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**MONTANA SIXTEENTH JUDICIAL DISTRICT COURT  
ROSEBUD COUNTY**

MONTANA ENVIRONMENTAL  
INFORMATION CENTER and  
SIERRA CLUB,

Plaintiffs,

vs.

MONTANA DEPARTMENT OF  
ENVIRONMENTAL QUALITY,

Defendant.

**COMPLAINT FOR  
DECLARATORY RELIEF**

**INTRODUCTION**

1. The U.N. High Commissioner on Human Rights stated in 2019:  
“Climate change is a reality that now affects every region of the world. The human implications of currently projected levels of global heating are catastrophic. Storms

are rising and tides could submerge entire island nations and coastal cities. Fires rage through our forests, and the ice is melting. We are burning up our future—literally.”

2. In Montana, the impacts of human-induced climate change from burning fossil fuels are causing widespread harm to and deterioration of the environment and the health of its inhabitants, in violation of our fundamental constitutional and human rights.

3. The time to avoid passing climate thresholds by cratering pollution is short, approximately ten years at current emission rates.

4. However, Defendant Montana Department of Environmental Quality (DEQ) deliberately ignores this existential threat and continues to permit long-term fossil fuel extraction, including extensive coal strip-mining.

5. Climate change is driven by increasing atmospheric concentrations of greenhouse gases (GHGs), such as carbon dioxide (CO<sub>2</sub>), predominantly from burning fossil fuels. Coal is the dirtiest fossil fuel and emits the most CO<sub>2</sub>.

6. The largest point source of GHGs in Montana is the Colstrip Power Plant (Colstrip Plant). The Colstrip Plant obtains coal exclusively from the Rosebud Mine, a 30,000-acre strip-mine adjacent to the plant. The mine is larger than the area of Billings.

7. On May 27, 2022, DEQ approved the AM5 expansion (Lee Coulee Expansion) of the Rosebud Mine into Lee Coulee, a tributary of Rosebud Creek, itself a tributary to the Yellowstone River. This expansion allows mine operator Westmoreland Rosebud Mining, LLC (WRM) to strip-mine 62.3 million tons of coal from approximately 2,500 acres in the headwaters of Lee Coulee over 21 years.

8. Virtually all coal mined will be burned at the Colstrip Plant, with a small amount of “waste coal” trucked to the adjacent Rosebud Power Plant. Neither plant has pollution controls to abate GHG emissions.

9. During permitting, the public, including Plaintiffs Montana Environmental Information Center (MEIC) and Sierra Club (together, “Conservation Groups”), submitted scientific studies detailing profound harms to Montana and Montanans from climate change. These harms will worsen, pushing human and natural systems past hard limits of adaptability, if GHG emissions are not greatly reduced.

10. Despite receiving these studies, in its environmental review for the project, DEQ refused to assess any climate impacts, asserting incorrectly that it was prohibited from doing so.

11. DEQ’s decision violated the Montana Environmental Policy Act (MEPA) and the Constitution of Montana and threatens the well-being and

fundamental rights of all Montanans. To protect these values, the Conservation Groups bring this action.

### **JURISDICTION AND VENUE**

12. Conservation Groups bring this action under the Uniform Declaratory Judgments Act, MCA §§ 27-8-201, 202, MEPA, MCA § 75-1-101 et seq., and the Constitution of Montana, Mont. Const. art. II, § 3, art. IX, § 1.

13. Venue is proper because the proposed operation would be constructed in Rosebud County. MCA §§ 25-2-126(1), 75-1-108.

### **PARTIES**

14. Plaintiff Montana Environmental Information Center is a nonprofit organization founded in 1973 with approximately 5,000 members and supporters. MEIC is dedicated to the preservation and enhancement of the natural resources and natural environment of Montana. MEIC is committed to assuring government officials comply with and uphold the laws of Montana that protect the environment from pollution. MEIC and its members have intensive, long-standing interests in the land, air, waters across the state, as well as the responsible production and use of energy. MEIC members live, work, and recreate in areas adversely impacted by the Lee Coulee Expansion. MEIC brings this action on its own behalf and that of its adversely affected members.

15. Plaintiff Sierra Club is America's largest grassroots environmental organization, with more than 800,000 members nationwide, including more than 3,200 in Montana. In addition to creating opportunities for people of all ages, levels, and locations to have meaningful outdoor experiences, the Sierra Club works to safeguard the health of our communities, protect wildlife, and preserve our remaining wild places through grassroots activism, public education, lobbying, and litigation. Sierra Club is dedicated to exploring, enjoying, and protecting the wild places of the Earth; to practicing and promoting the responsible use of the Earth's resources and ecosystems; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives.

16. Sierra Club members live, work, and recreate in areas that will be adversely impacted by DEQ's approval of the Lee Coulee Expansion. Sierra Club's concerns encompass the exploration, enjoyment, and protection of the land, air, and water impacted by the expansion. Sierra Club dedicates organizational resources specifically to safeguarding communities and the environment from climate harms from fossil fuel combustion. The Lee Coulee Expansion further harms Sierra Club's organizational interests, including their interests in reducing GHGs and combatting the climate crisis. Sierra Club brings this action on its own behalf and that of its adversely affected members.

17. The legal violations alleged herein injure Conservation Groups' members' health, recreational, property, and aesthetic interests. The challenged decision authorizes strip-mining and coal combustion that will increase air and water pollution and emit greenhouse gases that contribute to harmful climate change. Additionally, the challenged decision injures Conservation Groups, and their members' procedural interests because it was not based on the requisite analysis and disclosure that MEPA requires. These are actual and concrete injuries caused by DEQ's violation of MEPA and the Constitution of Montana that would be redressed by the relief requested in this complaint.

18. MEIC and Sierra Club exhausted administrative remedies by submitting scoping comments, comments on the draft environmental impact statement (EIS), and comments on the mining and water discharge permits for the Lee Coulee Expansion. Conservation Groups have no other adequate remedy at law.

19. Defendant Montana Department of Environmental Quality is an agency of the State of Montana responsible for reviewing the environmental impacts of coal mining, including the Lee Coulee Expansion, under MEPA. DEQ prepared and issued the EIS and record of decision (ROD) approving the expansion.

## LEGAL AND FACTUAL BACKGROUND

### MEPA

20. MEPA was designed “to promote efforts that will prevent, mitigate, or eliminate damage to the environment and biosphere and stimulate the health and welfare of humans.” MCA § 75-1-102(2). MEPA requires DEQ to “take a ‘hard look’ at the environmental impacts of a given project or proposal.” Mont. Wildlife Fed’n v. Mont. Bd. of Oil & Gas Conservation, 2012 MT 128, ¶ 43, 365 Mont. 232, 280 P.3d 877; see also MCA § 75-1-201(1)(b)(iv); ARM 17.4.609(3)(d). Properly implemented, “MEPA’s procedural mechanisms ... enabl[e] fully informed and considered decision making, thereby minimizing the risk of irreversible mistakes depriving Montanans of a clean and healthful environment.” Park Cnty. Env’t Council v. Mont. Dep’t of Env’t Quality, 2020 MT 303, ¶ 70, 402 Mont. 168, 477 P.3d 288.

21. MEPA requires agencies to consider direct, indirect, and cumulative environmental impacts of their actions. MCA § 75-1-201(1)(b)(iv); ARM 17.4.609(3)(d) (requiring evaluation of “impacts, including cumulative and secondary impacts, on the physical environment”); see also ARM 17.4.609(3)(e) (describing requirements for environmental assessments). In evaluating these impacts, “[t]he agency must examine the relevant data and articulate a satisfactory explanation for its action, including a rational connection between the facts found

and the choice made.” Mont. Wildlife Fed’n, ¶ 43 (quoting Clark Fork Coal. v. Mont. Dep’t of Env’t Quality, 2008 MT 407, ¶ 47, 347 Mont. 197, 197 P.3d 482).

22. Secondary impacts are “impact[s] to the human environment that may be stimulated or induced by or otherwise result from a direct impact of the action.” ARM 17.4.603(18). Cumulative impacts are “the collective impacts on the human environment within the borders of Montana of the proposed action when considered in conjunction with other past, present, and future actions related to the proposed action by location or generic type.” MCA § 75-1-220(4).

#### Environmental Protections of the Constitution of Montana

23. The Constitution of Montana compels the state to prevent unreasonable degradation of the “environmental life support system” to protect Montanans’ “inalienable ... right to a clean and healthful environment,” and requires that “[t]he state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.” Mont. Const. art. II, § 3, art. IX, § 1(1). The Constitution further requires that the Montana Legislature “shall ... provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.” Id. art. IX, § 1(3).

24. In enacting these provisions, the drafters aimed to establish “the strongest environmental protection provision found in any state constitution.” Park Cnty. Env’t Council, ¶ 61 (quoting Mont. Env’t Info. Center. v. Mont. Dep’t of

Env't Quality (MEIC), 1999 MT 248, ¶ 66, 296 Mont. 207, 988 P.2d 1236). Thus, these provisions do not “merely prohibit that degree of environmental degradation which can be conclusively linked to ill health or physical endangerment.” MEIC, ¶ 77. Rather, they provide environmental “protections which are both anticipatory and preventative.” Id.

25. The Montana Legislature designated MEPA an essential element of the overall statutory scheme for meeting its constitutional obligation to prevent unreasonable environmental degradation. See 2003 Mont. Laws ch. 361, § 5 (HB 437); see also MCA § 75-1-102(1) (MEPA's purpose); see Park Cnty. Env't Council, ¶ 67 (“MEPA serves a role in enabling the Legislature to fulfill its constitutional obligation to prevent environmental harms infringing upon Montanans' right to a clean and healthful environment.”). Accordingly, MEPA must be interpreted to serve its constitutional purpose. To the extent any provision of MEPA allows for unreasonable environmental degradation, it would violate Conservation Groups' environmental rights guaranteed by Article II, Section 3 and Article IX, Section 1 of the Montana Constitution. See MEIC, ¶ 80.

#### The Rosebud Mine

26. Coal mining began in Colstrip in the 1920s, when the railroad sought to break unions at underground mines in Red Lodge and Bozeman. When the railroad switched to diesel locomotives in the 1950s, it shuttered the mine in

Colstrip. Montana Power Company (MPC) reopened the Rosebud Mine in 1968 to ship coal to the J.E. Corette Power Plant in Billings, which was closed then demolished in 2015.

27. The Rosebud Mine then swelled to supply coal to the Colstrip Plant, the first two units (Units 1 and 2) of which were built in 1975 and 1976 by MPC, despite broad public opposition. The stated life of the coal plant was 30 years. Montana regulators predicted the operation would repeat the boom-and-bust cycle.

28. Approximately ten years later, following further opposition from ranchers, conservationists, and the Northern Cheyenne Tribe, MPC constructed Units 3 and 4 at Colstrip.

29. Units 1 and 2 were permanently shuttered in 2020 because they became uneconomical. The remaining units (Units 3 and 4) have a combined generating capacity of approximately 1,500 megawatts (MW).

30. The Colstrip Plant is the largest point source of GHG emissions in Montana, emitting approximately 8.2 million tons of CO<sub>2</sub> each year. Since 1968, the plant has emitted approximately 500 million tons of CO<sub>2</sub> emissions, equivalent to a year of emissions from 107 million passenger vehicles.

31. The Rosebud Mine now sprawls across more than 30,000 acres and supplies approximately 6 million tons of coal annually to the Colstrip Plant. A

small amount of high sulfur “waste coal” is sent to the adjacent Rosebud Power Plant.

32. The mine consists of multiple permit areas, denominated Areas A, B, C, D, and F.

#### The AM5 Expansion of the Rosebud Mine

33. The Lee Coulee Expansion (AM5) of Area B of the Rosebud Mine was proposed by WRM in 2017 and approved by DEQ in 2022.

34. The expansion allows WRM to strip-mine 62.3 million tons of coal from approximately 2,500 acres in the headwaters of Lee Coulee over 21 years.

35. WRM will strip the topsoil with earthmovers; blast and remove rock layers (called “overburden”) above the coal seam with a dragline, casting it aside; blast and dig the coal seam with loaders and backhoes; then crush the coal and deliver it to the adjacent plants.

36. All coal from the expansion will be shipped to the Colstrip Plant and the Rosebud Power Plant and burned.

37. DEQ prepared a draft EIS for the expansion. The draft contained no discussion of GHG emissions and no discussion of direct, indirect, or cumulative climate change impacts of those emissions.

38. Conservation Groups submitted multiple, detailed public comments to DEQ detailing the severe and worsening impacts of climate change and GHG emissions on public health and the environment in Montana.

39. Citing Montanans' inalienable constitutional right to a clean and healthful environment, Conservation Groups urged DEQ to assess and disclose these impacts to the public and decisionmakers.

40. DEQ refused, stating that it was prohibited by law from discussing or evaluating climate change.

#### Climate Change Impacts in Montana

41. Climate change is the foremost threat to Montana's environment.

42. Climate change from burning fossil fuels is already causing widespread harm to and deterioration of the environment in Montana and the health of Montanans.

43. Temperatures in Montana have increased between 2.0-3.0°F over the past 50 years, impacting every element of the environmental life support system.

44. Climate change has caused record-breaking heatwaves in Montana.

45. The increased temperatures reduce Montana's snowpack, stressing water supplies, especially in the summer and early fall.

46. Over 80% of the 150 glaciers that once existed in Glacier National Park have disappeared due to global heating. This loss is irreversible on human time scales.

47. Climate change is exacerbating drought, with severe consequences for people and the environment, including catastrophic consequences on aquatic species. Increased temperatures bake the moisture from the soil and plants (through evapotranspiration). This can lead to desertification.

48. The “flash drought” that struck Montana in the summer of 2017 was the worst drought in decades, causing wildfires that burned millions of acres and killed livestock. The drought devastated agricultural production of farmers and ranchers, causing losses of over \$2.6 billion dollars.

49. Reduced stream flow and more severe drought from climate change harms farming and ranching in Montana by limiting irrigation and desiccating soils. Excessive heat stresses livestock and can cause death. Heat reduces livestock fertility and decreases milk production in dairy cows. Excessive heat reduces growth of grains and lowers crop yields.

50. Climate change harms Montana’s forests. Hotter temperatures are increasing survival of forest pests, like bark beetles, which are causing widespread mortality across Montana’s forests. Catastrophic forest die-offs from drought have occurred throughout the western U.S.

51. Higher temperatures are drying out Montana's forests, increasing forest fire risk and expanding the fire season. Climate change has already doubled the number of acres burned across the United States by wildfire.

52. All these environmental impacts harm the health of Montanans. Heatwaves cause increased mortality and are a major cause of weather-related death in the United States. Excessive heat also harms numerous body systems, including the heart, lungs, and kidneys. These harms are most acute for the young, the elderly, the poor, and the unwell. Excessive heat especially threatens those who work outside, like construction and agriculture workers.

53. Increased wildfires from climate change degrade Montana's air, as summer smoke waves have become increasingly common. In the western U.S., including Montana, increased hospital admissions for respiratory problems accompany smoke events. For example, in 2017 Seeley Lake, Montana, beset by fire, experienced 38 days of unhealthy, very unhealthy, or hazardous air quality, causing decreased lung function for residents for years after the fires.

54. Simultaneously, climate change is causing increased spring flooding from earlier spring snowmelt and extreme precipitation. Such floods destroy infrastructure and homes and disrupt people's lives long after water levels fall. For example, a 500-year flood struck Livingston, Montana, this spring, causing

destruction that could exceed \$1 billion dollars and additional cascading economic impacts throughout the region.

55. Climate change further harms the health of Montanans by expanding the range of disease vectors, ticks, mosquitos, and fleas. Thus, incidence of mosquito-borne West Nile Virus appeared in Montana in 2002 and is now reported in 18 counties.

56. Climate change profoundly impacts mental health. Elevated temperatures worsen mental health, diminish cognitive function, and increase violence. Extreme events—wildfires, floods, drought—can cause post-traumatic stress disorder (PTSD), anxiety, depression, substance abuse, and suicidal thoughts. Displacement from extreme events fractures communities.

57. More broadly, the sense of hopelessness, helplessness, fatalism, apathy, and denial associated with climate change are sufficiently widespread to have gained unique descriptions: climate grief, eco-anxiety, and solastagia.

58. These effects will substantially worsen if climate change and GHG emissions are not abated. Temperatures in Montana will increase 5.6-9.8°F. Hard limits of resilience and adaptability of people and natural systems will be reached or surpassed, causing ecosystem decline, extinctions, and losses of life and livelihoods.

59. While economic tallies are a poor surrogate for harm to peoples' lives and irreplaceable resources (like trout streams and glaciers) and violations of peoples' fundamental rights, the economic costs of climate change are overwhelming.

60. Partial estimates have found over \$1 billion in lost labor earnings from climate change in Montana. This is surely a substantial underestimate, as the "flash drought" of 2017 alone caused greater economic losses to agriculture.

61. Another more recent analysis concluded that the GHG emissions from the Lee Coulee Expansion alone would cause roughly \$10 billion in climate damages, such as harm from wildfires and extreme weather, impacts to agriculture and water resources, and harm to human health.

62. To avoid these profound impacts, urgent and deep reductions to GHG emissions are needed.

63. Expanded coal strip-mining and combustion are the exact opposite of what is required to maintain and improve a clean and healthful environment in Montana.

**FIRST CLAIM FOR RELIEF  
(Violation of MEPA)**

64. Conservation Groups hereby reallege and reincorporate all preceding paragraphs.

65. To fulfill its requirement to take a “hard look” at the environmental impacts of the Lee Coulee Expansion, in its EIS, DEQ must evaluate direct, secondary, and cumulative impacts of the project on the physical environment and on the human population. ARM 17.4.609(3)(d), (e); ARM 17.4.603(18); MCA § 75-1-220(4).

66. DEQ’s final EIS unlawfully fails to disclose or provide any analysis of potential climate change impacts from direct, secondary, and cumulative GHG emissions within the State of Montana from the Lee Coulee Expansion.

67. Combustion of coal from the Rosebud Mine at the Colstrip Plant generates approximately 8 million tons of CO<sub>2</sub> each year.

68. Under the Legislature’s 2011 amendments to MEPA, DEQ’s environmental review “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.” MCA § 75-1-201(2)(a). However, while the effects of climate change are felt globally, they impact Montana’s environment and economy in particular and significant ways. One of MEPA’s core purposes is to ensure the State fully considers the consequences of actions it takes or authorizes on Montana’s environment. See MCA §§ 75-1-102, 75-1-103(2).

69. The Legislature’s amendment to MEPA restricting consideration of “regional, national, or global” impacts, MCA § 75-1-201(2)(a), does not absolve

DEQ of its obligation to consider the climate change impacts in Montana caused directly, secondarily, or cumulatively by the Lee Coulee Expansion.

70. Because the Lee Coulee Expansion will cause tens of millions of direct and secondary GHG emissions and will contribute to devastating cumulative impacts of climate change in Montana, DEQ was required to evaluate these impacts under MEPA, ARM 17.4.609(3)(d), (e). Its failure to do so was unlawful.

**SECOND CLAIM FOR RELIEF  
(Violation of Montana Constitution)**

71. Conservation Groups hereby reallege and reincorporate all preceding paragraphs.

72. In the alternative, to the extent that DEQ correctly interpreted Montana Code Annotated section 75-1-201(2)(a) to foreclose consideration of all climate change impacts including those in Montana, the provision violates Montana's constitutional environmental protections. Mont. Const. art. II, § 3, art. IX, § 1.

73. The State's constitutional obligation to prevent unreasonable environmental degradation under Article II, Section 3 and Article IX, Section 1 of Montana's Constitution is expressly implemented by MEPA, MCA § 75-1-102, which promotes a healthy environment by requiring state agencies to thoroughly evaluate the environmental consequences of activities they permit before those activities occur. MEPA is part of the Legislature's scheme to "provide adequate

remedies” to prevent unreasonable environmental degradation as required under Article IX, Section 1 of Montana’s Constitution. Mont. Const. art. IX, § 1(3).

74. Montana’s Constitution unambiguously requires preventative measures to protect Montanans’ inalienable right to a “clean and healthful environment,” and this right extends to protecting the environmental rights of future generations. Mont. Const. art. II, § 3, art. IX, § 1; Park Cnty Env’t Council, ¶ 62 (“[The] forward-looking and preventative language [of Article IX, Section 1] clearly indicates that Montanans have a right not only to reactive measures after a constitutionally-proscribed environmental harm has occurred, but to be free of its occurrence in the first place.”).

75. The Montana Legislature amended MEPA in 2011 to provide that an environmental review conducted pursuant to its provisions “may not include a review of actual or potential impacts beyond Montana’s borders [and] may not include actual or potential impacts that are regional, national, or global in nature.” MCA § 75-1-201(2)(a); 2011 Mont. Laws ch. 396 (SB 233). DEQ reads this provision to limit the agency’s ability to review the actual or potential climate change impacts of GHGs due to the regional, national, and global nature of climate change, even though those GHG emissions will have actual or potential climate change impacts in Montana. If DEQ’s interpretation is correct, DEQ could approve the largest GHG emitting projects in Montana, which are among the largest in the

nation and world, without ever analyzing climate impacts, while climate change lays waste to Montana's environment and communities.

76. Because Montana Code Annotated section 75-1-201(2)(a) as interpreted by DEQ would permit unexamined environmental harm, it impairs Conservation Groups' fundamental constitutional rights and is subject to strict judicial scrutiny. Mont. Const. art. II, § 3, art. IX, § 1; Park Cnty Env't Council, ¶¶ 60, 84.

77. Similarly, because Montana Code Annotated section 75-1-201(2)(a) as interpreted by DEQ would permit unexamined environmental harm, it violates the Legislature's obligation to provide environmental remedies to address climate change impacts of GHG emissions for present and future generations as required under Montana's Constitution. Mont. Const. art. IX, § 1; Park Cnty. Env't Council, ¶ 62.

78. In adopting Montana Code Annotated section 75-1-201(2)(a), the 2011 Legislature did not evince any compelling state interest for precluding DEQ's review of actual and potential environmental harms of GHG emissions in Montana and did not demonstrate any compelling state interest for abdicating its duty to prevent environmental harm. Accordingly, Montana Code Annotated section 75-1-201(2)(a), as that provision is interpreted by DEQ, is unconstitutional on its face

and/or as applied to this case. Mont. Const. art. II, § 3, art. IX, § 1; see Park Cnty Env't Council, ¶¶ 63, 84.

### **REQUEST FOR RELIEF**

THEREFORE, Conservation Groups respectfully request that this Court:

1. Declare that DEQ violated MEPA and its implementing regulations by failing to rationally evaluate the direct, secondary, and cumulative effects of the Lee Coulee Expansion of the Rosebud Mine;
2. Declare in the alternative that Montana Code Annotated section 75-1-201(2)(a) violates Montana Constitution Article II, Section 3 and Article IX, Section 1, on its face and/or as applied to this case;
3. Declare unlawful and set aside DEQ's final EIS for the Lee Coulee Expansion of the Rosebud Mine;
4. Declare unlawful and set aside DEQ's approval of the permit for the Lee Coulee Expansion of the Rosebud Mine; and
5. Grant Conservation Groups such additional relief as the Court may deem just and proper.

Respectfully submitted this 26th day of July, 2022.

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