

1 Leslie Halligan, District Court Judge  
Fourth Judicial District  
2 Missoula County Courthouse  
200 West Broadway  
3 Missoula, Montana 59802  
(406) 258-4771  
4  
5

FILED APR 22 2026

By AMY MCGHEE CLERK  
Deputy

6 MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

<p>7 PROTECT THE CLEARWATER, 8 Plaintiff, 9 v. 10 MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY, 11 Defendant, and 12 LHC, INC. 13 Intervenor Defendant.</p>	<p>Dept. No. 1 Cause No. DV-32-2023-717  <b>ORDER ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT</b></p>
--	--

14 Before the Court is Plaintiff Protect the Clearwater's ("PTC") Motion for  
15 Summary Judgment and Brief in Support ("Motion") (Doc. 54). The Court has  
16 considered the Motion, Defendant Montana Department of Environmental Quality's  
17 ("DEQ") Response Brief in Opposition to the Motion (Doc. 62), Intervenor  
18 Defendant LHC, Inc.'s ("LHC") Brief Opposing the Motion (Doc. 57), as well as  
19 PTC's Reply (Doc. 67) thereto. Oral arguments were heard on April 7, 2025.  
20 Having reviewed the entirety of the record before it, the Court rules as follows:

1 **ORDERS**

2 The Motion is GRANTED in part, and DENIED in part, as follows:

3 (1) DEQ misinterprets the statutory and regulatory framework governing  
4 its permitting decisions under the Opencut Mining Act. Because this framework  
5 implements provisions of the Montana Constitution, DEQ’s interpretation and  
6 subsequent actions have yielded the following areas of noncompliance:

7 (A) **Clean and healthful environment.** DEQ interprets Mont. Code  
8 Ann. § 82-4-432 as relieving it of the obligation to exercise its discretion in  
9 determining whether an environmental impact statement is necessary, to compile all  
10 relevant data, and to otherwise comply with its own administrative rules. This  
11 interpretation is legal error. Regardless of time limitations imposed by Mont. Code  
12 Ann. § 82-4-432, the Montana Constitution obligates DEQ to render informed  
13 decisions on environmental matters. *See* Mont. Const. art. II, § 3; Mont. Const. art.  
14 IX, § 1. Where a statutory provision is susceptible to an interpretation that conflicts  
15 with a constitutional mandate, the statute must be construed in a manner that  
16 preserves constitutional requirements. The record establishes that DEQ did not  
17 compile the data necessary to fulfill this obligation. The resulting deficiency in  
18 environmental review constitutes a violation of Mont. Const. art. II, § 3, Mont.  
19 Const. art. IX, § 1, and the statutes implementing these provisions.

20 (B) **Public participation.** DEQ interprets Mont. Code Ann. § 82-4-432  
as prohibiting or relieving it from the obligation to conduct a public meeting and

1 permitting adjustment of the level of public participation only upon the operator’s  
2 request. *See* AR 311–313, 317 (Doc. 26) (DEQ responds to public comment, “even  
3 if it were determined that the site would affect surface or groundwater, a public  
4 meeting would only be held for this site if the operator requested one,” and “[b]y  
5 law, DEQ cannot hold a public meeting for a Dryland permit application.”).

6 This interpretation is not supported by the applicable law. Under the Montana  
7 Environmental Procedure Act’s (“MEPA”) implementing regulations, DEQ “is  
8 responsible for adjusting public review” based on “the complexity and seriousness  
9 of environmental issues associated with a proposed action” and “the level of public  
10 interest.” A.R.M. 17.4.610(1); (implementing Mont. Code Ann. § 2-3-103); *See also*  
11 Mont. Code Ann. § 2-3-101. Nothing in Mont. Code Ann. § 82-4-432 divests DEQ  
12 of this discretion. By interpreting the statute to eliminate its obligation to calibrate  
13 public participation to the complexity and seriousness of the environmental issues  
14 and the level of public interest—and by acting upon that interpretation—DEQ failed  
15 to afford Plaintiff PTC the opportunity for informed public participation as required  
16 by Mont. Const. art. II, § 8 and the statutes and rules implementing this provision.

17 Accordingly, the Court DECLARES that DEQ’s interpretation of Mont. Code  
18 Ann. § 82-4-432 as eliminating its discretion under A.R.M. 17.4.610 is contrary to  
19 law. DEQ erred by conditioning the level of public participation on the operator’s  
20 request rather than adjusting it to match the level of public interest and the

1 complexity of the environmental issues associated with the project, including  
2 whether the proposal affects surface or groundwater.

3       (C) **Continuing obligation.** DEQ “has a continuing responsibility to  
4 review its programs and activities to evaluate known or anticipated conflicts between  
5 these rules and other statutory or regulatory requirements. It shall make such  
6 adjustments or recommendations as may be required to ensure maximum  
7 compliance with MEPA and these rules.” A.R.M. 17.4.634. Where DEQ identifies  
8 or encounters an interpretation of law it believes to be in tension with the Montana  
9 Constitution, DEQ is INSTRUCTED to notify the “governor and the EQC” of the  
10 nature of the conflict, *see* A.R.M. 17.4.634, so a lawful resolution may be pursued  
11 through the appropriate channels. The administrative rules contemplate precisely  
12 this situation, and the Court expects DEQ to avail itself of the process they provide.

13       The Court observes that Montana’s constitutional protections for the  
14 environment and public participation are designed to ensure informed governmental  
15 decision-making and preserve the public’s interest in the State’s natural resources,  
16 allowing Montanans to continue to enjoy the land for, *inter alia*, hunting, education,  
17 and recreation for generations to come. The record contains unsolicited  
18 communications from the public raising substantive concerns—including potential  
19 health impacts, threats to water quality, and environmental degradation. The record  
20 further reflects DEQ informed the public it was prohibited from conducting a public

1 meeting or exercising discretion to adjust public involvement; and from soliciting or  
2 considering public comment in response to an Environmental Assessment. To the  
3 extent DEQ believed it was acting in accordance with the law, the Court concludes  
4 that belief was based on an erroneous interpretation of the governing framework.  
5 DEQ is directed to conform its practices to the requirements set forth in this Order.

6 (2) **MEPA Claim.** The Motion is GRANTED, insofar as the Court  
7 finds DEQ failed to comply with MEPA in its issuance of the Permit, resulting in an  
8 incomplete compilation of data and an inadequate environmental review. DEQ's  
9 decision not to conduct a full Environmental Impact Statement ("EIS") was arbitrary  
10 and capricious and not supported by substantial evidence. Pursuant to Mont. Code  
11 Ann. § 75-1-201(5)(c)(ii), the Court REMANDS the matter to DEQ to complete an  
12 EIS in compliance with the procedures required by MEPA, including the public  
13 participation requirements identified in this Order and the agency's obligation to  
14 render informed decisions on environmental matters.

15 The Motion is DENIED, insofar as the Court RESERVES ruling on injunctive  
16 relief and vacatur of the Permit pending further briefing, as reserved by DEQ. The  
17 parties are DIRECTED to submit briefs addressing the considerations provided  
18 under Mont. Code Ann. § 75-1-201(5)(c)-(d). PTC may seek emergency relief upon  
19 any commencement or threat of commencement of operations prior to the Court's  
20 ruling, in which event the Court will address the matter on an expedited basis.

1 **MEMORANDUM**

2 **I. PROCEDURAL AND FACTUAL BACKGROUND**

3 This case concerns the legality of Defendant DEQ’s approval of Defendant  
4 LHC’s application for Opencut Mining Dryland Permit No. 3473 (“Permit”). The  
5 Permit authorizes LHC to operate a gravel pit on 21.2 acres of State Trust Lands in  
6 an area located approximately three miles south of Salmon Lake (“Site”) for 17 years  
7 in connection with a highway reconstruction project (“Project). *See* Compl., ¶ 4  
8 (Doc. 1); Answer, ¶ 4 (Doc. 11). Adjacent to the Blackfoot-Clearwater Wildlife  
9 Management Area, the Site is managed by the Department of Natural Resources and  
10 Conservation (“DNRC”).

11 LHC applied for a “dryland” permit which may be issued only if the proposed  
12 activity: (1) will not affect ground or surface water, “including intermittent or  
13 perennial streams, or water conveyance facilities,” and (2) will occur in an area with  
14 fewer than ten “occupied dwelling units . . . within one-half mile” of the proposed  
15 mining area. Mont. Code Ann. § 82-4-432(1)(b), (c).

16 The dryland permit process, enacted through HB 599 in 2021, provides a more  
17 streamlined review than the standard application, reflecting the premise that the  
18 proposed activity will not affect water quality or quantity and that few dwelling units  
19 exist nearby. Unlike the standard process, which requires a public meeting upon  
20 request by a threshold number of owners of occupied dwelling units within one-half

1 mile, the dryland process does not mandate a public meeting, leaving the decision to  
2 DEQ’s discretion. *Compare* Mont. Code Ann. § 82-4-432(2)–(13), with Mont. Code  
3 Ann. § 82-4-432(14)(a); *see also* A.R.M. 17.4.610.

4       On March 17, 2023, the DNRC signed the landowner consultation form for  
5 LHC’s application but expressly conditioned its approval, noting that “the  
6 corresponding environmental assessment must be completed and authorized prior to  
7 LHC, Inc. beginning any work on Trust Land.” AR 0046 (Doc. 16). Satisfaction of  
8 the landowner consultation requirement thus appears contingent upon completion of  
9 a proper environmental assessment. LHC’s application also was required to include,  
10 *inter alia*, a statement from the local governing body certifying compliance with  
11 zoning regulations; results from three soil test pits; certification from LHC that fewer  
12 than ten occupied dwelling units exist within one-half mile of the Site; and  
13 certification from LHC that notice of the proposal was published at least twice in a  
14 local newspaper, mailed to landowners within one-half mile pursuant to the county  
15 clerk and recorder records, and posted in at least two prominent locations near the  
16 Site. Mont. Code Ann. § 82-4-432(14)(a).

17       On March 27, 2023, LHC submitted its dryland permit application. *See* AR  
18 0031-47 (Doc. 16) (Application). Upon receipt, DEQ had five days to determine  
19 whether the application included the required information. Mont. Code Ann. § 82-  
20 4-432(b). If any required information was missing, DEQ was to notify LHC of the

1 deficiency rendering the application not “complete.” *Id.* LHC’s application did not  
2 include a certification as to the number of occupied dwelling units in the vicinity.  
3 Nevertheless, DEQ deemed the application “complete” and notified LHC by letter  
4 the following day, March 28, 2023. *See* AR 282 (Doc. 23) (Complete Letter).

5       Once an application is considered “complete,” DEQ has 15 days to review the  
6 application for “acceptability,” during which time the public may submit comments.  
7 Mont. Code Ann. § 82-4-432(b)-(d). If DEQ notices deficiencies during this review,  
8 it may notify the applicant in writing and provide an opportunity to correct them.  
9 Mont. Code Ann. § 82-2-432(e).

10       On April 10, 2023, DEQ sent LHC a deficiency letter identifying the  
11 following errors: the application failed to identify Missoula as the proper county,  
12 listed the operator’s address incorrectly, lacked the correct signature on the  
13 landowner consultation form, included illegible soil test pit measurements, and  
14 omitted a certification that fewer than ten occupied dwelling units exist within one-  
15 half mile of the Site. *See* AR 283–285 9 (Doc. 24) (Deficiency Letter).

16       On April 11, 2023, DEQ inspected the Site and issued a report describing it  
17 as “an alluvial terrace” above “the Clearwater River/Elbow Lake,” composed of  
18 “gravel deposits dissected with abandoned channels.” AR 275-281 (Doc. 22)  
19 (Inspection Report). The report acknowledges that within 1,000 ft of the Site exists  
20 surface water, namely, “Wetlands” and a “Lake/Pond[.]” *Id.* DEQ was unable to

1 view any soil test pits because none were available onsite but noted LHC must  
2 comply with A.R.M. 17.24.218(1)(c) when the pits are dug. *Id.* The report further  
3 states DEQ does not know the number of dwelling units within one-half mile of the  
4 Site, asserting it is LHC’s responsibility to make that determination and provide  
5 notice to the landowners, suggesting DEQ would not further investigate the matter.  
6 *Id.* DEQ nevertheless acknowledges the presence of cabins within one-half mile to  
7 the west of the Site. *Id.*

8         The report also notes that the Site “is surrounded to the north, east, and south  
9 by public lands managed by FWP, including the Blackfoot-Clearwater Wildlife  
10 Management area that encompasses over 43,000 acres.” *Id.* Although the spring  
11 timing of the inspection limited DEQ’s ability to identify vegetation, exposed soil  
12 indicated the terrain is “well-vegetated with grasses.” *Id.*

13         On April 12, 2023, LHC sent DEQ a Cover Letter asserting the deficiencies  
14 previously identified had been corrected, namely, LHC certified it had corrected the  
15 identified deficiencies and certifying it had reviewed property ownership records “to  
16 identify all properties within ½ mile of the exterior boundaries of the permitted area  
17 . . . The submitted application certifies that this site meets the requirements of a  
18 Dryland Application.” *See* AR 286 (Doc. 25) (Cover Letter).

19         Independent of Mont. Code Ann. § 82-4-432(14), DEQ is obligated under the  
20 Montana Constitution, the Montana Environmental Policy Act (“MEPA”), and

1 applicable administrative rules, to consider the environmental impacts of its  
2 permitting decisions. *See* Mont. Const. art. II, § 3; Mont. Const. art. IX, § 1; Mont.  
3 Code Ann. § 75-1-102(3)(a); and A.R.M. 17.4.607-610. This obligation ordinarily  
4 begins with a draft Environmental Assessment (“EA”) which affords the public an  
5 opportunity to provide information on the proposed action. When public interest  
6 exists, DEQ “shall consider the substantive comments received in response to an  
7 EA[.]” *See* A.R.M. 17.4.610. Here, DEQ did not publish a draft EA examining the  
8 Permit’s effects on the human environment, thereby depriving the public of any basis  
9 for meaningful review and comment. Despite this absence, DEQ received  
10 unsolicited inquiries from the public expressing concern over the lack of information  
11 provided and confusion regarding the process DEQ intended to follow.

12 For example, one person disputes “the self-reported assertion by the applicant  
13 that there are fewer than ‘ten Occupied Dwelling Units . . . within one-half mile of  
14 the permit boundary.” AR 306 (Doc. 26). This individual states the “excessive noise  
15 and dust conditions” of the Project “will negatively impact wildlife and residents in  
16 the area[.]” describing the Site as an:

17 [e]nvironmentally sensitive area near the Clearwater River and adjacent  
18 to a large Montana Fish Wildlife and Parks wildlife management area  
19 that is closed for nearly half the year for wildlife protection. The area is  
20 home to nesting osprey, and bald eagles. Within the las 12 months we  
have personally viewed grizzly bears, black bears, otters, fox, beaver,  
stoats, golden and bald eagles, deer, elk, common loons, trumpeter  
swans, wood ducks, mallard ducks, mergansers, buffleheads, red tail  
hawks, sandhill cranes, Canadian geese, and songbirds.

1 *Id.* This individual also identifies 11 already-permitted gravel sites, suggesting  
2 available alternatives for the Project’s gravel needs. *Id.*

3 Similarly, another person writes that it is their understanding no public  
4 meeting will be held based on a finding of fewer than ten dwelling units within one-  
5 half mile, but questions that determination:

6 I have a few questions about how that determination was made. Is it  
7 public record as to who was notified by LHC and the DEQ? Are those  
8 records available? There are certainly leaseholders and property owners  
9 in the Elbow Lake area that can provide up to date information, if that  
is needed. How is ½ mile radius determined? . . . How old is the data  
they used for notifications? Did notification include property owners to  
the north of section 20?

10 AR 319 (Doc. 26). The following day, DEQ replied that it is neither responsible for  
11 notifying nearby residents nor obligated to verify whether fewer than ten dwelling  
12 units exist within a one-half mile of the Site or whether LHC properly notified those  
13 units+. AR 317. When this individual inquired about a public meeting, DEQ  
14 responded that “[b]y law, DEQ cannot hold a public meeting for a Dryland permit  
15 application.” *Id.*

16 A nearby property owner recounts that the DNRC acquired the Site years ago  
17 from a private individual who had intended to develop housing, because the DNRC  
18 recognized the land as “an extension of habitat space and grazing for the Clearwater-  
19 Blackfoot Game range” and sought to preserve it in its natural condition. AR 368  
20 (Doc. 27) (“a 17 year active gravel pit and asphalt plant will most certainly disrupt  
the Dept’s original intent for acquiring this land.”). This property owner further

1 suggests that an existing gravel pit near Browns Lake would suffice for the highway  
2 reconstruction, and sourcing gravel from that pit “would have been factored into  
3 [LHC’s] bid for this work,” rendering the new permit unnecessary, serving only as  
4 “an enhancement of their profit margins.” *Id.*

5         On April 17, 2023, DEQ received additional inquiries, including one directing  
6 attention to stormwater and surface water contamination concerns. AR 311—313  
7 (Doc. 26). That person attached a link to the Clearwater Resource Council’s website  
8 depicting a map of water movement across the Site and asked whether DEQ would  
9 incorporate this into its evaluation. *Id.* This individual reported that their water well,  
10 permitted by the DNRC and drilled in 2009, is documented in the DNRC records,  
11 and asked whether DEQ would utilize that information. *Id.* Additionally, this  
12 individual asked whether a public meeting would be permitted if it were determined  
13 the Project would affect surface or ground water. *Id.* In response, DEQ stated it  
14 would consider the information provided, but “even if it were determined that the  
15 site would affect surface or groundwater, a public meeting would only be held for  
16 this site if the operator requested one.” *Id.*

17         Another individual emphasizes the Site’s use by grizzly bears, mountain lions,  
18 bald eagles, and other wildlife, and asserts because the Clearwater River flows into  
19 the Blackfoot and eventually the Clark Fork River, the Project’s proximity to these  
20 waters threatens bull trout, beavers, river otters, and nearby residents who depend

1 on the rivers. AR 381-82 (Doc. 27). Regarding water quality, this person asserts  
2 that the Site “is located in a swale that drains into wetlands, Elbow Lake and  
3 eventually the Clearwater. This would be extremely significant during springtime  
4 runoffs[,]” creating contamination risk for “seventeen wells . . . present on the cabin  
5 sites. (This information is from the Montana Bureau of Mines and Geology  
6 website).” *Id.* Are agencies “ignoring the tremendous number of negative factors  
7 in favor of potential revenue?” This individual also reminds DEQ of its stated  
8 mission “to champion a healthy environment for a thriving Montana.” *Id.*

9       On April 26, 2023, yet another individual reminds DEQ of its responsibility  
10 of “protecting a clean and healthy environment as guaranteed to the citizens of  
11 Montana by the State Constitution[,]” and asks, “how is it possible that an applicant  
12 using a questionable assessment of water hydraulics in the area . . . is entrusted with  
13 protecting public health and maintaining Montana’s high quality of life for current  
14 and future generations?” AR 347-348 (Doc. 27). After receiving such volume of  
15 inquiries, DEQ directed interested persons to an online portal. However, internal  
16 DEQ correspondence and public correspondence received on April 8 reveal that the  
17 link DEQ provided was not functioning, further interfering with the public’s ability  
18 to offer public comment. *See* AR 303 (Doc. 26).

19       On April 27, 2023, without having first published a draft, DEQ issued its final  
20 EA. That same day, DEQ approved LHC’s application and issued the Permit. DEQ

1 concedes that no MEPA compliant EA was published prior to approval but contends  
2 that Montana jurisprudence and the dryland permitting framework exempt it from  
3 MEPA requirements. DEQ further maintains its EA nevertheless is sufficient and  
4 demonstrates that no significant environmental impact will result from the Project,  
5 nor will nearby property owners be harmed. Accordingly, both DEQ and LHC argue  
6 that summary judgment is inappropriate, asserting that DEQ properly interpreted and  
7 followed the applicable procedure in granting the Permit.

8       Officers and supporters of Plaintiff PTC own property west of the Site, on or  
9 near Elbow Lake, and allege the Project will harm both them and their property.  
10 PTC further alleges DEQ’s procedure in approving the Permit already has caused  
11 injury. Specifically, PTC asserts DEQ violated: (1) the Montana Public Participation  
12 Act, (2) MEPA, and (3) the Montana Constitution—the latter being implemented,  
13 *inter alia*, through the Opencut Mining Act (“OMA”) and the Montana Public  
14 Participation Act. By violating these provisions, PTC contends, DEQ misconstrued  
15 the governing statutory and regulatory framework in a manner infringing upon  
16 Montanans’ constitutional rights to a clean and healthful environment and to  
17 meaningful public participation. PTC seeks declaratory relief accordingly.

18       PTC maintains the public is entitled to participate “in the operation of the  
19 agencies prior to the final decision as may be provided by law.” Compl., ¶ 50  
20 (*quoting* Mont. Const. art. II, § 8). PTC argues DEQ conducted an inadequate

1 review, failed to properly notify and inform the public, and reduced “what should  
2 have been a genuine interchange into a mere formality.” *See* Compl., ¶ 52 (quoting  
3 *Bryan v. Yellowstone Cty. Elementary School Dist.*, 2002 MT 264, ¶ 46, 312 Mont.  
4 257, 60 P.3d 381). PTC further asserts that DEQ failed to take a “hard look” at the  
5 direct, indirect, and cumulative impacts that would occur on the environment with  
6 the granting of the Permit, as MEPA requires, rendering DEQ’s review arbitrary,  
7 capricious, and unsupported by substantial evidence. Compl., ¶ 65. PTC asks this  
8 Court to declare DEQ’s interpretation of the law and its resulting actions as unlawful,  
9 and to declare the Permit void *ab initio*.

## 10 **II. LEGAL STANDARD**

11 In assessing PTC’s Motion for summary judgment, the Court considers “the  
12 pleadings, the discovery and disclosure materials on file, and any affidavits” to  
13 determine whether no genuine dispute of material fact exists and whether PTC is  
14 entitled to judgment as a matter of law. M. R. Civ. P. 56(c)(3). In reviewing an  
15 administrative decision, the Court’s focus is on the agency’s “decision-making  
16 process rather than the decision itself.” *Park Cty. Env’tl. Council v. DEQ*, 2020 MT  
17 303, ¶ 18, 402 Mont. 168, 477 P.3d 288 (“*Park Cty.*”).

18 PTC seeks declaratory relief holding DEQ’s procedure in granting the Permit  
19 unlawful, premised on DEQ’s unconstitutional interpretation of its own rules and the  
20 Opencut Mining Act (“OMA”) (*see* Mont. Code Ann. §§ 82-4-401 to -446). The

1 Uniform Declaratory Judgments Act exists “to settle and to afford relief from  
2 uncertainty and insecurity with respect to rights, status, and other legal relations; and  
3 it is to be liberally construed and administered.” Mont. Code Ann. § 27-8-102. Any  
4 interested party may accordingly seek a declaratory judgment to resolve questions  
5 of rights, status, or legal relations arising under a disputed instrument, statute,  
6 ordinance, or agency rule. *See* Mont. Code Ann. § 27-8-202.

7 PTC also challenges DEQ’s decision to forgo further environmental review  
8 and stand by an EA which concludes that the Project would not significantly impact  
9 the human environment, asserting that this decision was arbitrary, capricious,  
10 unlawful, and/or unsupported by substantial evidence in violation of MEPA. PTC  
11 bears the burden of proving this claim by clear and convincing evidence. *See* Mont.  
12 Code Ann. § 75-1-201(6)(a)(i). Therefore, the Court must consider whether DEQ  
13 “erred in law,” or whether its decision is “wholly unsupported by the evidence or  
14 clearly arbitrary or capricious.” *Mont. Env’tl. Info. Ctr. v. DEQ*, 2019 MT 213, ¶ 20,  
15 397 Mont. 161, 451 P.3d 493 (“*MEIC 2019*”) (citations omitted).

16 A decision is arbitrary and capricious when it is made “without consideration  
17 of all relevant factors or based on clearly erroneous judgment.” *Bitterrooters for*  
18 *Planning, Inc. v. DEQ*, 2017 MT 222, ¶ 16, 388 Mont. 453, 401 P.3d 712 (citation  
19 omitted). Substantial evidence means “more than a mere scintilla of evidence but  
20 may be less than a preponderance.” *Mont. Trout Unlimited v. DEQ*, 2024 MT 36, ¶

1 11, 415 Mont. 214, 544 P.3d 163 (cite omitted). The Court may not substitute its  
2 judgment for an agency carrying out a statutorily assigned duty. Mont. Code Ann.  
3 § 82-4-422; *MEIC 2019*, ¶ 20 (citing *Johansen v. Dep’t of Nat. Res. & Conservation*,  
4 1998 MT 51, ¶ 27, 288 Mont. 39, 955 P.2d 653).

5        Though environmental protection demands significant technical expertise  
6 beyond the Court’s province, the Court retains “an inherent power to review  
7 administrative decisions and to interpret the law.” *MEIC 2019*, ¶ 20 (citing  
8 *Johansen*, ¶ 25). While DEQ’s interpretation of its own rules is afforded “great  
9 weight,” an interpretation “plainly inconsistent with the spirit of the rule is not  
10 lawful.” *Id.*, ¶ 23; citing *Clark Fork Coal. v. DEQ*, 2008 MT 407, ¶ 39, 347 Mont.  
11 197, 197 P.3d 482 (“*Clark Fork 2008*”). Courts afford no deference to agency  
12 decisions not involving technical expertise. *Johansen*, ¶ 29.

### 13 **III. DECLARATORY JUDGMENT ANALYSIS**

14        PTC and DEQ disagree on what the statutory and regulatory framework  
15 requires of DEQ when it renders a permitting decision. DEQ contends that Mont.  
16 Code Ann. § 82-4-432(14)(d) and (f) relieve it of any duty to exercise discretion in  
17 two critical respects: (1) expanding public participation commensurate with the level  
18 of public interest and complexity of the Project; and (2) genuinely evaluating  
19 whether the Project’s impacts warrant preparation of an EIS. *See* DEQ’s Resp. Br.  
20 at 12 (“DEQ had 35 business days to issue a permit and the associated EA, which is

1 insufficient to draft an EA, put it out for comment, and then modify the final EA  
2 based on the comments.”); *see also* DEQ’s Resp. Br. at 7 (“Under these tight  
3 deadlines, DEQ does not have enough time to prepare an EIS”). On the other hand,  
4 PTC disagrees, arguing DEQ’s interpretation of the OMA violates Mont. Const. art.  
5 II, §§ 3 and 8, and Mont. Const. art. IX, and seeks declarations accordingly. The  
6 Court addresses these disputes in turn.

7       **A. The OMA’s policy section imposes a constitutional duty on DEQ to**  
8       **protect Montana’s environment in its permitting decisions.**

9       As an initial matter, the Court addresses DEQ’s duty and discretion under the  
10 OMA. The OMA grants DEQ authority to grant an opencut mining permit only  
11 when “the application and an evaluation of the proposed opencut operations”  
12 demonstrate compliance with the “requirements” and “rules adopted” to implement  
13 the OMA. *See* Mont. Code Ann. § 82-4-422(1)(a). DEQ “may prohibit an operation  
14 under this section if,” the applicant “is in current violation of this part, rules adopted  
15 under this part, or provisions of a permit.” Mont. Code Ann. § 82-4-432(14)(h). The  
16 term “part” refers to Title 82, chapter 4, part 4, Montana Code Annotated, i.e., the  
17 OMA (Mont. Code Ann. §§ 82-4-401 through 446). *See* Mont. Code Ann. § 1-2-  
18 108.

19       The OMA’s policy section is relevant not only to legislative intent regarding  
20 the statute’s overall purpose but also to the scope of DEQ’s permitting authority. *See*  
*In the Petition*, 2000 MT 342, ¶ 15, 303 Mont. 204, 15 P.3d 447 (“in delegating

1 powers to an administrative body with respect to the administration of statutes, the  
2 legislature must ordinarily prescribe a policy”) (cite omitted). The OMA’s stated  
3 purpose is to provide “adequate remedies for the protection of the environmental life  
4 support system from degradation and provide adequate remedies to prevent  
5 unreasonable depletion and degradation of natural resources.” Mont. Code Ann. §  
6 82-4-402(1); Mont. Code Ann. § 82-4-402(2) (The OMA’s “purpose” is to, *inter*  
7 *alia*, “preserve natural resources;” and “aid in the protection of wildlife and aquatic  
8 resources”). Indeed, the OMA was enacted to fulfill the Legislature’s constitutional  
9 obligations under Mont. Const. art. IX, § 1,<sup>1</sup> and Mont. Const. art. II, § 3.<sup>2</sup> *See* Mont.  
10 Code Ann. § 82-4-402(1) (“The legislature, mindful of its constitutional obligations  
11 under Article II, section 3, and Article IX of the Montana constitution, has enacted  
12 [OMA]”). DEQ’s authority to issue permits is accordingly contingent upon  
13 compliance with these constitutional mandates. *Id.*

14 Consistent thereto, DEQ is empowered to “make investigations or inspections  
15 that are considered necessary to ensure compliance with any provision of [Part 4].”  
16 Mont. Code Ann. §§ 82-4-422(1)(d); Mont. Code Ann. § 82-4-422(1)(e) (DEQ shall

---

18 <sup>1</sup> *See* Mont. Const. art. IX, § 1 (“(1) The state and each person shall maintain and improve a clean  
19 and healthful environment in Montana for present and future generations; (2) The legislature shall  
20 provide for the administration and enforcement of this duty; (3) The legislature shall provide  
adequate remedies for the protection of the environmental life support system from degradation  
and provide adequate remedies to prevent unreasonable depletion and degradation).”

<sup>2</sup> *See* Mont. Const. art. II, § 3 (provides Montanans with certain inalienable rights, the first being  
“the right to a clean and healthful environment”).

1 “enforce and administer the provisions . . . and issue orders necessary to implement  
2 the provisions of this part.”); Mont. Code Ann. § 82-4-422(2)(b)(iii) (DEQ must  
3 adopt rules and establish administrative requirements necessary to “accomplish the  
4 purpose” of the OMA). As the Montana Supreme Court has recognized, the  
5 Legislature “cannot fulfill its constitutional obligation to prevent proscribed  
6 environmental harms without some legal framework in place that mirrors the  
7 uniquely ‘anticipatory and preventative’ mechanisms” that underline Montana’s  
8 constitutional environmental protections. *See Park Cty.*, ¶ 70.

9 Reading the OMA with a view toward preserving its constitutionality, the  
10 provisions of Mont. Code Ann. § 82-4-422 mandate constitutionally sound methods  
11 for DEQ’s exercise of its permitting authority. This includes a duty to adopt rules  
12 effectuating the Legislature’s constitutional obligations under Mont. Const. art. II, §  
13 3 and art. IX, and to withhold permitting approval pending any investigation or  
14 inspection necessary to ensure compliance with these constitutional provisions. *See*  
15 Mont. Code Ann. §§ 82-4-422(1)(d)-(e), and -432(14)(h).

16 Although Mont. Code Ann. § 82-4-432(14) imposes certain requirements on  
17 dryland operations—including certifications from the operator, landowner, and local  
18 governing bodies—it is DEQ who bears the burden of preventing proscribed  
19 environmental harms and who holds the statutory authority to ensure compliance.  
20 *See* Mont. Const. art. IX, § 2 (the Legislature must provide for the administration

1 and enforcement of the duty to prevent proscribed environmental harms); *see also*  
2 Mont. Code Ann. § 82-4-402(1) (placing this environmental protection burden upon  
3 DEQ). With respect to open cut mines, DEQ thus is charged with enforcing a  
4 regulatory scheme intended to fulfill these constitutional mandates.

5 At minimum, this requires DEQ to exercise its discretion to preclude an  
6 operation from advancing where the project would violate Mont. Code Ann. § 82-4-  
7 402 by undermining the anticipatory and preventative mechanisms the Montana  
8 Constitution requires, as recognized by the Legislature in enacting the OMA. It is  
9 of constitutional importance that DEQ recognize its authority and discretion under  
10 Mont. Code Ann. § 82-4-402 to ensure compliance with the “requirements” and  
11 “rules adopted” to implement the OMA’s policy provisions.

12 While Mont. Code Ann. § 82-4-432(14) outlines directives for a dryland  
13 permit operation, all of which advance the OMA’s objective, DEQ retains discretion  
14 to impose additional requirements which reasonably relate to the OMA’s general  
15 purpose. *See e.g.*, 40 Mont. Op. Atty. Gen. No. 47 (1984) (recognizing agency  
16 discretion to require matters beyond those enumerated in Mont. Code Ann. § 82-4-  
17 434(2)); *see also* Mont. Code Ann. § 82-4-432(14)(h) (recognizing DEQ’s discretion  
18 to prohibit a dryland operation if any part of the OMA is violated, including the  
19 OMA’s policy provisions); A.R.M. 17.24.212(5) (“Before determining that an  
20

1 application for a permit or amendment is acceptable, [DEQ] may condition a permit  
2 as necessary to accomplish the requirements of the [OMA] and this subchapter.”).

3         These constitutional mandates require DEQ to “not take actions jeopardizing  
4 such unique and treasured facets of Montana’s natural environment without first  
5 thoroughly understanding the risks involved.” *Park Cnty.*, ¶ 76. DEQ is obligated  
6 to adopt and implement rules enabling it “to prevent a project from going forward,”  
7 to address risks and fulfill the Legislature’s “anticipatory and preventative  
8 constitutional obligations,” including investigating a project’s compliance with this  
9 mandate. *See Park Cnty.*, ¶ 72 (without such a mechanism, “the State’s anticipatory  
10 and preventative constitutional obligations is negated.”); *See also Mont. Env’tl Info.*  
11 *Ctr. v. DEQ*, 1999 MT 248, ¶ 77, 296 Mont. 207, 988 P.2d 1236 (“*MEIC 1999*”)  
12 (implementing rules cannot function to “require that dead fish float on the surface of  
13 our state’s rivers and streams before [the Montana Constitution’s] farsighted  
14 environmental protections can be invoked.”).

15         At the time of DEQ’s permitting decision—and as it stands today—the  
16 regulatory framework satisfying Mont. Const. art. II, § 3 and art. IX relies on MEPA  
17 and its implementing rules. *See Park Cnty.*, ¶ 70 (“MEPA’s procedural mechanisms  
18 help bring the Montana Constitution’s lofty goals into reality by enabling fully  
19 informed and considered decision making, thereby minimizing the risk of  
20 irreversible mistakes depriving Montanans of a clean and healthful environment.”).

1 Through the enactment of HB 285 in 2025, the Legislature sought to eliminate  
2 MEPA as the vehicle fulfilling this mandate, providing instead that other statutes  
3 (including the OMA) would serve that function. However, in the absence of properly  
4 adopted rules that mirror the environmental protections found in the Montana  
5 Constitution, MEPA and the rules derived therefrom remain necessary.

6       If the Court were to read the OMA as lacking a regulatory scheme that mirrors  
7 the protections required by the Montana Constitution, then “the State’s anticipatory  
8 and preventative constitutional obligations [are] negated.” *Park Cty.*, ¶¶ 70-72  
9 (“Whatever interest might be served by a statute that instructs an agency to forecast  
10 and consider the environmental implications of a project that is already underway—  
11 perhaps analogous to a mandatory aircraft inspection after takeoff—the  
12 constitutional obligation to prevent certain environmental harms from arising is  
13 certainly not one of them.”). An interpretation of the OMA that eradicates an  
14 existing preventative framework without providing a constitutionally adequate  
15 alternative is not one to which the Court may lawfully defer.

16       Even if HB 285 was effective at that time of the permitting decision, DEQ’s  
17 constitutional obligation to conduct meaningful analysis, allow for public  
18 participation, and render informed decisions to anticipate and avoid significant  
19 environmental impacts remains unchanged. While the Legislature may change the  
20 statutory vehicle used to fulfill its constitutional duties, amending a statute cannot

1 result in the loss of constitutional rights. Therefore, notwithstanding any statutory  
2 amendments, DEQ’s constitutional duties owed under the OMA remain intact.

3 **B. DEQ misinterprets Mont. Code Ann. § 82-4-432 to strip itself of the**  
4 **discretionary authority the Legislature delegated to it to fulfill**  
5 **constitutional mandates.**

6 “In this nation, both at the federal and state level, all legal authority is derived  
7 first and foremost from the constitution and then from the statutes implementing its  
8 provisions.” *Brown v. Gianforte*, 2021 MT 149, ¶ 17, 404 Mont. 269, 488 P.3d 548.  
9 It necessarily follows, any lawful interpretation of a statute or agency rule must be  
10 read in harmony with the Montana Constitution—especially where a statute’s  
11 prescribed policy is intended to implement a constitutional mandate. Statutes enjoy  
12 a presumption of constitutionality and must be read with this presumption in mind.  
13 *City of Billings v. Albert*, 2009 MT 63, ¶ 11, 349 Mont. 400, 203 P.3d 828. In  
14 interpreting statutes, our role is to “ascertain and carry out the Legislature’s intent.”  
15 *Mont. Fish, Wildlife & Parks v. Trap Free Mont. Pub. Lands*, 2018 MT 120, ¶ 14,  
16 391 Mont. 328, 417 P.3d 1100 (citation omitted).

17 DEQ’s authority and discretion to act under the OMA is tethered to the  
18 statute’s prescribed policy. *See In the Petition*, ¶ 15. Having established that the  
19 Legislature intended the OMA to fulfill a constitutional mandate, it bears emphasis  
20 that the 1972 Montana Constitutional Convention delegates intended this mandate  
“to be the strongest environmental protection provision found in any state  
constitution.” *MIEC 1999*, ¶ 66 (citing Montana Constitutional Convention, Vol. IV

1 at 1200, March 1, 1972). Indeed, there is an affirmative duty imposed on the State,  
2 the Legislature, and private individuals to maintain a clean and healthful  
3 environment for present generations and also to improve upon it for future  
4 generations. *See* Mont. Const. art. IX, § 1. The Court does not find any other  
5 constitution in the United States to impose such an obligation on private individuals.

6 “Reading Article II, Section 3, and Article IX, Section 1 in tandem, any failure  
7 by the Legislature to provide adequate remedies for *advance* environmental review  
8 and protection before government approval of activities with potential for significant  
9 environmental degradation is a violation of the fundamental right to a clean and  
10 healthful environment.” *Clark Fork Coalition v. Mont. Dept. of Nat. Res. &*  
11 *Conservation*, 2021 MT 44, ¶ 47, 403 Mont. 225, 481 P.3d 198 (“*Clark Fork 2021*”)  
12 (emphasis in original) (citations omitted). Consistent thereto, Mont. Code Ann. §  
13 82-4-432(14)(h) provides DEQ with the discretion to prohibit an operation from  
14 advancing—notwithstanding any time limitations—if DEQ determines the operation  
15 is in violation “of this part” or “rules” DEQ adopts to implement the OMA. *See also*  
16 A.R.M. 17.24.212(5) (DEQ “may condition a permit as necessary to accomplish the  
17 requirements of the [OMA] and this subchapter.”).

18 Without a regulatory scheme affording DEQ the discretion to conduct  
19 meaningful environmental review in *advance* of granting a permit with the potential  
20 for significant environmental degradation, the OMA would be rendered

1 unconstitutional, out of harmony with its own policy section, and the powers  
2 bestowed upon DEQ would be rendered meaningless. *See Clark Fork 2021*, ¶ 47;  
3 *see also* Mont. Code Ann. §§ 82-4-402 and -422. Nevertheless, DEQ maintains it  
4 lacks the authority to conduct advance environmental review for a dryland operation  
5 with the potential for significant environmental degradation, citing time constraints  
6 under the OMA. *See* DEQ’s Resp. Br. at 7 (Doc. 62) (“in reviewing an open-cut  
7 permit, DEQ has a limited amount of time,” and “based on the circumstances of this  
8 case, DEQ had 35 business days,” so under these deadlines, “DEQ does not have  
9 enough time to prepare an EIS.”).

10 Put simply, DEQ’s interpretation suggests it has no discretion to preclude a  
11 dryland operation from advancing, despite the plain text of the statute. Mont. Code  
12 Ann. § 82-4-432(14)(h) (“[DEQ] may prohibit an operation under this section if, at  
13 the time of submission of information required by subsection (14)(a), the operator .  
14 . . . is in current violation of this part, rules adopted under this part, or provisions of  
15 a permit.”). This interpretation renders Mont. Code Ann. § 82-4-432(14)(h) without  
16 effect, as it fails to acknowledge DEQ’s discretion to prohibit an operation from  
17 advancing when that operation violates the OMA—including its constitutionally  
18 prescribed policy—or DEQ’s implementing rules. It is also out of harmony with the  
19 OMA as a whole, as it fails to prioritize the constitutional mandate enshrined therein,  
20 which is the supreme law of the land. *See Brown*, ¶ 17.

1 An agency “vested with discretion, abuses that discretion when it behaves as  
2 if it has no other choice than the one it has taken, as well as when it makes a decision  
3 for which there is not adequate support.” See *Clark Fork 2008*, ¶ 43 (citations  
4 omitted); See Charles H. Koch, *3 Administrative Law and Practice* § 10.6 [3] (2d  
5 ed., West 1997) (“Failure to exercise discretion might be an abuse of discretion.”);  
6 *73A C.J.S. Public Administrative Law and Procedure* § 416 (2004) (“An agency that  
7 has authority to act but fails to exercise that authority based upon a false belief that  
8 there is no such authority abuses its discretion.”).

9 By focusing solely on the time limitations under Mont. Code Ann. § 82-4-  
10 432(14)—while disregarding its authority to prohibit an operation and its discretion  
11 under Mont. Code Ann. § 82-4-422 to ensure compliance with Mont. Code Ann. §  
12 82-4-402, which implements Mont. Const. art. II, § 3 and art. IX—DEQ has  
13 construed the OMA to strip itself of the ability to conduct meaningful advance  
14 environmental review before granting a permit. In doing so, DEQ abused its  
15 discretion by acting on this false belief that it lacked the authority that was expressly  
16 delegated to it by the Legislature for the specific purpose of fulfilling Montana’s  
17 constitutional environmental protections.

18 Nothing in the OMA prohibits DEQ from halting an operation where it finds  
19 the operation has the potential for significant environmental degradation. On the  
20 contrary, DEQ may exercise its discretion under Mont. Code Ann. § 82-4-432(14)(h)

1 to prohibit a project, pending proper exercise of its investigative powers under Mont.  
2 Code Ann. § 82-4-422, thereby ensuring compliance with Mont. Code Ann. § 82-4-  
3 402. *See also* A.R.M. 17.24.212(5). Moreover, the OMA directs DEQ to “adopt  
4 rules that pertain to opencut operations in order to accomplish the purposes of this  
5 part[.]” Mont. Code Ann. § 82-4-422(2). To the extent gaps exist in the regulatory  
6 framework, DEQ possesses the authority (and the obligation) to address those gaps  
7 through rulemaking and bears a “continuing responsibility to review its programs  
8 and activities to evaluate known or anticipated conflicts between these rules and  
9 other statutory or regulatory requirements.” A.R.M. 17.4.634.

10       Rather than fulfilling this continuing obligation, DEQ manufactured a conflict  
11 between the statutory time constraints and the OMA’s constitutional purpose and  
12 then resolved that contrived conflict by subordinating the Montana Constitution.  
13 Having identified what it believed to be a conflict, DEQ was obligated under A.R.M.  
14 17.4.634 to notify the “governor and the EQC” of the conflict’s nature so that a  
15 lawful interpretation could be derived. Instead, DEQ unilaterally concluded it could  
16 not conduct advance environmental review before approving a permit with the  
17 potential for significant environmental degradation, effectively nullifying the  
18 constitutional protections it was delegated to enforce. *See Clark Fork 2021*, ¶ 47.  
19 That the Permit was issued on the same day as the EA only underscores the absence  
20 of any meaningful review prior to approval of the Permit.

1 DEQ’s interpretation—that the time limitations under Mont. Code Ann. § 82-  
2 4-432 preclude it from effectuating Mont. Code Ann. §§ 82-4-402 and -422 and that  
3 its decision to conduct an EIS is determined by the statute’s time limitations rather  
4 than the potential for environmental degradation— is legally untenable and cannot  
5 stand. Accordingly, by acting on this misinterpretation and disregarding its  
6 constitutional duty, the full scope of its statutory authority, and its own  
7 administrative rules, DEQ abused its discretion. *See Clark Fork 2008*, ¶ 43 (citations  
8 omitted); Charles H. Koch, *3 Administrative Law and Practice* § 10.6 [3] (2d ed.,  
9 West 1997); *73A C.J.S. Public Administrative Law and Procedure* § 416 (2004).

10 **C. DEQ misinterprets Mont. Code Ann. § 82-4-432 as removing its**  
11 **discretion to adjust public participation based on the level of public**  
12 **interest and complexity involved in a proposed project.**

12 DEQ further interprets the regulatory framework to mean public participation  
13 is not required so long as some opportunity for public comment was afforded.  
14 DEQ’s Resp. Br. at 3-4 (“Because of the strict statutory deadlines imposed by the  
15 Opencut Act, DEQ did not have sufficient time to issue a draft EA and solicit public  
16 comment on that draft EA.”); DEQ’s Resp. Br. at 19 (“nothing in MEPA requires  
17 DEQ to issue a draft EA and solicit public comment on that EA”). This  
18 interpretation conflates two distinct obligations and constitutes as legal error. *See*  
19 *MEIC. v. DEQ*, 2025 MT 3, ¶ 62, 420 Mont. 150, 561 P.3d 1033 (“*MEIC 2025*”)  
20 (“DEQ must consider the substantive comments received in response to an EA.”).

1 As Montana law makes clear, public comment and public participation are not the  
2 same, and providing the former does not discharge the latter.

3 The level of public interest in this matter cannot be overstated. The Court’s  
4 Background section amply documents that interest, with numerous members of the  
5 public expressing fear, confusion, and concern over the lack of information  
6 regarding the Permit’s details, the adequacy of environmental review, and the  
7 procedures DEQ intended to follow. Without a draft EA informing the public of the  
8 environmental impacts at stake, the right to public participation is hollowed out.

9 Article II, § 8 of the Montana Constitution guarantees the public “the right to  
10 expect governmental agencies to afford such reasonable opportunity for citizen  
11 participation in the operation of the agencies prior to the final decision as may be  
12 provided by law.” The delegates at the 1972 Montana Constitutional Convention  
13 “sought to expose the activities of those bureaucratic authorities which were once  
14 isolated from public scrutiny.” *Bryan v. Yellowstone Cnty. Elementary Sch. Dist.*  
15 *No. 2, 2002 MT 264, ¶ 44, 312 Mont. 257, 60 P.3d 381.* The Montana Supreme  
16 Court has accordingly held, the right to participate demands more than an  
17 “uninformed opportunity to speak” reasoning that a contrary interpretation would  
18 “relegate the right of participation to paper tiger status in the face of stifled disclosure  
19 and incognizance.” *Bryan*, ¶ 44 (holding that the right to participate “demands  
20 compliance with the right to know contained in Article II, Section 9”).

1           Because Mont. Const. art. II, §§ 8 and 9 are read coextensively, the right to  
2 participate necessarily incorporates the right to know, i.e., the public must have  
3 access to sufficient information to participate in a meaningful and informed manner.  
4 *Bryan*, ¶ 31. The Legislature implemented these rights through Mont. Code Ann. §§  
5 2-3-101 to -221, which require agencies to “develop procedures for permitting and  
6 encouraging the public to participate in agency decisions that are of significant  
7 interest to the public” and to “ensure adequate notice and assist public participation  
8 before a final agency action is taken.” Mont. Code Ann. § 2-3-103(1)(a).

9           Exercising the authority conferred by these statutes, DEQ adopted  
10 administrative rules codified at A.R.M. Title 17, Chapter 4, Subchapter 6, including  
11 A.R.M. 17.4.610 (Public Review of EAs). The history of the rule confirms that it  
12 was adopted under the authority of Mont. Code Ann. §§ 2-3-103 and 2-4-201, to  
13 implement Mont Code Ann. §§ 2-3-104 and 75-1-201, i.e., the very statutes through  
14 which the Legislature carried out its constitutional mandate to ensure public  
15 participation in agency decision-making. DEQ “shall conform” to these rules “prior  
16 to reaching a final decision on actions covered by MEPA.” A.R.M. 17.4.601.

17           The rules draw a clear distinction between the obligation of “public  
18 involvement” and the narrower act of soliciting “public comment.” A.R.M.  
19 17.4.610(1) requires DEQ to calibrate the level of participation to “the complexity  
20 and seriousness of environmental issues associated with a proposed action” and “the

1 level of public interest.” DEQ bears responsibility for “providing additional  
2 opportunities for public review” through methods including, *inter alia*, publishing  
3 news releases, holding public meetings, maintaining mailing lists, and distributing  
4 copies of EAs for review and comment. A.R.M. 17.4.610(3). Where an action  
5 “normally requires an EIS, but effects that otherwise might be deemed significant  
6 are mitigated,” DEQ’s “public involvement must include the opportunity for public  
7 comment, a public meeting or hearing, and adequate notice.” ARM 17.4.610(4).  
8 Therefore, the rule’s own structure treats “public involvement” as the overarching  
9 obligation and “public comment” as one component within that framework.

10 DEQ “**shall consider the substantive comments received in response to an**  
11 **EA** and proceed in accordance with one of the following steps,”

12 (a) determine that an EIS is necessary; (b) determine that the EA did  
13 not adequately reflect the issues raised by the proposed action and issue  
14 a revised document; or (c) determine that an EIS is not necessary and  
15 make a final decision on the proposed action, with appropriate  
16 modification resulting from the analysis in the EA and **analysis of**  
17 **public comment.**

18 A.R.M. 17.4.610(6) (emphasis added).

19 Where the impacts of a proposed project “do not warrant the preparation of  
20 an EIS,” an EA may be used “to ensure the fullest appropriate opportunity for public  
review and comment on proposed actions, including alternatives and planned  
mitigation[.]” A.R.M. 17.4.607(2)(d). Moreover, “whenever statutory requirements  
do not allow sufficient time for an agency to prepare an EIS,” an EA allows DEQ

1 “to provide the basis for public review and comment[.]” A.R.M. 17.4.607(2)(e).  
2 Similarly, any public hearing must occur “after the EA has been circulated and prior  
3 to any final agency determinations concerning the proposed action,” and DEQ must  
4 “take such other steps as are reasonable and appropriate to promote the awareness  
5 by interested parties of a scheduled hearing.” A.R.M. 17.4.636(1)-(2).

6 Consistent with this framework, the Montana Supreme Court has recognized  
7 that “MEPA’s purpose is to inform not just public officials, but also the *public* of  
8 project impacts within their communities . . . [a]dministrative processes contemplate  
9 public participation . . . and DEQ must consider the substantive comments received  
10 in response to an EA.” *MEIC 2025*, ¶ 62 (citations omitted) (emphasis in original).  
11 Taken together, the caselaw, constitutional provisions, statutes, and administrative  
12 rules establish that “public participation” is a right rooted in Mont. Const. art. II, §  
13 8, implemented through Mont. Code Ann. §§ 2-3-101 to -221, and operationalized  
14 through, *inter alia*, DEQ’s MEPA rules which require DEQ to provide adequate  
15 notice, access to information sufficient for informed participation, and a meaningful  
16 opportunity to be heard before a final agency action.

17 An agency does not satisfy its public participation obligations by nominally  
18 accepting written comments while failing to ensure adequate notice and sufficient  
19 environmental review information to enable informed participation. *See Bryan*, ¶ 46  
20 (when an agency fails to provide information necessary for informed participation,

1 “it reduce[s] what should have been a genuine interchange into a mere formality”).  
2 Despite this body of law, DEQ informed the public that “even if it were determined  
3 that the site would affect surface or groundwater, a public meeting would only be  
4 held for this site if the operator requested one[;]” and that “[b]y law, DEQ cannot  
5 hold a public meeting for a Dryland permit application.” *See* AR 311—313, 317  
6 (Doc. 26). However, nothing in Mont. Code Ann. § 82-4-432(14) precludes DEQ  
7 from holding a public meeting. On the contrary, DEQ’s own rules explicitly oblige  
8 it to adjust the level of public review to match the complexity of the environmental  
9 issues and the level of public interest. *See* A.R.M. 17.4.610.

10 DEQ does not argue—nor could the record support—that there was little  
11 public interest in this Project. Turning to the complexity factor, a dryland  
12 classification may suggest lower environmental complexity insofar as such  
13 operations must not affect water resources, and a lower level of complexity could,  
14 standing alone, warrant less extensive public review under A.R.M. 17.4.610.  
15 However, DEQ’s argument is not that the level of public review was appropriate  
16 given low complexity; its position is far more sweeping. DEQ asserts it is prohibited  
17 from adjusting the level of public participation at all, including calling for a public  
18 meeting unless the operator requests one, even if “it were determined that the site  
19 would affect surface or groundwater.” *See* AR 311—313, 317 (Doc. 26).

1           This interpretation eviscerates DEQ’s discretion to calibrate participation  
2 based on the factors A.R.M. 17.4.610 expressly provides, and disregards the OMA’s  
3 stated purpose, which includes “aid[ing] in the protection of wildlife and aquatic  
4 resources.” Mont. Code Ann. § 82-4-402(2). It is particularly concerning in light  
5 of Mont. Code Ann. § 82-4-432(1)(b)(i), which prohibits the use of the more relaxed  
6 dryland permitting procedures for projects “that affect ground water or surface  
7 water.” Even if DEQ earnestly believed public meetings were prohibited under the  
8 dryland permitting process, Mont. Code Ann. § 82-4-432(1)(b)(i) dictates that a  
9 project determined to “affect surface or groundwater,” cannot proceed under that  
10 process. While A.R.M. 17.4.610 grants DEQ discretion to adjust public  
11 participation, it does not authorize DEQ to eliminate participation altogether or  
12 surrender its delegated authority to the regulated party. Accordingly, DEQ’s  
13 interpretation—that Mont. Code Ann. § 82-4-432 prohibits it from conducting a  
14 public meeting and that it may adjust the level of public participation only at the  
15 operator’s request—is legal error and an abdication of its constitutional obligations.

16           DEQ compounded this error by informing the public that because the operator  
17 “is responsible for carrying out public notice and certifies that they have done so in  
18 their application,” the agency bears no obligation to ensure the public actually  
19 receives notice, even if complaints about inadequate information are filed directly  
20 with the agency. *See* AR 317. This position ignores the plain text of Mont. Code

1 Ann. § 82-4-422(1)(d)–(e), which charges DEQ with the duty to “enforce and  
2 administer the provisions of this part” and to “make investigations or inspections  
3 that are considered necessary to ensure compliance with any provision of this part.”

4 While Mont. Code Ann. § 82-4-432(14) may require certifications from the  
5 operator, it is DEQ that bears the constitutional and statutory burden of preventing  
6 proscribed environmental harms and ensuring compliance. *See* Mont. Const. art. IX,  
7 § 2; *see also* Mont. Code Ann. § 82-4-402(1). DEQ thus has misinterpreted Mont.  
8 Code Ann. § 82-4-432 as relieving it of its enforcement and investigative duties  
9 under Mont. Code Ann. § 82-4-422, effectively delegating those duties to the very  
10 private actor the statute was designed to regulate, and doing so over the insistent  
11 objections of the public the agency is charged to protect.

12 By construing Mont. Code Ann. § 82-4-432 as excusing compliance with  
13 MEPA’s mandate to consider substantive public comments in response to an EA and  
14 as eliminating its discretion under A.R.M. 17.4.610—subordinating the level of  
15 public participation to the operator’s preference rather than to the level of public  
16 interest and the complexity of the environmental issues—DEQ violated PTC’s right  
17 to participation as guaranteed by Mont. Const. art. II, § 8, implemented through  
18 Mont. Code Ann. §§ 2-3-101 to -221, and operationalized through DEQ’s own rules.

#### 19 **IV. MEPA ANALYSIS**

##### 20 **A. Under MEPA, DEQ must take a hard look, not a blind leap.**

1 DEQ concedes the Project at issue is an action covered by MEPA. *See* AR  
2 003. As such, DEQ must issue a preliminary EA, i.e., a written analysis of the  
3 proposed action “to determine whether an EIS is required[.]” A.R.M. 17.4.603(9).  
4 “An EIS is required if an impact has a significant adverse effect, even if the agency  
5 believes that the effect on balance will be beneficial.” A.R.M. 17.4.608(2). To  
6 determine whether an action will have significant impact, DEQ’s initial EA must  
7 include an evaluation of “secondary impacts,” defined as “a further impact to the  
8 human environment that may be stimulated or induced by or otherwise result from  
9 a direct impact of the action.” A.R.M. 17.4.603(18), and 609(3)(d). The term  
10 “human environment” includes “biological, physical, social, economic, cultural, and  
11 aesthetic factors that interrelate to form the environment.” A.R.M. 17.4.603(12).

12 DEQ “shall consider” the following to determine the significance of impact:

- 13 (a) the severity, duration . . . and frequency of occurrence of the impact;
- 14 (b) the probability that the impact will occur if the proposed action
- 15 occurs; or conversely, reasonable assurance in keeping with the
- 16 potential severity of an impact that the impact will not occur; (d) the
- 17 quantity and quality of each environmental resource or value that would
- 18 be affected, including the uniqueness and fragility of those resources or
- 19 values; (e) the importance to the state and to society of each
- 20 environmental resource or value that would be affected . . . and (g)
- potential conflict with local, state, or federal laws, requirements, or
- formal plans.

A.R.M. 17.4.608. As explained in *Bitterrooters for Planning, Inc.*,

MEPA requires an agency to produce a formal environmental impact statement (EIS) if an agency action will significantly affect the quality of the human environment. However, MEPA does not require an EIS if a preliminary EA determines that the agency action will not

1 significantly affect the quality of the human environment. An EA thus  
2 serves as both the initial tool for determining whether a more intensive  
3 EIS is necessary and as the mechanism for required environmental  
4 review of agency actions that will likely impact the environment but  
5 not sufficiently to require an EIS.

6 *Bitterrooters for Planning, Inc.*, ¶ 20 (citations omitted); see Mont. Code Ann. §§  
7 75-1-102(1)-(3), -201, and -220(5); see also A.R.M. 17.4.607(2)-(4), and .608).

8 Implicit in this process, DEQ must take a “hard look at the environmental  
9 consequences of its actions” and make “an adequate compilation of relevant  
10 information, to analyze it reasonably, and to consider all pertinent data.”

11 *Bitterrooters for Planning, Inc.*, ¶ 19; *Clark Fork 2008*, ¶ 47. While MEPA imposes  
12 a procedural onus, it does not require DEQ to reach a particular decision. *Clark Fork*  
13 *2008*, ¶ 47. The Court does not take a “hard look” itself in reviewing MEPA  
14 compliance; instead, we consider whether the agency has done so. *Id.*, ¶ 47.

15 “A plaintiff need not show that significant effects will in fact occur, but if the  
16 plaintiff raises substantial questions whether a project may have a significant effect,  
17 an EIS must be prepared.” *Ravalli Cnty. Fish & Game Ass’n, Inc. v. Montana Dep’t*  
18 *of State Lands*, 273 Mont. 371, 379, 903 P.2d 1362, 1368 (1995) (cite omitted); see  
19 also A.R.M. 17.4.608(1)(b) (Where an uncertain impact of an agency action is  
20 potentially significant, DEQ may not deem it insignificant without “reasonable  
assurance ... that the impact will not occur.”); See also *Held v. State*, 2024 MT 312,  
¶ 67, 419 Mont. 403, 560 P.3d 1235 (“a clean and healthful environment cannot

1 occur unless the State and its agencies can make adequately informed decisions.”).

2 Accordingly, DEQ can forgo an EIS, only if it rationally determines through  
3 preparation of an EA that the project’s impacts will not be significant, or that  
4 otherwise significant impacts can be mitigated below the level of significance.

5 A.R.M. 17.4.607(l)(b), (4) (“For an EA to suffice” DEQ must determine “all of the  
6 impacts of the proposed action have been accurately identified, that they will be  
7 mitigated below the level of significance, and that no significant impact is likely to  
8 occur.”). Therefore, pursuant to PTC’s MEPA challenge, the Court considers  
9 whether by granting the Permit, DEQ has taken an agency action significantly  
10 affecting the quality of the human environment, triggering the necessity for an EIS.

11 **B. DEQ’s decision to forgo an EIS was arbitrary, capricious, and not**  
12 **supported by substantial evidence in violation of MEPA.**

13 PTC’s MEPA challenge contends DEQ failed to take the requisite “hard look”  
14 at the environmental consequences of the Permit across three categories: (1) impacts  
15 to threatened, endangered, and other wildlife species; (2) water quality and quantity,  
16 including impacts to bull trout and proximate aquatic ecosystems; and (3) the  
17 Project’s conflict with locally adopted land-use guidance. Br. Supp. Mot. at 9. PTC  
18 argues that had these impacts been properly evaluated in the EA, the necessity for a  
19 full EIS would have been triggered. The Court addresses these arguments in turn.

20 *i. Threatened, endangered, and other wildlife species.*

1 The EA identifies 25 species of concern in the vicinity of the Site. AR 0012.  
2 For each, the EA provides a general description of the species' characteristics, e.g.,  
3 noting bull trout are "threatened species of fish that can be found in the Clark Fork  
4 and Flathead drainages of western Montana[;]" bald eagles are "a bird of prey found  
5 in North America that is most recognizable as the national bird and symbol of the  
6 United States of America[;]" and grizzly bears "have a massive head with a  
7 prominent nose, rounded inconspicuous ears, small eyes, short tail and a large,  
8 powerful body." AR 0012-15. These are informational summaries of the kind one  
9 might find in a field guide or encyclopedia. They say nothing about whether the Site  
10 constitutes habitat for these species, how those species use the Site, or what effect a  
11 17 year industrial mining operation would have on these species. *Id.*

12 Following these descriptions, the EA provides its overarching conclusion:

13 While potential habitat for some individuals of the threatened and  
14 endangered species listed above **may exist**, the surrounding area is  
15 comprised of large undeveloped spaces. **Even if suitable habitat did**  
16 **exist** on this site, the disturbance area would be small in relation to the  
17 large areas of similar or identical habitat surrounding the site. The  
18 impact to aquatic species is expected to be non-existent as the proposed  
19 project is not expected to impact water quality or quantity resources  
20 where these species exist. Terrestrial species that would utilize the area  
as their habitat have expansive areas that would not be greatly affected  
by the proposed project as the impact would be minimal, compared to  
their overall habitats. The possible impact (including cumulative  
impacts) to these species would be short-term and negligible . . . No  
secondary impacts to unique, endangered, fragile, or limited  
environmental resources that could be stimulated or induced by the  
direct impacts analyzed above would be expected.

1 *See* AR 0016 (emphasis added). PTC challenges this conclusion as “speculative and  
2 unsubstantiated[.]” Br. Supp. Mot. at 10. Specifically, PTC argues the EA: (i) fails  
3 to determine whether the Site is habitat for the identified species; (ii) includes no  
4 explanation of the species’ needs or their use of such habitat; (iii) disregards the  
5 Montana Department of Fish, Wildlife and Parks’ (“FWP”) science identifying the  
6 Site as a top-tier connectivity corridor for grizzly bears (i.e., a species dependent on  
7 large-scale movement for recovery from its threatened status); and (d) fails to  
8 account for the scientific evidence in the record demonstrating the Project will  
9 significantly and negatively affect species on the Site. Br. Supp. Mot. at 11.

10       Indeed, the record appears to bear out PTC’s contentions. The EA’s  
11 conclusion that impacts will be “short-term and negligible” rest on two premises: (1)  
12 the Site is small relative to surrounding habitat; and (2) the displaced species can  
13 relocate to “similarly suitable” areas. *See* AR 0016. However, neither premise is  
14 supported by the EA’s analysis, and both are contradicted by substantial record  
15 evidence that the EA neither addresses nor refutes.

16       As an initial matter, the EA hedges on a threshold question, stating habitat for  
17 threatened and endangered species “may exist,” without ever resolving whether or  
18 not it does exist. *See* AR 0016. A “hard look” requires an agency to determine,  
19 based on the relevant data, whether a project site constitutes habitat for the species  
20 at issue, not merely to speculate that it might. *See MEIC 2025*, ¶ 41; *citing Mont.*

1 *Wildlife Fed'n v. Montana Bd. of Oil & Gas Conservation*, 2012 MT 128, ¶ 43, 365  
2 Mont. 232, 280 P.3d 877 ¶ 43 (“[G]eneral statements about possible effects and the  
3 existence of some risk do not constitute a hard look absent a justification regarding  
4 why more definitive information could not be provided.”).

5 Moreover, the record contains substantial evidence (which DEQ failed to  
6 compile as relevant data in its EA) establishing the Site sits within a critical wildlife  
7 connectivity corridor. *See* AR 00706 (Doc. 43). In 2009, FWP published an EA for  
8 a proposed land swap with the Montana Department of Transportation on a parcel  
9 immediately adjacent to, contiguous with, and on the same side of Highway 83 as  
10 the Site. AR 00706–732. In that EA, FWP made the following findings about the  
11 ecological significance of the area:

12 Deer routinely cross the highway to the river and back to the WMA as  
13 part of their daily or weekly patterns. The site also lies in a migration  
14 corridor many of the area’s 1,200 elk annually use to travel from  
15 summer ranges west of Highway 83 east to the BCWMA. Many other  
16 wildlife species were documented crossing this stretch of Highway 83,  
17 either routinely or as part of seasonal movements. *See* AR 00708.

18 If the parcel sold on the private market it would almost certainly have  
19 been developed for residential use, causing long-term and significant  
20 impacts to the function of the adjacent WMA. *See* AR 00709.

Grizzly bears are commonly observed on the BCWMA; the area is  
especially heavily used by grizzlies immediately post-emergence and  
during fall. *See* AR 00715.

This parcel contains important ungulate winter range and provides  
critical connectivity between the main unit of the BCWMA and  
important seasonal wildlife habitats to the west. *See* AR 00720.

1  
2 In addition to being locally critical wintering area for those species, the  
3 WMA provides a secure habitat and migration corridor for numerous  
4 other mammals and avian species, including grey wolves, grizzly bear,  
5 and lynx. *See* AR 00721.

6 These findings by DEQ's sister agency, directly contradict the EA's conclusion that  
7 impacts to wildlife would be "short-term and negligible." The EA does not cite,  
8 discuss, or attempt to reconcile FWP's conclusions. This omission is not a matter  
9 of scientific disagreement; it is a failure to compile and engage the relevant data.

10 Expert testimony on the record further contradicts the EA. Dr. Christopher  
11 Servheen, one of the nation's foremost experts on grizzly bear conservation,  
12 provided sworn testimony that the Permit's operations "will eliminate grizzly bear  
13 use of this area and surrounding habitat for the entire time this operation is in place,  
14 and perhaps for years afterwards." AR 00734-35 (Doc. 43). Dr. Servheen  
15 concluded, "this proposed development on public lands will have serious negative  
16 impacts on grizzly bear movements and habitat use in the Clearwater drainage." *Id.*  
17 He further explained, the Project's planned reclamation in 2040 means "grizzly bears  
18 use of the surrounding area and movement of grizzly bears across the Clearwater  
19 Valley would be eliminated in and in the vicinity of this development for at least 17  
20 years." *Id.*

21 The EA characterizes the Project's impacts as "temporary," yet the Permit  
22 authorizes mining for 17 years, i.e., a period Dr. Servheen identified as  
23 encompassing "several generations of grizzly bears." AR 00734. The EA offers no

1 explanation for why a project of nearly two decades’ duration qualifies as  
2 “temporary” in the context of wildlife lifecycle needs. The temporal framing of an  
3 impact must bear a rational relationship to the lifecycle and behavioral patterns of  
4 the affected species. However, the EA provides no such analysis. Nor does the EA  
5 meaningfully address cumulative impacts, which is a standalone requirement under  
6 MEPA. *See* Mont. Code Ann. § 75-1-201(1)(b)(iv)(C); *see also* A.R.M. 17.4.609(3).

7       Peer-reviewed research, including connectivity modeling conducted by FWP,  
8 identifies the Site as falling within the highest classification of connectivity corridor  
9 available in Montana for grizzly bear movement between recovery ecosystems. AR  
10 00782, 00791 (Doc. 43). The record establishes that the Site lies within the Northern  
11 Continental Divide Ecosystem (“NCDE”), approximately nine miles south of the  
12 NCDE Recovery Zone, and that connectivity between recovery ecosystems is  
13 important to the long-term conservation of this species. The record further  
14 demonstrates that “disruption or disconnection of the bears’ ‘corridors and linkage  
15 zones’ in turn disrupts their movement and could displace them ‘from areas  
16 important to their survival.’” AR 106, 0110 (Doc. 20). Physical fragmentation is  
17 exacerbated by noise from heavy human activities including large construction  
18 equipment. AR 0357 (Doc. 27). Even “small changes to an area ‘can eliminate or  
19 alter habitats rendering them less usable to bears.’” AR 0108 (Doc. 28).

1           The EA contains no analysis of the Site’s role as a connectivity corridor, a  
2 subject the record addresses at length. Merely identifying species of concern without  
3 evaluating how the Project would affect their movement and habitat use is  
4 inadequate. *See Or. Nat. Res. Council Fund v. Goodman*, 505 F.3d 884, 892 (9th  
5 Cir. 2007) (“Merely disclosing the existence of a biological corridor is inadequate.”);  
6 *Marble Mountain Audubon Soc’y v. Rice*, 914 F.2d 179, 182 (9th Cir. 1990); *see*  
7 *also Conner v. Burford*, 848 F.2d 1441, 1454 (9th Cir. 1988) (“species like the  
8 grizzly...require large home ranges making it critical that ESA review occur early  
9 in the process to avoid piecemeal chipping away of habitat”).

10           Beyond endangered species, FWP data document that the Site serves as winter  
11 range for elk, i.e., range on which elk depend upon for survival. AR 0357 (Doc. 27).  
12 The 53-acre FWP parcel, together with the 21-acre Site, constitutes the point “most  
13 migrating elk and deer use to travel between summer ranges to the west and the main  
14 unit of BCWMA.” AR 709 (Doc. 43). FWP’s data further show that “many of the  
15 area’s 1,200 elk annually use [this area] to travel from summer ranges west of  
16 Highway 83 east to the BCWMA,” including significant migration from the  
17 “southeast corner of the Mission Mountain Wilderness.” AR 708, 715 (Doc. 43).  
18 The EA dismisses these impacts as “temporary and negligible” without citing any  
19 scientific study, data, or report in support. AR 0011. Nor does the EA analyze the  
20 loss of winter range, species-specific migration patterns, or seasonal impacts.

1           Instead, DEQ assumes without evidence, that displaced wildlife will find  
2 equivalent habitat elsewhere and return after the Project concludes in 17 years.  
3 These types of “general statements about ‘possible’ effects and the existence of  
4 ‘some risk’ do not constitute a ‘hard look’” under MEPA. *See Mont. Wildlife Fed’n*,  
5 ¶ 43 (*citing Neighbors of Cuddy Mt. v. USFS*, 137 F.3d 1372, 1380 (9th Cir. 1998)).

6           The record indicates DEQ relied principally on an Environmental Summary  
7 Report from the Montana Natural Heritage Program (“MTNHP”) database. *See AR*  
8 0236 (Doc. 21). That report expressly states its data is “likely incomplete and may  
9 be inaccurate[.]” AR 0236. It further cautions its products “are not intended to  
10 substitute for field-collected data, nor are they intended to be the sole basis for  
11 natural resource management decisions[.]” and the information “is not intended as  
12 natural resource management guidelines or prescriptions or a determination of  
13 environmental impacts.” AR 0261, 0265. The report directed that “field verification  
14 by professional biologists” was necessary to determine the presence of identified  
15 species. AR 0261. However, it appears DEQ conducted no such field verification.

16           DEQ responds that its analysis is entitled to deference and PTC improperly  
17 seeks to substitute its preferred outcome for the agency’s technical judgment. DEQs  
18 Resp. Br. at 22–24. The Court does not lightly disturb agency determinations within  
19 the agency’s field of expertise. However, deference presupposes that the agency  
20 actually exercised that expertise, that it examined the relevant data and articulated a

1 rational connection between the facts found and the choices made. *Clark Fork 2008*,

2 ¶ 47. Where, as here, the agency’s conclusion is contradicted by its sister agencies,  
3 unsupported by the scientific record it compiled, unexplained in the face of contrary  
4 evidence, and premised on a data source that disclaims its fitness for the purpose to  
5 which it was put, the decision is not the product of reasoned analysis deserving  
6 deference. *Id.* Thus, DEQ’s evaluation of impacts to threatened, endangered, and  
7 other wildlife is arbitrary, capricious, and unsupported by substantial evidence. *Id.*

8 *ii. Water quality and quantity.*

9 Since the application was filed under the dryland permit process, the EA  
10 acknowledges “it is unknown whether water would be used on site or what the source  
11 of water would be.” AR 005. As for water quality, the EA states the applicant is  
12 “required to comply with the applicable local, county, tribal, state, and federal  
13 requirements pertaining to water quality.” *Id.* The EA identifies the Site as “situated  
14 on a stream terrace that is derived from alluvium.” AR 007. Elbow Lake sits  
15 approximately 100 feet lower in elevation and roughly 1,250 horizontal feet to the  
16 West; accordingly, DEQ states “disturbance would occur above groundwater.” AR  
17 008. A pond is located approximately 670 feet south of the Site, and the EA  
18 identifies abandoned water channels within the Site area. AR 008.

19 The EA concedes surface water “may leave the site during a heavy storm  
20 event” and “could carry sediment.” AR 008. It further acknowledges the

1 “depression caused by mining activities would likely cause runoff to drain  
2 internally” into the Site, and surface water runoff leaving the Site “would generally  
3 be expected to infiltrate into the subsurface.” AR 008. Despite these concessions,  
4 DEQ concludes it “does not anticipate an impact to surface water or groundwater  
5 quality or quantity and distribution management.” *Id.*; *see also* AR 009 (“It is  
6 anticipated that the proposed opencut operation would have a negligible impact on  
7 water quality and water quantity.”). However, the record reveals fundamental gaps  
8 in the analysis underlying this conclusion.

9 DEQ reached its no impact conclusion without analyzing the transmissivity  
10 of the subsurface water and without determining the actual depth to groundwater.  
11 The only evidence in the record bearing on groundwater depth consists of LHC’s  
12 14-foot test pits and the observation that the mine sits approximately 100 feet higher  
13 in elevation than Elbow Lake. AR 0008. However, the mine will be excavated to a  
14 depth of 20 feet, i.e., six feet deeper than the test pits reached. AR 0008. A 14-foot  
15 test pit cannot demonstrate the absence of groundwater at depths of 15 to 20 feet.  
16 Once excavated, the pit floor will sit only approximately 80 feet above Elbow Lake.  
17 Accordingly, without knowledge of the actual depth to groundwater, DEQ cannot  
18 rationally evaluate the potential for the mining operation to intersect groundwater or  
19 to transport contaminants to nearby surface water.

1 Public comments and expert submissions, which DEQ was obligated to  
2 consider, *see* A.R.M. 17.4.610, identify that the subsurface layers at the Site have  
3 “high hydraulic conductivity meaning the surface contaminants can readily flow  
4 through these soils[.]” AR 0356 (Doc. 27). As a result, “infiltration rates of  
5 contaminated stormwater runoff are expected to be high, with little natural  
6 attenuation[.]” AR 0356. The Clearwater Resource Council submitted evidence that  
7 the Site sits “on highly permeable material, on a landform that accumulates and  
8 concentrates runoff and efficiently transports it, both as surface and subsurface flow  
9 to jurisdictional wetlands, ponds and Elbow Lake, and the Clearwater River.” AR  
10 0358. Additional public comments identified 17 permitted water wells on nearby  
11 cabin sites, citing the Montana Bureau of Mines and Geology. AR 381–82 (Doc.  
12 27). The EA contains no data rebutting or even addressing these submissions.

13 The EA acknowledges that “[d]ust created from mining and crushing may  
14 pollute the air in the project area.” AR 0063. That dust can be carried onto and into  
15 nearby water bodies, increasing turbidity. The EA further concedes during “the  
16 beginning stages of mining surface water may leave the site during a heavy storm  
17 event and could carry sediment.” AR 008. Yet DEQ draws no connection between  
18 these acknowledged risks and their potential downstream effects on water quality in  
19 Elbow Lake, the Clearwater River, or the jurisdictional wetlands the EA identifies

20

1 as proximate to the Site. A conclusion with no supporting analysis is, by definition,  
2 arbitrary. *See MEIC 2025*, ¶ 40; *See also Montana Wildlife Fed’n*, ¶ 43.

3 The EA’s treatment of bull trout (a federally threatened species) warrants  
4 particular attention. The EA acknowledges bull trout reside in the Clark Fork basin,  
5 which includes the Clearwater River. AR 0012. Public outreach confirmed bull  
6 trout presence and identified the Clearwater River as “critical bull trout habitat.” AR  
7 0341, 0372, 0381. The record further demonstrates “[t]he Clearwater River above  
8 Rainy Lake and Morrell Creek are both considered core areas for bull trout in the  
9 Blackfoot drainage, while the Clearwater River in the project area and Salmon Lake  
10 are both listed as nodal habitats.” AR 00716. A nodal habitat is a connecting area  
11 between core habitats essential to maintaining the life cycle of a fish population. In  
12 Salmon Lake, directly north of the Site, “[b]ull trout are close to extinction,” and  
13 their recovery is hindered by “habitat degradation and fragmentation, obstruction of  
14 their migratory corridors, degradation of water quality, the introduction of nonnative  
15 species, dams and other diversions, road construction and maintenance, stream  
16 dewatering, and urban and rural development.” AR 0107.

17 Despite this record, the EA categorically dismisses all impacts to aquatic  
18 species in a single sentence: “Direct impacts to unique, endangered, and/or fragile  
19 aquatic habitats and species, such as bull trout, are expected to be non-existent as the  
20 project is not expected to impact water quality or quantity resources where these

1 species exist.” AR 0016. This conclusion appears to rest on the assertion that “the  
2 project would not alter any critical streambanks or riparian environments to cause a  
3 permanent or temporary increase in turbidity.” AR 008.

4       However, altering streambanks is not the only mechanism by which mining  
5 operations increase turbidity. The EA itself identifies dust pollution, stormwater  
6 runoff carrying sediment, and subsurface infiltration as potential consequences of  
7 the Project, yet fails to connect these risks to their potential effects on bull trout or  
8 the aquatic ecosystems in which they reside. *Compare Clark Fork Coal. v. Mont.*  
9 *Dep’t of Env’l Quality*, 2012 MT 240, ¶ 10, 366 Mont. 427, 288 P.3d 183  
10 (recognizing that juvenile and adult bull trout are harmed by excessive  
11 sedimentation). Where a threatened species inhabits waters proximate to a project,  
12 and the record identifies multiple pathways through which contamination could  
13 reach those waters, an agency may not dismiss all aquatic impacts on the basis that  
14 it does not “expect” the project to affect water quality. Expectation without analysis  
15 is speculation, not the product of a hard look. *See Mont. Wildlife Fed’n*, ¶ 43.  
16 Therefore, the Court finds DEQ’s evaluation of water quality and quantity to be  
17 arbitrary and not supported by substantial evidence.

18 *iii. Conflict with local land use.*

19       The Site is located “in a land use area designated as Resource Protection 1 in  
20

1 the Seeley Lake Regional Plan adopted by the Missoula County Board of County  
2 Commissioners in 2010.” AR 0021. The EA acknowledges the classification “is  
3 designed to protect important resource land and areas of natural hazard,” and is  
4 intended to provide the “greatest potential resource protection on lands with the  
5 highest values for biodiversity, fish and wildlife habitat, forest production,  
6 recreation, wetlands, and other resources.” AR 0021.

7 The EA further notes that the “Plan recommends that areas designated as such  
8 should remain undeveloped, but if development occurs, it should be accompanied  
9 by measures that minimize impacts to natural resources.” *Id.* The Resource  
10 Protection 1 designation specifically discourages development by recommending a  
11 maximum density of one dwelling unit per 160 acres and does not contemplate  
12 gravel pit operations. AR 0152. The Plan directs new gravel pits to be located in  
13 designated industrial zones, generally in the town of Seeley Lake or adjacent to  
14 Clearwater Junction, not in resource protection areas. *See* AR 0163, 0169, 0202.

15 The Plan’s stated purpose for these lands is to protect “overall ecosystem  
16 functions and support a significant amount of biodiversity” by preserving wildlife’s  
17 “primary habitat requirements as well as environments for them to move within and  
18 among seasonal habitats via corridors and linkage zones.” AR 0152. The  
19 designation also recognizes these lands as providing “critical winter range” for big  
20 game animals. AR 0152. The Plan concludes that while some residential

1 development may be permitted, “a better outcome for the area would be  
2 conservation.” AR 0153. Despite acknowledging this framework, the EA concludes  
3 that because “Missoula County indicated that the site was not zoned,” “impacts from  
4 or to locally-adopted environmental plans and goals would not be expected as a  
5 result of” the Project. AR 0021. The EA offers no analysis of how a 17 year  
6 industrial mining operation on land designated for the greatest degree of resource  
7 protection is consistent with—or conflicts with—the goals and action strategies of  
8 the Seeley Lake Regional Plan.

9       This reasoning conflates zoning with land-use planning. The absence of  
10 formal zoning does not render the Plan a nullity for purposes of MEPA review.  
11 Under A.R.M. 17.4.608(1)(f), DEQ must evaluate “potential conflict with local,  
12 state, or federal laws, requirements, or formal plans.” The Seeley Lake Regional  
13 Plan, adopted by the Missoula County Board of County Commissioners and  
14 incorporated into Missoula County’s Growth Plan, is precisely such a “formal plan.”  
15 *See Hartshorne v. City of Whitefish*, 2021 MT 116, ¶ 19, 404 Mont. 150, 486 P.3d  
16 693. DEQ’s failure to evaluate the Project’s conflict with its provisions, despite  
17 identifying them in the EA itself, renders the analysis incomplete.

18       PTC further observes that even where the EA attempts to address this criterion  
19 directly, it conflates the requirement of A.R.M. 17.4.608(1)(f) (conflict with formal  
20 plans) with A.R.M. 17.4.608(1)(c) (growth-inducing or growth-inhibiting impacts).

1 The EA states that there would be no conflict with “any local, state or federal laws,  
2 requirements or formal plans” because the mining activities would not “have any  
3 growth-inducing or growth-inhibiting aspects.” AR 0029. These are distinct  
4 inquiries. The question is not whether the Project will induce growth; it is whether  
5 the Project conflicts with a formal plan that designates the area for resource  
6 protection and expressly directs industrial activity, including gravel operations,  
7 elsewhere. DEQ’s conflation of these separate regulatory requirements further  
8 demonstrates that it did not meaningfully evaluate the Plan’s applicability to the  
9 Project. Therefore, the Court finds DEQ’s evaluation of the Project’s conflict with  
10 local land-use guidance to be arbitrary and capricious.

11 Having found DEQ’s analysis deficient across all categories challenged by  
12 PTC—wildlife and endangered species, water quality and quantity including bull  
13 trout, conflict with local land-use guidance, and the failure to consult with sister  
14 agencies—the Court concludes that DEQ’s decision to forgo preparation of an EIS  
15 was arbitrary, capricious, and unsupported by substantial evidence.

16 The record raises substantial questions as to whether the Project may have  
17 significant effects on the human environment. “A plaintiff need not show that  
18 significant effects will in fact occur, but if the plaintiff raises substantial questions  
19 whether a project may have a significant effect, an EIS must be prepared.” *Ravalli*  
20 *Cty. Fish & Game Ass’n, Inc.*, 273 Mont. at 379, 903 P.2d at 1368 (citation omitted).

1 The record supports findings of significance under A.R.M. 17.4.608(1)(d) (the  
2 quantity and quality of environmental resources affected, including uniqueness and  
3 fragility), (e) (the importance to the state and society of each resource affected), and  
4 (f) (potential conflict with local, state, or federal laws, requirements, or formal  
5 plans). Accordingly, DEQ shall be directed to prepare a full EIS. However, the  
6 issue of vacatur will be addressed after the parties have an opportunity to provide  
7 additional briefing to the Court, as explicitly reserved by DEQ.

8 **C. Whether DEQ has an obligation to consult with sister agencies.**

9 The Court turns finally to the question of whether DEQ was obligated to  
10 consult with FWP and the United States Fish and Wildlife Service (“USFWS”)  
11 before concluding that the Project would not significantly affect the human  
12 environment.

13 The Montana Supreme Court has recognized that “MEPA serves a role in  
14 enabling the Legislature to fulfill its constitutional obligation to prevent  
15 environmental harms infringing upon Montanans’ right to a clean and healthful  
16 environment.” *Park Cty.*, ¶ 67. Accordingly, “MEPA is an essential aspect of the  
17 State’s efforts to meet its constitutional obligations, as are the equitable remedies  
18 without which MEPA is rendered meaningless.” *Id.* ¶ 89; *Held*, ¶ 59.

19 MEPA was designed “to promote efforts that will prevent, mitigate, or  
20 eliminate damage to the environment” and to promote human health and welfare.

Mont. Code Ann. § 75-1-102(2). The law requires agencies to “use a systematic,

1 interdisciplinary approach that will ensure . . . the integrated use of the natural and  
2 social sciences and the environmental design arts in planning and in decision-making  
3 for a state-sponsored project that may have an impact on the Montana human  
4 environment.” Mont. Code Ann. § 75-1-201(1)(i)(A). In carrying out this mandate,  
5 DEQ “must examine the relevant data and articulate a satisfactory explanation for  
6 its action, including a rational connection between the facts found and the choice  
7 made.” *Clark Fork 2008*, ¶ 47.

8         The requirement of a “systematic, interdisciplinary approach” utilizing the  
9 “natural and social sciences” necessarily contemplates an agency will draw upon the  
10 expertise of those entities possessing specialized knowledge relevant to the impacts  
11 under review. Where, as here, the proposed action occurs in an area inhabited by  
12 federally threatened species (e.g., grizzly bears and bull trout), the agencies  
13 possessing the scientific expertise to evaluate impacts on those species are FWP and  
14 USFWS. The record confirms this expectation. The MTNHP report on which DEQ  
15 relied expressly noted that “USFWS wants project proponents to consider whether  
16 the species may be present when evaluating the potential impacts of a project and to  
17 work with the USFWS to develop and implement best management practices to  
18 minimize or eliminate project effects on the species.” AR 0239.

19         DEQ’s EA contains no evidence that it consulted with USFWS, FWP, or any  
20 wildlife biologist before concluding the Project would have negligible impacts on

1 threatened and endangered species. The EA relied instead on the MTNHP database,  
2 i.e., a source that disclaimed its own adequacy, and on DEQ's internal assessment,  
3 which, as detailed above, was contradicted by FWP's scientific findings for the  
4 immediately adjacent parcel. DEQ's failure to consult is particularly striking given  
5 FWP's 2009 EA and Dr. Servheen's expert testimony. Rather than seeking to  
6 compile all relevant data and engaging this evidence, DEQ reached conclusions  
7 directly at odds with it.

8         The purposes of both MEPA and the OMA are to fulfill and implement the  
9 constitutional right to a clean and healthful environment and the principle of non-  
10 degradation. *See Park Cty.*, ¶¶ 64–65; Mont. Code Ann. § 75-1-102(1); Mont. Code  
11 Ann. § 82-4-402(1). These constitutional and statutory mandates require DEQ to  
12 avail itself of the best available information when evaluating impacts on protected  
13 species. Where threatened or endangered species are identified as present within or  
14 proximate to a project area, and sister agencies possess directly relevant scientific  
15 expertise and findings, DEQ's failure to consult with those agencies before reaching  
16 its environmental conclusions renders its analysis fundamentally incomplete.

17         An agency cannot take a "hard look" with its eyes closed to the expertise at  
18 hand. The Court concludes that DEQ's failure to consult with FWP and USFWS, in  
19 light of the record evidence identifying threatened species within and proximate to  
20 the Site, contributed to the deficiencies identified above and further supports the

1 finding that DEQ’s EA was arbitrary, capricious, and unsupported by substantial  
2 evidence. However, the Court declines to declare a bright line rule on the agency’s  
3 consultation requirements. While DEQ has a clear statutory duty to “consult with  
4 and obtain the comments of any state agency that has jurisdiction by law or special  
5 expertise” before preparing an EIS (*see* Mont. Code Ann. § 75-1-201(l)(c)), no  
6 analogous consultation requirement applies at the EA stage, where the primary  
7 purpose is to determine whether the “significance” threshold is triggered. *See*  
8 A.R.M. 17.4.607, .608, .609. At that stage, the agency’s obligation is to compile  
9 relevant information, analyze it reasonably, and consider all pertinent data. *Clark*  
10 *Fork 2008*, ¶ 47. Nevertheless, where threatened and endangered species are present  
11 within a proposed mining area, the complete absence of consultation with sister  
12 agencies possessing specialized expertise in those species raises serious questions  
13 about whether DEQ has satisfied its obligations to compile “all pertinent data”  
14 leaving the resulting EA vulnerable to challenge under MEPA.

15 **V. CONCLUSION**

16 Based on the foregoing, the Motion is DENIED in part and GRANTED in  
17 part pursuant to the abovementioned instruction.

18 DATED this 22nd day of April 2026.

19   
20 Hon. Leslie Halligan, District Court Judge

cc: Robert Farris-Olsen, Esq./ Mark L. Stermitz Esq./ Graham J. Coppes, Esq./  
Jeremiah Radford Langston Esq./ Kaitlin Elizabeth Whitfield Esq.