



## Montana's Climate Change Lawsuit: the Right to a Clean and Healthful Environment

On August 14, District Court Judge Seeley issued a 103-page [opinion](#) ruling in favor of the youth plaintiffs, in a first of its kind climate change trial in the U.S. Judge Seeley declared that two provisions of Montana's statutes were unconstitutional and permanently enjoined them.

If you watched the trial to the Court on Zoom, as I did, the ruling was not particularly surprising.

### The Youth Plaintiffs' Claims

Earlier blogs ([May 17](#) and [June 23](#)) reviewed the substantive rulings that were issued prior to the trial by Judge Seeley and outlined the youth plaintiffs' claims.

In summary, the plaintiffs embraced the public trust doctrine and pursued challenges pursuant to the Montana Constitution. The 16 youth plaintiffs challenged the constitutionality of Montana's fossil fuel-based State Energy Policy and the "climate change exception" in the Montana Environmental Policy Act (MEPA). They alleged that the Governor and state agency defendants had continued "to act affirmatively to exacerbate the climate crisis" despite their awareness that the plaintiffs were living under "dangerous climatic conditions that create an unreasonable risk of harm."

The youth plaintiffs claimed that the Montana State Constitution guarantees residents "the right to a clean and healthful environment," and that the Governor and the state agency defendants are responsible for maintaining and improving the environment for present and future generations. The plaintiffs asked the court for declarations that the State Energy Policy and the climate change exception violate

the public trust doctrine and constitutional provisions that protect the right to a clean and healthful environment; the right to seek safety, health, and happiness; and the right to individual dignity and equal protection.

## **Procedural History**

The first nine pages of the Court's ruling reviewed the tortured procedural history of the case including, among many other filings and rulings, the March 13, 2020, filing of the complaint; the Court's initial ruling on August 14, 2021, concerning the defendant's motion to dismiss; the Montana Supreme Court's denial of the defendants first petition for writ of supervisory control; discovery including among other things, 36 depositions, 22 expert reports, and exchanges of over 50,000 pages of documents; rulings on the defendants' motion for summary judgment; enactment of legislation repealing the Montana State Energy Policy, which set up the defendants' subsequent motion to partially dismiss for mootness; the legislature's subsequent amendment of the MEPA limitation via HB 971; the defendant's subsequent motion to dismiss MEPA claims as moot based on the legislature's enactment of HB 971; a second Emergency Petition for Writ of Supervisory Control which was denied by the Montana Supreme Court; and finally, a trial that lasted from June 12–June 20, 2023, involving 27 witnesses and 172 exhibits.

## **Findings of Fact**

Judge Seeley made the following findings:

- Climate change harms children and specifically the youth plaintiffs. *Section III of the opinion.*
- Climate change is already adversely affecting Montana's natural environment. *Section IV.*
- Climate change is already harming the plaintiffs. *Section V.*
- The defendants' actions contribute to climate change and harm the plaintiffs. *Section VI.*
- The MEPA limitation and its implementation that statutorily prevented the defendants from considering climate change impacts and GHG emission when conducting environmental reviews is unconstitutional. *Section VII.*
- The MEPA limitation prevents full review of the technologically and economically available alternatives to fossil fuel energy in Montana. *Section VIII.*

The 1972 Montana Constitution requires that “the state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations” and that the delegates to the 1972 Constitutional Convention “intended to adopt the strongest preventative and anticipatory constitutional environmental provisions possible to protect Montana’s air, water, and lands for present and future generations.”

## **Conclusions of Law**

### *Standing*

The Court concluded that the youth plaintiffs have standing stating, in part, that the youth plaintiffs proved “causation” and “redressability” at trial and:

Plaintiffs suffer and will continue to suffer injuries due to the State’s statutorily mandated disregard for climate change and GHG emission in the MEPA Limitation and due to SB 557’s removal of MEPA’s preventative equitable remedies.

### *MEPA Revisions Unconstitutional*

Citing the 2020 decision of the Montana Supreme Court in *Park County Environmental Council v. Montana Department of Environmental Quality* (477 P.3d 288 (Mont. 2020)), the Court held that Montana Code section 75-1-201(6)(a)(ii) is “facially unconstitutional” under the *Park County* ruling. In *Park County*, the state Supreme Court held that:

Montanans’ right to a clean and healthful environment is complemented by an affirmative duty upon their government to take active steps to realize this right.

Judge Seely concluded:

Pursuant to the [Supreme] Court’s decision in *Park Cnty*, Mont. Code Ann. Section 75-1-201(6)(a)(iii) is facially unconstitutional because it eliminates MEPA litigants’ remedies that prevent irreversible degradation of the environment, and it fails to further a compelling state interest.

### *The Public Trust Doctrine*

The trial Court embraced the “Public Trust Doctrine” – not because of any particular personal endorsement of the concept, but rather because:

The Public Trust Doctrine is already codified in the Montana Constitution in Art. IX, Sec. 3 [citing *Galt v. State*, 225 Mont. 142, 144, 146, 731 P.2d 912, 913, 914 (1987); *Mont. Coal. For Stream Access v. Curran*, 210 Mont. 38, 682 P.2d 163 (1984), and Mont. Const. Art. IX, Sec. 3(3).].

### *Montana Constitution*

And finally, the MEPA limitation violates the Montana Constitution. The trial Court’s ruling on this issue follows on the heels of over six pages of careful analysis concluding in part:

By prohibiting consideration of climate change, GHG emissions, and how additional GHG emissions will contribute to climate change or be consistent with the Montana Constitution, the MEPA Limitation violates Plaintiffs’ right to a clean and healthful environment and is facially unconstitutional.

Appeals are certain. The defendants confirmed that even before the Court’s decision. And Judge Seeley certainly gives the appellate courts a smorgasbord of issues to address.

*This post was drafted by [John Watson](#), an attorney in the Denver, Colorado office of Spencer Fane LLP. For more information, visit [www.spencerfane.com](http://www.spencerfane.com).*