EARTHJUSTICE

WESTERN ENVIRONMENTAL LAW CENTER

COMMENT ON THE SUPPLEMENTAL DRAFT ENVIRONMENTAL ASSESSMENT FOR MAQP # 5261-00

SUBMITTED ON BEHALF OF:
350 Montana
Bridger Bowl Ski Area
Citizens for Clean Energy
Climate Smart Missoula
Families for a Livable Climate
Helena Interfaith Climate Advocates
Montana Chapter of the Sierra Club
Montana Conservation Voters Education Fund
Montana Environmental Information Center
Montana Health and Climate
Montana Public Interest Research Group
Northern Plains Resource Council
Steve Krum

September 23, 2026

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EARTHJUSTICE

WESTERN ENVIRONMENTAL LAW CENTER

September 23, 2026

DEQ Headquarters
2401 Colonial Dr.
Helena, MT 59601

Re: Supplemental Draft Environmental Assessment for MAQP # 5261-00

Sent via email: DEQAIR@mt.gov

To the DEQ Air Quality Bureau:

We submit the following comments on behalf of 350 Montana, Bridger Bowl Ski Area, Citizens for Clean Energy, Climate Smart Missoula, Families for a Livable Climate, Helena Interfaith Climate Advocates, Montana Chapter of the Sierra Club, Montana Conservation Voters Education Fund, Montana Environmental Information Center, Montana Health and Climate, Montana Public Interest Research Group, Northern Plains Resource Council, and Steve Krum ("Commenters") in response to the Montana Department of Environmental Quality's ("DEQ") Draft Secondary Supplemental Environmental Assessment for Montana Air Quality Permit #5261-00 ("Draft Second Supplemental EA") associated with NorthWestern Energy's Yellowstone County Generating Station ("YCGS") located near Laurel in Yellowstone County, Montana.

Commenters are individuals and organizations dedicated to preserving Montana's constitutional right to a clean and healthful environment and to ensuring that the public and the Legislature receive the information necessary to participate meaningfully in decisions affecting Montana. DEQ's Draft Second Supplemental EA does not adequately evaluate the greenhouse gas ("GHG") emissions authorized by the facility's air quality permit and fails to adequately assess the resulting climate harms. This failure is particularly concerning because YCGS is expected to emit nearly 700,000 metric tons of carbon dioxide equivalent ("CO_{2e}") every year, for at least the next thirty years.

Montana's constitution guarantees present and future generations a clean and healthful environment, which includes the right to a stable climate system. This guarantee is not aspirational: the State has an affirmative duty to not just ensure this stable climate system, but to prevent environmental degradation before it occurs. The Montana Environmental Policy Act ("MEPA") implements those constitutional protections by requiring agencies to take a hard look at the environmental impacts of state-authorized actions. This hard look extends further than just

disclosure, MEPA requires DEQ to adequately evaluate reasonable alternatives and appropriate mitigation measures. In fact, MEPA empowers DEQ to affirmatively disclose recommended mitigation measures that could reduce, as here, the impacts from YCGS's GHG emissions.

When DEQ fails to carry out its constitutional obligations or falls short of complying with MEPA, the resulting harm reaches further than just the specific project. Without adequate disclosure of the full scale of environmental impacts from a project like YCGS, the public is left without the necessary information to meaningfully participate in governmental decision-making processes. Further, without such disclosure, neither the Legislature nor agency decision-makers have adequate information to make reasoned decisions affecting Montana's future.

This Draft Second Supplemental EA does not exist in a vacuum. The Montana Supreme Court has specifically ordered DEQ to adequately assess YCGS's GHG emissions. Unforuntaely, the Draft Second Supplemental EA falls well short of this directive. Instead of confronting the climate harm from one of the largest sources of air pollution in Montana, the agency relies repeatedly on a dismissive refrain: YCGS's GHG emissions are insignificant on a global scale, and so there can be no significance here at home.

Montana's Constitution, MEPA, and the Montana Supreme Court's operative remand decision demand far more. DEQ's decision relies on an unduly narrow interpretation of Senate Bill 221 and its internal guidance, arbitrarily construing "proximate" impacts to those emissions produced by equipment within the facility boundary—but neither the Legislature (through Senate Bill 221) nor DEQ (through internal guidance) can authorize an analysis that falls below or renders meaningless the protections and guarantees afforded by Montana's Constitution. DEQ must set aside that blindered approach depicted in the Draft Second Supplemental EA. Proximity is rightly viewed as a question of causation and foreseeability, not just geography. In this regard, an adequate analysis must evaluate all reasonably foreseeable GHG emissions and climate effects having a sufficiently close causal relationship to the permitted activity, including relevant secondary, cumulative, upstream, downstream, and fugitive emissions. Such an analysis must also provide meaningful cumulative context for YCGS's emissions, rather than using statewide or global emissions to make the facilities substantial annual emissions appear inconsequential.

The Draft Second Supplemental EA also fails to connect YCGS's GHG emissions to the extensive climate science already before the agency, which documents that GHG emissions are intensifying extreme heat, drought, wildfire, wildfire smoke, and flooding, and causing declining snowpack, water scarcity, ecological disruption, human illness, and economic loss. Montana is already suffering these harms, and they are projected to become more severe. The consequences of GHG emissions threaten our rivers, lakes, forests, glaciers, and wildlife, while also negatively impacting agricultural and ranching operations, Montana's recreational industry, and the health and cultural well-being of Montana communities.

Against this undisputed threat, DEQ's decision to proceed without ever connecting YCGS's emissions to any of these documented harms cannot stand. The approach taken in the Draft Second Supplemental EA, merely to list scientific reports or calculate the likely project-specific change in global temperature, is a superficial, deeply inadequate analysis—it is also an abdication of the agency's constitutional obligations and a violation of the Montana Supreme Court's directive. The Draft Second Supplemental EA must explain how YCGS's GHG emissions contribute to the concrete harms proven by the evidence the agency already has, the Draft Second Supplemental EA must adequately disclose the magnitude and social cost of YCGS's GHG emissions, and the Draft Second Supplemental EA should use available operating data and accepted analytical tools to ensure its conclusions are tethered to reality.

Fundamentally, the Draft Second Supplemental EA is flawed because it creates a standard that no individual facility could ever fail. DEQ repeatedly treats YCGS's GHG emissions as insignificant because their effects cannot be isolated from the combined effects of worldwide emissions. But accepting that approach means that, going forward, DEQ would be able to approve every additional source of GHG emissions without ever acknowledging a significant climate impact. Further, such an approach is flawed because it ignores the incremental and cumulative nature of climate change, the regulatory significance factors, and the fact that Montana's Constitution does not give DEQ a "free pass" to authorize additional fossil fuel pollution sours simply because fossil fuel pollution sources exist elsewhere. When assessed accurately, the significance criteria show that YCGS's GHG emissions are certain, long-lasting, economically consequential, and harmful to the stable climate system Montana's Constitution guarantees.

For these reasons, it is not enough for DEQ to revise the Draft Second Supplemental EA. Instead, DEQ must also prepare an environmental impact statement that fully analyzes the direct, secondary, and cumulative GHG emissions from YCGS, discloses their global, regional, statewide, and local consequences, addresses their magnitude and societal costs, and considers reasonable and enforceable measures to avoid, minimize, or mitigate those harms. This fulsome analysis is necessary to ensure that the public is adequately informed and able to participate in state decision-making processes, and to ensure that the Legislature has adequate information when carrying out its duties.

IDENTITIES AND INTERESTS OF COMMENTERS

350 Montana is an all-volunteer citizens' organization that works to reduce atmospheric CO_2 concentrations to 350 parts per million by implementing strategic actions and advocating policies to end fossil fuel burning with the greatest urgency. 350 Montana envisions a rapid conversion to a 100 percent renewable global energy system using wind, water, and solar. The organization works with the global grassroots climate movement to achieve these goals and safeguard Earth's life-support systems.

Bridger Bowl Ski Area has operated as a nonprofit ski area since 1955, with a mission to remain a locally focused recreation area that balances quality, affordability, and sustainability in service to our community. Climate change poses a serious and growing threat to the ski industry and to Bridger Bowl's ability to fulfill that mission. Warmer winters, declining and less reliable snowpack, and an increased risk of wildfire can shorten ski seasons, increase operating challenges and costs and undermine the long-term viability of winter recreation in Montana.

Citizens for Clean Energy ("CCE") was founded nearly two decades ago, with a mission to educate the citizens of Montana about sustainable energy production, energy conservation, energy efficiency, and responsible energy use. CCE promotes public awareness of the environmental, economic, and public health impacts of fossil fuel extraction and use, and actively encourages the development and use of sustainable and renewable energy resources to meet Montana's growing energy needs."

Climate Smart Missoula is a community-based nonprofit organization with a mission to build and accelerate climate solutions for Missoula and beyond through collaborative programs, advocacy, and catalyzing climate leadership. Established in 2015, the organization has worked with local government and other partners to develop policies and implement programs to reduce carbon pollution and reach the community's goal of 100% clean electricity by 2030 for the Missoula area, which was jointly adopted by the City of Missoula and Missoula County in 2019. Climate Smart Missoula works with community members to reduce fossil fuel use and advocate for climate action, while also strengthening climate resilience and adaptation, with a focus on human and environmental health. To meet their climate and clean energy goals, effective state and federal policy, plans and regulations are necessary.

Families for a Livable Climate ("FLC") is a Montana nonprofit organization founded in 2019 by climate-concerned parents, dedicated to creating community for climate action across the state. FLC brings together families, young people, and community members to build relationships, develop grassroots leadership, and take meaningful action for a livable future. Our network includes Montanans from urban, rural, and Tribal communities, and our programs engage people across generations in climate education, civic participation, community organizing, and advocacy. FLC is committed to ensuring that Montana families and communities have meaningful opportunities to participate in decisions that affect their health, environment, and future, and to holding state agencies accountable to Montana's environmental obligations - for our sake as well as future generations.

Helena Interfaith Climate Advocates is committed to increasing awareness of and strengthening action against threats to our climate and environment. Our actions arise from thirteen faith traditions that comprise our group, motivated by love for our planet, humanity, and all beings. We recognize that climate change and other environmental threats affect the entire state and beyond. We follow the principle of thinking globally while acting locally. We

recognize the importance of education and the power of collective action. We are willing and able to collaborate with partner organizations, decision-makers and likeminded individuals to these ends.

Montana Chapter of the Sierra Club is a nonprofit member organization founded in 1983 to support policies and projects that address pressing environmental issues in Montana and get outside to enjoy the outdoors. The Montana Chapter has 11,000 members and supporters in Montana and currently focuses on securing access to clean water and clean air, protecting wildlife and public lands, and working towards a stable, healthy climate in Montana. Our members and supporters span the state. Included in the Montana Sierra Club community are avid outdoor recreationalists, farmers, ranchers, students, teachers, fly fishers, artists, scientists, faith leaders, and retired fossil fuel plant employees who support addressing the climate crisis with all due haste.

Montana Conservation Voters Education Fund is a non-profit, non-partisan organization that educates the public about critical environmental and public lands issues, promotes greater nonpartisan citizen involvement in the democratic process and provides strategic tools to conservation organizations to increase their effectiveness.

Montana Environmental Information Center ("MEIC") is a non-partisan, non-profit environmental advocacy group dedicated to ensuring clean air and water for Montana's present and future generations. MEIC was founded in 1973 by Montanans concerned with protecting and restoring Montana's natural environment. To protect and restore the land, air, water, and life-sustaining climate of Montana, MEIC advocates, educates, and empowers people in service of a clean and healthful environment for present and future generations. MEIC is dedicated to assuring that state and local governments comply with and fully uphold the laws and constitutional provisions that further the organization's goals and mission of protecting the environment for all Montanans to enjoy. MEIC has approximately 10,000 members and supporters, many of whom live, work, and recreate throughout the State and are impacted by the economic and environmental climate damages of Montana utilities' operations under the regulatory authority of the Commission.

Montana Health and Climate ("MHC") is a nonprofit founded in 2019 with 2,500 supporters. MHC sees the climate crisis as a health crisis. MHC helps Montanans understand how climate affects health, prepares healthcare professionals to recognize these risks and become trusted health leaders in their communities, and provides opportunities for Montanans to speak out, work with community partners, and act on climate.

Montana Public Interest Research Group (MontPIRG) is university student directed nonpartisan public interest nonprofit organization. Founded in 1982, MontPIRG conducts research, advocacy and campaigns on consumer, environmental and good government issues at the local, state and national level. With over 10,000 members and supporters, 40 yearly interns,

hundreds of volunteers and paid staff members the organization has a unique interest in the future of the clean air, climate change, consumer costs, and effective government oversight. Our leadership understands the need to effectively address pressing long-term decisions on energy for the future of our community, state and nation. MontPIRG, its leaders, members, supporters, and staff are dedicated to advocating for sustainable decisions that protect our environment, benefit consumers and provide for strong self-governance free from the undue influence of well-organized and funded special economic interests.

Northern Plains Resource Council was founded in 1972 by Montana ranchers and works to organize Montanans to protect our water, land, air, and working landscapes. Northern Plains Resource Council supports a healthy, localized, and sustainable economy in farm and ranch country and in our towns, and builds strong grassroots leaders, always considering the next generation. Today, we work with roughly 3,500 dues-paying members across our state to protect the unique way of life that Montanans enjoy. Northern Plains Resource Council strongly believes that a full assessment of YCGS's GHG emissions is necessary to fully inform the public, and lawmakers, of the gas plant's impacts.

Steve Krum, a retired refinery worker and railroader, is a long-time Laurel resident who's family and friends live across the Yellowstone River from YCGS. Steve has been advocating for DEQ to accurately and fully assess YCGS's GHG emissions, and their impacts, for years. He is concerned about misleading information surrounding YCGS and believes that a complete analysis of YCGS's GHG emissions is necessary so that both the public and lawmakers can be fully informed of the gas plant's impacts.

I. DEQ'S DRAFT SECOND SUPPLEMENTAL EA MUST BE EVALUATED IN LIGHT OF THE RELEVANT PROCEDURAL HISTORY

This is the most recent public comment period related to an environmental assessment prepared by DEQ regarding Montana Air Quality Permit Application #5261-00 (the "Permit"). NorthWestern filed an application for the Permit in May 2021.[1] DEQ first solicited public comment after issuing a five-page draft environmental assessment in connection with a preliminary determination proposing to grant the Permit.[2] After receiving "many public comments" that "expressed specific concerns about the plant's GHG emissions,"[3] DEQ issued a

[1] *Mont. Env't. Info. Ctr. v. Mont. Dept. of Env't. Quality*, 2025 MT 3, ¶ 2, 420 Mont. 150, 561 P.3d 1033 (hereinafter "*MEIC 2025*").

[2] *Id.* ¶ 4.

[3] *Id.* at ¶ 43.

final environmental assessment in August 2021 and stated that the agency was not required to evaluate GHG emissions.[4]

On January 3, 2025, the Montana Supreme Court determined DEQ was required to analyze GHG emissions associated with the Permit.[5] The Court found DEQ "did not take any sort of look at the impacts" of YCGS's GHG emissions, and concluded that, even though YCGS's GHG emissions "may reach far outside Montana," the agency is not allowed to "completely ignore whether and to what extent [those GHG emissions] may result in adverse effects on Montana's environment."[6] The Court also expressly stated that "[t]he State does not have 'a free pass to pollute the Montana environment just because the rest of the world insist[s] on doing so."[7]

The Court also addressed the importance of DEQ's obligation to fully evaluate YCGS's GHG emissions under the Montana Environmental Policy Act ("MEPA").[8] The Court held that such information "serves a purpose" and was appropriate to include in "DEQ's MEPA analysis as direct and secondary impact stemming from the [YCGS]."[9] The Court held that requiring the agency to disclose this information serves to inform not just the public, but also public officials of the impact of YCGS.[10] Ultimately, the Court concluded:

> Given the nature of the facility here and DEQ's acknowledgment of the emissions it will produce, MEPA does not permit the agency to forego an adequate inquiry, analyzing the extent to which, if any—though the agency lacks a regulatory-standard basis for denial—this project has environmental impact of some significance, and so informing the public.[11]

As a result, the Court affirmed the District Court's decision that DEQ was required to "consider the impact of GHG emissions within Montana in its evaluation of an air quality permit for

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[4] *Id.* ¶¶ 4, 43.

[5] *See id.* ¶ 78.

[6] *Id.* at ¶ 47.

[7] *Id.* (citing *Held v. State*, 2024 MT 312, ¶ 66, 419 Mont. 403, 560 P.3d 1235).

[8] *Id.* at ¶ 61.

[9] *Id.*

[10] *See id.* ¶ 62.

[11] *Id.*

[YCGS]," and remanded the case to DEQ "for further MEPA analysis in accordance with this Opinion."[12]

Following remand, DEQ issued a Draft Supplemental Environmental Assessment, solicited public comment, and subsequently issued a Final Supplemental Environmental Assessment on August 1, 2025 (the "Supplemental EA").[13] The Supplemental EA fails to comply with the Supreme Court's directive in MEIC 2025.[14]

On July 23, 2026, DEQ entered into a stipulation in Cause No. DV-56-2025-0001159-OC (Mont. Thirteenth Jud. Dist. Ct.).[15] As a result of that Stipulation, the Supplemental EA was remanded to DEQ and DEQ agreed to consider a guidance document issued by DEQ in January 2026, the Guidance for Greenhouse Gas Impact Assessment Under the Montana Environmental Policy Act (the "DEQ GHG Guidance"),[16] and, if necessary, issue a revised environmental assessment. Following that remand, DEQ issued the Draft Second Supplemental EA which is the focus of this comment.

This procedural history demonstrates that the Draft Second Supplemental EA must be judged against the directives issued by the Montana Supreme Court in *MEIC 2025*, in addition to the agency's obligations under MEPA. As the following makes clear, the Draft Second Supplemental EA falls well short of complying with the requirements imposed by MEIC 2025 and DEQ should revise the Draft Second Supplemental EA to ensure that it adequately assesses the GHG emissions from YCGS consistent with the holding of *MEIC 2025*.

II. ADEQUATELY ASSESSING YCGS'S GHG EMISSIONS IS IMPORTANT BECAUSE CLIMATE CHANGE THREATENS PEOPLE AND ECOSYSTEMS GLOBALLY AND STATEWIDE

The impacts of climate change and increased GHG emissions threaten existential harm both globally and in Montana. Previous submissions from Commenters, and others, including

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[12] *Id.* ¶¶ 62, 78.

[13] DEQ, Supplemental Final Environmental Assessment for MAQP #5261-00 (Aug. 1, 2025) (attached as Exhibit 1).

[14] *See* Comments on Draft Supplemental Environmental Assessment for MAQP #5261-00, from Earthjustice & Western Environmental Law Center to DEQ Air Quality Bureau (Apr. 28, 2025) ("April 2025 Comments"); *Mont. Env't. Info. Ctr. v. Mont. Dept. of Env't. Quality*, Doc. 1, Complaint for Declaratory Relief, Cause No. DV-56-2025-1159 (Mont. Thirteenth Jud. D. Ct.) (Sept. 29, 2025) (attached as Exhibit 2).

[15] Draft Second Supplemental EA at 3.

[16] *Guidance for Greenhouse Gas Impact Assessment Under the Montana Environmental Policy Act,* Mont. Dept. of Env't. Quality, at 2 (January 2026) (attached as Exhibit 3).

comments submitted regarding DEQ's Draft Supplemental Environmental Assessment for MAQP #5261-00,[17] and comments submitted regarding the DEQ GHG Guidance,[18] catalog a substantial body of climate science that DEQ must engage with. We incorporate both letters in their entirety by reference and summarize that science below.

A. Global Impacts

The Intergovernmental Panel on Climate Change's Sixth Assessment Report documents that anthropogenic GHG emissions are already degrading ecosystems and human systems worldwide: local species losses, mass mortality events, and the first climate-driven extinctions; increasing frequency, intensity, and duration of droughts, wildfires, heatwaves, and floods that are surpassing the resilience of ecological and human systems; and, absent deep and rapid emissions reductions, as many as nine million additional climate-related deaths projected annually by the end of the century.[19] These are no longer merely projections: a July 2026 consensus study by the National Academies of Sciences, Engineering, and Medicine confirms that the science tying GHG emissions to specific extreme weather and climate events has matured to the point that "[h]uman-caused changes to the thermodynamics of the climate system have a direct and well-understood impact on extreme temperatures, extreme rainfall, and compound hot-dry events"—links the National Academies describe as "established with high confidence" and "well supported by a robust combination of physical theory, observational data, and model simulations."[20]

Global climate change is also accelerating at an alarming rate. A report published by the United Nations Environment Programme (UNEP) in 2026 addressed shortening "overshoot" (*i.e.*, the time it takes to reduce mean warming below 1.5ºC mean global temperature) and emphasized that "every fraction of a degree matters" because Earth is already on path to surpass

[17] Comments on Draft Supplemental Environmental Assessment for MAQP #5261-00 (Apr. 28, 2025) ("April 2025 Comments") (attached as Exhibit 4).

[18] Comments on DEQ's Draft Guidance for Greenhouse Gas Impact Assessments under the Montana Environmental Policy Act (Oct. 30, 2025) ("Guidance Comments") (attached as Exhibit 5).

[19] IPCC, *Climate Change 2022: Impacts, Adaptation and Vulnerability — Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (2022).

[20] National Academies of Sciences, Engineering, and Medicine, *Attribution of Extreme Weather and Climate Events and Their Impacts* (2026) (hereinafter "NASEM Attribution Report") at 3 (attached as Exhibit 6).

1.5ºC.[21] Similarly, the World Meteorological Organization (WMO) reported the following earlier this year: in 2024 the atmospheric concentration of carbon dioxide reached its highest level in the last 2 million years, and methane and NO2 reached their highest levels in the last 800,000 years;[22] the Earth's "energy imbalance" has been increasing in the past 20 years compared to the previous 66 years;[23] 2025 was the second to third warmest year in the 176-year observational record;[24] ocean heat content in 2025 reached the highest level in the 66-year observational record and the rate of ocean warming from 2005-2025 is more than twice that observed over the period 1960-2005;[25] over the period 1985-2025, ocean surface pH has declined at a rate of –0.017 ± 0.001 pH units per decade;[26] in 2025 the global mean land temperature was second to third highest on record at 0.80º above the 1991-2020 average;[27] at the end of 2025, the global mean sea level was about 11 cm higher than it was in January of 1993, the start of the satellite record;[28] in 2025, exceptional levels of glacier mass loss occurred in Iceland, and along the Pacific coast of North America;[29] the extent of sea-ice in the Antarctic and Arctic regions in 2025 were both below their respective 1991–2020 averages;[30] and through 2025, near-surface temperatures were above the 1991–2020 average across most land areas, with few exceptions. [31]

According to the Fifth National Climate Assessment, "[t]he effects of human-caused climate change are already far-reaching and worsening across every region of the United States."[32] "The impacts of climate change increase with warming and warming is *virtually*

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[21] United Nations Environment Programme (2026). *Limiting Overshoot: Navigating exceedance of 1.5°C and pathways towards return*. Nairobi. https://doi.org/10.59117/20.500.11822/49857 at 8.

[22] World Meteorological Organization (2026). *State of Global Climate 2025*. Geneva. https://doi.org/10.59327/WMO/S/CRI/SOC/1 at 6.

[23] *Id* at 20. Earth's "energy imbalance" is WMO's new indicator that allows for better quantification and prediction of climate change. It measures how fast the heat trapped by anthropogenic emissions of GHG is accumulated in the climate system. This heat warms the ocean, continents, and the atmosphere, and melts ice.

[24] *Id* at 8. "1.43 º ± 0 .13 °C above the 1850–1900 average."

[25] *Id*. at 11.

[26] *Id* at 14.

[27] *Id* at 8.

[28] *Id* at 12.

[29] *Id* at 16.

[30] *Id* at 18.

[31] *Id* at 24.

[32] U.S. Glob. Change Rsch. Program, Fifth National Climate Assessment at 1-5 (2023), https://toolkit.climate.gov/sites/default/files/2025-07/NCA5_2023_FullReport.pdf.

certain to continue if emissions of carbon dioxide do not reach zero . . . the future is largely in human hands."[33]

B. Impacts on the Northern Great Plains Region

The Fifth National Climate Assessment's Northern Great Plains chapter,[34] and the 2017 Montana Climate Assessment,[35] document specific, quantified regional harms. "The Northern Great Plains region is experiencing unprecedented extremes related to changes in climate, including severe droughts (likely, high confidence), increases in hail frequency and size (medium confidence), floods (very likely, high confidence), and wildfire (likely, high confidence)."[36] Further, "[r]ising temperatures across the region are expected to lead to increased evapotranspiration (very likely, very high confidence), as well as greater variability in precipitation (very likely, high confidence)."[37] Warm nights, with minimum temperatures of 70°F or higher, are becoming increasingly common in Montana.[38] "By mid-century, Montana temperatures are projected to rise 4.5-6.0°F, depending on the emission scenario" and "by the end-of-century, Montana temperatures are projected to increase 5.6-9.8°F, both larger than the corresponding global and national averages.[39] These physical changes translate directly into economic harm: reduced irrigation capacity is projected to most affect hay, sugar beet, malt barley, and potato production, and rising temperatures are expected to expand the range of invasive weeds such as cheatgrass, decreasing forage productivity and increasing rangeland wildfire frequency.[40] This information was before the agency when DEQ issued the Draft Second Supplemental EA, and DEQ must not refuse to consider it when evaluating and disclosing the impacts from YCGS's GHG emissions.

C. Human and Health Impacts

The Montana Climate Assessment's 2021 special report on human health found that rising summer temperatures and wildfire smoke will worsen respiratory and cardiopulmonary illness;

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[33] *Id.* at 2-21 (emphasis original).

[34] Corrine N. Knapp et al., *Northern Great Plains, in Fifth National Climate Assessment*, U.S. Global Change Research Program (2023).

[35] Cathy Whitlock et al., *2017 Montana Climate Assessment*, Montana State University & University of Montana, Montana Institute on Ecosystems (2017) (hereinafter "Montana Climate Assessment").

[36] Knapp et al, *Fifth National Climate Assessment* at 25-8.

[37] *Id.*

[38] *Id.*

[39] Whitlock et al., *2017 Montana Climate Assessment* at 10.

[40] *Id.* at 198–199.

earlier snowmelt and flooding will increase gastrointestinal and other water-borne disease; summer drought will increase the incidence of West Nile virus and threaten the safety and availability of public and private water supplies; and elevated carbon dioxide levels and pollen counts will worsen allergies and asthma.[41]

As stated in the Fifth National Climate Assessment:

It is an established fact that climate change is harming physical, mental, spiritual, and community health and well-being through the increasing frequency and intensity of extreme events, increasing cases of infectious and vector-borne diseases, and declines in food and water quality and security. Climate-related hazards will continue to grow, increasing morbidity and mortality across all regions of the [United States] (very likely, very high confidence).[42]

D. Montana's Role in Climate Change

Montana is not a bystander to this harm. Nearly 75% of total U.S. GHG emissions come from fossil fuel combustion, and Montana is a significant contributor.[43] DEQ has previously acknowledged that Montana's fossil fuel electric generating units are the largest contributor of GHGs in the state.[44] The *Held* District Court found, based on uncontested trial evidence and affirmed by the Montana Supreme Court, that Montana's fossil-fuel-based economy is responsible for approximately 166 million tons of CO_2 annually (equivalent to the emissions of Argentina, the Netherlands, or Pakistan) and that this contribution is a substantial factor in causing climate impacts to Montana's environment and harm to Montanans.[45] The court catalogued the specific fossil fuel extraction, transportation, and combustion projects the State has authorized that produce these emissions, of which the YCGS is one.[46]

The causal connection between GHG emissions and climate impacts is no longer merely a matter of litigation-specific fact-finding. Again, the National Academies of Sciences, Engineering, and Medicine has recently confirmed, in July 2026, that the increased likelihood, intensity, and resulting economic, health, and societal harms of individual droughts, heatwaves,

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[41] Alexandra Adams et al., *Climate Change and Human Health in Montana: A Special Report of the Montana Climate Assessment,* Montana State University, Institute on Ecosystems, Center for American Indian and Rural Health Equity (2021) (hereinafter "Climate Change and Human Health in Montana").

[42] Knapp et al, *Fifth National Climate Assessment* at 15-6.

[43] *See* U.S. EPA, Inventory of U.S. Greenhouse Gas Emissions and Sinks (2021).

[44] *MEIC 2025*, ¶ 47.

[45] *Held v. State of Montana*, No. CDV-2020-307 (1st Dist. Ct. Mont., Aug. 14, 2023), ¶¶ 4, 219, aff'd 2024 MT 312 (hereinafter "*Held* District Court Order") (attached as Exhibit 7).

[46] *Id.*, ¶¶ 222-237.

wildfires, and floods are traceable to cumulative anthropogenic GHG emissions with increasing scientific confidence, and that such attribution science "is increasingly being considered in regulatory claims, constitutional cases, and other litigation."[47]

The Draft Second Supplemental EA fails to assess this causal connection and, as a result, does not adequately describe the climate impacts from YCGS's GHG emissions. According to the Montana Climate Assessment:

> Annual average temperatures, including daily minimums, maximums, and averages, have risen across the state between 1950 and 2015. The increases range between 2.0-3.0°F (1.1-1.7°C) during this period.[48]
>
> Despite no historical changes in average annual precipitation between 1950 and 2015, there have been changes in average seasonal precipitation over the same period. Average winter precipitation decreased by 0.9 inches (2.3 cm), which can largely be attributed to natural variability and an increase in El Niño events, especially in the western and central parts of the state. A significant increase in spring precipitation (1.3-2.0 inches [3.3-5.1 cm]) also occurred during this period for the eastern part of the state.[49]
>
> Montana is projected to continue to warm in all geographic locations, seasons, and under all emission scenarios throughout the 21st century. By midcentury, Montana temperatures are projected to increase by approximately 4.5-6.0°F (2.5-3.3°C) depending on the emission scenario. By the end-of-century, Montana temperatures are projected to increase 5.6-9.8°F (3.1-5.4°C) depending on the emission scenario. These state-level changes are larger than the average changes projected globally and nationally.[50]
>
> Across the state, precipitation is projected to increase in winter, spring, and fall; precipitation is projected to decrease in summer. The largest increases are expected to occur during spring in the southern part of the state. The

[47] NASEM Attribution Report at 3.

[48] Cathy Whitlock et al., 2017 Montana Climate Assessment, Mont. St. Univ., Univ. of Mont., Mont. Inst. on ecosystems at xxvi (2017).

[49] *Id.* at xxvii.

[50] *Id.*

> largest decreases are expected to occur during summer in the central and southern parts of the state.[51]
>
> Montana's snowpack has declined over the observational record (i.e., since the 1930s) in mountains west and east of the Continental Divide; this decline has been most pronounced since the 1980s.[52]
>
> Groundwater demand will likely increase as elevated temperatures and changing seasonal availability of traditional surface-water sources (e.g., dry stock water ponds or inability of canal systems to deliver water in a timely manner) force water users to seek alternatives.[53]
>
> Multi-year and decadal-scale droughts have been, and will continue to be, a natural feature of Montana's climate [high agreement, robust evidence]; rising temperatures will likely exacerbate drought when and where it occurs.[54]

If unrevised, DEQ's inadequate analysis of YCGS' GHG emissions and the dangerous precedent that it sets for future fossil fuel infrastructure all but ensures that decisions made by state officials in Montana will accelerate and amplify the harmful effects of climate change globally and statewide.

III. DEQ'S REVIEW OF YCGS'S GHG EMISSIONS MUST BE CONSISTENT WITH THE REQUIREMENTS IMPOSED BY BOTH THE MONTANA CONSTITUTION AND MEPA

MEPA mandates adequate environmental review to inform the legislature and the public of the environmental impacts from state actions and ways to avoid, minimize, or mitigate them.[55] The State is required to conduct such environmental review prior to permitting the consumption of fossil fuels in facilities such as generating stations, including YCGS.[56] However, though the requirements for environmental review are contained within the language of MEPA, they must be interpreted within the mandates of Montana's Constitution as well.

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[51] *Id.* at xxviii.

[52] *Id.* at xxxii.

[53] *Id.*

[54] *Id.*

[55] MCA § 75-1-102(2).

[56] *Held*, ¶ 6.

Montana's Constitution is explicit in recognizing the right to a "clean and healthful environment" among the "inalienable" rights shared by all Montanans.[57] This right is a fundamental one.[58] The environmental provisions of Montana's Constitution form one of the "strongest…environmental protections in the nation" and are "both anticipatory and preventative" in nature.[59] The Constitution also articulates the duty of state agencies like the DEQ to "maintain and improve a clean and healthful environment in Montana for present and future generations."[60] This requires state agencies to act consistently with the "forward looking and preventative" nature of the Constitution and the requirement that "Montanans have a right not only to reactive measures after a constitutionally-proscribed environmental harm has occurred, but to be free of its occurrence in the first place."[61] DEQ and other state agencies are thus compelled to take action to realize the explicit environmental protections embedded in the Constitution.

The Constitution also mandates that Montana's Legislature "provide adequate remedies for the protection of the environmental life support system from degradation" and "prevent unreasonable depletion and degradation of natural resources."[62] MEPA is part of the statutory scheme that helps implement this constitutional guarantee. To that end, MEPA is "a vehicle for pursuing [the Legislature's] constitutional mandate to prevent environmental harms."[63] Although MEPA requires certain procedures rather than a particular outcome, the Legislature enacted MEPA to "prevent or eliminate damage to the environment."[64] Prevention, however, depends on a forward-looking approach to environmental protection. MEPA's procedural mandate allows for this foresight by "enabling fully informed and considered decision making, thereby minimizing the risk of irreversible mistakes depriving Montanans of a clean and healthful environment."[65]

The Montana Supreme Court in *Held v. State* found that the constitutional right to a clean and healthful environment includes the right to a stable climate system.[66] In so finding, the court

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[57] Mont. Const. Art. II., § 3.

[58] *Mont. Env't Info. Ctr. v. Mont. Dep't of Env't Quality*, 1999 MT 248, ¶ 63, 296 Mont. 207, 988 P.2d 1236; *Held*, ¶ 57.

[59] *Held*, ¶ 30.

[60] Mont. Const. Art. IX, § 1(1).

[61] *Park Cnty. Env't Council v. Mont. Dep't of Env't Quality*, 2020 MT 303, ¶ 62, 402 Mont. 168, 477 P.3d 288.

[62] Mont. Const. Art. IX, § 1(3).

[63] *Held*, ¶ 59.

[64] *Park Cnty. Env't. Council*, ¶ 65.

[65] *Id*. ¶ 70.

[66] *Held*, ¶ 30.

also found a 2011 legislative amendment to MEPA ("the MEPA Limitation") to be unconstitutional.[67] The court held that the MEPA Limitation—which prohibited state agencies from considering the actual or potential impacts of GHG emissions from permitted projects—violated the constitutional right to a clean and healthful environment.[68] Importantly, the court in *Held* rejected the argument that because Montana's total GHG emissions are "insignificant when evaluated against the total amount of global GHG emissions" a "project's emissions will not significantly affect the quality of the human environment."[69] The extent of global GHG emissions, the court stated, "do not insulate the State from its affirmative constitutional duties with regards to projects that it permits."[70] DEQ's analysis of YCGS's GHG emissions is contrary to the Court's interpretation of the Constitution in *Held*.

Consistent with the state's constitutional obligations, MEPA's environmental review provisions establish that state agencies must look before they leap, "ensur[ing] that presently unquantified environmental amenities and values may be given appropriate consideration."[71] To this end, MEPA requires fully informed decision-making in three primary ways. First, MEPA review ensures that state agencies utilize the information obtained through the MEPA process to make decisions that maintain and improve the environment as the Montana Constitution requires. As the Montana Supreme Court stated in *Held*, "a clean and healthful environment cannot occur unless the State and its agencies can make adequately informed decisions."[72] A stable climate is encompassed by the "environmental life support system" protected by Montana's Constitution.[73] The degradation of Montana's climate and natural resources as a result of Montana's continued burning of fossil fuels—and the associated emissions of GHGs—have caused and continue to cause constitutional harm to all Montanans. Thus, state agencies, including DEQ, must utilize MEPA review to inform its actions to help realize these constitutional protections.

Second, MEPA "ensure[s] that … environmental attributes are fully considered by the legislature in enacting laws to fulfill constitutional obligations."[74] "[E]nvironmental review

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[67] *Id*. ¶ 68.

[68] *Id*.

[69] *Id*. ¶ 66.

[70] *Id*.

[71] MCA § 75-1-201(1)(B)(ii).

[72] *Held*, ¶ 67.

[73] *Id.* at ¶ 29.

[74] MCA § 75-1-102(1); *see also Ravalli Cnty. Fish & Game Ass'n v. Mont. Dep't of State Lands*, 273 Mont. 371, 903 P.2d 1362, 1367 (1995) ("MEPA requires that an agency take procedural steps to review '… major actions of state government significantly affecting the quality of the human environment' in order to make informed decisions.") (citation omitted).

[under MEPA] 'assist[s] the legislature in determining whether laws are adequate to address impacts to Montana's environment and … inform[s] the public and public officials of potential impacts resulting from decisions made by state agencies."[75] "MEPA serves a role in enabling the Legislature to fulfill its constitutional obligation to prevent environmental harms infringing upon Montana's right to a clean and healthful environment" and "is essential to the 'State's efforts to meet its constitutional obligations.'"[76]

Finally, MEPA provides for public engagement, ensuring that "the public is informed of the anticipated impacts in Montana of potential state actions."[77] The Montana Supreme Court recently affirmed the importance of public participation in *MEIC v. DEQ,* which concerned GHG emissions from YCGS.[78] There, the Court noted that where significant public comment was received expressing concern about the GHG emissions of the LGS, "it was appropriate information to include in DEQ's MEPA analysis."[79] Without adequate MEPA analysis of the impacts of a project, including impacts from its GHG emissions, Montanans' right to participate in government decision making is undermined.

Although the Legislature has amended MEPA, the Montana Supreme Court has cautioned that "the Legislature cannot fulfill its constitutional obligation to prevent proscribed environmental harms without some legal framework in place that mirrors the uniquely 'anticipatory and preventative' mechanisms found in the original MEPA."[80] Considering MEPA's essential goals to implement multiple constitutional obligations, to the extent that MEPA is amended to require anything less than an adequate disclosure or evaluation of impacts sufficient to fulfill the State's and Legislature's constitutional mandates, the individual statutes or statutory scheme is unconstitutional.

IV. THE DRAFT SECOND SUPPLEMENTAL EA FAILS TO TAKE A HARD LOOK AT THE PROJECT'S DIRECT, SECONDARY, AND CUMULATIVE CLIMATE IMPACTS

In furtherance of the constitutional protections for Montana's environment outlined above, MEPA requires agencies, including DEQ, to "take a 'hard look' at a project's

[75] *MEIC 2025*, ¶ 60 (citing MCA § 75-1-102 (3)(a); ARM 17.4.609 (3)(d), (e)).

[76] *Id.* (citations omitted).

[77] MCA § 75-1-102(1).

[78] *MEIC 2025*, ¶ 57 (citing MCA §75-1-102(1)(a), (b); Mont. Const., Art. II § 8; MCA § 2-3-103 (providing for public participation)).

[79] *Id.* at ¶ 61.

[80] *Park Cnty. Env't. Council*, ¶ 70.

environmental impacts."[81] As part of the mandated hard look, MEPA requires all state agencies to "include in each recommendation or report on proposals for projects, programs, and other major actions of state government significantly affecting the quality of Montana's environment a detailed statement" analyzing the environmental impacts of the proposed action.[82] Montana's Administrative Rules require these environmental impacts include "cumulative and secondary impacts, on the physical environment."[83] DEQ's analysis of the direct, secondary, and cumulative effects of YCGS's emissions falls short of MEPA's "hard look" requirement.

A. DEQ Must Take a Hard Look at the Direct and Secondary Climate Impacts of the Project's GHG Emissions.

Under MEPA *MEIC 2025*, and the Montana Constitution, DEQ must analyze the direct and secondary effects of a project and, in doing so, must do more than quantify potential emissions. MEPA requires a "hard look" at the environmental impacts of a proposed project, and applying this requirement to GHGs requires a direct effects analysis that moves beyond a statement of the amount of GHGs emitted.[84] YCGS's contribution to climate change must be evaluated in a meaningful context.[85] DEQ must also analyze secondary impacts, which are defined in ARM 17.4.603(18) as "a further impact to the human environment that may be stimulated or induced by or otherwise result from a direct impact of the action." These are impacts that occur at a different location or later than the proposed action. As the Montana Supreme Court made clear in *MEIC 2025*, the GHG emissions from YCGS include, at minimum, both direct and secondary emissions.[86]

In the wake of *Held*, the 2025 Montana Legislature passed SB 221, which limited this direct and secondary analysis to "proximate" impacts on Montana's environment.[87] The passage

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[81] *Mont. Wildlife Fed'n v. Mont. Bd. of Oil & Gas Conservation,* 2012 MT 128, ¶ 43, 365 Mont. 232, 280 P.3d 877; *MEIC 2025*, ¶ 13; *see also* MCA § 75-1-201(1)(b)(iv); ARM 17.4.609(3)(d).

[82] MCA § 75-1-201.

[83] *MEIC 2025*, ¶ 47 (citing ARM 17.4.609(3)(d)).

[84] *See Mont. Wildlife Fed'n*, ¶ 43; *MEIC 2025*, ¶ 40; *Ravalli Cnty. Fish & Game Assn.* at *377. *See also Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1198–1204 (9th Cir., 2008); *California v. Bernhardt*, 472 F. Supp. 3d 573, 623 (N.D. Cal. 2020); *Ctr. for Biological Diversity v. U.S. Forest Service*, 687 F. Supp. 3d 1053, 1077 (D. Mont. 2023).

[85] *See* National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change, 88 Fed. Reg. 1196, 1201 (2023); *Diné Citizens Against Ruining Our Env't. v. Haaland*, 59 F.4th 1016, 1044 (10th Cir. 2023); *350 Montana v. Haaland*, 50 F.4th 1254, 1265–67 (9th Cir. 2022).

[86] *See MEIC 2025*, ¶ 61.

[87] DEQ GHG Guidance at 2.

of SB 221 in 2025 substantially narrowed MEPA's required scope of environmental review to exclude upstream, downstream, and other indirect actions occurring independently of, or caused in part or exclusively by, the proposed action, and by requiring agencies to analyze the "proximate environmental impacts" and "proximate adverse effects" of the proposed action. After the amendments, an agency must "conduct a greenhouse gas assessment" that analyzes the impacts of these emissions on "Montana's environment" for any "fossil fuel activity" which includes "a proposed action that authorizes…[the] burning of…natural gas to generate energy for electricity."[88] To the extent SB 221 allows DEQ to prepare an environmental assessment that is inconsistent with the requirements of the Montana Constitution, and the Montana Supreme Court's implementing jurisprudence—like DEQ did here, with the Draft Second Supplemental EA—SB 221 is unconstitutional both facially and as applied.

In addition to revising MEPA, SB 221 also directed DEQ to develop guidance regarding when and how the State should evaluate GHG emissions and their impacts—the agency published that guidance (referred to herein as the "DEQ GHG Guidance").[89] Again, in July 2026, DEQ stipulated to considering the DEQ GHG Guidance in connection with the previously issued Supplemental EA.[90]

1. DEQ must evaluate environmental effects with a "reasonably close causal relationship" to the project.

    a. DEQ incorrectly interprets "proximate" in its GHG analysis guidance and, as a result, in its YCGS environmental analysis.

Contrary to DEQ's misinterpretation, "proximate" impacts under SB 221 refer to all impacts with a "reasonably close causal relationship" to the project. SB 221[91] amended § 75-1-201(1)(b)(iv), MCA, to require that MEPA reviews include the "proximate environmental impacts" and "any proximate adverse effects on Montana's environment." The Legislature left "proximate" undefined, but as comments submitted to DEQ regarding its Draft GHG Guidance Document demonstrate, DEQ's interpretation of proximate is legally incorrect.[92] That error

[88] MCA § 75-1-201(1) (2025); MCA § 75-1-220 (2025); MCA §75-1-220(6)-(8) (2025) (defining "environmental review" and "fossil fuel activity").

[89] *See generally* DEQ GHG Guidance.

[90] *Mont. Env't. Info. Ctr. v. Mont. Dept. of Env't. Quality*, Doc. 25, *Joint Stipulation to Supplement Administrative Record*, Cause No. DV-56-2025-1159 (Mont. Thirteenth Jud. D. Ct.) (July 23, 2026).

[91] 2025 Mont. Laws Ch. 348 §§ 1(1)(a)–(b); 4(7)(a)–(b) (SB 221); codified in §§ 75-1-201, 75-1-202, and 75-1-220, MCA.

[92] Ex. 5, Guidance Comments.

matters here because the Draft Second Supplemental EA imports the same flawed interpretation, uncorrected, into this project-level review.

The DEQ GHG Guidance asserts that the addition of the word "proximate" "narrows the scope of environmental review under MEPA" to only ""impacts directly emitted from sources controlled or owned by a facility or project," and excludes "downstream emissions."[93] It defines "proximate environmental impact" as "[d]irect impacts [] that occur at the same time and place as the action that triggers the effect," geographically limited to "impacts occurring on Montana's environment," and concludes that a GHG assessment "should focus on the direct proximate environmental impacts that are immediately attributable to the proposed action itself, rather than broader consequential or lifecycle impacts."[94]

This is incorrect. "Proximate" is a causal concept, describing the limits of foreseeability and responsibility for environmental effects, not a synonym for "on-site" or "direct emission." It does not disturb the "reasonably close causal relationship" standard that *Bitterooters, Held,* and *MEIC 2025* already affirm as the measure of MEPA's reach. Reading it to exclude all lifecycle emissions nullifies text the Legislature left intact, inserts limitations the Legislature never enacted, and ignores the constitutional obligations identified in *Held.* Moreover, if the DEQ GHG Guidance document is correct that SB 221 narrows MEPA review, it would run headlong into the Montana Supreme Court's admonition that: "the Legislature cannot fulfill its constitutional obligation to prevent proscribed environmental harms without some legal framework in place that mirrors the uniquely 'anticipatory and preventative' mechanisms found in the original MEPA."[95]

SB 221's upstream/downstream carve-out cabins what counts as the "proposed action," but it does not cabin the effects of that action DEQ must consider and disclose. While upstream processing/transport and downstream combustion are not themselves "the action," their emissions are related to it by location or generic type and are the foreseeable mechanism by which the approved action worsens Montana's heat, smoke, hydrologic, and economic harms. Nothing in SB 221 forbids analyzing lifecycle effects to explain those Montana impacts. And when it comes to climate change, the proximate effects of a fossil-fuel and GHG-generating action are the primary environmental impacts of that action. To pretend otherwise is akin to balancing a checkbook by counting only the cash in hand; it ignores the deposits and withdrawals that make up the full transaction. Omitting the emissions from fuel extraction and, particularly, end-use combustion gives a distorted picture of a project's total contribution to

[93] Department of Environmental Quality, Guidance for Greenhouse Gas Impact Assessments Under the Montana Environmental Policy Act (Jan. 2026) ("Guidance") at 3, 8.

[94] DEQ GHG Guidance at 8.

[95] *Park Cnty. Env't. Council*, ¶ 70.

atmospheric carbon, even though those emissions are quantifiable, foreseeable, and proximate to the proposed action.

Properly read, "proximate" should define DEQ's obligation to identify and evaluate environmental consequences sufficiently direct and foreseeable to warrant consideration, not impose artificial blinders on analysis outside a project's fence line. MEPA's "hard look" requirement obligates DEQ to reasonably discern which effects are sufficiently connected to the action to be analyzed, distinguishing speculative or remote consequences from proximate ones. As an example: the combustion-caused GHG emissions authorized by a coal-mining permit would not exist but for the extraction the permit allows and are therefore "proximate" to the permitted action.[96]

This framework aligns with MEPA's parallel federal standards, under which courts emphasize proximate causation, not geography, as the threshold for environmental review. The U.S. Supreme Court's decision in *Seven County Infrastructure Coalition v. Eagle County*[97], on which the DEQ GHG Guidance itself relies, confirms this reading:

> [T]he environmental *effects* of the project at issue may fall within [the statute] even if those *effects* might extend outside the geographical territory of the project or might materialize later in time — for example, run-off into a river that flows many miles from the project and affects fish populations elsewhere, or emissions that travel downwind and predictably pollute other areas . . . [b]ut if the project at issue might lead to the construction or increased use of a separate project . . . the agency need not consider the environmental effects of that separate project. To put it in legal terms, the separate project breaks the chain of proximate causation between the project at hand and the environmental effects of the separate project.[98]

In *Seven County*, the chain of proximate causation was broken because the Surface Transportation Board had no authority to permit either the upstream oil production or the downstream combustion at issue. Both were wholly separate actions, even though the railway permit would foreseeably increase both. Here, by contrast, DEQ is the permitting authority for the fossil-fuel production and combustion activity itself: absent DEQ's permit, the natural gas at issue could not be extracted, transported, or combusted at the facility. DEQ is thus the proximate cause of the upstream and downstream emissions in a way the Surface Transportation Board was not. Even under NEPA, which lacks MEPA's constitutional backstop, the U.S. Supreme Court has implicitly rejected a fenceline test for proximate causation. DEQ's reading of "proximate" as

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[96] *Held* District Court Order, ¶ 50, 67-73.

[97] *Seven County Infrastructure Coalition v. Eagle County*, 145 S. Ct. 1497, 221 L. Ed. 2d 820 (2025).

[98] *Id.* at 1515–16.

limited to the project footprint is arbitrarily narrow and, as discussed further below, incompatible with a meaningful and constitutionally adequate analysis of climate impacts.

Read together, SB 221 preserves MEPA's established "action vs. effects" distinction: indirect activities and consequences may fall outside the action yet remain part of the required effects analysis where they are proximate to the action's impacts in Montana. The DEQ GHG Guidance's own Appendix 4 operationalizes this cumulative frame through statewide baselines (EPA SIT), facility context (EPA FLIGHT), and federal-mineral context (BLM Specialist's Report) precisely so agencies can place a project's emissions in the broader picture that determines impacts to Montana's environment. [99] Coupled with MEPA's required alternatives analysis, the DEQ GHG Guidance should require quantifying the direct and cumulative effects of GHG combustion from the project at issue and from related upstream and downstream activities, consistent with MEPA's purpose and *Held's* recognition that every additional ton of GHGs matters.[100]

DEQ was previously warned that reading "proximate" this narrowly would improperly truncate every GHG assessment conducted under the DEQ GHG Guidance.[101] That prediction has now been realized: the Draft Second Supplemental EA imports the DEQ GHG Guidance's definition wholesale and without independent analysis, confining its "analysis area" to the equipment authorized by MAQP #5261-00[102] (the 18 RICE engines, the emergency generator, the fire pump engine, and the line heater) and excluding upstream gas production, processing, and transport, as well as downstream and systemic effects, from both its Direct Impacts and Cumulative Impacts sections.

While the DEQ GHG Guidance itself is flawed, the Draft Second Supplemental EA compounds the problem by deviating from the DEQ GHG Guidance in ways that further constrain the MEPA effects analysis. The DEQ GHG Guidance states that "individual project emissions produce temperature changes too small to provide meaningful context" and repositions MAGICC for "sectoral or large aggregated emissions analyses" only.[103] Yet the Draft Second Supplemental EA's Secondary Impacts section still runs MAGICC at the project level and reports a project-specific ΔT of 0.000015°C as its central secondary-impacts metric—the precise application the DEQ GHG Guidance disclaims. Similarly, the Guidance sets out a no-

[99] DEQ GHG Guidance, App. 4 (Cumulative Impacts of GHG).

[100] *Held*, ¶ 30.

[101] *See* Guidance Comments.

[102] Draft Second Supplemental EA, at 9-10 ("the analysis area for this resource is limited to the activities regulated by the issuance of MAQP #5261-00").

[103] DEQ GHG Guidance, App. 2 (Secondary Impacts from Greenhouse Gas Emissions), at 12, A-4.

action/alternatives/mitigation framework,[104] but the Draft Second Supplemental EA's scope statement omits any updates to the Alternatives section, so neither the no-action analysis nor the (now-deleted) mitigation are present in the Draft Second Supplemental EA. An agency acts arbitrarily when it invokes a standard and then declines to apply it. These internal inconsistencies are independently unlawful.[105]

Neither SB 221 nor the DEQ GHG Guidance can lower the floor of environmental review that the Montana Constitution and controlling case law (*Held*,[106] *MEIC 2025*,[107] *Park County*,[108], *Bitterrooters*,[109]) require DEQ to provide. SB 221 is a statute; the DEQ GHG Guidance is agency policy. Neither can limit DEQ's overarching constitutional obligation to take a "hard look" at the proximate, foreseeable direct, secondary, and cumulative GHG impacts of a fossil fuel activity; to the extent either purport to do so, that instruction is unconstitutional. DEQ may not shelter behind SB 221 or its own Guidance as a basis for narrowing analysis below that constitutional floor.

In sum, DEQ should reject the Guidance's fenceline definition of "proximate" as applied in this EA and conduct an independent analysis of the foreseeable upstream and downstream GHG effects of the Proposed Action consistent with SB 221's text and *Held*.

b. DEQ's incorrect definition of "proximate" improperly limits the scope of its environmental assessment.

Contrary to MEPA's framework outlined above, the Draft Second Supplemental EA is inadequate because DEQ has improperly limited the scope of both the project area and total emissions.

First, the project's analysis area identified in the Draft Second Supplemental EA is inappropriately limited to the immediate area surrounding YCGS.[110] The Draft Second Supplemental EA indicates the analysis area includes "neighboring lands surrounding the immediate project,"[111] yet this area is still inappropriately limited because the project will impact

[104] DEQ GHG Guidance, at 16-18.

[105] *Ctr. for Biological Diversity v. Zinke*, 900 F.3d 1053, 1074 (9th Cir. 2018) (agency acted arbitrarily by disregarding its own criteria for judging species viability that required "at least 10 years" of monitoring, and deeming a population viable based on only five years of data).

[106] *Held*, ¶ 30.

[107] *MEIC 2025*, ¶ 60.

[108] *Park Cnty. Env't Council v. DEQ*, 2020 MT 303, ¶ 62, 402 Mont. 168, 477 P.3d 288.

[109] *Bitterrooters for Planning, Inc. v. DEQ*, 2017 MT 249, ¶ 21.

[110] Draft Second Supplemental EA at 4–5.

[111] *Id.* at 5.

areas far beyond the area highlighted in blue in Figure 1 of the Draft Second Supplemental EA.[112]proposed 10.4-acre area and neighboring lands. DEQ is obligated to evaluate the direct, cumulative, and secondary impacts of the project on the physical environment and on the population affected by a proposed action.[113] DEQ's definition of "proximate" should not confine the analysis area.

Second, DEQ cannot avoid reviewing secondary and downstream impacts under the agency's suggestion that the impacts of the project's GHG emissions, "including warming temperatures and accompanying environmental consequences, are necessarily felt later in time,"[114] and at different locations.[115] The Montana Supreme Court rejected that level analysis when it ordered DEQ to prepare an adequate environmental analysis of YCGS's GHG emissions almost two years ago.[116] The project's emissions, enabled by DEQ's permit approval, are occurring now and contributing to the particular impacts of climate change in Montana. DEQ cannot avoid completing the analysis it has been ordered to prepare, and the any environmental assessment of YCGS's GHG emissions will be deficient until the agency does so.[117] DEQ's interpretation of "proximate" renders the Draft Second Supplemental EA deeply flawed and improperly narrow, contrary to the clear directive to evaluate all effects with a "reasonably close causal relationship."

2. <u>DEQ's evaluation of direct and secondary climate impacts is unreasonable and deficient</u>

DEQ's impacts analysis falls short of MEPA's "hard look" mandate and the requirements outlined above as the agency arbitrarily denies climate impacts from YCGS's substantial emissions and fails to consider the compounding nature of the project's emissions, the harms to human health from climate change, the economic cost of emissions, and the existence of fugitive emissions.

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[112] *See id.* at 4.

[113] AMR 17.4.609(3)(d), (e).

[114] Draft Second Supplemental EA at 12.

[115] *Id*. DEQ reasons that "an increase in GHG emissions from a particular source are not necessarily representative of environmental consequences in the same corresponding location because of the inherently global nature of climate change and trends.

[116] *See MEIC 2025*, ¶ 47.

[117] Notably, DEQ does not propose transferring its obligation to evaluate project's environmental impacts to different locations and at later times where and when those impacts are felt. DEQ's obligation to evaluate those impacts in Montana was triggered by DEQ's permitting action and the Court's subsequent remand, and it may not be deferred.

a. DEQ fails to adequately analyze and engage with the climate effects of YCGS' greenhouse emissions.

As a threshold issue, DEQ's denial of any significant climate impacts of the project's emissions is arbitrary and contrary to the science before the agency. Using the EPA Simplified GHG Calculator, DEQ calculated YCGS's emissions to be 695,217 metric tons per year of CO_{2e} per year.[118] However, despite having access to and acknowledging the extensive impacts of climate change, DEQ fails to adequately engage with the significant and adverse climate impacts of such emissions.

MEPA's "hard look" requirement demands that DEQ to show how the record evidence supports its significance determination, not merely to cite that evidence in a reference list. *Held,*[119] *MEIC 2025,*[120] *Park County,* [121] and *Bitterrooters*[122] establish that this obligation applies to environmental review under Montana's Constitution. Measured against that standard, the documented impacts of climate change catalogued outlined above, and DEQ's failure to engage them, show that DEQ's treatment of climate change throughout the Draft Second Supplemental EA falls short in a way that is independent of, and broader than, the individual gaps identified below.

The Draft Second Supplemental EA's reference list cites the Intergovernmental Panel on Climate Change's Sixth Assessment Report, the Fifth National Climate Assessment, and the Montana Climate Assessment by title.[123] Nowhere in the body of the document, however, does DEQ discuss what those sources actually say, connect their findings to the Proposed Action's emissions, or explain why 695,217 metric tons of CO_{2e} per year does or does not meaningfully contribute to the global, regional, and human-health harms those sources document. The same is true of Montana's substantial-factor role in causing those harms and of the SC-GHG methodology DEQ continues to decline to apply. Citation is not engagement, and a reference list is not a hard look.

Because DEQ has quantified the Proposed Action's emissions without ever connecting that quantity to any of the concrete, documented consequences summarized above, its significance determination lacks the "rational connection between the facts found and the choice made" that

[118] DEQ should confirm the accuracy of the calculated annual emissions by referencing operational data from YCGS, as the facility has been operating for some time.

[119] *Held*, ¶ 30.

[120] *MEIC 2025*, ¶ 60.

[121] *Park Cnty*., ¶ 62.

[122] *Bitterrooters*, ¶ 17.

[123] Draft Second Supplemental EA at 21–22.

MEPA requires.[124] This is a threshold deficiency. Curing of the other deficiencies of the environmental analysis addressed below cannot substitute for DEQ reasoning from the climate science already in its own record to the significance finding it reached.

b. DEQ fails to consider the compounding nature of the project's GHG emissions over its lifetime.

DEQ's Draft Second Supplemental EA fails to adequately disclose the project's impacts on the global, regional, and local environments and economies throughout its lifetime. To adequately disclose the magnitude of climate change, DEQ cannot and should not ignore modern scientific and economic studies and tools when evaluating the long-term impacts of the project. DEQ affirms that "GHG emissions incrementally add to global GHGs and, thus, to secondary and cumulative climate impacts."[125] Yet, DEQ does not evaluate the climate harm from YCGS's nearly seven hundred thousand metric tons of CO_{2e} emissions per year from combustion sources, which compounds upon itself each year for the duration of its life. The annual amount alone is significant: the equivalent to emissions of 167,327 gasoline-powered passenger vehicles operating for one year.[126] To put this into perspective, Yellowstone County has a population of approximately 168,957 people.[127] This facility then, emits one extra gas-powered vehicle's worth of GHG emissions for nearly every person in the county, and it will continue to add this amount every year for its life. In evaluating the impacts of YCGS's emissions, DEQ must acknowledge their compounding nature and its augmenting effect on the frequency and intensity of harmful climate events.

c. DEQ fails to acknowledge or evaluate the project's impacts on humans or their health.

The Draft Second Supplemental EA fails to adequately consider or acknowledge the risk to human health posed by YCGS's GHG emissions. As highlighted above, rising temperatures, increased wildfire smoke, flooding, drought, and elevated carbon dioxide and pollen levels will

[124] *Mont. Wildlife Fed'n*, ¶ 43.

[125] Draft Second Supplemental EA at 16.

[126] EPA, Greenhouse Gas Equivalencies Calculator, available at: https://www.epa.gov/energy/greenhouse-gas-equivalencies-calculator. *See* NorthWestern App. for Mont. Air Quality Permit, Air Emissions Inventory, at 7 (May 10, 2021) (DEQ's 2025 Draft Supplemental EA and Second Supplemental Draft EA contain a different figure from NorthWestern's Application, noting that the annual emissions total from the engines at the facility will equal 695,217 metric tons per year of CO_{2e} per year. Second Draft EA at 18; 2025 Draft EA at 29. DEQ did not explain why this figure differs from NorthWestern's 2021 calculation.)

[127] Data USA, Yellowstone County, MT, https://datausa.io/profile/geo/yellowstone-county-mt (2024).

all worsen illnesses and other health conditions. No mention of any consequences to human health appears anywhere in the Draft Second Supplemental EA. Instead, DEQ's meager analysis only addresses physical-science metrics and never discusses the people those metrics are meant to protect.

d. DEQ should have utilized the Social Costs of Greenhouse Gasses framework to analyze the impacts of the project's emissions.

The Draft Second Supplemental EA fails to adequately disclose the full impact of YCGS's GHG emissions because the agency has not quantified the social and economic cost incurred by those emissions. DEQ's claims that the agency is unable to quantify the incremental impacts of YCGS's emissions are undermined by the agency's decision not to use available tools, such as the Social Cost of Greenhouse Gases ("SC-GHG"). The SC-GHG is a peer-reviewed federal methodology that translates emissions into their present-value environmental and public-health damages. SC-GHG "reflects the net social cost of emitting, or the net social benefit of reducing emissions of, one metric ton of greenhouse gases in a given year,"[128] which gives both the public and lawmakers the ability to readily understand the scope of a project's climate impacts and contextualize them against other effects.

DEQ suggests that the project's GHG emissions cannot be evaluated because they are "well-mixed" with global ones and it is difficult to link "one source of GHG emissions to a specific environmental impact."[129] The Montana Supreme Court rejected that rationale in MEIC 2025: DEQ cannot avoid its obligations to fully disclose and analyze the impacts from YCGS's GHG emissions simply because the rest of the world insists on polluting the environment.[130]

Further, DEQ's reasoning, however, is precisely why EPA developed the SC-GHG framework. The SC-GHG monetizes abstract metric tons GHG emissions, using the data to contextualize a proposed action's climate effects. The model allows for consideration of the broader context of GHG emissions in the region and throughout the lifecycle of the project. Further, SC-GHG captures the fact that the climate harm caused by each additional ton of GHG emissions depends on the background concentration of greenhouse gases in the global atmosphere. Once emitted, GHGs can linger in the atmosphere, building up the concentration of radiative-forcing pollution and affecting the climate in cumulative, non-linear ways. As physical and economic systems become increasingly stressed by climate change, each marginal additional

[128] Office of Mgmt. & Budget, *Report to Congress on the Benefits and Costs of Federal Regulations and Agency Compliance with the Unfunded Mandates Reform Act: Fiscal Year 2023* at 20 (2024) (attached as Exhibit 9).

[129] Draft Second Supplemental EA at 16.

[130] *See MEIC 2025*, ¶ 47.

ton of emissions has a greater, non-linear impact. Against this background, the Draft Second Supplemental EA provides no justifiable basis for refusing to utilize the SC-GHG framework.

YCGS's GHG emissions come at an extreme social cost. In 2023, EPA calculated the social cost of carbon at approximately $190 per metric ton of CO_2 emitted in 2021.[131] Applied to the 695,217 metric tons of CO_{2e} per year, YCGS's GHG emissions result in over $132 million in damages annually. This is the equivalent to the damage caused by extreme weather events, like Tropical Storm Alberto (which caused $125 million in damage, mostly along the U.S. Gulf Coast, but every year, for thirty years.[132] Multiplied over YCGS's 30-year expected life (with potential lifetime CO_{2e} emissions of 23,091,180 metric tons), the social costs total over $3.9 billion—roughly the equivalent of the damage caused by Hurricane Zeta in October 2020 (which caused roughly $4.4 billion in damage in the United States).[133, 134] These costs capture "changes in net agricultural productivity, human health effects, property damage from increased flood risk, changes in the frequency and severity of natural disasters, disruption of energy systems, risk of conflict, environmental migration, and the value of ecosystem services"[135]—in other words, exactly the types of direct, secondary, and cumulative impacts within MEPA's purview.

For guidance, DEQ should review the Supplemental Environmental Impact Statement ("SEIS") for the 2024 Miles City Field Office Resource Management Plan Amendment, which applies an SC-GHG analysis for a NEPA assessment.[136] There, BLM affirmed that SC-GHGs

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[131] EPA, *Report on the Social Cost of Greenhouse Gases: Estimates Incorporating Recent Scientific Advances*, at 78 (Nov. 2023), https://www.epa.gov/system/files/documents/2023-12/epa_scghg_2023_report_final.pdf [hereinafter "EPA, Report on the Social Cost of Greenhouse Gases"] (attached as Exhibit 8).

[132] National Hurricane Center, Tropical Cyclone Report for Tropical Storm Alberto at 6 (Oct. 18, 2018), https://www.nhc.noaa.gov/data/tcr/AL012018_Alberto.pdf.

[133] National Hurricane Center, Tropical Cyclone Report for Hurricane Zeta at 9 (May 10, 2021), https://www.nhc.noaa.gov/data/tcr/AL282020_Zeta.pdf.

[134] These estimates are for global costs. However, EPA's report and other recent climate attribution and impact modeling offer guidance on calculating costs within specific geographies. *Id.* at 95; Nerilie J. Abram et al., *Quantifying the Regional to Global Climate Impacts of Individual Fossil Fuel Projects to Inform Decision-making*, NPJ Climate Action (Oct. 13, 2025) (attached as Exhibit 10); Sabine Undorf et al., *Approaches, Challenges and Applications of Climate Change Impact Attribution*, Nature Reviews Earth & Environment (June 2026) (attached as Exhibit 11).

[135] *Id.* at 1.

[136] BLM, Final Supplemental Environmental Impact Statement for the Proposed Resource Management Plan Amendment, at 3-90 (May 2024) (available at https://www.blm.gov/sites/blm.gov/files/MCFO_MT_Final%20Protest%20Resolution%20Report_112529.pdf).

numbers were monetized, but did not constitute a complete cost-benefit analysis, nor were they used as a direct comparison with other impacts.[137]

DEQ's rationale for refusing to conduct a SC-GHG analysis is deficient. DEQ claims that such calculations are prone to uncertainty and that the Montana Supreme Court's decision in *Belk v. Montana Department of Environmental Quality* "does not require quantitative economic forecasts."[138] First, uncertainties in forecasts are no reason not to conduct the forecast in the first place, and DEQ can easily remedy that concern by including appropriate qualifications in its analysis. Second, the Montana Supreme Court's decision in *Belk* does not prohibit the use of SC-GHG. Instead, *Belk* affirms that agencies can use an economic analysis to meet their "require[d] assessments of impacts on human populations," which includes "health, agriculture, tax bases, and culture."[139] Under *Belk*, DEQ has discretion to gather the information necessary to make accurate impact findings but this discretion is not an excuse to entirely forego an economic analysis.[140] To that end, SC-GHG is a damages metric that gives the public and decisionmakers the same kind of concrete, comprehensible context DEQ must provide to the public and to lawmakers.

e. DEQ wrongfully excluded fugitive emissions from its analysis.

The Draft Second Supplemental EA understates, and does not adequately disclose, YCGS's GHG emissions because DEQ has not identified, quantified, or evaluated methane released through equipment leaks or equipment failure, gas plant startup events and incomplete combustion, supply chain emissions, and the pipeline infrastructure that serves YCGS. These failures result in an understated annual estimate that does not adequately inform the public, or public officials, about the impacts from YCGS's GHG emissions.

Fugitive emissions are identified as "non-combustion emissions" and differ from "uncombusted emissions" that pass through a stack or functionally equivalent opening unignited.[141] Montana identifies fugitive emissions as those that "could not reasonably pass

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[137] *Id.* at F-29.

[138] DEQ GHG Guidance, App. 3 (Methods and Means of Quantifying Costs Related to Greenhouse Gas Emissions) at 13-14.

[139] *See Belk v. Mont. Dep't of Env't Quality*, 2022 MT 38, ¶ 29, 408 Mont. 1, 504 P.3d 1090.

[140] *Id.* (finding that assessing impacts in quantitative economic terms "may be helpful in some circumstances").

[141] "Uncombusted" can be measured from stack plumes to quantify unburned fuel. *See generally* Kristian D. Hajny, et al., *Observations of Methane Emissions from Natural Gas-Fired Power Plants*, Environ. Sci. Technol. (Aug. 2019); 53 (15): 8976–8984. https://doi.org/10.1021/acs.est.9b01875.

through a stack, chimney, vent, or other functionally equivalent opening."[142] Non-combusted, fugitive emissions commonly occur during the transportation and storage of gas *before* combustion, typically from leaks in transportation lines or storage tanks.[143]

The Draft Second Supplemental EA fails to evaluate or disclose fugitive emissions because it does not address the following potential sources: equipment leaks and equipment failures at YCGS, emissions associated with startup events at YCGS and the incomplete combustion of methane at YCGS, and emissions from the pipeline infrastructure that serves YCGS. On the final point, transmission and storage of natural gas have been found to produce the largest amounts of fugitive emissions, particularly compressor stations.[144] To adequately assess YCGS's GHG emissions, DEQ must evaluate the age of the pipeline infrastructure that serves YCGS. Early-life pipelines have elevated risks associated with equipment failures, construction defects, and early operational problems.[145] Newly constructed, early-life pipelines require effective management due to risks of failure attributed to "initial material defects."[146] Regardless of age, GHG emissions from pipeline infrastructure must be evaluated. A 2020 study found that there are approximately 630,000 leaks in the U.S. natural gas distribution mains, far more leaks than previously estimated, and that methane emissions from distribution mains are approximately five times larger than U.S. EPA's inventory estimates for this source category.[147]

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[142] ARM § 17.8.901(9).

[143] Greenhouse Gase Inventory Guidance, Direct Emissions from Stationary Combustion Sources, U.S. EPA Center for Corporate Climate Leadership, December 2023, at 2. https://www.epa.gov/sites/default/files/2020-12/documents/stationaryemissions.pdf.

[144] Daniel J. Zimmerle, et al., *Methane Emissions from the Natural Gas Transmission and Storage System in the United States*, Environ. Sci. Technol. (Aug. 2015); 49 (15): 9374–9383. https://doi.org/10.1021/acs.est.5b01669.

[145] Hongfang Lu, et al., *Quantifying greenhouse gas emission risks from natural gas pipeline incidents*, Nexus 2, 4, 100097, (Dec. 2025) https://www.researchgate.net/publication/395524756_Quantifying_greenhouse_gas_emission_risks_from_natural_gas_pipeline_incidents.

[146] *Id*. at 9.

[147] Weller, Z. et al, *A National Estimate of Leakage from Pipeline Mains in Natural Gas Local Distribution Systems* at 1, Environ. Sci. Technol. (2020), https://pubs.acs.org/esthag/article-pdf/54/14/8958/66995843/acs.est.0c00437.pdf

B. DEQ Must Take a Hard Look at the Cumulative Impacts of the Project's GHG Emissions.

Like the direct and secondary effects analysis, DEQ's evaluation of the cumulative impacts of YCGS' emissions is inadequate and fails to consider the presence of other existing refineries and sources of emissions in Montana.

Cumulative impacts are defined in § 75-1-220(5), MCA, as "the collective impacts on Montana's environment of the proposed action when considered in conjunction with other past and present actions related to the proposed action by location or generic type." Montana's administrative rules further elaborate that "[r]elated future actions must also be considered when these actions are under concurrent consideration by any state agency through preimpact statement studies, separate impact statement evaluation, or permit processing procedures."[148]

First, DEQ unreasonably suggests that cumulative impacts are limited to only projects occupying the *same footprint* as the project. Thus, because "[n]o previous industrial operations were known to occupy this site," DEQ identified no relevant past, present, or related future actions for its analysis.[149] This is contrary to the plain language of MEPA, which requires consideration in a cumulative impacts analysis of projects related "by location *or generic type.*"[150] There is no indication that location should be limited to the project footprint and, in any event, DEQ's myopic focus on location improperly reads the alternative criterion—projects related by "generic type"—out of the statute.[151] In the context of GHG cumulative-impacts analyses, such similar projects include other fossil-fuel burning activities that similarly impact climate-change effects felt in Montana.[152]

DEQ's second error in its cumulative-impacts discussion is its use of past and present actions to *diminish* the significance of the project's GHG emissions, rather than evaluating "the 'incremental impact' that these emissions will have … in light of other past, present, and

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[148] ARM 17.4.603(7).

[149] Draft Second Supplemental EA, at 6.

[150] § 75-1-220(5), MCA (emphasis added).

[151] *See Belk*, ¶ 23 (noting that courts "are required to avoid any statutory interpretation that renders any sections of the statute superfluous and does not give effect to all of the words used") (quoting *State v. Berger*, 259 Mont. 364, 367, 856 P.2d 552, 554 (1993)).

[152] *Montana Wildlife Fed'n*, ¶ 48 (finding that agency adequately considered cumulative impacts of oil and gas drilling by considering "other resource extraction, such as logging, mining, hydroelectric development, and livestock grazing"). Even if it were permissible to consider only past, present, and future emissions from projects in the same general location as YCGS, DEQ does not consider other fossil fuel projects, including numerous GHG-emitting refineries, in the Laurel/Billings/Lockwood industrial corridor specifically.

reasonably foreseeable actions."[153] DEQ concludes that the project's impacts are not significant because it "would contribute approximately 1.36% of Montana's annual CO_{2e} emissions," characterizing that contribution as negligible.[154] But as DEQ also observes, climate change is "inherent[ly] cumulative,"[155] such that no single project, on its own, is likely to contribute substantially to the changing climate. Rather than excusing a cumulative impacts analysis, the incremental nature of the problem enhances the need for robust consideration of such impacts. This is because "[a]ny given [project] might have an 'individually minor' effect on the environment," but DEQ's approval of fossil-fuel projects "are 'collectively significant actions taking place over a period of time.'"[156] DEQ's focus on the relative impact of the project's emissions, rather than on the additive impact when considered in conjunction with past, present, and foreseeable future GHG emissions from other fossil-fuel projects in Montana violates MEPA.

Third, even if DEQ's treatment of past and present GHG emissions were adequate, and it is not, DEQ's cumulative impacts analysis impermissibly overlooks fossil fuel projects DEQ is concurrently considering. For example, DEQ's "Air Public" web page identifies numerous pending permitting and environmental review actions, including a programmatic review for oil and gas well facilities.[157] DEQ's cumulative impacts analysis must account for these "[r]elated future actions."[158]

For all of these reasons, the Draft Second Supplemental EA falls well short of satisfying DEQ's MEPA obligation to evaluate cumulative impacts.

V. THE DRAFT SECOND SUPPLEMENTAL EA FAILS TO ADEQUATELY ASSESS MITIGATION MEASURES

The Draft Second Supplemental EA appears to contain no analysis of measures that could reduce YCGS's GHG emissions and contains a superficial four-sentence analysis of the no action alternative—this approach is inconsistent with DEQ's obligations under MEPA as informed by *MEIC 2025* and the Montana Constitution.

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[153] *Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1216 (9th Cir. 2008) (evaluating federal agency's NEPA analysis).

[154] Draft Second Supplemental EA, at 16.

[155] *Id.* at 17.

[156] *Ctr. for Biological Diversity*, 538 F.3d at 1217.

[157] DEQ, Draft Oil and Gas Registration Programmatic Environmental Assessment (https://deq.mt.gov/News/publiccomment-folder/AQ-OandGReg-2026-09-01).

[158] ARM 17.4.603(7).

As part of MEPA's "hard look" requirements DEQ must identify and evaluate alternatives to the proposed project and measures that will mitigate the project's impacts.[159] DEQ's analysis in the Draft Second Supplemental EA includes an arbitrary and inadequate analysis of alternatives to the YCGS and fails to analyze possible mitigation measures entirely.

Central to the environmental review process, agencies must describe "alternatives to the proposed action," which must include a "no-action alternative analysis" and "the projected beneficial and adverse environmental, social, and economic impact of the project's noncompletion."[160] This analysis is essential for understanding the baseline scenario and the potential consequences of not proceeding with the proposed project. In addition to the no-action alternative, agencies must evaluate other "reasonable" (meaning "economically feasible") alternatives.[161] While MEPA does not authorize DEQ to require a project sponsor to implement any particular alternative, the analysis of alternative courses of action is nonetheless important to inform the project sponsors decision whether to voluntarily implement the alternative,[162] and to inform the legislature about potential gaps in the environmental regulatory scheme.[163]

DEQ's assertion that it cannot fully analyze the no-action alternative because it could not deny the permit is inconsistent with the purpose of MEPA.[164] The purpose of the informational disclosure required by MEPA is to inform both the public and decision-makers; such disclosure must include providing sufficient information to convey a thorough understanding of baseline alternatives.[165]

In addition to alternatives, DEQ must consider mitigation measures to alleviate an action's environmental harm.[166] DEQ's MEPA rules explain that "mitigation" means:

> (a) avoiding an impact by not taking a certain action or parts of an action; (b) minimizing impacts by limiting the degree or magnitude of an action and its implementation; (c) rectifying an impact by repairing, rehabilitating, or restoring the affected environment; or (d) reducing or eliminating an

[159] ARM 17.4.609(3)(g).

[160] MCA § 75-1-201(1).

[161] *Id.*

[162] *Id.* § 75-1-201(1)(a)(v).

[163] *Id.* § 75-1-102(1)(a).

[164] Draft Second Supplemental EA, at 17.

[165] *See MEIC 2025*, ¶ 62.

[166] ARM 17.4.609(2)(d), (3)(g) (environmental assessments); 17.4.617(6) (environmental impact statements).

> impact over time by preservation and maintenance operations during the life of an action or the time period thereafter that an impact continues.[167]

An adequate explanation of available mitigation measures is critical to both the public and to lawmakers. In this context, MEPA's requirements are simple: DEQ must identify the measures that reduce YCGS's climate-harming GHG emissions, explain in understandable terms how each measure would work and what it would cost, and identify those that are either within DEQ's authority to impose or could be voluntarily adopted by NorthWestern Energy. On this latter point, Montana law is specific: MEPA allows NorthWestern Energy and DEQ to "mutually develop measures that may, at the request of [NorthWestern Energy], be incorporated into a permit or other authority to act."[168] DEQ forecloses that possibility from ever happening by refusing to provide adequate information in the Draft Second Supplemental EA. Put differently, by refusing to provide any information regarding mitigation measures, the Draft Second Supplemental EA removes the ability of both the public, and lawmakers, to advocate for NorthWestern Energy to voluntarily adopt measures to reduce YCGS's climate harms.

Indeed, here, the Draft Second Supplemental EA appears to take a step backward. The Final Supplemental EA, issued in August 2025, contained an albeit brief discussion of three potential mitigation measures, including geologic sequestration, biologic sequestration, and industrial carbon capture and sequestration.[169] Again, the Draft Second Supplemental EA appears not to discuss mitigation measures at all.

This backsliding is particularly troublesome because DEQ's own guidance recognizes that disclosure of such information is necessary to comply with MEPA. To illustrate, the DEQ GHG Guidance includes a dedicated section titled "Alternatives Analysis, Including Mitigation,"[170] and defines mitigation measures to include four categories: avoiding an impact by not taking an action or part of one; limiting the degree or magnitude of the action; repairing or otherwise rectifying impacts; and preservation or maintenance operations during the life of a project that reduce or eliminate impacts.[171]

Available research demonstrates the availability of mitigation measures that DEQ must consider and evaluate in order to comply with MEPA's directives. For example, peer-reviewed literature reports that a portion of the methane fed to the YCGS's RICE engines can pass through without burning—which is referred to as "methane slip"—which can be reduced through

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[167] ARM 17.4.603(14).

[168] MCA § 75-1-109(3)(b).

[169] DEQ, Final Supplemental Environmental Assessment at 4 (Aug. 1, 2025)

[170] DEQ GHG Guidance, at 16.

[171] *Id.* at 17.

mitigation measures.[172] Additionally, DEQ should consider whether mitigation measures such as caps on annual fuel throughput or hours of operation would reduce GHG emissions, state by how much, and identify whether they are enforceable by DEQ or whether they would require NorthWestern's agreement.

VI. THE DRAFT SECOND SUPPLEMENTAL EA FAILS TO REASONABLY EVALUATE THE SIGNIFICANCE OF THE PROJECT'S CLIMATE IMPACTS

A. DEQ's significance analysis creates a test that can never be failed, in direct contradiction to the Montana Supreme Court's orders.

The overarching flaw in DEQ's analysis is that the agency denies any significant impact of the emissions purely on the basis that they are a small fraction of state and global emissions—a characteristic that by nature of the volume of state and global emissions would apply to any Montana energy project. DEQ notes that the 695,217 metric tons of CO_{2e}/yr that YCGS will produce are only a small fraction of Montana and global total annual GHG emissions.[173] As a result, the agency asserts that the "resulting climate impacts associated with project-level emissions are globally indistinguishable and nondifferentiable."[174] DEQ then uses this conclusion to deny significant impacts at every step of its analysis, rendering the analysis meaningless and nothing more than a rubberstamp for the largest gas plant in the state. This is a dangerous precedent, because it is an emissions test that no project would ever fail. When a gas plant that is ten times, or even 100 times, as large as YCGS would still have "indistinguishable impacts" on global temperature increase and other climate impacts, this is not a functional significance standard.

DEQ's "indistinguishable" standard for emissions impacts also directly contravenes the Montana Supreme Court's orders from *Held* and *MEIC 2025*. In addressing such an argument previously, the Supreme Court could not have been clearer:

> The State argues that the total amount of Montana's permitted GHG emissions is insignificant when evaluated against the total amount of global GHG emissions. But just because one permitted project may seem insignificant when compared to worldwide emissions from every source and every project, it does not mean the project's emissions will not "significantly affect the quality of the human environment," requiring an environmental impact statement under MEPA, *see Park County*, ¶ 31, or

[172] Huonder, A., et al, *Methane Emission Reduction Technologies for Natural Gas Engines: A Review* at 1–5, Energies (2023), https://doi.org/10.3390/en16207054.

[173] Draft Second Supplemental EA, at 18.

[174] *Id.*

> result in an unconstitutional degradation to a clean and healthful environment. Mont. Const. art. II, § 3.[175]

The court went on to liken such an argument to the ad populum fallacy: "if everyone jumped off a bridge, would you do it too?"[176] DEQ owes the public a duty to acknowledge the significant impacts of a project and require an EIS "without requiring everyone else to stop jumping off bridges."[177] Otherwise, the court ruled, "the right to a clean and healthful environment is meaningless."[178] When addressing the YCGS specifically in *MEIC 2025*, the Montana Supreme Court again affirmed this principle, holding that "the State does not have a free pass to pollute the Montana environment just because the rest of the world insist[s] on doing so."[179] The Supreme Court has been clear that the insignificance of a project's emissions relative to statewide or global emissions does not discount that project's impacts on the Montana environment, nor does it discount the need for an EIS.

Indeed, "[e]very ton of fossil fuel emissions contributes to global warming and impacts to the climate."[180] An agency cannot refuse to analyze the effects of emissions simply because they are incremental and difficult to attribute to specific sources at a small scale.[181] Despite DEQ's claims that the project's emissions would be globally indistinguishable, a "reduction in domestic emissions would slow the pace of global emissions increases, no matter what happens elsewhere."[182]

YCGS is having very real and concrete physical climate impacts on Montana. The fact that these impacts are but a small fraction of global climate impacts does not eliminate their significance, nor does it excuse DEQ from requiring an EIS as is mandated under the Montana Constitution, MEPA, its implementing regulations.

B. DEQ never defined a significant threshold for a constitutional violation.

Held recognized that Montanans' constitutional right to a clean and healthful environment, and the stable climate system that right protects, are judicially enforceable and can be violated by

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[175] *Held*, ¶ 66.

[176] *Id.* at ¶ 49.

[177] *See Id.*

[178] *Id.*

[179] *MEIC 2025*, ¶ 47 (quoting *Held*, ¶ 30).

[180] *Held* District Court Order, ¶ 92.

[181] *350 Mont. v. Haaland*, 50 F.4th 1254, 1272 (9th Cir. 2022).

[182] *Massachusetts v. EPA*, 549 U.S. 497, 526 (2007).

the State's own permitting decisions.[183] However, neither the DEQ GHG Guidance nor this Draft Second Supplemental EA identifies any threshold, qualitative or quantitative, at which GHG emissions from a permitted action would rise to that level of significance. Other comments have previously put DEQ on notice of this issue, and we incorporate that discussion here by reference.[184]

The Draft Second Supplemental EA presents emissions data, tonnage, percentage of statewide total, and MAGICC ΔT. However, the Draft Second Supplemental EA fails to explain what level of contribution, if any, DEQ would treat as constitutionally significant. DEQ can report a number without ever saying whether, or when, that number matters to its permitting decision. As the Montana Supreme Court stated in the initial YCGS case, "[t]he State does not have 'a free pass to pollute the Montana environment just because the rest of the world insists on doing so.'"[185]

This gap is not merely a drafting oversight. *Held*'s own facts illustrate why it matters: the district court found, and the Montana Supreme Court affirmed, that Montana's fossil-fuel-based emissions are a substantial factor in nonetheless in causing climate harm.[186] Neither the DEQ GHG Guidance nor the Draft Second Supplemental EA engages with that reasoning. Instead, by failing to define significance, both documents let DEQ describe any single project's GHG emissions as too small to matter, the very argument *Held* and *MEIC 2025* rejected.

Without an articulated threshold, DEQ has no readily applicable, consistent standard for evaluating when a project's GHG contribution crosses the line into a constitutional harm, and no way to explain to the public or the Legislature why this project, or any project, falls on one side of that line or the other. As noted above, this gap effectively renders DEQ's analysis an empty formality rather than the meaningful check on unconstitutional environmental degradation that *Held* and *MEIC 2025* require. DEQ should articulate, in the DEQ GHG Guidance and as applied here, a reasoned framework or threshold—whether emissions-based, cumulative-context-based, or tied to specific documented climate impacts—for identifying when a project's GHG contribution is significant enough to implicate Montanans' constitutional right to a clean and healthful environment.

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[183] *See Held*, ¶ 30.

[184] April 2025 Comments, ("Requirements of Montana's Constitution and MEPA" section); Guidance Comments, ("Requirements of Montana's Constitution and MEPA" section).

[185] *MEIC*, ¶ 47 (quoting *Held*, ¶ 30).

[186] *See Held* District Court Order, ¶¶ 4, 219.

C. DEQ's review of MEPA's regulatory factors for determining impact significance and requiring an EIS is deficient and unlawful.

DEQ's conclusion under MEPA that there will be no significant adverse impacts from YCGS's GHG emissions is flawed for several reasons. DEQ utilizes the "indistinguishable" standard explained above to discount entire factors of its MEPA significance analysis, effectively using it as a "get-out-of-jail-free" card to avoid requiring an EIS. Under MEPA and its implementing regulations, when determining whether an EIS is required for a project, DEQ must consider seven significance criteria:

> (a) the severity, duration, geographic extent, and frequency of occurrence of the impact;
>
> (b) the probability that the impact will occur if the proposed action occurs; or conversely, reasonable assurance in keeping with the potential severity of an impact that the impact will not occur;
>
> (c) growth-inducing or growth-inhibiting aspects of the impact, including the relationship or contribution of the impact to cumulative impacts;
>
> (d) the quantity and quality of each environmental resource or value that would be affected, including the uniqueness and fragility of those resources or values;
>
> (e) the importance to the state and to society of each environmental resource or value that would be affected;
>
> (f) any precedent that would be set as a result of an impact of the proposed action that would commit the department to future actions with significant impacts or a decision in principle about such future actions; and
>
> (g) potential conflict with local, state, or federal laws, requirements, or formal plans.[187]

In its analysis of these criteria, DEQ fails to go beyond a few sentences of denying significance without support beyond the same flawed theory noted above—that the impacts of the project's emissions will not be significant because they are indistinguishable from global impacts. However, beyond this defective foundational argument, DEQ's significance analysis fails to

[187] ARM 17.4.608.

consider or improperly mischaracterizes several important facts relevant to the regulatory criteria. DEQ's analysis also neglects to note whether each impact is "adverse, beneficial, or both," as is required under MEPA's regulations.[188] In sum, DEQ improperly denies the need for an EIS based on an insufficient and deeply flawed analysis of the seven significance criteria.

1. 17.4.608(1)(a)

The first significance criterion addresses the severity, duration, geographic extent, and frequency of the occurrence of the impact. In analyzing this criterion, DEQ acknowledges the following:

- "Every additional ton of GHGs contributes to cumulative warming and associated climate effects"
- "GHG impacts are long-term (over decades and centuries)"
- "The emissions would originate in Montana, but their ultimate impact is global in nature."
- "The emission of GHGs would occur continuously for the life of the generating station as long as natural gas is available, and demand exists."[189]

However, DEQ then minimizes or discounts each factor (severity, duration, geographic extent, and frequency) on the same flawed basis outlined above—that the indistinguishable nature of this project's emissions to global emissions means that the impacts will be negligible and an EIS is unwarranted.[190] YCGS will emit 695,217 metric tons of CO_{2e}/yr and these emissions will be continuous and long-lasting, with impacts across the entire state of Montana, including in Yellowstone County specifically. These impacts will also be severe, contributing to an existential threat and compounding climate harms over time.[191] Accordingly, these factors under the first significance criterion support the need for an EIS and DEQ's analysis should accurately reflect that reality—at minimum, DEQ must state whether the impact under the first significance criterion is adverse, beneficial, or both.

[188] *Id.*

[189] Draft Second Supplemental EA, at 18.

[190] *Id.*

[191] *Held* District Court Order, ¶¶ 94–99.

2. 17.4.608(1)(b)

In evaluating the second significance criterion—probability of impacts—DEQ again acknowledges that the probability that the proposed project would contribute to GHG emissions is certain.[192] DEQ then reiterates that though the impact is certain, it will be "negligible to the overall warming of Montana." *Id.* Aside from incorrectly asserting that the impact will be negligible, this analysis also fails to consider impacts resulting from the GHG emissions other than warming. As noted throughout these comments, increased emissions have a range of climate impacts, including drought, storms, wildfires, flooding, reduced snowpack, and more.[193] Writ large, the certainty criterion substantially favors requiring an EIS and DEQ's analysis must acknowledge that. And, again, DEQ must state whether the impact under the first significance criterion is adverse, beneficial, or both.

3. 17.4.608(1)(c)

DEQ dismisses all economic impacts of the YCGS' emissions and refuses to engage in further analysis beyond that denial. Montana and Yellowstone County have important economic industries that are vulnerable to the very climate events that this project's emissions will cause and an EIS is crucial to fully evaluating these potential harms. Instead, DEQ simply alleges that the YCGS's combustion of natural gas and subsequent emissions would not induce or inhibit regional growth and that the increase in emissions would not alter the probability or severity of climate-related events at a scale that would inhibit growth locally or globally.[194] However, every ton of emissions will exacerbate climate impacts,[195] and 695,217 metric tons of CO_{2e}/yr is not an insignificant amount. As explained above, these emissions equate to an extra gas-powered vehicle for nearly every person in the county, every year for the life of the plant.

This volume of emissions and the resulting climate impacts have substantial economic implications. These implications include increased storms and extreme weather events which cost Montana millions of dollars in damages.[196] They also include harm to Montana's agriculture and ranching industries, leading to higher food prices.[197] They further include early snowmelt or drought, harming Montana's substantial winter recreation industry.[198] This list is not exhaustive, and there are numerous economic impacts from increased climate events. On the positive side of

[192] Draft Second Supplemental EA, at 18.

[193] Montana Climate Assessment, Executive Summary.

[194] Draft Second Supplemental EA, at 19.

[195] *Held* District Court Order, ¶ 92.

[196] Climate Change and Human Health in Montana, 19–20.

[197] *Id.* 45, 50; Montana Climate Assessment, XXXVIII–XL.

[198] *See id.* at 72.

the ledger, YCGS emissions may contribute to a longer growing season due to longer summers and warmer temperatures.[199] While tracing these impacts to YCGS emissions may present challenges if DEQ were operating on a blank slate, the SC-GHG framework and related climate attribution and impact modeling exist for exactly this purpose and must be used to inform DEQ's significance analysis.[200] Nevertheless, DEQ fails to address any of these economic impacts or whether they rise to the level of significance warranting an EIS. Further, at a minimum, DEQ must state whether the economic impacts from YCGS's GHG emissions are adverse, beneficial, or both.

4. 17.4.608(1)(d)

DEQ's analysis of the fourth criterion is brief and consists of essentially the same denial of impact that the agency has parroted throughout the Draft Second Supplemental EA. This criterion addresses the quantity and quality of the environmental resources affected, including their uniqueness and fragility. A consideration crucial to determining whether an EIS is warranted as it gets to the very heart of the environmental impacts of the project. The increased climate impacts resulting from an additional 695,217 metric tons of CO_{2e}/yr threaten a myriad of unique and invaluable environmental resources and ecosystems across the state. Due to the geographic location of Montana, with the Continental Divide, three major river basins, and a mix of diverse weather systems from the Pacific Ocean, the Arctic and subtropical regions, the state has incredibly unique geography and ecosystems.[201] The Supreme Court has found that substantial GHG emissions do unequivocally harm these invaluable resources:

> Climate change does impact the clear, unpolluted air of the Bob Marshall wilderness; it does impact the availability of clear water and clear air in the Bull Mountains; and it does exacerbate the wildfire stench in Missoula, along with the rest of the State…GHG emissions are drastically altering and degrading Montana's climate, rivers, lakes, groundwater, atmospheric waters, forests, glaciers, fish, wildlife, air quality, and ecosystem.[202]

In ignoring these impacts, DEQ fails to consider the fragility of the endangered bull trout that can no longer sustain their historic populations in Flathead Lake and across Montana.[203] DEQ fails to consider the one-of-a-kind Glacier National Park, that has seen historic levels of glacier

[199] *Id.* at 10.

[200] EPA, Report on the Social Cost of Greenhouse Gases, at 95; Abram et al., *supra* note 108; Undorf et al., *supra* note 108.

[201] Montana Climate Assessment, XXV, 17–18.

[202] *Held*, ¶ 29 (emphasis in original).

[203] *Held* District Court Order, ¶ 171.

retreat due to human-produced emissions.[204] And DEQ overlooks the manifold other consequences to Montana's unique ecological setting.

In sum, DEQ's single-sentence analysis of this criterion fails to consider or acknowledge a litany of unique and fragile environmental resources in Montana that will be affected by the YCGS' emissions and related climate impacts. This analysis does an injustice to Montana's invaluable environment and to its citizens who call it home and—when corrected—must reflect the need for a complete and thorough EIS. Finally, DEQ must state whether this impact is adverse, beneficial, or both.

5. 17.4.608(1)(e)

DEQ's stunted response to this criterion—the importance of the environmental resources impacted—seemingly contradicts itself, admitting that a stable climate system "is of the highest importance to the state and society," while also denying that such a system will be affected by the project's emissions at all.[205] The agency is right to place such importance on Montana's climate system, even while mischaracterizing the impacts the YCGS' emissions will have. However, beyond improperly denying impacts on the climate system, the agency fails to even consider or address the other environmental resources that would be affected by the increased emissions. As noted above, climate systems and clean air are not the only resources impacted by climate change. DEQ's analysis of this criterion should also consider and address the importance of clean water, forest ecosystems, the prairie and rangelands, and countless other environmental resources that will be affected by the GHG emissions resulting from the YCGS.[206] Again, DEQ must also state whether this impact is adverse, beneficial, or both.

6. 17.4.608(1)(f)

While the Draft Second Supplemental EA for YCGS's air permit does not commit the agency to issuing other similar permits in the future, it sets a dangerous precedent for rubberstamping any future energy infrastructure regardless of GHG emissions. As noted above, DEQ's test requiring a project's emissions be significant relative to state and global levels for an impact to be considered significant under MEPA is a test that no individual project will ever fail. While DEQ asserts under this criterion that DEQ would conduct environmental review for any related or future actions, it has demonstrated through its application of the Guidance document in this Draft Second Supplemental EA all future energy projects DEQ reviews under this same framework will be approved without meaningful and accurate environmental analysis.

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[204] *Id.* ¶¶ 156–158.

[205] Draft Second Supplemental EA, at 19.

[206] *See* Montana Climate Assessment, XXX–XXXII, XXXIII–XXXVII, XXXVIII–XL.

7. 17.4.608(1)(b)

DEQ's analysis of this last criterion consists of two sentences denying that the project will have any impact that would conflict with any local, state, or federal law.[207] This assertion is unaccompanied by any support or explanation. However, this very response, along with the rest of the deficient EA and failure to require an EIS violates MEPA and its implementing regulations.[208] Additionally, the impacts from the YCGS' emissions have degraded and will continue to degrade Montana's climate system in violation of every Montanan's fundamental right to a clean and healthful environment.[209]

D. Under MEPA and the Montana Constitution, DEQ must require an EIS.

In sum, MEPA, its implementing regulations, and the Montana Constitution mandate that when a project has significant adverse effects, as the YCGS does here, DEQ must require an EIS, even if the agency believes the balance will be net-beneficial. Ultimately, in its significance analysis, DEQ discounts all possible climate impacts purely because the project's emissions are a fraction of statewide and global emissions. This argument and DEQ's corresponding refusal to prepare an EIS are unsupported by logic or science and was explicitly rejected by the Montana Supreme Court. DEQ's significance analysis must evaluate the concrete impacts of an additional 695,217 metric tons of CO_{2e}/yr and consider those impacts under each significance criterion, rather than hiding behind the unrelated conclusion that global and statewide emissions are far greater. The Draft Second Supplemental EA is merely the start of an environmental analysis but should not be the end. When accurately analyzed, the significance criteria of ARM 17.4.608 and the adverse impacts of the YCGS' emissions require an EIS.

Additionally, the widespread concern about the project demonstrates the need for an EIS to adequately inform the public of its environmental impacts. In general, Montanans are incredibly concerned about climate change and GHG emissions.[210] A 2016 study found that "51% of respondents felt that climate change needs to be addressed now, including taking actions to mitigate greenhouse gases and adapt to changing conditions."[211] The YCGS—and the significant emissions the project will produce annually—has been a matter of substantial public concern and controversy for this very reason. "From the moment the facility was formally

[207] Draft Second Supplemental EA, at 19.

[208] MCA 75-1-201, -211; ARM 17.4.608.

[209] *See Held*, ¶¶ 29–30.

[210] Climate Change and Human Health in Montana, 21.

[211] *Id.*

proposed in 2021, it has been a lightning rod for public debate."[212] Local and national environmental groups mobilized in opposition to the project, calling for public comments and public protests, leading to the YCGS being among "the most hotly disputed industrial developments in recent Montana history."[213]

The public's concern has centered and continues to center around the project's emissions and DEQ's failure to properly analyze them. The public submitted over 700 comments to DEQ's first EA, with an overwhelming number of those comments expressing concerns about the project's GHG emissions specifically.[214] The public also demanded hearings to discuss the project and its emissions, with Billings' residents voicing concerns about the government's transparency and accountability regarding its analysis of YCGS's environmental impacts.[215]

This Draft Second Supplemental EA is further proof that Montanans are right to be concerned about the YCGS and DEQ's approval of it. By refusing to acknowledge its significant impacts and refusing to require an environmental impact statement, DEQ ignores the substantial public concern surrounding the YCGS and simply provides a rubber stamp for this project while clearing the way for future gas plants that will detrimentally harm Montana's climate and environment.

CONCLUSION

Commenters urge DEQ to address the deficiencies identified above before issuance of the Final Second Supplemental Environmental Assessment. Additionally, Commenters urge DEQ to complete an adequate significance analysis and to determine that an EIS is warranted here.

Sincerely,

/s/ Lars Phillips

Jenny K. Harbine
E. Lars Phillips

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[212] Eric Dietrich, *The Power Plant Next Door: NorthWestern Energy's Laurel Facility has Become a Lightning Rod*, Bozeman Daily Chronicle (Sep. 25, 2025), https://www.bozemandailychronicle.com/the-power-plant-next-door-northwestern-energys-laurel-facility-has-become-a-lightning-rod/article_85a73218-a8ee-48d4-97c3-d037ad1414d4.html.

[213] *Id.*

[214] *MEIC 2025*, ¶ 61.

[215] Ren Wadsworth, *Hearings regarding Yellowstone County Generating Station*, Montana Right Now (Aug. 17, 2023), https://www.montanarightnow.com/news/hearings-regarding-yellowstone-county-generating-station/article_c1755a3a-c6db-5d82-a7dd-09ff8af4cfcb.html.

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On behalf of 350 Montana, Bridger Bowl Ski Area, Citizens for Clean Energy, Climate Smart Missoula, Families for a Livable Climate, Helena Interfaith Climate Advocates, Montana Chapter of the Sierra Club, Montana Conservation Voters Education Fund, Montana Environmental Information Center, Montana Health and Climate, Montana Public Interest Research Group, Northern Plains Resource Council, and Steve Krum