



# MONTANA COAL COUNCIL

P.O. Box 5508

Helena, Montana 59604-5508

Director Chris Dorrington

October 19, 2023

I am George Harris, the Executive Director of the Montana Coal Council. On behalf of the Montana Coal industry, I would like to commend you and your staff for reviewing MEPA.

- Like me, members of the Coal industry also love Montana and strongly desires a clean and healthful environment.
- Mt. Coal is Abundant, Affordable and Clean. We have 1/3 of the nation's coal with the highest potential coal reserve at 118.4 billion tons (U.S. Energy Information)
- Mt. coal is affordable keeping our costs at 9 cents per kwh – among the lowest in the nation.
- Montana is meeting State and Federal environmental standards. Coal emissions have been reduced over 93 percent in the past two decade making it a clean resource due to millions of dollars of industry investment in clean coal technology. Power plants being built today emit 90% less pollutants than plants replaced from the 70's. (Nat. Energy Tech lab).
- 85% on the nation's electrical grid comes from fossil fuels including coal, oil, and natural gas. Coal produces over 20% of that grid, keeping our lights on, our homes warm in the winter and cool in the summer. We need all sources of energy including wind and solar which is less than 15% and has not moved the needle more than 2% in the last two decades. Coal is 24/7 not just when the wind blows or the sun shines. Coal demand has tripled since the 70's and will continue to grow worldwide for generations to come. Coal is the world's most reliable resource.
- Economy: The coal severance tax in Montana has produced \$2.4 billion since 1975 and funds state programs and citizen projects. It produces over 28 million tons a year, provides over 890 high paying jobs with \$100 million of annual payroll. It presently has over \$1 billion in trust fund
- MEPA is clearly a Montana process not a regulation. We have heard a lot of testimony that the Held case mandates DEQ to immediately evaluate GHG/climate change in every permit or project considered. Defendants have petitioned the District Court to clarify that its order does not require agencies to consider such in their MEPA analysis but merely invalidates the prohibition of such consideration that "declaring the MEPA Limitation unconstitutional is not commanding the State (DEQ) to consider GHGs/climate change in every project or proposal. The separation of powers further prevents the Court from imposing new legislation or regulation. The Legislature creates laws, not the court. The Montana Supreme court on October 17 has authorized the appeal of the entire case to proceed. This will take some time. DEQ cannot change its entire evaluation process overnight. We all need to be patient as the legal process unfolds without placing premature and unrealistic demands on DEQ.
- The Mt. coal industry champions a clean and healthful environment and will continue to meet State and Federal regulations and work with all stakeholders to keep Montana productive and the last best place to live.
- Montana's coal is not a villain but rather a superhero. Coal is Montana's ace in the hole.
- Thank you! George H. Harris



Frontier Institute  
PO Box 5104  
Helena, MT 59604  
406.924.9763  
[frontierinstitute.org](http://frontierinstitute.org)

October, 25<sup>th</sup> 2023  
RE: DEQ MEPA Reform

Dear Director Dorrington,

The Frontier Institute would like to commend you and your department for your interest in reforming Montana's bedrock environmental law, the Montana Environmental Policy Act (MEPA).

We believe reforming MEPA could be a rare opportunity to forge bipartisan consensus around reforms that modernize the law for the 21<sup>st</sup> Century, increase predictability for business and benefit the global climate.

With these goals in mind, below we suggest four principles for your department to consider in guiding MEPA reform:

### 1. Think Long-Run

With a new mandate from the courts to focus on the global climate, MEPA reformers should empower state agencies to prioritize streamlined, simplified environmental reviews for actions which have clearly beneficial long-run impacts to the global climate that outweigh relatively minor local impacts in the short-run:

**Example #1:** Safe, emissions-free power generation like wind, solar, nuclear, geothermal, hydroelectric etc.

**Reasoning:** Nationwide, a [vast majority](#) of the planned and in-progress energy projects requiring the most stringent environmental reviews are clean energy related— delaying and even jeopardizing projects widely recognized to be ultimately good for the global climate. Clean energy projects in Montana are also [not immune](#) to threats from obstructionist litigation. MEPA reforms could streamline and simplify environmental reviews for critical clean energy projects to increase predictability for business and accelerate clean energy development.

**Example #2:** Reliable energy sources that aid the rapid transition to clean energy

**Reasoning:** Intermittent renewable energy sources like wind and solar need to be complimented by reliable power during times of peak demand. For instance, reliable natural gas energy projects are part of [Northwestern Energy's strategy](#) to achieve net zero carbon emissions by 2050, balancing the intermittency of bringing in new wind and solar sources in their generation portfolio. Another example would be [energy storage systems](#). MEPA reforms



could prioritize reliable power projects specifically designed to complement renewables with less stringent environmental reviews.

**Example #3: Strengthening the electrical grid**

**Reasoning:** Today's electrical grid is one of the [least reliable](#) in the developed world. Strengthening the grid will be [necessary](#) to reduce emission-intensive activities and enable electrification in the long-run. MEPA reforms could simplify environmental reviews for transmission lines and projects that harden local grids, such as burying wires.

**Example #4: Mining Rare Earth Elements (REE's)**

**Reasoning:** REE's are a critical component of [hundreds](#) of high-tech products, including wind turbines and electric vehicles. The Berkley Pit and other locations in Montana have been [identified](#) as possible high quality sources of REE's. Reducing MEPA red tape for REE projects in Montana will promote a long-term, environmentally friendly [domestic supply chain](#) and reduce global reliance on China's toxic mining practices for these in-demand minerals.

## 2. Bring MEPA Into The 21st Century

MEPA's model rules were [adopted](#) in 1988 and have not been updated since. In addition to removing outdated language, MEPA reformers should aim to create specific, objective criteria that limits agency discretion and reduces uncertainty about the MEPA process.

State agencies are currently given an enormous amount of discretion to determine the level and depth of environmental analysis and the detail required under MEPA. While agency discretion is helpful in some cases, it also creates uncertainty for business and increases the likelihood of costly litigation.

For example, the two most [commonly litigated](#) MEPA issues are (1) *Should the state agency have conducted a MEPA analysis?* and (2) *Was the MEPA analysis adequate?* Frequent litigation on these two issues highlights an area of MEPA that needs clarification.

## 3. Prioritize Proactive Forest Management

Historically, Montana's healthy forests [were](#) large and effective carbon sinks. Now our forests are carbon emitters, overloaded with dead and beetle-infested trees and increasingly burning from catastrophic wildfires. Montana's [Climate Solutions Plan](#) identifies expanding proactive forest management like thinning and prescribed burns as key strategies to reduce emissions by



**Frontier Institute**  
**PO Box 5104**  
**Helena, MT 59604**  
**406.924.9763**  
**[frontierinstitute.org](http://frontierinstitute.org)**

making forests more resilient to a changing climate and less prone to unnaturally catastrophic fires.

Unfortunately, critical forest management projects are often subject to [MEPA-related litigation](#) which delays proactive restoration projects.

MEPA reformers should do everything possible to simplify and streamline environmental reviews for proactive forest management projects to reduce uncertainty and lower the threat of lawsuits that slow down these critical projects.

#### **4. Go Beyond MEPA**

MEPA is only a procedural law, intended to supplement agency decision-making. Reformers should also assess opportunities for modernizing and clarifying other substantive environmental regulations. Reformers should consider if the regulations which govern certain activities are truly necessary to protect Montanans' health, safety and environment and if so, whether the goals of the regulation could be met with a less burdensome restriction.

Adopting the four guiding principles outlined above will ensure successful reforms to modernize MEPA for the 21<sup>st</sup> Century, increase predictability for business and secure long-term benefits for the global climate. Thank you again for the opportunity to provide input.

In Liberty,

Tanner Avery  
Director, Center For New Frontiers  
Frontier Institute



My comments and recommendations re: MEPA. DEQ asked:

What changes, if any, are needed to modernize MEPA?

What should an analysis of greenhouse gas emissions and climate impacts include?

What opportunities exist for state agencies to be more thorough, balanced, efficient, or consistent?

MEPA, as written, protects the right to use and enjoy private property free of undue government regulation, but

MEPA does not define 'undue government regulation'. This term is nebulous and should be defined to provide guidance on how activities on private or public land ensure that environmental concerns are addressed for ALL citizens, even if such activities may cause some restriction to private or state activities. MEPA is procedural and designed to allow public participation and analyze actions that may affect the environment and "promote efforts that will prevent, mitigate, or eliminate damage to the environment and biosphere and stimulate the health and welfare of humans, to enrich the understanding of the ecological systems and natural resources important to the state, and to establish an environmental quality council."

MEPA does not provide constitutional guarantees for analysis and public participation of all actions that would deter a clean and healthy environment for all citizens, whether or not they are private property owners.

MEPA should incorporate guidance to DEQ and other regulatory agencies to deny or modify projects that would have such adverse effects to humans, wildlife, water quality, ecological processes such that the project would cause irreparable damage or destruction.

DEQ should immediately initiate analysis of activities that would affect climate change in all projects. Listening sessions are appreciated, but that does not remove DEQ's responsibility to incorporate analysis of activities that adversely affect the current and future climate.

"Higher temperatures and drought are likely to increase the severity, frequency, and extent of wildfires in Montana, which could harm property, livelihoods, and human health. On average, about 2 percent of the land in the state has burned per decade since 1984."

What Climate Change Means for Montana - US EPA United States Environmental Protection Agency (.gov)[https://19january2017snapshot.epa.gov › files](https://19january2017snapshot.epa.gov/files)

Climate change is occurring at rates far beyond the predictions of models a few years ago. We may have passed the opportunity to reduce widespread extinctions of wildlife and insects, avoiding disease epidemics, and irreplaceable changes to water availability and quality, and air. It is essential to take an objective analysis of the many actions we take that increase these risks. The peer reviewed literature is full of these consequences. Our impacts on the carbon balance of our planet need to be curtailed to avoid (or reduce) the ecological, economic and social consequences. I have particular concern regarding

our wild animals and processes.

<https://www.iucn.org/story/202211/wildlife-changing-climate>

<https://royalsocietypublishing.org/doi/full/10.1098/rstb.2009.0175?HITS=60&hits=60&andorexactfulltext=and&searchid=1&FIRSTINDEX=110&resourcetype=HWCIT&andorexacttitle=and&RESULTFORMAT=1&maxtoshow=&andorexacttitleabs=and>

Climate change analysis is well documented. DEQ has the expertise to incorporate thorough short and long term analysis of a project's impacts on greenhouse gas emissions, but here is additional guidance.

<https://climate.law.columbia.edu/content/eia-guidelines-assessing-impact-climate-change-project>

Montana has an unfortunate history of industry-driven projects that have caused irreparable damage to our environment, health and wildlife. These historic projects led to the bipartisan development of the Montana Constitution and the original MEPA in the 70's. Ensure that MEPA (and DEQ) incorporate analysis of proposals to avoid the mistakes of the past. In order to address this, I support the recommendation made at the Missoula listening meeting. Keep DEQ representatives neutral and unbiased and incorporate a 5 year buffer period of DEQ employees being hired or continuing their careers with industrial companies.

Further, many mining and other companies have defaulted on their promises to restore and rehabilitate lands following their project by bankruptcy or other devious means, leaving Montana taxpayers to pay for restitution—if it's even possible. MEPA should provide independent analysis of the financial status and past project history of proponents, keeping in mind that many CEOs and companies have restarted companies under new names to avoid their responsibilities and share this information with the public. Should that detailed analysis show proponents or company CEOs have a "bad actor" history, it should prompt DEQ and other regulatory agencies to deny the proposal and seek remedy, if possible, for past disgressions.

If MEPA doesn't support project denial in such situation by DEQ or other agencies, the regulations should be changed so it does. I also recommend that analysis be completed by professional objective parties—not the proponent (or contractors hired by the proponent). It can be nearly impossible to do a thorough and objective analysis if you have a vested interest in the outcome.

I spent over 40 years of my career writing proposals, evaluating impacts and addressing problems resulting from poor analysis. Public participation and detailed analysis can be time consuming and frustrating, but if done well by professional objective analysts, the end product proposal will be worth it—even if the analysis shows the project has so many adverse impacts, it should be denied. Exclusions can be tempting to save time, but it is a slippery slope that can lead to a rubber stamp philosophy and end up with projects that have more adverse impacts than originally proposed. Political pressure to cut process or judicial review will lead to dangerous situations. Keep the process clean, balanced and transparent.

Thank you for the opportunity to comment, and hopefully provide recommendations that will ensure Montana will remain the "last best place".

## Benoit, John

---

**From:** Harbage, Rebecca on behalf of DEQ MEPA  
**Sent:** Wednesday, November 8, 2023 12:19 PM  
**To:** Benoit, John  
**Subject:** FW: [EXTERNAL] DEQ Contact Form (General Feedback or Question)

Hi John, here's another MEPA comment.

**Rebecca Harbage** | *Public Policy Director*  
Montana Department of Environmental Quality  
**DESK:** 406-444-2813 **MOBILE:** 406-461-4683  
[Website](#) | [Facebook](#) | [Twitter](#) | [YouTube](#)  
How did we do? Let us know here: [Feedback Survey](#)

---

**From:** DEQ Communications Team <DEQCommunicationsTeam@mt.gov>  
**Sent:** Monday, November 6, 2023 9:31 AM  
**To:** DEQ MEPA <DEQMEPA@mt.gov>  
**Subject:** FW: [EXTERNAL] DEQ Contact Form (General Feedback or Question)

---

**From:** [noreply@formstack.com](mailto:noreply@formstack.com) <[noreply@formstack.com](mailto:noreply@formstack.com)>  
**Sent:** Sunday, November 5, 2023 6:27 AM  
**To:** DEQ Communications Team <[DEQCommunicationsTeam@mt.gov](mailto:DEQCommunicationsTeam@mt.gov)>  
**Subject:** [EXTERNAL] DEQ Contact Form (General Feedback or Question)



### Formstack Submission For: [DEQ Contact Form \[mtgov.formstack.com\]](https://mtgov.formstack.com)

Submitted at 11/05/23 6:26 AM

<b>Name:</b>	Sandy Young
<b>Email:</b>	<a href="mailto:bnsyoung@gmail.com">bnsyoung@gmail.com</a>
<b>Phone:</b>	(775) 682-1854
<b>Subject:</b>	General Feedback or Question

**Message:**

As a Montanan I have a constitutional right to a healthful environment. Defend and protect all Montanans healthful environment through DEQ.

Copyright © 2023 Formstack, LLC. All rights reserved. This is a customer service email.

Formstack, 11671 Lantern Road, Suite 300, Fishers, IN 46038

November 3, 2023

State of Montana  
Department of Environmental Quality  
Helena, MT 59620



Dear Sirs:

RE: Comments on Stopping Global Warming

### Solar Power: Man's or God's

In Geology 101, we learned tens of thousands of years of solar power went into millions of trees and seas moved inland in the east and west and these trees were up-rooted (much like we witnessed at the Spirit Lake-Mt. St Helens, Washington, eruption in 1980). After burial of these trees, a sequence of compaction of peat, lignite and then bituminous coal occurred. Tremendous amounts of solar power are in these coal deposits; far more than we can produce with man's arrays of solar panels.

Man's efforts at harnessing solar power fall far short of God's provision of energy for us. Solar panels and the technology it takes to produce electricity use much material and resources. Much of this comes from China.

The expense of man-made solar power and trying to force it on our nation may cause the government to penalize coal and oil use. Taxes on natural gas and then anything not using man's produced electricity may be banned or taxed to death.

Many liberal thinkers and academia would argue controlling global warming would be worth the problems we will have. Consider this: The Nyiragongo Volcano in Virunga National Park, Democratic Republic of the Congo, produces more air pollution, hydrogen sulfide, sulfur dioxide and carbon dioxide in one day than man produces in years. Even a casual thinker can conclude other factors control climate change.

If you desire climate change, go to the Creator. Our God created the way this planet works. Our self-righteousness [believing we are in control] is the same sin that got Adam and Eve in the garden. If we insist on going down this climate control route, soon there will be brown and black outs. You won't have enough electricity to get your car across the country. Think about it!

MEPA requires the state to permit resource development. Permit companies to produce but do it environmentally correct. Global warming is a fact, but to use it to shut down production and build a large voter block will prove to be a tragic mistake for this country.

Respectfully submitted,

*Robert C. Winegar*

Robert C. Winegar  
POB 1308  
Philipsburg, MT 59858



**GALLATIN WILDLIFE  
ASSOCIATION**

P. O. Box 5317

Bozeman, MT 59717

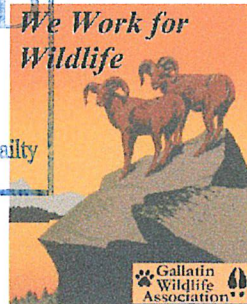
(406) 586-1729

[www.gallatinwildlife.org](http://www.gallatinwildlife.org)

RECEIVED

NOV 27 2023

Department of Environmental Quality  
Director's Office



November 19, 2023

Subject: Montana Environmental Policy Act

Christopher Dorrington, Director  
Montana Department of Environmental Quality  
1520 E 6th Ave,  
Helena, MT 59601-4541

Dear Director Dorrington:

Earlier this year, Montana's 2023 state legislature made changes to the Montana Environmental Policy Act (MEPA). The change stated the Montana Department of Environmental Quality (DEQ) does not have to consider the effect of greenhouse gases when performing analysis for fossil fuel projects unless the federal government declares carbon dioxide a regulation pollutant. A Montana trial court found provisions prohibiting the consideration of greenhouse gas emissions and climate change impacts a violation of the rights of Montanans to a clean and healthy environment, a right afforded to them under the Montana Constitution. As a result, according to their own press release, DEQ is soliciting comments from the public on a retrieval of ideas, suggestions, and methodology in how the agency should modernize MEPA and advance the decision made in the *Held vs Montana* court case.

We find this attempt a little surprising in that DEQ is supposed to be the agency surveilling the latest science research in clean air, water, and land. If science is available to the general public, which it is, it is also available to DEQ. In many of the comments submitted by the Gallatin Wildlife Association (GWA) concerning matters of forest health, climate change, carbon sequestration and overall ecological health of forests, lands, waters, and wildlife, we try to supply the latest science and scientific thought in our comments. It has been discouraging when all that work to research the latest science seems to fall on deaf ears.

Gallatin Wildlife Association (GWA) is a local, all volunteer wildlife conservation organization dedicated to the preservation and restoration of wildlife, fisheries, habitat and migration corridors in Southwest Montana and the Greater Yellowstone Ecosystem, using science-based decision making. We are a nonprofit 501 (c) (3) organization founded in 1976. GWA recognizes the intense pressures on our wildlife from habitat loss and

climate change, and we advocate for science-based management of public lands for diverse public values, including but not limited to hunting and angling.

It is obvious that the public at large wants climate change to be addressed in the agency's evaluation process. In their approval process, DEQ is supposed to be an agency advocating for clean water, air and land, addressing the needs of the people, not the corporation. It has already been said by many in the arena of institutional knowledge of DEQ, that DEQ already has the tools and ability to analyze climate change impacts. GWA does not think the problem is with the agency not having the knowledge or ability to carry out the functions of the agency's mission, but it is a problem of the will or the interference in that will.

GWA believes the agency, like others within the state government, has become too political, addressing the whims of politicians following a certain agenda rather than addressing the needs of the people. This manipulation of state government to carry out the dirty work of whoever is in power is a violation of the trust between the people and their government. We understand that the leaders in government have an agenda and have a right to fulfill that agenda, but not at the expense of the people's trust or the particular mission of any one state agency. So, once again, the state agency, DEQ, must have the will to carry out the work of the people, not the corporation. The will of the Governor or his/her aides should not violate the state constitution or the mission of their agency. If this be the case, the agency must hold firm to the values as instituted by the Constitution.

So, in answer to the agency's request to receive public comment on how to strengthen MEPA, one obvious solution is **not** to ignore climate change and its impacts. Do not use the excuse that local impacts are negligible on a world or global scale. Science looks at the cumulative impacts over time. The full scope of a project must also be analyzed over the broad perspective of time, space, and the ecological continuum, even if that ecological continuum extends outside the project area. To take this one more step further, MEPA and DEQ need to fully analyze the potential of consequential environmental impacts and report those to the public. While it may be unfair to perhaps expect that DEQ has a crystal ball to see into the future, it is still reasonable to expect the agency to understand how pollutants and unfettered pollution harm the ecological values of our planet.

Let's be clear, DEQ has the tools they need to analyze climate impacts of projects now. As we said, science exists for the public to use, and it is there for DEQ. We are also sure that the federal government, in terms of assistance from the Environmental Protection Agency, can be of assistance in this work. Montana should consult with fellow agencies with similar missions and train its employees accordingly, along with those same fellow agencies across region and country, utilizing both state and federal resources. The science and economic analysis have already been developed and should be shared.

There must be an acknowledgement of how atmospheric gases (natural and pollutants) affect climate of the project area and regions around the world. But there also must be knowledge of how those gases affect living things and natural processes. Climate change will affect the abundance of water, which not only will affect water chemistry and quality,

but the quantity as well. Such changes in the distribution of precipitation affect the quality and abundance of forage for wildlife, not to mention the sensitive nature of some species to snow or lack thereof, the length of growing seasons, etc., etc. That delicate balance can be easily disturbed by the cumulative actions of humankind across the globe.

There must be two other aspects that DEQ must employ to strengthen MEPA. Both are obvious in that MEPA should not weaken the constitutional requirements as established. In fact, any changes to MEPA need to conform to the Constitutional intent, not weaken the desired aims. In fact, an attempt to weaken MEPA also is an attempt to weaken the rights of Montana's citizenry.

The final and perhaps most important facet of a strong MEPA involves a robust opportunity for public comment. Announcement for public comment must entail ample advanced notice and allow sufficient time for public participation. Part of the opportunity for public comment must also include full public disclosure, be honest with the citizens of Montana as to the intent and purpose of any specific project. The agency needs to analyze projects based upon a true unbiased effort. Too much corporate and political influence on DEQ has harmed the reputation of the agency, not to mention the harm done to the state's environment.

## **Conclusion:**

To be clear, MEPA must allow for the analysis of all greenhouse gas emissions and address the climate impacts from emissions on all proposed projects, even those impacts which may occur outside the project area. Analyses should not only include carbon dioxide, but all potential harmful emissions known to exist from the project. This analysis must also include a reasonable analysis of mitigation measures, should the project go forth necessitating such action.

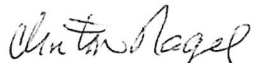
MEPA must also allow for ample notification of the public, not just a brief pronouncement in the newspaper, but in a way that garners the public's attention. Once that is done, the comment period must be extended in duration long enough to give the public ample time, and reasonable time to respond. Environmental assessments and environmental impact statements must include alternatives that provide options, varying set of actions that provide a varying set of impacts. The questionable practice of providing a "No Action" and Preferred Alternative" do not suffice as reasonable choices. Those two choices do not provide the people with an understanding of the project, instead it actually denies them a choice.

Again, we would like to reinstate our concerns that the state legislature and the Governor must not and should not recommend any changes to MEPA that weaken the original intent of the right of Montanans to live in a clean and healthy environment. To do so is a violation of the people's trust. Climate change, greenhouse gas emissions, carbon sequestration, etc., must be viewed on a local, regional, and global scale. Emissions and impacts must be viewed on a cumulative basis, over time, and in the mindset that local impacts affect global impacts and cannot be justified as being separate and apart from the world as we know it.

Finally, GWA wants to impress upon DEQ that MEPA analyses must also include impacts to the local and regional ecology, the biodiversity, the health of plants and wildlife. There will obviously be an indirect impact on these living things because of a warming world, as climate changes affect precipitation norms, but there should be a recognition that those changes in and of themselves will affect survival of wildlife as some species have brief tolerance zones of temperature, stress, and ability to find adequate forage. This is one of the primary rationales of GWA's submission of comments. We advocate for wildlife and their habitat and for their right to exist. A warming world can be a death sentence to their existence.

It is for this reason and for the reasons of all living beings that we need to be wise stewards of our resources and lands and understand the science as we know it of our planet. In that regard, we urge a strong and vitalized MEPA. Thank you for the opportunity to respond.

Sincerely,

A handwritten signature in cursive script that reads "Clinton Nagel".

Clinton Nagel, President  
Gallatin Wildlife Association

## **Benoit, John**

---

**From:** Clint Nagel <clint\_nagel@yahoo.com>  
**Sent:** Monday, November 20, 2023 11:49 AM  
**To:** Benoit, John  
**Subject:** [EXTERNAL] MEPA comment  
**Attachments:** 20231119.Comments on strengthening MEPA.docx

John,

The complete set of my comments are below in the attached. Thanks for your willingness to accept them.

clint.....

----- Forwarded Message -----

**From:** Clint Nagel <clint\_nagel@yahoo.com>  
**To:** Benoit, John <jbenoit@mt.gov>  
**Sent:** Monday, November 20, 2023 at 07:46:08 AM MST  
**Subject:** Re: MEPA comment

Thanks John,

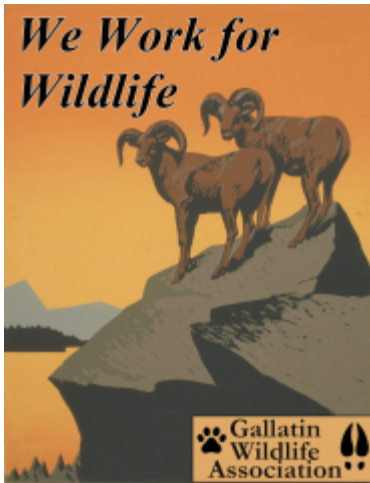
There were additional comments, but since I was limited in this format, I sent what I thought highlighted the gist of my thoughts. I was going to send the entirety of the comments to the Director of DEQ, Director Christopher Dorrington via snail mail.

But I can send them to you, as a matter of fact, I would prefer that so thank you for giving me that option. I have to go to the dentist at the moment, but will send later today when I return.

Thank you.

Clint Nagel, President  
Gallatin Wildlife Association





On Monday, November 20, 2023 at 05:22:39 AM MST, Benoit, John <jbenoit@mt.gov> wrote:

Mr. Nagel,

I received a comment regarding the MEPA process through the DEQ online portal. The message begins with:

*"Conclusion: To be clear, MEPA must allow for the analysis of all greenhouse gas emissions and address the climate impacts from emissions on all proposed projects, even those impacts which may occur outside the project area."*

Were there additional comments prior to this conclusion? If so, sending those to me directly will ensure they are filed and logged for additional review.

Respectfully,

**John Benoit** | *Rule Expert and Coordinator*

Waste Management Bureau

Montana Department of Environmental Quality

Office: 406-444-2802

My regular in-office hours are Monday through Thursday 0600-1630



## Benoit, John

---

**From:** Jones, Craig  
**Sent:** Monday, November 27, 2023 9:59 AM  
**To:** Benoit, John  
**Subject:** FW: [EXTERNAL] DEQ Contact Form (General Feedback or Question)

John,  
Here is another one for the file. Thanks.

**CRAIG JONES** | Senior *MEPA/MFSA Coordinator*  
Montana Department of Environmental Quality  
**DESK:** 406-444-0514 **MOBILE:** 406-465-1168  
**How did we do? Let us know here:** [Feedback Survey](#)

---

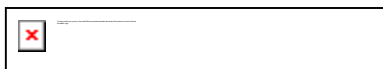
**From:** DEQ Communications Team <DEQCommunicationsTeam@mt.gov>  
**Sent:** Monday, November 27, 2023 9:50 AM  
**To:** Jones, Craig <crajones@mt.gov>; Harbage, Rebecca <RHabbage@mt.gov>  
**Cc:** DEQ Communications Team <DEQCommunicationsTeam@mt.gov>  
**Subject:** FW: [EXTERNAL] DEQ Contact Form (General Feedback or Question)

Comment about MEPA process submitted via the website.

**MAE VADER** (she/her) | *New Media Specialist*  
Montana Department of Environmental Quality  
**DESK:** 406-444-0201 **MOBILE:** 406-465-5958  
**How did we do? Let us know here:** [Feedback Survey](#)

---

**From:** [noreply@formstack.com](mailto:noreply@formstack.com) <[noreply@formstack.com](mailto:noreply@formstack.com)>  
**Sent:** Friday, November 24, 2023 10:06 AM  
**To:** DEQ Communications Team <[DEQCommunicationsTeam@mt.gov](mailto:DEQCommunicationsTeam@mt.gov)>  
**Subject:** [EXTERNAL] DEQ Contact Form (General Feedback or Question)



**Formstack Submission For:** [DEQ Contact Form \[mtgov.formstack.com\]](https://mtgov.formstack.com)  
Submitted at 11/24/23 10:05 AM

**Name:** Dick Thweatt

**Email:** [dickthweatt@gmail.com](mailto:dickthweatt@gmail.com)

**Phone:** (406) 443-3708

**Subject:** General Feedback or Question

**Message:**

This a comment on updating MEPA submitted as a letter to the editor, but too long.  
MEPA: UPDATE IT OR UNDERMINE IT?

Kendall Cotton of the Frontier Institute wrote an op-ed suggesting ideas for “updating” the Montana Environmental Policy Act (MEPA), but it appears that he doesn’t really understand it and his proposals would weaken and undermine the purpose of MEPA, which is to ensure that environmental consequences of a proposed action by the state are fully understood before the action is taken. It is simply to “look before you leap” and promote better decisions by our government. It’s just common sense.

There are four basic components on environmental review under MEPA:

1. Describe the purpose and need of the proposed state action, e.g., issuance of a mine permit or timber sale on state trust land, or whatever state government proposes to do that might significantly and adversely affect the environment.
2. Assess the existing environment in which the action would take place.
3. Assess the environmental consequences of the proposed action including a “hard look” and consideration of all relevant factors, and including the cumulative impacts of related actions.

4. Evaluate a range of reasonable alternatives to the proposed action, including no action. Courts have said that the consideration of “a range of reasonable alternatives” is the most important part of MEPA. This has never been more true than when we face excruciatingly difficult choices concerning our sources of energy.

Frontier Institute advocates wholesale “streamlining” environmental review for certain classes of actions whose long term benefits are deemed to outweigh environmental costs. Such a balancing of costs, risks, and benefits, short term and long term, is already inherent and required in MEPA . With some exceptions for very similar small projects, there are no generic proposed actions. Every mine, timber sale, power plant, wind farm, etc. is unique and needs specific scrutiny if we are to “look before we leap.” Frontier’s “streamlining” sounds like scrapping the required “hard look” for just a glance. These things aren’t simple.

It is vital that not only our government decision-makers be fully informed, but the public as well, so that they can participate in those decisions in an informed manner, and in the democratic process.

Dick Thweatt is a retired attorney for the Montana Department of Environmental Quality with extensive experience with MEPA.

Copyright © 2023 Formstack, LLC. All rights reserved. This is a customer service email.

Formstack, 11671 Lantern Road, Suite 300, Fishers, IN 46038

200 W. Broadway  
Missoula, MT 59802  
P: 406.258.4657 | F: 406.258.3920



Montana Department of Environmental Quality  
1520 E 6<sup>th</sup> Avenue  
Helena, MT 59601

November 28, 2023

**Subject: Montana Environmental Policy Act Implementation**

Dear Montana Department of Environmental Quality,

Thank you for the opportunity to comment on the implementation of the Montana Environmental Policy Act. In Missoula County, we are already experiencing the impacts of climate change and have identified specific ways in which DEQ through the MEPA process could aid our community in meeting these goals. Whether it is earlier and longer wildfire smoke seasons, our hotter summers, or increased flooding from rain on snow events, our citizens and businesses are experiencing climate change's negative health and economic effects. Given the issue's importance to our constituents, we have taken an active role at the local level to both prepare for and mitigate the impacts of climate change, adopting a 100% Clean Electricity by 2030 resolution in 2019 and a county-wide climate adaptation plan, Climate Ready Missoula, in 2020. We welcome the opportunity to comment on DEQ's analysis of greenhouse gas emissions in the MEPA process, incorporation of new science and associated technologies into the MEPA process, and ongoing efforts to efficiently serve the public through permitting by providing a public forum for public comment.

We would like to urge the state of Montana to include a thorough and robust analysis of greenhouse gas emissions and climate impacts in their evaluation. Increased greenhouse gas emissions will have large economic impacts on our state, and without understanding a project's climate impacts, we cannot make a well-reasoned decision on whether or not the project should proceed. We recognize that these can be complex and challenging assessments, however we believe that the appropriate tools and resources exist right now to enable these types of evaluations. For example, when Missoula County was developing our Climate Ready Missoula plan, we were able to utilize resources such as the Montana Climate Office to understand hyper-local climate projections and anticipated impacts. Montanans are fortunate to have smart and talented research institutions to provide the best available science for our state, and we also have the opportunity to learn from neighboring states who are performing these types of analyses today.

The Environmental Assessment stage can incorporate broadly accepted climate science, such as climate projections and climate impact calculators, to automatically trigger Environmental Impact Statements at certain thresholds or in sensitive airsheds or watersheds. Montana Climate Office datasets can be incorporated into assessments and used to identify thresholds. This is especially important so as to account for non-stationarity, or the concept that historical records do not accurately reflect what will occur in the future, particularly as climate drives increasing variability. Incorporating such variability into statistical analysis more regularly, or accounting for increased climate impacts more generally, would benefit local communities in planning for future resiliency.

We understand that modernizing MEPA is an area of interest. Generally, we support the goal of streamlining processes and administrative language when prudent. However, we are concerned that streamlining may impact the public's ability to comment on the environmental, fish and wildlife, economic, social, and cultural impacts of proposed projects before their approval. It is our view that issues involving MEPA are best served by numerous and varied voices that can bring unique considerations and perspectives to bear. To that end, we encourage you to ensure any attempts at streamlining do not limit what is otherwise appropriate, meaningful, and beneficial participation in relevant proceedings.

As part of modernization of MEPA, we recommend the state adopt use of a digital dashboard or GIS system to help the public access data and allow for integration of other data sets used in broader environmental context. This would help highlight overlapping permitting actions and decisions and allow the public and communities to take a holistic view of the range of existing projects on a watershed or airshed basis, regardless of department or division, as intended by MEPA. Such a system can also incorporate post permitting data to demonstrate a permitted entity is meeting permitting standards.

We appreciate working hand in hand with DEQ to protect our water, air, climate, and communities. Incorporation of a greenhouse gas emission analysis, incorporation of current science and use of a digital dashboard or GIS system, are all improvements to the MEPA process that we would appreciate DEQ considering. Thank you for your consideration of our input. We look forward to work with DEQ to meet State and local goals for current and future citizens.

Sincerely,



Josh Slotnick

Board of County Commissioners  
Chair



## Benoit, John

---

**From:** Harbage, Rebecca on behalf of DEQ MEPA  
**Sent:** Monday, December 4, 2023 5:49 PM  
**To:** Benoit, John  
**Subject:** FW: [EXTERNAL] comments on MEPA changes

Sending the comments that came into the MEPA inbox last week. Please make sure you don't already have them in your tracking sheet.

**Rebecca Harbage** | Public Policy Director  
Montana Department of Environmental Quality  
**DESK:** 406-444-2813 **MOBILE:** 406-461-4683  
[Website](#) | [Facebook](#) | [X](#) | [YouTube](#)  
How did we do? Let us know here: [Feedback Survey](#)

---

**From:** Lori Byron <lori.byron@gmail.com>  
**Sent:** Wednesday, November 29, 2023 12:16 PM  
**To:** DEQ MEPA <DEQMEPA@mt.gov>  
**Subject:** [EXTERNAL] comments on MEPA changes

To whom it concerns:

The Montana Health Professionals for a Healthy Climate collected 183 signatures (there are 185 on the list but I see 2 that are duplicates) on the following letter to DEQ re: comments on MEPA changes.

*Montana healthcare workers and others concerned about the effect of climate on human health are concerned that Montana does not consider climate effects when issuing permits. As we learned from Held v. MT, every ton of CO2 matters.*

*We, the undersigned, urge the Montana Department of Environmental Quality to immediately start analyzing climate change impacts in its review under the Montana Environmental Policy Act. As DEQ leaders have noted, the tools exist today for DEQ to begin analyzing and disclosing climate impacts of projects and allowing public and state agencies to understand the impacts proposed projects may have on our environmental life support system, including our climate. Please immediately comply with the district court's decision in Held v. State of Montana and protect present and future generations from the devastating impacts of the climate crisis.*

You can view names on this spreadsheet or they are cut and pasted below

[https://docs.google.com/spreadsheets/d/1BgKqFF86f6luZidia8W\\_B8RqdXbNOJ0sJks5yilFmBU/edit?usp=sharing](https://docs.google.com/spreadsheets/d/1BgKqFF86f6luZidia8W_B8RqdXbNOJ0sJks5yilFmBU/edit?usp=sharing)  
[\[docs.google.com\]](#)  
[https://docs.google.com/forms/d/e/1FAIpQLSfDpvpP7MnNP1k0QvbGwcDCnCSdiVpF0fPDgTrxVy9ufDeTDg/viewform?usp=sf\\_link](https://docs.google.com/forms/d/e/1FAIpQLSfDpvpP7MnNP1k0QvbGwcDCnCSdiVpF0fPDgTrxVy9ufDeTDg/viewform?usp=sf_link)  
[\[docs.google.com\]](#)

Marya Grathwohl	59105	Writer, lecturer
Sandra Welgreen	59601	Physician
Gunnar Johnson	59715	Medical Student
Rowntree	59901	Retired
Jordan Vaughan	59901	Pediatrician

Jeffrey Smith	59860	Retired
Kate Weiss	59718	Psychotherapist
Sarah Vaughan	59901	Nurse
Molly Harrington	59102	Registered Nurse/Faith community nurse
Kristen Wasler	59715	retired
Kristy Pelletier	59803	Registered Nurse
Barbara Merrifield	59804	
Ann Engrebretson	59802	Retail Associate
Sarah Elsasser	59808	retired
Agustin Garcia	59801	Public Servant
Jeff Stickney	59801	Retired
Lydia Byron	59808	
Joy LaClaire	59718	Journalist/human
Beth Taylor-Wilson	59804	Retired Social Worker
Melody Cunningham	59804	Physician
Melody Cunningham	59804	Physician
Rachel Corley	59834	GIS Specialist
Perry Gliessman	59701	Printer (Ret)
Erin Nuzzo	59823	Grants Administrator
Sue Harrison	59802	Property Manager
Shelley Eisenrich	59845	Retired
Jerome Kalur	59715	Retired civil trial attorney
Laulette Hansen	59802	Teacher
Hannah Hernandez	59844	Sailor
Kate Mrgudic	99217	Retired
Steven Stieler	59644	Environmental Scientist
Mark Juedeman	59601	retired geophysicist
Mike Sullivan	59701	Retired sawyer
Jeanne Frank	59808	retired
Ty Running Fisher	59417	Student
MaryMajj	59624	Wildlife biologist
Karen Jarussi	59101	Retired federal law clerk
Barry Hansen	59860	Biologist
Renee Taaffe	59802	retired
Carla Abrams	59801	Retired
Katie Ballard	59802	
Michele Kelley	59044	Attorney



Suzin Kratina	59801	Crisis Support Specialist at 988
Cindy Williams	59929	Retired educator
Mary Stranahan	59821	retired
Janet Blackler	59911	Retired
Gary W. Hawk	59803	Pastoral Counselor
Jlm Parker	59840	retired
pamela Boyd	59801	Retired Nurse Practitioner
Arati Moses	59102	Lawyer
Teresa Shiner	59401	Nurse and nurse educator
Kirk Stoner	59254	retired
Kris Newgard	59935	Retired
Eric Dickinson	59935	Retired
Michelle Daly	59714	Nurse
Donna Martin	59923	Retired clergy; part-time Census Field Representative
Marshall Martin	59923	Small Contractor - mostly retired
Renee Rose	59923	Teacher
Stephanie Mullany	59930	Retired physician/ethicist
Rita Gillan	59923	Retired
Susan Spanke	50801	business owner
Mary Dickson	59804	RN
Nancy. Chalgren	59933	Retired Educator
Mary Campbell	59835	Retired woodworker
Keilin Huang	59801	Grad student
Youpa Stein	59821	Artist
Douglas Crum	59923	Retired Educator
joan daniels	59870	retired
Tara Santi	59801	Management of community gardens
Ethel MacDonald	59801	Retired
Francis Kromkowski	59601	Retired after 32 years with MDOC and DPHHS
Roberta McCanse	59923	Retired nursing professor
Wendy Dodson	59935	Retired
Hal Schmid	59806	Writer, researcher, educator
Paula Darko Hensler	59923	Retired
Tim Leifer	59828	Retired
Patie P and Brent D Parker	59917	Retired
Teresa Blackburn	59602	Bus Driver
PAT MCLEOD	59939	Retired Social Worker

Gwen Sensenig	59804	Psychotherapist
Jones Terrel	59935	Retired teacher
Lindsay Cantwell	59102	Nurse practitioner
Jessica Dahlman	59901	RN
Sharon Ritter	59870	Retired wildlife biologist
Ellen Sullivan	59917	Retired
Jerri Balsam	59804	Retired
Marilynn Cochran	59901	Retired
Patricia A Grantham	82801	Retired physician
Melissa MacKenzie	59801	Retired professor
Mary langenderfer	59803	Physican
Jerome Walker, M.D.	59801	Retired physician
Tim, Skufca	59802	designer
Elloie Jeter	59833	
Mary Catherine Dunphy	59301	retired
Mark Kreider	59801	Phd candidate in Forestry & Conservation Sciences
susan schwab	59701	retired
Rachel Hill	59101	Equity Coordinator
Karlissa Skinner	59801	
Kathleen Foley	59802	Attorney
Julie Hagen	59923	retired
Robin Carey	59802	Retired Professor
kristin crawford	59401	nurse
William Dodson	59935	Retired
Chris Bachman	59935	Environmental Advocate
Katharine Cassidy	59715	retired
Deborah	59802	Retired
John Oetinger	59802	retired
Catherine Nolan	59803	Retired
Carol Blake	59917	retired
James Schmid	59803	Retired
Lannie Fehlberg	59917	retired physician
Ronald Korwald	59801	Retired
KATHRYN MOHAR	59935	Retired
Justin Barth	59718	Nonprofit worker
Heather Marshall	59808	Pediatric Nurse Practitioner
Cindy Leary	59803	Statistician

Shawna Kelsey	59935	business owner
Christopher Borton	59759	consultant
Pamela Fuqua	59935	retired
Greg Rice	59923-1712	Retired Family Physician
Matt Stash	59715	builder / carpenter
Rob Sand	59801	Retired carpenter
Gregar Lind	59803	Physician
Ellen Barth	59718	Registered Nurse
Janet Whaley	59803	Artist
Eileen Carney	59923	retired
Doug Ferrell	59874	Retired
John Ryan	59802	Retired Engineer
James Rodich	59935	Semi retired
Laurel Desnick	59047	Physician, Public Health Officer, Park County
Tracy Vranizan	59935	Retired
Jim Sayer	59801	Nonprofit consulting
Theresa Jones	59935	Retired
Jackson Scholl	59802	
Elizabeth Marshall	59801	Property manager
Lisa Bay	59601	retired natural resource professional
Mike Bay	59648	Rancher
Dave Dickson	59804	retired MTFWP
Rev. Jean Larson	59802	Clergy, retired
margo mccormick	59935	retired educator
Rita Harding	59101	Nurse - Retired
Dandilion Cloverdale	59802	Montanan
Janet Lyon	59807	retired
Larry Bean	59102	Retired
Matt Ellwood	59718	Registered nurse
Nik Ortman	59803	Civil Engineer
Kelsey Ammons	59801	student
Eric Ojala	59847	Educator
David Harmon	59802	Rancher
Cammy McKeehan	59901	Auditor
Erica Sebring	59741	Student
Lynn Dykstra	59901	MD
Hilary Hanba	59937	Physician

John Cole	59901	Pediatrician
Jim Barngrover	59601	Retired
Daniel Hanba	59937	Internal Medicine Physician
Kelly Redfield	59901	MD
daniel zlogar	59901	
Todd Johnson	59937	Emergency Physician
Emma Trotter	59803	lawyer
Kate Harrison	59823	Nurse
Andrea Vannatta	59846	Physician
Kathy Kirkley	59725	RN ER retired
Suzy Ralls	59901	Physician
Mara Cade	59715	Patient Relations Specialist
Lisa Milch	59801	Physician
Merrill Hiscock	59847	Retired
Marita Combs	59917	Educator
Paul Bradt	59923	Retired
Dylan Malloy	59101	RN
Russ Gautreaux	59923	retired Forester
Kelly Berkram	59901	primary care physician
Lisa Flynn	59917	Retired
Valerie Ann Beebe	59920	Family nurse practitioner
Jacob Mortensen	59803	Self Employed
Erica Olson	59802	Medical
Colin Bingham	59715	Student
Hannah Yerxa	59803	Physician - Pediatrician
Jenna Upham	59901	Family Nurse Practitioner
Lori Byron	59068	Physician
Robert Byron	59068-1972	Physician
Stephanie Mullany	59930	Retired
Dave Morris	59802	University Instructor
Jill Van Alstyne	59601	teacher
Ilona Eubank	59935	Tetired nurse and professor

**Lori Byron, MD**  
**Chair, Montana Health Professionals for a Healthy Climate**  
*"bringing the health voice to climate conversations in Montana"*

November 27, 2023

Department of Environmental Quality  
1520 E 6<sup>th</sup> Avenue  
Helena, Montana 59601

RECEIVED

NOV 30 2023

Dept. of Enviro. Quality  
Waste & Underground  
Tank Management Bureau

Re: Comments on DEQ Review of MEPA Implementation

ATTN: John Benoit

Dear Department of Environmental Quality:

I am submitting the following comments in response to Montana Department of Environmental Quality's (DEQ) call for feedback regarding the modernization of the Montana Environmental Policy Act (MEPA). I was employed by the federal government as a National Environmental Policy Act (NEPA) compliance officer for many years. Since that time, I have written numerous comment letters on various NEPA and MEPA projects in Montana for myself and also for Northern Plains Resource Council, a Montana organization I am a long-time member of as well as past chair.

The Montana Environmental Policy Act was modeled after NEPA, which was passed in 1969. NEPA was described by one of its authors, Senator Henry Jackson, as: "provid[ing] a statutory foundation to which administrators may refer. . . for guidance in making decisions which find environmental values in conflict with other values. . . . [NEPA] is a Congressional declaration that we do not intend, as a government or as a people, to initiate actions which endanger the continued existence or the health of mankind [and] that we will not intentionally initiate actions which will do irreparable damage to the air, land, and water which support life on earth. . . ." Likewise, the purpose of MEPA, when passed in 1971, was to institute a similar "look-before-you-leap" policy for Montana.

Both laws focus an agency's attention on the purpose and need for an action, all viable alternatives, and the environmental consequences of the action. While MEPA (like NEPA) is a process, its purpose is to foster state government decisions that are informed, accountable, transparent, balanced, and open to public participation. Most importantly, the purpose of **MEPA is to ensure that the public benefits from a project outweigh its social and environmental costs.**

Ever since MEPA passed the Montana Legislature, economic interests, developers, and large corporations in our state have worked to change it to their advantage, and every time the legislature introduced bills about MEPA, it was to weaken the Act. As of 2022, 128 bills and amendments have been introduced in the Montana Legislature to modify MEPA. Some of the most egregious for the people of Montana and the purpose of the Act include the following:

- In 1995, Senate Bill (SB) 231 shifted the focus away from primarily protecting environmental interests to incorporating economic ones into consideration as well.

- In 2001, the legislature established stricter time limits (*i.e.*, less time) for environmental review, required that alternatives assessed under MEPA be achievable with current resources and technology, and determined that MEPA was a procedural statute rather than a substantive one.
- In 2009, the scope of environmental review was further limited with a law that stated that the impact of energy development proposals must be confined solely to the area of the project.
- In 2011, SB 233 infamously restricted MEPA's jurisdiction to remain specifically within Montana's borders and stated that only state-sponsored projects were subject to MEPA standards.

[NOTE: Stopping any analyses at the edge of a project or at the state's borders is ludicrous – water, air, and pollutants freely flow across project and state boundaries.]

- In 2021, House Bill 273 struck down a voter-approved law from 1978 that required Montana citizens to approve the development of nuclear energy facilities in the state.

All of these modifications to the Act have resulted in limiting the concerned public's right to a government that is looking out for them – not the corporations – and ensure that any MEPA analysis is essentially superficial and minimal.

The District Court decision this past summer in *Held vs. State of Montana*, however, has set a new bar for the state in its decisions involving the effects of climate change. *Held* reaffirms our state Constitutional right to a clean and healthful environment. The *Held* decision also affirms that in today's world climate analysis is a mandatory part of a complete analysis of a project and should be robust and comprehensive in order to protect Montanans from bearing undue burdens. Climate polluters have been given a free pass for years while Montanans pay the costs from increased natural disasters, crop and grazing grass losses, increased wildfires, and harms to public health.

Along with the need to comply with the *Held* decision and begin addressing climate change when initially analyzing proposed projects, I think this “modernization” review presents an opportunity for DEQ to also recognize and address a major issue that keeps recurring with its MEPA decisions. DEQ has repeatedly been approving proposed projects long after the agency began the public process and analyzed and evaluated the environmental consequences of the project. For whatever reason(s), the particular project has been “on-the-shelf” for many years before a final DEQ decision is made. This means that DEQ is finally approving the project based on stale information contained in its original analysis, which under Montana law requires that a supplemental environmental analysis be prepared.

As a recent example, the AM5 amendment to Spring Creek Mine to allow a Haul Road from Youngs Creek Mine was approved in September 2023, years after the original analyses and public process were completed. This agency decision was made even in the face of significant new circumstances that were known prior to the final decision. Unfortunately, in this case as in



others, DEQ simply moved forward and approved the action without any follow-up review and analysis.

In point of fact, the final decision on the AM5 amendment came in September 2023 after the *Held* decision was made by the District Court – and climate change impacts were **not** originally addressed in the AM5 Haul Road from Youngs Creek analysis done by DEQ.

Additionally, other real impacts became more apparent during the time the AM5 decision was pending. For example, water quality impacts to the Tongue River have become more obvious in recent years. The Tongue River drainage is already failing to meet water quality standards due to excess salinity and/or specific conductivity (salts) throughout the watershed. In fact, as part of a previous commitment to do a TMDL [total maximum daily load] for the Tongue River, DEQ is now conducting a major analysis of the water quality in the Tongue as part of its public process and obligations. Coal mining at Youngs Creek (which is within the upper Tongue River watershed) would likely increase salinity levels in the watershed. Surface disturbance at the mine and from the proposed AM5 Haul Road would also likely increase runoff and, thus, increase the salinity impacts to the Tongue River via its tributaries. These facts should have required DEQ to re-look at the original environmental analysis presented in the AM5 Haul Road from Youngs Creek Mine environmental analysis to re-address the original information.

Furthermore, DEQ when issuing its final decision on the AM5 Haul Road entirely ignored the potential (and now better known) impacts that the addition of Youngs Creek coal would cause to the surrounding air quality, in particular with regard to the crushing-and-loading facility, the baghouse associated with the rail load-out facility, and other facilities associated with the stockpiling of coal pending its transportation and export to final destination. The original air quality permit issued to the Spring Creek Mine is devoid of **any** analysis associated with the addition of or content of coal from the Youngs Creek Mine and Haul Road.

An equally egregious example of DEQ failing to acknowledge or address **stale** – or total lack of – current environmental information and analysis is a recent decision regarding Signal Peak Energy's Bull Mountains Mine. In Northern Plains' January 2023 comments on the renewal of that mine's Coal Surface Mining Permit C1993017, it was pointed out that a full and complete environmental impact statement (EIS) that truly examines how this mine could significantly affect the natural, cultural, and human environment had **never** been done for the Bull Mountains Mine.

The original environmental documents from the early 1990s included a federal NEPA EIS document that approved land exchanges consolidating coal ownership in the Bull Mountains and a state MEPA EIS that simply approved a mining permit. Through the next 30 years, each new action that either a federal or state agency had to complete only tiered to one of those documents (a total of four NEPA documents and two MEPA documents, and two of those six documents were overturned in court). This is truly a **piecemeal approach** based on incomplete and outdated information that was and is undoubtedly **stale**. In effect, this approach has meant that the required "hard look" at the potential environmental consequences of this mine as well as all foreseeable direct and indirect effects from the mine has never been done. That mining permit

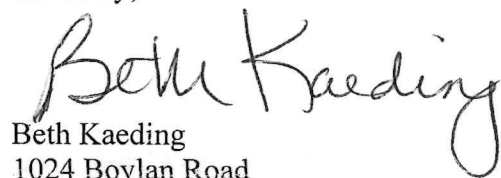
renewal should never have been granted without a current analysis of the environmental consequences and the many publicly known and ongoing impacts of this mine.

These are only two recent and specific examples of the public's frustration with how DEQ addresses its obligations to Montana citizens to protect our environment. There are many other examples from other parts of the state. MEPA was passed into law to ensure that any state action is thoroughly, honestly, and scientifically analyzed to ensure that the public benefits from a project outweigh its social and environmental costs. All MEPA processes must include the public and must objectively and fairly consider the issues brought forth not only during the public scoping but also after the release of a draft and/or final decision. Any "modernization" of MEPA during this current process must not undermine those public rights, in fact I believe the rights of the public to be involved in these state MEPA decisions must be strengthened.

Any change DEQ considers to MEPA must stand up to – and conform with – Constitutional requirements. Throughout its history, MEPA has allowed Montanans to take action to preserve the state's existing environmental integrity and protect the lands they love. As the state's agency tasked with protecting Montana's environment, its citizens expect that any DEQ analysis of projects that affect our state's many varied and important natural resources – and its citizens – is thorough, balanced, based on science, and objective. Often that job pits the agency against powerful private interests, but honesty and truth is what we citizens expect from DEQ.

Please use this opportunity to truly modernize MEPA by not only addressing climate change issues but also re-balancing the Act with an aim to ensure that its foundational mission is met. Please use this review process to truly follow your DEQ mission: ". . . to champion a healthy environment for a thriving Montana." Thank you for the opportunity to comment on this very important process.

Sincerely,

A handwritten signature in black ink that reads "Beth Kaeding". The signature is written in a cursive, flowing style.

Beth Kaeding  
1024 Boylan Road  
Bozeman, Montana 59715  
kaedingl@aol.com

**HEADQUARTERS**

120 Shelton McMurphey Blvd.  
Suite 340  
Eugene, OR 97401  
(541) 485-2471  
[info@westernlaw.org](mailto:info@westernlaw.org)

**Defending the West**

**OFFICES**

Oregon  
Washington  
New Mexico  
Montana  
Colorado

[westernlaw.org](http://westernlaw.org)

---

## WESTERN ENVIRONMENTAL LAW CENTER

December 1, 2023

Montana Department of Environmental Quality  
PO Box. 200901  
Helena, MT 59620-0901

Sent via email and DEQ: [deqmepa@mt.gov](mailto:deqmepa@mt.gov)

Re: Public Comment on Implementation of the Montana Environmental Policy Act.

We submit the following comments on behalf of 350 Montana, Citizens for a Better Flathead, Clark Fork Coalition, Earthworks, Families for a Livable Climate, Gallatin Valley Sunrise, Montana Chapter of the Sierra Club, Montana Environmental Information Center, Montana Health Professionals for a Livable Climate, Park County Environmental Council, Upper Missouri Waterkeeper, and Water for Flathead's Future in response to the Montana Department of Environmental Quality's ("DEQ") solicitation of comments on implementation of the Montana Environmental Policy Act ("MEPA"). These comments primarily address the need for DEQ to immediately begin analyzing greenhouse gas ("GHG") emissions and climate impacts and use its own expertise to apply well-established and readily available climate science in its MEPA reviews. This task is neither appropriate to be delegated to a citizen-stakeholder group, nor can it legally be deferred until such a group completes an undefined scope of work. In addition, these comments address DEQ's request for comment on whether changes are needed to "modernize" MEPA and the appropriateness of a stakeholder process in the context of MEPA implementation.

### **Interests of Commenting Organizations**

**350 Montana** began more than 10 years ago as an affiliate of the international climate activist organization, 350.org. Global warming is a consequence of profligate greenhouse gas pollution. 350 Montana's mission is to reduce atmospheric CO<sub>2</sub> concentrations to 350 ppm by implementing strategic actions and advocating policies to end fossil fuel burning with the greatest urgency. 350 Montana's 2,300 members and supporters regularly engage federal and state energy regulators.

**Citizens for a Better Flathead** ("CBF") is a Montana nonprofit public benefit corporation, whose mission is to foster informed and active citizen participation in the decisions shaping the Flathead's

future, and to champion the democratic principles, sustainable solutions, and shared vision necessary to keep the Flathead Special Forever. Since 1992 CBF has been active in providing input and encouraging public participation in almost every major land use decision in Flathead County, including growth policies, zoning, subdivision, and issues of water quality protection and decisions regarding these matters on both the county and municipal levels. CBF has approximately 1,500 members who live or own property primarily in Flathead County.

**The Clark Fork Coalition** is a non-profit organization based in Missoula, Montana, that works to protect and restore the Clark Fork River and its watershed. The organization was founded in 1985 in response to the environmental damage caused by historic mining activities in the Clark Fork River Basin, which is one of the largest river systems in Montana. The Clark Fork Coalition works on a variety of issues related to water quality, habitat restoration, and public access to the river. The organization engages in advocacy and education to promote policies and practices that support a healthy and thriving river ecosystem. The Coalition also works closely with community members, government agencies, and other organizations to coordinate restoration efforts and implement on-the-ground projects that improve the health of the river and its surrounding landscape.

Founded in 1988, **Earthworks** is a non-profit organization dedicated to protecting communities and the environment from the adverse effects of mineral and energy development while seeking sustainable resource solutions. Earthworks is headquartered in Washington, D.C., and has field offices across the country, including in Missoula, Montana. Earthworks has members who live near, recreate on, and otherwise derive benefit from Montana's landscape.

**Families for a Livable Climate** creates community for climate action in Montana. Families for a Livable Climate envisions an equitable and vibrant Montana, where families of all kinds advocate for resilient and connected communities, working together across differences to address the climate crisis, and create durable solutions. The organization represents over 2,000 Montana families who are joining together to ensure a thriving future for us all.

**The Montana Chapter of the Sierra Club** has thousands of members and supporters across the state of Montana. The chapter focuses on climate change, public lands issues, social justice and threats to democracy through grassroots organizing, lobbying and legal engagement.

**Montana Environmental Information Center** ("MEIC") is a nonprofit organization founded in 1973 with approximately 10,000 members and supporters. MEIC is dedicated to the preservation and enhancement of the natural resources and environment of Montana, particularly the protection of water quality, air quality, and the climate. MEIC is committed to ensuring that state and federal officials comply with and uphold environmental protection laws and protect the environment and Montana citizens from pollution. MEIC and its members have intensive, long-standing recreational, aesthetic, scientific, professional, and spiritual interests in the responsible production and use of energy, and the land, air, and waters across the state. MEIC members live, work, and recreate on public lands that are adversely impacted by fossil-fuel-based energy development.

**Montana Health Professionals for a Healthy Climate** (“MTHPHC”) addresses the causes and impacts of climate change to protect and enhance the health of all Montanans through education, advocacy, and leadership. MTHPHC represents over 1,000 Montanans, mostly health professionals, who are concerned about climate change and human health.

**The Park County Environmental Council** (“PCEC”) is a place-based conservation organization, working at a local level to protect the people, environment and wild landscapes of Park County, Montana. PCEC has cultivated a powerful bench of over 3,000 citizens and small businesses committed to conservation and is building a local movement that shares a vision to preserve wild, open landscapes and resilient rural communities. PCEC supports local and regional initiatives that foster community resiliency, connect Park County residents to the natural environment and provide human centered development opportunities.

**Upper Missouri Waterkeeper** (“Waterkeeper”) is a member-supported clean water advocacy and public education organization based in Bozeman, Montana, that works to protect and restore fishable, swimmable, drinkable water throughout the 25,000 square miles of Southwest and West-central Montana’s Upper Missouri River Basin. Over 500 individuals in Montana and around the country support Waterkeeper as members, both financially and with their activism. Since its founding in 2013, Waterkeeper has advocated and litigated at the local, state, and federal level to prevent degradation of water resources. Waterkeeper is also dedicated to assuring that state officials comply with and fully uphold the laws of Montana that are designed to protect the environment from pollution.

**Water for Flathead’s Future** (“WFF”) is a grass roots organization that advocates sustainable use of our surface and underground water resources to assure that the needs of the people, fish and wildlife of the Flathead Valley of Montana can be met now and for generations to come. WFF is made up of farmers, homeowners, sportsmen and business owners from around Flathead Valley who believe in careful conservation of water resources that belong to all of us. WFF represents thousands of Valley residents from all walks of life.

**I. DEQ is legally obligated under MEPA and the Montana Constitution to analyze climate change impacts; reliance on a stakeholder process to design such reviews is neither necessary nor legally defensible.**

As the First Judicial District Court determined in *Held v. State*,<sup>1</sup> MEPA and the Montana Constitution compel DEQ to conduct a climate analysis for all permitting activities that result in GHG emissions. Specifically, the court determined, “[b]ased on the plain language of the implicated constitutional provisions, the intent of the Framers, and Montana Supreme Court precedent, climate

---

<sup>1</sup> No. CDV-2020-307, Findings of Fact, Conclusions of Law, and Order at 102)(Mont. First Jud. Dist. Ct. Aug. 14, 2023).

is included in the ‘clean and healthful environment’ and ‘environmental life support system’.”<sup>2</sup> The court also recognized that “MEPA is an essential aspect of the State’s efforts to meet its constitutional obligations, as are the equitable remedies without which MEPA is rendered meaningless.”<sup>3</sup>

The district court declared unconstitutional and permanently enjoined the limitations in MEPA that unlawfully prevented state agencies from analyzing the climate impacts of their decisions and that prevented the public from obtaining equitable relief when agencies violated MEPA for failing to consider climate. In doing so, the district court invalidated both the 2023 version of the MEPA limitation enacted into law by HB 971 and codified at § 75-1-201(2)(a), MCA and § 75-1-201(6)(a)(ii), also enacted in 2023 by SB 557, because it removes the only preventative, equitable relief available to the public and MEPA litigants.<sup>4</sup>

The district court’s order in *Held* is in full force and effect, and no stay currently exists that would exempt DEQ from implementing the Order. Therefore, DEQ is legally obligated to immediately resume analysis of climate change and GHG emissions for any permit or other agency action that will result in such emissions. This being the case, we strongly urge DEQ to bifurcate the question of GHG analysis from any future stakeholder process aimed at “modernizing” MEPA. No such process is necessary for DEQ to meet its statutory and constitutional obligations to analyze the climate change impacts of its decisions, and DEQ may not rely on the mere existence of a nebulous stakeholder process to delay compliance with the court order. Moreover, DEQ witnesses testified under oath at trial that the agency is capable of implementing such reviews and has done so in the past, and that testimony was bolstered by the un rebutted testimony of other experts, leading the court to make the following determinations:

- Prior to 2011 state agencies were quantifying and disclosing GHG emissions and climate impacts from fossil fuel projects in MEPA reviews and could again if it possessed legal authority to do so;<sup>5</sup>
- “If the MEPA Limitation is declared unconstitutional, state agencies will be capable of considering GHG emissions and the impacts of projects on climate change.”<sup>6</sup>
- “Undisputed testimony established that Defendants could evaluate ‘greenhouse gas emissions and corresponding impacts to the climate in the state or beyond the state’s borders’ when evaluating fossil fuel activities. Indeed, Defendants have performed such evaluations in the past.”<sup>7</sup>

---

<sup>2</sup> *Id.* at 97-98.

<sup>3</sup> *Id.* at 91 (quoting *Park Cnty. Envtl. Council v. Mont. Dep’t of Envtl. Quality*, 2020 MT 303, ¶ 89).

<sup>4</sup> *Id.* at 102.

<sup>5</sup> *Id.* at 73; No. CDV-2020-307, Order Denying Defendants’ Motion for Clarification and for Stay of Judgment Pending Appeal at 8 (Mont. First Jud. Dist. Ct. Nov. 11, 2023).

<sup>6</sup> Findings of Fact, Conclusions of Law, and Order at 74.

<sup>7</sup> *Id.* at 101.

Further, the Order makes clear that such an analysis is not merely an empty box-checking exercise, but a critical part of the State's obligation to maintain and *improve* Montanans' fundamental constitutional right to a clean and healthful environment. By way of example, the Order includes detailed findings regarding the harmful impact of every additional ton of GHG emissions emitted into the atmosphere, including the following:

- Each additional ton of GHGs emitted into the atmosphere exacerbates impacts to the climate.<sup>8</sup>
- Every ton of fossil fuel emissions contributes to global warming and impacts to the climate and thus increases the exposure of Youth Plaintiffs to harms now and additional harms in the future.<sup>9</sup>
- Projections indicate atmospheric CO<sub>2</sub> and other GHGs will increase the severity of all impacts to the climate for the foreseeable future, absent drastic reduction in fossil fuel use and the resulting GHG emissions.<sup>10</sup>
- Actions taken by the State to prevent further contributions to climate change will have significant health benefits to Plaintiffs.<sup>11</sup>
- Montana has already warmed significantly more than the global average.<sup>12</sup>
- There is a scientific consensus that rising temperatures in Montana are due to rising GHG concentrations, primarily CO<sub>2</sub>.<sup>13</sup>
- The science is clear that there are catastrophic harms to the natural environment of Montana and Plaintiffs and future generations of the State due to anthropogenic climate change . . . The degradation to Montana's environment, and the resulting harm to Plaintiffs, will worsen if the State continues ignoring GHG emissions and climate change . . .<sup>14</sup>
- Plaintiffs have a fundamental constitutional right to a clean and healthful environment, which includes climate as part of the environmental life-support system.<sup>15</sup>

The district court reiterated the urgency for the State to begin complying with its August 14 Order in its most recent order denying the State's request for a stay of judgment pending appeal: "Plaintiffs are already experiencing substantial injuries and infringement of their constitutional rights. These injuries and constitutional violations will be exacerbated if Defendants continue to ignore climate change and GHG emissions in MEPA reviews. The infringement of constitutional rights constitutes

---

<sup>8</sup> *Id.* at 24.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 25.

<sup>11</sup> *Id.* at 34.

<sup>12</sup> *Id.* at 35.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 46.

<sup>15</sup> *Id.* at 102.



irreparable harm.”<sup>16</sup> Thus, it is clear as a matter of law that DEQ needs to begin analyzing climate impacts, and needs to do so now.

## II. What is an adequate MEPA analysis of GHG emissions and climate impacts?

Notwithstanding DEQ’s testimony under oath and the district court’s findings that DEQ is capable of conducting an adequate climate change analysis without further ado, we recognize that more than a decade has passed since DEQ actually conducted such an analysis, and that both climate science and the severity of the climate crisis have advanced dramatically since that time. While Montana, along with the rest of the Nation and world, have increasingly felt the impacts of the worsening climate crisis, Montana law and policy have not commensurately evolved since the 2011 MEPA limitation was enacted.

For that reason, we urge DEQ to look first to federal caselaw interpreting the National Environmental Policy Act (“NEPA”) for help determining what is required for an adequate climate analysis. As the Montana Supreme Court has repeatedly recognized, MEPA was modeled on NEPA, and federal caselaw construing the latter is generally persuasive in the construction of the former.<sup>17</sup> Legal developments over the past decade have resulted in a gradual evolution of government agencies’ responsibility to address climate change under NEPA. In the context of the federal fossil fuel program, many of the successful challenges to planning, leasing, and permitting decisions have centered on the Bureau of Land Management’s (“BLM”) duty to adequately analyze the impacts of its resource management decisions on GHG emissions, and by extension climate change. The constantly accruing body of climate science has contributed to rapidly evolving legal theories and judicial precedent. Federal agencies’ analytical obligations under NEPA have likewise changed considerably over the past decade.

Despite the ever-evolving state of climate science and federal jurisprudence, several fundamental principles are well settled in the NEPA context: namely that federal agencies are required to quantify the GHG emissions that will result from agency actions and to analyze the impacts of such emissions on climate. Indeed, courts began to require agencies to account quantitatively for the climate effects of their actions more than a decade ago. Following decisions such as *Center for Biological Diversity v. NHTSA* and *Sierra Club v. Fed. Energy Regulatory Comm’n*,<sup>18</sup> which collectively articulated a heightened standard for federal agencies’ duty to analyze the impact of GHG emissions on climate change, there has been a general trend on the part of courts to require agencies to also account for the emissions-related effects of their decisions as part of routine NEPA analyses. One pertinent example is in the context of BLM’s fossil fuel development programs (coal and oil and

---

<sup>16</sup> Order Denying Defendants’ Motion for Clarification and for Stay of Judgment Pending Appeal at 10.

<sup>17</sup> *North Fork Preservation Ass’n*, 238 Mont. at 457, 778 P.2d at 866; *Ravalli County Fish & Game Ass’n v. Montana Dep’t of State Lands*, 273 Mont. 371, 377, 903 P.2d 1362, 1367 (1995).

<sup>18</sup> 538 F.3d 1172, 1198-1201 (9th Cir. 2008); 867 F.3d 1357, 1374 (D.C. Cir. 2017).

gas), in which courts have required the agency to analyze GHG and climate impacts at the planning, leasing, and permitting stages.<sup>19</sup>

Moreover, federal agencies are required to analyze not only the direct emissions that will occur from the development of projects that result in GHG emissions, but also the downstream, indirect impacts of the combustion of the fossil fuels that are produced or transported as a result (or whose production or transportation is facilitated as a result) of the action in question and that are, by definition, reasonably foreseeable results of such projects.<sup>20</sup> Courts have upheld and echoed this reasoning in numerous other contexts in addition to pipeline permitting, including coal transport,<sup>21</sup> mine plan modifications,<sup>22</sup> and oil and gas development,<sup>23</sup> to name a few. Most recently, the Federal Energy Regulatory Commission has incorporated these accepted legal premises into its updated guidance to agencies involved in the permitting of fossil gas infrastructure.<sup>24</sup>

Now that DEQ is required to resume analysis of the GHG emissions and climate impacts of its decisions as a result of the *Held* decision, its MEPA analyses now must include quantification of the direct, indirect, and downstream emissions that will result from its permit approvals and other actions. Moreover, mere quantification of GHG emissions expected from a given project or action is insufficient to constitute an adequate analysis under NEPA,<sup>25</sup> and likewise under MEPA. The Court in *Held* documented the types of Montana-specific environmental and human impacts the *Held*

---

<sup>19</sup> *W. Org. of Res. Councils (WORC) v. U.S. Bureau of Land Mgmt.*, No. CV 16-21-GF-BMM, 2018 WL 1475470, at \*15 (D. Mont. Mar. 26, 2018) (BLM required to consider environmental consequences of downstream combustion of coal, oil and gas resources potentially open to development under resource management plan); *Wilderness Workshop v. United States Bureau of Land Mgmt.*, 342 F. Supp. 3d 1145, 1156 (D. Colo. 2018) (where agency has available data allowing it to calculate combustion related emissions, it is required to include such analysis, even though at the planning stage such emissions are still speculative); *WildEarth Guardians*, 368 F. Supp. 3d at 73 (D.D.C. 2019); *Ctr. for Biological Diversity v. U.S. Forest Serv.*, 444 F. Supp. 3d 832, 849 (S.D. Ohio 2020) (agency must analyze “reasonably foreseeable” consequences of leasing on climate, even though additional permitting is required to actually produce federal fossil fuels subsequent to leasing stage); *WildEarth Guardians v. U.S. Bureau of Land Mgmt.*, 457 F. Supp. 3d 880, 894-95 (D. Mont. 2020) (agency may not satisfy analytical burden merely by comparing emissions from a specific action to global and national emissions or by arguing that it is impossible to analyze impacts on climate from a single lease sale, it must instead catalogue reasonably foreseeable sales and other federal actions and analyze the combined environmental effects); *Diné Citizens Against Ruining Our Env’t v. Bernhardt*, 923 F.3d 831, 852 (10th Cir. 2019) (agency may tier to NEPA analyses done at earlier stages, but must include updated information and analysis at the drilling stage).

<sup>20</sup> See, e.g. *Sierra Club v. FERC*, 867 F.3d 1357, 1374 (D.C. Cir. 2017) (downstream GHG emissions were an indirect effect of pipeline project and required the agency to provide a quantitative estimate of the downstream GHG emissions resulting from the burning of the natural gas to be transported by the pipeline or explain why it could not do so, and to discuss the significance of these emissions).

<sup>21</sup> *Montana Envtl. Info. Ctr. v. U.S. Office of Surface Mining*, No. CV 15-106-M-DWM, 2017 WL 5047901, \*3 (D. Mont. Nov. 3, 2017).

<sup>22</sup> *Diné Citizens Against Ruining Our Env’t v. U.S. Office of Surface Mining Reclamation & Enforcement*, 82 F.Supp.3d 1201, 1213 (D. Colo. 2015); *WildEarth Guardians v. United States Office of Surface Mining, Reclamation & Enforcement*, 104 F.Supp.3d 1208, 1229–30 (D. Colo. 2015).

<sup>23</sup> *San Juan Citizens All. v. United States Bureau of Land Mgmt.*, 326 F. Supp. 3d 1227, 1244 (D.N.M. 2018); *WildEarth Guardians v. Zinke*, 368 F. Supp. 3d 41, 73 (D.D.C. 2019).

<sup>24</sup> *Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews*, 87 Fed. Reg. 14,104 (March 11, 2022), see, e.g. 14,106, 14,109-110.

<sup>25</sup> *California v. Bernhardt*, 472 F. Supp. 3d at 573, 623 (finding that agency quantifications that frame climate impacts solely in the context of the percentage of national or global emissions are misleading and that “[m]ere quantification is insufficient” when it results in a minimization of actual climate impacts.)

plaintiffs and other Montanans are *already experiencing* as a result of the climate crisis, and which will be exacerbated by “[e]ach additional ton of GHGs emitted into the atmosphere.”<sup>26</sup> These are the types of *qualitative* impacts that must be addressed by state agencies—in addition to the quantitative emissions—for each GHG contributing action going forward.

There are myriad tools available to help DEQ and other state agencies conduct such analyses using the most current scientific data. These include quantitative tools, such as the social cost of greenhouse gases and carbon budgeting. The social cost of GHGs is already being used by many federal and state agencies to assign a dollar figure to the damages that each ton of emissions from a given government action or permit will result in. This number provides useful information to the agency both in terms of a cost-benefit analysis, weighing the climate costs of an action against market economic benefits, and by framing in easily understood economic terms the extent to which a seemingly small quantity of emissions contributes to enormous environmental, societal, and public health costs. Conversely, social costs can illustrate the economic benefits through avoided costs of promoting *non-fossil-fuel* based energy infrastructure.<sup>27</sup> This was pertinently illustrated in the *Held* case, where the Court found, based on the record, that:

Converting from fossil fuel energy to renewable energy would eliminate another \$21 billion in climate costs in 2050 to Montana and the world. Most noticeable to those in Montana, converting to wind, water, and solar energy would reduce annual total energy costs for Montanans from \$9.1 to \$2.8. billion per year, or by \$6.3 billion per year (69.6% savings). The total energy, health, plus climate costs savings, therefore, will be a combined \$29 billion per year (decreasing from \$32 to \$2.8 billion per year), or by 91%.<sup>28</sup>

Knowledge of these types of costs—whether to be incurred or avoided by a given action—is critical for both the agency *and* the public to know before irretrievably committing state resources to actions that can have massive economic and physical consequences to the state and its people.

The carbon budget, by contrast, allows agencies to determine what percentage of the remaining global carbon budget will be consumed by a given action or permit. The global carbon budget is the amount of GHGs that can be emitted globally and allow the Earth to stay below key warming thresholds to avert the most catastrophic and irretrievable effects of climate change. Federal courts have endorsed the use of carbon budgets in the analysis of federal actions under NEPA as a way to address what has been termed the “one percent problem,”<sup>29</sup> or the manner in which emissions from

---

<sup>26</sup> Findings of Fact, Conclusions of Law, and Order at 24.

<sup>27</sup> *Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1217 (9th Cir. 2008) (finding that the government’s “decision not to monetize the benefit of carbon emissions reduction was arbitrary and capricious.”).

<sup>28</sup> Findings of Fact, Conclusions of Law, and Order at 82.

<sup>29</sup> See Stack & Vandenberg, *The One Percent Problem*, 111 COLUM. L. REV. 1385, 1393 (2011) (framing sources as less than 1% of global emissions is dishonest and a prescription for climate disaster).

an individual action can be made to appear *de minimis* when compared with National or global emissions.<sup>30</sup>

Other important instruction on how to conduct a climate analysis under NEPA, which is applicable to DEQ's implementation of MEPA, includes guidance recently issued by the Federal Council on Environmental Quality ("CEQ") instructing agencies on how to consider GHG and climate impacts in their NEPA reviews.<sup>31</sup> This guidance addresses comprehensively how agencies should incorporate climate analysis into every stage of the NEPA process. Much of this information is directly relevant to DEQ's implementation of a GHG/climate analysis methodology under MEPA.

These tools are a small subset of the wealth of scientific and policy guidance available to DEQ to help it implement an up-to-date and thorough climate analysis protocol. We have provided at the end of this comment, an appendix detailing a number of the most critical and relevant information sources DEQ should be relying on to conduct its GHG and climate analyses going forward.

### **III. Any "modernization" of MEPA should strengthen, not weaken, its fundamental role in upholding Montanans' constitutional rights.**

A fundamental purpose of MEPA is to "provide for the adequate review of state actions to ensure that: (a) environmental attributes are fully considered by the legislature in enacting laws to fulfill constitutional obligations; and (b) the public is informed of the anticipated impacts in Montana of potential state actions." Section 75-1-102(1), MCA; *see also Bitterrooters for Planning, Inc. v. DEQ*, 2017 MT 222, ¶ 18, 388 Mont. 453, 401 P.3d 712 ("The essential purpose of MEPA is to aid in the agency decision-making process otherwise provided by law by informing the agency and the interested public of environmental impacts that will likely result from agency actions or decisions.") As the district court in *Held* determined, DEQ's refusal to disclose and analyze the predicted greenhouse gas emissions and climate change impacts of a project clearly conflicts with MEPA's very purpose "to aid the State in meeting its constitutional obligation to prevent degradation."<sup>32</sup>

Concurrently, MEPA is also a vehicle for the DEQ and other state agencies to fulfill their constitutional mandate to provide the public with the right to know and participate in governmental decision-making. Meaningful public participation in the MEPA process is critical to achieving sound and durable environmental policies, in particular for frontline communities impacted by government actions. Meaningful involvement must include

---

<sup>30</sup> *See, e.g. Diné CARE v. Haaland*, 59 F.4th 1016, 1043-44 (10th Cir. 2023)(Indeed, all agency actions causing an increase in GHG emissions will appear *de minimis* when compared to the regional, national, and global numbers. Where BLM neither applied the carbon budget method nor explained why it did not, BLM acted arbitrarily and capriciously by failing to consider the impacts of the projected GHGs.)

<sup>31</sup> National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change, 88 Fed. Reg. 1,196 (January 9, 2023).

<sup>32</sup> Findings of Fact, Conclusions of Law, and Order at 99.

adequate and timely notice to a broad array of impacted people, an opportunity for people to participate in the decision-making process, and the ability for interested persons and communities to influence the agency's final decision. Unfortunately, DEQ's record on public participation is lackluster, and any potential reforms must not just preserve the status quo, but further enhance the ability for the public to have meaningful participation in the MEPA process.

Notably, over the past few decades MEPA has been repeatedly amended and revised by the Montana Legislature to "streamline" and "modernize" the Act. These changes, largely at the encouragement of industries that DEQ is purportedly charged with regulating, have come at the expense of environmental protections and robust public participation requirements. While these previous changes have certainly required updating DEQ's regulations, as it currently stands, the DEQ need now only conform its rules to the law as it now exists post-*Held*. There are no legal requirements, nor legislation, that require wholesale MEPA reform, and DEQ lacks authority to promulgate sweeping regulations that change the governing law without legislative approval. If changes are needed, legislative committees are the proper place for discussion on changes to law, and are the appropriate venue for the public to weigh in on such changes.

As stated above, DEQ should focus its time and attention on implementing the Order in *Held*. DEQ routinely raises concerns over a lack of resources for its existing regulatory responsibilities, and it is inappropriate and confusing for the agency to now *devote* its purportedly limited resources to such an ill-conceived endeavor when it has the ability to satisfy its legal duties without a prolonged, legally questionable, and undoubtedly expensive, stakeholder committee process. The easiest path for DEQ is to turn to federal NEPA precedent and guidance that has been interpreted by courts and agencies and used by industry for 50 years, rather than attempting to reinvent the wheel in a way that will likely result in fewer environmental protections and more legal challenges.

Any "modernization" of MEPA undertaken pursuant to DEQ's as-yet-undefined stakeholder process must take MEPA's fundamental purpose into account, and must, at all costs, avoid weakening the statute's core role in upholding the Montana Constitution.

#### **IV. Conclusion**

DEQ is clearly prohibited from ignoring the First Judicial District Court's permanent injunction against Section 75-1-201(2)(a), MCA, and is required, with respect to all MEPA analyses going forward that implicate GHG emissions (either positively or negatively), to analyze the quantitative and qualitative impacts of such actions in the context of climate change.

Over the last several months, DEQ has continued to issue permits for fossil fuel activities without considering GHG emissions or climate impacts, in defiance of the district court's Order in *Held*. Yet, the district court has enjoined this unconstitutional conduct on the part of the State. As a result, DEQ is required to comply with the order in *Held* and follow the law *now*, not seek to defer compliance until after a lengthy and likely inconclusive stakeholder process. This type of analysis is fully within DEQ's discretion and expertise, and the agency lacks discretion to defer it. We therefore request that DEQ stop ignoring GHG emissions and climate change in its permitting decisions, take the hard look at climate that MEPA requires, and disclose to the public the climate harms associated with individual permitting and other agency actions. The same applies to all other state agencies having authority to approve or deny actions that may result in GHG emissions or a diminution of such emissions.

Sincerely,



Melissa Hornbein, [hornbein@westernlaw.org](mailto:hornbein@westernlaw.org)  
Barbara Chillcott, [chillcott@westernlaw.org](mailto:chillcott@westernlaw.org)  
Western Environmental Law Center  
103 Reeders Alley  
Helena, MT 59601

On behalf of:

350 Montana  
Citizens for a Better Flathead  
Clark Fork Coalition  
Earthworks  
Families for a Livable Climate  
Gallatin Valley Sunrise  
Montana Chapter of the Sierra Club  
Montana Environmental Information Center  
Montana Health Professionals for a Livable Climate  
Park County Environmental Council  
Upper Missouri Waterkeeper  
Water for Flathead's Future

**HEADQUARTERS**

120 Shelton McMurphey Blvd.  
Suite 340  
Eugene, OR 97401  
(541) 485-2471  
[info@westernlaw.org](mailto:info@westernlaw.org)

Defending the West

**OFFICES**

Oregon  
Washington  
New Mexico  
Montana  
Colorado

[westernlaw.org](http://westernlaw.org)

---

## WESTERN ENVIRONMENTAL LAW CENTER

### Comment on Implementation of the Montana Environmental Policy Act

#### Appendix A – Resources

1. Whitlock C, Cross W, Maxwell B, Silverman N, Wade AA. 2017. 2017 Montana Climate Assessment. Bozeman and Missoula MT: Montana State University and University of Montana, Montana Institute on Ecosystems. 318 p. doi:10.15788/m2ww8w  
<https://montanacclimate.org/chapter/title-page>.
2. Adams A, Byron R, Maxwell B, Higgins S, Eggers M, Byron L, Whitlock C. 2021. Climate change and human health in Montana: a special report of the Montana Climate Assessment. Bozeman MT: Montana State University, Institute on Ecosystems, Center for American Indian and Rural Health Equity. 216 p. <https://doi.org/10.15788/c2h22021>. [https://live-mca-site.pantheonsite.io/sites/default/files/thumbnails/image/2021\\_C2H2inMT\\_final.pdf](https://live-mca-site.pantheonsite.io/sites/default/files/thumbnails/image/2021_C2H2inMT_final.pdf).
3. State of Montana. (2020). Montana Climate Solutions Plan. Helena, MT.  
[https://deq.mt.gov/files/DEQAdmin/Climate/2020-09-09\\_MontanaClimateSolutions\\_Final.pdf](https://deq.mt.gov/files/DEQAdmin/Climate/2020-09-09_MontanaClimateSolutions_Final.pdf).
4. Hostetler S, Whitlock C, Shuman B, Liefert D, Drimal C, Bischke S. 2021. Greater Yellowstone climate assessment: past, present, and future climate change in greater Yellowstone watersheds. Bozeman MT: Montana State University, Institute on Ecosystems. 260 p.  
<https://doi.org/10.15788/GYCA2021>;  
[https://www.gyclimate.org/sites/default/files/files/GYCA\\_June2021\\_FullReport.pdf](https://www.gyclimate.org/sites/default/files/files/GYCA_June2021_FullReport.pdf).
5. Power, Thomas Michael, and Donovan S. Power, The Economic Impact of Climate Change in Montana, Montana Wildlife Federation. (Sept. 2023). [https://montanawildlife.org/wp-content/uploads/2023/10/Economic-Impacts-of-Climate-Change-in-MT\\_Power-Consulting-Inc.\\_Clean-Version\\_9-27-2023.docx.pdf?c6b026&c6b026](https://montanawildlife.org/wp-content/uploads/2023/10/Economic-Impacts-of-Climate-Change-in-MT_Power-Consulting-Inc._Clean-Version_9-27-2023.docx.pdf?c6b026&c6b026).
6. Power, Thomas Michael and Donovan S. Power; The Impact of Climate Change on Montana's Agriculture Economy, Montana Farmers Union (Feb. 2016) [https://legacy-assets.eenews.net/open\\_files/assets/2017/07/03/document\\_gw\\_01.pdf](https://legacy-assets.eenews.net/open_files/assets/2017/07/03/document_gw_01.pdf).
7. Power, Thomas Michael and Donovan S. Power; The Impact of Climate Change on Montana's Outdoor Economy, Montana Wildlife Federation (Dec. 2015). <https://montanawildlife.org/wp-content/uploads/2015/12/Outdoor-Economy-Report.pdf>.



<content/uploads/2015/12/Impact-of-Climate-Change-on-the-Montana-Outdoor-Economy-Dec-2015-Final-Report.pdf>.

8. Montana Climate Change Advisory Committee. 2007. Montana Climate Change Action Plan: Final Report of the Governor's Climate Change Advisory Committee, Montana Department of Environmental Quality.  
[https://deq.mt.gov/Files/DEQAdmin/Climate/Documents/Montana\\_2007\\_Climate-Action-Plan.pdf](https://deq.mt.gov/Files/DEQAdmin/Climate/Documents/Montana_2007_Climate-Action-Plan.pdf).
9. Montana Climate Office. Source high-quality, timely, relevant, and scientifically based climate, drought and water resources information and services. <https://climate.unt.edu/>.
10. Evolved Energy Research, Decarbonization and Montana – Insights from the Northwest Deep Decarbonization Pathways Study, Montana Climate Solutions Council (July 28, 2020).  
[https://deq.mt.gov/files/DEQAdmin/Climate/2020-07\\_DecarbonizationMT\\_Slides.pdf](https://deq.mt.gov/files/DEQAdmin/Climate/2020-07_DecarbonizationMT_Slides.pdf).
11. Bailie, A, Roe, S, Lundquist, H, Jamison, A, Montana Greenhouse Gas Inventory and Reference Case Projections 1990-2020, Montana Dept. of Environmental Quality and Center for Climate Strategies, (Sept. 2007).  
[https://digital.library.unt.edu/ark:/67531/metadc226750/m2/1/high\\_res\\_d/O127F14011.pdf](https://digital.library.unt.edu/ark:/67531/metadc226750/m2/1/high_res_d/O127F14011.pdf).
12. Blend, et al., Understanding Energy in Montana, Montana Dept. of Environmental Quality and Legislative Services Division (2023).  
[https://deq.mt.gov/files/Energy/Documents/FINAL2023\\_Understanding%20Energy%202023\\_Web\\_300dpi-with%20images\\_Final.pdf](https://deq.mt.gov/files/Energy/Documents/FINAL2023_Understanding%20Energy%202023_Web_300dpi-with%20images_Final.pdf).
13. Blackfeet Climate Change Adaptation Plan, Blackfeet Nation (April 2018),  
[https://bcapwebsite.files.wordpress.com/2018/04/bcap\\_final\\_4-11.pdf](https://bcapwebsite.files.wordpress.com/2018/04/bcap_final_4-11.pdf).
14. Confederated Salish and Kootenai Tribes of the Flathead Reservation, Climate Change Strategic Plan (Sept. 2013, updated April 2016),  
<http://csktclimate.org/downloads/Climate%20Change%20Strategic%20Plan/CSKT%20Climate%20Change%20Adaptation%20Plan%204.14.16.pdf>.
15. Fort Belknap Indian Community Climate Change Adaptation Plan (2023)  
<https://img1.wsimg.com/blobby/go/d94bfdb9-dd85-49bd-94c2-4822ef04bf3b/downloads/Official%20FBIC%20Climate%20Change%20Plan%202023.pdf?ver=1690299573616>.
16. IPCC, 2023: Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, pp. 35-115, doi: 10.59327/IPCC/AR6-9789291691647. <https://www.ipcc.ch/report/ar6/syr>.

17. USGCRP, 2023: *Fifth National Climate Assessment*. Crimmins, A.R., C.W. Avery, D.R. Easterling, K.E. Kunkel, B.C. Stewart, and T.K. Maycock, Eds. U.S. Global Change Research Program, Washington, DC, USA. <https://doi.org/10.7930/NCA5.2023>.
18. Knapp, C.N., D.R. Kluck, G. Guntenspergen, M.A. Ahlering, N.M. Aimone, A. Bamzai-Dodson, A. Basche, R.G. Byron, O. Conroy-Ben, M.N. Haggerty, T.R. Haigh, C. Johnson, B. Mayes Boustead, N.D. Mueller, J.P. Ott, G.B. Paige, K.R. Ryberg, G.W. Schuurman, and S.G. Tangen, 2023: Ch. 25. Northern Great Plains. In: *Fifth National Climate Assessment*. Crimmins, A.R., C.W. Avery, D.R. Easterling, K.E. Kunkel, B.C. Stewart, and T.K. Maycock, Eds. U.S. Global Change Research Program, Washington, DC, USA. <https://doi.org/10.7930/NCA5.2023.CH25>.
19. United Nations Environment Programme (2023). Emissions Gap Report 2023: Broken Record – Temperatures hit new highs, yet world fails to cut emissions (again). Nairobi. <https://doi.org/10.59117/20.500.11822/43922>.  
<https://wedocs.unep.org/bitstream/handle/20.500.11822/43922/EGR2023.pdf?sequence=3&isAllowed=y>.
20. Lancet Countdown, 2023: 2023 Lancet Countdown on Health and Climate Change Policy Brief for the United States of America. Beyeler NS, Knappenberger P, Hess JJ, Salas RN. Lancet Countdown U.S. Policy Brief, London, United Kingdom, 20 pp.  
<https://www.lancetcountdownus.org/2023-lancet-countdown-u-s-brief/>.
21. The 2023 report of the *Lancet* Countdown on health and climate change: the imperative for a health-centred response in a world facing irreversible harms. DOI: [https://doi.org/10.1016/S0140-6736\(23\)01859-7](https://doi.org/10.1016/S0140-6736(23)01859-7) .  
[https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(23\)01859-7/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(23)01859-7/fulltext)
22. World Meteorological Organization (2023). United in Science 2023, Sustainable Development Edition. A multi-organization high-level compilation of the latest weather-, climate and water-related sciences and services for sustainable development.  
<https://library.wmo.int/idurl/4/68235>.
23. International Institute for Sustainable Development, *Navigating Energy Transitions: Mapping the Road to 1.5° C*, October 2022. [https://www.researchgate.net/publication/364735695\\_Navigating\\_Energy\\_Transitions\\_Mapping\\_the\\_road\\_to\\_15C\\_IISD\\_REPORT\\_International\\_Institute\\_for\\_Sustainable\\_Development](https://www.researchgate.net/publication/364735695_Navigating_Energy_Transitions_Mapping_the_road_to_15C_IISD_REPORT_International_Institute_for_Sustainable_Development).
24. Ratledge, N., Zachary, L. & Huntley, C. Emissions from fossil fuels produced on US federal lands and waters present opportunities for climate mitigation. *Climatic Change* 171, 11 (2022).  
<https://doi.org/10.1007/s10584-021-03302-x>.

25. 2022 BLM Specialist Report on Annual Greenhouse Gas Emissions and Climate Trends from Coal, Oil, and Gas Exploration and Development on the Federal Mineral Estate.  
<https://www.blm.gov/content/ghg/2022/>.
26. EPA, 2023, Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2021. U.S. Environmental Protection Agency, EPA 430-R-23-002.  
<https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks-1990-2021>.
27. EPA, 2022 Greenhouse Gas Emissions from Large Facilities, Facility Level Information on Greenhouse gases tool (FLIGHT). <https://ghgdata.epa.gov/ghgp/main.do>.
28. Council on Environmental Quality, Guidance: National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change, 88 Fed. Reg. 1196 (Jan. 8, 2023). <https://www.regulations.gov/document/CEQ-2022-0005-0001>.
29. Council on Environmental Quality, Federal Greenhouse Gas Accounting and Reporting Guidance. (Jan. 17, 2016).  
[https://www.sustainability.gov/pdfs/federal\\_ghg%20accounting\\_reporting-guidance.pdf](https://www.sustainability.gov/pdfs/federal_ghg%20accounting_reporting-guidance.pdf).
30. Council on Environmental Quality, Greenhouse Gas Tools and Resources. (A non-exhaustive compilation of GHG estimating tools and related resources.)  
<https://ceq.doe.gov/guidance/ghg-tools-and-resources.html>.
31. National Oceanic and Atmospheric Administration, National Centers for Environmental Information. 2022. Montana: State Climate Summaries.  
<https://statesummaries.ncics.org/downloads/Montana-StateClimateSummary2022.pdf>.
32. SEI, Climate Analytics, E3G, IISD, and UNEP. (2023). The Production Gap: Phasing down or phasing up? Top fossil fuel producers plan even more extraction despite climate promises. Stockholm Environment Institute, Climate Analytics, E3G, International Institute for Sustainable Development and United Nations Environment Programme.  
<https://doi.org/10.51414/sci2023.050>.
33. Interagency Working Group on Social Cost of Greenhouse Gases, United States Government, Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990 (Feb 2021) [https://www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument\\_SocialCostofCarbonMethaneNitrousOxide.pdf?msclkid=b3970d46bc0911ecb2044bed89fb2b76](https://www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf?msclkid=b3970d46bc0911ecb2044bed89fb2b76).
34. Bhatia R, Wernham A. Integrating human health into environmental impact assessment: an unrealized opportunity for environmental health and justice. Environ Health Perspect. 2008 Aug;116(8):991-1000. doi: 10.1289/ehp.11132. PMID: 18709140; PMCID: PMC2516559.  
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2516559/>.

35. EPA. Framework for Cumulative Risk Assessment. U.S. Environmental Protection Agency, Office of Research and Development, Center for Public Health and Environmental Assessment (CPHEA), formerly known as the National Center for Environmental Assessment (NCEA), Washington Office, Washington, DC, EPA/600/P-02/001F, 2003.  
[https://www.epa.gov/sites/default/files/2014-11/documents/frmwrk\\_cum\\_risk\\_assmnt.pdf](https://www.epa.gov/sites/default/files/2014-11/documents/frmwrk_cum_risk_assmnt.pdf).
36. EPA. 2021. Climate Change and Social Vulnerability in the United States: A Focus on Six Impacts. U.S. Environmental Protection Agency, EPA 430-R-21-003. [www.epa.gov/cira/social-vulnerability-report](http://www.epa.gov/cira/social-vulnerability-report).
37. EPA. 2023. Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2021. U.S. Environmental Protection Agency, EPA 430-R-23-002.  
<https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks-1990-2021>.
38. EPA, Greenhouse Gas Equivalencies Calculator (updated July 2023).  
<https://www.epa.gov/energy/greenhouse-gas-equivalencies-calculator>.
39. EPA, Memorandum: Addressing Climate Change and Environmental Justice through Reviews Conducted Pursuant to the National Environmental Policy Act and Section 309 of the Clean Air Act (April 26, 2022). <https://www.epa.gov/system/files/documents/2022-05/EPA%20Policy%20Memo%20Intergration%20of%20EJ%20and%20Climate%20Change%20into%20NEPA%20309%20review%204-26-2022.pdf>.
40. Hasselman, J. & Erickson, P. NEPA review of fossil fuels projects – principles for applying a “climate test” for new production and infrastructure. Earthjustice working paper.  
[https://earthjustice.org/sites/default/files/files/climate\\_test\\_-\\_hasselman\\_erickson.pdf](https://earthjustice.org/sites/default/files/files/climate_test_-_hasselman_erickson.pdf).
41. Erickson, P., and M. Lazarus (2013). Assessing the Greenhouse Gas Emissions Impact of New Fossil Fuel Infrastructure. SEI Discussion Brief.  
<https://mediamanager.sei.org/documents/Publications/SEI-DB-2013-Assessing-GHGs-fossil-fuel-infrastructure.pdf>.
42. Alder JR, Hostetler SW. 2013. USGS National Climate Change Viewer. US Geological Survey.  
<https://doi.org/10.5066/F7W9575T>.
43. Hagensted M, Burakowski E, Hill R. 2017. The economic contributions of winter sports in a changing climate [REI]. Protect our Winters, Boulder CO, USA. February 23, 2018,  
<https://scholars.unh.edu/cgi/viewcontent.cgi?article=1190&context=ersc>.
44. U.S. Energy Information Administration, State Energy Data System, Montana Profile Analysis (last updated April 20, 2023). <https://www.eia.gov/state/analysis.php?sid=MT>.

45. Burger, M. & Wentz, J. Evaluating the Effects of Fossil Fuel Supply Projects on Greenhouse Gas Emissions and Climate Change under NEPA. William Mary Environ. Law Policy Rev. 44, 423-530 (2020).  
<https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1754&context=wmelpr>.
46. Jacobson, M.Z., M.A. Delucchi, G. Bazouin, Z.A.F. Bauer, C.C. Heavey, E. Fisher, S. B. Morris, D.J.Y. Piekutowski, T.A. Vencill, and T.W. Yeskoo, 2015a. 100% clean and renewable wind, water, and sunlight (WWS) all-sector energy roadmaps for the 50 United States. Energy Environ Sci. 8: 2093-2117.  
Paper: <http://web.stanford.edu/group/efmh/jacobson/Articles/I/USStatesWWS.pdf>  
Spreadsheet: <https://web.stanford.edu/group/efmh/jacobson/Articles/I/USStates.xlsx>.

-



P.O. Box 4652 Butte, MT 59702

December 1, 2023

Chris Dorrington, Director  
Montana Department of Environmental Quality (DEQ)  
Lee Metcalf Building  
Helena, MT 59602

**RE: Montana Mining Association comments on Montana Environmental Policy Act (MEPA) modernization review, listening sessions**

Dear Director:

Please accept the following comments from the Montana Mining Association (MMA) regarding your department's efforts to solicit comments about whether and how the regulatory framework of MEPA should be modernized to reflect the experiences since the policy's adoption in 1971. Three guiding questions were posed to help focus feedback; MMA will follow this suggested lead.

MMA appreciates DEQ's efforts to engage our citizens, businesses, non-profits and industry in this important discussion. On behalf of the association, I was able to tune into the Billings and Missoula listening sessions virtually and provided general comments in person at the Helena session on October 18. The comments herein are general in nature, but reflective of the vast experience and perspective of MEPA shared by our association.

*How, if at all, should the regulatory framework of MEPA be modernized?*

Any changes to the regulatory framework of MEPA should be done with careful consideration and be focused and limited in scope. The most recent statutory changes and resulting ongoing litigation is informative of how controversial and confrontational any changes to this policy can be. DEQ's stated intent to form a diverse stakeholder group to work on any changes to MEPA "over the next year" accurately reflects the department's understanding of this importance.

Additionally, any efforts to discuss whether MEPA could or even should be modified should also include broad state agency representation, as well as legislative involvement. DEQ is most notably involved in the implementation of MEPA, as are FWP, DNRC and MDT. Specifically created by Part 3 of MEPA, the Environmental Quality Council should be viewed as crucial in its role regarding any discussions that could result in rulemaking. Careful consideration and focus on any proposed changes, and the involvement of but not limitation to the above stakeholders in reformative discussions regarding MEPA will minimize litigative risks to the state and project sponsors and provide the most practicable amount of certainty for broad acceptance of any



P.O. Box 4652 Butte, MT 59702

actions taken. MMA would welcome the opportunity to take part in any ongoing discussions of a stakeholder group. It is also pertinent to note that while the most recent litigation of *Held v. Montana* certainly focuses on the climate impacts analysis, it should not be misconstrued as requiring a wholesale review or reform of MEPA, and that the decision to conduct a greater review is not predicated by this legal controversy.

*What should an analysis of greenhouse gas emissions and climate impacts include?*

Clarity, certainty and consistency should be the goalposts for whatever analysis of greenhouse gas emissions (GHG) and climate impact the state ultimately adopts and requires. For clarity, it is important to emphasize that MEPA is procedural only and that it provides no basis for the agency to approve or deny a permit. Any analysis performed under MEPA is to provide certainty that the potential impacts of a proposed project or action(s) were evaluated, disclosed and considered, period.

It should also be defined what types of projects require GHG/climate analysis, based on impacts. Not every project or action likely has a measurable impact on GHG/climate and therefore, there should be clear definitions developed for what projects/actions are significant and require analysis and which ones could be exempted or excluded from performing an analysis. Any analyses, exemptions and definitions should be clearly based on reliable data, available technology and consistent application. Further consideration of exemptions should apply to existing facilities and permitted activities that require renewals if no significant changes are proposed and/or if no measurable changes in impacts from the project are expected or documented. Lastly, there are several existing GHG/climate impact analyses performed by other agencies and in other states. These models and their application would be worth exploring and evaluating, rather than attempting to create something new, when that may not be necessary.

*What opportunities exist for state agencies to be more thorough, balanced, efficient, or consistent?*

The way this question is framed provides evidence there is general acknowledgment that improvements could be made in the implementation of MEPA. MMA routinely stresses balance, clarity and certainty in its comments regarding policy, procedures and laws pertinent to mining and to industrial projects in general. Arguably, the most important improvement state agencies should strive for is consistency. Consistency is a foundational pillar of certainty, and there does not appear to be adequate uniformity in how the MEPA process is applied across different industries, agencies and even divisions within agencies. A clear and consistent approach applied to all agencies and actions would invariably increase certainty that the same process is followed, the same definitions are used, same exceptions are granted, etc., which would amount to more clarity for project timelines and less risk of furor and potential litigation.





P.O. Box 4652 Butte, MT 59702

*Conclusion*

MMA again expresses its appreciation for DEQ wanting to take on this endeavor and for the opportunity to comment and participate moving forward. Our members have a vested interest in continuing to operate responsibly, to contribute to Montana's economy and the nation's supply chain and security and to ensure the continued environmental protection and quality of life in our Treasure State. We look forward to following the advancement of your efforts and stand ready to participate in future stakeholder discussion in a cooperative and productive manner.

Sincerely,

*Matt*

Matt Vincent,  
Executive Director

cc: Craig Jones, MEPA Coordinator



December 1, 2023

*Submitted via email and DEQ Comment Portal*

deqmepa@mt.gov  
Montana Department of Environmental Quality  
1520 E 6th Avenue  
Helena, MT 59601

**RE: Montana Youth's Comments on Montana Environmental Policy Act Implementation**

To Montana Department of Environmental Quality:

On behalf of the sixteen Youth Plaintiffs in the constitutional climate case *Held v. State of Montana*, CDV-2020-307 (Mont. 1st Jud. Dist. Ct.), Our Children's Trust respectfully submits this comment letter as part of the Montana Department of Environmental Quality's ("DEQ") "MEPA Implementation Comment Portal and Public Listening Sessions."

DEQ's conduct and its implementation of MEPA and other permitting statutes must comply with Montana's Constitution and the August 14, 2023, Order in *Held v. State of Montana*. DEQ is a defendant in the *Held* case. Among other things, the *Held* Order declared the MEPA Limitation, § 75-1-201(2)(a), MCA, unconstitutional and permanently enjoined DEQ from implementing the MEPA Limitation.<sup>1</sup> The August 14 Order in *Held* is in full force and effect and is binding on DEQ right now. Defendants' request to stay the August 14 Order was denied by the District Court.<sup>2</sup> As a result, DEQ cannot rely on § 75-1-201(2)(a), MCA, or otherwise act in accordance with the unconstitutional statute, and must ensure full compliance with the August 14 Order and Montana's Constitution *now*. This MEPA implementation review process cannot be used as justification for failing to fully and immediately comply with the August 14 *Held* Order. As the bulk of comments received throughout this public input process have stated<sup>3</sup> – DEQ must immediately move forward with implementing the *Held* order and begin analyzing the greenhouse gas ("GHG") emissions and climate impacts of proposed fossil projects and activities in Montana.

Importantly, every additional fossil fuel permit approved by DEQ that causes an increase in GHG emissions, or which prevents the decrease in emissions required to protect the constitutional rights of youth, is a violation of the constitutional rights of the Youth Plaintiffs in

---

<sup>1</sup> August 14 Order at 102, *Held v. State of Montana*, CDV-2020-307, (hereinafter "August 14 Order").

<sup>2</sup> On November 21, 2023, the Montana First Judicial District Court, Hon. Kathy Seeley, denied the motions of Defendant Department of Environmental Quality, Department of Natural Resources and Conservation, Department of Transportation, and Governor Greg Gianforte for clarification and stay of judgment pending appeal. Order Denying Defendants' Motion for Clarification and for Stay of Judgment Pending Appeal, *Held v. State of Montana*, CDV-2020-307, (Mont. 1st Jud. Dist. Ct., Nov. 21, 2023).

<sup>3</sup> Montana Department of Environmental Quality, *DEQ MEPA Conversation*, <https://storymaps.arcgis.com/stories/4e14fb535c034e08bcf87c6c2a113c9d>.

*Held*.<sup>4</sup> Every additional ton of GHG emissions exacerbates the ongoing climate crisis which is causing the injuries and constitutional violations the Youth Plaintiffs are already suffering. The evidence presented at trial in *Held* is unequivocal that the Youth Plaintiffs will suffer further and more severe injuries and infringement of their fundamental constitutional rights so long as DEQ continues to approve permits, licenses, and other authorizations for fossil fuel activities in Montana.<sup>5</sup>

Montana must transition to 100% clean renewable energy in order to protect Montana's environment, natural resources, and youth. According to the uncontradicted evidence presented at trial in *Held*, it is technically and economically feasible for Montana to replace 80% of its existing fossil fuel energy by 2030 and 100% no later than 2050, and as soon as 2035. This transition starts with DEQ administering MEPA as it was intended. The basic purpose of MEPA demands that DEQ thoroughly consider the GHG emissions and the climate impacts of proposed fossil fuel activities during MEPA reviews and disclose such emissions and anticipated harms to the public. DEQ must also thoroughly consider and evaluate alternatives to any projects that would result in additional GHG emissions. The farsighted protections secured by Montana's Constitution, which are preventative and anticipatory,<sup>6</sup> demand that DEQ deny permits, licenses, and other authorizations for fossil fuel activities pursuant to the ample authority the agency is vested under Montana's substantive permitting statutes, when necessary to protect Montana's natural environment and citizens, including Montana's children.<sup>7</sup> Only then can DEQ adhere to its constitutional obligations to, among others, maintain *and improve* a clean and healthful environment in Montana for present and future generations.

While the Youth Plaintiffs appreciate the opportunity to submit this comment letter, the trial testimony in *Held* made clear that DEQ already knows how to analyze GHG emissions and climate impacts during MEPA reviews.<sup>8</sup> The trial record in *Held* shows DEQ already has the tools to analyze climate impacts and GHG emissions during MEPA reviews; indeed DEQ performed such analyses prior to the MEPA Limitation's codification in 2011. Accordingly, and consistent with the District Court's August 14 Order, DEQ must immediately begin conducting GHG and climate impact analyses in MEPA reviews and exercising its ample discretion under the substantive permitting statutes to deny permits, licenses, and other authorizations for fossil fuel activities in Montana when needed in order to come into constitutional compliance, protect the Youth Plaintiffs' constitutional rights, and safeguard Montana's youth from further injuries and constitutional violations. This public input and stakeholder process cannot be grounds for DEQ

---

<sup>4</sup> See August 14 Order at 98 ("Montana's climate, environment, and natural resources are unconstitutionally degraded and depleted due to the *current* atmospheric concentration of GHGs and climate change.") (emphasis added).

<sup>5</sup> *Id.* at 87 ("Every additional ton of GHG emissions exacerbates Plaintiffs' injuries and risks locking in irreversible climate injuries.").

<sup>6</sup> "The Montana Constitution guarantees that certain environmental harms shall be prevented, and prevention depends on forethought." *Park Cnty. Env't Council v. Montana Dep't of Env't Quality*, 2020 MT 303, ¶ 70, 402 Mont. 168, 197, 477 P.3d 288, 306.

<sup>7</sup> See August 14 Order at 13, 89-90.

<sup>8</sup> See *id.* at 74 ("If the MEPA Limitation is declared unconstitutional, state agencies will be capable of considering GHG emissions and the impacts of projects on climate change."); *id.* at 101 ("Undisputed testimony established that Defendants could evaluate 'greenhouse gas emissions and corresponding impacts to the climate in the state or beyond the state's borders' when evaluating fossil fuel activities. Indeed, Defendants have performed such evaluations in the past.").

delaying immediate implementation of the August 14 Order in *Held* and for bringing DEQ's conduct into constitutional compliance.

**I. Current Levels of Atmospheric GHGs are Causing Harm to Montana's Environment, Harming Young Montanans, and Violating Their Constitutional Rights.**

The *Held* Plaintiffs are experiencing grave constitutional injuries, harms that are compounded daily by DEQ's failure to comply with and fully implement the August 14 Order and by DEQ's exacerbation of climate change through its continued permitting and authorization of fossil fuel projects and activities in Montana—all done while continuing to use the blinders of the unconstitutional MEPA Limitation.

The extensive evidence and testimony adduced at trial in *Held* demonstrates that the resulting GHG emissions from DEQ's conduct (in approving every permit it receives for fossil fuel activities while ignoring each project's GHG emissions and resulting climate impacts) is causing grave harms *today* to the health and well-being of Montana's children, and to Montana's environment and natural resources, harms that are undisputed in the trial record.<sup>9</sup> According to the District Court's uncontroverted Findings of Fact and Conclusions of Law in *Held*:

FF #89. "Until atmospheric GHG concentrations are reduced, extreme weather events and other climactic events such as drought and heatwaves will occur more frequently and in greater magnitude, and Plaintiffs will be unable to live clean and healthy lives in Montana."

FF #91. "Each additional ton of GHGs emitted into the atmosphere exacerbates impacts to the climate."

FF #92. "Every ton of fossil fuel emissions contributes to global warming and impacts to the climate and thus increases the exposure of Youth Plaintiffs to harms now and additional harms in the future."

FF #140. "Anthropogenic climate change is impacting, degrading, and depleting Montana's environment and natural resources, including through increasing temperatures, changing precipitation patterns, increasing droughts and aridification, increasing extreme weather events, increasing severity and intensity of wildfires, and increasing glacial melt and loss."

FF #193. "The degradation to Montana's environment, and the resulting harm to Plaintiffs, will worsen if the State continues ignoring GHG emissions and climate change."

FF #194. "The unrefuted testimony established that Plaintiffs have been and will continue to be harmed by the State's disregard of GHG pollution and climate change pursuant to the MEPA Limitation."

---

<sup>9</sup> *Id.* at 46-64.

FF #266. “Montana’s annual, historical, and cumulative GHG emissions are increased by Defendants’ actions to permit and approve fossil fuel activities with no environmental review of their impact on GHG levels in the atmosphere and climate change.”

CL #6. “Every additional ton of GHG emissions exacerbates Plaintiffs’ injuries and risks locking in irreversible climate injuries.”

CL #16. “Montana’s GHG contributions are not *de minimis* but are nationally and globally significant. Montana’s GHG emissions cause and contribute to climate change and Plaintiffs’ injuries and reduce the opportunity to alleviate Plaintiffs’ injuries.”

CL #50. “Montana’s climate, environment, and natural resources are unconstitutionally degraded and depleted due to the current atmospheric concentration of GHGs and climate change.”<sup>10</sup>

The evidence supporting these findings and conclusions was uncontradicted at trial by DEQ and the other *Held* Defendants. The record before the District Court in *Held* demonstrates the dangerous nature of the *status quo* under which Youth Plaintiffs are living and provides the factual context for DEQ’s consideration of updates to MEPA. Indeed, in denying the motion by DEQ and the other Defendants to stay the August 14 Order in *Held*, the District Court stated: “[t]he record demonstrates the dangerous nature of the *status quo* that Defendants seek to preserve. The *status quo* is one where there are already ‘catastrophic harms to the natural environment of Montana and Plaintiffs,’ harms that ‘will worsen if the State continues ignoring GHG emissions and climate change.’”<sup>11</sup>

The District Court’s extensive Findings of Fact in the August 14 Order detail the myriad ways in which Montana’s unique environment and natural resources are currently being degraded and depleted as a result of climate change, and how such damage and the attendant harms to Youth Plaintiffs will only intensify with further warming and climate destabilization.<sup>12</sup> DEQ must ensure that its ongoing MEPA review and substantive permitting decisions are consistent with the factual findings and legal conclusions in *Held*. Simply stated, the blinders imposed by the MEPA Limitation must come off *now*.

## **II. To Protect the Youth Plaintiffs in *Held* and Other Montana Children, DEQ and the State of Montana Must Act Swiftly to Decarbonize its Energy Systems and Economy.**

The August 14 Order in *Held* set forth detailed findings of fact and conclusions of law relating to Montanans’ fundamental rights, including their right to a clean and healthful

---

<sup>10</sup> *Id.* at 24, 35, 46, 79, 87, 88, 98 (citations omitted).

<sup>11</sup> Order Denying Defendants’ Motion for Clarification and for Stay of Judgment Pending Appeal at 3 (Mont. 1st Jud. Dist. Ct., Nov. 21, 2023) (quoting August 14 Order at 46).

<sup>12</sup> See August 14 Order at 35-46.

environment. In particular, the District Court found that, “[b]ased on the plain language of the implicated constitutional provisions, the intent of the Framers, and Montana Supreme Court precedent, climate is included in the ‘clean and healthful environment’ and ‘environmental life support system’” referenced in Article II, Section 3 and Article IX, Section 1 of Montana’s Constitution.<sup>13</sup>

With respect to the climate system, the August 14 Order made detailed factual findings, based on the uncontroverted evidence presented at trial, concerning the basic science of climate change; the irrefutable connection between fossil fuel extraction, transportation, and combustion and the observed planetary warming and attendant consequences; and the array of serious harms that climate change has already caused and will increasingly cause to Montana’s environment and citizens. Based on the uncontested evidence presented at trial, the District Court found that:

FF #98. “According to the Intergovernmental Panel on Climate Change (IPCC), ‘Climate change is a threat to human well-being and planetary health (*very high confidence*). . . . There is a rapidly closing window of opportunity to secure a liveable and sustainable future for all (*very high confidence*). . . . The choices and actions implemented in this decade will have impacts now and for thousands of years (*high confidence*).’”

FF #104. “Children are uniquely vulnerable to the consequences of climate change, which harms their physical and psychological health and safety, interferes with family and cultural foundations and integrity, and causes economic deprivations.”

FF #108. “The physical and psychological harms are both acute and chronic and accrue from impacts to the climate such as heat waves, droughts, wildfires, air pollution, extreme weather events, the loss of wildlife, watching glaciers melt, and the loss of familial and cultural practices and traditions.”

FF #119. “The psychological harms caused by the impacts of climate change can result in a lifetime of hardships for children.”

FF #138. “The unrefuted testimony at trial established that climate change is a critical threat to public health.”

FF #139. “Actions taken by the State to prevent further contributions to climate change will have significant health benefits to Plaintiffs.”

FF #141. “Climate change impacts result in hardship to every sector of Montana’s economy, including recreation, agriculture, and tourism.”

---

<sup>13</sup> *Id.* at 97-8.

FF #193. “The science is clear that there are catastrophic harms to the natural environment of Montana and Plaintiffs and future generations of the State due to anthropogenic climate change.”<sup>14</sup>

Importantly, the District Court found that Earth’s Energy Imbalance (“EEI”) – the difference in energy from the sun arriving at the Earth and the amount radiated back into space – “is what climate scientists describe as the most critical metric for determining the amount of global heating and climate change we have already experienced and will experience as long as the Earth’s energy imbalance exists.”<sup>15</sup> The EEI is measured through calculating “how much extra energy, or heat, is being retained in Earth’s systems, like oceans, ice, air, and land surface compared to what Earth’s natural balance would be if more heat escaped our atmosphere.”<sup>16</sup> The District Court further found that the EEI is “currently significant” and that, from 1971 to 2018, the Earth gained approximately 360 zeta joules of energy (a zeta is a unit with 21 zeros; a trillion has 12 zeros) – which is enough energy to “bring Flathead Lake to boil 40,000 times over.”<sup>17</sup>

So long as the EEI is positive (i.e., more energy/heat is entering Earth’s systems than going out) “the Earth will continue to get hotter.”<sup>18</sup> Each additional ton of CO<sub>2</sub> emissions exacerbates the EEI and makes it more difficult and expensive to protect Earth’s systems upon which human life depends.<sup>19</sup> Accordingly, restoring Earth’s Energy Balance is key to solving the climate crisis and protecting the constitutional rights of Montana’s children. Correcting the EEI requires swiftly reducing GHG emissions by eliminating fossil fuel combustion and by protecting and enhancing carbon sinks to sequester excess atmospheric carbon.<sup>20</sup> The best available science today prescribes that global atmospheric CO<sub>2</sub> concentrations must be restored to less than 350 parts per million (“ppm”) by 2100 (with further reductions thereafter) to stabilize Earth’s Energy Balance and

---

<sup>14</sup> *Id.* at 28, 29, 31, 34, 35, 46 (citations omitted).

<sup>15</sup> *Id.* at 22.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 23.

<sup>18</sup> See James Hansen, *et al.*, *How We Know that Global Warming is Accelerating and that the Goal of the Paris Agreement is Dead*, Columbia.edu (Nov. 10, 2023), <http://www.columbia.edu/~jeh1/mailings/2023/Acceleration.2023.11.10.pdf>. See also August 14 Order at 23 (“As long as there is an energy imbalance, the Earth will continue to heat, ice will continue to melt, and weather patterns will become more extreme.”).

<sup>19</sup> See Intergovernmental Panel on Climate Change, IPCC Sixth Assessment Report, Working Group I: The Physical Science Basis, Summary for Policymakers (2022), [https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC\\_AR6\\_WGI\\_Full\\_Report.pdf](https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_Full_Report.pdf), at SPM-37, Figure SPM.10. See also August 14 Order at 24 (finding that “Every ton of fossil fuel emissions contributes to global warming and impacts to the climate and thus increases the exposure of Youth Plaintiffs to harms now and additional harms in the future.”); *id.* at 87 (concluding as a matter of law that Youth Plaintiffs had standing to challenge fossil fuel-related statutes and that “[e]very additional ton of GHG emissions exacerbates Plaintiffs’ injuries and risks locking in irreversible harms.”).

<sup>20</sup> See August 14 Order at 24 (“Until atmospheric GHG concentrations are reduced, extreme weather events and other climactic events such as droughts and heatwaves will occur more frequently and in greater magnitude, and Plaintiffs will be unable to live clean and healthy lives in Montana.”). See also Christine Bertram, *et al.*, *The Blue Carbon Wealth of Nations*, 11 NATURE CLIMATE CHANGE 704, 706 (2021); Karina von Schuckmann, *et al.*, Heat Stored in the Earth System: Where Does the Energy Go?, 12 EARTH SYST. SCI. DATA, 2013, 2029 (2020), <https://doi.org/10.5194/essd-12-2013-2020> (“Stabilization of climate . . . requires that EEI be reduced to approximately zero to achieve Earth’s system quasi-equilibrium.”).



restore balance to the climate system.<sup>21</sup> A global atmospheric CO<sub>2</sub> concentration of no more than 350 ppm would stabilize the long-term heating of the planet to less than 1°C above pre-industrial levels.<sup>22</sup>

In order to fulfill its constitutional function of anticipating and preventing harms, DEQ's MEPA reviews must immediately take into account the already significant EEI and evaluate whether: (1) each proposed projects being reviewed will increase or decrease Montana's GHG emissions, thereby exacerbating or reducing the EEI; and (2) whether there are economically feasible and technically available renewable energy alternatives to proposed fossil fuel projects that will reduce Montana's GHG emissions and be consistent with restoring Earth's Energy Balance and ensuring that Montana is doing its part to decarbonize its energy sectors and economy, thereby minimizing future climate harms to Montana's environment and children.

### **III. Montana Can Decarbonize its Economy by 2035-2050.**

There *are* reasonable alternatives to the climate harms currently being inflicted on Montana's environment and children. The August 14 Order made detailed findings, based on un rebutted expert testimony, concerning the economic and technological feasibility for Montana to transition away from fossil fuels in the coming years. In particular, the August 14 Order found that "non-fossil fuel-based energy systems across all sectors, including electricity, transportation, heating/cooling, and industry, are currently economically feasible and technologically available to employ in Montana."<sup>23</sup> Based on the undisputed expert testimony of Dr. Mark Jacobson, the District Court found that it is technically and economically feasible for Montana to "replace 80% of existing fossil fuel energy by 2030 and 100% by no later than 2050, but as early as 2035."<sup>24</sup>

Transitioning to renewable energy, "in addition to direct climate benefits, will create jobs, reduce air pollution, and save lives and costs associated with air pollution."<sup>25</sup> It would also reduce energy costs for Montanans by \$6.3 billion per year.<sup>26</sup> Under one scenario discussed during the *Held* trial, Montana's all-purpose energy (i.e., across all energy sectors) for the year 2050 could be met with 4.5 gigawatts (GW) of onshore wind, 3 GW of rooftop solar PV, 2.9 GW of utility-scale solar PV, 0.17 GW of geothermal electricity, and 2.7 GW of hydropower (which already exists).<sup>27</sup> Importantly, under a 100% clean, renewable (i.e., wind, water, sunlight) energy economy, Montana's energy needs in 2050 would "decline significantly (over fifty percent) as compared to a business-as-usual energy system due to a mix of gains in energy efficiency in vehicles and

---

<sup>21</sup> See August 14 Order at 21. See also James Hansen, *et al.*, *Assessing Dangerous Climate Change: Required Reductions of Carbon Emissions to Protect Young People, Future Generations and Nature*, 8 PLOS ONE e81648 (2013).

<sup>22</sup> See August 14 Order at 21. See also Johan Rockström, *et al.*, *Safe and just earth system boundaries*, 619 NATURE 102-111, 104 (2023) ("One-degree Celsius global warming is consistent with the safe limit proposed in 1990 and the PB [planetary boundary] of 350 ppm CO<sub>2</sub>."); James Hansen, *et al.*, *Young people's burden: requirement of negative CO<sub>2</sub> emissions*, 8 EARTH SYST. DYNAM. 557-616, 578 (2017) ("The 350 ppm CO<sub>2</sub> target is moderately stricter than the 1.5°C warming target. The near-planetary energy balance anticipated at 350 ppm implies a global temperature close to recent values, i.e., about +1°C relative to preindustrial.").

<sup>23</sup> August 14 Order at 81.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 82.

<sup>27</sup> *Id.*

appliances, and through eliminating the significant amounts of energy required to extract, transport, and refine fossil fuels.”<sup>28</sup>

Not only did the *Held* Defendants, including DEQ, fail to present any evidence refuting the copiously detailed harms to the Youth Plaintiffs caused by Defendants’ conduct, Defendants did not present any evidence at trial to dispute the benefits or feasibility of a renewable energy transition in Montana. Montana has abundant renewable energy resources that, when fully harnessed, “can provide enough energy to power Montana’s energy needs for all purposes in 2050.”<sup>29</sup> As the District Court recognized, “[t]he current barriers to implementing renewable energy systems are not technical or economic, but social and political” – and primarily result from government policy and action that continues to support fossil fuel energy sources at the expense of a just and rational transition to clean, renewable sources of energy.<sup>30</sup>

Given the unequivocal connection between fossil fuels and climate change, the significant degradation that has occurred to Montana’s environment and harm to Montana’s children because of fossil fuels and climate change, and the present technical and economic feasibility of renewable sources of energy, there is no justification for Montana to continue a business-as-usual exploitation and development of its fossil fuel resources. The State of Montana and DEQ must implement MEPA and the relevant substantive permitting statutes to decarbonize Montana’s energy sectors and economy in order to safeguard the State’s precious ecosystems and resources, and to uphold the basic constitutional rights of its citizens, in particular Montana’s youth. DEQ, and other Montana agencies, must consider alternatives to fossil fuel activities during MEPA review and consider whether each proposed project is consistent with Montana’s need to decarbonize all energy sectors by 2035 and by no later than 2050.

#### **IV. DEQ’s MEPA Analyses Must Quantify the Amount of GHG Emissions A Project Will Cause, Determine the Potential Climate Impacts in Montana That Will Result From Such Emissions, And Evaluate Available Alternatives.**

MEPA is “an essential aspect of the State’s efforts to meet its constitutional obligations.”<sup>31</sup> While MEPA itself may be procedural, the statute effectuates and implements Montanans’ substantive and fundamental right to a clean and healthful environment by ensuring an “adequate review of state actions.”<sup>32</sup> In other words, “[t]he essential purpose of MEPA is to aid in the agency decision-making process otherwise provided by law by informing the agency and the interested public of environmental impacts that will likely result from agency actions or decisions.”<sup>33</sup> As the August 14 Order in *Held* made clear, the MEPA Limitation, § 75-1-201(2)(a), MCA, is facially unconstitutional because it “constrains [state agencies including DEQ] from making fully informed

---

<sup>28</sup> *Id.* at 83.

<sup>29</sup> *Id.* at 84.

<sup>30</sup> *Id.*

<sup>31</sup> *Park Cnty.*, ¶ 89.

<sup>32</sup> Mont. Code Ann. § 75-1-102(1)(a), (b).

<sup>33</sup> *Bitterrooters for Planning, Inc. v. Mont. Dep’t of Env’tl. Quality*, 2017 MT 222, ¶ 18, 388 Mont. 453, 461, 401 P.3d 712, 719; *see also Park Cnty.*, ¶ 70 (MEPA “enable[es] fully informed and considered decision making, thereby minimizing the risk of irreversible mistakes depriving Montanans of a clean and healthful environment.”).

decisions through their environmental analysis about the scope and scale of the impacts to the environment and Montana’s children and youth when conducting environmental reviews.”<sup>34</sup>

With the MEPA Limitation declared unconstitutional and the *Held* Defendants, including DEQ, permanently enjoined from acting in accordance with the statute,<sup>35</sup> DEQ must now adhere to the constitutionally-grounded purposes of MEPA and fully consider the scientific information about climate change and how further GHG emissions from fossil fuel activities will affect Montana’s environment and citizens, especially youth. Immediate consideration of such information during MEPA environmental reviews will allow DEQ to make fully informed decisions under its existing substantive permitting statutory authority, decisions that comply with DEQ’s constitutional obligations. Further, given current climate change disruption and degradation to Montana’s environment and natural resources and the current economic and technical feasibility of non-fossil fuel-based energy systems, DEQ’s MEPA analyses must evaluate available alternatives to fossil fuel projects (including the availability of renewable energy options to meet Montanans’ electricity and energy needs).<sup>36</sup>

Although DEQ has instituted this public comment period and ostensibly plans to convene a year-long stakeholder group to solicit input on how to conduct MEPA analyses of GHG emissions and climate impacts,<sup>37</sup> this drawn-out process is unnecessary, because: (1) DEQ *already knows how to conduct* GHG emissions accounting and climate impacts analysis in MEPA reviews and was doing so prior to the codification of the MEPA Limitation in 2011; and (2) the science is clear that any additional GHG emissions from fossil fuel activities would further destabilize Montana’s climate system and further degrade Montana’s *already* unconstitutionally-degraded environment. DEQ cannot use this stakeholder process as justification for delaying immediate implementation of the District Court’s August 14 Order in *Held*, which is binding on DEQ *now*.<sup>38</sup> As the District Court in *Held* found:

FF #214. “It is possible to calculate the amount of CO<sub>2</sub> and GHG emissions that results from fossil fuel extraction, processing and transportation, and consumption activities that are authorized by Defendants.”

FF #252. “Prior to 2011, Defendants were quantifying and disclosing GHG emissions and climate impacts from fossil fuel projects.”

---

<sup>34</sup> August 14 Order at 74; *id.* at 75 (MEPA Limitation “prevents the availability of vital information that would allow Defendants to comply with the Montana Constitution and prevent the infringement of Plaintiffs’ rights.”).

<sup>35</sup> *Id.* at 102.

<sup>36</sup> *See id.* at 81 (MEPA Limitation caused the State to “ignore renewable energy alternatives to fossil fuels,” despite non-fossil fuel-based energy technology being “economically feasible and technologically available to employ in Montana.”).

<sup>37</sup> *See* Montana Department of Environmental Quality, *MEPA – DEQ MEPA Implementation Comment Portal and Public Listening Sessions* (Sep. 27, 2023), <https://deq.mt.gov/News/publiccomment-folder/MEPA-09-2023>.

<sup>38</sup> *See* Order Denying Defendants’ Motion for Clarification and for Stay of Judgment Pending Appeal, *Held v. State of Montana*, CDV-2020-307, (Mont. 1st Jud. Dist. Ct., Nov. 21, 2023).

FF #257. “If the MEPA Limitation is declared unconstitutional, state agencies will be capable of considering GHG emissions and the impacts of projects on climate change.”<sup>39</sup>

Ultimately, because the District Court found Youth Plaintiffs’ constitutional rights are *already* being violated due to the *current* atmospheric concentration of GHG emissions and resulting degradation of Montana’s environment and natural resources, it is incumbent upon DEQ, *before* issuing permits, to determine whether the proposed project will further violate Youth Plaintiffs’ constitutional rights. DEQ must use information gathered through MEPA reviews to inform its permitting decisions under the substantive permitting statutes it implements and use its ample statutory discretion under those statutes and deny the sought permit, license, or other authorization for fossil fuel projects if required to protect the constitutional rights of youth.

## V. Conclusion

To address ongoing violations of their constitutional rights, sixteen brave Montanans, now between the ages of six and twenty-two, took their state to court and on August 14, 2023, won an historic victory. DEQ is bound by the District Court’s August 14 Order *now*. DEQ must immediately begin fully implementing and complying with the August 14 Order *in Held*, including by conducting GHG emissions accounting and climate impact analysis in MEPA reviews and by fully considering economically feasible and technologically available renewable energy alternatives to fossil fuel projects. In its MEPA reviews, DEQ must consider whether each proposed fossil fuel project is consistent with restoring Earth’s Energy Balance and must evaluate alternatives to fossil fuel projects (including the availability of renewable energy). Based on the results of those MEPA reviews, DEQ can and must begin exercising its ample statutory discretion to deny permits, licenses, and other authorizations for further fossil fuel projects in Montana where necessary to comply with its obligations under the Montana Constitution and to avoid further infringement of the constitutional rights of Montana’s children. DEQ must do this *now* and cannot use this public comment process to delay bringing its conduct into constitutional compliance.

Sincerely,



Nathan Bellinger  
Counsel for Plaintiffs in *Held v. State of Montana*  
Our Children’s Trust  
P.O. Box 5181  
Eugene, OR 97405  
nate@ourchildrenstrust.org

---

<sup>39</sup> August 14 Order at 67, 73, 74 (citations omitted).



Stillwater Mining Company dba as Sibanye-Stillwater

**Business Address:**

PO Box 1330 • 536 E Pike Ave  
Columbus • Montana • 59019

Tel +1 406-322-8700

Fax + 1 406-322-8831

December 1, 2023

**Via Email**

Christopher Dorrington  
DEQ Director  
DEQ, Director's Office  
P.O. Box 200901  
Helena, MT 59620-0901

**RE: Stillwater Mining Company's Comments to DEQ's Request for Input Regarding Modernization of MEPA**

Dear Director Dorrington:

Stillwater Mining Company (SMC) is submitting this comment letter in response to the Montana Department of Environmental Quality's (DEQ) request for suggestions on changes to its implementation of the Montana Environmental Policy Act (MEPA).

**I. Any proposed changes to MEPA or its implementation should be directed toward providing a consistent, reliable framework for analyzing impacts of a potential state action.**

MEPA is a procedural statute intended to meet its dual aims, to ensure that: (1) environmental attributes are fully considered by the legislature in enacting laws to fulfill constitutional obligations; and (2) the public is informed of the anticipated impacts in Montana of potential state actions.<sup>1</sup>

SMC has demonstrated its dedication to operating in a sustainable and responsible manner. It is committed to using the best available technologies and practices to ensure safety and environmental stewardship for its operations, including for any actions subject to MEPA review. To this end, SMC has consistently dedicated years of study and analysis to the preparation of changes in its operation of the Stillwater Mine and East Boulder Mine and is continually engaged in a transparent planning process with local stakeholders through the Good Neighbor Agreement and public engagement. Through this process,

---

<sup>1</sup> Mont. Code Ann. § 75-1-102.

ensuring that all parties, agencies, and stakeholders have clear, well-defined guidelines is vital in meeting the dual aims of MEPA.

Where there is a lack of guidance in the statute or in the expectations in the MEPA review process, it creates delay, undue cost, and increases uncertainty for everyone involved. But where there are clear expectations, particularly when reflected in the statutory language, the courts and agencies are able to provide the consistency and transparency called for by MEPA.

SMC supports the inclusion of climate change analysis in the modernization of MEPA. However, in light of recent—but not yet settled—legal developments in our state courts, the question of MEPA modernization need not be so narrowly tailored to whether an agency must consider impacts of climate change. Rather, the focus should be on what procedures or mechanism can be utilized to consistently provide useful information to the public while still ensuring the expectations are clear during the review process—which, depending on the state action under review, may or may not include climate change impacts.

Focusing on a consistent and reliable process for evaluating the impact of an action can assist in all aspects of MEPA review. This could be based on comparable federal guidance or similar analytic tools or processes used in other states. Regardless, the process should be guided by the rule of reason and be proportionate to the anticipated impacts of the proposed action. After all, as a procedural statute, the goal is to consider the impact before making a decision. MEPA does not—and was not intended to—provide any additional *regulatory* authority beyond that already explicitly provided for in existing statutes simply because an impact has been identified or analyzed.<sup>2</sup> Thus, any proposed changes to MEPA or its implementation should be directed toward providing a reasonable, consistent, and reliable framework for analyzing impacts of a potential state action.

## **II. Uniformity is key to consistency and fulfilling the mandate of MEPA.**

Many of the vital components necessary to implement MEPA are set forth in administrative rule rather than in Montana Code. Although the MEPA “model rules” were created for agencies to use as their respective implementing regulations, many of the definitions and provisions could be clarified and incorporated into statute to provide more certainty and uniformity in the MEPA process statewide and across agencies. For example, a major component of MEPA and the basis for determining the level of review required under MEPA is the significance of impacts associated with a proposed action. Yet, MEPA is silent on what constitutes a “significant impact affecting the quality of the human environment.” State agencies, therefore, have the discretion to determine the meaning of “significant” which creates uncertainty in the applicability of MEPA and the level of environmental review that is applied. As a result, MEPA is sometimes implemented differently across agencies, and they are left with a lack of clear guidance

---

<sup>2</sup> Mont. Code Ann. § 75-1-102(b).

to determine when environmental review is necessary and, if so, what level of analysis is required. Stillwater would be interested in reviewing proposals to bring more certainty and uniformity to this process.

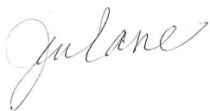
**III. Utilizing applicant third-party contractors for EIS preparation could save substantial time and money during the review process.**

DEQ's standard practice for preparing an EIS for some of its larger projects is to serve as the contracting entity with a third-party to assemble the necessary information and draft the EIS document. The administrative rules allow an agency to recover this cost from the project proponent. Nothing in MEPA, however, requires that the initial contracting and funding be channeled through the agency overseeing the review. Often, the current practice creates delays in initiating the MEPA review process and in invoicing the project proponent. Both aspects increase the overall time and cost associated with preparing an EIS. If the project proponent were allowed to initiate the contract with the MEPA preparation consultant, this would reduce delay, eliminate DEQ's administrative burden and costs associated with managing the contract, but still allow for the agency to retain control over the scope of review and overall analysis set forth in the EIS document. This ultimately would allow the agency to focus its resources and attention on the review itself.

**IV. Conclusion**

As DEQ evaluates the public comments submitted as part of its MEPA modernization effort, SMC looks forward to further opportunities to engage on these issues in the appropriate forum. As indicated, SMC values reasonableness, proportionality, consistency, and reliability in the MEPA process and it trusts that any changes to MEPA or its implementation that DEQ may consider be directed toward those aims. If you have any questions regarding the comments raised in this letter, please feel free to contact me at (406) 980-0445, or Randy Weimer at (406) 321-0015.

Sincerely,



Jen Lane  
Environmental Permitting Manager  
Sibanye-Stillwater  
US PGM Operations

Cc: DEQ (Rebecca Harbage and Craig Jones)  
SMC (Heather McDowell, Randy Weimer, and Matt Wolfe)



November 30, 2023

Christopher Dorrington  
Director  
Montana Department of Environmental Quality  
1520 E. 6th Avenue  
Helena, Montana 59601

***VIA Montana DEQ Comment Portal***

**Re: DEQ MEPA Conversation**

Dear Director Dorrington:

Signal Peak Energy, LLC, appreciates the opportunity to join DEQ's MEPA Conversation. As an applicant with recent experience with DEQ's MEPA process, Signal Peak has a unique perspective on DEQ's implementation of MEPA. While any substantive changes to MEPA must be deliberated upon and approved by the Montana Legislature, Signal Peak believes that DEQ's MEPA Conversation will provide value by developing ideas that the Legislature can consider in its next session.

Signal Peak operates the Bull Mountains Mine No. 1, the only underground coal mine in Montana. The Bull Mountains Mine is a technological leader that uses longwall techniques, many of which have been developed by Signal Peak, to safely and efficiently mine the Mammoth coal seam with minimal surface impacts. Underground coal mining is, of course, a highly regulated industry, and Signal Peak appreciates DEQ's commitment to fair and vigorous enforcement of all of its regulatory programs that apply to the mine, including MEPA.

A MEPA review is intended, by statute, to "assist the legislature in determining whether laws are adequate to address impacts to Montana's environment and to inform the public and public officials of potential impacts resulting from decisions made by state agencies." § 75-1-102(3)(a), MCA. A MEPA review should therefore be focused on efficiently completing the analysis that will serve this purpose. Extensive and extended analyses that provide no additive informational value do not serve the statutory purpose and should be avoided. Delaying state actions, including issuance of permits, has significant adverse impacts, not only to project applicants, but to the multitude of stakeholders who would benefit from projects and state actions that are improperly delayed. Congress has recently amended the National Environmental Policy Act (NEPA) to impose time limits on review. These time limits serve an important limiting function to ensure that the review is appropriately focused. DEQ and the Legislature should consider adding similar guardrails to MEPA to ensure that the process continues to serve its intended purposes. To the extent that lack of resources or employee turnover are factors in permitting delays, DEQ may consider recommending adding employees to permitting staffs

and/or offering retention bonuses or other salary incentives to ensure timely and efficient review of all applications which are submitted to DEQ.

Similarly, DEQ and the Legislature should consider revisions aimed at reducing the abuse of public and judicial review of MEPA decisions by special interest groups. Litigation challenging permit decisions can drag on for years, draining taxpayer and applicant resources as special interest groups attempt to develop and enforce policies via the courts that they cannot achieve through the appropriate democratic channels. DEQ and the Legislature should consider steps to ensure that litigation on MEPA issues is serving the public interest by allowing review only of non-frivolous claims by individuals who have real, personal interests in the proposed project. Among other reforms that would ensure review is available where appropriate but reduce the potential for abuse are:

- Restricting judicial review to named individuals who participated in the administrative public process and who have a concrete and regular interest in the area affected by the proposed action where the interest is proven with a sworn affidavit detailing the individual's use of the area, the mechanism by which the individual believes the proposed action will adversely affect the individual's use of the area, and how a decision in the individual's favor will prevent the alleged harm.
- Requiring a complaint challenging a department's compliance with MEPA to be filed within 30 days of the department publicly posting notice of the decision.
- Limiting the scope of judicial review to issues meaningfully raised before the department in the administrative process.
- Limiting the scope of judicial review to issues clearly identified in the complaint.
- Allowing any prevailing party in judicial review to recover attorneys' fees.

Signal Peak has participated in the Public Listening sessions and reviewed some of the comments received via the Comment Portal. Signal Peak believes DEQ is appropriately transparent but is generally supportive of suggestions made by various members of the public to use new technologies in public communications. Signal Peak urges DEQ to consider ways to ensure that public notice approaches are appropriately designed for current modes of communication and news distribution. Signal Peak further supports the suggestion to make DEQ MEPA documents easily available and, if possible, searchable online. Additional changes to the procedure DEQ employs throughout a MEPA evaluation may also be beneficial. Signal Peak would welcome the opportunity to discuss its experience as an applicant as more specific proposals are developed.

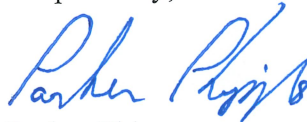
The public comment suggestions regarding changes to the scope of DEQ's substantive MEPA analysis that Signal Peak has reviewed appear to be restricted to high-level suggestions

without a clear implementation plan. As proposals become more concrete, Signal Peak would be pleased to provide more specific comments. However, Signal Peak notes that broad mandates to analyze particular subjects run the risk of diluting the usefulness of specific MEPA analyses. To fulfill its purpose of informing the public and assisting the decision maker in choices among alternatives, a MEPA evaluation must be tailored to the proposed action. The specific topics analyzed in the MEPA document must be determined by the proposed action and its expected impacts. Signal Peak urges DEQ to carefully consider whether and how any proposed reform, if implemented, will serve the purpose of providing useful information for the public and decision-maker to understand the unique impacts of the proposed project and its alternatives. Statutory changes that require the evaluation of generalized topics untethered to the project run the risk of requiring the agency to generate the “excellent paperwork” criticized in federal NEPA case law for failing to provide meaningful information upon which to base a decision.

For example, many commenters have urged DEQ to incorporate consideration of climate change in MEPA analyses but have not provided any suggestions on how such a complex topic should be addressed on a project-specific basis. Climate change models and monetization metrics can vary substantially depending on the assumptions used to the point that federal courts routinely affirm agency decisions not to use certain metrics, such as the social cost of carbon. Such tools also suffer from over-generalization because they rely on assumption about emissions factors, rather than an accurate estimate of greenhouse gas emissions associated with the project under evaluation. Signal Peak urges DEQ to carefully consider the reliability, objectivity, and accuracy of any metric suggested to evaluate climate change. Tracing a line of causation from a given Montana agency action to climate change impacts experienced in Montana is even harder. Signal Peak is aware of no method that that can do it. In any analysis of climate change, DEQ must be candid with the public about the limits on its analysis.

Signal Peak commends DEQ on its decision to launch the MEPA Conversation and looks forward to ongoing discussions over the coming months about changes to MEPA that would further its purpose of efficiently and effectively serving the public interest.

Respectfully,



Parker Phipps  
President and CEO  
Signal Peak Energy, LLC



December 1, 2023

Montana Trout Unlimited  
312 North Higgins, Suite 200  
P.O. Box 7186  
Missoula, Montana 59807

Montana Department of Environmental Quality  
1520 East Sixth Avenue  
Helena, Montana 59601

*Submitted via online form:*

<https://storymaps.arcgis.com/stories/4e14fb535c034e08bcf87c6c2a113c9d>

**Re: Montana Trout Unlimited comments on DEQ MEPA Implementation Scoping Session**

To Whom It May Concern:

Thank you for the opportunity to provide comments on the *Department of Environmental Quality (DEQ) Montana Environmental Policy Act (MEPA) Implementation Scoping* process. We appreciate the opportunity to be involved in the public scoping process around opportunities to improve the effectiveness and efficiency of implementation of the MEPA statutes and rules, and we wanted to be sure to offer formal written feedback as requested by the agency. Thank you in advance for your consideration of these comments.

Founded in 1964, Montana Trout Unlimited (MTU) is the only statewide grassroots organization dedicated solely to conserving, protecting, and restoring Montana's coldwater fisheries. Montana Trout Unlimited is comprised of 13 chapters across the state and represents more than five thousand Trout Unlimited members and supporters.

MTU has great interest in this topic given our mission to conserve, protect and restore Montana's coldwater fisheries and their habitats. In fact, each element of that mission leads us to finding ourselves in a different role in the MEPA process. At times we are participating in the public participation process on a proposed action that may impact important fisheries habitats, and at other times we are engaged in the MEPA process as a sponsor of a proposed action to restore habitats. That diverse perspective gives us a unique look at the law from a multitude of perspectives. However, it foremost gives us an overarching belief that good government is good government and the values of a common set of rules, certainty, and ample opportunity for public participation will lead to better and more durable decisions that are grounded in a process that takes a "hard look" at the environmental impacts using the best available science.

One of the primary values that the MEPA process affords is the opportunity for citizens to learn, participate, and provide comments on proposed state actions. In fact, the MEPA process often serves as the primary conduit for Montana citizens to exercise the Constitutional protections offered to them to participate in their government. Since the passage of the law however, much about how our world works and how we communicate amongst each other has changed. We believe that MEPA should also reflect the changing world and would recommend that much progress could be made in the area around strengthening, modernizing, and improving the opportunity for the public to be robustly engaged in state decision-making efforts. We believe that earlier and more informed public participation will lead to better and more durable decisions that protect the environment. That also means that the public is afforded easy to find access to the public record associated with any MEPA analysis that are digitally available at no charge. As an organization that helps to facilitate those public processes with thousands of members statewide, we would welcome the opportunity to provide further feedback about emboldening MEPA's call around public participation and engagement.

Further, our organization follows and participates in various MEPA processes across state government that are conducted by many agencies. What we have found is that through the years the implementation of the law has evolved into widely different protocols and procedures across these state agencies to invoke the same law. For example, the process of completing a checklist does look different at Fish, Wildlife, and Parks (FWP) for a private fishpond then it did at the Department of Natural Resources and Conservation (DNRC) for state grant award (prior to many of those grants being exempted from the law in 2023). That can often lead to confusion, delay, misunderstanding, and inefficient decision-making processes. We believe that there is room to make implementation of the law more consistent across state agencies to afford better and more durable decisions through more informed participation.

Much of the public discussion around your scoping effort has centered on the integration of climate analysis into the MEPA decision-making. We do believe that *Held* holds the agencies to find strategies to follow the spirit of the law in taking a hard look at all elements of potential impacts related to a state decision, including climate. Further, that analysis must include a real conversation about the impacts of climate on the natural environment to provide meaningful discussion about mitigation and adaptation strategies, which is of particular importance in the context of fish and wildlife resources. Both elements require the agency to use the best, most up-to-date science in its evaluation of environmental impacts, and they may require a hard conversation about the substantive versus procedural nature of today's law. While we do not have all the answers of how the DEQ will account for these weighty topics in the MEPA process today, we do believe that the agency already has adequate tools in statute and enough best practices are available in the government and private sector to achieve the goal of an adequate calculation of climate impact in the MEPA process.

We also know, through our work and as observers of the legislative process, that there is great need for continued public education and outreach regarding MEPA. In that experience we see much confusion about what MEPA is and is not, what the role is of MEPA, what the actual requirements are, and confusion around the nuanced relationship between MEPA and the permitting statutes. While we are unsure who's responsibility that public education and outreach

effort should be, it is a point that much more discussion could be afforded. Further, more robust training of practitioners in government, the private, and the non-profit sector could help bridge misunderstandings and inconsistent implementation of the law. In that regard, many examples exist in the world of water law where the State Bar affords opportunities for practitioners from all backgrounds to come together to build common understanding.

Finally, we strongly support the agency's intuition to convene a diverse stakeholder group to work through the various challenges surrounding implementation of the law. Practitioners of the law can bring great value when convened to guide recommendations to the agency about best practices and common-sense revisions that can make the law work better for Montana citizens and the agency alike that provides for the constitutionally provided protection for Montana's environment and natural resources. We do not feel that there will be much need for statutory recommendations; however, what the law has become is a piecemeal series of amendments through the years and better protocols and implementation tools may be necessary. We feel that many of the areas that we discussed above would serve as ripe points to start discussion amongst such a stakeholder group.

Please do not hesitate to contact us with any questions or if you need additional information regarding the comments that we have submitted (via email at [clayton@montanatu.org](mailto:clayton@montanatu.org) or by phone at 406-543-0054). Again, thank you for the opportunity to comment, and we appreciate the open public process used by the Department to develop this strategy and next steps.

Respectfully,



David Brooks  
Executive Director



Clayton Elliott  
Conservation Director

cc:

DEQ Director Christopher Dorrington  
DEQ Public Policy Director Rebecca Harbage



To: Montana DEQ MEPA administrators and Managers

FROM: John W. Herrin 2855 Sundown Road Helena 59602 406-202-0528

Date: December 1, 2023



Subject: Requesting DEQ Develop Amendments to MEPA Statutes and Rules to Address Past Administrative & Legal Shortcomings of State Regulatory Agency(s) Review Process for Operating/Proposed: Mining, Energy, Real Estate, Transportation, Agriculture, Construction, Industrial, Forestry, State Lands Leasing/Developments ETC.

1. What Changes are needed to modernize MEPA Statutes & Rules.
  - A. Insert procedures for one or more **preapplication meetings** between Agency/Applicant/Potential Opponents etc. in order to reduce future litigation and to resolve problems very early on to save everyone time, money and heartaches that could have been avoided with proper vetting.
  - B. Insert procedural requirements for State Agency(s) to allow Montana Agencies to hire outside **Legal professionals – if the agency/applicants permitting actions could likely trigger costly future Administrative/procedural legal challenges.**
  - C. **Agencies must have clear directive to conduct Internal and external proactive Legal/administrative risk analysis and means to self-correct in an expedient and proactive manner.**
  - D. Agencies must be put on high notice that they need to **conduct internal legal/administrative risk analysis as all key phases of application processes.**
  - E. Insert rules/regulations for added **options for Agencies to hire seek outside and independent legal/procedural/options analysis and mechanism to pay** for hiring competent and unbiased consultants to assist Agencies to reach a high standard of administrative and legal standards that Montana constitution requires.
  - F. **Insert rules and statutes into all State Agency frameworks – the key Constitutional Directives** contained in Montana's unique Constitutional protections and Agency Administrative directives to make sure that Montana's constitutional mandates are understood and supported by all State Agencies and is the basic legal foundations for all administrative regulatory actions. EXAMPLE: The Held et.al. v. State of Montana is a clear example for long standing Montana Executive, Legislative and Administrative failures to properly incorporate important legal protections (e.g. clean and healthful environment, private property rights, etc.) into all State of Montana Administrative actions.
  - G. Insert procedures for regulatory reviews that **encourage/incentivize permit etc. applicants to choose creative operational/management solutions** (e.g. value engineering, cost saving rebates etc.) that might otherwise stretch or conflict standard practices -- as long as the Agency can prove the alternative administrative proposed actions results in measurable cost/benefit &



Environmental/Public Health & Safety benefits that otherwise would not be permitted under Local/State/Federal administrative rules. This is very complicated regulatory concept, but hopefully proper guardrails are inserted to avoid agency, applicant, or governmental bias and administrative failures or unnecessary legal challenges.

- H. **Insert requirements of all State Agencies to abide by the Montana Constitution and that whenever the legislature proposes administrative rule changes that could be legally challenged based on Constitutional protections of public health and safety or other Constitutional protected rights (e.g. enjoyment, and private property rights etc.), that the impacted agency's appropriate administrative and/or legal representative(s) must complete a detailed agency cost/benefit and legal analysis to be presented to the legislature before any final action on the changes happen.**

This State of Montana Administrative Rule Change is warranted because the 2021 and 2023 Legislature passed and the Governor Approved a wide range of legislation that forced Montanans to file costly and time consuming legal actions – resulting in a high percentage of passed legislation being ruled as unconstitutional or suspect pending further legal analysis. It is clear that we Montana Taxpayer & citizen's Constitutional Rights are not being protected or even considered by Legislature Republican Super-majority power and Governor's office under the current legislative process. As such, the Citizens of Montana must be protected in part through added Constitutional given mandates incorporated into revised MEPA and All State of Montana Administrative Regulations.

- I. MEPA regulations must incorporate mandates and administrative rules to address the legal failures of State Agencies proven in these long-list of: coal and hardrock mining air and water quality issues, real estate development water quality impacts, Colstrip Coal-fired Power-units 3 & 4 power plant air quality issues, newly constructed NEW Laurel NG Plant GHGE impacts, etc. :
- a. Held et.al v. State of Montana et.al. – Montana's youth will bear undue health, mental and livelihood hardships past, present and future which 1<sup>st</sup> District Judge Kathy Seeley, ruled in August 2023 required the State of Montana to consider all GHGE impacts in all current and future State Agency decisions, over ruling several 2023 Legislative attempts to block such adverse development impact criteria to be considered by State Agencies.
  - b. Mt Supreme Court Challenge of NW Energy's Laurel Natural Gas Peak Plant. April 2023 District Court Judge Michael Moses in Billings rules that MDEQ in 2021 illegally granted NEW Yellowstone Conty Generating Station for failing to address Green House Gas Emissions (GHGE).

But 2023 Legislature passes legislation revising MEPA to exclude GHGE unless federal government regulations are added to permits and Judge Moses vacated his April ruling originally vacating the NEW air quality permit. But in the Held v. Mt. the pending Supreme Court NEW Appeal case, the 16 young Montanans added legal filings adding in the NEW NG plant into the decisions, and as such the Mt. Supreme Court Case final

ruling will set precedence in both cases, plus chart new regulatory frameworks going forward.

Given Mt. SC legal ruling history and how solid the Held Case was in both legal and technical merits, it is highly likely that Judge Seeley's Held case ruling will stand.

If the Mt. Supreme court does rule that all State/local Agencies must consider global warming GHGE impacts, then MEPA and State Agencies must quickly pivot to address the massive landscape shift in past, present and future development review and permitting decisions.

- c. The US Office of Surface Mining & Reclamation recently rescinded the Westmoreland Cold Surface Mining Permit, because of documented groundwater and surface water cumulative saline and heavy metal contamination of East Fork Armelless Creek – the primary downstream discharge state water body. Downstream and nearby landowners and Northern Plains Resource etc. interests started challenging the massive coal mining operations at Colstrip way back in the early 1980s.

It should be noted that in the mid 1980's I was the hydrologist and water quality expert on the 6 member Montana State Lands EIS team and we first produced draft and final EIS on Westmoreland's AREA B expansion and we undertook the first Comprehensive EIS on the entire Westmoreland and Colstrip power plant EIS 2 years later.

- d. 10/24/23 "DEQ Sued over wastewater approval in Big Sky" DEQ's approval of the KOA Mountainside and Holliday West Yellowstone campgrounds wastewater treatment deep-well discharge permit was challenged on public participation and public right to know legal requirements statutes – lawsuit being filed by adjacent landowners and local land stewards.
- e. In addition, the Land Application of sewer wastewater at the Yellowstone Club south of Big Sky has been documented to be contaminating surface and alluvial ground water downstream (pharmaceuticals etc.). I worked on and approved the land application of treated wastewater for the Kohr's Ranch Deer Lodge back in mid 2000s, and as such DEQ should be looking into residual impacts to off-site from all wastewater treatment systems impacts to surface water – especially given the fact that pharmaceutical etc. are not effectively removed by standard Montana approved Wastewater systems and even small amounts of pharmaceuticals in surface water can adversely affect the reproductive health of aquatic life in receiving streams.

I know the Helena Wastewater Treatment plant discharges to Prickly Pear represents relatively high percentage of flow water PP Cr and I have not seen reports documenting impacts to downstream aquatic life in public agency announcements, which is not to say it is or is not a problem.

- f. The Dubia EAU United Nations Climate Change Summit (COP26) this Next week will discuss future commitments by the roughly 160 larger UN countries participating, but time will tell if the majority of countries actually commit and then follow through with the drastic measure needed to really make meaningful over all reductions in total GHGE going forward.

DEQ and the State of Montana are very small players in the overall picture, however Judge Seeley's Held decision and supporting documents prove Montana is a major supplier of global GHGE through the permitting of 5 coal burning facilities, mining and exporting of millions of tons of coal annually -- and coal is the absolute worst major GHGE contributor globally.

- g. Include discussions of how nearly all world major GHGE actors in the world are not meeting the 2016 Paris Accord targets for meeting promised reductions in the GHGE and in fact nearly all developed countries are actually increasing GHGE after pandemic crisis and nearly all will see GHGE increasing going forward despite their hollow promises.
- h. Colstrip Coal-fired Units 3 & 4 are the only coal-fired power plants in the US that are not updated with filtrations baghouse or electrostatic precipitation filters to capture mercury and hazardous air pollution known to cause cancer and other serious health problems (6/23/23 "Pollution rules could be costly for Colstrip"). Talen stated the cost to bring the plant up to standards could cost in excess of \$600,000,000 which may not be possible technically or financially.

SO why is the Montana PSC allowing NWE to increase their ownership share from 15% to 30% and possibly more as Oregon and Washington State Governments are forcing their utilities to divest interests in arcane and the worst form of electrical power generating systems that are not cost nor environmentally acceptable?

9/1/23 "Study: Corporate carbon damages likely in Trillions" "The world's corporations produce so much climate change pollutions, it could eat up about 44% of their profits if they had to pay damages for it according to a study by economists of nearly 15,000 public companies.

- 2. DEQ/State of Montana must consider closing all coal mining and coal burning operations in Montana at least by 2030 and must develop a comprehensive EIS for the entire state. Given the fact that for every 10,000 tons (?) of coal produced by Montana one future person will die, the fact that carbon tax and carbon costs are not factored into permitting and taxation decisions is a public health and safety and constitutional violation issue that has yet to be address and must be going forward from August 2023 Held Decision.
- 3. Given these recent Massive wake up calls which I have printed and saved totaling in the hundreds this one article shapes the sheer violent and world death and destructive total unbridled and

uncoupled Economic/health/social costs that every new bit of Carbon GHGE added to the worlds already 2X last 800,000 year maximum CO2 & Methane levels<sup>8</sup>.

8/30/2023 "Negligent manslaughter": Study finds climate change could kill 1 billion mostly poor people – A future person is killed every time 1000 tons of fossil carbon are burned," the authors report – reporting by Mathew Rozsa, SALON staff writer

4. DEQ must require MRI Berkely Pit operations to complete a comprehensive EIS like we did in mid 1980s. The Company also must immediately start conducting real public health screening studies of nearby residents
5. The State DEQ must addressing all major GHGE

These above requested changes are neither unwarranted nor unreasonable given past abuses and therefor the rights all Montana citizens to see incorporated clearly into all state of Montana Administrative rules as a matter of self-protections and legal rights.

State Montana must pay for and do immediately is hire a quality consulting firm(s) to complete and comprehensive EIS on all major sectors of State industrial business – whether tied to permitting or not and help define alternatives future and drastic courses of action to help move Montana to net carbon natural by 2030.

That is the new world recognized tipping point beyond which the consequences of slow action start to really accelerate and compound.



# Study: Corporate carbon damages likely in trillions

BY JIM BORENSTEIN  
Associated Press

The world's corporations produce so much climate change pollution, it could eat up about 44% of their profits if they had to pay damages for it, according to a study by economists of nearly 15,000 public companies.

The "corporate carbon damages" from those publicly owned companies analyzed — a fraction of all the corporations — probably runs in the trillions of dollars globally and in the hundreds of billions for American firms, one of the study authors estimated in figures that were not part of the published research. That's based on the cost of carbon dioxide pollution that the U.S. government is proposing.

Nearly 90% of that calculated damage comes from four industries: energy, utilities, transportation and manufacturing of materials such as steel. The study in the journal *Science*, released last week by a team of economists and finance professors, looks at what new government efforts to get companies to report their emissions of heat-trapping gases could mean, both to the firm's bottom lines and the world's ecological health.

Earlier this year, the European Union enacted rules that would eventually require firms to disclose carbon emissions and the United States Securities and Exchange Commission and the state of California are looking at similar regulations.

The study co-author Christian Leuz, a finance and accounting professor at the University of Chicago, said the idea "of shining a light on corporate activities that have costs to society is very powerful, but it is not enough to save the planet." An earlier study he found that after fracking was disclosed their pollution levels, those contamination levels dropped 10% to 15%, he said. The idea is consumers and stockholders would see the



DITA ALANGKARA, ASSOCIATED PRESS

Haze blankets the main business district Aug. 11 in Jakarta, Indonesia. The world's corporations produce so much climate change pollution, it could eat up about 44% of their profits if they had to pay damages for what they spew, according to a study of nearly 15,000 public companies.

damage and pressure firms to be cleaner, Leuz said.

Outside economists agreed.

Leuz and his colleagues used a private analysis firm that finds or estimates carbon emissions of some publicly owned companies and analyzed the carbon pollution from 14,879 firms. Then they compared them to company revenues and profits.

That calculation shows "which activities are particularly costly to society from a climate perspective," Leuz said. Still, he cautioned that "it would not be correct to just blame the companies. It is not possible to divide responsibility for these damages between the firms that make the products and consumers who buy them."

The calculations are for only a fraction of the world's corporations, with many public companies not included and private firms not listed at all, Leuz said.

The economists didn't identify or tease out single companies but instead grouped firms by industry and by country. And they only

used direct emissions, not what happens downstream. So the gas in a person's car does not count toward an oil company's emissions or corporate carbon damages.

The calculations use the U.S. Environmental Protection Agency's \$190 cost per ton for carbon dioxide emissions and the study doesn't give a bottom line number in dollars, just in percent of profit and revenues. Only when asked by The Associated Press did Leuz estimate it in the trillions of dollars.

At \$190 a ton, the utility industry averaged damages more than twice its profits. Materials manufacturing, energy and transportation industries all had average damages that exceeded their profits.

On the opposite end, the banking and insurance industries averaged climate damages that were less than 1% of their profits.

When looking at companies based on countries, Russia and Indonesia were the top for corporate climate damages, while the

United Kingdom and the United States were the lowest. Leuz said that reflects the age and efficiency of the companies and which type of industries were based in countries.

Several outside experts said the study made sense within certain limits, while a few found faults with some of the choices of what to count, saying not counting downstream emissions is a problem. Because it doesn't count those it "does not provide an incentive to reduce these to the level needed," said Bill Hare, CEO of Climate Analytics, which studies global emissions and reduction efforts.

"The results are important but perhaps not that surprising," Stanford University economist Marshall Burke said. "The bigger take-home is the number of caveats that are needed to do this analysis, indicating what a mess our emissions accounting systems currently are."

Appalachian State University's Gregg Marland, who helps track global emissions by country, said "good numbers do allow us to know who is producing the products that consumers want with the least contribution to climate change."

Nobel Prize-winning economist Paul Romer, formerly of the World Bank and now at Boston College, said the damage estimates are useful but need to be interpreted accurately, "without the moralistic framing and induced urge to punish."

Romer used the example of his move from New York to Boston. The initial move would go under the moving company's corporate carbon damage, but when he took some books from his home they would not. Misusing corporate carbon damage figures could put the moving company out of business and he'd drive his stuff instead, so total carbon emissions would not be changed. Shifting to zero carbon fuel makes more sense, he said.



## **"Negligent manslaughter": Study finds climate change could kill 1 billion mostly poor people**

**"A future person is killed every time 1000 tons of fossil carbon are burned," the authors report**

By MATTHEW ROZSA, SALON Staff Writer PUBLISHED ONLINE AUGUST 30, 2023 12:25AM (EDT)

**By the end of the century, nearly 1 billion mostly poor people could die due to climate change, a new study suggests. If climate change reaches 2°C higher than preindustrial levels, the level of death it will unleash would be catastrophic, according to research published in the scientific journal Energies.**

**If true, this means that even staying within the confines of the Paris climate accord — which pledges 2°C as the upper limit of global warming — will still lead to a humanitarian disaster.**

The authors, Joshua Pearce of Western University in Ontario, Canada and Richard Parncutt of University of Graz, in Austria, performed a meta-analysis on studies that examine fatalities caused by climate change impacts.

**They found that "a future person is killed every time 1000 tons of fossil carbon are burned."**

**The researchers concluded that "if warming reaches or exceeds 2 °C this century, mainly richer humans will be responsible for killing roughly 1 billion mainly poorer humans through anthropogenic global warming, which is comparable with involuntary or negligent manslaughter.**

**" The scientists emphasized the role of wealthy humans because research shows that they are disproportionately among the so-called "super emitters," or wealthy individuals whose carbon footprint is significantly greater than that of ordinary people.**

**"In 2019, fully 40% of total U.S. emissions were associated with income flows to the highest earning 10% of households," explained the authors of a recent study in PLOS Climate.**

**Climate change is "a 'new abnormal' and it is now playing out in real time — the impacts of climate change are upon us in the form of unprecedented, dangerous extreme weather events,"**

**Dr. Michael E. Mann, a professor at the University of Pennsylvania, told Salon in July. MORE FROM MATTHEW ROZSA**

decline, when climate starts to cool, as well as to connect upwelling changes in the Antarctic with the fast climate oscillations during ice ages.”

This more precise timing allowed the researchers to home in on the winds as the key driver of the upwelling changes.

The new findings also allowed the researchers to disentangle how the changes in Antarctic upwelling and atmospheric CO<sub>2</sub> are linked to the orbital triggers of the glacial cycles, bringing scientists a step closer to a complete theory for the origin of the ice ages.

“Our findings show that upwelling-driven atmospheric CO<sub>2</sub> change was central to the cycles, but not always in the way that many of us had assumed,” said Sigman. “For example, rather than accelerating the descent into the ice ages, Antarctic upwelling caused CO<sub>2</sub> changes that prolonged the warmest climates.”

Their findings also have implications for predicting how the ocean will respond to global warming. Computer models have yielded ambiguous results on the sensitivity of polar winds to climate change. The researchers’ observation of a major intensification in wind-driven upwelling in the Antarctic Ocean during warm periods of the past suggests that upwelling will also strengthen under global warming. Stronger Antarctic upwelling is likely to accelerate the ocean’s absorption of heat from ongoing global warming, while also impacting the biological conditions of the Antarctic Ocean and the ice in Antarctica.

“The new findings suggest that the atmosphere and ocean around Antarctica will change greatly in the coming century,” said Ai. “However, because the CO<sub>2</sub> from fossil fuel burning is unique to the current times, more work is needed to understand how Antarctic Ocean changes will affect the rate at which the ocean absorbs this CO<sub>2</sub>.”

*“Southern Ocean upwelling, Earth’s obliquity, and glacial-interglacial atmospheric CO<sub>2</sub> change” by Xuyuan Ellen Ai, Anja S. Studer, Daniel M. Sigman, Alfredo Martínez-García, François Fripiat, Lena M. Thöle, Elisabeth Michel, Julia Gottschalk, Laura Arnold, Simone Moretti, Mareike Schmitt, Sergey Oleynik, Samuel L. Jaccard and Gerald H. Haug appears in the Dec. 11 issue of Science (DOI: [10.1126/science.abd2115](https://doi.org/10.1126/science.abd2115)). The research was supported by the National Science Foundation (grant PLR-1401489 to D.M.S.), ExxonMobil through the Andlinger Center for Energy and the Environment at Princeton University, the Swiss National Science Foundation*



We, the undersigned, urge the Montana Department of Environmental Quality to immediately start analyzing climate change impacts in its review under the Montana Environmental Policy Act. The tools exist today for DEQ to begin analyzing and disclosing climate impacts of projects, and allowing public and state agencies to understand the impacts proposed projects may have on our environmental life support system, including our climate. Please immediately comply with the district court's decision in *Held v. State of Montana* and protect present and future generations from the devastating impacts of the climate crisis.

Signed by 368 individuals with first name, last name, and zip code:

Abby Huseth 59802	Archie Harper 59602	Blakeley Adkins 59047
Adela Awner 59102	Arleen Boyd 59028	Bob Seibert 59715
Allison Gay 59802	Art Butler 59602	Bob Williams 59870
Alan Hilden 59105	Barbara Chillcott 59601	Borries Demeler 59801
Alecia Larson 59047	Barbara Rosenkotter 98243	Brad Maddock 59601
Alice B Elrod 59934	Becky Mitchell 59858	Bret Luedke 59937
Alison Young 59912	Beth Madden 59715	Briana Schultz 59718
Amy Cilimburg 59802	Beth Taylor-Wilson 59804	Brigitta A. Lee 59801
Ann Williamson 59715	Beth Underwood 59870	Brooke Shifrin 59718
Anne Banks 59715	Betty Stroock 59715	Bruce Bender 59801
Anne Biby 59901	Bev Beck Glueckert 59802	Caitlin Piserchia 59801

Cameron Blake 59937	Claire Reichert Baiz, c/o Reichert Family 59405	David Rockwell 59831
Carla Abrams 59801	Claire Trauth 59870	Dawn Oehlerich 59937
Carol Averill 59520	Claudia Brown 59801	Debo Powers 59928
Carol Blake 59917	Clifford David 59047	Deborah Hanson 59301
Carol Marsh 59802	Clifford Gerrells 04281	Dee Anna 59632
Carol Northcut 59901	Colleen Hinds 59844	Denise Nelson 59847
Carole Addis 59802	Constance Poten 59802	Denise P. Tripp-Loran 59802
Catherine Nolan 59803	Craig Menteeer 59801	Dennis Heinzig 59937
Charlene M. Woodcock 59715	Curtis Kruer 59749	Dennis Tighe 59404
Charles Mabbott 59829	Dan Struble 59047	Diana Hammer 59601
Charles Wright 59804	Daniel Biehl 59405	Diana Vanek 59715
Chelsea Liddell 59801	David Lee Coble 59860	Diane Bergstein 59457
Cheyenna Burrows 59840	David Lowery 59803	Diane Sylling 59833
Chris Merriman 59937	David MacLean 22152-2801	Dixie Osborne 59079
Christie Ferruzzi 59934		Don Bonet 59901

Don Harris 59634	Eric Nelson 59802	Gina MacIlwraith 59701
Don Larson 59840	Erin Nuzzo 59823	Glenda Bradshaw 59601
Donald T Harris 59634	Erin Steva 59715	Grace Gibson-Snyder 59801
Donetta Klein 59801	Fran Penner-Ray 59601	Greg Oliver 59801
Donna Gleaves 59405	Fred Longhart 59901	Gretchen Nolan 59068
Doris Fischer 59749	Gail Greener 59801	Hal Schmid 59806
Douglas Rohh 59718	Gail Schontzler 59715	Hannah Hernandez 59844
Dr. Cheyl Reichert 59405	Gail Souther 59840	Harold Hoem 59802
Dr. Mark Shapley 59601	Gail Trenfield 59865	Helen Pilling 59920
Dylan Flather 59840	Gary Jones 59830	Hillery Daily 59829
Edward Platt Jr 59740	Gary Rillema 59725	Hunter Coleman 59601
Elaine Snyder 59901	Genevieve Teid 59047	India Maxwell 59715
Elizabeth Hancock 59715	George Hayes 59802	Isabel Shaida 59715
Ellen Loran 59802	George Ryffel 59463	Ita Killeen 59715
Eloise Kendy 59601	Gerry Jennings 59404	Jackie Foster 59725

Jackson Scholl  
59802

Jennifer Nitz  
59802

John Dunkum  
59801

Jade Markus  
59804

Jennifer Swearingen  
59715

John Feckanin  
59047

Jaime Rauch  
59803

Jerome Kalur  
59715

John McAdam  
59047

James Schmid  
59803

Jerome Walker  
59807

Jon Wright  
59101

Jan Hoem  
59802

Jill Davies  
59875

Josh Davis  
59801

Janet Childress  
59601

Jill Schaunaman  
59715

Joy LaClaire  
59718

Janet Hess-Herbert  
59601

Jim Barrett  
59047

Judy Matson  
59851

Janet Robinson  
59601

Jim Parker  
59802

Judy Moore  
59833

Janet Zimmerman  
59601

Jim Roach  
59804

Judy Staigmiller  
59718

Janice Drahos  
59725

JL Angell  
95672

Julia Cougill  
59601

Janice Lee  
59828

Joan Brownell  
59028

Julia Tiey  
59601

Jean Boone  
59106

Joanne Morrow  
59845

Julia Wintersteen  
59601

Jeff Morrow  
59845

Joanne Pawlowski  
59410

Julie Chapman  
59846

Jeff Sillick  
59601

Joe Loos  
59802

June Doolittle  
59065

Jennifer Abbott  
59741

Johanna DeVries  
59047

Karen Cochran  
59047

Karen Davidson  
59631

Kelly McDermott  
59602

Leslie Stoltz  
59758

Karen Driessen  
59803

Ken McLean  
59601

Lezlie Nelson  
59047

Karen McLean  
59601

Kenneth Lousen  
59802

Linda Holding  
59801

Karen Roholt  
59801

Kent Cochran  
59047

Linda Henderson  
59801

Kari Gunderson  
59826

Kerry Krebill  
59634

Linda Metzger  
59404

Kasey Felder  
59044

Kirk Stoner  
59254

Linda Patenaude  
59106

Kathie Daviau  
59102

Kirsten Halseth  
59804

Linda Schmitt  
59828

Kathleen Grubbs  
59102

Kris Spanjian  
59106

Linda Winnie  
59920

Kathleen Patrick  
59917

Lana Sangmeister  
59061

Lisa Fleischer  
59901

Kathleen Ralph  
59019

Larry Blackwood  
59715

Liz Ametsbichler  
59802

Kathy Kinzogl  
59911

Laughing Water  
59601

Lou Hegwer  
59101

Kathy Ross  
59718

Laura Ferguson  
59601

Louis Schmidt  
59937

Katy Duffy  
59030

Lee Calhoun  
59937

Luca Welle  
59901

Katy Spence  
59801

Len Kopec  
59410

Lucinda Reinold  
59065

Keith Blaylock  
59901

Leona Hardy  
59828

Lynn Patrick Doyle  
59047

Lynn Purl 59801	Martha Newell 59802	Mike Kadas 59802
M. OBrien 59860	Mary Catherine Dunphy 59301	Mindy Ferrell 59874
Madelyn Bouchard 59105	Mary Crowe Costello 59874	Misty Nelson 59803
Madlyn Moellering 59801	Mary Dostal 59102	Nancy Krekeler 59068
Marian Kummer 59716	Mary Fitzpatrick 59101	Nancy Ostlie 59715
Marilynn Cochran 59801	Mary LaPorte 59801	Neysa Dickey 59718
Mark Canright 08802	Mary Owens 59847	Nicholas Fitzmaurice 59601
Mark Carpenter 59802	Maryliss Filipovich 59601	Nike Stevens 59715
Mark Connell 59803	Maureen Gary 59847	Norane Freistadt 59601
Mark E. Polakoff 59068	Michael Alvernaz 59801	Norma Linsky 59901
Mark Fix 59301	Michael Hathaway 59801	Norma Scheidecker 59044
Mark Good 59404	Michael Lee 59624	Norman Bishop 59715
Mark Payne 59715	Michael W Evans 90034	O. Alan Weltzien 59725
Mark Schulein 59047	Michelle Kelly 59401	Olivia Vesovich 59801
Marta Meengs 599802	Mike Atkinson 59018	Pamela Kloote 59823

Pamela Willison 59901	Rande Mack 59741	Robert Grudier 59602
Patricia Ames 59803	Randy York 59801	Robert Hensler 59847
Patricia Hogan 59801	Raso Hultgren 59807	Robert Ray 59601
Patricia St Tourangeau 59828	Raymond D. Brown 59601	Robin Kent 59801
Patrick Merkt 59803	Rebecca Canright 08802	Robin Kratschmer 59102
Patty Laughlin 59870	Renee Gabrian 59068	Robin Vogler 59911
Paulette Hutcheon 59601	Richard and Nancy Tuber 59601-4325	Rochelle Gravance 59019
Penny Nord 59821-9155	Richard Clawson 59102	Roderick Jude 59730
Peter Landres 59802	Richard Mousel 59405	Ron Paulick 59405
Peter Metcalf 59912	Rick Kerr 59422	Rose Beaudin 59047
Peter Ropp 59808	Rick Whitman 59047	Roy O'Connor 59802
Peyton Olson 59601	Robert Balhiser 59602	Rozanne Smith 59801
Rachel Corley 59834	Robert Byron 59068	Russell Sydnor 59864
Rachel Rockafellow 59715	Robert Filipovich 59601	Ruth Swenson 59602
Rae English 59741	Robert G. Jones 59601	Sally Lydon 59472



Sally Stephenson 59715	Sheila Bonnard 59718	Steven Kloetzel 59854
Sandy Kindt 59715	Shelley Eisenrich 59845	Steven McCoy 59457
Sara Toubman 59601	Shirley Atkins 59802	Stuart Lewin 50401
Sara Walsh 59410	Sierra Harris 59715	Sue Kronenberger 59601
Sarah Bond 59601	Stan Bayley 59102	Susan Cahill 59901
Sarah Lundquist 59801	Stephanie McDaniel-Gilman 59803	Susan Mavor 59715
Sarah Merrill 59715	Stephen Motsco 59917	Susan Schwab 59701
Sarah Muller 59047	Stephen Linder 59106	Susan Teitelman 59802
Sas Weber 59714	Stephen Nelson 59802	Suzanna McDougal 59840
Sasha Abrahamson 59802	Stephen Stutzbach 59801	Sylvia Wood 59802
Scott Merrell 59873	Stephen Tyler 92865	Tarn Ream 59802
Shannon Hensler 59847	Stephenie Tubbs 59601	Ted Mead 59801
Shanti Devins 59801	Steve Krum 59044	Theodore Gable 59701
Shari Dayton 59102	Steve Martinez 59901	Thomas Meinzen 59715
Sharon Patton-Griffin 59404		Todd Cochran 59801

Todd Loran  
59802

William Geer  
59847

Todd Tanner  
59911

Winona Bateman  
59802

Tom Kresan  
59840

Winona Rachel  
59801

Tom Michalek  
59701

Yvonne Hauwiler  
59715

Tracy Mikesell  
59846

Zack Winestine  
59410

Val Colenso  
59635

Valarie Krum  
59044

Vanessa Hoesl  
59457

Vicki Watson  
59801

Vivianne Ostheimer  
59801

Wayne Tomicich  
59068

Wendy Kamm  
59442-0234

Wendy Twinn  
59034

Wendy Weaver  
59047

Will Swearingen  
59715



December 1, 2023

Christopher Dorrington, Director  
Department of Environmental Quality  
1520 E 6<sup>th</sup> Avenue  
Helena, Montana 59601

Submitted via email to: Rebecca Harbage, Public Policy Director

Dear Director Dorrington,

On behalf of Northern Plains Resource Council (Northern Plains), I am submitting the following comment in response to the Montana Department of Environmental Quality's (DEQ) call for feedback regarding the modernization of the Montana Environmental Policy Act, (MEPA). We appreciate DEQ's efforts to engage the public in this important process.

The Montana Environmental Policy Act passed in 1971 and instituted a "look before you leap" policy for Montana. MEPA was modeled after the National Environmental Policy Act. Both laws focus an agency's attention on the purpose and need for an action, all viable alternatives, and the environmental consequences of the action. The purpose of MEPA is to foster state government decisions that are informed, accountable, transparent, balanced, and open to public participation. And, most importantly, the purpose of MEPA is to ensure that the public benefits from a project outweigh its social and environmental costs.

Since its passage, MEPA has afforded the State's residents an opportunity to be involved in state actions, safeguarding our democratic right to participate in the important decisions that are being made by our government leaders that could affect generations of Montanans to come.

From the plains of eastern Montana to the mountains of the west, Northern Plains' members deeply care about this land they call home. Currently, policies under discussion have disproportionately favored industry interests, jeopardizing the well-being of everyday Montanans, who have suffered due to inadequate protections for their land, air, water, health, and livelihoods. Northern Plains believes it is vitally important that any changes to MEPA must prioritize the expansion of public rights and participation, which have been eroded in favor of industry over time as MEPA faced successive amendments. It must also ensure that the comprehensive and accurate assessment of the costs associated with climate pollution are revealed and promote unbiased, robust analyses that incorporate significant conservation expertise, free from industry dominance.

Enacted only a year before the 1972 Montana Constitutional Convention, MEPA served as a precursor to the strong environmental protections laid out in our state constitution. The

recent decision in the *Held v. Montana* case is, and should be, at the forefront of DEQ's efforts during this modernization process. Because of this historic decision, the court has confirmed that DEQ, along with other state agencies, is required to immediately come into compliance with Montana law by including climate analysis within environmental analyses and impact statements. The right to a clean and healthful environment requires a comprehensive process for analyzing climate impacts associated with proposed projects. When asked whether this analysis was possible in court, the DEQ administrator stated, "I do believe we could do this kind of analysis, yes."

Montana DEQ has the tools, knowledge and ability to analyze climate change impacts that various projects could inflict upon Montana. Contrary to the stance by others that DEQ lacks the authority to deny permits based on greenhouse gas emissions, the *Held* decision unequivocally affirms the authority and obligation of DEQ to deny permits that would violate our constitutional rights. This climate analysis should include all greenhouse gas pollutants including carbon dioxide, methane, nitrous oxide, and fluorinated gasses. The department must deny any proposal for a facility that emits more than 50 metric tons of CO<sub>2</sub> / year. [EPA – a typical passenger vehicle emits 4.6 metric tons / year.] Comprehensive and thorough analysis is critical to ensuring that the state is avoiding projects that have major future costs, both environmentally, financially, and to the health of Montana citizens.

Montana DEQ must comply with the district court decision and analyze climate impacts of proposed projects such as refineries, coal mines, and power plants, using currently available tools and must include in the facility's MEPA analysis the federal government's social cost of greenhouse gases. It should include the impacts from the entire life cycle of projects. Importantly, this must include the construction, operation, and maintenance as well as the production, mining, refining and processing of products, storage and transportation of products and wastes, consumption and combustion, and decommissioning and reclamation efforts. As well as, services associated with the project. This analysis should involve active and strong engagement from conservation experts to ensure that Montana's land, air, and water quality are protected. Along with these necessities, we need to compare the results of analyses of fossil fuel projects, including all greenhouse gasses, not just CO<sub>2</sub> and CH<sub>4</sub>, with the alternatives.

Along with the need to comply with the *Held* decision and begin addressing climate change when initially analyzing proposed projects, DEQ must also understand and address "stale" analysis for projects that are proposed, analyzed, and then lie dormant for many years before a final decision. Unfortunately, this is not uncommon in our state. As a recent example, the Spring Creek Mine's Youngs Creek Haul Road AM5 project was approved in September 2023 years after the original analyses were completed. This final determination was made even in the face of significant new circumstances discovered prior to the agency decision. Unfortunately in this case as others, DEQ simply moved forward and approved the action. In this specific case, the final decision came in September 2023 *after* the *Held* decision – and climate change impacts were NOT originally addressed in the Youngs Creek Haul Road AM5 analysis.

Additionally, with the delay of a final decision, other real impacts often become apparent. In this case and with time, water quality impacts to the Tongue River have become more

apparent. The Tongue River drainage is already failing to meet water quality standards due to excess salinity and/or specific conductivity (salts) throughout the watershed, and DEQ is now conducting an analysis of the watershed due to its importance to agriculture. Coal mining at Youngs Creek (which is within the upper Tongue River watershed) would likely increase salinity levels in the watershed. Surface disturbance at the mine and from the proposed AM5 haul road would also likely increase runoff and, thus, increase the salinity impacts to the Tongue River via its tributaries. These facts should have required DEQ to re-look at the original environmental analysis to address the original stale information.

Likewise, DEQ with its final decision in this case entirely ignored the potential (and now better known) impacts that the addition of Youngs Creek coal would cause to the surrounding air quality, in particular with regard to the crushing-and-loading facility, the baghouse associated with the rail load-out facility, and other facilities associated with the stockpile of coal pending its transportation and export to final destination. The original air quality permit issued to the Spring Creek Mine is devoid of *any* analysis associated with the addition of or content of coal from the Youngs Creek Mine and Haul Road.

A far more egregious example of DEQ failing to acknowledge or address stale – or total lack of – current environmental information is Signal Peak Energy’s Bull Mountain Mine. In Northern Plains’ January 2023 comments on the renewal of that mine’s Coal Surface Mining Permit C1993017, we pointed out that a full and complete environmental impact statement (EIS) that truly examines how this mine could significantly affect the natural, cultural, and human environment had *never* been done for the Bull Mountain Mine. The original environmental documents from the early 1990s included a federal NEPA EIS document that approved land exchanges consolidating coal ownership in the Bull Mountains and a state MEPA EIS that simply approved a mining permit. Through the next 30 years, each new action that either a federal or state agency had to complete only tiered to one of those documents (a total of four NEPA documents and two MEPA documents, and two of those six documents were overturned in court). This is truly a piecemeal approach based on incomplete and outdated information that was/is undoubtedly stale. In effect, this approach has meant that the required “hard look” at the potential environmental impacts of this mine as well as all foreseeable direct and indirect effects from the mine has never been done.

These are two recent examples of our organization’s frustration with how DEQ addresses its obligations to Montana citizens to protect our environment. MEPA was passed into law to protect our constitutional right to a clean and healthful environment, and any diminishment of MEPA undermines that right. Any change DEQ considers to the implementation process of this law must stand up to - and conform with - constitutional requirements. Throughout its history, MEPA has allowed Montanans to take action to preserve the state’s existing environmental integrity and protect the land they love. As the state agency tasked with protecting Montana’s environment, its citizens expect that any DEQ analysis of projects that affect our state’s many varied and important natural resources – and its citizens – is thorough, balanced, based on science, and objective. Often that job pits the agency against powerful private interests, but it is what we citizens expect from DEQ.

Thank you again for the opportunity to comment on this very important process.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ed Gulick', with a long horizontal flourish extending to the right.

Ed Gulick, Chair  
Northern Plains Resource Council's Clean Energy Task Force



# MONTANA STATE SENATE

Senator Janet Ellis  
Senate District 41

DURING THE SESSION  
State Capitol Building  
PO Box 200500  
Helena MT 59620-0500  
Phone: (406) 444-4800  
Web: leg.mt.gov

HOME ADDRESS  
PO Box 385  
Helena, MT 59624  
Phone: (406) 431-9157  
Janet.Ellis@legmt.gov

To: Director Dorrington, Montana Department of Environmental Quality (DEQ)

From: Senator Janet Ellis

Date: December 1, 2023

Re: MEPA review comments

These comments briefly address the three questions raised on the DEQ website at <https://deq.mt.gov/News/publiccomment-folder/MEPA-09-2023>.

## Question 1: What changes, if any, are needed to modernize MEPA?

- First, it is important to note, that the effort to “modernize” the Montana Environmental Policy Act (MEPA) is significantly different than what the First Judicial District Court determined in *Held v. State*, which requires an analysis within Environmental Assessments and Environmental Impacts Statements under MEPA of any projects that likely have Greenhouse Gas (GHG) emissions. Because DEQ is under a court order to implement this climate impact analysis under MEPA, it needs to start that process independently of a stakeholder/“modernization” analysis of MEPA. And because there is no injunction on the court-ordered climate change impact analysis currently required of DEQ, that analysis should start immediately.
- I believe that DEQ has the expertise within the agency to analyze the impacts of climate change under MEPA at least in the short-term, so it can start on this analysis – as stated above - immediately.
- Although MEPA statutes have been amended repeatedly by the Montana Legislature over many legislative sessions (especially in 2001 and 2011), in any “modernization” quest, I do not support pursuing changes to the MEPA statutes at the Montana Legislature. As DEQ knows, any legislation that appears before the legislature can change dramatically – and currently, the Montana Legislature would be inclined to weaken - not strengthen or modernize - MEPA. It is unfortunate, but the legislature sometimes keeps unconstitutional statutes within the Montana Code Annotated, even when it considers bills that would place constitutional language in the statute (e.g., SB 31 repealing the



unconstitutional Ballot Interference Prevention Act (BIPA) failed to pass the 2023 Montana Legislature).

- If MEPA rules need to be updated in an attempt to “modernize” them, they should be updated to reflect current court decisions.
- It is unclear why in 2023 changes to MEPA are being requested (other than the *Held* decision), given that significant past changes in the law were made and no agency decided that the rules needed to be changed.
- Since MEPA serves as the main vehicle available for citizens to participate in the permit process (commenting on state actions), and it also serves as the main vehicle citizens use to ensure that their right to a ‘clean and healthful environment’ is protected, it might make sense to strengthen the public comment process between agencies. That said, since all state agencies follow the same MEPA rules, but there is evidently a lack of consistency on how different agencies handle MEPA (and perhaps public comment), more training for staff implementing MEPA could ensure that the process is actually more consistent, etc. (i.e., training for consistency would increase consistent execution of the statute and rules).
- Because I do not pretend to know what corporate staff and similar professionals might want to change in regard to ‘modernizing’ MEPA, I will not comment on that area. That said, any changes to the MEPA process or rules needs to follow court orders – and be balanced (not lopsided) so citizens can easily understand and participate in the MEPA process.

**Question 2: What should an analysis of greenhouse gas emissions and climate impacts include?**

- Because the First Judicial District Court in August 2023 determined in *Held v. State* that DEQ must include an analysis of climate change impacts under MEPA, DEQ has no choice but to start this analysis immediately. In addition, because the Montana Legislature has decided that MEPA, at least in part, implements Montanans’ right to ‘a clean and healthful environment’, DEQ is required to conduct a climate change analysis for all permitting activities that result in GHG emissions – again – starting immediately.
- The District Court determined that the statutes and rules that unlawfully prevented state agencies from analyzing the climate impacts of their decisions are unconstitutional and permanently enjoined (the two unconstitutional statutes I am aware of appear below). In addition, the limitations placed in MEPA that prevent the public from pursuing relief when agencies violate MEPA by failing to consider climate change impacts is also unconstitutional and permanently enjoined.
- DEQ is legally obligated to immediately resume analysis of climate change impacts for any permit or other agency action that will result in GHG emissions.
- It is my understanding that, in the past, DEQ routinely analyzed climate change impacts under MEPA. Therefore, the agency can certainly draw from its internal experience to determine what needs to be included in such an analysis at least in the short-term.

- If the agency needs additional, more up-to-date ideas on what it needs to include when analyzing climate change impacts, it can look to how other states with similar requirements and/or federal agencies using the National Environmental Policy Act (NEPA) are being implemented, adopting a more up-to-date analysis process. This review would give DEQ legally defensible information on what it needs to include in a defensible climate change analysis.
- Basing the analysis of climate change impacts under MEPA on the latest scientific data, is an obvious place to start.

**Question 3: What opportunities exist for state agencies to be more thorough, balanced, efficient, or consistent?**

- Investing in training for staff who implement MEPA seems to be a common-sense solution to ensuring that MEPA is enacted in a thorough, balanced, efficient and consistent manner. I am unclear why DEQ feels MEPA is the problem – and not staff who implement the process.
- It is particularly important to establish a standardized public comment process for all state agencies. This could be done through training. The training should help make the public comment process more consistent (and constitutional) for all state agencies. I also feel that this public comment process should allow MEPA comments to be considered in permit decisions because trying to separate MEPA from the permit process does not make sense: it is a complicated message to get through to average citizens. Lobbyists, corporations, and other entities that hire professional staff should not be driving the way MEPA and permitting interact. These professional entities can more easily understand complicated public comment processes than average Montanans. I understand that this request is perhaps contrary to statute, but the constitutional rights of citizens to understand (know), participate, and have a ‘clean and healthful environment’ should drive the public comment process.

These following two statutes appear to be no longer applicable in Montana after the *Held* decision (**highlight added for emphasis**):

- 75-1-201(2)(a), MCA, enacted in 2023 by HB 971: (2) (a) Except as provided in subsection (2)(b), an environmental review conducted pursuant to subsection (1) **may not include an evaluation of greenhouse gas emissions and corresponding impacts to the climate in the state or beyond the state's borders.**
- 75-1-201(6)(a)(ii), also enacted in 2023 by SB 557: (ii) An action alleging noncompliance or inadequate compliance with a requirement of parts 1 through 3, **including a challenge to an agency's decision that an environmental review is not required or a claim that the environmental review is inadequate based in whole or in part upon greenhouse gas emissions and impacts to the climate in Montana or beyond Montana's borders,** cannot

vacate, void, or delay a lease, permit, license, certificate, authorization, or other entitlement or authority unless the review is required by a federal agency or the United States congress amends the federal Clean Air Act to include carbon dioxide as a regulated pollutant.

Please contact me if you have any questions about these comments.

## Benoit, John

---

**From:** Harbage, Rebecca on behalf of DEQ MEPA  
**Sent:** Tuesday, December 5, 2023 5:12 PM  
**To:** Benoit, John  
**Subject:** FW: MEPA public comments from Earthjustice supporters  
**Attachments:** Outlook-Descriptio; MEPA public comments.xlsx

Rebecca Harbage | *Public Policy Director*  
Montana Department of Environmental Quality  
**DESK:** 406-444-2813 **MOBILE:** 406-461-4683  
[Website](#) | [Facebook](#) | [X](#) | [YouTube](#)  
How did we do? Let us know here: [Feedback Survey](#)

---

**From:** Swetha Pottam <spottam@earthjustice.org>  
**Sent:** Tuesday, December 5, 2023 4:32 PM  
**To:** DEQ MEPA <DEQMEPA@mt.gov>  
**Subject:** [EXTERNAL] MEPA public comments from Earthjustice supporters

Hi there,

My name is Swetha Pottam and I work with Earthjustice. I am submitting the names of 144 individuals who have submitted public comments urging the Department of Environmental Quality to factor climate change into the MEPA process.

Here is the letter:

Dear DEQ,

Climate change must be robustly considered in the MEPA process. It is causing profound and undeniable impacts on Montanans' health, economy and environment. While DEQ continues to allow the extraction and burning of fossil fuels in Montana—the primary driver of climate change—better alternatives are available. Transitioning from fossil fuels to clean, renewable energy would save Montana communities from the high costs of climate change and reduce total energy costs. MEPA requires DEQ to weigh these alternatives and evaluate all pertinent information before deciding whether to approve activities that will harm Montanans.

Calls to reform MEPA center around its modernization, in truth MEPA has been “streamlined” and “modernized” more than a dozen times over the last 25 years. The significant changes to MEPA in 2011 resulted in less rigorous analysis and public disclosure, reduced public participation opportunities, and a reduced ability for the public to challenge agency decisions in court. However, any change to MEPA must stand up to, and conform with, constitutional requirements. Notably, two of the changes from 2011 have been found to be unconstitutional by Montana courts.

DEQ has the tools, knowledge and ability to analyze the climate change consequences of the projects it considers—just as state and federal agencies across the country regularly do. To meet its constitutional

obligations, DEQ must conduct this analysis now, and not stall until after the stakeholder process or any further litigation. Montanans deserve no less.

Sincerely,  
[undersigned]

Thank you,

**Swetha Pottam** (she/her)

Digital Advocacy Associate

50 California Street, Suite 500

San Francisco, CA 94111

T: 415.217.2105

F: 415.217.2040

[earthjustice.org](http://earthjustice.org) [earthjustice.org]

[facebook.com/earthjustice](https://facebook.com/earthjustice) [facebook.com]

[twitter.com/earthjustice](https://twitter.com/earthjustice) [twitter.com]



*Because the earth needs a good lawyer*



[^qdp h0frdfk1frp `](#)

November 30, 2023

Christopher Dorrington  
Director  
Montana Department of Environmental Quality  
1520 E. 6th Avenue  
Helena, Montana 59601

***VIA Montana DEQ Comment Portal***

**Re: DEQ MEPA Conversation**

Dear Director Dorrington:

Signal Peak Energy, LLC, appreciates the opportunity to join DEQ's MEPA Conversation. As an applicant with recent experience with DEQ's MEPA process, Signal Peak has a unique perspective on DEQ's implementation of MEPA. While any substantive changes to MEPA must be deliberated upon and approved by the Montana Legislature, Signal Peak believes that DEQ's MEPA Conversation will provide value by developing ideas that the Legislature can consider in its next session.

Signal Peak operates the Bull Mountains Mine No. 1, the only underground coal mine in Montana. The Bull Mountains Mine is a technological leader that uses longwall techniques, many of which have been developed by Signal Peak, to safely and efficiently mine the Mammoth coal seam with minimal surface impacts. Underground coal mining is, of course, a highly regulated industry, and Signal Peak appreciates DEQ's commitment to fair and vigorous enforcement of all of its regulatory programs that apply to the mine, including MEPA.

A MEPA review is intended, by statute, to "assist the legislature in determining whether laws are adequate to address impacts to Montana's environment and to inform the public and public officials of potential impacts resulting from decisions made by state agencies." § 75-1-102(3)(a), MCA. A MEPA review should therefore be focused on efficiently completing the analysis that will serve this purpose. Extensive and extended analyses that provide no additive informational value do not serve the statutory purpose and should be avoided. Delaying state actions, including issuance of permits, has significant adverse impacts, not only to project applicants, but to the multitude of stakeholders who would benefit from projects and state actions that are improperly delayed. Congress has recently amended the National Environmental Policy Act (NEPA) to impose time limits on review. These time limits serve an important limiting function to ensure that the review is appropriately focused. DEQ and the Legislature should consider adding similar guardrails to MEPA to ensure that the process continues to serve its intended purposes. To the extent that lack of resources or employee turnover are factors in permitting delays, DEQ may consider recommending adding employees to permitting staffs

and/or offering retention bonuses or other salary incentives to ensure timely and efficient review of all applications which are submitted to DEQ.

Similarly, DEQ and the Legislature should consider revisions aimed at reducing the abuse of public and judicial review of MEPA decisions by special interest groups. Litigation challenging permit decisions can drag on for years, draining taxpayer and applicant resources as special interest groups attempt to develop and enforce policies via the courts that they cannot achieve through the appropriate democratic channels. DEQ and the Legislature should consider steps to ensure that litigation on MEPA issues is serving the public interest by allowing review only of non-frivolous claims by individuals who have real, personal interests in the proposed project. Among other reforms that would ensure review is available where appropriate but reduce the potential for abuse are:

- Restricting judicial review to named individuals who participated in the administrative public process and who have a concrete and regular interest in the area affected by the proposed action where the interest is proven with a sworn affidavit detailing the individual's use of the area, the mechanism by which the individual believes the proposed action will adversely affect the individual's use of the area, and how a decision in the individual's favor will prevent the alleged harm.
- Requiring a complaint challenging a department's compliance with MEPA to be filed within 30 days of the department publicly posting notice of the decision.
- Limiting the scope of judicial review to issues meaningfully raised before the department in the administrative process.
- Limiting the scope of judicial review to issues clearly identified in the complaint.
- Allowing any prevailing party in judicial review to recover attorneys' fees.

Signal Peak has participated in the Public Listening sessions and reviewed some of the comments received via the Comment Portal. Signal Peak believes DEQ is appropriately transparent but is generally supportive of suggestions made by various members of the public to use new technologies in public communications. Signal Peak urges DEQ to consider ways to ensure that public notice approaches are appropriately designed for current modes of communication and news distribution. Signal Peak further supports the suggestion to make DEQ MEPA documents easily available and, if possible, searchable online. Additional changes to the procedure DEQ employs throughout a MEPA evaluation may also be beneficial. Signal Peak would welcome the opportunity to discuss its experience as an applicant as more specific proposals are developed.

The public comment suggestions regarding changes to the scope of DEQ's substantive MEPA analysis that Signal Peak has reviewed appear to be restricted to high-level suggestions

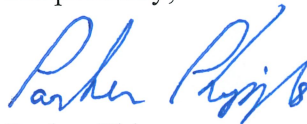


without a clear implementation plan. As proposals become more concrete, Signal Peak would be pleased to provide more specific comments. However, Signal Peak notes that broad mandates to analyze particular subjects run the risk of diluting the usefulness of specific MEPA analyses. To fulfill its purpose of informing the public and assisting the decision maker in choices among alternatives, a MEPA evaluation must be tailored to the proposed action. The specific topics analyzed in the MEPA document must be determined by the proposed action and its expected impacts. Signal Peak urges DEQ to carefully consider whether and how any proposed reform, if implemented, will serve the purpose of providing useful information for the public and decision-maker to understand the unique impacts of the proposed project and its alternatives. Statutory changes that require the evaluation of generalized topics untethered to the project run the risk of requiring the agency to generate the “excellent paperwork” criticized in federal NEPA case law for failing to provide meaningful information upon which to base a decision.

For example, many commenters have urged DEQ to incorporate consideration of climate change in MEPA analyses but have not provided any suggestions on how such a complex topic should be addressed on a project-specific basis. Climate change models and monetization metrics can vary substantially depending on the assumptions used to the point that federal courts routinely affirm agency decisions not to use certain metrics, such as the social cost of carbon. Such tools also suffer from over-generalization because they rely on assumption about emissions factors, rather than an accurate estimate of greenhouse gas emissions associated with the project under evaluation. Signal Peak urges DEQ to carefully consider the reliability, objectivity, and accuracy of any metric suggested to evaluate climate change. Tracing a line of causation from a given Montana agency action to climate change impacts experienced in Montana is even harder. Signal Peak is aware of no method that that can do it. In any analysis of climate change, DEQ must be candid with the public about the limits on its analysis.

Signal Peak commends DEQ on its decision to launch the MEPA Conversation and looks forward to ongoing discussions over the coming months about changes to MEPA that would further its purpose of efficiently and effectively serving the public interest.

Respectfully,



Parker Phipps  
President and CEO  
Signal Peak Energy, LLC



Chris Dorrington, Director  
Department of Environmental Quality  
1520 E Sixth Ave, Helena, MT 59601  
P.O. Box 200901, Helena MT 59620-0901

December 11, 2023

Please accept these comments on the Montana Environmental Policy Act from Wild Montana. We have a history of bringing about state policy and funding that secure wildlife habitat, enhance public land access, and help rural communities benefit from the lands and waters in their backyard. DEQ policies and practices play a crucial role in determining the future of our public wildlands.

The purpose of MEPA expressly includes a policy “to promote efforts that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of humans.” MEPA’s purpose is intertwined with Montanans’ inalienable constitutional right to a “clean and healthful environment.” MEPA further acknowledges that each generation of Montanans has a custodial responsibility to share in the economic, social, and ecological bounties the natural environment provides.

According to a 2023 poll from Colorado College, 70% of Montana voters think climate change is a serious problem. Montanans have a strong interest in and a constitutional right to know how climate change and its drivers are impacting our public lands and waters as part of project analysis and regulation.

Two additional inalienable rights enshrined in the Constitution include the right to know and the right to participate. The combination of these three rights gives Montanans powerful interests in and responsibilities towards the analysis of government actions with impacts on the environment and opportunities for public engagement.

Any changes to DEQ’s regulatory enforcement of MEPA must ensure that it explicitly fulfills the government’s obligation to maintain our constitutional right to a clean and healthful environment as well as the public’s constitutional right to know and to participate in government projects. DEQ cannot rewrite MEPA nor defy 50 years of judicial precedence that



explicitly declares the environmental right is proactive rather than reactive, and state agencies must prevent “unreasonable depletion and degradation of natural resources” using the MEPA analysis process. DEQ’s regulatory authority has a huge impact on how those rights and obligations are enacted. Any change to the regulatory framework of MEPA that tries to go below the minimum standards set by the courts and constitution or seeks subtle ways to lessen what it means to maintain a clean and healthful environment for Montanans today and generations to come and the right to full public participation in those decisions would open the door for corporations to pollute our clean rivers, streams, air, and public lands and leave taxpayers holding the bag for cleaning up their toxic messes.

Lowering the regulatory thresholds of MEPA to proactively protect our right to clean air, clean water, and healthy public lands would jeopardize one of Montana’s major competitive advantages and threaten the \$6 billion outdoor recreation economy we’ve spent decades building in Montana.

Thank you for your consideration of our input.

Aubrey Bertram  
Staff Attorney, [abertram@wildmontana.org](mailto:abertram@wildmontana.org)  
Wild Montana  
80 S. Warren St. Helena, MT 59601