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NEWS FROM THE MONTANA ENVIRONMENTAL INFORMATION CENTER



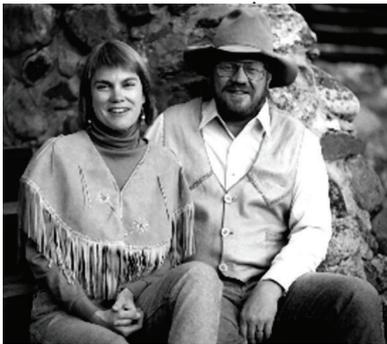
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Celebrating 40 Years of Advocacy for Montana's Environment

by Anne Hedges

Forty years ago, a group of enthusiastic visionaries came together and decided to form an organization that would work day in and day out to protect Montana's



MEIC founders Robin and Phil Tawney.

air, water, and land, and the health of those lucky enough to call this beautiful place home. They believed that Montana needed a strong advocate for the environment and public health in the halls of the Capitol, and before State government generally. Little did they know that they would create

an organization that would still be going strong forty years later.

Since its founding, MEIC has accomplished many things. Just look at the "Thoughts from the Executive Director" column on page 3 for a partial listing. MEIC has protected Montana's air and water quality, has been instrumental in causing the cleanup of contaminated sites, has prevented new cyanide heap-leach mines from being developed, and much, much,

"Forty years ago, a group of young enthusiastic visionaries got together and decided to form an organization that would work day in and day out to protect Montana's water and the health of those lucky enough to call this beautiful place home."

more. But perhaps most important, MEIC continues to be a voice at the Capitol and before State government for Montana's clean and healthful natural environment, and for

people's right to open government and public participation, and for public health and future generations.

At the legislature, MEIC has played a role in lobbying for the enactment of virtually all of Montana's core environmental laws. MEIC helped to establish and has defended Montana's bedrock environmental law, the Montana Environmental Policy Act, which



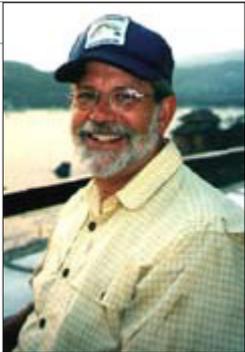
MEIC lobbyists, from left to right: Kyla Maki, Anne Hedges, Jim Jensen, and Derf Johnson.

has assisted governments and the public in identifying environmental impacts for decades. MEIC was one of the original forces behind the Montana Subdivision and Platting Act, which has assisted communities across Montana in land-use planning and protection of their communities. MEIC also helped to pass the Renewable Energy Standard, which requires some regulated utilities to obtain 15% of their electricity from renewable energy resources. These successes are truly just a small selection of MEIC's accomplishments.

We thank our founders for building an enduring foundation on which MEIC has been able to grow and thrive and continue to accomplish its original mission. ☺

Cover Photo: The Montana Capitol. Photo by MEIC.

Thoughts from the Executive Director



by Jim Jensen

Celebrating our 40th year is a fun exercise for all of us on the staff here at MEIC. It is human nature to become caught up in the issues of the day, and the daily challenges of the

legislature. But it is important to reflect, without being nostalgic, on our past work too.

I think it is important to remember that MEIC nearly ceased to exist in 1984 because of management failures. But thanks to the then Board members and others who invested time, labor, and money we are here today. These folks decided that MEIC was an institution worth saving and that MEIC's voice on behalf of Montana's land, air, and water would make a serious difference. They were right and we owe them our thanks.

Since that low point, MEIC has been able to make amazing progress, often overcoming challenges that others said were insurmountable.

One example is our lawsuit against the Legislature in 1995 for its refusal to allow the public to examine drafts of bills and other information in legislative staffers' files. We won, and now transparency is the standard.

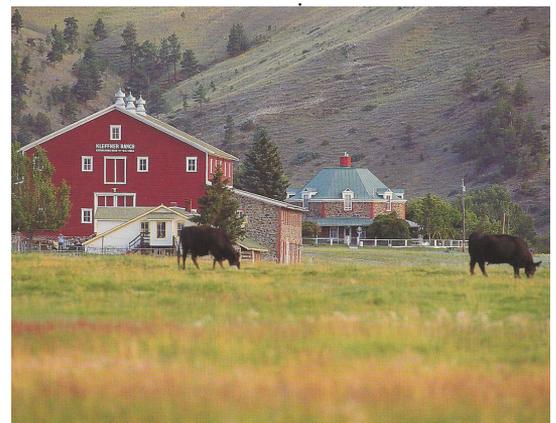
On another occasion, MEIC discovered that a secret meeting was going to take place between then Gov. Stan Stephens' chief legal counsel and the Burlington Northern Railroad, to make a "sweetheart" deal that would have

let BN off the hook for its massive ground water contamination throughout the state. When an MEIC staff member was told he could not attend the meeting and was thrown out, he called a reporter who agreed to come back to the meeting and expose the deal. The meeting was immediately adjourned, the news was on front pages across the state the next day. The deal never happened.

We were the main proponents for the State's "mini-Superfund" legislation to address the legacy of toxic waste sites in the state. We have assisted citizens in their communities to prevent hazardous waste incinerators from being built. We were instrumental in the passage of the Agricultural Chemical Groundwater Protection Act, and the State's Renewable Energy Standard that requires utilities to obtain a portion of their electricity from renewable sources.

These are just some of the lesser known but critical victories MEIC has had. When they are added to the successful initiative to ban cyanide heap-leach gold mining, to the exposing of the poisoning of Libby by W.R. Grace Corp., and to defeating the massive Roundup coal-fired power plant, you can be proud of our past and look forward to our progress as we begin our fifth decade of protecting this Last Best Place. ☺

The historic Kleffner Ranch near East Helena, Montana.



Save the Date! MEIC's 40th Anniversary Rendezvous!

September 21, 2013

2013 marks MEIC's 40th year of keeping Montana "clean and healthful" and we are going to celebrate! Plan ahead and mark your calendar for Saturday, September 21st for MEIC's 40th Anniversary Rendezvous at the historic Kleffner Ranch in East Helena. Food, speakers, silent auction, music, friends, and fun are all on tap. Keep checking back for more details!

2013 Legislature: The First Half is Over, but Many Troublesome Bills Remain

by Anne Hedges, Kyla Maki, and Derf Johnson

The first half of the 2013 Legislative Session is over. Although the tone was much better than in recent sessions, the content was not. Gov. Steve Bullock has set a tone that invites discussion and problem-solving. That feels like a breath of fresh air. Unfortunately, attacks on the

environment continue and misinformation remains rampant.

Many of this session's anti-environment bills are not new – they were the deserving victims of former Gov.

Brian Schweitzer's veto branding iron two years ago. But, like the "undead," they are back, and many will be likely to make it to Gov. Bullock's desk. MEIC will need your help to encourage the governor to make sure these rehashed and rotting ideas suffer a similar fate this year.

Victories: Bad Bills Defeated

There were a number of important victories in the first half of the session. And there are still a few good bills that are alive in the process.

Takings

In the category of really awful ideas that we and our allies have defeated, perhaps nothing is as significant as the demise of this session's takings bill. **SB 284** (Sen. Matthew Rosendale, *R-Glendive*) would have required state or local governments to reimburse a property owner whenever a regulation decreased the value of his or her property by as little as 10%. If the government body couldn't afford to pay, it would have been required to waive the regulation for that property owner. This crazy notion, estimated to cost at least \$600 million

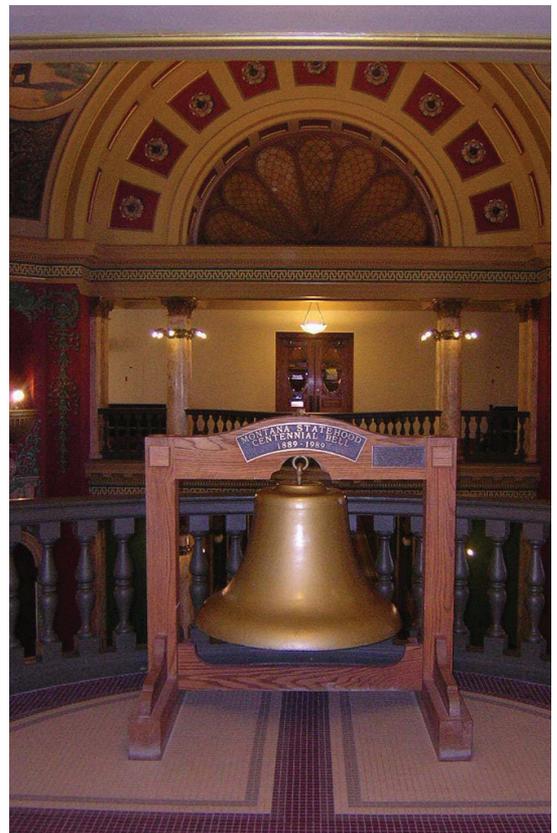
over 6 years, was overwhelmingly defeated in the Senate Local Government Committee.

A similar measure that would have written the concept of takings into the Montana Constitution never even had a hearing. **SB 17** (Sen. Jason Priest, *R-Red Lodge*) was introduced even before the session began. Perhaps the idea was too radical even for the sponsor, because the Senate Judiciary Committee tabled the bill at his request.

Energy

Another bad bill that died before it had a hearing was **SB 74** (Sen. Jason Priest, *R-Red Lodge*). This bill would have undermined a program called the Universal Systems Benefits (USB) Fund that funds low-income weatherization, energy efficiency, and renewable energy systems. It

"... Many bills will be likely to make it to Gov. Bullock's desk. MEIC will need your help to encourage the governor to make sure these rehashed and rotting ideas suffer a similar fate this year."



The bell in the Montana Capitol. Photo by MEIC.

2013 Legislature at Mid-Session *(cont.)*

would have also made constructing renewable energy projects to meet the Renewable Energy Standard (RES) much more difficult. The bill would have required USB and RES projects to be “green certified.” While this may sound good, the intention was to create so much red tape that these projects would never happen. And the bill did not require “green certification” for fossil fuel projects. The bill was tabled in the Senate Natural Resources Committee.

Water Rights and Water Projects

SB 347 (Sen. Chas Vincent, *R-Libby*) would have prohibited the Department of Environmental Quality from considering any amount of reduced stream flow caused by prior upstream diversions when determining whether a proposed activity would degrade water quality. The Montana Mining Association and a laundry list of mining companies and industry consultants supported the bill. MEIC, landowners, senior water rights holders, Trout Unlimited, and the Clark Fork Coalition opposed it. Fortunately, Sen. Vincent agreed to amendments that should protect the rights of senior water rights holders and that should drastically reduce the harm this bill will cause. The bill as amended passed the Senate on a 48-0 vote. MEIC will work to ensure that the House does not amend the bill in bad ways. If it remains unchanged, Montana’s waters will have avoided a serious attack.

SB 334 (Sen. Bradley Hamlett, *D-Cascade*) would have dramatically changed the definition of a stream in the Natural Streambed and Land Preservation Act of 1975, the so-called “Section 310” law. This law requires anyone wishing to build something within a waterway to obtain a permit from the local soil and water conservation district. The purpose is to assure that when culverts, bridges, irrigation diversions, and other streambed alterations are constructed, they are engineered and installed using the best methods to protect the stream. **SB 334** would have changed the definition of

a stream to reduce the jurisdiction of the law, putting intermittent streams – such as some sections of the lower Smith River, which dry up in drought years, and the Blackfoot River, which runs underground at Lincoln – at risk. The bill was tabled in the Senate Agriculture Committee on a 7-4 vote. An attempt by Sen. Hamlett to bring it to the full Senate for debate was defeated on a 24-26 vote.

“SB 334 would have changed the definition of a stream to reduce the jurisdiction of the law, putting intermittent streams - such as some sections of the lower Smith River, which dry up in drought years, and the Blackfoot River, which runs underground at Lincoln - at risk. ”

Membership List Confidentiality

The House also killed an unconstitutional bill to require any party seeking an injunction in court to disclose the names and addresses of its financial supporters. Fortunately, some Republicans value a member’s privacy in an organization. By the time two politically polar opposites, Rep. Ellie Hill (*D-Missoula*) and Rep. Jerry O’Niel (*R-Columbia Falls*), finished arguing against **HB 515** (Rep. Bill Harris, *R-Winnett*), the bill was defeated on the House floor on a 43-57 vote.

Gravel Mining

Once again there have been a number of bills to weaken the gravel mine permitting process. Two of the three worst bills have been defeated. **SB 234** (Sen. Jim Peterson, *R-Buffalo*) would have created a new



The Montana House of Representatives. Photo by MEIC.

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2013 Legislature at Mid-Session *(cont.)*



Sen. Bradley Hamlett,
D-Cascade

“provisional” permitting process for gravel mines that would have allowed a mine to operate with no permit review or public notice. **SB 229** (Sen. Bradley Hamlett, *R-Cascade*) would have allowed a 5-fold increase in the size of small unpermitted gravel mines with no agency review, public notice, or reclamation standards. Both bills were tabled in the Senate Natural Resources Committee, in favor of a more moderate bill, **SB 332** (Sen. Bruce Tutvedt, *R-Kalispell*), preferred by the committee.

commissions as “equal government parties” when implementing policies or rules that increased restrictions on or control over land or natural resources within the county. This bill was supported by the Jefferson County commission, which had unsuccessfully sued the Department of Environmental Quality over the siting of a transmission line. The County had argued that

Litigation

The House showed moderation when it tabled **HB 186** (Rep. Clayton Fiscus, *R-Billings*). This bill would have required the losing party in litigation to pay the attorney’s fees and legal costs of the winning party. This concept would allow multi-national corporations

“HB 326 . . . was a truly radical proposal that would have granted any county that desired it “coordinating county status” with the State on any State permit, license, or regulation.”

such as ExxonMobil to intimidate any average citizen or organization that wanted to seek justice in the courts.

It also would have harmed the insurance industry. That opposition helped convince the House Business and Labor Committee to table the bill.

Intergovernmental Relations

HB 326 (Rep. Kelly Flynn, *R-Townsend*) was a truly radical proposal that would have granted any county that desired it “coordinating county status” with the State on any State permit, license, or regulation. The bill defined county



The Montana Capitol Building. Photo by MEIC.

2013 Legislature at Mid-Session *(cont.)*

DEQ failed to coordinate with it in a manner that gave the County authority to decide the route of the power line. The Montana Supreme Court ruled unanimously against the County. Cascade County commission chairwoman Jane Weber joined MEIC, State agencies, and NorthWestern Energy to oppose the bill. The bill was tabled in the House Local Government Committee on a 17-1 vote.

More Victories (Maybe): Good Bills Still Alive

There is more good news to celebrate at the halfway point. Some positive bills related to clean and renewable energy, and the discouragement of fossil fuel development, remain alive.

Fossil Fuels

SB 295 (Sen. Christine Kaufmann, *D-Helena*) would repeal the “oil and gas tax holiday”



Sen. Christine Kaufmann, D-Helena.

by eliminating the tax break that oil and gas companies currently receive on the first 12-18 months of production. A large portion of the new revenue would be designated for critical infrastructure and public safety improvements in the eastern Montana communities that are impacted by the current oil boom. The bill awaits action in the Senate Taxation Committee.

HB 431 (Rep. Austin Knudsen, *R-Culbertson*) would improve the rights of surface owners when oil and gas is developed on their property by the mineral rights holders, by requiring that the value of the land and any damages from oil and gas development be calculated based upon the highest and best reasonably available use of the land. The bill passed the House on a 98-0 vote.

Renewable Energy

SB 106 (Sen. Greg Jergeson, *D-Chinook*) would help expand renewable energy opportunities by allowing certain energy storage technologies (batteries, flywheels, some pumped hydro) to be included as eligible renewable resources under the Renewable Energy Standard. Energy storage helps back up intermittent energy resources such as wind and solar. With storage, energy can be stored at times of the day with high production but low demand, and used during times of low production and peak demand. The bill passed the Senate on a 43-5 vote.

“SB 295... would repeal the “oil and gas tax holiday” by eliminating the tax break that oil and gas companies currently receive on the first 12-18 months of production.”

HB 587 (Rep. Douglas Coffin, *D-Missoula*) would reduce flaring of natural gas at well sites by taxing the gas that is flared. Currently, virtually all of the permitting in Montana is for oil because of its high market value. However, natural gas is often associated with the oil, and unless infrastructure is in place to capture the natural gas, oil developers will often burn it rather than capture and market it. This bill

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2013 Legislature at Mid-Session *(cont.)*

would encourage capture by taxing any gas that is flared. The bill is awaiting a hearing in the House Federal Relations, Energy, and Telecommunications Committee.

Tribal Relations

SR 9 (Sen. Jonathan Windy Boy, *D-Box Elder*) would recognize the Idle No More Movement, an indigenous effort initially started

by the First Nations of Canada in opposition to the extreme environmental devastation caused by the development of the tar sands. Idle No More has since grown

into an international movement that urges governments to recognize indigenous tribal sovereignty and environmental protection. The resolution, which does not go to the House, passed the Senate on a 32-18 vote.

MEIC members testified in support of the resolution and provided compelling arguments for the validity of human-induced climate change. But the Committee couldn't even agree to that.

Over the years Sen. Mike Phillips (*D-Bozeman*) has been a champion on climate change-related bills. Two of his good bills this session were voted down. **SB 214** would have undone some of the damage caused by the 2011 Legislature's revisions to the Montana Environmental Policy Act (MEPA). **SB 214** would have allowed State agencies to analyze environmental impacts beyond Montana's borders during a MEPA review. Currently, State agencies are prohibited from considering a project's regional or cross-border impacts on wildlife, water quality, air quality, or climate-related issues. The Senate

"MEIC members testified in support of the resolution and provided compelling arguments for the validity of human-induced climate change. But the Committee couldn't even agree to that."

Rep. Douglas Coffin, D-Missoula.



Losses: Good Bills Defeated

Unfortunately the science of climate change, and sensible solutions to the problems of global warming, have mainly suffered defeats this session.

HJ 10 (Rep. Douglas Coffin, *D-Missoula*) was tabled in the House Natural Resources Committee. The resolution would simply have declared that the concept of climate change is scientifically valid and represents an ecological threat. Many



The Montana Senate. Photo courtesy of Chad Harder.

2013 Legislature at Mid-Session *(cont.)*

Natural Resources Committee tabled the bill. The same committee also tabled Sen. Phillips' **SB 281**, which was a simple proposal to require the Montana Department of Environmental Quality to collaborate with the University System's climate science programs, and the Montana Drought Advisory Committee, regarding climate change efforts.

Renewable Energy

HB 394 (Rep. Tom Jacobson, *D-Great Falls*) would have allowed people in multi-unit residential buildings to buy into a portion of the electrical output from a solar, wind, or micro-hydro generator installed on-site, and to receive credit on their energy bills for the proportion of the energy produced, through a process known as net metering. Even that modest effort was too much for the House Natural Resources Committee, which tabled the bill on an 8-6 vote.

SB 247 (Sen. Mike Phillips, *D-Bozeman*) would have increased the number of renewable energy projects by simply raising the allowable size of these projects in a net metering arrangement from 50 kilowatts to 100 kilowatts. This bill would have expanded opportunities for solar projects on commercial buildings and new wind turbine technologies. The Senate Energy and Telecommunications Committee passed the bill on a 7-6 vote, but the full Senate rejected it on a 24-26 vote.

HB 429 (Rep. Franke Wilmer, *D-Bozeman*). Whereas in the last session the legislature attempted to eliminate all energy efficiency and renewable energy tax credits, this bill would expand those credits by increasing the alternative energy and energy efficiency tax credits from \$500 to \$1,000 for each taxpayer. The bill was defeated in the House on a 46-54 vote.

Fossil Fuels

HB 406 (Sen. Austin Knudsen, *R-Culbertson*) would have revised the law related to oil and gas "forced pooling interests" by decreasing the share of the costs that landowners would have had to pay if they were forced into developing their oil and gas holdings by adjacent developers. The bill was tabled in the House Federal Relations, Energy, and Telecommunications Committee.

Tribal Relations

Finally, **SB 273** (Sen. Sharon Stewart-Peregoy, *D-Crow Agency*) would have required the State to consult with tribes when a proposal would impact their traditional cultural property. This bill was tabled in the Senate State Administration Committee.

More Losses (Maybe): Bad Bills Still Alive

Once again this session, the list of anti-environment bills is long. While some bad bills (see above) have been defeated, most are alive and moving through the process. Many of these bills will have hearings in the coming weeks. You can follow their status on MEIC's web site throughout the remainder of the

"SB 247 . . . would have increased the number of renewable energy projects by simply raising the allowable size of these projects in a net metering arrangement from 50 kilowatts to 100 kilowatts."

Sen. Mike Phillips, D-Bozeman.



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2013 Legislature at Mid-Session *(cont.)*

session. We urge you to call Gov. Bullock and ask him for a veto if any of these bills make it to his desk.

MEPA

HB 513 (Rep. Bill McChesney, *D-Miles City*) is one of the worst bills of this session. It would exempt oversized loads (“mega-

loads”) from all review under the Montana Environmental Policy Act (MEPA). If this bill passes, transportation projects involving any number of loads, and loads of any size, would

have no review of their impacts on public safety, road integrity, or the environment. This bill is a direct retaliation against MEIC’s successful lawsuit against the hundreds of tar sands mega-loads that were slated to travel from Lolo Pass, through Missoula, and along the Blackfoot River and Rocky Mountain Front. The bill passed the House on a 72-26 vote.

Renewable Energy Standard (RES)

SB 31 (Sen. Debbie Barrett, *R-Dillon*) would define new hydropower facilities of any size as an eligible renewable resource under the RES. Even though hydropower is a renewable resource, this bill undermines the purpose of the RES, which is to encourage the development of new projects.

“HB 513... is one of the worst bills of this session. It would exempt oversized loads (“mega-loads”) from all review under the Montana Environmental Policy Act (MEPA).”



A mega-load haul in Montana. Photo by Dave King.

2013 Legislature at Mid-Session *(cont.)*

Hydropower already accounts for over 30% of Montana's electricity generation. The bill passed the Senate on a 32-18 vote.

SB 45 (Sen. Jim Keane, *D-Butte*) would allow already in place hydropower dam upgrades to be considered renewable energy resources under the RES. Dam upgrades should be encouraged, but the bill retroactively applies to the 25-megawatt upgrade at Rainbow Dam in Great Falls, resulting in an over \$20,000 windfall to Pennsylvania Power and Light (the dam's owner). The bill passed the Senate on a 46-4 vote.

SB 325 (Sen. Alan Olson, *R-Roundup*) would add wood treated with toxic creosote, arsenic, and PCP as an eligible renewable resource under the RES. Primarily, this bill would encourage the burning of railroad ties. Biomass treated with these carcinogenic chemicals was explicitly excluded from the definition of renewable resources because of their harmful impacts on human health and the environment. The bill passed the Senate on a 31-19 vote.

SB 125 (Sen. Alan Olson, *R-Roundup*) would significantly reduce the penalty that NorthWestern Energy would have to pay for not purchasing power from community renewable energy projects – from about \$700,000 to \$11,000. Montana's RES requires certain public



The Montana Capitol dome. Photo by MEIC.

utilities to purchase a portion of their electricity from community-based energy projects, but this bill essentially makes this important provision of the RES voluntary. The bill passed the Senate on a 26-23 vote.

Fossil Fuels

SB 138 (Sen. Art Wittich, *R-Bozeman*) would provide a significant tax break for dirty fossil fuels

A How-to Guide for Engaging at the Capitol

MEIC Legislative Bill Tracker

MEIC maintains and regularly updates a **Legislative Bill Tracker** on its web site (go to www.meic.org and look under "2013 Legislature") that includes the important legislative proposals that could impact Montana's environment. All of the bills on our bill tracker are categorized by issue, offer an easy-to-understand description, list MEIC's position. A tool for contacting key legislators is included.

Capitol Monitor and Blog

On MEIC's web site you can find an electronic version of **Capitol Monitor** (go to www.meic.org and look under "Media Center"), as well as a sign-up form to receive **Capitol Monitor** and other alerts by E-mail. MEIC also maintains a blog (go to www.meic.org and look under "Media Center") that has frequent posts about environmental and energy issues affecting Montana, and will include relevant writings on the 2013 Legislative Session.

Calendar of Events

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

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2013 Legislature at Mid-Session *(cont.)*

by allowing all new electricity generation and transmission facilities to qualify for the “clean and green” property tax rate. If this bill passes, new generation facilities, regardless of fuel type, and new transmission lines, regardless of the source of the electricity they carried, would be taxed at 3% rather than 12% of their value. Even worse, for the first 20 years, all new

transmission lines would only be taxed at a 1.5% rate. This bill, which blatantly undermines the purpose of “clean and green” tax incentives, passed the Senate on a 29-20 vote.

HB 218 (Rep. Duane Ankney, *R-Colstrip*) would authorize the Montana Board of Oil and Gas Conservation to administer a grant

program for communities impacted by oil and gas development. While the bill is intended to address the critical problems many Montana oil field communities are facing, the program would be funded mainly by removing money from the State’s general fund, which would ultimately take money from other critical programs across the state. Mitigating impacts from the current oil and gas boom should be the responsibility of the oil and gas corporations. The bill is awaiting action in the House Appropriations Committee.

HJ 9 (Rep. Jonathan McNiven, *R-Huntley*) would urge federal regulators to approve coal export terminals in Washington and Oregon, and would support the development of Montana’s coal resources above all other energy resources in the state. Democrats tried to amend the resolution to include encouragement for other energy resources such as wind, solar, and natural gas, but Republicans blocked that amendment.

This resolution consistently distorts the facts, for example by saying that coal is cheap and is Montana’s most abundant resource, even though renewable energy resources will be around long after the coal is gone, and wind and energy efficiency are less expensive electricity sources than coal. The resolution passed the House on a 70-29 vote.

Land Use

SB 105 (Sen. Taylor Brown, *R-Huntley*) would make it more difficult for local governments to maintain the status quo when considering zoning in an area, by

“This resolution consistently distorts the facts, for example by saying that coal is cheap and is Montana’s most abundant resource, even though renewable energy resources will be around long after the coal is gone...”

A massive gravel pit in the Gallatin Valley.



2013 Legislature at Mid-Session *(cont.)*



MEIC lobbyist Kyla Maki.

prohibiting them from adopting interim zoning if a State agency such as DEQ has received an application for an activity such as a gravel mine, even if an actual permit has not been, or is never, issued. Local governments could not restrict or mitigate impacts from that proposed activity even when the State has no authority to do so either. A similar bill was vetoed in 2011. The bill passed the Senate on a 27-23 vote.

SB 23 (Sen. Matthew Rosendale, *R-Glendive*) would also make interim zoning far more difficult by shortening the duration of interim zoning from 365 to 182 days, and only allowing an extension if a supermajority of county commissioners approve the extension. A similar bill was vetoed in 2011. The bill passed the Senate on a 28-22 vote, and has passed 2nd reading in the House on a 60-40 vote.

SB 41 (Sen. Edward Buttrey, *R-Great Falls*) would prohibit local governments from considering the impacts of possible future subdivisions when reviewing a subdivision application. A similar bill was vetoed in 2011.

The bill passed the Senate on a 33-17 vote, and passed 2nd reading in the House on a 31-18 vote.

SB 147 (Sen. Edward Buttrey, *R-Great Falls*) would undermine one of the original purposes of the subdivision law by limiting a local government's ability to protect agricultural land in the subdivision review process. Instead of allowing county governments to consider a proposed subdivision's potential impact on "agriculture," it would restrict consideration to "adjacent agricultural operations." A similar bill was vetoed in 2011. The bill passed the Senate on a 30-20 vote.

Gravel Mining

SB 24 (Sen. Matthew Rosendale, *R-Glendive*) is similar to **SB 105** discussed above by giving rights to an entity as soon as it files a permit application rather than when it receives a permit. This bill would prohibit a local government from adopting zoning for a gravel mine if a gravel mine permit application is submitted to DEQ at any time during the zoning process. A proposed gravel operator would gain rights over existing property owners even though no permit had been issued and even if a permit never was issued. This bill also prohibits local governments from protecting property owners even when DEQ doesn't have the authority to do so. The Senate defeated a similar bill in 2011. The bill passed the Senate on a 33-17 vote.

HB 553 (Rep. David Halvorson, *R-Sidney*) would allow gravel pit operators to mine before receiving a final permit. This

absurd bill had no proponents, but it still passed the House on a 60-38 vote.

"A proposed gravel operator would gain rights over existing property owners even though no permit had been issued and even if a permit never was issued."

Hazardous Waste

HB 359 (Rep. Steve Fitzpatrick, *R-Great Falls*) would decrease a property owner's ability to be recompensed when a neighboring property

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2013 Legislature at Mid-Session *(cont.)*

owner contaminates his or her land. This bill would overturn a Montana Supreme Court decision that said irrelevant information about what a State agency might do at a contaminated

“SB 139 ... elevates the economic impacts of a rule over its other impacts such as environmental protection, or public health and safety. Agencies would be required to do the impossible job of analyzing any alternative that could minimize the adverse economic impact of a rule.”

site was not admissible in court. This bill would require the admission of such evidence, even though it might distract or mislead a jury. The bill passed the House on a 60-38 vote.

to fathom a more mean-spirited bill. DEQ currently accepts anonymous complaints, although most people give their names but request anonymity to avoid financial or personal retribution. Many of these complaints involve valid noncompliance issues that DEQ resolves quickly and easily with the violator. Occasionally DEQ's investigation leads to a formal enforcement action. The bill, which would discourage people from helping protect public health and the environment, passed the Senate on a 31-19 vote.

HB 158 (Rep. Doug Kary, *R-Billings*) underscores how little some legislators know about how government really functions. State agencies, in a public process, constantly must write administrative rules to interpret the laws passed by legislators, to comply with federal requirements, or to clarify misunderstandings about existing rules or laws. This bill would require that all such rules be presented to legislative interim committees prior to adoption, even though these committees don't meet during a legislative session or for the two or three months before or after a legislative session. This would cause serious and unnecessary disruption in the rule-making process. The bill passed the House on a 53-46 vote.

SB 139 (Sen. Edward Walker, *R-Billings*) would require an extensive economic impact analysis of every administrative rule prior to approval. It elevates the economic impacts of a rule over its other impacts such as environmental protection, or public health and safety. Agencies would be required to do the impossible job of analyzing any alternative that could minimize the adverse economic impact of a rule. A mechanism for this type of analysis already exists. At the request of an interim committee or 15 legislators, an agency must complete an economic study prior to a rule's passage. This bill makes this analysis mandatory for every rule and will result in unnecessary delays, require more agency staff, and assure an inefficient rule-making processes. A similar bill was vetoed in 2011. The bill passed the Senate on a 30-15 vote. ☺

Good Government

When the legislature leaves town, State agencies are left to implement the laws it has passed, in part through permitting, rule-making, and enforcement. Unfortunately there are a number of bills that make those jobs unnecessarily more difficult. It's almost as if some

legislators want to make their belief that government is dysfunctional into a self-fulfilling prophesy.

SB 262 (Sen. John Brenden, *R-Scobey*) would prohibit the Department of Environmental Quality, but not other State agencies, from accepting anonymous complaints. The sponsor repeatedly told the Senate Judiciary Committee that those who have environmental complaints need to “be a man” and give their names. It is hard

*Rep. Doug Kary,
R-Billings.*



Otter Creek Coal Mine Process Moves Forward Prematurely

by Anne Hedges

The Otter Creek coal mine permit and environmental review processes are moving forward very quickly. In December 2012, just before Gov. Brian Schweitzer left office, the Montana Department of Environmental Quality declared Arch Coal's permit application for the massive 1.3-billion-ton coal strip mine to be complete. That decision required DEQ to prematurely begin the environmental review process, and also to accept comments on its completeness determination for the permit application. The public comment periods for both processes ran concurrently.

Unfortunately the permit application is, in fact, woefully deficient, and fails to meet the legal requirements for a complete application in significant respects. This is a problem. Once DEQ determines an application is complete, it must then review the application to see if it complies with the technical requirements in the law. If DEQ is willing to let legal requirements slide at the beginning of the process, it does not bode well for what the agency may do during the rest of its complex review process. It should be obvious that if DEQ does not have the information it needs, its technical review will be incomplete as well.

There is a lot of important information that DEQ is not requiring Arch Coal to provide at this stage of the permitting process. Experts have said Otter Creek has an alluvial valley floor, meaning that the ground water table is high enough that farmers and ranchers can rely on sub-irrigation of farmland. Alluvial valleys are afforded special protections under federal coal mining laws. Unfortunately, Arch Coal's

data collection efforts have been very incomplete on this critical issue. For example, its ground water wells were inappropriately constructed so they cannot be relied on to provide accurate ground water elevation and quality data. Other data essential for determining the probable hydrologic consequences of the mine are also missing. And the list goes on. Arch Coal admits the incomplete nature of what it has submitted, but DEQ has nevertheless accepted the application as complete.

Hundreds of people submitted comments to DEQ about the issues that should be considered in the environmental impact statement on the proposed mine. Many of those comments had to do with ground and surface water quality, air quality, and more. These comments are relevant to both the completeness of the permit application and the scope of the environmental review. Without a complete application that provides essential details of the proposed mine, DEQ is simply not in a position to start its technical review of the application, let alone to determine the environmental consequences of the mine proposal.

It's time for DEQ to tell Arch Coal that it will not waste agency resources by starting to review a permit that is missing so many essential and legally required details. 🌀

The Otter Creek valley. Photo by Kestrel Aerial Images, Inc.



Colstrip Violating Clean Air Laws

by Anne Hedges

The Colstrip power plant is the second largest coal-fired plant west of the Mississippi River. It also generates the second largest amount of greenhouse gas pollution of any power plant in the West (one year it was the largest polluter). Its sulfur dioxide and nitrogen oxide air pollution emissions are greater than the combined emissions of every other permitted source in Montana. Its massive coal sludge impoundments have leaked since they were installed in the 1980s, and they continue to contaminate ground water to this day. The Rosebud mine, which provides the coal for the plant, has polluted ground and surface waters, and is now seeking permission to expand its operations. Finally, the operator of the plant, Pennsylvania Power and Light (PPL), wants to sell its interest in the plant and hightail it out of Montana without modernizing the plant or cleaning up its mess.

The Colstrip power plant. Photo by Anne Hedges.

These facts have led MEIC to focus much of its attention over the past few years on an investigation of the potential air and water pollution violations at the plant. That investigation led MEIC and Sierra Club to file a lawsuit in March 2013 that is aimed at forcing the plant owners to “clean up their act.” The federal Clean Air Act requires companies to install modern cost-effective air pollution controls if they make any significant changes to a plant’s equipment. It appears that there have been significant changes to all four units at the Colstrip plant over the last two decades, yet the plant has never gone through the required permitting process to see if new pollution controls were warranted.

The framers of the Clean Air Act did not want older, dirtier plants to gain an economic advantage over new plants by being allowed to spew more pollution in the air. Coal-fired power plants such as the one built in Hardin

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Yellowstone County Violates Air Pollution Standard – Corette the Cause?

by Anne Hedges

A number of years ago the Billings area had unhealthy levels of sulfur dioxide (SO₂) in the air. After much contention, the largest air polluters were required to lower their SO₂ emissions. While that was a victory, since then public health studies have overwhelmingly shown that short-term spikes in SO₂ pollution are more harmful to public health than longer-term average concentrations. As a result, in 2010 the U.S. Environmental Protection Agency adopted a new standard for SO₂ pollution based on a one-hour average. The air in Yellowstone County is once again violating the SO₂ standard, and now the likely culprit is Pennsylvania Power and Light's (PPL) coal-fired Corette power plant.

Short-term spikes in SO₂ concentrations cause adverse respiratory effects, including increased asthma symptoms. These effects are particularly noticeable in sensitive populations whose respiratory systems are already impaired. Studies show a connection between short-term exposure to SO₂ and increased visits to emergency rooms and hospital admissions for respiratory illnesses, particularly in at-risk populations including children, the elderly, and asthmatics.

When EPA adopted the one-hour standard it did so to protect those most vulnerable to respiratory disease. Monitoring in Yellowstone County has shown violations of the new standard for a number of consecutive years. The Montana Department of Environmental Quality recently tried to convince EPA that it should not list Yellowstone County as a "nonattainment" area for the new SO₂ standard. Instead DEQ tried to blame the violations on other factors, and said it needed more time to prove there was not a problem.

In February 2013, EPA responded to DEQ's request. In no uncertain terms it said "no." EPA demonstrated that DEQ's stated reasons for the repeated violations were incorrect. The testing of new equipment at the Exxon refinery was

not the problem. New regulations would not solve the problem since most were already in effect, and would not have required upgrades at the biggest polluter in the area, PPL's Corette coal-fired power plant.

The Corette plant only generates 153 megawatts of electricity, yet it is consistently the second highest polluter in the state, after PPL's Colstrip plant. Corette's sulfur dioxide emissions, for example, are far higher than those of the oil refineries in the Billings area. Yet the Corette plant has no air pollution controls for SO₂.

DEQ has convincing evidence that the Corette plant is the primary cause of the air pollution violations in Yellowstone County. While other sources such as the refineries certainly contribute to the unhealthy air quality, it appears Corette is the principal cause of the problem.

This raises interesting questions since PPL announced six weeks before the 2012 general election that it would mothball the Corette plant by 2015. The announced closure of the plant became a "big" issue in the U.S. Senate campaign and the race for governor, with many blaming Democratic candidates for the closure. If PPL really intends to mothball Corette, then the air pollution problems are solved. But if, as many suspect, PPL only made the announcement for the political benefit of Republican candidates, then it may have to admit it does not intend to close the plant after all. In



The Corette Power Plant in Billings. Photo by MEIC.

continued on page 19

New PSC Hides Information and Ignores Facts

by Kyla Maki

After the 2012 election, the Montana Public Service Commission (PSC) has seemed to shift from a commission that was concerned about ratepayers and cared about facts to one focused mainly on ideology



Montana Public Service commissioners from left to right: Kirk Bushman, Bob Lake, Bill Gallagher, Travis Kavulla, and Roger Koopman.

and rhetoric. It didn't take long for the three newly elected commission members to live up (or down) to those expectations.

All three of the new commissioners have made their strong opposition to renewable energy resources well known. Immediately after being elected, two of them stated they would lobby for the repeal of the Renewable Energy Standard (RES). Commissioners Bob Lake (R-Hamilton) and Roger Koopman (R-Bozeman) said that they opposed "green energy mandates." Their anti-renewable statements are often presented as protecting the interests of ratepayers, even though renewable energy resources are some of the least expensive. Ironically, none of the new commissioners have mentioned a preference for the least expensive resource: energy efficiency. If the PSC cared about lowering rates, it would make utility

investment in efficiency and conservation a priority. The facts about the true costs of energy efficiency are obviously lost on the rhetoric-driven PSC.

The newly selected chairman of the PSC, Bill Gallagher (R-Helena), is not only ignoring facts, he is also trying to hide them. During the first few weeks of the legislative session, he testified on a bill that the PSC voted not to take a position on. Gallagher said he was testifying on his own behalf "as a ratepayer" for the bill. Most of the House Federal Relations, Energy, and Telecommunications Committee discussion focused on the cost of renewable energy projects to ratepayers. One of the opponents of the bill used information in a report by PSC staff that showed that renewable projects are some of the least expensive resources for NorthWestern Energy customers. This information conflicted with Gallagher's claim that renewable energy is expensive. The day after the hearing Gallagher had the report removed from the PSC's web site.

The PSC's recent 4-1 decision to endorse repealing its own rule requiring public utility executives to disclose their salaries to the PSC is the most blatant example of their mission to hide information from the public. Commissioner Lake, who proposed the rule repeal, said that corporations' right to privacy trumped the public's right to know. Commissioner Travis Kavulla (R-Great Falls) opposed the repeal because he said public utilities, unlike other corporations, are selling a product that customers (ratepayers) must buy and must buy from them. Ratepayers pay for utility executives' salaries. Therefore, ratepayers have every right to know how much these executives are making.

Right out of the gate, the PSC has demonstrated that it is willing to ignore facts and keep important public information in the dark. It makes one wonder if the name *Public Service Commission* is still appropriate. ☹

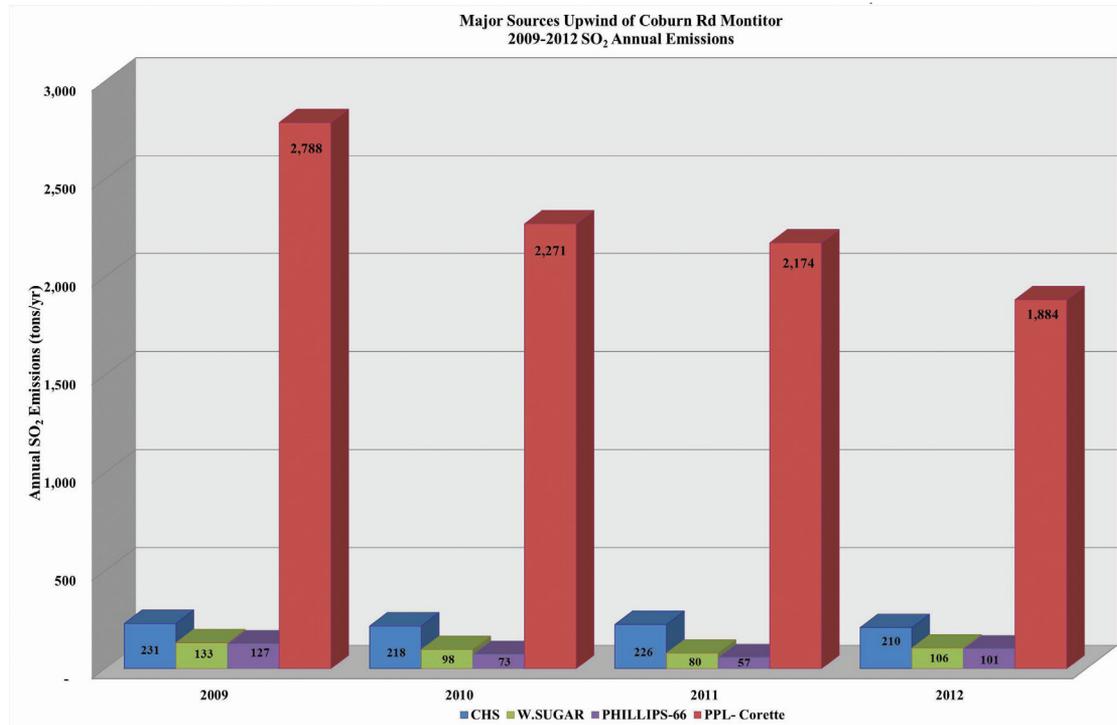
Yellowstone County Pollution (cont.)

that case it will have to pour more money into an “old dinosaur” of a plant and install effective pollution controls.

DEQ has until April 8, 2013, to respond to EPA’s rejection of its initial proposal. It appears that DEQ may take a different tack, and designate part of Yellowstone County as a nonattainment area. It would then focus its efforts on decreasing pollution from Corette, with a secondary goal of reducing emissions from the refineries and other less significant polluters in the area.

MEIC will continue to watch this process very closely, to make

sure that air pollution in Yellowstone County does not continue to jeopardize public health. ☺



Colstrip Violating Clean Air Laws (cont.)

2006 have installed the equipment needed to better control health-harming emissions such as nitrogen oxides, particulates, and sulfur dioxide. Yet Colstrip continues to operate with largely the same emissions controls that were installed when the plant was built, despite having spent tens of millions of dollars on upgrades to the plant’s equipment in recent years.

Three years ago MEIC requested information from the U.S. Environmental Protection Agency regarding these upgrades. EPA had previously asked PPL to submit data on its investments at the plant. EPA refused to turn over to MEIC many of the documents that it had received from PPL. After two years of stonewalling, last year EPA announced it would release the documents to MEIC. PPL immediately sued to

prevent EPA from releasing them. PPL’s desire to keep these documents secret is more than a little suspicious. MEIC intervened in that suit on behalf of the EPA, and continues to fight for the release of these documents in court.

In the meantime there is plenty of evidence that PPL wants to hide that information because it shows that the plant is not in compliance with the law, and needs to upgrade its pollution control equipment. It defies common sense that a massive, heavily used plant that started operating 35 years ago has never been significantly modified. MEIC intends to show in court that the evidence proves that PPL’s claims not only defy common sense, but also deny reality. ☺

Graphy courtesy of Montana DEQ.

Charity Rating Web Sites Unfair to Groups like MEIC

by Molly Severtson

It's the worst thing a fundraiser can hear: "I've stopped supporting your organization because a charity rating web site gave your group a low score."

It's a helpless feeling. I know that MEIC is a great organization. I know we are financially responsible. I know we're transparent and accountable. Why did this web site give us a low score?

Charity rating formulas can be complex, but generally they value a high program expense percentage, a low administrative

expense percentage, and a low fundraising expense percentage. In addition, a higher score is given to groups that grow financially every year and to groups that follow "best practices"

"Unfortunately, small, membership-based organizations like MEIC, which are not involved in land-related transactions and do not receive significant non-cash donations, can end up being harshly judged by these quantitative systems."

with regard to transparency and accountability.

Unfortunately, small, membership-based organizations like MEIC, which are not involved in land-related transactions and do not receive significant non-cash donations, can end up being harshly judged by these quantitative systems.

Here are a few of the reasons why:

- Small, membership-based organizations almost always have a lower program expense percentage than large, non-membership-based groups.
- Groups, like MEIC, which are not involved in land-related transactions, usually have lower program expense percentages, because land transaction groups can record the value of their land transactions as revenue and as a program expense.



MEIC Major Gifts Director Molly Severtson

- Groups, like MEIC, which do not receive significant non-cash donations, usually have lower program expense percentages, because groups that do receive these gifts can record the value of the donations as revenue and a program expense, and they often overvalue the donations.

It's also important to note that:

- Many groups knowingly lie on their IRS Federal Form 990 (from which the charity raters glean all the information on which their scores are based).
- Many groups fill out their Form 990 incorrectly, through ignorance or because the instructions for the form are so lengthy and convoluted.

MEIC has made efforts to improve its scores when and where it can, and will continue to do all it can to be accountable, transparent, and financially responsible.

Please call us if you have any questions about our practices, or about a particular score. It may not accurately represent the quality of our work, and we'd love the opportunity to explain why. ☺

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 or give a gift membership

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

4. Shop MEIC

Check out MEIC's new online store at www.meic.org (click on Support Us). There are MEIC logo ball caps and t-shirts that would make great Holiday (or any day) gifts!

I want to help protect Montana's environment by:

- Becoming an MEIC member.
- Renewing my MEIC membership.
- Joining the monthly pledge program.
- Donating to MEIC's permanent fund.
- Giving a gift membership.
- Making a special contribution.

Here are my dues or gift membership:

- \$250 (Sustainer) \$45 (Contributor)
- \$120 (Donor) \$30 (Basic)
- \$60 (Supporter) Other \$ _____

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Address _____

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Mail this form to:

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Helena, MT 59624

Thank you!

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President's Letter



by Roger Sullivan

earthearth . . .

I just just finished reading It All Turns on Affection, the 2012 Jefferson Lecture delivered by Kentucky farmer and writer Wendell Berry. In that

lecture, Berry weaves a compelling corrective to the destructive ethos of our industrial culture, taking strands from his mentor Wallace Stegner, early ecologist Aldo Leopold, poet Wallace Stevens, and novelist E.M. Forster (from whom he derived the phrase "it all turns on affection"). Indeed, Berry identifies affection as the primary motive for an environmentally sustainable culture:

"I don't hesitate to say that damage or destruction of the land-community is morally wrong, just as Leopold did not hesitate to say so when he was composing his essay, "The Land Ethic," in 1947. But I do not believe, as I think Leopold did not, that morality, even religious morality, is an adequate motive for good care of the land-community. The *primary* motive for good care and good use is always going to be affection, because affection involves us entirely. . . . Without this informed, practical, and *practiced* affection, the nation and its economy will conquer and destroy its country." (Pages 32-33.)

Other observers and critics of American culture have long noted the importance of the heart in maintaining our vital liberal democracy over the course of time. In fact, Alexis de Tocqueville in his 1835 Democracy in America noted that "habits of the heart" were in his estimation the qualities responsible for the maintenance of our democratic republic.

By noting the importance assigned to "affection" and "heart" by Berry and de Tocqueville I don't mean to suggest that these qualities should somehow supplant rational scientific thought. Rather, these qualities provide

us with the attitude and motivation to form a principled and sustained response to the scientific facts which confront us, be it climate change, loss of habitat, or the increasing economic imbalances that our current system produces. The changes that are needed, as described by Wendell Berry in his essays and poems over the course of the last 40 years, are indeed daunting.

Author and activist Joanna Macy calls this challenge "the Great Turning," meaning the needed shift from the industrial growth society criticized at length by Berry to a life-sustaining culture. According to Macy, there are three dimensions to the Great Turning.

The first dimension involves the actions needed to slow the damage to the earth and its beings, actions which take the form of litigation, active participation in the legislative process, and sometimes direct action. This first dimension is quite familiar to MEIC and its members. It is in effect the "tip of the spear." However, alone it is not sufficient to bring about the necessary changes.

The second dimension to the cultural shift is an analysis of the structural causes and the creation of structural alternatives. In essence, this requires an understanding of the system of which we are a part, and the creation of new social and economic arrangements that flow from our creativity and collaboration instead of from competition and the accumulation of individual wealth. I believe that MEIC also participates in this dimension. Look, for example, at the MEIC website. It's full of information on citizen-based initiatives, it sets forth suggestions for the reduction of our reliance on fossil fuels, and it points to MEIC's support for our society's conversion to reliance on renewable energy sources.

But even this is not sufficient to bring about the change to the dominant social paradigm that is called for. The final dimension is what Macy calls a shift in consciousness, by which she means the deeply ingrained values necessary to sustain the structural alternatives to the present system that is literally destroying the earth and its creatures.

In my mind this "shift in consciousness" brings us full circle back to Berry's thesis that "it all turns on affection." According to Berry

40 Years of MEIC at the Montana Legislature



Below: former MEIC lobbyist Pat Judge in the Natural House Natural Resource Committee during the 2007 session.



Left: MEIC lobbyist George Ochenski at the bill signing ceremony for Montana's "mini superfund" law with Gov. Ted Schwinden.

Above: MEIC employees Bonnie Gestring (far left) Anne Hedges (2nd from left), Pat Judge (2nd from right), and Michelle Reinhart (far right) at a bill signing ceremony for a mining reclamation bill with Governor Judy Martz.



that affection for the earth provides us with the enduring motivation to care for the earth, starting on our homesteads and emanating out into our communities and throughout our economies. Indeed, Berry notes, "economy in its original – and, I think, its proper – sense refers to household management. By extension, it refers to the husbanding of all the goods by which we live. An authentic economy, if we had one,

would define and make, on the terms of thrift and affection, our connections to nature and to one another." (Page 20.)

And so it is that the earth, the heart, and the hearth are intimately connected in an endless and sustaining cycle. Try writing out these three words and connecting them. There is indeed an uncanny connection. ☺

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

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September 21, 2013

See page 3 for details

