

# Down to Earth

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NEWS FROM THE MONTANA ENVIRONMENTAL INFORMATION CENTER



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# NorthWestern Energy Misrepresents Its Clean Energy Resources

by Brian Fadie

In late May 2018, U.S. Sen. Steve Daines hosted a fossil fuel cheerleading session in Billings, Montana, that he called the “Montana Energy Summit.” One of the speakers was NorthWestern Energy’s (NWE) CEO Bob Rowe, whose presentation included a curious slide that can be seen to the right.

[Editor’s comment: Unfortunately, because the image is a screenshot from the live webcast,

as “capacity contribution at peak.” For solar energy it states that 97 MW are installed but with only 6 MW contributing to peak. If this slide is to be believed two ideas are conveyed: 1) NWE has acquired large amounts of wind- and solar-generated electricity; and 2) wind and solar resources do not contribute much to meeting peak energy demand.

However, there’s one major problem with these numbers: they’re just completely wrong.

As of June 2018, NWE actually has about 28 MW of solar installed, including rooftop solar installed by customers (compared to the 97 MW claimed in the slide). For wind the correct number is about 288 MW installed (compared to the slide’s 448 MW).

So what’s going on here?

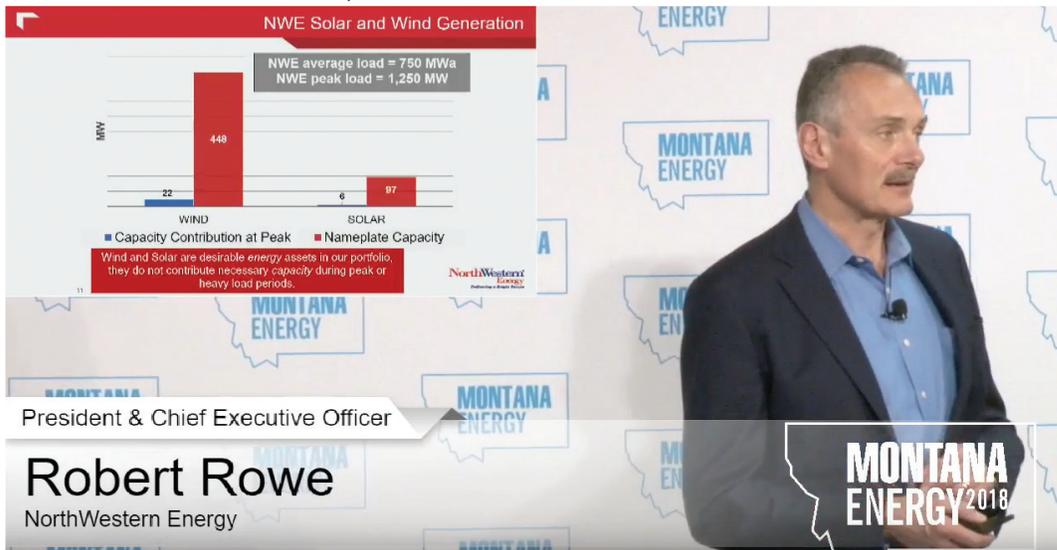
First, an educated guess about the solar energy discrepancy would note that currently NWE has 17 MW of utility-scale solar projects operating on its grid (not counting rooftop solar or any of the company’s small-scale pilot solar projects). If you add 80 MW from a proposed solar project north of Billings called MT Sun then you get to the 97 MW NWE is claiming.

But here again, MT Sun has not been built and there is little indication it ever actually will be.

As for the wind energy discrepancy, NWE claims it has 448 MW of wind installed today when it’s actually about 288 MW, the difference being 160 MW. This 160 MW is the exact total amount that would be generated by two new wind projects that could be coming online later in 2018 and 2019, both of which are 80 MW. Together they would account for the missing 160 MW. However, neither of these projects has been built yet and certainly neither is operating.

Clearly, the company thinks there is a public relations benefit to trying to claim it is drawing

*continued on page 14*



NorthWestern Energy’s CEO, Bob Rowe.

the resolution is poor and it is difficult to read the details on the page here.]

It is important to review the contents of the slide because it is a prime example of the mentality of NWE: the company wants to claim credit for having wind and solar electricity on its grid (even though it opposed the policies that spurred those projects to be there) while also fighting against acquiring any new wind and solar resources.

The slide is titled “NWE Solar and Wind Generation.” For wind energy it states the company has 448 megawatts (MW) of wind energy installed but with only 22 MW identified

Cover image: Granite Peak, Cabinet Mountains Wilderness. Photo by Flickr user Troy Smith.

# NorthWestern Proposes to Squander Its Tax Windfall

by Anne Hedges

The Tax Cuts and Jobs Act that was passed by Congress in December 2017 will result in a very generous financial windfall for large corporations such as NorthWestern Energy (NWE). Utilities collect money from their customers throughout the year in order to cover their income tax bills. When the corporate tax rate was decreased from 35% to 21% in the Act, NWE suddenly had a pot of money that it no longer needed to pay those taxes. The size of this pot for NWE's electricity business is about \$10 million.

Earlier this year the Montana Public Service Commission (PSC) asked NWE to provide a plan for how that money would be spent. In April, NWE proposed that half the money be returned to its customers and the other half be used for tree trimming along its transmission lines – an activity that is a regular utility operation.

In May, MEIC joined forces with the Northwest Energy Coalition and Earthjustice to challenge NWE's proposal. In the challenge we will argue that this tax windfall should be addressed as a part of NWE's upcoming rate case. This long-overdue rate case will take a comprehensive look at NWE's expenses and revenues in order to establish appropriate electricity rates for its customers. It is only sensible to address the tax windfall issue during the rate case so it may be part of the comprehensive analysis that takes place when establishing the new rates.

We will also argue that if NWE and the PSC decide to spend this windfall before the rate case then some of the money should go toward community transition for the town of Colstrip. Already two of the six Colstrip owners have agreed to pay a total of \$14.5 million to help the community transition away from coal. NWE's tax windfall money could help fund worker retraining, spur economic diversification, or offset lost revenues for municipal infrastructure projects. This would be a worthy use of the

windfall. Spending the money on tree trimming – an activity the utility regularly performs and customers regularly pay for – would be squandering an important opportunity for NWE to do the right thing.

Some of the out-of-state utility owners of the Colstrip plant have already provided Colstrip community transition funds. Now it's time for the home state utility to do the same. It's a particularly good opportunity because this windfall money has already been collected from utility customers, so allocating some of it toward community transition would have little or no impact on utility bills. At the same time it could provide important benefits which would help increase the tax base for the Colstrip area and the State.

The PSC's tax docket will be concluded by the end of the Summer. The rate case will begin in the Fall. We believe that it is clearly premature to act on the tax windfall when a more comprehensive review of NWE's electricity rates is just around the corner. 🌱

*“Spending the money on tree-trimming... would be squandering an important opportunity for NWE to do the right thing.”*

*Protesters outside NorthWestern Energy building in Butte, October 2016.*



# All the Latest on Coal Mining in Montana

by Anne Hedges

The companies operating Montana's biggest coal mines are requesting that the Trump Administration and the Montana Department of Environmental Quality (DEQ) approve massive mine expansions in the state. For example, the Rosebud mine, which supplies all the coal for the Colstrip power plant, wants approval to mine another 211 million tons of coal. This request has been made despite the fact that its parent company, Westmoreland Resources, is on the verge of bankruptcy, and its primary buyer, the Colstrip power plant, will only need about 6.2 million tons of coal a year after two of the four units are closed in a few years.

MEIC is opposing this and other expansions for a variety of reasons: to protect Montana's land and waterways from increased coal mine pollution; to eliminate the contribution that burning coal makes to climate change; and to prevent taxpayers from having to foot the bill for cleaning up plant and mine sites when companies such as Westmoreland go bankrupt.

Here's a quick rundown of some of the numerous things that MEIC is doing in its current work on coal. MEIC is represented by the Western Environmental Law Center in all of the following legal appeals and challenges.

## 1. Rosebud Mine Water Pollution Discharge Permit.

DEQ issued the Rosebud mine a water pollution discharge permit in 2012. MEIC challenged the permit because the State failed to require sufficient water quality monitoring and reclassified a stream without complying with the process defined in the federal Clean Water Act. DEQ's reclassification of the stream

allows the mine to dump more hazardous pollution into the water. A Helena district court judge ruled overwhelmingly in MEIC's favor in 2016. The mining company and DEQ appealed that decision to the State supreme court early this year.

**2. Rosebud Mine Expansion.** DEQ approved an expansion at the Rosebud mine in December 2015. MEIC challenged that expansion because of its effect on water quality in the area. A week-long trial was held before an administrative law judge in March 2018. The Montana Board of Environmental Review (BER) will consider the administrative law judge's recommendation and should make a final decision by the end of the year. An appeal to State district court by one of the parties is highly likely, regardless of the Board's decision. The Western Environmental Law Center and Roger Sullivan represent MEIC in this case.

**3. Rosebud Mine Area F Expansion.** In addition to the expansion described above, the Rosebud mine is proposing two other massive expansions. The first, in what is known as Area F, would allow an additional 70 million tons of coal to be mined. The federal government and DEQ issued a draft environmental impact statement (EIS) on the expansion in December 2017. MEIC, its allies, and members submitted hundreds of comments on the failure of both government entities to adequately consider water quality, water quantity, and climate change issues in the draft EIS. MEIC expects the U.S. Department of Interior to issue a final EIS any day. If the final EIS is similar to the draft, it is likely that MEIC and its allies will challenge the decision in court.

## 4. Rosebud Mine Area B Expansion.

The Rosebud mine is proposing yet another expansion in what is known as Area B. This expansion, different than the one described above, would allow the mining of an additional 147 million tons of coal. In March 2018, MEIC and the Sierra Club submitted extensive comments on the various water, air and climate-related issues that DEQ must consider in an

Rosebud Mine. Photo by Kestral Aerial Services, Inc.



environmental analysis under the Montana Environmental Policy Act. Once the mine has submitted all of the necessary permit application materials, DEQ will issue a draft permit and a draft environmental analysis. DEQ could deny the permit once all of the application materials are submitted, but given its previous willingness to issue inappropriate mining permits, we think that is highly unlikely.

**5. Bull Mountains Mine Expansion – State Approval.** In this instance, the BER ruled in MEIC’s favor on a 176 million ton expansion proposed by Signal Peak at its Bull Mountain underground coal mine near Roundup. The issue was the impact of the expansion on water resources in the area. But then, not surprisingly, DEQ issued another permit for the expansion eight months later. Similar to the first permit, the second permit suffers from water-related flaws. MEIC appealed that decision to the BER in September 2016. The mining company is doing everything it can to slow down the appeal process. We are hoping there will be a final BER decision on this case in late 2018 or early 2019.

**6. Bull Mountains Mine Expansion – Federal Approval.** In August 2017, a federal judge ruled that the federal government had failed to follow the law when it approved the expansion described above. After months of Signal Peak begging the court to change its mind, the court largely rejected the company’s requests in November 2017. In March 2018 the federal Office of Surface Mining (OSM) released a draft environmental assessment that only cursorily addressed the significant impacts of the proposed expansion. MEIC and a large host of allies submitted comments opposing the expansion. Considering the Trump Administration’s bias toward extractive industries, we expect a quick and wholly insufficient final decision from OSM in the next couple of months.

**7. Spring Creek Mine Expansion.** Cloud Peak Energy Co. owns the largest coal mine in Montana. It produced about 12.7 million tons



*Landscape near  
Rosebud Mine. Photo by  
Alexis Bonogofsky.*

of coal in 2017, much of which is shipped to overseas markets. Despite the huge annual volume of coal mined, the federal government has never subjected the mine to an environmental impact statement. MEIC is challenging the failure of the federal government to comply with the National Environmental Policy Act as well as challenging the government’s failure to accurately account for greenhouse gas emissions from the inevitable burning of the coal. The case is in Billings federal district court.

**8. Resource Management Plans.** In March 2018, a federal judge in Great Falls ruled that the federal Bureau of Land Management (BLM) had failed to adequately consider the consequences of opening up 15 million acres of public lands to oil and gas development, and of allowing the mining of 10 billion (yes, billion!) tons of coal on public lands, in the Powder River Basin (a portion of southeastern Montana and northeastern Wyoming). Since that time MEIC’s attorneys have been haggling with lawyers for BLM and the extractive industries over what the remedy should be for their failure to follow the law. As expected, it is unlikely the parties will agree on how our victory should be implemented, and the court will probably have to make the final decision, which could happen in the next few months. ☺

# It Turns Out Colstrip Electricity is Expensive – Really, Really Expensive

by Anne Hedges

Raise your hand if you want to pay more for electricity that’s dirty.

Let’s talk money.

It’s tiring to hear people repeat the same argument that has been made since the 1970s without bothering to update their facts. Namely: “we need coal power because it’s so cheap.” The old argument also mistakenly says that if we transition away from coal-fired electricity our bills will skyrocket. Ignore for the moment the issue of climate change and the cost that it imposes on society. [Let’s just talk about what Montanans pay for electricity.](#)

The assertion that the Colstrip power plant provides cheap electricity is based on data from more than a decade ago. Times have changed and in order to save money on our already expensive electricity bills, we need to keep up with the times.

The chart below says it all. And it was not generated by some wild-eyed liberal. It is based on data provided by NorthWestern Energy (NWE) itself. The company reports information every

Source: Montana Consumer Counsel.

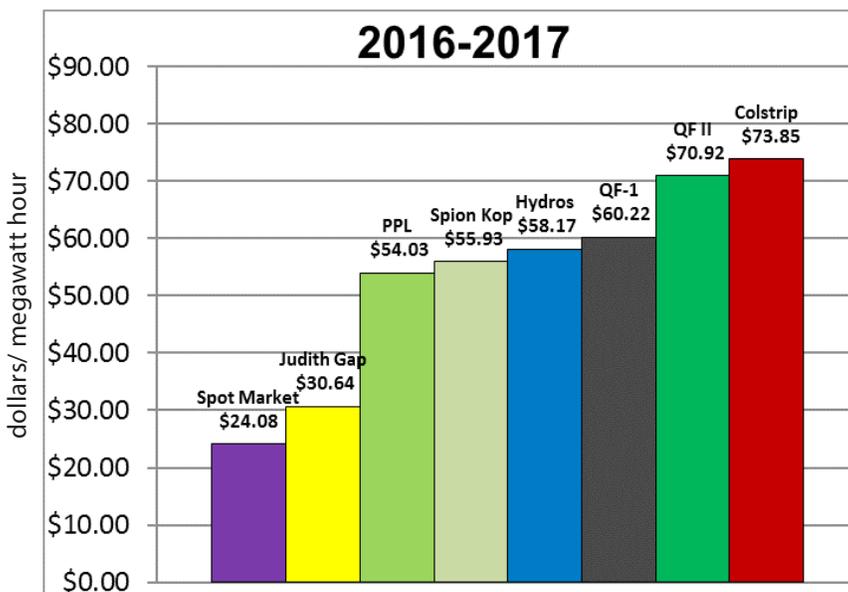
year to the Montana Public Service Commission. That data has been turned into user-friendly graphics by the Montana Consumer Counsel. And the conclusions couldn’t be more striking. Coal-fired electricity is expensive. Most of us don’t earn enough to just burn money, so we should pay attention to the facts. And “just the facts, ma’am” as Sgt. Friday would say.

The chart below shows the electricity costs per megawatt hour from various sources.

Let’s see what this means:

- Colstrip electricity costs NWE customers a whopping \$73.85 per megawatt-hour. It costs more than any other resource NWE uses to provide its customers (most Montanans) with electricity.
- QF II is largely comprised of two old, small, dirty waste coal and waste petroleum facilities. NWE got stuck with these facilities after deregulation. These contracts expire around 2025.
- Judith Gap, a wind-farm east of Great Falls, is the second cheapest source of electricity – about 60% cheaper than Colstrip. That wind farm has been bringing down Montanans’ electricity bills since the Renewable Energy Standard (sponsored by then State Sen. Jon Tester) passed the Montana legislature in 2005.
- Spion Kop is another wind farm. Its electricity costs about 25% less than Colstrip’s.
- QF I is almost entirely comprised of various wind and solar facilities. Their electricity costs 18% less on average than Colstrip’s.
- Hydros are the hydro-electric dams that NWE purchased from PPL a few years ago for \$900 million. Even that electricity is cheaper than Colstrip’s by about 21%.
- And then there’s the spot (or unregulated commercial) market. NWE buys electricity on the spot market when

**Electricity Supply Costs for NorthWestern Energy**



demand is high and its power plants don't produce enough, or when it's just a lot cheaper to buy electricity from somewhere else than to use its own generating sources. Currently the spot market is CHEAP!

This chart is incomplete, though. It doesn't show energy efficiency as a source of electricity. Years ago the Montana Public Service Commission calculated the cost for NWE to invest in energy efficiency to help meet energy demand. At that time energy efficiency measures cost \$14.32 per megawatt hour. That makes it the cheapest way of all to meet energy needs.

The chart is based on annual data through June 2017. Since that time renewable energy

prices have fallen and the average cost per megawatt for electricity from wind and solar sources contained under the QF 1 label, will decrease.

In the meantime, whenever you hear someone say that we need Colstrip because it keeps our electricity bills low, it is just not true. Show them the facts! The facts are undisputed. Colstrip is expensive and the cost of its electricity is rising. Renewables are cheap and getting cheaper. That leaves one question: as a NWE customer, do you want to pay a lot more than you have to for your electricity? It's really that simple. 🌱



*Judith Gap  
Wind Farm.*



## Energy Tidbits ...

### End of 2019:

the date by which the Montana Department of Environmental Quality recently said it will finally require the Colstrip power plant owners to obtain an adequate bond for the cleanup of the coal ash impoundments. DEQ currently holds less than \$8 million in bonds for that cleanup.

### \$14.5 million:

the amount that two of the six Colstrip power plant owners have so far agreed to pay to help the Colstrip community make the transition away from a coal-based economy.

### Twice:

the number of times the Trump Administration's Department of Energy has proposed massive government intervention in energy markets to prop up failing, uneconomic coal and nuclear plants. Trump's own Federal Energy Regulatory Commission embarrassingly shot down the first attempt earlier this year. The latest attempt would be what some are calling a "Soviet style government takeover" of a host of coal plants.

### \$2 million:

the amount of money the State has secured from the federal government to help retrain displaced coal workers in Montana.





# ...You Always Wanted to Know

## 35 million tons:

the amount of coal mined in Montana in 2017, an increase of 3 million tons from 2016, but a decrease from the high of 44 million tons in 2014. The resulting carbon dioxide in the air causes about \$2.5 billion in financial impacts according to the Social Cost of Carbon calculation, a figure that many scientists say underestimates the fiscal impact of greenhouse gas emissions.

**2.4%** the percent of acreage at the Rosebud coal strip mine that has been fully reclaimed since the mine opened in the early 1970s.

## \$1.5 million:

the amount that NorthWestern Energy could be fined for missing a payment deadline on its property taxes.

## 59 days:

the very small number of days that the coal-fired Hardin Generating Station, a 115 megawatt plant near Hardin, MT, operated in 2017.

## In the Toilet:

where the stock price of Westmoreland Resources can be found. Westmoreland was delisted from the NASDAQ stock exchange in early June 2018 after its price per share dropped from \$43.00 in 2014 to \$0.15 in late April 2018. Westmoreland, which owns the Rosebud mine – the sole source of coal for the Colstrip plant – is expected to declare bankruptcy soon. The company employs 45% of Montana's coal miners at its three Montana mines and is \$1.6 billion in debt.



# Transmission Lines? A Key to Montana's Clean Energy Future?

by Brian Fadie

There are often important issues that are esoteric or overly technical, but critical to accomplishing desirable goals. This is one. But keep reading. We'll try to explain it in understandable terms.

The subject here is electricity transmission lines. In the fight to see Montana realize its full renewable energy potential, one issue has always presented a challenge: is there adequate capacity on the transmission lines connecting Montana with the West Coast markets to carry the renewable electricity that Montana could generate?

Thanks to the advocacy of MEIC, the Renewable Northwest, and other organizations, a "stakeholder" process was recently completed that will significantly move the transmission issue forward and help unlock Montana's renewable energy potential.

For many years, clean energy advocates objected, and filed legal challenges, to an extra charge by the Bonneville Power Administration (BPA) on a section of a key transmission line in Montana, But BPA continually refused to eliminate it. Finally, and mainly as a result of our pressure, in December 2017, BPA administrator Elliot Mainzer and Montana governor Steve Bullock launched an effort to comprehensively tackle the transmission challenges for Montana

renewable energy exports.

The goal of the process was to bring all of the key players together to establish an agreed-upon set of facts about: 1) the transmission system in Montana and the Pacific Northwest; 2) the capabilities of Montana's renewable resources; 3) technical and physical obstacles to using the existing system to export Montana renewable energy, and 4) the needs of the region's utilities as well as its renewable energy developers. The participants included all of the utility companies owning a share of the Colstrip plant, the BPA, Gov. Bullock's office, renewable energy developers, clean energy advocates (including MEIC), grid operators, state agencies, and others energy experts.

The result of that effort is a document titled the Montana Renewable Resource Development Action Plan.

Governor Bullock and BPA Administrator Elliot Mainzer should be commended for bringing together the right people to make the process successful. And it was quite successful.

Some of the key outcomes presented in the Action Plan include:

- A statement of fact that the electricity generated by the Colstrip power plant can be entirely replaced, megawatt-for-megawatt, with renewable energy electricity, with minimal costs or technical modifications. All of the Colstrip owners will be signing off on this. This is a big deal.
- The discovery of a moderate amount of additional and available transmission capacity leading out of Montana toward the West Coast. This specific transmission does not go all the way to Portland or Seattle, but it goes most of the way there and is a good sign for future Montana renewable projects.
- There is even more transmission capacity becoming available from Montana to the West thanks to BPA and NorthWestern Energy finally resolving a long-standing



Staff for Renewable Northwest Cameron Yourkowski, Rachel Shimshak, and Jeff Fox stand with Governor Steve Bullock and BPA Administrator Elliot Mainzer to celebrate the completion of the Montana Renewable Resource Development Action Plan.

# How Cheap is Renewable Energy?

The prices for renewable energy and energy storage are dropping rapidly. See the list below for some recent contracted prices and developer bids to sell electricity to utilities across the west. Compare these prices to the \$74 per megawatt hour that NorthWestern Energy is paying for electricity from Colstrip, and you'll begin to understand why there is a monumental shift occurring in generation sources.

## NV Energy, Nevada

Project Name: Copper Mountain Solar 5  
Size: 250 megawatts Technology: **Solar**  
Cost: **\$27 per megawatt-hour**

Project Name: Battle Mountain  
Size: 101 megawatts solar + 25 megawatts battery storage  
Technology: **Solar and battery storage**  
Cost: **\$26 per megawatt-hour for solar only, \$31 per megawatt-hour including storage**

Project Name: Dodge Flat  
Size: 200 megawatts solar + 50 megawatts battery storage  
Technology: **Solar and battery storage**  
Cost: **\$29 per megawatt-hour for solar only, \$35 per megawatt-hour including storage**

## Central Arizona Project, Arizona

Project Name: AZ Solar 1  
Size: 30 megawatts Technology: **Solar**  
Cost: **\$25 per megawatt-hour**

## Xcel Energy, Colorado

Bids by wind developers to Xcel Energy  
Size: N/A Technology: **Wind**  
Cost: **\$19 per megawatt-hour**  
(median bid price)

## NorthWestern Energy, Montana

Project Name: South Peak  
Size: 80 megawatts  
Technology: **Wind**  
Cost: **\$22 per megawatt-hour**

dispute over who owned a specific segment of a transmission line.

- The discovery that there was sufficient "dynamic transfer capability" available in the region to allow Montana-generated wind energy to qualify for Washington State's Renewable Portfolio Standard. It was previously unknown how much of this capability was available. If little or none existed, it could have been a major impediment to the development of Montana wind resources, so this is another

big step forward.

To read the entire Action Plan, go to MEIC's website ([www.meic.org](http://www.meic.org)) where there is a link to the Plan.

The Action Plan is a giant step forward for Montana's renewable energy future. The statements of facts about the capabilities of the transmission system will help all stakeholders – from wind developers to utilities – understand what is and is not possible on the grid and to plan projects accordingly. A door to Montana's energy future has now been opened. 

# How Many Ways Is the Trump Administration Harming Montana's Environment?

by Anne Hedges

We've lost count!

The Trump Administration's damage to Montana's environment is immense, and goes far beyond such important things as eliminating data collection on climate change, pulling out of the Paris Climate Accord, dismantling scientific research and input in pollution regulation, switching sides in litigation, and decreasing agency budgets.

Here are just a few examples of some of the other things that will have a serious impact on Montana:

## 1. Coal Leasing Moratorium and Analysis.

Trump's Secretary of Interior Ryan Zinke ended a moratorium on coal leasing that was put in place so that the Department could update a 1979 analysis of the impacts of leasing billions of tons of coal on 570 million acres of public lands. MEIC and others are challenging that decision in court.

**2. Coal Ash Rule.** It took decades for EPA to finally regulate the highly toxic, and second largest waste stream in the United States, coal ash dumps. Pruitt is proposing to gut these very modest regulations. This could have major implications on whether there is an adequate cleanup at the Colstrip plant.

## 3. Granting Polluters' Wish List on Air Quality Regulations.

Changing how air emissions are calculated can make a big difference between having

more toxins in the air or fewer. Avoiding the public rulemaking process, Pruitt is making damaging changes to the Clean Air Act through what is euphemistically called "guidance." New guidance allows companies to avoid permitting requirements using arithmetical tricks. EPA has even agreed to stop checking industry's math when it calculates whether grandfathered industrial plants have to install modern pollution controls. Trump even issued his own guidance telling the EPA to be more industry-friendly when enforcing air pollution laws.

## 4. Coal and Nuclear Plant Bailout.

Trump's Department of Energy lackey, Rick Perry, continues to try to force coal plant owners to operate uneconomic coal plants, such as the one at Colstrip. He's on his third attempt to bail out this faltering industry. As Arnold Schwarzenegger tweeted: "I eagerly await the administration's regulations protecting pagers, fax machines, and Blockbuster."

**5. Keystone XL Fast Track Approval.** The State Department is trying to fast-track the approval of the pipeline that will carry toxic tar-sands oil across both the Missouri and Yellowstone Rivers in Montana.

**6. Oil & Gas Leases.** In the last six months, Zinke's BLM has approved the leasing of 200,000 acres of public land for oil and gas development in Montana. MEIC is also challenging that decision in court.

**7. Unraveling Methane Emission Limitations in Oil and Gas Fields.** Both Zinke and Pruitt want to eliminate Obama-era regulations that limit methane emissions from oil and gas development. A federal court has, for the moment, stopped BLM from suspending the rule, which would have forced the industry to capture methane emissions. Zinke continues with efforts to permanently eliminate that rule. MEIC is a party to that litigation. Pruitt was also

President Trump with windy "hair".



sued for failing to comply with the Clean Air Act's requirement that EPA protect public health and the climate by regulating methane emissions.

**8. Gutting Environmental Enforcement.**

Trump's EPA, under "Mr. Corruption" himself, has lost 10% of its criminal enforcement staff in less than two years. The law requires 200 special investigators in the EPA's criminal division. It currently has 140.

**9. Clean Power Plan Abandoned.** Pruitt scrapped the Clean Power Plan and the process it laid out that would have attained very modest reductions in greenhouse gas emissions from power plants. Now emissions will be regulated by a patchwork of state rules, which will create increased uncertainty for utilities and their workers.

**10. Tariffs on Imported Solar Panels.**

Trump has unnecessarily increased the price of solar energy by placing high tariffs on imported solar panels. That will harm Montana's solar development and jobs.

**11. Dismantling Fuel Efficiency Standards for Vehicles.** Trump has proposed eliminating fuel efficiency standards for cars and light trucks, making those vehicles more expensive to operate, and more polluting.

**12. Suspension of Clean Water Protections.** Pruitt and the Army Corps of Engineers have suspended the clean water regulation that protects headwater streams, wetlands, and drinking water sources.

The list could go on and on, but I'm sure you get the point. ☺

## MEIC Sues DNRC for Issuing Illegal Water Right

by Jim Jensen

**M**EIC and two other environmental groups have sued the Montana Department of Natural Resources and Conservation for issuing a water right to RC Resources. That is the company that wants to develop the Rock Creek mine, a massive copper and silver mine under the Cabinet Mountains Wilderness. DNRC issued the water right even after admitting that it will result in the dewatering of wilderness streams in violation of Montana law.

Specifically, RC Resources said in its application materials that its proposed groundwater pumping would dewater streams in the Cabinet Mountains Wilderness by up to 100% (that obviously means taking all of the water), which is well in excess of the limit imposed by Montana's Water Quality Act. Wilderness streams are defined as Outstanding Resource Waters under the Act. DNRC takes the position that it can ignore these impacts when

issuing a water right under the separate Water Use Act.

The brief filed in this case by our lawyers at Earthjustice nails the issue:

"In sum, DNRC's conclusion that water is legally available for RC Resources' proposed groundwater pumping, which is predicted to violate State law protections for stream flows in Outstanding Resource Waters, is contrary to the plain language, structure, and purposes of the Water Use Act, and the clear legislative mandate to provide the highest legal protections for Montana's Outstanding Resource Waters."

The issuance of this water right is another in a long list of situations in which the State agencies charged with protecting Montana's most important natural resources twist their reading of the law to serve the interests of industrial polluters. This long-persistent agency culture can only be reversed by the top officials, including the governor and department directors. ☺

## “Bad Actor” Update – Hecla Sues DEQ

by Jim Jensen

**A**s reported in the April issue of *Down to Earth*, the Department of Environmental Quality issued a notice to Hecla Mining Co. (along with its three wholly owned subsidiaries engaged in Montana mining activities), and its CEO and president Phillips S. Baker, Jr., stating that they were in violation of the “bad actor” provision of Montana’s Metal Mines Reclamation Act.

The Act prohibits a person from receiving a permit or participating in mining or exploration activities within the state if they were a “principal or controlling member” of a mining enterprise that “had a bond forfeited.”

Baker was the chief financial officer and a member of the board of directors of Pegasus Gold Corp. and its three wholly owned Montana

mining subsidiaries, all of which have forfeited their reclamation bonds. Therefore he is a “bad actor” and is barred from engaging in mining, either through another

employer or any other business structure. Of course, if he were no longer were employed by

Hecla, then the entire matter would be moot.

The company has chosen to keep Baker in his positions and fight the matter. However, instead of responding to DEQ’s notice of violation letter, which simply would have triggered an established administrative proceeding under the law, Hecla has sued DEQ.

The suit claims that the “bad actor” law does not apply to Hecla and Baker. However, the company has not cited any law or regulation that supports that position. Instead the company is trying to persuade the court that it is not subject the long-held legal doctrine that before one can go to court over an administrative action, one must first exhaust all available administrative remedies. In other words, Hecla must reply to DEQ’s letter as prescribed under the agency’s rules. It may then appeal any decision it does not like to the Board of Environmental Review. Then, if it remains unsatisfied, it is allowed to bring an action in district court.

DEQ is being represented by outside counsel in defending this case. Two of Montana’s most well-respected lawyers, Jim Goetz and (retired federal magistrate) Keith Strong, both of Bozeman, have taken the case on a *pro bono* basis.

Helena district judge Mike Menahan is presiding over the case.

*“...instead of responding to DEQ’s notice of violation letter, which simply would have triggered an established administrative proceeding under the law, Hecla has sued DEQ.”*

Protest at NorthWestern Energy’s headquarters in Butte, October 2016.



## NWE Misrepresentation *(continued from page 2)*

on a lot of clean energy resources. NWE has been buying billboards for more than a year along the highways heading east out of Missoula and south out of Helena touting that it has invested more than \$1 billion in clean energy. The truth is that \$870 million of that amount was for the hydro-electric dam buyback. So perhaps it’s not a surprise that NWE would also inflate the amount of wind and solar electricity on its grid.

It is one thing to project the peak capacity contribution of future wind and solar projects. It is entirely different to say that projects, which have not been built, are operating today and to include them in calculations of peak capacity contribution to depress those numbers and make wind and solar look bad.

This is just another unfortunate example of why you should always be vigilant about claims by utilities.

# There Are Some Things to Celebrate!

by Jim Jensen



20 years ago MEIC decided to do something that virtually all other environmental groups in Montana considered unwise. Or outrageous. Or insane.

The environmental movement had just come off the stinging defeat of I-122, the Clean Water Initiative. Understandably, many folks were exhausted and, perhaps, a little demoralized.

However, in the spirit of “the best defense is a good offense,” I felt that we should learn from the I-122 vote, listen to the voters, and more narrowly target the real problem. We lost I-122 in large part because the mining industry persuaded voters that the measure “goes too far, and costs too much.” It seemed to me at the time that they were right. Frankly, we also ran a pretty poor campaign.

Having learned from the I-122 campaign, I came up with a different idea (a morning shower “light bulb” moment was involved). That idea was Initiative 137, the “cyanide mining ban.” It was the right thing to do and the right time to do it. The Blackfoot River was at stake, as were the Sweetgrass Hills. Both were in the bull’s eye of open-pit, cyanide heap-leach gold mining proposals. There were other mines in the concept stage, including one on Revenue Flats near Norris, and another at the headwaters of Dillon’s planned new drinking water supply.



Granite Falls, Cabinet Mountains Wilderness. Photo by Flickr user Troy Smith.

Hence, I-137 was born. MEIC threw everything it had into the effort, and by the time Fall 1998 rolled around other groups had come on board with endorsements, and some with money, especially the Big Blackfoot Chapter of Trout Unlimited.

Ranchers Alan and Stephanie Shammel of Hilger agreed to do extremely effective TV ads, telling their story of the nightmare of this kind of mining, which had devastated their multi-generational cattle operation. Another rancher, from the Blackfoot River Valley, Mark Gerlach, also did a very compelling ad for the campaign. And, very importantly, MEIC member Norma Tirrell of Helena volunteered her expertise in paid media strategy, and how to get the best placement with our limited TV and radio budget.

Despite our being substantially outspent by the mining industry, and being opposed by every Republican statewide office holder, I-137 passed by a 52%-48% margin. It was then attacked in the 1999 Legislature. But the measure withstood the onslaught. It has been attacked every session since, but because of the effective lobbying efforts of MEIC and other groups, it remains intact to this day.

There was, of course, an attempt by the mining industry to repeal I-137. Initiative 147 was put on the ballot in 2004. We crushed that effort by a vote of 58% to 42%. 🌱

**MEIC** - a nonprofit environmental advocate

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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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## **CHANGE SERVICE REQUESTED**

### **Save the Date! September 15th!**

Mark your calendars. MEIC's Rendezvous will occur on the evening of September 15th. It will be a chance for you to help us celebrate the successes you have made possible, and for you to stay informed on the environmental challenges ahead.

We'll be at The Public House in Missoula for an evening of food, drinks, insider information, and fun!



*In the meantime, we hope you're getting out on the water and into the wilderness, and that you're enjoying everything Montana summer has to offer!*