Response to Comments
Westmoreland Mining, LLC, Absaloka Mine
MPDES Permit MT0021229

On September 3, 2024, the Montana Department of Environmental Quality (DEQ) issued Public Notice MT-24-10, stating DEQ's intent to issue a Montana Pollutant Discharge Elimination System (MPDES) permit to Westmoreland Mining, LLC (Westmoreland) for the Absaloka Mine. Public notice MT-24-10 stated that DEQ prepared a draft permit and fact sheet. The public notice required that all substantive comments must be received or postmarked by October 3, 2024, in order to be considered in formulation of the final determination and issuance of the permit.

As a result of comments received during the first public notice, MT-24-10, DEQ prepared an updated Fact Sheet and draft permit and reopened the public comment period. (Administrative Rules of Montana [ARM] 17.30.1376)

On February 3, 2025, DEQ issued Public Notice MT-25-02, stating DEQ's intent to issue an MPDES permit to Westmoreland for the Absaloka Mine. Public notice MT-25-02 stated that DEQ had prepared a draft permit and fact sheet for the project. The public notice required that all substantive comments must be received or postmarked by March 6, 2025, in order to be considered in formulation of the final determination and issuance of the permit.

This Response to Comments document includes a summary of comments received and responses to comments received during both public comment periods. DEQ has considered the following comments in preparation of the final permit and decision. Comments numbered 1 through 5 were received during the first public comment period (MT-24-10); comments numbered 6 through 23 were received during the second comment period (MT-25-02). Duplicative comments (e.g., the same comment received from the same commenter during both public comment periods) are only addressed once in the Response to Comments document.

DEQ has considered these comments in preparation of the final permit and decision. Copies of the original comment letters are available from DEQ upon request. This Response to Comments is an addendum to and supersedes relevant portions of the Fact Sheet prepared for public comment MT-25-02 to the extent further explanation is provided or any changes to the permit are described herein.

The table below identifies individuals supplying written or oral comments on the issuance of MPDES permit MT0021229.

List of Persons Submitting Comments on Draft MPDES Permit MT0021229	
Number	**Commenter**
1	Jesse Noel, P.E., Director, Environmental and Regulatory Affairs, Westmoreland Mining, LLC
2	Todd Briggs, Permitting and Regulatory Compliance Counsel, Westmoreland Mining, LLC

Summarized Comments on Draft MPDES Permit MT0021229

Comments from Public Notice MT-24-10

Comment 1: Application of Western Alkaline Standard (Westmoreland)
Westmoreland requests the outfalls that were reclassified as not meeting Western Alkaline Coal Mining applicability be reconsidered.
Westmoreland stated, "The Western Alkaline Standard at 40 C.F.R. Part 434, Subpart H, is designed to facilitate reclamation and reduce the "negative impacts cause by the predominant use of sedimentation ponds necessary to meet the guidelines for Subpart D – Alkaline Mine Drainage." 67 Fed. Reg. 3370, 3380 (Jan. 23, 2002). The Western Alkaline Standard effluent limitations apply "to alkaline mine drainage at western coal mining operations from reclamation areas, brushing and grubbing areas, topsoil stocking areas, and regraded areas." 40 C.F.R. § 434.81(a). The standards "apply until the appropriate SMCRA authority has authorized bond release." 40 C.F.R. § 434.81(c).

Permit MT0021229, as amended in 2019, assigned the following outfalls to the Western Alkaline Standard: 006, 007, 008, 009, 011, 020, 012, and 027. The permit states that this determination was made because Westmoreland submitted a site-specific Sediment Control Plan which included the elements required by regulation and demonstrated, "using watershed models that implementation of the [Sediment Control Plan] will result in average annual sediment yields that will not be greater than the sediment yield levels from pre-mined, undisturbed conditions." 2019 Permit Modification, Section I.B.2, pg. 10. This standard is drawn directly from 40 C.F.R. § 434.82. Because Outfall 027 is duplicative, please remove it from the permit.

The permit, as amended in 2019, includes a mechanism to transfer additional outfalls to the Western Alkaline Standard. To do so, "the [Sediment Control Plan] must be updated to include the outfall proposed to be transferred, the revised Sediment Control Plan and a revised watershed model must be submitted to and approved by DEQ," the revisions to the Sediment Control Plan "must meet all requirements contained at 40 CFR Part 434.82, and 100% of the drainage area must to an outfall must meet the definition of 'western alkaline reclamation, brushing and grubbing, topsoil stocking, and regarded areas' (as defined at 40 CFR 434.80) to be considered for coverage."

The draft permit reclassified Outfalls 006, 007, 008, 009, 011, 012, and 020 to subcategories other than the Western Alkaline Standard within 40 CFR Part 434. Westmoreland contends that to achieve compliance with new effluent limitations, new sediment control structures would need to be constructed.

As stated in their comments, "It was Westmoreland's understanding that DEQ intended to use the Phase II bond release standard as a proxy for watershed modeling, not as a new substantive requirement to meet *in addition* to the regulatory standard for watershed modeling under 40 C.F.R. Part 434, Subpart H. To the extent DEQ has made a policy determination that the entire MPDES watershed must achieve Phase II bond release prior to eligibility for the Western Alkaline Standard, Westmoreland respectfully asserts that policy determination is not required

by the regulations and its application to remove outfalls that have been in the Western Alkaline Standard for over five years is counterproductive for reclamation."
Westmoreland respectfully requests that DEQ authorize Outfalls 006, 007, 008, 009, 011, 020, 012 to remain in the Western Alkaline Standard based upon DEQ's prior determination of eligibility and to avoid unnecessary surface disturbance.

Response:
As requested by the permittee, DEQ removed Outfall 027 from the draft permit in advance of public notice MT-25-02. Please see the response to Comment 2 for further explanation.

For discussion of the applicability of the Western Alkaline Coal Mining Standards, see the response to Comment 6.

Comment 2: Addition of Outfall 021 to permit and deletion of Outfall 027 (Westmoreland)
Please add outfall 021 to the Permit. Outfall 021 has not yet been constructed but will be constructed during final reclamation. Please remove outfall 027 from the permit because it no longer exists.

Response:
In response to this comment, Montana DEQ has removed Outfall 027 from the permit as it no longer exists.

Outfall 021 was included in the 2015-issued permit. In a correspondence dated June 26, 2023, Westmoreland proposed deleting the outfall; therefore, the draft of the permit public noticed in MT-24-10 did not include Outfall 021. Based on this comment, Montana DEQ included Outfall 021 in the draft of the permit public noticed in MT-25-02.

Comment 3: Middle Fork of Sarpy Creek (Westmoreland)
All segments of the Middle Fork of Sarpy Creek that appear to be intermittent have been dammed prior to mining. All segments of the Middle Fork of Sarpy Creek are ephemeral.

Response:
Middle Fork Sarpy Creek is predominantly ephemeral; it flows only in response to precipitation or snowmelt events. However, just within the mine permit boundary in the SE ¼ of Section 5 and SW ¼ of Section 4 exist two short segments of Middle Fork Sarpy Creek that are wet for much of the year due to groundwater expression, meeting the definition of intermittent stream at ARM 17.30.602(13) (see Appendix III). Therefore, the specific water quality standards identified in ARM 17.24.629(2) must be applied to protect these intermittent segments of Middle Fork Sarpy Creek.

No changes have been made to the permit in response to this comment.

Comment 4: Reasonable Potential Analysis (RPA) (Westmoreland)

RPAs have been placed in the permit for Outfalls 013 through 020. No analysis has been conducted on the RPAs, and no foreseeable analysis will be conducted on the RPAs. The RPAs should be removed from the permit.

Response:
Monitoring data was not available for Outfalls 013 - 020 due to no discharges occurring in the previous permit term. Montana DEQ concurs that no reasonable potential analysis was performed and, in response to this comment, removed the discussion regarding reasonable potential analyses from the fact sheet for public notice **MT-25-02**.

Comment 5: Monitoring for additional parameters (Westmoreland)
Mercury, TKN, and hardness sampling have been added to the Permit. Please explain why these parameters were added to the permit.

Response:
DEQ added mercury monitoring because of its potential presence in coal mine discharges and because it has EPA-recommended Clean Water Act section 304(a) criteria for which the state of Montana has adopted water quality standards in DEQ Circular 7. Monitoring for mercury is commonly found in coal mine MPDES permits.

The 2015-issued permit did not contain any effluent total hardness monitoring requirements. The simplest definition of water hardness is the amount of divalent cations in the water. This parameter factors into metals toxicity (i.e., metals become more toxic when water hardness is lower, and many metals water quality criteria are calculated using an equation that includes hardness). To better determine the applicable metals' water quality standards, DEQ has established hardness monitoring requirements in the permit.

Total Kjeldahl nitrogen monitoring was removed from the permit as detailed in the response to Comment 8.

Comments from Public Notice MT-25-02

Comment 6: Application of Western Alkaline Standard (Westmoreland)
Westmoreland requests the outfalls that were reclassified as not meeting Western Alkaline Coal Mining applicability be reconsidered.
Westmoreland stated, "The Western Alkaline Standard at 40 C.F.R. Part 434, Subpart H, is designed to facilitate reclamation and reduce the "negative impacts cause by the predominant use of sedimentation ponds necessary to meet the guidelines for Subpart D – Alkaline Mine Drainage." 67 Fed. Reg. 3370, 3380 (Jan. 23, 2002)." The Western Alkaline Standard effluent limitations apply "to alkaline mine drainage at western coal mining operations from reclamation areas, brushing and grubbing areas, topsoil stocking areas, and regraded areas." 40 C.F.R. § 434.81(a). The standards "apply until the appropriate SMCRA authority has authorized bond release." 40 C.F.R. § 434.81(c). Westmoreland stated Western Alkaline Standards do no refer to bond release except to indicate when the standards no longer apply for a given outfall.

Permit MT0021229, as amended in 2019, assigned the following outfalls to the Western Alkaline Standard: 006, 007, 008, 009, 011, 020, 012, and 027. The permit states that this determination was made because Westmoreland submitted a site-specific Sediment Control Plan which included the elements required by regulation and demonstrated, "using watershed models that implementation of the [Sediment Control Plan] will result in average annual sediment yields that will not be greater than the sediment yield levels from pre-mined, undisturbed conditions." 2019 Permit Modification, Section I.B.2, pg. 10. This standard is drawn directly from 40 C.F.R. § 434.82. Because Outfall 027 is duplicative, please remove it from the permit.

The permit, as amended in 2019, includes a mechanism to transfer additional outfalls to the Western Alkaline Standard. To do so, "the [Sediment Control Plan] must be updated to include the outfall proposed to be transferred, the revised Sediment Control Plan and a revised watershed model must be submitted to and approved by DEQ," the revisions to the Sediment Control Plan "must meet all requirements contained at 40 CFR Part 434.82, and 100% of the drainage area must to an outfall must meet the definition of 'western alkaline reclamation, brushing and grubbing, topsoil stocking, and regarded areas' (as defined at 40 CFR 434.80) to be considered for coverage."

The draft permit reclassified Outfalls 006, 007, 008, 009, 011, 012, and 020 to subcategories other than the Western Alkaline Standard within 40 CFR Part 434. Westmoreland contends that to achieve compliance with new effluent limitations, new sediment control structures would need to be constructed.

As stated in their comments, "It was Westmoreland's understanding that DEQ intended to use the Phase II bond release standard as a proxy for watershed modeling, not as a new substantive requirement to meet *in addition* to the regulatory standard for watershed modeling under 40 C.F.R. Part 434, Subpart H. To the extent DEQ has made a policy determination that the entire MPDES watershed must achieve Phase II bond release prior to eligibility for the Western Alkaline Standard, Westmoreland respectfully asserts that policy determination is not required by the regulations and its application to remove outfalls that have been in the Western Alkaline Standard for over five years is counterproductive for reclamation."

In the comment, Westmoreland said "Subpart H of 40 C.F.R. Part 434 does not require reclamation areas to meet a specific phase of bond release." Westmoreland states that 40 CFR Part 434, Subpart E (Post-Mining Areas) can only be applied where it has been determined that the Western Alkaline Standard is not applicable. As stated in the closing of the comment, "If Western Alkaline Standards apply, the Post-Mining standards cannot apply. Here, the Western Alkaline Standards apply to outfalls 006, 007, 008, 009, 011, 020, 012, 021, and 026; therefore, none of the outfalls may be regulated by the Post-Mining standards."

Response:
40 CFR Part 434 is applicable to this facility. This effluent limitations, guidelines, and standards (ELG) comprises subparts dependent on the operations occurring, the wastewater characteristics, and the condition of the outfall areas discharging to each individual outfall. Subparts to 434 that apply to this facility include:

- Subpart B – Coal Preparation Plants and Coal Preparation Plant Associated Areas
- Subpart D – Alkaline Mine Drainage
- Subpart F – Miscellaneous Provisions
- Subpart H – Western Alkaline Coal Mining

Subparts B, D, and F apply to active mining areas. Subpart H applies to areas that are being, or have been reclaimed, and are in phases of bond release based on Surface Mining Control and Reclamation Act (SMCRA) requirements. Following recovery of coal, distribution of spoil, and initial contouring consistent with post-mine contouring requirements of the mine's coal permit, active mine areas transition to reclamation areas upon associated bond release requirements described at ARM 17.24.1116(6).

DEQ has reviewed the basis for the U.S. Environmental Protection Agency (EPA) Western Alkaline Coal Mining Subcategory including the Final Rule as documented in the Federal Register Notice (FR Vol. 67, Number 15, January 23, 2002, pages 3370 – 3410) and the Development Document for Final Effluent Limitations Guidelines and Standards for the Western Alkaline Coal Mining Subcategory (EPA 821-B-01-012, December 2001). As stated in 40 CFR 434.81, 40 CFR Part 434, Subpart H applies to drainage at western coal mining operations from reclamation areas, brushing and grubbing areas, topsoil stockpiling areas, and regraded areas. These areas are defined in 40 CFR 434.11(l) and 40 CFR 434.80(a), (e), and (b), respectively, as follows:

- "Reclamation area" is the surface area of a coal mine which has been returned to required contour and on which revegetation (specifically, seeding or planting) work has commenced.
- "Brushing and grubbing area" is the area where woody plant materials that would interfere with soil salvage operations have been removed or incorporated into the soil that is being salvaged.
- "Topsoil stockpiling area" is the area outside the mined-out area where topsoil is temporarily stored for use in reclamation, including containment berms.
- "Regraded area" is the surface area of a coal mine which has been returned to required contour.

Section V.B. of the Federal Register notice provides background information on the development of the regulation and subcategory. Section V.B.1. states, "EPA has determined that the predominant use of sedimentation ponds in order to meet the Subpart E numeric standards for settleable solids have caused negative impacts in arid and semiarid environments. This is predominantly due to the large land areas and volume of runoff that must be controlled through ponds in order to meet a sediment limit that is not appropriate for runoff in the arid and semiarid regions of the western United States. EPA notes that sedimentation ponds are considered an effective BMP for controlling sediment, and that sedimentation ponds may be used in conjunction with other BMPs in order to control sediment loads. EPA also recognizes that sedimentation ponds do not necessarily cause negative environmental impacts in all cases. EPA believes that ponds may be necessary in certain circumstances to ensure that sediment levels are

not increased over pre-mined levels or may be necessary to meet SMCRA requirements or to protect water quality."

The numeric limits for TSS established for active and post-mining areas in 40 CFR Part 434 were based on the treatment capabilities of sedimentation ponds. According to the development document for the Western Alkaline subcategory, use of sedimentation ponds to achieve sediment reductions to meet the TSS limits in arid and semiarid western regions can:

- Require significant additional surface disturbance;
- Result in environmental harm through the disruption of hydrologic balance;
- Adversely affect valuable riparian or aquatic communities; and
- Create contention during the administration of basin water rights.

Thus, the ELGs for the Western Alkaline subcategory allow the use of alternative sediment control best management practices (BMPs) to prevent an increase in the average annual sediment yield from pre-mined, undisturbed conditions, to be identified in the site-specific sediment control plan.

In the draft permits prepared for MT-24-10 and MT-25-02, DEQ used SMCRA Phase II bond release to determine the applicability of the Western Alkaline Coal Mining Subcategory. In the second public notice draft permit, DEQ applied the ELGs for Post-Mining Areas at 40 CFR Part 434 Subpart E to outfalls in drainage areas in Phase 1 bond release and the ELGs for Western Alkaline Coal Mining at 40 CFR Part 434 Subpart H to outfalls in drainage areas in Phase 2 bond release. Upon consideration of the Permittee's comment and review of both the Development Document and the Final Rule, DEQ has determined that Phase II bond release is not required for the Western Alkaline Coal Mining Subcategory to be applicable to reclaimed areas. According to the development document, one of the benefits of implementing alternative sediment control BMPs, as allowed under the Western Alkaline standards, instead of sedimentation ponds is that it minimizes disruptions to flow regime. The document states, "Sedimentation ponds have significant potential for removing runoff from the hydrologic system, and precluding potential down-drainage uses. With the implementation of alternative sediment control BMPs, drainage is allowed to flow relatively unimpeded. As a result of the appropriate implementation of these systems, impacts to downstream water users and to intermittent or perennial water resources, are minimized or avoided. In addition, the long-term flow pattern is established early in the reclamation process and sudden impacts to stream morphology and flow regime experienced after the removal of a sedimentation pond at Phase II bond release can be prevented. Disruption of the prevailing hydrologic balance in arid and semiarid regions can be expected to be much greater when the use of sedimentation ponds is predominant, than when BMPs are used to simulate pre-mining, undisturbed conditions." DEQ acknowledges that application of Post-Mining standards to reclaimed areas in Phase 1 bond release would necessitate use of sedimentation ponds to achieve necessary sediment reductions, could negatively impact water quality and the environment, and would be inconsistent with the intent of the Western Alkaline standards.

Therefore, DEQ is applying the regulatory requirements for the Western Alkaline Coal Mining Subcategory to those outfalls in reclamation areas in Phase 1, 2, or 3 bond release in the final permit, which includes the following outfalls:

- 006, 007, 008, 009, 011, 012, 020, and 021

The Permittee commented that Western Alkaline standards should be applied to Outfall 026. However, according to topographic maps, Outfall 026 is in an active mining area and the drainage area is not within any bond release phase. Therefore, DEQ has determined that the Western Alkaline Coal Mining Subcategory is not applicable to Outfall 026 and the final permit continues to apply the effluent limits required by 40 CFR 434, Subpart D, Alkaline Coal Mining to this outfall.

The permittee provided topographic maps, included as Attachments 1 and 2, showing the status of outfalls (active mining or Western Alkaline), outfall drainage areas, and the bond phase for each outfall (1, 2, or 3). Table 1 below provides a listing of each outfall, a description of the types of discharges at the outfall, the applicable ELG subpart, the basis and rationale for each determination, the outfall structure, and the receiving water.

Table 1

Outfall	Description	ELG Subpart	Basis Rationale – MPDES Outfall and Bond Phase	Receiving Water
001	Storm water runoff, mine drainage, and coal processing water	B – Coal Prep D – Alkaline Mine (BAT/BPT)	• Outfall receives coal processing wastewater • Outfall drainage comes from active mining areas • Existing source	Unnamed ephemeral tributary to Sarpy Creek
002	Storm water runoff and mine drainage	D – Alkaline Mine (BAT/BPT)	• Outfall drainage comes from active mining areas • Existing source	Unnamed ephemeral tributary to Middle Fork Sarpy Creek
006	Stormwater runoff	H – Western Alkaline	• All outfall drainage comes from reclaimed areas	Unnamed ephemeral tributary to East Fork Sarpy Creek
007	Stormwater runoff	H – Western Alkaline	• All outfall drainage comes from reclaimed areas	Unnamed ephemeral tributary to East Fork Sarpy Creek
008	Stormwater runoff	H – Western Alkaline	• All outfall drainage comes from reclaimed areas	Unnamed ephemeral tributary to East Fork Sarpy Creek
009	Stormwater runoff	H – Western Alkaline	• All outfall drainage comes from reclaimed areas	Unnamed ephemeral tributary to East Fork Sarpy Creek
011	Stormwater runoff	H – Western Alkaline	• All outfall drainage comes from reclaimed areas	Unnamed ephemeral tributary to East Fork Sarpy Creek
012	Stormwater runoff	H – Western Alkaline	• All outfall drainage comes from reclaimed areas	Unnamed ephemeral tributary to East Fork Sarpy Creek

Table 1				
Outfall	**Description**	**ELG Subpart**	**Basis Rationale – MPDES Outfall and Bond Phase**	**Receiving Water**
013	Storm water runoff and mine drainage	D – Alkaline Mine (BPT/BAT and WQ)	• Outfall drainage comes from active mining areas • Existing source • Receiving water subject to WQC for iron	Unnamed ephemeral tributary to Middle Fork Sarpy Creek[1]
015	Storm water runoff and mine drainage	D – Alkaline Mine (BPT/BAT and WQ)	• Outfall drainage comes from active mining areas • Existing source • Receiving water subject to WQC for iron	Unnamed ephemeral tributary to Middle Fork Sarpy Creek[1]
016	Storm water runoff and mine drainage	D – Alkaline Mine (NSPS and WQ)	• Outfall drainage comes from active mining areas • New source • Receiving water subject to WQC for iron	Unnamed ephemeral tributary to Middle Fork Sarpy Creek[1]
017	Storm water runoff and mine drainage	D – Alkaline Mine (NSPS and WQ)	• Outfall drainage comes from active mining areas • New source • Receiving water subject to WQC for iron	Unnamed ephemeral tributary to Middle Fork Sarpy Creek[1]
018	Storm water runoff and mine drainage	D – Alkaline Mine (NSPS and WQ)	• Outfall drainage comes from active mining areas • New source • Receiving water subject to WQC for iron	Unnamed ephemeral tributary to Middle Fork Sarpy Creek[1]
020	Soil stockpiling area	H – Western Alkaline	• Long term soil stockpiling area • No active mining taking place within this outfall area	Unnamed ephemeral tributary to Middle Fork Sarpy Creek
021	Not yet constructed	H – Western Alkaline	• All outfall drainage will come from reclaimed areas	Unnamed ephemeral tributary to Middle Fork Sarpy Creek
023	Storm water runoff and mine drainage	D – Alkaline Mine (NSPS)	• Outfall drainage comes from active mining areas • New source	Unnamed ephemeral tributary to Middle Fork Sarpy Creek
024	Storm water runoff and mine drainage	D – Alkaline Mine (NSPS)	• Outfall drainage comes from active mining areas • New source	Unnamed ephemeral tributary to Middle Fork Sarpy Creek
026	Storm water runoff and mine drainage	D – Alkaline Mine (NSPS)	• Outfall drainage comes from active mining areas • New source	Unnamed ephemeral tributary to Middle Fork Sarpy Creek

[1] As discussed in response to Comment 3, segments of Middle Fork Sarpy Creek are intermittent.

Sections 1.4 and of the permit provides a mechanism to reclassify an outfall as Western Alkaline during the permit term through minor modification. Changes to the permit as a result of outfall transition to Western Alkaline Standards are processed as a minor modification. Only effluent limitations enforceable under 40 CFR 434 Subpart H are applicable to outfalls designated under

Western Alkaline Standards, prior associated effluent limitations are no longer applicable following permit modification.

Permit modification for outfall transition to Western Alkaline Standards must include specific Best Management Practice inspection, maintenance, and reporting conditions drawn from the Department approved Sediment Control Plan, or as determined by the Department.

Comment 7: Location of Outfalls Within Their Respective Tables
Westmoreland had numerous comments on the structure of the tables within the draft permit. There were questions as to why certain outfalls were removed from tables and questions regarding outfalls subject to New Source Performance Standards (NSPS). Westmoreland questioned the classification of the receiving water for certain outfalls discharging to the Middle Fork Sarpy Creek. Westmoreland also suggests reformatting the tables to align with their comments.

Response:
The tables are formatted to present effluent limitations based on applicable technology and water quality-based requirements, which vary for each outfall.

Table 2 applies to Outfalls 001 and 002. These outfalls are subject to technology-based effluent limits for TSS, pH, and iron based on ELGs in 40 CFR Part 434, Subparts B (Outfall 001 only) and D. They are also subject to WQBELs for oil and grease based on ARM 17.30.637(1)(b).

Table 3 is applicable to Outfalls 013, 015, 016, 017, and 018. These outfalls are subject to technology-based effluent limits for TSS and pH based on ELGs in 40 CFR Part 434, Subpart D, which are the same for existing sources (Outfalls 013 and 015) and new sources (Outfalls 016, 017, and 018) for these parameters. Although the outfalls are also subject to ELGs for iron, they are subject to more stringent WQBELs for iron based on water quality criteria applicable to the receiving waters. See the response to Comment 3 for the comment on the intermittent designation of receiving waters. They are also subject to WQBELs for oil and grease based on ARM 17.30.637(1)(b).

Table 4 applies to Outfalls 023, 024, and 026. These outfalls are subject to technology-based effluent limits for TSS, pH, and iron based on ELGs in 40 CFR Part 434, Subpart D for new source coal mines. See the response to Comment 16 for the rationale for applying NSPS for Outfalls 016, 017, 018, 023, 024, and 016.

Tables 5 through 8 provide effluent limitations in the event of precipitation events as allowed in 40 CFR 434, Subpart F. However, the effluent limits are included in separate tables since they vary by outfall. Tables 5 and 6 are for precipitation events less than or equal to the 10 year, 24-hour event, with Table 6 retaining the maximum daily WQBELs for total iron for Outfalls 013, 015, 016, 017, and 018 based on water quality criteria applicable to the receiving waters. Similarly, Tables 7 and 8 are for precipitation events greater than the 10-year, 24-hour event with Table 8 retaining maximum daily WQBELs for total iron for Outfalls 013, 015, 016, 017, and 018 based on water quality criteria applicable to the receiving waters.

No changes were made to the permit in response to this comment.

Comment 8: Nutrient Monitoring Requirements
Westmoreland states: "Outfalls 002, 013, 015, 016, 017, 018, 023, 024, and 026 all discharge to unnamed ephemeral tributaries to Middle Fork Sarpy Creek, not to Sarpy Creek directly and not to any tributary of Sarpy Creek. Outfall 001 is approximately 2.4 miles upstream of Sarpy Creek; therefore, as noted by DEQ (Fact Sheet, p. 19), "[a]t this distance, it is unlikely that periodic discharges from Outfall 001 to an ephemeral tributary will be of sufficient volume to reach Sarpy Creek." The Fact Sheet, at page 17, also accurately concludes that "[t]he mine is not a significant source of nutrients." In fact, the water quality assessment for the Sarpy Creek impairment lists "grazing in riparian or shoreline zones and non-irrigated crop production" as probable sources of impairment, not mining. Contrary to these facts, the Fact Sheet erroneously deems nutrients as a pollutant of concern. In turn, the Permit inappropriately includes new monitoring requirements or Nitrate + Nitrogen, TKN, Nitrogen and Phosphorus throughout the Permit. The determination that Nitrate + Nitrogen, TKN, Nitrogen, and Phosphorus are pollutants of concern is erroneous. The Fact Sheet should be corrected and all monitoring requirements for Nitrate + Nitrogen, TKN, Nitrogen, and Phosphorus should be removed from the Permit."

Response:
In consideration of this comment, DEQ agrees that the Fact Sheet incorrectly characterized these nutrient parameters and has removed the related monitoring requirements from the permit.

Comment 9: Whole Effluent Toxicity, Acute Requirements
Westmoreland states: "No basis exists for the inclusion of the new monitoring requirement for Whole Effluent Toxicity. The mine is not new, has not changed its coal preparation operation, and has multiple years of operation and data collection that indicate no toxicity is present; therefore, no additional effluent characterization is needed. The Fact Sheet's (page 25) implication that further characterization is needed is wrong. All Whole Effluent Toxicity monitoring requirements should be removed from the Permit."

Response:
Acute whole effluent toxicity (WET) monitoring is consistent with the 2015 issued permit and DEQ has retained this requirement in the final permit. WET testing is required to assess any negative effects caused by aggregate toxic effects of pollutants in the discharge. WET monitoring is required only at those outfalls receiving runoff from areas categorized as "coal preparation plants and coal preparation plant associated areas" as defined by 40 CFR 424.11 (i.e., Outfall 001). Acute WET testing is necessary for characterization of the effluent and for future RPAs [ARM 17.30.637(1)(d)]. Monitoring for chronic toxicity is not required because the discharges from the facility are intermittent and sporadic and are unlikely to result on chronic impacts on the beneficial uses of the receiving waters. If acute toxicity is detected during routine monitoring at one of these monitoring locations, accelerated monitoring is triggered. If acute toxicity occurs in the accelerated monitoring, the Permittee would need to undertake a Toxicity Identification Evaluation/Toxicity Reduction Evaluation to establish the cause of the toxicity, locate the source(s) of the toxicity, and develop control or treatment for the toxicity.

Comment 10: Narrative Effluent Limitations
Westmoreland stated: "Pursuant to *City and County of San Francisco, California v. EPA*, 603 U.S. ____ (2025), "end result" requirements exceed the authority of the Clean Water Act and are invalid. The Permit's narrative effluent limitations at section 1.4.5, pages 6-7 of the Permit are a recitation of the narrative water quality standard found at ARM 17.30.637(1). Because the narrative effluent limitations effectively make the permittee responsible for the quality of water in the receiving water body, the limitations are "end result" limitations, which are invalid and should be removed from the Permit."

Response:
MT-25-02 was public noticed prior to the ruling in *City and County of San Francisco v. EPA*, 145 S. Ct. 704 (2025). Consistent with this ruling, DEQ has removed the generic narrative prohibitions at section 1.4.5. Nevertheless, and also consistent with the referenced U.S. Supreme Court case, DEQ determines if a discharge implicates the narrative prohibitions found at ARM 17.30.637(1), and, if necessary, imposes any specific effluent limitations needed to ensure that these narrative water quality standards are met. For example, DEQ identified the need for additional information to evaluate the prohibition against discharges that create concentrations or combinations of materials which are toxic or harmful to human, animal, plant or aquatic life (ARM 17.30.637(1)(d)) and required acute WET monitoring to ensure this information is available for future permit renewals. Additionally, DEQ identified RP for oil and grease, total suspended solids, and total dissolved solids, see Fact Sheet p. 21, and imposed effluent limitations to meet these narrative water quality standards.

Comment 11: Additional Comments
Westmoreland commented that the iron limits should be based on dissolved iron and not total iron. They stated this is due to the "science (see MPDES permit) used to develop the chronic iron standard is based on dissolved iron."

Response:
DEQ disagrees and has retained the total iron effluent limitations. The permit contains effluent limitations for Outfalls 013, 015, 016, 017, and 018 based on the chronic aquatic life criterion for iron in Circular DEQ-7 and for Outfalls 001, 002, 023, 024, and 026 based on applicable ELGs in 40 CFR Part 434. Footnote 9 of the Circular DEQ-7, Montana Numeric Water Quality Standards states, "Standards for metals (except aluminum) in surface water are based upon the analysis of samples following a 'total recoverable' digestion procedure (EPA Method 200.2, Supplement I, Rev 2.8, May 1994)." The ELGs in 40 CFR Part 434 express effluent limitations for iron as total iron. Furthermore, ARM 17.30.1345(5) requires that all effluent limits for a metal be expressed in terms of "total recoverable metal" (as defined in 40 CFR Part 136) unless an ELG specifies the limit in dissolved or valent or total form, it is necessary to express the limit in a different form to carry out the provisions of the CWA, or all approved analytical methods for the metal inherently measure only its dissolved form. None of these exceptions apply in this case.

No changes were made to the permit in response to this comment.

Fact Sheet Comments

Westmoreland had several comments on the fact sheet that are listed verbatim below, followed by DEQ's responses:

Comment 12: Table 1. Facility Information (Page 2 of 37)
This table shows unnamed ephemeral tributaries are the receiving waters. There is no reference to intermittent portions of the Middle Fork of Sarpy Creek as discussed in the Draft Permit.

Response: Table 1 is only intended to identify the immediate receiving waters and is not intended to summarize the classification of downstream waters. See the table included in the response to Comment 6 for a designation of receiving waters and outfalls. See also the response to Comment 3 and Section II.A.2.b.iii of the permit fact sheet for the rationale in determining that Middle Fork Sarpy Creek is an intermittent stream.

No changes were made to the permit in response to this comment.

Comment 13: Discharge Points and Receiving Waters (Page 3 of 37)
This paragraph states: "…unnamed ephemeral tributaries to Middle Fork Sarpy Creek..." There is no reference to intermittent portions of the Middle Fork of Sarpy Creek as discussed in the Draft Permit.

Response: The referenced paragraph in the fact sheet is only intended to identify the immediate receiving waters and is not intended to summarize the classification of downstream waters. See the table included in the response to Comment 6 for a designation of receiving waters and outfalls. See also the response to Comment 3 and Section II.A.2.b.iii of the permit fact sheet for the rationale in determining that Middle Fork Sarpy Creek is an intermittent stream.

No changes were made to the permit in response to this comment.

Comment 14: Table 2. Description of Discharge Points (Page 4 of 37)
This table shows unnamed ephemeral tributaries are the receiving waters. There is no reference to intermittent portions of the Middle Fork of Sarpy Creek as discussed in the Draft Permit.

Response: Table 2 is only intended to identify the immediate receiving waters and is not intended to summarize the classification of downstream waters. See the table included in the response to Comment 6 for a designation of receiving waters and outfalls. See also the response to Comment 3 and Section II.A.2.b.iii of the permit fact sheet for the rationale in determining that Middle Fork Sarpy Creek in an intermittent stream.

No changes were made to the permit in response to this comment.

Comment 15: Table 3. Outfalls for Fee Purposes (Page 5 of 37)
This table shows unnamed ephemeral tributaries are the receiving waters. There is no reference to intermittent portions of the Middle Fork of Sarpy Creek as discussed in the Draft Permit.

Response: Table 3 is only intended to identify the immediate receiving waters and is not intended to summarize the classification of downstream waters. See also the response to Comment 3 and Section II.A.2.b.iii of the permit fact sheet for the rationale in determining the Middle Fork Sarpy Creek in an intermittent stream.

No changes were made to the permit in response to this comment.

Comment 16: Paragraph 4. (Page 8 of 37)
The fact sheet stated the following:

> *Outfalls 016, 017, 018, 023, 024, and 026 have been determined to discharge effluent from a new source coal mine as defined at 40 CFR 434.11(j) and commenced discharges from these outfalls after promulgation of the October 9, 1985, amendments to 40 CFR 434. These outfalls are associated with significant new surface disturbance in new drainages to Middle Fork Sarpy Creek. These drainages extend south onto the Crow Indian Reservation, an area previously unaffected by mining. Additionally, the USEPA determined that the expansion of coal mining onto the Crow Indian Reservation is a major alteration because of extensive new surface disruption as a result of the mining operation, and because there will be discharge into an area that was not previously affected by wastewater from the Crow Indian Reservation mine. Therefore, NSPS requirements of the ELG apply to Outfalls 016, 017, 018, 023, 024, and 026.*

The permittee commented that Outfalls 016, 017, 018, 023, 024, and 026 are not from a new source coal mine nor are these outfalls from a new disturbance in new drainages to an area previously unaffected by mining. These drainages do not extend south onto the Crow Indian Reservation. These drainages extend north, off of, the Crow Indian Reservation. All discharges from these outfalls are off of the Crow Indian Reservation and all discharges eventually flow into the Middle Fork of Sarpy Creek.

Response: The applicability of New Source Performance Standards (NSPS) in 40 CFR 434 Subpart D from a new source coal mine, as defined in 40 CFR 434.11(j), and incorporated by reference at ARM 17.30.1207(3), is based on the date on which a major alteration resulting in a new, altered or increased discharge of pollutants has occurred and not on when the mine was established. Once a point source is deemed a new source coal mine and NSPS effluent requirements applied to its outfalls, that point source will continue to be classified as a new source coal mine and NSPS requirements applied to its outfalls in subsequent MPDES permits.

A "new source coal mine" as defined at 40 CFR 434.11(j)(1) means, "a coal mine (excluding coal preparation plants and coal preparation plant associated areas) including an abandoned mine which is being remined.

> (i) The construction of which is commenced after May 4, 1984; or
> (ii) Which is determined by the EPA Regional Administrator to constitute 'major alteration.' In making this determination, the Regional Administrator shall take into account whether one or more of the following events resulting in a new, altered or increased discharge of pollutants has occurred after May 4, 1984 in connection with the mine for which the NPDES permit is being considered:
>
> (A) Extraction of a coal seam not previously extracted by that mine;
> (B) Discharge into a drainage area not previously affected by wastewater discharge from the mine;
> (C) Extensive new surface disruption at the mining operation;
> (D) A construction of a new shaft, slope, or drift; and
> (E) Such other factors as the Regional Administrator deems relevant."

In the 2015-issued permit, DEQ determined that Outfalls 016, 017, 018, 023, 024, and 026 resulted from a "new source coal mine" because they resulted from a "major alteration" considering: 1) the outfalls are associated with significant new surface disturbance in new drainages to Middle Fork Sarpy Creek in an area previously unaffected by mining (meets condition in 40 CFR 434.11(j)(1)(ii)) and 2) it will result in extensive new surface disruption as a result of the mining operation (meets condition in 40 CFR 434.11(j)(1)(ii)). According to the fact sheet for the 2015-issued permit (page 3), Outfalls 016, 017, and 018 were constructed during the term of the prior 2000-issued permit, and Outfalls 023, 024, and 026 were expected to be constructed during the term of the 2015-issued permit.

DEQ acknowledges that the description on page 8 of the Fact Sheet infers that the drainages flow onto the Crow Reservation. The description should, instead, have read as follows:

> *Outfalls 016, 017, 018, 023, 024, and 026 have been determined to discharge effluent from a new source coal mine as defined at 40 CFR 434.11(j) and commenced discharges from these outfalls after promulgation of the October 9, 1985, amendments to 40 CFR 434. The permittee expanded mining to a coal reserve area south of its previous operations to the Crow Indian Reservation Boundary (the Tract III South Extension Revision) during the term of the 2015-issued permit, which required the addition of several outfalls. Outfalls 016, 017, and 018 were constructed during the term of the 2000-issued permit and Outfalls 023, 024, and 026 were constructed during the term of the 2015-issued permit. These outfalls are associated with significant new surface disturbance in new drainages to Middle Fork Sarpy Creek. ~~These drainages~~ The new mining operations extends south onto the Crow Indian Reservation~~,~~ in an area previously unaffected by mining. Additionally, the USEPA determined that the expansion of coal mining ~~onto the Crow Indian Reservation~~ is a major alteration because of extensive new surface disruption as a result of the mining operation, and because there will be*

discharge into an area that was not previously affected by wastewater from the ~~Crow Indian Reservation~~ mine. Therefore, NSPS requirements of the ELG apply to Outfalls 016, 017, 018, 023, 024, and 026.

Nevertheless, DEQ maintains that the portion of the coal mine that drains to Outfalls 016, 017, 018, 023, 024, and 026 is a "new source coal mine" for the reasons discussed above (which are independent of the direction of flow in the drainage areas).

Comment 17: ii. Alkaline Mine Drainage (Page 9 of 37)

2) New Sources, Outfalls 016, 017, 018, 023, 024, 026

These outfalls are not new sources and should be part of Table 6. TBELs – Outfalls 001, 002, 013, and 015.

Response: See the response to the comment 16. No changes were made to the permit in response to this comment.

Comment 18: iii. Post-Mining Areas (Page 10 of 37)

Phase II bond release is not a requirement for Western Alkaline Standards. Final bond release is required to remove the outfall.

Response: As stated in the response to Comment 6, DEQ has determined that the applicability of the Western Alkaline Coal Mining Subcategory is not contingent on bond release. Outfalls with effluent requirements based on the Post-Mining Subcategory for 40 CFR Part 434 have been reclassified to Western Alkaline Coal Mining.

Comment 19: iv. Precipitation Events, All Outfalls (Page 10 of 37)

1) Storm Events Less than or Equal to the 10-year, 24-hour Event

The NOAA Atlas 2, Volume 1 defines the 10-year, 24-hour precipitation as 2.58 inches.

NOAA Atlas Volume 1 was superseded by NOAA Atlas 14 Volume 12 effective August 31, 2024. The 10-year, 24- hour event is 2.54 inches.

2) Storm events Greater than the 10-year, 24-hr Precipitation Event (Page 11 of 37)
Replace 2.58 inches with 2.54 inches.

Response: DEQ has reviewed NOAA Atlas 14 Volume 12, Version 2 (https://hdsc.nws.noaa.gov/pfds/pfds_map_cont.html?bkmrk=mt). The 10-year, 24-hour event for Hardin, Montana (ZIP code 59034) is 2.45 inches. DEQ changed the permit language to reflect this number.

Comment 20: v. Western Alkaline Standards: Outfalls 006 and 007 (Page 11 of 37)

Phase II bond release is not a requirement for Western Alkaline Standards. Final bond release is required to remove the outfall.

Response: See response to Comment 6.

Comment 21: f. Outfalls 001, 002, and 023-026 and Outfall 006-012, 020, and 021 (page 19 of 37)
Westmoreland agrees that no RPA for nutrients is required, but also notes that DEQ-12A was repealed by the Legislature in 2021 (SB358) and prior to that was subject to a severability clause that also invalidated its applicability.

Response: DEQ acknowledges the permittee's comment. No revisions to the permit or fact sheet are necessary.

Comment 22: f. Outfalls 013, 015-018 (Page 20 of 37)
Outfalls 013, 015-018 discharge directly to ephemeral tributaries to Middle Fork Sarpy Creek and are located upstream of identified intermittent segments.

There are no intermittent segments within Middle Fork Sarpy Creek. Absaloka Mines National Pollution Discharge and Elimination System (NPDES) for the Crow Indian Reservation discusses outfalls, just upstream from Outfalls 013, 015-018, and therefore does not discuss intermittent segments of Middle Fork Sarpy Creek.

See the response to Comment 3. DEQ does not agree that there are no intermittent segments of Middle Fork Sarpy Creek and DEQ has retained Appendix III.

No changes were made to the permit in response to this comment.

Comment 23: Appendix III – Middle Fork Sarpy Creek Intermittent Segments
Please remove Appendix III as these are no intermittent segments of Middle Fork Sarpy Creek.

Response: See the response to Comment 3. DEQ does not agree that there are no intermittent segments of Middle Fork Sarpy Creek and DEQ has retained Appendix III.

No changes were made to the permit in response to this comment.

Environmental Assessment Comments

Westmoreland had several comments on the draft Environmental Assessment (EA) that are listed verbatim below, followed by DEQ's responses:

Comment 24: Facility Location
Page 3, Section 1.3 and Table 1 describe the mine as located "in Hardin, Montana" and should be revised to "near Hardin, Montana."

Response: DEQ agrees and made the requested correction.

Comment 25: Estimated Disturbance

Table 1, page 4, provides an "Estimated Disturbance" for the entire mining activities, beyond the scope of the MPDES permit being considered. Specific to the MPDES permit under consideration here, DEQ's draft permit removes outfalls from the Western Alkaline Standard and places them and two additional outfalls in a new "Post-Mining" category, which requires construction of sediment control structures in areas that have already been reclaimed. The change will result in significant disturbance of reclaimed lands and require additional, duplicative reclamation at a later date.

Response: See response to Comment 6. No changes were made to the EA in response to this comment.

Comment 26: "Construction Equipment" Category
Table 1, page 4, the "Construction Equipment" category should be revised to account for the construction required to accommodate DEQ's recharacterization of Western Alkaline outfalls as "Post-Mining" outfalls. DEQ's draft permit removes outfalls from the Western Alkaline Standard and places them and two additional outfalls in a new "Post-Mining" category, which requires construction of sediment control structures in areas that have already been reclaimed. The change will result extra and duplicative construction to reconfigure the outfalls and then later to again reclaim those areas.

Response: See response to Comment 6. No changes were made to the EA in response to this comment.

Comment 27: "Personnel Onsite" category
Table 1, page 4 the "Personnel Onsite" category should be revised to account for the increase in personnel required to reconfigure the current Western Alkaline Standard outfalls into Post-Mining outfalls.

Response: See response to Comment 6. No changes were made to the EA in response to this comment.

Comment 28: "Purpose, Need, and Benefits" category, regulated pollutant sources
Page 5, section 1.4, should be revised to note that the permit regulated the discharge of process runoff, mine drainage, and storm water runoff.

Response:
In response to the comment, DEQ has revised the Section 1.4 of the EA as follows: "…to renew their permit to discharge wastewater (including process wastewater, mine drainage, and storm water) to an ephemeral tributary of Sarpy Creek, ephemeral tributaries to Middle Fork Sarpy Creek, and ephemeral tributaries to East Fork Sarpy Creek."

Comment 29: "Water Quality, Quantity, and Distribution" category
Page 8, Section 2.2 should be revised to note that changing outfalls from the Western Alkaline Standard to Post-Mining requires "significant additional surface disturbance," and disrupts the hydrologic balance, adversely affect riparian areas and aquatic communities. EPA, Development

Document (December 2001), p. 3-2. Additionally, the benefits of the Western Alkaline Standard will be negated, which means that erosion and sedimentation problems will not be minimized, the natural sediment yield will not be maintained, surface disturbance will not be minimized, vegetation will not be encouraged, and flow regimes and evapotranspiration losses will be disrupted. *Id*., pp. 4-1 – 4-7.

Response: See response to Comment 6. No changes were made to the EA in response to this comment.

Comment 30: "Air Quality" category

Page 8, Section 2.3 should be revised to account for the air quality impacts caused by the need to tear up reclaimed land and construct sediment control structures due to DEQ's recharacterization of Western Alkaline Standard outfalls to Post-Mining outfalls.

Response: See response to Comment 6. No changes were made to the EA in response to this comment.

Comment 31: "Vegetation" category

Page 9, Section 2.4 should be revised to note that changing outfalls from the Western Alkaline Standard to Post-Mining requires "significant additional surface disturbance," and disrupts the hydrologic balance, adversely affect riparian areas and aquatic communities. EPA, Development Document (December 2001), p. 3-2. Additionally, the benefits of the Western Alkaline Standard will be negated, which means that erosion and sedimentation problems will not be minimized, the natural sediment yield will not be maintained, surface disturbance will not be minimized, vegetation will not be encouraged, and flow regimes and evapotranspiration losses will be disrupted. *Id*., pp. 4-1 – 4-7.

Response: See response to Comment 6. No changes were made to the EA in response to this comment.

Comment 32: "Terrestrial, Avian, and Aquatic Life and Habitats" category

Page 10, Section 2.5 should be revised to note that changing outfalls from the Western Alkaline Standard to Post-Mining requires "significant additional surface disturbance," and disrupts the hydrologic balance, adversely affect riparian areas and aquatic communities. EPA, Development Document (December 2001), p. 3-2. Additionally, the benefits of the Western Alkaline Standard will be negated, which means that erosion and sedimentation problems will not be minimized, the natural sediment yield will not be maintained, surface disturbance will not be minimized, vegetation will not be encouraged, and flow regimes and evapotranspiration losses will be disrupted. *Id*., pp. 4-1 – 4-7.

Response: See response to Comment 6. No changes were made to the EA in response to this comment.

Comment 33: "Demands on Environmental Resources of Land, Water, Air, or Energy" category

Page 11, Section 2.7 should be revised to acknowledge that previously reclaimed land will be disturbed as a result of this permit and DEQ's characterization of outfalls as "Post-Mining" rather than Western Alkaline Standard. Eventually, the areas will again require reclamation which will duplicate the reclamation already done, resulting in more than double land disturbance and use of energy resources.

Response: See response to Comment 6. No changes were made to the EA in response to this comment.

Comment 34: "Greenhouse Gas Assessment" category

Page 12, Section 2.11 should be revised to acknowledge the additional greenhouse gases generated as a result of the additional sediment control structure construction, destruction of reclamation, and later duplicative reclamation work required. Vehicle traffic would increase to accommodate DEQ's characterization of the outfalls as "Post-Mining" instead of Western Alkaline Standard.

Response: See response to Comment 6. No changes were made to the EA in response to this comment.

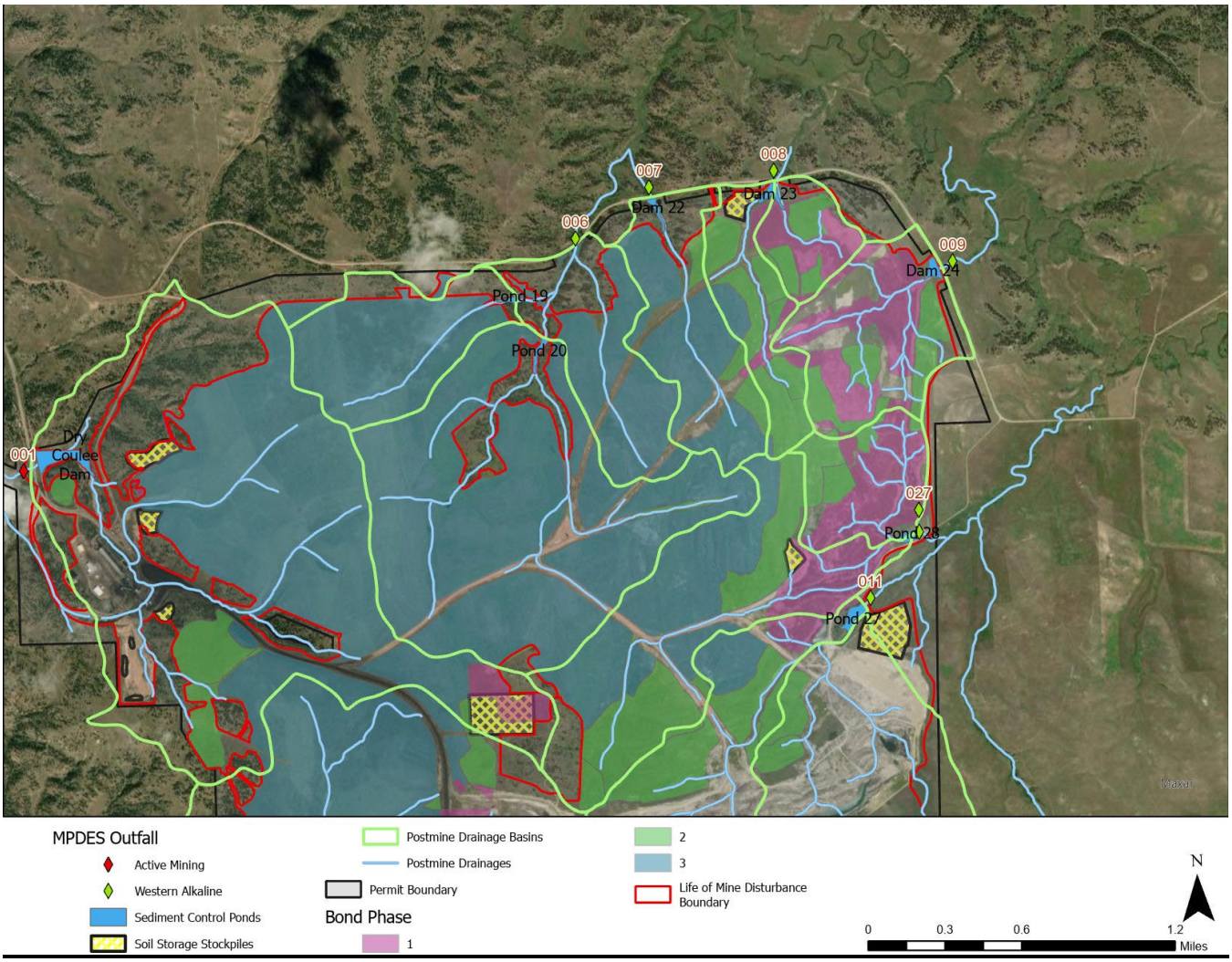
Comment 35: "No Action" Alternative

Page 12, Section 3, the "no action" alternative would not be appropriate because it would leave discharges without appropriate regulation.

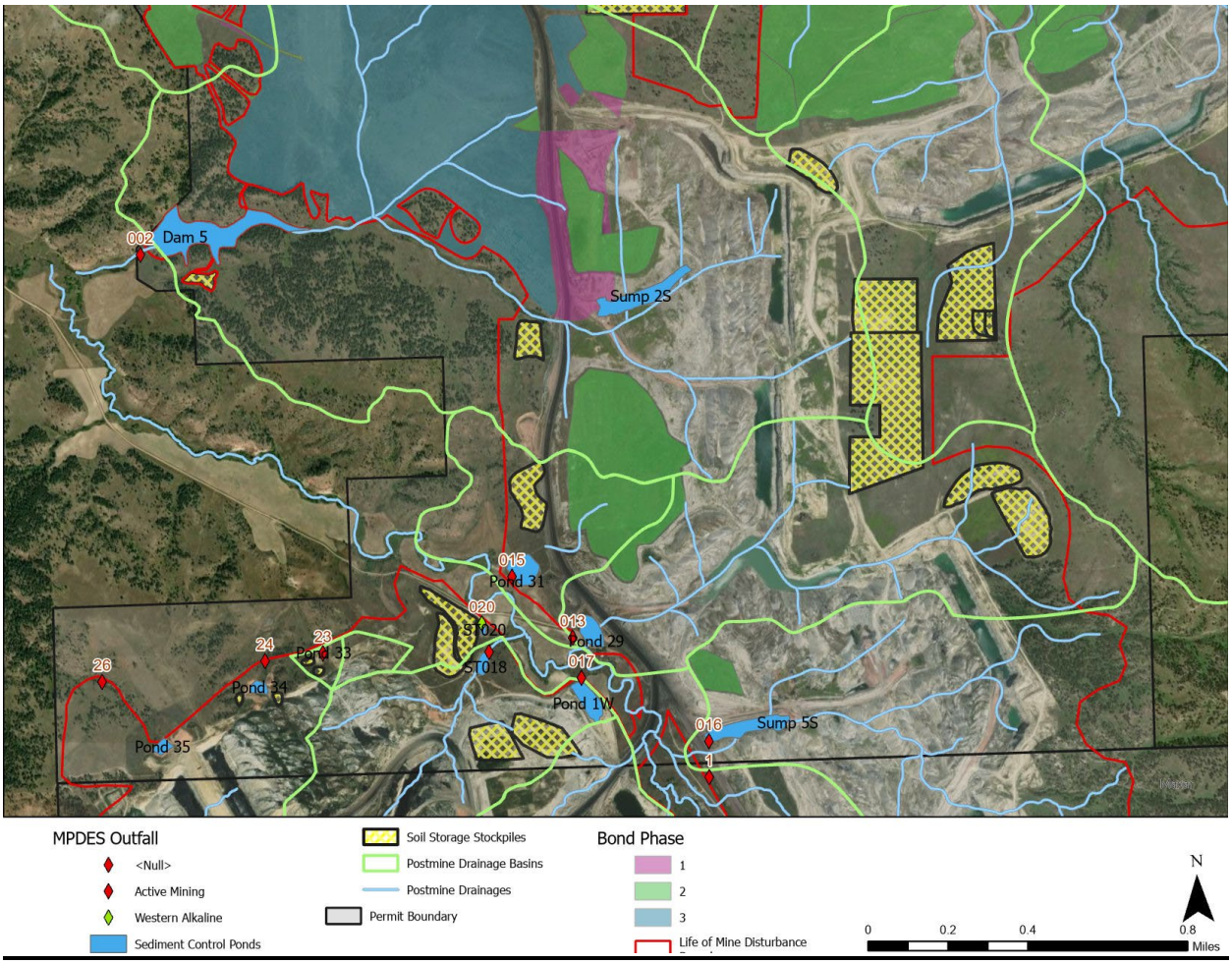
Response: DEQ concurs, as stated in the draft EA. No change was made in response to this comment.

End of Comments

Attachment 1: Absaloka North


008
007
Dam 23
Dam 22
006
009
Dam 24
Pond 19
Pond 20
001
Dry
Coulee
Dam
027
Pond 28
011
Pond 27
MPDES Outfall
Active Mining
Western Alkaline
Sediment Control Ponds
Soil Storage Stockpiles
Postmine Drainage Basins
Postmine Drainages
Permit Boundary
Bond Phase
1
2
3
Life of Mine Disturbance Boundary
N
0
0.3
0.6
1.2
Miles

Attachment 2: Absaloka South


002
Dam 5
Sump 2S
015
Pond 31
020
ST020
013
Pond 29
017
ST018
Pond 1W
016
Sump 5S
1
24
23
Pond 33
26
Pond 34
Pond 35
MPDES Outfall
<Null>
Active Mining
Western Alkaline
Sediment Control Ponds
Soil Storage Stockpiles
Postmine Drainage Basins
Postmine Drainages
Permit Boundary
Bond Phase
1
2
3
Life of Mine Disturbance
N
0
0.2
0.4
0.8
Miles