

Down to Earth

NEWS FROM THE MONTANA ENVIRONMENTAL INFORMATION CENTER

Cryptocurrency: Hidden in Plain Sight in Eastern Montana



**Honoring
Adam McLane**

**What is
Sustainable
Development?**

**The Inflation
Reduction Act
in Montana**

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Cover photo:
A cryptocurrency mining facility in eastern Montana.

MEIC is a nonprofit environmental advocate whose purpose is to protect Montana's clean and healthful environment.

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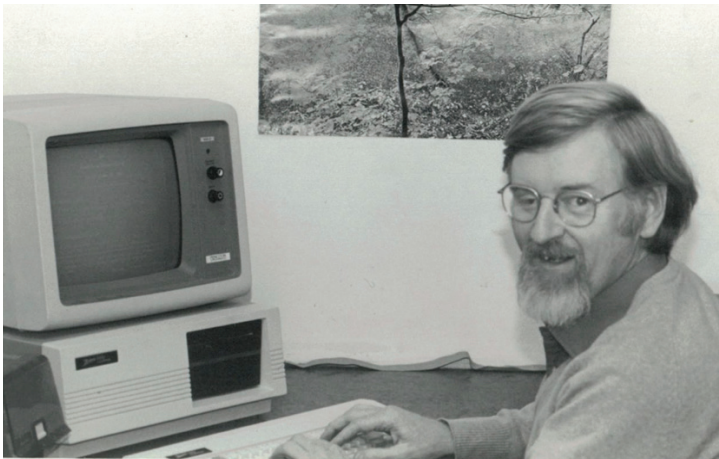
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Montana's Unsung Hero

by Anne Hedges

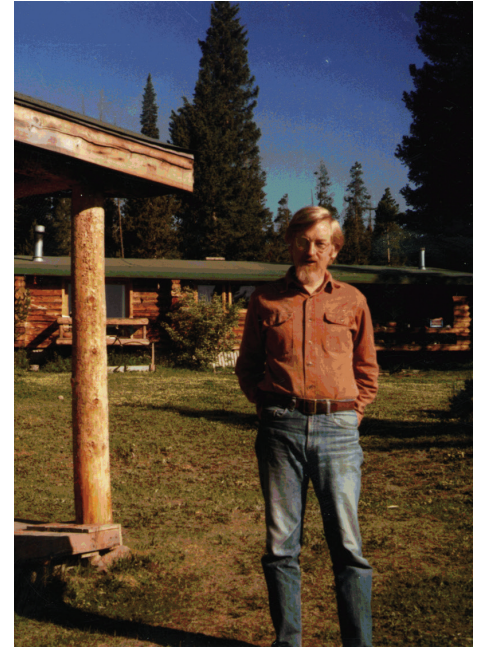
There are a lot of unsung heroes in this state but at **MEIC**, Adam McLane tops that list. Adam started working for MEIC in 1985. As MEIC's former Executive Director Jim Jensen frequently said, hiring Adam was the "first and smartest thing" he ever did. Anyone who worked with Adam agreed. After 37 years of serving as **MEIC**'s business manager, bookkeeper, editor extraordinaire, compliance officer, strategic planner, historian, sounding board, and friend – all while working only half-time – Adam retired in late August and passed away on Sept. 8, 2022. On August 22, **MEIC** presented Adam with its highest honor, Conservationist of the Year, a lifetime achievement award. No recipient was more deserving.

For those of you who didn't have the pleasure of working with Adam, let me introduce you to **MEIC**'s foundation. When Adam started working at **MEIC**, he, Jim, and George Ochenski were operating on a shoestring. The organization narrowly escaped closing its doors for lack of resources. But Adam's sound business mind helped set **MEIC** on a path to being the strong and effective organization that it is today. He answered phones faster than anyone, so many of our members often referred to him as that "nice gentleman who answers the phone." He helped innumerable organizations across the state obtain their federal nonprofit status or rely on **MEIC**'s. Adam helped other organizations understand the IRS and state compliance requirements. He wasn't just committed to **MEIC** succeeding. He was committed to effective environmental advocacy



across the state.

Adam was instrumental in creating and shaping the **MEIC** that exists today. He has trained hundreds of board members on how to be an effective member of a nonprofit and trained scores of staff on how to comply with state and federal



requirements and limitations while continuing to be effective advocates. He made sure **MEIC** planned for the future both in terms of finances and program work (even when that planning drove Jim crazy). As a CPA from Stanford University, Adam not only kept our books in order, he kept us out of trouble with the IRS and commissioner of political practices. **MEIC**'s publications (and my articles) benefited greatly from his amazing editing skills, and new staff members found great comfort and encouragement in his experience and wisdom. Not to mention the delight of opening an email with a joke of the day or an interesting article that Adam thought you might like.

There's so much more to say about how much Adam did for **MEIC** in four hours a day. Most importantly though, Adam did all of this in a quiet and systematic way. There was not a rash bone in his body but his absolutely dogged determination to protect the world in which we live made him indispensable to the conservation community. His cautious, thoughtful, systematic, clear thinking was a perfect balance to the program staff who just wanted to rush head first into battles.

To Adam, and his immeasurable contribution to the conservation movement in Montana, we urge you all to raise a glass of fine red wine in his honor. No one is more deserving. 🍷

Victory

Big Victory Against Leasing Coal on Public Lands

by Anne Hedges

Victories against coal, oil, and gas development are extra sweet when they also involve protecting millions acres of public land from fossil fuel exploitation. After seven years of litigation and two consecutive lawsuits, a federal court in Montana recently (finally!) ruled in **MEIC**'s favor against the Bureau of Land Management (BLM) in a case involving fossil fuel extraction on 15 million acres of public lands across Montana and Wyoming in the Powder River Basin. With this victory, we are hopeful that BLM will finally consider the impacts of extracting and burning 11 billion tons of coal and allowing the extraction of oil and gas.

The case involves BLM's Resource Management Plans (RMPs), which are intended to "guide and control management" of public lands in the West. They are required as one of the first steps for the federal government to develop fossil fuel resources. RMPs determine what lands are suitable for leasing minerals such as coal, oil, and gas. Until now, BLM has used RMPs as a stepping stone to make vast swaths of public lands available for mining and drilling.

Initially, in 2015, BLM issued RMPs for two adjacent areas in the Powder River Basin (the Miles City, MT, and Buffalo, WY, field offices). **MEIC** and our partner organizations challenged those RMPs in federal court, asserting that the RMPs were deficient because BLM failed to consider climate and environmental impacts of leasing enormous volumes of oil, gas, and coal. The RMPs also failed to consider possible alternatives to extracting 11 billion tons of coal. The extraction and burning of these fossil fuels would result in hundreds of millions of tons of greenhouse gases impacting our fragile climate over a 20-year period and would result

in the release of huge volumes of harmful air pollutants. In 2018, a federal court ruled in our favor. It required BLM to go back to the drawing board and to disclose the potential impacts of extracting and burning these fossil fuels as well as to consider alternatives that would allow extraction of something less than the entire quantity of fossil fuel under these public lands.

Then the Trump Administration took over. BLM issued the updated RMPs in 2020 but brazenly made many of the same mistakes and omissions as in its original analysis, forcing **MEIC** and our partners back to court. This August, the court ruled that:

- "BLM again failed to consider any alternative that decreases the amount of extractable coal practically available for leasing."
- BLM "failed to consider any alternatives that would limit the expansion of existing mines ... despite explicit direction from this Court that NEPA required BLM" to do so.
- BLM's "multiple use mandate does not require BLM to prioritize mineral development over other uses, such as closing areas to fossil fuel development."
- BLM "must disclose the public health impacts, both climate and non-climate, of burning fossil fuels from the planning areas."

Hopefully, BLM will follow the court's order this time around, and analyze and disclose not only the impacts of leasing vast quantities of climate destroying fossil fuels, but also consider alternatives that reduce or eliminate fossil fuel leasing altogether. Again, **MEIC** and our partners feel fortunate to be represented by Melissa Hornbein with WELC, Shiloh Hernandez with Earthjustice, and Nathaniel Shoaff with Sierra Club. 🌿

A huge thanks to
MEIC's partners in
this victory:

Western Environmental Law Center
Western Organization of Resource Councils
Powder River Basin Resource Council
Northern Plains Resource Council

Earthjustice
WildEarth Guardians
Center for Biological Diversity
Sierra Club



Victory

Zinke's Gift to the Coal Industry Ruled Illegal

by Anne Hedges

Ryan Zinke was a climate disaster as Secretary of the Interior. Fortunately, a federal court in Montana recently ruled that he violated the law when he eliminated a moratorium on coal leasing on public lands that had been put in place by Pres. Barack Obama's Secretary of the Interior, Sally Jewell. This is huge, considering the Bureau of Land Management estimated that the cumulative greenhouse gas emissions from the suspended coal lease applications would be more than one billion tons per year. The court reimposed the moratorium until the Department of Interior (Interior) analyzes the environmental, social and financial impacts of its elimination.

When former Sec. Jewell issued the coal leasing moratorium in late 2016, she did so for two primary reasons – coal's contribution to the climate crisis and the fact that the public was not getting a fair financial return on coal leases on public lands.

The coal leasing program was adopted in 1979, when knowledge about climate impacts were cursory and the financial requirements of companies who leased public lands to mine coal were minimal. Former Sec. Jewell wanted to make sure taxpayers received a fair return on their public resources. She placed a moratorium on new leases that would remain in effect until Interior completed a thorough analysis of the program.

One of former Sec. Zinke's first acts as Secretary of the Interior in early 2017 was to eliminate the moratorium, direct that coal leases be issued "expeditiously," and halt the environmental and economic analysis of the program. **MEIC**, the Northern Cheyenne Tribe, Citizens for Clean Energy, EcoCheyenne, and other partner organizations,

represented by Earthjustice, challenged former Sec. Zinke's action in federal court in Great Falls.

In 2019, the court ruled in our favor, directing Interior to analyze the environmental, social, and economic impacts of eliminating the moratorium under the National Environmental Policy Act. Thumbing its nose at the court's decision and the public's concerns, Zinke's Interior released a cursory 35-page analysis that only considered four leases, instead of the full breadth of leases subject to the moratorium which contain 1.8 billion tons of coal near 28 mines in nine states. Former Sec. Zinke further showed his hostility toward public concerns when he said there would be no difference in greenhouse gas emissions or other impacts between the "no action" alternative and full-scale leasing. Then, he limited the public comment period to 15 days, despite repeated requests for more time. Earthjustice returned to court asking it to again overturn former Sec. Zinke's decision.

When Pres. Joe Biden came into office, we had high hopes that the administration would hold true to its promise to tackle the climate crisis. Unfortunately, his Interior Secretary Deb Haaland initiated the environmental and financial analysis of the coal leasing program, but she failed to reinstate the leasing moratorium. This new court decision will force Interior to consider the profound impacts that leasing coal on public lands will have on the climate, water resources, the environment, and taxpayers' pocketbooks while suspending coal leasing on public lands.

MEIC is grateful for our partners in this case: Earthjustice, the Northern Cheyenne Tribe, EcoCheyenne, Citizens for Clean Energy, Center for Biological Diversity, Defenders of Wildlife, Sierra Club, and WildEarth Guardians. 🌿

Two Victories on Oil & Gas Leasing

by Anne Hedges

In early September, **MEIC** achieved two terrific legal victories on oil and gas development. Since these are late-breaking court decisions, we will keep this brief.

You may recall that in 2020, **MEIC**, WildEarth Guardians and three landowners were victorious in a challenge to the federal Bureau of Land Management's (BLM) issuance of two oil and gas lease sales in 2017 and 2018. In that instance, the court agreed that BLM failed to consider potential impacts to water resources and the climate from drilling and burning fossil fuels on 287 leases. While that court case was proceeding, the BLM issued five quarterly oil and gas lease sales on public lands in Montana and North Dakota from July 2019 through September 2020. After the first court victory, the coalition grew and a larger group of organizations joined in challenging BLM's subsequent lease sales, raising similar concerns about the impacts to water resources and the climate. After dragging its feet for over a year, the BLM finally agreed to settle our second case and conduct the required analysis to protect public lands, the climate, and water resources. The settlement was submitted to Federal District Court in Great Falls for approval on September 6. **MEIC** was represented by the Western Environmental Law Center and Earthjustice.

The other victory comes after a long and convoluted

legal history. When Pres. Joe Biden came into office in 2021, he issued a "pause" on onshore and offshore oil and gas leasing on public lands until the administration could evaluate the economic and climate impacts associated with the federal leasing program. Almost immediately, the oil and gas industry and conservative states filed five separate lawsuits, alleging various legal issues with Pres. Biden's "pause." Back in 2021, a federal judge in Louisiana ruled that Pres. Biden's leasing pause was illegal. This past August, however, the 5th Circuit Court of Appeals overturned the decision, stating that the lower court judge had failed to justify his decision. Within 24 hours, the lower court judge issued a second decision against the leasing pause, again without a legal rationale. Meanwhile, a federal judge in Wyoming issued a decision in a separate case on Sept. 2 upholding Pres. Biden's decision to issue the "pause," finding that there was "substantial evidence in the record" to support the decision. **MEIC**, along with a long list of other environmental groups, had intervened in the Wyoming case (the judge would not allow us to intervene in the Louisiana case). **MEIC** was represented by the Western Environmental Law Center. What happens now is anyone's guess, but hopefully the Biden Administration will fully analyze the oil and gas leasing program and live up to his campaign promise to tackle the climate crisis. Minimizing emissions of the super potent greenhouse gas methane emanating from oil and gas wells would be a good start. 🌿

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the list?*

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www.meic.org/take-action

It's Time for a Real Investigation of Signal Peak's Coal Mine

by Anne Hedges & Katy Spence

After years of illegal behavior, Signal Peak Energy was caught by the U.S. Department of Justice. While that investigation resulted in a \$1 million penalty and prison terms for some of those at the top of the corporate ladder, the investigation of Signal Peak's Bull Mountains coal mine is incomplete. It is past time for state and federal environmental agencies to investigate the mine, its owners, and the extent to which its illegal activities have harmed area waters, wildlife, and nearby ranching operations.

In August, **MEIC**, along with our partners Northern Plains Resource Council, Sierra Club, WildEarth Guardians, the Western Environmental Law Center, and Earthjustice, formally requested an investigation of Signal Peak, which operates the Bull Mountains Mine north of Billings. The Bull Mountain mine is Montana's only underground coal mine and exports its coal to Asian markets. **MEIC** has repeatedly and successfully challenged state and federal approvals to allow mine expansions which would make it the largest underground coal mine in the country. What we didn't know was that while we were challenging the mine expansion, the company was bribing workers who were injured on the job, illegally disposing of toxic waste at various locations on the mine site and in the mine, and lying on permit applications to the state. These violations are enough to warrant a revocation of its operating permit until these crimes have been investigated and resolved.

Signal Peak's sordid history of illegal behavior includes cocaine trafficking, firearms violations, worker endangerment, environmental violations, embezzlement, tax evasion, bribery, and money laundering. It has also damaged the land and water of ranchers who operate cattle operations above and near the mine.



Ranchers near Roundup are banding together to challenge Signal Peak. Photo from KTVQ.

Signal Peak has sued **MEIC** and local landowners in what is known in the legal world as a SLAPP suit (strategic litigation against public participation). In March 2019, a Montana judge ordered Signal Peak to pay the ranchers' attorneys' fees after the court found that the coal company had issued "unwarranted" and "oppressive" subpoenas against the ranchers based on "improper motives." Signal Peak's attorney admitted that it was seeking to subpoena the ranchers because they had submitted critical public comments about the mine, in clear violation of constitutionally protected rights to free speech and participation.

Signal Peak has also failed to fully disclose the mine's owners. Gunvor Group, Ltd, controls a 33.3% ownership stake in Signal Peak, according to the mine permit. Gunvor has been known to have close ties to Russian President Vladimir Putin. State and federal coal mining laws require full disclosure of coal mine ownership, yet neither state nor federal agencies have required this of Signal Peak's three owners.

The full extent of Signal Peak's activities should be investigated and illegal pollution addressed before Signal Peak is allowed to continue operating a coal mine in Montana. 🐦

2022 Board of Directors Election

It's time for the annual **MEIC** Board of Directors election. This year, we have five incumbent directors running for six open seats. Only **MEIC** members can vote; subscribers and business corporations are not eligible to vote.

To vote by mail:

- 1) Mark a "yes" or "no" or abstain from voting for each candidate on the enclosed postage-paid card.
- 2) Mail the card back to **MEIC** in time to arrive by October 20, 2022.

To vote online:

- 1) Scan the adjacent QR code with your smartphone's camera to access the online voting form.
- 2) Or submit votes online at tinyurl.com/MEICBoard2022.
- 3) Please submit online votes by October 20, 2022.

Thank you for your participation.



Diana Hammer

(she/her), Helena

I am a Life Scientist and an avid user of public lands and waters and enjoy exploring nature. I studied environmental science at Macalester College (B.A.) and also in India. I served as an Agroforestry volunteer in Peace Corps in Niger, West Africa, and then worked as a consultant for WWF/IUCN. I hold a Master in Public Health from Johns Hopkins and a Master of Science degree in Biomimicry from Arizona State University. I worked for the US Environmental Protection Agency for nearly 30 years (e.g., projects included the Milltown Dam Removal and Clark Fork River Restoration and other environmental programs) and also partnered with several Tribal Nations to address various environmental challenges. Through my community volunteer efforts and my work with ReGenerous Cities, LLC, I am committed to creating healthy and more resilient communities in a changing climate. I am keenly aware of **MEIC**'s critical role in protecting our right to a 'clean and healthful' environment and the places where we live, work, and, of course, where we play! I have been on the **MEIC** Board since 2020 and would be honored to continue to serve.



Kathy Juedeman

(she/her), Helena



I watch and admire the work that the talented and experienced **MEIC** team does to preserve and advance Montanans' right to a clean and healthful environment. I spend time with my husband on our family ranch, which gives me the opportunity to see the extravagant wildlife, the natural spaces, and rivers as we work. I am inspired by the richness and diversity of Montana's land, water, and air, and keenly aware of the need to protect Montana. I have served on **MEIC**'s Board for several years, and I am currently serving as **MEIC** Board President. It would be a privilege to continue to serve on the **MEIC** Board.

Not sure if you're a current member?
Email jwintersteen@meic.org to
check the status of your membership.



Skye Borden

(she/her), Missoula

The price of a clean and healthful environment is, to paraphrase Thomas Jefferson, “eternal vigilance.” In my advocacy work here in Montana, I have found that there is simply no better watchdog than **MEIC** when it comes to safeguarding our water, air and climate. Throughout the years, I have been fortunate to partner with **MEIC** on a wide range of issues from lead in school drinking water to local 100% renewable electricity resolutions. My love of wild places brought me to Montana. Today, I continue to advocate for wildlife and wildlands as the co-director of the Great Burn Conservation Alliance, and I spend most of my free time exploring the region’s trails and rivers with my partner and two young children. I believe that climate change is one of the greatest threats to our wild heritage, and I am grateful that groups like **MEIC** are working tirelessly to find commonsense, made-in-Montana solutions for our climate crisis. It has been an honor to serve on **MEIC**’s board for the past two years.



Beth Taylor Wilson

(she/her), Missoula

I grew up in Missoula. Post high-school, I took a break from studies at the University of Montana and took a “summer job” in Jackson Hole, Wyoming, moving away from Montana just as our fair state was drafting and adopting our extraordinarily prescient, forward-facing Montana Constitution. Montanans became constitutionally assured of the “fundamental right to a clean and healthful environment.” When I left, Missoula had some of the worst temperature-induced winter “inversion” air pollution in the country. But thanks to activists like the Gals Against Smog and Pollution (GASP), who numbered my mother as a member, Missoulians forced the then Hoerner-Waldorf pulp and paper mill to start cleaning up its corporate act. Missoula’s air became far cleaner and healthier thanks to environmental mitigation and citizen activism. Environmental activism and stewardship is in my family DNA, and I’m excited and honored to have the opportunity to work with **MEIC**, our state’s premier environmental watchdog.



Roger Sullivan

(he/him), Kalispell

Amidst the seemingly endless challenges wrought by an ascendant cultural paradigm that thoughtlessly takes its toll across Montana, the most hopeful thing I can think of doing is to continue working with **MEIC** in the ongoing effort to vindicate the right of this and future generations of Montanans to a clean and healthful environment. In this effort I have joined with others in advocating on behalf of **MEIC** on a number of occasions, including against oil and gas exploration adjacent to Glacier National Park, against the Highwood coal-fired generating station near Great Falls, in helping to achieve closure of Colstrip generating units 1 and 2, and expansion of the massive Rosebud coal mine. It has been my great honor to presently serve on the board of **MEIC**, and if elected to serve again I would hope to continue to contribute to **MEIC** through participating in the thoughtful analysis of requests for **MEIC**’s involvement in new matters, in the effective management of litigation, and in envisioning a sustainable future for all Montanans.

PSC Kicks the Can Down the Road with IRP rules

by Ian Lund

When the Public Service Commission (PSC) published proposed rules on energy resource planning in July, MEIC sprung into action. We helped bring our members, our allies, and the best minds together at a PSC hearing in August to demand that it make changes. The draft rules were hot garbage, but the path forward remains as uncertain as ever.

When an agency writes rules, it first publishes a draft, solicits comments from stakeholders, then integrates those comments into a new draft. Or, at least, that is what is supposed to happen. The three-year struggle over these rules between Montana's regulated utilities, led by NorthWestern Energy, and just about everyone else culminated in draft rules that may as well have been written by NorthWestern itself.

Every three years, utilities must submit plans detailing how they will provide electricity over a 20-year period. In the past, these were known as Resource Procurement Plans. A bill passed in 2019, **HB 597**, required the PSC to overhaul the requirements for how utilities must write their plans, now called Integrated Resource Plans (IRPs). An IRP is meant to 1) document and explain a utility's anticipated energy supply and demand forecasts, 2) identify whether the utility needs to invest in new resources (e.g. power plants or energy efficiency) to replace retiring resources or to

meet growing energy consumption, and 3) identify which resources are best suited to meeting that need. Unfortunately, NorthWestern Energy has historically used this process in bad faith. Instead of rigorously evaluating all viable energy resources – including renewables and storage, energy efficiency, and market purchases – it has used the resource planning process as an opportunity to justify building expensive methane plants or keeping the Colstrip coal plant open.

HB 597 was meant to fix that. It outlined a better process to allow public and PSC oversight over utility supply and supply-and-demand projections, as well as model optimal, least-cost investment paths to maintain reliable service. Additionally, it required that any time a utility sought approval from the Commission to invest in significant new energy resources, it would have to conduct a “competitive solicitation process.” Under this regime, a utility can't just decide to build a gas plant, it would have to first identify how much energy it needs, then issue a request for proposals (RFP) that any energy supplier could respond to (including the utility). The PSC would guide the utility through this process, and the public would have the ability to comment on the RFP and the scoring criteria for bids. In theory, competitive solicitation would result in a more thorough evaluation of new resource acquisitions.

For some reason, competitive solicitation was gutted in the July draft of the rules. In fact, there were many examples of the rules falling short of the legislative

Why do utilities like to build gas plants?

Utilities generally make about a 10% return on investment for capital projects (e.g. power plants). While the utilities make a solid return, they don't actually pay for the projects – their customers do, through higher electric bills. So their incentive is to build expensive plants and pipelines, because the more they spend, the more they can increase the rates of Montana customers, and the more they can increase returns to shareholders. NorthWestern's proposed Yellowstone County Generating Station will cost ratepayers \$286 million just to build!



intent. For instance, the statute aims to give alternative resources such as energy efficiency a fair shake, stating plans must contain “an evaluation of the full-range of cost-effective” resources, including efficiency and demand-side management. The draft rules, on the other hand, only say that the utility must include a “wide range of plausibly cost-effective resources,” allowing utilities to pick and choose which resources it wants to model. It sounded to us like NorthWestern wrote itself a loophole to avoid investing in renewables so it could maximize profits from building methane gas plants.

At a public hearing on August 16, only the utilities (NorthWestern Energy and Montana-Dakota Utilities) spoke in favor of the proposed rules. The long line of opponents, including the sponsor of HB 597, Rep. Daniel Zolnikov (R-Billings), strongly objected to the deference it gives to utilities. In response, PSC staffers

presented an updated version of the proposed rules to the Energy and Telecommunications Interim Committee on September 7. Staff’s newest version brought back competitive solicitation and included key transparency and planning diligence provisions. In their explanation of the revisions, they said “revisions to the proposed rules are appropriate to fully implement state policy.”

On September 13, the PSC voted 3-2 against approving the staff’s proposed version of the rules, and instead voted to postpone the rulemaking until January. The majority cited the utilities’ discomfort with the latest version of the rules as their primary reason for not approving.

MEIC will continue pushing the PSC to stand up to the utilities they are supposed to regulate. Stay tuned. 🌿

NorthWestern Continues to Fight Against Low Income Energy Assistance

Victory

by Anne Hedges

NorthWestern Energy is at it again. This time, it is trying to sidestep a requirement for its shareholders to pay \$2.5 million for low income and tribal energy assistance programs. Prior to its repeal in the 2021 Legislative Session, the Montana Renewable Energy Standard had a provision that required NorthWestern Energy to purchase electricity from small community renewable energy projects. The purpose of this provision of law was to ensure that the benefits that flow from the development of renewable energy projects were distributed across the state and not limited to rural areas of Eastern Montana.

But NorthWestern Energy never complied. Instead, it routinely requested and received waivers from the Montana Public Service Commission (PSC) from having to comply with the law. In 2015 and 2016, it requested waivers and did not even bother to try to

justify its failure to comply with the law. The PSC granted the waiver and **MEIC**, represented by Jenny Harbine with Earthjustice, challenged the decision in state district court.

In 2019, the court overturned the PSC’s decision. It found that the PSC had acted arbitrarily when it concluded that NorthWestern made reasonable efforts to comply. NorthWestern convinced the 2021 Legislature to retroactively eliminate that requirement, but once again a court ruled in **MEIC**’s favor and said that NorthWestern’s obligation to pay a \$2.5 million penalty remained despite NorthWestern’s and the Legislature’s new law.

Now, NorthWestern is asking the Montana Supreme Court to eliminate its obligation to pay for its bad behavior. Let’s hope the Supreme Court holds NorthWestern accountable to fund these important programs. 🌿



NorthWestern Tries to Skirt the Law in Rate Case

by Anne Hedges & Ian Lund

NorthWestern Energy knows no shame. As 20 million Americans fall behind on their utility bills, NorthWestern wants to substantially increase customer electricity and gas rates across Montana. In early August, it filed a rate case with the Montana Public Service Commission (PSC) in which it seeks permission to permanently increase customer rates starting in 2023 by a whopping 25% for the average electric customer and 11% for the average gas customer. (It is also requesting an immediate rate increase of 11% for electricity and 4% for gas until the PSC issues a final ruling on the amount of a permanent increase). One reason it is increasing rates is to pay for an overpriced, highly polluting methane gas plant on the banks of the Yellowstone River near Laurel (previously known as the Laurel Generating Station and now called the Yellowstone County Generating Station).

Broadly speaking, a rate case is a formal PSC process to establish the rates that consumers pay for their electricity and gas services and to assure that those rates are reasonable. Rate cases are legal proceedings in which intervening parties are allowed to ask the utility questions, request additional information, and provide expert testimony in order to help the PSC make a decision that protects customers from price gouging from monopoly utilities.

MEIC has requested to intervene in the case and will be represented by Earthjustice. We will have two primary priorities. First, we will closely scrutinize NorthWestern's charges for the Colstrip plant to determine if the costs are prudent investments in a plant where most owners will be ready to close by late 2025. Long-term investments in such a short-term resource would be unfair to customers.

Perhaps even more importantly, NorthWestern wants to charge customers \$280 million to build the 175-megawatt methane gas plant near Laurel before it gets built. NorthWestern is requesting permission to charge customers \$54 million a year for 20 years – just for this plant. This would result in customers paying more than \$1 billion to build the plant in addition to having to pay for annual operation, maintenance, and fuel costs! In normal utility regulation, a utility must build a plant and then ask the regulators for permission to pass those costs on to customers. Fortunately, a court found the broadly worded pre-approval law to be unconstitutional in May 2022. That meant NorthWestern would have to take the risk of building the plant and then work to convince regulators that the costs were prudent and should be passed on to customers after it is constructed and all costs are known.

NorthWestern is not one to give up on padding its pockets, though. It is now trying to find a backdoor way to charge customers for the methane gas plant before the plant is built. Instead of calling such permission “pre-approval,” it is requesting a “reliability rider” – something that has never been done. Capitalizing on fears of blackouts, NorthWestern is claiming that the only way to maintain adequate electricity supply is to build a fossil fuel plant outside of the traditional approval process. It is requesting the PSC forgo its normal approval process that requires the PSC and interested parties to review the proposal and verify that building such a plant is prudent and in the public interest.

This is an important case for the future of utility bills in Montana. If the PSC approves NorthWestern's rate increase, Montana customers will suffer from the imprudent and evasive maneuvers of a rogue utility. 🌿

Will Cities Adopt Montana's New Climate-Conscious Building Codes?

by Ian Lund

More than 43% of all energy consumed in the U.S. is used to heat or cool buildings. Globally, about one-third of all carbon emissions can be traced back to the building sector. While much attention is on electrifying our lives and procuring more carbon-free resources, every new building constructed increases the total amount of energy demand on the system. Luckily, there's a tried and tested regulatory tool for moderating energy usage in buildings: building codes.

Building codes define the minimum standards to which new buildings and major renovations are designed. They cover almost all aspects of building design, such as regulating structural features like stairs, electrical features to keep us safe, and plumbing standards to keep everything flowing properly. Building codes can also set minimum energy efficiency standards. Code today is efficiency tomorrow; they are a huge factor in the size of the average building's carbon footprint.

That's why **MEIC** and our members pushed the Montana Department of Labor and Industry (MDLI) to strengthen its Code. Under Montana law, counties and municipalities cannot impose codes stricter than those established at the state level. We are very pleased to report that the MDLI adopted nearly all of the 2021 International Energy Conservation Code (IECC), bringing Montana in line with modern standards for energy efficiency. Additionally, MDLI included three climate-focused stretch codes that local governments can voluntarily adopt.

The three stretch codes are solar-ready homes, solar-ready commercial buildings, and zero-energy commercial zones. Falling just short of actually requiring solar panels to be

installed, the solar-ready stretch code requires buildings to have large south-facing roofs and electrical wiring to be designed to accommodate the conduits and inverters associated with rooftop solar projects that may be added later. The solar-ready code will ensure that new buildings can get solar easily and affordably.

The zero-energy commercial zone stretch code would require new commercial buildings to assess their total energy usage and either offset that energy usage by producing an equivalent amount of renewable energy on-site or procuring it off-site. By adopting these stretch codes, the MDLI gave local governments a green light to require that some of the largest energy users in their jurisdiction use exclusively renewable energy. The zero-energy requirement would apply to all new buildings in a commercial zone.

However, these stretch codes only go into effect if local governments elect to include them. Currently, there are three cities with 100% clean electricity by 2030 goals – Bozeman, Missoula, and Helena. These are the most likely jurisdictions to implement the stretch codes, but even they are not likely to do so without public pressure. The City of Bozeman is currently considering including zero-energy and solar-ready standards as part of an incentive structure for new developments, though falling short of making them mandatory. Before including it in its Unified Development Code, Bozeman wants to conduct a cost-benefit analysis. If the City includes the social cost of carbon in its calculations, it would likely find that allowing for the easy addition of rooftop solar on buildings and decreasing emissions from the commercial sector would be a net positive.

Any city, county, or town certified by the state to enforce building codes can adopt the new codes and the stretch codes. Those localities need pressure from the public to do so. If you would like your government to adopt the building and stretch codes as a climate action, contact your local officials. 🐦



As Montana Prepares for EVs, Legislators Weigh Taxes

by Ian Lund

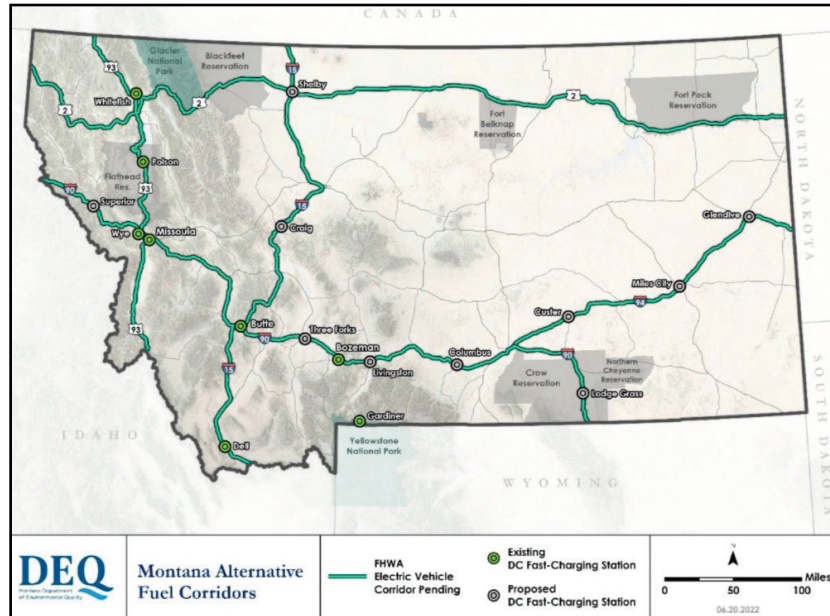
Electric vehicles (EVs) are coming, and Montana is getting ready. Thanks to the federal Infrastructure Investment and Jobs Act, which passed in 2021, Montana will receive almost \$43 million over five years to develop an EV charging network across its highways. The funding is part of a national push to create a cross-country Alternative Fuel Corridor (AFC), to make long-distance EV travel possible. A fully built-out corridor consists of at least four fast EV chargers every 50 miles on major highways within one mile of the highway. This funding should help close the gaps between charging stations, especially in rural areas where there is a weaker business case for private investment.

According to its plan filed with the federal government in July, the State of Montana's priorities for the AFC grant program are to fill large gaps of 100 miles or more along I-15, I-90, and I-94 in the first year; and then to fill 100-mile or greater gaps along US-2 and US-93, with a focus on gateway communities to national parks and recreation/tourism destinations, in the subsequent four years of funding.

Legislative Decision Making

On the policy side, the Legislative Transportation Interim Committee (TIC) is considering a bill that sets additional registration fees for EVs. The TIC proposed adding an \$110 annual fee for EVs weighing less than 6,000 pounds, with escalating fees for heavier vehicles. Most light-duty EVs weigh in below 3 tons, meaning most EV drivers will only be subject to the \$110 annual fee on top of existing registration fees.

Only 26 U.S. states have EV registration fees. They impose this tax on EVs as a way to replace the lost revenue from EVs not paying gas taxes. However, in reality, any registration fee greater than \$110 is more than a comparable internal combustion engine vehicle would pay in gas tax, especially if that comparable vehicle is a highly efficient hybrid, which uses less



fuel. In 2021, the Montana Legislature tried to pass an additional annual registration fee for EVs of \$195 for light duty vehicles and \$375 for heavy trucks, which was vetoed by Gov. Greg Gianforte because it would have been the highest EV fee in the nation.

Lawmakers are also concerned that registration fees are not enough to cover lost revenue from out-of-state EV drivers who don't pay a gas tax. A draft bill that would have established a \$0.03/kWh tax on EV charging (in addition to the registration fee) died quickly in the July TIC meeting. This tax would be difficult to implement, redundant, and regressive. Because the registration fee covers the lost gas tax revenue, the EV charging tax would double-tax in-state EV drivers. Since most Montana EV drivers charge their vehicles at home, they will be less affected by the tax than tourists. However, Montana EV drivers that need to frequently use public charging could end up paying upwards of \$100 in charging taxes, which, in addition to the registration fee, means EV drivers will pay twice as much in taxes as owners of internal combustion engine vehicles.

Luckily, TIC is reconsidering the wisdom of this tax, though still exploring other ways to tax out-of-state EV drivers. **MEIC** will keep you informed every step of the way. 🌿

Massive Colstrip Coal Mine Expansion Approval Challenged

by Derf Johnson

While leaders and decision-makers in the U.S. and across the world are taking proactive, positive steps to directly address the climate crisis by encouraging a reduction in fossil fuel use and a transition toward clean, renewable energy resources, the same cannot be said for the leadership of Montana. In fact, not by a long shot. Recently, the Gianforte Administration's Department of Environmental Quality (DEQ) approved a massive coal mine expansion at the Rosebud Mine that, if allowed to proceed, would undoubtedly further pollute water in southeast Montana, exacerbate the climate crisis, and delay the necessary transition to clean energy sources in Montana. Predictably, the approved expansion failed to fully account for its potential impacts on Montana's water and sensitive prairie streams and entirely ignored its inevitable contribution to climate pollution. Recognizing these failures, Earthjustice, on behalf of **MEIC** and Sierra Club, recently filed two separate legal challenges.

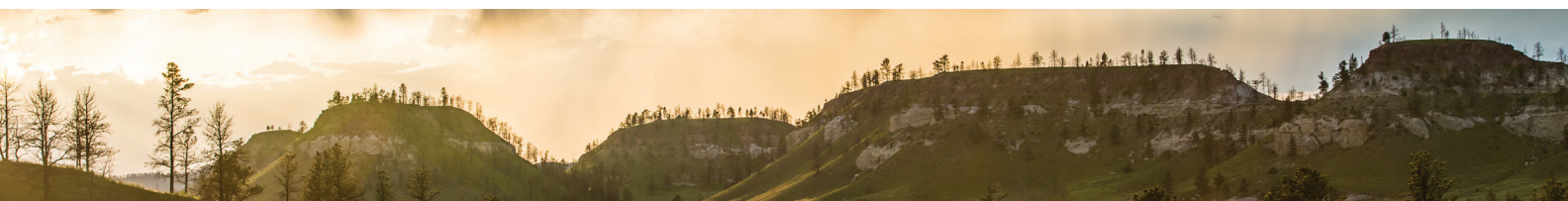
The Rosebud Mine is the sole fuel source for the Colstrip coal-fired power plant. The mine feeds the two remaining Colstrip units (Units 3 & 4) with approximately six million tons of coal annually. If allowed to proceed, the expansion would allow the mine operator Westmoreland Rosebud Mining, LLC, to strip-mine an additional 62.3 million tons of coal from approximately 2,500 acres in the headwaters of Lee Coulee over the course of 21 years. In addition to carbon emissions, the strip mine expansion would destroy everything in its path and have incredibly detrimental impacts for the adjacent lands, water, and wildlife.

Notably, despite an overwhelming wealth of scientific knowledge on climate change and greenhouse gases dating to the early 19th century,

the DEQ not only failed to evaluate the coal mine expansion's contribution to climate change – it purposely ignored them. Even though **MEIC** directly submitted data on climate change to DEQ through official comments, DEQ refused to assess the climate impacts in its environmental review for the project, asserting that state law prohibited it from doing so. DEQ subsequently approved the expansion in May 2022. The egregious failure to even provide reference to the monolithic problem of global climate change, much less to actually analyze the project's contributions to that problem and potentially mitigate or prevent its impacts, is a complete abdication of the DEQ's mission and responsibilities under the constitution.

This summer, Earthjustice, on behalf of **MEIC** and Sierra Club, took DEQ to court. First, we challenged DEQ's approval of the mine expansion under the Montana strip mining law (the Montana Strip and Underground Mine Reclamation Act) for failing to protect our water resources. We filed this case before the Gianforte-appointed Board of Environmental Review. Then we filed a complaint in state district court on the basis that DEQ's decision violated the Montana Environmental Policy Act and the Constitution of Montana and threatens the well-being and fundamental rights of all Montanans. It is an abject failure for any governmental entity to ignore climate change when dealing with the permitting of super polluters such as coal mines and coal-fired power plants.

DEQ's approval of this and another recent expansion of the mine will allow the mining of more than 130 million tons of coal, which would be the equivalent of over 200 million tons of greenhouse gases when burned. This is roughly equivalent to the greenhouse gases produced from burning more than 22 billion gallons of gasoline. The climate simply cannot afford such a dramatic increase. 🌿



Building Sustainable Montana Communities

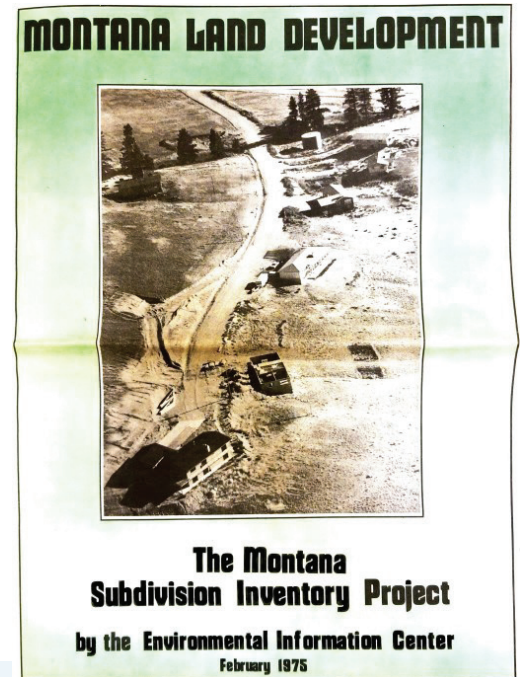
by Ann Schwend

If effectively managing land and water wasn't complicated enough, Montana is now experiencing a housing shortage that is driving prices through the roof. The lack of "housing stock" on the market is making it extremely difficult for hardworking Montanans to own or rent a place of their own, and it makes protecting water and healthy landscapes even more challenging.

But what exactly do we mean when we say "affordable?" The federal government defines housing as affordable when it consumes no more than 30% of gross income, including utilities. With median household incomes in Montana around \$57,000, and median home prices in many of Montana's cities exceeding \$400,000, housing is unaffordable for a large number of Montana residents, if they can even find something to buy or rent. So, how do we solve the affordable housing crisis without creating unmitigated sprawl or weakening environmental protections?

As it turns out, MEIC (or "EIC" back in the day) has been working on this topic for almost 50 years. On my first day of work, Adam McLane, our resident historian, handed me a vintage copy of a publication we produced and distributed in 1975 called the Montana Subdivision Inventory Project. It covers the perils of subdivisions with article titles such as "The Bitter Root boom could chop up the valley's whole land base by 1979," "Agriculture faces subdivision, saline seep, corporate farming, lowering profits, erosion, rising taxes, strip mining," and my personal favorite, "Montana could avoid growth follies of other areas." This excerpt reminds me that perhaps we should consider some of the wisdom that was apparent then:

If we value our rural nature and our open spaces, then we must forget the tired old belief that all growth is good. And we must recognize that Montana's resources – agricultural lands, wildlife and forests in particular – are finite. For the same level and well-drained fields that are most alluring to developers are also the most valuable to agriculture. Most of Montana's subdivision



Read the full 1975 project on our website:
www.meic.org/montana-land-development

growth centers in the fertile valleys near larger cities. And lands that are best for watersheds, wildlife and forests are also appealing sites for second homes in the country....

We can keep saying more is better for ourselves and forget tomorrow. Or we can have the courage and ingenuity to abandon the destructive patterns of our past. We can begin by together preserving the land that gives us food – and life.

Forty-seven years later, we find ourselves revisiting the same issues and similar conversations, though it's my hope and belief that we've learned a lot since then. This is, however, the first time in years that MEIC has had a staff person dedicated to working primarily on these issues. From water concerns and the Montana Subdivision and Platting Act to building codes and zoning laws, it's challenging to learn, discuss, and make decisions about policies that lead to affordable, sustainable development.

As I'm settling into my new role and formulating what "sustainable development" actually means, there are a few things we can agree on from the outset:

- 1. Sustainable development is a nonpartisan issue.** Our relationship with land, housing, and resources like water don't stick to party lines. We believe that everyone deserves to have a quality place to live that ALSO protects our environment. We need to take a comprehensive approach to integrate land and water planning in a way that provides for an adequate and dependable supply of clean water. There's also a huge need for housing stock in Montana right now, and we believe there's a way to do it inclusively and sustainably for the long term.
- 2. Terminology is important but malleable.** "Affordable." "Sustainable." "Attainable." It all can mean the same thing, but some terms work better than others. We're looking to other partner organizations working in these areas and often following their lead on terminology, but in general, MEIC is looking for solutions that will benefit Montanans in the long term. This means promoting policies that prioritize high quality housing with energy efficiency standards, access to existing public infrastructure (water and sewer), and bikeable/walkable communities. Affordable for the long term means creating sustainable communities and homes for all, not just simply building more structures.
- 3. We can't forget environmental protections.** While growth may be inevitable, urban sprawl is not. Rampant development of productive agricultural lands into subdivisions that are dependent on individual wells and septic systems is not sustainable. We want development to occur near towns with systems in place to regularly monitor water quality and quantity to protect individual homeowners and the environment. We also don't want to see development in environmentally sensitive or dangerous areas like floodplains or wildfire prone areas. The more we spread out, the more we infringe on the natural systems and the wildlife. Let's stay in our lane.

While there is still much to learn, we're already involved in two crucial, ongoing conversations.

Governor's Housing Task Force

On July 14, 2022, Gov. Greg Gianforte appointed a 26-member task force to address the emerging issue of affordable housing in Montana. Montana Department of Environmental Quality Director Chris Dorrington is the group's chair, and the committee consists of four subtask groups – Economics, Regulatory & Permitting, Construction, and Local Issues. Members of the task force include representatives from the public and private sectors. You can view a full list of members by visiting <https://bit.ly/MontanaHousingTaskForce>. The group is working quickly to develop draft recommendations to provide to the Governor's office by October 15.

DNRC Comprehensive Water Review

With the 50th anniversary of the Montana Water Use Act, the law which largely determines the use and distribution of water in Montana, the Department of Natural Resources and Conservation (DNRC) launched a stakeholder-driven comprehensive review of water rights and administration. Two stakeholder working groups are focused on determining whether the current set of regulations are adequate to meet future water policy objectives and needs. One of these groups, "Changes, Mitigation and Exceptions," is looking at water rights challenges associated with development, especially in basins that are closed to any new surface water appropriations. Visit the website for more information and meeting schedules: www.comprehensivewaterreview.mtdnrc.gov/

Some of the recommendations from these groups are likely to result in legislation or policy changes. We're attending the meetings and intend to be involved in any legislation that impacts clean air, clean water, or a sustainable future.

We would love to hear from you with questions, concerns, and ideas to help us address the challenges and build a more sustainable future. Please be in touch. 🌿

MEIC and Montana's Progressive Constitution

by Derf Johnson

This year marks the 50th anniversary of Montana's Constitution, an incredibly ambitious and remarkably forward-thinking document that has served Montana well. The document modernized Montana's government and took decision-making out of smoke-filled corporate boardrooms, placing it instead in the hands of the people. It also declared a series of rights in Article II, such as the right to a clean and healthful environment, the right to privacy, the right to know, and the right to participate in governmental decision-making.

While we've written about the Montana Constitution before, it remains a foundational part of MEIC's work and advocacy. In 1999, MEIC helped to secure the seminal case interpreting the right to a clean and healthful environment at the Montana Supreme Court in a case against the Montana Department of Environmental Quality (DEQ). The ruling from *MEIC v. DEQ* established "clean and healthful" as a fundamental right and further applied a "strict review" of laws and regulations that implicate that right. In the majority's opinion, Justice Terry Trieweiler stated:

We conclude that the right to a clean and healthful environment is a fundamental right because it is guaranteed by the Declaration of Rights found at Article II, Section 3 of Montana's Constitution, and that any statute or rule which implicates that right must be strictly scrutinized and can only survive scrutiny if the State establishes a compelling state interest and that its action is closely tailored to effectuate that interest and is the least onerous path that can be taken to achieve the State's objective.



Strict scrutiny is the most stringent standard applied by a court and is reserved for the protection of fundamental rights provided for under Article II of the Constitution and for laws that impact protected classes of people. For example, were the legislature to pass a law to exempt power plants from having to consider and mitigate pollution coming from its stacks, this would certainly implicate our right to breath clean air, a necessary component of a clean environment, and could only remain in effect if the state could demonstrate that it had a "compelling interest" in passing the law. While the legalese can get complicated, the take-home message is important and clear: Montanans have a strong, fundamental right to a clean and healthful environment, and the government can only impact or take that right away in rare circumstances and only for compelling reasons.

Certainly, MEIC relies upon and advocates for the right to a clean and healthful environment on a daily basis. However, MEIC also routinely relies upon the right to access government documents and to participate in governmental decision-making. Without these constitutional guarantees, our work and the ability of our members to influence government processes would certainly be constrained. We have highlighted some very recent work in which MEIC has asserted Montana's Constitution and Article II rights in defense of our right to a clean and healthful environment.

Gianforte's Decree on Public Documents: Not for Thee, Only for Me

Regular readers of *Down to Earth* are unfortunately all too familiar with the story of the environmental nightmare that is the now defunct Zortman-Landusky gold mine, the impacts to the Fort Belknap Indian Community, and the resulting Bad Actor law and its application to the proposed Montanore and Rock Creek mines. The latest chapter in this saga is Gov. Greg Gianforte's decision to abruptly drop the case against Phillips S. Baker, Jr., after he took over the governorship from Steve Bullock. Baker was a principal

with Pegasus Gold, which escaped liability at Zortman by declaring bankruptcy. Now Baker is with Hecla Mining, a company that

We the people of Montana grateful to God for the quiet beauty of our state, the grandeur of our mountains, the vastness of our rolling plains, and desiring to improve the quality of life, equality of opportunity and to secure the blessings of liberty for this and future generations do ordain and establish this constitution.

wants to mine under the Cabinet Mountains Wilderness. As you can imagine, Gov. Gianforte's decision set off alarm bells at **MEIC**, as the Bad Actor law is clearly a mandatory prohibition on issuing mining permits to bad actors, not a law that Gov. Gianforte can simply ignore or apply as he sees fit. **MEIC** is no stranger to making demands of the government. Recognizing the major implications of a governor choosing to simply ignore a mandatory law for political purposes, we filed a records request with his office for all documents and communications surrounding the decision to simply drop the Bad Actor determination. Underpinning this request is Article II, Section 9 of the Montana Constitution, which provides that "No person shall be deprived of the right to examine documents ... of all public bodies or agencies of state government and its subdivisions..."

The Governor's Office ultimately denied the public records request, in part through a novel legal rationale that the Governor has a "deliberative process privilege" that allows for him to deny the public access to government documents that would otherwise be available for review. The Governor's claim that the public should not be able to see these documents is a major shift in how the public records law has been interpreted for generations. If adopted, this would shred constitutionally guaranteed access to government decision-making. This issue is now in court, and **MEIC** is arguing vociferously that the Right to Know law must be maintained and appropriately applied.

Laurel Gas Plant: DEQ Stuffs Its Head in the Sand

Back in 2011, the Montana Legislature passed and Gov. Brian Schweitzer signed a law that revised

reviews under the Montana Environmental Policy Act (MEPA). The new law prohibits reviews from including a "review of actual or potential impacts beyond Montana's borders. It may not include actual or potential impacts that are regional, national, or global in nature." This change was very clearly meant to prohibit state government from analyzing, considering, or mitigating the overriding environmental and social issue of the 21st century: climate change.

The state frequently applies this remarkably regressive law when conducting environmental analyses, most recently with the permitting of NorthWestern Energy's proposed methane-gas-fired Yellowstone County Generating Station near Laurel (See also: coal mining expansion challenged at Rosebud Mine on pg. 15). In that process, the Montana DEQ purposely ignored climate change and refused to conduct any analysis of the potential impacts of greenhouse gas emissions from the proposed methane gas plant. An exclusion of such an important consideration obviously implicates our right to a clean and healthful environment, and it'd be hard to dream up a "compelling interest" that the state of Montana has in excluding climate change considerations as part of an environmental review for a methane gas-fired power plant.

Based in part on these constitutional concerns, **MEIC** challenged the MEPA analysis for the state's air permit for the methane plant as being deficient in that it did not consider climate change. To the extent that the law prohibits such an analysis, we are arguing that the law is an unconstitutional violation of our right to a clean and healthful environment. As of the time of this writing, we are awaiting a decision from a district court judge in Billings. 🌿

How does the Montana Constitution change?

It's no secret that some factions in Montana's political landscape are looking to make big changes to the Montana Constitution. MEIC is very concerned about the implications of potential changes – in particular for their potential to change or alter fundamental constitutional rights. There are a few ways that Montana's guiding document could be amended or wholly replaced:

Constitutional Amendment by Citizen Initiative

A petition signed by at least 10% of qualified electors (Montana citizens who are registered to vote) – including 10% of qualified electors in each of at least half of Montana counties will place the proposed constitutional amendment on the ballot for voter approval.

Legislative Referendum on Constitutional Amendments

A legislator can propose an amendment to the Constitution. The proposed amendment must be adopted by two-thirds of all legislators and subsequently referred to Montana voters and passed by a majority of state voters.

Constitutional Convention

The Montana Constitution provides for three ways a constitutional convention can be called: 1) Two-thirds of Montana legislators can vote in favor of holding a convention. Before a convention is held, it must also be approved by a majority of Montana voters, 2) a convention can be called by a majority of Montana voters using the initiative process. In order to be placed on the ballot, the initiative must first have signatures from at least 10% of qualified electors in the state, including at least 10% of the qualified electors in each of two-fifths of the legislative districts, or 3) the question of whether to hold a convention automatically lands on the ballot every 20 years if it has not appeared so in the previous 20 years (the last time this happened was in 2010). If a convention is held, any proposed amendments must ultimately be ratified by a majority of voters. 🌿

**DO YOU WANT TO
BE INVOLVED IN THE
2023 LEGISLATIVE
SESSION?**

TELL US HOW ONLINE:
[TINYURL.COM/MEIC2023LEG](https://tinyurl.com/MEIC2023LEG)

OR SCAN THIS QR CODE
WITH YOUR SMARTPHONE'S
CAMERA:



The Inflation Reduction Act:

Two Steps Forward, One Big Step Back

by Ian Lund, Katy Spence, & Anne Hedges

There's no doubt about it: the Inflation Reduction Act (IRA) is groundbreaking legislation for those of us working in the climate space. With more than 700 pages, we're still learning about everything it does. What we know now is that it's full of enough good things that we count this as a win, but there's still a lot of work to be done.

The Good

Perhaps the most important provision in the IRA is officially designating greenhouse gases as pollutants under the federal Clean Air Act (CAA). While the U.S. Supreme Court already made such a ruling in 2007, it was unclear what regulatory framework in the CAA governed the regulation of climate pollutants. This summer, the U.S. Supreme Court threw out the Environmental Protection Agency's Clean Power Plan (which had already been eliminated by the Trump Administration). The Supreme Court ruled in June that the EPA's plan to limit climate pollution from coal plants was inappropriate under the law, making it extremely unclear how or if EPA could proceed with limiting climate-changing pollution. The benefits that will flow from Congress officially designating greenhouse gases as "hazardous pollutants" under the law will pay significant dividends in coming years. **MEIC** is extremely relieved by this provision.

The IRA also contains a long overdue provision that requires oil and gas companies to pay \$900 per ton of methane leakage in 2024, escalating to \$1,200 in 2025, and \$1,500 in 2026 and thereafter. This methane leakage charge will help force the oil and gas industry to internalize the cost of climate-changing pollution. However, ensuring that leakages are accurately detected and accounted for will be a challenge. **MEIC** is committed to making sure methane handlers pay every red cent they owe for the impacts of emitting this supercharged greenhouse gas.

The IRA will also significantly decrease the cost for Montanans to reduce their reliance on fossil fuels. It provides a boatload of incentives for both residential- and commercial-scale clean energy, including a 10-year 30% tax incentive for solar and wind projects, electricity storage, and heat pumps beginning in 2023. Qualifying electric vehicles come with upfront discounts up to \$7,500 for new EVs and \$4,000 for used EVs. Additionally, there are incentives for improving the energy efficiency of homes and businesses. People below location-specific income brackets will be able to take advantage of rebates up to \$14,000 for qualifying efficiency and appliance upgrades, such as weatherization and water-heater replacement.

Check out the White House fact sheet for more good things to come from this bill: www.whitehouse.gov/wp-content/uploads/2022/08/Montana.pdf

The Bad

On the flip side, the IRA has a fan in one industry you may not expect: mining. Some mining companies are cheering a 10% tax write-off of the cost of their operation if they produce ANY amount of "critical minerals." In this case, this term is used to describe minerals considered essential to national security and the economy. Many of the minerals on the list are used in renewable energy technology. In order to qualify, mining companies will have to produce at least one of these minerals, which includes lithium, cobalt, and nickel, among others. While we can't argue the need for minerals in renewable technology, this is a large tax break for companies that could devote relatively little of their operations to producing these minerals.

In addition, the IRA also includes much more support for nuclear energy than we'd like to see. First, it includes \$36 billion to keep existing reactors in operation. Additionally, through an emissions-based

story continues on pg. 26

MEIC Hits the Road in Eastern Montana

by Melissa Nootz

This summer, I traveled across parts of central and eastern Montana to visit both long-time and newer **MEIC** members, and I want to share a few things I learned.

After a couple of weeks on the prairie, it's clear that Montanans across the state are fighting many similar battles. From managing limited water resources to pushing against extractive industries to finding solutions using local knowledge, more unites us than divides us in the Big Sky State.

Water is Life

Communities in the far reaches of eastern Montana don't have unlimited access to clean water for irrigation or drinking water, and it's a reminder that people have been living in these places with limited water since before Montana was a state. The climate crisis is intensifying aridification (the process through which a region becomes drier) and increasing the frequency and intensity of droughts and wildfires, alongside a decrease in available clean water.

Medicine Lake National Wildlife Refuge is an important asset in northeastern Montana. One of the largest bodies of water in the area created from historic glacial activity, this lake was important for the first people of this land and remains important today. Its current water levels rely on two area creeks, summer rainfall, and snowmelt. There are numerous wetlands that are crucial for migrating birds in the area. However, over the past several decades, warming temperatures and decreased precipitation have lowered the area water levels, including in the lake itself, to concerning levels. Our eastern members say they have witnessed notable changes to the lake in their lifetime. With an average of fewer than 13 inches of rain per year, one could speculate how many consecutive years it might take to replenish the lake water.

While this sounds like an extreme example, I learned from every single community I visited that water quality and water quantity are often top concerns. The climate crisis could make it much harder for Montana



Medicine Lake's disappearing shoreline is a result of aridification.

communities to be resilient, and ecosystem changes are already being seen in real time all across the state.

Pollution from excess nutrients, resource extraction, and other dirty industries have long impacted water, but the cost of maintaining and improving water infrastructure without an accompanying adequate source of revenue is impossible for most communities. What's even less clear is exactly how decisions from state legislators addressing sustainable planning, water quantity and quality, and ecological changes due to the changing climate will directly impact local communities and governments. Combined with the extreme recommendation for deregulation, it's apparent that state and local policies are intertwined and interdependent, and the future of Montana's water is truly at stake.

Crypto Infiltrating Under the Radar

Montana is no stranger to extractive industries that temporarily benefit nearby communities and leave behind long-term health and safety risks. There is a storied history of extended impacts to air quality and water quality and quantity from the moment oil, gas, and minerals are extracted through the process of transporting them to using them at generating stations or in homes.

However, there's a new extractive industry that is bringing no benefits to Montana communities.

Along the North Dakota border, there are numerous



The American Prairie Reserve is beautiful and contentious in parts of Central and Eastern Montana.

cryptocurrency data center operations hiding in plain sight on oil and gas well pads. More accurately, I heard the cryptocurrency operations before I saw them. The operations have massive fans which can be heard roaring across the landscape to cool the computers that are “mining” for digital currency.

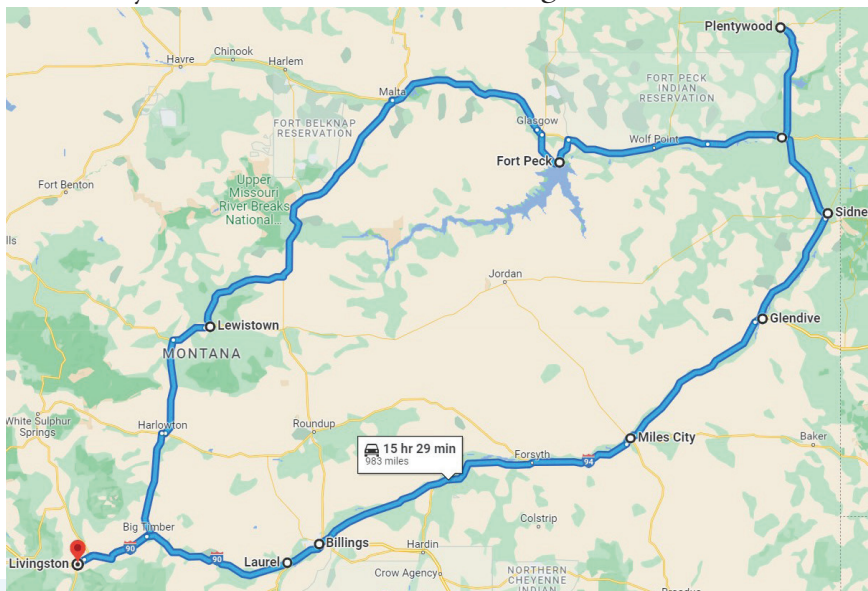
MEIC has written extensively about cryptocurrency operations and how they threatened the quality of life and clean energy goals in Missoula County, revived a coal plant in Hardin, and continually greenwash the impacts of gluttonous energy consumption, such as a proposed massive solar array in Butte that would solely power a crypto facility. Despite some arguments to the contrary, the crypto industry is actually drawing out the clean energy transition to make a few rich people even wealthier by enabling more fossil fuel extraction and consuming clean electricity that could otherwise power homes and businesses.

The companies that run these facilities claim to be largely powering their operations with methane gas that would otherwise be flared. The fossil fuel industry erroneously claims that it’s not possible

or profitable to capture and use flared methane gas for electricity, yet some are praising cryptocurrency operations as being a climate solution because they’re consuming methane gas, a very potent greenhouse gas. In reality, these companies are: creating a new demand for methane gas; releasing high volumes of greenhouse gases (when methane is flared, it releases both carbon dioxide and uncombusted methane); wasting gas that can be captured and used for societal necessities such as heat; and creating staggering climate impacts with the tremendous amount of energy needed for crypto mining. And to add insult to injury, most of the facilities were still flaring excess gas.

Once I learned what to look and listen for, I kept finding these facilities. The number of data centers

was surprising, with sometimes as few as two or as many as eight on one well pad. The incredible volume of noise that the fans produced makes one wonder: how could anyone live near them? What is the impact on the quality of life, health, and



Melissa’s route through eastern Montana.

story continues on next page

economy from constant truck traffic transporting oil on the gravel roads leading to the facilities, in addition to the added noise pollution from the cryptocurrency facilities? True to the history of extractive industry in Montana, local communities will continue to bear the brunt of all the associated negative impacts of boom and bust industries while the profits go elsewhere.

Local Solutions Under Threat

As a statewide nonprofit, many of the issues that MEIC works on deal with statewide policies, especially on issues that impact water quality and unfettered development. But what works for cities such as Helena, Billings, and Kalispell doesn't always work for places such as Glendive and Miles City. Local communities often have solutions to address their unique needs.

While most of the attention about housing has been focused on a handful of western cities, there is concern across the prairie about housing affordability and availability, maintaining clean water, and rural water availability where it's already quite arid. While a statewide mandate to promote housing development or water conservation can seem like a good solution, these cities are experiencing very different aspects of the same issue.

Western Montana is struggling to build enough houses to keep up with demand. Eastern Montana can't always get builders. For example, some eastern Montana **MEIC** members have been working to get solar panels on their property for years, but they aren't able to get return calls from solar developers willing to travel east. There is so much demand for work in the western part of the state that doesn't require travel. The current promoted solutions don't even begin to address the challenges of eastern Montana.

In addition, some in the state are calling for statewide deregulation of zoning laws to "open up" land for development in cities. But deregulating a map doesn't reflect reality, and many small towns are nestled into unique topography or have limited water supplies that would make them expensive to develop. A statewide mandate about housing could be impossible for some Montana cities to fulfill.



Lewistown's nonprofit garden provides fresh produce for community members.

In many cases, it's most effective to empower local people and governments to seek solutions for their own communities while ensuring there are state-level protections for issues such as water and air quality, building codes, clean energy, reducing the impacts of polluting industries, and more. For example, the Green Share Garden Project in Lewistown is a nonprofit garden growing organic produce to donate to the community. Volunteers at Glendive Recycles Our Waste (GROW) work to educate their community about recycling, and collect and process recyclables in order to divert waste from the landfill, with the intent to reduce landfill expansion that could be costly to the local taxpayers.

When we consider statewide policy at **MEIC**, we work with our members across the state to elevate solutions that work for everyone while protecting air, water and healthy landscapes. While it's clear that there is no single, perfect, one-size-fits-all solution to the real challenges we share across Montana, our current state administration continues to undermine local concerns and minimize public participation in favor of industry-friendly state-level policy to govern all of Montana. We at **MEIC** are concerned that this behavior will dominate the conversations and policy-making around clean energy, housing, sustainable planning, and water availability. 🌿

DEQ: Ignoring Neighbors Makes Opencut Permitting Faster

by Anne Hedges

If the speed of permitting is the only metric by which to measure success, then the opencut mining program is a huge success. Unfortunately, the permitting of these mines is so fast that the public is left out of the process. Even worse, that seems to suit the Montana Department of Environmental Quality (DEQ) just fine. In a recent presentation to the Legislative Environmental Quality Council (EQC), DEQ focused on how quickly it is issuing permits under the law passed by the 2021 Legislature, instead of elevating the concerns of those who live next to proposed mining operations.

The new law allows DEQ to issue a permit without notifying nearby landowners. It also eliminates the DEQ's obligation to consider water and air quality issues when issuing an opencut mine permit. When debating the bill in 2021, the Legislature erroneously believed that DEQ's water quality and air quality programs would allow public comments on a mine's water and air quality impacts. It didn't help that DEQ failed to tell the Legislature that most of the water and air permits for these facilities are called "general" permits, meaning there is no public comment period for individual mines and no site-specific analysis of the mine's impacts. Mine developers just sign a form saying they will comply with generic requirements and they receive the "general" air or water permit. Neighbors are left with nowhere to go to raise their site-specific concerns.



DEQ had an opportunity to raise these concerns during the last session but failed to do so, instead telling the Legislature that the proposed law struck a good balance. It had another opportunity to represent the public's concerns before the EQC and instead focused on how quickly it is issuing permits. Now, it has the ability to alleviate many of the public's concerns by writing rules that guarantee the constitutionally-protected rights to know what is being proposed, to participate in the permitting process and raise site-specific concerns about water and air impacts, and to a clean and healthful environment. Instead, DEQ is writing rules that make the problem even worse.

At a hearing on DEQ's proposed rules in August, people from Arlee, Libby, Paradise Valley, Bitterroot Valley, Helena Valley, and the Billings area spoke up to oppose the rule. Not a single person spoke in favor of the rules. Communities from across the state complained that DEQ was "knee-capping" the public by making it impossible to protect their communities, "aiding and abetting" violations of Montana's Constitution, "putting lipstick on a pig," and ignoring its mission to protect water and air quality.

Instead of listening to the public's concerns, members of the public were repeatedly chastised by the hearings examiner for being off-topic, even though they were just respectfully asking DEQ to do its job. The DEQ needs to: ensure the public is notified of mining proposals; require meaningful public comment periods on air and water permits; respond to public comments; require the concurrent submittal of opencut, air and water permit applications; prohibit changes to post-mining land uses, reclamation dates, or permit amendments without public notification and participation; and fully comply with the Montana Environmental Policy Act on each permit application.

The only thing that is certain is that the state is going to land in court defending an unconstitutional law and DEQ's fast track permitting, because the public will have no other recourse in its desire to protect their air, land, water and communities from large opencut mines. 🌿

Meet Anne Schwend

Montana has been discovered. With so many people wanting to live here, finding affordable housing is a challenge. I have been working in land, water, and community planning for decades and am really excited to bring it full circle as the Sustainable Communities Planning Advocate at **MEIC**. We cannot continue to address our growth and natural resource issues in independent silos. To build thriving, equitable communities for all Montanans, we need to take a comprehensive, collaborative approach to integrated land and water planning. Our response to the housing crisis might be to build and expand, but we need to be mindful of how and where we grow to limit our consumption of valuable agricultural lands and our limited natural resources. I believe that we have opportunities to be visionary and guide the future while maintaining our outstanding landscapes.

I “grew up” in water-scarce New Mexico but moved to Montana in the early ‘80s. I received both my Bachelors and Masters degrees from MSU, with an emphasis on plants, soils, and land rehabilitation. For the past 14 years, I worked as a water resource planner with the Montana Department of Natural Resources and Conservation. I raised four amazing humans and some poorly behaved dogs, cats, and chickens. I am a small business owner, love to garden, remodel old houses, recycle/upcycle cool stuff, and always prefer to be outside. I am thrilled to be part of the **MEIC** team and look forward to working together toward innovative solutions to protect our environment while meeting our growth challenges. 🌿



Inflation Reduction Act *(continued from page 21)*

tax credit scheme, the IRA could deliver up to a 50% investment tax credit to a nuclear developer that builds a nuclear plant in an “energy community,” i.e. an area with “significant employment” in the fossil fuel sector (think Colstrip). For more on MEIC’s stance on nuclear energy, visit www.meic.org/nuclear-energy.

The Ugly

It gets worse. The Center for Biological Diversity called the IRA a “climate suicide pact” due to its requirements for massive oil and gas leasing in the Gulf of Mexico and Alaska, reinstatement of an illegal 2021 Gulf lease sale, and mandate that millions more acres of public lands be offered for leasing before any new solar

or wind energy projects could be built on public lands or waters. Many of these areas are already considered sacrifice zones, and pushing for more fossil fuel development is devastating for local and Indigenous communities that have fought these projects and their impacts for years. These provisions are a gut punch and implementation is sure to be fought at every turn.

Finally, the IRA only passed because of a deal to bring forward another bill that will supposedly undermine or eliminate compliance with National Environmental Policy Act and its requirement for the government to disclose to the public the environmental, economic, social and cultural impacts of proposed projects. People across the country are already preparing to fight back. 🌿

Montana's Officials Need to Go Back to School

by Cari Kimball

The sun isn't up 'til 6:45am, the breeze through the aspens sounds like the rush of a river, and the school supply shelves of Target have been fully decimated – whip out that “bouquet of freshly sharpened pencils,” y'all. It's back to school time!

My days in academia are behind me, but if memory serves, a lot of good educators begin a new school year with a quick review of what was covered in last year's curriculum. In the spirit of that beginning-of-the-school-year review session, we at **MEIC** would like to provide the Gianforte Administration with a quick reminder about their responsibilities to Montanans, especially the leadership of state agencies dedicated to protecting Montana's environment, our natural resources, and the health of our communities.

Transparency

Montanans have a right to know what our government is up to and how this administration is weighing the pros and cons in their decisions. As many of you know, **MEIC** is legally challenging the Gianforte Administration's failure to produce public documents relevant to its decision to let Phillips S. Baker, Jr., and Hecla Mining Company run roughshod in our state. Montanans deserve to know why Gov. Greg Gianforte decided that Baker is above the law. If there are valid reasons that corporate polluters should get a free pass, the Gianforte Administration should be more than willing to transparently share that information, right?

Responsiveness to Public Input

Montanans have a constitutional right to participate in government decision-making. We saw very bad legislation passed last session that weakened public input in open-cut mine (gravel pit) permitting, and now we're seeing Montana Department of Environmental Quality (DEQ) take the ball and run with it, while people across Montana are experiencing major impacts from noisy, dusty operations next door that drain well water. Is it Rep. Steve Gunderson or DEQ who deserves the lion's share of blame for this



bad policy? Ultimately they both do, and **MEIC** is working with communities to hold both legislators and the DEQ accountable to fix the problems.

Hold Corporations Accountable

We all know the Montana history of Copper Kings, wealth hoarding, and abuse of workers, our landscapes, and our waters. We need government agencies to keep that context in mind. Public employees have a responsibility to bring some healthy skepticism to messaging from extractive industry executives who are here to get rich and then get out (leaving the rest of us with a mess). Permitting decisions for mining and fracking projects should meaningfully grapple with how projects worsen the climate crisis or impact streams and habitat; bonding and reclamation requirements should reflect the true costs of this important, expensive work. And if our government fails to do its due diligence in holding corporations accountable, you can bet that **MEIC** will be there applying pressure.

This week as I packed up Ruby's lunchbox, and she rode her little strider bike to preschool, I felt super grateful that **MEIC's** staff, members, and our partners are working tirelessly to protect what we love about this coming fall. Ruby and her generation deserve to know the joys of the golden glow of cottonwoods flanking the banks of the Yellowstone, the crisp scent of a chilly morning surrounded by ponderosas, and the special feeling of savoring these small wonders with our friends and family. 🌿



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