

Hon. Danni Coffman
District Judge, Department E
Flathead County Justice Center
920 South Main Street, Suite 310
Kalispell, MT 59901
Telephone: (406) 758-5906

THE MONTANA ELEVENTH JUDICIAL DISTRICT COURT
FLATHEAD COUNTY

CITIZENS FOR A BETTER FLATHEAD AND THE CONFEDERATED SALISH & KOOTENAI TRIBES, <i>Plaintiffs,</i> vs. MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY, <i>Defendant.</i>	Cause No. DV–2025–846 ORDER AND RATIONALE ON MOTIONS
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Pending before the Court are cross-motions for summary judgment. Plaintiffs moved for summary judgment on May 5, 2026. On May 22, 2026, DEQ filed a combined response and cross motion for summary judgment. All motions are submitted and the Court heard oral argument on July 21, 2026.

Also pending is Plaintiff's motion to supplement the complaint.

ORDER

Consistent with the following rationale, Plaintiffs' motions are DENIED. Defendant's cross motion for summary judgment is GRANTED.

RATIONALE

This matter arises from a dispute between the parties regarding Montana Ground Water Pollution Control System ("MGWPCS") Permit MTX000307 ("Permit"). The Montana Department of Environmental Quality ("DEQ") issued the Permit to Lakeside County Water and Sewer District ("LCWSD"). Plaintiffs challenge the legality of the Permit under the Montana Water Quality Act Title 75, Chapter 5, MCA ("WQA") and the Montana Environmental Act, Title 75, Chapter 1, MCA ("MEPA").

I. FACTUAL BACKGROUND

LCWSD operates a wastewater treatment system that serves the towns of Somers, Lakeside, and the surrounding rural areas. AR00564. Currently, LCWSD fulfills this role through a collection system, lift stations, a seven-mile transmission main, and aerated lagoons. AR00566. Effluent is dispersed by ground application in the vicinity of the aerated lagoons. *Id.* LCWSD is in the process of upgrading its infrastructure. Through an interlocal agreement with Flathead County, LCWSD is receiving subsidies to complete these upgrades and must, in return, accept an amount of future septage across Flathead County, build a septage receiving station, build a new wastewater treatment facility, and obtain a valid discharge permit to accommodate the interlocal agreement. *Id.*

In pursuit of this objective, LCWSD engineered a comprehensive treatment system. AR04950-55. The system starts with a receiving facility that mechanically screens and inspects septage. Following this receiving station, septage is mixed with municipal wastewater on the way to a headworks building for further screening before entering a proposed wastewater treatment facility with the capacity to treat 900,000 gpd. AR00566. LCWSD proposed that the system be capable of removing 80% of the total nitrogen, 70% of the total phosphorus along with many other contaminants. AR04958. Once treated, the effluent is subjected to two possible fates. During summer months, some effluent will be directed to the current aerated lagoons and land applied as irrigation. Year round, effluent will be pumped to one of three proposed rapid infiltration basins (“RIBs”). AR04940-41. Once inside a RIB, the effluent passes through the ground layer into the water table of the Delta Aquifer. *Id.* The permit proposed a 305 ft. “mixing zone,” an area directly under a RIB where the pollutant concentrations are temporarily allowed to exceed water quality standards so the aquifer may assimilate the wastewater pollutants. AR0974.

As the effluent permeates the RIBs it passes through an unsaturated ground layer before entering the Delta Aquifer. AR04940. The parties recognize that the Delta Aquifer is hydrologically connected to surface waters such as Flathead Lake, the Flathead River, and Ashley Creek among other seasonal ponds. AR04948.

LCWSD separated project review into two phases. The purpose of the first phase, which is currently the focus of the parties, is to authorize the proposed discharge to groundwater. When the permit was issued, LCWSD began phase two. Phase two is not the subject of this Order but is intended to address the engineering and design of the actual treatment facility and RIB infrastructure to accommodate the amount of discharge authorized by the instant Permit.

To model the behavior of the aquifer, LCWSD, through the professional services of Water Environmental Technologies (“WET”), constructed five test wells in the project area. AR04952. WET relied on data collected at those wells to calculate conclusions relevant to the hydrogeology. Notably, WET calculated a hydraulic conductivity of 122 ft. per day and a transmissivity value of 1,224 ft.² per day. AR04952. The parties recognize that the geology and hydrogeology of the aquifer will result in a change to the aquifer’s water table, described technically as “mounding.” AR04960. The collected data was used by WET to develop a model that both WET and DEQ used to predict the fate of the additional nitrogen and phosphorus added by way of the discharge that results from mounding. AR04960.

This modeling allows the generation of predictive values used to determine the strength of a pollutant at certain distances from the RIB. Utilizing this, along with other data, WET determined that nitrate concentrations would be reduced through denitrification below 7.5 mg/L within 110 feet of each RIB, below 5.0 mg/L within 335 to 670 ft. from each RIB, and near background conditions of .11 mg/L within 640-1,200 feet of each RIB. AR04966.

DEQ concluded that pollutant levels would be even further reduced by a combination of dilution and natural attenuation. The agency concluded that nitrogen would degrade to 0.9 mg/L at the end of the 305 ft. mixing zone, the surface water standard of 0.275 mg/L would be achieved at 469 ft., and that the non-detect levels would be reached by 930 ft. The closest surface water bodies to any of the three RIBS is Pond 4, located 1160 ft. to the Southeast of RIB 2 followed by Wiley Slough, located 1335 ft. from RIB 1. AR04966.

WET's modeling also concluded that phosphorus breakthrough would be similarly nonsignificant. However, by utilizing a more conservative model, DEQ determined the phosphorus breakthrough for RIBs 1 and 2 would be significant and subsequently limited the phosphorous discharge in the permit. AR04971, 5216.

DEQ published a draft EA (AR01769), a draft permit (AR05181), a tentative determination letter (AR01816) and collected public comments. Relevant to the instant issue, the draft EA and initial Fact Sheet made several critical conclusions. Notably, all nitrogen concentrations were predicted to be below significant criteria prior to exiting the mixing zones and at non detectable levels prior to reaching surface waters. AR0597

The public comment period received significant participation. Approximately 55% of the administrative record was devoted to the notice, comments, letters, and documents submitted by the public in support and opposition. AR01817-04911. In opposition to the Permit, Plaintiffs commissioned and submitted expert reports. The first report was completed by Hauer Environmental, LLC and authored by F. Richard Hauer, Ph.D. ("Hauer Report"). AR01903. A professional critique of the initial fact sheet was completed by HydroSolutions Inc. It reviewed the "thoroughness of the site characterization presented by the applicant, collection, analysis, and interpretation of appropriate data for the site, and suitability of the shallow groundwater system to receive" wastewater and authored by David Donohue ("Donohue Report"). AR01939. A third report, also prepared by HydroSolutions, provided an expert review of the modeling used to predict the groundwater mounding and was authored by Micheal Meredith ("Meredith Report"). AR01946. Collectively, this expert evidence concluded that the methodology used to collect the data was fundamentally flawed and that the modeling used to calculate the fate of nitrogen and phosphorus is scientifically shown to be inappropriate for the specific aquifer type.

DEQ released a response to public comments. AR04912. The response addressed 21 "themes," some of which directly respond to Plaintiff's contentions while others were determined to be beyond the scope of the DEQ's permitting action. *Id.* The final fact sheet and EA were unchanged by public comment except for the correction of minor typos. AR05208. The permit was issued on June 1, 2025. AR05212.

II. LEGAL STANDARD

Summary judgment is appropriate only when the pleadings, depositions, answers to interrogatories, and admissions on file together with any affidavits, demonstrate that no genuine issue exists as to any material fact and that the moving party is entitled to judgment as a matter of law. Mont. R. Civ. P. 56(c)(3). This Court is reviewing a final administrative agency decision. The standard by which the Court must measure a final administrative agency decision is whether the decision was arbitrary, capricious, unlawful, or not supported by substantial evidence. See *Core-Mark International, Inc. v. Montana Board of Livestock*, 2014 MT 197, ¶ 20, 376 Mont 25, 329 P.3d 1278, (citing *Clark Fork Coalition v. Mont. Dept. of Env'tl. Quality*, 2008 MT 407, ¶ 21, 347 Mont. 197, 197 P.3d 482). An agency's decision is unlawful if it does not comply with governing laws and administrative rules. An agency decision is arbitrary and capricious if made without consideration of all relevant factors or based on a clearly erroneous judgment. However, the arbitrary and capricious standard does not permit reversal "merely because the record contains inconsistent evidence or evidence which might support a different result." Rather, the decision "must appear to be random, unreasonable or seemingly unmotivated based on the existing record." A court cannot substitute its judgment for that of the agency but will not defer to an agency's decision without a searching and careful review of the record to verify that the agency made a reasoned decision. *Bitterrooters for Planning, Inc. v. Mont. Dept. of Env'tl. Quality*, 2017 Mont. 222, ¶¶ 15-16, 388 Mont. 453, 401 P.3d 712 (Citations omitted).

When there are cross-motions for summary judgment, a district court must evaluate each party's motion on its own merits. *Kilby Butte Colony, Inc. v. State Farm Mut. Auto. Ins. Co.*, 2017 MT 246, ¶ 7.

III. DISCUSSION

Both parties seek summary judgment. The administrative record has established all material facts for consideration. Plaintiffs argue two causes of action on summary judgment. They first challenge DEQ's non-significance finding under the WQA. They also challenge DEQ's hard look at the environmental impacts of the Permit under MEPA. DEQ has cross motioned for a judgment affirming they adhered to both statutes in their findings.

a. DEQ's Analysis of Cumulative Impacts or Synergistic Effects Under the WQA and ARM 17.30.715(2).

Plaintiffs argue DEQ failed to follow ARM 17.30.715(2) by not adequately evaluating the cumulative and synergistic effects of the proposed discharge. They acknowledge DEQ used a "mass-balance equation" that factored the cumulative impact of the existing upgradient discharges in the aquifer. However, they conclude that this does not equate to an adequate evaluation of cumulative impacts or synergistic effects and the result is that DEQ failed to consider the factors under ARM 17.30.715(2). They claim this failure to review relevant factors and make a determination that the action is significant was an abuse of discretion.

DEQ responds that the record shows the predicted nitrate concentration at the boundary of the mixing zone is nonsignificant by statute. DEQ also claims the record shows that phosphorous

discharge is also nonsignificant by statute due to permit limitations. They also claim that this Court must conclude that Plaintiffs do not dispute this as they have only raised issue with DEQ's exercise of discretion under ARM 17.30.715(2).

To prevail on summary judgment Plaintiffs must establish as a matter of law DEQ's actions were arbitrary and capricious. In support, Plaintiffs compare the instant case to the 2008 *Clark Fork* decision. The Court in *Clark Fork* determined that under DEQ's own operating rules it should have considered the discretionary criteria under subsection (2) of ARM 17.30.715 after it found a discharge was non-significant under subsection (1). *Id.*, ¶¶ 38, 42-43. The first point Plaintiffs raise is that DEQ's secondary and cumulative evaluation was actually a regurgitation of its evaluation of the direct effects. They claim DEQ stopped their analysis when it concluded that the pollutant concentrations would be below the significance criteria before exiting the mixing zone is only a direct effect. As it does not address the effect on surface waters, it fails to consider the secondary effect or the cumulative effect of other polluting sources on what are already compromised surface water systems.

The Court is convinced that when considering the record evidence, this position is untenable. DEQ did not simply determine that the pollution concentrations at the end of the mixing zone would be below the significance criteria and then conduct no further evaluation. AR04971. In fact, the fact sheet indicates that the evaluation continued far beyond the mixing zone. Using nitrogen as an example, the data establishes that the evaluation predicted further degradation as it continued downgradient. The record shows that surface water standards would be achieved approximately 469 ft. from the RIBs and that there would be no detectable levels of nitrogen by 930 ft. *Id.* In DEQ's words, "[i]f the discharge would add 0 nutrients to the surface waters, then there is 0 to contribute to cumulative or synergistic impacts." Doc. 46, p. 8.

The primary contention in *Clark Fork* was the possibility that the applicant will discharge in perpetuity. *Id.* ¶ 5. The discharge was determined to be nonsignificant under subsection (1) because the applicant would be required to treat the polluted water in perpetuity. *Id.* ¶ 16. The Court's holding hinged largely on § 75-5-301(5)(c), MCA, which was the legislative instrument that promulgated ARM 17.30.715. *Id.* ¶¶ 33-34. Since § 75-5-301(5)(c)(iii), MCA, specifically provided that the length of time must be factor for DEQ to consider when determining whether a discharge will be nonsignificant, DEQ abused its discretion by not addressing it under ARM 17.30.715(2)(g). *Id.* ¶ 38.

Here, unlike *Clark Fork*, the record reveals an analysis of cumulative effects within the scope of the permitted action. First, DEQ determined the existing background levels of nitrogen in the Delta Aquifer. AR05191. The ambient background level of .11 mg/L of nitrogen was considered "very low" compared to the groundwater standard of 10 mg/L. AR04959, Table 4; AR04973. DEQ also identified other permitted discharges, essentially the domestic septic systems in the area. *Id.* The Agency concluded that such a low ambient pollution level was evidence that the cumulative effect of the permit and known discharge of eleven existing septic systems would

be negligible. *Id.* There were no known future discharges beyond the instant permit. DEQ determined the assimilative capacity of the Delta Aquifer by using a mass-balance equation that factored the ambient pollution levels and cumulative impacts of all the identified discharges. AR0591. This represents all the record evidence of proposed pollutant discharges, known pollutants, and their cumulative effect on the aquifer.

The result, after considering the assimilative capacity of the Delta Aquifer, the known ambient level of other combined sources, and the proposed discharge of the instant permit, is that the nitrate levels will fall below the non-significant threshold of 7.5 mg/L under ARM 17.303.715(10) within 110 ft. of each RIB. AR04966. DEQ took the relevant information that pollutant levels were not detectable prior to surface waters, considered the cumulative and synergistic impacts to the affected waters (the Delta Aquifer), and therefore declined to exercise its discretion under ARM 17.30.715(2). AR04972-73.

Plaintiffs also argue that DEQ did “not identify or expand on other nutrient sources discharging to the same downgradient surface water” and failed to consider whether they could combine with the permitted discharge and “create cumulatively or synergistically significant effects and harm water quality or beneficial uses.” Doc. 40, p. 14. This argument suffers from the same deficiency. Relevant to nitrogen discharge, WET concluded that due to denitrification concentrations will return to background conditions between 640 and 1,200 ft. of each RIB. AR04966-67. DEQ performed a significance determination that considered the ambient concentrations, dilution estimates, and attenuation and concluded that the discharge will not be detectable 930 ft. from the RIBS. AR04970-71. The nearest surface water is 1160 ft. from RIB 2 to Pond 4. AR04966. Therefore, the record shows that the permitted discharge will have no predictable impact on surface water, the addition of non-detectable pollutants to other sources polluting the surface waters is not within the scope of the Permit.

Finally, Plaintiffs claim DEQ failed in many aspects that are relevant to the surface waters that are hydraulically connected to the Delta Aquifer. They claim that DEQ was confronted with substantial evidence that contradicted DEQ’s significance findings. If successful, DEQ’s determination that the proposed discharge is nonsignificant is fundamentally flawed due to their decision to accept WET’s ground water data and modeling. They believe conflicting evidence should lead to a determination that DEQ failed to give a “hard look” that the permitted discharge may have a higher likelihood to reach surface waters than the EA predicted.

This was a major impetus of the public comments DEQ received. It is relevant to Plaintiff’s position that DEQ failed to analyze the cumulative effect of the proposed discharge by not considering other pollutants entering the down gradient surface waters, that DEQ failed to abide by their own TMDL restrictions, and that DEQ did not consider the proposed discharge as a new surface water pollutant and its influence on the ecology of the connected surface waters.

This conflict stems from three expert reports commissioned and submitted by Plaintiffs during the public comment period. The first report was completed by Hauer Environmental, LLC

and was authored by F. Richard Hauer, Ph.D. (“Hauer Report”). AR01903. The second was a professional critique of the initial fact sheet completed by HydroSolutions Inc. that reviewed the “thoroughness of the site characterization presented by the applicant, collection, analysis, and interpretation of appropriate data for the site, and suitability of the shallow groundwater system to receive” wastewater and was authored by David Donohue (“Donohue Memo”). AR01939. A third report, also prepared through HydroSolutions, provided an expert review of the modeling used to predict the groundwater mounding and was authored by Micheal Meredith (“Meredith Memo”). AR01946.

The Hauer Report covers a wide berth of topics, one of which is lidar imaging that purports to show preferential pathways in the Delta Aquifer. AR01909. The report also highlights the conductivity differences between test wells. AR01912. Specifically, the Hauer Report notes that Well 1 averaged 7.1 ft. per day while Well 2 averaged 392.4 ft. per day. *Id.* DEQ’s nutrient attenuation assumptions are critiqued. AR01917. The report concludes that when considering the lidar imaging and the disparate averages of conductivity within DEQ’s nutrient fate modeling could differentiate wildly with reality. AR01923-35. Other than the Lidar imaging, there is nothing in the Hauer Report that is not otherwise present in the record.

The Donahue Memo reviewed the permit fact sheet, a geotechnical investigation related to the permit, and local water well data. AR01940. It heavily criticized the applicant’s methodology for data collection and analysis. AR01941-43. The Meredith Memo was limited to an evaluation of the applicant’s mounding analysis. AR01946. It raises two issues. First, the selected model was inappropriate because it assumes uniform physical properties (homogeneous). AR01947. The Meredith Memo concluded that after reviewing the Hauer Report and Donahue Memo that the Delata Aquifer was likely heterogeneous and that the applicant should conduct revised data collection and mounding analysis. AR01948. Second, the memo takes issue with the applicant’s decision to base its analysis on a five-year operational period. *Id.* The memo calls for the applicant to explain why 5 years was not an arbitrary decision, as a shorter model hides some complexity of the aquifer and further complicates the applicant’s reliance on its own modeling. *Id.*

Both the Hauer Report and the Meredith report conclude that the methodology used to collect the data was fundamentally flawed and that the modeling used to calculate the fate of nitrogen and phosphorus is scientifically shown to be inappropriate for the specific aquifer type. The expert reports contain no conflicting data, only a disagreement over means to gather and transmit the data meaningfully. Collectively, they can only be read to conclude that it is possible that nutrients could travel faster than what WET and DEQ have predicted.

In response, DEQ stands behind their procedure. First, DEQ explained in their fact sheet and response to comment that the assumption of a homogeneous aquifer is not fatal, but simply the default. They further identified that they had acknowledged the existence of preferential pathways and used more conservative assumptions when they did their own analysis of the nutrient

fate. Ultimately, they argue that neither model proves the presence or location of a preferential pathway.

When reviewing DEQ's decisions the "focus is on the administrative decisions-making process rather than the decision itself." *Park Cnty Envtl. Council v. Mont. Dept. of Envtl. Quality*, 2020 MT 303, ¶18, 402 Mont. 168, 477 P.3d 288 (Citing *Clark Fork*, ¶ 47). The decision to review and incorporate conflicting export reports is the type of assessment that "fits squarely within an agency's 'significant technical and scientific expertise beyond the grasp of the Court,' courts 'afford[] great deference to agency decisions'". *Water for Flathead's Future, Inc. v. Mont. Dept. of Envtl. Quality*, 2023 MT 86, ¶21, 412 Mont 258, 530 P.3d 790 (quoting *Mont. Envtl. Info. Ctr. V. Mont. Dept. of Envtl. Quality*, 2019 MT 213, ¶ 20, 397 Mont. 161, 451 P.3d 493 ("MEIC")). "The process of assigning relative weights to conflicting data for predictive purposes is essentially a technical exercise requiring agency expertise that should be afforded substantial deference." *Id.* ¶ 27 (citing *Park Cnty*, ¶ 43. Therefore, the question before the Court is whether the record reveals that DEQ considered this expert evidence and relied on technical expertise when it declined to take any action or if DEQ ignored the evidence without consideration.

The record shows DEQ acknowledged that it used the WET model, which included assumptions of homogeneity and isotropy, to simplify the complex water flow. AR04918. The agency reiterated that the model used site specific data included 15 slug tests from five monitoring wells. *Id.* They explained that this is common practice in water resource management, especially when there is a regional deficiency of hydrogeological data. *Id.* DEQ also responded that the use of lakes and rivers is also common practice because the water levels are relatively more stable than the aquifers. *Id.* This demonstrates the decision-making process that favored the WET model and is the type of "technical expertise" that requires deference to the agency.

In addition, DEQ also explained that it considered this data in light of the published industry studies and it fell within historical ranges. AR04919. Specifically, the agency cited Noble and Sanford (1986), which measured the transmissivity of the aquifer. *Id.* The Noble and Sanford study was also cited in support of the Hauer Report. AR01909-10. This supports DEQ's position as it establishes a scientific basis for which the agency can justify its decision. DEQ also explained that it adopted conservative assumptions for the non-significance determination than what was used by the applicant for both nitrogen and phosphorus for extra scrutiny. AR04914-15.

The Court must also note that the Plaintiff's expert reports do not actually contradict any of the data or modeling within the fact sheet or EA. There is a difference of opinion behind the data collection methodology and mounding model, but they include no contradictory models, values, or calculations that challenged WET's actual data. Their opinions create the very "battle of experts" this Court must avoid.

Plaintiffs have not shown as a matter of law that DEQ failed to explore the cumulative and synergistic impacts of the Permit.

Moving to DEQ's cross motion, they must show as a matter of law that the permit met the requirements of WQA and the governing administrative rules.

Administrative Rule 17.30.715(1) sets the criteria to determine if an activity will result in nonsignificant changes to water quality when the potential to affect human health or the environment are low. Relevant to nitrate, a concentration of predicted nitrate at the boundary of a mixing zone under 7.5 mg/L is nonsignificant. ARM 17.30.715(1)(d). Phosphorus is nonsignificant when "the evaluation of the phosphorus adsorptive capacity of the soils in the area of the activity indicates that phosphorus will be removed for a period of 50 years prior to a discharge to any surface waters." ARM 17.30.715(1)(e).

The record shows that nitrogen concentration will be below 7.5 mg/L from all RIBs prior to exiting the mixing zones. AR04970-71, 78. The record similarly shows that phosphorous breakthrough time will be over 50 years due to the restrictive limits set by DEQ in the Permit. AR04971, 79. Under ARM 17.30.715(2) the record also indicates DEQ considered the elements under its discretion to find nonsignificant changes are otherwise significant due to cumulative or synergistic effects. Specifically, DEQ determined the current upgradient and site-specific levels of background pollution are found it to be .11 mg/L of nitrogen. AR04958. DEQ also considered other pollutant sources in the form of neighboring septic systems that may contribute to additional pollution between the RIBS and the closest surface water. AR04973. After consideration DEQ declined to exercise this discretion.

Under the WQA, DEQ has shown as a matter of the law that the record supports its determination that the pollutant discharge limits set by the Permit are nonsignificant.

b. MEPA

Plaintiff's second cause of action challenges DEQ's adherence to the Montana Environmental Policy Act, Title 75, Chapter 1 ("MEPA"). They argue two issues; First, that DEQ failed to take the required hard look at the overall consequences of the LCWSD project on the geology, water quality, and aquatic life. Second, that the consideration of the LCWSD project in two distinct phases was an unlawful segmentation.

i. Hard Look

MEPA requires state agencies to prepare an EIS on "major actions of state government significantly affecting the quality of the human environment." Mont. Code Ann. § 75-1-201(1)(b)(iv). To implement § 75-1-201, MCA, the "agency shall determine the significance of the impacts associated with a proposed action. This determination is the basis of the agency's decision concerning the need to prepare and EIS and refers to the agency's evaluation of individual and cumulative impacts in their EAs or EISs." ARM 17.4.608(1). "An impact may be adverse, beneficial, or both. If none of the adverse effects of the impact are significant, an EIS is not required. An EIS is required if an impact has a significant adverse effect, even if the agency believes that the effect on balance will be beneficial." ARM 17.4.608(s).

Administrative Rule 17.4.607(3) governs when the DEQ should prepare an EA:

(a) the action is not excluded under (5) of this rule and it is not clear without preparation of an EA whether the proposed action is a major one significantly affecting the quality of the human environment;

(b) the action is not excluded under (5) of this rule and although an EIS is not warranted, the agency has not otherwise implemented the interdisciplinary analysis and public review purposes listed in (2)(a) and (d) of this rule through a similar planning and decision-making process; or

(c) statutory requirements do not allow sufficient time for the agency to prepare an EIS.

An EA must contain “an evaluation of the impacts, including cumulative and secondary impacts, on the physical environment” that includes a “detailed analysis of topics and impacts that are potentially significant, including, where appropriate: terrestrial and aquatic life and habitats; water quality, quantity, and distribution; geology; soil quality, stability, and moisture; vegetation cover, quantity and quality; aesthetics; air quality; unique, endangered, fragile, or limited environmental resources; historical and archaeological sites; and demands on environmental resources of land, water, air and energy[.]” ARM 17-4-609(d).

Courts have determined that MEPA requires an agency take a “hard look” at a project’s environmental impacts. *Ravalli County Fish & Game Assn., v. Montana Dept. of State Lands*, 273 Mont. 371, 377, 903 P.2d 1362 (1995). Under MEPA, the agency is obligated to evaluate the direct, secondary, and cumulative impacts of the permitted action. *Bitterrooters*, ¶¶ 33-34. The standard of review of an agency decision is narrow: the agency is afforded “great deference,” a court does “not substitute [its] own judgment,” the “focus [is] on the decision-making process itself, not the outcome.” *MEIC*, ¶ 31 (citing *Mont. Trout Unlimited. Mont. Dept. of Env’tl. Quality*, 2024 MT 36, ¶ 12, 415 Mont. 214, 544 P.3d 163.). The reviewing court must “review the record to determine whether the agency considered relevant data and articulated a reasoned decision.” *Id.* (citing *Mont. Trout Unlimited*, ¶ 93).

Plaintiffs have raised numerous issues relevant to MEPA and all boil down to a claim that the EA was insufficient and that DEQ should have required an EIS. To prevail, Plaintiffs must show as a matter of law that DEQ failed to identify all impacts of the discharge Permit were identified, failed to show how they will be mitigated below significance, and that no significant impacts will occur.

Plaintiffs present their arguments in support in a similar manner as their attack on DEQ’s adherence to the WQA by beginning with a claim that DEQ did not address the secondary or cumulative impacts. For instance, Plaintiffs have claimed DEQ’s fact sheet concludes that “nitrogen discharges will reach background levels of 0.11 mg/L before entering surface water” but does not “evaluate other nutrient loads to other same waterway by type, and location over time. They also claim DEQ did not analyze how “a new 200,000 gpd discharge of nutrient pollutants could” impact Ashley Creek or Flathead Lake, “or how the discharge was rationally congruent with the assumptions underlying [DEQ’s] own TMDLs for those waters.” Plaintiffs also point to DEQ’s determination that the LCWSD project will ultimately result in a net reduction in the

watershed in general. Plaintiffs claim this is “the only EA mention of potential water resource impact” and characterize it as a “conclusory statement.” Doc. 40, p. 21; Doc. 43, p. 16.

First, the claim that the EA does not evaluate other nutrient loads to the same waterway is patently false. The record clearly demonstrates DEQ determined the ambient nutrient load of the Delta Aquifer. AR04958. DEQ explained that this quantified the degree of upgradient pollution. AR04973. The record also identified other sources of potential pollution in the form of septic systems between each RIB and the closest surface water. *Id.* There are no other future discharges identified for DEQ to consider, and Plaintiffs have not identified any. The additional sources Plaintiffs do identify are relevant to the surface waters. However, as the Court has previously noted, the record predicts no detectable pollutants will reach these waters. Therefore, there is no cumulative or secondary effect to consider.

Plaintiff’s contention that DEQ’s claim that the overall watershed quality will be improved has merit. DEQ determined that the LCWSD project will ultimately result in a net pollution reduction in the watershed in general. Plaintiffs claim this is “the only EA mention of potential water resource impact” and characterize it as a “conclusory statement.” Doc. 40, p. 21; Doc. 43, p. 16. The fact sheet indicates that “wastewater and septage to be received and treated by the new facility is wastewater that already exists in the Flathead Lake watershed and is currently treated to much lower standards.” AR05192. There does not appear to be any analysis to support this conclusion in the record. Although it makes conceptual sense, Plaintiffs identify this as a conclusion without analysis and thus arbitrary. See *MEIC*, ¶ 40; *Mont. Wildlife Fed’n v. Mont. Bd. Of Oil & Gas Conservation*, 2012 MT 128, ¶ 43, 365 Mont. 232, 280 p.3d 877.

Conceptually, DEQ’s claim makes sense. However, Plaintiffs are correct that there is insufficient analysis in the record to support this position. Despite this, when one considers the entirety of Section 2.2 of the Fact Sheet the record indicates DEQ, overall, took a hard look at the cumulative effects of the permitted action. If the Court were to completely ignore this determination the EA can stand on its own, therefore it is not sufficient to demonstrate DEQ failed to take a hard look.

Plaintiffs also claim the EA is insufficient in that it failed to consider aquatic life and threatened species. Specifically, Plaintiffs reference numerous concerns raised for the bull trout habitat in Ashley Creek and Flathead Lake. They claim the EA “categorically dismiss[ed] any potential impacts to aquatic life and habitat.”

The record reveals DEQ did consider aquatic species and address public concerns. For instance, DEQ responded to CSKT concerns regarding fishing rights in ancestral territory and explained “[the] permit . . . contains effluent limits and conditions what will protect tribal water . . . including the protection of fish species[.]” AR04922. The record also reveals that the permit set effluent limits that will result in non-detectable pollution well before the discharge is transported to surface waters. This is not a case of DEQ “categorically dismissing” the impact to aquatic life. It is abundantly clear that DEQ explained that aquatic life will not be harmed because the record demonstrates the permitted discharge will not be detectable by the time it transits to surface water.

ii. Segmentation

Plaintiffs argue that by considering the instant permit separately from phase 2, DEQ failed to determine the full breadth of significance and alternatives under MEPA. They argue that DEQ had exclusive authority over all phases of the project and that both phases should be reviewed together to conduct an alternatives analysis of different treatment technologies, related economic costs, and whether the discharge, effluent limits, facility scale, and location would significantly impact human health and the environment. They conclude that this action circumvents “MEPA’s ‘essential purpose’ of ‘informing the agency and the interested public of environmental impacts that will likely result from agency actions or decisions.’” Doc 40. P. 24-25.

DEQ argues in response that review of each phase separately did not diminish, minimize, or hide combined impacts of phase 2. They also argue that phase 2 was not within the scope of phase 1 review because there were two distinct actions each requiring their own review and neither was under consideration at the same time.

In support, Plaintiffs refer to *Bitterroots* and *Park Cnty*. Neither case specifically hits on segmentation, however each is helpful in ascertaining the extent of which a government agency should include known or potential follow-on projects in a MEPA analysis. *Bitterrooters* affirmatively rejects the “but for” test and limited the scope of environmental review to the subjects that the reviewing agency has the authority to control. *Bitterrooters*, ¶¶ 24-25, 35. There is no dispute that both phases 1 and 2 are well within DEQ’s authority.

Park Cnty is slightly more on point and of greater significance. The ultimate issue before the Court was “whether, by granting a permit allowing exploration that could produce information potentially leading, in turn, to a full-scale mine on federal lands, DEQ has taken an agency action significantly affecting the environmental attributes of those federal lands.” *Park Cnty*, ¶ 31. The Court concluded that “the critical point by which the required environmental review must have occurred is the ‘go/no go’ juncture, beyond which lies an ‘irretrievable commitment of resources’ or ‘successive steps set into irreversible motion.’” *Id.* ¶ 32 (citing *North Fork Preservation Ass’n v. Dept. of State Lands*, 238 Mont. 451 461-62, 778 P.2d 862, 868-69 (1989)).

Segmentation is dealt with more directly in federal court challenges to NEPA. The Supreme Court reasoned that “a comprehensive impact statement may be necessary in some cases . . . when several proposals . . . [that] have cumulative or synergistic environmental impact upon a region are pending concurrently before an agency, their environmental consequences must be considered together. Only through comprehensive consideration of pending proposals can the agency evaluate different courses of action. *Kleppe v. Sierra Club*, 427 U.S. 390, 409 (1976). The 5th Circuit provided that “segmentation is improper when the segmented project ‘has no independent justification, no life of its own, or is simply illogical when viewed in isolation.’” *Save Barton Creek Ass’n v. Fed. Highway Admin.*, 950 F.2d 1129, 1139 (5th Cir. 1992) (quoting *Macht v. Skinner*, 715 F. Supp. 1131, 1135 (D. D.C. 1989)). A state improperly segments a project when it seeks to escape the reach of NEPA. *Id.*; *Blue Mts. Biodiversity Project v. Blackwood*, 161 F.3d 1208 (1998) (finding the USFS failed to consider the cumulative effects of five connected but independently approved logging projects).

This is clearly not a segmentation issue. Approving the permit under phase 1 places absolutely no obligations on any party. There is no irretrievable commitment of resources, and nothing was set into irreversible motion by granting the permit for phase 1.

This is also not a situation where the project was segmented into multiple phases to escape cumulative analysis. Here, both phases will have undergone environmental review under their own merits. Each review requires such analysis. There is no risk that the EA is failing to consider the cumulative effects of both phases because they have the same cumulative effect. The cumulative effect of both is that up to 200,000 gpd with a concentration not to exceed those set by section I, paragraph B of the Permit. AR05216. Neither project independently adds to this, thus there is no hiding the ball.

Finally, there is an independent justification for considering this project in multiple phases. As DEQ has articulated, phase 1 developed the discharge limits. Only upon the approval of phase 1 was LCWSD able to take those authorized discharge limits and engineer the mechanisms required to treat the discharge in accordance with phase 1.

Plaintiff's briefs attempt to imply that by seeking approval in multiple parts LCWSD is essentially evading full secondary and cumulative impact review because "the record demonstrates the applicant has already determined the scale of the facility needed - 900,000 gpd, a volume of treatment exponentially larger than the Permit's 200,000 gpd." Doc. 40, p. 24. First, Plaintiffs make two citations to the record to support this claim, neither of which accurately reflects the statement that the scale needed is 900,000 gpd. AR0566 cites the initial fact sheet and states only that the treatment facility in phase 2 will be designed to handle 900,000 gpd. It does not state that 900,000 is the predetermined amount of effluent that will be treated at some nebulous point in the future. AR02001 cites Plaintiff's public comment and repeats the same. It refers to the design parameters for the treatment facility, not any confirmed plan to process that amount of effluent. Second, if the LCWSD seeks to discharge more than 200,000 gpd, even up to the system capacity of 900,000 gpd, it will need a separate environmental review that will consider what the actual effects of that additional discharge will be. Approval of the 200,000 gpd permit is not the "go no-go" point for the project's future expansion beyond 200,000 gpd.

Plaintiffs have failed to establish as a matter of law that DEQ has violated MEPA.

MEPA requires state agencies to prepare a detailed environmental impact statement (EIS) on "major actions of state government significantly affecting the quality of the human environment." § 75-1-201(1)(b)(iv), MCA; ARM 17.4.607. An environmental assessment (EA) may be used to evaluate whether an agency must perform further environmental analysis. See ARM 17.4.607(2); see also *Mont. Wildlife Fed'n.*, 2012 MT at ¶ 44; 365 Mont. at 249; 280 P.3d at 889 (2012). An EA 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. ARM 17.4.609(3)(d) and (e).

For DEQ to prevail on summary judgment they must demonstrate that the agency took a hard look at the initial evaluation of the EA and evaluated all known direct, secondary, and cumulative impacts to be affected by the proposed action.

Plaintiffs do not question whether direct impacts were evaluated, in fact at least some of their argument rests on the position that they only evaluated the direct impacts. The record confirms that nitrate and phosphorus levels downgradient of the RIBS are expected to meet quality standards and protect beneficial uses. AR05190.

Under the MEPA model rules adopted by DEQ, “secondary impact” means “a further impact to the human environment that may be stimulated or induced by or otherwise result from a direct impact of the action.” See ARM 17.4.603(18). DEQ found no significant secondary impacts, largely due to the low predicted concentration of pollutants after crossing the mixing zone and the prediction that no detectable levels would be present prior to reaching surface waters. AR05190.

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. The effluent limits in the Permit were calculated using a mass-balance equation that considered the assimilative capacity of the receiving aquifer. This calculation factored in the cumulative impact of upgradient discharges and other sources of nutrient pollution. This includes neighboring septic systems that lie between the RIBs and surface water. AR05191. Although this Court determined DEQ’s finding in the final EA that this new source of total nitrogen will be a net reduction in total nitrogen in the watershed due to improved treatment conditions to lack support in the record, the EA still stands up to MEPA scrutiny absent the statement. AR05192. At the time of the environmental review, there were no future actions that would impact the Permit. AR05191. The fate of phase 2 review does not add to the cumulative impact of the Permit because it will not address any additional discharge beyond the limits of the Permit.

DEQ has established as a matter of law that the EA adequately evaluated the known direct, secondary, and cumulative impacts to be affected by the Permit. These determinations all concluded that the impacts were minor or negligible to the physical environment and on the human population in the affected area.

IV. CONCLUSION ON SUMMARY JUDGMENT

The record affirmatively demonstrates the environmental review appropriately. DEQ took a hard look at the direct, secondary, and cumulative impacts of the Permit and came to a reasoned determination that there was no significant impact on the physical environment and on the human population in the area to be affected by the proposed action. In this case, the record evidence clearly established that the area to be affected is limited to the Delta Aquifer because downgradient pollution would be below significant values prior to exiting the mixing zone and be non-detectable well before it transits to surface waters. For that reason, DEQ appropriately limited the scope of its secondary, cumulative, and synergistic impacts to areas that will be subjected to the discharged pollutant, which is not surface waters.

V. ORDER ON PLAINTIFF’S MOTION TO SUPPLEMENT THE COMPLAINT

Simultaneous to these proceedings, LCWSD had begun the pursuit of the aforementioned phase 2. On June 15, 2026, DEQ issued the final EA approving the design of the treatment plant and associated infrastructure. All parties completed briefing for the instant motions for summary

judgment by June 19, 2026. On July 17, 2026, Plaintiffs filed a motion to supplement their complaint to add a new party and to add additional factual foundation and allegations to their third claim for relief (MEPA). The motion was opposed.

Having considered the briefs, the Court declines to grant Plaintiff's request. First, this Court does not see the merits of judicial efficiency that Plaintiffs have argued. Although Plaintiffs claim this Court's substantial expertise regarding the record favors allowing a supplemental Complaint, phase 2 contains an entirely different administrative record that must be considered on its own merits separate from phase 1. Also, the timing, by no fault of Plaintiffs, is nonetheless terrible. The Court was informed of the filing on the very morning of oral argument, and all claims were fully briefed. Finally, as this Order on summary judgment likely foreshadows, it is this Court's opinion that these are two separate issues, better suited as two independent challenges under MEPA.

ELECTRONICALLY DATED AND SIGNED