

# NORTHERN PLAINS

RESOURCE COUNCIL



# VOTING RECORD

## 2009 MONTANA LEGISLATURE

**N**orthern Plains Resource Council was extremely active during the 2009 Legislative Session. Scores of our members answered our alerts to call or email their legislators on key issues. Forty-eight members went to Helena to lobby legislators face to face or testify at hearings. Our two staff lobbyists worked tirelessly in the halls of the Capitol to negotiate the best outcome we could hope for in the pressure-cooker atmosphere of the session. Inside, read how your legislators voted on bills important to you as a Northern Plains member. Also read about how we were able to keep up the pressure on both legislators and the Governor to pass some of our priority bills and beat back bad legislation that threatened our water and agricultural interests from irresponsible energy development.

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# Northern Plains Secures \$15 Million for Energy Efficiency in Schools

## Rep. Grinde Carries Legislation

**N**orthern Plains worked with Rep. Wanda Grinde (D-Billings) to introduce **HB 646**, The Montana High Performance Schools and Economic Stimulus Act. The bill failed to pass out of the House Appropriations Committee but lived on as an amendment to **HB 645**, the appropriations bill for the federal stimulus money sponsored by Rep. Jon Sesso (D-Butte). In the end, we were able to secure \$15 million of stimulus money for energy efficiency improvements in Montana schools over the next five months.

**HB 646** would have created an energy efficiency program for schools at the Department of Environmental Quality, which already runs the efficiency program for state buildings. The program would have been funded through a number of existing sources as well as the federal economic stimulus money.

Not only does energy efficiency yield the obvious benefit of reducing the money that schools spend on energy bills, it also creates job opportunities in the building trades helping to stimulate the economy. Furthermore, spending dollars on efficiency improvements rather than energy bills, means that money stays in our local communities rather than going to the energy companies and on to Wall Street.

At the hearing in the House Appropriations Committee, Rep. Grinde said, "We can reduce energy costs without sacrificing the quality of education. In fact, we know that daylighting, climate controls and air quality all contribute to student productivity. Energy efficiency projects in our schools would also provide jobs."

The bill received broad support at the hearing. Proponents included MEA-MFT, the Montana Contractors Association, the Montana Brotherhood of Carpenters, Montana Audubon, Our Montana, Montana Conservation Voters, Montana Environmental Information Center, Clark Fork Coalition, and NorthWestern Energy. There were no opponents.

Katy Kemmick, an eighth-grader at Riverside Middle School in Billings traveled to Helena for the hearing. Katy told the committee how the windows in her history class have ice on

the inside on cold days. She went on to say, "Improving energy efficiency in buildings means more of our tax dollars stay in our communities, instead of flowing to energy companies. It stimulates local economies through the creation of jobs."

Our second Lobby Day of the session came just two days after the hearing, giving our members the opportunity to talk with representatives about the benefits of energy efficiency in schools. The timing was perfect, as the Appropriations Committee was weighing three bills related to school facilities: **HB 646**, **HB 645** and **HB 152**, the Governor's proposal to create a Quality Schools Facility Grant Program, sponsored by Rep. Robin Hamilton (D-Missoula).

## HB 646 Lives on in Stimulus Bill

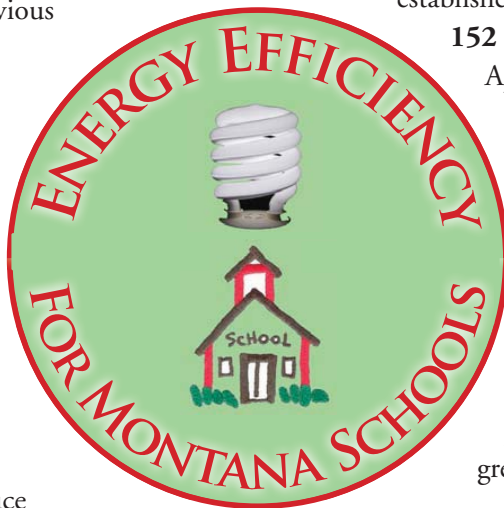
Because the Appropriations Committee was concerned with how **HB 646** might cause confusion with the program established under **HB 152**, it decided to pass **HB 152** and not pass **HB 646**. However, the

Appropriations Committee decided to create a "quick start energy grants fund" in **HB 645**, providing \$35 million for energy efficiency improvements in schools using language from **HB 646** to provide direction for how that money will be spent. Most importantly, it requires that efficiency measures be based on an energy audit. Proper planning for energy efficiency projects means better use of funds and greater energy savings.

The House Appropriations Committee deserves a lot of credit for the bipartisan work they did on **HB 645**. Representatives Jon Sesso (D-Butte), Dan Villa (D-Anaconda) and Galen Hollenbaugh (D-Helena) were particularly helpful in amending language from **HB 646** into **HB 645**. **HB 645** passed out of the House Appropriations Committee on an 18-2 vote on March 24 after accepting nearly 50 pages of amendments that were moved as a package, including the creation of the "quick start energy grants program." A couple of days later the House passed the bill 64-35.

## Funding for Energy Efficiency Defended

The Senate Finance and Claims Committee is where things started to turn south. The committee further amended **HB 645**



making deep cuts and shuffling the money around. Among the amendments added to **HB 645** was one from Sen. John Esp (R-Big Timber) that cut \$20 million out of the quick start energy grants, reducing the funding to \$15 million. Instead of using the money specifically for energy efficiency, the Department of Commerce would distribute the remaining \$20 million to schools according to a formula for deferred maintenance and making energy efficiency improvements.

**HB 645** then went to conference committee on April 17, after the House rejected the Senate amendments on a 73-27 vote. After a week-and-a-half of conference committee meetings, the bill emerged with the \$15 million for energy efficiency intact, but not without a lot of work to defend it. Some members of the education community called for the elimination of “quick start” altogether, preferring that all of the money be distributed to schools according to a formula. The debate over how the money should be distributed can be summed up as: Should every school get its “fair share” through a formula or should the best projects be prioritized?

Northern Plains members and others across Montana called and emailed the conference committee members asking for the energy efficiency money to stay put. Thankfully, they got the message. In the end, there was something for everyone; \$20 million will go out on a formula and \$15 million will go out as competitive “quick start energy grants” to fund projects that meet certain criteria for energy efficiency. Both pools of money will be administered by the Department of Commerce.

## Time to Get to Work on Schools

Funding energy efficiency in schools is one of the best uses of stimulus dollars. Doing so will create construction jobs, put money in local economies and save schools money by reducing energy bills.

“Using stimulus money for school energy efficiency improvements is the gift that keeps giving. Taxpayers and school districts continue to save money on utilities, and teachers and students have a better learning environment,” said Ed Gulick, Vice Chair of Northern Plains. “And as a bonus, jobs are created in the increasingly important and emerging sector of energy efficiency at a time when the construction industry is hit hard by the economic downturn.”



Ed Gulick

On May 15 Governor Schweitzer signed into law **HB 645** with \$15 million dedicated for energy efficiency in schools. Even though the amount is less than the \$35 million originally dedicated for energy efficiency, it is still a huge step toward improving energy efficiency in our aging schools. Furthermore,



**ABOVE:** Rep. Wanda Grinde, backed by other legislators and Northern Plains members, speaks at a news conference on energy efficiency in schools during a Northern Plains Lobby Day on March 20 in the Capitol.



**AT LEFT:** Katy Kemmick, 14, of Billings Riverside Middle School testifies at the House Appropriations Committee hearing on HB 645.

the \$20 million that will be distributed on a formula to all schools for infrastructure projects can be used for efficiency work. Additionally, the Quality Schools Facility Grant Program established by **HB 152** will provide around \$13 million per year for school facilities, and that money can also be used for efficiency improvements.

School districts should certainly consider using these other sources of funding to improve energy efficiency in their buildings. Of the various school facility improvements for which the money can be used, energy efficiency is the only improvement that actually provides direct savings – money that can then address other needs in schools.

“I would urge all school districts to make energy efficiency improvements a priority when they are addressing deferred maintenance,” Gulick said. “Significant reductions in utility costs – such as 30 percent or more – are common when the right approach is taken, and those savings can be reinvested into raising the quality of school programs.”

# Environmental Laws Again Under Assault

As we have come to expect from previous sessions, Montana's major environmental laws continued to come under fire this session. The Montana Environmental Policy Act (MEPA) was targeted, as were citizens' right to appeal permits and seek injunctions. We also started to see increased efforts to undermine Montana's renewable energy standards; an odd approach considering how popular wind energy is with Montanans. Most of the major attacks died in the legislative process or were vetoed by Governor Schweitzer. The one that made it through was heavily amended to reduce its negative impacts. Considering the deluge of attacks we faced, we were largely successful.

The failed Highwood Generating Station became the rallying cry for those who aimed to gut our environmental protections and shut concerned citizens out of the process. According to proponents of the anti-environmental bills, environmental protections and pesky citizens are all that stand between us and economic prosperity. What they fail to consider is that the proposed coal-fired Highwood facility fell not because of lawsuits and appeals but because the financing simply isn't there for dirty coal projects in 21st century America.

## MEPA Changes Sought

The 2009 session saw two bills that would have turned MEPA on its head, **SB 417**, sponsored by Sen. Jim Keane (D-Butte), and **HB 566**, sponsored by Rep. Llew Jones (R-Conrad). The MEPA process, which includes the completion of an environmental impact statement as well as the collection of public comments, is intended to inform our state agencies so they can make informed decisions. These bills would have changed the purpose of MEPA to simply inform the legislature about the adequacy of our environmental laws; the MEPA process would no longer be used for decision-making by state agencies. Thankfully, these cynical attacks fell short of passage. **SB 417** died in the House Federal Relations, Energy, and Telecommunications (FRET) Committee on a 7-7 vote, while **HB 566** died on the House floor on a 50-50 vote.

Two other MEPA bills also died in the process. **SB 440**, sponsored by Sen. Kelly Gebhardt (R-Roundup), would have exempted air quality permits from MEPA review, and **SB 481**, sponsored by Sen. Greg Barkus (R-Kalispell), would have exempted economic stimulus projects from MEPA. Both bills died in FRET on that familiar 7-7 vote.

Unfortunately, another MEPA bill did make it through and became law. **HB 529**, sponsored by Rep. Llew Jones (R-Conrad), limits the environmental review of energy development projects on school trust land. Although not the worst of the worst, this was still a bad bill that will have negative implications for select projects.

Two bills were aimed at restricting citizen appeals of permits. **SB 387**, sponsored by Sen. Keith Bales (R-Otter), and **HB**

**483**, sponsored by Rep. Llew Jones (R-Conrad) both created a two-tiered system of justice, with one set of rules for applicants (project developers) and another set of rules for citizens who appeal a permit. Both bills established a "pay to play" system, whereby citizens would be required to post a bond to cover potential economic damages the developer as well as their employees may incur.

Additionally, both bills limited citizens' ability to make their case. **SB 387** limited the evidence that may be presented at a public hearing to evidence that was included in the public comment period, while **HB 483** applied the same standard to the "issues" that are admissible at a hearing.

**HB 483** was heavily amended in the process including amendments from the Governor. Those amendments ease the limitations imposed on appeals, including removing the shortened timeframes and reducing the restriction on issues that are admissible in a hearing. The amendments also make it less likely that a bond will be imposed on a citizen filing an appeal. Though we asked for a veto on **HB 483**, we appreciate that the Governor's staff worked hard to address many of our concerns with amendments. **HB 483**, was ultimately signed into law, while **SB 387** died in the process – also tabled in the House FRET Committee.

**SB 288**, sponsored by Sen. Greg Hinkle (R-Thompson Falls), also limited citizen access to the courts by removing the \$50,000 cap on the bond requirement for filing an injunction to stop a dangerous project. This bill failed to pass the House Judiciary Committee on a 9-9 vote.

**SB 257**, sponsored by Sen. Jim Keane (D-Butte), would have undermined Montana's renewable energy standard by flooding the market with bogus renewable energy credits (REC's), reducing the incentives for legitimate new renewable energy projects. REC's are how utilities document their obligations under a renewable energy standard. **SB 257** would have granted owners of hydroelectric facilities REC's for routine upgrades to their dams, and done so retroactively. Thankfully, the Governor vetoed this bill after it arrived on his desk.

## Dodging Several Bullets

We dodged a bullet this session, or more appropriately dodged a barrage of bullets. Our opponents were strategic, flooding the legislature with environmental attacks to keep the conservation community working overtime. But our success is a testament to the strength of the coalition of conservation organizations known as the Conservation Working Group as well as the effectiveness of citizens speaking out against these attacks. With a strategic unified lobby and the power of literally tens of thousands of members, the conservation community was able to avoid a disastrous session.



## SENATE

Last Name	First Name	Party	City	SD	Percent favorable	SB 49 Energy Efficiency	SB 505 CBM Water	SB 575 CBM Water	SB 387 Project Permitting	SB 257 Renewable Energy	SB 483 Project Permitting	SB 417 MEPA	HB 416 Biodiesel	HB 278 Coal Reclamation	SB 7 Clean Water
Bales	Keith	R	Otter	20	18%	-	+	-	-	-	-	-	+	-	-
Balyeat	Joe	R	Bozeman	34	9%	-	-	-	-	-	-	-	+	-	-
Barkus	Gregory	R	Kalispell	4	9%	-	+	-	-	-	-	-	-	-	-
Barrett	Debby	R	Dillon	36	27%	+	+	-	-	-	-	-	+	-	-
Black	Jerry	R	Shelby	14	27%	+	+	-	-	-	-	-	+	-	-
Branae	Gary	D	Billings	27	82%	+	+	+	+	-	+	+	+	-	+
Brenden	John	R	Scobey	18	18%	-	+	-	-	-	-	-	+	-	-
Brown	Roy	R	Billings	25	27%	+	+	-	-	-	-	-	+	-	-
Brown	Taylor	R	Huntley	22	45%	+	+	+	+	-	-	-	+	-	-
Brueggeman	John	R	Polson	6	36%	+	+	-	-	-	-	+	+	-	-
Cooney	Mike	D	Helena	40	100%	+	+	+	+	+	+	+	+	+	+
Curtiss	Aubyn	R	Fortine	1	27%	+	+	-	-	-	-	-	+	-	-
Erickson	Ron	D	Missoula	47	100%	+	+	+	+	+	+	+	+	+	+
Esp	John	R	Big Timber	31	9%	-	-	-	-	-	-	-	+	-	-
Essmann	Jeff	R	Billings	28	18%	-	+	-	-	-	-	-	+	-	-
Gallus	Steve	D	Butte	37	64%	+	+	+	+	-	-	+	+	+	-
Gebhardt	Kelly	R	Roundup	23	27%	+	+	-	-	-	-	-	+	-	-
Gillan	Kim	D	Billings	24	64%	+	+	-	+	-	+	+	+	-	-
Hamlett	Bradley	D	Cascade	10	64%	+	+	+	+	-	-	+	+	-	-
Hansen	Ken (Kim)	D	Harlem	17	64%	+	+	-	-	+	+	+	+	-	-
Hawks	Bob	D	Bozeman	33	91%	+	+	+	+	+	+	+	+	-	+
Hinkle	Greg	R	Thom. Falls	7	9%	-	-	-	-	-	-	-	+	-	-
Jackson	Verdell	R	Kalispell	5	9%	-	-	-	-	-	-	-	+	-	-
Jent	Larry	D	Bozeman	32	91%	+	+	+	+	+	+	+	+	+	-
Juneau	Carol	D	Browning	8	91%	+	+	+	+	-	+	+	+	+	+
Kaufmann	Christine	D	Helena	41	100%	+	+	+	+	+	+	+	+	+	+
Keane	Jim	D	Butte	38	36%	+	+	-	-	-	-	-	+	-	+
Laible	Rick	R	Darby	44	27%	+	+	-	-	-	-	-	+	-	-
Larsen	Cliff	D	Missoula	50	91%	+	+	+	+	+	+	+	+	-	+
Laslovich	Jesse	D	Anaconda	43	73%	+	+	-	+	-	+	+	+	-	+
Lewis	Dave	R	Helena	42	27%	+	+	-	-	-	-	-	+	-	-
McGee	Daniel	R	Laurel	29	9%	-	+	-	-	-	-	-	-	-	-
Moss	Lynda	D	Billings	26	100%	+	+	+	+	+	+	+	+	+	+
Murphy	Terry	R	Cardwell	39	27%	+	+	-	-	-	-	-	+	-	-
Perry	Gary	R	Manhattan	35	27%	+	+	-	-	-	-	-	+	-	-
Peterson	Jim	R	Buffalo	15	27%	+	+	-	-	-	-	-	+	-	-
Ripley	Rick	R	Wolf Creek	9	27%	+	+	-	-	-	-	-	+	-	-
Schmidt	Trudi	D	Great Falls	11	82%	+	+	+	+	-	+	+	+	-	+
Shockley	Jim	R	Victor	45	27%	+	+	-	-	-	-	-	+	-	-
Squires	Carolyn	D	Missoula	48	100%	+	+	+	+	+	+	+	+	E	+
Steinbeisser	Donald	R	Sidney	19	18%	+	-	-	-	-	-	-	+	-	-
Stewart-Peregoy	Sharon	D	Crow Agency	21	73%	+	+	+	+	-	+	-	+	-	+
Story	Robert	R	Park City	30	27%	+	+	-	-	-	-	-	+	-	-
Tropila	Joe	D	Great Falls	13	91%	+	+	+	+	-	+	+	+	+	+
Tropila	Mitch	D	Great Falls	12	91%	+	+	+	+	-	+	+	+	+	+
Tutvedt	Bruce	R	Kalispell	3	27%	+	+	-	-	-	-	-	+	-	-
Wanzenried	David	D	Missoula	49	100%	+	+	+	+	+	+	+	+	+	+
Williams	Carol	D	Missoula	46	91%	+	+	+	+	+	+	+	+	-	+
Windy Boy	Jonathan	D	Box Elder	16	73%	+	+	+	+	-	+	-	+	-	+
Zinke	Ryan	R	Whitefish	2	45%	+	+	-	-	-	-	+	+	-	-



						HB 290 Local Produce	HB 445 Patented Seeds	SB 498 CO2 Sequestration	HB 278 Coal Reclamation	HB 416 Biodiesel	SB 257 Renewable Energy	HB 483 Project Permitting	HB 575 CBM Water	HB 575 CBM Water	SB 49 Energy Efficiency	HB 98 Energy Efficiency	Percent Favorable	HD	City	Party	First Name	Last Name
MacLaren	Gary	R	Victor	89	27%	+	+	-	-	-	-	-	-	-	-	-	27%	89	Victor	R	Gary	MacLaren
Malek	Sue	D	Missoula	98	82%	+	+	-	-	+	+	+	+	+	+	+	82%	98	Missoula	D	Sue	Malek
McAlpin	Dave	D	Missoula	94	82%	+	+	-	-	+	+	+	+	+	+	+	82%	94	Missoula	D	Dave	McAlpin
McChesney	Bill	D	Miles City	40	55%	+	+	-	-	+	+	-	-	-	+	+	55%	40	Miles City	D	Bill	McChesney
McClafferty	Edie	D	Butte	75	64%	+	+	-	-	+	-	-	+	+	+	+	64%	75	Butte	D	Edie	McClafferty
McGillvray	Tom	R	Billings	50	18%	-	-	-	-	-	-	-	-	-	-	-	18%	50	Billings	R	Tom	McGillvray
McNutt	Walt	R	Sidney	37	27%	+	-	-	-	-	-	-	-	-	-	-	27%	37	Sidney	R	Walt	McNutt
Mehlhoff	Bob	D	Great Falls	26	64%	+	+	+	+	-	-	-	+	+	+	+	64%	26	Great Falls	D	Bob	Mehlhoff
Menahan	Mike	D	Helena	82	91%	+	+	+	+	+	+	+	+	+	+	+	91%	82	Helena	D	Mike	Menahan
Mendenhall	Scott	R	Clancy	77	9%	-	+	-	-	-	-	-	-	-	-	-	9%	77	Clancy	R	Scott	Mendenhall
Milburn	Mike	R	Cascade	19	9%	-	-	-	-	-	-	-	-	-	-	-	9%	19	Cascade	R	Mike	Milburn
Miller	Mike	R	Helmville	84	18%	-	-	-	-	-	-	-	-	-	-	-	18%	84	Helmville	R	Mike	Miller
More	Michael	R	Gall. Gtway	70	0%	-	-	-	-	-	-	-	-	-	-	-	0%	70	Gall. Gtway	R	Michael	More
Morgan	Penny	R	Billings	57	45%	+	+	-	-	-	-	-	+	-	+	+	45%	57	Billings	R	Penny	Morgan
Noonan	Art	D	Butte	74	73%	+	+	+	+	-	+	+	-	-	-	-	73%	74	Butte	D	Art	Noonan
Noonan	Pat	D	Ramsay	73	55%	+	+	+	-	-	-	-	+	-	-	-	55%	73	Ramsay	D	Pat	Noonan
Nooney	Bill	R	Missoula	100	40%	+	-	-	-	-	-	-	+	+	+	+	40%	100	Missoula	R	Bill	Nooney
O'Hara	Jesse	R	Great Falls	18	40%	E	+	-	-	-	-	-	+	-	-	-	40%	18	Great Falls	R	Jesse	O'Hara
Pease-Lopez	Carolyn	D	Billings	42	70%	+	+	E	+	-	+	+	-	-	-	-	70%	42	Billings	D	Carolyn	Pease-Lopez
Peterson	Ken	R	Billings	46	18%	-	-	-	-	-	-	-	+	-	-	-	18%	46	Billings	R	Ken	Peterson
Phillips	Mike	D	Bozeman	66	82%	+	+	+	+	-	+	+	+	+	-	-	82%	66	Bozeman	D	Mike	Phillips
Pomnichowski	JP	D	Bozeman	63	100%	+	+	+	+	+	+	+	+	+	+	+	100%	63	Bozeman	D	JP	Pomnichowski
Randall	Lee	R	Broadus	39	36%	-	-	-	-	-	-	-	+	-	+	+	36%	39	Broadus	R	Lee	Randall
Regier	Keith	R	Kalispell	5	18%	+	-	-	-	-	-	-	-	-	-	-	18%	5	Kalispell	R	Keith	Regier
Reichner	Scott	R	Bigfork	9	27%	-	+	-	-	-	-	-	-	-	+	+	27%	9	Bigfork	R	Scott	Reichner
Reinhart	Michele	D	Missoula	97	100%	+	+	+	+	+	+	+	+	+	+	+	100%	97	Missoula	D	Michele	Reinhart
Roberts	Don	R	Billings	56	27%	+	-	-	-	-	-	-	+	-	-	-	27%	56	Billings	R	Don	Roberts
Roundstone	David	D	Busby	41	100%	+	+	+	+	+	+	+	+	+	+	+	100%	41	Busby	D	David	Roundstone
Sales	Scott	R	Bozeman	68	18%	-	+	-	-	-	-	-	-	-	+	+	18%	68	Bozeman	R	Scott	Sales
Sands	Diane	D	Missoula	95	91%	+	+	+	+	+	+	+	+	-	+	+	91%	95	Missoula	D	Diane	Sands
Sesso	Jon	D	Butte	76	55%	+	+	-	-	-	+	+	-	-	-	-	55%	76	Butte	D	Jon	Sesso
Smith	Cary	R	Billings	55	9%	-	-	-	-	-	-	-	-	-	-	-	9%	55	Billings	R	Cary	Smith
Sonju	Jon	R	Kalispell	7	27%	-	+	-	-	-	-	-	-	-	-	-	27%	7	Kalispell	R	Jon	Sonju
Stahl	Wayne	R	Saco	35	40%	-	-	-	-	-	+	+	A	+	+	+	40%	35	Saco	R	Wayne	Stahl
SteenSON	Cheryl	D	Kalispell	8	82%	+	+	+	+	+	+	+	+	-	-	-	82%	8	Kalispell	D	Cheryl	SteenSON
Stoker	Ron	R	Darby	87	18%	-	+	-	-	-	-	-	-	-	-	-	18%	87	Darby	R	Ron	Stoker
Taylor	Janna	R	Dayton	11	9%	-	-	-	-	-	-	-	-	-	+	+	9%	11	Dayton	R	Janna	Taylor
Van Dyk	Kendall	D	Billings	49	100%	+	+	+	+	+	+	+	+	+	+	+	100%	49	Billings	D	Kendall	Van Dyk
Vance	Gordon	R	Bozeman	67	18%	-	-	-	-	-	-	-	-	-	+	+	18%	67	Bozeman	R	Gordon	Vance
Villa	Dan	D	Anaconda	86	64%	+	+	+	+	-	-	-	+	-	-	-	64%	86	Anaconda	D	Dan	Villa
Vincent	Chas	R	Libby	2	36%	+	+	-	-	-	-	-	-	-	+	+	36%	2	Libby	R	Chas	Vincent
Wagner	Bob	R	Harrison	71	9%	+	-	-	-	-	-	-	-	-	-	-	9%	71	Harrison	R	Bob	Wagner
Warburton	Wendy	R	Havre	34	36%	-	-	-	-	-	-	-	+	-	+	+	36%	34	Havre	R	Wendy	Warburton
Washburn	Ted	R	Bozeman	69	27%	+	+	-	-	-	-	-	-	-	-	-	27%	69	Bozeman	R	Ted	Washburn
Welborn	Jeffrey	R	Dillon	72	9%	-	+	-	-	-	-	-	-	-	-	-	9%	72	Dillon	R	Jeffrey	Welborn
Wilmer	Franke	D	Bozeman	64	91%	+	+	+	+	+	+	+	+	-	+	+	91%	64	Bozeman	D	Franke	Wilmer
Wilson	Bill	D	Great Falls	22	100%	+	+	+	+	+	+	+	+	+	+	+	100%	22	Great Falls	D	Bill	Wilson
Wiseman	Brady	D	Bozeman	65	100%	+	+	+	+	+	+	+	+	+	+	+	100%	65	Bozeman	D	Brady	Wiseman

# 2009 KEY LEGISLATIVE BILLS

Here are the 2009 bills that were important to Northern Plains members:

## Energy Efficiency

Legislators introduced numerous energy efficiency bills this session, from tax credits and weatherization programs to efficiency standards for state buildings and funding for efficiency in schools. Northern Plains' top priority bill, **HB 646** – the energy efficiency in schools campaign – does not have a scorecard vote because it died, but language from **HB 646** was included in **HB 645**, the bill to appropriate federal stimulus money. That bill was too broad and not specific enough to the energy efficiency issue to provide meaningful scorecard votes. However, the following bills do provide an accurate gauge of support for the fastest, cheapest and easiest way to meet our energy needs while reducing global warming pollution – energy efficiency.

Not only were these policies worth supporting, but they also gave us opportunities to share our story about the Home on the Range. Northern Plains played an important role by demonstrating how energy efficiency works for us, both technically and financially. Talking with legislators about our LEED® (Leadership in Energy and Environmental Design) Platinum-certified building also served to educate decision-makers about our top priority for the session, the energy efficiency in schools campaign.

### HB 98

#### Financing Energy Efficiency in State Buildings Through Energy Performance Contracts

Sponsor: Rep. Dick Barrett (D-Missoula)

This bill allows the state, including the university system, to enter into energy performance contracts to provide capital for energy efficiency improvements in buildings. An energy service company (ESCO) does the project planning, financing, and contracting to complete the work. The customer (in this case, the state) pays the ESCO for its work with the energy savings realized by the improvements through the term of the contract. This tool is already available to school districts; HB 98 expands this option to state buildings.

■ Northern Plains' Position: Support

■ Scorecard Votes (Pages 5-7)

Senate: 3rd reading, March 31, passed 41-9

House: 3rd reading, January 31, passed 71-27

■ Bill Status: Became law

### SB 49

#### Energy Efficiency Standard for State Buildings

Sponsor: Sen. Dave Wanzonried (D-Missoula)

This bill requires a minimum energy efficiency standard for new state buildings and state buildings undergoing major renovations, requiring these buildings exceed the current energy efficiency code by 20%. The bill was amended to be effective immediately and

applies to any projects funded through federal stimulus money that break ground in the coming months.

■ Northern Plains' Position: Support

■ Scorecard Votes (Pages 5-7)

Senate: 3rd reading, February 11, passed 45-5

House: 3rd reading March 13, passed 72-27

■ Bill Status: Became law

## Coalbed Methane

**HB 575** was the start of a series of bills to undermine 140 years of water rights doctrine simply for one short-term industry -- coal bed methane. Senior water rights holders whose wells and springs might go dry from the methane industry's massive dewatering of aquifers would have no recourse if this bill had been signed into law. The bill died a temporary death in committee on a party-line vote but was revived again into **HB 40**, and **SB 505**. We were able to avoid two of those threats, but **HB 575** ultimately made it to the Governor's desk.

Defending water rights from these attacks became our number one defensive priority. Numerous members traveled to Helena throughout the session to lobby legislators on these bills. Our persistence paid off, and we were able to stop all of these threats, but not without relying on a veto from the Governor to kill the one that got through.

### HB 575

#### Redefine Coal Bed Methane Water as "Production Water"

Sponsor: Rep. Bill McChesney (D-Miles City)

The original HB 575 created a third category of "produced" water, not subject to the Montana Water Use Act, that coal bed methane companies could use in certain ways. The House Agriculture Committee killed that bill in February on a party-line tie vote. Unfortunately, HB 575 was revived in late March with an amendment that basically struck all the original language of the bill and substituted the substance of SB 505. The amended HB 575 gave methane company pipes legal status as the source of water for beneficial use. Any senior water rights holders whose wells and springs might go dry because of the massive dewatering of aquifers from methane drilling would be unable to protest.

During the floor debate in the House, Rep. David Roundstone (D-Busby) made a motion to amend the bill. His amendment would have added language that would protect senior water rights by requiring any withdrawals under this bill be certified to not adversely affect senior water rights. Northern Plains supported the amendment, which failed on a 45-55 vote.

In the end, Governor Schweitzer vetoed the bill. "I believe the bill reverses longstanding principles of Western and Montana water law," Schweitzer said. He was right on message. This bill was about undermining water rights and overturning longstanding water law for the benefit of one industry.

■ Northern Plains' Position: Oppose





Bill Berg, a member of the Bear Creek Council from Gardiner, and Elli Elliott, a member of Carbon County Resource Council from Red Lodge, talk to Rep. Bill McChesney (D-Miles City) about upcoming legislation during a Northern Plains Lobby Day in the state Capitol on March 20.

■ Scorecard Votes (Pages 5-7)

Senate: 3rd reading, April 16, 30-20

House: Motion to amend, March 30, failed 45-54

3rd reading March 31, passed 56-44

■ Bill Status: Vetoed by Governor

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## SB 505

### Water Theft Bill

Sponsor: Sen. Keith Bales (R-Otter)

This bill authorized temporary beneficial use permits for coal bed methane produced water to provide water to several dry ranches in Powder River country. The bill gave the methane company pipes legal status as the source of the water, and that meant senior water rights holders whose wells or springs might go dry from the massive withdrawal of water cannot protest the permits. It would have overturned a State District Court ruling last December that water that comes out of the ground is groundwater. This is what the methane industry needs to sidestep Montana's Water Use Act. It also would have overturned the prior appropriation doctrine upon which Western water law is built. The bill passed the Senate but was killed on a party-line tie vote in the House Natural Resources Committee.

■ Northern Plains' Position: Oppose

■ Scorecard Votes (Page 5)

Senate: 3rd reading, March 25, passed 28-22

■ Status: Died in House committee

## Major Rollbacks of Environmental Laws

The 2009 session brought numerous attacks on the Montana Environmental Policy Act (MEPA) and citizens' ability to challenge agency decisions and permits. We also saw attempts to weaken the Renewable Energy Standard, a law to encourage energy providers

to use new, renewable sources of energy such as wind and solar. The following bills were the worst of the worst. For the most part, we were able to stop these rollbacks. In the case of **HB 483**, the governor amended it to reduce its impact on citizens' right to participate in government, but it still became law. Many other rollbacks were stopped in House committees while the Governor had to veto **SB 257**, the biggest threat to the Renewable Energy Standard.

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## HB 483

### Limit Citizens' Right to Appeal Permits

Sponsor: Rep. Llew Jones (R-Conrad)

HB 483 undermines citizens' right to defend their property rights as well as the health and safety of their families. It establishes a "pay to play" system, whereby citizens would be required to post a bond (with no limit on the amount) in order to bring an appeal. Furthermore, it creates a two-tiered system of justice, with one set of rules for citizens and another for the corporations that have filed for a permit. The Governor amended the bill to limit some of the restrictions imposed on citizens, greatly reducing its impact. Though we were pleased that the Governor did amend HB 483, we would have preferred an outright veto.

■ Northern Plains' Position: Oppose

■ Scorecard Votes (Pages 5-7)

Senate: 3rd reading, March 30, passed 30-20

House: 3rd reading, February 25, passed 68-32

■ Bill Status: Became law

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## SB 257

### Reduce Incentives for Renewable Energy

Sponsor: Sen. Jim Keane (D-Butte)

This bill would have undermined the Montana's renewable energy standards by allowing owners of large hydroelectric dams to retroactively count routine upgrades toward the requirements of the act, decreasing statewide incentives to develop new, renewable sources. In addition, dam owners would receive renewable energy credits (REC's) for upgrades, regardless of the actual electric output from those upgrades. Since REC's are a valuable commodity, this bill would constitute a significant financial giveaway to PPL with its Enron-style accounting for REC's.

■ Northern Plains' Position: Oppose

■ Scorecard Votes (Pages 5-7)

Senate: 3rd reading, February 24, passed 39-11

House: 3rd reading, April 15, passed 57-43

■ Bill Status: Vetoed by Governor

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## SB 387

### Limit Citizens' Right to Appeal Permits

Sponsor: Sen. Keith Bales (D-Otter)

This bill would have undermined the right of citizens to appeal air and water permits as well as Major Facility Siting Act certificates. It effectively eliminated the ability of the public to challenge agency decisions on permits for "energy development projects," and created different standards and sets of rules for citizens and industry to

*Continued on Page 10*

participate, unfairly giving an advantage to development.

SB 387 was the parallel bill to HB 483. The House Federal Relations, Energy, and Telecommunications Committee passed HB 483, but chose to kill SB 387. The bill was tabled in the committee on an 8-6 vote.

■ Northern Plains' Position: Oppose

■ Scorecard Vote (Page 5)

Senate: 3rd reading, February 21, passed 27-23

■ Bill Status: Died in House committee

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## SB 417

### Render Montana Environmental Policy Act Meaningless

Sponsor: Sen. Jim Keane (D-Butte)

This bill would have turned the Montana Environmental Policy Act (MEPA) on its head. MEPA is the main avenue in Montana law for citizen participation and environmental review. SB 417 would have eliminated the right of citizens to sue under MEPA and prohibited agencies from using information from the environmental reviews (EA and EIS) resulting from MEPA in making decisions. Finally, the bill changed the purpose of MEPA to be solely to inform the legislature about the effectiveness of our environmental laws.

If this bill sounds familiar, that is because we fought and killed this bill in its 2007 incarnation, HB 610. SB 417 passed the Senate but died in the House Federal Relations, Energy, and Telecommunications Committee on a 7-7 vote.

■ Northern Plains' Position: Oppose

■ Scorecard Votes (Page 5)

Senate: 3rd reading, February 23, passed 29-21

■ Bill Status: Died in House committee

## Biodiesel

Northern Plains' first Lobby Day focused on passing **HB 415**, the micro-processing bill sponsored by Rep. Margie MacDonald (D-Billings). We had a good hearing in House Agriculture, great turnout for the Lobby Day and had broad support on the committee for the idea. However, confusion over whether the bill increased regulations or simplified current regulations led to its demise in committee on a party-line 10-10 vote.

Our efforts on biodiesel then turned to another bill sponsored by Rep. MacDonald, **HB 416**, fondly referred to as "the French Fry Bill." The bill eliminates a tax requirement for industrious people who make their own biodiesel from waste vegetable oil. It had strong bipartisan support and ultimately became law.

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## HB 416

### Encourage Production of Biodiesel from Waste Cooking Oil

Sponsor: Rep. Margie McDonald (D-Billings)

Under current law, people who make biodiesel in their garage from waste vegetable oil (fryer grease) are required to pay the state road

tax. This additional paperwork and accounting serves to discourage the production of homemade biodiesel. HB 416 exempts these individuals from the tax, helping to encourage a practice that is doing all of us a favor, turning a waste product into a transportation fuel that is not derived from petroleum.

■ Northern Plains' Position: Support

■ Scorecard Votes (Pages 5-7)

Senate: 3rd reading, April 3, passed 48-2

House: 3rd reading, March 19, passed 71-29

■ Bill Status: Became law

## Coal Mining, Sequestration

Is coal still king in Montana? If you look at a number of bills that passed the 2009 legislature, you would have to conclude that coal still has a lot of sway. In addition to bills that provided tax cuts to industry during a time of tight state budgets, the legislature also passed a bill to ease reclamation requirements as well as an industry-backed bill to establish carbon sequestration standards.

Northern Plains weighed in on this issue because the original version created a split estate situation by separating the pore space from the surface owner by giving it to the state. Three sequestration bills were offered during the session. We were able to strike split estate language from the bill that ultimately passed.

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## HB 278

### Weaken Coal Mine Reclamation

Sponsor: Rep. Bill McChesney (D-Miles City)

This bill revises coal reclamation laws to allow for the early release of a bond before all reclamation is completed. Water management and other support facilities, encompassing up to 10% of a strip-mined area for which bond release is sought, do not have to complete the 10-year waiting period after reseeding and establishment of vegetation before the phase-three bond could be released.

■ Northern Plains' Position: Oppose

■ Scorecard Votes (Pages 5-7)

Senate: 3rd reading, March 13, passed 39-10

House: 3rd reading, February 13, passed 76-23

■ Bill Status: Became law

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## SB 498

### Industry-backed Carbon Sequestration Standards

Sponsor: Sen. Keith Bales (R-Otter)

This is the industry-backed sequestration bill. It gives authority over sequestration to the Board of Oil and Gas Conservation (BOGC), fails to protect groundwater from potential contamination associated with sequestration, and allows the industry to transfer liability to the State. The bill was heavily amended to address some of the problems including giving the State Land Board the authority to approve transfer of liability rather than the BOGC as well as requiring baseline monitoring of groundwater near a sequestration project.

Furthermore, the original bill included language that says carbon dioxide from a sequestration project "is not a pollutant, nuisance, or



Testifying at legislative hearings on Northern Plains' and local food producers' behalf were, from left, Shar McComas of Red Lodge, Cheryl Brill of Red Lodge, Daniel Negaard of Grass Range, Deb Muth of Red Lodge, Rachel Negaard of Grass Range, Rep. Wanda Grinde (D-Billings), Clare Witcomb of Red Lodge, Rep. Margie MacDonald (D-Billings), and Jeanne Charter of Shepherd.

hazardous or deleterious substance.” The purpose of this language is to shield developers from liability should their development contaminate a person’s water well. Language was added to that provision limiting the scope to carbon dioxide within a geologic storage reservoir, clarifying that carbon dioxide that escapes the sequestration reservoir is pollution.

Though the bill was improved, the BOGC remains in charge of sequestration. Thus, we could not support the bill. In order to provide adequate protections for property, water, health, and safety, the appropriate entity must be charged with the permitting and oversight of sequestration. The BOGC is statutorily required to have a majority of members that have a vested interest in the oil and gas industry, and has demonstrated a lack of concern for water rights and water quality. Furthermore, the issue of liability must be addressed in any sequestration bill. The industry would like to see the State take on the liability. However, when Wyoming passed its sequestration bill, their legislators chose to leave liability in the hands of the developer.

■ Northern Plains’ Position: Oppose

■ Scorecard Votes (Pages 6-7)

House: 3rd reading, April 23, passed 59-41

■ Bill Status:: Became law

## Other Bills

### SJ 7

#### Opposition to the Clean Water Restoration Act

Sponsor: Sen. John Brendan (R-Scobey)

This resolution would have voiced Montana’s strong opposition to the federal Clean Water Restoration Act (CWRA). The CWRA restores the definition of waters protected by the federal Clean Water Act to what it was before several recent court cases severely restricted the authority of the act. The CWRA includes protection for ephemeral and intermittent streams that are critical headwaters for streams in southeast Montana impacted by coal bed methane development.

■ Northern Plains’ Position: Oppose

■ Scorecard Votes (Page 5)

Senate: 3rd reading, February 2, passed 32-18

■ Bill status: Died in House committee

### HB 445

#### Farmer Protection from Patented Plant Liability

Sponsor: Rep. Betsy Hands (D-Missoula)

This bill set up a system to protect farmers when they unknowingly possess or use a patented plant. It set up a procedure for sampling and analysis of plant material and requires any court procedure concerning breach of contract take place in Montana. Genetically modified plants can show up on farmers land after genetically modified plants on a neighboring farm pollinate their plants and produce a seed with the patented genetics. Thus, farmers can end up unintentionally growing genetically modified plants.

The bill had support in the House, passing out of the House Agriculture Committee 13-7 and passing the House floor 57-43. But just before the Senate Agriculture, Livestock and Irrigation Committee met to hear the bill, Monsanto representatives flew to Helena and lobbied six of the committee members at a private dinner at the Montana Club. Though Monsanto is not registered to lobby in Montana and did not testify at the hearing, their message got through as the committee tabled the bill on a 6-3 vote.

■ Northern Plains’ Position: Support

■ Scorecard Vote (Page 5)

House: 3rd reading, February 24, passed 57-43

■ Bill status: Died in Senate committee

### HB 290

#### Encourage Local Produce at Farmers Markets

Sponsor: Rep. Wanda Grinde (D-Billings)

This bill promotes local food in Montana by removing burdensome fees and license requirements for growers whose retail sales are less than \$25,000 annually. Previous law set the exemption at a level of under \$15,000 of annual gross produce sales.

■ Northern Plains’ Position: Support

■ Scorecard Votes (Pages 6-7)

House: 3rd reading, March 10, passed 90-8

■ Bill Status: Became law

2009 MONTANA LEGISLATURE  
VOTING RECORD  
MAY 2009

## Governor praised for veto of gaseous HB 575

After all the bluster and angst, no harmful coal bed methane legislation from this session was signed into law. We are grateful, but lament that it was only the Governor's veto, not the collective will of the legislature, that saved us from a terrible industry bill that would have overturned traditional water law throughout the state and left senior water rights unprotected. In his veto **HB 575**, the Governor said, "Montana needs to take a new approach to devising a strategy that protects senior water rights holders, reduces discharges of untreated water into our surface waters, and allows responsible CBM development."

In December 2008, a State District Court ruled in favor of Northern Plains and the Tongue River Water Users' Association who maintained that groundwater pumped in conjunction with the production of coal bed methane was indeed groundwater. That seemingly simple, common-sense determination rocked the Department of Natural Resources and Conservation (DNRC) because up until this ruling, DNRC had abdicated its responsibility regarding the pumping of methane groundwater to the Board of Oil and Gas Conservation (BOGC). The District Court decision brings the DNRC back into the equation.

This session's two major coal bed methane bills, **SB 505** sponsored by Sen. Keith Bales (R-Otter) and **HB 575** sponsored

by Rep. Bill McChesney (D-Miles City) were industry attempts to overturn the December court ruling and get away from the requirements of the water use act that protects senior water rights. Proponents argued that the water was already coming to the surface and the bill would simply allow several dry ranches and two coal mines to use the water beneficially instead of wasting it through discharge to the river.

Our members countered that their water rights would be stolen under this law and that enacting it would overturn the prior appropriations doctrine of first in time, first in right, the basis of most Western water law. We have no problem with beneficial use of the water, but there needs to be responsible development that protects senior water rights and requires meaningful mitigation of methane impacts to wells, springs and surface flows.

So far, DNRC, BOGC and industry have failed to offer solutions that protect water resources, protect senior water rights and still allow methane development to move forward in a responsible manner. It is hoped the Governor's veto message signals his desire to move the state forward on this issue and get beyond the lawsuits, gridlock, deteriorating water quality, waste of water, lack of production, fear, recrimination, and wild mudslinging that characterize this issue.

