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Elizabeth M. Forster
FORSTER LAW, PLLC
P.O. Box 30342
Billings, MT 59107
406-318-5354
liz@forster-law.com

Timothy M. Bechtold
BECHTOLD LAW FIRM, PLLC
PO Box 7051
Missoula, MT 59807
406-721-1435
tim@bechtoldlaw.net

Attorneys for Plaintiff

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 **PLAINTIFF'S REPLY IN SUPPORT OF SECOND MOTION FOR TEMPORARY RESTRAINING ORDER & PRELIMINARY INJUNCTION**

ARGUMENT

I. Plaintiff is more likely than not to succeed on the merits of its claims concerning water delivery to the Facility.

The State repeatedly characterizes Plaintiff's challenges as disagreements with the conclusions reached in the Revised Final EA outside the scope of MEPA review. *See* Doc. 58 at 1–2. This is wrong. Plaintiff challenges the State's reasoning and evidence to support its conclusions under MEPA's requirement that there be a rational connection between the facts found and conclusions reached. The State's quoting of Plaintiff's use of the term "conclusion" and its

repeated assertion that MEPA requires a hard look, not particular conclusions, do not answer those challenges.

A. The State's water demand calculation is unsupported by record evidence.

As to the Revised Final EA's water demand calculation, the State still fails to provide the evidence and reasoning to support its 2,000 gpd "actual" potable water demand projection. The State argues that the Revised Final EA is satisfactory because it explains that the 2,000 gpd estimate is based on a 1,000 gpd allocation for employee and patient needs and another 1,000 gpd for kitchen and laundry services. Doc. 58 at 5. But the record still does not contain the data, calculations, or methodology explaining how the State arrived at either of those allocations, despite claiming the figure is based on an engineering design. Doc. 58 at 5. Without that analysis, both the 2,000 gpd and the 1,000 gpd figures that make up the total estimate are, in MEPA terms, unsupported. *MEIC v. Mont. DEQ*, 2025 MT 3, ¶40 (rejecting DEQ's analysis of lighting impacts where it was "unclear how DEQ arrived at [its] conclusion"); *cf. id*. ¶19 (upholding DEQ's analysis of noise impacts where it supported with testing data its conclusion that the noise levels satisfied OSHA standards).

Looking at the difference between the 32-bed and 64-bed potable water projections underscores why the engineering analysis is necessary for a reasoned environmental assessment. The State's purported actual demand projection for the 32-bed facility with 100 employees is 2,000 gpd, while the projection for doubling the patient population to 64 and adding 60 more employees is only 2,600 gpd. MT005948–49. In other words, despite a 100% increase in patients and a 60% increase in employees, the State projects only a 30% increase in potable water demand. The Revised Final EA provides no explanation for why water demand would increase at such a disproportionately low rate. Without the underlying calculations and assumptions, neither the

public nor the Court can evaluate whether the State's projections are reasonable or supported by the Facility's engineering design. That is precisely why MEPA requires more than an unexplained assertion of projected demand. *Native Ecosystems Council v. U.S. Forest Serv.*, 418 F.3d 953, 963 (9th Cir. 2005) (quoting *SEC v. Chenery Corp.*, 332 U.S. 194, 196–97 (1947)) ("If the administrative action is to be tested by the basis upon which it purports to rest, that basis must be set forth with such clarity as to be understandable. It will not do for a court to be compelled to guess at the theory underlying the agency's action; nor can a court be expected to chisel that which must be precise from what the agency has left vague and indecisive.").

The State attempts to excuse the lack of supporting methodology for its demand projection by pointing to the Revised Final EA's conclusion that sufficient water capacity exists under either the 2,000 gpd estimate or DEQ Circular 4's significantly higher estimates. Doc. 58 at 6. The Revised Final EA bases its statement that the City can service the Facility regardless of the demand on the City's net surplus water rights and the percent of the City's total intake capacity that the Facility would represent. MT005953–54. However, as the City explained in its comments, the quantity of water the City is legally entitled to withdraw from the Yellowstone River and the capacity of its intake system are not equivalent to its ability to reliably treat, store, and deliver that water through its municipal system. MT005189. Moreover, the City identified significant deficiencies in its water distribution system, including its 2023 Preliminary Engineering Report's discussion of the City's inadequate storage system and reports that its newer intake system was inoperable for more than 90% of May through August 2026. MT005183, 5189.

The Revised Final EA does not engage with this material conflicting evidence. *See* MT006231–32. In fact, the State's engineer dismisses the City's comments without analysis, stating merely that his estimates "are a satisfactory proof of concept and no methods or data have

been provided by the City that would cause a revision to those estimates." MT006234. Such summary treatment of serious issues regarding the City's system does not satisfy MEPA. *See W. Watersheds Project v. Kraayenbrink*, 632 F.3d 472, 492–93 (9th Cir. 2009) (the agency acted arbitrarily and capriciously where it received comments from other governmental agencies directly contradicting its conclusion of no significant impact and then "neither responded to their considered comments objectively and in good faith nor made responsive changes to the proposed regulations," and instead relied solely on the assertion that the changes would '"improve the efficiency and effectiveness' of grazing administration."); *Idaho Conservation League v. Guzman*, 766 F.Supp.2d 1056, 1077 (D. Idaho 2011) ("The Court cannot defer to the agency in situations where, as here, the agency does not address conflicting evidence in the Administrative Record."); *cf. Mont. Trout Unlimited v. Mont. DEQ*, 2024 MT 36, ¶44 (discussing *Park Cnty. Envtl. Council v. DEQ*, 2020 MT 303, ¶¶39–41) (affirming DEQ's water quality analysis where the "DEQ articulated a satisfactory explanation for why it relied on the borehole data more than data from other samples" that it rejected).

More fundamentally, pointing to the overall capacity of the City's system still does not supply the underlying methodology for the 2,000 gpd projection. This is more than the "inconsistent" evidence that MEPA can permit; it is an analytical gap in the State's analysis that renders the conclusion about estimated water demand unsupported. *Contra* Doc. 58 at 15.

B. The State has not established sufficient municipal capacity.

Regarding whether the City can provide water and sewer services to the Facility, the State claims that the City's uncertainty about its ability to serve the Facility does not preclude the State from independently reaching that conclusion. Doc. 58 at 6–7. Plaintiff does not dispute that an agency generally may rely on its own engineering analysis and draw reasonable inferences from

the record. *Mont. Trout Unlimited*, ¶44. However, as explained in Plaintiff's opening brief, none of the considerations the State identifies actually supports the Revised Final EA's assertion that the City "has stated that sufficient capacity is available to provide water supplied to this proposed facility." MT005948. To the contrary, none of the City's actions or approvals cited by the State is a Facility-specific determination of sufficient capacity. *See also* Doc. 61 ¶74 (admitting that "the City of Laurel has never made a facility-specific determination that its water system has sufficient capacity to serve the Forensic Mental Health Facility."). Thus, while the State provided additional information concerning Laurel's water system, it has not explained how that information actually supports its characterization of the City's findings.

The Revised Final EA repeatedly characterizes the City's approval of the Love's Late-Comer's and Development Agreement as an affirmative determination that sufficient capacity exists to serve the Facility. MT005951–52. But, as explained in Plaintiff's opening brief, that Agreement only establishes that the improvements were adequate for Love's in 2025. Doc. 50 at 9 (citing MT005982–83). It neither establishes that the City has sufficient capacity to serve the Facility now nor commits the City to authorizing its connection. In fact, the City expressly confirmed that the Agreement contains no allocation, service commitment, or capacity certification for the Facility or any other development other than Love's. MT005188. The State cannot transform the City's approval of infrastructure for a different development into a Facility-specific capacity determination that the City has expressly declined to make. *Mont. Trout Unlimited*, ¶11 ("A court does not merely defer to an agency without close review of the record and satisfaction that the agency made a reasoned decision without clear error of judgment.").

The Agreement also predates the water pressure concerns and water intake failures experienced in the City, further limiting its value as evidence of the City's current capacity. Doc.

50 at 10; *see Lands Council v. Powell*, 395 F.3d 1019, 1031–32 (9th Cir. 2005) ("We conclude that the lack of up-to-date evidence on this relevant question prevented the Forest Service from making an accurate cumulative impact assessment of the Project on the habitat and population of the Westslope Cutthroat Trout.").

The other examples listed by the State do not establish the affirmative City determination that the Revised Final EA attributes to it. Doc. 58 at 7. The extension of municipal infrastructure, designation of the surrounding area for growth, approval of additional development at Love's, and availability of surplus water rights may be relevant to evaluating system capacity, but none establishes that the City has determined its system can serve the Facility without affecting existing users. The State also cites the City's agreement with CHS Refinery, but as the City explained in its comments, that agreement concerns raw water rather than potable water and provides no basis for evaluating the capacity of the City's potable-water distribution system. MT005184.

More importantly, the State's assertion that "no technical evidence has been identified or presented questioning the sufficiency of capacity or water pressure to the proposed Facility" disregards the City's detailed comments identifying existing infrastructure deficiencies, intake reliability problems, and the need for updated system modeling. MT005182–89. The State is entitled to evaluate that evidence independently, but it also is required to provide a reasoned explanation of why it rejected the City's conflicting evidence. *Kraayenbrink*, 632 F.3d at 492–93; *Mont. Trout Unlimited*, ¶44. Because the State has failed to provide that explanation, its analysis of whether the City of Laurel can service the Facility is unsupported by the record and does not comply with MEPA.

C. The State's analysis does not resolve existing pressure concerns.

The State next argues that the Revised Final EA adequately analyzes water pressure because its engineers estimated sufficient pressure at the Facility site during simultaneous peak domestic demand and fire flow. Doc. 58 at 8. But, as explained in Plaintiff's opening brief, the State's analysis evaluates those estimates only against the 20-psi minimum applicable during fire-flow events, without addressing the separate pressure requirements for domestic service. Doc. 50 at 11 (citing MT004904). The State responds that the 26-psi domestic pressure identified in the Love's study reflects pressure losses through Love's private meter and backflow equipment. Doc. 58 at 8. That may explain the domestic pressure deficiency identified at Love's, but it does not establish that the Facility will have adequate domestic pressure at the Facility's service connection after accounting for its own equipment and operating conditions. Doc. 50 at 11 (citing MT004904).

The State emphasizes that it was denied permission to conduct onsite testing by the City of Laurel. However, the State overlooks that its own engineer expressly stated that its estimates should be confirmed by onsite testing and final verification. MT004904. The State has not explained why its estimates, which its own engineer recommended verifying through additional testing and modeling, provide a sufficient basis for the Revised Final EA's unequivocal conclusion that the Facility will not adversely affect the municipal system. MT005977; *see Neighbors of Cuddy Mountain v. U.S. Forest Serv.*, 137 F.3d 1372, 1380 (9th Cir. 1998) (the agency must consider "potential impact of an action *before* the action takes place") (quotation omitted) (emphasis in original).

More fundamentally, the State still fails to address whether serving the Facility will adversely affect existing users. As explained in Plaintiff's opening brief, the Revised Final EA does not reconcile the City's identification of existing pressure concerns associated with the Love's line with its conclusion that the Facility will not affect pressure elsewhere in the municipal system.

Doc. 50 at 10–12. The State's estimates of pressure at the Facility site do not resolve that deficiency.

D. The State has not analyzed the effects of its stated options for obtaining water service.

The State next argues that the Revised Final EA adequately addresses the availability of municipal water and sewer service because it identifies eight potential means of obtaining those services, including its "preferred option" of reaching an agreement with the City without annexation. Doc. 58 at 9–10. But this Court previously found that the Final EA did not adequately address the "*ready availability* of city services and the need, or not, of annexation." Doc. 35 at 14 (emphasis added). The Revised Final EA still does not answer that question.

Its preferred option expressly assumes that the City will agree to provide service, notwithstanding the City's contrary position in light of its uncertainty about and ongoing evaluation of its water system. Doc. 58 at 10; MT005174–5202.[1] The remaining options present unresolved questions about their legal viability, implementation, cost, and effectiveness. Indeed, the State concedes that it is "premature to know what option will ultimately be required to 'establish' water and sewer availability." Doc. 58 at 11. Identifying eight possible means of obtaining those services does not establish that any of them is actually available to serve the Facility.

[1] The State also claims that the City has approved water and sewer services to users outside City limits without annexation. Doc. 58 at 10. There is neither evidence of this in the record nor is the City allowed to do so under its own codes. MT004907 (describing the City's annexation policy beginning in 2008 as prohibiting water or sewer services to be extended outside the incorporated City limits without annexation and a determination that the city system can serve the area). Contrary to the State's suggestion, Doc. 58 at 6 n.3, the annexation moratorium applies to all prospective users, not just the Facility. MT004020 ("This Ordinance is not direct at any particular development proposal, and it applies citywide to all annexation requests equally without regard to applicant identity, land use type, or pending proposal.").

Moreover, the State does not analyze the legal, practical, and financial obstacles in executing those alternative options, despite concluding none of those options will have environmental impacts. MT005955; Doc. 61 ¶105 (BOI admitting that it lacks sufficient knowledge concerning the potential costs, impacts, and effects of the options to receive water service). Instead, it argues that the environmental impacts of those options are too speculative to require analysis because it does not yet know which option will be necessary or what its consequences might be. Doc. 58 at 10–11. But the State has not explained why the uncertainty surrounding its preferred option excuses its consideration of the reasonably foreseeable consequences of the other means of obtaining service that the State itself identified. Again, the purpose of environmental review is to inform agency decisionmaking before the State commits itself to a proposed action, not to defer that analysis until after the "'go/no go juncture'" is passed and the "'irretrievable commitment of resources'" is made. *Park Cnty.*, ¶32 (quoting *North Fork Preservation Ass'n v. Dep't of State Lands*, 238 Mont. 451, 461–62, 778 P.2d 862, 868–69 (1989)).

The State excuses its deferral of its analysis of the environmental impacts of its non-preferred options for service because none will occur if the City just consents to servicing the Facility. Doc. 58 at 10. The State claims MEPA allows deferral in this situation because the City is effectively an intervening actor between the State's proposed action and the environmental effects of those other options. *Id*. (citing *Bitterrooters for Planning, Inc. v. Mont. Dept. of Envtl. Qual.*, 2017 MT 222, ¶33; Mont. Code Ann. § 75-1-201(1)(a)(iv); *Trout Unlimited v. Morton*, 509 F.2d 1276, 1283 (9th Cir. 1974)). The State misreads the law on this issue. As the Montana Supreme Court recently explained, *Bitterrooters* and the cases on which it relied concerned impacts of actions "vested in a separate governmental authority and outside the agency's authority over the narrower, permitted action." *MEIC*, ¶50. Here, the State itself proposes to construct and

operate the Facility, and the eight options are means the State itself identified for obtaining the municipal services necessary to implement that project. MT005954–55. These are not speculative alternatives raised by Plaintiff; they are the very options on which the State relies to conclude that water and sewer service will be available. *Cf. Bitterrooters*, ¶13 (rejecting *plaintiff's* request for DEQ to include in its assessment of a wastewater discharge permit for a proposed retail facility an analysis of the impacts of the private party's construction and operation of the facility unrelated to water quality). The State cannot rely on those options as evidence that municipal services can be obtained while simultaneously dismissing their potential environmental consequences as too speculative to warrant analysis.

The causal connection here is simple: if the State decides to construct the Facility, it must obtain water and sewer services to operate it. If the State does not construct the Facility, it will have no reason to pursue any of the eight options identified in the Revised Final EA. *Cf. Morton*, 509 F.2d at 1279, 1283–84 (rejecting plaintiff's argument that the Bureau of Reclamation had to analyze the effects of second home development in its assessment of a planned dam and reservoir where such development was not a necessary component or inevitable outcome of building the reservoir). The City's decisions may influence which option the State ultimately pursues, but they do not sever the causal connection between the State's proposed action and the measures necessary to implement it. The reasonably foreseeable environmental consequences of those measures are therefore properly within the scope of MEPA review.

The State last claims that the "means of acquiring services are environmentally neutral and not materially impactful," citing to the Revised Final EA's summary no-effects conclusions. Doc. 58 at 10–11. But the State has not pointed to a place in the record where it explains why the potential environmental impacts of those options are irrelevant under ARM 17.4.609(3)(e)'s

criteria or why the impacts are "neutral." To the contrary, as explained in Plaintiff's opening brief, condemning properties or retiring existing water uses to offset the Facility's demand could affect housing, population distribution, and the tax base; and annexation or construction of municipal infrastructure could alter demands for government services, public expenditures, and local planning. Doc. 50 at 13. These are the exact types of impacts that MEPA requires agencies to evaluate. *See* ARM 17.4.609(3)(e). The State cannot conclude, as it did here, that potentially adverse environmental impacts are nonsignificant without "a statement of reasons." *Clark Fork Coal. v. Mont. DEQ*, 2008 MT 407, ¶48; *see also Ravalli Cnty. Fish & Game Ass'n, Inc. v. Mont. Dep't of State Lands*, 273 Mont. 371, 381, 903 P.2d 1362, 1369 (1995) (quotation omitted) ("without an administrative record, courts are left to rationalize the agency's decision – a form of review which abandons standards in favor of predilections.").

II. Plaintiff has established irreparable harm.

The State contends that Plaintiff only alleges two harms implicated by the construction of the Facility—harm to the availability of municipal water services and to the existing character of its members' neighborhood. Doc. 58 at 11. But the State omits a third harm this Court already has recognized is irreparable: the loss of Plaintiff's ability to seek meaningful relief under MEPA if construction proceeds before the deficiencies in the environmental review are resolved. Doc. 50 at 13; Doc. 35 at 18–19. Because the Revised Final EA still fails to adequately address the Facility's water supply issues, that same irreparable harm remains imminent if construction can proceed while the Court resolves the merits of Plaintiff's claims. Doc. 35 at 18–19. Amber Zahn's supplemental declaration further explains her concern that construction will progress so far before the Court decides this case that reconsideration of the Facility's location will no longer be realistic, even if Plaintiff prevails. Fourth Decl. of Amber Zahn, ¶18; Doc. 52 ¶28. The State has not identified any circumstance that eliminates the risk to Plaintiff's ability to obtain meaningful relief.

Regarding the threatened harm to the availability of municipal water services to Plaintiff's members, the State responds that there is no harm because the issue "has been exhaustively analyzed." Doc. 58 at 11. As described above, this is wrong. Indeed, the State left unresolved significant issues with respect to its projected water demand, the City's expressed uncertainty about its ability to service the Facility without affecting existing users, and the means by which the State will obtain service. Plaintiff's members already are experiencing issues with water pressure, Doc. 51 ¶¶12–13; Doc. 52 ¶18, and the City has expressed serious doubts about whether its system can withstand a significant additional user without impacts to its existing users, MT005174–5202. Far from an amorphous interest, Plaintiff's members face a concrete risk to the reliability of their drinking water service if the Facility is allowed to proceed without resolving these concerns. *Contra* Doc. 58 at 13 ("Reduced to its essence, though, *Plaintiff's* 'interest,' whatever it may be, is not a harm.") (emphasis in original).

The State also argues that Plaintiff's members cannot establish irreparable harm to their neighborhood because they anticipated future development, the State modified the Facility's design to reduce visual impacts, and Plaintiff had opportunities to advocate for further changes. Doc. 58 at 11–13. None of these arguments establishes that the harms identified by Plaintiff's members have been eliminated. These arguments overlook the nature of the harm Plaintiff's members have described. As Ms. Zahn explains, her home has been in her husband's family for three generations, and the property was once part of the family's sheep farm. Fourth Zahn Decl., ¶¶5–8. She and her husband are now raising their children on those same four acres, alongside their horses, goats, chickens, and dogs, teaching them the agricultural values passed down through their families. *Id*. The surrounding farmland, including the field where the Facility would be constructed, is an important part of that way of life. *Id*. The fact that Ms. Zahn anticipated some

future residential or commercial growth does not mean that constructing a secure institutional facility on the adjoining agricultural land would have no adverse effect on her family's use and enjoyment of their property. Nor would modifications to the Facility's architecture, setbacks, or landscaping eliminate its security fencing, lighting, traffic, and other operational impacts. Doc. 51 ¶¶14–15; Doc. 52 ¶10.

More importantly, Ms. Zahn has already experienced harm from the State's preliminary construction activities. She describes commercial trucks using the narrow gravel road beside her home, generating noise, dust, and traffic, as well as workers walking along the edges of and reaching across the fence into her property. Doc. 52 ¶¶22–23; Fourth Zahn Decl., ¶12. Because of the increased traffic, she stopped allowing her children to play in the unfenced portions of their property. Fourth Zahn Decl., ¶13. These are concrete interferences with her family's use and enjoyment of their home, not merely "speculative" concerns about future development. *Contra* Doc. 58 at 12. Indeed, Ms. Zahn explains that the Court's first injunction brought relief from her concerns about her children's safety and the disruption of her family's daily life, and that those concerns will return if construction resumes. *Id*. ¶¶12–14. The State's design modifications do nothing to address these construction-related harms.

Sweet Grass Farms is not as factually distinguishable as the State suggests. There, the proposed subdivision would adjoin the plaintiff's existing farm. 2000 MT 147, ¶10. Here, the Facility would occupy agricultural land adjoining Ms. Zahn's multigenerational rural property. Fourth Zahn Decl., ¶¶5–12. Although Ms. Zahn does not operate a commercial farm, her family uses the property to raise animals, teach their children about the land, and continue the agricultural traditions of the previous generations of her and her husband's families. *Id*.

The *Sweet Grass Farms* court expressly recognized that introducing development could cause irreparable changes to an area's existing character, including increased traffic, noise, dust, and diminished local services. ¶32. The Court also emphasized that allowing development to proceed during litigation could render a favorable judgment ineffective. *Id*. ¶¶31–35. Ms. Zahn has personally experienced the physical impacts of construction and fears that, by the time judicial review is complete, the transformation of the adjoining farmland will have progressed too far for meaningful reconsideration of the site. Fourth Zahn Decl., ¶¶12–15, 18. Both concerns are present here, as this Court has already recognized. Doc. 35 at 18–19.

The State's flippant dismissal of these harms also overlooks the constitutional interests that MEPA is intended to protect. Fourth Zahn Decl., ¶¶16–17. As the Supreme Court explained, "MEPA's procedural mechanisms help bring the Montana Constitution's lofty goals into reality by enabling fully informed and considered decision making, thereby minimizing the risk of irreversible mistakes depriving Montanans of a clean and healthful environment." *Park Cnty.*, ¶70. That is precisely the risk presented here: allowing construction to proceed before the State adequately evaluates the Facility's potential impacts on the municipal water system and before Plaintiff can obtain meaningful judicial review of that decision.

III. Issuance of relief is in the public interest.

In arguing the public interest element, the State again emphasizes the acute need for additional forensic mental health services and the economic consequences of delaying construction of the Facility. Doc. 58 at 14–17. Plaintiff has never disputed the importance of expanding forensic mental health services; it challenges the State's selection of this particular site for the Facility for the aforementioned reasons and those outlined in Plaintiff's Amended Complaint. Nor does Plaintiff dispute that delaying construction will impose some economic costs. But, as this Court

previously explained, the public has a strong interest in ensuring that the State complies with MEPA and that public funds are expended judiciously, particularly where the availability of water and sewer services remains uncertain. Doc. 35 at 20–21. The Revised Final EA has not eliminated those concerns.

The State now estimates that delay costs $10,242.10 per day, based on the U.S. Bureau of Labor Statistics' Producer Price Index for New Health Care Building Construction and the cost of housing 32 patients in county jails. Doc. 58 at 16. But the State has not established that this index provides a reliable measure of the costs attributable to delaying this construction project. The index measures historical changes in prices received by contractors, not costs incurred from delaying construction. *Producer Price Indexes: Producer Price Index (PPI) Guide for Price Adjustment* (last updated Dec. 13, 2021) ("Producer price indexes measure the average change in prices received by domestic producers for their output"), https://www.bls.gov/ppi/publications/price-adjustment-guide-for-contracting-parties.htm. As the Bureau of Labor Statistics explains, the Producer Price Index "does not directly measure the cost of producing a good, providing a service, or building a structure." *Id*. The State provides no explanation for how historical changes in industry-wide construction prices establish the additional daily costs it estimates will result if construction is delayed.

The State also warns that further delay could postpone construction until spring 2027 or disrupt contractor availability. Doc. 58 at 16. Although Plaintiff recognizes the potential scheduling consequences of preliminary relief, those concerns do not eliminate the public interest in ensuring that the State adequately evaluates the Facility's municipal service requirements before construction creates an increasingly substantial commitment to the selected site.

The State further suggests that proceeding with the Facility could benefit Laurel because the State might fund improvements to its municipal water system. Doc. 58 at 16–17. But the possibility of future mitigation funding does not establish what infrastructure improvements will be necessary, whether the State will fund them, or whether they would adequately address the Facility's impacts on existing water users.[2] Nor does the State's prior financial assistance to Laurel resolve those questions. The public interest is served by identifying and evaluating those potential costs before committing additional public funds to construction, not by assuming that any problems can be resolved afterward.

Ultimately, this Court has already weighed the urgent need for additional forensic mental health services against the public interest in MEPA compliance and the judicious expenditure of public funds. Doc. 35 at 20–21. It concluded that the latter justified preliminary relief while the State addressed deficiencies in its environmental review. *Id*. Although the State has supplemented its environmental review, it has not adequately addressed the fundamental deficiencies identified above. Those unresolved deficiencies, together with the public interest in avoiding potentially irreversible commitments of public resources before MEPA review is complete, continue to favor preliminary relief. *Held v. State*, 2024 MT 312, ¶67 ("MEPA mandates that the State take a 'hard look at the environmental consequences of its actions' before it leaps, which is impossible when the State intentionally refuses to consider an entire area of significant environmental consequences.").

IV. Relief is narrowly tailored.

[2] The State's position on this point is difficult to reconcile with its earlier assertion that the consequences of pursuing the identified service options are too speculative to warrant analysis of their impacts. *Supra*, Section I.D.

Finally, Plaintiff's requested relief is narrowly tailored to address the above MEPA violations and prevent irreparable harm, while also allowing as much of the project to proceed as possible. Mont. Code Ann. § 75-1-201(5)(c)(iii)(C). As with the Court's prior injunction, Plaintiff seeks only to temporarily prohibit construction and other onsite activities that would further commit the State to the selected location while the merits of Plaintiff's claims are resolved. Doc. 35 at 21–23. The requested relief does not stop the State from off-site planning, engineering, etc. This Court previously determined that a limited injunction restricting onsite activities appropriately balanced those interests. *Id*. Nothing in the Revised Final EA alters the need for that narrowly tailored protection.

Respectfully submitted this 20th day of October, 2026.

/s/ Elizabeth M. Forster
Forster Law, PLLC

/s/ Timothy M. Bechtold
Bechtold Law Firm, PLLC

Attorneys for Plaintiff

CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 35, I hereby disclose that I used ChatGPT Pro to edit this brief. I certify that every citation to law and the record has been verified as accurate.

DATED this 20th day of October, 2026.

/s/ Elizabeth M. Forster
Forster Law, PLLC

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I, Elizabeth Marie Forster, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Reply Brief to the following on 10-20-2026:

Timothy M. Bechtold (Attorney)
PO Box 7051
317 East Spruce Street
Missoula MT 59807
Representing: Laurel CARED
Service Method: eService

Christopher Clark Stoneback (Attorney)
219 E. Center St
Kalispell MT 59901
Representing: Montana Board of Investments
Service Method: eService

Mason T. DuMars (Attorney)
219 E Center St
Kalispell MT 59901
Representing: Montana Board of Investments
Service Method: eService

Robert Cameron (Attorney)
203 N. Ewing St
Helena MT 59601
Representing: State of Montana, DPHHS
Service Method: eService

Tara DePuy (Attorney)
PO Box 222
Livingston MT 59047
Representing: City of Laurel
Service Method: eService

Susan Brooks Swimley (Attorney)
1807 W. Dickerson, Suite B
Bozeman MT 59715
Representing: City of Laurel
Service Method: eService

Electronically Signed By: Elizabeth Marie Forster
Dated: 10-20-2026