

Where did Montana's "Green Amendment" Come From?

For much of its history, Montana has been subjected to a kind of rough-and-tumble frontier justice that sometimes gets it right and sometimes not so much. A new Constitution changed all that in 1972.

Wilbur Sanders is one example of hit or miss justice. In 1863, [he was a successful prosecutor at the below-zero, outdoor jury trial in Virginia City, which convicted and hanged George Ives for murder.](#) Weeks later, he was an organizer for vigilantes who took the law into their own hands and hanged Montana's first elected official, [Henry Plummer](#), and 21 others. He went on to found the Montana Historical Society and serve as a U.S. Senator. His statue graces the grand staircase in the Montana Capitol.

Later, during the Copper King era, a judge's decision might hinge more on the bag of money or whiskey that was thrown in over the transom to his office than the law regarding the true ownership of an ore body beneath the richest hill on Earth.

One of the Copper Kings, William Andrews Clark, again epitomizes the topsy-turvy nature of Montana justice. [Clark bribed his way to his election in 1899, but the U.S. Senate refused to seat him.](#) He was elected again a short time later, and he served one term as U.S. Senator. "I never bought a man who wasn't for sale," Clark reportedly said afterwards.

At the very same time this bold corruption was taking place, however, a lawsuit by Deer Lodge Valley ranchers worked its way through Montana's courts. The ranchers were victims of the "tall stack syndrome," where arsenic and other toxic emissions from the Wahoe Smelter rose up out of the smokestack and distributed themselves far and wide with the winds. [Montana historian, K. Ross Toole](#) says that hay production decreased roughly 75 percent. Nick Bielenberg, who owned 5,800 acres 12 miles from the Washoe, had to move his herds to the Big Hole Valley after he lost 1,000 cattle, 800 sheep, and 20 horses. The federal government under Theodore Roosevelt intervened. The lawsuit finally had its day in court, and, in 1910, the Anaconda Company settled and began arsenic abatement on its smelter. Dr. Toole called it one of the first successful public health environmental lawsuits in the nation.

The chairman of the convention that wrote Montana's original Constitution, which was drafted hastily in 1889 as a requirement to achieve statehood, was none other than William Andrews Clark. [This document passed muster as far as qualifying Montana for statehood, but, as the years passed, its weaknesses surfaced.](#) Eventually, in the 1960s, the Legislature directed a study, which said the original Constitution was "like the mansions of [the 1880s] — massive, rambling and adorned with gingerbread." Among other things, it established an unaccountable executive branch, some 160-plus state boards and commissions, and a confusing chain of command. It was time for a change.

Nationally, the early 1970s saw Americans end the Vietnam War, establish Earth Day, and create the Environmental Protection Agency. Republican Richard Nixon was proud to sign bipartisan legislation such as the Clean Air Act, the Clean Water Act, and the Endangered Species Act, which, since then, has prevented the extinction of some 291 species.

Not to be outdone, [65 percent of voters in Montana empowered a constitutional convention to create a new constitution in 1972](#). In the spirit of the time, they approved a “green amendment” to the Constitution that gives Montanans a right to a “clean and healthful environment.” Montana is one of five states with this explicit right. [This right is one among 35 separate rights](#) such as the right to vote and the right to carry a gun guaranteed by the new Montana Constitution.

Montanans like the new constitution, voting to reject a new constitutional convention question by a vote of 82 percent in 1990 and 59 percent in 2010. Since 1972, the Montana Supreme Court has called the “clean and healthful” amendment a “fundamental right, which warrants strict scrutiny,” meaning that it’s very hard for the State to limit this right. Moreover, Article IX of the Constitution makes this right something active, something to “maintain and improve . . . for present and future generations.”

The Held decision does exactly that.