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NEWS FROM THE MONTANA ENVIRONMENTAL INFORMATION CENTER



2017 Legislature In Review

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MEIC Sues Trump Administration over Coal Leasing Reversal

by Jim Jensen

Cover Photo: The 2017 Montana Legislature. Photo by Alexander Ramirez.

Coal and wind turbines travel by train.



In what *The Washington Post* calls one of “the first shots” in the war against the Trump Administration by environmentalists, MEIC has joined with the Northern Cheyenne Tribe and other organizations to prevent the U.S. Bureau of Land Management (BLM) from abandoning the Obama Administration’s one-year-old moratorium on new federal coal leases.

The groups sued the U.S. Department of the Interior, Interior Secretary Ryan Zinke, and the BLM. They claim that the government agencies failed to comply with the National Environmental Policy Act (NEPA) when Zinke ordered the BLM to reverse course and abandon its review of how federal coal leases are issued and priced.

In explaining why his tribe was taking this action, L. Jace Killsback, president of the Northern Cheyenne Tribe, said: “The Nation is

concerned that coal mining near the Northern Cheyenne Indian Reservation will impact our pristine air and water quality, will adversely affect our sacred cultural properties and traditional spiritual practices, and ultimately destroy the traditional way of life that the Nation has fought to preserve for centuries.”

Concerns about the economic harm caused by the current leasing practices and fees were expressed by MEIC member Art Hayes, Jr., who operates a 9,000 acre ranch near Birney, Montana, that has been in his family since the late 1800s. He also depends on the Tongue River for irrigation water. Unfortunately his operation is downstream from the Decker coal mine, which has pending lease applications that could move forward now that the moratorium has been lifted. Hayes worries about the safety of his water supply: “We totally depend on it,” he said when the suit was filed. “The river is everything to us. We don’t have much water here and it is precious.”

BLM last evaluated the federal coal-leasing program in 1979, 38 years ago. Since that time profound changes have occurred in our understanding of the economics and environmental effects of mining and burning coal, including:

- the near certainty that catastrophic changes in the earth’s climate are caused by burning fossil fuels;
- the proven deleterious impacts to the health of people living near coal-fired power plants;
- a dramatic increase in mercury and other hazardous air pollutants in North America;
- a dramatic, world-wide drop in the price of electricity produced with natural gas and renewable energy technologies relative to coal; and
- the overwhelming evidence that the American taxpayers who own this coal are receiving far less money than they should for it.

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Pro-Fossil-Fuel Legislature Fights Clean Energy Future

by Anne Hedges

Each legislative session is unique, but they all seem to have something in common. Too often legislators line up behind their party, or particular people in their party, and fail to think for themselves about what is best for their constituents and for Montana. The 2017 legislative session was no different in that sense, but the relative importance of issues, and who was promoting them, has evolved.

Over the last couple of decades, the fossil fuel industry has ruled the roost. A majority of anti-environmental bills that were brought forward by industry lobbyists and their legislative allies were intended to weaken public participation, weaken environmental protections, and weaken permitting and enforcement requirements for the fossil fuel industry. But this session was different.

Instead of trying to prop up a struggling industry, the majority of legislators were often complicit in helping NorthWestern Energy try to undermine competition from cheaper and cleaner energy resources such as wind and solar. Many bills were proposed to make it more difficult, more expensive, and sometimes impossible for businesses or homeowners to install solar panels, to build community solar projects, or to develop small- and large-scale wind energy facilities. The fossil fuel industry finally realized that its problem is not environmental regulations but rather competition from renewable energy sources. And the best way to prevent that competition, it decided, is to try and impose onerous and expensive requirements on the competition.

Some legislators saw through this utility smokescreen and voted for their constituents' best interests, but far too many sided with the monopoly utility that is "hell-bent" on stopping all competition from clean energy resources.



The House Energy, Telecommunications, and Federal Relations Committee showed some notable bipartisanship and defeated some of the worst ideas, particularly those that interfered with competitive markets. Gov. Bullock has also been a champion for clean energy by vetoing some of the anti-clean energy bills that have reached his desk.

All told, one thing is clear. Montana electric utilities such as NorthWestern and the rural electric co-operatives are a long way from accepting the irreversible reality of changing energy markets, let alone embracing those changes. While a huge majority of Montanans support clean energy resources such as wind, solar, and storage technologies, the utilities might just have to be dragged kicking and screaming into the 21st century. ☺

MEIC Deputy Director Anne Hedges testifying at the Capitol. Photo by Alexander Ramirez.

A Clean Energy Stalemate

by Brian Fadie

This legislative session saw the sharpest attacks yet on clean energy, particularly on rooftop solar installations. These primarily utility-backed efforts ranged from a blunt attempt at weakening Montana’s Renewable Energy Standard to insidious changes to net-metering laws. A significant amount of time and energy was needed to defend against these attacks, but MEIC and its allies, with your help, were able to kill all of the worst clean energy bills, either in committee or thanks to a veto by Gov. Steve Bullock.

However, the pleasure of these victories is muted by the fact that the legislature once again failed to pass any positive clean energy legislation. This unfortunate intransigence not only continues to hold back Montana’s efforts to mitigate climate change, it also holds back one of the state’s opportunities for economic growth.

In 2016 one in every 50 new jobs in America was a solar job. At the same time, states such as

Wyoming and Iowa, with wind resources no better than Montana’s, are seeing billions of dollars of investment in wind energy development. The clean energy economy has arrived for those who want it, creating new jobs and new tax revenue. Unfortunately, Montana, thanks to the legislature, is “stuck in neutral.”

Rooftop Solar: Bad Bills that Failed to Pass

Thanks to the hard work of MEIC, and its members and allies, a number of bad bills failed to become law.

SB 7 (Sen. Pat Connell, *R-Hamilton*) would have discriminated against rooftop solar owners by treating them differently than other electricity customers. By disallowing any possible “subsidy” only for solar system owners, the bill ran counter to the reality of the electric grid, where subsidies exist across the board. For example, rural customers cost more to serve than urban customers due to the necessity for hundreds of miles of extra transmission lines and other additional infrastructure, yet they pay the same rates as everyone else.

Rooftop solar installers.



SB 78 (Sen. Keith Regier, *R-Kalispell*) would have fundamentally changed the economics of net-metered systems by lowering the compensation rate for any electricity put back on the grid (electricity that NorthWestern Energy turns around and sells to other customers at full retail value).

SB 1 (Sen. Pat Connell, *R-Hamilton*) would have required rooftop solar owners to buy expensive new inverter equipment that could not yet even interface with NorthWestern Energy's primitive grid.

SB 154 (Sen. Mike Lang, *R-Malta*) would have eliminated the modest tax incentives for rooftop solar installations; ones that in total cost the State about \$120,000 per year in lost revenue. In contrast, one State oil and gas tax incentive has cost the State \$265 million since 2008.

SB 277 (Sen. Tom Richmond, *R-Billings*) would have prevented a State alternative energy loan program from being used to purchase stakes in community solar projects, an unnecessary attempt to prohibit an activity that has yet to take place.

Rooftop Solar: Good Bills that Failed to Pass

This session marked the third in a row in which bipartisan attempts to improve Montana's solar installation laws failed to even make it out of committee.

HB 504 (Rep. Bryce Bennett, *D-Missoula*) was a bipartisan omnibus net-metering reform bill that would have significantly increased solar jobs and energy generation in Montana by increasing the arbitrary cap on the size of net-metered systems, allowing for community solar programs, allowing for the aggregation of electricity meters on a property, and allowing excess net-metering credits that currently expire to be rolled over into a low-income energy assistance fund.

HB 34 (Rep. Daniel Zolnikov, *R-Billings*) would have increased the size cap for solar installations on government buildings.

SB 201 (Sen. Jedediah Hinkle, *R-Belgrade*) would have allowed for meter aggregation.

Utility-Scale Clean Energy

Two bright spots stood out for clean energy.

HR 2 (Rep. Daniel Zolnikov, *R-Billings*) requires that a strongly worded letter be sent from the Montana House of Representatives to the Bonneville Power Administration, asking it to remove an unnecessary federal transmission fee that is imposed on Montana wind energy sent to Oregon and Washington.

HB 216 (Rep. Jim Keane, *D-Butte*) establishes reasonable bonding and decommissioning requirements for wind projects over 25 megawatts in size, helping to ensure that these installations are properly removed at the end of their useful lives.

MEIC and its allies were successful in stopping multiple attacks on utility-scale clean energy development.

SB 32 (Sen. Keith Regier, *R-Kalispell*) would have repealed a portion of Montana's Renewable Energy Standard that NorthWestern Energy (NWE) has yet to comply with. Called the "Community Renewable Energy Projects" requirement, NWE still needs to acquire projects equaling 40 megawatts in size to be in compliance. For reference, 40 megawatts is the size of NWE's second largest wind farm (Spion Kop).

SB 102 (Sen. Tom Richmond, *R-Billings*) would have restricted the length of the term of contracts that independent wind and solar developers could sign with NWE to 20 years, a restriction that does not exist when the utility itself wants to build a power plant.

HB 363 (Rep. Dennis Lenz, *R-Billings*) would have enacted unduly burdensome permitting and decommissioning requirements for renewable energy projects, ones that would have gone well beyond what is required for fossil fuel projects.



Rep. Bryce Bennett,
D-Missoula.
Photo by
Alexander Ramirez.

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The Smith River is Worth Protecting!

by Derf Johnson



Rep. Nate McConnell, D-Missoula.
Photo by Alexander Ramirez.

Hiker on the Smith River,
Photo by William Rahr.

Anyone who has ever had the opportunity to visit Montana's Smith River knows that it needs to be protected and preserved. It's a place of remarkable beauty and solitude. It has offered generations of Montanans a retreat from the daily grind of society, and endowed memories for countless families on its banks. It's an important place for Native Americans, and provides life-giving water to farmers and ranchers.

MEIC has been working strenuously since 2013 to prevent the development of a copper mine in the headwaters of the Smith. There has been an outpouring of support from across Montana, the country, and even the world. MEIC's staff have attended public hearings, held events, raised money from its members, gone to court, and most recently, worked to protect the Smith River at the Montana legislature.

HB 593 (Rep. Nate McConnell, D-Missoula) was introduced as a preventive measure to avoid the nearly inevitable pollution from

mines in Montana. The bill would have required mines proposed in sulfide ore bodies (such as the Smith River mine) to post a bond 50% greater than what would normally be required. The increase in the bond amount is critical, as most sulfide mines ultimately end up polluting, and the acid mine drainage that results must be treated in perpetuity. Montana is littered with examples of mines and other industrial projects that were under-bonded, and have not been reclaimed, or have required significant taxpayer funds to do so.

HB 593 would also have required that operating mines have independent audits every three years to assure that they are complying with the terms of their permits and environmental laws. An independent audit would also assure that the bond amounts held by the State are adequate to perform the necessary reclamation.

Unfortunately, the House Natural Resources Committee voted to table HB 593 with little debate. It was predictable, based upon the legislature's infatuation with letting natural resource-extracting industries run

roughshod across the state, but disappointing nonetheless. Rep. McConnell, not one to be deterred, attempted to "blast" the bill on to the floor of the House, but failed on a 38-60 vote.

HB 593 is included in MEIC's Voting Record, which begins on page 11. Make sure to find out how your legislator voted on it, and talk to them about their vote. It's perplexing why anyone in Montana would want to risk something as great as the Smith River. Thanks to Rep. McConnell for carrying this important piece of legislation. 



Colstrip's Debate Boils Over

by Anne Hedges

Keeping track of Colstrip-related bills this session was a full time job. The people and town of Colstrip may not have received everything they wanted from the legislature, but they scored big. The 40-year old Colstrip Units 1 & 2 were built to last 30 years. Some argue they should continue to operate indefinitely even though they produce expensive electricity and made the Colstrip plant the 3rd highest greenhouse gas polluter in the nation in 2015. These issues provided the undercurrent for the legislative debate that involved dozens of bills to address the real and perceived effects of closing two of the four units at Colstrip. Fortunately, the worst bills were rejected. Unfortunately, bills that would have ensured cleanup at the plant and helped plan for a fair transition for the workers and the community also failed. Still, the legislature passed six bills that will uniquely benefit the people and community of Colstrip in ways never before provided to any other area in Montana.

Sen. Duane Ankney (R-Colstrip) led the charge. A few of his bills were good, but far too many were misguided and would have discouraged investments in clean energy in the Colstrip area, undermined job replacement efforts for Colstrip workers, and interfered with putting clean energy on the large transmission lines that travel between the Colstrip plant and West Coast states.

Bad Colstrip Bills that Failed to Pass

SB 38 (Sen. Ankney) would have charged the owners of Colstrip Units 1 & 2 a \$60 million "exit fee" for closing those units, even though the owners have paid for schools, parks, and nearly all of the town's property taxes for decades. (Even after Units 1 & 2 close, it is estimated the plant owners will pay around 70% of the local property taxes.) Even Sen. Ankney ultimately agreed that SB 38 was too extreme and the bill was tabled in the Senate Energy Committee.

Another bad Ankney idea was **SB 37**, which

would have interfered with the cleanup of the water pollution in and around the town of Colstrip. After a bruising hearing, Sen. Ankney agreed to table his own bill and replace it with the unanimously supported SB 339 (see below).

Sen. Ankney made **SB 338** his highest priority. He successfully convinced the governor's office to support the bill and pressured Democratic legislators to do so as well. Advocates for SB 338 presented legislators with the false choice of workers versus the environment. Fortunately, most legislators saw through that smokescreen and voted "no" when they realized the devastating impact the bill would have had on clean energy investments (or any business investments in the state), economic diversification, work force retraining, tax revenue, and cleanup at the Colstrip plant. After easily passing the Senate, the bill died in a House committee on an 8-8 vote, and subsequently the House refused to take the bill from committee on a 41-59 vote. It was finally and permanently laid to rest when proponents failed to amend it into a completely different bill in the waning days of the session.

Good Colstrip Bills that Did Pass

One of the reasons legislators were willing to reject SB 338 was because of the numerous other bills that passed and provided unique and significant benefits to the people and town of Colstrip and the owners:

- MEIC worked with Sen. Ankney and the Colstrip owners to craft **SB 339**,

"...the legislature passed six bills that will uniquely benefit the people and community of Colstrip in ways never before provided to any other area in Montana."

*Rep. Janet Ellis,
D-Helena. Photo by
Alexander Ramirez.*



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It Takes Courage to Fight Climate Change at the Capitol

by Anne Hedges



Sen. Dick Barrett,
D-Missoula.



Sen. Mike Phillips,
D-Bozeman.

The Keystone XL pipeline was again debated by the Montana Legislature. A long line of proponents showed up to support **SJ 10** (Sen. Mike Lang, *R-Billings*), a resolution urging the president and Congress to support the pipeline. Proponents included oil and gas industry lobbyists, Montana AFL-CIO, utilities, the Chamber of Commerce, and more. The Keystone pipeline was rejected by President Obama last year but has been brought back from the dead by President Trump. It will cross through eastern Montana, and above the Ogallala aquifer, on its 1,700-mile journey from the Canadian tar sands to the Gulf Coast, where the oil will be refined and probably exported to Asia.

MEIC and Montana Audubon were the only opponents to the resolution. MEIC considers bills such as this an opportunity to represent the millions of people across the country who are concerned about the threats posed by the Keystone pipeline to water quality, indigenous lands and peoples, air quality, and the climate. Millions of people may oppose the pipeline but only two were brave enough to stand before the hostile Montana legislature and be counted.

Thanks to MEIC and Montana Audubon's legislative assistants, Nadine Nadow and Dan Roper, for representing Keystone's opponents so well in such an unfriendly environment.

SJ 10 passed the Senate on a 39-10 vote, and the House on a 67-33 vote. Resolutions do not require the signature of the governor.

Senators Mike Phillips (*D-Bozeman*) and Dick Barrett (*D-Missoula*) also showed the courage of their convictions by proposing **SB 190**, which would have required the State to account for greenhouse gas emissions and develop a plan to reduce them. With the loss of the Clean Power Plan at the federal level, fighting climate change will again be the responsibility of states. Sens. Phillips and Barrett wanted Montana to take responsibility and develop a plan to reduce harmful carbon dioxide pollution. While the outcome of their efforts was predictable, they too used the opportunity to speak up for climate solutions and educate fellow legislators on the dangers posed by climate change to Montanans' health, environment, and economy. Their commitment to climate solutions deserves our appreciation.

SB 190 passed the Senate Natural Resources Committee on an 8-4 vote, but was defeated on the floor of the Senate on an 18-32 vote. 

Otter Creek Mine Returns?

The proposed Otter Creek coal mine reared its ugly head once again at this legislative session. **SB 235** (Sen. Tom Richmond, *R-Billings*) would allow the State Land Board to extend mining leases on State land beyond their customary ten-year terms if the Board finds that doing so is in the "best interest of the state." The Land Board is notorious for rubber-stamping resource development proposals, and so there is little doubt that it would extend the Otter Creek leases before they expire in 2022, if the mine has not yet been developed.

Truly, the best decision that could be made in the "interest of the state" of Montana is to put a nail in the coffin of the terrible Otter Creek mine proposal, once and for all. Montana should not allow a recently bankrupt coal company to rip up with drag lines one of the most beautiful areas of Montana, condemn land along the Tongue River for the needed railroad, all to be able to ship the coal to China to be burned and contribute to global warming. Since this proposal first made headlines, the energy landscape has changed dramatically, and the Montana legislature would do better to focus its legislative efforts on encouraging the development of clean and renewable energy sources.

SB 235 passed the Senate on a 32-16 vote, and the House 67-33. As this issue went to press, the bill was awaiting a decision by the governor. Let's hope he does the right thing and vetoes the bill.

“Big Oil” Flexes Its Muscles

by Derf Johnson

Keystone and Other Pipelines

After the inauguration of Donald Trump, one of his first actions was to quickly approve the Keystone XL oil pipeline. This pipeline would travel across a corner of Montana, and seriously threaten several rivers and streams if it breaches. In the past five years, Montana has had two major oil pipeline ruptures that have fouled the Yellowstone River, making the Keystone pipeline even more concerning.

In reaction to Keystone XL, as well as to the Standing Rock conflict, Rep. George Kipp (*D-Heart Butte*), introduced **HB 486**. This bill would have required a number of safety upgrades to pipelines, including that pipelines above a certain diameter cross over rivers and streams (rather than under) to prevent scouring in the river bed and that pipelines utilize safety response planning and automatic shut-off valves.

Rep. Kipp said it best: “It’s time that the State of Montana and this legislative body start structuring some sideboards and controls to the transporting of fossil fuels. It’s the major method of transporting [oil and gas]. . . . Because we know all manmade objects are designed to break at some point in time, that is a consequence we [should] deal with today.”

Several members of Native American tribes supported the bill in the House Energy, Technology, and Federal Relations Committee hearing. The bill was opposed by organizations such as the Montana Petroleum Association, Montana Dakota Utilities, Phillips 66, the Montana AFL-CIO, and the Montana Chamber of Commerce.

The committee tabled the

bill, but the fight is not over for increasing protections for people and the environment from the impacts of inadequately regulated and poorly constructed pipelines.

As Usual, the Oil and Gas Industry Avoids Paying its Fair Share

History seems to repeat itself, and once again some of the wealthiest corporations on the planet have avoided paying their fair share of taxes, and actually received another tax break during this legislative session. First, they succeeded in maintaining for another two years what is commonly known as the “oil and gas tax holiday.” This tax break allows recently drilled wells to pay virtually no production taxes (less than 1%) in their first 12-18 months of operation. According to the Montana Budget and Policy Center, the State of Montana and

its counties lost \$265 million in revenue between 2008 and 2014. **HB 215** (Rep. Mary Ann Dunwell, *D-Helena*) would have increased the tax to 4.5%, a

rate still far below that of North Dakota and Wyoming. The industry persuaded the House Taxation Committee to table the bill, meaning that local governments and the State must find other sources of revenue to pay for the major infrastructure upgrades that are frequently needed when the oil industry comes to town.

Another bill, **SB 86** (Sen. Tom Richmond, *R-Billings*), increased a tax break for the oil and gas industry. Previously, if the price of oil was below \$54 per barrel for wells using enhanced oil recovery, the companies paid only an 8.5% tax (as opposed to a 12.5%-14.8% tax). SB 86 lowered the threshold for the lower tax rate to \$30 per barrel. SB 86 passed both the House and the

“Rep. Kipp said it best: “It’s time that the State of Montana and this legislative body start structuring some sideboards and controls to the transporting of fossil fuels. . . . Because we know all manmade objects are designed to break at some point in time, that is a consequence we [should] deal with today.”

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Rep. George Kipp, D-Heart Butte. Photo by Alexander Ramirez.



Whiskey is for Drinking, Water is for Fighting

by Derf Johnson

Fighting over the use and protection of water is a favorite pastime in Montana, and the 2017 Legislative Session was no exception. Numerous bills were introduced, but most failed to even leave their respective committees after a short hearing.

One particularly bad bill has defied the odds and has landed on the governor's desk. **HB 339** (Rep. Carl Glimm, *R-Kila*), would functionally overturn a 2016 Montana Supreme Court decision and re-open the exempt-well loophole that the court closed. It would again give developers the right to use ground water before those holding more senior water rights.

In Montana, the beneficial use of water typically requires a user to hold a water right, and the right to use water is based upon the date when the right was perfected (e.g., 1889) and the volume of water to be used. Up until the 1990s Montana law contained a limited exception for water users who drilled a well that produced less

than 35 gallons per minute (GPM) or 10 acrefeet per year. However, in the early 1990s the Montana Department of Natural Resources and Conservation (DNRC) misguidedly promulgated a rule that blew this narrow exception wide open, and developers took full advantage of DNRC's mistake. Massive subdivisions began to spring up with an exempt well at each home site. The cumulative use of the water by all the houses resulted in the drawdown of aquifers, the depletion of in-stream flows, and impacts to the holders of senior water rights.

The Clark Fork Coalition and some water users, represented by the Western Environmental Law Center, successfully challenged the DNRC rule in court as violating State water law and the Montana Water Use Act.

The development community, an entity typically unwilling to relinquish profits in favor of good planning, caused HB 339 to be introduced in an attempt to return to the *status quo* of unfettered development and partially unregulated water use. The bill would allow the continuation of exempt wells at 35 GPM, but does include some very modest density requirements as an apparent concession. Several environmental organizations, water users, the Montana League of Cities and Towns, and DNRC opposed the bill. The bill passed the House on a 62-38 vote, and the Senate 32-18. MEIC and its allies fought hard to maintain enough votes that a veto by the governor could not be overturned. Now it's up to Gov. Steve Bullock, whose veto of this bill would be a significant victory in protecting Montana's water resources.

Another bill, **SB 248** (Sen. Mark Blasdel, *R-Kalispell*), would also allow the use of exempt wells, albeit in a more restricted fashion. The bill would permit the drilling of exempt wells in the case of land transfers that are exempt from the subdivision laws because they are "family transfers." The family transfer exemption was originally intended to allow parents to transfer land to younger generations to keep them on the farm or ranch. However, the family transfer exemption has historically been abused. Allowing an exemption on an exemption only compounds the problem, and leads to poor planning and the abuse of Montana's water rights system. SB 248 passed the Senate on a 28-22 vote, and the House 59-41. Once again, it's up to the governor whether the bill becomes law.

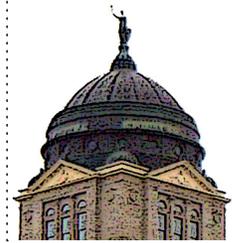
SB 48 (Sen. Chas Vincent, *R-Libby*) was a bill that would not only have impacted water quantity but also water quality. This bill would

Flathead River.



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2017 MEIC Legislative Voting Record



MEIC's Legislative Voting Record has been produced after every session of the Montana legislature since 1974.

MEIC generally chooses second reading votes unless a third reading vote or a vote on an amendment more accurately reflects legislators' positions on an issue. We encourage you to check on how your legislators voted and to talk to them about those votes. Don't forget to thank them when they voted correctly. But please remember that in order to fully evaluate a legislator, you must also consider committee performance, influence on the floor debates, and responsiveness to constituents.

The ✓'s and ✗'s in the Voting Record do not represent "yes" or "no" votes; they indicate whether the vote supported or opposed MEIC's position.

Bill Descriptions

A = HB 339 (Rep. Carl Glimm, R-Kila).

Would re-open exempt well loophole, deplete stream-flows, and harm senior water rights.

MEIC Position: *Oppose.*

Votes used:

- *Senate: 2nd reading, passed 32 to 18.*
- *House: 3rd reading, passed 62 to 38.*

Status:

B = SB 32 (Sen. Keith Regier, R-Kalispell).

Would have weakened the Renewable Energy Standard.

MEIC Position: *Oppose.*

Votes used:

- *Senate: 3rd reading, passed 31 to 19.*
- *House: 2nd reading, passed 60 to 40.*

Status: *Vetoed by the governor.*

C = SB 48 (Sen. Chas Vincent, R-Libby).

Would have put Montana DEQ in charge of the U.S. Army Corps' S404 dredge and fill program.

MEIC Position: *Oppose.*

Vote used:

- *Senate: 3rd reading, passed 39 to 11.*

Status: *Tabled in the House Natural Resources Committee.*

D = SB 78 (Sen. Keith Regier, R-Kalispell).

Would have drastically and unfairly reduced net metering compensation rates.

MEIC Position: *Oppose.*

Vote used:

- *Senate: : 2nd reading, passed 33 to 16.*

Status: *Tabled in the House Energy, Technology, and Federal Relations Committee.*

E = SB 98 (Sen. Cary Smith, R-Billings).

Would have prevented governments from adopting

regulations that burden private property.

MEIC Position: *Oppose.*

Votes used:

- *Senate: 2nd reading, failed 20-30.*

Status: *Failed 2nd reading in the Senate.*

F = SB 102 (Sen. Tom Richmond, R-Billings).

Would have interfered with contracts for wind and solar projects.

MEIC Position: *Oppose.*

Vote used:

- *Senate: 3rd reading, passed 25 to 24.*

Status: *Tabled in the House Energy, Technology, and Federal Relations Committee.*

G = SB 190 (Sen. Mike Phillips, D-Bozeman).

Would have required monitoring and reporting of greenhouse gas emissions.

MEIC Position: *Support.*

Vote used:

- *Senate: 2nd reading, failed 18 to 32.*

Status: *Failed 2nd reading in the Senate.*



H = SB 235 (Sen. Tom Richmond, R-Billings).

Would allow the Land Board to extend the term of coal leases, including for the Otter Creek tracts.

MEIC Position: *Oppose.*

Votes used:

- *Senate: 2nd reading, passed 32 to 17.*
- *House: 3rd reading, passed 67-33.*

Status: *Awaiting action by the governor.*

I = SB 337 (Sen. Duane Ankney, R-Colstrip).

Would eliminate the Montana Board of Environmental Review.

MEIC Position: *Oppose.*

Votes used:

- *Senate: 3rd reading, passed 33 to 17.*
- *House: 3rd reading, passed 57 to 43.*

Status: *Awaiting action by the governor.*

J = SB 338 (Sen. Duane Ankney, R-Colstrip).

Would have penalized owners for closing coal-fired power plants.

MEIC Position: *Oppose.*

Votes used:

- *Senate: 2nd reading, passed 47 to 7.*
- *House: Motion to amend SB 338 into SB 339, failed 40 to 60.*

Status: *Tabled in the House Energy, Technology, and Federal Relations Committee, and subsequent motions to pass the bill failed twice in the full House.*

K = HR 2 (Rep. Daniel Zolnikov, R-Billings).

Would urge the Bonneville Power Administration to eliminate extra transmission fee on exported renewable energy.

MEIC Position: *Support.*

Votes used:

- *House: 2nd reading, passed 73 to 27.*

Status: *Resolution adopted.*

L = HB 205 (Rep. Alan Redfield, R-Livingston).

Would set arbitrary and excessive annual fees on electric and hybrid vehicles.

MEIC Position: *Oppose.*

Vote used:

- *House: 2nd reading, passed 58 to 42.*

Status: *Vetoed by the governor.*

M = HB 455 (Rep. Forrest Mandeville, R-Columbus).

Would have required DEQ to rewrite and likely weaken water quality rules for subdivisions.

MEIC Position: *Oppose.*

Votes used:

- *House: 2nd reading, passed 56 to 44.*

Status: *Tabled in the Senate Local Government Committee.*

N = HB 593 (Rep. Nate McConnell, D-Missoula).

Would have strengthened bonding requirements for hardrock mines, including the Smith River one.

MEIC Position: *Support.*

Vote used:

- *House: Motion to take the bill from committee, failed 38 to 60.*

Status: *Tabled in the House Natural Resources Committee.*

O = SB 7 (Sen. Pat Connell, R-Hamilton).

Would have discriminated against net-metered electricity customers.

MEIC Position: *Oppose.*

Vote used:

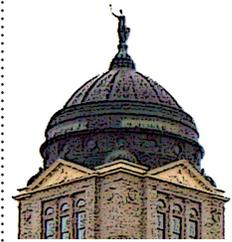
- *House: 3rd reading, passed 56 to 42.*

Status: *Vetoed by the governor.*



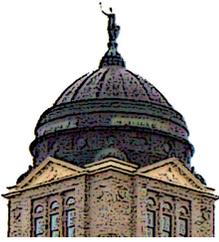
Sen. J.P. Pomnichowski, D-Bozeman. Senate Minority Whip, member of Senate Natural Resources Committee.

2017 Voting Record: Montana Senate

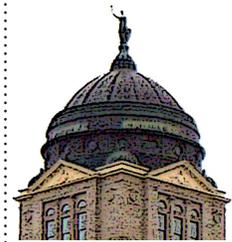


Senator	Town	Score	A	B	C	D	E	F	G	H	I	J
Ankney, Duane	Colstrip	10%	x	x	x	x	✓	x	x	x	x	x
Barrett, Dick	Missoula	90%	✓	✓	x	✓	✓	✓	✓	✓	✓	✓
Blasdel, Mark	Kalispell	0%	x	x	x	x	x	x	x	x	x	x
Boland, Cyndie	Great Falls	78%	✓	E	x	✓	✓	✓	✓	✓	✓	x
Brown, Dee	Hungry Horse	10%	x	x	x	x	x	✓	x	x	x	x
Buttrey, Edward	Great Falls	20%	x	x	x	x	✓	✓	x	x	x	x
Caferro, Mary	Helena	80%	✓	✓	✓	x	✓	✓	✓	✓	✓	x
Cohenour, Jill	East Helena	90%	✓	✓	✓	✓	✓	✓	✓	✓	✓	x
Connell, Pat	Hamilton	10%	x	x	x	x	✓	x	x	x	x	x
Facey, Tom	Missoula	80%	✓	✓	x	✓	✓	✓	✓	✓	✓	x
Fielder, Jennifer	Thompson Falls	0%	x	x	x	x	x	x	x	x	x	x
Fitzpatrick, Steve	Great Falls	10%	x	x	x	x	✓	x	x	x	x	x
Gauthier, Terry	Helena	0%	x	x	x	x	x	x	x	x	x	x
Gross, Jen	Billings	89%	✓	✓	✓	✓	✓	✓	✓	E	✓	x
Hinebauch, Steve	Wilbaux	10%	x	x	x	x	x	x	x	x	x	✓
Hinkle, Jedediah	Belgrade	10%	x	x	x	x	x	✓	x	x	x	x
Hoven, Brian	Great Falls	10%	x	x	x	x	✓	x	x	x	x	x
Howard, David	Park City	10%	x	x	x	x	x	x	x	x	x	✓
Jones, Llew	Conrad	20%	x	x	x	x	✓	✓	x	x	x	x
Kary, Doug	Billings	0%	x	x	x	x	x	x	x	x	x	x
Keenan, Bob	Bigfork	10%	x	x	x	x	x	x	x	x	x	✓
Lang, Mike	Malta	0%	x	x	x	x	x	x	x	x	x	x
MacDonald, Margaret	Billings	90%	✓	✓	✓	✓	✓	✓	✓	✓	✓	x
Malek, Sue	Missoula	90%	✓	✓	✓	✓	✓	✓	✓	✓	✓	x
McClafferty, Edie	Butte	89%	✓	✓	✓	✓	✓	E	✓	✓	✓	x
McNally, Mary	Billings	80%	✓	✓	x	✓	✓	✓	✓	✓	✓	x
Moore, Frederick	Miles City	0%	x	x	x	x	x	x	x	x	x	x
Olszewski, Albert	Kalispell	0%	x	x	x	x	x	x	x	x	x	x
Osmundson, Ryan	Buffalo	10%	x	x	x	x	x	✓	x	x	x	x
Phillips, Mike	Bozeman	78%	✓	✓	x	E	✓	✓	✓	✓	✓	x
Pomnichowski, JP	Bozeman	100%	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Regier, Keith	Kalispell	0%	x	x	x	x	x	x	x	x	x	x
Richmond, Tom	Billings	0%	x	x	x	x	✓	x	x	x	x	x
Sales, Scott	Bozeman	10%	x	x	x	x	x	x	x	x	x	✓
Salomon, Daniel	Ronan	10%	x	x	x	x	✓	x	x	x	x	x
Sands, Diane	Missoula	90%	✓	✓	✓	✓	✓	✓	✓	✓	✓	x
Sesso, Jon	Butte	90%	✓	✓	✓	✓	✓	✓	✓	✓	✓	x
Small, Jason	Busby	10%	x	x	x	x	✓	x	x	x	x	x
Smith, Cary	Billings	0%	x	x	x	x	x	x	x	x	x	x
Smith, Frank	Poplar	90%	✓	✓	✓	✓	✓	✓	✓	✓	✓	x
Swandal, Nels	Wilsall	10%	x	x	x	x	x	x	x	x	x	✓
Tempel, Russ	Chester	30%	x	✓	x	x	✓	✓	x	x	x	x
Thomas, Fred	Stevensville	0%	x	x	x	x	x	x	x	x	x	x
Vance, Gordon	Belgrade	0%	x	x	x	x	x	x	x	x	x	x
Vincent, Chas	Libby	20%	x	x	x	x	✓	✓	x	x	x	x
Vuckovich, Gene	Anaconda	70%	✓	✓	x	✓	✓	✓	✓	✓	x	x
Webb, Roger	Billings	0%	x	x	x	x	x	x	x	x	x	x
Welborn, Jeffrey	Dillon	10%	x	x	x	x	✓	x	x	x	x	x
Whitford, Lea	Cut Bank	90%	✓	✓	✓	✓	✓	✓	✓	✓	✓	x
Wolken, Cynthia	Missoula	80%	✓	✓	x	✓	✓	✓	✓	✓	✓	x
Senator	Town	Score	A	B	C	D	E	F	G	H	I	J

2017 Voting Record: Montana House



Representative	Town	Score	A	B	H	I	J	K	L	M	N	O
Abbott, Kim	Helena	90%	✓	✓	✓	✓	✗	✓	✓	✓	✓	✓
Anderson, Fred	Great Falls	30%	✗	✗	✗	✗	✓	✓	✗	✓	✗	✗
Bachmeier, Jacob	Havre	80%	✓	✓	✗	✓	✗	✓	✓	✓	✓	✓
Ballance, Nancy	Hamilton	20%	✗	✗	✗	✗	✓	✓	✗	✗	✗	✗
Bartel, Dan	Lewistown	40%	✓	✗	✗	✓	✓	✓	✗	✗	✗	✗
Beard, Becky	Elliston	10%	✗	✗	✗	✗	✓	✗	✗	✗	✗	✗
Bennett, Bryce	Missoula	100%	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Berglee, Seth	Joliet	20%	✗	✗	✗	✗	✓	✓	✗	✗	✗	✗
Bishop, Laurie	Livingston	100%	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Brodehl, Randy	Kalispell	20%	✗	✗	✗	✗	✓	✓	✗	✗	✗	✗
Brown, Bob	Thompson Falls	20%	✗	✗	✗	✗	✓	✓	✗	✗	✗	✗
Brown, Zach	Bozeman	80%	✓	✓	✗	✓	✗	✓	✓	✓	✓	✓
Burnett, Tom	Bozeman	20%	✗	✗	✗	✗	✓	✓	✗	✗	✗	✗
Cook, Rob	Conrad	10%	✗	✗	✗	✗	✗	✓	✗	✗	✗	✗
Court, Virginia	Billings	100%	✓	✓	✓	✓	✓	✓	✓	✓	A	✓
Cuffe, Mike	Eureka	10%	✗	✗	✗	✗	✓	✗	✗	✗	✗	✗
Curdy, Willis	Missoula	90%	✓	✓	✓	✓	✗	✓	✓	✓	✓	✓
Curtis, Amanda	Butte	80%	✓	✓	✓	✓	✗	✗	✓	✓	✓	✓
Custer, Geraldine	Forsyth	0%	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗
Doane, Alan	Bloomfield	11%	✗	✗	✗	✗	✓	✗	✗	✗	✗	A
Dudik, Kimberly	Missoula	90%	✓	✓	✓	✓	✗	✓	✓	✓	✓	✓
Dunwell, Mary Ann	Helena	100%	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Eck, Jennifer	Helena	90%	✓	✓	✓	✓	✗	✓	✓	✓	✓	✓
Ehli, Ron	Hamilton	20%	✗	✗	✗	✗	✓	✓	✗	✗	✗	✗
Ellis, Janet	Helena	100%	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Essmann, Jeff	Billings	20%	✗	✗	✗	✗	✓	✓	✗	✗	✗	✗
Fern, Dave	Whitefish	100%	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Fitzgerald, Ross	Fairfield	20%	✗	✗	✗	✗	✓	✓	✗	✗	✗	✗
Fleming, John	Saint Ignatius	100%	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Flynn, Kelly	Townsend	20%	✓	✗	✗	✗	✓	✗	✗	✗	✗	✗
Funk, Moffie	Helena	90%	✓	✓	✓	✓	✗	✓	✓	✓	✓	✓
Galt, Wylie	Martinsdale	20%	✗	✓	✗	✗	✓	✗	✗	✗	✗	✗
Garner, Frank	Kalispell	10%	✗	✗	✗	✗	✗	✓	✗	✗	✗	✗
Glimm, Carl	Kila	10%	✗	✗	✗	✗	✓	✗	✗	✗	✗	✗
Greef, Edward	Florence	20%	✗	✗	✗	✗	✓	✓	✗	✗	✗	✗
Grubbs, Bruce	Bozeman	20%	✗	✗	✗	✗	✓	✓	✗	✗	✗	✗
Gunderson, Steve	Libby	10%	✗	✗	✗	✗	✓	✗	✗	✗	✗	✗
Hamilton, Jim	Bozeman	90%	✓	✓	✓	✓	✗	✓	✓	✓	✓	✓
Hamlett, Bradley	Cascade	20%	✗	✗	✗	✓	✗	✗	✗	✓	✗	✗
Harris, Bill	Winnett	30%	✗	✗	✗	✗	✓	✓	✗	✗	✗	✓
Hayman, Denise	Bozeman	100%	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Hertz, Adam	Missoula	20%	✗	✗	✗	✗	✗	✓	✗	✗	✗	✓
Hertz, Greg	Polson	20%	✗	✗	✗	✗	✓	✓	✗	✗	✗	✗
Hill Smith, Ellie	Missoula	90%	✓	✓	✓	✓	✗	✓	✓	✓	✓	✓
Holmlund, Kenneth	Miles City	20%	✗	✗	✗	✗	✓	✓	✗	✗	✗	✗
Hopkins, Mike	Missoula	30%	✗	✗	✗	✗	✓	✓	✗	✗	✗	✓
Jacobson, Tom	Great Falls	60%	✗	✓	✗	✓	✗	✓	✗	✓	✓	✓
Jones, Donald	Billings	10%	✗	✗	✗	✗	✓	✗	✗	✗	✗	✗
Karjala, Jessica	Billings	90%	✓	✓	✓	✓	✗	✓	✓	✓	✓	✓
Keane, Jim	Butte	20%	✗	✗	✗	✗	✗	✗	✓	✓	✗	✗
Representative	Town	Score	A	B	H	I	J	K	L	M	N	O



2017 Voting Record: Montana House

Representative	Town	Score	A	B	H	I	J	K	L	M	N	O
Kelker, Kathy	Billings	90%	✓	✓	✓	✓	✗	✓	✓	✓	✓	✓
Kipp III, George	Heart Butte	100%	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Knokey, Jon	Bozeman	50%	✗	✓	✗	✓	✓	✓	✓	✗	✗	✗
Knudsen, Austin	Culbertson	20%	✗	✗	✗	✗	✓	✓	✗	✗	✗	✗
Knudsen, Casey	Malta	10%	✗	✗	✗	✗	✗	✓	✗	✗	✗	✗
Lavin, Steve	Kalispell	10%	✗	✗	✗	✗	✓	✗	✗	✗	✗	✗
Lenz, Dennis	Billings	20%	✗	✗	✗	✗	✓	✓	✗	✗	✗	✗
Loge, Denley	Saint Regis	0%	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗
Lynch, Ryan	Butte	70%	✓	✓	✗	✓	✗	✗	✓	✓	✓	✓
Mandeville, Forrest	Columbus	30%	✗	✗	✗	✗	✓	✓	✓	✗	✗	✗
Manzella, Theresa	Hamilton	30%	✗	✗	✗	✓	✓	✓	✗	✗	✗	✗
McCarthy, Kelly	Billings	90%	✓	✓	✓	✓	✗	✓	✓	✓	✓	✓
McConnell, Nate	Missoula	90%	✓	✓	✓	✓	✗	✓	✓	✓	✓	✓
McKamey, Wendy	Great Falls	20%	✗	✗	✗	✗	✓	✓	✗	✗	✗	✗
Morigeau, Shane	Missoula	90%	✓	✓	✓	✓	✗	✓	✓	✓	✓	✓
Mortensen, Dale	Billings	20%	✗	✗	✗	✗	✓	✓	✗	✗	✗	✗
Noland, Mark	Bigfork	10%	✗	✗	✗	✗	✓	✗	✗	✗	✗	✗
O'Hara, James	Fort Benton	20%	✗	✗	✗	✗	✓	✓	✗	✗	✗	✗
Olsen, Andrea	Missoula	90%	✓	✓	✓	✓	✗	✓	✓	✓	✓	✓
Patelis, Jimmy	Billings	22%	✗	✗	✗	✗	✓	✓	✗	✗	✗	A
Peppers, Rae	Lame Deer	80%	✓	✓	✓	✓	✗	✗	✓	✓	✓	✓
Perry, Zac	Hungry Horse	80%	✓	✓	✓	✓	✗	✗	✓	✓	✓	✓
Pierson, Gordon	Deer Lodge	50%	✗	✓	✗	✓	✗	✗	✗	✓	✓	✓
Price, Jean	Great Falls	80%	✓	✓	✓	✓	✗	✗	✓	✓	✓	✓
Redfield, Alan	Livingston	20%	✓	✗	✗	✗	✓	✗	✗	✗	✗	✗
Regier, Matt	Kalispell	20%	✗	✗	✗	✗	✓	✓	✗	✗	✗	✗
Ricci, Vince	Laurel	10%	✗	✗	✗	✗	✓	✗	✗	✗	✗	✗
Rosendale, Adam	Billings	20%	✗	✗	✗	✗	✓	✓	✗	✗	✗	✗
Ryan, Marilyn	Missoula	80%	✓	✓	✓	✓	✗	✗	✓	✓	✓	✓
Sales, Walt	Manhattan	10%	✗	✗	✗	✗	✗	✓	✗	✗	✗	✗
Schreiner, Casey	Great Falls	80%	✓	✓	✗	✓	✗	✓	✓	✓	✓	✓
Shaw, Ray	Sheridan	10%	✗	✗	✗	✗	✗	✓	✗	✗	✗	✗
Sheldon-Galloway, Lola	Great Falls	40%	✗	✗	✗	✗	✓	✓	✓	✓	✗	✗
Skees, Derek	Kalispell	20%	✗	✗	✗	✗	✓	✓	✗	✗	✗	✗
Smith, Bridget	Wolf Point	100%	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Staffanson, Scott	Sidney	10%	✗	✗	✗	✗	✓	✗	✗	✗	✗	✗
Stewart-Peregoy, Sharon	Crow Agency	90%	✗	✓	✓	✓	✓	✓	✓	✓	✓	✓
Swanson, Kathy	Anaconda	80%	✓	✓	✓	✓	✗	✗	✓	✓	✓	✓
Trebas, Jeremy	Great Falls	30%	✗	✗	✗	✗	✓	✓	✗	✓	✗	✗
Tschida, Brad	Missoula	20%	✗	✗	✗	✗	✓	✓	✗	✗	✗	✗
Usher, Barry	Billings	10%	✗	✗	✗	✗	✗	✓	✗	✗	✗	✗
Vinton, Sue	Billings	20%	✗	✗	✗	✗	✓	✓	✗	✗	✗	✗
Wagoner, Kirk	Montana City	10%	✗	✗	✗	✗	✗	✓	✗	✗	✗	✗
Webb, Peggy	Billings	10%	✗	✗	✗	✗	✓	✗	✗	✗	✗	✗
Webber, Susan	Browning	90%	✓	✓	✓	✓	✗	✓	✓	✓	✓	✓
Welch, Tom	Dillon	10%	✗	✗	✗	✗	✗	✓	✗	✗	✗	✗
White, Kerry	Bozeman	22%	✗	✗	✗	✗	✓	✓	✗	✗	A	✗
Windy Boy, Jonathan	Box Elder	50%	✗	✗	✓	✓	✗	✗	✓	✓	✓	✗
Woods, Tom	Bozeman	90%	✓	✓	✓	✓	✗	✓	✓	✓	✓	✓
Zolnikov, Daniel	Billings	40%	✗	✗	✗	✗	✓	✓	✓	✗	✗	✓
Representative	Town	Score	A	B	H	I	J	K	L	M	N	O

Environmental Oversight Board Attacked

by Anne Hedges

The Montana legislature, with the help of lobbyists for large industrial polluters, put the Montana Board of Environmental Review (BER) in its sights. The BER is the volunteer body that oversees the Montana Department of Environmental Quality (DEQ). It is comprised of seven members from across the state who are required to have expertise in a variety of fields. Board members are nominated by the governor and confirmed by the Senate. The total cost of the BER is a paltry \$18,000 a year because the members donate their time to the State.

“...the job of the BER is to hold both DEQ and regulated industries accountable for complying with laws and regulations that protect the environment and public health.”

The BER is responsible for holding public hearings on proposed air quality, water quality, and mining rules, and amending, rejecting, or adopting those proposals. It also decides appeals of DEQ-issued permits and enforcement actions. In other words, the job of the BER is to hold both DEQ and regulated industries accountable for complying with laws and regulations that protect the environment and public health.

The BER provides transparency and a final opportunity, short of going to court, for public involvement in DEQ decisions. Its existence helps ensure that DEQ follows the law and doesn't totally ignore concerns raised during the permitting or rule-making process. On rare occasions the BER rejects a DEQ rule or permit – and therein lies the rub.

Polluting industries want to get their way 100% of the time, not just most of the time.

Sen. Duane Ankney (*R-Colstrip*) launched the attacks against the BER by introducing a bill to eliminate the BER entirely. **SB 337** was a 268-page bill that put DEQ in charge of overseeing itself. Lobbyists for the coal, oil and gas, and hardrock mining industries, and the Montana Chamber of Commerce, argued that they were “very comfortable” with DEQ having nobody with oversight authority over it. Not a single example was offered of why the BER should be eliminated. Instead, the bill’s proponents just said that DEQ had the expertise to police itself and that they trusted DEQ to do so.

Although DEQ was only an informational witness at the Senate hearing, it switched to being an opponent when SB 337 moved over to the House. The bill passed the Senate on a 33 to 17 vote, and the House 57 to 43, largely along party lines. It is awaiting action by the governor. MEIC is strongly encouraging the governor to recognize that meaningful public involvement and oversight will happen only if the fox is not in charge of the hen house.

In another “slam” at the BER, never before has the legislature employed such underhanded tactics in dealing with the governor’s nominations to the BER. Sen. Chas Vincent (*R-Libby*), chair of the Senate Natural Resources Committee, refused to even hold a hearing on the governor’s three nominees. Without a hearing, the Senate cannot confirm or reject nominees. This year’s nominees were all returning board members: physician Robert Byron from Hardin; Michele Reinhart Levine, Great Falls attorney; and Roy O’Connor, one of two public members. These three people have given hundreds of volunteer hours to serve on the BER and Sen. Vincent treated them shamefully by refusing to even allow a hearing to be held on their nominations. The governor will now need to appoint three replacement board members. ☺

Capitol building.
Photo by Alexander Ramirez.



Land Use and Takings

by Anne Hedges

The 2017 legislature considered a number of proposals that would have eviscerated local and state land use regulation. Fortunately, those proposals were either rejected or amended to remove the most objectionable provisions. Most of the proposed bills to improve land use regulations were also rejected. (For a review of land use bills that deal with water-related issues see page 10). Overall, in the seemingly never-ending battle over local land use regulation, this session could be summed up as a draw.

The worst environmental bill of the session was arguably **SB 98** (Sen. Cary Smith, *R-Billings*). SB 98 was an extreme takings bill that would have forced state and local governments to pay a property owner almost any time a regulation decreased the value of the property, regardless of its benefits in protecting public health, safety, and welfare. If a government could not afford to pay that reimbursement, the government would have to waive the regulation for that property owner, which could put neighbors, other property owners, the rest of the community, and those living downwind or downstream at risk. Similar takings bills have been introduced and rejected nearly every legislative session. SB 98 actually made it out of committee, but was defeated on the Senate floor by a vote of 20-30.

A few legislators were brave enough to try and improve land use planning laws. Most notably, Rep. Jim Hamilton (*D-Bozeman*) introduced **HB 548**. This bill would have fixed the provision in the county zoning law that allows the public to protest local government zoning decisions. In 2013 the Montana Supreme Court struck down the county zoning protest provision in state law because it gave large landowners protest rights but not other impacted parties. The legislature

had not removed the unconstitutional language nor provided a legal mechanism to protest zoning decisions. Rep. Hamilton's bill would have done both those things. Unfortunately, the bill was tabled in the House Local Government Committee on a party-line vote.

Other good ideas that failed to pass were:

HB 317 (Rep. Walt Sales, *R-Manhattan*) would have allowed local governments to have a public hearing on the first minor subdivision of a larger piece of property. The bill passed committee but was defeated on the House floor on a 50-50 vote.

SB 266 (Sen. Jill Cohenour, *D-East Helena*)



Bitterroot River.

would have limited the duration of subdivision review approvals to three years unless the development was in an area with a growth policy, zoning, and an infrastructure plan. The bill was tabled in the Senate Local Government Committee.

SB 269 (Sen. Mary Caferro, *D-Helena*) would have required a developer to submit a complete application for sanitation to the State prior to the public comment period at the local level. The bill was tabled in the Senate Local Government Committee.

continued on page 21

Other Noteworthy Bills

by Nadine Nadow

Each session there are a large number of bills that MEIC works on that are important to the environment – both good and bad – but aren’t neatly categorized into a general list of priorities. Four bills rise to the top of that list this session. Three were good proposals that would have produced positive environmental benefits. Although none of those passed, the sponsors are to be commended for bringing them forward for debate, and hopefully each idea will be adopted by future legislatures. The fourth is a truly terrible resolution seeking to amend the U.S. Constitution. If the language in the resolution were to be added to the U.S. Constitution, health, safety, and environmental protections (among many other important rights) would be in serious jeopardy.

SJ 6 (Sen. Duane Ankney, *R-Colstrip*) is a resolution urging the U.S. Congress to propose what is known as the “regulation freedom amendment” to the U.S. Constitution. The amendment would include a clause saying that whenever one-quarter of the members of the U.S House of Representatives or the U.S. Senate send to the president a declaration in opposition to a proposed federal regulation, it will require a majority vote of both the House and Senate before the regulation can go into effect. Such an amendment to the Constitution would allow a minority of lawmakers to prevent the

adoption of complex and important regulations. Only lobbyists for industrial polluters supported the resolution at its hearings. SJ 6 passed the Senate on a 32-17 vote, and the House 56-44. Resolutions are not signed by the governor.

SB 247 (Sen. Mike Phillips, *D-Bozeman*) would have prohibited the outdoor use of neonicotinoids, an insecticide ingredient that has been linked to the rapid decline of pollinator populations, including bees, birds, bats, butterflies, beetles, ants, lizards, and other wildlife. Montana, for example, is the second-leading honey producer in the U.S., producing nearly 15 million pounds valued at \$31 million annually. The use of neonicotinoids will undoubtedly contribute to a decline in the production of this commodity. The bill was amended in the Senate to merely require a report to be prepared by the Department of Agriculture, but even so failed to pass the Senate on a 25-25 vote.

HB 657 (Rep. Shane Morigeau, *D-Missoula*) would have phased out the use of styrofoam in food-related businesses. Styrofoam is made from polystyrene, a petroleum-based plastic, is not biodegradable so it remains in the environment for centuries, and is a significant pollutant of U.S. waters. It degrades into microscopic particles (or microplastics) and retains contaminants, such as oil and grease, which contain toxins. The bill was tabled in the House Business and Labor Committee.



Thank you, Nadine!

by Anne Hedges

Sometimes you get lucky. MEIC has been fortunate to have some of the best legislative assistants around. This session was no exception. Nadine Nadow came to MEIC from the Vermont Law School. Her interest in land use law and in the legislative process made her a perfect fit for MEIC. She tackled new tasks nearly every day and did it with humor, efficiency, and astute perception. She also happens to own the sweetest dog, who was calming to have around during the madness of the session. We wish the best for Nadine (and her dog) and look forward to working with her again in her legal career.

SB 109 (Sen. Mike Phillips, *D-Bozeman*) was the second attempt by Sen. Phillips to reinstate the requirement that an environmental review under the Montana Environmental Policy Act should include the examination of impacts beyond Montana's borders. State agencies

should be required to analyze interstate and out-of-state environmental impacts because economic, social, and environmental impacts do not stop at state lines. The bill was tabled in the Senate Natural Resources Committee. ☺

Trump Lawsuit *(continued from page 2)*

Because of these changes the Obama Administration had declared a moratorium on new leases while it began an extensive, programmatic analysis of the leasing program under NEPA. It held numerous public hearings around the country including in Billings where MEIC staff and members testified in support. More than 20,000 public comments were received, nearly all in favor of revamping the program.

NEPA requires an environmental impact statement or an environmental assessment be prepared for every major action or decision that will potentially affect the environment. But, with only the stroke of his pen, Zinke revoked the moratorium and cancelled the programmatic analysis. No scientific facts, no policy analysis,

only a political statement that we should mine more coal on our public lands. Hence, this lawsuit was filed.

In addition to the Northern Cheyenne and MEIC, the plaintiffs are ecoCheyenne (Lame Deer), Citizens for Clean Energy (Great Falls), Sierra Club, Center for Biological Diversity, WildEarth Guardians, and Defenders of Wildlife. The law firms representing the groups are Earthjustice of Bozeman and Ziontz Chestnut of Seattle.

News Flash: As this issue was going to press, the states of New Mexico, Washington, California and New York filed a very similar suit in the same court. They are represented in-state by former MEIC Board President Roger Sullivan of Kalispell. ☺

Water *(continued from page 10)*

have required the Montana Department of Environmental Quality (DEQ) to take over the federal Clean Water Act Section 404 permitting process for dredging and filling operations that impact waters of the U.S. That program is currently administered by the U.S. Army Corps of Engineers. Not only would it have required millions of dollars in Montana taxpayer money to administer, but it also would be likely to result in weaker permits and more lax enforcement, largely due to the fact that DEQ is understaffed and more subject to political pressures. The bill was tabled in the House Natural Resources Committee.

Sen. Vincent also introduced **SB 28**, which unfortunately has become law. SB 28 will allow aggrieved parties involved in water disputes to appeal DNRC decisions directly to the Montana Water Court. The Water Court was created and entirely dedicated to the water adjudication process (an ongoing and decades-long process that aims to establish and clarify water rights across Montana). The new responsibilities in this bill will potentially distract the Water Court from its primary purpose. ☺

Clean Energy *(continued from page 5)*

Clean Vehicles

In the category of bills looking for a problem that does not exist, **HB 205** (Rep. Alan Redfield, *R-Livingston*) initially would have assessed an extra \$300 annual registration fee on electric vehicles and \$150 fee on all “hybrid” vehicles. The definition of hybrid was so broad it included Flex Fuel vehicles that may never actually burn a drop of alternative fuel. MEIC successfully promoted amendments that decreased the electric vehicle fee to \$90 and removed the hybrid fee entirely. Fortunately, Governor Bullock vetoed this bad bill.

Public Service Commission

As the regulator of Montana’s investor-owned utilities such as NorthWestern Energy (NWE), the Montana Public Service Commission (PSC) plays a key role in determining the future of clean energy. This session saw two good bills pass (one over the objections of NWE) and two good bills fail (both at the request of NWE).

The good bills that passed included:

HB 193 (Rep. Tom Woods, *D-Bozeman*), which was motivated in large part by MEIC’s successful effort to keep NWE from passing on to ratepayers imprudently incurred costs related to an outage at Colstrip. The bill gives the PSC greater authority to review rate increase requests and to potentially disallow those deemed

unjustified, forcing the company to be more accountable for the costs it incurs.

SB 168 (Sen. Sue Malek, *D-Missoula*) requires the PSC to file its official comments on a utility’s long-term resource acquisition plan within nine months of receiving it.

The good bills that died included:

HB 189 (Rep. Daniel Zolnikov, *R-Billings*), which would have prevented NWE from passing on to ratepayers its property tax costs without PSC approval; and

HB 475 (Rep. Tom Woods, *D-Bozeman*), which would have given the PSC more authority to initiate comprehensive reviews of gas and electric rates.

Upcoming Studies

One bill and two resolutions that proposed interim studies were passed. If legislators prioritize these studies, MEIC will be monitoring and participating in them as appropriate during the interim between now and the next legislative session.

HB 219 (Rep. Zach Brown, *D-Bozeman*) requires the PSC to specify the parameters for a cost-benefit study of net metering which NWE will then conduct. The results of the study will be used to inform any changes to the net metering program during NWE’s next general electricity rate case. MEIC will participate thoroughly in this process, making sure the ultimate results are valid and useful.

SJ2 (Sen. Pat Connell, *R-Hamilton*) proposes a study of renewable energy credits to better understand how that mechanism for valuing clean energy works.

SJ31 (Sen. Mary McNally, *D-Billings*) calls for a study of decoupling, a regulatory process by which the amount of revenue a utility receives is no longer dependent on the quantity of energy it sells. Instead, revenues become dependent on the utility providing quality energy services. ☺

Vice-Chair of the House Energy Committee, Rep. Denise Hayman, D-Bozeman.



Oil and Gas *(continued from page 9)*

Senate, and was signed by the governor.

Reducing Protections for People Living Near Oil and Gas Wells

SB 93 (also Sen. Tom Richmond) would replace rules recently adopted by the Montana Board of Oil and Gas Conservation that required drilling operators to notify homeowners and businesses within a certain distance of a new

well before beginning drilling. SB 93 would reduce the distance used to determine who is notified from 1,320 feet to 990 feet and would remove schools, hospitals, and offices from the notification requirements. Rep. Richmond is, by the way, the long-time former administrator of the Board of Oil and Gas. The bill was vetoed by the governor. 

Land Use *(continued from page 17)*

One good bill that did pass was **HB 445** (Rep. Ed Greef, *R-Florence*). This bill fixed a deficiency in the law that was identified in a 2015 court decision in which Bitterrooters for Planning successfully challenged the approval of a huge subdivision near Hamilton that would have allowed development to be phased in over 30 years with no additional opportunities for public comment. HB 445 is not perfect, but it allows counties to approve 20-year phased developments but with public comment opportunities for each phase, and the possibility of additional mitigation measures during that time. The bill passed both houses and was signed by the governor.

Rep. Forrest Mandeville (*R-Columbus*) proposed some of the worst land use bills this session. The two most offensive ideas were rejected and the other was amended to resolve most of its problems.

HB 455 would have required the Department of Environmental Quality to rewrite water quality protection rules for subdivisions to expand the exemptions from water quality requirements and mandated that the Board of Environmental Review adopt whatever rules DEQ proposed. The bill passed the House on a 58-41 vote but was tabled in the Senate Local Government Committee.

HB 457 was so radical it failed to make it out of

the House Local Government Committee. This bill would have allowed a developer to redesign the lot configuration in a subdivision after the subdivision was approved by the local government.

HB 245, as introduced, would have allowed local governments to delegate final subdivision review to a third party and would have radically limited the timeframes for local governments to review and approve subdivisions. Fortunately, Mandeville was willing to amend the bill to lengthen the review time and to ensure that local elected officials have the final say over the approval, modification, or denial of final subdivision plats.

Another bill that would have been particularly damaging to land use regulation was amended to be less objectionable. **HB 416** (Rep. Ed Greef, *R-Florence*) would have changed the legal review criteria for challenges to subdivision decisions by local governments, making it far more difficult for the public to challenge such decisions when the local government acted irresponsibly. The bill was amended by both the House and Senate Local Government Committees to clarify that the courts would continue to review local government decisions to determine if they are arbitrary, capricious, or unlawful. 

Colstrip (continued from page 7)

Colstrip coal-fired power plant.



a consensus bill that will ensure transparency and public involvement in the groundwater clean-up process at the plant and its waste ash ponds.

- Despite the legislature eliminating a block grant program for school districts throughout Montana, **HB 647** (Rep. Don Jones, *R-Billings*) was amended in the Senate to maintain a \$1.7 million annual grant for Colstrip schools.
- **SB 22** (Rep. Jim Keane, *D-Butte*) gave the Montana attorney general \$80,000 to argue for clean energy replacement and clean-up funding in a Washington State rate case for Puget Sound Energy, the owner with the largest share of the Colstrip plant.

impacts of coal development. **HB 209** (Rep. Barry Usher, *R-Billings*) will double the grant funding available for coal communities such as Colstrip, from \$1.6 million to \$3.2 million a year through 2019. Hopefully that funding will go to communities struggling to address the decline in coal production, such as the Crow Agency and Colstrip, and help these communities diversify economically.

Good Colstrip Bills that Failed to Pass

The legislature rejected some of the most important bills that would have addressed the problems facing the town of Colstrip and the plant's workers.

- **HB 625** (Rep. Janet Ellis, *D-Helena*) would have required the Montana Department of Environmental Quality to impose a remediation bond on Talen Montana, the only Colstrip owner not regulated by a utility commission. Because Talen is unregulated it cannot pass remediation costs on to customers which makes it critical that Talen post bonds to pay for its remediation obligations. DEQ issued a cleanup order for contamination at the plant nearly 5 years ago but has yet to require the owners to post a remediation bond. Talen's share of Colstrip, previously held by PPL Montana, has traded hands twice in as many years. This type of corporate shuffling often is a precursor to bankruptcy. Talen repeatedly told legislators that it is losing about \$30 million a year at Colstrip and that it is unwilling to continue to do so. If Talen declares bankruptcy, clean-up funding for the massive contamination at Colstrip could be jeopardized. The bill would have required DEQ to impose a bond on Talen within 60 days to guarantee that clean-up funding is available, or to at least establish a place in the queue in bankruptcy court. The bill was tabled in the House Energy Committee.
- Sen. Ankney's **SB 140** allows the Montana Board of Investments to loan the town of Colstrip \$10 million from the Coal Tax Trust Fund to pay for infrastructure. No other town has access to such a low-interest loan.
- **HB 585** (Rep. Austin Knudsen, *R-Culbertson*) allows Talen Energy, which has the second largest ownership share in the plant and is the plant's operator, to borrow \$10 million each year from the Coal Tax Trust Fund to operate Units 1 & 2 until those units close. The bill is the first time a private company has been allowed to borrow money from the Trust Fund to operate a facility.
- Years ago the legislature created a grant fund program to help offset the negative

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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 . . ."

- **HB 624** (also Rep. Ellis) would have established a transition working group comprised of Colstrip owners and representatives from Native American tribes, labor, education, economic development, local government, and other interest groups. The working group was to discuss the needs of the town as two of the four units close and how those needs could be met. This bill was also tabled in the House Energy Committee.

Other Colstrip Bills

There were other proposals to address the transition at Colstrip but they failed to make it out of committee or were never even introduced. For example, **HB 60** (Rep. Jim Keane, *D-Butte*) would have imposed a tax on energy production to create a grant program for Colstrip. The idea was so widely opposed that Sen. Keane requested the bill be withdrawn prior to its hearing.

One thing is certain: the people and town of

Colstrip came out of this session much better off than they were before. Many other towns across the state have had major employers leave yet the legislature did little or nothing to help those towns recover. Stone Container in Frenchtown closed in 2009 and 417 people lost their jobs. Columbia Falls Aluminum closed, and at its peak employed 1,200 people. The BNSF diesel shop in Glendive just announced the elimination of 55 workers. Golden Sunlight mine laid off 135 workers in 2015. The transition facing Colstrip is not unique to Montana. It is not even unique in the country, with about half of the nation's coal-fired power units closed or slated for closure. Montanans should be asking how they can take advantage of changing markets, address climate change, and create jobs and tax revenue. Montana's abundant clean energy resources make Montana uniquely situated to take advantage of the energy market transition. The big question is – will it do so? ☺

Thoughts from the Executive Director

by Jim Jensen



First, a big Thank You to all of MEIC's members who contributed to our legislative lobbying effort. This session was another mean-spirited one and it took extra effort to kill bad bills as you will see as you read

this issue of **Down To Earth**. It is only because of you – our strong and dedicated members – that we can, and did, succeed.

On a more cheerful note, we've had lots of moisture this Winter and Spring and now it's turning into a glorious Montana summer. I hope everyone gets out and enjoys Montana's natural bounty. It is,

after all, why we love our state so much.

I'm very proud (as reported on page 2 of this issue) that MEIC has stepped up as a leader to fight against the Trump war on the environment, by being the first to sue over his anti-clean energy future.

And there is very good news in the world's rejection of dirty energy sources and their replacement with clean renewable energy. Coal is so "last century" now, with almost three times more workers in the renewable energy industry than in coal, and some countries now generating nearly 80% of their energy from the wind and sun.

We must fight against the political winds in Washington, D.C. to maintain this momentum. MEIC is prepared to be in the vanguard in doing so. Let us be optimistic, happy warriors as we put our collective shoulders to the wheel. I am hopeful that the intangible "something special" about Montana will make us succeed. ☺



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