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STILLWATER COUNTY, MONTANA

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August 21, 2017

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401 North Last Chance Gulch
P.O. Box 557
Helena, MT 59624-0557

Re: Part One Zoning Stillwater County Beartooth Front District

Dear Mr. Wilson:

As you are aware, we are scheduled for a meeting on Wednesday, August 23, 2017, in the Stillwater County Courthouse to address the issues raised in your letter of July 31, 2017.

The Stillwater County Clerk and Recorder has completed her tally and validation of signatures, and the Stillwater Protective Association was able to secure 60% of the surface holders' consent in the affected zone. However, it has come to our attention that there is a question as to whether the owners of mineral rights in the affected zone should have been included as real property owners, 60% of whose consent is also required, to proceed any further with the proposed zoning.

We base our concern on the Montana Supreme Court decision in *Libby Placer Mining v. Noranda Minerals Corp.*, 346 Mont. 436, 197 P.3d 924, 2008 MT 367 (2008). The Court did a thorough analysis of property rights, and specifically whether fractional mineral interests were interests in real property. Libby Placer sought the return of a fractional mineral interest that had previously been condemned by Noranda and for which Libby had been compensated. Libby relied upon Montana Code Annotated §70-30-321(3) which requires that an interest in land, other than a fee simple interest, should revert to the original owner after condemnation if the condemnor has abandoned that interest. Libby argued that you cannot hold a fractional mineral interest in fee simple and that the abandoned fractional mineral interest should revert to them.

The Court acknowledged that mineral interests may be severed horizontally from the surface interest and vertically into fractional interests. *Libby*, 346 Mont. 436, ¶10 and ¶11, 197 P.3d 924, ¶10 and ¶11 (2008). The Court also found that the fact that Libby's interest was a fractional interest had no bearing on the quality of its estate and that Libby held the fractional mineral interest in fee simple when it was condemned by Noranda. *Id* at ¶46. The Court further says that fee simple refers not to a quantity of real property, but to the infinite or perpetual duration of ownership of the interest. *Id* at Mr.

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¶47. Finally, the Court acknowledges that “Mineral interests are treated as real property interests, and are subject to the rules related to real property.” *Id* at ¶39.

It is highly likely that the owners of mineral interests in the proposed district should have been surveyed to see whether 60% or more of them would agree to this potential restriction on their real property rights. Given that this is a threshold issue that must be addressed before any further work can be done on the proposed zone, I have advised the Stillwater County Commission, and they have agreed, to postpone the meeting with you and your clients that is set for this coming Wednesday. Additionally, I will be forwarding this issue to the Montana Attorney General’s Office for a legal opinion as to whether the fee simple owners of fractional and/or whole mineral rights in the proposed zone must be surveyed as to whether they want this proposed zone.

Yours truly,



Nancy L. Rohde
Stillwater County Attorney

cc: Stillwater County Commissioners
Stillwater County Clerk & Recorder