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NEWS FROM THE MONTANA ENVIRONMENTAL INFORMATION CENTER



## 2011 Legislature In Review

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# 2011 Legislature: A few big losses, but many surprising victories

by Anne Hedges

It is hard to be positive about a legislative session that saw the passage of numerous bills to encourage coal development, to give big coal companies multi-million-dollar tax breaks, to allow hardrock mining companies to analyze environmental impacts AFTER receiving final mining permits, and to eviscerate the Montana Environmental Policy Act. But this was a very unusual session, and MEIC's success in defending the environment was significant, in spite of all the odds. While it is true that no progress was made, despite valiant efforts by a few legislators, the session's outcome would have been far worse if it were not for the Montanans who stood up, spoke up, and insisted that their rights be protected, and a governor who was not hesitant to wield his VETO branding irons.

The attacks were relentless:

- on the environment
- on public health
- on small- and large-scale renewable energy projects
- on programs to encourage energy efficiency
- on land use regulations
- on the Constitution
- on citizen initiatives
- on agency rulemaking
- on water quality
- on air quality
- on state and local governments' financial health

It often seemed as if the goal was to make government as inefficient and ineffective as possible, so self-proclaimed Tea Party advocates would be justified in claiming that government does not work and should be drastically reduced.

Thanks to the hard work of many environmentalists across the

State who testified at hearings, attended a large rally at the Capitol, contacted legislators and the governor, and wrote letters to newspapers, the vast majority of the radical proposals did not pass. Lobbyists in the Capitol were talking to legislators and the Governor's Office while voters were contacting them from around the state. This helped the legislators to vote against bad proposals in committee. It helped lobbyists to defeat bills on the Senate floor (and on rare occasions on the House floor). And it allowed the governor to veto nearly every bad environmental proposal that made it to his desk.

But the bad bills that did become law are bitter pills to swallow. MEIC's ability to defeat bad ideas was at an all-time high, but the few losses were significant. The new laws will raise many questions. As just one example, does MEPA still implement the right to a clean and healthful environment if it is essentially voluntary and limited in the scope of its environmental analyses? Time will tell, and only the courts can determine if such changes are constitutional. For now, let us be thankful that the siege has ended, and that when the Legislature did not recognize bad ideas, the governor usually did – with a few notable exceptions.



MEIC 2011 lobbying staff, from left to right: Anne Hedges, Derf Johnson, Kyla Wiens.

# 2011 Legislature in review

## Montana Environmental Policy Act

**B**y far the most devastating defeat this session was the passage of **SB 233** (Sen. Jim Keane, *D-Butte*). This bill undermines the Montana Environmental Policy Act (MEPA) at every turn: it limits the scope of the environmental analysis; it prohibits the State Land Board and many State agencies from relying on information gathered during the MEPA process to make decisions on projects such as Otter Creek; and, most importantly, it provides no recourse if a State agency fails to analyze a project's impacts, because it allows the project to be built even if the agency's review is inadequate or nonexistent.

Most people do not know what MEPA is, or what it does, until a project is proposed in their community. MEPA requires State agencies to consider and disclose the overall impacts of a project or permit prior to making a decision on it. Since 1971, it has been the primary means by which the public has been informed and allowed to participate in State agency decision making. It is supposed to help State agencies make better decisions. Until now that is.

This session two very different bills were introduced that attacked MEPA. SB 233 was the brainchild of Leo Berry, the lobbyist for Great Northern Properties (part owner of the Otter Creek coal tracts), Burlington Northern Santa Fe railroad, Monsanto, Montana Mining Association, Coal Mountain Mining, and others. The other bill was **SB 317** (Sen. Chas Vincent, *R-Libby*). It was written by Jon Metropoulos, lobbyist for Fidelity Exploration and MDU Resources (although he said he was not representing any clients when he lobbied for the bill).

SB 317 was a wholesale rewrite of MEPA. It reorganized the structure of the law, limited the scope of the analysis, changed MEPA's purpose and policy, and hamstrung agencies as to what information they could consider in an environmental analysis. MEPA would no longer be about informing decision makers and the public; its purpose would instead be to encourage the development of natural resources.

Having two different bills created problems. The bills conflicted. They changed the same sections of law in different ways. Both could not be passed. Republicans had held a big press conference when SB 317 was introduced, calling it one of their primary "jobs" bills of the session. SB 233 was the more destructive of the two bills, but it was sponsored by a Democrat. The Republican leadership was in a quandary. They wanted to gut MEPA but the governor was more likely to veto a bill sponsored by a Republican. So the Republicans decided to pass the Democrat's bill and just amend most of SB 317 into SB 233.

Their assessment apparently was correct. The governor refused to veto SB 233 and instead let the bill become law. In his "no-veto" statement the governor said: "MEPA has been a popular scapegoat for those whose development projects have failed in Montana. For many years it has been under assault by one industry or legislature after another..." But instead of standing up to wealthy corporate interests and protecting Montanans' right to participate in government decisions, to a clean and healthful environment, and to judicial

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*Since 1971, it has been the primary means by which the public has been informed and allowed to participate in State agency decision making. It is supposed to help State agencies make better decisions. Until now that is.*



*Governor Schweitzer during a bill signing ceremony.*

## 2011 Legislature in review (cont.)

*“With gold and silver prices now at all-time highs, it could easily be economical for new mines to truck their ore to Golden Sunlight or Majesty for processing.”*

*The Golden Sunlight mine. Aerial photo taken during a Lighthawk flight.*



redress, the governor sided with polluters and developers and let one of the most confusing and poorly drafted bills in a decade become law.

The merging of SB 233 and SB 317 created a Frankenstein. The combined bill has four different provisions that say parts of the bill only go into effect if other things happen. One such contingency says that if the Montana Supreme Court finds one section of the bill to be unconstitutional then another section will go into effect. These contingency provisions are so poorly written they are nearly impossible to decipher.

At the end of the day, many questions remain. Does MEPA really implement the constitutional right to a clean and healthful environment, as it says in the law, or doesn't it? If it does, can the legislature so severely limit the scope of environmental analyses as to exclude consideration of such things as the global warming impacts of burning coal? Court decisions have found that the Constitution requires State agencies to show that they have chosen the least onerous path when they implicate the fundamental constitutional right to a clean and healthful environment. Can the

State comply with this requirement without a rigorous alternatives analysis? Finally, the Montana Constitution provides all Montanans with the right of judicial redress. If a project can go forward without adequate environmental review, is this right undermined? MEIC will weigh these questions, and many more, as it considers what to do about this legislative travesty.

### Hardrock Mining

As was expected after last Fall's elections, the mining industry requested a number of bills to reduce State oversight and control of hardrock mines in Montana. Two truly bad bills were introduced. Both were passed by the legislature. The governor vetoed one, but signed the other into law.

**SB 306** (Sen. Terry Murphy, *R-Cardwell*) would have partially repealed I-137, the 1998 voter-passed initiative banning new open-pit cyanide-leach gold and silver mines. The bill would have allowed new mines to be developed, as long as their ore was processed at already permitted leaching facilities.

The bill would have directly benefitted to two operations: the massive Golden Sunlight mine near Whitehall; and the small Majesty mine near Norris. Both of these operations were "grandfathered" by I-137 because they had operating permits in place before the vote.

With gold and silver prices now at all-time highs, it could easily be economical for new mines to truck their ore to Golden Sunlight or Majesty for processing. This would mean that new open-pit mines could be developed – precisely what the initiative was intended to prevent.

Mining lobbyists testified for SB 306 using the same tired arguments that Montana voters have twice rejected: 1) that Montana needs high-paying jobs; and 2) that this type of mining is safe now – the industry learned its lesson and has changed – the problems that happened at the Zortman/Landusky, Beal Mountain, Kendall, and other failed cyanide-leach mines are "old news" and can't happen again.

Remarkably, even after two statewide votes

that supported banning this type of mining, both houses of the legislature passed the bill.

The governor did not think this should happen. During his widely reported “branding party,” Gov. Schweitzer branded SB 306 with his largest VETO iron, sealing the measure’s fate.

**SB 312** (Sen. Chas Vincent, *R-Libby*) is a draconian rewriting of the State’s hardrock mine permitting law. It easily passed both houses of the legislature and was signed by the governor. The bill requires the State Department of Environmental Quality to give mine operators much more say over the permitting of hardrock mines, and over the enforcement of State mining laws and regulations. The most objectionable provisions include:

- allowing mines to be expanded by the lesser of 25 acres or 10% of the mine’s area without environmental review.
- requiring DEQ to make a pre-determination that a mine can be permitted and then issue a draft permit that can only be modified with agreement of the applicant.
- postponing any environmental review under the Montana Environmental Policy Act until the permit is final.

Coupled with the changes made to MEPA this session, the review – whether it is an environmental impact statement or environmental assessment – will be completed after a final decision has been made.

MEPA was originally intended to require agencies to “look before they leap.” But as DEQ director Richard Opper recently told a Missoula audience, it is now a “look, but go ahead and leap anyway” law – except, of course, for hardrock mines under SB 312, where you leap first and look later.

The mining industry argued that these changes were necessary so companies can more easily obtain financing for mines. If they have their permits in hand, and the environmental review results cannot be used to change the permits, then there is no risk that environmental problems will interfere with their plans.

This is truly a return the days when mining interests controlled the state. Then it was called

the “Copper Collar” era; perhaps “Gold Collar” is more appropriate now.

## Montana Constitution

A majority of legislators voted to place a constitutional referendum on the statewide ballot that would have changed Montana’s constitutional right to a clean and healthful environment. Fortunately, it failed to receive the 100 votes required. It only received 89 votes. **HB 292** (Rep. Dan Kennedy, *R-Laurel*) would

have amended the right to a clean and healthful environment to say that Montanans have a right to a “clean, healthful, and economically productive environment” (underlined words would have been added). Despite the fact that only a handful of people testified in support of this radical change, the bill passed both houses. The sponsors and proponents should consider themselves lucky this measure fell short, because none of them could answer even the simplest questions about what this wording would mean in practice.

## Takings

Two of the most important victories this session were the defeat of a pair of “regulatory takings” bills. These bills would have required State and local governments to undertake a detailed analysis of how any regulation might diminish the value of any portion of someone’s property, and then would have forced them to compensate the landowner for that loss. If the government could not afford to pay for the property’s lost value, it would have had to exempt the landowner from that regulation – regardless of the need for the regulation or its benefit to the community.



*The Montana Capitol. Photo by Amy Kelley.*

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## 2011 Legislature in review (cont.)

**SB 344** (Sen. Jason Priest, *R-Red Lodge*) and **SB 347** (Sen. Bob Lake, *R-Hamilton*) would have bankrupted local and State governments, or resulted in a patchwork of public health and environmental regulations across the state based upon who had sued what government body. The Senate Judiciary Committee defeated SB 344, and it removed all of the offensive language in SB 347.

### Water Quality

One topic on which there is mostly good news from this session is water quality. There were very few bills intended to weaken protections for Montana's lakes, rivers, and streams. Here are two that are worth mentioning, although their impact is likely to be limited.

**SB267** (Sen. Chas Vincent, *R-Libby*) repealed the statutory deadline for the Montana Department of Environmental Quality to finish the development of total maximum daily levels (TMDL) of pollutants that are causing impairment of many water bodies across the state. The deadline was enacted in 1997 in response to a successful federal lawsuit brought by MEIC and others against the State for its failure to complete this work as required by the 1972 Clean Water Act. MEIC will be urging the federal

judge who heard that case to impose his own deadlines in order to increase the likelihood that the State will actually complete the ongoing work.

**SB 367** (Sen. Chas Vincent, *R-Libby*) created exemptions from water quality standards for algae-causing pollution in the low-flow times of Summer, if the discharger can show that "because of economic impacts or because of the limits of technology" it is too expensive to prevent the pollution. It is likely

that the U.S. EPA will reject this change when it is submitted for approval under the federal Clean Water Act.

One could reasonably argue that every bill this session that encouraged coal, gravel, and hardrock mining, and most of the bills addressing land use issues, could be considered as water quality-related. But outside of the setbacks in those arenas, the State's water resources fared better than expected this session.

### Energy

The 2011 Legislature waged an unprecedented and all-out attack on Montana's renewable energy, and energy conservation and efficiency, policies. Proposals to override the voter-enacted restrictions on nuclear power plants, weaken energy codes for new buildings, undermine the renewable energy standard, and discourage small-scale renewable energy are examples of the serious effort by many legislators to derail policies that promote a clean and safe energy future.

Fortunately, MEIC and its allies worked successfully to defeat most of the radical bills attacking clean energy before they reached Governor Schweitzer's desk. And the governor did veto the worst of the energy bills that passed the legislature. In an otherwise dismal session, a handful of legislators and Governor Schweitzer stood up for clean energy, and helped keep renewable energy, and energy conservation and efficiency, policies mostly intact for the next two years.

### Energy: Renewables

Weakening the renewable energy standard (RES) was a priority of many legislators this session. In 2005, the legislature passed a renewable energy standard that requires regulated utilities to obtain 10% of their electricity from eligible renewable sources by 2010, and 15% by 2015. Since 2005, Montana's renewable energy capacity has grown exponentially from 2 megawatts (MW) to nearly 400 MW. NorthWestern Energy, the state's largest utility, is already on target to meet its 2015 requirement by early 2012. Renewable

Inside the Montana Capitol Building.



energy projects have boosted Montana's generating capacity, have created jobs, and have brought capital investments to rural communities. Despite these facts, the 2011 Legislature passed many bills to undermine the RES and drive clean energy business and investment away from Montana.

There were three bills that affected key provisions in the RES and one bill that even proposed to repeal the standard entirely. **SB 109** (Sen. Debby Barrett, *R-Dillon*) would have changed the definition of renewable energy to include all new hydropower projects, regardless of size. The 2005 law allowed for small hydropower projects (under 10 MW) to qualify as renewable as long as they "did not create a new impoundment or diversion." SB 109 would have eliminated this wording and allowed any new dam of any size to qualify as a renewable energy source. This bill would have "watered down" the standard and reduced the need for utilities to invest in other forms of renewable energy. SB 109 passed the legislature, but was vetoed by Governor Schweitzer.

Another bill affecting the RES was **SB 330** (Sen. Edward Walker, *R-Billings*). This bill would have made the RES nearly voluntary by allowing utilities to repeatedly apply to the Public Service Commission for three-year waivers from the RES if the price of renewable energy exceeded an unrealistically low cost-cap. SB 330 also would have contradicted and added confusion to the RES, which already includes numerous cost-cap provisions and allows for waivers. SB 330 passed the legislature, but was also vetoed by Gov. Schweitzer.

A third bill that would have changed the RES significantly was **HB 237** (Rep. Mike Menahan, *D-Helena*). This bill would have repealed the Community Renewable Energy Provision of the standard. This important provision requires utilities to acquire 75 MW of renewable energy from renewable sources that are 25 MW or less in size and owned in part by local communities or Montana-based companies. Projects like the 13 MW Turnbull irrigation drop hydropower project



near Fairfield would not have been built without the community provision. HB 237 passed the House, but was defeated in the Senate on a 33-17 vote.

One of the most radical bills introduced this session was **HB 244** (Rep. Derek Skees, *R-Whitefish*). This bill would have repealed the RES and killed planned renewable energy projects and investment across the state. Utilities, renewable energy advocates, businesses, and manufacturers opposed HB 244. The bill was defeated in the House Federal Relations, Energy, and Telecommunications Committee on a 12-4 vote.

A majority of legislators were hostile towards energy efficiency and renewable energy, and quickly rejected the few bills that were introduced that would have advanced clean energy policies in Montana.

**SB 332** (Kendall Van Dyk, *D-Billings*) would have increased and extended Montana's renewable energy standard by requiring utilities to obtain 20% of their electricity from renewable sources by

2020 and 25% by 2025. This bill was defeated in the Senate Energy Committee on a 7-5 party-line vote.

The attacks on renewable energy this session were not limited to large utility-scale projects. **SB 226** (Sen. Jason Priest, *R-Red Lodge*) would have unfairly charged individuals who install small-scale solar and wind systems on their property (customer generators) an extra fee to pay for the transmission and distribution of the energy they produce. This

*Judith Gap  
Wind Project.  
Photo by MEIC.*

*"A majority of legislators were hostile towards energy efficiency and renewable energy, and quickly rejected the few bills that were introduced that would have advanced clean energy policies in Montana."*

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## 2011 Legislature in review (cont.)

bill would have drastically changed the concept of Montana's current "net metering" law, which allows customer generators to "zero out" their energy bills if their energy system produces the same amount of energy they use in one month. Since the net-metering law passed in 1999, over 800 systems have been installed and 40 renewable energy installation businesses have started across Montana. After narrowly passing the Senate, SB 226 was defeated in the House FRET Committee on a 12-5 vote.

**HB 581** (Rep. Mary McNally, *D-Billings*) would have expanded Montana's net-metering law to allow for third party ownership of small-scale renewable energy projects. This bill was defeated in the House FRET Committee on a 12-5 party-line vote.

A bill crucial to the development of renewable energy in Montana, **HB 198** (Rep. Ken Peterson, *R-Billings*), passed the legislature and became law without the governor's signature after the legislature adjourned.

The bill simply clarifies who has the power to condemn

private property for new electricity transmission lines—but it became a very contentious issue during the session. The right of condemnation (or eminent domain) has been granted by the legislature to 45 different entities, most of which are in the private for-profit sector of the economy.

A State district court judge injected confusion into the construction of the Montana Alberta Tie Line (MATL) in 2010 when she ruled that the legislature had never explicitly granted condemnation authority to power lines that are not

regulated by the Public Service Commission. Her ruling seems contradicted by the clear wording of the law (70-30-102, M.C.A.), which says: "...the right of eminent domain may be exercised for the following public uses: ... telephone or electrical lines..."

MEIC worked hard for passage of HB 198 because in order for Montana to establish a robust renewable energy industry transmission lines must be built. In order for them to built, they must have, as a last resort, the power of eminent domain. Encouraging renewable energy development, and the needed transmission lines, will reduce the amount of future greenhouse gas emissions because of the reduction in fossil-fuel-based electricity.

MEIC also supported HB 198 because it seems wrong to deny to the renewable energy industry the right of eminent domain when so many other private businesses enjoy this authority. The playing field must be level if Montana is to move toward a renewable and sustainable energy economy.

Without HB 198, the substantial expansion of the NaturEner wind-generating field near Cut Bank will not be possible, and Montana will lose a \$1 billion clean energy investment. The MATL line is necessary for this project and without condemnation ability it cannot be completed.

Another project that may be affected by the district judge's ruling and helped by the passage of HB 198 is the Mountain States Transmission Line (MSTI) being proposed by NorthWestern Energy to run from Townsend to central Idaho. This line is being built, according to NorthWestern CEO Bob Rowe, to enable a potential \$3 billion renewable energy industry in Montana.

### Energy: Conservation and Efficiency

There were numerous attacks on energy efficiency this session. Misguided proposals attempted to roll back policies that promote energy efficiency in Montana homes and businesses. These bills ignored the widely accepted and sensible concept that saving energy makes economic and environmental sense. For example,



Transmission lines transmitting power.  
Photo by FERC.



**SB 159** (Sen. Jason Priest, *R-Red Lodge*) would have required any efficiency measures adopted in Montana’s building codes to have a payback period of five years or less. The result would have been new buildings built without energy-efficient windows, insulation, and lighting, and higher energy bills for home and business owners. This bill passed the legislature primarily on party-line votes, but was vetoed by Gov. Schweitzer.

**SB 104** (Sen. Jason Priest, *R-Red Lodge*) would have limited the Public Service Commission’s (PSC) ability to adopt inverted block rates—a type of energy rate design that encourages energy efficiency by raising rates for those who use more energy. This bill would have set a negative precedent by allowing the legislature to interfere with the PSC’s ratemaking authority. SB 104 passed the Senate, but was defeated in the House FRET Committee on a 12-0 vote.

The legislature also attempted to undermine energy efficiency incentives by passing **SB 253** (Sen. Bob Lake, *R-Hamilton*). SB 253 would have repealed all energy efficiency and renewable energy income tax credits. Last year over 28,000 Montanans claimed the energy conservation credit and nearly 10,000 the renewable energy credit. These tax credits help homeowners and businesses pay for energy retrofits and small-scale renewable energy systems. The bill passed the Senate and passed the House by one vote, but was vetoed by Gov. Schweitzer.

**HB 406** (Rep. Jesse O’Hara, *R-Great Falls*) would have added an energy efficiency expert to the State Building Codes Council. This bill was defeated in the House Business and Labor Committee on a party-line vote.

## Energy: Global Warming Pollution

This session saw an unprecedented attack on the scientific evidence proving that global warming is occurring. Some legislators argued that global warming is good for Montana, many denied that global warming is happening, and others said that addressing global warming would be too costly to be worthwhile. The

silliest measure, **HB 549** (Rep. Joe Read, *R-Ronan*), would have declared as State policy that global warming is “beneficial to the welfare and business climate of Montana” and that “human activity has not accelerated it.” Even the radically conservative House Natural Resources Committee could not stomach this.

The other global warming bill, **HB 550** (Rep. Joe Read, *R-Ronan*), made it through the House but was defeated in the Senate. That bill said that EPA had no authority to regulate greenhouse gases since the U.S. Constitution of 1788 made no mention of such a regulation (funny – that constitution also did not contain a Bill of Rights, or address the topics of all other amendments that were adopted after 1788). This bill would have attempted to prevent EPA from regulating greenhouse gases in Montana, and it would have barred the State from implementing or enforcing similar regulations. The Senate Energy Committee understood that even if the State does not implement federal regulations, EPA will do so, and defeated the bill.

One non-binding resolution that supported this anti-greenhouse gas position did pass. **SJ 10** (Sen. Jason Priest, *R-Red Lodge*) as introduced calls on Congress to defund all federal air quality regulations and. It was amended to only call for the elimination, and defunding



*Colstrip Power Plant. Photo by Anne Hedges.*

***This session saw an unprecedented attack on the scientific evidence proving that global warming is occurring.***

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## 2011 Legislature in review (cont.)

(if necessary), of greenhouse gas regulations. Fortunately, such resolutions have no real effect on decision makers in Montana or in Congress.

### Energy: Coal

One area in which the environment suffered many setbacks was coal development. In these difficult economic times one bill was passed to give huge tax breaks to coal companies, another allows the State Land Board to lease coal without an appraisal, and others play Russian roulette with groundwater by encouraging experimental underground coal mining technologies. A majority of legislators believed that coal development should be encouraged at any cost and that the negative impacts of coal development should be ignored. These beliefs come with an immediate monetary cost to State and local governments, and long-term costs to the economy, environment, public health, and private property.

In the waning days of the session the Governor facilitated one of the biggest corporate giveaways of the session when he proposed an amendment to **SB 266** (Sen. Alan Olson, *R-Roundup*). The governor's amendment came directly from a bill by Sen. Jason Priest (R-Red Lodge) that had been defeated in the Senate Taxation Committee just a few weeks earlier, and was also rejected by the entire Senate shortly after the committee defeat.

The governor's amendment provided a \$2.8 million annual tax break to the Signal Peak coal mine, and tax breaks to any future underground coal mines in Montana. (At least five of Montana's

nine proposed coal mines would be underground.) With the help of local governments that would lose tax revenues, MEIC and Northern Plains Resource Council were temporarily able to defeat this last minute corporate give-away in the Senate. But with just hours left in the session the governor worked hard to persuade Democrats to join most of the Republicans in a vote to suspend the Senate rules and allow a subsequent vote on his amendment. The amendment eventually succeeded and the State general fund, K-12 education, and local government coffers will suffer as a result.

Two other pro-coal bills were passed that encourage risky new underground coal mining technologies that could pose significant risks to groundwater. **SB 286** (Sen. Alan Olson, *R-Roundup*) directs the Department of Environmental Quality to develop rules for underground coal gasification. This technique involves injecting a catalyst underground and combusting the coal in place. In order to facilitate this process, SB 286 remarkably defines any resulting contamination of groundwater as "not pollution" under the State law.

The other coal bill that poses a risk to groundwater is **HB 479**, (Rep. Sterling Small, *R-Busby*). This bill directs the Board of Oil and Gas Conservation, a notoriously pro-industry board, to develop rules governing the injection of microbes into coal seams to help gasify the coal. As a BLM study in Wyoming pointed out, this process has the potential to mobilize trace elements in coal. Another report found elevated levels of fluoride, dissolved iron, total dissolved solids, sodium bromide, magnesium, chloride, nitrate and sulfate in wells used for this purpose. This bill passed both houses and was signed by the governor.

The legislature also wasted time on bills like **SB 297** (Sen. Jeff Essmann, *R-Billings*). This bill defines a "coal beneficiation" plant, and attempts to exempt certain coal activities from the federal coal mining statutes. The bill's provisions do not go into effect until the federal Office of Surface Mining approves the change to Montana law. Federal law is quite clear that these types of activities cannot be exempted, making OSM

Rosebud coal mine near Colstrip. Photo by Anne Hedges.



*continued on page 16*

# 2011 MEIC Legislative Voting Record



**M**EIC's Legislative Voting Record has been produced after every session of the Montana Legislature since 1974.

MEIC chooses votes that it believes will reasonably reflect how supportive legislators are of MEIC's purpose, which is to protect and restore Montana's natural environment. 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 plusses and minuses in the Voting Record do not represent "yes" or "no" votes; they indicate whether the vote supported or opposed MEIC's position.

## Bill Descriptions and Vote Key

**A = SB 104** (Sen. Jason Priest, *R-Red Lodge*).

Would have prohibited the Public Service Commission from adopting "inverted block rates." *See page 9.*

**Position:** *Oppose.*

**Votes used:**

- *Senate: 3rd reading, passed 28 to 21.*

**Status:** *Passed the Senate, tabled in a House committee.*

**B = SB 109** (Sen. Debby Barrett, *R-Dillon*).

Would have defined existing hydropower facilities as "renewable resources" for the Renewable Energy Standard. *See page 7.*

**Position:** *Oppose.*

**Votes used:**

- *Senate: 3rd reading, passed 33 to 17.*
- *House: 3rd reading, passed 66 to 33.*

**Status:** *Passed the House and Senate, vetoed by the governor.*

**C = SB 159** (Sen. Jason Priest, *R-Red Lodge*).

Would have prohibited the adoption of energy efficient building codes with payback times greater than 5 years. *See page 9.*

**Position:** *Oppose.*

**Votes used:**

- *Senate: 3rd reading, passed 28 to 21.*
- *House: 3rd reading, passed 63 to 35.*

**Status:** *Passed the Senate, tabled in a House committee.*

**D = SB 226** (Sen. Jason Priest, *R-Red Lodge*).

Would have required utilities to charge small-scale generating systems for the costs of transmission. *See page 7.*

**Position:** *Oppose.*

**Votes used:**

- *Senate: 3rd reading, passed 26 to 24.*

**Status:** *Passed the Senate, tabled in a House committee.*

**E = SB 233** (Sen. Jim Keane, *D-Butte*).

Prohibits lawsuits under MEPA from affecting the validity of permits. *See page 3.*

**Position:** *Oppose.*

**Votes used:**

- *Senate: 3rd reading, passed 32 to 18.*
- *House: 2nd reading, passed 76 to 24.*

**Status:** *Law.*

**F = SB 253** (Sen. Bob Lake, *R-Hamilton*).

Would have repealed renewable energy and conservation tax. *See page 9.*

**Position:** *Oppose.*

**Votes used:**

- *Senate: 3rd reading, passed 28 to 22.*
- *House: Rep. Williams' amendments, failed 36 to 64.*

**Status:** *Passed the House and Senate, vetoed by the governor.*

**G = SB 254** (Sen. Rowlie Hutton, *R-Havre*).

Attempted to give the State eminent domain authority over federal lands. *See page 23.*

**Position:** *Oppose.*

**Votes used:**

- *House: 3rd reading, passed 76 to 23.*

**Status:** *Passed the House and Senate, vetoed by the governor.*

**H = SB 266** (Sen. Alan Olson, *R-Roundup*).

As amended, gives multi-million dollar tax breaks to coal mines. *See page 10.*

**Position:** *Oppose.*

**Votes used:**

- *Senate: Motion to suspend rules to reconsider on 3rd reading, passed 38 to 12.*

**Status:** *Law.*

*continued on page 12*

## Bill Descriptions and Vote Key

**I = SB 306** (Sen. Terry Murphy, *R-Cardwell*).

Would have allowed new open-pit mines to process ore at existing cyanide heap-leach mills. *See page 4.*

**Position:** *Oppose.*

**Votes used:**

- *Senate: 2nd reading, passed 29 to 21.*
- *House: 2nd reading, passed 63 to 37.*

**Status:** *Passed the House and Senate, vetoed by the governor.*

**J = SB 312** (Sen. Chas Vincent, *R-Libby*).

Weakens DEQ's authority to regulate metal mines. *See page 5.*

**Position:** *Oppose.*

**Votes used:**

- *Senate: 2nd reading, do not concur in governor's amendments, passed 36 to 14.*
- *House: 3rd reading, passed 76 to 23.*

**Status:** *Law.*

**K = SB 330** (Sen. Edward Walker, *R-Billings*).

Would have allowed utilities to petition for a waiver from the Renewable Energy Standard. *See page 7.*

**Position:** *Oppose.*

**Votes used:**

- *Senate: 3rd reading, passed 28 to 22.*
- *House: 3rd reading, passed 66 to 32.*

**Status:** *Passed the House and Senate, vetoed by the governor.*

**L = SB 379** (Sen. Alan Olson, *R-Roundup*).

Would have given power over zoning to a minority of landowners. *See page 18.*

**Position:** *Oppose.*

**Votes used:**

- *Senate: 3rd reading, passed 28 to 22.*
- *House: 2nd reading, passed 69 to 31.*

**Status:** *Passed the House and Senate, vetoed by the governor.*

**M = SJ 10** (Sen. Jason Priest, *R-Red Lodge*).

Urges Congress to revoke the EPA's authority to regulate greenhouse gases. *See page 9.*

**Position:** *Oppose.*

**Votes used:**

- *House: 2nd reading, passed 68 to 32.*

**Status:** *Passed.*

**N = HB 292** (Sen. Dan Kennedy, *R-Laurel*).

Would have diminished the constitutional right to a clean and healthful environment. *See page 5.*

**Position:** *Oppose.*

**Votes used:**

- *Senate: 3rd reading, passed 26 to 24.*
- *House: 2nd reading, passed 68 to 32.*

**Status:** *Failed to receive a 100 votes from both the House and Senate combined.*

**O = HB 402** (Rep. Matthew Rosendale, *R-Glendive*).

Would have prohibited local governments from excluding sand or gravel mines from many areas zoned as residential. *See page 18.*

**Position:** *Oppose.*

**Votes used:**

- *Senate: 2nd reading, failed 24 to 26.*
- *House: 2nd reading, passed 65 to 35.*

**Status:** *Passed the House, failed on 2nd reading in the Senate.*

**P = HB 542** (Rep. John Esp, *R-Big Timber*).

Would have dramatically weakened the Subdivision and Platting Act. *See page 17.*

**Position:** *Oppose.*

**Votes used:**

- *Senate: 3rd reading, passed 26 to 24.*
- *House: 2nd reading with Senate amendments, passed 54 to 46.*

**Status:** *Passed the House and Senate, vetoed by the governor.*

**Q = HB 550** (Rep. Joe Read, *R-Ronan*).

Attempted to establish State authority over the federal regulation of greenhouse gas emissions. *See page 9.*

**Position:** *Oppose.*

**Votes used:**

- *House: 2nd reading, passed 67 to 33.*

**Status:** *Passed the House, tabled a Senate committee.*

**R = HB 593** (Rep. Duane Ankney, *R-Colstrip*).

Would have eliminated the State's regulation of mercury emissions from coal-fired power plants. *See page 19.*

**Position:** *Oppose.*

**Votes used:**

- *Senate: 2nd reading with House amendments, failed 20 to 30.*
- *House: 2nd reading, do not concur in Senate amendments, passed 72 to 28.*

**Status:** *Passed the House and Senate, failed in conference committee.*

To read the full text of any of these bills, or to see tallies of all the votes taken on them, go to <http://laws.leg.mt.gov/laws11>.

# 2011 Voting Record: Montana Senate



Senator	Town	Score	A	B	C	D	E	F	H	I	J	K	L	N	O	P	R
Arthun, Ron	Wilsall	7%	-	-	-	-	-	-	-	-	-	-	-	-	+	-	-
Augare, Shannon	Browning	80%	+	+	+	+	-	+	-	+	-	+	+	+	+	+	+
Balyeat, Joe	Bozeman	7%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	+
Barrett, Debby	Dillon	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Blewett, Anders	Great Falls	93%	+	+	+	+	+	+	-	+	+	+	+	+	+	+	+
Branae, Gary	Billings	100%	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Brenden, John	Scobey	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Brown, Taylor	Huntley	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Buttrey, Edward	Great Falls	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Cafarro, Mary	Helena	100%	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Erickson, Ron	Missoula	100%	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Essmann, Jeff	Billings	7%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	+
Facey, Tom	Missoula	100%	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Gallus, Steve	Butte	53%	+	-	+	+	-	+	-	-	-	+	-	+	+	+	-
Gillan, Kim	Billings	87%	+	+	+	+	+	+	-	+	-	+	+	+	+	+	+
Hamlett, Bradley	Cascade	67%	+	-	-	+	-	+	-	+	-	+	+	+	+	+	+
Hawks, Bob	Bozeman	100%	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Hinkle, Greg	Thompson Falls	7%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	+
Hutton, Rowlie	Havre	7%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	+
Jackson, Verdell	Kalispell	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Jent, Larry	Bozeman	100%	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Jones, Llew	Conrad	13%	-	-	-	+	-	-	-	-	-	-	-	-	+	-	-
Kaufmann, Christine	Helena	100%	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Keane, Jim	Butte	53%	+	-	+	+	-	+	-	-	-	+	-	+	+	+	-
Lake, Bob	Hamilton	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Larsen, Cliff	Missoula	93%	+	+	+	+	+	+	-	+	+	+	+	+	+	+	+
Lewis, Dave	Helena	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Moore, Frederick	Miles City	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Moss, Lynda	Billings	100%	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Mowbray, Carmine	Polson	13%	-	-	-	-	-	-	-	-	-	-	-	-	-	+	+
Murphy, Terry	Cardwell	13%	-	-	-	-	-	-	-	-	-	-	+	-	-	+	-
Olson, Alan	Roundup	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Peterson, Jim	Buffalo	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Priest, Jason	Red Lodge	7%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	+
Ripley, Rick	Wolf Creek	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Shockley, Jim	Victor	13%	-	-	-	-	-	-	-	+	-	-	-	-	-	-	+
Sonju, Jon	Kalispell	7%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	+
Steinbeisser, Donald	Sidney	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Stewart-Peregoy, Sharon	Crow Agency	87%	+	+	+	+	+	+	-	+	-	+	+	+	+	+	+
Tropila, Mitch	Great Falls	100%	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Tutvedt, Bruce	Kalispell	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Van Dyk, Kendall	Billings	93%	+	+	+	+	+	+	-	+	+	+	+	+	+	+	+
Vincent, Chas	Libby	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Vuckovich, Gene	Anaconda	73%	+	-	+	+	-	+	+	-	-	+	+	+	+	+	+
Walker, Edward	Billings	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Wanzenried, David	Missoula	100%	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Williams, Carol	Missoula	100%	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Windy Boy, Jonathan	Box Elder	73%	+	-	+	+	-	+	-	+	-	+	+	+	+	+	+
Wittich, Art	Bozeman	27%	-	-	-	-	+	-	-	-	-	-	-	+	+	-	+
Zinke, Ryan	Whitefish	53%	-	-	E	+	+	-	-	+	-	-	+	+	+	-	+

continued on page 14

# 2011 Voting Record: Montana House



Representative	Town	Score	B	C	E	F	G	I	J	K	L	M	N	O	P	Q	R
Ankney, Duane	Colstrip	7%	-	-	-	-	-	-	-	-	-	-	-	-	+	-	-
Arntzen, Elsie	Billings	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Bangerter, Liz	Helena	14%	-	A	-	-	+	-	-	-	-	-	-	-	+	-	-
Barrett, Dick	Missoula	100%	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Beck, Bill	Whitefish	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Belcourt, Tony	Box Elder	73%	+	+	-	+	+	+	-	+	-	+	+	+	+	+	-
Bennett, Bryce	Missoula	100%	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Bennett, Gerald	Libby	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Berry, Tom	Roundup	7%	-	-	-	-	-	-	-	-	-	-	-	-	+	-	-
Blasdel, Mark	Somers	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Blyton, Joanne	Joliet	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Boland, Carlie	Great Falls	100%	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Brodehl, Randy	Kalispell	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Burnett, Tom	Bozeman	7%	-	-	-	-	+	-	-	-	-	-	-	-	-	-	-
Clark, Christy	Choteau	7%	-	-	-	-	-	+	-	-	-	-	-	-	-	-	-
Connell, Pat	Corvallis	7%	-	-	-	-	-	-	-	-	-	-	-	-	+	-	-
Cook, Rob	Conrad	7%	-	-	-	+	-	-	-	-	-	-	-	-	-	-	-
Court, Virginia	Billings	100%	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Cuffe, Mike	Eureka	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Driscoll, Robyn	Billings	100%	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Edmunds, Champ	Missoula	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Ehli, Ron	Hamilton	7%	-	-	-	-	-	+	-	-	-	-	-	-	-	-	-
Esp, John	Big Timber	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Evans, Lila	Browning	31%	-	+	-	+	+	+	E	E	-	-	-	-	-	-	-
Fitzpatrick, Steve	Great Falls	7%	-	-	-	-	-	-	-	-	-	-	-	-	-	+	-
Flynn, Kelly	Townsend	0%	A	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Furey, Timothy	Milltown	100%	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Gibson, Steve	East Helena	13%	-	-	-	-	-	-	-	-	-	-	-	+	+	-	-
Greef, Edward	Florence	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Hale, Alan	Basin	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Hands, Betsy	Missoula	100%	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Hansen, Kristin	Havre	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Harris, Bill	Mosby	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Hendrick, Gordon	Superior	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Hill, Ellie	Missoula	100%	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Hiner, Cynthia	Deer Lodge	67%	+	+	-	+	+	-	-	+	-	+	+	+	+	+	-
Hollandsworth, Roy	Brady	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Hollenbaugh, Galen	Helena	100%	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Hoven, Brian	Great Falls	36%	-	+	-	+	+	+	-	A	-	-	-	-	+	-	-
Howard, David	Park City	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Hunter, Chuck	Helena	100%	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Ingraham, Pat	Thompson Falls	7%	-	-	-	-	-	-	-	-	-	-	-	-	+	-	-
Kary, Douglas	Billings	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Kennedy, Dan	Laurel	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Kerns, Krayton	Laurel	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Klock, Harry	Harlowton	7%	-	-	-	-	-	-	-	-	-	-	-	-	+	-	-
Knox, James	Billings	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Knudsen, Austin	Culbertson	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Lavin, Steve	Kalispell	7%	-	-	-	-	-	+	-	-	-	-	-	-	-	-	-
Loney, Cleve	Great Falls	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

# 2011 Voting Record: Montana House



Representative	Town	Score	B	C	E	F	G	I	J	K	L	M	N	O	P	Q	R
MacDonald, Margaret	Billings	100%	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
MacLaren, Gary	Victor	13%	-	-	-	-	-	+	-	-	-	-	-	-	+	-	-
Malek, Sue	Missoula	100%	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
McChesney, Bill	Miles City	60%	+	+	-	+	+	-	-	+	-	+	+	-	+	+	-
McClafferty, Edith	Butte	87%	+	+	-	+	+	+	-	+	+	+	+	+	+	+	+
McGillvray, Tom	Billings	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
McNally, Mary	Billings	100%	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
McNiven, Jonathan	Huntley	7%	-	-	-	-	-	-	-	-	-	-	-	-	+	-	-
McNutt, Walter	Sidney	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Mehlhoff, Robert	Great Falls	73%	-	+	-	+	+	+	-	+	+	+	+	+	+	+	-
Menahan, Mike	Helena	100%	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Milburn, Mike	Cascade	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Miller, Mike	Helmville	7%	-	-	-	-	-	-	-	-	-	-	-	-	+	-	-
More, Michael	Gallatin Gateway	7%	-	-	-	-	-	-	-	-	-	-	-	+	-	-	-
Noonan, Pat	Ramsay	87%	+	+	-	+	+	+	-	+	+	+	+	+	+	+	+
O'Hara, Jesse	Great Falls	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
O'Neil, Jerry	Columbia Falls	7%	-	-	-	-	-	-	-	-	+	-	-	-	-	-	-
Osmundson, Ryan	Buffalo	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Pease-Lopez, Carolyn	Billings	93%	+	+	+	+	+	+	-	+	+	+	+	+	+	+	+
Peterson, Ken	Billings	7%	-	-	-	-	-	+	-	-	-	-	-	-	-	-	-
Phillips, Mike	Bozeman	100%	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Price, Jean	Great Falls	100%	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Randall, Lee	Broadus	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Read, Joe	Ronan	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Regier, Keith	Kalispell	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Reichner, Scott	Bigfork	7%	-	A	-	-	-	-	-	-	-	-	-	+	-	-	-
Reinhart, Michele	Missoula	100%	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Roberts, Don	Billings	7%	+	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Rosendale, Matthew	Glendive	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Salomon, Daniel	Ronan	20%	+	-	-	-	-	-	-	-	+	-	-	-	+	-	-
Sands, Diane	Missoula	100%	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Schmidt, Trudi	Great Falls	100%	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Sesso, Jon	Butte	80%	+	+	-	+	+	-	-	+	+	+	+	+	+	+	+
Skattum, Dan	Livingston	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Skees, Derek	Whitefish	7%	-	-	-	-	-	+	-	-	-	-	-	-	-	-	-
Small, Sterling	Busby	13%	-	+	-	-	-	-	-	-	-	-	-	-	+	-	-
Smith, Cary	Billings	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Smith, Frank	Poplar	80%	+	+	+	+	+	+	-	-	-	+	+	+	+	+	+
Squires, Carolyn	Missoula	100%	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Stahl, Wayne	Saco	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Swanson, Kathy	Anaconda	93%	+	+	-	+	+	+	+	+	+	+	+	+	+	+	+
Taylor, Janna	Dayton	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Vance, Gordon	Bozeman	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Wagner, Bob	Harrison	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Warburton, Wendy	Havre	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Washburn, Ted	Bozeman	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Welborn, Jeffrey	Dillon	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Williams, Kathleen	Bozeman	100%	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Wilmer, Franke	Bozeman	100%	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Yates, Max	Butte	33%	-	-	-	+	-	-	-	+	-	-	-	+	+	-	-

## 2011 Legislature in review *(cont. from page 11)*.

approval of this revision a long-shot at best.

Another bad bill relating to coal allows the State Land Board to lease coal without an appraisal. **HB 533** (Rep. Tom Berry, *R-Roundup*) allows the Board to accept bids based solely on the coal companies willingness to pay. This approach raises the issue of whether the Board will receive fair market value for the resource as is required by the Constitution. This new provision is bound to

and the present waste of federal oil and gas resources. Currently as much as 5% of oil and gas are released into air due to faulty operating procedures, outdated technology, and poor federal oversight. This results in the loss of millions of dollars in royalty payments, and annually generates carbon emissions equivalent to 10 average-sized coal plants.

A number of bills were introduced to improve the State's regulation of oil and gas production and increase the revenue generated by such production. None were passed.

Two bills would have required public disclosure concerning the use of toxic "fracking" fluids. Both bills were defeated in committee. **SB 86** (Sen. Bob Hawks, *D-Bozeman*) and **HB 586** (Rep. Virginia Court, *D-Billings*) would have required adjacent landowners to be notified of the fluids used to fracture oil and gas seams. These fluids often contain toxic chemicals, and are known to have contaminated underground aquifers and wells.

Two good bills would have revised the composition of the Board of Oil and Gas Conservation (BOGC). Both failed to pass. **HB 383** (Rep. Mike Phillips, *D-Bozeman*) and **SB 93** (Sen. Ron Erickson, *D-Missoula*) would have added a geohydrologist and a geomorphologist, respectively, to the BOGC to aid in the extremely technical issue of the regulation of carbon sequestration.

Two other good bills were defeated in the Senate Taxation Committee. **SB 408** (Sen. Christine Kaufmann, *D-Helena*) would have ended the tax break that oil and gas companies receive on the first 18 months of production from new wells. A recent study by Headwaters Economics showed that this type of tax break does not result in increased production. Instead states without the tax breaks, such as Wyoming, enjoy higher production and higher state revenues. The other bill, **SB 401** (Sen. Ron Erickson, *D-Missoula*) would have placed on the ballot a constitutional amendment to establish an Oil and Gas Trust Fund similar to the Coal Trust. As Headwaters Economics pointed out at the hearing, Montana is the only state west of the Mississippi that does not have some type of oil and gas permanent fund.



*Oil and gas development is booming in Eastern Montana.*

end up being challenged in court if a future Land Board fails to obtain an appraisal prior to leasing State-owned coal.

### Energy: Oil and Gas

The governor's veto is all that stopped a give-away to oil and gas companies. **SB 415** (Sen. Bob Lake, *R-Hamilton*) would have allowed those companies to deduct their transportation costs from their royalty payments for oil and gas produced on State school trust lands. This would have resulted in a significant loss of revenue to the State (projected at \$2.5 million per year) and altered a leasing process that has worked well for decades.

The Legislature did pass **SJ 12** (Sen. Edward Walker, *R-Billings*), which urges the federal government to increase exploration and development of oil and gas on federal lands and ignores the problems of global warming,



## Energy: Other

In 1978, Montana voters passed a ballot initiative requiring any nuclear facility to be approved by a majority of voters before it could be built in Montana. **HB 326** (Rep. Dan Kennedy, *R-Laurel*) would have overturned this initiative and, worst of all, exempted nuclear facilities from requirements for public health and environmental safeguards in the Major Facility Siting Act! This bill was defeated in the House FRET Committee on a 12-5 vote.

Another bad energy bill, **SB 305** (Sen. Verdell Jackson, *R-Kalispell*) adds a laundry list of policy goal statements to Montana's energy policy. Many of these goal statements place a priority on developing fossil fuels over renewable energy, efficiency, and conservation.

**SB 327** (Sen. Cliff Larsen, *D-Missoula*) was the one good energy bill passed this session. This bill requires the Department of Natural Resources and Conservation to conduct a study of the hydropower potential at State-owned dams and irrigation projects. The information produced will help DNRC prioritize, increase efficiency, and expand hydropower generation at nearly two dozen locations across the state.

## Land Use

This session saw no shortage of truly awful land use proposals. Fortunately, the Senate defeated some of the bad bills and the governor vetoed most of the remainder. As with so many issues this session, all the positive proposals to protect land and watersheds failed.

### Land Use: Subdivisions

Most of the subdivision bills were either defeated or amended to be innocuous. Only one found its way into law. **HB 522** (Rep. Douglas Kary, *R-Billings*) allows local governments to extend subdivision approval indefinitely if requested to do so by the developer. The bill requires no public notification or comment period.

The extremely harmful subdivision bills



*Public lands near the Bridger Mountains. Photo by Diane Ensign.*

were vetoed by the governor. **HB 542** (Rep. John Esp, *R-Big Timber*) would have amended the Subdivision and Platting Act to allow developers to add information to the record after the close of the public comment period, and would have eliminated consideration of a subdivision's impacts on agriculture. **HB 494** (Rep. Champ Edmunds, *R-Missoula*) would have allowed any property that a developer said was going to be leased or rented to escape subdivision review and public comment (i.e., multi-plexes, motels, resorts, and trailer parks). This issue may be the subject of an interim legislative study committee.

Other bad land use bills were amended or defeated. **SB 89** (Sen. Art Wittich, *R-Bozeman*) tried to drastically reduce the time for local and State sanitation and subdivision review of water systems, but was amended to only cut a few days from the State's review time. **SB 239** (Sen. Art Wittich, *R-Bozeman*) would have prohibited DEQ from taking enforcement actions against most community water systems for the next two years. It was defeated in the Senate Natural Resources Committee.

*This session saw no shortage of truly awful land use proposals. Fortunately, the Senate defeated some of the bad bills and the governor vetoed most of the remainder.*

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## 2011 Legislature in review (cont.)

### Land Use: Zoning

Despite the fierce attacks on zoning during the session, Montana's zoning laws remain intact. Two of the worst bills were defeated on the Senate floor. **SB 383** (Sen. Llew Jones, *R-Conrad*) was an attempt by Cascade County commissioner Joe Briggs to undermine the effect of the Montana Supreme Court's decision on the rezoning of land for Highwood Generating Station. The bill would have allowed local governments to decide if their zoning decisions constitute illegal spot zoning. **HB 402** (Rep. Matthew Rosendale, *R-Glendive*) would have prevented counties from using zoning to keep gravel pits out of residential areas.

The governor vetoed three terrible zoning bills that the legislature passed. **SB 379** (Sen. Alan Olson, *R-Roundup*) was a Plum Creek Timber Co. bill to allow it to block local zoning. This bill would have allowed large landowners to overrule the

the gravel pit operators were back, this time asking the legislature to prevent local regulation of gravel pits. Several of their bills would have had implications beyond just gravel pits, but it was the gravel pit operators who led the charge. Fortunately, the Senate defeated one bill, and the governor vetoed the other two.

The worst of the gravel pit bills was **HB 402** (Rep. Matthew Rosendale, *R-Glendive*). This bill would have prohibited local governments from adopting zoning regulations that barred gravel pits in residential areas if a gravel pit operator had submitted a permit application to the State, regardless of whether the application was complete or approved. While this bill sailed through the House on a largely party line vote, the Senate was more concerned about how it would impact homeowners and their property values. The bill was defeated on the Senate floor on a 24-26 vote.

In some places, interim zoning has been used to prevent gravel pits from locating near homes while a county developed long-term regulations to protect public health, safety, and property values (see SB 183 and HB 366 discussed above under Zoning).

### Land Use: Other

Two good land use bills were introduced but defeated.

**SB 164** (Sen. Bob Hawks, *D-Bozeman*) would have required County growth policies to include provisions to protect Montana's largest rivers.

**SB 191** (Sen. Ron Erickson, *D-Missoula*) would have required a homeowner to disclose information regarding their septic system prior to selling their house.

### The Courts

A bill was introduced that would have allowed the legislature to override some court decisions. **SB 323** (Sen. Joe Balyeat, *R-Bozeman*) would have allowed the legislature to overturn any Supreme Court decision by a two-thirds vote. That change would have allowed the legislature



Gravel pit operation in the Gallatin Valley. Photo by Amy Kelley.

wishes of the majority of landowners in the area. **SB 183** (Sen. Taylor Brown, *R-Billings*) and **HB 366** (Rep. Matthew Rosendale, *R-Glendive*) were similar bills that would have prevented local governments from adopting interim zoning regulations in order to maintain the status quo while they considered a permanent zoning proposal.

### Land Use: Gravel Pits

In 2009 the legislature passed a bill that some could say "undermined" the State's permitting process for gravel pits. This session

to interpret the Constitution – a duty clearly reserved for the judicial branch of government. This bad idea never made it out of the Senate Judiciary Committee.

**HB 412** (Rep. Bill Harris, *R-Mosby*) was another bad idea that passed the House but was defeated in the Senate Judiciary Committee. This bill would have required any organization that brought a lawsuit to stop an industrial activity to disclose all its financial contributors. Members of organizations that file suits to stop industrial activities should have the freedom to associate without fear of retribution. This bill would have required the disclosure of membership lists. Rep. Harris showed his true motivation when he repeatedly referred to any organization that would try to stop an industrial activity as “despicable.”

## Montana Administrative Procedures Act

The Montana Administrative Procedures Act describes the process that all State agencies must follow when adopting regulations. Changes to MAPA can have a significant impact on all State agencies, particularly those charged with protecting the environment, namely the Department of Environmental Quality, the Department of Fish, Wildlife and Parks, and the Department of Natural Resources and Conservation.

MAPA was under attack by a number of bills this session. The worst bill, **HB 40** (Rep. Ken Peterson, *R-Billings*), was defeated in the Senate State Administration Committee. This bill would have required all administrative rules to be approved by the legislature. This would have put intense political pressure on State agencies trying to protect public health and the environment. It would have delayed agency adoption of rules because the legislature only meets every other year. And it would have put Montana at odds with the federal government, which requires Montana rules to be regularly updated to comply with federal standards.

Another bill to undermine agency rule-



*Inside the Montana House of Representatives during the 2011 Session. Photo by Derf Johnson.*

making authority was **SB 201** (Sen. Edward Walker, *R-Billings*). As introduced it would have required State agencies to consider how their rules negatively impacted businesses. It was significantly amended to allow agencies to consider how their rules benefited businesses as well. The bill was touted by Republicans as an important “jobs” bill, so the governor initially issued an amendatory veto, adding a requirement for tracking how many jobs were created as a result of its passage. Those amendments were rejected by the Legislature. So the Governor vetoed the bill.

## Other

The two bills that most directly threatened public health were both defeated. **HB 593** (Rep. Duane Ankney, *R-Colstrip*) would have allowed Montana’s coal-fired power plants to turn off their mercury emission control equipment. In 2006 Montana enacted a rule that required those plants to control mercury air emissions. Until then the plants were responsible for almost all of Montana’s airborne mercury emissions each year. Since January 2010, plants have been successfully controlling up to 95% of their mercury air emissions.

Not a single coal plant owner testified in favor of the bill. The only supporters were organized labor, including the Montana AFL-CIO. The bill

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# Highway Robbery

by Kyla Wiens

Imperial Oil (a subsidiary of ExxonMobil) wants to move over 200 massive loads of equipment headed for the tar sands region of Alberta along two-lane highways that wind through western and north-central Montana. The highways to be used include ones that go along Lolo Creek, up the Blackfoot River Valley, over Roger's Pass, and along the Rocky Mountain Front. These narrow roads are completely unsuited for equipment that can weigh over 500,000 pounds and be 3/4ths the length of a football field. Moving so much massive equipment along highways and through communities in Montana is unprecedented.

This means that MDT believes its environmental analysis (EA) is adequate and that it does not need to complete a more thorough analysis known as an environmental impact statement (EIS).

MEIC and the other plaintiffs claim that the EA failed to analyze impacts of this project on public safety, water quality, recreation, and tourism. The plaintiffs asked for a temporary restraining order (TRO) against MDT, after the agency issued permits for construction activity along the proposed route. District court judge Ray Dayton granted the TRO in part, and halted any construction of turnouts or highway modifications. Dayton allowed a test module for the project parked at Lolo Pass to move eight miles into Montana, and allowed utility companies to continue to bury electricity lines.

The TRO remains in effect until Judge Dayton rules on the plaintiffs' request for a preliminary injunction (the next legal step in the process). The purpose of the injunction is to force MDT to produce an EIS evaluating all the impacts before issuing the travel permits for the

oversized loads. A hearing on the preliminary injunction request took place May 16th-18th in Missoula.

At the hearing, witnesses for the plaintiffs included a person who lives along the proposed route, a wetlands expert, a land surveyor, an environmental health specialist, and an economist. Each of them raised concerns about a wide range of impacts that weren't considered in the EA. These impacts include degradation of water quality, encroachment on wetlands, disturbance of a flood plain, adverse effects on public safety, and impacts on recreation and tourism businesses. The attorneys for the defendants attempted to discredit each of these witnesses, and claimed that it was the public's responsibility to raise concerns about the impacts of the project during the public comment period on the EA. Plaintiffs'

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Tar sands equipment "big rig." Photo by "Fighting Goliath"

Regardless of these concerns, Imperial hopes to move forward soon, and is treating what is known as the Kearl Module Transportation Project (KMTP) as "just another highway project." This is clearly not a typical highway project, as Imperial and the Montana Department of Transportation (MDT) both know. In fact, everything about this project is extraordinary, and therefore MDT needs to analyze its impacts much more thoroughly than it has to date.

Last month, MEIC, joined by Missoula County, the National Wildlife Federation, and the Montana Chapter of the Sierra Club, filed a lawsuit in State district court to challenge MDT's decision to issue Imperial Oil the permits it needs to move the loads. In February 2011, MDT had given preliminary approval for the project, and issued a Finding of No Significant Impact (FONSI).

## PSC Plays Musical Chairs

by Kyla Wiens

The Public Service Commission (PSC)—the five-member elected body that regulates publicly owned utilities in Montana—does not usually have a reputation for controversy. But since the 2010 elections many procedural and policy-related votes by the PSC have been very divisive. The 2010 elections changed the party balance on the PSC from a 4-1 Democratic majority to a 3-2 Republican majority. With the Republicans in charge, the chair-apparent was Brad Molnar (R-Billings), whose controversial tenure at the PSC includes being fined in 2010 for political ethics violations. In January 2011, the PSC took a usually routine vote to elect a new chair. The vote was a 2-2 deadlock, when newly elected Travis Kavulla (R-Great Falls) refused to vote for Molnar because of Molnar's ethics violations. After heated debate, and several days of delay, the commissioners finally voted 3-2 to elect first-term member Bill Gallagher (R-Helena) as chair and Molnar as vice-chair.

The issue of who should be chair surfaced again in April 2011, after Molnar attended an important Federal Energy Regulatory Commission settlement conference in Washington, D.C. without the knowledge of the other commissioners except Gallagher. Citing a lack of trust in both Gallagher and Molnar, the other three commissioners voted 3-2 to elect Kavulla as the new chair and Gail Gutsche (D-Missoula) as the new vice-chair.

It is likely that the divisive votes for chair have set a precedent for many 3-2 votes on important issues. One such issue was the PSC decision last month to agree to a settlement of a lawsuit related to NorthWestern Energy's electric rate structure. In December 2010 the former PSC had voted 4-1 to approve modifications to NorthWestern Energy's rate design to help encourage energy efficiency and conservation. One change approved was a "decoupling" mechanism that can encourage efficiency by breaking the link between the utility's profits and the amount of energy it sells. The second change was to adopt an inverted block

rate structure to increase rates for consumers who use more electricity.

As part of its decision, the PSC also approved a rate of return for NorthWestern Energy that was lower than the utility had requested. NorthWestern, joined by groups including the Montana Consumer Counsel and Natural Resources Defense Council, appealed the PSC's decision to State district court. On April 26th, at the request of those groups, and for reasons that remain unclear, commissioners Gutsche, John Vincent (D-Bozeman), and Kavulla voted to accept the

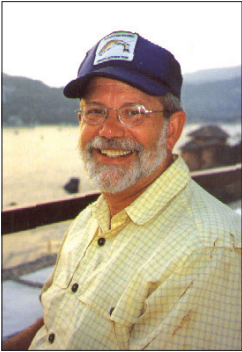


PSC commissioners from left to right: Brad Molnar, Travis Kavulla, and Bill Gallagher

proposed settlement of the case, and throw out the decoupling mechanism and inverted rate structure, and authorize an increase in NorthWestern Energy's rate of return. Kavulla said this decision would "save consumers a great deal of money." Actually, "decoupling" and inverted rate structures help encourage efficiency and repealing them will mean higher energy costs to consumers—especially individuals with low and fixed incomes. Hopefully, NorthWestern Energy will consider proposing a rate structure that includes decoupling and inverted rates in the future. And, also hopefully, the PSC will put personal and political divisiveness aside and agree once again to support energy-efficient rate designs. ☺

## Thoughts from the Executive Director

by Jim Jensen



I was recently at an event in Denver where Bill McKibben, the writer and Middlebury College professor who has become one of the globe's leading climate change fighters, spoke. Among other things he founded the global action organizations 350.org and Power Shift, both designed to engage people around the world to demand action to keep the planet livable.

I have followed his writing for a few years and his message, which is sort of a Dutch uncle-like talking-to, is that we no longer have the luxury of time to solve humanity's greatest problem—climate change.

His framework is one of small truths versus large ones. In one place he has written:

“Opponents of the Cape Wind development protest that these windmills will be visible from shore -- and by golly, they're right. How visible is a matter of debate, but on a clear day you would see their blades turning on the horizon. They point out, again correctly, that the developers are private interests, rushing to develop a resource that, in fact, they do not own, and without waiting for the government to come up with a set of rules and processes for siting such installations. The critics also insist that there's a “better” site somewhere -- and again they're probably right. There's almost always a better site for anything. The whole business is messy, imperfect.

But those criticisms, however valid, are small truths. The big truths are these: Each breath of

wind that blows across Nantucket Sound contains 370 parts per million of carbon dioxide, up from 275 parts per million before the Industrial Revolution, before we started burning coal and gas and oil. That CO<sub>2</sub> traps the sun's heat--about two watts per square meter of the planet's surface. Right now the concentration of CO<sub>2</sub> in the atmosphere is higher than it's been for 400,000 years. If we keep burning coal and gas and oil, the scientific consensus is that by the latter part of the century the planet's temperature will have risen five degrees Fahrenheit, to a level higher than we've seen for fifty million years. The choice, in other words, is not between windmills and untouched nature. It's between windmills and the destruction of the planet's biology on a scale we can barely begin to imagine.”

This same attitude is fueling the attempt by opponents of new transmission lines for wind power to suspend HB 198, a law recently passed by the legislature, and have it placed on the 2012 general election ballot for a vote. They, of course, want it killed.

New lines, including the Montana Alberta Tie Line (MATL) and Mountain States Transmission Intertie (MSTI) are being built to serve new renewable energy development, primarily wind power. Billions of dollars invested in renewable energy to increase the percentage of green electrons in the West is an imperative. Environmentalists should welcome the projects, and their necessary transmission lines, with open arms.

This is a large truth. ☺

### Highway Robbery *(continued from page 20)*

attorneys argued that the onus was on MDT to act in the best interest of Montana and to conduct a thorough analysis before making its decision.

The witnesses for Imperial Oil and MDT included the KMTP project manager, a water resource expert with the consulting firm that prepared the EA, and the MDT employee who oversaw the EA process. They attempted to justify the level of analysis that went into the EA and the project development, and referred to the transportation plan (another required step

in the State's oversight process) as an “evolving document.” Therefore, they argued, the EA may not address all the specific impacts, because the transportation plan could change to mitigate impacts. Plaintiffs' attorneys questioned why MDT initially said the KMTP was significant enough to require an EIS, but was later satisfied with a less comprehensive EA.

The judge is expected to rule on the preliminary injunction request in the next two months. ☺

# President's Letter

by Sarah Merrill

A major (if unspoken) theme of the 2011 Montana legislature was the promotion of an unlimited increase in corporate profits. We're all familiar with the corporate culture's sales message: we are individual consumers, and we are all inadequate as we are; we can only approach adequacy by buying the right stuff, and the more stuff we buy the better we'll feel. Nature is property, something to be conquered and possessed; nature has value only as it is of use to humans.

Also on full display this session was the old false argument that environmentalists will take away jobs, jobs, jobs. As my friend Lynda Sexson puts it: ". . . we think that by sentimentalizing subsistence labor, we will not have to examine the oppressive hierarchies of society."

People are examining oppressive hierarchies, seeing that humans are the environment, realizing that the promotion of policies that poison what sustains us is a type of insanity. As more and more people stop buying the corporate unlimited industrial growth story, the story's

cheerleaders feel threatened. Their attacks on the environment will increase in reaction to the shift in consciousness.

While politicians in this state and nation resist positive change, we can look elsewhere for hopeful signs. Kenya's constitution states: "Every person has the right to a clean and healthy environment, which includes the right . . . to have the environment protected for the benefit of present and future generations through legislative and other measures." Ecosystems have legally enforceable rights in Ecuador. Ecuador's 2008 constitution states that nature "has the right to exist, persist, maintain, and regenerate its vital cycles, structure, functions, and its processes in evolution." If the notion of nature having rights seems radical, consider that the notion of slaves having rights was also once considered radical. Perhaps recognizing and institutionalizing the rights of non-human life forms is the next stage of western civilization's evolution, moving us away from a self-destructive political economy to a life-sustaining society. ☺



## 2011 Legislature in review *(continued from page 19)*

sailed through the House but was amended in the Senate to require Montana's rule to stay in effect until a recently proposed federal rule on mercury emissions takes effect. Rep. Ankney opposed that amendment but was unable to convince the Senate to adopt the bill without it, so the bill failed to pass.

**HB 434** (Rep. Steve Fitzpatrick, *R-Great Falls*) also would have led to increased toxic pollution. The bill was supported by the BNSF railroad, which is responsible for about 10% of Montana's State superfund sites. The bill would have allowed BNSF to challenge every proposed or final DEQ decision. BNSF has been notorious at stalling its cleanup efforts. This bill would have made that problem worse, but was defeated in the House Natural

Resources Committee.

One of the most bizarre bills this session was **HB 364** (Rep. Alan Hale, *R-Basin*). It would have prohibited DEQ from relying on its own computer modeling for water quality and air quality permitting. Rep. Hale told the committee the idea for the bill came to him after he got down on his knees and prayed for guidance. Even the House Natural Resources Committee could not stomach such a silly idea.

Turning to the unconstitutional, there was **SB 254** (Sen. Rowlie Hutton, *R-Havre*). This bill would have attempted to give the State of Montana eminent domain authority over federal lands. The bill passed both houses of the legislature but was vetoed by the governor. ☺



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### Don't miss the upcoming **MEIC Rendezvous and Member Celebration!**

All MEIC members and supporters are invited to attend our annual event on **Saturday, June 4th** at the beautiful **Ten Spoon Vineyard and Winery in Missoula.**

- Celebrate MEIC and its accomplishments this year.
- Get the inside scoop on the legislative session from MEIC staff and **Senate minority leader Carol Williams.**
- Hear about work on climate change and the Clean Air Act from **Jim Martin, Region 8 administrator of the EPA,** as well as **U.S. Senator Jon Tester (invited).**
- Meet old friends, tour the winery, and have a glass of local organic wine and lunch on us!



Please join us for a wonderful day and bring your family and friends to spread the word about the important work we are doing. For more information or to **RSVP, call Sara Marino at 406-443-2520 or e-mail her at [smarino@meic.org](mailto:smarino@meic.org).**

**Please RSVP by May 31st if you plan to attend so we can count you in for lunch.**