the department to make those lands capable of supporting the uses that those lands were capable of supporting prior to any mining or to higher or better uses."). Here, the draft EA fails to address whether shallow water quality post-mining will be sufficient to support "higher or better uses." The evidence indicates that it will not be adequate. Baseline shallow water quality in the mine area was high quality Class II groundwater. DEQ, Decker Area Groundwater Cumulative Hydrologic Impact Assessment (CHIA), Spring Creek Mine, East and West Decker Mines at 8 (2015) ("Background water quality varies but generally exceeds secondary EPA drinking water standards for TDS (>500 mg/L) and Montana C lass I beneficial uses (Class I = < 1,000 mg/L TDS). Most groundwater in the area meets Montana Class II standards (TDS > 1,000 mg/L and <2,500 mg/L).").

The draft EA notes, however, that spoil water quality post-mining will be significantly worse, with salinity levels approximately "three times" higher than baseline. Draft EA at 24. This will result in groundwater that is Class III or even Class IV, which does not support the same uses as Class II groundwater. *See* ARM 17.30.1006. There is no indication that NTEC has any plans to treat this spoils water to remove the salinity pollution. Groundwater will not begin to recover until approximately "one or more pore volumes of water pass through the backfill." PHC at 67. This will be centuries to millenia in the future, given that DEQ expects that water levels "are not expected to do so for hundreds of years." Draft EA at 26. Indeed, it appears that DEQ is not even requiring bonding for any hydrologic reclamation (which also violates MSUMRA). Without some analysis, backed and funded by an adequate bond, indicating that NTEC can treat and reclaim the spoils aquifer (beyond just walking away and leaving the problem for future generations), NTEC has not established that reclamation can be accomplished. This failure not only violates MSUMRA, it also has constitutional implications,

given that reclamation is required under Montana's Constitution and degradation of the environmental life support system is prohibited. Mont. Const. Art. II, § 2, Art. IX, § 1.

This is not a minor issue. The coal aquifer that NTEC is destroying is one of the most important shallow water resources in an area that is wholly dependent on scarce water supplies. As the draft EA notes: "The coal and alluvial aquifers are generally the most important sources of water in the area." Draft EA at 21. DEQ cannot approve destruction of this aquifer without guarantees that NTEC can fully reclaim it to support the Class II uses that it supported prior to mining. DEQ should not allow what happened with the Big Sky Mine to repeat itself here: to conclude after mining has been completed that material damage is occurring but then be constrained to return the company's bond in full, despite unreclaimed material damage existing at the mine site. *See* Ltr. from DEQ to Peabody Energy (Feb. 3, 2020) (attached as Exhibit 11).

It has also been clear for decades that the impacts of coal mining in this semi-arid and water dependent ecosystem simply cannot be reclaimed. The 1979 EIS for the Spring Creek Mine recognized that the mine would "destroy" shallow aquifers: "Shallow aquifers, including the alluvium of South Fork Spring Creek, and other stratigraphic beds would be destroyed within the 1,850-acre mine area and replaced with an admixture of unconsolidated overburden material devoid of its original texture, permeability, and structure." U.S. Dep't of Interior & Mont. Dep't of State Lands, Final Environmental Statement Proposed Mining and Reclamation Plan Spring Creek Mine at vi (1979) (attached as Exhibit 12). Regulators concluded that the ability of the land to support livestock and wildlife would decrease: "Approximately 4,400 acres of grazing land would be unusable until reclamation is completed. The loss of vegetation diversity and replacement of shrubby species by grasses would decrease the carrying capacity for wildlife and livestock." *Id.* The ability of the land to support sage grouse will be decreased for the long-term: "The existing diverse habitat would be destroyed and replaced by topographic features and plant species not generally suitable for deer, antelope, sage grouse, and other species currently inhabiting the area. The impacts probably will be long-term. Game birds and animals would be displaced and the population of songbirds, rodents and reptiles would decrease." *Id.* "About 3,000 acres of existing vegetation and the existing vegetation mosaic would be progressively destroyed, over a 25-year period. Reestablishment of the vegetation mosaic would probably require several decades, and ponderosa pine would probably be lost as a self-sustaining regenerating population for the long term." *Id.* at vii. "About 3,000 acres of existing wildlife habitat and grazing land would be progressively destroyed. The carrying capacity of the entire permit area would be lowered for most species that currently inhabit or use the minesite; however, 30 percent less area would be affected than under the original mine plan." *Id.* "Impacts on society would not be substantially different than those generated by the original mine plan. There would be a reduction in the quality of life for the residents of the Birney-Sheridan area resulting from a breakdown in society and impingements on social and psychological well-being." *Id.*

When SMCRA was enacted approximately a half-century ago, there was significant speculation that reclamation, especially in the American west, would not be possible. In the past half-century, there are no examples of successful reclamation. No ponderosa pine forests have been replaced, no sage brush steppe ecosystems have been recreated, and no spoils aquifers have been cleaned or remediated. There is no showing that reclamation can be accomplished (especially given that NTEC's bond does not include any funding for water replacement or remediation).

DEQ must address in its EA and its MSUMRA review whether prior regulators were mistaken in their determinations that the land could not be reclaimed to support the same or higher and better uses. DEQ must fully address and disclose whether reclamation can be accomplished. And DEQ must deny the permit because no evidence demonstrates that reclamation, as required by MSUMRA and Montana's constitution, can be accomplished.

Moreover, DEQ must assess how the worsening impacts of climate change will affect and impair reclamation. In its 2025 EIS for the Spring Creek Mine, the U.S. Department of the Interior explained that climate change will significantly impact the hydrology and other resources of the mine area:

> The Montana Climate Assessment reports that the state of Montana is projected to continue to warm in all geographic locations, seasons, and under all emission scenarios. By mid-century, Montana temperatures are projected to increase by approximately 4.5-6.0°F (2.5-3.3°C) depending on the emission scenario. By the end-of-century, Montana temperatures are projected to increase 5.6-9.8°F (3.1-5.4°C) depending on the emission scenario. These state-level changes are larger than the average changes projected globally and nationally. The number of days in a year when daily temperature exceeds 90°F (32°C) and the number of frost-free days are expected to increase across the state and in both emission scenarios studied. Increases in the number of days above 90°F (32°C) are expected to be greatest in the eastern part of the state. Across the state, precipitation is projected to increase in winter, spring, and fall; precipitation is projected to decrease in summer. The largest increases are expected to occur during spring in the southern part of the state. The largest decreases are expected to occur during summer in the central and southern parts of the state.
>
> Most of the water that enters Montana comes as rain or snow at higher elevations. Although some of Montana's water originates in Wyoming or adjacent Canadian provinces, over 80% is derived from within state boundaries. Groundwater is another large and important component of the water cycle in Montana, with most

> groundwater coming from shallow sand or gravel aquifers in river floodplains. Groundwater resources contribute significantly to natural streamflow throughout the year. In Montana, much of the winter snowfall that accumulates in the mountains melts in spring to produce streamflow and recharge groundwater aquifers.
>
> Rising temperatures will reduce snowpack, shift historical patterns of streamflow in Montana, and likely result in additional stress on Montana's water supply, particularly during summer and early fall. Earlier onset of snowmelt and spring runoff will reduce late-summer water availability in snowmelt-dominated watersheds. Groundwater demand will likely increase as elevated temperatures and changing seasonal availability of traditional surface-water sources force water users to seek alternatives. Rising temperatures will exacerbate persistent drought periods that are a natural feature of Montana's climate.

U.S. Dep't of Interior & U.S. Office of Surface Mining, Spring Creek Mine Mining Plan Modification for Federal Coal Leases MTM 94378 and MTM 110693: Final Environmental Impact Statement at 5-8 (2025). The Department of the Interior specifically recognized that climate change will impact reclamation:

> The post-reclamation land use at the SCM is wildlife habitat and grazing, consisting of vegetation cover of grasses and shrubs. For all alternatives, the SCM would be required as part of its approved reclamation plan, and as a condition of eventual bond release, to replace topsoil within disturbed areas and revegetate.
>
> The direct effects of climate change on soils and vegetation include increased temperatures and shifts in precipitation that together alter humidity, soil moisture, and water stress. Reduced soil moisture and water availability could impact revegetation success during reclamation.
>
> To successfully meet the requirements for revegetation success, the SCM may need to adjust the species used for vegetative cover and rely more on drought tolerant and native species, as well as species to prevent increased soil erosion. The timing of revegetation may need to be adjusted based on future climate conditions during reclamation. In some projections, a potentially longer growing season may promote increased vegetative growth but may reduce growth productivity in water-limited areas. Any changes to NTEC's approved reclamation plan would need to be approved by MDEQ.

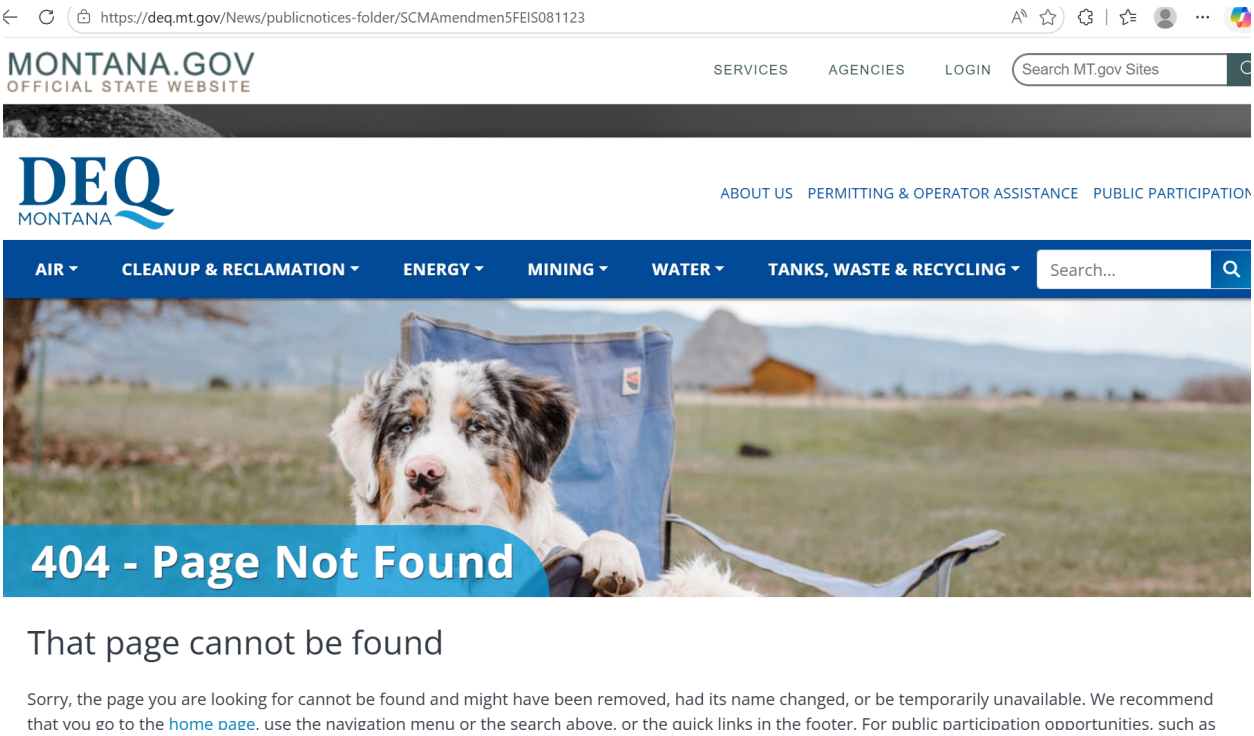
> Any impacts to water resources and vegetation at the SCM may have an impact on wildlife in the area. Lack of available resources may force migration of certain wildlife species.

Id. This conclusion is consistent with numerous other studies indicating that climate change is having significant impacts on the environment of Montana (and the world) and that if emissions are not reduced significantly and rapidly. *See* Justin T. Martin et al., *Increased Drought Severity Tracks Warming in the United States' Largest River Basin*, 117 Proceedings of the National Academies of Science 11328 (2020) (attached as Exhibit 13); Ki-Weon Seo et al. *Abrupt Sea Level Rise and Earth's Gradual Pole Shift Reveal Permanent Hydrological Regime Changes in the 21st Century*, 387 Science 1408 (2025) ("Drought is an emerging climatic and hydrologic disaster that has affected humans and ecosystems over the past several decades (1–3). Extended periods of precipitation deficit, associated with abnormally high barometric pressure over the continents and with anomalous sea surface temperatures, are main contributors to drought conditions (4, 5). Increasing air temperature also increases evapotranspiration as an additional contributor to drought (6, 7). The frequency of once-in-a decade agricultural and ecological droughts has increased by a factor of about 1.7 compared with the 1850–1990 mean. Drought frequency is projected to further rise in accordance with various warming scenarios."); *id.* ("If the abrupt shift in SM [soil moisture] and TWS [terrestrial water storage] is driven by a warming climate and associated changes, the diminished TWS may not be recoverable in the foreseeable future.") (attached as Exhibit 14); Wen-Ying Wu et al., *Divergent Effects of Climate Change on Future Groundwater Availability in Key Mid-Latitude Aquifers*, Nature Communications (2020) (attached as Exhibit 15); Jennifer Skerker et al., *Urban Water Affordability Crisis Exacerbated by Climate Change*, Nature Sustainability (2026) (attached as Exhibit 16).

IV. Improper Reference to Materials Unavailable to the Public

Montanans' constitutional rights to know and participate, as well as MEPA, require materials on which government entities rely to make decisions be made available to the public prior to any decision. Mont. Const. Art. II, §§ 17, 18; ARM 17.4.625(6) ("No material may be adopted unless it is reasonably available for inspection by interested persons within the time allowed for comment."). Here, the draft EA purports to adopt and incorporate analyses from prior EISs from 2020 and 2023. Draft EA at 6 ("Due to the availability of Environmental Impact Statements (EIS's) completed by DEQ for SCM permitting actions within the last five years, DEQ is incorporating by reference relevant portions of the Spring Creek Mine TR1 EIS, dated March 2020, and the Spring Creek Mine AM5 EIS, dated August 2023, for the analysis of this Proposed Action. The 2023 AM5 EIS is considered the most recent EIS for non-mining related surface disturbance impacts and the 2020 TR1 EIS is considered the most recent EIS for mining related impacts. In the analysis that follows, one or both previous EIS's are referenced when relevant. The impacts discussed in the TR1 EIS and the AM5 EIS are presumed to still be present, unless otherwise noted. Accordingly, only updates to the impact analysis from those

contained in TR1 EIS and AM5 EIS will be discussed in this EA."). Neither of these EISs, however, is reasonably available to the public. DEQ has apparently removed them from its website. While DEQ's website has a page that apparently once contained a link to the AM5 EIS, that link is now dead, as shown below:



Because these documents are not available to the public, DEQ cannot rely on or incorporate them by reference.

DEQ similarly improperly defers reference of cumulative impacts to water resources to its currently unpublished cumulative hydrologic impact assessment. *See* Draft EA at 25 ("DEQ is in the process of preparing a Cumulative Hydrologic Impact Assessment (CHIA) as part of the written findings of the AM6 final decision. The CHIA process includes the following: 1) evaluating impacts to the hydrologic system, 2) defining the cumulative hydrologic impact area, 3) describing the hydrologic system, the baseline values, and natural variability, 4) identifying hydrologic resources likely to be affected, 5) estimating the impacts of mining on hydrologic resources, and 6) making a material damage determination and preparing a statement of findings. Further discussion of the topics discussed below can be found in the CHIA."). This is wholly improper. The CHIA is not available for public review and comment. No public participation or transparency is accomplished by DEQ's relying on a document and analysis that does not exist at the time of public comment.

V. Bonding

Reclamation bonding is intended to prevent the public from having to bail out coal companies that fail to complete required reclamation. The requirement is based on a history of bad actions by coal companies:

> For more than a century, the environment, communities, and people of the region had suffered from the externalized costs of abandoned, unreclaimed, underground, and strip coal mining. SMCRA was enacted by Congress to put an end to the harm caused by abandoned mines and other coal mining regions of the country. While it is important to recognize that SMCRA has been beneficial in reducing many of coal's environmental externalities, it is also essential to acknowledge that the failure of OSM and Appalachian state regulatory programs to enforce SMCRA's reclamation bonding mandate has led to enormous environmental and socio-economic harm, and billions of dollars of unfunded land reclamation and water pollution abatement.

Patrick C. McGinley, *With A Wink and A Nod: How Politicians, Regulators, and Corrupt Coal Companies Exploited Appalachia*, 57 U. Rich. L. Rev. 899, 941 (2023); Joshua Macey, Jackson Salovaara, *Bankruptcy As Bailout: Coal Company Insolvency and the Erosion of Federal Law*, 71 Stan. L. Rev. 879, 906–35 (2019) (explaining how coal companies evaded reclamation obligations through bankruptcy in the 2010s).

Accordingly, MSUMRA requires DEQ to set a bond amount that will ensure reclamation. MCA, § 82-4-223(2) ("In determining the amount of the bond, the department shall take into consideration the character and nature of the overburden, the future suitable use of the land involved, and the cost of backfilling, grading, highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation to be required, but the bond may not be less than the total estimated cost to the state of completing the work described in the reclamation plan."). Reclamation includes reclamation of impacts to the hydrologic balance. ARM 17.24.1116(6)(d).

Here, NTEC's application and the existing permit do not appear to include any bonding to implement and assure reclamation of impacts to the hydrologic balance. *See* App. M, Reclamation Cost Estimates. This is unlawful. The evidence in the permit record and from DEQ's prior analyses indicate that the majority of the shallow groundwater in coal aquifers and alluvial aquifers has been high quality Class II groundwater. DEQ, Decker Area Groundwater Cumulative Hydrologic Impact Assessment (CHIA), Spring Creek Mine, East and West Decker Mines at 8 (2015) ("Background water quality varies but generally exceeds secondary EPA drinking water standards for TDS (>500 mg/L) and Montana Class I beneficial uses (Class I = < 1,000 mg/L TDS). Most groundwater in the area meets Montana Class II standards (TDS > 1,000 mg/L and <2,500 mg/L)."). Destroying these aquifers and replacing them with spoils aquifers will degrade this to poor quality Class III groundwater (or worse).

Accordingly, reclamation will require either large scale water treatment or large scale water replacement and alternative water supplies. Indeed, the plan for the protection of the hydrologic balance recognizes the need for provision of alternative water supplies. Yet, there is no bonding for treatment or alternative water supplies. Nor is there any provision for long-term operations and maintenance. Nor are there any provisions in the plan for protection of the hydrologic balance to address salinity pollution to the Tongue River, even though numerous studies indicate that the mines adjacent to the river are going to discharge significant salts into that river (via groundwater) for decades or centuries. The impacts will be significant, given that the river is already impaired for excessive salinity, an impairment that will only become more significant due to the impacts of climate change (which will increase evapotranspiration, concentrating salts). These impacts must be addressed in the reclamation plan and they must be bonded. Otherwise, the area will become a sacrifice zone and the public will be forced to assume these responsibilities. The people of Montana have rejected both outcomes when they enacted MSUMRA and adopted our constitution. If NTEC can reclaim its mine, it may receive a permit, if it cannot, it may not receive a permit. DEQ may not permit the failed reclamation of the Big Sky Mine to repeat itself. On this point, it is worth noting that significant groundwater and surface water pollution problems have been identified at every coal mine in Montana. *See* Earthjustice, Comments on Bonding Guidelines (Apr. 24, 2026) (attached as Exhibit 17).

Consistent with DEQ's worst-case reclamation bonding analysis, DEQ must assume that pollution from the mine will degrade water quality in the Tongue River, requiring long-term treatment or water replacement. NTEC must post a bond to address such impacts.

VI. NTEC cannot receive a permit because its use of sovereign immunity to evade application of the citizen oversight provisions of SMCRA, MSUMRA, and other federal and state laws undermines the statutory scheme, which depends on public participation.

NTEC has used sovereign immunity to thwart efforts by the public to enforce the law against regulators. *Dine Citizens Against Ruining Our Env't v. Bureau of Indian Affs.*, 932 F.3d 843 (9th Cir. 2019). SMCRA and Montana law require public participation in and oversight of the regulation of coal mining. 30 U.S.C. § 1202(i); Mont. Const. Art. II, § 8. A state program must be consistent with the provisions of SMCRA. 30 U.S.C. §1254(a). SMCRA requires the public to be able to seek judicial review of coal mining permits. 30 U.S.C. §§ 1270, 1276. Because NTEC can use sovereign immunity to thwart public oversight and judicial review of the permitting process, it may not receive a permit under MSUMRA.

VII. NTEC may not conduct mining operations in AM6 without prior federal approval of a mining plan modification, including compliance with NEPA and the Endangered Species Act, among other federal laws.

The draft EA indicates that the AM6 expansion includes about 15 million tons of federal coal that is being added to the mining permit. Draft EA, tbl. 1. Both SMCRA and the Mineral Leasing Act require NTEC to obtain a mining plan modification from the US Office of Surface Mining and Department of Interior prior to mining this federal coal. 30 C.F.R. §§ 746.13, 14. Before OSM and DOI can approve a mining plan modification, they must comply with applicable federal laws, including the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA). *Id.* § 746.13(b), (d).

VIII. Wildlife

A. Sage Grouse

DEQ's EA and MSUMRA analysis must disclose the cumulative impacts to sage grouse from the Spring Creek Mine, together with past, present, and future cumulative impacts. Sage grouse have long been present along the Tongue River and in the area of the Spring Creek and Decker strip-mines. *See, e.g.*, U.S. Dep't of Interior & Mont. Dep't of State Lands, Final Environmental Statement Proposed Mining and Reclamation Plan Spring Creek Mine at II-35 (1979) ("Sage grouse, the most commonly observed upland game bird, have three active breeding-display sites within the 100-mile study area."). Since mining started, however, sage grouse populations have declined:

> Based on the Montana Fish, Wildlife and Parks (MFWP) current classification system for grouse leks, the wildlife monitoring area includes two Confirmed Active lek sites, six Confirmed Inactive leks, and one Confirmed Extirpated (mined through) lek (Map 3.10-1). However, no GRSG have been recorded at either of the two Confirmed Active leks in the last 6 to 7 years, depending on the site.
>
> As discussed in the 2022 Wildlife Annual Monitoring Report, peak GRSG counts for leks within the wildlife monitoring area have been below the current long-term average of 3.4 males/lek/year during 34 of the last 43 years in which separate records are available (Great Plains Wildlife Consulting, Inc. 2023). Average peak male counts exceeded five birds per lek in only 8 of the 43 years with separate counts; an average of more than 10 males per lek was recorded in only 4 years. The last years for those exceedances were 1989 and 1980, respectively. The highest average peak male count recorded in any given year was 27 males per lek in 1978 and the highest male count at an individual lek was 37 in 1978.

> No GRSG broods have ever been observed during annual targeted surveys along drainage routes and no broods have been observed from 2000 to 2022 (Great Plains Wildlife Consulting, Inc. 2023). No GRSG or their sign were encountered during at least 159 individual winter surveys conducted for wintering sage-grouse or other wintering species (e.g., big game, bald eagles) over the last 28 years (1995-2022) (Great Plains Wildlife Consulting, Inc. 2023).

U.S. Dep't of Interior & U.S. Office of Surface Mining, Spring Creek Mine Mining Plan Modification for Federal Coal Leases MTM 94378 and MTM 110693: Final Environmental Impact Statement at 3-27 (2025). DEQ and the State of Montana must manage this species to prevent its listing under the Endangered Species Act and in a manner that "assists in the maintenance and recovery" of the species. MCA, § 87-1-201(10)(a). It is specifically Montana policy to conserve sage grouse. MCA § 87-5-902.

The cumulative impacts of coal mining to sage grouse recovery appear to be significant. Worse, it does not appear that the impacts of mining on sage grouse habitat can be reclaimed. *See* MCA, § 82-4-227(1). U.S. Dep't of Interior & Mont. Dep't of State Lands, Final Environmental Statement Proposed Mining and Reclamation Plan Spring Creek Mine at vi (1979). Regulators concluded that the ability of the land to support livestock and wildlife would decrease: "Approximately 4,400 acres of grazing land would be unusable until reclamation is completed. The loss of vegetation diversity and replacement of shrubby species by grasses would decrease the carrying capacity for wildlife and livestock." *Id.* The ability of the land to support sage grouse will be decreased for the long-term: "The existing diverse habitat would be destroyed and replaced by topographic features and plant species not generally suitable for deer, antelope, sage grouse, and other species currently inhabiting the area. The impacts probably will be long-term. Game birds and animals would be displaced and the population of songbirds, rodents and reptiles would decrease." *Id.* "About 3,000 acres of existing vegetation and the existing vegetation mosaic would be progressively destroyed, over a 25-year period. Reestablishment of the vegetation mosaic would probably require several decades, and ponderosa pine would probably be lost as a self-sustaining regenerating population for the long term." *Id.* at vii. "About 3,000 acres of existing wildlife habitat and grazing land would be progressively destroyed. The carrying capacity of the entire permit area would be lowered for most species that currently inhabit or use the minesite; however, 30 percent less area would be affected than under the original mine plan." *Id.* "Impacts on society would not be substantially different than those generated by the original mine plan. There would be a reduction in the quality of life for the residents of the Birney-Sheridan area resulting from a breakdown in society and impingements on social and psychological well-being." *Id.*

These predicted impacts appear to have materialized, evidenced by the extended decline in sage grouse populations. U.S. Dep't of Interior & U.S. Office of Surface Mining, Spring Creek Mine Mining Plan Modification for Federal Coal Leases MTM 94378 and MTM 110693: Final Environmental Impact Statement at 3-27 (2025). There is, to our knowledge, no example of successful restoration of sage brush steppe habitat at any stip mine in Montana. *See* U.S. Dep't of Interior & Mont. Dep't of State Lands, Final Environmental Statement Proposed Mining and Reclamation Plan Spring Creek Mine at III-16 (1979) (noting that "Present technology has failed to demonstrate an ability to reestablish ponderosa pine, Rocky Mountain juniper, deciduous trees, and many shrubs in reclaimed mine areas of the Northern Great Plains. Several plant species would be precluded from reestablishment of the mine area, particularly those which require specialized microenvironments for their maintenance. Ponderosa pine would undoubtedly be lost as a self-sustaining population for the long term and might be irretrievably eliminated because the requisite moisture, soil, and bedrock conditions would be irreparably destroyed. Further, the success of establishing this species in areas of marginal moisture has not been demonstrated. Rocky Mountain juniper would also be lost from the reclaimed area for the long term. This species, however, would be more likely to become reestablished since it is less dependent on those conditions which support ponderosa pine.").

This apparently permanent degradation of habitat is inconsistent both with MSUMRA and Montana's constitution, Mont. Const. Art. II, § 3, Art. IX, §§1-3, 7. DEQ must disclose and analyze these impacts and may not permit continued degradation of sage grouse habitat. Further, DEQ must, consistent with state policy, be taking steps to actively recover sage grouse populations, rather than continuing to allow incremental destruction of habitat, as here.

The draft Ea states that "Pursuant to the Greater Sage Grouse Stewardship Act and Executive Orders 12-2015 and 21-2015, NTEC consulted with the Montana Sage Grouse Habitat Conservation Program in March 2025 (Montana Sage Grouse Habitat Conservation Program, 2025). The Montana Sage Grouse Habitat Conservation Program drafted three mitigation options based on three different project scenarios using the information provided to them and current Montana Fish, Wildlife and Parks lek statuses ...." However, the mitigation plan and three options are not included in the AM6 application materials and draft EA, and are otherwise unavailable for the public to scrutinize, evaluate or comment on concerning its efficacy. These documents should be made public, and DEQ cannot determine NTEC's application complete until the public has a chance to meaningfully comment on the AM6 applications plan for mitigation of sage grouse impacts.

B. Pallid Sturgeon

DEQ's approved state program under MSUMRA must be consistent with federal law, including the Endangered Species Act. It is apparent from permit application correspondence that DEQ has consulted with FWS and that FWS has issued a "biological opinion" related to the

mine expansion. *See* Ltr. from NTEC to DEQ (Jan. 16, 2026) (referring to "USFWS AM6 Biological Opinion"). This information is highly relevant to public review of the AM6 proposal and must be made available to the public for meaningful public comment. Mont. Const. Art. II, §§ 17, 18; ARM 17.4.625(6). We request that you make this information available on the project webpage and reopen the public comment period after the public has had the opportunity to review this critical information.

It is also apparent from the draft EA that DEQ has not evaluated the downstream impacts of pollution from the mine on the Tongue River. The stream is impaired and salinity from the Decker and Spring Creek mines are important contributors to that impairment. *See supra*. USFWS IPaC indicates that pallid sturgeon are present in the Tongue River downstream from the mine. Pollution from the mine may cumulatively impact sturgeon.

C. Federal Consultation under the ESA

Further, OSM's biological opinion for state programs under SMCRA is invalid. *Ctr. for Biological Diversity v. U.S. Off. of Surface Mining Reclamation & Enf't*, No. CV 23-3343 (SLS), 2026 WL 1506550 (D.D.C. May 29, 2026). Thus, the ESA consultation process that currently exists between OSM and DEQ is unlawful and inconsistent with the ESA. *Id.* Accordingly, DEQ must formally consult with OSM and FWS prior to making any decision on the pending permit. To the degree that FWS relied on the 2020 programmatic biological opinion in its evaluation of the AM6 expansion, its reliance was unlawful. As the court noted in *Center for Biological Diversity*, the 2020 programmatic biological opinion is flawed in numerous respects and may not be a stand-in for full consultation under the ESA.

We appreciate some mitigation measures suggested by DEQ on pesticide and insecticide use, however, they are not sufficient. It is hard to see how the mine expansion will not adversely affect monarch butterflies, western regal fritillaries, and suckley's cuckoo bumble bee, given that mining operations will disturb habitat during nesting and hibernation periods and will destroy wetlands. It is not clear how these impacts will be mitigated.

CONCLUSION

For these reasons, Conservation Organizations respectfully request that the DEQ reverse its decision regarding the acceptability determination on AM6. Ultimately, AM6 cannot be approved based on the certainty that the project violates law and policy.

Sincerely,

Shiloh Hernandez
Senior Attorney

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Gilbert, Sharona

From: marita.sioux@cheyennenation.com
Sent: Monday, July 13, 2026 2:34 PM
To: DEQ AEMD Coal
Subject: [EXTERNAL] Request for Consultation
Attachments: Request for Full Government-to Government Consultation.pdf

Dear Sir or Madam.

Please see attached letter from Northern Cheyenne President Gene Small.

Marita Haugen
Executive Assistant
Northern Cheyenne Tribe
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-WOHEHIV-
The Morning Star

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-WOHEHIV-
The Morning Star

July 13, 2026

Sent via email

Department of Environmental Quality
Coal Section
P.O. Box 200901
Helena, MT 59620-0901
DEQCoal@mt.gov

Re: Request for Full Government-to-Government Consultation on Spring Creek Mine Expansion

To whom it may concern:

It appears from the recently published Notice of Acceptability that DEQ is preparing to permit expanded coal mining at the Spring Creek Mine, adjacent to the Tongue River Reservoir in Big Horn County.[1] The proposed mining, called the AM6 Amendment, will occur on approximately 520 acres. DEQ indicates that it has prepared a draft environmental assessment associated with the proposed mining expansion. Because this mine expansion will occur in ancestral Northern Cheyenne territory, near our present-day Reservation, and will impact the Tongue River, which is of vital importance to the Northern Cheyenne, the Northern Cheyenne Tribe hereby formally requests government-to-government consultation on this expansion, as required by Montana law.

Montana law requires state agencies to fully consult with tribal nations on issues of state policy that affect their interests:

[1] https://deq.mt.gov/Files/Land/CoalUranium/Public-Notices/AM6NoticeAcceptability071126.pdf.

> In formulating or implementing policies or administrative rules that have direct tribal implications, a state agency shall document its consideration of the following principles:
>
> (1) a commitment to cooperation and collaboration;
>
> (2) mutual understanding and respect;
>
> (3) regular and early communication;
>
> (4) a process of accountability for addressing issues; and
>
> (5) preservation of the tribal-state relationship.

MCA § 2-15-142. Consistent with this policy, state agencies must invite the participation of tribes in the preparation of environmental reviews under the Montana Environmental Policy Act (MEPA). ARM 17.4.615(2)(a) ("To identify the scope of an EIS, the agency shall: (a) invite the participation of affected federal, state, and local government agencies, Indian tribes, the applicant, if any, and interested persons or groups ...."); ARM 17.4.609(1) ("Whenever the agency elects to initiate this process, it shall follow the procedures contained in ARM 17.4.615.").

This consultation and collaboration are especially important with respect to coal mining projects, like here, where tribal nations, including especially the Northern Cheyenne, have often been excluded or contacted only as an afterthought. *See* MCA § 82-4-227(2)(d) ("In applying the provisions of this subsection (d), particular attention should be paid to the inadequate preservation previously accorded Plains Indian history and culture.").

Here, DEQ's draft environmental assessment indicates that there are multiple historical and archeological sites in the area to be mined:

> In 1990, site 24BH1041 was documented as a large site encompassing a ridgetop over one mile long and determined to be eligible for the NRHP. Based on revisits and previous determinations of effects, 24BH1041 is now managed as smaller discrete sites (24BH566, 24BH575, 24BH1039, 24BH1067, 24BH1068, 24BH2526,

> 24BH2530, 24BH2531, 24BH3401, 24BH3673, 24BH3674, 24BH3675, and 24BH3967) and is no longer considered a discrete resource (ACR Consultants, Inc, 2024). DEQ will initiate consultation with the Montana SHPO upon determining the application is complete, requesting concurrence on an NRHP Eligibility status of 'Ineligible' for site 24BH1041. Until SHPO concurrence is received, this site is considered undetermined.
>
> In the direct impact analysis area, site 24BH1067, 24BH2526, and 24BH3683 remain "unevaluated". Unevaluated sites require further testing and consultation in order to determine NRHP eligibility and must not be disturbed until final NRHP eligibility status is determined. Site 24BH2526 is located on BLM surface property and NRHP eligibility determination requires BLM consultation. NTEC is working with consultants to conduct the additional evaluation necessary to receive authorization from DEQ, BLM, and MT SHPO prior to surface disturbance. In the interim, the sites must be avoided with a 100-foot buffer.
>
> Upon the completeness determination, interested parties, including but not limited to Montana's tribal reservations, will be invited to consult with DEQ regarding potentially unidentified culturally significant sites in the proposed AM6 areas. SCM will contact DEQ and the Montana State Historical Preservation Office (SHPO) if any unrecorded cultural resource site is discovered in the course of mining. All appropriate action will be taken to properly record and mitigate any such site.

Draft EA 40. It is not sufficient and not consistent with state policy of "early consultation" to leave tribal consultation to the end of the process, when the mine expansion is a done deal. That does not "preserv[e] … the tribal-state relationship." It appears that DEQ, along with the mine operator, have already begun consultation with BLM and the Montana State Historic Preservation Officer (SHPO), but not with the Northern Cheyenne. It appears that DEQ has done no more for consultation with the Northern Cheyenne than send a "notice of completeness" and availability of the EA. This is insufficient.

Additionally, it appears that the mine expansion will continue to cause long-term water quality degradation in the Tongue River basin. The draft environmental assessment recognizes that mining will destroy coal seam aquifers and replace them with spoils that will increase the salinity three-fold. Draft EA 24 ("Spoil wells typically show TDS levels between 3,800 mg/L and 5,670 mg/L and three times increase to the median TDS over the premine conditions of all aquifers (4625 mg/L compared to 1,450 mg/L)."). Because this salinity, along with salts from the Decker Mines, will ultimately, according to DEQ, "discharge[] to the Tongue River Reservoir east of SCM [the Spring Creek Mine]," it will impact one of the most important water sources for the Northern Cheyenne Tribe. Even if these discharges will only occur many years after the end of mining, this is a major concern for us. The Northern Cheyenne Reservation is our land base, which we intend to preserve for all future generations. As you know, the Tongue River is already impaired for salinity and this will only worsen the impairment. DEQ has not completed a much needed total maxim daily load (TMDL) to remedy the salinity pollution in the river.

In light of these concerns, the Northern Cheyenne Tribe respectfully requests that DEQ initiate government-to-government consultation on this mining proposal. This should include:

- meetings;
- site visits;
- involvement of the Tribal Historic Preservation Officer in a Class III cultural resources inventory;
- involvement of Northern Cheyenne officials in the review and assessment of impacts to the Tongue River; and
- re-opening of the public comment period following the full and meaningful government-to-government consultation.

Thank you for your prompt consideration of this matter.

Sincerely,

Gene Small
President