

SYNOPSIS OF THE CASE¹**2011 MT 265, DA 11-0048: Jefferson County v. Department of Environmental Quality**

In this case regarding the State permitting process for the proposed Mountain States Transmission Intertie, the Montana Supreme Court has reversed a decision of a district court that had prevented the Department of Environmental Quality from completing a draft Environmental Impact Statement without further consultation with Jefferson County.

The Montana Department of Environmental Quality (DEQ) and NorthWestern Energy (NorthWestern) appealed the Fifth Judicial District Court's judgment in favor of Jefferson County.

The Montana Supreme Court held DEQ's statutory obligation under § 75-1-201(1)(c), MCA, to "consult with" the County did not require a ministerial task that could support the County's request for a writ of mandamus. Because DEQ has discretion regarding the consultation requirement, the statutory language did not impose a clear legal duty and mandamus was not appropriate.

During its environmental review process, DEQ extended, and Jefferson County accepted, invitations to attend public and governmental scoping meetings. DEQ reviewed comments and recommendations submitted by Jefferson County and verified the MSTI would comply with the County's zoning and land use plans. DEQ continued correspondence with Jefferson County Commissioners about the MSTI via e-mail, telephone conference, and in-person meetings. The Court determined DEQ did not have a clear statutory obligation to do more at this juncture in the process.

The Court held that Jefferson County has alternative adequate legal remedies under MEPA and the Major Facilities Siting Act once DEQ renders a final agency decision. Under the 2009 version of § 75-1-201(6), MCA, any legal action by the County to dispute MEPA compliance must await final outcome of the process. Jefferson County's suit was premature as DEQ has not yet released a Draft EIS or a Final EIS, or issued or denied a permit. Accordingly, an injunction halting the environmental review process was inappropriate. The Court reversed the District Court and remanded with instructions to dismiss the action without prejudice.

¹ This synopsis has been prepared for the convenience of the reader. It constitutes no part of the Opinion of the Court and may not be cited as precedent.