GLACIER-
TWO MEDICINE
ALLIANCE

April 5, 2024

To: VelRey Lozano
Environmental Protection Agency Region 8
1595 Wynkoop St.
Denver, CO 80202

Re: Montalban Oil & Gas Operations, Inc's Request for Permit Numbers MT52443-12513 & MT52439-12514

Comments also submitted electronically to Ms. VelRey Lozano at Lozano.velrey@epa.gov

Dear Ms. Lozano and the Environmental Protection Agency,

Thank you for the opportunity to provide comments on the Montalban Oil and Gas Operations Inc. disposal well permits (MT52443-12513 & MT52439-12514) at Jody Field 34-1 and 34-2. Please accept these comments on behalf of Glacier-Two Medicine Alliance (GTMA). We are a community-based, grassroots conservation organization located in East Glacier Park on the Blackfeet Nation with hundreds of members and supporters in Pondera, Glacier, Teton and surrounding counties. GTMA is dedicated to the protection and stewardship of the lands, waters, and wildlife of the Badger-Two Medicine and surrounding areas in Montana's Crown of the Continent ecosystem, which includes the area where the two wells are located.

Glacier-Two Medicine Alliance urges the Environmental Protection Agency (EPA) to DENY both permits due to potential harm to federally listed species, clean water, and sources of drinking water. More detailed comments follow.

#1. Likely Harm to Grizzly Bears
The proposed activities will likely cause harm to grizzly bears (*Ursus arctos*), a threatened species protected by the Endangered Species Act. Grizzly bears reside or frequent the area around the wells. Dupuyer Creek, which runs just north of the wells, and local, shrub-lined irrigation canals provides important habitat and habitat security for grizzly bears. Bears use these vegetated corridors to forage and stay out of sight of humans. These waterways also serves as critical dispersal corridors for bears in the Northern Continental Divide Ecosystem to expand their range eastward and recolonize historical habitat on the great plains. This range expansion is biologically critical to the long-term recovery of the species.

The proposed project could, at a minimum, cause harm or take of grizzly bears, acts prohibited by Section 9 of the ESA. Take means "to pursue, hunt, shoot, wound, kill, trap, capture, or

collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect" (50 CFR 10.12). Harm "means an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering" (50 CFR 17.3). Even by the most conservative estimates, dozens of trucks will pass down this road daily that would not otherwise do so if the permit is denied. These trucks may hit and kill or injure grizzly bears. Wastewater spilled at the site will attract grizzly bears due to the animal by-products it contains (this same industrial wastewater is regularly spilled when transferred from truck to trains in Shelby, according to a local observer). Human food or other waste products discarded at the site by employees could also attract bears. These attractants could lead to conflicts, or food conditioning that necessitate management removals (i.e. relocation or euthanasia) of grizzly bears. Conversely, the uptick in traffic and human presence could compel bears to avoid the area, which may force them to use less secure habitat. Again, this could cause conflicts elsewhere as bears are forced to travel in open country or close to residences, activities that result in death of more grizzly bears. Sufficient mortality or the severing of movement through this corridor may jeopardize the population.

To protect grizzly bears and contribute to their recovery, which the EPA is lawfully required to do, the EPA must consult with the US Fish and Wildlife Service (USFWS) to ensure the proposed actions associated with this permit do not cause harm, take or jeopardy to grizzly bears, or if they do, the actions are mitigated. The EPA's claim that grizzly bears will not be harmed because the well footprint will not be altered fails to consider the full suite of activities the permits will facilitate, especially the high volume of truck traffic to the site. Limiting the scope of analysis to ¼ mile of the well site along with the failure to consider all activities associated with this permit likely render the EPA's determination of "no impacts" to grizzly bears as arbitrary and capricious per the Administrative Procedures Act. Furthermore, the EPA cannot lawfully substitute its judgement for the judgement of the USFWS. Consultation and a biological assessment, at a minimum, is required. Consultation must also consider reasonably foreseeable expansion of industrial wastewater delivery should Montalban seek to permit additional wells in the area, as the company has publicly stated it intends to do.

#2. Likely Harm to Piping Plover

Piping plover (*Charadrius melodus*) are a small migratory shorebird whose population in Montana is listed as threatened under the Endangered Species Act. The birds are also protected under the Migratory Bird Treaty Act. The wells happen to be located in the western most known breeding area for piping plover in the conterminous US.[1] The area is also within the migratory flyway for piping plover and many other migratory species protected under the Migratory Bird Treaty Act. Piping plover nest on barren sand and gravel shores along lakes and reservoirs, especially alkaline areas. The increased truck traffic could cause mortality (bird strikes) of nesting or migrating piping plover. Contamination of surface water from accidental spills or infiltration from groundwater, could degrade nesting, rearing, or stopover habitat. Given the

[1] See: Montana Field Guide: https://fieldguide.mt.gov/speciesDetail.aspx?elcode=ABNNB03070

small size of the local breeding population and its disjunct from other breeding populations, any harm or loss of individuals is likely to be significant.

The EPA does not appear to have even considered possible impacts to piping plover at this juncture. By law, the EPA must consult with the US Fish and Wildlife Service to assess whether the proposed activities could take or harm any piping plover under section 9 of the Endangered Species Act (see above for legal definitions), or cause jeopardy (Section 7) to the local population, or to critical habitat, and whether those impacts can be mitigated.

The EPA's claim that piping plover will not be harmed because the well footprint will not be altered fails to consider the full suite of activities the permits will facilitate, especially the high volume of truck traffic to the site. Limiting the scope of analysis to ¼ mile of the well site along with the failure to consider all activities associated with this permit likely render the EPA's determination of "no impacts" to piping plover as arbitrary and capricious per the Administrative Procedures Act. Furthermore, the EPA cannot lawfully substitute its judgement for the judgement of the USFWS. Consultation and a biological assessment, at a minimum, is required. As with grizzly bears, consultation must also consider reasonably foreseeable expansion of industrial wastewater delivery should Montalban seek to permit additional wells in the area, as the company has publicly stated it intends to do.

#3 Likely Degradation of Clean Water

Converting these dry oil and gas wells to injection wells to accept wastewater generated by Montana Renewables poses an unacceptable risk to local water sources like Dupuyer Creek, Lake Frances, local irrigation canals, or groundwater, that serve as drinking water, support wildlife and agriculture, or provide for recreation. Spills from truck accidents or during transfer of the liquid could potentially contaminate surface water. The EPA should require detailed emergency response plans and bonding prior to issuing any permit. The emergency response plans must ensure prompt and complete cleanup of any spills in a way that minimizes risk to water sources like Dupuyer Creek, to emergency responders, to wildlife, and to local residents.

Another significant concern we have is the potential for ground water contamination should the injected wastewater find its way through existing or future cracks in the rock strata overlying the anticipated containment zone. More disclosure of the geology and models that indicate safety is needed. Greater analysis of earthquake risk is also warranted. According to Pondera County, the earthquake risk for this region of the Front is rated as "medium." However, limited data exists. The EPA appears to fallaciously rely on absence of data to support its claim of an absence of risk. Greater evaluation of actual earthquake risk is necessary. So too are strict limits on the use of fracking in future oil and gas exploration to prevent new cracks from forming that could lead to future groundwater contamination.

Although the EPA's provided information claims this wastewater will not contaminate the underlying aquifer, wastewater injection has contaminated aquifers around the country, including

aquifers used for drinking water, for irrigation, or for livestock.[2] Before any permit is issued, the EPA should develop, or work with state and local authorities to develop, a groundwater monitoring plan to ensure wastewater is not contaminating local drinking wells, or water used for irrigation or stock water. The EPA should also require a substantial bond from Montalban to pay for any pollution or other damages to county infrastructure that may occur as a result of activities associated with this permit.

This region of Montana is so fortunate to have such an abundant supply of clean water. Any damage to this precious water supply would harm local people who depend on these waters for personal consumption, agriculture, or other economic uses. The potential harm extends far downstream, as these waters are important headwaters of the Marias and Missouri rivers. The Madison Aquifer provides drinking and irrigation water for other communities in Montana, Alberta and the western Dakotas. Extreme caution in permitting the injection of industrial wastewater into the aquifer should be exercised given the sensitive environment and importance of clean water to local and downstream communities.

#4 Lack of Disclosure of Materials to be Injected into the Well

GTMA is deeply concerned about the lack of disclosure of what chemicals, animal by-products, heavy metals or other organic and inorganic materials, including proprietary components, may be in the wastewater. All content, including proprietary components, should be disclosed to the public and Pondera County officials with samples made available for independent analysis in a certified laboratory prior to issuing the permit. The Company's content claims and the sample results should be made publicly available prior to issuance of a permit. Should any permit be issued, it should include requirements for continued, regular disclosure to local officials and the public, along with independent analysis of the wastewater samples.

#5 Other Impacts to People of Pondera County

GTMA also shares the concerns of the Pondera County Commission and many others about the potential impacts to the roads and the public treasury from increased road maintenance and public safety costs associated with the tremendous increase in heavy truck traffic. Pondera County does not stand to gain any financial benefit from this operation, yet it is being asked to shoulder the burden. The concerns of the community and County Commissioners should be weighted as a balancing criteria when considering whether to approve the permit.

#6 Future Expansion and Cumulative Effects

GTMA is concerned that these two wells may be just the first of many non-producing oil and gas wells to be converted into wastewater injection wells. Montalban has publicly indicated it would like to permit additional wells in the future. However, by seeking permits in stages, the company (and the EPA) may be avoiding the hard look at cumulative effects required under the National Environmental Policy Act. The EPA is exempt from most aspects of NEPA related to the Clean

[2] For example, see https://www.propublica.org/article/poisoning-the-well-how-the-feds-let-industry-pollute-the-nations-undergroun

Water Act per the "functional equivalency" standard, it is not exempt from the law in its entirety. The EPA must assess the direct, indirect, and cumulative effects of more wells (and all the associated truck traffic) must be considered as they are reasonably foreseeable and likely to occur (40 CFR 1508.1(g), see also 40 CFR 144.33 (c)(3)). The cumulative effects on the environment, economy, and communities that may result from converting more injection wells in the area to Class V need to be considered and evaluated before issuing this permit.

#7 Tribal Consultation

It is not clear that the EPA has actually conducted meaningful consultation with the Blackfeet Tribal government about this project and the potential impacts it has on Blackfeet reserved rights and resources. Failure to meaningfully consult would violate the EPA's trust responsibilities and policy including Executive Order 13175 "Consultation and Coordination with Indian Tribal Governments," and Executive Order 14096 "Revitalizing our Nation's Commitment to Environmental Justice" as well as other orders and current administrative memoranda on the subject. This deficiency needs to be corrected, if it has not been already, prior to issuing any permit for wastewater injection in these two wells.

#8 A Better Alternative Exists

The water, wildlife, and people of Pondera County should not have to bear a risk without benefit when a better alternative exists. Montana Renewables has suggested that this permit is necessary as a short-term measure until it can build a treatment facility. The company should expedite the construction of such a facility rather than push the risks associated with this injection well onto the wildlife, water, and people of Pondera County. The technology exists[3] and financing to for such a facility that supports renewable energy targets is likely accessible from federal or private sources. If the company is serious about producing renewable energy, the waste stream should be made as renewable as possible as well. Denying the permit will motivate them to take important steps that will further protect our environment locally and globally.

Thank you again for the opportunity to comment on the Montalban Oil and Gas Operations Inc. disposal well permit (MT52439-12514) at Jody Field 34-1 and 34-2. To sum, we urge the EPA to NOT issue a permit for this injection well permit at these sites due to potential impacts to federally-protected wildlife species, risks to clean water sources, lack of disclosure of wastewater content, uncertainties about the underlying geology and earthquake risk, as well as other issues identified in this letter.

Sincerely,

Peter Metcalf
Executive Director

[3] See for example, https://cabbi.bio/wastewater-to-energy-new-treatment-process-can-improve-biorefinery-sustainability/#:~:text=If%20not%20properly%20managed%2C%20biorefineries,on%20a%20previous%20CABBI%20study. Last accessed 4.5.2024