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MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
YELLOWSTONE COUNTY

LAUREL CARED, Plaintiff, vs. STATE OF MONTANA, Defendant.	Cause No.: DV-56-2026-0000855-DK Judge: Hon. Ed Zink **MONTANA BOARD OF INVESTMENTS' AND DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES' JOINT RESPONSE IN OPPOSITION TO PLAINTIFF'S SECOND MOTION FOR TEMPORARY RESTRAINING ORDER & PRELIMINARY INJUNCTION**

Introduction

Plaintiff Laurel CARED again moves for a temporary restraining order and preliminary injunction to stop an acutely and urgently needed Forensic Mental Health Facility. Plaintiff asserts "conclusions" reached in the Environmental Assessment must be questioned before work on the

Forensic Mental Health Facility can proceed. But *conclusions* are *not* what the Montana Environmental Policy Act requires. The Montana Environmental Policy Act requires a *hard look* at environmental, social, public health, and economic impacts. The Montana Board of Investments and Department of Public Health and Human Services took this hard look at the potential impacts of the Forensic Mental Health Facility. *See e.g.* MT5930-6233; 4908-4958.[1] The Agencies complied with the Montana Environmental Policy Act.

But more, temporary restraining orders or preliminary injunctions are *extraordinary* remedies, *never* awarded as of right. *See Kalarchik v. State*, 2026 MT 76, ¶ 23, 427 Mont. 333, 346, 587 P.3d 784, 794. They require a precise showing, which Plaintiff does not and cannot make.

Plaintiff is not likely to prevail on the merits of its complaint given the uncontroverted facts in the record and applicable law. *See* Mont. Code Ann. § 75-1-201(5)(c)(iii). Plaintiff questions certain of the Agencies' "conclusions" in the Environmental Assessment. But MEPA requires a hard look, not particular conclusions, and this hard look the Agencies took.

Plaintiff suffers no harm. *See* Mont. Code Ann. § 75-1-201(5)(c)(iii)(A). Plaintiff alleges two "interests" ostensibly harmed if the Forensic Mental Health Facility progresses: (1) an interest in the availability of local water services; and (2) an interest in the existing character of the neighborhood. "Interests" are not harm.

The public interest strongly supports urgently moving forward with the acutely needed Forensic Mental Health Facility. *See* Mont. Code Ann. § 75-1-201(5)(c)(iii)(B). It is incontrovertibly in the public's interest to urgently address Montana's acute shortage of forensic mental health care capacity. As found by this Court, "the need for increased mental health services

[1] *See e.g.* State of Montana *Final* Environmental Assessment (Sept. 18, 2026) (MT5930-6233); State of Montana *Draft* Final Environmental Assessment *Redline* (August 31, 2026) (MT4908-4958) (identifying changes made to Environmental Assessment in further investigation and explanation as to all water supply issues).

for the underserved population areas in central Montana is *acute and urgent*." Order Granting in Part Preliminary Injunction 20 (emphasis added) (Doc. 35). The damages caused by any delay, moreover, are real, significant, and increasing.

Stopping an acutely and urgently needed Forensic Mental Health Facility is not narrowly tailored relief for Plaintiff's putative harms. *See* Mont. Code Ann. § 75-1-201(5)(c)(iii)(C). Plaintiff's putative harms lend themselves to narrower relief, already afforded, that also allows the Forensic Mental Health Facility to move forward. But Plaintiff does not request such narrowly tailored relief.

Plaintiff does not satisfy any, much less all, of the requirements for a temporary restraining order or preliminary injunction, for which Plaintiff bears the burden of proof. *See* Mont. Code Ann. § 75-1-201(5)(d). Plaintiff's Second Motion for Temporary Restraining Order & Preliminary Injunction should be denied.

I. Plaintiff questions the Agencies' "conclusions," but the Montana Environmental Policy Act requires a hard look at environmental impacts, not any particular conclusion.

Plaintiff is not "more likely than not to prevail on the merits of its complaint given the *uncontroverted* facts in the record and applicable law." Mont. Code Ann. § 75-1-201(5)(c)(iii) (emphasis added). Plaintiff questions certain "conclusions" reached by the Montana Board of Investments and Department of Public Health and Human Services in the Environmental Assessment. *See* Pl.'s Br. 7-13. But the Montana Environmental Policy Act requires a "hard look" at environmental impacts, not any particular conclusion.

The Montana Environmental Policy Act "is procedural." Mont. Code Ann. § 75-1-102(1). Its "focus is on the administrative decision-making process rather than the decision itself."

Montana Trout Unlimited v. Montana Dept. of Envtl. Quality, 2024 MT 36, ¶ 12, 415 Mont. 214, 544 P.3d 163 (internal quotations omitted).

Reduced to its essence, MEPA requires agencies take "a 'hard look' at the environmental impacts of a given project." *Id.*, ¶ 18. "Environmental review" means "to *determine, examine, or document the effects and impacts* of the proposed action on the quality of Montana's environment." Mont. Code Ann. § 75-1-220(7) (emphasis added).

MEPA "does not demand that an agency make particular substantive decisions." *Montana Wildlife Fed'n. v. Montana Bd. of Oil & Gas Conservation*, 2012 MT 128, ¶ 32, 365 Mont. 232, 280 P.3d 877 (internal quotations omitted). While there must be a "rational connection between the facts found and the choice made," there is not "intense scrutiny of the decision itself." *Id.,* ¶ 43 (internal quotations omitted). The question is *not* "whether the agency's decision was the 'correct' one scientifically, morally, or politically." *Montana Trout Unlimited,* ¶ 12. Rather, the question *is* "whether the decision was so at odds with the information gathered that it could be characterized as arbitrary or the product of caprice." *Id.* "[G]reat deference," moreover, is afforded "to agency decisions implicating substantial agency expertise." *Id.* (internal quotations omitted).

The Montana Board of Investments and Department of Public Health and Human Services took a hard look at the environmental, social, public health, and economic impacts potentially caused by the Forensic Mental Health Facility. *See e.g.* MT5930-6233; 4908-4958. The Agencies' analysis was comprehensive, reasoned, and predicated on substantial evidence. *See id*. The Environmental Assessment analyzed, among other things, the affected environment, including water infrastructure, capacity, pressure, and availability (MT5948-5949; 5951-5957; 6231-6232; 6234; 4902-4905), public health and safety, environmental consequences, and alternative Facility locations. The Agencies' conclusions were reasoned, rational, based on substantial evidence, based

on Agency expertise, and based on expert engineering review. *See* MT5976-5979. The Montana Board of Investments and Department of Public Health and Human Services complied with the Montana Environmental Policy Act.

In arguing otherwise, Plaintiff questions the "*conclusion* that the Facility's actual potable-water demand will be approximately 2,000 gpd," and questions that conclusion when compared to the Agencies' use of DEQ Circular 4 to calculate an alternative theoretical facility's demand of approximately 4,680 gpd for a 32 bed facility or 8,960 gpd for a 64 bed facility. *See* Pl.'s Br. 7-8 (emphasis added). Plaintiff's semantic summersaults in arguing an unsupported conclusion are creative, but unavailing (and certainly not uncontroverted). As the Final Environmental Assessment makes clear:

> Department of Environmental Quality (DEQ) Circular 4, which can be used to variously estimate water use from theoretical facilities, forecasts use of a theoretical facility potentially analogous to the [F]orensic [M]ental [H]ealth [F]acility of 4,680 gallons per day (gpd) for Phase I (32 beds times 115 gpd plus 100 employees times 10 gpd). Phase II of a theoretical facility would add an additional 4,280 gpd (32 beds times 115 gpd plus 60 employees times 10 gpd). An alternative calculation using DEQ Circular 4 projects, at 32 beds, which is roughly the equivalent of 10 five-bedroom single family homes, approximately 400 gpd (approximately 4,000 gpd total).
>
> However, actual projected potable demand for the 32-bed [Forensic Mental Health Facility] based on engineering design is approximately 2,000 gallons per day: 1,000 for employee and patient needs and 1,000 for kitchen and laundry services. At 64 beds, the [F]acility would use 2,600 gallons per day potable water. *Accordingly, the impact of the [F]acility can be analyzed both based on its actual use as designed, or, more conservatively, based on projection from a theoretical facility using DEQ Circular 4*.

MT5948-5949; 4926-4927 (emphasis added).

Thus, there was no lack of data or methodology,[2] nor certainly any "reject[ion]" of estimates. *See* Pl.'s Br. 8. Rather, to take a hard look at impacts, the Environmental Assessment analyzed *both* the Forensic Mental Health Facility's *actual* projected potable demand and, to

[2] The Environmental Assessment itself described how the 2,000 gpd actual projected water use was calculated. *See* MT5948-5949; 5953.

ensure conservatism in its hard look, *also* analyzed a theoretical facility's *estimated* water demand. It was a look at *both* what the Facility was expected to use (a lower value), as well as what an analogous facility might use (a higher value), to understand the impacts for each. This is not deficient analysis; it is over analysis. And, regardless, "[w]ater and sewer capacity and water pressure is more than sufficient whether evaluated using the [F]acility's actual projected water use based on [F]acility design, or whether evaluated against the more conservative use numbers projected for a theoretical facility." MT5977-5978; 4955-56.

Next, Plaintiff asserts that "[t]he City [of Laurel] has not determined that its system can serve the Facility," and that the Environmental Assessment's "*conclusion* that municipal capacity is sufficient still rests on an inference that the City itself has declined to make." Pl.'s Br. 8, 10 (emphasis added). As a threshold matter, nothing is wrong with the Agencies or their professional engineers making inferences or extrapolating in analyzing an issue in an environmental analysis. *See e.g. Montana Trout Unlimited v. Montana Dept. of Envtl. Quality*, 2024 MT 36, ¶ 44, 415 Mont. 214, 544 P.3d 163 (noting "process of assigning relative weights to conflicting data for predictive purposes is essentially a technical exercise requiring agency expertise that should be afforded substantial deference" (internal quotations omitted)).

That the City of Laurel has not made (or chooses not to make[3]) this determination, , *does not mean* that it cannot be (and was) a conclusion rationally reached by the Agencies. But, again, it is not the conclusion that matters. It is the analysis. And the Agencies' analysis of water capacity issues is exhaustive. *See e.g.* MT5951-5954; 5956-5957; 6227-6228; 6231-6232; 6234; 4902-4905; 4929-4932; 4934-4935. For instance, the Agencies' analysis included:

[3] The City of Laurel's approach to the Forensic Mental Health Facility, its moratorium on annexation applications, and its denial of the Forensic Mental Health Facility's will serve request may be animated by considerations other than impacts, if any, to the City's water system. *See e.g.* MT8771-8772.

- The City of Laurel's approval of R25-29 reflected an affirmative engineering determination that capacity exists in the existing system to receive new connections.

- The City's review and approval of water and sewer plans and specifications and construction of the infrastructure in accordance with City standards demonstrated the availability of new and sufficient water and sewer infrastructure.

- The extended water and sewer mains contemplated new connections and were designed to specifications providing adequate capacity to service those new connections.

- The City recognized the area as a "growth area" capable of receiving services.

- No technical information has been identified or presented questioning the sufficiency of water or sewer capacity or water pressure to the proposed Facility.

- The City had presented nothing to the Montana Department of Environmental Quality (DEQ), the regulator of public water supply systems, suggesting concerns as to infrastructure capacity.

- The Montana Department of Natural Resources and Conservation (DNRC), which regulates the City's water rights, confirmed the City has access to significantly more water than necessary to service the Forensic Mental Health Facility.

- The City approved a Conditional Use Permit for Love's Travel Stops and Country Stores for a 24-unit recreational vehicle parking area, the water services for which would be provided by the same water line that would service the Facility.

- The City discussed a new 10-year agreement with CHS Refinery, which includes a new requirement for minimum water purchase requirements for the City's largest user of the public water supply, and no concerns regarding the City's water or sewer infrastructure or capacity or water pressure were raised.

- The Montana Board of Investments and Department of Public Health and Human Services again conducted their own engineering analysis, relying on professional engineers, who again confirmed (including upon review of public comments, including the City of Laurel's) that adequate water and sewer capacity exists for the Forensic Mental Health Facility, and that adequate capacity exists whether evaluated against the Facility's actual use as designed or against a theoretical facility's use.

See id. This analysis, moreover, is at a granularity that even MEPA does not contemplate. *See* Mont. Code Ann. § 75-1-112 ("The department is exempt from the provisions of Title 75, chapter 1, parts 1 and 2 when reviewing water or sewer system plans or specifications under this part").

Turning to water pressure, Plaintiff alleges the "Revised Final [Environmental Assessment] *does not resolve* the identified water pressure issues" (emphasis removed and added). Pl.'s Br. 10. Again, MEPA does not require any particular "resolution" of issues; it requires the analysis of certain issues, and the Environmental Assessment identified and analyzed the water pressure issues. *See e.g.* MT5954; 4932. For example, the Environmental Assessment analyzed:

- Physical testing data, which demonstrated sufficient water pressure to serve the domestic and fire flow requirements of the proposed Facility.
- The water line built by Love's and which runs adjacent to the Facility's proposed location meets water pressure and capacity standards.
- Telgian testing showed that water pressure and capacity of the public water supply on the line that would be used by the Facility met all regulatory specifications.
- The Facility's impact to pressure elsewhere in the system and water pressure's relationship to private, or intra-facility, lines versus the mains.
- The current pressure zone is maintained by the City's 4-million gallon water tank, meaning the Facility would represent only 0.05% of the total tank capacity.
- Public water pressure concerns were addressed, and no technical information suggested that servicing the Forensic Mental Health Facility with water and sewer would result in extra-Facility capacity or pressure impacts.

See MT5949; 5951-5954;5956-4935; 4902-4905; 6234; 4927; 4929-4932; 4934-4935.

With respect to domestic pressure requirements, the 26 psi figure Plaintiff cites, *see* Pl.'s Br. 11, is pressure at Love's own riser after Love's meter and backflow losses. The engineers estimated 37.5 to 40.5 psi at the Facility site with fire flow and peak domestic demand flowing at the same time, the most demanding condition. *See* MT4904. As reflected in the Environmental Assessment, "[t]he City of Laurel water system has capacity to serve *the domestic* and fire flow requirements of the proposed [F]acility." MT5954; 4932 (emphasis added) *see also* MT 4905 (professional engineers concluding "City of Laurel water system currently has both intake and post-treatment capacity to serve the domestic and fire flow requirements of the project").

In arguing that the Agencies' professional engineering analysis "does not *resolve* these [water pressure] issues," Plaintiff asserts that "no pressure test was conducted at the Facility site," and thus that the Agencies' professional engineers had to rely on "extrapolated" estimates. Pl.'s Br. 10-11 (emphasis added). Again, there is nothing is wrong with the Agencies or their professional engineers making inferences or extrapolating. *See e.g. Montana Trout Unlimited v. Montana Dept. of Envtl. Quality*, 2024 MT 36, ¶ 44, 415 Mont. 214, 544 P.3d 163.

But more, the Montana Board of Investments and Department of Public Health and Human Services *requested from the City of Laurel permission to conduct these tests*. *See* MT4735-4737. The City of Laurel *denied the State permission to conduct these tests*.[4] *See id*. It would be the height of inequity to fault the State's environmental analysis for failing to predicate a "conclusion" in part upon a test the State requested to conduct but was denied permission to conduct.

Plaintiff next critiques the Environmental Assessment's purported failure to "*establish* that municipal water and sewer service are actually available." *See* Pl.'s Br. 12-13 (emphasis added). In the Court's Preliminary Injunction Order, the Court stated "the Final [Environmental Assessment] does not adequately address the ready availability of city services and the need, or not, of annexation," and thus the Environmental Assessment was remanded for "additional investigation and explanation as to all water supply issues, including…water availability to service the Facility." Order Granting in Part Preliminary Injunction 14, 23 (Doc. 35). The City of Laurel had enacted a moratorium on annexation applications, implicitly raising concerns about water and sewer capacity, pressure, and infrastructure, *see* MT5956; 4934, but also raising questions as to the availability of, or means of acquiring, water and sewer services, MT5954; 4932.

[4] *See also supra* n. 3.

In compliance with the Court's Preliminary Injunction Order, the Agencies analyzed options for acquiring City water and sewer services, including the need, or not, for annexation. *See* MT5954-5955; 4932-4933. The State's preferred option was for the City of Laurel to agree to provide water and sewer services to the Forensic Mental Health Facility without annexing the property into the City, as the City is currently doing with other customers, and, if necessary, for the State to provide mitigation funding to the City for conservation measures or infrastructure upgrades in the amount of the Facility's expected use as a condition of connection. MT5955; 4933.

In response to the Agencies' analysis of options for acquiring City water and sewer services, Plaintiff alleges the Environmental Assessment "still did not establish that municipal water and sewer service are actually available," and that the Agencies failed to address environmental impacts ostensibly arising from some of the options. *See* Pl.'s Br. 12-13.

The Environmental Assessment identified the preferred option; and the preferred option's environmental impacts, including to water and sewer capacity, water pressure, and infrastructure, have been exhaustively analyzed (it is, effectively, the Proposed Action, and assumes the City of Laurel will agree to provide water and sewer services to the Forensic Mental Health Facility). *See* MT4933. The other options would not be triggered by actions of the State, but rather, would be triggered by actions of others (*e.g.* the City of Laurel refusing to provide water and sewer services to the Forensic Mental Health Facility). *See Bitterrooters for Planning, Inc. v. Montana Dept. of Envtl. Quality*, 2017 MT 222, ¶ 33, 388 Mont. 453, 401 P.3d 712 (noting "MEPA…requires a reasonably close causal relationship between *the triggering [S]tate action* and the subject environmental effect" before requiring analysis of impacts (emphasis added)).

None of the other options would materially impact water capacity and pressure and, generally, the means of acquiring services are environmentally neutral and not materially

impactful. *See* MT5955; 4933. Absent knowing what actions others may ultimately take, however, it is premature to know what option will ultimately be required to "establish" water and sewer availability, or what the scope of that option's other at present unforeseeable (and thus not requiring review) impacts, if any, might be.[5] *See* Mont. Code Ann. § 75-1-201(1)(a)(iv) (noting environmental analysis must include analysis of "*proximate* environmental impacts of the proposed action" and "*proximate* adverse effects on Montana's environment that cannot be avoided if the proposed action is implemented" (emphasis added)); *Trout Unlimited v. Morton*, 509 F.2d 1276, 1283 (9th Cir. 1974) (noting environmental analysis should be guided by "rule of reason" and "need not discuss remote and highly speculative consequences").

II. Plaintiff suffers no harm.

Plaintiff alleges two "interests" ostensibly harmed if the Forensic Mental Health Facility progresses: (1) an interest in the availability of local water services; and (2) an interest in the existing character of the neighborhood. *See* Pl.'s Br. 13-14.

The availability of local water services, including Plaintiff's concerns regarding local water services, has been exhaustively analyzed. *See* MT5954-5957; 6227-6228; 6231-6232; 4902-4905; 6234; 4932-4935; *see also* Defendant's Brief in Support of Motion to Dissolve Preliminary Injunction (Doc. 46) (describing Agencies' further investigation and explanation of water supply issues). Plaintiff's "interest" has been addressed, any relief afforded, and any harm obviated.

Plaintiff's interest in the existing character of the neighborhood is more amorphous. Plaintiff concedes that the area was expected to "keep growing,"[6] though ostensibly as a residential

[5] Plaintiff asserts several of the options "facially implicate" various effects on the human environment. *See* Pl.'s Br. 13. But Plaintiff can no more speculate than the Agencies what those unforeseeable effects, if any, might be. *See id*.

[6] Plaintiff contemplates an intensity of growth for the area far greater than that caused by the Forensic Mental Health Facility. Yet, for that growth, Plaintiff does not question whether sufficient water or sewer capacity or water pressure would be available. *See* MT5965; 4943 (noting "Commenters assume a scale of residential and commercial development exceeding that of the [Forensic Mental Health Facility]").

area. *See e.g.* 2nd Decl. Hopper ¶ 14; 3rd Decl. Zahn ¶ 10. Plaintiff, therefore, cannot allege harm from the general incidents of growth, such as more traffic or noise, construction, dust, the area's declining rural character, or impacted views.

Recognizing this, Plaintiff asserts that the Forensic Mental Health "Facility would bring *things* into this neighborhood that are not here now, including security fencing, security lighting, more traffic [a general incident of growth], employees coming and going [commensurate with more residents coming and going, a general incident of growth], and *other activity* that comes with a secure facility." 2nd Decl. Hopper ¶ 15 (emphasis added).

The identified "interests," if harms, are not irreparable. The Montana Board of Investments and Department of Public Health and Human Services endeavored, throughout the environmental analysis process, to modify the Forensic Mental Health Facility's aesthetics to minimize visual impacts and better integrate the Facility with the surrounding area's residential and commercial context, including as to architectural design, setbacks, and landscaping. *See e.g.* MT5962; 5965; 4940; 4943. Should Plaintiff have been concerned about the impacts of fencing, lighting, or other Facility aesthetics, it had opportunities to advocate for changes in Facility design. Plaintiff's "interests" have been addressed, relief afforded, and any harm obviated.

Plaintiff's insinuations of interests in other "things" or "other activity" is not clear. Irreparable harm cannot be speculative. *Montanans Against Irresponsible Densification, LLC v. State*, 2024 MT 200, ¶ 15, 418 Mont. 78, 555 P.3d 759. To the extent Plaintiff's interest in the character of the neighborhood may concern the proximity of the Forensic Mental Health Facility to schools and residences and related safety concerns, tax revenue, and property values, those issues have been exhaustively analyzed in the Environmental Assessment. *See e.g.* MT5942-5944; 5946; 5958; 5960-5961; 5962-5965; 4920-4922; 4924; 4936; 4938-4939; 4940-4943. In that sense,

Plaintiff's "interests" have been addressed, any relief afforded, and any harm obviated. To the extent Plaintiff's interest in the character of the neighborhood may reflect a desire to exclude from the area people in need of or receiving mental health care, that is not a legally cognizable harm. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (noting an injury in fact requires an "an invasion of a legally protected interest"); *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 448 (1985) (noting "mere negative attitudes, or fear…are not permissible bases" for differential treatment); MT8771-8872.

Reduced to its essence, though, *Plaintiff's*[7] "interest," whatever it may be, is not a harm. *See Sierra Club v. Morton*, 405 U.S. 727, 739 (noting "a mere 'interest in a problem,' no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient by itself to render the organization 'adversely affected' or 'aggrieved' within the meaning of the [Administrative Procedures Act]."); *Heffernan v. Missoula City Council*, 2011 MT 91, ¶ 33, 360 Mont. 207, 255 P.3d 80 (to be a case or controversy, "plaintiff must clearly allege a past, present, or threatened injury to a property or civil right").

Plaintiff points to *Sweet Grass Farms v. Bd. of Cnty Comm'rs*, 2000 MT 147, ¶ 32, 300 Mont. 66, 2 P.3d 825, for the proposition that "irreparable harm [is found] where the development of a subdivision in an agricultural area would reduce the quality of local services and irreparably change the character of the area." Pl.'s Br. 13-14. But *Sweet Grass Farms* shows why the plaintiff *there* demonstrated harm, while Plaintiff *here* does not and cannot demonstrate harm.

In *Sweet Grass Farms*, Sweet Grass Farms, a "family-*owned* farming operation," owned the property in the area that would be irreparably changed from rural agricultural to subdivided residential, and Sweet Grass Farms' "*property rights*" "would" be impacted. *See Sweet Grass*

[7] Plaintiff, Laurel CARED, is a "collective of Laurel community members" with "intensive, long-standing interests." Amended Complaint ¶ 11 (Doc. 54).

Farms, ¶¶ 7, 32 (emphasis added). That is *not* the situation here. Here, Plaintiff anticipated change to the neighborhood, it just takes issue with aspects of that change. But more, Plaintiff alleges only an "interest" in the character of the neighborhood. That is not harm. It is not, for instance, an impacted property right.

Plaintiff suffers no harm, nor any harm that is irreparable. *See* Mont. Code Ann. § 75-1-201(5)(c)(iii)(A).

III. The public interest strongly supports urgently moving forward with the acutely needed Forensic Mental Health Facility.

It is incontrovertibly in the public's interest to address the acute shortage of forensic mental health care capacity. MT5937-5939; 5958-5961; 5969-5971; 5976. And it is incontrovertibly in the public's interest to do so urgently. *See id*. As found by this Court, "the need for increased mental health services for the underserved population areas in central Montana is *acute and urgent*." Order Granting in Part Preliminary Injunction 20 (emphasis added) (Doc. 35).

Juxtaposed against this acute and urgent public interest is Plaintiff's belief that "unresolved questions" remain "concerning potable water demand, pressure, system capacity, and the means by which municipal water and sewer service will actually be obtained," and that the public interest is served by stopping the Forensic Mental Health Facility and "resolving those questions." *See* Pl.'s Br. 14-15. Any public interest in indefinitely deliberating questions exhaustively analyzed and already rationally answered is far exceeded by the public's interest in providing mental health care to people in need; alleviating strains on the criminal justice system; mitigating due process risks; and mitigating safety risks. *See* MT5937-5939; 5958-5961; 5969-5971; 5976. And the

damages caused by indefinite delay are real, significant, and increasing. *See* Declaration of Board of Investments Executive Director (Oct. 5, 2026) (Attached as Exhibit A to Doc. 55).[8].

Plaintiff's questions have been exhaustively analyzed. *See* Section I*; see also* Defendants' Brief in Support of Motion to Dissolve Preliminary Injunction (identifying steps the Agencies took to further analyze these questions) (Doc. 46). And Plaintiff's questions have been answered:

> [The Department of Public Health and Human Services (in cooperation with the Board of Investments)] finds that water, wastewater, transportation, and other public service infrastructure, including emergency services, have sufficient capacity to support the Proposed Action. Expanding upon this finding, water and sewer capacity and infrastructure is sufficient and is available, water pressure is sufficient, and multiple options exist to secure water and sewer public services for the Proposed Action. Water and sewer capacity and water pressure is more than sufficient whether evaluated using the [F]acility's actual projected water use based on [F]acility design, or whether evaluated against the more conservative use numbers projected for a theoretical facility. No extrafacility impacts to water or sewer capacity or water pressure are anticipated from the Proposed Action. MT5977-5978; 4955-4956.

The Agencies' conclusions were reasoned, rational, based on substantial evidence, based on Agency expertise, and based on expert engineering review. *See* Section I. That there *may* be inconsistencies in the support for aspects of the conclusions, or that the conclusions *may* not even be the correct ones, do not justify their reversal, much less indeterminate deliberation over them. *See Montana Wildlife Fed'n.*, ¶ 25 (recognizing the arbitrary and capricious standard applied to MEPA decisions "does not permit a reversal merely because the record contains inconsistent evidence or evidence which might support a different result" (internal quotations omitted); *North Fork Pres. Ass'n v. Dept. of State Lands*, 238 Mont. 451, 465, 778 P.2d 862, 871 (1989) (questioning whether an agency's decision was "correct" is an improper substitution of judgment).

With respect to the implications of injunctive relief on the State and local economy, the Court has already concluded that it "is certain the State will suffer some amount of economic harm

[8] The Declaration of Board of Investments Executive Director (Oct. 5, 2026) is attached as Exhibit A to Defendants' Reply Brief in Further Support of Motion to Dissolve Preliminary Injunction (Doc. 55).

should construction of the Facility be temporarily paused" and that the "local economy will also be negatively impacted in some way." This harm is only increasing.

The State's per-day estimated damages have increased from $8,229.60 to $10,242.10, which is calculated using the applicable BLS Producer Price Index for New Health Care Building Construction times the construction contract costs plus the cost of housing 32 patients at the current legislatively authorized daily county jail rate divided by 365. Declaration of Board of Investments Executive Director ¶¶ 10-11.[9] Construction costs are likely to increase. *Id*. ¶ 11.

Any additional delay, moreover, risks *significant* delay. Any additional delay risks a lost construction *season* (postponing commencement of construction of the Forensic Mental Health Facility until Spring 2027), not merely lost days or weeks. *Id*. ¶¶ 8-9. It risks requiring reconfigured work plans and work progression, unavailable or unwilling contractors, and the related inefficiencies and inevitable cost increases. *Id*. §§ 5-7. Delay also exacerbates the acute shortage of forensic mental health care capacity, risking persons in need of mental health care being denied the ability to receive it, straining local jails and the criminal justice system, and risking due process concerns. And it impacts the infusion of construction and operational resources (a 48+ million investment) into the local and State economy and the area's opportunity for growth in well-paid, technical mental health care jobs. *See* MT5966.

In assessing the impact on the State and local economy, Plaintiff seems to suggest that it is *the Forensic Mental Health Facility* (which at 32-beds would represent only 0.05% of total tank capacity, *see* MT5954; 4932, which is a less intense water use than otherwise being contemplated for the area, *see* MT5965; 4943, and which ignores that the City is agreeing to expand water use to other users, *see* MT5956-5957; 4934-4935) that might somehow be responsible for requiring or

[9] *See supra n.* 8.

accelerating municipal water system improvements or exposing the City or ratepayers to substantially greater costs. *See* Pl.'s Br. 14-15. Ignoring all things suspect with Plaintiff's argument, it actually demonstrates another reason why it is *in the public's interest* to construct the Forensic Mental Health Facility at a location implicating the City of Laurel's water system.

Included in the State's options to ensure adequate sewer and water services are provided to the Forensic Mental Health Facility is an option for the State to "provide *mitigation funding* to the City of Laurel *for conservation measures or infrastructure upgrades* in the amount of the [F]acility's expected use as a condition of connection and/or annexation"; and, with respect to the annexation option, that "it is an option to potentially arrive at a situation mutually benefiting both the City of Laurel and the [F]orensic [M]ental [H]ealth [F]acility." MT5955; 4933 (emphasis added); *see also* MT5957 ("Securing public services through a mutually beneficial relationship with the City of Laurel, by which annexation into the City is one means, is the preferred option for securing water and sewer for the [Facility]").

In short, even if there were anything to Plaintiff's argument (there is not), the State is receptive to mitigating impacts caused to City services by the Facility. The State, moreover, has provided "substantial [S]tate financial assistance [in excess of $23 million] for construction, operation, and maintenance of [the City of Laurel's] water and wastewater systems." MT5966-5967; 4944-4945.

The public interest strongly supports urgently moving forward with the acutely needed Forensic Mental Health Facility. Injunctive relief is not in the public interest, and it would negatively impact the State and local economy. *See* Mont. Code Ann. §§ 75-1-201(5)(c)(iii)(B).

IV. Stopping the progression of the Forensic Mental Health Facility is not narrowly tailored relief.

Any relief must be "as narrowly tailored as the facts allow to address both the alleged non-compliance and the irreparable harm the party asking for the relief will suffer," and the relief must "ensure, to the extent possible, that the project or as much of the project as possible can go forward while also providing the relief to which the applicant has been determined entitled." Mont. Code Ann. §§ 75-1-201(5)(c)(iii)(C).

Plaintiff alleges two "interests" ostensibly harmed if the Forensic Mental Health Facility progresses: (1) an interest in the availability of local water services; and (2) an interest in the existing character of the neighborhood. *See* Pl.'s Br. 13-14.

On the first interest, Plaintiff's concern appears to be the impact, if any, of the Forensic Mental Health Facility on residential water pressure, and whether the Facility may further complicate the simultaneous use of multiple water using devices. *See e.g.* 2nd Decl. Hopper ¶¶ 11-12; 3rd Decl. Zahn ¶ 18. Stopping the Forensic Mental Health Facility is *not* necessary to address this interest. Residential water pressure can be addressed independent of the Facility's progression. The interest, moreover, has already been addressed, affording Plaintiff any relief. *If* Plaintiff were to have proven that the Facility would be a cause of further impacted water pressure at a residence (which Plaintiff has not done) and that mitigation was required (which Plaintiff also has not done), then mitigation funding and/or mitigation measures might have been considered to address the proven causal impact.

On the second interest, Plaintiff's concern appears to be the aesthetic impact of Forensic Mental Health Facility security fencing or lighting. *See* 2nd Decl. Hopper ¶ 15. As with Plaintiff's interest in water pressure, Plaintiff has already been afforded an opportunity to comment on these impacts, if any, and to attempt to influence the State's design of the Facility. *See e.g.* MT5962;

5965; 4940; 4943. Plaintiff has not demonstrated, nor even alleged, that the opportunity to comment on this interest was insufficient, or that the State's design of the Facility was in any way arbitrary, capricious, or otherwise in error. Stopping the progression of the Forensic Mental Health Facility, moreover, is not necessary to address these aesthetic issues, as reasonable and permissible aesthetic design modifications are still possible.

Plaintiff demands the State be enjoined "from taking any acts in furtherance of the construction of the Facility, including any permitting, ground-breaking activities[,] or other on-site work," until "the merits of the case are resolved," an indeterminate amount of time. Pl.'s Br. 16. Stopping an acutely and urgently needed Forensic Mental Health Facility is not narrowly tailored relief for Plaintiff's putative harms; it does not allow for as much of the Facility to move forward as possible; and it is not consistent with the Court's intention that "relief be as short-lived as is reasonably possible." *See* Mont. Code Ann. § 75-1-201(5)(c)(iii)(C); Order Granting in Part Preliminary Injunction 22 (Doc. 35).

V. Plaintiff is required to assume some responsibility for stopping the Forensic Mental Health Facility.

A temporary restraining order or preliminary injunction may only issue if Plaintiff provides a written undertaking in an amount reasonably calculated by the Court to pay the costs and damages sustained by the State. *See* Mont. Code Ann. § 75-1-201(5)(d). Where Plaintiff objects to a written undertaking for any reason, Plaintiff is required to file an affidavit with the Court stating its "income, assets, and liabilities." Mont. Code Ann. § 75-1-201(5)(d). Plaintiff has not, and acknowledges it has not, done this. *See* Pl.'s Br. 16. Given the real, significant, and increasing damage to the State, the State reserves its right to object to the sufficiency of Plaintiff's required demonstration of income, assets, and liabilities and to any written undertaking predicated thereon.

Conclusion

Plaintiff does not prove any, much less all, of the requirements necessary for a temporary restraining order or preliminary injunction. *See* Mont. Code Ann. § 75-1-201(5)(c)-(d). Plaintiff questions certain of the Montana Board of Investments' and Department of Public Health and Human Services' "conclusions," but the Montana Environmental Policy Act requires a "hard look" at environmental impacts, which the Agencies took, not particular conclusions. "Interest" in local water services or the character of the neighborhood is not harm. The public interest strongly supports urgently moving forward with the acutely needed Forensic Mental Health Facility, and damages caused by any delay are real, significant, and increasing. And stopping an acutely and urgently needed Forensic Mental Health Facility is not narrowly tailored relief.

The Montana Board of Investments and Department of Public Health and Human Services respectfully request that Plaintiff's Second Motion for Temporary Restraining Order & Preliminary Injunction be denied.

Dated this 13th day of October, 2026.

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CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 35, I disclose that I used Microsoft Word's Copilot feature to edit this brief for spelling, grammar, and typographical errors. I certify that every citation to law and the record has been verified as accurate.

Dated this 13th day of October, 2026

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I, the undersigned representative for the law firm of Crowley Fleck PLLP, hereby certify that on this 13th day of October 2026, I electronically filed the foregoing document to the Clerk of the Court which will send notification to all Registrants below.

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