

Down to Earth

NEWS FROM THE MONTANA ENVIRONMENTAL INFORMATION CENTER



Victory Among Changes

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Cover: MEIC's
Conservationist
of the Year
Ellen Pfister.

2021 Montana Legislature: Buckle Up, It's Going to Be Ugly

by Anne Hedges

Once again, Montana's elections have caused an acute turn to the far right end of the political spectrum. Many of us are justifiably worried about the plight of everyday Montanans, about the natural environment, and about our future with a conservative Republican legislature and a conservative Republican governor. The type of gubernatorial vetoes we appreciated from Governors Steve Bullock and Brian Schweitzer will be very hard to come by.

There are many parallels to the 1990s, when the Republican-controlled legislature and governor weakened water protections, mining laws, the

laws went too far, or by defeating bills that even conservatives couldn't stomach, such as putting polluting industries in charge of enforcing environmental laws. We even had a few wins, such as convincing the legislature to authorize net-metering (aka rooftop solar). But things have changed.

In the 1990s we were just learning about climate change. Today we know the profound impact it is having in Montana and around the world. We also know that legislators will propose bills to foul our water, destroy our climate, pollute our air, gouge our wallets with expensive fossil fuel projects, and put corporations in charge of our future. In short, it's going to be a long four months for MEIC's lobbyists.

Fortunately, we have three things going for us.

First, President-elect Biden. Biden has detailed his top four priorities, one of which is tackling the climate crisis. No president has made climate change a top priority right at the start of his term. Even Pres. Obama did little on it until his second term. We now have a president who has not only prioritized increasing investments and deployment of clean energy and removing fossil fuels from the country's energy mix, but is also assigning a priority to workforce transition. While there may not be a willing Senate to help Biden achieve his agenda, as we've learned under Trump the president has broad authority to implement policies without Congressional approval. The seriousness

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Montana State
Legislature in
session.



Montana Environmental Policy Act, clean air safeguards, and much more. Sometimes we were able to successfully fight back by going to the courts when

Major Victory for Clean Water and Wilderness

by Derf Johnson

Last month, in a victory for clean water and wild country, the Montana Supreme Court threw out a key permit for the proposed Montanore silver-copper mine in the Cabinet Mountain Wilderness. The permit would have allowed the mining company to proceed with polluting wilderness streams. This victory is a significant setback for the proposed mine which, if permitted, would bore beneath the Cabinet Mountains Wilderness and pollute multiple streams designated as “high quality” waters under Montana law with heavy metals and sediment – pollutants harmful or toxic to aquatic life. In issuing its order, the Court voided the permit, noting that “DEQ acted arbitrarily, capriciously, and unlawfully” in actually issuing the discharge permit.

The remote Cabinet Wilderness and adjacent National Forest lands are an exceedingly unique region of Montana, in that they receive a relatively large amount of precipitation. In certain parts, this creates a dense canopy of hemlocks and Western red cedars that choke out much of the undergrowth but allow for mosses and ferns to blanket the ground. The Cabinets are also a refuge for endangered bull trout and home to an isolated, small population of grizzly bears. Permitting the mine would almost certainly be a death sentence for these vulnerable species.

Specifically, the Court ruled that Idaho-headquartered Hecla Mining

Co. cannot rely on antiquated pollution standards in order to degrade publicly owned streams. While Hecla claims the mine would use state-of-the-art technology, it based its assumptions on an expired water pollution authorization issued to a different company in the 1990s – in order to evade modern pollution standards that protect our cleanest waters. The Supreme Court found that strategy to be illegal and invalidated the mine’s pollution permit.

Writing for the majority, Justice Ingrid Gustafson also noted that the justices on the court “remain mindful of the fact that Montanans have a constitutional right to a clean and healthful environment.”

MEIC has been involved in this fight since the mid-1980s, and we will continue opposing this proposal until the Cabinet Mountains are permanently protected from ill-conceived hardrock mining projects. MEIC was joined in the litigation by Save Our Cabinets and Earthworks, and skillfully represented by Katherine O’Brien of Earthjustice. 🌿

Victory!

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



A Victory for Montana Consumers at Colstrip

by Anne Hedges

Victory!

In 1985, the original Macintosh computer became available. At the time, it was touted as a revolutionary piece of electronic machinery, sporting a 7.8 MHz processor that was connected to 128 KB of RAM and a 400 KB, single-sided 3 1/2-inch floppy disk drive. Fast forward to today, and the capabilities and features of that old Mac computer are laughable when compared to the basic version of the iPhone in your pocket.

1985 was also the year that Colstrip Unit 4 began producing electricity. At the time, it was also a revolutionary piece of machinery – an engineering marvel that powered homes and industries from Montana to the Pacific Coast. For the past 35 years that the plant has been in operation, it's managed to produce electricity on a more-or-less consistent basis, with some notable

outages. In recent years, however, the plant has become increasingly unreliable, outdated, expensive, and inefficient. Case in point: recently the Montana Public Service Commission (PSC), the elected body that oversees how much NorthWestern Energy is allowed to charge its customers, denied NorthWestern's request to bill its customers more for the extra costs of a breakdown at Colstrip. The clear conclusion is that since NorthWestern is operating machinery from 1985 in order to serve electricity needs today, it's costing customers dearly, and NorthWestern has no intention of changing course until 2042 or later.

Back in June 2018, the Colstrip plant violated the federal law regulating mercury and air toxics emissions. The plant failed a quarterly emissions test and had to shut down until the problem was identified and resolved. It took almost three months before the plant was finally able to once again produce electricity. However, during this time customers didn't stop using electricity and they still had to pay for the depreciation and operating costs of the plant even though it was generating no electricity. During the Summer plant outage, the utility was forced to purchase on the open market replacement electricity, at a time of year when electricity is in high demand and therefore very expensive to purchase. In effect, Montana customers were paying for an inoperable coal plant, as well as the costs of replacement power – almost \$6 million extra.

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Colstrip Power Plant.



Montana Supreme Court Rules in Favor of Solar Energy

by Conor Ploeger

The Montana Supreme Court issued a decision that is a huge win for solar energy in Montana. MEIC had challenged the Montana Public Service Commission (PSC) decision to help NorthWestern avoid its obligation to buy clean energy from renewable energy developers. The Supreme Court saw through that smokescreen and ruled that the PSC acted illegally when it worked with NorthWestern to prevent solar energy development in Montana.

In the late 1970s, Congress enacted the Public Utility Regulatory Policies Act (PURPA), requiring monopolistic utility companies, such as NorthWestern, to purchase electricity from independent renewable energy facilities at particular rates and contract terms that increased the viability of these projects. PURPA delegates the responsibility for implementing the Act to state utility commissions, such as the PSC.

In 2016, the PSC dealt a death blow to large-scale solar energy projects in Montana. At NorthWestern's urging, the PSC dramatically decreased the rates NorthWestern was required to pay independent solar energy producers for their electricity. It also reduced the average contract term of these power purchase agreement from 25 to 15 years. These proposals made it close to impossible for solar developers to obtain financing for their projects. In fact, no such projects have been built since the PSC issued its decision.

The PSC made its position very clear. It did not like these solar energy projects and wanted to avoid requiring NorthWestern to follow the law and sign contracts for their electricity. During the meeting in which the PSC made its decision, MEIC's Brian Fadie overheard a PSC commissioner admit that adopting NorthWestern's request to slash solar projects' compensation rates and contract terms would effectively quash solar development in Montana. The PSC is required to encourage clean energy development under PURPA, not do everything in its power to prevent such development. MEIC, represented by Jenny Harbine of Earthjustice, took the PSC to court.

After MEIC won handily in district court, the PSC and NorthWestern appealed to the Montana Supreme Court. In late August, the Montana Supreme Court ruled that the PSC had failed to follow the law and encourage renewable development in Montana. It found that the PSC arbitrarily allowed NorthWestern to reduce rates for renewable projects. According to the Court: "NorthWestern's frequently uttered trope that the requirements of [federal law] and thus approval of solar sources of



Reed Point solar installation. Photo by Jeff Fox.

Victory!

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Implications of NorthWestern's Failed Bid to Buy More of Colstrip

by Anne Hedges

Now it's time to be honest about plant's future.

Question #1. What is the number regarding the Colstrip plant that politicians don't want you to know? It's \$1.3 billion (plus another \$108 million a year). That's the cost that President Trump's Department of Energy (DOE) calculated for installing and operating a carbon capture and

DOE wanted to keep a number that large a secret.

Question #2. What is the number that NorthWestern Energy doesn't want you to know? It's 55%. That's the percentage of Colstrip owners who are needed to approve annual budgets for the plant. NorthWestern only owns 30% of Unit 4, one of the two remaining units at the plant. In late October, when Puget Sound Energy (another owner) backed out of the deal to sell its 25% share of Unit 4, NorthWestern's path to own a large enough share of the plant to force the approval of annual budgets evaporated. NorthWestern now has no viable path to increase its ownership to 55%. That means it cannot keep the plant operating beyond 2025, the date Washington has set for its utilities to be coal-free. Three of the five owners of Colstrip Unit 4 are in Washington. The other owner, Portland General Electric, recently released an analysis showing that a 2025 exit date reduces the costs and risks to its customers.

NorthWestern, on the other hand, wants to keep the plant operating to 2042 or beyond.

One of the primary risks of continued operation that is frequently cited by plant owners is the cost of the coal supply for the plant. Previously the plant's annual coal supply cost about \$150 million. But the coal supply agreement with the Rosebud mine – the plant's sole source of coal – was renegotiated in late 2019. It now requires coal cost increases that are

Emissions from Colstrip Power Plant. Photo by Colin Ruggiero.



storage system that would deal with only a small percentage of the carbon dioxide emissions from the Colstrip coal-fired power plant. DOE hid that number from the public for years, but after it failed to respond to MEIC's Freedom of Information Act request last year, we sued. DOE finally revealed the estimated cost figure in late October, thanks to the efforts of our attorney David K.W. Wilson. It's no surprise

both significant and escalating. But most importantly, the new coal contract expires at the end of 2025, the same time at which the Washington utility owners are required to stop selling coal-generated electricity.

Add to all of these increasing costs and risks the escalating upkeep costs for the plant because of its age (for example, the \$20 million cost to repair a superheater, which the owners tried to hide from their customers last year). Then there is the uncertainty about the future of Unit 3. It is likely to be permanently closed before 2025 because of all of these escalating costs and the fact that NorthWestern is not an owner. If Colstrip Unit 3 closes before Unit 4, the costs to operate Unit 4 will increase markedly, forcing higher costs and risks on the customers of the remaining owners (read: NorthWestern's customers).

All of this is bad news for the future of the Colstrip plant, even though it is good news for the climate and for the pocket books of customers.

Montana's politicians have known about the estimated cost of carbon capture and storage for years, even though DOE hid the numbers from the public. The plant owners understand the precarious nature of continuing to operate the plant, due to both the regulatory risks as well as to the increasing costs of operating an aging plant that is breaking down with increasing frequency.

It's widely known that NorthWestern wants to hold on to the plant so it can continue to force its customers to pay it the \$408 million that the Montana Public Service Commission in 2008 allowed NorthWestern to recover for its purchase of its share of the Colstrip

You Spoke, DEQ Listened! Excavation of Coal Ash Required

DEQ issued a decision on the final clean-up plan for the leaking coal ash ponds associated with the now-closed Colstrip Units 1 & 2. DEQ received well over 1,000 comments (over 600 from MEIC members) urging it to require the Colstrip owners to remove the coal ash that is sitting in the groundwater and store it in a safe, dry, properly lined location that is above the water table. On Tuesday, November 17th DEQ did exactly what all of you had urged – it adopted a plan that requires the plant owners to clean up the contamination in a manner that has become the standard across the nation. Unfortunately, this protective clean-up requirement can be appealed by Talen, the plant operator. The appeal timeframe allows the final clean-up decision not to be made until the Gianforte Administration is in office. With any luck the new governor will understand the need to follow federal clean-up requirements, to prevent perpetual water pollution, and to avoid unfunded clean-up costs in the decades to come.

plant (even though NorthWestern only paid \$187 million for that same small share of the plant a year before). The recovery period lasts until 2042. As long as the plant operates, NorthWestern can claim it is entitled to recover this hefty amount from its customers, regardless of the soaring operating costs to keep the plant running.

It's clear that NorthWestern is running out of options. The other

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Fight Over Copper Mine Near Smith River is Not Over

by Derf Johnson

This past Summer, people from across Montana and around the country fished for wild trout as the cool, clean waters of the Smith River flowed around them. They sat around campfires, sharing with friends and family stories



Floating and fishing on the Smith River.

of the good times gone by, while their kids played nearby, making wishes on stars. They sat under the shade of massive limestone cliffs, cooling off after a hike to the canyon rim, in the course of which they passed by Native American cultural sites and saw some of the most picturesque views in Montana.

They traveled to the Smith River valley for solitude, recreation, and relaxation. They spent money on guides, groceries, and gas, preparing for a vacation that many can only dream of. They came from all walks of life

with only one thing in common — their love for the Smith River. It's Montana's premier recreational float, winding north from White Sulfur Springs to just outside of Great Falls, flowing approximately 60 miles through a deep canyon devoid of any major development and replete with wildlife.

Many of these people were probably unaware of the existential threat lurking just upstream from them. An international mining conglomerate (Sandfire Resources) has made preliminary moves to develop an underground copper mine in an acidic ore body adjacent to and directly beneath the Smith's most important rainbow trout spawning tributary, Sheep Creek. If the courts allow the mine to go through, it will forever change the Smith River's water quality and everything that depends on it. So far, Sandfire has been limited to pre-mining activities such as road-building and tailings impoundment construction. But the prospect of the mine going into operation is deeply distressing to most anyone who's had an opportunity to float the river, or even dreams of doing so.

MEIC has taken this threat seriously right from the start because we know how mining in the past has damaged Montana's waterways and landscape. We've been present with our members at every public hearing and event involving the mine, submitted numerous technical reports to different agencies in order to influence the permitting process, held rallies to get

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Montana DEQ Takes its Ball and Goes Home, Refuses to Recognize Climate Change

by Derf Johnson

Imagine a truly wild scenario in which an environmental protection agency, an entity tasked with assuring that our air and water are clean and the enforcement of our constitutional right to a clean and healthful environment, is responsible for evaluating a massive coal mine expansion and subsequently recommends proceeding with the project. While this alone is objectionable, further imagine that this agency not only fails to, but refuses to, evaluate the greenhouse gas pollution and climate change impacts associated with this massive expansion.

Unfortunately, one doesn't even need to use one's imagination to drum up this hypothetical scenario that should, quite plainly, not occur in the year 2020. But here in the Big Sky State, the Montana Department of Environmental Quality (DEQ) has done just this by recommending that the Rosebud coal strip mine receive a permit for a massive expansion (the largest expansion in modern memory) to feed the Colstrip coal-fired power plant and in doing so did not, in any way, shape, or form, evaluate the climate impacts from the greenhouse gases coal will cause.

The Environmental Impact Statement (EIS) for what's known as the Area B-AM 5 expansion states that, if permitted, the expansion would result in the Rosebud Mine accessing an additional 147 million tons of coal,

which when burned will pollute our atmosphere with close to 300 million tons of CO₂. By way of reference, 300 million tons of emissions is roughly equivalent to the pollution resulting from 64 million passenger vehicles being driven for one year. The expansion will also produce enough coal to run Units 3 & 4 of the Colstrip

Power Complex, the dirtiest coal-fired power plant West of the Mississippi, until 2045. Combined with coal from another recently approved expansion of the mine, known as Area F, the Colstrip plant could operate full steam for another 36 years, to 2056!

Never mind that there are a host of other environmental problems associated with this mine expansion, including continued dewatering and contamination of sensitive prairie streams, the release of toxic air pollution, and the displacement of wildlife. These reasons alone should be enough for DEQ to deny the mine an expansion permit, by selecting the "no-action" alternative in the EIS. But DEQ's decision is hardly surprising; it has never denied a modern coal mine permit. It's exceedingly likely that DEQ will issue a final EIS and a permit approving the project, all without



Coal trains.

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Jim Jensen – a Great Friend, Comrade-in-Arms, and Powerful Force for Environmental Good

by *George Ochenski*

In the beginning, there was darkness. For lo, Butte's Copper Kings polluted the land, water and air at will, and there was no one, not even the president of the United States, to stop their horrible destruction of Montana's once-pristine environment. But in 1972, after a century of environmental destruction, the good people of Montana rose up, threw off the Copper Collar and adopted a new Constitution that promised never again would corporate polluters run roughshod over the beloved Big Sky State.

Unique in the world at the time, the Montana Constitution guarantees all Montanans "the right to a clean and healthful environment" – a foundation upon which half a century

of environmentalism was born, bred, fought, and continues to fight to keep that constitutional promise intact. Leading that fight since then has been and continues to be the Montana Environmental Information Center and Jim Jensen, who has been at the helm of the organization for the last 35 years – exactly half his life – and is now taking his much-deserved retirement.

I was hired as MEIC's lobbyist late in 1984 and hit the ground running for the 1985 legislative session, but the organization consisted of Don Reed, who was leaving after the session, a part-time bookkeeper, and me. Nonetheless, we had a productive session, passing such milestone legislation as Montana's Mini-Superfund Act – which is still on the books and still cleaning up the hundreds of Montana's toxic sites that will not qualify for the national Superfund priorities list.

Jensen was at the session, too, but as a lobbyist for the magistrates. We became good friends and, having been a legislator, he was a fount of wisdom on the complex process of lawmaking. That we both thoroughly enjoyed Bombay Sapphire gin only added to our growing camaraderie.

At session's end MEIC's vaunted environmental prowess was down to one staffer – me. Jim took the Executive Director's job in mid-1985, but there wasn't much to "direct" – let alone any executives. Jensen hired the brilliant

Jim Jensen,
Richard Steffel
and Ron
Erickson.



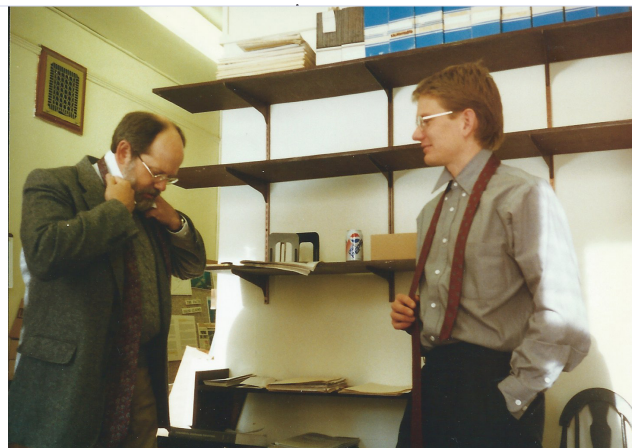
Adam McLane to keep MEIC between the white lines with the non-profit rules and reporting – a job he has done since then and earned the well-deserved reputation as a non-profit guru. He also did a great job editing the newsletters, being a man of many skills.

And so MEIC was basically the Three Musketeers – Jensen, McLane, and Ochenski – and we not only had fun, we worked hard and won many, many battles for Montana's environment. Meanwhile, slowly but surely, Jim went to work on rebuilding the organization while we juggled the plethora of never-ending environmental crises.

By 1987 MEIC had two full-time lobbyists as well as Jensen at the Capitol every day and we handled more than a hundred bills in the session. We fought tooth and nail against Democratic Governor Ted Schwinden's successful effort in the 1985 session to cut the coal severance tax in half. But we beat him on his bill to divert the interest from the \$100 million Resource Indemnity Trust Fund to

general purposes of government instead of reclamation of land damaged by extractive industries. Likewise we illuminated Schwinden's untenable position of allowing Montana's blue ribbon trout streams to go dry during the drought of 1985 – forcing him to appoint a Drought Task Force to analyze water supply data, crop damage,

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Jim Jensen and Pat Judge tie their ties, 1997.



George Ochenski (left) and Jim Jensen (right) orate.



Ellen Pfister Given MEIC's Conservationist of the Year Award

by Anne Hedges

If it has to do with the regulation of coal mining in Montana during the last 50 years, you can guarantee that Ellen Pfister had her hand in it. MEIC is proud to present Ellen Pfister with MEIC's 2020 Conservationist of the Year Award. She is a marvel. A lawyer by training and a rancher by occupation, she helped start the Northern Plains Resource Council (NPRC) in 1972 and she's been dogging coal mine regulations and regulators ever since.

She worked hard to secure the passage of the federal Surface Mine Control and Reclamation Act, the Montana Surface and Underground Mine Reclamation Act, and the Major Facility Siting Act. Her work resulted in those laws being better than other environmental laws because of the

requirement for meaningful public involvement. She monitored the Montana legislature and made sure bills complied with the law. Whenever you saw the dynamic duo of Ellen and the late Jeanne Charter in the halls of the Capitol, you knew the legislature was trying to weaken mining laws that the two of them helped pass, and that some committee was about to get an earful. And when the legislature weakened the mining law below allowable limits, Ellen successfully pressured the federal Office of Surface Mining to overrule it. Ellen's ranch happened to be located above Signal Peak's coal mine north of Billings, the only underground coal mine in Montana. She's been an incredible asset to MEIC as we work to force the State and the mine owner to protect area ranchers, wildlife, and the water quality and quantity in the area.

Her tenacity, overwhelming work ethic, and incredible knowledge about coal mining, has benefited not just NPRC for 50 years, but MEIC staff, lawyers across the country, and everyone who enjoys Montana's waters, landscapes, agriculture, and climate. As Wally McRae said recently: "Ellen has stamped her foot and said no for half a century and with that has left her mark on Montana." Montana is a better place because of Ellen's undaunted commitment. 🌱

Ellen Pfister.



Kim Wilson Earns MEIC's Len & Sandy Sargent Award

by Anne Hedges

After two terms of service on MEIC's board of directors – 30 years apart – the Board has given Kim Wilson MEIC's Len & Sandy Sargent Award for his exceptional commitment to the organization. Len and Sandy Sargent were the godparents of MEIC. They generously funded MEIC at its inception and their foundation continues to do so today.

Kim first served on MEIC's board from 1986 – 1990. He has generously helped the organization on legislative and legal matters for decades and has also served as MEIC's attorney on a broad swath of issues including hardrock mining, air quality, land use,

and enforcement of open government laws. Kim returned to the board in 2014 and is now term-limited. His decades-long strong legal and strategic guidance has been appreciated but most importantly he has been instrumental in helping MEIC realize a smooth transition from 35 years of one executive director to the organization's next chapter. His thoughtfulness, kindness, and commitment to MEIC and the environment are unparalleled. 🌿



Kim Wilson.

Smith River (continued from page 8)

the attention of the decision makers and the media, and in the process created a committed movement of people, from all walks of life and backgrounds, who would like to protect the Smith River forever.

Now, we and our allies are in the next round of the same fight. Earlier this year, the Montana Department of Environmental Quality issued a permit for the mine. We immediately took the agency to court because of some very serious flaws in the mining permit that directly threaten the natural wonders of the Smith River. We've also intervened in Sandfire's attempt to acquire water rights for the project from the Montana

Department of Natural Resources and Conservation. Luckily, Sandfire cannot actually start mining until it acquires these water rights and until it posts a reclamation bond. These processes will now play out over the next several months and even years, during which time we will continue our fierce advocacy on behalf of the river.

Places such as the Smith River are rare and dwindling. If the coronavirus pandemic has shown us anything this past Summer, it is that we desperately need places such as the Smith River to nourish our souls and give us hope that better days lie ahead. 🌿

Jim Jensen *(continued from page 11)*

and methods to mitigate the impacts.

It was a break from the past for MEIC in many ways since at the time environmentalists were considered part and parcel of the Democrat Party. But it paid off in lifting MEIC's credibility as even-handed and non-partisan, a significant advantage when negotiating with Republican legislators.

Nor was Schwinden the only Democrat with whom we bumped heads. Max Baucus, Montana's U.S. Senator and a Democrat came up with the whacky idea to amend the Superfund law to exempt mining waste from the program. Spewing baloney he undoubtedly got from a mining lobbyist in D.C., Baucus claimed mining waste was "high volume, low toxicity" and shouldn't be covered by Superfund.

Baucus was wrong, of course, and we went to work to alert the attorneys general of several Western states with significant mining waste problems to Max's amendment. Long story short, we beat Baucus – and it meant that the Upper Clark Fork Superfund Complex, the nation's largest site, would continue to receive remediation – and continues to do so to this day.

That did not endear the Jensen-Ochenski team to a very angry Max Baucus and the next thing we knew this U.S. Senator was demanding a private meeting with MEIC's board to get both Jensen and me fired. Max got his meeting, but neither Jensen nor I got fired since, after all, we were just doing the job MEIC's members financially supported and expected us to do.

In the 1989 session I got to work with Jim once again as MEIC was

part of the newly-formed Alliance for Montana Water along with Trout Unlimited and Audubon. Together with Stan Bradshaw lobbying for TU, we passed the highly contentious water leasing for instream flows bill – a first in the West that allowed willing water rights owners to lease their water to Fish, Wildlife and Parks to keep vital streams flowing. The law was amended in '91 to allow leasing water to anyone, not just the state agency, and continues to provide instream flows on the crucial spawning streams that were often completely dewatered for irrigation.

While that marked the end of my actual staff/lobbying employment with MEIC, both Jensen and I continued to take the fight to the polluters by developing and passing measures to protect, restore, and enhance Montana's environment. In late 1998 I got a phone call from Jim asking "what do you think would happen if we ran an initiative to ban cyanide heap leach mining in Montana?" I replied without hesitation "you'll win." Seemed a no brainer that people wouldn't want cyanide in their water and the state's dismal record of leaking cyanide mines only bolstered the effort.

Well, I was right about one thing – I-137 passed and indelibly marked a historic high-point in the record of both MEIC and Jim Jensen. But it did not pass without a very serious fight. At the time a new cyanide heap-leach mine was proposed on the banks of Montana's iconic Blackfoot River – the very same river in Norman McLean's novel "A River Runs Through It" which was widely popularized by Robert Redford's

movie of the same name.

Montanans – and indeed people from all over the nation – said “NO” to that mine and any other new cyanide heap leach mines with their voices, letters, dollars and votes. And although the 1999 legislature attempted to water down the initiative, they failed and there haven’t been any new leaking cyanide mines for over 20 years. Unfortunately, those developed before the ban are still leaking and will require treatment in perpetuity.

Never one to rest on his laurels – and there being no shortage of environmental crises these days – Jensen turned his and MEIC’s attention and efforts to the rapidly increasing problem of climate change brought on by the burning of fossil fuels. In Montana, that particularly meant the Colstrip coal-fired power plants, one of the largest greenhouse gas emitters in the nation.

Again, by taking the fight to the polluters, MEIC and Jim Jensen went to court and won again. Colstrip’s Units 1 and 2 have been shut down and Units 3 and 4 are expected to follow. As luck would have it, the environmental curse of fracking, with its radioactive wastes and groundwater pollution had the side benefit of making natural gas so cheap that burning coal became uneconomical as utilities turned to natural gas generators that could be fired up with the flip of a switch, required far less expensive pollution control than coal, and did not leave behind the leaking coal ash ponds that will plague Colstrip into the foreseeable future.

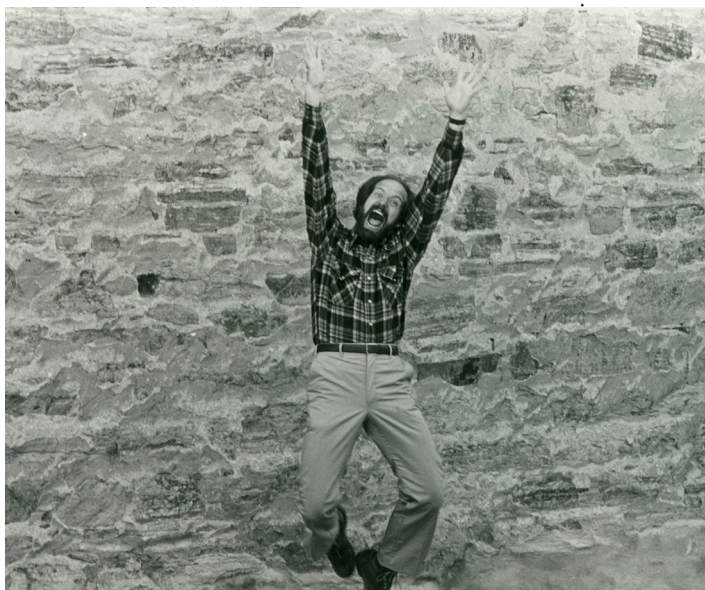
And sure enough, MEIC has again taken up the battle to force the full cleanup of those massively polluting ponds, which is expected to cost hundreds of millions of dollars. Of

course the real solution to energy is renewable, sustainable sources – and MEIC is once again leading Montana’s growing transition to wind and solar power.

Come year’s end, Jim Jensen will walk out of his office as MEIC’s Executive Director for the last time – and he can do so with his head held high for an outstanding record of accomplishment. Jensen will be gone, but MEIC will live on – and will need the continuing support that has made such a difference in Montana’s environmental history.

Jensen leaves MEIC strong and well-funded, its capable staff continuing the unending work of meeting the challenges of environmental destruction still far too prevalent in our industrialized society. Those challenges will likely grow given the outcome of the recent Republican sweep of Montana’s state elections – meaning the best way we can honor Jim Jensen and his work is to keep MEIC strong and fighting for Montana’s constitutional guarantee of a “clean and healthful” environment for the present and those generations yet to come. 🌱

Jim Jensen.



2021 Legislature *(continued from page 2)*

of Biden's commitment is evidenced by more than just words. The transition team for the Environmental Protection

Agency, for example, is being led by a top-notch attorney from Earthjustice, a nonprofit environmental law firm that has

successfully represented hundreds of organizations, including MEIC, in seeking to move from fossil fuels to clean energy. That is very good news.

Second, Montana is not a political island. The State must follow federal laws, whether its leaders agree with them or not. The Montana legislature does not have authority over federal laws such as the Clean Air Act, the Clean Water Act, the Surface Mine Control and Reclamation Act, and many other bedrock environmental laws. States often implement these federal laws, but are not allowed to weaken them. MEIC can use the courts to prevent the Montana legislature or State agencies from modifying these environmental

laws beyond allowable limits. We know how to do that, and we will.

Third and finally, we have you, and together we make a great team. MEIC will be even more challenged to engage in the legislative session, than we have been in the past, since it is unsafe to be in the Capitol during a pandemic. We are currently developing strategies to compensate for this serious limitation. One of our strategies is to make sure that you and other Montanans have the information you need to contact your legislators. MEIC will again have a state-of-the art bill tracking system available for your use on website. We will provide you with webinars, newsletters, action alerts, and fact sheets to help you understand what is threatened and how you can help. We will be here to answer your questions and help you engage. Now more than ever, we will need your help and we will do everything we can to make it easy for you, your family, and your friends to have a voice.

Stay tuned. It's going to get rocky. But the stakes have never been higher. 🌱

MEIC will again have a state-of-the-art bill tracking system available for your use on its website.

Solar Victory *(continued from page 5)*

energy will wildly increase the rates charged to consumers finds little basis of support in this record."

As virtually every utility across the nation has begun to invest in clean, renewable energy and incorporate it into their business model, NorthWestern has remained steadfast in its commitment to rely on dirty, climate killing, cancer-causing electricity generated by

burning coal and fracked gas.

It took years of effort to achieve this victory and MEIC, Earthjustice, and Vote Solar will remain vigilant as the PSC once again establishes rates and contract terms for renewable energy developers who want to sell clean energy to NorthWestern, a utility still stuck in the 20th century. 🌱

Victory at Colstrip *(continued from page 4)*

NorthWestern tacked these costs onto its customers' (read you and me) power bills in October 2019 but it was required to demonstrate that these costs were prudently incurred. It requested the PSC to authorize these charges. MEIC, represented by its in-house attorney, Derf Johnson, and the Montana Consumer Counsel intervened, because we "smelled a rat." Why should customers pay extra to prop up an old coal plant that spews unsafe levels of toxic pollution into the air when there are more affordable and cleaner options to produce electricity?

In the ensuing discovery and expert testimony that is part of the PSC process, we learned that NorthWestern knew about the problems associated with the elevated toxic air pollution levels as early as late February 2018, four months before the failed emissions test. But NorthWestern chose to turn a blind eye to the problem, did not conduct any investigation or research into the problem, and just hoped that the increased toxic pollution issue would go away and that the quarterly test in June would be in compliance with federal regulations.

Thankfully, the PSC saw through NorthWestern's excuses and found that NorthWestern had acted imprudently, did not diligently manage the plant to avoid an outage, and was not authorized to charge its customers millions of dollars. Customers will now receive a refund of the charges that NorthWestern wrongfully tacked onto their bills.

But the real question is why on earth NorthWestern wants to keep using an

original Macintosh in a world of ever-advancing iPhones. Our electricity grid is becoming cleaner, faster, cheaper, more reliable, and more responsive. The Colstrip plant simply can't compete in this rapidly advancing and increasingly technical energy market. It's time NorthWestern moved into the 21st Century. 🌱

2014 Pro-Solar Rally.



Remembering Jack Tuholske

by *Conor Ploeger*

Jack Tuholske woke up at 4:30 every morning. Very few people are that dedicated, but Jack was. Jack believed that hard work and passion can make a difference, and his morning routine exemplified this fact. He was a very kind, humble, and inspiring environmentalist. He spent his career representing MEIC and many other small Montana organizations and individuals who cared deeply about and wanted to protect this beautiful state and its resources. These are a few of the many reasons why MEIC's staff was saddened when we learned of his recent passing.

He spent his youth getting in trouble (even attempting but, ultimately, failing to hitchhike to Woodstock), and later became one of Montana's most forward-thinking environmentalists. As an environmental lawyer in the state, there are over 50 reported court decisions to his credit, but far more legal cases and

proposed legislation passed his desk for his invaluable input. Especially notable was his work regarding bull trout. His efforts led to the successful listing of the bull trout under the federal Endangered Species Act. The listing protected more than 19,000 miles of streams and rivers across Montana, Idaho, Washington, and Oregon. Jack's work was instrumental in giving Montanans a voice against powerful polluters, and in turn, he enriched the lives of many and protected this place we call home.

But I will always remember Jack as Professor Tuholske. Professor Tuholske taught during the Spring semester of my Civil Procedure course while I attended Vermont Law School. Professor Tuholske brought a sense of warmth to the classroom that few professors are able to do. Whether he was breaking down complicated legal theory in a manner anyone could understand, or quoting Austin Powers, Professor Tuholske exemplified how to be a humble, yet successful, environmental attorney. Professor Tuholske also taught me an invaluable lesson I will never forget: "Confused? Pick up the damn phone!"

Jack passed away this past October after a 17-month struggle with hepatocellular carcinoma (liver cancer). MEIC would like to send its deepest condolences to Jack's family during this time. All of Montana feels his loss.

If you would like to honor Jack, please feel free to send contributions to the Jack Tuholske Endowed Scholarship in Environmental Law at the Alexander Blewitt III School of Law, under the care of the University of Montana Foundation, P.O. Box 7159, Missoula, MT 59807. 🌿

Jack Tuholske.



Meet Conor Ploeger

Hello! It is wonderful to meet everyone.

My name is Conor, and I feel privileged to serve as MEIC's new Clean Energy Program Director. I know I have some big shoes to fill, but I am eager to fight the good fight to protect Montana's environment. If you want to know more about me, well, I grew up in Reno, NV. I lived there for twenty-four years and came to love the community. Whether it was canvassing, attending local shows at the Holland Project, or substitute teaching, I learned to appreciate living in a small city with a big heart.



Welcome to MEIC, Conor!

However, I always felt like there was more that I could do. That is why I chose to attend Vermont Law School in 2017 following the 2016 presidential election. All I knew before I started law school is that I wanted to study environmental law so that I could do my part to fight climate change. And Vermont Law School's reputation with the environmental community ultimately led to my decision to move across the country to attend law school in the tiny village of South Royalton, VT, and I could not be happier with my decision. While living in Vermont I was fortunate to study with noted environmentalists to better understand how law and policy shape environmental actions. I also had the opportunity to live in Washington, DC to work with both the Potomac Riverkeeper Network and the National Oceanic and Atmospheric Administration while attending VLS.

But now I am honored and humbled to serve as the Clean Energy Program Director at MEIC. We all must do our part to mitigate climate change this decade, and I hope to make you proud while I advocate for clean, renewable energy for Montana.

Two Ways to Give this Holiday Season!

As you have read in this issue of *Down to Earth*, the threats to Montana's environment are immense. MEIC needs your help and, luckily, we have donation options for every budget:

Respond to our Year-End Appeal!

Your tax-deductible donation (in any amount) will help celebrate Jim Jensen's retirement and fund MEIC's year-round work for clean air, water, and climate action! With your help, MEIC will prevent dirty coal, fracked gas, and pollution-generating hardrock mine development. At the same time, we'll be pushing for policies that give clean, renewable energy a fighting chance.



Buy a Raffle Ticket!

As MEIC looks ahead to the 2021 Legislative Session, we're facing an uphill battle, but we've been there before. We've lobbied for clean air, water, and land for Montanans in good times and bad, and we're gearing up to do so again. Help MEIC fight the good fight by buying a Montana Futures Raffle ticket today. Your purchase will directly fund our work speaking up for Montana's environment at the legislature. (Raffle ticket purchases are not tax-deductible since the funds are used for lobbying).

From all of us at MEIC,
thank you for your
support!

Enjoy the holidays and
please stay safe and
healthy! The future of
Montana's environment
depends on YOU!



NWE's Failed Bid *(continued from page 7)*

owners can't sell. NorthWestern's customers are not wild about enriching the company's shareholders while they see their electricity bills increase. tight NorthWestern doesn't own a controlling interest in the plant and the other owners, like NorthWestern, are being denied customer reimbursement for these increasing costs (see article on Colstrip outage costs on page 4).

What comes next? The owners need to publicly establish a closure date. Montana needs to plan for that closure. The shareholders of each owner need to help with nearby Tribal impacts and with workforce retraining. Two of the owners, Puget Sound Energy and Avista, have committed \$10 million and \$3 million, respectively, for those purposes. NorthWestern has committed nothing.

Almost more important, Montana needs to work with the out-of-state

owners who have recently reiterated their interest in Montana wind projects and pumped hydro. Montana wind energy would allow them to diversify their wind portfolios and to receive wind

power when their electricity needs are the greatest.

Montana would be wise to work with the Colstrip owners to

figure out a transition plan for the workers as well as for helping the out-of-state owners replace the lost electricity with Montana-based renewable electricity sources. Doing so would benefit Montana's workforce, its local governments, and the landowners in the area. 🌱

It's clear that NorthWestern is running out of options. The other owners can't sell. NorthWestern's customers are not wild about enriching the company's shareholders while they see their electricity bills increase.

DEQ and Rosebud Expansion *(continued from page 9)*

so much as a single sentence on climate impacts.

It's truly astonishing that in a time when our rivers run dry, our moisture levels are changing, our forests succumb to intense wildfires, and our economic prosperity and quality of life are being diminished by greenhouse gas pollution, DEQ abjectly fails at its job. Taking a look at, let alone actually doing something about, climate change is

literally the least it could have done. DEQ's failures here emphasize how critical it is for MEIC, with the help of its members, to continue "watchdogging" the government. Doing so is essential because we simply cannot rely upon Montana's government agencies, with the tidal shift in the recent election, to do the right thing. (Also see article on the legislature on page 2). 🌱

Thoughts from the Executive Director

by Jim Jensen

The future of MEIC is looking very bright to me as I end my 35-year-long career here on December 31st.



The Board of Directors has intelligently decided on the new leadership at MEIC – which will be announced at MEIC’s ZOOM holiday party on December 10. Of importance to me was that the Board required a high command of humor – a hallmark of our office is joy and laughter – in its decision.

Being MEIC’s Executive Director has been a career of love for me. I loved raising hell for you, the members, and loved working with the staff, starting with the irrepressible George Ochenski, to achieve so many, many successes. And, an organization could not have a finer staff than the one we have now.

It is no easy task to defend clean air and water against the destructive avarice of corporate despoilers, whose only motivation is profit. Never kid yourself that they care about anything else, regardless of their protestations. And forcing government agencies to enforce laws is a never-ending challenge – and MEIC’S duty. As Thomas Jefferson admonished us: “eternal vigilance is the price of liberty.” And that is what your ongoing dedication to MEIC has made possible.

I harbor a special disgust for governors and their weak-kneed lackeys who hypocritically stress how much they care about clean air and water when

running for office, and are too cowardly to honor those words after being elected. It is telling to remember that no mine permit has ever been denied by either party in Montana. Not even for a mine as speculative and inevitably polluting as the one currently proposed for the headwaters of the Smith River. This is why we must sue governments in order to have the laws honored.

On that note I want to especially thank the lawyers who have represented MEIC so effectively over the years. Here is a salute to Roger Sullivan, Karl Englund, Tom France, Kim Wilson, Jim Goetz, Brenda Lindlief-Hall, Susan Daggett, Abigail Dillen, Jenny Harbine, Katherine O’Brien, Tim Preso, Shiloh Hernandez, Laura King, Melissa Hornbein, Mike Meloy, Jennifer Hendricks, George Hays, and the late Jack Tuholske and Don Marble.

And, of course, I thank all the people who served on the MEIC Board of Directors during my tenure. It was not easy at times dealing with a sometimes cantankerous executive director, but when the chips were down they always had my and the staff’s backs.

And with a tear in my eye I want to specially thank Adam McLane and Anne Hedges for their dedication to this outfit. Adam has been here for 35 years and Anne for 27. Boy, have we had some great times together.

And thank you to my personal partners, whose love and support has enriched my life forever.

Finally, as Anne Hedges said after a few uncharacteristic moments of silence when I told her of my retirement: “Uh oh, Jensen unleashed?” 🐦

President's Column

by Kathy Juedeman

This holiday season I'm trying to take one step to simplify, as I do periodically. I share with you my priorities for the season – hold your people close, take action where you can, and embrace changes in a positive way.



In the holding people close category, I had a short note lately from my Mom's doctor, and at the close of the note was his signature, and a closing '#maskup'. Yep, so important to pay attention to the advice of our doctors. I've started periodic Zoom calls to stay connected with friends who live close, and have ended up also reconnecting with several friends who live in other states – such a good silver lining! Keeping our families and our community safe and strong makes it possible for us take action when MEIC

needs advocates and allies. We are in this for the long game.

Taking action – you knew I would say that this is important, right? Our experienced MEIC staff can give advice on this one. Shortly we will enter the new year and a new legislative session. Our MEIC staff will be sending opportunities to our doors (and our e-mails) to support and defend Montana's clean air and clean water, and renewable energy initiatives – pick several of these, and take those actions! Clean air and clean water – what makes you cherish these? I have awestruck memories of visiting the Bob Marshall Wilderness with my husband when we were both still in our 20's – we saw only one forest ranger and no other people the whole week, but so much glorious nature. Mountains, raging streams, wildlife, forests – what a revelation, and I have pictures of that trip in my memories. Find and hold a 'picture' that helps you know that MEIC's mission is important enough to take action. 🌿

MEIC – a nonprofit environmental advocate

Mailing Address:
P.O. Box 1184
Helena, MT 59624
(406) 443-2520
www.meic.org
meic@meic.org

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 . . ."

Goodbye to Old Friends, and Hello to New Ones!

MEIC's sincere gratitude goes to its retiring board members: Kim Wilson and John Rundquist of Helena, and Dustin Leftridge of Kalispell. Their service to MEIC has been crucial and they will be missed.

Happily, MEIC welcomes back Roger Sullivan, who rejoins our Board for another stint. And we're delighted to add several new members to the Board, each bringing expertise and enthusiasm to our community: Beth Taylor Wilson and Skye Borden, both of Missoula, and Diana Hammer of Helena.

Thank you to all the MEIC members who cast their votes in the election.



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Join us on Thursday, December 10th, at 7 PM for a lively conversation, award presentation, and sneak preview of who will lead MEIC starting on January 1, 2021.

Save the Date!



In this action-packed ZOOM call you can:

- Hear Jim Jensen's final swan song
- Celebrate Ellen Pfister as MEIC's 2020 Conservationist of the Year
- Learn about MEIC's new leadership in a post-Jim Jensen world.

There will be fun, laughs, honors, and insights. Maybe we can't have our usual Holiday Party but we can still "see" each other and celebrate. We will e-mail our members the information on how to participate in this meeting a week before the call.

Please contact Cari at 443-2520 to request the Zoom link if you are not on our email list but would like to participate.