

Down to Earth

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NEWS FROM THE MONTANA ENVIRONMENTAL INFORMATION CENTER



**MEIC
Board Elections
on page 12 -
please vote!**

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A variety of ways you can help MEIC

1. Join MEIC's monthly giving program

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

Members are the heart and soul of MEIC, and who better to spread the word than you. 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. **Ask about our 2-for-1 program when you renew your MEIC membership!**

I want to help protect Montana's environment by:

- Joining MEIC.
- Renewing my MEIC membership.
- Donating to MEIC's endowment.
- Giving a gift membership.
- Making a special contribution.

Here are my dues or gift membership:

- \$250 (Sustainer) \$45 (Family)
- \$120 (Donor) \$30 (Individual)
- \$60 (Supporter) Other \$ _____

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Thank you!



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Cover photo courtesy of Paul K. Anderson.

Important Victory: No “Mega-loads” For Now

by Kyla Wiens

On July 19th a State district court judge ruled in favor of MEIC, the Montana Chapter of the Sierra Club, the National Wildlife Federation, and Missoula County by granting a request for a preliminary injunction to stop the Montana Department of Transportation (MDT) from issuing any further permits to Imperial Oil for the Kearsarge Module Transportation Project (KMTMP). Judge Ray Dayton provisionally agreed that MDT failed to consider alternatives to the preferred transportation route and did not adequately analyze the economic and environmental impacts of the project, as required by the Montana Environmental Policy Act (MEPA).

Permits for KMTMP would have allowed Imperial—a subsidiary of ExxonMobil—to haul over 200 loads of gargantuan tar sands mining equipment from Lolo Pass, along U.S. Highway 12 and Montana Highway 200 in western Montana, over Rogers Pass, and then along the Rocky Mountain Front, to Alberta. These “megaloads” could weigh up to 600,000 lbs. and would be the some of the largest ever permitted on Montana highways. According to MDT director Jim Lynch, the proposed route would create a “permanent high and wide corridor,” through some of the most scenic and ecologically sensitive areas of Montana. Transforming these two-lane highways into industrial haul routes would require over 75

turnouts to be constructed and utility lines to be buried at hundreds of locations. Each of these activities, and transporting the loads, require permits from MDT. The underlying purpose of the project is to continue the development of the Alberta tar sands—one of the most environmentally destructive energy development projects on Earth.

In April 2010, MDT had issued an environmental assessment (EA) for KMTMP. During the public comment period, numerous concerns were raised about the project’s potential safety, environmental, and economic impacts. In February 2011, MDT issued a “finding of no significant impact” for KMTMP despite glaring

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The underlying purpose of the project is to continue the development of the Alberta tar sands - one of the most environmentally destructive energy development projects on Earth.



Photo by Northern Rockies Rising Tide.

Mega-loads Victory *(cont. from page 3)*



A Conoco Phillips load waiting at the Port of Lewiston. Photo by fightinggoliath.org.

omissions in the EA and only a cursory analysis of the project's impacts. In April 2011, MEIC and the other plaintiffs filed a motion in State district court for a temporary restraining order to prevent MDT from issuing further permits. The agency had already issued a permit to Imperial Oil to haul a test module of a size equivalent to the future loads. Judge Dayton granted the temporary restraining order pending a hearing on the plaintiffs' motion for a preliminary

injunction. His ruling on July 19th granted the preliminary injunction and prevents the massive loads from moving for now.

Specifically, Judge Dayton provisionally agreed that MDT failed to:

- Consider future impacts associated with removing or relocating highway turnouts at numerous locations.
- Assess whether significant changes to the roads would facilitate the creation of a permanent "high and wide" corridor.
- Adequately compare and analyze alternative routes for the project.
- Independently scrutinize the EA, which was prepared by Imperial Oil and its contractors.

The preliminary injunction is an important but temporary victory because it prevents MDT from issuing transportation permits for the loads until there is an additional court hearing. The plaintiffs believe that the agency should produce either a new environmental assessment or a more comprehensive environmental impact statement on the project. MDT has indicated that it will challenge Dayton's injunction ruling, but will not make a final decision about how to proceed until after a court-ordered scheduling conference set for August 24th. ☺

MEPA and "Mega-loads"

When the 2011 Montana Legislature passed a bill to dramatically weaken the Montana Environmental Policy Act (MEPA), it intended to prevent State agencies from considering comprehensive environmental impacts, particularly those related to global warming. This significant change to MEPA raises an important question: when State agencies analyze a project's environmental impacts will they still be fulfilling their constitutional obligations to maintain and improve a clean and healthful environment if they ignore the significant impacts associated with global warming?

The Montana Department of Transportation (MDT) has already raised this question in MEIC's court case against tar sands "mega-load" permits. MDT argued that even if it initially failed to consider the environmental impacts of the project, the 2011 Legislature changed MEPA so much that requiring the agency to conduct another environmental analysis would be pointless because MEPA no longer requires agencies to review comprehensive impacts.

The courts will have to decide if the changes to MEPA allow the State to ignore significant environmental impacts, such as global warming pollution. The "mega-loads" case just might bring an answer to that question.

Last Chance to Change the Habitat Conservation Plan

by Kyla Wiens

Your help is needed. After reading this article, please contact the State Land Board members—contact information is given on page 24 (the back cover).

The State Land Board will vote early this Fall on a multi-species Habitat Conservation Plan (HCP) that the Montana Department of Natural Resources and Conservation (DNRC) has been developing for nearly eight years. This HCP covers five threatened and endangered species including grizzly bears, Canada lynx, and bull trout. The federal Endangered Species Act (ESA) requires DNRC to develop an HCP in order to receive a permit to conduct management activities such as logging and road construction that could impact endangered species. Under the ESA, DNRC's plan must minimize impacts to these species to the "maximum extent practicable."

This HCP will guide DNRC's land management activities on 500,000 acres of forested State school trust lands for the next 50 years. And, according to DNRC, the plan will set a precedent for future habitat conservation agreements on both public and private land. The HCP's large geographic scope and long duration make it critical that it follows ESA guidelines and protects species and their habitats. Unfortunately, DNRC's proposed HCP prioritizes timber harvesting over endangered species protection, and will almost certainly diminish habitat conditions for these species over time.

Despite the HCP's insufficiency, the U.S. Fish and Wildlife Service (USFWS) is likely to issue a favorable Biological Opinion for the HCP by the end of August 2011. After USFWS issues its opinion, the Land Board will vote on whether to approve

or deny DNRC's plan. Before the Land Board even considers approving the plan it should require DNRC to extend riparian buffers, decrease road densities, account for climate change, and maintain secure areas for grizzly bears.

This long HCP process is almost complete, but it is not too late to contact Land Board members and ask them to require DNRC to make important changes before they approve the plan. Here are the most important changes that need to be made.

- Road densities should be capped at one mile of road per square mile of land, or at the very least a no-net-gain policy should be adopted.
- Streamside buffers should be widened beyond 50-foot no-cut buffers to at least 100 feet, and the numerous exemptions for logging, road building, and gravel mining within the buffer zones should be eliminated.

Some of Montana's threatened and endangered species.



- The grizzly bear "core security" habitat should be maintained or increased. The current plan replaces core security areas with much weaker "quiet" areas where roads and other human disturbances would be allowed.
- An adaptive management strategy should be developed that adequately describes the threats that climate change poses to species, and identifies how DNRC will adjust its management activities based on potential impacts.
- A thorough technical and scientific review of the HCP should be required after 25 years to see if management strategies have been biologically effective. 🔄

Please refer to page 24 for Land Board contact information.

Judge Rules for State in Golden Sunlight Mine Lawsuit

by Jim Jensen

State district court judge Loren Tucker has ruled that the reclamation plan adopted by the State for the Golden Sunlight mine near

The framers of the Montana's 1972 Constitution wanted to make sure that Montana's future did not include any more Berkeley Pits.

Whitehall complies with the Montana Constitution's requirement that "all lands disturbed by the taking of natural resources shall be reclaimed" (Article IX, section II). He determined that the State's decision to allow the mine to leave 159 acres of the massive pit unreclaimed, and potentially able to erode and crumble over time, is legal.

This is the fifth court ruling MEIC has received in its long-running challenge to the reclamation plan for the mine. MEIC, the National Wildlife Federation, and the Gallatin

Wildlife Association brought the first lawsuit on the subject in 1992. On four different occasions former State district judge Thomas Honzel ruled for the environmental groups, and each time the legislature changed the law to nullify his rulings. Now, 19 years later, Tucker's ruling is the first to go against MEIC.

In his ruling Tucker created a two-pronged standard to determine what must be done to mined land to comply with the constitutional requirement. His test is: 1) whether the land is altered from its mined state by the reclamation; and 2) whether the alteration is positive. In the reclamation plan the State and company propose to drill a few "cavities" for bats to nest in (whether bats will move into these "toxic condos" is unknown). Tucker wrote that both prongs of his standard had been satisfied.

The framers of the Montana's 1972 Constitution wanted to make sure that Montana's future did not include any more

Aerial photo of the Golden Sunlight Mine. Photo by Wilburforce.



Golden Sunlight mine pit. Photo by Jeff Barber, taken on a flight courtesy of Lighthawk.



Berkeley Pits. The reclamation requirement was intended to prevent more such huge open sores gouged out of the landscape that remained “moonscapes” forever.

But the framers probably made a fundamental mistake when they delegated to the legislature the duty to enforce the constitutional requirement of reclamation.

It is not news to anyone who has studied Montana’s politics, both old and new, that the legislature nearly always prioritizes monied interests over the public interest. No clearer example exists than the mining industry’s history of domination of our State government. The recent proof of this reality is that the legislature has time and time again amended the reclamation laws to evade the Constitution’s clearly stated requirement of reclamation. And, of course, governors from

both political parties have signed the bills weakening the laws.

MEIC will be appealing Judge Tucker’s ruling to the Montana Supreme Court. The question is whether that Court will stand as the bulwark it has been in the past in defending Montana’s Constitution.

MEIC is represented in this case by Kim Wilson of Helena, and Tom France and Beth Brennan of Missoula. ☺

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Coal for Asia - The Hot New Thing

by Anne Hedges and Jim Jensen

Montana is at a crossroads. It can continue down the path of nearly unmitigated exploitation of its fossil fuel resources, or it can finally acknowledge the devastating impacts to air, land, water, and climate from such development, and instead encourage the development of more sustainable energy sources. If the recent Exxon pipeline spill into the Yellowstone River has any lesson, it is that fossil fuel development comes with very steep and unexpected costs.

Should Montana dig up its coal, contaminate its water resources, scar its landscape, and contribute to global warming, in order to feed a nearly unlimited demand for coal from Asian markets? Many of Montana's numerous proposed coal mines intend to sell their coal in Asia. During the 2011 legislative session coal industry lobbyists proudly proclaimed that the industry is gearing up to send Montana's coal

to China. Massive coal export terminals on the West Coast are being proposed by companies with coal interests in Montana, including Arch Coal and Ambre Energy. Just this month the Australian company developing the massive Many Stars coal-to-liquids project on the Crow Reservation announced that part of the project would focus on processing coal for export to Asia.

If Montana wants to protect itself from the ravages of coal mining and the well-documented impacts of global warming it must just say "No" to coal. MEIC is working to do just that.

MEIC Appeals Expansion of Bull Mountain Mine

One of the most questionable mines in the state is the Bull Mountain mine operated by Signal Peak Energy. It is an underground mine in the Bull Mountains south of Roundup, MT.

Rosebud Mine.
Photo by Kestrel
Aerial Services, Inc.



Signal Peak is infamous for seeking huge tax breaks from local and State governments. The mine has a checkered history filled with law violations, mine cave-ins, and employee injuries and death. Now Signal Peak wants to expand and the federal Bureau of Land Management (BLM) seems all too willing to accommodate it.

In June 2011 MEIC and the Sierra Club appealed to the Interior Board of Land Appeals BLM's decision allowing the mine to expand. The expansion would increase the size of the mine by about 2,680 acres, and allow it to access 61 million tons of coal on federal land and 71 million tons on State and private lands. BLM only conducted a cursory environmental assessment of the proposed expansion. Its consideration of the impacts to air quality and the mine's contribution to greenhouse gases was pitiful. Although BLM's analysis admits that nearly all of the coal will go to coal-fired power plants, it does not consider any global warming emissions other than the minimal emissions from the mining operation itself. The National Environmental Policy Act requires a cumulative analysis of all significant impacts, not just a small sliver of them.

Otter Creek

In July 2011, the Montana Department of Environmental Quality approved Otter Creek Coal's prospecting permit application. Otter Creek Coal, LLC, is a subsidiary of Arch Coal. The State approved the company's request to drill 44 test holes to characterize the coal seam.

In January 2011 State district court judge Joe Hegel had ruled in favor of MEIC and against the State and Arch Coal when he refused to dismiss the case that questions the legality of a law that exempts the State Land Board from the Montana Environmental Policy Act when leasing coal. The judge found that the exemption could allow the State to transfer public property to private owners without considering the environmental consequences of such an action.

This Summer all of the parties submitted motions for summary judgment to the court (asking that the case be decided without an evidence-gathering hearing, based upon the clear wording in the law). The judge has set a hearing on the motions for September 27th. MEIC and the Sierra Club are represented by Earthjustice attorney Jenny Harbine.

Although BLM's analysis admits that nearly all of the coal will go to coal-fired power plants, it does not consider any global warming emissions other than the minimal emissions from the mining operations itself.

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*Otter Creek region.
Photo by Kestrel
Aerial Services, Inc.*



Coal for Asia *(cont. from page 9)*

Coal Mine Proposed near Great Falls

American Power Corp. has proposed developing a coal mine east of Great Falls, just south of Stanford, MT. The mine, known as the Pace Coal project, just received a prospecting permit from the Montana Department of Environmental Quality in August 2011. Last year the Denver-based American Power Corp. bought 29,000 acres in Judith Basin County that included an old Great Northern Railway Co. coal mine site. The company intends to drill 61 holes in three phases to help characterize the coal seam. DEQ has approved the drilling of the first 13 holes. The company says that exploration work done in 1979 by what is now ExxonMobil Corp. found the site contained between 172 million and 410 million tons of bituminous coal. The mining area is located along an existing rail line and there are indications that the coal is destined for Asia. It is not yet known whether this will be an underground or a surface mine.

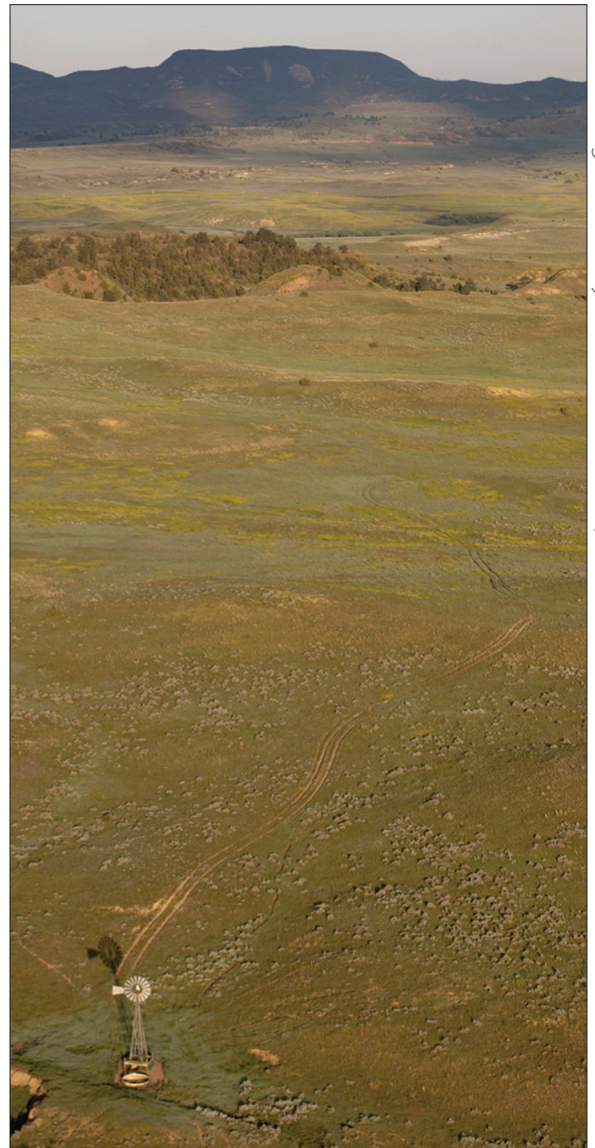
Billionaire Buys Tongue River Railroad

Billionaire candy magnate and Southeast Montana rancher Forrest Mars announced in July 2011 that he had purchased the permits for a portion of the controversial Tongue River Railroad in order to prevent the line from being built south of Ashland and crossing his extensive ranch holdings in the Birney area. It also saves roughly an additional dozen ranches along the Tongue River from the threat of the railroad.

The deal makes Mars a partner with the Burlington Northern Santa Fe Railroad and Arch Coal. That means he will no longer oppose the massive strip mine proposed at Otter Creek. In his letter announcing the deal Mars said: "It seems to those of us involved in this that the State of Montana

will greatly benefit through new jobs and revenue from the development of a portion of the railroad." Translated, that means he is investing considerable resources in the railroad to facilitate development of the Otter Creek tracts.

The railroad's permit, issued by the federal Surface Transportation Board, is currently being challenged in court by local ranchers. Oral arguments in the long-running case were heard in July 2011 before the 9th U.S. Circuit Court of Appeals. ☺



Otter Creek region. Photo by Kestrel Aerial Services, Inc.

Puzzling through the Rush to Export Coal to China

by Tom M. Powers

This commentary originally aired on Montana Public Radio on May 23, 2011.

The world price of thermal coal, the coal used to fuel electric generating plants, continues to rise despite the slow growth in American demand. Many commodities speculators are projecting still higher prices. In early May coal purchasers from Europe to China were paying \$140 per ton for this coal. Meanwhile the price of Powder River Basin coal in Montana and Wyoming was being listed as just over \$12 per ton.

That goes a long way to explain the enthusiasm of the coal companies operating in Montana's and Wyoming's Powder River Basin to shift from domestic U.S. coal markets to overseas markets and the push to expand the export capacity of West Coast coal ports.

Arch Coal, which owns huge mines in Wyoming and lots of coal in Montana, and its Australian partner, Ambre Energy, continue to try to work out the kinks associated with building a new coal port on the Columbia River northwest

of Portland. One of the challenges is how large numbers of mile-long unit trains can thread their way through Montana, Idaho, and Washington, snaking along the Columbia River on Burlington Northern Santa Fe rail lines, to the proposed West Coast ports.

Ambre Energy is exploring the possibility of avoiding the circuitous route from Eastern Montana and Wyoming by going northwest through Montana almost to the Canadian border in North Idaho and then back south to the Columbia River. Another alternative being considered would use Union Pacific rail lines through southern Wyoming and Idaho and then north to the Columbia River in eastern Oregon west of Pendleton. There the coal would be transferred to barges to float it down the Columbia River to proposed ocean-going coal ports near the mouth of the Columbia.

Arch Coal, which owns huge mines in Wyoming and lots of coal in Montana, and its Australian partner, Ambre Energy, continue to try to work out the kinks associated with building a new coal port on the Columbia River northwest of Portland.

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Coal trucks in China. Photo by Ross Keogh.

MEIC's 2011 Board Elections: *Cast your ballot today!*

It's time for the annual MEIC Board of Directors election. This year we have four new candidates, and two incumbent directors running for re-election. Please vote. It may seem like a formality, but it is an important part of keeping MEIC a viable and legal organization.

Instructions: 1) Only MEIC members can vote; subscribers and business corporations are not eligible. 2) Mark a "yes" or "no," or abstain from voting, for each candidate on the enclosed postage-paid card. 3) Mail the card back to MEIC in time to arrive by September 30, 2011. *Thank you for your participation.*



Gary Aitken

Gary Aitken, Ovando

Forty years ago, I felt our country was generally coming to its senses in terms of environmental awareness and social conscience. Unfortunately, history has proven that a very incorrect assessment. More than ever in the last fifty years, we need to stand firm and fight for those impossible-to-put-a-price-tag on values that make life on this planet enjoyable and worthwhile — clean air, clean water, and unspoiled natural places, the clean and healthful environment to which Montana citizens have a right.

Many organizations contribute to the overall progress of conservation in this country and in the state. All of them have their place. MEIC is the one organization which has proven its ability and willingness to tackle many of the seemingly hopeless industrial steamrollers and beat them back. I hope my contributions on the board can continue to help it maintain that success.



Steve Gilbert

Steve Gilbert, Helena

MEIC occupies a very special niche among Montana environmental organizations. It is lean and focused and has a remarkable sense of strategy in joining and winning battles against those who would deprive us of our constitutional right to a clean and healthful environment. It commits to win every time and rarely loses. It has well-represented your interests and mine against misguided state and federal "watch-dog agencies" and industries for over 30 years. For these things, I am forever in its debt.

I am proud to have been a long-time MEIC supporter and former board member. I would like to continue my board membership with your assistance. Thank you for your consideration.



Anne Johnson

Anne Johnson, Bozeman

MEIC is the environmental organization that connects most with my priorities, and probably yours too: a clean and healthful environment, now and for future generations. MEIC's strategies and tactics get results, and the board has worked hard to ensure good governance practices that promote MEIC's success in its mission. I'm pleased to run for another term and pledge to keep working hard with the rest of the board to support MEIC's savvy and hard-working staff in the many ways that a good board can. Thank you for your continuing support of MEIC—and our unique Montana constitutional rights.

Myla Kelly, Bozeman

After growing up in New England, and just hours after my graduation from Tufts University in Biology/Environmental Science, my husband-to-be and I left for Montana. Our tiny Ford Escort held all of our possessions with room to spare. We captained antique boats and gave naturalist tours on the lakes of Glacier National Park. With Glacier as our introduction to Montana, we were destined to never leave.

I earned my Masters degree in Forestry/Resource Conservation from the University of Montana and have used that educational background in my career as an ecologist/environmental consultant/program manager. I am currently the coordinator of the Peaks to Prairies Pollution Prevention Center at Montana State University, funded by the Environmental Protection Agency to develop projects that prevent pollution. I have worked with diverse stakeholder groups in their efforts to restore Montana watersheds, including the Blackfoot Challenge, Big Hole Watershed Council, and the Greater Gallatin Watershed Council. I co-founded the Gallatin Zero Waste Coalition, which is pushing Gallatin County to improve its recycling and waste reduction efforts. I am also an environmental representative on the Gallatin National Forest Resource Advisory Council.

Montana has been home to Mike and me, and now to our three children Madeline, Miles and Mason, for 15 years. Daily, I appreciate the beauty and unique value of our state. In my career, I have advocated strongly for the protection of our lands and would like the opportunity to further that advocacy by serving on the MEIC board. Thank you for your consideration and I look forward to working with all of you to protect Montana's environment.



Myla Kelly

Tom Steenberg, Missoula

I recently retired after working for 25 years in public safety with the City of Missoula Fire Department. I appreciate and value the rewards that come from working for the public good and welfare.

I also love and cherish the magnificent natural environment we are blessed with in Montana and take every opportunity to recreate on our rivers and lakes, in our mountains and parks. I consider it our responsibility to work to preserve our beautiful Treasure State.

I believe MEIC is at the forefront of protecting the public interest in clean air, clean water, and a healthy environment; in a nutshell -- leaving this place better than we found it. I have the time and energy to commit to MEIC, and welcome the opportunity to serve on the board.



Tom Steenberg

Michelle Tafoya, Whitefish

I believe that MEIC is one of the most effective environmental organizations in Montana. I have worked with some of the staff over the years and have found them always to be well-informed and committed to their work.

I have been coming out to Montana since 2001 and have lived permanently in Whitefish for five years. There are many places in Montana that hold a special place in my heart, but Glacier National Parks holds the top spot. I consult for various organizations and am in the process of completing my graduate degree in Environmental Policy and Management from the University of Denver. I hope to contribute to MEIC's efforts to protect our right to a clean and healthful environment through my experience working on clean energy and climate change campaigns.



Michelle Tafoya

If It Sounds Like a Dirty Word . . . It Is

by Derf Johnson

Fracking is an oil industry jargon word for hydraulic fracturing. Fracking is a process used in developing natural gas and oil wells that involves pumping enormous quantities of

Some landowners have been able to light their tap water on fire due to the high chemical concentrations. Problems like these have led the State of New York to issue a moratorium on new fracking wells until proper safeguards can be established.

water and chemicals into the ground at high pressure to stimulate production. The chemicals are often toxic. Poor fracking practices have been shown to contaminate adjacent wells and aquifers, threatening

the health of people and the environment.

The eastern United States is the region that has received the brunt of the use of fracking. Some landowners have been able to light their tap water on fire due to the high chemical concentrations. Problems like these have led the State of New York to issue a moratorium on new fracking wells until proper safeguards can be established.

Although fracking is somewhat new in Montana, it is happening here. In fact, the Montana Board of Oil and Gas Conservation (BOGC) recently drafted a proposed rule that is aimed at public

Oil well in eastern Montana.

disclosure of the chemicals that are used in fracking. But BOGC largely missed the mark. The rule was probably drafted in response to bills in the 2011 Legislature that would have required public disclosure and notification for adjacent landowners. The Senate committee hearing (on SB 86) was packed with Montanans concerned about the dangers of the fracking process, but the committee largely sided with the oil industry and tabled the bill.

The flaws in the proposed rule include: it doesn't establish a central, online clearinghouse of information on fracked wells; it doesn't require adjacent landowners to be notified before the wells are fracked; and it has an extremely permissive "trade secret" exemption.

A central online repository of information would be invaluable to the public by providing a "one-stop-shop" for understanding exactly what chemicals were used in a fracked well. And landowner notification is indispensable – without notification adjacent property owners are deprived of the ability to seek base-line water testing. This information could prove essential if landowners later suspect that the quality of their water has been compromised due to poor fracking practices.

The standard industry argument against disclosure is the protection of trade secrets. BOGC bought this line wholesale. Under the proposed rule, any time a company wants to claim its mix of chemicals is a trade secret, it can do so. This self-fulfilling exemption is even more generous than Wyoming, the Mecca of oil and gas development, could tolerate. Wyoming requires companies to apply for trade secret exemptions, but without a guarantee that the exemptions will be approved.

The fight for disclosure is not over. Although the comment period on the rule has ended, BOGC will be holding public hearings on its rule. If an inadequate rule is adopted, it may be necessary to return to the legislature to strengthen the disclosure laws for fracking. ☺



Mercury: Do Polluters Know Best?

by Derf Johnson

Who could oppose a regulation that is predicted to prevent between 6,800 and 17,000 premature deaths, and avoid 120,000 cases of aggravated asthma, in the next five years? The coal- and oil-fired electricity generating industry, that's who. And they've come out swinging.

The U.S. Environmental Protection Agency recently released a proposed regulation that will reduce toxic air pollutants from coal- and oil-fired power plants. Essentially, it will require those plants to upgrade their air pollution control equipment, and to change certain operating practices in order to reduce their toxic emissions. If adopted, it will be the first national standard requiring reductions in toxic air pollutants such as mercury, arsenic, and acid gases. Of particular concern is mercury, a neurotoxin that builds up in fish and then is passed on to humans. Montana is certainly not immune to this form of pollution – the Montana Department of Environmental Quality has determined that more than 1,280 miles of streams and 418,836 acres of lakes in the state containing toxic levels of mercury pollution.

Appallingly, the electricity generating industry is willing to ignore the vast and documented health benefits, and is lobbying against implementation of the EPA regulation, presumably to safeguard its profits and avoid having to pay for facility upgrades. In July 2011, with the help of a few coal-state politicians, the industry was able to extend the public comment period, in an attempt to delay the rule's

implementation. This is part of their overall strategy to defeat or avoid complying with the new regulation.

Although the proposal is a big step forward, it is certainly not perfect. Of major concern is that it virtually exempts lignite-burning facilities. Lignite facilities are some of the biggest polluters, so exempting them seems unjustifiable. EPA cites the difficulties and costs of requiring stronger standards for lignite facilities. But this ignores the fact that it is both technically feasible and cost-effective for many of these facilities to comply. Case in point: the Lewis and Clark Station lignite coal plant in eastern Montana, which has successfully complied with the even stronger mercury standards issued by the State of Montana for approximately two years.

The new regulation is not slated to go into effect for three or four years. But if it is adopted, by 2015 Montanans could be breathing cleaner and healthier air, and catching fish with reduced levels of toxic mercury. ☺

If adopted, it will be the first national standard requiring reduction in toxic air pollutants such as mercury, arsenic, and acid gases. Of particular concern is mercury, a neurotoxin that builds up in fish and then is passed on to humans.

Colstrip Power Plant. Photo by Anne Hedges.



Puzzling through the Rush to Export Coal to China *(cont. from page 11)*

One potential advantage of the latter arrangement would be that it could allow Arch Coal to export coal from its mines in Utah and Colorado as well as Wyoming and Montana. Those Utah and Colorado mines currently have had difficulty accessing export markets since the Los Angeles coal port was abandoned and dismantled after the last Asian coal boom went bust. With thermal coal export prices pushing \$150 a ton and coal customers in southeastern China paying \$175 per ton, some Western coal is already being

Coal train traveling through the Missoula rail yard. Photo by Chad Harder.



shipped to the American Gulf Coast for export. It would be hard to draw a longer transportation route from western Colorado and eastern Utah to India or China. But the rising export prices can justify sky-high transportation costs. If coastal Chinese coal customers are willing to pay \$175 a ton for coal that can be bought in the Powder River Basin for \$12 a ton, transportation costs as high as \$163 per ton, 14 times the cost of the coal at the mine mouth, could be justified and any transportation costs that are lower would be pure gravy for Montana and Wyoming coal mines.

Of course, this rosy picture for Western coal exporters depends on coal prices in China and elsewhere in Asia staying very high. As we all should know from the bursting of the dot-com bubble and the housing bubble, just because prices are high now does not mean that they will stay high. Coal export enthusiasts insist that the booming market for coal exports is here to stay because China and India and their rapidly industrializing economies cannot produce enough coal to serve their own needs. This, we are told, is a long-run "super cycle" that will last for the foreseeable future.

When someone tells us that a particular price will only go up and never go down, we should have learned enough over the last decade to be a bit skeptical. Ordinary market forces are at work in Asian coal markets. During the first quarter of 2011 Chinese coal imports dropped dramatically and Chinese coal exports rose. It looked like China was returning to its earlier role as a net coal exporter. This was partly driven by the high cost of imported coal. Australian and Indonesian coal did not look as attractive compared to Chinese domestic sources given the "fly-up" in world thermal coal prices. As a result the Chinese reduced imports and sought to capture some of the benefits of those high prices by exporting rather than importing. As a result, Australian coal prices tumbled steeply, narrowing the price gap and possibly making importing coal attractive to the Chinese again.

If the half-dozen proposed new coal ports and all of the expansions announced for existing North American coal ports proceed, and North America's abundant coal pours into Asian markets, this could change dramatically the relative price situation there. North American coal companies will be competing against each other as well as competing against other Asian coal suppliers and domestic Chinese coal producers.

It is not clear what the outcome of this competition will be except that it will produce coal prices to the Chinese that are lower than those prices otherwise would be. That might be good for the Chinese. It will take some pressure off the energy costs they face and high energy costs will serve as less of a brake on their booming economy. It will also encourage continued Chinese investments in long-lived but relatively inefficient

and polluting coal-fired electric generators. Those fifty-year commitments to major greenhouse gas emitting industrial facilities are highly unlikely to be good for the world and climate stability. Collectively, we will implicitly be engaged in a multi-billion dollar effort to convince China and India to make another half-century long commitment to much higher levels of coal consumption, almost assuring that we, collectively, will miss the opportunity we currently have to actually stabilize and then reduce global greenhouse gas emissions.

This casual commercial business-as-usual, supported by the contemporary "need for jobs," could commit our children and grandchildren to a dreadful mess. 🌍

Coal is blended from several locations at the Westshore Terminal, Delta, B.C. Photo by Paul K. Anderson.



Gooch's Last gift

by Mary Sheehy Moe, on behalf of Gooch's friends

He was born William J. Nicholls, but nobody called him that. He was known to everyone as "Gooch" – and nobody knew why.

Gooch grew up in Great Falls, graduating from Great Falls High School in 1962. He later completed a bachelor's degree in biology at Eastern Montana College and was proud of his academic record and his science major. After a stint in the military, he returned to Great Falls to work for Burlington Northern, first as a gandyman and eventually as a conductor. When an opportunity to transfer to the railroad's Whitefish operations popped up in the early

William "Gooch" Nicholls



1970s, Gooch grabbed it. From then until the day he died, the Flathead Valley was his home.

Over his four decades in the Flathead, Gooch worked for Burlington Northern and Columbia Falls Aluminum Company, but work didn't define his life. Play did. He was one of the charter residents of the Montana "Hotel" – the legendary ramshackle house overlooking the Whitefish River on Highway 93. In the 1970s, an ever-changing squad of 4-6 guys called the Hotel home. Everyone else in Whitefish called it Party Central.

It was not Martha Stewart Living, nor was any home Gooch lived in. The clutter of magazines, clothes and beer cans, the dishes piled up everywhere, and always, always, the sound of crackling grease at mealtime ... that was signature Gooch.

If you love play, you love sports, and Gooch did. On a whim he would jump on a plane and fly to a major athletic event – major league baseball games all over the country, national championships for hockey, basketball, and wrestling. Once he attended a football game at the University of Tennessee just to experience the college atmosphere in one of the biggest venues in the country. Perhaps his biggest thrill came a few years ago, closer to home, when he traveled to Seeley Lake so he could personally caress the real Stanley Cup.

For many years at Thanksgiving, he organized the "Whitefish Turkey Bowl," a touch football game for folks waiting for the big bird finally to emerge from the oven. Every Summer he put together a men's softball team, mainly for local league play, but also to scout the talent for a Flathead team to take to the Stein Haus tournament in Great Falls. In 1981, his team won the whole shebang. He was in heaven. But as Gooch would be the first to say, when you live in Montana, you're always in heaven.

Playing sports and partying were sidelined during Gooch's last years as he battled non-Hodgkin's lymphoma. But the same mischievous grin that shone in his high school graduation

picture shines in the last photo we have of him. His sharp mind and deep interest in the world, particularly the biological world, were ever-evident. In fact, even in the advanced stage of his illness, he took a trip to Newport, RI, to spend a week in solitude in a lighthouse looking out at the sea.

Gooch was fun-loving to a fare-thee-well and irreverent to a fault. Gruff on the exterior, he had a warm and tender heart. He was fiercely independent, but also fiercely loyal to those who passed “the Gooch test.” Gooch couldn’t abide a phony, a prig, a weasel, or a drone. He didn’t embrace many causes, but those he cared about, he cared about passionately.

One of those causes was the environment.

Gooch grew up in Montana. He loved every square inch of this state, especially Glacier National Park and the Flathead Valley. He came of age during the great environmental awakening of the late 1960s, followed environmental issues avidly a lifetime long, and never lost his conviction that we need to preserve forever more the Montana he knew and loved. Montana was his playground, yes. But it was also his temple, his breath, his blood, his home. As it is ours.

Gooch was not rich, but he lived a simple life and he saved wisely. When he died on November 17, 2010, he bequeathed one-third of his estate to Montana Environmental Information Center. Congratulations, MEIC. You passed the Gooch test. 🍷

Providing a clean and healthful legacy through planned giving

MEIC is wholeheartedly humbled by and indebted to the generosity of William Nicholls for the bequest he left to MEIC in his will. Even though we have lost the pleasure of ever meeting him, it is his life’s story and his commitment to providing long-term support to MEIC through planned giving that inspires us all. His love of Montana and the environment along with his forethought through planned giving will help to sustain MEIC for years to come. He is an example that reminds us all of what we can do to leave an enduring legacy, no matter what our income level or giving ability.

There are a number of ways that you can follow his example, including:

- **Leave a bequest in your will.**
- **Contribute to the MEIC’s Permanent Fund endowment.**
- **Designate MEIC as a beneficiary in a Charitable or Deferred Gift Annuity through Montana Community Foundation.**
- **Give MEIC stock or other assets, either while you are living or in your will.**
- **Designate MEIC as a beneficiary on a life insurance policy or retirement plan.**

Not only will your planned gift help to protect Montana’s air, water, and land now and for generations to come, you could be providing yourself and your family (and other beneficiaries) with significant tax benefits.

We believe that MEIC’s future is worth securing! If you do as well, and would like to receive more information and discuss planned giving options, please contact Paul Travis at 406-443-2520 or ptravis@meic.org.

Photos from MEIC's 2011 Rendezvous

On Saturday, June 4th MEIC held its 2011 Rendezvous at the beautiful Ten Spoon Vineyard and Winery outside of Missoula in the Rattlesnake Valley. Speakers included U.S. Senator Jon Tester, State Senator Carol Williams, and U.S. E.P.A. Region 8 Administrator Jim Martin.



(Left) U.S. Senator Jon Tester spoke about the future of energy policy in the United States.



(Above) Executive Director Jim Jensen talking with an MEIC member.



(Right) U.S. Senator Jon Tester talking with MEIC members before his address.



(Above) U.S. Senator Jon Tester addressed the importance of developing clean and renewable domestic energy sources.



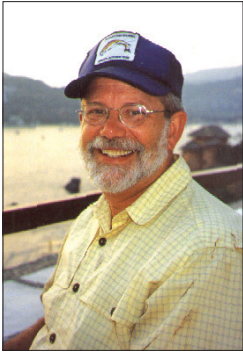
(Above) Jim Martin spoke about the EPA's efforts to reduce toxic air pollution and grapple with climate change.



(Left) State Senator Carol Williams, discussed the extreme anti-environment attitude of the 2011 Montana Legislature.

Thoughts from the Executive Director

by Jim Jensen



Since the adjournment of the 2011 Legislature, the full measure of harm done to the Montana Environmental Policy Act (MEPA) – Montana’s fundamental environmental protection law – is beginning to become apparent. SB 233, sponsored by Butte Democrat senator Jim Keane and signed into law by Democrat Governor Brian Schweitzer, makes MEPA a mere procedural hoop, and afterthought, in the natural resource development process.

These changes matter.

As one example, MEIC’s lawsuit against the State Land Board for failing to even consider the serious, long-term negative impacts of leasing the coal in the Otter Creek tracts directly involves MEPA. As described on page 8 of this issue of *Down to Earth*, the coal, if mined, will be shipped to China to be burned in dirty coal-fired power plants. But under SB 233, even if the court agrees with us and tells the State to prepare a MEPA analysis, it will be done under the new provisions of the law. And MEPA now specifically prohibits an analysis of climate change impacts.

As another example, MEIC’s lawsuit against the Montana Department of Transportation over the agency’s failure to adequately analyze

the impacts of the ExxonMobil mega-loads transport proposal (see story on page 3 of this issue of *Down to Earth*) also involves MEPA. State district judge Ray Dayton has granted MEIC and its co-plaintiffs a temporary restraining order that prevents MDT from issuing permits to ExxonMobil until after a hearing and subsequent ruling regarding the agency’s compliance with MEPA. If Judge Dayton rules that MDT failed to adequately analyze the negative impacts, then MDT would have to prepare a new environmental analysis. But under MEPA as now amended, MDT can go ahead and issue the permits, and ExxonMobil can go ahead and haul the loads, while the analysis is being prepared.

On the bright side, both these lawsuits give MEIC the opportunity to challenge the constitutionality of SB 233 as it affects our fundamental constitutional right to a clean and healthful environment. You can count on us to do so. But the question is: what harm will occur in the years it will take before this issue is finally resolved by the courts?

A better solution is to elect legislators and a governor next year who will support, and renew, Montana’s commitment to clean air and water, and restore MEPA to its original, and noble, purpose. ☺

Secure Montana’s environment for future generations by joining MEIC’s Pledge Program!

When MEIC was starting out, monthly pledge donors were its only source of income. Nearly 40 years of protecting Montana’s natural environment later, the Pledge Program is still a vital part of MEIC.

It’s simple—you can pledge any annual amount and make payments in 12 or fewer installments. For example, you could pledge \$120 for the year, and pay just \$10 a month—that’s only 33 cents a day! And it gets even easier! Sign up to pay monthly with your credit card or by automatic withdrawal from your bank account, and we’ll take care of it for you. Pledge members provide the predictable income that helps keep MEIC at the forefront of environmental advocacy in Montana.

Call Sara Marino at 406-443-2520 or e-mail her at smarino@meic.org for more information. All new pledges of \$15 per month or more will receive a free MEIC logo baseball cap!

President's Letter

by Sarah Merrill

Studies of primate brain activity have revealed the existence of “mirror neurons.” Neuroscientists, concentrating on the part of the brain’s frontal lobe associated with distinct actions, observed specific neurons firing in the brain of a monkey performing a specific activity. They also found that the exact same neurons fired in a monkey that was only observing the monkey performing the action. Studies of humans have shown that when we observe someone else, we experience part of what the other person is experiencing.

Psychologist Daniel Goleman explains that our “intimate brain-to-brain linkup . . . lets us affect the brain – and so the body – of everyone we interact with, just as they do us.”

That certainly reinforces that old saying about being the change you want to see in the world, doesn’t it. It makes you think twice about the people you choose to interact with. Certainly it has heightened my awareness of my actions, both the mundane and the more significant.

Those daily choices we make and actions we take – using the reusable shopping bags, recycling, pushing the reel lawn mower, writing the letter to the elected representative, writing the check to the nonprofit – all imprint on those who observe us.

What and who we spend time with, face-to-face, on the Internet, on TV, in films, forms us. To change and empower ourselves, it makes sense to spend time with those we admire.

I am leaving the MEIC Board of Directors in early October at the end of my current term. Serving on the Board has given me the opportunity to be in the company of those I esteem. Each staff member brings his or her expertise to the fight to protect Montana’s natural environment. I am continually awed by their intelligence, courage, dedication, and vision. And the Board members are committed to supporting and improving the organization, contributing a breadth of perspective and a depth of wisdom. Thank goodness my mirror neurons have been taking it all in. ☺



Stay up-to-date. Send us your e-mail address.

You want to ensure that your voice is heard in protecting and preserving Montana’s clean and healthful environment. You’re interested in following what’s happening—but how? It can be overwhelming to keep track of all of the environmental policies and issues that affect Montana.

WE CAN HELP.

Send us your e-mail address and we’ll add you to our e-Activists list. You’ll receive updates on the issues we are working on, and notification of opportunities for you to help.

KEEP IN TOUCH!

Send your e-mail address to Adam McLane: mclane@meic.org



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CHANGE SERVICE REQUESTED

Please Comment on DNRC's Habitat Conservation Plan!

Your help is needed! Please contact the State Land Board TODAY regarding the important and necessary changes needed in the Habitat Conservation Plan. For more information, refer to page 5 of this issue.

Contact Land Board Members at:

Governor Brian Schweitzer: governor@mt.gov
Attorney General Steve Bullock: contactdoj@mt.gov
State Auditor Monica Lindeen: stateauditor@mt.gov
Superintendent of Public Instruction Denise Juneau: opisupt@mt.gov
Secretary of State Linda McCulloch: sos@mt.gov

By U.S.P.S.:

State Land Board
Attn: Lucy Richards
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