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**U.S. DISTRICT COURT  
DISTRICT OF MONTANA  
BILLINGS DIVISION**

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GARDINER-PARK COUNTY WATER AND SEWER DISTRICT,	)	CASE NUMBER:
	)	
Plaintiff,	)	<b>COMPLAINT FOR INJUNCTIVE RELIEF, AND DEMAND FOR JURY TRIAL</b>
	)	
v.	)	
	)	
NATIONAL PARK SERVICE, an Agency of the United States Department of Interior,	)	
YELLOWSTONE NATIONAL PARK and JOHN DOES 1-10,	)	
	)	
Defendants.	)	
	)	
	)	

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COMES NOW, the Gardiner-Park County Water and Sewer District, (the "District") by and through its attorney, and for its Complaint against the Defendants, states as follows.

**PARTIES, JURISDICTION AND VENUE**

1. The District is a water and sewer district with its primary place of business in Gardiner, Montana.

2. Upon information and belief, Defendant National Park Service (the “Park Service”) is an agency of the United States Department of the Interior.

3. Upon information and belief, Yellowstone National Park (the “Park”) is an agency of the National Park Service.

4. The John Does listed in the Complaint are currently unidentified persons or entities potentially liable to the Plaintiff.

### **JURISDICTION**

5. This Court has jurisdiction of this claim pursuant to 28 U.S.C.A. §1346(b)(1), the Federal Tort Claims Act (“FTCA”). The FTCA provides that Federal District Courts shall have exclusive jurisdiction of civil actions against the United States involving tortious conduct by person acting on behalf of the United States.

6. The Plaintiff has searched for any requisite Notice of Claim forms or requirements in connection with asserting any claim against Yellowstone National Park and has been unable to locate any such forms or requirements.

### **VENUE**

7. This Court is the proper venue for this action under 28 U.S.C.A. §1391 as the events or omissions giving rise to the claims occurred in Park County, Montana. Further, the property that is the subject of this action is situated in Park County, Montana.

### **BACKGROUND**

8. The District operates and maintains a sewage treatment plant in Gardiner, Montana.

9. The District is responsible for, among other things, operating and maintaining its sewer works for purposes beneficial to the

District. Additionally, the District has, pursuant to §7-13-2218, M.C.A., the power to commence and maintain any action involving or affecting any sewer rights within the District that are used or useful for any purpose of the District.

10. The Park Service does not have a sewage treatment facility in the Mammoth Hot Springs and North Entrance areas of the Park.

11. For many years, the Park Service has utilized the District's sewage treatment plant, and continues to do so.

12. Part of operating a sewage treatment plant involves periodically removing and disposing of sludge from sewage treatment ponds at the treatment plant. The Montana Department of Environmental Quality (the "DEQ") has advised the District that it needs to remove the sludge and replace the liners in its treatment ponds.

13. In February, 2015, the District's engineer advised the District that there were high levels of arsenic entering the District's sewage treatment facility from the Park. (At the same time, the engineer reported to the District that the arsenic levels in both the District's drinking water and the Park's drinking water were below the applicable standards.)

14. The engineer further advised the District that over 95% of the arsenic entering the District's sewage treatment plant originates in the Park.

15. The engineer reported to the District that the high levels of arsenic entering the District's sewage treatment facility were not coming from the Park's wastewater, but rather from another source from within the Park. The engineer advised that the likely entrance

points of the arsenic from the Park are through leaking pipes or manholes from within the Park, and that such conditions are likely prevalent along the route from the Park's main collection pipe to the District's sewage treatment plant.

16. The engineer recommended that the District address this infiltration problem with the Park prior to beginning any sludge removal project. Otherwise, the high level of arsenic in the District's sewage treatment plant would return after the sludge removal project.

17. Sludge removal is expensive, and requires special handling due to federal and state regulations.

18. Following the receipt of recommendations from its engineer, the District wrote to the Park Service in March of 2015 and advised the Park Service that high levels of arsenic were entering the District's sewer system from the Park. Additionally, the District informed the Park Service that the District's tests determined that the sewage from the Park had arsenic levels 40 times higher than the arsenic levels in the District's sewage. Further, the District's testing revealed that the arsenic levels in the District's sewage was below the applicable standard.

19. The District's March 2015 letter requested that the Park Service locate and repair the areas of infiltration. In said letter, the District advised the Park Service that the District's upcoming sludge removal project was estimated to be in excess of 2 million dollars.

20. Additionally, the District's March 2015 letter advised the Park Service that the District could not move forward with its sludge removal project until the infiltration problem from within the Park was addressed and corrected. Specifically, the District advised the Park

Service that it “would make no sense to remove the sludge from the [sludge] ponds while continuing to accumulate high levels of arsenic” from the Park.

21. The Park Service did not respond to the District’s March 2015 letter. Due to this, the District wrote to the Park Service again in December 2015 and requested an update as to any progress being made in regard to addressing and correcting the infiltration problem from within the Park.

22. The District’s December 2015 letter advised the Park Service that further testing revealed that the arsenic levels within the sewage from the Park had increased from the results reported in March 2015. Also, again, the District advised the Park Service that the District’s sludge removal project “is still on hold until the problem in Yellowstone is corrected.”

23. The Park Service did not respond to the District’s December 2015 letter.

24. Despite the lack of a written response from the Park Service, the District initiated further discussions with the Park Service. The Park Service acknowledged the high levels of arsenic flowing from the Park into the District’s sewage treatment plant.

25. Additionally, the Park Service advised the District that it would make a substantial financial contribution to the District’s upcoming sludge removal project given the Park Service’s responsibility for the high arsenic levels within the District’s sewage treatment plant.

26. However, the Park Service did not advise the District as to how it planned to address and correct the infiltration problem the

District continued to be faced with. Given this, the District followed up with a letter in August of 2016, requesting that the Park Service provide a written response to its earlier letters and requests as to how the Park Service planned to address and correct the infiltration problem, along with the specific amount the Park Service would contribute to the sludge removal project.

27. In September 2016 the District received a response from the Park Service without any commitments from the Park Service. At the same time, the Park Service's response confirmed that the infiltration problems reported to the Park Service by the District were accurate, and continuing. Despite this acknowledgment, the Park Service's response advised the District that funding to repair the infiltration problem would likely not be received until sometime in 2020.

28. Additionally, the Park Service's response acknowledged that it was responsible for contributing to the costs of the sludge removal project, and replacing the lining of the sewage ponds within the District's sewage treatment facility. However, the Park Service's response provided very little information as to when the Park Service's contribution would be available and, moreover, indicated that it may not be within the next five years.

29. On November 9, 2016, the District, through its attorney, requested that the Park Service provide a specific written report to the District regarding its plan to correct the arsenic infiltration problem, and to specify the amount of its financial contribution to the sludge removal project. The Park Service did not provide a substantive response to this request.

30. Given that the District has been directed by the DEQ to dispose of the sludge and replace the liners in its treatment ponds and cannot await the Park Service's responses any longer, it has been compelled to file suit.

### **COUNT 1**

#### **BREACH OF ORAL CONTRACT**

31. The Plaintiff realleges the above paragraphs as though fully set forth herein.

32. The Defendants have utilized the District's sewage treatment facilities for many years.

33. The Defendants have acknowledged that the high arsenic levels in the District's sewage treatment plant is a result of infiltration from the Park.

34. The Defendants agreed to address and correct the infiltration of the high arsenic levels into the District's sewage treatment plant.

35. The Defendants agreed to contribute funds to the District's sludge removal project and the relining of the District's sewage ponds.

36. Following the agreement, the Defendants failed to follow through with plans for addressing and remedying the infiltration problem, and failed to contribute funds for the District's sludge removal project and the relining of the District's sewage ponds

37. As a result of the Defendants' breach of the agreement, the District cannot commence its sludge removal project in a practical manner as it will have to repeat the project given that the Park's infiltration of high arsenic levels into the District's sewage treatment plant is ongoing.

**COUNT 2**  
**TRESPASS**

38. The Plaintiff realleges the above paragraphs as though fully set forth herein.

39. The Defendants are committing a continuing trespass as the damage caused by the arsenic infiltrating the District's sewage system is ongoing and will continue until the Park Service locates the areas of infiltration and repairs them.

40. As a result of this continuing trespass, the District is suffering ongoing damages.

**COUNT 3**  
**PUBLIC NUISANCE**

41. The Plaintiff realleges the above paragraphs as though fully set forth herein.

42. MCA § 27-30-102 states as follows:

A public nuisance is one which affects, at the same time, an entire community or neighborhood or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

43. The Defendants created a danger to public safety by permitting high levels of arsenic to flow into the District's sewer treatment plant.

44. As a result of this public nuisance, the District is now faced with paying a substantially higher cost for the removal and disposal of sludge from its sewer treatment plant.

**COUNT 4**

**PRIVATE NUISANCE**

45. The Plaintiff realleges the above paragraphs as though fully set forth herein.

46. The Defendants created a private nuisance by permitting the arsenic from the Park to infiltrate the District's sewer treatment plant, thereby forcing the District to be responsible for removing and disposing of sludge with a high arsenic level.

**COUNT 5**

**NEGLIGENCE**

47. The Plaintiff realleges the above paragraphs as though fully set forth herein.

48. Defendants had a duty to the District to, among other things, maintain its pipes emptying sewage into the District's sewage treatment plant to ensure that they were in good repair.

49. Defendants failed to monitor the condition of the pipes emptying sewage into the District's sewage treatment plant resulting in high levels of arsenic being deposited in the District's sewage ponds.

50. As a result of the high levels of arsenic leaking into the District's sewage ponds, the District has suffered damages and will continue to suffer damages until the Defendants remediate the problem of the arsenic leaking into its sewage pipes leading to the District's sewage treatment plant.

**PRAYER FOR RELIEF**

WHEREFORE, the District respectfully requests that the Court grant the following relief:

1. That the Court preliminarily, and upon final judgment, permanently enter a mandatory injunction requiring the Defendants to address and correct the high level of arsenic infiltration into the District's sewage treatment plant.
2. That the Defendants contribute funds to the District's sludge removal project commensurate with their responsibility for the high arsenic levels within the District's sewage treatment plant.
3. That the Defendants monitor its sewer lines quarterly and provide quarterly monitoring reports to the District.
4. Award the District all damages, and any other relief that the Court deems to be just and proper.
5. Award Attorneys' fees and costs.

**DEMAND FOR JURY TRIAL**

The Plaintiff hereby makes a demand for a jury trial on in this matter on all issues so triable.

RESPECTFULLY SUBMITTED this 21<sup>st</sup> day of December, 2016.

/s/ Todd Shea  
Todd Shea  
Attorney for Gardiner-Park County  
Water and Sewer District