EARTHJUSTICE

WESTERN ENVIRONMENTAL LAW CENTER

COMMENT ON QUANTICA BIG SKY CAMPUS PUBLIC WATER WELL CATEGORICAL EXCLUSION UNDER A PROGRAMMATIC ENVIRONMENTAL ASSESSMENT

SUBMITTED ON BEHALF OF:

Butte Watchdogs for Social and Environmental Justice
Citizens for Clean Energy
Families for a Livable Climate
Honor the Earth
Montana Conservation Voters
Montana Environmental Information Center
Montana Health and Climate
Montana Public Interest Research Group
Northern Plains Resource Council
Park County Environmental Council
Sierra Club Montana Chapter
Upper Missouri Waterkeeper
350 Montana

November 6, 2026

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November 6, 2026

Montana Department of Environmental Quality
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Submitted via Email to DEQEngProgramMEPA@mt.gov

RE: Public Comment on Quantica Big Sky Campus Public Water Well

Director Nowakowski:

Butte Watchdogs for Social and Environmental Justice, Citizens for Clean Energy, Families for a Livable Climate, Honor the Earth, Montana Conservation Voters, Montana Environmental Information Center, Montana Health and Climate, Montana Public Interest Research Group, Northern Plains Resource Council, Park County Environmental Council, Sierra Club Montana Chapter, Upper Missouri Waterkeeper, and 350 Montana (collectively, "Commenters") submit these comments to highlight the significant flaws in the Montana Department of Environmental Quality's ("DEQ") environmental review regarding the Application[1] to develop a non-community public water supply for Big Sky Digital Infrastructure, LLC to serve Quantica's Big Sky Campus, including its planned data center.[2]

Granting Quantica's Application would authorize the first water-supply infrastructure for what may become one of the largest industrial developments in Montana's history: Quantica's proposed Big Sky Campus. DEQ has framed its review as involving a single public water supply well, but the record before the agency tells a different story. Documents submitted to DEQ prove that the well exists solely to facilitate a much larger undertaking, including a hyperscale data center. Quantica asks DEQ to hide the true scope of this project from the public by seeking review of the Application in isolation through an expedited review and categorical exclusion. If DEQ accepts that invitation, the agency will deprive both

[1] Commenters, like DEQ, refer to the Public Water Supply Well T3 Design Report prepared by Tetra Tech on behalf of Big Sky Digital Infrastructure, LLC as the "Application."

[2] The project documents differ as to which entity is controlling the project. The Montana Sage Grouse Habitat Conservation Program letter is directed to Quantica Infrastructure and DEQ's Notice references "Quantica," At the same time, the Public Water Supply Well T3 Design Report has been prepared for "Big Sky Digital Infrastructure, LLC." Commenters refer to both "Quantica Infrastructure, LLC" and "Big Sky Digital Infrastructure, LLC" as "Quantica."

decisionmakers and the public of the comprehensive environmental review that Montana's Constitution and Montana law require.

The Montana Environmental Policy Act ("MEPA") was enacted in 1971, with broad bipartisan support, as Montana faced plans to turn the southeastern part of the State into a hub for coal extraction and combustion, a future that contemporaries described as making Montana the "boiler room for the nation."[3] MEPA was the State's answer: a "look before you leap" statute requiring agencies to study and disclose the environmental consequences of major state actions before committing to them, not after. That founding purpose has not changed. MEPA exists so that the Legislature and the public understand the anticipated impacts of State action while there is still time to act on that understanding.[4]

Hyperscale data centers present the same kind of large-scale, unstudied threat that prompted MEPA's enactment. Artificial intelligence ("AI") data centers are placing unprecedented and cumulative demands on Montana's water and energy resources; demands of a scale and character the State has never confronted and has not yet meaningfully studied. This is exactly the circumstance MEPA was designed for: a new, fast-moving category of industrial development whose full impacts are not yet understood, arriving faster than the regulatory apparatus built to evaluate it. DEQ's obligation is to ensure that the Legislature and the public understand the impacts of these projects, including Quantica's proposed Big Sky Campus, before those impacts are locked in. To review this project in piecemeal fashion, as the Application proposes, risks DEQ's ability to demonstrate that it made its decision upon a consideration of relevant factors based on a rational connection between the facts available and the agency's conclusion.

The water well DEQ proposes to approve without environmental review is not a stand-alone project. Again, it is the first permit for what could be one of the largest industrial facilities in Montana's history: a hyperscale AI data center campus that is anticipated to be powered by a 1,785-megawatt on-site methane gas-fired generation plant and an additional request for up to 7,235 megawatts of grid interconnection from NorthWestern Energy—a utility with significant investments

[3] K. Ross Toole, *The Rape of the Great Plains: Northwest America, Cattle and Coal* (1976).

[4] Mont. Code Ann. § 75–1–102(1).

in coal and methane gas generation assets.[5] The well's sole purpose is to supply that data center campus, beginning with water for up to 1,500 construction workers.[6]

DEQ cannot lawfully treat this well as if it were a household or subdivision well covered by the Final Programmatic Environmental Assessment for Certificate of Subdivision Approval or Letter of Approval under the Sanitation in Subdivision Act of Montana and Public Water Supply Act of Montana to Install and Operate a Water Well and Its Associate Facilities (Feb. 20, 2026) ("Programmatic EA"). DEQ is engaged with Quantica on a major-source air permit and potential wastewater discharges, and the applicant has announced a second public water supply ("PWS") well. Approving the first permit now, through a categorical exclusion review that does not mention the data center, the gas plant, or the second well, is precisely the type of piecemeal review MEPA and the Montana Constitution forbid. DEQ has already informed Quantica that an EIS will likely be required for the air permit associated with its proposed gas plants.[7] The time to conduct the EIS is now, before issuing any permits to facilitate the construction of this massive project.

Commenters therefore request that DEQ:

1. Reject Quantica's request for expedited review and deny Quantica's Application as incomplete;
2. Withdraw the Draft Categorical Exclusion Review and decline to rely on the Programmatic EA for this well;
3. Defer any approval of the T3 well and the forthcoming T6 well until DEQ completes environmental review of the Big Sky Campus as a whole; and
4. Prepare an Environmental Impact Statement ("EIS") for the Big Sky Campus that analyzes all of its reasonably foreseeable direct, secondary, and cumulative impacts, including a full greenhouse gas emission assessment.

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[5] Alex Mitchell, *Quantica Eying Massive Gas Plants for Montana Data Center*, Billings Gazette (May 20, 2026), https://billingsgazette.com/news/local/business/development/article_72b2ec17-3180-46e0-9145-ebab45ae4cfc.html (submitted as Ex. 1).

[6] Jack Conver, Tetra Tech, *Public Water Supply Well T3 Design Report: Big Sky Campus 117-001278-26028*, pdf p. 4 (Sep. 2, 2026) [hereinafter Application].

[7] *See* Mont. Off. of Pub. Info. Requests, Request No. 26-PIR-0753 (Apr. 17, 2026) [hereinafter DEQ-Quantica Emails] (submitted as Ex. 2).

IDENTITIES AND INTERESTS OF COMMENTERS

The Commenters, identified below, include a diverse group of Montana organizations:

Butte Watchdogs for Social and Environmental Justice is a small non-profit organization dedicated to advancing the cause of social and environmental justice for the people of Butte-Silver Bow, Montana, and the State of Montana. Butte Watchdogs was created to hold polluters accountable for the Butte area Superfund cleanup. Butte Watchdogs believes in social and environmental justice that is rooted in transparency, accountability, and morality. The organization demands quality, timely, and science-based solutions. Butte Watchdogs has approximately 500 supporters.

Citizens for Clean Energy formed in Cascade County twenty years ago, in the heart of Montana's Golden Triangle, to underscore the importance of fully disclosing to the citizens of Montana the environmental costs of resource-intensive projects. The non-profit grassroots organization represents Montanans from Great Falls and Cascade County, Montana. The organization works to promote adequate, clean, and cost-effective energy sources and energy efficiency to help reduce the need for fossil-fuel based generation. The organization's members include working farmers, ranchers and gardeners, for whom climate impacts, such as increasing temperatures and drought, are materially affecting their livelihoods through the need to transport water significant distances to keep crops and livestock alive.

Families for a Livable Climate ("FLC") is a Montana nonprofit organization founded in 2019 by climate-concerned parents, dedicated to creating community for climate action across the state. FLC brings together families, young people, and community members to build relationships, develop grassroots leadership, and take meaningful action for a livable future. FLC's network includes Montanans from urban, rural, and Tribal communities, and its programs engage people across generations in climate education, civic participation, community organizing, and advocacy. FLC is committed to ensuring that Montana families and communities have meaningful opportunities to participate in decisions that affect their health, environment, and future, and to holding state agencies accountable to Montana's environmental obligations for current as well as future generations.

Honor the Earth is an Indigenous-led organization fighting to dismantle settler-colonialism, racial capitalism, white supremacy, and imperialism. The organization is creating a world where Indigenous sovereignty is recognized, respected, and upheld. It is working to create a future where communities thrive with honor, abundance, and in right relationship with Mother Earth. It does this by investing in its communities through campaigns, research, training, reclaiming narratives, and providing capacity support in service of all land and life. Honor the Earth is based in Lame Deer, Montana. The organization is concerned about the material and physical impacts of artificial intelligence on Indigenous lands and rural communities, including the disproportionate effects on Indigenous, Black, and

Brown communities across the country. Honor the Earth is concerned that data center developers are racing to build large load data centers without tribal or local community consent, at the cost of water, health, land, and energy bills.

Montana Conservation Voters ("MCV") is a nonprofit, nonpartisan organization that protects Montana's clean air, clean water, public lands and democracy by supporting leaders who fight for these rights and holding accountable those who do not. MCV works to increase protections and designations for Montana's public lands and water for both people and wildlife. MCV educates the public and policy makers on critical environmental and public lands issues.

Montana Environmental Information Center ("MEIC") is a non-partisan, non-profit environmental advocacy group dedicated to ensuring clean air and water for Montana's present and future generations. MEIC was founded in 1973 by Montanans concerned with protecting and restoring Montana's natural environment. To protect and restore the land, air, water, and life-sustaining climate of Montana, MEIC advocates, educates, and empowers people in service of a clean and healthful environment for present and future generations. MEIC is dedicated to assuring that state and local governments comply with and fully uphold the laws and constitutional provisions that further the organization's goals and mission of protecting the environment for all Montanans to enjoy.

Montana Health and Climate ("MHC") works to protect human health from effects of air pollution and climate change. MHC represents 2,800 Montanans, the majority of whom are involved in healthcare or medicine. The organization supports care for Montana's water resources and the families dependent on them. Its members are concerned that damage to or the dwindling of limited water resources around Broadview could cause significant difficulty to local community members and livelihoods. MHC members advocate for the approval of water wells after intense research, including consideration of the regional impacts.

Montana Public Interest Research Group ("MontPIRG") is a student-led nonpartisan public interest organization dedicated to developing the next generation of civic leaders, advocating for consumer and good government issues, and defending the environment. For nearly forty-five years, MontPIRG has represented the student populations at the University of Montana and Montana State University. Additionally, the organization has a Board of Directors composed of twelve university students, and it enrolls approximately twenty-five students for internships each semester. MontPIRG's student and citizen members are concerned about the environmental degradation.

Northern Plains Resource Council is a grassroots conservation and family agriculture group that organizes Montanans to protect our natural resources and Montanans' unique way of life. The organization was formed in 1972 when ranch families in the Bull Mountains came together over concerns about what industrial coal mining would do to their homes, livelihoods, and ability to make a living from ranching. Since those early days, Northern Plains Resource Council

members have continued to be stewards of the place its members love—working to support vibrant communities, build grassroots leaders, and make sure that the interests of everyday people are never overlooked. Its members firmly believe that organized people working together can be a very powerful force for good and one that protects Montana for generations to come.

Park County Environmental Council ("PCEC") is a community-based conservation organization that works to protect the land, water, air, and wildlife of Park County and to foster a resilient future for Yellowstone's Northern Gateway. PCEC has approximately 500 members and 3,000 supporters, who rely on the health and beauty of the natural world for their livelihoods, recreation, and well-being. PCEC's members stand in solidarity with neighbors in Yellowstone County in protecting our water resources from extractive, industrial development, in accordance with the constitutional right to a clean and healthful environment.

Sierra Club Montana Chapter is a nonprofit member organization founded in 1983 to support policies and projects that address pressing environmental issues in Montana and get outside to enjoy the outdoors. The Montana Chapter has approximately 11,000 members and supporters, including avid outdoor recreationalists, farmers, ranchers, students, teachers, fly fishers, artists, scientists, faith leaders, and retired fossil fuel plant employees. It advocates to protect access to clean water and clean air, protect wildlife and public lands, and work towards a stable, healthy climate in Montana.

Upper Missouri Waterkeeper is a non-profit, member-supported environmental advocacy and public education organization dedicated to protecting and improving fishable, swimmable, drinkable water and community health throughout Montana's 25,000 square mile Upper Missouri River Basin. Since its founding in 2013, Waterkeeper has advocated and litigated at the local, state, and federal level to prevent degradation of water resources and to protect community health and the environment. Waterkeeper is also committed to holding state officials accountable to comply with and uphold Montana's laws designed to protect the environment from degradation.

350 Montana is an all-volunteer citizens' organization that works to reduce atmospheric carbon dioxide concentrations to 350 parts per million by implementing strategic actions and advocating policies to end fossil fuel burning in response to the urgency of the climate crisis. 350 Montana envisions a rapid conversion to a 100 percent renewable global energy system using wind, water, and solar. The organization works with the global grassroots climate movement to achieve these goals and safeguard Earth's life-support systems.

COMMENT

I. Background

A. The Big Sky Campus

Quantica Infrastructure, LLC announced the Big Sky Campus in 2025 as a 5,000-acre "energy, real estate, and telecommunications campus" in Yellowstone County, about 3.5 miles south of Broadview.[8] NorthWestern Energy ("NorthWestern") signed a letter of intent in July 2025 to supply an initial 500 megawatts ("MW"), with "phased growth" to 1,000 MW.[9] For context, NorthWestern supplies roughly 760 MW to all its Montana electric customers on an average day.[10]

Since then, the project's scale has since grown dramatically. Quantica subsequently asked NorthWestern for up to 7,235 MW of interconnection capacity, which it described as including renewables, firming generation, and battery storage; the company has acknowledged discussing with DEQ permits for firming power that includes methane gas.[11]

DEQ records obtained by a public records request show Quantica is pursuing permits for 585 MW of gas-fired reciprocating engines and 1,200 MW of gas-fired turbines, a combined 1,785 MW.[12] That exceeds the combined capacity of every gas

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[8] Keila Szpaller, *Montana PSC to Take Up Data Centers, AI*, Daily Montanan (Aug. 11, 2025), https://dailymontanan.com/2025/08/11/montana-psc-to-take-up-data-centers-ai/.

[9] Amanda Eggert, *NorthWestern Energy Inks Power Agreement with Proposed AI Data Center in Yellowstone County*, Mont. Free Press (July 31, 2025), https://montanafreepress.org/2025/07/31/northwestern-energy-inks-power-agreement-with-an-ai-data-center-planned-for-yellowstone-county/; Press Release, NorthWestern Energy, NorthWestern Energy Signs Letter of Intent to Serve Quantica Infrastructure's Montana Data Center Development (July 30, 2025), https://northwesternenergy.com/about-us/our-company/2025/07/30/northwestern-energy-signs-letter-of-intent-to-serve-quantica-infrastructure-s-montana-data-center-development#.

[10] NorthWestern Energy, *2025 Montana at a Glance*, pdf p. 3 (June 2025), https://www.northwesternenergy.com/docs/default-source/default-document-library/in-your-community/economic-development/3667_ataglance_mt_1021.pdf.

[11] MTN News, *Quantica seeking to boost energy capacity at proposed Broadview data center* (May 20, 2026), https://www.kpax.com/news/montana-news/quantica-seeking-to-boost-energy-capacity-at-broadview-data-center-site-to-7-235-mw.

[12] Ex. 2, DEQ-Quantica Emails at pdf p. 41 (email from E. Merchant (DEQ) to A. Leon et al. (Quantica) re: Quantica Infrastructure - Air Quality Pre-Application Meeting Summary (Mar. 23, 2026)).

plant now operating in Montana and is roughly ten times the capacity of NorthWestern's 172 MW Yellowstone County Generating Station near Laurel.[13]

Following a pre-application meeting in March 2026, DEQ's air permitting supervisor described the proposal as a "proposed fossil-fuel (gas)-fired data center project" and estimated it would require a Major New Source Review/Prevention of Significant Deterioration ("PSD") permit.[14] In April 3, 2026 emails to DEQ staff, the supervisor noted that "wastewater discharge may also be in play,"[15] and that a gas pipeline to the facility would be needed.[16] Quantica's consultant told DEQ the objective was to have the data center online in late 2029, with the air permit in place early enough to support construction.[17]

Since then, Quantica has reportedly secured leases on roughly 40,000 additional acres for energy development.[18] And Quantica has publicly announced the start of Phase 1 construction, beginning with access roads and a well.[19]

B. The T3 Well

The Application for the Big Sky Campus describes the T3 well as a non-transient noncommunity ("NTNC") PWS that will serve the data center campus.[20] The Application is explicit that this application is only the first step. The requested expedited approval "is limited to the location and construction of the well."[21]

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[13] Ex. 1, *Quantica Eying Massive Gas Plants for Montana Data Center*.

[14] Ex. 2, DEQ-Quantica Emails at pdf p. 29 (email from E. Merchant (DEQ) to D. Wilson et al. (DEQ) re: Quantica Infrastructure - Proposed Data Center (Mar. 23, 2026)).

[15] *Id.* at pdf p. 16 (email from E. Merchant (DEQ) to T. Davila et al. (DEQ) re: Proposed Data Center - Broadview, MT (Apr. 3, 2026)).

[16] *Id.* at pdf p. 19 (email from E. Merchant to A. Steinmetz re: Proposed Data Center - Broadview, MT (Apr. 3, 2026)).

[17] *Id.* at pdf p. 3 (email from E. Merchant (DEQ) to various re: Quantica Infrastructure - Proposed Data Center (Apr. 3, 2026)).

[18] Data Center Post, *Quantica's Big Sky Digital Infrastructure Project Brings Power, Land, and Connectivity Together in Montana* (Oct. 28, 2025), https://datacenterpost.com/quanticas-big-sky-digital-infrastructure-project-brings-power-land-and-connectivity-together-in-montana/.

[19] Phoebe Tollefson, *Broadview Area Data Center Sees First Phase of Construction with Roads, Well Work*, Mont. Free Press (Sep. 18, 2026), https://montanafreepress.org/2026/09/18/broadview-area-data-center-sees-first-phase-of-construction-with-roads-well-work/.

[20] Application at pdf p. 4.

[21] *Id.*

Permanent pumping, conveyance, wellhouse, storage, treatment, and distribution facilities "are anticipated to be addressed in subsequent submittals."[22] A second well is planned: "A separate PWS NTNC well application for T6 location will shortly be submitted for review and approval."[23] The well is to serve "[a]ll of the potable and non-potable uses" of the campus, including the initial charge and maintenance of the data center's closed-loop cooling system, and the applicant is "evaluating potential offsite uses" of the water.[24] Campus sewage and wastewater facilities are planned about 2,500 feet north of the well.[25]

C. DEQ's Draft Categorical Exclusion

DEQ's Draft Categorical Exclusion review tiers to DEQ's February 20, 2026 Programmatic EA.[26] It describes the action as "a single Public Water Supply well," finds the disturbance footprint is about 100 by 100 feet with treatment housing "similar to a small shed," and answers "[n]o" to every question regarding the potential for significant environmental impacts.[27]

The Draft Categorical Exclusion does not mention the data center, the gas generation, the T6 well, the planned wastewater facilities, nor Quantica's proposed construction schedule. The only related actions identified are future Montana Department of Natural Resources and Conservation ("DNRC") water-use permitting and "DEQ engineering review of additional water and wastewater system designs."[28] It states that "DEQ is not aware of any application pending with any other state agency, including DNRC, at this time."[29] It contains no greenhouse gas analysis, no drawdown or aquifer analysis, and no evaluation of the source's water quality, which it acknowledges is "unknown."[30]

II. MEPA implements the Constitution's anticipatory and preventative guarantees.

Montana's Constitution is explicit in recognizing the fundamental right to a "clean and healthful environment" among the "inalienable rights" shared by all

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[22] *Id.*

[23] *Id.* at pdf p. 7.

[24] *Id.* at pdf p. 6.

[25] *Id.* at pdf p. 130.

[26] Mont. Dep't of Env't Quality, *Draft Categorical Exclusion Review Under Programmatic Environmental Assessment*, 1 (Sep. 28, 2026) [hereinafter Draft Categorical Exclusion].

[27] *Id.* at 2–5.

[28] *Id.* at 2.

[29] *Id.*

[30] *Id.* at 3.

Montanans,[31] which includes the right to a stable climate system.[32] The environmental provisions of Montana's Constitution form one of the "strongest environmental protection provisions found in any state," and are "both anticipatory and preventive" in nature.[33] The Constitution also articulates the duty of state agencies like DEQ to "maintain and improve a clean and healthful environment in Montana for present and future generations."[34] As a result, state agencies, like DEQ, must act consistently with the "forward-looking and preventive" nature of the Constitution and the requirement that "Montanans have a right not only to reactive measures after a constitutionally-proscribed environmental harm has occurred, but to be free of its occurrence in the first place."[35]

The Constitution also mandates that the Montana Legislature "provide adequate remedies for the protection of the environmental life support system from degradation" and "prevent unreasonable depletion and degradation of natural resources."[36]

MEPA is part of the statutory scheme that helps implement these constitutional guarantees. MEPA mandates adequate environmental review to inform the legislature and the public of the environmental impacts from state actions and ways to avoid, minimize, or mitigate them.[37] MEPA is also "a vehicle for pursuing [the Legislature's] constitutional mandate to prevent environmental harms."[38] "[P]revention depends on forethought. 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."[39] Review that comes only after an agency has committed to a course of action is "analogous to a mandatory aircraft inspection after takeoff."[40]

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[31] Mont. Const. art. II, § 3.

[32] *Held v. State*, 2024 MT 312, ¶ 29, 419 Mont. 403, 560 P.3d 1235.

[33] *Mont. Env't Info. Ctr. v. Dep't of Env't. Quality* ("*MEIC 1999*"), 1999 MT 248, ¶¶ 66, 77, 296 Mont. 207, 988 P.2d 1236.

[34] Mont. Const. art. IX, § 1(1).

[35] *Park Cnty. Env't Council v. Mont. Dep't of Env't Quality*, 2020 MT 303, ¶ 62, 402 Mont. 168, 477 P.3d 288.

[36] Mont. Const. art. IX, § 1(3).

[37] Mont. Code Ann. § 75-1-102(2).

[38] *Held*, ¶ 59.

[39] *Park Cnty.,* ¶ 70; *Held*, ¶ 60.

[40] *Park Cnty.*, ¶ 72.

Consistent with the obligations imposed on the State by Montana's Constitution, MEPA requires fully informed decision-making in three primary ways. First, MEPA review ensures that state agencies use the information obtained through the MEPA process to make decisions that maintain and improve the environment as Montana's Constitution requires. "[A] clean and healthful environment cannot occur unless the State and its agencies can make adequately informed decisions."[41]

Second, MEPA "ensure[s] that … environmental attributes are fully considered by the legislature in enacting laws to fulfill constitutional obligations."[42] "[E]nvironmental review [under MEPA] 'assist[s] the legislature in determining whether laws are adequate to address impacts to Montana's environment and … inform[s] the public and public officials of potential impacts resulting from decisions made by state agencies."[43] "MEPA serves a role in enabling the Legislature to fulfill its constitutional obligation to prevent environmental harms infringing upon Montana's right to a clean and healthful environment" and "is essential to the 'State's efforts to meet its constitutional obligations.'"[44]

Third, MEPA provides for public engagement, ensuring that "the public is informed of the anticipated impacts in Montana of proposed actions."[45] Without adequate MEPA analysis of the impacts of a project, Montanans' right to participate in government decision making is undermined. In this way, MEPA also implements the constitutional rights to know and to participate.[46] Participation must be informed, not simply "an uninformed opportunity to speak."[47] A review that withholds from the public what DEQ already knows about a project—here, the gas plants and air permit discussions—reduces participation to "a mere formality."[48]

At its core, MEPA requires a "hard look" at a proposal's environmental consequences.[49] That analysis "must include … 'an evaluation of the impacts,

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[41] *Held*, ¶ 67.

[42] *Id.*, ¶ 37.

[43] *Mont. Env't. Info. Ctr. v. Mont. Dept. of Env't. Quality* ("*MEIC 2025*"), 2025 MT 3, ¶ 60, 420 Mont. 150, 561 P.3d 1033 (citations omitted).

[44] *Id.* (citations omitted).

[45] Mont. Code Ann. § 75-1-102(1).

[46] Mont. Const. art. II, §§ 8–9.

[47] *Bryan*, ¶ 44.

[48] *Id.*, ¶ 46.

[49] *Mont. Wildlife Fed'n v. Mont. Bd. of Oil & Gas Conservation*, 2012 MT 128, ¶ 43, 365 Mont. 232, 280 P.3d 877.

including cumulative and secondary impacts."[50] The agency "must examine the relevant data and articulate a satisfactory explanation for its action."[51] And where a project will emit large quantities of greenhouse gases, it is arbitrary and capricious for DEQ not to analyze them.[52]

Failure to comply with MEPA's important "look before you leap" provisions also would violate the Montana Administrative Procedure Act. This is because the standard of review for MEPA decisions is whether the record establishes that the agency acted arbitrarily, capriciously, or unlawfully.[53] Moreover, without satisfying MEPA's straightforward information-gathering obligations, DEQ cannot demonstrate that its findings, inferences, conclusions, and decisions are not arbitrary or capricious or characterized by an abuse of discretion. Indeed, by sidestepping MEPA's central requirements, the agency is supporting precisely the opposite conclusion. The Montana Supreme Court has held that an agency decision is arbitrary and capricious if made without consideration of all relevant factors or based on a clearly erroneous judgment.[54]

III. Quantica's proposal is not entitled to expedited review, and does not satisfy the requirements for the Programmatic EA nor the Draft Categorical Exclusion.

A. DEQ must reject Quantica's request for expedited review.

Quantica seeks expedited review under DEQ's New Non Community Water Supply Well Expedited Review Checklist ("Expedited Review Checklist").[55] DEQ must reject that request. Expedited review is only appropriate when certain conditions are met,[56] and Quantica's request is deficient in several ways.

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[50] *Bitterrooters for Planning, Inc. v. Mont. Dep't of Env't. Quality*, 2017 MT 222, ¶ 21, 388 Mont. 453, 401 P. 3d 712 (citing Mont. Admin. R. 17.4.609(3)(d), (e)); *accord Water for Flathead's Future v. Mont. Dep't of Env't Quality*, 2023 MT 86, ¶ 31, 412 Mont. 258, 530 P. 3d 790.

[51] *Mont. Wildlife Fed'n*, ¶ 43 (citation omitted).

[52] *MEIC 2025*, ¶¶ 58–62.

[53] *See Mont. Wildlife Fed'n*, ¶ 43.

[54] *See Water for Flathead's Future, Inc.*, ¶ 31.

[55] Application at pdf p. 85–95.

[56] Mont. Dep't of Env't Quality, *New Non Community Water Supply Well Expedited Review Checklist* (2018), https://deq.mt.gov/files/Water/Forms/NewWellChecklistDEQ-3Fillable.pdf [hereinafter *New Non Community Water Supply*].

First, and foremost, Quantica's application for expedited review is incomplete[57] because the Application does not contain "the information required in DEQ-3, Chapter 1."[58] This conclusion is unavoidable. A complete application for expedited review must include "[a]n engineering report presenting, at minimum, the information required in DEQ-3, Chapter 1."[59] The Application does not contain that required documentation. For example, Circular DEQ-3, Section 1.2.2, requires the submission of "[d]etailed plans, including … piping in sufficient detail to show flow through the water system, including waste lines … locations, dimensions, and elevations of all proposed water system facilities … [and an] adequate description of any features not otherwise covered by the specifications."[60] And yet, the Application does not contain any of this required information. While Circular DEQ-3 does allow "[d]eviations from the mandatory requirements of these standards,"[61] the need for a deviation means that expedited review is not appropriate.[62] DEQ's expedited review checklist states that "[c]hecklists submitted without all of the required documentation will be considered incomplete and will not be processed until all of the required information has been submitted."[63] In other words, DEQ must refuse to process Quantica's request for expedited review.

Further, Quantica's responses to the Expedited Review Checklist are deficient and demonstrate that the Application does not contain the required documentation. For example, Expedited Review Checklist item 1.1.7 asks the applicant to "[d]escribe the existing or proposed sewage collection system and sewage treatment works, with special reference to their relationship to existing or proposed water works structures which may affect the operation of the water supply system, or which may affect the quality of the supply."[64] Quantica references Section 7.0 of its Application, which states: "No existing sanitary sewer or wastewater treatment facilities are identified within the Big Sky Campus.

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[57] *Id.* at pdf p. 2 ("Submittals that do not contain all of the required information are not considered complete.").

[58] *Id.*

[59] *Id.*

[60] Mont. Dep't of Env't Quality, *Circular DEQ-3 Standards for Non-Community Public Water Systems*, 5–6 (Apr. 2023), https://deq.mt.gov/files/Water/WQInfo/Documents/Subdivisions/DEQ-3-2023.pdf.

[61] *Id.* at 6.

[62] Application at pdf p. 86 ("New wells that require a deviation from the Standards of DEQ-3 are not eligible for checklist review.").

[63] Mont. Dep't of Env't Quality, *New Non Community Water Supply Well Expedited Review Checklist*, pdf p. 2 (2018), https://deq.mt.gov/files/Water/Forms/NewWellChecklistDEQ-3Fillable.pdf.

[64] Application at pdf p. 88.

Temporary construction wastewater facilities and later permanent facilities are expected to be designed separately. The future wastewater systems will be located to the north approximately 2,500 feet from the T3 Well Location."[65] This is insufficient.

Expedited Review Checklist item 3.2.1.1 states that the "total developed groundwater source capacity must equal or exceed the design maximum day demand."[66] Quantica references Section 4.3 of its Application, which states: "The T3 PWS well is expected to produce a flow rate that exceeds the maximum use rate of 160 gpm. The T3 PWS well has not yet been drilled, so a definitive flow rate cannot be demonstrated until an aquifer test establishes sustainable yield."[67] Again, this is insufficient.

Finally, wells that require deviations from the standards set forth in Circular DEQ-3 are simply not eligible for expedited review.[68]

B. DEQ cannot rely on the Programmatic EA to evaluate this project.

In February 2026, DEQ issued the Programmatic EA. The purpose of the Programmatic EA was to allow DEQ to "act upon any Subdivision or PWS applications that include the installation of a well and its associated facilities which may include a well house, water storage tanks and water mains and connections."[69] The Programmatic EA applied to DEQ's regulation of subdivisions and public water supplies under the Sanitation and Subdivisions Act, Title 76, Chapter 4.[70]

Under the Sanitation and Subdivisions Act, a Public Water Supply System is defined as:

> [A] system for the provision of water for human consumption from a community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that has at least 15 service connections or that regularly serves at least 25 persons daily for any 60 or more days in a calendar year.[71]

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[65] *Id.* at pdf p. 14.

[66] *Id.* at pdf p. 88.

[67] *Id.* at pdf p. 10.

[68] Mont. Dep't of Env't Quality, *New Non Community Water Supply Well Expedited Review Checklist*, pdf p. 2 (2018), https://deq.mt.gov/files/Water/Forms/NewWellChecklistDEQ-3Fillable.pdf

[69] Programmatic EA at 15.

[70] *Id.*

[71] Mont. Code Ann. § 75-6-102(16); Mont. Admin. R. 17.38.202(5).

Quantica's Application seeks permission to construct a non-transient non-community water system.[72] The non-community water system proposed by the Application cannot be reviewed under the Programmatic EA for several reasons.

1. DEQ may not review this project under the Programmatic EA because Quantica fails to provide sufficient detail regarding its closed-loop cooling system.

The Application states that the proposed non-community water system will be used to provide water to a "[c]losed-loop cooling recharge/makeup" system for a data center,[73] but provides no description, plans, or any details about this closed loop system. The Programmatic EA must address "growth-inducing or growth-inhibiting aspects of the impact, including its relationship or contribution to cumulative impacts."[74] The Application makes clear that the non-community water system proposed by Quantica will not just allow the construction of an undisclosed closed-loop cooling system, but also the data center itself. Without sufficient detail regarding that facility, DEQ lacks sufficient information to review this project under the Programmatic EA.

2. The Application lacks the information the Programmatic EA requires DEQ to evaluate.

The Programmatic EA states that it evaluates "treatment requirements,"[75] but fails to address the water quality issues discussed in Part IV below or the required treatment facilities. The Application states that "construction-phase wastewater facilities, such as septic tanks, are expected and will require separate design and permitting" and that the "specific locations of future water distribution and wastewater facilities have not been established."[76] The Application also states that "the permanent PWS facilities, including pumping, treatment, storage, distribution, controls, and operational requirements, will be developed under subsequent MDEQ submittals following completion and characterization of the T3 source well."[77] Because expedited review is not appropriate, DEQ cannot defer evaluation of these issues until a later date and, as a result, cannot review this project under the Programmatic EA.

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[72] Application at pdf p. 4; A "[n]on-community water system" is "a public water supply system that is not a community water system." Mont. Admin. R. 17.38.101(3)(n)(ii).

[73] Application at pdf p. 9.

[74] Mont. Admin. R. 17.4.608(1)(c).

[75] Programmatic EA at 4.

[76] Application at pdf p. 4.

[77] *Id.* at pdf p. 5.

3. Even taken at face value, the Application falls outside the scope of projects that may be evaluated by the Programmatic EA.

The Application reflects a disturbance area of roughly 2.55 acres (a 250-foot well pad (roughly 1.43 acres of disturbance) and a sixteen-foot-wide road approximately 3,036 feet in length (roughly 1.12 acres of disturbance)).[78] Publicly available information demonstrates that the disturbance area of the project, even without considering the required facilities, likely exceeds five acres. Recent reporting states that Quantica will be required to upgrade miles of existing roads in addition to the new road and well pad that the Application states will be constructed.[79]

Specifically, an agreement between Big Sky Digital Infrastructure and Yellowstone County states that "[o]n-site improvements to complete the water well include upgrading an existing ranch access from Buffalo Trail Road to a permitted approach; installing a private gravel road, on private property, to replace an existing two-track access road; and constructing a gravel drilling pad for the water well drilling operations."[80] The agreement further describes the subject roads as "a portion of Heiken Road and Buffalo Trail Road."[81] The portion of Heiken Road is approximately one mile in length, while the Portion of Buffalo Trail Road is approximately four miles in length.[82] Pursuant to the Agreement, Quantica has agreed to make several construction improvements to Heiken Road.[83]

As a result, these portions of both Heiken Road and Buffalo Trail Road must be included in the maximum area disturbance calculation. DEQ must require Quantica to quantify the additional area disturbance created by its use of these two roads, and cannot approve the Application until Quantica has done so. Assuming that these two roads are similar to the new road that Quantica plans to construct (i.e., that they both have a sixteen-foot width), including the relevant portions of both of these roads in the maximum area disturbance would add approximately 9.69 acres of disturbance. As a result, the disturbed area for the project would exceed the

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[78] *See id.* at pdf p. 32.

[79] Phoebe Tollefson, *Yellowstone County Signs Deal for Data Center Developer to Pay Road Costs*, Mont. Free Press (Oct. 27, 2026), https://montanafreepress.org/2026/10/27/yellowstone-county-signs-deal-for-data-center-developer-to-pay-road-costs/.

[80] *Agreement Between Yellowstone County and Big Sky Digital Infrastructure LLC On the Use of a Portion of Heikin Road and Buffalo Trail Road*, 2 [hereinafter Quantica Contract] (submitted as Ex. 3).

[81] *Id.*

[82] *Id.*

[83] *Id.* at 2–3.

Programmatic EA's five-acre limitation,[84] and thus require, at minimum, a standalone environmental assessment.

Further, it is hard to credit the Draft Categorical Exclusion's statement that the project is limited to five acres when a report by DNRC states that the project will result in the loss 137.30 acres of sage grouse habitat.[85] Even setting aside the larger project, the DNRC Letter and Report describes the project as "Two Well Pads Totaling 4.13 Acres; Two Roads Totaling 2.04 Miles"[86]—assuming a sixteen-foot width, those two roads result in an additional disturbance area of roughly 3.96 acres.

Because the information provided to DEQ in connection with Quantica's Application demonstrates that the maximum disturbance area exceeds five acres, DEQ cannot evaluate this project under the Programmatic EA.

C. DEQ may not rely on a categorical exclusion for this project.

Agencies may also approve actions pursuant to a categorical exclusion. Categorical exclusions apply to:

> [a] state action that does not individually, collectively, or cumulatively result in a significant adverse effect on the human environment that would require an environmental assessment or environmental impact statement, as determined by agency rulemaking, programmatic review, or statute, unless extraordinary circumstances exist as defined by the agency rulemaking, programmatic review, or statute that would make the designation of categorical exclusion inappropriate.[87]

Montana has adopted the former federal regulations for NEPA that apply to categorical exclusions.[88] Under federal law, a project may only be subject to a categorical exclusion if it will have "no effect" on the environment.[89] Under DEQ's amended MEPA rules, an action that falls within a categorical exclusion carries

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[84] Programmatic EA at 8

[85] Ltr. from Therese Hartman, Mont. Dep't of Nat. Res. & Conservation, Sage Grouse Habitat Conservation Program Manager, to Adam Davis, Quantica Infra., pdf p. 3 (Sep. 2, 2026), https://deq.mt.gov/files/Water/WQInfo/Documents/Subdivisions/Quantica%20Big%20Sky%20Campus/7514%20Signed%20Letter%2020260902.pdf [hereinafter DNRC Letter and Report].

[86] *Id.* at pdf p. 1.

[87] Mont. Code Ann. § 75-1-220(3).

[88] *Id.* § 75-1-209(1)(c).

[89] *Riverhawks v. Zepeda*, 228 F. Supp. 2d 1173, 1189–91 (D. Or. 2002).

only a *rebuttable* presumption that no extraordinary circumstances exist, and DEQ must still document that determination.[90]

1. DEQ's administrative rules foreclose applying a categorical exclusion here.

DEQ is precluded from granting a categorical exclusion if the underlying public water supply system meets certain criteria.

First, DEQ may not grant a categorical exclusion if the "action would authorize facilities that will provide capacity to serve a population at least 30% greater than the existing population."[91] Here, approval of the Application would authorize facilities that will provide capacity to serve a population at least 30% greater than the existing population.[92] The Application states that there is no existing population within the 5,083-acre Big Sky Campus.[93] As a result, a categorical exclusion cannot be granted. Further, even assuming that the population of nearby Broadview, Montana should be considered, the exception to granting a categorical exclusion would still apply. Census data states that Broadview has a population of 175.[94] Here, the Application seeks permission to construct a non-community water supply system to serve 1,500 workers during the construction phase, and 250 employees during the operational phase.[95]

Second, DEQ cannot grant a categorical exclusion if the "action directly or indirectly involves or relates to upgrading or extending infrastructure systems primarily for the purposes of future development."[96] Here, again, the Application demonstrates that the purpose of Quantica's non-community water supply system is for the future development of Quantica's Big Sky Campus.

Third, DEQ cannot grant a categorical exclusion if "the department has received information indicating that public controversy exists over the project's

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[90] *See* Mont. Admin. R. 17.4.607(6); Mont. Admin. R. 17.4.603(10) (defining "extraordinary circumstances" as "site- or project-specific conditions under which a normally categorically excluded action requires additional environmental review").

[91] Mont. Admin. R. 17.38.103(2)(c).

[92] Application at pdf p. 8.

[93] *Id.* at pdf p. 4 ("The approximately 5,083-acre Big Sky Campus property has no residences, existing public water facilities, or sanitary sewer facilities.").

[94] U.S. Census Bureau, *American Community Survey 5-year estimates.* Retrieved from *Census Reporter Profile page for Broadview, MT* (2024), http://censusreporter.org/profiles/16000US3009775-broadview-mt/.

[95] Application at pdf p. 8.

[96] Mont. Admin. R. 17.38.103(2)(e).

potential effects on the quality of the human environment."[97] DEQ cannot seriously contest that a public controversy exists over the project's potential effects on the quality of the human environment in the Broadview area. Multiple news organizations have reported the deep and extensive concerns raised by Montanans. As *Montana Free Press* reported "[t]he project, which would be among the largest in the world as currently planned, has generated fiery public opposition, with opponents crowding into county commission meetings to boo the commission and demand action."[98] A petition to block the data center gathered 14,980 signatures,[99] and much of the concern relates to potential water impacts.[100]

Further, the lack of information in the Application leaves DEQ unable to rationally conclude that several other exceptions may be applicable here. For example, DEQ may not grant a categorical exclusion if "the action would authorize facilities that will provide a new discharge or relocate an existing discharge to ground or surface waters."[101] The Application estimates Quantica's non-community water system would use approximately 75,000 gallons per day of potable water for the construction workforce, with additional water being required for construction-related activities.[102] The Application contains no information as to how that water will be disposed of and DEQ cannot logically conclude that the total peak construction water demand of 150,000 gallons per day,[103] will not result in a "new discharge" to ground or surface waters.

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[97] Mont. Admin. R. 17.38.103(2)(f).

[98] Phoebe Tollefson, *Broadview Area Data Center Sees First Phase of Construction with Roads, Well Work*, Mont. Free Press (Sep. 18, 2026), https://montanafreepress.org/2026/09/18/broadview-area-data-center-sees-first-phase-of-construction-with-roads-well-work/.

[99] Phoebe Tollefson, *Frustrated, Rowdy Data Center Opponents Make More Noise in Yellowstone County*, Mont. Free Press (Aug. 19, 2026) https://montanafreepress.org/2026/08/19/data-center-opponents-make-noise-in-yellowstone-county/.

[100] Amanda Eggert, *As AI Investors Eye Montana for New Data Centers, Communities Brace for Water Impacts*, Mont. Free Press (Feb. 12, 2026), https://montanafreepress.org/2026/02/12/as-ai-investors-eye-montana-for-new-data-centers-communities-brace-for-water-impacts/.

[101] Mont. Admin. R. 17.38.103(2)(a).

[102] Application at pdf p. 8.

[103] *Id.*

2. The Application contradicts statements made by DEQ in the Draft Categorical Exclusion.

The Draft Categorical Exclusion states that the present action is "one public water supply well" and that DEQ does not know of any other application pending before another agency and references only future permitting, handled by DNRC, and future review of additional water and wastewater designs, handled by DEQ.[104] But the Application makes clear that "[a] separate PWS NTNC well application for T6 location will shortly be submitted for review and approval."[105] Further, the materials provided by DNRC and published by DEQ appear to reveal that DEQ has already received information regarding the second public water supply well.[106] This is a material contradiction. The Programmatic EA states that future actions are material when they are under concurrent permitting processing or other agency consideration.

3. DEQ's Draft Categorical Exclusion fails to acknowledge the scope of the project.

The Programmatic EA commits DEQ to use the Draft Categorical Exclusion to evaluate "whether multiple wells or related developments in the same area may result in cumulative … impacts that were not fully addressed at the programmatic level," and to prepare "supplemental environmental analysis" when they may.[107]

DEQ's Draft Categorical Exclusion fails to even identify the intended use of this well to serve Quantica's hyperscale data center. DEQ did not consider or disclose the known additional permits that will be required for the Big Sky Campus to facilitate the operation of the data center, including the gas plant and associated air permits, or the additional well that Quantica indicates it will seek a permit for imminently.

IV. DEQ failed to consider Quantica's impacts on water quality.

A. DEQ's review fails to evaluate information available to the agency.

MEPA requires agencies to analyze impacts to surface water and groundwater quality and quantity.[108]

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[104] Draft Categorical Exclusion at 1.

[105] Application at pdf p. 7.

[106] *E.g.*, DNRC Letter and Report at pdf p. 12 (depicting an additional well pad and road not reflected in the Application and identifying the same as "proposed disturbances").

[107] Programmatic EA at 15.

[108] Mont. Code Ann. § 75-1-201(1)(a)(iv); Mont. Admin. R. 17.4.609(3)(d).

Here, the Programmatic EA and Draft Categorical Exclusion fail to adequately evaluate or disclose impacts to surface and groundwater, quality and quantity. First, the Draft Categorical Exclusion or associated materials fail to include any baseline information about surface or ground water quality or quantity. Baseline information is critical to any determination of environmental impacts, as it is the point from which impacts are assessed. "Without establishing the baseline conditions which exist ... before [a project] begins, there is simply no way to determine what effect the [project] will have on the environment and, consequently, no way to comply with NEPA."[109] But the Programmatic EA says nothing about the site-specific water resources in the project area. The Draft Categorical Exclusion admits to the lack of any baseline data: "[w]ater quality in the Mission Canyon Formation of the Madison Group is unknown prior to developing and testing, which would be conducted if the well is approved and drilled, pursuant to DEQ rules."[110] While this well could be used for testing, that does not excuse DEQ from failing to gather relevant information contained in its own files about water quality in the Madison Aquifer. Moreover, even if the well were necessary to obtain baseline information, it would not be appropriate for DEQ to grant a Public Water Supply and Subdivision permit prior to obtaining this information. In short, Quantica is overreaching.

Adding to this concern, the Application includes well drilling logs that DEQ must consider. For example, Quantica submits a well drilling log from Signal Peak Energy, reflecting a well drilled into the Madison aquifer.[111] DEQ is well aware of the data that has been gathered from the wells drilled by Signal Peak Energy near the Bull Mountains Mine, and DEQ's own analysis has concluded that the water quality from that well is not potable. DEQ's 2024 Cumulative Hydrologic Impact Assessment ("CHIA") for the Bull Mountains Mine stated that three industrial supply wells:

> completed in carbonate rocks of the Madison Group, at depths greater than 8,600 feet … produce hot (approximately 165°F) and highly mineralized water that is isolated from the shallower groundwater of the Fort Union Formation by thousands of feet of confining rock units. The water contains concentrations of fluoride and radionuclides in

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[109] *Half Moon Bay Fishermans' Mktg. Ass'n v. Carlucci*, 857 F.2d 505, 510 (9th Cir. 1988).

[110] Draft Categorical Exclusion at 3.

[111] Application at pdf p. 75.

excess of drinking water standards for groundwater that make the deep Madison well water unsuitable as potable water."[112]

Additionally, the Application submits a well log associated with a test well, completed by the U.S. Geological Survey ("USGS"), into the lower and upper parts of the Mission Canyon Limestone of the Madison aquifer.[113] The information derived from that test well is reflected in a report that was published in May 1981.[114]

The USGS determined that the water from the lower part of the Mission Canyon Limestone, at interval samples between 4,783 and 4,973 feet below the land surface—the approximate depth of Quantica's planned well—contained dissolved-solids concentrations ranging between 2,700 milligrams per liter to 11,500 milligrams per liter.[115] Mission Canyon Formation of the Madison aquifer contained "dissolved-solids concentrations of 3,000 milligrams per liter or less," with water temperatures of up to roughly fifty-five and fifty-six degrees Celsius (131 and 132.8 degrees Fahrenheit, respectively).[116]

If the water quality of the Madison aquifer at the location of the proposed well site is similar to water quality found in the sites addressed above, then it will likely have to be treated. However, this is no information in the Application, the Programmatic EA, nor the Draft Categorical Exclusion about water treatment or where the pollutants removed from the water will be disposed. Given the requirements of DEQ's administrative rules, and Circular DEQ-3, DEQ must deny Quantica's Application until sufficient detail regarding Quantica's water treatment plans is disclosed.

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[112] Mont. Dep't of Env't Quality, *Bull Mountains Mine No. 1 Amendment 6 Cumulative Hydrologic Impact Assessment* § 8.4 (2024) (submitted as Ex. 16). A consultant for Signal Peak Energy also concluded that the groundwater from these wells "is not suitable for potable purposes as it contains high hydrogen sulfide concentrations, elevated fluoride, and radionuclides." Water and Environmental Technologies, App. 314-5–Permit C1993017: Comprehensive Evaluation of Probable Hydrologic Consequences, 314-5-49 (2024) (Part 1) (submitted as Ex. 4).

[113] Application at pdf p. 73.

[114] Blankennagel et al., *Completion and Testing of Madison Limestone Test Well 3*, 1 [hereinafter USGS Report] (submitted as Ex. 5).

[115] *Id.* at 26.

[116] *See id.* at 1, 56–60.

B. DEQ must reject the Application for failure to provide sufficient information regarding Quantica's plan for handling discharge associated with well construction.

The Application discloses that Quantica expects to encounter artesian flow when drilling this well: "[f]lowing artesian conditions are … anticipated and will be verified during drilling and testing,"[117] and that "pressure at the ground surface" is expected to be "approximately 108 psi."[118] The Application also states that the "well construction details identify … provisions for control of anticipated flowing artesian conditions."[119] However, the Application does not contain sufficient detail regarding how Quantica plans to control these flowing artesian conditions. Similarly, the Application does not contain sufficient detail to explain how Quantica plans to contain the water produced during its well test, which the application states will run for seventy-two hours,[120] presumably at the stated rate of 160 gallons per minute. Instead, the Application simply states that "[a]ll water generated and used during drilling and well-development activities will be collected and properly managed; no water will be discharged on site."[121]

Put simply, the Application discloses that a significant amount of water will be discharged during the well drilling process. A seventy-two-hour test at 160 gallons per minute will result in production of approximately 691,200 gallons of water—roughly 2.12 acre feet.

If the water quality at the proposed well site is similar to that found by the USGS when it completed a test well into the Mission Canyon formation of the Madison aquifer in May 1981, this water will be as hot as the USGS reported water temperatures—between roughly fifty-five and fifty-six degrees Celsius (131° and 132.8° Fahrenheit, respectively).[122] Further, the USGS also indicated that water with concentrations of "dissolved-solids concentrations of 3,000 mg/L or less (maximum permissible concentration for disposal at land surface near the wellsite) was available only from … [the] Lower part of the Mission Canyon Limestone of Mississippian age,"[123] which the USGS identified as between 4,287 and 4,477 feet below the land surface.[124] And, if the water quality at the proposed site is similar to

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[117] Application at pdf p. 56.

[118] *Id.* at pdf p. 44.

[119] *Id.* at pdf p. 18.

[120] *Id.* at pdf p. 47.

[121] *Id.* at pdf p. 16.

[122] *See* Ex. 5, USGS Report at 56–60.

[123] *Id.* at 4.

[124] *Id.* at 26.

that found near the Bull Mountains Mine, the produced water could include "hydrogen sulfide concentrations, elevated fluoride, and radionuclides."[125]

Either way, DEQ must deny the Application unless and until Quantica presents sufficient information to ensure that such produced water will be handled appropriately. DEQ must not allow Quantica to rely on a mere "plan to make a plan."[126]

C. DEQ has failed to evaluate the risks posed by Quantica's undisclosed closed-loop cooling system.

DEQ's review of the Application fails to acknowledge the risk associated with discharges from Quantica's undisclosed closed loop data center cooling system. Indeed, Quantica's decision to entirely omit information about water treatment from its Application leaves DEQ unable to rationally evaluate the risk posed by such discharges. At the same time, the Application makes clear that such discharges will occur. The Application states that the data center's closed loop cooling system will use approximately 7,500 gallons of water per day.[127] Additionally, the Application admits that the planned, but undisclosed, closed loop cooling system will require "replacement of small fluid volumes associated with closed-loop cooling or equipment repairs."[128] As a result, the information disclosed in the Application must lead DEQ to the rational conclusion that some fluid volumes associated with the closed loop cooling system will be discharged. However, the Application leaves DEQ, and the public, in the dark about how that discharge will be handled.

As stated above, DEQ's administrative rules, Circular DEQ-3, and the Programmatic EA (which requires compliance with Circular DEQ-3) all require disclosure of how this discharge will be handled. DEQ must reject Quantica's Application, and cannot adequately assess the environmental impacts of the project, until this information is provided.

The risks associated with discharges from data centers are being made clear from reporting across the country. In July, "a data center under construction in Cheyenne, Wyoming, was found to have contaminated [a] sewer system with a rare bacterium."[129] According to reporting, the "fill and flush" process for closed-loop

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[125] Ex. 4, Water and Environmental Technologies, App. 314-5–Permit C1993017: Comprehensive Evaluation of Probable Hydrologic Consequences at 314-5-49.

[126] *See Park Cnty.*, ¶ 44.

[127] Application at pdf p. 9.

[128] *Id.* at pdf p. 8.

[129] Miranda Wilson, *Data Centers Face a New Environmental Concern*, E&E News (July 20, 2026), https://www.eenews.net/articles/data-centers-face-a-new-environmental-concern/.

cooling systems, which must occur prior to a data center begins operations, resulted in the wastewater that led to that contamination.[130] This contamination led the City of Cheyenne to, as an engineer with the City's Board of Public Utilities put it, "set up a rule that says, 'You will not discharge to the public wastewater system, period, until we learn more about what's going on and can understand exactly what happened.'"[131] Likewise, officials in Virginia have learned that the construction of closed-loop cooling systems "can use chemicals that aren't really suitable for wastewater treatment."[132] Additionally, research suggests that the closed-loop cooling systems can contain PFAS.[133]

DEQ must reject the Application until Quantica provides sufficient information for the agency to determine how to evaluate these risks. Further, DEQ cannot conduct an adequate environmental review of the potential impacts from this well until Quantica thoroughly explains how discharges from the closed-loop cooling system will be handled.

V. DEQ failed to consider the energy intensity of Quantica's data center.

DEQ improperly relied on the Draft Categorical Exclusion for Quantica's Application because the agency failed to consider the cumulative impacts of (1) the energy intensity of Quantica's proposed closed-loop cooling system; (2) scope two water impacts from the indirect water consumption from required energy generation assets to power the data center; and (3) scope three water impacts from the indirect water consumption from Quantica's supply chain.

First, DEQ failed to analyze the cumulative impacts of the energy intensity of Quantica's proposed closed-loop system. Neither the Programmatic EA nor the Draft Categorical Exclusion reference Quantica's potential closed-loop cooling system. And there is no indication that DEQ has considered the environmental harms—including the energy intensity of such closed-loop system.

Instead, the only public notice regarding Quantica's proposed closed-loop cooling system is a brief reference in the Application for the Big Sky Campus. Even there, however, information is scant. The Application indicates that "[t]he design for the cooling system for data center operations *is expected to be* closed loop."[134] There

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[130] *Id.*

[131] *Id.*

[132] *Id.*

[133] Andie Hardin, *Data Centers Are Contributing to PFAS Forever Chemical Pollution*, Env't & Energy Study Inst. (Apr. 9, 2026), https://www.eesi.org/articles/view/data-centers-are-contributing-to-pfas-forever-chemical-pollution.

[134] Application at pdf p. 6 (emphasis added).

are no details about the type of closed-loop cooling system the applicant anticipates installing (e.g., refrigeration cooling systems; adiabatic or direct-evaporative cooling systems, free cooling systems, liquid cooling systems).[135]

Nor are there any details about the energy or water intensity of such system. "Energy and water efficiency at data centers are measured using two metrics: power use efficiency (PUE) and water use efficiency (WUE)."[136] DEQ must consider both metrics when evaluating the impacts of Quantica's proposal. First, "[t]he PUE is the ratio of energy used by the data center to the energy used for computing (measured in kilowatt hour/kWh)."[137] Second, "WUE is measured as the liters of water per kWh of energy used for computing."[138] Together, these two metrics demonstrate some of the trade-offs between energy efficiency and water efficiency.[139] Generally, evaporative cooling technologies have a high WUE, and a low PUE—making them more water intensive, but less energy intensive.[140] In contrast, air cooling technologies tend to have a low WUE, but a high PUE—making them very energy intensive, but less water intensive.[141] DEQ must evaluate the trade-offs between more water-efficient cooling systems and their higher energy demands.[142] And in order to make such an evaluation, more information should be demanded of the applicant regarding the type of closed-loop system proposed for Quantica's data center.

Second, although DEQ has disclosed the anticipated direct water use—the water expected to be consumed on-site at the data center—the agency has not

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[135] *See infra* Part IX (outlining questions regarding the closed-loop system necessary for public participation).

[136] Deborah Kapiloff, Lindsay Rogers, & Stacy Tellinghuisen, W. Res. Advocs., *Data Center Impacts in the West: Policy Solutions for Water and Energy Use*, 15 (July 2025) (submitted as Ex. 6).

[137] *Id.*

[138] *Id.*

[139] *See id.*

[140] *See* Landon Marston, Va. Tech., *Data Centers and Water Usage: A National Overview*, Env't L. Inst., 8 (July 30, 2025) (submitted as Ex. 7).

[141] *See id.*

[142] *See generally* Garrett Alston, Nancy Love, & Rabab Haider, U. Mich., *Data Center Cooling Choices Shift Water Impacts Across the Grid: An Integrated Water-Energy Model for Sustainable Data Center Development*, pdf p. 6–9 (Sep. 21, 2026) (submitted as Ex. 8) (evaluating water-energy tradeoffs).

disclosed indirect water use.[143] According to one report, the majority (approximately seventy-five percent) of the water footprint of data centers nationwide occurs offsite.[144] DEQ failed entirely to assess such offsite impacts.

Indirect water use refers to "the volume of water consumed within the data center value chain, including in the generation of electricity to power the data centers."[145] Notably, clean energy resources such as "wind and solar have a lower indirect water footprint compared to [methane] gas and nuclear power generation."[146] In contrast, thermal generation, including coal, methane, nuclear, and geothermal uses significant more water, especially for cooling power plants.[147] Therefore, "[a]ssessing the water risk tied to a data center's water use embedded in purchased electricity includes examining the power plants connected to the grid that supply them (specifically, their generation technology, cooling systems, fuel type, water supply sources, and any seasonal variations in water demands)."[148]

For example, "[i]n 2023, U.S. data centers consumed roughly 176 TWh of electricity, carrying an anticipated indirect water dependency of 211 billion gallons" of water.[149] And as the data center bubble booms, "[b]y 2030, water used in electricity generation is projected to account for 72% of U.S. data center total water consumption, even as facilities use more efficient cooling and reclaimed water within their own operations."[150] "Increasing reliance on energy supplies that use less water, like wind, solar, or solar + storage, could significantly decrease the indirect water demand. This change would also ensure that an increase in water

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[143] *See generally* Pengfei Li, Jianyi Yang, Mohammad A. Islam, & Shaolei Ren, *Making AI Less "Thirsty": Uncovering and Addressing the Secret Water Footprint of AI Models*, 3–4 (Mar. 26, 2025) (submitted as Ex. 9); Yuelin Han, Pengfei Li, Adama Wierman, Shaolei Ren, *Small Bottle, Big Pipe: Quantifying and Addressing the Impact of Data Centers on Public Water Systems*, 5–6, 10–13, 22 (Mar. 18, 2026) (submitted as Ex. 10).

[144] Ex. 7, *Data Centers and Water Usage* at 7.

[145] Kirsten James, Shama Perveen, & Benjamin Jacobson, Ceres, *Drained by Data: The Cumulative Impact of Data Centers on Regional Water Stress*, 4 (Sep. 2025) (submitted as Ex. 11).

[146] *Id.*

[147] Kirsten James, Joelle Young Patil, Benjamin Jacobson, & Shama Perveen, Ceres, *Water Behind the Watts: The Hidden Risk of Powering Data Centers*, 5 (Aug. 2026) (submitted as Ex. 12).

[148] *Id.* at 4.

[149] *Id.*

[150] *Id.*

consumption for a water saving strategy such as dry cooling does not increase water demand."[151]

Here, Quantica has indicated publicly an intent to build a 1,785-megawatt methane gas plant.[152] Quantica has filed interconnection applications for an additional 7,235 megawatts of electricity supply service from NorthWestern Energy.[153] And Quantica previously signed a letter of intent with NorthWestern Energy for up to 1,000 megawatts of electricity supply service.[154] NorthWestern owns a majority-share of the Colstrip Steam Electric Station, one of the largest coal-fired power plants in the western United States.[155] Additionally, the utility owns a methane gas plant—Yellowstone County Generating Station.[156] DEQ failed entirely to consider the scope two water and energy impacts of these thermal resources.

Further, scope three water impacts "occur[] in upstream manufacturing processes, such as the fabrication of semiconductors and chips that form the core hardware infrastructure of data centers."[157] On average, such manufacturing facilities "can use 10 million gallons of ultrapure water per day—matching the water use of about 33,000 U.S. households."[158] Here too, DEQ failed entirely to consider the water impacts of scope three water usage for chip and server manufacturing.

In sum, DEQ must conduct a comprehensive environmental impact statement analyzing the water and energy intensity of Quantica's Application, which includes evaluating the intensity of the proposed closed-loop cooling system,

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[151] Margaret Cook, *Thirsty Data and the Lone Star State: The Impact of Data Center Growth on Texas' Water Supply*, HARC, 16 (Jan. 2026) (submitted as Ex. 13).

[152] Ex. 1, *Quantica Eying Massive Gas Plants for Montana Data Center*.

[153] Press Release, Quantica, Quantica Files Interconnection Applications to Expand Power Generation for its Big Sky Infrastructure Campus (May 20, 2026), https://quanticainfra.com/2026/05/20/quantica-files-interconnection-applications-to-expand-power-generation-for-its-big-sky-digital-infrastructure-campus/ (submitted as Ex. 14).

[154] *See* Dkt. No. 2022.09.087, Index #48, Public LOIs (Mont. Pub. Serv. Comm'n July 31, 2026) (submitted as Ex. 15).

[155] *See* NorthWestern Energy, *The Colstrip Plant*, https://www.northwesternenergy.com/clean-energy/where-does-your-energy-come-from/electric-generation/colstrip-power-plant.

[156] *See* NorthWestern Energy, *Yellowstone County Generating Station*, https://northwesternenergy.com/about-us/our-projects/yellowstone-county-generating-station.

[157] Ex. 11, *Drained by Data* at 4.

[158] *Id.*

scope two water use from electricity generation, and scope three water use from manufacturing.

VI. DEQ failed to explain how the State will monitor and, if necessary, enforce, the legal provisions it says will protect existing water supplies and prevent adverse impacts.

The proposed decision documents treat compliance with existing statutory and regulatory provisions as the answer to every question about potential impacts yet fail to establish any sort of ongoing inspection or monitoring oversight by either DEQ or DNRC. Moreover, DEQ apparently relies on the Programmatic EA's generalized assurances that compliance is "mandatory," that impacts will be "mitigated by adherence" to other agencies' rules, and that no significant programmatic adverse effects are expected to determine that a categorical exclusion is appropriate for the T3 well.[159]

The Draft Categorical Exclusion, discussed above, compounds the problem: it imposes no conditions, requires no monitoring, and describes no inspection obligations of any kind. Collectively, these documents appear to assume that the point of the impact evaluation is to propose a hypothetical scenario asserting that a project could be built lawfully. The evaluation should more appropriately ask whether, under the circumstances at issue here, the agency has "reasonable assurance, commensurate with the potential severity of the impact, that [an] impact will not occur."[160] An assumption that the applicant will follow the rules does not constitute such assurance, and it is indefensible for a 4,850-foot flowing artesian well whose only barriers against uncontrolled flow and cross-aquifer contamination are steel casing, cement, and a valve, none of which will be subject to ongoing inspections or monitoring by any state agency.

A. Neither the Programmatic EA nor the Draft Categorical Exclusion indicate what entity will verify the well construction and operation.

The Programmatic EA recites a catalog of regulatory requirements, not a description of oversight that will, in fact, occur. Moreover, as discussed in Part III.B, the proposed T3 well construction is inappropriate in scope and geographic extent to be appropriately analyzed pursuant to the Programmatic EA. Even setting aside this concern, the Programmatic EA does little more than assume that DNRC's construction rules and DEQ's circular requirements are self-executing: the applicant "must adhere to all regulations," and the well-construction rules are

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[159] Programmatic EA at 17 (noting compliance with erosion-control requirements "is not just recommended but mandatory"); *id.* at 25 (noting human-health impacts "mitigated by adherence to OSHA rules and guidelines"); *id.* at 31 (finding "no significant adverse effects").

[160] Mont. Admin. R. 17.4.608(1)(b).

"designed to safeguard ground water."[161] When the Programmatic EA acknowledges that a borehole could encounter karst, where contamination "could have widespread effects," its only response is to emphasize "the importance of regulatory compliance,"[162] rather than supplying any detail on how such compliance is to occur. It identifies no DEQ inspection and no hold point at which work must be paused for agency review. While the drilling itself is under the auspices of DNRC, and drillers are licensed by a board under DNRC, it is unclear which agency—if any—is responsible for field verification of the drilling and subsequent operation of the well.[163] DEQ reviews permitting conditions, DNRC licenses drillers, and it is unclear which agency, if any, will be in the field ensuring compliance.

While the Programmatic EA describes DEQ as acting "through its permitting and conditioning power" and asserts that the "Proposed Action conditions are reasonably necessary," the Draft Categorical Exclusion is intended to determine whether "site-specific conditions" warrant more review.[164] Yet the Draft Categorical Exclusion contains no conditions of approval, no notification or reporting requirements, and no ongoing monitoring obligations. Its sole mitigation measure is the sage grouse development plan that it says is "anticipated to mitigate impacts," with no explanation of how anyone will confirm implementation.[165] The Sage Grouse Program's letter calls the plan "binding" and says it "shall be attached to any permit the State issues," but the Draft Categorical Exclusion says only that the plan is attached, and neither the Programmatic EA nor the Draft Categorical Exclusion indicates who will verify the weed control or the payment.[166] The Sage Grouse Program's letter also describes two wells and 4.13 acres of pad, not a single 100-by-100-foot site.[167] The Draft Categorical Exclusion reflects that the well is expected to be artesian with a shut-in head "in excess of 100 psi," and that water

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[161] Programmatic EA at 17 (noting applicant "must adhere to all regulations"); *id.* at 19 (noting Mont. Admin. R. 36.21, subchapter 6, is "designed to safeguard ground water from potential well-related contamination").

[162] *Id.* at 17.

[163] *Id.* at 4 (noting DNRC "is the primary authority for well drilling in Montana"); *id.* at 9 (drillers licensed by the Board of Water Well Contractors "under the auspices of the DNRC").

[164] *Id.* (noting analysis covers impacts DEQ can address "through its permitting and conditioning power"); *id.* at 27–28; *id.* at 15 (noting Draft Categorical Exclusion evaluates "site-specific conditions").

[165] Draft Categorical Exclusion at 4.

[166] DNRC Letter and Report at pdf p. 3–4; Programmatic EA at 22.

[167] DNRC Letter and Report at pdf p. 1–2.

quality is "unknown prior to developing and testing."[168] Approving a well on the footing that its unknowns will be resolved after approval, by the applicant, in documents DEQ will review later, neither accomplishes MEPA's "look before you leap" goals, nor does it constitute the "convincing statement of reasons" MEPA requires.[169]

These omissions have legal consequences. DEQ's enforcement authority under the Public Water Supply Act attaches to violations of the Act, its rules, and a "condition of approval."[170] An approval carrying no conditions leaves DEQ little to enforce beyond generic rule text and leaves the public no way to know what, if anything, DEQ will require or observe. It also leaves DEQ with only one lever, which the Draft Categorical Exclusion itself describes: revoking the exclusion if the project changes, if new evidence shows "serious local or environmental issues," or if laws "may be violated."[171] Revocation depends on DEQ learning that a trigger has occurred. Nothing in either document obliges the applicant to say so, or DEQ to look. Revocation of the exclusion after the well is constructed and operating also defeats the prospective and protective purposes of MEPA review.

B. The Application proposes to substitute inspection by the applicant's consultants for agency oversight.

The application confirms that DEQ's role will be to receive documents after the fact. The expedited-review form requires only an owner certification that "a professional engineer will be retained for construction inspection," with as-builts due "within 90 days of project completion."[172] Quantica's certification does not name that engineer, does not say whether the engineer will be independent of the applicant or of Tetra Tech, and promises only "construction oversight appropriate to the work."[173] Tetra Tech designed the well, wrote the specifications and the source-water assessment, and is listed as the project engineer; the specifications assign the ENGINEER—apparently Tetra Tech's own—to supervise the aquifer test, collect

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[168] Draft Categorical Exclusion at 3 (noting artesian well with "shut-in head of approximately 250 feet (in excess of 100 psi)"; water quality "unknown prior to developing and testing"); *id.* at 4 (referencing the sage grouse development plan).

[169] *Ravalli Cnty. Fish and Game Ass'n v. Mont. Dept of State Lands* (1995), 273 Mont. 371, 383, 903 P.2d 1362 (citation omitted).

[170] Mont. Code Ann. § 75-6-109(1) (notice of violation of the Act, a rule, or "a condition of approval"); *id.* § 75-6-112(1), (4) (prohibiting construction before DEQ approval and violation of "any condition or requirement of an approval"); *id.* § 75-6-114(1) (civil penalties for violating a "rule, order, or condition of approval").

[171] Draft Categorical Exclusion at 6.

[172] Application at pdf p. 86; *id.* at pdf p. 95.

[173] *Id.* at pdf p. 95.

the water-quality samples, and report results to DEQ.[174] The specifications do not even contemplate that the ENGINEER will necessarily "remain at the test site" during a seventy-two-hour constant-rate test.[175]

That structure puts critical safeguards beyond independent review. The applicant's own assessment concedes that, because the Madison is deeply confined, "the most direct potential contamination pathway is the well bore itself."[176] The Application states the well is "designed to avoid aquifers overlying the Madison Group" to protect existing users.[177] Whether it does so depends on whether the 20-inch, 13 ⅜-inch, and 7-inch casing strings are set at the right depths; whether grout fills the annulus across thousands of feet of shale, sandstone, and fractured carbonate; whether the packers and liner hangers seal as intended; and whether the flow-control valve holds at the pressure the aquifer delivers. The Application admits those details are not final: casing depths, grout intervals, pressure ratings, and completion intervals are "carried forward only as a preliminary basis from the existing Big Sky Campus well design" and "must be revised" to conditions encountered during drilling.[178] DEQ would thus approve a preliminary design, would not witness its execution, and would learn what was built from a well log and an engineer's certificate delivered after construction is complete.

Long-term protection fares no better. Quantica proposes to protect the isolation zone by relying on oversight by "ownership and control of the surrounding land."[179] The only instrument offered is a draft Declaration of Well Control Zone that is unsigned, undated, unnotarized, and unrecorded; names no beneficiary and no enforcement role for DEQ; disclaims liability for violations; and terminates if the parcel is "no longer being used primarily for purposes subject to regulation as a Public Water Supply."[180] A covenant by which the owner restricts itself, that ends when the land's use changes, and that no agency is empowered to enforce is self-certification, not protection.

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[174] *Id.* at pdf p. 87 (listing "Tetra Tech Inc. - Jake Conver, PE" as Engineer); *id.* at pdf p. 42 (noting ENGINEER "will perform all collection of water quality samples"); *id.* at pdf p. 44 (noting ENGINEER "will provide supervision of the tests"); *id.* at pdf p. 49 (ENGINEER reports test data to DEQ).

[175] *Id.* at pdf p. 47.

[176] *Id.* at pdf p. 61.

[177] *Id.* at pdf p. 7.

[178] *Id.* at pdf p. 16.

[179] *Id.* at pdf p. 15; *id.* at pdf p. 60.

[180] *Id.* at pdf p. 69–70 (marked "DRAFT - UNSIGNED").

C. The well's hazards make independent inspection essential, and neither the Programmatic EA nor the Draft Categorical Exclusion Provides for it.

The Programmatic EA assumes that drilling a well is a short, shallow, low-risk activity: typically one to seven days with a crew of two or three.[181] T3 is a 4,850-foot flowing-artesian completion into a fractured, potentially karstic aquifer, and several of its hazards turn on field execution that no one outside the applicant's team is positioned to check:

- **Well control.** The applicant projects roughly 108 psi at the surface and proposes to manage flow with a master valve, a flow-control valve, and a gauge.[182] But the Application concedes the actual outcome is unknown ("too much artesian pressure," too little, or enough) until the well is drilled.[183] Appendix D of the Application shows how wide the range can be: a USGS Madison test well in Yellowstone County recorded a closed-in pressure of 454 psi and a flow test of 1,838 gpm, and has since been plugged.[184] If seals or valves fail, the result is uncontrolled flow of confined Madison water to the surface or into overlying formations, an irreversible harm that no subsequent penalty can undo. The Programmatic EA never addresses flowing wells, and the Draft Categorical Exclusion mentions the artesian head only in its soils-and-geology entry.[185]
- **Stimulation.** The Application contemplates opening the production interval "after logging/stimulation," and the specifications require the well log to record stimulation "materials, quantities and methods."[186] Nothing describes what stimulation is planned (acid, fracturing, or otherwise), what chemicals might be introduced into a confined aquifer intended for drinking water, or how return fluids would be captured and disposed of. Neither the Programmatic EA nor the Draft Categorical Exclusion references the potential for stimulation.
- **Test water.** The specifications call for a constant-rate test of up to 160 gpm for 72 hours, roughly 690,000 gallons, which the application says will be "containerized," with "no water … discharged on site."[187] It does not say what

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[181] Programmatic EA at 11–12.

[182] Application at pdf p. 12 (108 psi); *id.* at pdf p. 16 (Table 3, "Master valve, flow-control valve, pressure gauge").

[183] *Id.* at pdf p. 11.

[184] *Id.* at pdf p. 73.

[185] Draft Categorical Exclusion at 3.

[186] Application at pdf p. 16 (Table 3, "Production interval"); *id.* at pdf p. 41.

[187] *Id.* at pdf p. 44.

containers will hold that volume, where the water will go, or how DEQ will confirm that test water never reached the ground or nearby Comanche Creek.[188] The water may be highly mineralized: the applicant's regional screening data suggest total dissolved solids of 2,500 to 5,000 mg/L, five to ten times the federal secondary standard of 500 mg/L.[189] The Programmatic EA analyzes a 24-hour, 144,000-gallon example and assumes discharge can simply be routed away from the well,[190] and the Draft Categorical Exclusion identifies no permit or plan for test water at all.

- **Operation.** Once in service, the application's sampling table calls for arsenic and Phase II/V inorganics once per three-year period, asbestos once per nine-year cycle, and nitrate and VOCs annually, all arranged by the owner.[191] The Programmatic EA contemplates an operator on site "periodically," which it elsewhere estimates at fewer than three trips per week.[192] For a source whose quality is "unknown," in a formation the applicant itself describes as fractured and locally karstic,[193] this is a monitoring regime built for an ordinary rural water system, not for a deep artesian well serving an industrial campus.

D. Post-approval changes will go undetected, and the sequencing invites use before safeguards exist.

The requested approval is "limited to the location and construction of the well"; pumping, treatment, storage, and distribution are deferred to "subsequent submittals."[194] The Application says a flowing artesian source will need full-time microbial treatment before service, but that treatment is also deferred.[195] Meanwhile the applicant needs water for a construction workforce of up to 1,500, is "evaluating potential offsite uses" of the water and has announced a second well.[196] The Programmatic EA states that water-quality results must be submitted to DEQ for review and approval before a well is placed into service, but neither document

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[188] *Id.* at pdf p. 13.

[189] *Id.* at pdf p. 56 (describing the figure as "screening-level information only"); *see* 40 C.F.R. § 143.3.

[190] Programmatic EA at 10.

[191] Application at pdf p. 42–43.

[192] Programmatic EA at 12, 21.

[193] Application at pdf p. 12.

[194] *Id.* at pdf p. 4; *id.* at pdf p. 18.

[195] *Id.* at pdf p. 49.

[196] *Id.* at pdf p. 6; *id.* at pdf p. 7 ("A separate PWS NTNC well application for T6 location will shortly be submitted for review and approval.").

imposes an express condition barring use or sale of T3 water before that approval, explains how DEQ would detect early use, requires notice before drilling begins, or requires Quantica to report when its plans change. DEQ's expedited-review form states that construction of a new well "is unlawful until approval is granted," and media reports indicate Phase 1 construction has begun with "well work" and staging of equipment.[197] DEQ should disclose what, if anything, it has done to verify that no drilling or other construction of the water supply has begun.

E. DEQ may not defer risk management to post-hoc enforcement.

Penalties exist, up to $10,000 per violation per day,[198] but a penalty cannot restore a confined aquifer's pressure or reseal a failed casing, nor can a penalty issue absent some contemplated plan for ongoing monitoring by the agency. MEPA's purpose is to ensure that DEQ understands, before it commits, how a project's risks will be mitigated and controlled.[199] Commenters therefore request that DEQ withdraw the Draft Categorical Exclusion and prepare an EIS that analyzes construction, stimulation, test-water management, and long-term operation of both the T3 and T6 wells as part of the overall impacts of Big Sky Campus these wells are being drilled to serve. If DEQ nonetheless proceeds, it should, at a minimum, condition any approval on the following, each of which falls within the "[c]onstruction-related impacts" and "[f]acility design and operation" that DEQ concedes it reviews:[200]

- DEQ and/or DNRC staff, or an independent inspector selected by and reporting to DEQ or DNRC, on site to witness casing and cementing, packer and liner-hanger installation, pressure testing, and installation and testing of flowing-well controls;
- Advance notice of the spud date, and daily drilling reports delivered to DEQ/DNRC and posted publicly;
- A DEQ or DNRC-approved well-control and emergency plan, before drilling, naming a responsible individual and 24-hour contact and requiring immediate notice to one or both agencies of any loss of control, seal or casing failure, or unplanned flow;

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[197] *Id.* at pdf p. 86; Mont. Code Ann. § 75-6-112(1); Phoebe Tollefson, *Broadview Area Data Center Sees First Phase of Construction with Roads, Well Work*, Mont. Free Press (Sep. 18, 2026), https://montanafreepress.org/2026/09/18/broadview-area-data-center-sees-first-phase-of-construction-with-roads-well-work/.

[198] Mont. Code Ann. § 75-6-114(1)–(2) (noting civil penalties up to $10,000, each day a separate violation).

[199] *Park Cnty.*, ¶ 72.

[200] Programmatic EA at 4 (listing "[c]onstruction-related impacts" and "[f]acility design and operation" within DEQ's review).

- DEQ-approved stimulation and test-water plans, before drilling, identifying methods, chemicals, volumes, containment capacity, disposal destination, and required permits;
- An independent hydrogeologist present throughout the aquifer test, notice to DEQ, and public posting of test data and laboratory results;
- An express condition prohibiting any use of T3 water, for any purpose, before DEQ's written final source approval;
- An executed and recorded well control zone covenant that names DEQ as an enforcing party, as a condition precedent to drilling; and
- Scheduled DNRC/DEQ inspections and public reporting of compliance sampling for the life of the system.

These are the things DEQ would need to know to claim reasonable assurance. On the current record, DEQ can say only that it assumes. This is insufficient to justify DEQ's reliance on the Programmatic EA and use of an exclusion.

VII. DEQ failed to consider how Quantica's water needs may evolve or scale up after construction.

DEQ's analysis of Quantica's proposed water well also fails to acknowledge how Quantica's Big Sky Campus may evolve in the coming years. First, DEQ failed to contemplate alternatives to Quantica's closed-loop cooling system. Second, DEQ failed to consider additional water needs from an associated gas plant to power the data center.

First, DEQ's Draft Categorical Exclusion only contemplated Quantica relying on a closed-loop cooling system for its data center. The Application, however, indicates that "[t]he design for the cooling system for data center operations *is expected to be* closed loop."[201] There are no assurances to the public nor DEQ that the applicant will move forward with a closed-loop cooling system. As noted above, the water intensity could be higher for alternative cooling systems.[202] And at this juncture, there are no assurances nor guarantees that the data center developer will proceed with a closed-loop cooling system. Therefore, DEQ must assess the water intensity of all potential cooling systems in its analysis.

Second, DEQ failed to analyze the impacts of the Big Sky Campus scaling up in the near-term, not only to serve the data center, but also to support generation assets, including a 1,785-megawatt methane gas plant. The Application only reflects maximum water demand during "peak construction" and for "operations and related activities, including potable water for the onsite employees and contractors

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[201] Application at pdf p. 6 (emphasis added).

[202] *See supra* Part V (energy intensity of closed-loop cooling systems); Ex. 6, *Data Center Impacts in the West* at 15; Ex. 7, *Data Centers and Water Usage* at 8.

operating and maintaining the data center."[203] The Application makes no mention of the gas plant, despite public records requests demonstrating pre-permitting activities and discussions with the agency.[204] DEQ's failure to consider how the campus will scale up in the near-term raises serious questions regarding the adequacy of its environmental review for the water well.

VIII. DEQ may not segment the Big Sky Campus into permit-sized pieces to avoid a meaningful cumulative impacts analysis.

There is a litany of cases in which the Montana Supreme Court has explained the purpose and requirements of cumulative impacts analysis and its importance to both the "hard look" required by MEPA and the Constitution's anticipatory and preventative goals.[205] By piecemealing its review of Quantica's project, DEQ risks reviewing smaller actions in isolation and never assessing the significance of the whole, as MEPA requires. DEQ is proposing to approve the first piece of Quantica's Big Sky Campus as "a single Public Water Supply well" in isolation while it simultaneously processes, or prepares to process, the campus's air permit, its wastewater systems permit, a second well permit, and its remaining water infrastructure.

A. The well has no independent utility apart from the campus.

Federal courts applying NEPA, which Montana courts consult in construing MEPA, hold that actions must be analyzed together when they are "inextricably intertwined" and when one would not proceed but for the other.[206] The T3 well is the textbook case. The Application states the well exists to serve "[a]ll of the potable

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[203] Application at pdf p. 6.

[204] Ex. 2, DEQ-Quantica Emails.

[205] *See, e.g.*, *Mont. Wildlife Fed'n v. Mont. Bd. of Oil & Gas Conservation*, 2012 MT 128, ¶ 45, 365 Mont. 232, 280 P.3d 877 (quoting Mont. Admin. R. 36.2.522) ("In determining the significance of the impacts associated with state action … the state agency must evaluate the individual and cumulative impacts. … An analysis of 'cumulative impacts' means reviewing: the collective impacts on the human environment of the proposed action when considered *in conjunction with other past and present actions* related to the proposed action by location or generic type. Related future actions must also be considered.'"); *Bitterrooters for Planning, Inc.*, ¶ 21 (quoting Mont. Admin. R. 17.4.609(3)(d), (e)) (noting the MEPA analysis "must include … 'an evaluation of the impacts, including cumulative and secondary impacts' on the 'physical environment' and on the 'human population in the area to be affected by the proposed action'"); *Water for Flathead's Future v. Mont. Dep't of Env't Quality*, 2023 MT 86, ¶ 31, 412 Mont. 258, 530 P.3d 790 (noting the agency must consider cumulative impacts and secondary impacts).

[206] *Thomas v. Peterson*, 753 F.2d 754, 758–59 (9th Cir. 1985) (noting timber sales and the road built to access them had to be analyzed together).

and non-potable uses" of the Big Sky Campus, its demand is sized to the construction workforce building the campus, and its operational demand is sized to the data center's staffing and cooling needs.[207] Without the campus, there is no well; without the well, the campus would not be built.

B. DEQ is aware that Quantica is pursuing additional permits.

The Draft Categorical Exclusion asserts that DEQ "is not aware of any application pending with any other state agency."[208] Yet, DEQ's Air Bureau has held pre-application meetings with Quantica since at least March 2026 on 1,785 MW of gas-fired generation, has concluded a PSD permit is likely needed, and has coordinated internally with the Water Protection Bureau about wastewater.[209] DEQ prepared a "Data Center Regulation" document and circulated it to Quantica's team.[210] The Application itself also tells DEQ that a T6 well application is imminent and that treatment, storage, distribution, and wastewater facilities will follow.

MEPA's cumulative impacts requirement reaches related future actions "under concurrent consideration by any state agency through preimpact statement studies, separate impact statement evaluation, or permit processing procedures."[211] The air permit pre-application process is precisely such a "permit processing procedure." And MEPA requires DEQ to "make an adequate compilation of relevant information, to analyze it reasonably, and to consider all pertinent data."[212] DEQ cannot satisfy that duty by looking only at what is formally pending before one bureau on one day.

C. DEQ's cumulative impacts analysis must consider the project as a whole in conjunction with other past, present, and future actions.

Cumulative impacts analysis is MEPA's built-in safeguard against piecemealing. It requires DEQ to evaluate "the collective impacts on Montana's environment of the proposed action when considered in conjunction with other past, present, and future actions related to the proposed action by location or generic

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[207] Application at pdf p. 4, 6, 8–10.

[208] Draft Categorical Exclusion at 2.

[209] *See* Ex. 2, DEQ-Quantica Emails (discussing pre-application meeting and internal agency coordination).

[210] Mont. Dep't of Env't Quality, *Data Center Regulation*, https://deq.mt.gov/files/Energy/Data%20Centers/Montana_DEQ_Data_Center_Regulation.pdf.

[211] Mont. Code Ann. § 75-1-208(11).

[212] *MEIC 2025*, ¶ 61 (quotation omitted).

type."[213] The Montana Supreme Court has repeatedly held that this analysis is an essential part of the hard look, including when DEQ decides whether an action's impacts are significant.[214] And a MEPA framework that "arbitrarily exclude[s]" activities from cumulative impacts review is unconstitutional.[215]

The Draft Categorical Exclusion's cumulative impacts discussion consists of a statement that the site is undeveloped grazing land and that DEQ knows of no concurrent applications.[216] It omits future actions entirely. The Programmatic EA likewise concluded that wells approved under it "would neither promote nor impede growth, nor contribute to cumulative impacts."[217] That conclusion cannot be applied to a well whose sole purpose is to enable a 5,083-acre industrial campus.

A cumulative impacts analysis that complies with Mont. Code Ann. § 75-1-220(5) must consider at least the following:

Related actions by location: the rest of the Big Sky Campus. These include:

- the T6 well and any additional wells, and their combined withdrawals from the Madison aquifer;
- the campus's treatment, storage, distribution, and wastewater systems, including disposal of treatment reject water from high-TDS source water;
- the 1,785 MW of gas-fired engines and turbines now in DEQ's air permitting pipeline, and the gas pipeline needed to supply them;
- the data center buildings, roads, stormwater infrastructure, and construction activity across the campus;
- the transmission and interconnection facilities needed for up to 7,235 MW of grid connection; and
- energy development on the roughly 40,000 additional acres Quantica has reportedly leased nearby.

Each of these is related to the proposed action by location, and most are under concurrent consideration by DEQ through pre-application meetings or announced permit submittals. Considered together, they describe a facility whose impacts on air quality, climate, groundwater, wildlife habitat, and the Broadview community

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[213] Mont. Code Ann. § 75-1-220(5).

[214] *Mont. Wildlife Fed'n*, ¶ 45 (noting that in determining significance, "the state agency must evaluate the individual and cumulative impacts"); *Water for Flathead's Future*, ¶ 31.

[215] *Held*, ¶ 68.

[216] Draft Categorical Exclusion at 1–2.

[217] Programmatic EA at 31.

are plainly significant, even if each permit, viewed alone, could be described as minor.

Related actions by generic type: Montana's data center buildout. The Big Sky Campus is one of several large data center proposals that are arriving in Montana at the same time. By 2030, announced data center projects in Montana could at least double, and by some reports increase by tenfold, NorthWestern's average daily load.

Cumulative greenhouse gas emissions and climate impacts. DEQ's greenhouse gas emissions guidance directs agencies to place a project's emissions in the context of Montana's statewide inventory and the cumulative climate impacts to which it contributes.[218] The campus's gas generation, alone or combined with other gas-fired data center power and existing fossil generation serving new data center load, would add materially to Montana's emissions at a time when the Court in *Held* found Montana's climate is already unconstitutionally degraded.

Cumulative effects on the Madison aquifer and other water users. The Madison is a regional confined aquifer with distant recharge. Cumulative withdrawals from multiple campus wells, plus the applicant's contemplated "offsite uses" and other existing and future Madison users in the region, should be evaluated together rather than one well at a time.

The Madison Aquifer is one of the most significant regional aquifers in the northern Great Plains. According to the USGS, the Madison Aquifer underlies portions of Montana, North Dakota, Wyoming, South Dakota, Nebraska, Alberta, Saskatchewan, and Manitoba and serves as an important water resource where surface-water supplies are limited.[219] The Madison Aquifer supplies drinking water to numerous communities and public water systems in central Montana, including Great Falls-area systems, and several towns, such as Cascade and Roundup, have recently developed new Madison wells for municipal supply.[220] Moreover, the USGS has recognized that growing populations and declining water availability may lead to increased future development of the Madison Aquifer as a water supply, particularly as drought conditions intensify and climate change places additional

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[218] Mont. Dep't of Env't Quality, *Guidance for Greenhouse Gas Impact Assessments Under the Montana Environmental Policy Act*, 15–16 (Jan. 2026).

[219] U.S. Geological Surv., *Water Resources Mission Area, Karst Aquifers: Madison Aquifer* (July 20, 2021), https://www.usgs.gov/mission-areas/water-resources/science/karst-aquifers-madison-aquifer.

[220] *See* John I. LaFave, *Tracking Montana's Groundwater*, Mont. Bureau of Mines & Geology, Information Pamphlet 9, 4, https://mbmg.mtech.edu/mbmgcat/public/FileDirector.asp?fn=1498

strain on existing water sources.[221] "The Madison aquifer is … receiving renewed interest as a deeper source of good quality water."[222] The Montana Bureau of Mines and Geology has found that water levels in the Madison Aquifer are controlled primarily by precipitation rather than pumping, and that the aquifer system "is strongly impacted by short- and long-term climate variability."[223] During a dry period between 1995 and 2005, water levels in Madison observation wells near Great Falls fell about 30 feet, a decline that coincided with below-average precipitation and recovered only during the relatively wet years that followed.[224]

The point of cumulative impacts review is to analyze "the collective impacts on Montana's environment of the proposed action when considered in conjunction with other past, present, and future actions related to the proposed action by location or generic type."[225] DEQ must conduct a lawful cumulative impacts analysis prior to authorizing any actions related to Quantica's project.

IX. DEQ's process for permitting Quantica's water supply well interferes with the public's Right to Know and Right to Participate.

The ambiguity surrounding the permitting process for Quantica's water supply well and subsequent permits interferes with the public's Right to Know and Right to Participate. DEQ and Quantica must release additional information about the proposed data center and any associated electricity generation assets—including a reported 1,785-megawatt gas plant[226]—to ensure that the public can meaningfully participate in a public comment process.

Under Article II, section 8 of the Montana Constitution, Montanans enjoy "the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as

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[221] U.S. Geological Surv., *Water Resources Mission Area, Karst Aquifers: Madison Aquifer* (July 20, 2021), https://www.usgs.gov/mission-areas/water-resources/science/karst-aquifers-madison-aquifer.

[222] Roger A. Noble, Robert N. Bergantino, Thomas W. Patton, Brenda Sholes, Faith Danel, & Judeykay Schofield, *Occurrence and Characteristics of Ground Water in Montana: The Great Plains Region*, 40 (1982), https://nepis.epa.gov/Exe/ZyPDF.cgi/94007W3U.PDF?Dockey=94007W3U.PDF.

[223] U.S. Geological Surv., *Water Resources Mission Area, Karst Aquifers: Madison Aquifer*, 4, fig. 4 (July 20, 2021), https://www.usgs.gov/mission-areas/water-resources/science/karst-aquifers-madison-aquifer.

[224] *Id.*

[225] Mont. Code Ann. § 75-1-220(5).

[226] *See* Ex. 1, *Quantica Eying Massive Gas Plant for Montana Data Center*.

may be provided by law."[227] This right ensures that Montanans are able to participate in agency decisions that affect them.

DEQ has an obligation to ensure that adequate notice is provided to the public so that it may take advantage of reasonable opportunities for public participation. Whether a reasonable opportunity has been afforded is assessed by whether adequate notice was provided and whether an agency instituted procedures for assisting the public in participating.[228] In fulfillment of the constitutional Right to Participate, agencies are required by statute to develop procedures that encourage public participation in agency decisions.[229]

Further, the Right to Know ensures that citizens have the right to examine documents as well as observe the "deliberations of all public bodies or agencies" within the state government.[230] This right is fundamental and carries with it the presumption that every document in the possession of public officials is "subject to inspection."[231] Where there is an insufficient disclosure of information, both the Right to Know and the Right to Participate are restricted for members of the public seeking to participate.[232]

To meaningfully participate in the public comment process, DEQ and/or the applicant must, at minimum, disclose the following additional information and allow for a public comment period based on a complete project record.[233] With respect to water supply and capacity, DEQ and/or the applicant must disclose:

- How much water will the facility withdraw annually?
- How much water will the facility consume versus return to the watershed?
- What is the maximum or peak water demand?
- Will water demand change or be limited during the hottest and driest days of the year?

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[227] Mont. Const. art. II, § 8.

[228] *Bitterroot River Protective Ass'n, Inc. v. Bitterroot Conservation Dist.*, 2008 MT 377, ¶ 21, 346 Mont. 507, 198 P.3d 219.

[229] Mont. Code Ann. § 2-3-103.

[230] Mont. Const. art. II, § 9.

[231] *Bryan v. Yellowstone Cnty. Elem. Sch. Dist. No. 2*, 2002 MT 264, ¶ 39, 312 Mont. 257, 60 P.3d 381.

[232] *See id.* ¶¶ 45–46.

[233] *See generally* Amy Adams, *How Data Centers Use Water: Cooling, Consumption, Wastewater & What Communities Need to Know*, Halt the Harm Network (Oct. 6, 2026), https://haltttheharm.net/recording/how-data-centers-use-water-cooling-consumption-wastewater-what-communities-need-to-know/.

- Will water demand change or be limited during drought or low-flow conditions?
- If the developer can curtail water use during drought or low-flow conditions, by how much, how quickly, and for how long can water use be curtailed?
- Does the applicant have the legal right or permitted capacity to withdraw the water?

With respect to Quantica's proposed close-loop cooling system, DEQ and/or the applicant must disclose:

- Which loop is closed? Specifically, is only the loop running through the servers closed or are there additional closed loops?
- How is the heat ultimately removed from the facility?
- Does the data center cooling system use cooling towers or evaporative cooling?
- Does the cooling system use dry/air cooling during cooler weather? If so, does the system transition to water-based or evaporative cooling during warmer weather?
- How much water must be periodically added to the closed loop system?
- How frequently is water removed or replaced from the closed loop system?
- What chemicals are added to the cooling water?
- Are PFAS or related fluorinated compounds used anywhere at the facility?
- Is the facility using any immersion cooling fluids? If so, what polymers, gels, or other chemicals are being used?
- What happens to the water when the closed loop system is flushed or serviced?
- How much electricity is required when the system is using dry cooling? How much electricity is required if the system uses water-based or evaporative cooling?

With respect to wastewater and sewage, DEQ and/or the applicant must disclose:

- How much wastewater will the facility generate?
- What chemicals may be present in wastewater from the data center?
- What are the concentrations of any chemicals upon discharge?
- Will wastewater be tested for PFAS and related compounds? If not, what compounds are included in the testing?
- Will any wastewater be discharged directly into a surface water?

- Can existing wastewater treatment plans handle the volume and concentrations of wastewater?
- What additional treatment equipment or capacity may be necessary?
- Who will pay for upgrades or additional treatment equipment or capacity?
- Will wastewater be collected and transported elsewhere?
- What monitoring requirements will be required for wastewater discharge?
- What protections are in place if discharge limits are exceedance?
- Where does any reclaimed water currently go?

With respect to scope two water impacts, DEQ and/or the applicant must disclose:

- How much electricity will the full data center campus require?
- What is the expected average monthly demand of the data center?
- What is the expected peak demand of the data center?
- Where will the applicant source its electricity supply service from?
- What transmission lines, substations, generation assets, or other infrastructure must be built to serve the data center?
- What generation assets will supply electricity service to the data center?
- Where are those generation assets located?
- What is the water footprint of each generation asset used to provide electricity supply service to the data center?
- If a gas plant is used to supply electricity supply service to the data center, will that gas plant use water for cooling?
- If a gas plant is used to supply electricity supply service to the data center, will that water use occur in a different watershed or the same watershed as the data center?

Disclosing answers to each of these questions will bolster the public's Right to Know. If complemented by an additional public comment period on a complete record, and a cumulative impact analysis of each of the issues described above, DEQ can ensure compliance with the State's constitutional obligations and the public's Right to Participate. Further, DEQ should announce anticipated future public comment periods or provide for one cumulative analysis of all elements of the development with a complete record of potential environmental harm.

CONCLUSION

Commenters appreciate that DEQ has noticed the scope of this public comment period to include both the Application and the associated environmental review.[234] For the reasons stated above, approval of the Application in its current form is arbitrary and capricious and would violate Montana law, as would granting Quantica's request for expedited review and relying on the Draft Categorical Exclusion Review to evaluate the environmental impacts of this project.

Commenters respectfully request that DEQ reject Quantica's request for expedited review and deny its Application as incomplete. Further, DEQ should withdraw the Draft Categorical Exclusion Review, acknowledge that this project falls outside the scope of the Programmatic EA, and prepare an EIS for the Big Sky Campus that analyzes all reasonably foreseeable direct, secondary, and cumulative impacts of the Big Sky Campus as a whole.

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[234] Mont. Dep't of Env't Quality, *Request for Public Comments on Categorical Exclusion Review under a Programmatic Environmental Assessment*, 1 (Sep. 29, 2026) ("DEQ is accepting public comment on the proposed well and associated environmental review.") (submitted as Exhibit 17).

for a Livable Climate, Honor the Earth, Montana Conservation Voters, Montana Environmental Information Center, Montana Health and Climate, Montana Public Interest Research Group, Northern Plains Resource Council, Park County Environmental Council, Sierra Club Montana Chapter, Upper Missouri Waterkeeper, and 350 Montana