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MONTANA ELEVENTH JUDICIAL DISTRICT, FLATHEAD COUNTY

_____)	
CITIZENS FOR A BETTER FLATHEAD and)	Case No.
the CONFEDERATED SALISH &)	
KOOTENAI TRIBES)	COMPLAINT
)	
Plaintiffs,)	
v.)	
)	
MONTANA DEPARTMENT OF)	
ENVIRONMENTAL QUALITY,)	
an agency of the State of Montana)	
)	
Defendant.)	
)	
)	
_____)	

COMES NOW Plaintiffs, Citizens for a Better Flathead (CBF) and Confederated Salish & Kootenai Tribes (CSKT) (together, Plaintiffs), through counsel, and in support of their Complaint seeking review and relief from the Department of Environmental Quality's (DEQ or Defendant) final decision issuing a groundwater pollution discharge permit to the Lakeside County Water & Sewer District (LCWSD), state and allege as follows:

INTRODUCTION

1. Plaintiffs bring this case to vindicate their and their members' rights to government decision-making that applies best-available science, protects a clean and healthful environment, and prevents unreasonable depletion and degradation of water resources in the Flathead.
2. On April 28, 2025, Defendant DEQ issued a new municipal-scale groundwater discharge permit to the Lakeside County Water & Sewer District authorizing up to 200,000 gallons per day (gpd) of new wastewater pollution disposal approximately 1/4 mile upgradient of Lower Ashley Creek and less than a mile north of Flathead Lake.
3. DEQ issued this discharge permit without reconciling record evidence demonstrating the certainty that permit pollution will flow into Lower Ashley Creek and Flathead Lake far more quickly and in more potent concentrations than anticipated, the high likelihood that such new pollution loading will negatively affect those waters' ability to attain their beneficial uses, and without explaining how the permit's nutrient loads are consistent with the assumptions underlying the 2014 Flathead-Stillwater Total Maximum Daily Loads for Nutrients and the 2001 Flathead Lake TMDLs for Nutrients.
4. DEQ finalized its permitting action through a defective decision-making process that failed to apply its own rules under the Water Quality Act and Montana Environmental Policy Act, and failed to perform the requisite analysis of whether the discharge requires a surface water permit pursuant to the federal Clean Water Act, including no evaluation of how the discharge could violate downstream tribal water quality standards applicable to Flathead Lake.
5. Taken as a whole, DEQ's permitting action represents an arbitrary and capricious decision untethered to an extensive body of evidence before it concerning the likely harms flowing

from disposing of enormous volumes of new wastewater pollution to groundwater hydrologically connected to Lower Ashely Creek and Flathead Lake.

VENUE & JURISDICTION

6. The Eleventh Judicial District has subject matter jurisdiction over claims brought under Article II, Sections 3 & 16, Article VII, Section 4(1), and Article IX, Sections 1 & 3, of the Montana Constitution; MCA § 75-1-101 *et seq.* (MEPA); MCA § 75-5-101 MCA *et seq.* (WQA); MCA § 27-8-202 (declaratory relief); and MCA § 27-19-101 (injunctive relief).
7. Venue lies in the Eleventh Judicial District pursuant to MCA §§ 25-2-126, 75-1-108, 75-5-107, and MCA § 2-4-506(4) because the violation of law at-issue arose in Flathead County.

PARTIES

8. Plaintiff Citizens for a Better Flathead is a Montana non-profit, public-benefit corporation that works to foster informed and active citizen participation in the decisions shaping the Flathead's future, and to champion the democratic principles, sustainable solutions, and shared vision necessary to keep the Flathead special forever.
9. Members of Citizens live in the State of Montana, in and around the City of Kalispell, Somers, Lakeside, and the Flathead watershed. These members use Flathead Lake, including areas proximate to Lakeside County Water and Sewer District's treatment and disposal operations, and have an interest in preserving water quality.
10. In addition, Citizens and its members share the goals of protecting water quality, promoting sound land use planning and lawful process, involving citizens in decision-making affecting land and water resources, protecting the Flathead's rural aesthetic character, and promoting sustainable use of water resources, and such interests are adversely affected by the DEQ's unlawful actions herein.

11. Citizens submitted comments in opposition to DEQ's proposed discharge permit, including expert reports identifying fatal flaws in agency analysis, findings, and conclusions that undermine the accuracy and lawfulness of the discharge permit.
12. Plaintiff the Confederated Salish and Kootenai Tribes (CSKT) are a federally-recognized confederation of Indian tribes with a government operating in accordance with the Indian Reorganization Act of 1934, 25 U.S.C. § 461, et seq. The CSKT reserved from their aboriginal territory the Flathead Indian Reservation (FIR) as their exclusive and permanent homeland pursuant to the Hellgate Treaty of July 16, 1855, 12 Stat. 975 (1855).
13. Through the 1855 “Treaty with the Flatheads, Etc.” 12 Stat.975 (“Hellgate Treaty”) the CSKT reserved for themselves a homeland and the right to continue taking fish from all usual and accustomed places both on the Flathead Indian Reservation and throughout their aboriginal homeland. Hellgate Treaty of 1855, Art. III. For CSKT Tribal members to fully exercise their treaty-reserved right to harvest fish there must be water quality sufficient to support sustainable fisheries, and fish that are safe for human consumption.
14. The CSKT also has an interest in ensuring that water that flows from locations under the water quality jurisdiction of the state of Montana not harm treaty-protected resources within the Flathead Indian Reservation, such as fish and wildlife that rely on Flathead Lake, the largest natural freshwater lake west of the Mississippi River. The northern half of Flathead Lake is under the jurisdiction of Montana, while the southern half of the lake is located within the reservation and under the jurisdiction of the CSKT.
15. The CSKT commented in opposition to DEQ's proposed LCWSD discharge permit for the LCWSD inasmuch as it would allow for greater input of harmful pollution to Flathead Lake and its tributaries, has the likelihood of directly impacting CSKT Tribal members and treaty

resources located within the aboriginal territory of the CSKT and reserved through the 1855 Hellgate Treaty, and to express concern that DEQ was improperly treating the new, municipal-scale public wastewater discharge as a groundwater permit under state law, when the federal Clean Water Act required the agency to consider the discharge as a NPDES permit, and to affirmatively demonstrate that the discharge would not negatively affect downstream Flathead Lake's ability to fulfill CSKT water quality standards.

16. Plaintiffs' ecological, economic, aesthetic, and social interests are directly impacted by DEQ's authorization of a new municipal-scale wastewater discharge permit that will undisputedly contribute more pollution to Flathead Lake and its tributaries, without the agency performing the analyses required by law.
17. These adverse impacts may be redressed by the Court granting the relief requested herein.
18. Plaintiffs' possess individual, organizational, and associational standing to challenge DEQ's decision-making authorizing the new pollution permit for LCWSD.
19. Defendant the Montana Department of Environmental Quality is an agency of the State of Montana, headquartered in Helena, MT. DEQ implements environmental imperatives of the Montana Constitution through its administration of the Montana Environmental Policy Act, MCA § 75-1-101 *et seq.*, and the Water Quality Act, MCA § 75-5-101 *et seq.* DEQ must also implement requirements of the federal Clean Water Act, 33 U.S.C. § 1251 *et seq.* as an Environmental Protection Agency (EPA) delegated entity.

FACTUAL BACKGROUND

A. Wastewater and Nutrient Pollution

20. Nutrient pollution (also known as “cultural eutrophication”), especially by Nitrogen and Phosphorus, is among the most pervasive sources of impairment to surface waters in the State of Montana, and nationally.
21. Cultural eutrophication (often abbreviated as “eutrophication”) is the process of Nitrogen (N) and Phosphorus (P) contamination of surface waters from human-related sources that add high levels of N and P, relative to what is natural background, so that the affected aquatic ecosystem is pushed out of balance to an unhealthy state.
22. Eutrophication is a gradual, natural aging process of freshwaters (often hundreds to thousands of years) as they become more nutrient-rich. In contrast, cultural eutrophication greatly accelerates that process. It much more rapidly promotes production of algae and other biota, as well as incites major adverse shifts in the structure and abundant species of algal/plant and aquatic life communities.
23. Aquatic ecosystems are sensitive to nutrient additions beyond natural conditions.
24. In fertilizing lawns or croplands, people are accustomed to thinking in terms of pounds of N and P fertilizers that are added to grass or soil, followed by watering to move the nutrients down to the plant roots. In contrast, algal primary producers are much smaller than grass or crop plants; they have proportionately much more surface area to take up nutrients relative to their size, and they are immersed in water so that addition of nutrient pollution makes the water analogous to a nutrient broth.
25. Increased nutrient supplies above natural background levels often stimulate too much algal growth, especially of “weedy” or nuisance, pollution-tolerant species that grow best with elevated nutrients.

26. Overall, nutrient pollution can damage aquatic ecosystems in two basic ways: First, through an increase in the available *amounts (supplies)* of N and P that stimulate outbreaks (“blooms”) of nuisance algae; and second, through a shift in the proportion (*supply ratio*) of N relative to P supplies. Surface waters affected by nutrient pollution usually have both problems: the N and P supplies are elevated in comparison to background (reference or minimally impacted) conditions, and the N:P ratio is skewed so that the aquatic communities have been pushed into what is referred to as “stoichiometric imbalance.”
27. Surface waters that receive high nutrient enrichment from raw or partially treated sewage are more vulnerable to adverse impacts of nutrient pollution in comparison to waters affected by other sources, because the majority (often ~80 to 95%) of the N and P is NH_4^+ and PO_4^{3-} , directly available for algal/plant uptake.
28. The highly bioavailable N and P supplies in sewage-affected systems are much more potent in causing adverse impacts on receiving water resources. Risk of increased downstream impacts are greater as well, especially for partially treated sewage that includes high concentrations of nitrate which is highly soluble and can travel for hundreds of miles.
29. Nutrients, including in particular nitrogenous compounds, can lead to a variety of far-field effects on aquatic ecosystems, impacting water quality and biodiversity through eutrophication, algal blooms, oxygen depletion, and changes in the structure and function of aquatic food webs.
30. Changes in the abundance of benthic/floating algae, especially filamentous macroalgae, are often the most visible signs of a changing nutrient regime in rivers. Benthic algae directly consume the inorganic N and P supplies in sewage.

31. In general, high-nutrient-tolerant and high-nutrient-optimal filamentous benthic algae become dominant in areas affected by partially treated sewage. “Canopy” or “overstory” species of benthic algae that can grow up into the overlying water as debris accumulates have a competitive advantage over other species because of much greater, continual access to the rich water-column nutrient source.
32. In developing Montana's numeric nutrient water quality standards, DEQ's scientists stated that both N and P pollution should be controlled because, long before impacts manifest, there tend to be strong, positive synergistic physiological effects of combined N+P enrichment on nuisance algae, even if enrichment of one nutrient is much less than that of the other.
33. Nutrient pollution directly or indirectly affects freshwater ecosystems at every trophic level, from microbes to the larger aquatic life, and significantly reduces biodiversity.
34. Natural systems with minimal human disturbance, such as mountain streams draining undeveloped watersheds in granitic bedrock areas, are generally oligotrophic or low in N and P supplies.
35. The diverse communities characteristic of oligotrophic waters tend to be dominated by sensitive species that are limited to a narrow range of environmental conditions. Oligotrophic ecosystems are more sensitive (or less resistant), overall, to stress from nutrient enrichment.
36. The most predictable outcomes flowing from nutrient enrichment of oligotrophic ecosystems are loss of sensitive species and increased abundance of generalist or opportunistic species that are more resistant to the undesirable water quality changes and other stresses imposed by nutrient pollution.
37. The science supporting DEQ's adoption of numeric nutrient water quality standards recognized that humans easily notice negative aesthetics caused by high-biomass nuisance

algal blooms, such as nuisance algae and weedy growths. Numeric nutrient standards in Montana are set at levels to prevent nuisance aquatic vegetation and eutrophication events.

38. Eutrophication has significant impacts on aquatic communities. The blooms can deplete DO at night from respiration, then cause dramatic increases in DO with photosynthesis during the day, and the wide diel variation can stress and weaken sensitive aquatic life.
39. Algal overgrowth alters critical bottom habitat so that sensitive fish such as salmonids cannot use it for spawning and recruitment. Photosynthetic activity from the high algal biomass can elevate the pH to levels known to adversely affect young life history stages and gill function in sensitive fish species such as salmonids. Decomposition of high-biomass algal blooms can decrease DO availability.
40. Over time, nutrient contamination of oligotrophic waters often shifts macroinvertebrate communities from sensitive, pollution-intolerant stoneflies, mayflies, and caddisflies to pollution-tolerant midges, aquatic worms, and black fly larvae, which in turn can negatively affect fishery abundance and fish size.
41. In 2008 and in support of developing the State of Montana's Numeric Nutrient Water Quality Standards, Dr. Suplee of DEQ explained a negative impact of eutrophication on aquatic life in stating:

Aquatic insect (aquatic macroinvertebrate) populations often shift in response to increasing nutrient enrichment....sensitive macroinvertebrates, including mayfl[ies] (Ephemeroptera), stonefl[ies] (Plecoptera), and caddisfl[ies] (Trichoptera), tend to be found in clean water having low nutrient concentrations and DO near saturation (i.e., without extreme daily oscillations). At the other end of the spectrum, many midge species (chironomids) are tolerant of heavy eutrophication and the associated conditions (e.g., low nighttime DO) (Hynes 1966, Hilsenhoff 1987, Lenat and Penrose 1996). Downstream [as the stream partially recovers]...overall macroinvertebrate density and biomass increase, but the density of pollution-sensitive species diminishes (Gücker et al. 2006).

B. The Flathead-Stillwater Watershed & Existing Nutrient Pollution Surface Water Impairments in Ashley Creek and Flathead Lake

42. Flathead Lake, the Flathead River, and Ashley Creek are oligotrophic surface waters, which is to say they naturally possess very low nutrient concentrations.
43. The Flathead Stillwater subwatershed includes Lower Ashley Creek, which remains impaired on DEQ's 303d List of Impaired Waters in the most recent Integrated Report, and which possesses Total Maximum Daily Loads (TMDLs) for both Nitrogen and Phosphorus, adopted in 2014 by DEQ and approved by EPA in 2015.
44. The Flathead-Stillwater nutrient TMDLs estimated there were 3,353 septic systems in the watershed contributing to the Lower Ashley Creek nutrient impairment and described that load as 15% of the Total Nitrogen (TN) impairment for Lower Ashley Creek.
45. The Flathead-Stillwater nutrient TMDL also described the same septic systems contribution to Lower Ashley Creek as 20% of the Total Phosphorus (TP) load related to ongoing surface water impairment.
46. The Flathead-Stillwater nutrient TMDLs calls for TN reductions of 67-97% from existing loads, with a median average needing per sector of 92%. It also estimates an existing gross TN load of 230.6 lbs/day and requires a 91% reduction to 20.20 lbs/day to attain water quality targets.
47. The Flathead-Stillwater nutrient TMDLs estimate a TP load of 4.41 lbs/day and requires a 58% reduction to 1.84 lbs/day average to attain water quality targets.
48. The Flathead-Stillwater nutrient TMDL reductions are also designed to, when implemented, address surface waters with dissolved oxygen impairments, including Lower Ashley Creek.
49. DEQ has not revised or updated, and EPA has not approved, any revisions to the promulgated 2014 Flathead-Stillwater Nutrient, Sediment, and Temperature TMDLs.

50. EPA has delegated authority to DEQ to implement requirements of the Clean Water Act, including its Section 303(d) impairment and TMDL programs.
51. DEQ must issue discharge permits that are consistent with the assumptions and requirements of applicable TMDLs for state waters receiving pollutants subject to a discharge permit.
52. Flathead Lake also possesses nutrient TMDLs.
53. Ashley Creek is impaired by and possesses TMDLs related to nutrients, dissolved oxygen, and sediment pollutants.
54. Ashley Creek's aquatic life beneficial uses are not fully attained. The creek experiences nuisance aquatic vegetative growth and recurrent algal blooms, including the lower segment of Ashley Creek.
55. The discharge permit issued to the LCWSD by DEQ authorizes the disposal of 200,000 gpd of new wastewater discharges to groundwater with the recognition that such discharges will enter Ashley Creek and ultimately, Flathead Lake.
56. Flathead Lake has a DEQ approved nutrient TMDLs, adopted and in force since 2002. The Lake's TMDLs set forth numeric water quality targets of 5.0 ug/L Total Phosphorus, and 95 ug/L Total Nitrogen (i.e., .005 mg/L and .95 mg/L, respectively).
57. The Lake nutrient TMDLs also express the narrative water quality goal of "no nuisance algal blooms", explaining that "blooms [...] are an indicator of declining water quality and have only been noted in the lake since the 1980s, commensurate with increasing nutrient loads from human sources [...]" Section 5.1, "Water Quality Goals", Flathead Lake Nutrient TMDLs.
58. The Lake's numeric nutrient targets "were developed as result of extensive scientific research, followed by considerable debate and discussion." The 2001 Nutrient TMDLs called for a "15% reduction in nitrogen and phosphorus loads, plus an additional 10 percent load

reduction for a margin of safety. The TMDL applies to the entire basin and all anthropogenic sources.

59. Flathead Lake remains impaired for nutrients on DEQ's most recent Integrated Report, and likewise its nutrient TMDLs remain applicable for water quality planning.

60. The nearby Big Fork wastewater treatment facility has a design treatment capacity of 690,000 gallons per day, and discharges to Flathead Lake.

61. When Big Fork was determining what wastewater treatment upgrade to perform in 2010, DEQ published an Environmental Analysis that evaluated four treatment alternatives, including a membrane bioreactor, two types of sequencing batch reactors, and ultraviolet disinfection.

62. The Big Fork wastewater treatment facility is a membrane bioreactor facility.

63. Membrane bioreactor treatment achieves better quality effluent in terms of reducing nutrient concentrations than that achieved by sequencing batch reactors.

C. The Interlocal Agreement Between Flathead County & Lakeside County Water & Sewer District

64. On September 14, 2023, Flathead County entered an Interlocal Agreement with Lakeside County Water & Sewer District (LCWSD). That Agreement contemplated a plan for the County to build, own, and operate a wastewater treatment facility capable of accepting septage gathered from across Flathead County, and delivery to LCWSD for disposal.

65. Flathead County purchased property at 305 Wiley Dike Road, originally intending to build and operate a septage treatment facility at that location.

66. On March 19, 2024, Flathead County and LCWSD signed a revised Interlocal Agreement. Under the revised Agreement, Flathead County would fund the construction of a septage

receiving and treatment facility, and the LCWSD will build, own, and operate the receiving station, treatment facility, and be responsible for disposal of wastewater.

67. The Interlocal Agreement stipulates to two phases of construction. Phase 1 includes construction of a new septage receiving station. Phase 2 includes construction of a new wastewater treatment facility that will treat LCWSD's existing and committed wastewater service along with septage gathered from across Flathead County.
68. The Interlocal Agreement states that Flathead County will provide approximately 23.5 million taxpayer dollars in funding to LCWSD towards its construction of new and expanded waste treatment infrastructure upon the fulfillment of a condition precedent, namely, the District obtaining a discharge permit for disposal of wastewater.
69. On March 28, 2024 Flathead County sold the 305 Wiley Dike Road property to the LCWSD for use in its wastewater treatment operations and planned infrastructure build-out.

D. DEQ's Discharge Permit Decision

70. On December 9, 2024, DEQ published a draft groundwater discharge permit for LCWSD.
71. According to DEQ's Fact Sheet for the draft Permit "[t]his engineering design was combined with existing plans to update LCWSD's wastewater treatment facility. Under the new proposed treatment operations, "septage (received from septage pumpers operating across, presumably, the Flathead Valley) will be unloaded into the septage receiving facility." "Septage will be mixed into the [District's] municipal wastewater at a fixed ration to maintain a steady state...will go into the secondary treatment facility, which will have a design treatment capacity of 900,000 gpd. The wastewater treatment facility will be a mechanical treatment plan utilizing sequencing batch reactor technology with biochemical nutrient reduction capabilities."

72. DEQ's Fact Sheet repeatedly affirms that the Deltaic Aquifer receiving proposed discharges from the LCWSD RIBs is "hydrologically connected to surface waters."
73. Similarly, the Fact Sheet recognizes that the nearest wadeable surface water, Wiley Slough, is connected to the nutrient-impaired Lower Ashley Creek, and that nutrient pollutant additions to Ashley Creek are capped based on requirements of the Flathead-Stillwater TMDL.
74. DEQ made a preliminary determination under the Water Quality Act that the proposed discharges would be nonsignificant based on its analysis under ARM 17.30.715(1).
75. DEQ's WQA nonsignificance determination rests on, first, modeling of the receiving aquifer and conclusions about nutrient pollutants fate and transport to receiving surface water.
76. Second, it rests on the allegation that collection and treatment of sewage from across the County and treatment and disposal under the permit represents a net reduction in nutrient loading to the Flathead Basin.
77. Third, DEQ asserts that attenuation and chemical treatment will occur in the aquifer, further reducing nutrient loads before discharging to surface water.
78. DEQ states that Final Effluent Limitations for LCWSD's discharges include an annual average of more than 628 lbs/yr of phosphorus, and a quarterly average of 14.2 lbs/day load of nitrogen to the receiving aquifer.
79. DEQ estimates anywhere from 3.5 to 7.7 years for nitrate to discharge to downgradient surface waters that range from 1160 ft to 2540 ft downgradient, again based on aquifer characteristics such as receiving alluvium type, velocity, porosity and transmissivity, and gradient.

80. DEQ also estimated that it will take approximately 469 ft of travel for denitrification to occur in the receiving alluvium sufficient to bring nitrogenous concentrations to or below .275 mg/L, which is the surface water standard for receiving surface waters.
81. DEQ's Permit incorporates nutrient nonsignificance findings of the applicant's engineering firm, conclusions based on five soil borings, monitoring wells, and five rising-head slug tests, combined with AQTESLOV software modeling aquifer characteristics.
82. The volume of groundwater discharged to the receiving aquifer via the proposed Rapid Infiltration Basins exceeds the volume of groundwater in the aquifer and is anticipated to cause groundwater mounding.
83. DEQ also made a preliminary determination pursuant to the Montana Environmental Policy Act that the proposed discharge permit constituted a nonsignificant action.
84. DEQ's draft discharge permit and fact sheet avoided considering the multiple, related phases and elements of LCWSD's new wastewater treatment facility as a single project for the purposes of its MEPA review, despite referencing those components and the publicly disclosed Interlocal Agreement between the District and Flathead County treating all phases as a single endeavor.
85. DEQ has authority over permitting both wastewater discharges and the planning, construction, and design of wastewater treatment facilities.
86. At the time of its April 28, 2025 discharge permit decision, DEQ had both notice of and preliminary planning discussions with LCWSD regarding related phases of wastewater infrastructure development and associated elements.
87. Plaintiffs, the CSKT and Citizens, both submitted comments in opposition to the proposed discharge permit. Both comments also referenced three expert reports from Hydrosolutions

and Hauer Environmental, each of which identified missing data, inaccuracies, and conclusory findings in DEQ's draft discharge permit and supporting materials.

88. The Donohue Hydrogeology Report examined the hydrogeologic analyses performed in support of the Permit and its conclusions. It found that the Permit's conclusions and findings are arbitrary and capricious because of a lacking hydrogeologic baseline for the project area, including complete omission of the presence of preferential pathways in the receiving aquifer and heterogeneous nature of the receiving aquifer more generally. The report identifies several inconsistencies and conclusory findings regarding alleged nutrient pollutant fate and transport based on the inadequate hydrogeologic analyses for the disposal area.
89. The Meredith Mounding Report examined the mounding evaluation and related findings for the Permit. The author identified a fatal flaw: neither the applicant or DEQ recognized the heterogeneous nature of the receiving Delta Aquifer. The report clarified that because DEQ and the applicant used modeling to estimate mounding and nutrient pollutant transport based on the assumption of a homogeneous aquifer, the Permit's findings are erroneous and wholly speculative. The author opines that the Permit's effluent limits cannot be scientifically defensible without a far greater degree of baseline diligence and a numerical groundwater model capable of estimating pollutant fate and transport in heterogeneous aquifers.
90. The Hauer Ecological Report evaluated the ecological conclusions of the draft Permit regarding nonsignificance, including the assumed nutrient fate and transport and potential impacts on water quality. That analysis found a wholly lacking scientific basis for the DEQ's conclusion of nonsignificance, and so too found a very high likelihood that the Permit's effluent limits would cause or contribute to violations of water quality standards in downgradient surface waters, including a high likelihood of contributing to non-attainment of

assumptions underpinning the Flathead-Stillwater TMDLs for Lower Ashley Creek. The report also specifically identifies the presence of preferential pathways in the receiving heterogeneous - not homogeneous - aquifer, two relevant factors the Permit wholly fails to identify or consider, and likewise finds the Permit's assumptions of nutrient attenuation, retention, or denitrification erroneous based on undisputed characteristics of the receiving aquifer and well-established metrics for such chemical processes.

91. Substantively, Plaintiffs' comments asserted that DEQ had not conducted lawful nondegradation or environmental analyses because the agency had failed to consider cumulative impacts and synergistic effects of the proposed new wastewater discharge on surface waters, and that DEQ improperly constrained its MEPA analysis contrary to its own rules.
92. Plaintiffs also asserted that DEQ had failed to evaluate the appropriateness of the proposed groundwater discharge permit as, instead, a functional equivalent of a point source discharge requiring an MPDES permit pursuant to requirements of the Clean Water Act.
93. Plaintiffs also identified DEQ's failure to evaluate how the permit's discharges could cause or contribute to violations of CSKT water quality standards in the southern half of Flathead Lake.
94. DEQ did not conduct the Nondegradation Analysis required for new pollution discharges under MCA § 75-5-303(2).
95. DEQ provided a mass-balance equation allegedly considering downgradient surface water impacts from the LCWSD discharge. This analysis did not consider the status of nutrient-impaired Lower Ashley Creek or Flathead Lake, protection of those waters' beneficial uses,

or demonstrate how the discharge would satisfy requirements and assumptions of those waterbodies' nutrient TMDLs.

96. DEQ did not provide analysis of cumulative impacts or synergistic effects of the proposed discharge to downgradient Lower Ashley Creek or Flathead Lake in combination with other known and related actions and activities contributing the same pollutants of concern in the same watershed area of the Project.
97. DEQ also did not reasonably explain why it was permissible to segment its review of the LCWSD's undisputed, multiple phases of infrastructure in an EA, as opposed to the rigor required for an EIS.
98. DEQ issued LCWSD a discharge permit on April 28, 2025.
99. DEQ's final permit and Response to Comments document did not evaluate or respond to contrary expert opinions.
100. Plaintiffs challenged DEQ's decision authorizing MTX000307 by filing this Complaint thirty days later, on May 28, 2025.

FIRST CLAIM FOR RELIEF
(WQA: Failure to Take a Hard Look at Cumulative Impacts)

101. The allegations in the foregoing paragraphs are re-alleged and incorporated by reference.
102. The WQA implements the Montana Constitution's imperative that DEQ's decisions protect and maintain a clean and healthful environment.
103. Further, Article II, Section 3 and Article IX, Section 1 require DEQ's exercise of authority be anticipatory and preventative in nature, to protect the ecological life support system, and to prevent unreasonable depletion and degradation of natural resources.
104. A core purpose of the WQA is to provide remedies to prevent, abate, and control the pollution of state waters.

105. DEQ's nondegradation analysis for discharge permit MTX000307 failed entirely to consider potential cumulative impacts or synergistic effects of nutrient pollution discharges as required by ARM §§ 17.30.715(2)(a), 17.30.637(2).
106. DEQ's permit decision was restricted to the Permit's direct effects on receiving water quality.
107. DEQ's permit decision did not identify, or consider, recurrent nuisance algal blooms or undesirable aquatic vegetative growth in downgradient receiving surface waters, nor adequately evaluate the new permit's pollution discharges in light of those waters' ongoing nutrient impairments and related nutrient pollution restrictions set forth in either the Flathead-Stillwater Nutrient TMDLs or Flathead Lake Nutrient TMDLs.
108. DEQ's decision ignored record evidence of the far-field, negative impacts of adding new nutrient pollution to Ashley Creek and Flathead Lake in determining the permit's discharges nonsignificant.
109. DEQ's decision ignored record evidence that its significance findings were based on an improper groundwater model, and therefore clearly erroneous.
110. DEQ's failure to consider potential cumulative impacts or synergistic effects of new nutrient pollution discharges authorized by permit MTX000307 was an unlawful violation of nondegradation policy under the WQA, and arbitrary and capricious based on the decision-making record.

SECOND CLAIM FOR RELIEF
(WQA: 75-5-301(d), 75-5-303)

111. The allegations in the foregoing paragraphs are re-alleged and incorporated herein by reference.

112. The Montana Water Quality Act was 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." 75-5-101(1), (2) MCA.
113. The express foci of Montana's Nondegradation Policy is the protection of existing uses of state waters and the level of water quality necessary to protect those uses.
114. DEQ's authorization of the LCWSD permit relies on the agency's determination of nutrient sewage concentrations compliant with ARM 17.30.715(1)(d), 75-5-301(5)(d), MCA, and therefore nonsignificant and exempt from the mandatory review for new pollution discharges required pursuant to 75-5-303(3).
115. Nondegradation Policy requires DEQ to consider whether new discharge source(s) will cause degradation of surface water.
116. A discharge from a new source or activity is only exempted from Nondegradation Policy Analysis under 75-5-303 MCA if they will not cause degradation of surface water and an exemption under 75-5-317, MCA applies. *See* § 75-5-301(5)(d), MCA (emphasis added).
117. Montana's Nondegradation Policy prohibits DEQ from authorizing degradation of high-quality waters unless the agency makes certain affirmative findings, including a finding that "the least degrading water quality protection practices determined by the department to be economically, environmentally, and technologically feasible will be fully implemented by the applicant prior to and during the proposed activity." 75-5-303(3), MCA.
118. DEQ violated the plain language of MCA 75-5-303 when it failed to apply its own rules and examine whether authorizing the LCWSD's wastewater discharges will cause, in conjunction with other sources, degradation in downgradient surface waters based on an

analysis of on-the-ground conditions, including the agency's preexisting nutrient impairment determinations for Lower Ashley Creek and Flathead Lake, cumulative impacts and synergistic effects of nutrient pollutants, and substantive information derived from public comment. 75-5-301(5)(d), MCA; ARM 17.30.715(2), 637(1)-(2).

119. The LCWSD groundwater discharge is subject to full Nondegradation Policy review unless a legitimate exemption, not present here, applies. 75-5-303(2), MCA.

120. DEQ failed to undertake the required Nondegradation Policy analysis of the LCWSD's new pollution discharges in violation of 75-5-303, MCA.

THIRD CLAIM FOR RELIEF
(Violation of the Montana Environmental Policy Act)

121. The allegations in the foregoing paragraphs are re-alleged and incorporated herein by reference.

122. MEPA is intended to implement the environmental protection imperatives of Article II, Section 3 and Article IX, Section 1 of the Montana Constitution. § 75-1-102, MCA.

123. MEPA requires state agencies to carefully scrutinize the potential environmental consequences of their actions. § 75-1-101, *et seq.*, MCA; ARM 17.4.601 *et seq.* “MEPA requires that an agency be informed when it balances preservation against utilization of our natural resources and trust lands.” *Ravalli County Fish & Game Ass’n, Inc.*, 273 Mont. at 385, 903 P.2d at 1371. Thus, state decision makers are prohibited from “reach[ing] a decision without first engaging in the requisite significant impacts analysis.” *Id.*

124. Under ARM 17.4.608(1), to implement MEPA the agency shall determine the significance of impacts associated with a proposed action. This determination is the basis of the agency's decision concerning the need to prepare a more robust review via an

environmental impact study and also refers to the agency's evaluation of individual and cumulative impacts in an environmental assessment (EA).

125. To determine a project's significance, "[t]he agency shall consider [...] (b) the probability that the impact will occur if the proposed action occurs; or conversely, reasonable assurance in keeping with the potential severity of an impact that the impact will not occur; (c) growth-inducing or growth-inhibiting aspects of the impact, including the relationship or contribution of the impact to cumulative impacts, (d) the quantity and quality of each environmental resource or value that would be affected, including the uniqueness and fragility of those resources or values, (e) the importance to the state and to society of each environmental resource or value that would be affected, (f) any precedent that would be set as a result of an impact of the proposed action that would commit the department to future actions with significant impacts or a decision in principle about such future actions; and (g) potential conflict with local, state, or federal laws, requirements, or formal plans." ARM 17.4.608(1).
126. Among other items, an EA must include: (d) an evaluation of the impacts, including cumulative and secondary impacts, on the physical environment [...]" ARM 17.4.609(3).
127. "Cumulative impact" means the collective impacts on the human environment of the proposed action when considered in conjunction with other past and present actions related to the proposed action by location or generic type.
128. An EA must also include an evaluation of alternatives to the proposed action. 75-1-201(b)(iv)(C); ARM 17.4.609(3)(f).
129. DEQ's EA for the discharge permit is insufficient. The permit factsheet and EA do not contain an environmental impacts assessment as required by ARM 17.4.608-609.

130. Further, the EA's review of the significance of both direct and secondary impacts was inadequate and contrary to that required by ARM 17.4.609(3)(d) and (e).
131. Similarly, the EA fails to evaluate alternatives within the authority of DEQ, such as requiring more stringent effluent limits achievable by improved pollution control infrastructure at the same proposed facility.
132. DEQ's EA failed to evaluate the cumulative impacts of a permanent, new nutrient pollution source contributing municipal-scale pollution to downstream nutrient-impaired surface water, contrary to ARM 17.4.608.
133. DEQ's decision also wholly ignored record evidence from experts identifying fatal flaws in the water quality modeling on which its nonsignificance finding rests. In doing so, DEQ failed to consider all pertinent data and made a clear error of judgment.
134. DEQ's decision also failed to evaluate the probability of potentially serious water resource impacts and degradation that could occur based on record evidence of erroneous agency conclusions, the social and economic significance of a defensible and durable septage solution for Flathead County, and the importance and sensitivity of Flathead Lake's water quality, violating ARM 17.4.608(1).
135. DEQ's failure to use MEPA's own criteria in support of its finding did not allow the agency to fully consider the significance of impacts of the proposed action, contrary to ARM 17.4.609.
136. These failures render DEQ's EA nonsignificance determination legal error and arbitrary and capricious.
137. For the reason described above, DEQ's flawed analysis of the potential impacts of the LCWSD discharge permit provides the basis for a claim that DEQ failed to take a "hard

look" at the environmental consequences of the proposed activity in violation of MEPA.

Ravalli County Fish & Game Ass'n, Inc., 273 Mont. at 377, 903 P.2d at 1367. "Implicit in the requirement that an agency take a hard look at the environmental consequences of its actions is the obligation to make an adequate compilation of relevant information, to analyze it reasonably, and to consider all pertinent data." *Clark Fork Coal.*, 2008 MT at ¶ 47, 347 Mont. at 211, 197 P.3d at 492. By failing to do so here, DEQ violated MEPA.

FOURTH CLAIM FOR RELIEF
(Declaratory Judgment)

138. The allegations in the foregoing paragraphs are re-alleged and incorporated herein by reference.

139. DEQ has been delegated authority by the Environmental Protection Agency to implement requirements of the federal Clean Water Act in Montana.

140. 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.

141. The WQA directs DEQ to "examine plans and other information needed to determine whether a permit should be issued or suggest changes in plans as a condition to the issuance of a permit." 75-5-402(2), MCA.

142. Plaintiffs submitted comments and expert testimony demonstrating an evidentiary basis for DEQ to evaluate the need for considering the discharges contemplated by MTX000307 as a functional equivalent of a point source discharge requiring a MPDES permit pursuant to the United States Supreme Court precedent of *County of Maui v. Hawaii Wildlife Fund*, 140 S. Ct. 1462 (2020).

143. DEQ's issuance of permit MTX000307 to LCWSD failed to meaningfully evaluate whether the record demonstrated the need to reclassify the proposed discharges as requiring a MPDES surface water discharge permit.
144. DEQ "has no authority to create a permit exemption from the CWA for discharges that would otherwise be subject to the NPDES permitting process." *Northern Plains Resource Council v. Fidelity Exploration and Development Co.*, 325 F.3d 1155, 1164 (9th Cir. 2003).
145. Plaintiffs seek and are entitled to a declaration that DEQ violated the WQA when it failed to evaluate the record as a whole to support a determination of whether a proposed state groundwater discharge permit must instead be considered a surface water discharge pursuant to *County of Maui*, 140 S. Ct. 1462 (2020).
146. Plaintiff the CSKT possesses both narrative and numeric water quality standards applicable to the southern portion of Flathead Lake, and the CSKT submitted comments in opposition to DEQ's proposed MTX000307.
147. DEQ's Response to Comment document admits that "federal and state regulations require the state to consider and ensure the attainment and maintenance of downstream water quality standards," but DEQ's decision-making failed to evaluate the cumulative impacts of authorizing a new municipal scale discharge of nutrient pollution to Flathead Lake.
148. DEQ's decision failed to examine: whether southern Flathead Lake is attaining its water quality standards; the negative, far-field effects nutrient pollution is capable of inciting; or evaluate how even the allegedly nonsignificant pollution contributions from MTX000307 could cause or contribute to violations of CSKT Surface Water Quality Standards that require water quality capable of supporting the growth and propagation of salmonid fishes and associated aquatic life.

149. Plaintiffs seek and are entitled to a declaration that DEQ acted unlawfully when it failed to consider whether proposed MTX000307 discharges could cause or contribute to violations of CSKT water quality standards in downstream Flathead Lake.
150. After the development of a TMDL and its approval, DEQ shall incorporate the TMDL into its continuing planning process and incorporate the wasteload allocation developed for point sources during the TMDL process into appropriate discharge permits. 75-5-703(6), MCA.
151. Plaintiffs seek and are entitled to a declaration that DEQ acted unlawfully when it approved MTX000307 without demonstrating how the permit's effluent limits and new nutrient loads are consistent with the assumptions and conditions underlying nutrient TMDLs for the Flathead Stillwater and Flathead Lake.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs pray for relief against Defendant DEQ as follows:

- A. For an order declaring *void ab initio* DEQ's issuance of groundwater discharge permit MTX000307 authorizing new pollution from LCWSD and remanding the permit to DEQ for reconsideration in light of its lawful mandates.
- B. For a determination and declaration that issuance of groundwater discharge permit MTX000307 is illegal and violates the Montana Water Quality Act for its failure to take a hard look at impacts to surface water and cumulative impacts.
- C. For a determination and declaration that issuance of groundwater discharge permit MTX000307 is illegal and violates the Montana Environmental Policy Act for its failure to sufficiently review the environmental impacts of the new pollution permit.
- D. For a determination and declaration that MTX000307 is illegal and DEQ's approval violated the WQA and federal CWA when it failed to adequately evaluate whether record evidence demonstrates MTX000307 is the functional equivalent of a point source discharge and requires a MPDES surface water discharge permit pursuant to *County of Maui v. Hawaii Wildlife Fund*, 140 S. Ct. 1462 (2020).

- E. For a determination and declaration that DEQ's failure to consider whether MTX000307 was significant under the WQA and MEPA based on the potential to cause or contribute to violations of CSKT water quality standards for the southern portion of Flathead Lake was unlawful, arbitrary and capricious.
- F. For a determination and declaration that DEQ's issuance of a new municipal-scale discharge permit without demonstration of how new nutrient pollution loads are consistent with the assumptions and conditions underlying nutrient TMDLs for receiving surface waters was unlawful, arbitrary and capricious.
- G. Grant Plaintiffs their attorney fees and reasonable costs as under the Private Attorney General Doctrine, the Uniform Declaratory Judgments Act, or as otherwise provided at law.
- H. Grant Plaintiff such additional relief as the Court may deem just and proper.

Respectfully submitted on this _28_ day of May, 2025.

/s/ Guy Alsentzer
Attorney for Plaintiffs