

MEPA Court Cases (Supreme Court/Pending Supreme Court – 20 Year Snapshot)

Appealed and Pending Before the Montana Supreme Court

<u>Case</u>	<u>Question Raised</u>	<u>Court Ruling</u>
<i>Montana Trout Unlimited, Montana Environmental Information Center, TU, Earthworks, and American Rivers v. DEQ, Tintina, and Meagher and Broadwater Counties (2020)</i>	(1) Did DEQ adequately address the safety and stability of the surface cemented tailings held within the tailings storage facility under the MMRA and MEPA? (2) Did DEQ adequately address treatment of nitrogen, which can contribute to algae blooms, through attenuation prior to allowing effluent to enter the surface waters of Sheep Creek? (3) Did DEQ adequately consider reasonable alternatives in MEPA to alleviate or avoid potential environmental harms?	(1) Awaiting Supreme Court Decision.
<i>Rikki Held, et al., v. State of Montana (2020)</i>	(1) District Court ruled provision of MEPA outlined in 75-1-201(2), MCA—from 2023 prohibiting an analysis of greenhouse gas emissions is unconstitutional.	(1) Appealed to Supreme Court. Briefs filed on or before Feb. 13.
<i>Montana Environmental Information Center and Sierra Club v. DEQ and NorthWestern Energy (2021)</i>	(1) Did DEQ adequately address aesthetic impacts from the natural gas fueled generator—including noise and lighting impacts—under MEPA, including cumulative impacts from other industrial projects located in the area? (2) Is 75-1-201(2)(a), MCA – from 2011, prohibiting an analysis of greenhouse gas emissions unconstitutional – question of within state borders?	(1) Oral arguments scheduled before Supreme Court for April 22, 2024.

Ruled on By the Montana Supreme Court

<u>Case</u>	<u>Question Raised</u>	<u>Court Ruling</u>
<i>Belk v. Mont. DEQ, 2022 MT 38</i>	(1) Was DEQ legally required under MEPA to consider impacts to property values to surrounding cabins? (2) Did DEQ adequately address aesthetic impacts from mining operations; and (3) Did the district court err by not supplementing the record with the applicant’s prior violations?	(1) MEPA does not require DEQ to examine property value impacts (2) DEQ satisfied MEPA by discussing how distance would affect visibility and noise effects, the geographic and temporal scope of the disturbance, the severity and frequency of noise (3) The EA record did not have to be supplemented to include prior violations because MEPA is inherently forward looking.
<i>Park County Envtl. Council and Greater Yellowstone Coalition v. Mont. DEQ and Lucky Minerals, 2020 MT 303</i>	(1) Did the plaintiffs have standing to challenge DEQ’s MEPA analysis? (2) Did DEQ have to evaluate full scale mining on federal lands? (3) Did DEQ take a hard look at road improvements? (4) Did DEQ adequately evaluate water quality issues? (5) Did DEQ adequately examine alternatives? (6) Were remedial limitations in 75-1-201(6)(c), MCA, precluding the remedy of vacatur, a violation of the right to a clean and healthful environment under the Constitution?	(1) Plaintiffs had standing because they recreated and operated a business in the affected area (2) DEQ was not required to evaluate full scale impacts of mining because any operations permit would be subject to additional review (3) DEQ conceded it had not adequately examined impacts to wildlife from road improvements and the Court remanded for more analysis (4) DEQ conceded it had not adequately addressed measures to control artesian flows from boreholes and the Court remanded for more analysis (5) DEQ properly considered alternatives (6) The remedial limitations in § 75-1-201(6)(c), MCA (2011) violated the Montana Constitution.

<p><i>Bitterrooters for Planning and Bitterroot River Protective Association, Inc. v. Mont. DEQ, 2017 MT 222</i></p>	<p>(1) Was DEQ required to extend its MEPA review beyond the impacts of the wastewater permit to consider impacts, like light pollution and traffic? (2) Was DEQ required to identify the actual owner and operator of the wastewater treatment facility?</p>	<p>(1) DEQ was not required to evaluate the impacts because MEPA “requires a reasonably close causal relationship between the triggering state action and the subject environmental effect” (2) MEPA doesn’t require the disclosure of the owner and operator of a project, but the Montana Water Quality Act does require that information.</p>
<p><i>Mont. Wildlife Fed’n v. Mont. Bd. Of Oil & Gas Conservation, 2012 MT 128</i></p>	<p>(1) Were 24 EAs for gas well permits required to explicitly reference prior programmatic EISs? (2) Was a checklist EA, nearly identical for the 24 wells, comply with MEPA by addressing cumulative impacts? (3) Was the Board of Oil and Gas required to conduct a programmatic EIS for development in the Cedar Creek Anticline area?</p>	<p>(1) The EAs implicitly tiered their analysis to the prior programmatic EISs (2) The EAs noted the minimal additional impacts as a small fraction of the existing wells in the area, meaning that they considered the cumulative impacts of the 24 new wells (3) a programmatic EIS was not required because the EA correctly determined there would be no significant impacts and plaintiffs had not challenged prior Board decisions when more programmatic review may have been appropriate.</p>
<p><i>Water for Flathead’s Future, Inc. v. Mont. DEQ and Montana Artesian Water Company, 2023 MT 86</i></p>	<p>(1) Did DEQ adequately address concerns regarding Bull Trout? (2) Was DEQ required to evaluate the applicant’s permit under the water volume provided in its MPDES application or its beneficial use application before the DNRC, which was a larger volume than the MPDES application?</p>	<p>(1) DEQ adequately addressed impacts to bull trout by setting effluent limits and conditions sufficient to protect bull trout (i.e., DEQ was not required to independently evaluate impacts of the water bottling plant on bull trout) (2) DEQ appropriately limited its review to the water volume figure provided in the permit—any additional volume later required would be subject to separate MEPA review.</p>
<p><i>Hillcrest Natural Area Found v. Mont. DEQ and the City of Billings, 2022 MT 240</i></p>	<p>(1) Did DEQ properly find that it did not need to prepare an EIS by determining in its EA that the project would not create significant impacts?</p>	<p>(1) Affirmed DEQ’s EA because it properly incorporated a prior BLM plan into its aesthetic impact analysis.</p>

* Since 2020, there have been an additional 10 MEPA cases filed that are now pending before various District Courts.