

21 A People's Constitution – 1972

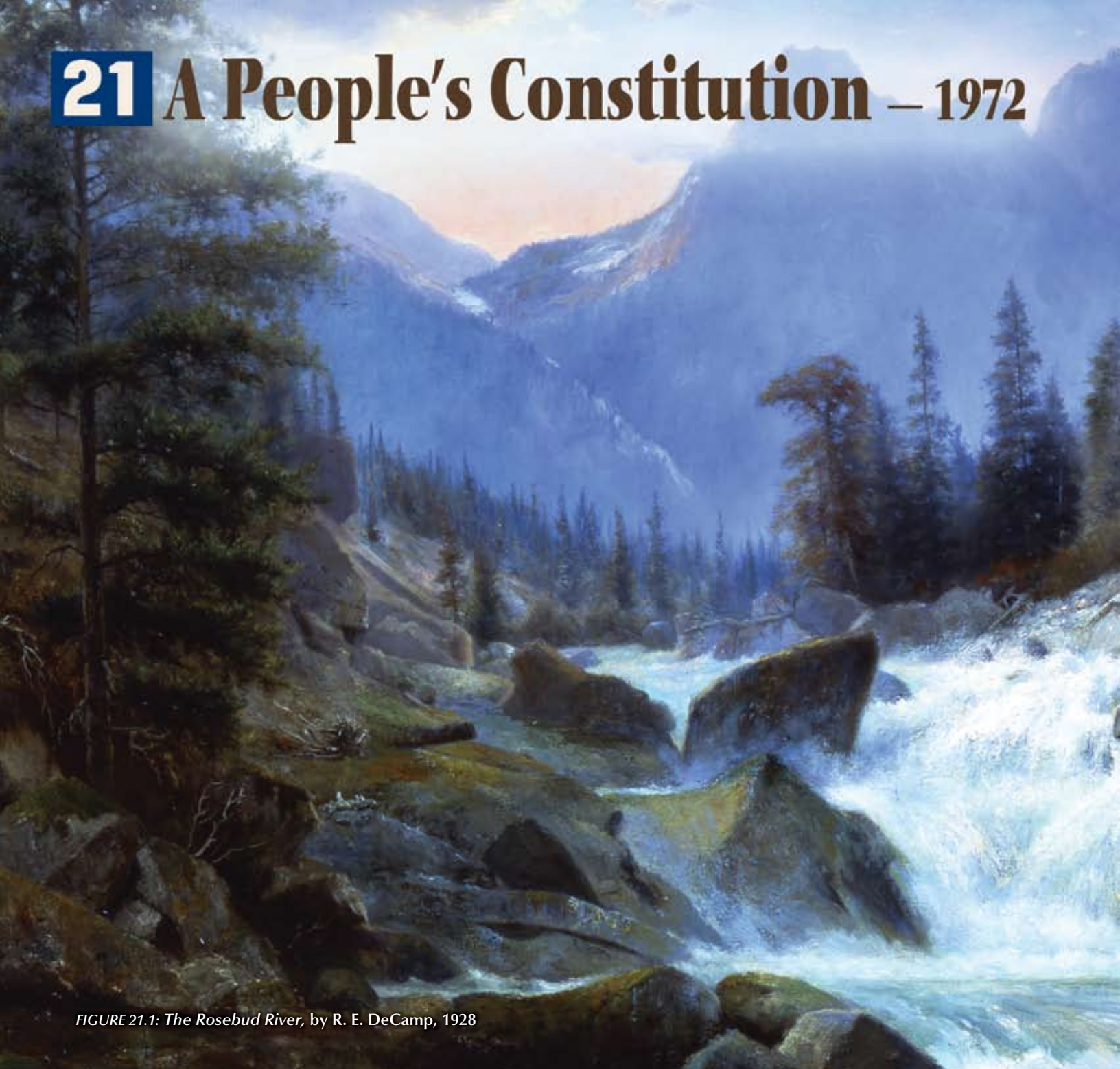
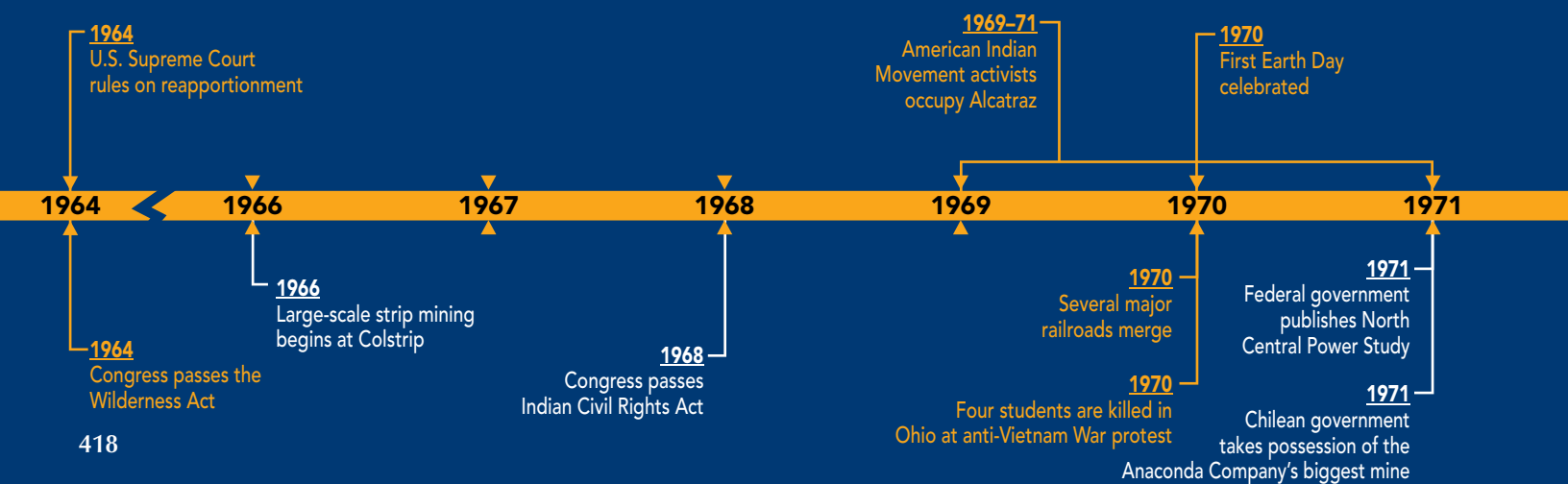


FIGURE 21.1: *The Rosebud River*, by R. E. DeCamp, 1928





READ TO FIND OUT:

- Why Montana needed a new constitution
- How the 1960s changed how citizens thought about their government
- Why the constitutional convention was called a “people’s crusade”
- How the new constitution changed Montana

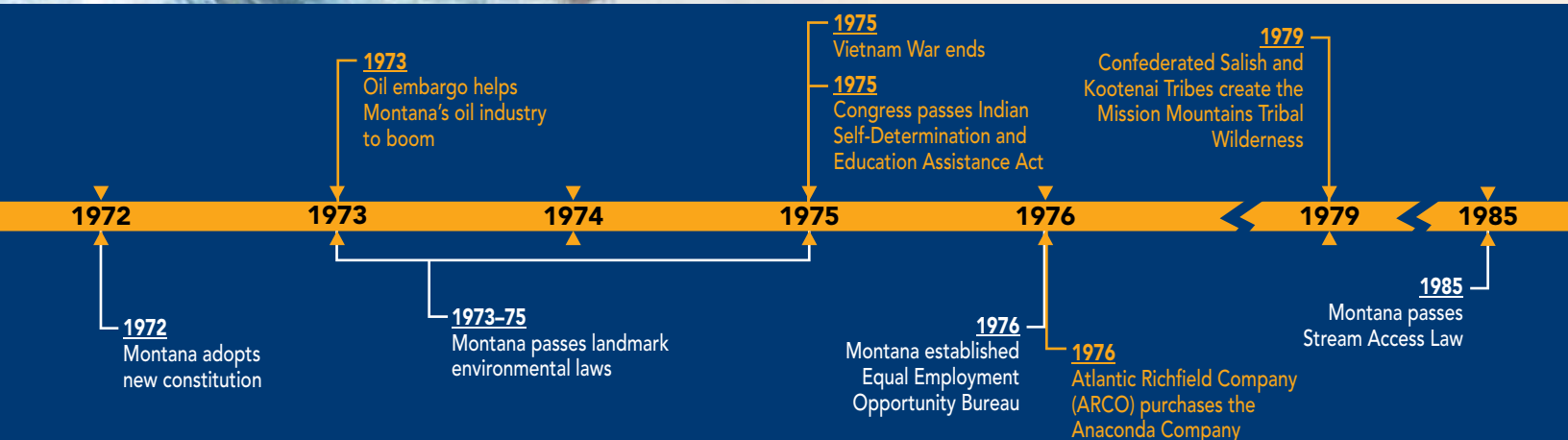
The Big Picture

The 1972 Montana constitution has been called one of the most beautiful, most progressive constitutions in the history of the United States. To this day it remains a model of good government that other states and nations have followed. And it was written by everyday people just like you.

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.

—Preamble to the 1972 Constitution

Two young Montanans wrote those words late one night in a tiny room of the state capitol. They wrote and rewrote this paragraph, struggling to express their love of Montana, their hope for its future, and their faith in democracy. While they worked, the glow from their window lit the snow below.



“I think it [the 1960s] has been a transforming decade. I know for some people it was a frightening time, but it is also a profound learning experience. We will look back on the 1960s and say it was an enormously fascinating time to be alive.”

—REVEREND BOB HOLMES, CHAPLAIN AT ROCKY MOUNTAIN COLLEGE, 1969

This statement, which is primarily the work of Montanans Bob Campbell and Mae Nan Ellingson, is the **preamble** (introduction) of the 1972 Montana state **constitution** (a document that sets rules for government). It is a statement of gratitude, hope, and confidence in the constitution that follows it.

Yet, at the time these two huddled over their scratch paper, the world outside their frosted window was turning upside down.

A Nation in Transformation

The 1960s and 1970s brought many changes to the nation. Women, American Indians, and African Americans organized for more political power. The environmental movement celebrated the first Earth Day in 1970. A youth movement arose as young people searched for new ways to define the future.

Issues like the Vietnam War and racism deeply divided the nation. African Americans in the South campaigned for civil rights. More people joined anti-Vietnam War protests. In 1970 national guardsmen killed four university students in Ohio during an antiwar protest on campus. Then Americans discovered that the government had been secretly bombing Cambodia (a country next to Vietnam) and lying to the people about it.

Many Americans distrusted government leaders and spoke out—or protested—for change. But there were many others who fought to hold fast to traditional methods and ideas.

Two Shocking Events in Montana

Montana was changing, too—in big ways. By 1972 the state had transformed into a place that the writers of its 1889 constitution never would have recognized. Women campaigned for equal rights and equal pay. American Indians joined together to claim more political power. A Mexican American won a seat in the state legislature for the first time.

Then, in 1971, two shocking events happened. These two events made many Montanans think hard about their land and their future.

The first involved the Anaconda Company. For years the Company had produced most of its copper—and made most of its money—at mines in Chile. But in 1971 the Chilean government took possession of Anaconda’s biggest mine. Anaconda lost \$357 million (equal to \$1.8 billion today) in one year. Faced with bankruptcy, it shut down mines and laid off thousands of Montanans.

The second event happened the same year. The federal government

released a report called the North Central Power Study. This federal study explored ways to fill the nation's growing need for energy. It recommended building 21 coal-fired electrical generating plants fed by numerous coal strip mines. It would have used half of the Yellowstone River's flow. Eastern Montana's grasslands would have become an industrialized landscape of strip mines and power plants.

The idea of **ravaging** (ruining) Montana to fill the power needs of other states terrified and enraged many Montanans. As one group said, "We do not want to be the boiler-room of the nation."

Many Montanans who did not think of themselves as environmentalists reacted strongly against the North Central Power Study. Farmers, students, and others angered by the study formed **grassroots** (made up of ordinary citizens) organizations. They held study meetings and met with legislators and members of Congress. They staged protests against the environmental **degradation** (damage) of their state. "It was a whole new era," journalist Chuck Johnson said of this period.

A New Constitution for a New Montana

In this time of tumult and hopefulness, Montanans took a good look at their constitution. After nearly a century of domination by the Anaconda and Montana Power Companies, many people deeply distrusted big business—and government that supported business more than it did citizens. They wanted their state government to focus on the needs and rights of everyday people. As Governor Stan Stevens said later, people felt "a determination—sometimes bordering on the reckless—to change the system."

For two years in the late 1960s, legislative committees studied the 1889 constitution and debated what to do about it. They found that the 1889 constitution restricted many of the powers of state government. It limited when and how long the **legislature** (the branch of

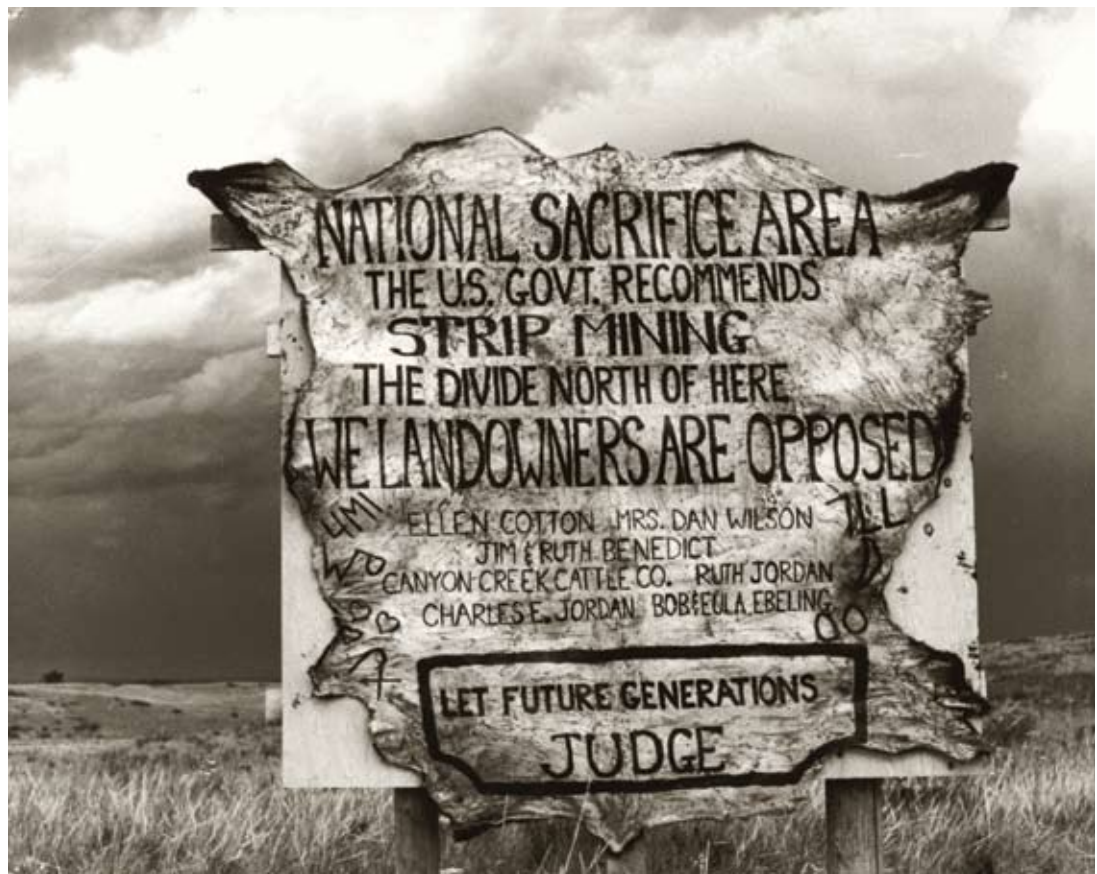


FIGURE 21.2: Landowners objected when the federal government proposed strip-mining much of eastern Montana and building dozens of coal-fired power plants to supply electricity to the nation. One angry landowner erected this sign protesting the idea that eastern Montana should sacrifice itself for the nation's power needs.

“We had to shake off the 1889 constitution because it just wasn’t working. There was so much secrecy. Nobody was accountable for anything. We had to open up the system and we knew that the only way we could do that was with a new constitution.”

—ARLYNE REICHERT, DELEGATE FROM GREAT FALLS

government that passes laws) could meet and what it could do. It allowed state leaders to make big decisions behind closed doors, without public input. No one even recorded legislators’ votes, so the public never even knew how their representatives voted.

Montanans felt helpless to protect their environment from big business and governmental policies. There were too many limits on how citizens could participate in their own government. Through the years

voters had approved 37 **amendments** (changes) to the constitution that fixed some of these problems—but not all of them. Montana had outgrown its first constitution.

Reapportionment Opens the Door to a New Constitution

One big issue got in the way of creating a new constitution. Montana’s 1889 constitution—like those of many other states—said that Montanans could elect one state senator per county. This meant that in the 1960s the 864 residents of Petroleum County had the same number of votes in the legislature as the 79,016 people of Yellowstone County.

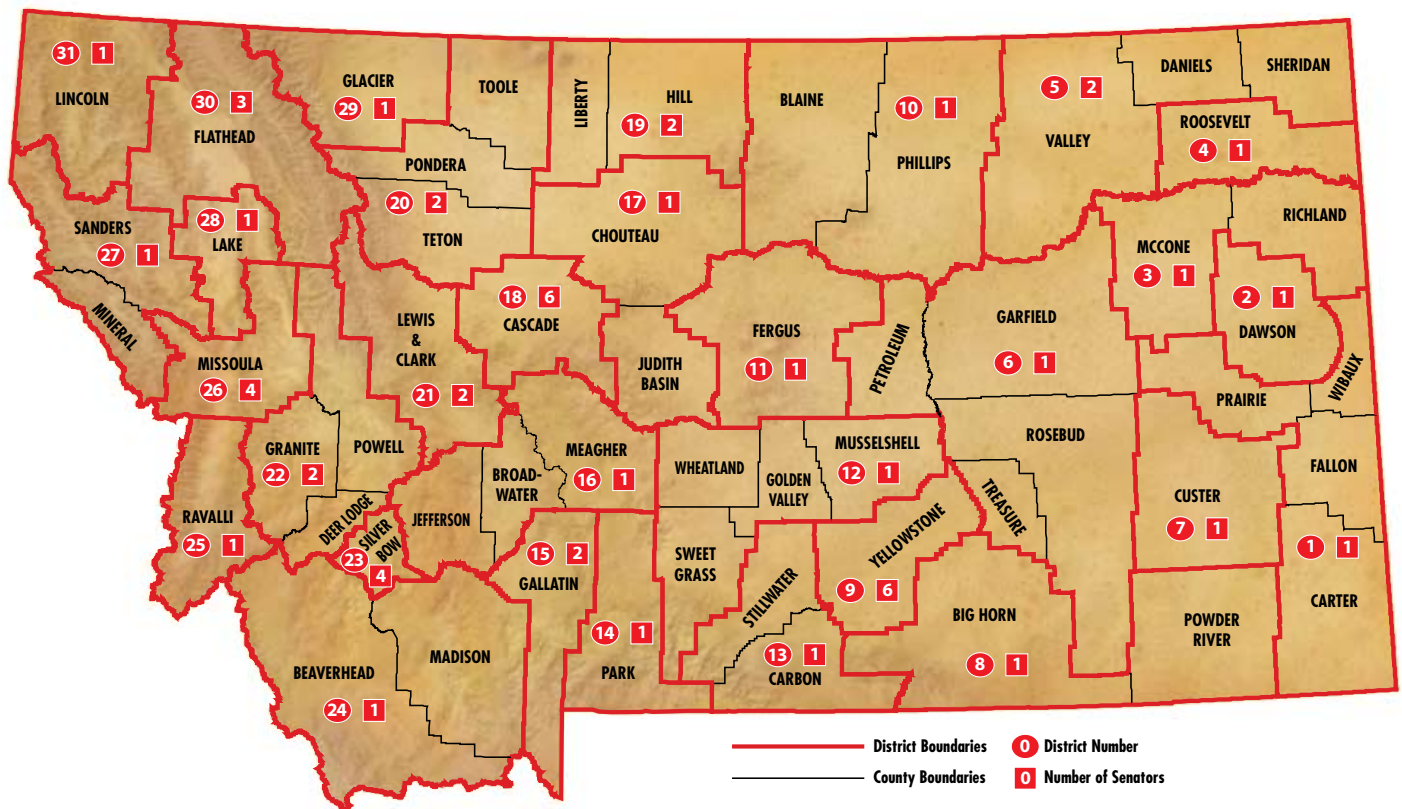
By the 1960s more than half of Montana’s population lived in just seven cities in central and western Montana. As the rural population shrank and the urban population grew, the urban citizens demanded equal representation. But the shrinking rural areas did not want to change the state constitution as long as their political power was at risk.

In 1964, in a case called *Wesberry v. Sanders*, the U.S. Supreme Court ruled that state senate districts had to be based on population instead of area. This way, each legislator would represent about the same number of people. Creating new legislative districts was called **reapportionment** (to apportion, or distribute, in a new way).

After reapportionment, rural Montanans had less political power. As urban citizens clamored for a new constitution, rural voters found it hard to stop them.

FIGURE 21.3: As cars and highways multiplied in the 1960s, bumper stickers became a popular way to express political opinions. This bumper sticker encouraged Montanans to vote for the referendum calling for a new constitutional convention. Why do you think the designer made the letters so jiggly?





Montana's State Senate Districts, 1966, after Reapportionment

1972: A People's Convention

In November 1971 voters went to the polls to elect 100 **delegates** (representatives) to the **constitutional convention** (a meeting to write a constitution). These delegates were remarkable for one striking reason: they were not professional politicians. A little-known restriction in the old constitution prohibited anyone from holding two public offices at the same time—so no active legislators or political appointees could be constitutional convention delegates.

As a result the delegates were ordinary people from many walks of life. The press called them “extraordinarily ordinary.”

On January 17, 1972, the convention's delegates gathered in the state capitol in Helena. They included 58 Democrats, 36 Republicans, and 6 Independents. Among them were 20 farmers and ranchers, 24 lawyers, 17 business owners, 11 housewives, and one beekeeper. Four were ministers or priests, 13 were educators, and one was a graduate student. The oldest was 73; the youngest was 24. And 19 were women.

Most of the delegates had gone to college. Many had graduate degrees. They included fourth-generation Montanans and children of immigrants from Italy, Ireland, and Armenia. They were all white—there were no American Indians, Mexican Americans, African Americans, or Asian Americans elected. After the election, most of the delegates agreed they had almost no idea how to write a new constitution.

On the first day, Leo Graybill Jr., of Great Falls, president of the constitutional convention, stood before the delegates. He asked them

FIGURE 21.4: Before reapportionment, each county had one state senator no matter how many people lived there. After reapportionment, representation was based on population, not geographic area. So, in 1966, the people of Petroleum, Garfield, Rosebud, and Treasure Counties shared one state senator while the people in Yellowstone County shared six. Every ten years a special committee redraws the state's house and senate district lines using data from the U.S. **census** (a count of every person living in each area of the country).

Montana Statistics

	1889	1970
State population	142,224	682,133
Number of towns & cities	19	126
Number of counties	21	56
Urban population	35%	60%
Rural population	65%	40%
Number of state agencies	38	161
Annual state budget	\$187,000	\$250 million

“How can we accomplish our work? . . . We must be open. Open to ideas, to opinions, to debate. We must also be open to our own conscience and our inner selves. We must seek guidance and good fellowship right here in this room. We must be responsive to each other. If we can make government work here, then perhaps we can help Montana move into the future with confidence and vision.”

—LEO GRAYBILL JR., CONSTITUTIONAL CONVENTION PRESIDENT
AND DELEGATE FROM GREAT FALLS

to remember what life was like in Montana in 1900. There were no paved roads, no automobiles, and no telephone system. There was no radio or television. Most Montanans worked in the mines, on farms, or on ranches. They traveled by railroad or by horse-drawn wagon.

Then he asked the delegates to try to imagine what life would be like 70 years into the future, in 2040. What would families be like? How might people travel? What kind of communications technology might there be? How will people spend their time?

“Do you really think things won’t change as much in the next 70 years?” he said.

Then he charged the delegates with writing a constitution that would still be effective in future generations. “This convention is a way for each of us, and for each of Montana’s citizens, to concern ourselves with the general shape of the future,” he said. “We have that opportunity.”

Getting to Work

The delegates sat in alphabetical order to minimize political differences and encourage cooperation. Usually, legislators sit grouped by political party and often vote as a group. But these delegates liked the mixed seating because it encouraged everyone to work together regardless of political party. “Most of the time I had no idea if the person making a proposal was a Democrat or a Republican,” said delegate George Harper from Helena, who was elected as an Independent. “That’s what I loved about it.”

The delegates worked together to write down the basic principles by which they hoped Montanans would govern themselves efficiently and fairly into the future. They worked for 56 days, often staying late into the night. They plowed through 2,300 pages of homework studying constitutions from all over the world. They read more than 1,500 letters from Montanans suggesting things they wanted to see in their new constitution. They also welcomed public testimony. They broke out into committees to draft proposals—then debated them vigorously and wrote them again, discussing every word.

After 90 years of closed political meetings in Montana, the delegates insisted that all their meetings be open and all their votes recorded. As delegate Bob Campbell remembered, “The spirit of openness was a breath of fresh air in the state’s political process.”

What They Wrote

The 1972 constitution, just like the 1889 one, reflects the way its writers saw Montana and its future. Because 1972 was a very different time than 1889, the new constitution was very different from the old one.

First of all, it was half as long and much easier to read. Delegates took out parts of the old constitution that caused problems. The new document streamlined state government to make it run more smoothly.

Some major themes run throughout the 1972 constitution. These themes reflect the ideas and concerns of Montanans in the 1970s: ensuring a strong, responsive government; guaranteeing the public's right to know about and be involved in government; improving education; protecting the environment; and guaranteeing equal rights to all.

Another important theme—a theme found in no other state constitution at that time—was affirming the importance of American Indian cultures. And throughout, the document reflects Montanans' love of the land.

“ People have to work together for good government. I think the [constitutional convention] proved that they could work together . . . We didn't fight each other. We didn't always agree, but we did work together. ”

—BETTY BABCOCK, DELEGATE FROM HELENA

FIGURE 21.5: Women had never had this big a presence in state government before. These 19 women delegates to the convention influenced the convention and the constitution in many ways.



Things You Need To Know

There are three branches of government:

the **executive branch** (the governor and administrative offices), which enforces laws;

the **legislative branch** (the legislature, which includes the state senate and house of representatives), which enacts laws; and

the **judicial branch** (the court system, including the state Supreme Court), which interprets and applies laws in specific cases.

“In this age, 1972, with all the sophisticated electronic equipment that is available, they have sophisticated devices that they can focus on a window half a mile away, and hear everything that is said in a room. So put into this Bill of Rights this right of privacy, so that they cannot do this unless there is a compelling state reason. And of course this would be decided by a court.”

—CHET BLAYLOCK, DELEGATE FROM LAUREL, URGING CONVENTION DELEGATES TO INCLUDE THE RIGHT TO PRIVACY IN THE DECLARATION OF RIGHTS

The Declaration of Rights

The 1972 constitution begins with a vigorous Declaration of Rights—34 individual rights guaranteed to the citizens of Montana. It is similar to the U.S. Bill of Rights—but it adds some rights not even mentioned in the U.S. Constitution. It includes the right to personal privacy and the right to **human dignity** (every person’s right to be treated with respect). It also grants children the same fundamental rights as adults. And it guarantees equal rights to all, including the right to pursue a living and the right to education.

The Declaration of Rights begins by stating that all political power belongs to the people. It affirms that the government and the military can never have power over the people themselves.

A Strong Government to Serve the People

Several articles of the new constitution strengthened the executive and legisla-

tive branches of government and made them more accountable to the people. These articles ended some outdated rules, like one that said the legislature could meet for only 60 days every two years. And they provided for the legislature to exist as a body through its entire two-year term whether it was meeting or not. This made it easier for legislators to come together in special session if a problem arose.

The constitution gave the governor new powers, like the power to **veto** (reject) specific items out of the legislature’s budget. It also removed some commissions and offices that made state government more confusing and less efficient.

The constitution also strengthened local and county governments. It gave citizens the right to organize and empower their local governments as they thought best. It also extended citizens’ rights to pass and **repeal** (cancel) laws by **initiative** (a law passed by the people rather than by the legislature) and **referendum** (when the people vote to reject a law passed by the legislature), and the power to put proposed constitutional amendments on the ballot.

From beginning to end, the constitution affirmed that the purpose of government is to help the people and respond to their needs.

Sunshine Laws: The Public's Right to Know

Say you vote to elect a legislator based on how he or she promises to vote on issues important to you. How do you know whether your legislator actually votes the way he or she promised?

Section 9 of the Declaration of Rights guarantees the public's right to listen in while state leaders and officials debate, vote, or hold informational meetings about issues. These "right to know" statements are called the "sunshine laws," because they drew back the curtains of secrecy that had cloaked state government since its earliest years, and let in the sunshine of public observation.

Improving Education

Article 10 guarantees every Montanan equal access to quality education. Montanans of the 1970s believed that education was essential to a person's development. They also believed that the educational system was responsible for cultivating the minds of students and developing their "capacities for cultural and technological advancement of society."

In other words, each one of you reading this chapter is expected to contribute to improving life in Montana in some way. And the constitution says that your school is partly responsible for getting you ready to do that. It is left to each generation to figure out how the state can guarantee an equal education to everyone whether they live in Alzada or Yaak, on a reservation, in a city, or down a remote country road.

Equal Protection

Montanans were eager to establish equal rights for all citizens and to end discrimination against some people for their **gender** (whether a person is male or female), race, religion, or political ideas. The constitution affirms the dignity of every human being and guarantees that Montana laws protect all citizens equally.

The U.S. Constitution protects U.S. citizens from discrimination by the

“The rights that the people gave themselves are a fascinating bundle of very progressive individual rights . . . I think it's a marvelous reflection not just of the time, but of the people of Montana. And I think it is to this day.”

—CHIEF JUSTICE KARLA GRAY, SPEAKING IN 2002 ABOUT THE CONSTITUTION

FIGURE 21.6: In the 1950s and 1960s, only full-time lobbyists could even locate the rooms where hearings were being held. Open meeting laws now require all hearing schedules to be posted in advance. This makes it easier for people like Helena sixth grader Chelsea Carlson to testify on issues of interest.



“As late as two years ago a woman, single, divorced or widowed, could not purchase an automobile, home or open a charge account unless she had a male to cosign [accept responsibility] . . . The Equal Rights proposal I urge you to include in the Bill of Rights grants equality to both sexes which is what we think we now have, but do not.”

—VIRGINIA H. BLEND, DELEGATE FROM GREAT FALLS

FIGURE 21.7: Just because the Montana constitution guarantees equal rights for all does not mean that everyone is treated equally. In 2006 Ray Walker carried this sign in a Billings march in honor of Martin Luther King. His sign asks for “Dignity and respect for all Americans.”



government. But Montanans wanted their constitution to go further and to prevent all discrimination. So the delegates included the following in Article 2, Section 4: “Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his [or

her] civil or political rights on account of race, color, sex [gender], culture, social origin or condition, or political or religious ideas.”

This article was important—some called it revolutionary—for two reasons. First, it guaranteed equal rights to women. During this time debates raged across the country over the Equal Rights Amendment, a proposed amendment to the U.S. Constitution that would grant equal rights to everyone regardless of gender. The Equal Rights Amendment created a tremendous amount of controversy. It has not passed to this

day. But several states—including Montana—included equal rights language in their state constitutions in the 1970s.

The second reason is that the article included the word culture. Delegates specifically guaranteed equal rights to American Indians and others whose cultures are different from **mainstream** (majority) society.

Teaching and Preserving Our American Indian Heritage

One day during the constitutional convention, two high school students from the Fort Peck Indian Reservation—Mavis Scott and Diana Leuppe—appeared at a public hearing. They asked the delegates to give all Indian students the opportunity to study their own culture, their heritage, and their own language in public schools. They also expressed hope that all students could recognize the importance of American Indians’ heritage to the life of Montana.

Two delegates in particular, Rick Champoux and Dorothy Eck, championed Indian education in the constitution. The result is found in Section 1.2 of Article 10: “The state recognizes the distinct and unique cultural heritage of the American Indians, and is committed in its educational goals to the preservation of their cultural integrity.”

This simple, general statement challenges the state

of Montana to teach and preserve its native cultures. Since then, American Indian and non-Indian teachers, leaders, and legislators have struggled to help fulfill the constitution's promise.

Protecting the Environment

Article 9 of the constitution states plainly, "The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations."

Further, it requires anyone who disturbs the land to take its natural resources—like trees or minerals—to **reclaim** (to claim back or make useful again) the land. It affirms the importance of water to Montanans and affirms that Montanans have a right to the beneficial use of water.

Some of these **provisions** (things that the constitution provided for) have started many controversies. What is the definition of a "clean and healthful environment"? How do you decide if we have one or not? How much disturbing of the land can you do before you have to reclaim it? What does a successful reclamation look like? The people have had to puzzle these questions out through the court system by filing lawsuits when they believed a constitutional provision was being

“Every other ethnic group in this country has a country of origin to relate to in their pride of heritage, and we have learned in our schools about their countries . . . What is the country of origin for American Indians? It is America. What have the average Americans learned in our schools about our American people? Very little, if not nothing.”

—RICK CHAMPOUX, DELEGATE FROM KALISPELL

FIGURE 21.8: No other state constitution guarantees its citizens a clean and healthful environment, but Montana's does.



“Is not Montana our home? Is not the world our home? Should we not have the right to protect our homes by appropriate legal proceedings against those who would defile it?”

—CECIL GARLAND OF THE WILDERNESS SOCIETY, TESTIFYING BEFORE THE CONSTITUTIONAL CONVENTION

violated. And that, according to Missoula delegate Mae Nan Ellingson, was exactly what the delegates intended.

“What did it mean to have a right to a clean and healthful environment? To me, it meant that the citizen had the right to go to court to protect that environment,” she said later.

A Trust Fund to Benefit Montana

Article 9 also calls for Montana to identify and protect places that are special for cultural, historic, archaeological, scientific, or recreational reasons. To help fulfill this challenge, Montana created two special trust funds. One provides money to help fight noxious weeds in Montana.

The other, called the coal severance tax trust fund, is funded by taxes on coal mining. The state spends a portion of this fund on arts and culture programs to enrich life in Montana. During every legislative session you will hear people debating about the coal severance tax trust fund.

The Constitution Passes by a Whisker

After 56 days of hard work, the delegates put down their pencils. Then all 100 of them answered a roll call and, one by one, went forward to sign the constitution they had worked so hard to create. After debates, arguments, and even a few tears, they all came to agreement that they had written a useful constitution.

“Every single delegate signed it,” remembered George Harper of Helena. “That was practically unheard of among all the states that were rewriting their constitutions at the time.”

As delegate Wade Dahood remembered, “There was a very small minority who were opposed to some of the provisions and we all waited, hoping—praying—that they would sign the final document. We all left our convention excited, with a great deal of pride and love and friendship for one another.”

Not everyone approved of the new constitution. After the convention ended, some delegates criticized the constitution and urged voters to reject it. The Montana Farm Bureau—the state’s largest agricultural organization—led the campaign against it. Many farmers thought the new constitution gave the state too much power and local governments not enough power. Other groups thought its environmental policies were too strict.

One opposing group filed a lawsuit to stop the state from spending any of the remaining convention budget to educate voters about the new constitution. So some delegates drove around at their own expense, held town meetings, and wrote articles for newspapers to help inform the voters what the new constitution said and meant.

Mae Nan Ellingson gave 56 talks at Missoula schools, banquets, and grange halls urging voters to approve the constitution. Conservative

Republican Betty Babcock often traveled around with liberal Democrat Dorothy Eck and Reverend George Harper, an Independent, to answer questions about it.

“We appeared anywhere people would have us,” Harper remembered later. “My feeling—and many people felt this way—is that if it hadn’t been for the help of strong Republicans like Betty Babcock and John Toole, that constitution never would have passed.”

On June 6, 1972, the people of Montana voted to **ratify** (formally approve) the new constitution. It nearly failed—44 of 56 counties rejected it. But voters in the most populated counties did approve it, and the new constitution passed by 2,532 votes out of 230,000 cast.

Montana’s Constitution Is Unique

Montana’s 1972 constitution is unique in many ways. Other states in our region of the country, like North Dakota and Idaho, proposed new constitutions at the same time, but the voters rejected them. Of all the states in the Rocky Mountain West, only Montana has created and adopted an entirely new second constitution. And of all the states in the United States, only one has amended its constitution fewer times than Montana.

Since 1972 other countries and states have used Montana’s constitution as a model for their own. Some constitutional scholars have called it the most progressive constitution in the nation’s history.

What the Constitution Has Meant for Montana

Some historians call the 1972 constitution a turning point in Montana history. In many ways it painted a picture of a new Montana—a state concerned about its environment, about equal rights for all its people, and about strengthening government to improve society.

Yet passing the constitution did not automatically change anything. The legislature had to change the laws to

“ I think our Constitution is the finest gift to the young people of Montana that is within our power to give. ”

—JIM GARLINGTON, DELEGATE FROM MISSOULA

FIGURE 21.9: Even to the last moment, no one knew whether some of the delegates would sign the constitution—but they all did. Later, Bob Campbell, pictured here, said signing Montana’s 1972 constitution was one of the most important moments of his life.



comply (go along) with the constitution. And in many cases, people had to organize to force some changes to happen.

Laws Changed to Match the Constitution

Right away the state legislature got busy updating laws to match what the new constitution said. The 1973 legislature passed some important environmental bills to help protect Montana's clean and healthful environment:

- The **Montana Water Use Act** established water rights within the state.
- The **Major Facility Siting Act** oversees the environmental impacts of power plants and transmission lines.
- The **Montana Strip and Underground Mine Reclamation Act** requires mining companies to restore the land to its original contours after mining.

These laws have changed over time, but they still help protect Montana's environment for the people.

A few years later, the legislature updated the sunshine laws. New versions of these laws guaranteed the people's right to attend meetings, read documents, and know what their government's employees are doing.

Over time the state caught up to other provisions of the new constitution. To comply with the constitution's guarantee of equal rights, the state created a Human Rights Bureau and an Equal Employment Opportunity Bureau. These are only a few examples of the changes that the constitution brought to Montana.

People Had to Fight for Some Changes

Some changes did not happen right away. For example, it took a long time to include American Indian history and culture in Montana's education system. The 1973 legislature passed a law called the Indian Studies Law. It required teachers on or near Montana's Indian reservations to study American Indian history and culture so they would be able to teach about Montana's Indians in their classrooms. But many people disagreed over how to make the law work.

FIGURE 21.10: In the 1960s employers did not have to hire women, even if they were as qualified as men. The Equal Employment Opportunity Bureau helped fulfill the new constitution's promise by making sure employers did not **discriminate** (be unfair). Today women like Yates Colby, a Hamilton-area electrician, are increasingly entering professions formerly reserved for men.



A later legislature struck down that law and made Indian studies voluntary.

Through the 1980s and 1990s more Indian people served in the legislature and on advisory committees. They pushed harder for Indian education. In 1989 the state Supreme Court declared that schools must teach Indian history and culture. Still the legislature failed to provide any funding for the program.

In 1999 Carol Juneau, a Mandan-Hidatsa legislator from the Blackfeet Reservation, pushed through the Indian Education for All Act, which requires Montana's schools to teach about Indian cultures responsibly and respectfully. The legislature funded it in 2005. It took 33 years and many efforts to turn the constitution's promise of Indian education into a reality. Today Montana's Indian Education for All program is a model for other programs around the country.



FIGURE 21.11: Montana's constitution says that it is important not only to celebrate and nurture our American Indian cultures but to teach about them in schools. Here Dora Rides Horse teaches a traditional Crow song to students at Crow Agency School.

Courts Interpret the Constitution

Sometimes people have to take issues to court to decide what the constitution's provisions really mean. On these questions the Montana Supreme Court gets the final say.

For example, one statement in Article 9 requires the state to protect the environment from degradation and to make sure any lands disturbed to take natural resources are reclaimed. Does this mean the state must provide for cleanup after a natural resource has been polluted? Or is the state responsible for preventing pollution in the first place?

A key Montana Supreme Court decision came in 1999. The state government gave the Seven-Up Pete gold mine a permit to dump water containing toxic levels of **arsenic** (a trace metal that is poisonous in large concentrations) into the Blackfoot River. Two environmental groups sued the state, claiming that the state had violated its own constitution by allowing the pollution in the first place. The state responded that just requiring cleanup was enough.

The Supreme Court sided with the environmental groups. "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** [called upon]," wrote Justice Terry Triewailer. This decision means that the state is responsible not only for fixing polluted areas but for preventing pollution from happening.

Some Changes Came in Unexpected Ways

The constitution helped create some laws that even its writers could not have predicted. For example, Article 9 of the constitution says that all waters within state boundaries are owned by the state for the use of the people. Yet, in the 1980s, two landowners—one on the Dearborn River and one on the Beaverhead River—tried to prevent people from using the river where it passed through their land. A group of citizens joined together to take the issue to court.

In 1984 the Montana Supreme Court ruled that the public has a right to use and enjoy any stream or river capable of recreational use, no matter who owns the land around it. The right to use that stream or river, however, does not include a right to cross private lands to get to it. In 1985 the legislature wrote this decision into law.

The Stream Access Law gives all Montanans the right to float rivers and fish from riverbanks below the **high-water mark** (the mark on the riverbank below which the water has washed away most of the vegetation). This law, a direct result of Article 9 of the constitution, has been important to hundreds of thousands of Montanans who float, fish, guide, and sightsee along its rivers every year without having to pay or ask permission from every landowner along the way.

FIGURE 21.12: The Stream Access Law means that Colin Shirley, shown here on the Dearborn River, can fish as long as he stays below the high-water mark. Vegetation doesn't grow below the high-water mark, so as long as Colin stays on the rocks, he is within the law.

Montanans Will Define Their Own Future

Thirty years after the constitutional convention of 1972, Anaconda delegate Wade Dahood said he thought it was “the most important political event of the 20th century.” “I was part of it,” he said. “I’m proud of it, and I’ll always consider that the greatest 56 days of my careers as a lawyer and as a citizen of this state.”

The 100 delegates to the constitutional convention wanted Montanans of every generation to have a say in shaping state government. They instructed the state to ask the voters every 20 years if they want to hold a new constitutional convention. In 1990 citizens voted on whether or not to call a new convention. They overwhelmingly answered “no”—by 82 percent. The next vote will come up in 2010.

Someday a new generation of Montanans may draft a new constitution for Montana. Perhaps you will even help write it.



How It Worked

Why We Have the Bob Marshall Wilderness

Bob Marshall liked to hike. When he came to Montana as a young man in the 1920s, he would go on 30-mile day hikes and 100-mile backpack trips. What he loved most was being able to go out for days without crossing a road or fence or running into a town.

Bob Marshall was one of the first wilderness **advocates** (supporters) in Montana. Later, when he moved back east, he wrote a paper called “The Problem of Wilderness” to bring attention to the importance of wilderness to American culture. He defined wilderness as land where there is no motorized transportation and no humans living there permanently.

At that time many Americans saw the land as the supplier of water, food, timber, metals, minerals, and other natural resources. Not many people thought about the value of preserving wilderness for its own sake. But Marshall did. He and some other influential advocates of wilderness created the Wilderness Society, an organization that worked to preserve some of the nation’s most beautiful, undeveloped landscapes.

“Wilderness is melting away like some last snowbank on some south-facing mountainside during a hot afternoon in June,” he wrote in *Nature* magazine.

FIGURE 21.13: The Bob Marshall Wilderness Complex preserves 2,400 square miles of Montana landscape for future generations.



Marshall became Chief of the Division of Recreation and Land for the U.S. Forest Service. In this position he **designated** (selected and classified) 5.4 million acres of American forestland as wilderness areas to be protected from development.

Marshall had strong beliefs but a weak heart. He died in 1939 at age 38. A year later the federal government created the 1-million-acre Bob Marshall Wilderness Area in Montana. It was one of the first designated wilderness areas in the country.

In 1964 Congress passed the Wilderness Act, which put wilderness areas like the Bob Marshall under permanent protection. Montana senator Lee Metcalf **championed** (led) the effort. (Later, the Lee Metcalf National Wildlife Refuge in the Bitterroot Valley was named after him.) The Wilderness Act also allowed citizens to get involved in creating wilderness areas.

In the late 1960s a Lincoln hardware store owner named Cecil Garland decided that the dramatic landscape of Montana's Rocky Mountain Front Range should be designated a wilderness area. He worked with the Wilderness Society to create the 240,000-acre Scapegoat Wilderness Area along the Continental Divide. In 1972—the same year as the constitutional convention—the Scapegoat became the first wilderness area created by citizens themselves.

In 1978 the Great Bear Wilderness Area was established. Now the Great Bear, the Scapegoat, and the Bob Marshall are together considered the Bob Marshall Wilderness Complex. They include 1.5 million acres of land—2,400 square miles—with no roads, fences, or permanent human habitation. A recent visitor called the Bob Marshall Wilderness Area “God’s greatest cathedral.” Most Montanans just call it “the Bob.”

The grandeur of “the Bob”—and of all Montana’s wilderness areas—remains protected for everyone to enjoy on foot, horseback, canoe, or raft. Preserving Montana’s natural landscape is one way citizens can make their world better for future generations.

FIGURE 21.14: Bob Marshall thought one of the best things in life was to walk for several days without seeing a road, a town, or even another person. This hiker, on a fishing trip in the Bob in the 1960s, possibly felt the same way.



CHAPTER 21 REVIEW

► CHECK FOR UNDERSTANDING

1. Identify: (a) North Central Power Study; (b) Leo Graybill Jr.; (c) Declaration of Rights; (d) Stream Access Law
2. Define: (a) preamble; (b) grassroots; (c) amendment; (d) reapportionment; (e) delegate; (f) veto; (g) ratify
3. What two mining-related events affected Montanans in 1971?
4. What was the main difference between the priorities of the 1889 constitutional convention and those of the 1972 convention?
5. How had Montanans fixed some of the problems with the 1889 constitution?
6. How had the **demographics** (statistics characterizing human populations) of Montana changed since 1889?
7. What important ruling did the U.S. Supreme Court make in 1964?
8. What were some of the themes of the new constitution?
9. What are “sunshine laws”?
10. Describe how the 1972 constitution affected the following areas: (a) education; (b) equal protection; (c) Indian heritage; and (d) the environment.
11. What is the purpose of the trust funds?
12. Describe the history of the laws governing the teaching of Indian history and culture in Montana’s public schools.

► CRITICAL THINKING

1. The writers of Montana’s 1972 constitution had different priorities than the writers of the 1889 constitution. How do these differences reflect our changing values? What might account for the change?
2. You have learned from your reading that the authors of the 1972 constitution were not professional politicians. Do you think this was a positive or negative circumstance?
3. You read in the text that many states have used Montana’s constitution as a model for their own and that many scholars call it the most progressive constitution in the nation’s history. Why do you think the constitution has received such praise?

4. The constitution guarantees a “clean and healthful environment,” and both the state and federal governments have passed many laws to protect the environment. Why are there so many laws addressing this issue? Do you think there are too many restrictions on development and land use or are more needed?

► PAST TO PRESENT

1. Republicans, Democrats, and Independents worked remarkably well together during the constitutional convention. This contrasts with recent legislatures, where conflict between political parties has increased. What do you think explains the difference?

► MAKE IT LOCAL

1. Research a delegate to the constitutional convention from your community. What was his or her background? What issues did he or she care about and on which committees did he or she serve?

► EXTENSION ACTIVITIES

1. Make a chart comparing Montana’s Declaration of Rights with that of the U.S. Constitution’s Bill of Rights. What are some of the most important differences? How are they similar?
2. Write a constitution for your class. Brainstorm some themes you would like to see in your constitution. Then divide into committees to write laws governing these ideas. Students may wish to “testify” in front of committees on which they do not serve.
3. Currently, there are seven “wilderness study areas” (WSAs) in Montana. These are areas that some people think should be designated as wilderness. Create a map showing the wilderness areas currently protected in Montana. Research the laws governing wilderness areas and gather information about one of the WSAs. Then hold a classroom debate on whether it should be formally designated as wilderness.

Credits

The following abbreviations are used in the credits:

BBHC Buffalo Bill Historical Center, Cody, Wyoming
GNPA Glacier National Park Archives
LOC Library of Congress
MAC Montana Arts Council, Helena
MDEQ Montana Department of Environmental Quality, Helena
MDT Montana Department of Transportation, Helena
MFWP Montana Fish, Wildlife and Parks, Helena
MHS Montana Historical Society, Helena
MHSA Montana Historical Society Archives, Helena
MHSL Montana Historical Society Library, Helena
MHS Mus. Montana Historical Society Museum, Helena
MHS PA Montana Historical Society Photograph Archives, Helena
MSU COT Montana State University College of Technology, Billings
NMAI National Museum American Indian, Smithsonian Institution, Washington, D.C.
MSU Billings Special Collections, Montana State University Billings Library
NARA National Archives and Records Administration
NPS National Park Service
NRIS Natural Resource Information System, Montana State Library, Helena
SHPO State Historic Preservation Office, Montana Historical Society, Helena
TM Travel Montana, Helena
UM Missoula Archives & Special Collections, The University of Montana-Missoula
USDA United States Department of Agriculture
USFS United States Forest Service
WMM World Museum of Mining, Butte

Chapter 21

- FIG. 21.1 *The Rosebud River*, R. E. DeCamp, MHS Mus.
- FIG. 21.2 National Sacrifice Area sign, photo by Terrence Moore, Northern Plains Resource Council
- FIG. 21.3 Bumper sticker, MHS Mus. 1987.25.05
- FIG. 21.4 Montana's State Senate Districts after Reapportionment, map by MHS based on map in *Secretary of State, 1966 Montana Election Information* (Helena, MT, 1965), pg. 2, Vertical File "Elections General 1966," MHSL
- FIG. 21.5 Women delegates to the Constitutional Convention, photo by MT Highway Dept. photographer, November 30, 1971, MHS PA PAc 86-15.71216-1
- FIG. 21.6 Chelsea Carlson waiting to testify, photo by George Lane, *Helena Independent Record*, February 17, 2005
- FIG. 21.7 Ray Walker at the Martin Luther King Day gathering on January 16, 2006, photo by David Grubbs, Stephen Brashear and MSU-B News Service, *Billings Gazette*
- FIG. 21.8 Grasshopper Creek, photo by Rick Graetz, courtesy FWP
- FIG. 21.9 Robert Campbell, delegate to MT Constitutional Convention, 1971-72, MHS PA 952-254
- FIG. 21.10 Yates Colby, ©Trevon Baker Photography

- FIG. 21.12 Dora Rides Horse, photo by James Woodcock, courtesy *Billings Gazette*, August 24, 2006
- FIG. 21.12 Colin Shirley fishing on the Dearborn River, photo by Steve Shirley
- FIG. 21.13 Bob Marshall Wilderness, photo by Cal Tassihari, Swan Ecosystem Center, www.wilderness.net
- FIG. 21.14 Packing in to fish at Areo Lake, MT, photo by Bill Browning, Helena, MHS PA PAc 2002-62.P1A-385