

FILED

AUG 14 2023

ANGIE SPARKS, Clerk of District Court
By H. Coleman Deputy Clerk

**MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY**

RIKKI HELD, et al.,

Plaintiff,

v.

STATE OF MONTANA, et al.,

Defendant.

Cause No. CDV-2020-307

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER**

PROCEDURAL HISTORY

On March 13, 2020, sixteen Montana youth (collectively Plaintiffs or Youth Plaintiffs) filed a Complaint for Declaratory and Injunctive Relief (Doc. 1) against the State of Montana, the Governor, Montana Department of Environmental Quality, Montana Department of Natural Resources and Conservation, Montana Department of Transportation, and Montana Public Service Commission (collectively Defendants or State). Plaintiffs' Complaint challenged the constitutionality of the State's fossil fuel-based state energy system, which they allege causes and contributes to climate change in violation

1 of their constitutional rights guaranteed under Article II, Section 3; Article II,
2 Section 4; Article II, Section 15; Article II, Section 17; Article IX, Section 1;
3 Article IX, Section 3 of the Montana Constitution; and the Public Trust Doctrine.
4 (Doc. 1 ¶¶ 3-4).

5 Specifically, the Complaint challenged the constitutionality of
6 fossil fuel-based provisions of Montana’s State Energy Policy Act, Mont. Code
7 Ann. § 90-4-1001(1)(c)-(g); a provision of the Montana Environmental Policy
8 Act (MEPA), Mont. Code Ann. § 75-1-201(2)(a) (MEPA Limitation), which
9 forbids the State and its agents from considering the impacts of greenhouse gas
10 (GHG) emissions or climate change in their environmental reviews; and the
11 aggregate acts the State has taken to implement and perpetuate a fossil fuel-based
12 energy system pursuant to these two statutory provisions.

13 (Doc. 1 ¶¶ 4, 105, 108, 118).

14 Youth Plaintiffs asked the Court for a declaration of law
15 concerning their constitutional rights; a declaration of law that the fossil fuel-
16 based provisions of Montana’s State Energy Policy, Mont. Code Ann.
17 § 90-4-1001(1)(c)-(g), are unconstitutional; a declaration of law that the MEPA
18 Limitation is unconstitutional; and a declaration of law that Defendants’ past and
19 ongoing affirmative aggregate actions to implement a fossil fuel-based energy
20 system—carried out in furtherance of the State Energy Policy and perpetuated
21 through the MEPA Limitation—are unconstitutional. (Doc. 1, Requests for Relief
22 # 1-5). The Complaint further requested injunctive relief to enjoin Defendants
23 from subjecting Plaintiffs to the fossil fuel-based State Energy Policy, Mont.
24 Code Ann. § 90-4-1001(1)(c)-(g), the MEPA Limitation, and aggregate acts;
25 order Defendants to prepare a statewide GHG accounting; order

1 Defendants to develop a remedial plan to reduce statewide GHG emissions;
2 retain jurisdiction until Defendants have fully complied with the Court's orders;
3 and, if necessary, appoint a special master to review the remedial plan for
4 efficacy. (Doc. 1, Requests for Relief # 6-9). Plaintiffs also requested an order
5 awarding Youth Plaintiffs their reasonable attorneys' fees and costs, and any
6 such further or alternative relief as the Court deems just and equitable. (Doc. 1,
7 Requests for Relief # 10-11).

8 On April 24, 2020, Defendants filed a motion to dismiss pursuant
9 to Mont. R. Civ. P. 12(b)(1), 12(b)(6), and 12(h)(3). (Doc. 11). After briefing and
10 oral argument, the Court issued an Order on Motion to Dismiss on August 4,
11 2021, (Doc. 46), partially granting and partially denying Defendants' motion to
12 dismiss.

13 The Court found that Plaintiffs' requests for the Court to order
14 Defendants to develop a remedial plan, to retain jurisdiction over the matter until
15 Defendants complied with the remedial plan, and, if necessary, appoint a special
16 master to assist the Court in reviewing the remedial plan exceeded the Court's
17 authority under the political question doctrine. (Doc. 46 at 21). Nevertheless, the
18 Court held that prudential standing considerations did not merit dismissal
19 because the Court "may grant declaratory relief regardless of injunctive relief.
20 The court possesses the authority to grant declaratory or injunctive relief, or
21 both." (Doc. 46 at 22).

22 Finally, the Court declined to dismiss Plaintiffs' challenge to
23 MEPA for want of administrative exhaustion, finding that "Youth Plaintiffs
24 properly brought this action in district court rather than through the
25 administrative review process." (Doc. 46 at 24). The Order granted Defendants'

1 motion with respect to Plaintiffs' Requests for Relief # 6, 7, 8, and 9, and denied
2 Defendants' motion with respect to Plaintiffs' Requests for Relief # 1, 2, 3, 4,
3 and 5.

4 Defendants filed their Answer on September 17, 2021, (Doc. 53),
5 denying virtually all allegations in the Complaint and raising several affirmative
6 defenses.

7 Pursuant to the December 27, 2021, Scheduling Order (Doc. 61),
8 the parties engaged in discovery throughout 2022.

9 On May 6, 2022, Defendants filed a Motion for Clarification of
10 Order on State's Motion to Dismiss pursuant to Rule 60(a), Mont. R. Civ. P.
11 (Doc. 84), seeking clarification on whether Plaintiffs' Request for Relief # 5 had
12 been dismissed by the August 04, 2021, Order on Motion to Dismiss. Plaintiffs
13 filed a Response in Opposition on May 20, 2022. (Doc. 102).

14 On June 10, 2022, Defendants filed a Petition for Writ of
15 Supervisory Control (OP 22-0315), requesting the Montana Supreme Court
16 exercise supervisory control and "dismiss Request for Relief 5 from this case."
17 On June 14, 2022, the Supreme Court denied the Petition. (OP 22-0315).

18 On June 15, 2022, the Court issued an Order Partially Granting
19 Defendants' Motion to Modify Scheduling Order and Setting Scheduling
20 Conference. (Doc. 145) (Modified Scheduling Order). The Modified
21 Scheduling Order governed the timeline thereafter. Pursuant to the Modified
22 Scheduling Order, the parties engaged in discovery through January 9, 2023 —
23 including disclosing expert witnesses (Docs. 222, 227), rebuttal expert
24 witnesses (Docs. 240, 242), and conducting dozens of depositions.

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1 On June 30, 2022, the Court issued an Order on Defendants’ Rule
2 60(a) Motion for Clarification (Doc. 158), clarifying that “requests for injunctive
3 relief contained in the complaint were dismissed, except for Request for Relief
4 5.” (Doc. 158 at 3).

5 On July 19, 2022, Defendants filed a Motion for Independent
6 Medical Examination, or, in the Alternative, Motion to Strike Opinions and
7 Testimony of Plaintiffs’ Expert Dr. Lise Van Susteren Pursuant to Rule 35(a),
8 Mont. R. Civ. P. (Doc. 163), alleging that Plaintiffs’ allegations of mental health
9 impacts as a result of climate change had placed their mental health at issue.
10 (Doc. 163 at 2). On October 14, 2022, the Court issued an Order denying
11 Defendants’ motion (Doc. 225), ruling that IMEs were unwarranted because
12 “Plaintiffs have not placed their mental health at the center of this case, nor is it
13 really and genuinely in controversy,” (Doc. 225 at 6), and because “Defendants
14 have not established good cause for the requested examinations.” (Doc. 225 at 7).

15 On July 20, 2022, Defendants filed a Second Motion for
16 Clarification of Order on State’s Motion to Dismiss pursuant to Rule 60(a),
17 Mont. R. Civ. P. (Doc. 167). Defendants’ second motion for clarification sought
18 clarification from the Court as to why Plaintiffs’ Requests for Relief # 1, 2, 3, 4,
19 and 5 “don’t violate the political question doctrine.” (Doc. 167 at 3). On
20 September 22, 2022, the Court issued an Order (Doc. 217), denying Defendants’
21 Second Rule 60(a) Motion for Clarification of Order on State’s Motion to
22 Dismiss.

23 On September 30, 2022, pursuant to the Modified Scheduling
24 Order, Plaintiffs disclosed their expert witnesses and expert disclosures. (Doc.
25 222). On October 31, 2022, Defendants disclosed their expert witnesses and

1 expert disclosures. (Doc. 227). On November 30, 2022, the parties exchanged
2 rebuttal expert disclosures. (Docs. 239, 242).

3 Discovery closed on January 9, 2023. Between the parties,
4 discovery included the completion of thirty-six depositions, the exchange of
5 twenty-two expert reports, the exchange of over 50,000 pages of documents, and
6 responses to dozens of interrogatories.

7 On February 1, 2023, Plaintiffs and Defendants file motions *in*
8 *limine*. Plaintiffs filed seven motions *in limine* (Docs. 260, 262, 264, 266, 268,
9 270, 272) and Defendants filed seven motions *in limine* (Docs. 284, 286, 288).

10 On February 1, 2023, Defendants filed a Motion for Summary
11 Judgment pursuant to Mont. R. Civ. P. 56. (Doc. 290). On February 14, 2023,
12 Plaintiffs filed a response brief opposing summary judgment. (Doc. 299).
13 Plaintiffs filed sixteen declarations from Plaintiffs, experts, and counsel in
14 support of their response brief. (Docs. 300-315). On February 28, 2023,
15 Defendants filed a reply. (Doc. 332).

16 On March 16, 2023, Governor Greg Gianforte signed House Bill
17 170 into law, repealing the Montana State Energy Policy, Mont. Code Ann.
18 § 90-4-1001.

19 On March 31, 2023, Defendants filed a Motion to Partially Dismiss
20 for Mootness pursuant to Mont. R. Civ. P. 12(b)(1), 12(b)(6), and 12(h)(3).
21 (Doc. 339). Defendants moved to dismiss Plaintiffs' claims premised on the
22 Montana State Energy Policy Act, Mont. Code Ann. § 90-4-1001, on the ground
23 that the repeal of Mont. Code Ann. § 90-4-1001 (HB 170) mooted claims
24 concerning the statute.

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1 On April 14, 2023, Plaintiffs filed a Response Brief in Opposition
2 to Defendants’ Motion to Partially Dismiss for Mootness. (Doc. 354). Plaintiffs
3 filed nine declarations from experts in support of their response. (Docs. 355-363).

4 On April 26, 2023, unable to reach agreement on a joint proposed
5 Pre-Trial Order, the parties submitted separate proposed pre-trial orders. (Docs.
6 366, 367). On April 27, 2023, a Final Pre-Trial Conference was held with the
7 Court.

8 In response to Judge Moses’ April 6, 2023, Order on Summary
9 Judgment in *MEIC, et al. v. DEQ, et al.*, Yellowstone County Cause No.
10 DV-56-2021-1307, the Montana Legislature adopted House Bill 971, an
11 amendment to clarify the MEPA Limitation. On May 10, 2023, Governor Greg
12 Gianforte signed into law HB 971, which clarified Mont. Code Ann.
13 § 75-1-201(2)(a). The clarifications in HB 971 explicitly prohibit Montana’s
14 agencies from considering “an evaluation of greenhouse gas emissions and
15 corresponding impacts to the climate in the state or beyond the state's borders” in
16 their MEPA reviews.

17 On May 12, 2023, the Court heard oral argument on Defendants’
18 Motions for Summary Judgment, Motion to Partially Dismiss for Mootness, and
19 Motion to Stay Proceedings.

20 On May 18, 2023, Defendants filed a Motion to Dismiss MEPA
21 Claims based on the enactment of HB 971. (Doc. 376). On June 1, 2023,
22 Plaintiffs filed a response brief opposing Defendant’s motion to dismiss the
23 claims. (Doc. 382). Defendants filed a reply and request for oral argument on
24 June 9, 2023. (Doc. 385).

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1 On May 19, 2023, Governor Gianforte signed into law Senate Bill
2 557, amending several provisions of MEPA, Mont. Code Ann. § 75-1-201.

3 On May 23, 2023, the Court issued an Order on Defendants'
4 Motions to Partially Dismiss for Mootness and For Summary Judgment. (Doc.
5 379). As to Defendants' Motion to Partially Dismiss for Mootness (Doc. 343),
6 the Court granted Defendants' motion and dismissed without prejudice Plaintiffs'
7 claims involving the State Energy Policy and Defendants' aggregate acts taken
8 pursuant to and in furtherance of the State Energy Policy on redressability and
9 prudential standing grounds. (Doc. 379 at 3-4). The Court denied Defendants'
10 motion for summary judgment and allowed Plaintiffs' MEPA claims to proceed
11 to trial. (Doc. 379 at 20-26).

12 On June 1, 2023, the Court issued an order on the remaining
13 motions *in limine*. (Doc. 381). The Court granted Plaintiffs' motion # 2; granted
14 in part and denied in part Plaintiffs' motions # 3 and 5; and denied Plaintiffs'
15 motions # 4, 6, and 7. The Court granted Defendants' motions # 1, 4, 5, 6, 7; and
16 denied Defendants' motions # 2 and 3.

17 On June 2, 2023, Defendants filed an Emergency Petition for Writ
18 of Supervisory Control with the Montana Supreme Court (OP 23-0311),
19 requesting again that the Supreme Court exercise supervisory control and reverse
20 this Court's denial of the State's motion for summary judgment. The State also
21 asked the Supreme Court to stay the trial set to begin June 12, 2023.

22 On June 6, 2023, the Montana Supreme Court denied the
23 Emergency Petition for Writ of Supervisory Control. (OP 23-0311). The
24 Supreme Court observed that Defendants had "not demonstrated that HB 971's

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1 amendments alter the allegations the Plaintiffs make in the Complaint”
2 concerning the MEPA provision. (OP 23-0311 at 3).

3 | On June 7, 2023, this Court entered the Final Pre-Trial Order
4 governing this proceeding. (Doc. 384). In addition to “supersed[ing] the
5 pleadings as to the remaining issues and govern[ing] the course of the trial of this
6 case,” (Doc. 384 at 38), the Court’s Final Pre-Trial Order denied Defendants’
7 Motion to Dismiss MEPA Claims (Doc. 376). (Doc. 384 at 38).

8 Trial began June 12, 2023, and ended on June 20, 2023.

9 On June 19, 2023, while trial was proceeding, Defendants filed a
10 Bench Memorandum on the Constitutional and Procedural Limits of the Montana
11 Environmental Policy Act. (Doc. 396). On June 25, 2023, Plaintiffs filed a
12 response (Doc. 402). This briefing discussed in detail SB 557.

13 | **FINDINGS OF FACT¹**

14 The Findings of Fact and Conclusions of Law are based on the
15 evidence and arguments presented at trial. The Court heard live testimony from
16 twenty-seven witnesses. Plaintiffs presented testimony from twenty-four
17 witnesses and Defendants presented testimony from three witnesses. The Court
18 admitted one hundred sixty-eight of Plaintiffs’ exhibits and four of Defendants’
19 exhibits.

20 | **I. PARTIES**

21 | **A. Plaintiffs**

22 | 1. Plaintiffs are youth citizens of Montana. When the
23 Complaint was filed in March 2020, Plaintiffs were from two to eighteen years
24 old. They are now between five and twenty-two years old.

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¹ Citations to the trial transcript, exhibits, and demonstrative slides are in brackets and identified by witness using their initials. For example, “SR-14”, refers to Steven Running demonstrative slide 14.

1 2. Plaintiffs are Rikki Held, Lander Busse, Sariel Sandoval,
2 Kian Tanner, Georgianna Fischer, Kathryn Grace Gibson-Snyder, Olivia
3 Vesovich, Claire Vlases, Taleah Hernández, Badge B., by and through his
4 guardian Sara Busse, Eva L., by and through her guardian Mark Lighthiser, Mica
5 K., by and through his guardian Rachel Kantor, Jeffrey K., by and through his
6 guardian Laura King; Nathaniel K., by and through his guardian Laura King,
7 Ruby D., by and through her guardian Shane Doyle, and Lilian D., by and
8 through her guardian Shane Doyle.

9 3. Rikki Held is from Broadus, Montana, was eighteen years
10 old when this case was filed, and is currently twenty-two years old.

11 4. Lander Busse is from Kalispell, Montana, was fifteen years
12 old when this case was filed, and is currently eighteen years old.

13 5. Sariel Sandoval is from Ronan, Montana, and lives on the
14 Flathead Indian Reservation. She was seventeen years old when this case was
15 filed and is currently twenty years old.

16 6. Kian Tanner is from Bigfork, Montana, was fourteen years
17 old when this case was filed, and is currently eighteen years old.

18 7. Georgianna Fischer is from Bozeman, Montana, was
19 seventeen years old when this case was filed, and is currently twenty-one years
20 old.

21 8. Kathryn Grace Gibson-Snyder is from Missoula, Montana,
22 was sixteen years old when this case was filed, and is currently nineteen years
23 old.

24 9. Olivia Vesovich is from Missoula, Montana, was sixteen
25 years old when this case was filed, and is currently twenty years old.

1 10. Claire Vlases is from Bozeman, Montana, was seventeen
2 years old when this case was filed, and is currently twenty years old.

3 11. Taleah Hernández is from Polson, Montana, was sixteen
4 years old when this case was filed, and is currently nineteen years old.

5 12. Badge B. is from Kalispell, Montana, was twelve years old
6 when this case was filed, and is currently fifteen years old.

7 13. Eva L. is from Livingston, Montana, was fourteen years old
8 when this case was filed, and is currently seventeen years old.

9 14. Mica K. is from Missoula, Montana, was eleven years old
10 when this case was filed, and is currently fifteen years old.

11 15. Jeffrey K. is from Montana City, Montana, was six years old
12 when this case was filed, and is currently nine years old.

13 16. Nathaniel K. is from Montana City, Montana, was two years
14 old when this case was filed, and is currently five years old.

15 17. Ruby D. is from Bozeman, Montana, was twelve years old
16 when this case was filed, and is currently fifteen years old.

17 18. Lilian D. is from Bozeman, Montana, was nine years old
18 when this case was filed, and is currently twelve years old.

19 **B. Defendants**

20 19. Defendants are the State of Montana, Governor Greg
21 Gianforte, Montana Department of Environmental Quality, Montana Department
22 of Natural Resources and Conservation, Montana Department of Transportation,
23 and Montana Public Service Commission.

24 20. The State of Montana is a governmental entity.

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1 21. Greg Gianforte is the current Governor of Montana. He is
2 sued in his official capacity.

3 22. As Governor, Governor Gianforte is charged with seeing
4 that the State's laws are faithfully executed, including the Constitution. Mont.
5 Const. Art. VI, Sec. 4.

6 23. Governor Gianforte has supervisory authority over the
7 principal departments of the executive branch.

8 24. Governor Gianforte holds cabinet meetings, communicates
9 with other state officers, oversees budget expenditures, and has authority to issue
10 executive orders. [Def. Answer, Doc. 11 ¶ 84].

11 25. Defendant Montana Department of Environmental Quality
12 (DEQ) is a department of the State of Montana.

13 26. DEQ is the primary administrator of Montana's
14 environmental regulatory, environmental cleanup, environmental monitoring,
15 pollution prevention, and energy conservation laws. [Def. Answer, Doc. 11 ¶ 88].

16 27. DEQ is mandated to ensure that projects and activities for
17 which it issues permits, licenses, authorizations, or other approvals comply with
18 Montana's environmental laws and rules (including MEPA) to maintain and
19 improve Montana's natural environment. [Agreed Facts, Final PTO, Doc. 384 at
20 2; Def. Answer, Doc. 11 ¶ 88].

21 28. DEQ is mandated to comply with the Montana Constitution
22 and state law. [CD 1308:6-12].

23 29. DEQ issues air quality permits for applications that
24 demonstrate compliance with all applicable requirements of the Federal and/or
25 Montana Clean Air Act and their implementing rules, including but not limited to

1 coal and natural gas-powered energy plants, coal mining operations, and oil and
2 gas refineries. [Agreed Facts, Final PTO, Doc. 384 at 2; Def. Answer, Doc. 11
3 ¶ 90].

4 30. DEQ prepares environmental review documents under
5 MEPA, including for projects related to fossil fuels, such as natural resource
6 extraction and power generating facilities. [CD 1313:21-1315:13].

7 31. DEQ has authority to certify certain pipelines that meet the
8 definition provided in the Major Facility Siting Act, § 75-20-104(9)(b), MCA,
9 and that comply with the requirements of the Major Facility Siting Act. [Agreed
10 Facts, Final PTO, Doc. 384 at 2; Def. Answer, Doc. 11 ¶ 91].

11 32. DEQ permits coal mining for applications which meet the
12 requirements set forth in Titles 82 (Minerals, Oil, and Gas) and 75
13 (Environmental Protection). DEQ has issued permits for surface coal mining in
14 Montana on state, private, and federal land. [Agreed Facts, Final PTO, Doc. 384
15 at 2; Def. Answer, Doc. 11 ¶ 92].

16 33. Pursuant to its statutory authority, DEQ has discretion to
17 deny and revoke permits. [SN 1392:24-1393:6].

18 34. Since 2011, pursuant to the MEPA Limitation, DEQ has not
19 analyzed in its environmental review documents the cumulative impacts of the
20 permits it issues on GHG emissions or climate change. [AH 846:1-3, 818:11-
21 819:10].

22 35. Defendant Montana Department of Natural Resources and
23 Conservation (DNRC) is a department of the State of Montana.

24 36. DNRC prepares environmental review documents under
25 MEPA. [Shawn Thomas Perpetuation Deposition, 42:1-16].

1 37. DNRC manages the resources of the state trust lands through
2 the State Board of Land Commissioners (Land Board). [Agreed Facts, Final
3 PTO, Doc. 384 at 2; Def. Answer, Doc. 11 ¶ 95].

4 38. DNRC regulates, permits, and authorizes activities that
5 result in GHG emissions in Montana. [Agreed Facts, Final PTO, Doc. 384 at 2].

6 39. DNRC issues leases, permits, and licenses for uses of lands
7 under its jurisdiction, including licenses for exploration and leases for production
8 and extraction of oil and gas in Montana and permits for drilling. [Agreed Facts,
9 Final PTO, Doc. 384 at 2].

10 40. DNRC has exercised its authority to grant easements for the
11 operational rights-of-way for interstate pipelines, with the approval of the Land
12 Board, and issues land use licenses for the construction of rights-of-way and
13 other activities on state lands and waterways for the construction and operation of
14 interstate pipelines, which are used to transport fossil fuels. [Agreed Facts, Final
15 PTO, Doc. 384 at 2; Def. Answer, Doc. 11 ¶ 95].

16 41. DNRC, through its Forestry Division, is responsible for
17 planning and implementing forestry and fire management programs, as well as
18 authorizing and permitting commercial timber sales on trust lands. [Agreed Facts,
19 Final PTO, Doc. 384 at 3; Def. Answer, Doc. 11 ¶ 97].

20 42. Defendant Montana Department of Transportation (MDT) is
21 a department of the State of Montana.

22 43. MDT is responsible for state planning in the transportation
23 sector and is charged with collecting and enforcing fuel taxes. [Agreed Facts,
24 Final PTO, Doc. 384 at 3].

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1 44. Defendant Montana Public Service Commission (PSC) is a
2 governmental entity.

3 45. PSC regulates, supervises, and controls public utilities,
4 common carriers, railroads, and pipelines. [Agreed Facts, Final PTO, Doc. 384
5 at 3].

6 46. PSC sets standard-offer contracts for qualifying facilities
7 and utility rates. [Agreed Facts, Final PTO, Doc. 384 at 3].

8 47. PSC is responsible for the safety of interstate pipelines,
9 including crude oil or petroleum products that operate within or through
10 Montana. [Agreed Facts, Final PTO, Doc. 384 at 3].

11 48. Defendants' performance of their respective governmental
12 functions has resulted in the extraction, transportation, and consumption of fossil
13 fuels. [Agreed Facts, Final PTO, Doc. 384 at 3].

14 49. The extraction, transportation, and consumption of fossil
15 fuels results in GHG emissions. [Agreed Facts, Final PTO, Doc. 384 at 3].

16 50. Defendants authorize the operation of coal-fired powerplants
17 in Montana. [Def. Answer, Doc. 11 ¶ 118].

18 51. The drilling for and production of oil in Montana is
19 authorized by Defendants. [Def. Answer, Doc. 11 ¶¶ 90, 96].

20 52. Montana has an abundance of energy sources, including
21 fossil fuels yet to be extracted. [PE 944:24-946:4; PE-37].

22 53. The Montana Legislature enacted Mont. Code Ann.
23 § 90-4-1001 (repealed) and the MEPA Limitation as amended. [Def. Answer,
24 Doc. 11 ¶ 82].

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1 54. Montana’s State Energy Policy was codified at Mont. Code
2 Ann. § 90-4-1001. [Def. Answer, Doc. 11 ¶ 112].

3 55. Mont. Code Ann. § 90-4-1001 was enacted by the Montana
4 Legislature in 1993 and amended in 2011. [Def. Answer, Doc. 11 ¶ 115].

5 56. The Montana Legislature repealed Mont. Code Ann.
6 § 90-4-1001 in 2023. The Governor signed the repeal, HB 170, into law on
7 March 16, 2023.

8 57. The provisions of MEPA governing environmental reviews
9 are codified at Mont. Code Ann. § 75-1-201.

10 58. In 2011, the Montana Legislature amended MEPA to limit
11 the scope of environmental reviews—enacting the MEPA Limitation, which
12 prohibited Montana’s agencies from considering in their MEPA reviews “actual
13 or potential impacts beyond Montana’s borders . . . [or] actual or potential
14 impacts that are regional, national, or global in nature.”

15 59. The Montana Legislature adopted amendments to clarify the
16 MEPA Limitation in 2023. The Governor signed the clarifying legislation, HB
17 971, into law on May 10, 2023.

18 60. The MEPA limitation now provides that Montana’s agencies
19 are prohibited from considering “an evaluation of greenhouse gas emissions and
20 corresponding impacts to the climate in the state or beyond the state’s borders.”
21 Mont. Code Ann. § 75-1-201(2)(a) (enacted by HB 971, 68th Legislature (2023)).

22 61. The 2023 Montana Legislature amended various provisions
23 of MEPA that pertain to legal challenges to MEPA environmental reviews.

24 62. SB 557 was introduced on March 27, 2023, passed by the
25 Legislature, and signed into law by the Governor on May 19, 2023.

1 63. SB 557 enacted a new provision, Mont. Code Ann.
2 § 75-1-201(6)(a)(ii), which eliminates the preventative, equitable remedies for
3 MEPA litigants who raise GHG or climate change issues. The new subsection
4 provides in part:

5 [a]n action alleging noncompliance or inadequate compliance with
6 a requirement of parts 1 through 3, including a challenge to an
7 agency’s decision that an environmental review is not required or a
8 claim that the environmental review is inadequate based in whole or
9 in part upon greenhouse gas emissions and impacts to the climate in
10 Montana or beyond Montana’s borders, cannot vacate, void, or delay
11 a lease, permit, license, certificate, authorization, or other entitlement
12 or authority unless the review is required by a federal agency or the
13 United States congress amends the federal Clean Air Act to include
14 carbon dioxide as a regulated pollutant.

15 Mont. Code Ann. § 75-1-201(6)(a)(ii) (enacted by SB 557, 68th Legislature
16 (2023)).

17 64. Defendants cited Mont. Code Ann. § 75-1-201(6)(a)(ii) and
18 SB 557 as foreclosing redressability in this case in their June 19, 2023, Bench
19 Memorandum on the Constitutional and Procedural Limits of the Montana
20 Environmental Policy Act. (Doc. 396).

21 **II. CLIMATE SCIENCE AND PROJECTIONS.**

22 **A. Climate Science**

23 65. Dr. Steven Running is a University Regents Professor
24 Emeritus of Global Ecology in the College of Forestry and Conservation at the
25 University of Montana. [SR-2]. Dr. Running currently co-chairs the standing
26 Committee for Earth Science and Application from Space of the National
27 Academy of Science. In 2007, Dr. Running shared the honor of the Nobel Peace
28 Prize as a chapter Lead Author for the 4th Assessment Report of the

1 Intergovernmental Panel on Climate Change (IPCC). [P193]. Dr. Running
2 provided expert testimony in the general areas of the climate system, including
3 the energy balance and imbalance, the physics of GHG emissions that are driving
4 climate change, the global carbon cycle, the global hydrologic cycle, how they
5 control this energy imbalance, and then how human caused fossil fuel
6 development is harming Montana's ecosystems and hydrology. Dr. Running is a
7 well-qualified expert, and the Court found his testimony informative and
8 credible.

9 66. Dr. Cathy Whitlock is Regents Professor Emerita of Earth
10 Sciences and a Fellow of the Montana Institute on Ecosystems at Montana State
11 University (MSU). Dr. Whitlock was lead author of the 2017 Montana Climate
12 Assessment, and in 2020 co-authored a state-level Montana Climate Solutions
13 Plan and a 2021 special report of the Montana Climate Assessment entitled
14 Climate Change and Human Health in Montana. Dr. Whitlock was also co-lead
15 author of the 2021 Greater Yellowstone Climate Assessment. Dr. Whitlock
16 provided expert testimony explaining how human-caused fossil fuel development
17 and the resulting release of CO₂ into the atmosphere are harming Montana's
18 ecosystems, water supplies, communities, and the Plaintiffs themselves. Dr.
19 Whitlock also discussed recent trends and future projections in temperature,
20 precipitation, snow accumulation and snowmelt, and stream runoff in Montana
21 and explained how they affect terrestrial ecosystems, communities, and the
22 livelihoods of people that depend on these ecosystem services. Dr. Whitlock's
23 testimony included projections for Montana's future based on continuing or
24 increasing the present rate of GHG emissions. Dr. Whitlock's testimony

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1 primarily focused on the effect GHG emissions in Montana. Dr. Whitlock is a
2 well-qualified expert, and the Court found her testimony informative and
3 credible.

4 67. There is overwhelming scientific consensus that Earth is
5 warming as a direct result of human GHG emissions, primarily from the burning
6 of fossil fuels. [SR 102:10-103:9, 125:11-22, 141:18-20; CW 257:14-25; P6, P13,
7 P23, P34, P223, P143; SR-22].

8 68. Fossil fuels include coal, crude oil or its derivatives (such as
9 gasoline or jet fuel), and natural gas. [PE 901:24-902:8].

10 69. While several GHGs are emitted from the burning of fossil
11 fuels, carbon dioxide (CO₂) is the GHG most responsible for trapping excess heat
12 within Earth's atmosphere. [SR 114:20-116:10].

13 70. Science is unequivocal that dangerous impacts to the climate
14 are occurring due to human activities, primarily from the extraction and burning
15 of fossil fuels. [SR 103:5-9; P6, P23, P34, P223, P143; SR-46, SR-47].

16 71. A substantial portion of every ton of CO₂ emitted by human
17 activities persists in the atmosphere for as long as hundreds of years or millennia.
18 As a result, CO₂ steadily accumulates in the atmosphere. [SR 166:2-10, 168:2-10;
19 CW 279:14-20, 314:20-315:8, 318:2-5].

20 72. The cumulative effect of GHG emissions causes the impacts
21 to the climate being experienced today. [SR 168:2-16]. Human activity and the
22 burning of fossil fuels have accelerated the accumulation of CO₂ to the point that
23 42% of the total accumulation of CO₂ emissions has happened in the last thirty
24 years. [SR 141:16-142:2; SR-42].

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1 73. It has long been understood that certain GHGs, including
2 CO₂ and methane (CH₄), trap heat in the atmosphere, causing the Earth to warm.
3 [SR 107:16-25]. An American, Eunice Newton Foote, was one of the first
4 scientists to research and write about the ability of atmospheric carbon dioxide to
5 affect solar heating in the 1850s. [SR 108:22-109:3; SR-14].

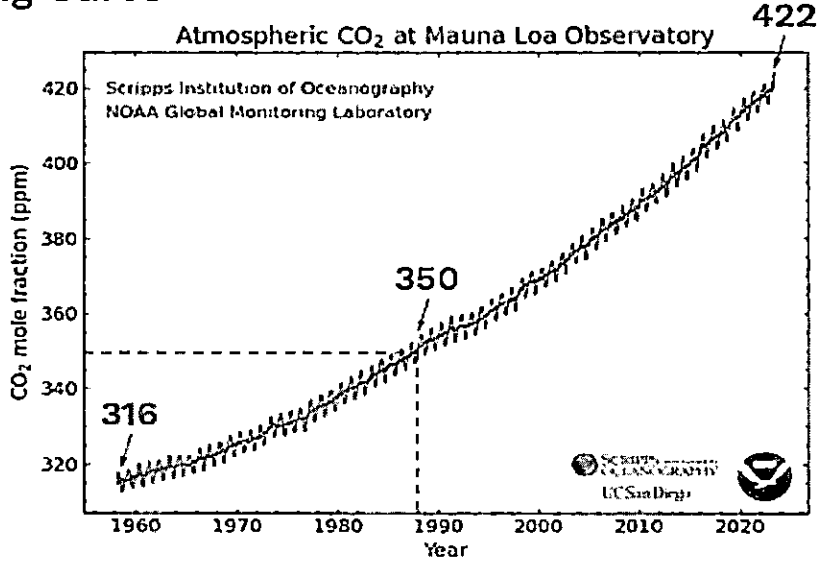
6 74. In 1896, Svante Arrhenius, a Swedish chemist, wrote that
7 the practice of burning fossil fuels emitting CO₂ could one day warm the planet.
8 [SR 108:1-8]. Arrhenius, and other early climate scientists, understood that the
9 more CO₂ that was added to the atmosphere, the more the surface of the Earth
10 would warm. [SR 108:8-13]. At the time of Arrhenius's work, atmospheric CO₂
11 levels were approximately 295 parts per million (ppm). Pre-industrial levels
12 were approximately 280 ppm. [SR 109:22-25; SR-14].

13 75. In 1958, Dr. David Keeling began the modern monitoring of
14 atmospheric CO₂ at Mauna Loa, Hawaii, a remote location not near any local
15 CO₂ sources. [SR 111:12-21]. Keeling's data, now replicated at dozens of
16 stations worldwide, proved that CO₂ has continued to rise every year from 1958
17 to the present from an initial concentration of 315-316 ppm in 1958, to an annual
18 mean level of around 424 ppm today. [SR 112:22-113:4, 113:16-114:8]. The
19 curve showing a long-term increase in CO₂ concentrations has become known as
20 the "Keeling Curve." [SR 110:22-111:11, 113:20].

21 76. Between 1960 and 2000, CO₂ levels rose at about
22 2 ppm per year, but since approximately 2000, CO₂ levels are rising at about
23 3 ppm per year, primarily from fossil fuel emissions. [SR 117:14-20, 118:1-12,
24 121:9-11; SR-21].

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1 Keeling Curve



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13 77. CO₂ levels have fluctuated throughout history, but the rate of

14 increase in atmospheric CO₂ is 100 times faster than in natural CO₂ fluctuations

15 and cycles, and it is happening in a very short timeframe that is unprecedented in

16 the geologic record. [SR 119:20-121:11; SR-19].

17 78. The continuous rise in atmospheric CO₂ has caused global,

18 national, and Montana air temperatures to rise, as measured by meteorological

19 stations. Total global temperature rise over the last 120 years is on average 2.2°F,

20 or about 1.2°C. [SR 132:19-22; SR-38; CW 262:4-21; CW-18, CW-19, CW-20].

21 79. Montana is heating faster than the global average because

22 higher latitudes are heating more quickly. [CW 263:20-264:7].

23 80. Montana is warming, and the rate of warming is increasing.

24 [CW 266:15-16].

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1 81. The Earth has warmed by 1.3 to 2.2°F in only the last thirty-
2 five years, as atmospheric CO₂ concentrations have risen from 350 ppm to over
3 420 ppm today. [SR 130:14-18; SR-35, SR-64]. It previously took 140 years for
4 the Earth to warm by 0.9°F. [SR-35]. The Earth is heating more quickly now.
5 2020 was the second warmest year on record, and land areas were record warm.
6 The ten warmest years on record have occurred since 2005, and since 1981, a
7 new global temperature record has been set every three years. Since 1980, the
8 Earth has not experienced a single year with below long-term average
9 temperatures. [SE 131:20-132:10; SR-37].

10 82. The Earth's energy imbalance (the difference in energy from
11 sun arriving at the Earth and the amount radiated back to space) is what climate
12 scientists describe as the most critical metric for determining the amount of
13 global heating and climate change we have already experienced and
14 will experience as long as the Earth's energy imbalance exists. [SR 122:1-15,
15 129:17-20; SR-34]. Scientists measure and calculate how much extra energy, or
16 heat, is being retained in Earth's systems, like oceans, ice, air, and land surface,
17 compared to what Earth's natural balance would be if more heat escaped our
18 atmosphere. [SR 122:1-15, 129:21-130:4].

19 83. The Earth's energy imbalance is currently significant and is
20 due to accumulation of energy within Earth's oceans, ice, land, and air, with the
21 energy measured in joules and the rate of additional energy measured in watts per
22 square meter. [SR 124:14-125:18]. A watt is the addition of one joule of energy
23 in one second, which is then averaged by the area of the Earth to yield watts per
24 square meter. From 1971 to 2018, the Earth gained about 360 zeta joules of heat
25 (a zeta is a unit with 21 zeros; a trillion has 12 zeros). [SR-29]. Adding this much

1 energy over forty-eight years yields an energy imbalance of about 0.5 W m^{-2} .
2 However, the rate of energy addition has continued to increase due to increasing
3 GHG emissions and the Earth's energy imbalance for 2010 to 2018 is about 0.9
4 W m^{-2} . [SR 122:14-24; SR-29; P79].

5 84. 358 zeta joules are enough energy to bring Flathead Lake to
6 boil 40,000 times over. [SR 125:3-6; SR-30].

7 85. As long as there is an energy imbalance, the Earth will
8 continue to heat, ice will continue to melt, and weather patterns will become
9 more extreme. [SR 127:7-22, 131:9-15, 137:6-9, 149:2-14]. If more GHGs are
10 added to the atmosphere and more incoming energy received from the sun is
11 trapped as thermal energy, the Earth's climate system will continue to heat up.
12 [SR 125:7-22].

13 86. The scientific consensus is that CO_2 from fossil fuel
14 pollution is the primary driver of Earth's energy imbalance. [SR 117:21-118:12;
15 125:11-22]. Due to the buildup of CO_2 from about 280 ppm to 419 ppm in the
16 last 140 years (and to a lesser extent other GHGs), more solar energy is now
17 retained on Earth and less energy is released back to space. [SR 130:8-14; P20,
18 P22, P79; SR-14].

19 87. The buildup of CO_2 and the current Earth energy imbalance
20 is due to anthropogenic changes in the environment, not natural variability. [SR
21 103:5-9, 121:7-11].

22 88. Approximately 89% of annual anthropogenic CO_2
23 emissions, or 35 gigatons of CO_2 , is attributable to burning fossil fuels. [SR
24 115:9-17; SR-20]. Approximately 11% of annual anthropogenic CO_2 is from land
25 use change, which includes wildfires, agricultural burning, and deforestation.

1 [SR 115:18-22, 116:7-15; SR-20]. This means that fossil fuel use is around 10
2 times as large as other sources of emissions due to human management. [SR
3 115:15-21]. In terms of the CO₂ humans emit each year, approximately 48% of
4 these emissions end up in the atmosphere, 29% are absorbed in back up in the
5 biosphere, and 26% are absorbed by the oceans. [SR 115:7-117:10; SR-20].

6 89. Until atmospheric GHG concentrations are reduced, extreme
7 weather events and other climactic events such as droughts and heatwaves will
8 occur more frequently and in greater magnitude, and Plaintiffs will be unable to
9 live clean and healthy lives in Montana. [SR 128:22-129:5, 131:5-15,
10 149:2-150:7; SR-45; LVS-44].

11 90. There is scientific certainty that if fossil fuel emissions
12 continue, the Earth will continue to warm. [SR 106:15-18, 168:20-24; SR-46,
13 SR-47].

14 91. Each additional ton of GHGs emitted into the atmosphere
15 exacerbates impacts to the climate. [SR 106:15-18, 188:3-6; CW 279:14-20,
16 314:20-315:8, 318:2; P143].

17 92. Every ton of fossil fuel emissions contributes to global
18 warming and impacts to the climate and thus increases the exposure of Youth
19 Plaintiffs to harms now and additional harms in the future. [SR 168:17-169:7;
20 CW 279:14-20, 314:20-315:8, 318:2-5; PE-40].

21 **B. Climate Change Projections.**

22 93. Computer models used by scientists are an important tool for
23 predicting climate change and are reasonably relied upon by members of the
24 scientific community. [SR 90:23-91:9].

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1 94. Projections indicate atmospheric CO₂ and other GHGs will
2 increase the severity of all impacts to the climate for the foreseeable future,
3 absent drastic reduction in fossil fuel use and the resulting GHG emissions.
4 [SR 106:1-18, 169:22-170:10, 170:16-22; CW 269:14-18; SR-46, SR-47].

5 95. There is a strong scientific consensus that as GHG emissions
6 continue to increase, impacts to the climate will become more severe.
7 [SR 106:15-18, 137:3-9; SR-43].

8 96. The yearly days in Montana with extreme heat, meaning
9 temperatures over 90 degrees, is expected to increase by 11 – 30 days by
10 midcentury, and by as much as two months by the end of the century.
11 [CW 273:6-20; CW-24, CW-28]. At the same time, the number of days above
12 freezing will increase by weeks to months in the future. [CW 273:6-20,
13 275:21-276:7; CW-27; P222].

14 97. Projections indicate a high-emission scenario results in
15 9.8°F of warming in Montana by 2100, relative to temperatures in 1971-2000. An
16 intermediate emission scenario projects an increase of 5.6°F in Montana by 2100,
17 relative to temperatures in 1971-2000. [CW 270:1-271:9; CW-23; P222].

18 98. According to the Intergovernmental Panel on Climate
19 Change (IPCC), “Climate change is a threat to human well-being and planetary
20 health (*very high confidence*). [SR-48]. There is a rapidly closing window of
21 opportunity to secure a liveable and sustainable future for all (*very high*
22 *confidence*) . . . The choices and actions implemented in this decade will have
23 impacts now and for thousands of years (*high confidence*).” [SR 149:15-150:7;
24 P143; SR-48, SR-63; LB-43].

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1 99. According to the IPCC, “[i]n the near term, every region of
2 the world is projected to face further increases in climate hazards (*medium to*
3 *high confidence*, depending on region and hazard), increasing multiple risks to
4 ecosystems and humans (*very high confidence*). Hazards and associated risks
5 expected in the near-term include an increase in heat-related human mortality and
6 morbidity (*high confidence*), food-borne, water-borne, and vector-borne diseases
7 (*high confidence*).” [SR-46, SR-47; LB-42].

8 **III. CLIMATE CHANGE HARMS CHILDREN AND SPECIFICALLY**
9 **THE YOUTH PLAINTIFFS.**

10 100. Dr. Lori Byron obtained a Doctor of Medicine degree in
11 1984. She has been a board-certified pediatrician since 1988. Dr. Byron earned a
12 M.S. in Energy Policy and Climate from Johns Hopkins in 2020. From 1988-
13 2015, Dr. Byron worked with the Indian Health Service in Crow Agency,
14 Montana, providing primary care, emergency care, and public health services to
15 Crow Indian children. Dr. Byron now works as a pediatric hospitalist at SCL
16 Health in Billings, Montana. Dr. Byron has decades of experience caring for
17 children who have suffered Adverse Childhood Events (ACEs). Over the past
18 decade, Dr. Lori Byron and her husband, Dr. Rob Byron, have made
19 presentations on climate change and health locally, nationally, and
20 internationally. Dr. Lori Byron finished a six-year term on the Executive
21 Committee of the Council on Environmental Health and Climate Change with the
22 American Academy of Pediatrics and a six-year term on the Children’s Health
23 protection Advisory Committee with the Environmental Protection Agency
24 (EPA). Dr. Byron was an author on the 2021 report “Climate Change and Human

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1 Health in Montana: A Special Report of the Montana Climate Assessment,” as
2 well as other climate and health publications.

3 101. Dr. Byron provided expert testimony that climate change
4 and the air pollution associated with it are negatively affecting children in
5 Montana, including Youth Plaintiffs, with a strong likelihood that those impacts
6 will worsen in the absence of aggressive actions to mitigate climate change.
7 Dr. Byron outlined ways in which climate change is already creating conditions
8 that are harming the health and well-being of the Youth Plaintiffs. Dr. Byron
9 testified that reducing fossil fuel production and use, and mitigating climate
10 change now, will benefit the health of the Youth Plaintiffs now and for the rest of
11 their lives. Dr. Byron is a well-qualified expert, and the Court found her
12 testimony informative and credible.

13 102. Dr. Lise Van Susteren is a board certified general and
14 forensics clinical psychiatrist, in practice for thirty years. She is a Clinical
15 Associate Professor of Psychiatry and Behavioral Sciences at George
16 Washington University in Washington, D.C. In 2009, Dr. Van Susteren co-
17 convened one of the first conferences on the psychological effects of climate
18 change. In 2013, Dr. Van Susteren worked with Dr. James Hansen and other
19 experts on a paper, Assessing “Dangerous Climate Change”: Required
20 Reductions of Carbon Emissions to Protect Young People, Future Generations
21 and Nature. (Hansen et al., 2013). In May 2018, Dr. Van Susteren received the
22 Distinguished Fellow award of the American Psychiatric Association, its highest
23 membership honor. Dr. Van Susteren has helped develop youth climate anxiety
24 assessment tools, conducted research and reviewed data in assessing the mental
25 health of young people faced with climate change. Dr. Van Susteren provided

1 expert testimony on the physiological harms caused by climate change to
2 Montana's youth, including the Youth Plaintiffs, the psychological harms caused
3 by the MEPA Limitation, and the availability of remedies to alleviate Plaintiffs'
4 psychological injuries. Dr. Van Susteren is a qualified expert, and the Court
5 found her testimony credible.

6 103. Michael Durglo, Jr., is a member of the Confederated Salish
7 and Kootenai Tribes (CSKT). He has a Bachelor of Science degree in
8 Environmental Science from Salish Kootenai College. Mr. Durglo has worked in
9 different capacities for the CSKT for over three decades. In his current role as
10 Head of the Tribal Preservation Department and Chairman of the Climate Change
11 Advisory Committee (CCAC), Mr. Durglo has worked extensively with tribal
12 elders and youth on climate related issues. He has been involved with the
13 Institute for Tribal Environmental Professionals' Climate Change Adaptation
14 Planning Workshop, and he served as the co-chair of the National Tribal Science
15 Council and the chair of the EPA Region 8 Tribal Operations Committee,
16 consisting of EPA tribal environmental directors in Montana, Wyoming,
17 Colorado, Utah, and North and South Dakota. He has taught workshops and
18 seminars on climate adaptation planning throughout North America. Mr. Durglo
19 is a qualified expert and the Court found him informative and credible.

20 104. Children are uniquely vulnerable to the consequences of
21 climate change, which harms their physical and psychological health and safety,
22 interferes with family and cultural foundations and integrity, and causes
23 economic deprivations. [LB 473:12-24, 474:12-477:12; LVS 1177:5-8,
24 1202:6-24, 1215:13-24, 1217:2-1222:11; MDJ 597:9-18, 600:23-604:14,
25 609:23-610:10; LB-9, LB-15, LB-16; LVS-11, LVS-25].

1 105. Children are at a critical development stage in life, as their
2 capacities evolve, and their physiological and psychological maturity develops
3 more rapidly than at any other time in life. [LB 474:12-477:12, 485:10-486:1;
4 LVS 1177:10-21, 1213:7-23, 1215:13-24].

5 106. The brains and lungs of children and youth are not fully
6 developed until around age 25. [LB 474:18-25; LVS 1213:7-16].

7 107. All children, even those without pre-existing conditions or
8 illness, are a population sensitive to climate change because their bodies and
9 minds are still developing. [LB 473:12-24, 474:12-477:12; LVS 1177:2-1178:12,
10 1213:7-23; LB-9; LVS-11].

11 108. The physical and psychological harms are both acute and
12 chronic and accrue from impacts to the climate such as heat waves, droughts,
13 wildfires, air pollution, extreme weather events, the loss of wildlife, watching
14 glaciers melt, and the loss of familial and cultural practices and traditions. [LB
15 498:12-25, 524:11-22; LVS 1178:13-1179:6, 1196:6-11, 1200:7-1201:25,
16 1202:6-24, 1204:21-1205:19, 1206:19-1209:12, 1218:2-16, 1219:25-1220:11,
17 1221:19-21; MDJ 595:18-596:2, 597:6-18, 600:23-604:14, 606:11-607:2, 608:1-
18 13, 609:23-610:10].

19 109. Climate change can cause increased stress and distress
20 which can impact physical health. [LB 526:8-16; LVS 1188:16-24; LVS-15].
21 Dr. Van Susteren observed that Youth Plaintiffs testified to specific personal
22 consequences. For example:

23 a. Grace feels fearful due to the glaciers disappearing
24 from a state she loves.

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1 b. Sariel has suffered significant distress due to the
2 impacts of climate change on culturally important plants, and snow for creation
3 stories. Her cultural connection to the land increases this impact.

4 c. Mica has experienced a sense of loss from having to
5 stay inside due to wildfire smoke.

6 d. Olivia expressed despair due to climate change.

7 e. Claire has been impacted by fear and loss from
8 glaciers melting, and anxiety over whether it is a safe world in which to have
9 children.

10 110. Heat waves are associated with significant psychological
11 stress. Increased heat and temperature negatively affect cognition and are linked
12 to increased incidence of aggression and exacerbation of pre-existing mental
13 health disorders. [LVS 1197:1-1198:7, 1200:7-12; LVS-29].

14 111. Children have a higher risk of becoming ill or dying due to
15 extreme heat. [LB-15, LB-16].

16 112. Drought is associated with anxiety, depression, and chronic
17 despair. [LVS 1200:24-1201:25].

18 113. Wildfires, including those witnessed by Badge, are
19 traumatic. Being surrounded by wildfires can make the world feel unsafe and the
20 inability to breathe clean air creates anxiety. [LVS 1202:6-24, 1204:21-1205:19].

21 114. The threat of loss can be enough to cause mental health
22 harms, especially when there are no signs the future will be any different. [LVS
23 1203:15-1204:6].

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1 115. As climate disruption transforms communities, some
2 Plaintiffs are experiencing feelings that they are losing a place that is important to
3 them.

4 116. The IPCC has found, with *very high confidence*, that climate
5 change has “detrimental impacts” on mental health and the harms to mental
6 health are expected to get worse. [LVS 1185:12-1186:3, 1192:23-1194:9, 1195:6-
7 13; P127; LVS-23, LVS-24].

8 117. The 2021 report, *Climate Change and Human Health in*
9 *Montana*, found that “[t]he mental health impacts of climate change are profound
10 and varied.” [LVS-27]. Extreme weather events, prolonged heat and smoke, and
11 environmental change can all impact mental health and increase feelings of
12 disconnectedness and despair. [LVS 1196:6-11; P31; LVS-28].

13 118. Exposure to extreme heat can cause heat rash, muscle
14 cramps, heatstroke, damage to liver and kidney, worsening allergies, worsening
15 asthma, and neurodevelopmental effects. [LB 485:2-9; P31; LB-13, LB-14].

16 119. The psychological harms caused by the impacts of climate
17 change can result in a lifetime of hardships for children. [LVS 1194:4-9,
18 1210:2-1211:2, 1213:24-1215:4; P127; LVS-12].

19 120. The physiological features of children make them
20 disproportionately vulnerable to the impacts of climate change and air pollution.
21 [LB 474:14-25, 475:4-10; LVS 1213:7-23; LB-9, LB-10; LVS-11].

22 121. Children have a higher basal metabolic rate, which makes it
23 harder for them to dissipate heat from their bodies. [LB 475:14-21].

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1 122. Children breathe in more air per unit of time than adults and
2 consume more food and water proportional to their body weight, making children
3 more susceptible to polluted or contaminated air, water, or food. [LB 476:21-
4 477:12].

5 123. Typical child behavior and physiology—which involves
6 spending more time recreating outdoors and more difficulty self-regulating body
7 temperature—render children more susceptible to excess heat, poor air quality,
8 and other climate change impacts. [LB 476:21-477:12, 481:9-19].

9 124. Childhood exposure to climate disruptions and air pollution
10 can result in impaired physical and cognitive development with lifelong
11 consequences. Air pollution can trigger or worsen juvenile idiopathic arthritis,
12 leukemia, and asthma in children. [LB 482:9-21, 502:4-22; LB-25; LVS
13 1205:20-1206:8, 1207:18-1208:3].

14 125. The air quality where Plaintiffs live has been negatively
15 impacted by smoke from wildfires contributed to by climate change.

16 126. Allergies are increasingly prevalent among children and
17 anthropogenic climate change is extending the allergy season and exacerbating
18 allergy symptoms. An increase in these symptoms can affect children’s physical
19 and psychological health by interfering with sleep, play, school attendance, and
20 performance. [LB 484:25-485:9, 508:2-16; LVS-30].

21 127. Climate change is contributing to an increase in the severity
22 and frequency of asthma in children. Six million children in the U.S. ages 0-17
23 have asthma, which translates to approximately one in every twelve children.
24 [LB 485:7-8, 503:1-14, 505:4-25; LB-26, LB-30].

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1 128. Children who have pre-existing respiratory conditions,
2 including asthma, are especially vulnerable to climate impacts, including
3 increasing air pollution and rising temperatures. Wildfire smoke has harmed the
4 health of Plaintiffs Olivia, Jeffrey, and Nate, all who have pre-existing health
5 conditions, and other Plaintiffs, including Badge and Eva. [LB 505:12-506:20,
6 508:23-509:1; LB-28].

7 129. Plaintiffs Olivia and Grace are distressed by feeling forced
8 to consider foregoing a family because they fear the world that their children
9 would grow up in. [LB 497:4-21; LVS 1214:21-1215:1, 1221:19-1222:5; GGS
10 208:3-22].

11 130. Plaintiffs Rikki, Kian, Claire, and Taleah, face economic
12 deprivations, including barriers to keeping family wealth and property intact and
13 decreased future economic opportunities.

14 131. Extreme heat threatens the health of competitive athletes,
15 including Kian, Georgi, Claire, and Grace. [LB 490:6-491:15; LB-18].

16 132. For indigenous youth, like Ruby, Lilian, and Sariel, extreme
17 weather harms their ability to participate in cultural practices and access
18 traditional food sources, which is particularly harmful to indigenous youth with
19 their place-based cultures and traditions. [LB 491:23-493:9; MDJ 579:19-580:9].

20 133. Because of their unique vulnerabilities, their stages of
21 development as youth, and their average longevity on the planet in the future,
22 Plaintiffs face lifelong hardships resulting from climate change. [LB 474:14-25,
23 475:4-10; LVS 1177:2-1178:12, 1189:1-6, 1194:4-9, 1210:2-1211:2, 1213:7-23,
24 1215:13-24].

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1 134. Youth are more vulnerable to the mental health impacts of
2 climate change because younger people are more likely to be affected by the
3 cumulative toll of stress and have more adverse childhood experiences (ACEs).
4 ACEs increase the likelihood of cumulative trauma that leads to mental and
5 physical illness, as well as an increased risk of early death. [LB 521:14-16,
6 5236-15; LVS 1210:2-1211:2; LB-33; LVS-31].

7 135. ACEs can cause prolonged fear, anxiety, and stress,
8 cognitive impairments, and unhealthy risk behaviors. ACEs can also cause long-
9 term health impacts including increased risk of obesity, diabetes, heart disease,
10 depression, strokes, chronic obstructive pulmonary disease, and broken bones.
11 [LB 516:3-20, 519:16-520:4, 522:17-523:2; LB-34].

12 136. Children born in 2020 will experience a two to sevenfold
13 increase in extreme events, particularly heatwaves, compared with people born in
14 1960. [LB 495:1-11, 497:1-3; P45; LB-20].

15 137. According to the IPCC, “Climate change is a threat to
16 human well-being and planetary health (*very high confidence*).” The IPCC stated,
17 “Without urgent, effective, and equitable mitigation and adaptation actions,
18 climate change increasingly threatens ecosystems, biodiversity, and the
19 livelihoods, health and wellbeing of current and future generations (*high*
20 *confidence*).” [LB 530:11-533:9; LB-43, LB-44; P143; SR-61].

21 138. The unrefuted testimony at trial established that climate
22 change is a critical threat to public health. [LB 536:10-537:14].

23 139. Actions taken by the State to prevent further contributions to
24 climate change will have significant health benefits to Plaintiffs. [LB 534:25-
25 535:9].

1 **IV. CLIMATE CHANGE IS ALREADY ADVERSELY AFFECTING**
2 **MONTANA’S NATURAL ENVIRONMENT.**

3 140. Anthropogenic climate change is impacting, degrading, and
4 depleting Montana’s environment and natural resources, including through
5 increasing temperatures, changing precipitation patterns, increasing droughts and
6 aridification, increasing extreme weather events, increasing severity and intensity
7 of wildfires, and increasing glacial melt and loss. [JS 655:2-658:10, 659:6-
8 660:11; *see generally* SR, CW, DF; CW-56; DF-20].

9 141. Climate change impacts result in hardship to every sector of
10 Montana’s economy, including recreation, agriculture, and tourism. For example,
11 private water supplies will be harmed. [SR 144:13-145:17; CW-52].

12 142. Montana has already warmed significantly more than the
13 global average. [CW 263:12-17, 263:20-264:7; CW-18, CW-19].

14 143. All parts of Montana have seen a long-term trend of
15 increasing mean annual temperatures since 1950. Winter and spring have warmed
16 the most [CW 267:18-268:20; CW-21; P6].

17 144. There is a scientific consensus that rising temperatures in
18 Montana are due to rising GHG concentrations, primarily CO₂. [SR 103:5-9,
19 117:25-118:12; CW 269:18-25].

20 145. Montana’s snowpack has been decreasing and is likely to
21 continue decreasing with warmer temperatures, as a long-term trend caused by
22 impacts to the climate. [CW 283:11-19; CW-33, CW-35, CW-55; DF 421:12-23].

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1 146. Montana’s April 1, Snow Water Equivalent, which is an
2 important metric for how much water will be available during the dry summer
3 months in Montana, has been declining since the 1930s. [CW 284:23-286:15;
4 CW-34].

5 147. The decline in snowpack is directly attributed to elevated
6 temperatures due to high levels of GHG emissions. [CW 283:11-19, 288:3-10].

7 148. Warming temperatures in Montana are resulting in more
8 precipitation falling as rain instead of snow, particularly in western Montana.
9 This results in reduced snowpack and shorter snowpack runoff duration in the
10 spring and summer. Warming temperatures and rapid snowmelt and rain-on-
11 snow events have been a major cause of spring flooding in Montana. [CW
12 291:17-292:20].

13 149. Extreme spring flooding events are consistent with climate
14 change, including more spring precipitation, which can cause flash flooding
15 when rain falls on snow. [SR 144:24-145:8; SR-44]. Spring flooding is expected
16 to increase in frequency with increased climate change. [CW 291:15-292:20].

17 150. The 2018 Shields River flooding and the 2022 Yellowstone
18 River flooding event are examples of rain on snow and heavy precipitation events
19 that will be more frequent with climate change. [CW 291:15-292:20].

20 151. Dr. Dan Fagre holds a Ph.D. from the University of
21 California, Davis. He joined the National Park Service as a research scientist in
22 1989 and, in 1991, he became the Climate Change Research Coordinator at
23 Glacier National Park as part of the nationwide United States Global Change
24 Research Program. His position was transferred to the United States Geological
25 Survey (USGS), where he served until his retirement in 2020, after which he has

1 continued as Scientist Emeritus. At Glacier National Park, Dr. Fagre helped
2 develop a national climate change research program within the National Park
3 Service, coordinating with other scientists at national parks from Florida to
4 Alaska. He built a research program centered on Glacier Park as a representative
5 mountain ecosystem, engaging faculty and scientists from Montana universities
6 and across the U.S. [P190]. Dr. Fagre is a well-qualified expert, and his
7 testimony was informative and credible.

8 152. Glacier National Park is a major driver of the regional
9 economy and a source of fresh water for countless communities. [Def. Answer,
10 Doc. 54 ¶ 159; DF 404:10-406:10, 407:1-3, 408:11-25, 426:2-17; DF-13].

11 153. The glaciers in Glacier National Park were an early focus of
12 the U.S. Geological Survey climate change research because they are excellent
13 indicators of impacts to the climate. Located above the rest of the mountain
14 ecosystem, glaciers respond only to climatic forces that affect summer
15 temperatures that melt ice and snow and winter snow accumulation (i.e.,
16 snowpack). [DF 394:15-396:1, 396:25-397:17].

17 154. Of the approximately 146 glaciers present in Glacier
18 National Park in 1850, only twenty-six glaciers larger than twenty-five acres
19 remained in 2015. 82% of Glacier Park's glaciers are gone and there has been a
20 70% loss of area of all glaciers. [DF 418:1-8, 422:25-424:4; DF-17, DF-20].

21 155. Since 1900, glaciers in Glacier Park lost 66% of their area,
22 making Montana the largest region for glacier loss in the U.S. lower forty-eight.
23 Agassiz Glacier, Grinnell Glacier, Jackson Glacier, Sperry Glacier, and

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1 Thunderbird Glacier have all experienced significant retreat. [DF 409:9-23,
2 410:23-415:5, 412:13-21, 415:12-416:20; P61-P64; DF-8, DF-15, DF-16, DF-18,
3 DF-20, DF-21].

4 156. The scientific consensus is that the retreat of Glacier Park's
5 glaciers over the past century is due to human GHG emissions (mainly CO₂ from
6 fossil fuel burning). [DF 409:24-410:19, 416:21-417:15, 422:8-19, 424:5-11,
7 428:13-24].

8 157. The current ice retreat of Glacier Park's glaciers is in
9 response to modern, human-caused warming of the region. [DF 428:13-24].

10 158. Computer models project the loss of Glacier Park's glaciers
11 if fossil fuel emissions continue to rise. [DF 425:9-23].

12 159. The loss of Glacier National Park's glaciers will affect the
13 water sources of many communities, stream and river hydrology, local
14 economies, and the recreational opportunities of several Plaintiffs because they
15 will be denied access to natural resources enjoyed by previous generations of
16 Montanans. [DF 404:10-406:10, 407:1-3, 408:11-25, 426:2-17; DF-13].

17 160. If GHG emissions are reduced glaciers would slow their
18 melting, eventually stabilize, and then begin to grow again. [DF 428:1-12].

19 161. Climate change results in water levels in Montana's rivers
20 and lakes that are routinely well below normal levels in summer and fall months
21 and water temperatures that are well above historical levels. [JS 686:18-687:4,
22 690:7-17, 692:22-25, 693:2-7; JS-25].

23 162. Dr. Jack Stanford received his Ph.D. in Freshwater Ecology
24 at the University of Utah. [JS-2]. He is Professor Emeritus at the Flathead Lake
25 Biological Station (FLBS) of the University of Montana. He was the Director and

1 Bierman Professor of Ecology at the University of Montana (1980-2016). His
2 primary area of research is aquatic ecosystem processes, including influences of
3 human activities. He has published over 220 scientific papers and books on
4 aquatic ecosystem processes, including influences of human activities. [P194].
5 Dr. Stanford is a well-qualified expert, and his testimony was informative and
6 credible.

7 163. Montana is part of the northern Rocky Mountain region. The
8 northern Rocky Mountains are a headwaters region, including for the Missouri
9 River system to the East and the Columbia River System to the West, where most
10 of the water originates as snow. [Def. Answer, Doc. 54 ¶ 157].

11 164. Montana is a key “water tower” of the Continent. Water that
12 drains from the Rocky Mountains feeds three of the great rivers of North
13 America: the Columbia, the Saskatchewan, and the Missouri-Mississippi. Snow
14 at high elevations provides eighty-five percent of the fresh water that people use
15 in Montana. [DF 405:22-406:10, 407:16-409:1; DF-13; JS 656:21-657:7].

16 165. The accumulation of winter snowpack in the mountains
17 naturally acts as a reservoir for the hotter, drier months, gradually melting with
18 onset of spring, and in summer providing continuous flow downstream, which is
19 critical in the period of less precipitation and warmer temperatures. [SR
20 152:2-18]. Some accumulations are held in mountain glaciers which add
21 meltwaters to the flow paths. [DF 407:16-409:1; DF-13].

22 166. Precipitation also is retained in lakes and wetlands where a
23 large share of runoff penetrates into the ground, feeding aquifers that store water
24 or augment river and stream flows. [JS 655:20-24, 657:13-17,
25 660:12-661:7; JS-4].

1 167. Montana’s river and lake ecosystems are interconnected
2 with each other and with aquatic and terrestrial ecosystems beyond Montana’s
3 borders. [JS 646:2-647:2]. The interconnectivity of Montana’s river and lake
4 ecosystems includes being connected with groundwater and atmospheric waters.
5 [JS 661:8-12; JS-4, JS-8, JS-9; P82].

6 168. The rivers of Montana are interlinked and their flows and
7 the quantity of materials (e.g., sediments) that they naturally transport are now,
8 without functioning glaciers, increasingly dependent on seasonal rain and
9 Snow. These river networks transport and deliver the water and materials that
10 sustain the natural and cultural (human) elements of Montana’s ecosystems.
11 [JS 661:8-664:18, 646:2-647:2; JS-4; DF-19].

12 169. Montana’s water resources are critically important to Youth
13 Plaintiffs and all Montana citizens and to many people beyond the State’s
14 borders. Montanans must have a dependable supply of clean freshwater. [JS
15 659:6-19; JS-25].

16 170. Anthropogenic climate change is disrupting the natural
17 range of variation in the flow paths of Montana’s river systems. Compared to the
18 1960s, the summer streamflow in Montana’s rivers has decreased by
19 approximately 20% and stream temperatures have increased between 1-2°C.
20 [JS 666:15-667:20; JS-10, JS-25].

21 171. As a result of anthropogenic climate change:

22 a. Surface temperatures in Flathead Lake are too warm
23 for bull and cutthroat trout to sustain their historic populations. [JS 687:5-14].

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1 b. The Flathead River is experiencing low streamflow
2 and a decline in cutthroat trout populations due to warm temperatures and low
3 water. Bull trout populations have also declined in Flathead Lake. [JS 687:5-14].

4 c. The Missouri River is experiencing discharge
5 declines, and increase in stream temperatures, fishing restrictions, and algae
6 blooms. [JS 687:15-688:25].

7 d. The Clark Fork River is experiencing low streamflow
8 and discharge declines. [CW 292:21-293:18; CW-42].

9 e. The Yellowstone River is experiencing discharge
10 declines, low streamflow, increasing temperatures, fish die offs due to diseases,
11 record-setting floods, a decline in brown trout populations, and algae blooms. [JS
12 676:4-25, 689:9-690:1].

13 f. The Powder River is experiencing low streamflow and
14 a decline in water quality. [JS 690:7-17].

15 g. The Madison River is experiencing increased
16 temperatures, declining discharge, fishing closures, a decline in brown trout
17 populations, algae blooms, fish die offs and river closures. [JS 692:2-10].

18 h. The Blackfoot River is experiencing declining
19 discharge, increased temperatures, and river closures. [JS 692:22-25].

20 i. The Smith River is experiencing record low flows in
21 June, increased temperatures, and fishing restrictions. [JS 693:2-7].

22 j. The Shields River is experiencing low flows and river
23 closures. [JS 693:9-10].

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1 k. The Bitterroot River has experienced increased
2 temperatures, a reduction in bull trout habitat, algae blooms, and fishing closures.
3 [JS 693:12-22].

4 172. One impact of anthropogenic climate change to Montana's
5 aquatic ecosystems is that runoff (spring spate) from snowmelt is days to weeks
6 earlier. Loss of snowpack also accelerates warming and water loss owing to
7 reduced reflection than would occur if the snowpack was sustained. [JS 670:20-
8 671:2].

9 173. Low water levels and abnormally warm water temperatures
10 create harmful conditions for fish and other aquatic organisms. [JS 671:3-17].

11 174. Access to boating and fishing on certain rivers and lakes in
12 Montana has been limited, and in some instance completely foreclosed, because
13 of low river flows or high-water temperatures. These changes limit the ability of
14 some Plaintiffs to fish and access the State's rivers and lakes for sport or
15 recreation. [SR 152:25-153:9, 153:10-13; JS 679:7-15].

16 175. Wildfires resulting from climate change have caused
17 nitrogen levels in Montana's lakes to increase. This has caused nutrient
18 imbalances that threaten the plant and animal life in the lakes. [JS 683:1-684:4].

19 176. If GHG emissions continue to rise, impacts to the climate
20 will further harm Montana's wildlife and fisheries, and the ability of Plaintiffs to
21 hunt and fish. [JS 679:7-15; 687:8-14].

22 177. The western United States, including Montana, has
23 experienced a trend of increased drought and heat stress from climate change,

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1 which has killed trees and altered ecosystem dynamics, and this trend toward
2 hotter and drier summers will continue in the future. [SR 106:1-18, 146:18-21,
3 156:2-17; CW 258:24-259:8, 283:3-10; CW-44].

4 178. Droughts in Montana are more expansive and longer term
5 which negatively affects stream systems: aquifer systems become depleted due to
6 reduced infiltration of streamflow and rainfall. Where aquifers contribute
7 significantly to base flow maintenance in Montana streams, the outcome is even
8 more extreme and with sustained drying. [JS 677:7-678:1].

9 179. Anthropogenic climate change is producing a shift from
10 snow to rain earlier in the year, and flooding from intense but extreme, short-
11 duration flooding is more commonly occurring today than in the past (especially
12 in the spring). That ultimately means less water is retained in the drainage
13 network. [JS 676:12-25].

14 180. Increases in the frequency, duration, and/or severity of
15 drought and heat stress associated with climate change are fundamentally altering
16 the composition, structure, and biogeography of forests in Montana. [SR 106:
17 1-14]. There is already evidence of accelerating forest mortality in western
18 forests, and this acceleration is clearly tied to increasing temperatures and plant
19 water stress. [SR 156:2-17, 163:9-164:2].

20 181. Montana's forests are being drastically altered due to the
21 combination of drought, pest infestations, and wildfires. [SR 156:12-157:15].

22 182. Climate scientists have long known that increasing
23 temperatures intensify drought conditions, and the combination of drier and
24 hotter weather leads to larger, more frequent, and severe wildfires. [SR 106:1-14,
25 157:2-158:6].

1 183. The wildfire season in Montana is two months longer than it
2 was in 1980s. [SR 159:7-13]. The lengthening of the fire season is largely due to
3 declining mountain snowpack, earlier spring snowmelt, decreased summer
4 precipitation, and warmer summer temperatures leading to deficits in soil and
5 fuel moisture—which are all due to increasing GHG emissions. [SR 106:1-14,
6 156:24-157:13, 159:18-160:6, 160:22-24; SR-54; CW 305:3-24; CW-47].

7 184. The extent of area burned in the U.S. each year has
8 increased since the 1980s. According to National Interagency Fire Center data, of
9 the ten years with the largest acreage burned, all have occurred since 2004,
10 including the peak year of 2021. This period coincides with many of the warmest
11 years on record nationwide. [SR 158:4-11; SR-52].

12 185. Wildfires in Montana are expected to become significantly
13 worse in the coming years without immediate steps to reduce GHG emissions.
14 [SR 106:1-24; CW 306:11-307:11; CW-49].

15 186. The effects of anthropogenic climate change, including
16 rising temperatures, changing precipitation patterns, and drought conditions,
17 create challenges and uncertainty for farmers. [CW 312:2-313:15].

18 187. Climate change affects wildlife, and some species will be
19 more sensitive to impacts to the climate than others. Species may adapt, move, or
20 go extinct. For example, the American pika and Snowshoe hares are considered
21 highly sensitive to climate change due in large part to their dependence on
22 subalpine habitat and snow cover, which is also projected to decline. [SR-59;
23 P72; DF 406:11-15]. Dependence on climate-sensitive habitats like seasonal

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1 streams, wetlands and vernal pools, seeps and springs, alpine and subalpine
2 snowfield areas, grasslands and balds, is a large driver of species sensitivity. [SR
3 164:5-16, 165:6-166:6].

4 188. Rising temperatures will increase the number of freeze-free
5 days in Montana and increase in the number of days above 90°F. [CW 273:6-20,
6 275:18-276:7; P6; CW-24, CW-27].

7 189. There will be increasing seasonal variation in Montana's
8 precipitation, with more precipitation falling in the spring and fall and less in the
9 winter and summer. The change in precipitation timing and a decrease in
10 precipitation during the summer months, combined with increasing summer
11 temperatures, will contribute to increasing risk of summer drought conditions in
12 parts of Montana and more precipitation falling as rain as opposed to snow. [CW
13 281:4-21; CW-30, CW-35; P6, P34].

14 190. Increasing temperature will offset small increases in
15 precipitation by increasing rates of evaporation and transpiration and will make
16 late-summer and fall droughts highly likely and increasingly severe. [CW 283:
17 3-10].

18 191. The current decline in Montana snowpack and snow
19 accumulation is projected to continue. The loss of snowpack and snow
20 accumulation is primarily driven by increasing temperatures, which are caused by
21 anthropogenic GHG emissions. [CW 283:11-19, 284:23-285:21, 286:9-15,
22 287:15-288:10, 290:20-291:9; CW-35].

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1 192. Spring runoff in Montana is projected to increase through
2 the 21st century because of warmer temperatures and earlier snowmelt. Increased
3 January-April runoff will lead to increasingly low streamflow in July-September.
4 [CW 293:8-18].

5 193. The science is clear that there are catastrophic harms to the
6 natural environment of Montana and Plaintiffs and future generations of the State
7 due to anthropogenic climate change. [SR 105:9-21, 149:15-150:7]. The
8 degradation to Montana's environment, and the resulting harm to Plaintiffs, will
9 worsen if the State continues ignoring GHG emissions and climate change. [SR
10 105:22-106:18, 137:10-15, 168:17-169:7, 169:19-21; CW 318:2-5, 316:17-317-
11 14; DF 428:6-12; JS 712:8-12].

12 **V. CLIMATE CHANGE IS ALREADY HARMING PLAINTIFFS.**

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

16 195. Plaintiff Rikki Held lives on her family's ranch twenty miles
17 outside of Broadus, Montana. Broadus is a ranching community in Southeastern
18 Montana, with a population of approximately 450 people in the town and
19 approximately 2000 in Powder River County.

20 a. Rikki has experienced climate change-related harms
21 to herself and her family ranch, including harms from flooding, severe storms,
22 wildfires, and drought.

23 b. The Powder River runs through Rikki's ranch. The
24 ranch includes five pivot fields and pine-covered hills. Rikki and her family have
25 raised cattle on the ranch, grew crops to feed cattle, and owned horses.

1 c. Rikki started riding horses and herding livestock when
2 she was four. Rikki grew up involved in ranching activities, working with
3 livestock, haying, and fixing fences.

4 d. Rikki's grandparents are from Broadus and her dad
5 grew up in Broadus.

6 e. Rikki and her family run a motel that rents rooms to
7 travelers. Rikki often works for the family motel business. The primary source of
8 Rikki's family's income is the ranch (currently leased) and motel business. Loss
9 of this income affects Rikki personally.

10 f. Impacts to the climate are already harming Rikki's
11 home, family, community, income, and way of life.

12 g. Rikki was often required to work outside on the ranch
13 regardless of the temperatures or air quality. Rikki's physical well-being has been
14 harmed by wildfires and wildfire smoke, as well as extreme heat.

15 h. In 2012, the Ash Creek fire burned seventy miles of
16 power poles, causing the loss of electricity on Rikki's ranch for a month.
17 Electricity is required to access water for both cattle and Rikki's house on the
18 ranch, so the loss of electricity harmed both cattle and Rikki.

19 i. Climate change has impacted the snowpack on the
20 ranch in recent years, with snow typically not lasting through the winter.
21 Reduced winter snowpack means less natural water available for cattle. As a
22 result, the cattle must rely on water tanks, which are far apart and expensive to
23 install. With less water, there is also less grass available for the cattle to eat.

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1 j. With less water and grasses, cattle travel further for
2 water and food, and lose weight. This means the cattle are not as valuable and the
3 ranch profits and income declined.

4 k. Wildfires have closed roads around Broadus limiting
5 the number of people that can reach Rikki's family motel business, causing lost
6 income for Rikki and her family.

7 l. Climate change has caused increased variability in
8 water levels in the Powder River. Rikki's family relies on the river to water their
9 livestock. Increasingly, the river levels are extremely low while at other times the
10 river floods.

11 m. In 2017, the Powder River flooded and eroded the
12 riverbank on Rikki's ranch, undercutting a fifty-year-old fence. Since then,
13 continued flooding has eroded about fifty feet of riverbank, with floodwaters that
14 nearly reach Rikki's home.

15 n. Rikki experiences stress and despair from how climate
16 change impacts her well-being, the well-being of her family, and the well-being
17 of other Montanans. Montana is Rikki's home and seeing how climate change is
18 impacting Montana and her family ranch is a heavy emotional burden for Rikki.

19 o. Rikki faces economic harm, including barriers to
20 keeping family wealth and property intact and decreased future economic
21 opportunities.

22 196. Plaintiffs Lander Busse and Badge B. are brothers, living in
23 Kalispell, Montana.

24 a. Lander and Badge enjoy hunting and fishing.

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1 b. Lander and Badge hunt with their parents and
2 grandparents. Hunting is an important family activity.

3 c. Lander and Badge’s ability to hunt and fish is
4 inhibited due to climate change consequences, including extreme heat and
5 wildfires.

6 d. Climate change has adversely impacted Lander and
7 Badge’s ability to fish by rendering certain waterways impassible by raft due to
8 low instream levels or too-warm water temperatures, which harm fish and
9 decrease their populations.

10 e. Lander and Badge have had their ability to fish
11 limited or foreclosed due to fishery closures as a result of climate change-induced
12 conditions in Montana’s rivers. Lander and Badge have also had their access to
13 rivers limited for other recreational activities.

14 f. The extreme temperatures and smoke have at times
15 made hunting unbearable and impossible for Lander and Badge. Smoky
16 conditions have also impacted their fishing activities.

17 g. Due to climate change, the wildfire smoke in
18 Kalispell, and in other parts of Montana where Badge recreates, makes it difficult
19 for Badge to breathe and triggers a cough, which negatively impacts his health
20 and well-being.

21 h. In 2018, a wildfire near the Busse’s home forced their
22 family to prepare to evacuate. Preparing to evacuate was a traumatic experience
23 for Lander and Badge. Badge is worried that wildfires will continue to threaten
24 his home.

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1 i. Lander has seasonal pollen allergies, which are
2 worsening due to the increased pollen count and a changing climate.

3 j. Lander is an accomplished musician and theater
4 performer and often performs outdoors. Climate change and wildfires have
5 hampered his ability to perform music and theater at a high level and have
6 negatively impacted his physical well-being.

7 k. Badge is named after the Badger-Two Medicine, an
8 area where he frequently recreates and fishes. Wildfires in the Badger-Two
9 Medicine have destroyed trees and have degraded areas important to Badge and
10 where he enjoys visiting and recreating, which has had a powerful emotional
11 impact on Badge. Badge experiences a sense of loss and distress knowing that the
12 area is being damaged and degraded due to climate change. Badge feels as if a
13 part of him were lost in the Badger Two-Medicine fire.

14 l. Badge is passionate about skiing and has skied for as
15 long as he can remember. Climate change is reducing Badge's ability to
16 participate in this important recreational activity.

17 m. Badge is anxious when he thinks about the future that
18 he, and his potential children, will inherit.

19 n. Lander and Badge care deeply about protecting
20 Montana's environment, which is an integral part of their family traditions,
21 culture, and identity. Witnessing the current impacts of climate change in
22 Montana is traumatic for both Lander and Badge.

23 o. Lander and Badge are experiencing the loss of ties to
24 the land in Montana.

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1 197. Plaintiff Sariel Sandoval is a member of the Confederated
2 Salish and Kootenai Tribes and is from Ronan, Montana.

3 a. Sariel and her family have a deep connection to the
4 natural world, and have a unique connection to the land, the natural environment,
5 and the seasons. Climate change is harming Sariel’s culture and tribal practices.
6 Sariel went to a Salish language immersion school called Nkwusm in Arlee. At
7 school, Sariel was taught her native language and learned about the Salish
8 culture.

9 b. Sariel was excited to receive her Salish name, which
10 means “Person Who Brings the Cedar.” Cedar has important cultural significance
11 because it provides a connection through the land to the Creator.

12 c. Sariel feels a strong sense of connection to her
13 community. She believes that carrying on her community’s traditions is
14 important because it is their way of life and reflects their connection to the land.

15 d. Gathering and using sweet grass and bear root is
16 important to Sariel culturally and spiritually.

17 e. Sariel is concerned about how climate change affects
18 the seasons because her culture is very ingrained with the land and the seasons. It
19 also affects plants and foods her tribe needs to survive, and she is concerned that
20 these changes will change the community itself. Because of earlier-than-normal
21 snowmelt and the consequent drying of mountain streams as a result of climate
22 change, plants used in Salish and Kootenai medicines are becoming scarcer and
23 more difficult for tribe members to gather.

24 f. Coyote Stories are a culturally important type of
25 Creation Story that can only be told when there is snow on the ground. Sariel is

1 concerned because the snow is not staying on the ground as long, and she does
2 not know what will happen to the stories when there is no more snow.

3 g. Climate change impacts Sariel's ability to partake in
4 cultural and spiritual activities and traditions, which are central to her individual
5 dignity. Climate change has disrupted tribal spiritual practices and longstanding
6 rhythms of tribal life by changing the timing of natural events like bird
7 migrations.

8 h. Sariel worked at Blue Bay Campground the summer
9 after she graduated high school. Sariel lost a few weeks of work and income due
10 to the nearby Finley Point fire (also known as the Boulder 2700 Fire) in 2021.
11 The fire also led to the road being shut down, homes being lost, and people being
12 evacuated.

13 i. Sariel is often unable to see the mountains near her
14 home due to wildfire smoke.

15 j. Berry picking is a staple cultural activity for Sariel
16 and her family. Some huckleberry bushes are not producing fruit because of
17 drought and Sariel must travel higher up into the mountains to find healthy
18 huckleberries.

19 k. Climate change has a profound emotional impact on
20 Sariel, who experiences stress and despair about the impacts her community is
21 facing due to climate change.

22 l. Sariel was greatly distressed when she learned that
23 Montana was almost at the point of no return with respect to climate change.

24 198. Plaintiff Kian Tanner lives on his family's property in
25 Bigfork, Montana.

1 a. Kian's property has been degraded by wildfire smoke.

2 b. Kian is a passionate fly fisher and has fished with his
3 dad since he was about four years old. Kian hopes he will be able to preserve this
4 tradition and fish for the next fifty years or more.

5 c. The warmer water temperatures, lower oxygen levels,
6 and declining instream flows due to climate disruption are harming Montana's
7 rivers and fish. These climate impacts have decreased fishing opportunities for
8 Kian as he has had to cancel fishing trips due to wildfires. Not being able to fish
9 is devastating for Kian.

10 d. Kian lives near and enjoys visiting and recreating in
11 Glacier National Park, which is a very special place for Kian. He is distressed he
12 will never be able to see the natural glaciers as they have historically existed, and
13 as other generations experienced them.

14 e. Kian enjoys downhill and cross-country skiing, which
15 is an activity he does with his mom, who taught him to ski. Kian cross-country
16 skis on his family's property. Impacts to the climate have reduced his
17 opportunities to downhill and cross-country ski.

18 f. Increased smoke in the summer has harmed Kian's
19 ability to play soccer, fish, and otherwise recreate outside, activities which are
20 crucial for his emotional health and foundational to his family. Kian's soccer
21 practices have been cancelled due to heat and wildfire smoke.

22 g. The smoke often forces Kian to seek refuge indoors,
23 which makes him feel very claustrophobic.

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1 h. Kian’s fears about impacts to the climate take an
2 emotional toll on him and he feels a heavy burden to carry the mantel of the
3 generation that must address climate change.

4 199. Plaintiff Georgianna Fischer (Georgi) is from Bozeman,
5 Montana.

6 a. Georgi’s family has lived in Montana for generations.
7 Goergi’s great grandmother, Mary “Polly” Wisner Renne, is someone that Georgi
8 admires because of her work to protect Montana’s environment. Renne was a
9 key figure in establishing protections for the Lee Metcalf Wilderness Area.

10 b. Georgi is a competitive Nordic skier. She has
11 competed on the national level, including Junior National Championships, U.S.
12 National Championships, and the 2021 NCAA competition. She trains eleven
13 months of the year, six days a week. Georgi’s ability to compete and participate
14 in Nordic skiing has been directly impacted by climate disruption. Declining
15 winter snowpack has inhibited Georgi’s ability to complete necessary and
16 appropriate training and hinders her ability to continue to compete at a high level,
17 which adversely impacts her health and mental well-being.

18 c. In recent years there has not been enough snow to
19 groom trails or create tracks in the snow to Nordic ski race until January,
20 although historically tracks were created in November.

21 d. Georgi’s summer Nordic skiing training has been
22 impacted by wildfires and wildfire smoke. Practices have been cancelled or
23 curtailed due to smoke and the smoke prevents Georgi from training at a high
24 intensity. Georgi is increasingly worried about the long-term effects that the
25 exposure to heavy wildfire smoke while training has on her health and respiratory

1 system. Extreme heat also harms Georgi and her ability to recreate and train
2 outdoors. The heat has caused her to feel dizzy, nauseous, generally unwell, and
3 has caused persistent nosebleeds that led Georgi to seek medical attention.

4 e. Georgi enjoys paddleboarding, rafting, backpacking,
5 hiking, and other outdoor activities. Georgi's recreation on Montana's rivers has
6 been impaired due to low water levels and stream flows. Georgi and her family
7 have had to cancel river rafting trips, including one on the Smith River, due to
8 low stream flow.

9 f. Georgi experiences feelings of despair and
10 hopelessness because of the declining winter snowpack and what that trend
11 entails for her snow-based sport.

12 200. Kathryn Gibson-Snyder (Grace) is from Missoula, Montana.

13 a. Grace's recreation on Montana's rivers and streams
14 has been affected due to both low water levels and flooding conditions. Because
15 of climate change, Grace's access to the Clark Fork River for recreational
16 activities has been increasingly impaired, limiting her ability to enjoy activities
17 important to her health and family.

18 b. Grace enjoys many outdoor activities, including long-
19 distance biking, hiking, soccer, and kayaking.

20 c. Grace has been harmed by wildfire smoke and
21 extreme heat; which have adversely impacted her ability to play competitive
22 soccer. Smoke and heat have led to fewer soccer practices and the cancellation of
23 games. Wildfires have impacted Grace's ability to go outside, enjoy outdoor
24 activities, and have placed her safety, health, and well-being at risk.

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1 d. One of Grace's environmental community education
2 events was cancelled due to wildfire smoke.

3 e. Grace has had hiking activities impacted by wildfire
4 smoke.

5 f. Grace experiences psychological harms, is distressed
6 from day-to-day climate conditions, and is anxious about climate change. It is
7 devastating for Grace to think that Montana's special landscapes, like Glacier
8 National Park's glaciers, will not exist as they have in the past, or at all, when she
9 is older.

10 g. Even though Grace would like to raise children in
11 Montana, she questions whether she can morally bring children into the world,
12 because of her knowledge and fear of the world that her children would grow up
13 in if climate change is not ameliorated.

14 201. Plaintiff Olivia Vesovich is from Missoula, Montana.

15 a. Olivia has exercise-induced asthma and is therefore
16 particularly vulnerable to smoke-filled air. In smoky conditions, Olivia feels she
17 is suffocating if she spends more than thirty minutes outdoors. During smoky
18 conditions, Olivia is forced to stay inside and reduce or eliminate the outdoor
19 activities she enjoys. Olivia has been forced to spend recent summers away from
20 Montana due to the smoke-filled air and her asthma.

21 b. Olivia suffers from spring pollen allergies, which
22 force her to stay indoors and prevent her from engaging in the recreational
23 activities she enjoys. Olivia's spring allergies cause her eyes to swell shut and
24 can cause eye pain for weeks at a time. Olivia's allergies have become
25 progressively worse in recent years.

1 c. Olivia is affected emotionally and psychologically by
2 climate change, and experiences bouts of depression when she thinks about the
3 dire projections of the future. Olivia would like to have children of her own, but
4 she questions whether this is an option in a world devastated by the effects of
5 climate change.

6 d. Olivia experiences psychological harms and is
7 distressed from day-to-day climate conditions and is anxious about climate
8 change. There are days when Olivia feels paralyzed by the impacts and threats of
9 climate change and she fears that it is too late to address climate change.

10 e. For Olivia, climate anxiety is like an elephant sitting
11 on her chest and it feels like a crushing weight. This climate anxiety makes it
12 hard for her to breathe.

13 202. Plaintiff Claire Vlases is from Bozeman, Montana.

14 a. Claire works as a ski instructor at Big Sky Resort, and
15 her ability to earn money is harmed by climate disruption, which is decreasing
16 Montana's winter snowpack and the number of days Claire can work. Claire has
17 been sent home from her job as a ski instructor without working her scheduled
18 shift, and without pay, because of insufficient snow. Claire relies on her income
19 as a ski instructor, so the lost income is a financial hardship for her.

20 b. Claire regularly visits Glacier National Park where
21 she loves to hike. Seeing the loss of glaciers in Glacier National Park is terrifying
22 for Claire and reduces her enjoyment of the park. Claire's ability to enjoy hiking
23 in Glacier National Park has also been diminished due to increasing wildfire
24 smoke, which obstructs the beautiful views and is harmful to her health.

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1 c. Claire has been harmed by the reduced snowpack in
2 Montana and the related impacts to winter sports and tourism.

3 d. Claire's ability to run cross-country has been harmed
4 by extreme heat and wildfire smoke. Claire has had cross-country practices
5 cancelled due to dangerously smoky air quality conditions. The heat and smoke
6 make it difficult for Claire to train and compete.

7 e. Claire's family has water rights to Bozeman Creek.
8 Claire and her family use the water for drinking, plumbing, watering their garden,
9 and all other water needs at their home.

10 f. Claire's water security is threatened by Montana's
11 melting glaciers, declining snowpack, and increasing summer drought conditions,
12 which lead to water scarcity and low water levels in Bozeman Creek.

13 g. As an individual born with a disability, Claire relies
14 on the outdoors for recreational therapy to replace the physical therapy her
15 insurance stopped providing when she was ten years old. The outdoors helped
16 Claire to grow strong and she continues to rely on activities like skiing, biking,
17 hiking, and running to maintain her physical health. Claire depends on a clean
18 and healthful environment for her physical and mental health and well-being.

19 h. Climate change impacts harm Claire's mental health,
20 causing her to feel stress, anxiety, and a sense of helplessness about the future.

21 203. Plaintiff Taleah Hernández is from Polson, Montana, and
22 lives on the Flathead Indian Reservation.

23 a. Taleah has been forced to remain inside for extended
24 periods of time during the summer because of poor air quality caused by
25 excessive wildfire smoke. Wildfires have caused Taleah to lose electricity at her

1 home and forced her to prepare to evacuate her home. The Boulder 2700 fire in
2 2021, forced Taleah to cut down trees around her property for fire safety.

3 b. Taleah works outdoors with horses and other animals.
4 Dangerous air quality conditions created by wildfire smoke have caused Taleah
5 to miss days of work, lose pay, and lose opportunities to ride horses.

6 c. Wildfires and wildfire smoke have prevented Taleah
7 from participating in outdoor recreation activities, including hiking and
8 paddleboarding on Flathead Lake.

9 d. Changes in weather and climate patterns, including
10 warming winter temperatures, have reduced the number of opportunities Taleah
11 has to ice skate on Flathead Lake in the winter.

12 e. Wildfires and wildfire smoke have caused Taleah
13 physical and emotional distress.

14 204. Plaintiff Eva L. is from Livingston, Montana.

15 a. Eva enjoys many outdoor activities, including
16 backpacking, climbing, and cycling, which are central to her family life.

17 b. Eva has been harmed by wildfire smoke in Montana
18 on numerous occasions, and Eva has suffered eye, nose, and throat irritation and
19 headaches because of the smoky air.

20 c. Eva and her family had a family trip to Glacier
21 National Park negatively impacted by excessive wildfire smoke, which posed
22 risks to Eva's health and safety.

23 d. Eva has been harmed by the impacts of extreme
24 flooding. In 2018, flooding along the Shields River damaged a bridge and
25 rendered impassable for more than a year the primary route from Eva's home to

1 the town of Livingston. A temporary bridge was also washed away due to
2 extreme flooding. Eva's family eventually decided to relocate because of this
3 hardship. Being cut off from town was very stressful for Eva and her family.

4 e. Eva moved to Livingston and now lives near the
5 Yellowstone River. Eva feels a strong connection to the river. In 2022, there was
6 major flooding along the Yellowstone River, including in Livingston. [CW-41;
7 JS-11]. Eva helped fill sandbags to hold back the flood waters. [P108, P109]. A
8 park near Eva's home was underwater. [P110]. Eva saw her community and close
9 friends lose property due to flooding.

10 f. The 2022 flooding in Livingston caused Eva acute
11 emotional distress, panic, and dread. Parks and other public places she often
12 visits were significantly damaged, preventing her enjoyment of them.

13 g. Eva's access to the Yellowstone River in summer
14 2016 was significantly curtailed, as a 180-mile portion of the river was closed for
15 several weeks due to a parasite growth in cutthroat and rainbow trout perpetuated
16 by abnormally high air temperatures and historically low river flows.

17 h. Eva has experienced forced relocation and the loss of
18 ties to the land.

19 i. Eva has had her ability to access Montana's rivers for
20 other recreational activities limited due to river conditions.

21 j. Wildfire smoke has impacted Eva's ability to hike and
22 spend time outdoors with her family.

23 k. Eva is anxious about how she, her family and
24 community can adapt to the devastation of public resources and infrastructure as
25 the impacts of climate change worsen. Eva is increasingly anxious about the

1 climate change impacts she and her family are experiencing. She is distressed
2 that climate change will worsen if action is not immediately taken.

3 205. Plaintiff Mica K. is from Missoula, Montana.

4 a. Rising temperatures and wildfires resulting from
5 climate change make it difficult for Mica to recreate outdoors and participate in
6 activities he loves, and which are important to his health and well-being.

7 b. Mica has been forced to spend extended periods of
8 time indoors and has lost school recess time because of wildfire smoke. In 2019,
9 a forest fire started approximately one mile from Mica's home, and Mica is
10 anxious that, as climate change worsens, he may lose his family home.

11 c. Wildfire smoke has impacted Mica's training as a
12 long-distance runner. Mica is an avid runner, running his first half-marathon
13 when he was nine. He runs regularly with his dad. Running is a way for Mica to
14 be in nature and relieve stress. Running in smoke makes Mica feel sick, so he
15 cannot run as much due to increasingly smoky summers in Missoula. Smoke has
16 limited Mica's ability to train and compete in sports.

17 d. Mica gets frustrated when he is required to stay
18 indoors during the summer because of wildfire smoke.

19 e. Mica's family now avoids camping and other outdoor
20 activities in August and September due to wildfire smoke and its negative effect
21 on Mica's health.

22 f. Mica was recently diagnosed with exercise-induced
23 asthma, which puts him at greater risk for respiratory hardship when the air is
24 smoky.

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1 g. Mica's favorite animal is the pika. Mica understands
2 the pika is uniquely vulnerable to climate impacts, and its survival is in jeopardy
3 due to climate change.

4 h. Mica's outdoor recreation activities such as enjoying
5 the views of glaciers in Glacier National Park are disrupted by climate change.
6 Seeing the glaciers recede in Glacier National Park is depressing for Mica.

7 i. Climate change causes Mica to feel anxious, stressed,
8 and depressed, and makes it hard for him to sleep at times.

9 206. Plaintiffs Jeffrey K. and Nathaniel K. are brothers who grew
10 up in Montana City, Montana.

11 a. Jeffrey K. has pulmonary sequestration and is
12 uniquely susceptible to respiratory complications, such as infections. Nathaniel
13 K. also has respiratory issues. Both Jeffrey and Nate are therefore especially
14 vulnerable to poor air quality, such as smoke-filled air caused by wildfires. [LB
15 487:21-488:11, 505:4-25].

16 b. The increasing length and severity of the wildfire
17 season harms Jeffrey's and Nathaniel's health, especially given their young age
18 and pre-existing respiratory health conditions. It has forced their family to make
19 changes in daily activities. [LB 487:21-488:11, 505:4-25].

20 207. Plaintiffs Ruby D. and Lilian D. are from Bozeman,
21 Montana. Shane Doyle is their father and he testified on their behalf.

22 a. Ruby and Lilian are members of the Crow Nation.
23 Ruby and Lilian regularly travel to the Crow Reservation to visit family members
24 and engage in traditional cultural activities.

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1 b. Ruby's Crow name is Biachagata, which means
2 "Pretty Woman." Lilian's Crow name is Malesch, which means "Loved by
3 Many."

4 c. Abnormal and extreme weather conditions caused by
5 climate change have impacted Ruby's and Lilian's ability to engage and
6 otherwise partake in cultural practices that are central to their spirituality and
7 individual dignity.

8 d. Ruby and Lilian visit their family on the Crow
9 Reservation several times a year. Ruby and Lilian attend Crow Fair on the Crow
10 Reservation every year. Crow Fair takes place each August and is a large
11 gathering to celebrate cultural activities and events. Many people, including
12 Ruby and Lilian, stay in teepees. Attending Crow Fair is a highlight for Ruby and
13 Lilian. Ruby and Lilian love dancing at Crow Fair, and enjoy the parades, the
14 rodeo, and doing family events.

15 e. In recent years, increasing temperatures at Crow Fair
16 have made it hard to wear traditional regalia and participate in cultural activities
17 because it is dangerously hot, sometimes over 100 degrees.

18 f. Wildfire smoke has also made it difficult for Ruby
19 and Lilian to enjoy the Crow Fair.

20 g. It is a huge disappointment to Ruby and Lilian when
21 they are unable to dance or participate in other events at the Crow Fair due to
22 heat or smoke.

23 h. Crow Fair used to coincide with when chokecherries
24 were ripe, which was important because many meals eaten at Crow Fair involved
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1 chokecherries. In recent years chokecherry harvest has become much harder to
2 predict, and drought has meant there are less chokecherries available for the
3 festival.

4 i. Ruby and Lilian pick chokecherries with their family
5 as part of the Crow tradition. They enjoy participating in the process of picking
6 the berries, processing them into syrup, and eating them. But due to drought and
7 heat, fewer chokecherries are available and some stands that usually have berries
8 had none. Increased wildfire frequency has impacted the ability of Ruby and
9 Lilian to participate in these traditional cultural practices.

10 j. Ruby was diagnosed with asthma when she was eight
11 years old and had an acute form of pneumonia. As a result, Ruby stays inside
12 when it is smoky, and Lilian often stays inside too. This is a disappointment for
13 Ruby and Lilian.

14 k. During the Bridger fire, which burned near Bozeman
15 in 2020, Ruby and Lilian were worried to see a fire so close to their home and it
16 brought up concerns about whether they were safe.

17 l. Climate disruption has impacted Ruby and Lilian's
18 outdoor recreation activities, such as rafting, swimming, and floating. Drought
19 has created low river conditions that have impacted Ruby and Lilian's ability to
20 enjoy recreating on the river because it has such low flow.

21 m. Ruby and Lilian believe that protecting Montana's
22 environment and natural resources is important because in their culture taking
23 care of the Earth is their responsibility.

24 208. The testimony of the Youth Plaintiffs and their guardian was
25 credible and was undisputed.

1 **VI. DEFENDANTS' ACTIONS CONTRIBUTE TO CLIMATE**
2 **CHANGE AND HARM PLAINTIFFS.**

3 209. Anne Hedges received a B.S. in environmental policy
4 analysis and planning from the University of California at Davis in 1988 and a
5 Master of Environmental Law, *magna cum laude*, from Vermont Law School in
6 1993. She is Co-Director and Director of Policy and Legislative Affairs at the
7 Montana Environmental Information Center (MEIC). She directs MEIC's
8 program work, including its legislative, regulatory, policy, and legal
9 activities. She has worked at MEIC since 1993, and her work is focused on
10 pollution-related policy issues in Montana, with a primary emphasis on impacts
11 to air, water, landscapes, and climate from fossil fuels. Ms. Hedges is a well-
12 qualified expert, and the Court found her testimony informative and credible.

13 210. Peter Erickson received a bachelor's degree in Geology in
14 1998 at Carleton College, Minnesota, as well as coursework in intermediate
15 microeconomics and macroeconomics at the University of Washington. Mr.
16 Erickson has worked as an environmental and climate policy and technical
17 analyst in greenhouse gas emission accounting, most recently with the Stockholm
18 Environment Institute, an international research institution providing, in part,
19 technical analysis to government and NGOs on the details of climate policy and
20 emissions accounting. Mr. Erickson has served on both national and international
21 committees devoted to GHG emissions accounting: one convened by the
22 International Council of Local Environmental Initiatives (ICLEI) to create a U.S.
23 Community-scale GHG Emissions Accounting and Reporting Standard, and one
24 convened by the Greenhouse Gas Protocol to create the Greenhouse Gas
25 Mitigation Goals Standard. [P192]. Mr. Erickson testified about Montana's fossil

1 fuel consumption, extraction, and infrastructure, focusing on three categories:
2 (1) extraction of fossil fuels; (2) processing and transportation of fossil fuels; and
3 (3) consumption of fossil fuels by end users. For each of these categories, Mr.
4 Erickson quantified the amount of coal, oil, and gas and translated that in units of
5 carbon dioxide (CO₂) emissions released from the fuels once they are combusted.
6 Mr. Erickson added up all the coal, oil, and gas to determine the emissions
7 associated with the extraction, consumption, and transportation of those fuels. In
8 his opinion, emissions from Montana's fossil fuel consumption, extraction, and
9 infrastructure are globally significant quantities. Mr. Erickson is a well-qualified
10 expert, and the Court found his testimony informative and credible.

11 211. Defendants offered the testimony of Dr. Terry Anderson as
12 an expert economist. Purporting to be based on data from the Energy Information
13 Agency (EIA), Dr. Anderson provided extremely limited testimony in response
14 to three questions: (1) the total greenhouse gas emissions for the world; (2) the
15 2020 greenhouse gas consumption emissions for the state of Montana; and (3) the
16 2022 greenhouse gas consumption emissions for the state of Montana. Dr.
17 Anderson's testimony was not well-supported, contained errors, and was not
18 given weight by the Court.

19 212. Defendants permit three types of fossil fuel-related
20 activities: (1) extraction of fossil fuels; (2) processing and transportation of fossil
21 fuels; and (3) consumption of fossil fuels by end users. [PE 914:12-915:3; PE-9].

22 213. Fossil fuel consumption includes any combustion, or
23 burning, of these fuels, primarily for energy. Fossil fuel extraction is mining,
24 pumping, drilling, or otherwise taking fossil fuels out of the ground for purposes
25 of making fuels. Fossil fuel processing and transportation are activities that occur

1 between that initial extraction and combustion by the end user, such as refining,
2 or moving the fuels in bulk from one place to another. [PE 914:14-21; PE-11].

3 214. It is possible to calculate the amount of CO₂ and GHG
4 emissions that results from fossil fuel extraction, processing and transportation,
5 and consumption activities that are authorized by Defendants. [PE 915:13-21;
6 P311; PE-10].

7 215. Data indicates that in 2019, the total annual fossil fuels
8 extracted in Montana led to about 70 million tons of CO₂ being released into the
9 atmosphere once the fuels were combusted, which is higher than many other
10 countries, including Brazil, Japan, Mexico, Spain, or the United Kingdom.
11 [PE 922:23-923:3, 928:18-929:11, 950:13-14; PE-17].

12 216. Data indicates that in 2019, total annual fossil fuels
13 consumed in Montana led to about 32 million tons of CO₂ being released into the
14 Atmosphere.

15 217. In 2019, total annual fossil fuels transported and processed
16 in and through Montana led to at least 80 million tons of CO₂ being released into
17 the atmosphere once those fuels were combusted. [PE 923:19-924:4, 950:14-15].
18 That is equivalent to all the GHG emissions from Columbia, which has 50 times
19 the population of Montana. [PE 930:11-23; PE-17, PE-20].

20 218. Accounting for overlap among fossil fuels extracted,
21 consumed, processed, and transported in Montana, the total CO₂ emissions due to
22 Montana's fossil fuel-based economy is about 166 million tons CO₂. [PE 924:5-
23 18, 950:16-18; PE-18]. This is a conservative estimate and does not include all
24 the GHG emissions, including methane, for which Montana is responsible.
25 [PE 928:5-9; PE-17].

1 219. The 166 million tons CO₂ due to Montana's fossil fuel-based
2 economy is equivalent to the emissions from Argentina (with forty-seven million
3 residents), the Netherlands (with eighteen million residents), or Pakistan (with
4 248 million residents). [PE 931:22-932:9; PE-22].

5 220. In terms of per capita emissions, Montana's consumption of
6 fossil fuels is disproportionately large and only five states have greater per capita
7 emissions. [PE 930:19-23, 938:23-25; PE-25].

8 221. The cumulative CO₂ emissions from all fossil fuels extracted
9 in Montana since 1960 is 3.7 billion metric tons of CO₂. [PE 941:9-19; PE-26].

10 222. Montana is a major emitter of GHG emissions in the world
11 in absolute terms, in per person terms, and historically. [PE 930:19-23].

12 223. Montana has six coal mines that Defendants authorize:
13 Spring Creek Mine, Rosebud Mine, Decker Mine, Absaloka, Bull Mountain, and
14 Savage Mine. [PE 942:16-943:5]. Montana also has the largest estimated
15 recoverable coal reserves in the U.S., and Montana is a substantial exporter of
16 coal. [AH 791:1-25; AH-7-AH-13; PE 946:1-3].

17 224. Montana's annual coal production is 34 million short tons of
18 coal. [PE 946:5-22]. Montana's coal reserves, as of 2019, are 707 million short
19 tons. [PE 945:21-25; PE-37].

20 225. Montana is a substantial producer of oil and gas in the U.S.
21 Defendants authorize the drilling and production of oil and gas in Montana. [PE
22 932:18-933:5, 949:7-15].

23 226. Montana has approximately 4,000 oil producing wells with
24 an annual oil production of twenty-three million barrels. As of 2019, Montana's
25 oil reserves were 298 million barrels. [PE 946:23-947:8; PE-36, PE-37].

1 227. Montana has approximately 5,000 gas producing wells with
2 an annual oil production of forty-three billion cubic feet. As of 2019, Montana's
3 gas reserves were 613 billion cubic feet. [PE 947:14-19; PE-36, PE-37].

4 228. Between 1960 and 2019 the fastest growing category of
5 fossil fuel consumption in Montana has been gas. [PE 942:11-12].

6 229. Montana is home to four state-authorized oil refineries. [PE
7 948:22-24, 949:10-15]. Montana's refineries process crude oil largely from
8 Canada and Wyoming and distribute the refined product by railroad and pipeline
9 throughout Montana and to nearby states. [PE 948:17-949:23; PE-38].

10 230. Montana's land contains a significant quantity of fossil fuels
11 yet to be extracted. [Def. Answer, Doc. 54 ¶ 139; PE 945:21-946:4, 947:16-19,
12 945:1-25].

13 231. Montana's GHG emissions have grown significantly since
14 the passage of the 1972 Montana Constitution. [AH 940:15-941:2; PE-27,
15 PE-28].

16 232. Defendants continue to approve permits and licenses for
17 new fossil fuel activities. [AH 862:1-5; SN 1354:12-16].

18 233. Defendants have authorized fossil fuel extraction,
19 transportation, and combustion resulting in high levels of GHG emissions that
20 contribute to climate change. [AH 831:22-832:1, 846:25-847:11, 845:14-846:3;
21 AH-50-AH-61; PE 932:18-933:5].

22 234. In taking action to authorize fossil fuel extraction, since
23 2011 Defendants have not considered or disclosed GHG or climate
24 change impacts in their environmental reviews because they were statutorily
25 precluded from doing so. [AH 836:2-13, 845:14-846:3; AH-50-AH-61].

1 235. DEQ issues air quality permits to facilities that emit GHG
2 emissions. [AH 788:13-23; Def. Answer, Doc. 11 ¶ 90].

3 236. DEQ has authorized fossil fuel extraction, transportation,
4 and combustion, which generate GHG emissions, contribute to climate change,
5 and harm Plaintiffs. [AH 845:14-846:24; AH-50-AH-61].

6 237. What happens in Montana has a real impact on fossil fuel
7 energy systems, CO₂ emissions, and global warming. [PE 976:8-24; PE-40].

8 **VII. THE MEPA LIMITATION AND ITS IMPLEMENTATION.**

9 238. The 2011 MEPA Limitation provided in pertinent part:

10 (2)(a) Except as provided in subsection (2)(b), an environmental
11 review conducted pursuant to subsection (1) may not include a
12 review of actual or potential impacts beyond Montana's borders. It
13 may not include actual or potential impacts that are regional,
national, or global in nature.

14 239. While this case has been pending, Judge Moses held in
15 *MEIC v. DEQ*:

16 Here, the plain language of MCA 75-1-201(2)(a) precludes agency
17 MEPA review of environmental impacts that are 'beyond Montana's
18 borders,' but it does not absolve DEQ of its MEPA obligation to
19 evaluate a project's environmental impacts within Montana. DEQ
20 misinterprets the statute. They must take a hard look at the
greenhouse gas effects of this project as it relates to the impacts
within the Montana borders.

21 Order on Summary Judgment at 29:3-9, *MEIC v. DEQ*, No. DV-56-2021-1307
22 (Thirteenth Dist. Ct., April 6, 2023).

23 240. Eight days after Judge Moses' ruling, on April 14, 2023, HB 971
24 was introduced in the Montana Legislature. HB 971 was passed, sent to enrolling

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1 on May 1 and signed by the Governor on May 10, 2023. HB 971 clarifies the
2 MEPA Limitation to say:

3 (2)(a) Except as provided in subsection (2)(b), an environmental
4 review conducted pursuant to subsection (1) may not include an
5 evaluation of greenhouse gas emissions and corresponding impacts
6 to the climate in the state or beyond the state's borders.

7 (b) An environmental review conducted pursuant to subsection (1)
8 may include an evaluation if:

9 (i) conducted jointly by a state agency and a federal agency to the
10 extent the review is required by the federal agency; or

11 (ii) the United States congress amends the federal Clean Air Act to
12 include carbon dioxide emissions as a regulated pollutant.

13 Mont. Code Ann. § 75-1-201(2)(a) (enacted May 10, 2023) (new language
14 underlined).

15 241. On May 19, 2023, various provisions of MEPA that pertain
16 to legal challenges to MEPA environmental reviews were amended when the
17 Governor signed SB 557 into law. SB 557 created Mont. Code Ann.
18 § 75-1-201(6)(a)(ii), which states:

19 (ii) An action alleging noncompliance or inadequate compliance with
20 a requirement of parts 1 through 3, including a challenge to an
21 agency's decision that an environmental review is not required or a
22 claim that the environmental review was inadequate based in whole or
23 in part upon greenhouse gas emissions and impacts to the climate in
24 Montana or beyond Montana's borders, cannot vacate, void, or delay
25 a lease, permit, license, certificate, authorization, or other entitlement
or authority unless the review is required by a federal agency or the
United States congress amends the federal Clean Air Act to include
carbon dioxide as a regulated pollutant.

Mont. Code Ann. § 75-1-201(6)(a)(ii) (enacted by SB 557, 68th Legislature
(2023)) (signed May 19, 2023).

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1 242. Other components of SB 557 limit who can challenge an
2 agency’s final decision, the scope of the challenge, and require challengers to pay
3 a fee to compile and submit a certified record to the reviewing court. [AH 825:4-
4 826:18; AH-45].

5 243. Both the 2011 and 2023 versions of the MEPA Limitation
6 allowed Projects to be permitted without consideration of their impacts that
7 increase emissions of greenhouse gases. [AH 851:9-852:23; AH-51-AH-60].

8 244. The State has known of the dangerous impacts of GHG
9 emissions and climate change for at least the last thirty years. [CW 256:6-15; AH
10 802:13-18; AH-25, AH-26; P17, P19].

11 245. State government and scientists have known about the
12 international scientific consensus of the dangers posed by climate change since at
13 least the 1990s when the IPCC started issuing climate assessment reports. The
14 State also had access to the congressionally mandated national climate
15 assessments undertaken in 2000, 2009, 2014, and 2017. [SR 139:12-140:1;
16 AH 797:5-798:6, 802:13-18; CW 256:9-24; AH-32, AH-33, AH-34; P28, P262,
17 P263].

18 246. In 2007, Defendants DNRC, DEQ, and the Office of the
19 Governor were made aware of the issues concerning the impacts of climate
20 change in Montana, including rising temperatures, accelerating warming, and
21 reduced snowpack, and the need for Montana to reduce its GHG emissions, as a
22 result of the 2007 Montana Climate Change Action Plan and the 2007 Montana
23 Greenhouse Gas Inventory and Reference Case Projections 1990-2020. [CW
24 243:14-244:3, 256:19-24; CW-12, CW-13, CW-14; AH 806:17-807:20; AH-35,
25 AH-36, AH-37; P2, P18].

1 247. In 2017, Defendants DNRC, DEQ, and the Office of the
2 Governor were again informed by the 2017 Montana Climate Assessment of the
3 issues concerning the impacts of climate change in Montana. [CW 243:14-244:3;
4 AH 832:12-24; AH-49; P6].

5 248. In 2019, when then Governor Steve Bullock promulgated
6 Executive Order No. 8-2019 creating the Montana Climate Solutions Council,
7 Defendants knew that “climate change poses a serious threat to Montana’s
8 natural resources, public health, communities, and economy,” and “Montanans
9 understand that climate change is occurring and are concerned about the impacts
10 it will have on current and future generations.” [AH 832:25-833:6; AH-49; P10].

11 249. In August 2020, when the Montana Climate Solutions
12 Council released its final report, the Montana Climate Solutions Plan (Climate
13 Solutions Plan), the State knew how climate change was already harming
14 Montana and its residents, through rising temperatures, early snowmelt, earlier
15 spring runoff, flooding, changes in water availability and stream temperatures,
16 increase in forest mortality due to insects, and increasing wildfires. [CW 244:
17 7-22; AH 833:7-835:10; AH-49; P36].

18 250. The Climate Solutions Plan included thirty-seven
19 recommendations and strategies to reduce Montana’s GHG emissions. [AH
20 833:7-835:10; AH-49; P36]. Defendants have not implemented the
21 recommendations. [AH 835:8-10].

22 251. In 2021, the report Climate Change and Human Health in
23 Montana was distributed to State officials. [CW 245:2-246-1].

24 252. Prior to 2011, Defendants were quantifying and disclosing
25 GHG emissions and climate impacts from fossil fuel projects, including, for

1 example, the Silver Bow Generation Project, the Roundup Power Project (Bull
2 Mountain), and the Highwood Generating Station. [AH 808:10-19, 808:20-
3 809:18, 809:19-810:24, 811:8-24, 813:6-23; AH-38, AH-39, AH-40; P231, P224,
4 P232, P225, P226, P229, P237].

5 253. Since 2011, because of the MEPA Limitation, Defendants
6 have been statutorily prevented from considering climate change impacts and
7 GHG emissions when conducting environmental reviews. [AH 814:6-21,
8 816:17-817:14, 818:11-819:10; SN 1361:6-9; AH-42].

9 254. The MEPA Limitation explicitly prohibits state agencies
10 from considering the impacts of climate change and GHG emissions in
11 environmental reviews under MEPA. [AH 814:22-815:9, 816:17-817:14,
12 818:11-819:10; SN 1361:6-9; AH-42].

13 255. Pursuant to the MEPA Limitation, the State has ignored
14 GHG emissions and climate impacts when authorizing fossil fuels activities. [AH
15 814:22-815:9, 816:17-817:14, 818:11-819:10; AH-51-AH-60].

16 256. The MEPA Limitation constrains Defendants from making
17 fully informed decisions through their environmental analysis about the scope
18 and scale of the impacts to the environment and Montana's children and youth
19 when conducting environmental reviews. Mont. Code Ann. § 75-1-201(6)(a)(ii)
20 attempts to constrain the authority of courts when reviewing agency permitting
21 decisions and MEPA analyses.

22 257. If the MEPA Limitation is declared unconstitutional, state
23 agencies will be capable of considering GHG emissions and the impacts of
24 projects on climate change. [AH 807:23-808:19, 821:16-25; SN 1437:4-8; P231,
25 P224, P232, P225, P226, P229, P237].

1 258. Montana’s river and lake ecosystems are interconnected
2 with each other, as well as aquatic and terrestrial ecosystems beyond Montana’s
3 borders. Because of this interconnectivity to ecosystems both within and beyond
4 Montana’s borders, any prohibition on the consideration of either impacts within
5 Montana or regional impacts of climate change, is not scientifically supported.
6 [JS 642:23-15, 646:2-647:2].

7 259. Defendants’ application of the MEPA Limitation during
8 environmental review of fossil fuel and GHG-emitting projects, prevents the
9 availability of vital information that would allow Defendants to comply with the
10 Montana Constitution and prevent the infringement of Plaintiffs’ rights. [AH
11 810:13-24, 816:9-16, 820:16-821:11, 822:1-823:10; AH-51-AH-60].

12 260. The State authorizes energy projects and facilities within
13 Montana that emit substantial levels of GHG pollution, including, but not limited
14 to, projects that burn and promote the use of fossil fuels, but pursuant to the
15 MEPA Limitation, Defendants do not consider climate change and GHG
16 emissions and measure those individual and cumulative emissions against the
17 standards the Montana Constitution imposes on the State to protect people’s
18 rights, before authorizing energy projects and facilities. [AH 818:25-819:10,
19 824:8-825:3; AH-51-AH-60].

20 261. The State issues permits, licenses, and leases that result in
21 GHG emissions without considering how the additional GHG emissions will
22 contribute to climate change or be consistent with the standards the Montana
23 Constitution imposes on the State to protect people’s rights. [AH 832:2-11,
24 841:23-844:9, 843:1-844:5, 844:19-846:3; AH-51-AH-60].

25 //

1 262. The State authorizes four private coal power plants to
2 operate in the State, which generate 30% of Montana’s energy production,
3 without considering how the additional GHG emissions will contribute to climate
4 change or be consistent with the standards the Montana Constitution imposes on
5 the State to protect people’s rights. [AH 792:1-21].

6 263. The State continues to permit surface coal mining and
7 reclamation in Montana, which results in substantial GHG emissions, without
8 considering how the additional GHG emissions will contribute to climate change
9 or be consistent with the standards the Montana Constitution imposes on the
10 State to protect people’s rights. [AH 836:16-846:3; PE 934:14-15].

11 264. The State authorizes, through licenses and leases, the
12 exploration for and extraction of oil and gas in Montana, without considering
13 how the additional GHG emissions will contribute to climate change or be
14 consistent with the standards the Montana Constitution imposes on the State to
15 protect people’s rights. [AH 793:6-18, 845:20-846:9].

16 265. Defendants have and continue to authorize projects,
17 activities, and plans that cause emissions of GHG pollution into the atmosphere,
18 all while ignoring the impacts of climate change and GHG emissions due to the
19 MEPA Limitation. [AH 836:16-846:3; AH-51-AH-60; PE 932:18-933:5]. For
20 example:

21 a. Defendants authorize and certify energy projects and
22 facilities within the State of Montana that emit substantial levels of GHG
23 pollution, including, but not limited to, projects that burn and promote the use of
24 fossil fuels. [AH 836:16-846:3; PE 932:18-933:5].

25 /////

1 b. DEQ approved the AM4 expansion of Rosebud Strip
2 Mine in December 2015, a 12.1-million-ton coal mine expansion. Pursuant to the
3 MEPA Limitation, DEQ refused to analyze how that decision would aggravate
4 climate impacts. [AH 836:16-837:12; P259, P260, P277; AH-51].

5 c. DEQ issued a MSUMRA permit to Bull Mountain
6 Mine in January 2016, authorizing Bull Mountain Mine to produce 176 million
7 tons of coal per year. DEQ refused, pursuant to the MEPA Limitation, to analyze
8 how the decision would aggravate climate impacts. [AH 837:14-838:16; P243,
9 P264; AH-52].

10 d. Between 2002 and 2014, DEQ issued twelve different
11 permits for Signal Peak Energy to operate the Bull Mountain Mine. Since 2011,
12 pursuant to the MEPA Limitation, DEQ refused, in its environmental
13 assessments to consider how those GHG emissions would contribute to climate
14 change or adversely impact Montana’s environment and natural resources. [P245,
15 P247, P256].

16 e. DEQ approved the TR3 expansion of Decker Mine in
17 2018, allowing for strip-mining of twenty-three million tons of coal. DEQ
18 refused, pursuant to the MEPA Limitation, to analyze how that decision would
19 aggravate climate impacts. [P236, P238, P250, P252, P257-258].

20 f. In 2020, DEQ approved revision to Spring Creek
21 Mine, the largest coal mine in the State, allowing for recovery of additional
22 seventy-two million tons of coal. In August 2019, DEQ refused, pursuant to the
23 MEPA Limitation, to analyze impacts on the social cost of carbon and economic
24 impacts from climate change in its EIS. [AH 841:23-842:20; P227, P248, P253,
25 P255; AH-56].

1 g. DEQ authorized the operation of Colstrip Steam
2 Electric Station—which produced 13.2 million metric tons of carbon dioxide
3 equivalent (CO₂e), 38,015 metric tons methane, and 65,919 metric tons nitrous
4 oxide in 2018. CO₂e is a metric measure used to compare the emissions from
5 various greenhouse gases based upon their global warming potential (GWP).
6 [P281, P285, P286].

7 h. In 2019, when DEQ issued its Record of Decision
8 approving Western Energy’s permit application to expand coal mining at
9 Rosebud Coal Mine Area F, where “[t]he proposed mine permit application
10 would add 6,746 acres and approximately 70.8 million tons of recoverable coal
11 reserves to the Rosebud Mine, extending the operational life of the mine by eight
12 years (at the current rate of production).” DEQ, pursuant to the MEPA
13 Limitation, did not consider how those GHG emissions would contribute to
14 climate change or adversely impact Montana’s environment and natural
15 resources. [AH 830:25-840:16; SN 1322:21-1323:2; P254, P277, P297; AH-54].

16 i. DEQ issued the air quality permit to NorthWestern
17 Energy for the Laurel Generating Station (now named the Yellowstone County
18 Generating Station), a proposed gas-fired power plant. Pursuant to the MEPA
19 Limitation, DEQ, in its environmental assessment, did not consider how the
20 GHG emissions would contribute to climate change or adversely impact
21 Montana’s environment and natural resources. [AH 831:9-21, 844:19-845:13;
22 P294; AH-57].

23 j. In May 2022, DEQ issued its Final EIS for Rosebud
24 Mine Area B AM5, in Colstrip. Pursuant to the MEPA Limitation, the
25 environmental assessment did not consider how GHG emissions would

1 contribute to climate change or adversely impact Montana’s environment and
2 natural resources. [AH 840:20-841:22; P228; AH-55].

3 k. DEQ continues to issue permits for fossil fuel energy
4 projects, including oil and gas pipelines and associated compressor stations, coal
5 mines and coal facilities, oil and gas facilities, oil and gas leases, oil and gas
6 drilling, petroleum refineries, industrial facilities that burn fossil fuels, and fossil
7 fuel power plants. Pursuant to the MEPA Limitation, DEQ does not consider how
8 a proposed project would contribute to climate change or adversely impact
9 Montana’s environment and natural resources. [AH 845:14-846:24; PE 949:7-15,
10 954:2-9; P138, P224, P232, P239, P240, P241, P242, P246, P249, P251, P264,
11 P276, P277, P278, P279, P280, P281, P282, P285-301; AH-58, AH-59, AH-60].

12 l. DNRC issues permits for fossil fuel projects,
13 including coal mines and oil and gas extraction. DNRC does not consider how
14 GHG emissions from projects will contribute to climate change or adversely
15 impact Montana’s environment and natural resources or violate the Constitution,
16 because of the MEPA Limitation. [P217-217; P233, P234, P235, P265-P275,
17 P283, P284].

18 266. Montana’s annual, historical, and cumulative GHG
19 emissions are increased by Defendants’ actions to permit and approve fossil fuel
20 activities with no environmental review of their impact on GHG levels in the
21 atmosphere and climate change. [PE 932:18-933:5].

22 267. Defendants’ actions cause emissions of substantial levels of
23 GHG pollution into the atmosphere within Montana and outside its borders,
24 contributing to climate change. [SR 164:18-166:16; PE 932:18-933:5].

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1 268. The State’s actions exacerbate anthropogenic climate change
2 and cause further harms to Montana’s environment and its citizens, especially its
3 youth. [AH 845:14-846:2; P150].

4 **VIII. THE MEPA LIMITATION PREVENTS FULL REVIEW OF THE**
5 **TECHNOLOGICALLY AND ECONOMICALLY AVAILABLE**
6 **ALTERNATIVES TO FOSSIL FUEL ENERGY IN MONTANA.**

7 269. Dr. Mark Jacobson obtained a M.S. in Environmental
8 Engineering, from Stanford University. Dr. Jacobson also obtained both a M.S.
9 and later a Ph.D. in Atmospheric Sciences from UCLA. In 1994, Dr. Jacobson
10 became an Assistant Professor in the Department of Civil & Environmental
11 Engineering at Stanford. Since 2007, he has been a full professor in that
12 Department. Dr. Jacobson was a co-founder and is Director of Stanford’s
13 Atmosphere/Energy Program, as well as a Senior Fellow at Stanford’s Precourt
14 Institute for Energy, and Stanford’s Woods Institute for the Environment. Since
15 2008, Dr. Jacobson has been Director and Co-founder of The Solutions Project,
16 an organization that utilizes the combined efforts of individuals in the fields of
17 science, business, and culture to accelerate the transition to 100% renewable
18 energy use in the United States. Starting in 1999, Dr. Jacobson began examining
19 clean, renewable energy solutions. In 2015, this research culminated in the
20 development of roadmaps to transition the all-sector energy infrastructures of
21 each of the fifty United States to 100% clean, renewable energy by 2050, which
22 Dr. Jacobson updated in 2022. Dr. Jacobson has published six textbooks of two
23 editions each and over 175 peer-reviewed journal articles. Dr. Jacobson’s career
24 has focused on understanding air pollution and global warming problems and
25 developing large-scale clean, renewable energy solutions to those problems. In

1 this case, Dr Jacobson summarized his research related to Montana and the
2 feasibility of transitioning Montana swiftly from fossil fuels to clean and
3 renewable energy in all sectors by mid-century, where all energy sectors include
4 electricity, transportation, heating/cooling, and industry. Dr. Jacobson is a well-
5 qualified expert, and his testimony was informative and credible.

6 270. The MEPA Limitation causes the State to ignore renewable
7 energy alternatives to fossil fuels. [MJ 1030:7-1032:24, 1035:9-23, 1069:18-
8 1071:8, 1066:6-17, 1067:10-20; MJ-15, MJ-62, MJ-63; AH 823:15-825:3; P312].

9 271. Non-fossil fuel-based energy systems across all sectors,
10 including electricity, transportation, heating/cooling, and industry, are currently
11 economically feasible and technologically available to employ in Montana.
12 Experts have already prepared a roadmap for the transition of Montana's all-
13 purpose energy systems (for electricity, transportation, heating/cooling, and
14 industry) to a 100% renewable portfolio by 2050, which, in addition to direct
15 climate benefits, will create jobs, reduce air pollution, and save lives and costs
16 associated with air pollution. [MJ 1030:7-1032:24, 1035:9-23, 1069:18-1071:8,
17 1066:6-17, 1067:10-20; P312; MJ-15, MJ-62, MJ-63].

18 272. It is technically and economically feasible for Montana to
19 replace 80% of existing fossil fuel energy by 2030 and 100% by no later than
20 2050, but as early as 2035. [MJ 1072:4-23, 1100:9-1101:4; P312; MJ-62, MJ-63].
21 A number of countries around the world with populations far larger than
22 Montana's relied on >95% wind, water, and sunlight (WWS) to power their
23 electricity sectors in 2021. [MJ-44].

24 273. To replace fossil fuel energy, Montana would need to
25 electrify all energy sectors with existing or near-existing appliances and

1 machines, and then generate the electricity for all sectors with 100% WWS,
2 namely onshore wind, utility-scale photovoltaics (PV), rooftop PV, geothermal
3 power, and hydroelectric power. [MJ 1043:9-1045:8, 1045:15-1047:10; P312;
4 MJ-12, MJ-15, MJ-18, MJ-19, MJ-20, MJ-29].

5 274. All-purpose Montana energy in 2050 can be met, for
6 example, in one scenario, with 4.5 gigawatts (GW) of onshore wind, 3 GW of
7 rooftop PV, 2.9 GW of utility-scale PV, 0.17 GW of geothermal electricity, and
8 2.7 GW of hydropower (which already exists). [MJ 1057:2-1058:15; MJ-29].

9 275. Converting from fossil fuel energy to renewable energy
10 would eliminate another \$21 billion in climate costs in 2050 to Montana and the
11 world. Most noticeable to those in Montana, converting to wind, water, and solar
12 energy would reduce annual total energy costs for Montanans from \$9.1 to \$2.8
13 billion per year, or by \$6.3 billion per year (69.6% savings). [MJ-39]. The total
14 energy, health, plus climate cost savings, therefore, will be a combined \$29
15 billion per year (decreasing from \$32 to \$2.8 billion per year), or by 91%.
16 [MJ 1061:20-1063:24; MJ-15, MJ-39, MJ-40, MJ-41, MJ-42].

17 276. Wind, water, and solar are the cheapest and most efficient
18 form of energy. Cost per unit of energy in a 100% WWS system in Montana
19 would be about 15% lower than a business-as-usual case by 2050, even when
20 including increased costs for energy storage. New wind and solar are the lowest
21 cost new forms of electric power in the United States, on the order of about half
22 the cost of natural gas and even cheaper compared to coal. [MJ 1045:9-1047:10,
23 1062:8-1063:24; MJ-20].

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1 277. According to a 2018 Montana DEQ report, Understanding
2 Energy in Montana, Montana has significant solar energy potential, comparable
3 to many other U.S. cities. [MJ 1086:21-1087:4; P9; MJ-50].

4 278. The new footprint over land required to implement a 100%
5 renewable energy system in Montana would be only about 0.06% of Montana's
6 land. Utility scale solar would occupy 0.01% of Montana's land (fourteen square
7 miles), while new wind turbines, including the land around those turbines, which
8 could be used for agriculture, open space, or more solar panels, would occupy
9 about 0.05% (seventy-one square miles) of Montana's land. In comparison,
10 Montana's oil and gas wells and associated infrastructure already occupy about
11 304 square miles of land (0.21% of Montana land area). [MJ 1079:25-1082:3;
12 MJ-46].

13 279. There is an abundant supply of renewable energy and four
14 ways to store renewable energy: heat storage (in water), cold storage (as ice),
15 electricity storage (pumped hydropower, batteries, hydrogen fuel cells), and
16 hydrogen as a form of storage (for use in long distance transportation and steel
17 production). [MJ 1057:2-15, 1058:5-15, 1072:24-1073:7, 1076:9-1077:22,
18 1079:22-1082:8; MJ-15, MJ-19, MJ-45, MJ-62].

19 280. Montana's energy needs in 2050 under a 100% WWS
20 roadmap would decline significantly (over fifty percent) as compared to a
21 business-as-usual energy system due to a mix of gains in energy efficiency in
22 vehicles and appliances, and through eliminating the significant amounts of
23 energy required to extract, transport, and refine fossil fuels. [MJ 1045:9-1047:10;
24 MJ-15, MJ-19, MJ-20, MJ-21, MJ-22, MJ-23, MJ-24, MJ-25, MJ-26, MJ-27,
25 MJ-28, MJ-55].

1 281. Transitioning to WWS will keep Montana’s lights on while
2 saving money, lives, and cleaning up the air and the environment, and ultimately
3 using less of Montana’s land resources. [MJ 1061:4-1062:12, 1066:6-17,
4 1066:18-1067:20, 1079:22-1082:8; MJ-15, MJ-20-MJ-30, MJ-39, MJ-41, MJ-42,
5 MJ-46, MJ-56, MJ-57, MJ-58, MJ-62].

6 282. The current barriers to implementing renewable energy
7 systems are not technical or economic, but social and political. Such barriers
8 primarily result from government policies that slow down and inhibit the
9 transition to renewables, and laws that allow utilization of fossil fuel
10 development and preclude a faster transition to a clean, renewable energy system.
11 [MJ 1042:15-1043:2, 1059:9-1061:3, 1100:9-1101:4, 1103:11-1104:24; MJ-15,
12 MJ-19, MJ-20, MJ-33, MJ-35, MJ-36, MJ-38, MJ-62, MJ-63].

13 283. Montana has abundant renewable energy resources that can
14 provide enough energy to power Montana’s energy needs for all purposes in
15 2050. [MJ 1058:2-15; MJ-15, MJ-19, MJ-29, MJ-30, MJ-46, MJ-47, MJ-48,
16 MJ-50, MJ-61, MJ-62].

17 **IX. THE 1972 MONTANA CONSTITUTION.**

18 284. Mae Nan Ellingson was a delegate to the 1972 Montana
19 Constitutional Convention. Ms. Ellingson’s testimony was informative and
20 provided useful context, including on the compilation of the records of the
21 Constitutional Convention proceedings on which Montana courts regularly rely.
22 Ms. Ellingson was elected to the Constitutional Convention as a delegate from
23 Missoula County.

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1 285. The first “delegate proposal” advanced during the
2 Constitutional Convention was for a constitutional provision on environmental
3 quality.

4 286. Article IX, Section 1 of the Constitution states that “[t]he
5 state and each person shall maintain and improve a clean and healthful
6 environment in Montana for present and future generations.” This provision came
7 about after long debate to strengthen the environmental article recommended by
8 the Natural Resources Committee by including the words “clean” and
9 “healthful.”

10 287. As reflected in the Constitutional Convention Transcripts
11 (March 1, 1972, Vol. V 1230), Ms. Ellingson suggested the “legislature shall
12 provide adequate remedies to prevent” language of Article IX, Section 1 to assure
13 greater protections of the current environment. She believed that if you are
14 trying to protect the environment, you need the ability to sue or seek injunctive
15 relief before the environmental damage is done--paying someone monetary
16 damages after the harm is done does little good. This position was complemented
17 by including the right to a clean and healthful environment in the Declaration of
18 Rights in Article II, Sec. 3 of the Montana Constitution. The decision to include
19 the right to a clean and healthful environment as one of the unalienable rights
20 included in the Bill of Rights passed by a large majority.

21 288. During the Constitutional Convention, there were concerns
22 among the delegates over the constitutional rights for people under the age of
23 eighteen, and Article II, Section 15 in the Declaration of Rights was included to
24 ensure that Montana’s youth have the same fundamental rights as adults. This
25 section was adopted with broad support.

1 289. Delegates to the 1972 Constitutional Convention intended to
2 adopt the strongest preventative and anticipatory constitutional environmental
3 provisions possible to protect Montana’s air, water, and lands for present and
4 future generations.

5 **CONCLUSIONS OF LAW**

6 1. To the extent that any of the foregoing Findings of Fact
7 incorporate Conclusions of Law or the application of law to fact, they are
8 incorporated herein as Conclusions of Law.

9 2. This Court has jurisdiction over the parties and subject
10 matter in this case.

11 3. The Conclusions of Law are conformed to the evidence
12 presented at trial by both parties. Mont. R. Civ. P. 15(b)(2). The Court will
13 address the constitutionality of Mont. Code Ann. § 75-1-201(6)(a)(ii), which was
14 enacted by SB 557 and addressed by both parties during trial and in trial briefing.
15 *See, e.g., Docs. 390, 402.*

16 **I. PLAINTIFFS HAVE PROVEN STANDING.**

17 **A. Plaintiffs Have Proven Injury.**

18 4. As described in the Findings of Fact, Youth Plaintiffs have
19 experienced past and ongoing injuries resulting from the State’s failure to
20 consider GHGs and climate change, including injuries to their physical and
21 mental health, homes and property, recreational, spiritual, and aesthetic interests,
22 tribal and cultural traditions, economic security, and happiness.

23 5. Plaintiffs’ mental health injuries directly resulting from State
24 inaction or counterproductive action on climate change, on their own, do not
25 establish a cognizable injury. *Steel Co. v. Citizens for a Better Env’t.*, 523 U.S. 83,

1 107 (1998). However, Plaintiffs’ mental health injuries stemming from the
2 effects of climate change on Montana’s environment, feelings like loss, despair,
3 and anxiety, are cognizable injuries.

4 6. Every additional ton of GHG emissions exacerbates
5 Plaintiffs’ injuries and risks locking in irreversible climate injuries.

6 7. Plaintiffs’ injuries will grow increasingly severe and
7 irreversible without science-based actions to address climate change.

8 8. Plaintiffs have proven that as children and youth, they are
9 disproportionately harmed by fossil fuel pollution and climate impacts.

10 9. Plaintiffs have proven that they have suffered injuries that
11 are concrete, particularized, and distinguishable from the public generally.

12 10. Plaintiffs suffer and will continue to suffer injuries due to
13 the State’s statutorily mandated disregard of climate change and GHG emissions
14 in the MEPA Limitation, and due to SB 557’s removal of MEPA’s preventative
15 equitable remedies with Mont. Code Ann. § 75-1-201(6)(a)(ii).

16 **B. Plaintiffs Have Proven Causation at Trial.**

17 11. The PSC is exempted from MEPA as a matter of law. Mont.
18 Code Ann. § 75-1-201(3).²

19 12. There is a fairly traceable connection between the MEPA
20 Limitation and the State’s allowance of resulting fossil fuel GHG emissions,
21 which contribute to and exacerbate Plaintiffs’ injuries.

22 13. There is a fairly traceable connection between the State’s
23 disregard of GHG emissions and climate change, pursuant to the MEPA
24 Limitation, GHG emissions over which the State has control, climate change
25 impacts, and Plaintiffs’ proven injuries. Unlike in *Bitterrooters Inc.*, the causal

² Hereinafter, when the Court refers to Defendants or the State, the PSC is excluded.
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1 relationship between the permitted activities and the resulting environmental
2 harms is reasonably close. *Bitterrooters for Planning, Inc. v. Mont. Dep't of*
3 *Envtl. Quality*, 2017 MT 222, ¶ 25, 401 P.3d 712. The State authorizes fossil fuel
4 activities without analyzing GHGs or climate impacts, which result in GHG
5 emissions in Montana and abroad that have caused and continue to exacerbate
6 anthropogenic climate change.

7 14. The Defendants have the authority under the statutes by
8 which they operate to protect Montana's environment and natural resources,
9 protect the health and safety of Montana's youth, and alleviate and avoid climate
10 impacts by limiting fossil fuel activities that occur in Montana when the MEPA
11 analysis shows that those activities are resulting in degradation or other harms
12 which violate the Montana Constitution.

13 15. Montana's contributions to GHG emissions can be measured
14 incrementally and cumulatively both in terms of immediate local effects and by
15 mixing in the atmosphere and contributing to global climate change and an
16 already destabilized climate system.

17 16. Montana's GHG contributions are not *de minimis* but are
18 nationally and globally significant. Montana's GHG emissions cause and
19 contribute to climate change and Plaintiffs' injuries and reduce the opportunity to
20 alleviate Plaintiffs' injuries.

21 **C. Plaintiffs Have Proven Redressability at Trial.**

22 17. The psychological satisfaction of prevailing in this lawsuit
23 does not establish redressability. *Steel Co.* at 107.

24 18. Defendants can alleviate the harmful environmental effects
25 of Montana's fossil fuel activities through the lawful exercise of their authority if

1 they are allowed to consider GHG emissions and climate change during MEPA
2 review, which would provide the clear information needed to conform their
3 decision-making to the best science and their constitutional duties and
4 constraints, and give them the necessary information to deny permits for fossil
5 fuel activities when inconsistent with protecting Plaintiffs' constitutional rights.

6 19. Montana's land contains a significant quantity of fossil fuels
7 yet to be extracted. The State and its agents could consider GHG emissions and
8 climate impacts and reject projects that would lead to unreasonable degradation
9 of Montana's environment.

10 20. A reduction in Montana's GHG emissions that results from a
11 declaration that Montana's MEPA Limitation is unconstitutional would provide
12 partial redress of Plaintiffs' injuries because the amount of additional GHG
13 emissions emitted into the climate system today and in the coming decade will
14 impact the long-term severity of the heating and the severity of Plaintiffs'
15 injuries.

16 21. It is possible to affect future degradation to Montana's
17 environment and natural resources and injuries to these Plaintiffs.

18 22. Permitting statutes give the State and its agents discretion to
19 deny permits for fossil fuel activities. *See, e.g.*, Mont. Code Ann. §§ 75-2-203
20 and -204 (discretion under Clean Air Act of Montana to prohibit facilities that
21 cause air pollution); § 75-2-211(2)(a) (DEQ to provide rules governing
22 suspension or revocation of air quality permits); § 75-2-218(2) (DEQ has
23 discretion to deny air quality permits); § 75-2-217(1) (DEQ to provide rules
24 governing suspension or revocation of operating permits); 75-20-301 (DEQ can
25 only approve permits for Major Facility Siting Act facilities after considering

1 numerous discretionary factors, including environmental impacts and public
2 health, welfare, and safety); § 77-3-301 (state lands “may” be leased for coal if
3 “in the best interests of the state”); § 77-3-401 (state lands “may” be leased for
4 oil and gas if consistent with the Constitution); § 82-4-102(3)(a) (stating purpose
5 of surface and underground mining and reclamation laws to vest DEQ with
6 rulemaking authority to “either approve or disapprove” new strip mines or new
7 underground mines); § 82-4-227 (DEQ has wide discretion to refuse mining
8 permits).

9 23. The State must either: 1) have discretion to deny permits for
10 fossil fuel activities when the activities would result in GHG emissions that cause
11 unconstitutional degradation and depletion of Montana’s environment and natural
12 resources, or infringement of the constitutional rights of Montana’s children and
13 youth; or 2) the permitting statutes themselves must be unconstitutional.

14 24. “[C]ourts should avoid constitutional issues whenever
15 possible.” *Park Cnty. Env’tl. Council v. Mont. Dep’t of Env’tl. Quality*,
16 2020 MT 303, ¶ 54, 477 P.3d 288 (citing *Sunburst Sch. Dist. No. 2 v. Texaco,*
17 *Inc.*, 2007 MT 183, ¶ 62, 165 P.3d 1079). Under the doctrine of constitutional
18 avoidance, this Court clarifies that Defendants do have discretion to deny permits
19 for fossil fuel activities that would result in unconstitutional levels of GHG
20 emissions, unconstitutional degradation and depletion of Montana’s environment
21 and natural resources, or infringement of the constitutional rights of Montanans
22 and Youth Plaintiffs.

23 //

24 //

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1 **II. MONT. CODE ANN. § 75-1-201(6)(a)(ii) IS NOT A BARRIER TO**
2 **REDRESSABILITY BECAUSE IT IS FACIALLY UNCONSTITUTIONAL**
3 **UNDER *PARK COUNTY*.**

4 25. Mont. Code Ann. § 75-1-201(6)(a)(ii) eliminates the
5 preventative remedies available to MEPA litigants: vacatur and injunction. The
6 State raised Mont. Code Ann. § 75-1-201(6)(a)(ii) during trial as a barrier to
7 redressability in this case, bringing it before the Court and making the issue
8 unavoidable.

9 26. The Legislature is obligated under Article IX,
10 Sec. 1(3) to provide “adequate remedies for the protection of the environmental
11 life support system from degradation” and “to prevent unreasonable depletion
12 and degradation of natural resources.” Mont. Const. Art. IX, Sec. 1(3).

13 27. “MEPA is an essential aspect of the State’s efforts to meet
14 its constitutional obligations, as are the equitable remedies without which MEPA
15 is rendered meaningless.” *Park Cnty.* ¶ 89.

16 28. In *Park Cnty.*, a unanimous Court reasoned:

17 Montanans’ right to a clean and healthful environment is
18 complemented by an affirmative duty upon their government to take
19 active steps to realize this right. Article IX, § 1, Subsections 1 and 2
20 of the Montana Constitution command that the Legislature ‘shall
21 provide for the administration and enforcement’ of measures to meet
22 the State’s obligation to ‘maintain and improve’ the environment.
23 Critically, Subsection 3 explicitly directs the Legislature to ‘provide
adequate remedies to prevent unreasonable depletion and
degradation of natural resources ...

24 Without a mechanism to prevent a project from going forward until
25 a MEPA violation has been addressed, MEPA’s role in meeting the
State’s ‘anticipatory and preventative’ constitutional obligations is

1 negated. Whatever interest might be served by a statute that instructs
2 an agency to forecast and consider the environmental implications of
3 a project that is already underway—perhaps analogous to a
4 mandatory aircraft inspection after takeoff—the constitutional
5 obligation to prevent certain environmental harms from arising is
6 certainly not one of them.

7 *Id.* ¶¶ 63, 72.

8 29. Pursuant to the Court’s decision in *Park Cnty.*, Mont. Code
9 Ann. § 75-1-201(6)(a)(ii) is facially unconstitutional because it eliminates MEPA
10 litigants’ remedies that prevent irreversible degradation of the environment, and
11 it fails to further a compelling state interest. *Park Cnty.* ¶¶ 63, 69-72.

12 **III. ALL PLAINTIFFS’ CONSTITUTIONAL CLAIMS ARE**
13 **PREDICATED ON DEGRADATION OF MONTANA’S CLEAN AND**
14 **HEALTHFUL ENVIRONMENT.**

15 30. All of Plaintiffs’ claims hinge on whether the MEPA
16 Limitation and Mont. Code Ann. § 75-1-201(6)(a)(ii) violate Mont. Const. Art.
17 II, Sec. 3 and Art. IX, Sec. 1.

18 a. The Public Trust Doctrine is already codified in the
19 Montana Constitution in Art. IX, Sec. 3. *Galt v. State*, 225 Mont. 142, 144, 146,
20 731 P.2d 912, 913, 914 (1987) (citing *Mont. Coal. for Stream Access v. Curran*,
21 210 Mont. 38, 682 P.2d 163 (1984) and Mont. Const. Art. IX, Sec. 3(3)).

22 b. Except for Plaintiffs’ mental health injuries resulting
23 from government inaction on climate change, the alleged equal protection,
24 dignity, liberty, and health and safety violations all stem from harm to Montana’s
25 environment.

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1 c. Plaintiffs' mental health injuries resulting from
2 government inaction alone do not establish a cognizable, redressable injury.

3 d. It would be impossible for the Court to find that the
4 MEPA Limitation and Mont. Code Ann. § 75-1-201(6)(a)(ii) do not violate Art.
5 II, Sec. 3 and Art. IX, Sec. 1, and then find that the statutes violate the Public
6 Trust Doctrine or the rights to equal protection, dignity, liberty, or health and
7 safety.

8 **IV. DETERMINING WHETHER THE CONSTITUTIONAL**
9 **PROVISIONS AT ISSUE ARE SELF-EXECUTING IS UNNECESSARY TO**
10 **RESOLVE THIS CONTROVERSY.**

11 31. It is possible to resolve this case without determining
12 whether Art. II, Sec. 3 and Art. IX, Sec. 1 are self-executing.

13 32. A determination that a right is non-self-executing “does not
14 end the inquiry. As here, (1) once the Legislature has acted, or ‘executed,’ a
15 provision (2) that implicates individual constitutional rights, courts can determine
16 whether that enactment fulfills the Legislature's constitutional responsibility.”
17 *Columbia Falls Elem. Sch. Dist. No. 6 v. State*, 2005 MT 69, ¶ 17, 109 P.3d 257
18 (citing *City of Boerne v. Flores*, 521 U.S. 507 (1997)).

19 33.

20 “Provisions that directly implicate rights guaranteed to
21 individuals under our Constitution are in a category of their own.
22 That is, although the provision may be non-self-executing,
23 thus requiring initial legislative action, the courts, as final
24 interpreters of the Constitution, have the final ‘obligation to
25 guard, enforce, and protect every right granted or secured by the
Constitution”

Brown v. Gianforte, 2021 MT 149, ¶ 23, 488 P.3d 548 (citing *Columbia
Falls Elem. Sch. Dist.*, ¶ 18 (quoting *Robb v. Connolly*, 111 U.S. 624, 637
(1884))).

1 34. Like in *Park Cnty.*, the question presented to the Court by
2 this case “is straightforward: has the Legislature met its obligation to provide
3 adequate remedies with which to prevent potential future environmental harms
4 when it removes what appears to be the *only* available legal relief positioned to
5 do so?” *Park Cnty.* ¶ 78. The MEPA Limitation, especially in conjunction with
6 Mont. Code Ann. § 75-1-201(6)(a)(ii), removes the only preventative equitable
7 relief available to the public and MEPA litigants concerned about GHGs and
8 climate change, which are degrading Montana’s environment.

9 **V. THE MEPA LIMITATION IS SUBJECT TO STRICT SCRUTINY.**

10 35. Any statute, policy, or rule which implicates a fundamental
11 right must be strictly scrutinized and can only survive scrutiny if the State
12 establishes a compelling state interest and that the action is narrowly tailored to
13 effectuate that interest. *Park Cnty.* ¶ 84.

14 36. The MEPA Limitation is subject to strict scrutiny because it
15 implicates Plaintiffs’ fundamental right to a clean and healthful environment.

16 **VI. THE MEPA LIMITATION VIOLATES THE MONTANA**
17 **CONSTITUTION.**

18 **A. MEPA Limitation violates Plaintiffs’ Right to a Clean and**
19 **Healthful Environment – Mont. Const. Art. II, Sec. 3, 15; Art. IX, Sec. 1.**

20 37. Montana’s Constitution provides: “All persons are born free
21 and have certain inalienable rights. They include the right to a clean and healthful
22 environment....” Mont. Const. Art. II, Sec. 3. Consistent with the provision of
23 these rights and responsibilities, the Montana Constitution further provides: “The

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26

1 state and each person shall maintain and improve a clean and healthful
2 environment in Montana for present and future generations.” Mont. Const.
3 Art. IX, Sec. 1(1).

4 38. Article II, Sec. 3 and Article IX, Sec. 1 are to be read
5 together, along with the Preamble to Montana’s Constitution. *MEIC I*, ¶¶ 65, 77.

6 39. The right to a clean and healthful environment is a
7 fundamental right protected by Mont. Const. Art. II, Sec. 3 and Art. IX, Sec. 1(1).
8 *MEIC I*, ¶ 64.

9 40. Montana’s children under age eighteen, have a fundamental
10 right to a clean and healthful environment. Mont. Const. Art. II, Sec. 15. The
11 right to a clean and healthful environment is intended to protect Montana’s
12 children and future generations.

13 41. During Montana’s 1972 Constitutional Convention,
14 delegates placed significant emphasis on protecting natural resources and
15 improving Montana’s environment. The Montana Supreme Court has recognized
16 that “it was agreed by both sides of the debate that it was the convention’s
17 intention to adopt whatever the convention could agree was the stronger
18 language.” *MEIC I*, ¶ 75 (citing Convention Transcripts, Vol. IV at 1209, Mar. 1,
19 1972). The Montana Supreme Court has repeatedly found that the Framers
20 intended the state constitution contain “the strongest environmental protection
21 provision found in any state constitution.” *Park Cnty.*, ¶ 61.

22 42. The Constitutional Framers “did not intend to merely
23 prohibit that degree of environmental degradation which can be conclusively
24 linked to ill health or physical endangerment.” *MEIC I*, ¶ 77. As Delegate Foster
25 noted: “[I]f we put in the Constitution that the only line of defense is a healthful

1 environment and that I have to show, in fact, that my health is being damaged in
2 order to find some relief, then we've lost the battle." *MEIC I*, ¶ 74 (citing
3 Convention Transcripts, Vol. V at 1243-44, Mar. 1, 1972).

4 43. The right to a clean and healthful environment language in
5 Montana's Constitution is "forward-looking and preventative language" which
6 "clearly indicates that Montanans have a right not only to reactive measures after
7 a constitutionally-proscribed environmental harm has occurred, but to be free of
8 its occurrence in the first place." *Park Cnty.*, ¶ 62.

9 44. The right to a clean and healthful environment requires
10 enhancement of Montana's environment. According to the Constitutional
11 Delegates, "*our intention was to permit no degradation* from the present
12 environment and affirmatively require enhancement of what we have now."
13 *MEIC I*, ¶ 69 (quoting Convention Transcripts, Vol. IV at 1205, Mar. 1, 1972)
14 (emphasis in original).

15 45. Montanans' right to a clean and healthful environment is
16 complemented by an affirmative duty upon their government to take active steps
17 to realize this right. Article IX, Sec. 1(1) and (2) of the Montana Constitution
18 command that the Legislature "shall provide for the administration and
19 enforcement" of measures to meet the State's obligation to "maintain and
20 improve" the environment. Critically, Subsection 3 explicitly directs the
21 Legislature to "provide adequate remedies to prevent unreasonable depletion and
22 degradation of natural resources." Mont. Const. Art. IX, Sec. 1(3); *Park Cnty.*,
23 ¶ 63.

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25 ////

1 46. The obligations of the Legislature found in Article IX,
2 Sec. 1 include providing “adequate remedies for the protection of the
3 environmental life support system from degradation.” Mont. Const. Art. IX,
4 Sec. 1(3).

5 47. According to Delegate McNeil, “the term ‘environmental
6 life support system’ is all-encompassing, including but not limited to air, water,
7 and land; and whatever interpretation is afforded this phrase by the Legislature
8 and courts, there is no question that it *cannot be degraded*.” *MEIC I*, ¶ 67 (citing
9 Convention Transcripts, Vol. IV at 1201, Mar. 1, 1972) (emphasis in original).

10 48. Montana’s constitutional right to a clean and healthful
11 environment prohibits environmental degradation that causes ill health or
12 physical endangerment and unreasonable depletion or degradation of Montana’s
13 natural resources for this and future generations:

14 Our conclusions in *MEIC I* are consistent with the constitutional
15 text’s unambiguous reliance on preventative measures to ensure that
16 Montanans’ inalienable right to a ‘clean and healthful environment’
17 is as evident in the air, water, and soil of Montana as in its law
18 books. Article IX, Section 1, of the Montana Constitution describes
19 the environmental rights of ‘future generations,’ while requiring
20 ‘protection’ of the environmental life support system ‘from
21 degradation’ and ‘prevent[ion of] unreasonable depletion and
22 degradation’ of the state’s natural resources. This forward-looking
23 and preventative language clearly indicates that Montanans have a
24 right not only to reactive measures after a constitutionally-proscribed
25 environmental harm has occurred, but to be free of its occurrence in
the first place.

Park Cnty., ¶ 62.

 49. Based on the plain language of the implicated constitutional
provisions, the intent of the Framers, and Montana Supreme Court precedent,

1 climate is included in the “clean and healthful environment” and “environmental
2 life support system.” Mont. Const. Art. II, Sec. 3; Art. IX, Sec. 1.

3 50. Montana’s climate, environment, and natural resources are
4 unconstitutionally degraded and depleted due to the current atmospheric
5 concentration of GHGs and climate change.

6 51. The right to a clean and healthful environment allows
7 plaintiffs to obtain equitable relief before harm occurs. According to the Supreme
8 Court:

9 When considering which remedies are ‘adequate’ in this context,
10 we note that equitable relief, unlike monetary damages, can avert
11 harms that would have otherwise arisen. It follows that equitable
12 relief must play a role in the constitutional directive to ensure
13 remedies that are adequate to prevent the potential degradation that
14 could infringe upon the environmental rights of present and future
15 generations. We are not alone in this conclusion. As Delegate Mae
16 Nan Robinson pointed out during the 1972 Constitutional
17 Convention: if you’re really trying to protect the environment, you’d
18 better have something whereby you can sue or seek injunctive relief
before the environmental damage has been done; it does very little
good to pay someone monetary damages because the air has been
polluted or because the stream has been polluted if you can't change
the condition of the environment once it has been destroyed.

19 *Park Cnty.* ¶ 64 (citing *MEIC I* ¶ 71).

20 52. “The essential purpose of MEPA is to aid in the agency
21 decision-making process otherwise provided by law by informing the agency and
22 the interested public of environmental impacts that will likely result from agency
23 actions or decisions.” *Bitterrooters Inc.* ¶ 18.

24 53. “MEPA is an essential aspect of the State’s efforts to meet
25 its constitutional obligations.” *Park Cnty.*, ¶ 89; § 75-1-102, MCA.

1 54. The stated policy of MEPA makes clear that the State should
2 use “all practicable means” “so that the state may: (a) fulfill the responsibilities
3 of each generation as trustee of the environment for succeeding generations; (b)
4 ensure for all Montanans safe, healthful, productive, and aesthetically and
5 culturally pleasing surroundings; (c) attain the widest range of beneficial uses of
6 the environment without degradation, risk to health or safety, or other undesirable
7 and unintended consequences . . .” § 75-1-103, MCA.

8 55. By enacting and enforcing the MEPA Limitation, the State
9 is failing to meet their affirmative duty to protect Plaintiffs’ right to a clean and
10 healthful environment, and to protect Montana’s natural resources from
11 unreasonable depletion.

12 56. The MEPA Limitation categorically limits what the
13 agencies, officials, and agencies tasked with protecting Montana’s clean and
14 healthful environment can consider. The MEPA Limitation conflicts with the
15 very purpose of MEPA, which is to aid the State in meeting its constitutional
16 obligation to prevent degradation by “informing the agency and the interested
17 public of environmental impacts that will likely result” from State actions.
18 *Bitterrooters Inc.* ¶ 18; § 75-1-102(1), MCA (“The legislature, mindful of its
19 constitutional obligations under Article II, section 3, and Article IX of the
20 Montana constitution, has enacted the Montana Environmental Policy Act . . .
21 [to] provide for the adequate review of state actions in order to ensure that: (a)
22 environmental attributes are fully considered . . .”).

23 /////
24 /////
25 //

1 57. The plain language of the MEPA Limitation bars agencies
2 from considering GHG emissions and climate impacts for any project or
3 proposal, even to assess whether the project complies with the Montana
4 Constitution.

5 58. The MEPA Limitation is unconstitutionally contributing to
6 the depletion and degradation of Montana’s environment and natural resources
7 and contributing to Plaintiffs’ injuries. The MEPA Limitation deprives Plaintiffs
8 of their constitutionally guaranteed rights under Mont. Const. Art. II, Sec. 3, and
9 Art. IX, Sec. 1.

10 59. By prohibiting consideration of climate change, GHG
11 emissions, and how additional GHG emissions will contribute to climate change
12 or be consistent with the Montana Constitution, the MEPA Limitation violates
13 Plaintiffs’ right to a clean and healthful environment and is facially
14 unconstitutional.

15 **B. The MEPA Limitation Does Not Pass Strict Scrutiny.**

16 60. The MEPA Limitation infringes on fundamental rights and
17 must pass strict scrutiny. *Mont. Cannabis Indus. Ass’n v. Montana*, 2012 MT
18 201, ¶ 16, 366 Mont. 224, 286 P.3d 1161 (“*Mont. Cannabis Indus Ass’n*
19 (*2012*)”); *see also Kloss v. Edward D. Jones & Co.*, 2002 MT 129, ¶ 52,
20 310 Mont. 123, 54 P.3d 1.

21 61. Under strict scrutiny, “the government must show that the
22 law is narrowly tailored to serve a compelling government interest.” *Mont.*
23 *Cannabis Indus. Ass’n* (2012), ¶ 16.

24 62. The State failed to show that the MEPA Limitation serves a
25 compelling governmental interest.

1 5. This judgment will influence the State’s conduct by
2 invalidating statutes prohibiting analysis and remedies based on GHG emissions
3 and climate impacts, alleviating Youth Plaintiffs’ injuries and preventing further
4 injury.

5 6. By prohibiting analysis of GHG emissions and
6 corresponding impacts to the climate, as well as how additional GHG emissions
7 will contribute to climate change or be consistent with the Montana Constitution,
8 the MEPA Limitation violates Youth Plaintiffs’ right to a clean and healthful
9 environment and is unconstitutional on its face.

10 7. Plaintiffs have a fundamental constitutional right to a clean
11 and healthful environment, which includes climate as part of the environmental
12 life-support system.

13 8. The 2023 version of the MEPA Limitation, Mont. Code
14 Ann. § 75-1-201(2)(a), enacted into law by HB 971, is hereby declared
15 unconstitutional and is permanently enjoined.

16 9. Mont. Code Ann. § 75-1-201(6)(a)(ii), enacted into law by
17 SB 557 from the 2023 legislative session, is hereby declared unconstitutional and
18 is permanently enjoined because it removes the only preventative, equitable relief
19 available to the public and MEPA litigants.

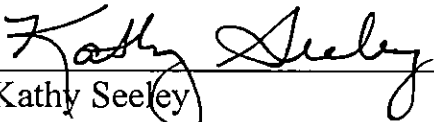
20 10. In addition to the findings, conclusions, and declarations set
21 forth above, injunctive relief is appropriate, prohibiting Defendants from acting
22 in accordance with the statutes declared unconstitutional.

23 11. Judgment is hereby found in favor of the Plaintiffs as
24 prevailing parties.

25 ////

1 12. The Youth Plaintiffs requested an award of reasonable
2 attorneys' fees and costs. (Doc. 1 at 104.). Pursuant to Rule 54 (d), Mont. R. Civ.
3 P., Youth Plaintiffs shall submit their motion for fees and costs and
4 documentation in support of their request for fees and costs, within fourteen days
5 of the date of this Order. Defendants shall have fourteen days thereafter to
6 respond, and shall have the opportunity to request a hearing pursuant to the
7 provisions of Rule 43 (c), Mont. R. Civ. P. The Court reserves jurisdiction to
8 issue its final judgment to include the issue of attorneys' fees and costs.

9 DATED this 14 day of August 2023.

10
11 
12 Kathy Seeley
13 District Court Judge
14

15 cc: Melissa Hornbein, via email: hornbein@westernlaw.org
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