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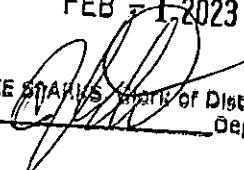
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**FILED**

FEB 1 2023

ANGIE SPARKS, Clerk of District Court  
By  Deputy Clerk

*Attorneys for Plaintiffs*

MONTANA FIRST JUDICIAL DISTRICT COURT  
LEWIS AND CLARK COUNTY

RIKKI HELD, et al.,  Plaintiffs,  v.  STATE OF MONTANA, et al.,  Defendants.	Cause No. CDV-2020-307  Hon. Kathy Seeley  <b>PLAINTIFFS' MOTION <i>IN LIMINE</i> NO. 3: BRIEF IN SUPPORT OF MOTION RE: DEFENDANTS' 30(b)(6) WITNESSES AND HYBRID EXPERT TESTIMONY</b>
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2023

Plaintiffs Rikki Held, *et al.*, by counsel, and pursuant to the Court’s Modified Scheduling Order (Doc. 145), entered June 15, 2022, respectfully submit the following brief in support of their motion *in limine* to address two issues:

First, numerous aspects of the anticipated expert testimony of two of Defendants’ hybrid expert witnesses, as set forth in Defendants’ Expert Disclosure (Doc. 228, dated October 31, 2022), as amended by Defendants’ Supplemental Expert Witness Disclosure (Doc. 236, dated November 22, 2022), and as disclosed during their deposition as a hybrid witness:<sup>1</sup>

- Dave Klemp, previously with the Montana Department of Environmental Quality; and
- Sonja Nowakowski, Division Administrator Air Energy and Mining for the Montana Department of Environmental Quality.

This motion *in limine* seeks to limit the expert testimony at trial to the testimony provided—in particular the opinions expressed—by Mr. Klemp and Ms. Nowakowski at their respective depositions. Contrary to the broad language used to describe the areas of testimony at trial for these two Hybrid Experts in Defendants’ Expert Disclosure, during the course of their respective depositions, these two Hybrid Experts testified they had limited opinions (or testified they had no opinions) on areas listed in Defendants’ Expert Disclosure. Plaintiffs’ motion *in limine* seeks to limit the scope of the expert testimony of these two Hybrid Experts at trial to the testimony set forth in their depositions on the grounds that the underlying purposes of M. R. Civ. P. 26 are to eliminate surprise and to promote effective cross-examination of experts. Both purposes of Rule 26 will be satisfied if this Court restricts the trial testimony of the two Hybrid Experts to the

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<sup>1</sup> Dave Klemp and Sonja Nowakowski are the only two hybrid witnesses of Defendants that were deposed in their capacity as a hybrid witness.

opinions expressed in their depositions and the trial testimony of employees of Defendants to the testimony in the respective Rule 30(b)(6) depositions.

Second, testimony at trial of those Defendants and their respective witnesses who testified as Rule 30(b)(6) witnesses. Specifically, the following Defendants produced witnesses who testified at depositions under Rule 30(b)(6): (a) Defendant Department of Environmental Quality (“DEQ”); (b) Defendant Department of Natural Resources & Conservation (“DNRC”); and (c) Defendant Public Service Commission (“PSC”).<sup>2</sup>

### **I. APPLICABLE STANDARDS**

A motion *in limine* is a “request for guidance by the court regarding an evidentiary question, which the court may provide at its discretion to aid the parties in formulating trial strategy.” *Hunt v. K-Mart Corp.*, 1999 MT 125, ¶ 11, 294 Mont. 444, 981 P.2d 275; *see also Speaks v. Mazda Motor Corp.*, 118 F. Supp. 3d 1212, 1217 (D. Mont. 2015) (a motion *in limine* is a “procedural device[] to obtain an early and preliminary ruling on the admissibility of evidence.”). The purpose of a motion *in limine* is to “prevent the introduction of evidence which is irrelevant, immaterial, or unfairly prejudicial.” *Cooper v. Hanson*, 2010 MT 113, ¶ 38, 356 Mont. 309, 234 P.3d 59 (quoting *State v. Krause*, 2002 MT 63, ¶ 32, 309 Mont. 174, 44 P.3d 493). The district court’s authority to grant or deny a motion *in limine* “rests in the inherent power of the court to admit or exclude evidence and to take such precautions as are necessary to afford a fair trial for all parties.” *City of Helena v. Lewis*, 260 Mont. 421, 425-26, 860 P.2d 698, 700 (1993) (quoting *Feller v. Fox*, 237 Mont. 150, 153, 772 P.2d 842, 844 (1989) (overruled on other grounds by *Giambra v. Kelsey*, 2007 MT 158, 338 Mont. 19, 162 P.3d 134)).

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<sup>2</sup> Defendant DEQ’s Rule 30(b)(6) witnesses are Chris Dorrington, Dave Klemp, and Sonja Nowakowski. Defendant DNRC’s Rule 30(b)(6) witness is Shawn Thomas. Defendant PSC’s Rule 30(b)(6) witness is Will Rosquist. Each were deposed in their role as a Rule 30(b)(6) witness.

### A. Hybrid Experts.

The “spirit” of the civil rules requires “liberal disclosure” of witnesses. *Superior Enters. v. Mont. Power Co.*, 2002 MT 139, ¶ 18, 310 Mont. 198, 49 P.3d 565. The underlying purposes of M. R. Civ. P. 26 are to eliminate surprise and to promote effective cross-examination of experts. *Henricksen v. State*, 2004 MT 20, ¶ 57, 319 Mont. 307, 84 P.3d 38. A court should examine the adequacy of an expert disclosure in light of those underlying purposes. *Hawkins v. Harney*, 2003 MT 58, ¶ 24, 314 Mont. 384, 66 P.3d 305.

A factor in determining prejudice to the opposing party is whether that party could have obtained additional information by deposing the designated expert. *Hawkins*, ¶ 27; *Henricksen*, ¶ 60; *Norris v. Fritz*, 2012 MT 27, ¶ 21, 364 Mont. 63, 270 P.3d 79. “A party may depose any person who has been identified as an expert whose opinions may be presented at trial.” M. R. Civ. P. 26(b)(4)(A)(ii).

This Court should review the pre-trial disclosures and the deposition testimony to determine whether they provided sufficient notice of the opinions of the two Hybrid Experts to be offered at trial to prevent unfair surprise. *Faulconbridge v. State*, 2006 MT 198, ¶¶ 43–44, 333 Mont. 186, 142 P.3d 777. The Court in *Faulconbridge* suggested that the opposing party should have adequate notice of the opinions to be offered by hybrid experts at trial in order for those opinions to be admissible. *See Faulconbridge*, ¶¶ 43–44. As a result, this Court should focus on whether Plaintiffs have adequate notice of each of the Hybrid Experts’ proposed testimony at trial based on Defendants’ Expert Disclosure and the deposition testimony of the Hybrid Expert as to his or her opinions at trial.

## **B. Rule 30(b)(6) Depositions**

Under Rule 30(b)(6) of the Federal and Montana Rules of Civil Procedure, the persons designated “must testify about information known or reasonably available to the organization.” A Defendant has an obligation to educate its designee so she or he can testify on behalf of the corporation and provide binding answers to the matters in the notice. The testimony of a Rule 30(b)(6) witness represents the collective knowledge of the agency, not of the specific individual deponents. A Rule 30(b)(6) designee presents the agency’s position on the listed topics, as the agency appears vicariously through its designees. *United States v. Taylor*, 166 F.R.D. 356, 361 (M.D.N.C.1996). An agency has an affirmative duty to provide a witness who is able to provide binding answers on behalf of the corporation. *Ecclesiastes 9:10–11–12, Inc. v. LMC Holding Co.*, 497 F.3d 1135, 1147 (10th Cir. 2007).

## **II. BACKGROUND ON DEFENDANTS’ EXPERT DISCLOSURES**

On October 31, 2022, pursuant to this Court’s June 15, 2022 Scheduling Order M. R. Civ. P. 26(b)(4), Defendants withdrew all previously disclosed expert and hybrid witnesses and provided an expert witness disclosure that included the following language as to hybrid witnesses:

Defendants note that the below individuals are employees of the Montana Department of Environmental Quality who possess knowledge regarding the facts alleged in this case, as well as specialized training that allows them to formulate opinions regarding those factual allegations. They have not been specially retained for litigation purposes. Rather, they are mixed fact and expert—or “hybrid”—witnesses. *See Norris v. Fritz*, 2012 MT 27, ¶ 22, 364 Mont. 63, 270 P.3d 79. As such, full disclosures, including written reports, are not required. *Id.* at ¶ 32 (citation omitted). Defendants disclose the identity of these mixed fact and expert witnesses and a summary of their proposed testimony so as to prevent unfair surprise or prejudice. *Id.* at ¶ 33 (citation omitted).

Defendants’ Expert Disclosure at 3 (Doc. 228)

On November 22, 2022, Defendants served a Supplemental Expert Witness Disclosure (Doc. 236) which withdrew nine (9) previously disclosed hybrid witnesses. Plaintiffs thereafter took the

depositions of two of Defendants Hybrid Experts: Sonja Nowakowski, Division Administrator Air Energy and Mining for the Montana DEQ; and Dave Klemp, formerly an employee of Montana DEQ.

During these depositions, the two Hybrid Experts stated there were numerous areas where they simply had no opinions or did not know what opinions they would be offering at trial, as illustrated by the following questions and answers taken from the deposition of Sonja Nowakowski<sup>3</sup>:

**Q. Okay. Were you asked to provide any opinions about Montana state energy policy as part of your hybrid expert testimony in this case?**

A. I was not.

**Q. Do you have any additional knowledge or opinions that you intend to offer at trial regarding the Montana state energy policy?**

A. I would -- it would depend on the question that was asked.

Nowakowski Dep. 28:4-12.

**Q. Were you asked to provide any opinions about MEPA as part of your hybrid expert testimony in this case?**

A. I was not.

Nowakowski Dep. 28:22-25.

**Q. Do you have any additional knowledge or opinions that you intend to offer at trial regarding MEPA?**

A. I -- I would again have to say it depends on the questions that are asked.

**Q. Sure. But you testified that you haven't been asked to provide specific opinions?**

A. I have not.

Nowakowski Dep. 30:10-17.

**Q. Are there any aspects of plaintiffs' experts' opinions that you reviewed that you disagree with?**

A. I would need to have specifics.

**Q. But as you sit here now, you're not recalling specific areas of disagreement with Dr. Running's report?**

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<sup>3</sup> A true and correct certified copy of the condensed deposition of Sonja Nowakowski taken on December 14, 2022 ("Nowakowski Dep.") is attached as Exhibit 1 to the Declaration of Roger Sullivan ("Sullivan Dec.").

- A. I can't speak to that. It was a very broad report.  
Q. **Okay. How about Dr. Fagre's?**  
A. As well a very broad report. I can't speak to that.  
Q. **And Ms. Hedge's?**  
A. The same. I can't speak to that. I'd need specifics.

Nowakowski Dep. 35:12-36:1.

**Q. Okay. What opinions do you intend to offer at trial about the allegations contained in that paragraph 87?**

- A. I can't speculate. It will depend on the questions asked.

Nowakowski Dep. 43:6-10.

**Q. Okay. Do you have any additional knowledge or opinions regarding the allegations in paragraph 90 that you intend to offer at trial that we haven't discussed?**

- A. I may. It depends on the questions that are asked.  
Q. **But you haven't been asked to provide any other opinions at this point?**  
A. I have not been asked by you today to provide any additional opinions.  
Q. **Good point. Have you been asked by DEQ?**  
A. I have not.

Nowakowski Dep. 60:22-61:8.

**Q. Do you agree that DEQ has authorized and permitted transportation of fossil fuels?**

A. DEQ has some limited authority through the Major Facility Siting Act where it authorizes the transportation through oil and gas pipelines.

**Q. Do you agree that DEQ has authorized and permitted combustion of fossil fuels?**

A. DEQ authorizes and permits or provides air quality permits for facilities where fossil fuels are combusted.

**Q. Do you agree that those activities, meaning fossil fuel extraction, transportation of fossil fuels, and combustion of fossil fuels, generate greenhouse gas emissions?**

A. Certain activities -- there need to be some specific examples -- do generate greenhouse gas emissions, yes.

**Q. Do you agree that those activities contribute to climate change?**

A. I wouldn't be able to speak to their contribution to climate change.

**Q. So are you testifying that you don't know if those activities contribute to climate change?**

A. That's correct.

**Q. Do you agree that those activities harm youth plaintiffs?**

A. I don't know if they -- I -- I can't speak to whether or not they contribute to climate change, and I cannot speak to whether or not that contributes to harm to youth plaintiffs.

**Q. So you don't have an opinion on whether those activities harm youth plaintiffs?**

A. I do not.

**Q. Do you have any opinions about whether the youth plaintiffs in this case are being harmed?**

A. I do not.

**Q. In the complaint have you read the paragraph describing how the youth plaintiffs have been injured?**

A. Yes, I have.

**Q. And do you disagree with those allegations?**

A. I would need to review each specific allegation and speak to those.

**Q. Do you intend to testify at trial that the youth plaintiffs are not being injured?**

A. I do not. I think that there would be scientists who are probably more knowledgeable and better prepared to answer those questions.

**Q. So you don't have an opinion about whether the youth plaintiffs are being injured?**

A. I do not.

Nowakowski Dep. 105:4-107:5.

**Q. Do you intend to offer any opinions regarding the allegations in paragraph 118-L based on your experience at Montana Legislative Services?**

A. It would depend on the questions asked.

Nowakowski Dep. 147:22-25.

During his deposition, Dave Klemp similarly testified there were numerous areas where he had no opinions or did not know what opinions he would be offering at trial, as illustrated by the following excerpts from his deposition<sup>4</sup>:

**Q. Okay. Can you -- if someone were to ask you about emissions inventories, can you state what testimony you would offer with respect to paragraph 192 of the complaint?**

A. I would have to listen to the specific question that was asked.

Klemp Dep. 94:1-6.

**Q. Okay. In your opinion would the share of statewide greenhouse gas emissions from Montana's electricity sector decline if the state shifted away from fossil fuels for electricity generation?**

A. I can't answer that.

**Q. Okay. In your opinion would the state of Montana's gross and net greenhouse gas emissions decline if the state shifted away from fossil fuels for electricity generation?**

A. I -- I can't answer that one either.

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<sup>4</sup> A true and correct certified copy of the condensed deposition of Dave Klemp taken on December 15, 2022 ("Klemp Dep.") is attached as Exhibit 2 to the Sullivan Dec.



Klemp Dep. 103:11-20

**Q. Is it your understanding that in order to drill an oil or gas well, there has to be some state agency approval?**

A. I don't know that.

Klemp Dep. 107:12-15

**Q. Okay. Do you agree that those emissions and that growth between 1990 and 2005 were generated pursuant to state issued permits or some other authorization?**

A. I – I can't answer that.

**Q. Okay. Are there any other opinions that you intend to offer about paragraph 192?**

A. Anything I offer will depend upon the questions I'm asked.

Klemp Dep. 110:15-23.

### **III. ARGUMENT**

#### **A. Hybrid Witnesses**

M. R. Civ. P. 26(b)(4) governs expert disclosures. These disclosure requirements eliminate surprise and promote effective cross-examination of expert witnesses. *Henricksen*, ¶ 57; *Smith v. Butte–Silver Bow Cnty.*, 276 Mont. 329, 333, 916 P.2d 91, 93 (1996). Absent such disclosures, a party would incur difficulty in ascertaining the particular approach of an adversarial expert. *Sunburst Sch. Dist. No. 2 v. Texaco, Inc.*, 2007 MT 183, ¶ 72, 338 Mont. 259, 165 P.3d 1079. Sufficient disclosure provides a party enough information and time to plan effectively for cross-examination and to obtain an expert to refute the adversarial expert's testimony. *Superior Enters.*, ¶ 18.

Notably, Rule 26(b)(4) limits disclosure requirements to retained experts and does not address the expert whose information was not acquired in preparation for trial but rather because he or she was an actor or viewer with respect to transactions or occurrences that are part of the subject matter of the lawsuit. These non-retained (or "hybrid") experts possess personal knowledge of factual events relevant to the case, as well as specialized training that allows these hybrid experts

to formulate expert opinions regarding those factual events. In advance of trial, both the personal knowledge of factual events relevant to the case and the expert opinions regarding those factual events can only be obtained through depositions.

Through the deposition process, Plaintiffs asked two of Defendants' Hybrid Experts about both their personal knowledge of factual events relevant to the case and their expert opinions regarding those factual events. Yet, as evidenced by the excerpts set forth above, often these two Hybrid Experts stated they had no opinions about specific allegations in the Complaint or in a number of areas for which they were supposedly offered, such as climate change and harms to Plaintiffs. In response to specific questions about individual allegations, these witnesses answered that they had no opinion, or their opinions depended on the questions that might be asked at trial. Because Defendants failed to prepare these two Hybrid Experts in advance of the deposition with the opinion testimony to be offered at trial, these two Hybrid Experts should be limited at trial to testifying only about the opinions offered at their depositions. Failure to so limit their testimony would directly controvert the purposes of the rules and subject Plaintiffs to unfair surprise.

In *Norris*, the Montana Supreme Court concluded "based on the totality of the pre-trial circumstances," that the plaintiff did not lack sufficient notice of Strizich, as a treating physician, testifying as to the standard of care that he would employ generally. ¶ 37. The opposing party had access to the underlying medical records that catalogued Strizich's own treatment, including records containing several reports prepared by Strizich. The Court reasoned: "Cross-examination normally would reveal any faulty basis on which Strizich relied in opining as to standard of care," ¶ 37, citing *N. Plains Res. Council v. Bd. of Nat. Res. & Conserv.*, 181 Mont. 500, 537, 594 P.2d 297, 317 (1979). The Court also noted: "Any ambiguity within these records readily could have been clarified through proper inquiry at Strizich's deposition." ¶ 39.

In the instant case, Plaintiffs' counsel asked at deposition about the possible opinions at trial of two of the Hybrid Experts, attempting, as set forth in *Norris*, to clarify the precise opinions "through proper inquiry" and "cross-examination." Defendants should be held to the testimony offered at deposition by these two Hybrid Experts.

Finally, to the extent either of the Hybrid Experts intends to testify on topics outside his or her personal knowledge obtained while working at their current (or former) government agency, those topics must be presented as expert opinions, established after the events at issue, because, by definition, the two Hybrid Experts simply would not have percipient knowledge of them. In other words, if either of the Hybrid Experts formed expert opinions after the fact, such opinions must be disclosed as if they were a retained expert. If the Hybrid Expert formed his or her opinions as a result of his or her role in this litigation, these opinions are based on work performed solely for the purposes of this litigation and not during the ordinary course of his or her employment. Because no Hybrid Expert disclosed any opinions on issues relating to matters for which they do not have any personal knowledge, the trial testimony of both Hybrid Experts must be limited to opinions based solely on their personal knowledge and which were disclosed at the depositions. Accordingly, the testimony of the two Hybrid Experts should be limited to what he or she witnessed or experienced that is the subject of the lawsuit, and not from any information resulting from an "after-the-fact" examination of facts, as would be the case with a retained expert.

**B. Rule 30(b)(6) Witnesses**

Plaintiffs took the Rule 30(b)(6) depositions of Defendants: (a) DEQ, whose witnesses are Chris Dorrington, Dave Klemp, and Sonja Nowakowski; (b) DNRC, whose witness is Shawn Thomas; and (c) PSC, whose witness is Will Rosquist. During the depositions, the Rule 30(b)(6) witnesses expressed varying degrees of knowledge, or lack thereof, on various deposition topics.

For example, during his Rule 30(b)(6) deposition, Mr. Dorrington testified he was not aware of DEQ's MEPA analysis as it related to greenhouse gas emissions prior to 2016, when he joined DEQ. Dorrington Dep. 39:14-21. He also testified he was not a permitter and was not an expert in DEQ permitting practices. Dorrington Dep. 47:20-24, 81:2-15, 104:9-24; 106:3-16; 115:4-19. If a Rule 30(b)(6) witness testified during his or her deposition, and the witness either lacked knowledge or had limited knowledge on topics covered by the deposition notice, this motion *in limine* seeks to limit the Rule 30(b)(6) witness from testifying differently on such topics at trial.

#### IV. CONCLUSION

An order limiting the opinions to be offered by the two Hybrid Experts to those opinions based on their personal knowledge offered in their depositions is necessary in this case because a non-retained expert's role in the factual scenario makes his or her identity well known to both parties and his opinions more readily available through deposition to prevent unfair surprise. *See Norris*, ¶¶ 30-33. As in *Norris*, Plaintiffs here do not contend Defendants failed to provide sufficient notice as to the *identity* of their Hybrid Experts; rather, to the extent one of the two Hybrid Experts offers opinions outside the deposition testimony, Defendants have failed to provide sufficient notice as to those *opinions*.

An order limiting the testimony to be offered by the three Defendant agencies to the testimony given in the Rule 30(b)(6) depositions is necessary in this case because a 30(b)(6) witness is obligated to testify on behalf of the agency and provide answers binding at trial to the matters in the notice to prevent unfair surprise.

Accordingly, Plaintiffs respectfully request this Court enter an order *in limine* limiting: (1) the scope of the expert testimony of these two Hybrid Experts at trial to the testimony set forth in their respective depositions on the grounds that the underlying purposes of Rule 26 are to eliminate

surprise and to promote effective cross-examination of experts; and (2) limiting the testimony to be offered by the three Defendant agencies on the matters noticed to the testimony given in the Rule 30(b)(6) depositions.

DATED this 1st day of February, 2023.

/s/ Barbara Chillcott

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**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing was delivered by email to the following on February 1, 2023:

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MONTANA FIRST JUDICIAL DISTRICT COURT  
LEWIS AND CLARK COUNTY

RIKKI HELD, et al.,  Plaintiffs,  v.  STATE OF MONTANA, et al.,  Defendants.	Cause No. CDV-2020-307  Hon. Kathy Seeley  <b>PLAINTIFFS' MOTION <i>IN LIMINE</i> NO. 3: DECLARATION OF ROGER SULLIVAN IN SUPPORT OF PLAINTIFFS' MOTION RE: DEFENDANTS' 30(b)(6) WITNESSES AND HYBRID EXPERT TESTIMONY</b>
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Pursuant to MCA §1-6-105, Roger Sullivan hereby declares as follows:

1. I am an attorney admitted in the State of Montana and an attorney of record for Plaintiffs herein. I have personal knowledge of the facts stated herein, except as to those stated on information and belief.
2. Attached hereto as **Exhibit 1** is a true and correct copy of the December 14, 2022 condensed transcript of the deposition of Sonja Nowakowski.
3. Attached hereto as **Exhibit 2** is a true and correct copy of the December 15, 2022 condensed transcript of the deposition of Dave Klemp.

Pursuant to MCA §1-6-105, I declare that the foregoing is true and correct.

Executed this 1st day of February, 2023

/s/ Roger Sullivan  
Roger Sullivan



**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing was delivered by email to the following on February 1, 2023:

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/s/ Barbara Chillcott  
Barbara Chillcott

**EXHIBIT 1**

*Rikki Held, et al. v  
State of Montana, et al.*

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*Sonja Nowakowski  
December 14, 2022*

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**Min-U-Script® with Word Index**

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 3  
 4 \_\_\_\_\_  
 5 RIKKI HELD, et al.,  
 6 Plaintiffs,  
 7 v. Cause Number  
 8 STATE OF MONTANA, et al., CDV-2020-307  
 9 Defendants.  
 10 \_\_\_\_\_  
 11 VIDEORECORDED DEPOSITION UPON ORAL EXAMINATION OF  
 12 SONJA NOWAKOWSKI  
 13 \_\_\_\_\_  
 14  
 15 BE IT REMEMBERED, that the videorecorded  
 16 deposition upon oral examination of SONJA NOWAKOWSKI,  
 17 appearing at the instance of Plaintiffs, was taken at  
 18 the offices of Fisher Court Reporting, 800 North Last  
 19 Chance Gulch, Suite 101, Great Falls, Montana, on  
 20 Wednesday, December 14th, 2022, beginning at the hour  
 21 of 10:38 a.m., pursuant to the Montana Rules of Civil  
 22 Procedure, before Deborah L. Fabritz, Court Reporter  
 23 - Notary Public.  
 24  
 25 \* \* \* \* \*

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1 APPEARANCES  
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 18 Nate Trejo, videographer; Catherine  
 19 Armstrong; and Tara Robinson (via Zoom)  
 20  
 21  
 22  
 23  
 24  
 25

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1 WHEREUPON, the following proceedings were had  
 2 and testimony taken, to-wit:  
 3 \* \* \* \* \*

4 **THE VIDEOGRAPHER:** This is the  
 5 videorecorded deposition of Sonja Nowakowski, taken  
 6 in the Montana First Judicial District Court, Lewis  
 7 and Clark County. Cause Number CDV-2020-307. Rikki  
 8 Held, et al., versus State of Montana, et al.  
 9 Today is December 14th, 2022. The time is  
 10 10:38 a.m. We are present at the offices of Fisher  
 11 Court Reporting, 800 North Last Chance Gulch, Suite  
 12 101, Helena, Montana.  
 13 The court reporter is Deb Fabritz, and the  
 14 video operator is Nate Trejo of Fisher Court  
 15 Reporting. The deposition is being taken pursuant to  
 16 notice.  
 17 I would now ask the attorneys to identify  
 18 themselves, who they represent, and whoever else is  
 19 present.  
 20 **MS. CHILLCOTT:** Barbara Chillcott here on  
 21 behalf of plaintiffs.  
 22 **MS. McKENNA:** Lee McKenna attorney for  
 23 DEQ.  
 24 **MR. RUSSELL:** Michael Russell for  
 25 defendants.

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1 **MS. ARMSTRONG:** Catherine Armstrong,  
 2 paralegal for DEQ.  
 3 **THE VIDEOGRAPHER:** The court reporter will  
 4 now administer the oath.  
 5 **SONJA NOWAKOWSKI,**  
 6 called as a witness, having been first duly sworn,  
 7 was examined and testified as follows:  
 8 **EXAMINATION**  
 9 **BY MS. CHILLCOTT:**  
 10 **Q.** Good morning again, Ms. Nowakowski.  
 11 Again, for the record, my name is Barbara Chillcott,  
 12 and I am one of the attorneys representing the youth  
 13 plaintiffs in this case.  
 14 Can you please state and spell your name  
 15 for the record?  
 16 A. Sure. Sonja Nowakowski. S-O-N-J-A,  
 17 N-O-W-A-K-O-W-S-K-I.  
 18 **Q.** Thanks. And is it still okay if I address  
 19 you as Sonja --  
 20 A. Yes.  
 21 **Q.** -- as I did this morning?  
 22 And you live in Helena. Correct?  
 23 A. Yes.  
 24 **Q.** So this morning we completed your  
 25 deposition in your capacity as a Rule 30(b)(6)

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1 designee for the Montana Department of Environmental  
 2 Quality. Correct?  
 3 A. Yes.  
 4 **Q.** DEQ has also disclosed you as a mixed fact  
 5 and expert witness or a hybrid witness who has  
 6 knowledge regarding the facts of this case and  
 7 specialized training to formulate opinions on those  
 8 factual allegations. Correct?  
 9 A. Yes.  
 10 **Q.** For the record, I want to state that we  
 11 are back now for a deposition in your hybrid witness  
 12 capacity. So I want to make sure you're able to  
 13 change hats and you know which hat you're wearing.  
 14 A. Yes.  
 15 **Q.** Okay. Great. This morning in our -- in  
 16 your 30(b)(6) deposition I went over some ground  
 17 rules, and those same ground rules apply. Do you  
 18 have any questions about those?  
 19 A. I do not.  
 20 **Q.** Do you want me to restate that?  
 21 A. No. You don't need to restate them.  
 22 **Q.** You do understand that this testimony is  
 23 also under oath. Correct?  
 24 A. Yes.  
 25 **Q.** Okay. Sonja, I'm going to hand you what's

Page 12

1 been marked as Exhibit 126.  
 2 A. Okay.  
 3 (Whereupon, Exhibit 126 was  
 4 marked for identification.)  
 5 **BY MS. CHILLCOTT:**  
 6 **Q.** And have you seen this document before?  
 7 And I can help you if --  
 8 A. Sure.  
 9 **Q.** -- this is helpful. If you turn to page  
 10 4 --  
 11 A. Okay.  
 12 **Q.** -- your name appears in this document.  
 13 Correct?  
 14 A. Correct.  
 15 **Q.** And is this document that's in the expert  
 16 witness disclosure dated October 31st, 2022?  
 17 A. Yes.  
 18 **Q.** I'm going to pass you -- go ahead.  
 19 A. Thank you.  
 20 **Q.** I'm going to pass you what's been marked  
 21 as Exhibit 127.  
 22 A. Okay.  
 23 (Whereupon, Exhibit 127 was  
 24 marked for identification.)  
 25 **BY MS. CHILLCOTT:**

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1 **Q. And are you familiar with this document?**  
 2 **And you might not be, which is okay.**  
 3 A. Okay. I am not familiar with the details  
 4 of this exhibit.  
 5 **Q. Okay. Sure. And is the title of the**  
 6 **document defendants' supplemental expert witness**  
 7 **disclosure?**  
 8 A. Yes, it is.  
 9 **Q. And is the date of the document**  
 10 **November 22nd, 2022?**  
 11 A. Yes, it is.  
 12 **Q. Could you turn to page 2 and read the**  
 13 **sentence right before the signature line that starts**  
 14 **with "other than."**  
 15 A. On page --  
 16 **Q. I'm sorry. On page 2.**  
 17 A. 2? This page 2?  
 18 **Q. Oh, sorry. It's on -- it looks like this.**  
 19 **It's not highlighted but right -- like right there.**  
 20 A. Okay.  
 21 **Q. There we go.**  
 22 A. "Other than the amendments made by this  
 23 supplemental expert witness disclosure, defendants'  
 24 expert witness disclosure of October 31st, 2022  
 25 remain unchanged in all respects."

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1 **Q. So that indicates to me that the**  
 2 **disclosure we looked at that was marked 126 is still**  
 3 **current as to how it relates to your testimony here.**  
 4 **Is that correct?**  
 5 A. Yes.  
 6 **Q. Can you turn back to Exhibit 126?**  
 7 A. Okay.  
 8 **Q. And turn to page 4.**  
 9 A. Okay.  
 10 **Q. Does number 4 there on page 4 indicate**  
 11 **what you are expected to testify about in this case?**  
 12 A. Yes.  
 13 **Q. And you did not prepare an expert report**  
 14 **for this?**  
 15 A. I did not.  
 16 **Q. Okay. What did you do to prepare for this**  
 17 **deposition?**  
 18 A. I reviewed the documents and -- and  
 19 attachments.  
 20 **Q. And which documents would those be?**  
 21 A. The attachments in Appendix A, I believe  
 22 it was called, as well as an overview of the  
 23 plaintiffs' witnesses.  
 24 **Q. Okay. And was that overview something**  
 25 **that you were provided?**

Page 15

1 A. It was their CVs, yes.  
 2 **Q. Oh, I see. How many hours did you spend**  
 3 **on this deposition prep?**  
 4 A. Roughly eight to ten hours.  
 5 **Q. Is that in addition to the eight to ten**  
 6 **that you testified you spent on the 30(b)(6)**  
 7 **deposition prep?**  
 8 A. No. That would be total.  
 9 **Q. And you did -- I can't remember. Did you**  
 10 **meet with the attorneys for the state in this matter?**  
 11 A. Yes.  
 12 **Q. Okay. Did anyone else other than the**  
 13 **attorneys help you prepare for this testimony?**  
 14 A. No.  
 15 **Q. Did you receive any directions about your**  
 16 **testimony today from any colleagues at DEQ?**  
 17 A. No.  
 18 **Q. Did you receive any directions from**  
 19 **anyone?**  
 20 A. Not any directions, no. I did meet with  
 21 some of my colleagues, as I indicated, Dan Lloyd of  
 22 the energy bureau, to outline some of the various  
 23 energy programs and better familiarize myself with  
 24 them.  
 25 **Q. Okay. Great. I'm handing you what's been**

Page 16

1 **marked as Exhibit 128.**  
 2 A. Okay.  
 3 (Whereupon, Exhibit 128 was  
 4 marked for identification.)  
 5 **BY MS. CHILLCOTT:**  
 6 **Q. Can you identify this document, please?**  
 7 A. Sure. This is the notice of deposition of  
 8 Sonja Nowakowski.  
 9 **Q. And have you reviewed this document**  
 10 **before?**  
 11 A. Yes, I have.  
 12 **Q. When did you review that?**  
 13 A. I reviewed this document in the last few  
 14 weeks as I prepared.  
 15 **Q. Okay. Who asked you to serve as a hybrid**  
 16 **witness in this case?**  
 17 A. I believe the attorney who was originally  
 18 working on this for DEQ, Sarah Clerget.  
 19 **Q. And why do you think Sarah Clerget asked**  
 20 **you to be the hybrid expert?**  
 21 A. As the division administrator for air,  
 22 energy, and mining, I had knowledge and expertise on  
 23 many of the documents.  
 24 **Q. Now I'm passing you what has been marked**  
 25 **as Exhibit 129.**

Page 17

1 A. Okay.  
 2 (Whereupon, Exhibit 129 was  
 3 marked for identification.)  
 4 **BY MS. CHILLCOTT:**  
 5 **Q. Is this an up-to-date copy of your CV?**  
 6 A. Yes, it is.  
 7 **Q. So you received your BA in journalism with**  
 8 **a minor in political science. Correct?**  
 9 A. Correct.  
 10 **Q. Did you take any science classes while you**  
 11 **were in college?**  
 12 A. I -- I probably took some basic ones. I  
 13 don't remember.  
 14 **Q. Like prereqs or not --**  
 15 A. Yeah.  
 16 **Q. -- like required?**  
 17 A. Right. Required science courses, yeah.  
 18 **Q. Yeah. Do you remember which ones?**  
 19 A. I do not.  
 20 **Q. Are you a member of any professional**  
 21 **organizations?**  
 22 A. I am not.  
 23 **Q. And you are currently employed at DEQ.**  
 24 **Correct?**  
 25 A. Correct.

Page 18

1 **Q. And remind me how long you've worked at**  
 2 **DEQ?**  
 3 A. I started in April of 2021.  
 4 **Q. Okay. And can you briefly describe your**  
 5 **employment history with DEQ? And I think you**  
 6 **testified this morning that this is the only position**  
 7 **you've held. Is that correct?**  
 8 A. That is correct.  
 9 **Q. Okay. Has this position that you're in**  
 10 **now, division administrator -- has that changed over**  
 11 **time since you've taken the position?**  
 12 A. It has not.  
 13 **Q. Can you, I guess, in general terms**  
 14 **describe what your current job description is?**  
 15 A. Sure. I manage and direct the overall  
 16 direction of the air, energy, and mining division in  
 17 terms of establishing the budget, strategic  
 18 objectives, communications.  
 19 **Q. Okay. So what would you say your role is**  
 20 **in the agency?**  
 21 A. Sure. I would -- I would say my role is  
 22 -- is -- is to manage and direct the air, energy,  
 23 mining bureaus.  
 24 **Q. Who is your boss?**  
 25 A. Director Dorrington.

Page 19

1 **Q. Do you play a role in permitting decisions**  
 2 **at DEQ?**  
 3 A. I -- I am not a permitter, so no. I don't  
 4 play a specific role in the permitting decisions.  
 5 **Q. Are you consulted if there are questions**  
 6 **that pertain to permits?**  
 7 A. It would depend on the questions and the  
 8 permit.  
 9 **Q. Okay. Can you give me an example of a**  
 10 **time when you were consulted about a --**  
 11 A. Sure. For example --  
 12 **THE REPORTER:** Wait. Consulted, sorry.  
 13 **BY MS. CHILLCOTT:**  
 14 **Q. -- consulted on a question on a permit?**  
 15 A. Sure. For example, if there were -- if  
 16 staff were concerned that they weren't going to meet  
 17 a time line or a deadline required in statute, I  
 18 would be advised in part of the discussions on how  
 19 best to proceed.  
 20 **Q. That makes sense. How about when there**  
 21 **are kind of like -- how do I put this -- like kind of**  
 22 **politically charged issues that pertain to a permit?**  
 23 **Do you -- are you consulted in those situations?**  
 24 A. It really would depend on the situation  
 25 and the question at hand.

Page 20

1 **Q. Can you recall a situation?**  
 2 A. I think another example might be timing if  
 3 -- if, for example, there was pressure to -- to make  
 4 a decision quicker than a scientist perhaps needed,  
 5 it kind of -- a discussion about what an appropriate  
 6 time line looks like and -- and a discussion about  
 7 kind of where we're at in the decision-making  
 8 process.  
 9 **Q. Okay. Yeah. I used to work at DNRC, so I**  
 10 **can totally empathize --**  
 11 A. Yeah.  
 12 **Q. I can empathize with that. And where does**  
 13 **that -- as far as DEQ goes, where does that pressure**  
 14 **come from sometimes with regard to, you know, time**  
 15 **lines and --**  
 16 A. Sure. It can -- it can come from a  
 17 variety of sources. You know, it can come from an  
 18 applicant who's awaiting it. It can come from  
 19 stakeholders who are interested in the process.  
 20 **Q. Legislators sometimes?**  
 21 A. I haven't had firsthand experience with  
 22 that.  
 23 **Q. Okay. So you also served as research**  
 24 **director for the legislative office of research and**  
 25 **policy analysis. Correct?**



Page 21

1 A. That's correct.  
 2 **Q. And when did you do that?**  
 3 A. I did that for the five years prior to  
 4 taking the job at DEQ.  
 5 **Q. And what were your job duties in that**  
 6 **role?**  
 7 A. Sure. I was responsible for drafting  
 8 legislation. I was also responsible for overseeing  
 9 the assignment and staffing of the policy and interim  
 10 committees.  
 11 **Q. Okay. Did you work on any**  
 12 **climate-change-related issues in your role -- in that**  
 13 **role?**  
 14 A. In my role as the research director -- I  
 15 guess how would you define climate policies?  
 16 **Q. I asked about climate-change-related**  
 17 **issues. And so I guess I'm just speaking broadly in**  
 18 **terms of, you know, did you do work with regard to**  
 19 **climate change issues in that role?**  
 20 A. As the nonpartisan research director, I  
 21 did draft legislation at the request of legislators  
 22 that -- that discuss climate policy.  
 23 **Q. Okay. Do you recall what legislation?**  
 24 A. I can recall a couple. They -- they all  
 25 kind of blend together. I have drafted bills, for

Page 22

1 example, to direct the DEQ to adopt rules to regulate  
 2 greenhouse gases. I have drafted bills to implement  
 3 carbon taxes. I have drafted resolutions to urge  
 4 action on climate change. I have drafted resolutions  
 5 to -- and -- and bills to prohibit the state from  
 6 acting on climate change. So it's a very wide  
 7 variety.  
 8 **Q. Kind of run the gamut then?**  
 9 A. Yes.  
 10 **Q. Do you recall whether the examples that**  
 11 **you gave with regard to legislation that would**  
 12 **require regulation of greenhouse gases -- did that**  
 13 **legislation pass?**  
 14 A. It did not.  
 15 **Q. How about the one about carbon taxes?**  
 16 A. It did not pass?  
 17 **Q. How about the one to -- the resolution**  
 18 **about taking action on climate change?**  
 19 A. It did not pass.  
 20 **Q. How about the one prohibiting action on**  
 21 **climate change?**  
 22 A. It did not pass.  
 23 **Q. Okay. Do you recall drafting legislation**  
 24 **for the legislature climate change that actually did**  
 25 **pass in a legislative session?**

Page 23

1 A. For example -- yes. There are some  
 2 examples. In 2009 a very broad carbon sequestration  
 3 regulatory structure was adopted by the legislature,  
 4 some other examples in the -- some of the energy  
 5 policy in terms -- in Title 69 directing the public  
 6 service commission, for example, with utility  
 7 reintegration. There was a preapproval statute that  
 8 was adopted that includes specifics related to carbon  
 9 mitigation requirements of a regulated utility that  
 10 was building a natural gas or coal-fired power plant.  
 11 There was an energy demonstration program  
 12 that was passed and approved that could incorporate  
 13 some climate mitigation efforts in the energy  
 14 projects, a grant program that was established. It  
 15 was never funded, but it was established in statute.  
 16 **Q. Okay. Thank you. Was that grant program**  
 17 **-- is that -- does that still exist in statute?**  
 18 A. It does.  
 19 **Q. Okay. And it's never been funded --**  
 20 **A. It's never been funded.**  
 21 **Q. -- to your knowledge?**  
 22 **So in addition to that work drafting**  
 23 **climate legislation, did you work on any other energy**  
 24 **policy issues while at the -- in this role at the**  
 25 **legislature -- in your research director role?**

Page 24

1 A. I drafted a multitude of energy  
 2 legislation over the years, yes.  
 3 **Q. You also served as a research analyst for**  
 4 **the legislative policy office. Correct?**  
 5 A. Correct.  
 6 **Q. And when did you do that?**  
 7 A. I did that starting in 2006.  
 8 **Q. Okay. And what were your job duties as**  
 9 **the research analysis -- analyst? Sorry.**  
 10 A. I was the primary drafter of energy  
 11 legislation, and I staffed the standing and interim  
 12 committee -- energy committees of the legislature.  
 13 **Q. Your resume says you did research and**  
 14 **analyzed energy environmental issues. Correct?**  
 15 A. Correct.  
 16 **Q. And what issues are you referring to here?**  
 17 A. I would include a wide variety of issues.  
 18 I conducted studies and analysis of renewable energy.  
 19 I conducted study and analysis of carbon  
 20 sequestration efforts. I conducted a study of net  
 21 metering policies. The -- the studies are -- are  
 22 conducted at -- at the direction of the legislature.  
 23 **Q. Okay. In your work with the Montana**  
 24 **legislature, did you ever work on MEPA-related**  
 25 **issues?**

Page 25

1 A. I did draft MEPA legislation, yes.  
 2 Q. Okay. Did you conduct any studies on  
 3 MEPA?  
 4 A. I don't believe I conducted any studies  
 5 that were specific to MEPA. Some of the studies may  
 6 have touched on MEPA issues.  
 7 Q. Okay. Was it -- is it Hope Stockwell who  
 8 was probably the go-to MEPA person at legislative  
 9 services?  
 10 A. Correct.  
 11 Q. Okay. Did you work with Hope at all on  
 12 drafting MEPA statutes?  
 13 A. I'm sure I did over the last 15 years,  
 14 yes.  
 15 Q. In your work with the Montana legislature,  
 16 did you ever work on issues regarding the Montana  
 17 state energy policy?  
 18 A. I did, yes.  
 19 Q. What were those?  
 20 A. In my capacity as a nonpartisan bill  
 21 drafter, I did draft the energy policy at the request  
 22 of the legislator.  
 23 Q. So you drafted the energy policy which is  
 24 now in statute at Montana Code Annotated 90-4-1001?  
 25 A. Yes.

Page 26

1 Q. Which legislature -- legislator requested  
 2 that you draft that?  
 3 A. Senator Verdell Jackson.  
 4 Q. When you drafted that legislation, what  
 5 type of research did you do in putting together the  
 6 -- the text that we see in the bill?  
 7 A. I believe in -- in this situation Senator  
 8 Jackson had written it himself and just provided me a  
 9 copy of it and was largely -- largely an inputting  
 10 project.  
 11 Q. Oh, okay. So you didn't make much of any  
 12 substantive revisions?  
 13 A. Not that I can recall, no.  
 14 Q. You mentioned a couple of times that your  
 15 role is a nonpartisan role at legislative services.  
 16 A. Correct.  
 17 Q. Do you think climate change is a partisan  
 18 issue?  
 19 A. I do not. I can't really speak to whether  
 20 or not climate change is a partisan issue. That was  
 21 part of my role as nonpartisan. I drafted  
 22 legislation that aimed to mitigate climate change. I  
 23 -- I drafted legislation that said climate change  
 24 didn't exist, and my role was not to have an opinion  
 25 on that.

Page 27

1 Q. That's fair. And I think it's probably  
 2 easier in that situation.  
 3 But in this role here you're being offered  
 4 as a witness to offer your opinions, and so I'm  
 5 curious what your opinion as you sit here today is in  
 6 terms of whether you think climate change is a  
 7 partisan issue.  
 8 A. I think before the Montana legislature  
 9 climate change is a partisan issue.  
 10 Q. Yeah. Can you expand on that?  
 11 A. Sure. I think there are legislators who  
 12 have differing opinions on climate change.  
 13 Q. I'm going to -- let's see here. I'm  
 14 actually going to refer you back to the state energy  
 15 policy statute, which is --  
 16 A. Okay.  
 17 Q. -- Exhibit 9.  
 18 A. Okay.  
 19 Q. Have it in front of you?  
 20 A. I do.  
 21 Q. Great. This is the state energy policy  
 22 statute that we just talked about. Correct?  
 23 A. Yes.  
 24 Q. And it sounds like you drafted it.  
 25 A. I did, yes.

Page 28

1 Q. Okay. And we discussed this this morning  
 2 during your Rule 30(b)(6) deposition?  
 3 A. Yes.  
 4 Q. Okay. Were you asked to provide any  
 5 opinions about Montana state energy policy as part of  
 6 your hybrid expert testimony in this case?  
 7 A. I was not.  
 8 Q. Do you have any additional knowledge or  
 9 opinions that you intend to offer at trial regarding  
 10 the Montana state energy policy?  
 11 A. I would -- it would depend on the question  
 12 that was asked.  
 13 Q. Okay. Okay. Would you please turn to the  
 14 MEPA statute at --  
 15 A. Sure.  
 16 Q. -- Exhibit 66.  
 17 A. Okay.  
 18 Q. So you testified in your Rule 30(b)(6)  
 19 deposition this morning that you're familiar with  
 20 MEPA?  
 21 A. Yes.  
 22 Q. Were you asked to provide any opinions  
 23 about MEPA as part of your hybrid expert testimony in  
 24 this case?  
 25 A. I was not.

Page 29

1 **Q. Is it your opinion that DEQ considers**  
 2 **climate change as part of its MEPA analysis?**  
 3 **A. I believe the DEQ is prohibited from**  
 4 **reviewing actual or potential impacts beyond**  
 5 **Montana's borders.**  
 6 **Q. Would that provision in MEPA also prohibit**  
 7 **DEQ from considering climate change within Montana's**  
 8 **borders?**  
 9 **A. It would depend -- you'd need to -- to --**  
 10 **I'd need to look more specifically at that in terms**  
 11 **of whether the impacts were regional, national, or**  
 12 **global in nature.**  
 13 **Q. Okay. If you're asked to interpret the**  
 14 **statute while you're processing a permit or asking a**  
 15 **-- or answering a question from a permit writer and**  
 16 **there are predicted climate change impacts within the**  
 17 **borders of Montana, do you think MEPA would preclude**  
 18 **DEQ from looking at that?**  
 19 **A. I do, yes.**  
 20 **Q. In what way?**  
 21 **A. Because we're prohibited from looking at**  
 22 **impacts that are regional, national, or global in**  
 23 **nature that are beyond the borders.**  
 24 **Q. So even if they -- even if climate change**  
 25 **impacts manifest within Montana, because they are**

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1 **considered regional or global in nature, there would**  
 2 **be no review ever of climate change?**  
 3 **A. Yes:**  
 4 **Q. In Montana?**  
 5 **A. Yes.**  
 6 **Q. Okay. So is it your opinion that DEQ is**  
 7 **constrained in considering the global impacts of**  
 8 **climate change as part of its MEPA analysis?**  
 9 **A. Yes.**  
 10 **Q. Do you have any additional knowledge or**  
 11 **opinions that you intend to offer at trial regarding**  
 12 **MEPA?**  
 13 **A. I -- I would again have to say it depends**  
 14 **on the questions that are asked.**  
 15 **Q. Sure. But you testified that you haven't**  
 16 **been asked to provide specific opinions?**  
 17 **A. I have not.**  
 18 **Q. Thank you. Do you -- Sonja, do you**  
 19 **consider yourself an expert in a specific area?**  
 20 **A. In my capacity as division administrator,**  
 21 **I would consider myself an expert in the operations**  
 22 **of the air, energy, and mining bureaus.**  
 23 **Q. Anything else?**  
 24 **A. I'd say in my previous experience I am**  
 25 **very well versed in the drafting of Montana statutes.**

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1 **Q. Do you consider yourself to be an expert**  
 2 **in state energy policy?**  
 3 **A. I would consider myself to be an expert in**  
 4 **the energy policies that have been implemented in**  
 5 **Montana in the last 15 years.**  
 6 **Q. Meaning that you are familiar with the**  
 7 **energy policies that have been enacted?**  
 8 **A. Yes. I am familiar with the energy**  
 9 **policies that have been enacted in Montana over the**  
 10 **last 15 years.**  
 11 **Q. Are there any other areas that you**  
 12 **consider yourself to be an expert in?**  
 13 **A. I think in energy policies overall, that's**  
 14 **-- that's where my expertise would lie.**  
 15 **Q. Okay. Do you consider yourself to be an**  
 16 **expert in psychology?**  
 17 **A. No.**  
 18 **Q. How about psychiatry?**  
 19 **A. No.**  
 20 **Q. Mental health?**  
 21 **A. No.**  
 22 **Q. Do you consider yourself to be an expert**  
 23 **in children's health?**  
 24 **A. No.**  
 25 **Q. You're not a pediatrician. Right?**

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1 **A. I am not.**  
 2 **Q. Do you have any experience in the medical**  
 3 **field?**  
 4 **A. I do not.**  
 5 **Q. Do you consider yourself to be an expert**  
 6 **in glaciers?**  
 7 **A. I do not.**  
 8 **Q. Do you consider yourself to be an expert**  
 9 **in electric power systems?**  
 10 **A. I do not. I -- I do not consider myself**  
 11 **to be an expert in electric power systems.**  
 12 **Q. You are not an engineer?**  
 13 **A. I am not an engineer.**  
 14 **Q. Do you have any experience with respect to**  
 15 **renewable energy?**  
 16 **A. I have experience with renewable energy**  
 17 **policies.**  
 18 **Q. And is that experience what we discussed**  
 19 **earlier about your experience drafting legislation?**  
 20 **A. Yes.**  
 21 **Q. Is there any other experience that you**  
 22 **would point to in --**  
 23 **A. In -- in --**  
 24 **Q. -- renewable energy?**  
 25 **A. In my role as division administrator, I've**

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1 been involved in the discussions about the  
 2 development of -- and implementation of some of the  
 3 statutes that impact DEQ or that DEQ is responsible  
 4 for implementing; for example, the wind and solar  
 5 bonding.  
 6 **Q. Will you tell me a little bit about the**  
 7 **wind and solar bonding and how that works?**  
 8 **A. Sure.** For example, based on legislation  
 9 that I believe was approved in -- in 2017 and 2019,  
 10 requires for the development of certain wind and  
 11 solar projects, a decommissioning and remediation  
 12 plan to be required for those facilities. And DEQ  
 13 has a responsibility for determining at certain  
 14 stages different time lines for amounts of bonds that  
 15 the state needs to hold to ensure that that  
 16 reclamation and decommissioning occurs.  
 17 **Q. Okay. Does DEQ also have responsibility**  
 18 **for bonding over fossil fuel projects?**  
 19 **A. DEQ has responsibility, for example, for**  
 20 **bonding for coal mine reclamation, yes.**  
 21 **Q. How about oil and gas refineries?**  
 22 **A. We do not have authority for bonding**  
 23 **requirements for air quality permits that are issued**  
 24 **for oil or gas facilities.**  
 25 **Q. Okay. Are there any other areas in the**

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1 **bonding realm that DEQ has responsibility over with**  
 2 **regard to fossil fuel projects?**  
 3 **A. It would kind of depend on how you wanted**  
 4 **to define that. For example, we require bonding for**  
 5 **metal mines, and metal mines are used in the**  
 6 **development of -- of many, many materials that are**  
 7 **used in renewable and nonrenewable energy projects.**  
 8 **Q. Right. And so you have -- DEQ requires**  
 9 **bonding for mining operations?**  
 10 **A. Correct.**  
 11 **Q. Okay. Do you consider yourself to be an**  
 12 **expert in greenhouse gas emissions accounting?**  
 13 **A. I do not.**  
 14 **Q. Do you consider yourself to be an expert**  
 15 **in economics?**  
 16 **A. I do not.**  
 17 **Q. How about in forests?**  
 18 **A. No.**  
 19 **Q. Fish biology?**  
 20 **A. No.**  
 21 **Q. Wildfire?**  
 22 **A. No.**  
 23 **Q. Are you a political scientist?**  
 24 **A. I am not.**  
 25 **Q. Have you reviewed any of the expert**

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1 **reports submitted on behalf of the plaintiffs in this**  
 2 **case?**  
 3 **A. Yes.**  
 4 **Q. Which ones?**  
 5 **A. For example, I reviewed Dr. Running,**  
 6 **Dr. Fagre's, Ms. Hedge's, and Senator Barrett's.**  
 7 **Q. And I imagine you must be familiar with**  
 8 **Dr. Running from your work --**  
 9 **A. Yes, I am.**  
 10 **Q. -- in the energy policy world?**  
 11 **A. Yes.**  
 12 **Q. Are there any aspects of plaintiffs'**  
 13 **experts' opinions that you reviewed that you disagree**  
 14 **with?**  
 15 **A. I would need to have specifics.**  
 16 **Q. But as you sit here now, you're not**  
 17 **recalling specific areas of disagreement with**  
 18 **Dr. Running's report?**  
 19 **A. I can't speak to that. It was a very**  
 20 **broad report.**  
 21 **Q. Okay. How about Dr. Fagre's?**  
 22 **A. As well a very broad report. I can't**  
 23 **speak to that.**  
 24 **Q. And Ms. Hedge's?**  
 25 **A. The same. I can't speak to that. I'd**

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1 **need specifics.**  
 2 **Q. Sure. Have you reviewed any of the expert**  
 3 **reports submitted on behalf of the defendants?**  
 4 **A. I have reviewed some of those; for**  
 5 **example, the -- the -- the ones I've outlined**  
 6 **previously, the permit requirements, the CVs of the**  
 7 **folks who are testifying.**  
 8 **Q. Okay. Did you review the expert report**  
 9 **submitted by defendants' expert Dr. Currey?**  
 10 **A. I did not review it in detail.**  
 11 **Q. How about Dr. Terry Anderson's report?**  
 12 **Did you review that?**  
 13 **A. I did not review that in detail.**  
 14 **Q. Now if you could turn back to the**  
 15 **complaint, which was -- there it is -- Exhibit 1.**  
 16 **A. Uh-huh.**  
 17 **Q. And keep that handy.**  
 18 **A. Okay.**  
 19 **Q. So in what's been marked as Exhibit 126,**  
 20 **which is defendants' expert witness disclosure from**  
 21 **October 31st, 2022, you were identified as a witness**  
 22 **to testify regarding issues raised by plaintiffs'**  
 23 **complaint at paragraphs 87 through 90, 92 through 93,**  
 24 **118 sub G through sub N, 192, and 194. Is that**  
 25 **correct?**

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1 A. And if you could refer to the page.  
 2 Q. So you could look -- sorry. If you want  
 3 to refer back -- excuse me -- to Exhibit 126.  
 4 A. Okay.  
 5 Q. Page 4. Sorry.  
 6 A. That's all right. If you could read that  
 7 again.  
 8 Q. Oh, sure. So at page 4 there it says that  
 9 Sonja Nowakowski, division administrator, air,  
 10 energy, and mining for Montana DEQ, will testify  
 11 regarding topics raised in plaintiffs' complaint at  
 12 paragraphs 87 through 90, 92 through 93, 118 sub G  
 13 through sub N, 192, 194. Did I read that correctly?  
 14 A. Yes.  
 15 Q. So turning back to the complaint, have you  
 16 reviewed the complaint before today?  
 17 A. I have.  
 18 Q. And so just so you know, I have tried to  
 19 put tabs on the pages where the paragraphs are  
 20 located that we're going to talk about.  
 21 A. Okay.  
 22 Q. So hopefully it will be easier to get  
 23 there. So first, if you could please turn to  
 24 paragraph 87?  
 25 A. Yes.

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1 Q. All right. So paragraph 87 reads:  
 2 "Defendant DEQ has a constitutional duty to maintain  
 3 and improve a clean and healthful environment for  
 4 present and future generations. Defendant DEQ also  
 5 has broad statutory authority to protect, sustain,  
 6 and improve a clean and healthful environment to  
 7 benefit present and future generations but has used  
 8 its authority in a manner that has resulted in  
 9 dangerous levels of GHG emissions." Have I read that  
 10 correctly?  
 11 A. You did read it correctly.  
 12 Q. In your opinion are you the person at DEQ  
 13 who is the most knowledgeable with respect to the  
 14 allegations in paragraph 87?  
 15 A. Yes.  
 16 Q. In your opinion is there anyone else at  
 17 DEQ who has more knowledge than you over these  
 18 allegations?  
 19 A. There -- there could be.  
 20 Q. But not that you're aware of?  
 21 A. Not that I'm aware of.  
 22 Q. Are there any parts of paragraph 87 with  
 23 which you disagree?  
 24 A. Yes.  
 25 Q. Which ones would that be?

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1 A. Most of the paragraph. For example, DEQ  
 2 has a constitutional duty to maintain and improve a  
 3 clean and healthful environment, Article IX,  
 4 subsection 2 puts the responsibility or the duty on  
 5 the legislature to implement laws to maintain and  
 6 improve a clean and healthful environment. And so  
 7 DEQ has a responsibility then to enact or implement  
 8 those laws that the legislature passes in exercising  
 9 its duty. And so I would clarify on that.  
 10 DEQ has broad statutory authority to  
 11 protect, sustain, and improve a clean and healthful  
 12 environment. DEQ has specific statutory authority as  
 13 granted by the Montana legislature. For example, in  
 14 the Clean Air Act in Title 75, it outlines that our  
 15 implementation of the Clean Air Act is implementing  
 16 the clean and healthful aspects of the Constitution;  
 17 for example, in the metal mine, the coal mine, and  
 18 the open cut mine reclamation acts. It also states  
 19 in enacting those permitting requirements we are  
 20 implementing the requirements of a clean and  
 21 healthful environment.  
 22 Q. Okay. Thanks. So would you agree, then,  
 23 that if the legislature exercises its duty to  
 24 maintain and improve a clean and healthful  
 25 environment, as you stated, through legislation --

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1 A. Uh-huh.  
 2 Q. -- then would DEQ have a duty to implement  
 3 that legislation?  
 4 MS. McKENNA: Objection. Calls for a  
 5 legal conclusion.  
 6 THE WITNESS: I would -- I would need to  
 7 review the law that -- that was enacted by the  
 8 legislature.  
 9 BY MS. CHILLCOTT:  
 10 Q. Sure. If you were -- you just mentioned  
 11 the Title V statutes and the reclamation statutes  
 12 which include provisions with regard to the clean and  
 13 healthful environment provision. For those statutes  
 14 do you consider DEQ's implementation of them as  
 15 fulfilling the clean and healthful environment  
 16 provision in the Constitution?  
 17 A. For example, in -- in Title 82, that --  
 18 that clearly establishes and states that  
 19 implementation of those permitting and reclamation  
 20 requirements implement the clean and healthful  
 21 aspects of the Constitution.  
 22 Q. Okay. And we've talked about this  
 23 already, but you're familiar with the term "climate  
 24 change." Correct?  
 25 A. Yes.

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1 **Q. And in your own words, can you describe**  
 2 **what climate change is?**  
 3 **A. Sure. Climate change is basically**  
 4 **long-term changes in the overall climate of -- as a**  
 5 **result of -- of -- of -- of certain emissions.**  
 6 **Q. Which emissions?**  
 7 **A. I'm not a scientist, and it's defined**  
 8 **differently by different scientists.**  
 9 **Q. Okay. Is it your opinion that climate**  
 10 **change is harmful to present generations?**  
 11 **A. I have kind of staked my career on, again,**  
 12 **not having an opinion on -- one way or another on the**  
 13 **impacts of climate change.**  
 14 **Q. So at trial you won't be offering**  
 15 **testimony as far as your opinion goes on the impacts**  
 16 **of climate change?**  
 17 **A. It will depend on how the question is**  
 18 **phrased, but I -- I wouldn't plan to, no.**  
 19 **Q. And we talked a little bit about this this**  
 20 **morning, but can you refresh my memory on how DEQ**  
 21 **works on climate change issues -- or I guess let me**  
 22 **-- strike that.**  
 23 **Let me ask. Does DEQ work on climate**  
 24 **change issues?**  
 25 **A. DEQ does -- is not specifically directed**

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1 **in the statute that I'm aware of to work on climate**  
 2 **change issues.**  
 3 **Q. Does, for example, the energy bureau work**  
 4 **on climate change issues?**  
 5 **A. The energy bureau doesn't have any**  
 6 **authority directly to work on climate change issues.**  
 7 **Q. And when you refer to authority, do you**  
 8 **mean statutory authority?**  
 9 **A. I do, yes.**  
 10 **Q. In your opinion how does climate change**  
 11 **relate to DEQ's efforts to implement legislation to**  
 12 **protect, sustain, and improve a clean and healthful**  
 13 **environment to benefit present and future**  
 14 **generations?**  
 15 **A. I'm not sure I understand the question.**  
 16 **Q. Yeah. That's probably fair. So we**  
 17 **discussed earlier that the legislature passes laws,**  
 18 **some of which are -- include provisions that are**  
 19 **intended to implement a clean and healthful**  
 20 **environment provision in the Constitution; for**  
 21 **example, the Title V permitting and then the**  
 22 **reclamation permitting. How do you think climate**  
 23 **change relates to DEQ's efforts to implement those**  
 24 **laws?**  
 25 **A. I'm still not quite sure. Can you say**

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1 **that question again?**  
 2 **Q. Yeah. Does DEQ consider climate change**  
 3 **when it implements its permitting authority?**  
 4 **A. DEQ doesn't have the authority to consider**  
 5 **climate change in its permitting decisions.**  
 6 **Q. Okay. What opinions do you intend to**  
 7 **offer at trial about the allegations contained in**  
 8 **that paragraph 87?**  
 9 **A. I can't speculate. It will depend on the**  
 10 **questions asked.**  
 11 **Q. Okay. So next would you please turn to**  
 12 **paragraph 88.**  
 13 **A. Okay.**  
 14 **Q. So I'll read that. "Defendant DEQ, as the**  
 15 **primary administrator of Montana's environmental**  
 16 **regulatory, environmental cleanup, environmental**  
 17 **monitoring, pollution prevention, and energy**  
 18 **conservation laws, has implemented its authority in a**  
 19 **manner that has contributed to the constitutional**  
 20 **violations described herein. Defendant DEQ's**  
 21 **actions, pursuant to and in furtherance of the state**  
 22 **energy policy, have contributed to dangerous levels**  
 23 **of GHG emissions."**  
 24 **Did I read that right?**  
 25 **A. Yes, you did.**

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1 **Q. In your opinion are you the person at DEQ**  
 2 **who is the most knowledgeable with respect to the**  
 3 **allegations in paragraph 88?**  
 4 **A. Yes.**  
 5 **Q. In your opinion is there anyone else who**  
 6 **has more knowledge than you?**  
 7 **A. There could be, yes.**  
 8 **Q. But you're not aware?**  
 9 **A. But I'm not aware.**  
 10 **Q. In your opinion what are greenhouse gases?**  
 11 **A. Greenhouse gases are -- are defined**  
 12 **differently by different scientists in terms of which**  
 13 **-- which emitters -- what types of emissions are**  
 14 **included.**  
 15 **Q. And so how would you describe greenhouse**  
 16 **gases based on what you've read from scientists?**  
 17 **A. Sure. I think greenhouse gases include**  
 18 **methane, carbon, black carbon, and -- and perhaps**  
 19 **some other gases that I'm missing.**  
 20 **Q. Okay. Would it include carbon dioxide?**  
 21 **A. Yes.**  
 22 **Q. So in your opinion what are greenhouse gas**  
 23 **emissions?**  
 24 **A. I think I would need to have that term**  
 25 **defined since there is disagreement about what is**

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1 included in a greenhouse gas emission. I would rely  
 2 on a scientist definition.  
 3 **Q. So you would base your opinion on the**  
 4 **science?**  
 5 A. Yes.  
 6 **Q. And can you, if you can, explain to me**  
 7 **what you are referring to in terms of differences of**  
 8 **opinion on what constitutes greenhouse gas emissions?**  
 9 A. Sure. For example, I think there's just  
 10 been discussions about, you know, whether or not you  
 11 include the term black carbon or not or if carbon  
 12 dioxide includes that. And then in terms of when  
 13 you're calculating emissions, there's different ways  
 14 of -- of -- of calculating those emissions. Are they  
 15 -- you know, and -- and outcomes of -- in terms of  
 16 consumption based versus straight emissions,  
 17 emissions with control technologies.  
 18 **Q. Okay. In your opinion what effect do**  
 19 **greenhouse gas emissions have on Montana's**  
 20 **environment?**  
 21 A. I -- I would say I'm not really sure I'm  
 22 qualified to speak to that. I'm not a scientist.  
 23 **Q. Okay. So you don't have an opinion about**  
 24 **the effect of greenhouse gas emissions on Montana's**  
 25 **environment?**

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1 A. I don't have the scientific background to  
 2 give you a factual answer on the impacts.  
 3 **Q. Okay. Do you have an opinion about**  
 4 **whether greenhouse gas emissions are good for**  
 5 **Montana?**  
 6 A. I -- again, I'm not a scientist. I don't  
 7 have an opinion on the impacts of greenhouse gases.  
 8 **Q. Okay. Are you familiar with the term --**  
 9 **and I quote -- dangerous levels of greenhouse gas**  
 10 **emissions?**  
 11 A. I'm familiar. I don't think it's a  
 12 defined term.  
 13 **Q. Yeah. I don't think so either. Do you**  
 14 **have any opinions as to what that term means, though?**  
 15 A. I don't.  
 16 **Q. Can you tell me what parts of paragraph 88**  
 17 **that you disagree with?**  
 18 A. Sure. I would say DEQ is the  
 19 administrator of -- of Montana's environmental  
 20 regulatory cleanup and monitoring and some pollution  
 21 prevention programs as established in statute. In  
 22 terms of energy conservation laws, I don't think  
 23 that's a -- a defined term.  
 24 I would say our energy bureau has some  
 25 responsibilities as outlined, as I've discussed

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1 before, the alternative energy resolving loan  
 2 program, the state building energy conservation  
 3 program or role in some residential energy efficiency  
 4 standards. And I disagree that DEQ has implemented  
 5 its authority in a manner that's contributed to  
 6 constitutional violations. I disagree that DEQ's act  
 7 has a responsibility or has acted to further the  
 8 state energy policy, and then I would also disagree  
 9 that DEQ has contributed to dangerous levels of  
 10 greenhouse gas emissions.  
 11 **Q. Okay. Thanks. And with regard to the**  
 12 **state energy policy, we discussed this morning that**  
 13 **-- and correct me if I'm wrong, but your testimony**  
 14 **was that because the legislation or the statute**  
 15 **90-4-1001 doesn't include the words "DEQ shall" in**  
 16 **terms of implementing the state energy policy, then**  
 17 **DEQ has no responsibility to do so?**  
 18 A. That's correct.  
 19 **Q. As far as energy conservation laws go, I**  
 20 **have a question about whether, for example, the**  
 21 **energy bureau for next legislative session, for**  
 22 **example, has proposed any legislation to address or**  
 23 **to deal with the energy conservation?**  
 24 A. The DEQ energy bureau has not.  
 25 **Q. In your experience with legislative**

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1 **services, did you -- do you recall having DEQ work**  
 2 **with a sponsor to put forward a bill to implement**  
 3 **energy conservation?**  
 4 A. How would you define energy conservation?  
 5 **Q. That's a good question. I think it's a**  
 6 **broad definition. I would say similar to what you**  
 7 **testified -- I guess maybe that's an example, what**  
 8 **you testified to earlier with regard to the types of**  
 9 **legislation you drafted when you were with**  
 10 **legislative services. Were any of the bills related**  
 11 **to kind of energy conservation or greenhouse gas**  
 12 **emissions agency bills?**  
 13 A. I don't believe they were agency bills. I  
 14 would need to review the -- the list of proponents.  
 15 I wouldn't be able to speak to that. I can't  
 16 remember.  
 17 **Q. That's fair. Yeah. I was just curious.**  
 18 **And so other than what we've just now**  
 19 **discussed with regard to paragraph 88, is there**  
 20 **anything else that you expect to testify to about**  
 21 **that paragraph?**  
 22 A. It will depend on how the questions are  
 23 posed.  
 24 **Q. Okay. Thank you. Let's turn to paragraph**  
 25 **89.**

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1 A. Okay.

2 Q. So I'll read that. "Defendant DEQ is

3 mandated to ensure that all projects and activities

4 for which it issues permits, licenses,

5 authorizations, or other approvals comply with

6 Montana's environmental laws and rules, including the

7 MEPA, to protect the quality of Montana's natural

8 environment. DEQ -- sorry. Defendant DEQ is

9 responsible for enforcing compliance with its

10 permitting requirements."

11 Did I read that right?

12 A. Yes.

13 Q. Same question, in your opinion are you the

14 person at DEQ who is most knowledgeable about the

15 allegations in this paragraph 89?

16 A. Yes. There -- there could be someone who

17 I'm not aware of --

18 Q. Got it.

19 A. -- that is more qualified.

20 Q. Thank you. You anticipated my question.

21 Do you agree with the allegations in

22 paragraph 89?

23 A. I would kind of take that in -- in

24 different pieces. DEQ is required to ensure that

25 projects and activities for which it issues permits,

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1 licenses, authorizations, and other approvals comply

2 with specific statutes and -- and laws and rules.

3 MEPA is procedural. It's not substantive.

4 So, for example, a MEPA analysis can't condition the

5 outcome of a permit. And yes. As -- as much as the

6 laws provide for, we do protect the quality of

7 Montana's natural -- natural environment. And DEQ,

8 yes, is responsible for enforcing compliance with

9 permitting requirements as outlined in statute and

10 rule.

11 Q. Okay. So it sounds like maybe the only

12 thing you don't necessarily agree with is with

13 regards to MEPA because it is a procedural statute,

14 not substantive?

15 A. Yes.

16 MS. McKENNA: Objection. That misstates

17 her testimony.

18 THE WITNESS: Yeah. That --

19 BY MS. CHILLCOTT:

20 Q. Sorry. Could you --

21 A. Sure.

22 Q. -- explain to me what exactly you would

23 disagree with in that paragraph --

24 A. Sure.

25 Q. -- 89.

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1 MS. McKENNA: Objection. Asked and

2 answered.

3 THE WITNESS: DEQ in -- in -- DEQ is -- is

4 required and does implement all the laws it is

5 required to implement. And insofar as those provide

6 for the permitting or authorization and licenses of

7 projects, we follow those and comply with Montana's

8 environmental laws and rules.

9 I would exclude MEPA because MEPA is

10 procedural and a separate action, but that -- that

11 the agency takes in terms of a "look before you leap"

12 document but, again, procedural in nature and that

13 the permitting requirements that are established in

14 the statute provide for the protection of Montana's

15 natural environment, and that DEQ does have a

16 responsibility as outlined in statute for enforcing

17 compliance through violations and enforcement

18 processes.

19 BY MS. CHILLCOTT:

20 Q. Thanks. And sorry if I mischaracterized

21 --

22 A. Okay.

23 Q. -- what you said before.

24 With regard to MEPA, DEQ is required to

25 follow MEPA, though. Right?

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1 A. For any state action that is taken, DEQ,

2 as well as any state agency, is required to do a MEPA

3 analysis.

4 Q. Okay. And there are -- DEQ has its -- has

5 administrative rules that dictate how it implements

6 MEPA?

7 A. Yes.

8 Q. Correct?

9 Other than what we just talked about, do

10 you expect to testify regarding any other issues

11 about paragraph 89?

12 A. It will depend on how the questions are

13 posed.

14 Q. Sure. All right. Turning to paragraph

15 90.

16 A. Yes.

17 Q. Are you doing okay?

18 A. Yeah.

19 Q. Okay.

20 MS. McKENNA: Actually, why don't we take

21 a break. It's 11:30 and we've been going about an

22 hour.

23 MS. CHILLCOTT: Yeah. Sure. Let's go off

24 the record.

25 THE VIDEOGRAPHER: We're going off the



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1 record. The time is 11:29 a.m.  
 2 (Whereupon, a break was then  
 3 taken.)  
 4 **THE VIDEOGRAPHER:** We are back on the  
 5 record. The time is 11:43 a.m.  
 6 **BY MS. CHILLCOTT:**  
 7 **Q. All right. Sonja, I'm going to pass you**  
 8 **what has been marked as Exhibit Number 130.**  
 9 **A. Okay.**  
 10 (Whereupon, Exhibit 130 was  
 11 marked for identification.)  
 12 **BY MS. CHILLCOTT:**  
 13 **Q. Can you please identify the document I**  
 14 **just handed to you?**  
 15 **A. Excuse me. It says it's the CHS Laurel**  
 16 **Refinery permit number MTHWP-14-02 facility fact**  
 17 **sheet.**  
 18 **Q. And that permit applies to the Laurel**  
 19 **Refinery. Correct?**  
 20 **A. Correct.**  
 21 **Q. Do you know whether the person who created**  
 22 **this document has knowledge of the facility being**  
 23 **permitted, the Laurel Refinery?**  
 24 **A. I don't know. You would need to speak to**  
 25 **Becky Holmes.**

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1 **Q. Okay. Were you involved at all in the**  
 2 **creation of this document?**  
 3 **A. No, I was not.**  
 4 **Q. From what you can tell, was this document**  
 5 **made in the course of DEQ's regularly conducted**  
 6 **business activity?**  
 7 **A. I don't know.**  
 8 **Q. Have you seen these kinds of fact sheets**  
 9 **before?**  
 10 **A. I have not.**  
 11 **Q. Really?**  
 12 **A. Yeah.**  
 13 **Q. Do you know how many oil refineries are**  
 14 **operating in Montana?**  
 15 **A. I don't.**  
 16 **Q. Do you know if that document there is**  
 17 **publicly available?**  
 18 **A. I don't.**  
 19 **Q. So on page 1 of this document, under the**  
 20 **subheading regulatory background, it says the -- a**  
 21 **hazardous waste permit was issued to CHS in 1991 for**  
 22 **the Laurel Refinery and then reissued in 2002 and**  
 23 **2014. Correct?**  
 24 **A. That's what it states, yes.**  
 25 **Q. Under that same section it says hazardous**

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1 **waste permits are effective for up to ten years and**  
 2 **may be reissued. Correct?**  
 3 **A. That's correct.**  
 4 **Q. Is DEQ legally obligated to issue or**  
 5 **reissue hazardous waste permits?**  
 6 **A. I can't speak to the issuance of hazardous**  
 7 **waste permits. That's outside of the air, energy,**  
 8 **and mining division.**  
 9 **Q. So you would not offer -- be able to offer**  
 10 **testimony on hazardous waste permits?**  
 11 **A. I would not.**  
 12 **Q. Does DEQ issue other kinds of permits for**  
 13 **oil refineries?**  
 14 **A. I am only aware of the permits issued for**  
 15 **air quality permits. That's the only responsibility**  
 16 **I have in air, energy, and mining.**  
 17 **Q. Based on your background in -- that we**  
 18 **discussed earlier, are you aware of any other kind of**  
 19 **permits that are issued by DEQ for oil refineries?**  
 20 **A. I think it would refer -- it would depend**  
 21 **on the specific site and what was happening at the**  
 22 **site.**  
 23 **Q. For the Laurel Refinery are you aware of**  
 24 **what types of permits DEQ issues?**  
 25 **A. I'm not.**

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1 **Q. Okay. I'm going to pass you what's been**  
 2 **marked as Exhibit 131.**  
 3 **A. Okay.**  
 4 (Whereupon, Exhibit 131 was  
 5 marked for identification.)  
 6 **BY MS. CHILLCOTT:**  
 7 **Q. Can you please identify that document?**  
 8 **A. This is the Montana Department of**  
 9 **Environmental Quality authorization to discharge**  
 10 **under the Montana pollution discharge elimination**  
 11 **system.**  
 12 **Q. And this also applies to the Laurel**  
 13 **Refinery. Correct?**  
 14 **A. That's what it states. It's for the**  
 15 **Laurel Refinery, yes.**  
 16 **Q. Have you ever reviewed this document?**  
 17 **A. I have not.**  
 18 **Q. And I take it because you don't work in**  
 19 **the water quality bureau, you wouldn't have an**  
 20 **opinion on whether these types of permits are the**  
 21 **types DEQ normally issues for oil refineries?**  
 22 **A. I wouldn't be able to speak to the water**  
 23 **quality permits, no.**  
 24 **Q. Okay. No problem. So if we could go back**  
 25 **to the complaint.**

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1 A. Sure.

2 Q. And we're going to go to paragraph 90 --

3 A. Okay.

4 Q. -- which we discussed earlier this morning

5 in your 30(b)(6) deposition. Correct?

6 A. Yes.

7 Q. So I'll read it again. "Defendant DEQ

8 issues air quality permits to facilities that emit

9 greenhouse gas emissions, including but not limited

10 to coal mining operations, energy power plants, and

11 oil and gas refineries. Through its Board Of

12 Environmental Review, which adopts rules and

13 determines appeals under regulatory statutes,

14 defendant DEQ has broad statutory authority to set

15 and enforce a quantitative limit of emissions as

16 necessary to prevent or control air pollution."

17 Have I read that correctly?

18 A. You have read this correctly.

19 Q. And we discussed this paragraph in your

20 Rule 30(b)(6) deposition this morning. Correct?

21 A. Yes, we did.

22 Q. And we also discussed Senate Bill 233

23 which was marked as Exhibit 122. Correct?

24 A. Yes.

25 Q. And we talked about how Senate Bill 233

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1 removed rulemaking authority from the Board of

2 Environmental Review and transferred that to DEQ.

3 Correct?

4 A. Yes.

5 Q. Okay. In your opinion are you the person

6 at DEQ who is most knowledgeable about the

7 allegations in paragraph 90?

8 A. Yes. Although there may someone who is

9 more qualified that I'm not aware of.

10 Q. Got it. And this morning we talked about

11 this paragraph, and I believe you agreed that DEQ

12 issues air quality permits for coal mining

13 operations?

14 A. DEQ issues air quality permits for coal

15 mining operations. However, they do not contemplate

16 greenhouse gas emissions. They are based largely on

17 fugitive dust and other regulated pollutants.

18 Q. Okay. And do you agree that DEQ issues

19 air quality permits for energy power plants?

20 A. DEQ does issue air quality permits for

21 certain energy power plants.

22 Q. Right. We talked about that this morning

23 too. Correct?

24 A. Yes. Yes. For example, the natural --

25 the Laurel Generating Station.

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1 Q. Right. And then do you agree that

2 defendant DEQ issues air quality permits for oil and

3 gas refineries?

4 A. Yes. DEQ issues air quality permits for

5 oil and gas refineries.

6 Q. And you testified that DEQ does not have

7 the authority to analyze greenhouse gas emissions

8 when issuing those air quality permits. Correct?

9 A. That's correct.

10 Q. Would you say that DEQ is aware that

11 greenhouse gas emissions result from these

12 operations?

13 A. Yes. They're -- through some permitting

14 actions -- and Mr. Klemp will be able to speak to

15 this in more detail. There is some requirements out

16 there for inventorying and -- and -- and tracking

17 greenhouse gases that -- that occur at the federal

18 level.

19 Q. So those requirements come from the

20 federal government and are requirements that DEQ has?

21 A. They are not. They're just requirements

22 that DEQ is aware of.

23 Q. Okay. And to your knowledge, are those

24 requirements that would be the responsibility of the

25 permit holder to fulfill?

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1 A. Yes. That's correct.

2 Q. Okay. So we talked this morning about

3 your role as division administrator with regard to

4 DEQ's issuance of permits -- air quality permits.

5 And I believe you testified that your role was more

6 if there were issues with time lines and, you know,

7 things like that, that you would help resolve an

8 issue. Is that correct?

9 A. That is correct.

10 Q. And other than that, you don't really have

11 a role in the permitting part?

12 A. I do not.

13 Q. Other than what we discussed this morning

14 about Senate Bill 233 and how it kind of changes the

15 BER role, are there any other parts of paragraph 90

16 that you disagree with and also other than what we

17 discussed in your Rule 30(b)(6) deposition?

18 A. Yes. I would -- I would rely again on the

19 testimony that I provided in detail previously

20 outlining the multiple things that I disagree with in

21 paragraph 90.

22 Q. Okay. Do you have any additional

23 knowledge or opinions regarding the allegations in

24 paragraph 90 that you intend to offer at trial that

25 we haven't discussed?

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1 A. I may. It depends on the questions that  
 2 are asked.  
 3 **Q. But you haven't been asked to provide any  
 4 other opinions at this point?**  
 5 A. I have not been asked by you today to  
 6 provide any additional opinions.  
 7 **Q. Good point. Have you been asked by DEQ?**  
 8 A. I have not.  
 9 **Q. I'm going to pass you what's been marked  
 10 as Exhibit 132.**  
 11 A. Okay.  
 12 (Whereupon, Exhibit 132 was  
 13 marked for identification.)  
 14 **BY MS. CHILLCOTT:**  
 15 **Q. And can you please identify that document?**  
 16 A. Sure. This is Montana air quality permit  
 17 number 1821-32, issued on December 31st, 2013, by the  
 18 DEQ for the CHS petroleum refinery.  
 19 **Q. Is that the same as the Laurel Refinery  
 20 that we talked about earlier?**  
 21 A. Yes. But I would want to compare the  
 22 dates. This is the Montana air quality permit versus  
 23 -- I believe the earlier document was the Title V  
 24 permit.  
 25 **Q. Oh, sure. Yeah. I guess to clarify, is**

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1 **it the same facility?**  
 2 A. It is the same facility, yes.  
 3 **Q. Okay. And do you know if the person who  
 4 created this document has knowledge of the Laurel  
 5 Refinery?**  
 6 A. Yes. The person who -- the permitter has  
 7 knowledge of that facility.  
 8 **Q. Were you involved in this document  
 9 creation at all?**  
 10 A. I was not.  
 11 **Q. You think it was before your time?**  
 12 A. It was, yes.  
 13 **Q. Would you agree that this document was  
 14 made in the course of DEQ's regularly conducted  
 15 business activity?**  
 16 A. Yes.  
 17 **Q. And are these the kinds of air quality  
 18 permits DEQ issues for oil refineries?**  
 19 A. This is the type of air quality permit  
 20 that -- that we are -- that we do provide for  
 21 petroleum refineries. Every facility is unique in  
 22 terms of what processes occur and what emissions  
 23 occur.  
 24 **Q. Okay. And is this document publicly  
 25 available?**

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1 A. Yes.  
 2 **Q. Where would the public be able to get that  
 3 document?**  
 4 A. I would need to refer to the website, but  
 5 I believe all our permitting decisions are available  
 6 on the website.  
 7 **Q. Okay. And do you have a reason to believe  
 8 that this document is not a true and correct copy of  
 9 this permit?**  
 10 A. I do not. I -- I would -- I would want to  
 11 review it -- review it in detail and confirm the  
 12 dates, but it -- it -- it appears to be the  
 13 legitimate document.  
 14 **Q. Thanks.**  
 15 **MS. McKENNA:** So I am going to put an  
 16 objection on the record because Ms. Nowakowski  
 17 testified that she has been an employee of DEQ for a  
 18 year and a half, and this document was started well  
 19 -- like more than nine years -- or eight years since  
 20 -- you know, before she started working. So yeah. I  
 21 don't believe the foundation has been established  
 22 through this witness.  
 23 **MS. CHILLCOTT:** Sure. That's fair. And  
 24 more I'd just like to talk to you about how these  
 25 permits are issued. So no problem.

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1 **BY MS. CHILLCOTT:**  
 2 **Q. And I think we talked about this earlier,  
 3 but could the Laurel Refinery operate lawfully  
 4 without an air quality permit from DEQ?**  
 5 A. It could not operate lawfully without a  
 6 permit.  
 7 **Q. Do you know why like in this example the  
 8 Laurel Refinery needs an air quality permit?**  
 9 A. Yes. Because it emits regulated  
 10 pollutants and DEQ is responsible for analyzing those  
 11 emissions, setting standards, setting requirements,  
 12 and ensure that the emissions stay at those regulated  
 13 and permitted levels.  
 14 **Q. Okay. And which pollutants would those be  
 15 that were regulated?**  
 16 A. They're the -- I'm not going to be able to  
 17 say it correctly -- the SOX, the NOX, the VOCs. I  
 18 believe there are six of them. Mr. Klemp would be  
 19 able to list them by memory for you tomorrow.  
 20 **Q. Okay. Great. And in general, whenever  
 21 air quality permits are issued, are there any  
 22 conditions in the permit with respect to carbon  
 23 dioxide emissions?**  
 24 A. I am not aware in this specific permit. I  
 25 would need to -- to know the specifics of an

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1 application and of the permit analysis.  
 2 **Q. Have you ever seen an air quality permit**  
 3 **issued by DEQ that has conditions on carbon dioxide**  
 4 **emissions?**  
 5 A. In the last year and a half as division  
 6 administrator, I have not.  
 7 **Q. Are you aware of any that exist?**  
 8 A. I'm not aware of any.  
 9 (Whereupon, Exhibit 133 was  
 10 marked for identification.)  
 11 **BY MS. CHILLCOTT:**  
 12 **Q. I'll hand you a document that is marked**  
 13 **Exhibit 133.**  
 14 A. Okay.  
 15 **Q. Does this document look familiar to you?**  
 16 A. It looks like this was pulled from the DEQ  
 17 website.  
 18 **Q. And have you reviewed that -- or are you**  
 19 **familiar with that website or the web page?**  
 20 A. I am familiar with the web page. I would  
 21 want to double-check for updates. This is dated  
 22 May 26, 2022, and I -- I would want to review for  
 23 updates.  
 24 **Q. Sure. And that's fine. This -- what you**  
 25 **have in front of you now, it looks like it's a list**

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1 of air quality permits DQ -- DEQ has issued as of  
 2 May 21st, 2022. Right?  
 3 A. Yes.  
 4 **Q. And this is a document that someone can**  
 5 **just go on the Internet on the web page and -- and**  
 6 **get?**  
 7 A. Yes.  
 8 **Q. And it's updated when new permits are**  
 9 **issued?**  
 10 A. Yes.  
 11 **Q. Okay.**  
 12 **MS. McKENNA:** Well, objection as to this  
 13 document because it may not exist currently. The  
 14 website is updated, then it would not be this  
 15 document.  
 16 **MS. CHILLCOTT:** That makes sense, yep.  
 17 Sure.  
 18 **BY MS. CHILLCOTT:**  
 19 **Q. So as far as the permits go on the list in**  
 20 **front of you or the list that's maintained --**  
 21 **A. Uh-huh.**  
 22 **Q. -- and kept on this web page, do any of**  
 23 **those permits authorize activities related to fossil**  
 24 **fuels?**  
 25 A. I don't know. I'd need to review each

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1 specific permit application.  
 2 **Q. Okay. Do you think the first one on the**  
 3 **list there that's dated May 21st, 2022, that refers**  
 4 **to Talen Montana, LLC, to the Colstrip Steam Electric**  
 5 **Station would be a fossil fuel activity?**  
 6 A. I would need to review the permit  
 7 application. It could be a change in a bag house  
 8 operation. I don't know what the application was  
 9 for.  
 10 **Q. Okay. That's fair. Do you know what the**  
 11 **Colstrip Steam Electric Station is?**  
 12 A. Yes.  
 13 **Q. What is that?**  
 14 A. It's a coal-fired power plant.  
 15 **Q. Okay. Do you know -- just based on what**  
 16 **you told me before, I'm going to assume the answer is**  
 17 **no, but I'll ask. For these permits that are issued**  
 18 **here and in general the permits that are listed on**  
 19 **this web page, were they issued after an evaluation**  
 20 **of greenhouse gas emissions that would result from a**  
 21 **project?**  
 22 A. I would need to review each specific  
 23 application.  
 24 **Q. Are there any permits that review**  
 25 **greenhouse gas emissions on the project?**

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1 A. I don't know. It would depend on the  
 2 application.  
 3 **Q. Okay. So there are applications in which**  
 4 **DEQ analyzes greenhouse gas emissions?**  
 5 A. I don't know. It would depend on the  
 6 specific application in the ask.  
 7 **Q. In your experience as the air -- as the**  
 8 **division administrator, are you aware of any rules or**  
 9 **statutes that require DNRC to evaluate greenhouse gas**  
 10 **emissions?**  
 11 **MS. McKENNA:** Objection. DEQ is the  
 12 witness here, not DNRC.  
 13 **MS. CHILLCOTT:** Did I say DNRC? Sorry.  
 14 That is a slip. And actually, Ms. Nowakowski is the  
 15 witness in this deposition not DNRC or DEQ.  
 16 **THE WITNESS:** Correct.  
 17 **BY MS. CHILLCOTT:**  
 18 **Q. And I'll repeat the question. Are there**  
 19 **any rules or statutes that require DEQ to evaluate**  
 20 **greenhouse gas emissions before issuing air quality**  
 21 **permits?**  
 22 A. No.  
 23 (Whereupon, Exhibit 134 was  
 24 marked for identification.)  
 25 **BY MS. CHILLCOTT:**

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1 **Q. I'm handing you an exhibit marked 134.**  
 2 A. Okay.  
 3 **Q. Can you identify that document?**  
 4 A. Yes. This is a press release that DEQ  
 5 issued the air quality permit for the proposed Laurel  
 6 Generating Station in Yellowstone County, dated  
 7 August 2021.  
 8 **Q. Have you seen this document before?**  
 9 A. Yes, I have.  
 10 **Q. Did you review this document before it**  
 11 **went out?**  
 12 A. Yes, I did.  
 13 **Q. Is Mariah Dabbin an employee of DEQ?**  
 14 A. Yes, she is.  
 15 **Q. Was this press release made in the course**  
 16 **of DEQ's regularly conducted business activities?**  
 17 A. Yes.  
 18 **Q. Can you please read the first paragraph in**  
 19 **the press release?**  
 20 A. Sure. "Today the Montana Department of  
 21 Environmental Quality released the air quality permit  
 22 for NorthWestern Energy's proposed generating station  
 23 in Laurel, Montana, located in Yellowstone County.  
 24 The air quality permit analyzed the potential  
 25 emissions from 18 9.17 megawatt electrical

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1 reciprocating internal combustion engines, an  
 2 emergency backup diesel-fired engine generator set, a  
 3 fire pump engine, natural gas line heater, and road  
 4 dust at the proposed site to ensure the facility  
 5 complies with the Montana -- the Clean Air Act of  
 6 Montana."  
 7 **Q. Thank you. So this permit was issued**  
 8 **during your time at DEQ?**  
 9 A. Yes, it was.  
 10 **Q. Do you recall if you reviewed the permit**  
 11 **before it was issued?**  
 12 A. I did not review the permit before it was  
 13 issued.  
 14 **Q. Why -- and why did this project need an**  
 15 **air quality permit?**  
 16 A. Because it emits regulated pollutants as  
 17 listed in the second paragraph of this press release.  
 18 **Q. And in issuing this permit, did DEQ**  
 19 **analyze how much greenhouse gas emissions would**  
 20 **result from the project?**  
 21 A. No, they did not.  
 22 **Q. Does this air quality permit that this**  
 23 **press release refers to restrict the amount of**  
 24 **greenhouse gas emissions from the project?**  
 25 A. It does not, no.

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1 **Q. All right. You're going to think this is**  
 2 **crazy, but this is the next two exhibits. So I'm**  
 3 **going to mark Exhibit Number 135 -- 135 and Exhibit**  
 4 **Number 136. Sorry in advance for the bulk.**  
 5 **(Whereupon, Exhibit 135 and**  
 6 **Exhibit 136 were marked for**  
 7 **identification.)**  
 8 **BY MS. CHILLCOTT:**  
 9 **Q. And so could you just open the binder to**  
 10 **the first page.**  
 11 A. Uh-huh.  
 12 **Q. And can you identify the document I just**  
 13 **handed to you?**  
 14 A. Sure. This is the final environmental  
 15 impact statement for the proposed Highwood Generating  
 16 Station prepared by DEQ in consultation with the  
 17 USDA.  
 18 **Q. Okay. And I understand this EIS was**  
 19 **prepared prior to your time at DEQ?**  
 20 A. Yes.  
 21 **Q. Do you know -- well, one I guess are you**  
 22 **familiar with this project, the Highwood Generating**  
 23 **Station?**  
 24 A. I'm not familiar with it in my capacity at  
 25 DEQ.

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1 **Q. Are you familiar with it in your capacity**  
 2 **at your former capacity with legislative services?**  
 3 A. I am familiar with it in my -- under that  
 4 capacity, yes.  
 5 **Q. In what way?**  
 6 A. It was the subject of -- of several  
 7 committee meetings. I believe there were  
 8 presentations given to the energy and  
 9 telecommunications interim committee of the  
 10 legislature on development of this project.  
 11 **Q. Okay. It was kind of a big deal. Right?**  
 12 A. It -- it was a significant project  
 13 proposal. That's why it triggered an EIS.  
 14 **Q. Okay. Do you know as part of the MEPA**  
 15 **process for this -- for generating this FEIS, did DEQ**  
 16 **ever evaluate the greenhouse gas emissions that**  
 17 **result from the Highwood Generating Station?**  
 18 A. I don't know.  
 19 **Q. You don't recall that from your time at**  
 20 **legislative services?**  
 21 A. I don't.  
 22 **Q. Can you please turn -- and that's tabbed**  
 23 **-- it's the second tab, and it's page 4-53.**  
 24 A. Okay.  
 25 **Q. Are you there?**

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1 A. Yep.  
 2 Q. Okay. And I will just read this. Second  
 3 to the last paragraph from the bottom: "The  
 4 potential facility-wide CO2 emission rate of the HGS  
 5 is 2.1 million tons or 1.9 million metric tons per  
 6 year. In addition, the Highwood Generating Station,  
 7 or HGS, would release methane and nitrous oxide, two  
 8 other greenhouse gases. Per molecule, both of these  
 9 gases have a higher global warming potential than  
 10 carbon dioxide and their emissions are often  
 11 quantified in terms of CO2 equivalents. The  
 12 potential facility-wide, CO2 equivalents emission  
 13 rate of these gases is .67 million tons or .61  
 14 million metric tons per year. Total greenhouse gas  
 15 emissions from the HGS are 2.8 million tons or 2.5  
 16 metric tons per year. HGS carbon dioxide emissions  
 17 would constitute .033 percent of U.S. annual  
 18 emissions of 5,843 million metric tons and .007  
 19 percent of global year -- global yearly emissions of  
 20 26,000 million metrics tons in 2002. As such, HGS's  
 21 emissions would represent a very small but tangible,  
 22 incremental contribution to this cumulative global  
 23 issue. At the present time the U.S. emissions of  
 24 greenhouse gases from all sources are unregulated and  
 25 uncapped since the U.S. is not a signatory to the

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1 Kyoto Protocol and not bound by its mandatory  
 2 national reductions."  
 3 Do you agree with that conclusion in this  
 4 FEIS that HGS's emissions would represent a small but  
 5 tangible, incremental contribution to this cumulative  
 6 global issue?  
 7 A. I can't speak to that. I'm not a  
 8 scientist. I don't have knowledge of how this was  
 9 prepared.  
 10 Q. So you don't have an opinion then?  
 11 A. I don't.  
 12 Q. Do you know if it's still the view of DEQ  
 13 that U.S. emissions of GHGs from all sources are  
 14 unregulated and uncapped?  
 15 A. Since this was prepared in 2007, I would  
 16 need to review all the various changes in -- in  
 17 federal and state statute. This was prepared as --  
 18 in conjunction with a federal partner, so I believe  
 19 it's a -- under NEPA, the National Environmental  
 20 Policy Act. The Montana Environmental Policy Act has  
 21 also been amended since 2007.  
 22 Q. Okay. Are you familiar with the Paris  
 23 agreement?  
 24 A. I'm not.  
 25 Q. So then you are not familiar with the

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1 United States' nationally determined contribution?  
 2 A. I'm not.  
 3 Q. Okay. Is it your opinion that small  
 4 amounts of greenhouse gas emissions do not make the  
 5 climate change problem worse?  
 6 A. Again, I'm not a scientist. I can't speak  
 7 to the impacts of greenhouse gas emissions.  
 8 Q. Do you know in this FEIS if DEQ ever  
 9 analyzed how the operation of the Highwood Generating  
 10 Station would affect human health?  
 11 A. I don't know.  
 12 Q. Do you know if DEQ evaluated the  
 13 greenhouse gas emissions from this project other than  
 14 what's located in this document?  
 15 A. In the actual permit, I -- I don't know.  
 16 I can't speak to --  
 17 Q. Sure.  
 18 A. -- 2007 permits.  
 19 Q. Okay. So if you could turn to the first  
 20 tab in the document.  
 21 A. Okay.  
 22 Q. So that's that exhibit -- or page -- I'm  
 23 sorry -- 3-25.  
 24 A. Yes.  
 25 Q. And I'll read the column on the right.

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1 There's a heading carbon dioxide. And it says  
 2 "Burning fossil fuels releases carbon that has been  
 3 stored underground for tens of millions of years into  
 4 the atmosphere in the form of carbon dioxide, the  
 5 dominant gas contributing to an enhanced greenhouse  
 6 effect. Equilibrium in the natural carbon cycle is  
 7 disrupted when large amounts of carbon dioxide are  
 8 released to the atmosphere by human activities such  
 9 as burning of fossil fuels." Did I read that  
 10 correctly?  
 11 A. You did, yes.  
 12 Q. Would you again then that this document  
 13 shows that DEQ had knowledge of the reality and the  
 14 existence of climate change when this FEIS was  
 15 published?  
 16 MS. McKENNA: Objection. Calls for  
 17 speculation. Witness has already testified that she  
 18 did not work for DEQ at the time this document was  
 19 prepared.  
 20 BY MS. CHILLCOTT:  
 21 Q. Do you have an opinion based on reading  
 22 that section on carbon dioxide whether the document  
 23 authors had knowledge of the existence of climate  
 24 change when this document was written?  
 25 MS. McKENNA: Further objection. The

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1 document speaks for itself.  
 2 **THE WITNESS:** I can't speak to what people  
 3 thought in 2007.  
 4 **BY MS. CHILLCOTT:**  
 5 **Q.** Okay. I'm done with this binder, and you  
 6 can just put it on the floor.  
 7 **A.** Okay.  
 8 **Q.** I'm going to hand you a document now that  
 9 has been marked as Exhibit 137.  
 10 **A.** Okay.  
 11 (Whereupon, Exhibit 137 was  
 12 marked for identification.)  
 13 **BY MS. CHILLCOTT:**  
 14 **Q.** And can you identify that document?  
 15 **A.** Yes. This is the final environmental  
 16 impact statement for the Roundup power project, dated  
 17 January 2003.  
 18 **Q.** And with the understanding that you were  
 19 not at DEQ during this time, do you have any  
 20 knowledge about whether DEQ evaluated or calculated  
 21 the greenhouse gas emissions from the Roundup power  
 22 project?  
 23 **A.** I don't know.  
 24 **Q.** Do you have any knowledge of that from  
 25 your time at legislative services?

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1 **A.** This was prior to my time at legislative  
 2 services. I was a newspaper reporter at the time,  
 3 and I may have written stories about this proposal.  
 4 I don't remember.  
 5 **Q.** Okay. When you were a newspaper reporter,  
 6 did you write stories on power projects?  
 7 **A.** I did, yes.  
 8 **Q.** Do you recall which ones?  
 9 **A.** I believe I wrote -- I'd -- I'd need to  
 10 refer back. It was a long time ago. I -- I do think  
 11 I wrote something on the Highwood Generating Station.  
 12 **Q.** Okay. Do you remember -- you probably  
 13 don't remember what it was about?  
 14 **A.** I don't, no.  
 15 **Q.** What role do you play in DEQ's rulemaking  
 16 process?  
 17 **A.** The role I play in DEQ rulemaking process  
 18 is -- is largely advisory. I do review rules as they  
 19 move through the process and provide input as -- as  
 20 requested from -- from the scientists who are writing  
 21 them.  
 22 **Q.** Do you recall any specific rulemakings  
 23 that you participated in since your time at DEQ?  
 24 **A.** I participated in the development of open  
 25 cut rulemaking that proceeded in the last year.

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1 **Q.** Uh-huh. Anything else?  
 2 **A.** That's all I can think of, yes.  
 3 **Q.** Do you play a role at the Board of  
 4 Environmental Review when there's an appeal of a  
 5 permit?  
 6 **A.** I have not currently in the last year and  
 7 a half played a role.  
 8 **Q.** Do you anticipate playing a role in the  
 9 future if one of like say an air quality permit is  
 10 appealed?  
 11 **A.** I potentially could.  
 12 **Q.** So you testified to this already. But you  
 13 -- with regard, again, to paragraph 90 of the  
 14 complaint, you testified that you do not agree that  
 15 defendant DEQ has broad statutory authority to set a  
 16 quantitative limit for greenhouse gas emissions?  
 17 **MS. McKENNA:** Objection. Asked and  
 18 answered at least three times.  
 19 **BY MS. CHILLCOTT:**  
 20 **Q.** And you discussed that DEQ does have  
 21 authority to regulate air pollution.  
 22 **MS. McKENNA:** Objection. Asked and  
 23 answered.  
 24 **THE WITNESS:** DEQ does have authority to  
 25 regulate regulated air pollutants.

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1 **BY MS. CHILLCOTT:**  
 2 **Q.** Do you know if the BER, or Board of  
 3 Environmental Review, has ever set a quantitative  
 4 limit for greenhouse gas emissions?  
 5 **A.** In 2010 the BER, in consultation with the  
 6 DEQ, did prepare and advance a rulemaking to  
 7 establish some greenhouse gas emission limits and  
 8 tracking requirements.  
 9 **Q.** What was the result of that rulemaking?  
 10 **A.** When that rulemaking was presented to the  
 11 environmental quality council in January of 2010, the  
 12 environmental quality council objected to the  
 13 rulemaking through the MAPA process and put a pause  
 14 on that.  
 15 **Q.** Did the rule ever become effective?  
 16 **A.** No, it did not.  
 17 **THE REPORTER:** Did you say MAPA?  
 18 **THE WITNESS:** MAPA, the Montana  
 19 Administrative Procedures Act.  
 20 **THE REPORTER:** Thank you.  
 21 **BY MS. CHILLCOTT:**  
 22 **Q.** Were you at legislative services when that  
 23 was going on with the EQC and the proposed rule?  
 24 **A.** Yes, I was.  
 25 **Q.** Did you advise or -- did you advise the

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1 EQC on this rule during that time?  
 2 A. I did not advise them, no.  
 3 Q. Did you prepare any reports or analysis  
 4 about that proposed rule for EQC?  
 5 A. I don't recall that I did. I believe that  
 6 was all handled by the attorney, Todd Everetts.  
 7 Q. Do you recall what the objections were  
 8 from EQC to the proposed rule?  
 9 A. I don't recall.  
 10 Q. During your time at DEQ, has that  
 11 rulemaking effort ever been restarted?  
 12 A. It has not, because in most sessions since  
 13 that legislation has been proposed to try to  
 14 explicitly grant DEQ the authority to move forward on  
 15 that and the legislation has failed.  
 16 Q. To your knowledge, when legislation that  
 17 you just described is heard at the legislature, is  
 18 DEQ a proponent of that legislation?  
 19 A. I don't know.  
 20 Q. Are you aware of any legislation to give  
 21 DEQ explicit authority over regulating greenhouse gas  
 22 emissions that is proposed for this next session?  
 23 A. I don't know.  
 24 Q. Do you know if DEQ has a position on  
 25 legislation like that if it exists?

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1 A. I do not know.  
 2 Q. Okay. If you could turn to paragraph 92  
 3 of the complaint.  
 4 A. Okay.  
 5 Q. I'll read that. Paragraph 92 says  
 6 "Defendant DEQ has permitted strip and underground  
 7 coal mining operations and mining and prospecting  
 8 activities that are causing dangerous amounts of GHG  
 9 emissions. DEQ has issued permits for surface coal  
 10 mining in Montana on state and federal land.  
 11 Defendant DEQ actively works with coal mining  
 12 companies in Montana to implement the state energy  
 13 policy. In approving such activities, DEQ has  
 14 repeatedly refused to disclose the significant harms  
 15 to human health and the environment from its  
 16 decision." Did I read that correctly?  
 17 A. Yes.  
 18 Q. And same questions, are you in your  
 19 opinion the person at DEQ who is most knowledgeable  
 20 of that paragraph 92?  
 21 A. Yes. But there may be someone who is more  
 22 qualified.  
 23 Q. Thanks. But you're not aware?  
 24 A. That I'm not aware of.  
 25 Q. Are there areas in this paragraph -- in

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1 the allegations in this paragraph that you are not  
 2 knowledgeable about?  
 3 A. No. I believe I'm knowledgeable of this  
 4 paragraph.  
 5 Q. Okay. Do you agree that DEQ has permitted  
 6 strip and underground coal mining operations?  
 7 A. Yes.  
 8 Q. Do you agree that DEQ has permitted strip  
 9 and underground mining operations?  
 10 A. Yes.  
 11 Q. Do you agree that DEQ has permitted  
 12 prospecting activities?  
 13 A. I would need you to define prospecting  
 14 activities.  
 15 Q. Yeah. Good question. Do you agree that  
 16 DEQ's permitting of the strip and underground coal  
 17 mining operations and mining activities causes  
 18 dangerous amounts of greenhouse gas emissions?  
 19 A. No. DEQ is -- in authorizing strip and  
 20 underground coal mining operations, they are based on  
 21 applications received by the agency and then  
 22 processed under the Montana Strip and Underground  
 23 Mine Reclamation Act, which does not grant the DEQ  
 24 authority to contemplate greenhouse gases.  
 25 Q. What is your role in DEQ's permitting of

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1 strip and underground coal mining operations?  
 2 A. My role is, again, largely just at the --  
 3 the top level in terms of if there are problems that  
 4 arise, that I can be consulted.  
 5 Q. Do you have any opinions about whether DEQ  
 6 refuses to disclose the significant harms to human  
 7 health and the environment from its decisions?  
 8 A. DEQ does not have the authority to review  
 9 in its permitting processes basically harms to human  
 10 health and the environment. Through the MEPA  
 11 analysis, DEQ reviews and through that procedural  
 12 process takes a look at impacts to the health and  
 13 environment.  
 14 Q. Do you agree that DEQ has issued permits  
 15 for surface coal mining in Montana on state and  
 16 federal land?  
 17 A. Yes.  
 18 Q. What kinds of permits does DEQ issue for  
 19 surface coal mining in Montana?  
 20 A. For example, DEQ issues amendments to  
 21 allow for coal mining. They issue revisions and  
 22 amendments to move spoil piles, revisions and  
 23 amendments to deal with ponds and other changes  
 24 needed to ensure the reclamation occurs.  
 25 Q. Can you describe for me the process where



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1 **DEQ decides whether or not to issue a permit for a**  
 2 **surface coal mining in Montana on state land?**  
 3 A. On state land, I don't have specific  
 4 experience with that on -- on state trust land, for  
 5 example.  
 6 Q. So since you've been at DEQ, you haven't  
 7 worked on any coal projects on state trust land?  
 8 A. Not that I'm aware of.  
 9 Q. Okay. Do you -- can you describe the  
 10 process where DEQ decides whether or not to issue a  
 11 permit for surface coal mining on federal land in  
 12 Montana?  
 13 A. That is a joint process. Specifically the  
 14 MEPA analysis is something that takes on the NEPA  
 15 elements and is -- and is done in consultation with  
 16 federal partners for that federal land.  
 17 Q. So when those are -- those joint projects  
 18 occur and the National Environmental Policy Act is  
 19 implicated, do those reviews consider climate change?  
 20 A. Yes, they do.  
 21 Q. Do they also consider greenhouse gas  
 22 emissions?  
 23 A. I would need to review them specifically.  
 24 They include some analysis related to greenhouse gas  
 25 emissions, yes.

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1 Q. Do you know how many permits DEQ has  
 2 issued for surface coal mining?  
 3 A. I do not.  
 4 Q. Any rough estimate?  
 5 A. I don't have a rough estimate.  
 6 Q. And DEQ undertakes a MEPA analysis for the  
 7 surface coal mining permits it issues. Correct?  
 8 A. Yes.  
 9 Q. And in that MEPA analysis, does DEQ  
 10 evaluate the effects of climate change?  
 11 A. It -- again, it depends if there's a  
 12 federal partner involved or not.  
 13 Q. The -- if we're talking just strictly  
 14 MEPA, with the M, would DEQ evaluate the effects of  
 15 climate change?  
 16 A. Under MEPA? Under MEPA, again because we  
 17 don't look at regional or global impacts, we would  
 18 not.  
 19 Q. Does DEQ quantify the greenhouse gas  
 20 emissions that would result from the burning of coal  
 21 on a surface coal mine?  
 22 A. They do not.  
 23 Q. And DEQ hasn't analyzed how the burning of  
 24 coal extraction would contribute to the Earth's  
 25 energy imbalance, does it?

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1 A. DEQ does not have the authority to conduct  
 2 that kind of analysis in a permitting action.  
 3 Q. Do you agree that DEQ actively works with  
 4 coal mining companies in Montana to implement the  
 5 state energy policy?  
 6 A. No, I do not.  
 7 Q. What do you disagree with about that  
 8 statement?  
 9 A. DEQ doesn't actively work with the coal  
 10 mining companies. We are responsive in nature to  
 11 applications that is received. And, again, DEQ  
 12 doesn't have a specific role in implementing the  
 13 state energy policy. We -- we understand the goals  
 14 or statements that are made and -- and recognize  
 15 that, but we don't specifically, and, again, as I've  
 16 stated earlier, have a statutory duty in that to  
 17 implement the energy policy or to work with partners  
 18 in implementing an energy policy.  
 19 Q. Thanks. Do you know if DEQ has ever  
 20 denied a permit for coal mining because of its  
 21 impacts to human health?  
 22 A. I don't know.  
 23 Q. Do you know if DEQ has ever denied a  
 24 permit for coal mining because of impacts to the  
 25 environment?

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1 A. There's a process that -- that we walk  
 2 through in terms of getting a -- a coal mine  
 3 applicant needs to have a sufficient -- a complete  
 4 application. And so we walk through what we call the  
 5 deficiency processes. And so there have been  
 6 conversations with coal mine applicants that  
 7 potential proposals in the application that we may  
 8 see are going to have an environmental impact. And  
 9 then it is up to them whether or not they withdraw  
 10 those from the application so we can get to a final  
 11 complete and acceptable application to move forward  
 12 with.  
 13 Q. Okay. And in those circumstances does DEQ  
 14 work with the applicant to problem solve on how to  
 15 fix the deficiencies?  
 16 A. DEQ largely doesn't. It's all in written  
 17 correspondence in deficiency letters. So DEQ  
 18 outlines what those deficiencies are, and then it's  
 19 up to the applicant to respond to those deficiencies.  
 20 Q. Are you aware of applicants calling permit  
 21 writers on the phone to talk through some issues?  
 22 A. I think that that has occurred, yes.  
 23 Q. That seems pretty standard. Right?  
 24 A. Yes.  
 25 Q. And I think you testified before that

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1 under the MEPA process, DEQ will analyze or disclose  
 2 the impacts to human health potentially from a  
 3 project?  
 4 A. DEQ, yes, using the administrative rules  
 5 and outline what the MEPA process looks like in that  
 6 procedural action do disclose and discuss impacts to  
 7 the human health and the environment.  
 8 Q. And do you yourself have any general  
 9 responsibilities regarding the assessment of human  
 10 health impacts or environmental impacts from the coal  
 11 program?  
 12 A. I do not.  
 13 Q. What do you expect to testify about  
 14 regarding the allegation that DEQ has refused to  
 15 disclose the significant harms to human health and  
 16 the environment --  
 17 A. Can you --  
 18 Q. -- in those decisions?  
 19 A. Can you clarify that question?  
 20 Q. Yeah. It's the -- back up to paragraph  
 21 92.  
 22 A. Uh-huh.  
 23 Q. The last sentence says "In approving such  
 24 activities, DEQ has repeatedly refused to disclose  
 25 significant harms to human health and the environment

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1 from its decisions." Do you agree with that  
 2 statement?  
 3 A. I do not agree with that statement.  
 4 Q. What is the basis of your disagreement?  
 5 A. Within its statutory authority DEQ  
 6 discloses potential impacts to the human health and  
 7 the environment in all its decisions.  
 8 Q. Under what circumstances would DEQ take  
 9 the information it discloses regarding impacts to  
 10 human health and the environment into account when  
 11 deciding whether to issue a permit for a coal mine?  
 12 A. So I would need some clarification. In  
 13 the MEPA analysis, MEPA is procedural, and MEPA  
 14 cannot be used to deny a permit. However, if in the  
 15 scientific analysis that's required in the permit  
 16 there are impacts to the environment that were  
 17 disclosed that violate requirements of the law, then  
 18 a permit can be denied.  
 19 Q. We're making progress.  
 20 MS. CHILLCOTT: What was the last Exhibit  
 21 Number we marked?  
 22 THE REPORTER: 137.  
 23 MS. CHILLCOTT: Thank you.  
 24 (Whereupon, Exhibit 138 was  
 25 marked for identification.)

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1 BY MS. CHILLCOTT:  
 2 Q. Okay. I'm handing you another exhibit  
 3 marked 138.  
 4 A. Okay.  
 5 Q. Can you identify that document?  
 6 A. Sure. This is the Montana Department of  
 7 Environmental Quality industrial and energy minerals  
 8 bureau coal program amendment to mine plan revision  
 9 for the Bull Mountain coal mining in Mussellshell and  
 10 Yellowstone County, dated October 2012.  
 11 Q. Thank you. Have you reviewed this  
 12 document before?  
 13 A. I have not.  
 14 Q. Do you know whether the person who created  
 15 this document has knowledge of the mining expansion  
 16 being permitted?  
 17 A. I don't know.  
 18 Q. Have you reviewed other documents like  
 19 this that are titled written findings?  
 20 A. I have not.  
 21 Q. Are these type of documents prepared  
 22 currently at DEQ?  
 23 A. I don't know.  
 24 Q. But not to your knowledge. You haven't  
 25 seen them?

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1 A. No, I have not.  
 2 Q. Do you have any knowledge over this Bull  
 3 Mountain's mine amendment number 2?  
 4 A. I do not.  
 5 Q. Do you have knowledge of Bull Mountain  
 6 Mine in general?  
 7 A. Yes.  
 8 Q. What would that be?  
 9 A. I have knowledge of -- for example, I  
 10 believe in the 30(6)(b) [sic], I was required to have  
 11 knowledge of a pond application that -- that they had  
 12 requested, and I have just general knowledge of their  
 13 operations?  
 14 Q. Okay. If you could turn to page 5 of that  
 15 document.  
 16 A. Okay.  
 17 Q. And if you look under the heading  
 18 evaluation of compliance, subheading A, coal reserves  
 19 and coal conservation, it says "SPE proposes to amend  
 20 approximately 1,193 acres to the permit area of the  
 21 Bull Mountain's mine number 1 south of Roundup,  
 22 Montana. The amendment would add about 11 million  
 23 tons of in-place coal reserves to the existing permit  
 24 area for a total of approximately 50 million tons of  
 25 in-place coal."

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1           **Do you agree that this expansion**  
 2 **authorizes the company to mine the additional 11**  
 3 **million tons of coal?**  
 4       A. I would need to read the full permit and  
 5 what conditions are included in that -- in -- in the  
 6 permit.  
 7       **Q. Sure. Do you agree that if 11 million**  
 8 **tons of coal were burned, it would lead to nearly 23**  
 9 **million tons of carbon dioxide emissions?**  
 10      A. I can't speak to that.  
 11      **Q. Do you have any opinions about the amount**  
 12 **of greenhouse gas emissions that would result from**  
 13 **burning 11 million tons of coal?**  
 14      A. I do not.  
 15      **Q. Do you know how you would find that**  
 16 **information out?**  
 17      A. I don't.  
 18      **Q. In your opinion does climate change cause**  
 19 **negative socioeconomic impacts to Montanans?**  
 20      A. Again, I can't speak to that. I'm not a  
 21 socioeconomic nor an economics professor.  
 22           **MS. CHILLCOTT:** This might be a good time  
 23 to take a break.  
 24           **THE WITNESS:** Okay.  
 25           **MS. CHILLCOTT:** It's close to 12:40 if you

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1 want to go off the record.  
 2           **MS. McKENNA:** Okay.  
 3           **THE VIDEOGRAPHER:** We're going off the  
 4 record. The time is 12:37 p.m.  
 5                   (Whereupon, a break was then  
 6 taken.)  
 7           **THE VIDEOGRAPHER:** We are back on the  
 8 record. The time is 1:30 p.m.  
 9 **BY MS. CHILLCOTT:**  
 10      **Q. We're back. Okay. Ms. Nowakowski, I'm**  
 11 **going to pass you an exhibit that has been marked as**  
 12 **Exhibit 139.**  
 13      A. Okay. Thank you.  
 14                   (Whereupon, Exhibit 139 was  
 15 marked for identification.)  
 16 **BY MS. CHILLCOTT:**  
 17      **Q. Actually, that's -- yeah. That's correct.**  
 18      A. Uh-huh.  
 19      **Q. Can you please identify that document I**  
 20 **just handed to you?**  
 21      A. Yes. This is the final environmental  
 22 impact statement for the Rosebud Mine Area B AM5  
 23 issued --  
 24      **Q. Have you ever seen this document before?**  
 25      A. Yes, I have.

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1       **Q. I'm sorry. Did I interrupt you?**  
 2       A. No.  
 3       **Q. Was this document made and kept in the**  
 4 **course of DEQ's regularly conducted business**  
 5 **activity?**  
 6       A. Yes, it was.  
 7       **Q. Are you familiar with how DEQ prepares**  
 8 **documents like this?**  
 9       A. Yes, I am.  
 10      **Q. How does DEQ prepare documents like that?**  
 11      A. Sure. These are environmental impact  
 12 statements, and this is one where DEQ works with a  
 13 contractor. The contractor develops the statements  
 14 and works jointly with our scientists.  
 15      **Q. How are contractors selected for**  
 16 **completing documents like this?**  
 17      A. I'd need to review the statute. There's  
 18 an outline of how it needs to happen in the statute.  
 19      **Q. Is it under a state procurement law of**  
 20 **some sort?**  
 21      A. For example -- and I think it is in the  
 22 MEPA statutes as well. For -- I can't remember. I'd  
 23 need to review it.  
 24      **Q. Sure. No problem.**  
 25           **So what does this final EIS for the**

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1 **Rosebud Area B AM5 authorize Western Energy, slash,**  
 2 **Westmoreland Rosebud to do?**  
 3       A. This -- this environmental impact  
 4 statement was simply procedural and review of the  
 5 environmental impacts of their proposal for a mining  
 6 application in Area B AM5.  
 7       **Q. Did DEQ ever evaluate the greenhouse gas**  
 8 **emissions that results from the burning of the coal**  
 9 **extracted at Rosebud Mine Area B?**  
 10      A. Under the environmental impact statement  
 11 or under the permit?  
 12      **Q. Either.**  
 13      A. Under the permit DEQ does not have any  
 14 regulatory authority to evaluate greenhouse gas  
 15 emissions. And I believe in the -- in this EIS it is  
 16 outlined -- I had glanced through this -- on page 118  
 17 where DEQ's authority is -- is limited, and there's a  
 18 discussion of the limitations in MEPA in the  
 19 environmental analysis to analyze regional and  
 20 national impacts.  
 21      **Q. Would you mind pointing me to that page?**  
 22      A. I would need to find it.  
 23      **Q. If you can find it.**  
 24      A. Yeah. I'll need to find it real quickly  
 25 here.

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1 Q. I might actually be going there.  
 2 A. Sure.  
 3 Q. So we could always come back to it.  
 4 A. Yeah. I think I might need to come back  
 5 to it.  
 6 Q. Okay. That's fine. I might be taking you  
 7 there.  
 8 A. Okay.  
 9 Q. And if it's not where you were thinking,  
 10 we can revisit.  
 11 A. Sure.  
 12 Q. Sound good?  
 13 A. Uh-huh.  
 14 Q. All right. So we'll come back to the EIS.  
 15 But you were just saying -- asking if I meant to ask  
 16 whether DEQ evaluated greenhouse gas emissions for  
 17 the FEIS or the -- the permit. And -- is that  
 18 correct?  
 19 A. Yes. That's what I was asking.  
 20 Q. And then -- so for the permit did DEQ  
 21 evaluate greenhouse gas emissions?  
 22 A. DEQ does not have the authority to analyze  
 23 greenhouse gases in -- in Title 82 for a coal mining  
 24 permit.  
 25 Q. Okay. Did DEQ analyze how the operation

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1 of the Rosebud Mine Area B would affect human health?  
 2 A. In the EIS there is an analysis of -- of  
 3 health and human impacts, yes.  
 4 Q. Okay. Were there also -- do you expect  
 5 there also is in this EIS an analysis of how the  
 6 Rosebud Mine Area B would affect the environment?  
 7 A. Yes.  
 8 Q. In this FEIS, before DEQ issued the  
 9 approval, did it analyze how the approval would  
 10 contribute to climate change?  
 11 A. Again, no. And that's because we don't  
 12 have the authority under MEPA to do so.  
 13 Q. Okay. So let's turn to page, if you  
 14 would, D-27, and I think it's tabbed there.  
 15 A. Uh-huh.  
 16 Q. So page D-27 contains a November 23rd,  
 17 2020, letter from the Western Environmental Law  
 18 Center to DEQ concerning the Rosebud Area B AMS  
 19 application. Correct?  
 20 A. Correct.  
 21 Q. Now, on the left-hand side of the page  
 22 D-27, where you see the Western Environmental Law  
 23 Center's November 23rd letter to DEQ, do you see  
 24 Roman numeral I, with a heading saying the draft  
 25 environmental impact statement violates the Montana

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1 Constitution. Is that what it says?  
 2 A. That is what it says, yes.  
 3 Q. Now, could you please turn to page -- the  
 4 next page, D-28, and that's where you'll see that the  
 5 Western Environmental Law Center's November 23rd,  
 6 2020, letter to DEQ is continued on the left-hand  
 7 side of the page. Correct?  
 8 A. Yeah. Yes.  
 9 Q. And do you see that DEQ has marked the  
 10 second paragraph on the left-hand side of page D-28  
 11 as comment 79-2? Correct?  
 12 A. Yes.  
 13 Q. So that paragraph reads -- and I am  
 14 quoting from the Western Environmental Law Center  
 15 letter -- based on an overwhelming amount -- I'm  
 16 sorry. Let me go to the document.  
 17 "Based on an overwhelming amount of  
 18 climate evidence published in recent years, DEQ must  
 19 acknowledge the findings of recent climate reports,  
 20 including the fourth national climate assessment of  
 21 2018 and those prepared by the intergovernmental  
 22 panel on climate change, or IPCC, and U.S. Geological  
 23 Survey. Additionally, information published in  
 24 January 2019 by Oil Change International specifically  
 25 highlights the urgent need for federally managed

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1 fossil fuels to remain in the ground in order to  
 2 effectively combat climate change. The findings of  
 3 these recent and important climate reports are  
 4 summarized below."  
 5 Did I read that correctly?  
 6 A. Yes.  
 7 Q. On the right-hand side of page D-28,  
 8 you'll see that DEQ has a comment response to comment  
 9 79-2. Correct?  
 10 A. Yes.  
 11 Q. Now, beginning at the third sentence of  
 12 DEQ's comment on the right-hand side of D-28, it  
 13 reads: "Here the statute is clear as are DEQ's  
 14 duties thereunder. Under MEPA DEQ's analysis may not  
 15 include a review of actual or potential impacts  
 16 beyond Montana's borders. It may not include actual  
 17 or potential impacts that are regional, national, or  
 18 global in nature, such as impacts that may result  
 19 from climate change, Section 75-1-201 (2(a), MCA."  
 20 Did I read that correctly?  
 21 A. Yes.  
 22 Q. And is that the provision you were  
 23 thinking about just now when you were trying to  
 24 locate information in the document?  
 25 A. Yes.

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1 Q. Okay. Does that reflect DEQ's current  
 2 policy?  
 3 A. Yes.  
 4 Q. Now, turning back to that comment response  
 5 from DEQ, it reads down a little further: "Section  
 6 75-1-201, (2)(a), provides two limitations on the  
 7 impacts that may be contained in an EIS. First, an  
 8 environmental review may not include a review of  
 9 actual or potential impacts that are beyond Montana's  
 10 borders. This limitation is subject to the limited  
 11 exceptions set forth in (2)(b).  
 12 Second, an environmental review may not  
 13 include a review of impacts that are regional,  
 14 national, or global in nature. These limitations are  
 15 clear and unequivocal. An EIS may not analyze  
 16 impacts that are beyond Montana's borders subject to  
 17 the exception stated above, nor may an EIS analyze  
 18 impacts that are regional, national, or global in  
 19 nature."  
 20 Did I read that right?  
 21 A. Yes.  
 22 Q. And does that still reflect DEQ's current  
 23 policy?  
 24 A. Yes.  
 25 Q. Could you please turn to the page D-98 of

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1 that document which is tabbed.  
 2 A. Okay.  
 3 Q. Are you there?  
 4 A. Uh-huh.  
 5 Q. On page D-98 there's an issue statement  
 6 that says, quote, climate change as it relates to the  
 7 proposed project, including potential impacts, and  
 8 the social cost of carbon should be analyzed in an  
 9 EIS." Did I read that right?  
 10 A. Yes.  
 11 Q. And on page D-99, the next page, towards  
 12 the top of the page there's DEQ's response to the  
 13 issue statement we just read. Do you see that?  
 14 A. Yes.  
 15 Q. And that response reads in part: "Under  
 16 MEPA DEQ's analysis may not include a review of the  
 17 actual or potential impacts beyond Montana's borders  
 18 and may not include actual or potential impacts that  
 19 are regional, national, or global in nature, such as  
 20 impacts that may result from climate change."  
 21 Did I read that correctly?  
 22 A. Yes.  
 23 Q. Does that reflect DEQ's current policy?  
 24 A. Yes.  
 25 Q. Based on those excerpts that I just

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1 reviewed with you, would you agree that the Western  
 2 Environmental Law Center raised climate change  
 3 concerns to DEQ as a reason to deny the Rosebud Area  
 4 B AM5 from mine expansion?  
 5 A. They did raise that in -- in their  
 6 opinion, yes.  
 7 Q. Based on the excerpts we just reviewed,  
 8 would you agree that DEQ refused to deny the mine  
 9 expansion on the grounds of any concerns of the  
 10 expansion's contribution to climate change?  
 11 A. DEQ does not have the authority to deny a  
 12 coal permit based on concerns raised about climate  
 13 change.  
 14 Q. And what was your role in reviewing this  
 15 document?  
 16 A. It was simply just a review role.  
 17 Q. Did you offer any edits or suggestions?  
 18 A. I did not.  
 19 Q. Do you have any other opinions about this  
 20 document that we haven't already touched on?  
 21 A. I don't. It would depend on questions  
 22 asked.  
 23 Q. Sure. Okay. So I'm going to turn to  
 24 paragraph 93 in the complaint.  
 25 A. Okay.

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1 Q. That paragraph reads: "DEQ has  
 2 authorized, permitted, and encouraged fossil fuel  
 3 extraction, transportation, and, combustion which  
 4 activities generate dangerous levels of greenhouse  
 5 gas emissions, contribute to the climate crisis, and  
 6 harm youth plaintiffs."  
 7 Did I read that correctly?  
 8 A. Yes.  
 9 Q. In your opinion are you the person at DEQ  
 10 who is most knowledgeable with respect to the  
 11 allegations in paragraph 93?  
 12 A. Yes.  
 13 Q. And do you know of anyone else at DEQ who  
 14 has more knowledge than you do?  
 15 A. There may be someone who I'm not aware of  
 16 who has more knowledge.  
 17 Q. Do you agree that DEQ has authorized,  
 18 permitted, and encouraged fossil fuel extraction?  
 19 A. No.  
 20 Q. What do you disagree with about that?  
 21 A. DEQ has authorized and permitted fossil  
 22 fuel extraction within the requirements of the law.  
 23 Q. Do you agree that DEQ encourages --  
 24 encourages fossil fuel extraction?  
 25 A. No. I disagree.

1 **Q. Why do you disagree about that?**  
 2 A. DEQ is a regulatory body, not a  
 3 promotional body.  
 4 **Q. Do you agree that DEQ has authorized and**  
 5 **permitted transportation of fossil fuels?**  
 6 A. DEQ has some limited authority through the  
 7 Major Facility Siting Act where it authorizes the  
 8 transportation through oil and gas pipelines.  
 9 **Q. Do you agree that DEQ has authorized and**  
 10 **permitted combustion of fossil fuels?**  
 11 A. DEQ authorizes and permits or provides air  
 12 quality permits for facilities where fossil fuels are  
 13 combusted.  
 14 **Q. Do you agree that those activities,**  
 15 **meaning fossil fuel extraction, transportation of**  
 16 **fossil fuels, and combustion of fossil fuels,**  
 17 **generate greenhouse gas emissions?**  
 18 A. Certain activities -- there need to be  
 19 some specific examples -- do generate greenhouse gas  
 20 emissions, yes.  
 21 **Q. Do you agree that those activities**  
 22 **contribute to climate change?**  
 23 A. I wouldn't be able to speak to their  
 24 contribution to climate change.  
 25 **Q. So are you testifying that you don't know**

1 scientists who are probably more knowledgeable and  
 2 better prepared to answer those questions.  
 3 **Q. So you don't have an opinion about whether**  
 4 **the youth plaintiffs are being injured?**  
 5 A. I do not.  
 6 **Q. And what is -- I think we talked about**  
 7 **this. But in terms of your role in DEQ's**  
 8 **authorization of those activities, meaning fossil**  
 9 **fuel extraction, transportation of fossil fuels, and**  
 10 **combustion of fossil fuels, is your role as the**  
 11 **division administrator what we discussed earlier with**  
 12 **regard to helping with problems that come up?**  
 13 A. For example, it's advisory in nature and  
 14 assisting in questions that come up about time lines  
 15 and -- and policy requirements.  
 16 **Q. In what way do you advise on policy**  
 17 **requirements with regard to DEQ's authorization of**  
 18 **those activities?**  
 19 A. For example, in an air quality permit I  
 20 advise on -- we received a request to extend the  
 21 public comment period, and so I reviewed the statutes  
 22 and provided an opinion on extending the public  
 23 comment period.  
 24 **Q. And is extending the public comment period**  
 25 **a discretionary decision on the part of DEQ?**

1 **if those activities contribute to climate change?**  
 2 A. That's correct.  
 3 **Q. Do you agree that those activities harm**  
 4 **youth plaintiffs?**  
 5 A. I don't know if they -- I -- I can't speak  
 6 to whether or not they contribute to climate change,  
 7 and I cannot speak to whether or not that contributes  
 8 to harm to youth plaintiffs.  
 9 **Q. So you don't have an opinion on whether**  
 10 **those activities harm youth plaintiffs?**  
 11 A. I do not.  
 12 **Q. Do you have any opinions about whether the**  
 13 **youth plaintiffs in this case are being harmed?**  
 14 A. I do not.  
 15 **Q. In the complaint have you read the**  
 16 **paragraph describing how the youth plaintiffs have**  
 17 **been injured?**  
 18 A. Yes, I have.  
 19 **Q. And do you disagree with those**  
 20 **allegations?**  
 21 A. I would need to review each specific  
 22 allegation and speak to those.  
 23 **Q. Do you intend to testify at trial that the**  
 24 **youth plaintiffs are not being injured?**  
 25 A. I do not. I think that there would be

1 A. It depends on the permitting action.  
 2 **Q. Makes sense. Do you have any other**  
 3 **responsibilities with respect to DEQ's authorization**  
 4 **of fossil fuel extraction?**  
 5 A. I do not.  
 6 **Q. How about any general responsibilities**  
 7 **with respect to DEQ's authorization of transportation**  
 8 **of fossil fuels?**  
 9 A. I do not.  
 10 **Q. And with combustion of fossil fuels?**  
 11 A. I do not. My responsibilities lie simply  
 12 in an advisory role to the air quality permits.  
 13 **Q. Are there circumstances when you're asked**  
 14 **for advice from staff that you need to seek advice**  
 15 **yourself from others?**  
 16 A. There could be examples, depending on the  
 17 question at hand. I'm not an attorney. There may be  
 18 a legal question that is raised.  
 19 **Q. Sure. Any time -- are there any times**  
 20 **that you need to discuss issues with Director**  
 21 **Dorrington?**  
 22 A. There are times when I communicate with  
 23 Director Dorrington about where we're at with the  
 24 permitting process.  
 25 **Q. Okay. Is there anything else you expect**

1 to testify to about the allegations in paragraph 93  
 2 that we haven't talked about?  
 3 A. It will depend on the questions that are  
 4 posed.  
 5 Q. Okay. I'm going to pass you another  
 6 exhibit, and this one has already been marked as  
 7 Exhibit Number 78.  
 8 A. Okay.  
 9 Q. And are you familiar with this document?  
 10 A. It appears at the top that this is a list  
 11 of Montana air quality permits that have been issued  
 12 and Title V permits that have been issued.  
 13 Q. Do you know if there's a more recent  
 14 version of this document?  
 15 A. I don't know.  
 16 Q. Do you know if DEQ has ever calculated the  
 17 cumulative amount of greenhouse gas emissions that  
 18 come from all the projects on this list?  
 19 A. DEQ has never been directed to calculate  
 20 that I'm aware of.  
 21 Q. Do you know if that would be possible?  
 22 A. I don't think DEQ would have the authority  
 23 to calculate that unless directed to for a specific  
 24 purpose.  
 25 Q. Do you think it would be possible for

1 in my capacity at DEQ.  
 2 Q. In what capacity have you seen this?  
 3 A. I have seen this document before in my  
 4 role at the legislature.  
 5 Q. Okay. And in what context?  
 6 A. I think, again, updates on this decision  
 7 for certificate were the subject of discussions  
 8 before both the energy and telecommunications interim  
 9 committee and the environmental quality council.  
 10 Q. Do you recall if those discussions  
 11 involved concerns about climate change?  
 12 A. I don't recall.  
 13 Q. Is this document an example of the kinds  
 14 of certifications DEQ regularly issues for pipelines  
 15 in Montana?  
 16 A. I don't have experience with the issuance  
 17 of these certificates.  
 18 Q. In your current role is that a  
 19 responsibility that falls within your division?  
 20 A. It is not.  
 21 Q. And which division would that be?  
 22 A. This actually is under the director's  
 23 office and the Montana Environmental Policy Act,  
 24 Major Facility Siting Act unit.  
 25 Q. Great. That unit is under the director's

1 someone like me or you to just -- to figure out how  
 2 to calculate the cumulative greenhouse gas emissions  
 3 from these permits?  
 4 A. I think that would be a question for a  
 5 scientist.  
 6 Q. Okay. Do you think that would be helpful  
 7 information to know in order to protect Montana's  
 8 environment?  
 9 A. I don't think so. These are specific  
 10 permitting decisions.  
 11 Q. So I'm going to pass you what has been  
 12 marked as Exhibit 140.  
 13 A. Okay.  
 14 Q. Or what I just marked as Exhibit 140.  
 15 (Whereupon, Exhibit 140 was  
 16 marked for identification.)  
 17 BY MS. CHILLCOTT:  
 18 Q. Can you identify this document?  
 19 A. Sure. This is from the Montana Department  
 20 of Environmental Quality in the matter of the  
 21 application of the TransCanada Keystone Pipeline for  
 22 a certificate of compliance under the Major Facility  
 23 Siting Act.  
 24 Q. Have you seen this document before?  
 25 A. I have seen this document before but not

1 office?  
 2 A. I believe so.  
 3 Q. Okay. Are all pipelines -- or excuse me.  
 4 Are all permits for pipelines in Montana issued under  
 5 the governor's office?  
 6 A. No. So only certain pipelines are  
 7 required to receive a permit under the Major Facility  
 8 Siting Act permit, pipelines of a certain size. I'd  
 9 need to refer to the statute for that exact size.  
 10 Ours are the public service commission oversees the  
 11 siting and safety of pipelines in Montana.  
 12 Q. Got it. Do you agree that the operation  
 13 of this Keystone Pipeline would result in greenhouse  
 14 gas emissions?  
 15 A. I don't know.  
 16 Q. You don't have an opinion?  
 17 A. I do not.  
 18 Q. Do you know if DEQ ever analyzed the  
 19 amount of greenhouse gas emissions that would result  
 20 from operation of the Keystone Pipeline?  
 21 A. I don't know.  
 22 Q. Done with that one.  
 23 A. Okay.  
 24 Q. Okay. I'm going to pass you what I've  
 25 marked as Exhibit 141.

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1 A. Okay.  
 2 (Whereupon, Exhibit 141 was  
 3 marked for identification.)  
 4 **BY MS. CHILLCOTT:**  
 5 **Q. And could you identify that document,**  
 6 **please.**  
 7 A. Sure. This is the Phillips 66 pipeline, a  
 8 final operating permit for the Great Falls terminal,  
 9 and this is an air quality permit.  
 10 **Q. Okay. And so what does this document**  
 11 **authorize Phillips 66 to do?**  
 12 A. This provides for the air quality permit  
 13 that allows them to legally and lawfully operate a  
 14 bulk terminal which stores and transfers gasoline and  
 15 distillates from the pipeline and distributes them to  
 16 regional markets via cargo tank.  
 17 **Q. Did DEQ evaluate the greenhouse gas**  
 18 **emissions that result from the operation of this**  
 19 **terminal in issuing this permit?**  
 20 A. I don't know.  
 21 **Q. This permit is dated September 23rd, 2021.**  
 22 **Is that correct?**  
 23 A. Yes, it is.  
 24 **Q. And you were employed at DEQ during that**  
 25 **time?**

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1 A. Yes, I was.  
 2 **Q. Did you have any -- do you have any**  
 3 **knowledge of this permit given your time at DEQ when**  
 4 **it was issued?**  
 5 A. I do not. This was an application for a  
 6 simple renewal, so I was not involved in these  
 7 discussions.  
 8 **Q. Renewals don't rise to your level**  
 9 **generally?**  
 10 A. They don't, no.  
 11 **Q. For renewals then who has the ultimate**  
 12 **decision-making authority for granting those?**  
 13 A. These are decisions that are made by the  
 14 air quality engineer who evaluates the permit and  
 15 then ultimately signed by the permitting section  
 16 supervisor, who at the time was Julie Merkel.  
 17 **Q. I'm finished with that one.**  
 18 A. Okay.  
 19 **Q. Could you please turn to paragraph 118-G**  
 20 **of the complaint.**  
 21 A. Okay.  
 22 **Q. Okay. So 118-G says "Defendants continue**  
 23 **to permit surface coal mining and reclamation in**  
 24 **Montana, which results in substantial GHG emissions.**  
 25 **Defendant DEQ approved the AM4 expansion of the**

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1 **Rosebud Strip Mine in December 2015. Defendant DEQ**  
 2 **issued a permit to expand the coal mining operation**  
 3 **and reclamation plan at Bull Mountain Mine in July**  
 4 **2015. Pursuant to the climate change exception to**  
 5 **MEPA, DEQ refused to analyze how these decisions**  
 6 **would aggravate the impacts of climate change."**  
 7 **Did I read that right?**  
 8 A. Yes.  
 9 **Q. I'm going to pass you an exhibit that has**  
 10 **previously been marked as Exhibit 100.**  
 11 A. Okay.  
 12 **Q. And can you identify that document?**  
 13 A. These are written findings prepared by the  
 14 Montana Department of Environmental Quality  
 15 industrial and energy minerals bureau, colon, uranium  
 16 program for AM4, an additional 49 acres of Western  
 17 Energy Company, Rosebud Coal Mine Area B, dated  
 18 December 2015.  
 19 **Q. Thank you. What does this document**  
 20 **authorize Western Energy Company to do?**  
 21 A. I don't know. I would need to review the  
 22 document. It says the proposal is for a 49-acre  
 23 increase in the area permitted.  
 24 **Q. Did DEQ evaluate greenhouse gas emissions**  
 25 **that result from the AM4 expansion of the Rosebud**

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1 **Strip Mine?**  
 2 A. DEQ does not have the authority to  
 3 evaluate greenhouse gases in the application for a  
 4 mining permit.  
 5 **Q. Do you know the amount of greenhouse gas**  
 6 **emissions that would result from burning coal**  
 7 **extracted at the Rosebud Mine?**  
 8 A. I don't.  
 9 **Q. Do you know where you could find that**  
 10 **information out?**  
 11 A. I don't.  
 12 **Q. I'm sorry. What exhibit was that? That**  
 13 **was 100. Correct?**  
 14 A. 100.  
 15 **Q. Thank you. I'm finished with that one.**  
 16 A. Okay.  
 17 **Q. I'm sorry again. What is the one right**  
 18 **before that that we talked about? Sorry.**  
 19 A. Prior to that was 141.  
 20 **Q. Thank you.**  
 21 A. You bet.  
 22 **Q. Handing you an exhibit that I've marked as**  
 23 **Exhibit Number 142.**  
 24 A. Okay.  
 25 (Whereupon, Exhibit 142 was



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1 marked for identification.)  
 2 **BY MS. CHILLCOTT:**  
 3 **Q. And can you identify that document?**  
 4 **A.** This is an environmental assessment  
 5 prepared by the Montana Department of Environmental  
 6 Quality, colon, uranium program for Western Energy  
 7 Company, Rosebud Coal Mine Area B, December 3rd,  
 8 2015.  
 9 **Q. Thank you. Do you know if the person who**  
 10 **created this document, which appears to be Angela**  
 11 **McDannel, is one person who has knowledge of the**  
 12 **Rosebud Mine?**  
 13 **A.** I -- I don't know.  
 14 **Q. Are you familiar with how DEQ prepares EA**  
 15 **checklists like this?**  
 16 **A.** I am familiar with the process today. I'm  
 17 not familiar with what the process was in 2015.  
 18 **Q. It's possible that the DEQ's regulations**  
 19 **changed between 2015 and the present time?**  
 20 **MS. McKENNA:** Objection. Calls for  
 21 speculation.  
 22 **BY MS. CHILLCOTT:**  
 23 **Q. Do you know if DEQ's regulations have**  
 24 **changed with regard to MEPA?**  
 25 **A.** I don't. I don't know.

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1 **Q. Are EA checklists publicly available on**  
 2 **DEQ's website?**  
 3 **A.** I believe they -- they are at the time  
 4 they're issued. I don't know if they remain on the  
 5 website.  
 6 **Q. Would someone just file an information**  
 7 **request if they wanted to see one that is no longer**  
 8 **on the website?**  
 9 **A.** Yes.  
 10 **Q. Could you please turn to -- well, there's**  
 11 **no page numbers. There's a section in the document,**  
 12 **five pages in from the back, and it says air quality.**  
 13 **I'm sorry. It's number 3. It looks like this.**  
 14 **A.** Okay.  
 15 **Q. Are you there?**  
 16 **A.** Yep.  
 17 **Q. And can you just read that section to**  
 18 **yourself?**  
 19 **A.** Uh-huh.  
 20 **Q. Please.**  
 21 **A.** Okay.  
 22 **Q. In part of that section that you just**  
 23 **read, it says "the mined coal is destined to be**  
 24 **combusted at a nearby power generation facility." Is**  
 25 **that correct?**

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1 **A.** Yes.  
 2 **Q. Do you have any reason to disagree with**  
 3 **that statement?**  
 4 **A.** I do not.  
 5 **Q. And then at the end it says "Greenhouse**  
 6 **gas emissions from that facility are regulated in**  
 7 **accordance with current federal and state laws."**  
 8 **Correct?**  
 9 **A.** Yes.  
 10 **Q. Do you know what federal laws are referred**  
 11 **to there?**  
 12 **A.** I do not.  
 13 **Q. Do you know what state laws are referred**  
 14 **to there?**  
 15 **A.** I don't.  
 16 **Q. Okay.**  
 17 **A.** 142.  
 18 **Q. Thank you.**  
 19 **A.** Uh-huh.  
 20 **Q. Sonja, I'm going to pass you another**  
 21 **exhibit that I marked as Number 143.**  
 22 **A.** Okay.  
 23 (Whereupon, Exhibit 143 was  
 24 marked for identification.)  
 25 **BY MS. CHILLCOTT:**

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1 **Q. And can you please identify that document?**  
 2 **A.** Sure. These are written findings prepared  
 3 by the Montana Department of Environmental Quality  
 4 industrial and energy minerals bureau coal program  
 5 for an amendment and mine plan revision for the Bull  
 6 Mountain Coal Mine, dated July 2016.  
 7 **Q. Do you know what this document authorizes**  
 8 **Signal Peak Energy to do?**  
 9 **A.** I do not.  
 10 **Q. Have you seen this document before?**  
 11 **A.** I have not.  
 12 **Q. Do you have any general responsibilities**  
 13 **with respect to DEQ's 2016 approval of the AM3**  
 14 **expansion?**  
 15 **A.** I do not.  
 16 **Q. What do you expect to testify about the**  
 17 **allegation that DEQ refused to consider climate**  
 18 **change impacts when evaluating whether to approve**  
 19 **that AM3 expansion at Bull Mountain Mine?**  
 20 **A.** I can speak to that under the Montana  
 21 Underground Surface Mine Reclamation Act, DEQ has no  
 22 authority under this application to evaluate  
 23 greenhouse gas emissions.  
 24 **Q. Is there anything else you expect to**  
 25 **testify about regarding allegations contained in**

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1 paragraph 118-G?  
 2 A. Well, it would depend on the questions  
 3 asked.  
 4 Q. Okay. Thank you. So turning to paragraph  
 5 118-H.  
 6 A. Okay.  
 7 Q. And reading paragraph 118-H, if I can find  
 8 it, it says "In 2018, defendant DEQ, pursuant to the  
 9 climate change exception to MEPA, refused to analyze  
 10 or discuss any climate change impacts from the TR3  
 11 expansion of the Decker Mine, which allowed the coal  
 12 company to strip mine 23 million tons of coal, which  
 13 will lead to nearly 50 million tons of carbon dioxide  
 14 emissions when burned, aggravating the impact of  
 15 climate change, including causing negative  
 16 socioeconomic impacts to Montanans."  
 17 Did I read that correctly?  
 18 A. Yes.  
 19 Q. In your opinion are you the person at DEQ  
 20 with the most knowledge with respect to this  
 21 allegation?  
 22 A. As far as I know I am, yes.  
 23 Q. Okay.  
 24 MS. McKENNA: I'm going to object to this  
 25 line of questioning because Ms. Nowakowski did not

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1 work at DEQ in 2018.  
 2 MS. CHILLCOTT: True. But she was  
 3 identified as the witness for DEQ who could testify  
 4 to -- with knowledge and opinions about paragraph  
 5 118-H.  
 6 MS. McKENNA: To the extent that she was  
 7 working at DEQ, she can answer questions. I'm  
 8 objecting on the record because she wasn't employed  
 9 at DEQ during the time that you're questioning her  
 10 about.  
 11 THE WITNESS: I was not employed with DEQ  
 12 in 2018.  
 13 BY MS. CHILLCOTT:  
 14 Q. Were you employed with legislative  
 15 services in 2018?  
 16 A. I was.  
 17 Q. And in your role at legislative services,  
 18 do you have knowledge about the Decker Mine that is  
 19 referred to in paragraph 118-H?  
 20 A. I do not.  
 21 Q. Do you have any knowledge about the Decker  
 22 Mine that's referenced here?  
 23 A. Just in that my experience in the past  
 24 year and a half have been involved in the discussions  
 25 about the bankruptcy and ongoing reclamation that's

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1 occurring at Decker.  
 2 Q. Okay. And can you tell me more about the  
 3 reclamation discussions that you've had at DEQ?  
 4 A. For example, the -- the mine is no longer  
 5 operating. The Decker Mine is no longer operated and  
 6 has moved into full reclamation. And so just an  
 7 assessment of -- and an analysis of the bonds we have  
 8 on hand and the benchmarks that are required to meet  
 9 the reclamation requirements that were outlined in  
 10 their permit.  
 11 Q. Is that assessment available in a publicly  
 12 available report?  
 13 A. I don't believe it's been part of a  
 14 report. They're part of informal discussions.  
 15 Q. Okay. But you have no reason to disagree  
 16 that in 2018 DEQ permitted the TR3 expansion of the  
 17 Decker Mine, do you?  
 18 A. I would want to review the application and  
 19 the -- the permit approval --  
 20 Q. But as you sit here today --  
 21 A. -- to verify that.  
 22 Q. Excuse me.  
 23 A. Sorry.  
 24 Q. Sorry. As you sit here today, you're not  
 25 -- you're not prepared to agree that the mine was

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1 permitted in 2018?  
 2 A. Not without analyzing the permit and the  
 3 permit conditions that were approved by DEQ.  
 4 Q. Sure.  
 5 (Whereupon, Exhibit 144 was  
 6 marked for identification.)  
 7 BY MS. CHILLCOTT:  
 8 Q. Next exhibit I marked is Exhibit Number  
 9 144.  
 10 A. Okay.  
 11 Q. Can you please identify that document?  
 12 A. Sure. These are the written findings for  
 13 the major revision TR3 for East Decker Coal Mine,  
 14 Decker Coal Company, permit ID number C1983007,  
 15 prepared by DEQ, dated July 2018.  
 16 Q. And this is with regard to the Decker Mine  
 17 we were just discussing. Correct?  
 18 A. Yes.  
 19 Q. And based on your review of that document,  
 20 do you agree that in 2018 DEQ permitted the TR3  
 21 expansion of Decker Mine?  
 22 A. After four rounds of acceptability  
 23 deficiencies, the application was ruled acceptable on  
 24 June 7, 2018.  
 25 Q. And you just read that from the document?

1 A. Yes. Page 1, paragraph 2.  
 2 Q. Thank you. To your knowledge, did DEQ  
 3 ever evaluate the greenhouse gas emissions that  
 4 result from burning of the coal extracted as a result  
 5 of that TR3 expansion?  
 6 A. Under the Underground Surface Mining  
 7 Reclamation Act, DEQ does not have the authority to  
 8 evaluate greenhouse gas emissions.  
 9 Q. Did DEQ ever analyze how it -- the  
 10 expansion would affect human health?  
 11 A. I would need to review whether or not an  
 12 environmental assessment or an environmental impact  
 13 statement was prepared for this project in 2018, and  
 14 if so, that document would include an overview of  
 15 those impacts.  
 16 Q. Okay. Do you have any general  
 17 responsibilities with respect to this 2018 approval  
 18 of the TR3 East Decker Mine expansion?  
 19 A. I do not.  
 20 Q. What do you expect to testify about the  
 21 allegations that DEQ refused to consider climate  
 22 impacts when evaluating this expansion?  
 23 A. DEQ does not have the authority to  
 24 evaluate climate change impacts.  
 25 Q. Okay. Is there anything else you expect

1 A. Yes.  
 2 Q. In your opinion are you the person at DEQ  
 3 with the most knowledge with respect to those  
 4 allegations?  
 5 A. Yes. To my knowledge, I'm the best person  
 6 to answer those questions.  
 7 Q. Has DEQ revised its permit for Spring  
 8 Creek Mine?  
 9 A. I'd need to review the permit.  
 10 Q. Do you know the date of the most recent  
 11 permit for Spring Creek Mine?  
 12 A. According to this document, it's 2020. I  
 13 would need to take a look at the permit.  
 14 Q. Sure.  
 15 (Whereupon, Exhibit 145 was  
 16 marked for identification.)  
 17 BY MS. CHILLCOTT:  
 18 Q. I'm going to hand you a document I have  
 19 marked as Exhibit 145.  
 20 A. Okay.  
 21 Q. And can you identify that document,  
 22 please?  
 23 A. Sure. This is the record of decision and  
 24 written findings for Spring Creek Coal Mine, Spring  
 25 Creek Coal, permit ID C1979012, dated March 27th,

1 to testify about regarding the allegations in  
 2 paragraph 118-H?  
 3 A. It will depend on the questions asked.  
 4 Q. Are there any other opinions that you have  
 5 regarding paragraph 118-H that we haven't touched on?  
 6 A. It will depend on the questions asked.  
 7 Q. Okay. Turning to page 118-I of the  
 8 complaint.  
 9 A. Uh-huh.  
 10 Q. 118-I reads: "In 2020, defendant DEQ is  
 11 preparing to revise its permit to Spring Creek Mine,  
 12 the largest coal producer in the state. The proposed  
 13 revision would add 977 acres of new mining  
 14 disturbance to recover approximately 72 million tons  
 15 of coal. In August 2019 defendant DEQ, pursuant to  
 16 the climate change exception to MEPA, refused to  
 17 analyze impacts on the social cost of carbon and the  
 18 economic impacts from climate change in its draft  
 19 environmental impact statement for the Spring Creek  
 20 Mine. Although public comments urged defendants to  
 21 consider these impacts in the DEQ analysis, defendant  
 22 did not review how their decision would aggravate  
 23 impacts of climate change, and the substantial  
 24 socioeconomic impacts on Montanans." Did I read that  
 25 right?

1 2020.  
 2 Q. Prior to the issuance of these written  
 3 findings, did DEQ evaluate the greenhouse gas  
 4 emissions that result from the operation of the  
 5 Spring Creek Mine?  
 6 A. Under the Montana Strip and Underground  
 7 Mine Reclamation Act, DEQ doesn't have the authority  
 8 to evaluate greenhouse gas emissions.  
 9 Q. Do you have any general responsibilities  
 10 with respect to DEQ's 2020 approval of this mine  
 11 expansion?  
 12 A. I do not. I did not work at DEQ in March  
 13 of 2020.  
 14 Q. What do you expect to testify about the  
 15 allegation that DEQ refused to consider climate  
 16 impacts when evaluating whether to approve the TR1  
 17 expansion of the Spring Creek Mine?  
 18 A. I can speak to the authority. DEQ did not  
 19 have the authority to analyze greenhouse gas impacts.  
 20 Q. Do you agree that if 72 million tons of  
 21 coal were burned it would lead to the emission of  
 22 carbon dioxide?  
 23 A. I'm not able to agree to that.  
 24 Q. Do you not have an opinion or --  
 25 A. I don't have enough information.

1 Q. Generally, do you agree that burning coal  
 2 leads to the emissions of carbon dioxide?  
 3 A. Yes.  
 4 Q. Could Spring Creek coal -- or Spring Creek  
 5 Mine -- excuse me -- have begun extracting this  
 6 additional coal without DEQ's approval of the mine  
 7 expansion?  
 8 A. They could have begun extracting the coal,  
 9 but they would have been in violation with the  
 10 Montana Strip and Underground Surface Mining Act.  
 11 Q. What else do you expect to testify about  
 12 the allegations in paragraph 118-H?  
 13 A. It will depend on the questions asked.  
 14 Q. Okay. Turning to paragraph 118-J.  
 15 A. Okay.  
 16 Q. And that paragraph reads: "Defendant DEQ  
 17 authorizes the operation of the Colstrip Steam  
 18 Electric Station, which produced 13.2 million metric  
 19 tons of carbon dioxide equivalent, 38,015 metric tons  
 20 of methane, and 65,919 metric tons of nitrous oxide  
 21 in 2018." Is that correct?  
 22 A. You read that correctly, yes.  
 23 Q. Thank you. Are you the person at DEQ with  
 24 the most knowledge with respect to these allegations?  
 25 A. As far as I know, I am.

1 for issuing air quality permits for the Colstrip  
 2 Steam Electric Station when applied for.  
 3 Q. Do you disagree with the allegation in  
 4 paragraph 118-J that Colstrip produced 13.2 million  
 5 metric tons of carbon dioxide equivalent in 2018?  
 6 A. According to the footnote, that  
 7 information was drawn from the U.S. Environmental  
 8 Protection Agency facility level information  
 9 greenhouse gas tool that is collected. So I would  
 10 want to review that information to verify it.  
 11 Q. Sure. I'll pass you now what's been  
 12 marked as Exhibit 146.  
 13 A. Okay.  
 14 (Whereupon, Exhibit 146 was  
 15 marked for identification.)  
 16 BY MS. CHILLCOTT:  
 17 Q. Can you identify that document?  
 18 A. Based on the website at the bottom, this  
 19 is a greenhouse gas summary produced by the  
 20 Environmental Protection Agency, dating 2018.  
 21 Q. And is this the type of information you  
 22 would look for to determine whether you agree or  
 23 disagree with the allegation that Colstrip produced  
 24 13.2 million metric tons of carbon dioxide equivalent  
 25 in 2018?

1 Q. Anyone else that would have more knowledge  
 2 than you?  
 3 A. Mr. Klemp will have knowledge of this and  
 4 the air quality permit associated with the Colstrip  
 5 Steam Electric Station.  
 6 Q. Sure. Do you agree that DEQ authorized  
 7 the operation of the Colstrip Steam Electric Station?  
 8 MS. McKENNA: Objection. I'm -- I'm going  
 9 to say that calls for a legal conclusion.  
 10 THE WITNESS: DEQ authorizes air quality  
 11 permits for the Colstrip Steam Electric Station.  
 12 BY MS. CHILLCOTT:  
 13 Q. Are there any other permits that DEQ  
 14 authorizes for the Colstrip Steam Electric Station?  
 15 A. There likely are, but I'm not able to list  
 16 them all.  
 17 Q. Sure. Do you have any general  
 18 responsibilities with respect to DEQ's authorization  
 19 of the Colstrip Steam Electric Station?  
 20 A. The only authority I have relates again to  
 21 the issuance of the lawful air quality permit.  
 22 Q. What do you expect to testify about the  
 23 allegation that DEQ is authorized the Colstrip Steam  
 24 Electric Station?  
 25 A. I will be able to testify to the process

1 A. Yes. I would want to look at kind of -- I  
 2 think this is generated through a database where you  
 3 put in certain search parameters. So I'd want to  
 4 take a look at what search parameters were used.  
 5 Q. Sure. Have you used that database before?  
 6 A. I have, yes.  
 7 Q. Okay. So are you aware that the U.S. EPA  
 8 collects annual greenhouse gas emissions data from  
 9 certain emitting facilities?  
 10 A. Yes.  
 11 Q. Are you aware that the EPA collected  
 12 annual greenhouse gas emissions data from the  
 13 Colstrip Steam Electric Station?  
 14 A. Yes.  
 15 Q. Are you aware that EPA collected that data  
 16 on Colstrip since at least 2010?  
 17 A. I don't know when the data started being  
 18 collected.  
 19 Q. Do you agree that this document shows that  
 20 Colstrip Steam Electric Station as having emitted  
 21 over 13 million metric tons of carbon dioxide and  
 22 1500 metric tons of methane in 2018?  
 23 A. Yes. According to this document, that was  
 24 where the amounts ended.  
 25 Q. Do you have any reason to doubt that these

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1 are accurate figures?  
 2 A. I don't.  
 3 Q. And do you have any reason to believe that  
 4 this document is not a true and correct copy of the  
 5 factual emissions data from Colstrip produced by EPA?  
 6 A. I don't.  
 7 Q. Does DEQ rely upon these EPA greenhouse  
 8 gas emissions data in its permitting decisions at  
 9 all?  
 10 A. As to my knowledge, we do not rely on  
 11 these.  
 12 Q. And in what way are you familiar with this  
 13 -- strike that. I'm sorry.  
 14 You indicated that you were familiar with  
 15 the database?  
 16 A. Uh-huh.  
 17 Q. And in what way?  
 18 A. I have looked at the database before in my  
 19 capacity as a researcher with the legislative  
 20 services division when asked questions about  
 21 greenhouse gas emissions in Montana.  
 22 Q. Okay. So you're experienced with kind of  
 23 plugging in information into the database?  
 24 A. Yes. I have experience.  
 25 Q. Okay. I'm having trouble keeping up. Is

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1 that Number 146?  
 2 A. Yes.  
 3 Q. Okay. Thank you. And you're probably  
 4 aware that I'm skipping some. You have them all on  
 5 your -- they're not all being used.  
 6 MS. McKENNA: (Nodded head up and down.)  
 7 (Whereupon, Exhibit 147 was  
 8 marked for identification.)  
 9 BY MS. CHILLCOTT:  
 10 Q. I'm handing you now what is marked as  
 11 Exhibit 147.  
 12 A. Okay.  
 13 Q. And is this document familiar to you, if  
 14 you turn the page maybe?  
 15 A. It's not.  
 16 Q. Okay. You've actually not seen the  
 17 information here related to the Colstrip Steam  
 18 Electric Station?  
 19 A. Not specifically, no.  
 20 Q. Okay.  
 21 A. It appears it's posted on the DEQ website.  
 22 Q. That's okay. Could you just turn to that  
 23 second page that talks about introduction, and it  
 24 says -- or sorry. It says introduction and at the  
 25 bottom --

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1 MS. McKENNA: I'm going to object to this  
 2 document for lack of foundation. The witness  
 3 testified that she's not familiar with this document.  
 4 MS. CHILLCOTT: Sure. No problem.  
 5 BY MS. CHILLCOTT:  
 6 Q. I'll just ask you some general questions  
 7 about the Colstrip Steam Electric Station. And I  
 8 guess my question is, is it fair to say the Colstrip  
 9 Steam Electric Station emits carbon dioxide?  
 10 A. Yes.  
 11 Q. Does DEQ restrict that amount of carbon  
 12 dioxide that comes from the Colstrip Steam Electric  
 13 Station?  
 14 A. DEQ doesn't have the authority to regulate  
 15 the emissions of carbon dioxide from Colstrip.  
 16 Q. If you can refer back now to the exhibit  
 17 marked 121 that we discussed this morning during your  
 18 30(b)(6) deposition.  
 19 A. 121?  
 20 Q. Yes.  
 21 A. Okay.  
 22 Q. And this is the document entitled  
 23 Understanding Energy in Montana, 2018. Correct?  
 24 A. Yes.  
 25 Q. And you're familiar with this document.

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1 Correct?  
 2 A. Yes, I am.  
 3 Q. What role did you play in creating this  
 4 document?  
 5 A. I -- I am the author of the utility  
 6 deregulation section of this document. I also  
 7 assisted in some of the overall editing and -- and  
 8 compilation in my role at legislative services.  
 9 Q. And is this a DEQ report?  
 10 A. This is not. This is a legislative  
 11 services report. DEQ contributes information to the  
 12 report.  
 13 Q. Is this document kept in the ordinary  
 14 course of the legislature's regularly conducted  
 15 business?  
 16 A. This document is informational in nature  
 17 and kept by legislative staff and provided at the  
 18 request of legislators.  
 19 Q. Is there a more recent version of this  
 20 document that you know of?  
 21 A. There is a more recent document under  
 22 development that has not yet been published.  
 23 Q. And that's what we talked about earlier  
 24 this morning.  
 25 A. Yes.

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1 **Q. Right. Do you have any reason to believe**  
 2 **that the figures and data in this document are not**  
 3 **true and correct figures and data concerning**  
 4 **Montana's energy system as it existed in 2018?**  
 5 A. I believe these are accurate.  
 6 **Q. Do you have any reason to believe the**  
 7 **figures and data in this document concerning coal,**  
 8 **natural gas, and petroleum production are true and**  
 9 **correct for coal, natural gas, and petroleum**  
 10 **production in Montana as they existed in 2018?**  
 11 A. I believe the entire document is -- is  
 12 correct.  
 13 **Q. Okay. Why was this document created?**  
 14 A. This document is created as authorized by  
 15 the energy and telecommunications interim committee  
 16 of the legislature and the work plans they  
 17 established for the interim.  
 18 **Q. And for the update to this document that's**  
 19 **under development, did you eTick request the update?**  
 20 A. Yes. ETick builds that into their work  
 21 plan and requests an update.  
 22 **Q. Did they request an update every interim?**  
 23 A. They do not. They typically request an  
 24 update every four years.  
 25 **Q. Okay. How -- and I think we talked about**

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1 **this this morning, but refresh my memory. How is**  
 2 **this document used at DEQ?**  
 3 A. This document is not specifically used by  
 4 DEQ. DEQ just takes part in its development.  
 5 **Q. Okay. So DEQ does not use the information**  
 6 **in that document in permitting decisions?**  
 7 A. Not that I'm aware of.  
 8 **Q. Do you expect to testify about this**  
 9 **document at trial?**  
 10 A. Yes.  
 11 **Q. And what do you expect to testify about?**  
 12 A. I can testify to my experience in  
 13 assisting in the development and updates to this  
 14 document in my role at legislative services.  
 15 **Q. And in addition to the utility**  
 16 **deregulation section that you testified you**  
 17 **authored --**  
 18 A. Uh-huh.  
 19 **Q. -- in this document. Correct?**  
 20 **Are there any other sections that you**  
 21 **contributed significantly?**  
 22 A. I -- I don't recall. I may have provided  
 23 some edits and remarks to the document as it was  
 24 developed over time.  
 25 **Q. Sure. And it looks like from the page**

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1 **listing the authors of this document, the project**  
 2 **coordinator was Trevor Graft. Correct?**  
 3 A. Yes. That's correct.  
 4 **Q. Was he kind of the final decision-maker**  
 5 **with regard to what ended up in this document?**  
 6 A. Largely, yes. He's the final  
 7 decision-maker. But as you can see, it's also a  
 8 document that is prepared for the energy and  
 9 telecommunications interim committee. So they review  
 10 a draft copy of it before it's formally published.  
 11 **Q. For this document did the eTick review and**  
 12 **provide comments that led to revisions of the**  
 13 **document?**  
 14 A. I don't recall.  
 15 **Q. In the document that is being worked on**  
 16 **now, has that been presented to eTick yet?**  
 17 A. I don't recall.  
 18 **Q. Do you expect it -- that it will be before**  
 19 **being finalized?**  
 20 A. I don't recall if it was. The interim  
 21 concluded September 15th, 2022.  
 22 **Q. Oh, I see. And it concluded without a**  
 23 **final publication -- or a finalization of this**  
 24 **update?**  
 25 A. Correct.

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1 **Q. When do you expect the -- this document to**  
 2 **be updated?**  
 3 A. That would be a question for Mr. Graft,  
 4 who is guiding the publication and the printing of  
 5 the publication.  
 6 **Q. Do you know if it would need to wait until**  
 7 **the next interim session?**  
 8 A. It would not.  
 9 **Q. Does it need to be approved by a**  
 10 **legislative committee before being finalized?**  
 11 A. That would be a question for legislative  
 12 services and how they review it. For example, in the  
 13 past a draft copy was -- was provided, and there was  
 14 kind of an overall, yes, proceed and publish it. I'm  
 15 not sure if they've continued to do that since I've  
 16 left.  
 17 **Q. Okay. Okay. If we could turn to**  
 18 **paragraph 118-K.**  
 19 MS. McKENNA: We've been going --  
 20 MS. CHILLCOTT: Do we need a break?  
 21 MS. McKENNA: -- about an hour.  
 22 MS. CHILLCOTT: Sure.  
 23 MS. McKENNA: Yeah. Let's just take a  
 24 break.  
 25 MS. CHILLCOTT: Yeah. Thanks.

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1           **THE VIDEOGRAPHER:** We're going off the  
 2 record. The time is 2:33 p.m.  
 3                   (Whereupon, a break was then  
 4 taken.)  
 5           **THE VIDEOGRAPHER:** We are back on the  
 6 record. The time is 2:45 p.m.  
 7 **BY MS. CHILLCOTT:**  
 8     **Q.** All right. Sonja, we are getting close to  
 9 the finish line here. I'm going to turn to paragraph  
 10 118-K in the complaint.  
 11     A. Okay.  
 12     **Q.** And reading -- reading that it says  
 13 "Defendant DEQ granted the Bull Mountain Mine an air  
 14 quality permit in January 2016, authorizing Bull  
 15 Mountain Mine to produce 15 million tons of coal  
 16 during any rolling 12-month period. Pursuant to the  
 17 climate change exception to MEPA, DEQ refused to  
 18 analyze how this decision would aggravate the impacts  
 19 of climate change." Did I read that correctly  
 20 A. You did read that correctly, yes.  
 21     **Q.** And in your opinion are you the person at  
 22 DEQ who is most knowledgeable with respect to these  
 23 allegations?  
 24 A. I am as much -- to my knowledge, I'm the  
 25 most knowledgeable. However, I did not work at DEQ

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1 in 2016.  
 2     **Q.** Right. I understand that. And so in your  
 3 opinion is there anyone else at DEQ who would have  
 4 more knowledge who was working there then?  
 5 A. There -- there may be. Mr. Klemp may --  
 6 may be able to speak to air quality permits for the  
 7 Bull Mountain Mine.  
 8     **Q.** Okay. And I'm going to hand you a  
 9 document that I've marked -- or actually it's  
 10 previously marked Exhibit 108.  
 11 A. Okay.  
 12     **Q.** And can you tell me what that document is?  
 13 A. Sure. This is Montana air quality of  
 14 permit number 3179-12 for Signal Peak Energy,  
 15 prepared by the Montana Department of Environmental  
 16 Quality.  
 17     **Q.** Thanks. Does this permit apply to the  
 18 Bull Mountain Mine?  
 19 A. Yes, it does.  
 20     **Q.** And do you know what this document  
 21 authorizes Signal Peak Energy to do?  
 22 A. This application was for an administrative  
 23 amendment to the air quality permit from  
 24 December 27, 2015, action. Proposes to increase the  
 25 fill area depth and capacity for WDA-1,

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1 reconfiguration of the soil stockpiles at WDA-1 and  
 2 WDA-2 which leads to a reduction in total footprint  
 3 and a reduction in total disturbed area at any given  
 4 time.  
 5     **Q.** Thanks. And can you turn to the last page  
 6 of the document?  
 7 A. Okay.  
 8     **Q.** And on the last page it says under Roman  
 9 numeral VIII "This permit is an administrative permit  
 10 action. Therefore, an environmental assessment is  
 11 not required." Is that correct?  
 12 A. Yes.  
 13     **Q.** What does that mean?  
 14 A. For ministerial and administrative actions  
 15 do not trigger MEPA. They're not considered a state  
 16 action. They're an administrative action.  
 17     **Q.** And does DEQ have regulations that direct  
 18 it to -- to determine when an action is an  
 19 administrative action?  
 20 A. Yes. Those are outlined in the MEPA  
 21 rules.  
 22     **Q.** Rules. So with regard to the allegations  
 23 in paragraph 118-K, specifically with regard to the  
 24 Bull Mountain Mine air quality permit, what do you  
 25 expect to testify about?

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1 A. I would be able to testify to the process  
 2 for issuing an air quality permit and the analysis  
 3 conducted by the department.  
 4     **Q.** Do you agree with the allegation that the  
 5 2016 permit DEQ issued authorizes the mine to produce  
 6 15 million tons of coal during any rolling 12-month  
 7 period?  
 8 A. I disagree with that. An air quality  
 9 permit, as indicated on this -- this -- this  
 10 permitting action, is in regard to air quality and  
 11 emissions -- reductions and fugitive dust emissions  
 12 from wind erosion. Air quality permits do not  
 13 authorize -- or air quality permits do not permit the  
 14 mining of coal.  
 15     **Q.** Could the Bull Mountain Mine have operated  
 16 in Montana lawfully without DEQ's approval of this  
 17 permit?  
 18 A. Bull Mountain Mine could have potentially  
 19 operated. It would depend on air quality emissions  
 20 and whether or not they were triggered and violated  
 21 any of the -- any of the air quality requirements or  
 22 limitations that are established in the original  
 23 permit.  
 24     **Q.** Is there anything else you expect to  
 25 testify about regarding paragraph 118-K of the

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1 **complaint?**  
 2 A. It would depend on the questions asked. I  
 3 would -- would state that -- in there that the  
 4 statement DEQ refused to analyze how this decision  
 5 would aggravate the impacts of climate change, that  
 6 DEQ doesn't have the authority to analyze how this  
 7 decision would impact climate change.  
 8 **Q. Okay. Turning to paragraph 118-L of the**  
 9 **complaint.**  
 10 A. Okay.  
 11 **Q. I'll read that now. 118-L says "defendant**  
 12 **DEQ issued a certificate of compliance for the**  
 13 **Keystone XL Pipeline in March 2012, which authorized**  
 14 **the construction, operation, and maintenance of the**  
 15 **Montana portion of the pipeline that would result in**  
 16 **substantial greenhouse gas emissions. Defendant DNRC**  
 17 **leased public land for the easement for the**  
 18 **operational right-of-way, with the approval of the**  
 19 **Land Board, and issued a land use license for the**  
 20 **construction right-of-way and other activities on**  
 21 **state lands and waterways." Did I read that**  
 22 **correctly?**  
 23 A. You did read it correctly.  
 24 **Q. And correct me if I'm wrong, but I assume**  
 25 **you're not intending to testify on the second**

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1 **sentence in that -- that paragraph that relates to**  
 2 **DNRC?**  
 3 A. I would not be able to testify to the  
 4 second sentence. I also was not employed by DEQ in  
 5 2012.  
 6 **Q. That's correct.**  
 7 **MS. McKENNA: Are you on L or M?**  
 8 **MS. CHILLCOTT: L. They're both related**  
 9 **to Keystone.**  
 10 **MS. McKENNA: Okay. Thank you.**  
 11 **MS. CHILLCOTT: Yeah.**  
 12 **BY MS. CHILLCOTT:**  
 13 **Q. I understand you weren't employed at DEQ**  
 14 **until 2021, but you were identified as a witness with**  
 15 **knowledge about the allegations in this paragraph L.**  
 16 **So in your opinion are you the person at DEQ who is**  
 17 **the most knowledgeable with respect to that**  
 18 **paragraph?**  
 19 A. I think there are probably folks who are  
 20 more knowledgeable who worked at DEQ in 2012.  
 21 **Q. And would Dave Klemp be one of those**  
 22 **people?**  
 23 A. Mr. Klemp would only be able to speak to  
 24 air quality.  
 25 **Q. Who would you name who would be more**

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1 **knowledgeable?**  
 2 A. I don't know.  
 3 **Q. Are they currently employed at DEQ?**  
 4 A. I don't know.  
 5 **Q. Okay. And we discussed the Keystone March**  
 6 **2020 -- I'm sorry -- March 2012 certificate of**  
 7 **compliance and talked about that at Exhibit 144. Do**  
 8 **you remember that?**  
 9 A. I do, yes.  
 10 **Q. And you don't have to pull it up yet --**  
 11 **A. Okay.**  
 12 **Q. -- unless you need to to answer this**  
 13 **question. And my question is do you agree that DEQ**  
 14 **issued a certificate of compliance for the Keystone**  
 15 **XL Pipeline in March 2012?**  
 16 A. Yes. DEQ issued a certificate of  
 17 compliance.  
 18 **Q. And I think I recall you testified you**  
 19 **were aware of this project in your role at**  
 20 **legislative services?**  
 21 A. That's correct.  
 22 **Q. Do you intend to offer any opinions**  
 23 **regarding the allegations in paragraph 118-L based on**  
 24 **your experience at Montana Legislative Services?**  
 25 A. It would depend on the questions asked.

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1 **Q. All right. Turning to paragraph 118-M.**  
 2 A. Okay.  
 3 **Q. That reads: "Defendants DEQ and DNRC**  
 4 **issued permits, licenses, and leases for the**  
 5 **construction, operation, and maintenance of the**  
 6 **Keystone XL Pipeline project in Montana which would**  
 7 **transport Canadian tar sands crude oil, the most**  
 8 **greenhouse gas intense source of petroleum in the**  
 9 **world. Pursuant to the climate change exception to**  
 10 **MEPA, neither DEQ nor DNRC disclosed to the public**  
 11 **the health or climate consequences of these**  
 12 **decisions." Did I read that right?**  
 13 A. You did read that correctly.  
 14 **Q. Do you agree that Canadian tar sands crude**  
 15 **oil is the most greenhouse gas intensive source of**  
 16 **petroleum in the world?**  
 17 A. I don't know.  
 18 **Q. Do you have any opinions about that?**  
 19 A. I don't.  
 20 **Q. I'm going to hand you what I have marked**  
 21 **as Exhibit 148.**  
 22 **(Whereupon, Exhibit 148 was**  
 23 **marked for identification.)**  
 24 **BY MS. CHILLCOTT:**  
 25 **Q. Can you please identify that document?**



1 A. This is a DEQ application number  
 2 MT4011079, an application from TransCanada Keystone  
 3 Pipeline, for a 401 water quality certification.  
 4 Q. Thanks. And are you familiar with how DEQ  
 5 prepares certifications like this?  
 6 A. I am not.  
 7 Q. You don't work on these types of water  
 8 quality certifications in your role at DEQ?  
 9 A. I do not.  
 10 Q. Okay. Do you have any opinions that you  
 11 intend to offer about paragraph 118-M?  
 12 A. It will depend on the questions that are  
 13 asked.  
 14 Q. Do you know whether DEQ disclosed to the  
 15 public the health or climate consequences of this  
 16 decision?  
 17 A. I would --  
 18 Q. Go ahead. I'm sorry.  
 19 A. I would need to review the environmental  
 20 impact statement that was prepared along with the  
 21 application.  
 22 Q. Have you reviewed that document before?  
 23 A. I have not.  
 24 Q. All right. Turning to paragraph 192 of  
 25 the complaint.

1 climate change advisory committee?  
 2 A. I do in my capacity in working for the  
 3 legislative services division in the environmental  
 4 policy office and as staff of the environmental  
 5 quality council.  
 6 Q. Did you attend climate change advisory  
 7 committee meetings?  
 8 A. I may have. I can't remember.  
 9 Q. Do you know or -- excuse me. What  
 10 opinions do you intend to offer about paragraph 192?  
 11 A. I'm able to discuss the role of the  
 12 legislature in reviewing this report and the work  
 13 they did related to this report.  
 14 Q. I'm going to pass you an exhibit marked  
 15 149.  
 16 A. Okay.  
 17 (Whereupon, Exhibit 149 was  
 18 marked for identification.)  
 19 BY MS. CHILLCOTT:  
 20 Q. Excuse me.  
 21 A. Okay.  
 22 Q. And can you identify that document,  
 23 please?  
 24 A. Sure. This is the Montana greenhouse gas  
 25 inventory and reference case projections from 1990 to

1 A. Can you repeat that number?  
 2 Q. Oh, sorry. 192. It's on page 84.  
 3 A. Okay. Okay.  
 4 Q. I'll read that. Paragraph 192 says "As  
 5 part of the CCAC initiative, Montana's GHG emissions  
 6 were inventoried in 2007, at which time inventories  
 7 were estimated for each year from 2007 to 1990.  
 8 Defendant DEQ published the GHG inventory report in  
 9 2007." Did I read that correctly?  
 10 A. You did read that correctly.  
 11 Q. And CCAC stands for climate change  
 12 advisory committee. Correct?  
 13 A. Yes.  
 14 Q. In your opinion are you the person at DEQ  
 15 who is the most knowledgeable with respect to the  
 16 allegations in paragraph 192?  
 17 A. As far as I know, I am.  
 18 Q. Do you have any expertise in greenhouse  
 19 gas emission inventories?  
 20 A. I don't.  
 21 Q. Does DEQ -- excuse me. Does DEQ use  
 22 greenhouse gas emissions inventories in its  
 23 permitting work?  
 24 A. It does not.  
 25 Q. Do you have any knowledge about the

1 2020, prepared by the Center for Climate Strategies  
 2 in September 2007.  
 3 Q. And have you seen this document before?  
 4 A. Yes, I have.  
 5 Q. And is this the document that contains the  
 6 greenhouse gas inventory report from 2007?  
 7 A. Yes, it is.  
 8 Q. Do you disagree with anything in paragraph  
 9 192?  
 10 A. I would need to clarify. I don't know if  
 11 DEQ published the greenhouse gas inventory report in  
 12 2007. It appears our -- our logo is on the bottom,  
 13 but I was not a part of that.  
 14 Q. Other than that potential clarification,  
 15 do you disagree with anything in paragraph 192?  
 16 A. I would also clarify that there were  
 17 certain assumptions made in -- in this greenhouse gas  
 18 emissions inventory. For example, this was based on  
 19 consumption and some of the reduction levels that are  
 20 proposed to get to 2020 levels, but they were based  
 21 on energy consumption versus energy production in  
 22 Montana.  
 23 Q. And how does that factor into your  
 24 disagreement or agreement with the paragraph 192?  
 25 A. I'm not sure that this inventory

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1 accurately depicts basically or depicts emissions  
 2 overall in Montana because it didn't contemplate in  
 3 some areas energy generation or emissions that were  
 4 emitted in a process where electricity was generated  
 5 and exported out of state.  
 6 **Q. Okay. So let me make sure I understand.**  
 7 **So you're saying that this report calculates the**  
 8 **greenhouse gas emissions associated with consumption**  
 9 **only and not production?**  
 10 A. That is my understanding of the inventory,  
 11 yes.  
 12 **Q. Okay.**  
 13 A. And that is outlined on page -- the lower  
 14 paragraph -- the bottom paragraph. "It is important  
 15 to note that the preliminary emission estimates  
 16 reflected -- reflect the GHG emissions associated  
 17 with the electricity sources used to meet Montana's  
 18 demands corresponding to a consumption-based  
 19 approach."  
 20 **Q. How do you think this report would be**  
 21 **different if production was also included?**  
 22 A. I don't know that I can speculate on that.  
 23 **Q. Could you turn to page 3 of this report.**  
 24 A. Okay.  
 25 **Q. And I should ask. Were you involved at**

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1 all in the creation of this report in your role at  
 2 legislative services?  
 3 A. I was not.  
 4 **Q. But did you review it in that role?**  
 5 A. I did in its final form.  
 6 **Q. Okay. Looking at page 3, the bottom of**  
 7 **the page in the table where it says total gross**  
 8 **emissions, if you look under the year 2005, I see the**  
 9 **number 36.8. Is that correct?**  
 10 A. Yes.  
 11 **Q. So do you agree that this inventory**  
 12 **calculated Montana's 2005 gross consumption-based**  
 13 **carbon dioxide equivalent emissions to be**  
 14 **approximately 36.8 million metric tons?**  
 15 A. Yes. That is what this inventories.  
 16 **Q. And then with the total net carbon dioxide**  
 17 **equivalent emissions of approximately 11.4 million**  
 18 **metric tons?**  
 19 A. Yes. They implemented or -- or made some  
 20 assumptions in terms of, I guess, what we're calling  
 21 sinks or offsets.  
 22 **Q. Okay. Do you know what a sink or an**  
 23 **offset is?**  
 24 A. For example, forestry and land use -- an  
 25 example might be CRP lands not -- not using for

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1 agricultural development.  
 2 **Q. So that would be conservation reserve**  
 3 **program lands?**  
 4 A. Yes.  
 5 **Q. And does DEQ do any work related to**  
 6 **identifying sinks or offsets?**  
 7 A. DEQ doesn't have any authority related to  
 8 that.  
 9 **Q. Okay. Are you familiar with those terms**  
 10 **from your experience at legislative services?**  
 11 A. Yes, I am.  
 12 **Q. And could you please turn to little 3?**  
 13 A. Sure.  
 14 **Q. Okay. And the executive summary on page**  
 15 **little Roman numeral iii, it says "On a per capita**  
 16 **basis, Montanans emit about 40 metric tons of carbon**  
 17 **dioxide equivalent, which is about twice the national**  
 18 **average of 25 metric tons of carbon dioxide**  
 19 **equivalent. The reasons for the higher per capita**  
 20 **intensity in Montana are varied but include the**  
 21 **state's strong fossil fuel production industry, large**  
 22 **agricultural industry, large distances for**  
 23 **transportation, and low population base." Did I read**  
 24 **that correctly?**  
 25 A. You did.

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1 **Q. Do you agree with that statement?**  
 2 A. Yes.  
 3 **Q. Is that still true today?**  
 4 A. I don't know.  
 5 **Q. Do you know how you would find out?**  
 6 A. You would need to take a look at some --  
 7 how things have changed over time. For example,  
 8 Colstrip units 1 and 2 are no longer online. The  
 9 Corette coal-fired power plant is no longer online.  
 10 I'm not sure if there have been trends or changes in  
 11 the agricultural industry. There's additional use of  
 12 lower emitting vehicles on roadways.  
 13 **Q. Okay. In your opinion would Montana's per**  
 14 **capita carbon dioxide equivalent emissions be lower**  
 15 **if Montana produced fewer fossil fuels?**  
 16 A. I don't know that I can speculate overall  
 17 on what the numbers would look like.  
 18 **Q. Okay. Do you have an opinion then as to**  
 19 **whether producing fewer fossil fuels leads to less**  
 20 **carbon dioxide emissions?**  
 21 A. I don't really have an opinion.  
 22 **Q. In your opinion would Montana's per capita**  
 23 **of carbon dioxide equivalent emissions be lower if**  
 24 **Montana relied on less fossil fuels to meet its**  
 25 **energy and transportation needs?**

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1 A. I'm not -- I wouldn't be able to speak to  
 2 that without some scientific analysis.  
 3 **Q. Have you been asked to conduct any**  
 4 **scientific research for purposes of your testimony**  
 5 **with regard to paragraph 192? I'm sorry?**  
 6 A. Sure. Can you repeat that question?  
 7 **Q. Sure. Have you been asked for purposes of**  
 8 **your testimony in this case to conduct any research,**  
 9 **scientific or otherwise, to form your opinions? Have**  
 10 **you ever been asked?**  
 11 A. In my capacity at the Department of  
 12 Environmental Quality, no, I have not.  
 13 **Q. In your capacity at legislative services**  
 14 **have you?**  
 15 A. In my capacity at legislative services, I  
 16 was the author of a report for the environmental  
 17 quality council that responded to some of the work  
 18 and analysis that the legislature conducted in  
 19 response to this inventory.  
 20 **Q. And what -- what did the legislature do in**  
 21 **response to the inventory?**  
 22 A. They produced a report, and they analyzed  
 23 some of the different scenarios that are proposed. I  
 24 believe there are 54 recommendations by the clean --  
 25 or excuse me -- by the climate change advisory

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1 committee, and they analyzed those 54  
 2 recommendations. They collected public opinion -- or  
 3 stakeholder input on those, and then they ultimately  
 4 advanced a few of those through the legislative  
 5 process.  
 6 **Q. Okay. In your -- in your role at**  
 7 **legislative services during that time, did you assist**  
 8 **in -- in that work that you just discussed?**  
 9 A. Yes, I did.  
 10 **Q. In what way?**  
 11 A. For example, I put out the requests for  
 12 public comment. I collected the public comment. I  
 13 collated the public comment. I provided overviews of  
 14 -- of what comment was received, and then also did  
 15 some statistical analysis in terms of which -- which  
 16 of the 54 recommendations we received public comment  
 17 on or the most comment on.  
 18 **Q. Okay. Do you recall today which ones**  
 19 **received the top number of public comments?**  
 20 A. I don't. I would need to review --  
 21 **Q. Sure.**  
 22 A. -- the report from 2007.  
 23 **Q. No problem. If you would turn to page 5**  
 24 **of this report, please.**  
 25 A. Sure. Okay.

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1 **Q. And I'll read at the top. It says**  
 2 **"Electricity use transportation and agriculture are**  
 3 **the state's principal GHG emission sources. Together**  
 4 **the combustion of fossil fuels for electricity**  
 5 **generation use in state and in the transportation**  
 6 **sector account for about 46 percent of Montana's**  
 7 **gross GHG emissions as shown in figure 2."**  
 8 A. Uh-huh.  
 9 **Q. Did I read that right?**  
 10 A. You did read that right.  
 11 **Q. In your opinion would the share of**  
 12 **statewide GHG emissions from Montana's electricity**  
 13 **sector decline if the state shifted away from fossil**  
 14 **fuels for electricity generation?**  
 15 A. I think that there is -- is evidence with  
 16 the -- for example, with the closure of Colstrip  
 17 units 1 and 2 that our emissions have been reduced.  
 18 **Q. Okay. In your opinion would the state of**  
 19 **Montana's gross and net GHG emissions decline if the**  
 20 **state shifted away from fossil fuels for electricity**  
 21 **generation?**  
 22 A. I can't speak to that without doing some  
 23 scientific analysis.  
 24 **Q. But given what you just testified to with**  
 25 **regard to the closure of Colstrip 1 and 2, it appears**

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1 **that Montana's GHG emissions have declined. Right?**  
 2 A. Montana's GHG emissions have declined.  
 3 **Q. Can you please turn to page 45 of this**  
 4 **report?**  
 5 A. Sure. Okay.  
 6 **Q. So under the heading oil and gas industry**  
 7 **emissions, it says "Emissions of carbon dioxide and**  
 8 **methane occur at many stages of production,**  
 9 **processing, transmission, and distribution of fossil**  
 10 **fuels. With over 4,000 oil wells and over 5,000 gas**  
 11 **wells in the state, 3 operational gas processing**  
 12 **plants, 4 oil refineries, and over 10,000 miles of**  
 13 **gas pipelines, there are significant uncertainties**  
 14 **associated with estimates of the state's GHG**  
 15 **emissions from the fossil fuels sector." Did I read**  
 16 **that right?**  
 17 A. You did.  
 18 **Q. Do you agree that each of these oil and**  
 19 **gas wells, gas processing plants, oil refineries, and**  
 20 **pipelines were required to obtain permits from DEQ or**  
 21 **another state agency before construction and**  
 22 **operation?**  
 23 A. I don't know. I'd need to analyze each  
 24 one.  
 25 **Q. Are you aware of oil and gas wells or --**

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1 that don't require approval from the state?  
 2 A. Oil and gas wells require air quality  
 3 permits, and so I could review the air quality  
 4 permits.  
 5 Q. Are you aware of any gas processing plants  
 6 that do not require state agency approval?  
 7 A. I would need to take a look and see if the  
 8 gas wells that are referenced here required air  
 9 quality permits.  
 10 Q. There could be other types of permits that  
 11 are required?  
 12 A. There could be, yes.  
 13 Q. But you're only speaking here today as far  
 14 as air quality permits are concerned?  
 15 A. That's correct.  
 16 Q. Do you agree that the 4,000 oil wells,  
 17 over 5,000 gas wells, 3 operational gas processing  
 18 plants, 4 oil refineries, and over 10,000 miles of  
 19 gas pipelines mentioned in the report could not have  
 20 been constructed and operated without prior state  
 21 authorization or approval?  
 22 A. I don't agree with that.  
 23 Q. What do you disagree about that?  
 24 A. I can't speak to 4,000 oil wells air  
 25 quality applications or 5,000 gas wells air quality

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1 applications. I would need to review those.  
 2 Q. In your opinion does Montana have more oil  
 3 and gas wells now than it did in 2007?  
 4 A. I don't know.  
 5 Q. Do you know if Montana has more gas  
 6 processing plants or oil refineries now than it did  
 7 in 2007?  
 8 A. I don't know.  
 9 Q. What about more miles of pipeline -- gas  
 10 pipeline now than it did in 2007? Do you know?  
 11 A. I don't.  
 12 Q. Has DEQ done greenhouse gas emissions  
 13 inventory since 2007?  
 14 A. I'm not sure what role that DEQ played in  
 15 some additional climate change activities that were  
 16 authorized under then Governor Bullock.  
 17 Q. But there could have been some work that  
 18 DEQ did --  
 19 A. Yes.  
 20 Q. -- under that direction?  
 21 A. Yes.  
 22 Q. Are you aware of any other state  
 23 governmental entity that has done a more recent  
 24 greenhouse gas emissions inventory than this one?  
 25 A. I am not. There has been some additional

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1 analysis, but I'm not sure if it's by a state agency  
 2 or -- or if it was more authorized through the  
 3 university system.  
 4 Q. Are you referring to a specific report?  
 5 A. I can't remember the name of the report  
 6 off the top of my head.  
 7 Q. But somehow you have come across the  
 8 report in your work?  
 9 A. There have been some additional reports,  
 10 yes.  
 11 Q. Does DEQ use greenhouse gas emissions  
 12 inventory in its permitting decisions?  
 13 A. DEQ does not have the authority to use  
 14 greenhouse gas inventories in its permitting  
 15 decision.  
 16 Q. Is there anything else you would testify  
 17 to about paragraph 192?  
 18 A. It would depend on the questions asked.  
 19 Q. I'm going to hand you an exhibit now  
 20 marked 150.  
 21 A. Okay.  
 22 (Whereupon, Exhibit 150 was  
 23 marked for identification.)  
 24 BY MS. CHILLCOTT:  
 25 Q. And what is that document?

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1 A. This is the Montana climate change action  
 2 plan final report of the governor's climate change  
 3 advisory committee from November 2007.  
 4 Q. Are you familiar with this document?  
 5 A. Yes, I am.  
 6 Q. Do you know who prepared this document?  
 7 A. This was prepared by the climate change  
 8 advisory committee.  
 9 Q. Did DEQ play a role in preparing this  
 10 document?  
 11 A. I don't know.  
 12 Q. Did you play a role?  
 13 A. I did not. Actually, it says Montana DEQ  
 14 director appointed the broad-based group of 18  
 15 Montana citizens to the climate change advisory  
 16 committee. The C -- the climate change advisory  
 17 committee was supported by a panel of scientific  
 18 experts, public and private sector, technical and  
 19 policy specialists, and staff from DEQ.  
 20 Q. Great. Do you have any reason to believe  
 21 that this is not a true and correct copy of the  
 22 Montana climate change action plan?  
 23 A. I do not.  
 24 Q. Can you please turn to page EX-2, which is  
 25 executive summary-2.

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1 A. Okay.

2 Q. Found it?

3 A. Yep.

4 Q. And you just mentioned this recently in

5 the past few minutes about these what are discussed

6 under the heading climate change advisory committee

7 recommendations. And the sentence reads:

8 "The CCAC agreed upon 54 policy recommendations that

9 are designed to help reduce Montana's emissions of

10 greenhouse gases, or GHGs, to 1990 levels by the year

11 2020."

12 You were aware of those 54 recommendations

13 based on your work with legislative services?

14 A. Yes.

15 Q. Did Montana achieve this goal of reducing

16 greenhouse gas emissions to 1990 levels by 2020?

17 A. I don't know. A lot has changed between

18 2007 and 2020.

19 Q. And when you say a lot has changed, what

20 do you mean?

21 A. For example, I don't know that there was

22 any follow-up analysis conducted that talked about

23 some of the changes in the energy sector in

24 transportation and in agriculture to -- to see if

25 these levels were achieved or not.

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1 Q. Has Montana implemented all of the 54

2 recommendations to your knowledge?

3 A. I would need to read each of the 54

4 recommendations.

5 Q. Sure. So if you could turn to page EX-7.

6 A. Okay.

7 Q. And on that page is table EX-1, policy

8 options recommended by the CCAC.

9 A. Yes.

10 Q. And does this appear to be the 54

11 recommendations?

12 A. It does, yes.

13 Q. Are you familiar with these based on your

14 work with legislative services then?

15 A. Yes, I am.

16 Q. So if you scroll down to under energy

17 supply --

18 A. Yes.

19 Q. -- in the left-hand column, it says ES-2.

20 A. Uh-huh.

21 Q. And next to that it says renewable energy

22 incentives, biomass, wind, solar, and geothermal.

23 Did I read that right?

24 A. Yes, you did.

25 Q. So this might be cumbersome, but if you

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1 could turn to page -- save your spot --

2 A. Okay.

3 Q. -- and turn to page 4-8, which is, yeah,

4 beyond that.

5 A. Okay.

6 Q. Is this the page that seems to describe in

7 more detail what the ES-2 recommendation is that we

8 just read?

9 A. Yes.

10 Q. So this is -- if you want to take a minute

11 to look at this policy, I'm going to ask you if you

12 are aware of whether this one has been implemented.

13 A. The first bullet point or -- can you

14 repeat the question?

15 Q. Oh, sure. Yeah. Excuse me just a second.

16 So the -- I'm reading from the top of the

17 page. "This policy option reflects financial

18 incentives and other efforts such as improving the

19 ability to integrate intermittent wind resources and

20 to encourage investment in renewable energy sources

21 by businesses that sell power commercially."

22 Do you know if the state has implemented

23 that policy recommendation?

24 A. There are significant tax incentives

25 included in Title 15 for various types of energy

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1 development. I'd need to take a look at those and

2 the dates they were enacted, but yes.

3 Q. And when you say energy development, do

4 you mean renewable energy development?

5 A. Yes.

6 Q. Any other types of energy development?

7 A. Specifically in the last few years it's

8 been largely focused on renewable energy development.

9 Q. So if you could flip back to table EX-1.

10 A. You bet.

11 Q. And take a look at just a couple spots

12 down. It says ES-5.

13 A. Okay.

14 Q. And next to that it says "Incentives for

15 advanced fossil fuel generation and carbon capture

16 and storage, CCS, including combined hydrogen and

17 electricity production with carbon sequestration."

18 Is that right?

19 A. Yes.

20 Q. And if you could please turn to page 4-10.

21 A. Okay.

22 Q. And that appears to be where

23 recommendation ES-5 that we just read is --

24 A. Uh-huh.

25 Q. -- kind of flushed out.

1 A. Uh-huh.  
 2 Q. Is that correct?  
 3 A. Yes.  
 4 Q. Okay. Can you just read that section to  
 5 yourself, and then I'll ask you if you think the  
 6 state has implemented this policy.  
 7 A. Okay.  
 8 Q. Has -- so excuse me. The second paragraph  
 9 there under ES-5, it says "The CCAC recommends that  
 10 Montana direct DEQ or direct the state to enter into  
 11 a regional collaborative effort to develop standards  
 12 and protocols per CCSR." Did DEQ do that?  
 13 A. I don't know. I believe the DNRC may have  
 14 entered into some regional agreements in 2009. The  
 15 legislature authorized passing legislation that  
 16 provided a framework for the geologic storage of --  
 17 of carbon. And I believe most of those  
 18 responsibilities lie within the board of oil and gas  
 19 at the Department of Natural Resources and  
 20 Conservation.  
 21 Q. Okay. Thanks. Could you please turn back  
 22 to that table EX-1?  
 23 A. Sure.  
 24 Q. And if you turn the page, though, to EX-9.  
 25 A. Okay.

1 Q. There's a notation on the left side of the  
 2 table that says CC-2, and it state GHG report in it.  
 3 Is that correct?  
 4 A. I'm sorry. Could you --  
 5 Q. Do you see that?  
 6 A. I -- can you -- I -- I don't.  
 7 Q. Sure. Yeah. So it's on the back page, so  
 8 EX-9 is the page.  
 9 A. Okay.  
 10 Q. So I was looking at CC-2 state GHG  
 11 reporting.  
 12 A. Yes.  
 13 Q. Okay. And if you could please turn to  
 14 page 7-4 of the report.  
 15 A. Uh-huh. Okay.  
 16 Q. I'll just read the second -- part of the  
 17 second paragraph under the heading CC-2 state GHG  
 18 reporting, which says "The CCAC recommends that  
 19 Montana develop GHG reporting requirements and  
 20 opportunities for its emissions sources and citizens  
 21 as soon as possible." Do you know if Montana has  
 22 developed those GHG reporting requirements?  
 23 A. As I testified or spoke to earlier, the  
 24 DEQ, in conjunction with the Board of Environmental  
 25 Review, did attempt to move forward with some

1 greenhouse gas reporting requirements and limitations  
 2 in 2010, and the environmental quality council  
 3 objected to those efforts. In addition, in the  
 4 following legislative sessions, legislation was  
 5 brought forward to explicitly grant DEQ the authority  
 6 to require some GHG reporting requirements, and those  
 7 legislative proposals failed.  
 8 Q. Okay. Thanks. With regard to that  
 9 rulemaking effort, I know you testified that  
 10 environmental quality council objected to the  
 11 proposed rule. That did not preclude DEQ from moving  
 12 forward with the rulemaking effort eventually.  
 13 Right?  
 14 A. DEQ could have proceeded. The DE -- or  
 15 excuse me. The environmental quality council made it  
 16 very clear that they would issue a formal objection  
 17 that would have stopped any effort to advance that.  
 18 Q. That makes sense. And so based on your  
 19 understanding, DEQ decided not to proceed?  
 20 A. I wasn't part of that decision-making  
 21 process at DEQ.  
 22 Q. You were -- you were with legislative  
 23 services then?  
 24 A. I was, yes.  
 25 Q. Okay. Does DEQ use this climate change

1 action plan in its permitting decisions at all?  
 2 A. It does not.  
 3 Q. How are you doing?  
 4 A. Good.  
 5 Q. You need a break?  
 6 A. No. I'm fine.  
 7 Q. Okay. We're getting there. All right.  
 8 Paragraph 194 I'm turning to in the complaint.  
 9 A. Okay. Okay.  
 10 Q. All right. That paragraph reads: "In  
 11 2007, the Montana legislature commissioned the  
 12 environmental quality council to produce a report on  
 13 climate change in Montana, which it published in  
 14 2008. The report suggests the early adoption of cost  
 15 effective measures to reduce Montana's greenhouse gas  
 16 emissions. These included, but are not limited to,  
 17 laws to increase building energy efficiency  
 18 standards, programs to incentivize weatherization and  
 19 energy efficiency for lower income Montanans, and  
 20 laws to promote Montana's local economy." Did I read  
 21 that correctly?  
 22 A. You did read that correctly.  
 23 Q. In your opinion are you the person at DEQ  
 24 who is the most knowledgeable with respect to the  
 25 allegations in paragraph 194?

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1 A. Yes.

2 **Q. Is there anyone else at DEQ that has more**

3 **knowledge than you.**

4 A. There may be someone at DEQ that has more

5 knowledge than I do.

6 **Q. But you're not aware of anyone?**

7 A. I am not aware of anyone.

8 **Q. What role did you play with the**

9 **environmental quality council with regard to**

10 **developing the report that's referenced in paragraph**

11 **194?**

12 A. I was the author of that report.

13 **Q. Okay. And I will pass you Exhibit 151.**

14 A. Okay.

15 **Q. Is this the report that we're talking**

16 **about here?**

17 A. Yes, it is.

18 (Whereupon, Exhibit 151 was

19 marked for identification.)

20 **BY MS. CHILLCOTT:**

21 **Q. Okay. Can you identify that report,**

22 **please?**

23 A. Sure. It is climate change and analysis

24 of climate change policy issues in Montana, a report

25 to the 61st Montana legislature.

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1 **Q. And you testified that you are the author**

2 **of this report. Correct?**

3 A. Yes. That is correct.

4 **Q. Is this document publicly available?**

5 A. Yes, it is.

6 **Q. And do you have any reason to believe that**

7 **this document is not a true and correct copy of the**

8 **report?**

9 A. I do not.

10 **Q. And so did you author all of this**

11 **document, or did you compile it from other people?**

12 A. It's -- it's a compilation of a variety of

13 -- of resources.

14 **Q. Right. Okay. So with regard to, I guess,**

15 **what I would call the -- the meat of the document**

16 **which would go from page 1 to 32, were you the author**

17 **of those pages?**

18 A. Yes.

19 **Q. Does this report include measures to**

20 **reduce Montana's greenhouse gas emissions?**

21 A. This report includes an analysis of the

22 recommendations that came out of the climate change

23 advisory action plan, public comments received in

24 response to those, and then the EQC's decision-making

25 process in which those recommendations it wished to

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1 move forward on.

2 **Q. And to your knowledge, do -- have the**

3 **measures in this report -- have they been adopted?**

4 A. I would need to review each of the pieces

5 of draft legislation that were proposed. I don't

6 remember which ones were successful and which ones

7 were not.

8 **Q. Sure. And that would be relatively easy**

9 **to find out just by looking on the -- one way -- one**

10 **way to find that out would be just to look on the**

11 **legislative website for Montana state legislature?**

12 A. Yes. That would be correct, to -- to take

13 -- review the 2009 legislative proposals.

14 **Q. Sure. And to your knowledge, if you know**

15 **right now without going through, for the measures**

16 **that were adopted, did they succeed in reducing**

17 **Montana's greenhouse gas emissions?**

18 A. I don't know that any follow-up analysis

19 was conducted.

20 **Q. Do you know who would be responsible for**

21 **conducting that follow-up analysis?**

22 A. It would have had to have been outlined in

23 the statute, if anyone.

24 **Q. Okay. Do you agree it's hard to measure**

25 **progress in achieving a reduction in Montana's**

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1 **greenhouse gas emissions if a follow-up analysis is**

2 **not conducted?**

3 A. I think it's -- over time it has changed

4 in terms of responsibilities and roles in conducting

5 that. And DEQ, for example, only follows what -- it

6 follows what is required in statute to do that

7 analysis, and DEQ is not charged with that right now.

8 **Q. Are you aware of any other agency that is?**

9 A. I'm not.

10 **Q. Okay. Is it fair to say when you wrote**

11 **your -- the portion of the report that you authored,**

12 **you were aware of climate change?**

13 A. Yes.

14 **Q. When did you first become aware of climate**

15 **change?**

16 A. I don't remember.

17 **Q. Do you know if it was when you were an**

18 **adult?**

19 A. It was when I was an adult.

20 **Q. Do you remember any specific moment when**

21 **you thought to yourself, wow, this is climate change?**

22 A. I don't.

23 **Q. Do you know when DEQ first started working**

24 **on climate change issues?**

25 A. I don't.

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1 **Q. When you wrote this report, were you aware**  
 2 **of measures that could be implemented by the**  
 3 **government to reduce greenhouse gas emissions?**  
 4 **A. When I wrote this report, I was very aware**  
 5 **of the recommendations that were included in the**  
 6 **Montana climate change action plan.**  
 7 **Q. Okay. If you could please turn to**  
 8 **appendix D --**  
 9 **A. Okay.**  
 10 **Q. -- of this report at page D-1 -- D, dash,**  
 11 **1.**  
 12 **A. Okay.**  
 13 **Q. So if you see on the top of this page D-1,**  
 14 **the second column over on this table says renewable**  
 15 **portfolio standard. Correct?**  
 16 **A. Yes.**  
 17 **Q. And then below it, it says next to**  
 18 **Montana, 15 percent by 2015, 20 percent by 2020, 25**  
 19 **percent by 2025, and then in parentheses it says**  
 20 **recommendation by MCCAC. Is that right?**  
 21 **A. Yes.**  
 22 **Q. To your knowledge, has Montana adhered to**  
 23 **these renewable portfolio standard recommendations?**  
 24 **A. Montana has adhered to the 15 percent by**  
 25 **2015. That was enacted in the renewable -- the**

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1 renewable portfolio standard which was enacted -- put  
 2 into place by the Montana legislature in 2005.  
 3 **Q. Uh-huh.**  
 4 **A. I would need to refer back to that statute**  
 5 **for how far in time it went. I believe it only went**  
 6 **through 2020. I'm not sure. I'd need to take a look**  
 7 **at what was the requirement in the statute. But all**  
 8 **the benchmarks required in that statute were**  
 9 **achieved.**  
 10 **Q. In that 2005 statute?**  
 11 **A. Yes.**  
 12 **Q. Are you aware of any other legislation**  
 13 **since 2005 that addresses the RPS?**  
 14 **A. There were legislative proposals, but they**  
 15 **did not pass. The 2021 legislature did pass**  
 16 **legislation related to the renewable portfolio**  
 17 **standard.**  
 18 **Q. And what was that?**  
 19 **A. They repealed the renewable portfolio**  
 20 **standard that had been achieved.**  
 21 **Q. Do you know if DEQ took a position on that**  
 22 **legislation?**  
 23 **A. I don't know.**  
 24 **Q. In your experience at DEQ, has DEQ sought**  
 25 **to achieve or implement the recommendations set out**

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1 **in this report?**  
 2 **A. In --**  
 3 **Q. In this -- in this climate change report.**  
 4 **A. I don't believe this report included any**  
 5 **-- any recommendations or directions to the DEQ.**  
 6 **Q. Okay. In your experience at DEQ, has DEQ**  
 7 **sought to reduce fossil fuel industry greenhouse gas**  
 8 **emissions using the recommendations in this report or**  
 9 **in the previous report we discussed?**  
 10 **A. DEQ hasn't been granted authority to do**  
 11 **so.**  
 12 **Q. Okay. In your experience at DEQ, have you**  
 13 **ever felt that DEQ has made decisions or pursued**  
 14 **action that is inconsistent with the emissions**  
 15 **reduction recommendations contained in this report?**  
 16 **A. DEQ follows its -- its established**  
 17 **regulatory authority, which again doesn't allow for**  
 18 **contemplation of emissions.**  
 19 **Q. In turning back to paragraph 194 of the**  
 20 **complaint, are there any other opinions you intend to**  
 21 **offer about paragraph 194 that we haven't talked**  
 22 **about?**  
 23 **A. It would depend on the questions that are**  
 24 **asked.**  
 25 **Q. Do you anticipate providing testimony at**

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1 **trial strictly in your role at DEQ, or would you also**  
 2 **be providing testimony based on your experience at**  
 3 **legislative services?**  
 4 **A. I think that would depend on the criteria**  
 5 **-- the legal criteria of which I was asked to**  
 6 **testify.**  
 7 **Q. If questions were asked related to state**  
 8 **energy policy and your work specifically with regard**  
 9 **to these reports, you would have to draw from your**  
 10 **experience with legislative services. Correct?**  
 11 **A. That is correct.**  
 12 **Q. Have you been asked to testify regarding**  
 13 **these documents at trial?**  
 14 **A. I can't speak to that. I'm not sure if I**  
 15 **have or not --**  
 16 **Q. Okay.**  
 17 **A. -- been asked to prepare for this**  
 18 **deposition --**  
 19 **Q. Sure.**  
 20 **A. -- to testify on these.**  
 21 **Q. Sure. Okay. Could you please turn back**  
 22 **to what's probably at the bottom of your pile, and**  
 23 **it's Exhibit 62, which is defendants' expert witness**  
 24 **disclosure.**  
 25 **A. Okay.**



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1 Q. Dated October 31, 2022.  
 2 A. Okay.  
 3 Q. I can tell you it's not 62. That's the  
 4 one we had issues with.  
 5 A. Sure.  
 6 Q. Just a second. It would be number 126.  
 7 A. Okay.  
 8 Q. Sorry about that.  
 9 A. No problem.  
 10 Q. Okay. Okay. On page 4 of Exhibit 126, it  
 11 indicates that you intend to testify at trial.  
 12 Correct?  
 13 A. Yes, it does.  
 14 Q. And it says "Ms. Nowakowski's professional  
 15 CV is attached as Exhibit E, and she may testify to  
 16 any of the experiences or opine on the subjects  
 17 contained therein." Correct?  
 18 A. Yes.  
 19 Q. Other than what we've already discussed  
 20 today, are there any other experiences or subjects in  
 21 your CV that you intend to testify about at trial?  
 22 A. I think it will be limited to these. It  
 23 will depend also on the questions asked. I'll answer  
 24 truthfully.  
 25 Q. Sure. On page 4 it also says that you may

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1 have factual knowledge and expertise in a number of  
 2 subject areas, including public policy. Correct?  
 3 A. Yes.  
 4 Q. What knowledge of public policy do you  
 5 expect to testify about in court?  
 6 A. I would be able to testify in terms of my  
 7 role with the legislature in the development of  
 8 legislation.  
 9 Q. What opinions about public policy do you  
 10 expect to testify about in court?  
 11 A. I will express my opinions just in terms  
 12 of the development of that policy in my role as the  
 13 nonpartisan research director and a nonpartisan  
 14 research analysis for legislators.  
 15 Q. And page 4 also says that you may have  
 16 factual knowledge or expertise in DEQ's internal  
 17 functioning. Correct?  
 18 A. Yes.  
 19 Q. What knowledge do you have about this that  
 20 you intend to testify about in court?  
 21 A. I will be able to speak to my role as the  
 22 division administrator for air, energy, and mining  
 23 and my responsibilities in that role.  
 24 Q. What opinions about this do you expect to  
 25 give in court?

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1 A. It will depend on the questions asked.  
 2 Q. And page 4 also says you have knowledge  
 3 and expertise in permitting generally and past  
 4 permits issued. Correct?  
 5 A. Yes, it does.  
 6 Q. What knowledge do you have about this that  
 7 you intend to testify about in court?  
 8 A. I will be able to testify to my knowledge  
 9 in terms of issuance of air quality permits as well  
 10 as mining permits.  
 11 Q. Do you intend to testify about air quality  
 12 and mining permits that were issued prior to your  
 13 time at DEQ?  
 14 A. I think I will testify to those that were  
 15 issued while I was employed by DEQ.  
 16 Q. And what opinions do you -- about these  
 17 permits generally -- permitting generally and past  
 18 permits issued do you expect to give in court?  
 19 A. I will be able to speak to the role of DEQ  
 20 in following the regulatory requirements and analysis  
 21 required in making the determinations to issue those  
 22 permits.  
 23 Q. And how about with regard to air, energy,  
 24 and mining?  
 25 A. I will be able to testify, again, related

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1 to air quality permitting, the functions of the  
 2 energy office of -- of DEQ as well as the -- the  
 3 mining bureau and the issuance of mining permits.  
 4 Q. What opinions about those topics do you  
 5 expect to give in court?  
 6 A. I will be able to testify to DEQ's  
 7 regulatory authority and requirements for analysis  
 8 required in the issuance of those permits as well as  
 9 the functioning of the energy bureau.  
 10 Q. And then as far as the topic of past  
 11 legislation goes, what past legislation do you intend  
 12 to testify about in court?  
 13 A. It will depend on the questions asked. I  
 14 will be able to testify to legislation that I -- that  
 15 I drafted or may have had a role in researching.  
 16 Q. Okay. What opinions about those matters  
 17 do you expect to give in court?  
 18 A. I will simply be able to testify in terms  
 19 of the drafting process and development of those  
 20 proposals.  
 21 Q. I think the last topic is with regard to  
 22 panels, councils, and studies discussed by plaintiffs  
 23 that DEQ has said -- said on page 4 that you have  
 24 factual knowledge and expertise in. Is that correct?  
 25 A. Yes.

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1 **Q. What panels, councils, and studies do you**  
 2 **intend to testify about in court?**  
 3 A. I'll be able to testify to my role with  
 4 the legislature, similar to many of the things we  
 5 already discussed today, the climate change advisory  
 6 council, the environmental -- the environmental  
 7 quality council, the energy and telecommunications  
 8 interim committee as well as some of the  
 9 subcommittees that have been formed.  
 10 **Q. What opinions about this do you expect to**  
 11 **give the court?**  
 12 A. I'll be able to -- excuse me. You can go  
 13 ahead and finish.  
 14 **Q. I'm finished.**  
 15 A. I'll be able to speak to my role as the  
 16 staffer for those committees or my knowledge in  
 17 response to the -- for example, my response as a  
 18 staffer for the legislature, working on a study that  
 19 -- that talked about the climate change advisory  
 20 committee's work.  
 21 **Q. Okay. So it sounds like if you're called**  
 22 **to testify at trial, it's possible based on the**  
 23 **topics identified on page 4 that you will be**  
 24 **testifying based on your experience working with**  
 25 **Montana Legislative Services to some extent.**

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1 **Correct?**  
 2 A. To some extent. And it will depend on the  
 3 -- the questions asked and the timing -- the time  
 4 included in those questions.  
 5 **Q. Sure. Do you know if the Montana climate**  
 6 **change advisory committee is still operating today?**  
 7 A. I'm not aware that it is.  
 8 **MS. CHILLCOTT:** I'm going to take just a  
 9 five-minute break and be able to wrap up after that.  
 10 **THE WITNESS:** Okay. Sounds good.  
 11 **THE VIDEOGRAPHER:** We are going off the  
 12 record. The time is 3:47 p.m.  
 13 (Whereupon, a break was then  
 14 taken.)  
 15 **THE VIDEOGRAPHER:** We are back on the  
 16 record. The time is 3:51 p.m.  
 17 **BY MS. CHILLCOTT:**  
 18 **Q. Okay. Ms. Nowakowski, I have just a**  
 19 **couple more questions to wrap up.**  
 20 A. Okay.  
 21 **Q. And here we go. So my job here today is**  
 22 **to find out what you're going to testify about at**  
 23 **trial so there's no surprises. I just want to cover**  
 24 **a few broad topics and make sure there's nothing else**  
 25 **that we didn't talk about that you want to share.**

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1 **The first topic is fossil fuels generally.**  
 2 **What knowledge do you have about fossil fuels and do**  
 3 **you intend to testify about in court?**  
 4 A. I think I would need some clarification in  
 5 terms of what you mean by fossil fuels, what -- what  
 6 you're including and some specifics.  
 7 **Q. Okay. And earlier today or most of the**  
 8 **day we talked about your role in air quality**  
 9 **permitting with regard to different facilities that**  
 10 **develop fossil fuels. Correct?**  
 11 A. That's correct.  
 12 **Q. And do you anticipate testifying about any**  
 13 **other types of permitting actions in addition to air**  
 14 **quality?**  
 15 A. Yes. I'd be able to testify in terms of  
 16 mining permitting as well.  
 17 **Q. Right. Okay. As far as DEQ's authority**  
 18 **to regulate or analyze climate change, we talked a**  
 19 **lot about that today. And is there anything else**  
 20 **that we haven't talked about with regard to DEQ's**  
 21 **authority that you anticipate or intend to testify**  
 22 **about in court?**  
 23 A. It will depend on the questions asked.  
 24 **Q. As far as DEQ's budget and staff go, do**  
 25 **you have knowledge about DEQ's budget and staff that**

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1 **you would anticipate testifying about in court?**  
 2 A. I would be able to testify to budget and  
 3 staffing for the air, energy, and mining division of  
 4 DEQ.  
 5 **Q. Okay. Do you have any opinions that you**  
 6 **expect to give in court about that?**  
 7 A. It will depend on the questions asked.  
 8 **Q. Is there anything else you plan to testify**  
 9 **about at trial that we have not discussed here today?**  
 10 A. Again, it's going to depend on questions  
 11 that are asked of me in court.  
 12 **Q. Sure.**  
 13 **MS. CHILLCOTT:** I think that's all I have,  
 14 Ms. Nowakowski. I have no further questions in -- in  
 15 your hybrid expert testimony. So thank you so much.  
 16 **THE WITNESS:** Thank you.  
 17 **MS. McKENNA:** I just have a couple of  
 18 follow-up questions.  
 19 **THE WITNESS:** Okay.  
 20 **EXAMINATION**  
 21 **BY MS. McKENNA:**  
 22 **Q. This is Lee McKenna, attorney for DEQ. So**  
 23 **could you turn to page -- I don't know what page it**  
 24 **is. Paragraph 93 of the complaint.**  
 25 A. Sure.

1 Q. Okay. If you could review the first line.  
 2 A. Okay.  
 3 Q. It states: "DEQ has authorized,  
 4 permitted, and encouraged." And so let's -- let's  
 5 look at those. Let's look at that language. So you  
 6 already testified that DEQ does not encourage any  
 7 activity. Correct?  
 8 A. Correct.  
 9 Q. Let's look at the language DEQ authorizes,  
 10 quote, unquote. Does DEQ have independent authority  
 11 to authorize anything?  
 12 A. DEQ does not. DEQ has permitting  
 13 responsibilities as outlined in statute.  
 14 Q. Can you explain the difference between  
 15 permitting and authorizing?  
 16 A. Sure. So permitting is -- is specifically  
 17 outlined in statute and provides DEQ with its  
 18 authority to, for example, issue a permit.  
 19 Q. So in the complaint the word -- the phrase  
 20 "DEQ authorizes" appears a number of times. Do you  
 21 agree that DEQ authorizes any action that is stated  
 22 in the complaint?  
 23 A. I don't. I would state that DEQ has  
 24 authority to issue permits.  
 25 Q. What does the -- the phrase in this

1 paragraph 93 "fossil fuel extraction" mean?  
 2 A. As I testified previously, I would need  
 3 some specific examples.  
 4 Q. Next word is "transportation." Does that  
 5 word in paragraph 93 -- is that clear to you?  
 6 A. It is not clear. I would like some  
 7 further definition of transportation.  
 8 Q. How about combustion? Is the word  
 9 "combustion" clear to you?  
 10 A. I also would like some additional  
 11 clarification in terms of combustion, specifically  
 12 how DEQ permits the combustion.  
 13 MS. McKENNA: Thank you. No further  
 14 questions.  
 15 THE WITNESS: Thanks.  
 16 THE VIDEOGRAPHER: That concludes this  
 17 deposition. The time is 3:56 p.m.  
 18 (Whereupon, the deposition  
 19 concluded at 3:56 p.m.)  
 20 SIGNATURE RESERVED.  
 21 \* \* \* \* \*  
 22  
 23  
 24  
 25

1 DEPONENT'S CERTIFICATE  
 2  
 3 I, SONJA NOWAKOWSKI, the deponent in the  
 4 foregoing deposition, DO HEREBY CERTIFY, that I have  
 5 read the foregoing - 190 - pages of typewritten  
 6 material and that the same is, with any changes  
 7 thereon made in ink on the corrections sheet, and  
 8 signed by me a full, true and correct transcript of  
 9 my oral deposition given at the time and place  
 10 hereinbefore mentioned.  
 11  
 12  
 13 \_\_\_\_\_  
 14 SONJA NOWAKOWSKI  
 15  
 16 Subscribed and sworn to before me this  
 17 \_\_\_\_\_ day of \_\_\_\_\_, 2023.  
 18  
 19  
 20 \_\_\_\_\_  
 21 PRINT NAME: \_\_\_\_\_  
 22 Notary Public, State of Montana  
 23 Residing at: \_\_\_\_\_  
 24 My commission expires: \_\_\_\_\_  
 25 DF - HELD VS. STATE OF MT

1 CERTIFICATE  
 2 STATE OF MONTANA )  
 3 COUNTY OF GALLATIN ) : ss  
 4  
 5 I, Deborah L. Fabritz, Registered Professional  
 6 Reporter and Notary Public for the State of Montana,  
 7 residing in Bozeman, do hereby certify:  
 8  
 9 That I was duly authorized to and did swear in  
 10 the witness and report the deposition of SONJA  
 11 NOWAKOWSKI, in the above-entitled cause; that the  
 12 foregoing pages of this deposition constitute a true  
 13 and accurate transcription of my stenotype notes  
 14 of the testimony of said witness, all done to the best  
 15 of my skill and ability; that the reading and signing  
 16 of the deposition by the witness have been expressly  
 17 RESERVED.  
 18  
 19 I further certify that I am not an attorney nor  
 20 counsel of any of the parties, nor relative or  
 21 employee of any attorney or counsel connected with  
 22 the action, nor financially interested in the action.  
 23  
 24 IN WITNESS WHEREOF, I have hereunto set my hand  
 25 and affixed my notarial seal on this 6th day of  
 January, 2023.

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**EXHIBIT 2**

*Rikki Held, et al. v  
State of Montana, et al.*

---

*David Klemp  
December 15, 2022*

---

*Charles Fisher Court Reporting  
442 East Mendenhall  
Bozeman, MT 59715  
(406) 587-9016  
maindesk@fishercourtreporting.com*

**Min-U-Script® with Word Index**

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MONTANA FIRST JUDICIAL DISTRICT COURT  
LEWIS AND CLARK COUNTY

---

RIKKI HELD, et al.,  
Plaintiffs,  
v. Cause Number  
STATE OF MONTANA, et al., CDV-2020-307  
Defendants.

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VIDEORECORDED DEPOSITION UPON ORAL EXAMINATION OF  
DAVID KLEMP

---

BE IT REMEMBERED, that the videorecorded deposition upon oral examination of DAVID KLEMP, appearing at the instance of Plaintiffs, was taken at the offices of Fisher Court Reporting, 800 North Last Chance Gulch, Suite 101, Great Falls, Montana, on Wednesday, December 15th, 2022, beginning at the hour of 2:07 p.m., pursuant to the Montana Rules of Civil Procedure, before Deborah L. Fabritz, Court Reporter - Notary Public.

\* \* \* \* \*

Page 2

APPEARANCES

ATTORNEY APPEARING ON BEHALF OF  
THE PLAINTIFFS, RIKKI HELD, ET AL.:

Ms. Melissa Hornbein, Esq.  
Western Environmental Law Center  
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Helena, MT 59601  
and  
Mr. David Schwartz, Esq. (via Zoom)  
Our Children's Trust  
1216 Lincoln Street  
Eugene, OR 97401  
and

ATTORNEY APPEARING VIA ZOOM IN A LIMITED PURPOSE CAPACITY ON BEHALF OF THE MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY:

Ms. Lee M. McKenna, Esq.  
Department of Environmental Quality  
Legal Unit, Metcalf Building  
1520 East Sixth Avenue  
Helena, MT 59620-0901

ALSO PRESENT:

Nate Trejo, videographer; Catherine Armstrong; and Tara Robinson (via Zoom)

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WHEREUPON, the following proceedings were had and testimony taken, to-wit:

\* \* \* \* \*

**THE VIDEOGRAPHER:** This is the videorecorded deposition of Dave Klemp, taken in the Montana First Judicial District Court, Lewis & Clark County. Cause Number CDV-2020-307. Rikki Held, et al., versus State of Montana, et al.

Today is December 15th, 2022. The time is 2:07 p.m. We are present at the offices of Fisher Court Reporting, 800 North Last Chance Gulch, Suite 101, Helena, Montana.

The court reporter is Deb Fabritz, and the video operator is Nate Trejo of Fisher Court Reporting. The deposition is being taken pursuant to notice.

I would now ask the attorneys to identify themselves, who they represent, and whoever else is present.

**MS. HORNBEIN:** Melissa Hornbein representing plaintiffs.  
**MS. McKENNA:** Lee McKenna representing the Montana Department of Environmental Quality.  
**MS. ARMSTRONG:** Catherine Armstrong, paralegal for DEQ.

1 **THE VIDEOGRAPHER:** The court reporter will  
2 now administer the oath.

3 **DAVID KLEMP,**  
4 called as a witness, having been first duly sworn,  
5 was examined and testified as follows:

6 **EXAMINATION**

7 **BY MS. HORNBEIN:**

8 **Q.** Could you please state and spell your name  
9 for the record again.

10 **A.** Yes. First name David, D-A-V-I-D. Last  
11 name Klemp, K-L-E-M-P.

12 **Q.** Okay if I still call you Dave?

13 **A.** Yes, it is.

14 **Q.** Okay. I haven't worn out my welcome quite  
15 yet. Let's see how I can do this time.

16 **I** think we've been doing well with ground  
17 rules. You need me to cover any of that again?

18 **A.** I don't believe so.

19 **Q.** Okay. In your testimony this morning, you  
20 talked about your prior testimony. Is there anything  
21 that you want to add here?

22 **A.** No.

23 **Q.** Okay. Do you understand --

24 **MS. McKENNA:** So this is Lee McKenna. I'm  
25 sorry. I do want to make an objection, and it

1 applies to the prior deposition as well when you  
2 asked about whether Mr. Klemp's testimony was binding  
3 on the department. And I -- I want to make an  
4 objection on the grounds that that calls for a legal  
5 conclusion.

6 **DEQ** has designated -- just to clarify, **DEQ**  
7 has designated Mr. Klemp to be a 30(b)(6) deponent on  
8 the topics that were designated, but I believe the  
9 word "binding" is a legal term of art that is subject  
10 to legal interpretation. So I just wanted to put  
11 that objection on the record.

12 **MS. HORNBEIN:** Understood.

13 **BY MS. HORNBEIN:**

14 **Q.** Do you understand the capacity in which  
15 you're testifying in this deposition?

16 **A.** Yes. I believe so.

17 **Q.** Okay. Do you understand that you have  
18 been designated as a hybrid expert witness by the  
19 state?

20 **A.** Yes.

21 **Q.** Okay. I'm going to hand you what has  
22 previously been marked as Exhibit Number 62. And I'm  
23 also handing you what I am going to mark as --

24 **MS. HORNBEIN:** Are we on 168 now?

25 **THE REPORTER:** Um-hum.

1 **BY MS. HORNBEIN:**

2 **Q.** -- as Exhibit 168.

3 **(Whereupon, Exhibit 168 was**  
4 **marked for identification.)**

5 **BY MS. HORNBEIN:**

6 **Q.** Here you go. Do you know what these  
7 documents are, Dave?

8 **A.** They both appear to be defendants' expert  
9 witness disclosures.

10 **Q.** Okay. So just for the record and for  
11 **Ms. McKenna, I have handed you Exhibit Number 62,**  
12 **which is defendants' original expert witness**  
13 **disclosure filed October 31st of 2022. And then as**  
14 **new Exhibit 168, I have handed you defendants'**  
15 **supplemental expert witness disclosure, I believe,**  
16 **filed November 22nd of 2022. Does that look right?**

17 **A.** Yes. 22nd of November 2022.

18 **Q.** Okay. Are you familiar with these  
19 documents?

20 **MS. McKENNA:** Just to clarify, there's  
21 another one that is November 30th, and I just want to  
22 make sure we're all on the same page about that.

23 **MS. HORNBEIN:** So that's a source of  
24 confusion for me. I have not been able to find a  
25 supplemental disclosure dated the 30th. Plaintiffs'

1 supplemental notice of 30(b)(6) depositions was dated  
2 the 30th. And so if there is something else we're  
3 missing, it would be good to get a copy of that.

4 **MS. McKENNA:** Okay. Well, Catherine is  
5 the keeper of the documents, so she might be able to  
6 straighten you out.

7 **MS. ARMSTRONG:** You're -- you're correct.  
8 It's -- yeah. The -- the 30th -- the only one that I  
9 have that's from the 30th of November is from  
10 plaintiffs.

11 **MS. HORNBEIN:** Okay.

12 **MS. ARMSTRONG:** Yeah.

13 **MS. HORNBEIN:** Are we good on that? Okay.

14 **MS. McKENNA:** Yes.

15 **BY MS. HORNBEIN:**

16 **Q.** Going back to Exhibit Number 62, the  
17 original expert witness disclosure, could you please  
18 turn to page 5 of that document.

19 **A.** Okay.

20 **Q.** And do you see the heading with your name  
21 that says Dave Klemp will give fact and expert  
22 testimony regarding topics raised in plaintiffs'  
23 complaint at paragraphs 87 through 89, 92 to 93, and  
24 118 sub J and K and paragraph 192?

25 **A.** You said 87 to 89, instead of 87 to 90?

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1 Q. Oh, I apologize.  
 2 A. Am I reading that wrong?  
 3 Q. 87 to 90.  
 4 A. Okay. I see that.  
 5 Q. Is all the rest of that correct?  
 6 A. I believe so, yes.  
 7 Q. And are those the paragraphs that you are  
 8 prepared to give testimony on today in your hybrid  
 9 capacity?  
 10 A. Yes.  
 11 Q. Okay. We already went over your CV in the  
 12 prior deposition. I don't see any need to go over  
 13 that again unless there is anything you want to add.  
 14 A. No. Nothing.  
 15 Q. Okay. We already went over the  
 16 preparation, so we don't need to do that again unless  
 17 there is anything you want to add there.  
 18 A. No.  
 19 Q. Okay. I'm going to hand you what I am  
 20 marking as Exhibit Number 169.  
 21 (Whereupon, Exhibit 169 was  
 22 marked for identification.)  
 23 BY MS. HORNBEIN:  
 24 Q. Can you identify this document?  
 25 A. This is the notice of deposition of Dave

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1 Klemp.  
 2 Q. Okay. Have you seen this before?  
 3 A. I believe I have, yes.  
 4 Q. Okay. Do you remember when you reviewed  
 5 it?  
 6 A. No. Not -- not specifically. I don't  
 7 remember which date.  
 8 Q. Okay. Do you recollect who asked you to  
 9 serve as a hybrid expert in this case?  
 10 A. To serve as a hybrid expert, I believe it  
 11 was the attorney Lee McKenna.  
 12 Q. Okay. Not Director Dorrington as with the  
 13 30(b)(6) deposition?  
 14 A. I don't recall those specific legal terms  
 15 used when I talked with Director Dorrington.  
 16 Q. Okay. And returning to the question I  
 17 asked you earlier, why you?  
 18 A. I believe because of the experience that I  
 19 have or have had while I worked at DEQ.  
 20 Q. Okay. I'm handing you what has previously  
 21 been marked as Exhibit 65. Can you tell me what that  
 22 is?  
 23 A. Exhibit 65 appears to be Montana Code  
 24 Annotated 90-4-1001, state energy policy goal  
 25 statements.

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1 Q. Are you familiar with this statute?  
 2 A. At a very high level.  
 3 Q. Okay. Do you agree that Montana has a  
 4 state energy policy and that it is codified at  
 5 Section 90-4-1001?  
 6 A. I believe that's accurate, yes.  
 7 Q. Okay. Do you agree that the defendants in  
 8 this case have a duty to apply the laws that are  
 9 passed by the Montana legislature?  
 10 A. Yes. I would generally agree to that.  
 11 Q. Okay. Do you believe that --  
 12 MS. McKENNA: I object to -- on that. I  
 13 object on the grounds of legal conclusion.  
 14 BY MS. HORNBEIN:  
 15 Q. Do you agree that that duty applies under  
 16 this statute 90-4-1001?  
 17 MS. McKENNA: Objection. Calls for a  
 18 legal conclusion.  
 19 BY MS. HORNBEIN:  
 20 Q. You can go ahead and answer.  
 21 A. Okay. In -- in my capacity I believe we  
 22 have a duty to comply with the Clean Air Act of  
 23 Montana and some of the other statutes that govern  
 24 our day-to-day work. I can't speak to whether or not  
 25 there's something in here that someone else would

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1 need to comply with.  
 2 Q. Is it a correct characterization of your  
 3 testimony that you don't take a position on whether  
 4 DEQ is required to comply with the state energy  
 5 policy?  
 6 A. I take a position that the DEQ,  
 7 specifically the air quality bureau, needs to comply  
 8 with the Clean Air Act of Montana, Montana  
 9 Environmental Policy Act, and those statutes that  
 10 govern our work.  
 11 Q. Okay. But not this statute?  
 12 A. Not this statute.  
 13 Q. Okay. What is the basis for your opinion  
 14 that DEQ and specifically the air quality bureau does  
 15 not need to comply with the provisions of this  
 16 statute?  
 17 A. Making sure my attorney is good. I don't  
 18 -- in the Clean Air Act of Montana, I don't recall  
 19 that the -- this energy statute is referenced  
 20 anywhere in that statute.  
 21 Q. Okay. Do you have an understanding about  
 22 what this lawsuit is about?  
 23 A. Yes.  
 24 Q. What is your understanding of what this  
 25 lawsuit is about?

1 A. A couple different elements. The state's  
2 energy policy --  
3 **Q. Uh-huh.**  
4 A. -- encourages fossil fuel use.  
5 **Q. Uh-huh.**  
6 A. And Montana, maybe specifically DEQ and  
7 other agencies, aren't appropriately implementing the  
8 Montana Environmental Policy Act.  
9 **Q. Okay. Is it your understanding that**  
10 **plaintiffs are challenging the constitutionality of**  
11 **this section 90-4-1001, the state energy policy?**  
12 A. Yes.  
13 **Q. Okay. Do you have an understanding of**  
14 **whether DEQ implements this policy in any way?**  
15 A. I have an understanding that the Air  
16 Quality Bureau does not follow the statute in the --  
17 through the normal course of the air quality work.  
18 **Q. Okay. Do you have an opinion about**  
19 **whether DEQ, the agency, has a role in implementing**  
20 **the statute?**  
21 A. I can't speak to other parts of the  
22 agency.  
23 **Q. Okay. Are you aware of any laws or**  
24 **policies suggesting that DEQ does not have to follow**  
25 **this statute?**

1 A. No.  
2 **Q. Okay. Are you aware of any laws or**  
3 **policies directing or requiring DEQ to act in a**  
4 **manner that is contradictory to this statute?**  
5 A. No.  
6 **Q. Okay. Were you asked to provide any**  
7 **opinions about this statute, the Montana state energy**  
8 **policy, in your role as a hybrid expert in this case?**  
9 A. As it relates to my previous employment in  
10 the air quality bureau, I think the answer to that  
11 would be yes.  
12 **Q. And what testimony were you asked to**  
13 **provide relative to section 90-4-1001?**  
14 A. Are you -- when you say testimony, are you  
15 referring to the deposition today or potentially at  
16 trial? I should clarify.  
17 **Q. Either today or at trial were you -- were**  
18 **you asked to provide opinions on this statute?**  
19 A. So at trial it remains to be seen. It  
20 depends on the question.  
21 **Q. Sure.**  
22 A. With regard to today, I looked at that to  
23 talk about whether or not it had any role in the  
24 issuance of air quality permits or the operation of  
25 the air quality program.

1 **Q. And your conclusion was?**  
2 A. No, it does not.  
3 **Q. Okay. Do you have any additional opinions**  
4 **about section 90-4-1001 that we haven't discussed?**  
5 A. No.  
6 **Q. You have familiarity with the Montana**  
7 **Environmental Policy Act, or MEPA, as part of your**  
8 **prior role -- roles really with DEQ. Is that**  
9 **correct?**  
10 A. Correct.  
11 **Q. I think you've already touched on this**  
12 **quite a bit in the prior deposition, but is there**  
13 **anything in terms of the manner in which you're**  
14 **familiar with MEPA implementation that we didn't**  
15 **discuss in the last deposition? In other words, we**  
16 **discussed MEPA in the context of permitting. Is**  
17 **there any other way that in your former roles with**  
18 **DEQ that you applied MEPA or used the statute outside**  
19 **of the -- say outside of the permitting context?**  
20 A. Not that I can think of.  
21 **MS. McKENNA: Objection. Vague.**  
22 **THE REPORTER: Sorry. I didn't get that.**  
23 **MS. McKENNA: Objection. Vague. That's a**  
24 **vague question.**  
25 **THE WITNESS: Not that I can think of**

1 today.  
2 **BY MS. HORNBEIN:**  
3 **Q. Are you familiar with the analysis that**  
4 **the state defendants undertake pursuant to MEPA with**  
5 **respect to fossil fuel development in Montana?**  
6 A. Not all of them. Can you please clarify  
7 what you mean by defendants?  
8 **Q. Sure. In what sense are you familiar with**  
9 **MEPA analysis in the context of fossil fuel**  
10 **development in Montana? Can I ask it that way?**  
11 A. Specifically as it relates to air quality  
12 permitting actions?  
13 **Q. Is that the scope of your knowledge?**  
14 A. Primarily.  
15 **Q. Sure. Go ahead.**  
16 A. There's also some permits, licenses that  
17 may -- might be required in other programs that might  
18 have air quality implications. So I or the bureau  
19 would be involved with some of those documents that  
20 were being prepared.  
21 **Q. I think you -- you provided an example in**  
22 **a prior deposition. Could you provide another**  
23 **example of that type of situation here?**  
24 A. Yes. There -- there could be a permit or  
25 license required by another program. I think the

1 example that I used was the solid waste program,  
2 licensing a landfill that might have air quality  
3 implications. And so we, the air quality bureau,  
4 would assist in the preparation of that environmental  
5 analysis.

6 **Q. Okay. Do you have any knowledge whether**  
7 **in your capacity with DEQ or otherwise about how the**  
8 **state analyzes greenhouse gas emissions and climate**  
9 **change under MEPA?**

10 **MS. McKENNA:** Objection. Vague as to "the  
11 state."

12 **BY MS. HORNBEIN:**

13 **Q. Let's start with DEQ. Do you have**  
14 **knowledge about whether DEQ considers greenhouse gas**  
15 **emissions in its MEPA analyses?**

16 **A. Some. I would need to go back and look at**  
17 **the -- the record for each of the individual permits**  
18 **and the analysis as well as the MEPA documents to**  
19 **determine what has been done for greenhouse gases.**

20 **Q. Are you aware of criteria that cause**  
21 **greenhouse gas that require greenhouse gas analysis**  
22 **under MEPA versus a situation that doesn't?**

23 **A. Can you please clarify that question?**

24 **Q. I'm just trying -- when you said "some,"**  
25 **I'm trying to get a sense of what those situations**

1 **might be where there is a greenhouse gas analysis**  
2 **implicated.**

3 **A. Well, earlier there was an exhibit where**  
4 **we identified greenhouse gas emissions in the**  
5 **environmental impact statement.**

6 **Q. Uh-huh.**

7 **A. That would be an example of one.**

8 **Q. Okay. And going back to your testimony**  
9 **this morning, would an example of a situation where a**  
10 **greenhouse gas analysis is not implicated be, for**  
11 **example, a permit renewal or amendment?**

12 **A. This morning we talked about -- or earlier**  
13 **MEPA is not required for administrative actions or**  
14 **for title -- permit amendments or Title V permits.**

15 **Q. Uh-huh. Okay. Were you asked to provide**  
16 **any opinions about MEPA in this case?**

17 **A. Can you be more specific about -- I mean,**  
18 **the short answer is yes, as we've discussed earlier**  
19 **today.**

20 **Q. What opinions were you asked to provide**  
21 **about MEPA?**

22 **A. What was done, how it was done to the**  
23 **extent I knew or could review from the attachments or**  
24 **the correspondence that, you know, are in this case.**

25 **Q. Were you asked to provide opinions on**

1 **whether DEQ is required to analyze greenhouse gas**  
2 **emissions under MEPA?**

3 **A. Not specifically.**

4 **Q. Were you asked to provide opinions on**  
5 **whether DEQ is required to analyze climate change**  
6 **under MEPA?**

7 **A. Not specifically.**

8 **Q. Okay. When you say not specifically, are**  
9 **there general situations where you were asked to**  
10 **provide such opinions?**

11 **A. The MEPA statute describes what should be**  
12 **done and what the constraints are of that analysis,**  
13 **and I don't believe climate change or greenhouse**  
14 **gases are mentioned in the statute.**

15 **Q. Okay. When you mention what the**  
16 **constraints are of that analysis, what are you**  
17 **referring to?**

18 **A. A couple changes that have been made,**  
19 **clarified MEPA's procedural. It does not convey any**  
20 **additional authorities beyond the underlying**  
21 **statutory authority such as the Clean Air Act.**

22 **Q. Uh-huh.**

23 **A. And we don't analyze impacts that are**  
24 **essentially outside the state's border that are of**  
25 **regional, national, or global in nature.**

1 **Q. Okay. To your mind, does that provision**  
2 **directing entities implementing MEPA not to look at**  
3 **impacts outside of the state's borders -- does that**  
4 **preclude a consideration of greenhouse gas emissions?**

5 **A. Can you describe what you mean by**  
6 **consideration of greenhouse gas emissions?**

7 **Q. An analysis of greenhouse gas emissions as**  
8 **part of a decision whether or not to grant a permit**  
9 **or an analysis as part of an environmental review**  
10 **under MEPA supporting the granting of such a permit.**

11 **A. Okay. There's a couple -- the -- the**  
12 **first part. I may need to ask you to repeat the**  
13 **second part.**

14 **Q. Sure.**

15 **A. I'm not aware --**

16 **MS. McKENNA:** Let's object on -- on the  
17 **basis of a compound question.**

18 **THE WITNESS:** Okay.

19 **MS. McKENNA:** And take it one topic at a  
20 **time.**

21 **MS. HORNBEIN:** Okay.

22 **MS. McKENNA:** The permitting is very  
23 **different from an environmental review, so please ask**  
24 **a question to answer each if that's where you're**  
25 **going.**

1 MS. HORNBEIN: Okay.  
 2 BY MS. HORNBEIN:  
 3 Q. Okay. Is it your understanding that --  
 4 you know what? Strike that. We're going to address  
 5 this issue here very shortly, so why don't we wait  
 6 until we have the statute in front of us. I think  
 7 that will be more useful.  
 8 A. Okay.  
 9 Q. Do you agree that DEQ is subject to the  
 10 requirements of MEPA?  
 11 A. Yes. I agree --  
 12 Q. Okay.  
 13 A. -- DEQ must comply with MEPA.  
 14 Q. Okay. So now we can get back to the  
 15 earlier discussion. I am handing you what has been  
 16 previously marked as Exhibit Number 66. What is this  
 17 statute?  
 18 A. This is Montana Code Annotated 2021 Title  
 19 75, chapter 1, part 2, environmental impact  
 20 statements.  
 21 Q. Okay. Can you look at section 75-1-201,  
 22 subpart (2)(a), which is on page 3 of 5 of the  
 23 document I just put in front of you?  
 24 A. Okay.  
 25 Q. Are you familiar with this provision?

1 A. Generally. I've read it in the past, not  
 2 recently.  
 3 Q. Is this the provision that we were  
 4 discussing a few moments ago?  
 5 A. Yes. I believe so, yes.  
 6 Q. Okay. Do you have knowledge of under what  
 7 circumstances this provision is implemented by DEQ?  
 8 A. When you say implementing this provision,  
 9 are you talking about the restriction on the  
 10 analysis?  
 11 Q. Yes.  
 12 A. I believe it would be for any MEPA  
 13 document that we complete. We cannot look or require  
 14 review of actual or potential impacts beyond  
 15 Montana's borders.  
 16 Q. Okay. Does this provision apply to any  
 17 MEPA analysis for permitting a fossil fuel-related  
 18 activity by DEQ?  
 19 MS. McKENNA: Objection. Vague as to  
 20 fossil fuel activity.  
 21 BY MS. HORNBEIN:  
 22 Q. Does this provision apply when -- let's  
 23 start with the air quality bureau. Does this  
 24 provision apply when the air quality bureau is  
 25 issuing permits for an action that will produce

1 greenhouse gases?  
 2 A. Maybe.  
 3 MS. McKENNA: Objection. That's a very  
 4 vague question. Many things could potentially  
 5 produce greenhouse gases. If you could be more  
 6 specific, that would be helpful.  
 7 BY MS. HORNBEIN:  
 8 Q. Okay. Well, I referenced a permitting  
 9 activity, but let's go through some of the examples  
 10 that we used this morning to get a bit more specific.  
 11 Does this provision apply when you are  
 12 permitting an oil refinery -- when DEQ is permitting  
 13 an oil refinery?  
 14 A. Which specific permit -- air quality  
 15 permit are you referring to?  
 16 Q. Any air quality permit.  
 17 A. It may or may not apply to a permit,  
 18 depending on whether or not the permit is a state  
 19 action that's subject to MEPA.  
 20 Q. Okay. If the permit is a state action  
 21 that's subject to MEPA, does this provision apply?  
 22 A. If there are actual or potential impacts  
 23 beyond Montana's borders, the agency would be  
 24 precluded from reviewing those impacts.  
 25 Q. Okay. Does this provision apply when DEQ

1 is undertaking a permitting action that is subject to  
 2 MEPA to permit coal mining in Montana?  
 3 A. If there were impacts associated with the  
 4 issuance of the air quality permit that were beyond  
 5 Montana's borders, Montana would be precluded from  
 6 reviewing actual or potential -- those actual or  
 7 potential impacts.  
 8 Q. Okay. Would this provision apply if DEQ  
 9 is issuing a permit that is subject to MEPA for the  
 10 transportation of fossil fuels?  
 11 A. Again, as I mentioned earlier, air quality  
 12 permits specifically, transportation facilities may  
 13 or may not be included as -- as part of the permit.  
 14 And so if it was part of a permit that was a state  
 15 action and required a MEPA review, if there were  
 16 impacts -- actual or potential impacts beyond  
 17 Montana's borders from that action, we -- we would be  
 18 precluded from reviewing those impacts.  
 19 Q. In permitting oil and gas infrastructure,  
 20 for example, of the type we discussed earlier today  
 21 for, say, a storage tank location, if that permit  
 22 were subject to MEPA, would this provision apply?  
 23 A. If an air quality permit was issued for an  
 24 oil tank facility, again, and there were impacts --  
 25 actual or potential impacts outside of Montana's



1 borders, the agency could not review those.  
2 Q. Okay. Is DEQ required -- or excuse me. I  
3 need to rephrase that.

4 Is an air quality permit required to  
5 conduct oil and gas drilling and extraction in  
6 Montana?

7 A. Drilling and -- and extraction --  
8 MS. McKENNA: Objection. So I'm going to  
9 object because that's compound. Drilling and  
10 extraction are two separate things.

11 BY MS. HORNBEIN:

12 Q. Okay. Is a DEQ air quality permit  
13 required to drill for oil or gas in Montana?

14 A. No, it is not.

15 Q. Is it required for the extraction of oil  
16 and gas?

17 A. Please tell me what you mean specifically  
18 by extraction.

19 Q. Once a well is drilled for subsequent  
20 production and operation from that well.

21 A. Those are two different things. Pulling  
22 the oil from a well versus processing that are  
23 different things.

24 Q. Okay. If I used the term processing, that  
25 was a misuse.

1 that.

2 Q. Okay. Section 75-1-201 (2)(a) reads:  
3 "Except as provided in subsection (2)(b), an  
4 environmental review conducted pursuant to subsection  
5 (1) may not include a review of actual or potential  
6 impacts beyond Montana's borders. It may not include  
7 actual or potential impacts that are regional,  
8 national, or global in nature." Did I read that  
9 correctly?

10 A. Yes.

11 Q. Okay. I think we've already covered this,  
12 but in your opinion what does this provision require  
13 DEQ to do when it is conducting an environmental  
14 analysis?

15 A. I believe that we conduct a review of  
16 actual or potential impacts that are within Montana's  
17 borders.

18 Q. Okay. Would those impacts include impacts  
19 of climate change within Montana's borders?

20 A. That would depend on if there were  
21 impacts.

22 Q. Okay. Can I set up a hypothetical? Okay.

23 A. Yes.

24 Q. I can go ahead and do it. I guess you can  
25 answer or not.

1 A. Okay.

2 Q. Let's talk about oil production. Is a DEQ  
3 air quality permit required?

4 A. It would depend on the facilities that are  
5 necessary for that production.

6 Q. Is an air quality permit required for  
7 processing of oil or gas once it is extracted?

8 A. It would depend upon, again, the specific  
9 equipment that is used.

10 Q. And would the nature of that answer to  
11 that question be what the emissions are from the  
12 equipment that's used?

13 A. Yes. That would be the basis for that.

14 Q. Okay. Do you have a sense for how often  
15 this provision is used in the application of MEPA to  
16 air quality permitting?

17 A. Not without reviewing the specific actions  
18 because it would be tied to the specific facility  
19 that was either being permitted as a new facility or  
20 the changes that were being made.

21 Q. Okay. Does DEQ have any internal policies  
22 with respect to how it analyzes climate change  
23 impacts under MEPA?

24 A. I don't believe I've read an internal  
25 policy or -- or seen a specific policy with regard to

1 Okay. Let's say a new coal mine was being  
2 permitted. That coal mine was going to extract --  
3 let's just use the example of 15 million tons of coal  
4 per year. That extraction would result in some  
5 quantifiable amount of greenhouse gas production.  
6 What would DEQ be required to do in implementing MEPA  
7 in this situation?

8 MS. McKENNA: Objection. Calls for  
9 speculation.

10 BY MS. HORNBEIN:

11 Q. It does call for speculation. So please  
12 go ahead and answer.

13 A. Okay. And -- and this is obviously  
14 speculation. If we were to receive an air quality  
15 permit that you describe, we would first notice that  
16 for public comment --

17 Q. Uh-huh.

18 A. -- which is very important. We would  
19 prepare the draft permit as well as the corresponding  
20 environmental review. It could be an environmental  
21 assessment or potentially an environmental impact  
22 statement. And we would rely on information that is  
23 required to be submitted by the applicant to  
24 determine what the impacts were in the state of  
25 Montana. We would then disclose those impacts, put

1 those out for public consumption, and see whether or  
2 not we hit the mark and take comments and then  
3 finalize that document based upon the requirements in  
4 MEPA and the underlying statutes, such as the Clean  
5 Air Act, and follow that process.

6 **Q. Okay. As part of that environmental  
7 analysis, would DEQ be required to consider, for  
8 example, increasing severity and frequency of  
9 wildfires in Montana?**

10 **A. I can't answer that without a solid  
11 connection between a permit of the coal mine or the  
12 specific action at hand and the wildfires ignited in  
13 Montana.**

14 **Q. Okay. Would DEQ be required to take under  
15 consideration data indicating that anthropogenic  
16 climate change has caused an increase in the severity  
17 and duration of wildfires in Montana?**

18 **A. It would depend if that severity -- it's  
19 somewhat of a general statement that has all sorts of  
20 terminology in there that might be considered very  
21 subjective. So can you please restate it or use more  
22 specific words to describe the answer that you're --  
23 the question that you're asking?**

24 **Q. So I guess the question I'm asking, I'm  
25 using the example of wildfire severity and duration**

1 **because there is substantial scientific evidence in  
2 the record that climate change -- anthropogenic  
3 climate change is leading to an increase in the  
4 length of Montana's fire seasons and the severity of  
5 fires, and additional effects caused by those fires.  
6 But let's just stick with the fires themselves.**

7 **If DEQ is engaging in a permitting action  
8 that is going to result in a significant amount of  
9 greenhouse gas emissions, would it be required to  
10 consider such impacts within the state's borders?**

11 **MS. McKENNA: That's a really compound  
12 question. I'm going to object to that.**

13 **BY MS. HORNBEIN:**

14 **Q. Okay. You can still go ahead and try and  
15 answer.**

16 **A. It would really depend on the impacts that  
17 were occurring in Montana. When you say  
18 anthropogenic, you know, the impacts in Montana, we  
19 are required to review and disclose those impacts in  
20 Montana from a facility that we are issuing a permit  
21 for in the state of Montana.**

22 **Q. Okay. In your opinion does this  
23 provision, this provision being 75-1-201 (2)(a),  
24 preclude DEQ from assessing certain impacts as part  
25 of its environmental review?**

1 **A. I believe it prohibits us from conducting  
2 a review of actual or potential impacts beyond  
3 Montana's borders.**

4 **Q. Okay. How would -- in your opinion, how  
5 would DEQ's MEPA analysis for permitting -- for  
6 issuing air quality permits related to fossil fuel  
7 development change if this provision didn't exist?**

8 **MS. McKENNA: Objection. Vague as to  
9 fossil fuel development.**

10 **BY MS. HORNBEIN:**

11 **Q. Okay. In your opinion how would DEQ's  
12 analysis under MEPA change for issuance of a permit  
13 for a new coal mine if this provision did not exist?**

14 **MS. McKENNA: I want to clarify that coal  
15 mine permitting is not the same thing as air quality  
16 permitting. So if you're directing this question to  
17 Mr. Klemp in his capacity as an air quality hybrid  
18 expert witness, I -- I think the question should  
19 include a reference to the air quality permit. He  
20 does not -- is not designated to testify on behalf of  
21 coal mining permitting.**

22 **MS. HORNBEIN: Sure.**

23 **BY MS. HORNBEIN:**

24 **Q. How would DEQ's analysis change for  
25 issuance of an air quality permit for a new coal mine**

1 **in Montana if this provision did not exist?**

2 **A. If this provision did not exist, if we  
3 were issuing an air quality permit for a new coal  
4 mine and there was a corresponding MEPA analysis, it  
5 could potentially include the review of actual or  
6 potential impacts beyond Montana's borders.**

7 **Q. Okay. In your opinion what would a,  
8 quote, unquote, thorough climate change MEPA analysis  
9 consist of?**

10 **A. Again, the type of analysis and the  
11 thoroughness really depends on what we're talking  
12 about for the issuance of an air quality permit.**

13 **Q. Okay.**

14 **THE REPORTER: You said again the type of  
15 analysis and the --**

16 **THE WITNESS: Thoroughness. I'm sorry.**

17 **THE REPORTER: Oh. Thank you. Sorry.  
18 Thoroughness.**

19 **BY MS. HORNBEIN:**

20 **Q. Okay. Would -- if this provision that  
21 we've been discussing were not in effect, do you  
22 believe that MEPA analyses conducted by DEQ's air  
23 quality bureau, since that's the realm of your  
24 expertise, would be impacted in its budget?**

25 **A. To the extent there's additional analysis**

<p style="text-align: right;">Page 33</p> <p>1 that we're not -- that is not being done today, the 2 potential exists for budgetary impacts. 3 <b>Q. Okay. Does a potential exist for staffing 4 impacts?</b> 5 A. Maybe. 6 <b>Q. Depending on?</b> 7 A. Again, I'm speaking, historically 8 speaking. Didn't really staff people based on MEPA 9 analysis. It's based on the number of permits, but 10 there is a budget impact. And so that's why 11 potentially it depends on the extent and -- it 12 depends on the types of permits that we're seeing, 13 the number, the complexity, and the impacts 14 associated with each one. 15 <b>Q. Okay. Would you agree that climate change 16 has impacts that are regional in nature?</b> 17 A. I think that's a fair assessment. 18 <b>Q. Would you agree that climate change has 19 impacts that are national in nature?</b> 20 A. I think that's a fair assessment. 21 <b>Q. And would you agree that climate change 22 has impacts that are global in nature?</b> 23 A. I think that's also fair. 24 <b>Q. Okay. Are you aware of anyone at DEQ, 25 including yourself when you were there, who has</b></p>	<p style="text-align: right;">Page 35</p> <p>1 <b>Q. Okay. So I'm going to ask you a series of 2 questions that may seem ridiculous, but bear with me. 3 Do you consider yourself to be an expert in 4 psychology?</b> 5 A. No. 6 <b>Q. Psychiatry?</b> 7 A. No. 8 <b>Q. How about mental health?</b> 9 A. No. 10 <b>Q. Do you consider yourself to be an expert 11 in children's health?</b> 12 A. No. 13 <b>Q. You're not a pediatrician?</b> 14 A. No. 15 <b>Q. Okay. Do you have any expertise in any 16 medical field?</b> 17 A. No. 18 <b>Q. Okay. Do you consider yourself to be an 19 expert in glaciology or glaciers?</b> 20 A. No. 21 <b>Q. How about energy policy?</b> 22 A. No. 23 <b>Q. Okay. How about electric power systems?</b> 24 A. No. 25 <b>Q. Okay. Renewable energy?</b></p>
<p style="text-align: right;">Page 34</p> <p>1 <b>relied on this provision, this provision being 2 75-1-201 (2)(a), when conducting an environmental 3 review of a proposed project under MEPA?</b> 4 A. Yes. 5 <b>Q. Does that apply to you?</b> 6 A. Yes. 7 <b>Q. Does that apply to other people?</b> 8 A. Yes. 9 <b>Q. Okay. Under what circumstances?</b> 10 A. Again, just the air quality bureau, this 11 section applies virtually to -- well, it applies to 12 every MEPA analysis, whether or not there's something 13 specific that is not completed or not, but it is 14 looked at, every single MEPA analysis. 15 <b>Q. Okay. Do you consider yourself an expert 16 in a specific area?</b> 17 A. Yes. 18 <b>Q. What is that area?</b> 19 A. Air quality. 20 <b>Q. Okay. Are there any other areas that you 21 consider yourself to be an expert in? Refereeing?</b> 22 A. Yeah. Refereeing, yeah. I -- I wouldn't 23 say anything but air quality rises to the level of 24 being an expert. There's various levels of 25 expertise, but no.</p>	<p style="text-align: right;">Page 36</p> <p>1 A. No. 2 <b>Q. Okay. Do you consider yourself to be an 3 expert in greenhouse gas emissions accounting?</b> 4 A. No. 5 <b>Q. Okay. How about economics?</b> 6 A. No. 7 <b>Q. Okay. Do you have any expertise in 8 forests?</b> 9 A. No. 10 <b>Q. Fish biology?</b> 11 A. No. 12 <b>Q. Wildfires?</b> 13 A. No. 14 <b>Q. Okay. You paused there a little bit. Is 15 there anything else you want to add to that?</b> 16 A. No. We deal with wildfires in the air 17 quality realm. So to the extent there's air quality 18 related impacts, that's why I hesitated. It's broad. 19 <b>Q. Okay. Are you a political scientist?</b> 20 A. No. 21 <b>Q. Do you consider yourself to be a climate 22 scientist?</b> 23 A. No. 24 <b>Q. Okay. Have you read any of the expert 25 reports submitted by the plaintiffs' experts in this</b></p>

<p style="text-align: right;">Page 37</p> <p>1 case?</p> <p>2 A. At a very high level.</p> <p>3 Q. Which reports?</p> <p>4 A. I read the names of each individual.</p> <p>5 Q. Okay. Was that the sum and substance?</p> <p>6 A. And I -- I read Ann Hedge's a little</p> <p>7 closer because I've worked with Ann for a lot of</p> <p>8 years.</p> <p>9 Q. Sure. Anyone else?</p> <p>10 A. No.</p> <p>11 Q. Okay. How about Dr. Barrett, formerly</p> <p>12 Senator Barrett?</p> <p>13 A. Formerly Senator Barrett, same thing. I</p> <p>14 read his name and confirmed that it was the Senator</p> <p>15 Barrett that I was familiar, and that was about it.</p> <p>16 Q. Okay. You mentioned that you had looked</p> <p>17 at Ann Hedge's report a little more closely. Do you</p> <p>18 have any disagreements with the opinions in her</p> <p>19 report?</p> <p>20 A. Not that I recall.</p> <p>21 Q. Do you have any disagreements with any of</p> <p>22 the other opinions to the extent that you're familiar</p> <p>23 with them?</p> <p>24 A. Not -- not that I can recall.</p> <p>25 Q. Okay. Have you read any of the</p>	<p style="text-align: right;">Page 39</p> <p>1 -- I would say at DEQ but you're not at DEQ anymore.</p> <p>2 Are you the staffer or former staffer at DEQ who is</p> <p>3 the most knowledgeable with respect to the</p> <p>4 allegations that I just read to you?</p> <p>5 A. Certainly as it relates to air quality.</p> <p>6 Outside of that, maybe or maybe not. I don't know.</p> <p>7 Q. Sure.</p> <p>8 A. Yeah.</p> <p>9 Q. Is there anyone at DEQ -- let's just stick</p> <p>10 to air quality since that's your --</p> <p>11 A. Okay.</p> <p>12 Q. -- area of expertise. Is there anyone at</p> <p>13 DEQ who has an equivalent level or more knowledge</p> <p>14 than you with respect to these allegations?</p> <p>15 A. I don't believe so.</p> <p>16 Q. Okay. Do you agree that defendant DEQ has</p> <p>17 a constitutional duty to maintain and improve a clean</p> <p>18 and healthful environment for present and future</p> <p>19 generations?</p> <p>20 A. I have a hard time because DEQ, I don't</p> <p>21 believe, is specifically referenced in the</p> <p>22 Constitution.</p> <p>23 Q. Uh-huh.</p> <p>24 A. I believe it says the state and each</p> <p>25 person.</p>
<p style="text-align: right;">Page 38</p> <p>1 defendants' expert reports in this case?</p> <p>2 A. No.</p> <p>3 Q. Okay. So I'm going to ask you if it's not</p> <p>4 too much trouble to try and find Exhibit, what would</p> <p>5 have been previously marked as Exhibit 1, the</p> <p>6 complaint. You got it right there. Awesome.</p> <p>7 A. Yes. You mentioned you were coming back</p> <p>8 to it.</p> <p>9 Q. Yes. Thank you. Can you please turn to</p> <p>10 page [sic] 87, which is on page 28.</p> <p>11 A. Okay. I'm on page 28, paragraph 87.</p> <p>12 Q. Okay.</p> <p>13 A. Okay.</p> <p>14 Q. That paragraph reads: "Defendant DEQ has</p> <p>15 a constitutional duty to maintain and improve a clean</p> <p>16 and healthful environment for present and future</p> <p>17 generations. Defendant DEQ also has broad statutory</p> <p>18 authority to protect, sustain, and improve a clean</p> <p>19 and healthful environment to benefit present and</p> <p>20 future generations but has used its authority in a</p> <p>21 manner that has resulted in dangerous levels of</p> <p>22 greenhouse gas emissions." Did I read that</p> <p>23 correctly?</p> <p>24 A. Yes. I believe you did.</p> <p>25 Q. Okay. In your opinion are you the person</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. Okay.</p> <p>2 A. So I believe, you know, if I -- reading</p> <p>3 the Constitution it would be the state and each</p> <p>4 person has a constitutional duty to maintain and</p> <p>5 improve a clean and healthful environment.</p> <p>6 Q. Okay. Does that include the state's</p> <p>7 government?</p> <p>8 A. Yes. I believe it does.</p> <p>9 Q. Okay. Is DEQ part of the state's</p> <p>10 government?</p> <p>11 A. Yes, it is.</p> <p>12 Q. Is there anything in the allegation in</p> <p>13 paragraph 87 that I just read you that you disagree</p> <p>14 with?</p> <p>15 A. We've already covered the first sentence.</p> <p>16 Q. Uh-huh.</p> <p>17 A. I also, I think, referenced earlier -- and</p> <p>18 I'm not sure how much I need to repeat, but, again,</p> <p>19 the Clean Air Act of Montana and the Montana</p> <p>20 Environmental Policy Act are two statutes that we use</p> <p>21 to fulfill the obligation under the Constitution.</p> <p>22 The next sentence, if you look at</p> <p>23 defendant DEQ, there's the word broad in there --</p> <p>24 Q. Uh-huh.</p> <p>25 A. -- that I believe is very subjective.</p>

<p style="text-align: right;">Page 41</p> <p>1 <b>Q. Okay.</b></p> <p>2 A. And I don't know that I would call it</p> <p>3 broad statutory authority.</p> <p>4 <b>Q. How would you describe DEQ's statutory</b></p> <p>5 <b>authority in this respect?</b></p> <p>6 A. There is statutory authority to protect,</p> <p>7 sustain, and improve a clean and healthful</p> <p>8 environment.</p> <p>9 <b>Q. Okay.</b></p> <p>10 A. And I would not agree with "but has used</p> <p>11 its authority in a manner that has resulted in</p> <p>12 dangerous levels of GHG emissions."</p> <p>13 <b>Q. Okay. Do you want to expand on your</b></p> <p>14 <b>disagreement there?</b></p> <p>15 A. I don't think it's accurate.</p> <p>16 <b>Q. Okay.</b></p> <p>17 A. I don't think it's representative of, you</p> <p>18 know, the Clean Air Act, specifically the Clean Air</p> <p>19 Act and the actions, you know, taken at least that</p> <p>20 I'm aware of.</p> <p>21 <b>Q. Okay. I'm going to ask you now to stay on</b></p> <p>22 <b>that page, and we're going to look at paragraph 88</b></p> <p>23 <b>which states: "Defendant DEQ, as the primary</b></p> <p>24 <b>administrator of Montana's environmental regulatory,</b></p> <p>25 <b>environmental cleanup, environmental monitoring,</b></p>	<p style="text-align: right;">Page 43</p> <p>1 A. Greenhouse gases, there is a definition</p> <p>2 that is contained in the federal rules. They're a</p> <p>3 group of pollutants that basically cause the</p> <p>4 greenhouse effect.</p> <p>5 <b>Q. Okay.</b></p> <p>6 A. Yeah.</p> <p>7 <b>Q. Can you describe what the greenhouse</b></p> <p>8 <b>effect is?</b></p> <p>9 A. It is an amplification maybe of -- of</p> <p>10 temperatures --</p> <p>11 <b>Q. Uh-huh.</b></p> <p>12 A. -- due to the gases being present in the</p> <p>13 atmosphere.</p> <p>14 <b>Q. Okay. And is that effect influenced by</b></p> <p>15 <b>the concentration of those gases in the atmosphere?</b></p> <p>16 A. I believe so, yes.</p> <p>17 <b>Q. Okay. In your -- in your opinion what</b></p> <p>18 <b>effect do greenhouse gas emissions have on the</b></p> <p>19 <b>atmosphere?</b></p> <p>20 A. In my opinion from a -- a specific action</p> <p>21 related to permitting something that has greenhouse</p> <p>22 gas emissions in their totality, I can't speak to</p> <p>23 that because emissions are different than impact.</p> <p>24 <b>Q. Okay. Do emissions influence impact?</b></p> <p>25 A. Yes, they do.</p>
<p style="text-align: right;">Page 42</p> <p>1 pollution prevention, and energy conservation laws,</p> <p>2 has implemented its authority in a manner that has</p> <p>3 contributed to the constitutional violations</p> <p>4 described herein. Defendant DEQ's actions, pursuant</p> <p>5 to and in furtherance of the state energy policy,</p> <p>6 have contributed to dangerous levels of greenhouse</p> <p>7 gas emissions." Did I read that one correctly?</p> <p>8 A. Yes. I believe you did.</p> <p>9 <b>Q. Okay. In your opinion are you the person</b></p> <p>10 <b>at DEQ -- and we can cabin this within the air</b></p> <p>11 <b>quality bureau -- who is the most knowledgeable with</b></p> <p>12 <b>respect to these allegations?</b></p> <p>13 A. For purposes of air quality and those</p> <p>14 elements that are part of the air quality program, I</p> <p>15 would say yes.</p> <p>16 <b>Q. Okay. No representations beyond that. Is</b></p> <p>17 <b>that correct?</b></p> <p>18 A. Correct.</p> <p>19 <b>Q. Okay. In your opinion is there anyone</b></p> <p>20 <b>else at DEQ who has an equivalent or greater level of</b></p> <p>21 <b>knowledge about this?</b></p> <p>22 A. Certainly not related to air quality.</p> <p>23 With regard to other programs I can't speak.</p> <p>24 <b>Q. Okay. In your opinion what are greenhouse</b></p> <p>25 <b>gases?</b></p>	<p style="text-align: right;">Page 44</p> <p>1 <b>Q. Okay. How do they influence impact?</b></p> <p>2 A. Holding everything else the same?</p> <p>3 <b>Q. Uh-huh.</b></p> <p>4 A. Generally, if you add more of something to</p> <p>5 the mix, it's going to increase the concentrations.</p> <p>6 <b>Q. Okay. And what does it increase -- what</b></p> <p>7 <b>does increasing the concentrations do within the</b></p> <p>8 <b>atmosphere?</b></p> <p>9 A. Are you referring to specifically</p> <p>10 greenhouse -- there's carbon dioxide concentration or</p> <p>11 greenhouse gas concentrations.</p> <p>12 <b>Q. Greenhouse gas concentrations.</b></p> <p>13 A. It could amplify the -- the -- I guess the</p> <p>14 -- the greenhouse gas effect.</p> <p>15 <b>Q. Otherwise known as climate change?</b></p> <p>16 A. Some people refer to that as climate</p> <p>17 change, yes.</p> <p>18 <b>Q. Or global warming?</b></p> <p>19 A. Some people refer to it as that as well.</p> <p>20 <b>Q. Okay. I just want to make sure we're</b></p> <p>21 <b>talking about the same principle. Does the amount of</b></p> <p>22 <b>greenhouse gases admitted -- not admitted -- emitted</b></p> <p>23 <b>into the atmosphere have any effect on how DEQ</b></p> <p>24 <b>carries out its mission?</b></p> <p>25 A. It could.</p>

1 Q. In what way?

2 A. If the amount of greenhouse gas emissions  
3 rose to the level that it became subject to  
4 regulation, there could be some analysis done as part  
5 of the Montana air quality permit.

6 Q. Okay. In your opinion is regulation of  
7 greenhouse gases dependent on their level in the  
8 atmosphere?

9 A. No. I don't believe it is.

10 Q. Okay. So when you said in answer to my  
11 prior question if greenhouse gases rose to such a  
12 level that they were regulated -- I know I'm  
13 paraphrasing -- you're not seeing a cause-and-effect  
14 relationship there. In other words, they don't need  
15 to get to a certain point before they can be  
16 regulated?

17 A. I believe what I referred to was the  
18 emissions level in that instance.

19 Q. Okay.

20 A. Once there is a certain amount of  
21 emissions, under certain actions it may cause  
22 greenhouse gases to become subject to regulation.

23 Q. Got it. Are you familiar with the term,  
24 quote, dangerous levels of GHG emissions, end quote?

25 A. I hadn't really seen it until reading it

1 in this complaint.

2 Q. Okay. Do you have any opinions as to what  
3 that term means?

4 A. No, I do not.

5 Q. Okay. Are there any parts of paragraph 88  
6 of the complaint that you disagree with?

7 A. Okay. I'm going to start with defendant  
8 DEQ, I agree, is the primary administrator certainly  
9 as this relates to air quality. I cannot speak to  
10 cleanup other than air quality cleanup --

11 Q. Uh-huh.

12 A. -- or monitoring. I don't believe we've  
13 implemented our authority in a manner that has  
14 contributed to constitutional violations.

15 Q. Okay. Do you want to expand on that at  
16 all?

17 A. As I've -- as I've stated, I believe all  
18 of our actions have conformed to the Clean Air Act of  
19 Montana and the Montana Environmental Policy Act.

20 Q. Okay. Do you believe that even accepting  
21 for the sake of argument that all of DEQ's actions  
22 have conformed with the Montana Clean Air Act and  
23 Montana Environmental Policy Act, that DEQ's actions  
24 have contributed to, quote, unquote, dangerous levels  
25 of greenhouse gases in the atmosphere?

1 A. No. I wouldn't agree to that.

2 Q. Okay. Can you explain what you expect to  
3 testify about with respect to this paragraph,  
4 paragraph 88 of the complaint?

5 A. I really believe it depends upon which  
6 questions I'm asked.

7 Q. Okay. I would ask you now to take a look  
8 at paragraph 89 which reads: "Defendant DEQ is  
9 mandated to ensure that all projects and activities  
10 for which -- for which it issues permits, licenses,  
11 authorizations, or other approvals comply with  
12 Montana's environmental laws and rules, quote,  
13 including the MEPA to" -- excuse me, not quote --  
14 parentheses, "including the MEPA to protect the  
15 quality of Montana's natural environment. Defendant  
16 DEQ is responsible for enforcing compliance with its  
17 permitting requirements." Did I read that correctly  
18 aside from the verbal stumbles?

19 A. Yes. I believe you did.

20 Q. In your opinion are you the person at DEQ  
21 who is the most -- and we'll just say within the air  
22 quality bureau -- who is the most knowledgeable with  
23 respect to these allegations?

24 A. I believe so, yes.

25 Q. Okay. And there's no one else at DEQ who

1 has more knowledge than you with respect to these  
2 allegations in -- in the air quality bureau?

3 A. I don't believe so.

4 Q. Okay. Do you agree with the allegations  
5 contained in paragraph 89?

6 A. No.

7 Q. Okay. Which parts do you disagree with?

8 A. The phrasing of this is challenging in the  
9 very first paragraph.

10 Q. Uh-huh.

11 A. DEQ is mandated to ensure that all  
12 projects and activities, I believe, are mandated to  
13 ensure that all of our permit issuance procedures,  
14 everything comply with MEPA. That may be different  
15 than a project or an activity.

16 Q. Okay. Anything else?

17 A. We talked earlier DEQ is primarily  
18 responsible for enforcing compliance with permitting  
19 requirements. We're not, as -- as we discussed  
20 third-party, federal. There's also folks -- others  
21 that can enforce those provisions.

22 Q. Okay. Would you agree that DEQ has both  
23 permitting and compliance responsibilities?

24 A. Specifically within the air quality  
25 bureau, yes.

<p style="text-align: right;">Page 49</p> <p>1 Q. Okay. Can you speak at all to what you 2 expect to testify about with respect to the 3 allegations in paragraph 89? 4 A. Again, it would really depend on the 5 questions that I'm asked. 6 Q. Okay. Same on page 29, we're going to 7 look at paragraph 91 [sic]. " Defendant DEQ issues 8 air quality permits to facilities that emit GHG 9 emissions, including but not limited to coal mining 10 operations, energy power plants, and oil and gas 11 refineries. Through its Board of Environmental 12 Review, which adopts rules and determines appeals 13 under regulatory statutes, defendant DEQ has broad 14 statutory authority to set and enforce a quantitative 15 limit for emissions as necessary to prevent or 16 control air pollution." Did I read that correctly? 17 A. I believe you did, yes. 18 Q. Okay. 19 MS. McKENNA: So I -- I think you said 20 paragraph 91 and that's paragraph 90. 21 MS. HORNBEIN: Okay. If I said that -- 22 MS. ARMSTRONG: I heard that as well. 23 MS. HORNBEIN: Okay. If I said paragraph 24 91, that was in error. I was reading from paragraph 25 90, and thank you for the correction.</p>	<p style="text-align: right;">Page 51</p> <p>1 phrase "change the balance of authority." That is 2 vague. 3 MS. HORNBEIN: Okay. 4 BY MS. HORNBEIN: 5 Q. I can withdraw that and I'm just going to 6 go ahead and ask you what did Senate Bill 233 do to 7 your knowledge and understanding? 8 A. To my knowledge and understanding, it 9 removed the rulemaking provisions from the Board of 10 Environmental Review and placed them with the 11 Department of Environmental Quality and left permit 12 appeals with the Board of Environmental Review. 13 Q. Okay. Is there anything else that it 14 substantively changed about what DEQ does or what BER 15 does? 16 A. I would have to read specifically the 17 sections of this bill that pertain to the section of 18 statute of the Clean Air Act -- 19 Q. Sure. 20 A. -- that I'm familiar with, but I can't 21 think of anything off the top of my head right now. 22 Q. Okay. Do you agree that DEQ issues air 23 quality permits to facilities that emit greenhouse 24 gas emissions in the state of Montana? 25 A. Yes. Generally.</p>
<p style="text-align: right;">Page 50</p> <p>1 BY MS. HORNBEIN: 2 Q. In your opinion are you the person at DEQ 3 who is the most knowledgeable with respect to the air 4 quality bureau about the allegations contained in 5 paragraph 90? 6 A. Yes. 7 Q. Okay. I am going to hand you what has 8 been previously marked as Exhibit 122, if you could 9 tell me what that is. 10 A. 122 is Senate Bill 233, 67th -- from the 11 67th legislature. 12 Q. Okay. Are you -- I'm trying to think how 13 to phrase this. Are you familiar with Senate Bill 14 233? 15 A. Yes. 16 Q. Okay. Is Senate Bill 233 the legislative 17 action from the 2021 session that changed the balance 18 of authority between the Board of Environmental 19 Review and DEQ? 20 A. I believe it is. It's not signed or 21 anything. 22 Q. Okay. 23 A. So I -- I believe it is. 24 Q. Okay. To the best of -- 25 MS. McKENNA: I'm going to object to the</p>	<p style="text-align: right;">Page 52</p> <p>1 Q. Do you agree that defendant DEQ issues air 2 quality permits to -- and I'm just providing examples 3 under that part of the question -- to coal mining 4 operations? 5 A. We issue air quality permits to coal 6 mining operations, yes. 7 Q. Does DEQ issue permits to energy power 8 plants? 9 A. Yes. 10 Q. And does DEQ issue permits to oil and gas 11 refineries? 12 A. Yes. Some. 13 Q. We've already touched on this a bit, but 14 is there anything else you want to add about the role 15 that you have played in your various capacities at 16 DEQ in DEQ's issuance of permits to facilities that 17 emit greenhouse gas emissions? 18 A. I can't think of anything I need to add in 19 the moment. 20 Q. What do you expect to testify about the 21 allegations in paragraph 90 of the complaint? 22 A. It would depend on the questions that I am 23 asked. 24 Q. Okay. What if you're asked questions 25 about coal mining operations?</p>

1 A. That is very broad. I would attempt to  
2 answer the question within my knowledge of -- of the  
3 air quality permitting program.

4 **Q. Okay. Same thing if I asked you about  
5 power plants?**

6 A. Yes.

7 **Q. And how about oil and gas refineries?**

8 A. Yes.

9 **Q. Are there any other facilities that you  
10 can think of that emit greenhouse gas emissions that  
11 fall under the air quality bureau's permitting  
12 authority?**

13 A. Yes.

14 **Q. Like what?**

15 A. Any facility that the air quality bureau  
16 issues a permit to that has any sort of combustion  
17 would have some greenhouse gas emissions.

18 **Q. Okay. Could you provide me an example or  
19 two of things that don't fall into these other  
20 categories that we just discussed?**

21 A. There could be compressor stations.

22 **Q. Uh-huh.**

23 A. There could be oil and gas well  
24 operations, gravel crushers.

25 **Q. Okay.**

1 A. Anything that might use an engine or  
2 something like that to power something.

3 **Q. Okay. We talked earlier in your 30(b)(6)  
4 deposition about controlled burns. Does that fall  
5 within that authority?**

6 A. There would be -- yes. Thank you. There  
7 would be greenhouse gas emissions associated with the  
8 open burning program.

9 **Q. Okay. And is that a program that's  
10 primarily -- I -- I know you mentioned -- during your  
11 30(b)(6), you mentioned the forest service. Is that  
12 a program that's also carried out -- excuse me -- by  
13 state agencies? You mentioned --**

14 A. Any other agencies besides DEQ, is that  
15 what you're referring to?

16 **Q. Yeah. Or besides the U.S. Forest Service,  
17 that you mentioned the forest service needing to get  
18 an air quality permit for some categories of  
19 controlled burns. Are there any other entities that  
20 would be required to get such a permit from DEQ?**

21 A. Yes.

22 **Q. Like what?**

23 A. Department of Natural Resources and  
24 Conservation is also a major open burner.

25 **Q. Okay.**

1 A. Bureau of Land Management.

2 **Q. Uh-huh.**

3 A. Anybody who qualifies as a major open  
4 burner is required to get a permit. There are also  
5 firefighter training, trade waste that might apply to  
6 different entities, every volunteer fire department  
7 potentially. Those are the ones that -- that the  
8 permitting portion of open burning applies to.

9 **Q. Okay. Are there other portions of the  
10 open burning program that DEQ oversees?**

11 A. Yes.

12 **Q. What are those?**

13 A. Burning during winter times. There's --  
14 anytime a citizen wants to burn -- or not anytime.  
15 There are times when a citizen wants to burn twigs,  
16 trees in their backyard. They may need to call and  
17 get a ventilation forecast or notify somebody  
18 somewhere.

19 **Q. Okay.**

20 A. As an example.

21 **Q. Do you agree that DEQ now post Senate Bill  
22 233 adopts rules and -- adopt -- excuse me -- adopts  
23 rules?**

24 A. I believe DEQ has the authority to adopt  
25 rules without going through the board process.

1 **Q. Okay. Does it sometimes still go through  
2 the board process in adopting rules?**

3 A. I'm not aware. That change and the  
4 effectiveness happened really close to when I left  
5 and retired. So I don't know if there's an exception  
6 to that or not in the air quality program.

7 **Q. Okay.**

8 A. I can't speak to the rest of the agency.

9 **Q. To the best of your knowledge, is it still  
10 the BER that determines appeals under regulatory  
11 statutes that DEQ is in charge of administering?**

12 A. I -- I believe so, yes. Permit appeals,  
13 yep.

14 **Q. Okay. In your former capacity at DEQ, did  
15 you play any role in what was then the BER's  
16 rulemaking process?**

17 A. Yes.

18 **Q. What role did you play?**

19 A. Played a lot of different roles.

20 **Q. Uh-huh.**

21 A. There are times we are staffed to the  
22 board. We were staffed to the board, and -- and we  
23 prepared rules that the board was interested in  
24 seeing. There were also times that I was the lead on  
25 rule development for various parts of the air quality



<p style="text-align: right;">Page 57</p> <p>1 program that I would testify in front of the board 2 on, things of that nature. 3 <b>Q. Okay. Did you play a role in BER appeals 4 processes in your former capacity with DEQ?</b> 5 A. Yes. 6 <b>Q. What role did you play there?</b> 7 A. Specifically I've been a witness in front 8 -- well, for depositions and for hearings examiners 9 as well as when the board determined they wanted to 10 hear the appeal themselves. So I would be in front 11 of the BER -- BER as a witness. 12 <b>Q. When you say when the board determined 13 that they wanted to hear the appeal themselves, is 14 that opposed to selecting a hearings examiner to do 15 so for them?</b> 16 A. Correct. 17 <b>Q. Okay. Do you agree that DEQ has broad 18 statutory authority to set a quantitative limit for 19 greenhouse gas emissions as necessary to prevent air 20 pollution?</b> 21 A. I would not agree with that. 22 <b>Q. What's the source of your disagreement 23 there?</b> 24 A. Starting with the term "broad authority." 25 <b>Q. Okay.</b></p>	<p style="text-align: right;">Page 59</p> <p>1 <b>Q. Has DEQ ever set such a limit?</b> 2 A. I would have to review all of the permits. 3 <b>Q. Okay. Has DEQ ever set such a limit 4 through a rulemaking proceeding?</b> 5 A. Are you still referring to a specific 6 quantitative limit? 7 <b>Q. Yes.</b> 8 A. Through a rulemaking? Not that I'm aware 9 of. 10 <b>Q. Okay. What role did you play when you 11 were at DEQ in setting quantitative limits for 12 greenhouse gas emissions to prevent air pollution?</b> 13 A. Going back to -- as a permitter, anytime 14 you establish a production limitation, whether you 15 specifically list the -- all the different pollutants 16 including greenhouse gases or not, you would be 17 controlling or limiting the amount of -- amount of 18 emissions. 19 <b>Q. Okay.</b> 20 A. So as a permitter I would do that, also as 21 the permit reviewer or the manager of the -- the 22 section that issued the permits or even the bureau 23 chief. 24 <b>Q. Okay. So is it fair to say that in your 25 -- all of your former capacities with DEQ you had the</b></p>
<p style="text-align: right;">Page 58</p> <p>1 A. Again, very subjective. 2 <b>Q. How would you describe DEQ's authority to 3 set a quantitative limit for greenhouse gas 4 emissions?</b> 5 A. I would describe that DEQ has statutory 6 authority in certain instances to -- to establish 7 greenhouse gas emissions. 8 <b>Q. Okay. What instances do you think those 9 are?</b> 10 A. If the emissions are associated with a 11 major stationary source and the emissions of 12 greenhouse gas emissions are above a certain 13 threshold, there is an opportunity to review whether 14 or not that may or may not -- the greenhouse gas 15 emissions can or cannot be economically controlled. 16 And there's the opportunity to potentially establish 17 a specific greenhouse gas limitations or work 18 practice in -- in place of that. 19 <b>Q. Okay. We'll take a break here in just a 20 moment.</b> 21 <b>As far as you're aware, has the BER ever 22 set a quantitative limit for greenhouse gas 23 emissions?</b> 24 A. I cannot think of an instance where that 25 has happened.</p>	<p style="text-align: right;">Page 60</p> <p>1 <b>authority through specific permit provisions to set 2 such limitations?</b> 3 A. No. That's not a fair statement. 4 <b>Q. Okay. How would you characterize the 5 agency's authority?</b> 6 A. It -- it -- it comes at a different time. 7 Right? When I first started, greenhouse gases were 8 not a regulated pollutant. 9 <b>Q. Uh-huh.</b> 10 A. And so we did not have the authority to 11 specifically require a limitation or a -- a work 12 practice to specifically limit that. It might do it 13 in practice, but it might be for a different 14 pollutant that has the cobenefit of reducing or 15 limiting greenhouse gas emissions. 16 <b>Q. Okay.</b> 17 A. So after it became subject to regulation, 18 at the appropriate level there exists the potential 19 -- there -- there exists authority to establish it if 20 necessary. 21 <b>Q. Okay.</b> 22 <b>MS. HORNBEIN:</b> Let's take a quick break. 23 Ten minutes. 24 <b>THE VIDEOGRAPHER:</b> We are going off the 25 record. The time is 3:21 p.m.</p>

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1 (Whereupon, a break was then  
2 taken.)  
3 **THE VIDEOGRAPHER:** We are back on the  
4 record. The time is 3:34 p.m.  
5 **BY MS. HORNBEIN:**  
6 **Q.** I apologize. I need to switch binders. I  
7 -- because I'm going to skip the last exhibit.  
8 Sorry. I'm cutting exhibits here based on some  
9 decisions.  
10 A. That's okay.  
11 **Q.** Okay. I am handing you what I have just  
12 marked as Exhibit Number 170.  
13 (Whereupon, Exhibit 170 was  
14 marked for identification.)  
15 **BY MS. HORNBEIN:**  
16 **Q.** You may want to, yeah, just keep that  
17 complaint handy.  
18 A. Okay.  
19 **Q.** Can you please identify the document I  
20 just handed you, Dave?  
21 A. Yes. Exhibit 170 is Montana air quality  
22 permit number 1570-09 which was deemed final as of  
23 June 19th, 2019, for Westmoreland Rosebud Mining,  
24 LLC.  
25 **Q.** And what facility is this for?

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1 A. I believe this is for the Rosebud Mine.  
2 **Q.** Are you familiar with this document?  
3 A. Yes.  
4 **Q.** How are you familiar with this document?  
5 A. This document was issued during my time at  
6 the department --  
7 **Q.** Okay.  
8 A. -- as the air quality bureau chief. And  
9 it looks very familiar.  
10 **Q.** Okay. Did you work on this document?  
11 A. Peripherally maybe but not directly.  
12 Craig Hendrickson was the permitting engineer  
13 assigned to this.  
14 **Q.** As air quality bureau chief, would you  
15 ever have worked directly on a document like this, or  
16 is -- would you have more of an oversight role?  
17 A. Both.  
18 **Q.** Okay. What determined which types of  
19 permit -- or which permit activities you would work  
20 on as bureau chief?  
21 A. The profile, general interest, the  
22 complexity, if staff need help. A variety of -- of  
23 ways would determine that.  
24 **Q.** Okay. When did you last review this  
25 document? Did you review it in preparation for your

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1 **testimony today or in your professional capacity?**  
2 A. I believe this is in the attachment A, if  
3 I'm not mistaken. Is this the same one we went over  
4 earlier or is this --  
5 **Q.** I think this might be a different one.  
6 Sorry. I'm checking.  
7 A. That's okay.  
8 **Q.** Yeah. I know you had a Rosebud permit  
9 earlier, but I believe it was not the same one. I'm  
10 just not seeing it right now.  
11 A. And that one was a name change as well, if  
12 I recall, transfer of ownership as is this one.  
13 **Q.** Okay.  
14 A. And so the conditions would have been very  
15 similar.  
16 **Q.** And, again, no MEPA review?  
17 A. No MEPA review for admin amendments.  
18 **Q.** Okay. And the -- I think your reference  
19 to admin amendments covers this, but no substantive  
20 changes other than the change in ownership here?  
21 A. As -- as near as I can tell, correct.  
22 **Q.** Okay. And you mentioned Craig Hendrickson  
23 was involved in issuing this permit?  
24 A. Yes.  
25 **Q.** And do you know if he had knowledge of the

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1 **facility being permitted?**  
2 A. I know Craig and Craig is very  
3 knowledgeable.  
4 **Q.** Okay. About this --  
5 A. About this facility and every facility,  
6 yes.  
7 **Q.** Okay. And was this document made and kept  
8 in the ordinary course of DEQ's regularly conducted  
9 business activities?  
10 A. Yes. I believe so.  
11 **Q.** Okay. And are you familiar with the  
12 process by which DEQ prepares permits like this?  
13 A. Yes.  
14 **Q.** Okay. Is this document an example of the  
15 kinds of air quality permits that DEQ routinely or  
16 regularly issues?  
17 A. One kind of them, yes.  
18 **Q.** Okay. And are you familiar with how these  
19 types of documents are kept at DEQ?  
20 A. Yes.  
21 **Q.** Okay. Is this document publicly  
22 available?  
23 A. I don't know if it's specifically on the  
24 -- on the website. It certainly is available upon  
25 request.

<p style="text-align: right;">Page 65</p> <p>1 <b>Q. Okay. And I think we already talked on</b>  2 <b>this, but what does this document authorize</b>  3 <b>Westmoreland Rosebud Mining to do?</b>  4 <b>A. This specific action is for a transfer of</b>  5 <b>ownership from Western Energy Company to Westmoreland</b>  6 <b>Rosebud Mining, LLC.</b>  7 <b>Q. Okay. And do you have any reason to</b>  8 <b>believe this document is not a true and correct copy</b>  9 <b>of the air quality permit issued to Westmoreland</b>  10 <b>Rosebud Mining for the Rosebud Mine?</b>  11 <b>A. No, I do not.</b>  12 <b>Q. Okay. Could Westmoreland Rosebud Mining</b>  13 <b>have operated the Rosebud Mine without this permit</b>  14 <b>from DEQ?</b>  15 <b>A. Yes.</b>  16 <b>Q. Legally?</b>  17 <b>A. Yes.</b>  18 <b>Q. How so?</b>  19 <b>A. When you said can Westmoreland Rosebud</b>  20 <b>Mining operate, based on this permit -- or without</b>  21 <b>this permit? This permit effectuated the transfer.</b>  22 <b>Q. Uh-huh.</b>  23 <b>A. Oftentimes the companies assume operation</b>  24 <b>or control of a mine, and there's an administrative</b>  25 <b>process that lags in order to transfer that</b></p>	<p style="text-align: right;">Page 67</p> <p>1 <b>Q. Okay. And which record would that be?</b>  2 <b>A. For the mine that you referenced in the</b>  3 <b>question.</b>  4 <b>Q. Okay. And where is that record kept?</b>  5 <b>A. The air quality record would be part of</b>  6 <b>the air quality bureau's record management</b>  7 <b>procedures. It would be all of the application,</b>  8 <b>correspondence, any other general correspondence that</b>  9 <b>we had basically for the life of the facility.</b>  10 <b>Q. Okay.</b>  11 <b>(Whereupon, Exhibit 171 was</b>  12 <b>marked for identification.)</b>  13 <b>BY MS. HORNBEIN:</b>  14 <b>Q. I'm handing you a document that I've</b>  15 <b>marked as Exhibit Number 171. Can you tell me what</b>  16 <b>that is?</b>  17 <b>A. Exhibit 171 appears to be several tables</b>  18 <b>related to coal production, first one by state and</b>  19 <b>coal rank, and then there was one for Montana coal</b>  20 <b>production.</b>  21 <b>Q. Are you familiar with this document?</b>  22 <b>A. I don't believe I am.</b>  23 <b>Q. Okay. Is it fair to say that you have not</b>  24 <b>reviewed this document before?</b>  25 <b>A. I don't believe I have.</b></p>
<p style="text-align: right;">Page 66</p> <p>1 ownership. So they could have operated this without  2 this specific permit in place.  3 <b>Q. Okay. But the underlying permit allowing</b>  4 <b>operations at the mine would have to be in place?</b>  5 <b>A. Correct.</b>  6 <b>Q. Okay. Where is this document kept at DEQ?</b>  7 <b>A. I know when I was there, we had a finals</b>  8 <b>permit directory --</b>  9 <b>Q. Uh-huh.</b>  10 <b>A. -- on the web. And, again, I don't know</b>  11 <b>if this is in there. We had a copy of all recently</b>  12 <b>issued permits, and -- and oftentimes that goes back</b>  13 <b>years.</b>  14 <b>Q. Okay.</b>  15 <b>A. I believe it's all electronic filing</b>  16 <b>instead of hard filing -- hard copy filing now.</b>  17 <b>Q. Okay. Do you have any reason to believe</b>  18 <b>that this document is not a true and correct copy of</b>  19 <b>the air quality permit issued to Westmoreland Rosebud</b>  20 <b>Mining for the Rosebud Mine?</b>  21 <b>A. No, I do not.</b>  22 <b>Q. Did DEQ ever evaluate the greenhouse gas</b>  23 <b>emissions that result from the operation of the</b>  24 <b>Rosebud Mine?</b>  25 <b>A. I would have to look at that record.</b></p>	<p style="text-align: right;">Page 68</p> <p>1 <b>Q. Okay. Okay. I'm only going to do this to</b>  2 <b>you one more time. I'm going to ask that you take</b>  3 <b>another look at exhibits that have been previously</b>  4 <b>marked as 135 and 136, which are Volumes 1 and 2 of</b>  5 <b>the final EIS for the Highwood Generating Station.</b>  6 <b>A. Okay. I'm on Exhibit 135.</b>  7 <b>Q. Okay. Do you recognize this document from</b>  8 <b>your 30(b)(6) deposition?</b>  9 <b>A. Yes, I do.</b>  10 <b>Q. Do you have any new testimony or opinions</b>  11 <b>about this document that you would like to offer</b>  12 <b>here?</b>  13 <b>A. Not at this point, no.</b>  14 <b>Q. Okay. Can you -- sorry. I'll take that</b>  15 <b>back from you.</b>  16 <b>A. Okay.</b>  17 <b>Q. Just thought you needed some exercise.</b>  18 <b>A. Yeah. Thanks.</b>  19 <b>Q. Can you take another look at the</b>  20 <b>complaint, please, and turn to paragraph 92?</b>  21 <b>A. Page 29, paragraph 92.</b>  22 <b>Q. Okay.</b>  23 <b>A. I'm there.</b>  24 <b>Q. I have to find my copy now because I put</b>  25 <b>it away. All right. Paragraph 92 reads: "Defendant</b></p>

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1 DEQ has permitted strip and underground coal mining  
 2 operations and mining and prospecting activities that  
 3 are causing dangerous amounts of greenhouse gas  
 4 emissions. DEQ has issued permits for surface coal  
 5 mining in Montana on state and federal land.  
 6 Defendant DEQ actively works with coal mining  
 7 companies in Montana to implement the state energy  
 8 policy. In approving such activities, DEQ has  
 9 repeatedly refused to disclose the significant harms  
 10 to human health and the environment in its decision."  
 11 Did I read that paragraph correctly?  
 12 A. Yes. I believe you did.  
 13 Q. Okay. In your opinion are you the person  
 14 at DEQ who is the most knowledgeable with respect to  
 15 these allegations?  
 16 A. With regard to any air quality permitting  
 17 for these types of operations, I would say yes.  
 18 Q. Okay. Is there anyone else you can think  
 19 of with commensurate level of knowledge?  
 20 A. For air quality, no.  
 21 Q. Okay. Are there areas regarding these  
 22 allegations -- and by "these allegations", I mean  
 23 those in paragraph 92 that I just read -- about which  
 24 you are not knowledgeable?  
 25 A. I could -- I could not speak to other

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1 permitting on state and/or federal land.  
 2 Q. Uh-huh.  
 3 A. I can only speak to air quality  
 4 permitting --  
 5 Q. Okay.  
 6 A. -- which makes no regard. And I can't  
 7 speak to how other bureaus do or do not work with  
 8 coal mining companies.  
 9 Q. Okay. Do you have expertise with respect  
 10 to human health?  
 11 A. Insofar as the air quality standards  
 12 apply, yes.  
 13 Q. Okay. Do you agree that DEQ has permitted  
 14 strip and underground coal mining operations and  
 15 mining and -- let's just stop with that -- strip and  
 16 underground coal mining operations?  
 17 A. Specifically the air quality bureau has  
 18 permitting -- has permitted strip and underground  
 19 coal mining operations.  
 20 Q. Do you agree that DEQ has permitted  
 21 prospecting activities?  
 22 A. Can you please tell me what prospecting  
 23 activities you're specifically referring to?  
 24 Q. Looking for coal resources, for example.  
 25 A. That is not something that the air quality

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1 bureau would have issued a permit for most likely.  
 2 Q. Okay. Are there any situations under  
 3 which prospecting would require an air quality  
 4 permit?  
 5 A. Potentially, yes.  
 6 Q. Can you think of an example?  
 7 A. If a mining company wanted to drill a very  
 8 large long hole and it took them a long time to do it  
 9 such that the drill was no longer considered a mobile  
 10 emission source, if it took several years to -- to do  
 11 that, we may end up issuing a permit if that  
 12 equipment used exceeded the permitting threshold.  
 13 Q. Okay. So is a mobile emission source not  
 14 subject to DEQ's air quality permitter -- permitting  
 15 authority?  
 16 A. Planes, trains, automobiles, and other  
 17 mobile sources are exempt from permits.  
 18 Q. What about oil and gas drill rigs?  
 19 A. Those are facilities that are considered  
 20 mobile sources. It includes both onroad and offroad  
 21 engines.  
 22 Q. Okay. I believe that you previously  
 23 mentioned there might be some circumstances under  
 24 which a drilling operation would require an air  
 25 quality permit. What type of situation would that be

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1 given if it involves a mobile source?  
 2 A. It would depend upon how long that  
 3 equipment remained at that location. If it's no  
 4 longer considered a mobile source, that is, if it  
 5 doesn't change sites -- and I believe it's a 12-month  
 6 time period, then it could be considered a stationary  
 7 source.  
 8 Q. Okay. So it's not so much about the  
 9 nature of the equipment as how long it stays in one  
 10 place?  
 11 A. How long it stays and then the nature  
 12 comes in.  
 13 Q. Okay. Do you agree that DEQ's permitting  
 14 actions for strip and underground coal mines has  
 15 contributed to dangerous amounts of greenhouse gas  
 16 emissions?  
 17 A. No. I do not agree with that.  
 18 Q. What do you disagree with about that  
 19 statement?  
 20 A. I don't have a definition of dangerous.  
 21 Q. Okay.  
 22 A. Or contributed, as we discussed earlier.  
 23 Q. Do you agree that DEQ's permitting  
 24 activities for strip and underground coal mining  
 25 operations results in the emissions of greenhouse

1 gases?  
 2 A. Some may.  
 3 **Q. Okay. What was your role in DEQ's**  
 4 **permitting of strip and underground coal mining**  
 5 **operations?**  
 6 A. Through my time both as a permitter, lead  
 7 engineer, air quality permitting supervisor, and  
 8 bureau chief, there was some involvement, sometimes  
 9 closer than others, for almost every permit that went  
 10 out the door.  
 11 **Q. Okay. Do you have an opinion about**  
 12 **whether DEQ refuses to disclose the significant harms**  
 13 **to human health and the environment from its**  
 14 **decisions?**  
 15 A. Do you have a specific question -- in  
 16 terms of what sort of document were you talking about  
 17 disclosing?  
 18 **Q. I'm talking about the context of MEPA**  
 19 **analysis.**  
 20 A. I believe DEQ, specifically the air  
 21 quality bureau, has disclosed if there could  
 22 potentially be significant harm to human health.  
 23 **Q. What about if the significance of that**  
 24 **harm is contingent on whether the analysis is within**  
 25 **state borders or outside of state borders?**

1 A. We would be prohibited from reviewing or  
 2 disclosing impacts that are outside of the -- the  
 3 border of Montana.  
 4 **Q. Okay. Do you agree that DEQ has issued**  
 5 **permits for surface coal mining in Montana on state**  
 6 **and federal land?**  
 7 A. I can't speak to the land ownership and  
 8 air quality land ownership aside from tribal lands.  
 9 Doesn't make a difference.  
 10 **Q. What's the between with respect to tribal**  
 11 **lands?**  
 12 A. State of Montana does not have  
 13 jurisdiction under the Clean Air Act for tribal  
 14 lands.  
 15 **Q. Is it fair to say that DEQ has not issued**  
 16 **permits for surface coal mining in Montana on tribal**  
 17 **lands?**  
 18 A. I can't answer that question with regard  
 19 to other programs, just air quality.  
 20 **Q. Yeah. Okay. What types of permits does**  
 21 **DEQ issue for surface coal mining in Montana?**  
 22 A. The specific types of air quality permits  
 23 that could be issued are Montana air quality permit,  
 24 or if their emissions are high enough, they could  
 25 have a Title V operating permit as well. They may

1 also need an open burning permit from time to time,  
 2 depends on what -- what's going on.  
 3 **Q. Okay. Can you describe the process**  
 4 **whereby DEQ decides whether or not to issue a permit**  
 5 **for surface coal mining in Montana on state land?**  
 6 A. The process we use to issue a permit is  
 7 does it comply with all applicable state and/or  
 8 federal air quality requirements.  
 9 **Q. If an application complies with all state**  
 10 **and federal air quality requirements, does DEQ have**  
 11 **discretion to deny that application?**  
 12 A. I don't believe we have discretion to  
 13 deny, no.  
 14 **Q. Okay. Is the process by which DEQ decides**  
 15 **whether or not to issue a permit for surface coal**  
 16 **mining on federal land the same as for state land?**  
 17 A. I certainly can't think of any  
 18 differences.  
 19 **Q. Okay. Does it change the nature of the**  
 20 **MEPA analysis?**  
 21 A. From an air quality perspective?  
 22 **Q. Uh-huh.**  
 23 A. No. I don't believe it does.  
 24 **Q. Okay. Do you know how many permits DEQ**  
 25 **has issued for surface coal mining?**

1 A. Not off the top of my head I don't.  
 2 **Q. Okay. Does DEQ undertake a MEPA analysis**  
 3 **for the surface coal mining permits it issues?**  
 4 A. In the air quality bureau, if it is a  
 5 state action that is subject to MEPA, then we would  
 6 undertake a MEPA review for that.  
 7 **Q. Okay. In that MEPA analysis, does DEQ**  
 8 **evaluate the effects of climate change?**  
 9 A. I can't speak to every -- I would need to  
 10 look at the record for each and every permit to see  
 11 if we have done anything with regard to climate  
 12 change.  
 13 **Q. Do you know of any permits where DEQ has**  
 14 **evaluated the effects of climate change in a permit**  
 15 **analysis?**  
 16 A. Boy, I've seen a lot of them. I cannot  
 17 recall anything off the top of my head, no.  
 18 **Q. Does DEQ in issuing a permit for a surface**  
 19 **coal mining operation quantify the greenhouse gas**  
 20 **emissions that would result from the burning of the**  
 21 **coal that it is allowing to be extracted under the**  
 22 **permit?**  
 23 A. Quantify the emissions from the burning of  
 24 the coal mined at the coal mine?  
 25 **Q. Uh-huh.**

<p style="text-align: right;">Page 77</p> <p>1 A. Not unless it was burned on the property 2 or on-site at the coal mine, we would not assess that 3 as part of the permit application process. 4 <b>Q. What if the coal were to be burned</b> 5 <b>off-site but still within the state of Montana?</b> 6 A. There is the potential to quantify the 7 emissions. 8 <b>Q. Would DEQ do so?</b> 9 A. It depends really on the type of 10 permitting action and what was -- what we were -- 11 what we were trying to accomplish. 12 <b>Q. Are you aware of any guidance within DEQ</b> 13 <b>instructing the air quality bureau when such an</b> 14 <b>analysis is appropriate?</b> 15 A. Other than just following the statute 16 which basically is to, you know, review and disclose 17 those impacts that occur within Montana's borders, 18 since the change to MEPA, that's the only, you know, 19 the guidance is to follow the statute. 20 <b>Q. So when is an analysis of climate change</b> 21 <b>impacts appropriate in permitting surface coal</b> 22 <b>mining, what circumstances?</b> 23 A. Climate change impacts could be analyzed 24 if they occurred from the action within the borders, 25 within the state of Montana.</p>	<p style="text-align: right;">Page 79</p> <p>1 A. No. 2 <b>Q. Okay. Do you agree that DEQ actively</b> 3 <b>works with coal mining companies in Montana to</b> 4 <b>implement the state energy policy?</b> 5 A. I -- I don't agree with that. 6 <b>Q. What is the source of your disagreement?</b> 7 A. Specifically speaking for the air quality 8 bureau, while the coal mines are part of our Clean 9 Air Act advisory committee, I don't know we have ever 10 discussed the state energy policy with them. 11 <b>Q. Does DEQ work with anyone to implement the</b> 12 <b>state energy policy?</b> 13 A. Specifically to implement the state energy 14 policy does not factor into our decisions. It's the 15 Clean Air Act of Montana. 16 <b>Q. Okay. But you previously testified that</b> 17 <b>if an applicant for an air quality permit or a</b> 18 <b>surface coal mine meets all federal and state</b> 19 <b>requirements, DEQ does not have discretion to deny</b> 20 <b>that permit. Correct?</b> 21 A. Federal and state air quality 22 requirements, we would have the discretion to issue, 23 issue with conditions. But if they were in 24 compliance, I don't believe we could deny. 25 <b>Q. Okay.</b></p>
<p style="text-align: right;">Page 78</p> <p>1 <b>Q. And could greenhouse gas emissions from</b> 2 <b>the coal -- from combustion of the coal that is</b> 3 <b>permitted to be mined be included in that analysis?</b> 4 A. If there were impacts from -- I can't 5 remember -- reasonably foreseeable activity within 6 the state, it could be disclosed. 7 <b>Q. Okay. Are you aware of any circumstances</b> 8 <b>where DEQ had or DEQ's air quality bureau has made</b> 9 <b>such disclosures?</b> 10 A. I can't think of any. I'd have to review 11 again all of the files, MEPA documents through the 12 years. 13 <b>Q. But you can't think of any off the top of</b> 14 <b>your head?</b> 15 A. Not off the top of my head as I sit here 16 today, no. 17 <b>Q. Okay. Does DEQ ever analyze how burning</b> 18 <b>of coal extracted from a surface coal mine that it</b> 19 <b>has permitted for which it has issued an air quality</b> 20 <b>permit would contribute to Earth's energy imbalance?</b> 21 A. From the air quality bureau perspective, I 22 -- the energy imbalance, I'm not familiar with what 23 that is. 24 <b>Q. Okay. So you're not familiar with the</b> 25 <b>concept of Earth's energy imbalance?</b></p>	<p style="text-align: right;">Page 80</p> <p>1 (Whereupon, Exhibit 172 was 2 marked for identification.) 3 <b>BY MS. HORNBEIN:</b> 4 <b>Q. I'm handing you what I have marked as</b> 5 <b>Exhibit 172. Could you tell me what that document</b> 6 <b>is, please.</b> 7 A. Exhibit 172 are the written findings 8 prepared by the Montana Department of Environmental 9 Quality's industrial and energy minerals bureau coal 10 program for amendment and mine plan revision for the 11 Bull mine -- Bull Mountain Mining, Incorporated. 12 <b>Q. Have you reviewed this document before?</b> 13 A. I don't recall seeing this document 14 before. 15 <b>Q. Do you know if this document was made and</b> 16 <b>kept in the course of DEQ's regularly conducted</b> 17 <b>business activities?</b> 18 A. I don't know. 19 <b>Q. Okay.</b> 20 (Whereupon, Exhibit 173 was 21 marked for identification.) 22 <b>BY MS. HORNBEIN:</b> 23 <b>Q. I'm handing you what I have marked as</b> 24 <b>Exhibit Number 173. Could you tell me what that is?</b> 25 A. Yes. Exhibit 173 are the written findings</p>

<p style="text-align: right;">Page 81</p> <p>1 prepared by Montana Department of Environmental 2 Quality industrial and energy minerals bureau coal 3 program for amendment and mine plan revision for the 4 Bull Mountain Coal Mine. This one is for October 5 2013.</p> <p>6 <b>Q. Have you reviewed this document before?</b> 7 <b>A. I don't believe I've seen this document</b> 8 <b>before.</b></p> <p>9 <b>Q. Are you familiar with what this document</b> 10 <b>is?</b> 11 <b>A. No, I am not.</b></p> <p>12 <b>Q. Okay.</b> 13 <b>(Whereupon, Exhibit 174 was</b> 14 <b>marked for identification.)</b></p> <p>15 <b>BY MS. HORNBEIN:</b></p> <p>16 <b>Q. I'm handing you what I have marked as</b> 17 <b>Exhibit 174. Could you tell me what that document</b> 18 <b>is, please?</b> 19 <b>A. These are the written findings prepared by</b> 20 <b>Montana Department of Environmental Quality</b> 21 <b>industrial and energy minerals bureau, colon, uranium</b> 22 <b>program for Pearson Creek amendment application</b> 23 <b>00183, Spring Creek Coal Mine, June 21st, 2011.</b></p> <p>24 <b>Q. Are you familiar with this document?</b> 25 <b>A. No, I am not.</b></p>	<p style="text-align: right;">Page 83</p> <p>1 <b>marked as Exhibit 147. There we go. Can you take a</b> 2 <b>look and tell me what that document is?</b> 3 <b>A. Exhibit 147 just says Colstrip at a</b> 4 <b>glance. I -- I don't know what this document is.</b> 5 <b>Q. Okay. This is not a document that you've</b> 6 <b>seen before?</b> 7 <b>A. I -- certainly doesn't -- I don't believe</b> 8 <b>so, no.</b></p> <p>9 <b>Q. I am handing you now what was previously</b> 10 <b>marked as Exhibit 146. Can you tell me what that is?</b> 11 <b>A. Exhibit 146 has a title GHG summary report</b> 12 <b>for a facility named Colstrip in reporting year 2018.</b> 13 <b>Q. Are you familiar with this document?</b> 14 <b>A. No. I don't believe I am.</b></p> <p>15 <b>Q. Okay. I'm looking for 136, and I think</b> 16 <b>it's previously marked. Oh. I said I wasn't going</b> 17 <b>to do this to you again, and here I go. Last time.</b> 18 <b>A. Thank you.</b></p> <p>19 <b>Q. Okay. Actually, if you can keep that</b> 20 <b>open, that's great. I'd like to start by going back</b> 21 <b>to the complaint, which I believe is in front of you,</b> 22 <b>and looking at paragraph 93. Are you there?</b> 23 <b>A. Yes.</b></p> <p>24 <b>Q. Okay. Paragraph 93 reads: "DEQ has</b> 25 <b>authorized, permitted, and encouraged fossil fuel</b></p>
<p style="text-align: right;">Page 82</p> <p>1 <b>Q. Okay. Okay. Hold on. I was about to</b> 2 <b>hand you something that I just marked as Exhibit 175,</b> 3 <b>but it looks like it's actually been admitted</b> 4 <b>already. So I'm going to instead hand you what was</b> 5 <b>previously marked as Exhibit 139. Can you tell me</b> 6 <b>what that is?</b> 7 <b>A. The title page of Exhibit 139 is the final</b> 8 <b>environmental impact statement appendices for Rosebud</b> 9 <b>Mine Area B AM5 in Colstrip.</b></p> <p>10 <b>Q. Are you familiar with this document?</b> 11 <b>A. No. I -- I don't believe I am.</b></p> <p>12 <b>Q. Were you involved with the FEIS for the</b> 13 <b>Rosebud Mine Area B AM5 expansion?</b> 14 <b>A. I can't recall the exact involvement for</b> 15 <b>this -- for -- for that. I -- I do recall hearing</b> 16 <b>AM5 and -- and being around AM5. I think it was</b> 17 <b>mainly during my tenure as acting division</b> 18 <b>administrator, and then there was an acting air</b> 19 <b>quality bureau chief as well. So I don't recall</b> 20 <b>much.</b></p> <p>21 <b>Q. It's not something that you worked on</b> 22 <b>directly in other words?</b> 23 <b>A. No.</b></p> <p>24 <b>Q. Okay. Let me see. This one was marked</b> 25 <b>previous. I'm going to hand you what was previously</b></p>	<p style="text-align: right;">Page 84</p> <p>1 <b>extraction, transportation, and combustion, which</b> 2 <b>activities generate dangerous levels of greenhouse</b> 3 <b>gas emissions, contribute to the climate crisis, and</b> 4 <b>harm youth plaintiffs." Did I read that correctly?</b> 5 <b>A. Yes. I believe you did.</b></p> <p>6 <b>Q. In your opinion are you the person at DEQ</b> 7 <b>who is the most knowledgeable with respect to these</b> 8 <b>allegations in the context of the air quality bureau?</b> 9 <b>A. Yes. I believe I am.</b></p> <p>10 <b>Q. Okay. And is there anyone else with</b> 11 <b>commensurate knowledge at DEQ that you're aware of?</b> 12 <b>A. No.</b></p> <p>13 <b>Q. Has DEQ permitted fossil fuel extraction?</b> 14 <b>A. Some fossil fuel extraction requires an</b> 15 <b>air quality permit.</b></p> <p>16 <b>Q. Okay. Has DEQ issued permits allowing for</b> 17 <b>the transportation of fossil fuels?</b> 18 <b>A. I would phrase it as some transportation</b> 19 <b>facilities to the extent they're part of a stationary</b> 20 <b>source are also identified in the permit.</b></p> <p>21 <b>Q. Okay. And has DEQ permitted activities</b> 22 <b>that allow the combustion of fossil fuels?</b> 23 <b>A. Yes. DEQ has permitted combustion, yes.</b></p> <p>24 <b>Q. Do these activities generate greenhouse</b> 25 <b>gas emissions?</b></p>

<p style="text-align: right;">Page 85</p> <p>1 A. Yes.</p> <p>2 Q. Okay.</p> <p>3 A. At least some, yes.</p> <p>4 Q. Do greenhouse gas emissions contribute to</p> <p>5 global climate change?</p> <p>6 A. At some level. I -- I don't -- I -- I</p> <p>7 can't say that in the affirmative because that's very</p> <p>8 broad.</p> <p>9 Q. Okay. Do you agree that these activities</p> <p>10 by producing greenhouse gas emissions at some level</p> <p>11 contribute to climate change?</p> <p>12 A. I don't agree with that.</p> <p>13 Q. Okay. Where is the disconnect?</p> <p>14 A. I believe there has to be a certain level</p> <p>15 to contribute.</p> <p>16 Q. Okay. So I realize we have covered this</p> <p>17 before. I'm just trying to get at the basis for your</p> <p>18 disagreement here. Is it correct that atmospheric</p> <p>19 levels of greenhouse gas concentrations drive climate</p> <p>20 change?</p> <p>21 A. I believe that is the theory of some</p> <p>22 folks.</p> <p>23 Q. Okay.</p> <p>24 A. Yes.</p> <p>25 Q. Is that your theory?</p>	<p style="text-align: right;">Page 87</p> <p>1 concentrations lead to more climate change?</p> <p>2 A. That part I am not -- you know, I'm not an</p> <p>3 expert in that regard.</p> <p>4 Q. Do you have an opinion on that?</p> <p>5 A. My opinion -- I -- I believe the</p> <p>6 concentrations would have an impact. How significant</p> <p>7 of that impact, I do not know.</p> <p>8 Q. Okay. So if you believe that the</p> <p>9 concentrations have an impact -- and we can leave</p> <p>10 aside the significance of that impact -- wouldn't it</p> <p>11 be correct that every ton of greenhouse gases</p> <p>12 released would contribute to the concentration in the</p> <p>13 atmosphere of greenhouse gases?</p> <p>14 A. No, I would not.</p> <p>15 Q. Okay. I'm just trying to tease out --</p> <p>16 A. Uh-huh.</p> <p>17 Q. -- the impasse here. Why not?</p> <p>18 A. Because as -- as we discussed earlier,</p> <p>19 when emissions come out of a stack in mass form,</p> <p>20 they're subject to meteorology, the other atmospheric</p> <p>21 conditions, and then that could translate to a</p> <p>22 concentration increase or not. So I can't</p> <p>23 unequivocally say every ton is going to increase</p> <p>24 concentration in the atmosphere as measured where,</p> <p>25 how, under what processes.</p>
<p style="text-align: right;">Page 86</p> <p>1 A. I believe that in part. There may be</p> <p>2 other things that drive climate change.</p> <p>3 Q. Do you believe that that's the predominant</p> <p>4 driver of climate change?</p> <p>5 A. I don't know its relative contribution.</p> <p>6 Q. Do you believe that it -- that</p> <p>7 human-caused emissions of greenhouse gases primarily</p> <p>8 from the combustion of fossil fuels are the primary</p> <p>9 -- in other words, 51 percent or more -- contribution</p> <p>10 to global climate change?</p> <p>11 A. I don't know the relative percentages. I</p> <p>12 know that that is a large one.</p> <p>13 Q. Okay. So if greenhouse gas emissions from</p> <p>14 fossil fuel combustion is a large contributor to</p> <p>15 climate change, would you agree with that statement?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And the burning of fossil fuels</p> <p>18 causes greenhouse gas emissions. Is that correct?</p> <p>19 Would you agree with that statement?</p> <p>20 A. I would agree it is a cause, yes.</p> <p>21 Q. Okay. And if overall concentrations of</p> <p>22 greenhouse gas emissions -- do overall concentrations</p> <p>23 of greenhouse gas emissions determine the level of</p> <p>24 climate change that we experience -- that the Earth</p> <p>25 experiences? In other words, do higher</p>	<p style="text-align: right;">Page 88</p> <p>1 Q. Would you agree that the more tons that</p> <p>2 you put into the atmosphere, the more likely that</p> <p>3 source is to have an impact on climate change?</p> <p>4 A. It could potentially be that way, yes.</p> <p>5 Q. Okay. But you don't agree that the --</p> <p>6 that the fossil fuel extraction and combustion</p> <p>7 activities that DEQ air quality bureau issues permits</p> <p>8 for contribute to climate change?</p> <p>9 MS. McKENNA: Objection. Compound.</p> <p>10 THE WITNESS: That is an awful long</p> <p>11 question.</p> <p>12 BY MS. HORNBEIN:</p> <p>13 Q. All right. Do you disagree that DEQ's air</p> <p>14 quality permitting activities allowing for the</p> <p>15 combustion of fossil fuels contribute to climate</p> <p>16 change?</p> <p>17 A. I don't agree that all do.</p> <p>18 Q. Okay. Okay. Going back to the Bull</p> <p>19 Mountain spring -- or I'm sorry. What exhibit do you</p> <p>20 have in front of you?</p> <p>21 A. Exhibit 135 and 136 --</p> <p>22 Q. Okay.</p> <p>23 A. -- are Highwood Generating.</p> <p>24 Q. All right. I'm going to take that back.</p> <p>25 I apologize. I'm just trying to clean up loose ends</p>



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1 here and --

2 **MS. HORNBEIN:** Okay. Can we take like a

3 five-minute break, and then I think that we can push

4 through and be done after that. Does that work for

5 everyone?

6 **MS. McKENNA:** Sure.

7 **THE VIDEOGRAPHER:** We are going off the

8 record. The time is 4:24 p.m.

9 (Whereupon, a break was then

10 taken.)

11 **THE VIDEOGRAPHER:** We are back on the

12 record. The time is 4:31 p.m.

13 **BY MS. HORNBEIN:**

14 **Q. Okay. Dave, I put in front of you what**

15 **was previously marked, I believe, as Exhibit 156.**

16 **Does that look right?**

17 **A. Yes.**

18 **Q. Okay. And can you tell me -- do you**

19 **recognize that document from your 30(b)(6)**

20 **deposition?**

21 **A. Yes, I do. This is the permit for Signal**

22 **Peak Energy, the Montana air quality permit.**

23 **Q. Okay. And then I want to direct your**

24 **attention back to paragraph 192 of the complaint. I**

25 **shouldn't say back to. I should say to.**

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1 **A. 192?**

2 **Q. Yes.**

3 **A. Okay.**

4 **Q. Page 84.**

5 **A. Okay. I am there on page 84.**

6 **Q. Okay. Paragraph 192 reads: "As part of**

7 **the climate change advisory committee initiative,**

8 **Montana's greenhouse gas emissions were inventoried**

9 **in 2007, at which time inventories were estimated for**

10 **each year from 2007" -- this says -- let's see --**

11 **"from each year from 2007 to 19 -- oh, going back to**

12 **1990, I suppose. "Defendant DEQ published the**

13 **greenhouse gas inventory report in 2007." Other than**

14 **my editorializing, did I read that correctly?**

15 **A. Yes. I believe you did.**

16 **Q. Okay. In your opinion are you the person**

17 **at DEQ who is most knowledgeable with respect to**

18 **allegations contained in this paragraph 192 of the**

19 **complaint?**

20 **A. Yes. I believe I am.**

21 **Q. Can you think of anyone else with a**

22 **commensurate level of knowledge?**

23 **A. Not at the DEQ, no.**

24 **Q. Okay. What was your role with the climate**

25 **change advisory committee initiative on behalf of**

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1 **DEQ?**

2 **A. My specific role is I was the air**

3 **permitting supervisor at the time, more in support.**

4 **Q. Uh-huh.**

5 **A. There were technical working groups that**

6 **sought information, like to calculate inventories, we**

7 **would supply whatever emission inventory data we had**

8 **as a bureau towards that effort.**

9 **Q. Okay. Anything else?**

10 **A. Observing it at least peripherally.**

11 **Q. Uh-huh.**

12 **A. Being aware of, you know, the -- the**

13 **council, the initiative, the requirements from the**

14 **governor, just knowing that was, you know, something**

15 **that was occurring at DEQ at the time.**

16 **Q. Okay. Do you have any expertise either**

17 **through your involvement with the committee**

18 **initiative or elsewhere in your work with DEQ in**

19 **greenhouse gas emissions inventories?**

20 **A. A little bit, yes.**

21 **Q. And what's the scope of your knowledge**

22 **with respect to emissions inventories?**

23 **A. Well, I understand there are some**

24 **inventories that are easier than others. They're**

25 **directly monitored emissions. So we verify, there**

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1 are continuous emission monitors that are part of the

2 air quality permit. They are part of the air quality

3 permitting requirements. There's other ways to

4 estimate them. They're called emission factors.

5 **Q. Uh-huh.**

6 **A. And the -- they're generally developed by**

7 **the Environmental Protection Agency. So there's**

8 **various ways to calculate greenhouse gas emissions.**

9 **Q. Okay. And can you describe a couple of --**

10 **a couple or a few of those ways?**

11 **A. Direct measurement.**

12 **Q. Uh-huh.**

13 **A. Emission factors or other type of**

14 **knowledge you may have of -- a person may have of a**

15 **system.**

16 **Q. So would direct measurement be something**

17 **like being able to quantify the emissions directly**

18 **from a stationary source; for example, a power plant?**

19 **A. Correct. They would have an in-stack**

20 **monitor that would measure the CO2.**

21 **Q. And what are some of the other kinds?**

22 **A. Some of the other kinds, especially**

23 **dealing with greenhouse gas emissions, we may look at**

24 **how much methane might exist in a given stream. And**

25 **based on that percentage, that would be an emission**

1 factor. That would be a way of estimating that part  
2 of the greenhouse gas -- the methane portion of the  
3 greenhouse gases.

4 **Q. Are there emissions inventories that you**  
5 **would do as part of the permitting process at DEQ?**

6 A. Yes.

7 **Q. And can you give me an example of those?**  
8 **What types of emissions inventories would you do as**  
9 **part of the permitting process?**

10 A. Generally, for a new or modified facility  
11 that we're requiring a permit based on emission  
12 levels, you will find an emission inventory in the  
13 analysis of those permits primarily criteria  
14 pollutants. Some of them, I think, have quantified  
15 CO2 or maybe other greenhouse gas emissions.

16 **Q. Okay. And where things like -- so you**  
17 **mentioned some of these have quantified CO2. What**  
18 **other types of greenhouse gas emissions might be**  
19 **monitored as part of these types of inventories?**

20 A. Could be methane.

21 **Q. Uh-huh.**

22 A. I can't think of any other off the top of  
23 my head. We -- we also have an emission inventory  
24 system that we charge fees on, but greenhouse gases  
25 are not a part of that.

1 **Q. Okay. Can you -- if someone were to ask**  
2 **you about emissions inventories, can you state what**  
3 **testimony you would offer with respect to paragraph**  
4 **192 of the complaint?**

5 A. I would have to listen to the specific  
6 question that was asked.

7 **Q. Okay. I am going to ask you to look at --**  
8 **I think what we previously marked as Exhibit 149,**  
9 **which I believe would have been from yesterday. But**  
10 **we used it today, so it should actually be in this**  
11 **pile. I think this is it right here.**

12 A. This one?

13 **Q. There it is. You recognize this document**  
14 **from your 30(b)(6) deposition testimony. Correct?**

15 A. Yes.

16 **Q. Okay. Could you describe what role you**  
17 **played in creating this document?**

18 A. For certain emission sources --

19 **Q. Uh-huh.**

20 A. -- the bureau was asked specifically for  
21 maybe some production data or any other data that  
22 could be used to quantify greenhouse gas emissions  
23 from certain sources that we may have data on.

24 **Q. And what types of sources would those be?**

25 A. Again, usually anybody who has a Montana

1 air quality permit, generally speaking, is required  
2 to submit an annual emissions inventory or production  
3 data so we could calculate that. So it could come  
4 from a variety of sources -- electrical generating  
5 facilities, anything that they were specifically  
6 looking for in here.

7 **Q. Okay. So could that have included surface**  
8 **coal mines?**

9 A. Could have. I -- I don't know -- don't  
10 know if it did or not.

11 **Q. Okay.**

12 A. Could have.

13 **Q. Underground coal mines?**

14 A. It could have.

15 **Q. Okay. Refining facilities?**

16 A. Potentially.

17 **Q. Power generation plants?**

18 A. Yes. Potentially.

19 **Q. Okay. Was this document -- and I'm**  
20 **referring to this exhibit which is the Montana**  
21 **greenhouse gas inventory and reference case**  
22 **projections for 1990 to 2020. Was this a document**  
23 **that was made and kept in the course of DEQ's**  
24 **regularly conducted business activity?**

25 A. I was not the specific author of this.

1 Again, I supplied information so I can't really speak  
2 to that part.

3 **Q. Okay. But you agreed that Montana's**  
4 **emissions, at least insofar as they're covered in**  
5 **this report, were inventoried in 2007. Correct?**

6 A. I agree that the ones that are contained  
7 in here, yes.

8 **Q. Okay. So looking back at paragraph 192 in**  
9 **the complaint that we were just looking at, are there**  
10 **any portions of that paragraph that you disagree**  
11 **with?**

12 A. I agree it was part of the initiative. It  
13 says Montana's GHG emissions were inventoried. That  
14 seems very broad. I don't know that all of Montana's  
15 GHG emissions were inventoried.

16 **Q. Okay. The title of the document is**  
17 **Montana greenhouse gas inventory and reference case**  
18 **projections. Correct?**

19 A. That is the title.

20 **Q. Okay. Are there any other parts of that**  
21 **paragraph 192 that you disagree with?**

22 A. I don't know specifically when it was  
23 published. I don't have any information to the  
24 contrary, but no. I believe it says -- excuse me.  
25 This was developed in 2007. The projections are 1990

1 to 2020. This says 2007 to 1990.  
 2 **Q.** Let's see. Yeah. They cover -- in the  
 3 title it says 1990 to 2020. I assume that includes  
 4 the projections part of it, because obviously it was  
 5 published well before 2020.  
 6 **A.** That could be the reason for 2007 here. I  
 7 don't know.  
 8 **Q.** Okay. Do you agree that 2007 is the  
 9 publication date?  
 10 **A.** 2000 -- which -- yes. And that causes me  
 11 the problem. If it's published in 2007, I'm not sure  
 12 how you could have an inventory for 2007 because 2007  
 13 is not over.  
 14 **Q.** No. I'm just -- I'm wondering and I am  
 15 wondering based on your experience contributing to  
 16 this document --  
 17 **A.** Uh-huh.  
 18 **Q.** -- if the 2020 or any -- any post-2007  
 19 portion is with respect to the, quote, referenced  
 20 case projections, if projecting out Montana's  
 21 emissions, at least those categorized here, was part  
 22 of this 2007 report?  
 23 **A.** I believe it would be emissions 2007  
 24 through 2020, which would be the projections.  
 25 **Q.** Okay. And the, quote, unquote, inventory

1 would be 1990 to 2007?  
 2 **A.** Through 2006 is what I'm saying.  
 3 **Q.** Sure.  
 4 **A.** Yeah.  
 5 **Q.** Is that based on your memory of your  
 6 participation in the process or just extrapolating  
 7 from?  
 8 **A.** No. It's more than extrapolating. See,  
 9 the data we collect is on a calendar-year basis.  
 10 **Q.** Uh-huh.  
 11 **A.** The air quality bureau. And so calendar  
 12 year 2007 was not over, so we would not have had  
 13 calendar year 2007 data. We would only have had to  
 14 calendar year 2006.  
 15 **Q.** Okay. That makes sense.  
 16 **Q.** Hang on to that just for a moment.  
 17 So if I could direct you to page 3 of that  
 18 document.  
 19 **A.** Roman numeral III?  
 20 **Q.** No. Just page 3.  
 21 **A.** Okay. Okay. I'm there.  
 22 **Q.** And do you see table 1, Montana historical  
 23 and reference case GHG emissions, consumption based  
 24 by sector?  
 25 **A.** Yes. I see that.

1 **Q.** Okay. And then going down to the bottom  
 2 row, do you see net emissions including sinks?  
 3 **A.** Yes.  
 4 **Q.** Okay. Do you agree that in 2005 Montana's  
 5 gross consumption based carbon dioxide equivalent  
 6 emissions with a total net carbon -- had a total net  
 7 carbon dioxide equivalent of approximately 11.4  
 8 million metric tons?  
 9 **A.** You mentioned total gross emissions?  
 10 **Q.** The total gross emissions for that year  
 11 would have been 36.8 or rounding up 37 million metric  
 12 tons. And then the net emissions would be 11.4  
 13 million metric tons?  
 14 **A.** That's what that table says, yes.  
 15 **Q.** Okay. And then can you flip back to where  
 16 I think you were before, the Roman -- little Roman  
 17 numeral iii in the executive summary?  
 18 **A.** Okay.  
 19 **Q.** And in the executive summary it says "On a  
 20 per capita basis Montanans emit about 40 metric tons  
 21 of CO2 equivalent which is about twice as much as the  
 22 national average of 25 million metric" -- excuse me,  
 23 not million -- "25 metric tons of CO2 equivalent.  
 24 The reasons for the higher per capita intensity in  
 25 Montana are varied but include the state's strong

1 fossil fuel production industry." Did I read that  
 2 correctly?  
 3 **A.** Yes. I believe you did. It is metric  
 4 tons not million, but yes.  
 5 **Q.** Yeah.  
 6 **A.** Yes.  
 7 **Q.** Do you agree with that statement?  
 8 **A.** You only read part of it.  
 9 **Q.** Okay.  
 10 **A.** Because it talked also about the large  
 11 agricultural industry, large distances for  
 12 transportation, and low population base.  
 13 **Q.** Okay. Do you agree that all of those are  
 14 factors in Montana's relatively large per capita  
 15 emissions levels at least for the years covered in  
 16 this report?  
 17 **A.** Emissions levels? No.  
 18 **Q.** What do you disagree with about that  
 19 statement?  
 20 **A.** Well, you mentioned carbon intensity.  
 21 **Q.** Uh-huh.  
 22 **A.** That's different than emissions levels.  
 23 **Q.** Okay. How is that different than  
 24 emissions levels?  
 25 **A.** This is metric tons per person. As

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1 opposed to an emissions level, it would be a tons per  
 2 yearly emissions.  
 3 **Q. Okay. So if -- let's go -- let's use the**  
 4 **correct nomenclature then and the language in the**  
 5 **paragraph which says "Montanans emit about 40 metric**  
 6 **tons of CO2E, which is about twice the national**  
 7 **average of 25 metrics tons of CO2E equivalent." Do**  
 8 **you agree with the reasons given in this paragraph**  
 9 **for that disparity between Montana's per capita**  
 10 **emissions of CO2 equivalent versus the national**  
 11 **average?**  
 12 A. I -- I don't -- I don't have any basis to  
 13 disagree with that --  
 14 **Q. Okay.**  
 15 A. -- that entire statement.  
 16 **Q. This was not something that you addressed**  
 17 **as part of your work on this report?**  
 18 A. No.  
 19 **Q. Okay. In your opinion would Montana's per**  
 20 **capita carbon dioxide equivalent emissions be lower**  
 21 **if Montana produced fewer fossil fuels?**  
 22 A. Potentially.  
 23 **Q. Okay. In your opinion would Montana's per**  
 24 **capita of carbon dioxide equivalent emissions be**  
 25 **lower if Montana relied less on fossil fuels to meet**

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1 **its energy and transportation needs?**  
 2 A. Tying it to the same equation that's in  
 3 this paragraph, potentially.  
 4 **Q. Okay. And then could you turn to page 5**  
 5 **in this report, please.**  
 6 A. Actual number 5?  
 7 **Q. Yes. Actual number.**  
 8 A. Okay.  
 9 **Q. And at the top of that page 5, it says**  
 10 **"Electricity use, transportation, and agricultural**  
 11 **are the state's principal GHG emission sources.**  
 12 **Together, the combustion of fossil fuels for**  
 13 **electricity generation used in state and in the**  
 14 **transportation sector account for about 46 percent of**  
 15 **Montana's gross GHG emissions as shown in figure 2.**  
 16 **The relative contribution of agricultural emissions,**  
 17 **methane and nitrogen oxide emissions from manure**  
 18 **management, fertilizer use, and livestock is much**  
 19 **higher in Montana, 26 percent, than in the nation as**  
 20 **a whole. This is a result of more agricultural**  
 21 **activity per capita in Montana compared to the U.S.**  
 22 **The remaining use of fossil fuels -- natural gas, oil**  
 23 **products, and coal -- in a residential, commercial,**  
 24 **and industrial or RCI sectors and the emissions from**  
 25 **fossil fuel production constitute another 23 percent**

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1 **of state emissions." Did I read that correctly?**  
 2 A. Not completely.  
 3 **Q. Okay. What did I get wrong?**  
 4 A. In N20, I believe, is nitrous oxides.  
 5 **Q. Okay.**  
 6 A. Not nitrogen oxides.  
 7 **Q. Okay.**  
 8 A. There is a regulatory difference.  
 9 **Q. Got it. Anything else?**  
 10 A. I don't believe so.  
 11 **Q. Okay. In your opinion would the share of**  
 12 **statewide greenhouse gas emissions from Montana's**  
 13 **electricity sector decline if the state shifted away**  
 14 **from fossil fuels for electricity generation?**  
 15 A. I can't answer that.  
 16 **Q. Okay. In your opinion would the state of**  
 17 **Montana's gross and net greenhouse gas emissions**  
 18 **decline if the state shifted away from fossil fuels**  
 19 **for electricity generation?**  
 20 A. I -- I can't answer that one either.  
 21 **Q. Is that outside of the area of your**  
 22 **expertise?**  
 23 A. Maybe. It also depends on in-state versus  
 24 out-of-state consumption and whether those facilities  
 25 would exist even if Montana cut its electricity.

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1 There are some things that I don't know or can't  
 2 predict would or would not happen.  
 3 **Q. Okay. And when you say whether those**  
 4 **facilities would exist, which facilities are you**  
 5 **talking about?**  
 6 A. The electrical generation facilities.  
 7 **Q. Okay. Okay. And then if you could turn**  
 8 **to page 45.**  
 9 A. Okay. I am there.  
 10 **Q. And under oil and gas industry emissions**  
 11 **it says "Emissions of carbon dioxide, CO2, and**  
 12 **methane, CH4, occur at many stages of production,**  
 13 **processing, transmission, and distribution of fossil**  
 14 **fuels. With over 4,000 wells and over 5,000 gas" --**  
 15 **excuse me. "With over 4,000 oil wells and over 5,000**  
 16 **gas wells in the state, three operational gas**  
 17 **processing plants, four oil refineries, and over**  
 18 **10,000 miles of gas pipelines, there are significant**  
 19 **uncertainties associated with estimates of the**  
 20 **state's GHG emissions from the fossil fuel sector.**  
 21 **This is compounded by the fact that there are no**  
 22 **regulatory requirements to track CO2 or methane**  
 23 **emissions. As a result, greenhouse gas emissions can**  
 24 **only be estimated based on industry wide averages**  
 25 **reported at the state level." Do you agree with that**

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1 statement?  
 2 I guess first of all, did I read that  
 3 correctly?  
 4 A. Yes. You read the paragraph correctly.  
 5 With -- with statement -- there are several  
 6 statements in there. There are several sentences.  
 7 Q. Okay.  
 8 A. So which statement are you referring to?  
 9 Q. So in particular would -- well, let's go  
 10 one by one. Do you agree with the estimations of the  
 11 number of oil and gas wells? Let's stop there first.  
 12 A. At the time?  
 13 Q. At the time.  
 14 A. It was -- it was likely pretty accurate --  
 15 Q. Okay.  
 16 A. -- with the information that we had  
 17 available to us.  
 18 Q. Okay. How about with respect to  
 19 operational gas processing plants at the time?  
 20 A. I -- I cannot verify that that is  
 21 accurate.  
 22 Q. Okay. What about with respect to oil  
 23 refineries?  
 24 A. Same thing. There are -- I know there are  
 25 four that had permits, but there are some oil

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1 refineries that didn't need permits.  
 2 Q. Okay. And how about the more than 10,000  
 3 miles of gas pipelines?  
 4 A. I don't have any information about that.  
 5 Q. Okay. Do you agree there are significant  
 6 uncertainties associated with estimates of the  
 7 state's GHG emissions from the fossil fuel sector?  
 8 A. And I have a problem with the term  
 9 "significant."  
 10 Q. Okay.  
 11 A. It has regulatory meaning to me. I  
 12 believe there are uncertainties associated with --  
 13 with the estimates.  
 14 Q. Okay. Do you agree that each of these oil  
 15 and gas wells -- let's stop there for a minute and  
 16 finish the question -- were required to obtain DEQ or  
 17 other state agency approval and authorization prior  
 18 to construction and operation?  
 19 A. I don't -- I can't agree with that.  
 20 Q. Okay. Why can't you agree with that?  
 21 A. Oil wells themselves generally -- I don't  
 22 know what they're referring to, if these are -- these  
 23 are all oil wells, including the ones that had been  
 24 orphaned or the ones that are active.  
 25 Q. Okay.

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1 A. And so -- and I also can't speak to what  
 2 the Department of Natural Resources and Conservation  
 3 does with regard to the wells.  
 4 Q. Okay.  
 5 A. Only specifically air quality.  
 6 Q. Okay.  
 7 A. And we won't know the number of wells.  
 8 What we generally permit are the -- is the equipment  
 9 that is processing the material from the well.  
 10 Q. Okay.  
 11 A. Might service multiple wells.  
 12 Q. Is it your understanding that in order to  
 13 drill an oil or gas well, there has to be some state  
 14 agency approval?  
 15 A. I don't know that.  
 16 Q. Okay. What about for gas processing  
 17 plants?  
 18 A. I would know about the gas processing  
 19 plants for which we -- the air quality bureau had  
 20 permits. Depending on the size, I -- there may be  
 21 some that aren't out there.  
 22 Q. Okay.  
 23 A. Or that don't have permits. Excuse me.  
 24 Q. Do you know of any gas processing plants  
 25 or did you know of any at the time this report was

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1 written that did not -- were not required to have air  
 2 quality permits?  
 3 A. Not off the top of my head as I sit here  
 4 today.  
 5 Q. Okay. How about oil refineries?  
 6 A. I do know as I sit here today, there are  
 7 four major oil refineries.  
 8 Q. Uh-huh.  
 9 A. But there are some smaller operations that  
 10 are characterized as oil refineries that do not have  
 11 air quality permits.  
 12 Q. Okay. And then what about pipelines?  
 13 Does DEQ air quality bureau have a role in permitting  
 14 for pipelines?  
 15 A. Generally not permitting of pipelines, no.  
 16 Q. Okay. So there are no air quality permits  
 17 that pipelines need in order to operate?  
 18 A. I don't believe so.  
 19 Q. Okay.  
 20 A. Yeah.  
 21 Q. In your opinion does Montana have more oil  
 22 and gas wells now than it did in 2007?  
 23 A. Are you referring to active or just total  
 24 that have been drilled?  
 25 Q. Total.

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1 A. Total I would say yes.  
 2 Q. How about active?  
 3 A. I could not speak to that.  
 4 Q. Okay. In your opinion does Montana have  
 5 more gas processing plants or -- let's go with  
 6 processing plants -- now than it did in 2007?  
 7 A. I would have to look at the files to -- to  
 8 know where we stand with regard to now versus 2007.  
 9 I don't know off the top of my head.  
 10 Q. Okay. How about oil refineries?  
 11 A. There's still the four major. I don't  
 12 know how many of the little ones are out there.  
 13 Q. Okay. And when you say the little ones,  
 14 are those refineries that would not be subject to a  
 15 DEQ air quality permit?  
 16 A. That is correct.  
 17 Q. Okay. So in terms of refineries that are  
 18 subject to an air quality permit, there are four --  
 19 there were four then and there are four now?  
 20 A. Yes.  
 21 Q. Okay. Okay. If you could turn to page  
 22 50, we're just about done with this exhibit.  
 23 Page 50 under results, reference case says  
 24 "Table E-4 displays the estimated methane emissions  
 25 from the fossil fuel industry in Montana from 1990 to

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1 2005 with reference case projections to 2020.  
 2 Emissions from this sector grew by 40 percent from  
 3 1990 to 2005 and are projected to increase modestly  
 4 by a further 7 percent between 2005 and 2020."  
 5 And then if you turn over to table E-4 on  
 6 page 51, which is the next page, that table shows 3.5  
 7 -- I believe this is million megatons of CO2  
 8 equivalent in the fossil fuel -- in the fossil fuel  
 9 industry sector in 1990 and 5 million megatons, I  
 10 believe, in CO2 equivalent from that sector in 2005.  
 11 Is that correct?  
 12 A. Million metric tons.  
 13 Q. Metric tons. Excuse me.  
 14 A. Yes. I see 1990, 3.5; 2005, 5.0.  
 15 Q. Okay. Do you agree that those emissions  
 16 and that growth between 1990 and 2005 were generated  
 17 pursuant to state issued permits or some other  
 18 authorization?  
 19 A. I -- I can't answer that.  
 20 Q. Okay. Are there any other opinions that  
 21 you intend to offer about paragraph 192?  
 22 A. Anything I offer will depend upon the  
 23 questions I'm asked.  
 24 Q. Okay.  
 25 MS. HORNBEIN: I may be done. If we could

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1 just take another five minutes, I'll verify that.  
 2 THE VIDEOGRAPHER: We are going off the  
 3 record. The time is 5:03 p.m.  
 4 (Whereupon, a break was then  
 5 taken.)  
 6 THE VIDEOGRAPHER: We're back on the  
 7 record. The time is 5:06 p.m.  
 8 MS. HORNBEIN: Lee, are you there? Okay.  
 9 We'll just wait. I promise I won't change my mind.  
 10 (Whereupon, a discussion was  
 11 held outside the record.)  
 12 MS. HORNBEIN: All right. Lee, I don't  
 13 have any further questions for Dave. Do you have any  
 14 follow-up?  
 15 MS. McKENNA: No, I don't. Thank you.  
 16 MS. HORNBEIN: Thank you very much for  
 17 your patience and endurance.  
 18 THE WITNESS: You are welcome. Thank you.  
 19 THE VIDEOGRAPHER: That concludes this  
 20 deposition. The time is 5:08 p.m.  
 21 (Whereupon, the deposition  
 22 concluded at 5:08 p.m.)  
 23 SIGNATURE RESERVED.  
 24 \* \* \* \* \*  
 25

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1 DEPONENT'S CERTIFICATE  
 2  
 3 I, DAVID KLEMP, the deponent in the  
 4 foregoing deposition, DO HEREBY CERTIFY, that I have  
 5 read the foregoing - 111 - pages of typewritten  
 6 material and that the same is, with any changes  
 7 thereon made in ink on the corrections sheet, and  
 8 signed by me a full, true and correct transcript of  
 9 my oral deposition given at the time and place  
 10 hereinbefore mentioned.  
 11  
 12  
 13 \_\_\_\_\_  
 14 DAVID KLEMP  
 15  
 16 Subscribed and sworn to before me this  
 17 \_\_\_\_\_ day of \_\_\_\_\_, 2023.  
 18  
 19  
 20  
 21 \_\_\_\_\_  
 22 PRINT NAME: \_\_\_\_\_  
 23 Notary Public, State of Montana  
 24 Residing at: \_\_\_\_\_  
 25 My commission expires: \_\_\_\_\_  
 DF - HELD VS. STATE OF MONTANA

1 CERTIFICATE

2 STATE OF MONTANA )  
3 COUNTY OF GALLATIN ) : ss

4 I, Deborah L. Fabritz, Registered Professional  
5 Reporter and Notary Public for the State of Montana,  
6 residing in Bozeman, do hereby certify:

7 That I was duly authorized to and did swear in  
8 the witness and report the deposition of DAVID KLEMP,  
9 in the above-entitled cause; that the foregoing pages  
10 of this deposition constitute a true and accurate  
11 transcription of my stenotype notes of the testimony  
12 of said witness, all done to the best of my skill and  
13 ability; that the reading and signing of the  
14 deposition by the witness have been expressly  
15 RESERVED.

16 I further certify that I am not an attorney nor  
17 counsel of any of the parties, nor relative or  
18 employee of any attorney or counsel connected with  
19 the action, nor financially interested in the action.

20 IN WITNESS WHEREOF, I have hereunto set my hand  
21 and affixed my notarial seal on this 8th day of  
22 January 2023.  
23  
24  
25

[	32:25	<b>Air (130)</b>	18:1,10;19:12,16;20:7, 9;22:10,17;27:14;29:7; 31:5,12,24;32:4,8,10, 15,25;33:9;34:12,14, 45:4;73:19,24;75:20; 76:2,7,15;77:14,20; 78:3;93:13	69:8
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