



ENVIRONMENTAL QUALITY COUNCIL

PO BOX 201704
HELENA, MONTANA 59620-1704
(406) 444-3742

GOVERNOR

GREG GIANFORTE

DESIGNATED REPRESENTATIVE

MIKE FREEMAN

HOUSE MEMBERS

PAUL FIELDER

STEVE GUNDERSON – Chair

JEDEDIAH HINKLE

JONATHAN KARLEN

RHONDA KNUDSEN

MARILYN MARLER

SENATE MEMBERS

DAN BARTEL

BOB BROWN

WILLIS CURDY – Vice Chair

PAT FLOWERS

STEVE HINEBAUCH

THERESA MANZELLA

PUBLIC MEMBERS

JIM KEANE

DAVE GALT

JON METROPOULOS

DAN VERMILLION

COUNCIL STAFF

JASON MOHR, Lead Staff

KATY CALLON, Research Analyst

JOE CARROLL, Legal Staff

JOLANDA SONGER, Secretary

Director Amanda Kaster
Montana Department of Natural Resources and Conservation
1539 11th Ave.
P.O. Box 201601
Helena, MT 59620-1601

Feb. 14, 2024

Subject: Removal of Historical Outfall Pipes, Berms, and Riprap in the Clark Fork River

Dear Director Kaster:

The Environmental Quality Council of the Montana Legislature appreciates the department's recent determination that at least three outfall pipes from the Smurfit-Stone mill site are in the bed of the Clark Fork River and are trespassing on state trust lands.

While the Environmental Protection Agency leads the remediation process, the state has an important role in ensuring that the clean-up best serves the people of Montana and the Frenchtown community. The berms and riprap can no longer be used for their original purpose under the original, authorized pollution discharge permit (MPDES), so we believe that any new activity, including remediation of the Smurfit-Stone mill site by the EPA, must also include the removal of this trespassing infrastructure.

The council would like the DNRC to assist us with collecting information necessary to advocate for a cleanup that upholds that state's interests and rectifies the trespass on state trust lands. Based on the discussion during the Jan. 18 EQC meeting, we would also like to examine trespass on state trust lands elsewhere, and we kindly request that DNRC support these objectives in the following ways:

- Determine the extent to which the berms and rip-rap adjacent to the Smurfit-Stone site are trespassing on state trust lands within the Clark Fork River
- Advise the council on how best to represent Montana's interest in mitigating trespass during the Smurfit-Stone mill site Superfund process
- Suggest legal strategies to effect removal of all outfall pipes, berms, riprap, or other unauthorized trespasses from all state lands without resorting to an "after-the-fact" agency authorization
- Provide guidance on how to prevent similar instances of trespass in other Montana streambeds, and whether Montana statutes can better protect state trust lands

- Work with the Department of Environmental Quality to ensure that mitigating trespass on state lands is a standard procedure in their management of sites under both state and federal Superfund processes

Thank you for your attention to our concerns. We trust that the department shares our commitment to remediation of the mill site and will address the concerns raised in this letter.

Should you require any further information or assistance, please do not hesitate to contact us.

Sincerely,

(signed)

Rep. Steve Gunderson, presiding officer, EQC