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NEWS FROM THE MONTANA ENVIRONMENTAL INFORMATION CENTER



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Mid-Session, Page 6**

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Another Coal-Fired Plant Bites the Dust

by Anne Hedges

In early February 2015, PPL Montana announced it would permanently close the 150-megawatt coal-fired Corette Power plant in Billings, Montana. The plant is nearly 50 years old, and it joins a growing list of over 150 old coal-fired plants nationwide that are slated for closure. The principal contributing factors are increased competition from cheaper natural gas

and renewable resources, and laws requiring these old plants to modernize and finally control known harmful air

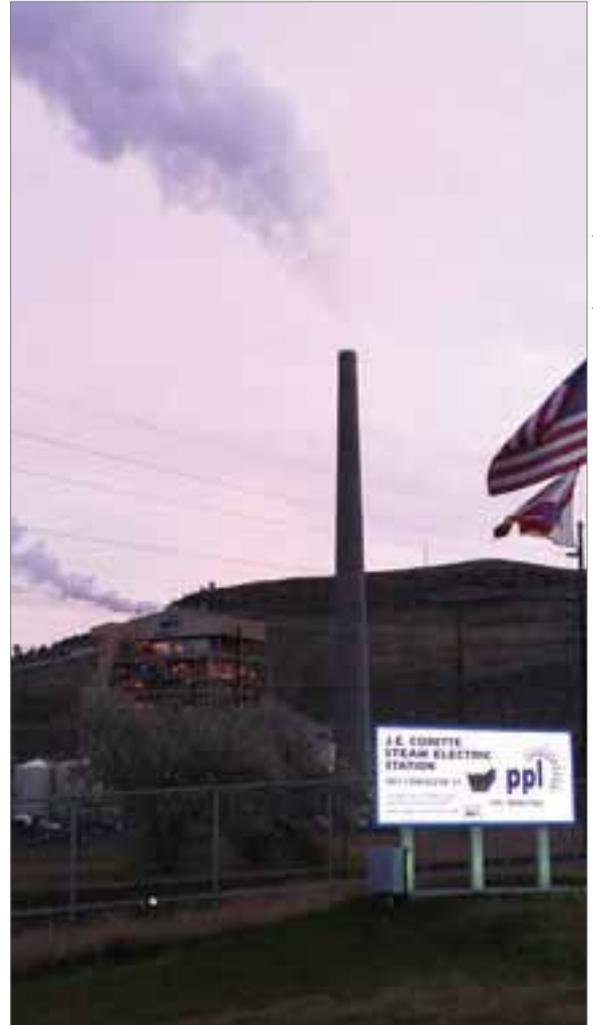
pollutants such as toxic mercury and sulfur dioxide.

In November 2013, PPL Montana had announced that it would mothball the plant. That announcement was a political gimmick, as it was made one month prior to the re-election of U.S. Sen. Jon Tester and

the election of Gov. Steve Bullock. The announcement was unsuccessfully used in an attempt to defeat them through a barrage of dark money-funded mailings in the final month of the campaign.

The reality is that the Corette plant is old.

And it's the biggest polluter in the Yellowstone Valley. Each year the plant emitted about 1,800 tons of sulfur dioxide, 1,000 tons of nitrogen oxides, 1 million tons of greenhouse gases,



The Corette coal-fired power plant.

“People in Billings will breathe easier – literally – after the plant goes offline for the final time in April 2015. That’s a good thing for Montana, for people’s health, and for the global climate.”

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Cover Photo:
The Montana
Capitol rotunda.
Photo by MEIC.

and over 180,000 pounds of toxic chemicals to the air, land, and water. The plant does not have modern pollution controls, and it has caused violations of health-based air pollution standards for sulfur dioxide in recent years.

People in Billings will breathe easier – literally – after the plant goes offline for the final time in April 2015. That’s a good thing for Montana, for people’s health, and for the global climate. 🌱

DEQ Proposes to Weaken Water Quality Standards for Otter Creek

by Anne Hedges

On February 27, 2015, the Montana Department of Environmental Quality (DEQ) presented a proposed regulation to the Water Pollution Control Advisory Committee (WPCAC). DEQ proposed weakening the existing water quality standards on Otter Creek, the stream that runs through Arch Coal's proposed Otter Creek mine. Otter Creek is a tributary of the Tongue River, a high quality waterbody critical for irrigation in southeastern Montana. Fortunately, after hearing testimony from MEIC, Tongue River Valley irrigators and their attorney, DEQ, and Arch Coal's attorney, WPCAC did not endorse DEQ moving forward with the regulation.

In 2003 the Montana Board of Environmental Review (BER) adopted water quality standards for certain southeastern Montana rivers and their tributaries. Those standards limited the amount of salts in the water. High levels of salts, as measured by EC and SAR (electrical conductivity, and sodium adsorption ratio), already naturally existed in many waterways in the area. BER set the standard after a long and exhaustive process that was intended to protect irrigated agriculture from an expected boom in coal bed methane development. The coal bed methane industry sued the State after the standards were adopted, because it claimed they were too restrictive (i.e., too protective of water quality). DEQ defended BER's decision, and a State district court eventually upheld the new standards.

Now Arch Coal, as part of its development of the proposed Otter Creek mine, wants to discharge salty water into the Otter Creek drainage. It needs weaker water quality standards in order to do so. Arch Coal must obtain a water pollution

discharge permit from DEQ prior to opening the mine. The problem is that Otter Creek is already high in salts and most of that salt is naturally occurring. These high salt levels already make it difficult for irrigators. They must be extremely cautious about the amount of water they use to irrigate their crops at certain times of the year, or they risk permanent damage to their soils. Currently they limit their use of water to times when flows are high enough to dilute the salts. If Arch Coal is allowed to increase the salts flowing into Otter Creek, it could eliminate the ability of downstream irrigators to use the water.

The 25,000 acres of irrigated agriculture along the 190-mile length of the Tongue River in Montana produce about \$22 million in revenue each year, according to a recent study by Montana State University. This creates a conundrum for DEQ. If it weakens the standard for salts it risks the viability of irrigated agriculture in the area. If it doesn't weaken the standard, Arch Coal will have to spend more money to treat the water pollution from the mine, in order to discharge water that

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The Otter Creek Valley. Photo by Kestrel Aerial Services, Inc.



Who Will Decide Colstrip's Future?

by Anne Hedges

The behemoth Colstrip coal-fired power plant, 100 miles east of Billings, Montana, sends most of its electricity to utilities in Washington and Oregon. Only one regulated utility in Montana has a share; NorthWestern Energy owns 30% of Unit 4, or about 217 megawatts. PPL Montana owns portions of Units 1, 2, and 3, but it is not regulated, so it sells its share of Colstrip electricity to the highest bidder.

In both Washington and Oregon, there is a growing concern among utilities, regulators, and the public about the use and financial consequences of electricity generated by burning coal. Both states, rightfully alarmed about climate change, are considering legislation to minimize their reliance on coal.

Coal burning accounts for about 25% of the U.S. greenhouse gas pollution, which is a major contributor to climate change. Climate change is already costing Oregon and Washington dearly and the price tag is climbing. For example, recent studies have shown that

climate change-induced ocean acidification will wreak havoc on the shellfish industry. Ocean acidification in the Pacific Northwest has already cost at least \$110 million and affected 3,200 jobs, and the problem is getting worse. Increasing temperatures are also causing more devastating fires across the West, including in these two states. Last Summer brought the largest fire in Washington history, and about 1.3 million acres burned in Washington and Oregon combined. The total cost of these fires was over \$280 million in Oregon and \$180 million in Washington. These are just two of many reasons these states feel compelled to do something about climate change.

As a result of these concerns, the one operating coal plant in each state is slated for closure in the coming years. When those two plants close, both states will still be using coal-generated electricity, but that electricity will be coming from out-of-state plants such as Colstrip. In industry jargon, this is often referred to as "coal-by-wire." In an effort to

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The Colstrip power plant. Photo by Anne Hedges.



MEIC to Appeal Golden Sunlight Mine Ruling

by Jim Jensen

MEIC will be appealing to the Montana Supreme Court a recent State district court ruling allowing a new open pit at the Golden Sunlight mine complex near Whitehall to be only partially reclaimed.

The district court ruling is the latest in MEIC's 25-year long battle to require that the Montana Constitution's reclamation requirement be enforced. Article IX, section 2, of the Constitution says: "All lands disturbed by the taking of natural resources shall be reclaimed." Period. End of sentence.

MEIC's previous court cases involving Golden Sunlight have been over the massive 2,000-foot deep Mineral Hill pit. The current case involves only the new North Area pit. This pit is projected to be 575 feet deep and cover 50 acres.

The Montana Department of Environmental Quality (DEQ) analyzed the option of backfilling the pit and found that there were significant benefits to doing so. However, the agency ultimately adopted another option that simply leaves the gaping hole in the ground. And that is the rub.

DEQ is only requiring 30 of the 50 acres to be reclaimed (re-contoured and re-vegetated) and is allowing the balance to simply be eroded and weathered by natural forces, a process it and the company say will result in an undetermined amount of possible bat and raptor habitat. And that, Boulder district judge Loren Tucker ruled, is sufficient to constitute reclamation.

So what about that little word in the Constitution: "all." Remember, it says all lands shall be reclaimed. Not just 3/5th of the lands. Thus, the question before the Supreme Court will be does "all" mean something other than "all." 

The Golden Sunlight Mine. Photo by Wilburforce.



2015 Legislature at Mid-Session

by Anne Hedges, Kyla Maki, and Derf Johnson

The 2015 Montana legislative session is at the halfway point, and things are proceeding as one might have predicted ... unfortunately.

The fossil fuel industry is certainly alive and well at the Capitol. Coal and other fossil fuel industry representatives are busy convincing the legislature to fight their battles

“There’s a long way to go until adjournment. MEIC retains the hope that sanity, logic, and a love for a clean and healthful environment may prevail, particularly in the Governor’s office.”

and to have the State pick up the tab. They seem to be hoping that the legislature will save them from international markets, the reality of climate change,

and Montana’s water quality laws. Sadly, with very few exceptions, their expectations are being realized.

For example, fossil fuel lobbyists such as NorthWestern Energy’s John Fitzpatrick have successfully bullied the legislature into defeating all proposals to encourage more renewable energy. Other lobbyists have sweet-talked the legislature into giving tax breaks to coal companies, capping the Permanent Coal Tax Trust Fund, weakening water quality standards so Arch Coal’s proposed Otter Creek mine can proceed ... and the list goes on.

Even though the news is generally bleak, there are a few rays of sunshine. A bill initiated by MEIC to make available to the public information regarding pipeline safety and crossings of navigable waters sailed through the

Senate. And the Senate tabled the worst of the “Arch Coal” bills. House committees also refused to pass most of the wackier bills (see the last section of this Update).

There’s a long way to go until adjournment. MEIC retains the hope that sanity, logic, and a love for a clean and healthful environment may prevail, particularly in the Governor’s Office.

Smith River

SB 218 (Sen. Mary Sheehy Moe, *D-Great Falls*) would have increased by 50% the bond that hardrock mining companies must post, if they planned to mine in an ore body that contained sulfide mineralization, such as the proposed Smith River copper mine. Sulfide mineralization is the precursor to acid mine drainage, a chemical and physical process that has led to the pollution of many of Montana’s rivers and streams. Montana has a sad legacy of under-bonded mines that have required taxpayer dollars to fully reclaim the disturbed land and to treat the contaminated water. This bill would have protected taxpayers from careless or ill-advised mining activities. The bill was tabled in the Senate Natural Resources Committee.



Smith River. Photo by William Rahr.

Private Property Rights

One of the most dangerous ideas of the session is still alive and well.

SB 286 (Sen. Cary Smith, *R-Billings*) would prohibit a State agency from adopting a regulation if it burdened private property, or the enjoyment of private property, in any way. This bill has no exception for government regulations that protect public health, safety, or neighboring properties' rights or values, and it has no exceptions for rules that are required by federal law. MEIC and the Montana Department of Transportation were the only opponents. The bill passed the Senate on a 29 to 21 vote.

Hopefully, more opponents will testify in the House.

Clean Energy

While the legislature has easily passed bills to prop up and give handouts to fossil fuel industries (see the next two sections of this Update), it has refused to pass bills – even bills with bipartisan support – that would have helped local, clean energy resources, particularly rooftop and community solar installations. A number of these bills would have expanded and updated Montana's net metering law. Unfortunately, legislators in the House and Senate chose to side with Montana's largest utility, NorthWestern Energy, over dozens of small businesses and numerous individuals who came to testify in support of local clean energy options.

Montana's net metering law has not been changed since it was adopted in 1999. Net metering allows individuals and businesses that own renewable energy systems to receive credit on their electricity bills for the

amount of energy their systems produce.

HB 188 (Rep. Art Wittich, *R-Bozeman*) would have allowed the carry-over of unused renewable energy credits to a subsequent year. Currently, the credits are lost after twelve months. The bill was tabled in the House Federal Relations, Energy, and Telecommunications Committee.

HB 192 (Rep. Art Wittich, *R-Bozeman*) would have increased the cap on net-metered systems to 1 megawatt (from 50 kilowatts). The bill was also tabled in the House Federal Relations, Energy, and Telecommunications Committee.

HB 294 (Rep. Bridget Smith, *D-Wolf Point*) would have expanded the requirement to offer net metering to all public utilities. The current law only applies to NorthWestern Energy. The bill was withdrawn without a hearing.

SB 134 (Sen. Jennifer Fielder, *R-Thompson*)

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“While the legislature has easily passed bills to prop up and give handouts to fossil fuel industries ... it has refused to pass bills – even bills with bipartisan support – that would have helped local, clean energy resources”

Solar panels being installed on a Helena home. Photo by MEIC.



2015 Legislature at Mid-Session *(continued)*



Sen. Mike Phillips,
D-Bozeman.

Falls) would have allowed properties with multiple electricity meters to derive benefit on all the accounts from the installation of one renewable energy system. The bill was tabled in the Senate Energy and Telecommunications Committee.

SB 182 (Sen. Mike Phillips, *D-Bozeman*) would have allowed individuals and businesses to invest in and receive credit on their electricity bill for a neighborhood or community renewable energy system. The bill was also tabled in the Senate Energy and Telecommunications Committee.

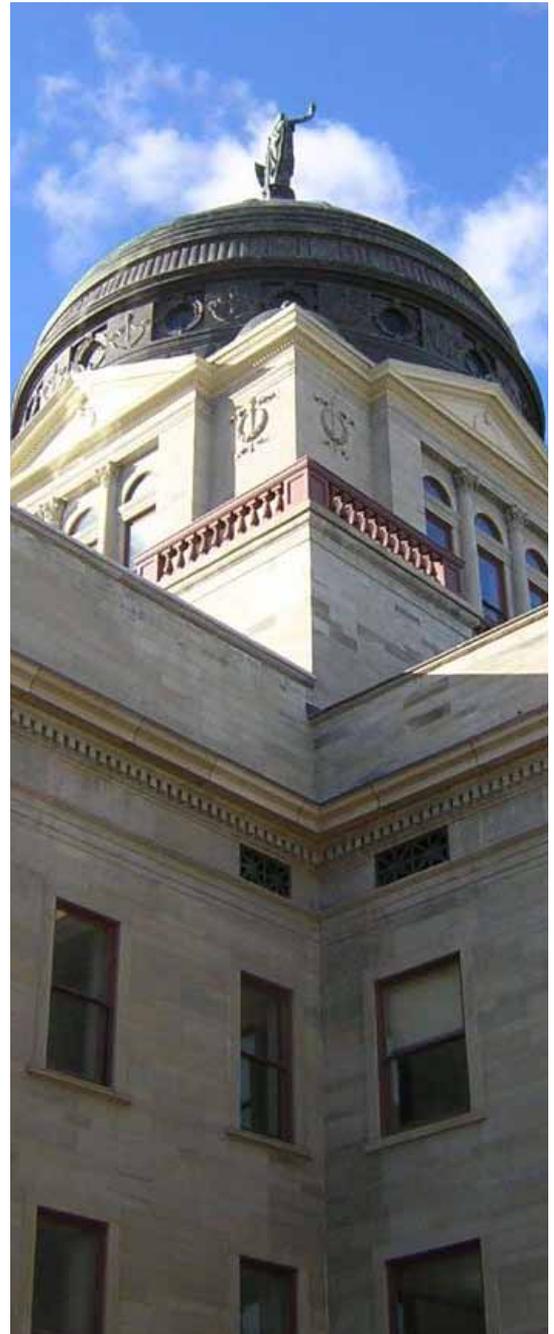
Meanwhile, a wholesale rollback of Montana’s Renewable Energy Standard, and the elimination of clean energy incentives, are sailing through the legislature.

SB 114 (Sen. Debbie Barrett, *R-Dillon*) would allow the electricity generated at all existing large-scale hydropower dams to count toward a utility’s obligation under Montana’s

Renewable Energy Standard. This bill would eliminate all incentive for such utilities to invest in or build new renewable energy projects. For example, NorthWestern Energy could suddenly use the hundreds of megawatts of existing hydropower it now owns to count towards its 15% renewable energy requirement. An equivalent bill has been introduced in the last two legislative sessions, has been passed both times, and has been vetoed both times by the governor. SB 114 passed the Senate by a vote

of 34 to 16, and the House by a vote of 55 to 45, and is on its way to the governor.

SB 171 (Sen. Bruce Tutvedt, *R-Kalispell*) would eliminate certain individual income tax credits, including the energy efficiency and renewable energy tax credits. These credits are



The Montana Capitol Building. Photo by MEIC.

“Meanwhile, a wholesale rollback of Montana’s Renewable Energy Standard, and the elimination of clean energy incentives, is sailing through the legislature.”

an important incentive to encourage individuals to purchase energy saving devices and materials, and small-scale solar and wind systems. The credits help Montanans save energy, and the state to develop a more distributed renewable energy system. A version of this bill has also passed in the last two legislative sessions and has been vetoed by the governor both times. The bill passed the Senate by a vote of 30 to 18.

In the midst of the bills that undermine clean energy, there are a couple of bright spots.

HB 464 (Rep. Zach Brown, *D-Bozeman*) would establish high performance building standards for existing State agency and Montana university system buildings. It would allow those entities to annually transfer budgeted utility funds to a special revenue account to pay for energy improvements in existing buildings. The bill is awaiting action in the House State Administration Committee.

SB 249 (Sen. Jill Cohenour, *D-East Helena*)

would improve Montana's energy performance contracting law. Energy performance contracting allows State and local governments to contract with energy service companies to make energy efficiency upgrades and improvements to State and local government buildings, and to pay for those upgrades with the future energy savings. This bill would provide governments with the authority to better evaluate whether the guaranteed savings are actually occurring. **SB 249** has passed the Senate and had a hearing in House Federal Relation, Energy, and Telecommunications Committee on March 6th.

Fossil Fuel Subsidies

Three bills would cost the State millions of dollars a year, and provide unwarranted subsidies to the coal industry.

SB 353 (Sen. Rick Ripley, *R-Wolf Creek*) is a constitutional referendum that would divert coal tax revenue away from the Permanent Coal Tax Trust Fund and put it into a building program, thereby

denying future generations the benefits of coal that is extracted today. The bill would also make it easier for future legislatures to divert coal tax revenue from the Trust by requiring a lesser vote of the

legislature than at present. The bill needs 100 votes between the House and the Senate to be put on the ballot. The Senate passed the bill with 30 votes. That means the bill must receive at least 70 votes in the House to succeed. That would require, for example, support from every House Republican and eleven House Democrats.

HB 156 (Rep. Mike Miller, *R-Helmville*) would exempt from property taxation most new pollution control and carbon sequestration

"SB 353 ... is a constitutional referendum that would divert coal tax revenue away from the Permanent Coal Tax Trust Fund and put it into a building program, thereby denying future generations the benefits of coal that is extracted today."

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Rep. Zach Brown, D-Bozeman.

2015 Legislature at Mid-Session *(continued)*

equipment. It would cost the State hundreds of thousands of dollars a year, and local governments and schools four times that amount. The bill would benefit Denbury Resources, a company that extracts carbon dioxide from deep underground in

“The coal industry arranged for [HB 244] to be introduced outside of the normal appropriations process. The bill would double the attorney general’s entire litigation budget.”

order to pump it back underground elsewhere in order to extract more carbon in the form of oil. The bill passed 2nd reading in the House by a vote of 83 to 17, but was re-referred to the House Appropriations Committee, where it had a hearing on March 12th.

HB 244 (Rep. Jeff Essmann, *R-Billings*) would create a \$1 million per year slush fund for the Montana attorney general to use for “litigation to improve and protect the state’s access to and growth in domestic and international markets

for its products and natural resources.” The unstated purpose behind the bill is to allow the attorney general to sue Washington and Oregon over coal export terminals, if those states deny the terminals permits. The coal industry arranged for this bill to be introduced outside of the normal appropriations process. The bill would double the attorney general’s entire litigation budget. If coal companies believe there is a legal basis for suing Oregon and

Senator Ankney’s Retribution Bill

Sen. Duane Ankney (*R-Colstrip*) will be proposing a bill to punish Washington and Oregon for even considering ending their dependence on Colstrip electricity. The bill, known at this stage as **LC 979**, would require any owner of Colstrip that wants to close any portion of the plant at any time in the future to pay outlandish impact fees.

MEIC strongly supports the creation of a fund to help the Colstrip community and workers with the inevitable transition away from coal-based electricity, and also supports requiring the current owners of Colstrip to pay for all cleanup of the existing contamination at the plant. However, it is extremely bad public policy to force a business to stay open if it does not think it is economic to do so. The State should not substitute its judgment for that of a business owner. That smacks of socialism at the very least, and starts the State down a very “slippery slope” at best.



The Montana Senate. Photo courtesy of Chad Harder.

Washington, they should do so themselves, and not force Montanans to pay their way. The bill passed the House on a 53 to 45 vote, and had a hearing in the Senate Finance and Claims Committee on March 12th.

HB 421 (Rep. Tom Berry, *R-Roundup*) would extend the “coal washing” tax credit for eight more years. The sole beneficiary would be the company owning the Signal Peak coal mine in the Bull Mountains, which uses that coal processing method because it increases the market value of the coal. This bill would cost the State over \$1.5 million per year, and local governments about \$400,000 per year, in lost revenue. The bill is awaiting a vote on the House floor.

Fossil Fuel Encouragement

Two resolutions that give unqualified support for coal exports, and the Keystone XL pipeline, flew through their first houses.

HJ 11 (Rep. Mike Lang, *R-Malta*) is a resolution that supports the construction of the Keystone XL pipeline. The pipeline would allow a Canadian corporation to condemn private property and ship tar sands oil to Gulf Coast refineries for possible export to Asia. Development of the tar sands has proven to be a major contributor to climate change, air and water pollution, and habitat destruction. The resolution passed the House on a 71 to 28 vote.

SJ 13 (Sen. Duane Ankney, *R-Colstrip*) is a resolution that encourages the use of coal in electricity generation and for export. It ignores the negative impacts of coal mining, transportation, and climate change. It erroneously claims that coal is reliable, affordable, and the most abundant source of energy in the U.S., when energy efficiency and renewable energy are cheaper, cleaner, and more abundant. It ignores the very real impacts of huge volumes of coal moving by train through Montana's cities and towns, and the rail congestion that already negatively affects agriculture. The resolution passed the Senate on a 37 to 13 vote, and had a hearing in the House Federal Relations, Energy, and Telecommunications Committee on March 11th.

Coal and Water Quality

A number of bills were introduced at the behest of Arch Coal to weaken water quality protections, so that its proposed Otter Creek coal mine could pollute water in a manner that would be harmful to existing irrigators. The good news is that the worst bill was defeated,

and some of the other bills were amended to be less offensive.

The worst bill, **SB 159** (Sen. Duane Ankney, *R-Colstrip*), would have weakened existing water quality protections for tributaries of Rosebud Creek, and the Tongue, Powder, and Little Powder Rivers. Current water quality standards in southeast Montana were carefully designed to protect irrigators and other existing uses. The bill was tabled in the Senate Natural Resources Committee.

SB 112 (Sen. Duane Ankney, *R-Colstrip*), as introduced, would have forced DEQ to complete a water quality analysis on polluted waterways within an unreasonably short period of time or have to pay damages to the permit applicant. Arch Coal needs this analysis to be completed before it can receive a water pollution discharge permit for the Otter Creek mine. The bill was amended to allow companies to ask DEQ to provide an upfront timeframe for the analysis, and allow the companies to

"A number of bills were introduced at the behest of Arch Coal to weaken water quality protections, so that its proposed Otter Creek coal mine could pollute water in a manner that would be harmful to existing irrigators."

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Otter Creek. Photo by Kestrel Aerial Services, Inc.



2015 Legislature at Mid-Session *(continued)*

challenge that timeframe before the Board of Environmental Review. As amended this bill creates an unnecessary process that will waste DEQ's time. The bill, as amended, passed the Senate on a 33 to 17 vote.

SB 160 (Sen. Duane Ankney, *R-Colstrip*) would redefine natural water quality to allow more water pollution in waterbodies (including those in the vicinity of the Otter Creek mine).

The bill would define the term "natural" (i.e., baseline) to include human-caused pollution, a clear violation of federal law. The bill passed the Senate on a 36 to 14 vote.

SB 325 (Sen. Jim Keane, *D-Butte*), as introduced, was almost identical to SB 160. However, it was amended in committee to say that existing downstream users have to be protected and "natural" background levels of water quality do not include human-caused pollution. As amended, this bill would clarify existing law and help eliminate a conflict with

federal law. The bill passed the Senate on a 49 to 1 vote.

Water Quality

SB 97 (Sen. Chas Vincent, *R-Libby*), as introduced, would have made it easier for DEQ to reclassify water bodies and thereby decrease water quality protections. The bill was significantly amended to provide protections for existing and future beneficial uses when DEQ decides to reclassify a water body. The bill passed the Senate on a 48 to 1 vote, and had a hearing in the House Natural Resources Committee on March 6th.

Most troublesome at the moment is **SB 387** (Sen. Cary Smith, *R-Billings*). This bill would prohibit DEQ from fining water quality violators more than \$1,000 for paperwork violations. If a company failed to submit its required monitoring or other reports to DEQ, the failure could be considered merely a "paperwork" violation. A maximum \$1,000 fine is too minimal for failing to provide the information that is essential for DEQ to determine if a company is in compliance with the law. The bill is awaiting action in the Senate Natural Resources Committee.

"MEIC crafted one small but positive bill. SB 368 (Sen. Matthew Rosendale, R-Glendive) would require DEQ to collect information on pipelines that cross navigable waters in Montana, and to post that information on a State web site."



A hearing before the Senate Natural Resources Committee.

Oil and Gas

MEIC crafted one small but positive bill. **SB 368** (Sen. Matthew Rosendale, *R-Glendive*) would require DEQ to collect information on pipelines that cross navigable waters in Montana, and to post that information on a State web site. Doing so would enable the public to know what pipelines exist, what fuels they carry, their size, the distance of shutoff valves from the stream, etc. The bill passed the Senate on a 48 to 2 vote, and had a hearing in the House Federal Relations, Energy, and Telecommunications Committee on March 11th.

HB 243 (Rep. Mary Ann Dunwell, *D-Helena*) would have improved the public notice and

disclosure laws related to hydraulic fracturing (i.e., fracking) fluids. Currently, Montana has a weak disclosure law that allows companies to exempt themselves from disclosure if they claim the chemical formula is a trade secret. This bill would also have provided adjacent landowners with advance notice of proposed drilling activities. The bill was tabled in the House Federal Relations, Energy, and Telecommunications Committee.

HB 253 (Rep. Virginia Court, *D-Billings*) would have required the use of a closed-loop system for water used in oil and gas operations, and prohibited the use of earthen pits and ponds. While this bill was only a modest step towards protecting water quality, it was tabled in the House Federal Relations, Energy, and Telecommunications Committee.

HB 310 (Rep. Tom Jacobson, *D-Great Falls*) would place a referendum before Montana voters on whether to establish a permanent oil and gas trust fund. The fund would be modeled after the successful Permanent Coal Tax Trust Fund, and would put a portion of oil and gas taxes into a trust fund that would generate interest spendable for generations to come. The bill failed 2nd reading in the House on a 47 to 53 vote.



The Montana Capitol dome. Photo by MEIC.

SB 172 (Sen. Sharon Stewart-Peregoy, *D-Crow Agency*) would have required that prior to starting operations oil and gas developers would have to pay for baseline water testing for surface owners and adjacent landowners. This bill would have allowed property owners to identify whether their water quality was impacted by oil and gas development. The bill was tabled in the Senate Natural Resources Committee.

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A How-to Guide for Engaging at the Capitol

MEIC Legislative Bill Tracker

MEIC maintains and regularly updates a **Legislative Bill Tracker** on its web site (go to www.meic.org and look under "2015 Legislature") that includes the important legislative proposals that could impact Montana's environment. All of the bills on our bill tracker are categorized by issue, offer an easy-to-understand description, list MEIC's position. A tool for contacting key legislators is included.

Capitol Monitor and Blog

On MEIC's web site you can find an electronic version of **Capitol Monitor** (go to www.meic.org and look under "Media Center"), as well as a sign-up form to receive **Capitol Monitor** and other alerts by E-mail. MEIC also maintains a blog (go to www.meic.org and look under "Media Center") that has frequent posts about environmental and energy issues affecting Montana, and will include relevant writings on the 2015 Legislative Session.

Calendar of Events

MEIC and other environmental organizations will hold "lobby days," host legislative socials, and schedule membership meetings across the state to provide legislative updates. MEIC regularly updates its online events calendar, where you can view the details of different events (go to www.meic.org and look under "Get Involved/Attend an Event").

2015 Legislature at Mid-Session *(continued)*

SB 173 (Sen. Christine Kaufmann, *D-Helena*) would have increased bonding requirements for oil and gas wells so that, after oil and

“Montana has one of the lowest bonding levels in the nation for oil and gas wells, and this bill would have brought Montana to a level that is comparable with regional standards.”

gas development has ended, the impacted land is fully reclaimed and water quality is protected. Montana has one of the lowest bonding levels in the nation for oil and gas wells, and this bill would have brought Montana to a level that is comparable with regional standards. The bill was tabled in the Senate Natural Resources Committee.

SB 177 (Sen. Mary McNally, *D-Billings*) would have established a buffer zone prohibiting the drilling of oil and gas wells within a 1,000-foot radius of a water source or inhabitable structure, unless the landowner waived the restriction.

A floor session of the Montana Senate.

This bill would have protected surface owners and private property by preventing damage and disruption from oil and gas activities and their related water pollution. The bill was tabled in the Senate Natural Resources Committee.

SB 314 (Sen. Roger Webb, *R-Billings*) would authorize Montana to establish an interstate Compact Commission, involving other states, and provinces of Canada, to develop a process, procedures, and standards for permitting interstate pipelines. The sponsor’s immediate goal is to facilitate the development of the Keystone XL pipeline. However, the bill applies to all interstate pipelines, and would potentially have dramatic and unintended consequences for Montana in terms of eminent domain, pipeline siting, and costs to the State. Further, although provinces in Canada could participate in the Compact Commission, sovereign Indian nations in Montana could not. The bill passed the Senate by a vote of 28 to 22.

There are three proposals that would alter the so-called oil and gas tax “holiday,” and provide more money to impacted communities and to the State. Currently, oil and gas developers receive a tax “holiday” for the first 12-18 months of production during which they pay virtually no production taxes. This policy has been criticized heavily because companies are escaping taxation during the time period when oil and gas wells



are usually most productive. The tax holiday causes a very serious loss of revenue to local governments that are impacted by oil and gas development and are in need of sources of infrastructure funding.

HB 420 (Rep. Mary Ann Dunwell, *D-Helena*) would change the tax rates and increase the distributions to local governments. The bill is awaiting action in the House Taxation Committee.

HB 591 (Rep. Christopher Pope, *D-Bozeman*) would modestly change the tax rates. The bill is also awaiting action in the House Taxation Committee.

SB 374 (Sen. Christine Kauffman, *D-Helena*) would also change the tax rates and revise the distributions. As with the other bills, it would help to assure that oil and gas companies pay their fair share of taxes in order to help Montana communities meet infrastructure funding needs that the development has caused. The bill is awaiting action in the Senate Taxation Committee.



MEIC lobbyists, from left to right: Kyla Maki, Anne Hedges, Jim Jensen, and Derf Johnson.

Public Participation

HB 369 (Rep. Clayton Fiscus, *R-Billings*), as amended, would have required that the losing party in most civil litigation pay the expenses, and the attorney's fees if the lawsuit was found to be "frivolous or vexatious," of the prevailing party. That is already generally the practice in Montana courts. Originally, this bill would have required the losing party in litigation to pay the attorney's fees and legal costs of the winning party without exception. This simplistic and misguided idea would have prevented people from ever suing wealthier parties, or large corporations, or from bringing lawsuits that involved any possible controversy or doubt. This concept would allow multi-national corporations such as ExxonMobil to intimidate any person, or any nonprofit organization, that wanted to seek justice in the courts. It would also have been

"This concept would allow multi-national corporations such as ExxonMobil to intimidate any person, or any nonprofit organization, that wanted to seek justice in the courts."

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Sen. Christine Kaufmann, *D-Helena*.



2015 Legislature at Mid-Session *(continued)*

expensive for the insurance industry. Those flaws helped convince the House to defeat the bill on a vote of 45 to 55.

HB 398 (Rep. Tom Richmond, *R-Billings*)

“The right to know and the right to participate are fundamental rights in the Montana Constitution, and essential for assuring that other constitutional rights, such as the right to a clean and healthful environment, are fully protected by the State.”

would have limited the hourly rate that attorneys may recover from the State if they prevail in a lawsuit to the hourly rate charged by the Montana Department of Justice. This bill would have

discouraged the public from attempting to enforce resource permitting laws, and weakened the ability of people to protect their private property and enforce their Constitutional rights. The bill was tabled in the House Judiciary Committee.

HB 447 and **HB 448** (Rep. Kirk Wagoner, *R-Montana City*) would provide that in a legal action against the State to enforce the constitutional rights to participate in government decisions or to have access to

government information, a person who prevails is entitled to be reimbursed for their reasonable costs and attorney’s fees. The right to know and the right to participate are fundamental rights in the Montana Constitution, and essential for assuring that other constitutional rights, such as the right to a clean and healthful environment, are fully protected by the State. HB 447 passed the House by a vote of 75 to 25 and HB 448 by a vote of 76 to 26, and both bills had a hearing in the Senate Judiciary Committee on March 10th.

SB 248 (Sen. John Brenden, *R-Scobey*) would require that members of the public must give their name, city, and state of residence, when making either written or verbal communications to the legislature. The legislature would be entitled to ignore communications that do not provide this information. This bill raises privacy concerns, and could lead to communications being disregarded merely due to oversights by the communicator. In any event, legislators already have the freedom to ignore public comments for whatever reason. The bill passed the Senate on a 29 to 21 vote, and had a hearing in the House State Administration Committee on March 12th.

The Montana Supreme Court. Photo by MEIC.



Land Use

The most objectionable land use bills have either been defeated or amended to be benign.

SB 226 (Sen. Roger Webb, *R-Billings*) would have prohibited local governments from considering the impact of future subdivisions when considering a subdivision application. A similar bill passed in the 2011 and 2013 sessions, and was vetoed by the governor both times. SB 226 was amended in the Senate to allow local governments to consider

growth policies, zoning regulations, capital improvement plans, and transportation plans when reviewing proposed subdivisions. The bill, as amended, passed the Senate on a 46 to 4 vote, and had a hearing in the House Local Government Committee on March 10th.

Rep. Forrest Mandeville (*R-Columbus*) had two bad land use bills that were both defeated.

HB 182 would have prohibited local governments from considering how land that is proposed to be subdivided would be used unless the land was zoned. With very little zoning outside of cities in Montana, this bill would effectively have prohibited local governments from considering the impacts of a proposed developments. The bill was defeated in the House on a 41 to 59 vote.

HB 302 would have made it very difficult for local governments to prove that a developer was deliberately evading the Subdivision and Platting Act. The bill passed the house on a 55 to 44 vote, but was tabled in the Senate Local Government Committee.

Finally, **HB 380** (Rep. Mike Miller, *R-Helmville*) would have exempted most RV and mobile home parks from subdivision review. The bill was tabled in the House Local Government Committee.

Asbestos and Hazardous Waste

The legislature wisely rejected **HB 239** (Rep. Jeff Essmann, *R-Billings*). This bill would have weakened standards for asbestos removal from businesses and schools. The bill was tabled in the House Natural Resources Committee.

MEIC helped craft an alternative measure, **HB 434** (Rep. Ed Lieser, *D-Whitefish*). This bill would help make the DEQ asbestos control program more efficient and shorten the review period for approval of smaller asbestos removal projects. The bill passed the House on a 90 to 10 vote.

SB355 (Sen. Duane Ankney, *R-Colstrip*) would allow parties responsible for contamination at a hazardous waste site to avoid clean-up costs, and transfer those costs to the State. It would prevent DEQ from using funding to clean up contaminated sites that do not have responsible parties. The bill passed the Senate on a 28 to 22 vote.

Five Wacky Ideas that Were Defeated

The following bills are but a very limited selection of the many more bills that could be listed. Notice that they all originated in the House.

HB 171 (Rep. David Moore, *R-Missoula*) would have made it a felony punishable by at least a year in jail for someone to cross a rail line if a train was approaching. (This is the same representative who was quoted in the media as saying yoga pants should be illegal.)

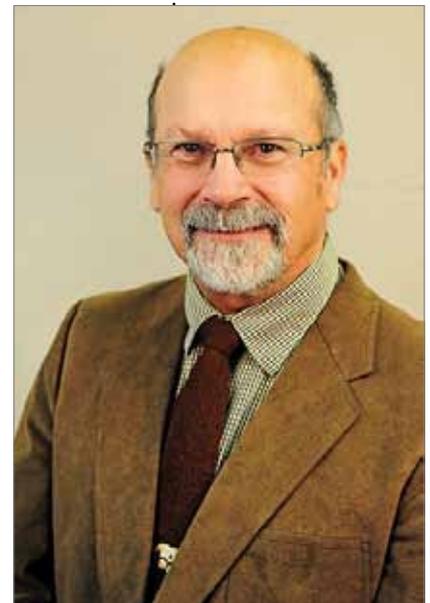
HB 321 (Rep. Clayton Fiscus, *R-Billings*) would have required all theories and viewpoints on the origin of life on this planet, and of the universe itself, to be subject to the same degree of "critical thinking" in Montana public schools.

HB 340 (Rep. Tom Burnett, *R-Bozeman*) would have required DEQ to sue the federal government because of air pollution caused by forest fires burning on federal land.

HB 401 (Rep. Steve Fitzpatrick, *R-Great Falls*) would have allowed large biomass burning facilities to burn hazardous and toxic wood products, and receive credit under Montana's Renewable Energy Standard.

HB 465 (Rep. Theresa Manzella, *R-Hamilton*) would have prohibited regulation of wood burning stoves, even though old stoves cause the worst small particulate pollution in Winter months. 

Rep. Ed Lieser,
D-Whitefish.



Another Yellowstone River Oil Pipeline Disaster

by Derf Johnson

Most Montanans have heard the news that, yet again, an oil pipeline crossing under the Yellowstone River has ruptured. Initial reports estimated that up to 50,000 gallons of crude oil had been released into the river. Bridger Pipeline Co. owns the pipeline, which was last inspected three years ago when it was allegedly buried eight feet below the river bottom. The pipeline crosses the river directly upstream from the City of Glendive.

Almost immediately, local and State officials proclaimed that they were “unaware of any threats to public safety or health.” But since up to 50,000 gallons of toxic crude oil was floating down the Yellowstone, contaminating a major river and a source of drinking water for millions of Americans, and poisoning aquatic species and wildlife, that statement seems ill informed.

And, less than 24-hours later, the cancer-causing agent benzene was found in the water supply of the City of Glendive, after residents reported “an odor” in their water. Public officials urged residents not to “drink or cook with water from their taps.” Clean-up attempts have been hampered by the large amount of ice that characteristically covers the river at this time of

year. The initial reports also suggested that the oil from the rupture would float on the surface of the river, and that Glendive’s water supply would not be compromised because the City draws its water from the bottom of the river. What’s now clear is that a lot of oil made it into the river, that the company doesn’t know exactly how much, and that an oil sheen has been seen near Sidney, a town over sixty miles downstream.

This most recent oil pipeline rupture follows on the heels of a July 2011 rupture of a pipeline owned by ExxonMobil. That break, near Laurel, Montana, released 63,000 gallons of crude oil into the Yellowstone River and contaminated close to 100 miles of downstream riverbank, impacting agricultural irrigators, ranchers, and communities. Of course, the initial reports by Exxon attempted, as usual, to downplay the problem.

Almost as tragic as these actual disasters is the continuing complacency and tacit acceptance by oil companies that the Yellowstone River, and all other water bodies, can be a sacrifice zone for their industry. The public is simply supposed to accept that these spills are normal for the oil industry and look the other way.

continued on page 23

The Yellowstone River near Sidney. Photo by the Montana Film Office.



One Decision Left on Keystone Pipeline

by Kyla Maki

On February 12, 2015, Congress passed a bill authorizing construction of the Keystone XL pipeline. Ten days later Pres. Barack Obama vetoed the bill. It was only his third veto since taking office seven years ago. On March 4th, supporters of the pipeline in the U.S. Senate were unable to muster enough votes to override the veto.

The first priority of the Republican-dominated 114th Congress was to pass a bill circumventing Pres. Barack Obama's authority to approve or disapprove TransCanada's Keystone XL pipeline. Since Keystone was proposed in 2008, Congress has taken numerous votes on bills and amendments that would "grease the wheels" for the controversial 1,200-mile pipeline. It would carry dirty oil from the destructive tar sands in Alberta, Canada, to Texas's Gulf Coast.

About 280 miles of Keystone would be in Montana. The 36-inch pipeline would cross under the Milk, Missouri and Yellowstone Rivers. TransCanada has pre-emptively received the necessary permits and easements for the portion of the pipeline that crosses through Montana. Since these permits were issued, there have been two major pipeline breaks and oil spills into the Yellowstone River in Montana. The first was in July 2011, when 63,000 gallons of crude oil from Exxon's Silvertip pipeline gushed into the river. In January 2015, another pipeline cracked, releasing 31,000 gallons of oil into the Yellowstone River. Both of these pipelines were much smaller and carrying much lighter crude than the Keystone XL pipeline. With a capacity of over 800,000 barrels of tar sands oil, a spill from the Keystone pipeline would be significantly more disastrous than the recent spills on the Yellowstone. A study done at the University of Nebraska found that the Keystone pipeline could spill as much as 6.9 million gallons of crude oil into the Yellowstone River.

Exacerbating the direct risks that Keystone poses to Montana are the devastating impacts that tar sands extraction has on the Athabaskan

region of Alberta, not to mention the impacts that the pipeline's construction, and the use of the oil it would carry, would have on the global climate. In February 2015, the U.S. Environmental Protection Agency (EPA) estimated that building the Keystone pipeline would add 27.4 million metric tons of CO₂ to the atmosphere – equivalent to the annual carbon pollution from an additional eight coal-fired power plants. EPA added that the Keystone pipeline would pose a number of risks including "a significant increase in greenhouse gas emissions."

Despite Keystone's significant water quality, land use, and global climate impacts, Montana's Congressional delegation continues to unequivocally support its development. Senators Tester and Daines both voted for the bill to authorize the pipeline, and both senators voted to override Pres. Obama's veto.

The bill could also have set a precedent that went far beyond the Keystone pipeline. It would have been an instance of Congress circumventing presidential authority on a project that affects national security and safety. The separation of powers established in the U.S. Constitution should not be thwarted for a Canadian pipeline that poses serious risks to clean air and exacerbates climate change.

Now that Congress has failed to override Pres. Obama's veto, he still must decide whether the pipeline is in the national interest and approve or deny TransCanada's cross-border permit. Clearly, the pipeline is not in the best interest of the United States or the world. In the long-run the pipeline would only benefit TransCanada. It is time for President Obama to deny the foreign corporation its permit. Our air, water, economy, and climate will all be better off. 



President Barack Obama. Photo courtesy of the White House.

George Darrow, Author of MEPA, Dies

by Jim Jensen

George Darrow, a Republican oilman, business entrepreneur, community builder, and environmentalist died on February 25, 2015, at age 90.

Darrow was the author and principal sponsor of the Montana Environmental Policy Act (MEPA). As a Yellowstone County senator, Darrow shepherded his bill through a divided 1971 Legislature, where it passed the GOP-controlled House 99-0, and the Democrat-controlled Senate 49-1. It was signed into law by Democratic Gov. Forrest Anderson.

George was a fierce defender of MEPA and an outspoken and harsh critic of both Republican and Democratic legislators who attacked it in

virtually every legislative session since its passage. In a 2011 interview with the *Flathead Beacon*, Darrow put it this way: “The people trying to tear it down don’t understand what Montana is – they don’t have any appreciation for the place where they live.” In 2011 the Montana Conservation Voters awarded Darrow its Conservation Champion Award.

After moving to Bigfork in 1990, George and his wife Elna (who died in 2009) operated Kootenai Galleries, and were the immutable force behind the Bigfork Playhouse. They also (with Elna leading) began the Tamarack Time local food festival, now in its 24th year, and they persuaded the Flathead County Commission to allow the wonderful shelter to be built at Sliter Park, now the venue for the Riverfront Concert Series.

Both of them were true community builders in the best sense and cared deeply about the natural wonders of Montana. 

“George was a fierce defender of MEPA and an outspoken and harsh critic of both Republican and Democratic legislators who attacked it in virtually every legislative session since its passage.”

Montana PSC Approves Wind Project

by Kyla Maki

On March 3, 2015, the Montana Public Service Commission (PSC) approved, by a 3-2 vote, NorthWestern Energy’s (NWE) agreement to purchase power from the 25-megawatt Greenfield wind power project near Fairfield, Montana. The PSC authorized the purchase of electricity at \$54.00 per megawatt-hour (MWh) over the next 25 years. That cost is less than the \$58 per MWh that NWE

customers will pay for the 11 hydro-electric dams the utility purchased from PPL in 2014.

In December 2014, the PSC had initially rejected the agreement between NWE and Greenfield. The PSC reconsidered its action this March after the 2014 elections brought about a change in its membership. The project is a qualifying facility under the federal Public Utility Regulatory Policy Act (PURPA). PURPA requires utilities of certain sizes to enter into contracts with alternative energy projects that they do not own.

The Greenfield project adds to the low-cost wind projects already in NWE’s portfolio. The PSC’s own staff noted that NWE’s addition of the Greenfield wind energy contract would result in lower costs for consumers. 

Construction of the Judith Gap Wind Farm. Photo by MEIC.



A Variety of Ways You Can Help MEIC

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The Pledge Program is a simple but very effective way you can support MEIC. You design the program to best fit your budget and lifestyle. You can pledge any annual amount you choose and make payments in 12 or fewer installments. You could pledge \$240 for the year, and pay just \$20 a month—**that's only 66 cents a day!**

And it gets even easier. You can sign up to pay monthly with your credit card, or by automatic withdrawal from your bank account, and MEIC will take care of the rest. Pledge members help provide the staying power that keeps MEIC at the forefront of environmental advocacy in Montana.

2. Leave a bequest to MEIC

You can provide the financial security and long-term stability MEIC needs to weather unpredictable and cyclical funding by contributing to MEIC's Permanent Fund, our endowment. All gifts to the Permanent Fund are invested. Only the income earned on these investments is spent, and all of it goes to MEIC. Here are two ways you can contribute to MEIC's endowment:

1) The Permanent Fund accepts cash or property including stock, real estate, and life insurance. These contributions can be made directly to MEIC and are deductible as charitable contributions.

2) MEIC also has an endowment account at the Montana Community Foundation, which greatly expands the ways you can help MEIC while taking advantage of a Montana State income tax credit. Call the Montana Community Foundation at 406-443-8313 for more information.

3. Encourage others to join MEIC or give a gift membership

Members are the heart and soul of MEIC, and who better to spread the word than you give an MEIC gift membership or tell your friends and family why you joined MEIC and about the difference they can make for Montana's environment by joining with you. Every member means a lot. **Take advantage of our 2-for-1 gift membership program when you renew your MEIC membership -- when you renew, you can give an MEIC membership to a friend for FREE!**

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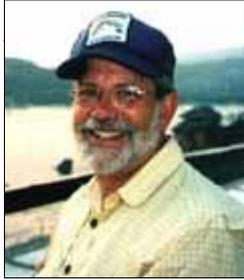
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Thoughts from the Executive Director



by Jim Jensen

Thank you to all MEIC members for continuing support. 2014 was a banner year with increasing member numbers and excellent revenues to

support the work of the staff.

The recent sweeping restructuring of the Great Falls Tribune has resulted in the departure of its capitol bureau chief, John Adams. This is a loss for all Montanans in general and for Montana journalism in particular. Adams broke many of the most important political stories of the last 10 years and was a first rate investigative reporter. As they would say in the South, "that dog can hunt." I wish him the very best in his new life chapter as a freelancing vagabond.

The never-ending pressure by leading Republicans in the legislature (along with a handful of Butte Democrats) to destroy the Coal Severance Tax Trust has risen to a boil once again. The idea of placing taxes from non-renewable resource development to benefit state residents in the indefinite future is an inherently conservative idea. But, for the sake of greed, Montana industrial exploiters just cannot accept it and their legislative lackeys

consistently team with them to try to undermine the Trust. This session's attempt is embodied in Senate Bills 353 and 354, sponsored by Sen. Rick Ripley (R-Wolf Creek). They come from the Montana Contractor's Association and the Treasure State Resource Industry Association (formerly WETA) and are couched in the lambs clothing of jobs -- providing a big infusion of money for public infrastructure projects. MEIC and others will likely prevent them from becoming law, but it won't be the last time we have this fight.

Sen. Jon Tester's unwavering support of the Keystone XL Pipeline is based on economic fantasy and political irrationality. It is hard to reconcile this position with some of his other work. He won his first U.S. Senate race in large part, according to his own statements, because of his endorsements by the League of Conservation Voters and its Montana affiliate. And, to his credit he has sponsored two bills to encourage renewable energy development on public lands. And, he has been a champion for allowing the EPA to adopt rules to regulate greenhouse gasses.

Yet, he has also adopted the Republican mantra of an "all of the above" energy policy. Which in my view is no policy at all.

(This is a corrected version of this column that originally wrongly said that Sen. Tester had not introduced any legislation to promote renewable energy). ☺

Otter Creek (continued from page 3)

has lower salt levels than what could be natural background of the stream at certain times of the year. Add to this the fact that Montana law defines "natural" water quality as including the impact of human influences (a provision that violates the federal Clean Water Act, by the way). The 2015 Legislature is currently considering two conflicting bills to redefine the word "natural" as it applies to water quality.

MEIC and the irrigators in the Tongue River drainage have a bottom line – protecting the incredibly valuable irrigated agriculture in the area. To do this DEQ must keep the water quality standard as close to the existing one

as possible. BER "got it right" in 2003, when it set a standard designed to protect agriculture. Protecting existing uses of area waters should be the highest priority. Any other uses, such as facilitating the development of the largest proposed coal mine in the nation, should be a distant second in priority.

DEQ is very likely in the coming months to ask BER to weaken the standard for Otter Creek. What BER ultimately decides will depend on the testimony of another round of expensive experts, and on extensive public participation. The future of the Tongue River Valley depends on the decision. ☺

Yellowstone River Oil Disaster(continued from page 18)

As for Keystone . . . (also see the article on page 19)

Now, the oil industry is seeking to bury yet another pipeline (the Keystone XL) under Montana's rivers. It is much larger in diameter (36 inches vs. 12 for the Bridger Pipeline Co. one), and will carry the more toxic oil extracted from the bitumen in the Alberta tar sands. Previous ruptures of the Keystone Phase I pipeline in other states have proven very difficult to clean up, in part because tar sands oil sinks in water. The Keystone XL pipeline is a Canadian project that will allow its developer, TransCanada, to ship carbon-intensive tar sands oil to refineries on the Gulf Coast. The speculation is that much

of the refinery output will be exported to Asia.

If built, the Keystone XL pipeline would cross (i.e., be buried under) both the Yellowstone and Missouri Rivers in Montana, as well as innumerable other smaller streams and rivers in Montana and elsewhere). The pipeline's proponents say, "don't worry," because, they promise, Keystone XL will be significantly better constructed and safer than older pipelines. But the current track record of the industry leaves a great deal of room for doubt. It's clear that protecting the integrity of Montana's rivers is not included in the oil industry's "bottom-line" calculations. ☺

Colstrip (continued from page 4)

continue decreasing their reliance on coal-based electricity, the legislatures in both states are considering bills to reduce or eliminate coal-by-wire.

Oregon's bill, SB 477, would require Colstrip owners Portland General Electric and PacifiCorp, to stop providing coal-based electricity to Oregon customers by 2025. That electricity would need to be replaced with sources that are 90% cleaner. The bill is awaiting action in the Oregon Senate Environment and Natural Resources Committee, and many people believe it has a strong likelihood of passage.

The Washington legislation is more complex. Two bills have been introduced, one in the House and one of the Senate. Both are intended to wean the state off of coal-by-wire. HB 2002 is awaiting action in the Washington House of Representatives. The sponsor was quoted as saying, "it's important that we start the discussion about how to divest ourselves of energy supply from coal." SB 5874 is long and complex. It provides a structure for Colstrip's

largest percentage owner, Puget Sound Energy, to purchase the ownership shares of the other owners and then retire the plant. The complexity of the bill, and fact that it shifts huge costs away from the utility and on to Washington ratepayers, creates an uphill battle for the bill.

Whatever Washington and Oregon decide to do in their current legislative sessions is almost beside the point. All the owners of Colstrip are facing increased pressure to cease their reliance on coal and to switch to cleaner forms of energy. Colstrip's massive carbon pollution, about 15 million tons per year, makes it one of the largest producers of climate changing pollution in the nation. Climate change is already causing significant economic, public health, and environmental consequences for each state. Even if these current bills do not pass, the "horse is out of the barn." Both states understand that climate change is real and needs to be addressed. Ending their reliance on coal-generated electricity is an essential step toward doing just that. ☺

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MEIC's purpose is to protect Montana's clean and healthful environment. The words "clean and healthful" are taken from the Montana Constitution, Article II, section 3 - Inalienable Rights, which begins: "All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment . . ."

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