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BEYOND ORO Y PLATA: THE 1971-1972 MONTANA STATE CONSTITUTIONAL
CONVENTION AND THE WRITING OF MONTANA'S ENVIRONMENTALLY
PROGRESSIVE CONSTITUTION

A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR GRADUATION HONORS

DEPARTMENT OF HISTORY

BY

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APRIL 2001
This thesis has been approved for honors recognition for the Department of History.

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PREFACE

World famous climber and outdoor clothing designer Royal Robbins exhorted the audience, in a lecture I once attended, to "do what you love and love what you do" because everything else is a waste of freedom. This was exactly what was going through my frantic mind in the closing days of the 2000 spring semester as I tried to pick a topic for my honors thesis. I decided that I had to write about something that I was passionate about—something that I could love throughout an entire year of work. I decided to pursue a topic close to my heart: the environment.

But I did not know what I wanted to write. I knew that environmental history was a nascent field wide-open for study and I hoped to contribute something to that field, but I was unaware of any specific topics on which to research and write. Knowing this much and armed with some contacts and information on environmental history from my advisor, Professor Robert Swartout, I embarked on a summer journey to find my topic.

Working from the municipal library of Cimarron, New Mexico, during the summer of 2000, I had limited access to sources from which to extract a topic for an honors thesis. I read Rachael Carson's *Silent Spring*, Hal K. Rothman's *Greening of a Nation?: Environmentalism in the United States since 1945*, and Paul Hirt’s *Conspiracy of Optimism: Management of the National Forests since World War Two* to gain an understanding of the history of the environmental movement, but none of these works helped me to select a specific topic. The Internet, too, failed to provide any suitable
subjects of study. Finally, in the last weeks of summer break before the fall semester was to commence, I received an email that would lead me to the topic of this honors thesis.

One of the people that Professor Swartout had advised me to contact was Mark Fiege, a professor of environmental history at Colorado State University in Fort Collins. I had emailed Professor Fiege to ask for his advice in selecting a topic early in the summer and in August he sent me a list of five or six topics—any of which would have been a fine subject for a thesis. Among them was the topic of Montana's environmentally progressive Constitution.

Montana reviewed its 1889 Constitution in the late 1960s, and finding much of it obsolete, followed the national trend of that was taking place in the post-World War II period to rewrite the state Constitution. What Montanans produced in 1972, through the process of a constitutional convention, was an environmentally progressive document that would serve as a model for the rest of the nation. My work examines the 1971-1972 Montana Constitutional Convention—the delegates, issues, and debates—within the social, economic, and political context of Montana and the nation in the late 1960s and 1970s in order to explain how and why Montana wrote such an environmentally progressive constitution. My work on this topic is nowhere near complete, but I believe I have succeeded in conveying what happened and offering some insights into why.

Researching and writing about Montana's 1971-1972 Constitutional Convention broadened my love and knowledge of history—of Montana, its politics and environment. Keeping Robbin's maxim in mind, I do not regret a single minute I spent in the Montana Historical Society or any of late night writing sessions in front of my computer. I hope readers enjoy reading this as much as I enjoyed writing it.
I could not have been successful without the help of a number of key individuals. First and foremost, I would like to thank my parents, Roy and Phyllis Ferguson, for convincing me that I can do whatever I set my mind to and supporting me financially while I have done it.

I would like to thank Professor Robert Swartout for all of his advice and support over the past year pertaining to this thesis and for all of our thought-provoking and reassuring talks about the future. He always put my fears at bay while keeping me on track. I could not have asked for a better advisor either for this thesis or for my academic career. Words truly cannot express my gratitude to Professor Swartout.

If it were not for Professor Mark Fiege at Colorado State University, I might still be searching the Internet for leads as to what to write on. I hope that I have done justice to the topic that Professor Fiege pointed me to, and I look forward to meeting him face-to-face someday.

I would like to thank my readers, Professors Dennis Wiedmann and Phil Wittman, for the hours of help they provided me in shaping the raw material of my work into a coherent contribution to the study of Montana's political history.

Thank you to Bob Campbell, George Harper, and Hal Harper for giving me a better understanding of the 1971-1972 Constitutional Convention and Montana's politics over the past thirty years.

I would like to give special thanks to staff at the Montana Historical Society Library and Archives for helping me to find the sources I needed to write this thesis.

Finally, I would like to thank my sister, Rebecca, my roommate and best friend, Canon, and my girlfriend, Callie, for putting up with my ramblings about Montana's
Constitution, environment, and politics over the past twelve months. Thanks for your interest, patience, and humor.
CHAPTER 1
ENVIRONMENTALISM IN THE UNITED STATES AND MONTANA IN THE EARLY 1970S

A new ideology entered the national political arena at the end of the 1960s: environmentalism. Born of the Conservationism of the Progressive Era, environmentalism sought to protect Americans' geographical surroundings—what became known collectively as the "environment." Unlike the conservationism of the early and mid-twentieth century, this new ideology was based on the idea of protecting the environment for the purpose of preserving and improving a quality of life that Americans felt they deserved. Conservationism was rooted in the premise that the United States, its industry and government, should conserve its resources with the goal of efficient use. Multiple use and sustained yield philosophies of land management, trademarks of Gifford Pinchott's United States Forest Service, were the guiding principles of Conservationism—"the greatest good for the greatest number." If the geographic characteristics of a certain piece of land, for example the spectacular scenery of the Yellowstone area of northwestern Wyoming, made it more valuable to the public good to maintain it in its raw form than to extract its resources, it was preserved. But, if the value of its raw materials, either because of their quantity or because of the ease in which they could be extracted, exceeded the value of preserving a plot of land, it was developed.

Environmentalism, on the other hand, was an ideology that acknowledged the interdependence of all living things on the planet and sought to protect the environment
because such protection was viewed as necessary for the continuation of life on Earth—protecting the planet for the planet’s sake.

The environmentalism of the 1970s, while it was not as wilderness-oriented as its conservationist predecessor, was also heavily influenced by the growing recreation of Americans in that period. Better transportation and technological advances in out-door recreational equipment were making the out-of-doors more accessible to Americans in the post-war period and wilderness had become fashionable as more and more Americans were getting out into their “back yard.” Environmental organizations witnessed a boom in membership—some doubled or tripled in size in a brief period.1

This new ideology reached maturity in the late 1960s and would flourish in the 1970s, the “environmental decade.” However, with the inflation inspired by the Vietnam War and the Organization of Petroleum Exporting Countries’ (OPEC) oil embargo, the optimism and utopianism that made environmentalism a widespread movement began to dwindle. Before its light had been extinguished, though, environmentalism influenced the passage of numerous pivotal laws for the protection of the environment, at both the national and state level.

From victory over Japan in 1945 to the Yom Kippur War in 1973, Americans experienced an unparalleled level of economic prosperity. With that affluence, a general feeling of optimism and utopianism permeated the United States. It was this optimism and utopianism that Hal K. Rothman, in his *The Greening of a Nation?: Environmentalism in the United States since 1945*, argues created a national consensus about the environment that influenced American policy-making throughout the 1970s and ended only with the inauguration of Ronald Reagan in 1981. Americans looked at the
price of their post-war economic prosperity—the smog in their cities, the streams and lakes filled with dead fish floating amidst detergent suds and industrial effluent—and collectively determined that actions had to be taken to bring the quality of their living conditions up to that of their economic standard of living. Optimistic from emerging victorious and strong from the Second World War, it seemed only right for the most powerful country in the world to protect its environment. In this optimism, and the idealism that was created and encouraged by spirit of John F. Kennedy’s “New Frontier,” Lyndon B. Johnson’s “Great Society” and the civil rights movement of the 1960s, Americans viewed protection of the environment as a societal good and a socially desirable pursuit.

The American public was first awakened to the “environmental crisis” when Rachael Carson published her work *Silent Spring* in 1962. That work revealed the dangers of pesticide and herbicide use not only on animals but on humans as well. In *Silent Spring* was strong evidence, researched and recorded by an expert biologist, that America’s use of pesticides such as DDT was a potential threat to the quality of life in the United States. America was also an increasingly urban nation in the 1960s and quality of life issues, the category in which environmental concerns were placed, gained prominence on the urban, affluent American agenda, along with economic considerations. That agenda influenced greatly the lawmakers of the 1960s and 1970s led to the creation of a number of laws designed to protect the environment. The public outcry that surrounded *Silent Spring*, in addition to increasing public concerns about the environment in the postwar period, prompted the creation of the most powerful
environmental legislation in United States history: the National Environmental Protection Act of 1969 (NEPA).

Environmentalism in National Politics During the 1960s and 1970s

Although other laws had been passed preceding it, NEPA was the first law with any real strength to turn the post-war tide of environmental degradation. The monumental environmental laws of the earlier 1960s, most notably the Wilderness Act of 1964, were pivotal in the protection of wild lands, but they were the product of the conservation ethic saving millions of acres of land from development because of its recreation value. NEPA committed the federal government to "create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans." It put the federal government front and center in leading the march of environmental protection based on environmentalist ideals—not the potential value that might be accrued from protection.

The ease with which NEPA sailed through Congress reflected the national consensus on environmental protection that had emerged in the 1960s. Its passage reflected the importance to Americans that environmental protection now enjoyed. Rothman writes that after NEPA, the environment was thrust to the center stage of the American agenda as a buzzword whose protection was considered "... 'good,' a socially advantageous and highly desirable goal."

Unlike the Clean Air Act and Clean Water Act that came before the National Environmental Protection Act, NEPA required that before any federal or federally
supported undertaking, an Environmental Impact Statement (EIS) be written to describe the impact of the project. It also created the Council on Environmental Quality (CEQ) as the highest legal advisory body to the president on environmental affairs. Consisting of three members, selected by the president and approved by the Senate, the CEQ's role was largely determined by the president. Some administrations, such as Richard Nixon's, chose not to utilize the CEQ. Under other presidents it was assertive and used well. A final condition of NEPA mandated that the president give a "Message on the Environment" to Congress, which President Nixon first gave in February of 1970. All of these components gave the NEPA something that no other environmental legislation had—teeth. NEPA was designed to place the federal government in the driver's seat of environmental protection in the United States. The EIS, the CEQ, and the president's "Message on the Environment" kept the government and industry accountable to the environmentally aware and concerned American public.

In December of 1970, a "signature event of the environmental revolution" took place: President Nixon signed The Environmental Protection Agency (EPA) into law. Created under the auspices of NEPA, the EPA supplanted and consolidated numerous federal agencies such as the Federal Water Quality Administration in the Department of the Interior, and the National Air Pollution Control Administration in the Department of Health, Education, and Welfare. The EPA also administered the various solid-waste management programs scattered throughout the federal government, set standards and guidelines for radiation control, and controlled pesticide and toxic substance registration and administration. The founding of the EPA was a turning point in federal environmental protection because it codified the era's new environmental ethic into both
policy and the legal code. Rothman writes that prior to its creation, economic justification was all that was needed for any private or public undertaking. After 1970, though, the Americans could be assured that new methods of administration would govern the use of the American environment.7

**Earth Day**

While Congress's overwhelming support for NEPA reflected a national consensus on the environment at the national political level, millions of Americans showed their support for protecting the environment at the grass-roots level in the spring of 1970. On April 22, 1970, about 20 million people expressed their support for environmental protection when they gathered for the first Earth Day. Conceived by Wisconsin Senator Gaylord Nelson at a September 1969 symposium in Seattle, Washington, Earth Day was originally to be a “National Teach-in of the Crisis of the Environment.” Nelson's dream held two objectives: to help crystallize the environmental constituency, and to limit its links with the New Left that was so prominent on American college campuses at the time. Environmental Teach-in Inc. was established by Nelson and was ran, practically out of his office, to organize this event. With the help of a Harvard Law School student, Denis Hayes, who acted as the event's chief organizer, Earth Day possessed a centrist tone that increased its inclusiveness to all sides of the environmental spectrum (though its centrist position no doubt alienated some extremists).8 The peaceful Earth Day rallies were a rousing success; Hayes reflected the sentiments of many who attended them in a speech:

> We will not appeal any more to the conscience of institutions because institutions have no conscience. If we want them to do what is right, we must make them do what is right. We will use proxy fights, lawsuits, demonstrations, research, boycotts, ballots—whatever it takes. This may be our last chance.9
NEPA, the EPA, and Earth Day were definitive of the new ideology of Environmentalism that was growing to maturity in the late 1960s and early 1970s. In the window of political opportunity that environmentalism enjoyed in the early 1970s, the ideals of the "environmental decade" permeated state as well as national politics.

**Environmentalism at the State Level in the 1960s and 1970s**

While the federal government was taking steps to protect the environment, the state governments were also at work attempting to address the same issues. State legislatures contemplated creating new institutions within state governments to try to resolve what were seen as environmental problems. In the national wave of state constitutional review, states were also experimenting with writing environmental provisions into their new or revised constitutions. Eleven states had voted to hold constitutional conventions since 1950, and at least eight had included environmental sections in their new constitutions. Maryland, New Mexico, Arkansas, Florida, Hawaii, and Alaska had all included natural resources provisions that reflected the growing influence of environmentalism at the state level in the post-war period. Two states in particular, Illinois and North Dakota, included environmental provisions that were reviewed and considered by the Montana's Constitutional Convention delegates in deliberations and greatly influenced Montana in the writing of its constitution. The 1972 Montana Constitution states in article 9, section 1 that: "The state and each person shall maintain and improve a clean and healthful environment. . .." It is almost a mirror image of the Illinois provision with the exception of differences in wording concerning the
words “maintain” and “clean.” “Maintain” replaced “provide” and “clean” was added in front of “healthful” in the Montana provision in the hope that the change of wording would provide for a stronger provision for the state of Montana. Environmentalism, in fact, had existed in Montana politics before the convention delegates met in Helena in January of 1971. Its prominence was a product of the political, economical, and ideological changes that were occurring in the late 1960s and 1970s that would permanently alter the state.

**Montana’s Triple Revolution and Progressivism in the 1970s**

According to historian Harry W. Fritz, Montana experienced a triple revolution, political, economical, and ideological, between 1965 and 1980. Politically, urbanization and reapportionment permanently altered the way in which Montana was governed; economically, the state experienced a swing of its economic center from west to east; and ideologically, environmentalism entered the Montanan political scene. A flurry of political and economic changes swept Montana after 1965 that led to a permanent change in the political landscape and character of the state. The post-war phenomenon of urbanization and the resulting call for reapportionment in 1965 changed the face of Montana politics. These two fundamental changes help to explain the increased progressivism indicative of the state’s politics in the early 1970s. Whereas rural and mining interests had previously dominated Montana politics, the burgeoning urban centers of the state were now the seat of real political power. Urbanites comprised 60% of the population, had different interests, and tended to be more liberal than their rural counterparts. In the highly respected text, *Montana: a History of Two Centuries*, it
is stated that “[t]he lawmakers of the 1970’s tended to be younger, better educated, more environmentally aware, and more independent than their predecessors.” The environmental bills preceding and following the Constitutional Convention were the product of this new breed of Montana politicians. It was this “new activism,” as it is referred to in *Montana: a History of Two Centuries*, which typified the members of the Constitutional Convention and is represented in the environmental provisions present in the constitution. The increase in pro-environmental legislation and progressivism in this period cannot be attributed to increased liberalism alone, however.

A temporary surge Democratic strength, as the result of the “taxpayer’s revolt” of 1971, contributed as well. As Rex Renk wrote in his master’s thesis entitled “‘Pay More? What For!’: The 1968 Gubernatorial Race in Montana and the Sales Tax Issue,” “…this era’s political activism is clearly associated with the Democratic Party.”

Put on the same ballot as the referendum calling for a constitutional convention in November of 1970 was Referendum 68, a constitutional amendment to create a sales tax for Montana—an issue vigorously supported by Republican legislators in the late 1960s. Governor Tim Babcock also advocated the sales tax and it cost him his reelection in 1968. With seventy percent of the electorate voting Referendum 68 down, the sales tax issue caused an anti-Republican backlash that led to the election of Democratic Governor Forrest Anderson, a strong Democratic majority in the state senate, and “…an exceptionally liberal-minded group of delegates to the Constitutional Convention.” The Democratic dominance of the early 1970s fostered the progressivism which prompted a review of the 1889 Constitution and, upon that document being found obsolete, lead to the call for a constitutional convention. That dominance flowed over into the 1971-1972
Con Con and further contributed to the writing of Montana’s environmentally progressive constitution in 1972. The “taxpayer’s revolt” led to the election of a more liberal group of politicians, most of whom were Democrats. It helped to explain why fifty-eight of the one hundred delegates to the Con Con were Democrats, and, moreover, why Democrats dominated the Montana politics for the duration of the 1970s.

Accompanying the political changes occurring in Montana during the period was a fundamental shift of the Montana economy. Coal was quickly replacing copper as the basis of the Montana economy in the early 1970s—the economic center of Montana was shifting to the east. In the west, the timber industry was being restrained by recessions, high interest rates, and environmental restriction. The Anaconda Company, once synonymous with Montana, was quickly disappearing from its former economic prominence in Butte as the Atlantic Richfield Company (ARCO), who now owned the company, continued to close down its Montana operations. In the east, farmers set all time records for the yield per acre and the price per bushel of wheat. The OPEC oil embargo of 1973 and the subsequent hikes in gas and oil prices spurred extensive exploration for oil and gas in Montana. New uses for Montana coal, particularly in electricity production, were researched and developed; the state electricity output grew by nearly 90 fold between 1967 and 1979.18 Montana resembled decreasingly the land of gold and silver and more the land of wheat and coal.

Montana residents read in the November 4, 1970, edition of the Billings Gazette that surface mining in Montana “... could exceed 22 billion tons...”,19 a figure not to be taken lightly. Headlines such as “Mining Alarms Ranchers”20 began to appear in newspapers around the state as those dependent on the land, and city dwellers alike,
began to worry about the possible degradation that could ensue from this new form of mining. Drawing on the past experiences of mining and its effect on the environment colored by images of Butte’s increasingly gaping Berkley Pit, a spirited and progressive legislature, confronting both the promise and the threat of coal mining, established basic environmental conditions for further development. Reclamation Bills were passed and signed into law in early 1971. The Montana Senate passed Senate Bill 70, which dealt with strip mining. The House passed House Bill 243, which was aimed at hard rock mining and would require the Anaconda Company to reclaim mining and waste dump work excluding the filling-in of the Berkley Pit. In addition, the legislature, in compliance with the Nixon Administration that compelled states to create structures similar to the EPA, also approved the Montana Environmental Policy Act (MEPA), which sought to prevent degradation of existing environmental quality. Protection of the environment was a statewide political issue before the delegates ever met in Helena to draft a new constitution.

Encouraged by the federal government’s creation of the EPA and the threat that coal mining presented to the Montanan way of life, another, less tangible, factor helped to explain the role of environmentalism in Montana in the 1970s. Fritz writes that a new spirit of appreciation spread over the land at that time. Montanans began to realize the special uniqueness of their state. With its mountains and “quiet beauty,” Montanans were realizing that their state was special. As recreation uses of the land increased in the post-war period, people across the country were beginning to appreciate more the natural beauty of the United States. Montana held as much of that natural beauty as any other state, and in the 1970s, Montanans recognized that fact. As Fritz writes: “The state’s
greatest resources, it appeared, were clean air and water, unspoiled forests, and wide-open spaces.”25

Montana’s triple revolution—political, economic, and ideological—coalesced with the national tide of environmentalism of the 1970s, in the efforts of the 1971-1972 Montana State Constitutional Convention, to produce Montana’s environmentally progressive constitution.
NOTES—CHAPTER 1


2 Ibid., 109-110.

3 Ibid., 116. From the National Environmental Protection Act of 1969.

4 Ibid.

5 Ibid., 117.

6 Ibid.

7 Ibid., 119.

8 Ibid., 121-123.

9 Ibid., 123.


17 Malone, Roeder, and Lang, 395.


24 Ibid., 127.

25 Ibid., 78.
CHAPTER 2


The 1971-1972 Montana Constitutional Convention was different from any other elected proceedings in the history of Montana state politics. Its delegation was comprised of fewer seasoned politicians and delegates from occupations typical of Montanan politics—agriculture, law, and business—than any elected political gathering since the state’s inception in 1889. With the absence of experienced politicians, delegates with backgrounds not traditionally represented in the Montana policymaking process were abundant. Educators, clergymen, and housewives ran and were elected to contribute their special insights into writing Montana’s new Constitution. It was not by chance that the delegation to the Con Con included so few experienced politicians.

Procedural Differences in the Constitutional Convention

Between the call for a constitutional convention by Referendum 67 in November of 1970 and the campaigning of candidates to the convention, something remarkable happened that could be attributed to creating what Delegate Bob Campbell reminisced as “a breath of fresh air” in the Convention. The State Supreme Court, ruling on an 1889 Constitution statute, decided that no person could occupy more than one elected position in the state at any time and thus made all current office holders, from state senators to county sheriffs, ineligible to run for the delegation of the 1971-1972 Constitutional
Convention. The Court's decision was written into the Constitutional Convention Enabling Act and led to the election of an unusually diverse delegation to the Con Con.

The result of the "breath of fresh air" provided by the 1889 Constitution and the Supreme Court was that the 1972 Constitutional Convention was a model of democracy; the women and men who were elected to write the new Constitution reflected the view that the Constitution should be of the people, by the people, and for the people. Unlike the legislature, less than one-quarter of the delegates were attorneys. Other occupations common among Montana politics were represented in the Con Con: 19 delegates were farmers or ranchers and 17 made their living as businessmen or merchants. There were a large number of delegates, though, from nontraditional backgrounds. Fourteen delegates represented education. There were four clergymen present, and two bankers. Eleven delegates were housewives and eight others were from miscellaneous occupations. One-quarter of the delegates were Catholic, 13 were Presbyterians, 12 were Methodists, 10 were Lutherans, 9 were Episcopalians, and 8 delegates claimed Congregationalism as their religious denomination. Fifty-eight of the delegates had no previous political experience. With the absence of old-time politicians, the delegation of the Constitutional Convention resembled the citizenry of Montana more than any legislative session preceding it.

Many factors worked together to increase representation through public participation. Public hearings were planned by all committees to hear anyone who would want to testify before the committee on issues pertaining to that committee. A Constitutional Convention Review Committee was created to keep the public informed on all the happenings inside the walls of the Capitol building. The media also played an
active role in keeping the public informed of Con Con proceedings and keeping the delegates abreast of public opinion. Bob Campbell remembered that the media covered the convention well and that television stations donated airtime to heighten public awareness of the issues in the Con Con.³ The Associated Press ran a series of articles in state newspapers “to explain how some changes approved at the Montana Constitutional Convention may affect Montana citizens. . . .”⁴ Finally, the convention delegates voted “61 to 37 to establish Tuesday through Saturday as the ‘work week’ for convention business.” This change in the work week of the convention was to “permit attendance by those whose own Monday [through] Friday responsibilities would prevent them from attending the convention unless Saturday sessions were held.”⁵ Public participation was considered essential in the democratic creation of a new Constitution for the state of Montana. Conscientious representation by delegates, the concept of a committee to keep the public informed, the role of the media, and the change of the work week to one that would accommodate the public led to the creation of a Constitution that was truly of the people, by the people, and for the people.

Unlike the legislature, attempts were made to make the convention as non-partisan as possible. But, as noble as those attempts were, little could be done to eradicate partisanship from the convention hall entirely. In any case, the Convention was the least-partisan gathering of its kind in Montana history.

The Constitution was meant to be a document for all residents, not a partisan document in any form. Partisanship was an issue in the election of delegates and the public was in strong support of a non-partisan convention. George Harper recalled in an interview that in campaigning for the convention, “. . . we’d be in little forums and I’d
say 'I'm independent, I think it ought to be non-partisan,' [and] people began to ask the other candidates, 'now are you going to be partisan, Republican, Democrat, when you get there,' and they began to have to say 'no.'"6 The belief that the Con Con should be non-partisan flourished after the elections and Harper remembered that the delegates decided that the proceedings should be as non-partisan as possible. Consequently, as reported in the Great Falls Tribune, "An overwhelming majority of the Constitutional Convention delegates responding to a Tribune Capitol Bureau poll [said] they will vote to organize the convention on a bipartisan basis when they meet. . . ."7

Despite the Tribune poll mentioned above, there was fear in Republican and Independent camps that the strong Democrat majority that elected Democrat Leo Graybill, Jr., as president of the convention would dominate the proceedings to craft a partisan document. But according to an article in The Great Falls Tribune, "... several factors—the election of a popular Republican as first vice president, the vote to keep delegates seated alphabetically rather than by parties and Graybill's naming of some Republicans and an Independent to committee chairmanships—united the delegates at least until January."8

In organizational meetings held at Carroll College on November 29, 1971, it was decided that delegates would sit alphabetically rather than by party designation, and that they should be listed on the roster without party designation—both were contrary to Montana legislative tradition. Bob Campbell, delegate from Missoula, remembered this as "... a big thing we did ... because [we broke] up the segregation of the parties. . . ."9 Desegregating the convention chamber and listing the delegates by name only helped to free delegates from their parties' discipline. However facile these changes may seem,
they gave the convention an aura of political unity and nonpartisanship, or at least bipartisanship. As Harper recalled, within a few weeks, the delegates did not know who was in what party. All of this, and the lesser number of seasoned politicians in the group, made the event increasingly less partisan.

Yet, in spite of all of the attempts to keep partisanship out of the convention, the hard fact was that 58 of the delegates were Democrats, 36 were Republicans, and six were Independents. Partisanship, however slight, was present from the start. The Billings Gazette reported: “It is clear to the reporters covering the event that partisanship has been the key organizational force at the convention. The convention is organized with a Democratic and Republican caucus, and will frequently divide along those lines.” While the Con Con may have been as non-partisan as possible, it was de facto partisan due to the use of the party system in elections and in the early organization of the Convention itself. Delegates Dorothy Eck, Jerome Cate, and George Harper were some of the most strident opponents of the use of the party system in the Con Con. Eck called for a “non-caucus” comprised of delegates from all parties to select, along non-partisan terms, a presidential candidate. Harper, who almost thirty years after its conclusion remembered a pleasant lack of partisanship in the Con Con, “expressed dismay . . . at what he termed ‘obvious partisanship’ by Democrats in picking a convention president.” Due to the political structure in which the convention was formed, eliminating partisanship entirely was impossible. Yet voting records show that when it came to the environment, protection was rarely, if ever, a partisan issue.

The issue of environmental protection, typically viewed as progressive and supported by Democrats, drew votes from all sides. The writing of a strong provision
was no doubt aided by the fact that the Democrats held a strong majority in the Convention, but minimal partisanship played a great role as well. Had the Con Con been segregated by party as was the legislature, it can be assumed this issue may have been polarized along party lines and become a partisan issue.

**New Voices for Environmental Protection: Academia and Young People**

The openness of the Convention provided the opportunity for a certain segment of the public to take an active role in the writing of the Constitution’s environmental provisions. Academia, in the form of professors and students from the state’s institutions of higher education were ardent in their attempts to save Montana’s environment through the new Constitution. In the proceedings of the committees of the Convention and the Convention itself, academics were active through letter writing and testimonies before the Natural Resources and Agriculture and Bill of Rights Committees. William P. Cunningham, professor of forestry at the University of Montana, proposed the public trust doctrine as the most effective means of protecting the environment. The doctrine read that the government possesses the state’s natural resources in a public trust for “... the proper use and enjoyment of the citizenry.” In countless letters and testimonials, Cunningham, with the help of University of Montana Dean Arnold Bolle and fellow professor William C. Hollenbaugh, convinced the most environmentally-friendly of the delegates of the necessity of the public trust doctrine. Delegate Jerome Cate proposed the public trust to the delegates in Delegate Proposal 162.

Students and young people were also quite vocal in their desire for the Constitution to include strong provisions for the protection of the environment. The
University of Montana Wildlife club wrote a position paper to the Bill of Rights Committee advocating support for the inclusion of Cunningham’s public trust doctrine.\(^{15}\) The Montana Student President’s Association encouraged the Convention to consider writing an environmental provision similar to those found in the Hawaii and Illinois constitutions that included the right to sue any party, government or private, for failing to protect the environment.\(^{16}\) Out-of-state students suggested that Montana not squander its natural resources and beauty as their home states had done. “Don’t Californicate Montana!!” one young, new, resident wrote, warning the Convention of the need to include protection of Montana’s environment in the new Constitution.\(^{17}\) These young people were the children of the late 1960s, products of the new left and witnesses to one of the most turbulent, and socially revolutionary decades in United States’s history. This generation was Earth Day’s greatest proponent and it brought a different point of view to the Convention—that of the generations to come who would be most affected by the new Constitution. With professors, they advocated strong constitutional protection of the environment; their ideas influenced delegate proposals to the convention and the writing of the environmental provisions.

**The Role of Women in Writing the New Constitution**

In the vacuum of political experience that the Enabling Act provided, another group took its place in Montana politics: women. Even before the public approved Referendum 67, calling for a constitutional convention, Montanan women were reviewing the 1889 document and working with the Constitutional Revision Commission in preparation for the writing of a new constitution. In July of 1969, Dorothy Eck,
president of the League of Women Voters of Montana and later vice-president of the
Constitutional Convention, wrote Donald L. Sorte of the Montana Legislative Council
that the League had adopted Constitutional Revision as "... our state study item during
the next two years and will want to keep informed regarding the work of the
commission."¹⁸ That state study required that the League of Women Voters name Mrs.
Firman Brown to represent the League as a member of the Constitutional Revision
Commission, and Lucille Spears of Missoula, chairman for research on the League’s
study and later delegate to the Con Con, to attend Commission meetings when it was
possible. Later Con Con delegate Daphne Bugbee and Eck were also to attend the
meetings to formulate the League’s study.¹⁹ With the Montana Legislative Council’s
finding that the 1889 Constitution needed substantial revision and the Constitutional
Revision Commission’s suggestion of a constitutional convention as the most suitable
means of change, the Revision Commission implored the League’s assistance in
constructing an advertising campaign to spread the word to the people of the necessity of
a constitutional convention. Chairman John K. McDonald of the Review Commission
wrote:

Because of the League’s widely respected process of careful study, thorough
discussion, attainment of consensus, and action programs to implement consensus
recommendations, the League will be in an important position to assist and
provide leadership in education programs to familiarize the citizenry with the
Montana constitution, its impact on the everyday functioning of government, and
the need for its modernization.²⁰

From the beginning, women organized in the League of Women Voters had a hand in the
constitutional revision process. In November of 1971, the election of a record number of
women would influence the writing of the new constitution.
In the legislative session preceding the Constitutional Convention, only one woman, Dorothy Bradley of Bozeman, was elected to serve her district as a representative in Helena. In November of 1971, after months of campaigns, 19 women were elected from around the state to serve as delegates. From them would be chosen a vice-president to the Con Con in Dorothy Eck and a chairman of the Natural Resources and Agricultural Committee in Louise Cross. The 19 women delegates were vocal about the issues closest to their hearts. They were disproportionately vociferous about the issue of a strong environmental provision in the Constitution.

Organized in groups, a large number of the women in the Convention delegation fought hard for the strongest environmental provision possible. Many of the women belonged to the powerful League of Women Voters. As mentioned before, Con Con Vice-President Dorothy Eck was the League’s president. Other delegates active in the League were Jean Bowman, Lucille Spears, Daphne Bugbee, and Louise Cross. The League wrote in a position paper that provisions should be made for “... the right of each citizen to a clean and healthful environment. ...” This was almost exactly the same language used in the final product. Many members, such as legislator Dorothy Bradley, were so radical as to avidly support the controversial “public trust doctrine.” Another influential group was GASP (Gals Against Smog and Pollution), which pushed for the strongest environmental provision possible through countless citizen proposals. GASP was a proponent of a “right to sue” provision that would give each Montanan the right to take legal action against the state or any other resident or corporation for failing to protect the environment as described in the Constitution. Other women’s groups active in the convention were the Montana State Democratic Women and the American
Association of University Women; Chairman of Natural Resources and Agriculture Committee Louise Cross was an active member in both groups.24

While women’s groups were influential in the introduction and writing of a strong environmental provision, key individuals within the delegation contributed greatly to the cause of constitutional environmental protection. Delegates Mae Nan Robinson, Arlene Reichert, Daphne Bugbee, Lucille Speer, Jean Bowman, and Dorothy Eck all stood in support of the strongest environmental provision for the Constitution and often gave impassioned speeches to that end. The most influential woman in the delegation when it came to environmental protection, though, was Louise Cross of Glendive.

Many would have thought that a constitutional convention would be no place for a housewife. Louise Cross of Glendive proved conventional thinking wrong. Following closely the increasing environmental threat of coal mining in eastern Montana, she fought for reclamation legislation in the legislative sessions preceding her 1971 campaign for the Con Con. In her campaign to be one of her district’s delegates to the Convention, she made few promises except those dealing with the environment, a fact she later credited to her victory.25 Upon being elected to the Convention, Cross was chosen as the only woman committee chairman. Vice-President Eck told her that she was chosen for the position because of her known stand on the environment. She served as only one of two professed environmentalists on the nine-member committee and its only female member.26 Due to its large proportion of delegates who were less committed to environmental protection, Cross expressed her regret that “…the makeup of the committee was unfortunate to begin with….”27 Yet she led the committee with
conviction and did not back down when her proposals were met with opposition from the other committee members.

Inside her committee, Cross argued for the strongest environmental provision possible. She thought that Montana's provision should be stronger than that written in the Illinois Constitution. In her environmentalism, she fervently advocated the "public trust doctrine," which would be laid to rest on the Convention floor after it was labeled "socialistic." Cross also supported a "right to sue" provision. When four of the five members of her committee voted to introduce a provision that "... [stated] that a citizen may bring action against a governmental agency not doing its job . . .," she saved the right to sue from meeting the same fate as its public trust predecessor by writing it in a minority report. Unfortunately for Cross, the minority report would be trounced, and the right to sue with it, on the Convention floor on March 1, 1971.

Cross was not only a model of environmental leadership within her committee, but also an effective representative of her constituents. She served as an example of representation that brought the public and its opinions into the forefront of the question of constitutional environmental protection. Cross, who testified twice as a "citizen of the state of Montana" in front of her own committee and once in front of the Bill of Rights committee, told those committees that she was "speaking for those people in this state who cannot be here to speak for themselves, but are greatly concerned about our natural resources and our environment." The chairman knew that natural resources and the environment concerned her constituents greatly because she read and responded to countless letters from her district that advocated strong environmental protection in the Constitution. Starting general letters to her constituents with "Hi everyone" and ending
them with “Your delegate,” she kept those who elected her informed of the everyday happenings of the Constitutional Convention.

Chairman Cross realized that achieving the goal of constitutional environmental protection was going to be a formidable battle. She reported that from the beginning, lobbyists or representatives from industries that had everything to lose from the introduction of a strong environmental provision sat in the committee room. The “Montana Twins”—The Anaconda Company and The Montana Power Company—made their presence known, as did the forest and timber interests and occasionally Montana-Dakota Utilities. In the face of the coming debacle, Cross headed efforts to organize the supporters of meaningful constitutional environmental protection in common cause. In a letter home she reported that the group of delegates met secretly outside of the convention to formulate strategy for getting a strong environmental article to the Convention floor. Referring to their meeting place as the “catacombs,” she said that they met several times in the lunchroom of what was the dorm for the Vo-tech students in Helena. Cross remembered that although the intentions were good, disagreements often arose between the lawyers in the group over wording, prompting her to write that “with friends like that, who needs enemies?” Finally, though, they did get an article in the Constitution which she remembered as “not too strong, but something.” History would prove that statement wrong and reveal the worth of Cross and the other female delegates’ contribution to the writing of Montana’s environmentally progressive Constitution.

Representation in the Constitutional Convention was key to ensuring that the public was heard. Louise Cross was a model representative of her constituents, but built-in structures within the Con Con also helped to ensure representation so that the
Constitution would be a document not created by politicians, but by the people for whom it was written.

These procedural changes from the legislative norm allowed for fewer experienced politicians, a lesser degree of partisanship, and heightened public participation in the 1971-1972 Constitutional Convention. New voices and forces for a strong environmental provision in the influence of academics and young people and a large number of women, coupled with the progressivism of the 1970s, help to explain how such an environmentally progressive constitution was produced.
NOTES—CHAPTER 2


3 Campbell interview, 20 September 2000, Helena.

4 “Environmental Section Sets Tone for Proposed Constitution,” Great Falls Tribune, 3 April 1972, p. 5.


8 “Partisan Flag Flies High,” Great Falls Tribune, 2 December 1971, pp. 1, 2.

9 Campbell interview, 20 September 2000, Helena.


11 “Telling it like it is,” Billings Gazette, 1 February 1972, p. 4.


13 Montana Constitutional Revision Commission, “News Releases,” Record Series 20, Box 1, Folder 7, Montana Historical Society Archives, Helena, Montana. The University of Montana was selected to be the organizational head of the legislative commission. The sixteen members of the commission were selected in April of 1969, by the state House of Representatives, State Senate, the Governor, and the Supreme Court; many of the selectees were either professors, students, or tied to higher education. Their biographical information can be found in the location cited above.
14 William C. Hollenbaugh and William P. Cunningham, to Mrs. Louise Cross, Chairman of Natural Resources and Agriculture Committee, 14 January 1972, Record Series 22, Box 2, Folder 2, Montana Historical Society, Helena, Montana.

15 University of Montana Wildlife Club, to Bill of Rights Committee, Montana Constitutional Convention, 1 February 1972, Record Series 22, Box 2, Folder 2, Montana Historical Society Archives, Helena, Montana.


18 Mrs. Hugo Eck, to Donald L. Sorte, 7 July 1969, Record Series 20, Box 2, Folder 2, Montana Historical Society Archives, Helena, Montana.

19 Ibid.

20 John K. McDonald, Chairman, Constitutional Revision Commission, to Mrs. Henry G. Bugbee, 18 December 1969, Record Series 20, Box 2, Folder 2, Montana Historical Society Archives, Helena, Montana.

21 Let there be no doubt that Louise Cross was indeed female. The author's use of the title "chairman," instead of either "chairwoman" or "chairperson" is reflective of the language of the period.


26 Louise Cross, “Thoughts from a Committee Chairman – on February 26, 1972,” Louise Cross Papers, A: 6 2-1, Montana Historical Society Archives, Helena, Montana. Henry L. Siderius was the other environmentalist member of the committee.

27 Ibid.

28 Illinois had undertaken a constitutional convention in the early 1970s just prior to Montana calling its Con Con. In that convention, Illinois had written into its constitution an environmental provision that was similar to that written into the Montana Constitution. Unlike Montana, though, Illinois gave its residents a right to take legal action against those who would violate the Constitution. However, the Illinois Constitution lacked any qualifying language such as “clean” or “healthful.”

29 Ibid.

30 Louise Cross, delegate to the Montana Constitutional Convention, 1971-1972, address to the Joint Hearing of Committee on Bill of Rights and Committee of Natural Resources and Agriculture, 1 February, 1972, Record Series 22, Box 4, Folder 2, Montana Historical Society Archives, Helena, Montana.


32 Cross, “Thoughts of a Committee Chairman.”

33 Cross, Letter to Constituents, 5 March 1972.
Perhaps most illustrative of the progressivism characteristic of Montana politics in the early 1970s were the debates over protection of the environment in the Constitutional Convention. They were not polarized along simple lines of for and against, as the great majority of the delegates favored a provision to protect the environment. Instead, debates ensued as to how strong the environmental provision should be. While there were some delegates who objected early in the Convention to including an environmental article in the Constitution, believing the protection of Montana’s environment should be left to the legislature, this argument was short-lived. Debates, in the Natural Resources and Agriculture Committee and on the Convention floor, centered on what was known as the “public trust doctrine,” wording that provided qualifications for environmental protection, and a “right to sue” provision that would give every resident the right to sue the state, other residents, or corporations for failing to protect the environment as described in the Constitution. These issues defined who were the radicals and who were the moderates when it came to writing a strong environmental provision.

The Public Trust, Right to Sue, and the Radical Position

Many who supported the strongest environmental provision possible considered the Public Trust doctrine, advocated most fervently by University of Montana Professor of Forestry William P. Cunningham, to be the most effective means of protecting
Montana's environment. Introduced as Delegate Proposal 162 by delegate Jerome Cate, the public trust worked to protect the environment by making it the "... policy of the state of Montana to hold in trust for the people and to conserve the air, water, public lands and other natural resources by purchase, by withdrawal from use or by regulation. ..."¹ This would make all lands and resources in Montana the property of the people of Montana. Therefore, any citizen would have the right to take legal action against any group or individual who might damage his or her property—the "public trust." This approach to protecting the Montana environment was not that different than the less controversial "right to sue" approach; however, the wording, which focused on public ownership of property as the foundation for the right to take legal action, triggered emotional images in the minds of the more conservative delegates and interest groups who used ideological rhetoric to argue against the trust. Its opponents termed the public trust doctrine "socialistic" and "anarchistic."² Interest groups such as the Farm Bureau, which represented landowners and agriculture, barraged the convention with letters accusing the Convention of taking away private property rights. Bob Campbell remembered that Jerome Cate received letters calling him a communist after proposing the public trust to the convention in Delegate Proposal 162.³ The public trust was easily defeated in the Natural Resources and Agricultural Committee despite efforts by Chairman Cross and Delegate Henry Siderius to save it, and then it was defeated again 34 to 58 when reintroduced in the Convention debates by Delegate Cate.

Another point of contention in the debate over the environmental provision was the wording of the provision. The majority proposal of the Natural Resources and Agricultural committee to the convention read: "The State of Montana and each person
must maintain and enhance the environment of the state for present and future
generations.” Missing from the proposal was any qualifying language to describe what
kind of environment Montana should have. On March 1, 1972, the debate began on the
environmental article. Radicals, who supported the strongest article possible, argued that
without qualifiers, this proposal, if adopted, would leave the state Supreme Court helpless
against the legislature that would decide the state of the environment. Those who
supported the majority proposal argued that qualifiers such as “healthful,” which
appeared in the Illinois provision, “clean,” or “pleasant” were aesthetic and subjective—
these words would weaken the article, as they have no clear meaning. The radicals
responded that there were clear definitions for “clean” and “healthful,” citing recent
Supreme Court cases and laws such as the National Environmental Protection Act, which
used such language. With the help of a passionate speech and a bit of compromise, some
progress was finally made after a long day of debating the wording of the article.

Delegate Bob Campbell of Missoula, wading through the lack of attention that
had plagued Convention Hall in the late afternoon of March 1, stood in opposition to a
substitute motion that would leave out any qualifying language by a conservative member
of the Natural Resource and Agriculture Committee, delegate C.B. McNeil. Campbell
gave a speech in which he appealed to a sort of state pride, saying that if the Con Con
delegates failed to write a strong environmental provision, people would stop making
jokes about North Dakota because the joke would be on Montana. “Under the majority
proposal,” he told the other delegates, “you will have to look [the residents] in the eye,
knowing that you spent all the money to come over here to do something they were
interested in and say, ‘Yes, we the people in Montana at the Convention decided to have
Despite Campbell's very passionate speech, the motion passed 68 to 19 to keep the majority proposal's wording in the article. Campbell then received a note from President Graybill telling him to put up the motion again, in spite of this recent defeat. Campbell reluctantly did so, this time leaving out "in the state" and "For the enjoyment and protection of..." His motion added "a clean and healthful Montana environment" to McNeil's recently adopted substitute motion. No one argued or stood in opposition and the motion passed 49-38. Although this was a compromise of the radical position, it was perhaps the only success those in favor of strong wording of the environmental article would achieve. The radicals were not so successful when it came to the issue of a right to sue.

The right to sue the state, other individuals, or corporations for failure to protect the environment as described in the Constitution was supported by the radicals who saw this right as giving teeth to the environmental article. The proposed Illinois Constitution gave this right to its residents. Including such a provision in Montana's Constitution was a major subject of argument in the Natural Resources and Agricultural Committee. Chairman Louise Cross and Delegate Henry L. Siderius advocated the introduction of a right to sue in the majority report. When five of the nine committee members voted it down, it was submitted in a minority report, which Cross proposed to the convention on March 1, 1972. Although the right to sue drew the support of popular Democratic Senator Lee Metcalf, "who told a committee hearing that the proposal 'should provide the right to sue...','" the idea was shot down quickly in convention debates. The attorneys in the group worried—without legal precedent to support such concerns—that such an addition would open the state to a torrent of illegitimate and frivolous legal charges.
Those who opposed the right to sue, without empirical evidence from the experience of other states, crushed it and the minority proposal. The debate over including “a right to a clean and healthful environment” as an inalienable right would not be quite so tumultuous.

Unsuccessful in writing an environmental right into the committee report of the Bill of Rights Committee, the radicals of the Convention surprised the delegation when they proposed an inalienable right to “a clean and healthful environment” on the Convention floor on March 7. Bob Campbell, member of the Bill of Rights Committee, remembered arguing for the introduction of such a right in the committee meetings, but to no avail. After his success on March 1 in working “clean and healthful” into the environmental article, he recalled that, with his new credibility as someone sympathetic to the environmental cause, he was implored by “the environmental people who were meeting before on the public trust” to help hatch a plan to write a powerful environmental right into the Bill of Rights. Campbell knew, after fighting for such a right in his committee for the preceding two months, that he could not propose such an amendment. Instead, the supporters of the inalienable “right to a clean and healthful environment” decided to have someone not tied to either the Bill of Rights or the Natural Resource and Agriculture Committee introduce the right as an amendment to the Bill of Rights Committee proposal on the Convention floor. Their strategy would prove ingenious.

Bob Campbell remembered that Bill of Rights Chairman Wade Dahood, a conservative attorney from Anaconda tied to mining interests, was “. . . really
shocked . . .” when the amendment came to the floor of the Convention. Campbell said:
“ . . . we had someone that was not on Bill of Rights Committee, not on the [Natural
Resources and Agriculture Committee], but was a minister . . . from Helena that had no
previous record of environmental [leanings] . . . Bill Burkhardt.9 Delegate Bill
Burkhardt, Republican minister from Helena and member of the Education and Public
Lands Committee and Vice Chairman of the Style, Drafting and Transition Committee,
stood on the Convention floor and moved to amend the Bill of Rights committee proposal
and add “the right to a clean and healthful environment” as the first inalienable right.
Dahood, who fervently opposed the right to sue, worried about the possible ramifications
that Burkhardt’s amendment might have for the smelter in Anaconda. He stood and asked
Burkhardt if he was trying to introduce a right to sue into the Bill of Rights article, and
Burkhardt responded that he was not; that he was a minister who did not want to sue
anyone. He told the delegation that he proposed the amendment because he felt that the
Bill of Rights should be consistent with the Natural Resources and Agriculture Article
that the Con Con had already approved, that it complemented that article, and that it
would complement the preamble which pledged Montana’s dedication to the protection
of the state’s “quiet beauty.” To this, Dahood said that so long as Burkhardt was not
proposing the amendment with the intent of introducing a right to sue, the Anaconda
attorney had no objection to the amendment. After being discussed on the floor, the
amendment went to a vote where it was passed by a 79 to 7 majority.10 The result: the
first inalienable right in the Constitution of the State of Montana is that of every citizen to
a “clean and healthful environment.” Burkhardt’s amendment would figure prominently
in Montana law in the years to come.
All of these debates indicate what might have been the principal challenge to the Convention’s deliberations and results: the ability to sell the finished product to the public. While certain idealists supported the public trust as the best possible way to protect the environment, even the most radical environmentalists of the delegates knew that if the doctrine made its way into the Constitution, it might trigger such opposition by rural interests, who were a well financed political force, as to defeat the document in June. Campbell recollected that the delegation, at the risk of losing the whole Constitution in June, had to be careful not to include provisions that were so radical as to offend the public.\textsuperscript{11} It was the same with qualifying language and the right to sue. The Constitution passed by such a narrow margin that had the environmental provision been any stronger or any more controversial, it might have been lost at the polls.

**Opponents and Supporters of a Strong Environmental Provision**

The environmental provisions written into the propose Natural Resources and Agriculture article and the Bill of Rights of the proposed Constitution had their obvious opponents and supporters. As the provisions would give each Montanan “the right to a clean and healthful environment,” industries dependent on the extraction of resources at the expense of degrading the environment had everything to lose. As mentioned before, the Anaconda Company and The Montana Power Company sat in on the proceedings of the Natural Resources and Agriculture Committee, along with representatives from other extractive industries. Delegates were required to disclose to the Convention, under Rule 20 of the Convention rules, any interests they might have that would affect their decision-making in the proceedings.\textsuperscript{12} Rule 20 did not mean that delegates could not let their
biases affect their judgment, only that they must make them known to the other delegates. In some cases where delegates were closely tied to industry, such as attorney Wade Dahood from Anaconda who had represented the mining interests, those connections appear to have possibly skewed their judgment. But those delegates were no less representative of their constituency, which included those constituents who were dependent on industry for employment, than others who were not tied to industry. Delegate George Harper remembered that lobbyists, who sat in the balcony of the Convention hall but were not allowed on the convention floor, tried to exert as much influence as possible. He recalled that he knew that “. . . certain people were in [industry’s] camp . . .” but said that he was not lobbied much and he felt that most people in the Con Con were probably swayed little by the efforts of lobbying.¹³

Most of the proponents of a strong environmental provision were as obvious as its opponents. In addition to individual outdoor enthusiasts, groups such as the Hellgate Civil Shooters Association, the Montana Wildlife Federation, The Western Montana Fish and Game Association, the Montana League of Conservation Voters, and the State of Montana Department of Fish and Game wrote letters in support of a strong environmental provision and in many cases advocated the controversial public trust. Like women, academia, and young people, other less obvious groups also were active in promoting the introduction of a strong environmental provision. The Convention received letters from the Montana Law Review, the Montana Chamber of Commerce, and rural Montanans who, witnessing the degradation of their surroundings at the hand of industry, departed from the anti-environmentalist view held by the majority of their rural neighbors.¹⁴
Urban vs. Rural Montana

Support for a strong environmental provision came primarily from the cities. This was reflected in the Convention itself, where the majority of the most adamant advocates of powerful constitutional environmental protection were from the state’s urban areas. Bob Campbell, Daphnee Bugbee, Mae Nan Robinson, and Lucille Speer were all from Missoula; William Burkhardt and George Harper were from Helena; Jean Bowman and Jerome Cate were from Billings; Dorothy Eck was from Bozeman; Arlene Reichert was from Great Falls; and Henry Siderius was from Kalispell. And not only were the majority of the proponents of a strong environmental article from the cities, but they were predominantly from western cities. With the exception of Louise Cross, who was from Glendive, and a few letters from the eastern half of the state written by citizens familiar with the negative aspects of strip mining, support from the east for a strong environmental article was benign. The demographics of environmentalism in the Convention illustrate what may have been the greatest conflict in the Con Con: rural versus urban interests.

One might think that those who were closest to the land—ranchers and farmers who were tied to the environment for their very livelihood—would have been the most eager to protect it. However, this was not the case. Not only was rural support for a strong environmental provision rare, but rural interests would be among the most powerful opponents to the new Constitution’s ratification and would challenge the narrow vote to ratify in court. It must be remembered, though, that their opposition to the Constitution as a whole was not over its environmental provisions, but rather other issues of taxation, government organization, and most significantly, water rights. Rural
Montana’s rejection of the Constitution in June of 1972 was indicative of a larger social phenomenon that helps to explain why rural Montana did not support strong environmental protection.

Rural Montanans had legitimate reasons to oppose some of the environmental proposals introduced in the Constitutional Convention. Among ranchers and landowners who were vocally opposed to the most radical environmental proposals, the sharpest thorn in their side was the public trust doctrine. Various other proposals advocated public use of land in addition to Jerome Cate’s proposal 162. Letters poured into the Convention from small townships, such as Dupuyer and Cut Bank, expressing dissatisfaction over Delegate Earl Berthelson’s proposal to open rivers running through privately-owned land, and their banks, to the public for recreational use. To those who owned the land that would be opened under such a proposal, this meant that, constitutionally, they had no right to say who was allowed to fish on their land. The public trust doctrine, which advocated state ownership of all the land within Montana’s borders, was also viewed as a serious threat to private-property rights. Rural landowners understandably opposed these proposals.

Revealing the true nature of their relationship with the land, rural Montanans were also the first to advocate agricultural use of water above all other uses. Understandably, as their livelihood was reaped from the land, rural Montanans’ view of conservation saw the environment as a commodity, a resource to be utilized. Indeed, ranchers and farmers wanted clean water in Montana—so long as they had primary access to it and were not to be held responsible for its condition after it had drained off of their fields. Only after their needs were met would they support water being used for recreational purposes. Like the Anaconda Company and Montana Power, farmers and ranchers were in the business of
Another deeper explanation, though, for why rural Montana opposed strong environmental protection in the Constitution was a social phenomenon that had been developing since the end of World War II. As mentioned in Chapter 1, Montana by the late 1960s was classified as an urban state, with the majority of its residents living in urban areas. With the legislature forced to reapportion itself in 1965, Montana policy-making no longer reflected the votes of cows; cities took prominence in the Montana political scene. In *Montana: A History of Two Centuries*, it is stated that as “... Montana’s cities became centers for moderate, middle-class, consensus politics, closely divided between the two parties and receptive to arguments for change ... the rural areas, having been hurt by change, tended to fear and resist it, and they moved in a more conservative direction.” The reforms introduced in the Constitutional Convention, including those dealing with Montana’s environment, were radical changes from the status quo. They were feared by an increasingly conservative rural population that came very near, as will be discussed in Chapter 4, to destroying the vehicles of change that the Constitution threatened to provide. And even after a majority of Montanans voted to ratify the document, rural Montanans did not give up their fight as they challenged the election results in court.
NOTES—CHAPTER 3


2 “Environmental Section Sets Tone for Proposed Constitution,” p. 5.


6 Campbell interview, 20 September 2000, Helena.


8 Campbell interview, 20 September 2000, Helena.

9 Ibid.

10 Constitutional Convention Editing & Publishing Committee, Verbatim Transcript, vol. 5, 1637-1640.


14 These letters can be found in the Montana Historical Society Archives, Record Series 22, Box 2, Folder 2, Helena, Montana.


16 These letters can be found in the Montana Historical Society Archives, Record Series 22, Box 2, Folder 2, Helena, Montana.

Upon finishing their work in March of 1972, the Convention delegation presented their work to voters on March 6. After fifty-four days of proposals, debates, and revisions, the one hundred delegates produced a document that at 12,000 words was half the length of its 1889 predecessor and was applauded for its progressivism. The federal government prepared a documentary film on the Constitution to be shown abroad as an example of grass-roots democracy, and *Time* magazine featured an article on the Convention's work in which the author called the document "populist," and praised the "progressive principles" in the document, including the right to a clean and healthful environment. Despite the national recognition received by the proposed Constitution, it would meet stern opposition in the three months before the June 6 vote for ratification.

**Rural Montana's Campaign Against The Proposed Constitution**

As explained in Chapter 3, rural interests opposed many of the possible changes that might occur in Montana as the result of the proposed Constitution. Montana's sparsely populated legislative districts had lost considerable political power in the federally mandated legislative reapportionment of 1965 and it was clear throughout the Convention proceedings that they resented their relatively inferior position in the writing of the Constitution. When the document was finished the battle lines were drawn and, with the delegates' hands tied in defending their work by the Convention Enabling Act, rural interests almost wiped the progressive document from Montana's history.
The Enabling Act of 1971, which created the parameters by which a constitutional
convention would be held, provided no funding for the delegates to sell their product to
the public. The delegates attempted to work around Enabling Act by voting to
appropriate some of the money that was not spent during the Convention on an
information campaign for the proposed Constitution. The Supreme Court, however,
intervened in the matter and declared that the delegates, voting for the appropriation of
funds after the prescribed deadline for the end of the Convention, had acted beyond their
power. Thus, no additional money was provided by the state for the delegates to show
the citizens of Montana what they had produced. While the newspapers covered the
Convention well and came out in support of the document, efforts of various groups to
ensure that the document would not be ratified quickly cast the document in a darker light
and swayed public opinion. The ultra-conservative Citizens for Constitutional
Government turned out anti-constitutional literature reflecting the Cold War fears of the
time by stating that the proposed document was "...pretty much in line with One World
people..." But the greatest of the proposed Constitution's opponents was the
financially powerful Farm Bureau.

The Montana Farm Bureau Federation represented rural Montanans from across
the state and its members influenced the Con Con delegates through various letter-writing
campaigns during the Convention. When they were unable to accomplish their agenda
during the Convention, they spearheaded a drive to destroy the Constitution in the three
months of review before ratification. The *Great Falls Tribune* reported on May 20,
1972, that the leaders of the Farm Bureau had put out a booklet emphasizing what the
Bureau felt were defects in the proposed Constitution.
On April 15, 1972, Vice-President of the Con Con Dorothy Eck wrote a letter to the Bureau in response to its concerns over the proposed document. In that letter she addressed the desires of the Farm Bureau and explained what the delegates had accomplished in their two months of proceedings. The Farm Bureau's most notable concerns involved the need to make local and state government responsible and effective, the protection of water rights, the importance of local control over education and government, and an equitable basis for taxation. She explained that she believed that the proposed Constitution would ensure more effective and responsible government, that local control of schools would be ensured, and that taxes being applied on an equitable basis was "... clearly the intent of the Revenue and Finance Article." With respect to water rights, she stated that although there was some apprehension about the Constitution's statement that all waters would be the property of the state, this would in no way interfere with water rights, "... but is necessary, or at least advantageous in federal court cases with other states." Eck also pointed out that recognition of recreation as a beneficial use of water had been considered, but the delegates decided to leave that issue up to the legislature. Despite Eck's attempts at winning over the support of the conservative Farm Bureau, she was unsuccessful.

In the face of formidable opposition, many of the delegates spent the subsequent months before ratification campaigning for the document. An effort was led by delegate John Toole of Missoula to educate the public as to what the convention had produced. Delegates donated money and time to the campaign and traveled the state to educate the public between March and June of 1972. Fearing "a last minute blast of anti-constitutional propaganda... in the last few days before the election...," and feeling
itself "... at they mercy of special interests," the committee promoting the new Constitution announced in the *Great Falls Tribune* in May of 1972 that it planned to buy 30 and 60 second television ads. Low on funds, the committee ran on credit; its campaign included newspaper testimonials by prominent figures and an extensive "letter to the editor" campaign in addition to television advertising. The delegates' efforts would prove to be essential on June 6 when the Constitution went before the voters.

On June 6, when all the votes were counted, 116,415 were for ratification, and 113,383 were against—the Constitution was ratified by a majority of only 50.6%. Montanans, who less than two years prior had approved the calling of a constitutional convention by a two-thirds majority, voted to ratify the proposed constitution by a margin of just over three thousand votes. Equally important—and revealing of changing nature of Montana's electorate in the post-war years—only the twelve urban counties of the fifty-six voted in support of the Constitution. The closeness of the results indicates that Montana was clearly divided along rural-urban lines on the issue of the new Constitution. Responding to this conflict, the Farm Bureau challenged the results in Court.

Well-financed and determined to end the Constitution for good, the Farm Bureau contested the results in the Montana Supreme Court. They argued that the 116,415 votes to ratify the Constitution did not represent a majority of the ballots turned in but only of those that indicated a vote to reject or ratify the new Constitution. Enough ballots had been turned in indicating votes for the side issues included on the ballot but without a vote for or against the new Constitution that, when all the ballots were counted, the 116,415 votes to ratify represented only a plurality of the total ballots. The Supreme Court, dismissed the challenge on August 18, 1972, and found the new constitution valid...
by a 3-2 decision. A conflict ensued between Secretary of State Frank Murray, an opponent of the proposed Constitution and the Supreme Court’s decision to uphold the election results, and Democratic Governor Forest A. Anderson, an ardent supporter of the proposed Constitution. The Governor won the argument and signed the Constitution, making its ratification complete. It would go into effect as the basis of Montana law in January of 1973.

While the ratification of the new Constitution was tumultuous at best, it is important to remember that although the document was fervently opposed by rural interests, it was not opposed because of its environmental provisions. As a matter of fact, Montana’s environmental Constitution would serve as a blueprint for other states in writing, rewriting, and revising their own constitutions and as the basis for Montana’s environmental policies for the rest of the 1970s. The conflict over the new Constitution was indicative of the changing landscape of Montana politics during the period. In the years that followed the Convention, Montana would enact environmental laws—like the Coal Severance Tax of 1975—that would be considered far more radical than those written into the Constitution.

Since 1972

The environmental progressivism characteristic of Montana’s politics in the late 1960s and early 1970s did not end with the ratification of the new Constitution in June of 1972. In the legislative sessions following the Convention, Montanan legislators passed environmental laws that were radical by Montanan standards and that would shape Montana’s politics, economy, and environment for the next thirty years.
With the new Constitution as its base, the legislature passed the Montana Strip Mining and Reclamation Act, established in 1973, that would restore land disturbed by strip mining to its original contour and productivity. It also passed the Montana Water Use Act of 1973, which for the first time allocated “recreation” as a beneficial use of water in the state; the Montana Utility Siting Act of 1973 and the Major Facility Siting Act of 1975, which set strict parameters to ensure that new plants were environmentally compatible; and The Strip Mined Coal Conservation Act of 1973 to minimize waste. The most radical and important of the environmental bills passed by Montana during the “environmental decade” was the Coal Severance Tax of 1975 which imposed a steep 30 percent tax on coal mined in the state to fund the social costs of development and rehabilitate affected areas.9

According to Montana: A History of Two Centuries, Governor Tom Judge, a Helena Democrat, referred to the Coal Severance Tax as “the most significant piece of legislation enacted in Montana in this century. . . .”10 His clairvoyance in this statement cannot be understated. The 30 percent tax would fill Montana’s coffers with hundreds of millions of dollars ensuring that the state would be left sizable trust years after the coal reserves had been exhausted. Other states had enacted similar laws—Wyoming’s severance tax was the next highest at 17.5 percent11—but none had made such a dramatic move to make sure that extraction of its natural resources would not leave Montana empty handed when the coal companies left. There would be no Berkley Pits in eastern Montana.

Hal Harper of Helena, legislator from 1973 to 2000 and son of Convention delegate George Harper, remembered that Montanans feared they would become the
“boiler room of the United States.” It was this fear that led most Montanans to applaud the severance tax. But coal consumers, particularly in the Midwest, attacked it as unconstitutionally interfering with interstate commerce, and challenged the law in the U.S. Supreme Court. In mid-1981, the U.S. Supreme Court allowed the law to stand, but reserved the right of Congress to restrict such taxes in the future.

The environmentalism that inspired the right to a clean and healthful environment and then immortalized it in the 1972 Constitution was a powerful force in Montana politics in the 1970s. An agricultural recession occurring in the 1980s, coupled with a national swing toward the political right with the election of Ronald Reagan in 1980, would quickly extinguish the political support experienced by environmentalism in Montana. The pendulum would swing away from the progressivism of the “environmental decade” as Montana approached the twenty first century.

What Has Happened?

Flipping through the newspapers in the spring of 2001, one had to wonder, what has happened? How could it be that only thirty years since MEPA was introduced by a Republican legislator and passed by a unanimous vote in the House of Representatives and almost a unanimous vote in the Senate, it was being gutted by the legislature? How could it be that a law might be passed that would make Environmental Impact Statements, central to modern environmental policy, so weak as to be meaningless? And, striking at the heart of Montanan law, how could it be that a law was introduced to dramatically reduce the power of the right to a clean and healthful environment by leaving it up to the legislature to interpret? The reasons for the dramatic shift of the
Montanan political scene from the 1970s to the twenty-first century are complex but can perhaps be best explained by the decline of the Democratic party and Montana's economic challenges in the decades since the "environmental decade."

As explained in the previous chapters, the Democratic dominance in Montanan politics, as a result of the Tax Payers Revolt of 1971, was a factor in the increased prominence enjoyed by environmentalism in the 1970s. Though support for the environmental provisions proposed in the Constitutional Convention would have bipartisan support, the environmental laws of the 1970s that would follow the Convention were the product of a strong Democratic dominance in Montana politics. As the 1970s came to a close, that dominance slowly started to weaken, and with the election of Republican Ronald Reagan to the presidency in 1980, the "environmental decade" was at an end.

In the early and mid 1980s, Hal Harper remembered that industry began to exert more power over the legislature to lower taxes on oil, gas, and coal. Aided by a state and regional recession in the early 1980s, their efforts paid off in 1987 when these interests were able to convince the legislature into cutting the Coal Severance Tax in half to 15 percent. The economic slow down that was being experienced by Montana and other energy states pushed Montanans in a conservative direction toward the Republican camp of the popular president, Ronald Reagan. Democratic Governor Ted Schwinden was able to adjust to the changing economic and political tide by taking the middle-road as a fiscal conservative. Steadily, though, increasingly scarce economic prosperity, the product of an uneven economy based on extractive industries spurred by the
disappearance of the Anaconda Company, was being viewed as at odds with a clean and healthful environment.

The decade of the 1990s began as a decade of hope for Montanan Democrats. In the 1990 state elections, they were able to capture both the House of Representatives and the Senate. In the session that followed, they were able pass a number of environmental bills into law, but popular Republican governor Marc Racicot, a new tax revolt, and a continually struggling economy would confine the party to the minority for the remainder of the twentieth century.

In 1991, when the Democrats had reached a temporary peak in power not experienced since the 1970s, the party was the victim of a tax battle that would damage its image and its popularity. Republican Governor Stan Stevens had called the legislature into special session to balance the state budge that was $50 million out of balance, recalled Hal Harper. The governor considered increasing gambling taxes to make up the difference, but Republicans in the legislature refused to support such a measure for fear of angering the tavern and casino lobby. The Democrats, in their own attempt to balance the budget, came up with what would become known as the “7 percent solution”—a 7 percent increase of every tax. Although the policies proposed in the so-called “7 percent solution” would radically reform and simplify the taxation process in Montana—making it possible for Montanans to literally file their taxes on a post-card—the stigma attached to the proposed tax increase made it widely unpopular. A crusade led by University of Montana Law professor Rob Natelson to roll back the tax increasingly polarized the issue with the public and left the Montana Democratic party helpless to fend off the rising popularity of a new Republican governor, Marc Racicot. The widespread rejection of the
“7 percent solution” by the public assured that in the 1990s the Republican Party, led by possibly the most popular governor in Montana’s history, would dominate politics.

With the waning power of the Democratic Party in the late 1990s, Montana’s environmental laws would need a new defender against attacks from the dominant Republicans. The Montana Supreme Court would prove to be such a savior when, in 1999, it passed down one of the most important decisions ever rendered regarding Montana’s environment. In 1999, the Montana Supreme Court decided in *Montana Environmental Information Center v. Department of Environmental Quality and Seven-Up Pete Joint Venture*, that “. . . the right to a clean and healthful environment is a fundamental right . . . ,” and overturned the lower court’s decision, thus prohibiting the Seven-Up Pete Joint Venture from conducting tests that would introduce known carcinogens into the water table. According to Hal Harper, this decision “put industry on its ear” and prompted it to step up its lobbying effort in the 2001 legislature to weaken the Constitution.

Under Republican control, the Montana legislature in the 1990s steadily chipped away at the environmental laws of the 1970s and more than once challenged the Constitution’s right to a clean and healthful environment. All of its efforts, however, would provide little stimulation to the economy. By 2000, Montana was ranked last in the United States in terms of terms of wages and near last in terms of teacher’s wages. The state of *oro y plata* was facing serious challenges at the beginning of the twenty-first century.

The problems facing Montana had to do with more than just the economy in the year 2000. The rhetoric in the 2000 elections was about jobs, industry, education, and the environment. In 2001, it appeared that Montana legislators were willing to sacrifice the
environment that Montanans had fought for in the 1970s in order to apparently jumpstart the state's economy.

The controversy over Montana's environment, as reflected by the actions of the 2001 legislature, may illuminate one of the most important and decisive factors that created such broad support for environmental legislation during the 1970s: economic prosperity. The absence of the kind of economic affluence experienced in the 1970s has corresponded with a lack of optimism and progressivism in Montana politics in the 1990s and early twenty-first century. Montana politicians viewed a clean and healthful environment as an inalienable right in 1972. However, that right appeared to be more of an expendable luxury in the face of the economic stagnation that plagued the state at the start of the new millennium. This has lead Hal Harper, a proponent of environmental protection in the Montana legislature for nearly thirty years, to remark, "it is a sad day."18
NOTES—CHAPTER 4


6 Dorothy Eck, to the Montana Farm Bureau, 15 April 1972, Record Series 22, Box 3, Folder 2, Montana Historical Society Archives, Helena, Montana.


8 The Bureau then appealed to the Supreme Court of the United States, which rejected the suit in February of 1973 without explanation.


10 Malone, Roeder, Lang, 397.

11 Ibid.


13 Malone, Roeder, Lang, 398.


15 Malone, Roeder, Lang, 398.


18 Ibid.
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