



## **Climate Change, the Public Trust, and Constitutional Challenges in Montana: the First Trial Addressing the “Right” to a Clean and Healthful Environment Starts June 12**

A first-of-its-kind climate change trial will start in a Montana State District Court on June 12, 2023. It will be the first involving a climate change suit premised on the Public Trust Doctrine and challenges pursuant to a state’s Constitution.

### **The Youth Plaintiffs**

The 16 young activist plaintiffs, which the district court refers to as the Youth Plaintiffs, claim that the Montana State Constitution guarantees residents “the right to a clean and healthful environment,” and that the Governor and the state agency defendants are responsible for maintaining and improving the environment for present and future generations (See the [full complaint](#)).

The lawsuit seeks a declaration of the “right” under the Montana Constitution to a stable climate system. It also seeks to compel Montana to prepare and implement a remedial plan to reduce greenhouse gas emissions.

### **Focus on the “Climate Change Exception”**

The case challenges the constitutionality of Montana’s fossil fuel-based State Energy Policy and the “Climate Change Exception” in the Montana Environmental Policy Act (MEPA). The complaint alleges that the Governor and state agency defendants had continued “to act affirmatively to exacerbate the climate crisis” despite their awareness that the plaintiffs were living under “dangerous climatic conditions that create an unreasonable risk of harm.”

The plaintiffs asked the court for declarations that the State Energy Policy and the Climate Change Exception violate the Public Trust Doctrine and constitutional provisions that protect the right to a clean and healthful environment; the right to seek safety, health, and happiness; and the right to individual dignity and equal protection.

The plaintiffs also asked the district court for injunctive relief in the form of orders directing the defendants to:

- Prepare an accounting of Montana’s greenhouse gas emissions; and
- Develop and implement a remedial plan to reduce emissions “consistent with the best available science and reductions necessary to protect Youth Plaintiffs’ constitutional rights from further infringement..., and to reduce the cumulative risk of harm to those rights.”

### **Standing to Sue and No Need to Pursue Administrative Remedies**

The defendants argued that the claims should be dismissed because, although there were admitted past, present, and future injuries, the plaintiffs lacked standing because they could not prove causation and redressability. In the complaint, the plaintiffs offered several examples that allegedly demonstrated Montana’s significant contribution to climate change. For example:

- Montana’s per capita energy consumption is among the top one-third of all states, ranking 12th highest energy use per capita in 2017<sup>[1]</sup>;
- Montana is the sixth largest coal producer in the United States<sup>[2]</sup>;
- Montana produces one in every 200 barrels of U.S. oil<sup>[3]</sup>;
- One fifth of all U.S. natural gas imports from Canada entered the U.S. by pipelines through Montana in 2017. These pipelines were authorized by the defendants. Roughly 95% of natural gas that enters Montana passes through this state to other states<sup>[4]</sup>; and
- Between 1960–2017, coal, oil, and gas extracted from Montana with state-authorization resulted in 3,940 million metric tons of CO<sub>2</sub> emissions once combusted. This number is roughly equivalent to 80% of all energy-related U.S.

CO2 emissions in 2018. This amount of cumulative emissions would rank as the third largest when compared to the annual emissions of countries<sup>[5]</sup>.

District Court Judge Kathy Seely made short work of the defendants' standing allegations. She held that the plaintiffs had "case or controversy" standing to pursue their claims that the Montana State Energy Policy and the Climate Change Exception to the MEPA (which provides that environmental review under MEPA may not include "actual or potential impacts that are regional, national, or global in nature") violate the state's Constitution and the Public Trust Doctrine. The court held that these claims, if proven at trial, could be redressed by declaratory relief.

The court also rejected the defendants' claims that the plaintiffs had not exhausted administrative remedies holding that the claims could be addressed in court without first seeking administrative review.

### **Partial Victory Only. Injunctive Relief Denied**

However, the court denied the plaintiffs' second claim seeking an injunction that would force the state agencies to develop a remedial plan to reduce emissions and prepare an accounting of greenhouse gas emissions. The court held that such a ruling would violate the "political question" doctrine and is thus non-justiciable. Citing the state Supreme Court's decision in *Larson v. State*<sup>[6]</sup> the court explained the doctrine:

Under this doctrine, courts recognize that they "generally should not adjudicate matters 'more appropriately in the domain of the legislative or executive branches or the reserved political power of the people.'<sup>[7]</sup> Courts may not review "controversies...which revolve around policy choices and value determinations constitutionally committed for resolution to other branches of government or to the people in the manner provided by law."<sup>[8]</sup>

See the [Court Order on Motion to Dismiss](#). For a comprehensive review of the case, see the [October 2021 Case Note in the Public Land & Resources Law Review](#).

### **Conclusion**

Perhaps the best characterization of the case can be taken from the case note published in the *Public Land & Resources Law Review* cited above:

*Held* provides a roadmap for future climate change litigation by elucidating Montana’s jurisprudential approach to climate arguments. The constitutional challenge strategy allowed Plaintiffs to streamline judicial review through avoidance of exhausting administrative remedies. This is important because climate change is not an impending threat but an active one. The young Plaintiffs sought expansive remedies and the Court will now only hear the ones considered judicially reasonable. Although the remedies are reasonable for the judiciary, they relief sought is underwhelming when the enormity of climate change is taken into context. The success of *Held* is in building legal arguments, pushing the courts to recognize climate change, and utilizing the environmental rights of Montana’s Constitution. This case highlights the importance of intergenerational equity and the abdication of government from recognizing that future citizens have a right to enjoy land, air, and water held in public trust.

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

[\[1\]](#) *Complaint* ¶ 129 (Mar. 13, 2020)

[\[2\]](#) *Id.*, ¶ 134

[\[3\]](#) *Id.*, ¶ 135

[\[4\]](#) *Id.*, ¶ 138

[\[5\]](#) *Id.*, ¶ 140

[\[6\]](#) 2019 MT 28, 394 Mont. 167, 434 P.3d 24

[\[7\]](#) *Larson* ¶ 18 n. 6

[\[8\]](#) *Id.*, ¶ 39 (citation omitted)