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June 4, 2009

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RE: Montanore Project Draft EIS – water quality issues

The following comments are submitted on behalf of Save Our Cabinets in response to the Draft Environmental Impact Statement (“DEIS”) for the latest version of the Montanore Project, proposed by Montanore Minerals Corporation (“MMC”). These comments focus on the project’s predicted impacts to water quality and its consistency with the federal Clean Water Act (33 U.S.C. § 1251 et seq.) and the Montana Water Quality Act (Mont. Code Ann. § 75-5-101 et seq.). A more specific technical review of the predicted impacts is being submitted separately by Tom Meyers, Ph.D. That review is incorporated herein by reference.

As described in the DEIS, the project raises several serious legal concerns that appear to preclude the project from being permitted in its currently-proposed form. These include:

- Improper reliance on an authorization to degrade issued 17 years ago to a different mining company that subsequently abandoned the project;
- Improper extension of the scope of that 1992 authorization to degrade to waterbodies, discharges, and constituents not included in its terms;
- Failure to recognize that, even if the 1992 authorization to degrade were considered to apply, the project would still qualify as a “new source” of degradation to Rock Lake under the plain language of ARM 17.30.702(16), and thus requires a non-degradation review under Montana’s current regulations; Proposed permitting of discharges to impaired waters for which a Total Maximum Daily Load (“TMDL”) has not been completed; and

- Failure to seek Section 401 authorization for proposed federally-permitted activities that will affect water quality in Rock Lake and other Wilderness waters but not be subject to MPDES review.

These and other issues are described in detail in the following sections. In light of the serious permitting concerns raised by the project in its current form, we believe strongly that the agencies should withdraw this draft of the EIS and conduct a more in-depth and complete review of the project under all applicable laws.

Previous Permitting History

The Noranda Minerals Corporation and a now-defunct partner proposed the Montanore Mine in the late 1980s. In November 1992, the Montana Board of Health and Environmental Sciences issued, pursuant to then-existing non-degradation law, an order authorizing the joint venture to lower the quality of surface and groundwater for certain parameters – specifically nitrogen, ammonia, dissolved solids, and five metals (chromium, copper, iron, manganese, and zinc). The authorization required that all discharges be treated via a land application system achieving at least 80% removal, which BHES found to constitute the best practicable control technology available at that time. The BHES did not authorize degradation for any other parameters, or for any discharges that were not treated via land application.

On May 14, 1993, the Department of State Lands issued Noranda an operating permit under the Metal Mine Reclamation Act. Despite receiving this permit, the authorization to degrade, and other necessary state and federal authorizations, Noranda failed to construct the Montanore Project. Instead, over the next decade, it allowed most of the permits for the Project to terminate or expire. In 2002, Noranda notified the U.S. Forest Service that it was relinquishing that agency's authorization to construct and operate the mine.

On September 9, 2002, Montanore notified DEQ and the Forest Service that had “decided to abandon the Montanore copper-silver project.” Noranda attempted to relinquish its MMRA operating permit, but DEQ insisted it stay in effect because the company had not completed reclamation of an exploration adit it had begun prior to approval of the full mine. DEQ did not believe it appropriate to terminate the permit until reclamation was complete. Noranda re-affirmed its decision to abandon the project in a letter dated November 21, 2003, and committed to completing reclamation at the site.

At no time after receiving the 1992 authorization to degrade did Noranda apply for an MPDES permit for the land application system, or for any of the various other point source discharges that construction of the mine would create. The only MPDES authorization Noranda received was for the discharge of nitrates from the abandoned exploration adit. Noranda applied for this permit only as a condition of a consent decree with DEQ. Noranda attempted to terminate this MPDES permit in 2002, but DEQ required that it remain in effect.

After Noranda abandoned the Montanore project, a new company, MMC, proposed constructing the Montanore mine. It acquired Noranda's mineral claims and submitted applications to both the state and Forest Service for new operating permits. In 2006, MMC apparently acquired rights to the MMRA and MPDES permits governing reclamation of the exploration adit. DEQ then agreed to process MMC's mine proposal as a request for an "amendment" to the 1993 operating permit Noranda had never used. In contrast, the Forest Service, acknowledging Noranda's abandonment of the project, recognized that MMC's proposal constituted a new project, and chose to process MMC's proposed plan of operations as a new submittal. The DEIS reflects both agencies' analysis of MMC's proposed mine.

Following are specific comments on the DEIS.

I. Lack of MPDES permit application

The DEIS states that one of the proposed agency actions being analyzed pursuant to MEPA is the issuance of an MPDES permit for the mine's various discharges to state waters. As of the release of the draft DEIS, however, DEQ had not in fact proposed issuing an MPDES permit for those discharges, and DEQ staff have reported that MMC has not yet even submitted a complete application for an MPDES permit.

If constructed as described in the DEIS, the mine would require MPDES authority for multiple point-source outfalls, including the LAD system, the seepage from the tailings impoundment and waste rock piles to hydrologically-connected groundwater, and the underground mine workings themselves, which are predicted to become a source of metals and nitrogen to surface water. The DEIS cannot properly analyze the impacts of the mine's discharges until the specific number, location, and nature of these outfalls, as well as the enforceable conditions applicable to each, are specifically described in a proposed permit and fact sheet. DEQ should withdraw this draft of the DEIS and re-submit a new draft after a draft permit and fact sheet have been prepared.

II. Compliance with Montana non-degradation law

A. Applicability of the 1992 authorization to degrade to MMC's current proposal

The DEIS categorically states that MMC's current proposal is exempt from Montana's current non-degradation laws by virtue of the authorization to degrade that Noranda obtained from BHES in 1992. (DEIS at 413-14). We will address the application of Montana's non-degradation laws to the individual discharges for the proposed mine in our detailed comments below. As a general matter, however, we strongly disagree with the contention that MMC is entitled to rely on a 17-year-old authorization for a project that its predecessor not only failed to construct, but affirmatively abandoned. We urge DEQ to reconsider its position on this issue.

As Noranda's successor, MMC cannot have acquired any greater rights under the 1992 authorization than Noranda had; at best, it can step into Noranda's shoes. While Noranda

did obtain non-degradation approval to build the mine in 1992, it subsequently failed to move forward with construction in a reasonable period of time. While the BER's authorization to degrade does not contain a specific termination date, Noranda could not reasonably expect that it could simply put its plans on hold indefinitely without ever becoming subject to new regulations. As Noranda was well aware, permitting laws are continually updated over time to reflect new technology, new scientific understanding of impacts, and new societal standards. This is particularly true with regard to standards, like those set forth in BHES' 1992 order, that are based on "best available technology" standards. By definition, such standards are constantly evolving, and are intended to become more stringent over time as technology improves and costs decrease. By failing to take any steps to move forward with construction for a decade after it secured approval, Noranda gave rise to a reasonable inference by the state and the public that it did not intend to go forward with the project as approved. Noranda removed any conceivable doubt about intentions in 2002, when it declared to both DEQ and the Forest Service that it was closing the Montanore Project. By so doing, Noranda waived any right to build the mine under the conditions in the 1992 approval.

The public and the environment would be seriously prejudiced by allowing MMC to construct the mine under the terms of Noranda's 1992 authorization to degrade. Montana's non-degradation standards, treatment technology, and scientific knowledge of the ecology of the mine area have all evolved considerably over the last 17 years. For example, EPA and the state of Montana have invested a huge amount of research in developing scientifically-based numeric standards for nitrates, one of the primary pollutants the mine would generate. Much more is known about the impacts of nitrates in high mountain streams like Libby Creek and its tributaries, and it is likely that a present-day non-degradation analysis would find greater impacts than in 1992. Likewise, the effectiveness of land application systems in treating mine effluent has improved, and the 80% standard the BHES set in 1992 is likely no longer the state of the art. In addition, a great deal has been learned about the sensitivity of the wilderness lakes overlying the Montanore deposit, and about the effects the mine would likely have on them. (Gurrieri 2001). The BHES did not have this information in 1992.) For DEQ to deny its own ability to take this information into account because of a 17-year-old authorization for an unbuilt project that was abandoned by the permittee is contrary with the entire approach of the Montana Water Quality Act and federal Clean Water Act, which are designed to ensure that projects are reviewed using the best currently-available science and information.

Even if the 1992 authorization to degrade did apply to MMC's current proposal, it cannot serve to authorize degradation that goes beyond its own express terms. For example, it cannot authorize degradation for parameters other than the eight listed pollutants, or degradation of waters that were not considered in the non-degradation proceedings, or degradation caused by discharges that are not treated in the manner required by the order. As discussed in more detail in the following sections, this means that several of the discharges described in the DEIS are subject to current non-degradation standards even if the 1992 order is deemed to apply to the current project.

B. Applicability of non-degradation requirements to specific waters

1. East Fork Bull River

The East Fork of the Bull River lies largely within the Cabinet Mountains Wilderness Area, and is considered the most important bull trout stream in the lower Clark Fork watershed. (Montana Bull Trout Scientific Group 1996.) It is classified as an Outstanding Resource Water under the non-degradation provisions of the Montana Water Quality Act. As such, DEQ is prohibited by statute from authorizing any degradation of the East Fork Bull River, and from permitting any new or increased point source that would cause a permanent change in its water quality, however minimal that change might be. MCA 75-5-316(2).

All action alternatives in the DEIS would degrade water quality in the East Fork Bull River in at least two ways. These are described as follows.

Post-mining degradation by contaminated mine water. After mining is complete, the mine cavity will re-fill with water that will be contaminated with elevated levels of toxic metals and nitrogen. DEIS at 505, & Table 103. The DEIS predicts that this water will migrate toward the East Fork Bull River. *Id.* Although there may be some attenuation of pollutants due to the 3,000 foot distance from the mine cavity to the river, this attenuation will likely be minimal since the substrate is bedrock rather than soil or alluvium. The only possible mitigation identified in the DEIS is the installation of bulkheads to try to reduce the volume of flow toward the river. However, the DEIS predicts that such bulkheads will reduce the volume of contaminated flow by only 50%. (DEIS at p. 442.) The DEIS does not predict what the resulting concentrations of contaminants will be in the East Fork Bull River, other than to say that “[t]he fate and transport of dissolved metals within the flooded mine void cannot be estimated without significant uncertainty, particularly considering the relatively low surface water standards.” However, it is certain there would be some increase in metals and nitrogen, which is absolutely prohibited by current non-degradation law. Moreover, even if current non-degradation law did not apply, it appears highly plausible that in-stream concentrations would violate chronic aquatic life standards for various metals, including copper (.003 ppm), which is impermissible under the Water Quality Act. Absent some means of assuring that water quality standards will not be violated, this discharge cannot be permitted.

With regard to nutrients, the DEIS states at page 309 that “no changes in nutrient concentrations within the Rock Creek and East Fork Bull River drainages are predicted to occur with any of the alternatives” This appears to be in error. As discussed above, the DEIS predicts that all action alternatives will result in mine water reaching the East Fork Bull River, and this water will have highly elevated levels of nitrate/nitrite as compared to background levels in the river. DEIS at Table 103. This will necessarily cause an increase in concentrations of nitrogen in the river. As discussed above, any such degradation is prohibited by Montana law.

There can be no argument that the discharges of metals and nitrogen to the East Fork Bull River are authorized by the BHES’ 1992 order. Even if Noranda had not waived any

right to rely on that order, the order makes no mention of the East Fork of the Bull River. Moreover, there is nothing in the record of the proceedings to indicate that BHES ever considered impacts to that river, or that Noranda even petitioned for authorization to degrade it. Finally, the language of the order expressly conditions the application of the relaxed non-degradation criteria contained therein on the treatment of all discharged effluent via a land application system obtaining at least 80% efficiency. Obviously, land application of the underground seepage flowing from the mine cavity is neither proposed nor feasible. Therefore, it is not within the scope of the authorization to degrade, and is subject to Montana's current non-degradation policy, which allows no degradation of the East Fork of the Bull River.

De-watering during and after mining. All action alternatives are predicted to reduce flows in the East Fork Bull River. The river's population of bull trout is particularly sensitive to flow reductions during periods of baseflow during late summer/ fall/ winter:

“Changes in streamflow may limit bull trout habitat, and may create barriers by reducing base flow within these drainages. Because bull trout spawn from August through November when base flow conditions often occur, available spawning habitat in these streams may decrease. Additionally, bull trout prefer to spawn in areas with ground water discharge because these areas tend to remain open throughout winter, maintain appropriate incubation temperatures, and increase the water exchange rate (Montana Bull Trout Scientific Group 1998).” (DEIS p. 315.)¹

The DEIS further notes that “Because the East Fork Bull River is considered the most important bull trout stream in the lower Clark Fork River drainage, decreased levels of bull trout spawning within this stream could have long-term adverse effects on the bull trout population within the lower Clark Fork River drainage.” (DEIS p. 316) Although Alternatives 3 and 4 call for the construction of underground bulkheads as mitigation measures, the agencies estimate they would reduce underground flow losses by only

¹ As a general comment, the DEIS makes repeated statements with regard to the East Fork and other surface waters that flow reductions “may be difficult to measure,” or “may be difficult to separate from natural variability.” These statements are not – and we assume are not intended to be – qualitative conclusions that the impacts of flow reduction will be insignificant or unimportant. Measuring the mine's effects on flows will be difficult largely because flow cannot be measured accurately (plus or minus 10%) within the Wilderness, because there is very little baseline flow data available for many streams (and none for the East Fork Bull River within the Wilderness), and because natural variability is high from season to season and year to year. (DEIS at 461). But of course, just because an effect is difficult to measure given available methods and data does not mean it is not significant – particularly in the case of reductions in late summer, fall, and winter base flows in crucial bull trout streams like the East Forks Bull River and East Fork Rock Creek. The DEIS should include appropriate clarifications to these statements to avoid misleading the public.

50%. (DEIS at 442)

Under Montana law, any lowering in the quality of the existing physical or biological characteristics of Outstanding Resource Waters is defined as degradation, and may not be allowed. *See* ARM §17.30.702(4), MCA 75-5-103(5), MCA 75-5-316(2)(a), and ARM17.30.705(2)(c) . This prohibits the flow reductions predicted in the DEIS. As discussed further in the following section on Rock Lake, the current Outstanding Resource Water provisions of Montana’s non-degradation policy would apply to this dewatering even if the discharges of pollutants from the mine were not considered “new or increased sources” under ARM § 17.30.702(16).

2. Rock Lake

Rock Lake is located in the Cabinet Mountain Wilderness and is classified as an Outstanding Natural Resource Water. As discussed above, Montana’s non-degradation law prohibits any activity that will change the existing chemical, physical, or biological conditions of the lake. As discussed below, there can be no question that current non-degradation policy applies to the mine with regard to Rock Lake, because the proposed activities that would affect the lake fall within the plain language of the definition of “new or increased source” set forth in ARM 17.30.702(16).

The DEIS acknowledges that all action alternatives could affect water quality and water quantity in Rock Lake. This and other Wilderness lakes were the subject of a study by Joe Gurrieri, formerly with DEQ, which established that Rock Lake’s fragile ecosystem relies on deep groundwater inputs as a vital source of micronutrients, particularly in the summer and fall seasons after all snow has melted from its watershed. (Gurrieri 2001). The mine cavity will intercept groundwater flow to the lake, lowering the input of both water and nutrients. For example, the DEIS states:

“Mine dewatering and the resulting drawdown of bedrock ground water could result in subtle changes in water quality of various water bodies, such as Rock Lake Assuming these water bodies receive water from both shallow and deep ground water sources, reducing the source of deeper ground water could reduce the introduction of certain minerals considered to be necessary for potential populations of organisms (Gurrieri 2001, 2004).” (DEIS at p. 434)

Although this passage understates the likelihood of impacts stated in the Gurrieri report, it nevertheless confirms that at best, DEQ does not have sufficient information to allow the mine to go forward, since it cannot be reasonably certain that the non-degradation standards applicable to the lake will be met. The DEIS has identified no mitigation measures that could be implemented to prevent degradation of the lake once the mine cavity has been dug, nor is it likely that any such measures even exist. Therefore, DEQ cannot permit the mine unless and until it can ensure that standards will not be violated.

Once again, there can be no reasonable argument that the mine’s impacts to Rock Lake are governed by Montana’s current non-degradation law. First, as already noted, the 17-

year-old authorization to degrade that BHES granted to Noranda cannot be deemed to apply to MMC's current proposed mine. Second, even if it could, there is no evidence that Noranda asked for, or that BHES granted, authorization to degrade Rock Lake.

Third, even if the BHES order had somehow granted authorization to degrade Rock Lake, that grant would be superseded by the enactment of ARM § 17.30.705(2)(c) in 1994, which prohibits any degradation of Outstanding Natural Resource Waters by any "new or increased source." That term is broadly defined as any "activity resulting in a change of existing water quality occurring on or after April 29, 1993." ARM § 17.30.702(16). Since the excavation of the Montanore mine workings would obviously occur well after April 29, 1993, and would change existing water quality in Rock Lake (and other Wilderness waters), it would constitute a "new source."

Note that even if the BHES order applied to MMC's proposed mine, the excavation of the mine cavity would *not* qualify for an exception to non-degradation review under subsection (a) of the "new source" definition, which applies to discharges approved prior to April 29, 1993. That subsection states:

The term ["new or existing source"] does not include the following:
(a) sources *from which discharges to state waters have commenced or increased* on or after April 29, 1993, provided the discharge is in compliance with the conditions of, and does not exceed the limits established under or determined from, a permit or approval issued by the department prior to April 29, 1993.

§17.30.702(16) (emphasis added). The excavation of the mine cavity – which is the proposed "activity" that would affect water quality in Rock Lake – is not a "source from which a discharge to state waters has commenced." Rather, it is just the opposite – an activity that would *reduce* flows to state waters.² (Gurrieri 2001) Therefore, it is outside the plain language of the exception, and is subject to the 1994 rule.³ Again, that rule prohibits *any* degradation of Rock Lake or other Wilderness waters.

3. Libby Creek and tributaries

All action alternatives would increase nitrogen levels in Libby Creek and its tributaries at least an order of magnitude above background levels, and well in excess of the levels found in many western Montana waterbodies that are listed in the state's 303(d)

² The distinction between activities that affect water quality by the discharge of pollutants, and activities that affect water quality by flow reduction, is not an arbitrary one. For example, DEQ has long distinguished between discharges and flow reductions in its TMDL program, requiring TMDLs to be prepared for waters impaired by the former but not the latter.

³ The various mine activities that would discharge pollutants to state waters would likewise fail to be exempted by ARM § 17.30.702(16)(a), because even if the MMRA permit were considered an "approval" for purposes of the rule, that permit was not issued until May 14, 1993.

submittals as impaired by nitrogen pollution. (See Tables 101 and 104). Even under the higher degree of treatment proposed in Alternatives 3 and 4, nitrogen in Ramsey Creek would violate the comparatively lax non-degradation criteria that BHES issued 17 years ago. In Libby, Ramsey, and Poorman Creeks, nitrate levels in all phases of the mine and into the foreseeable future would be from 2-4 times the numeric standards being proposed by DEQ and the US EPA. These are very high levels of pollution, and deserve a correspondingly detailed level of analysis under MEPA and NEPA. The only discussion of the impacts of nutrient pollution on aquatic life is a single paragraph on page 310 which indicates the agencies do not know what the limiting factors for algae growth are in these waters, and therefore what the effects of a 10 to 20-fold increase in total inorganic nitrogen will be (other than to suggest they may be beneficial). This analysis is not adequate, particularly given the presence of two sensitive native trout species in these waters.

With regard to Table 104, it is not clear why many of the predicted in-stream concentrations of contaminants for Alternative 3 are so much lower than for Alternative 2. The difference between the alternatives appears to be that in Alternative 3, MMC would have the ability to pre-treat the effluent to achieve higher pollutant removal before land application. However, it does not appear that MMC would have any legal obligation to actually provide this level of treatment. Rather, the legally enforceable criteria appear to be the same in all action alternatives – i.e., the criteria set forth in the 1992 BHES order. Is MMC making a legal commitment to meet the higher treatment levels set forth in Alternatives 3? If so, under what legal authority will it be required to do so, and what will be the enforcement mechanism? If not, the DEIS should be revised to reflect the assumption that under all alternatives, MMC would not treat the effluent to a degree than required to meet the BHES criteria.

Another problem with Tables 101 and 104 is that the predictions of in-stream concentrations appear to be based on discharge from the LAD system alone, and do not take into account seepage from the tailings impoundment and waste rock facilities, both of which are predicted to discharge elevated levels of metals and nitrates to groundwater that is connected to Libby Creek and/or tributaries. The analysis must consider the effects of these discharges. In addition, as already noted, these discharges may not be permitted without proper MPDES approval.

Finally, the EIS fails to adequately address the potential for exceedance of non-degradation standards for arsenic in surface and groundwater in the watersheds of Libby Creek and tributaries. As noted in the comments of Tom Meyers, Troy adit water, which is generally used as a predictor of wastewater quality at Montanore, contains elevated levels of arsenic. (Table 17, Geomatrix, 2007a). Montana non-degradation standards do not allow any discharge of arsenic in concentrations greater than ambient concentrations in the receiving ground or surface water, without an authorization to degrade. ARM 17.30.715; *Clark Fork Coalition v. DEQ*, Montana 1st Jud. Dist No BDV 2002-70, Order of March 26, 2006. The mine would appear to have a high probability of exceeding this threshold, requiring a non-degradation review. The agencies should address this issue in more detail, ensuring they use the most up-to-date data and information, including

existing ambient data for groundwater, which appears to be absent from the DEIS. All data should reflect current detection limits for arsenic, which have become lower in recent years.

III. Discharges to impaired waters for which no TMDL has been prepared

The DEIS describes various aspects of the project that would discharge sediment to Libby Creek and tributaries during and following construction. As the DEIS notes, a downstream segment of Libby Creek is listed in Montana's 303(d) submittal as impaired by excessive levels of sediment. The DEIS makes no effort to analyze the obvious possibility that discharges from mine activities would increase sediment concentrations in this downstream impaired stream segment.

The state may not permit any new point sources that will add pollutants to an impaired waterbody unless and until such discharges are incorporated into a valid TMDL for that waterbody demonstrating that water quality standards will be met. 40 CFR § 122.4(i); *Friends of Pinto Creek v. EPA*, 504 F.3d 1007, 1011-1015 (9th Cir. 2007); *Friends of the Wild Swan v. EPA*, 130 F. Supp.2d 1207, 1209-11 (D. Mont. 2000). The DEIS should note that permitting of the mine, whether under the applicable general permit programs or individual MPDES permits, may not go forward until these requirements are complied with.

IV. Section 401 authorization for federally-permitted activities impacting water quality in Rock Lake and the East Fork Bull River

The DEIS's discussion of certification under Section 401 of the Clean Water Act is limited to the issuance of Section 404 wetland fill permits by the Army Corps of Engineers. This scope is too narrow. The excavation of the mine cavity approval also requires 401 certification because it will affect the quality of Rock Lake, and cannot go forward without approval of a valid plan of operations by the Forest Service. Moreover, as discussed below, DEQ lacks authority to waive 401 certification for this activity.

Section 401 of the Clean Water Act prohibits any federal agency from issuing a permit or other approval for an activity that will affect surface water quality without obtaining certification from the state that the project will comply with state water quality laws. 33 U.S.C. § 1341. This requirement applies to proposed mining activities on Forest Service lands. *See, e.g., Hells Canyon Preservation Council v. Haynes*, 2006 WL 2252554 (D.Or.), 63 ERC 1466, 36 Env'tl. L. Rep. 20,158.

Under the Montana Water Quality Act, Section 401 certification is initially handled by DEQ. *See* ARM 17.30.101 et seq. Upon receiving an application for 401 certification from the federal permitting agency, DEQ may grant the certification, grant certification with conditions, or waive certification. ARM 17.30.105. Where a project will have more

than a de minimis impact on surface water quality, however, DEQ may only waive certification to the extent the proposed activity will require MPDES approval. Stat elaw prohibits a federal permittee from conducting any activity affecting water quality without a certification or waiver from DEQ.

As discussed in previous sections, the excavation of the mine cavity will likely affect water quality and the aquatic ecosystem in Rock Lake by reducing the flow of water and micronutrients from the underlying groundwater system. Therefore it is subject to 401 certification pursuant to ARM § 17.30.101. This impact cannot be considered de minimis, since it will violate state non-degradation standards. Moreover, the mine excavation will not be subject to MPDES approval, since it is not a discharge to state waters. Therefore, DEQ may not waive certification for this activity.

In addition, the DEIS predicts that the excavation of the mine activity will affect water quality in the East Fork Bull River by discharging metals and nutrients to the river after mining is complete, as already discussed. This discharge would appear to be a point source, and therefore would require an MPDES application which should be analyzed in the DEIS. If DEQ does not consider it to be a point source, it will require 401 certification pursuant to § 17.30.101.

The Forest Service and/or MMC should submit an application to DEQ pursuant to § 17.30.101 seeking 401 certification for Forest Service approval of the excavation of the mine cavity. This application should be added to the scope of the proposed agency actions analyzed in the DEIS.