

FILED

APR 26 2023

ANGIE SPARIS, Clerk of District Court
By: Holmes Deputy Clerk

Melissa Hornbein
Barbara Chillcott
Western Environmental Law Center
103 Reeder's Alley
Helena, MT 59601
(406) 708-3058
hornbein@westernlaw.org
chillcott@westernlaw.org

Roger Sullivan
Dustin Leftridge
McGarvey Law
345 1st Avenue East
Kalispell, MT 59901
(406) 752-5566
rsullivan@mcgarveylaw.com
dlefridge@mcgarveylaw.com

Nathan Bellinger (*pro hac vice*)
Andrea Rodgers (*pro hac vice*)
Julia Olson (*pro hac vice*)
Our Children's Trust
1216 Lincoln Street
Eugene, OR 97401
(413) 687-1668
nate@ourchildrenstrust.org
andrea@ourchildrenstrust.org
julia@ourchildrenstrust.org

Philip L. Gregory (*pro hac vice*)
Gregory Law Group
1250 Godetia Drive
Redwood City, CA 94062
(650) 278-2957
pgregory@gregorylawgroup.com

MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY

<p>RIKKI HELD, et al.,</p> <p>Plaintiffs,</p> <p>v.</p> <p>STATE OF MONTANA, et al.,</p> <p>Defendants.</p>	<p>Cause No. CDV-2020-307 Hon. Kathy Seeley</p> <p>PLAINTIFFS' NOTICE TO THE COURT OF DISPUTES TO PROPOSED FINAL PRE-TRIAL ORDER</p>
---	---

366

Plaintiffs, through counsel, hereby give Notice to the Court of disputes as to contents of the proposed Pre-trial Order in this case, which – pursuant to Montana Uniform District Court Rule 5 – will be presented to the Court for resolution at the Final Pre-Trial Conference on April 27, 2023 at 9:30 a.m. Contemporaneously herewith, Plaintiffs have filed Plaintiffs’ Proposed Final Pre-Trial Order and Exhibit List, which also will be presented to the Court at the Pre-Trial Conference.

BACKGROUND

Rule 5: Absent specific language regarding the Pre-Trial Order in the governing scheduling order, Uniform District Court Rule 5(b) governs:

Not later than seven days prior to the pre-trial conference, Plaintiff shall convene a conference of all parties for the purpose of preparing a pre-trial order. The proposed pre-trial order shall be presented for signature at the pre-trial conference. In the event of a dispute as to the contents of the order, such dispute shall be presented to the judge for resolution at the pre-trial conference.

Rule 5 also provides the template for the Pre-Trial Order. In the “Agreed Facts” section, Rule 5 states: “The following facts are admitted, agreed to be true, and require no proof: (Here enumerate all agreed facts, *including facts admitted in the pleadings.*)” (Emphasis added.)

Plaintiffs have been attempting to get the Pre-Trial Order finalized so that it is ready for signature at the time of the Pre-Trial Conference on April 27 as contemplated by Rule 5. That said, “In the event of a dispute as to the contents of the order, such dispute shall be presented to the judge for resolution at the pre-trial conference.” *Id.*

The Exchanges of Draft Pre-Trial Orders:¹ On March 27, 2023, the Parties reached agreement on a schedule for exchanging drafts and meeting and conferring to finalize the Pre-Trial Order, as follows: by April 7, the Parties agreed to exchange versions of their respective sections;

¹ At the April 27 Pre-Trial Conference, Plaintiffs will have copies of the relevant emails and drafts should the Court wish to review any of the underlying documentation referenced in this Notice.

by April 14, the Parties were to then review their respective sections and circulate revised versions; on April 18 the Parties were to conduct a meet and confer about the pre-trial order via zoom; and by April 24 the Parties were to then use the results of the meet and confer to finalize the Pre-Trial Order.

The Parties exchanged drafts of the Pre-Trial Order and their respective sections on April 7, 14, 18, 21, and 24. Further, the Parties conducted the meet and confer session on April 18, 2023. Present were the following individuals for Plaintiffs (Philip Gregory, Roger Sullivan, Barbara Chillcott, Nate Bellinger, David Schwartz, Ji Hyun Lee, and Tara Robinson) and for Defendants (Mark Stermitz, Selena Sauer, Lee McKenna (for DEQ only), Thane Johnson, and Michael Russell).² In addition, on April 19, counsel met in person informally, where pre-trial issues were discussed. Attending were for Plaintiffs (Philip Gregory, Barbara Chillcott, and Nate Bellinger) and for Defendants (Thane Johnson and Michael Russell). During the April 18 session it was agreed that the primary individuals tasked with finalizing the Pre-Trial Order were Philip Gregory (Plaintiffs) and Michael Russell (Defendants).

At the session on April 18, the Parties reached agreement that, among other items, the Pre-Trial Order would use attachments for each of the Parties' sections, rather than paste the text in the body of the Pre-Trial Order. On April 21, Mr. Russell informed Mr. Gregory via phone that Defendants were not going to utilize the attachment method previously agreed and would instead continue to have the text of their sections in the body of the Pre-Trial Order. As a result of Defendants' change in position, Plaintiffs modified their draft Pre-Trial Order also to have the text

² It should be noted that Emily Jones, counsel for Defendants, did not attend the sessions on April 18 or April 19.

of their sections in the body of the Pre-Trial Order. On April 21, Defendants provided their revised Pre-Trial Order.

On April 24, Plaintiffs provided their revised Pre-Trial Order as a redlined version of Defendants' draft Pre-Trial Order of April 21. In that email, Plaintiffs stated, in relevant part, as follows:

3. On April 7, and again on April 18, Plaintiffs circulated their proposed Agreed Facts. I have attached that document again for your reference. Plaintiffs agreed to most of Defendants' proposed Agreed Facts, yet Defendants have not responded as to their position on any of Plaintiffs' proposed Agreed Facts. Can you please provide Defendants' position on Plaintiffs' proposed Agreed Facts?

4. As to resolving issues regarding exhibits, Defendants' proposed dates will not work as to the 150 documents that Defendants have been reviewing since December 2022. As to those documents, if the Parties cannot reach agreement by the Pre-Trial Conference, and the Court has not ruled on Plaintiffs' Motion *in Limine* No. 7, Plaintiffs will have to arrange to take the depositions that Defendants agreed would occur of the Rule 30(b)(6) records custodian depositions for the Montana Department of Environmental Quality, the Montana Department of Natural Resources and Conservation, the Montana Public Service Commission, and the Montana Governor's office.

5. As to resolving issues regarding the remaining exhibits, Defendants' proposed schedule is too tight for anticipated objections to authenticity and foundation (May 19, 2023), final objections (May 26, 2023), and presentation of unresolved objections to the Court for pre-trial resolution (June 2, 2023). In order to give the Court enough time to rule on the proposed objections, Plaintiffs propose the following compromise between Plaintiffs' offered dates and Defendants' offered dates:

- a. Anticipated objections to authenticity and foundation will be identified by May 5, 2023.
- b. Final objections will be identified by May 12, 2023.
- c. Any authenticity or foundation objections that cannot be resolved by the Parties will be presented to the Court for pre-trial resolution on or before May 19, 2023.

.....
8. Finally, as to Defendants' proposal concerning the 150 documents that Defendants have been reviewing since December 2022 whereby Plaintiffs would "identify such documents that Plaintiffs believe fall under Rule of Evidence 902's self-authentication provisions," Plaintiffs cannot agree to that proposal.

As a result of prior commitments, starting April 21, Michael Russell could no longer continue as the primary individual responsible for Defendants, and that role was taken over by Emily Jones. On April 24, Ms. Jones wrote an email, responding to Plaintiffs' April 24 draft, stating, in relevant part:

I have circulated our latest draft to all the state agency defendants and am waiting for additional feedback from them. Additionally, since you just sent me your latest draft, I will need to circulate that as well and get my clients' input. Your goal of filing the final pretrial order by tomorrow afternoon likely won't be attainable. I propose we strive to present an agreed-upon proposed FPTO at the final pretrial conference on Thursday morning, as is standard practice. I will get back to you with our comments and changes as soon as possible.

Ms. Jones' April 24 email went on to state, in relevant part:

- We do not agree to your proposed agreed facts; that's why we provided you with our alternate proposed agreed facts. I thought we were all in agreement that we using our version, not your version, but sorry if there was any confusion in that regard.
- Regarding the schedule for proposed exhibits, we disagree that it's too tight and maintain that our dates give ample time to work out objections before trial. It is likely the judge won't resolve all of these issues anyway and will reserve rulings on objections until the time of trial. If we can't agree on a schedule, then we need to consider filing two separate proposed final pretrial orders for the Court's consideration. We can't agree to your proposed timeline.
- Also regarding exhibits, we will stipulate to the authenticity of all documents we have produced in discovery. Your unwillingness to identify the exhibits you believe are self-authenticating under the Rules of Evidence in order to streamline objections is perplexing. We have repeatedly asked you to narrow your exhibits to those you actually intend to introduce at trial, which you also have been unwilling to do. We remain willing to allow you to take any records custodian depositions you deem necessary, although we think this could be avoided by simply telling us which exhibits you believe are self-authenticating. Additionally, many of your proposed exhibits date back decades and include documents purportedly from non-parties, such as the Board of Oil and Gas Conservation. We can't authenticate non-party documents, and there are likely no records custodians who could authenticate decades-old documents that we did not produce to you. Perhaps it is best we just discuss this issue with the judge.

- Regarding witnesses, we can call any witness – disclosed or undisclosed – for rebuttal purposes, and will do so if necessary. The language we have used is standard in Montana.

In concluding her April 24 email, Ms. Jones suggested that the Parties “get on the phone for another meet and confer” on April 25 and stated: “I’m going to hold off on sending this to my clients until we discuss it.”

Later April 24, Roger Sullivan responded via email, agreeing to a call on April 25. In relevant part, Mr. Sullivan went on to state:

As you are aware, there is a long email chain dating back to December and January and continuing thereafter indicating Defendants were almost done reviewing the 150 documents listed as exhibits by Plaintiffs and indicating that authentication and foundation should not be a problem. There remain outstanding motions addressing same. However, it would be unfortunate to require the Court to expend its time on a matter that we should be able to resolve by ourselves by reference to the previously cited rules of evidence and procedure.

As to your concern with documents from the Board of Oil and Gas Conservation, DNRC, as the agency the BOGC is administratively attached to, is charged with record-keeping for the BOGC per 2-15-121(2)(a), MCA: “The department to which an agency is allocated for administrative purposes only in this title shall: (a) direct and supervise the budgeting, recordkeeping, reporting, and related administrative and clerical functions of the agency;” accordingly, DNRC would be the obvious party to authenticate those documents.

On April 25, Ms. Jones responded to Mr. Sullivan’s April 24 email as follows:

I have conferred again with my team regarding where we are with the final pretrial order. We previously agreed to your proposed schedule for back and forth exchanges of drafts. We adhered to that schedule. My team also conferred with your team at least twice last week, with additional phone conversations for the purpose of finalizing the pretrial order. The draft you sent us late yesterday did not conform to those agreements. At this late juncture, we intend to move forward with submitting our own proposed pretrial order to the Court and preparing for the conference. We do not think the judge will appreciate a 138-page proposed pretrial order, and we are not comfortable signing it.

We’ll provide you with a copy of our final proposed pretrial order and exhibit list once we file them. We’ll provide you with copies of our exhibits at the conference.

As a result of Defendants' April 25 email, there have been no further meet and confer sessions.

Disputes to be Resolved at Pre-Trial Conference: The following disputes will be presented to the Court:

1. **Schedule for Resolution of Authenticity and Foundation Objections to Exhibits.** As more fully set forth in Plaintiffs' Motion *in Limine* No. 7, Defendants continue to refuse to stipulate as to authenticity and foundation to 150 proposed exhibits. In order to avoid involving the Court, Plaintiffs had asked Defendants to stipulate these 150 proposed exhibits had proper authentication and foundation and that, subject to other substantive objections, such 150 proposed exhibits are admissible at trial in accordance with the Montana Rules of Evidence. Defendants have had these 150 exhibits since December 2022. Since December 2022, Defendants stated on January 31, 2023 that the documents were being reviewed: "The agencies are still going through them and [Defendants] are committed to finishing that in a timely fashion, meaning within a reasonable time to complete the exhibit lists for the pretrial order. [Defendants] agree it is to everyone's benefit to narrow down as much as possible any dispute about authenticity or foundation."

As can be seen from the emails of the last two weeks, Defendants have not taken a position on *any* of the 150 proposed exhibits. As a result, Plaintiffs request this Court resolve the dispute concerning these 150 proposed exhibits as to proper authentication and foundation and that, subject to other substantive objections, such 150 proposed exhibits are admissible at trial in accordance with the Montana Rules of Evidence

2. **Resolution of Issues regarding Exhibits.** Rule 5 of the Uniform District Court Rules states, "Attached to the pre-trial order are exhibit lists identifying by number and brief

description each exhibit and stating any objection to the exhibits. Any exhibit offered at the trial to which no objection was made in the pre-trial order will be admitted into evidence.” In their Proposed Pre-Trial Order, Plaintiffs proposed the following dates for resolution of objections to all exhibits, except for the authenticity and foundation objections as to the 150 Exhibits described in Paragraph 1, above:

With respect to authenticity and foundation of exhibits, the Parties agree that:

1. Anticipated objections to authenticity and foundation will be identified by May 5, 2023.
2. Final objections will be identified by May 12, 2023.
3. Any authenticity or foundation objections that cannot be resolved by the Parties will be presented to the Court for pre-trial resolution on or before May 26, 2023.
4. The Parties may call any necessary witnesses at trial, including through depositions, to establish disputed authenticity or foundation.

In their Proposed Pre-Trial Order, Defendants proposed the following dates for resolution of objections to all exhibits, except for the authenticity and foundation objections as to the 150 Exhibits described in Paragraph 1, above:

1. Anticipated objections to authenticity and foundation will be identified by May 19, 2023.
2. Final objections will be identified by May 26, 2023.
3. Any authenticity or foundation objections that cannot be resolved by the Parties will be presented to the Court for pre-trial resolution on or before June 2, 2023.

As a result, Plaintiffs request this Court resolve the dispute concerning objections as to dates for resolution of objections to all exhibits, except for the authenticity and foundation objections as to the 150 Exhibits described in Paragraph 1, above.

3. **Agreed Facts**. On April 7, 2023, Plaintiffs and Defendants, per their agreement, exchanged their respective versions of the Pre-Trial Order. Plaintiffs' version included their proposed Agreed Facts, which – as provided in Rule 5 – included “facts admitted in the pleadings.” A true and correct copy of Plaintiffs' proposed Agreed Facts is attached hereto as **Attachment 1**. Defendants did not notify Plaintiffs that they would not agree to Plaintiffs' proposed Agreed Facts until April 24, 2023. As discussed above, Defendants indicated that they would agree to none of Plaintiffs' proposed Agreed Facts, even though, for example, several of these proposed Agreed Facts are admissions in Defendants' Answer. As a result, Plaintiffs request this Court resolve the dispute concerning Plaintiffs' proposed Agreed Facts as provided in Rule 5.

DATED this 26th day of April, 2023.

/s/ Barbara Chillcott

Barbara Chillcott
Melissa Hornbein
Western Environmental Law Center
103 Reeder's Alley
Helena, MT 59601
(406) 708-3058
hornbein@westernlaw.org
chillcott@westernlaw.org

Roger Sullivan
Dustin Leftridge
McGarvey Law
345 1st Avenue East
Kalispell, MT 59901
(406) 752-5566
rsullivan@mcgarveylaw.com
dlefridge@mcgarveylaw.com

Nathan Bellinger (*pro hac vice*)
Andrea Rodgers (*pro hac vice*)
Julia Olson (*pro hac vice*)
Our Children's Trust
1216 Lincoln Street
Eugene, OR 97401
(413) 687-1668
nate@ourchildrenstrust.org
andrea@ourchildrenstrust.org
julia@ourchildrenstrust.org

Philip L. Gregory (*pro hac vice*)
Gregory Law Group
1250 Godetia Drive
Redwood City, CA 94062
(650) 278-2957
pgregory@gregorylawgroup.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was delivered by email to the following on April 26, 2023:

AUSTIN KNUDSEN
Montana Attorney General
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401
Phone: 406-444-2026
Fax: 406-444-3549

MICHAEL RUSSELL
THANE JOHNSON
Assistant Attorneys General
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401
Telephone: (406) 444-2026
michael.russell@mt.gov
thane.johnson@mt.gov

EMILY JONES
Special Assistant Attorney General
Jones Law Firm, PLLC
115 N. Broadway, Suite 410
Billings, MT 59101
Phone: 406-384-7990
emily@joneslawmt.com

MARK L. STERMITZ
Crowley Fleck PLLP
305 S. 4th Street E., Suite 100
Missoula, MT 59801
Phone: 406-523-3600
mstermitz@crowleyfleck.com

SELENA Z. SAUER
Crowley Fleck PLLP
1667 Whitefish Stage Road
Kalispell, MT 59901
ssauer@crowleyfleck.com

/s/ Barbara Chillcott
Barbara Chillcott

Attachment 1
Held v. State of Montana
Cause No. CDV-2020-307
Plaintiffs' Statement of Proposed Agreed Facts
As of April 7, 2023

Statement of Agreed Facts based on Defendants' Answer to Plaintiffs' Complaint		
Complaint [with citation]	Answer [with cite]	Agreed Fact
<p>“Defendants are governmental entities that have created and implemented a long-standing fossil-fuel based state energy system that contributes to dangerous climate disruption in violation of Youth Plaintiffs; constitutional rights as guaranteed under [cites].”</p> <p>Compl. ¶ 3.</p>	<p>“In response to Paragraph 3, Montana admits that Defendants are governmental entities. Montana denies the remainder of the allegations in Paragraph 3.”</p> <p>Answer ¶ 3.</p>	<p>Defendants are governmental entities.</p>
<p>“This Court has original jurisdiction over this action pursuant to Article II, Section 16, and Article VII, Section 4 of the Montana Constitution and pursuant to Mont. Code Ann. § 3-5-302.”</p> <p>Compl. ¶ 11.</p>	<p>“In response to Paragraph 11, Montana admits only that this Court has personal jurisdiction. Montana denies that a justiciable controversy exists as to all of Plaintiffs' claims.”</p> <p>Answer ¶ 11.</p>	<p>This Court has personal jurisdiction over Defendants.</p>
<p>“Venue in this action is proper in this Court pursuant to Mont. Code Ann. § 25-2-126(1) and § 25-2-112. This is an action against the State of Montana, against officers and agencies of the state in their official capacities, and one or more of the Youth Plaintiffs reside in Lewis and Clark County.”</p> <p>Compl. ¶ 13.</p>	<p>“In response to Paragraph 13, Montana admits that the First Judicial District Court is a proper venue for this action. In response to the allegations that one or more Plaintiffs live in Lewis and Clark county, Montana lacks sufficient information to admit or deny the allegations and therefore denies them.”</p> <p>Answer ¶ 13.</p>	<p>The First Judicial District Court is a proper venue for this action.</p>
<p>“Defendant State of Montana is the sovereign trustee over the Public Trust Resources within its domain, including the atmosphere (air), water, public lands, and fish and wildlife. As a sovereign trustee, Defendant Montana is charged with protecting Public Trust Resources from substantial impairment and alienation</p>	<p>“The allegations in the first and second sentence of Paragraph 82 constitute legal conclusions to which no response is required; to the extent a response may be required, Montana denies all allegations. In response to the third sentence of Paragraph 82, Montana admits that the Legislature and the Governor enacted Mont. Code Ann. §§ 90-4-1001 and 75-1-201(2)(a).”</p> <p>Answer ¶ 82.</p>	<p>The Legislature and the Governor enacted Mont. Code Ann. §§ 90-4-1001 and 75-1-201(2)(a).</p>

<p>for the benefit of present and future Montanans. Defendant Montana has a constitutional duty to maintain and improve a clean and healthful environment for present and future generations. The State of Montana, through its legislature and governor, enacted Montana's State Energy Policy and MEPA Climate Change Exception.”</p> <p>Compl. ¶ 82.</p>		
<p>“Defendant Governor Steve Bullock is sued in his official capacity as Governor of the State of Montana. Pursuant to the Montana Constitution, “the executive power is vested in the governor who shall see that the laws are faithfully executed.” Mont. Const. art. VI, § 4. Defendant Bullock has supervisory authority over the principal departments of the executive branch, which include all allocated executive and administrative offices, boards, bureaus, commissions, agencies and instrumentalities of the executive branch. [fn.3] Defendant Bullock directs departments’ implementation of policies and procedures to meet the objectives of the State Energy Policy. Mont. Const. art. VI, § 8.”</p> <p>Compl. ¶ 83.</p>	<p>“The first sentence of Paragraph 83 is a Plaintiffs’ characterization of the case for which no response is required. The second sentence characterizes a provision of the Montana Constitution that speaks for itself, is the best evidence of its contents, and no response is required. Montana denies the allegations in the third sentence of Paragraph 83 as Defendant Bullock is no longer the governor of Montana but admits them as they pertain to Greg Gianforte, who is currently the Governor of Montana. The allegations in the fourth sentence of Paragraph 83 constitute legal conclusions to which no response is required; to the extent a response may be required, Montana denies all allegations.”</p> <p>Answer ¶ 83.</p>	<p>Governor Greg Gianforte has supervisory authority over the principal departments of the executive branch, which include all allocated executive and administrative offices, boards, bureaus, commissions, agencies and instrumentalities of the executive branch.</p>
<p>“Defendant Bullock holds cabinet meetings, communicates with other state officers, oversees budget expenditures, and has authority to issue executive orders. By and through his actions, Defendant Bullock implements and directs</p>	<p>“Montana denies the allegations in this paragraph as they pertain to Bullock, who is no longer the Governor of Montana. Montana admits the allegations in first sentence of Paragraph 84 as they pertain to Governor Gianforte. Montana denies the allegations in second sentence of Paragraph 84.”</p>	<p>Governor Greg Gianforte holds cabinet meetings, communicates with other state officers, oversees budget expenditures, and has authority to issue executive orders.</p>

<p>implementation of the State Energy Policy.”</p> <p>Compl. ¶ 84.</p>	<p>Answer ¶ 84.</p>	
<p>“Defendant Montana Department of Environmental Quality (“DEQ”) is a department of the State of Montana created by Chapter 418, Laws of 1995.”</p> <p>Compl. ¶ 86.</p>	<p>“Montana admits the allegations in Paragraph 86.”</p> <p>Answer ¶ 86.</p>	<p>Defendant Montana Department of Environmental Quality (“DEQ”) is a department of the State of Montana created by Chapter 418, Laws of 1995.</p>
<p>“Defendant DEQ, as the primary administrator of Montana’s environmental regulatory, environmental cleanup, environmental monitoring, pollution prevention, and energy conservation laws, has implemented its authority in a manner that has contributed to the constitutional violations described herein. [fn. 6] Defendant DEQ’s actions, pursuant to and in furtherance of the State Energy Policy, have contributed to dangerous levels of GHG emissions. [fn. 7]”</p> <p>Compl. ¶ 88.</p>	<p>“Montana admits the allegations that the Montana Department of Environmental Quality (“DEQ”) is the primary administrator of Montana’s environmental regulatory, environmental cleanup, environmental monitoring, pollution prevention, and energy conservation laws. Montana denies all other allegations in Paragraph 88.”</p> <p>Answer ¶ 88.</p>	<p>Defendant Montana Department of Environmental Quality (“DEQ”) is the primary administrator of Montana’s environmental regulatory, environmental cleanup, environmental monitoring, pollution prevention, and energy conservation laws.</p>
<p>“Defendant DEQ issues air quality permits to facilities that emit GHG emissions, including but not limited to coal mining operations, energy power plants, and oil and gas refineries. Through its Board of Environmental Review, [fn.9] which adopts rules and determines appeals under regulatory statutes, Defendant DEQ has broad statutory authority to set and enforce a quantitative limit for emissions as necessary to prevent or control air pollution. [fn. 10]”</p>	<p>“Montana admits that DEQ issues air quality permits to facilities including coal mining operations, energy power plants, and oil and gas refineries, and denies the remaining allegations in the first sentence of Paragraph 90. Montana admits that the Board of Environmental Review determines appeals under regulatory statutes and denies the remaining allegations in the second sentence of Paragraph 90.”</p> <p>Answer ¶ 90.</p>	<p>Defendant Montana Department of Environmental Quality (“DEQ”) issues air quality permits to facilities including coal mining operations, energy power plants, and oil and gas refineries.</p> <p>DEQ’s Board of Environmental Review determines appeals under regulatory statutes.</p>

<p>Compl. ¶ 90.</p> <p>“Defendant DEQ authorizes the construction, operation, and maintenance of interstate pipelines under the Major Facility Siting Act, Mont. Code Ann. § 75-20-101, <i>et seq.</i> Pursuant to the Major Facility Siting Act, Defendant DEQ certifies all pipeline facilities that are constructed or operated in Montana. <i>See</i> Mont. Code Ann. § 75-20-102(4).”</p>	<p>“Montana admits that it has authority to certify certain pipelines that meet the definition provided in the Major Facility Siting Act, Mont. Code Ann. § 75-20-104(9)(b), and otherwise comply with the requirements of the Act. <i>See</i> Mont. Code Ann. § 75-20-201. Montana denies the remaining allegations in Paragraph 91.”</p> <p>Answer ¶ 91.</p>	<p>The State of Montana has authority to certify certain pipelines that meet the definition provided in the Major Facility Siting Act, Mont. Code Ann. § 75-20-104(9)(b), and otherwise comply with the requirements of the Major Facility Siting Act. <i>See</i> Mont. Code Ann. § 75-20-201.</p>
<p>Compl. ¶ 91.</p> <p>“Defendant DEQ has permitted strip and underground coal mining operations and mining and prospecting activities that are causing dangerous amounts of GHG emissions. [fn. 11] DEQ has issued permits for surface coal mining in Montana on state and federal land. [fn. 12] Defendant DEQ actively works with coal mining companies in Montana to implement the State Energy Policy. [fn. 13] In approving such activities, DEQ has repeatedly refused to disclose the significant harms to human health and the environment from its decisions.”</p>	<p>“Montana admits that DEQ permits coal mining operations and mining and prospecting activities and Montana denies the remaining allegations in first sentence of Paragraph 92. Montana admits the allegations in second sentence of Paragraph 92. Montana denies the remaining allegations in Paragraph 92.”</p> <p>Answer ¶ 92.</p>	<p>DEQ permits coal mining operations and mining and prospecting activities.</p> <p>DEQ has issued permits for surface coal mining in Montana on state and federal land.</p>
<p>Compl. ¶ 92.</p> <p>“Defendant DNRC manages all the resources of the state trust lands through the State Board of Land Commissioners (“Land Board”). [fn. 15] The Land Board is bound by the public trust to permit only those activities on state land that are in the best interests of the state. [fn. 16] To comply with its constitutional and statutory public trust mandate, the Land Board is</p>	<p>“Montana admits the allegations in the first sentence of Paragraph 95. The second and third sentences of Paragraph 95 are legal conclusions for which no response is required; to the extent a response is required, Montana denies these allegations.”</p> <p>Answer ¶ 95.</p>	<p>The Montana Department of Natural Resources and Conservation (“DNRC”) manages all the resources of the state trust lands through the State Board of Land Commissioners (“Land Board”).</p>

<p>required to manage Montana resources in a manner that is not detrimental to public welfare or the environment.”</p> <p>Compl. ¶ 95.</p>		
<p>“Defendant DNRC, through its Forestry Division, is responsible for planning and implementing forestry and fire management programs, as well as authorizing and permitting commercial timber sales on public trust lands. [fn. 18] Although only 4% of Montana’s forests are within state trust lands, activity on this acreage accounted for nearly 25% of Montana’s total timber volume sold in 2017. [fn. 19]”</p> <p>Compl. ¶ 97.</p>	<p>“In response to the first sentence of Paragraph 97, Montana admits that DNRC, through its Forestry Division, is responsible for planning and implementing forestry and fire management programs, as well as authorizing and permitting commercial timber sales on trust lands a [sic] but denies all other allegations in the first sentence of Paragraph 97. The allegations in second sentence of Paragraph 97 purport to characterize a report that speaks for itself, is the best evidence of its contents, and no response is required; to the extent a response may be required, Montana denies all allegations.”</p> <p>Answer ¶ 97.</p>	<p>DNRC, through its Forestry Division, is responsible for planning and implementing forestry and fire management programs, as well as authorizing and permitting commercial timber sales on trust lands.</p>
<p>“Defendant Montana Department of Transportation (“MDT”) is responsible for the planning, authorization, and operation of programs for the construction, maintenance, and monitoring of Montana’s transportation infrastructure and operations, including Montana’s highway network, railroads, and airports. [fn. 11] Defendant MDT is responsible for state planning in the transportation sector and is charged with collecting and enforcing fuel taxes. [fn. 23]”</p> <p>Compl. ¶ 101.</p>	<p>“Montana admits the allegations in Paragraph 101.”</p> <p>Answer ¶ 101.</p>	<p>The Montana Department of Transportation (“MDT”) is responsible for the planning, authorization, and operation of programs for the construction, maintenance, and monitoring of Montana’s transportation infrastructure and operations, including Montana’s highway network, railroads, and airports.</p> <p>Defendant MDT is responsible for state planning in the transportation sector and is charged with collecting and enforcing fuel taxes.</p>
<p>“Defendant Montana Public Service Commission (“PSC”) regulates, supervises, and controls public utilities, common carriers, railroads, and pipelines. Mont. Code Ann. § 69-3-102. Defendant PSC</p>	<p>“Montana admits the first sentence of Paragraph 102. In response to the second sentence of Paragraph 102, Montana admits that the Montana Public Service Commission (“PSC”) sets standard-offer contracts for qualifying facilities and utility rates. Montana denies the remaining</p>	<p>Defendant Montana Public Service Commission (“PSC”) regulates, supervises, and controls public utilities, common carriers, railroads, and pipelines. Mont. Code Ann. § 69-3-102.</p> <p>The Montana Public Service Commission (“PSC”) sets standard-offer contracts for qualifying facilities and utility rates.</p>

<p>is responsible for reviewing standard-offer contracts and utility rates, as well as prescribing suitable commercial units of product or service for each kind of public utility. Mont. Code Ann. § 69-3-108.”</p> <p>Compl. ¶ 102.</p>	<p>allegations in the second sentence of Paragraph 102.”</p> <p>Answer ¶ 102.</p>	
<p>“Defendant PSC is responsible for the safety of interstate pipelines (such as gas pipelines that cross state borders) as well as all liquid lines, including crude oil or petroleum products, that operate within or through Montana. [fn. 24] Defendant PSC has exercised its authority over pipelines in a manner that perpetuates the use of fossil fuels by locking in infrastructure that will result in GHG emissions for decades.”</p> <p>Compl. ¶ 104.</p>	<p>“Montana admits the allegations in first sentence of Paragraph 104. Montana denies the allegations in the second sentence of Paragraph 104.”</p> <p>Answer ¶ 104.</p>	<p>Defendant PSC is responsible for the safety of interstate pipelines (such as gas pipelines that cross state borders) as well as all liquid lines, including crude oil or petroleum products, that operate within or through Montana.</p>
<p>“Montana’s fossil fuel-based energy system is the result of Montana’s State Energy Policy, and actions taken pursuant to that policy, which defines Montana’s energy policies, goals, and development process and explicitly calls for the use of dangerous fossil fuels. The State Energy Policy has existed for decades and is now codified in law. Mont. Code Ann. § 90-4-1001(c)-(g).”</p> <p>Compl. ¶ 112.</p>	<p>“Montana denies the allegations in the first sentence of Paragraph 112. Montana admits the allegations in the second sentence of Paragraph 112.”</p> <p>Answer ¶ 112.</p>	<p>Montana’s State Energy Policy has existed for decades. It was codified in law. Mont. Code Ann. § 90-4-1001[1](c)-(g).</p>
<p>“According to Senator Jackson, who sponsored amendments to the State Energy Policy in 2011, the “State Energy Policy will guide Montana’s energy production.” [fn. 25] The purpose of the State Energy Policy is to ensure an</p>	<p>“The allegations in first sentence of Paragraph 113 purport to characterize a statement that speaks for itself, is the best evidence of its contents, and no response is required; to the extent a response may be required, Montana denies all allegations. In response to the second sentence of Paragraph 113, Montana admits that Mont. Code Ann. § 90-4-1001 articulates an</p>	<p>Mont. Code Ann. § 90-4-1001 articulates an aspiration to ensure an adequate supply of energy and avoid a high cost of energy.</p>

<p>adequate supply of energy and avoid a high cost of energy. [fn. 26] Those purposes are readily achievable without perpetuating a form of energy that is known to cause dangerous climate change, cause harm to children, and result in a myriad of other adverse impacts to humans and the environment.”</p> <p>Compl. ¶ 113.</p>	<p>aspiration to ensure an adequate supply of energy and avoid a high cost of energy; Montana denies the remaining allegations in the second sentence of Paragraph 113. Montana denies the allegations in the third sentence of Paragraph 113.”</p> <p>Answer ¶ 113.</p>	
<p>“Despite opposition to the 2011 amendments to the State Energy Policy, the bill passed and thus Montana’s State Energy Policy, which implicitly promoted fossil fuels for decades, was amended to explicitly promote fossil fuels and to expand the already substantial extraction and use of fossil fuels in Montana.”</p> <p>Compl. ¶ 115.</p>	<p>“Montana admits the Mont. Code Ann. § 90-4-1001 was amended by the Montana Legislature in 2011. Montana denies the remaining allegations in Paragraph 115.”</p> <p>Answer ¶ 115.</p>	<p>The Mont. Code Ann. § 90-4-1001 was amended by the Montana Legislature in 2011.</p>
<p>“Despite Defendants’ knowledge of climate change dangers and Defendants’ rhetoric on the importance of reducing GHG emissions and the “profound consequences” [fn. 28] of climate change, Defendants, pursuant to and in furtherance of the State Energy Policy, have taken, and continue to take, affirmative actions to authorize, implement, and promote projects, activities, and plans (hereinafter, “aggregate acts”) that cause emissions of dangerous levels of GHG pollution into the atmosphere. For example:</p> <p>a. Defendants authorize and certify</p>	<p>“Montana objects to the form of Paragraph 118 because, pursuant to Mont. R. Civ. P. 10(b), claims must be provided in separate paragraphs. To the extent a response may be required, Montana admits: some Defendants authorize and certify energy projects and facilities within the State of Montana as prescribed by statute; the PSC has regulatory authority over contract lengths and rates for qualifying small power production facilities within the State as prescribed by statute; some Defendants have regulatory authority over coal plants to operate within the State as prescribed by statute; DEQ has regulatory authority over coal mining and reclamation within the State as prescribed by statute; DEQ has regulatory authority over pipelines within the State as prescribed by statute; some Defendants have regulatory authority over petroleum refineries within the State as prescribed by statute; some Defendants have regulatory authority over fuel and</p>	<p>Some Defendants authorize and certify energy projects and facilities within the State of Montana as prescribed by statute.</p> <p>The PSC has regulatory authority over contract lengths and rates for qualifying small power production facilities within the State as prescribed by statute.</p> <p>Some Defendants have regulatory authority over coal plants to operate within the State as prescribed by statute.</p> <p>DEQ has regulatory authority over coal mining and reclamation within the State as prescribed by statute.</p> <p>DEQ has regulatory authority over pipelines within the State as prescribed by statute.</p> <p>Some Defendants have regulatory authority over petroleum refineries within the State as prescribed by statute.</p>

<p>energy projects and facilities within the State of Montana that emit substantial levels of GHG pollution, including, but not limited to, projects that burn and promote the use of fossil fuels.</p> <p>b. Defendant PSC significantly cut utility contract lengths and rates for NorthWestern Energy in June 2017 demonstrating biased decisions obstructing solar projects. [fn.29] Defendant PSC was found to have violated solar companies' due process rights by making decisions based on bias and policy preferences. [fn. 30]</p> <p>c. Defendant PSC exercises its authority to obstruct solar projects. [fn. 31] The public service commissioners have publicly expressed their affinity for coal power and publicly disparaged renewable energy sources. PSC Commissioner Bob Lake admitted that Defendant PSC was setting rates and contract lengths to eliminate small solar projects. [fn. 32]</p> <p>d. Defendant PSC affirmatively acts to promote public utilities reliant on fossil fuels and</p>	<p>fuel tax requirements for vehicles, commercial carries, and aviation within the State as prescribed by statute; and some Defendants have regulatory authority over infrastructure and energy and transportation systems within the State as prescribed by statute. Additionally, these allegations characterize documents, authorities, and statements that speak for themselves, and for which no response is required. To the extent a response may be required, Montana denies the remaining allegations in Paragraph 118.”</p> <p>Answer ¶ 118.</p>	<p>Some Defendants have regulatory authority over fuel and fuel tax requirements for vehicles, commercial carries, and aviation within the State as prescribed by statute.</p> <p>Some Defendants have regulatory authority over infrastructure and energy and transportation systems within the State as prescribed by statute.</p>
--	--	--

<p>against the public safety in the face of dangerous climatic changes.</p> <p>e. Defendants engage in a systemic pattern and practice of issuing permits, licenses, and leases that result in GHG emissions without considering how the additional GHG emissions will contribute to the climate crisis.</p> <p>f. Defendants authorize four private coal plants to operate in the state, and these coal plants are responsible for 30% of Montana's energy production.</p> <p>g. Defendants continue to permit surface coal mining and reclamation in Montana, which results in substantial GHG emissions. Defendant DEQ approved the AM4 expansion of the Rosebud Strip Mine in December 2015. Defendant DEQ issued a permit to expand the coal mining operation and reclamation plan at Bull Mountain Mine in July 2016. [fn. 33] Pursuant to the Climate Change Exception to MEPA, DEQ refused to analyze how these decisions would aggravate the impacts of climate change.</p> <p>h. In 2018, Defendant DEQ, pursuant to</p>		
--	--	--

<p>the Climate Change Exception to MEPA, refused to analyze or discuss any climate change impacts from the TR3 expansion of the Decker Mine, which allowed the coal company to strip-mine 23 million tons of coal, which will lead to nearly 50 million tons of carbon dioxide emissions when burned, aggravating the impacts of climate change including causing negative socioeconomic impacts to Montanans.</p> <p>i. In 2020, Defendant DEQ is preparing to revise its permit to Spring Creek Mine, the largest coal producer in the state. The proposed revision would add 977 acres of new mining disturbance to recover approximately 72 million tons of coal. In August 2019, Defendant DEQ, pursuant to the Climate Change Exception to MEPA, refused to analyze impacts on the social cost of carbon and the economic impacts from climate change in its draft environmental impact statement for the Spring Creek Mine. Although public comments urged Defendants to consider these</p>		
--	--	--

impacts in the DEQ analysis, Defendants did not review how their decision would aggravate impacts of climate change, and the substantial socioeconomic impacts on Montanans.

- j. Defendant DEQ authorizes the operation of the Colstrip Steam Electric Station, which produced 13.2 million metric tons of CO₂e, 38,015 metric tons of methane, and 65,919 metric tons of nitrous oxide in 2018. [fn. 34]
- k. Defendant DEQ granted the Bull Mountain Mine an air quality permit in January 2016, authorizing Bull Mountain Mine to produce 15 million tons of coal during any rolling 12-month period. [fn. 35] Pursuant to the Climate Change Exception to MEPA, DEQ refused to analyze how this decision would aggravate the impacts of climate change.
- l. Defendant DEQ issued a certificate of compliance for the Keystone XL Pipeline in March 2012, which authorized the construction, operation, and maintenance of the Montana portion of

the pipeline that would result in substantial GHG emissions. Defendant DNRC leased public land for the easement for the operational right-of-way, with the approval of the Land Board, and issued a land use license for the construction right-of-way and other activities on state lands and waterways. [fn. 36]

- m. Defendants DEQ and DNRC issued permits, licenses, and leases for the construction, operation, and maintenance of the Keystone XL Pipeline project in Montana, which would transport Canadian tar sands crude oil, the most greenhouse gas intense source of petroleum in the world. Pursuant to the Climate Change Exception to MEPA, neither DEQ nor DNRC disclosed to the public the health or climate consequences of these decisions. [fn. 37]
- n. Defendants authorize, through licenses and leases, the exploration and extraction of oil and gas in Montana.
- o. Defendants have adopted and enforced GHG emissions standards

<p>for petroleum refineries that authorize dangerous levels of GHG emissions. Secondary emissions are not considered by Defendants in determining potential to emit. [fn. 38]</p> <p>p. Defendants continue to certify and authorize four petroleum refineries—Exxon/Mobil, Phillips 66, CHS Laurel, and Calumet Refining—in the State of Montana. In 2016, these refineries exported 66.5 million barrels of crude oil. The four refineries combined released 2.0 million metric tons of CO₂e in 2018. [fn. 39] Pursuant to the Climate Change Exception to MEPA, Defendants have failed to disclose to the public the health or climate consequences of these decisions.</p> <p>q. Defendants have explicitly adopted and endorsed fuel and fuel tax requirements for vehicles, commercial carriers, and aviation that lock in dangerous levels of GHG emissions from the transportation sector. [fn. 40]</p> <p>r. Defendants have exempted certain</p>		
---	--	--

facilities that burn fossil fuels from present and future compliance with GHG emission standards.

- s. Defendants continue to finance, incentivize, and subsidize fossil fuel infrastructure and energy and transportation systems that are endangering Youth Plaintiffs, while refusing to harness Montana's potential for wind energy.
- t. Defendants continue to aggressively pursue expansion of the fossil fuel industry in Montana, particularly the expansion of coal and mining development, as well as oil and gas development.
- u. Defendant Bullock has stated that "[] coal will continue to be a critical part of the nation's energy portfolio for years to come, and increasing electricity demand will ensure that we will need both carbon-based and renewable sources of energy, and not enough is done in this country to advance clean-coal technologies." [fn. 41]
- v. Defendant Bullock continues to support policies that incentivize technologies for coal, including but

<p>not limited to: (1) providing favorable tax treatment for investments in carbon capture, sequestration, and transportation; and (2) calling for stronger policies and incentives to advance enhanced oil recovery and CO2 capture at power plants and other industrial sources; both of which directly authorize GHG emissions to continue at dangerous levels in Montana.</p> <p>w. Defendants continue to “safeguard existing economic and energy assets” [fn. 42] by authorizing Montana fossil fuel extraction, production, consumption, transportation, and exportation.”</p> <p>Compl. ¶ 118.</p>		
<p>“In September 2019, Montana, pursuant to its State Energy Policy, generated 1,383 thousand MWh of electricity from coal; 49 thousand MWh of electricity from natural gas; 543 thousand MWh of electricity from hydroelectric power plants; and 186 thousand MWh of electricity from nonhydroelectric renewable energy sources. [fn. 55] All power plants in Montana are authorized by Defendants.”</p> <p>Compl. ¶ 131.</p>	<p>“Montana admits that Defendants authorize coal plants in the State. Montana denies the remaining allegations in Paragraph 131.”</p> <p>Answer ¶ 131.</p>	<p>Defendants authorize coal plants in the State.</p>

<p>“Pursuant to its State Energy Policy, Montana produces 1 in every 200 barrels of U.S. oil. In 2018, Montana’s oil production rose to 59,000 barrels per day and there were over 4,600 producing oil wells as of 2017 (see Figure 4). [fn. 63] With the authorization of Defendants, Montana produced 20,706,000 barrels of crude oil in 2017 alone that, once combusted, resulted in 8,948,719 metric tons CO₂. As of March 2019, Montana’s monthly crude oil production was 62,000 barrels per day. [fn. 64] Between 1960 and 2017, Defendants authorized the production of 1.59 billion barrels of crude oil that, once combusted, resulted in 689 million metric tons of CO₂. The drilling and production of oil is authorized by Defendants.”</p> <p>Compl. ¶ 135.</p>	<p>“Montana denies the allegations in the first sentence of Paragraph 135. The allegations in the second, third, and fourth sentences of Paragraph 135 purport to characterize documents that speak for themselves, are the best evidence of their contents, and no response is required; to the extent a response may be required, Montana denies any remaining allegations. Montana admits the allegations in the fifth sentence of Paragraph 135.”</p> <p>Answer ¶ 135.</p>	<p>Between 1960 and 2017, Defendants authorized the production of 1.59 billion barrels of crude oil that, once combusted, resulted in 689 million metric tons of CO₂.</p> <p>The drilling and production of oil is authorized by Defendants.</p>
<p>“In 2017, almost one-fifth of all U.S. natural gas imports from Canada entered the United States by pipelines that go through Montana and are authorized by Defendants. Roughly 95% of the natural gas that enters Montana passes right through the state to other states.”</p> <p>Compl. ¶ 138.</p>	<p>“Montana admits the allegations in Paragraph 138.”</p> <p>Answer ¶ 138.</p>	<p>In 2017, almost one-fifth of all U.S. natural gas imports from Canada entered the United States by pipelines that go through Montana and are authorized by Defendants.</p> <p>Roughly 95% of the natural gas that enters Montana passes right through the state to other states.</p>
<p>“Montana’s lands contain a significant quantity of fossil fuels yet to be extracted, but that can be extracted under the State’s Energy Policy. According to EIA data, as of 2018 there were over 817 million short tons of recoverable coal at producing mines. [fn. 67] If</p>	<p>“In response to the first sentence of Paragraph 139, Montana admits that the State has an abundance of energy sources including fossil fuels. The allegations in Paragraph 139 concerning the amount of recoverable coal, oil reserves, and natural gas reserves located in Montana purport to characterize documents that speak for themselves, are the best evidence of their contents, and no response is required; to</p>	<p>The State has an abundance of energy sources including fossil fuels.</p>

<p>burned, this would release some 1,541 million metric tons of CO₂. The state also contains 279 million barrels of proven crude oil reserves [fn. 68] that, if combusted, would release 121 million metric tons of CO₂. Almost 600 billion cubic feet dry natural gas reserves are contained within Montana's borders [fn. 69] that, if combusted, would release 32 million metric tons of CO₂. Pursuant to and in further of the State Energy Policy, Defendants continue to permit, promote, authorize, and encourage fossil fuel use and production in Montana and other activities resulting in dangerous levels of GHG emissions."</p> <p>Compl. ¶ 139.</p>	<p>the extent a response may be required, Montana denies any remaining allegations. Montana lacks sufficient information to admit or deny the remaining allegations in Paragraph 139 and therefore denies them."</p> <p>Answer ¶ 139.</p>	
<p>"Montana encompasses part of the northern Rocky Mountain region. The northern Rocky Mountains are a headwaters region, including the Missouri river system to the East and the Columbia River system to the West, where most of the water originates as snow. [fn. 92] Due to the warming climate, the water cycle in the atmosphere is disrupted and less precipitation falls as snow, and more snow melts during winter. [fn. 93] Consequently, Montana's snowpack has been decreasing and is likely to continue decreasing with warming temperatures (see Figure 11). [fn. 94]"</p> <p>Compl. ¶ 157.</p>	<p>"Montana admits the allegations in the first and second sentences of Paragraph 157. Montana lacks sufficient information to admit or deny the allegations in the third and fourth sentences of Paragraph 157 and therefore denies them. Additionally, these allegations characterize documents that speak for themselves, are the best evidence of their contents, and for which no response is required."</p> <p>Answer ¶ 157.</p>	<p>Montana encompasses part of the northern Rocky Mountain region.</p> <p>The northern Rocky Mountains are a headwaters region, including the Missouri River system to the East and the Columbia River system to the West, where most of the water originates as snow.</p>
<p>"Glacier National Park is a world-renowned landmark, major driver of the regional economy, and source of fresh water for countless</p>	<p>"Montana admits the allegations in first sentence of Paragraph 159. Montana lacks sufficient information to admit or deny the remaining allegations in Paragraph 159, and therefore denies them. Additionally,</p>	<p>Glacier National Park is a world-renowned landmark, major driver of the regional economy, and source of fresh water for countless communities.</p>

<p>communities. [fn. 99] In Glacier National Park, the effects of climate disruption are dramatic as the glaciers are rapidly retreating (see Figure 12 [fn. 100]). [fn. 101] Glaciers retreat when melting outpaces accumulation of new snow. [fn. 102] Scientific surveys of Glacier National Park have observed that “all glaciers have been reduced in area since 1966 with some glaciers having been reduced by as much as 85% by 2015.” [fn. 103] Specifically, the glaciers in the Blackfoot-Jackson Glacier Basin of Glacier National Park decreased in area from 21.6 square kilometers (“km²”) in 1850 to 7.4 km² in 1979. [fn. 104] Of the approximately 150 glaciers present in the park in 1850, only 26 glaciers (larger than 25 acres) remained in 2015. As Dr. Eric Rignot, an expert in glaciology and climate change, has stated: “Glacier National Park will soon have no glaciers left. Most of the glaciers in that park no longer qualify as glaciers per my definition of what a glacier is, which is an entity of ice thick enough to deform under its own weight, which requires ice to be at least 100 m thick. [fn. 105]”</p> <p>Compl. ¶ 159.</p>	<p>several of the allegations characterize documents or statements that speak for themselves, are the best evidence of their contents, and therefore no response is required.”</p> <p>Answer ¶ 159.</p>	
<p>“Yellowstone and Glacier National Park are economic powerhouses for Montana. Together, the parks receive a combined five million visitor days per year. [fn. 115] Yellowstone National Park, the world’s first National</p>	<p>“Montana admits the allegations in first, second, and third sentences of Paragraph 163. In response to the remainder of Paragraph 163, Montana lacks sufficient information to admit or deny the allegations and therefore denies them.”</p> <p>Answer ¶ 163.</p>	<p>Yellowstone National Park and Glacier National Park are economic powerhouses for Montana.</p> <p>Together, Yellowstone National Park and Glacier National Park receive a combined five million visitor days per year.</p>

<p>Park, spreads into southeastern Montana. In addition to providing a tourism-based economy, Yellowstone National Park is the heart of the Greater Yellowstone Ecosystem. [fn. 116] Ongoing and anticipated impacts of climate disruption on Yellowstone National Park include more extreme hot and cold days, change to the composition of flora and fauna in the park, and increasing fire frequency, all of which threatens the continued viability of this national treasure and the ability of Youth Plaintiffs, including Eva, to continue to access for recreational activities. [fn. 117]”</p> <p>Compl. ¶ 163.</p>		<p>Yellowstone National Park was the world’s first National Park and spreads into southeastern Montana.</p>
<p>“In 1972, the State of Montana held a Constitutional Convention, during which delegates placed significant emphasis on adding a natural resources article to the Constitution that would protect and improve the environment of Montana. In introducing the majority committee report of the Natural Resources Committee of the 1972 Constitutional Convention, Delegate C.B. McNeil stated: [t]he committee recommends the strongest environmental section of any state constitution. It is the only constitutional provision with an affirmative duty to enhance the environment [. . .] It provides that the term environmental life-support system is all encompassing, including but not limited to air, water and land. And</p>	<p>“In response to the first sentence of Paragraph 187, Montana admits in 1972 the State held a constitutional convention. The remaining allegations in Paragraph 187 purport to characterize documents and statements that speak for themselves, are the best evidence of their contents, and no response is required; to the extent a response may be required, Montana denies any remaining allegations.”</p> <p>Answer ¶ 187.</p>	<p>In 1972, the State held a constitutional convention.</p>

<p>whatever interpretation is afforded this phrase by the legislature and the courts, there is no question that it cannot be degraded. [fn. 151]</p> <p>Likewise, aware of the dangers of air pollution, Delegate Harper testified: I do not believe that we are in a time when business as usual will get the job done. I do not subscribe to the theory that everything is going along just fine and if we do not change any present laws or present attitudes or present actions, that everything is going to turn out all right [. . .] every intelligent citizen is alarmed, and duly alarmed, at what is happening to the environmental life system in this world today. [fn. 152]”</p> <p>Compl. ¶ 187.</p>		
--	--	--

Statement of Agreed Facts based on Defendants’ Discovery Responses to Plaintiffs’ Discovery Requests

Plaintiffs’ Interrogatory or Request for Production	Defendants’ Discovery Response	Agreed Fact
<p>[Plaintiffs’ First Discovery Requests to Defendants, dated April 20, 2022] “Interrogatory No. 1: Please describe the factual bases upon which you base your denial of Paragraph 3 in Plaintiffs’ Complaint.”</p> <p>[Paragraph 3 of Complaint: “Defendants are governmental entities that have created and implemented a long-standing fossil-fuel based state energy system that contributes to dangerous climate disruption in violation of Youth Plaintiffs’ constitutional rights as guaranteed under Article II, Section 3; Article II, Section 4; Article II, Section 15; Article II, Section 17; Article IX,</p>	<p>[Defendants’ Responses to Plaintiffs’ First Discovery Requests, dated May 20, 2022] “ANSWER: Defendants deny the allegations of Paragraph 3 of Plaintiffs’ Complaint for the following reasons:</p> <ul style="list-style-type: none"> • Plaintiffs’ allegations are vague and ambiguous in that they do not specify what they mean by using the terms “long-standing fossil-fuel based state energy system,” “contributes to,” and “dangerous climate disruption.” Plaintiffs bear the burden of proof of each of these allegations, including the burden to prove what is meant by these terms. • Defendants deny that their alleged actions or omissions as described in Paragraph 3 of Plaintiffs’ Complaint have caused harm to Plaintiffs or have violated their constitutional rights. Much of the factual basis for this denial is the subject of expert opinion and 	<p>The Montana Legislature enacted the State Energy Policy in 1993 and amended it in 2011. <i>See</i> 2011 Mont. Laws 1606–08, ch. 385, § 1 (codified at MCA § 90-4-1001).</p> <p>The State Energy Policy’s purpose is to “enhance existing energy development and create new diversified energy development from all of Montana’s abundant energy resources.” MCA § 90-4-1001(1)(b).</p> <p>The State Energy Policy identifies wind, rooftop, solar, biomass, oil and gas, and coal as potential energy sources. <i>Id.</i> at (1)(c)–(i).</p> <p>Defendant Public Service Commission (“PSC”) adheres to the regulatory and procedural mandates under Mont. Code Ann. Title 69, Chapter 3 and Title 2, Chapter 4.</p>

<p>Section 1; Article IX, Section 3 of the Montana Constitution; and the Public Trust Doctrine.”]</p>	<p>testimony and will be disclosed pursuant to Mont. R. Civ. P. 26(b)(4) and the Court’s Scheduling Order.</p> <ul style="list-style-type: none"> • Plaintiffs’ claims are not justiciable because Plaintiffs lack standing to bring these claims. • These claims also raise nonjusticiable political questions and present requests for impermissible advisory opinions. • To the extent that the alleged “long-standing ... state energy system” alluded to in Paragraph 3 of Plaintiffs’ Complaint refers to the State Energy Policy, Defendants respond as follows: The Montana Legislature enacted the State Energy Policy in 1993 and amended it in 2011. <i>See</i> 2011 Mont. Laws 1606–08, ch. 385, § 1 (codified at MCA § 90-4-1001). The State Energy Policy’s purpose is to “enhance existing energy development and create new diversified energy development from all of Montana’s abundant energy resources.” MCA § 90-4-1001(1)(b). The State Energy Policy identifies wind, rooftop, solar, biomass, oil and gas, and coal as potential energy sources. <i>Id.</i> at (1)(c)–(i). • Defendant Public Service Commission (“PSC”) has not created or implemented any “long-standing fossil-fuel based state energy system.” It simply adheres to the regulatory and procedural mandates under Mont. Code Ann. Title 69, Chapter 3 and Title 2, Chapter 4.” 	
<p>[Plaintiffs’ First Discovery Requests to Defendants, dated April 20, 2022] “Interrogatory No. 4: Please describe the role that each Defendant plays in making, implementing, or directing energy policy for the State of Montana.”</p>	<p>[Defendants’ Responses to Plaintiffs’ First Discovery Requests, dated May 20, 2022] “ANSWER: Defendants object to Interrogatory No. 4 because it is vague and ambiguous as to what Plaintiffs mean by “implementing” and “directing” “energy policy for the State of Montana.” Plaintiffs have sued six state agencies who have taken actions every day for decades that could conceivably be responsive to this Interrogatory, and therefore the</p>	<p>The Governor may sign or veto legislation related to energy passed by the Montana Legislature.</p> <p>The Department of Environmental Quality (“DEQ”) is responsible for regulating air, water, and ground resources to administer Montana’s environmental and mine reclamation laws.</p> <p>DEQ works in partnership with the federal Environmental Protection Agency, Department of</p>

	<p>Interrogatory is grossly overbroad and unduly burdensome.</p> <p>Subject to and without waiving this request, Defendants state that the following agencies have the following general responsibilities:</p> <ul style="list-style-type: none"> • The Governor may sign or veto legislation related to energy passed by the Montana Legislature. • The Department of Environmental Quality (“DEQ”) is responsible for regulating air, water, and ground resources to administer Montana’s environmental and mine reclamation laws. DEQ works in partnership with the federal Environmental Protection Agency, Department of Energy, and Office of Surface Mining, Reclamation, and Enforcement. EPA and OSM have delegated authority and responsibility for particular environmental areas to DEQ. The EPA state-federal cooperative agreement provides federal resources to DEQ but also directs much of the agency activity. Five divisions form DEQ and perform the following functions: The Central Management Program provides managerial and administrative support services to the entire department. The Water Quality Division oversees issues of water quality within Montana including permitting, the development of water quality plans, encouraging the use of new practices, and providing assistance. The Enforcement Division investigates possible violations of Montana environmental laws and monitors compliance. The Waste Management & Remediation Division manages the waste processing, investigates environmentally contaminated sites, and directs clean up efforts. The Air, Energy & Mining Division reviews and assesses permit and license applications impacting air and land environmental quality and provides information on energy 	<p>Energy, and Office of Surface Mining, Reclamation, and Enforcement.</p> <p>EPA and OSM have delegated authority and responsibility for particular environmental areas to DEQ.</p> <p>The EPA state-federal cooperative agreement provides federal resources to DEQ but also directs much of the agency activity. Five divisions form DEQ and perform the following functions:</p> <p>The Central Management Program provides managerial and administrative support services to the entire department.</p> <p>The Water Quality Division oversees issues of water quality within Montana including permitting, the development of water quality plans, encouraging the use of new practices, and providing assistance.</p> <p>The Enforcement Division investigates possible violations of Montana environmental laws and monitors compliance.</p> <p>The Waste Management & Remediation Division manages the waste processing, investigates environmentally contaminated sites, and directs clean up efforts.</p> <p>The Air, Energy & Mining Division reviews and assesses permit and license applications impacting air and land environmental quality and provides information on energy production, conservation and renewable opportunities.</p> <p>The Petroleum Tank Release Compensation Board is not attached to DEQ by law. The Petroleum Tank Release Compensation Board is functionally supported by DEQ.</p> <p>The Petroleum Tank Release Compensation Board provides procedures and resources for reimbursement of expenditures for cleanup of petroleum tank leaks.</p> <p>The Department of Natural Resources and Conservation’s (“DNRC”) mission is to help ensure that Montana’s land and water resources provide benefits for present and future generations.</p> <p>Nine boards and commissions are attached to DNRC.</p> <p>Six of these DNRC boards—the Board of Land Commissioners, Reserved Water Rights Compact</p>
--	--	--

	<p>production, conservation and renewable opportunities. In addition, although it is not attached to DEQ by law, the Petroleum Tank Release Compensation Board is functionally supported by DEQ. The board provides procedures and resources for reimbursement of expenditures for cleanup of petroleum tank leaks. The DEQ is limited in its ability to enact any air, water, hazardous waste, etc. regulation that is more stringent than a federal regulation. The Montana Legislature eliminated DEQ's role in the Energy Policy process in 2009 (SB 290).</p> <ul style="list-style-type: none"> • The Department of Natural Resources and Conservation's ("DNRC") mission is to help ensure that Montana's land and water resources provide benefits for present and future generations. Nine boards and commissions are attached to the department. Six of them—the Board of Land Commissioners, Reserved Water Rights Compact Commission, Board of Oil and Gas Conservation, Board of Water Well Contractors, Flathead Basin Commission, and Montana Grass Conservation Commission—have decision-making authority. The other three—the Resource Conservation Advisory Council, Rangeland Resources Committee, and Drought Advisory Committee—act in an advisory capacity only. The department is organized into seven divisions: Director's Office; Conservation and Resource Development; Forestry; Oil and Gas Conservation; Reserved Water Rights Compact Commission; Trust Land Management; Water Resources. Two of the divisions—the Oil and Gas Conservation Division and the Reserved Water Rights Compact Commission—are attached to the department for administrative purposes only. 	<p>Commission, Board of Oil and Gas Conservation, Board of Water Well Contractors, Flathead Basin Commission, and Montana Grass Conservation Commission—have decision-making authority.</p> <p>The other three DNRC boards—the Resource Conservation Advisory Council, Rangeland Resources Committee, and Drought Advisory Committee—act in an advisory capacity only.</p> <p>DNRC is organized into seven divisions: Director's Office; Conservation and Resource Development; Forestry; Oil and Gas Conservation; Reserved Water Rights Compact Commission; Trust Land Management; Water Resources.</p> <p>Two of the seven DNRC divisions—the Oil and Gas Conservation Division and the Reserved Water Rights Compact Commission—are attached to DNRC for administrative purposes only.</p> <p>The Department of Transportation's ("MDT") mission is to plan, build, operate, and maintain a safe and resilient transportation infrastructure to move Montana forward.</p> <p>MDT's responsibilities include planning and design; contract administration; materials design and testing; property acquisition; fiscal programming and cost accounting; motor fuel collection and enforcement; enforcing vehicle weight and dimension laws; outdoor advertising control; managing the state motor pool; highway, bridge and rest area maintenance; public transportation and rail programs and planning; general aviation airport planning; and highway traffic safety.</p> <p>The PSC regulates private, investor-owned natural gas, electric, telephone, water and private sewer companies doing business in Montana.</p> <p>The PSC regulates intrastate railroads and certain motor carriers hauling regulated commodities.</p> <p>The PSC oversees natural gas pipeline safety regulations.</p>
--	--	--

	<ul style="list-style-type: none"> • The Department of Transportation’s (“MDT”) mission is mission is [sic] to plan, build, operate, and maintain a safe and resilient transportation infrastructure to move Montana forward. MDT’s responsibilities include planning and design; contract administration; materials design and testing; property acquisition; fiscal programming and cost accounting; motor fuel collection and enforcement; enforcing vehicle weight and dimension laws; outdoor advertising control; managing the state motor pool; highway, bridge and rest area maintenance; public transportation and rail programs and planning; general aviation airport planning; and highway traffic safety. • The PSC regulates private, investor-owned natural gas, electric, telephone, water and private sewer companies doing business in Montana. In addition, the PSC regulates intrastate railroads and certain motor carriers hauling regulated commodities. The PSC oversees natural gas pipeline safety regulations. The PSC does not make or direct energy policy for the State of Montana. To the extent PSC “implements” energy policy, it does so in accordance with its regulatory and procedural mandates under Mont. Code Ann. Title 69, Chapter 3 and Title 2, Chapter 4.” 	
<p>[Plaintiffs’ First Discovery Requests to Defendants, dated April 20, 2022] “Interrogatory No. 6: Please describe the factual bases upon which you base your denial of Paragraph 90 in Plaintiffs’ Complaint.”</p> <p>[Paragraph 90: “Defendant DEQ issues air quality permits to facilities that emit GHG emissions, including</p>	<p>[Defendants’ Responses to Plaintiffs’ First Discovery Requests, dated May 20, 2022] “ANSWER: DEQ only has statutory authority over certain air quality parameters. DEQ does not have authority to impose restrictions on GHG emissions. DEQ does not control, and is not responsible for, the actions of the Board of Environmental Review (“BER”), which is an independent quasi-judicial board. Until 2021, the BER had authority to make administrative rules setting and implementing certain emissions, although</p>	<p>Until 2021, the Board of Environmental Review had authority to make administrative rules setting and implementing certain emissions</p>

<p>but not limited to coal mining operations, energy power plants, and oil and gas refineries. Through its Board of Environmental Review, [fn. 9] which adopts rules and determines appeals under regulatory statutes, Defendant DEQ has broad statutory authority to set and enforce a quantitative limit for emissions as necessary to prevent or control air pollution. [fn.10]”]</p>	<p>these are also set and regulated by the federal government independently of DEQ. DEQ has complied with all state and federal laws, as applicable, in granting and denying air quality, mining, and Major Facilities Citing Act permits.”</p>	
<p>[Plaintiffs’ First Discovery Requests to Defendants, dated April 20, 2022] “Interrogatory No. 14: Please identify all actions Defendants have taken to reduce Montana’s greenhouse gas emissions since 1990.”</p>	<p>[Defendants’ Responses to Plaintiffs’ First Discovery Requests, dated May 20, 2022] “ANSWER: The State objects to Interrogatory No. 14 as overbroad and unduly burdensome because it seeks “all” actions taken by six agencies for 32 years, which is unreasonable. Subject to and without waiving the above objections, PSC states that, pursuant to Admin. R. Mont. 38.5.8213(1), the PSC’s rules state that utilities’ electricity supply resource planning, procurement, and decision-making processes should incorporate proven, cost-effective computer modeling and rigorous analyses by using modeling and analyses to develop methods for weighting resource attributes and ranking bid offers and alternative candidate owned resources. These resource attributes may include, but are not necessarily limited to, e.g., underlying fuel source and associated price volatility and risk, including risks related to future regulatory constraints on environmental impacts such as emissions of carbon dioxide, sulfur dioxide, nitrogen oxides and mercury.”</p>	<p>Pursuant to Admin. R. Mont. 38.5.8213(1), the rules of the Public Service Commission (“PSC”) state that utilities’ electricity supply resource planning, procurement, and decision-making processes should incorporate proven, cost-effective computer modeling and rigorous analyses by using modeling and analyses to develop methods for weighting resource attributes and ranking bid offers and alternative candidate owned resources.</p> <p>These resource attributes may include, but are not necessarily limited to, e.g., underlying fuel source and associated price volatility and risk, including risks related to future regulatory constraints on environmental impacts such as emissions of carbon dioxide, sulfur dioxide, nitrogen oxides and mercury.</p>
<p>[Plaintiffs’ First Discovery Requests to Defendants, dated April 20, 2022] “Interrogatory No. 17: Please describe the factual bases for Defendants’ affirmative defense that Plaintiffs lack standing.”</p>	<p>[Defendants’ Responses to Plaintiffs’ First Discovery Requests, dated May 20, 2022] “ANSWER: Defendants object to Interrogatory No. 17 to the extent that it calls for expert opinion. The degree to which Montana’s State Energy Policy and 2011 Montana Limitation to MEPA contribute to global climate issues that, allegedly, contribute to Plaintiffs’ purported harms depends on numerous factors and requires an expert’s “scientific, technical, or other specialized knowledge.” Defendants will make their expert</p>	<p>The degree to which Montana’s State Energy Policy and 2011 Montana Limitation to MEPA contribute to global climate issues that, allegedly, contribute to Plaintiffs’ purported harms depends on numerous factors and requires an expert’s “scientific, technical, or other specialized knowledge.”</p> <p>Montana’s energy policy is set forth and implemented not only by the State Energy Policy, but also by many other statutory provisions. <i>See, e.g.</i>, MCA §§ 15-24-3101, 15-32-101, 15-321-401, 15-72-102, 50-60-801, 69-3-1202, 69-3-1202, 69-3-2002, 69-8-601, 75- 20-</p>

disclosures pursuant to Mont. R. Civ. P. 26(b)(4) and the Court’s Scheduling Order. Subject to and without waiving these objections, Defendants affirmatively state that Plaintiffs lack standing because the State Energy Policy and MEPA’s Montana Limitation do not cause Plaintiffs’ alleged injuries. First, Montana’s energy policy is set forth and implemented not only by the State Energy Policy, but also by many other statutory provisions. *See, e.g.*, MCA §§ 15-24-3101, 15-32-101, 15-321-401, 15-72-102, 50-60-801, 69-3-1202, 69-3-1202, 69-3-2002, 69-8-601, 75- 20-102, 76-15-902, 90-4-301, 90-4-1010, 90-4-1011, 90-4-1101. If this Court were to invalidate the State Energy Policy, these other statutes would remain. Second, the State’s alleged “aggregate acts” complained of by Plaintiffs are not caused by the two statutes Plaintiffs challenge. Instead, they are the result of numerous substantive laws scattered throughout the Montana Code. Defendants provided a list of these laws in their Brief in Support of Motion to Dismiss (Doc. 12) at page 9. Third, only claims for declaratory relief remain in this lawsuit. Declaratory relief will not alleviate Plaintiffs’ alleged harms. Fourth, Plaintiffs’ alleged harms are too speculative to establish a cognizable injury sufficient to confer standing under Montana law. Fifth, Plaintiffs request a nonjusticiable advisory opinion. Sixth, Plaintiffs’ remaining claims for declaratory relief raise nonjusticiable political questions. Seventh, the Court cannot grant relief that will alleviate Plaintiffs’ alleged harms because, even assuming *arguendo* that Plaintiffs’ premise that anthropogenic greenhouse gas emissions are causing global climate change which causes environmental harms in Montana, striking down the two statutes Plaintiffs challenge will not alleviate that harm.”

102, 76-15-902, 90-4-301, 90-4-1010, 90-4-1011, 90-4-1101.

The aggregate acts complained of by Plaintiffs are the result of numerous substantive laws throughout the Montana Code. *See, e.g.*, Defendants’ Brief in Support of Motion to Dismiss (Doc. 12, April 24, 2020) at 9:

Utility Planning Utility Planning	Electric Utility Industry Generation Reintegration Act: Mont. Code Ann. §§ 69-8-419 to -421; Mont. Admin. R. 38.5.8201–8229. Montana Integrated Least-Cost Resource Planning and Acquisition Act: Mont. Code Ann. §§ 69-3-1201 to -1209; Mont. Admin. R. 38.5.2001–2016
Rates for Renewable Energy Projects	Small Power Production Facilities: Mont. Code Ann. §§ 69-3-601 to -605; Mont. Admin. R. 38.5.1901–1910.
Coal-fired Power Plants	Montana Major Facility Siting Act: Mont. Code Ann. §§ 75-20-101 to -411; Mont. Admin. R. 17.20.301–1902. Clean Air Act of Montana: Mont. Code Ann. § 75-2-201 to -429; Mont. Admin. R. 17.8.101–17.8.1815.
Coal Mines	The Montana Strip and Underground Mine Reclamation Act: Mont. Code Ann. §§ 82-4-201 to -254; Mont. Admin. R. 17.24.301–1826.
Oil Pipelines	Montana Major Facility Siting Act: Mont. Code Ann. §§ 75-20-101 to -411; Mont. Admin. R. 17.20.301–1902. Easements on State Lands: Mont. Code Ann. §§ 77-2-101 to -107; Mont. Admin. R. 36.25.135. Use of Beds of Navigable Rivers: Mont. Code Ann. §§ 1109 to - 1117; Mont. Admin. R. 36.25.1101–1108. Eminent Domain for Pipeline

		<table border="1"> <tr> <td data-bbox="940 165 1141 236"></td> <td data-bbox="1141 165 1549 236">Carriers: Mont. Code Ann. § 69-13-104.</td> </tr> <tr> <td data-bbox="940 236 1141 623">Oil and Gas Exploration and Extraction</td> <td data-bbox="1141 236 1549 623"> Oil and Gas—General Provisions: Mont. Code Ann. §§ 82-10-101 to -604. Oil and Gas Conversation: Mont. Code Ann. §§ 82-11-101 to -306; Mont. Admin. R. 36.22.101–1707. Oil and Gas Leases on State Lands: Mont. Code Ann. §§ 77-3-101 to -512; Mont. Admin. R. 36.25.201–237. </td> </tr> <tr> <td data-bbox="940 623 1141 751">Petroleum Refineries</td> <td data-bbox="1141 623 1549 751">Clean Air Act of Montana: Mont. Code Ann. §§ 75-2-204, -211, -213, -215; Mont. Admin. R. 17.8.740–772.</td> </tr> <tr> <td data-bbox="940 751 1141 878">Fuel Taxes</td> <td data-bbox="1141 751 1549 878">Gasoline and Vehicle Fuels Taxes: Mont. Code Ann. §§ 15-70-101 to -720; Mont. Admin. R. 18.15.101–805.</td> </tr> <tr> <td data-bbox="940 878 1141 1006">Transportation Planning and Infrastructure</td> <td data-bbox="1141 878 1549 1006">Highways and Transportation: Title 60 of the Montana Code Annotated; Title 18 of the Montana Administrative Rules</td> </tr> </table>		Carriers: Mont. Code Ann. § 69-13-104.	Oil and Gas Exploration and Extraction	Oil and Gas—General Provisions: Mont. Code Ann. §§ 82-10-101 to -604. Oil and Gas Conversation: Mont. Code Ann. §§ 82-11-101 to -306; Mont. Admin. R. 36.22.101–1707. Oil and Gas Leases on State Lands: Mont. Code Ann. §§ 77-3-101 to -512; Mont. Admin. R. 36.25.201–237.	Petroleum Refineries	Clean Air Act of Montana: Mont. Code Ann. §§ 75-2-204, -211, -213, -215; Mont. Admin. R. 17.8.740–772.	Fuel Taxes	Gasoline and Vehicle Fuels Taxes: Mont. Code Ann. §§ 15-70-101 to -720; Mont. Admin. R. 18.15.101–805.	Transportation Planning and Infrastructure	Highways and Transportation: Title 60 of the Montana Code Annotated; Title 18 of the Montana Administrative Rules
	Carriers: Mont. Code Ann. § 69-13-104.											
Oil and Gas Exploration and Extraction	Oil and Gas—General Provisions: Mont. Code Ann. §§ 82-10-101 to -604. Oil and Gas Conversation: Mont. Code Ann. §§ 82-11-101 to -306; Mont. Admin. R. 36.22.101–1707. Oil and Gas Leases on State Lands: Mont. Code Ann. §§ 77-3-101 to -512; Mont. Admin. R. 36.25.201–237.											
Petroleum Refineries	Clean Air Act of Montana: Mont. Code Ann. §§ 75-2-204, -211, -213, -215; Mont. Admin. R. 17.8.740–772.											
Fuel Taxes	Gasoline and Vehicle Fuels Taxes: Mont. Code Ann. §§ 15-70-101 to -720; Mont. Admin. R. 18.15.101–805.											
Transportation Planning and Infrastructure	Highways and Transportation: Title 60 of the Montana Code Annotated; Title 18 of the Montana Administrative Rules											
<p>[Plaintiffs’ First Discovery Requests to Defendants, dated April 20, 2022] “Request for Production No. 19: Please produce a list of all oil well and gas well facilities that have registered with DEQ pursuant to ARM 17.8 Subchapter 17, Registration of Air Contaminant Sources since May 12, 2011.”</p>	<p>[Defendants’ Responses to Plaintiffs’ First Discovery Requests, dated May 20, 2022] “RESPONSE: Please see documents produced as D000288–D000405. DEQ currently has 336 Inactive Registrations and 1,179 active oil and gas registrations for a total of 1,515 total registrations (active and inactive).”</p>	<p>DEQ currently has 336 Inactive Registrations and 1,179 active oil and gas registrations for a total of 1,515 total registrations (active and inactive).</p>										
<p>[Plaintiffs’ First Discovery Requests to Defendants, dated April 20, 2022] “Interrogatory No. 20: Please identify the total number of acres of land in Montana (including private, state, tribal, and federal) that have been used, are presently being used, have been permitted for use, or will be used (if pending applications for expansion</p>	<p>[Defendants’ Responses to Plaintiffs’ First Discovery Requests, dated May 20, 2022] “ANSWER: There are currently 5,508 acres of State land managed by the Trust Land Management Division under active coal leases. Additional information responsive to this Interrogatory is reported publicly and available at https://deq.mt.gov/mining/resources.”</p>	<p>There are currently 5,508 acres of State land managed by the Trust Land Management Division under active coal leases.</p> <p>From July 1, 2021 through June 30, 2022, DEQ permitted 84,650 acres for coal mining in Montana and retained \$476,229,050.00 in bonds for such acreage. <i>See</i> DEQ 2022 Coal Mining Annual Report, https://deq.mt.gov/files/Land/CoalUranium/Annual%20Reports/AR%20Report_2022.pdf (p. 1), available at https://deq.mt.gov/mining/resources.</p> <p>From January 1, 2021 through December 31, 2021, DEQ permitted 75,533 acres of coal mining in</p>										

<p>are approved) for coal mining operations.”</p>		<p>Montana, of which 12,694.2 acres were being actively mined. <i>See</i> DEQ 2022 Coal Mining Annual Report, https://deq.mt.gov/files/Land/CoalUranium/Annual%20Reports/AR%20Report_2022.pdf (p. 4), available at https://deq.mt.gov/mining/resources.</p> <p>From July 1, 2021 through June 30, 2022, DEQ permitted six active coal mining companies and four active coal prospecting companies. <i>See</i> DEQ 2022 Coal Mining Annual Report, https://deq.mt.gov/files/Land/CoalUranium/Annual%20Reports/AR%20Report_2022.pdf (p. 2), available at https://deq.mt.gov/mining/resources.</p> <p>From July 1, 2021 through June 30, 2022, DEQ issued three amendments and/or major revisions to existing mine permits, with an additional revision pending. <i>See</i> DEQ 2022 Coal Mining Annual Report, https://deq.mt.gov/files/Land/CoalUranium/Annual%20Reports/AR%20Report_2022.pdf (p. 4), available at https://deq.mt.gov/mining/resources.</p> <p>From July 1, 2021 through June 30, 2022, DEQ had five pending coal mine permit renewals and/or transfers for existing mines. <i>See</i> DEQ 2022 Coal Mining Annual Report, https://deq.mt.gov/files/Land/CoalUranium/Annual%20Reports/AR%20Report_2022.pdf (p. 4), available at https://deq.mt.gov/mining/resources.</p> <p>From July 1, 2021 through June 30, 2022, DEQ permitted coal prospecting on 261 acres of land in Montana. <i>See</i> DEQ 2022 Coal Mining Annual Report, https://deq.mt.gov/files/Land/CoalUranium/Annual%20Reports/AR%20Report_2022.pdf (p. 14), available at https://deq.mt.gov/mining/resources.</p> <p>From July 1, 2020 through June 30, 2021, DEQ permitted 75,533 acres for coal mining in Montana and retained \$476,229.050 in bonds for such acreage. <i>See</i> DEQ 2021 Coal Mining Annual Report, https://deq.mt.gov/files/Land/CoalUranium/Annual%20Reports/AR%20Report_2021.pdf (p. 1), available at https://deq.mt.gov/mining/resources.</p> <p>From July 1, 2020 through June 30, 2021, DEQ permitted six active coal mining companies and four active coal prospecting companies. <i>See</i> DEQ 2021 Coal Mining Annual Report, https://deq.mt.gov/files/Land/CoalUranium/Annual%20Reports/AR%20Report_2021.pdf (p. 2), available at https://deq.mt.gov/mining/resources.</p>
---	--	--

From July 1, 2020 through June 30, 2021, four pending amendments and/or major revisions to existing coal mine permits were before DEQ. *See* DEQ 2021 Coal Mining Annual Report, https://deq.mt.gov/files/Land/CoalUranium/Annual%20Reports/AR%20Report_2021.pdf (p. 4), available at <https://deq.mt.gov/mining/resources>.

From July 1, 2020 through June 30, 2021, DEQ issued nine renewals and/or transfers for coal mining permits at existing mines. *See* DEQ 2021 Coal Mining Annual Report, https://deq.mt.gov/files/Land/CoalUranium/Annual%20Reports/AR%20Report_2021.pdf (p. 3-4), available at <https://deq.mt.gov/mining/resources>.

From January 1, 2020 through December 31, 2021, DEQ permitted 75,455 acres of coal mining in Montana, with active mining occurring on 12,192.87 of those acres. *See* DEQ 2021 Coal Mining Annual Report, https://deq.mt.gov/files/Land/CoalUranium/Annual%20Reports/AR%20Report_2021.pdf (p. 5), available at <https://deq.mt.gov/mining/resources>.

From July 1, 2020 through June 30, 2021, DEQ permitted 366 acres of coal mining prospecting in Montana. *See* DEQ 2021 Coal Mining Annual Report, https://deq.mt.gov/files/Land/CoalUranium/Annual%20Reports/AR%20Report_2021.pdf (p. 15), available at <https://deq.mt.gov/mining/resources>.

From July 1, 2019 through June 30, 2020, DEQ permitted 75,455 acres of coal mining in Montana and such acreage was subject to \$474,429,050.00 in bonds. *See* DEQ 2020 Coal Mining Annual Report, https://deq.mt.gov/files/Land/CoalUranium/Annual%20Reports/AR%20Report_2020.pdf (p. 2), available at: <https://deq.mt.gov/mining/resources>.

From July 1, 2019 through June 30, 2020, DEQ permitted seven active coal mining companies and six active coal prospecting companies in Montana. *See* DEQ 2020 Coal Mining Annual Report, https://deq.mt.gov/files/Land/CoalUranium/Annual%20Reports/AR%20Report_2020.pdf (p. 3), available at: <https://deq.mt.gov/mining/resources>.

From July 1, 2019 through June 30, 2020, DEQ issued one coal mining permit amendment and/or major revision, and had three such amendments/revisions pending. *See* DEQ 2020 Coal Mining Annual Report, https://deq.mt.gov/files/Land/CoalUranium/Annual%20Reports/AR%20Report_2020.pdf

[20Reports/AR%20Report_2020.pdf](https://deq.mt.gov/mining/resources) (p. 4), available at: <https://deq.mt.gov/mining/resources>.

From July 1, 2019 through June 30, 2020, DEQ had ten renewals and/or transfers of existing coal mine permits pending. *See* DEQ 2020 Coal Mining Annual Report, https://deq.mt.gov/files/Land/CoalUranium/Annual%20Reports/AR%20Report_2020.pdf (p. 5-6), available at: <https://deq.mt.gov/mining/resources>.

From January 1, 2019 through December 31, 2019, DEQ permitted 75,455 acres of land for coal mining in Montana, with active mining occurring on 11,381.87 acres of that permitted land. *See* DEQ 2020 Coal Mining Annual Report, https://deq.mt.gov/files/Land/CoalUranium/Annual%20Reports/AR%20Report_2020.pdf (p. 7), available at: <https://deq.mt.gov/mining/resources>.

From July 1, 2019 through June 30, 2020, DEQ permitted 366 acres of coal mine prospecting in Montana. *See* DEQ 2020 Coal Mining Annual Report, https://deq.mt.gov/files/Land/CoalUranium/Annual%20Reports/AR%20Report_2020.pdf (p. 17), available at: <https://deq.mt.gov/mining/resources>.

From July 1, 2018 through June 30, 2019, DEQ permitted 80,927 acres of coal mining in Montana, with such acreage subject to \$488,147,686.80 in bonds. *See* DEQ 2019 Coal Mining Annual Report, https://deq.mt.gov/files/Land/CoalUranium/Annual%20Reports/AR%20Report_2019.pdf (p. 2), available at: <https://deq.mt.gov/mining/resources>.

From July 1, 2018 through June 30, 2019, DEQ permitted seven active coal mining companies and six active coal prospecting companies in Montana. *See* DEQ 2019 Coal Mining Annual Report, https://deq.mt.gov/files/Land/CoalUranium/Annual%20Reports/AR%20Report_2019.pdf (p. 3), available at: <https://deq.mt.gov/mining/resources>.

From July 1, 2018 through June 30, 2019, issued one coal mine permit application and had a second application pending. From July 1, 2018 through June 30, 2019, DEQ issued one amendment/major revision and had three such applications pending for existing mining permits. During this same time period, DEQ issued two renewals to coal mining permits. *See* DEQ 2019 Coal Mining Annual Report, https://deq.mt.gov/files/Land/CoalUranium/Annual%20Reports/AR%20Report_2019.pdf (p. 4-5), available at: <https://deq.mt.gov/mining/resources>.

From January 1, 2018 through December 31, 2018, DEQ permitted 74,181 acres of coal mining in Montana, with active mining occurring on 11,412.27 of those acres. *See* DEQ 2019 Coal Mining Annual Report, https://deq.mt.gov/files/Land/CoalUranium/Annual%20Reports/AR%20Report_2019.pdf (p. 6), available at: <https://deq.mt.gov/mining/resources>.

From July 1, 2018 through June 30, 2019, DEQ permitted 396 acres of coal prospecting in Montana. *See* DEQ 2019 Coal Mining Annual Report, https://deq.mt.gov/files/Land/CoalUranium/Annual%20Reports/AR%20Report_2019.pdf (p. 15), available at: <https://deq.mt.gov/mining/resources>.

From July 1, 2017 through June 30, 2018, DEQ permitted 75,339 acres of coal mining in Montana, with such acreage subject to \$461,988,498.80 in bonds. *See* DEQ 2018 Coal Mining Annual Report, https://deq.mt.gov/files/Land/CoalUranium/Annual%20Reports/AR%20Report_2018.pdf (p. 2), available at: <https://deq.mt.gov/mining/resources>.

From July 1, 2017 through June 30, 2018, DEQ permitted seven active coal mining companies and six active coal prospecting companies. *See* DEQ 2018 Coal Mining Annual Report, https://deq.mt.gov/files/Land/CoalUranium/Annual%20Reports/AR%20Report_2018.pdf (p. 3), available at: <https://deq.mt.gov/mining/resources>.

From July 1, 2017 through June 30, 2018, DEQ had two pending coal mine permit applications, four pending amendments and/or major revisions to existing mine permits, issued one amendment and/or major revision to an existing mine permit, and approved six renewals and/or transfers to existing mine permits. *See* DEQ 2018 Coal Mining Annual Report, https://deq.mt.gov/files/Land/CoalUranium/Annual%20Reports/AR%20Report_2018.pdf (p. 4-5), available at: <https://deq.mt.gov/mining/resources>.

From January 1, 2017 through December 31, 2017, DEQ permitted 75,219 acres of coal mining in Montana, with active mining occurring on 10,998.8 of those acres. *See* DEQ 2018 Coal Mining Annual Report, https://deq.mt.gov/files/Land/CoalUranium/Annual%20Reports/AR%20Report_2018.pdf (p. 6), available at: <https://deq.mt.gov/mining/resources>.

From July 1, 2017 through June 30, 2018, DEQ permitted coal prospecting on 572 acres of land in Montana. *See* DEQ 2018 Coal Mining Annual Report, https://deq.mt.gov/files/Land/CoalUranium/Annual%20Reports/AR%20Report_2018.pdf (p. 15), available at: <https://deq.mt.gov/mining/resources>.

From July 1, 2016 through June 30, 2017, DEQ permitted 76,590 acres of coal mining in Montana, with such acreage subject to \$453,556,546.80 in bonds. *See* DEQ 2017 Coal Mining Annual Report, https://deq.mt.gov/files/Land/CoalUranium/Annual%20Reports/AR%20Report_2017.pdf (p. 3), available at: <https://deq.mt.gov/mining/resources>.

From July 1, 2016 through June 30, 2017, DEQ permitted seven active coal mining companies and six active coal prospecting companies. During that same time period, DEQ had two pending new coal mining permit applications. *See* DEQ 2017 Coal Mining Annual Report, https://deq.mt.gov/files/Land/CoalUranium/Annual%20Reports/AR%20Report_2017.pdf (p. 4), available at: <https://deq.mt.gov/mining/resources>.

From July 1, 2016 through June 30, 2017, DEQ had four pending amendments and/or major revisions to existing mining permits and four pending renewals and/or transfers of existing mining permits. *See* DEQ 2017 Coal Mining Annual Report, https://deq.mt.gov/files/Land/CoalUranium/Annual%20Reports/AR%20Report_2017.pdf (p. 5-6), available at: <https://deq.mt.gov/mining/resources>.

From January 1, 2016 through December 31, 2016, DEQ permitted 76,780 acres of coal mining in Montana, with active mining occurring on 11,032 of such acres. *See* DEQ 2017 Coal Mining Annual Report, https://deq.mt.gov/files/Land/CoalUranium/Annual%20Reports/AR%20Report_2017.pdf (p. 7), available at: <https://deq.mt.gov/mining/resources>.

From July 1, 2016 through June 30, 2017, DEQ permitted 572 acres of coal prospecting in Montana. *See* DEQ 2017 Coal Mining Annual Report, https://deq.mt.gov/files/Land/CoalUranium/Annual%20Reports/AR%20Report_2017.pdf (p. 24), available at: <https://deq.mt.gov/mining/resources>.

A registration program regulates the majority of air quality emissions sources at opencut mining sites through operating limitations. *See* DEQ, Frequently Asked Questions About Air Quality Impacts from

		<p>Opencut Sites, https://deq.mt.gov/files/Land/OpenCut/Forms/2021-DEQAIRFAQ.pdf (p. 2), available at: https://deq.mt.gov/mining/resources.</p> <p>DEQ requires a Montana air quality permit for larger opencut mining operations which are unable to operate below the registration program limits. <i>See</i> DEQ, Frequently Asked Questions About Air Quality Impacts from Opencut Sites, https://deq.mt.gov/files/Land/OpenCut/Forms/2021-DEQAIRFAQ.pdf (p. 2), available at: https://deq.mt.gov/mining/resources.</p> <p>The main air quality pollutants from diesel engines, asphalt plants, and concrete plants are nitrogen oxide (NO_x), carbon monoxide (CO), sulfur dioxide (SO₂) and dust (PM including PM₁₀). <i>See</i> DEQ, Frequently Asked Questions About Air Quality Impacts from Opencut Sites, https://deq.mt.gov/files/Land/OpenCut/Forms/2021-DEQAIRFAQ.pdf (p. 2), available at: https://deq.mt.gov/mining/resources.</p> <p>PM, PM₁₀, NO_x, CO, and SO₂ from engines used at opencut mines must meet EPA vehicle emission standards and nonroad diesel fuel limits. <i>See</i> DEQ, Frequently Asked Questions About Air Quality Impacts from Opencut Sites, https://deq.mt.gov/files/Land/OpenCut/Forms/2021-DEQAIRFAQ.pdf (p. 1), available at: https://deq.mt.gov/mining/resources.</p> <p>PM, PM₁₀, NO_x, and CO from asphalt plant hot mix dryers and drums can be controlled through good combustion practices, low NO_x burners, and the use of particulate control devices such as baghouses. <i>See</i> DEQ, Frequently Asked Questions About Air Quality Impacts from Opencut Sites, https://deq.mt.gov/files/Land/OpenCut/Forms/2021-DEQAIRFAQ.pdf (p. 1), available at: https://deq.mt.gov/mining/resources.</p>
<p>[Plaintiffs' First Discovery Requests to Defendants, dated April 20, 2022] "Interrogatory No. 21: Please identify the total number of acres of land in Montana (including private, state, tribal, and federal) that have been used, are presently being used, have been permitted for use, or</p>	<p>[Defendants' Responses to Plaintiffs' First Discovery Requests, dated May 20, 2022] "ANSWER: There are currently 419,199 mineral interest acres managed by the Trust Land Management Division being leased. The amount of State land surface acres managed by the Trust Land Management Division overlying the mineral leases is 364,945 acres. Defendants do not know how many private, tribal, or federal acres are being</p>	<p>There are currently 419,199 mineral interest acres managed by the Trust Land Management Division being leased.</p> <p>The amount of State land surface acres managed by the Trust Land Management Division overlying the mineral leases is 364,945 acres.</p>

will be used (if pending applications for expansion are approved) for oil and gas exploration, extraction, or development.”

used for the purposes describes in Interrogatory No. 21.”

[Plaintiffs’ First Discovery Requests to Defendants, dated April 20, 2022]
“Interrogatory No. 22:
 Please identify how much money the State of Montana has spent fighting wildfires each year since 1993.”

[Defendants’ Second Supplemental Responses to Plaintiffs’ First Discovery Requests, dated July 25, 2022]

“Information from 2000 forward is provided below:

Fiscal Year	Total Cost	Reimbursements	Net C
2000	\$5,205,614	(\$914,375)	\$4,29
2001	\$54,925,104	(\$44,784,017)	\$10,1
2002	\$16,417,193	(\$3,549,700)	\$12,8
2003	\$6,710,688	(\$4,684,927)	\$2,02
2004	\$79,579,965	(\$44,582,841)	\$34,9
2005	\$3,969,096	(\$989,945)	\$2,97
2006	\$8,302,312	(\$3,240,042)	\$5,06
2007	\$61,000,318	(\$21,290,928)	\$39,7
2008	\$108,152,537	(\$56,757,219)	\$51,3
2009	\$10,082,885	(\$3,211,351)	\$6,87
2010	\$6,695,714	(\$1,047,748)	\$5,64
2011	\$3,293,346	(\$807,571)	\$2,48
2012	\$20,357,103	(\$3,596,721)	\$16,7
2013	\$71,224,976	(\$14,000,275)	\$57,2
2014	\$19,658,832	(\$8,038,987)	\$11,6
2015	\$7,424,542	(\$2,785,577)	\$4,63
2016	\$22,383,119	(\$6,567,112)	\$15,8
2017	\$23,434,460	(\$4,805,918)	\$18,6
2018	\$84,599,076	(\$19,259,129)	\$65,3
2019	\$12,039,499	(\$5,304,523)	\$6,73
2020	\$18,637,883	(\$7,086,790)	\$11,5

The State of Montana has spent millions of dollars each year since 2000 in order to fight wildfires, as follows:

Fiscal Year	Total Cost	Reimbursements	Net Cost
2000	\$5,205,614	(\$914,375)	\$4,291,239
2001	\$54,925,104	(\$44,784,017)	\$10,141,087
2002	\$16,417,193	(\$3,549,700)	\$12,867,493
2003	\$6,710,688	(\$4,684,927)	\$2,025,761
2004	\$79,579,965	(\$44,582,841)	\$34,997,124
2005	\$3,969,096	(\$989,945)	\$2,979,151
2006	\$8,302,312	(\$3,240,042)	\$5,062,270
2007	\$61,000,318	(\$21,290,928)	\$39,709,390
2008	\$108,152,537	(\$56,757,219)	\$51,395,318
2009	\$10,082,885	(\$3,211,351)	\$6,871,534
2010	\$6,695,714	(\$1,047,748)	\$5,647,966
2011	\$3,293,346	(\$807,571)	\$2,485,775
2012	\$20,357,103	(\$3,596,721)	\$16,760,382
2013	\$71,224,976	(\$14,000,275)	\$57,224,701
2014	\$19,658,832	(\$8,038,987)	\$11,619,844
2015	\$7,424,542	(\$2,785,577)	\$4,638,965
2016	\$22,383,119	(\$6,567,112)	\$15,816,007
2017	\$23,434,460	(\$4,805,918)	\$18,628,542
2018	\$84,599,076	(\$19,259,129)	\$65,339,947
2019	\$12,039,499	(\$5,304,523)	\$6,734,976
2020	\$18,637,883	(\$7,086,790)	\$11,551,093

[Plaintiffs’ Third Discovery Requests to Defendants, dated November 18, 2022]
“Request for Production No. 35: Please produce each and every climate scenario projection(s) referenced on page 2 of Exhibit A-Curry Report produced, developed, created, authored, or compiled by Dr. Judith

[Defendants’ Responses to Plaintiffs’ Third Discovery Requests, dated December 15, 2022] **“RESPONSE:**
 Defendants object to this Request for Production as outside the scope of Mont. R. Civ. P. 26(b)(4)(A), which provides: “Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (b)(1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows: (i) A party

CFAN has not produced any regional scenarios for Montana. CFAN’s regional climate scenarios do not serve as the basis for any of the arguments presented in Dr. Curry’s Expert Report.

<p>Curry's Climate Forecast Applications Network, LLC. since 2016."</p>	<p>may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion; (ii) A party may depose any person who has been identified as an expert whose opinions may be presented at trial." (Emphasis supplied). Defendants further object to this Request on the grounds that CFAN's regional scenarios of future climate variability and change are propriety. They are the property of CFAN's clients who have paid for them. Subject to and without waiving this objection, please see the information found at https://www.cfanclimate.net/climate-change. No regional scenarios for Montana have been produced by CFAN. CFAN's regional climate scenarios do not serve as the basis for any of the arguments presented in Dr. Curry's Expert Report."</p>	
<p>[Plaintiffs' Third Discovery Requests to Defendants, dated November 18, 2022] "Request for Production No. 36: Please produce each and every impact assessment referenced on page 2 of Exhibit A-Curry Report produced, developed, created, authored, or compiled by Dr. Judith Curry's Climate Forecast Applications Network, LLC. since 2016."</p>	<p>[Defendants' Responses to Plaintiffs' Third Discovery Requests, dated December 15, 2022] "RESPONSE: Defendants object to this Request for Production as outside the scope of Mont. R. Civ. P. 26(b)(4)(A), which provides: "Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (b)(1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows: (i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion; (ii) A party may depose any person who has been identified as an expert whose opinions may be presented at trial." (Emphasis supplied). Defendants further object to this Request on the grounds that CFAN's regional scenarios of future climate variability and change are propriety. They are the property of CFAN's clients who have paid for them.</p>	<p>CFAN has not produced any regional scenarios for Montana. CFAN's regional climate scenarios do not serve as the basis for any of the arguments presented in Dr. Curry's Expert Report.</p>

	<p>Subject to and without waiving this objection, please see the information found at https://www.cfanclimate.net/climate-change. No regional scenarios for Montana have been produced by CFAN. CFAN's regional climate scenarios do not serve as the basis for any of the arguments presented in Dr. Curry's Expert Report."</p>	
Statement of Agreed Facts based on Defendants' 30(b)(6) Depositions		
Deponent	Transcript	Agreed Fact
<p>Dave Klemp</p>	<p>Q. Okay. So you just spoke to what sounded like a -- an internal state effort to -- I think you used the term to "reduce the footprint." Is that -- am I characterizing what you said correctly? A. Governor Schweitzer's 20 percent reduction by 2010 initiative. Q. And what was the need for that reduction as you understood it? A. As I understood it, it was to reduce some of the greenhouse gas emissions from at least a portion of a sector. Q. And was that in response to climate change? A. I believe -- yes. At some level, yes. Yes. Q. Okay. Would you agree that DEQ was aware of the existence of climate change at the time of this meeting? A. I would say DEQ was certainly aware of the argument surrounding climate change.</p> <p>Klemp 30(b)(6) Dep. 42:15-43:9.</p>	<p>DEQ was aware of the existence of climate change in 2010.</p>
<p>Dave Klemp</p>	<p>Q. Okay. Would you agree that this document, this document being the Highwood Generating Station final EIS, demonstrates that DEQ had knowledge of the reality and existence of climate change? MS. McKENNA: Objection. Compound question. BY MS. HORNBEIN: Q. Okay. Let me try and rephrase that. As we do that, I'll direct you to page 3-25, and you should have a tab for that one as well. A. Okay. Q. Do you agree that this EIS demonstrates that DEQ had knowledge of the existence of climate change? A. Is there a particular section that you're referring to here?</p>	<p>In 2006, DEQ had knowledge of the fact that burning fossil fuels releases carbon that has been stored underground for tens of millions of years into the atmosphere in the form of carbon dioxide, the dominant gas contributing to an enhanced greenhouse effect and that equilibrium in the natural carbon cycle is disrupted when large amounts of carbon dioxide are released into the atmosphere by human activities such as the burning of fossil fuels.</p>

	<p>Q. For example -- and I'm referring to the EIS generally, but in particular on page 3-25, there's -- do you see the -- the box on the right-hand side of the page?</p> <p>A. Yes, I do.</p> <p>Q. And under carbon dioxide CO2 it says "Burning fossil fuels releases carbon that has been stored underground for tens of millions of years into the atmosphere in the form of carbon -- carbon dioxide, the dominant gas contributing to an enhanced greenhouse effect. Equilibrium in the natural carbon cycle is disrupted when large amounts of carbon dioxide are released into the atmosphere by human activities such as the burning of fossil fuels, citing EPA 2003 D." Did I read that correctly?</p> <p>A. Yes.</p> <p>Q. Do you believe that -- do you understand that DEQ had knowledge of what I just read in that statement?</p> <p>A. I believe DEQ had knowledge of what was in this statement, yes.</p> <p>Q. Okay. Do you agree that DEQ had knowledge of the physical processes that this statement is talking about?</p> <p>A. Yes. I believe that to be true.</p> <p>Klemp 30(b)(6) Dep. 77:5-78:20.</p>	
Dave Klemp	<p>Q. And does DEQ agree that it has authorized, permitted, and encouraged the combustion of fossil fuels?</p> <p>A. No, I do not.</p> <p>Q. What is the source of your disagreement?</p> <p>A. Starting with the -- the first term, the -- the term "authorization" is challenging for me.</p> <p>Q. Uh-huh.</p> <p>A. Issuing air quality permit allows certain activities provided compliance is demonstrated with those activities.</p> <p>Q. So are you stating that your understanding of authorization is different from allowance subject to certain requirements?</p> <p>A. Yes. And I'm speaking specifically for the air quality permit. There may be other programs there --</p> <p>Q. Sure.</p> <p>A. -- use different terms.</p>	DEQ permits fossil fuel extraction and combustion.

	<p>Q. Okay. A. Yes.</p> <p>Q. Any other sources of disagreement with those statements? A. I would agree that, you know, we permit fossil fuel extraction and combustion. I don't agree with the word "encouraged."</p> <p>Klemp 30(b)(6) Dep. 122:19-123:19.</p>	
Dave Klemp	<p>Q. Okay. Does DEQ agree that these activities -- fossil fuel extraction, transportation, and combustion -- generate greenhouse gas emissions? A. I believe these activities could generate greenhouse gas emissions.</p> <p>Q. Okay. Does DEQ agree that these activities -- fossil fuel generation or -- excuse me -- fossil fuel extraction, transportation, and combustion -- by producing greenhouse gas emissions contribute to climate change? A. I can't say that, no. MS. McKENNA: I'll object to that as a compound question, if you could break it down, please. BY MS. HORNBEIN: Q. Okay. Does DEQ agree that fossil fuel extraction produces greenhouse gas emissions? A. Fossil fuel extraction could produce greenhouse gas emissions.</p> <p>Klemp 30(b)(6) Dep. 124:2-20.</p>	DEQ knows that fossil fuel extraction, transportation, and combustion could generate and produce GHG emissions.
Dave Klemp	<p>Q. Okay. Would you agree that the emission of some greenhouse gases contributes to the phenomenon of climate change? A. I would agree that some do, yes.</p> <p>Q. Okay. So would DEQ have been aware that the burning of 2.7 million tons of coal would lead to greenhouse gas emissions that would contribute to climate change? A. I do believe that DEQ would believe that combusting that amount of coal would lead to greenhouse gas emissions. Whether or not it contributed to climate change would be in the relative percentages and how the word "contribute" is defined.</p> <p>Klemp 30(b)(6) Dep. 68:11-24.</p>	<p>DEQ agrees that emission of some GHGs contribute to climate change.</p> <p>DEQ is aware that burning of 2.7 million tons of coal leads to GHG emissions.</p>

<p>Dave Klemp</p>	<p>Q. Is a permit modification a more involved process than a permit amendment? A. Depending upon the application. Generally, yes.</p> <p>Q. Okay. Is the permit amendment that this document refers to different from the permit that was -- in terms of the process required, is it different from the permit that was originally issued to this facility when it opened? A. Yes. It would have been different.</p> <p>Q. How would it have been different? A. For a new facility that does not have an air quality permit that is proposing to locate or operate in the state, there is a -- there is a more involved application and regulatory review process as well as public comment. Appeal periods might be different, and also the Montana Environmental Policy Act compliance would be different.</p> <p>Q. Would the Montana Environmental Policy Act compliance for this permit amendment have required MEPA review? A. Permit amendments are administrative or ministerial actions and, therefore, exempt from further review under MEPA.</p> <p>Klemp 30(b)(6) Dep. 81:17-82:15.</p>	<p>DEQ admits that permit amendments are considered administrative or ministerial actions and, therefore, are exempt from further review under MEPA.</p>
<p>Dave Klemp</p>	<p>Q. Okay. And would that analysis have been as a part of the issuance of the initial Title V permit, the initial Montana air quality permit, or both, if you know? A. I would need to look at the record for the issuance of the Montana air quality permit which goes back decades --</p> <p>Q. Uh-huh. A. -- and the final operating permit. What I was referring to, I -- I know we did analyze those in accordance with the clean power plan when we were working on that.</p> <p>Q. Okay. But that analysis does not occur during the course of a renewal such as the one that you were just looking at? A. The renewal for the operating permit would generally not have any analysis of emissions.</p> <p>Klemp 30(b)(6) Dep. 96:24-97:15.</p>	<p>DEQ admits that operating permit renewals would generally not have any analysis of emissions.</p>

<p>Dave Klemp</p>	<p>Q. Okay. And when the renewal happens, is that process subject to MEPA review? A. Title V is not subject to MEPA review. Q. What about the Montana air quality permit? A. Certain Montana air quality permits, as we discussed earlier, are subject to MEPA. Q. Okay. Was this one? A. This is a permit amendment. It was not - - it's considered an administrative action. Q. Okay. So not subject to MEPA? A. Not subject to MEPA. Q. Okay. Could an electric generating station such as the Colstrip Steam Electric Station operate in Montana without an air quality permit from DEQ? A. Could. Not legally.</p> <p>Klemp 30(b)(6) Dep. 96:2-17.</p>	<p>DEQ admits Title V permit renewals are not subject to MEPA review.</p> <p>DEQ admits permit amendments are considered administrative action not subject to MEPA review.</p> <p>DEQ admits that electric generating stations, such as the Colstrip Steam Electric Station, cannot operate legally in Montana without an air quality permit from DEQ.</p>
<p>Dave Klemp</p>	<p>Q. Okay. So was this -- do Montana air quality permits have a periodic renewal process that has to occur? A. No, they do not.</p> <p>Klemp 30(b)(6) Dep. 99:23-25.</p>	<p>Montana air quality permits do not have a periodic renewal process that has to occur.</p>
<p>Dave Klemp</p>	<p>Q. Do you have any reason to believe this document is not a true and correct copy of section 75-2-102 of the Montana Code Annotated? A. Not as I sit here now, no. Q. Looking to part 1 of the statute, it reads: "The legislature, mindful of its constitutional obligations under Article 2, Section 3 and Article 9 of the Montana Constitution, has enacted the Clean Air Act of Montana. It is the legislature's intent that the requirements of parts 1 through 4 of this chapter provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources." Did I read that correctly? A. Yes. I believe you did. Q. What is DEQ's understanding of that section that I just read you? A. My understanding of this particular section is that implementation of the Clean Air Act of Montana helps, I guess, satisfy</p>	<p>DEQ admits implementation of the Montana Clean Air Act helps DEQ satisfy its constitutional obligations under the Montana Constitution.</p> <p>DEQ admits Section 75-2-102 of the Montana Code Annotated could apply to DEQ.</p>

	<p>our constitutional obligations under the Montana Constitution.</p> <p>Q. Okay. Does the section that I just read to you, subsection 1, apply to DEQ?</p> <p>A. It is part of -- it is the intent of the Clean Air Act of Montana, so there are some things in there that apply maybe to the department. So it could.</p> <p>Klemp 30(b)(6) Dep. 142:16-143:18.</p>	
Dave Klemp	<p>Q. Okay. Does the Montana Constitution apply to DEQ decisions made under the Montana Clean Air Act?</p> <p>MS. McKENNA: Objection. Calls for a legal conclusion.</p> <p>BY MS. HORNBEIN:</p> <p>Q. You can go ahead and answer if you can.</p> <p>A. My answer would be the Clean Air Act is the statute -- one of the statutes that guides our actions to comply with the Montana Constitution.</p> <p>Q. Okay. Do Article 2, Section 3 and Article 9 of Montana's Constitution apply to DEQ decisions made under the Montana Clean Air Act?</p> <p>MS. McKENNA: Objection. Calls for a legal conclusion.</p> <p>THE WITNESS: I would phrase it very similarly in that the decision -- the Clean Air Act of Montana and its implemented rules as well as some other statutes guide our decision-making to comply with the Montana Constitution.</p> <p>Klemp 30(b)(6) Dep. 144:19-145:13.</p>	<p>DEQ admits the Montana Clean Air Act is one of the statutes that guides DEQ's actions to comply with the Montana Constitution.</p> <p>DEQ admits the Montana Clean Air Act and its implementing rules help to guide DEQ in complying with the Montana Constitution.</p>
Dave Klemp	<p>Q. Got it. Do Article 2, Section 3 and Article 9 of Montana's Constitution apply to DEQ decisions made under MEPA?</p> <p>MS. McKENNA: Objection. Calls for a legal conclusion.</p> <p>THE WITNESS: I believe MEPA has a very similar intent and policy purpose written in front of that section of code. So I believe it would be the same answer, that in implementing our -- the MEPA obligations, under a certain action is one of the statutes that we follow to comply with the Montana Constitution.</p> <p>Klemp 30(b)(6) Dep. 145:15-25.</p>	<p>DEQ admits that DEQ's implementing its MEPA obligations under a particular proposed action is one of the statutes DEQ follows to comply with the Montana Constitution.</p>

Dave Klemp	<p>Q. Was your work influenced by MEPA? A. Yes. We were required -- one of the statutes that we administer as -- as a bureau and as a section was the Montana Environmental Policy Act associated with certain permit decisions.</p> <p>Klemp 30(b)(6) Dep. 31:6-10.</p>	DEQ admits that the work of DEQ Air Quality Bureau administers MEPA with certain permit decisions.
Dave Klemp	<p>Q. Okay. Prior to issuance -- strike that. Was this EIS for the Roundup power project issued while you were at DEQ? A. Yes, it was.</p> <p>Q. And was it when you were in your capacity as bureau chief? A. No, it was not.</p> <p>Q. And what was your role at the time that this document was issued? A. Air quality permit supervisor.</p> <p>Q. Okay. Were you involved with working on this EIS? A. Yes, I was.</p> <p>...</p> <p>Q. Okay. Do you recollect what the greenhouse gas emissions from this project were? A. Not off the top of my head.</p> <p>Q. Fair enough. Did DEQ ever evaluate the emissions that would result from the operation of this power plant? A. When you say evaluate and emissions, can you please be more specific?</p> <p>Q. Did DEQ ever quantify and record the projected greenhouse gas emissions that would have occurred as a result of this project being developed? A. I can't recall off the top of my head. I thought we had.</p> <p>Q. Okay. Is that something that DEQ would typically have done for a power project of this nature? A. Typically, yes.</p> <p>Q. Okay. Do you know if DEQ ever analyzed how this Roundup power project would affect human health when it was operational? A. I believe we did analyze certain aspects of it for its impact of -- on human health.</p> <p>Q. And is that also something that would typically have been done for a project of this nature? A. Yes.</p> <p>Klemp 30(b)(6) Dep. 62:12-64:12.</p>	<p>DEQ admits that an environmental impact statement for a power plant in 2003 would typically have included an evaluation of the GHG emissions that would have resulted from the project's development.</p> <p>DEQ admits that an environmental impact statement for a power plant in 2003 would typically have included an analysis of the project's impact on human health.</p>

<p>Dave Klemp</p>	<p>Q. Okay. And with that hopefully memory refresher, do you agree that this EIS effectively allowed this project to burn that much coal per year, 2.7 million tons? A. No. I do not agree that the EIS allowed. Q. Okay. What's the basis of your disagreement? A. The MEPA document is generally attached to a permitting decision and is -- it is the permit that contains the allowable emission or limitations, the -- the allowances for a specific company, not the EIS.</p> <p>Klemp 30(b)(6) Dep. 66:12-23.</p>	<p>DEQ admits that a permit, not the EIS, is the document which contains the allowable emissions or limitations (i.e., allowances) for each specific company.</p>
<p>Dave Klemp</p>	<p>Q. Okay. Could the Roundup power project have begun operation without DEQ's -- well, in this instant, without issuance of a final EIS? A. They could not have begun operation legally without the issuance of a final air quality permit. Q. And is a final air quality permit contingent on issuance of a final EIS or other MEPA analysis? A. The agency needs to ensure compliance with MEPA when issuing the documents. Sometimes when permits are issued versus when final EISs or records of decisions are issued, they're not the same days, not the same dates. Q. Does -- but it sounds like -- let me know if I have this correct -- that in order to issue a permit, MEPA needs to have been complied with? A. For this particular permit, yes.</p> <p>Klemp 30(b)(6) Dep. 70:5-10.</p>	<p>DEQ admits the Roundup Power Project could not have legally operated without issuance of the final air quality permit from DEQ.</p> <p>In order to issue Roundup Power Project air quality permit, DEQ needed to ensure compliance with MEPA.</p>
<p>Dave Klemp</p>	<p>Q. Okay. Does looking at this document refresh your memory at all as to whether and to what extent DEQ conducted a greenhouse gas analysis? A. Yes, it does. Q. Okay. And what is your response to that question? A. During this time, we did assess particularly from this particular plant an analysis, the amount of emissions that would be associated with this plant.</p> <p>Klemp 30(b)(6) Dep. 75:6-15.</p>	<p>In 2006, prior to the 2011 MEPA amendments, DEQ's MEPA analysis for power plants such as Highwood Generation Station included analysis of the amount of GHG emissions that would be associated with the plant.</p>

<p>Dave Klemp</p>	<p>Q. Okay. How does DEQ prepare permits of this type? A. This type is a permit amendment -- Q. Okay. A. -- which is requested by the company, and it is for various changes; generally speaking, operational changes that don't increase emissions or if they increase emissions, they're less than de minimis levels. THE REPORTER: Less than -- THE WITNESS: De minimis levels. THE REPORTER: Thank you. THE WITNESS: I apologize. And so the preparation of this is different than some of the other types of permits. We issue a department decision that then goes for an appeal period to the company only before it goes final. BY MS. HORNBEIN: Q. Okay. So when you say it goes to an appeal period for the company only, it is not put out for public comment, for example? A. That is correct.</p> <p>Klemp 30(b)(6) Dep. 80:4-25.</p>	<p>DEQ handles and processes permit amendments differently than original permit applications.</p>
<p>Dave Klemp</p>	<p>Q. Okay. Do you agree with the allegation that the 2016 air quality permit DEQ issued to the Bull Mountain Mine authorizes it to produce 15 million tons of coal during any rolling 12-month period? And I'm referring here to page 1 under section 2. A. Can you -- that is a very long one. Right? Q. Sure. A. And there's the term "authorizes." Can you please reread at least that first part of that? Q. Yes. Would you agree that this permit for the Bull Mountain Mine authorizes the mine to produce 15 million tons of coal during any rolling 12-month period. Does that help? A. I believe this permit allows the company to do that without being out of compliance with this specific permit condition.</p> <p>Klemp 30(b)(6) Dep. 86:14-87:6</p>	<p>DEQ admits that the air quality permit for the Bull Mountain Mine authorizes the mine to produce 15 million tons of coal during any rolling 12-month period without being out of compliance with this specific permit condition.</p>

<p>Dave Klemp</p>	<p>Q. Okay. This is an air quality permit, though. It's just the renewal of that existing permit. Is that right? A. This is a renewal of the final operating permit. Q. Okay. A. For Talen. Q. Okay. And how is -- how is the process for this document different from the issuance of an air quality permit? A. I'll -- I'll try to be pretty high level. Q. Okay. A. The Montana air quality permit, which is the permit that is issued that authorizes the construction and subsequent operation according to the conditions, establishes the applicable requirements. The operating permit program is essentially an umbrella document where all applicable requirements are pulled into that document. It does not establish substantive new requirements and generally ensures the appropriate monitoring, recordkeeping, and reporting compliance for that facility. Q. And does the renewal process happen every five years? A. The company is required to apply. Sometimes it takes the agency longer to process the application. So you won't see the permits issued, generally speaking, five years apart. Q. Does the renewal process entail MEPA analysis? A. No, it does not.</p> <p>Klemp 30(b)(6) Dep. 88:21-90:2.</p>	<p>The Montana air quality permit, which is the permit that is issued that authorizes the construction and subsequent operation according to the conditions, establishes the applicable requirements. The operating permit program is essentially an umbrella document where all applicable requirements are pulled into that document. It does not establish substantive new requirements and generally ensures the appropriate monitoring, recordkeeping, and reporting compliance for that facility.</p> <p>The renewal process of the final operating permit does not entail MEPA analysis.</p>
<p>Dave Klemp</p>	<p>Q. Is that like at the time that the steam electric station was built? I'm just curious as to when that more extensive review happens. A. Okay. So these permits very quickly are -- the operating permits are issued every five years. Q. Okay. A. When the initial permit was issued, there was a very rigorous review to ensure that all applicable requirements and requirements otherwise applicable to the facility are included in that document as well as the appropriate compliance demonstrations. As it's renewed, the main focus is to ensure all applicable requirements remain as well as any new ones -- new applicable requirements that</p>	<p>Operating permits are issued every five years. When the initial permit is issued, there is a very rigorous review to ensure that all applicable requirements to the facility are included in that document as well as the appropriate compliance demonstrations. As the operating permit is renewed, the main focus is to ensure all applicable requirements remain as well as any new applicable requirements that may have been developed through the course of the intervening five-year period.</p>

	<p>may have been developed through the course of the intervening five-year period.</p> <p>Klemp 30(b)(6) Dep. 95:11-96:1.</p>	
Dave Klemp	<p>Q. Okay. What other events might trigger a renewal of a Montana air quality permit as opposed to a Title V permit?</p> <p>A. There would be nothing that would trigger the renewal of an air quality -- of a Montana air quality permit.</p> <p>Q. Okay.</p> <p>A. Those are not renewed.</p> <p>Q. Okay. Excuse me. What else would trigger an amendment to a Montana air quality permit?</p> <p>A. Generally speaking, is a changed condition of operation that does not result in an increase in emissions. Could fix errors in permits. Also there could be an increase as long as it's less than de minimis thresholds.</p> <p>Q. How are de minimis thresholds defined?</p> <p>A. They are defined by rule.</p> <p>Q. Do you know what they are off the top of your head?</p> <p>A. Five tons per year.</p> <p>Klemp 30(b)(6) Dep. 100:7-101:1.</p>	<p>Montana air quality permits are not renewed.</p> <p>Increase in emissions under 5 tons per year allowed without triggering need for air quality permit amendment.</p>
Dave Klemp	<p>Q. Okay. Could Westmoreland Rosebud Mining operated the Rosebud Mine without an air quality permit from DEQ?</p> <p>A. They would need -- at their threshold they would need an air quality permit to legally operate it.</p> <p>Klemp 30(b)(6) Dep. 101:2-7.</p>	<p>Westmoreland Rosebud Mining could not operate the Rosebud Mine without an air quality permit from DEQ.</p>
Dave Klemp	<p>Q. Okay. Could Northwestern Energy operate the Belfry compressor station without an air quality permit from DEQ?</p> <p>A. Not legally.</p> <p>Klemp 30(b)(6) Dep. 108:4-7.</p>	<p>Northwestern Energy could not operate the Belfry compressor station without an air quality permit from DEQ.</p>
Dave Klemp	<p>Q. Okay. Does DEQ track or keep track of the amount of greenhouse gas emissions that come from the facilities that it issues permits to?</p> <p>A. I'm not aware of any greenhouse gas tracking across the facilities we issue permits to.</p>	<p>DEQ does not keep track of the amount of GHG emissions that come from the facilities that DEQ issues permits to.</p>

	Klemp 30(b)(6) Dep. 110:22-111:1.	
Dave Klemp	<p>Q. Who ensures that TrueNorth Steel is complying with the terms of its permit? A. There are multiple entities that ensure compliance with air quality permits.</p> <p>Q. What are some examples of those entities? A. The primary is Montana DEQ.</p>	DEQ is the primary entity that ensures compliance with air quality permits.
	Klemp 30(b)(6) Dep. 116:2-7.	
Dave Klemp	<p>Q. All right. What are DEQ's general responsibilities with respect to its authorization of fossil fuel extraction? A. I can only speak to the air quality bureau --</p> <p>Q. Uh-huh. A. -- in terms of our obligations are to follow our statutory requirements as well as the implementing requirements that may be in a rule regarding these facilities.</p> <p>Q. And what are DEQ's general responsibilities with respect to its -- to the extent that it authorizes the transportation of fossil fuels, what are its responsibilities with respect to such authorization or permitting, if you prefer that term? A. It would be the same. It would be to follow all the statutes appropriately and the implementing ones appropriately before we issued a permit for those facilities.</p> <p>Q. Okay. And same thing for combustion? A. Yes.</p>	DEQ's air quality bureau has the obligation to follow statutory requirements and implementing requirements when permitting fossil fuel extraction.
	Klemp 30(b)(6) Dep. 127:8-17.	
Dave Klemp	<p>Q. Okay. What is DEQ's understanding of the phrase, quote, achieve and maintain levels of air quality that will protect human health and safety, end quote? A. I believe the meaning of this is that they want the state of Montana to be in compliance with the ambient air quality standards.</p>	DEQ's understanding of the phrase "achieve and maintain levels of air quality that will protect human life" from Mont. Code Ann. § 75-2-102 is that the State of Montana must be in compliance with the ambient air quality standards.
	Klemp 30(b)(6) Dep. 148:8-14.	
Dave Klemp	<p>Q. Okay. In what ways does Montana's Constitution inform DEQ's statutory obligation -- obligations under 75-2-102? A. I believe that, again, the Clean Air Act of Montana was enacted to satisfy the Montana Constitution, and, number two, is along those same veins. It is talking more</p>	DEQ believes the Montana Clean Air Act was enacted to satisfy the Montana Constitution.

	<p>specifically about achieving and maintaining levels -- levels of air quality that would protect human health. It is very similar.</p> <p>Klemp 30(b)(6) Dep. 155:2-11.</p>	
Chris Dorrington	<p>Q. You also then have been the division administrator. Is that -- excuse me -- the director of the Department of Environmental Quality. Is that correct?</p> <p>A. Yes.</p> <p>Q. And could you summarize your responsibilities in that position.</p> <p>A. Yes. As a director I lead a competent workforce of 400 environmental science engineering and operations professionals in -- in the Department of Environmental Quality. I implement state statute given the agency authority to do so, maintain relationships both internally and externally in order to efficiently and effectively accomplish those tasks. On the budgeting side, I'm responsible for our agency budget ultimately. Yeah.</p> <p>Dorrington 30(b)(6) Dep. 25:9-24.</p>	The Director of DEQ implements the state statute giving DEQ the authority to do so and is responsible for the agency budget.
Chris Dorrington	<p>Q. Are you familiar with this statute?</p> <p>A. Yes.</p> <p>Q. You agree that Montana has a state energy policy that's codified in MCA 90-4-1001?</p> <p>A. Yes.</p> <p>Q. Do you agree that defendant DEQ has a duty to comply with MCA 90-4-1001 of Montana state energy policy?</p> <p>MS. McKENNA: Objection. Calls for a legal conclusion.</p> <p>You can answer.</p> <p>THE WITNESS: Yes.</p> <p>BY MR. SULLIVAN:</p> <p>Q. You may still answer.</p> <p>A. So in reference to 90-4-1001, in -- under definitions of this title, the department would be referenced as Montana DEQ.</p> <p>Q. To confirm, do you agree that DEQ has a duty to comply with MCA 90-4-101 [sic]?</p> <p>MS. McKENNA: Objection. Calls for a legal conclusion.</p> <p>THE WITNESS: As with any other state law, the agency must follow that which is given, yes.</p>	<p>Montana has a state energy policy that is codified in MCA § 90-4-1001.</p> <p>DEQ has a duty to comply with MCA § 90-4-1001 of the Montana state energy policy.</p> <p>As with any other state law, DEQ must follow the law as given.</p>

Chris Dorrington	<p>Dorrington 30(b)(6) Dep. 27:12-28:9.</p> <p>Q. Would you explain to us how DEQ implements the policy set forth in MCA 90-4-1001?</p> <p>MS. McKENNA: Objection. Overbroad and vague.</p> <p>THE WITNESS: Would you like me to proceed?</p> <p>MS. McKENNA: If you understand the question.</p> <p>THE WITNESS: I can speak to how the state energy office housed within the Montana Department of Environmental Quality operates and the -- some of the programs. I'll probably limit my answer and then seek clarification.</p> <p>So within the Department of Environmental Quality, we house the state energy office, which is responsible for -- for work related to energy policy. This -- it's -- in practice it's -- it's referenced that the energy bureau -- the energy bureau is led by a professional and then bureau chief and section two provides our staff that then implement energy programs in the state that enact state policy. So -- and there are a handful of those. I'll let you lead where you want to go from there, I suppose.</p> <p>BY MR. SULLIVAN:</p> <p>Q. Okay. Mr. Dorrington, are you aware of any policies that -- that -- or laws that indicate that DEQ does not have to follow MCA 90-4-1001?</p> <p>MS. McKENNA: Objection. Calls for a legal conclusion.</p> <p>THE WITNESS: I'm not aware of any authority not to follow state law, no.</p> <p>Dorrington 30(b)(6) Dep. 29:9-30:14.</p>	<p>DEQ houses the state energy office, which is responsible for work related to energy policy. The energy bureau implements energy programs in the state that enact state policy.</p> <p>DEQ not aware of any authority allowing DEQ not to follow state law.</p>
Chris Dorrington	<p>Q. Are you familiar with this provision in MEPA [Mont. Code Ann. § 75-1-201(2)(a)]?</p> <p>A. Yes.</p> <p>Q. Do you have any knowledge under what circumstances this provision is used by defendant DEQ?</p> <p>A. The agency by -- by permitting and compliance activities, permitting primarily, would -- would be subject to this provision and is. So we do not look at -- in quote, actual or potential impacts beyond Montana's border, end quote.</p> <p>Q. You indicated that you use these statutory provisions in permitting and</p>	<p>DEQ admits that Mont. Code Ann. § 75-1-201(2)(a) [the MEPA Climate Change Exception] applies to its permitting activities.</p> <p>DEQ admits that Mont. Code Ann. § 75-1-201(2)(a) causes DEQ to not look at "actual or potential impacts beyond Montana's border" as a part of permitting decisions.</p> <p>DEQ admits that Mont. Code Ann. § 75-1-201(2)(a)'s prohibition on considering the "actual or potential impacts beyond Montana's border" is primarily used in the permitting of natural resource extraction and power generation.</p>

	<p>could you give more description of what permitting activities DEQ conducts that you apply this provision?</p> <p>A. Yeah. So primarily in the permitting of natural resource extraction and the permitting activities related to power generation.</p> <p>Dorrington 30(b)(6) Dep. 36:7-24.</p>	
Chris Dorrington	<p>Q. And in terms of the focus of our conversation today, sir, that has to do with -- my question was related to the permitting of fossil fuel extraction and fossil fuel combustion. Is that what you understood when you responded?</p> <p>A. Yes. So at the beginning -- I apologize. I provided you a compound answer. Yes. We conduct a MEPA analysis subject to (2)(a) for natural resource extraction and power generating facilities.</p> <p>Q. And so that analysis does not include a review of actual or potential impacts beyond Montana's borders, and it does not include actual or potential impacts that are regional, national, or global in nature?</p> <p>A. The department follows state law, yes.</p> <p>Dorrington 30(b)(6) Dep. 37:18-38:2.</p>	<p>DEQ's MEPA review for fossil fuel extraction and combustion activities (i.e., power generating facilities) does not include a review of impacts beyond Montana's borders and potential impacts that are regional, national, or global in nature.</p>
Chris Dorrington	<p>Q. Sir, in your experience, knowledge, and opinion, how would DEQ's MEPA analysis for fossil fuel projects of extraction and combustion be different if this restriction did not exist?</p> <p>A. Again, it would call for me to speculate. But if -- if the Montana State legislature were to pass a law that eliminated or edited (2)(a), then we would follow state law as we do now and include an analysis of potential -- actual or potential impacts beyond the border of the state.</p> <p>Q. Would that include, sir, an analysis of climate impacts from the extraction and combustion of fossil fuels in Montana?</p> <p>A. Again, you're asking me to speculate on what the law would be amended or changed to, but we would follow state law. If it included an amendment of the actual or potential impacts that are regional, national, or global, then yes.</p> <p>Dorrington 30(b)(6) Dep. 38:3-20.</p>	<p>If the restriction in Mont. Code Ann. § 75-1-201(2)(a) did not exist, DEQ would follow the law and would include an analysis, as part of DEQ's MEPA reviews, of a project's actual or potential impacts beyond the border of the state.</p> <p>If the restriction in Mont. Code Ann. § 75-1-201(2)(a) did not exist, DEQ would follow the law and would include an analysis, as part of DEQ's MEPA reviews, of the climate impacts from the extraction and combustion of fossil fuels in Montana.</p>
Chris Dorrington	<p>Q. And, sir, just for the record, what I'll do is I will read what paragraph 87</p>	<p>DEQ has an authority to enact all provisions of state law, which include the State Constitution, in addition</p>

	<p>states and then ask you some questions about it. Quoting paragraph 87. "Defendant DEQ has a constitutional duty to maintain and improve a clean and healthful environment for present and future generations. Defendant DEQ also has broad statutory authority to protect, sustain, and improve a clean and healthful environment to benefit present and future generations but has used its authority in a manner that has resulted in dangerous levels of GHG emissions." Did I read that correctly, Mr. Dorrington?</p> <p>A. I read your statement correctly -- or I heard your statement read correctly, yes.</p> <p>Q. Mr. Dorrington, do you agree that defendant DEQ has a constitutional duty to maintain and improve a clean and healthful environment for present and future generations?</p> <p>MS. McKENNA: Objection. Compound. There's multiple statements within that sentence.</p> <p>THE WITNESS: DEQ has an authority to enact all provisions of state law, which include the State Constitution. Contained within this sentence and in the paragraph are former elements of the agency mission statement, I believe, in addition to the clean and healthful provision of Article IX of the Constitution.</p> <p>Dorrington 30(b)(6) Dep. 43:11-44:13.</p>	<p>to the clean and healthful provision of Article IX of the Constitution.</p>
Chris Dorrington	<p>Q. Is there anything in paragraph 87 that you disagree with?</p> <p>A. Well, respectfully, I would probably rewrite parts of all of it, but I -- I don't feel sentence number two, defendant DEQ has broad authority to protect, sustain, and improve a clean and healthful environment, is a very -- using your own term, very broad statement. We have statutory authority as outlined in -- in state law and enacted by Montana state legislature. Activities include those that would generically protect, sustain, and improve to achieve Article IX of the -- of the State Constitution.</p> <p>Dorrington 30(b)(6) Dep. 44:15-45:2.</p>	<p>DEQ has statutory authority as outlined in state law and enacted by Montana state legislature. Activities include those that would generically protect, sustain, and improve to achieve Article IX of the State Constitution.</p>

Chris Dorrington	<p>Q. Well, then in terms of the coal mining permitting that DEQ does, is it true then that it does not analyze the greenhouse gas emissions that are attendant to the combustion of the coal that's mined? A. That's correct.</p> <p>Dorrington 30(b)(6) Dep. 48:14-19.</p>	When permitting coal mining activities, DEQ does not analyze the GHG emissions that result from the combustion of the coal that is mined.
Chris Dorrington	<p>Q. Does the amount of greenhouse gases emitted into the atmosphere have any effect on the mission of the Department of Environmental Quality? A. Yes. I would say -- so going back to the mission, a healthy environment for a thriving Montana is subject to emitters achieving and sustaining levels of emissions under state and federal statutory limits, so yes.</p> <p>Dorrington 30(b)(6) Dep. 56:9-16.</p>	DEQ's mission – to champion a healthy environment for a thriving Montana - is subject to emitters achieving applicable state and federal emission limits, including GHGs emissions.
Chris Dorrington	<p>Q. And could you explain what your understanding of those words "dangerous levels of greenhouse emissions" means? A. Well, first, I wouldn't agree with the sentence in any way. I don't believe DEQ's actions have contributed to dangerous levels of – GHG. . . . Q. Do you have an opinion as to what would constitute a dangerous level? A. I don't.</p> <p>Dorrington 30(b)(6) Dep. 56:22-57:16.</p>	DEQ has no opinion as to what would constitute a dangerous level of GHG emissions.
Chris Dorrington	<p>Q. Thank you, Mr. Dorrington. Do you agree with the allegations contained in paragraph 89? A. I -- I believe so. DEQ's role is definitely mandated to ensure that projects and activities as it issues permits, licenses, authorizations. I don't know what other approvals would be, and so I not include that. Comply with Montana's environmental laws and rules, yes. We are also responsible for enforcing compliance with our permits, yes.</p> <p>Dorrington 30(b)(6) Dep. 63:18-64:2.</p>	DEQ agrees with the allegations contained in paragraph 89 of the Complaint. DEQ's role is definitely mandated to ensure that projects and activities as it issues permits, licenses, authorizations, as well as to comply with Montana's environmental laws and rules. DEQ is also responsible for enforcing compliance with its permits.
Chris Dorrington	<p>Q. Mr. Dorrington, do you agree that defendant DEQ has permitted strip and underground coal mining operations and mining and prospecting activities that are causing dangerous amounts of greenhouse gas emissions? A. I do not.</p>	DEQ has permitted strip and underground coal mining operations and mining and prospecting activities.

	<p>Q. And what's the basis for your disagreement?</p> <p>A. I believe, as the sentence reads, the factual portion of that sentence is DEQ has permitted strip and underground mining -- coal mining operations and mining and prospecting activities, period. I don't believe we have permitted such operations and activities causing dangerous amounts of GHG emissions.</p> <p>Dorrington 30(b)(6) Dep. 64:18-65:7.</p>	
Chris Dorrington	<p>Q. Yeah. Well, let's continue. You said there was -- there were more than -- go ahead?</p> <p>A. Yes, sir. So second sentence: "DEQ has issued permits for surface coal mining in Montana on state and federal land," that is factual and accurate. I would agree with that.</p> <p>Dorrington 30(b)(6) Dep. 67:10-15.</p>	DEQ has issued permits for surface coal mining in Montana on state and federal land.
Chris Dorrington	<p>Q. Yes. And that is the written findings prepared by the Montana Department of Environmental Quality for the AM4 addition to the Rosebud Coal Mine Area B, dated December 4th, 2015. Mr. Dorrington, is that the document you have in front of you?</p> <p>A. Yes.</p> <p>Q. Mr. Dorrington, to the best of your knowledge, did DEQ, pursuant to the climate change exception to MEPA, refuse to analyze how that permit decision would aggravate the impacts of climate change?</p> <p>MS. McKENNA: Objection. Calls for a legal conclusion.</p> <p>THE WITNESS: The agency and program at the time would have -- would have evaluated subject to the exception the -- the effect of mining and the postmine land use, postmine topography, and the operations -- operations characteristics. The air quality portion of this same permit would have evaluated emissions subject to limits and standards of state and federal law.</p> <p>Dorrington 30(b)(6) Dep. 97:10-98:5.</p>	DEQ's environmental analysis for the 2015 Rosebud coal mine expansion was conducted subject to the MEPA Climate Change Exception.
Chris Dorrington	<p>Q. Yes. No. Let's -- let's not move forward to H, but if you have additional testimony or comments on G, please proceed with that.</p>	DEQ continues to permit surface coal mining and reclamation.

	<p>A. Okay. Thank you. So I wouldn't agree with the first sentence. We do continue to permit surface coal mining and reclamation. The way the sentence is written is again a convoluted. Reclamation does not result in substantial GHG emissions. That -- and it's -- it's interesting, probably fitting at this point to identify that all of the mining laws are reclamation oriented. So while the -- while we go through paragraph 118 and -- and previous paragraphs, we discussed how mining results in X. The result -- the -- the operation -- the operational permitting of the mine is a permit to extract a resource and reclaim pursuant to the reclamation statute standard. Second sentence, DEQ approved the AM4 expansion. I believe that's true. Third sentence, defendant DEQ issued a mine -- a permit to expand the coal mining operation reclamation plan. I believe that is true. Last and closing sentence, pursuant to climate change exception of MEPA, DEQ refused to analyze how these decisions would aggregate -- or aggravate the impacts of climate change. Those aren't -- that is not how I would characterize that. The DEQ followed state law and implemented its analysis subject to MEPA and (2)(a) as we've discussed.</p> <p>Q. And as we've discussed, you followed the limitations that are set forth in (2)(a). Is that correct, Mr. Dorrington?</p> <p>A. We do, yes. Yes.</p> <p>Dorrington 30(b)(6) Dep. 100:19-102:2.</p>	<p>DEQ approved the 2015 AM4 expansion to the Rosebud coal mine.</p> <p>DEQ followed the MEPA Climate Change Exception in Mont. Code Ann. § 75-1-201(2)(a) when issuing the permit for the 2015 AM4 expansion to the Rosebud coal mine.</p>
Chris Dorrington	<p>Q. Would you agree, sir, that pursuant to the climate change exception to MEPA that we've discussed today, subsection (2)(a), that DEQ refused to analyze or discuss any climate change impacts from the TR3 expansion of the Decker Mine?</p> <p>A. No. I would not agree to that characterization.</p> <p>Q. And could you explain your disagreement with the characterization.</p> <p>A. I believe that it would be more correctly stated that for the MEPA analysis and evaluation of emissions within the air quality permit, their -- they evaluated emissions subject to the limitations of the borders of the state in (2)(a).</p>	<p>DEQ conducted its MEPA analysis for the 2018 TR3 expansion to the Decker coal mine subject to the MEPA Climate Change Exception in Mont. Code Ann. § 75-1-201(2)(a).</p> <p>DEQ's MEPA analysis for the 2018 TR3 expansion to the Decker coal mine did not contain an analysis of the emissions associated with the combustion of the mined coal.</p> <p>Mobile source emissions are excluded from DEQ's analysis, so not even the equipment used to extract coal would be evaluated in DEQ's analysis for an air quality permit.</p>

	<p>Q. And, Mr. Dorrington, just to be clear, when you're talking about analyze the emissions, you're talking about, if I understand correctly, the emissions from the -- the operating equipment that would have removed the overburden to access the coal. I'm just trying to understand that -- what your emissions analysis entailed, but it did not entail an analysis of the combustion of the mined coal. Is that correct?</p> <p>A. The last portion of your statement is correct, yes. I -- I'm not an expert in air quality permitting, but I do believe mobile source emissions are excluded, so not even the equipment used to extract coal would be evaluated in -- in the air quality permit. That's -- mobile sources are not included.</p> <p>Dorrington 30(b)(6) Dep. 103:20-104:24.</p>	
Chris Dorrington	<p>Q. Could Spring Creek Coal have begun extracting this additional 72 million tons of coal without DEQ's mine expansion approval?</p> <p>A. Oh, no. The mine operator -- a mine operator would have -- would not operate a mine without a permit and approve disturbance and extraction subject to a -- subject to DEQ's permitting -- issuance of a permit.</p> <p>Dorrington 30(b)(6) Dep. 110:1-8.</p>	Coal mine operators would not be able to legally operate their coal mines without a permit from DEQ.
Chris Dorrington	<p>Q. And what does this permit authorize Signal Peak Energy to do?</p> <p>A. Operate their coal mining operation subject to limitations of total production and discharge into the atmosphere of any limited source conveyed in the permit. You Have assumptions -- generally, you have assumptions on operation and the generation of -- of emissions. This permit would have evaluated that production, those emissions, and then subject it to state and federal law and any standard thereby.</p> <p>Q. And, sir, would I be correct in understanding that the analysis that DEQ would have conducted in the review of this permit would have been subject to the same MEPA limitations set forth in subject (2)(a) that we discussed earlier?</p> <p>A. Yes. . . .</p> <p>Dorrington 30(b)(6) Dep. 114:24-115:4.</p>	DEQ's environmental analysis for the 2016 air quality permit issued to Signal Peak for the Bull Mountain Mine was subject to the MEPA Climate Change Exception in Mont. Code Ann. § 75-1-201(2)(a).

Chris Dorrington	<p>MS. McKENNA: I have two follow-up questions to topic 13.</p> <p>EXAMINATION BY MS. McKENNA:</p> <p>Q. Director Dorrington, would you agree that DEQ incorporates compliance with Montana's constitutional provisions through the legislative -- legislative enactment of the Montana Environmental Policy Act?</p> <p>A. Yes.</p> <p>Q. Would you agree that DEQ incorporates compliance with Montana's constitutional provisions into its permitting processes through Montana Code Annotated, Title 75?</p> <p>A. Yes.</p> <p>Q. And 82?</p> <p>A. Yes to both.</p> <p>Dorrington 30(b)(6) Dep. 120:11-121:2.</p>	<p>DEQ incorporates compliance with Montana's constitutional provisions through MEPA.</p> <p>DEQ incorporates compliance with Montana's constitutional provisions into its permitting processes under Title 75 of the Montana Code Annotated.</p> <p>DEQ incorporates compliance with Montana's constitutional provisions into its permitting processes under Title 82 of the Montana Code Annotated.</p>
Sonja Nowakowski	<p>Q. Can you please identify the document I just handed to you?</p> <p>A. Sure. This is the Final Title V Operating Permit for the CHS Laurel Refinery.</p> <p>Q. Thank you. And what does this document authorize CHS to do?</p> <p>A. This is their air quality permit. This allows them to operate and emit certain regulated pollutants under the circumstances and requirements in this permit.</p> <p>Q. Okay. Could a company operate an oil refinery in Montana without an air quality permit from DEQ?</p> <p>A. They could operate. They would be subject to violations of the law, however.</p> <p>Q. Could CHS, Inc., operate the Laurel Refinery without an air quality permit from DEQ?</p> <p>A. Again, they could operate without an air quality permit. However, they would be subject to violations of the law.</p> <p>Nowakowski 30(b)(6) Dep. 19:12-20:6.</p>	<p>DEQ air quality permits allow the permittee to operate and emit certain regulated pollutants under the circumstances and requirements in the permit.</p> <p>A company could not legally operate an oil refinery in Montana without an air quality permit from DEQ.</p> <p>If a company operated an oil refinery without a DEQ air quality permit, such operation would be unlawful, and the company would be subject to legal violations.</p>
Sonja Nowakowski	<p>Q. So then in this case DEQ never evaluated the greenhouse gas emissions from the Laurel Refinery. Correct?</p> <p>A. Under this permit, DEQ does not -- this is a Title V operating permit, and I believe this is a renewal permit. And DEQ does not have the authority to analyze greenhouse gas for a Title V permit under our primacy from the Environmental Protection Agency.</p>	<p>DEQ does not evaluate greenhouse gas emissions for Title V operating permits.</p>

	Nowakowski 30(b)(6) Dep. 20:13-20.	
Sonja Nowakowski	<p>Q. Did DEQ consider the impacts of climate change in Montana when determining whether to issue this Title V permit to the Laurel Refinery?</p> <p>A. Can you define -- are you asking about the air quality permit?</p> <p>Q. Yes. Exactly. For the Title V.</p> <p>A. Under the Title V permit, DEQ does not evaluate greenhouse gas emissions.</p> <p>Q. Does DEQ evaluate any other impacts on climate change?</p> <p>A. DEQ, under the Title V operating permit authorization and -- and application process, does not.</p> <p>Q. Okay. Prior to issuing a Title V permit like this one, does DEQ have to go through the Montana Environmental Policy Act or MEPA process?</p> <p>A. Yes.</p> <p>Q. Do you know for this permit what that process entailed?</p> <p>A. For this -- for this permit it would have been an environmental assessment.</p> <p>Q. And during that environmental assessment process, did DEQ consider greenhouse gas emissions that would result from the project?</p> <p>A. Because I believe this permit is a renewal, no, we did not.</p> <p>Q. Did DEQ consider impacts on climate change on the project --</p> <p>A. This --</p> <p>Q. -- in the MEPA analysis?</p> <p>A. Again, this is a renewal, and no, they did not.</p> <p>Q. So for renewals of permits, DEQ doesn't engage in -- strike that. I guess I'm trying to understand when -- when it's a renewal, how does that change how DEQ implements MEPA for these types of permits?</p> <p>A. In terms of a renewal, it's -- it's a smaller -- it's a -- it's a more limited scope and process for the MEPA review.</p> <p>Nowakowski 30(b)(6) Dep. 21:18-23:7.</p>	<p>DEQ does not evaluate GHG emissions or any other impacts on climate change in performing the MEPA analyses for Title V permits.</p> <p>DEQ does not engage in a MEPA analysis for permit renewals.</p>
Sonja Nowakowski	<p>Q. And so similar question as before, could the Laurel generating station operate in Montana without an air quality permit from DEQ?</p> <p>A. It could operate. It would be, again, in violation of Montana law.</p>	<p>A fossil fuel fired power plant would not be able to legally operate without an air quality permit from DEQ.</p> <p>Only certain levels of emissions of a regulated pollutant trigger BACT analyses.</p>

	<p>Q. In issuing air quality permits like this one, does DEQ evaluate the greenhouse gas emissions that result from the operation of the proposed project?</p> <p>A. These are for the -- what we call MAQPs, Montana Air Quality Permit, which is different from a Title V permit. And so under this it would depend on the amount of regulated pollutant that was being emitted. And in this case the potential emissions of the greenhouse gases as outlined do not trigger what we call a B-A-C-T or a BACT analysis. So no, we did not.</p> <p>...</p> <p>Q. Okay. Great. As part of this process for issuing this air quality permit to NorthWestern Energy for the Laurel generating station, did DEQ evaluate greenhouse gas emissions that would result from burning of a natural gas at the station?</p> <p>A. No. Again, DEQ didn't have the authority under this to -- to do that analysis.</p> <p>Q. And is that because of the level of pollutants or emissions?</p> <p>A. In part it's because of the level of pollutants. It's also again because it doesn't -- carbon is not a regulated pollutant.</p> <p>Q. Okay. And so last question on this, did DEQ consider the impacts of climate change in Montana when determining whether to grant that air quality permit for the Laurel generating station?</p> <p>A. When issuing the Montana air quality permit, DEQ does not have the authority to analyze greenhouse gas emissions.</p> <p>Q. And, again, the reason for that lack of authority?</p> <p>A. For this, we don't have the authority because there are no rules or statutes granting us that authority.</p> <p>Nowakowski 30(b)(6) Dep. 24:1-25:23.</p>	<p>DEQ does not evaluate or consider the impacts of climate change in Montana when determining whether to issue an air quality permit because DEQ does not have the authority to regulate greenhouse gas emissions.</p> <p>DEQ does not evaluate or consider the impacts of climate change in Montana when determining whether to issue an air quality permit because carbon dioxide is not a regulated pollutant.</p>
Sonja Nowakowski	<p>Q. Okay. Could Signal Peak have proceeded with building this pond without DEQ's approval?</p> <p>A. Yes. Again, they would have been violating the Montana Underground and Surface Coal Mine Reclamation Act, however.</p> <p>Q. Just curious, if it came to DEQ's attention that an entity had conducted</p>	<p>If a permittee has taken action for which a permit or permit revision would be required, DEQ would issue a violation and request resolution, and potentially pursue enforcement if the issue was not resolved.</p>

	<p>an operation or a project like this building a pond without approval -- A. Uh-huh. Q. -- does DEQ pursue an enforcement action for that violation? A. It's a -- under that we would issue a violation and ask for resolution of that, and then depending on if it was resolved, it could move to enforcement.</p> <p>Nowakowski 30(b)(6) Dep. 26:20-27:10.</p>	
Sonja Nowakowski	<p>Q. Okay. So in addition to compiling the information for this report, can you describe, I guess, more broadly DEQ's role with respect to setting energy policy in Montana? A. DEQ does not have a role in setting energy policy in Montana. Q. Does DEQ have a role in implementing energy policy in Montana? A. DEQ only has so much authority as it is granted specifically in other statutes or rules. Q. So would you say the legislature is the entity who sets energy policy in Montana? A. Yes.</p> <p>Nowakowski 30(b)(6) Dep. 28:19-29:6.</p>	<p>DEQ does not have a role in setting energy policy for Montana.</p> <p>DEQ only has so much authority as it is granted in statutes or other rules.</p> <p>The Montana Legislature sets the energy policy for the state.</p>
Sonja Nowakowski	<p>Q. Do you agree that DEQ issues air quality permits to facilities that emit greenhouse gas emissions in Montana? A. Yes. Q. And that would include facilities like coal mining operations? A. I would need to clarify. DEQ issues air quality permits to coal mining operations. However, we are limited in statute. We don't have the authority to over -- review or discuss the emission of greenhouse gas emissions in those applications. Q. And even though -- is DEQ aware that those types of operations emit greenhouse gas emissions? A. Yes. Q. And does DEQ issue air quality permits for energy power plants? A. DEQ issues air quality permits for certain energy power plants. Q. Can you specify? A. Sure. For example, the Northwest Energy Laurel generating station was issued an air quality permit.</p>	<p>DEQ issues air quality permits for facilities that emit GHGs in Montana.</p> <p>DEQ issues air quality permits to coal mining operations.</p> <p>DEQ does not have the authority to review or discuss the emission of greenhouse gasses in coal mining air quality permit applications, despite knowledge that those types of operations emit GHGs.</p> <p>DEQ issues air quality permits for certain types of power plants (i.e., fossil fuel-fired). Air quality permits are not required for wind power facilities or for geothermal facilities.</p> <p>DEQ issues air quality permits for oil and gas refineries.</p>

	<p>Q. And then which -- are there energy power plants for which DEQ does not issue air quality permits?</p> <p>A. Sure. Air quality permits aren't required for wind power facilities. They aren't required for geothermal facilities.</p> <p>Q. Okay. Thanks. And so -- and then DEQ also issues air quality permits for oil and gas refineries. Correct?</p> <p>A. Yes.</p> <p>Nowakowski 30(b)(6) Dep. 31:18-32:24.</p>	
Sonja Nowakowski	<p>[Q.] . . . I understand that your testimony is that DEQ doesn't have the authority to analyze greenhouse gas emissions. But DEQ is aware that those oil and gas refineries do emit greenhouse gases. Correct?</p> <p>A. Yes.</p> <p>Nowakowski 30(b)(6) Dep. 33:1-5.</p>	DEQ does not have the authority to analyze greenhouse gas emissions. However, DEQ is aware that oil and gas refineries do emit greenhouse gases.
Sonja Nowakowski	<p>Q. Do you agree that Senate Bill 233 transferred statutory authority from the Board of Environmental Review to DEQ?</p> <p>A. Senate Bill 233 transferred rulemaking authority from the BER to the DEQ.</p> <p>Q. Okay. So turning back to paragraph 90 of the complaint, the second sentence states: "Through its Board of Environmental Review which adopts rules and determines appeals under regulatory statutes, defendant DEQ has broad statutory authority to set and enforce a qualitative -- quantitative -- excuse me -- limit for emissions as necessary to prevent or control air pollution." Did I read that correctly?</p> <p>A. You did read it correctly.</p> <p>Q. So after the statutory changes made by Senate Bill 233, is it fair to say that as of the effective date of that legislation that now DEQ is responsible for adopting rules, not BER?</p> <p>A. DEQ has broad statutory authority to adopt the rules, yes.</p> <p>Q. And after Senate Bill 233 BER retained some authority to hear certain appeals but not the rulemaking authority --</p> <p>A. Yes.</p> <p>Q. -- that it once had. Correct?</p> <p>A. Yes.</p>	<p>Senate Bill 233 (2021) transferred rulemaking authority from the Board of Environmental Review to DEQ.</p> <p>Following the statutory changes made by Senate Bill 233, DEQ now has broad statutory authority to adopt rules to set and enforce a quantitative limit for emissions as necessary to prevent and control air pollution.</p> <p>Following Senate Bill 233, the Board of Environmental Review no longer possesses the rulemaking authority it once had; such rulemaking authority is now held by DEQ.</p>

	Nowakowski 30(b)(6) Dep. 33:18-34:18.	
Sonja Nowakowski	<p>Q. Okay. Do you agree that DEQ has the statutory authority to control air pollution? A. Yes.</p> <p>Q. Does that include greenhouse gas emissions? A. No.</p> <p>Q. And can DEQ use the permits it issues as a means to control air pollution? A. Yes.</p> <p>Nowakowski 30(b)(6) Dep. 35:4-12.</p>	<p>DEQ has the statutory authority to control air pollution, but such authority does not include controlling greenhouse gas emissions.</p> <p>DEQ can use the permits it issues as a means to control air pollution.</p>
Sonja Nowakowski	<p>Q. So do you agree that Montana has a state energy policy that is codified at Montana Code Annotated Section 90-4 - 90-4-1001? A. Yes.</p> <p>Nowakowski 30(b)(6) Dep. 37:8-11.</p>	<p>Montana has a statutorily-codified state energy policy at Mont. Code Ann. § 90-4-1001.</p>
Sonja Nowakowski	<p>Q. In subpart 1D there's a phrase about increasing utilization of Montana's vast coal reserves. Can you describe what, if anything, DEQ does to increase utilization of Montana's vast coal reserves? A. DEQ is responsible for the permitting of coal mine applications -- permit applications that allow for additional mining, and they do so under the Underground and Surface Coal Mine Reclamation Act in Title 82.</p> <p>Q. Okay. So would you agree that issuing a permit allowing a coal mine to operate would increase utilization of Montana's coal reserves? A. Yes.</p> <p>Nowakowski 30(b)(6) Dep. 39:20-40:8.</p>	<p>To increase utilization of Montana's vast coal reserves, DEQ is responsible for permitting of coal mine applications that allow for additional mining.</p> <p>DEQ's issuing a permit to allow a coal mine to operate would increase utilization of Montana's coal reserves.</p>
Sonja Nowakowski	<p>Q. Can you describe what DEQ does to increase local oil and gas exploration and development? A. DEQ permits or provides air quality permits for oil and gas.</p> <p>Q. Does DEQ issue permits for oil and gas -- strike that. So your testimony is that DEQ issues permits for oil and gas exploration and development? A. No. DEQ only issues air quality permits that could allow for some oil and gas exploration.</p> <p>Q. I see.</p>	<p>To increase local oil and gas exploration and development, DEQ issues air quality permits that allow for oil and gas exploration or which are necessary for oil and gas exploration activities.</p>

	<p>A. Or that are necessary for oil and gas exploration.</p> <p>Nowakowski 30(b)(6) Dep. 40:22-41:9.</p>	
Sonja Nowakowski	<p>Q. Can you describe what DEQ does to expand Montana's petroleum refining industry?</p> <p>A. Montana does not take -- DEQ does not take specific actions to expand Montana's petroleum refining industry. Again, DEQ's role is in issuing air quality permits that allow petroleum refiners to operate in the state of Montana in compliance with the Air Quality Act.</p> <p>Q. Okay. And so you'd agree that petroleum refining industry needs permits from DEQ to operate?</p> <p>A. They are required to have permits to operate. They could operate without them and, again, be subject to violation.</p> <p>Q. Right. And in addition to air quality permits, doesn't DEQ issue like other permits, like water discharge permits under the Montana Water Quality Act?</p> <p>A. Yes.</p> <p>Q. For oil refineries?</p> <p>A. Yes.</p> <p>Q. And if -- if DEQ were to deny a permit for a petroleum refinery, that refinery would be unable to operate lawfully. Correct?</p> <p>A. Yes.</p> <p>Nowakowski 30(b)(6) Dep. 41:24-42:22.</p>	<p>To expand Montana's petroleum refining industry, DEQ issues air quality permits that allow petroleum refiners to operate in Montana in compliance with the Air Quality Act.</p> <p>The petroleum refining industry could not lawfully operate in Montana without air quality permits, water discharge permits under the Montana Water Quality Act, or other necessary permits from DEQ.</p>
Sonja Nowakowski	<p>Q. What is -- can you tell me what the Montana energy office is?</p> <p>A. Sure. The Montana energy office is a bureau within the division of Air, Energy and Mining.</p> <p>Q. What are the responsibilities of that bureau?</p> <p>A. The responsibility of that bureau are multifaceted. They are the state energy office or the state energy program, so they receive federal funding. For example, they implement the alternative energy revolving loan program that I spoke to. They oversee the state building energy conservation program. They have some other energy security responsibilities.</p> <p>Q. Okay. Does the Montana energy office have any -- does the Montana energy office have any role in advising</p>	<p>The Montana Energy Office is a Bureau in DEQ's Division of Air, Energy, and Mining.</p> <p>The Montana Energy Office does not have any role in advising DEQ on the permits DEQ issues for fossil fuel projects.</p> <p>The regulatory role of the Montana Energy Office is largely related to bonding for wind and solar facilities.</p>

	<p>DEQ on the permits it issues for fossil fuel projects? A. No. Q. Would you say the Montana energy office has a regulatory role at all? A. I would say they have a -- their regulatory role is largely related to they're required to do some bonding for wind and solar facilities.</p> <p>Nowakowski 30(b)(6) Dep. 44:17-45:16.</p>	
<p>Sonja Nowakowski</p>	<p>Q. Okay. Does the -- excuse me. Does the energy bureau do any work with like analyzing trends and issues with regard to energy in Montana? A. As far as analysis of trends, the most they do is they compile the federal EIA, Energy Information Agency, information that then is compiled and used in the development of the -- that Understanding Energy handbook for the legislature. Q. Okay. Does DEQ use that information compiled by the energy bureau to inform permitting decisions? A. No.</p> <p>Nowakowski 30(b)(6) Dep. 46:10-21.</p>	<p>The Montana Energy Office compiles energy information produced by the U.S. Energy Information Administration.</p> <p>DEQ does not use the information compiled by the Montana Energy Bureau to inform DEQ's permitting decisions.</p>
<p>Sonja Nowakowski</p>	<p>Q. Okay. And can you turn the page? I think it's the third page, to Section 75-1-201, 2A. It should be at the top of the third page. A. Yes. Q. And that section reads: "Except as provided in subsection 2B, an environmental review conducted pursuant to subsection 1 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." Did I read that correctly? A. Yes. Q. What does this provision require DEQ to do when conducting environmental reviews pursuant to MEPA? A. This precludes the DEQ from reviewing actual or potential impacts beyond Montana's borders. Q. Does climate change have impacts that are regional in nature? A. Yes.</p>	<p>Mont. Code Ann. § 75-1-201(2)(a) precludes DEQ from reviewing, during environmental impact analyses, actual or potential impacts beyond Montana's borders.</p> <p>Climate change has impacts that are regional in nature.</p> <p>Climate change has impacts that are national in nature.</p> <p>Climate change has impacts that are global in nature.</p> <p>DEQ relies on the prohibition in that Mont. Code Ann. § 75-1-201(2)(a) in multiple permitting decision-making processes.</p>

	<p>Q. Does climate change have impacts that are national in nature? A. Yes.</p> <p>Q. How about global in nature? A. Yes.</p> <p>Q. Are you aware of anyone at DEQ, including yourself, who has relied on this provision when conducting an environmental review proposed -- of a proposed project subject to MEPA? A. Yes. I believe the agency does review this and -- and rely on it throughout in multiple permitting decision-making processes.</p> <p>Nowakowski 30(b)(6) Dep. 48:3-49:9.</p>	
Sonja Nowakowski	<p>Q. Okay. Does DEQ use that provision or reference that provision in MEPA when analyzing environmental impacts from fossil fuel activities that it has authority to permit? A. It -- it references this if the question arises if these are actual or potential impacts that are beyond Montana's borders.</p> <p>Nowakowski 30(b)(6) Dep. 49:13-19.</p>	DEQ relies on the prohibition in Mont. Code Ann. § 75-1-201(2)(a) when analyzing environmental impacts from fossil fuel activities it permits if the question arises if there are actual or potential impacts beyond Montana's borders.
Shawn Thomas	<p>Q. Thank you. Can you describe to me what the mission of the DNRC is? A. The mission, word for word, is probably published on the website, but it's to -- I may be paraphrasing a bit here -- but to manage Montana's natural resources for present and future generations.</p> <p>Thomas 30(b)(6) Dep. 19:15-20.</p>	The mission of DNRC is to manage Montana's natural resources for present and future generations.
Shawn Thomas	<p>Q. Does the director set policy for the DNRC? A. No, I don't believe so. Policy is set by the legislature, primarily.</p> <p>Thomas 30(b)(6) Dep. 20:2-4.</p>	The Montana Legislature primarily sets the policy for DNRC.
Shawn Thomas	<p>Q. Okay. And what is the role of the Trust Lands Management Division? A. In this document, the Trust Land Management Division is described as overseeing 5.2 million acres of state trust land through the following -- through several programs.</p> <p>Q. Okay. And it says there -- it says: Through programs including sustainable forestry, agriculture, grazing, and energy leasing, we generate millions of dollars annually for K through 12 public education, including</p>	<p>DNRC's Trust Land Management Division oversees 5.2 million acres of state trust lands.</p> <p>DNRC's Trust Land Management Division conducts energy leasing on state trust lands for fossil fuels such as oil, gas, and coal.</p> <p>DNCR's Trust Land Management Division conducts energy leasing on state trust lands for hydropower and wind energy.</p>

	<p>schools, facilities, and classroom technology? Did I read that correctly? A. Yes. Q. In that sentence there, what kind of energy leasing programs are referenced there? A. Trust lands leases -- does energy leases for oil and gas. We have leases for hydrological power. We have leases for wind energy. Q. Are there leases for coal as well? A. Yes, there are coal leases as well.</p> <p>Thomas 30(b)(6) Dep. 21:3-23.</p>	
Shawn Thomas	<p>Q. Well, what is the role of the agency? Does the agency issue the leases? Can you describe what their general responsibilities are with respect to energy leasing specifically? MR. OESTREICHER: Objection to form, compound, vague. Go ahead.</p> <p>THE DEPONENT: So the DNRC issues leases under the -- as described in state legislative -- by law in the -- that the legislature has passed, and under the direction of the state land board, who's the constitutional decision-making authority for uses of state trust land. Q. (By Ms. Rodgers) And who decides what form of energy can be used on state lands? A. I'm not sure that there's anyone who decides what form of energy can be used. We are -- trust lands is obligated to put uses on the ground or to go through the procedural processes in order to allow for uses on the ground under the direction of the land board and the legislature. And we're -- we -- no one decides what uses -- as long as they're legal uses by, you know, state law, any uses of trust land are things that we would consider putting on the ground.</p> <p>Thomas 30(b)(6) Dep. 22:3-25.</p>	<p>DNRC and State Land Board exercise their discretion in allowing various types of energy leasing (fossil fuel versus renewable) activities on state trust lands.</p>
Shawn Thomas	<p>Q. Uh-huh. Does the Forestry Division do any kind of projects with respect to carbon sequestration? A. I don't believe the Forestry Division has any carbon sequestration projects under their purview.</p>	<p>DNRC's Trust Lands Management Division is actively working on a carbon sequestration project with the federal Bureau of Land Management.</p>

	<p>Q. Do you know if any of the other divisions at DNRC do?</p> <p>A. The Trust Land Management Division is actively working on a significant carbon sequestration project in conjunction with the BLM currently. We don't have any carbon sequestration projects yet authorized and operating.</p> <p>Thomas 30(b)(6) Dep. 24:16-25.</p>	
Shawn Thomas	<p>Q. Okay. In the next paragraph on the web page, it describes the Montana Board of Oil and Gas Conservation?</p> <p>A. Yes.</p> <p>Q. And how is the Board of Oil and Gas Conservation -- is that just another division, or how is that related to DNRC?</p> <p>A. The Board of Oil and Gas Conservation is listed as a division. It's administratively attached to the DNRC. So they operate under their own board, and the DNRC helps them with administrative functions such as HR assistance, accounting assistance, sort of just the day-to-day running of the operation through our director's office. But they're an administratively attached organization with their own board of -- you know, governing board.</p> <p>Thomas 30(b)(6) Dep. 25:22-26:10.</p>	The Montana Board of Oil and Gas Conservation is administratively attached to DNRC, but has its own governing board.
Shawn Thomas	<p>Q. (By Ms. Rodgers) And in this paragraph that I -- that talks about the Montana Board of Oil and Gas Conservation, it says: Through regulation and remediation, the Montana Board of Oil and Gas Conservation protects citizens and the environment from the impacts of oil and gas activities. Do you see that there?</p> <p>A. Yes.</p> <p>Q. Can you describe how they go about doing that? MR. OESTREICHER: Objection to form, speaks for itself. Go ahead.</p> <p>Q. (By Ms. Rodgers) I can rephrase my question. What do they mean "through regulation and remediation" here? What does that mean?</p> <p>A. So the Board of Oil and Gas Conservation is the regulatory body that</p>	<p>The Montana Board of Oil and Gas Conservation is the regulatory body that oversees oil and gas activities in Montana for state and private landowners.</p> <p>The Montana Board of Oil and Gas Conservation issues permits for oil and gas activities.</p>

	<p>oversees oil and gas activities in the state of Montana for state and private landowners. So the board has a responsibility to ensure that all of the regulatory aspects of drilling wells, plugging and abandoning wells, and managing the spacing so that the ownership of the oil and gas resources are equitably distributed amongst various mineral owners, those sorts of things.</p> <p>Q. Does the Board of Oil and Gas Conservation, do they issue permits for oil and gas activities?</p> <p>A. Yes, they do.</p> <p>Thomas 30(b)(6) Dep. 27:3-28:4.</p>	
Shawn Thomas	<p>Q. And does the DNRC, the trust lands division, what is their role with respect to oil and gas permits?</p> <p>MR. OESTREICHER: Objection to form, vague. Go ahead.</p> <p>THE DEPONENT: So the Trust Land Management Division can be viewed just like any other landowner or mineral owner in the state. We are subject to the Board of Oil and Gas permitting processes and regulations, just like a private mineral owner would be. So we go to the board with an -- or our lessees will go to the board for applications and go through the board's processes in order to get permission to move forward with oil and gas well drilling. The board will set spacing units, communitization agreements, those sorts of things that talk about the equitable distribution of the oil and gas to the various mineral owners. They bring those things. They -- they create the regulatory environment around those agreements. And then we take those agreements to get approved by the state land board.</p> <p>Thomas 30(b)(6) Dep. 28:5-22.</p>	<p>DNRC's Trust Lands Management Division is subject to the Board of Oil and Gas Conservation permitting processes and regulations in order to get permission to move forward with oil and gas well drilling.</p>
Shawn Thomas	<p>Q. Okay. You were talking about the difference between what the trust land division does and the board does. Does the trust land division do the environmental analyses with respect to oil and gas leasing, or is that done by the board?</p> <p>A. With respect to the leasing activity, there's no environmental analysis on the leasing action itself. The environmental</p>	<p>There is no environmental analysis on DNRC's leasing action itself.</p> <p>For oil and gas development, the Montana Board of Oil and Gas Conservation conducts the environmental analysis for the drilling to be conducted.</p> <p>For oil and gas leases, DNRC only conducts an environmental analysis as to the surface disturbance component of the project.</p>

	<p>analysis comes from the board for the drilling and the stuff that's down-hole, as they describe. And we do an environmental analysis on the surface disturbance component.</p> <p>Thomas 30(b)(6) Dep. 29:18-30:4.</p>	
Shawn Thomas	<p>Q. Uh-huh. Can you tell me how many active oil and gas wells there are on state lands in Montana?</p> <p>MR. OESTREICHER: Objection to form, calls for speculation. Go ahead and answer, if you can.</p> <p>THE DEPONENT: I could come up with the exact number for you, but I don't have anything in front of me. I believe it's somewhere in the neighborhood of -- in the 600s. 600 to 700.</p> <p>Thomas 30(b)(6) Dep. 30:5-18.</p>	There are approximately 600 to 700 active oil and gas wells on state lands in Montana.
Shawn Thomas	<p>Q. Okay. How about the number of coal mines on state lands? Do you know that information?</p> <p>MR. OESTREICHER: Objection to form, vague. Go ahead.</p> <p>THE DEPONENT: Active coal leases is a -- it's similar to the oil and gas lease information. I could come up with an exact number. I believe it's somewhere in the 10 to 20 range of separate lease agreements for -- excuse me -- for coal.</p> <p>Thomas Dep. 31:7-15.</p>	There are approximately 10 to 20 separate lease agreements for active coal extraction on state lands in Montana.
Shawn Thomas	<p>Q. Land Board. Okay. All right. And I don't see it here, so I'm assuming it's not considered a separate division; right?</p> <p>MR. OESTREICHER: Objection to form. Go ahead.</p> <p>THE DEPONENT: No. The Trust Land Management Division is the administrative arm, I would say, of the state Land Board. The state Land Board is the constitutional authority decision-maker for activities involving the state trust land.</p> <p>Q. (By Ms. Rodgers) Uh-huh. And who makes up the Land Board?</p> <p>A. It's the top five statewide elected officials. So the Governor is the chair, the attorney general, secretary of state, the state auditor, and the superintendent of public instruction.</p> <p>Thomas 30(b)(6) Dep. 37:8-23.</p>	<p>The State Land Board is the constitutional authority decision-maker for activities involving state trust land.</p> <p>DNRC's Trust Land Management Division is the administrative arm of the State Land Board.</p> <p>The State Land Board is comprised of the Governor, the attorney general, the secretary of state, the state auditor, and the superintendent of public instruction.</p>

<p>Shawn Thomas</p>	<p>Q. Okay. And so does the DNRC play any role with respect to pipelines that transport oil and gas, either over state land or water?</p> <p>A. Yes. In the Trust Land Management Division, the -- oftentimes people come to us for authorizations to move things across state lands, whether there's private driveways, pipelines, power lines. And so there's a process to apply for easements for those uses, and ultimately those are presented to and approved by the Land Board.</p> <p>Q. Okay. And could a pipeline cross state lands or state waters without the approval of DNRC?</p> <p>MR. OESTREICHER: Objection to form. Go ahead.</p> <p>THE DEPONENT: Without the approval of the Land Board, it's a little bit of a complex question. The department has authority that's been delegated to them by the Land Board for certain administrative tasks. So for things like flow lines that are captured within our oil and gas leases, as an authority under the lease, they can move oil from a wellhead to a storage tank. For large transmission pipelines, those require Land Board approval.</p> <p>Thomas 30(b)(6) Dep. 37:24-38:8.</p>	<p>DNRC's Trust Land Management Division plays a role in issuing easements and other authorizations for pipelines that cross state lands and waters.</p> <p>The State Land Board has ultimate approval authority for large oil and gas transmission pipelines that cross state lands.</p>
<p>Shawn Thomas</p>	<p>Q. And can you look at the signature page of the document?</p> <p>A. Okay. (Complies.)</p> <p>Q. And who signed this document?</p> <p>A. This document was signed by the Governor, the secretary of state, and the department's director, and then accepted by the representative of the applicant.</p> <p>Q. And those three signatures on behalf of the state, those are all members of the Land Board; right?</p> <p>A. No, they're not.</p> <p>Q. Oh, they're not? Okay. Why did they sign this document?</p> <p>MR. OESTREICHER: Objection to the form of the question.</p> <p>THE DEPONENT: The Governor, as chair of the Land Board, signs the document. I don't know what legal underpinnings there are for who signs rights of way deeds on behalf of the Land</p>	<p>The DNRC Director signs easement documents for pipelines that cross state lands.</p>

	<p>Board or the state. And the reason that not all three of them are Land Board members is one is the director of the department, who is not a member of the Land Board.</p> <p>Thomas 30(b)(6) Dep. 42:4-25.</p>	
Shawn Thomas	<p>Q. (By Ms. Rodgers) Do you know, does the state retain the authority to terminate a right-of-way deed?</p> <p>MR. OESTREICHER: Objection to form, calls for a legal conclusion. Go ahead.</p> <p>THE DEPONENT: Yes, I believe it would -- it's probably -- I'll look at the one that's in front of me.</p> <p>There might be language for termination within the document itself, but sometimes we do, for sure.</p> <p>Thomas 30(b)(6) Dep. 46:25-47:8.</p>	The State of Montana retains the authority to terminate a right-of-way deed it has granted across state lands.
Shawn Thomas	<p>Q. (By Ms. Rodgers) Okay. And here it says in the answer, it says: Montana admits the allegations in the first sentence of Paragraph 96. Right?</p> <p>A. That's what it says, yes.</p> <p>Q. And that first paragraph -- first sentence is: Defendant DNRC issues leases, permits, and licenses for all uses of state land. Correct?</p> <p>A. Yes. That's what it says.</p> <p>Q. And do you agree with that statement?</p> <p>MR. OESTREICHER: Objection to form.</p> <p>THE DEPONENT: I have a slight disagreement in that we don't have any responsibility for lands owned by the Department of Fish, Wildlife, and Parks, Montana Department of Transportation -- other state agencies own land. But other than that, yes, I agree with that statement.</p> <p>Q. (By Ms. Rodgers) Okay. If it were to say "state trust land," would --</p> <p>A. Yeah. That fixes it.</p> <p>Thomas 30(b)(6) Dep. 53:6-54:2.</p>	DNRC issues leases, permits, and licenses for all uses of state trust land, except for lands owned by other state agencies, such as the Department of Fish, Wildlife and Parks, and the Montana Department of Transportation.
Shawn Thomas	<p>Q. (By Ms. Rodgers) Okay. Do you agree with the statement that DNRC has authority to pursue energy development on state land?</p>	DNRC has authority to pursue energy development on state trust lands, under the direction of the State Land Board.

	<p>A. I don't disagree with that. The DNRC has that authority, under the direction of the Land Board, to pursue energy development on state land. On state trust land.</p> <p>Thomas 30(b)(6) Dep. 54:20-25.</p>	
Shawn Thomas	<p>Q. (By Ms. Rodgers) Would you agree that the Land Board has authority to grant easements for the operational right-of-way of interstate pipelines? MR. OESTREICHER: Objection to form. Go ahead. THE DEPONENT: The Land Board has authority to grant rights-of-way for a variety of activities, including interstate pipelines. Q. (By Ms. Rodgers) Okay. And do you agree that some of the pipelines that the Land Board has granted rights-of-way for are used to transport fossil fuels? MR. OESTREICHER: Objection to form. Go ahead. THE DEPONENT: Yes.</p> <p>Thomas 30(b)(6) Dep. 55:22-56:10.</p>	<p>The State Land Board has authority to grant rights-of-way across state lands for interstate pipelines.</p> <p>The State Land Board has granted rights-of-way for pipelines that transport fossil fuels.</p>
Shawn Thomas	<p>Q. Okay. Do you agree that DNRC issues licenses for exploration and leases for production of oil – for production and extraction of oil and gas in Montana, and permits for drilling in Montana. MR. OESTREICHER: Objection to the form of the question. Go ahead. THE DEPONENT: Yes.</p> <p>Thomas 30(b)(6) Dep. 56:20-57:2.</p>	<p>DNRC issues licenses for exploration and leases for production and extraction of oil and gas in Montana, and permits for drilling in Montana.</p>
Shawn Thomas	<p>Q. (By Ms. Rodgers) Okay. Does DNRC have any policies with respect to greenhouse gas emissions? MR. OESTREICHER: Objection to form. Go ahead. THE DEPONENT: I don't believe there's any policies, formal policies, on greenhouse gas emissions at the DNRC.</p> <p>Thomas 30(b)(6) Dep. 58:6-12.</p>	<p>DNRC has no formal policies with respect to greenhouse gas emissions.</p>
Shawn Thomas	<p>Q. (By Ms. Rodgers) Do you quantify the greenhouse gas emissions from the activities that you license on state trust lands? MR. OESTREICHER: Objection to form. Go ahead. THE DEPONENT: Not -- no, not usually.</p>	<p>DNRC does not quantify the GHG emissions from the activities that DNRC licenses on state trust lands.</p>

	Thomas 30(b)(6) Dep. 59:5-10.	
Shawn Thomas	<p>Q. (By Ms. Rodgers) Would you agree that DNRC's permitting of oil and gas activities on state trust lands results in greenhouse gas emissions?</p> <p>MR. OESTREICHER: Objection to form, calls for speculation.</p> <p>THE DEPONENT: Yes. I would agree that activities -- drilling and all activities result in greenhouse gas emissions.</p> <p>Thomas 30(b)(6) Dep. 60:1-8.</p>	DNRC's permitting of oil and gas activities on state trust lands results in greenhouse gas emissions.
Shawn Thomas	<p>Q. And does the DNRC do MEPA analysis for every license and permit it issues?</p> <p>MR. OESTREICHER: Objection to form, asked and answered. Go ahead.</p> <p>THE DEPONENT: No, not for every license.</p> <p>Q. (By Ms. Rodgers) Which ones don't require MEPA analysis?</p> <p>MR. OESTREICHER: Objection to form, vague. Go ahead.</p> <p>THE DEPONENT: So licenses that are -- releases that are issued under the Minerals Management Bureau for oil and gas, coal, we do not do MEPA on the issuance of the leases themselves. The MEPA gets done at the time that a development activity was -- were to be proposed.</p> <p>Q. (By Ms. Rodgers) So that's after the leases are issued?</p> <p>A. That's correct.</p> <p>Thomas 30(b)(6) Dep. 61:10-62:2.</p>	<p>DNRC does not conduct a MEPA analysis for each license that DNRC issues.</p> <p>DNRC does not conduct a MEPA analysis on the leases that DNRC issues.</p>
Shawn Thomas	<p>Q. (By Ms. Rodgers) Uh-huh. But am I correct that with respect to those right-of-way easements that we talked about earlier, that is something the DNRC does the MEPA analysis for; correct?</p> <p>A. Yes. For rights-of-way easements, we do the MEPA analysis for that.</p> <p>Thomas 30(b)(6) Dep. 62:18-23.</p>	DNRC conducts a MEPA analysis for right-of-way easements across state lands that DNRC issues.
Shawn Thomas	<p>Q. (By Ms. Rodgers) What's the basis for your disagreement?</p> <p>A. We manage those because it's our obligation to manage the navigable rivers in the state of Montana per legislative authority to do so.</p>	<p>DNRC is obligated to manage the navigable rivers in Montana per legislative authority to do so.</p> <p>DNRC leases some state-owned riverbed and island tracts for oil and gas development.</p>

	<p>Q. Are any of those riverbeds or island tracts leased for oil and gas development? A. Yes, some of them are.</p> <p>Q. And do you agree or disagree with the second sentence that says the leased tracts provide the State of Montana with \$914,373 in oil and gas revenues in 2018, which is less than 1 percent of the amount of money the state spent fighting wildfires in 2018, which was \$95 million? MR. OESTREICHER: Objection to form. Answer if you can. THE DEPONENT: So I can't answer the exact – whether the \$914,000 is the exact number from specifically leased river beds and island tracts in 2018. I do know that the amount of money the state spent fighting fires in 2018 was not \$95 million. It was less than that. But other than those specific details, we – we lease oil and gas and navigable rivers. It generates revenue.</p> <p>Thomas 30(b)(6) Dep. 64:1-23.</p>	<p>DNRC's leasing of state lands for oil and gas development generates revenue for the state.</p>
Shawn Thomas	<p>Q. (By Ms. Rodgers) Okay. Do you recall what that -- what that actual total was for 2018? A. I believe the state's expenditure in 2018 was somewhere in the neighborhood of 65 million.</p> <p>Thomas 30(b)(6) Dep. 65:22-25.</p>	<p>In 2018, the State of Montana spent approximately \$65 million fighting wildfires in the state.</p>
Shawn Thomas	<p>Q. Ownership itself. Thank you. And it also says there's 1,126 oil and gas leases; correct? A. Correct.</p> <p>Q. And are those leases issued by DNRC? A. Yes.</p> <p>Thomas 30(b)(6) Dep. 71:4-9.</p>	<p>As of 2021, DNRC issued 1,126 oil and gas leases.</p>
Shawn Thomas	<p>Q. Okay. Do you know the amount of greenhouse gas emissions that results from these 1,126 leases? MR. OESTREICHER: Objection to the form of the question. THE DEPONENT: I do not.</p> <p>Q. (By Ms. Rodgers) How could you find that information out?</p> <p>MR. OESTREICHER: Objection to the form of the question. Answer if you can.</p>	<p>DNRC does not know the amount of greenhouse gas emissions that result from the 1,126 oil and gas leases issued by DNRC.</p> <p>It is possible to calculate the greenhouse gas emissions that result from the oil and gas leases issued by DNRC.</p> <p>DNRC does not calculate or know the amount of greenhouse gas emissions that result from production from the oil and gas leases issued by DNRC, even though such a calculation is possible.</p>

	<p>THE DEPONENT: I would presume that you could figure out what the total production is. We can provide information for how productive each single lease is in terms of the number of barrels. And I presume there's some way to calculate greenhouse gas emissions based on oil production. But we don't do that, so I don't have that answer.</p> <p>Thomas 30(b)(6) Dep. 72:15-19.</p>	
Shawn Thomas	<p>Q. Okay. And it says there's 31 coal leases; correct? A. Yes. I see that there.</p> <p>Q. And those are leases that are issued by DNRC; right? A. Correct.</p> <p>Q. And is that the same with respect to the oil and gas leases? This is just a snapshot in time of how many leases exist when the report was produced? A. That's correct, it is. Although it's much different than the oil and gas in that we don't issue coal leases very often. It's unusual to have a new coal lease.</p> <p>Thomas 30(b)(6) Dep. 73:17-74:3.</p>	As of 2021, DNRC issued 31 coal leases on state trust lands.
Shawn Thomas	<p>Q. Okay. Do you know the amount of greenhouse gas emissions that result from the operations that occur on the these 31 coal -- from these 31 coal leases? MR. OESTREICHER: Objection to form, asked and answered. THE DEPONENT: I do not.</p> <p>Q. (By Ms. Rodgers) How could one find that information out? MR. OESTREICHER: Same objection. THE DEPONENT: I think my answer is the same as before. You'd have to figure out what the production is from the state lease in any given period of time, and however you calculate greenhouse gas emissions from the mining of coal in that period of time.</p> <p>Thomas 30(b)(6) Dep. 74:23-75:11.</p>	<p>DNRC does not know the greenhouse gas emissions that result from the 31 coal leases on state trust lands that DNRC issued.</p> <p>The greenhouse gas emissions resulting from the 31 coal leases on state trust lands that DNRC issued could be calculated, but that DNRC has not attempted to do such a calculation.</p>
Shawn Thomas	<p>Q. (By Ms. Rodgers) Was a MEPA analysis done before issuance of the coal lease itself? MR. OESTREICHER: Objection to form, asked and answered. THE DEPONENT: The leasing activities themselves</p>	DNRC did not conduct a MEPA analysis before issuance of coal leases.

	<p>on the most recent coal leases, no. Many of these coal leases have been held by production for a very long time, and I can't speak to what the process was. Some of them probably predate MEPA, frankly. But currently, any issuance of coal leases in my tenure here, the issuance of the lease does not have a MEPA document associated with it. That comes at the development of the mine plan in conjunction with the Department of Environmental Quality.</p> <p>Thomas 30(b)(6) Dep. 75:12-24.</p>	
Shawn Thomas	<p>Q. Do you know the amount of acreage that's leased for renewable energy on state lands?</p> <p>A. For the period of time of this annual report or currently?</p> <p>Q. Currently.</p> <p>A. So I don't know the exact acres. What I can tell you about renewable energy is that we have two active wind farms that have been developed that involve school trust land; one at Judith Gap, which would have been operational before the period of time in this report that we're currently talking about, and then more recently we've got Clearwater Wind in the Miles City area that is about to become operational. And it has quite a few turbines. It's part of a much larger project.</p> <p>Thomas 30(b)(6) Dep. 76:7-20.</p>	DNRC leases state trust lands for renewable energy projects.
Shawn Thomas	<p>Q. Uh-huh. Okay. Does DNRC see wildfires as a threat to state trust lands?</p> <p>A. Wildfires, yes, they can threaten state trust land.</p> <p>Thomas 30(b)(6) Dep. 85:4-7.</p>	Wildfires are a threat to state trust lands.
Shawn Thomas	<p>Q. (By Ms. Rodgers) Mr. Thomas, will you look at Paragraph 99, which is on Page 32 of the complaint?</p> <p>A. Okay.</p> <p>Q. And I'm going to ask you a few questions about that paragraph, as this is one of the subject areas you were designated to talk about today. Can you please read that paragraph?</p> <p>A. Yep. I've read it.</p> <p>Q. Okay. And are you the person at DNRC who's most knowledgeable with respect to these allegations?</p>	DNRC, through the Board of Oil and Gas Conservation, administers all oil and gas conservation laws and issues licenses for exploration and leases for production and extraction of oil and gas in Montana, and permits for drilling in Montana.

	<p>A. I'm not. This would be the Board of Oil and Gas Conservation, the administratively attached part of the DNRC. Somebody there would be much more well-versed to talk about this than I.</p> <p>Q. Okay. What in this paragraph do you have knowledge about?</p> <p>A. I generally understand what the Board of Oil and Gas does as it pertains to trust land management, so I -- they administer the laws and licenses and -- and do permitting. So I can say that's a true statement.</p> <p>Thomas 30(b)(6) Dep. 85:16-86:7.</p>	
Shawn Thomas	<p>Q. Okay. And do you agree that DNRC has a duty to comply with laws passed by the legislature, assuming that they're constitutional?</p> <p>MR. OESTREICHER: Objection to the form of the question.</p> <p>Go ahead.</p> <p>THE DEPONENT: Yes, I believe we have to comply with the laws passed by the legislature.</p> <p>Thomas 30(b)(6) Dep. 87:10-17.</p>	DNRC has a duty to comply with the laws passed by the Montana legislature.
Shawn Thomas	<p>Q. (By Ms. Rodgers) Uh-huh. With respect to Subsection F, it says: It is the policy of the State of Montana to expand exploration and technological innovation, including using carbon dioxide for enhanced oil recovery in declining oil fields to increase output. On any state lands, is DNRC involved in activity with respect to using carbon dioxide for enhanced oil recovery in declining oil fields?</p> <p>A. Yes.</p> <p>Q. And can you describe what that entails?</p> <p>A. What that entails is -- is piping carbon dioxide from some source to an oil field, and carbon dioxide, when pumped into an oil field, acts as a solvent and creates different pressures in the reservoir that can expand and enhance the amount of oil that's recoverable.</p> <p>Q. So what is the role that DNRC plays in that?</p> <p>A. We have two, sort of, major project areas in southeastern Montana; one at Bell Creek and one at the Cedar Creek anticline where old oil fields exist, and a company</p>	<p>Admits that DNRC takes action to implement Mont. Code Ann. § 90-4-1001(1)(f): It is the policy of the State of Montana to expand exploration and technological innovation, including using carbon dioxide for enhanced oil recovery in declining oil fields to increase output. On any state lands, is DNRC involved in activity with respect to using carbon dioxide for enhanced oil recovery in declining oil fields.</p> <p>That entails piping carbon dioxide from some source to an oil field, and carbon dioxide, when pumped into an oil field, acts as a solvent and creates different pressures in the reservoir that can expand and enhance the amount of oil that's recoverable.</p> <p>DNRC has two major project areas in southeastern Montana: one at Bell Creek and one at the Cedar Creek anticline where old oil fields exist, and a company has come in there with a carbon dioxide pipeline and is doing EOR, enhanced oil recovery, in those two areas.</p>

	<p>has come in there with a carbon dioxide pipeline and is doing EOR, enhanced oil recovery, in those two areas.</p> <p>Thomas 30(b)(6) Dep. 92:4-25.</p>	
Shawn Thomas	<p>Q. (By Ms. Rodgers) Okay. And so you agree that DNRC authorizes, permits, and licenses fossil fuel exploitation, extraction, and production?</p> <p>A. I would agree that we authorize, permit, and license fossil fuel extraction and production.</p> <p>Q. Okay. Not -- exploitation, you take issue with?</p> <p>A. Yeah.</p> <p>Thomas 30(b)(6) Dep. 104:2-8.</p>	<p>DNRC authorizes, permits, and licenses fossil fuel extraction and production.</p>
Shawn Thomas	<p>Q. (By Ms. Rodgers) Uh-Huh. Do you disagree that the authorization and permitting and licensing of fossil fuel extraction and production results in greenhouse gas emissions?</p> <p>MR. OESTREICHER: Objection to form. Same objections. But go ahead.</p> <p>THE DEPONENT: No. They – I think authorizing and permitting those things does contribute to greenhouse gas emissions.</p> <p>Thomas 30(b)(6) Dep. 105:9-18.</p>	<p>DNRC’s authorization, permitting, and licensing of fossil fuel extraction and production results in greenhouse gas emissions.</p>
Shawn Thomas	<p>Q. And it says: Defendants engage in a systemic pattern and practice of issuing permits, licenses, and leases that result in greenhouse gas emissions without considering how the additional GHG emissions will contribute to the climate crisis. Do you see that there?</p> <p>A. Yes.</p> <p>Q. Is there anything in that statement that you disagree with?</p> <p>MR. OESTREICHER: Objection to form, vague, calls for a legal conclusion. Go ahead.</p> <p>THE DEPONENT: So DNRC does engage in a pattern of – and practice of issuing permits, licenses, and leases. Those do result in greenhouse gas emissions. There’s considerations for climate that come into play from time to time on certain actions – agency actions, so those permits are oftentimes subject to other permitting regulatory entities, such as federal regulation, other regulation, that dictate what and how an analysis would be</p>	<p>DNRC engages in a pattern and practice of issuing permits, licenses, and leases for activities which result in greenhouse gas emissions.</p>

	<p>done that might or might not determine or contribute to the climate crisis.</p> <p>Thomas 30(b)(6) Dep. 108:3-25.</p>	
Shawn Thomas	<p>Q. (By Ms. Rodgers) Okay. Has DNRC ever denied a permit for a coal lease?</p> <p>A. DNRC, in the time I've been here, has never denied a permit for a coal lease. I can't speak to most of the coal leases that existed prior to my tenure here, if any of them would have been denied by the board or the department as throughout history.</p> <p>Thomas 30(b)(6) Dep. 110:7-13.</p>	<p>Since 2003, DNRC has never denied a permit for a coal lease.</p>
Shawn Thomas	<p>Q. Okay. Has DNRC issued a permit or license for the Keystone XL pipeline project?</p> <p>A. We have issued permits and leases.</p> <p>Q. What kinds of permits?</p> <p>A. Actually it would be licenses and leases. Sorry. Correct me.</p> <p>Q. Okay.</p> <p>A. I believe licenses for construction workspace, and we had a commercial lease for a pumping station.</p> <p>Q. Did any of the pipeline cross state trust lands?</p> <p>A. Yes.</p> <p>Q. And did you issue a right-of-way or easement for that?</p> <p>A. Yes.</p> <p>Thomas 30(b)(6) Dep. 112:3-16.</p>	<p>DNRC has issued licenses and leases for the Keystone XL pipeline, as well as a right-of-way or easement where the pipeline crossed state trust lands.</p>
Shawn Thomas	<p>Q. Okay. Can you take a look at Subparagraph N? And that reads: Defendants authorized, through licenses and leases, the exploration and extraction of oil and gas in Montana. Do you see that there?</p> <p>A. Yes.</p> <p>Q. And is that activity that DNRC does?</p> <p>MR. OESTREICHER: Objection to the form of the question, asked and answered.</p> <p>THE DEPONENT: Yes. I believe through -- under the direction of the Land Board and with their approval as necessary, yes.</p> <p>Q. (By Ms. Rodgers) Uh-huh. When you say "under the direction," what do you mean by that?</p>	<p>DNRC, through the State Land Board, has authorized, through licenses and leases, the exploration and extraction of oil and gas in Montana</p>

	<p>A. The Land Board is the constitutional body that has the decision-making functions for the DNRC, so...</p> <p>Q. Okay. You mean they're the final decision-maker; is that what you mean?</p> <p>A. Yes.</p> <p>Thomas 30(b)(6) Dep. 115:14-116:8.</p>	
Shawn Thomas	<p>Q. Okay. And does DNRC have any policies in place with respect to how it implements MEPA?</p> <p>MR. OESTREICHER: Objection to form, vague.</p> <p>THE DEPONENT: So MEPA implementation is outlined in statute. The Legislative Services Division does statewide coordination and training on MEPA implementation. We do a number of internal MEPA trainings and have a person that coordinates our MEPA activities.</p> <p>Thomas 30(b)(6) Dep. 125:3-10.</p>	DNRC's implementation of MEPA is outlined in the MEPA statute.
Shawn Thomas	<p>Q. And what is the purpose of migrating pipelines held under license to right-of-way easements?</p> <p>A. So historically the department has had the ability to authorize pipelines -- particularly smaller pipelines, flowlines -- under licenses, so we could issue a license on a 10-term to somebody. The Land Board has evolved policy related to pipelines over time, and the current direction from the board through the Land Board's easement policy is to have pipelines under 30-year term easements.</p> <p>Thomas 30(b)(6) Dep. 129:2-10.</p>	Historically DNRC has had the ability to authorize pipelines, particularly smaller pipelines, flowlines, under licenses, so DNRC could issue a license on a 10-term. The State Land Board has evolved policy related to pipelines over time, and the current direction through the State Land Board's easement policy is to have pipelines under 30-year term easements.
Shawn Thomas	<p>Q. And who decides what is put up for -- what parcels are put up for auction?</p> <p>A. So the -- the front of that web page, on Page 1 of the handout you gave us, there's, under "mineral lease search," "oil and gas vacant lease tracts." So we do quarterly lease sales, and we move forward with a nominations process every quarter. So a proponent that wants to lease a section can nominate that section for lease. There's four cycles of that that happen throughout the year. They can look at this tool here to find out what's already leased, what is not, what's available. They nominate the</p>	<p>DNRC holds quarterly lease sales for mineral leases.</p> <p>DNRC can establish stipulations in its mineral leases to protect natural resources, such as water bodies.</p>

	<p>process. We evaluate those -- those nominations, and then that -- you asked if we had ever rejected a lease process, that would be the place where things might get filtered out. And we establish stipulations to those leases. So if a lease is near a body of water, we might put a stipulation for offsetting from that.</p> <p>Thomas 30(b)(6) Dep. 133:8-18.</p>	
Shawn Thomas	<p>Q. (By Ms. Rodgers) Okay. Does the DNRC track Montana's oil, gas, and coal reserves? A. No. Q. Do you have knowledge about Montana's oil, coal, and gas reserves? A. No.</p> <p>Thomas 30(b)(6) Dep. 137:6-8.</p>	<p>DNRC does not track Montana's oil, gas, and coal reserves.</p> <p>DNRC does not have any knowledge about Montana's oil, gas, and coal reserves.</p>
Will Rosquist	<p>Q. I have noticed in some of the documents that we'll look at later today a reference to the Department of Public Service Regulation. What is that? A. The Department of Public Service Regulation is the State agency, and the Public Service Commission is the head of the Department of Public Service Regulation. We often use the term "Public Service Commission" interchangeably with "Department of Public Service Regulation." Q. Just to clarify then, the Montana Department of Public Service Regulation is an agency of the State of Montana? A. That's correct.</p> <p>Rosquist 30(b)(6) Dep. 11:2-15.</p>	<p>Admits that PSC is an agency of the State of Montana.</p>
Will Rosquist	<p>Q. (By Mr. Sullivan) I'd like to turn now to some questions about the Public Service Commission's organizational structure and mission, if we could. What is the mission of the Public Service Commission? A. The commission states its mission on its website as endeavoring to ensure that public utility customers have access to affordable, reliable electricity service that's sustainable for the long-term -- I should say utility services, not just electricity services, and to balance the interests of the utility customers with the interests of the utility.</p>	<p>The PSC's mission is endeavoring to ensure public utility customers have access to affordable, reliable utility (including electric) services that is sustainable for the long term and to balance the interests of the utility customers with the interests of the utility.</p> <p>The PSC is headed by five elected commissioners acting collectively.</p> <p>The role of PSC commissioners is to vote as a member of the commission on matters that come before the commission and which require a commission decision.</p>

	<p>Q. Who runs the Public Service Commission? A. The head of the agency is the five elected commissioners acting collectively.</p> <p>Q. And they in turn hire a staff? A. Correct.</p> <p>Q. What is the role of the public service commissioners? A. The role of the public service commissioners is to vote as a member of the commission on matters that come before it and that require a commission decision.</p> <p>Q. Are they elected? A. They are elected.</p> <p>Rosquist 30(b)(6) Dep. 17:20-18:20.</p>	
Will Rosquist	<p>Q. (By Mr. Sullivan) Can a pipeline that transports oil or gas operate within the state of Montana without involvement of the Public Service Commission? A. In certain instances, yes.</p> <p>Q. What are those instances? A. The commission does not have involvement with interstate oil pipelines, liquid pipelines, or interstate natural gas pipelines.</p> <p>Q. And How do you define "interstate"? A. A pipeline that passes through Montana interconnects with a pipeline on -- outside the borders of Montana.</p> <p>Q. What if a pipeline that passes through the state of Montana also delivers oil or gas to the state of Montana, intrastate delivery of gas? A. When you say, "gas," are you referring to gasoline or natural gas?</p> <p>Q. Natural gas. A. So what I can say is that the commission exercises authority over intrastate natural gas pipeline safety, and we have authority to set rates on intrastate moves of liquids and carbon dioxide in a common carrier -- in a common carrier mode.</p> <p>Rosquist 30(b)(6) Dep. 21:10-22:20.</p>	<p>The PSC does not have involvement with interstate oil pipelines, liquid pipelines, or interstate natural gas pipelines.</p> <p>The PSC exercises authority over intrastate natural gas pipeline safety.</p> <p>The PSC has authority to set rates on intrastate moves of liquids and carbon dioxide in a common carrier mode.</p>
Will Rosquist	<p>Q. (By Mr. Sullivan) I'm trying to understand this reference to the commission apparently, based on the statement in the document, directing the utility to consider regional development while identifying its resource needs as</p>	<p>It is important for the PSC to consider region-wide impacts when making decisions.</p>

	<p>well as a wide range of alternatives to meet those needs. MR. OESTREICHER: Same objection. Go ahead. THE WITNESS: So recognizing that this report is a statement of a commissioner, the chairman, but not a statement of the commission, the commission speaks through its orders, I believe that he is referring to the idea that Montana's electricity grid is interconnected to a broader regional grid, and a particular utility that he references there, NorthWestern Energy, purchases electricity in a regional bilateral market. And so the broader regional balance between the capacity to generate electricity and the demand for that electricity affects the price that that utility pays for electricity and can affect the reliability of the broader system. And so I think he's referring to the commission's interest or comments to NorthWestern Energy regarding accounting for those factors in its resource planning process. Q. (By Mr. Sullivan) So would it be fair to say that it's important to consider region-wide impacts when making decisions? MR. OESTREICHER: Objection, form. Go ahead and answer. THE WITNESS: Yes.</p> <p>Rosquist 30(b)(6) Dep. 26:16-27:21.</p>	
Will Rosquist	<p>Q. (By Mr. Sullivan) What is meant by "alternatives" in the commissioner's statement there? MR. OESTREICHER: Objection, form. Answer if you can. THE WITNESS: The statutes require utilities to evaluate the full range of alternatives that could be used to meet the needs of its customers when it plans for the future. And so alternatives includes things like generating plants. It includes things like energy efficiency programs, demand-side management programs. So that's what "alternatives" refers to, all the ways that the utility could meet the needs of its customers.</p> <p>Rosquist 30(b)(6) Dep. 27:22-28:9.</p>	<p>The statutes require utilities to evaluate the full range of alternatives that could be used to meet the needs of its customers when it plans for the future. "Alternatives" in the integrated resource planning process encompasses the full range of alternatives that could be used to meet a utility's customer's needs – including generating plants, energy efficiency programs, and demand-side management programs.</p>
Will Rosquist	<p>Q. (By Mr. Sullivan) I just said that the answer then states that in response to</p>	<p>The PSC sets standard-offer contracts rates and terms for qualifying facilities and utility rates.</p>

	<p>the second sentence of paragraph 102, Montana admits that the Montana Public Service Commission, PSC, sets standard-offer contracts for qualifying facilities and utility rates.</p> <p>A. Yes.</p> <p>Q. Okay. Do you agree with that?</p> <p>MR. OESTREICHER: Objection, form. Go ahead.</p> <p>THE WITNESS: Yes, generally I agree with that. I would probably have said Montana Public Service Commission sets standard-offer contracts rates and terms for qualifying facilities and utility rates, but that's generally correct.</p> <p>Rosquist 30(b)(6) Dep. 31:14-32:3.</p>	
Will Rosquist	<p>Q. To your knowledge, what materials do the pipelines transport through Montana?</p> <p>MR. OESTREICHER: Object to the form. Go ahead.</p> <p>THE WITNESS: To my knowledge, pipelines in Montana transport natural gas, crude oil, gasoline, diesel, various refined products.</p> <p>Rosquist 30(b)(6) Dep. 40:4-10.</p>	Pipelines in Montana transport natural gas, crude oil, gasoline, diesel, and various refined products.
Will Rosquist	<p>Q. (By Mr. Sullivan) And I will just want to confirm by way of foundation that you -- if I understand correctly, Mr. Rosquist, you indicated earlier that the Public Service Commission's decisions are made through orders, I believe you said?</p> <p>MR. OESTREICHER: Object to the form of the question. I think it misstates his testimony. But go ahead.</p> <p>THE WITNESS: The commission, as the head of the agency, speaks through its written orders.</p> <p>Rosquist 30(b)(6) Dep. 52:13-23.</p>	The Commission, as the head of the agency, speaks through its orders.
Will Rosquist	<p>Q. (By Mr. Sullivan) Explain to me about this provision that it states "Montana adopted PURPA and the commission oversees its implementation."</p> <p>MR. OESTREICHER: Objection to form, calls for a legal conclusion, speaks for itself. Go ahead.</p> <p>THE WITNESS: So it's my understanding, as I said</p>	<p>Montana has a state version of the federal PURPA statute.</p> <p>PSC implements Montana's PURPA statute.</p>

	<p>before, PURPA is a federal statute, but it is referred to as a system of cooperative federalism. Subsequent to the adoption or to the enactment of PURPA at the federal level, the Montana Legislature adopted a PURPA statute. And that PURPA statute is within the section of code that the Montana Public Service Commission implements.</p> <p>Rosquist 30(b)(6) Dep. 56:13-25.</p>	
<p>Will Rosquist</p>	<p>Q. And specifically I'm going to commence at paragraph 17 because I have some questions to ask you about avoided costs that you've generally described to us, which I appreciate. Quoting, "The commission's decision to reduce by more than half the standard rate that NorthWestern Energy must pay for QF-generated electricity was also arbitrary and unreasonable. NorthWestern Energy must pay a rate for QF power that equals its full 'avoided costs' from not having to generate that energy itself or purchase it on the market, 16 U.S.C. Section 824a-3(b),(d); 18 C.F.R. Section 292.101(b)(6); Administrative Rule Montana 38.5.1901(2)(a)(defining 'avoided costs'). The rates must be 'just and reasonable to the electric consumers of the electric utility and in the public interest' and 'shall not discriminate' against QFs." Did I read that correctly?</p> <p>A. Yes.</p> <p>Q. So are there three separate requirements that must be met in terms of avoided costs?</p> <p>MR. OESTREICHER: Objection to form, speaks for itself.</p> <p>THE WITNESS: If by "three requirements" you are referring to just and reasonable to the electric consumers in the public interest and shall not discriminate against QFs --</p> <p>Q. (By Mr. Sullivan) That's what I'm referring to.</p> <p>MR. OESTREICHER: Same objection. Go ahead.</p> <p>THE WITNESS: And is your question whether those are the only requirements?</p> <p>Q. (By Mr. Sullivan) If those are three factors.</p> <p>A. Yes, they are.</p>	<p>Avoided costs paid to Qualifying Facilities under PURPA must be just and reasonable to the electric consumers of the electric utility, in the public interest, and not discriminate against Qualifying Facilities.</p>

<p>Will Rosquist</p>	<p>Rosquist 30(b)(6) Dep. 60:20-62:5.</p> <p>Q. (By Mr. Sullivan) If I understand correctly, you are both at a supervisory capacity and you're an economist. Have you, in terms of your work at the commission, looked at rate setting?</p> <p>A. Yes.</p> <p>Q. And in terms of your work in setting rates and issuing staff reports, have you considered these factors?</p> <p>A. Yes.</p> <p>Rosquist 30(b)(6) Dep. 62:12-20.</p>	<p>When setting rates, the PSC has considered the factors of just and reasonable to the electric consumers of the electric utility, in the public interest, and not discriminate against Qualifying Facilities.</p>
<p>Will Rosquist</p>	<p>Q. (By Mr. Sullivan) Yeah, I was trying - - you know, preliminarily to that, I was just trying to understand. You know, we hear a lot about, for instance, what the benefit will be from a particular project, let's say a utility project of some sort. Let's say that the distribution of some electricity to consumers, as an example. But there's also -- in terms of that, there's also costs that are inherent in that. And I'm just trying to get as a baseline, what is a cost when you're -- when you're actually doing an economic analysis of a proposal, what is a cost so that we can understand then and go to the next more detailed level of avoided costs. Let's say, for instance, a utility is going to take an action, and that action would involve some costs. Let's say it's going to try to fulfill its obligation to transmit a certain amount of energy over its electrical lines, as an example. That would -- that would mean that that utility would incur certain costs in order to be able to sell that electricity and have the benefit of the income from the sale of that. Is that simplistically accurate?</p> <p>MR. OESTREICHER: I'll just object to the form. I think multiple questions there. I'm not trying to get in your way of asking the question, but for purposes of the record, objection.</p> <p>THE WITNESS: So I'm not sure I'm prepared to give an economic seminar on the -- on the concept of cost. What I can say is that in the context of PURPA rate-making cost and the notion of avoided cost will be the cost that the utility would otherwise have incurred. So if that -- if</p>	<p>In the context of PURPA, an avoided cost is the cost that a utility would otherwise have incurred to generate the electricity the utility obtains from the Qualifying Facility.</p> <p>A utility's carbon dioxide emissions could be considered an avoided cost under PURPA rate setting.</p>

	<p>we're talking about energy cost and what would be avoided by QF energy, it may be the cost of generating electricity from an alternative electric power plant, or it may be the cost of purchasing electricity from someone else who generates power from a power plant.</p> <p>Q. (By Mr. Sullivan) Those examples, I understand. What about this idea of – and particularly in regard to the regulatory functions that you've been involved in – what about the costs of carbon dioxide emissions?</p> <p>MR. OESTREICHER: Objection to form.</p> <p>THE WITNESS: I'm not sure I understand what you're asking. What about the cost?</p> <p>Q. (By Mr. Sullivan) Well, is that an avoided energy cost?</p> <p>MR. OESTREICHER: Objection to form, vague. Go ahead.</p> <p>THE WITNESS: If – if the utility would incur a cost, it would have to make a payment for the carbon emissions that it emits in the process of generating electricity, then it could potentially be avoidable.</p> <p>Rosquist 30(b)(6) Dep. 65:11-67:14.</p>	
Will Rosquist	<p>Q. (By Mr. Sullivan) So the future regulatory costs of carbon dioxide emissions is a cost that should be included –</p> <p>MR. OESTREICHER: Objection to form. Q. (By Mr. Sullivan) -- in avoided cost analysis?</p> <p>MR. OESTREICHER: Apologies. Objection to form. Go ahead and answer, if you can.</p> <p>THE WITNESS: Can you clarify what you mean by the future regulatory costs?</p> <p>Q. (By Mr. Sullivan) Oh, is there a present regulatory cost of carbon emissions?</p> <p>A. Not that I'm aware of.</p> <p>MR. OESTREICHER: Objection to form. Go ahead.</p> <p>MR. SULLIVAN: Pardon?</p> <p>MR. OESTREICHER: Objection to the form of the question. Go ahead and answer.</p>	<p>In Montana, there is no statute that imposes costs on a public utility for the carbon dioxide emissions associated with their electricity generation.</p>

	<p>THE WITNESS: In Montana, there is no statute that imposes a cost on an electric generator for the carbon emissions associated with that generation.</p> <p>Rosquist 30(b)(6) Dep. 67:15-68:11.</p>	
Will Rosquist	<p>Q. (By Mr. Sullivan) We will, but I'm talking about we -- we kind of started at some economic basics you'll remember, and we were dealing with costs, and then we went to avoided costs. And we will go next then to a specific application of avoided cost methodology here momentarily, but I was just trying to -- see if we had a common understanding of the concepts.</p> <p>A. It is -- it is possible and intervenors in commission cases have argued that it's reasonable to incorporate expectations or projections of the possibility that carbon emissions will be regulated in the future, and, therefore, there will be a cost associated with them to account for those in the -- in the estimation of avoided energy costs, yes.</p> <p>Rosquist 30(b)(6) Dep. 70:6-20.</p>	<p>It is possible for the PSC to consider the avoided cost of future carbon emissions regulations in rate setting.</p> <p>Intervenors in PSC proceedings have argued for the PSC to consider the avoided cost of future carbon emissions regulations in rate setting.</p>
Will Rosquist	<p>Q. Could you, as you've attempted to do before, just briefly summarize for us the concept of avoided capacity costs?</p> <p>A. So my understanding is that capacity costs generally reflect the cost of a new capital investment that would be needed to -- to add generating -- add the capability to produce energy. And so avoided capacity cost would be any of those future investments that could be offset as a result of acquiring the energy from the QF.</p> <p>Rosquist 30(b)(6) Dep. 75:20-76:4.</p>	<p>Avoided capacity costs reflect the cost of a new capital investment that a utility would need to add to its generating capacity that would be offset as a result of the utility's acquiring energy from a qualifying facility.</p>
Will Rosquist	<p>Q. (By Mr. Sullivan) It may be that I'm misconflating it, but I -- I want to make sure that we -- we understand. And in particular, I want to try to get back to this issue of avoided capacity needs, which is also relevant here in terms of QFs, right, in terms of setting pricing for QFs?</p> <p>MR. OESTREICHER: Objection to form, compound.</p> <p>THE WITNESS: Avoided capacity costs is an -- is an element of implementing PURPA.</p>	<p>A utility's avoided capacity costs are important to determining the rate that should be paid to a PURPA Qualifying Facility.</p>

	<p>Q. (By Mr. Sullivan) And specifically for the QFs? A. Yes, the utility's avoided capacity costs are important to determining the rate that should be paid to the QF.</p> <p>Rosquist 30(b)(6) Dep. 79:18-80:6.</p>	
Will Rosquist	<p>Q. (By Mr. Sullivan) Would it be fair to say, Mr. Rosquist, that the commission staff does not always agree with the commission or vice versa. The commission does not always agree with the commission staff? A. That's true.</p> <p>Rosquist 30(b)(6) Dep. 82:7-12.</p>	The Commission staff does not always agree with the decisions of the Commission, and the Commission does not always agree with the Commission staff.
Will Rosquist	<p>Q. Let's talk next about contract length, please. Describe to me the import economically of contract length and more specifically in the context of these QFs. MR. OESTREICHER: Objection, form, compound. Go ahead. THE WITNESS: Contract length gives a QF a measure of certainty in the sense that when you can combine a known rate with a known contract term, you can estimate a revenue stream that allows you to do your own economic analysis as to whether or not constructing your qualifying facility will be feasible. Q. (By Mr. Sullivan) And as Commissioner Lake so adroitly noted, that's an important factor, is it not, in terms of the viability of a QF? MR. OESTREICHER: Objection to the form of the question. THE WITNESS: Yes.</p> <p>Rosquist 30(b)(6) Dep. 86:23-87:9.</p>	<p>Contract length gives PURPA qualifying facilities certainty as to whether constructing the facility will be feasible.</p> <p>Contract length is an important factor that determines the ultimate viability of a PURPA qualifying facility.</p>
Will Rosquist	<p>Q. (By Mr. Sullivan) And what does the -- well, I'll read the last sentence in the same paragraph. It states, does it not, "Montana Sun is entitled to a 25-year contract under commission precedent and based on testimony in the underlying Montana Sun docket"; is that correct? MR. OESTREICHER: Same objection. Go ahead. THE WITNESS: That's what the document says. Q. (By Mr. Sullivan) In this case also, in a -- in a particularized way, addressed</p>	The PSC can and has addressed carbon pricing in specific rate setting determinations.

	<p>the issue of carbon pricing again, did it not? MR. OESTREICHER: Same objection. Go ahead. THE WITNESS: "In a particularized way" meaning? Q. (By Mr. Sullivan) Well, before you said that the docket -- it was -- that the preceding case involved a generalized docket, whereas this was a particular -- a petition filed by a particular applicant. A. Correct. Q. Okay. And so I was just saying that carbon pricing was not being addressed generically here, but specific to the application at issue, which was Montana Sun's? A. Yes.</p> <p>Rosquist 30(b)(6) Dep. 92:1-93:1.</p>	
Will Rosquist	<p>Q. Explain -- I think you briefly touched on it earlier, but if you would explain what the Integrated Resource Plan is. MR. OESTREICHER: I'll just object to form. I think it's asked and answered. Go ahead. THE WITNESS: So the Integrated Resource Plan is a document that the utility files with the commission pursuant to a statutory requirement for utilities to conduct integrated resource planning. The Integrated Resource Plan assesses -- provides the utilities an assessment of its expectations of future load serving obligations, the performance of its existing generating or other supply resources and the need for new resources, and an evaluation of the costs of alternatives that could be used to fill any -- any future resource needs to -- to meet those load-serving obligations.</p> <p>Rosquist 30(b)(6) Dep. 97:3-19.</p>	<p>An Integrated Resource Plan is a document utilities file with the Commission pursuant to statutory requirements.</p> <p>A utility's Integrated Resource Plan provides an assessment of the utility's expectations of future load serving obligations, performance of existing generating resources and need for new resources, and an evaluation of the costs of alternatives that could be used to fill load-serving obligations.</p>
Will Rosquist	<p>Q. (By Mr. Sullivan) Okay. Do you agree that the Public Service Commission has a duty to comply with the state energy policy as set forth in this statute? MR. OESTREICHER: Object to the form of the question, calls for a legal conclusion, misstates the title of the statute. Go ahead. THE WITNESS: So in my experience, the commission is guided in its regulatory</p>	<p>The PSC is guided in its regulatory activity by the statutes in Title 69 of the Montana Code Annotated. The state's energy policy goal statements are reflected in the PSC's governing statutes in Title 69.</p>

	<p>activity by -- by Title 69. And to the extent that the regulation of public utilities is guided by the state's energy policy goal statements, we accept that those are reflected in our governing statutes in Title 69.</p> <p>Rosquist 30(b)(6) Dep. 106:5-18.</p>	
Will Rosquist	<p>Q. (By Mr. Sullivan) Who decides how Montana should obtain its energy? A. I'm not sure there is one single person who makes that decision.</p> <p>Q. Entity? A. I'm not sure there's one single entity that makes that decision.</p> <p>Q. Among a range of players, whether persons or entities, who would be included in that? A. Well, obviously electric utilities that the commission oversees make decisions regarding energy planning and resource acquisition, and the commission in its regulatory sphere oversees that.</p> <p>Q. Others? A. I'm sure there are others. I don't know if I can be specific of who they are.</p> <p>Q. Does the Public Service Commission play a role in deciding what energy Montanans can use? MR. OESTREICHER: Object to the form of the question. Go ahead. THE WITNESS: To some extent, it does.</p> <p>Rosquist 30(b)(6) Dep. 110:20-111:15.</p>	<p>There is no one person or entity who determines how Montana obtains its energy.</p> <p>The PSC plays a role in deciding what sources of energy Montanans can use.</p>
Will Rosquist	<p>Q. (By Mr. Sullivan) If a regulated utility wanted a new coal-fired power plant, would it need to obtain Public Service Commission approval? A. No.</p> <p>Q. Where would it -- where would it need to obtain approval? A. It may need to obtain certain permits, environmental permits or siting permits or land use permits from other regulatory bodies, but it would not need the Public Service Commission's approval to construct a new coal-fired power plant.</p> <p>Q. When would the Public Service Commission's jurisdiction or concern arise with a coal-fired power plant? MR. OESTREICHER: Objection to the form of the question. Go ahead. THE WITNESS: At the time the utility</p>	<p>PSC approval is not needed for a utility to operate a new coal-fired power plant in Montana.</p> <p>PSC jurisdiction in a hypothetical new coal-fired power plant scenario would arise at the time the utility would seek to recover the cost of the coal plant in its electricity rates.</p>

	would seek to recover the cost of that coal plant in its rates. Rosquist 30(b)(6) Dep. 112:1-19.	
Will Rosquist	Q. Are you aware of the reason why, to your knowledge, the Public Service Commission doesn't review MEPA documents in its proceedings and decision-making? MR. OESTREICHER: And I'll have the same objection. But you can answer. THE WITNESS: Because the Public Service Commission is an economic regulator, not an environmental regulator. Rosquist 30(b)(6) Dep. 114:15-22.	The PSC does not conduct MEPA analyses in its proceedings and decision-making because the PSC is an economic regulator, not an environmental regulator.
Will Rosquist	Q. Well, I -- I don't mean to confuse you. There were -- inherently confusing as to whether it was, you know, a utility or the PSC. But to clarify, does the PSC -- we can just ask that question. Does the Public Service Commission have any plans or policies in regards to transitioning Montana away from fossil fuels? A. No. Q. Has the Public Service Commission ever done any economic analysis with respect to decarbonizing Montana's energy system? A. No, I don't believe that's a statutory responsibility that we have. Rosquist 30(b)(6) Dep. 118:9-16.	The PSC has no current plans or policies to transitioning Montana away from fossil fuels. The PSC has never done any economic analyses with respect to decarbonizing Montana's energy system.
Will Rosquist	Q. Could Montana meet all of its electricity requirements through the use of renewable energy projects? MR. OESTREICHER: Objection, form. Go ahead. THE WITNESS: It may be technically feasible to do that. Rosquist 30(b)(6) Dep. 118:22-119:3.	It may be technically feasible for Montana to meet all its electricity requirements through the use of renewable energy projects.
Will Rosquist	(By Mr. Sullivan) Is it the PSC's position that continuing to rely on fossil fuels is in the public interest? MR. OESTREICHER: Objection to the form of the question. THE WITNESS: That is a decision that the commission makes on an ongoing case-by-case basis. Utilities currently have resources that rely on fossil fuels. And every time the commission makes a decision regarding the recovery of costs	Whenever the PSC makes a decision regarding the recovery of costs regarding fossil fuel-based electricity generation, it is essentially making a public interest determination. The public interest is defined in the context of each contested case proceeding based on the evidentiary record in the proceeding concerning the cost and benefit.

	<p>regarding those resources, it's -- it's essentially making a public interest determination.</p> <p>Q. (By Mr. Sullivan) How does the Public Service Commission define "public interest"?</p> <p>A. Public interest gets defined in the context of contested case proceedings based on the evidentiary record gathered in those proceedings regarding the cost and the benefit.</p> <p>Rosquist 30(b)(6) Dep. 120:8-24.</p>	
Will Rosquist	<p>Q. (By Mr. Sullivan) So I take it, Mr. Rosquist, that on behalf of the PSC, you would agree that the Public Service Commission has an obligation to comply with the Montana Constitution?</p> <p>A. We have an obligation to implement the statutes that we're charged with implementing, and we take as a given that those statutes are constitutional.</p> <p>Q. I think you mentioned that the constitution is kind of the basis to what the Public Service Commission was doing, or I could have misunderstood your answer a minute ago.</p> <p>A. I was referring to the Montana Consumer Counsel which was a constitutionally created state agency.</p> <p>Q. The Consumer --</p> <p>A. Counsel.</p> <p>Q. Yes, the Consumer Counsel. But what about -- does the Public Service Commission have a duty to comply with the Montana Constitution's right to a clean and healthy environment?</p> <p>MR. OESTREICHER: Objection, asked and answered.</p> <p>THE WITNESS: The Montana Public Service Commission assumes that the statutes that it's required to implement account for the constitution's requirement regarding a clean and healthful environment.</p> <p>Rosquist 30(b)(6) Dep. 121:21-122:21.</p>	<p>The PSC has obligation to implement the statutes it is charged with implementing.</p> <p>The PSC takes it as a given that the statutes it is charged with implementing are constitutional.</p> <p>The PSC assumes the statutes it is required to implement account for the Montana Constitution's requirement regarding a clean and healthful environment.</p>
Will Rosquist	<p>Q. (By Mr. Sullivan) And specifically -- the specific question was, if a Court told the PSC that its conduct was unconstitutional, would the PSC be obligated to respect the Court's ruling?</p>	<p>The PSC would respect authoritative decision from Montana Supreme Court that its conduct was unconstitutional.</p>

	<p>MR. OESTREICHER: I mean, same objection. But go ahead.</p> <p>THE WITNESS: Again, assuming that there were no opportunity to appeal that ruling to a higher authority, the commission would respect the decision.</p> <p>Rosquist 30(b)(6) Dep. 123:10-21.</p>	
Statement of Agreed Facts based on Defendants' Hybrid Witness Depositions		
Deponent	Transcript	Agreed Fact
Dave Klemp	<p>Q. Okay. Do you agree that Montana has a state energy policy and that it is codified at Section 90-4-1001?</p> <p>A. I believe that's accurate, yes.</p> <p>Q. Okay. Do you agree that the defendants in this case have a duty to apply the laws that are passed by the Montana legislature?</p> <p>A. Yes. I would generally agree to that.</p> <p>Q. Okay. Do you believe that --</p> <p>MS. McKENNA: I object to -- on that. I object on the grounds of legal conclusion.</p> <p>BY MS. HORNBEIN:</p> <p>Q. Do you agree that that duty applies under this statute 90-4-1001?</p> <p>MS. McKENNA: Objection. Calls for a legal conclusion.</p> <p>BY MS. HORNBEIN:</p> <p>Q. You can go ahead and answer.</p> <p>A. Okay. In -- in my capacity I believe we have a duty to comply with the Clean Air Act of Montana and some of the other statutes that govern our day-to-day work. I can't speak to whether or not there's something in here that someone else would need to comply with.</p> <p>Q. Is it a correct characterization of your testimony that you don't take a position on whether DEQ is required to comply with the state energy policy?</p> <p>A. I take a position that the DEQ, specifically the air quality bureau, needs to comply with the Clean Air Act of Montana, Montana Environmental Policy Act, and those statutes that govern our work.</p> <p>Q. Okay. But not this statute?</p> <p>A. Not this statute.</p> <p>Klemp Hybrid Dep. 11:3-12:12.</p>	<p>Montana has a state energy policy codified at Mont. Code Ann. § 90-4-1001.</p> <p>Defendants have duty to apply the laws that are passed by the Montana legislature.</p> <p>DEQ's Air Quality Bureau needs to comply with the Clean Air Act of Montana and the Montana Environmental Policy Act.</p>
Dave Klemp	<p>Q. Okay. Is it your understanding that plaintiffs are challenging the constitutionality of this section 90-4-1001, the state energy policy?</p>	<p>DEQ is not aware of any laws or policies that exempt DEQ from following the State Energy Policy, Mont. Code Ann. § 90-4-1001.</p>

	<p>A. Yes.</p> <p>Q. Okay. Do you have an understanding of whether DEQ implements this policy in any way?</p> <p>A. I have an understanding that the Air Quality Bureau does not follow the statute in the -- through the normal course of the air quality work.</p> <p>...</p> <p>Q. Okay. Are you aware of any laws or policies suggesting that DEQ does not have to follow this statute?</p> <p>A. No.</p> <p>Q. Okay. Are you aware of any laws or policies directing or requiring DEQ to act in a manner that is contradictory to this statute?</p> <p>A. No.</p> <p>Klemp Hybrid Dep. 13:9-14:5.</p>	<p>DEQ is not aware of any laws or policies that direct or require DEQ from acting contrary to the State Energy Policy, Mont. Code Ann. § 90-4-1001.</p>
<p>Dave Klemp</p>	<p>Q. Okay. And going back to your testimony this morning, would an example of a situation where a greenhouse gas analysis is not implicated be, for example, a permit renewal or amendment?</p> <p>A. This morning we talked about -- or earlier MEPA is not required for administrative actions or for title -- permit amendments or Title V permits.</p> <p>Klemp Hybrid Dep. 18:8-14.</p>	<p>MEPA analyses are not required for administrative permit renewals or for Title V permits.</p>
<p>Dave Klemp</p>	<p>Q. Okay. When you say not specifically, are there general situations where you were asked to provide such opinions?</p> <p>A. The MEPA statute describes what should be done and what the constraints are of that analysis, and I don't believe climate change or greenhouse gases are mentioned in the statute.</p> <p>Q. Okay. When you mention what the constraints are of that analysis, what are you referring to?</p> <p>A. A couple changes that have been made, clarified MEPA's procedural. It does not convey any additional authorities beyond the underlying statutory authority such as the Clean Air Act.</p> <p>Q. Uh-huh.</p> <p>A. And we don't analyze impacts that are essentially outside the state's border that are of regional, national, or global in nature.</p>	<p>During MEPA reviews, DEQ does not analyze a project's impacts that are outside the state's border that are of regional, national, or global in nature.</p>

	Klemp Hybrid Dep. 19:8-25.	
Dave Klemp	<p>Q. Do you agree that DEQ is subject to the requirements of MEPA? A. Yes. I agree -- Q. Okay. A. -- DEQ must comply with MEPA.</p> <p>Klemp Hybrid Dep. 21:9-13.</p>	DEQ must comply with the MEPA.
Dave Klemp	<p>Q. Okay. Can you look at section 75-1-201, subpart (2)(a), which is on page 3 of 5 of the document I just put in front of you? A. Okay. Q. Are you familiar with this provision? A. Generally. I've read it in the past, not recently. Q. Is this the provision that we were discussing a few moments ago? A. Yes. I believe so, yes. Q. Okay. Do you have knowledge of under what circumstances this provision is implemented by DEQ? A. When you say implementing this provision, are you talking about the restriction on the analysis? Q. Yes. A. I believe it would be for any MEPA document that we complete. We cannot look or require review of actual or potential impacts beyond Montana's borders.</p> <p>Klemp Hybrid Dep. 21:21-22:15.</p>	<p>DEQ applies Mont. Code Ann. § 75-1-201(2)(a) in every MEPA document it reviews and completes.</p> <p>For any MEPA analysis, DEQ cannot look or require review of actual or potential impacts beyond Montana's borders.</p>
Dave Klemp	<p>BY MS. HORNBEIN: Q. Okay. Well, I referenced a permitting activity, but let's go through some of the examples that we used this morning to get a bit more specific. Does this provision apply when you are permitting an oil refinery -- when DEQ is permitting an oil refinery? A. Which specific permit -- air quality permit are you referring to? Q. Any air quality permit. A. It may or may not apply to a permit, depending on whether or not the permit is a state action that's subject to MEPA. Q. Okay. If the permit is a state action that's subject to MEPA, does this provision apply? A. If there are actual or potential impacts beyond Montana's borders, the agency would be precluded from reviewing those impacts.</p>	<p>If a project for which DEQ is considering whether to issue an air quality permit has actual or potential impacts that are beyond Montana's borders, DEQ is precluded from reviewing those impacts in the MEPA analysis for that air quality permit.</p>

	Klemp Hybrid Dep. 23:7-24.	
Dave Klemp	<p>Q. Okay. Does this provision apply when DEQ is undertaking a permitting action that is subject to MEPA to permit coal mining in Montana?</p> <p>A. If there were impacts associated with the issuance of the air quality permit that were beyond Montana's borders, Montana would be precluded from reviewing actual or potential -- those actual or potential impacts.</p> <p>Q. Okay. Would this provision apply if DEQ is issuing a permit that is subject to MEPA for the transportation of fossil fuels?</p> <p>A. Again, as I mentioned earlier, air quality permits specifically, transportation facilities may or may not be included as -- as part of the permit. And so if it was part of a permit that was a state action and required a MEPA review, if there were impacts -- actual or potential impacts beyond Montana's borders from that action, we -- we would be precluded from reviewing those impacts.</p> <p>Q. In permitting oil and gas infrastructure, for example, of the type we discussed earlier today for, say, a storage tank location, if that permit were subject to MEPA, would this provision apply?</p> <p>A. If an air quality permit was issued for an oil tank facility, again, and there were impacts -- actual or potential impacts outside of Montana's borders, the agency could not review those.</p>	Mont. Code Ann. § 75-1-201(2)(a) prohibits DEQ from reviewing actual or potential impacts beyond Montana's borders of a proposed state action in a number of permitting contexts, including air quality permits for an oil tank facility.
Dave Klemp	<p>Klemp Hybrid Dep. 23:25-25:1.</p> <p>Q. Okay. Does DEQ have any internal policies with respect to how it analyzes climate change impacts under MEPA?</p> <p>A. I don't believe I've read an internal policy or -- or seen a specific policy with regard to that.</p>	DEQ does not have internal policies with respect to how the agency analyzes climate change impacts under MEPA.
Dave Klemp	<p>Klemp Hybrid Dep. 26:21-27:1.</p> <p>If DEQ is engaging in a permitting action that is going to result in a significant amount of greenhouse gas emissions, would it be required to consider such impacts within the state's borders?</p>	<p>DEQ is required to review and disclose the impacts occurring in Montana resulting from a facility for which DEQ is issuing a permit for in Montana.</p> <p>Mont. Code Ann. § 75-1-201(2)(a) prohibits DEQ from conducting a review of actual or potential impacts beyond Montana's borders.</p>

	<p>MS. McKENNA: That's a really compound question. I'm going to object to that.</p> <p>BY MS. HORNBEIN: Q. Okay. You can still go ahead and try and answer.</p> <p>A. It would really depend on the impacts that were occurring in Montana. When you say anthropogenic, you know, the impacts in Montana, we are required to review and disclose those impacts in Montana from a facility that we are issuing a permit for in the state of Montana.</p> <p>Q. Okay. In your opinion does this provision, this provision being 75-1-201 (2)(a), preclude DEQ from assessing certain impacts as part of its environmental review?</p> <p>A. I believe it prohibits us from conducting a review of actual or potential impacts beyond Montana's borders.</p> <p>Klemp Hybrid Dep. 30:7-31:3.</p>	
Dave Klemp	<p>Q. How would DEQ's analysis change for issuance of an air quality permit for a new coal mine in Montana if this provision did not exist?</p> <p>A. If this provision did not exist, if we were issuing an air quality permit for a new coal mine and there was a corresponding MEPA analysis, it could potentially include the review of actual or potential impacts beyond Montana's borders.</p> <p>Klemp Hybrid Dep. 31:24-32:6.</p>	<p>If Mont. Code Ann. § 75-1-201(2)(a) did not exist, DEQ could include the review of actual or potential impacts beyond Montana's borders as part of a MEPA environmental review for an air quality permit.</p>
Dave Klemp	<p>Q. Okay. Would you agree that climate change has impacts that are regional in nature?</p> <p>A. I think that's a fair assessment.</p> <p>Q. Would you agree that climate change has impacts that are national in nature?</p> <p>A. I think that's a fair assessment.</p> <p>Q. And would you agree that climate change has impacts that are global in nature?</p> <p>A. I think that's also fair.</p> <p>Q. Okay. Are you aware of anyone at DEQ, including yourself when you were there, who has relied on this provision, this provision being 75-1-201 (2)(a), when conducting an environmental review of a proposed project under MEPA?</p> <p>A. Yes.</p>	<p>Climate change has impacts that are regional in nature.</p> <p>Climate change has impacts that are national in nature.</p> <p>Climate change has impacts that are global in nature.</p> <p>DEQ relies on Mont. Code Ann. § 75-1-201(2)(a) when conducting MEPA environmental reviews.</p> <p>Mont. Code Ann. § 75-1-201(2)(a) applies to every MEPA analysis undertaken by DEQ.</p>

	<p>Q. Does that apply to you? A. Yes.</p> <p>Q. Does that apply to other people? A. Yes.</p> <p>Q. Okay. Under what circumstances? A. Again, just the air quality bureau, this section applies virtually to -- well, it applies to every MEPA analysis, whether or not there's something specific that is not completed or not, but it is looked at, every single MEPA analysis.</p> <p>Klomp Hybrid Dep. 33:15-34:14.</p>	
Dave Klomp	<p>Q. Okay. Do you agree that defendant DEQ has a constitutional duty to maintain and improve a clean and healthful environment for present and future generations? A. I have a hard time because DEQ, I don't believe, is specifically referenced in the Constitution.</p> <p>Q. Uh-huh. A. I believe it says the state and each person.</p> <p>Q. Okay. A. So I believe, you know, if I -- reading the Constitution it would be the state and each person has a constitutional duty to maintain and improve a clean and healthful environment.</p> <p>Q. Okay. Does that include the state's government? A. Yes. I believe it does.</p> <p>Q. Okay. Is DEQ part of the state's government? A. Yes, it is.</p> <p>Klomp Hybrid Dep. 39:16-40:11.</p>	<p>The Montana Constitution requires the Montana state government to maintain and improve a clean and healthful environment.</p> <p>DEQ is part of the Montana state government.</p>
Dave Klomp	<p>Q. Is there anything in the allegation in paragraph 87 that I just read you that you disagree with? A. We've already covered the first sentence.</p> <p>Q. Uh-huh. A. I also, I think, referenced earlier -- and I'm not sure how much I need to repeat, but, again, the Clean Air Act of Montana and the Montana Environmental Policy Act are two statutes that we use to fulfill the obligation under the Constitution. The next sentence, if you look at defendant DEQ, there's the word broad in there --</p> <p>Q. Uh-huh. A. -- that I believe is very subjective.</p>	<p>DEQ has statutory authority to protect, sustain, and improve a clean and healthful environment.</p>

	<p>Q. Okay. A. And I don't know that I would call it broad statutory authority.</p> <p>Q. How would you describe DEQ's statutory authority in this respect? A. There is statutory authority to protect, sustain, and improve a clean and healthful environment.</p> <p>Klemp Hybrid Dep. 40:12-41:8.</p>	
Dave Klemp	<p>Q. Can you describe what the greenhouse effect is? A. It is an amplification maybe of -- of temperatures --</p> <p>Q. Uh-huh. A. -- due to the gases being present in the atmosphere.</p> <p>Q. Okay. And is that effect influenced by the concentration of those gases in the atmosphere? A. I believe so, yes.</p> <p>Q. Okay. In your -- in your opinion what effect do greenhouse gas emissions have on the atmosphere? A. In my opinion from a -- a specific action related to permitting something that has greenhouse gas emissions in their totality, I can't speak to that because emissions are different than impact.</p> <p>Q. Okay. Do emissions influence impact? A. Yes, they do.</p> <p>Q. Okay. How do they influence impact? A. Holding everything else the same?</p> <p>Q. Uh-huh. A. Generally, if you add more of something to the mix, it's going to increase the concentrations.</p> <p>Q. Okay. And what does it increase -- what does increasing the concentrations do within the atmosphere? A. Are you referring to specifically greenhouse -- there's carbon dioxide concentration or greenhouse gas concentrations.</p> <p>Q. Greenhouse gas concentrations. A. It could amplify the -- the -- I guess the -- the greenhouse gas effect.</p> <p>Q. Otherwise known as climate change? A. Some people refer to that as climate change, yes.</p> <p>Q. Or global warming? A. Some people refer to it as that as well.</p>	<p>The greenhouse effect is an amplification of temperatures due to the gases being present in the atmosphere and is influenced by the concentration of those gases in the atmosphere.</p> <p>Emissions of GHGs influence their resulting impact on the atmosphere.</p> <p>Holding all else the same, increasing emissions of GHGs will increase atmospheric GHG concentrations.</p> <p>An increase in atmospheric greenhouse gas concentrations could amplify the planetary greenhouse effect.</p> <p>The amplification of the planetary greenhouse effect is referred to as climate change or global warming.</p>

	Klemp Hybrid Dep. 43:7-44:19.	
Dave Klemp	<p>Q. Okay. I just want to make sure we're talking about the same principle. Does the amount of greenhouse gases admitted -- not admitted -- emitted into the atmosphere have any effect on how DEQ carries out its mission?</p> <p>A. It could.</p> <p>Q. In what way?</p> <p>A. If the amount of greenhouse gas emissions rose to the level that it became subject to regulation, there could be some analysis done as part of the Montana air quality permit.</p> <p>Klemp Hybrid Dep. 44:20-45:5.</p>	The amount of GHGs emitted into the atmosphere could have an effect how DEQ carries out its mission, in terms of rendering a certain facility or activity subject to regulation and permitting requirements.
Dave Klemp	<p>Q. Okay. Do you agree with the allegations contained in paragraph 89?</p> <p>A. No.</p> <p>Q. Okay. Which parts do you disagree with?</p> <p>A. The phrasing of this is challenging in the very first paragraph.</p> <p>Q. Uh-huh.</p> <p>A. DEQ is mandated to ensure that all projects and activities, I believe, are mandated to ensure that all of our permit issuance procedures, everything comply with MEPA. That may be different than a project or an activity.</p> <p>Klemp Hybrid Dep. 48:4-15.</p>	DEQ is mandated to ensure that all permit issuance procedures comply with MEPA.
Dave Klemp	<p>Q. Okay. Would you agree that DEQ has both permitting and compliance responsibilities?</p> <p>A. Specifically within the air quality bureau, yes.</p> <p>Klemp Hybrid Dep. 48:22-25.</p>	DEQ's air quality bureau has both permitting and compliance responsibilities.
Dave Klemp	<p>Q. I can withdraw that and I'm just going to go ahead and ask you what did Senate Bill 233 do to your knowledge and understanding?</p> <p>A. To my knowledge and understanding, it removed the rulemaking provisions from the Board of Environmental Review and placed them with the Department of Environmental Quality and left permit appeals with the Board of Environmental Review.</p> <p>Klemp Hybrid Dep. 51:5-12.</p>	Senate Bill 233 (2021) removed the rulemaking provisions from the Board of Environmental Review and placed them with the Department of Environmental Quality and left permit appeals with the Board of Environmental Review.
Dave Klemp	<p>Q. Okay. Do you agree that DEQ issues air quality permits to facilities that emit</p>	DEQ issues air quality permits to facilities that emit greenhouse gas emissions in the state of Montana.

	<p>greenhouse gas emissions in the state of Montana? A. Yes. Generally. Q. Do you agree that defendant DEQ issues air quality permits to – and I'm just providing examples under that part of the question -- to coal mining operations? A. We issue air quality permits to coal mining operations, yes. Q. Does DEQ issue permits to energy power plants? A. Yes. Q. And does DEQ issue permits to oil and gas refineries? A. Yes. Some.</p> <p>Klemp Hybrid Dep. 51:22-52:12.</p>	<p>DEQ issues air quality permits to coal mining operations.</p> <p>DEQ issues air quality permits to energy power plants.</p> <p>DEQ issues permits to oil and gas refineries.</p>
<p>Dave Klemp</p>	<p>Q. Are there any other facilities that you can think of that emit greenhouse gas emissions that fall under the air quality bureau's permitting authority? A. Yes. Q. Like what? A. Any facility that the air quality bureau issues a permit to that has any sort of combustion would have some greenhouse gas emissions. Q. Okay. Could you provide me an example or two of things that don't fall into these other categories that we just discussed? A. There could be compressor stations. Q. Uh-huh. A. There could be oil and gas well operations, gravel crushers. Q. Okay. A. Anything that might use an engine or something like that to power something.</p> <p>Klemp Hybrid Dep. 53:9-54:2.</p>	<p>DEQ issues air quality permits for any facility or operation that uses a combustion engine or a similar apparatus to power a device (i.e., compressor stations, oil and gas well operations, gravel crushers), which device would have some greenhouse gas emissions.</p>
<p>Dave Klemp</p>	<p>Q. Do you agree that DEQ now post Senate Bill 233 adopts rules and – adopt -- excuse me -- adopts rules? A. I believe DEQ has the authority to adopt rules without going through the board process. ... Q. To the best of your knowledge, is it still the BER that determines appeals under regulatory statutes that DEQ is in charge of administering? A. I -- I believe so, yes. Permit appeals, yep.</p>	<p>Senate Bill 233 gives DEQ the authority to adopt rules without going through the Board of Environmental Review process.</p> <p>The BER still determines appeals under regulatory statutes that DEQ administers.</p>

	Klemp Hybrid Dep. 55:21-56:13.	
Dave Klemp	<p>Q. How would you describe DEQ's authority to set a quantitative limit for greenhouse gas emissions?</p> <p>A. I would describe that DEQ has statutory authority in certain instances to -- to establish greenhouse gas emissions.</p> <p>Q. Okay. What instances do you think those are?</p> <p>A. If the emissions are associated with a major stationary source and the emissions of greenhouse gas emissions are above a certain threshold, there is an opportunity to review whether or not that may or may not -- the greenhouse gas emissions can or cannot be economically controlled. And there's the opportunity to potentially establish a specific greenhouse gas limitations or work practice in -- in place of that.</p> <p>Klemp Hybrid Dep. 58:2-18.</p>	DEQ has statutory authority in certain instances to establish greenhouse gas emissions limitations. If the emissions are associated with a major stationary source and the greenhouse gas emissions are above a certain threshold, there is an opportunity to review whether or not the greenhouse gas emissions can or cannot be economically controlled.
Dave Klemp	<p>Q. As far as you're aware, has the BER ever set a quantitative limit for greenhouse gas emissions?</p> <p>A. I cannot think of an instance where that has happened.</p> <p>Klemp Hybrid Dep. 58:21-25.</p>	The BER has never set a quantitative limit for greenhouse gas emissions.
Dave Klemp	<p>Q. Okay. Has DEQ ever set such a limit through a rulemaking proceeding?</p> <p>A. Are you still referring to a specific quantitative limit?</p> <p>Q. Yes.</p> <p>A. Through a rulemaking? Not that I'm aware of.</p> <p>Klemp Hybrid Dep. 59:3-9.</p>	DEQ has not established a quantitative limit for greenhouse gas emissions through rulemaking.
Dave Klemp	<p>Q. Okay. What role did you play when you were at DEQ in setting quantitative limits for greenhouse gas emissions to prevent air pollution?</p> <p>A. Going back to -- as a permitter, anytime you establish a production limitation, whether you specifically list the -- all the different pollutants including greenhouse gases or not, you would be controlling or limiting the amount of -- amount of emissions.</p> <p>Q. Okay.</p> <p>A. So as a permitter I would do that, also as the permit reviewer or the manager of</p>	<p>Permitters can control or limit the amount of emissions by establishing production limitations for different pollutants.</p> <p>Once greenhouse gas emissions became subject to regulation, there exists the authority for DEQ to establish emission limitations if necessary.</p>

	<p>the -- the section that issued the permits or even the bureau chief.</p> <p>Q. Okay. So is it fair to say that in your -- all of your former capacities with DEQ you had the authority through specific permit provisions to set such limitations?</p> <p>A. No. That's not a fair statement.</p> <p>Q. Okay. How would you characterize the agency's authority?</p> <p>A. It -- it -- it comes at a different time. Right? When I first started, greenhouse gases were not a regulated pollutant.</p> <p>Q. Uh-huh.</p> <p>A. And so we did not have the authority to specifically require a limitation or a -- a work practice to specifically limit that. It might do it in practice, but it might be for a different pollutant that has the cobenefit of reducing or limiting greenhouse gas emissions.</p> <p>Q. Okay.</p> <p>A. So after it became subject to regulation, at the appropriate level there exists the potential -- there -- there exists authority to establish it if necessary.</p> <p>Klemp Hybrid Dep. 60:20.</p>	
Dave Klemp	<p>Q. Okay. Do you agree that DEQ has permitted strip and underground coal mining operations and mining and -- let's just stop with that -- strip and underground coal mining operations?</p> <p>A. Specifically the air quality bureau has permitting -- has permitted strip and underground coal mining operations.</p> <p>Klemp Hybrid Dep. 70:13-19.</p>	<p>DEQ's Air Quality Bureau has permitted strip and underground coal mining operations.</p>
Dave Klemp	<p>Q. Okay. So is a mobile emission source not subject to DEQ's air quality permitter -- permitting authority?</p> <p>A. Planes, trains, automobiles, and other mobile sources are exempt from permits.</p> <p>Q. What about oil and gas drill rigs?</p> <p>A. Those are facilities that are considered mobile sources. It includes both onroad and offroad engines.</p> <p>Klemp Hybrid Dep. 71:13-21.</p>	<p>Mobile emission sources (i.e., planes, trains, automobiles) are exempt from DEQ's air quality permitting authority.</p> <p>Oil and gas drill rigs are exempt from DEQ air quality permits because they are facilities that are considered mobile sources.</p>
Dave Klemp	<p>Q. Do you agree that DEQ's permitting activities for strip and underground coal mining operations results in the emissions of greenhouse gases?</p> <p>A. Some may.</p>	<p>Some of DEQ's permitting activities for strip and underground coal mining operations result in the emission of greenhouse gases.</p>

	Klemp Hybrid Dep. 72:23-73:2.	
Dave Klemp	<p>Q. Okay. Do you have an opinion about whether DEQ refuses to disclose the significant harms to human health and the environment from its decisions?</p> <p>A. Do you have a specific question -- in terms of what sort of document were you talking about disclosing?</p> <p>Q. I'm talking about the context of MEPA analysis.</p> <p>A. I believe DEQ, specifically the air quality bureau, has disclosed if there could potentially be significant harm to human health.</p> <p>Q. What about if the significance of that harm is contingent on whether the analysis is within state borders or outside of state borders?</p> <p>A. We would be prohibited from reviewing or disclosing impacts that are outside of the -- the border of Montana.</p> <p>Klemp Hybrid Dep. 73:11-74:3.</p>	In the context of a MEPA analysis, DEQ is prohibited from reviewing or disclosing impacts that are outside the border of Montana.
Dave Klemp	<p>Q. Yeah. Okay. What types of permits does DEQ issue for surface coal mining in Montana?</p> <p>A. The specific types of air quality permits that could be issued are Montana air quality permit, or if their emissions are high enough, they could have a Title V operating permit as well. They may also need an open burning permit from time to time, depends on what -- what's going on.</p> <p>Q. Okay. Can you describe the process whereby DEQ decides whether or not to issue a permit for surface coal mining in Montana on state land?</p> <p>A. The process we use to issue a permit is does it comply with all applicable state and/or federal air quality requirements.</p> <p>Q. If an application complies with all state and federal air quality requirements, does DEQ have discretion to deny that application?</p> <p>A. I don't believe we have discretion to deny, no.</p> <p>Q. Okay. Is the process by which DEQ decides whether or not to issue a permit for surface coal mining on federal land the same as for state land?</p> <p>A. I certainly can't think of any differences.</p>	<p>DEQ issues Montana air quality permits, Title V operating permits, and open burning permits for surface coal mining operations in Montana.</p> <p>When DEQ is deciding whether or not to issue a permit for surface coal mining in Montana on state land, DEQ evaluates whether the surface coal mining complies with all applicable state and/or federal air quality requirements.</p> <p>DEQ does not have the discretion to deny an air quality permit if the surface coal mining application complies with all state and federal air quality requirements.</p> <p>The process by which DEQ decides to issue an air quality permit for surface coal mining is the same for state and federal land.</p>

	<p>Q. Okay. Does it change the nature of the MEPA analysis? A. From an air quality perspective? Q. Uh-huh. A. No. I don't believe it does.</p> <p>Klemp Hybrid Dep. 74:20-75:23.</p>	
Dave Klemp	<p>Q. Does DEQ in issuing a permit for a surface coal mining operation quantify the greenhouse gas emissions that would result from the burning of the coal that it is allowing to be extracted under the permit? A. Quantify the emissions from the burning of the coal mined at the coal mine? Q. Uh-huh. A. Not unless it was burned on the property or on-site at the coal mine, we would not assess that as part of the permit application process. Q. What if the coal were to be burned off-site but still within the state of Montana? A. There is the potential to quantify the emissions. Q. Would DEQ do so? A. It depends really on the type of permitting action and what was -- what we were -- what we were trying to accomplish.</p> <p>Klemp Hybrid Dep. 76:18-77:11.</p>	<p>In deciding whether to issue a permit for a surface coal mining operation, DEQ does not quantify the emissions that result from the burning of the coal mined, unless the coal was burned on-site at the coal mine.</p> <p>In deciding whether to issue a permit for a surface coal mining operation, DEQ could quantify the emissions that result from the burning of the coal mined, if the coal was burned off-site, but within the State of Montana.</p>
Dave Klemp	<p>Q. Are you aware of any guidance within DEQ instructing the air quality bureau when such an analysis is appropriate? A. Other than just following the statute which basically is to, you know, review and disclose those impacts that occur within Montana's borders, since the change to MEPA, that's the only, you know, the guidance is to follow the statute. Q. So when is an analysis of climate change impacts appropriate in permitting surface coal mining, what circumstances? A. Climate change impacts could be analyzed if they occurred from the action within the borders, within the state of Montana.</p> <p>Klemp Hybrid Dep. 77:12-25.</p>	<p>DEQ's air quality bureau is instructed to follow MEPA, which is to review and disclose those impacts that occur within the borders of the State of Montana.</p> <p>DEQ could analyze climate change impacts as part of MEPA if the impacts occurred within the borders of the State of Montana.</p>
Dave Klemp	<p>Q. Okay. But you previously testified that if an applicant for an air quality</p>	<p>DEQ has discretion to issue permits, or issue permits with conditions.</p>

	<p>permit or a surface coal mine meets all federal and state requirements, DEQ does not have discretion to deny that permit. Correct?</p> <p>A. Federal and state air quality requirements, we would have the discretion to issue, issue with conditions. But if they were in compliance, I don't believe we could deny.</p> <p>Klemp Hybrid Dep. 79:16-24.</p>	
<p>Dave Klemp</p>	<p>Q. Has DEQ permitted fossil fuel extraction?</p> <p>A. Some fossil fuel extraction requires an air quality permit.</p> <p>Q. Okay. Has DEQ issued permits allowing for the transportation of fossil fuels?</p> <p>A. I would phrase it as some transportation facilities to the extent they're part of a stationary source are also identified in the permit.</p> <p>Q. Okay. And has DEQ permitted activities that allow the combustion of fossil fuels?</p> <p>A. Yes. DEQ has permitted combustion, yes.</p> <p>Q. Do these activities generate greenhouse gas emissions?</p> <p>A. Yes.</p> <p>Q. Okay.</p> <p>A. At least some, yes.</p> <p>Klemp Hybrid Dep. 84:13-85:3.</p>	<p>DEQ has issued an air quality permit for some fossil fuel extraction activities.</p> <p>DEQ issues air quality permits to fossil fuel transportation facilities to the extent they are part of a stationary source.</p> <p>DEQ has permitted activities that allow the combustion of fossil fuels.</p> <p>Activities that allow the combustion of fossil fuels generate greenhouse gas emissions.</p>
<p>Dave Klemp</p>	<p>Q. Okay. So if greenhouse gas emissions from fossil fuel combustion is a large contributor to climate change, would you agree with that statement?</p> <p>A. Yes.</p> <p>Q. Okay. And the burning of fossil fuels causes greenhouse gas emissions. Is that correct? Would you agree with that statement?</p> <p>A. I would agree it is a cause, yes.</p> <p>Q. Okay. And if overall concentrations of greenhouse gas emissions -- do overall concentrations of greenhouse gas emissions determine the level of climate change that we experience -- that the Earth experiences? In other words, do higher concentrations lead to more climate change?</p> <p>A. That part I am not -- you know, I'm not an expert in that regard.</p>	<p>Greenhouse gas emissions from fossil fuel combustion are a large contributor to climate change.</p> <p>The burning of fossil fuels causes greenhouse gas emissions.</p> <p>Overall atmospheric concentrations of greenhouse gases would have an impact on the resulting climate change the Earth experiences.</p>

	<p>Q. Do you have an opinion on that? A. My opinion -- I -- I believe the concentrations would have an impact. How significant of that impact, I do not know.</p> <p>Klemp Hybrid Dep. 86:13-87:7.</p>	
Dave Klemp	<p>Q. So would direct measurement be something like being able to quantify the emissions directly from a stationary source; for example, a power plant? A. Correct. They would have an in-stack monitor that would measure the CO2. Q. And what are some of the other kinds? A. Some of the other kinds, especially dealing with greenhouse gas emissions, we may look at how much methane might exist in a given stream. And based on that percentage, that would be an emission actor. That would be a way of estimating that part of the greenhouse gas -- the methane portion of the greenhouse gases.</p> <p>Klemp Hybrid Dep. 92:16-93:03.</p>	<p>DEQ's capabilities to measure and quantify GHG emissions from the facilities it permits from a stationary source (i.e., a power plant) would include an in-stack monitor that would measure the CO2.</p> <p>DEQ may look at how much methane might exist in a given stream. Based on that percentage, methane would be an emission actor.</p>
Dave Klemp	<p>Q. There it is. You recognize this document from your 30(b)(6) deposition testimony. Correct? A. Yes. Q. Okay. Could you describe what role you played in creating this document? A. For certain emission sources -- Q. Uh-huh. A. -- the bureau was asked specifically for maybe some production data or any other data that could be used to quantify greenhouse gas emissions from certain sources that we may have data on. Q. And what types of sources would those be? A. Again, usually anybody who has a Montana air quality permit, generally speaking, is required to submit an annual emissions inventory or production data so we could calculate that. So it could come from a variety of sources -- electrical generating facilities, anything that they were specifically looking for in here. Q. Okay. So could that have included surface coal mines? A. Could have. I -- I don't know -- don't know if it did or not. Q. Okay. A. Could have.</p>	<p>All holders of Montana air quality permits are required to submit an annual emissions inventory or production data to DEQ.</p> <p>It is possible for DEQ to collect data and quantify GHG emissions from underground coal mines, refining facilities, and power generation facilities.</p>

	<p>Q. Underground coal mines? A. It could have.</p> <p>Q. Okay. Refining facilities? A. Potentially.</p> <p>Q. Power generation plants? A. Yes. Potentially.</p> <p>Klemp Hybrid Dep. 94:13-95:18.</p>	
Dave Klemp	<p>Q. Okay. In your opinion would Montana's per capita carbon dioxide equivalent emissions be lower if Montana produced fewer fossil fuels? A. Potentially.</p> <p>Q. Okay. In your opinion would Montana's per capita of carbon dioxide equivalent emissions be lower if Montana relied less on fossil fuels to meet its energy and transportation needs? A. Tying it to the same equation that's in this paragraph, potentially.</p> <p>Klemp Hybrid Dep. 101:19-102:3.</p>	<p>Montana's per capita carbon dioxide equivalent emissions would potentially be lower if Montana produced fewer fossil fuels.</p> <p>Montana's per capita carbon dioxide equivalent emissions would potentially be lower if Montana relied less on fossil fuels to meet its energy and transportation needs.</p>
Dave Klemp	<p>Q. In your opinion does Montana have more oil and gas wells now than it did in 2007? A. Are you referring to active or just total that have been drilled? Q. Total. A. Total I would say yes. Q. How about active? A. I could not speak to that.</p> <p>Klemp Hybrid Dep. 108:21-109:2.</p>	<p>Montana has more oil and gas wells now than it did in 2007.</p>
Dave Klemp	<p>Q. Okay. So in terms of refineries that are subject to an air quality permit, there are four -- there were four then and there are four now? A. Yes.</p> <p>Klemp Hybrid Dep. 109:17-20.</p>	<p>There are four oil refineries subject to Montana air quality permits, which is the same now as it was in 2007.</p>
Sonja Nowakowski	<p>Q. In your work with the Montana legislature, did you ever work on issues regarding the Montana state energy policy? A. I did, yes. Q. What were those? A. In my capacity as a nonpartisan bill drafter, I did draft the energy policy at the request of the legislator. Q. So you drafted the energy policy which is now in statute at Montana Code Annotated 90-4-1001? A. Yes.</p>	<p>When she was working in the Montana legislature, Sonja Nowakowski drafted the state energy policy which is now codified at Mont. Code Ann. § 90-4-1001.</p>

	<p>...</p> <p>Q. I'm going to -- let's see here. I'm actually going to refer you back to the state energy policy statute, which is --</p> <p>A. Okay.</p> <p>Q. -- Exhibit 9.</p> <p>A. Okay.</p> <p>Q. Have it in front of you?</p> <p>A. I do.</p> <p>Q. Great. This is the state energy policy statute that we just talked about.</p> <p>Correct?</p> <p>A. Yes.</p> <p>Q. And it sounds like you drafted it.</p> <p>A. I did, yes.</p> <p>Nowakowski Hybrid Dep. 25:15-25; 27:13-25.</p>	
<p>Sonja Nowakowski</p>	<p>Q. Is it your opinion that DEQ considers climate change as part of its MEPA analysis?</p> <p>A. I believe the DEQ is prohibited from reviewing actual or potential impacts beyond Montana's borders.</p> <p>Q. Would that provision in MEPA also prohibit DEQ from considering climate change within Montana's borders?</p> <p>A. It would depend -- you'd need to -- to -- I'd need to look more specifically at that in terms of whether the impacts were regional, national, or global in nature.</p> <p>Q. Okay. If you're asked to interpret the statute while you're processing a permit or asking a -- or answering a question from a permit writer and there are predicted climate change impacts within the borders of Montana, do you think MEPA would preclude DEQ from looking at that?</p> <p>A. I do, yes.</p> <p>Q. In what way?</p> <p>A. Because we're prohibited from looking at impacts that are regional, national, or global in nature that are beyond the borders.</p> <p>Q. So even if they -- even if climate change impacts manifest within Montana, because they are considered regional or global in nature, there would be no review ever of climate change?</p> <p>A. Yes.</p> <p>Q. In Montana?</p>	<p>DEQ is prohibited from considering climate change in its MEPA analysis because DEQ is prohibited from reviewing actual or potential impacts beyond Montana's borders during a MEPA analysis.</p> <p>DEQ is also prohibited from considering climate change impacts within Montana's borders during MEPA analysis because DEQ is prohibited from looking at impacts which are regional, national, or global in nature.</p>

	<p>A. Yes.</p> <p>Nowakowski Hybrid Dep. 29:1-30:5.</p>	
Sonja Nowakowski	<p>Q. Okay. So is it your opinion that DEQ is constrained in considering the global impacts of climate change as part of its MEPA analysis?</p> <p>A. Yes.</p> <p>Q. Do you have any additional knowledge or opinions that you intend to offer at trial regarding MEPA?</p> <p>A. I -- I would again have to say it depends on the questions that are asked.</p> <p>Q. Sure. But you testified that you haven't been asked to provide specific opinions?</p> <p>A. I have not.</p> <p>Nowakowski Hybrid Dep. 30:6-17</p>	<p>DEQ is constrained in considering the global impacts of climate change as part of its MEPA analysis.</p>
Sonja Nowkowski	<p>Q. Is there any other experience that you would point to in --</p> <p>A. In -- in --</p> <p>Q. -- renewable energy?</p> <p>A. In my role as division administrator, I've been involved in the discussions about the development of -- and implementation of some of the statutes that impact DEQ or that DEQ is responsible for implementing; for example, the wind and solar bonding.</p> <p>Q. Will you tell me a little bit about the wind and solar bonding and how that works?</p> <p>A. Sure. For example, based on legislation that I believe was approved in -- in 2017 and 2019, requires for the development of certain wind and solar projects, a decommissioning and remediation plan to be required for those facilities. And DEQ has a responsibility for determining at certain stages different time lines for amounts of bonds that the state needs to hold to ensure that that reclamation and decommissioning occurs.</p> <p>Q. Okay. Does DEQ also have responsibility for bonding over fossil fuel projects?</p> <p>A. DEQ has responsibility, for example, for bonding for coal mine reclamation, yes.</p> <p>Q. How about oil and gas refineries?</p> <p>A. We do not have authority for bonding requirements for air quality permits that are issued for oil or gas facilities.</p> <p>Nowakowski Hybrid Dep. 33:1-24.</p>	<p>DEQ is responsible for development, bonding, and implementation of wind and solar projects, as well as ensuring reclamation and decommissioning occurs.</p> <p>DEQ has responsibility for bonding for fossil fuel projects (i.e., coal mine reclamation).</p> <p>DEQ does not have authority for bonding requirements for air quality permits that are issued for oil and gas facilities.</p>

<p>Sonja Nowakowski</p>	<p>Q. Are there any parts of paragraph 87 with which you disagree? A. Yes. Q. Which ones would that be? A. Most of the paragraph. For example, DEQ has a constitutional duty to maintain and improve a clean and healthful environment, Article IX, subsection 2 puts the responsibility or the duty on the legislature to implement laws to maintain and improve a clean and healthful environment. And so DEQ has a responsibility then to enact or implement those laws that the legislature passes in exercising its duty. And so I would clarify on that. DEQ has broad statutory authority to protect, sustain, and improve a clean and healthful environment. DEQ has specific statutory authority as granted by the Montana legislature. For example, in the Clean Air Act in Title 75, it outlines that our implementation of the Clean Air Act is implementing the clean and healthful aspects of the Constitution; for example, in the metal mine, the coal mine, and the open cut mine reclamation acts. It also states in enacting those permitting requirements we are implementing the requirements of a clean and healthful environment.</p> <p>Nowakowski Hybrid Dep. 38:22-39:21.</p>	<p>DEQ has a constitutional duty to maintain and improve a clean and healthful environment.</p> <p>DEQ has a responsibility to implement the laws that the legislature passes.</p> <p>DEQ has broad statutory authority to protect, sustain, and improve a clean and healthful environment.</p> <p>DEQ has specific statutory authority as granted by the Montana Legislature.</p> <p>The Montana Clean Air Act implements the clean and healthful aspects of Montana's Constitution.</p> <p>The permitting requirements of Montana's environmental laws implement the requirements of a clean and healthful environment.</p>
<p>Sonja Nowakowski</p>	<p>Q. Okay. And we've talked about this already, but you're familiar with the term "climate change." Correct? A. Yes. Q. And in your own words, can you describe what climate change is? A. Sure. Climate change is basically long-term changes in the overall climate of -- as a result of -- of -- of -- of certain emissions. Q. Which emissions? A. I'm not a scientist, and it's defined differently by different scientists. Q. Okay. Is it your opinion that climate change is harmful to present generations? A. I have kind of staked my career on, again, not having an opinion on -- one way or another on the impacts of climate change.</p>	<p>Climate change is long-term changes in the overall climate as a result of certain emissions.</p>

	<p>Q. So at trial you won't be offering testimony as far as your opinion goes on the impacts of climate change? A. It will depend on how the question is phrased, but I -- I wouldn't plan to, no.</p> <p>Nowakowski Hybrid Dep. 40:22-41:18.</p>	
Sonja Nowakowski	<p>Q. Yeah. Does DEQ consider climate change when it implements its permitting authority? A. DEQ doesn't have the authority to consider climate change in its permitting decisions.</p> <p>Nowakowski Hybrid Dep. 43:2-5.</p>	DEQ does not have the authority to consider climate change in its permitting decisions.
Sonja Nowakowski	<p>Q. Can you tell me what parts of paragraph 88 that you disagree with? A. Sure. I would say DEQ is the administrator of -- of Montana's environmental regulatory cleanup and monitoring and some pollution prevention programs as established in statute. In terms of energy conservation laws, I don't think that's a -- a defined term.</p> <p>I would say our energy bureau has some responsibilities as outlined, as I've discussed before, the alternative energy resolving loan program, the state building energy conservation program or role in some residential energy efficiency standards. And I disagree that DEQ has implemented its authority in a manner that's contributed to constitutional violations. I disagree that DEQ's act has a responsibility or has acted to further the state energy policy, and then I would also disagree that DEQ has contributed to dangerous levels of greenhouse gas emissions.</p> <p>Nowakowski Hybrid Dep. 46:16-47:10.</p>	DEQ is the administrator of Montana's environmental regulatory, cleanup, and monitoring, and some pollution prevention programs, as established by statute.
Sonja Nowakowski	<p>Q. Thank you. You anticipated my question. Do you agree with the allegations in paragraph 89? A. I would kind of take that in -- in different pieces. DEQ is required to ensure that projects and activities for which it issues permits, licenses, authorizations, and other approvals comply with specific statutes and -- and laws and rules. MEPA is procedural. It's not substantive. So, for example, a MEPA analysis can't condition the outcome of a permit. And yes. As -- as much as the laws provide for,</p>	<p>DEQ is required to ensure that projects and activities for which it issues permits, licenses, authorizations, and other approvals comply with specific statutes and rules.</p> <p>DEQ is responsible for enforcing compliance with permitting requirements as outlined in statute and rule.</p>

	<p>we do protect the quality of Montana's natural -- natural environment. And DEQ, yes, is responsible for enforcing compliance with permitting requirements as outlined in statute and rule.</p> <p>Nowakowski Hybrid Dep. 49:20-50:10.</p>	
Sonja Nowakowski	<p>Q. Sorry. Could you -- A. Sure. Q. -- explain to me what exactly you would disagree with in that paragraph -- A. Sure. Q. -- 89. MS. McKENNA: Objection. Asked and answered. THE WITNESS: DEQ in -- in -- DEQ is - - is required and does implement all the laws it is required to implement. And insofar as those provide for the permitting or authorization and licenses of projects, we follow those and comply with Montana's environmental laws and rules. I would exclude MEPA because MEPA is procedural and a separate action, but that -- that the agency takes in terms of a "look before you leap" document but, again, procedural in nature and that the permitting requirements that are established in the statute provide for the protection of Montana's natural environment, and that DEQ does have a responsibility as outlined in statute for enforcing compliance through violations and enforcement processes.</p> <p>Nowakowski Hybrid Dep. 50:20-51:18.</p>	<p>DEQ has a responsibility, as outlined in statute, for enforcing compliance with its permits or licenses through issuing violations or pursuing enforcement proceedings.</p>
Sonja Nowakowski	<p>Q. -- what you said before. With regard to MEPA, DEQ is required to follow MEPA, though. Right? A. For any state action that is taken, DEQ, as well as any state agency, is required to do a MEPA analysis. Q. Okay. And there are -- DEQ has its -- has administrative rules that dictate how it implements MEPA? A. Yes.</p> <p>Nowakowski Hybrid Dep. 51:23-52:3.</p>	<p>For any state action taken, DEQ, as well as any state agency, is required to do a MEPA analysis.</p> <p>DEQ has administrative rules that dictate how DEQ implements MEPA.</p>
Sonja Nowakowski	<p>Q. Got it. And this morning we talked about this paragraph, and I believe you agreed that DEQ issues air quality permits for coal mining operations? A. DEQ issues air quality permits for coal mining operations. However, they do not contemplate greenhouse gas emissions.</p>	<p>DEQ issues air quality permits for coal mining operations.</p> <p>DEQ's air quality permits for coal mining operations do not contemplate greenhouse gas emissions, but are based largely on fugitive dust and other regulated pollutants.</p>

	<p>They are based largely on fugitive dust and other regulated pollutants.</p> <p>Q. Okay. And do you agree that DEQ issues air quality permits for energy power plants?</p> <p>A. DEQ does issue air quality permits for certain energy power plants.</p> <p>Q. Right. We talked about that this morning too. Correct?</p> <p>A. Yes. Yes. For example, the natural -- the Laurel Generating Station.</p> <p>Q. Right. And then do you agree that defendant DEQ issues air quality permits for oil and gas refineries?</p> <p>A. Yes. DEQ issues air quality permits for oil and gas refineries.</p> <p>Q. And you testified that DEQ does not have the authority to analyze greenhouse gas emissions when issuing those air quality permits. Correct?</p> <p>A. That's correct.</p> <p>Q. Would you say that DEQ is aware that greenhouse gas emissions result from these operations?</p> <p>A. Yes. They're -- through some permitting actions -- and Mr. Klemp will be able to speak to this in more detail. There is some requirements out there for inventorying and -- and -- and tracking greenhouse gases that -- that occur at the federal level.</p> <p>Nowakowski Hybrid Dep. 58:19-59:18.</p>	<p>DEQ issues air quality permits for certain power plants (i.e., the Laurel Generating Station).</p> <p>DEQ issues air quality permits for oil and gas refineries.</p> <p>DEQ does not have authority to analyze greenhouse gas emissions when issuing air quality permits for oil and gas refineries.</p> <p>DEQ is aware that greenhouse gas emissions result from the operation of the oil and gas refineries to which it issues permits.</p>
Sonja Nowakowski	<p>Q. And I think we talked about this earlier, but could the Laurel Refinery operate lawfully without an air quality permit from DEQ?</p> <p>A. It could not operate lawfully without a permit.</p> <p>Q. Do you know why like in this example the Laurel Refinery needs an air quality permit?</p> <p>A. Yes. Because it emits regulated pollutants and DEQ is responsible for analyzing those emissions, setting standards, setting requirements, and ensure that the emissions stay at those regulated and permitted levels.</p> <p>Q. Okay. And which pollutants would those be that were regulated?</p> <p>A. They're the -- I'm not going to be able to say it correctly -- the SOX, the NOX, the VOCs. I believe there are six of them. Mr. Klemp would be able to list them by memory for you tomorrow.</p>	<p>The Laurel Refinery could not operate lawfully without an air quality permit from DEQ, because it emits regulated pollutants and DEQ is responsible for analyzing those emissions, setting standards, setting requirements, and ensuring that the emissions stay at those regulated and permitted levels.</p>

	Nowakowski Hybrid Dep. 64:2-19.	
Sonja Nowakowski	<p>Q. Have you ever seen an air quality permit issued by DEQ that has conditions on carbon dioxide emissions? A. In the last year and a half as division administrator, I have not.</p> <p>Q. Are you aware of any that exist? A. I'm not aware of any.</p> <p>Nowakowski Hybrid Dep. 65:2-8.</p>	There is no DEQ air quality permit that has conditions on carbon dioxide emissions.
Sonja Nowakowski	<p>Q. Okay. That's fair. Do you know what the Colstrip Steam Electric Station is? A. Yes.</p> <p>Q. What is that? A. It's a coal-fired power plant.</p> <p>Nowakowski Hybrid Dep. 67:10-14.</p>	The Colstrip Steam Electric Station is a coal-fired power plant.
Sonja Nowakowski	<p>BY MS. CHILLCOTT: Q. And I'll repeat the question. Are there any rules or statutes that require DEQ to evaluate greenhouse gas emissions before issuing air quality permits? A. No.</p> <p>Nowakowski Hybrid Dep. 68:17-22.</p>	There are no rules or statutes that require DEQ to evaluate greenhouse gas emissions before issuing air quality permits.
Sonja Nowakowski	<p>Q. And in issuing this permit, did DEQ analyze how much greenhouse gas emissions would result from the project? A. No, they did not.</p> <p>Q. Does this air quality permit that this press release refers to restrict the amount of greenhouse gas emissions from the project? A. It does not, no.</p> <p>Nowakowski Hybrid Dep. 70:18-25.</p>	<p>In issuing the air quality permit for the Laurel Generating Station, DEQ did not analyze how much greenhouse gas emissions would result from the project.</p> <p>The air quality permit for the Laurel Generating Station does not restrict the amount of greenhouse gas emissions from the project.</p>
Sonja Nowakowski	<p>Q. And you discussed that DEQ does have authority to regulate air pollution. MS. McKENNA: Objection. Asked and answered. THE WITNESS: DEQ does have authority to regulate regulated air pollutants. BY MS. CHILLCOTT: Q. Do you know if the BER, or Board of Environmental Review, has ever set a quantitative limit for greenhouse gas emissions? A. In 2010 the BER, in consultation with the DEQ, did prepare and advance a rulemaking to establish some greenhouse</p>	<p>DEQ has authority to regulate regulated air pollutants.</p> <p>In 2010, the Board of Environmental Review, in consultation with DEQ, prepared and advanced a rulemaking to establish some greenhouse gas emission limits and tracking requirements.</p> <p>The rule never became effective.</p>

	<p>gas emission limits and tracking requirements.</p> <p>Q. What was the result of that rulemaking?</p> <p>A. When that rulemaking was presented to the environmental quality council in January of 2010, the environmental quality council objected to the rulemaking through the MAPA process and put a pause on that.</p> <p>Q. Did the rule ever become effective?</p> <p>A. No, it did not.</p> <p>Nowakowski Hybrid Dep. 79:20-80:16.</p>	
Sonja Nowakowski	<p>Q. Okay. Do you agree that DEQ has permitted strip and underground coal mining operations?</p> <p>A. Yes.</p> <p>Q. Do you agree that DEQ has permitted strip and underground mining operations?</p> <p>A. Yes.</p> <p>Q. Do you agree that DEQ has permitted prospecting activities?</p> <p>A. I would need you to define prospecting activities.</p> <p>Q. Yeah. Good question. Do you agree that DEQ's permitting of the strip and underground coal mining operations and mining activities causes dangerous amounts of greenhouse gas emissions?</p> <p>A. No. DEQ is -- in authorizing strip and underground coal mining operations, they are based on applications received by the agency and then processed under the Montana Strip and Underground Mine Reclamation Act, which does not grant the DEQ authority to contemplate greenhouse gases.</p> <p>Nowakowski Hybrid Dep. 83:5-24.</p>	<p>DEQ has permitted strip and underground coal mining operations.</p> <p>Permits for strip and underground coal mines are issued pursuant to the Montana Strip and Underground Mine Reclamation Act, which does not grant DEQ the authority to contemplate greenhouse gases when issuing the permits.</p>
Sonja Nowakowski	<p>Q. Do you have any opinions about whether DEQ refuses to disclose the significant harms to human health and the environment from its decisions?</p> <p>A. DEQ does not have the authority to review in its permitting processes basically harms to human health and the environment. Through the MEPA analysis, DEQ reviews and through that procedural process takes a look at impacts to the health and environment.</p>	<p>DEQ has issued permits for surface coal mining in Montana on state and federal land.</p>

	<p>Q. Do you agree that DEQ has issued permits for surface coal mining in Montana on state and federal land? A. Yes.</p> <p>Q. What kinds of permits does DEQ issue for surface coal mining in Montana? A. For example, DEQ issues amendments to allow for coal mining. They issue revisions and amendments to move spoil piles, revisions and amendments to deal with ponds and other changes needed to ensure the reclamation occurs.</p> <p>Nowakowski Hybrid Dep. 84:5-24.</p>	
Sonja Nowakowski	<p>Q. Okay. Do you -- can you describe the process where DEQ decides whether or not to issue a permit for surface coal mining on federal land in Montana? A. That is a joint process. Specifically the MEPA analysis is something that takes on the NEPA elements and is -- and is done in consultation with federal partners for that federal land.</p> <p>Q. So when those are -- those joint projects occur and the National Environmental Policy Act is implicated, do those reviews consider climate change? A. Yes, they do.</p> <p>Q. Do they also consider greenhouse gas emissions? A. I would need to review them specifically. They include some analysis related to greenhouse gas emissions, yes.</p> <p>Nowakowski Hybrid Dep. 85:9-25.</p>	<p>The environmental analysis for permits for surface coal mining on federal land in Montana is conducted jointly by DEQ and federal agencies.</p> <p>Environmental analyses for surface coal mines on federal land in Montana under the National Environmental Policy Act consider climate change.</p> <p>NEPA analyses for surface coal mines on federal land in Montana include some analysis related to greenhouse gas emissions.</p>
Sonja Nowakowski	<p>Q. Do you know how many permits DEQ has issued for surface coal mining? A. I do not.</p> <p>Q. Any rough estimate? A. I don't have a rough estimate.</p> <p>Q. And DEQ undertakes a MEPA analysis for the surface coal mining permits it issues. Correct? A. Yes.</p> <p>Q. And in that MEPA analysis, does DEQ evaluate the effects of climate change? A. It -- again, it depends if there's a federal partner involved or not.</p> <p>Q. The -- if we're talking just strictly MEPA, with the M, would DEQ evaluate the effects of climate change?</p>	<p>DEQ undertakes a MEPA analysis for the surface coal mining permits it issues.</p> <p>DEQ's MEPA analyses for the surface coal mining permits it issues does not evaluate the effects of climate change because DEQ does not look at regional or global impacts.</p> <p>DEQ does not quantify the greenhouse gas emissions that would result from the burning of the coal on a surface coal mine.</p>

	<p>A. Under MEPA? Under MEPA, again because we don't look at regional or global impacts, we would not.</p> <p>Q. Does DEQ quantify the greenhouse gas emissions that would result from the burning of coal on a surface coal mine?</p> <p>A. They do not.</p> <p>Nowakowski Hybrid Dep. 86:1-87:2.</p>	
Sonja Nowakowski	<p>Q. The last sentence says "In approving such activities, DEQ has repeatedly refused to disclose significant harms to human health and the environment from its decisions." Do you agree with that statement?</p> <p>A. I do not agree with that statement.</p> <p>Q. What is the basis of your disagreement?</p> <p>A. Within its statutory authority DEQ discloses potential impacts to the human health and the environment in all its decisions.</p> <p>Q. Under what circumstances would DEQ take the information it discloses regarding impacts to human health and the environment into account when deciding whether to issue a permit for a coal mine?</p> <p>A. So I would need some clarification. In the MEPA analysis, MEPA is procedural, and MEPA cannot be used to deny a permit. However, if in the scientific analysis that's required in the permit there are impacts to the environment that were disclosed that violate requirements of the law, then a permit can be denied.</p> <p>Nowakowski Hybrid Dep. 89:23-90:18.</p>	<p>Within its statutory authority, DEQ must disclose potential impacts to human health and the environment in all its decisions.</p> <p>If in the scientific analysis that is required in the permit process, there are impacts to the environment disclosed that violate requirements of the law, then DEQ can deny a permit.</p>
Sonja Nowakowski	<p>Q. Okay. Did DEQ analyze how the operation of the Rosebud Mine Area B would affect human health?</p> <p>A. In the EIS there is an analysis of -- of health and human impacts, yes.</p> <p>Q. Okay. Were there also -- do you expect there also is in this EIS an analysis of how the Rosebud Mine Area B would affect the environment?</p> <p>A. Yes.</p> <p>Q. In this FEIS, before DEQ issued the approval, did it analyze how the approval would contribute to climate change?</p>	<p>DEQ's FEIS for the Rosebud Mine Area B did not analyze how the permit approval would contribute to climate change because DEQ does not have the authority to do so based on MEPA.</p>

	<p>A. Again, no. And that's because we don't have the authority under MEPA to do so.</p> <p>Nowakowski Hybrid Dep. 97:25-98:12.</p>	
<p>Sonja Nowakowski</p>	<p>Q. Now, could you please turn to page -- the next page, D-28, and that's where you'll see that the Western Environmental Law Center's November 23rd, 2020, letter to DEQ is continued on the left-hand side of the page. Correct?</p> <p>A. Yeah. Yes.</p> <p>Q. And do you see that DEQ has marked the second paragraph on the left-hand side of page D-28 as comment 79-2? Correct?</p> <p>A. Yes.</p> <p>Q. So that paragraph reads -- and I am quoting from the Western Environmental Law Center letter -- based on an overwhelming amount -- I'm sorry. Let me go to the document. "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, or 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." Did I read that correctly?</p> <p>A. Yes.</p> <p>Q. On the right-hand side of page D-28, you'll see that DEQ has a comment response to comment 79-2. Correct?</p> <p>A. Yes.</p> <p>Q. Now, beginning at the third sentence of DEQ's comment on the right-hand side of D-28, it reads: "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</p>	<p>DEQ's policy is that, 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.</p>

	<p>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."</p> <p>Did I read that correctly?</p> <p>A. Yes.</p> <p>Q. And is that the provision you were thinking about just now when you were trying to locate information in the document?</p> <p>A. Yes.</p> <p>Q. Okay. Does that reflect DEQ's current policy?</p> <p>A. Yes.</p> <p>Nowakowski Hybrid Dep. 99:3-101:3.</p>	
<p>Sonja Nowakowski</p>	<p>Q. Now, turning back to that comment response from DEQ, it reads down a little further: "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 exception stated above, nor may an EIS analyze impacts that are regional, national, or global in nature."</p> <p>Did I read that right?</p> <p>A. Yes.</p> <p>Q. And does that still reflect DEQ's current policy?</p> <p>A. Yes.</p> <p>Nowakowski Hybrid Dep. 101:4-24.</p>	<p>DEQ's MEPA policy is that 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 exception stated above, nor may an EIS analyze impacts that are regional, national, or global in nature.</p>
<p>Sonja Nowakowski</p>	<p>Q. On page D-98 there's an issue statement that says, quote, climate change as it relates to the proposed project, including potential impacts, and the social cost of carbon should be analyzed in an EIS." Did I read that right?</p> <p>A. Yes.</p> <p>Q. And on page D-99, the next page, towards the top of the page there's</p>	<p>DEQ's MEPA policy is that, under MEPA, DEQ's analysis may not include a review of the actual or potential impacts beyond Montana's borders and may not include actual or potential impacts that are regional, national, or global in nature, such as impacts that may result from climate change.</p>

	<p>DEQ's response to the issue statement we just read. Do you see that? A. Yes. Q. And that response reads in part: "Under MEPA DEQ's analysis may not include a review of the actual or potential impacts beyond Montana's borders and may not include actual or potential impacts that are regional, national, or global in nature, such as impacts that may result from climate change." Did I read that correctly? A. Yes. Q. Does that reflect DEQ's current policy? A. Yes.</p> <p>Nowakowski Hybrid Dep. 102:5-24.</p>	
<p>Sonja Nowakowski</p>	<p>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.</p> <p>Nowakowski Hybrid Dep. 105:4-106:2.</p>	<p>DEQ, through the Major Facility Siting Act, authorizes the transportation of fossil fuels through oil and gas pipelines.</p> <p>DEQ provides air quality permits to facilities where fossil fuels are combusted.</p> <p>Certain fossil fuel extraction, transportation, and combustion activities generate greenhouse gas emissions.</p>
<p>Sonja Nowakowski</p>	<p>Q. Generally, do you agree that burning coal leads to the emissions of carbon dioxide? A. Yes. Q. Could Spring Creek coal -- or Spring Creek Mine -- excuse me -- have begun extracting this additional coal without DEQ's approval of the mine expansion? A. They could have begun extracting the coal, but they would have been in violation with the Montana Strip and Underground Surface Mining Act.</p>	<p>Burning coal leads to the emission of carbon dioxide.</p> <p>Spring Creek Mine would have been in violation of the law if they had begun extraction additional coal without DEQ's approval of the TR1 expansion.</p>

	Nowakowski Hybrid Dep. 129:1-10.	
Sonja Nowakowski	<p>Q. Do you agree that this document shows that Colstrip Steam Electric Station as having emitted over 13 million metric tons of carbon dioxide and 1500 metric tons of methane in 2018?</p> <p>A. Yes. According to this document, that was where the amounts ended.</p> <p>Q. Do you have any reason to doubt that these are accurate figures?</p> <p>A. I don't.</p> <p>Q. And do you have any reason to believe that this document is not a true and correct copy of the factual emissions data from Colstrip produced by EPA?</p> <p>A. I don't.</p> <p>Q. Does DEQ rely upon these EPA greenhouse gas emissions data in its permitting decisions at all?</p> <p>A. As to my knowledge, we do not rely on these.</p> <p>Nowakowski Hybrid Dep. 132:19-133:11.</p>	<p>Colstrip Steam Electric Station emitted over 13 million metric tons of carbon dioxide and 1500 metric tons of methane in 2018.</p> <p>DEQ does not rely on EPA greenhouse gas emissions data in its permitting decisions.</p>
Sonja Nowakowski	<p>Q. And this is the document entitled Understanding Energy in Montana, 2018. Correct?</p> <p>A. Yes.</p> <p>Q. And you're familiar with this document. Correct?</p> <p>A. Yes, I am.</p> <p>Q. What role did you play in creating this document?</p> <p>A. I -- I am the author of the utility deregulation section of this document. I also assisted in some of the overall editing and -- and compilation in my role at legislative services.</p> <p>Q. And is this a DEQ report?</p> <p>A. This is not. This is a legislative services report. DEQ contributes information to the report.</p> <p>...</p> <p>Q. Right. Do you have any reason to believe that the figures and data in this document are not true and correct figures and data concerning Montana's energy system as it existed in 2018?</p> <p>A. I believe these are accurate.</p> <p>Q. Do you have any reason to believe the figures and data in this document concerning coal, natural gas, and</p>	<p>The figures and data in the Understanding Energy in Montana report are true and correct concerning Montana's energy system as it existed in 2018.</p>

	<p>petroleum production are true and correct for coal, natural gas, and petroleum production in Montana as they existed in 2018? A. I believe the entire document is -- is correct.</p> <p>Nowakowski Hybrid Dep. 135:22-137:12.</p>	
Sonja Nowakowski	<p>Q. And on the last page it says under Roman numeral VIII "This permit is an administrative permit action. Therefore, an environmental assessment is not required." Is that correct? A. Yes. Q. What does that mean? A. For ministerial and administrative actions do not trigger MEPA. They're not considered a state action. They're an administrative action. Q. And does DEQ have regulations that direct it to -- to determine when an action is an administrative action? A. Yes. Those are outlined in the MEPA rules.</p> <p>Nowakowski Hybrid Dep. 143:8-21.</p>	<p>It is the policy of DEQ that ministerial and administrative actions do not trigger MEPA review.</p> <p>DEQ has regulations that determine when an action is an administrative rule.</p>
Sonja Nowakowski	<p>Q. -- unless you need to to answer this question. And my question is do you agree that DEQ issued a certificate of compliance for the Keystone XL Pipeline in March 2012? A. Yes. DEQ issued a certificate of compliance. Q. And I think I recall you testified you were aware of this project in your role at legislative services? A. That's correct.</p> <p>Nowakowski Hybrid Dep. 147:12-21.</p>	<p>DEQ issued a certificate of compliance for the Keystone XL Pipeline in March 2012.</p>
Sonja Nowakowski	<p>Q. Do you have any expertise in greenhouse gas emission inventories? A. I don't. Q. Does DEQ -- excuse me. Does DEQ use greenhouse gas emissions inventories in its permitting work? A. It does not.</p> <p>Nowakowski Hybrid Dep. 150:18-24.</p>	<p>DEQ does not use greenhouse gas emission inventories in its permitting work.</p>
Sonja Nowakowski	<p>Q. Okay. And the executive summary on page little Roman numeral iii, it says "On a per capita basis, Montanans emit about 40 metric tons of carbon dioxide equivalent, which is about twice the</p>	<p>Montanans emit about twice the natural average of carbon dioxide-equivalent emissions because of the state's strong fossil fuel production industry, large distances for transportation, and low population base.</p>

	<p>national average of 25 metric tons of carbon dioxide equivalent. The reasons for the higher per capita intensity in Montana are varied but include the state's strong fossil fuel production industry, large agricultural industry, large distances for transportation, and low population base." Did I read that correctly? A. You did. Q. Do you agree with that statement? A. Yes.</p> <p>Nowakowski Hybrid Dep. 155:14-156:2.</p>	
Sonja Nowakowski	<p>Q. And I'll read at the top. It says "Electricity use transportation and agriculture are the state's principal GHG emission sources. Together the combustion of fossil fuels for electricity generation use in state and in the transportation sector account for about 46 percent of Montana's gross GHG emissions as shown in figure 2." A. Uh-huh. Q. Did I read that right? A. You did read that right. Q. In your opinion would the share of statewide GHG emissions from Montana's electricity sector decline if the state shifted away from fossil fuels for electricity generation? A. I think that there is -- is evidence with the -- for example, with the closure of Colstrip units 1 and 2 that our emissions have been reduced. Q. Okay. In your opinion would the state of Montana's gross and net GHG emissions decline if the state shifted away from fossil fuels for electricity generation? A. I can't speak to that without doing some scientific analysis. Q. But given what you just testified to with regard to the closure of Colstrip 1 and 2, it appears that Montana's GHG emissions have declined. Right? A. Montana's GHG emissions have declined.</p> <p>Nowakowski Hybrid Dep. 159:1-160:2.</p>	The closure of Colstrip Units 1 and 2 have reduced Montana's GHG emissions.
Sonja Nowakowski	<p>Q. Oh, sure. Yeah. Excuse me just a second. So the -- I'm reading from the top of the page. "This policy option reflects financial incentives and other</p>	There are tax incentives in Title 15, Mont. Code Ann. that apply to renewable energy development.

	<p>efforts such as improving the ability to integrate intermittent wind resources and to encourage investment in renewable energy sources by businesses that sell power commercially." Do you know if the state has implemented that policy recommendation? A. There are significant tax incentives included in Title 15 for various types of energy development. I'd need to take a look at those and the dates they were enacted, but yes. Q. And when you say energy development, do you mean renewable energy development? A. Yes. Q. Any other types of energy development? A. Specifically in the last few years it's been largely focused on renewable energy development.</p> <p>Nowakowski Hybrid Dep. 167:15-168:7.</p>	
<p>Sonja Nowakowski</p>	<p>Q. I'll just read the second -- part of the second paragraph under the heading CC-2 state GHG reporting, which says "The CCAC recommends that Montana develop GHG reporting requirements and opportunities for its emissions sources and citizens as soon as possible." Do you know if Montana has developed those GHG reporting requirements? A. As I testified or spoke to earlier, the DEQ, in conjunction with the Board of Environmental Review, did attempt to move forward with some greenhouse gas reporting requirements and limitations in 2010, and the environmental quality council objected to those efforts. In addition, in the following legislative sessions, legislation was brought forward to explicitly grant DEQ the authority to require some GHG reporting requirements, and those legislative proposals failed. Q. Okay. Thanks. With regard to that rulemaking effort, I know you testified that environmental quality council objected to the proposed rule. That did not preclude DEQ from moving forward with the rulemaking effort eventually. Right?</p>	<p>In 2010, DEQ, in conjunction with the Board of Environmental Review, attempted to move forward with rulemaking to establish certain greenhouse gas emissions reporting requirements and emissions limitations, and that the Environmental Quality Council objected to those efforts.</p>

	<p>A. DEQ could have proceeded. The DE -- or excuse me. The environmental quality council made it very clear that they would issue a formal objection that would have stopped any effort to advance that.</p> <p>Nowakowski Hybrid Dep. 170:16-171:17.</p>	
Sonja Nowakowski	<p>Q. What role did you play with the environmental quality council with regard to developing the report that's referenced in paragraph 194? A. I was the author of that report.</p> <p>...</p> <p>BY MS. CHILLCOTT: Q. Okay. Can you identify that report, please? A. Sure. It is climate change and analysis of climate change policy issues in Montana, a report to the 61st Montana legislature.</p> <p>Q. And you testified that you are the author of this report. Correct? A. Yes. That is correct.</p> <p>Nowakowski Hybrid Dep. 173:8-174:3.</p>	<p>Sonja Nowakowski authored climate change and analysis of climate change policy issues in Montana, a report to the 61st Montana legislature, referenced in Paragraph 194 of Plaintiffs' Complaint.</p>
Sonja Nowakowski	<p>Q. And then below it, it says next to Montana, 15 percent by 2015, 20 percent by 2020, 25 percent by 2025, and then in parentheses it says recommendation by MCCAC. Is that right? A. Yes.</p> <p>Q. To your knowledge, has Montana adhered to these renewable portfolio standard recommendations? A. Montana has adhered to the 15 percent by 2015. That was enacted in the renewable -- the renewable portfolio standard which was enacted -- put into place by the Montana legislature in 2005.</p> <p>Q. Uh-huh. A. I would need to refer back to that statute for how far in time it went. I believe it only went through 2020. I'm not sure. I'd need to take a look at what was the requirement in the statute. But all the benchmarks required in that statute were achieved.</p> <p>Q. In that 2005 statute? A. Yes.</p> <p>Q. Are you aware of any other legislation since 2005 that addresses the RPS? A. There were legislative proposals, but they did not pass. The 2021 legislature did</p>	<p>Montana met its 15% by 2015 renewable portfolio standard.</p> <p>In 2021, the Montana Legislature repealed the renewable portfolio standard that had been achieved.</p>

pass legislation related to the renewable portfolio standard.

Q. And what was that?

A. They repealed the renewable portfolio standard that had been achieved.

Nowakowski Hybrid Dep. 177:17-178:20.