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13 FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY

14
15 RIKKI HELD; LANDER B., by and through
his guardian Sara Busse; BADGE B., by and
16 through his guardian Sara Busse; SARIEL S.,
by and through her guardian Cristen Twoteeth;
17 KIAN T., by and through his guardian Todd
Tanner; GEORGIANNA F., by and through
her guardian Douglas Fisher; KATHRYN
18 GRACE S., by and through her guardian Erik
Gibson-Snyder; EVA L., by and through her
19 guardian Mark Lighthiser; MIKA K., by and
through his guardian Rachel Kantor; OLIVIA
20 V., by and through her guardian Lynn Purl;
JEFFREY K., by and through his guardian
21 Laura King; NATHANIEL K., by and through
his guardian Laura King; CLAIRE V., by and
22 through her guardian Michael Vlases; RUBY
D., by and through her guardian Shane Doyle;
23 LILIAN D., by and through her guardian

Case No. _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 Shane Doyle; TALEAH H., by and through her
guardian Cesar Hernández,

2
3 Plaintiffs,

4 v.

5 STATE OF MONTANA, GOVERNOR
6 STEVE BULLOCK, MONTANA
7 DEPARTMENT OF ENVIRONMENTAL
8 QUALITY, MONTANA DEPARTMENT OF
9 NATURAL RESOURCES AND
10 CONSERVATION, MONTANA
11 DEPARTMENT OF TRANSPORTATION,
12 and MONTANA PUBLIC SERVICE
13 COMMISSION,

14 Defendants.

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1 COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

2 1. Youth Plaintiffs, Rikki Held; Lander B., by and through his guardian Sara Busse; Badge
3 B., by and through his guardian Sara Busse; Sariel S., by and through her guardian Cristen
4 Twoteeth; Kian T., by and through his guardian Todd Tanner; Georgianna F., by and
5 through her guardian Douglas Fisher; Kathryn Grace S., by and through her guardian Erik
6 Gibson-Snyder; Eva L., by and through her guardian Mark Lighthiser; Mika K., by and
7 through his guardian Rachel Kantor; Olivia V., by and through her guardian Lynn Purl;
8 Jeffrey K., by and through his guardian Laura King; Nathaniel K., by and through his
9 guardian Laura King; Claire V., by and through her guardian Michael Vlases; Ruby D., by
10 and through her guardian Shane Doyle; Lilian D., by and through her guardian Shane
11 Doyle; and Taleah H., by and through her guardian Cesar Hernández, (collectively, “Youth
12 Plaintiffs”), bring this action against Defendants, State of Montana, Governor Steve
13 Bullock, Montana Department of Environmental Quality, Montana Department of Natural
14 Resources and Conservation, Montana Department of Transportation, and Montana Public
15 Service Commission (collectively “Defendants”) in their official capacities, and
16 respectfully allege as follows:

17 NATURE OF THE ACTION

18 2. The Youth Plaintiffs to this proceeding are children and youth in Montana, between the
19 ages of two (2) and eighteen (18), who have been and will continue to be harmed by the
20 dangerous impacts of fossil fuels and the climate crisis. Children are uniquely vulnerable
21 to the consequences of the climate crisis, which harms Youth Plaintiffs’ physical and
22 psychological health and safety, interferes with family and cultural foundations and
23 integrity, and causes economic deprivations. The climate crisis is degrading and depleting

1 Montana’s unique and precious environment and natural resources, which the Youth
2 Plaintiffs depend on for their safety and survival. Because of their unique vulnerabilities
3 and age, Youth Plaintiffs are disproportionately harmed by the climate crisis and face life-
4 long hardships. Instead of using governmental authority to exacerbate the existing dangers
5 and risks of harm to these children, Defendants must use their existing authorities to take
6 science-based actions to reduce their risk of harm.

7 3. Defendants are governmental entities that have created and implemented a long-standing
8 fossil-fuel based state energy system that contributes to dangerous climate disruption in
9 violation of Youth Plaintiffs’ constitutional rights as guaranteed under Article II, Section
10 3; Article II, Section 4; Article II, Section 15; Article II, Section 17; Article IX, Section 1;
11 Article IX, Section 3 of the Montana Constitution; and the Public Trust Doctrine.

12 4. Youth Plaintiffs bring this case to challenge the constitutionality of Montana’s fossil-fuel
13 based State Energy Policy, which is codified in law, Mont. Code Ann. § 90-4-1001(c)-(g)
14 (“State Energy Policy”), as well as the Climate Change Exception in the Montana
15 Environmental Policy Act (“MEPA”), Mont. Code Ann. § 75-1-201(2)(a) (“Climate
16 Change Exception”). A controversy lies in the ongoing implementation of the State Energy
17 Policy and the Climate Change Exception to MEPA, which are harming these Youth
18 Plaintiffs and infringing on their constitutional rights.

19 5. The purpose of the Montana Constitution, as set out in its Preamble, is not just to benefit
20 Montana’s present generations of children and youth, but future generations as well:

21 We the people of Montana grateful to God for the quiet beauty of our state,
22 the grandeur of our mountains, the vastness of our rolling plains, and
23 desiring to improve the quality of life, equality of opportunity and to secure
the blessings of liberty for this *and future generations* do ordain and
establish this constitution.

Montana Constitution, Preamble (emphasis added).

1 6. Moreover, the Constitution, through Article II, Section 15, explicitly extends all
2 constitutional rights to children and youth.

3 7. The threats posed by fossil fuels and the climate crisis are existential. Science is
4 unequivocal that dangerous climate change is upon us and is occurring due to human
5 activities, primarily from the extraction and burning of fossil fuels. Additionally, while
6 forests have the potential to sequester significant amounts of carbon dioxide (“CO₂”),
7 current forestry practices and activities are not maximizing the sequestration potential of
8 forests and are resulting in significant greenhouse gas (“GHG”) emissions. The release of
9 anthropogenic GHGs into the atmosphere is already triggering a host of adverse
10 consequences in Montana, including dangerously increasing temperatures, changing
11 precipitation patterns, increasing droughts and extreme weather events, increasing the
12 frequency and severity of wildfires, increasing glacial melt, and causing numerous adverse
13 health risks, especially to children.

14 8. Although Defendants know that Youth Plaintiffs are living under dangerous climatic
15 conditions that create an unreasonable risk of harm, they continue to act affirmatively to
16 exacerbate the climate crisis. Youth Plaintiffs, most of whom cannot vote, therefore seek
17 this Court’s judgment and redress. Youth Plaintiffs first seek a declaration of their
18 constitutional rights, the constitutionality of the State Energy Policy and the Climate
19 Change Exception to MEPA, and the liability and duties of the government Defendants. If
20 awarded declaratory relief, these children seek an equitable order directing Defendants to
21 cease and reform their unconstitutional conduct and prepare a remedial plan of the
22 government’s own devising, consistent with its authorities and the Court’s declaration of
23 law, to bring the state energy system into constitutional compliance. Where the political

1 majority places these children in harm's way and at substantial risk to their lives and
2 security, Youth Plaintiffs are dependent on the judiciary to vindicate and protect their
3 fundamental and inalienable constitutional rights.

4 9. Some of this State's and the nation's landmark constitutional rulings have approved
5 declaratory and injunctive relief, including remedial plans, to remedy systemic
6 constitutional violations like those at issue here. For example, in *Columbia Falls*
7 *Elementary School Dist. No. 6 v. State*, 2005 MT 69, 326 Mont. 304, 109 P.3d 257, schools
8 on behalf of children called upon the courts to reform pervasive deficiencies in Montana's
9 system of funding public elementary and secondary schools. *See also Helena Elementary*
10 *School Dist. No. 1 v. State*, (1989), 236 Mont. 44, 769 P.2d 684. Similarly, federal courts
11 have declared unconstitutional systemic racial injustice in school systems, *Brown v. Bd. of*
12 *Educ.*, 349 U.S. 294 (1955), government-sanctioned segregated public housing systems,
13 *Hills v. Gautreaux*, 425 U.S. 284 (1976), and cruel and unusual conditions across
14 California's state prison system, *Brown v. Plata*, 563 U.S. 493 (2011).

15 10. Here too, because Defendants have used their governmental authority to create a state
16 energy system that causes unparalleled harms to Montana's children and youth, it is
17 incumbent on the courts to bring that system into constitutional compliance. As Delegate
18 Aronow stated during Montana's 1972 constitutional convention: "The Constitution is, true
19 enough, the framework of government, but on the other hand, it is a last bulwark and
20 protection that the people have."¹

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¹ *Montana Constitutional Convention 1971-1972 Verbatim Transcript Vol. IV*, at 1069 (Mar. 1, 1972),
https://courts.mt.gov/portals/189/library/mt_cons_convention/vol4.pdf.

1 JURISDICTION AND VENUE

2 11. This Court has original jurisdiction over this action pursuant to Article II, Section 16, and
3 Article VII, Section 4 of the Montana Constitution and pursuant to Mont. Code Ann. § 3-
4 5-302.

5 12. This Court has jurisdiction to grant declaratory and injunctive relief pursuant to the
6 Uniform Declaratory Judgments Act, Mont. Code Ann. §§ 27-8-101, *et seq.* (“UDJA”) and
7 §§ 27-19-101, *et seq.*, as well as the general equitable powers of this Court. Pursuant to the
8 UDJA, this Court “shall have power to declare rights, status, and other legal relations” and
9 this is “whether or not further relief is or could be claimed” in this action. Mont. Code Ann.
10 § 27-8-201.

11 13. Venue in this action is proper in this Court pursuant to Mont. Code Ann. § 25-2-126(1) and
12 § 25-2-117. This is an action against the State of Montana, against officers and agencies of
13 the state in their official capacities, and one or more of the Youth Plaintiffs reside in Lewis
14 and Clark County.

15 PARTIES

16 PLAINTIFFS

17 14. Plaintiff **Rikki Held** is 18 years old and is from Broadus, Montana where she lives with
18 her family on their 7,000 acre-ranch. Her family’s livelihood largely depends upon the
19 cattle they raise on the ranch and sell, as well as growing and harvesting a variety of crops.
20 Rikki’s access to and enjoyment of the outdoors, including camping and backpacking, are
21 central to her health and foundational to her family. Climate disruption is already
22 threatening Rikki’s home, family, community, and way of life.

23 15. The Powder River runs through Rikki’s family ranch and Rikki’s family has water rights
to the river. Due to changes in the climate there is increased variability in the water levels

1 in the river. In 2007 the river dried up. In the spring of 2017, abnormally high temperatures
2 linked to the climate crisis caused the frozen river to melt at a rapid rate and flood. The
3 water flooded Rikki's family property and nearly flooded her house. Approximately 20
4 feet of river bank was lost in the overflow and more has eroded since then. In 2011, a few
5 young bulls on the ranch were stranded at a bend in the river on a piece of ice when a
6 channel flooded. The young bulls were unable to cross to safe land, and one bull died.
7 Rikki's father operated a log skidder to wade through 4-feet of water and help provide
8 alfalfa to save the cattle, placing his own life at risk.

9 16. Rikki and her family depend upon an abundant snowfall in the winter, which melts and
10 fills up the reservoirs on the ranch to water the cattle all summer. However, due to climate
11 disruption, the snow does not last throughout the winter. The lack of snow means there is
12 no spring runoff that Rikki's family can rely on to water their livestock. The variant
13 temperatures and rapidly melting snow quickly freeze and Rikki's fields are then covered
14 in ice. The ice is incredibly dangerous; cattle slip and fall on the ice, breaking their hips or
15 aborting their calves. These injuries to cattle greatly affect Rikki and her family's
16 livelihood because they lose profits when any calf, cow, or bull is injured or dies. Rikki's
17 family has already experienced a loss in profits and Rikki is afraid of the worsening
18 economic hardship her family will face if the climate crisis is not addressed.

19 17. Climate change has intensified extreme weather events in the Powder River County area.
20 For example, a severe hail storm in or around July 2019 destroyed parts of Rikki's ranch,
21 including her home, and the second cutting of the alfalfa crop was devastated.

22 18. Rikki's family hunts deer and elk on the ranch, which they freeze and eat throughout the
23 year. Due to rising temperatures and drought conditions, elk range and herd behaviors have

1 changed and it has become more difficult for Rikki's family to hunt deer and elk on the
2 ranch. Elk herd ranges now extend past the outskirts of the ranch, causing significant
3 damage to the interior ranch, including fences and hay crops. The elk migrate down to the
4 meadows earlier in the year because the grass dries in the hills, and the elk then compete
5 with the cattle and destroy crops on Rikki's ranch. The rising temperatures in Montana
6 have caused an increase in Bluetongue Virus, a viral disease of ruminants transmitted by
7 small biting midges, or *Culicoides*. The first severe frost of the year destroys the biting
8 midges and abruptly ends the spread of disease for the year; however, such disease-carrying
9 insects are surviving due to warmer winters. Rikki and her family frequently find diseased
10 white-tailed deer and carcasses on her ranch due to Bluetongue, which could be transmitted
11 if eaten. Likewise, white pine weevils are surviving in the warmer temperatures and are
12 killing the pine trees on Rikki's ranch.

13 19. There have been a number of wildfires on the ranch. In or around the summer of 2012, a
14 large wildfire swept the ranch and burned approximately 70 miles of area powerlines
15 causing Rikki and her family lost electricity and power for approximately one month. Rikki
16 and her family's cattle suffered because of the fire; many lost a significant amount of
17 weight and several starved to death, causing Rikki's family financial losses that year. The
18 smoke was particularly bad, and Rikki was forced to remain inside. Broadus has recorded
19 some of the worst air quality in Montana, as well as the nation, in significant part due to
20 the fossil fuels development and combustion that happens in the areas surrounding
21 Broadus.

22 20. Rikki feels a heavy burden as a result of the climate crisis. She experiences stress and
23 despair when thinking about how the State of Montana has known about climate disruption

1 for decades and yet has chosen to continue to act in a way that threatens her home and
2 property, her family's livelihood, and infringes upon her constitutional rights and future.

3 21. Plaintiffs **Lander B.** and **Badge B.** are 15 and 12 years old, respectively, and live in
4 Kalispell, Montana. Hunting and fishing are an integral part of Lander and Badge's cultural
5 heritage and community, as well as an important food source – Lander, Badge, and their
6 family depend on the food they hunt and fish for as their source of meat and protein. Their
7 access to an important food source, and a cultural and familial tradition, is inhibited due to
8 the climate crisis.

9 22. Lander and Badge are also avid fishermen and catch cutthroat trout, rainbow trout, bull
10 trout, and other fish in Montana. Their ability to fish is adversely impacted as the climate
11 crisis causes abnormally low instream water levels and high water temperatures, which
12 harm fish and decrease their population. Climate disruption has also caused the closure of
13 certain fisheries; Lander and Badge recall closures on the Flathead River and Blackfoot
14 River, among others, which have prohibited them from fishing. Their ability to raft on
15 rivers, including the Flathead, Blackfoot, and Smith Rivers, has also been restricted, and
16 in some cases made impossible, due to low instream water levels.

17 23. Hunting is an important part of Lander and Badge's family life, identity, and culture.
18 Lander hunts for antelope, deer, birds, and other small and large wild game animals.
19 However, the increasing heat, as well as the dry and smoke-filled air in the summer and
20 fall, as a result of climate disruption, have diminished his opportunities to hunt in Montana.
21 The extreme temperatures and smoke make hunting unbearable for Lander. The heat and
22 drought conditions pose challenges for wildlife and alters their normal range, behavior, and
23 populations, which makes hunting even more challenging. Badge hunts for upland birds,

1 which are a food source for him and his family. However, as climate disruption increases
2 the frequency of extreme weather events and drought conditions, the birds are experiencing
3 increased mortality rates, which limits Badge's ability to hunt and cuts off a natural food
4 source.

5 24. During the summer of 2018, a wildfire near Lander and Badge's home forced their family
6 to prepare to evacuate. While the wildfire ultimately spared their property, Lander and
7 Badge fear that, as climate destabilization makes wildfires more frequent and destructive,
8 their home could be damaged or destroyed, further threatening their safety and security.
9 Due to climate change, the wildfire smoke in Kalispell, and in other parts of Montana where
10 Badge recreates, makes it difficult for Badge to breath, triggers a cough, and irritates his
11 eyes, which negatively impacts his health and well-being. Lander has seasonal pollen
12 allergies, which will worsen with the increased pollen count and a changing climate.

13 25. Badge is named after Badger-Two Medicine, an area where he frequently recreates and
14 fishes, and feels strongly connected to. Severe wildfires in Badger-Two Medicine
15 destroyed ancient White Pines and degraded areas significant to Badge and where he likes
16 to visit and recreate. The devastation of Badger-Two Medicine, Badge's namesake, was
17 particularly distressing and had a profound emotional impact on Badge. Badge's ability to
18 enjoy and recreate in and around Montana's forests, which is important for his health and
19 foundational to his family, has been diminished as pine beetles infest and kill trees,
20 decimating forests. Badge has even seen pine beetles on the trees while hiking in Montana's
21 forests.

22 26. Lander cares deeply about protecting Montana's environment, which is an integral part of
23 his family traditions, culture, and identity. Witnessing the current impacts of the climate

1 crisis in Montana and in other parts of the world is traumatic for Lander. Badge is anxious
2 when he thinks about the future that he, and his potential children, will inherit. Both Lander
3 and Badge were plaintiffs in a 2011 constitutional climate case against the State of
4 Montana, which was filed directly with the Montana Supreme Court. Following the
5 Supreme Court's directive, they are filing this case in the district court.²

6 27. Plaintiff **Sariel S.** is 17 years old and lives on the Flathead Indian Reservation. Sariel is a
7 member of the Confederated Salish and Kootenai Tribes. Sariel's family and community
8 have a deep connection to the natural world, and have a body of knowledge about the
9 environment closely tied to the seasons, locations, and environment. This body of
10 knowledge, as well as cultural practices and traditions, are passed on by Elders and family
11 to Sariel so that her generation and future generations can continue her community's
12 spiritual, cultural, and familial traditions and ways of life.

13 28. Climate change is threatening Sariel's culture, which is already in jeopardy and at risk of
14 being lost. The environment is one of the remaining connections Sariel and her community
15 have to their culture; Sariel is worried that her and her community's activities, practices,
16 and beliefs of cultural significance will be entirely lost if climate change continues. The
17 threat of losing her community's important connection to the environment and losing her
18 culture because of climate change is extremely stressful on Sariel and her community.

19 29. The lack of winter snowpack in recent years, due to climate disruption, has harmed Sariel
20 and her community on the Flathead Reservation. The Flathead Lake depends on the runoff
21 from the snow but the lack of snow creates low water levels, which impacts Sariel's
22 aesthetic and recreational opportunities, and impacts her community's ability to fish for
23

² *Barhaugh et al., v. State of Montana*, No. OP 11-0258 (June 15, 2011).

1 bull trout and rainbow trout. Snow is also a necessary component of certain traditional
2 ceremonies, like Coyote Stories and Creation Stories. Sariel's Elders are only able to share
3 these stories when there is snow on the ground, but this winter season, and in recent winters,
4 the snow has melted too quickly and this oral history thus cannot be shared with Sariel and
5 the community. Climate change is impacting Sariel's ability to partake in cultural and
6 spiritual activities, central to her individual dignity.

7 30. There has been an increase in wildfires on the Flathead Reservation where Sariel lives, and
8 she is forced to remain indoors when the smoke is concentrated in the area to preserve her
9 overall health and safety.

10 31. Sariel's family members hunt wild game on the Flathead Reservation, including bison.
11 Sariel and her family rely on this food source for the rest of the year. Bison in particular,
12 are a central part of her Salish and Kootenai cultural heritage and also a critical food source
13 for Sariel and her community. Sariel and her family pick huckleberries, which they dry,
14 freeze, and make into jam, syrup, and other foods, such as cheesecake for Sariel's birthday.
15 However, Sariel has to travel farther to pick huckleberries, and the huckleberry picking
16 season has been pushed later into the year because the berries are not ripe due to fluctuating
17 and extreme temperatures. Sariel is concerned that as the climate crisis worsens, traditional
18 food sources and cultural practices may be lost with the declining access to bison, berries,
19 and other foods.

20 32. Climate disruption has made it difficult for Sariel to learn and engage in traditional and
21 cultural practices and customs that have been passed down for generations. The passing on
22 of cultural knowledge is incredibly important to Sariel, and she is increasingly worried that
23 the impacts of climate change are threatening her opportunity and right to learn these

1 practices so that she might carry them on. The climate crisis has a profound emotional and
2 psychological impact on Sariel, who stresses about the impacts her community is facing
3 and will face in the near future. Sariel is distraught when thinking about her future and if
4 she will have one.

5 33. Plaintiff **Kian T.** is 14 years old and lives with his family on 27 acres in Bigfork, Montana.

6 As the climate crisis causes warmer winters and increased insect activity, trees on his
7 family's property—including birch, spruce, aspen, cottonwood, and fir of various age
8 classes—are dying with heightened frequency. Kian likes to recreate on the creek to which
9 he and his family own water rights, and which borders his family's property. The creek is
10 primarily fed by snowmelt, but due to human-caused climate disruption there is earlier
11 spring snowmelt in the surrounding mountains, which threatens the creek's water supply
12 in the summer and fall. Kian's family property, where he lives and recreates, is directly
13 harmed as a result of the climate crisis.

14 34. Kian is a passionate fly fisher; he has been fishing Montana's lakes, ponds, and rivers since

15 he was four years old. Fly fishing is a part of Kian's cultural heritage and family traditions;
16 his father has been fishing for over 50 years and Kian hopes that he will be able to preserve
17 this tradition and fish for the next 50 years or more. However, such fishing opportunities
18 are already diminishing. Kian especially enjoys fishing the Flathead and Missouri Rivers,
19 where he catches rainbow and cutthroat trout. He was featured fishing in the 2019 fishing
20 and hunting documentary, "In the Heart of the Rockies" on the Sportsman Channel. The
21 warmer water temperatures, lower oxygen levels, and declining in-stream flows due to
22 climate disruption are harming Montana's rivers and fish. These climate impacts have
23 decreased fishing opportunities for Kian as the rivers become warmer and hold less water

1 in the summer. He has had to cancel fishing trips due to warm water temperatures and low
2 flows. Climate destabilization is thus restricting and infringing on Kian's ability to fish.

3 35. Kian lives near Glacier National Park, which he enjoys visiting. Kian hopes to continue
4 recreating in Glacier National Park, a place of significance to him, but the dead and dying
5 forests, melting glaciers, and declining snowpack diminishes these experiences and
6 recreational opportunities. He is distressed that he will never be able to see the natural
7 glaciers as they have historically existed, and as other generations experienced.

8 36. Increased smoke in the summer has impacted Kian's ability to play soccer, fish, hike, camp,
9 and otherwise recreate outside, activities which are central to his health and foundational
10 to his family. The smoke makes Kian feel sick, and he is forced to seek refuge inside.
11 During the summer of 2017, his family had to cancel a camping trip because the smoke
12 conditions were so oppressive and dangerous.

13 37. Kian has a black belt in taekwondo, which is a discipline and practice he has trained in
14 since the age of five. Kian is inspired and strives to live by the five taekwondo principles:
15 courtesy, integrity, perseverance, self-control, and indomitable spirit—principles that
16 encourage him to be conscientious about the impact he has in the world. He has taken
17 numerous steps in his personal life to conserve energy and natural resources in order to
18 protect the planet for both his generation and future generations.

19 38. Plaintiff **Georgianna F. ("Georgi")** is 17 years old and lives in Bozeman, Montana. Georgi
20 is a competitive Nordic skier and she trains 11 months of the year and practices 15 hours
21 each week, 7 days a week. She primarily trains for her competitions in Montana and has
22 competed in Junior National competitions for the past three years.

23

1 39. Georgi's ability to compete and participate in Nordic skiing has been directly impacted by
2 climate disruption. With less snowfall in the winter, and the snow melting at rapid rates,
3 Georgi's training season is curtailed and has overall shortened in length. In recent years
4 there has not been enough snow to groom trails or create tracks in the snow to Nordic ski
5 race until January, although historically tracks were created in November. The lack of snow
6 has inhibited Georgi's ability to complete all her necessary and appropriate training and
7 hinders her ability to continue to compete at a high level, which adversely impacts her
8 health and mental well-being.

9 40. In the summer, when Georgi trains for Nordic skiing and winter competition, the wildfire
10 smoke limits her ability to train outdoors, which is important for the sport. Practices in the
11 summer have been cancelled or curtailed due to smoke from wildfires in Montana. The
12 smoke makes it so Georgi cannot fully breathe or train at a high intensity level; she is
13 increasingly worried about the long-term effects that the exposure to heavy smoke while
14 training has on her health and respiratory system. In or around August 2017, while training
15 in Canmore, Alberta, Canada, Georgi had to wear a mask to protect herself from the ash
16 that fell from the sky.

17 41. Georgi also enjoys paddleboarding, backpacking, hiking, and other activities in the
18 outdoors. She has noticed that there is less flow in the local rivers, in particular the Smith,
19 Flathead, and Missouri Rivers, and at times these rivers have been closed due to low water
20 levels, which inhibits her access and restricts activities important to her health and
21 foundational to her family life. Additionally, due to less water flows, the season for
22 recreating on the river is shortened and it is increasingly difficult for Georgi and her family
23 to receive a permit to recreate on the Smith River, further inhibiting access. At times, even

1 with a permit, Georgi and her family have been forced to cancel float trips on the river
2 because there is not enough water due to climate disruption, thus impacting important
3 familial activities.

4 42. Georgi sometimes has feelings of despair and hopelessness; she has invested years into a
5 snow-based sport, but understands that snow and the sport may not exist in her future.

6 43. Plaintiff **Kathryn Grace S. (“Grace”)** is 16 years old and resides in Missoula, Montana.

7 Grace and her family kayak and recreate on the Clark Fork River, which is near her house,
8 and other nearby rivers and creeks. However, due to higher temperatures, decreasing
9 snowpack, and drought, the water level in the river is sometimes so low during the summer
10 months that it is impossible to float on the river. During the summer of 2013, Grace and
11 her family had to drag her raft down the river because it ran aground due to low water
12 levels. Grace’s access to the river is also impeded when the water level rises too high,
13 which can occur when unusually warm springs cause rapid snowmelt, because rafting,
14 kayaking, floating, and other activities become too dangerous. Flood warnings have
15 become more common due to the dangerously high water levels in the spring, caused by
16 unusually warm weather causing rapid snowmelt. Because of the climate crisis, Grace’s
17 access to the Clark Fork River for recreational activities has been increasingly limited and
18 impaired, thus limiting her ability to enjoy activities important to her health and family.

19 44. In the summers of 2017 and 2018, the smoke from wildfires impacted Grace’s ability to go
20 outside and enjoy outdoor activities, and placed her safety, health, and well-being at risk.

21 The smoke triggered coughing, as well as throat irritation. The extreme heat and wildfire
22 smoke adversely impact Grace’s ability to play competitive soccer and has led to fewer
23 soccer practices.

1 45. Witnessing climate change impacts occur around her is devastating emotionally to Grace
2 and she is anxious about her future and fearful that her generation may not survive the
3 climate crisis. Grace has doubts about whether she would want to have her own children
4 given her anxieties about the future. Grace participates in Students Against Violating the
5 Environment (“SAVE”), a school club, and participated in a campaign to eliminate single-
6 use plastic from the cafeteria at her school. Grace also launched and led a service project
7 in her community to eliminate disposable containers at restaurants. Grace feels that she
8 must do these activities to protect her environment but knows that her state government
9 also needs to stop its actions that are perpetuating the use of fossil fuels.

10 46. Plaintiff **Eva L.** is 14 years old and is based in Livingston, Montana, just north of
11 Yellowstone National Park. Eva enjoys learning about nature and travels with her family,
12 exploring national parks and public lands. Eva enjoys many activities outdoors, which are
13 central to her health and foundational to her family, including backpacking, climbing, and
14 riding bikes; she also enjoys swimming and rafting on the Yellowstone River.

15 47. In the summer of 2017, wildfire smoke from several fires in Montana created very poor air
16 quality in Livingston, harming Eva’s health and security. During that time, from June to
17 October, Eva was unable to enjoy the high-intensity activities she normally enjoys
18 outdoors, which are an integral part of her lifestyle and family life. Eva often felt ill that
19 summer, as the thick layer of smoke lingered in Livingston. She suffered from eye and
20 nose irritation, a sore throat, and headaches.

21 48. In or around September 2017, Eva and her family traveled to Glacier National Park for a
22 family vacation. Eva and her family were unable to hike as planned or enjoy the park due
23 to the thick smoke that permeated the area. The smoke was so bad that the glaciers were

1 not visible, even from just a few hundred yards away. Eva found it difficult to breathe while
2 at Glacier National Park and she and her family ended the trip early to escape the smoke
3 and protect their health and safety.

4 49. In May 2018, all of the rivers, tributaries, and streams near Eva’s home flooded when
5 higher than average temperatures rapidly melted the snowpack – an event that was called
6 “the Tsunami of 2018.” The Shields River in Shields Valley flooded and the bridge that
7 crosses the Shields River near Eva’s house was severely damaged. Ultimately, the local
8 government declared the bridge unsafe for vehicle use and condemned it, even though it
9 was Eva and her family’s primary route from their home to the city of Livingston. Eva and
10 her family would drive one car to the bridge from their home, walk across the bridge, and
11 then drive their other car parked on the other side of the river into town. When the fuel had
12 run out in their vehicle, Eva and her family biked across the bridge to their home, which
13 was an approximately 2-mile bike ride. Park County built a temporary bridge for the
14 residents to use during construction of the new bridge, which was expected to be completed
15 before spring runoff in May 2019. Unexpected, early season snow melt in March of 2019,
16 due to abnormally warm temperatures, completely destroyed the temporary bridge,
17 washing the bridge planks downriver. Eva and her family were forced to drive an additional
18 45 minutes around the river to get to town each day. This period of time was incredibly
19 stressful on Eva and her family. Because of their inability to access the bridge and town,
20 and increased hardship and stress in their everyday life, Eva and her family made the
21 decision to relocate; they sold their home and moved in with Eva’s grandparents in
22 Livingston. Eva is anxious about how, as the climate crisis impacts worsen, her family and
23 community will be able to adapt to the devastation of public resources and infrastructure.

1 50. During the summer of 2016 abnormally high air temperatures and historically low flows
2 allowed a parasite to grow in the Yellowstone River, which caused kidney disease in
3 Yellowstone cutthroat and rainbow trout and other fish, and killed tens of thousands of
4 fish. Over 180 miles of the Yellowstone River were closed for several weeks, prohibiting
5 Eva and her family from accessing the river to swim, float, raft, or let her dog play near the
6 river. These are traditional activities for Eva, her friends, and her family, central to her
7 identity, well-being, and family foundations.

8 51. Eva is increasingly anxious about the climate change impacts she and her family are
9 experiencing. She is distressed that the climate crisis will worsen if action is not
10 immediately taken.

11 52. Plaintiff **Mica K.** is 11 years old and resides in Missoula, Montana. Mica has experienced
12 stress over the impacts of the climate crisis since he was three, when he saw the film
13 *Chasing Ice*. Mica participates in climate strikes on most Fridays, writes to elected
14 officials, and participates in other acts of civic engagement because he knows Montana
15 must stop promoting fossil fuel projects and address the climate crisis.

16 53. Rising temperatures due to climate disruption have made it difficult for Mica to recreate
17 outdoors and participate in the activities that he enjoys, which are important to his health
18 and development, and overall well-being. Mica suffers from headaches, fatigue, and eye
19 irritation because of the increase in wildfires and smoke, direct impacts to his physical
20 health and safety, as well as the indirect psychological impacts, and behavioral issues when
21 he is required to stay indoors during the summer. Wildfires and smoke during the summer
22 of 2017 forced him to stay inside for six weeks in August and September. The lengthening
23 wildfire season and the resulting smoke have caused Mica's school to cancel recess for

1 approximately three weeks in 2017, forcing Mica and his classmates to remain inside due
2 to dangerous levels of smoke and pollution. Because of where Mica lives, in a valley, the
3 airshed is particularly susceptible to air pollution such as smoke, thus further exacerbating
4 the harm to Mica from wildfire smoke.

5 54. On August 1, 2019, a forest fire started approximately one mile away from Mica's house.
6 Mica watched the helicopters and firefighters work to prevent the fire from spreading. The
7 event was distressing to Mica and he feared that the fire would destroy his home. Mica is
8 anxious that, as the climate crisis worsens he will lose his family home to climate
9 disruption.

10 55. Mica trains for and runs half marathons in the spring and summer months in Montana with
11 his family. The wildfire smoke makes Mica feel sick when he runs outside, and he becomes
12 lethargic and suffers from headaches. During a trail running class in the summer of 2017,
13 Mica became ill due to the smoke and he could not participate in the remainder of the
14 classes for that season. Mica and his family used to go backpacking and camping in late
15 summer, recreational activities that are foundational to their family and lifestyle, but now
16 avoid camping or other outdoor activities in August and September because of the smoke
17 and its negative effect on Mica's health and safety.

18 56. Mica and his dad and brother fish in the Blackfoot river and catch cutthroat, rainbow, and
19 brown trout. In the spring, the Blackfoot, Clark Fork, and Bitterroot Rivers now regularly
20 flood at frequencies not historically seen due to the abnormally warm spring temperatures
21 and increased spring rainfall, causing rapid snowmelt and increased runoff. This prevents
22 Mica and his family from fishing and obstructs their access of the river. Fishing restrictions
23 in middle-late summer limit the hours during the day that Mica is able to fish due to the

1 low water levels and warm water temperatures, which deprive the fish of needed oxygen,
2 putting them under stress, resulting in an increase in fish mortality.

3 57. Mica has seen how the glaciers and lakes have been impacted by climate disruption first
4 hand in Glacier National Park and this has a profound emotional impact on Mica. This
5 summer he is planning a backpacking trip to Glacier National Park in order to hike up to a
6 glacier and see one up close before it melts further and eventually disappears. Mica's
7 favorite animal is the pika; however, as the number of pikas continue to decline, it will be
8 increasing difficult for Mica to see or hear pikas while recreating outdoors.

9 58. Plaintiff **Olivia V.** is 16 years old and lives in Missoula, Montana. Olivia takes numerous
10 steps to minimize her impact on the environment. She has been actively involved with the
11 local Sunrise Movement and helped organize a climate strike in Missoula in or around
12 September 2019.

13 59. The summers in Missoula are increasingly hot and smoky. Olivia has exercise induced
14 asthma, which she was diagnosed with at the age of 13. Olivia is particularly vulnerable to
15 the smoke-filled air because of her asthma. When the air is filled with wildfire smoke,
16 Olivia feels like she is suffocating if she spends more than five minutes outside. Olivia's
17 throat and lungs are irritated by the smoke, and she often suffers from a cough during these
18 conditions. Olivia feels as if her lungs are closing up. The higher temperatures and smoke
19 have had an impact on her asthma. Olivia was prescribed an inhaler at the age of 13 but,
20 over the years, her asthma attacks have become more frequent and severe. Due to the
21 smoke, Olivia is forced to stay inside and has had to eliminate and reduce outdoor activities
22 that she enjoys, such as hiking, biking, and swimming. Missoula has particularly poor air
23 quality, which only exacerbates Olivia's respiratory health issues. Because of the smoke-

1 filled air and her asthma, Olivia has been forced to leave Montana entirely in past summers,
2 most recently in 2018, in search of cleaner air.

3 60. Olivia also suffers from spring pollen allergies which has caused her eyes to swell shut,
4 and her eyes are in pain for weeks at a time. Allergies first impacted Olivia at or around
5 the age of 14, but have become progressively worse in recent years.

6 61. Olivia is profoundly impacted by the climate crisis emotionally and psychologically. She
7 experiences bouts of depression when she thinks about the dire projections of the future,
8 and doubts whether society and civilization will even exist. Olivia values her family and
9 would like to have and raise children of her own, but she questions whether this is even an
10 option in a world devastated by the climate crisis. She fears that if she has children they,
11 or their children, would suffer or starve. Imagining the future that she will inherit, or that
12 her children would live in, and the current suffering that the climate crisis is already causing
13 her and others is a heavy burden for her to carry, and Olivia feels heartbroken and
14 desperate.

15 62. Plaintiffs **Jeffrey K.** and **Nathaniel (“Nate”) K.** live in Montana City, Montana. Jeffrey is
16 six years old and Nate is two years old. Jeffrey has a pulmonary sequestration. As a result,
17 Jeffrey is uniquely susceptible to respiratory complications, such as infections. Nate also
18 has respiratory issues and, at the age of two, is sick frequently. Nate has gone to the
19 emergency room twice due to difficulty breathing. Both Jeffrey and Nate, given their
20 unique lung and health conditions, are especially vulnerable to poor air quality, such as
21 smoke-filled air caused by wildfires. Climate disruption is increasing the length and
22 severity of Montana’s wildfire season which poses a threat to Jeffrey and Nate’s health,
23 especially given their young age and respiratory health conditions.

1 63. As a result of Jeffrey and Nate’s unique vulnerabilities and sensitivities to poor air quality
2 and wildfire smoke, their family has been forced to make changes in their daily activities.
3 Jeffrey and Nate are kept indoors when the air is filled with wildfire smoke and they are
4 unable to go hiking, camping, or participate in other outdoor activities that are central to
5 their lifestyle, family, and overall well-being. This is difficult because Jeffrey and Nate
6 both enjoy playing outside and being in Montana’s beautiful natural environment.

7 64. Plaintiff **Claire V.** is 17 years old and lives in Bozeman, Montana. Claire is very active in
8 her community and has worked on a number of projects to promote reliable and clean
9 energy. For example, in middle school Claire raised \$120,000 to put solar panels on her
10 school and other municipal buildings in Bozeman and she is the president of her high
11 school’s Solar Club. Claire is also on the Bozeman Climate Team, where she is working
12 with stakeholders develop a climate plan for the city.

13 65. Claire works as a ski instructor at Big Sky Resort. However, her ability to earn money is
14 jeopardized by climate disruption, which is causing a decrease in Montana’s winter
15 snowpack and, consequently, fewer visitors and decreased opportunities for work. If there
16 is not enough snow and too few visitors, Claire is sent home without working her scheduled
17 shift.

18 66. Claire is an avid road cyclist and enjoys participating in long distance bike rides across the
19 country. In the summer of 2017, she cycled around Montana and in 2018 rode her bike
20 across the United States. Claire has biked through Glacier National Park, where she was
21 dismayed to see firsthand the receding glaciers. The extreme heat and increasing
22 temperatures in the summer makes it harder for Claire to bike, especially long distances.
23 Claire recalls that, in one instance while cycling, the extreme heat melted the asphalt.

1 67. Claire is on her school’s cross-country team and trains year-round. As a result of climate
2 destabilization, the increasing heat and smoke from wildfires in the summer and fall, have
3 altered her training schedule – some of her practices have been cancelled while others have
4 been moved entirely indoors. The heat and smoke make it harder for Claire to train and
5 compete at a high level.

6 68. Bozeman Creek, which Claire’s family has water rights to, runs through Claire’s property
7 and is Claire and her family’s water source. She feels threatened and is concerned that with
8 melting glaciers, declining snowpack, and increasing summer drought conditions—all as a
9 result of climate disruption—water scarcity will impact her and her family in the future.

10 69. Despite Claire’s work to raise money to install solar panels on her school, Montana law
11 limits the size of solar panel arrays. Consequently, Claire’s school is forced to continue to
12 buy energy instead of using the cheaper energy generated by solar panels on site. As a
13 result, her school has fewer financial resources to spend on programs, teachers, and
14 facilities and, therefore, Claire’s educational opportunities have been diminished by
15 Montana’s efforts to hinder large-scale solar arrays and instead, promote fossil fuels as an
16 energy source.

17 70. Plaintiff **Ruby D.** is 11 years old, and Plaintiff **Lilian D.** is 9 years old. Ruby and Lilian
18 reside in Bozeman, Montana. Ruby and Lilian are of Crow descent and a member of the
19 Crow Tribe of Montana—Ruby’s Crow name is Biachögata, which means “pretty girl,”
20 and Lilian’s Crow name is Malesch, which means “loved by many.” Many of Ruby and
21 Lilian’s family members live on the Crow Reservation, where they visit during the summer
22 and for special occasions and celebrations.

1 71. Each year in August, Ruby, Lilian, and their family travel to Crow, Montana for Crow Fair,
2 during which they engage in a number of traditional cultural and spiritual activities and
3 practices, including Pow Wows, toymaking, horse-riding, dancing, story-telling, playing
4 games, sleeping in a tipi, and eating traditional foods. Ruby is a jingle dress dancer and
5 often dances at Crow Fair, and travels to jingle dress dance at different Pow Wows in the
6 region. Lilian is a fancy shawl dancer and dances at Crow Fair and competes at different
7 Pow Wows in the region. The past two Fairs have been abnormally wet, cold, and muddy,
8 which makes it difficult to complete the dances and other events as planned—events and
9 cultural practices that are central to their spirituality and individual dignity.

10 72. Ruby and Lilian pick wild chokecherries, and use the berries to make syrup. They also pick
11 wild huckleberries, raspberries, Oregon grapes, and other wild fruits. They pick the berries
12 before Crow Fair; however, recently they have experienced abnormal weather conditions
13 and the berries and other fruits are not ripe. The increase in wildfires in Montana has
14 restricted access to certain areas where they used to pick berries.

15 73. Ruby was diagnosed with asthma in 2015. She has had multiple asthma attacks since her
16 diagnosis and has been prescribed an inhaler. As a result of her asthma, Ruby is uniquely
17 vulnerable to the increased wildfire smoke in Montana due to climate change, which
18 irritates her lungs and makes it more difficult for her to breathe and partake in physical
19 activities such as sports, impacting her overall health and safety.

20 74. Increasingly frequent and destructive wildfires have also diminished Lilian and Ruby's
21 ability to recreate in and enjoy Montana's forests. Seeing dead and degraded forests, both
22 due to wildfires and pine beetles, is distressing to Ruby. Wildfires also making it more
23 difficult to engage in cultural practices, including building the tipis that are an integral part

1 of Ruby and Lilian’s experience at Crow Fair. The tipis can only be built out of lodgepole
2 pine. However, once lodgepole pine trees have been exposed to heat from a wildfire it is
3 no longer possible to peel the bark off the tree, which is necessary for constructing the tipi
4 and to avoid damaging the tipi. As wildfires are increasingly common in Montana, it is
5 becoming difficult to find lodgepole to build tipis and for Ruby and Lilian to engage in this
6 cultural practice.

7 75. One of Ruby and Lilian’s favorite rivers is the Madison River, where they like to go rafting.
8 At times, however, low water levels due to climate disruption cause her raft to get stuck
9 and otherwise make rafting more challenging. Lilian and Ruby used to enjoy outdoor ice
10 skating but, as a result of Montana’s warmer winters, the outdoor ice-skating rink has been
11 closed more frequently because it is too warm for the ice to form.

12 76. Ruby and Lilian are aware that their cultural practices and individual dignity are worthy of
13 protection. They advocate for their rights and for the environment by selling toys that they
14 make, and donating the proceeds to support different advocacy campaigns and
15 organizations that they care about but they know that they alone cannot protect their future
16 and Lilian and Ruby need support from their state government.

17 77. Plaintiff **Taleah H.** is 16 years old and lives in Polson, Montana, on the Flathead Indian
18 Reservation. Taleah enjoys ice skating on Flathead Lake; however, in 2019, she could not
19 ice skate on the lake because rising temperatures due to climate destabilization prohibited
20 a sufficient amount of ice from forming. The increase in wildfires near Taleah’s home, due
21 to rising temperatures and an increase in drought conditions, has prohibited Taleah from
22 recreating outdoors, including hiking and paddle boarding, and forced her to remain inside
23

1 for long periods of time during the summer due to poor air quality and to preserve her
2 health.

3 78. Taleah and her mother participate in an annual Mother’s Day bike ride on Going-to-the-
4 Sun Road in Glacier National Park. Taleah’s recreational, aesthetic, and family interests
5 are being harmed as glaciers in the park recede, and are at risk of being lost forever due to
6 climate change, which would fundamentally alter the nature of this annual bike ride.

7 79. Taleah lives on the Flathead Indian Reservation, near a bison range. Taleah fears that, as
8 the climate crisis worsens, the increase in transmittable diseases between other wildlife and
9 bison will increase and this resource, which she cares deeply about, will be lost. Taleah’s
10 father hunts deer and elk, which is an important food source for Taleah and her family. As
11 temperatures increase and viral diseases are more easily transmitted, this food source will
12 be impacted.

13 80. Taleah’s ancestry is Taíno (an Indigenous Puerto Rican group). Taleah has plans to visit
14 her father’s family in Puerto Rico, and immerse herself in her cultural and familial
15 traditions. Taleah’s family, however, was impacted by Hurricane Maria, and Taleah
16 experiences stress when thinking about their future and her ability to visit her family, which
17 is important for her cultural and individual dignity.

18 81. All Youth Plaintiffs are adversely affected by the Defendants’ conduct in perpetuating a
19 fossil fuel-based energy system that is disproportionately impacting children.

20 **DEFENDANTS**

21 82. Defendant **State of Montana** is the sovereign trustee over the Public Trust Resources
22 within its domain, including the atmosphere (air), water, public lands, and fish and wildlife.
23 As a sovereign trustee, Defendant Montana is charged with protecting Public Trust
Resources from substantial impairment and alienation for the benefit of present and future

1 Montanans. Defendant Montana has a constitutional duty to maintain and improve a clean
2 and healthful environment for present and future generations. The State of Montana,
3 through its legislature and governor, enacted Montana’s State Energy Policy and MEPA
4 Climate Change Exception.

5 83. Defendant **Governor Steve Bullock** is sued in his official capacity as Governor of the State
6 of Montana. Pursuant to the Montana Constitution, “the executive power is vested in the
7 governor who shall see that the laws are faithfully executed.” Mont. Const. art. VI, § 4.
8 Defendant Bullock has supervisory authority over the principal departments of the
9 executive branch, which include all allocated executive and administrative offices, boards,
10 bureaus, commissions, agencies and instrumentalities of the executive branch.³ Defendant
11 Bullock directs departments’ implementation of policies and procedures to meet the
12 objectives of the State Energy Policy. Mont. Const. art. VI, § 8.

13 84. Defendant Bullock holds cabinet meetings, communicates with other state officers,
14 oversees budget expenditures, and has authority to issue executive orders. By and through
15 his actions, Defendant Bullock implements and directs implementation of the State Energy
16 Policy.

17 85. Defendant Bullock has used the authority of his office, and has directed the Defendants, to
18 facilitate, and authorize activities resulting in dangerous levels of CO₂ and GHGs, thus
19 causing, contributing to, and exacerbating the climate crisis and infringing on Youth
20 Plaintiffs’ constitutional rights. He has taken these actions while acknowledging the
21 dangers of climate change, simultaneously telling the public that “climate change poses a
22 serious threat” to Montana and that the “irreversible impacts of a changing climate require
23

³ Mont. Const. art. VI, § 7 (“except for the office of the governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor”).

1 an urgent effort to reduce emissions and build resilience for communities.”⁴ A declaration
2 of the constitutional parameters of the Governor’s conduct in this time of climate crisis will
3 assist his office in ensuring that it is not infringing on the rights of citizens, like these
4 children, when carrying out state laws.

5 86. Defendant **Montana Department of Environmental Quality** (“DEQ”) is a department of
6 the State of Montana created by Chapter 418, Laws of 1995.

7 87. Defendant DEQ has a constitutional duty to maintain and improve a clean and healthful
8 environment for present and future generations. Defendant DEQ also has broad statutory
9 authority to protect, sustain, and improve a clean and healthful environment to benefit
10 present and future generations⁵ but has used its authority in a manner that has resulted in
11 dangerous levels of GHG emissions.

12 88. Defendant DEQ, as the primary administrator of Montana’s environmental regulatory,
13 environmental cleanup, environmental monitoring, pollution prevention, and energy
14 conservation laws, has implemented its authority in a manner that has contributed to the
15 constitutional violations described herein.⁶ Defendant DEQ’s actions, pursuant to and in
16 furtherance of the State Energy Policy, have contributed to dangerous levels of GHG
17 emissions.⁷

18 89. Defendant DEQ is mandated to ensure that all projects and activities for which it issues
19 permits, licenses, authorizations or other approvals comply with Montana’s environmental
20 laws and rules (including the MEPA) to protect the quality of Montana’s natural
21

22 ⁴ Executive Order Creating the Montana Climate Solutions Council and Joining the State of Montana to the U.S.
Climate Alliance, Mont. Exec. Order No. 8-2019 (July 1, 2019).

23 ⁵ Montana Department of Environmental Quality, *Mission Statement and Guiding Principles: Department Goals and
Objectives*, <http://deq.mt.gov/DEQAdmin/about/mission> (last visited Feb. 5, 2020).

⁶ Organization of Department, Mont. Admin. R. 17.1.101 (2019).

⁷ Mont. Admin. R. 17.1.101.

1 environment.⁸ Defendant DEQ is responsible for enforcing compliance with its permitting
2 requirements.

3 90. Defendant DEQ issues air quality permits to facilities that emit GHG emissions, including
4 but not limited to coal mining operations, energy power plants, and oil and gas refineries.
5 Through its Board of Environmental Review,⁹ which adopts rules and determines appeals
6 under regulatory statutes, Defendant DEQ has broad statutory authority to set and enforce
7 a quantitative limit for emissions as necessary to prevent or control air pollution.¹⁰

8 91. Defendant DEQ authorizes the construction, operation, and maintenance of interstate
9 pipelines under the Major Facility Siting Act, Mont. Code Ann. § 75-20-101, *et seq.*
10 Pursuant to the Major Facility Siting Act, Defendant DEQ certifies all pipeline facilities
11 that are constructed or operated in Montana. *See* Mont. Code Ann. § 75-20-102(4).

12 92. Defendant DEQ has permitted strip and underground coal mining operations and mining
13 and prospecting activities that are causing dangerous amounts of GHG emissions.¹¹ DEQ
14 has issued permits for surface coal mining in Montana on state and federal land.¹²
15 Defendant DEQ actively works with coal mining companies in Montana to implement the
16 State Energy Policy.¹³ In approving such activities, DEQ has repeatedly refused to disclose
17 the significant harms to human health and the environment from its decisions.

18 ⁸ Clean Air Act of Montana, Mont. Code Ann. § 75-2-101, *et seq.* (2019). Air Quality, Mont. Admin. R. 17.8 (2019).

19 ⁹ *See* Mont. Code Ann. § 2-15-3502 (2019).

20 ¹⁰ *See* Board to Set Emission Levels, Mont. Code Ann. § 75-2-203 (2019).

21 ¹¹ Montana Strip and Underground Mine Reclamation Act, Mont. Code Ann. § 82-4-201, *et seq.* (2019); Mont. Admin.
22 R. 17.24.301-1309 (2019); Strip and Underground Mine Reclamation Act, Mont. Code Ann. § 82-4-226 (2019); Mont.
Admin. R. 17.24.101, *et seq.* (2019). *See* Montana Department of Environmental Quality, *Prospecting Permitting*,
<http://deq.mt.gov/Mining/Resources/prospect> (last visited Feb. 5, 2020); Mont. Admin. R. 17.24.1018, 17.24.1001,
1003, 1016, 1102 (2019). *See also* Montana Department of Environmental Quality, *Coal EA's: Pending Applications*
& *Environmental Assessments*, <http://deq.mt.gov/Public/ea/coal> (last visited Feb. 5, 2020).

23 ¹² State-Federal cooperative agreement, 30 C.F.R. § 926.30 (2020) (agreement for Montana state control and
regulation of surface coal mining and reclamation operations on Federal lands and fostering coal exploration
operations not subject to 43 C.F.R. Group 3400).

¹³ Montana Department of Environmental Quality, *Coal Section*, <http://deq.mt.gov/mining/coal> (last visited Feb. 5,
2020).

1 93. DEQ has authorized, permitted, and encouraged fossil fuel extraction, transportation, and
2 combustion, which activities generate dangerous levels of GHG emissions, contribute to
3 the climate crisis, and harm Youth Plaintiffs.

4 94. Defendant **Montana Department of Natural Resources and Conservation** (“DNRC”) is
5 charged with “help[ing] ensure Montana’s land and water resources provide benefits for
6 present and future generations.”¹⁴ Defendant DNRC has a constitutional duty to maintain
7 and improve a clean and healthful environment for present and future generations. In
8 accordance with the State Energy Policy, the DNRC regulates, permits, and authorizes
9 activities that result in significant emissions of GHGs in Montana.

10 95. Defendant DNRC manages all the resources of the state trust lands through the State Board
11 of Land Commissioners (“Land Board”).¹⁵ The Land Board is bound by the public trust to
12 permit only those activities on state land that are in the best interests of the state.¹⁶ To
13 comply with its constitutional and statutory public trust mandate, the Land Board is
14 required to manage Montana resources in a manner that is not detrimental to public welfare
15 or the environment.

16 96. Defendant DNRC issues leases, permits, and licenses for all uses of state land.¹⁷ Pursuant
17 to the State Energy Policy, Defendant DNRC has authority to pursue energy development
18 on state land. DNRC issues licenses for exploration and leases for production and
19

20 ¹⁴ See Organization of Department, Mont. Admin. R. 36.1.101 (2019).

21 ¹⁵ The state trust lands total 5.2 million surface acres and 6.2 subsurface acres, which includes 8,935 agriculture and
22 grazing leases; 1,486 oil and gas leases; and 137 commercial real estate leases. The state trust lands gross revenue
23 from all activities was \$87.4 million in 2019. Montana Department of Natural Resources & Conservation, *2019 Report
to the Montana Legislature*, 5 (2019), <http://dnrc.mt.gov/2019FinalReportWebVersion.pdf>. See also Montana
Department of Natural Resources & Conservation, *Land Board*, <http://dnrc.mt.gov/landboard> (last visited Feb. 5,
2020); see Office of Public Instruction, *Montana Board of Land Commissioners*, <https://opi.mt.gov/DNRCLB> (last
visited Feb. 5, 2020).

¹⁶ See Mont. Code Ann. §§ 77-1-202, 77-1-203(1)(a), 77-3-301 (2019); Mont. Const. art. X, § 11 (“[a]ll lands of the
state that have been or may be granted by congress ... shall be held in trust for the people.”).

¹⁷ Leasing or Other Use of State Lands, Mont. Admin. R. 36.2.1001 (2019).

1 extraction of oil and gas in Montana, and permits for drilling in Montana, which result in
2 dangerous levels of GHG emissions and contribute to the climate crisis. Defendant DNRC
3 has exercised its authority to grant easements for the operational right-of-way for interstate
4 pipelines, with the approval of the Land Board, and issue land use licenses for the
5 construction right-of-way and other activities on state lands and waterways for the
6 construction and operation of interstate pipelines, which are used to transport fossil fuels.
7 In approving such activities, DNRC has repeatedly failed to disclose the significant harms
8 to human health and the environment from its decisions.

9 97. Defendant DNRC, through its Forestry Division, is responsible for planning and
10 implementing forestry and fire management programs, as well as authorizing and
11 permitting commercial timber sales on public trust lands.¹⁸ Although only 4% of Montana's
12 forests are within state trust lands, activity on this acreage accounted for nearly 25% of
13 Montana's total timber volume sold in 2017.¹⁹

14 98. As of 2018, Defendant DNRC managed 9,714 acres of leased riverbed and island tracts, in
15 part to facilitate the development of oil and gas resources.²⁰ The leased tracts provided the
16 State of Montana with \$914,373 in oil and gas revenues in 2018, which is less than 1% of
17 the amount of money the state spent fighting wildfires in 2018 (which was \$95 million).²¹

18 ¹⁸ Montana Department of Natural Resources & Conservation, *Timber Permit Information*,
19 <http://dnrc.mt.gov/divisions/trust/forest-management/timber-permit-information> (last visited Feb. 5, 2020).

¹⁹ *2019 Report to the Montana Legislature*, *supra* note 15, at 7.

20 ²⁰ See Navigable Waterways, Mont. Admin. R. 36.25.1102 (“[p]ursuant to Article X, Section 11(1) of the 1972
21 Montana Constitution and 70-1-202(1) and 77-1-102(2), MCA, the title to all navigable rivers is held by the board in
trust for the benefit of the public.”). See also Ownership of certain islands and riverbeds, Mont. Code Ann. § 77-1-
102.

22 ²¹ See Montana Department of Natural Resources & Conservation, *Minerals Management*,
<http://dnrc.mt.gov/divisions/trust/minerals-management> (last visited Feb. 5, 2020); Montana Department of Natural
23 Resources & Conservation, *Annual Report Fiscal Year 2018 Trust Lands Management Division*, 12 (2018),
<http://dnrc.mt.gov/divisions/trust/docs/annual-report/FY2018TrustLandsAnnualReport.pdf>. See Associated Press,
Large Wildfires Cost Montana More than \$95M this Year, Great Falls Trib. (Nov. 10, 2018),
[https://www.greatfallstribune.com/story/news/2018/11/10/large-wildfires-cost-montana-more-than-95-m-
year/1957095002/](https://www.greatfallstribune.com/story/news/2018/11/10/large-wildfires-cost-montana-more-than-95-m-year/1957095002/).

1 99. The DNRC, through the Montana Board of Oil and Gas Conservation, administers all oil
2 and gas conservation laws and issues licenses for exploration and leases for production
3 and extraction of oil and gas in Montana, and permits for drilling in Montana pursuant to
4 and in furtherance of the State Energy Policy. Mont. Code Ann. § 90-4-1001(1)(e).

5 100. Defendant DNRC has authorized, permitted, licensed, and encouraged fossil fuel
6 exploitation, extraction, and production, and forestry practices and activities that have
7 caused and contributed to dangerous concentrations of atmospheric GHGs and the climate
8 crisis and harmed Youth Plaintiffs.

9 101. Defendant **Montana Department of Transportation** (“MDT”) is responsible for
10 the planning, authorization, and operation of programs for the construction, maintenance,
11 and monitoring of Montana’s transportation infrastructure and operations, including
12 Montana’s highway network, railroads, and airports.²² Defendant MDT is responsible for
13 state planning in the transportation sector and is charged with collecting and enforcing fuel
14 taxes.²³

15 102. Defendant **Montana Public Service Commission** (“PSC”) regulates, supervises,
16 and controls public utilities, common carriers, railroads, and pipelines. Mont. Code Ann. §
17 69-3-102. Defendant PSC is responsible for reviewing standard-offer contracts and utility
18 rates, as well as prescribing suitable commercial units of product or service for each kind
19 of public utility. Mont. Code Ann. § 69-3-108.

21 ²² See Montana Department of Transportation, *2019 About MDT: Moving Montana Forward* (2019),
22 <https://www.mdt.mt.gov/mdt/docs/about-mdt.pdf>.

23 ²³ Montana Department of Transportation, *Plan Summary*, TranPlanMT (Nov. 2017),
23 <https://www.mdt.mt.gov/tranplan/docs/TPMT-SUMMARY.pdf>. Montana’s transportation system is mainly funded
through a combination of federal and state funding sources. Of the total transportation revenue, approximately 60% is
generated from federal sources and 40% is received from state sources. See also Montana Department of
Transportation, *Volume IV Transportation Management*, TranPlanMT, 11 (Nov. 2017),
<https://www.mdt.mt.gov/tranplan/docs/TPMT-MANAGEMENT.pdf>.

1 103. Defendant PSC is specifically authorized to adopt rules to implement renewable
2 energy sources for utilities, Mont. Code Ann. § 69-3-2006, because “utilities should
3 support expanded development of these resources to meet the state’s electricity demand
4 and stabilize electricity prices.” Mont. Code Ann. § 69-3-2002. However, Defendant PSC
5 continues to certify energy projects and utilities that rely on fossil fuels.

6 104. Defendant PSC is responsible for the safety of interstate pipelines (such as gas
7 pipelines that cross state borders) as well as all liquid lines, including crude oil or petroleum
8 products, that operate within or through Montana.²⁴ Defendant PSC has exercised its
9 authority over pipelines in a manner that perpetuates the use of fossil fuels by locking in
10 infrastructure that will result in GHG emissions for decades.

11 105. In sum, through the State Energy Policy, and the actions taken pursuant to and in
12 furtherance of the Policy, Defendants have taken affirmative actions to authorize, permit,
13 and encourage fossil fuel extraction, transportation, and combustion resulting in dangerous
14 levels of GHG emissions and contributing to climate destabilization. Defendants
15 affirmative actions have degraded and depleted Montana’s environment, are causing
16 substantial impairment to Montana’s Public Trust Resources, and are causing substantial
17 harm to Youth Plaintiffs in violation of their constitutional rights.

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23 ²⁴ U.S. Department of Trans. Pipeline & Hazardous Materials Safety Admin., *Regulatory Fact Sheet: Montana*,
https://primis.phmsa.dot.gov/comm/FactSheets/States/MT_State_PL_Safety_Regulatory_Fact_Sheet.htm?nocache=8808 (last revised Jan. 9, 2017). See Montana Public Service Commission, *Pipeline Safety*, <http://psc.mt.gov/Public-Safety/Pipeline-Safety>.

1 **STATEMENT OF THE FACTS**

2 **DEFENDANTS' STATE ENERGY POLICY AND THE CLIMATE CHANGE**
3 **EXCEPTION TO MEPA PERPETUATE FOSSIL FUELS AND CONTRIBUTE TO**
4 **THE CLIMATE CRISIS**

5 106. Carbon dioxide is the GHG that is most responsible for trapping excess heat within
6 Earth's atmosphere. Excess CO₂ and other GHGs from human activity create an "energy
7 imbalance" that drives warming temperatures and climate disruption. A substantial portion
8 of every ton of CO₂ emitted by human activity persists in the atmosphere for as long as a
9 millennium or more. As a result, CO₂ steadily accumulates in the atmosphere. It is the
10 cumulative effect of GHG emissions that causes climate disruption. The Earth will continue
11 to heat up even as more emissions of today and tomorrow continue to increase atmospheric
12 concentrations of GHGs.

13 107. This means that the harm from present day GHG emissions will be
14 disproportionately borne by today's children and future generations, including the Youth
15 Plaintiffs. This scientific concept has been well understood by the Defendants for decades.

16 108. Notwithstanding their longstanding knowledge of the dangers that climate
17 disruption and GHG emissions pose, more particularly described below, Defendants have
18 developed and implemented a State Energy Policy in Montana for decades, which involves
19 systemic authorization, permitting, encouragement, and facilitation of activities promoting
20 fossil fuels and resulting in dangerous levels of GHG emissions, without regard to climate
21 change impacts or the fundamental rights of Youth Plaintiffs and future generations of
22 Montanans. Mont. Code Ann. § 90-4-1001(c)-(g), State Energy Policy. Moreover, pursuant
23 to the Climate Change Exception to MEPA, Mont. Code Ann. § 75-1-201(2)(a),
Defendants have deliberately ignored the dangerous impacts of the climate crisis.

1 **A. Defendants’ State Energy Policy Perpetuates a Fossil-Fuel Based Energy System that**
2 **Causes and Contributes to the Climate Crisis and Youth Plaintiffs’ Injuries**

3 109. The State of Montana has a stated policy to “promote energy efficiency,
4 conservation, production, and consumption of a reliable and efficient mix of energy sources
5 that represent the least social, environmental, and economic costs and the greatest long-
6 term benefits to Montana citizens.” Mont. Code Ann. § 90-4-1001(a).

7 110. Contrary to this policy, Montana’s State Energy Policy explicitly promotes the use
8 of dangerous fossil fuels that cause numerous social, environmental, and economic costs
9 and harms to the short- and long-term detriment of Montana citizens. Fossil fuel energy is
10 the least efficient form of energy available to the State of Montana. The provisions of the
11 State Energy Policy that promote fossil fuels and that Youth Plaintiffs challenge the
12 constitutionality of in this action state that it is the policy of Montana to:

13 (c) promote development of projects using advanced technologies that convert coal
14 into electricity, synthetic petroleum products, hydrogen, methane, natural gas, and
15 chemical feedstocks;

16 (d) increase utilization of Montana’s vast coal reserves in an environmentally sound
17 manner that includes the mitigation of greenhouse gas and other emissions;

18 (e) increase local oil and gas exploration and development to provide high-paying
19 jobs and to strengthen Montana’s economy;

20 (f) expand exploration and technological innovation, including using carbon
21 dioxide for enhanced oil recovery in declining oil fields to increase output;

22 (g) expand Montana’s petroleum refining industry as a significant contributor to
23 Montana’s manufacturing sector in supplying the transportation energy needs of
Montana and the region;

Mont. Code Ann. § 90-4-1001(c)-(g).

24 111. Additionally, the Climate Change Exception to MEPA states:

Except as provided in subsection (2)(b), an environmental review conducted pursuant to
subsection (1) may not include a review of actual or potential impacts beyond Montana's

1 borders. It may not include actual or potential impacts that are regional, national, or
2 global in nature.

3 Mont. Code Ann. § 75-1-201(2)(a).

4 This has been interpreted to mean that Defendants cannot consider the impacts of climate
5 change in their environmental reviews.

6 112. Montana’s fossil fuel-based energy system is the result of Montana’s State Energy
7 Policy, and actions taken pursuant to that policy, which defines Montana’s energy policies,
8 goals, and development process and explicitly calls for the use of dangerous fossil fuels.
9 The State Energy Policy has existed for decades and is now codified in law. Mont. Code
10 Ann. § 90-4-1001(c)-(g).

11 113. According to Senator Jackson, who sponsored amendments to the State Energy
12 Policy in 2011, the “State Energy Policy will guide Montana’s energy production.”²⁵ The
13 purpose of the State Energy Policy is to ensure an adequate supply of energy and avoid a
14 high cost of energy.²⁶ Those purposes are readily achievable without perpetuating a form
15 of energy that is known to cause dangerous climate change, cause harm to children, and
16 result in a myriad of other adverse impacts to humans and the environment.

17 114. During a hearing before the full Montana Senate on the 2011 amendments to the
18 State Energy Policy, Senator Ron Erickson, in encouraging a no vote on the bill, stated
19 “above all . . . this is a bill that leaves out the major context of our time, it leaves out the
20 fact that global climate change is occurring and that we ought to be a part of the solution
21

22 ²⁵ Senate Energy and Telecommunications: Hearing on SB 305 Revise Energy Policy Before the Senate Energy and
23 Telecomm. Communications, 62nd Cong. 11, 9:23:30-9:34:00 (Feb. 15, 2011), [http://sg001-
harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/22357?agendaId=100797](http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/22357?agendaId=100797).

²⁶ Senate Floor Session: Hearing on SB 305 Revise Energy Policy, 62nd Cong. 492, 13:08:51-13:09:38 (Feb. 22,
2011), [http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-
1/21606?agendaId=98099](http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/21606?agendaId=98099).

1 as this nation moves ahead. I would doubt if there is another nation in the world that would
2 talk about an energy policy without mentioning that we should be a part of the solution to
3 climate change.”²⁷

4 115. Despite opposition to the 2011 amendments to the State Energy Policy, the bill
5 passed and thus Montana’s State Energy Policy, which implicitly promoted fossil fuels for
6 decades, was amended to explicitly promote fossil fuels and to expand the already
7 substantial extraction and use of fossil fuels in Montana.

8 116. Montana’s State Energy Policy, and the actions taken pursuant to and in furtherance
9 of the Policy, leads to fossil fuel development, extraction, transport, and combustion and
10 other activities that promote fossil fuels and cause emissions of dangerous and substantial
11 levels of GHG pollution into the atmosphere within Montana and outside of its borders and
12 contributes to climate destabilization.

13 117. Just as invidious majoritarian state policies that segregated children on the basis of
14 race or failed to adequately fund schools would be unconstitutional and undermine
15 fundamental rights, so too, Montana’s State Energy Policy, which explicitly promotes the
16 use of dangerous fossil fuel-based energy and endangers children, violates Youth
17 Plaintiffs’ constitutional rights.

23 ²⁷ Senate Floor Session: Hearing on SB 305 Revise Energy Policy, 62nd Cong. 492, 13:10:12 – 13:11:03 (Feb. 22,
2011), <http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/21606?agendaId=98099>.

1 **B. Defendants’ Aggregate Acts Pursuant to and in Furtherance of the State Energy**
2 **Policy Demonstrate an Unconstitutional Systemic Course of Conduct and Cause**
3 **Dangerous Levels of GHG Pollution and Climate Destabilization**

4 118. Despite Defendants’ knowledge of climate change dangers and Defendants’
5 rhetoric on the importance of reducing GHG emissions and the “profound consequences”²⁸
6 of climate change, Defendants, pursuant to and in furtherance of the State Energy Policy,
7 have taken, and continue to take, affirmative actions to authorize, implement, and promote
8 projects, activities, and plans (hereinafter, “aggregate acts”) that cause emissions of
9 dangerous levels of GHG pollution into the atmosphere. For example:

10 a. Defendants authorize and certify energy projects and facilities within the State of
11 Montana that emit substantial levels of GHG pollution, including, but not limited
12 to, projects that burn and promote the use of fossil fuels.

13 b. Defendant PSC significantly cut utility contract lengths and rates for NorthWestern
14 Energy in June 2017 demonstrating biased decisions obstructing solar projects.²⁹
15 Defendant PSC was found to have violated solar companies’ due process rights by
16 making decisions based on bias and policy preferences.³⁰

17 c. Defendant PSC exercises its authority to obstruct solar projects.³¹ The public
18 service commissioners have publicly expressed their affinity for coal power and
19 publicly disparaged renewable energy sources. PSC Commissioner Bob Lake

20 ²⁸ The Montana Climate Change Advisory Committee, *Montana Climate Change Action Plan: Final Report of the*
21 *Governor’s Climate Change Advisory Committee*, Montana Department of Environmental Quality, 1-9 (2007),
22 <https://deq.mt.gov/Portals/112/Energy/ClimateChange/Documents/FinalReportChapters.pdf>.

23 ²⁹ See Catherine Morehouse, *Montana judge rules PSC intentionally set PURPA rates to kill solar projects*, Utility
Dive (2019), <https://www.utilitydive.com/news/montana-judge-rules-psc-intentionally-set-purpa-rates-to-kill-solar-project/552236/> (“The PSC cut the rates utilities have to pay solar producers under the Public Utility Regulatory Policies Act by 40%, from \$66/MWh to \$31/MWh, and cut contracts from 25 to 15 years.”).

³⁰ *Vote Solar v. Montana Dept. of Public Service Reg. Comm.*, Findings of Fact and Conclusions of Law for the
Symmetry Finding in MTSUN Order No. 7535b, No. BDV-17-0776 (8th Jud. D. Mont. 2019),
<https://montanafreepress.org/wp-content/uploads/2019/06/19-06-20-Findings-of-Fact-and-Conclusions-of-Law.pdf>.

³¹ Catherine Morehouse, *supra* note 29. See also 350 Montana, *Blocking Montana’s Future* (2017),
<http://350montana.org/docs/BlockingMtFuture.pdf>.

1 admitted that Defendant PSC was setting rates and contract lengths to eliminate
2 small solar projects.³²

- 3 d. Defendant PSC affirmatively acts to promote public utilities reliant on fossil fuels
4 and against the public safety in the face of dangerous climatic changes.
- 5 e. Defendants engage in a systemic pattern and practice of issuing permits, licenses,
6 and leases that result in GHG emissions without considering how the additional
7 GHG emissions will contribute to the climate crisis.
- 8 f. Defendants authorize four private coal plants to operate in the state, and these coal
9 plants are responsible for 30% of Montana’s energy production.
- 10 g. Defendants continue to permit surface coal mining and reclamation in Montana,
11 which results in substantial GHG emissions. Defendant DEQ approved the AM4
12 expansion of the Rosebud Strip Mine in December 2015. Defendant DEQ issued a
13 permit to expand the coal mining operation and reclamation plan at Bull Mountain
14 Mine in July 2016.³³ Pursuant to the Climate Change Exception to MEPA, DEQ
15 refused to analyze how these decisions would aggravate the impacts of climate
16 change.
- 17 h. In 2018, Defendant DEQ, pursuant to the Climate Change Exception to MEPA,
18 refused to analyze or discuss any climate change impacts from the TR3 expansion
19 of the Decker Mine, which allowed the coal company to strip-mine 23 million tons
20

21 ³² A tape recording was released by local media, in which Commissioner Lake is recorded admitting to PSC staff that
22 the rates would effectively kill small projects: “[t]he 20 year might do it if the price doesn't, and honestly at this low
23 price I can't imagine anyone going to get into it, so it becomes a totally moot point because just dropping the rate that
much probably took care of the whole thing.” Catherine Morehouse, *supra* note 29.

³³ Montana Department of Environmental Quality, *Signal Peak Energy LLC Letter of Approval, Amendment 3*, (July
6, 2016),
[https://deq.mt.gov/Portals/112/Land/CoalUranium/Documents/SPE%20AM3/Approval%20Letter%20July%202016
.pdf](https://deq.mt.gov/Portals/112/Land/CoalUranium/Documents/SPE%20AM3/Approval%20Letter%20July%202016.pdf).

1 of coal, which will lead to nearly 50 million tons of carbon dioxide emissions when
2 burned, aggravating the impacts of climate change including causing negative
3 socioeconomic impacts to Montanans.

- 4 i. In 2020, Defendant DEQ is preparing to revise its permit to Spring Creek Mine, the
5 largest coal producer in the state. The proposed revision would add 977 acres of
6 new mining disturbance to recover approximately 72 million tons of coal. In August
7 2019, Defendant DEQ, pursuant to the Climate Change Exception to MEPA,
8 refused to analyze impacts on the social cost of carbon and the economic impacts
9 from climate change in its draft environmental impact statement for the Spring
10 Creek Mine. Although public comments urged Defendants to consider these
11 impacts in the DEQ analysis, Defendants did not review how their decision would
12 aggravate impacts of climate change, and the substantial socioeconomic impacts on
13 Montanans.
- 14 j. Defendant DEQ authorizes the operation of the Colstrip Steam Electric Station,
15 which produced 13.2 million metric tons of CO_{2e}, 38,015 metric tons of methane,
16 and 65,919 metric tons of nitrous oxide in 2018.³⁴
- 17 k. Defendant DEQ granted the Bull Mountain Mine an air quality permit in January
18 2016, authorizing Bull Mountain Mine to produce 15 million tons of coal during
19 any rolling 12-month period.³⁵ Pursuant to the Climate Change Exception to
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21 ³⁴ See U.S. Environmental Protection Agency, Facility Level Information on Greenhouse Gases Tool, Colstrip,
22 <https://ghgdata.epa.gov/ghgp/service/facilityDetail/2018?id=1001020&ds=E&et=&popup=true>. See generally
23 Montana Department of Environmental Quality, *All Things Colstrip*, <http://deq.mt.gov/DEQAdmin/mfs/AllColstrip>;
Montana Department of Environmental Quality, *Understanding Energy in Montana 2018*, 2017-2018 Energy and
Telecommunications Interim Committee, 71 (2018), <https://leg.mt.gov/content/Committees/Interim/2017-2018/Energy-and-Telecommunications/Understanding%20Energy%202018.pdf>.

³⁵ Montana Department of Environmental Quality, *Montana Air Quality Permit #3179-12*, 1 (2016), <https://deq.mt.gov/Portals/112/Air/AirQuality/Documents/ARMpermits/3179-12.pdf>.

1 MEPA, DEQ refused to analyze how this decision would aggravate the impacts of
2 climate change.

- 3 l. Defendant DEQ issued a certificate of compliance for the Keystone XL Pipeline in
4 March 2012, which authorized the construction, operation, and maintenance of the
5 Montana portion of the pipeline that would result in substantial GHG emissions.
6 Defendant DNRC leased public land for the easement for the operational right-of-
7 way, with the approval of the Land Board, and issued a land use license for the
8 construction right-of-way and other activities on state lands and waterways.³⁶
- 9 m. Defendants DEQ and DNRC issued permits, licenses, and leases for the
10 construction, operation, and maintenance of the Keystone XL Pipeline project in
11 Montana, which would transport Canadian tar sands crude oil, the most greenhouse
12 gas intense source of petroleum in the world. Pursuant to the Climate Change
13 Exception to MEPA, neither DEQ nor DNRC disclosed to the public the health or
14 climate consequences of these decisions.³⁷
- 15 n. Defendants authorize, through licenses and leases, the exploration and extraction
16 of oil and gas in Montana.
- 17 o. Defendants have adopted and enforced GHG emissions standards for petroleum
18 refineries that authorize dangerous levels of GHG emissions. Secondary emissions
19 are not considered by Defendants in determining potential to emit.³⁸

21 ³⁶ Montana Department of Environmental Quality, *In the Matter of the Application of TransCanada Keystone Pipeline,*
22 *LP (Keystone) for a Certificate of Compliance under the Major Facility Siting Act: Findings Necessary for*
Certification and Determination, 4 (March 30, 2012),
http://deq.mt.gov/Portals/112/DEQAdmin/MFS/Documents/KXL_Cert_Final_Signed.PDF.

23 ³⁷ *Id.*

³⁸ Montana Department of Environmental Quality, *Instructions for Registering, Updating, or Deregistering an Oil or*
Gas Well Facility (June 6, 2018),
<http://deq.mt.gov/Portals/112/Air/AirQuality/Documents/forms/InstructionsMTOGRegistration-01.pdf>.

- 1 p. Defendants continue to certify and authorize four petroleum refineries—
2 Exxon/Mobil, Phillips 66, CHS Laurel, and Calumet Refining—in the State of
3 Montana. In 2016, these refineries exported 66.5 million barrels of crude oil. The
4 four refineries combined released 2.0 million metric tons of CO_{2e} in 2018.³⁹
5 Pursuant to the Climate Change Exception to MEPA, Defendants have failed to
6 disclose to the public the health or climate consequences of these decisions.
- 7 q. Defendants have explicitly adopted and endorsed fuel and fuel tax requirements for
8 vehicles, commercial carriers, and aviation that lock in dangerous levels of GHG
9 emissions from the transportation sector.⁴⁰
- 10 r. Defendants have exempted certain facilities that burn fossil fuels from present and
11 future compliance with GHG emission standards.
- 12 s. Defendants continue to finance, incentivize, and subsidize fossil fuel infrastructure
13 and energy and transportation systems that are endangering Youth Plaintiffs, while
14 refusing to harness Montana’s potential for wind energy.
- 15 t. Defendants continue to aggressively pursue expansion of the fossil fuel industry in
16 Montana, particularly the expansion of coal and mining development, as well as oil
17 and gas development.
- 18 u. Defendant Bullock has stated that “[] coal will continue to be a critical part of the
19 nation’s energy portfolio for years to come, and increasing electricity demand will
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21
22

23 ³⁹ U.S. Environmental Protection Agency, *2018 Greenhouse Gas Emissions from Large Facilities*, Facility Level Information on Greenhouse Gases Tool (“Flight”) (last updated Aug. 4, 2019), <https://bit.ly/2HqZvMM>.

⁴⁰ *2019 About MDT: Moving Montana Forward*, *supra* note 22, at 2-3, 8, 13.

1 ensure that we will need both carbon-based and renewable sources of energy, and
2 not enough is done in this country to advance clean-coal technologies.”⁴¹

3 v. Defendant Bullock continues to support policies that incentivize technologies for
4 coal, including but not limited to: (1) providing favorable tax treatment for
5 investments in carbon capture, sequestration, and transportation; and (2) calling for
6 stronger policies and incentives to advance enhanced oil recovery and CO₂ capture
7 at power plants and other industrial sources; both of which directly authorize GHG
8 emissions to continue at dangerous levels in Montana.

9 w. Defendants continue to “safeguard existing economic and energy assets”⁴² by
10 authorizing Montana fossil fuel extraction, production, consumption,
11 transportation, and exportation.

12 119. Defendants’ aggregate acts described herein, taken pursuant to and in furtherance
13 of the State Energy Policy, continue to be executed by Defendants and their agents and
14 employees in their official capacities, and such actions are causing and contributing to the
15 ongoing deprivation of Youth Plaintiffs’ fundamental rights secured by the Montana
16 Constitution.

17 120. Given that Defendants have persisted in, and continue to persist in, a wrongful and
18 unconstitutional systemic course of conduct affirmatively authorizing, permitting, and
19 promoting fossil fuels and dangerous GHG emissions, with knowledge of the dangers of
20 climate change since at least the 1960s, there is substantial likelihood that Defendants’
21 State Energy Policy, and aggregate acts taken pursuant to the State Energy Policy, will

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23 ⁴¹ Amended Executive Order Establishing an Interim Montana Clean Power Plan Advisory Council, Exec. Order No. 01-2016 (Jan. 7, 2016).

⁴² Executive Order Creating the Montana Climate Solutions Council and Joining the State of Montana to the U.S. Climate Alliance, Exec. Order No. 8-2019, 3 (July 1, 2019).

1 continue and will, *inter alia*, further deprive Youth Plaintiffs of their constitutional rights.
2 This evidence demonstrates that similar illegal conduct will continue in the future absent
3 judicial intervention.

4 **DEFENDANTS’ STATE ENERGY POLICY HAS RESULTED IN DANGEROUS**
5 **AMOUNTS OF GREENHOUSE GAS EMISSIONS IN MONTANA**

6 121. As a result of Defendant’s State Energy Policy, and actions taken consistent with
7 that policy, Defendants are responsible for dangerous amounts of GHG emissions from
8 Montana – both cumulative emissions and ongoing emissions, which in turn causes and
9 contributes to the Youth Plaintiffs’ injuries.

10 122. According to U.S. Energy Information Administration (“EIA”) data, in 2017, 30.5
11 million metric tons of CO₂ were emitted in Montana from fossil fuel consumption, or
12 emissions that result from burning fossil fuels within the boundaries of the State of
13 Montana.⁴³ Of that amount, 14.9 million metric tons of CO₂ was attributable to coal
14 consumption, 11.2 million metric tons of CO₂ from the consumption of petroleum products;
15 and 4.4 million metric tons of CO₂ from natural gas consumption.⁴⁴

16 123. According to EIA data, Montana’s 2017 CO₂ emissions have increased by 56%
17 from 1980, when Montana emitted 19.5 million metric tons of CO₂, and increased by 13%
18 compared to 1990 levels, which were 27.0 million metric tons of CO₂.⁴⁵

19 124. The above emissions data significantly underestimates total greenhouse gas
20 emissions attributable to Montana. The EIA inventory only reports CO₂ emissions from
21 fossil fuel consumption in Montana. It does not include: (a) GHG emissions from the

22 ⁴³ These numbers include CO₂ emissions for all electricity generation in Montana, including the electricity that is
eventually sent to other states.

23 ⁴⁴ U.S. Energy Information Admin. (EIA) State Carbon Dioxide Emissions Data, *Montana Carbon Dioxide Emissions
from Fossil Fuel Consumption (1980-2017)*, <https://www.eia.gov/environment/emissions/state/excel/montana.xlsx>
(last updated Oct. 23, 2019).

⁴⁵ *Id.*

1 combustion of fossil fuels extracted in Montana and then exported and combusted out of
2 state; (b) non-CO₂ emissions (methane and nitrous oxide, for example) resulting from fossil
3 fuel extraction and combustion; (c) GHG emissions from non-energy sources (land use,
4 agriculture, forestry, and process emissions from cement manufacture, for example); (d)
5 GHG emissions resulting from the extraction and out of state transport of imported fossil
6 fuels; or (e) embedded GHG emissions—those emissions resulting from the production
7 and transportation of goods and energy produced outside of Montana but ultimately
8 consumed in Montana. Consequently, the EIA data *significantly* underestimates GHG
9 emissions attributable to Montana. For sense of scale, if we look at the U.S. as a whole,
10 CO₂ emissions from fossil fuel consumption in 2017 are only 76% of U.S. territorial carbon
11 dioxide equivalent (“CO₂e”) emissions.⁴⁶

12 125. The most complete (albeit outdated) data for GHG emissions that result from
13 Montana’s State Energy Policy⁴⁷ is from a 2007 report, *Montana Climate Change Action*
14 *Plan*, a report of the Governor’s Climate Change Advisory Committee (“CCAC”).⁴⁸
15 According to this report, Montana’s GHG emissions were 39.2 million metric tons of CO₂e
16 in 1990; 43.7 million metric tons of CO₂e in 2000; and were projected to be 50.0 million
17 metric tons of CO₂e in 2010 and 54.6 million metric tons of CO₂e in 2020.⁴⁹ This data is
18 outdated and so significantly underestimates the GHG emissions attributable to Montana
19

20 ⁴⁶ U.S. Energy Information Admin. (EIA), *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990 – 2017*
(2019).

21 ⁴⁷ GHG emissions include emissions from carbon dioxide, methane, nitrous oxide, hydrofluorocarbons,
perfluorocarbons, and sulfur hexafluoride.

22 ⁴⁸ This November 2007 report was prepared with input from the Montana Department of Environmental Quality and
the Center for Climate Strategies and relied heavily on in the September 2007 report titled *Montana GHG Emissions*
Inventory and Reference Case Projections, 1990-2020, for Montana’s GHG inventory and projections. The September
23 2007 report was presented to the CCAC, which unanimously approved it.

⁴⁹ *Montana Climate Change Action Plan: Final Report of the Governor’s Climate Change Advisory Committee*, *supra*
note 28, at 1-9. These emissions numbers include emissions from agriculture and from the generation of electricity
sent out of state. They do not include emissions sinks, such as forestry and soil sinks. *Id.*

1 because it excludes emissions from fossil fuels extracted in Montana but exported and
2 combusted out of state as well as embedded emissions. The lack of transparency regarding
3 these emissions is due in part to Defendants ongoing and systemic refusal, pursuant to the
4 Climate Change Exception to MEPA, to disclose the climate change impacts of their
5 actions. Since 2011, the Montana legislature has barred state agencies from considering
6 climate change under MEPA. Mont. Code Ann. § 75-1-201(2)(a).

7 126. Nevertheless, despite having the authority to do so, Defendants have never
8 completed a comprehensive accounting and inventory that accounts for all of Montana's
9 GHG emissions, including emissions from fossil fuels extracted in Montana but exported
10 and combusted out of state and embedded emissions. As such, Defendants failed to disclose
11 to the public the danger caused by its implementation of its State Energy Policy.

12 127. Based on EIA data, in 2017, Montana's electrical power sector, over which
13 Defendants exercise regulatory control, was responsible for 15.5 million metric tons of
14 CO₂ emissions, 51% of statewide emissions. The next largest source of CO₂ emissions in
15 2017 was the transportation sector, which accounted for 8.0 million metric tons of CO₂ in
16 2017, 26% of Montana's emissions. The industrial sector accounted for 3.8 million metric
17 tons of CO₂ in 2017, 12.5% of Montana's emissions. Finally, the residential sector
18 accounted for 1.7 million metric tons of CO₂ in 2017, 5.6% of emissions, and the
19 commercial sector accounted for 1.5 million metric tons of CO₂, or 4.9% of emissions.⁵⁰

20 128. In 2017, Montana consumed 156.1 trillion Btu of coal, 83.3 trillion Btu of natural
21 gas, 60.8 trillion Btu of motor gasoline (excluding ethanol), 51.9 trillion Btu of distillate
22 fuel oil, 44.5 trillion Btu of other petroleum products, 100.9 trillion Btu of hydroelectric
23

⁵⁰ *Montana Carbon Dioxide Emissions from Fossil Fuel Consumption (1980-2017)*, *supra* note 44.

1 power, 20.5 trillion Btu of other renewables (excluding biomass), and 19 trillion Btu of
2 biomass.⁵¹

3 129. Montana's per capita energy consumption is among the top one-third of all states,
4 ranking 12th highest energy use per capita in 2017.⁵²

5 130. Coal-fired power
6 plants, which are authorized to
7 operate by Defendants,
8 provide the largest share of
9 Montana's electricity
10 generation, roughly 47% in
11 2018 (see Figure 1⁵³). Besides
12 coal, Montana gets about 40%

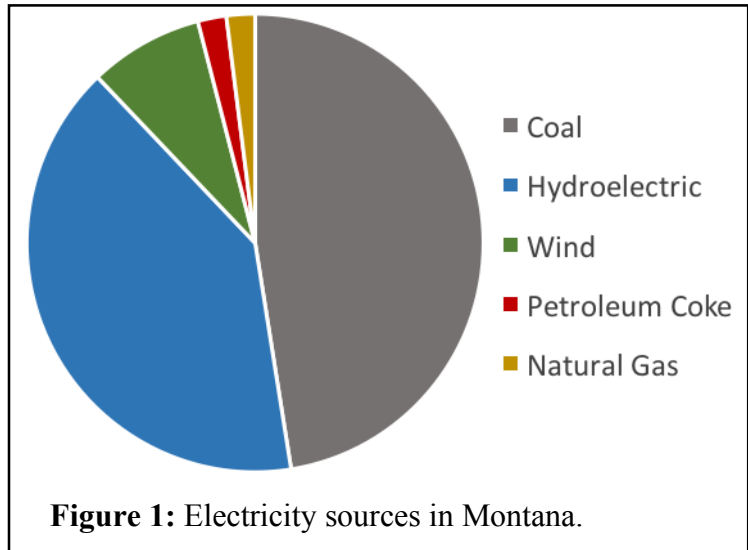


Figure 1: Electricity sources in Montana.

13 of its electricity from hydroelectric power plants and 8% from wind power. Natural gas
14 and oil each currently represent almost 2% of electric power generation.⁵⁴ Roughly half of
15 the electricity generated in Montana is used in-state while the other half is sent to other
16 states via high-voltage transmission lines.

17 131. In September 2019, Montana, pursuant to its State Energy Policy, generated 1,383
18 thousand MWh of electricity from coal; 49 thousand MWh of electricity from natural gas;
19 543 thousand MWh of electricity from hydroelectric power plants; and 186 thousand MWh

21 ⁵¹ U.S. Energy Information Admin., *Montana State Energy Profile*, <https://www.eia.gov/state/print.php?sid=MT> (last
22 updated Jan. 16, 2020).

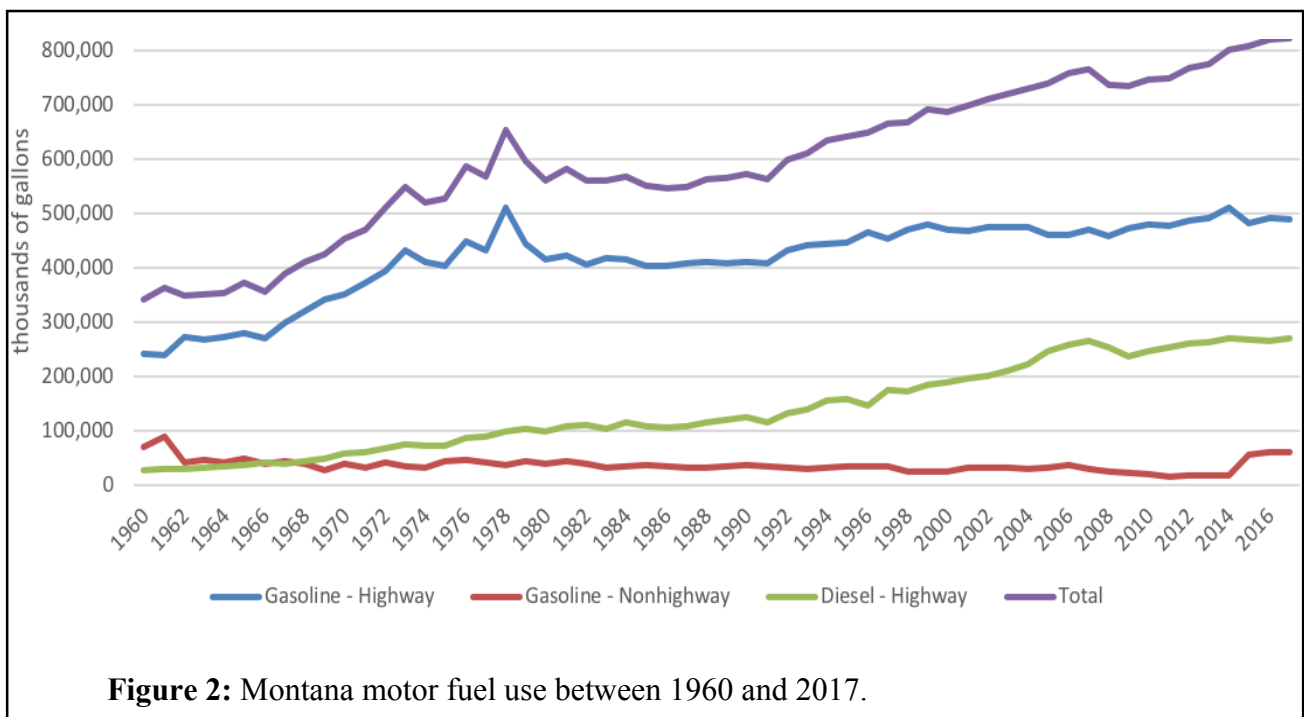
23 ⁵² U.S. Energy Information Admin., *Table C13. Energy Consumption Estimates per Capita by End-Use Sector, Ranked
by State, 2017*, State Energy Data 2017: Consumption (2017),
https://www.eia.gov/state/seds/sep_sum/html/pdf/rank_use_capita.pdf.

⁵³ See *Montana State Energy Profile*, *supra* note 51.

⁵⁴ *Id.*

1 of electricity from nonhydroelectric renewable energy sources.⁵⁵ All power plants in
2 Montana are authorized by Defendants.

3 132. In 2017, Montana’s transportation sector, which Defendant MDT regulates and
4 authorizes, consumed two-thirds of all the petroleum burned in Montana. Montana’s total
5 motor fuel use continues to increase (see Figure 2⁵⁶) while the CO₂ emissions resulting
6 from burning fossil fuel for transportation increased 38% from 5.8 million metric tons of
7 CO₂ in 1990 to 8.0 million metric tons of CO₂ in 2017.



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Figure 2: Montana motor fuel use between 1960 and 2017.

18 133. In 2017, pursuant to the State Energy Policy, Defendants authorized the production
19 of 624.8 trillion Btu of coal, 50.6 trillion Btu of gas, and 118.5 trillion Btu of crude oil.⁵⁷

21 ⁵⁵ U.S. Energy Information Admin., *Montana Net Energy Generation by Source, Sept. 2019*, Montana: State Profile and Energy Estimates, <https://www.eia.gov/state/?sid=MT#tabs-4> (last updated Jan. 16, 2020). See also U.S. Energy Information Admin., *Electric Power Monthly, Net Generation by State by Type of Producer by Energy Source*, https://www.eia.gov/electricity/data/state/generation_monthly.xlsx (last accessed on Jan. 2, 2020).

22 ⁵⁶ Figure prepared with data from Montana Department of Environmental Quality, Petroleum Tables Workbook – 2019 Update, Table P8. Motor Fuel Use, 1960-2017 (thousand gallons), http://deq.mt.gov/Portals/112/Energy/Documents/Energy_Statistics/PetroleumTables2019.xlsx.

23 ⁵⁷ U.S. Energy Information Admin, *Table P2. Primary Energy Production Estimates in Trillion Btu, 2017*, State Energy Data 2017: Production, https://www.eia.gov/state/seds/sep_prod/pdf/P2.pdf (last accessed Dec. 23, 2019).

1 That same year Defendants authorized the production of just 136 trillion Btu from
2 renewable sources. Montana produced nearly six times as much energy from fossil fuel as
3 it produced from renewables. In other words, only 14.6% of the energy produced in
4 Montana is from renewable sources. Defendants—who manage, operate, and regulate the
5 energy sector by and through the State Energy Policy—have the authority to produce
6 renewable energy sources. Nevertheless, Defendants are manifestly indifferent to Youth
7 Plaintiffs’ injuries and continue to authorize energy from fossil fuels as opposed to
8 renewables.

9 134. Montana has six coal mines (see Figure 3⁵⁸), all of which Defendants authorize to
10 operate, and the Nation’s largest estimated recoverable coal reserves, accounting for nearly
11 one-third of the Nation’s recoverable coal reserves, and is a substantial supplier of coal for
12 the rest of the country.⁵⁹ Between 1960 and 2017 over 1.63 billion short tons of coal were
13 mined in Montana,⁶⁰ with authorization from Defendants, releasing 3,073 million metric
14 tons of CO₂ emissions once combusted. In 2018, over 38 million short tons of coal were
15 mined from Montana, with authorization from Defendants, making it the sixth largest coal
16 producer in the United States.⁶¹ Once combusted, that 38 million short tons of coal is
17 equivalent to approximately 72.8 million metric tons CO₂ emissions. Montana’s coal
18 production increased for the first time in three years during 2017. About 22% of the coal
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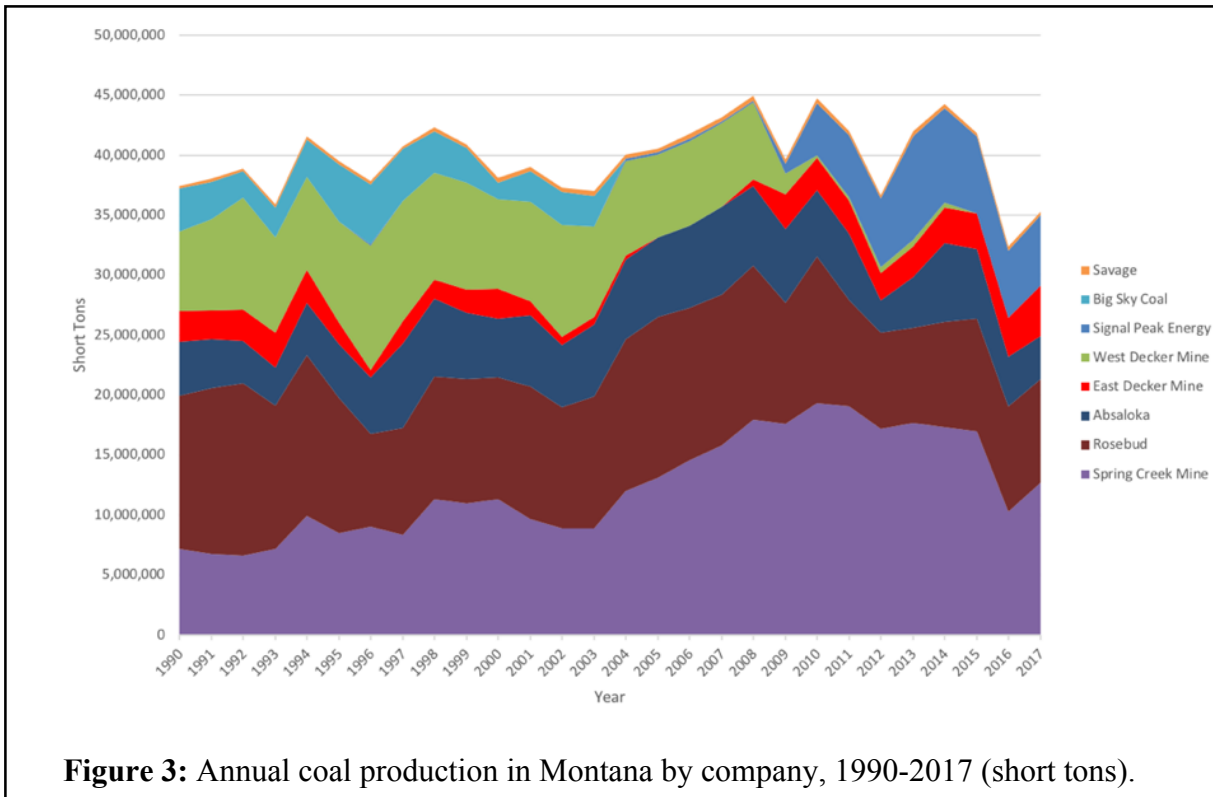
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21 ⁵⁸ Montana Department of Environmental Quality, *Coal Tables Workbook – 2018 Update* (2018),
http://deq.mt.gov/Portals/112/Energy/Documents/Energy_Statistics/CoalTables2018_Final.xlsx.

22 ⁵⁹ See *Montana State Energy Profile*, *supra* note 51; U.S. Energy Information Admin, *Annual Coal Report 2018, Table*
15, Recoverable Coal Reserves at Producing Mines, Estimated Recoverable Reserves, and Demonstrated Reserve by
Mining Method, 2018, Annual Coal Report, <https://www.eia.gov/coal/annual/pdf/table15.pdf> (last accessed Feb. 5,
23 2019).

⁶⁰ U.S. Energy Information Admin, *Table PT1 Primary Energy Production Estimates in Physical Units, Montana, 1960-2017*, https://www.eia.gov/state/seds/sep_prod/xls/PT1_MT.xlsx.

⁶¹ See *Montana State Energy Profile*, *supra* note 51; *Understanding Energy in Montana 2018*, *supra* note 34.

1 mined in 2018 was consumed in state, almost all in the electric power sector; 42% was sent
 2 to other states; and 36% was exported to other countries.⁶²



135. Pursuant to its State Energy Policy, Montana produces 1 in every 200 barrels of
 15 U.S. oil. In 2018, Montana’s oil production rose to 59,000 barrels per day and there were
 16 over 4,600 producing oil wells as of 2017 (see Figure 4).⁶³ With the authorization of
 17 Defendants, Montana produced 20,706,000 barrels of crude oil in 2017 alone that, once
 18 combusted, resulted in 8,948,719 metric tons CO₂. As of March 2019, Montana’s monthly
 19 crude oil production was 62,000 barrels per day.⁶⁴ Between 1960 and 2017, Defendants

⁶² U.S. Energy Information Admin., *Profile Analysis*, Montana State Profile and Energy Estimates <https://www.eia.gov/state/analysis.php?sid=MT> (last updated Jan. 16, 2020); *Understanding Energy in Montana 2018*, *supra* note 34.

⁶³ Montana Department of Environmental Quality, *Petroleum Tables Workbook – 2019 Update, Table P3* (2019), http://deq.mt.gov/Portals/112/Energy/Documents/Energy_Statistics/PetroleumTables2019.xlsx; *see also Montana State Energy Profile*, *supra* note 51.

⁶⁴ U.S. Energy Information Admin., *Montana Supply Data and Map*, <https://www.eia.gov/beta/states/states/mt/data/dashboard/production-capacity-generation> (last accessed Dec. 24, 2019).

1 authorized the production of 1.59 billion barrels of crude oil that, once combusted, resulted
2 in 689 million metric tons of CO₂. The drilling and production of oil is authorized by
3 Defendants.

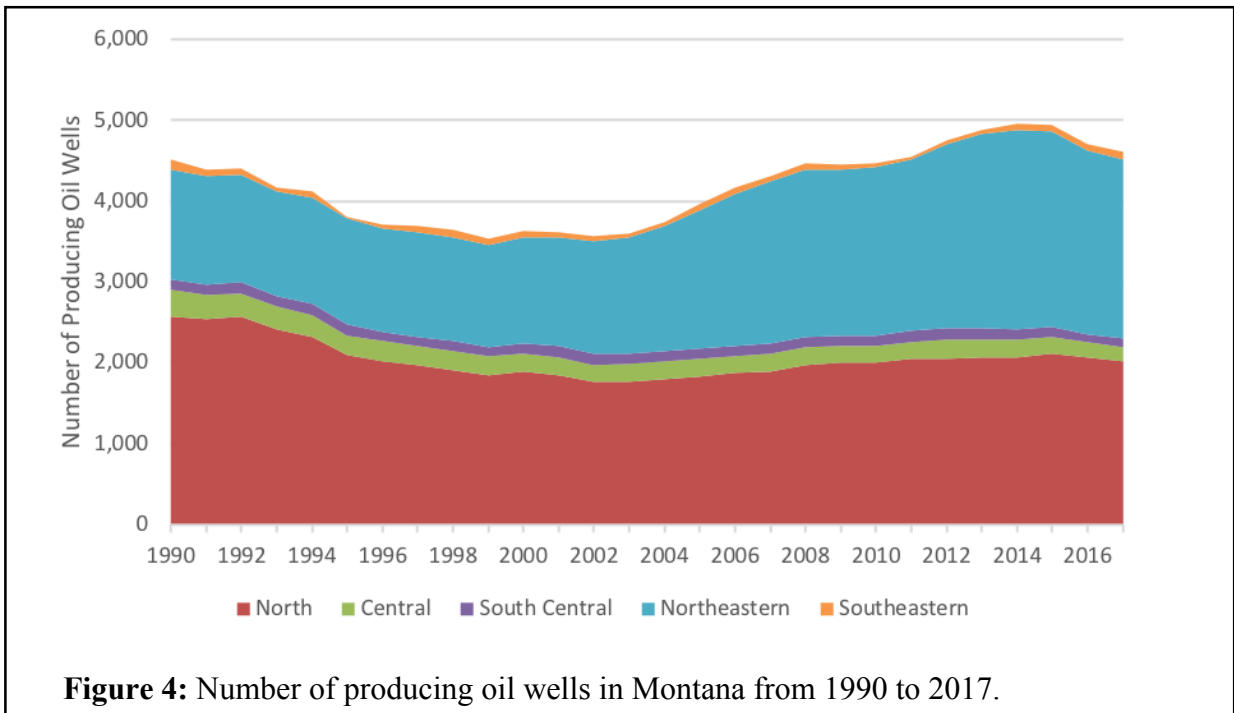


Figure 4: Number of producing oil wells in Montana from 1990 to 2017.

136. There are four state-authorized oil refineries in Montana with a combined oil processing capacity of roughly 205,000 barrels per day. The refineries process crude oil largely from Canada and Wyoming and distribute the refined product by railroad and pipeline throughout Montana and to nearby states.

137. According to EIA data, there were over 7,400 state-authorized natural gas producing wells in 2018 and Montana's monthly natural gas production was approximately 4,000 million cubic feet as of September 2019.⁶⁵ Total gas production in 2017 was 46,090 million cubic feet that, once burned resulted in 2,509,139 metric tons of CO₂. Between 1960 and 2017, 3.26 trillion cubic feet of gas were produced in Montana, resulting in 177.7

⁶⁵ U.S. Energy Information Admin., *Montana Natural Gas Data and Map*, <https://www.eia.gov/beta/states/states/mt/data/dashboard/natural-gas> (last visited Dec. 24, 2019).

1 million metric tons of CO₂. Pursuant to its State Energy Policy, Montana consumes more
2 natural gas than it produces, making it a net gas importer.⁶⁶

3 138. In 2017, almost one-fifth of all U.S. natural gas imports from Canada entered the
4 United States by pipelines that go through Montana and are authorized by Defendants.
5 Roughly 95% of the natural gas that enters Montana passes right through the state to other
6 states.

7 139. Montana's lands contain a significant quantity of fossil fuels yet to be extracted,
8 but that can be extracted under the State's Energy Policy. According to EIA data, as of
9 2018 there were over 817 million short tons of recoverable coal at producing mines.⁶⁷ If
10 burned, this would release some 1,541 million metric tons of CO₂. The state also contains
11 279 million barrels of proven crude oil reserves⁶⁸ that, if combusted, would release 121
12 million metric tons of CO₂. Almost 600 billion cubic feet dry natural gas reserves are
13 contained within Montana's borders⁶⁹ that, if combusted, would release 32 million metric
14 tons of CO₂. Pursuant to and in further of the State Energy Policy, Defendants continue to
15 permit, promote, authorize, and encourage fossil fuel use and production in Montana and
16 other activities resulting in dangerous levels of GHG emissions.

17 140. In sum, between 1960 and 2017, the coal, oil, and gas extracted from Montana, with
18 state authorization, resulted in 3,940 million metric tons of CO₂ emissions once combusted.
19 For perspective, that is roughly equivalent to 80% of all energy-related U.S. CO₂ emissions
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22 ⁶⁶ *Montana State Energy Profile*, *supra* note 51.

23 ⁶⁷ U.S. Energy Information Admin., *Montana Coal Data and Map*,
<https://www.eia.gov/beta/states/states/mt/data/dashboard/coal> (last visited Dec. 24, 2019).

U.S. Energy Information Admin., *Montana Crude Oil and Petroleum Products Data and Map*
<https://www.eia.gov/beta/states/states/mt/data/dashboard/crude-oil-petroleum> (last visited Dec. 24, 2019).

⁶⁹ *Montana Natural Gas Data and Map*, *supra* note 65.

1 for 2018.⁷⁰ This amount of cumulative emissions would rank as the third largest when
2 compared to the annual emissions of countries (behind China and the United States, using
3 2018 emissions data).⁷¹

4 141. Additionally, between 1980 and 2017, a cumulative 1,083 million metric tons of
5 CO₂ were emitted from fossil fuel consumption in Montana.⁷² Compared to the emissions
6 of all countries around the world in 2018, that quantity of emissions would rank sixth in
7 the world.⁷³

8 142. Whether looking at a particular year or Montana's historical and cumulative GHG
9 emissions, the state, as a result of actions taken pursuant to and in furtherance of the State
10 Energy Policy, is responsible for a significant and dangerous quantity of GHG emissions
11 that have contributed to dangerous climate change and infringed the constitutional rights
12 of Youth Plaintiffs. The GHG emissions have continued, and only grown, notwithstanding
13 the passage of the 1972 Montana Constitution, MEPA, and Defendants' longstanding
14 knowledge of the dangers posed by fossil fuels and the climate crisis.

15 **ANTHROPOGENIC CLIMATE DESTABILIZATION IS ALREADY CAUSING**
16 **DANGEROUS IMPACTS IN MONTANA**

17 143. There is an overwhelming scientific consensus that human-caused climate
18 disruption is occurring and is dangerous to humans and other life and ecosystems on which
19 humans depend. The present rate of global heating and ocean acidification is a result of
20 anthropogenic GHG emissions, primarily CO₂ emissions, from the combustion of fossil
21 fuels. This release of GHG emissions into the atmosphere, combined with carbon released

22 ⁷⁰ U.S. Energy Information Admin., *U.S. Energy-Related CO₂ Emissions Increased in 2018 but Will Likely Fall in*
23 *2019 and 2020*, Today in Energy (Jan. 28, 2019), <https://www.eia.gov/todayinenergy/detail.php?id=38133>.

⁷¹ Global Carbon Atlas, *CO₂ Emissions* (2019), <http://www.globalcarbonatlas.org/en/CO2-emissions>.

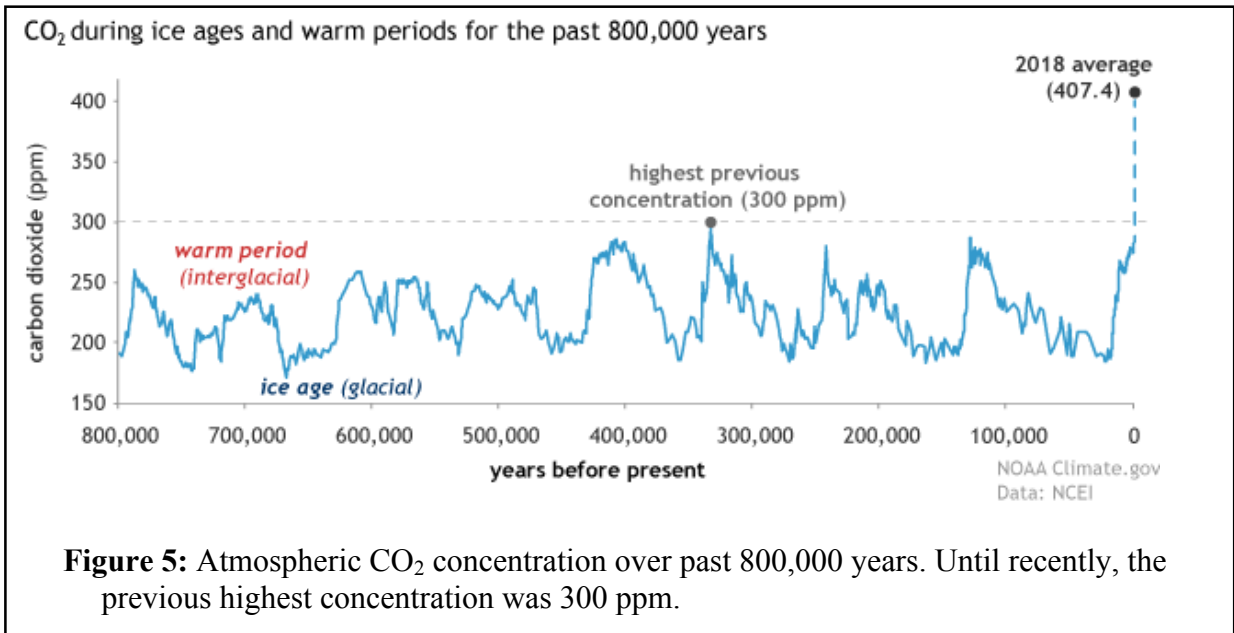
⁷² *Montana Carbon Dioxide Emissions from Fossil Fuel Consumption (1980-2017)*, *supra* note 44.

⁷³ Global Carbon Atlas, *supra* note 71.

1 through deforestation and soil degradation, has disrupted Earth's energy balance, thereby
2 changing Earth's climate, resulting in climate disruption globally and in Montana.

3 **A. Anthropogenic Climate Disruption and the Dangers of Increased Global Warming**

4 144. The global annual average atmospheric CO₂ concentration for 2019 was 411.4 ppm
5 compared to the pre-industrial concentration of 280 ppm.⁷⁴ The atmospheric CO₂
6 concentration has been increasing, and continues to increase, as a direct result of human
7 combustion of fossil fuels (see Figures 5 and 6).⁷⁵ Current atmospheric CO₂ concentrations
8 are higher than levels in millions of years. Atmospheric CO₂ is the primary forcer of climate
9 change.



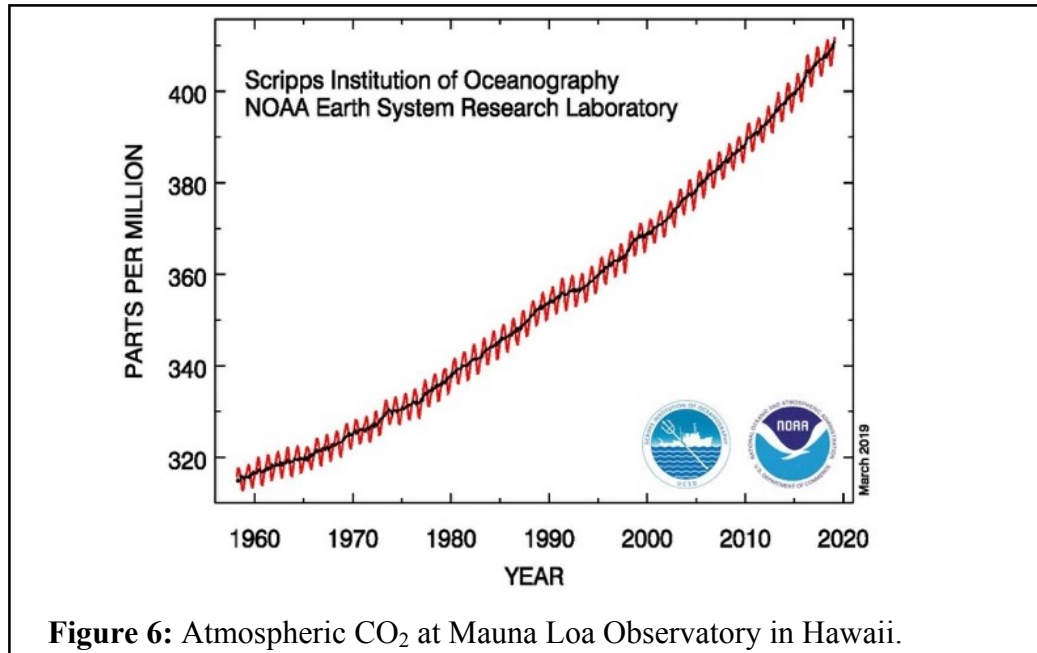
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22 ⁷⁴ Mauna Loa CO₂ Annual Mean Data, ftp://aftp.cmdl.noaa.gov/products/trends/co2/co2_annmean_mlo.txt (last updated Mar. 5, 2020).

23 ⁷⁵ Rebecca Lindsey, *Climate Change: Atmospheric Carbon Dioxide*, National Oceanic and Atmospheric Administration (NOAA) (Feb 20, 2020), <https://www.climate.gov/news-features/understanding-climate/climate-change-atmospheric-carbon-dioxide>; National Oceanic and Atmospheric Administration (NOAA), *Global carbon dioxide growth in 2018 reached 4th highest on record*, Climate Research, (Mar. 22, 2019), <https://www.noaa.gov/news/global-carbon-dioxide-growth-in-2018-reached-4th-highest-on-record>.



145. The atmosphere and water are inextricably linked and there is a continuous movement of water between the earth and atmosphere.⁷⁶ Almost all of the water in the atmosphere is from evaporation from water bodies or evapotranspiration by plants and vegetation. Subsequent precipitation adds water back into land-based hydrological systems.⁷⁷ Thus, there is both a functional and physical connection between the land-based water and the atmosphere. The atmosphere contains more freshwater than the rivers and lakes of Montana and indeed contains atmospheric rivers that provide precipitation for Montana. The atmosphere, the oceans, other freshwater resources, and the biosphere are all interconnected.

146. For the first time in the measurable paleoclimatic record, CO₂ levels have risen by 130 ppm within only 150 years, a rate 100 times faster than the natural increase in carbon

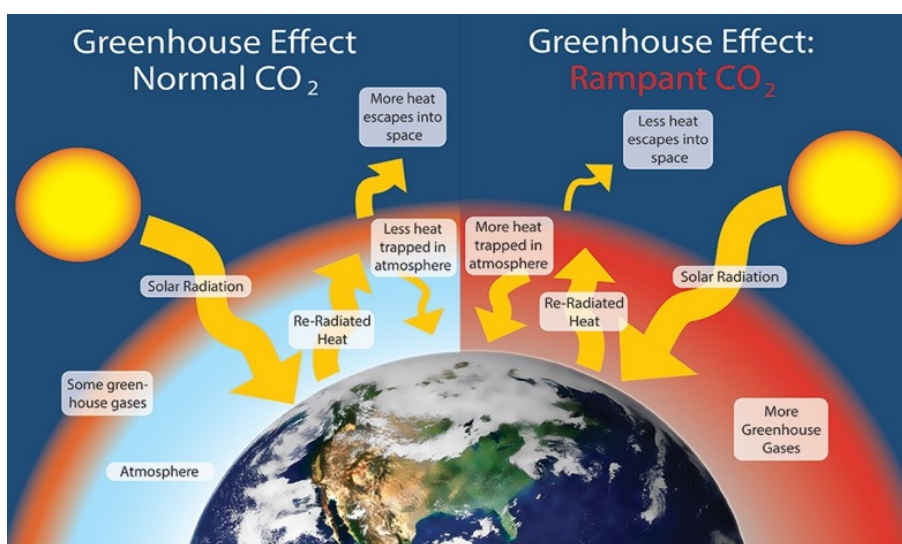
⁷⁶ National Oceanic and Atmospheric Administration (NOAA), *Water Cycle*, Education, <https://www.noaa.gov/education/resource-collections/freshwater-education-resources/water-cycle> (last updated Feb. 2019).

⁷⁷ United States Geological Survey (USGS), *A Comprehensive Study of the Natural Water Cycle*, Water Science School, https://www.usgs.gov/special-topic/water-science-school/science/a-comprehensive-study-natural-water-cycle?qt-science_center_objects=0#Condensation (last visited Feb. 20, 2020).

1 dioxide from 180 to 280 ppm following the last ice age, which ended some 12,000 years
2 ago.

3 147. The concentrations of other GHGs in the atmosphere have also increased. For
4 example, the concentration of methane, a GHG that is 86 times⁷⁸ more potent than carbon
5 dioxide, has increased approximately 250% since the mid 1800s.

6 148. GHGs in the atmosphere act like a blanket over Earth to trap the heat received from
7 the sun (see Figure 7).⁷⁹ Without this greenhouse effect, the Earth's average surface
8 temperature would be 0° F (-18° C) instead of 59° F (15° C). Scientists have understood
9 this basic mechanism of global heating since at least the late-nineteenth century. More
10 GHGs in the atmosphere means that more heat is being retained on Earth, with less heat
11 radiating back out into space, causing a disruption in Earth's energy balance.



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20 **Figure 7:** While greenhouse gases, like CO₂ normally trap some of the sun's heat, which
21 prevents the planet from freezing (left side), with increasing atmospheric
22 concentrations of GHGs, the planet is now experiencing an energy imbalance and is
23 warming at an unprecedented rate (right side).

⁷⁸ Gunnar Myhre et al., *Chapter 8: Anthropogenic and Natural Radiative Forcing: Climate Change 2013: The Physical Science Basis*, Intergovernmental Panel on Climate Change (IPCC), 714 (2013), http://www.climatechange2013.org/images/report/WG1AR5_Chapter08_FINAL.pdf.

⁷⁹ Will Elder, *What is Climate Change?*, U.S. National Park Service, <https://www.nps.gov/goga/learn/nature/climate-change-causes.htm> (last updated Sep. 13, 2019).

1 149. A substantial portion of every ton of CO₂ emitted by humans persists in the
2 atmosphere for as long as a millennium or more. As a result, CO₂ steadily accumulates in
3 the atmosphere. The Earth will continue to warm in response to the atmospheric
4 concentrations of GHGs caused by past emissions, as well as future emissions; therefore,
5 the impacts associated with the CO₂ emissions of today will be mostly borne by Youth
6 Plaintiffs, other youth, and future generations.

7 150. Unless GHGs are reduced to meet science-based targets, climatic tipping points,
8 such as massive species extinction and rapid ice sheet disintegration, will be reached and
9 the Earth will cross a point of no return after which catastrophic climate change impacts
10 will be unavoidable and irreversible. The continued GHG emissions from fossil fuels will
11 further disrupt Earth's climate system and that, in turn, will impose profound and mounting
12 risks of ecological, economic, and social collapse.

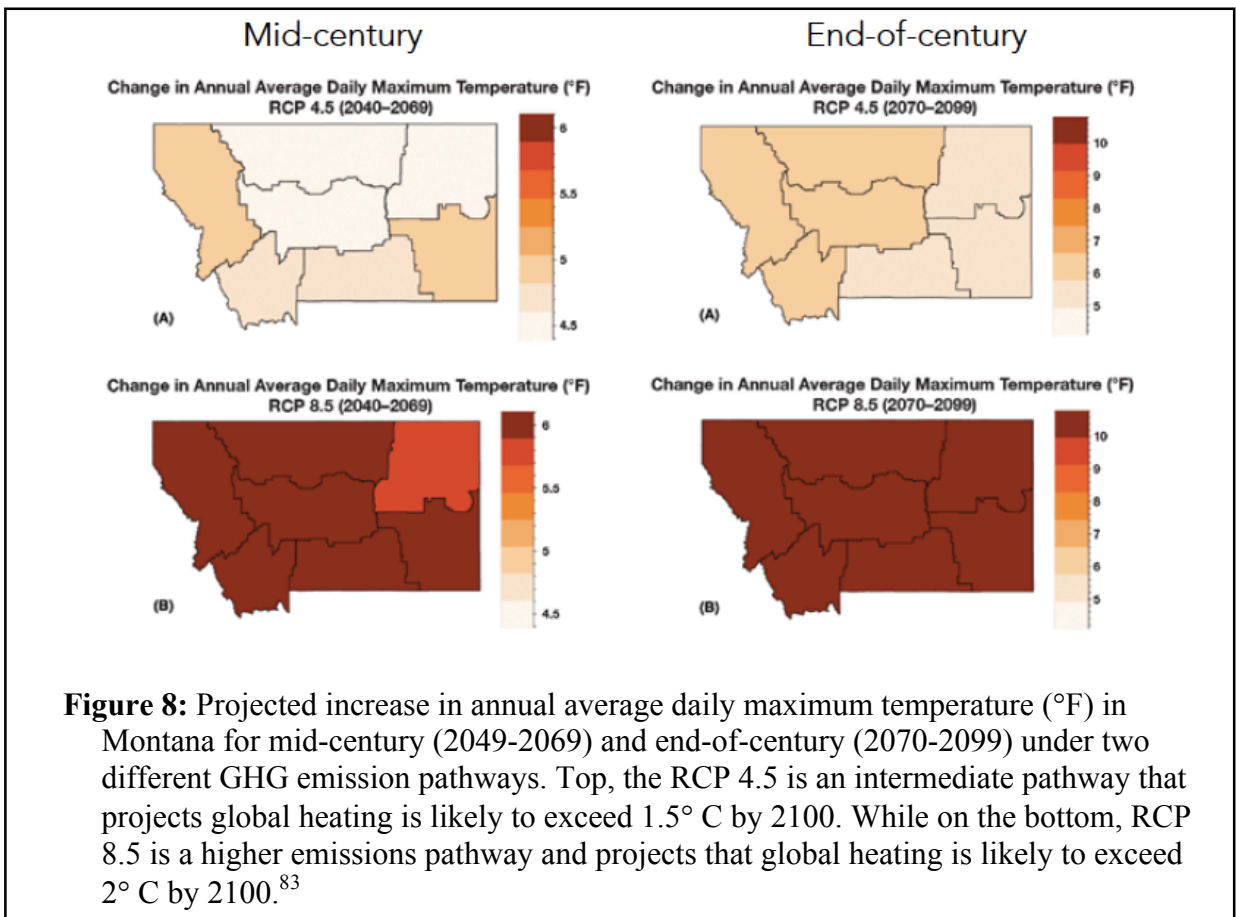
13 **B. The Impacts of Climate Disruption in Montana are Pervasive**

14 151. One key observable change in the climate system, and in Montana, is the rapid
15 increase in recorded global surface temperatures. The last decade, 2010-2019, was the
16 warmest on record. The increased concentrations of GHGs in our atmosphere have raised
17 average global surface temperature by more than 1° C (over 2.0° F) from 1880 to 2019.⁸⁰
18 This is well above the maximum warming of the Holocene era, the ~12,000 year epoch of
19 relatively stable climate, which allowed human civilization to develop.

20 152. The impacts of climate disruption in Montana are pervasive. Annual average
21 temperatures across Montana have risen significantly more than the global average,
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23 ⁸⁰ National Oceanic and Atmospheric Administration (NOAA), *2019 was 2nd hottest year on record for Earth say NOAA, NASA* (January 15, 2020), <https://www.noaa.gov/news/2019-was-2nd-hottest-year-on-record-for-earth-say-noaa-nasa>.

1 between 2° and 3° F between 1950 and 2015.⁸¹ It is as if the Earth has a constant fever, and
2 just as in the human body, even a slight rise in temperature weakens the organism, increases
3 the vulnerability of the organism, and can have dangerous long-term effects on the system.
4 By mid-century, when the Youth Plaintiffs will be adults, models project that the annual
5 average daily maximum temperature in Montana will increase by approximately 4.5-6.0°
6 F, a temperature increase that would imperil human civilization (see Figure 8). By the end
7 of the century, models predict that the annual average daily maximum temperature in
8 Montana will increase by approximately 5-10° F.⁸²



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23 ⁸¹ Cathy Whitlock et al., *2017 Montana Climate Assessment*, Montana Institute on Ecosystems, 10 (2017), <http://live-mca-site.pantheonsite.io/sites/default/files/thumbnails/image/2017-Montana-Climate-Assessment-lr.pdf>.

⁸² *Id.* at 10 (“Montana temperatures are projected to rise by approximately 5.6-9.8° F” by the end-of-century).

⁸³ Cathy Whitlock et al., *supra* note 81, at 48.

1 153. Montana has warmed more than most of the contiguous United States because
2 northern latitudes heat more quickly.⁸⁴ As a result of the average temperature increase, heat
3 waves are becoming more common and snow is melting earlier in the spring season. In
4 Helena, for example, the number of summer days above 90° F has increased by 20 days
5 between 1970 and 2019 (see Figure 9).⁸⁵ By mid-century, extreme heat days (above 90° F)
6 are projected to increase by 5-35 additional days (see Figure 10) while frost-free days are
7 projected to increase by 24-44 days.⁸⁶

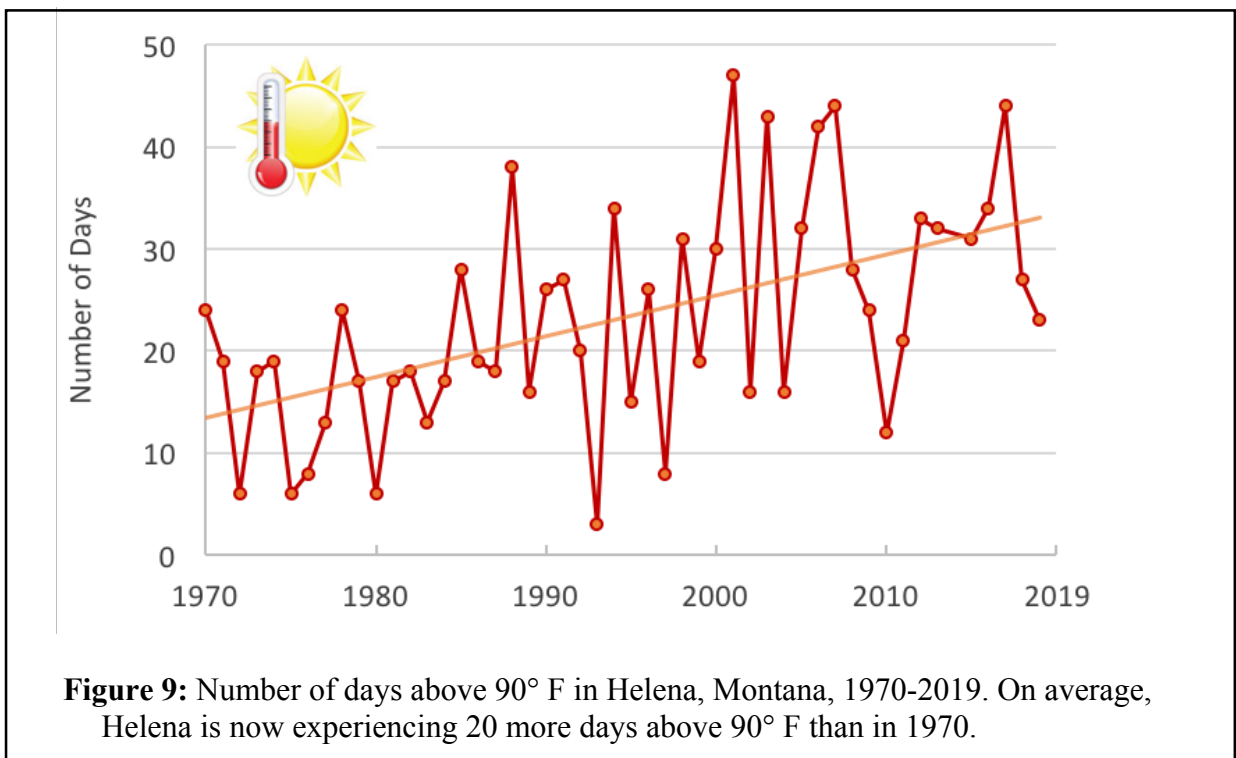


Figure 9: Number of days above 90° F in Helena, Montana, 1970-2019. On average, Helena is now experiencing 20 more days above 90° F than in 1970.

⁸⁴ U.S. Environmental Protection Agency, *What Climate Change Means for Montana* (Aug. 2016), <https://19january2017snapshot.epa.gov/sites/production/files/2016-09/documents/climate-change-mt.pdf>.

⁸⁵ Figure prepared with data from the Applied Climate Information System, Helena Airport Association weather station, <http://scacis.rcc-acis.org/>. Trend line is the linear regression.

⁸⁶ Cathy Whitlock et al., *supra* note 81, at 66.

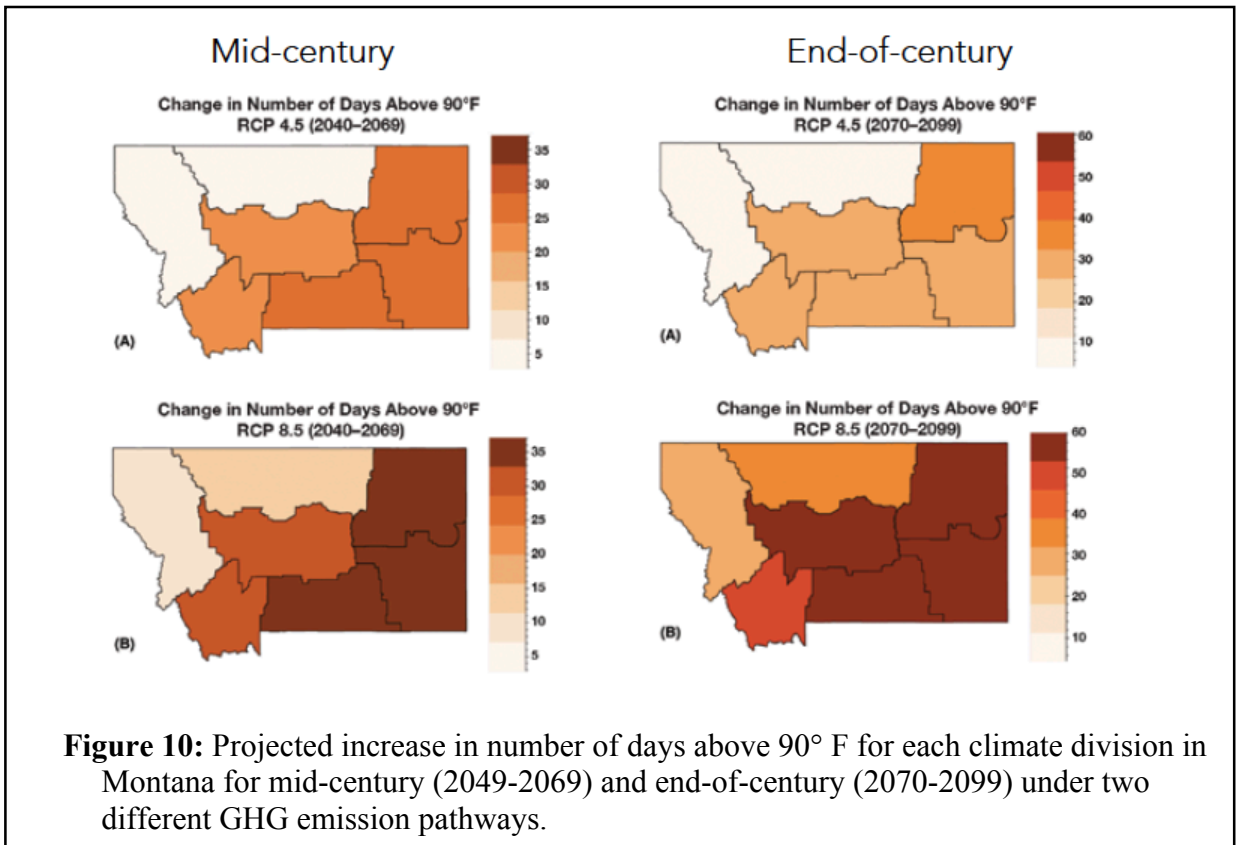


Figure 10: Projected increase in number of days above 90° F for each climate division in Montana for mid-century (2049-2069) and end-of-century (2070-2099) under two different GHG emission pathways.

154. Climate disruption in Montana—specifically, temperature rises resulting in warmer springs and the delay of frost in the fall—will have a significant economic impact on Montana’s two primary agricultural sectors. The economic impact is projected as a 20% decline in rangeland cattle production and 25% reduction in grain production.⁸⁷ The economic losses associated with this aspect of climate disruption would be the loss of about 25,000 jobs and \$736 million in labor earnings by 2055.⁸⁸ As a result of the impacts to the agricultural sector, food shortages that lead to higher food prices will also be borne by future Montana consumers and Youth Plaintiffs.⁸⁹ Such losses would be particularly harmful to Montana’s family ranchers and farmers, including Youth Plaintiff Rikki.

⁸⁷ Thomas Michael Power, et al., *The Impact of Climate Change on Montana’s Agriculture Economy*, Montana Farmers Union, 16 (2016), https://montanafarmersunion.com/wp-content/uploads/2016/02/FINAL_Impact_Climate_Change_MT_Ag_Econ_Power_Consulting_2-24-2016.pdf.

⁸⁸ *Id.* at 18.

⁸⁹ Expert Report of Joseph E. Stiglitz, *Juliana v. United States*, No. 6:15-cv-01517-TC, ¶ 33 (D. Or. June 8, 2016).

1 155. While Montana’s growing season has lengthened with warming temperatures,
2 future climate changes will become increasingly disruptive to Montana’s agricultural
3 sectors. For example, reduced irrigation capacity from decreasing mountain snowpack is
4 projected to impact hay, sugar beet, malt barley, market garden, and potato production.⁹⁰
5 In addition, warmer winter temperatures will lead to increased winter annual weeds, which
6 are projected to decrease crop yields and forage productivity.⁹¹

7 156. The longer growing seasons also allows trees, grasses, and other plants to produce
8 pollen for a longer period, resulting in aggravated and prolonged allergies for millions of
9 Americans, including Youth Plaintiffs Lander and Olivia.

10 157. Montana encompasses part of the northern Rocky Mountain region. The northern
11 Rocky Mountains are a headwaters region, including the Missouri river system to the East
12 and the Columbia River system to the West, where most of the water originates as snow.⁹²
13 Due to the warming climate, the water cycle in the atmosphere is disrupted and less
14 precipitation falls as snow, and more snow melts during winter.⁹³ Consequently, Montana’s
15 snowpack has been decreasing and is likely to continue decreasing with warming
16 temperatures (see Figure 11).⁹⁴

22 ⁹⁰ Cathy Whitlock et al., *supra* note 81, at 198.

⁹¹ *Id.* at 199.

⁹² Gregory T. Pederson et al., *Climatic Controls on the Snowmelt Hydrology of the Northern Rocky Mountain*, 24
23 *Journal of Climate* 1666 (2011), <https://journals.ametsoc.org/doi/pdf/10.1175/2010JCLI3729.1>.

⁹³ *What Climate Change Means for Montana*, *supra* note 84.

⁹⁴ Cathy Whitlock et al., *supra* note 81, at 88, 91.

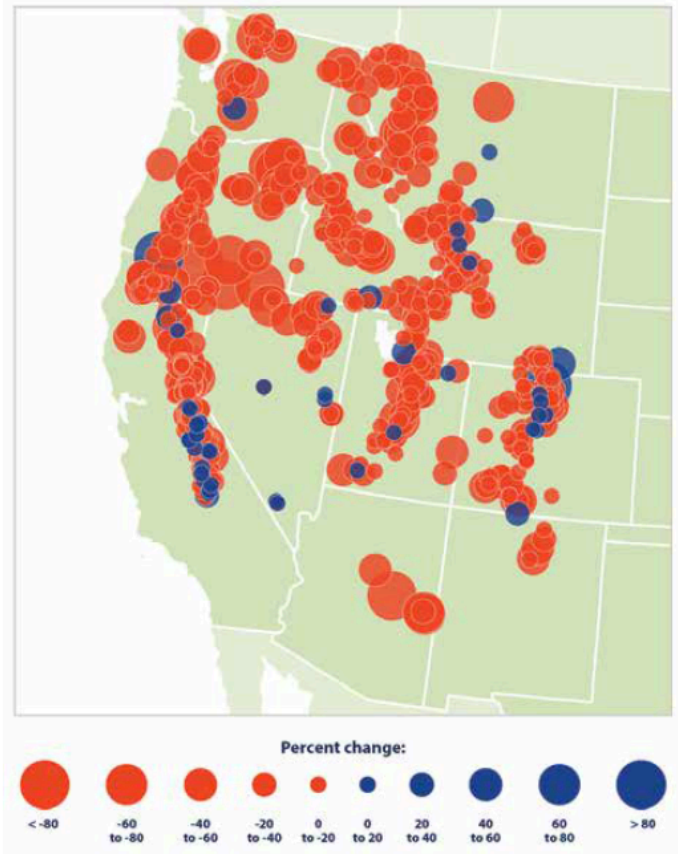


Figure 11: Trends in April snowpack in the Western United States from 1955-2016. Red bubbles indicate areas with declining snowpack while blue bubbles indicate areas with increasing snowpack. The diameter of the bubbles is proportional to the percent change from 1955-2016.

158. The reduced snowpack corresponds to shortened ski seasons and negatively impacts other forms of winter tourism and recreation activities in Montana.⁹⁵ A number of Youth Plaintiffs, including Georgi and Claire, have been harmed by the reduced snowpack and impacts to winter tourism. Changes in snowpack and runoff timing will likely increase drought conditions, which will be exacerbated by the rising temperatures.⁹⁶ While precipitation is expected to increase in winter, spring, and fall, it is projected to decrease

⁹⁵ *What Climate Change Means for Montana*, *supra* note 84.

⁹⁶ Cathy Whitlock et al., *supra* note 81, at 123.

1 in summer.⁹⁷ Demand for groundwater will likely grow with temperature increases and
2 changes in availability of surface water sources.⁹⁸

3 159. Glacier National Park is a world-renowned landmark, major driver of the regional
4 economy, and source of fresh water for countless communities.⁹⁹ In Glacier National Park,
5 the effects of climate disruption are dramatic as the glaciers are rapidly retreating (see
6 Figure 12¹⁰⁰).¹⁰¹ Glaciers retreat when melting outpaces accumulation of new snow.¹⁰²
7 Scientific surveys of Glacier National Park have observed that “all glaciers have been
8 reduced in area since 1966 with some glaciers having been reduced by as much as 85% by
9 2015.”¹⁰³ Specifically, the glaciers in the Blackfoot-Jackson Glacier Basin of Glacier
10 National Park decreased in area from 21.6 square kilometers (“km²”) in 1850 to 7.4 km² in
11 1979.¹⁰⁴ Of the approximately 150 glaciers present in the park in 1850, only 26 glaciers
12 (larger than 25 acres) remained in 2015. As Dr. Eric Rignot, an expert in glaciology and
13 climate change, has stated: “Glacier National Park will soon have no glaciers left. Most of
14 the glaciers in that park no longer qualify as glaciers per my definition of what a glacier is,
15 which is an entity of ice thick enough to deform under its own weight, which requires ice
16 to be at least 100 m thick.”¹⁰⁵

18 ⁹⁷ *Id.* at 10.

19 ⁹⁸ *Id.* at 114.

20 ⁹⁹ D.B. Fagre et al., *Glacier Margin Time Series (1966, 1998, 2005, 2015) of the Named Glaciers of Glacier National Park, MT, USA*, U.S. Geological Survey data release, United States Geological Survey (USGS) (2017), <https://www.sciencebase.gov/catalog/item/58af7022e4b01ccd54f9f542>.

21 ¹⁰⁰ National Park Service, *Melting Glaciers*, <https://www.nps.gov/glac/learn/nature/melting-glaciers.htm> (last accessed Jan. 14, 2020).

22 ¹⁰¹ United States Geological Survey (USGS), *Retreat of Glaciers in Glacier National Park*, https://www.usgs.gov/centers/norock/science/retreat-glaciers-glacier-national-park?qt-science_center_objects=0-qt-science_center_objects (last visited Feb. 20, 2020).

23 ¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ Myrna H. P. Hall et al., *Modeled Climate-Induced Glacier Change in Glacier National Park, 1850–2100*, 53 *BioScience* 131 (2003), <https://academic.oup.com/bioscience/article/53/2/131/254976>.

¹⁰⁵ Expert Report of Eric Rignot, *Juliana v. United States*, No. 6:15-cv-01517-TC (D. Or. June 28, 2018).

JACKSON GLACIER 1911 AND 2009



JACKSON GLACIER 1911 AND 2009



BLACKFOOT AND JACKSON GLACIER 1914 AND 2009



BLACKFOOT AND JACKSON GLACIER 1914 AND 2009



GRINNELL GLACIER 1910 AND 2017



GRINNELL GLACIER 1910 AND 2017



Figure 12: From top to bottom: Jackson Glacier in 1911 (left) and 2009 (right); Blackfoot and Jackson Glacier in 1914 (left) and 2009 (right); Grinnell Glacier in 1910 (left) and 2017 (right).

160. Youth Plaintiffs, including Kian, Eva, Mica, and Claire, are losing their ability to access and recreate near and around glaciers. The loss of glaciers, which are also important water sources, has significant consequences for the surrounding ecosystems as well as

1 impacting landscape aesthetics valued by visitors to the national parks.¹⁰⁶ Seasonal snow
2 accumulation does not function the same as glacial melt, as it melts early in the summer
3 season. Glaciers, instead, “act as a ‘bank’ of water (stored as ice) whose continual melt
4 helps regulate stream temperatures and maintains streamflow during late summer and
5 drought periods when other sources are depleted.”¹⁰⁷ Without glacial melt, stream
6 temperatures will likely increase, which may have detrimental effects for temperature
7 sensitive aquatic insects, thereby disrupting the aquatic food chain.¹⁰⁸ Warming stream
8 temperatures have led to a reduction in native fish growth, and an increase in nonnative
9 fish growth.¹⁰⁹ The impact of the melting glaciers in Glacier National Park is having an
10 effect on the downstream watershed, Montana’s economy, and the livelihoods of many
11 Montanans.

12 161. Montana’s rivers are already experiencing the impacts of climate disruption as the
13 water levels are decreasing and temperatures are increasing. As shown in Figure 13, the
14 snow water equivalent (“SWE”), or the amount of water contained in the snow, for the
15 river basins for the Clark Fork, Missouri, and Yellowstone Rivers, rivers Youth Plaintiffs,
16 including Kian, Georgi, Grace, Mica, and Eva, fish and recreate in, are expected to continue
17 to decline significantly in the coming decades, which will result in lower instream flows.¹¹⁰
18 At the same time, as Figure 14 shows, the summer water temperatures for Montana’s rivers
19 are expected to continue to rise.¹¹¹

21 ¹⁰⁶ *Retreat of Glaciers in Glacier National Park*, *supra* note 101.

22 ¹⁰⁷ *Id.*

23 ¹⁰⁸ *Id.*

¹⁰⁹ Andrew J. Hansen et al., *Trends in Vital Signs for Greater Yellowstone: Application of a Wildland Health Index*, *Ecosphere* (Aug. 16 2018), <https://esajournals.onlinelibrary.wiley.com/doi/full/10.1002/ecs2.2380>.

¹¹⁰ Cathy Whitlock et al., *supra* note 81, at 135.

¹¹¹ *Id.* at 97.

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April 1 SWE projections for RCP 4.5 and RCP 8.5 (2040-2069 and 2070-2099)

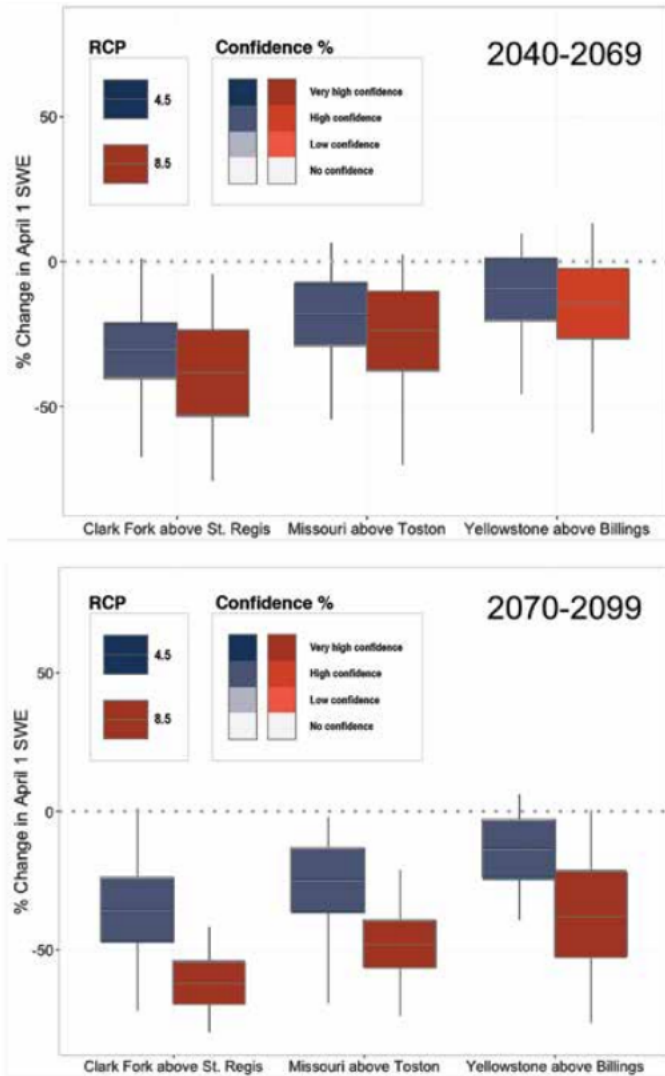


Figure 3-10. APRIL 1 SWE projections for three snowmelt-dominated basins in Montana under two scenarios (RCP4.5 and RCP8.5) and two time periods (2040-2069 and 2070-2099). Data are presented as the projected percent change in April 1 SWE between the baseline period 1970-2000 and two future time periods (2040-2069: upper panel; 2070-2099: lower panel). Box and whisker plots show variation in projections among the different models. These types of plots appear in other graphs below that depict model projections.

The line in the middle of the boxplot represents the median value of all model projections. The bottom and top of the box represent the 25th and 75th percentiles (or first and third quartiles), respectively, of model projections. The upper whisker (line extending from the box) extends from the box to the largest model value no further than 1.5*IQR from the box (where IQR is the inter-quartile range, or distance between the first and third quartiles). The lower whisker extends from the box to the smallest model projection that is no further than 1.5*IQR of the hinge. Few model projections fall beyond the end of the whiskers (i.e., outliers), and these are not shown in the figures.

For explanation of specific confidence levels, refer to Future Projections in Water Chapter.

Figure 13: The snow water equivalent (“SWE”) projections for three of Montana’s major river basins will be significantly less with continued climate disruption, which will cause a decrease in streamflow levels for these three rivers, and other Montana rivers and streams.

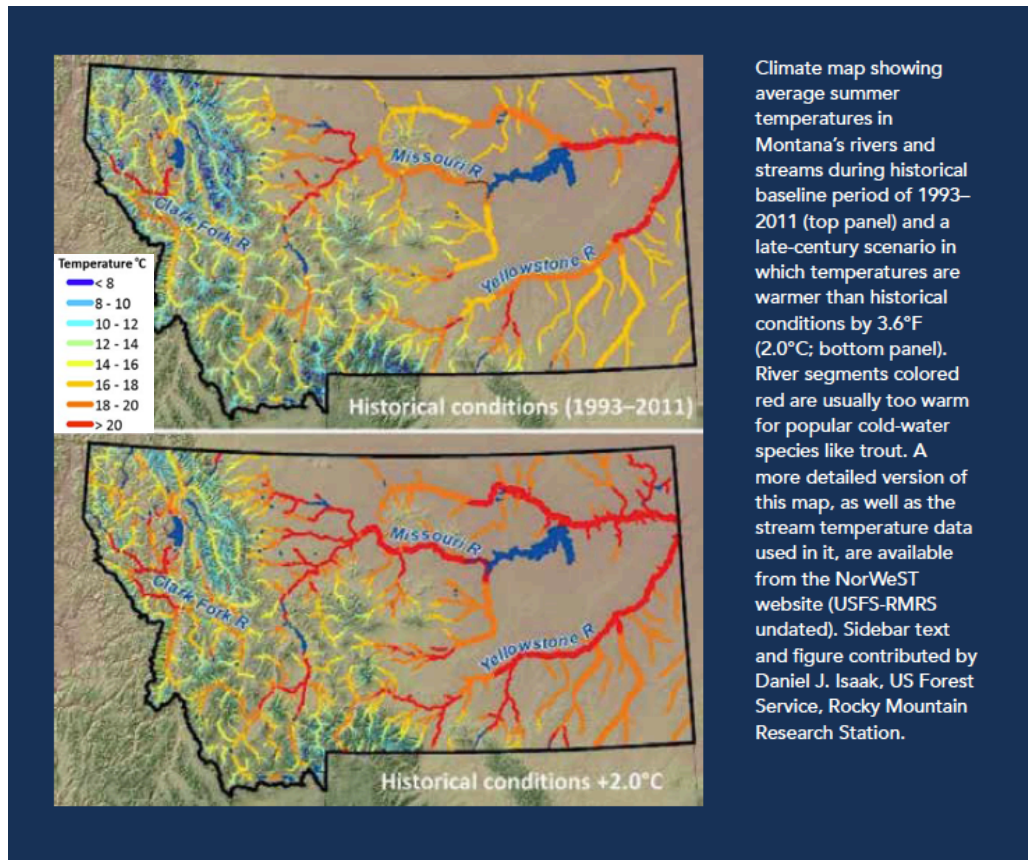


Figure 14: With 2.0°C of warming, almost all of Montana's rivers and streams would experience significant warming and many rivers and streams would be too warm to support certain fish species.

162. As a result of ecosystem disruption, including drought conditions and wildfires, boating and fishing are being adversely impacted and certain rivers, or stretches of rivers, and fisheries have been closed.¹¹² Montana has adopted a drought fishing closure policy to determine when closures are necessary.¹¹³ Low river flows and high water temperatures, both directly linked to climate disruption, are conditions that lead to closures. As a result of impacts to Montana's wildlife and outdoor economy, approximately 11,000 jobs and \$281 million in income is threatened due to stream closures, lost hunting opportunities,

¹¹² *Retreat of Glaciers in Glacier National Park*, *supra* note 101.

¹¹³ Montana Fish, Wildlife & Parks, *Drought Fishing Closure Policy*, <http://fwp.mt.gov/news/drought/closurepolicy.html> (last visited Feb. 21, 2020).

1 wildfires, and reduced snowpack.¹¹⁴ Youth Plaintiffs’ ability to fish and access rivers has
2 been impaired due to river and fishery closures due to climate disruptions. For example,
3 Youth Plaintiffs Mica, Kian, Lander, and Badge have all had their ability to fish limited,
4 or completely foreclosed in some instances, due to fishery closures as a result of the
5 conditions in Montana rivers. Other Youth Plaintiffs, including Eva, Georgi, Lander, and
6 Badge, have had their access to rivers limited for other recreational activities.

7 163. Yellowstone and Glacier National Park are economic powerhouses for Montana.
8 Together, the parks receive a combined five million visitor days per year.¹¹⁵ Yellowstone
9 National Park, the world’s first National Park, spreads into southeastern Montana. In
10 addition to providing a tourism-based economy, Yellowstone National Park is the heart of
11 the Greater Yellowstone Ecosystem.¹¹⁶ Ongoing and anticipated impacts of climate
12 disruption on Yellowstone National Park include more extreme hot and cold days, change
13 to the composition of flora and fauna in the park, and increasing fire frequency, all of which
14 threatens the continued viability of this national treasure and the ability of Youth Plaintiffs,
15 including Eva, to continue to access for recreational activities.¹¹⁷

16 164. As Montana temperatures increase, ski areas will have to compete for water rights
17 or use energy to make snow. The ski season will be shorter and skiers will likely have to
18 travel farther for snow. Lack of precipitation and declines in snowpack will reduce the ski
19 and snow mobile industry by an estimated 1,500 jobs and \$37 million.¹¹⁸ The rising

21 ¹¹⁴ Thomas Michael Power, et al., *The Impact of Climate Change on Montana’s Outdoor Economy*, Montana Wildlife
22 Federation, 29 (Dec. 2015), <https://montanawildlife.org/wp-content/uploads/2015/12/Impact-of-Climate-Change-on-the-Montana-Outdoor-Economy-Dec-2015-Final-Report.pdf>.

22 ¹¹⁵ *Id.* at iii.

23 ¹¹⁶ Andrew J. Hansen et al., *supra* note 109, at 5-6.

¹¹⁷ U.S. National Park Service, *Climate Change*, Yellowstone National Park, <https://www.nps.gov/yell/learn/nature/climate-change.htm> (last updated June 25, 2019).

¹¹⁸ *The Impact of Climate Change on Montana’s Outdoor Economy*, *supra* note 114, at iii-iv.

1 temperatures will cause profound changes and disruption in those Montana communities
2 built around these activities, such as Big Sky, West Yellowstone, Phillipsburg, and
3 Whitefish.

4 165. Climate disruption is harming Montana's wildlife. As many as one in six species
5 are threatened with extinction due to climate disruption. Many more species that do not
6 face extinction will face changes in abundance, distributions, and species interactions that
7 cause adverse impacts for ecosystems and humans. Almost two-thirds of common plants
8 and half of all animals are projected to decline dramatically in population this century as a
9 result of climate disruption, absent science-based GHG reductions. This has an impact for
10 wildlife viewing and hunting, and dramatically disrupts the ecology of the state. These
11 cascading effects of climate disruption will affect children and youth in Montana, including
12 Youth Plaintiffs. For example, opportunities to view certain animals, like wolverines, may
13 be lost forever. Pikas are another animal that Youth Plaintiffs, including Mica, enjoy seeing
14 in the wild that are being adversely impacted by rising temperatures, declining snowpack,
15 and other climate impacts. Likewise, the ability of Youth Plaintiffs to inherit hunting and
16 wildlife knowledge from their parents, and to pass that knowledge on to their children is
17 threatened to be lost forever due to climate disruption.¹¹⁹

18 166. The climate crisis is also having an impact on Montana's hunting heritage. As
19 Montana warms, big game, including elk, bighorn sheep, and mountain goats, are moving
20 to higher country, increasing difficulty for hunters. Additional, certain bird species,
21 including grouse, are shifting their ranges north, impacting hunters. Montana's wildlife is
22 also adversely impacted by climate impacts such as rising temperatures, drought, increased
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¹¹⁹ *The Impact of Climate Change on Montana's Outdoor Economy*, *supra* note 114.

1 wildfire activity, loss of forest and grassland habitat, declining snowpack, and other climate
2 impacts. Climate disruption is decreasing the productivity and range of big game and bird
3 hunting, has led to the closure of public lands previously available for hunting, and leads
4 to an overall deterioration in the quality of the hunting experience, including for Youth
5 Plaintiffs Lander and Badge. In turn, the decrease in hunting is resulting in job losses,
6 costing the state millions, and undermining an important way of life and cultural heritage
7 for Montanans.¹²⁰

8 167. These changes are also having an effect on the health of Montana’s fisheries and
9 relatedly, the angling and sportfishing industries. Estimates include a loss of one-third of
10 angling days, resulting in a loss of about 1,800 jobs and \$49 million to the Montana
11 economy.¹²¹

12 168. Climate disruption is already having a significant impact on Montana’s natural
13 environment and, as a result, the state’s recreation and tourism industry. Not only does this
14 effect Youth Plaintiffs’ ability to use and enjoy Montana’s Public Trust Resources, it also
15 carries implications for the future of the Montana economy as the recreation and tourism
16 industry in Montana is responsible for between 34,000 (nonresident) and 89,000
17 (nonresident and resident) jobs. The tourism industry brings in between \$1 billion
18 (nonresident) and \$2.3 billion (nonresident and resident) per year to Montana.¹²²

19 169. Rising temperatures and increased droughts in Montana have dried out the forests
20 and soil, killing trees, increasing the risk of forest fires, and enabling outbreaks of forest
21 insects.¹²³

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23 ¹²⁰ *Id.*

¹²¹ *Id.* at vii.

¹²² *Id.* at v.

¹²³ *What Climate Change Means for Montana*, *supra* note 84.

1 170. Rising temperatures due to climate disruption in Montana disturb the life cycle of
2 the bark beetle, an insect which kills trees.¹²⁴ With rising winter temperatures and fewer
3 freezing days that would normally kill off beetle larva, the bark beetle are living longer,
4 reproducing faster, and accessing trees at higher elevations that had formerly been resistant
5 due to the cold temperatures. In Helena, for example, the winters were, on average, 2.6° F
6 warmer in 2019 than in 1970.¹²⁵ Since 2000, bark beetles have decimated more than 85,000
7 square miles of forest in the western United States—their rapid advance fueled by climate
8 disruption—with Montana experiencing some of the worst impacts.¹²⁶ The forest
9 decimation by the bark beetle has massive impacts on Montana’s logging industry,
10 including deterioration in quality of logging products, as well as impacting wildlife habitat,
11 hunting, and recreation. Youth Plaintiffs Kian, Lander, and Badge have been directly
12 impacted by pine beetles, which have killed trees on their property and in places they
13 recreate.

14 171. The whitebark pine is an example of an important tree threatened by mountain pine
15 beetles. The seeds of whitebark pine are an important food for grizzly bears, birds, and
16 other animals. The whitebark pine is dying out across much of Montana, with the most
17 serious declines in and near Glacier National Park and the Blackfeet Indian Reservation
18 and Yellowstone National Park.¹²⁷

21 ¹²⁴ Zeoann Murphy & Chris Mooney, *Gone in A Generation*, Washington Post (Jan. 29, 2019),
<https://www.washingtonpost.com/graphics/2019/national/gone-in-a-generation/forest-climate-change.html> (updated
22 Sept. 26, 2019).

¹²⁵ Applied Climate Information System, Helena Airport Association Weather Station, <http://scacis.rcc-acis.org/>;
23 Zeoann Murphy & Chris Mooney, *supra* note 124.

¹²⁶ Cheryl Katz, *Small Pests, Big Problems: The Global Spread of Bark Beetles*, Yale Environment 360 (Sept. 21,
2017), <https://e360.yale.edu/features/small-pests-big-problems-the-global-spread-of-bark-beetles>.

¹²⁷ Laura Roady, *Whitebark Pine*, Montana Outdoors (Sept. 2010),
<http://fwp.mt.gov/mtoutdoors/HTML/articles/portraits/whitebarkpine.htm>.

1 172. Montana’s trees provide the crucial function of acting as a “carbon sink,” pulling
2 CO₂ from the atmosphere. In the 1990s, Montana’s forests pulled around 20 million tons
3 of CO₂ from the atmosphere per year. With the decimation of forests due to the combination
4 of drought, pest infestations, and wildfires, forests that have been a sink for GHGs may no
5 longer be able to store as much carbon.¹²⁸

6 173. Higher temperatures are leading to increased severity, frequency, and extent of
7 wildfires (see Figure 15).¹²⁹ Wildfires are expected to get significantly worse in the coming
8 years without immediate steps to limit global heating (see Figure 16).¹³⁰ According to
9 experts, the wildfire season in the western United States is at least 87 days longer than it
10 was in the 1980s.¹³¹ Additionally, the number of large fires (over 1000 acres) has increased
11 four times and the number of acres burned has increased six times. Aside from the danger
12 posed to residents—including Youth Plaintiffs—wildfires also impact ecosystems, property,
13 and livelihoods.¹³² Increases in fire risk is expected due to prolonged fire seasons from
14 warmer temperatures and increased fuel load.¹³³ In 2017—Montana’s worst wildfire
15 season in more than 100 years in terms of number of acres burned—wildfires cost the state
16 approximately \$70 million.¹³⁴ In 2018 wildfires cost the state more than \$95 million.¹³⁵

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18 ¹²⁸ Cathy Whitlock et al., *supra* note 81, at 170.

¹²⁹ Figure prepared with historical incident data from the Northern Rockies Coordination Center, National Interagency Fire Center, https://gacc.nifc.gov/nrcc/predictive/intelligence/ytd_historical/ytd_historical.htm.

19 ¹³⁰ National Research Council, *Climate Stabilization Targets: Emissions, Concentrations, and Impacts over Decades to Millennia* 180 (2011).

20 ¹³¹ Expert Report of Steve W. Running, *Juliana v. United States*, No. 6:15-cv-01517-TC, 13 (D. Or. June 6, 2018) (citing A.L. Westerling, et al., *Warming and Earlier Spring Increase Western U.S. Forest Wildfire Activity*, 313 *Science* 940-43 (2006)).

21 ¹³² *What Climate Change Means for Montana*, *supra* note 84.

22 ¹³³ Cathy Whitlock et al., *supra* note 81, at 170.

23 ¹³⁴ Karl Puckett, *2017 Was State’s Worst Fire Season Since 1910*, Great Falls Tribune, (Feb. 8, 2018), <https://www.greatfallstribune.com/story/news/2018/02/08/2017-fire-season-no-1-produced-largest-fire-states-history/319952002/>.

¹³⁵ Associated Press, *Large Wildfires Cost Montana more than \$95M This Year*, Great Falls Tribune (Nov. 20, 2018), <https://www.greatfallstribune.com/story/news/2018/11/10/large-wildfires-cost-montana-more-than-95-m-year/1957095002/>.

1 Both years were well above the state’s average of around \$20 million per year over the last
2 decade. Wildfires in Montana are estimated to result in potential annual losses of 227
3 homes worth \$53 million, from 2016 to 2050.¹³⁶ Experts expect increased risk of home loss
4 due to wildfires and increased expenditures on firefighting.¹³⁷

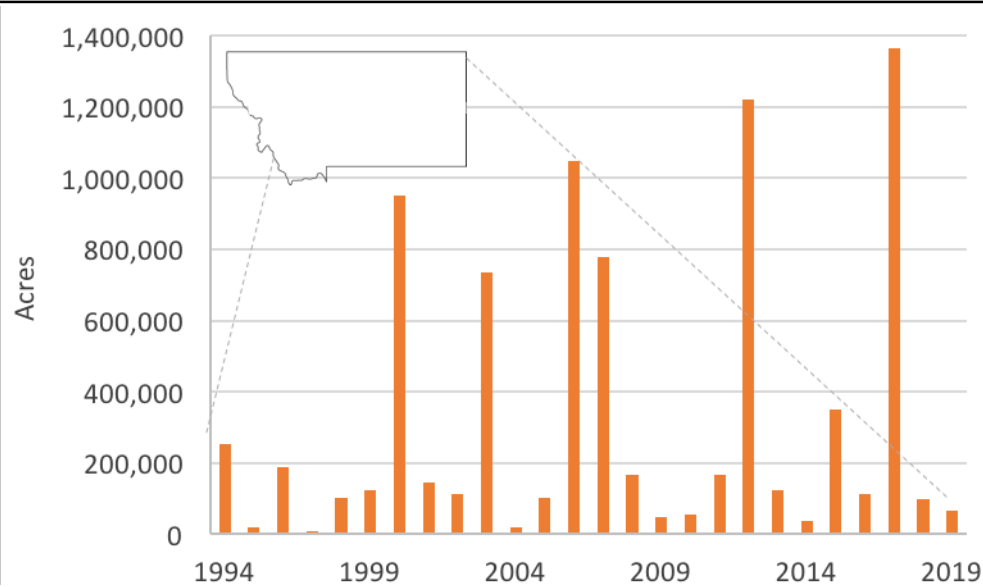
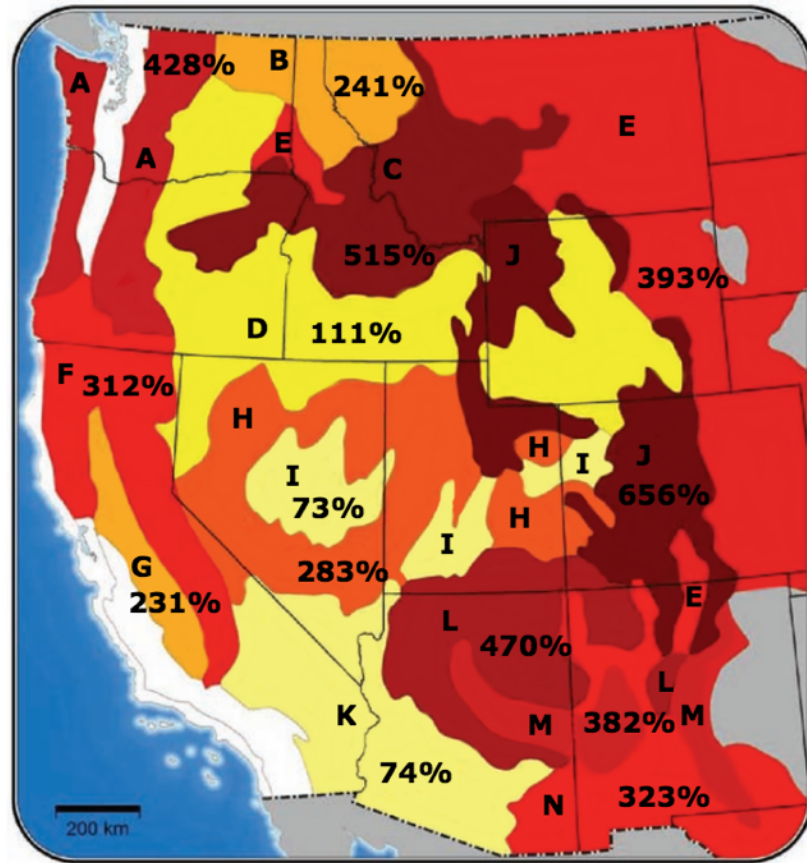


Figure 15: Acres burned annually by wildfires in Montana between 1994 and 2019.

¹³⁶ *The Impact of Climate Change on Montana’s Outdoor Economy*, supra note 114, at 54.

¹³⁷ *Id.* at iv.



- A – Cascade Mixed Forest
- B – Northern Rocky Mt. Forest
- C – Middle Rocky Mt. Steppe-Forest
- D – Intermountain Semi-Desert
- E – Great Plains-Palouse Dry Steppe
- F – Sierran Steppe-Mixed Forest
- G – California Dry Steppe
- H – Intermountain Semi-Desert/Desert
- I – Nevada, Utah Mts. Semi-Desert
- J – South Rocky Mt. Steppe-Forest
- K – American Semi-Desert/Desert
- L – Colorado Plateau Semi-Desert
- M – Ariz., New Mex. Mts. Semi-Desert
- N – Chihuahuan Semi-Desert

Figure 16: Percent increase (relative to 1950-2003) in median annual area burned for ecoregions of the Western United States with a 1°C increase in global average temperatures.

174. Numerous Youth Plaintiffs have been directly impacted by the increase in wildfires in Montana. A wildfire near the home of Youth Plaintiffs Lander and Badge forced them to prepare to evacuate, while Youth Plaintiff Rikki’s ranch has been damaged from wildfires, causing economic losses. The smoke from wildfires has limited the ability of Youth Plaintiffs Mica, Georgi, Grace, and Claire to train and compete in sports at a high level. Additionally, Youth Plaintiffs with asthma and other respiratory conditions,

1 including Ruby, Jeffrey, Nate, and Olivia have to limit outdoor activities when it is smoky
2 as they are uniquely vulnerable to the smoky conditions.

3 175. Fossil fuel extraction and combustion and the resulting climate crisis harms public
4 health and welfare and is already contributing to an increase in asthma, cancer,
5 cardiovascular disease, stroke, heat-related morbidity and mortality, food-borne diseases,
6 and neurological diseases and disorders. Climate disruption also increases occurrence of
7 infectious diseases, including those spread by mosquitos, ticks, and other pests. Doctors
8 and leading medical institutions are recognizing the climate crisis as a “health
9 emergency.”¹³⁸

10 176. There is further risk that as the climate and land use pattern changes, disease vectors
11 may also move north from southern tropical climates. This could lead to increases in public
12 health costs, specifically in terms of vaccinations and treatments. Furthermore, Youth
13 Plaintiffs will be at risk of enduring one or more of these increased health concerns or
14 diseases, and only a portion of the associated health costs may be picked up by insurance
15 or public assistance. The economic impacts of climate disruption will also lead to
16 increasing inequality, as those with financial means are more able to privately bear the
17 costs of disasters, such as floods and wildfires, while those without financial means will
18 not. This will impose a greater burden on those less able to pay for the direct, local
19 consequences of climate disruption.¹³⁹

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¹³⁸ Caren G. Solomon, et al., *Climate Change – A Health Emergency*, 380 N. Engl. J. Med. 3 (2019).

¹³⁹ Expert Report of Joseph E. Stiglitz, *supra* note 89, at ¶ 34.

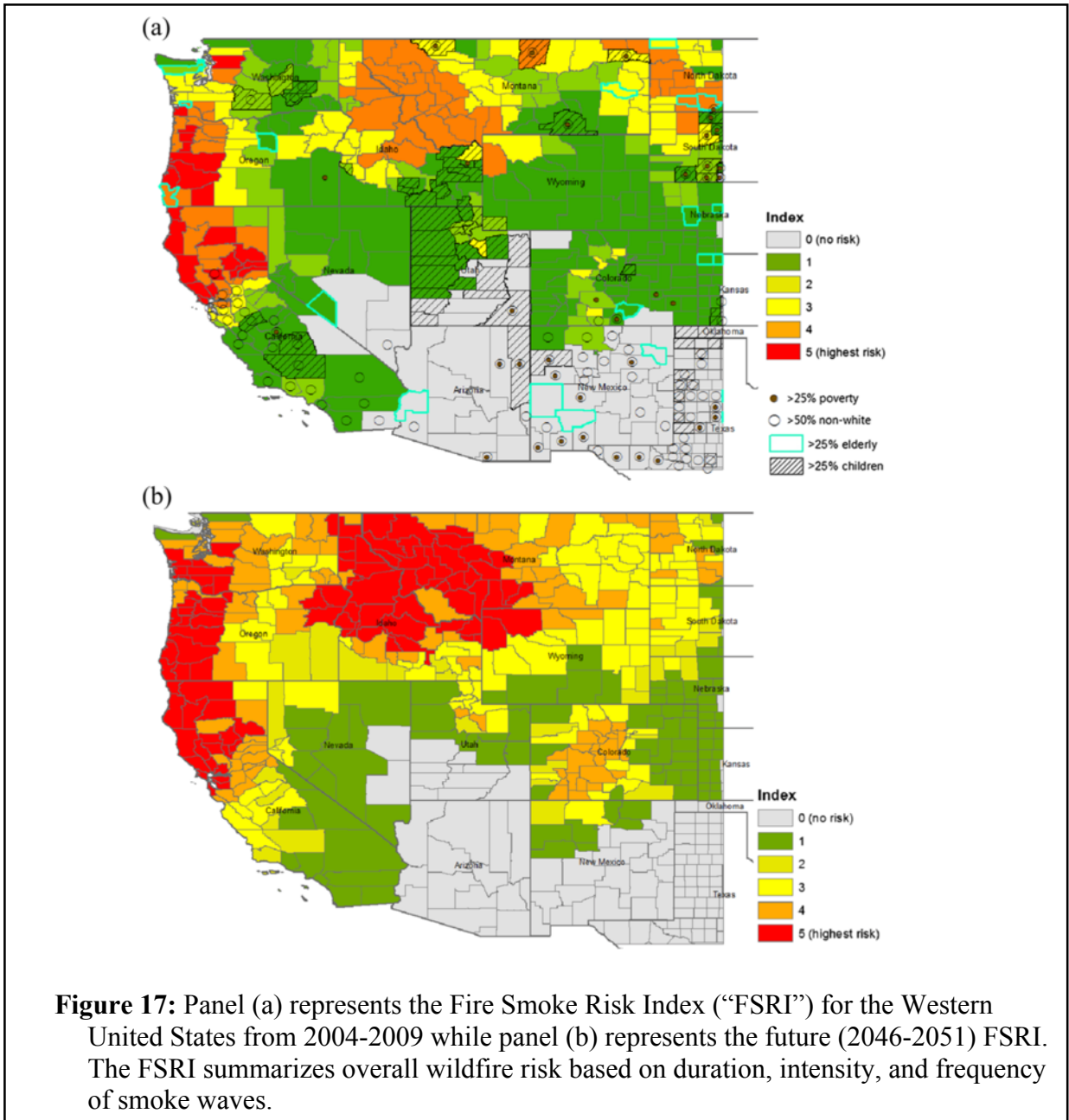
1 **C. Children are the Most Vulnerable to the Climate Crisis and Its Dangerous Impacts**

2 177. All children, even those without pre-existing illness, are considered a “sensitive
3 population” to the effects of the climate crisis because their bodies are still developing.¹⁴⁰
4 Air pollution poses severe health risks for Montana’s youth and is shown to impede their
5 physical development. Montana’s persistent drought conditions and record wildfire
6 seasons have doubled respiratory-related emergency room visits.¹⁴¹ As illustrated in Figure
7 17, panel (a) below, Montana, in particular western Montana, already experiences some of
8 the worst wildfire smoke conditions in the United States.¹⁴² Unless the climate crisis is
9 addressed, the smoke conditions in Montana will get significantly worse, with much of
10 western Montana facing the highest risk factor (Figure 17, panel (b)).

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21 ¹⁴⁰ U.S. Environmental Protection Agency et al., *Wildfire Smoke A Guide for Public Health Officials*, Montana
Department of Environmental Quality (revised May 2016),
22 http://deq.mt.gov/Portals/112/Air/FireUpdates/Documents/wildfire_may2016.pdf.

23 ¹⁴¹ Phil Drake, *Gov. Bullock Creates Climate Change Council*, Great Falls Tribune (Jul. 1, 2019, 1:05 PM),
https://www.greatfallstribune.com/story/news/2019/07/01/montana-governor-creates-climate-solutions-council/1619878001/?cid=twitter_GFTribune.

¹⁴² Jia Coco Liu., et al., *Particulate air pollution from wildfires in the Western US under climate change*, 138 *Climate Change*, 655, 662 (2016).



19. The psychological harms from the climate crisis are acute and chronic and they
20. accrue from impacts such as heat waves, drought conditions, wildfires, air pollution,
21. violent storms, the loss of wildlife, watching glaciers melt, and the loss of familial and
22. cultural foundations and traditions. Many children, including Youth Plaintiffs Olivia and
23. Grace, experience psychological impacts and are distressed from day to day conditions,

1 anxious about the climate crisis, and are unable to alleviate their concerns.¹⁴³ Youth
2 Plaintiffs are acutely aware that the window to avoid locking in irreversible climate change
3 impacts is closing. As climate disruption transforms communities, Youth Plaintiffs and
4 children are likely to experience a feeling that they are losing a place that is important to
5 them, which is a phenomenon called *solastalgia*.¹⁴⁴ Solastalgia describes the gripping sense
6 of existential loss when treasured places are irreparably damaged or destroyed as a result
7 of human carelessness or willful disregard for them, and can cause profound distress.¹⁴⁵
8 This captures the way Youth Plaintiff Badge feels when knowing that the area he was
9 named after is being damaged and degraded due to climate disruption.

10 179. The psychological health effects include elevated levels of anxiety, depression,
11 post-traumatic stress disorder, increased incidences of suicide, substance abuse, social
12 disruptions like increased violence, and a distressing sense of loss. The psychological
13 harms caused by the climate crisis can result in a lifetime of hardships for children.

14 180. Importantly, there can be prompt redress for Youth Plaintiffs' psychological
15 injuries with declaratory and/or injunctive relief. If the Court granted declaratory relief, it
16 would help redress Youth Plaintiffs psychological injuries by making it clear that their
17 fears were understood by the judiciary and by restoring their confidence that there is
18 recourse for government conduct that violates their constitutional rights—it would give
19 them hope and restore their confidence in their government. Injunctive relief would also
20 provide redress for Youth Plaintiffs psychological injuries because they would then know
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23 ¹⁴³ Expert Report of Lise Van Susteren, *Juliana v. United States*, No. 6:15-cv-01517-TC, 2-3 (D. Or. June 8, 2016).

¹⁴⁴ *Id.* at 8.

¹⁴⁵ *Id.* at 8 (citing Glenn Albrecht, '*Solastalgia*': *A New Concept in Health and Identity*, 3 PAN: Philosophy Activism Nature 41).

1 that their government was taking meaningful action to respond to the dangers posed by the
2 climate crisis.

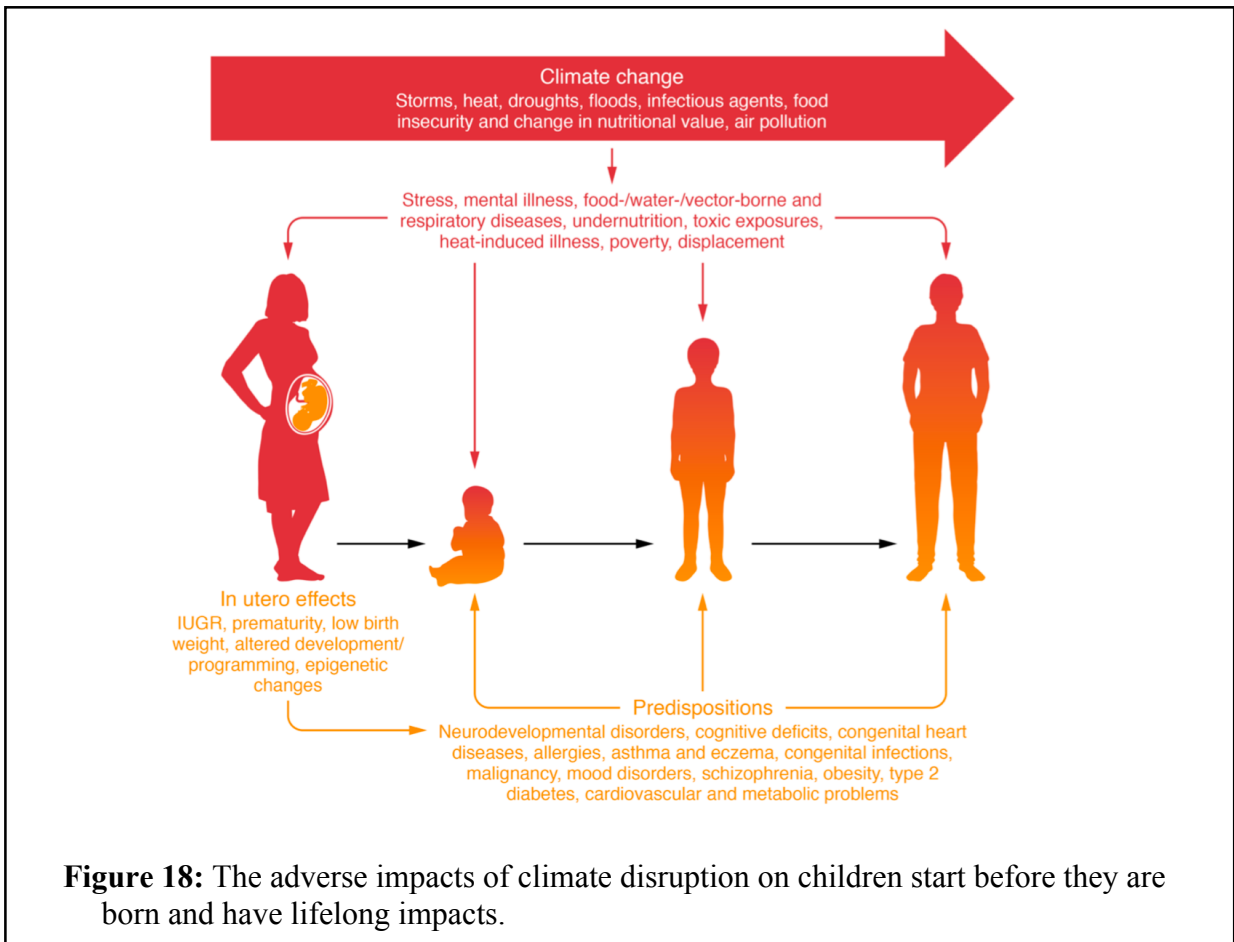
3 181. The physiological features of children make them disproportionately vulnerable to
4 the impacts of the climate crisis and air pollution. Perhaps most important, their organs,
5 such as lungs and brain, are still developing, which makes youth more vulnerable to
6 environmental stresses, pollution, and injuries. Children breathe in more air per unit time
7 than adults and consume more food and water proportional to their body weight, making
8 them more susceptible to polluted or contaminated air, water, or food.¹⁴⁶ The behavior of
9 children, which includes spending more time recreating outside and having a harder time
10 self-regulating, also makes them more vulnerable to excess heat, poor air quality, and other
11 climate impacts. Childhood exposure to climate disruptions and air pollution can result in
12 impaired physical and cognitive development with life-long consequences.

13 182. Children are particularly vulnerable to climate change-related diseases. The vast
14 majority (approximately 88%) of current sufferers of diseases due to climate disruption are
15 children.¹⁴⁷ Allergies are highly prevalent among children and climate disruption
16 exacerbates allergy symptoms, including asthma. An increase in these symptoms can affect
17 children's physical and psychological health by interfering with sleep, play, school
18 attendance, and performance. Certain categories of children are especially vulnerable to
19 climate change impacts and air pollution, for example, children that have pre-existing
20 medical conditions, such as Youth Plaintiffs Jeffrey and Nate, as well as children that are
21 economically disadvantaged or from minority populations, including indigenous peoples.

23 ¹⁴⁶ *Wildfire Smoke A Guide for Public Health Officials*, *supra* note 140.

¹⁴⁷ World Health Organization (WHO), *Quantitative Risk Assessment of the Effects of Climate Change on Selected Causes of Death, 2030s and 2050s*, 48 (Simon Hales, et al., eds., 2014).

1 183. The adverse impacts of the climate crisis and air pollution on the physical and
2 mental health of children can result in life-long challenges and consequences (see Figure
3 18).¹⁴⁸ The climate crisis is limiting children’s potential for development and inhibiting
4 their opportunity to engage in Montana’s most important institutions and heritage.



18 184. Children also face barriers to family formation as a result of the climate crisis. For
19 example, increasingly children, including Youth Plaintiffs Olivia and Grace, are expressing
20 that they do not want to have children of their own because they fear the world that their
21 children would grow up in. Children, including Youth Plaintiffs Rikki and Kian, also face
22

23 ¹⁴⁸ Susan E. Pacheco, *Catastrophic effects of climate change on children’s health start before birth*, The Journal of Clinical Investigation (Jan. 13, 2020), <https://www.jci.org/articles/view/135005>.

1 economic deprivations, including barriers to keeping family wealth and property intact and
2 decreased future economic opportunities. Other children are experiencing forced re-
3 location and the loss of ties to the land, including Youth Plaintiffs Eva, Lander, and Badge.
4 All of these impacts disproportionately impact children, are the consequence of matters
5 beyond their control that they are not responsible for causing, and will impose a lifetime
6 of hardships.

7 **DEFENDANTS' LONGSTANDING KNOWLEDGE**
8 **OF THE DANGERS OF AIR POLLUTION AND CLIMATE DISRUPTION AND**
9 **AUTHORITY TO REDUCE GHG EMISSIONS**

10 185. Montana has known of, but refused to act on, the dangerous impacts of air pollution
11 and climate disruption for over 50 years. In 1968, the Montana Department of Health held
12 the conference “A Montana Strategy for a Livable Environment” at the Montana House of
13 Representatives, during which state representatives and agencies, professors, and scientists
14 explicitly warned of the impacts of air pollution and GHG emissions into the
15 atmosphere.¹⁴⁹ The findings expressed at the conference were to serve as a guide to state
16 agencies.

17 186. The state conference proceedings produced a report on its findings, which found
18 that—

19 [d]ue to excessive combustion not being counterbalanced by vegetational
20 carbon fixation, it is estimated that by the year 2,000 our atmosphere will
21 contain 50% more CO₂ than at present. The new total seems insignificant.
22 However, the temperature regulating effect of CO₂ is tremendous.
23 Conceivably then, our world will be warmer. This sounds enticing at first
glance, but from a biological equilibrium standpoint it could spell disaster.
As we realize, the ideal endpoint of complete combustion is CO₂ + water.
Thus it is predictable that if CO₂ production increases at present rates, we

¹⁴⁹ Montana Department of Health, *A Montana Strategy for a Livable Environment: Conference Proceedings*, 1 (Sep. 15, 1969), <https://ia800907.us.archive.org/15/items/montanastrategyf1968mont/montanastrategyf1968mont.pdf>.

1 will encounter a WATER problem resulting from enough glacial melting to
2 even inundate some coastal cities—like smoggy Los Angeles.¹⁵⁰

3 The state report determined that waste is produced faster than can be recycled and that
4 “our atmosphere is a prime receptacle for much of this waste,” and found that, although
5 air is “mandatory for the life process,” our “air resource is finite.”

6 187. In 1972, the State of Montana held a Constitutional Convention, during which
7 delegates placed significant emphasis on adding a natural resources article to the
8 Constitution that would protect and improve the environment of Montana. In introducing
9 the majority committee report of the Natural Resources Committee of the 1972
10 Constitutional Convention, Delegate C.B. McNeil stated:

11 [t]he committee recommends the strongest environmental section of any
12 state constitution. It is the only constitutional provision with an affirmative
13 duty to enhance the environment [. . .] It provides that the term
14 environmental life-support system is all encompassing, including but not
15 limited to air, water and land. And whatever interpretation is afforded this
16 phrase by the legislature and the courts, there is no question that it cannot
17 be degraded.¹⁵¹

18 Likewise, aware of the dangers of air pollution, Delegate Harper testified:

19 I do not believe that we are in a time when business as usual will get the job
20 done. I do not subscribe to the theory that everything is going along just fine
21 and if we do not change any present laws or present attitudes or present
22 actions, that everything is going to turn out all right [. . .] every intelligent
23 citizen is alarmed, and duly alarmed, at what is happening to the
24 environmental life system in this world today.¹⁵²

25 188. As evidenced by its transcripts, it was the intention of the Constitutional
26 Convention to adopt the strongest constitutional environmental provisions because the
27 delegates were concerned of the irreparable harm of continued pollution and degradation

28 ¹⁵⁰ *Id.* at 15.

29 ¹⁵¹ *Montana Constitutional Convention 1971-1972 Verbatim Transcript Vol. IV, supra* note 1 at 1200.

30 ¹⁵² *Montana Constitutional Convention 1971-1972 Verbatim Transcript Vol. V, at* 1217 (Mar. 1, 1972),
31 https://courts.mt.gov/portals/189/library/mt_cons_convention/vol5.pdf.

1 of the Montana environment, including the atmosphere, waters, and lands.¹⁵³ Delegate
2 Burkhardt noted, “[n]othing is as important that we will do here as guarantee the future of
3 our citizens, and those who come from all over this country and the world, to enjoy the
4 sense of cleanliness and the health of our environment in Montana.”¹⁵⁴

5 189. The 1972 Constitutional Convention also made clear that the delegates were
6 concerned about protecting Montana’s natural environment for their children and future
7 generations. For example, Delegate Champoux stated, “I love Montana; this is why I’m
8 here. And I hope it remains the way it is today, because I want it to be like this for my
9 children.”¹⁵⁵ Delegate Bugbee added, “[a]nd I’d just like each of you to question yourselves
10 about your own children, your own grandchildren, and your own great-grandchildren, and
11 I submit to you that we are using something right now that belongs to them. We’re using
12 their land, and we’re using their air, and we’re using their water; and we have no right to
13 do this. We have no right to take it from them”¹⁵⁶

14 190. In 1989, Montana Senator Max Baucus¹⁵⁷ testified before the federal Senate on the
15 perils of “global climate change.”¹⁵⁸ Referring to the available climate science, he warned
16 that “we can probably not afford to wait until all of the uncertainties have been resolved
17 before we do act. Time will not make the problem go away.”¹⁵⁹ Senator Baucus urged that
18 prudent steps be taken to address climate change, and criticized the federal government’s
19 failure to act on climate, as well as for altering James Hansen’s congressional testimony

21 ¹⁵³ *Montana Constitutional Convention 1971-1972 Verbatim Transcript Vol. IV, supra* note 1 at 1200. (“I believe the
entire delegation will agree that, whichever we adopt, that it is the intention of this Convention to adopt the stronger
of the two.”).

22 ¹⁵⁴ *Id.* at 1205.

23 ¹⁵⁵ *Montana Constitutional Convention 1971-1972 Verbatim Transcript Vol. V, supra* note 152 at 1231.

¹⁵⁶ *Id.* at 1231.

¹⁵⁷ Senator Max Baucus was the Executive Director of Montana’s 1972 Constitutional Convention.

¹⁵⁸ 135 Cong. Rec. S. 14458 (1989).

¹⁵⁹ *Id.*

1 and thereby burying evidence of the grave threat of climate change.¹⁶⁰ Notwithstanding his
2 critique of the federal government’s efforts to bury evidence of climate change, Montana
3 is now doing the very same thing via the Climate Change Exception in MEPA, which
4 prohibits the State from considering the impacts of climate change.

5 191. In 2005, then-Governor Brian Schweitzer directed Defendant DEQ to establish a
6 Climate Change Advisory Committee (“CCAC”). The then-DEQ director Richard Opper
7 appointed 18 Montana citizens to the CCAC, which was also supported by scientific
8 experts, technical and policy experts, and DEQ staff.¹⁶¹

9 192. As part of the CCAC initiative, Montana’s GHG emissions were inventoried in
10 2007, at which time inventories were estimated for each year from 2007 to 1990.¹⁶²
11 Defendant DEQ published the GHG inventory report in 2007.¹⁶³

12 193. In 2007, the final report of the Governor’s Climate Change Advisory Committee
13 was released, which included Montana’ GHG emissions inventory and 54 policy
14 recommendations that were designed to reduce Montana’s GHG emissions to 1990 levels
15 by 2020.¹⁶⁴

16 194. In 2007, the Montana legislature commissioned the Environmental Quality Council
17 to produce a report on climate change in Montana, which it published in 2008.¹⁶⁵ The report
18

19 ¹⁶⁰ *Id.*

20 ¹⁶¹ *Montana Climate Change Action Plan: Final Report of the Governor’s Climate Change Advisory Committee, supra*
note 28 at EX-1.

21 ¹⁶² *Id.*

22 ¹⁶³ See generally Alison Bailie, et al., *Montana Greenhouse Gas Inventory and Reference Case Projections 1990-*
2020, Center for Climate Strategies (CCS) (Sep. 2007),
<https://deq.mt.gov/Portals/112/Energy/ClimateChange/Documents/GreenhouseGasInventory.pdf>.

23 ¹⁶⁴ *Montana Climate Change Action Plan: Final Report of the Governor’s Climate Change Advisory Committee, supra*
note 28 at EX-1.

¹⁶⁵ Sonja Nowakowski, *An Analysis of Climate Change Policy Issues in Montana: A Report to the 61st Legislature,*
Environmental Quality Council (EQC) (2008),
<https://leg.mt.gov/content/Publications/Environmental/2008climatechange.pdf>.

1 suggests the early adoption of cost-effective measures to reduce Montana’s greenhouse gas
2 emissions.¹⁶⁶ These included, but are not limited to, laws to increase building energy
3 efficiency standards, programs to incentivize weatherization and energy efficiency for low-
4 income Montanans, and laws to promote Montana’s local economy.¹⁶⁷

5 195. These reports make clear that Defendants have been aware of Montana’s
6 contributions to anthropogenic climate change for decades and of readily available options
7 to reduce the State’s reliance on fossil fuels and GHG emissions.

8 196. Despite knowledge of the dangers posed by fossil fuels and climate disruption and
9 the readily available policies to reduce the State’s reliance on fossil fuels, in 2011,
10 Montana’s State Energy Policy was amended to explicitly promote fossil fuels as an energy
11 source for Montana.

12 197. Testimony by Senator Ron Erickson regarding the State Energy Policy reveals that
13 the dangers of climate change were specifically raised as reasons for *not* to amending the
14 State Energy Policy to call for the explicit promotion of fossil fuels. Senator Erickson stated
15 before the full Senate that the bill ignored the fact that global climate change is occurring
16 and that “[Montana] ought to be a part of the solution as this nation moves ahead.”¹⁶⁸
17 Notwithstanding concerns raised about climate change, and the available of reliable and
18 cheap sources of renewable energy, the State Energy Policy was amended in 2011 to
19 explicitly promote fossil fuels as an energy source for Montana.

22 ¹⁶⁶ *Id.* at 1.

23 ¹⁶⁷ *Id.*

¹⁶⁸ Senate Floor Session: Hearing on SB 305 Revise Energy Policy, 62nd Cong. 492, 13:10:12 – 13:11:03 (Feb. 22, 2011), <http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/21606?agendaId=98099>.

1 198. Conversely, numerous efforts to pass climate change related legislation in Montana
2 have failed, with the legislation never making it out of committee.¹⁶⁹

3 199. State government officials continue to be aware of the perils of runaway climate
4 change. Governor Bullock recently issued an executive order creating a Montana Climate
5 Solutions Council (“Council”) to prepare the state for the impacts of climate change.¹⁷⁰
6 According to the executive order, “[c]limate change poses a serious threat to Montana’s
7 natural resources, public health, communities, and economy.” However, the executive
8 order neither directs any state agencies to actually reduce GHG emissions, nor does it direct
9 the Council to tailor its plan to the best available climate science. Moreover, the executive
10 order explicitly states that the Council should consider ways to safeguard existing energy
11 assets (which are primarily fossil fuel based). There is no indication that the executive order
12 will actually lead to any reduction in Montana’s GHG emissions, which is further
13 supported by the fact that the Council should cease to exist by August 1, 2020.

14 200. On February 11, 2020, the Council released the *Montana Climate Solutions Plan:
15 Preliminary Recommendation and Key Questions*, which once again simply includes a
16 series of “recommendations” to address climate change adaptation and reducing
17 GHG emissions.¹⁷¹ Even assuming *arguendo* all the “recommendations” were fully
18 implemented, which the Governor’s Executive Order does not require, the preliminary plan
19 fails to delineate how much Montana’s GHG emissions would be reduced, let alone
20 demonstrate that it would bring the State Energy Policy into constitutional compliance.

22 ¹⁶⁹ See, e.g., H.J. 60, 60th Leg. Sess. (Mont. 2007); H.J. 10, 60th Leg. Sess. (Mont. 2007); S.J. 20, 60th Leg. Sess.
23 (Mont. 2007); H.B. 753, 60th Leg. Sess. (Mont. 2007); S.J. 17, 64th Leg. Sess. (Mont. 2015); S.B. 177, 64th Leg.
Sess. (Mont. 2015); H.B. 504, 65th Leg. Sess. (Mont. 2017); H.B. 215, 65th Leg. Sess. (Mont. 2017), S.B. 190, 66th
Leg. (Mont. 2019); S.B. 189, 66th Leg. Sess. (Mont. 2019); H.B. 193, 65th Leg. Sess. (Mont. 2019).

¹⁷⁰ Phil Drake, *supra* note 141.

¹⁷¹ See *supra* note 161, regarding a similar 2005 process by Governor Schweitzer.

1 **THE SCIENCE DICTATES WHAT IS NEEDED**
2 **TO PROTECT YOUTH PLAINTIFFS**

3 201. The best available science today prescribes that global atmospheric CO₂
4 concentrations must be restored to no more than 350 ppm by 2100 (with further reductions
5 thereafter) in order to stabilize Earth’s energy balance and restore the climate system on
6 which human life depends. A global emission reduction and sequestration pathway back to
7 350 ppm by 2100 would stabilize long-term global heating at no more than 1° C above pre-
8 industrial temperatures, with a short-term peak of approximately 1.3° C as a global average.
9 Each government has an obligation to contribute to the requisite CO₂ emission reductions
10 and CO₂ sequestration.

11 202. More than 45 eminent scientists from over 40 different institutions have published
12 in peer-reviewed journals finding that the maximum level of atmospheric CO₂ consistent
13 with protecting humanity and other species is 350 ppm and no one, including the
14 Intergovernmental Panel on Climate Change (“IPCC”), has published any scientific
15 evidence to counter that 350 ppm is the maximum safe concentration of CO₂.¹⁷²

16 203. Two steps are required to reduce the atmospheric CO₂ concentration to 350 ppm by
17 2100: (1) reducing CO₂ emissions; and (2) sequestering excess CO₂ already in the
18 atmosphere. There are various pathways to reduce the atmospheric CO₂ concentration to
19 350 ppm by 2100. For example, if CO₂ emissions were reduced globally, on average, by

20
21 ¹⁷² James Hansen et al., *Target Atmospheric CO₂: Where Should Humanity Aim?*, 2 *The Open Atmospheric Science*
22 *Journal* 217 (2008); James Hansen et al., *Assessing “Dangerous Climate Change”: Required Reduction of Carbon*
23 *Emissions to Protect Young People, Future Generations and Nature*, 8 *PloS one* e81648 (2013); James Hansen et al.,
Ice Melt, Sea Level Rise and Superstorms: Evidence From Paleoclimate Data, Climate Modeling, and Modern
Observations That 2°C Global Warming Could Be Dangerous, 16 *Atmospheric Chemistry* 3761 (2016); James Hansen
et al., *Young People’s Burden: Requirement of Negative CO₂ Emissions*, 8 *Earth Syst. Dynam.* 577 (2017); J.E.N.
Veron. et al., *The Coral Reef Crisis: The Critical Importance of <350 ppm CO₂*, 58 *Marine Pollution Bulletin* 1428
(2009); K. Frieler, et al., *Limiting global warming to 2 °C is unlikely to save most coral reefs*, 3 *Nature Climate Change*
165 (2013).

1 10.9% per year, beginning in 2020, 100 gigatons (equivalent to 100 billion metric tons) of
2 CO₂ would need to be sequestered globally by 2100 through improved land management
3 practices and protection of forests and soils. Alternatively, if CO₂ emission reductions of
4 6% per year began in 2021, 153 gigatons of CO₂ would need to be sequestered globally by
5 2100 through improved land management practices and protection of forests and soils to
6 reach 350 ppm by 2100.

7 204. Importantly, for every additional year of delay, it becomes that much more difficult
8 to reach 350 ppm by 2100. Research indicates 153 gigatons of CO₂ is approaching the
9 upper limit of natural carbon sequestration potential globally, meaning if global emissions
10 peak *after* 2021, achieving 350 ppm by 2100 will almost certainly require extremely
11 expensive technological methods of carbon sequestration. At some point in time,
12 governments' ability to return to safe CO₂ concentrations will become physically
13 impossible for hundreds of years to come.

14 205. These emission reduction pathways reflect the global average emission reductions
15 required to remedy the current climate emergency and stabilize the climate system. While
16 Montana cannot on its own achieve the GHG emission reduction and sequestration
17 measures needed to restore the entirety of Earth's energy imbalance and stop dangerous
18 climate disruption entirely, there are multiple feasible pathways to reduce Montana's
19 emissions in line with what is required to protect Youth Plaintiffs' constitutional rights. If
20 Montana acts to reduce emissions and enhance natural sequestration, it will at minimum
21 reduce the risks of harm to these children by slowing the ongoing heating. Action to reduce
22 emissions today also keeps the achievement of long-term safety a realistic possibility.
23 Regardless of the pathway Defendants choose to reduce emissions, emission reductions

1 should be consistent with the global average emission reductions required to return the
2 global atmospheric CO₂ concentration to 350 ppm by the end of the century.

3 206. Critically, non-fossil fuel-based energy systems across all sectors, including
4 electricity generation and transportation systems, are currently economically feasible and
5 technologically available to employ in Montana.¹⁷³

6 207. Experts have already concluded the feasibility of, and prepared a roadmap for, the
7 transition of Montana's all-purpose energy systems (for electricity, transportation,
8 heating/cooling, and industry) to a 100% renewable portfolio by 2050, which, in addition
9 to direct climate benefits, will create jobs, reduce air pollution, and save lives and costs
10 associated with air pollution.

11 208. Opportunities to sequester carbon through improved land use practices are
12 technically and economically feasible. For example, improved forestry and agricultural
13 practices, such as improved stand management, avoiding tillage with no-till technology,
14 adding winter cover crops to avoid bare soil, diversifying crop rotation, growing perennial
15 grasses or trees on degraded soils, and increasing plant productivity on pastures and
16 rangeland, can provide a net drawdown of atmospheric CO₂, helping to return to safe levels
17 of atmospheric CO₂ or preventing the additional accumulation of dangerous CO₂.

18 209. Any reduction in GHG emissions that results from a declaration that Montana's
19 fossil fuel-based energy system is unconstitutional and an order directing Defendants to
20 bring the energy system into constitutional compliance would help redress Youth
21

22 ¹⁷³ See, e.g., Clean Energy Transition Institute, *Meeting the Challenge of Our Time: Pathways to a Clean Energy*
23 *Future for the Northwest: An Economy-Wide Deep Decarbonization Pathways Study* (2019); Evolved Energy
Research, *Northwest Deep Decarbonization Study* (2019); Mark Z. Jacobson, et al., *100% Clean and Renewable Wind,*
Water, and Sunlight (WWS) All-Sector Energy Roadmaps for the 50 United States, 8 *Energy & Environmental Science*
2093, 2111 (2015).

1 Plaintiffs’ injuries because the amount of additional GHG emissions emitted into the
2 climate system in the near-term will dictate the severity of the heating, the severity of Youth
3 Plaintiffs injuries, and whether Youth Plaintiffs and future generations can survive. The
4 theory of “perfect substitution” or “leakage” under which it is assumed that limiting
5 production of fossil fuels in one place will never limit consumption or affect emissions
6 because another source somewhere else will always step in to substitute for the missing
7 production, has been shown to be false and contrary to basic supply and demand economic
8 principles.

9 210. Protecting Youth Plaintiffs’ constitutional rights and Montana’s environment and
10 natural resources from the climate crisis would save billions of dollars in costs to be borne
11 by Montanans both now and in the future. The costs of climate change mitigation are far
12 smaller than the costs of the damage that climate change could inflict. Renewable energy
13 systems are readily available and feasible to employ in Montana and are already cost-
14 competitive with all fossil fuel energy sources and significantly cheaper than coal. As
15 renewable energy technologies continue to improve and the efficiency increases, renewable
16 energy sources will be significantly cheaper than fossil fuel energy sources in the coming
17 years. If fossil fuel externalities (i.e., the costs of their pollution that are borne by the public)
18 are included in the cost of electricity from coal and gas, the cost of renewable energy is
19 orders of magnitude cheaper.

20 CLAIMS

21 **COUNT I—RIGHT TO CLEAN AND HEALTHFUL ENVIRONMENT,** 22 **INCLUDING THE RIGHT TO A STABLE CLIMATE SYSTEM** 23 **(Mont. Const. Art. II, § 3, § 15, § 17, Art. IX, § 1)**

211. Youth Plaintiffs hereby reallege all paragraphs above as if set forth fully herein.

1 212. The Montana Constitution provides that, “All persons are born free and have certain
2 inalienable rights. They include the right to a clean and healthful environment” Mont.
3 Const. Art. II, § 3. Moreover, “In enjoying these rights, all persons recognize corresponding
4 responsibilities.” *Id.* Consistent with the provision of these rights and responsibilities the
5 Montana Constitution further provides that, “The state and each person shall maintain and
6 improve a clean and healthful environment in Montana for present and future generations.”
7 Mont. Const. Art. IX, § 1. As cogently articulated by the Montana Supreme Court:

8 We conclude, based on the eloquent record of the Montana Constitutional
9 Convention that to give effect to the rights guaranteed by Article II, Section
10 3 and Article IX, Section 1 of the Montana Constitution they must be read
11 together and consideration given to all of the provisions of Article IX,
12 Section 1 as well as the preamble to the Montana Constitution. In doing so,
13 we conclude that the delegates’ intention was to provide language and
14 protections which are both anticipatory and preventative. The delegates did
15 not intend to merely prohibit that degree of environmental degradation
16 which can be conclusively linked to ill health or physical endangerment.
17 Our constitution does not require that dead fish float on the surface of our
18 state’s rivers and streams before its farsighted environmental protections
19 can be invoked.

20 *Montana Env’tl. Info. Ctr. v. Dep’t of Env’tl. Quality*, 1999 MT 248, ¶ 77, 296 Mont. 207,
21 230, 988 P.2d 1236, 1249.

22 213. Moreover, eliminating any doubt that these farsighted anticipatory and preventative
23 provisions can be invoked by the Youth Plaintiffs, the Montana Constitution further
provides that, “The rights of persons under 18 years of age shall include, but not be limited
to, all the fundamental rights of this Article unless specifically precluded by laws which
enhance the protection of such persons.” Mont. Const. Art. II, § 15.

24 214. At its most fundamental level, a clean and healthful environment includes and
requires a stable climate system capable of sustaining human life and liberties. The “quality
of life, equality of opportunity and the blessings of liberty for this and future generations,”

1 which the Montana Constitution enshrines all, depend upon a stable climate system.
2 Without a stable climate system there is no clean and healthful environment—and Montana
3 as we know it would cease to exist.

4 215. Montana’s clean and healthful environment provides an essential life support
5 system and is necessary in order for Youth Plaintiffs to be able to enjoy their lives and
6 liberties. A clean and healthful environment is one that is free from dangerous levels of
7 anthropogenic CO₂ and other GHG emissions. Montana’s constitutional right to a clean
8 and healthful environment prohibits environmental degradation that causes ill health or
9 physical endangerment and unreasonable depletion or degradation of the state’s natural
10 resources.

11 216. Defendants, by and through their implementation of the State Energy Policy, Mont.
12 Code Ann. § 90-4-1001(c)-(g), including the aggregate acts of Defendants that
13 affirmatively authorize fossil fuel production, consumption, and combustion resulting in
14 dangerous levels of GHGs described herein, and MEPA’s Climate Change Exception, are
15 unconstitutionally depleting and degrading Montana’s environment and natural resources
16 and causing and contributing to the dangerous destabilization of the climate system,
17 thereby depriving the Youth Plaintiffs of their constitutionally guaranteed rights under the
18 Montana Constitution Article II, Sections 3, 15, 17, and Article IX, Section 1.

19 217. Regarding the Youth Plaintiffs’ right to a clean and healthful environment, the
20 Montana Supreme Court has further instructed that “as to any statute or rule which
21 implicates that right must be strictly scrutinized and can only survive scrutiny if the State
22 establishes a compelling state interest and that its action is closely tailored to effectuate
23 that interest and is the least onerous path that can be taken to achieve the State’s objective.”

1 *Montana Env'tl. Info. Ctr. v. Dep't of Env'tl. Quality*, 1999 MT 248, ¶ 63. There is no
2 interest, compelling or otherwise, that justifies Defendants' deprivation of Youth Plaintiffs'
3 fundamental right to a clean and healthful environment "for present and future
4 generations," including a stable climate system. Nor is Defendants' conduct narrowly
5 tailored to effectuate any such interest.

6 218. Youth Plaintiffs have no adequate and speedy remedy to obtain full legal redress
7 other than to seek declaratory and injunctive relief in this Court. Youth Plaintiffs lack non-
8 equitable remedies to restrain Defendants from acting in a manner that violates Youth
9 Plaintiffs' constitutional rights under Article II, Sections 3, 15, and 17, and Article IX,
10 Section 1, of the Montana Constitution.

11 **COUNT II—RIGHT TO SEEK SAFETY, HEALTH, AND HAPPINESS**
12 **(Mont. Const. Art. II, § 3, § 15, § 17, Art. IX, § 1)**

13 219. Youth Plaintiffs hereby reallege all paragraphs above as if set forth fully herein.

14 220. Article II, Section 3 of the Montana Constitution guarantees the rights to seek
15 safety, health, and happiness in all lawful ways to all persons. Article II, Section 17
16 provides, "No person shall be deprived of life, liberty, or property without due process of
17 law." Article II, Section 15 specifically extends these rights to persons under 18 years of
18 age.

19 221. Despite Defendants' longstanding knowledge of the dangers of fossil fuels and
20 GHG emissions, Defendants continue to perpetuate a State Energy Policy, Mont. Code
21 Ann. § 90-4-1001(c)-(g), and implement actions thereunder, that unconstitutionally
22 interfere with Youth Plaintiffs safety, health, and happiness. Furthermore, under the
23 Climate Change Exception to MEPA, Mont. Code Ann. § 75-1-201(2)(a), Defendants have

1 failed to disclose the climate impacts of their state-sponsored projects and state actions
2 including climate impacts to children's safety, health, and happiness.

3 222. Defendants' conduct dangerously deprives the Youth Plaintiffs of their rights under
4 Article II, Section 3 to seek safety, health, and happiness because it exposes these
5 vulnerable children to physical injury and disease; serious psychological, social, and
6 spiritual harm and trauma; interferes with their capacity for growth and development; and
7 threatens their personal security and family life, all in violation of Youth Plaintiffs rights
8 under Article II, Section 17.

9 223. Pursuant to and in furtherance of Defendants' State Energy Policy, Defendants have
10 acted, and continue to act, affirmatively to place Youth Plaintiffs in a position of
11 foreseeable danger, with deliberate indifference to their safety, health, and happiness.

12 224. Defendants' continue to place Youth Plaintiffs in a position of danger, violating
13 their rights to seek safety, health, and happiness, by failing to implement readily available
14 laws, policies, plans, and laws for climate stabilization, or any other comprehensive
15 remedial measures that would protect Youth Plaintiffs' safety, health, and happiness.
16 Although Defendants have longstanding, actual knowledge of the substantial risk of harm
17 to Youth Plaintiffs, Defendants have not taken necessary or feasible steps to address,
18 ameliorate, and/or reduce the risk of such harm.

19 225. There is no interest, compelling or otherwise, that justifies Defendants' deprivation
20 of Youth Plaintiffs' fundamental rights to due process and to seek safety, health, and
21 happiness in all lawful ways. Nor is Defendants' conduct narrowly tailored to effectuate
22 any such interest.
23

1 226. Youth Plaintiffs have no adequate speedy remedy to obtain full legal redress other
2 than to seek declaratory and injunctive relief in this Court. Youth Plaintiffs lack non-
3 equitable remedies to restrain Defendants from acting in a manner that violates Youth
4 Plaintiffs’ constitutional rights under Article II, Sections 3, 15, and 17, and Article IX,
5 Section 1 of the Montana Constitution.

6 **COUNT III—INDIVIDUAL DIGNITY AND EQUAL PROTECTION**
7 **(Mont. Const. Art. II, § 4, § 15)**

8 227. Youth Plaintiffs hereby reallege all paragraphs above as if set forth fully herein.

9 228. The dignity clause of Article II, Section 4 commands that, “The dignity of the
10 human being is inviolable. No person shall be denied the equal protection of the laws.” As
11 the Montana Supreme Court has instructed:

12 Article II, Section 15 provides: ‘Rights of persons not adults. The rights of
13 persons under 18 years of age shall include, but not be limited to, all the
14 fundamental rights of this Article unless specifically precluded by laws
15 which enhance the protections of such persons.’ This section must be read
16 in conjunction with the guarantee of equal protection found in Article II,
17 Section 4. The report of the Bill of Rights Committee of the Constitutional
18 Convention indicates that one of the primary purposes of Article II, Section
19 15 was to remedy the fact that minors had not been accorded full recognition
20 under the equal protection clause of the United States Constitution.

21 *Matter of S.L.M.*, 287 Mont. 23, 951 P.2d 1365 (1997) (*citing* Montana Constitutional
22 Convention, Vol. II at 635–36).

23 229. The State Energy Policy, Mont. Code Ann. § 90-4-1001(c)-(g), the MEPA Climate
Change Exception, and aggregate acts taken by Defendants described herein, have violated
and continue to violate the fundamental rights of Youth Plaintiffs to individual dignity
under Article II, Section 4 of the Montana Constitution. Defendants’ conduct deprives
Youth Plaintiffs of “the moral right and moral responsibility to confront the most
fundamental questions about the meaning and value of their own lives and the intrinsic

1 value of life in general, answering to their own consciences and convictions,” which the
2 Montana Supreme Court has described as the hallmark of individual dignity. *Armstrong v.*
3 *State*, 1999 MT 261 ¶ 72, 296 Mont. 361, 989 P.2d 364 (1999).

4 230. The Defendants have demeaned the “worth and [] basic humanity” of Youth
5 Plaintiffs by infringing on their ability to freely and meaningfully practice their cultural
6 and spiritual beliefs.

7 231. Children and youth hold the same constitutional rights as adults yet their political
8 powerlessness, unique physiological characteristics and vulnerabilities, and lack of
9 autonomy and dependency on caregivers render children and youth more vulnerable to
10 rights violations. Children and youth are at a critical development stage in life, as their
11 capacities evolve and their physiological and psychological maturity develops more rapidly
12 than at any other time in life.

13 232. These immutable characteristics of children and youth place Youth Plaintiffs in a
14 separate suspect, or quasi-suspect, class in need of extraordinary protection pursuant to the
15 principles of equal protection.

16 233. Children and youth, as a suspect class, historically are saddled with such
17 disabilities, subjected to purposeful unequal treatment, and relegated to such position of
18 political powerlessness as to command extraordinary protection from majoritarian political
19 process.

20 234. For purposes of the present action, Youth Plaintiffs should be treated as a protected
21 class. Youth Plaintiffs will continue to disproportionately experience the catastrophic
22 impacts of a destabilized climate. Adults will not experience the harms to the extent
23 experienced by Youth Plaintiffs because youth are disproportionately vulnerable to the

1 irreversible impacts of the climate crisis and the worst impacts of climate disruption caused
2 by Defendants' aggregate acts today will occur in the future. Youth Plaintiffs are the living
3 generation that will be most affected by the actions of Defendants.

4 235. Defendants' State Energy Policy also discriminates against Youth Plaintiffs' in the
5 exercise of their fundamental and inalienable constitutional rights to a clean and healthful
6 environment; safety, health, and happiness; individual dignity; and Public Trust Resources.
7 Defendants' continue to materially cause and contribute to irreversible climate damage,
8 infringing on Youth Plaintiffs fundamental rights and abridging central precepts of
9 equality. As a result, the harm caused by Defendants has denied Youth Plaintiffs the same
10 protection of fundamental rights afforded to prior and present generations of adult citizens.
11 The imposition of this disability serves only to disadvantage and subordinate Youth
12 Plaintiffs as members of the class of youth and children.

13 236. Defendants' aggregate acts in perpetuation of the State Energy Policy and the
14 Climate Change Exception to MEPA reflect a short-term policy to favor the present
15 generation's interests to the long-term detriment to Youth Plaintiffs. Montana's tri-partite
16 constitutional democratic system of government is designed to check such a dysfunctional
17 majoritarian outcome and to protect those that are in the minority or are politically
18 powerless, such as the Youth Plaintiffs who cannot vote, from the tyranny of the majority.
19 Here, this check is especially appropriate because irreparable harm is imminent if
20 Defendants are not restrained, and Youth Plaintiffs will no longer be able to secure equal
21 protection of the laws.

22 237. Defendants' State Energy Policy and the Climate Change Exception to MEPA
23 discriminate against Youth Plaintiffs as members of the protected class of children *and*

1 with respect to Youth Plaintiffs’ fundamental rights, and are not narrowly tailored to serve
2 a compelling state interest. Similarly, Defendants cannot satisfy intermediate scrutiny or
3 rational basis review.

4 238. As a result of Defendants’ unlawful State Energy Policy and the Climate Change
5 Exception to MEPA, Youth Plaintiffs seek declaratory and injunctive relief in this Court.
6 Youth Plaintiffs suffer and will continue to suffer injury due to Defendants’
7 implementation and enforcement of the State Energy Policy, and until Defendants are
8 restrained.

9 **COUNT IV—PROTECTION OF MONTANA’S CLEAN AND HEALTHFUL**
10 **ENVIRONMENT AND PUBLIC TRUST RESOURCES FOR PRESENT AND FUTURE**
11 **GENERATIONS**
12 **(Mont. Const. Art. IX, § 1, § 3)**

13 239. Youth Plaintiffs hereby re-allege and incorporate by reference each of the
14 allegations set forth above.

15 240. The rights of the public and future generations as beneficiaries under the Public
16 Trust Doctrine are an attribute of sovereignty that predate Montana’s Constitution, they are
17 secured by the Constitution, and they cannot be abrogated. *Montana Coalition for Stream*
18 *Access v. Curran*, 210 Mont. 38, 682 P.2d 163 (1984); *Montana Coalition for Stream*
19 *Access v. Hildreth*, 211 Mont. 29, 684 P. 2d 1088 (1984).

20 241. Under Article IX, Section 1(1), “The state and each person shall maintain and
21 improve a clean and healthful environment in Montana for present and future generations.”
22 Likewise reflecting public trust principles, the Preamble to Montana’s Constitution states
23 that the Constitution was ordained and established for “this and future generations.”

24 242. Article IX, Section 1(3) mandates that, “The legislature shall provide adequate
25 remedies for the protection of the environmental life support system from degradation and

1 provide adequate remedies to prevent unreasonable depletion and degradation of natural
2 resources.” At the 1972 Montana Constitutional Convention, Delegate C.B. McNeil
3 emphasized that:

4 Subsection 3 mandates the Legislature to provide adequate remedies to
5 protect the environmental life-support system from degradation. The
6 committee intentionally avoided definitions, to preclude being restrictive.
7 And the term ‘environmental life-support system’ is all-encompassing,
8 *including but not limited to air, water and land; and whatever interpretation*
9 *is afforded this phrase by the Legislature and courts, there is no question*
10 *that it cannot be degraded.*¹⁷⁴

8 243. Under Article IX, section 3(3), “*All surface, underground, flood, and atmospheric*
9 *waters* within the boundaries of the state are the property of the state for the use of its
10 people and are subject to appropriation for beneficial uses as provided by law” (emphasis
11 added). The Montana Supreme Court has recognized this provision as an underpinning of
12 the Public Trust Doctrine for water rights, including atmospheric waters, under the
13 Montana Constitution. *Galt v. Montana*, 225 Mont. 142, 731 P.2d 912, 914-15 (1987); *see*
14 *also, Montana Trout Unlimited v. Beaverhead Water Co.*, 2011 MT 151, ¶¶ 29, 30, 361
15 Mont. 77, 255 P.3d 179.

16 244. The nature of the environmental rights and responsibilities provided for by Articles
17 II and IX cannot be interpreted separately and are applied in tandem.¹⁷⁵ Thus, state action
18 that implicates either will be strictly scrutinized.¹⁷⁶ Moreover, Articles II and IX, taken
19 together with Montana’s common law, provide a compelling basis for the Courts’
20 recognition of the Public Trust Doctrine over the atmosphere in Montana.

22 ¹⁷⁴ Larry M. Elison & Fritz Snyder, *The Montana State Constitution: A Reference Guide 168*
23 (Greenwood Press 2001) (emphasis added); *see also Montana Constitutional Convention Proceedings*
vol. 4, 1201 (Mont. Legis. & Legis. Council 1972), <http://courts.mt.gov/library/montanalaws.mcp.x>.

¹⁷⁵ *Montana Env'tl. Info. Ctr. v. Dep't of Env'tl. Quality*, 1999 MT 248, ¶ 77, 296 Mont. 207, 230, 988 P.2d 1236, 1249.

¹⁷⁶ *Id.*

1 245. Montana's Public Trust Resources also include those other essential natural
2 resources that are of vital public concern to the citizens of Montana, including the
3 atmosphere (air), fish and wildlife, wetlands, public lands, submerged lands, and the banks
4 of waters to the high water mark. Public Trust rights, secured by the Public Trust Doctrine,
5 include the rights of present and future generations to access, use, and enjoy these essential
6 resources that are protected by Montana's Public Trust Doctrine. The public's interest in
7 using and accessing such vital natural resources includes the rights of navigation, fishing,
8 hunting, commerce, and recreational uses. The atmosphere is indistinguishably interrelated
9 with water and there is always water in the atmosphere. Harm to the atmosphere negatively
10 affects waters, fish and wildlife, wetlands, and public lands.

11 246. The Public Trust Doctrine requires all sovereign governments, including
12 Defendants as trustees, to maintain control, protect, preserve, and prevent substantial
13 impairment to and waste of Public Trust Resources for the benefit of all Montanans,
14 including Youth Plaintiffs and future generations of Montanans. Defendants, as trustees,
15 also have an obligation to refrain from acting in a manner that abdicates control of Public
16 Trust Resources.

17 247. Defendants, as trustees, have a duty to administer and manage Public Trust
18 Resources with loyalty to and in the interest of trust beneficiaries—all present and future
19 generations of Montanans, including Youth Plaintiffs. As trustees, Defendants have a duty
20 of impartiality prohibiting them from favoring one class or generation of beneficiaries over
21 another in the management of Public Trust Resources. Present and future generations are
22 equally protected classes of beneficiaries under Montana's Constitution. Defendants have
23

1 a duty of care to exercise appropriate skill, prudence, and caution in managing Public Trust
2 Resources.

3 248. By and through Defendants' State Energy Policy, Mont. Code Ann. § 90-4-1001(c)-
4 (g), and the Climate Change Exception to MEPA, as evidenced by and implemented
5 through Defendants' affirmative aggregate and systemic actions, Defendants have
6 unconstitutionally caused, and continue to cause, the substantial impairment to, and waste
7 of, Public Trust Resources, including the atmosphere, waters of Montana, fish and wildlife,
8 and other Public Trust Resources. The dangerous levels of greenhouse gas emissions that
9 Defendants have authorized to be emitted into the atmosphere have a scientifically
10 demonstrable effect on the Youth Plaintiffs' ability to use, access, enjoy and navigate the
11 state's waters and other Public Trust Resources.

12 249. By and through Defendants' State Energy Policy, Mont. Code Ann. § 90-4-1001(c)-
13 (g), and the Climate Change Exception to MEPA, as evidenced by their affirmative
14 aggregate and systemic actions, Defendants have abdicated control over and alienated
15 substantial portions and capacities of Public Trust Resources in favor of the short-term
16 interests of private parties, authorizing those private parties to treat our atmosphere as a
17 dump for their carbon emissions and profit off of developing Montana's fossil fuel
18 resources to the detriment of Youth Plaintiffs and future generations of Montanans. Such
19 policies, practices, and customs prejudice the Public Trust rights and interests of Youth
20 Plaintiffs and future generations of beneficiaries in violation of Defendants' duties of
21 loyalty, impartiality, and prudence.

22 250. By and through Defendants' State Energy Policy, Mont. Code Ann. § 90-4-1001(c)-
23 (g), and the Climate Change Exception to MEPA, as evidenced by their affirmative

1 aggregate and systemic actions, Defendants have breached their affirmative duty to protect
2 and improve a clean and healthful environment in Montana—which includes the protection
3 and improvement of the atmosphere (air) and all essential natural Public Trust Resources—
4 for present and future generations under Article IX, Section 1(1) of the Montana
5 Constitution.

6 251. As a result of Defendants’ unlawful State Energy Policy, Youth Plaintiffs seek
7 declaratory and injunctive relief in this Court. Youth Plaintiffs suffer and will continue to
8 suffer injury due to Defendants’ implementation and enforcement of the State Energy
9 Policy and the Climate Change Exception to MEPA until Defendants are restrained.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Youth Plaintiffs respectfully requests that this Court grant the following
12 relief:

- 13 1. Adjudge and declare that the State Energy Policy, Mont. Code Ann. § 90-4-1001(c)-(g),
14 the aggregate affirmative acts, policies, and conditions taken thereunder, and the Climate
15 Change Exception to MEPA, Mont. Code Ann. § 75-1-201(2)(a), are in violation of the
16 following Articles of the Montana Constitution: Article II, Section 3; Article II, Section 4;
17 Article II, Section 17; Article IX, Section 1; Article IX, Section 3; and the Public Trust
18 Doctrine;
- 19 2. Adjudge and declare that the State Energy Policy, Mont. Code Ann. § 90-4-1001(c)-(g), is
20 facially unconstitutional;
- 21 3. Adjudge and declare that the Climate Change Exception to MEPA, Mont. Code Ann. § 75-
22 1-201(2)(a), is facially unconstitutional;

1 4. Adjudge and declare that Youth Plaintiffs’ fundamental constitutional right to a clean and
2 healthful environment includes a stable climate system that sustains human lives and
3 liberties and that said right is being violated;

4 If awarded declaratory relief, Youth Plaintiffs respectfully request the Court fashion an
5 equitable remedy that it deems just and proper, including granting the following equitable
6 relief:

7 5. Permanently enjoin Defendants, their agents, employees and all persons acting in concert
8 with them, from subjecting Youth Plaintiffs to the State’s Energy Policy, Mont. Code Ann.
9 § 90-4-1001(c)-(g), the aggregate affirmative acts, policies, and conditions described
10 herein, and the Climate Change Exception to MEPA, Mont. Code Ann. § 75-1-201(2)(a);

11 6. An order requiring Defendants to prepare a complete and accurate accounting of Montana’s
12 GHG emissions, including those emissions caused by the consumption of fossil fuels
13 extracted in Montana and consumed out of state, and Montana’s embedded emissions;

14 7. An order requiring Defendants to develop a remedial plan or policies to effectuate
15 reductions of GHG emissions in Montana consistent with the best available science and
16 reductions necessary to protect Youth Plaintiffs’ constitutional rights from further
17 infringement by Defendants, and to reduce the cumulative risk of harm to those rights; to
18 submit the remedial plan to the Court by a date certain; and to implement the plan;

19 8. An order that, if necessary, a special master or equivalent, with appropriate expertise, be
20 appointed to assist the Court in reviewing the remedial plan for efficacy;

21 9. An order retaining jurisdiction over this action until such time as Defendants have fully
22 complied with the orders of this Court, or there are adequate assurances that Defendants
23 will continue to comply in the future absent continuing jurisdiction;

- 1 10. An order awarding Youth Plaintiffs their reasonable attorneys' fees and costs; and
2 11. Such further or alternative relief as the Court deems just and equitable.

3
4 Respectfully submitted this 13th day of March, 2020,

5
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