

**MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY**

RIKKI HELD, et al.,

Plaintiffs,

v.

STATE OF MONTANA, et al.,

Defendants.

Cause No.: CDV-2020-307

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND
ORDER ON ATTORNEY
FEES AND COSTS**

PROCEDURAL HISTORY

On March 13, 2020, sixteen Montana youth (collectively Plaintiffs or Youth Plaintiffs) filed a Complaint for Declaratory and Injunctive Relief against the State of Montana, the Governor, Montana Department of Environmental Quality, Montana Department of Natural Resources and Conservation, Montana Department of Transportation, and Montana Public Service Commission (collectively Defendants or State). D.C. Doc. 1. A bench trial was held in June 2023. D.C. Docs. 390-395, 397-399. This Court's findings of fact, conclusion of law, and order were filed August 14, 2023. This Court ruled in favor of Plaintiffs as to their claims regarding the existence and effects of climate change, the effects of climate change on Plaintiffs and the effects of climate change on Montana's environment and the ecosystems of the North American Continent. This Court held that Mont. Code Ann. §§ 75-1-201(2)(a)

1 and -201(6)(a)(ii)(2023), were unconstitutional and violated the Montana
2 constitutional right to a clean and healthful environment. D.C. Doc. 405.

3 Before the Court is Plaintiffs' Motion for an Award of Costs and
4 Attorneys' Fees and brief in support filed January 31, 2025. D.C. Docs. 447, 448.
5 In support of their motion, Plaintiffs' filed declarations of various attorneys. D.C.
6 Docs. 439 - 455. Defendants' response was filed March 7, 2025, along with the
7 declaration of Patrick M. Risken. D.C. Docs. 460, 461. Plaintiffs' reply was
8 filed April 4, 2025. D.C. Doc. 464.

9 The Court held a hearing May 28, 2025, and heard testimony and
10 argument regarding attorney fees. Timothy Bechtold testified as an expert for
11 Plaintiffs regarding the requested fees. Patrick M. Risken's testimony was
12 presented via video deposition. D.C. Doc. 468, 478. A supplemental statement
13 of Risken was also allowed pursuant to stipulation of the parties. D.C. Doc. 470.

14 **FINDINGS OF FACT**

15 From the court record of this case and the evidence presented, the
16 Court enters the following:

17 1. On April 24, 2020, Defendants filed a motion to dismiss
18 pursuant to Mont. R. Civ. P. 12(b)(1), 12(b)(6), and 12(h)(3). D.C. Doc. 11. On
19 August 4, 2021, the Court issued an Order on Motion to Dismiss partially
20 granting and partially denying Defendants' motion to dismiss. D.C. Doc. 46.
21 Defendants thereafter filed two motions for clarification regarding the order on
22 the motion to dismiss. D.C. Docs. 84, 167.

23 2. Defendants filed their Answer on September 17, 2021,
24 denying all allegations in the Complaint and raising several affirmative defenses.
25 D.C. Doc. 53.

26 3. On June 10, 2022, Defendants filed a Petition for Writ of
27 Supervisory Control requesting the Montana Supreme Court exercise supervisory

1 control regarding this Court's ruling on the motion to dismiss. On June 14, 2022,
2 the Supreme Court denied the Petition, finding no basis for emergency or other
3 relief. *State v. Mont. First Jud. Dist. Ct.*, 2022 Mont. LEXIS 558, 409 Mont.
4 557, 512 P.3d 1178.

5 4. On July 19, 2022, Defendants filed a Motion for
6 Independent Medical Examination, or, in the Alternative, Motion to Strike
7 Opinions and Testimony of Plaintiffs' Expert Dr. Lise Van Susteren. D.C. Doc.
8 163. On October 14, 2022, the Court issued an Order denying Defendants'
9 motion. D.C. Doc. 225.

10 5. On February 1, 2023, Defendants moved for summary
11 judgment. D.C. Doc. 290. Plaintiffs filed sixteen declarations from Plaintiffs,
12 experts, and counsel in support of their response in opposition. D.C. Docs. 299,
13 300-315.

14 6. On February 1, 2023, Plaintiffs filed seven motions *in limine*
15 (D. C. Docs. 260, 262, 264, 266, 268, 270, 272) and Defendants filed seven
16 motions *in limine* (D. C. Docs. 284, 286, 288).

17 7. During the pendency of this case, the 2023 Montana
18 Legislature and Defendant Gianforte repealed the Montana State Energy Policy
19 (Mont. Code Ann. §§ 9-4-1001, -1003; HB 170, signed as law March 16, 2023).

20 8. On April 3, 2023, Defendants moved to dismiss, urging that
21 the repeal of Mont. Code Ann. § 90-4-1001 on March 16, 2023, mooted claims
22 concerning the statute. D.C. Doc. 342. *See* 2023 HB 170. On April 14, 2023,
23 Plaintiffs filed their response, supported by nine declarations from experts. D.C.
24 Docs. 354-363.

25 9. During the pendency of this case, the 2023 Montana
26 Legislature and Defendant Gianforte amended Mont. Code Ann. 75-1-201(2)(a).
27 *See* HB 971, signed as law May 10, 2023.

1 10. On May 18, 2023, Defendants filed a Motion to Dismiss
2 MEPA Claims based on the enactment of HB 971. D.C. Doc. 376. Plaintiffs
3 filed a response brief in opposition and Defendants filed a reply, requesting oral
4 argument. D.C. Docs. 382, 385.

5 11. Following oral argument, on May 23, 2023, this Court
6 issued an order denying Defendants' motion for summary judgment. D.C. Doc.
7 379.

8 12. On June 2, 2023, Defendants filed an Emergency Petition
9 for Writ of Supervisory Control, requesting that the Montana Supreme Court
10 reverse this Court's denial of the State's motion for summary judgment. The
11 State also asked the Supreme Court to stay the trial set to begin June 12, 2023.
12 On June 6, 2023, the Montana Supreme Court denied the relief requested. *State*
13 *v. Mont. First Jud. Dist. Ct.*, 2023 Mont. LEXIS 592, 412 Mont. 554,
14 531 P.3d 546.

15 13. The parties were unable to agree on a joint proposed Pre-
16 Trial Order. They submitted separate proposed pre-trial orders. D.C. Docs. 366,
17 367. On June 7, 2023, this Court entered its Final Pre-Trial Order. The Court's
18 Final Pre-Trial Order included denial of Defendants' May 18, 2023, motion to
19 dismiss. D.C. Doc. 384 at 38.

20 14. Trial began June 12, 2023, and ended on June 20, 2023. The
21 Court heard live testimony from twenty-four Plaintiffs' witnesses (twelve
22 Plaintiffs, two fact witnesses, ten expert witnesses). The Court heard live
23 testimony from three Defendants' witnesses (two hybrid witnesses, one expert
24 witness). D.C. Docs. 390-395, 397-399.

25 15. During the pendency of this case, the 2023 Montana
26 Legislature passed and Defendant Gianforte signed into law Mont. Code Ann.
27 § 75-1-201(6)(a)(ii). *See* SB 557, signed as law May 19, 2023.

1 16. On June 19, 2023, while trial was proceeding, Defendants
2 filed a memorandum raising an issue related to SB 557. D.C. Docs. 396, 402.

3 17. During trial, the Court admitted one hundred sixty-eight of
4 Plaintiffs' exhibits and four of Defendants' exhibits. D.C. Doc. 429.

5 18. This Court issued Findings of Fact, Conclusions of Law, and
6 Order on August 23, 2023. D.C. Doc. 405.

7 19. This case was decided on constitutional grounds. D.C. Doc.
8 405.

9 20. The statutes challenged by Plaintiffs and considered by this
10 Court directly prevented the implementation and application of the constitutional
11 provisions that establish Plaintiffs' right to a clean and healthful environment.

12 21. Plaintiffs prevailed on all issues presented at trial. D.C.
13 Doc. 405.

14 22. On December 18, 2024, this Court's decision was affirmed
15 by the Montana Supreme Court in *Held v. State*, 2024 MT 312, 419 Mont. 403,
16 560 P.3d 1235.¹

17 23. Plaintiffs seek an award of attorney fees based on either the
18 Private Attorney General Doctrine (PAGD) and/or the Uniform Declaratory
19 Judgments Act (UDJA). Defendants argue that no attorney fees should be
20 awarded.

21 **Application of the PAGD**

22 24. The PAGD considers three “*Montrust*” factors (1) strength
23 or societal importance of the public policy vindicated by the litigation, (2)
24 necessity for private enforcement and the magnitude of the resultant burden on
25

26 ¹ This Court's rulings as to Defendants' seven pretrial motions, as well as the order regarding
27 motions *in limine* and this Court's final order issued August 14, 2023, were certified to the
Montana Supreme Court on September 18, 2023. D.C. Doc. 417.

1 the plaintiff, and (3) number of people standing to benefit from the decision.”
2 *Montanans for the Responsible Use of the School Trust v. State ex rel. Bd. of*
3 *Land Comm'rs*, 1999 MT 263], ¶ 66, 296 Mont. 402, 989 P.2d 800 (*Montrust*).

4 25. The public policies involved in this case include Montanans'
5 prioritization of a clean and healthful environment, as stated in the Montana
6 Constitution.

7 26. The public policies involved also include Montanans'
8 prioritization of maintenance, improvement, and protection of a clean and
9 healthful environment.

10 27. The strength of those policies is set forth in the discussion
11 by the 1972 constitutional delegates as to the background, basis, and intentions of
12 the delegates, representative of Montanans, regarding the goal of a clean and
13 healthful environment. *See Held*, 2024 MT 312, ¶¶ 23 - 29.

14 28. The strength of those policies lies in the existence of
15 relevant language in various sections of the Montana Constitution. *See Held*,
16 ¶¶ 23 - 29, 36.

17 29. The strength of those policies lies in the need stated in the
18 Montana Constitution for the passage of statutes to fulfill the constitutional
19 provisions.

20 30. The societal importance of the public policies stated above
21 was clearly established by the trial testimony of Plaintiffs' witnesses, which
22 established the need for fulfillment of the constitutional provisions. The
23 constitutional provisions are directly impacted by anthropogenic climate change,
24 and climate change harms the Youth Plaintiffs by harming their physical and
25 psychological health and safety, interfering with family and cultural foundations
26 and integrity, and causing economic deprivations. The harms to the Youth
27 Plaintiffs directly relate to the lack of compliance by Defendants with the

1 constitutional provisions at issue in this case.

2 31. The strength and societal importance of the public policies
3 vindicated by this litigation is extremely high.

4 32. The first *Montrust* factor weighs heavily in favor of an
5 attorney fees award.

6 33. The need for private enforcement of the constitutional
7 provisions asserted by Plaintiffs is established by all of the circumstances,
8 including the scientific facts established at trial that (1) certain GHGs, including
9 CO₂ and methane (CH₄), trap heat in the atmosphere, causing Montana to warm;
10 (2) the warming is increasing; (3) Montana's children have been and will be
11 harmed by climate change, including in their physical and psychological health
12 and safety, interference with family and cultural foundations and integrity, and
13 economic deprivations; (4) Montana's natural environment is already adversely
14 affected by climate change; and (5) Defendants' actions contribute to emissions
15 which, in turn, contributed to climate change that harmed Plaintiffs.

16 34. The need for private enforcement of the constitutional
17 provisions asserted by the Plaintiffs is also established by the fact that the
18 governmental entities with the power and the duty to protect Montana's natural
19 resources (Defendants) have enacted unconstitutional statutes.

20 35. Defendants have various roles in the environmental
21 consideration, review, regulation, conservation, and protection of Montana's
22 natural resources.

23 36. Defendant's application and defense of statutes that failed to
24 protect Montana's natural resources from the scientifically-established
25 anthropogenic climate change, including changes to the water sources of many
26 communities, stream and river hydrology, local economies, and recreational
27 opportunities to access previously-existing natural resources, created a need for

1 private enforcement of Montana's constitutional provisions.

2 37. The need for private enforcement is also established by the
3 passage of new law during the 2023 Montana Legislative session that continued
4 the unconstitutional acts of Defendants. The new law was signed by Defendant
5 Gianforte during the pendency of this case. Thus, the need for private
6 enforcement continued.

7 38. The magnitude of the burden on Plaintiffs in this case is
8 high, given the complexity of the factual issues in the case.

9 39. The burden on Plaintiffs is high, given the length of the
10 litigation (over four years), extensive discovery, and consideration by this Court
11 and the Montana Supreme Court (prior to appeal).

12 40. The burden on Plaintiffs related to this case included, but
13 was not limited to, the hiring of attorneys, experts, and other staff to present in
14 writing and orally.

15 41. Defendants claim that resolution of some of the issues prior
16 to trial decreased Plaintiffs' burden in the case. However, the early resolution of
17 some claims does not negate the burden of Defendants' continued dispute as to
18 the most basic of facts, the need to address discovery disputes, the need to
19 respond in both the district and supreme courts.

20 42. The required testimony of the Youth Plaintiffs included
21 testimony regarding their private lives, their personal activities, and their
22 personal adjustments in their lives based on climate change. This testimony, as
23 well as all general obligations of plaintiffs over the course of a long-running case,
24 is aptly characterized as a burden for the Youth Plaintiffs.

25 43. The second *Montrust* factor weighs heavily in favor of an
26 attorney fees award.

1 44. The number of people standing to benefit from this Court's
2 decision in this case is the number of persons who benefit from the rights in
3 Montana's Constitution.

4 45. Defendants argue that there has been no determination of the
5 number of people standing to benefit from this Court's decision. They also argue
6 that the decision of this Court does not have broad effect within the context of
7 State review and permitting of activities affecting Montana's environment. D.C.
8 Doc. at 10 - 11.

9 46. Defendants' argument ignores the holdings of this Court and
10 the Montana Supreme Court in this case as to the relevant rights and interests set
11 out in the Montana Constitution. Their argument ignores the applicability of the
12 holdings in similar or analogous cases; they have become a part of the body of
13 law applicable to Montanans in many situations.

14 47. The third *Montrust* factor strongly weighs in favor of an
15 attorney fees award.

16 **Application of the UDJA**

17 48. Plaintiffs brought this action pursuant to the Uniform
18 Declaratory Judgments Act, Mont. Code Ann. §§ 27-8-101 et seq. D.C. Doc. 1
19 at 9.

20 49. Plaintiffs sought, *inter alia*, declarations by this Court
21 regarding the constitutionality of statutes under the Montana Constitution. D.C.
22 Doc. 107 - 08.

23 50. The equitable concerns relevant to awarding attorney fees
24 include whether the parties are similarly situated. In this case the parties are not
25 similarly situated.

1 51. Plaintiffs are younger persons suffering the effects of
2 climate change, with arguably no power beyond bringing suit to address their
3 state government's failure to abide by constitutional provisions. D.C. Doc. 405
4 at 9 - 11; 46 - 64.

5 52. Defendants are government agencies that are, by law,
6 required to see that the Montana Constitution is faithfully followed.

7 53. Defendants argue that the parties are not similarly situated in
8 that Plaintiffs were represented by attorneys who were knowledgeable and
9 experienced in the subject matter of the case. D.C. Doc. at 11 - 12. Defendants
10 also were represented by multiple attorneys, many who regularly work on
11 environmental and constitutional issues. The Defendants also had the government
12 structure, personnel, and power available to the State.

13 54. Defendants have various roles in the regulation (including
14 authorization through permitting), conservation, and protection of Montana's
15 natural resources. The Defendants possessed the capability to consider GHG
16 emissions and climate change impacts. Prior to the passage of the 2011 statute,
17 Defendants did this. The Montana Constitution was the constant standard
18 throughout.

19 **Determination of Amount of Fees**

20 55. In response to Defendants' opposition to their attorney fee
21 request and to the declaration of Defendants' expert (D.C. Doc. 461), Plaintiffs
22 filed a reply with an attachment entitled "Maximum Fee Reductions." D.C. Doc.
23 464. The attachment included a revised calculation of Plaintiffs' fee requests and
24 the pleading concluded: "Plaintiffs' requested attorneys' fees and costs should be
25 reduced by no more than \$214,996 and \$23,686.40, respectively, bringing the
26 revised totals to \$2,857,193 in attorneys' fees and \$98,667.73 in costs." D.C.
27 Doc. 464 at 20.

1 56. The method to calculate attorney fees in this case is the
2 lodestar method (see Conclusions of Law below), as there is no percentage of
3 recovery involved.² Factors included in the lodestar method include the amount
4 and character of the services rendered; labor, time and trouble involved; character
5 and importance of the litigation in which the services were rendered; amount of
6 money or the value of the property to be affected; professional skill and
7 experience called for; attorneys' character and standing in their profession; and
8 results secured by the services of the attorneys.

9 57. Discovery by the parties included thirty-six depositions, the
10 exchange of twenty-two expert reports, the exchange of over 50,000 pages of
11 documents, and responses to dozens of interrogatories. D.C. Doc. 405 at 6.

12 58. In August 2022, the parties both presented to this Court
13 regarding their discovery disputes. Discovery disputes concerned the location of
14 the depositions of Plaintiffs, which Plaintiffs or their guardians (or their prior
15 guardians) must be deposed, the scheduling of depositions, failures to respond to
16 discovery requests, and supplementation of discovery requests. D.C. Docs. 183,
17 181, 189, 205.

18 59. A discovery conference was held by this Court on
19 September 28, 2022, during which the Court ruled as to who must be deposed
20 and when. D.C. Doc. 220.

21 60. The amount of time, labor, and trouble required by Plaintiffs'
22 attorneys to address the discovery issues was substantial.

23 61. Defendants' identification of over 37 lay witnesses (D.C.
24 Doc. 79) and almost thirty exhibits for trial (D.C. Doc. 384, Attachment 2)

25
26 ² Defendants filed a notice of authority on September 2, 2025, that references SB 39 a law that was signed by the
27 governor on May 8, 2025, with an effective date of October 1, 2025. This Court has no basis to apply a law that is
not in effect. In addition, the law was not referenced, argued or applied by the State or its expert during the briefing
and hearing on attorney fees.

1 required the expenditure of extensive time and resources by Plaintiffs' attorneys.
2 The presentation by Defendants at trial of three witnesses and four exhibits does
3 not negate the time and labor expended by Plaintiffs' attorneys in familiarizing
4 themselves and preparing for trial regarding defense witnesses and exhibits not
5 presented.

6 62. The time, labor, and trouble required of Plaintiffs' attorneys
7 generally related to trial preparation was substantial.

8 63. As set out above, the timeline of this case establishes the
9 procedural demands upon Plaintiffs to respond to motions and filings in this
10 Court, as well as the Montana Supreme Court. They were numerous.

11 64. The need to respond to issues raised by Defendants based on
12 legislation passed during the 2023 Montana legislative session and signed by
13 Defendant Gianforte increased the demands upon Plaintiffs' attorneys.

14 65. The character and importance of this litigation, as set out
15 above, includes the constitutional provisions and statutes passed relating to
16 Montana's residents (their physical and psychological health and their culture),
17 environment, and natural resources.

18 66. This litigation includes considerations of widespread
19 importance, including the effects of climate change upon Montanans, Montana's
20 natural resources, and the natural resources of adjoining and affected areas not
21 limited to Montana geographically.

22 67. The character and importance of this litigation includes the
23 relationship between Montana's governmental agencies, i.e., Defendants, and
24 Montana citizens faced with the need to sue those governmental agencies to
25 assert their constitutional rights, in face of the support and passage of
26 unconstitutional statutes.

1 68. The case involved broad and significant factual issues and
2 required the testimony of multiple expert witnesses.

3 69. The attorneys who represented Plaintiffs in this lawsuit are
4 recognized in Montana and elsewhere as attorneys with specialized knowledge in
5 the areas related to Plaintiffs' claims. In addition, the attorneys have used their
6 specialized knowledge of the subject matter, as well as of civil procedure, to
7 present this case to this Court and the Montana Supreme Court. They succeeded
8 in the claims tried before this Court, a successful result directly attributable to
9 their specialized knowledge and diligence in establishing credible evidence and
10 responding to Defendants' defenses.

11 70. Defendants' characterization of the character of this case
12 includes that "this is a massive, complex, document-intensive, and expert-
13 intensive case." Defendants state that Plaintiffs' claims are "factually, legally,
14 and scientifically complex." D.C. Doc. 88 at 4.

15 71. Plaintiffs presented the declaration of Roger Sullivan, a
16 Kalispell, Montana, attorney who seeks his fees calculated from August 2019 to
17 December 2024. D.C. Doc. 451.³

18 72. Sullivan's request for fees excludes clerical and secretarial
19 tasks. He requests fees for one-half of his travel time and reduced time spent in
20 conferences with co-counsel "to reasonably reflect my responsible participation."
21 D.C. Doc. 451 at 2.

22 73. Since Sullivan's admission to the Montana state bar in 1985,
23 he has worked primarily in complex civil litigation and public interest
24

25 ³ The parties stipulated and the court confirmed by order that there is no issue as to violation of
26 Montana Rule of Professional Conduct 3.7 in presentation of Sullivan's, Bellinger's, and dos
27 Santos' providing testimony as to the nature and value of the legal services they provided in the
case. "Only the sworn declarations and testimony of these individuals shall constitute evidence."
D.C. Doc. 468 at 3.

1 environmental law. The list of cases and matters in which he has been involved in
2 this area firmly establish his experience in both areas. He also has a history of
3 involvement in complex civil suits brought on behalf of injured workers. D.C.
4 Doc. 451 at 3 - 5.

5 74. As to the attorneys involved and necessary to the
6 prosecution of this case, Sullivan stated:

7 16. The availability of attorneys in the state and federal courts of
8 Montana who possess sufficient expertise in environmental law,
9 constitutional rights, and children's rights litigation to prosecute
10 competently in a case such as this one is limited, and my co-counsel
11 are among a small class of specialists in these fields. The specialized
12 knowledge and experience of these attorneys was critical to the
13 success of this case, particularly given the unique and complex
14 subject matter and the rigorous demands of litigation which spanned
15 more than four years.

16 D.C. Doc. 451 at 8.

17 75. Plaintiffs presented the declaration of Nathan Bellinger, a
18 Eugene, Oregon, attorney who seeks his fees calculated from July 2019 to July
19 2024. D.C. Doc. 449.

20 76. Bellinger has "over a decade of experience working
21 exclusively on constitutional climate litigation." Working for a law firm with the
22 unique goal of "securing the legal rights of youth to a healthy atmosphere and
23 safe climate, based on the best available science," Bellinger has worked on court
24 and administrative cases involving climate change and/or fossil fuel pollution in
25 various states throughout the United States. D.C. Doc. 449 at 1 - 4.

26 77. Bellinger's declaration reviewed the history of this case,
27 providing information relevant to the lodestar factors. He stated that the case
required extensive discovery and significant pre-trial motions practice. He notes
that the handling of the statutory and constitutional legal issues required

1 knowledge of the workings of the State as to oil and gas exploration and
2 extraction, utility and energy projects and the science applicable thereto. As to
3 the effects on the Youth Plaintiffs, handling of the legal issues required
4 knowledge and presentation of the unique impact of global climate issues on
5 children. D.C. Doc. 449 at 5 - 6.

6 78. Bellinger noted that, because Defendants denied all facts
7 alleged by Plaintiffs, including basic scientific facts, time and effort were
8 required in the discovery practices of depositions and interrogatories of both fact
9 and expert witnesses. Bellinger described pre-trial practices involving no easy
10 scheduling with Defendants or quick resolution of issues that eventually came to
11 no effect in the case, including pre-trial investigation of potential witnesses. D.C.
12 Doc. 449 at 6 - 8.

13 79. Bellinger totaled the substantive motions by Defendants at
14 eighteen. He notes the two petitions to the Montana Supreme Court and the
15 motions based on the actions of the Montana Legislature. He stated that
16 Defendants tried to have the case dismissed ten times prior to trial. Even though
17 the issues raised were often the same or of no effect in this case, Plaintiffs were
18 required to respond. D.C. Doc. 449 at 9 - 10.

19 80. Plaintiffs presented the declaration of Mathew dos Santos, a
20 Eugene, Oregon, attorney who seeks fees calculated from February 2020 to May
21 2024. Mx. dos Santos also seeks the fees of Andrea Rodgers, calculated from
22 September 2019 to May 2024, the fees of Julia Olson, calculated from June 2019
23 to July 2024, the fees of Philip Gregory, calculated from October 2021 to July
24 2023, and the fees of David Schwartz calculated from August 2021 to July 2024.
25 D.C. Doc. 450.

26 81. Plaintiffs presented the declaration of Barbara Chillcott, a
27 Helena, Montana, attorney who seeks her fees calculated from January 2022 to

1 July 2024. She also seeks the fees of Melissa Hornbein, calculated from August
2 2021 to July 2024, and the fees of Shiloh Hernandez calculated from January
3 2019 to February 2021. D.C. Doc. 452.

4 82. Plaintiffs presented the declarations of Raph Graybill and
5 Michael B. Gerrard, who have knowledge of the facts and law relevant to the
6 case, including observations as to some of the factors to be considered by this
7 Court pursuant to the lodestar factors. D.C. Docs. 453, 454.

8 83. Plaintiffs' attorney fees time records include voluntary
9 omission of some fees for work done and time incurred. Their stated reasons for
10 omissions include decisions to reduce their request and to avoid excessive,
11 redundant, and otherwise unnecessary hours spent. D.C. Docs. 449 at 11 - 12;
12 450 at 12 - 13; 451 at 2; 452 at 3.

13 84. Plaintiffs presented the declaration and testimony of
14 Timothy Bechtold. He has been an attorney since 2000 and he specializes
15 primarily in environmental litigation. D.C. Doc. 455.

16 85. Bechtold is "familiar with prevailing hourly rates for
17 attorneys in Montana." D.C. Doc. 455 at 2. He offered his expert opinion based
18 on (1) his knowledge of the practice of law in the field of environmental
19 litigation; (2) his knowledge of an award to him in 2018 in Montana and an
20 award of another attorney in 2017 in Montana; (3) the qualifications of Plaintiffs'
21 attorneys; (4) the reputation of Plaintiffs' attorneys; and (5) the facts of this case,
22 including the success achieved. D.C. Doc. 455.

23 86. Bechtold reviewed the rates and hours requested by
24 Plaintiffs' attorneys. D.C. Doc. 455 at 3, 6.

25 87. Bechtold concluded that Sullivan's requested rates are lower
26 than they should be, given his specialized knowledge and experience, years of
27 practice, reputation, and work critical to the outcome of this case. D.C. Doc. 455

1 at 3.

2 88. Similarly, Bechtold concluded that Gregory's and Olson's
3 requested rates are lower than they should be, given their specialized knowledge
4 and experience. D.C. Doc. 455 at 5.

5 89. Bechtold opined that the rates requested by dos Santos,
6 Rodgers, Bellinger, Schwartz, Chillcott, Hornbein, and Hernandez are reasonable
7 and commensurate with their experience and expertise. D.C. Doc. 455 at 6.

8 90. Bechtold summarized:

9 It is my opinion that the time Plaintiffs' counsel devoted to this
10 case is reasonable considering the length and complexity of this
11 litigation and, if anything, underestimates the time spent litigating
12 this case. Given the complex legal and scientific issues presented in
13 this constitutional case, and the approach the State took in litigating
this case, it is no surprise that this matter required the time and
energy it did to litigate successfully.

14 D.C. Doc. 455 at 7.

15 91. Defendants presented the testimony of Patrick Risken as an
16 expert in support of their objection to an award of attorney fees in this case.
17 Risken restricted his opinions to the amounts claimed, and offered no opinion as
18 to whether any award is appropriate. D.C. Doc. 461 at 3; D.C. Doc. 478 at 43.

19 92. Risken claims "32 years of private practice representing
20 primarily "commercial" (institutional) clients." He has no experience litigating
21 the type of case at hand. He presented his knowledge as based on his review of
22 attorney billing records when he worked in the civil bureau of the Montana
23 Attorney General's Office from 2014 to 2021. D.C. Doc. 461 at 2; 478 at 8 - 9.
24 Risken opined that "the hourly rates claimed by the various attorneys [for
25 Plaintiffs] appear to be high compared with hourly rates charged by lawyers in
26 the Montana market in small to mid-sized firms." D.C. Doc. 461 at 3.

1 93. Risken did not include any consideration of any rate charged
2 by Defendants' attorneys. D.C. Doc. 478 at 54 - 56, 60.

3 94. Risken did not consider case law statements by the Montana
4 Supreme Court or the United States District Court for Montana of the standard
5 for determining a market rate for attorneys based on expertise, reputation, and
6 experience rather than locations where attorneys reside. D.C. Doc. 478 at
7 49 - 51.

8 95. Risken stated that "Larger firms with multiple locations, a
9 national or regional practice, the availability of greater resources, larger rosters of
10 lawyers and paralegals and the latest technologies (discovery, filing, trial
11 preparation ad trial, etc.) charge higher amounts than lawyers in smaller firms
12 that practice 'locally.'" He states what one firm "may" charge in some cases. He
13 provided no empirical data in support of these statements. D.C. Doc. 461, ¶ 11.

14 96. Risken's conclusion regarding larger versus smaller firms
15 based on "what you need, to pay your overhead and make a . . . decent profit" is
16 not based on knowledge of any firm's overhead costs. D.C. Doc. 478 at 51 - 52.

17 97. Risken's assessment generally was that Plaintiffs' attorneys
18 each charged an exorbitant hourly rate. Risken challenged their experience,
19 where they practice, and compared the rates to those of two Montana attorneys,
20 without mention of the type of work in this case or the specialized experience of
21 the attorneys. D.C. Doc. 461 at 4 - 5.

22 98. Risken characterized the outcome of the case as less than
23 successful. "Plaintiffs were only partially successful in a bench trial." D.C. Doc.
24 461 at 6. In reality, most claims against Defendants that did not succeed were
25 dismissed well before trial. Plaintiffs were fully successful on claims tried during
26 the bench trial.

27 99. In reviewing the case pursuant to the lodestar factors, Risken

1 concluded that the number of hours were too high, including the use of too many
2 attorneys charging too many hours of their time. D.C. Doc. 461 at 5 - 10.

3 100. Given his lack of experience as to the subject matter in this
4 case, Risken's conclusion that "much of the time claimed by the Plaintiffs was the
5 result of significant inefficiency, overbilling and overstaffing" (D.C. Doc. 461 at
6 6) is not persuasive. Similarly, Risken's opinions as to how the case might have
7 been handled differently are not persuasive.

8 101. Risken's analysis of rates charged by Plaintiffs' attorney was
9 not credible, given his methodology. For example, in determining market rate, he
10 did not consider the standard enunciated by Montana courts. D.C. Doc. 478 at
11 50 - 51. He also did not consider attorneys with experience, knowledge, and
12 reputation similar to Plaintiffs' attorneys.

13 102. Risken's analysis of rates charged by Plaintiffs' attorney was
14 not credible, given his failure to fully analyze the applicable standards for a
15 submission of attorney fees. For example, Risken asserted that hours were
16 improperly omitted by Plaintiffs' attorneys, even in light of case law requiring the
17 exclusion of excessive, redundant or otherwise unnecessary hours. Risken
18 erroneously did not credit Plaintiffs' attorneys with the exclusion of such hours.
19 *See* D.C. Doc. 478 at 67 - 69, 76 - 77. He states only that he would not present to
20 a client a bill that shows omissions. D.C. Doc. 478 at 76 - 77.

21 103. Plaintiffs met their burden of establishing that the requested
22 fees are reasonable.

23 104. Defendants have not overcome the rebuttable presumption
24 that "when a Montana citizen has to resort to litigation in order to vindicate a
25 constitutional right, the citizen is entitled to a *rebuttable* presumption that he
26 should not bear the expense of that litigation." *Mont. Env't Info. Ctr. v. Off. of the*
27 *Governor for State*, 2025 MT 112, ¶ 44, 422 Mont. 136, 569 P.3d 555 (Shea,

concurring).

Costs

105. In response to Defendants' opposition to their attorney fees request and to the declaration of Defendants' expert (D.C. Doc. 461), Plaintiffs filed a reply with an attachment entitled "Maximum Fee Reductions." D.C. Doc. 464. The attachment included a revised calculation of Plaintiffs' fee and costs request and the pleading concluded: "Plaintiffs' requested . . . costs should be . . . \$98,667.73." D.C. Doc. 464 at 20.

106. The requested costs are attached to the declarations of Mathew dos Santos and Barbara Chillcott. D.C. Docs. 450, Exhibit 6; 452, Exhibit 4.

107. Chilcott's requests are for filing fees, payment for service of process, and printing costs. D.C. Doc. 452, Exhibit 4. Defendants do not object to these costs.

108. Defendants object to payment of costs for *pro hac vice* application costs, costs related to depositions not used in summary judgment or at trial, and various trial costs. D.C. Doc. 460 at 17 - 18.

109. In response to Defendants' objections, Plaintiffs reduced their requested costs from \$122,354.13 to \$98,667.73.

CONCLUSIONS OF LAW

1. To the extent that any of the foregoing Findings of Fact incorporate Conclusions of Law or the application of law to fact, they are incorporated herein as Conclusions of Law.

2. Montana follows the American Rule regarding any award of attorney fees. The American Rule requires each party to a lawsuit to pay its own fees regardless of the outcome of the case. This rule is negated if there is a

1 contractual basis or statutory authority for an award. *Gendron v. Mont. Univ.*
2 *Sys.*, 2020 MT 82, ¶ 11, 399 Mont. 470, 461 P.3d 115. There are also several
3 narrow equitable exceptions to the American Rule, including the Private Attorney
4 General Doctrine (PAGD). *Forward Montana v. State*, 2024 MT 75, ¶ 15,
5 416 Mont. 175, 546 P.3d 778.

6 3. In *Forward Montana v. State*, appellants challenged the
7 constitutionality of two amendments to a campaign finance statute. The Montana
8 Supreme Court restated what is referred to as the "*Montrust* factors."

9 The party seeking attorney fees must show three basic equitable
10 considerations under the Doctrine: "(1) the strength or societal
11 importance of the public policy vindicated by the litigation, (2) the
12 necessity for private enforcement and the magnitude of the resultant
13 burden on the plaintiff, [and] (3) the number of people standing to
14 benefit from the decision." [*Montanans for the Responsible Use of*
15 *the School Trust v. State ex rel. Bd. of Land Comm'rs*, 1999 MT
263], ¶ 66, [296 Mont. 402, 989 P.2d 800 (*Montrust*)], (quoting
Serrano [v. Priest], 20 Cal. 3d 25, 141 Cal. Rptr. 315, 569 P.2d
1303], 1314 [(Cal. 1977)].

16 *Forward Montana*, ¶ 15. The Montana Supreme Court ruled that the district court
17 considering the request for attorney fees pursuant to the PAGD abused its
18 discretion in not allowing fees. *Forward Montana*, ¶ 44.

19 4. The statutes challenged by Plaintiffs and considered in this
20 case directly prevented the implemented and application of the constitutional
21 provisions that establish Plaintiffs' right to a clean and healthful environment.

22 5. Plaintiff's constitutional interests underlie and establish the
23 societal importance of this litigation. *Burns v. Cty of Musselshell*, 2019 MT 291,
24 ¶¶ 20 - 21, 398 Mont. 140, 454 P.3d 685.

25 6. *Forward Montana* provides guidance as to the consideration
26 of the first *Montrust* factor:
27

1 Appellants challenged Sections 21 and 22 purely on
2 constitutional grounds and won summary judgment on their
3 claims under Article V, Section 11, of the Montana
4 Constitution. *See Burns*, ¶ 21 ("It is the vindication of
5 constitutional interests that demonstrates the societal
6 importance of the litigation."). This case falls squarely within
7 the courts' important role in enforcing constitutional checks on
8 the legislative power.

9 The Dissent suggests that even though significant
10 constitutional interests were vindicated in *Western Tradition*
11 *Partnership*, we held these were not enough under the first
12 factor. *See* Dissent, ¶ 53. However, our holding in *Western*
13 *Tradition Partnership* recognized that "even though ATP
14 vindicated principles of constitutional magnitude, the State's
15 defense *also was grounded in constitutional principles* and in
16 an effort to enforce interests the executive deemed *equally*
17 *significant* to its citizens." *W. Tradition P'ship*, ¶ 20 (emphasis
18 added). The important constitutional interests at stake in
19 *Western Tradition Partnership* are not in dispute. Our holding
20 shows that both sides had important constitutional interests
21 they were trying to vindicate. Here, however, Appellants alone
22 were vindicating important constitutional interests. The
23 Legislature disregarded its constitutional limitations, and the
24 Attorney General offered no substantive or constitutional
25 interests in defense of these actions.

26 *Forward Montana*, ¶¶ 17-18.

27 7. This Court's decision in this case was pursuant to its
important role of determining the constitutionality of statutes that impact the
constitutional right to a clean and healthful environment.

8. The first *Montrust* factor of the strength or societal
importance of the public policy vindicated by the litigation weighs heavily in
favor of an attorney fees award.

9. The enforcement of the constitutional provisions at issue in
this case was only possible through the actions of persons in the same situation as

1 Plaintiffs, given Defendants' avoidance and prevention of enforcement of the
2 constitutional provisions. *Burns*, ¶ 22.

3 10. Without the private enforcement recognized in *Montrust*, the
4 Defendants would have continued to enforce statutes violative of Montana's
5 constitutional rights.

6 11. The second *Montrust* factor, the necessity for private
7 enforcement and the magnitude of the resultant burden on the plaintiff, weighs
8 heavily in favor of an attorney fees award.

9 12. Because all Montanans feel the effects of anthropogenic
10 climate change, the holdings of this Court have become a part of the body of law
11 applicable to all Montanans in many situations.

12 13. The third *Montrust* factor, the number of people standing to
13 benefit from this Court's decision, weighs heavily in favor of an attorney fees
14 award.

15 14. Attorney fees should be awarded here, given that the three
16 *Montrust* factors weigh in favor of an award pursuant to the PAGD.

17 15. Defendants erroneously assert that the presence of bad faith is a
18 requirement for an award of attorney fees. Consideration of bad faith "is only an
19 equitable guidepost rather than a requirement" for applying the PAGD. *Forward*
20 *Montana*, ¶ 30.

21 16. According to the UDJA, attorney fees may be awarded in
22 actions for declaratory relief "whenever necessary or proper." Mont. Code Ann.
23 § 27-8-313.

24 17. "The availability of attorney fees is not automatically
25 presumed, nor are fees warranted in "garden-variety declaratory judgment
26 actions." *Abbey/Land v. Glacier Contr. Partners, LLC*, 2019 MT 19, ¶ 66,
27 394 Mont. 135, 433 P.3d 1230.

1 18. As a threshold question, the equities must support a grant of
2 attorney fees. *Id.*

3 If the equities support a grant of attorney fees under § 27-8-313,
4 MCA, we consider three "tangible parameters" as articulated in
5 *Renville [v. Farmers Ins. Exch., 2004 MT 366], ¶ 27[, 324 Mont.*
6 *509, 105 P.3d 280].* Under these parameters, fees are "necessary and
7 proper" when (1) the other party "possesses" what the party filing the
8 declaratory judgment sought in the litigation; (2) the party filing the
9 declaratory judgment action needed to seek a declaration showing
10 that it is entitled to the relief sought; and (3) the declaratory relief
11 sought was necessary in order to change the status quo. [*Trs. of Ind.*
12 *Univ. v.] Buxbaum, [2003 MT 97,] ¶ 45[, 315 Mont. 210, 69 P.3d*
13 *663]; Renville, ¶ 27.*

14 *Abbey/Land, ¶ 67.*

15 19. The equities in this case support a grant of attorney fees
16 pursuant to the UDJA. The parties are not similarly situated. Defendants have
17 significantly more resources in terms of governmental structure, personnel, and
18 power to devote to the duty to protect Montana's natural resources and
19 environment, including in any court case. *See Town of Kevin v. N. Cent. Mont.*
20 *Reg'l Water Auth., 2024 MT 159, ¶¶ 17 - 18, 417 Mont. 325, 553 P.3d 392.*

21 20. The parties are not similarly situated in that Defendants have
22 significantly more resources in terms of legal services. *See Town of Kevin,*
23 *¶¶ 17 – 18.*

24 21. Defendants engage in constitutional fossil fuel permitting.

25 22. Plaintiffs needed to seek a declaration showing that certain
26 statutes violated the Montana Constitution as to fossil fuel permitting and that
27 Plaintiffs were entitled to the relief sought.

 23. The action for declaratory relief was needed to invalidate
unconstitutional statutes. The way to stop the continued violation of the

1 constitution by Defendants' defense and application of unconstitutional
2 statutes—the status quo—was to seek declaratory relief.

3 24. According to the tangible parameters set by the Montana
4 Supreme Court, there should be an award of attorney fees pursuant to the UDJA.

5 25. The lodestar method of calculating attorney fees is
6 applicable. The lodestar figure results from multiplying the number of reasonable
7 hours by a reasonable hourly rate. *Hensley v. Eckerhart*, 461 U.S. 424, 433
8 (1983).

9 26. The applicant for fees has the burden to produce satisfactory
10 evidence that the requested rates are in line with those prevailing in the
11 community for similar services by lawyers of reasonably comparable skill,
12 experience, and reputation. *Blum v. Stenson*, 465 U.S. 886, 895, n.11 (1984).

13 27. Only those hours that were "reasonably expended" should be
14 included. *Hensley*, 461 U.S. at 434. Hours must not be excessive, redundant, or
15 unnecessary. "Hours that are not properly billed to one's client also are not
16 properly billed to one's adversary..." *Id.*

17 28. The lodestar method is recognized in Montana. *Gendron v.*
18 *Mont. Univ. Sys.*, ¶ 12.

19 Under the lodestar method, we have identified seven guiding
20 factors to be used in determining the number of hours counsel
reasonably expended:

- 21 (1) the amount and character of the services rendered;
- 22 (2) the labor, time and trouble involved;
- 23 (3) the character and importance of the litigation in which the
services were rendered;
- 24 (4) the amount of money or the value of the property to be affected;
- 25 (5) the professional skill and experience called for;
- 26 (6) the attorneys' character and standing in their profession; and
- (7) the results secured by the services of the attorneys.

27 *Id.*, ¶ 13.

1 29. These factors are not exclusive, and this court may
2 rely on other considerations in determining reasonableness. *Id.*

3 30. Many of the factors are fulfilled by the undisputed
4 facts related to the nature of this long-running case. As recognized by
5 Defendants, Plaintiffs' claims were factually, legally, and scientifically
6 complex. Therefore, the amount of services; labor involved; time and
7 trouble involved; and professional skill and experience called for weigh
8 heavily in support of the hours requested.

9 31. The character and importance of the litigation is well-
10 established by the subject matter, i.e., review, consideration, and application of
11 constitutional provisions regarding inalienable rights and relevant statutes.

12 32. The successful litigation required numerous hours by
13 Plaintiffs' attorneys.

14 33. Plaintiffs' attorneys' diligence in avoiding redundancies and
15 other unnecessary charges in their request for fees supports a conclusion that the
16 requested hours are properly calculated.

17 34. Consideration of the lodestar factors in this case supports the
18 requested hours of Plaintiffs' attorneys.

19 35. The market rate for attorneys in this case is not restricted to
20 rates charged by Montana attorneys. As stated by the Montana Supreme Court, a
21 court must consider "the historic rate prevailing in the relevant community for
22 similar work performed by attorneys of comparable skill, experience, and
23 reputation based on all the evidence presently in the record." *Ihler v. Chisholm*,
24 2000 MT 37, ¶ 40, 298 Mont. 254, 995 P.2d 439. See also *Ferdig Oil Co. v.*
25 *ROC Gathering, LLP*, 2018 MT 307, ¶¶26-30, 393 Mont. 500 432 P.3d 118.

1 36. The relevant community for work similar to that necessary
2 in this case is the community of attorneys with specialized knowledge and
3 experience in complex environmental litigation.

4 37. The attorneys seeking fees in this case are lawyers of
5 comparable expertise, reputation, and experience in similarly complex litigation.
6 The litigation included complex underlying scientific information, extensive
7 expert witness testimony, voluminous discovery, extensive motions practice,
8 trial, post-trial motions, numerous defendants and appellate advocacy. The
9 Defendants aggressively litigated every step of this case, at times relitigating
10 issues. The skills necessary to litigate the case were exceptional. As such, the
11 rate requested is within the range of market rates for attorneys. Allowances made
12 for years of experience will necessitate different rates between the attorneys.

13 38. The Court is skeptical of the \$20 yearly increase in hourly
14 rates for Plaintiffs' attorneys. There was insufficient evidence presented to
15 support a conclusion that such across-the-board rate increases were required to
16 meet cost of living or overhead increases. Nonetheless, without accepting the
17 increases under those premises, this Court deems the hourly rates, when
18 considered over the years as average hourly rates, to be sufficiently supported
19 and reasonable.

20 39. Risken erroneously gave no consideration or credit to
21 Plaintiffs' attorneys' reduction of requested fees pursuant to the court-sanctioned
22 practice of excluding from a fee request "hours that are excessive, redundant or
23 otherwise unnecessary." D.C. Docs. 449 - 452; 478 at 69 - 70; *Hensley*, 461 U.S.
24 at 434.

25 40. Plaintiffs have established the reasonableness of the hourly
26 rate they seek for their work in this case.

27 ///

1 41. Mont Code Ann. § 25-10-201, provides:

2 A party to whom costs are awarded in an action is entitled to
3 include in the party's bill of costs the party's necessary
4 disbursements, as follows:

5 (1) the legal fees of witnesses, including mileage, or referees and
6 other officers;

7 (2) the expenses of taking depositions;

8 (3) the legal fees for publication when publication is directed;

9 (4) the legal fees paid for filing and recording papers and certified
10 copies of papers necessarily used in the action or on the trial;

11 (5) the legal fees paid stenographers for per diem or for copies;

12 (6) the reasonable expenses of printing papers for a hearing when
13 required by a rule of court;

14 (7) the reasonable expenses of making transcript for the supreme
15 court;

16 (8) the reasonable expenses for making a map or maps if required
17 and necessary to be used on trial or hearing; and

18 (9) other reasonable and necessary expenses that are taxable
19 according to the course and practice of the court or by express
20 provision of law.

21 Mont. Code Ann. § 25-10-201.

22 42. The requested costs, including those not disputed by
23 Defendants, are allowed by Mont. Code Ann. § 25-10-201.

24 43. Any requested costs, as stated in Plaintiffs' reply (D.C. Doc.
25 464 at 20) not specifically covered otherwise by Mont. Code Ann. § 25-10-201,
26 fall within the category of "other reasonable and necessary expenses" allowed by
27 Section 25-10-201(9).

ORDER

 Based on the foregoing, **IT IS ORDERED** that that attorney fees
are awarded to Plaintiffs in the amount of \$2,857,193.00.

1 **IT IS FURTHER ORDERED** that Plaintiffs are awarded costs in
2 the amount of \$98,667.73.

3
4 **ELECTRONICALLY SIGNED BELOW**

5
6 cc: Melissa Hornbein, via email: hornbein@westernlaw.org
7 Barbara Chillcott, via email: chillcott@westernlaw.org
8 Roger Sullivan, via email: rsullivan@mcgarveylaw.com
9 Dustin Leftridge, via email: dleftridge@mcgarveylaw.com
10 Nathan Bellinger, via email: nate@ourchildrenstrust.org
11 Mathew dos Santos, via email: mat.dossantos@ourchildrenstrust.org
12 Andrea Rodgers, via email: andrea@ourchildrenstrust.org
13 Philip L. Gregory, via email: pgregory@gregorylawgroup.com
14 David M.S. Dewhirst, via email: David.dewhirst@mt.gov
15 Derek Oestreicher, via email: derek.oestreicher@mt.gov
16 Timothy Longfield, via email: timothy.longfield@mt.gov
17 Morgan Varty, via email: morgan.varty@mt.gov
18 Emily Jones, via email: emily@joneslawmt.com
19 Lee McKenna, via email: lee.mckenna@mt.gov

20
21
22
23
24
25
26
27
KS/sm/CDV-2020-307 Held FCO