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JUL 30 2010

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DISTRICT OF MONTANA
MISSOULA

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6 *Pro Se Plaintiff*

7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE DISTRICT OF MONTANA
9 MISSOULA DIVISION

10
11 MICHAEL SPREADBURY)

Cause No: CV 10-81-M-DWM-JCL

12 Plaintiff)

13 v.)

COMPLAINT

14 US DEPARTMENT OF HEALTH AND HUMAN)

15 SERVICES, NATIONAL INSTITUTES OF)

16 HEALTH, FRANCAIS COLLINS, MARSHALL)

17 BLOOM,

18 Defendants)

19 **Cause of Action:**

20 This cause of action is for violation of the National Environmental Policy Act (NEPA) as
21 described in 42 USCA §4332 et. seq.; 40 CFR §1502 and §1503 et. seq. Defendants failed to
22 follow well established guidelines for NEPA, and assess health and safety risks at National
23 Institute of Health facility in Hamilton, Montana known as Rocky Mountain Labs (RML).

24

25 Plaintiff Michael Spreadbury (hereafter "Plaintiff") in his complaint against US Department of

26 Health and Human Services et. al. Defendants allege as follows:

27

Parties:

- 28 1. Michael Spreadbury, a resident and natural person of the State of Montana.
- 29 2. The US Department of Health and Human Services, an executive branch department of the
30 United States which must abide by all applicable laws.
- 31 3. National Institutes of Health (NIH), a branch of the US Department of Health and Human
32 Services must act in compliance with all applicable laws, based in Bethesda, Maryland.
- 33 4. Francis Collins, Director of the National Institutes of Health, the responsible official who
34 must act in compliance with all applicable laws, based in Bethesda, Maryland.
- 35 5. Marshall Bloom, Director of Rocky Mountain Labs (RML) affiliated with NIH, is the local
36 responsible official for who must abide by all applicable laws, located in Hamilton, Montana.

37

Jurisdiction and Venue:

38 The Montana US District Court has jurisdiction via 5 USC s. 701 et. seq., 28 USCA 1331
39 Federal Question, 28 USCA 1336, 28 USCA 2201 et. seq. Declaratory Judgment Act. NEPA
40 42 USCA § 4332 et. seq., 40 CFR §1502, §1503 et. seq. Plaintiff entitled to relief.

41 Venue is proper due to Defendant property and activities in Ravalli County Montana which is
42 within the Missoula Division of the US District Court for Montana.

43

Factual Background

- 44 6. The Bitterroot Valley, where the Rocky Mountain Laboratory is located contains blue
45 ribbon trout rivercourse Bitterroot River containing protected Species Bull Trout.
- 46 7. Lewis & Clark traversed valley upon direction of US President to find a land route to the
47 Pacific Ocean.
- 48 8. Soils in the Bitterroot Valley are some of the richest in the state; water, timber resources
49 abound surrounding the NIH facility in Hamilton, MT.
- 50 9. The Selway-Bitterroot Wilderness is the second largest in the US at 1.6M acres, which
51 sits at the western boundary of the RML site in Hamilton, MT.
- 52 10. Wildlife crossings in Bitterroot are essential to habitat such as Bear, Moose, Elk, Deer,
53 bird habitat of waterfowl, migrating birds, owls, hawks, bald eagles.
- 54 11. RML site in floodplain for flood insurance: any part of property below the 100 year
55 floodplain makes entire property floodplain, 1968 National Floodplain Insurance Act.

- 56 12. Neighborhood surrounding RML south of Hamilton, MT contains historic homes over 40
57 years which require historical review for any federal project by NIH.
- 58 13. NIH-RML drafted an Environmental Impact Statement (EIS) and Final EIS (FEIS) with
59 appropriate comment period.
- 60 14. NIH-RML drafted a 20 year master plan with appropriate comment period.
- 61 15. Specific details for Interpretive Center and North Parking Lot projects in FEIS did not
62 include required items as per the National Environmental Policy Act (NEPA).
- 63 16. NIH-RML FEIS did not include alternatives to interpretive center project.
- 64 17. FEIS did not include a historical review in report specific to the interpretive center,
65 proposed parking lot project, purchasing residential property for NIH industrial use.
- 66 18. FEIS did not allow public comment addressing the interpretive center, or the parking lot
67 project specifically as proposed.
- 68 19. Proposed Parking Lot project is near floodplain and drainage to Bitterroot River, and
69 would require use of residential property purchased for a federal industrial purpose.
- 70 20. Interpretive Center proposed demolition is within a historic residential area did not
71 include alternatives to the proposed demolition of the existing structure 801, 803 S. 4th.
- 72 21. In planning the new BSL-4 facility, NIH did not include professional fire, material safety
73 personnel or fire structure assets at RML for safety, health of residents, employees.
- 74 22. The 20 year plan and FEIS does not include an emergency response structure at RML.
- 75 23. RML agreed to respect NEPA process, and uphold health and safety of community and
76 RML employees in 2004 to resolve CV-04-154-M-DWM out of court.
- 77 24. NIH BSL-4 facilities in Frederick, MD; Bethesda, MD; and Raleigh-Durham, NC have
78 sufficient fire assets due to being in larger communities which have training and
79 equipment necessary to provide emergency assistance to comparable facilities to RML.
- 80 25. RML is located in an isolated valley with no professional fire departments, and no
81 material safety teams within 45 miles, and 29 volunteer firemen in Hamilton, MT.
- 82 26. NIH headquarters house 30 federal firefighters, and can get assistance from the well
83 equipped Bethesda (MD) Fire Department, located within 15 minutes from D.C. metro.
- 84 27. RML has no federal or professional fire personnel in any proximity to facility.

- 85 28. RML 20 year plan had no onsite emergency response facility although no adequate
86 biological, materials, or radiological safety team is within 45 miles.
- 87 29. First Presidentially declared fire emergency was in proximity to RML, Ravalli County,
88 and Montana in year 2000. Fire hazard is extremely high near RML.
- 89 30. RML is 45 miles from Missoula, MT with 60,000 residents and five firehouses.
90 Materials safety team is currently dispatched from Missoula Fire Department.
- 91 31. Fallen timber block fire corridor route, accidents, and in-climate weather 3000 ft. AMSL,
92 47°Latitude; fire/materials response from Missoula not assured within 1 hour of dispatch.
- 93 32. RML without professional material safety, biological, or radiological staging area
94 available on site, or within 45 miles of the Hamilton, MT facility.
- 95 33. NIH Office Research Safety issued Plaintiff false assurances of safety since 2007.
- 96 34. Plaintiff has adequately participated in administrative process by expressing concerns to
97 RML, NIH in fire safety, environmental quality, NEPA director, Director of Research
98 Safety, NIH legal counsel, and NIH Directors office.
- 99 35. Plaintiff has offered mediation to resolve this dispute to NIH.
- 100 36. No further remedy is available to Plaintiff to resolve NEPA and related safety issues.
- 101 37. FEIS and published NIH documents failed to adequately disclose, analyze, and assess
102 environmental risk from proposed interpretive center demolition, parking project
103 proposed by RML.
- 104 38. Risks from RML proposed interpretive center, parking lot projects have impacts to the
105 environment, human health, and impacts to local governments.
- 106 39. Defendants did not comply with the NEPA act at RML.
- 107 40. Defendants have duty protect safety and health of employees, public around RML.
- 108 41. Defendants failed to answer electronic correspondence from Plaintiff addressed to
109 askrml@niaid.nih.gov relating to fire safety.
- 110 42. Defendants do not pay taxes to local governments, nor payment in lieu of taxes (PILT) to
111 defray wear on roads, fire response, and other costs.
- 112 43. Defendants are adding lab space at RML requiring more water resources, and have not
113 addressed resource issue in the master plan, FEIS, or other published NIH documents.

- 114 44. Water discharge from RML facility, or monitoring is not published or public information.
115 45. Security of RML north boundary is substandard as non-fortified chain-link fencing.
116 46. Purchase of residential property for RML is not proper for federal industrial projects.
117 47. Industrial process as RML requires roof cooling fans, which impact bird habitat, and
118 riparian, river area to west and surrounding RMI, and was not addressed in FEIS.
119 48. Use of NIH police vehicles except official use, outside RML property, improper.

120 **Charges:**

121 **Failure to consider a reasonable range of alternatives—Count 1**

- 122 49. Plaintiff repeats and realleges paragraphs 1-48 of this complaint as fully set herein.
123 50. NEPA requires NIH to consider alternatives to recommended courses of action in any
124 proposal 42 USCA §4332(2)(E).
125 51. NEPA requires NIH to prepare a detailed evaluation of all reasonable alternatives to the
126 proposed action in every EIS. 42 USCA §4332(C)(iii); 40 CFR §1502.14(a)
127 52. Defendants consideration of a single action alternative does not satisfy the requirement
128 that an agency prepare a detailed evaluation of all reasonable alternatives.
129 53. Failure to develop and consider reasonable alternatives by NIH with respect to the
130 demolition of a dwelling, and a parking lot project is a violation of the NEPA Act.

131 **Failure to Disclose Substantive Information Regarding the Proposed Action—Count 2**

- 132 54. Plaintiff repeats and realleges paragraphs 1-53 of this complaint as if fully set herein.
133 55. Defendants did not disclose impacts to the public about proposed parking lot project,
134 interpretive center project, within EIS for public comment.
135 56. No alternative was presented to local fire services in 20 year plan, or current expansion.
136 57. Impacts to demolishing duplex residential dwelling at 801 and 803 So. Fourth St

137 Hamilton, MT for RML interpretive center was not published in FEIS.

138 58. No alternative was presented for interpretive center or parking lot proposed projects.

139 59. Water use in further expansion of RML post BSL-4 has not been disclosed.

140 60. As a result of Defendants not disclosing substantive information, NEPA violation exists.

141 **Failure to respond to comments— Count 3**

142 61. Plaintiff repeats and realleges paragraphs 1-60 of this complaint as if fully set herein.

143 62. Defendants have a responsibility within NEPA to adequately respond, and take into
144 account correspondence from the public from EIS comments as in 40 CFR §1503.4

145 63. Plaintiff comment and Public comments as to material, biological, and fire safety at RML
146 were not adequately and meaningfully responded to in NEPA process by Defendants.

147 64. False assurances to safety by NIH did not adequately address public concerns.

148 65. RML did not respond to questions from Plaintiff and public regarding fire safety at RML.

149 66. Defendant's failure to adequately respond to, or incorporate public comments into a FEIS
150 process is a violation of NEPA.

151 **Failure to protect federal employees and general public—Count 4**

152 67. Plaintiff repeats and realleges paragraphs 1-66 of this complaint as if fully set herein.

153 68. Defendants planned, and built level 4 BSL in Hamilton, MT at RML.

154 69. Increased dangers to employees and public were not met with sufficient resources to
155 protect federal employees, federal property, and US Citizens residing near RML.

156 70. NIH did not treat RML equally in respect to health and safety as compared to other BSL-
157 4 labs in other locations of the United States with respect to fire and materials safety.

158 71. Due to a failure of NIH to protect employees and the general public at RML, no fire
159 assets or structures were built or planned as published in 20 year master plan and FEIS.

160 **Lack of Disclosure in EIS and Mater Plan Documents—Count 5**

- 161 72. Plaintiff repeats and realleges paragraphs 1-71 of this complaint as if fully set herein.
162 73. Fire capabilities for local volunteer departments are not published in RML documents.
163 74. Volunteer fire departments do not protect other NIH facilities with BSL-4 labs.
164 75. The lack of disclosure by NIH of fire capabilities for RML does not meet duty to assess
165 health and safety risks to the public, as found in NEPA laws.
166 76. Due the lack of disclosure by NIH, RML is not sufficiently protected as well as other
167 BSL-4 laboratories in the United States.

168 **Negligence—Count 6**

- 169 77. Plaintiff repeats, realleges paragraphs 1-76 of this complaint as if fully set herein.
170 78. Defendants planned BSL-4 structure five years prior to construction at RML.
171 79. No fire facility was planned within the campus at RML although no professional fire or
172 fully equipped hazardous materials safety team is available within 45 miles of RML.
173 80. By working with high level pathogens with no known cure or vaccine, without fire and
174 materials safety infrastructure on, or near RML campus, Defendants were negligent in
175 their duty to protect the public and RML employees.
176 81. Defendants knew or should have known that RML had less fire safety available to it than
177 other NIH facilities with BSL-4 labs on their campuses.
178 82. Defendants are negligent in not planning or building sufficient fire assets at RML.

179 **Failure in Scientific Integrity—Count 7**

- 180 83. Plaintiff repeats, realleges allegations in paragraphs 1-82 as if fully set herein.
181 84. The failure to disclose and assess health risks constitutes a failure to satisfy the standard
182 of scientific integrity, a violation of NEPA 42 USCA §4332 et seq, 40 CFR §1502 §1503.
183 85. Defendants did not disclose specific facts about fire capability, specifics about Hamilton
184 Volunteer Fire, type of engines, type and frequency of calls, required training, average
185 age & physical condition, requirements for volunteers, capacities and age of equipment.
186 86. NIH did not publish alternative to use of volunteer fire departments to protect RML.

187 87. Vagueness of FEIS, Master Plan, Defendants gave arbitrary and non-specific information
188 on biological, fire, material, and radiological safety at RML.

189 88. NIH failed to give specific information for scientific integrity with respect to NEPA
190 required documents such as FEIS, projects, and fire operations for RML.

191 **Disregard for Process—Count 8**

192 89. Plaintiff repeats, realleges paragraphs 1-88 of this complaint as if fully set herein.

193 90. Defendants did not use EIS process to evaluate alternatives, gain comment from process,
194 limit impact to environment on federally funded projects, but a means to gain the desired
195 outcome of publicly owned resources.

196 91. Federal regulations state EIS “shall serve the means of assessing the environmental
197 impact of proposed agency actions rather than justifying decisions already made. 40 CFR
198 §1502.2 (g).”

199 92. Federal agencies “shall not commit resources prejudicing selection of alternatives before
200 making a final decision. CFR 40 §1502(f).”

201 93. Defendant NIH did have a disregard to EIS process with respect to Interpretive Center,
202 Fire resources, and proposed parking lot at RML.

203 **Non-disclosure of Natural Resource use—Count 9**

204 94. Plaintiff repeats, realleges paragraphs 1-93 in this complaint as if fully set herein.

205 95. RML uses resources from the public like water without delineating use.

206 96. The proposed expansion of RML will demand more water resources.

207 97. By not tracking, and publishing these figures, NIH is not upholding its duty to the public
208 to wisely use local resources, or explain its use to public.

209 98. RML does not publish water quality figures after treatment, and release into the Bitterroot
210 River in Hamilton, Montana.

211 99. RML has a duty to assure the public that the post-process water quality is below
212 allowable levels, and is within tolerable limits of environmental protection.

213 100. Resource use is an impact to a community, and NIH has an obligation to the public via
214 Federal Regulations and NEPA laws to disclose specifics on use, and protect resources
215 from over-extraction, and assurances of best use practices.

216

Negligent disclosure of Environmental Impacts—Count 10

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101. Plaintiff repeats, realleges paragraphs 1-100 in this complaint as if fully set herein.

218

102. NIH, in FEIS did not disclose impacts all impacts to wildlife at RML.

219

103. FEIS stated 100 species of birds surrounding lab, yet published no impact to Riparian area due to no building in those zones on NIH property at RML.

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221

104. NIH knew or should have known that impacts to wildlife would occur due to expansion and further expansion of the RML campus to add laboratory buildings.

222

223

105. NIH knew or should have known that an industrial campus near a wilderness river area and natural sanctuary for wildfowl on RML property would cause impacts.

224

225

106. NIH was negligent in disclosing environmental sensitive areas on the RML campus.

226

Misrepresentation of safety facts, environmental impacts at RML—Count 11

227

107. Plaintiff repeats, realleges paragraphs 1-106 in this complaint as if fully set herein.

228

108. NIH did not disclose fire safety statistics, fact that no comparable NIH BSL-4 facility is protected by volunteer fireman in the United States.

229

230

109. NIH did not disclose impacts, alternatives to certain projects planned at RML.

231

110. NIH did not mention water use other than it was sufficient for fire flow.

232

111. NIH did not mention impacts for wildlife, or impacts to proposed projects.

233

112. NIH did not reveal land purchase expansion is zoned residential for planned federal industrial use for RML.

234

235

113. Due to misrepresentation, or omission, NIH did not disclose facts as required in EIS.

236

Relief Sought from Court

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Plaintiff respectfully requests that Court will find declarative ruling that the Defendants have violated the National Environmental Policy Act (NEPA), or other violations in all or part of this complaint herein.

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Additionally Plaintiff requests US Magistrate to:

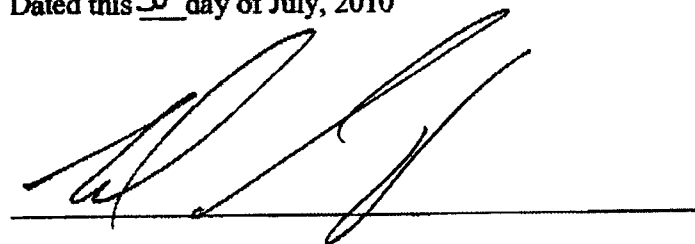
241

- I. Issue temporary injunctive relief to enjoin Defendants to immediately raise fire assets of RML to the standard of other BSL-4 laboratories in the United States.

242

- 243 II. Enjoin Defendants with cease order to stop building, on other projects at RML so
244 fire protection can be brought to a suitable level consistent with relief sought in I.
- 245 III. Make declarative judgment whether Defendant federal agency can purchase
246 private zoned residential property for use as federal industrial property at RML.
- 247 IV. If affirmative in III, enjoin Defendants to re-issue EIS process to include
248 alternatives, public comment, and other NEPA requirements on proposed parking
249 project at north central portion of RML site, and interpretive center project.
- 250 V. If negative in III, enjoin the Defendants to maintain the integrity of the historical
251 neighborhood at RML main entrance and refrain from the proposed interpretive
252 center project, and parking lot project at north central RML property.
- 253 VI. Enjoin Defendants to secure flood insurance for all structures on RML required
254 by National Flood Insurance Act of 1968 per US Congress Legislation.
- 255 VII. Enjoin Defendants to regularly disclose to the public water use, expected water
256 use, treatment standards, and contaminant levels of effluent discharged into the
257 Bitterroot River at Hamilton, MT.
- 258 VIII. Issue permanent injunction to enjoin Defendants to prepare an EIS which follows
259 the NEPA law to the benefit of the public with respect to the Interpretive Center,
260 impacts to wildfowl, and all future and current federal projects at RML.
- 261 IX. Plaintiff asks court to grant any costs that arise from this action.
- 262 X. Plaintiff yields to court any further relief court deems proper in this action.

263
264 Dated this th30 day of July, 2010

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266
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268 Michael Spreadbury, Pro Se Plaintiff