

Down to Earth

NEWS FROM THE MONTANA ENVIRONMENTAL INFORMATION CENTER

Koocanusa's Canadian Coal Problem



**NWE Customers
to Pay
28% More**

**Montana's
Energy
Transition**

**Exempt Wells
Exacerbate
Water Issues**

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Cover photo: Lake Koocanusa is northeast of Libby and was created by damming the Kootenai River in the 1970s. Photo by Katy Spence.

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

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From a Board Member

by Jessie Wiles

What leads some people to give up and accept the state of the world, while others take action?

For many of us, learning the impacts and existential threat of climate change has led to increased feelings of grief, sadness, anxiety, and fear for the future, often branded informally as “climate anxiety.” Climate anxiety, though a shared intergenerational experience, may be felt even more deeply by the younger generation and those in marginalized communities, who often feel the weighty burden of fixing our current climate crisis.

As the study of the link between climate and mental health continues to expand, we are learning more about the nuances of climate-related emotions, which include not only climate anxiety, but also climate worry, ecological grief, and solastalgia (a term used to describe pain and distress experienced by those witnessing their home environments destroyed or changed in unwelcome ways). In short, our feelings around the climate crisis can be complex and nuanced. And, importantly, these intense feelings are a healthy response to the state of our world.

All too often, these overwhelming feelings can lead us to give up hope and feel there is nothing that we can do to make a difference, because our planet is already too far gone, the obstacles are too big, and our voice is too small. Yet, these feelings can sometimes bring on a deep sense of urgency to take actions to address climate change.

Which brings me to my original question: why do some people take action to address our climate crisis, while other people don't act, even when feeling the same levels of climate distress?

Climate emotions research indicates that people are more likely to act when they feel they have a sense of agency. Agency is feeling like we can make an actual difference in addressing climate change in some capacity.

I offer this simple message to those fellow humans out there with feelings of climate worry and climate anxiety: **MEIC** can be your vehicle for agency in the climate crisis. Not everyone has the time or the

means to be climate activists or take individual climate-related actions. But by simply being a supporter of **MEIC**, **YOU** are taking action; **YOU** have an outsized impact on how Montana addresses climate change; **YOU** have influence in court battles seeking to uphold our constitutional right to a clean and healthy environment; and **YOU** have a voice in the Legislature to affect state policy. That's agency. And that's how our collective action becomes **YOUR** action.

So, I say this: Spread the word. Lend a listening ear to friends and family struggling with complex climate emotions. Share yours. Acknowledge the importance of these emotions. And, with compassion, offer your people the gift of “agency” when it comes to addressing climate change — they can, in fact, make a difference. Let them know that **MEIC's** staff shows up, with urgency, every day, to carry our voices out into the world on so many stages. By supporting **MEIC** with a membership, or by learning about **MEIC's** work and sharing with your friends, or by taking an action from an email, **YOU** are making the choice to have an enormous impact in addressing the climate crisis. You have agency!

Of course, feeling agency won't cure our climate anxiety. But, a sense of agency can mean the difference between giving up hope and living meaningfully in the face of climate change. Let us each choose meaning and, importantly, share this gift with others. 🌿

For the last 10 years, Jessie Wiles has been working in areas of public land law and Indian law for the DOI Solicitor's Office, for Montana DNRC, and now in private practice. As a mom, Jessie is passionate about giving our kids the chance to thrive in a clean and healthful environment and supporting Montana families as we address the challenges and inequities brought on by climate change.





THANK YOU

To our dear rabble-rousers and changemakers,

MEIC wouldn't be what it is today without amazing folks like you. From our donors and volunteers to our staff and expert testifiers to social media followers and brand-new supporters, every person helps build the movement and work towards a clean and healthful environment for this and future generations. It felt so good to celebrate our 50th Anniversary with you, our friends and supporters. It was a party 50 years in the making, and we'll remember it forever.

HERE'S TO 50 MORE





Photos by Amanda Jones and Katy Spence

PSC Approves NorthWestern's 28% Electricity Rate Hike for Residents

by Anne Hedges

Anyone who watched the most recent NorthWestern Energy rate case meetings was left wondering whether the Public Service Commissioners (PSC) had read any of the thousands of pages of documents and expert reports that detailed why NorthWestern was not entitled to its proposed electric rate increase. It was clear the Commissioners hadn't listened to testimony or comments about the rapidly rising cost of living and the concerns for those who are already facing steep housing and food costs. Instead, the PSC did what NorthWestern asked and saddled hundreds of thousands of Montanans and families with the largest share of the increase in electricity rates.

In normal rate case proceedings, elected PSC Commissioners will discuss the merits of the arguments raised by the parties who participated in the case. The Commissioners will debate whether to increase rates as requested by a monopoly utility or whether to choose a different path that better protects customers. But not this time.

Instead of publicly discussing the positions of the various parties and providing direction to the staff to craft a draft order, the PSC took a new, very troubling path. It made a decision behind closed doors, away from the eyes of the public whom it serves. It never publicly debated the merits of the case. It never publicly provided direction to the staff to craft a proposed order. It never told the public why it couldn't protect their interests from a monopoly utility that is required to benefit its shareholders regardless of the impact on captive customers. In short, the Commission never told the public why it disagreed with the vast majority of parties in the rate case and instead allowed NorthWestern to increase residential electric bills a whopping 28%. Residential customers are left wondering why they have to shoulder a greater increase in their electric rates than businesses and major industrial customers.

One reason might be that NorthWestern struck a deal with the Montana Consumer Counsel (MCC) and large industrial customers. Like MEIC, the MCC had strongly objected to some very unusual "riders" in the original rate request, which would

have increased customer costs even more by allowing the utility to charge hundreds of millions of dollars for NorthWestern's Laurel gas plant. NorthWestern agreed to eliminate these riders in order to persuade the MCC to strike a deal. The MCC, who represents all customers and not just residences, was under the gun; its budget was still before the Legislature, and it had been publicly targeted by Republican leaders early in the session, narrowly escaping an outright attempt to muzzle it in legislative committees. Days before the April PSC rate hearing, the MCC struck a deal with NorthWestern and some of the largest industrial facilities in the state that would require residential customers to bear the brunt of the rate increase.

At the October hearing, the PSC Commissioners complained that they didn't have authority to reject the deal and that protecting customers was the sole responsibility of the MCC. Commissioners read prepared statements and didn't consider the arguments of other parties who were excluded from the deal.

In actuality, the PSC is elected to protect all customers — including residential customers — and balance the interests of average Montanans with the right of the utility to earn fair compensation for the service it provides. What is the point of having a PSC if the monopoly utility always gets whatever it wants, without regard to the harms suffered by Montanans?

The fact that Montanans now have the highest electricity rates in the region means the PSC is failing to do its job. Montana families are the losers in this dangerous new approach to utility "oversight."

NorthWestern now has the highest rates in the region.

Utility	Per-kWh Rate	Monthly Bill @ 750 kWh
NorthWestern Energy	\$0.145	\$112.94
Portland General Electric	\$0.1268	\$106.10
Montana-Dakota Utilities	\$0.112	\$96.93
Puget Sound Energy	\$0.1156	\$94.19
Rocky Mountain Power (Utah)	\$0.095	\$81.25

Data compiled by Mike Dennison

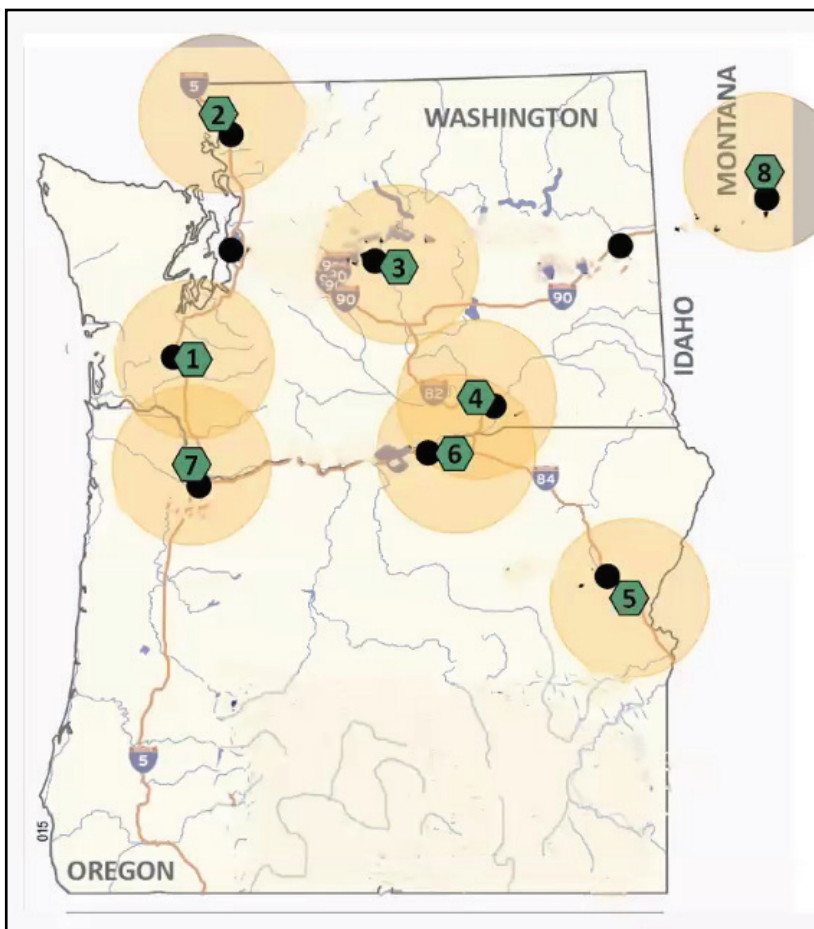
Keeping an Eye on Hydrogen Hubs

by Nick Fitzmaurice

In October, the Biden Administration announced \$7 billion in awards to develop seven distinct “clean” hydrogen hubs across the US. These funds are part of the Infrastructure Investment and Jobs Act (IIJA). The regional hubs are the Mid-Atlantic, Appalachian, California, Gulf Coast, Heartland, Midwest, and Pacific Northwest. Last year, Gov. Greg Gianforte entered an agreement with the governors of North Dakota, Minnesota, and Wisconsin to be a part of the Heartland Hub, but when the grants were announced, North Dakota, South Dakota, and Minnesota were the only states included (though press releases state the hub may later expand into neighboring states such as eastern Montana). However, some of these federal funds are still likely to reach Montana through the Pacific Northwest Hub, tentatively including a project for western Montana’s St. Regis.

Producing hydrogen from water using electrolysis is an incredibly energy-intensive process. While clean hydrogen — hydrogen produced using only clean energy — is likely to be a part of the energy transition, it should only be used for the most challenging decarbonization sectors. These “hard to abate” sectors include industrial and commercial applications such as cement production, shipping, and aviation. While these industries may need to rely on clean hydrogen to decarbonize fully, they should do so only after alternatives are thoroughly considered. This use of hydrogen must be truly clean, with zero associated emissions throughout the fuel’s value chain.

Although touted as “clean,” not all of the hubs are truly slated to be so. Hydrogen is classified by a range of colors based on how it is produced. Included in these hydrogen hubs are blue, pink, and green hydrogen. Blue hydrogen is produced from fossil fuels where CO₂ is captured and either stored or repurposed, and pink hydrogen is produced using nuclear power. These forms of hydrogen rely on expensive and unproven



The Pacific Northwest Hydrogen Hub could be home to eight hydrogen production facilities. Image via Pacific Northwest Hydrogen Association.

technologies. Green hydrogen is produced using 100% renewable energy for the electrolysis of water and is the only truly clean form of hydrogen production.

Four of these hubs plan to use blue hydrogen in part, including the Heartland Hub. The Pacific Northwest Hub intends to use green hydrogen from hydropower and other renewable energy sources. Unfortunately, very little information has been released by the U.S. Department of Energy regarding these proposals, and there are no publicly available plans for scaling up renewable energy generation to power these hubs.

It is important to keep an eye on these hydrogen hubs as they develop to ensure extensive federal funds are not wasted or put toward polluting hydrogen projects. 🌱

Will State Listen to the Public on MEPA and the Climate?

by Anne Hedges

Time and time again, when attempts arise to weaken the Montana Environmental Policy Act (MEPA), Montanans show up to ask the state to comply with its Constitutional obligation “to maintain and improve a clean and healthful environment in Montana for present and future generations.” More than 300 people turned out for purported “listening sessions” held by the Montana Department of Environmental Quality (DEQ) in October regarding how to “streamline” MEPA and what to do about a court-ordered climate analysis.

While MEPA implements Montanans’ Constitutional right to a clean and healthful environment, the Legislature and DEQ pretend that a stable climate is not a part of the “environmental life support system” that is protected in the Constitution. Fortunately for us, hundreds of people at the hearings in Billings, Helena, and Missoula politely disagreed and insisted that the State do its job.

Contrary to the State’s prior (and ongoing) approach, two district courts recently said the state must consider climate impacts when conducting environmental reviews under MEPA. In May, a Billings district court agreed with MEIC, Earthjustice, and Sierra Club when it required the state to consider the climate impacts of NorthWestern Energy’s Laurel gas plant. DEQ has yet to conduct the required analysis six months later.

In August, a Helena district court in *Held v. State of Montana* said the constitution requires the State to consider the climate impacts of proposed projects under MEPA. DEQ continues to issue fossil fuel permits that fail to consider climate change.

Despite telling the court under oath that it could analyze climate impacts in MEPA decisions, DEQ continues to feign confusion about its legal obligation. These “public listening sessions” and year-long stakeholder group process are just more stall tactics. The stakeholder group – sure to be rigged in favor of the fossil fuel industry – is purportedly intended to uncover how MEPA can be “fixed.” However, DEQ



Nearly 100 people attended the Missoula hearing. Photo by Katy Spence.

has no authority to do such a thing; state agencies are required to follow the law as written by the legislature or interpreted by the courts. Only the Legislature can change a law such as MEPA, which it did earlier this year.

The 2023 Legislature ignored thousands of public comments arguing against weakening MEPA, passing two laws that were found to be unconstitutional in the *Held* case only a few months later. Now, the State is attempting to avoid compliance with the court for at least another year, while the planet experiences record heat, drought, storms, floods, and widespread death.

The tools to analyze climate impacts in Montana exist. The federal government has spent years perfecting a widely-used metric called the “social cost of greenhouse gases,” which puts a monetary figure on each ton of greenhouse gas that goes into the atmosphere. (See the following page for more information.) DEQ could easily do this same analysis for proposed projects.

Only a handful of industry lobbyists attended the MEPA listening sessions to claim MEPA needs to be fixed. Everyone else earnestly asked DEQ to finally do its job and consider climate impacts in state projects.

“As a young person who loves Montana, loves being outdoors, who wants to raise a family and wants to live here, I urge you to listen to the voices of my peers and even more importantly those who are younger than me. I urge you to see them and hear them,” said Isabel Shaida from Bozeman.

Tom Caffery, a Helena high school teacher, wisely

said, “There is not a right way to do the wrong thing.”

John Herrin, a former DEQ employee who spent years writing environmental impact statements for coal mines, said, “We are facing the worst nightmare you can put into a movie.”

Many other voices joined them: high school students showed up to beg for a livable future, elderly

folks spoke on behalf of their grandchildren, ranchers spoke about climate impacts on agriculture, as well as doctors, lawyers, college professors... The list goes on.

That leaves only one remaining question for DEQ: will it protect our constitutional rights or will it continue to stall while the planet burns? 🌿

Federally Recommended Social Cost of Greenhouse Gases: **\$190 Per Metric Ton**

Source	2022 Point Emissions (Metric Tons CO ₂ e)	Social Cost
Colstrip Plant (Coal)	10,740,663	\$2,040,725,970
CHS Inc Laurel Refinery (Petroleum)	1,013,794	\$192,620,860
Phillips 66 Billings Refinery (Petroleum)	834,083	\$158,475,770
*Yellowstone County Generating Station (Methane Gas)	770,000	\$146,300,000
Hardin Generating Station (Coal)	730,172	\$138,732,680

Total social cost for Montana's five largest point polluters: **\$2,676,855,280**

*YCGS Projected Annual Emissions

What's the Deal with the Social Cost of Greenhouse Gases?

by Nick Fitzmaurice

The social cost of greenhouse gases is a metric that estimates the economic damage caused by each additional ton of carbon dioxide and other greenhouse gases emitted into Earth's atmosphere. This metric allows decision-makers to internalize the cost of greenhouse gas emissions that were previously externalized. The federal government has calculated this cost since 2009, currently estimated at \$51 per ton emitted, but the U.S. Environmental Protection Agency proposed increasing the value to \$190 in November 2022.

The Montana Department of Environmental Quality (DEQ) could use this metric in its analyses

under the Montana Environmental Policy Act to assess the impact of projects' forecasted greenhouse gas emissions or to demonstrate the social cost averted through projects that eliminate or prevent greenhouse gas emissions. Fourteen states already use this social cost to assess greenhouse gas emission climate impacts, including Colorado, Nevada, and Washington. Additionally, this social cost metric has been federally recommended for use in National Environmental Policy Act environmental reviews, as well as in federal agency budgeting, procurement, and other decision-making. The U.S. Department of Transportation and the U.S. Postal Service are already utilizing the metric. DEQ could be doing the same. 🌿

Montana's Terrible Plan to Grease the Skids for a Massive Wyoming Coal Mine

by Derf Johnson

Astronomical profits are motivating coal corporations to increase their export capacity in order to take advantage of a lucrative Asian market. The Powder River Basin in southeastern Montana and northern Wyoming — the largest source of coal burned for electricity in the United States — is no exception. Montana mines in this region include the Bull Mountain mine and the Spring Creek mine, which currently export a large volume of their coal to international markets, primarily through Canadian ports. Now, the Navajo Transitional Energy Company (NTEC) is looking to further capitalize on a large and profitable export market by building out a new Wyoming mine, and the Montana Department of Environmental Quality (DEQ) is willing to pave the way, our climate be damned.

Currently, coal mining corporations are making profits hand-over-fist on the international market and are looking at every avenue possible to increase sales and double down on revenue. Much of this is due to a growing demand for coal in Asia and, in particular, China. According to the Energy Information Administration, a coal exporter in 2022 could expect upwards of \$115 per ton for exports to Asian markets, whereas domestic sales were approximately \$34 per ton, a 240% difference in price.

Following the bankruptcy of Cloud Peak Energy in 2019, NTEC acquired a number of Cloud Peak assets, including the Spring Creek coal mine in Montana as well as the Antelope and Cordero Rojo mines in Wyoming. NTEC also acquired the Youngs Creek mine, a proposed and fully permitted Wyoming coal mine right on the Montana border that has not yet broken ground. Mining tens of millions of coal tonnage annually at Youngs Creek has been a dream of the coal industry since the late 1970s, but the limiting factor in its viability appears to primarily be that the transportation component of exporting the coal has proven difficult. Now that NTEC is on the scene and massive profits are on the horizon, there is a renewed

interest in developing Youngs Creek, and the Montana DEQ is complicit in the plan.

Rather than build out existing rail infrastructure to Youngs Creek, which comes at high capital costs, NTEC is now on a path to building a coal “haul road,” which will allow for massive, 240-ton trucks to haul coal on nine miles of road in Montana from Youngs Creek to Spring Creek, where NTEC could take advantage of existing railroad infrastructure to export the coal. To be clear, these massive trucks will make approximately 130 trips every day, seven days per week, 365 days per year.

In addition to facilitating a carbon bomb and adding more coal to Montana’s coal-choked railways, the road would cut directly through prime sage grouse habitat and destroy several lek sites in the process.

NTEC’s predecessor Cloud Peak originally applied to the Montana DEQ for a permit to build the haul road in December 2015. In summer 2018, DEQ issued a draft environmental impact statement (EIS) which was intended to evaluate the myriad environmental issues associated with the construction of the haul road. However, noticeably absent was any evaluation of the carbon emissions that would result from Montana facilitating and enabling new coal mine in Wyoming. **MEIC** submitted comments in 2018 on the draft EIS, urging the agency to account for or consider carbon emissions in its evaluation. Those requests were ignored, but the application then went dormant.

After the application sat for five long years, DEQ suddenly deemed the haul road application “acceptable” August 11 and issued a final EIS. The acceptability determination is one of the final steps for approval of a coal mine permit and includes a short comment period for the public. Most importantly, the final EIS specifically refused to analyze climate impacts, citing the laws passed just months prior during the 2023 Montana Legislature, which specifically prohibited the DEQ from considering climate impacts in its environmental analyses.

DEQ’s timing is impeccable. Just four days after the

story continues on pg. 21

The Federal Government Recommends Reform of Outdated Mining Laws



Many of the proposed reforms will increase Tribal engagement and considerations. Photo of the Zortman-Landusky mine by Katy Spence.

by Derf Johnson

Our hardrock mining laws are broken and outdated; in particular, the laws governing extraction on federal public lands. Over the coming decades, this problem will be especially acute as the mining industry pushes to extract more metals at a lower cost, in part to feed our needed transition to a clean, carbon-free energy system. In fact, many mining corporations have pivoted their messaging to the “necessity” of mining in order to produce the “critical” minerals necessary for windmills, solar panels, and batteries. While no one can argue that clean energy facilities need metals, the mining industry arguments give short shrift to the parallel necessity of protecting clean water, clean air, and public health during the climate crisis, when these essential ingredients for life and prosperity become all the more critical.

Recognizing the inevitable changes that our nation and the world now face, Pres. Joe Biden directed the U.S. Department of Interior to conduct a comprehensive review of our nation’s mining laws and regulations. Over the past several months, the interagency working group convened experts, stakeholders, and the public to review our outdated laws and make recommendations for reform. The extensive set of recommendations was released in a report in September and includes both regulatory and policy changes that agencies (i.e. Forest

Service, Bureau of Land Management, etc.) could enact almost immediately, as well as more sweeping reforms that will require congressional approval.

Most notably, the report recommends that Congress scrap the 1872 Mining Law — the antiquated law that governs mineral extraction on federal public lands — and convert to a leasing system with royalty payments to the public. The 1872 Mining Law was passed during the presidency of Ulysses S. Grant, aimed at “settling” the West and regulating miners with pick-axes and mules. It has long since proven to be inadequate in protecting the environment and people from modern mining. Unfortunately, its 151-year duration implicitly signals the difficulty in reforming this law, and the likelihood of Congress passing legislation for Pres. Biden to sign is slim to nil.

However, the report also provides an extensive set of recommendations for federal agencies to implement that do not require Congressional approval, such as increasing public and Tribal engagement; making permitting processes more consistent and predictable; protecting impacted communities and workers; and safeguarding environmentally and culturally sensitive lands. Time will ultimately tell whether and how federal agencies will implement such reforms, but the report offers a relatively straightforward set of goals that agencies can and should work to implement over the next few years. 🌿

Water Pollution Knows No Borders: How Canadian Coal is Poisoning Montana Waters

by Katy Spence

Lake Koocanusa continues to be plagued by selenium pollution from Canadian coal mining, and **MEIC** continues to hold the line alongside a number of partners. We've shared updates about Koocanusa in previous issues of *Down to Earth*, but **MEIC**'s part in this campaign is just one piece of a much larger story. To tell it more fully, we have to start at the source of the pollution: in British Columbia's (B.C.) Elk Valley.

The Selenium Problem

Wide, wild rivers meander through dramatic mountains and support a robust ecosystem full of critters such as grizzlies, wolves, and wolverines in the Elk Valley. Unfortunately, 120 years of coal mining is taking its toll on the valley, its rivers, and its inhabitants.

Teck Coal operates four active, mountaintop-removal, metallurgical coal mines that leech toxic amounts of selenium into the Elk and Upper Fording Rivers, rendering a popular fishing destination incapable of supporting healthy fish populations.

The health impacts of selenium are not insignificant. The U.S. Forest Service reports that once selenium is in water, it can bioaccumulate in food chains and become toxic to aquatic life. Selenium impacts on fish can range from subtle effects on growth to severe deformities and complete reproductive failure.

Teck has been ordered to pay several large fines for water pollution and resulting fish kills, including

the largest fine imposed under Canada's Fisheries Act: \$60 million ordered in 2021. One tributary of the Elk River — the Upper Fording River — experienced a devastating 93% decrease in adult westslope cutthroat trout populations during fall 2019 (compared to 2017 levels). In addition, several towns on the Elk River have also experienced issues with selenium polluting groundwater wells, costing them millions of dollars.

Because selenium is incredibly difficult to remove from water, and rivers pay no heed to borders and complex international water pollution policy, the issue gets more complicated as waters flow south.

The Montana Piece

The Elk River carries selenium pollution right into Lake Koocanusa, a 90-mile body of water that straddles the border between Montana and B.C., with just barely half its length in Montana. The Kootenai (also spelled Kootenay) River flows out from Koocanusa, through Libby and into Idaho. Both the Elk and Kootenai Rivers are culturally and ecologically significant, especially to the Ktunaxa Nation in B.C, Confederated Salish and Kootenai Tribes in Montana, and the Kootenai Tribe of Idaho, who have always advocated for protecting and restoring these waters.

In fact, in 2020, the Montana Department of Environmental Quality (DEQ) published water quality standards for how much selenium the state would allow in Lake Koocanusa and the Kootenai River. The U.S. Environmental Protection Agency (EPA) has established a national selenium standard of 1.5 micrograms per liter ($\mu\text{g/l}$) in the U.S., but it also recognizes that the one-size-fits-all standard would not work



Also known as the Koocanusa Reservoir, this lake was created in 1972 when the Libby Dam was completed on the Kootenai River and flooded hundreds of forest acres, an Indigenous cemetery, an abandoned town, and more. A Whitefish woman named the lake as part of a contest by combining the words Kootenai, Canada, and USA to get the name: Koo-can-usa. Photo by Katy Spence.

for all places and developed a process in which states could establish site-specific standards that would be protective of beneficial uses of water. The EPA is also ultimately responsible for approving state standards for selenium.

Over the course of several years, DEQ worked in accordance with the EPA's national criteria alongside a group of stakeholders, comprised of the B.C. Ministry of Environment & Climate Change Strategy, U.S. Fish & Wildlife Service, U.S. Geological Survey, University of Saskatchewan, U.S. Tribes, B.C. First Nations, and an environmental consultant for Teck Coal, to develop a site-specific selenium standard of 0.8 µg/l for Lake Koocanusa in Montana. The B.C. Province was present at most meetings, but did not sign on for the final site-specific standard. Ultimately, the Montana Board of Environmental Review (BER) adopted the 0.8 µg/l standard in the waning days of the Bullock Administration, and EPA approved the standard.

Because members of the BER are appointed by the Governor, a majority of its current members were appointed by newly-minted Gov. Greg Gianforte in 2021. In a surprising turn of events, Teck Coal successfully lobbied the new BER to attempt to rescind its selenium rule and to send a letter to EPA claiming that Montana's new standard was adopted illegally and should be voided. BER is a quasi-judicial agency with a stated mission to protect the health, safety and interests of our state and our people. Curiously, BER is administratively attached to DEQ; yet DEQ objected repeatedly to BER's attempts to rescind the rule.

So where does this leave Montana's standard, and does it apply to Teck? For now, EPA considers Montana's 0.8 µg/l for selenium the correct standard. Additionally, **MEIC**, the Clark Fork Coalition, Idaho Conservation League, and Idaho Rivers United, filed a legal challenge against BER in May in Montana's 1st Judicial District Court in Helena for attempting to unlawfully void Montana's standard. **MEIC** is



There are four active mountaintop-removal coal mines in the Elk Valley, with four more proposed. Photo by Alec Underwood.

represented by Earthjustice in this suit. DEQ has also separately sued its own BER over its attempt to void the standard, and the two cases have been consolidated.

What's Next

As if agency capture and devastating impacts to ecosystems weren't enough, Teck has proposed at least three additional mines on the Elk River in B.C. This wouldn't even be legal south of the border under the U.S.' Clean Water Act, yet it seems perfectly legal in B.C. Unfortunately, Montana and Idaho waterways will also suffer the consequences of increased coal mining in the Elk Valley.

B.C. First Nations and U.S. Tribes are calling for an International Joint Commission (IJC) reference to help provide a framework for enforcing regulations and working with entities on both sides of the border. The IJC is a bi-national organization established by the U.S. and Canada under the Boundary Waters Treaty of 1909. The IJC's Rob Sisson spoke at Montana's Water Policy Interim Committee in October, recommending to Montana legislators that an IJC reference would be beneficial for helping all parties feel heard and move forward with common solutions.

For **MEIC**'s part, we will continue to hold the line and push for enforcement of the site-specific selenium standard in Lake Koocanusa, as well as support the Tribes and other organizations working to prevent more pollution and damaging coal mining, through an IJC and otherwise. 🌿



HB 576 & SB 392:

The Next Chapter in the Story of the Coal Industry's Undue Influence on Montana Government

by Derf Johnson

For anyone that paid attention to **MEIC**'s lobbying efforts during the 2023 Montana Legislature, you will recall two bad coal mining bills that weaved through the process and ultimately became law. These bills were championed by the coal industry as a way to eliminate legal challenges by citizens and nonprofits to coal mining operations (**SB 392**, **Sen. Steve Fitzpatrick**, "loser pays") and to reduce water quality protections so that companies could pollute more without repercussions (**HB 576**, **Rep. Rhonda Knudsen**, "material damage"). Because both of these bills made changes to Montana's coal mining laws, the U.S. Office of Surface Mining (OSM) must approve them before they go into effect. This requirement is part of our cooperative federalism agreement and ability for Montana to continue running the program.

However, the Montana Legislature, always eager to poke the feds in the eye, put an immediate effective date on the bills with the intent of having the new laws be applicable immediately (rather than after OSM approval). Because this was illegal, **MEIC** took the Montana Department Environmental Quality (DEQ) to court to prevent their immediate implementation. Thankfully, because the law on this subject is crystal-clear, **MEIC** quickly reached a stipulated agreement with DEQ in which the agency agreed to not "take any action to apply, effectuate, or enforce the provisions of HB 576 or SB 392" for seven months (See the September 2023 issue of *Down to Earth* for more information). While this stipulated agreement hit a "pause" button on DEQ enforcement of the laws, the final resolution of the case, and the fate of the two laws, still remains.

Notably, after the stipulation was entered with the court, Montana Attorney General Austin Knudsen and Westmoreland Rosebud Mining (WRM) filed motions to intervene in the case. Interestingly, the Office of the Attorney General appears to be unhappy with the legal defense lodged by DEQ, whereby it agreed to not enforce the two laws until federal OSM approval occurs. WRM, on the other hand, was primarily concerned with the ability to seek attorneys fees from organizations and individuals so that it could discourage legal challenges and continue mining coal uninterrupted. **MEIC** also reached a proposed settlement with DEQ (through a consent decree) that basically mirrors the stipulated agreement and would prohibit the DEQ from enforcing the laws. On November 1, the judge put a "stay" on the case through the end of the year, delaying the potential for the consent decree to be finalized. Because of the stipulation that **MEIC** and DEQ reached, the laws will not go into effect until January 19 (or hopefully never).

Additionally, as required under the Surface Mine Control and Reclamation Act (SMCRA), the DEQ requested that OSM conduct a review and approve the two changes to the law. Lucky for us (and for our water), SMCRA was designed to protect the environment from coal mining and encourage citizen participation and accountability.

OSM's review process is now fully underway, and if popular sentiments carry the day, as exhibited by the public comments at a hearing on November 1 in Billings, OSM would be hard pressed to approve these two laws. Of the 50 people who showed up, about 20 commented, including Anne Hedges with **MEIC**. All but one person — the legislator who sponsored one of the

bills — spoke in opposition. Tribal members, ranchers, lawyers, and average Montanans strongly urged the OSM to reject both of the changes. Notably, concerns over water quality, public participation, and climate change were repeatedly brought up as reasons for OSM to reject the changes. Perhaps most compelling were the written comments from the Northern Cheyenne Tribe urging OSM to protect water quality and reject both bills.

Now that the public hearing and comment period are wrapped up, OSM will make a final decision on approval or denial of SB 392 and HB 576. We expect OSM to reject all or most of these laws, as they do not comply with the intent, letter, or spirit of SMCRA. Of course, any decision that OSM makes will be subject to legal review, and so this sordid tale of undue influence by the coal industry is likely far from over. 🌿

Signal Peak mine causes surface damage, safety hazards



by Anne Hedges

MEIC joined a dozen other conservation organizations in filing a complaint with state and federal agencies against Signal Peak Energy, operator of the Bull Mountains Coal Mine north of Billings. The complaint shows evidence of the mine causing subsidence cracks that have damaged lands in and adjacent to Signal Peak's mine.

Signal Peak is failing to comply with permit requirements to reclaim lands affected by this subsidence. This subsidence is making it extremely difficult and dangerous for wildlife, wildland firefighters, landowners, and ranchers. Despite knowing about the severe subsidence problems, Montana Department of Environmental Quality (DEQ) has failed to protect the public and environment by issuing notices of violation or cessation orders.

We requested the Office of Surface Mining Reclamation and Enforcement (OSMRE) perform a federal inspection of this mine and issue a cessation order to Signal Peak requiring it halt operations at the

Bull Mountains Mine until it complies with the law.

While a federal court invalidated Signal Peak's federal mining plan in February 2023, the company is still obligated to repair the damage caused by its coal mine operations. This year, *The New York Times* reported on the corruption and criminal history surrounding Signal Peak Energy. Along with impacts to local ranchers, the story reveals embezzlement, a fake kidnapping, bribery, cocaine trafficking, firearms violations, past links to Vladimir Putin, and worker safety and environmental violations by the mine and its owners.

The Western Environmental Law Center (WELC) and Earthjustice filed the complaint on behalf of MEIC, Citizens for Clean Energy, 350 Montana, Families for a Livable Climate, Moms Clean Air Force, Montana Conservation Voters, Montana Environmental Information Center, Montana Health Professionals for a Livable Climate, Northern Plains Resource Council, Park County Environmental Council, Sierra Club, and WildEarth Guardians. 🌿

MONTANA'S ENERGY TRANSITION

by Nick Fitzmaurice

Climate change is the greatest challenge of our time, driven by unprecedented atmospheric concentrations of carbon dioxide (CO₂) and other greenhouse gases as a result of human activities since the Industrial Revolution. Access to abundant fossil fuel energy has made modern technological development possible, but there are dire consequences to this energy consumption. Addressing the climate crisis does not mean shutting off the power, but it does mean a complete overhaul of the energy systems that modern societies and institutions are built upon.

As a net energy exporter positioned with disproportionate access to untapped fossil fuel reserves, Montana is key in the fight against climate change. This is not just about deploying clean energy infrastructure; this is a transformation of the entire energy system. Decarbonizing Montana's energy systems is no doubt a transition of great proportion, but it can and must be done to avert the greatest impacts of the climate crisis. Engineers and regulators must abandon antiquated practices, facing the possibilities of this new energy age with open minds. Montanans can lead the charge.

Of Montana's energy-related CO₂ emissions, nearly 45% come from electric power generation, followed by nearly 30% from transportation, over 15% from industrial processes, and the remaining 10% from commercial and residential heating and cooking. Nationally, about 75% of all anthropogenic greenhouse gas emissions (CO₂, methane, nitrous oxide, hydrofluorocarbons, etc.) result from combusting fossil fuels for energy, including over 90% of the U.S.'s total CO₂ emissions. All sources of greenhouse gas emissions must be curtailed but, as the largest contributor, energy presents the greatest opportunity to lessen anthropogenic emissions.

Decarbonizing Montana's energy system will require a highly coordinated effort and the concurrent achievement of several interrelated transformations. To meet energy demand cleanly, energy electrification, demand-side management, and

electricity decarbonization are all necessary. Expanding transmission infrastructure and implementing power sharing across the West will also be essential to reliably connect clean energy production to consumers (see article on pg. 18). The Federal Inflation Reduction Act and the Infrastructure Investment and Jobs Act (IIJA) have opened substantial federal funding avenues for Montana to facilitate these transformations.

Accelerating this energy transition is the directive of my position as **MEIC's** Energy Transition Advocate. This is a big topic, so I will be unpacking the Montana Energy Transition in installments, starting with energy electrification.

Electricity can be sourced through both carbon-intensive and carbon-free means, but carbon-based liquid and gas fuels such as methane and petroleum inherently release CO₂ upon combustion. Viable options for generating clean electricity exist today, so all energy uses must be electrified to rapidly decarbonize the Montana energy system. Electrification targets three general areas: Residential & Commercial Heating, Transportation, and Industry.

Residential & Commercial Heating

Gas is often used in commercial and residential buildings for space heating, water heating, and cooking. Heat pumps are an extremely efficient alternative that can electrify both space- and water-heating needs, while electric induction stoves are an excellent solution to most efficiently replace gas in cooking applications.

Heat pump technology can be deployed to recycle thermal energy between neighboring buildings ("clean energy districts") by using the ground and other available "sinks" as thermal batteries. Montana State University (MSU) has pioneered this technology in the state, deploying several energy districts that connect campus regions with ground-source heat pumps. MSU faculty have also been involved in retraining oil and gas drilling operators across the state to drill boreholes for ground-source heat pumps.

Industry

Across the U.S., industries such as cement production and steel manufacturing burn fossil fuels on-site to achieve extremely high temperatures for their processes. Alongside power generation and petroleum refineries, cement production and associated processes are among the largest point sources of greenhouse gas pollution in Montana. Industrial cement production and lime manufacturing at three sites across the state are collectively responsible for nearly one million metric tons of CO₂ equivalent emissions annually (2% of total state emissions). Aluminum production is another industry using direct fossil fuel heat, but Montana's only aluminum smelter closed in 2009. Electrifying these industries is a challenge, but Antora Energy is developing solid-carbon batteries that can be charged with clean electricity for just these industrial heating applications. (Chemical processes in industrial manufacturing, such as cement clinker calcination,

emit greenhouse gases not associated with energy use. These must be addressed separately.)

Transportation

Electrifying transportation is a hot topic these days as car manufacturers roll out growing electric vehicle fleets. This electrification eliminates the need for petroleum-based fuels used in combustion engines.

Phasing out the combustion engine does not stop at the single-occupancy vehicle. Additional progress can be realized toward addressing the climate crisis through expanded access to public transportation such as electric buses and electric passenger rail. The Big Sky Passenger Rail Authority was recently established to advocate for the revival of abandoned rail service in the state, particularly across southern Montana. Federal funding is explicitly set aside in the IIJA to improve passenger rail in the U.S. Freight and cargo shipping vehicles must also be electrified (see article on pg. 19).

DEQ Climate Emissions & Resilience Planning

In October, the U.S. Environmental Protection Agency's (EPA) Climate Pollution Reduction Grant program (CPRG) awarded the Montana Department of Environmental Quality (DEQ) \$3 million as the Governor's designated lead agency to develop a Climate Action Plan for the state. This planning grant represents the first of two CPRG funding phases. The second phase will distribute \$4.6 billion nationally for implementation projects included in states' Climate Action Plans. DEQ held a public meeting in October to elicit input on pollution reduction measures to include in Montana's plan. The CPRG seeks to target greenhouse gas emissions reduction across the following key economic sectors: electricity generation, industry, transportation, buildings, agricultural/natural and working lands, and waste management. The Governor's office is limiting DEQ to use the funding for "nonregulatory" projects. Unfortunately, this makes it very challenging for funds awarded in Montana to target the primary culprit of greenhouse gas emissions: fossil fuel combustion for energy.

This is not Montana's first climate planning process, but it is slightly different than previous ones. The Schweitzer Administration published the Montana Climate Change Action Plan in 2007, and the Bullock Administration published the Montana Climate Solutions Plan in 2020. These planning processes were resource-intensive and amounted to little progress towards concrete greenhouse gas emission reductions. The current process is only intended to provide a framework by which local, state, and Tribal governments can apply for additional funding if those projects are included in states' plans. In accepting these federal dollars, DEQ must ensure that the money goes towards a plan that will tangibly move the needle on reducing greenhouse gas emissions with explicit, time-bound goals for Montana's energy system. Unfortunately, the timeframe to design projects and apply for funding is tremendously short, and the fossil fuel industry appears to be lining up to receive this funding for performative projects that may very well avoid the transitions necessary for true decarbonization.

The Linchpin to Decarbonization in the West?

by Anne Hedges

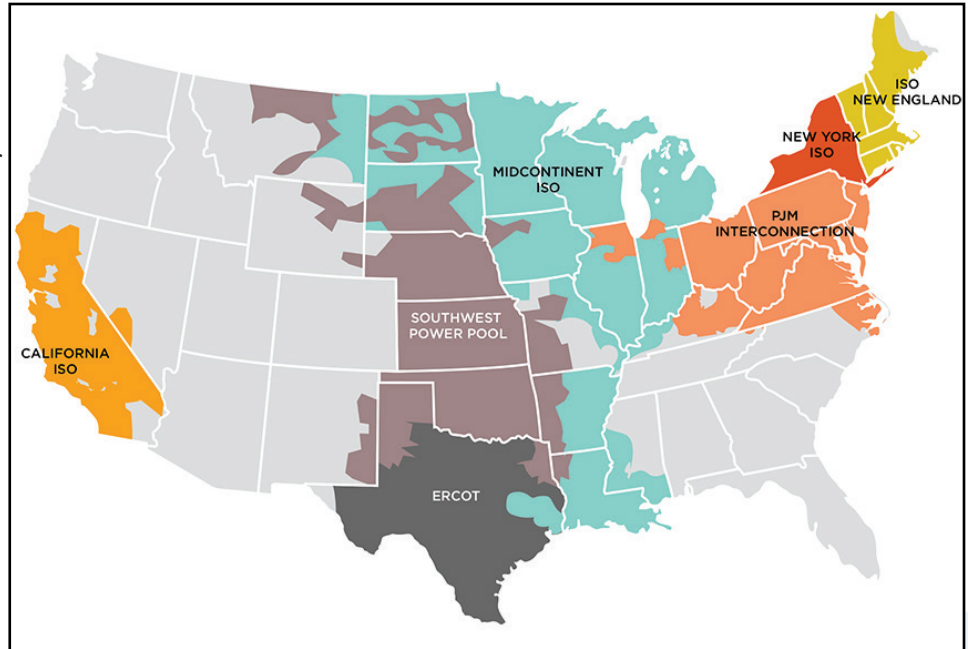
With rising electricity rates and more erratic weather coming as a result of the climate crisis, it's time to look for new solutions. One such solution is an emerging and rarely-mentioned arena that holds tremendous potential for not only preventing rate increases and increasing energy reliability, but decarbonizing the entire West.

The energy system in the West consists of dozens of individual areas in which a single utility manages the transmission system. If that utility is a publicly-traded monopoly, such as NorthWestern Energy, it is incentivized to decrease competition and to build extremely expensive projects in order to increase revenue for shareholders. Ultimately, that utility wants to sell its product (electricity) for as much as regulators will allow.

This has led to a woefully outdated and inefficient energy system in the West. No single entity oversees the grid system to ensure it evolves to meet modern electricity needs and keep prices reasonable for customers. Even though affordable and reliable electricity is critical to our everyday lives and economy, we have let the system languish.

But change is on the horizon and it comes in the form of a modern and interconnected transmission system. Other areas of the country already engage in energy trading systems within a larger geographic area than is covered by a single utility. These systems, often referred to as independent system operators or regional transmission organizations (RTO), exist in much of the rest of the country to varying degrees of effectiveness, largely depending on the governance structure. There is a strong push to create such an entity in the Western U.S. to allow utilities to take advantage of the tremendous geographic and weather diversity, and make the best use of the energy resources that are available at any point in time.

A market has formed in the West that is already



There is a noticeable absence of regional transmission organizations in the West. Image via FERC.

extremely successful: the Western Energy Imbalance Market (EIM), which allows participating utilities to trade energy with other utilities on a short-term basis to meet spikes in demand or sell power elsewhere. Since 2014, the EIM has grown to include 22 participants, including NorthWestern Energy, who have collectively realized over \$4.6 billion in benefits in less than a decade. NorthWestern Energy joined the EIM in June 2021 and has already seen benefits of more than \$66 million by September 2023.

Much like trading food, cars, and even healthcare across state lines, trading power across a greater geographic landscape just makes sense. While the wind doesn't always blow in the same location, it's almost guaranteed to be blowing somewhere else in the region. The wind profiles of nearby states are very different from Montana; for example, the wind in Montana is most productive in winter months, when coastal states have the highest demand for power. But the wind in Washington and Oregon is strongest during summer months, when other states have a higher demand for power. Sharing electricity resources across a greater area allows electricity to be used in a more efficient and affordable manner for all ratepayers.

For example, on September 6, 2022, California faced an intense heat wave and record electricity demand. If customers hadn't immediately responded to a request to decrease demand, the state may have experienced blackouts. On that day, Montana was not experiencing the same heat wave, opening the possibility that we could have provided power if there had been an effective energy market available.

But trading on a short-term basis is only the start. Many across the region are working furiously to improve the electricity trading system by creating a system where utilities can trade power the day before they need it. The Extended Day Ahead Market (EDAM) would be the logical next step to creating a more affordable and efficient electricity system. It would ideally be followed-up with an RTO, designed and overseen by states, to create the greatest benefit for electricity reliability and customers' bills.

Trading power across state lines already happens, but it is an inefficient and bilateral system. An organization that oversees the electric grid, helps expedite upgrades to an aging and inadequate transmission system, and helps ensure power is used more efficiently and affordably makes sense. And while an RTO is still a few years away, EDAM is likely to be up and running in the next year or so. The ability of these two market structures to help utilities meet peak demand without building new power plants cannot be overstated.

These market structures need to be a priority in our climate work. Clean energy generation is an important part of decarbonizing, but hooking up to a regional grid can reduce the energy generated (and wasted) across the entire West. The cleanest (and cheapest) energy is that which is not used, so a more efficient method of managing electricity demand could address emissions and air pollution on a truly impactful scale. 🌱

MT Dept. of Transportation's Carbon Reduction Plan Falls Flat

by Nick Fitzmaurice

In September, the Montana Department of Transportation (MDT) released its draft Carbon Reduction Strategy (CRS) for a public review period that month. Developing a CRS in each state is a requirement under the Carbon Reduction Program (CRP) within the Infrastructure Investment and Jobs Act (also known as the Bipartisan Infrastructure Law) to access funding for projects that will reduce carbon emissions from transportation sources.

While the draft CRS establishes that the current transportation emissions baseline in Montana is 8 million tons of CO₂ per year (mostly from direct tailpipe emissions), the MDT did not use the strategy as an opportunity to commit to specific emissions reduction goals. MDT split its projects into the following strategy buckets: Transportation Demand Management, Mode Choice, Vehicles, Parking, Transportation System Management & Operations, Energy, and Construction/Maintenance. While numerous valuable strategy areas and projects are superficially explored within these themes, little detail is provided on the potential projects.

MDT makes no explicit commitments to pursue any of these projects and there is no analysis of their emission reduction potential.

In the public review period, **MEIC** advocated for a number of improvements. These included focusing more on the electricity generation and associated emissions powering Montana's growing electric vehicle fleets; expanding passenger rail access in Montana, particularly along the I-90 corridor in partnership with the Big Sky Passenger Rail Authority; and containing suburban sprawl, moving away from car-centric development and bolstering transit connectivity for more walkable and bikeable cities. **MEIC** particularly emphasized that MDT must develop an explicit plan and emission reduction targets to not let available funds go to waste.

Having collected public input, including from **MEIC** and our members, MDT finalized the strategy document in November. The projects outlined will direct the allocation of an estimated \$68.1 million in funding apportioned to Montana over the next five years. 🌱

Climate Implications of Land Use Planning

by Ann Schwend

The earth is warming. Humans — and our lifestyle choices, large living quarters, electricity consumption, and personal vehicles — are responsible for emitting much of the carbon pollution that is driving that change. Making better individual choices can be part of a climate solution, but how development occurs is an important part of the puzzle. Poor planning can significantly increase carbon emissions, and thoughtful planning can help cities grow with fewer harmful impacts to our climate. While **MEIC** will continue working toward high-level, high-impact climate solutions, local solutions can also add up, especially when it comes to development patterns and local household carbon footprints (HCFs).

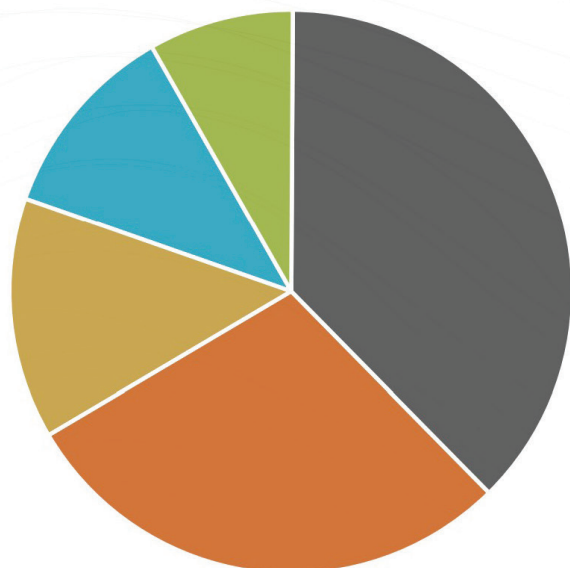
Increased carbon footprints are accelerating climate change, so how we develop our communities really matters. According to the Brookings Institute, U.S. urban land area grew 1.7 times faster than population growth between 1960 and 2010. This data indicates that a much larger percentage of people are living in locations that require more driving, increasing Americans' daily travel mileage by 85%. We have created and encouraged a shift from walkable city living

to a suburban car culture. Studies have consistently shown a lower HCF in urban areas as compared to outlying suburbs.

In Montana, due to limited public transportation and longer commute times, car culture is a driving factor in higher carbon footprints, with vehicle exhaust accounting for the largest percentage of carbon emissions. Moving further away from city centers, the HCF tends to increase because homes are often larger, single-family units and the residents drive more. Even if a rural resident drives an electric car, runs energy-efficient appliances, and has a solar-powered home, a 20-mile commute likely contributes more carbon than a resident in a duplex or apartment in town. Quite simply, in order to address the climate crisis, we must change our unsustainable land use practices by building human-centered neighborhoods that minimize car culture and consume less energy.

Development patterns also impact the local hydrology. Increased temperatures mean that snowpack is melting earlier each spring. If the majority of the annual water budget falls as snowpack, and then comes out in a spring flash, it is vital to capture that water when it is available. Allowing a river to spill over its banks and saturate the floodplain can function much

Figure 3: Current Montana CO₂ Emissions by Sector



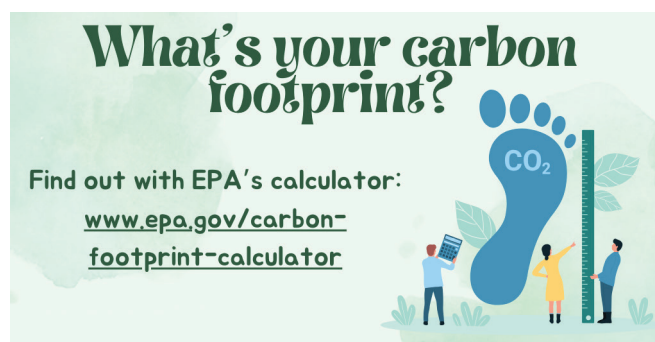
Electricity generation and transportation are two of the biggest GHG emitting sectors in Montana and could be partially addressed by better planning. Graph from the Montana Climate Solutions Plan.

- 38% Colstrip 3&4
- 29% Transportation
- 14% Industrial
- 11% Residential & Commercial
- 8% Electric Power (other)

like a sponge to slow down high spring flows, percolate into the shallow aquifer, and slowly release critical late summer return flows to the rivers and streams. If structures, homes, and roads restrict the floodplain, much of the annual available water flows by and the opportunity to store snowmelt is lost until next season.

Traditionally, communities have built levees to protect themselves from floodwaters, but channelizing the river may actually increase downstream flooding. Confining a flooding river increases pressure and velocity, much like a firehose, so that once past the levees, the downstream communities are greatly impacted. While it probably isn't feasible to move entire cities out of the floodplain, it is possible to better incorporate water resource planning with land use planning and minimize future building in locations that aren't suitable. Flooding doesn't have to be a natural disaster but could be an opportunity to bank water and recharge aquifers. Current floodplain management is all about reducing the risk for man made structures. We should rethink this approach and instead identify and minimize development in areas where flooding is reasonable to recharge the system and reduce downstream flooding.

It's important to consider the causes and effects of



a changing climate. Changing precipitation patterns impact future water supplies and, as Montana warms, summers become longer and drier, dramatically changing water use and availability. Each of these factors creates a bad feedback loop for maintaining sustainable communities. It is important to consider historic development patterns, learn from the mistakes, and plan for a hotter future with a limited water supply.

We simply cannot reach emissions reduction targets unless we reconsider our growth and development patterns. Addressing the drivers of climate warming is paramount, such as reducing vehicle emissions by encouraging more development in walkable urban areas and climate conscious lifestyle choices. We also need to locate development more appropriately and adapt to changing hydrologic regimes. These changes can start in our individual homes and how we plan, locate, and build our communities. 🌿

Coal Haul Road *(continued from pg. 10)*

acceptability determination and final EIS were issued, the groundbreaking case *Held v. State of Montana* was released, where a district court judge ruled that the State of Montana has a duty to consider climate impacts when conducting an EIS process. The judge further ruled that the law passed in 2023 that prohibited the state from considering climate change was unconstitutional and could not be enforced. **MEIC** subsequently submitted comments on DEQ's acceptability determination and final EIS, noting that the laws were now invalid, that DEQ had a responsibility and an obligation to analyze climate impacts, and that it was still required to do so through a supplemental EIS as the agency had not reached a final decision.

Rather than conduct what is legally required, DEQ shirked off our concerns and issued a final approval of

the haul road to NTEC on September 26. The approval of the haul road was NTEC's last hurdle to mine up to 291 million tons of recoverable coal from Youngs Creek, haul it by truck to Spring Creek, and export it to power plants across the world where it will be fed into boilers that destroy our climate. 291 million tons of coal is massive, representing more than half of all of the coal burned in the United States in 2022 for electricity (513 million tons). The thought that the Montana Department of Environmental Quality is not just complicit in this plan, but is refusing to analyze climate change impacts in the year 2023 – even after a judge has ordered it to do so – is shocking and appalling. Watch this space, as there's a good chance we're going to hold the DEQ to account for this morass. 🌿

Exempt Wells: Montana's White Elephant Gift?

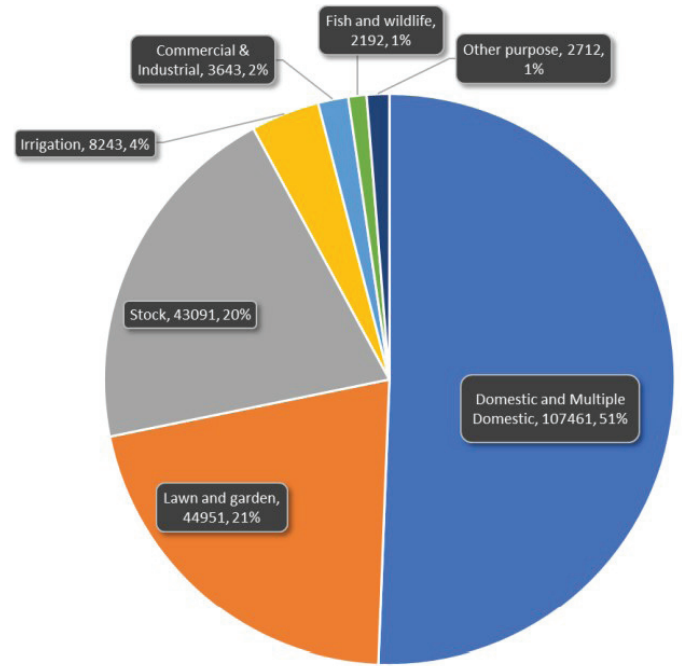
by Ann Schwend

We all need water to survive, and it is certainly much more convenient if it is piped directly into our homes rather than hauling it one bucket at a time. But just how clean and secure are those supplies? The answer may depend on whether that water is coming from an individual domestic well or from a public or municipal system.

In Montana, most of the new subdivisions that are being built outside of city limits (and out of range for public water utilities) rely on individual domestic wells for water supplies. This is occurring for a variety of reasons, but mainly because putting in a public system is a big investment and requires a permitted water right. Obtaining a water right permit is costly, time-consuming, and can be very difficult. Many of our fastest-growing communities are located in basins that are administratively or legislatively closed to any new surface water rights because there are more water rights than water that is actually, physically available (“over-appropriated”). Because a public water system requires a legal water right, it makes it extremely challenging for housing developers, especially in a closed basin. This leaves few choices and drives developments to depend on “exempt wells” in order to provide water for the new homes. What was meant to be a minor exception to the water rights system is now the default method used to bypass it altogether.

So, what exactly is an exempt well? The definition has gone through many legal and statutory changes, but suffice to say, it is a domestic or stock water well that is exempt from the traditional water right permitting process. These small wells pump water at less than 35 gallons per minute to a maximum of 10-acre feet per year in total volume. Basically, the landowner drills a well, files an application, and the Montana Department of Natural Resources and Conservation (DNRC) will issue a certificate of completion for that well. This simplified process is not the same as the full permitting process to get a traditional water right permit. The full permitting process requires an in-depth analysis of

9. Exempt wells by purposes statewide (chart)



As of September, only about 25% of exempt wells in Montana are for stock or irrigation. Chart via DNRC.

legal and physical availability and cumulative impacts, and sufficient notification to potentially affected water right holders.

The original intent of the exempt well provision was to provide water for rural homesites or livestock. Unfortunately, this exemption is now creating a problematic loophole as more and more developments rely on this system for their water. Building entire subdivisions and ignoring the cumulative impacts of hundreds or thousands of wells is creating an unmitigated, unmonitored trainwreck. While domestic or household water use is not “consumptive” (the water returns to the system via a septic drain field), most households have some outdoor landscaping and lawns, which is very consumptive. Additionally, as communities grow and multiple subdivisions locate in close proximity, there is an increased risk of drawing down the aquifer, especially during the hot summer months. Recall that when DNRC reviews a proposed

subdivision, it does not analyze the cumulative water resource impacts or physical availability of multiple individual wells outside of the proposed project area. Since exempt wells do not require the full water permitting analysis, DNRC only reviews each proposed project independently, without consideration of how the new wells will impact existing water rights and surrounding wells.

Another issue with exempt wells is that homeowners often don't realize the potential vulnerability of their water quantity or quality. Long term monitoring and maintenance of individual wells are the responsibility of the private property owner. The homeowner has the well drilled, maintains the pump, protects the well head, and (should) check annually for contamination in the well. According to the U.S. Geological Survey, more than 43 million Americans rely on private wells, and federal experts estimate that more than a fifth of private wells have contaminant levels that are considered unsafe. It is especially important to monitor wells in areas with high concentrations of older individual septic systems, which may not be designed or maintained to filter out bacteria, nitrates, pharmaceuticals, minerals, or forever chemicals (PFAS). Additionally, if aquifer levels change due to drought, new developments, or changing land use practices on neighboring properties, then it is the homeowner's responsibility to drill a deeper well. There are no guarantees that groundwater will continue to remain at current levels, especially as we continue to put more unmonitored "straws" into the system and change land use and irrigation practices,

all without consideration of the interconnectedness to the diminishing aquifer.

On the other hand, homes located on municipal or public utility systems have a larger degree of certainty that water will be supplied to their homes. The responsibility for securing and effectively delivering water lies with the public works department, and not the homeowner. The water is also treated and tested regularly for pollution or pathogens. Homeowners pay for the amount of water that is consumed through monthly bills, but they don't have to stay up at night worrying about pumps going out, declining aquifer levels, or unsafe drinking water.

While it may be easier, or less costly, for the developer to build without providing a water supply system, it is not necessarily less expensive to the homeowner. We cannot continue to behave as if water is an unlimited resource or that exempt wells don't impact existing water users or everyone's right to clean water. Changing land use and a rapidly changing climate will only increase the supply and demand imbalance, and we need a system that accounts for all water use, protects water right holders and provides homeowners with a defensible water right. It is time to reconsider how to adequately provide water for new development through a new permitting system that considers cumulative impacts and plans for future growth. Too many straws in and out of the same system is already causing a noticeable difference in overall water levels and quality. Something needs to change. 🌱

Farewell, Melissa!

After working with **MEIC** for 2.5 years, Melissa Nootz is leaving **MEIC**. We'll miss her thoughtful questions, her sharp wit, and her unyielding advocacy for the people who live in Montana.

Thanks for working with us, Melissa! We'll miss you. 🌱



Extraordinary Hope: A Conversation with Roger Sullivan

by Katy Spence

MEIC is fortunate to have a number of friends and allies that we can call upon for support, encouragement, or assistance. This year, we feel especially fortunate to know our board member, mentor, and friend Roger Sullivan.

Roger has a deep history in Montana environmental law and justice. For more than 35 years, Roger has advocated for Montanans and our constitutional right to a clean and healthful environment. He has successfully represented dozens of Libby residents sickened by exposure to asbestos from the W.R. Grace mining operations. Most recently, Roger was one of the attorneys in the landmark youth climate trial *Held v. State of Montana*.

Roger has served on MEIC's board multiple times and has represented MEIC and other public health and environmental groups in innumerable cases. He tirelessly advises and mentors young environmental lawyers in the state, including many of whom have worked with (or still work with) MEIC.

Here's a conversation I had with Roger (as he was driving to Missoula to speak with environmental law students about *Held* and MEIC). *This conversation has been edited for brevity and clarity.*

Katy Spence (KS): What does justice mean to you, Roger?

Roger Sullivan (RS): We know of justice as fairness – all of our citizens should have a fair and equal voice in forums, whether that's legislative, administrative, or judicial. That's really hard to do for our marginalized citizens and communities. We should also make sure that we don't limit our concept of justice to simply the present and past; what I have really tried to interject into the decision-making process in the courts and in the Legislature is the concept of "intergenerational justice." The decisions we are making now will have a profound impact on future generations. The science is demonstrating that this generation is consuming the quality of life for future generations, and I consider



Roger Sullivan questions witnesses at the *Held v. State of Montana* trial in June. Photo via Roger Sullivan.

that to be an injustice that we in the present time must address. That was one of the major themes of the recent *Held v. Montana* trial. One of the real important parts of my practice is making myself available for the next generation of lawyers, and it's been a great joy.

KS: Speaking of young lawyers, how did you get into environmental law?

RS: When I was a young person, there were a lot of environmental-related decisions that were being made. I started attending various public hearings and basically just doing an on-the-spot file review like, "Hand me that EA [environmental assessment]" and attempting to express some concerns. That was how I got started, and people would say, "Wow, have you ever thought of being a lawyer?" At the time, I was a carpenter and a back-to-the-lander, and it was nice to have that encouragement. I traveled down to the University of Montana Law School and got to be friends with one of the fabulous cornerstones of Montana natural resource, environmental, and Indian law, Marge Brown. We just got along so well, and Marge made every effort she could to help me figure out the [logistics]. It's really important to have a community of support for doing these kinds of things.

KS: Looking ahead, what do you see as the key moments or challenges facing Montana in the next few years?

RS: It's going to be really important to communicate to all Montanans across this beautiful landscape the importance of our state Constitution. So much of the work that we've been doing in recent years has hinged on our ability to identify those constitutional rights that the founders created way back in 1972 but have taken really about half a century in order to breathe life into. Specifically, the right to a clean and healthful environment for this and future generations, but also for the full range of rights that are the important companions of that right. We've got to make sure that we're doing our part to defend against attacks on that extraordinary and visionary document. The other challenge is to continue this process of transition. Increasingly, Montanans are becoming aware through their own experiences, their own observations on their farms and ranches, their own observations on their ski areas and in their recreational pursuits, that climate change is upon us. With that awareness, then the challenge becomes: how do we move away from the fossil fuel economy that supports so many Montanans and move into this transition process that will equally or — as Professor Jacobson pointed out in his testimony in the *Held* trial — even better support average Montanans, both financially as well as environmentally? There's also a whole lot of families that rely on the extractive economy for a decent livelihood, and that's really important to keep in mind.

KS: What advice do you have to people who are looking to make a difference, on these or other issues?

RS: One of the keys is collaboration. There's really not an environmental issue that we're involved in that we're not collaborating with everyone — from the local community to concerned activists conceptualizing it into the larger policy scheme of things and working with existing groups to really find an effective coalition of

advocates, whether it's with Western Environmental Law Center or Earthjustice. It's important to develop those relationships and coalitions because 1) it makes us much more effective, 2) it's nice to have that kind of support and 3) it's a whole lot more fun. We all bring different talents to this important project of making the world a better place for future generations.

KS: How do you stay hopeful in the face of the climate crisis? Do you?

RS: Oh, I'm absolutely hopeful. The way I stay hopeful is by doing what I can to participate in the large project of addressing the challenges of our time and recognizing that what I contribute is just part of a much larger project and process that takes all of us contributing our unique gifts. Remarkably, as our experts testified in the recent *Held* trial, there's still time to turn this [climate crisis] around. We can do this, and I believe we must. And we might as well have a good time while we're at it, right? It doesn't mean we don't try as hard as we possibly can, but it kind of lightens the load, and I do think the world will ultimately be a better place for it. And it's not just because of us, but because of that larger movement of which we're a part. 🌱

Roger's Psalm

"Blessed be the spider that sways between the trees on a single filament of hope, confident of the wind."

RS: If you've ever watched how a spider makes a web, it just drops down that one little filament and waits for the wind to blow, and then it can begin the process of making that extraordinary web. I just consider myself part of that larger web. We're part of this much larger process, and we are doing what we can.

Roger (right) makes a point at a 1989 hearing before the Montana Board of Oil and Gas. This hearing occurred after **MEIC** and NFPA successfully challenged BOG's issuance of an oil exploration drilling permit up the North Fork of the Flathead River, adjacent to Glacier National Park. Also pictured from the left are **MEIC**'s Jim Jensen, NFPA's John Frederic, and Jon Heberling. Photo via Roger Sullivan.



Reflecting with Pride, Anticipating with Hope

by Cari Kimball

The light is low and the air is crisp. I know I'm not alone in the annual struggle of striking the right balance between MAKING MERRY and hibernating during this time of year. The hustle and bustle of holiday season gatherings and activities can be so cheerful and fun, but the introvert in me particularly enjoys hunkering down for a cozy day of reading, many mugs of tea, and baking projects. This time of year also offers us a chance to reflect on all that took place in 2023 and to ponder what we'll be working toward in the year to come. Oh boy, do we have a lot of accomplishments to reminisce about!

2023 was quite the year. Things really started with a bang as **MEIC**'s four full-time lobbyists joined forces with our communications and engagement staffers to lobby the heck out of the 2023 Legislative Session. With the help of our partners and supporters, **MEIC**'s team battled proposals to amend Montana's constitution, proposals to undercut rooftop solar, "takings" legislation that would hand out beaucoup bucks to developers at the expense of our local communities, a 300% tax increase on wind energy projects, a "loser pay" bill that would mean only the richest of the rich could level legal challenges, and so much more. Despite stiff headwinds, **MEIC** successfully lobbied for the passage of two "Right to Know" laws that will increase transparency in government decision-making. All-in-all, the



Supporters of all ages turned out to support the *Held* plaintiffs. Photo by Cari Kimball.

Legislature presented us with crucial opportunities to connect with our supporters who joined us for 18 Zoom legislative info updates (with an average of 53 attendees each week!), six Legislative Roadshow gatherings in communities across the state, and three in-person rallies and Lobby Days at the Capitol.

After a long, intense session, **MEIC**'s staff took a deep breath, dusted ourselves off, and dove back into the work. After all, there's little use to lobbying for good environmental legislation if we aren't also ensuring that those laws are followed! In 2023, we saw several good decisions out of the courts, rulings that an expansion at the Rosebud Coal Mine was illegal, that the permitting process for a Big Sky subdivision's wastewater system was inadequate, an expansion of the Signal Peak coal mine was illegal, and that DEQ failed to fully weigh the impacts of climate when approving permits for NorthWestern Energy's polluting gas plant in Yellowstone County.

As always, one of our favorite activities is connecting with our members, supporters, and partners to make moves for Montana's air, water, land, critters, and climate. Over the summer, our crew convened a summer Montana Climate Summit for advocates across the state to identify ways to further weave our work together. We rallied our friends to show love for the



Anne Hedges, Katy Spence, and **MEIC** supporters laugh during Jensen's speech at the 50th. Photo by Amanda Jones.



The proposal for Rock Creek Mine under the Cabinets was shelved this year. Photo by Katy Spence.

Held v. State of Montana youth plaintiffs where **MEIC**'s work played a pivotal role in the court's favorable decision, supported a successful inaugural Billings Climate Week, and bolstered energetic turnout for PSC and DEQ hearings where folks voiced concerns about the climate and the injustice of NorthWestern Energy rate hikes. And, of course, in September, we celebrated the 50th anniversary of **MEIC**'s founding by gathering with our community of supporters in the Bitterroot to eat delicious food, hear from inspiring speakers, and dance the night away under a big star-filled sky. That was the party of a lifetime! Thank you, thank you — to everyone who attended the event, to our staff for their work pulling it off, and to our generous sponsors. What a team!

I love seeing the throughline of how **MEIC**'s

MEIC's Derf Johnson was key in getting two right to know bills passed during the session.



work this year builds upon our organization's 50 years of history: banning heap leach mining, protecting Montana's beloved Blackfoot and Smith Rivers to stopping coal plant construction, fighting for government transparency, advocating for the public's right to participate, holding corporations accountable, defending grizzly bear habitat and wilderness waters, and keeping toxic, carcinogenic pollutants out of our air, water, and soil. **MEIC** is nimble, effective, and persistent. We are able to do so much because we have a fantastic community of rabble-rousers and changemakers, brilliant partners with complementary strengths, and a staff and board team that consistently shows up.

Montana is exceptional. We draw inspiration from this most beautiful place on the planet. And because we treasure so much about this place, we also know we have a lot to lose. Unfortunately, extractive industries also have their sights set on our state. In the coming year, we will continue to demand better for Montana and Montanans. We deserve cleaner air, water, energy, and thoughtfully developed communities that will provide a higher quality of life for future generations. With your help, we'll be moving closer and closer to that brighter future.

I hope that this winter, you'll find yourself sipping a warm beverage and gazing at some snow-capped peaks to really savor this season of reflection and gratitude. Please know that from our corner of the Last Best Place, we will be toasting you. Your role in **MEIC**'s circle of supporters has helped make it all possible. Cheers to 50 more years! 🍀



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