



COTTONWOOD

ENVIRONMENTAL LAW CENTER

November 4, 2022

**Certified Mail
Return Receipt Requested**

**RE: NOTICE OF INTENT TO BRING SUIT FOR VIOLATION OF SECTION
301(A) OF THE FEDERAL CLEAN WATER ACT, 33 U.S.C. §1311(A)
(UNPERMITTED DISCHARGE)**

Spanish Peaks Mountain Club
181 Clubhouse Fork
Big Sky, MT 59716

Montage International
3 Ada Parkway Suite 100
Irvine, CA 92618

Lone Mountain Land Company
25 Town Center Ave.
P.O. Box 160040
Big Sky, MT 59716

Michael S. Regan
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code: 1101A
Washington, DC 20460

K.C. Becker
Regional Administrator
U.S. Environmental Protection Agency
Region 8
1595 Wynkoop St.
Denver, CO 80202-1129

Cottonwood Environmental Law Center
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Bozeman, MT 59771

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Chris Dorrington
State of Montana, Director
Department of Environmental Quality
520 E 6th Ave, Helena, MT 59601

I am writing on behalf of Cottonwood Environmental Law Center to notify you of serious violations of the federal Clean Water Act (“CWA”), 33 U.S.C. §§1251-1387, at Spanish Peaks in Big Sky, Montana. The purpose of this letter is to provide notice of the Cottonwood’s intent to file a civil action against Spanish Peaks for this violation pursuant to Section 505(b)(1)(A) of the Clean Water Act, 33 U.S.C. §1365(b)(1)(A), which requires a sixty-day notice of alleged violations prior to commencement of suit.

IDENTITY OF PERSONS GIVING NOTICE AND THEIR COUNSEL

In accordance with 40 C.F.R. §135.3, notice is hereby given of the Cottonwood’s full name, addresses, and telephone number, as well as the full name, address, and phone number of legal counsel:

Cottonwood Environmental Law Center
John Meyer, Executive Director
P.O. Box 412 Bozeman, MT 59771
John@cottonwoodlaw.org
(406) 546-0149

NOTICE OF INTENT TO SUE FOR VIOLATION OF THE CLEAN WATER ACT.

The Montana Department of Environmental Quality has listed the Middle Fork of the Gallatin as water-quality impaired because of the pollutants Nitrate + Nitrite and E. coli. Spanish Peaks does not have a permit to discharge the pollutants into the Middle

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Fork/West Fork of the Gallatin River. Cottonwood collected a water sample from a headwater stream of the Middle Fork/West Fork after Spanish Peaks sprayed treated sewage near the stream. A sign on the bridge directly above the stream states, “Reclaimed Waste Water. Do Not Drink. Spanish Peaks Mountain Club.” Lab results verify that the stream contains nitrogen pollution. The location of the sample is: 45.26450, -111.38157. Cottonwood then collected a water sample upstream of the confluence of the headwater stream and the Middle Fork. Above the confluence, lab samples show the stream is not polluted by nitrogen. The location of the sample is: 45.26979, -111.34093.



The railing of the bridge above the polluted creek is visible in the picture. Video is available upon request.

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Cottonwood members took video of two pipes on the Spanish Peaks Golf Course spraying treated sewage into a stream that runs through the golf course. The pipes are located on holes #3 & #6. The pipe on hole #3 is between the men's and ladies' tees, under the second bridge. The pipe on hole #6 is about 20 short of the green.



Treated sewage being sprayed out of the pipe. Another photo of the pipe is below.

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This pipe discharged the treated sewage shown in the photo above.

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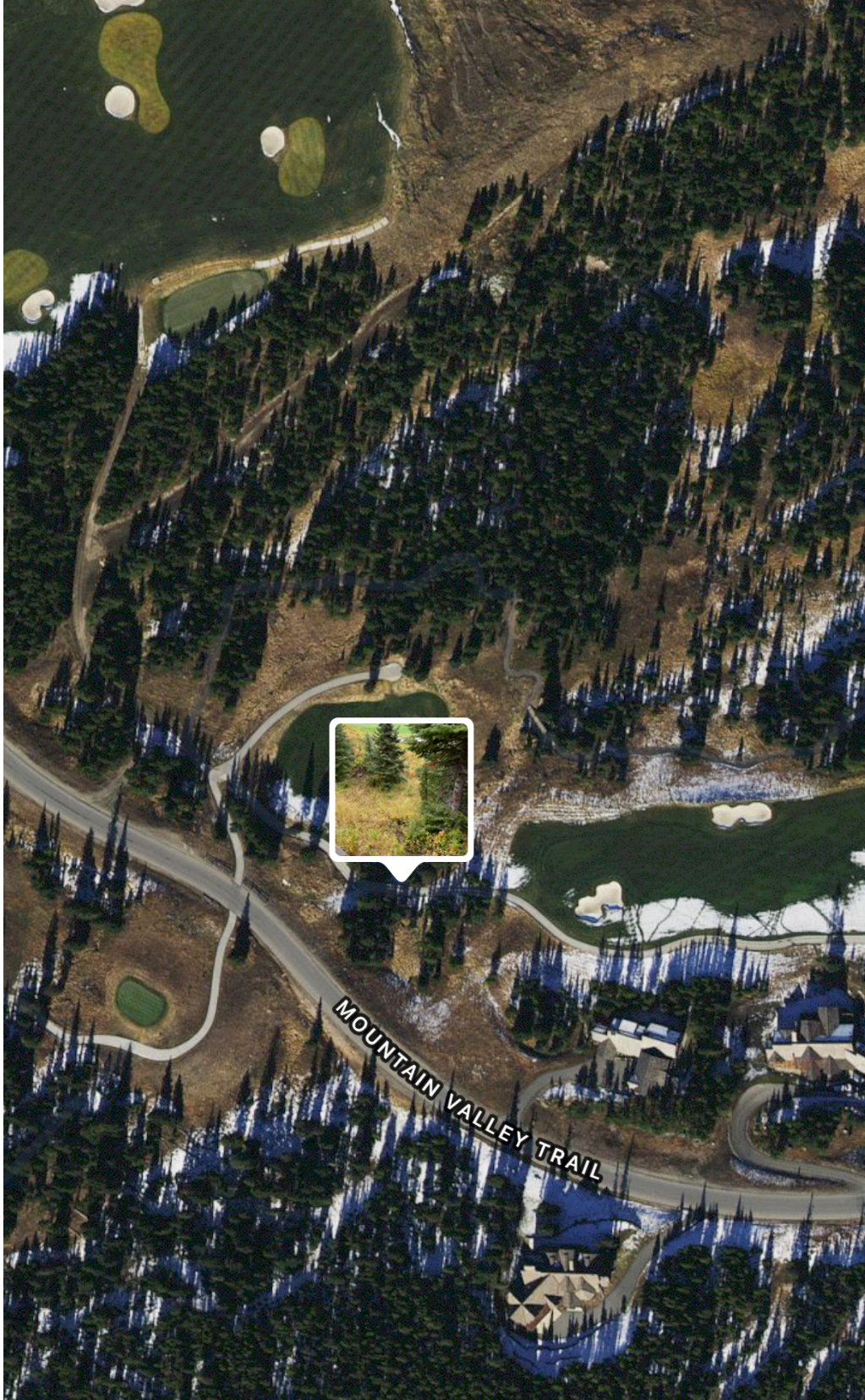
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E. coli. And Nitrate + Nitrite as N are pollutants regulated by the Clean Water Act. The West Fork of the Gallatin River is 303(d) listed for the pollutants. Spanish Peaks appears to be illegally discharging the pollutants into the Middle Fork/West Fork of the Gallatin River, thereby exacerbating the already existing water quality issues. Discharging treated sewage out of the pipes on the Spanish Peaks' golf course and spraying treated sewage out of sprinklers/snow guns adjacent to the golf course are activities that are polluting the unnamed streams of the Middle Fork/West Fork of the Gallatin River.

The Clean Water Act strictly regulates the discharge of pollutants into the waters of the United States by prohibiting “any addition of any pollutant to navigable waters from any point source” in the absence of an NPDES permit. *Id.* §1362(12); *see also Id.* §§1311(a), 1342. “The term ‘point source’ means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.” *Id.* The sprinklers spraying the treated wastewater that contains the nitrogen pollution into the unnamed stream of the West Fork and the two pipes on the golf course discharging treated sewage into an unnamed stream that enters the West Fork are all “point sources.”



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Spanish Peaks, Montage International, and Lone Mountain Land is discharging pollutants to navigable waters without an NPDES permit in violation of the CWA. 33 U.S.C. §1311(a). These violations occur whenever Spanish Peaks, Montage International, and Lone Mountain Land sprays from the sprinklers adjacent to the golf course or the pipes on the golf course discharge the treated sewage. The most recent discharges occurred on the last day the golf course was open and the three weeks preceding the last day the golf course was open.

The point source discharges described above constitute violations of the CWA and are in direct violation of National Pollution Discharge Elimination System (“NPDES”) permitting requirements. *See* 33 U.S.C. 1311(a). Spanish Peaks, Montage International, and Lone Mountain Land (collectively “Spanish Peaks”), as the owners and operators of the golf course, the sprinklers, pipes on the golf course, and irrigation equipment, is responsible for these violations and for remedying them. Lone Mountain Land previously notified Cottonwood that it would be involved in settlement discussions during the previous round of litigation.

We hope that this letter will convince Spanish Peaks to immediately investigate and correct this violation. We welcome any additional information that would contradict or clarify the monitoring and lab results. Until Spanish Peaks abates these violations, it is subject to civil penalties under the CWA.

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Cottonwood intends to seek civil penalties for past violations, injunctive relief to place a moratorium on development to prevent future illegal discharges, and such other relief as is permitted by law. 33 U.S.C. §§1365(a) & (d). Pursuant to CWA section 309(d) and its implementing regulations, the above-described violations subjects the Yellowstone Club to a penalty of up to \$55,800 per day per violation. *Id.* §1319(d); 40 C.F.R. §19.4.

/s/ John Meyer, Attorney for Cottonwood
JOHN MEYER