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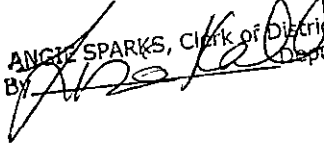
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ANGIE SPARKS, Clerk of District Court
By  Deputy Clerk

Attorneys for Plaintiffs

MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY

<p>RIKKI HELD, et al., Plaintiffs, v. STATE OF MONTANA, et al., Defendants.</p>	<p>Cause No. CDV-2020-307 Hon. Kathy Seeley DECLARATION OF ANNE HEDGES IN SUPPORT OF PLAINTIFFS' RESPONSE BRIEF IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT</p>
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Pursuant to MCA §1-6-105, Anne Hedges hereby declares as follows:

1. I am a fact witness and an expert in the above-entitled action. I am making this declaration in support of Plaintiffs' Response Brief in Opposition to Defendants' Motion for Summary Judgment. I have personal knowledge of the facts I state herein, except as to those stated on information and belief, and if called to testify, I would and could testify competently thereto.
2. I am the Co-Director and Director of Policy and Legislative Affairs at the Montana Environmental Information Center ("MEIC"). In this role, I direct MEIC's program work, including our legislative, regulatory, policy, and legal activities. I have been working at MEIC since 1993. My work has focused on pollution-related policy issues in Montana, with a primary emphasis on climate change, fossil fuels, clean air, clean water, and energy systems.
3. I received a B.S. in environmental policy analysis and planning from the University of California at Davis in 1988 and a Masters of Environmental Law, *magna cum laude*, from Vermont Law School in 1993.
4. As the Director of Policy and Legislative Affairs, I actively work before all three branches of Montana's government. I am very familiar with environmental reviews conducted by state agencies pursuant to the Montana Environmental Policy Act ("MEPA"). Over the course of my nearly 30 years working with MEIC, I have reviewed hundreds of Environmental Assessments and Environmental Impact Statements drafted by Montana agencies. I have also reviewed thousands of permit applications submitted by industry applicants, final permits issued by state agencies, compliance and enforcement documents, expert reports, and comments that other organizations and individuals have submitted during the MEPA and NEPA processes, and other regulatory materials. I have also reviewed hundreds of docket submissions to the Montana Public Service Commission in regard to MEIC's work before that

agency. On behalf of MEIC, I closely track most fossil fuel projects, including all proposed and existing coal-fired power plants, all coal mine proposals and expansions, and many oil and gas projects including power plants, drilling proposals, and large pipelines. I frequently draft or supervise the drafting of comments submitted on the proposed projects to the relevant Montana agency.

5. I have represented MEIC at every regular and special legislative session in Montana since I started work at MEIC in May 1993, including the current 2023 legislative session. Every regular legislative session I review and track hundreds of bills that may have an impact on Montana's environment or natural resources, and pay particularly close attention to legislation related to climate, energy, fossil fuels, and the Montana Environmental Policy Act. I have testified hundreds of times before interim and regular session legislative committees and I supervise MEIC's staff testifying before legislative committees. I have worked with legislators and legislative staff to draft and amend bills. I have worked with legislators to introduce or amend legislation and I have helped other MEIC staff and environmental lobbyists work to do the same. I have lobbied the governor and his staff on scores of bills in pursuit of the governor signing or vetoing a bill. I have a deep understanding of the legislative process as well as the substantive content and legislative history of environmental laws in Montana, including MEPA¹ and Montana's State Energy Policy.²
6. My work at MEIC—consistent with MEIC's mission—is focused on protecting and restoring Montanans' constitutional right to a clean and healthful environment for this and future

¹ Mont. Code Ann. § 75-1-101, et seq.

² Mont. Code Ann. § 90-4-1001, et seq.

generations, which includes ensuring that MEPA and other environmental statutes are followed.

7. My Expert Report, which was filed with the Court on September 30, 2022, (Doc. 222), provides additional information regarding Defendants' role in energy policy and planning, the State of Montana's knowledge about the dangers posed by fossil fuels and climate change, and Defendants' longstanding practice of collaborating with the fossil fuel industry to permit fossil fuel projects, that are resulting in significant greenhouse gas emissions and exacerbating climate change. More information regarding my professional and educational background can be found on pages 1 through 3 of my Expert Report.
8. The Montana legislature is currently in the midst of the 2023 legislative session. As I have done for the past 30 years, during the 2023 legislative session I am closely monitoring bills that may have an impact on Montana's environment or natural resources. Staff at MEIC that I supervise are helping me track and monitor numerous bills currently pending before the legislature. My staff and I are testifying regularly before the 2023 legislature, including before various committees, on bills that relate to climate, energy, fossil fuels, natural resources, and other topics.
9. In December 2022, I became aware of a request by a Montana legislator to amend Montana's State Energy Policy, MCA § 90-4-1001, et seq. My immediate reaction was, this is being done to undermine *Held v. State of Montana*.
10. On January 4, 2023, the text of the bill, HB 170, was made available. HB 170 seeks to repeal MCA § 90-4-1001, State Energy Policy Goal Statements, and MCA § 90-4-1003, Energy Policy Development Process, in their entirety. Representative Steve Gunderson is the primary sponsor of HB 170.

11. My staff and I have tracked HB 170 since it was first proposed, and continue to track it.
12. On January 11, 2023, there was a hearing on HB 170 before the House Energy, Technology and Federal Relations committee. MEIC staff was present at the hearing. At the hearing, Michael Freeman, the Natural Resources Policy Advisor for Governor Gianforte, testified in favor of HB 170. Mr. Freeman's testimony made clear that Governor Gianforte has a state energy policy, and he's sees MCA § 90-4-1001 as being in conflict with Governor Gianforte's energy policy. As Mr. Freeman stated:

Governor Gianforte's energy policy is an all-of-the-above a strategy delivering affordable, reliable energy to Montanans. . . . The proposed legislation [HB 170] does not conflict with the [Governor's] energy policy and in fact it helps clarify Montana's energy policy. . . . Repealing this section would have the effect of treating all these competing technologies equally and fairly.

13. Mr. Freeman's testimony made clear that even if MCA § 90-4-1001 was repealed, that would not mean that Montana would be without an energy policy. The primary effect of repealing MCA § 90-4-1001 would be to maintain the status quo so that the Governor could continue to set the energy policy that is then implemented by state agencies including the Defendants in this case. As Mr. Freeman stated:

Repealing these sections referenced in Representative Gunderson's bill does not abdicate the state's role in energy policy. I believe it refocuses and reframes it in a helpful way that promotes equal treatment of all energy sources. As such, the bill is in line with the spirit of the red-tape reform efforts the Governor has been leading
.....

14. In response to a question from Representative Sullivan, Mr. Freeman reiterated that:

From the Governor's perspective we do have an energy policy. It is an all-of-the-above energy policy to support, to provide an economy that provides affordable and reliable energy. . . . So I think we do, the Governor absolutely has an energy policy and it's, we want to see one that is inclusive of all energy sources and not picking winners and losers.

15. At the January 11, 2023, hearing on HB 170 before the House Energy, Technology and Federal Relations committee, Derf Johnson, MEIC Deputy Director, testified in opposition to HB 170, at my direction. MEIC opposes the repeal of MCA § 90-4-1001, because as Mr. Johnson put it in his testimony:

Now more than ever, Montana needs an energy policy for our state and for our state agencies which promote energy efficiency, conservation, and production and consumption of energy sources that represent the least social, environmental, and economic costs and the greatest long-term benefits to Montana citizens, and you can find that specific language in MCA 90-4-1001 (1)(a). It simply makes no sense to repeal this sound principle, which has stood for 30 years at this point, especially now in the face of increasing impacts of climate change that Montana is now experiencing. This fundamental policy should be achieved by complimentary policies which, carefully transition Montana away from reliance from fossil fuels extraction, transport, and combustion, take advantage of Montana's vast and untapped capacity for renewable energy, including wind and solar, makes strategic use of Montana's existing transmission capacity and commit to the mitigation from fossil fuel development on communities and workers. Rather than wholesale repeal of this statute, the State Energy Policy should be amended to incorporate the policies I just outlined which will guide Montana towards a more sustainable future.

16. Even if MCA § 90-4-1001 is ultimately repealed, that would not prevent the legislature from adopting the same State Energy Policy in the future, as Representative Gunderson admitted at the conclusion of the House hearing:

[A]ll I can tell you is I feel that we need to give the Governor a clean slate and if he so desires, and he may not, if he so desires, he has the ability to input a policy and if this legislature and the next legislature wants to put that back in the Title 90 then so be it.

17. The repeal of MCA § 90-4-1001 also would not alter how state agencies, including Defendants, are currently implementing their discretionary authorities to license, permit, and authorize fossil fuel activities.

18. On January 31, 2023, there was a hearing on HB 170 before the Senate Energy and Telecommunications committee. Mr. Freeman, the Natural Resources Policy Advisor for

Governor Gianforte, testified at this hearing too and affirmed that regardless of whether MCA § 90-4-1001 is repealed or not, there is a state energy policy in Montana.

What is energy policy? In terms of what energy policies are its policies, laws and regulations, that actually impact energy investment in energy generation, transmission and distribution in Montana. Gianforte's policy is an all of the above energy policy focused on delivering affordable, reliable energy to Montanans. Governor Gianforte's approach embraces innovation, entrepreneurial creativity of the free market system while protecting the environment and the Montana way of life with a robust and predictable regulatory system.

19. In response to a question from Senator Pope, Mr. Freeman again affirmed that there is a state energy policy:

I think we have an in-depth energy policy and ironically enough it's not in these sections it's in our tax policies and environmental policies; how we permit on our state lands, MEPA, I could go on, we have a very comprehensive energy policy in the state of Montana.

20. At the January 31 Senate hearing, Alan Olson, the Executive Director for the Montana Petroleum Association, testified in favor of HB 170. He testified that he supported Mr. Freeman's testimony, and did not have anything else to add. In my experience, when a representative from the Montana Petroleum Association testifies in favor of a bill, it is because it is in their best interest to do so.

21. At the January 31 Senate hearing on HB 170 before the Senate Energy and Telecommunications committee, Ian Lund, MEIC's Energy Policy Director, testified in opposition to HB 170, at my direction. Mr. Lund testified that MEIC opposes the repeal of MCA § 90-4-1001, because, given the dangers of climate change, it is more important than ever for Montana to have an energy policy that promotes energy efficiency, conservation, production, and consumption of energy sources that represent the least social, environmental and economic costs and produce the greatest long-term benefits to Montana citizens.

22. As of the filing of this declaration, HB 170 has been passed by the full House, and is currently pending before the Senate.
23. Regardless of what ultimately happens with HB 170, two things are clear to me.
24. First, if MCA § 90-4-1001 is ultimately repealed, I believe what Mr. Freeman, Governor Gianforte's Natural Resources Policy Advisor, said: Montana will still have a state energy policy, which is confirmed by the testimony of, Mr. Freeman, referenced above, and by State agencies long-standing and systemic promotion of fossil fuel activities that I have experienced during my many years at MEIC and which is detailed in my Expert Report, which was filed with the Court on September 30, 2022 (Doc. 222).
25. Second, it is clear to me that the Defendants in this case will continue to implement Montana's state energy policy to prioritize the increasing utilization, exploration, and development of Montana's fossil fuels, even if MCA § 90-4-1001 is repealed. As I explained in my expert report, Montana has a long history of permitting and approving fossil fuels projects, including power plants, oil and gas pipelines, coal mines, and others, that cause dangerous levels of greenhouse gas emissions. The 2011 amendments to the state energy policy codified Montana's practice of promoting fossil fuels in response to growing concerns about climate change and mounting evidence about the need for Montana to reduce its greenhouse gas emission, as I explain in my Expert Report on pages 21-22. I believe Defendants will continue their longstanding practice to permit and approve fossil fuels projects, including power plants, oil and gas pipelines, coal mines, and projects long into the future unless Montana's Constitution is interpreted by the courts to constrain their authority in doing so. Even if the law does not explicitly require the promotion of fossil fuels, that is the clear consequence of how Defendants have implemented, and continue to implement their authority with respect to

authorizing and permitting the use of fossil fuels. Defendants' policy of permitting fossil fuels shows no sign of abating.

26. As I stated in my Expert Report on page 28 (emphasis added):

In my opinion, and based on my decades of work trying to protect Montana's environment and citizens from the adverse effects of fossil fuel projects, Defendants have demonstrated a clear pattern and practice of granting permits for new fossil fuel projects and renewing permits to allow already built fossil fuel projects to continue to operate in Montana in defiance of the overwhelming weight of scientific consensus that such action threatens the health and safety of Montana's citizens and their individual rights to enjoy a clean and healthful environment. **In fact, in my experience and to the best of my knowledge, there is not a single example where Defendant agencies have denied an environmental permit to a fossil fuel company in Montana.**

27. I believe that the reason Governor Gianforte is pushing the repeal of MCA § 90-4-1001 is to try and undermine this case so that Defendants can continue their conduct without any constitutional oversight. I do not believe that it will result in less fossil fuel permitting in Montana.

28. I have been opposing fossil fuel projects in Montana for 30 years. In my opinion, the only thing that will fundamentally alter the state's historic and ongoing energy policy of prioritizing the development and use of fossil fuels is a court order declaring that policy unconstitutional. Absent such a court order, I have no doubt that Defendants will continue their long-standing state energy policy of approving every permit for fossil fuel exploration, extraction, burning, and transport in Montana.

29. In Defendants' Brief in Support of Motion for Summary Judgment, Defendants claim that state agencies could consider the actual or potential impacts of projects beyond Montana's borders when that review is required by a specific law, rule, regulation, or federal agency. MSJ Brief at 6, citing MCA § 75-1-201(2)(b)(ii), (iii). Based on my long experience in reviewing and commenting on MEPA analyses prepared by Defendant agencies, when Defendant agencies

prepare a joint environmental impact statement with federal agencies, the federal agencies are the only entities that analyze and consider climate impacts. In fact, Defendant agencies have made clear in separate records of decision from the federal agencies that they have no authority to analyze or consider climate impacts. On several occasions, MEIC and other organizations have specifically asked some of the Defendants to consider climate change in their MEPA analysis for fossil fuel activities, but they have specifically declined to do so because of the Climate Change Exception to MEPA.

30. The Montana Department of Environmental Quality's ("DEQ") May, 2022 Final Environmental Impact Statement for Rosebud Mine Area B AM5, relevant excerpts attached as **Exhibit 1** to this declaration, is an example of this. MEIC and other groups submitted comments asking DEQ to consider the impacts of the coal mine on climate change. *See* pp. D-27-45; *see also* pp. D-98-99. In response to our request to consider climate change, DEQ cited to the Climate Change Exception to MEPA to justify its decision not to evaluate the impacts of the project on climate change. DEQ explicitly stated:


Under MEPA, DEQ's analysis may not include a review of actual or potential impacts beyond Montana's borders. It may not include actual or potential impacts that are regional, national, or global in nature **such as impacts that may result from climate change. Section 75-1-201(2)(a), MCA.**

D-28; D-99 (emphasis added).

31. As illustrated here, and in other MEPA review documents, Defendant agencies rely explicitly on MCA § 75-1-201(2)(a) to exclude climate change from their MEPA review. For other examples of this, see pages 24-29 of my Expert Report. (Doc. 222.)

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

Executed this 14th day of February, 2023 in Helena, Montana.



Anne Hedges

EXHIBIT 1


Final Environmental Impact Statement

Rosebud Mine Area B AM5
Colstrip, Montana

Appendices

May 2022



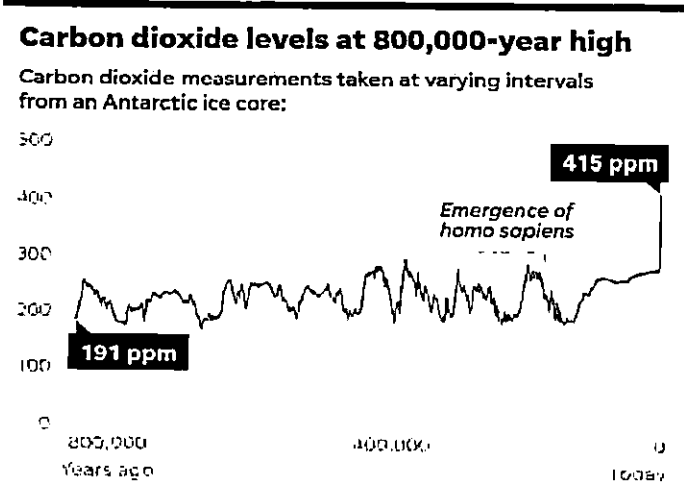
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79-1	 <p>Northwest 1216 Queen's Street Eugene, Oregon 97401 (541) 385-2471</p> <p>Rocky Mountain 101 West 7th Ave. Helena, Montana 59601 (406) 443-1901</p> <p>Southwest 200 Broadway, Suite 400 Tucson, Arizona 85701 (520) 781-0351</p> <p>079</p> <p>Defending the West www.westernlaw.org</p> <p>Western Environmental Law Center</p> <p>November 23, 2020</p> <p>Montana DEQ Attn: Jen Lane, MEPA Coordinator PO Box 200901 Helena, MT 59620-0901 rosbud-mine-area-b-cis@erresources.com jlanc2@mt.gov</p> <p>Dear Sir/Madame:</p> <p>Please accept the following comments regarding the DEIS for Western Energy Company's (WECO) AM5 application. These comments are being submitted by the Western Environmental Information Center (WELC) on behalf of the Montana Environmental Information Center (MEIC) and the Sierra Club (collectively, Conservation Groups).</p> <p>I. The Draft Environmental Impact Statement Violates the Montana Constitution</p> <p>The Constitution of the State of Montana guarantees the inalienable right to a "clean and healthful environment" and "human dignity." Mont. Const. Art. II, §§ 3, 4. These rights entail the correlative duty of the State to "maintain and improve a clean and healthful environment in Montana for present and future generations." <i>Id.</i> Art. IX, § 1(1). Accordingly, the State must "protect[] ... the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources." <i>Id.</i> § 1(3). DEQ's proposal to allow a massive expansion of the Rosebud Mine in the face of the worsening crisis of climate change violates the Montana Constitution and contradicts DEQ's purported mission to protect the environment.</p> <p>The Conservation Groups have previously explained to DEQ the degree to which its coal mining permitting system egregiously violates the constitutional and</p> <p>1</p>	<p>Comment Response 79-1: Comment noted.</p>

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<p>79-2</p>	<p style="text-align: right;">079</p> <p>human rights of all Montanans—especially those of children. Those comments are summarized below and incorporated by reference hereto.¹</p> <p>Based on an overwhelming amount of climate evidence published in recent years, DEQ must acknowledge the findings of recent climate reports, including the Fourth National Climate Assessment of 2018 and those prepared by the Intergovernmental Panel on Climate Change (IPCC) and U.S. Geological Survey. Additionally, information published in January 2019 by Oil Change International specifically highlights the urgent need for federally-managed fossil fuels to remain in the ground in order to effectively combat climate change. The findings of these recent and important climate reports are summarized below.</p> <p>Fourth National Climate Assessment</p> <p>Prepared by the U.S. Global Change Research Program and published in 2018, the Fourth National Climate Assessment, Volume II (“NCA4”) identifies and evaluates the risks of climate change that threaten the U.S., and how a lack of mitigation and adaptation measures will result in dire climate consequences for the U.S. and its territories. This report builds upon the foundational physical science set out in the first volume of NCA4, the 2017-released <i>Climate Science Special Report</i>, which analyzed how climate change is affecting geological processes across the U.S.² Volume II focuses on national and regional impacts of human-induced climate change since the Third National Climate Assessment in 2014, as well as highlighting the future of global warming that will jeopardize human health, economy, and the environment.</p> <p>The report affirms that it is no longer reliably true that current and future climate conditions will resemble the recent past. Due to human activities that produce greenhouse gas emissions, the atmospheric concentration of carbon dioxide has increased approximately 40 percent since the beginning of the industrial era in the 19th century.³ In fact, USGCRP concludes that evidence of anthropogenic climate change is staggering, and that the impacts of climate change are intensifying across</p> <p>¹ Comment Letter from WELC to DEQ (Sept. 26, 2019) (Ex. 1).</p> <p>² USGCRP, <i>Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II: Report-in-Brief (2018)</i> 1.</p> <p>³ <i>Id.</i> at 30.</p>	<p>Comment Response 79-2: Thank you for your comment. DEQ acts consistently with Montana’s Constitution by “faithfully execut[ing] the laws of Montana.” See <i>Merlin Meyers Revocable Trust v. Yellowstone County</i>, 2002 MT 201, ¶ 21, 311 Mont. 194, 200. Here, the statute is clear, as are DEQ’s duties thereunder. Under MEPA, DEQ’s analysis may not include a review of actual or potential impacts beyond Montana’s borders. It may not include actual or potential impacts that are regional, national, or global in nature such as impacts that may result from climate change. Section 75-1-201(2)(a), MCA. Section 75-1-201(2)(a) provides two limitations on the impacts that may be contained in an EIS. First, an environmental review may not include a review of actual or potential impacts that are beyond Montana’s borders. This limitation is subject to the limited exceptions set forth in (2)(b). Second an environmental review may not include a review of impacts that are regional, national, or global in nature. These limitations are clear and unequivocal. An EIS may not analyze impacts that are beyond Montana’s borders (subject to the exceptions stated above). Nor may an EIS analyze impacts that are regional, national, or global in nature. Subsection (1)(b)(iv)(B) provides a general requirement that an EIS analyze any adverse effects on Montana’s environment. That general requirement is subject to the particular provision precluding an EIS from reviewing impacts that are regional, national or global in nature. Under Section 1-2-102, a particular provision controls a general provision that is inconsistent with it. DEQ is, as always, confined to what the statute provides. Further, DEQ cannot deny a coal mining permit under Sections 75-1-102(3) and 201(4)(a), MCA. A substantive decision on whether to issue or deny a coal mining permit would be made pursuant to MSUMRA, 82-4-201, MCA, et seq. In addition, no federal coal is proposed to be mined in the Proposed Action.</p>

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<p>79-3</p> <p>79-4</p>	<p style="text-align: right;">079</p> <p>the U.S. and its territories. These impacts are multiplying climate risks to Americans' physical, social, and economic well-being.¹ Climate risks threatening the U.S. and its territories include: impacts to the economy, such as property losses up to \$1 trillion in coastal property destruction; loss of reliable and affordable energy supplies and damaged energy infrastructure; declines in agricultural productivity; loss of two billion labor hours annually by 2090 due to temperature extremes; recreational and cultural losses of wildlife and ecosystems such as coral reefs; decreased water quality and security; diminished snowpack, sea level rise, and frequent flooding; increase in droughts, wildfires, and invasive species; and rise in deaths across vulnerable populations due to extreme weather events and heat waves.² To avoid these grave scenarios, the public and private sectors must invest in and implement mitigation actions to reduce greenhouse gas emissions, as well as adopt adaptation plans to prepare for future impacts.</p> <p>These findings are significant in regards to DEQ moving forward with the AM5 expansion, since no matter the amount carbon dioxide produced from fossil fuel extraction and end-source combustion, NCA4 unequivocally states that we must immediately reduce U.S. greenhouse gas emissions. DEQ must take into account this updated climate report, and explicitly acknowledge its findings. We urge DEQ to consider the report's conclusions and not move forward with the proposed strip-mine expansion.</p> <p>IPCC SR 1.5</p> <p>In October 2018, the Intergovernmental Panel on Climate Change ("IPCC") released a special report on the impacts of global warming, commissioned by the Paris Agreement of 2016. <i>Global Warming of 1.5°C</i>, finds greenhouse gas emissions produced by human activity have significantly contributed to global warming since the industrial revolution of the 19th century, increasing the rise in global temperature by 0.2°C per decade at present.³ The report forecasts the state</p> <hr/> <p>¹ <i>Id.</i> at 26.</p> <p>² <i>Id.</i> at 36-48.</p> <p>³ IPCC, <i>Global Warming of 1.5°C</i>, An IPCC Special Report on the Impacts of Global Warming of 1.5°C Above Pre-Industrial Levels and Related Global Greenhouse Gas Emission Pathways, in the Context of Strengthening the Global Response to the Threat of Climate Change, Sustainable Development, and Efforts</p> <p style="text-align: center;">3</p>	<p>Comment Response 79-3: See response to Comment 79-2.</p> <p>Comment Response 79-4: Opposition to the Proposed Action is noted. See response to Comment 79-2.</p>

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	<p style="text-align: right;">079</p> <p>of the climate at 1.5°C and 2°C, describing the devastating consequences continued warming has for our earth—destroying ecosystems, disrupting global economy, and jeopardizing public health. The report is a stark warning that delayed actions to cut greenhouse gas emissions, as well as the implementation of other mitigation and adaptation measures to climate change, will be extremely costly.</p> <p>The IPCC report assessed scientific, technical, and socio-economic literature to compare the impacts of global warming at 1.5°C to 2.0°C above pre-industrial levels of greenhouse gas emissions, and the results are severe. At 2.0°C warming, as compared to 1.5°C, the following will be even more certain to occur: heavy precipitation and flooding; loss of ice sheets in Antarctica and Greenland triggering multi-meter sea level rise; heat waves, heat-related morbidity and mortality, and spread of vector-borne diseases; species loss and extinction, including doubling the number of insects, plants, and invertebrates losing over half of their geographic range; increased risks of forest fires and the spread of invasive species; increase in ocean temperature, acidity, and deoxygenation; risks to marine biodiversity, fisheries, and the near extinction of coral reef ecosystems; climate-related risks to health, livelihoods, food security, and freshwater supply; and risks to economic growth and the increase of poverty by several hundred million by 2050.⁷</p> <p><i>Global Warming of 1.5°C</i> concludes that anthropogenic CO₂ emissions must decline approximately 45 percent from 2010 levels by 2030 in order to stay within the range of 1.5°C, reaching net zero emissions around 2050.⁸ In addition to cutting carbon emissions, the IPCC reports other non-CO₂ emissions, including methane, must be deeply reduced to achieve limiting global warming to 1.5°C with no or limited overshoot.⁹ To progress in reducing global greenhouse gas emissions, rapid and transformative changes must be made to our global economy, particularly energy infrastructure. For instance, the IPCC suggests the complete phase-out of coal, explaining “the use of coal, with no or limited overshoot of</p> <hr/> <p>to Endicote Poverty, Summary for Policymakers at SMP-4 (2018) (hereafter “IPCC”).</p> <p>⁷ <i>Id.</i> IPCC at 8-14.</p> <p>⁸ <i>Id.</i> at 15.</p> <p>⁹ <i>Id.</i> at 16</p>	

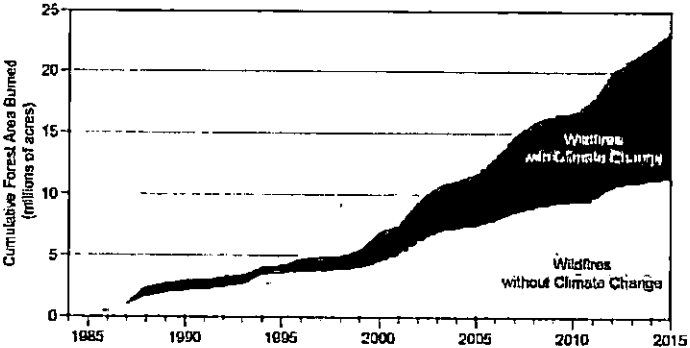
Com- ment	Document #79-Western Environmental Law Center	Response
	<p style="text-align: right;">679</p> <p>1.5°C, shows a steep reduction in all pathways and would be reduced to close to 0% (0-2%) of electricity (<i>high confidence</i>).¹⁰</p> <p>In summary, the lower the greenhouse gas emissions in 2050, the less challenging it will be to limit global warming to 1.5°C. Far-reaching climate mitigation and adaptation efforts are needed to both slow the rise in global temperature as well as prepare the planet for climate change impacts that are already in place, due to past and ongoing greenhouse gas emissions. The report specifically notes that “the challenges from delayed actions to reduce greenhouse gas emissions include the risk of cost escalation, lock-in carbon-emitting infrastructure, stranded assets, and reduced flexibility in future options in the medium- and long-term (<i>high-confidence</i>).”¹¹ Therefore, collective, international cooperation on all levels is needed to limit global warming to 1.5°C.</p> <p>Further, there is strong evidence that even limiting global warming to 1.5°C is “not considered ‘safe’ for most nations, communities, ecosystems, and sectors.”¹² Instead, the unfuted evidence shows that the maximum safe level of carbon dioxide concentrations in the atmosphere is 350 parts per million.¹³ Currently, global carbon dioxide concentrations are terrifyingly high: 415 ppm.¹⁴</p> <hr style="width: 20%; margin-left: 0;"/> <p>¹⁰ <i>Id.</i> at 21.</p> <p>¹¹ <i>Id.</i> at 24.</p> <p>¹² <i>Id.</i> at 5-4.</p> <p>¹³ <i>E.g.</i>, Hansen et al., <i>Young People’s Burden</i> at 1.</p> <p>¹⁴ Miller & Rice, <i>Carbon Dioxide Levels Hit Landmark at 415 ppm, Highest in Human History</i>, <i>US Today</i> (May 13, 2019), available at https://www.usatoday.com/story/news/world/2019/05/13/climate-change-co2-levels-hit-415-parts-per-million-human-first/1186417001/.</p> <p style="text-align: center;">5</p>	

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79-5	<p style="text-align: right;">079</p> <hr/> <p>Carbon dioxide levels at 800,000-year high</p> <p>Carbon dioxide measurements taken at varying intervals from an Antarctic ice core:</p>  <p>SOURCE World Data Center for Paleoclimatology, Boulder, and NOAA Paleoclimatology Program USA TODAY</p> <hr/> <p>Given this report from the IPCC and its strong evidence of the rise in global temperature and severity of future climate change impacts, DEQ should deny the proposed coal mine expansion and instead take steps to ensure that its decisions do not further exacerbate the climate crisis.</p> <p>U.S. Geological Survey</p> <p>The U.S. Geological Survey (USGS), a bureau within the U.S. Department of the Interior, released a study in November 2018 that calculates the amount of greenhouse gases emitted from fossil fuel extraction and combustion on federal lands, as well as the sequestration, or absorption of carbon that naturally occurs on undisturbed public lands. Specifically, from 2004 to 2015, USGS quantified the amounts of carbon (CO₂), methane (CH₄), and nitrous oxide (N₂O) produced from coal, gas, and oil activities, as a result of public lands management.</p> <p style="text-align: center;">6</p>	<p>Comment Response 79-5: See response to Comment 79-2. Additionally, this is a state-only project, implementing only state law, and it does not involve any federal lands.</p>

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79-6	<p style="text-align: right;">670</p> <p>Using data collected from 28 states (not including tribal lands) and offshore Gulf and Pacific continental shelves, USGS concludes that 1,279.0 million metric tons (MMT) CO₂, 47.6 MMT CO₂ equivalent CH₄, and 5.5 MMT CO₂ equivalent N₂O were released between 2004 and 2015.¹⁵ During the same time period, federal lands sequestered an average of 343 MMT CO₂, of which nine states accounted for 60 percent of carbon storage.¹⁶ Therefore, only approximately 15 percent of CO₂ emissions resulting from fossil fuel extraction and end-use combustion were offset by sequestration. Depending on public lands management, federal lands can either be a net sink or source of greenhouse gas emissions.</p> <p>Significantly, over the 10-year period of this study, the report finds emissions from fossil fuels produced on federal lands represent, on average, 23.7 percent of national emissions for carbon dioxide, 7.3 percent for methane, and 1.5 percent for nitrous oxide.¹⁷ In 2014, Wyoming, offshore Gulf areas, New Mexico, Louisiana, and Colorado had the highest CO₂ emissions from fossil fuels produced on federal lands. CO₂ emissions attributed to federal lands in Wyoming are 57 percent of the total from federal lands in all states and offshore areas combined.¹⁸ In addition, in 2014, methane emissions were highest from federal lands in Wyoming (28 percent), New Mexico (23 percent), offshore Gulf areas (20 percent), Colorado (13 percent), and Utah (7 percent).¹⁹</p> <p>In short, DEQ must not only acknowledge this new scientific information, but it must address the policy implications that necessarily follow. Releasing additional carbon dioxide into the atmosphere intensifies global warming, and thus the impacts of climate change.²⁰ DEQ must disclose the scientific conclusions about</p> <p>¹⁵ Matthew D. Merrill et al., Federal lands greenhouse gas emissions and sequestration in the United States—Estimates for 2005-14, (2018).</p> <p>¹⁶ <i>Id.</i> at 13.</p> <p>¹⁷ <i>Id.</i> at 6.</p> <p>¹⁸ <i>Id.</i></p> <p>¹⁹ <i>Id.</i></p> <p>²⁰ USGCRP, 30</p> <p style="text-align: center;">7</p>	<p>Comment Response 79-6: See response to Comment 79-2.</p>

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<p>79-6 cont.</p>	<p style="text-align: right;">079</p> <p>rising global temperatures and the need to keep carbon in the ground if we are to avoid the worst effects of climate disruption.</p> <p>Oil Change International: Drilling Towards Disaster</p> <p>In January 2019, Oil Change International in collaboration with another 17 not-for-profit organizations published a report called <i>Drilling Towards Disaster: Why U.S. Oil and Gas Expansion is Incompatible with Climate Limits</i> ("Report").²¹ In addition to discussing why further oil and gas expansion must be halted to avoid climate crisis, the Report discusses the dire need of saying "no" to additional coal reserve development. Already with all developed reserves of coal, gas, oil, and cement combined, we have surpassed the threshold of a 50 percent chance of only a 1.5°C global temperature increase.²² In fact, we have surpassed this threshold by so much that we are now on the doorstep of a 66 percent chance of a 2°C increase with developed reserves alone.²³ Approving this proposed coal expansion at the Rosebud Mine for strip-mining over 100 million tons of coal would only further lock us into an unsustainable and catastrophic climate trajectory.</p> <p>To date, the U.S. is still the world's third-largest coal producer, behind China and India.²⁴ Federally leased coal is a huge player as "[a]round 40% of all U.S. coal production comes from federally leased land."²⁵ Existing U.S. mines already contain far more coal than the U.S. can extract under a coal phase-out timeline that is consistent with the Paris Agreement goals.²⁶ Based on both economic efficiency and equity, the U.S. should phase out coal much faster than the global average to</p> <hr/> <p>²¹ Kelly Trout and Lorie Stockman, <i>Drilling Towards Disaster: Why U.S. Oil and Gas Expansion is Incompatible with Climate Limits</i>, Oil Change International (January 2019).</p> <p>²² <i>Id.</i> at 5</p> <p>²³ <i>Id.</i></p> <p>²⁴ <i>Id.</i> at 21.</p> <p>²⁵ <i>Id.</i> at 22.</p> <p>²⁶ <i>Id.</i></p> <p style="text-align: center;">8</p>	

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79-7	<p style="text-align: right;">079</p> <p>meet responsibilities under the Paris goals.²⁷ To be consistent with Powering Past Coal Alliance's (an alliance that include 28 national governments) coal mining phase out of 2030, more than 70 percent of coal reserves in existing mines need to remain in the ground.²⁸</p> <p>Although U.S. coal mining is currently in decline, it is not being managed in a way that is fast enough for climate or fair for workers. Again, "[i]f U.S. coal production is phased out over a timeframe consistent with equitably meeting the Paris goals, at least 70 percent of coal reserves in already-producing mines would [need] to stay in the ground."²⁹ Federal agencies as well as policymakers need to focus on accelerating the phase out of coal by 2030 or sooner, while ensuring a just transition for communities and workers.</p> <p>Based on the overwhelming scientific consensus that we must drastically reduce GHG emissions as quickly as possible in order to avoid a climate catastrophe, DEQ should reject further mining of coal reserves at the Rosebud Mine.</p> <p>The scientific evidence further plainly demonstrates that the devastating impacts of the climate crisis will not spare Montana, but that Montanans will see dire impacts to their health, livelihoods, and recreation interests and that Montana's environmental life support system will suffer cascading harms. The worsening impacts of climate change in Montana will include new and unprecedented extreme weather, such as intense flooding followed by extreme drought, harm to agriculture from water stress and extreme weather, and cascading harms to ecosystems.³⁰ The state will also suffer ever-worsening wildfires and water scarcity.³¹ Indeed, Montanans have already seen the prelude of smoke-filled summers—climate change has already doubled the number of acres burned across the United States due to wildfire.³²</p> <p>²⁷ <i>Id.</i></p> <p>²⁸ <i>Id.</i></p> <p>²⁹ <i>Id.</i> at 7 (emphasis in original).</p> <p>³⁰ USGCRP, NCA-4 at 136-38.</p> <p>³¹ <i>Id.</i> at 146.</p> <p>³² <i>Id.</i> at 151.</p> <p style="text-align: center;">9</p>	<p>Comment Response 79-7: Opposition to the Proposed Action is noted. See response to Comment 79-2.</p>

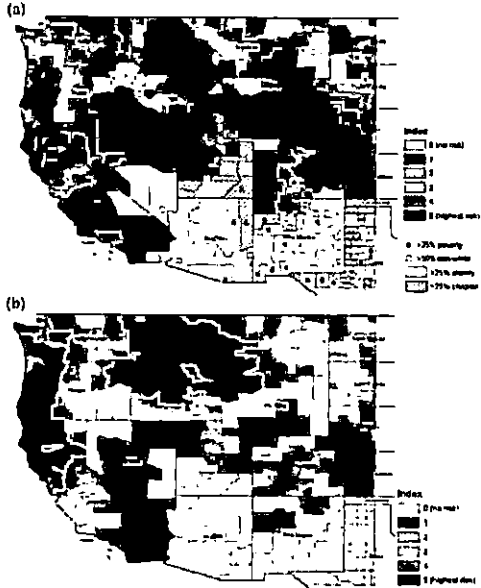
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	<p style="text-align: right;">OTA</p>  <p>Increased wildfire activity is expected to cause "profound changes" to ecosystems.³³ Climate change is and will continue to affect Montana's hydrology and it will exacerbate persistent drought in the states.³⁴ Reduced snowpack and increased summer temperatures will cause reduced summer flows in streams and rivers throughout the state and worsen warm season drought throughout the state.³⁵ This could have "severe consequences for human and natural systems," including "catastrophic impacts on some aquatic species."³⁶ The trout-streams eulogized by Normal McClean will be dramatically reduced.³⁷ Climate change will also dramatically change Montana's forests as we know them. Higher temperatures are likely to cause more of Montana's forests to simply die and give way to grasslands.³⁸ More trees will be killed by forest pests, such as bark beetles and</p> <p>³³ USGCRP, NCA4 Vol. 1, at 231.</p> <p>³⁴ Mont. Instit. on Ecosystems, Montana Climate Assessment at 140.</p> <p>³⁵ <i>Id.</i> at 130-33.</p> <p>³⁶ <i>Id.</i> at 133.</p> <p>³⁷ <i>Id.</i> at 134-35.</p> <p>³⁸ <i>Id.</i> at 150.</p> <p style="text-align: center;">10</p>	

Com- ment	Document #79-Western Environmental Law Center	Response
79-8	<p style="text-align: right;">070</p> <p>more forest will burn, due to lengthened fire seasons (due to higher temperatures).³⁹ Climate change is going to tax Montanans' pocketbooks as well. Agricultural impacts could total over \$700 million in lost income and nearly 25,000 lost jobs.⁴⁰ These impacts will be felt most acutely in Montana's small towns and rural areas.⁴¹ Climate change is further expected to cost Montana hundreds of millions of dollars and over 10,000 jobs by impacting the recreation industry in the form of reduced fishing, hunting, sight-seeing, winter recreation, and visits to national parks.⁴² Conservatively estimated, the impacts of increased fire, in the form of destroyed homes and ever-increasing fire management costs will be billions of dollars.⁴³</p> <p>Despite the devastating impacts of climate change, DEQ refuses to broach the topic at all, in reliance on Montana Code Annotated § 75-1-201(2)(a). This provision—which mandates official ignorance of what may be the gravest threat to our state, nation, and planet—is blatantly unconstitutional. The Montana Constitution enshrines all Montanans' fundamental constitutional right to a "clean and healthful environment." Mont. Const. art. II, § 3. Further, the constitution provides: "The State and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations." <i>Id.</i> art. IX, § 1(1). "The legislature shall provide for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources." <i>Id.</i> art. IX, § 1(3). The arbitrary exclusion of harmful pollution from regulation implicates these rights and obligations. <i>MHC v. DEQ</i>, 1999 MT 248, ¶ 80, 296 Mont. 207, 988 P.2d 1236. This mandates a showing that the statute is narrowly tailored to a compelling state interest. <i>Id.</i> ¶ 63. The state cannot meet this standard, as there is no compelling interest in willful ignorance.</p> <hr/> <p>³⁹ <i>Id.</i></p> <p>⁴⁰ Power & Power, <i>The Impact of Climate Change on Montana's Agricultural Economy</i> at iv (2016).</p> <p>⁴¹ <i>Id.</i> at 18.</p> <p>⁴² Power & Power, <i>The Impact of Climate Change on Montana's Outdoor Economy</i> at 57 (Ex. 33).</p> <p>⁴³ <i>Id.</i></p> <p style="text-align: center;">11</p>	<p>Comment Response 79-8: Thank you for your comment. See response to Comment 79-2.</p>

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79-9	<p style="text-align: right;">079</p> <p>The DEIS's complete failure to assess the climate impacts of mining and burning over 100 million tons of coal violates the fundamental right to a clean and healthful and environment, as well as the state's duty to maintain and improve a clean and healthful environment. The legislature's mandated ignorance in Montana Code Annotated § 75-1-201(2)(a) plainly violates these rights, as well as the legislature's duty to provide adequate remedies to prevent degradation of the environmental life support system.</p> <p>On September 9, 2019, the UN High Commissioner on Human Rights, Michelle Bachelet, stated:</p> <p>Climate change is a reality that now affects every region of the world. The human implications of currently projected levels of global heating are catastrophic. Storms are rising and tides could submerge entire island nations and coastal cities. Fires rage through our forests, and the ice is melting. We are burning up our future – literally.</p> <p>The climate emergency is already driving a sharp increase in global hunger, which according to FAO has increased this year for the first time in a decade. WHO expects climate change to cause approximately 250,000 additional deaths per year between 2030 and 2050 – from malnutrition, malaria, diarrhoea and heat stress alone. In many nations, chaotic weather patterns and other manifestations of our environmental emergency are already reversing major development gains: exacerbating conflict, displacement and social tension; hampering economic growth; and shaping increasingly harsh inequalities.</p> <p>The world has never seen a threat to human rights of this scope. This is not a situation where any country, any institution, any policy-maker can stand on the sidelines. The economies of all nations; the institutional, political, social and cultural fabric of every State, and the rights of all your people – and future generations – will be impacted.</p> <p>Excellencies,</p> <p>The window of opportunity for action may be closing – but there is still time to act. We live in an era of tremendous innovation. More thoughtful approaches to our use of natural and renewable resources; policies which protect and empower marginalised communities; including various social protection initiatives; and better strategies by</p>	<p>Comment Response 79-9: See response to Comment 79-2.</p>

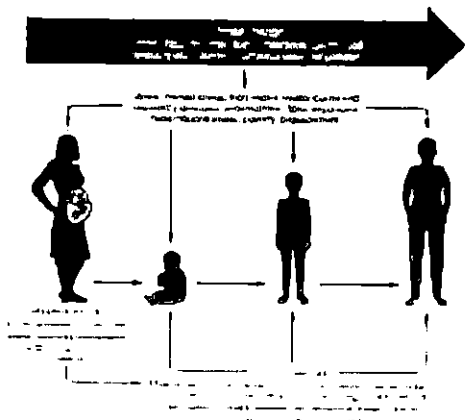
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	<p style="text-align: right;">079</p> <p>businesses across their supply chains can be good for the environment and promote greater human dignity and rights.</p> <p>This Council has recognised that "human rights obligations, standards and principles have the potential to inform and strengthen international, regional and national policymaking in the area of climate change, promoting policy coherence, legitimacy and sustainable outcomes"</p> <p>We need to act on that powerful statement. We need strong national commitments for action, with an emphasis on participation by environmental human rights defenders, indigenous peoples, and civil society groups representing the communities that are most at risk - as well as support from business actors, cities and other active stakeholders.</p> <p>The Secretary-General will convene a Climate Action Summit in two weeks' time in New York to step up the pace of climate action by States and the international community.</p> <p>As members of the world's primary intergovernmental body for human rights, I ask each of your States to contribute the strongest possible action to prevent climate change, and to promote the resilience and rights of your people in dealing with environmental harm.</p> <p>Effective action on climate requires bringing the uncommitted and unconvinced into a shared, just and truly international effort. Human rights can help galvanize that movement. Today, a very uneven mosaic of environmental and human rights standards stands between human beings and environmental harm - and many have no effective recourse for the harm they suffer.</p> <p>I am encouraged by the increasing recognition of the right to a healthy and sustainable environment, in over 100 national and regional laws, which defines the relationship between the environment and human rights. To each of us, a healthy environment is no less important than the food we eat, the water we drink, or the freedom of thought we cherish: all people, everywhere, should be able to live in a healthy environment and hold accountable those who stand in the way of achieving it.</p> <p>Mr. President,</p> <p style="text-align: center;">13</p>	

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79-10	<p style="text-align: right;">079</p> <p>This Council has a critical role to play, with both existing and innovative means to contribute to climate action. There are five key points that I believe should guide our action on climate.</p> <p>Point one: Climate change undermines rights, development and peace.</p> <p>The Secretary-General has noted that over the past six decades, 40% of civil wars have been linked to environmental degradation. While there are many current examples of this, I want to look to the countries of the Sahel region. As the UN Special Adviser on the Sahel has noted, this is among the regions most vulnerable to climate change, with temperature increases projected to be 1.5 times higher than the global average.⁴⁴</p> <p>Continued development of coal, the dirtiest of all fossil fuels, constitutes a gross and continuing violation of the human rights of everyone in Montana, and indeed of everyone in the world. It is a flagrant violation of Montanans' right to a clean and healthful environment.</p> <p>As noted above, the impacts of climate change are most cruel to the least powerful, particularly children. All children, even those without pre-existing illness, are considered a "sensitive population" to the effects of the climate crisis because their bodies are still developing.⁴⁵ Air pollution poses severe health risks for Montana's youth and is shown to impede their physical development. Montana's persistent drought conditions and record wildfire seasons have doubled respiratory-related emergency room visits.⁴⁶ As illustrated in Figure 17, panel (a) below, Montana, in</p> <p>⁴⁴ UN Human Rights, Office of the High Commissioner, Global Update at the 42nd session of the Human Rights Council (Sept. 9, 2019), available at https://www.ohchr.org/E/N/NewsEvents/Pages/DisplayNews.aspx?NewsID=24956&LangID=E.</p> <p>⁴⁵ U.S. Environmental Protection Agency et al., <i>Wildfire Smoke: A Guide for Public Health Officials</i>, Montana Department of Environmental Quality (revised May 2016), http://deq.mt.gov/Portals/112/Air/FireUpdates/Documents/wildfire_may2016.pdf.</p> <p>⁴⁶ Phil Drake, <i>Gov. Bullock Creates Climate Change Council</i>, Great Falls Tribune (Jul. 1, 2019, 1:05 PM), https://www.greatfallstribune.com/story/news/2019/07/01/montana-governor-creates-climate-solutions-council/1619878001/?cid=twitter_GFTribune.</p> <p style="text-align: center;">14</p>	<p>Comment Response 79-10: See responses to Comment 79-2.</p>

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	<p style="text-align: right;">079</p> <p>particular western Montana, already experiences some of the worst wildfire smoke conditions in the United States.⁴⁷ Unless the climate crisis is addressed, the smoke conditions in Montana will get significantly worse, with much of western Montana facing the highest risk factor (Figure 17, panel (b)).⁴⁸</p>  <p>⁴⁷ Jia Coco Liu., et al., <i>Particulate air pollution from wildfires in the Western US under climate change</i>, 138 <i>Climate Change</i>, 655, 662 (2016).</p> <p>⁴⁸ Panel (a) represents the Fire Smoke Risk Index ("FSRI") for the Western United States from 2004-2009 while panel (b) represents the future (2046-2051) FSRI. The FSRI summarizes overall wildfire risk based on duration, intensity, and frequency of smoke waves.</p> <p style="text-align: center;">15</p>	

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	<p style="text-align: right;">079</p> <p>The psychological harms from the climate crisis are acute and chronic and they accrue from impacts such as heat waves, drought conditions, wildfires, air pollution, violent storms, the loss of wildlife, watching glaciers melt, and the loss of familial and cultural foundations and traditions. Many children experience psychological impacts and are distressed from day to day conditions, anxious about the climate crisis, and are unable to alleviate their concerns.⁴⁹ Children are acutely aware that the window to avoid locking in irreversible climate change impacts is closing. As climate disruption transforms communities, children are likely to experience a feeling that they are losing a place that is important to them, which is a phenomenon called <i>solastalgia</i>.⁵⁰ Solastalgia describes the gripping sense of existential loss when treasured places are irreparably damaged or destroyed as a result of human carelessness or willful disregard for them, and can cause profound distress.⁵¹</p> <p>The psychological health effects include elevated levels of anxiety, depression, post-traumatic stress disorder, increased incidences of suicide, substance abuse, social disruptions like increased violence, and a distressing sense of loss. The psychological harms caused by the climate crisis can result in a lifetime of hardships for children.</p> <p>The physiological features of children make them disproportionately vulnerable to the impacts of the climate crisis and air pollution. Perhaps most important, their organs, such as lungs and brain, are still developing, which makes youth more vulnerable to environmental stresses, pollution, and injuries. Children breathe in more air per unit time than adults and consume more food and water proportional to their body weight, making them more susceptible to polluted or contaminated air, water, or food.⁵² The behavior of children, which includes spending more time recreating outside and having a harder time self-regulating, also makes them more vulnerable to excess heat, poor air quality, and other climate impacts. Childhood</p> <p>⁴⁹ Expert Report of Lise Van Susteren, <i>Juliana v. United States</i>, No. 6:15-cv-01517-TC, 2-3 (D. Or. June 8, 2016).</p> <p>⁵⁰ <i>Id.</i> at 8.</p> <p>⁵¹ <i>Id.</i> at 8 (citing Glenn Albrecht, <i>Solastalgia: A New Concept in Health and Identity</i>, 3 PAN: Philosophy Activism Nature 41).</p> <p>⁵² <i>Wildfire Smoke A Guide for Public Health Officials</i>, <i>supra</i> note 140.</p>	

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79-11	<p style="text-align: right;">079</p> <p>exposure to climate disruptions and air pollution can result in impaired physical and cognitive development with life-long consequences.</p> <p>Children are particularly vulnerable to climate change-related diseases. The vast majority (approximately 88%) of current sufferers of diseases due to climate disruption are children.⁵³ Allergies are highly prevalent among children and climate disruption exacerbates allergy symptoms, including asthma. An increase in these symptoms can affect children's physical and psychological health by interfering with sleep, play, school attendance, and performance. Certain categories of children are especially vulnerable to climate change impacts and air pollution, for example, children that have pre-existing medical conditions, as well as children that are economically disadvantaged or from minority populations, including indigenous peoples.</p> <p>The adverse impacts of the climate crisis and air pollution on the physical and mental health of children can result in life-long challenges and consequences (see Figure below).⁵⁴ The climate crisis is limiting children's potential for development and inhibiting their opportunity to engage in Montana's most important institutions and heritage.⁵⁵</p> <p>⁵³ World Health Organization (WHO), Quantitative Risk Assessment of the Effects of Climate Change on Selected Causes of Death, 2030s and 2050s, 48 (Simon Hales, et al., eds., 2014).</p> <p>⁵⁴ Susan E. Pacheco, <i>Catastrophic effects of climate change on children's health start before birth</i>, The Journal of Clinical Investigation (Jan. 13, 2020), https://www.jci.org/articles/view/135005.</p> <p>⁵⁵ The adverse impacts of climate disruption on children start before they are born and have lifelong impacts.</p> <p style="text-align: center;">17</p>	<p>Comment Response 79-11: The laws and rules that DEQ enacts and enforces are designed to protect human health and the environment. USEPA has delegated authority to DEQ to administer and enforce the regulations set forth under the Clean Air Act. Air quality standards under the Clean Air Act are set to protect the most sensitive subpopulations, including children. Regarding air quality in Area B AM5, air quality modeling was used to determine whether emissions from the Proposed Project (Alternative 2) would contribute to exceedances of the NAAQS and/or MAAQS. The potential increases in coal dust and diesel fumes from coal-mining equipment mentioned in the comment were assessed. Impacts from blasting and fugitive dust from mining equipment and wind erosion (blowing dust) were also assessed in addition to the other mining sources discussed above. The EIS concludes that the Project (for either Alternative 2—Proposed Action or Alternative 3—Lee Coulee Only) would result in minor, unavoidable, adverse impacts on air quality, but direct, secondary, and cumulative impacts would be lower than the health based federal and state ambient air quality standards where applicable. Comparison of the modeling results to the NAAQS and MAAQS is a routine approach for determining whether an air quality permit will be issued. See also responses to Comment 79-2.</p>

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	<p style="text-align: right;">079</p>  <p>Indeed, the Red Cross and Red Crescent recently issued a report concluding that extreme weather from climate change has killed more than 410,000 people in the past ten years.⁵⁶ Climate disasters have further affected 1.7 billion people.⁵⁷ The State of Montana clearly knows about this danger and its impact specifically to Montana, as detailed in the Montana Climate Solutions Plan (2020), which recognized that “urgent action ... is needed to address the increasing threats and impacts of climate change.”⁵⁸ Indeed, the Governor has explained:</p> <p style="padding-left: 40px;">Montanans across the state believe climate change is a significant problem posing risks to the future of Montana and to future generations. For too long our response to this issue has been curtailed out of a false</p> <p>⁵⁶ International Federation of Red Cross and Red Crescent Societies, <i>Come Heat or High Water at 19</i> (2020), available at https://media.ifrc.org/ifrc/world-disaster-report-2020.</p> <p>⁵⁷ <i>Id.</i></p> <p>⁵⁸ Montana Climate Solutions Council, <i>Montana Climate Solutions Plan</i> (2020).</p> <p style="text-align: center;">18</p>	

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79-12	<p style="text-align: right;">b7D</p> <p>pretense that dealing with climate will divide our state along east-west, rural-urban, and partisan divides. As the Council's work demonstrates, there is an impressive array of opportunities and recommendations that represent a broad-based consensus and can serve as a foundation for bipartisan climate action moving forward that responds to the many values Montanans share.</p> <p>There is an immediate and urgent need for the state to plan for the future and confront the needs to prepare our communities and economy. Already Montana is three degrees warmer on average than we were just a few decades ago. Earlier spring runoffs are causing flooding, impacting our water availability, and contributing to the increasing size and severity of our wildfire seasons. 2017 saw our largest fire season on record since the Big Burn of 1910, spurring periodic waves of evacuations, curtailing visitation, and prompting twice the incidence of respiratory-related ER visits in affected counties.</p> <p>But the risks facing Montana due to climate change are not just physical risks to our health and safety. The state's businesses and economy face a series of economic and financial risks as well. Shifting energy demands and policy changes are prompting a transition across our region and around the world, impacting the markets Montana traditionally serves. Institutional and private investors are increasingly signaling their concern over stranded assets of energy companies and financial performance tied to these changes. In small towns across the state, workers and communities are caught in the crosshairs, lacking the economic capacity to shift labor and capital to emerging opportunities. These transitions are also impacting our state's fiscal health, where declines in traditional revenue streams from energy production and increasing costs tied to unforeseen events, like the 2017 fire season, can impact our state's core services and programs. Planning for climate change helps us manage these risks and costs tied to transitions, but it also offers insights into how we can develop competitive advantages and local economic development strategies that put Montana at the forefront of new energy and technology solutions.</p> <p>In sum, it is plainly unlawful for DEQ here to refuse to address an issue that the State recognizes as extremely dangerous and harmful to Montana.</p> <p style="text-align: center;">19</p>	<p>Comment Response 79-12: See responses to Comment 79-2.</p>

reclamation is supposed to occur “as contemporaneous as practicable”. Furthermore, OSMRE stated that an operator’s success at contemporaneous reclamation is primarily measured by the operator’s compliance with its permit and reclamation plan, which is developed under the applicable approved regulatory program and not by the status of bond release, and whether contemporaneous reclamation is occurring is primarily measured by the timeliness of the operator’s actions in accordance with permit terms and commitments, including those made in the operator’s approved reclamation plan. In conclusion, OSMRE stated that on available information, there is no reason to believe that, as a factual matter, a violation of contemporaneous reclamation requirements for coal mining operations in Montana, including the Rosebud Mine, is occurring.

To protect the State and people of Montana from incurring reclamation costs, DEQ cannot issue a permit until the applicant files the required performance bond payable to DEQ as financial assurance (**EIS Section 1.6, Financial Assurance**). The bond amount is based upon the cost to the State if it were to reclaim and restore the permit area in the event that the mine operator defaults on its reclamation obligations. The bond may not be less than the total estimated cost to the State of completing the work described in the reclamation plan (**EIS Section 1.6.1, Bond Amount**). All currently permitted areas of the Rosebud Mine are fully bonded for reclamation.

Pursuant to ARM 17.24.1116, DEQ cannot release any portion of the performance bond until it finds that the permittee has met the requirements of the applicable reclamation phase. Final bond release occurs only when the permittee has successfully met all Phase IV reclamation requirements (**Section 1.6.4, Bond Release**).

1.4.4.6 Proposed Operations Plan (Code 2203)

Issue Statement: Changes should be made to the Proposed Operations Plan in the EIS.

Representative Quote:

I recently acquired sections 24, I think, it's 25, I believe that's the correct numbers on the east edge of the mine. I've asked Western Energy to withdraw them from the permit area (Document 69, page 1).

Response: During the permitting process, Big Sky Area B received final bond release which triggered an ownership change from Big Sky Coal Mine to Greenleaf Land and Livestock Company modified on Montana Cadastral recorded on September 17, 2020. Westmoreland completed a landowner agreement on December 3, 2021, with Greenleaf Land and Livestock Company that includes surface mining activities.

1.4.4.7 Suggested Resources for Analysis (Code 3000)

Issue Statement: Climate change as it relates to the proposed project, including potential impacts, and the social cost of carbon should be analyzed in the EIS.

Representative Quotes:

The impacts on climate are not being considered. I understand that such requirements are not required by a law passed in 2015, but this is 2020. The impacts of global warming grow more evident every day. No request of this magnitude should be processed until the impact on the climate can be included. This application should be put on hold until the legislature can draft such requirements if that is what is necessary to have them be included (Document 59, page 1).

It's bizarre that we're considering this expansion today, one of the largest mine expansions, if not the largest mine expansion in modern Montana history. We're doing this at a time when we're in the middle of a climate catastrophe. This expansion, as mentioned, would allow for the Rosebud Mine to gain access to approximately 104 to 147 million tons of additional coal. That amounts to two or 300 million tons of carbon dioxide. DEQ completely failed to analyze the carbon

emissions associated with this project, even though you have the tools available to do so. That's completely unconscionable at a time when our climate is so rapidly changing. How does that failure comport with the DEQ's mission and how does that comply with our constitutional fundamental right to a clean healthful environment? As a simple answer, it doesn't (Document 66, page 1).

Response: Under MEPA, DEQ's analysis may not include a review of actual or potential impacts beyond Montana's borders. It may not include actual or potential impacts that are regional, national, or global in nature such as impacts that may result from climate change. Section 75-1-201(2)(a), MCA. Further, DEQ cannot deny a coal mining permit under MEPA. Sections 75-1-102(3) and 201(4)(a), MCA. A substantive decision on whether to issue or deny a coal mining permit would be made pursuant to MSUMRA, 82-4-201, MCA, et seq.

See also, response to comments 77-7 and 79-2. **EIS Section 3.3, Air Quality** includes an analysis of air quality impacts from the Proposed Action.

Issue Statement: Public health as it relates to the proposed project, including potential impacts, should be analyzed in the EIS.

Representative Quotes:

I know the prent non insubstantial health problems with coal-fired power generation (over 200,000 deaths per year in the US) as well as the damage to the unborn child - increased risk of preterm, stillbirth, neurodevelopmental defects, thyroid disruption, Attention Deficit, autism, and more. That is just from air pollution. Adding on the climate change that is already occurring adds a host of new risks to our children (Document 56, page 1).

Response: The laws and rules that DEQ enacts and enforces are designed to protect human health and the environment. USEPA has delegated authority to DEQ to administer and enforce the regulations set forth under the Clean Air Act. Air quality standards under the Clean Air Act are set to protect the most sensitive subpopulations, including children. Regarding air quality in Area B AM5, air quality modeling was performed to determine whether emissions from the Project would contribute to exceedances of the NAAQS and/or MAAQS. The potential increases in coal dust and diesel fumes from coal-mining equipment mentioned in the comment were assessed. Impacts from blasting and fugitive dust from mining equipment and wind erosion (blowing dust) were also assessed in addition to the other mining sources discussed above. The EIS concludes that the Project would result in minor, unavoidable, adverse impacts on air quality, but direct, secondary, and cumulative impacts would be lower than the health based federal and state ambient air quality standards where applicable.

See also response to comment 79-2 above.

1.4.4.8 Air Quality Analysis and Impacts (Codes 3203 and 3204)

Issue Statement: The EIS air quality analysis should disclose impacts of mine construction and operations on air quality, including blowing dust.

Representative Quotes:

When the wind blows from the east- north east We have dust (Document 52, page 1)

The dust is also a problem (Document 64, page 1).

Response: The air emissions from the mining, construction, and reclamation operations of the Project would be subject to a number DEQ air quality regulations that control fugitive dust emissions as described in **EIS Section 3.3.1.1**. This includes ARM 17-8-304(2) which requires that fugitive dust emissions from the Project meet an operational visible opacity standard of 20% or less averaged over 6 consecutive minutes, including during construction of haul roads. The operator would also be required to