

BEFORE THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

IN THE MATTER OF CHANGE APPLICATION) STIPULATED
NOS. 76M-30150596 AND 76M-30151160 BY) SETTLEMENT AGREEMENT
MLH MONTANA LLC)

SETTLEMENT STIPULATION

This Stipulation is entered into as of the last date below written by and between Applicant MLH Montana, LLC (MLH) and Objector Missoula Valley Water Quality District (MVWQD), (collectively the "Parties" or individually "Party").

CHANGE APPLICATION NOS. 76M-30150596 AND 76M-30151160
BY MLH MONTANA, LLC

WHEREAS, MLH Montana, LLC filed Application Nos. 76M-30150596 and 76M-30151160 (Applications) with the Department of Natural Resources and Conservation (DNRC) on January 28, 2021, to change Water Right Nos. 76M 118475-00, 76M 118477-00, 76M 118478-00, 76M 118480-00, 76M 118484-00, 76M 118485-00, 76M 118490-00, 76M 118491-00, 76M 118492-00, 76M 118494-00, 76M 118495-00, 76M 11497-00, Permit 76M 2789-00, 76M 118481-00, 76M 118483-00, 76M 118507-00, and 76M 118509-00. The DNRC determined that the clear and convincing evidentiary standard applies to the change applications since the requested changes necessary to authorize MLH to market for mitigation these water rights would result in more than 4,000 cfs of consumed volume being changed.

STIPULATED SETTLEMENT AGREEMENT- Change Application Nos. 76M-30150596 AND 76M-30151160.

WHEREAS, the DNRC determined the Applications were “correct and complete” on July 26, 2022. On November 30, 2022, the Department issued two Preliminary Determinations to Grant (PDG) the Applications and each PDG included two (2) remarks and conditions including but not limited to a twenty (20) year period for completion and perfection of the change to mitigation use and that any water not sold and changed to the purpose of mitigation will revert to its historical use.

WHEREAS, the DNRC on January 4, 2023, provided public notice of the Applications and the requested changes pursuant to Mont. Code Ann. § 85-2-307 and provided until February 17, 2023, for the objection period for the Applications.

WHEREAS, on February 17, 2023, MVWQD objected to the Applications using Form No. 611 “Objection to Application” based on the ongoing CERCLA process at the related Smurfit Stone Mill Site and the associated groundwater contamination. On March 10, 2023, the DNRC deemed MVWQD’s objection to water quality pursuant to Mont. Code Ann. § 85-2-402(2)(f) as valid, but determined that the remaining objections were deficient. The DNRC then provided MVWQD an additional fifteen (15) days to supply information to correct the deficiencies for the invalid objections. On March 24, 2023, the MVWQD provided responsive information to the Department.

WHEREAS, on April 13, 2023, the DNRC then deemed the MVWQD’s objections valid for 1) water quality pursuant to Mont. Code Ann. § 85-2-402(2)(f), and for 2) the reasonable use criteria pursuant to Mont. Code Ann. § 85-2-402(4)(b)(i)-(vi).

WHEREAS, No other person filed any objection to the Applications.

WHEREAS, on April 17, 2023, the DNRC issued a scheduling order and set a scheduling conference. After the scheduling conference, the Department issued a new scheduling order dated

April 28, 2023. The parties then agreed to continue the schedule order for two months to allow the parties to negotiate a potential resolution, and the DNRC issued a new schedule order on August 29, 2023.

WHEREAS, the parties, represented by legal counsel, participated in settlement discussions and have reached a resolution to resolve MVWQD's objections to the Applications as set forth below, which will result in the withdrawal of MVWQD's objections, thus making a hearing on those objections unnecessary.

AGREEMENT

WHEREFORE, in consideration of the mutual covenants contained herein, the Parties stipulate and agree as follows:

1. Until such time as the EPA issues its Record of Decision pursuant to the CERCLA for the Smurfit Stone Mill Site, MLH agrees not to market or use twenty percent (20%) of the historically diverted volume of the combined water rights under Application Nos. 30151159 and 30151160 ("Water Rights").
If the EPA orders that a pump and treat method be conducted at the Mill site, then MLH agrees not to market or use any portion of the 20% of the Water Rights, including the flow rate and volume, needed for this treatment method until such time as the treatment is no longer required by the EPA.
2. If MLH uses any of the wells associated with the water rights set forth in Application Nos. 30151159 and 30151160 within one mile of the outer perimeter of the Mill Site, as defined in the EPA's Administrative Order on Consent: (a) MLH agrees to conduct testing for the constituents of concern related to the Mill Site, including but not limited to dioxins and furans, as required by and in accordance with the methods and standards

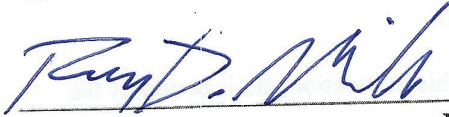
under the Montana Numeric Water Quality Standards Circular DEQ-7 for the type of use contemplated; (b) MLH agrees to conduct any necessary remediation to come into compliance with the Circular DEQ-7 standards for the contemplated use of the water rights prior to such use.

MLH additionally agrees that, if any part of any future purchase agreement of the Water Rights set forth in Application Nos. 30151159 and 30151160 involves the use of wells located within one mile of the outer perimeter of the Mill Site, as defined in the EPA's Administrative Order on Consent, MLH will require the purchasing party and any successor (whether by purchase, merger, consolidation, or otherwise): (a) to conduct testing on said wells for the constituents of concern related to the Mill Site, including but not limited to dioxins and furans, as required by and in accordance with the methods and standards under the Montana Numeric Water Quality Standards Circular DEQ-7 for the type of use contemplated; (b) to conduct any necessary remediation to come into compliance with the Circular DEQ-7 standards for the contemplated use of the water rights prior to such use.

3. MLH agrees to provide the MVWQD with any independent testing of the Wells that MLH or its agents have conducted or will conduct in the future.
4. This Stipulation is a compromise of disputed objections to the Applications and is not to be construed as an admission against the interests of any party.
5. The terms of this Stipulation are binding on the Parties, their successors, heirs, and assigns.

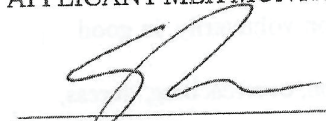
6. Upon execution of this Agreement, MVWQD hereby withdraws all objections to Change Application Nos. 76M-30150596 and 76M-30151160.
7. Each Party represents it has the authority to execute this Stipulation and is bound by the terms herein.
8. The Parties represent and affirm that the signatories to this Stipulated Settlement Agreement are legally authorized to bind their respective parties in this matter.
9. Each undersigned Party entered into and executed this Stipulation voluntarily, in good faith, and without any fraud, misunderstanding, misrepresentation, overreaching, duress, or undue influence.
10. Each Party agrees to bear its own costs and attorney fees arising from the negotiation and execution of this Stipulation and the proceedings before the DNRC.
11. Each Party represents that their execution of the Stipulation is knowing and voluntary, and that they had the opportunity, if so desired, to consult with legal counsel before executing this document.
12. The Parties agree that this document embodies the entire Stipulated Settlement Agreement of the Parties.
13. This Stipulation may be executed by the parties in several counterparts, each of which when executed and delivered shall be an original, but all of which together shall constitute one instrument. Facsimile or electronically transmitted copies of signatures will be deemed the equivalent of original signatures.
14. The effective date of this Stipulation shall be the date of the last signature below.

OBJECTOR MISSOULA VALLEY WATER QUALITY DISTRICT

 11/16/2023

Ross Miller Date
Board Chair, duly authorized to sign on behalf of Missoula Valley Water Quality District Board

APPLICANT MLH MONTANA, LLC

 11/7/23

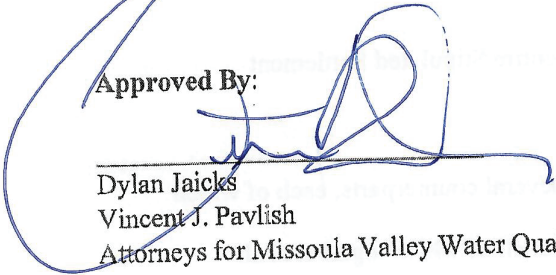
Steve Malsam Date
Principal, duly authorized to sign on behalf of the Corporation

Approved By:

 11/7/23

John J. Ferguson
Attorney for MLH Montana, LLC

Approved By:



Dylan Jaicks
Vincent J. Pavlish
Attorneys for Missoula Valley Water Quality District