

University of Montana

ScholarWorks at University of Montana

Undergraduate Theses, Professional Papers, and Capstone Artifacts

2022

The History and Conflicts of the Montana Environmental Policy Act

William Oliver Borghesani
wb141193@umconnect.umt.edu

Follow this and additional works at: <https://scholarworks.umt.edu/utpp>



Part of the [Environmental Law Commons](#), and the [Political Science Commons](#)

Let us know how access to this document benefits you.

Recommended Citation

Borghesani, William Oliver, "The History and Conflicts of the Montana Environmental Policy Act" (2022). *Undergraduate Theses, Professional Papers, and Capstone Artifacts*. 392.
<https://scholarworks.umt.edu/utpp/392>

This Thesis is brought to you for free and open access by ScholarWorks at University of Montana. It has been accepted for inclusion in Undergraduate Theses, Professional Papers, and Capstone Artifacts by an authorized administrator of ScholarWorks at University of Montana. For more information, please contact scholarworks@mso.umt.edu.

The History and Conflicts of the Montana Environmental Policy
Act

Will Borghesani

Davidson Honors College Capstone Research Project

Spring 2022

Introduction & Overview

Montana has always been known for its outdoor recreational opportunities and endemic scenic beauty, which are major sources of state pride as well as important revenue faucets. Thus, protecting the environment has always historically been a high priority in Montana, albeit a contentious one. An important milestone was reached in 1971 with the state legislature's passage of the Montana Environmental Policy Act, (MEPA) a groundbreaking environmental law which protected access to outdoor recreation and declared a clean environment as a natural right. The following year, the new state constitution was approved via public referendum in the historic Constitutional Convention of 1972, which was revolutionary because of the populist sentiments it espoused that facilitated the direct participation of ordinary Montanans in the political process. (notably environmental matters.) Not only did Montana take a radical position toward to guaranteeing access to a clean environment as a constitutional right, but its citizens were given a direct custodial role in making assessments of environmental issues, allowing their voices to be amplified and taken into consideration in court cases and legislative sessions. MEPA would play a domineering role in Montana's environmental affairs during the remainder of the 20th century, setting an important precedent in the history of Montana's environmental law through influencing both the right to access the environment and the right to keep it clean to be enshrined in the state Constitution. The expectation that state citizens can have a seat at the table in environmental matters and their input must be valued by legislators, judges, and other parties encapsulates a strong pro-environment and pro-civic engagement identity that Montana helped pioneer in the United States.

However, maintaining an adequate legal approach toward protecting Montana's environment has proved to be a contentious and divisive issue in more recent years, especially amidst the current polarizing national political landscape that has permeated into Montana. In hindsight, it has become more apparent that MEPA seemed to have only put a large band-aid over an even larger problem. In the 2020s and beyond, much of Montana's environmental future lies in uncertainty as politicians and judges find it more difficult to apply MEPA's guidelines to new situations or are unwilling to do so, and there is a growing debate over whether or not MEPA can be updated or if it's obsolete and no longer relevant. The inevitable conflict of interest between Montana's environmental and economic priorities will cause further political turbulence and challenge Montana's rural, frontier-like identity as more out-of-staters pour in. (Ironically, mainly due to the natural scenery their looming and expanding presence threatens.) The current political landscape in Montana is calling into question the importance of MEPA's provisions, notably the declared right to a clean environment, signifying that MEPA is less likely to be expanded by court rulings and updated by legislative sessions as a consequence of changing demographic and political trends that result in environmental interests being placed on the back burner. This is attributable to both an increasing population in Montana that necessitates further economic development, as well as Montana's political landscape that trends toward greater control by a Republican party that prioritizes economic development over environmental protection and public access to the environment. The combined effects of an increasing population that will put Montana's demographic trends at odds with the environment and an indomitable right-leaning political trend that will make future legislative sessions more hostile toward environmental protection initiatives (and thus

favorable to business development and expansion) ultimately spell doom for MEPA and render it unlikely to be expanded and protected in the future. And this phenomenon that will be at odds with Montana's longstanding bipartisan political consensus toward environmental protection and challenge conservation as one of Montana's top priorities and defining characteristics.

MEPA's Origins & Premise

Passed by the Montana state legislature in the spring of 1971 and signed into law the following November, Montana's Environmental Policy Act was conceptually modeled after the federal National Environmental Act of 1969 (NEPA) signed by President Richard Nixon.¹ NEPA was a groundbreaking piece of environmental legislation that established a counsel to the president on environmental quality and required policymakers to assess the impact of each major policy decision in relation to the environment.² Both of these ideas were influences on the formation of Montana's environmentalist philosophy, since MEPA's proponents sought to emulate NEPA's affirmation of the rights of American citizens to clean air, water, and sanitation and apply them to Montana's outdoors, hoping that it would solve disagreement over how to properly protect public lands and balance environmental interests with economic ones. MEPA took NEPA's approach a step further by outlining a detailed framework of the standards and protocols that should be employed to achieve its objectives. At its core, MEPA had three major components: 1) acknowledging that human activity has a profound impact on the environment and therefore requiring the state government to allocate any funding and resources required to

¹ Nixon's Environmental Legacy," *Flathead Beacon*, January 26, 2011, <https://flatheadbeacon.com>.

² "National Environmental Policy Act," GSA (US General Services Administration, August 13, 2017), <https://www.gsa.gov>

support future environmental conservation initiatives, 2) codifying provision #1 into law and requiring the state government to assess future acts of legislation through the lens of their predicted impact on the environment, and 3) establishing the Environmental Quality Council, (EQC) the legislative committee which would direct and oversee the implantation of MEPA's guidelines and promoting other environmental initiatives throughout Montana.³

While not being legally binding, MEPA was revolutionary in signifying Montana's acknowledgement of the importance of environmental conservation and allowing its citizens to play a central role in making decisions pertaining the environment. It strove to utilize Montana's resources in a productive, safe manner that facilitated economic expansion but not at the cost of environmental conservation.⁴ Embracing a utilitarian outlook on conservation, MEPA's proponents hoped to incorporate the protection and preservation of the environment into Montana's legal system. However, the fact that MEPA is not legally binding is what creates so much grey area over where to draw the line for its jurisdiction, and why there are still many elected officials and environmentalist throughout Montana who disagree if MEPA should be interpreted as substantive or procedural, or even if it's still relevant.⁵ As every aspect of Montana life has changed significantly in the past 5 decades and will continue to change with shifts in population, political, and social trends, disagreements over how MEPA's vague original charter establishes its appropriate level of influence in legislative and judicial matters will

³ Hope Stockwell, "A Guide to the Montana Environmental Policy Act," *A Guide to the Montana Environmental Policy Act* (Helena, MT: Legislative Environmental Policy Office, 2013).

⁴ John Munding, Todd Everts, and Hope Stockwell, *A Guide To the Montana Environmental Policy Act* (Helena, MT: Legislative Environmental Policy Office, Environmental Quality Council, 2013)

⁵ ERIN P. BILLINGS Missoulian State Bureau, "Montana Environmental Policy Act: Broken or Effective," *missoulian.com* (*The Missoulian*, September 20, 1999), <https://missoulian.com>.

continue to be a divisive issue in the state's political arena, as has been shown in the state legislature.

Initial Controversies and Subsequent Legislative Modifications

At the time of its passage, MEPA's guidelines were vague and have been open to interpretation by subsequent legislative sessions and various generations of conservationists, and there have been numerous attempts by the state legislature to amend MEPA to reflect the changing political climate and adapt to new standards as times change. As of 2022, 128 bills and amendments have been introduced in the state legislature to modify MEPA since 1972, which have encompassed a wide variety of proposals ranging from changing the standards of MEPA's review process to increasing the responsibilities of the EQC.⁶ Despite its widespread support among legislators, environmental advocates, and Montana residents upon its enactment in 1971, finding agreement on the specifics of MEPA's guidelines and keeping them consistent with changing times have proved to be contentious, which is why its future does not look promising.

In 1995, the legislature passed Senate Bill (SB) 231, which added a provision to MEPA that affirmed citizens' right to private property and implemented a new requirement of the state to protect the use of private property from undue government regulation.⁷ SB 231 was a pivotal provision in MEPA's legislative history by shifting the focus away from primarily

⁶ Hope Stockwell, "A Guide to the Montana Environmental Policy Act," *A Guide to the Montana Environmental Policy Act* (Helena, MT: Legislative Environmental Policy Office, 2013).

⁷ John Munding, Todd Everts, and Hope Stockwell, *A Guide To the Montana Environmental Policy Act* (Helena, MT: Legislative Environmental Policy Office, Environmental Quality Council, 2013).

protecting environmental interests to incorporating economic ones into the scene as well. The bill was an early signifier of the trend away from affirming an absolute right to environmental access to making compromises on environmental rights with the need for further economic development. In 2001, proposals were introduced in both the House and Senate to establish stricter time limits for environmental review, require that alternative programs assessed under MEPA must be achievable with current resources and technology, clarify MEPA as a procedural statute rather than a substantive one.⁸ Passed in 2007, SB 448 required a thorough consumer fiscal impact analysis be conducted for each permit granted by the state government to construct or upgrade electrical facilities throughout Montana. The scope of environmental review was further limited by the passage of HB 529 in 2009, which ruled that impact assessments of energy development proposals must be confined to the affected areas. And in 2011, SB 233 infamously restricted MEPA's jurisdiction to specifically within Montana's borders, and only state-sponsored projects were subject to MEPA standards.⁹ MEPA's boundaries of oversight toward environmental projects were now limited to initiatives sought through the public sector, whereas ones sought by the private sector were exempt. The takeaway from all the aforementioned legislative amendments to MEPA, both successful and unsuccessful, is that it's simply no longer adequate for Montana's environmental philosophy to stipulate that citizens have an absolute right to environmental access and that environmental interests will always take priority over economic ones. The current changes Montana is rapidly undergoing

⁸ John Munding, Todd Everts, and Hope Stockwell, *A Guide To the Montana Environmental Policy Act* (Helena, MT: Legislative Environmental Policy Office, Environmental Quality Council, 2013)

⁹ John Munding, Todd Everts, and Hope Stockwell, *A Guide To the Montana Environmental Policy Act* (Helena, MT: Legislative Environmental Policy Office, Environmental Quality Council, 2013)

necessitate imposing some more stringent requirements on environmental rights to balance out emerging and expanding economic priorities, but compromises on these two priorities that satisfy every party are becoming rarer and rarer. The passage of House Bill 273 in early 2021 removed any doubt that that times were changing, which struck down a voter approved law from 1978 that required Montana citizens to approve the development of nuclear energy facilities in the state.¹⁰ As a consequence, Montana's citizens can no longer expect that the state legislature will be predisposed toward favoring their environmental rights in absolute terms because their elected representatives in Helena have fallen out of favor of updating and expanding MEPA.

Court History

In addition to the drastic (and often contradictory) changes implemented by the state legislature, MEPA has undergone changes when it has been brought up in court. A typical MEPA case consists of the plaintiff(s) suing either the state of Montana or an independent agency to either declare an agency's action invalid, (declaratory judgement) to stop the state or agency from doing something, (injunctive relief) or compelling the state or agency do something the plaintiff(s) want it to do.(mandamus) Courtroom tensions inevitably flare up when environmentalists invoke their constitutional right to land use because this can't guarantee that they will win cases. In order to rule on behalf of the plaintiff(s) the court must be able to determine that the defendants(s) either violated a state law/regulation, or neglected to make a

¹⁰ Keila Szpaller, "People's Power League Takes on HB273," Daily Montanan, June 11, 2021, <https://dailymontanan.com>.

proper assessment of their decision, as required by MEPA.¹¹ When MEPA was first implemented, courts throughout Montana were expected to rule in favor of environmental issues and the rights of Montana citizens to conduct adequate reviews and analyses. However, a noteworthy trend has gained traction since the 1980s, in which Montana courts have transitioned away from their inclination to blindly affirm environmental rights, instead adjudicating MEPA-related cases within the confines of a very specific scope that doesn't give environmental concerns as much weight. Montana's courts remain reluctant to curtail MEPA's oversight in areas where it has established jurisdiction, (hence following judicial precedent) but they impose rules of strict scrutiny on environmentalists in order to side with environmental interests over economic ones.¹² Court rulings on MEPA's jurisdiction are binding, (ironically, much more so than MEPA itself) meaning that district court decisions are binding in the districts where they are decided, and Montana Supreme Court rulings are binding statewide. Since courts are inclined to interpret MEPA as a procedural statute rather than a substantive one, they are even more reluctant to expand MEPA's oversight. Plaintiffs can be granted some leeway and provided with relief when the defendants are charged with acting outside of the best interest of the surrounding environment and community even if no laws or regulations have been broken. This means that courts can rule on behalf of the plaintiff(s) in environmental cases even if the defendant(s) didn't violate any laws, although strict scrutiny still applies and the courts no longer feel inclined to rule in their favor by default merely because a law from the

¹¹ Hope Stockwell, "A Guide to the Montana Environmental Policy Act," *A Guide to the Montana Environmental Policy Act* (Helena, MT: Legislative Environmental Policy Office, 2013)

¹² John Munding, Todd Everts, and Hope Stockwell, *A Guide To the Montana Environmental Policy Act* (Helena, MT: Legislative Environmental Policy Office, Environmental Quality Council, 2013)

1970s enshrines the right of the plaintiffs to environmental protection and access without more specific parameters.

The first major case pertaining to the confines MEPA's authority was *Montana Wilderness Association v. Board of Land Commissioners*, in 1975. The plaintiffs, the Montana Wilderness Association, (MWA) alleged that the Board of Land Commissioners and Department of State Lands had infringed on their right to access an unspecified portion of state land. The court ruling held that the only person who had access to the land was the individual who had been granted a specific lease to raise cattle on it, following a clause of the Montana State Constitution that states: "no such land or any estate interest therein shall ever be disposed of except in pursuance of general laws providing for such disposition, or until the full market value of the estate or interest disposed of has been paid or safely secured to the state."¹³ Since no formal lease for the land in question had been granted to MWA, its members had no right to use it. Not only did the court rule that MWA's right to public land use hadn't been violated, its claim was wholly without merit and lacked legal standing. This ruling set an important precedent for future cases: It was not sufficient for plaintiffs to only vaguely invoke their environmental rights to be granted legal standing in court; from now on they would be required to provide documentation to prove that they been leased or specifically granted access to the land in question or some other documented, verifiable grievance. Therefore, in this case the court ruled against MEPA's initial provisions to argue that EQC's guidelines did not apply to state agencies that had contractually leased out land, even if their lease went against the

¹³ *Montana Wilderness Association v. Board of Land Commissioners*, Justia US Law (Montana Supreme Court 1976).

wishes of environmental conservation organizations and even MEPA's original charter. This was an early sign of the gradual transition away from an absolutist interpretation of MEPA's codification of environmental rights to imposing more strict requirements for plaintiffs' environmental rights to be affirmed by courts, a precedent set only four years after MEPA was implemented.

In 1979, the verdict ruled by the Montana Supreme Court in *Kadillak v. The Anaconda Mining Company* was another important indication of what sort of rulings would follow in the ensuing decades with regard to environmental protection. Residents of Butte had complained against the activity of the Anaconda Mining Company expanding mining operations in closer proximity to their homes when the company wanted to create a new waste dumping site. Butte residents had hoped to prevent the company from securing a permit from the Department of State Lands to begin drilling, and argued that the Department of State Lands had violated MEPA by failing to conduct an adequate Environmental Impact Statement (EIS), but the District Court of Silver Bow County denied them relief. When the plaintiffs appealed and took the case to Montana's Supreme Court, it was held that even though the Anaconda Mining Company's permit request was incomplete, all the company needed to do was make the necessary modifications to its permit application that had been sent to the Department of State Lands, essentially guaranteeing the legal right to expand its mining operations even if those operations came into conflict with the property concerns of the plaintiffs.¹⁴ Although Montana's Supreme Court imposed a stringent requirement on the Anaconda Company for needing an airtight

¹⁴ *Kadillak v. The Anaconda Mining Company* (Montana Supreme Court October 16, 1979).

permit to have a waste dump in that location, the ruling held that the company was allowed to do so once it modified its permit request to encompass all the area it intended include in its proposed waste dump. It was held that an EIS had been necessary to evaluate the potential outcomes of allowing the Anaconda Company to expand its waste dump site, but the rights of the Anaconda Mining Company were ultimately prioritized over the concerns of the citizens of Butte.

In 1980, in *Friends of the Earth v. Department of State Lands*, an environmental protection group called Friends of the Earth sued the Department of the State Lands for leasing off unclaimed land for uranium mining. The plaintiffs' grievances were 1) that Department of State Lands violated MEPA in granting permits for mining without fulfilling its legal obligation to prepare an EIS, 2) failing to keep the local residents in the area informed, 3) failure to prepare a site-specific EIS review of the impact mining would have on the ecosystem, 4) failure to utilize a disciplined and systematic approach toward assessing the long term impact of uranium development on the human environment, and 5) the blatant violation of the right to a clean, healthy environment guaranteed by Article II, Section 3 of the Montana Constitution.¹⁵ However, the court dismissed their claims on the grounds that their grievances failed to establish controversy, and overruled the plaintiffs' seeking of preliminary injunction against the Department of State Lands for failure to establish immediate and irreparable harm, concluding that the Friends of the Earth had lacked standing. Once again, the court had ruled in favor of the Department of State Lands against the interests of an environmental conservation group,

¹⁵ *Friends of the Earth v. Department of State Lands* (First Judicial District of the State of Montana August 2, 1980).

continuing the trend of court interpretation of MEPA's jurisdiction that established a clear and apparent injury against the plaintiffs as a requirement to rule in their favor. If the plaintiffs seeking protection of their environmental rights were unable to meet that heavy burden, then Montana courts would continue to rule against them.

One exception to this trend was the ruling in *Cabinet Resource Group v. Dept. of State Lands* in 1980, in which the court of the First Federal District of Montana deemed MEPA to be substantive under Metal Mine Reclamation Act, ruling that "MEPA itself specifies that its policies and goals are supplementary to the existing authorization of state boards, commissions, and agencies."¹⁶ The court had held that as was the case with NEPA, MEPA was intended to implement substantive changes in policymaking rather than be a broad framework of general suggestions. The rationale for this decision was that it made little sense for MEPA to acknowledge environmental problems but denied state agencies the authority to take coordinated action against them. Therefore, with this particular case, the court went further than many would be willing to go in future cases in affirming that Montanans' constitutional right to a clean, healthy environment guarantees the necessary authority of states agencies to take regulatory action. However, this verdict turned out to be the exception rather than the rule, for the trend of court cases consistently ruling in favor of developers and other economic interest groups continued and in the 21st century, and courts' procedural interpretation of MEPA continues to allow them to exercise discretion when to adequately enforce it.

¹⁶ *Cabinet Resource Group v. Department of State Lands* (First Judicial District of Montana August 25, 1980).

As already shown, Montana courts' approach toward mediating disputes between environmentalists and businesses/developers requires the plaintiffs to articulate either a vested interest in the specific area at stake or a documented, verifiable grievance that can prove legitimate injury beyond a reasonable doubt. Unless plaintiffs can prove how the actions of the state or a business are impeding them, Montana's courts are disinclined to rule in their favor. This attitude toward MEPA's jurisdiction represents shift in priority of the courts from protecting environmental interests at any cost toward facilitating economic development, another priority that they have had to contend with as Montana's population has surged in the decades since MEPA's passage. As Montana's population will continue to grow in the near future (partially due to the allure of Montana's environment and public land access) courts will continue striving for a balance between economic interests and environmental ones, even if that requires limiting the scope of MEPA's influence by declining to rule in favor of the environmental rights of individuals and organizations. While it may be a tough pill to swallow for environmental enthusiasts and other Montanans who treasure their enshrined right to a clean, healthy environment, the reality is that Montana's rural, frontier identity that had previously sustained this attitude is threatened by the surging inward migration levels pouring into the state. This inevitability will ultimately force politicians and judges to make a major trade-off by acquiescing to further economic development, even if that requires prioritizing environmental initiatives (and many of MEPA's guidelines by extension) less. Therefore, with MEPA continuously being interpreted by Montana's courts as procedural rather than substantive, environmental reviews will still be conducted when deemed necessary, although

that provides no guarantee that environmental concerns such as land protection will ultimately be given high priority or the will of Montana's citizens on such matters will carry any weight.

Political History in Montana

The monumental change in Montana's political demographics inevitably shifts much of the political consensus away from favoring MEPA in absolute terms toward placing less priority on updating or preserving it. State politicians no longer feel inclined to allow MEPA to continue playing an influential role in devising Montana's environmental policy as it was intended to do. When MEPA was first passed in 1971 it had been authored by George Darrow, a prominent statewide Republican politician who believed in protecting the environment and passed with enormous bipartisan support.¹⁷ Part of the rationale behind MEPA's passage was that both Democrats and Republicans in the state legislature understood how much the scenic beauty of Montana's mountains, rivers, lakes, and everything in between made Montana such a great state. Therefore, there was a bipartisan consensus that necessary action needed to be taken not only to preserve state lands for the recreational enjoyment of future generations. economy as well as maintaining a beautiful environment as a source of pride for Montanans.

Unlike its deep red neighbors Idaho, Wyoming, and both Dakotas, Montana had long prided itself in its independent political streak, giving Democrats as much of a competitive edge as Republicans in senate and gubernatorial elections and cementing Montana as a splotch of

¹⁷ Lynette Hintze , "George Darrow, Bigfork Leader, Passes Away," Bigfork Eagle (Daily Interlake , March 11, 2015), <https://bigforkeagle.com>

bluish-purple in a sea of deep red on the electoral map of the western United States.¹⁸ This was still the case when MEPA and the constitutional right to a clean environment were enacted in 1971 and 1972 respectively, when Montana Democrats who championed environmental causes could find allies in Republicans who also valued those priorities. This thinking was what had made MEPA possible in the first place, since it required both the efforts and contributions from Democrats and Republicans to craft an expansive, comprehensive environmental agenda that catered to the needs and desires of the majority of Montanans.

Montana's Current Political Landscape

However, the political landscape in Montana has shifted enormously in the past 50 years, as Montana's purple shading on the electoral map has faded away to be replaced by a shade of red that is becoming darker and darker after each subsequent election cycle.¹⁹ Liberal Democrats who had performed strongly in Montana and championed environmental causes along with like-minded Republicans have now lost the competitive edge they once had. In the current age, Montana's state legislature has become dominated by a new brand of Republicans who have shed their forefathers' environmentalist stances and embraced a business-friendly philosophy that prioritizes economic development in Montana, often at the expense of expanded environmental protection and creating more public lands.²⁰ This thinking goes

¹⁸ Gwen Florio, "It's Just a Slaughter': Montana Goes From Purple to Deep Red," *The Nation*, November 5, 2020, <https://www.thenation.com>.

¹⁹ Brown, Matthew, and Amy Beth Hanson. "Republican Rout Caps Decade-Long Montana Political Shift." *Great Falls Tribune*, Great Falls Tribune, 4 Nov. 2020, www.greatfallstribune.com.

²⁰ Ron Selden, "Republicans Undermine a Bedrock Environmental Law," *High Country News – Know the West*, March 26, 2001, <https://www.hcn.org>

against the intentions of MEPA’s earliest proponents who had hoped to permanently incorporate public land and environmental protection into Montana’s governing philosophy, regardless of which party controlled the governorship and/or the legislature. Thus, the fact the Montana’s elected leaders can no longer sustain absolute affirmation of environmental rights and feel the greater pressure to balance them out with economic priorities represents a harsh truth about a gradual but dramatic shift in Montana politics: It will not be a sparsely populated state forever. With the demand for more land to build more housing and expand development for other natural resources, tradeoffs will have to be made that require less land protection and more land development to feed a steadily growing population that will forever alter Montana’s identity as a rural, land-abundant state. And the current generation of Montana’s Republicans seems happy to continue making this tradeoff as long as it remains politically advantageous for them to do so.

2020 was a pivotal election year in Montana politics, marking the first time in history that the majority of Montanans had voted for a Republican congressman, senator, governor, and president all on the same ballot.²¹ (3 of those 4 elections were won by Republicans, and they were all the statewide ones.) It also was the first year in which a Republican had been elected governor since 2004, ending the 16 year-long reign of Democratic governors charting the direction of Montana’s political winds.²² Although Republicans had been steadfastly gaining steam in Montana as Democrats encountered more difficulty in competing in rural areas, the

²¹ “Republicans Sweep Key Races in Montana,” Flathead Beacon, November 4, 2020, <https://flatheadbeacon.com/aces-montana>.

²² Shaylee Ragar, “The GOP Will Control Montana's State Government for the 1st Time in 16 Years,” NPR (NPR, November 14, 2020), <https://www.npr.org>

results of 2020's statewide elections in Montana were interpreted as a big realignment in Montana politics that represented major priority changes in Helena.

A vital component of the shift in Montana politics that culminated in the Republican state victories of 2020 was the change in the state government's approach toward environmental policy, deemphasizing the need to preserve the environment in favor of loosening business regulation and making Montana more hospitable to emerging businesses and industries.²³ Spearheaded by Governor Greg Gianforte, (a former tech entrepreneur who successfully argued that the changes in Montana's political climate warranted a governor with business experience,) the current gubernatorial administration has fundamentally changed the direction of Montana by altering the balance between environmental and economic priorities that MEPA had tried to sustain. It wasn't very long into Gianforte's tenure as governor when it became apparent that unlike previous Democratic governors and even some Republican ones, Gianforte wasn't nearly as reliable on upholding MEPA's guidelines. His election to the governorship symbolized how much Montana has become more open to compromising its historically ardent pro-environmental and public-lands stance in favor of further development in energy and other economic sectors.

A major component of Gianforte's legislative agenda is his Montana Comeback Plan, a package of all his policy proposals relating to the wide variety of issues facing Montana as it recovers from the COVID-19 pandemic. The Comeback Plan has faced criticism for neglecting to mention climate change and placing little importance on public land access, instead prioritizing

²³ Michael Janofsky, "Republicans Take on Environmental Regs in Big Sky Country / Montana Reviewing Its 30-Year-Old Permit Process," SFGATE (San Francisco Chronicle, January 28, 2001), <https://www.sfgate.com>.

the development and commoditization of Montana's natural resources such coal, oil, natural gas, timber, and minerals.²⁴ It has also been criticized for vaguely citing the free market as the best tool for advancing Montana's environmental interests without any recognition of the need to update the state's framework for protecting public lands and other ecological concerns. Gianforte and his allies have argued that the key toward unleashing Montana's business potential is to roll back excessive and cumbersome regulations that limit energy companies' development and expansion, understandably prioritizing keeping Montana's economy alive by sustaining jobs. In turn, Gianforte and his allies believe that they can kill two birds with one stone by integrating economic priorities with environmental ones, although when the two come into conflict, no one doubts that the environmental ones will take a back seat. Gianforte's critics argue that he bears not only the authority but the moral obligation to steer the state away from over dependence on fossil fuels and the environmental destruction that accompanies unrestrained energy development, although his election to the governorship in 2020 signified that Montana's political winds were already heading in a direction that placed greater priority on economic development than environmental protection.

One of Gianforte's first acts as governor in February 2021 was to join 16 other state governors in writing a letter to President Joe Biden urging him to reverse Executive Order 14008, which banned oil and natural gas development on federally protected land.²⁵ In signing onto the letter, Gianforte signified his opposition to drilling bans, which environmentalists in Montana argue is necessary to preserve public land for recreational enjoyment and mitigate

²⁴ Amanda Eggert, "Does Greg Gianforte Have a Plan for Climate Change?," MTFP (Montana Free Press , August 18, 2021), <https://montanafreepress.org>

²⁵ "Gianforte, Governors Urge President to Reverse Ban on New Drilling on Federal Lands," Montana.GOV: Official State Website (State of Montana Newsroom, February 22, 2021), <https://news.mt.gov>.

potential damage to the surrounding environment. In July, he withdrew Montana from the US climate alliance, a pact Montana had previously entered in 2019 under Democratic Governor Steve Bullock to join other western states including Colorado, Washington, and Oregon to achieve the goals of the 2015 Paris Agreement and achieve net-zero carbon emissions by 2050.²⁶ Thus, Gianforte's governing approach toward steadfastly advancing economic interests signifies that like the rest of Republicans in Montana's state legislature, the governor believes his priorities lie in setting Montana's economy on a path toward efficient modernization and expansion in the coming decades, and that environmental interests like MEPA or concerns of environmentalist organizations can take a backseat without negative repercussions, at least for now.

Economic Development vs. Environmental Rights

Despite Gianforte's continued insistence on the need to devise adequate, long-term solutions to climate change, he has faced routine criticism from Montana Department of Environmental Quality (one of most important organizations for upholding MEPA's guidelines) for not presenting a compelling plan to tackle it. Additionally, another top priority Gianforte has undertaken as governor has been to tackle the housing crisis felt in many corners of the state as it has had to grapple with a surging population,²⁷ especially in the wake of the 2020 census report. As aforementioned, this priority comes into conflict with environmental preservation initiatives and other efforts to take preventative measures against pollution and overuse of

²⁶ Sam Brooks, "Gianforte Pulls out of U.S. Climate Alliance," Explore Big Sky, July 14, 2021, <https://www.explorebigsky.com>

²⁷ The Center Square. "Gianforte Signs Affordable Housing Measure." *The Center Square*, 13 Apr. 2021, www.thecentersquare.com.

lands, and the downside of Gianforte's outlook on this growing dilemma is that his own business expertise renders him biased toward economic interests at the expense of environmental ones. This means that his most important decisions are always made with Montana's job market and economy in mind, and pressing environmental matters will take a back seat as long as there is more money to be made for the state through expansion of energy industries or more housing construction, even if those come at the cost of development of land that conservationists would prefer to be protected and made available only for recreational use.

As a result of all the aforementioned legislative changes that go against MEPA's guidelines, environmental protection environmental interests under Governor Gianforte's tenure have been placed on the back burner. This change in priorities reflects a culmination of the Montana Republican party's shift in recent decades from being progressive and bipartisan on environmental issues toward embracing a corporatist attitude in favor of curtailing pro-environmental legislation and slowing the expansion of public lands, against initiatives that were supported by both political parties in Montana in the 1970s and that MEPA sought to protect. Environmental activists and conservation organizations fear that ardent protection of public lands and other environmental initiatives will cease to be a priority for future legislative sessions, where the bipartisan consensus on environmental conservation proposals that has pervaded for so long in Montana's state history will wither away as a result of Montana's lurch further right politically and embrace of pro-business development policies. Consequentially, the future of MEPA falls into question as well, considering that the changing political winds in Montana reflect that the majority of elected officials in Montana are valuing MEPA less than

prior generations, which makes finding a balancing point between environmental and economic priorities the hardest it has been since MEPA's passage.

Conclusion

In conclusion, the purpose of the Montana Environmental Policy Act was to reach a consensus on the protection and preservation of public lands and the rest of Montana's scenic environment for the recreational enjoyment of future generations. Considering the great degree to which Montanans value the scenic beauty intrinsic to their state, MEPA's affirmation was revolutionary in declaring access to a clean healthy environment as a natural right. However, in contemporary Montana's political landscape, not only have Montana's judges and legislators have had a difficult time keeping MEPA's standards and guidelines up to date, but they are becoming less inclined to do so. Courts apply a procedural interpretation to MEPA rather than a substantive one, which makes it easier to override MEPA's guidelines to compromise environmental concerns and make concessions to the need for economic development in Montana. The deemphasis of MEPA and the continued reluctance of legislators and judges to continue enforcing it symbolizes how much a growing population and a rightward shift in politics have changed Montana's priorities in focusing on economic expansion rather than environmental protection. Regardless of the large role the scenic environment plays in crafting Montana's state identity, the shifting trends in the state that involve a rising population and rightward lurch in state politics no longer sustain the bipartisan environment that facilitated MEPA in the first place. Therefore, even though MEPA will remain on the books and invoked by environmentalist organizations, its influence in state politics will continue to wither

away as Montana shifts its priorities in favor of economic interests over environmental ones in the 21st century.

Bibliography

- 1 ERIN P. BILLINGS Missoulian State Bureau, “Montana Environmental Policy Act: Broken or Effective,” missoulian.com (The Missoulian , September 20, 1999), <https://missoulian.com>.
- 2 Sam Brooks, “Gianforte Pulls out of U.S. Climate Alliance,” Explore Big Sky, July 14, 2021, <https://www.explorebigsky.com>.
- 3 Brown, Matthew, and Amy Beth Hanson. “Republican Rout Caps Decade-Long Montana Political Shift.” *Great Falls Tribune*, Great Falls Tribune, 4 Nov. 2020, www.greatfallstribune.com.
- 4 The Center Square. “Gianforte Signs Affordable Housing Measure.” *The Center Square*, 13 Apr. 2021, www.thecentersquare.com.
- 5 Amanda Eggert, “Does Greg Gianforte Have a Plan for Climate Change?,” MTFP (Montana Free Press , August 18, 2021), <https://montanafreepress.org>.
- 6 Gwen Florio, “‘It’s Just a Slaughter’: Montana Goes From Purple to Deep Red,” *The Nation*, November 5, 2020, <https://www.thenation.com>.
- 7 Nixon’s Environmental Legacy,” Flathead Beacon, January 26, 2011,
- 8 Republicans Sweep Key Races in Montana,” Flathead Beacon, November 4, 2020, <https://flatheadbeacon.com>
- 9 “National Environmental Policy Act,” GSA (US General Services Administration , August 13, 2017), <https://www.gsa.gov/>.
- 10 Gianforte, Governors Urge President to Reverse Ban on New Drilling on Federal Lands,” Montana.GOV: Official State Website (State of Montana Newsroom , February 22, 2021), <https://news.mt.gov>.
- 11 Lynette Hintze , “George Darrow, Bigfork Leader, Passes Away,” Bigfork Eagle (Daily Interlake , March 11, 2015), <https://bigforkeagle.com>
- 12 Michael Janofsky, “Republicans Take on Environmental Regs in Big Sky Country / Montana Reviewing Its 30-Year-Old Permit Process,” SFGATE (San Francisco Chronicle, January 28, 2001), <https://www.sfgate.com>.
- 13 John Mundinger, Todd Everts, and Hope Stockwell, *A Guide To the Montana Environmental Policy Act* (Helena, MT: Legislative Environmental Policy Office, Environmental Quality Council, 2013)
- 14 Shaylee Ragar, “The GOP Will Control Montana’s State Government for the 1st Time in 16 Years,” NPR (NPR, November 14, 2020), <https://www.npr.org>
- 15 Ron Selden, “Republicans Undermine a Bedrock Environmental Law,” High Country News – Know the West, March 26, 2001, <https://www.hcn.org/>
- 16 Hope Stockwell , “A Guide to the Montana Environmental Policy Act,” *A Guide to the Montana Environmental Policy Act* (Helena , MT: Legislative Environmental Policy Office , 2013).
- 17 Cabinet Resource Group v. Department of State Lands (First Judicial District of Montana August 25, 1980).
- 18 Friends of the Earth v. Department of State Lands (First Judicial District of the State of Montana August 2, 1980).
- 19 Kadillak v. The Anaconda Mining Company (Montana Supreme Court October 16, 1979).