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Bull Mountain Coal Mine: A Major Victory for the Climate

by Derf Johnson

Cover Photo:
Backpackers
in the Cabinet
Mountains.
Photo by
Katherine
O'Brien

August 2017 brought one piece of good news for the future of our shared climate. In a lawsuit brought by MEIC, U.S. district court judge Donald Molloy ruled that the U.S. Office of Surface Mining (OSM), the federal agency responsible for much of the permitting of coal mines in Montana, had failed to adequately do its job when it approved a massive expansion of the Bull Mountain coal mine north of Billings. The ruling is significant not only because the proposed expansion would potentially have resulted in 176 million additional tons of coal being mined (making it the largest underground coal mine in the United States), but also because of its broader implications for how the federal government should evaluate coal mines and climate change in the future.

In permitting coal mine expansions, OSM must often conduct an environmental analysis under the National Environmental Policy Act. This process requires OSM to look at a broad range of environmental and social impacts that would potentially result from the development or expansion of the mines. In the current case involving the Bull Mountain mine's environmental analysis (EA), MEIC asserted that OSM did not adequately look at the major climate costs associated with burning the coal that would result from the mine expansion. Judge Molloy agreed.

OSM argued that adequately analyzing and calculating the costs of the global warming pollution would have been impractical. However, it ignored a very useful tool used by other federal agencies, which was developed to do just that, called the social cost of carbon (SCC). The SCC is a peer-

reviewed guideline developed by the Obama Administration to more fully evaluate the impacts to human society and the environment from greenhouse gas emissions. The SCC calculates the cost of the long-term damage done by a ton of carbon dioxide (CO₂) emissions in a given year, such as reduced agricultural productivity, harmed human health, and increased property damage from sources such as flooding. The judge saw through OSM's weak argument on impracticality, and found that it should have utilized a tool such as the SCC to fully determine the costs associated with burning coal from the Bull Mountain expansion.

Remarkably, while OSM ignored major climate impacts associated with the expansion, it still found space in its environmental analysis to include a calculation of the benefits that might result should the expansion move forward, including increased tax revenue and workers' earnings. Judge Molloy noted that this conflated analysis "places the [OSM's] thumb on the scale by inflating the benefits of the action while minimizing its impacts."

The combustion of coal to produce electricity remains the most significant contributor to global warming pollution worldwide. In order to avoid the worst impacts of global warming, the mining and burning of coal must be phased out as part of a transition to clean energy sources. This victory moves the U.S. a step further towards that goal.

MEIC partnered with Montana Elders for a Livable Tomorrow and the Sierra Club, and was represented by the Western Environmental Law Center (WELC), in bringing the litigation. WELC, and specifically attorney Shiloh Hernandez, are owed a debt of gratitude for bringing this victory to fruition. Hopefully, other federal courts around the country will utilize this ruling's well-reasoned opinion, and force agencies to account for the true costs of permitting fossil-fuel-burning projects. 🌱

Longwall coal mining operation.



Smith River Mine Permit Application Deemed Complete

by Derf Johnson

In July 2017, the Montana Department of Environmental Quality (DEQ) declared Tintina Resources' application for its proposed Black Butte mine on a tributary of the Smith River to be complete. But don't despair or lose hope. This is only one step in a long process, and it does not mean that Tintina's application has been approved. What it does mean is that DEQ believes that it has received all of the information required in order for it to make a decision about the mine's permit. This step is loosely comparable to turning in your homework but not yet knowing what your grade will be.

Now that the application is deemed complete, DEQ will begin the process of preparing an environmental impact statement under the Montana Environmental Policy Act. This analysis will look at the broad range of environmental and social problems that could potentially result if DEQ were to permit the mine. The process will likely take years, and will provide for public input at several junctures. That is why it is critical for Montanans to pay attention, and to speak up during public comment periods and attend public meetings in their area. DEQ needs to hear from everyone who loves the Smith River and is concerned about the myriad potential environmental impacts of this project.

As the process moves forward, DEQ's Hard Rock Mining Bureau also needs to be held accountable

for the problems at currently permitted mines. Recently it came to light that the defunct Montana Tunnels mine south of Helena is a major disaster waiting to happen. The high-wall of the mine will collapse into the pit at some point, and carry with it the flow of Clancy Creek (which is currently diverted through a pipeline to prevent it from entering the pit). This "modern" mine is under-bonded for reclamation, and appears to be yet another mining disaster waiting to happen in Montana. Why DEQ would continue to issue permits for new mines, while there are environmental and financial liabilities across the state at existing ones, is baffling.

We urge you to pay attention and to become involved over the coming months. You can sign up to receive e-mail updates and notifications at www.meic.org. This mine will only be stopped if we, collectively, speak up and demand accountability from DEQ and the protection of the Smith River. ♻️

"...it is critical for Montanans to pay attention, and to speak up during public comment periods and attend public meetings in their area."

Fisherman on the Smith River. Photo by William Rahr.



Hardrock Mining Update

by Jim Jensen

MEIC and Others Sue over Montanore Water Pollution Permit

MEIC has sued the Montana Department of Environmental Quality (DEQ) for issuing a water pollution discharge permit for the Montanore mine, a huge copper and silver mine proposed by the Montanore Minerals Corp. (MMC) in the Cabinet Mountains of northwest Montana. The

Entrance to Montanore mining site. Photo by Katherine O'Brien.



other plaintiffs in the case are Save Our Cabinets and Earthworks.

The mine would tunnel beneath the Cabinet Mountains Wilderness on the Kootenai National Forest, which contains some of the purest waters in the lower 48 states, and includes critical populations of bull trout – a threatened species protected by the Endangered Species Act – along with other native fish.

MEIC has a very long history, beginning in the 1980s, of working to prevent a mine from being developed under the wilderness, and on Libby and Poorman Creeks among other very high quality waters in the area. In 1991 MEIC staff discovered, via an anonymous telephone tip, that the State had been allowing the then-owner of the project, Noranda Minerals, to pollute Libby Creek for years with no enforcement action whatsoever. MEIC alerted the press, and because of MEIC's aggressive investigating and the inevitable unfavorable coverage that would result, Noranda shut down its exploration activities immediately.

Noranda wanted to mine up to 20,000 tons of ore each day, seven days per week, for as long as twenty years. This would have generated up to 120 million tons of mining waste and polluted streams designated as "high quality" under Montana law with metals, sediments, and nutrient pollutants that are harmful or toxic to aquatic life.

Noranda subsequently sold its interest in the project to MMC. DEQ, relying in part on a 25-year-old authorization to degrade the streams granted by the Board of Health and Environmental Sciences (now called the Board of Environmental Review) and issued for Noranda's original project at the Montanore site, has allowed MMC to evade compliance with Montana's current, and more protective, water quality laws. DEQ did this even though the current proposal is substantially different in its design from the 25-year-old one.

Montanore Attempts to Condemn Neighbors' Claims

Normally the power to condemn private property is limited to governments for the purpose of building roads, bridges, and other infrastructure that provide benefits for the general public. When such property is "taken," the owner is paid its fair market value.

However, Montana law empowers private mining companies and individual miners to

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Update from the War on Solar

by Brian Fadie

Earlier this Summer the Montana Public Service Commission (PSC) issued a disastrous ruling for solar energy development in Montana. Newspapers across the state went ablaze with stories and commentary trying to explain what happened and seeking accountability. The policy being implemented is of great importance, but it is also somewhat complex. MEIC has been heavily involved in the case, both in front of the PSC and in the news, and will remain so.

The federal law driving this solar war is the Public Utilities Regulatory Policy Act of 1978 (PURPA). At its core, PURPA allows independent wind and solar companies access to the electricity grid which gives them the ability to sell their product. Each state decides how to implement PURPA; however all must follow certain standards, including creating an implementation policy that encourages alternative energy production. For more information about PURPA, read the "sidebar" to this article on page 19.

As wind and solar energy have become

cost-competitive thanks to advances in technology, Montana's principal utility, NorthWestern Energy (NWE), finds itself increasingly competing with renewable energy companies that are utilizing the provisions of PURPA. In fact, PURPA has become the biggest driver of new wind and solar project development in Montana. But rather than building its own cost-effective wind and solar generation facilities, which would naturally reduce the need for PURPA projects, NWE has sought to evade the intention of the law. It has lobbied both the State legislature and the PSC to reduce electricity purchase contract lengths, and to use valuation formulas that would severely undervalue wind- and solar-generated electricity. MEIC fought and won the battles in the legislature this year, lobbying successfully to keep the law intact. Now the issue has shifted to the PSC, where MEIC is once again on the

"But rather than building its own cost-effective wind and solar generation facilities, which would naturally reduce the need for PURPA projects, NWE has sought to evade the intention of the law."

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Rooftop solar panels in Helena.



The Plot Thickens at Colstrip

by Anne Hedges

This year's smoke-filled skies make the MEIC staff want to "double down" on its efforts to reduce coal burning – the leading cause of global warming today. President Trump's withdrawal of the U.S. from the Paris Climate Agreement is having a similar effect and causing state and local governments in Montana and across the nation to become more serious in their efforts to reduce greenhouse gas emissions as well. While that's good news for the planet, it is bad news for coal workers. That's why it was welcome news when Montana's coal country recently received \$4.6 million from the federal government to help with coal worker retraining and economic diversification strategies. For too long, politicians and coal workers have flatly rejected the fact that coal burning is the primary contributor to climate change and that a transition to cleaner energy is necessary. It is helpful that some in coal country are starting to accept the fact that change is coming and realizing that it's better to be ready and plan for it.

Colstrip power plant.



Nowhere is that change more apparent than at the Colstrip power plant. Colstrip is the region's biggest coal-fired power plant and ranks 3rd in the United States in terms of greenhouse gas pollution. That makes it an obvious target for those who want to reduce greenhouse gas emissions. It also is a target of concern for those who don't want to pay the increasing costs of water pollution from both the plant and the adjacent coal mine that feeds it.

Here are just a few of the highlights of what's happening on the Colstrip front.

Colstrip Coal Ash Cleanup Will Be Expensive – REALLY, REALLY Expensive

The Montana Department of Environmental Quality (DEQ) recently received an estimate from Talen Montana, the company that manages the Colstrip plant, that the cost to close the dozens of leaking coal ash impoundments at Colstrip will be about \$137 million. Closing a coal ash impoundment just means encapsulating the waste so it doesn't continue to leak into ground water. This figure does not even include the cost to clean up the contaminated ground and surface water. Those costs will be much, much higher.

Talen's proposal for closing the waste impoundments was very short on details, but one detail that was included was that Talen wants to leave the coal ash where it is and merely put a cap on top of it. Without additional information it is impossible to know if that is the best strategy for permanent closure of the impoundments, but it certainly sounds incomplete.

What is known is that DEQ told the Montana legislature in March that it would be redundant to pass a bill that would impose a bond on Talen for its remediation obligations at the ash ponds because DEQ and Talen were already required to do so under existing law within the same time frame. But when Talen submitted its recent analysis of its bond obligations, it only included the lower cost of closure, not the far higher cost for remediation. The question is: will DEQ act responsibly and require Talen to provide the remediation bond as it promised it would, or will Montanans have to wait years for the owners to show that they can afford to pay the full costs for the cleanup? 🌱

Attorney General Fox Is Long on PR and Short on Legal Action

In February 2017, Montana attorney general Tim Fox issued a press release proclaiming he was getting involved in a legal proceeding in Washington State in order to protect the interests of Colstrip workers and to ensure the proper cleanup and decommissioning of the power plant. Unfortunately, his actions don't match his public relations strategy.

Puget Sound Energy owns the largest share

of the Colstrip plant. State regulators use legal proceedings called rate cases to establish the rates that utilities can charge consumers to cover the costs of operating and cleaning up plants such as Colstrip. At the time Fox filed to participate in the Washington rate case MEIC agreed that it was imperative that Montana participate in the Washington State proceeding in order to protect Montana's interests. Legislators also

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Rosebud Coal Mine Seeks Another Large Expansion

The Rosebud coal mine, which is owned by a company called Western Energy, exists solely to supply coal to the Colstrip power plant.

Western Energy recently proposed yet another large strip mine expansion at the Rosebud mine, bringing the current total to three proposed mine expansions. Combined these expansions would increase the quantity of coal available for the Colstrip coal-fired power plant by 229 million tons. The plant uses between 8-10 million tons of coal each year and that amount will decrease when approximately a third of the plant is shut down by 2022. Mining this quantity of coal will exacerbate the already serious water quality and quantity problems caused by the mining operations, and increase global warming pollution by almost half of a billion tons of CO₂ when the coal is inevitably burned. The

former is a serious problem for anyone who lives downstream of the mine; the latter is a serious problem for the planet.

MEIC challenged the first of these expansion proposals in 2015 due to its concern that the Montana Department of Environmental Quality (DEQ) had issued the expansion permit despite ongoing water quality and quantity problems caused by the mine. That expansion is called Amendment 4. The permit appeal is before the Board of Environmental Review. MEIC and Sierra Club are represented by Shiloh Hernandez with the Western Environmental Law Center in this proceeding.


MEIC has also been keeping a close eye on a larger proposed expansion in what is called Area F. This expansion would allow Western Energy to mine an additional 70 million tons of coal. Area

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Colstrip Owner Avista to Change Hands?

The Canadian province of Ontario closed its last coal-fired power plant in 2014. Canadian climate activists worked for years to phase out coal in a province the size of Montana, California, and Colorado combined. Politicians and environmentalists saw that hard-fought victory undermined recently by the July 2017 announcement that the Province's primary utility, Hydro One, wanted to purchase Avista, a United States utility with an ownership share in the Colstrip plant. They didn't think it was honest or financially prudent for their utility to invest

in the third-highest greenhouse gas emitter in the United States and the owner of a toxic waste site to boot.

The \$6.7 billion deal has not been completed so there is still a chance the Canadians will try to stop it. The Ontario government is the largest owner in Hydro One so it is possible that even if the deal does go through, there will be intense pressure from Canadians that could affect Avista's future willingness to make further investments in Colstrip. 

traditional base load generators [i.e. coal plants], they are dispatched first and displace base load resources when they are available.”

Press reports about the study indicated that DOE career staff, who understand coal plants are closing because of their poor economics, were able to block the editorial hand of pro-coal Trump political appointees who wanted to change these findings. As a result, the Trump Administration is now on record acknowledging that market forces are

bringing about the end of coal.

However, while the study’s factual findings about coal’s decline were accurate, its recommendations for the future quixotically ignored them, instead promoting Trump’s vision of a coal-dependent America. Rather than recommending more cheap and clean renewable energy, the study called for allowing coal plants and gas pipelines to breeze through environmental reviews and receive permits more easily. It also suggested using an emergency provision of the Federal

Power Act to keep coal plants from closing, forcing utility customers to pay higher electricity prices and receive dirty energy in return. And in a thinly disguised shot at Obama-era progress on climate change, the study recommended rescinding “certain energy and climate related policies.”

The chasm between the study’s backward-looking findings and future recommendations seems to indicate a rift between federal energy experts and Trump political appointees within DOE. But try as the political appointees might, they could not change the fact on the ground that coal is losing because of its poor economics. Unfortunately, they still control DOE going forward.

MEIC will continue to closely monitor DOE activity and make sure you have the information necessary to push back against Trump’s pro-coal, climate-disaster-creating, agenda. ☺

The Myth of “Base Load Power”

Because the Trump Administration uses the term “base load power” as a pseudonym for coal-fired power plants, the term is likely to be used often over the next three years. However, much like coal itself, the base load concept is outdated, costly, and rightfully on its way out.

In general, a base load power plant is one that is supposed to run all hours of all days. It is a type of power plant designed in the 1900s to fit the needs of the electric grid at the time. But as more cheap and clean variable output power plants such as wind and solar generators come online, the grid will eventually need to modernize to more quickly respond to upward and downward changes in electricity demand. The boilers in base load power plants (i.e., coal furnaces) were designed to slowly ramp up to maximum output and stay there for days at a time. They cannot ramp production up or down quickly enough to meet the needs of a modern grid. Simply put, the grid is moving much faster (and more efficiently) and coal plants cannot keep up.

This technological shortcoming, combined with higher operating costs and the availability of better options for meeting these upward and downward supply needs, is making the base load electricity generation facilities of the 1900s obsolete. The sooner the U.S. government accepts this, the more money and climate emissions America will save.

MEIC's 2017 Board of Directors Election

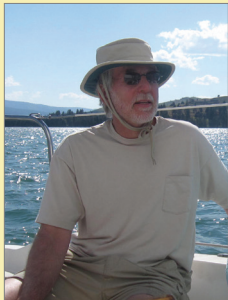
Cast your ballot today!

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

Instructions:

- 1) Only MEIC members can vote; subscribers and business corporations are not eligible.
- 2) Mark a "yes" or "no," or abstain from voting, for each candidate on the enclosed postage-paid card.
- 3) Mail the card back to MEIC in time to arrive by September 30, 2017.

Thank you for your participation.



Bruce Bender, Missoula, MT

I recently retired from a career of near 40 years in working in city government as an engineer and public administrator in Missoula and earlier in Helena. My primary work was providing services in protecting clean water and clean air.

Since my retirement I have decided to prioritize working on protecting our environment. My primary interest is mitigating the effects of climate change and working on clean energy.

I have been a member of MEIC for five years and have been impressed with its level of activity in advocating for a clean and healthy environment. I strongly support MEIC's involvement in advocating for clean energy with solar and wind energy and want to be supportive of those efforts. I recently have become acquainted with MEIC staff and have been impressed with their professionalism and effectiveness.

I would bring a strong sense of commitment and want to serve on the MEIC Board.



Charles Besançon, Missoula, MT

MEIC appeals to me very much because of its non-partisan perspective and focus on issues dear to my heart like landscape protection, climate change and clean water. I have 24 years of professional experience as a policy analyst, facilitating United Nations environmental negotiations, conducting environmental impact analyses, training park managers in planning, and promoting sustainable biodiversity financing.

Montana has been home since 1995 when I studied for a Master's Degree at the University of Montana through the College of Forestry and Conservation. I'm back in Missoula after 13 years away working for the UN and other international environmental organizations. After working on six continents, and spending too much time away from my favorite mountains and rivers, it's time to be back and to devote some of my energy to local issues. As a board member, I would bring a great deal of energy and enthusiasm to support the important mission of MEIC.

Alexis Bonogofsky, Billings, MT

Protecting Montana's air, water, wildlife, and landscapes for future generations is a task that requires constant vigilance. MEIC is one of the most effective statewide organizations that works every day to that end. As a fourth-generation Montanan, rancher, and hunter, I'm proud to have served on the Board for the last two years and, if elected for another term, will be privileged to help MEIC meet the conservation challenges Montana faces.



Lowell Chandler, Missoula, MT

I would like to serve on the MEIC Board because I strongly believe in MEIC's mission to protect and restore Montana's environment. MEIC has always provided a strong legal backbone for environmentalists throughout our beautiful state. During my experiences in the mega-loads campaign and fighting coal export mining proposals, MEIC stood with us from the beginning, working hard in the Capitol and the courtroom.



As a Montana-grown individual, I am passionate about protecting Montana and strengthening our constitutional right to a clean and healthful environment. This passion led me to work for three years on environmental policy in D.C. and to pursue my legal education at the University of Montana to become a better environmental advocate. I hope to put my experience to work as a board member and to ultimately help MEIC maintain its status as the most effective and dynamic environmental organization in Montana.

Augusta "Gusty" Clarke, Helena, MT

As a professional in the nonprofit sector working to protect agricultural lands, fish and wildlife habitat, and open space across Montana, and as a dedicated sportswoman, I understand the importance of these resources to our rural and state economies and to our identity as Montanans. I am committed to working with like-minded people in homes and in organizations, in rural communities across the state, and with our legislators, to protect our land-based heritage and treasures.



I graduated from Brown University where I studied environmental law and researched community-based conservation solutions, like campaigns undertaken to quell the development of hard-rock mines. I worked with a local conservation group in the Swan Valley and in the regional office of a national conservation organization. I began working for the Montana Land Reliance, our state's largest private land conservation organization, 18 months ago, where I manage the organization's development efforts.

I am excited at the prospect of helping to guide our state's pre-eminent environmental defense organization in crafting practical solutions to our critical environmental threats, and to work to promote and preserve laws that protect our environment and our way of life. I believe in Montana and pledge to work diligently as a board member of MEIC and to raise a strong voice to promote what is good and unique about our land and culture.

MEIC Board Election *(continued from page 11)*



Greg Findley, Bozeman, MT

Although born in the Midwest, I have always felt most alive when hiking, camping, rafting, and boating in the undeveloped wild lands of Montana and the West. After a life-changing NOLS Semester in the Rockies, I transferred to the University of Montana and set out on a career as a guide leading remote international wilderness rafting expeditions so that I could share my love of wild places and my passion for protecting the environment.

I then got an MBA and founded and run a Montana-based sustainable tourism company sending travelers to Latin America with the dual goals of providing fantastic and life-changing cultural and nature experiences for the travelers, while also making sure to leave a positive trace in each destination, leaving it better than if the traveler had not visited at all. Through my work I have witnessed firsthand the environmental and cultural disasters caused by new dams, mines, and oil and gas development, and the ravages of warming temperatures and changing weather patterns from climate change all around the world.

I love Montana and want to help protect it. I am proud to serve on MEIC's Board as I feel MEIC is the most effective organization working to protect Montana's land, air and water, and ensuring our constitutional right to a clean and healthful environment. I am most concerned about climate change and its effects on our great state and the planet, and want to support the good work MEIC is doing on this issue.



Bob Gentry, Missoula, MT

As a member of the MEIC Board of Directors, I have had the privilege of seeing firsthand and participating in the extraordinary work of MEIC's staff and board as they continue to support Montanans' constitutional right to a clean and healthful environment. From sustainable energy development to the preservation of the environmental and human health values of Montana's rivers and groundwater, MEIC remains a statewide, regional, and national leader for the development and implementation of sustainable and rational science-based environmental policy. It continues to be my great honor to serve on MEIC's Board and I look forward to my continued participation in MEIC's work on behalf of all Montanans, MEIC's members, the biodiversity of the Earth, and a sustainable future for all of us.



Greg Lind, Missoula, MT

I want to remain on the Board of Directors of MEIC in order to advocate for our rights under Article II of our Montana Constitution, where Section 3 reads as follows: "Inalienable rights. All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities."

The bad news is that there is much work to be done. The good news is that MEIC is a thoughtful, strong, and very effective membership organization with the best staff in the business.

Erica Rosenberg, Washington, DC

I've been involved with environmental and natural resources policy for over 30 years in a variety of capacities, both in DC and the West: Congressional committee staffer, U.S. EPA attorney (tribal attorney in Denver, air attorney in DC), academic, state DEQ advisor, NGO board president (of Western Lands, where I worked closely with MEIC board member Steve Gilbert, and of the American Lands Alliance). I've had years of experience advocating for public lands in the West, and my wide-ranging experience has familiarized me with NGOs, and state and federal politics surrounding a range of environmental issues.

MEIC is an exceptionally effective and principled NGO. As an advocate for Montana's environment, I would love to use my legal and policy background, and writing and advocacy skills, to help advance its agenda. My NEPA background should be particularly helpful in addressing mining and energy issues in Montana.



Jennifer Swearingen, Bozeman, MT

My association with MEIC began almost 20 years ago, when I joined a group of local citizens fighting to protect air and water quality from hazardous waste incineration in the Gallatin Valley. MEIC's talented staff stood shoulder to shoulder with us, taught us how to be effective advocates, and tutored us in the intricacies of industrial permitting and the right of public participation in government decisions. MEIC has repeated this act of empowerment many times over in communities seeking to protect their constitutional right to a clean and healthful environment.

When it comes to fighting climate change and pushing for the development of our state's abundant renewable energy resources – an issue I care passionately about – MEIC is leading the charge in Montana. Whether it's in the legislature, in front of the Public Service Commission, or in the courts, MEIC's professional staff are skillful, experienced, and highly respected advocates for Montana's clean energy transition. MEIC's expertise has now become even more critically important, as the focus shifts away from the gutted federal policy arena to the state and local utility level.

In my first two years on the board, I have sought to strengthen MEIC's long-term security through recognizing and encouraging major donors and by helping to expand membership, especially those in younger generations. It would be an honor to continue supporting MEIC's vitally important mission.



MEIC executive director Jim Jensen speaking to the Board.

MEIC Protests Federal Decision that Hampers Montana Wind Energy Development

by Anne Hedges

The key to increasing renewable energy development and addressing climate change sometimes lies in an often overlooked place – the electricity transmission system. That’s why a U.S. Bonneville Power Administration (BPA) decision in July 2017 was so disappointing. BPA decided to continue charging an extra fee on a

“Fear of increased competition likely explains why some West Coast utilities oppose the elimination of this extra fee on Montana wind-generated electricity.”

90-mile section of transmission line that moves electricity from Montana to the West Coast. The extra fee is in addition to the

regular fee that BPA already charges for the use of all of its 15,000 miles of transmission line. This extra fee, known as the Montana Intertie Rate, makes electricity produced by Montana wind farms less competitive with West Coast energy sources. Fear of increased competition likely explains why some West Coast utilities oppose the elimination of this extra fee on Montana wind-generated electricity.

Judith Gap wind farm in Montana.



Last year MEIC and Sierra Club, represented by Earthjustice, joined Renewable Northwest in arguing before BPA that it should eliminate the extra fee. Unfortunately, BPA decided to keep the extra fee, with a minor reduction in the rate that does not make a meaningful difference for Montana wind developers. BPA then said it would participate in a stakeholder process

to discuss Montana transmission issues, even though such a process cannot by law be a vehicle for eliminating the extra fee.

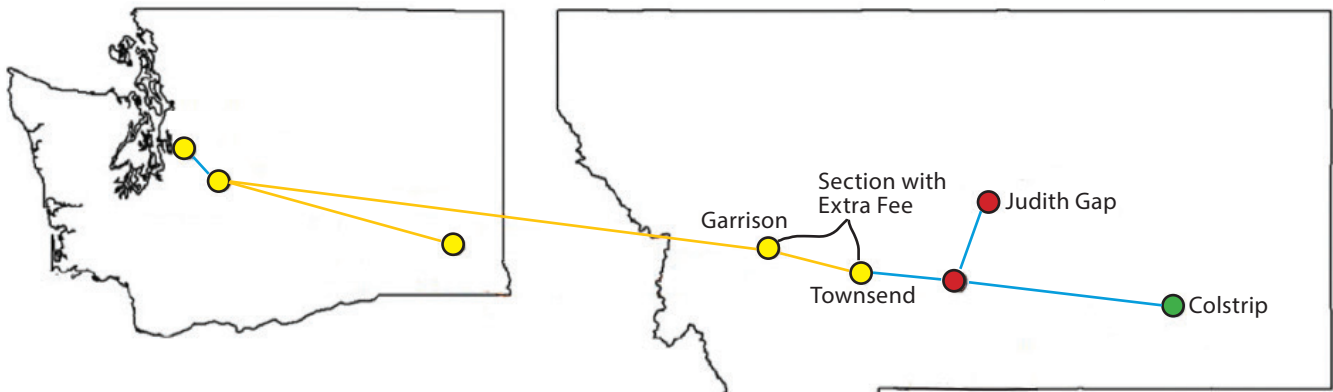
MEIC and the other groups believe this is a completely inadequate response. So the groups have filed a protest with the Federal Energy Regulatory Commission, asking it to disapprove BPA’s decision.

Politicians across Montana and across the political spectrum agree that the extra charge on Montana wind energy should be eliminated. Gov. Steve Bullock, Sen. Jon Tester, the Republican-controlled Montana Public Service Commission, and the Republican-controlled Montana House of Representatives (through a resolution sponsored by Rep. Daniel Zolnikov, R-Billings) all urged BPA to eliminate the extra fee.

The extra fee is partially, if not completely, responsible for nearly 200 megawatts of BPA transmission capacity going unused each year. That has been the case since the transmission line was built decades ago. That’s money BPA is foregoing and it deprives Montana of much needed revenue from wind development. More importantly it is discouraging the generation of clean, carbon-free electricity. It should be clear that as Montana’s parched forests burn, and as hurricane intensities increase, it is past time to increase the country’s use of low-carbon fuels.

Why is Montana Wind-Generated Electricity An Important Part of the Climate Solution?

The map on page 15 shows the primary power line that moves huge quantities of electricity from the Colstrip power plant in Montana to Puget Sound Energy’s service area near Seattle. The blue line from Colstrip to Townsend is the portion of the line owned by the Colstrip owners. The much longer orange



Source: Puget Sound Energy

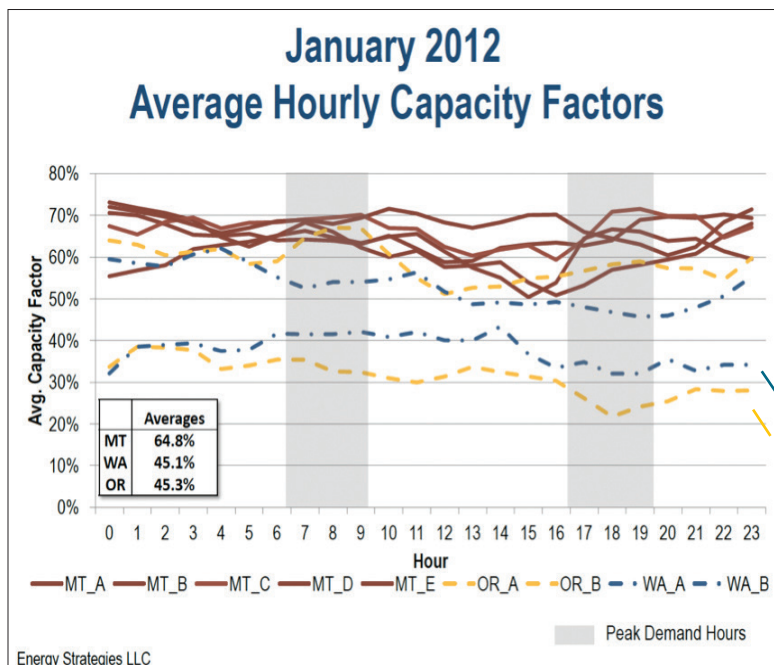
section is owned by BPA. It is only on the short section from Townsend to Garrison that BPA charges the extra fee.

The chart below may look very confusing. But it shows that there is more wind energy potential available in Montana in January than there is in West Coast states. And in West Coast markets the winter months (such as January) are when electricity demand is the highest. Those markets are increasingly demanding lower carbon fuels. West Coast utilities can purchase lower carbon electricity from their own states, or they can buy it from Montana.

During these high demand winter months the wind blows more in Montana than it does in Washington or Oregon. If West Coast utilities are looking for low carbon electricity when their demand for electricity is highest, they should look to Montana.

The brown lines on the chart show Montana wind potential in January at locations near the transmission system. The yellow lines show Oregon's wind potential, and the blue lines Washington's. The grey vertical bars indicate the times of day when electricity demand is the greatest.

Unfortunately, the extra BPA fee on electricity from Montana wind farms being moved from Townsend to Garrison, and ultimately to West Coast customers, is making that electricity less competitive in the market, resulting in unused transmission system capacity. ☹️



- Montana Wind Potential
- Washington Wind Potential
- Oregon Wind Potential

Hardrock Mining *(continued from page 4)*

condemn private property for their private use. The law is a living vestige of the virtually unlimited power exercised over the State legislature and governors by the Anaconda Copper Mining Co. in the 1950s, when it converted from underground mining and began digging the Berkeley Pit in Butte.

At the Montanore site, Noranda had recognized that a couple of small miners named Bakie and Lindsey from Libby owned unpatented claims at the site of the exploratory tunnel Noranda wanted to dig, and so it

*Cabinet Mountains
Wilderness.*



leased an easement from them. However, after Noranda abandoned the project, it was purchased by a company called Mines Management Inc. (MMI). MMI decided that the small miners' claims were invalid and refused to renew the lease.

Bakie and Lindsey then barricaded MMI from crossing their claims, and MMI responded by suing them in State court to invalidate the claims. In March 2013, State district judge James Wheelis ruled that Bakie and Lindsey had valid claims.

Soon thereafter, a newly formed corporation called Optima acquired the claims from Bakie and Lindsey. Optima was formed by former Gov. Brian Schweitzer and Frank Duval, a former

Pegasus Gold executive with a very checkered mining history.

Optima demanded that MMI pay it \$10 million for the claims. This was described by the president of MMI as attempted extortion.

Believing that it was faced with an unsympathetic state court in Libby, MMI turned to the federal courts. It filed a parallel condemnation action under state law in federal district court in Missoula. After a year of inactivity, the chief federal judge of Montana, Dana Christensen, ruled for MMI and appointed a three-member panel to determine the value of the claims for purposes of compensation. The panel determined the claims had no value, in part because the state court action was still ongoing.

Schweitzer and Duval appealed Christensen's ruling to the federal 9th Circuit Court of Appeals, which in July 2017 overturned Christensen's ruling and directed him to stay the federal proceedings until the State court case was finally resolved.

MMI was subsequently bought out by Idaho-based Hecla Mining, making Hecla the owner of MMC. In spite of all this legal and corporate maneuvering, Hecla still does not have the required "right to mine" the ore deposit that it is seeking permission from the State to develop. This puts the entire project in limbo for the time being.

Stay tuned for the next chapter in this sordid story.

Federal Court Rulings Are a Blow To Montanore Proposal

In two separate rulings issued in May 2017, U.S. district judge Donald Molloy ruled that the U.S. Forest Service and U.S. Fish and Wildlife Service wrongly approved Hecla Mining Co.'s Montanore copper and silver mine in February 2016. In June Molloy issued a further ruling vacating the decisions of both agencies and remanding the Record of Decision and Joint

Final Environmental Impact Statement to the agencies “for further action as outlined in the May 2017 Opinion and Order.” The suits were brought by three environmental groups, Save Our Cabinets, Earthworks, and the Clark Fork Coalition, and one private landowner, the Libby Placer Mining Co. They were represented, respectively, by Earthjustice’s Bozeman office, and Helena attorney Kim Wilson.

Molloy found that the Forest Service violated the federal Clean Water Act, the National Forest Management Act, the National Environmental Policy Act, and the Forest Service Organic Act of 1897. Further he ruled that the Fish and Wildlife Service violated the federal Endangered Species Act by failing to properly assess how the project would affect grizzly bears and bull trout.


Hecla spokesman Luke Russell responded in the press that the agencies now “have the opportunity to decide how to proceed, whether to issue a new record of decision for just the evaluation phase or once again address the entire project.” Russell tried to put a positive spin on the situation, saying: “the court basically laid out a path and we think there is a path that the Fish and Wildlife Service and the Forest Service can take to keep the project moving for the evaluation phase.”

In late August Hecla filed notice that it will appeal Molloy’s ruling to the 9th Circuit Court of Appeals.

Golden Sunlight Mine

In August 2017 the Montana Department of Environmental Quality (DEQ) announced it had substantially raised the reclamation bond for the Golden Sunlight mine near Whitehall, Montana. DEQ said it did so after “negotiating the amount” with the company.

For years, MEIC and the National Wildlife Federation have argued in litigation over the mine’s reclamation plan that the State-held bond was woefully less than the law required. For more than a decade DEQ arrogantly resisted the demands to revise and raise it.

Finally, however, the agency has raised the bond to \$146.5 million from \$112.2 million, an increase of \$34 million. The fact that it was the product of “negotiations” leaves a question as to whether the amount is truly high enough to cover the costs of reclaiming the mine site if the company declares bankruptcy, as so many mining companies have done in the past. 

Golden Sunlight Mine.



War on Solar *(continued from page 5)*

front lines.

In July 2017, the PSC did NWE's bidding and voted to undermine PURPA. The two most critical decisions were on the contract length for these renewable energy projects and the compensation rate for the electricity produced. The PSC dramatically cut both. Contract lengths went from 25 years to 5 years (some say the PSC approved 10-year contracts, but it also required a mandatory and unpredictable price reset at the 5-year mark). The compensation rate went from \$66 per megawatt hour to \$31. Combined, these cuts will put an end to the development of these projects in Montana. One solar developer told the *Billings Gazette*: "We certainly cannot move forward at the current rate, or 10 years."


To add insult to injury, it appears at least one PSC commissioner knew precisely what he was doing. Commissioner Bob Lake was unknowingly caught telling the truth on a "hot" microphone shortly after casting his vote, saying: "Well, the 10-year might do it if the price doesn't. And at this low price, I can't imagine

anyone getting into it."

This is wrong and MEIC is fighting back. Working with the national solar advocacy group Vote Solar, and represented by Earthjustice, MEIC is an intervener in the case before the PSC and has filed a motion for reconsideration of the unwise decision. MEIC will make sure the record includes the necessary evidence so that this disastrous ruling can be reversed. We are also working diligently to ensure that the press and legislators are fully aware of the ruling and its repercussions, so that there can be informed public discourse and accountability.

MEIC is also holding NWE accountable. Following the PSC's ruling the company tried to create a "green" image through misleading newspaper op-eds. MEIC called the company out with an op-ed of its own in the *Missoulian*, noting that the wind and solar projects the company now wants credit for were the result of PURPA – the very law the company has continuously tried to skirt. NWE also failed to mention that its latest 20-year plan includes no (i.e., zero) new wind or solar generation, and instead calls for 13 new gas generating plants costing over \$1.3 billion. While the company claims the plan is sound, reality reveals otherwise. In fact, the plan was resoundingly scorned by reviewing stakeholders, including MEIC, for being poorly thought-out and too risky for Montana consumers. If the stakes were not so high, this head-in-the-sand behavior by NWE might be humorous.

Montana continues to see hotter, dryer, and longer Summers thanks, in part, to the greenhouse gases produced by fossil-fuel power plants. The state's streams are running lower and warmer while its skies are hazy with wildfire soot. Whether it is stubborn utilities or hardheaded regulators, MEIC realizes this is no time for appeasing decision-makers clinging to the past. The climate clock is ticking.

Fortunately, clean energy technologies are here, they are affordable, and they are the right choice for Montana's future. 

Rooftop solar installers.



What is PURPA?

Congress passed the Public Utility Regulatory Policies Act (PURPA) in 1978 in response to the energy crisis of that decade. It was designed to increase the nation's energy supply and diversity by giving alternative energy projects a legal mechanism to put their electricity onto the grid. The law was not commonly utilized for wind or solar projects until relatively recently, when dramatic cost declines for these technologies made them cost-competitive. With this shift in economics, PURPA has become one of the most important drivers of new clean energy projects both in Montana and around the country.

Why are utilities fighting it?

In general, the electric grid is controlled by monopoly utilities that have a financial interest in keeping out competition. PURPA gives independent wind and solar producers the ability to compete with those utilities by allowing them to put their electricity onto the grid despite a utility's opposition. Utilities often see this as a threat to their bottom line.

Do PURPA projects impact electric rates?

Critical to PURPA's fairness is that the independent electricity producers are compensated at the same rate that it would otherwise cost the utility to meet its energy needs. Therefore, ratepayers are protected because the utility is just paying the independent producer the same amount it would cost the company to otherwise procure the energy.

PURPA projects also help stabilize electric rates. By locking in cost-effective clean energy at a long-term fixed price, electricity costs are known and predictable. Additionally, because wind and solar projects do not require fuel, consumers are not exposed to the swings in the market prices for coal or gas.

What are the key issues under PURPA?

The first is the contract length. It is standard practice in the utility industry for power plants to be built with guaranteed revenue time horizons of 20 years or more. For example, in 2012 when NorthWestern Energy looked to build its own wind farm called Spion Kop, the company asked for and received 25 years of guaranteed profitable revenue from the Montana Public Service Commission (PSC). Contracts for wind and solar PURPA projects are written with this same idea of guaranteed revenue. The PSC's recent decision to reduce the contract lengths for PURPA projects to ten years or less makes the financing costs for these projects incredibly high to the point of being unworkable (imagine if someone had to finance a home purchase over 10 years instead of 25).

The second is the compensation rate. In most cases the PSC determines this rate for PURPA projects. It is based on multiple calculations, including how much value a wind or solar project provides to a utility's customers. The PSC's recent decision severely undervalued solar energy by predicting these facilities would not produce much in Montana. This decision came despite the fact that surrounding states with similar solar energy resources and more experience in these valuations have assigned solar a much higher value.

Attorney General and Colstrip *(continued from page 7)*

nearly unanimously agreed and allocated an extra \$80,000 for the Attorney General’s office to participate. Rate cases happen infrequently so it is important to participate when the opportunity arises.

Fox hired the high-priced law firm of the former Republican Washington State attorney general to represent Montana. But guess what; unlike all other participants in the proceeding Fox failed to file any testimony. Other parties filed thousands of pages of expert testimony addressing, among other points, the exact topics the legislature directed Fox to raise: worker protections, remediation, and decommissioning costs. As every lawyer knows, there are strict deadlines in legal proceedings. Fox’s failure to file this essential testimony meant the State of Montana is now barred from further participation in the rate case, including being unable to critique the important financial estimates of what Puget Sound Energy should pay.

Fox had a number of excuses for his failure. First, his office said the failure was intentional. Then his spokesperson blamed it on the legislature’s rejection of Senate Bill 338, a bill that was introduced long after he filed to intervene in the case. If this was the case, he should have told the legislature to keep the money after SB 338

failed to pass. He didn’t do that. Most recently, he has claimed that he has a strategy for future legal action that is too secret to reveal. That argument is preposterous as legal proceedings require full participation from the start, in this instance in the rate case itself.

Fox then tried to cover up his previous failure by filing something with the Washington regulators in August. The filing was both tardy and “chock full” of bizarre and irrelevant arguments. The Washington utility commission staff asked for his testimony to be thrown out. The Commission agreed, saying his testimony was “procedurally flawed and untimely,” as well as “irrelevant” and “immaterial.” Allowing Fox to file testimony late would put the many other parties who abided by the deadline at a disadvantage because they would not have the opportunity to respond.

This whole debacle underscores the fact that too many politicians seem more enamored with engaging in the political rhetoric surrounding Colstrip than they do with helping to figure out how to help the community of Colstrip and the state of Montana transition to a cleaner energy future. ☺



Rosebud Coal Mine Expansion *(continued from page 7)*

F contains federal coal, meaning the proposed expansion requires an environmental impact statement under the National Environmental Policy Act. NEPA requires a more rigorous analysis than the significantly watered down State version of the law – the Montana Environmental Policy Act (MEPA). NEPA allows the federal government to take the time it needs to conduct a thorough review of the impacts of proposals such as this, including the climate impacts. The Montana legislature has amended MEPA so it no longer allows consideration of climate impacts. The federal review process is ongoing.

In the meantime, Western Energy apparently did not want to wait for the federal government to complete its environmental analysis. In February 2017 it submitted an application to DEQ for a huge mine expansion. This expansion, known as Amendment 5, proposes to mine up to 147 million tons of coal. Again the mining would occur in an area in which water quality and quantity are already severely impaired from previous coal mining as well as by the operation of the coal-fired plant.

DEQ determined in July that the permit application for Amendment 5 contained enough information for it to start the MEPA process and to analyze the application for compliance

with Montana laws. MEIC, Sierra Club, and the Western Environmental Law Center strongly believe that DEQ does not have sufficient information to begin its legal and technical review.

As allowed under the law our groups requested a hearing before DEQ to raise concerns. That hearing was held on August 17th. Ranchers, lawyers, doctors, and concerned citizens from across the state spoke about the many potential problems with the expansion regarding water quality and quantity, air quality, climate change, impacts to agriculture, reclamation bonding, and Western Energy's apparent attempt to evade the federal law that requires consideration of climate impacts. A slew of mine attorneys and employees had to sit and listen. Maybe they learned something from the heartfelt concerns that were expressed.

DEQ is required to respond to the concerns raised at the hearing. Then it will have to decide how to move forward with reviewing the permit application. MEIC and its allies will be there every step of the way to make sure that DEQ does not continue to allow Western Energy to treat the Colstrip area, the watershed, and the atmosphere as sacrifice zones in its search for profits. 🌱

MEIC is Featured in a National Geographic special!

From the Ashes captures Americans in communities across the country as they wrestle with the legacy of the coal industry and what its future may be under the Trump Administration. Montana and MEIC are featured prominently in the movie, including stories on Colstrip and the proposed Otter Creek coal mine.

Watch the movie at home tonight! *From the Ashes* is available to view on TV and on-demand (Apple TV, Roku, iOS phone and tablet, Android mobile, Xbox 360 and Xbox One, Samsung Smart TVs and natgeotv.com). It's also available for purchase on iTunes, Amazon, Hulu and GooglePlay.

For more information go to <https://www.fromtheashesfilm.com/>.

Board of Oil and Gas Initiates Fracking Rule Making

by *Derf Johnson*

The Montana Board of Oil and Gas Conservation (BOGC) recently initiated a rule-making process that will further define the required disclosure of chemical additives used in the fracking process. This process is mainly the result of legislation passed in the 2017 Montana Legislature that partially improved the regulation of fracking in Montana, by narrowing the ability of oil and gas companies to claim trade secret exemptions and thereby avoid having to disclose the chemicals used in their operations. This rule-making process is certainly a step forward, but the BOGC should take a further step by requiring that fracking fluid chemicals be disclosed in advance of any drilling activity.

In 2016, MEIC and a coalition of public health professionals, landowners, and environmental organizations petitioned the BOGC to initiate a rule-making process that, in part, would have required pre-drilling disclosure of chemicals. Pre-drilling disclosure is critical for adjacent landowners and water users in order to be adequately notified and able to conduct

baseline water testing before drilling starts. Baseline water testing provides additional protections for landowners by recording water quality levels before drilling activity occurs. Sadly, the BOGC rejected the petition, and the coalition was compelled to bring litigation in State district court to accomplish its goal.

However, now that the legislature has acted, and the BOGC has begun a rule-making process, there is a new opportunity to persuade the BOGC to require pre-fracking disclosure. For the time being, MEIC has temporarily suspended the litigation, and will be participating in and monitoring the rule-making process and working to improve the rule by requiring pre-fracking disclosure.

The BOGC will be holding three public “listening sessions” in Billings, Sidney, and Shelby in advance of the formal rule-making process. These listening sessions will be an excellent opportunity for the public and MEIC members to advocate for strong fracking disclosure rules.

Watch MEIC’s website (www.meic.org) and look for action alerts giving more information about the listening sessions and the proposed regulations.

Available Now! MEIC Specialty License Plate

Help protect Montana’s clean air and water by choosing an MEIC license plate! With an initial extra cost of \$40, and an annual renewal extra cost of \$20, it’s an easy way to support our important work. Your donation is tax-deductible, and will be used to protect your right to a clean and healthful environment.

You don’t have to wait for your current plates to expire. Simply bring your old plates in and be one of the first to purchase and show off our design! Note: the new MEIC license plate may not be in stock yet in your county, but you can order one from your local MVD today.



Thoughts from the Executive Director



by Jim Jensen

The Montana Land Reliance (MLR) reached a remarkable milestone recently. The state-based land trust completed a conservation

easement that put it over one million acre mark for lands protected from development. This is one seventeenth of all land under private conservation easements in the entire United States.

So why am I writing about MLR? Well, it is because of its genesis, which began at MEIC. One of MEIC's first big projects in 1975 was a study of land subdivision in Montana. The project was directed by MEIC staffers Christine Torgrimson and Rod Hamman. Among the study's conclusions/recommendations was the need for a state-based land trust.

And so the Montana Land Reliance was born, initially operating as a project of MEIC. MLR's founding directors were Christine Torgrimson and Barbara Rusmore. By the way, the unusual name "Reliance" was used because at the time the word "Trust" could not be used in the name of any organization that was not regulated under the State's banking laws.

Another of the subdivision study's conclusions was that Montana law needed to explicitly recognize conservation easements and their property rights. MEIC took the issue to the legislature and after a hard-fought battle lasting over several legislative sessions, got just such a bill passed. It is among the foundations upon which MLR and Montana's numerous local

land trusts have operated ever since.

It is important to recognize the obvious interrelationship between land protection and the protection of clean air, clean water, and a livable climate. The intrinsic and economic values of these million acres – and the many more to come – rely on environmental protections that are at the heart of MEIC's mission.

There are many pieces in the puzzle of keeping Montana Montana. We need them all to complete the puzzle. 🍷

Montana Land Reliance managing director Rock Ringling.



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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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"Since the founding days of Phil and Robin Tawney, I've had the privilege of being involved with MEIC. Staff and board (there were just two staff then!) were up at the legislature doing the bold and audacious....making major gains for the environment....and gaining the respect of representatives and senators. Jim Jensen, Anne Hedges and all our staff do the same today. All these years, MEIC has lobbied the hard issues, filed the tough lawsuits, and won advancement for Montana's environment with the sustaining support of our members.



Bob and Carolyn Adams, Helena, MT

To give this support in a way that lets MEIC know there's a steady base of funding year-round, Carolyn and I choose to pledge monthly. We can write a letter or make some calls, but these decades later, we find our lives and time pulled in directions that minimize our ability to be activists on-the-ground, "in the weeds," of MEIC's year-long work. Pledging monthly is our way of helping provide the sustainable base to keep the MEIC crew in action. AND....you won't get reminders for renewals....just appreciation for keeping a great cause moving!"

-Bob Adams, Helena, MT