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History and Timeline of Opencut Mining Permit Events in Clearwater

The passage of **House Bill 599** in 2021, revising Opencut Mining Laws during Montana's 67th legislative session, has already caused damage not only to the Clearwater watershed but also to other sites across the state. LHC Inc. was granted an expedited permit for a site located in the Clearwater watershed, only 1250 feet from and 100 feet above the Clearwater River and Elbow Lake. The mining activity has irreversibly altered the site, with the removal of old growth trees, destruction of a beautiful mountain meadow, stripping of topsoil, and settling of excavation dust and sediment on vehicles, homes, and river and lake. The significance of this area to wildlife cannot be overstated, and the negative outcomes threaten this area that state and federal agencies have collaborated to protect.

House Bill 599 removed environmental protections, including preventing acid drainage or sedimentation on or in adjoining lands or streams or catchments. Approval of a plan for fire protection to avoid range and wildland fire and spontaneous combustion was also removed. The duty to comply with air quality permitting and protection requirements, protection of groundwater from deterioration of water quality and quantity were removed, as well as requirements to minimize noise and visual impacts. Public meetings were eliminated for dryland opencut gravel mines. Mining companies were put in charge of notifying affected property owners and assessing potential impacts on water.

In **2009**, Fish, Wildlife, and Parks (FWP) acquired 53 acres on the northern border of the site, now managed as part of the Blackfoot-Clearwater Wildlife Management Area (BCWMA). DEQ did not contact FWP and did not address impacts to the critical wildlife corridor that was preserved with the 1.2 million dollar purchase —an area open for recreational public access. In the Environmental

Assessment (EA), this parcel was identified as "an area that most migrating elk and deer use to travel between summer ranges to the west and the main unit of BCWMA."

January 2023: Shallow, insufficient test pits were excavated, and material samples were taken.

March 16 to April 16, 2023: Time period for written public comments to Department of Natural Resources and Conservation (DNRC).

Notification regarding the project and permit from LHC, Inc. (the mining company) on behalf of the Department of Environmental Quality (DEQ) was a small post in the Missoulian and an 8 ½ x 11-inch piece of paper that faded with moisture to be unreadable at the side of the highway near the site.



March 17, 2023: Letter from LHC, Inc. on behalf of DEQ was sent to property owners, not to leaseholders, meaning that people leasing their cabin sites from the State (DNRC) were not notified.

March 23, 2023: LHC, Inc. applied to DEQ for a "Dryland" Opencut Mining Permit.

April 27, 2023: DEQ issued its final environmental assessment (EA). Completed in just 30 days, the DEQ stated it had received, reviewed, and considered public comments. Unlike DNRC's EA, no comments were attached. DEQ specifically stated that they accepted LHC's self-reported certification that ground and surface water would not be affected.

May 15, 2023: DNRC approved an aggregate take and remove permit, in large part, based on the DEQ expedited EA.

May 25, 2023: Protect the Clearwater (PTC), a grassroots group, was formed to safeguard Montana's communities and habitats in danger from expedited gravel mine permits. The group aims to protect water quality, wildlife habitat and communities are protected by the DEQ with thorough, inclusive, and complete environmental assessments.

May 26, 2023: PTC appealed the permit decision to Board of Environmental Review (BER), the group charged with overseeing the DEQ, and requested a review of the permit based on inadequacy of public notice and inadequacy of water quality analysis.

June 27, 2023: PTC challenged DEQ's actions in the 4th District Court as violations of the Montana Environmental Policy Act (MEPA), the Montana Public Participation Act and the Montana Constitution.

June 28, 2023: LHC, Inc. began actively preparing the site for mining, cutting down old growth trees and using heavy equipment to excavate, strip topsoil, and build roads, creating an excessive amount of dust in the area, drifting to the river and cabin sites.

July 11, 2023: PTC applied to the 4th District Court for an emergency stand-alone temporary restraining order and preliminary injunction to prevent more irreparable harm at the site. PTC had no preemptive way to legally stop this gravel mine before work started.

July 17, 2023: The temporary restraining order was issued, pausing the mining operation.

July 21, 2023: Judge John Larson heard compelling evidence in the 4th District Court in Missoula from PTC, Dave Donahue (hydrogeologist), DEQ, DNRC and LHC, Inc.

August 8, 2023: Judge Larson ordered the injunction to remain in place until the appeal to the BER and the MEPA case are both settled.

September 20, 2023: LHC, Inc. and DEQ filed an appeal of Judge John Larson's decision to the Supreme Court of Montana.

LHC, Inc. and DEQ opposed a motion by PTC to pause the Board of Environmental Review (BER) proceedings until after the Supreme Court hearing. As a result, this permit challenge must be fought on three different fronts, the Montana Supreme Court, in the 4th District Court, MEPA, and with the DEQ – BER case.

These duplicative legal battles have resulted in additional taxpayer money being spent by State agencies and unnecessary, additional legal fees being paid by average citizens.

February 17, 2024: The fight continues, all three legal battles remain in progress with court dates pending. Protect the Clearwater continues to raise funds to support our efforts. Protect the Clearwater raised \$70,000 in 2023. Our challenge to defend vital water resources, critical wildlife habitat, and our right for citizen participation has been complex, demanding, and expensive. We plan to raise an additional \$82,000 in 2024 to finish the job. We are grateful to the many supporters that have sustained this effort.

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