

Current DEQ MEPA Cases
July 30, 2007

-MEIC et al. v. DEQ, Bull Mountain Development (constitutional and MEPA challenge to air quality permit)--on appeal to Montana Supreme Court from judgment for defendants by Mussellshell County District Court)--The plaintiffs argue, among other things, that DEQ's EIS on the Roundup Power Plant too narrowly defines the purpose of the project to be construction of a coal fired power plant and therefore does not examine reasonable alternatives, such as conservation or use of renewable resources to generate electricity. This case has been briefed and is before the Court for decision.

-Rattlesnake Coalition, Folsom, and Jensen v. City of Missoula, DEQ (Missoula County, 2005)--Plaintiffs challenge three SIDs that were established for sewer expansion in the Rattlesnake area of Missoula. Two of the four counts are directed at DEQ. In both counts the plaintiffs contend that DEQ should have prepared an EIS on its partial funding of the project. They contend that DEQ's failure to do so violates MEPA and their constitutional right to a clean and healthful environment. The basis for the claim that an EIS should have been prepared is that extension of the sewer will facilitate high-density growth that will have environmental impacts. This case is before the court on motion for summary judgment.

-Northern Cheyenne Tribe v. DEQ (Big Horn County, 2006)--In this case, the Tribe challenges the permit and permit renewal issued to Fidelity for discharges of CBM water on the Tongue. The alleged errors are: failure to impose technology-based treatment limitations, violation of the non-degradation provisions of the water quality act because the existing significance threshold for EC and SAR are unlawful, violation of the right to a clean and healthful environment, abuse of discretion (issuance of permits while new nondegradation rule pending), failure to conduct adequate alternatives analysis under MEPA, failure to prepare EIS, and inappropriate reliance on invalid programmatic EIS. The case is before the court for decision on summary judgment motions.

-Pennaco et al. v. BER, DEQ (Big Horn County, 2006)--This is a challenge to the Board of Environmental Review's adoption of rules setting water quality standards for electrical conductivity and sodium absorption ratio in 2003 and a non-degradation threshold for these parameters in 2006. One of the grounds for challenge is failure to prepare an EA or an EIS. This case is before the court for decision on summary judgment motions.

-Pennaco et al. v. EPA, State of Montana (Federal District Court, Wyoming, 2006)--This is a challenge to EPA's approval of the Board of Environmental Review's 2003 rulemaking pertaining to EC and SAR and to EPA's decision to delay review of the Board's 2006 rulemaking on EC and SAR. A number of cases were filed and consolidated. One of the plaintiff's grounds for challenge is that the Board was required to prepare an EA or EIS under MEPA on the 2006 rulemaking and did not do so. This case is stayed till August 2, 2007, to allow settlement negotiations to proceed.