



## INTRODUCTION

1. This case challenges a final decision by the Montana Department of Environmental Quality that has the potential to degrade water quality in the renowned Flathead River and exacerbate nutrient pollution in the downstream Flathead Lake.
2. Specifically, this case challenges DEQ's decision to approve wastewater controls for a new subdivision nearby the Flathead River without adequately assessing potential impacts to nearby surface water, and without allowing any public participation on its Montana Water Quality Act decisionmaking, in violation of DEQ's clear legal duties.
3. The Benches Subdivision Project (Benches) is a proposed 48-lot subdivision on 55.4 acres east of the City of Columbia Falls off US Highway 2.
4. The Benches is approximately 600 feet east upgradient of the Flathead River.
5. Sewage from the Benches subdivision's 48 proposed septic systems on individual lots will contribute to pollution in groundwater.
6. Groundwater underlying the Benches subdivision is hydrologically connected to the Flathead River.
7. The Benches subdivision will discharge nutrients to groundwater, to the Flathead River, and ultimately to Flathead Lake, a surface water already identified by Defendant as degraded by and at risk for nutrient pollutants.
8. Despite requests from the public, including Plaintiffs (Citizens), DEQ failed to provide the public any opportunity to participate in its Nondegradation Policy decisionmaking pursuant to the Montana Water Quality Act, thereby violating Citizens' fundamental constitutional rights to public participation.

9. DEQ also failed to comply with its mandatory duties under the Montana Water Quality Act to consider whether sewage from the Benches, either alone or cumulatively, would lead to degradation of surface water, including the Flathead River.
10. DEQ's issuance of a certificate of plat approval and nonsignificance determination for the Benches Subdivision Project constitute a final agency action that failed to include adequate Nondegradation Policy review or mandatory public process, and therefore are arbitrary, capricious, and in violation of the law.

### **JURISDICTION AND VENUE**

11. Jurisdiction is based on, *inter alia*, Article II, Sections 3, 8, 9, and 16, Article VII Section 4(1), and Article IX Section 1, of the Montana Constitution; the Montana Water Quality Act MCA § 75-5-101 *et seq.*; the Montana Declaratory Judgment Act, MCA § 27-8-101 *et seq.* (uniform declaratory relief); MCA § 27-26-102 (mandamus), and as an informal administrative agency action.
12. Venue is proper in this district under § 25-2-126, MCA, because the Defendant is a state agency located in Helena, Montana.
13. Plaintiff Upper Flathead Neighborhood Association is a Montana non-profit public-benefit corporation that works to promote the protection of natural resources, water quality, bird and wildlife habitat, and rural landscapes, and to maintain the quality of life and economic vitality in the Flathead Valley through citizen participation, education, and land use planning for sensible growth.
14. Plaintiff Water for Flathead's Future is a Montana non-profit, public-benefit corporation that works to advocate for the sustainable use of our surface and underground water resources to

assure that the needs of the people, and fish and wildlife of the Flathead Valley of Montana, can be met now and for generations to come.

15. 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.
16. Members of each of these organizations live in the State of Montana, in and around the City of Columbia Falls and the Flathead watershed. These members use the Flathead River and Flathead Lake, including areas downstream of the Benches subdivision, and have an interest in preserving water quality. The environmental, health, aesthetic, and commercial interests of Citizens will be adversely affected by DEQ's actions at issue herein.
17. In addition, Citizens all share interests in the goals of protecting water quality, promoting sound land use planning and lawful process, involving citizens in decisionmaking affecting land and water resources, protecting the area's rural aesthetic character, and promoting sustainable use of water resources, and such interests are adversely affected by DEQ's unlawful actions herein. These adverse impacts may be redressed by granting the relief requested herein. This action is brought on behalf of Citizens and their members.
18. Defendant DEQ is an agency of the State of Montana. It regulates degradation to state waters from subdivisions and is responsible for implementing the Montana Water Quality Act and its Nondegradation Policy.

## FACTUAL BACKGROUND

### A. Urban Sprawl and Water Pollution

19. The Flathead Basin, including the Flathead-Stillwater watershed north of Flathead Lake, has experienced rapid population growth and high use of septic systems from 1990 to present.
20. Septic tank and drainfield systems treat wastewater by settling solids and partly digesting the organic matter, allowing liquid effluent – which still contains nutrients and pathogens (bacteria, protozoa, and viruses) – to be discharged into the soil around a drainfield.
21. Septic systems are a significant source of water quality degradation in groundwater and surface water in the Flathead Basin, including waters comprising the upper Flathead watershed.
22. The use of septic systems in Montana river valleys can contribute to unnaturally elevated groundwater nitrate concentrations.
23. Nitrate is a very soluble chemical, which is transported readily in groundwater and can eventually reach surface water.
24. Nitrate and nitrogen are pollutants.
25. Total nitrogen arises in four forms: nitrate, nitrite, ammonia, and organic nitrogen (total nitrogen is the sum of ammonia and organic nitrogen components).
26. The nitrogen in raw wastewater is comprised primarily of ammonia. Through treatment in septic tanks and drainfield, ammonia is converted to nitrite and ultimately nitrate. Therefore, most of the nitrogen in raw wastewater can be transformed into nitrate.
27. Nutrient enrichment, or eutrophication, is the over-fertilization of surface water by nitrogen and/or phosphorus, and is one of the leading causes of water pollution in lakes, rivers, and coastal regions in the United States.

28. Nutrient enrichment can cause a host of negative ecological effects on streams and lakes, including loss of water clarity, proliferation of aquatic weeds, algae blooms, and drop-offs in dissolved oxygen (a critical health factor for fish and other aquatic life).
29. Nitrogen, in its nitrate form, is a direct risk to human and livestock health if it reaches high concentrations in drinking water.
30. The levels of nitrogen and phosphorus that can cause ecological damage in lakes and rivers are far lower – usually more than 10 times lower – than the levels which are toxic to humans and livestock.
31. DEQ is responsible for controlling pollutant discharges to state waters including review, conditioning, and approval of sewage treatment and disposal systems of new subdivisions.
32. Groundwater standards are based on the human health standards given in Circular DEQ-7 and include trigger criterion based on Nondegradation Policy and rules.
33. Montana’s Nondegradation Policy requires DEQ to consider degradation of surface water and nitrogen concentrations at the end of the mixing zone. MCA § 75-5-301(5)(d).
34. Sewage treatment systems discharging to state waters must comply with all applicable water quality standards, including nondegradation requirements in ARM 17.30.701 *et seq.*, and MCA § 75-5-301 *et seq.*
35. In accordance with ARM 17.30.706(2), DEQ is required to determine whether a new or increased source may cause degradation to state waters and whether the discharge from a new or increased source is significant according to ARM 17.30.715.

**B. Hydrology of the Flathead Lake Basin & Flathead Valley**

36. Flathead Lake is the hydrologic end-point for tributaries of the Flathead Lake Basin. Its primary tributary is the Flathead River, which collects and transports water from the roughly

312 square miles of the Flathead Valley and upstream tributaries, flowing generally north to south, ending at Flathead Lake.

37. The Flathead Valley is a north-northwest-trending subbasin of the Flathead Lake Basin, encompassing an area of approximately 312 square miles and including the communities of Kalispell and Bigfork to the south, Columbia Falls to the northeast, and Whitefish to the northwest.
38. The east and west hydrologic boundaries of the Flathead Valley include bedrock mountains that define the valley margins. The Benches subdivision Project and larger Columbia Falls lie on the northeast corner of the Flathead Valley at or near the bedrock margin.
39. Groundwater flow tends to follow surface topography throughout the Flathead Lake Basin, moving from high elevations to low elevations and valley centers, culminating in primary surface waters at the valley floor.
40. Aquifers in the Flathead Lake Basin typically form both a shallow groundwater flow system and a deep groundwater flow system. These systems are typically separated by a low permeability (i.e., low or no hydraulic connectivity) confining layer, but in some areas the confining layer is pinched and can disappear altogether, functionally allowing the connection of shallow and deep groundwater systems.
41. The surface water and groundwater systems are closely interrelated in the Flathead Valley Basin. After entering the basin as precipitation, water may interchange between systems several times by way of springs, seeps, and wetlands and leave as either stream flow, underflow, or water vapor.
42. In addition to being responsible for issuing authorizations controlling discharges of pollutants to groundwater, DEQ is responsible for completing Total Maximum Daily Loads (TMDL)

plans, which assess the maximum ability of any surface water to hold pollutants without impairing beneficial uses, and allocate pollution from all sources at levels necessary to maintain water quality standards and eliminate pollution from the watershed.

43. The Flathead River mainstem from its confluence north of Columbia Falls to its discharge to Flathead Lake is classified as a B-1 high-quality water by DEQ.
44. The larger Columbia Falls region, including the Benches subdivision, falls within the Flathead-Stillwater watershed, which terminates at its discharge to Flathead Lake.
45. Downstream, Flathead Lake has struggled with nutrient pollution challenges since at least the 1990s and remains listed on DEQ's biannual Integrated Reports as a nutrient impaired waterbody since 1996.
46. Septic-based pollution has been a significant water pollution concern within the Flathead Basin for over two decades. Numerous reports, guidance, and watershed planning documents from the Flathead Basin Commission, the Montana Bureau of Mines and Geology, the federal Environmental Protection Agency, and Montana DEQ reference the water quality threat posed by septic systems and the importance of better controlling septic pollution to protect local water quality.
47. In 2001 DEQ issued a nitrogen and phosphorus TMDL for Flathead Lake in response to its failure to fully attain its aquatic life beneficial use. A revised Flathead Lake Watershed Restoration Plan was adopted in 2014, reaffirming the Lake's and upstream Flathead Basin's continued challenges with nutrient pollution.

### **C. The Benches Project**

48. On August 6, 2019, Prairie Dog Development LLC submitted a major subdivision preliminary plat to the City of Columbia Falls' Planning Department for what is now named the Benches Project.
49. The Benches Project is a 55.4 acre plot of bench land and upland wetlands, hidden from view of Highway 2, between the Flathead River Bridge east of Columbia Falls and Columbia Heights.
50. The Benches Project contemplates 48 single-family residential lots on 32.5 acres, each with its own septic system.
51. Neighboring property owners, including some of the Plaintiffs, first became aware of the Benches Project subdivision proposal upon receiving notice of a public hearing held by the City of Columbia Falls concerning the request for a Planned Unit Development and Major Subdivision in late summer 2019.
52. At a September 10, 2019 City of Columbia Falls Planning Board public hearing on the Benches Project more than a half-dozen adjacent landowners to the Project, including some of the Plaintiffs, spoke in opposition to the proposal.
53. On October 7, 2019 the City Council of Columbia Falls held a hearing to consider the Project where again approximately a dozen citizens spoke in opposition. At this hearing the City Council approved a preliminary plat for the 48-residence portion of the Benches Project with 27 conditions.
54. The City's preliminary plat approval specifically required as a contingent condition that the Project receive future DEQ approval for its wastewater control plans.

55. A recurring theme voiced in public opposition to the Project concerned foreseeable negative water and land impacts from authorizing new sprawl development to the east of Columbia Falls, across the Flathead River, which is a relatively rural, undeveloped landscape lying within the City's planning jurisdiction although without access to City infrastructure or centralized sewer.
56. After issuance of a preliminary plat authorization from local government an applicant may submit documentation necessary to commence DEQ decisionmaking concerning water and land resources under the Montana Subdivisions and Platting Act, the Montana Sanitation in Subdivisions Act, and the Montana Water Quality Act.
57. DEQ exercises significant discretion under the Montana Water Quality Act to approve, deny, or condition a proposed subdivision's desired subsurface wastewater treatment system on the basis of a project's compliance with, among other items, the Nondegradation Policy at M.C.A. § 75-5-301 *et seq.* and DEQ's implementing rules at ARM §§ 17.30.701, 17.30.1001 *et seq.*
58. Plaintiff Upper Flathead Neighborhood Association (UFNA) submitted a formal letter and several attachments dated December 28, 2020 to DEQ, expressing concerns with the Project including but not limited to inadequate data concerning potential negative impacts to water resources, the lack of public participation concerning Nondegradation Policy decisionmaking, and requested files relevant to DEQ's water pollution control decisionmaking. *See Exhibit A, attached hereto.*
59. UFNA's letter explicitly referenced a lack of public participation concerning DEQ's nondegradation review and provided scientific evidence, contra to that the applicant provided

during its preliminary plat approval before the City, indicating potential flaws in assumed Project hydrologic conditions and potential water resource impacts. *Id.*

60. In a response email dated December 28, 2020 DEQ refused to accept or consider UFNA's letter, comments, or proffered scientific evidence, alleging that DEQ may only consider public comment on proposed subdivisions under public processes laid out by the Sanitation Act, M.C.A. § 76-4-101 and the Montana Subdivisions and Platting Act, M.C.A. § 73-3-101. *See Exhibit B, attached hereto.*
61. UFNA, working collaboratively with Plaintiff Citizens For a Better Flathead (CBF), pursued a public records request in 2021 to understand DEQ's water resources decisionmaking on the Benches subdivision, both in terms of process and substance.
62. Plaintiffs' lay review of the Benches' records request indicated likely flaws in science and process corresponding to Plaintiff's earlier attempted submission of concerns and data to DEQ.
63. To assist in their comprehension of these issues Plaintiff's hired an expert hydrogeologist, Dr. Willis Weight of Carroll College in Helena, MT, to investigate water resource data, the applicant's assumptions and assertions, and DEQ's determinations for the Benches Project. *See Exhibit C, attached hereto.*
64. Dr. Weight's comprehensive expert report examining the Benches subdivision project and DEQ decisionmaking (hereinafter "expert report") identified substantive flaws in both the applicant's presumed hydrologic conditions and the degradation potential of proposed sewage treatment and disposal systems, including but not limited to showing that shallow groundwater underlying the Project will transport nutrient pollutants discharged by proposed

sewage treatment systems directly west & north towards the downgradient Flathead River, instead of south as averred by the applicant. *Id.*

**D. DEQ's Non-Degradation Policy Review of the Benches Project**

65. Consideration of the potential for water degradation and standards for controlling the effects of a new subdivision proposal's sewage on state waters arise under mandates of the Montana Water Quality Act, MCA § 75-5-101 *et seq.*, the Montana Sanitation in Subdivisions Act, MCA § 76-4-101 *et seq.*, and the Montana Subdivisions and Platting Act, MCA § 76-3-101 *et seq.*
66. Nondegradation Policy is the preliminary mechanism by which DEQ performs a Montana Water Quality Act review of a new subdivision's proposed sewage treatment and disposal system.
67. Nondegradation Policy requirements and considerations pursuant to MCA § 75-5-101 *et seq.* and ARM 17.30.701 *et seq.* encompass different considerations and legal standards than those standards under the Montana Sanitation in Subdivisions Act or the Montana Subdivisions and Platting Act.
68. The preliminary step in DEQ's Nondegradation Policy review of a proposed discharge to state waters is a significance determination.
69. A project may be considered nonsignificant and exempted from a full Nondegradation Policy analysis if several legal predicates are met.
70. Together, issuance of a certificate of plat approval and a nonsignificance determination conclude DEQ's substantive water resources and nondegradation review of the Benches Project.

71. In a letter dated December 18, 2019 DEQ denied the Benches' initial application for a determination of non-significance under Nondegradation Policy.
72. DEQ's December 18, 2019 letter to the Benches applicant identified, among other items, issues with the adequacy of representative wells, background nitrate calculations used in application materials, and the presence of shallow groundwater underlying the Project.
73. In a letter dated January 9, 2020 the Benches' applicant responded to DEQ and provided new data and application materials in support of a non-significance determination.
74. On February 12, 2020 DEQ issued a finding of non-significance, which concluded the Project will not degrade state waters.
75. DEQ's February 12, 2020 nondegradation significance review found that the Project will affect high quality state waters.
76. DEQ's February 12, 2020 significance review found that the Project is a new or increased source of pollutants.
77. DEQ's February 12, 2020 significance review found that the Project is not significant under ARM 17.30.715(2). There are no notes or other written rationale supporting this finding.
78. ARM 17.30.715(2) contemplates several manners in which a project could be significant for the purposes of Nondegradation Policy despite compliance with other corollary rules.
79. The Project's estimation of regional groundwater flow is based upon static water-level measurements from two different aquifers, from wells outside the Project's boundary.
80. DEQ's nondegradation finding for the Project relied upon the applicant's estimation of regional groundwater flow.
81. The Project's proposed subsurface wastewater treatment systems would sit and contribute pollutants to groundwater connected to a shallow confined aquifer.

82. The applicant's nondegradation submittal to DEQ dated January 13, 2020 uses groundwater hydraulic conductivity values estimated from well tests at the Project's water supply wells, at a depth of 227 feet in gravels.
83. DEQ's nondegradation finding uses hydraulic conductivity values found in the Project's water supply wells, over 200 feet below the surface in a deep gravel aquifer, for hydraulic conductivity values of the Project's subsurface wastewater treatment systems, which are proposed for use in a separate, confined, shallow and sandy aquifer lying close to the surface.
84. Hydraulic conductivity values for groundwater near the Project's drinking supplies, found in the deep aquifer, are different than hydraulic conductivity values for groundwater within the shallow aquifer.
85. DEQ did not independently determine the Project's groundwater data, but rather relied on values provided by the applicant.
86. Dr. Weight's expert report indicates that groundwater in the confined, shallow aquifer underlying the Project moves directly west by northwest towards the Flathead River, approximately 600 feet distant.
87. DEQ decisionmaking for the Benches failed to use groundwater data specific to the shallow aquifer underlying the Project in background nitrate calculations, mixing zones, or hydraulic conductivity values.
88. DEQ failed to provide any analysis of the Project's proposed sewage treatment systems' potential impacts on surface water.
89. DEQ failed to consider the Project's potential cumulative or synergistic impacts on downgradient high-quality waters or the nutrient-impaired Flathead Lake in conjunction with other known and reasonably foreseeable projects also contributing nutrient pollution.

90. DEQ did not provide for any public participation on its decisionmaking of the Project's wastewater treatment systems under Nondegradation Policy.

### **FIRST CLAIM FOR RELIEF**

#### **(Violation of Right to Meaningful Public Participation in Agency Decisionmaking)**

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

92. Article II, Section 8 of the Montana Constitution guarantees the public a "right to expect government agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law."

93. Article II, Section 9 of the Montana Constitution guarantees "no person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure."

94. Article II, Sections 8 and 9 are cooperative mechanisms through which concerned citizens can advocate for their right to a clean and healthful environment under Article II, Section 3 of the Montana Constitution.

95. Article II, Section 3 and Article IX, Section 1 were intended to provide protections that are both anticipatory and preventative, imposing a duty on public and private parties to act in a forward-thinking manner to prevent degradation of the environment.

96. Mindful of these constitutional obligations, the legislature enacted the Montana Water Quality Act, MCA § 75-5-101 *et seq.*

97. Any state or private action that implicates these environmental rights is subject to strict scrutiny.

98. While the City of Columbia Falls held a public hearing on the Benches' preliminary plat proposal, DEQ – not local government – substantively reviewed proposed sewage pollution control plans for the Benches and DEQ, in its penultimate authority over Nondegradation Policy review, made final decisions concerning the adequacy of those plans under the Montana Water Quality Act.
99. DEQ's Nondegradation Policy review process was the critical time when the Project's regulatory significance and substantive compliance with Nondegradation Policy under the Montana Water Quality Act were determined.
100. DEQ's review and issuance of a nonsignificance and no degradation determination under the Montana Water Quality Act for the Benches' sewage plans was wholly insulated from any public participation.
101. DEQ's failure to provide for any public participation on its Montana Water Quality Act decisionmaking on sewage pollution control plans for the Benches Project implicates Citizens' and their members' constitutional environmental rights in Articles II and IX of the Montana Constitution, because those rights cannot be effectively protected unless decisionmakers provide an adequate process through which citizens can both know the information a decisionmaker is considering and a meaningful opportunity to provide input, before a decision is rendered.
102. Rules that infringe upon or implicate Montanan's constitutional fundamental rights are subject to strict scrutiny.
103. Here, Citizens could not have reasonably tracked – much less participated - in DEQ's Nondegradation Policy decisionmaking for the Benches due to the agency's practice of making such decisions behind closed doors without notice, hearing, or a comment period.

104. Plaintiff UFNA's attempt to express water pollution concerns and scientific evidence about the Benches Project with DEQ was wholly rejected before DEQ finalized its decisionmaking, and Plaintiffs were forced to use a lengthy public records request process to gain documents purportedly explaining what decisions DEQ had made and the basis for those decisions.
105. Expert analysis of those public documents by Dr. Weight in summer 2021 indicates substantive flaws in DEQ's nondegradation finding, and such expert analysis is precisely the type of public comment that would inform DEQ decisionmaking if in fact DEQ provided for a meaningful public participation process on its review of subdivision water degradation pursuant to the Montana Water Quality Act.
106. Therefore, as-applied here DEQ's Nondegradation Policy decisionmaking procedure – or the lack thereof - for the Benches Project violated Citizens' right to a meaningful opportunity to participate in agency decisionmaking, implicating their fundamental constitutional rights in Article II, Sections 8 & 9 of the Montana Constitution.

### **SECOND CLAIM FOR RELIEF**

#### **(Violation of Nondegradation Policy Regarding Nitrogen Pollution)**

107. The allegations in the foregoing paragraphs are re-alleged and incorporated herein by reference.
108. The objective of the Montana Water Quality Act (MWQA) is to “conserve water by protecting, maintaining, and improving the quality and potability of water for public water supplies, wildlife, fish and aquatic life, agriculture, industry, recreation, and other beneficial uses...[achieved by] provid[ing] a comprehensive program for the prevention, abatement, and control of water pollution.” M.C.A. § 75-5-101(1)-(2).

109. In furtherance of this objective and in conjunction with the pollution control mandates imposed on delegated states implementing the federal Clean Water Act, the MWQA imposes a nondegradation requirement that applies to agency consideration of projects with the potential to impact state waters. *See* M.C.A. § 75-5-303, 40 C.F.R. § 131.12.
110. In addition, the Montana Constitution Article II, Section 3 and Article IX, Section 1 require the Defendant to be anticipatory and preventative in its duties to protect the state's waters from pollution.
111. DEQ's nonsignificance determination for the Project failed to consider whether nitrogen discharges from the Project would cause degradation of surface water, as required by M.C.A. § 75-5-301(5)(d), and ARM § 17.30.715(d).
112. DEQ's nondegradation determination did not include analysis regarding the Project's likelihood of discharging sewage that could degrade the downgradient Flathead River.
113. To the extent DEQ relied on setbacks under ARM 17.30.716(2)(a) to justify its failure to consider whether nitrogen discharges would cause degradation of surface water, DEQ's reliance is unlawful, invalid and/or inapplicable.
114. DEQ's failure to consider whether the nitrogen discharges authorized by its approval of the Benches Project would degrade surface water was arbitrary, capricious, and a violation of the Montana Water Quality Act.

### **THIRD CLAIM FOR RELIEF**

#### **(Violation of Nondegradation Policy: Failure to Take a Hard Look at Cumulative Impacts)**

115. The allegations in the foregoing paragraphs are re-alleged and incorporated herein by reference.
116. DEQ's nondegradation determination for the Benches Project failed to consider

potential cumulative or synergistic impacts, as required by ARM § 17.30.715(2)(a).

117. DEQ utilized a perfunctory checklist with no supporting rationale in finding that the Project had no potential cumulative impacts.

118. DEQ's failure to consider potential cumulative impacts of the Project's wastewater discharges was arbitrary, capricious, and a violation of the nondegradation provisions of the Montana Water Quality Act.

#### **FOURTH CLAIM FOR RELIEF**

##### **(Writ of Mandate)**

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

120. Defendant has non-discretionary legal duties to review and make decisions on sewage treatment and disposal systems proposed for use in new development to ensure no unlawful degradation of state waters, and to provide for adequate public participation in that process. MCA §§ 75-5-301, 75-5-301, Mont. Const. Art. II, Sec. 8 & 9.

121. Defendants violated these clear legal duties.

122. Citizens have no other plain, speedy, or adequate remedy at law. MCA § 27-26-101(2).

123. Pursuant to Montana Code Annotated § 27-26-101 *et seq.*, a peremptory writ of mandamus should issue directing DEQ to reconsider its decisionmaking under the Montana Water Quality Act for the Benches and provide a process ensuring meaningful public participation.

#### **REQUEST FOR RELIEF**

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

- A. For an order declaring void *ab initio* DEQ's certificate of plat approval and nonsignificance determination authorizing wastewater discharges for the Benches Project, and remanding to DEQ for reconsideration in light of its lawful mandates.
- B. For a determination and declaration that issuance of the Benches Project nonsignificance determination 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. Issue a writ of mandamus directing DEQ to reconsider its Montana Water Quality Act decisionmaking and to ensure the public is afforded an opportunity to participate in the Benches' nondegradation review process pursuant to the Montana Constitution.
- D. Award Plaintiffs their reasonable attorneys' fees and expenses under the Private Attorney General Theory, MCA § 27-26-402, and/or as otherwise provided by law.
- E. For costs of suit.
- F. For such relief as this Court deems equitable and just.

Respectfully submitted on this   30th   day of September 2021.

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