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MONTANA EIGHTEENTH JUDICIAL DISTRICT, GALLATIN COUNTY

UPPER MISSOURI WATERKEEPER Plaintiff, v. MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY, an agency of the State of Montana Defendant.	Case No. **COMPLAINT FOR DECLARATORY & INJUNCTIVE RELIEF**

1. Plaintiff Upper Missouri Waterkeeper (Waterkeeper) brings this action against Defendant the Montana Department of Environmental Quality (DEQ), and respectfully alleges as follows:

NATURE OF THE ACTION

2. Plaintiff Upper Missouri Waterkeeper ("Waterkeeper") brings this case to challenge the constitutionality of DEQ's April 28, 2025 approval of the Quarry Subdivision, Phase 2, an agency decision that explicitly relies on Montana's new statutory and regulatory nonsignificance exemptions for a class of subdivision nutrient pollution discharges, Mont. Code Ann. § 75-5-301(5)(e), ARM 17.30.715(4), 17.30.1022(1)(d), and to challenge the constitutionality of those exemptions from Nondegradation Policy under the Water Quality Act, Mont. Code Ann. § 75-5-303. A live controversy lies in the Department's ongoing implementation of these new exemptions to Nondegradation Policy review and pollution permitting under the Water Quality Act (WQA), and in DEQ's application of those laws to exempt new subdivision nutrient pollution discharges of the Quarry Phase 2 from Nondegradation Policy, both of which are harming Plaintiff and infringing on its constitutional rights.

3. DEQ's authorization of four new community septic systems in Phase 2 of the Quarry Subdivision sanctions the discharge of 11,500 gallons-per-day of nutrient laden pollution into groundwater that is hydrologically connected to, and conveys nutrient pollutants discharging into the Gallatin River, which is already impaired for nuisance algal blooms. The Quarry Phase 2 is one of the first times DEQ has applied new nonsignificance rules to exempt subsurface wastewater disposal for new a class of subdivision development from otherwise mandatory Nondegradation Policy review under the WQA.

4. The addition of wastewater-based nutrient pollutants into the middle segment Gallatin River causes and contributes to nuisance algal blooms, including the growth of the macroalga type *cladophora*, which thrives in nutrient-contaminated waters under conducive conditions, has

been documented repeatedly in the middle segment Gallatin River, and was a basis for that river's impairment determination by DEQ and the Environmental Protection Agency (EPA). The cumulative impacts and synergistic effects of nutrient pollutants in freshwater river systems mean the Quarry Phase 2's wastewater discharges, in conjunction with other sources of nutrient pollution, cause or contribute to nuisance algal growth, lowered water quality, and diminishment of constitutionally protected and societally important uses of the Gallatin River such as aquatic life and recreational uses.

5. DEQ determined the Quarry Subdivision's Phase 2 wastewater discharges are legally nonsignificant and exempt from requirements of Nondegradation Policy, Mont. Code Ann. § 75-5-303 because:

   (a) they constitute less than 15,991 gallons per day (gpd) and 1 lb./day nitrogen and therefore do not require a pollution discharge permit;

   (b) they satisfy a mixing zone nitrogen concentration of 7.5 mg/L or less; and

   (c) each septic system is located more than 1/4 mile from the Gallatin River and satisfies corollary subsurface wastewater disposal engineering and placement criteria.

6. The above criteria are elements of Senate Bill 285 from the 2023 Legislative Session, now codified in Mont. Code Ann. § 75-5-301(5)(e), ARM 17.30.715(4)(e), and also reflect DEQ's related 2024 amendment of its discharge permitting rules, now codified at ARM 17.30.1022(1)(d). Alone and together, these rules operate to exempt a class of subdivision wastewater discharges from discharge permitting and Nondegradation Policy review under Mont. Code Ann. § 75-5-303. Alone and collectively, these criteria lack an evidentiary basis demonstrating their application will protect, maintain, or improve existing uses of surface

water and the water quality necessary to support those uses, or prevent unreasonable depletion and degradation of surface water.

7. Although Defendant is well aware that nutrient pollutants are a leading threat to the health and safety of Montana's rivers and water quality, and likewise understands that the overwhelming majority of groundwater receiving subdivision wastewater proximate to Montana surface waters will carry and transport nutrient pollutants to surface waters, it continues to act affirmatively to authorize subdivision wastewater discharges that exacerbate harm to Montana's waterways.

8. Waterkeeper and its members seek this Court's judgment to redress the harms being committed by Defendant. Plaintiff first seeks a declaration of their constitutional rights, the constitutionality of subdivision nutrient pollution exemptions under the WQA, and the liability and duties of the government Defendant. Plaintiff also seeks an order enjoining Defendant from enforcing the offending statutory and regulatory language.

9. The Montana Supreme Court has emphasized the anticipatory and preventative nature of the right to a clean and healthful environment, stating:

> Our conclusions in MEIC I are consistent with the constitutional text's unambiguous reliance on preventative measures to ensure that Montanans' inalienable right to a 'clean and healthful environment' is as evident in the air, water, and soil of Montana as in its law books. Article IX, Section 1, of the Montana Constitution describes the environmental rights of 'future generations,' while requiring 'protection' of the environmental life support system 'from degradation' and 'prevent[ion of] unreasonable depletion and degradation' of the state's natural resources. This forward-looking and preventative language [. . .] clearly indicates that Montanans have a right not only to reactive measures after a constitutionally-proscribed environmental harm has occurred, but to be free of its occurrence in the first place first place.

Park Cnty. Envt'l Council v. Mont. Dep't of Envt'l Quality, 402 Mont. 168, 194, 2020 MT 303, ¶ 62, 477 P.3d 288, 304, (2020). By adopting and enforcing the aforementioned categorical

exclusions for a class of harmful subdivision wastes DEQ violates its mandatory duty to act in an anticipatory and preventative manner to protect Montana's rivers and uses of those rivers.

PARTIES

10. Upper Missouri Waterkeeper (Waterkeeper) is a member-supported clean water advocacy and public education organization based in Bozeman, Montana. The organization works to protect and restore fishable, swimmable, drinkable water and community health throughout the 25,000 square miles of Southwest and West-central Montana's Upper Missouri River Basin. The Upper Missouri River Basin includes the Gallatin River. The organization is dedicated to, in part, protecting its and its members' rights to a clean and healthful environment and lawful government decision-making that protects the Public Trust. More than a thousand individuals in Montana and around the country support Waterkeeper as members, both financially and with their activism. Waterkeeper members regularly fish, float, hunt, view wildlife on the public and private lands and waters in the Upper Misouri River Basin, including within the Gallatin subwatershed, rely on the Gallatin River for drinking water supplies, or rely on the Gallatin River for work and income, including in the vicinity of and downstream from the Quarry Subdivision. The organization and its members' interests will be impacted by any nutrient pollution of surface waters in the Upper Missouri River Basin, including the Gallatin River, or the licensure of activities that contribute unfettered volumes of wastes capable of causing or contributing to nuisance algal blooms in surface waters of Montana.
11. Waterkeeper member Bill Zell is 64 years old and lives in Bozeman, MT. River recreation and fishing are an integral part of Mr. Zell's personal values: each year for the past 33 years,

Mr. Zell has spent anywhere from 100 to 150 days working and recreating on the Gallatin, Madison, and/or Yellowstone Rivers of Montana. As an avid boater and angler, Mr. Zell enjoys the solitude, scenic qualities, physical challenges, and rugged nature that river recreation in Montana offers. Mr. Zell also enjoys being able to catch cutthroat trout, rainbow trout, brown trout, and other fish in Montana's rivers, and sharing these river experiences with friends and family. His ability to fish and boat is adversely impacted when nutrient loading of Montana's waterways by land use development and wastewater disposal causes and contributes to negative water quality conditions, including nuisance algal blooms, warmer water temperatures, and harm to boating and fishing opportunities and aquatic life populations.

12. Mr. Zell is also the founder and owner of Montana Whitewater, a 33-year old river recreation business that employs over 160 seasonal staff and introduces thousands of people to experiences on Montana rivers each year, including the Gallatin, Madison, and Yellowstone Rivers. Mr. Zell remembers unnatural, nuisance algal blooms beginning to plague the middle segment Gallatin in 2018. Nuisance algal blooms often possess an unnatural neon-green coloring, and when they've occurred in the Gallatin have been severe, covering most of the river bottom. Algal blooms in the Gallatin affect Montana Whitewater's ability to attract and retain customers because those pollution events make river-based recreation less aesthetically attractive. Similarly, some clients are worried about whether nuisance algal blooms are harmful to river boating and recreation, also negatively affects Montana Whitewater's business. Mr. Zell's business, and his personal recreation, is negatively affected by the presence of any unnatural or nuisance algae or weeds in rivers and streams, as well as the high temperatures and turbidity that often accompany algae and weed growth in rivers that

suffer from too much nutrient loading. 20 years ago, in most of the rivers named above, that Mr. Zell professionally and personally visited then and often now, did not experience unnatural weeds, algal blooms, fluctuating insect populations, or unnatural temperatures. Conversely, over the past 10 years many of these rivers – particularly the main-stem Gallatin – have declined in terms of their quality due to problems like algae, higher temperatures, or unstable fish populations.

13. Mr. Zell cares deeply about protecting Montana's rivers, which are an integral part of his personal identity, and his source of livelihood. Mr. Zell remembers the Gallatin before the community of Big Sky was developed to its present-day scale, including a larger abundance of wildlife, better fishing opportunities, and no algal blooms in the river. Because Mr. Zell understands and is concerned by the scientific relationship between land use development, wastewater disposal, nuisance algal blooms and degraded river quality, he supports Upper Missouri Waterkeeper as a member and wants to see government actions that use best available science to protect high-quality rivers like the Gallatin. Mr. Zell is concerned by recent changes to state law that exempt a class of new subdivision development from undergoing meaningful scientific rigor and pollution control permitting. Without site-specific review and conditioning - or denial - of activities with the known ability to harm local water quality, his interests, and those of Montana Whitewater, in clean water, healthy rivers, and sustainable wildlife stand to be harmed every time DEQ approves another subdivision with more nutrient pollution discharging to Montana's rivers, including the addition of new wastewater pollution to the middle segment Gallatin River from the Quarry Subdivision in Big Sky's Canyon Area.

14. Jason Fleury is also a member of Waterkeeper who has lived in Montana for 39 years. Mr. Fleury lives in Bozeman along the Gallatin River. Mr. Fleury has been a life-long angler and has been as a licensed river outfitter and fishing guide throughout Montana. Mr. Fleury has 28 years of employment in the fly-fishing industry, and has worked for highly respected fly shops, lodges, and outfitters across Montana in Dillon, MT, Fort Smith, MT, Craig, MT, and Bozeman, MT among others. He currently owns and operates Montana TroutChasers, based on the Gallatin River north of Big Sky, a business that directly uses, and relies upon, Montana rivers, and which regularly guides and outfits clients to fish and recreate on several blue-ribbon trout streams across Montana including the Gallatin, Madison, Yellowstone, Jefferson, Big Hole, and Missouri rivers. Mr. Fleury also recreates on the Missouri, Madison, Jefferson, Beaverhead, Big Hole, Gallatin and Yellowstone Rivers, spending approximately 200 days each year on Montana's waters. As an angler, Montana businessman, and Montana citizen, Mr. Fleury relies directly on healthy, clean rivers which, in turn, support strong fisheries that historically provided excellent recreational opportunities.

15. Mr. Fleury's business specifically relies on healthy waters as the presence of any unnatural nuisance algae and weed vegetation, high temperatures, or turbidity impacts the ecological conditions and presence of fish. Poor ecological conditions result in the loss of current and prospective clients looking to fish Montana's pristine rivers. Mr. Fleury supports Waterkeeper because of their work to protect Montana's rivers and provide valuable information to river-based business owners.

16. Mr. Fleury has personally witnessed the change in Montana's waterways over the past 20 years and has seen detrimental conditions to their fishability. Mr. Fleury has seen severe nuisance algal blooms on the Gallatin River along with the growth and expansion of vast

nuisance weed growths in the Missouri River, segments of the Big Hole and Beaverhead, and the Jefferson River. Neon-green, slimy algal blooms and nuisance weedy aquatic vegetation have a negative practical effect on fishing based on the ability to cast and fish foraging habits, and a negative aesthetic effect on visiting anglers. As a professional angler Mr. Fleury is concerned that chronic algal blooms can negatively impact macroinvertebrate communities and fishery populations by shifting availability and creating harmful water quality conditions. Mr. Fleury has seen first-hand the increasing trend of river decline and the negative impacts of nutrient pollution and is particularly concerned that the State of Montana and amended pollution rules do not adequately protect waterways from known polluting sectors, including unrelenting new development pressure in Big Sky reliant on septic systems.

17. Defendant the Department of Environmental Quality (DEQ) is the Montana governmental entity responsible for implementing a system of law that exempts a class of subdivision-based nutrient pollution discharges to nearby surface water from the necessary science-based evaluation and site-specific limits capable of preventing harm to receiving water quality in violation of Plaintiff's constitutional rights as guaranteed under Article II, Section 3; Article IX, Section 1; Article IX, Section 3, of the Montana Constitution; and the Public Trust Doctrine. DEQ is also the entity responsible for authorizing wastewater discharges from the Quarry Subdivision Phase 2.

JURISDICTION & VENUE

18. This Court has original jurisdiction over this action pursuant to Article II, Section 16, and Article VII, Section 4 of the Montana Constitution, and pursuant to Mont. Code Ann. § 3-5-302.

19. This Court has jurisdiction to grant declaratory and injunctive relief pursuant to the Uniform Declaratory Judgments Act, Mont. Code Ann. §§ 27-8-101, *et seq*. (UDJA), and §§ 27-19-101, *et seq*., as well as the general equitable powers of this Court. This Court also has jurisdiction over DEQ's decision to authorize new pollution discharges from the Quarry Subdivision Phase II under the Montana Environmental Policy Act, Mont. Code Ann. § 75-1-101 *et seq*., and the Water Quality Act, Mont. Code Ann. § 75-5-101 *et seq*.

20. Venue is proper in this Court pursuant to Mont. Code Ann. §§ 25-2-126, 75-1-108, 75-5-107, and 2-4-506(4) because the violations of law at-issue arose in Gallatin County.

STATEMENT OF FACTS

Quarry Subdivision Phase 1

21. In 2021, Big Sky Rock LLC, the owner of the Quarry Subdivision, received Platting and Planning approval for the Quarry Planned Unit Development (PUD) Site Plan from Gallatin County. The PUD contemplated 23 lots (12 residential and 11 commercial), 135 single-family dwelling units, 130 multi-family dwelling units, and 170,000 sq. ft of commercial space. Upper Missouri Waterkeeper and dozens of members of the public opposed the County's approval the Quarry PUD based on its scale, proximity to the Gallatin River, and proposed use of community septic systems.

22. The Quarry Subdivision represents the largest new residential development project in the area known as Big Sky's Canyon Area in more than two decades, and the only new proposed development reliant explicitly on community-scale septic systems for wastewater treatment.

23. The Quarry Subdivision is sited on an approximately 175-acre parcel of land, previously a gravel pit, located adjacent to and south of the intersection of HWY 191 and HWY 64 in Big Sky, MT's Canyon Area.

24. The subdivision is underlain by a groundwater aquifer that flows northeast offsite and is hydrologically connected to the downgradient middle segment Gallatin River.

25. In pre-application meetings with Defendant DEQ, the Quarry Subdivision was originally proposed as utilizing a centralized wastewater treatment system, but that plan was subsequently abandoned in favor of its current approach, which entails several phases of development and the use of several community scale, on-site septic systems for each phase, each discharging less than 5,000 gallons per day.

26. Until amendments in 2024, Montana DEQ's rules stated that wastewater systems discharging more than 5,000 gallons per day required a discharge permit. If a new source or activity requires a discharge permit, Mont. Code. Ann. § 75-5-303 WQA presumptively requires that DEQ's decision-making conditioning any discharge permit assure "[e]xisting uses of state waters and the level of water quality necessary to protect those uses must be maintained and protected," and prohibits degradation of high-quality waters absent a Nondegradation Authorization pursuant to § 75-5-303(3).

27. The Quarry Subdivision's PUD application to Gallatin County examined hydrogeology underlying the property, and estimated nitrogen loading from a hypothetical Quarry wastewater discharge into the Gallatin River. The applicant's analysis determined that groundwater receiving proposed wastewater discharges travels due northeast, with a hydraulic conductivity rate of 515 ft/day, a flow velocity rate of 57 ft/day, and an estimated 23-day travel time to reach the Gallatin River, located approximately 1,320 ft distant.

28. Those application materials were submitted to Gallatin County in support of the PUD, and expressly admitted that pollution discharged by the Quarry would flow to and add nutrient pollutants to the Gallatin River.

29. The Quarry applicant also performed a mass-balance equation considering estimated gross nutrient wastewater discharges to the Gallatin River from the subdivision against numeric nutrient water quality standards, determining that river dilution would mean the Quarry's gross wastewater discharges would not, at the point of discharge, exceed applicable numeric nutrient criteria, and therefore wastewater from the Quarry PUD was nonsignificant. Both Gallatin County and later, DEQ in approving Phase I of the Quarry Subdivision, relied on this mass-balance equation to determine the subdivision's wastewater discharges legally nonsignificant, and to authorize a phase of development.

30. DEQ's approval of a groundwater discharge permit for Lazy J South, which is the adjacent subdivision south and bordering the Quarry Subdivision, also identified underlying groundwater that would receive its subdivision pollution discharges, and admitted those pollutants would be conveyed into the Gallatin River, also located less than 1,500' distant. Quarry PUD application materials to Gallatin County and DEQ both reference data from Lazy J South’s hydrogeology to inform characterization of groundwater and nutrient fate and transport from the Quarry Subdivision.

31. On February 16, 2022, DEQ approved Phase 1 of the Quarry Subdivision, including the use of eight (8x) septic systems, each discharging less than 5,000 gpd, and each capable of achieving nitrogen concentrations at the end of mixing zones satisfying Level II septic effluent criteria under ARM 17.30.715(1). That authorization and its supporting documents relied on the applicant's mass-balance equation estimating the Quarry Phase 1's nutrient

discharges to the Gallatin River, compliance with rules regarding total nitrogen concentrations at the end of mixing zones, and DEQ's subdivision nondegradation guidance criteria, to determine Phase I wastewater discharges legally nonsignificant and exempt from Nondegradation Policy review under Mont. Code Ann. § 75-5-303, despite being new pollutant sources capable of causing ecological harm.

Quarry Subdivision Phase 2

32. On November 18, 2024, DEQ published a draft Environmental Assessment (EA) for the Quarry Subdivision Phase 2. Phase 2 entails 45 condominium units supported by four (4x) community septic systems. Lots 9 and 10 would each have 12 condominiums with septic flows of 3,000 gpd per lot, while Lots 11 and 12 would each have 11 condominiums with septic discharges of 2,750 gpd per lot.

33. DEQ's EA for Phase 2 stated that each septic system discharging nutrient pollution was exempt from discharge permitting because DEQ's newly-adopted, 2024 amendments to its Montana Ground Water Pollution Control System ("MGWPCS") rules do not require permitting of any subdivision wastewater discharges constituting less than 1 lb. nitrogen per day, equal to aggregate discharges from a common plan of development up to but not exceeding 15,991 gpd in total of septic discharges with concentrations of 7.5 mg/L at the end of mixing zones.

34. The EA determined that because Quarry Phase 2 septic discharges entailed 12,000 gpd or less in the aggregate, each at or below 7.5 mg/L total nitrogen concentration at the end of applicable mixing zones, the discharges satisfied DEQ's groundwater nonsignificance criteria under Mont. Code Ann. § 75-5-301(5)(d). The EA also determined that discharges complied with subdivision wastewater exemptions from surface water impact analyses under Mont.

Code Ann. § 75-5-301(5)(e) and ARM 17.30.715(4)(e), and therefore the discharges were all legally nonsignificant and exempt from both discharge permitting and any Nondegradation Policy review. DEQ made this determination despite the Quarry Phase 2 wastewater discharges being new sources of pollutanta capable of causing or contributing to water quality degradation, and contrary to a wide body of scientific evidence demonstrating that Phase 2 nutrient pollution had the potential to cause or contribute to nuisance algal blooms in the Gallatin River.

35. On its and its members' behalf Waterkeeper submitted timely public comment and three expert scientific reports to DEQ in opposition to the proposed authorization of the Quarry Phase 2's new wastewater discharges, the continued use of septic systems for new development proximate to the Gallatin River middle segment, and the agency's refusal to apply Nondegradation Policy to evaluate the cumulative impacts of nutrient pollution from the Quarry against the ecological baseline of a Gallatin River impaired for nuisance algal blooms and undisputed other existing and poorly controlled nutrient sources also discharging to the Gallatin River.

36. Coshow Environmental and Dr. Mark Rains, PhD, a hydrogeologist, reviewed DEQ's draft Quarry Phase 2 EA and related materials and issued an expert report finding:

    a. Receiving groundwater underlying the Quarry Subdivision has relatively high hydraulic properties that act to transport wastewater pollutants discharged to groundwater offsite and into the Gallatin River;

    b. Substrate underlying the Quarry Subdivision and substrate downgradient from the subdivision have low rates of natural nitrogen decay (i.e., little capacity for

denitrification), such that most of the nitrogen pollution discharged to groundwater will be transported into the Gallatin River;

c. Nitrogen pollutants discharged by the Quarry Subdivision are expected to travel offsite and discharge to the Gallatin River as fast as several days, or at longest a few months, depending on specific conditions;

d. Onsite septic systems in the Quarry's vicinity are cumulatively discharging nutrient pollutants to the Gallatin River via groundwater in a relatively short time span (a finding supported by several water quality models and site-specific data); and

e. DEQ's nonsignificance determination of Phase 2 did not consider cumulative nutrient pollutants discharging to the Gallatin River and is nonprotective of the Gallatin River's water quality and beneficial uses.

37. Dr. JoAnn Burkholder, PhD, is a nationally renowned limnologist specializing in the field of nutrients and water quality. Dr. Burkholder reviewed DEQ's proposed Quarry Phase 2 Subdivision documentation, related site-specific science, and issued an expert report finding:

a. Freshwater aquatic ecosystems, including the Gallatin River, are extremely sensitive to nutrient pollutants;

b. Excessive nutrient loading can harm aquatic ecosystems, including stimulating nuisance algal blooms and causing and contributing to negative trophic shifts in aquatic food webs and causing or contributing to ecological tipping points and regime shifts;

c. Nutrient loading of freshwater river systems is directly linked to the growth of *cladophora*, a specific alga that has been documented in the Gallatin River downstream of the Quarry Subdivision and community of Big Sky;

d. Septic system wastes disposed to groundwater at and nearby the Quarry Subdivision will travel to and discharge into the middle segment Gallatin River, and those septic discharges will adversely affect the Gallatin River's beneficial uses and water quality by fueling nuisance algal blooms;

e. The Gallatin River middle segment's documented *cladophora* algal blooms indicate the river has already experienced a diminution in water quality and is reaching a tipping point for a regime shift to more degraded water quality conditions;

f. Evaluating numeric nutrient criteria for the middle segment Gallatin River against a single wastewater discharge hypothetical is not sufficient, alone, to evaluate the potential for harm to the river from human caused nutrient loading;

g. The Quarry Subdivision Phase 2 EA and supporting documents demonstrate DEQ is aware of the threat that nutrient pollutants represent to the Gallatin River and similar freshwater ecosystems, but the decision-making documents do not provide a scientific basis demonstrating Phase 2 wastewater discharges will not harm the middle segment Gallatin River's water quality or existing uses;

h. The Quarry Phase 2 EA documents arbitrarily find new proposed wastewater discharges nonsignificant, contrary to best available science showing those discharges are likely to incite negative effects on sensitive aquatic life, cause and contribute to algal blooms, and those discharges' likelihood to cause negative downstream impacts on water quality and existing uses of the Gallatin River;

i. DEQ's rule establishing categorically a > 1 lb./nitrogen/day discharge threshold for requiring a discharge permit for subdivision sewage systems, and its rules for categorically establishing a total nitrogen mixing zone concentration of < 7.5 mg/L as

nonsignificant - both facially and as applied here - are not scientifically defensible means for determining whether a new source of nutrient pollutant will cause harm to Montana's rivers and streams or the Gallatin River;

j. Quarry Phase 2 wastewater discharges are likely to cause or contribute to major adverse ecological impacts, including stimulating nuisance algal growth and diminished water quality conditions in the Gallatin River; and

k. Phase 2 documentation did not provide a scientifically-defensible evaluation of cumulative or secondary nutrient pollutant impacts from wastewater on the Gallatin River.

38. Dr. Bill Kleindl, PhD, an aquatic ecologist with NAIAD, LLC, also produced an expert report examining the Quarry Subdivision's proposed Phase 2 wastewater discharges. That report made the following findings:

a. Phase 2 wastewater discharge documentation lacks a scientific basis demonstrating the additional nutrient loads will not cause degradation or significant impacts on the Gallatin River;

b. The Phase 2 documentation did not evaluate the cumulative impacts of nutrient pollution discharges on the Gallatin River;

c. Continued, additional nutrient loading to the Gallatin River middle segment risks creating ecological degradation from reduced water quality parameters and inciting nuisance algal growth that is difficult to recover from;

d. Nuisance algal blooms have plagued the Gallatin River, and those blooms represent trophic shifts and negative changes in that ecological system;

e. The middle segment Gallatin River is sensitive to any nutrient loading, and previous algal blooms are indicative of unhealthy water quality related to excessive nutrient loading to the river system.

The Gallatin River, Nuisance Algal Blooms, and Nutrient Pollution Impacts on Freshwater Ecosystems

39. Since 2018, the Gallatin River middle segment has experienced several years of nuisance algal blooms.

40. In 2022 and in response to a petition for impairment, DEQ made a preliminary determination that the middle segment Gallatin River was impaired due to nuisance algal blooms, which precluded the segment from fully supporting its aquatic life and recreation beneficial uses. DEQ finalized its impairment decision for the middle segment Gallatin River in 2023, and EPA approved that determination. Upper Missouri Waterkeeper was a lead petitioner seeking DEQ's formal recognition of the harm that nuisance algal blooms incite on the Gallatin River, and a river restoration planning process, all achievable through an impairment determination. Hundreds of members of the public and dozens of businesses and civic organizations provided public comments in support of DEQ's impairment determination for the Gallatin River.

41. Today the middle segment Gallatin River is listed on DEQ's 303(d) list of impaired waters for nuisance algal blooms. So too several other tributaries of the Missouri, and the Missouri itself, remain impaired by nutrient pollutants.

42. Nuisance algal blooms are not natural in the middle segment Gallatin River, and were not documented before 2018.

43. Nuisance algal blooms are fueled by the loading of nutrient pollutants, particularly nitrogen and phosphorus.

44. Nitrogen is one of the primary nutrients critical for the growth and survival of all living organisms. It is a necessary component of many organic molecules including DNA, proteins, and Chlorophyll. Although nitrogen is very abundant in the atmosphere as dinitrogen gas (N_2), it is comparatively inaccessible to living organisms. Indeed, N_2 gas is a very stable compound due to the strength of the triple bond between the nitrogen atoms. For atmospheric nitrogen gas to be available to make proteins, DNA, and other biologically important compounds, it must first be "broken" and then converted into a different and usable form. This is accomplished in the environment by microbial organisms capable of converting dinitrogen gas into ammonia (NH_3); a process referred to as Nitrogen Fixation.

45. Nitrification is the process that converts ammonia (NH_3) to nitrite (NO_2^-) and then to nitrate (NO_3^-). Most nitrification occurs aerobically and is exclusively done by a different suite of microbial prokaryotes than the microbes involved in nitrogen fixation. There are two distinct steps of nitrification. The first step is the oxidation of ammonia to nitrite (NO_2^-), which is carried out by microbes known as ammonia-oxidizers. The second step in nitrification is the oxidation of nitrite (NO_2^-) to nitrate (NO_3^-). This step is carried out by a separate group of microbes known as nitrite-oxidizing bacteria. For complete nitrification, both ammonia oxidation and nitrite oxidation must occur.

46. Denitrification is the process that converts nitrate (NO_3^-) to nitrogen gas (N_2), thus removing bio-available nitrogen and returning it to the atmosphere. Unlike nitrification, denitrification is an anaerobic process, occurring mostly in soil and sediments and anoxic zones in lakes and oceans. Similar to nitrogen fixation, denitrification is carried out by a diverse group of

microbes (i.e., again primarily prokaryotes). Denitrifiers are chemo-organotrophs and thus must also be supplied with some form of organic carbon (e.g., carbohydrates, proteins, sugars, lipids). Denitrification becomes highly limited if/when organic matter that "feeds" the microbes is insufficient to provide the energy to drive the denitrification process, if necessary anoxic conditions are not present, and if adequate temperatures are not present. When denitrification occurs, it can reduce the chances that wastewater discharged from anthropogenic sources will cause undesirable groundwater or surface water contamination or unhealthy NO3 concentrations to subsurface aquifers (e.g., polluting drinking water) or surface waters (e.g., fostering algal blooms).

47. However, denitrification rates are site-specific and rates vary considerably even in similar environments, and therefore using a single denitrification rate to calculate denitrification of subsurface wastewater discharges is highly speculative because the variety in site-specific conditions undermines any meaningful confidence interval for estimating nitrate reduction.

48. In freshwater ecosystems (i.e., rivers, wetlands, lakes and nearshore lacustrine systems), increases in nitrogen can lead to algal blooms, which often lead to hypoxia (i.e., low oxygen) and even anoxia (i.e., no oxygen) of surface water. Hypoxia and anoxia impact biodiversity, forcing changes in food-web structure, and negatively impact habitat, leading to broad aquatic system degradation. The addition of bio-available nitrogen into freshwaters can also lead to changes in biodiversity and species composition in algae, invertebrates and fish communities. Such changes in turn lead to negative changes in overall ecosystem integrity.

49. Studies have conclusively shown that nitrogenous pollution can lead to an increased risk of parasitic and infectious diseases among fish and wildlife in aquatic ecosystems.

50. Low concentration of phosphorus in freshwater systems reduces plant growth and slows microbial growth. Microorganisms, particularly freshwater algae, act as both sinks and sources of available phosphorus in the biogeochemical cycle. In freshwater systems phosphorus is often a limiting nutrient. In other words, concentrations are often very low and limit growth of primary producers. Indeed, freshwater algae, as well as emergent and floating aquatic plants, are extremely efficient in taking up and sequestering phosphorus leading to over-production and eutrophication of freshwater systems when phosphorus concentrations increase due to disturbances or human caused pollution, such as wastewater discharges to freshwater systems.
51. Phosphorus has a much lower aquatic mobility than nitrogen based on its chemical propensity to bond and adsorb or precipitate within groundwater and surface water.
52. Phosphorus discharged from subsurface wastewater systems to groundwater tends to be locally concentrated within and downgradient of drainfields and discharge zones based on adsorption or precipitation, however site-specific conditions greatly influence phosphorus' mobility in groundwater after discharge from subsurface wastewater systems.
53. While much of the phosphorus load discharged by subsurface wastewater systems tends to remain proximate to the point of discharge, some portion of the phosphorus load usually migrates to downgradient surface water.
54. Even small amounts of phosphorus loading from subsurface wastewater systems can have noticeable impacts on surface water quality and uses of surface water.
55. Eutrophication is the process where water bodies become excessively enriched with nutrients, primarily nitrogen and phosphorus, leading to algal blooms and oxygen depletion.

56. Eutrophication is a leading cause of freshwater impairment of many river and lake ecosystems in Montana.

57. Eutrophication is also a leading cause of freshwater pollution across the United States.

58. Eutrophication is characterized by excessive plant and algal growth due to the increased availability of one or more limiting growth factors, especially the nutrients nitrogen and phosphorus. Algal blooms are strongly linked to nutrient enrichment resulting from human activities such as agriculture, industry, and sewage disposal. The most conspicuous effect of eutrophication is the creation of dense blooms of noxious, often foul-smelling phytoplankton that reduce water clarity and harm water quality. When algal blooms eventually die, microbial decomposition can severely deplete dissolved oxygen, creating hypoxic or anoxic 'dead zones' in surface water, making those waterbody segments inhospitable for aquatic life and harming the most sensitive plants and animals within such waterbody segments through poor water quality.

59. An exhaustive body of scientific study correlates the negative impacts on surface water quality and waterbody health from the cumulative effects of subsurface wastewater disposal within discrete subwatersheds draining to primary surface water.

60. The negative ecological impacts of cumulative nutrient loading from wastewater to western Montana surface waters has been studied by Montana DEQ, and in part drove the adoption of the State's numeric nutrient water quality standards, which are designed to protect and maintain uses of surface water and water quality and prevent nutrient-based degradation.

61. Most western Montana rivers are hydrologically connected to and gain flows from adjacent groundwater aquifers.

62. The Gallatin River middle segment gains from the groundwater aquifer underlying the region known as Big Sky's Canyon Area.

63. The Quarry Subdivision Phase 2 discharges wastewater to shallow groundwater that flows downgradient to and discharges into the Gallatin River middle segment in approximately one 1/2 mile.

64. Subsurface wastewater disposal by septic systems, including Level 2 septic systems in Montana, does not remove all nutrient pollutants.

65. Because natural dilution and denitrification is highly variable in groundwater proximate to surface water, and because subsurface wastewater disposal contributes nutrient pollutants that ultimately discharge to downgradient surface water with varying degrees of assimilative capacity, it is critical to evaluate site-specific and cumulative nutrient loading to surface water to prevent negative water quality impacts or diminution of uses of receiving surface waters.

SB 285 of the 2023 Legislative Session & DEQ's Nondegradation Exemptions for Subdivision Wastewater

66. Senate Bill 285 of the 2023 Legislative Session amended the WQA to provide criteria for excluding new subdivision septic system discharges not otherwise required to possess a discharge permit from Nondegradation Review under Mont. Code Ann. § 75-5-303. SB 285 is codified at Mont. Code Ann. § 75-5-301(5)(e) and implementing rules at 17.30.715(4)(e).

67. In addition, in 2024 DEQ amended its Nondegradation rules as regards criteria for determining activities of polluting activities nonsignificant or exempt from WQA review. Among the changes was an amendment that public sewage systems approved by DEQ under a common design plan or serving a common development and discharging in the aggregate

less than one pound of nitrogen per day are exempted from needing to obtain a discharge permit. This exclusion is codified at ARM 17.30.1022(1)(d).

68. Neither Mont. Code Ann. § 75-5-301(5)(e) MCA or implementing rules at 17.30.715(4)(e) possess a scientific basis demonstrating such criteria can protect Montana's "environmental life support system", water quality necessary for the protection of existing uses of state waters, or preventing the diminishment of water quality parameters including protection of a waterbody's assimilative capacity.

69. ARM 17.30.1022(1)(d)'s exemption of certain subdivision wastewater discharges from the requirement to obtain a permit, and therefore also exempt from Nondegradation Policy review as a new or increased discharge, also lacks a scientific basis demonstrating such criteria can protect Montana's "environmental life support system", water quality necessary for the protection of existing uses of state waters, or preventing the diminishment of water quality parameters including protection of a waterbody's assimilative capacity.

DEQ'S CLEAR AUTHORITY TO CONTROL SUBDIVISION NUTRIENT POLLUTION DISCHARGING TO SURFACE WATER

70. In 1972, the State of Montana held a Constitutional Convention, during which delegates placed significant emphasis on adding a natural resources article to the Constitution that would protect and improve the environment of Montana. In introducing the majority committee report of the Natural Resources Committee of the 1972 Constitutional Convention, Delegate C.B. McNeil stated:

> [t]he committee recommends the strongest environmental section of any state constitution. It is the only constitutional provision with an affirmative duty to enhance the environment [. . .] It provides that the term environmental life-support system is all encompassing, including but not limited to air, water and land. And whatever

interpretation is afforded this phrase by the legislature and the courts, there is no question that it cannot be degraded.

Montana Constitutional Convention 1971-1972 Verbatim Transcript Vol. IV, at 1200 (Mar. 1, 1972), https://courts.mt.gov/portals/189/library/mt_cons_convention/vol4.pdf.

71. The WQA implements the environmental protection imperatives of Art. II, sec. 3 and Art. IX, sec. 1 of the Montana Constitution guaranteeing citizens' right to a 'clean and healthful environment,' to provide adequate remedies for protecting the 'environmental life support system' and to prevent 'unreasonable depletion and degradation of natural resources.'

72. The Montana Water Quality Act was also enacted in light of the state's public policies to "conserve water by protecting, maintaining, and improving [its] quality and potability," and to "provide a comprehensive program for the prevention, abatement, and control of water pollution." Mont. Code Ann. § 75-5-101(1), (2) MCA. A core intent of the WQA is "to provide additional and cumulative remedies to prevent, abate, and control the pollution of state waters." § 75-5-102(1).

73. As a core focus, the WQA mandates that "existing uses of state waters and the level of water quality necessary to protect those uses must be maintained and protected." Mont. Code Ann. § 75-5-303(1), MCA. As a second mandate, the WQA requires that the quality of high-quality waters be maintained "[u]nless authorized [to degrade] under subsection (3) or exempted from review under 75-5-317[.]" Mont. Code Ann. § 75-5-303(2).

74. In turn, degradation of high-quality waters - which is defined as "a change in water quality that lowers the quality of high-quality waters for a parameter [notwithstanding changes exempted under 75-5-301(5)(c)]" - is not allowed absent affirmative demonstrations under Mont. Code Ann. § 75-5-303(3).

75. The affirmative demonstrations under Mont. Code Ann. § 75-5-303(3) reflect baseline requirements of federal antidegradation policy pursuant to the Clean Water Act ("CWA"), and explicitly provide means for protecting and maintaining "existing and anticipated use of state waters."

76. DEQ is required to adopt rules governing permits for discharging sewage and wastes into state waters, and to "examine plans and other information needed to determine whether a permit should be issued." Mont. Code Ann. § 75-5-402.

77. DEQ's WQA rules prohibit, among other items, discharges that "create concentrations or combinations of materials harmful to animal, plant, or aquatic life; and create conditions which produce undesirable aquatic life." ARM 17.30.637(1)(d)-(e).

78. Likewise, "[n]o wastes may be discharged and no activities conducted such that the wastes or activities, either alone or in combination with other wastes or activities, will violate, or can reasonably be expected to violate, any of the standards." ARM 17.30.637(2).

79. Furthermore, DEQ is the delegated entity with responsibility to implement requirements of the federal Clean Water Act, 33 U.S.C 1521 *et seq*. DEQ must administer its MPDES discharge permitting program in compliance with baseline requirements of the CWA. Section 301(a) of the CWA prohibits the "discharge of a pollutant" from a point source into navigable waters of the United States without an NPDES permit issued under § 402. 33 U.S.C. §§ 1311(a), 1342.

80. The United Supreme Court has determined that discharges to groundwater that are the functional equivalent of a point source discharge require an NPDES permit. At a minimum, as a delegated CWA authority DEQ must evaluate all subsurface wastewater discharges

based upon criteria expounded by the Supreme Court in *County of Maui v. Hawaii Wildlife Fund,* 140 S. Ct. 1462 (2020), to determine whether an NPDES is required.

81. Montana's Nondegradation Policy, which also implements requirements of federal antidegradation policy, is designed to protect the assimilative capacity of waterways by maintaining and protecting existing water quality and uses, including for high-quality waters.

82. EPA's 2014 "Tier 2 Antidegradation Reviews and Significance Thresholds" guidance defines "assimilative capacity" as the amount of a pollutant that a waterbody can accommodate without exceeding water quality standards, including assuring a waterbody can fully support its beneficial uses. *See* https://www.epa.gov/sites/default/files/2014-10/documents/tier2.pdf (last accessed Jun 26, 2025).

83. Under Mont. Code Ann. § 75-5-303, Nondegradation Policy mandates that existing uses of state waters and the water quality necessary to protect those uses be preserved. Thus, a plain purpose of Mont. Code. Ann. § 75-5-303 is the maintenance and protection of assimilative capacity in surface waters of the State.

84. For high-quality waters, degradation is only permitted under specific conditions, such as when it is demonstrated that no feasible alternatives exist, the proposed activity provides significant economic or social benefits, and the least degrading practices are implemented. Mont. Code Ann. § 75-5-303(3).

85. The policy also requires public notice and comment before final decisions on degradation are made. Mont. Code Ann. § 75-5-303(4).

86. Moreover, any proposed authorization to degrade is subject to strict review and must comply with the highest statutory and regulatory requirements for point and nonpoint sources within the affected hydrologic unit. ARM 17.30.705(2)(b).

87. The existence and application of Mont. Code Ann. § 75-5-301(5)(e), ARM 17.30.715(4)(e), 17.30.1022(1)(d) precludes DEQ from evaluating the assimilative capacity of downgradient surface water when authorizing new subsurface wastewater discharges from a class of subdivision development, from evaluating direct or cumulative impacts on downgradient surface water, or from applying any pollution controls more stringent than those provided in the aforementioned categorical exclusions, each outcome individually and collectively being contrary to the plain statutory purposes of the WQA and federal CWA, including Montanan's fundamental environmental rights.

FIRST CLAIM FOR RELIEF
RIGHT TO A CLEAN AND HEALTHFUL ENVIRONMENT, INCLUDING THE RIGHT TO HEALTHY RIVERS & CLEAN WATER
(Mont. Const. Art. II, § 3, Art. IX, § 1)

88. The preceding paragraphs are hereby realleged and incorporated by reference.

89. The Montana Constitution provides that, "All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment . . . ." Mont. Const. Art. II, § 3. Moreover, "In enjoying these rights, all persons recognize corresponding responsibilities." *Id*. Consistent with the provision of these rights and responsibilities the Montana Constitution further provides that, "The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations." Mont. Const. Art. IX, § 1. As articulated by the Montana Supreme Court:

> We conclude, based on the eloquent record of the Montana Constitutional Convention that to give effect to the rights guaranteed by Article II, Section 3 and Article IX, Section 1 of the Montana Constitution they must be read together and consideration given to all of the provisions of Article IX, Section 1 as well as the preamble to the Montana Constitution. In doing so, we conclude that the delegates' intention was to provide language and protections which are both anticipatory and preventative. The delegates did not intend to merely prohibit that degree of environmental degradation which can be

> conclusively linked to ill health or physical endangerment. Our constitution does not require that dead fish float on the surface of our state's rivers and streams before its farsighted environmental protections can be invoked.

Mont. Envt'l Info. Ctr. v. Dep't of Envt'l Quality, 1999 MT 248, ¶ 77, 296 Mont. 207, 230, 988 P.2d 1236, 1249.

90. A clean and healthful environment includes and requires healthy rivers capable of providing for and maintaining the most foundational uses of those waters: aquatic life and biodiversity.

91. Plainly speaking, without clean water and healthy rivers, there is no clean and healthful environment in Montana.

92. Clean, resilient rivers capable of providing for all their existing and beneficial uses represents a key component of an essential life support system necessary for Plaintiff and its members to enjoy their lives and liberties. A clean and healthful environment is one where rivers are free from harmful levels of nutrient pollutants related to subdivision development. Montanan's constitutional right to a clean and healthful environment prohibits environmental degradation that causes unreasonable depletion or degradation of the state's natural resources and requires affirmative action to protect water quality and the assimilative capacity of surface water in order to assure clean water and healthy rivers are maintained for future generations.

93. Defendant DEQ, by and through implementation of Mont. Code Ann. § 75-5-301(5)(e), ARM 17.30.715(4)(e), and ARM 17.30.1022(1)(d) are unconstitutionally depleting and degrading Montana's environmental and natural resources and causing and contributing to the destruction of assimilative capacity in the State's surface waters, including the Gallatin River, thereby injuring Plaintiff and its members of their constitutionally guaranteed rights under the Article II, Section 3 and Article IX, Section 1. DEQ's implementation of the

aforementioned exemptions effects a blanket prohibition on reviewing a class of pollution discharges to surface water to assure adequate protection of receiving water quality, including a prohibition on evaluating or further conditioning a class of subdivision-based nutrient discharges that have a significant and detrimental effect on water quality and uses of surface water.

94. Defendant's authorization of the Quarry Phase 2's new subsurface wastewater discharges containing nutrient pollutants to state waters, including discharges to the algal bloom impaired Gallatin River, without application of Nondegradation Policy or evaluation of how those discharges can, cumulatively and synergistically, cause or contribute to lower water quality and impairment of existing uses of the Gallatin River, or any evaluation of what limitations are necessary to maintain and protect existing uses of water and water quality, violated Plaintiff and its members' constitutionally guaranteed rights under Article II, Section 3 and Article IX, Section 1.

95. With regard to Plaintiff's right to a clean and healthful environment, the Montana Supreme Court has instructed that "as to any statute or rule which implicates that right must be strictly scrutinized and can only survive strict scrutiny if the State establishes a compelling state interest and that its action is closely tailored to effectuate that interest and is the least onerous path that can be taken to achieve the State's objective." *Mont. Envt'l Info Ctr. v. Dep't of Envt'l Quality*, 1999 MT 248, ¶ 63.

96. There is no interest, compelling or otherwise, that justifies Defendant's injury to Plaintiff's fundamental right to a clean and healthful environment for present and future generations, including but not limited to Defendant's adoption and implementation of laws that destroy or diminish the assimilative capacity of Montana's rivers.

97. Nor is Defendant's conduct narrowly tailored to implement any valid State interest. Even if it were, wholly exempting significant pollution discharges known to be harmful to Montana's aquatic life or recreation is not the least onerous path to achieve the state's objective of "cutting red tape" to make development easier in Montana.

SECOND CLAIM FOR RELIEF

PROTECTION OF MONTANA'S CLEAN AND HEALTHFUL ENVIRONMENT AND PUBLIC TRUST RESOURCES FOR PRESENT AND FUTURE GENERATIONS (Mont. Const. Art. IX, § 1, § 3)

98. The preceding paragraphs are hereby realleged and incorporated by reference.

99. The rights of the public and future generations as beneficiaries under the Public Trust Doctrine are an attribute of sovereignty that predate Montana's 1972 Constitution, are secured by the Constitution, and cannot be abrogated by statute or administrative rule. *Montana Coalition for Stream Access v. Curran*, 210 Mont. 38, 682 P.2d 163 (1984); *Montana Coalition for Stream Access v. Hildreth,* 211 Mont. 29, 684 P. 2d 1088 (1984).

100. Under Article IX, Section 1(1), "The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations." Likewise reflecting public trust principles, the Preamble to Montana's Constitution states that the Constitution was ordained and established for "this and future generations."

101. Article IX, Section 1(3) mandates that, "The legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources." At the 1972 Montana Constitutional Convention, Delegate C.B. McNeil emphasized that:

> Subsection 3 mandates the Legislature to provide adequate remedies to protect the environmental life-support system from degradation. The committee intentionally

> avoided definitions, to preclude being restrictive. And the term 'environmental life-support system' is all-encompassing, *including but not limited to air, water and land; and whatever interpretation is afforded this phrase by the Legislature and courts, there is no question that it cannot be degraded. See* Larry M. Elison & Fritz Snyder, *The Montana State Constitution: A Reference Guide 168* (Greenwood Press 2001) (emphasis added); *see also Montana Constitutional Convention Proceedings* vol. 4, 1201 (Mont. Legis. & Legis. Council 1972**),** http://courts.mt.govlibrary/montanalaws.mcpx. (emphasis added)

102. Under Article IX, section 3(3), "*All surface, underground*, flood, and atmospheric *waters* within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law" (emphasis added). The Montana Supreme Court has recognized this provision as an underpinning of the Public Trust Doctrine for water rights under the Montana Constitution. *Galt v. Montana,* 225 Mont. 142, 731 P.2d 912, 914-15 (1987); *see also, Montana Trout Unlimited v. Beaverhead Water Co.,* 2011 MT 151, ¶¶ 29, 30, 361 Mont. 77, 255 P.3d 179.

103. The nature of the environmental rights and responsibilities provided for by Articles II and IX cannot be interpreted separately and are applied in tandem. *Mont. Envt'l Info Ctr. v. Dep't of Envt'l Quality*, 1999 MT 248, ¶ 77, 296 Mont. 207, 230, 988 P.2d 1236, 1249. Thus, state action that implicates either will be strictly scrutinized. *Id*.

104. The Public Trust Doctrine requires all sovereign governments, including Defendant as trustee, to maintain control, protect, preserve, and prevent substantial impairment to and waste of Public Trust Resources for the benefit of all Montanans, including Plaintiff, its members, and future generations of Montanans. Defendant, as trustee, also has an obligation to refrain from acting in a manner that abdicates control of Public Trust Resources.

105. By and through Defendant's nonsignificance exemptions for a class of subdivision wastewater discharges as described above, Defendant has unconstitutionally caused, and continues to cause, impairment to and waste of Public Trust Resources, including the state

waters of Montana, fish and wildlife, and other Public Trust Resources. The levels of nutrient pollution that Defendant's exemptions authorize to surface water, including the Gallatin River, have a scientifically demonstrable negative impact on Plaintiff's ability to use, access, enjoy and navigate the state's waters. Further, application of the aforementioned exemptions are unreasonable and wasteful because through avoidance of science-based analyses and Nondegradation Policy, they do not require or adequately incentivize best available treatment or conservation practices capable of protecting and maintaining water quality and existing uses of waterways, or protecting the environmental life support system from degradation.

106. By and through Defendant's nonsignificance exemptions for a class of subdivision wastewater discharges from Nondegradation Policy, Mont. Code Ann. § 75-5-301(5)(e), ARM 17.30.715(4)(e), and ARM 17.30.1022(1)(d), Defendant has abdicated control over and reduced the assimilative capacity of state surface waters, including the Gallatin River, in favor of short-term interests of private parties, authorizing those parties to treat Montana's water resources as a sewer system for their pollution while profiting off developing Montana's natural resources, to the detriment of Plaintiff and its members and future generations of Montanans. Such policies, rules, and statutes undermine the Public Trust rights and interests of Plaintiff, its members, and future generations of beneficiaries in violation of Defendant's duties of loyalty, impartiality, and prudence.

107. By and through Defendant's nonsignificance exemptions for a class of subdivision wastewater discharges from the Water Quality Act and Nondegradation Policy, Mont. Code Ann. § 75-5-301(5)(e), ARM 17.30.715(4)(e), and ARM 17.30.1022(1)(d), as evidenced by its approval of the Quarry Subdivision Phase 2 pollution discharges to the Gallatin River, Defendant has breached its affirmative duty to protect and improve a clean and healthful

environment in Montana - which includes the protection and improvement of surface waters and existing uses in waters as the Gallatin River - for present and future generations under Article IX, Section 1(1) of the Montana Constitution. Further, DEQ has an affirmative duty to evaluate the direct, secondary, and cumulative effects of polluting activities upon interests protected by the Public Trust, and so far as feasible, to avoid unreasonable depletion and degradation of those interests.

108. DEQ has shirked its affirmative duty to reasonably control the impacts of a polluting class of activities on public trust uses of state surface waters, including the Gallatin, and likewise shirked its duty to implement feasible measures to protect those waterway's public trust resources and prevent the loss of beneficial uses.

109. As a result of Defendant's unconstitutional and unlawful nonsignificance exemptions for a class of subdivision wastewater disposal, Plaintiff seeks declaratory and injunctive relief in this Court. Plaintiff and its members suffer and will continue to suffer injury due to Defendant's implementation and enforcement of WQA exemptions for subdivision wastewater systems until Defendant is restrained.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

A. Determine and declare that Plaintiff's and its members' fundamental constitutional right to a clean and healthful environment includes healthy rivers that sustain human lives, aquatic communities, biodiversity, and existing uses of waterways, and that right is being violated by Defendant's statutes and rules as set forth above;

B. Determine and declare that Mont. Code Ann. § 75-5-301(5)(e), ARM 17.30.715(4)(e), and ARM 17.30.1022(1)(d) are facially unconstitutional;

C. Determine and declare that Mont. Code Ann. § 75-5-301(5)(e), ARM 17.30.715(4)(e), and ARM 17.30.1022(1)(d), and affirmative acts taken thereunder in approving the Quarry Subdivision Phase 2 wastewater discharges, are in violation of Article II, Section 3, Article IX, Section 1, Article IX, Section 3 of the Montana Constitution and the Public Trust Doctrine, and void approval of the Quarry Phase 2;

D. Permanently enjoin Defendant and its agents from implementing the unconstitutional requirements of Mont. Code Ann. § 75-5-301(5)(e), ARM 17.30.715(4)(e), ARM 17.30.1022(1)(d) as described herein;

E. Award Plaintiff their reasonable attorneys' fees, costs, and expenses; and

F. Grant Plaintiff such additional relief as the Court may deem just and proper.

Respectfully submitted on this 27th of June 2025.

/s/ Guy Alsentzer

/s/ Graham J. Coppes

/s/ Emily F. Wilmott

Attorneys for Plaintiff