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# Montana Court Rules State Agencies Must Consider GHG/Climate Impacts in Fossil Fuel Approvals

**Insight — August 15, 2023**

On August 14, 2023, Judge Kathy Seeley issued a decision in the *Held* case that impacts state fossil fuel permit holders and current and future permit applications. Judge Seeley found unconstitutional a Montana statute that prohibits state agencies from considering the impact of greenhouse gas emissions (GHG) and impacts to the climate when authorizing fossil fuel activities in Montana. As the decision is likely to be appealed, it is difficult to predict all impacts. Below is what we know based on Judge Seeley's Order.

## Background

In March 2020, sixteen Montana youth (the Youth Plaintiffs) filed a lawsuit against the State of Montana, its Governor, and several state agencies (including the Department of Environmental Quality and Public Service Commission), alleging the State's fossil fuel-based energy system contributes to climate change in violation of their constitutional rights.

Specifically, the Youth Plaintiffs challenged the constitutionality of certain provisions of Montana's State Energy Policy Act and a provision in the Montana Environmental Policy Act (MEPA Limitation) that prohibits state agencies from considering the impacts of GHG and climate change in their environmental reviews for fossil fuel related permitting and approvals.<sup>1</sup>

After a prolonged procedural history, Judge Seeley presided over a trial in June, hearing testimony from witnesses concerning GHG emissions, climate change, Montana's environment, and the State's efforts to maintain a clean and healthful environment through MEPA and its permitting processes.

## Judge Seeley's Decision

Judge Seeley held that the MEPA Limitation is unconstitutional, concluding that it violates Montana's unique constitutional right to a clean and healthful environment.<sup>2</sup> The Court enjoined the MEPA Limitation. The Court reasoned that, by enacting the MEPA Limitation, the State failed its affirmative duty to protect Montana citizens' right to a clean and healthful environment and to protect Montana's natural resources from unreasonable depletion.

The Court found that permits issued by Montana state agencies authorizing the extraction, processing, transportation, and consumption of fossil fuels by end users contributes to climate change and harms the Youth Plaintiffs. Relying on testimony offered by witnesses called by Youth Plaintiffs, the Court found that “there is overwhelming scientific consensus that Earth is warming as a direct result of human GHG emissions, primarily from the burning of fossil fuels,” and that climate change is harming children and will continue to do so absent a policy change. As evidence of state-approved projects contributing to climate change, the Court cited several recent agency approvals, including the Montana Department of Environmental Quality’s approval of coal mine expansions and the issuance of an air quality permit to Northwestern Energy for the Yellowstone County Generating Station. The Court found “Montana’s GHG emissions and climate change have been proven to be a substantial factor in causing climate impacts to Montana’s environment.”

The case remains pending before Judge Seeley while she determines whether the State is responsible for paying the Youth Plaintiffs’ attorney’s fees.

### **Impact**

The immediate impact of the *Held* decision is that the MEPA Limitation is now enjoined statewide, and state agencies will have to evaluate how to comply with the Judge Seeley’s decision when conducting future environmental assessments of fossil fuel projects.

It seems likely that the State will appeal Judge Seeley’s decision to the Montana Supreme Court, particularly given the provisions in Article IX, Section 1 of the Montana Constitution. However, unless the Montana Supreme Court issues a stay pending appeal, the decision will remain in effect during the appeal process and state agencies in Montana cannot rely on the MEPA Limitation to avoid considering GHG emission and climate impacts in issuing agency approvals.

<sup>1</sup> Montana Code Ann. § 75-1-201(2)(a), amended during the 2023 Montana Legislature by HB 971. The MEPA Limitation states: “(a) Except as provided in subsection (2)(b), an environmental review conducted pursuant to subsection (1) may not include an evaluation of greenhouse gas emissions and corresponding impacts to the climate in the state or beyond the state’s borders.”

<sup>2</sup> Montana Constitution Article II, Section 3.

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