

VOTING RECORD

2011 Montana Legislature



About 600 people braved cold and snow to rally at the Capitol Feb. 21 for clean-energy jobs and upholding laws that protect clean air and water.

Corporate power makes resurgence

With wide legislative majorities determined to hand the state's reins over to corporate interests, Northern Plains fought a principled and mostly uphill battle to protect landowners, family agriculture, and our land and water. As the 62nd Legislative Session began, nearly a fourth of the bill draft requests related in some way to the environment.

Despite the bleak landscape, Northern Plains succeeded in moving forward a number of our campaigns during the legislature and in shining a light on our issues even during eventual losses or stalemates in the legislative arena. Thanks

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Northern Plains fights for landowner rights

The defining fight of the session for Northern Plains centered on the state's power of eminent domain. Our position on eminent domain, the government's authority to take private property, is that it should only be used as a last resort for public projects that advance the public good. The process, in our opinion, must include fair compensation and treatment for landowners.

House Bill 198, carried by Rep. Ken Peterson (R-Billings), authorizes public utilities, as defined in statute, to exercise the power of eminent domain and grants any facility – transmission lines, certain pipelines, geothermal facilities – receiving a certificate under the Major Facilities Siting Act (MFSa) the right to use eminent domain. It would allow private corporations to take an individual's property for a private profit-making project that has no demonstrated public need. It also applied retroactively to all persons that have received a certificate under the MFSa after September 2008.

While Northern Plains and other opponents were initially successful at tabling the bill in committee, the Governor and corporate interests applied heavy pressure to move the bill. The Governor tried to portray the bill as a way to promote clean energy jobs. Even if that were true, Northern Plains believes that energy development shouldn't occur on the backs of landowners.

The full Senate brought the bill to the floor and, after a passionate bipartisan debate, passed the measure 28-22. The bill had previously passed the House 69-30. Northern Plains believes that the passage of this bill sets a dangerous precedent

for landowners facing condemnation in the future. The playing field for landowners negotiating with a company will now be dramatically tilted toward the condemning company.

Despite arduously lobbying Democratic senators, the Governor chose not to sign the bill, sending it on to the Secretary of State without his signature to become law. Unfortunately, his actions are simply an attempt to play on both sides of the fence.

Our members were extremely active in the fight – making hundreds of phone calls and emails and rivaling the amount of pressure legislators were getting from the Governor and industry. Your voice made the difference in holding legislators accountable to the interests of the state's family farms and ranches, or at the very least, made this a very difficult vote for legislators to make.



Photo by Shutterstock

Northern Plains also worked with legislative allies to advance proactive legislation designed to give landowners more rights in negotiations in condemnation proceedings. **HB 240**, sponsored by Rep. Kelly Flynn (R-Townsend), sought to codify definitions of fair appraisal, coercion, and negotiation. It also clarified the process for final written offer and created a process for formal mediation. It was amended so heavily by opponents of landowner rights that Northern Plains and the sponsor pulled support and killed the bill.

With the close of the session, it is clear there is much work to be done in the coming years to ensure landowners receive fair treatment in the eminent domain process. Northern Plains will continue to work to ensure that the landowner's voice is a part of the dialogue.

Power

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to the work of your grassroots efforts we were successful in putting public pressure on legislators, the Governor and, in some cases, industry to do the right thing, killing a number of the egregious attacks.

Northern Plains identified two primary areas of proactive policy solutions in the months before the legislature – requiring the public disclosure of fluids used in hydraulic fracturing and moving the state's renewable energy industry forward. While we were not able to pass these proactive bills, these campaigns

benefited from our work in the session.

Also, thanks to the help of affiliate Bull Mountain Land Alliance, Northern Plains was part of a successful push to reform the make-up of the rangeland taxation advisory committee, another priority identified before the session.

Thanks to those of you who drove through blowing snow to testify in Helena, wrote thoughtful notes to your legislator, participated in a phone tree, or submitted your thoughts in the form of letters to the editor. Your effort made a tremendous difference in the outcome of the session! We are well aware that it would have been far worse without the work you did.



Renewable energy economy defended

Montana made a bold commitment to affordable, abundant, and clean energy in 2005 with the passage of the state's renewable energy standard (RES). Since then, state leaders have come together to build this emerging economy that has a proven track record of creating jobs and wealth in the state.

With both major public utilities now on track to meet the standard, Northern Plains and a diverse coalition of allies went to the session asking for a renewed commitment to this job-creating policy. Sen. Kendall Van Dyk's (D-Billings) **Senate Bill 332** would have increased the standard to 25% by 2025. Unfortunately, like most clean energy bills, it was killed on party lines.

The good news is that the numerous bills that sought to undo most of the clean energy progress of recent years by weakening the existing RES and taking away incentives for energy efficiency were not successful. Among them were bills adding all of the state's hydroelectric facilities under the standard (**SB 109**, Sen. Debby Barrett (R-Dillon)), stripping the section of the law that requires a small percentage of the energy to be produced by Montana businesses (**HB 237**, Rep. Mike Menehan (D-Helena)), granting utilities long-term waivers from meeting the requirements (**SB 330**, Sen. Ed Walker (R-Laurel)), and even an all out repeal of the standard (**HB 244**, Rep. Derek Skees (R-Whitefish)).

Thankfully, all measures were either defeated in the legislative process or at the Governor's desk. At the end of the session,

the RES remains fully intact, and the state's clean energy economy is poised for future growth.

The attack on clean energy did not stop with the RES. Energy efficiency is the most inexpensive form of energy on the grid and has long been a bipartisan solution to solving the state's energy problems, yet it was attacked by the majority party this session.

SB 226, pushed by Sen. Jason Priest (R-Red Lodge), would have fully eliminated existing policy that enables homeowners to connect small-scale renewable power systems to the grid and get credited for the energy they produce. Sen. Priest also carried

SB 159, a bill to mandate that all energy efficiency measures in the state building code must have a five-year payback to be incorporated in future energy codes for new construction.

Finally, the legislature took aim at the most basic tax credits that homeowners receive for making efficiency upgrades to their homes and businesses. **SB 253**, sponsored by Sen. Bob Lake (R-Hamilton) would have eliminated these credits, used by thousands of low and middle income Montanans, and would have used the savings to pay for a fat tax break for the state's largest corporations. Thankfully none of these bills became law.

With 62% of Montanans reaffirming their support for renewable energy in a recent Mason-Dixon poll, there is tremendous opportunity for policy advancements in coming sessions. Renewable, homegrown energy is important to Montanans, and Northern Plains will continue to advocate for the transition to energy that is cheaper, cleaner, and faster.



Governor vetoes rangeland taxation reform

Northern Plains succeeded in our work to begin reforming the process for evaluating rangeland for the purposes of taxation. However, Governor Schweitzer vetoed **HB 616** May 10. While **HB 616**, sponsored by Rep. Lee Randall (R-Broadus), did not go as far as we hoped, it did make some common-sense changes to the rangeland taxation advisory committee, which guides the Department of Revenue in its process of developing formulas for property tax valuation. The aim of **HB 616** was to prevent valuations of rangeland that were based on unrealistic productivity estimates. Though the final bill fell short of this, the version that passed is a first step in the right direction. Northern Plains also worked on other policy areas to ensure

that Montana's agricultural economy remains strong. Currently, large water rights (over 4,000 acre/feet) may only be leased from the state to ensure that the long-term public trust is protected against industrial transfers. We opposed **HB 497**, sponsored by Rep. Christy Clark (R-Choteau), to repeal the state's prohibition on appropriations of these large water rights. Unfortunately, **HB 497** was passed and signed into law.

Recognizing the need to build new markets for Montana's ag producers, we also worked with allies to continue funding for the state's Food and Agricultural Development Centers. Unfortunately, **HB 207**, sponsored by Rep. Margie MacDonald (D-Billings), was tabled in House Appropriations.

Environmental laws again in crosshairs

The 2011 session was marked by a wave of attacks on Montana's bedrock environmental laws by legislators who operated under the myth that weakening environmental protections will bring prosperity to Montana. We were forced to defend our constitutional right to a clean and healthful environment while legislators took swings at the basic laws that protect our land, air, and water, and also undercut the right of citizens to participate in the policy process. In nearly every case, legislators insisted that these were the bills that "industry wants to speed development and protect their investments."

MEPA fundamentally altered

The Montana Environmental Policy Act (MEPA) was the primary target of extractive industries and their legislative allies, something that is not unusual. This session, two bills – **SB 233**, sponsored by Sen. Jim Keane (D-Butte), and **SB 317**, sponsored by Sen. Chas Vincent (R-Libby) – proposed major rollbacks to provisions of MEPA. Under these changes, the public's ability to hold agencies and companies accountable for environmental damages will be severely weakened.

In its final amended form, **SB 233**, which had some aspects of **SB 317** rolled into it, contains significant and troubling changes to MEPA. Most important, under the new judicial review process, citizens affected by a project will no longer have a legal recourse to make sure the environmental review adequately addresses the impacts of the project. The bill also creates a system in which information collected for MEPA analysis of non-state sponsored projects cannot be used in decision-making.

In one final blow, Arch Coal placed an amendment on the bill that would make the Otter Creek permit a non-state sponsored project – meaning that this project potentially will go forward with no alternative analysis and no ability to use MEPA in the permit decision. Due to the serious constitutionality concerns, there is no doubt these changes will be challenged in court in the years to come. The only jobs this bill will create will be for attorneys trying to navigate this new confusing, contradicting, and unconstitutional law.

SB 233 was the worst environmental bill to come out of this legislative session, yet Governor Schweitzer failed to veto it. While we are thankful for some of his other vetoes, there is no excuse for his failure to stop this bill when he had the power to do so. The primary purpose of MEPA is to improve decision-

making by state agencies, and **SB 233** has blatantly undercut that purpose.

No radical changes to Constitution

Early in the session, radical legislators focused their attack on the Constitution, challenging the basic notion that the citizens of Montana should have a fundamental right to a clean and healthful environment. **HB 292**, sponsored by Rep. Dan Kennedy (R-Laurel), proposed a referendum to add the phrase "economically productive" to our existing constitutional right to a clean and healthful environment. He was never able to explain what that term meant. The measure needed a super-majority of 100 votes between both chambers to make it on the ballot, but only got 89.

Legislators resurrect cyanide mining

SB 306, sponsored by Sen. Terry Murphy (R-Cardwell), would have effectively repealed Montana's ban on cyanide heap-leach open-pit mining. It proposed expanding and extending the use of cyanide processing as well as encouraging new open pit mines. Despite Montanans twice supporting the ban at the ballot box, **SB 306** passed the Senate 29-21 and passed the House 62-37. Governor Schweitzer stood up for the will of the people when he put his veto branding iron to the bill.

Legislators also sought to make significant changes to the permitting laws governing hard rock mining. **SB 312**, sponsored by Sen. Chas Vincent (R-Libby), was another attempt by this legislature to put corporate mining interests ahead of the health and safety concerns of Montana communities. The changes to the permit process allow a company to receive a "draft" mining permit before any environmental review is considered and before other relevant permits, like those for water or air quality, are issued. **SB 312** passed the Senate 35-15 and passed the House 69-30 and was signed into law by Governor Schweitzer.

Pro-mercury pollution bill falls

In the final days of the session, legislators put to rest a proposal to dump nearly 800 pounds of mercury into the state's air and water. **HB 593**, sponsored by Rep. Duane Ankney (R-Colstrip), proposed repealing Montana's regulations on the containment of mercury from coal-fired generating facilities, essentially allowing companies to turn off existing control facilities.



Lyzander Gassmann, 2, and Joslin Gassmann, 4, both of Wise River, demonstrate for their futures at the For the Love of Montana Rally on February 21.



SENATE

E = Excused

| Senators | Party | City | SD | Percent favorable | HB 198 Expand corporate eminent domain | HB 237 Repeal local provision in RES | HB 292 Right to clean and healthful environment | HB 497 Revise water appropriation permit | HB 593 Eliminate clean air mercury rules | SB 233 Gut Montana Environmental Policy Act | SB 266 Reduce local coal tax | SB 306 Ban cyanide heap leach pit mining | SB 330 Make renewable energy standard voluntary | SB 332 Increase Renewable Energy Std. | SB 86 Disclose fracturing fluid for oil and gas wells |
|-------------------------|-------|----------------|----|-------------------|--|--------------------------------------|---|--|--|---|------------------------------|--|---|---------------------------------------|---|
| Arthun, Ron | R | Wilsall | 31 | 9% | + | - | - | - | - | - | - | - | - | - | - |
| Augare, Shannon | D | Browning | 8 | 91% | + | + | + | + | + | - | + | + | + | + | + |
| Balyeat, Joe | R | Bozeman | 34 | 18% | + | - | - | - | + | - | - | - | - | - | - |
| Barrett, Debby | R | Dillon | 36 | 9% | + | - | - | - | - | - | - | - | - | - | - |
| Blewett, Anders | D | Great Falls | 11 | 82% | - | + | + | + | + | + | - | + | + | + | + |
| Branae, Gary | D | Billings | 27 | 91% | - | + | + | + | + | + | + | + | + | + | + |
| Brenden, John | R | Scobey | 18 | 9% | + | - | - | - | - | - | - | - | - | - | - |
| Brown, Taylor | R | Huntley | 22 | 27% | + | + | - | - | - | - | + | - | - | - | - |
| Buttrey, Edward | R | Great Falls | 13 | 9% | - | + | - | - | - | - | - | - | - | - | - |
| Caferro, Mary | D | Helena | 40 | 91% | - | + | + | + | + | + | + | + | + | + | + |
| Erickson, Ron | D | Missoula | 47 | 91% | - | + | + | + | + | + | + | + | + | + | + |
| Essmann, Jeff | R | Billings | 47 | 18% | + | - | - | - | + | - | - | - | - | - | - |
| Facey, Tom | D | Missoula | 48 | 91% | - | + | + | + | + | + | + | + | + | + | + |
| Gallus, Steven | D | Butte | 37 | 36% | - | - | + | - | - | - | - | - | + | + | + |
| Gillan, Kim | D | Billings | 24 | 82% | - | + | + | + | + | + | - | + | + | + | + |
| Hamlett, Bradley | D | Cascade | 10 | 73% | - | + | + | - | + | - | + | + | + | + | + |
| Hawks, Bob | D | Bozeman | 33 | 91% | - | + | + | + | + | + | + | + | + | + | + |
| Hinkle, Greg | R | Thompson Falls | 7 | 27% | + | + | - | - | + | - | - | - | - | - | - |
| Hutton, Rowlie | R | Havre | 17 | 18% | + | - | - | - | + | - | - | - | - | - | - |
| Jackson, Verdell | R | Kalispell | 5 | 0% | - | - | - | - | - | - | - | - | - | - | - |
| Jent, Larry | D | Bozeman | 32 | 82% | - | + | + | - | + | + | + | + | + | + | + |
| Jones, Llew | R | Conrad | 14 | 20% | + | + | - | - | - | - | - | - | - | - | E |
| Kaufmann, Christine | D | Helena | 41 | 91% | - | + | + | + | + | + | + | + | + | + | + |
| Keane, Jim | D | Butte | 38 | 36% | - | - | + | - | - | - | - | - | + | + | + |
| Lake, Bob | R | Hamilton | 44 | 0% | - | - | - | - | - | - | - | - | - | - | - |
| Larsen, Cliff | D | Missoula | 50 | 82% | - | + | + | - | + | + | + | + | + | + | + |
| Lewis, Dave | R | Helena | 42 | 9% | - | + | - | - | - | - | - | - | - | - | - |
| Moore, Frederick (Eric) | R | Miles City | 20 | 18% | + | - | - | - | - | - | + | - | - | - | - |
| Moss, Lynda | D | Billings | 26 | 100% | + | + | + | + | + | + | + | + | + | + | + |
| Mowbray, Carmine | R | Polson | 6 | 18% | - | + | - | - | + | - | - | - | - | - | - |
| Murphy, Terry | R | Cardwell | 39 | 0% | - | - | - | - | - | - | - | - | - | - | - |
| Olson, Alan | R | Roundup | 23 | 0% | - | - | - | - | - | - | - | - | - | - | - |
| Peterson, Jim | R | Buffalo | 15 | 9% | - | + | - | - | - | - | - | - | - | - | - |
| Priest, Jason | R | Red Lodge | 30 | 18% | + | - | - | - | + | - | - | - | - | - | - |
| Ripley, Rick | R | Wolf Creek | 9 | 18% | + | + | - | - | - | - | - | - | - | - | - |
| Shockley, Jim | R | Victor | 45 | 36% | - | + | - | - | + | - | + | + | - | - | - |
| Sonju, Jon | R | Kalispell | 4 | 27% | + | + | - | - | + | - | - | - | - | - | - |
| Steinbeisser, Donald | R | Sidney | 19 | 9% | + | - | - | - | - | - | - | - | - | - | - |
| Stewart-Peregoy, Sharon | D | Crow Agency | 21 | 91% | + | + | + | + | + | + | - | + | + | + | + |
| Tropila, Mitch | D | Great Falls | 12 | 100% | + | + | + | + | + | + | + | + | + | + | + |
| Tutvedt, Bruce | R | Kalispell | 3 | 18% | - | + | - | - | - | - | + | - | - | - | - |
| Van Dyk, Kendall | D | Billings | 25 | 91% | - | + | + | + | + | + | + | + | + | + | + |
| Vincent, Chas | R | Libby | 1 | 9% | - | + | - | - | - | - | - | - | - | - | - |
| Vuckovich, Gene | D | Anaconda | 43 | 64% | - | + | + | + | + | - | - | - | + | + | + |
| Walker, Edward | R | Billings | 29 | 9% | + | - | - | - | - | - | - | - | - | - | - |
| Wanzenried, David | D | Missoula | 49 | 100% | + | + | + | + | + | + | + | + | + | + | + |
| Williams, Carol | D | Missoula | 46 | 91% | - | + | + | + | + | + | + | + | + | + | + |
| Windy Boy, Jonathan | D | Box Elder | 16 | 82% | + | + | + | + | + | - | - | + | + | + | + |
| Wittich, Art | R | Bozeman | 35 | 36% | + | - | + | - | + | + | - | - | - | - | - |
| Zinke, Ryan | R | Whitefish | 2 | 55% | - | + | + | - | + | + | + | + | - | - | - |

2011 scored legislative bills

Here are the 2011 bills that rose to the top of Northern Plains' priorities and had votes we can use for our scorecard (in other words, they had a vote by either the full House and/or Senate).

RENEWABLE ENERGY

HB 237

Repealing the community provision in the renewable energy standard

Sponsor: Rep. Mike Menahan (D-Helena)

This bill would have eliminated the requirement that public utilities purchase a certain portion of renewable energy procured to meet the renewable energy standard from small, locally owned projects. The community provision was designed to spread the benefits of renewable energy development across Montana's rural communities.

■ **Northern Plains' position:** Oppose

■ **Vote used in Scorecard:**

Senate: 2nd reading, March 25, failed 17-33

House: 3rd reading, February 16, passed 77-21

■ **Status:** Failed on second reading in Senate

SB 330

Creating exemptions in the renewable energy standard

Sponsor: Sen. Edward Walker (R-Billings)

This bill would have weakened the waiver and noncompliance provisions of the renewable energy standard (RES) so that compliance with the RES would become almost voluntary. It would set up two new waiver systems in addition to the existing cost cap provisions. This bill as originally written would have allowed a public utility to apply for an indefinite waiver from complying with the RES.

■ **Northern Plains' position:** Oppose

■ **Vote used in Scorecard:**

Senate: 3rd reading, February 24, passed 28-22

House: 3rd reading, April 5, passed 66-32

■ **Status:** Vetoed by the Governor

SB 332

Increasing montana's renewable energy standard

Sponsor: Sen. Kendall Van Dyk (D-Billings)

This bill would have increased the amount of energy Montana utilities produce from our abundant renewable resources such as sun and wind, going from 15% up to 25% by 2025. The current renewable energy standard has brought affordable power, good-paying jobs, and rural prosperity to Montana. Increasing the standard will set the state on a path of progress by building on

these benefits.

■ **Northern Plains' position:** Support

■ **Vote used in Scorecard:**

Senate: Blast motion, February 21, failed 22-28

■ **Status:** Tabled in Senate Energy and Telecommunications

MAJOR ROLLBACKS OF ENVIRONMENTAL LAWS

HB 292

Constitutional amendment weakening right to clean and healthful environment

Sponsor: Rep. Dan Kennedy (R-Laurel)

This bill sought to amend the Montana Constitution, changing our fundamental right to a clean and healthful environment to read "a clean, healthful, and economically productive environment." The result of this vague and confusing addition would be years of bitter legal battles attempting to define and interpret the new language, all aimed at weakening this fundamental right of Montana citizens. To be placed on the ballot, the bill needed 100 total votes between the two chambers.

■ **Northern Plains' position:** Oppose

■ **Vote used in Scorecard:**

Senate: 3rd reading, March 28, passed 26-24

House: 2nd reading, February 22, passed 68-32 (5 members were absent on 3rd reading)

■ **Status:** Failed to meet 100 votes, died with only 89 3rd reading votes in favor

HB 593

Allowing increased mercury pollution

Sponsor: Rep. Duane Ankney (R-Colstrip)

This bill would have repealed the state rules governing mercury emissions, and prohibited the Montana Board of Environmental Review from adopting mercury rules that are more stringent than federal regulations (of which there are currently none). As written, the bill would actually have allowed coal-fired power plants to turn off their mercury abatement equipment, thus increasing mercury pollution in Montana's air and water. Mercury is severely toxic to human health.

■ **Northern Plains' position:** Oppose

■ **Vote used in Scorecard:**

Senate: To concur with conference committee report, April 20, failed 20-30

House: To concur with conference committee report, April 20, passed 69-29

■ **Status:** Died in conference committee





Walt Gulick, right, a Northern Plains member from Billings, talks with Representative Tom McGillvray (R-Billings) during a Northern Plains citizen Lobby Day on January 26 at the Capitol. Northern Plains fought for retaining the Renewable Energy Standard of 15% by 2015 and increasing the RES to 25% by 2025, the latter of which was defeated.

SB 233

Laying waste to the Montana Environmental Policy act

Sponsor: Sen. Jim Keane (D-Butte)

This bill is a fundamental rewrite of the Montana Environmental Policy Act (MEPA). It eliminates the courts' ability to prevent a project from proceeding if the project fails to comply with MEPA. This bill also eliminates the requirement for alternative analysis on environmental impact statements for private projects and has numerous constitutional problems.

■ **Northern Plains' position:** Oppose

■ **Vote used in Scorecard:**

Senate: 3rd reading, concur with House amendments, April 18, passed 32-18

House: 3rd reading, April 11, passed 74-25

■ **Status:** Became law without the Governor's signature

MINING, OIL, AND GAS

SB 86

Establishing public's right to know on fracking chemicals

Sponsor: Sen. Bob Hawks (D-Bozeman)

This bill would have required that oil and gas operators planning to use hydraulic fracturing publicly disclose the chemical composition of the fracturing fluid. In addition to publishing this information online, the bill would have required that these operations provide written notice to all landowners adjacent to the fracturing site. Except in the case of medical emergencies, the disclosure of proprietary chemical formulas used in fracturing is not required.

■ **Northern Plains' Position:** Support

■ **Vote used in Scorecard:**

Senate: Blast motion, February 7, failed 22-27

■ **Status:** Tabled in Senate Natural Resources Committee

SB 266

Corporate tax break for underground coal mines

Sponsor: Sen. Alan Olson (R-Roundup)

The bill was originally written to provide local governments with flexibility in granting abatements to the local coal gross proceeds tax. In his amendments, Governor Schweitzer incorporated provisions of a separate bill that was defeated in Senate Taxation. With the amendments, the bill mandates a 50% reduction in the coal gross proceeds tax that funds local governments and the state general fund. Combined, that is a \$2.8 million tax break to the state's only existing underground coal mine – Signal Peak.

■ **Northern Plains' position:** Oppose

■ **Vote used in Scorecard:**

Senate: 3rd reading, concurrence with Governor's amendments, April 28, passed 30-20

House: 3rd reading, concurrence with Governor's amendments, April 28, passed 63-32

■ **Status:** Became law

SB 292

Codify definition of in situ gasification for coal

Sponsor: Sen. Alan Olson (R-Roundup)

This bill provides a definition for in situ coal gasification that permits the contamination of groundwater within the underground mining area caused by in situ coal gasification. This new definition could potentially legalize contamination of surrounding underground aquifers as a result of this untested, experimental process.

■ **Northern Plains' position:** Oppose

■ **Vote used in Scorecard:**

House: 3rd reading, April 20, passed 69-28

■ **Status:** Became law without the Governor's signature

SB 306

Overturn ban on cyanide and vat leach open-pit mining

Sponsor: Sen. Terry Murphy (R-Cardwell)

This bill would effectively have overturned the voter-approved ban on cyanide heap leach open-pit mining by allowing any new mine to process ore at an existing mine that was grandfathered into the ban. This bill attempted to alter the language from ballot initiative I-137 that passed in 1998 to ban cyanide heap leach open-pit mining in Montana, and which was strongly reaffirmed by voters in 2004.

■ **Northern Plains' Position:** Oppose

■ **Vote used in Scorecard:**

Senate: 3rd reading, February 24, passed 29-21

House: 3rd reading, April 1, passed 62-37

■ **Status:** Vetoed by the Governor

PRIVATE PROPERTY, WATER, AND AG

HB 497

Removing protections against out-of-state water transfers

Sponsor: Rep. Christy Clark (R-Choteau)

This bill removes an important protection against large-scale, industrial, out-of-state transfers of Montana water by repealing the prohibition on appropriations over 4,000 acre/feet to individuals. Currently, appropriations of this size may only be leased from the Department of Natural Resources and Conservation to ensure that this publicly owned trust is protected. The prohibition was placed into law by the 1985 legislature to protect against potential damage to Montana's water resources by large coal slurry pipelines planned at that time to move coal from Montana to the Midwest. Development projects are different today, but they pose as great a danger to our water resources.

■ Northern Plains' position: Oppose

■ Vote used in Scorecard:

Senate: 3rd reading, March 18, passed 33-17

House: 3rd reading, February 22, passed 80-18

■ Status: Became law

HB 198

Granting private corporations power of eminent domain

Sponsor: Rep. Ken Peterson (R-Billings)

This bill is a response to a state court ruling last winter that

forbade a private power line from using eminent domain against landowners. HB 198 authorizes public utilities, as defined in law, as well as any party receiving a certificate under the Major Facilities Siting Act, to use eminent domain. HB 198 set a precedent that will allow private corporations to take an individual's private property for a private profit-making project that has no demonstrated public need.

■ Northern Plains' Position: Oppose

■ Vote used in Scorecard:

Senate: 3rd reading, April 20, passed 28-22

House: 3rd reading, February 7, passed 69-30

■ Status: Became law without Governor's signature

HB 207

Building montana's local foods infrastructure

Sponsor: Rep. Margie MacDonald (D-Billings)

This bill would have continued funding for the state's four Food and Agriculture Development Centers for the purpose of developing the infrastructure to keep more of the state's food, agricultural, and energy dollars circulating in Montana communities. Funding was granted on a one-time only basis in the previous session, necessitating a renewal for the next biennium.

■ Northern Plains' position: Support

■ Vote used in Scorecard:

House: Blast motion, March 23, failed 40-58

■ Status: Tabled in House Appropriations Committee

Board pushed to start rule-making on fracking

Reports of contamination from hydraulic fracturing, commonly known as "fracking," continue to grow across the country. Northern Plains worked diligently during the session to force companies to finally disclose the chemicals they use in the fracking process to the public, to emergency responders, and to adjacent landowners. Fracking fluids have been shown to get into drinking water and can include chemicals and mixes such as benzene and diesel fuel which have serious health effects.

Two bills, **SB 86** and **HB 586**, were carried by Sen. Bob Hawks (D-Bozeman) and Rep. Virginia Court (D-Billings) respectively. Both would have required gas drilling companies to fully disclose the chemicals used in fracking through the Board of Oil and Gas Conservation Commission's (BOGCC) website. They would also have protected private property rights by requiring a twenty-day notice to adjacent

landowners in advance of fracking. Currently, only two states (Wyoming and Arkansas) have disclosure rules, and these bills would have put Montana in front of the national curve.

Unfortunately, both bills were killed in committee at the request of the gas drilling industry.



The good news is that, because of the pressure we put on industry and the BOGCC during the session, BOGCC has begun a rule-making process to guide the disclosure of fracking fluids in the state. We think it is safe to say that without this public pressure during the session, BOGCC would not have begun this process.

Northern Plains leaders plan to play an influential role in the rule-making process, ensuring that the concerns of the public and landowners are taken into account. Contact Becca Fischer at the Northern Plains office if you are interested in getting involved in this process.



Last-minute tax break caps rough session on coal

Northern Plains' predictions that coal proponents would go on the offensive this session were correct. Our opponents chose a concerted strategy of flooding the session with small, technical bills to change the process for leasing and extracting coal. The totality of these changes is troublesome as we try to guide resource development with common sense protections for Montana's land, water, and family agriculture in the future.

By the end of the session this legislature and Governor made it easier for the state to lease its coal to private interests, further exempted its extraction from the laws that protect our land and water, and then sealed the deal with a sweetheart of a tax break.

Coal markets are booming – let's give them a tax break!

SB 266 sponsored by Sen. Alan Olson (R-Roundup) was originally written to provide local governments flexibility in granting abatements to the local coal gross proceeds tax. Using amendments, Governor Schweitzer incorporated provisions of **SB 427**, sponsored by Sen. Jason Priest (R-Red Lodge), that Northern Plains and allies killed in the Senate Taxation Committee. That bill was strongly opposed by county and local governments because it mandated a 50% reduction in the coal gross proceeds tax that funds local governments and the state general fund. The Governor's amendments will grant a total \$2.8 million tax break to the state's only existing underground coal mine – Signal Peak.

In its final days of work, the legislature signed on to the amendments. In a session that was dominated by a battle over funding education and essential public services, it is unconscionable that legislators and the Governor would grant one corporation a multi-million dollar break on state and local taxes!

Attack by a thousand cuts

Rather than pushing one massive overhaul of the laws governing the extraction of coal, opponents adopted a legislative approach of making many small changes to disparate portions of code. Northern Plains worked diligently to help legislators connect the dots, but given the state's pro-coal political climate, that task was difficult. Taken together, these bills carve out sweeping exemptions from the laws that were written to protect landowners from the damaging impacts of coal mining.

HB 533, carried by Rep. Tom Berry (R-Roundup), created another taxpayer subsidy for the coal industry by removing the requirement for the state to conduct an appraisal on proposed



Participants in the For the Love of Montana Rally gather in front of the state Capitol on Presidents' Day, February 21. Ralliers called on the legislature and Governor to create clean-energy jobs such as in wind and solar and uphold Montana laws that protect clean water, clean air, and our outdoor heritage. About 600 citizens participated in the rally, which was organized by Northern Plains Resource Council and endorsed by 20 statewide conservation organizations.

coal lease parcels. Instead, the state will simply assume that fair market value is whatever a coal company is willing to pay. The bill ultimately passed the legislature and was signed by the Governor.

The legislature also carved out legal exemptions for certain coal extraction methods. **SB 292**, sponsored by Sen. Alan Olson (R-Roundup), creates a potentially dangerous exemption to the state's water quality laws by declaring that contamination of groundwater as a result of in situ coal gasification will not be considered pollution. The bill became law without the Governor's signature.

HB 479, carried by Rep. Sterling Small (R-Busby), directs the Board of Oil and Gas Conservation Commission (BOGCC) to draft new rules allowing the microbial conversion of coal to gas without any legislative sideboards to protect land and water.

Lastly, **SB 297** will exempt new coal beneficiation plants from the Strip and Underground Mining Reclamation Act (SUMRA). Sen. Jeff Essman (R-Billings) sponsored the bill, though it was written by the coal industry. This bill was written by the coal industry and might violate federal law.

2011 MONTANA LEGISLATURE
VOTING RECORD
MAY 2011

Members keep legislators accountable

Northern Plains' success during this and any legislative session rests on the support and participation of our members. Our strength as a lobbying organization comes from the fact that our members are seen and heard around the halls of the Capitol. Legislators remember our members and the impression that you make through lobbying, testifying. They also take note of your phone calls and emails.

Northern Plains hosted two very successful Citizen Lobby Days this session.

The first, in January, focused on increasing Montana's renewable energy standard. The second, held in February, focused on bills to increase public disclosure and transparency in the process of hydraulic fracturing.

Each Lobby Day brought 10 Northern Plains members from across the state to spend the day talking with legislators.

Many members also made the trip outside of our lobby



Ed Gulick

days, which was equally as important to our work during the session. Members came from all over Montana through bad weather and even during calving season to speak on behalf of Northern Plains in committee hearings.

In addition to lobbying, every phone or email asking legislators or the governor for an action on a specific bill was immensely powerful this session.

Because of your participation, we were able to make an impression and change the actions of key legislators this session.

The session started out looking far worse than it did at the end, and your efforts are a big part of the reason that some legislators began to listen. Without your involvement, many outcomes would likely have been far different.

Thank you!

– Ed Gulick, Northern Plains Chair

