



December 18, 2024

The Honorable Bryan Steil
Chair, Committee on House Administration
1309 Longworth House Office Building
Washington, D.C. 20515

RE: Testimony of Derf L. Johnson, Montana Environmental Information Center

Dear Chairman Steil, Ranking Member Morelle, and Members of the Committee on House Administration:

Thank you for the opportunity to appear before the Committee on House Administration to offer my experience with foreign interference in U.S. elections and how it can be fully prohibited. I share your goal in assuring that Americans hold confidence in our electoral system, and in particular offer comments below on the interference of an Australian corporation in a Montana ballot initiative campaign that would have protected Montana's water resources.

I am the Deputy Director of the Montana Environmental Information Center (MEIC), a non-profit environmental advocate founded in 1973. MEIC has tens of thousands of members and supporters in Montana and across the United States. MEIC's organizational mission is to protect and restore the land, air, water, and life-sustaining climate of Montana, and advocate, educate, and empower people in service of a clean and healthful environment for present and future generations. Montana has a unique constitutional guarantee of a right to a clean and healthful environment for its people, and the provision is perhaps the most forward-thinking constitutional environmental provision of any state in the union. MEIC works to protect and enforce that fundamental right.

Through my work, I have gained unique insight into the permitting process for natural resource extraction projects in Montana. As a law student at the University of Montana, I focused on environmental and natural resources issues, with a focus on mining. For the past 15 years, I have been employed as both a lobbyist and attorney for MEIC and have focused on the legal and policy issues of mining and energy production in Montana. I represent MEIC and other parties in legal matters before state and federal courts, serve as a registered lobbyist during the Montana Legislature's biennial sessions, and work with both state and federal agencies in implementing policies and regulations on these matters. This experience has helped to inform my opinion on mining and energy development, both in Montana and across the West. In my career,

I have also worked directly on several Montana ballot initiatives that have dealt with environmental and mining issues, as well as broader policy considerations.

As a native Montanan, I share a common sentiment of caring for and valuing the land we call home. Montana is an important place for me personally. It is a place of abundant beauty and recreation that is unlike anywhere else that I have lived or traveled. Over the years, I have explored Montana extensively - to work, hunt, fish, camp, bike, boat, and drive, and have done so in virtually every county in the state. I particularly enjoy visiting the vast acreage of public lands that we have in Montana. These places are some of the least populous in the lower 48 and offer the opportunity for solace and escape from the daily grind of life.

I. Montana's Unique History of Corruption in Our Electoral System

Since its creation as a territory, Montana has had a marked history of exploitation and corruption, owing in large part to its enormous mineral wealth and high interest in corporate profiteering of our natural resources. The excessive and disproportionate influence of extractive industries that dominated Montana's political history is often referred to as the "Copper Collar," referencing the enormous control that Butte's copper barons exerted over Montana's political, media, and business activities. Over one hundred and twenty years ago, a member of the U.S. Senate Committee on Privileges and Elections "expressed horror at the amount of money which had been poured into politics in Montana in elections from 1888 onward." The hearing was regarding the appointment of William A. Clark by the Montana Legislature to serve in the U.S. Senate. The sheer level of corruption led to the U.S. Senate to refuse to seat him, and also was the catalyst for a Montana citizens' initiative that required the direct election of U.S. Senators.

As Montana matured into statehood, we attempted to address this corruption through the passage of the Corrupt Practices Act, which prohibited corporate contributions to candidates and lasted for 100 years until the Citizens United decision. Aspects of the "Copper Collar" stranglehold survived well into the 20th century. Even today, Montana is unfortunately vulnerable to unwarranted corporate and political influence. Our small population and relatively cheap media market – coupled with a high degree of interest from foreign corporations in accessing Montana's natural resources – has frequently allowed for local interests to be trammled by outside interests.

II. Hardrock Mine History and Permitting in Montana

Montana has an unfortunate relationship with extractive industries and, more specifically, hardrock mining, both historically and in modern times. From the Berkeley Pit in Butte and its downstream impacts on the Clark Fork River basin (constituting the largest Superfund site in the United States) to the more recent developments such as Montana Tunnels, a defunct mine just

south of my home. Montana Tunnels is now insufficiently bonded to the tune of \$20 million, the corporate owner is in bankruptcy, and the defunct mine has destroyed a stream that was excellent habitat for a native Yellowstone cutthroat trout population. Pockmarks of defunct mining projects across the state demonstrate the failed policies of the past and continue to represent an ongoing liability for our residents and sovereign Tribal Nations.

Due to our history, many Montanans are rightfully skeptical of mining proposals, and while the state will likely continue to promote resource extraction into the foreseeable future, such practices must contend with several safeguards meant to assure that our lands and waters are protected. Most notably, in 1972, Montanans adopted a new constitution that contains explicit environmental rights and protections that are meant to address the corporate abuses of the past. In Art. II, Sect. 3 – outlining the inalienable rights of our citizens – we have a clearly defined “right to a clean and healthful environment” This provision has been further refined through subsequent case law as a fundamental right, requiring a strict scrutiny analysis for any circumstance encumbering the right. It also has been found to be both anticipatory and preventative, with the Montana Supreme Court stating:

The delegates did not intend to merely prohibit that degree of environmental degradation which can be conclusively linked to ill health or physical endangerment. Our constitution does not require that dead fish float on the surface of our state's rivers and streams before its farsighted environmental protections can be invoked.

Concurrently, Montana’s constitution contains companion provisions requiring that the “state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations,” that the “legislature shall provide for the administration and enforcement of this duty,” and that the “legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.” More specific to mining and extraction, the Constitution contains a requirement that “All lands disturbed by the taking of natural resources shall be reclaimed. The legislature shall provide effective requirements and standards for the reclamation of lands disturbed.”

Due in part to the abuses of the past and government systems that may be prone to capture from special interests, Montana also created a ballot initiative process under our constitution. Under the initiative process, citizens and organizations may place initiatives on a ballot after collection of the signatures of at least 5% of registered voters in at least one-third of Montana’s legislative districts as well as at least 5% of the total registered voters.

Montanans have used our initiative process for a myriad of different policy proposals, including the regulation of hardrock mining. In 1998, Montana voters passed I-137, an initiative that placed a ban on cyanide heap leach mining, effectively becoming the first state in the nation to outlaw the destructive practice. In large part, the initiative was successful due to Montanans’ interest in protecting the Blackfoot River from an ill-conceived open-pit gold mining project at

its headwaters. In 2004, an industry-sponsored initiative to overturn the cyanide heap leach ban failed handily, and the law remains intact to this day.

III. Montana's Smith River

While Montana boasts a little over a million residents, close to 12 million visitors flock to Montana every year to experience our great state, and our landscapes are world-renowned for good reason. It is the home of the first National Park in the United States, the headwaters to much of the river system in the lower 48, and the home to robust flora and fauna that existed at the time of the Lewis and Clark expedition. It is the setting for Normal Maclean's novel *A River Runs Through It and Other Stories*, which aptly summarized many Montanans' sympathies of "no clear line between religion and fly fishing." Our landscape is in many ways our identity, and instilled within our constitutional preamble: "We the people of Montana grateful to God for the quiet beauty of our state, the grandeur of our mountains, the vastness of our rolling plains, and desiring to improve the quality of life, equality of opportunity and to secure the blessings of liberty for this and future generations do ordain and establish this constitution."

Montana's environment and landscape also means real money for our state's citizens and our economy. According to a November 2024 report from the U.S. Bureau of Economic Analysis, in 2023 the outdoor industry sector contributed \$3.4 billion to Montana's GDP and grew 7.2%. Nationwide, it now ranks third in the nation for contributions to state GDPs, accounts for close to 6% of statewide employment, and makes up 4.4% of the state's total compensation. In short, Montana's outdoor recreation industry is a critical growth industry that is an essential part of our present and future, especially water-based recreation.

The Smith River flows in central Montana. Its headwaters begin in Meagher County near White Sulphur Springs and the Castle Mountains, before flowing north where it is bound on its banks by the Little Belt and Big Belt Mountains before meeting the mighty Missouri near Great Falls. From Camp Baker to Eden Bridge, the Smith flows for 59 miles through a towering limestone canyon without any public access points. Due to a largely undeveloped landscape, an excellent trout fishery, and a multi-day opportunity to float the river, this section has been designated as a Montana State Park and is Montana's only permitted recreational river. Over 10,000 people from across the United States enter an annual lottery for the opportunity to win a coveted float permit which, if successful, will allow them to spend up to five days in some of the wildest country in Montana with their closest friends and family.

Recreation on the Smith River also generates significant economic activity for central Montana during the summer months. In addition to private recreation and associated spending, a portion of the launch permits are owned by river guides, and people from around the world hire their services for a once-in-a-lifetime trip down the Smith. Every day during the permit season – rain or shine – the Camp Baker launch facility is buzzing with activity as people scramble to get on the river. A 2015 analysis by Southwick and Associates evaluated the economic impacts of Smith River fishing recreation, pegging annual anglers' spending to close to \$8 million with a

ripple effect of over \$11 million, supported over \$3 million in salaries and 70 jobs, and contributed close to \$1 million in state and local tax revenues. This economic activity is very likely to have grown in the nine years since the report's release.

In 2015, an Australian mining corporation known as Sandfire Resources applied for a mining permit to the Montana Department of Environment Quality (DEQ). The company proposed to build an underground mine directly under and adjacent to Sheep Creek, the critical tributary in the Smith River basin for clean water, spawning habitat, and summer flows. Since that time, Sandfire has further consolidated its shares of the project and has labeled the mine the "Black Butte Copper Project," but most Montanans refer to it as the "Smith River Mine."

Since that time, the proposal has met with stiff resistance from Montanans of all walks of life who are concerned about repeating the mistakes of the past and risking the Smith River for yet another failed mining experiment. Sandfire Resources, however, continues to pursue its mine and edges closer every day to beginning its project and risking perpetual pollution of one of Montana's environmental gems.

IV. A Ballot Initiative to Protect Montana's Water, and an Australian Corporation Helping to Bankroll its Opposition

It is against this backdrop – a history of environmental exploitation, corrupting influence in our political processes, and strong constitutional protections – that a group of Montana citizens and organizations worked to pass a citizen-initiated ballot initiative (I-186) in 2018. The initiative would have placed additional safeguards to prevent unnecessary impacts from mining activities on Montana's people and her environment through what is known as perpetual pollution. I-186 was voted on during the 2018 general Montana election and would have prohibited the state's Department of Environmental Quality (DEQ) from permitting a newly proposed hardrock mine unless the reclamation plan provided to the DEQ clear and convincing evidence that the mine would not have required perpetual treatment of water polluted by acid mine drainage or other contaminants. More than 45,000 signatures from Montanans were submitted to the Montana Secretary of State, and the initiative was subsequently approved for the ballot.

The initiative primarily targeted mines that were likely to result in acid mine drainage, a chemical process that results from mining of sulfur-bearing minerals. If sulfur-bearing minerals are exposed to air, water, and bacteria during mining, it often creates a chemical reaction that produces sulfuric acid, which dissolves other constituents and heavy metals in the rocks and creates toxic runoff from mine sites. Acid mine drainage is an unfortunate, common occurrence in Montana both historically and presently, and has served as a death sentence for several of Montana's rivers and streams. Because acid mine drainage cannot be halted once it begins and will last into perpetuity, water treatment and management of these sites must also occur in perpetuity. Perpetual water treatment and management raises questions about the ongoing

environmental and fiscal obligations of Montana's future generations in managing the failed mining activities of the past, and whether permitting such mines complies with Montana's affirmative, strong constitutional environmental protections.

The citizen-led ballot initiative was submitted not just as a reflection of Montana's love for rivers and Constitutional obligations to assure their protection, but also more specifically to address concerns related to the Smith River Mine and its potential, high-risk impacts to the cherished waterway. The subsequent election fight over the ballot initiative was hard-fought, in large part due to the large access to funds that the mining industry typically enjoys relative to public interest advocates. Both the support and opposition of I-186 created ballot committees: Yes for Responsible Mining was created in support of I-186, and Stop I-186 to Protect Miners and Jobs was created to oppose the initiative.

Predictably, Australian corporation Sandfire Resources took a high level of interest in I-186 due to its implications for the proposed mine at the headwaters of Montana's Smith River. The company has repeatedly acknowledged that the mine is located within a "massive sulfide zone," the precursor and necessary ingredient for acid mine drainage. Due to its perceived interests, Sandfire Resources donated – and the opposition committee accepted – approximately \$285,000 to campaign against I-186. Sandfire Resources did not contest that it was an *Australian* company with a *Canadian* subsidiary (Sandfire Resources America, which at the time did not have any sources of revenue in the United States and "a cash flow of zero") but had an interest in developing the Smith River mine.

The contributions were subject to a high level of interest and scrutiny and were ultimately the subject of a complaint filed with the Federal Election Commission ("FEC") in October of 2018. Three years later, in 2021, the FEC dismissed the complaint. Commenting on the dismissal of this and another similar matter, a Democratic commissioner expressed her alarm at her "colleagues' voting to allow such foreign interference in American political life." I-186 was voted down at the ballot box.

Following the failed passage of I-186, the Republican-controlled Montana Legislature enacted a ban in 2019 on foreign national contributions to candidate elections. Unfortunately, this ban fell short of prohibiting foreign national contributions to ballot campaigns – due to intense lobbying from the mining industry, the bill was amended to focus only on candidates. Today, the status quo remains that unlimited amounts of money can be contributed from locations across the world by foreign nationals to state and local ballot initiatives in Montana. This permissive arrangement of foreign money has undoubtedly caused a chilling effect on, and perversion of, our ballot initiative process. The universe of funding available for corporate participation in our ballot initiative process is now much broader, and the interests those funds serve is often far flung from the concerns of everyday Montanans.

Thank you again for the opportunity to appear before the Committee. As this Committee considers the issues of foreign interference in our election system, I hope that it incorporates and weighs the experiences I've offered from the great State of Montana. I wish the Committee well

as it seeks to address the important issues that surround foreign interference in our election system, especially as it relates to state and local ballot initiatives.

Sincerely,

A handwritten signature in black ink, appearing to read "Derf L. Johnson". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Derf L. Johnson
Deputy Director
Montana Environmental Information Center