DowntoEarth

NEWS FROM THE MONTANA ENVIRONMENTAL INFORMATION CENTER

"Unforgivable."

Montana DEQ's Refusal to Enforce the Bad Actor Law



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Tribes, Partner Organizations Sue DEQ Over "Bad Actor" Law

by Derf Johnson

ne of Gov. Gianforte's more brazen decisions in his first year in office, which will have broad ranging implications for Montana's land and people, is the dismissal of the "Bad Actor" enforcement action against Phillips S. Baker and Hecla Mining Co. Gov. Gianforte's decision to let Baker off "scot free," essentially allowing him to continue conducting mining activities in Montana, firmly establishes the Gianforte Administration's posture and governing style as a corporatocracy that is willing to bend or break the rules for those with money, power, and influence. Montana has been down this road before.

We've covered the Bad Actor controversy in previous issues of *Down to Earth*, and many Montanans are well aware of the tragic events in the Little Rocky Mountains (and other places in Montana) which led up to former Gov. Steve Bullock's Administration instigating an enforcement action against both Baker and Hecla.

To make a long story short, starting back in the 1980s, Pegasus Gold operated several mines in the state. In the late '90s, Pegasus declared bankruptcy and defaulted on its reclamation obligations for its Montana mines, including Zortman-Landusky and Beal Mountain. The Pegasus bankruptcy has since been characterized as an environmental "nightmare" in which Pegasus skipped out on conducting reclamation, forcing taxpayers to pay for reclamation and treatment of toxic mine tailings and water. To date, public expenditures for the reclamation of Pegasus' mining operations have amounted to at least \$77 million at Zortman-

Cover: A tour of the Landusky mine site in September 2021. Landusky alone, with no end in sight for the reclamation and water treatment to address the perpetual acid mine drainage.

Notably, at the time of Pegasus' bankruptcy, Baker held the position of Chief Financial Officer in the company. The damage at Zortman-Landusky is truly jawdropping and a disaster for the people who are most directly affected by living downstream: the Fort Belknap Indian Community.

Repercussions and political responses immediately followed Pegasus' bankruptcy. In 2001, the Republican-controlled Montana Legislature overwhelmingly passed (and then-Gov. Judy Martz signed) an update to the "Bad Actor" Law which prevented corporations — and their directors — that had defaulted on reclamation obligations at hardrock mines from receiving new operating permits. This type of law fundamentally recognizes that adequate and full reclamation of the land is the cost of doing business in Montana. Indeed, it's enshrined in our constitution, which states in Article IX, Section 2 that "all lands disturbed by the taking of natural resources shall be reclaimed." It's also part of the good manners that we are taught in grade school: "Clean up the mess you make before you get out another toy."

Baker is now the CEO of Hecla Mining, an Idaho-based corporation that is attempting to develop two mines on the flanks of the Cabinet Mountains Wilderness in northwest Montana. MEIC and a coalition of environmental and conservation organizations alerted the Bullock Administration to this serious violation of the Bad Actor law, and the Administration subsequently took action, as it should, through enforcement at Montana Department of Environmental Quality (DEQ), which predictably ended up in court. When the Gianforte Administration came to power, however, DEQ was directed to file a motion to dismiss its own legal action, abruptly announcing that it would no longer be pursuing enforcement of the Bad Actor law against Hecla or Baker. This decision was politically motivated and sets an extremely poor precedent for determining when and how laws should be enforced.

Unfortunately for Gov. Gianforte, the



enforcement of the Bad Actor law does not contain an exception for political expediency or for rich people who may be implicated. Its enforcement is a mandatory duty that DEQ is obligated to pursue. Due to Gov. Gianforte's abject failure in enforcing the clean water protections in our mining laws by dismissing his own department's action against Hecla and Baker, a coalition of Tribes and citizens groups stood up and pushed back. The Fort Belknap Indian Community, the Confederated Salish and Kootenai Tribes, the Ksanka Elders Advisory Committee, and several environmental and conservation organizations, including MEIC, filed a lawsuit on November 10 against DEQ and its director, because the agency is not enforcing the Bad Actor law.

The Montanore and Rock Creek Mines would actually tunnel underneath a federally designated Wilderness Area: the Cabinet Mountains Wilderness. This area is also a culturally significant place for the Kootenai people, many of whom are very concerned about the impacts that could occur should mining proceed.

"The Cabinet Mountains hold an important position in the relationship between the Ksanka people and all of creation," Vernon Finley, a member of the Ksanka Elders Advisory Committee and the Confederated Salish and Kootenai Tribes, recently stated in a press release. "The 'Bad Actor' law is the best way to hold people responsible for attempting to heal the wounds inflicted on nature. To simply free someone from their responsibility is

Stakeholders view the Zortman mine site in September 2021. Photos by Katy Spence, MEIC.

to allow them to do it again and is unforgivable."

Hecla's proposed mines will also mar the wilderness character of one of Montana's originally designated Wilderness Areas, which received that status with the passage of the Wilderness Act in 1964. The mines will also have major impacts on the fish and wildlife of the Cabinet Mountains Wilderness. Endangered bull trout and grizzly bears would undoubtedly suffer from the industrialization of the area through dewatering, sediment pollution, road building, traffic, and blasting. The clean water of the Cabinets Wilderness, which the U.S. Forest Service characterizes as "rated ... among the top 5% purest water in the lower 48 states," would also be placed in jeopardy from mining pollution.

Of course, Gov. Gianforte didn't have to bend to an out-of-state mining corporation and its wealthy executive. He could have done right for Montana, the Tribes, and the Cabinet Mountains by continuing to pursue the Bad Actor enforcement action. But that would have required him to have political courage. Instead, MEIC and its partners were forced to go to court. MEIC is proudly represented in the litigation by Earthjustice, and is joined as a plaintiff by the aforementioned tribes, Earthworks, Clark Fork Coalition, Rock Creek Alliance, Montana Conservation Voters, Montana Trout Unlimited, and Cabinet Resources Group.

Victory for Clean Water at the Rosebud Coal Mine

by Anne Hedges

A fter failing for a decade to convince the State of Montana to stop allowing water pollution from the Rosebud Mine, MEIC finally has had a critical victory, thanks to the extraordinary efforts of Shiloh Hernandez of the Western Environmental Law Center (WELC) who is now with Earthjustice. The Rosebud Mine is a massive coal strip mine in southeastern Montana that provides coal to the Colstrip power plant. The Montana Department of Environmental Quality (DEQ) has repeatedly allowed the mine to expand in recent years despite the contamination and dewatering that the mine has caused to area waters.

For years, DEQ and the mine owner, Westmoreland, fought vigorously to allow pollution from the mine to destroy area waters and successfully sought to ignore or redefine language in the law that is clearly intended to protect water from coal strip-mining operations.

The Rosebud Mine is located at or near various headwater creeks in a beautiful, but dry, area next to Colstrip. These creeks flow into the Yellowstone River. Headwater creeks are essential to the biological health of an area as well as to downstream agriculture producers who rely on clean water. Despite their importance, DEQ has allowed the mine to discharge high levels of salts into area waters, which can harm or destroy aquatic species and the life that relies on them, as well as impacting agricultural production.

Long before approving the permit expansion at issue, DEQ and Westmoreland ignored public concerns about the existing contamination and loss of area waters. After the permit was issued, WELC, on behalf of MEIC and Sierra Club, challenged it before the Board of Environmental Review (BER). BER appointed a hearings examiner to provide it with a recommendation on the challenge. That hearings examiner, who recently went to work for DEQ, ruled in DEQ and the mine's favor at every important juncture. Her rulings were so remarkably biased toward the mine and the agency that it would have been comical — if they weren't so counter to the law and so harmful to clean water. The BER accepted all of her recommendations.

Fortunately, courts care about the law even if DEQ, BER, and Westmoreland don't. In late October 2021, the court ruled in favor of clean water on every count. For each of the claims in our lawsuit against the State, the court found multiple reasons why we were correct.

It's been a long and sometimes painful slog, but it would not have been possible without the help of **MEIC** board member Steve Gilbert, and our attorneys Shiloh Hernandez, Derf Johnson, Roger Sullivan, and Walton Morris.

Westmoreland, DEQ, and now johnnycome-lately, Talen Montana, the Colstrip plant operator, are requesting the court to allow mining operations to continue in the disputed area despite the damage they are causing to area waters. We will be involved and keep you informed.

MEIC and its allies are also challenging another, even larger, Rosebud mine expansion, based upon very similar water quality issues. We hope the victory described here will be a wakeup call for DEQ and will be followed in future court decisions in favor of clean water.

Photo by Kestrel Aerial Photography.



Protecting Montana's natural environment since 1973.



Mine Expansion onto Federal Lands Poses Further Threat to Smith River

by Derf Johnson

ne of the biggest, if not <u>the</u> biggest, threat to the Smith River from the mine proposed by the Australian mining company Sandfire Resources is the potential for mine expansions beyond the boundaries of the current proposal. Should the current proposal be permitted, expansions are not only possible, but probable. If Sandfire manages to get the mine up and running, then expanding and even permitting new mines in the area becomes much easier.

In talking to investors outside Montana, Sandfire has made no bones about the potential for a mine expansion. Here in Montana, they've made every effort to characterize their proposal as a small, underground mine, with a limited surface impact that would operate over a short period of time. They've also made every effort to assert that their project is entirely located on private land.

But this is not true. Sandfire is not just talking about expansion but actively planning for it. The company has acquired over 500 mining claims on approximately 12,000 acres of federal lands utilizing the 1872 Mining Law (see pg. 8 for a full description of this antiquated law, which is still on the books). These claims give Sandfire the right to access federal lands, explore for minerals, and potentially mine them. Sandfire has also acquired a number of leases on adjacent private property that will allow for the company to explore, and potentially mine, more private lands.

In total, Sandfire has acquired thousands of acres of mineral leases and mining claims, stretching from their proposed mine site to within a stone's throw of the Smith River. The possible expansion area straddles several more tributaries of the Smith River beyond Sheep Creek. If fully developed, the mining operation would turn a huge swath of the Little Belt Mountains into an industrialized zone. Such development would undoubtedly have major implications for the water, land, and wildlife of the Smith River watershed. However, the environmental impact assessment that has already been issued focused narrowly on the proposed mine and did not consider any potential expansions (and associated impacts). This type of truncated environmental analysis has the effect of minimizing the actual and likely cumulative impacts associated with the mine.

ENVIRONMENTAL

Montanans are somewhat familiar with a mining company strategy of permitting a mine and then continuously expanding that mine through permit amendments. The Golden Sunlight Mine outside of Whitehall is a prime example of this practice. That mine was originally relatively small but, through a number of permit amendments, became a very large scar on the land with major perpetual pollution problems.

Currently, the proposed Smith River Mine permit is under litigation, awaiting an order (likely to be issued within a year) from the judge as to whether it complies with the law. **MEIC** and its partners will continue to "bird-dog" this boondoggle at every turn. With any luck, this disaster will never get off the ground and certainly never have an opportunity to expand to areas well beyond those listed in the original permit application.

Neighbors Object to NorthWestern's Laurel Methane Gas Plant



by Anne Hedges

on't blink or you might miss the latest twist in the ongoing saga of NorthWestern Energy's attempt to build an electricity-generating plant fired by methane gas on the banks of the Yellowstone River near Laurel. The 175-megawatt gas plant would require fuel from the conversion of an old oil pipeline that starts in Wyoming and eventually runs under the Yellowstone River. The plant would emit hazardous air pollutants such as benzene and formaldehyde, and increase the amount of airborne sulfur dioxide in an area that already fails to meet the human health standard for SO_2 . It would also add 769,706 tons of greenhouse gases into an already overloaded atmosphere each year, compounding the climate crisis.

For years, NorthWestern has proposed building a large fleet of expensive methane gas plants. In May 2021, using flawed and incomplete data, NorthWestern applied to the Montana Public Service Commission (PSC) for permission to build the Laurel plant and increase customers' bills. It claimed the Laurel Generating Station would cost \$283 million to construct, yet it spent months stonewalling those who wanted to verify the costs and understand NorthWestern's justification of the need for the plant.

Building the plant will increase customers' monthly electricity bills, but the cost will

Laurel community members gather to discuss the NorthWestern Energy proposal. Photo by Larry Mayer, *Billings Gazette*.

be far higher than NorthWestern has stated. NorthWestern refuses to disclose the whole cost to customers: the cost of converting the old oil pipeline into a gas pipeline; the cost to build and operate compressor stations so the gas can travel through the pipeline from Wyoming to Laurel; the cost and risks of placing a pipeline under the freeflowing Yellowstone River; the cost to operate and maintain the plant year after year; the replacement power cost if methane gas continues to be in short supply; and most notably, NorthWestern refuses to disclose what it will cost to buy the methane fuel for the plant. That's extremely important considering that the PSC just projected gas prices could increase by 47% to 62% this winter.

Customers will be on the hook for all of these higher costs, yet NorthWestern refuses to provide estimates for anything but the cost of construction. That's called "hiding the ball" when it comes to open and adequate disclosure.

When the original PSC process (in which NorthWestern asked for pre-approval of the plant with next to no disclosure of its costs) appeared to be going badly for NorthWestern because of increasing opposition, it abruptly withdrew its application and said it would build the plant first and then ask the PSC for permission to charge customers later. NorthWestern, likely fearing the mounting opposition to its proposal, withdrew its request only a few days before the other parties in the case were required to release their experts' analyses of the problems with its proposal. It's the second time in just over a year that NorthWestern has withdrawn an application to the PSC after the PSC, Montana Consumer Counsel and many, many others invested significant time and resources into reviewing its application. Wasting taxpayer resources — and its own — doesn't appear to bother NorthWestern.

In late August, while the PSC process was still ongoing, NorthWestern quietly went to the City of Laurel and requested permission to rezone a parcel of land from agricultural use to heavy industrial. It also requested City approval for an easement through Riverside Park, an important community center, fishing access, and recreation and historic site. The public notices for the City meetings to consider these proposals were not published in the local paper, the *Laurel Outlook*; instead, they were placed in a weekly newspaper for a community located 30 miles away on the other side of Billings. Laurel residents didn't learn what was proposed until late October.

When nearby homeowners finally discovered NorthWestern's stealth moves to rezone and procure an easement, opposition in the community grew swiftly. Neighbors are rightly concerned about air pollution, light pollution, high noise levels, and impacts to the Yellowstone River and local wildlife. While NorthWestern's attorney claims that the noise will be no louder than a conversation, who wants to live with someone talking in their ear day and night, all year long? NorthWestern has yet to try and meet with the people who will live near the plant and to address their concerns.

In the last few weeks, NorthWestern has failed twice to get the necessary votes from the Laurel City Council for the pipeline easement across the park. It now appears to be buying private land so it can avoid the City approval process altogether. The mayor and the Council also put the brakes on the rezoning request and started to appoint a special committee to analyze the project

Carbon What Now?

With all the promises governments and businesses are making about sustainability goals, what do these terms actually mean?



Carbon Negative

Some companies such as Microsoft are going "carbon negative," which means they're going beyond achieving net-zero carbon emissions to create an environmental benefit by removing additional carbon dioxide from the atmosphere.



Carbon Zero

This term means that companies aren't emitting any carbon dioxide because they are using renewable energy. The term is often used with buildings that are off-grid.

Carbon Neutral or Net Zero

This is a fuzzier term and is commonly used to mean that any carbon dioxide released into the atmosphere from a company's or government's activities is balanced by an equivalent amount being removed through offsets. The calculations to determine the offsets must be verified for accuracy.

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Carbon Intensity Reduction

This is a term NorthWestern Energy is using, and it's a meaningless PR term. It means NorthWestern's emissions per unit of energy are going down even if its overall emissions are <u>increasing</u>. In other words, NorthWestern is making no moves to reduce the total amount of carbon emissions its releasing.

and its impacts. Then adding another twist, on November 24, the Laurel City Council voted down NorthWestern's zoning request and sent the proposal back to the Laurel Zoning Commission to more thoroughly analyze the project and to allow robust public participation. No one from NorthWestern spoke at the meeting.

NorthWestern claims it needs to build the plant quickly because expiring construction contracts will lead to escalating costs. But if NorthWestern decided in early 2020 that it needed to build this plant and it's already panicking that it failed to establish adequate contract terms, how can customers trust it to build, maintain, and operate a plant that is affordable for its customers? NorthWestern is clearly far more concerned with its shareholders than with its customers who will be forced to pay the bills.

The 1872 General Mining Act is Slated to Turn 150

by Derf Johnson

hile 150 years would normally mark a particularly notable anniversary, in this case, it is not a birthday we should be celebrating.

In 1872, Ulysses Grant was the President, post-Civil War Reconstruction was a hot political topic, and there were only 37 states in the Union. Thomas Edison's lightbulb would not be invented for another seven years, and kerosene had just surpassed whale oil as the dominant fuel source used for illumination. The population of the U.S. was approximately 12% of what it is today, life expectancy was just a few years over 40, and infant mortality was roughly 315 deaths for every 1,000 births. Although the Fifteenth Amendment to the United States Constitution, which provided people of color with the right to vote (on paper, though not in practice), had been passed just two years prior, women would not see the legal right to vote for another 48 years, and Native Americans another 52 years.

Montana was just a territory and would not be admitted to the Union for another 17 years. The Battle of the Little Bighorn, also known as the Battle of the Greasy Grass, in which many met their demise, would not happen for another four years, and our transportation system was horse-powered, as the first railroad in Montana, running from Idaho to Butte, would not be constructed for another nine years. Yellowstone National Park was designated through an act of Congress as the first national park of the U.S., but Glacier would not receive this designation for another 38 years.

It is within this context and period of time that the mining law *currently* governing the extraction of minerals on public lands was passed. It is known as the General Mining Act of 1872 (in this article referred to simply as the "mining law" or "this law."). During this time, a grizzled



Placer miners in Nelson Gulch, south of Helena, 1860-1870. Source: Library of Congress.

prospector in Montana Territory with a mule and a pickaxe was the typical person exploring for and extracting minerals such as gold, silver, and copper from the earth. While certainly not benign, this method pales in comparison to the impacts of modern mining technology and methods; that grizzled prospector could likely have worked a ton or so of earth in a single day, but with modern mining machinery, thousands of tons of ore can be moved per day in a single truck. Even so, this law has not seen many substantive changes since 1872 — hence its name.

The law was conceived of and passed during a time when environmental protection was not considered an important aspect of natural resource decision-making, and it does not recognize any protections for land, air, and water. Even more remarkable is that the law allows individuals to walk onto federal lands, stake (literal) claims, file some paperwork with the county, and obtain the exclusive right to mine the minerals on or under the land with the payment of an upfront and annual fee. The cost per acre in 1872 was between \$2.50 to \$5.00 per acre and has not been <u>changed</u> to this day. The operation of the law also allows for the displacement of other, better uses for the land, such as recreation and environmental protection.

The mining law passed one year after the federal government stopped making treaties with Tribes, and Congress promoted the law to fuel enthusiasm for Western colonization and settlement, which led to decades of unlawful prospecting on Tribal lands.

Furthermore, unlike the extraction of other natural resources on public lands, such as oil, gas, and coal, the mining law does not require the payment of an annual royalty for incredibly valuable minerals. Due to the law, the American public is missing out on billions of dollars in revenue that could help fund critical services and to help address serious environmental issues created by hardrock mining.

Without a doubt, the mining law is an antiquated and outdated relic that does not contain the safeguards needed for modern industrial mining, nor does it allow for the appropriate siting of mining operations. While there have been serious efforts to substantively amend or replace the law, they have all failed, including a recent attempt in the reconciliation package being considered by Congress. Over the next year, **MEIC** and its partners will be highlighting both the absurdity of, and need for reform of, the 1872 General Mining Act.

Bull Mountain Coal Mine Fined for Breaking Environmental and Labor Laws

by Derf Johnson

In an incredibly predictable turn of events, Signal Peak Energy, the operator of the Bull Mountain coal mine north of Billings, has agreed to pay a \$1 million fine as part of a plea agreement for violations of safety standards and environmental protections. Signal Peak executives directed mine employees to improperly dispose of mine waste by pumping the waste into abandoned mine sections. Executives are also accused of attempting to hide workplace accidents by paying offemployees to lie about where injuries occurred.

This comes on the heels of a \$40 million fraud scheme in which executives of the company bilked money from the mining company and its contractors. The scheme involved overbilled and falsified equipment sales which were unknowingly paid by Signal Peak.

The Bull Mountain coal mine has been seriously damaging the water and land of the Bull Mountains for several years now. The environmental damage will last for centuries, while the benefits of extracting the coal will be short-lived. In good news, a recent announcement



by Canadian Prime Minister Justin Trudeau could put a stop to mining at Bull Mountain. Trudeau and the Liberal Party propose to ban coal exports from Canada by 2030, which would have implications not only for the Bull Mountain Mine, but also the Spring Creek coal mine, as both mines export most or all of their coal through Canadian ports. If this proposal comes to fruition, the remainder of the Bull Mountains may be spared, and the world may move a little bit closer to coal-free electricity production.

MEIC's Work to Stop Oil and Gas Development in Montana

by Derf Johnson

The full life cycle of the oil and gas industry is increasingly under major scrutiny as the U.S. comes to grips with the reality that, in order to attain the necessary emissions reduction to slow global warming, drilling for, transporting, and burning oil and methane gas must stop. This is especially important considering that climatewarming methane is 86 times as potent as carbon dioxide over a 20-year period.

While President Biden and the U.S. Environmental Protection Agency are making some strides — most recently by releasing a set of proposed regulations on methane emissions, which will address emissions from the wellhead to the consumer — the truth is that in order to address climate change, drilling for gas has to stop. Period.

MEIC's oil and gas program has been tackling this problem for decades, but weaning the state and country off methane gas grows more important each day. Here are some updates on MEIC's work on oil and gas development.

Supporting a Moratorium on Oil & Gas Leasing

One of President Biden's first actions in the White House was to issue an executive order placing a moratorium on new oil and gas leasing on federal lands. As many of you know, the federal leasing system is fraught with problems, including weak requirements surrounding environmental protection, and prices for drilling on federal lands that are so low that they do not adequately compensate the public. When the moratorium was issued, oil and gas companies and industryfriendly states (including Montana's Attorney General Austin Knudsen) filed a slew of litigation, **MEIC** and a number of partners have intervened in litigation in support of the moratorium in both Wyoming and Louisiana.

Unfortunately, a conservative judge in Louisiana ordered the resumption of federal leasing activity. The U.S. Bureau of Land Management (BLM) is now in the process of accepting comments on the environmental analysis for the first quarter of 2022 leasing in

> Montana. While there has been some commitment by the agency to more adequately analyze the greenhouse gas impacts associated with opening up the

There are currently 29 sections of land slated for oil and gas development with the recent lease sale, including 14 in Montana. For example, the red outline in this map shows a 12.4-acre parcel in Richland County on the banks of the Missouri River.

View all the parcels at this website: <u>https://tinyurl.com/BLMOGSale</u>



lands for drilling, this leasing activity has a myriad number of problems. In order to fully protect water quality and to address climate change goals based on science, oil and gas drilling on federal lands needs to stop completely. Moving forward, **MEIC** will be "bird-dogging" oil and gas leasing activity, and concurrently defending the Biden Administration's moratorium in Wyoming and Louisiana. With any luck, the moratorium will be reimposed and leasing will cease on federal lands.

ChallengingPreviously-Issued Leases

MEIC, represented by the Western Environmental Law Center, is also challenging a set of Trump-era leases based on a number of concerns, including the impacts that drilling on these federal lands would have on our climate. This litigation was filed in late 2020 and is a followup to a previous challenge of federal oil and gas leases. The result of the first challenge was that federal Judge Brian Morris cancelled 287 oil and gas leases in question because of BLM's failure to comply with the National Environmental Policy Act. Judge Morris ruled that BLM had erroneously found that the leases would have no significant impact on the environment. In his decision, he particularly cited the impacts on water resources and the climate.

The Trump Administration made nearly the exact same errors in a subsequent round of leasing. Litigation involving these additional leases is currently being briefed and is once again in front of Judge Morris.

Challenging Trump-Era ResourceManagementPlans

BLM utilizes what are called Resource Management Plans (RMP) to guide decisions on how it manages our public lands, including what

Methane Gas

Methane gas is 86 times more potent than carbon dioxide in warming the atmosphere over 20 years. Methane gas is extracted from underground and brought to the surface at oil and gas wells that often vent and flare gas – meaning methane is either released directly to the atmosphere (venting) or some portion of it is burned (flaring), transforming it into carbon dioxide, another greenhouse gas. Pipelines leak methane at an average rate of 2.3% per year. Scientists say that the U.S. must reduce its reliance on methane gas by 3% every year – and that peak methane use should occur by 2020 (last year) – if we are to limit global temperature increases to 1.5 degrees Celsius, as was agreed to in the Paris Accord. Just to add a further perspective, Montana's average temperatures are already increasing far faster than the global average.

> lands may be available for fossil fuel leasing and exploitation. Under the Trump Administration, an RMP was issued for the Miles City Planning Office that was a gift to the oil and gas industry. **MEIC** and its partners took BLM to court, and a federal judge ruled, in part, that BLM failed to consider reduced coal mining of the federal lands and failed to disclose the downstream impacts of fossil fuel combustion. The judge ordered BLM back to the drawing board.

Lo and behold, BLM made virtually the same omissions in its new analysis of the RMPs and forced MEIC to go back to the courts again. BLM still refused to consider any alternative that would have reduced coal production. Instead, it only considered alternatives that would result in identical amounts of coal development and greenhouse gas emissions. Further, BLM also only analyzed the impacts of one pollutant (carbon dioxide) emitted from downstream fossil fuel combustion, and refused to consider the impacts of the myriad other harmful and toxic pollutants - such as particulate matter, sulfur dioxide, mercury, and lead — despite evidence that these pollutants cause widespread and lethal impacts to public health. This litigation is also in front of Judge Morris and is currently being briefed.

Nutrient Pollution Threatens Montana's Waterways, Economy, & Way of Life

by Derf Johnson

I t's a worn-out statement, but it still rings true: Montana's world-class rivers, streams, and lakes are the lifeblood of our state. Much of our social and economic activity is tethered to, or even completely dependent upon, the natural cycle of precipitation, snowpack, runoff, and in-stream flow that continually recharges our waterways. It's clear that how we interact with and manage our water resources are critical in determining the health and economic vitality of our state. For me, a major part of growing up in Montana was growing up around Montana's rivers and streams, such as the Madison and Gallatin Rivers, where I learned how to fly fish and to appreciate what we have.

As an example of how important water is for Montana, the federal Department of Commerce's Bureau of Economic Analysis recently released figures on the economic impact associated with outdoor recreation. In Montana, outdoor recreation accounted for 4.3% of the state's GDP, the highest percentage in the entire U.S. Outdoor recreation added \$2.2 billion to the Montana economy in 2020, with boating and fishing alone contributing approximately \$288 million in value-added activity. Of course, these numbers focus exclusively on recreation, but there are innumerable other benefits of clean water to agriculture, livestock production, and municipal water supplies.

Therefore, it's a bit shocking to learn that the State is doing a relatively poor job of preventing pollution from ending up in our water. A recent analysis by the Montana Department of Environmental Quality (DEQ) shows that more than 70% of Montana's waterways and lakes are not fully supporting aquatic life (an indicator of poor stream and lake health) due to excessive sediment and siltation, chemical pollution, or



alteration of stream channels and vegetative covers.

Under the federal Clean Water Act, Montana is required to conduct an assessment of our water quality and prepare a report every two years. The 2020 Water Quality Integrated Report identified over 200 rivers and streams in Montana as being impaired by nitrogen and/or phosphorus.

Nutrient pollution, such as that caused by excess nitrogen or phosphorus, is a leading cause of water quality impairments in Montana. Surprising as it may be, it is possible for too many nutrients to end up in our waterways. Combined with less and warming water, excess nutrients promote the growth of algae and algal blooms, which suck up large amounts of oxygen that fish and other organisms need to survive. Algal blooms also promote discoloration of the water, which can reduce the ability of aquatic life to find food.

Excess nutrients end up in our rivers and streams from a variety of sources, including agricultural runoff (fertilizers and livestock feeding operations), leaky septic systems, sewage treatment discharges, detergents, and stormwater runoff. There are two sources of water pollution: **Point source** pollution emanates from a single source and is often literally discharged from a



pipe. **Nonpoint sources** are much more diffuse and spread across the landscape. Due to the innumerable sources of nutrient pollution from a variety of activities, preventing and mitigating nutrient pollution can be a challenging endeavor.

Montana was one of the first states to adopt a "numeric" limit to nutrient pollution in its waterways. This placed a specific and measurable limit on the amount of nutrient pollution that could be discharged into waterways. While having numeric nutrient limits was not perfect, it was a far better system than the previous narrative approach.

But then, the 2021 Montana Legislature decided to pump the brakes and drive the truck right into the algae-filled ditch by directing the State to abandon numeric standards and return to the old system of defining pollution limits. Gov. Gianforte signed SB 358 (Sen. John Esp, R-Big Timber), which repealed numeric nutrient limits. The bill directed DEQ to regulate nutrient pollution through the less effective "narrative" approach and watershed-level adaptive management plans. The legislation also directed DEQ to develop a set of regulations. Since the legislation's passage, a set of stakeholders has been meeting monthly (along with a technical advisory committee) to develop the regulations. MEIC has been participating in this process and has worked closely with other partners, including Upper

Developments such as this one in Big Sky threaten nearby waterways. Photo by Samuel Wilson, Report for America.

Missouri Waterkeeper, to ensure that conservation and water quality are properly considered.

DEQ is about to release a draft set of regulations. Unfortunately, it appears that the major recommendations from **MEIC** and its partners were ignored. If the new regulations are adopted, Montana's waterways will undoubtedly suffer from even more nutrient pollution. The new regulations take a "pollution management" approach rather than a "pollution prevention" approach, and they almost completely ignore the principal source of pollution: nonpoint source pollution.

DEQ is proposing a formal 60-day public comment period on the draft rules, which will begin on December 24. It is critical that you speak up during the comment period on the importance of protecting Montana's waterways and urge the rejection of the poorly drafted regulations. When the comment period opens, **MEIC** will issue an action alert and have a fact sheet and petition available on its website at <u>www.meic.</u> <u>org/nutrients-in-our-water</u>.

Clean water is critical for Montana. It's not just important for fish and aquatic life but also for businesses, the economy, and human health. And for folks like me who want a chance to continue visiting the Gallatin River to catch a few trout.

Cryptocurrency's Serious Threat to Climate Progress

by Katy Spence

When we first wrote about cryptocurrency in the March issue of *Down to Earth*, we hoped it was a one-time article about Missoula County's brush with the latest tech fad. As the year progressed, everything we've learned about "crypto" has made us more concerned. Namely, "mining" cryptocurrency takes an appalling amount of electricity — enough electricity to save a dying coal-fired power plant near Hardin, Montana.

Cryptocurrency, such as Bitcoin, is a virtual currency that only exists as computer code. Proponents of crypto tout its decentralized nature and "secure" transactions through a public ledger called blockchain that construct a financial system apart from the world's traditional banking systems. While these arguments have appeal, the rest of the story is more than a little troubling.

Through a computational process called "mining," users can sometimes earn cryptocurrency without having to buy it outright. Huge facilities are dedicated to this mining, and the process is incredibly energy intensive. One such operation recently reinvigorated the Hardin Generating Station. This 115-megawatt coal-fired power plant was likely to close after NorthWestern Energy declined to acquire the plant in 2018. Shortly thereafter, the plant was purchased by a cryptocurrency company and now it appears to exist solely to provide electricity to mine the profitable currency. Just this November, it was revealed that the



cryptocurrency company is under investigation by the U.S. Securities and Exchange Commission for violations of securities laws.

While the energy demand and resulting greenhouse gas emissions of cryptocurrency mining are by far the most concerning environmental factors, more information has come to light about the origin and use of the digital currency. Namely, Bitcoin and other digital currencies are used on the "dark" or "deep" web, a part of the Internet that's difficult to access and is often used as a way to buy drugs and weapons, and conduct other illicit or dangerous activities. *Forbes* magazine has reported that the use of Bitcoin on the dark web increased 340% between 2017 and 2020. By 2019, Bitcoin fueled a more than \$1 billion black market on the dark web.

As far as we're concerned, cryptocurrency's flimsy redeeming values cannot outweigh its faults – and serious climate impacts.



Protecting Montana's natural environment since 1973.

DEQ Undermines Colstrip Coal Ash Pond Cleanup



by Anne Hedges

I t was the 11th hour of the Bullock Administration when the Montana Department of Environmental Quality (DEQ) decided to require the owners of the coal ash ponds at Colstrip Units 1 & 2 to excavate the coal ash waste and safely store it away from groundwater. Talen Energy, the plant operator and half-owner of those two units, went to work to overturn that decision, and it found a friendly ear in the new Gianforte Administration.

In June 2021, DEQ announced it would decrease the clean-up bond for these coal ash waste ponds by \$120 million, nearly half of what the Bullock Administration found would be necessary to clean up the area. To add insult to injury, the closed-door negotiations with Talen resulted in DEQ agreeing to let Talen avoid doing any actual cleanup work for two years and propose another cleanup alternative during that time. In the meantime, Talen has to prepare paperwork showing its developing plans to excavate the site, but it doesn't actually have to begin the excavation.

The coal ash ponds at Colstrip have leaked since they were built as far back as 1975. They have contaminated groundwater in the area for generations. In a quest to avoid more lawsuits from local Colstrip residents after the lawsuit led by Sen. Duane Ankney, the previous plant owner Pennsylvania Power & Light (PPL) asked DEQ to work with it on a cleanup plan. After years of negotiations, DEQ issued the cleanup framework in 2012. The framework allowed PPL, and then Talen, to drag their feet for years. But in November 2020, DEQ rejected Talen's inadequate plan that only proposed partial excavation of the waste. Instead, DEQ chose the most protective alternative plan that would permanently remove all of the coal ash in the Units 1 & 2 ponds that are sitting in the groundwater table. It was a short-lived victory. Talen immediately appealed the decision to the new Gianforte Administration.

The newest agreement keeps DEQ's excavation requirement in place for the time being. That's a good thing. But it's very likely that Talen will propose an alternative clean-up plan similar to the weaker plan DEQ already rejected, and the change in administration means that DEQ could decide to adopt it this time around. That's great news for Talen. It's lousy news for Montanans.

Maybe DEQ will stick to its guns and force the Colstrip owners to do what they should have done decades ago: clean up their mess. But Talen's inexplicable sway over this administration is cause for concern.



The Montana Public Service Commission recently warned that home gas prices could increase 47% to 62% this winter. As methane gas becomes more expensive and concerns increase over the danger it poses to the climate and your health, here are some ways to start using less in your home.

IMPROVE YOUR HOME'S ENERGY EFFICIENCY

If you have a gas furnace in your home, consider ways to make your home more energy efficient: improve insulation in walls and around pipes, install a programmable thermostat so you don't use gas when you're not home, upgrade windows, and seal gaps around windows and doors. Even blocking off unused vents and chimneys will

help heat stay in your home.

CONSIDER PARTING WITH (OR TRANSITIONING AWAY FROM) YOVR GAS STOVE

We know, we know: gas stoves are beloved. They also emit lots of harmful substances into your home's air! If you're not ready to part ways, try using a portable induction burner. Induction cooking is more than twice as energy-efficient as gas and considered much safer. If you like that, you could eventually upgrade to a full induction cooktop!

REPLACE YOUR HOT WATER HEATER

VPGRADE YOUR HEATING SYSTEM

Replacing your gas heater with a modern electric heating one can give you more control over which rooms are heated throughout your home. Heat pumps are particularly effective for both heating and cooling, and they're up to four times more efficient than other heating systems. If you're on a budget, start by using window insulation film and closing your curtains at nighttime.

Hot water heaters are commonly the second most energy-intensive appliance in a household (after the furnace). Electric- and solar-powered hot water heating devices are incredibly efficient and long-lived. If you can't make the switch just yet, turn your hot water heater down and wrap it in a blanket. Both steps can go a long way to preventing heat (and energy) loss.

CLOSE YOUR GAS ACCOUNT

If you're ready to make the switch completely away from gas, woohoo! But do your homework: some utilities such as Oklahoma Natural Gas want to charge customers up to \$1,375 to cancel their gas service. (Guess they see the writing on the wall for gas, huh?) If NorthWestern Energy tries to pull the same stunt, have a certified technician manually turn your gas valve off: you don't have to pay for gas you're not using.

What's the DEAL with EVs?

by Katy Spence and Anne Hedges

Electric vehicles (EVs) are not some far-off possibility. Montana already has electric cars, SUVs, and transit buses. Elsewhere in the country, there are electric garbage trucks, school buses, street sweepers, work trucks, bucket trucks, delivery vans, and more. Every major auto manufacturer is proposing to electrify their vehicle fleet. It's a critical step toward solving the climate crisis and reducing air pollution. So why is Montana such a laggard?

Last session, the Montana Legislature adopted the highest annual EV fees in the country. Fortunately, Gov. Gianforte vetoed that bill. But some legislators are still committed to undermining the affordability of EVs, even as most of the rest of the country is rapidly pursuing electric vehicles.

Idaho has nearly three times as many registered EVs as Montana. In fact, Montana is tied with Alaska, one of only two states in the nation with



lesser population <u>and</u> lesser population density than Montana.

At the time of this writing, President Biden's Build Back Better bill includes a refundable tax credit of up to \$12,500 for EV buyers. What does this mean for Montana? Well, if the Montana Legislature gets its way and makes owning an EV inordinately expensive, it might not mean much. We'll keep you posted.



Source: U.S. Dept. of Energy

What Does the Infrastructure Bill Mean for Montana?

by Derf Johnson

n November 15, President Biden signed the Infrastructure Investment and Jobs Act into law, which will infuse \$1.2 trillion into the aging infrastructure of the U.S. and result in some major, generational changes. The bill has important implications for Montana's environmental, transportation, and energy sectors. The bill was supported by Sen. Jon Tester and opposed by both Sen. Steve Daines and Rep. Matt Rosendale.

Below, we've listed some of the money earmarked for energy infrastructure projects in Montana. This is not a comprehensive list, as it only focuses on energy, and the dollar amounts will be stretched over a five-year time period. How the funds will be managed and disbursed is still somewhat unknown, as different federal agencies need to go through administrative processes and likely conduct rulemaking on the different programs.

- \$43 million is earmarked for Montana's Electric Vehicle program, primarily to establish charging station infrastructure. With most major auto manufacturers transitioning to production of electric vehicles in the next 15 years, this infrastructure spending is essential.
- An estimated \$3.9 million will be allocated to the Montana State Energy Office (SEO) at the Montana Department of Environmental Quality. This will significantly expand the ability of the SEO to conduct its current activities, such as education, outreach, research, and planning on renewable energy.
- Approximately \$1.9 million will be allocated to the Montana State Energy Office for the Energy Efficiency and



Conservation Block Grant Program.

- Approximately \$29 million will be allocated to Montana's Weatherization Assistance Program. This will help make low-income housing more energy efficient, affordable, and comfortable.
- \$800,000 may be allocated to the Montana State Energy Office for the Energy Efficiency Revolving Loan Fund Grant Program, which would fund energy efficiency projects for commercial and residential buildings. The receipt of the money depends on how the federal grant program decides which 15 states to select.

We know these dollar amounts are guaranteed for Montana, but the infrastructure bill also authorized a competitive grant program, in which Montana state and local governments and Tribes may apply for additional funding, such as \$2.5 billion in funds for a grant program administered through the Department of Administration for charging stations and fueling infrastructure.

Come December, Congress is likely to finally consider passage of the reconciliation legislation, which will include a number of other measures related to energy and the environment. We will make sure to update you on how the reconciliation package will impact Montana.

Clean and Healthful, it's Your Right, Our Mission.

Clean Energy

Join the MEIC team!

ur Clean Energy Advocate, Conor Ploeger, is off to new ventures. We wish him all the best and will miss him around the **MEIC** office.

So, we've got an opening for a Clean Energy program staffer. We're looking for someone with savvy, energy, and passion for working towards clean energy solutions in Montana. If you or someone you know might be interested in applying, please share!

Position Summary: The Clean Energy staffer develops and implements **MEIC**'s clean energy campaigns, which aim to address the climate crisis and accelerate an equitable transition from fossil fuels to clean energy through adoption of creative and strong clean energy policies in Montana. These responsibilities include lobbying government officials, working with utilities and state agencies, public advocacy, organizing, outreach, and developing and implementing clean energy programs that restore and protect a clean and healthful environment for all Montanans. Issues include, but are not limited to: renewable energy, storage, conservation and energy efficiency; low-carbon fuels; utility planning; transmission; building decarbonization; and clean transportation.

To Apply: Please combine a cover letter, a resume, a writing sample, and the names and contact information for three references into a single PDF file (preferably) and email to jobs@meic.org. Application review began November 30, but the position is open until filled.

Find the full description and application instructions on our website: <u>www.meic.org/clean-energy-advocate</u>





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Intergovernmental Panel on Climate Change (IPCC) report, you're not alone. The heavy report seems compounded by an unseasonably warm start to winter, increasing Covid cases that limit our ability to meet in person with you, and political chasms that seem unbridgeable, especially in the wake of one of the hardest legislative sessions Montana has ever seen.

If you're feeling all of that, we're right there with you.

That's why we want to take some space here to address what the latest IPCC report means for us Montanans.

The nearly 4,000-page report cites about 14,000 studies and was agreed upon by 195 countries.

The report has a couple of clear, big picture takeaways:

- 1. Climate change is real and "unequivocally" human-caused.
- 2. We're already seeing its impacts in every region around the world.
- 3. The impacts can get much, much worse if we continue on the path we're on.

This is honestly devastating news. Many of us have been advocating for climate action for years. During a year that's brought one blow after another, it's okay to give yourself space to mourn.

However, it's so important to note that climate doomism is not the answer. If we let ourselves lose hope and drive, the fossil fuel companies win.

This is why there's another critical takeaway from the report: we still have time to mitigate the worst impacts of the climate crisis in our lifetime.

Read that again: <u>we still have time</u>. What we do right now matters.

According to the report, if countries worked together to shift away from fossil fuels and stop



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adding carbon dioxide to the atmosphere by 2050, it could curtail the impact of the worst predictions in the report. Actively removing carbon from the air may be an essential component, as well.

And here's the most important takeaway: You're not alone in this fight. Nearly 200 countries approved this report and see the need for urgent climate action. Millions of people around the world are working together and advocating for change.

And, of course, you have us at MEIC and your fellow MEIC members. We've been fighting for the environment for almost 50 years, and we're not giving up. There is so much to fight for. There's so much that we can still save.

We can prevent the planet from heating to extremes and preserve a livable climate for our children. We can fight for justice, alongside communities around the world that have already seen the impacts of the climate crisis and will feel the worst effects before anyone else.

We can help protect trillions of life forms on Earth, from great blue whales in the ocean to 1,500 different species of butterflies in the Amazon to the huckleberries and grizzlies here in Montana.

We can build a clean energy economy that is good for our livelihoods <u>and</u> our planet. We have the power to make a difference here and at a larger scale.

In Montana, that means we must demand our elected officials stop taking money from fossil fuel companies in order to push their agenda. Sen. Daines, Sen. Tester, Rep. Rosendale, and Gov. Gianforte have the responsibility to put the health and safety of Montanans first.

MEIC is continuing to push for the closure of the coal-fired Colstrip plant, which is the biggest greenhouse gas polluter in Montana and the region. We must advocate for a cleaner energy system that relies on renewable energy, such as solar and wind generation.

We must fight cryptocurrency companies (see pg. 14) that are hell-bent on mining their digital currency, even if it means reviving old coal-fired plants to do it, such as the plant in Hardin, Montana.

We must push NorthWestern Energy and the Public Service Commission to make and approve investments in clean energy, such as wind, solar, and energy efficiency, rather than expensive, polluting gas plants.

Here's what you can do today:

- Contact your elected officials at every level and ask for specific actions to reduce carbon dioxide emissions. You can use our website to do so.
- Help us hold elected officials and state agencies accountable by commenting when they try to weaken or eliminate important environmental safeguards.
- Listen to marginalized voices. So many communities are already seeing climate impacts; follow them on social media, share their stories, and learn.
- As much as you can, limit your own impact and encourage your family, friends, and co-workers to do the same.
- Donate to MEIC and other climate justice groups. Even more than any carbonreducing lifestyle decisions you make – though those are important – investing in the climate advocacy movement will generate the significant, systemic changes we need to see.
- Go for a hike, go birdwatching, plant a tree, or garden with a friend. Remind yourself of what we're fighting for.

MEIC Mourns the Passing of Our Friend, Bill Broadbent

Wo months ago, **MEIC** lost a dear friend, colleague, and generous supporter of our work in protecting and restoring Montana's environment. William S. Broadbent, Sr., was a remarkable "force of nature" who established an impressive, if unique, legacy of conservation advocacy here in the Big Sky State. He left an amazing track record of conservation and charity work across the country, but his work in Montana is obviously how we knew him best.

Bill was a political conservative and proud of it, but he would never let politics get in the way of good ideas, let it hamper his relationships, or tarnish the work and mission of protecting the Montana that he loved. He was constantly brimming with ideas to further **MEIC**'s mission and protect rivers and landscapes. His style was to think about different ideas, tactics, and people to convince, and then see what stuck. He cared deeply about issues such as protecting the Smith River from the threat of a mine at its headwaters (see pg. 5), how Montana considered housing and urban development in its river valleys, Montana's energy future, and reforming the 1872 Mining Law (see pg. 8).

Bill first became involved with MEIC when he reached out to us about the Highwood Generating Station, a proposed coal-fired power plant, which would have been constructed near his ranch. His early morning phone calls were full of ideas on how to stop the plant and his willingness to roll up his sleeves to get the work done helped us beat back that proposal and many more, including preventing the Tongue River Railroad from getting financing.

MEIC staff always enjoyed the opportunity to visit Bill and his wife Camille at the 26 Ranch, the Broadbent family's ranch outside of Geyser. Bill cared deeply for this place, prioritized its conservation and care, and took his obligations as



a landowner very seriously. Be it bird hunting, a lunch and chat about **MEIC** and our latest work, or a presentation to a group of oil investors on how they should switch careers (poor Anne Hedges), he never disappointed. Bill strongly believed that, regardless of politics, people would want to protect clean water and healthy landscapes if they just had the right information and the right people talking to them.

In addition to Bill's work with MEIC, he was deeply involved in the work of the Montana Land Reliance. Over the years, he also worked with Montana Audubon and American Rivers, and probably many organizations we weren't aware of. A part of Bill's lasting legacy was his establishment of the William S. Broadbent Family Endowment, as a special fund in MEIC's endowment.

We might not miss your 6 AM calls, but we'll miss you, Bill. Thank you.

- MEIC 📐

Clean and Healthful, it's Your Right, Our Mission.

Taking Stock of the Good

by Cari Kimball

swereflecton 2021, it's impossible to ignore the things that went poorly. Many of us lost loved ones or experienced illness while enduring another year of the pandemic. Decisions made during the 2021 legislative session and by the Gianforte Administration are weakening environmental protections in order to pad industry profits. It's rough

out there, but when it comes right down to it, learning to hold the good in our lives alongside the bad is a pathway from despair to action. So here's what's filling my cup this season.

Holy moly – MEIC's staff and board members are creative, funny, passionate, and brilliant. This small but mighty team has taken on some tough fights and goes toeto-toe with powerful corporate interests. And you know what? We have FUN doing it. I'm very lucky and proud to work with this crew. They keep things interesting, and for that, I'm eternally grateful.

I'm thankful for MEIC's effective work for a cleaner, more healthful Montana. Despite adverse circumstances, MEIC stopped some very bad bills during the legislative session — remember the "Billion Dollar Bailout" to enrich NorthWestern Energy's shareholders at the expense of Montana's climate and ratepayers? We successfully stopped another coal mine expansion and are doing our darndest to block an expensive, climate travesty of a gas plant in Laurel. MEIC's ability to work at the nexus of policy, advocacy, and community engagement has kept millions of tons of CO_2 in the ground, and protected rivers and lands from ill-conceived mining projects.

When I reflect on the good work we did in 2021, I'm filled with appreciation for **MEIC's amazing members and supporters**. Your dedication and passion make our winspossible.

When the tremendous amount of work that remains to be done for Montana's environment seems overwhelming, I take solace in the fact that we have an incredible community to work alongside.

Finally, throughout another hard year, Montana's beauty sustained me. The trails outside my backdoor are where I connect with my people and the landscape we call home. On weekday mornings, a couple friends and I run on the trails at 6 AM, tracking the change of the seasons as the sun rises above the Big Belts later and later. On preschooler-paced walks through the hills, my husband, daughter, and I watch for the spring's first yellowbells, then pasque flowers, on to shooting stars and then arrowleaf balsamroot. I'm so grateful for the good stewardship of Montana that has made these small wonders available to me.

Thank you for being part of MEIC's community working for clean air, water, land, and life-sustaining climate. Together we will make these wonders available for future generations as well. MEIC is a nonprofit environmental advocate whose purpose is to protect Montana's clean and healthful environment.

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