



TREASURE STATE
RESOURCE INDUSTRY ASSOCIATION

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TSRIA NEWS
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Breaking News: Statement by Bob Stallman, President, American Farm Bureau Federation, Regarding Nationwide Stay of Waters of the U.S Rule

Washington, D.C. , October 9, 2015 – “A federal court today ordered the EPA to stop enforcement nationwide of the Waters of the United States rule. The American Farm Bureau Federation is pleased the Sixth Circuit recognizes that this rule has serious flaws and cannot go forward until the courts have had an opportunity to understand its effect on farmers, ranchers and landowners of all kinds.

The judges expressed deep concerns over the basic legality of this rule. We’re not in the least surprised: This is the worst EPA order we have seen since the agency was established more than 40 years ago. The court clearly understood our arguments.

We are confident that the courts will strike down this rule. Unfortunately, we also know stay’s don’t last forever, and cases like this almost always take years to win. So we again ask the Senate to pass legislation to nullify this rule just as the House has already done. Farmers and ranchers cannot afford to wait.”

(Statement provided courtesy of Nicole Rolfe, Montana Farm Bureau Federation)

In explaining the decision, U.S. Sixth Circuit Court of Appeals Judge McKeague wrote: *A stay allows for a more deliberate determination whether this exercise of Executive Power, enabled by Congress and explicated by the Supreme Court, is proper under the dictates of federal law. A stay temporarily silences the whirlwind of confusion that springs from uncertainty about the requirements of the new Rule and whether they will survive legal testing. A stay honors the policy of cooperative federalism that informs*

the Clean Water Act and must attend the shared responsibility for safeguarding the nation's waters. See 33 U.S.C. Section 1251(b) ("It is the policy of Congress to recognize, preserve, and protect the primary responsibilities of the States to prevent, reduce and eliminate pollution.") In light of the disparate rulings on this very question issued by district courts around the country – enforcement of the Rule having been preliminarily enjoined in thirteen states – a stay will, consistent with Congress's stated purpose of establishing a national policy, 33 U.S.C. Section 1251(a), restore uniformity of regulation under the familiar, if imperfect, pre-Rule regime, pending judicial review.

TSRIA Elects New Leaders

At its 2015 Annual Business Meeting in Whitefish, TSRIA elected new officers for 2016-2017. They are: **President – Todd O'Hair, Cloud Peak Energy; 1st Vice President Jay Bodner, Montana Stockgrowers Association; 2nd Vice President Mark Baker, ABS Legal; and Secretary/Treasurer Steve Wade, Browning, Kaleczyc, Berry & Hoven. Immediate Past President Barb Ranf, BNSF** will continue to serve as a member of the association's Executive Committee. In addition to the officers, several members of the Board were re-elected for a 3-year term. They were: Bud Clinch, Montana Coal Council; Neil Colwell, Avista Corporation; David Hoffman, Talen Energy; Barb Ranf, BNSF and Chuck Roady, F.H. Stoltze Land & Lumber Company. TSRIA welcomed two new Board members: John Roeber, Montana State Building & Construction Trades Council and Bill Ryan, IBEW Local #44.

Annual Meeting Highlights

Attendees at TSRIA's annual meeting held September 22-23 in Whitefish enjoyed great Montana Fall weather as they heard the latest on key issues affecting resource development. Trent Howard from KLJ Engineering caught attendees up on development in the Bakken, noting that new technology and management practices pointed to a cautiously optimistic future for the oil and gas industry. BLM Director Jamie Connell provided additional perspective on the previous day's announcement that the Sage Grouse would not be listed as an Endangered Species. While it was good news for all concerned, resource management plans will still result in more restrictions on development. All who use BLM lands for development or recreation should stay engaged as those plans are implemented.

Attorney Peter Scott, who represented the Montana Association of Counties in the recent challenge to the Waters of the U.S Rule reviewed the recent decisions by the judge in North Dakota and what might lie ahead. For now, the new rule cannot be implemented in Montana.

Members of several legislative interim committees offered an update on their activities. The Energy and Telecommunications Interim Committee (ETIC), and more specifically the 111(d) Subcommittee made up of members from both the ETIC and Environmental Quality Council was represented by Representative Keith Regier. He spoke of their commitment to being actively involved in the development of Montana's "Clean Power Plan", noting the potential impact on Montana's economy. Sens. Chas Vincent, Mark Blasdel and John Brenden touched on the work

of the Water Policy Interim Committee, Revenue and Transportation Interim Committee and Environmental Quality Council respectively.

That was followed with a stellar panel on the Clean Power Plan with Dave Klemp, DEQ Air Quality Bureau; Gordon Criswell, Talen Energy (Colstrip); Bud Clinch, Montana Coal Council; and Bill Pascoe, Pascoe Energy Consulting. While each offered a different perspective, the far-reaching impacts of this proposal could not be downplayed in terms of reliability for the power grid and potential increase in consumer costs, nor could the challenge of developing a plan that meets the EPA requirements. The Governor has not yet announced the formation of the much-anticipated Clean Power Plan Advisory Group that will be made up of various stakeholders.

A highlight of the program was a presentation by communication's consultant Jessica Sena on the use of social media in educating the public about industry, particularly the "people" perspective in terms of jobs and importance to local communities. Jessica demonstrated a little humor can go a long way in helping promote the importance of resource development to our state. Jessica also captured TSRIA meeting highlights for our Facebook page.

Of course, it would not be a TSRIA Annual Meeting without the annual golf scramble. Golfers enjoyed a spectacular day at the Northern Pines Golf Course. This year's winning team, and recipient of the Mike Pichette Cup, was made up of Mark Baker, Sen. Bruce Tutvedt, Bill Ryan and Joe Peterson. **A big thank you to Tom Ray**, Plum Creek Timber who chaired the event and made sure things ran smoothly.

TSRIA appreciated the help of our generous meeting sponsors who helped make the event possible. They were: **BNSF Railway, Cloud Peak Energy, Plum Creek, Bison Engineering, Browning, Kaleczyc, Berry & Hoven; MDU Resources, NorthWestern Energy, Calumet Montana Refining, ABS Legal, Denbury Resources, Energy Laboratories, Great Northern Properties, and the Montana Contractors' Association.** We couldn't do it without you!

Governor Bullock, Secretary Jewell, Western Governors Announce Sage Grouse Does Not Warrant Listing On Endangered Species Act

FOR IMMEDIATE RELEASE: September 22, 2015

CONTACTS: Dave Parker, Communications Director, 444-9844 and Mike Wessler, Deputy Communications Director, 444-9725

Denver, CO. – (Montana) Governor Steve Bullock today joined Secretary of the Interior Sally Jewell and other western governors to announce that the U.S. Department of Interior has decided the Great Sage-grouse does not warrant protection under the Endangered Species Act. The decision ensures that states will continue to oversee management of the bird.

“Today’s announcement is good for our state, our economy, and this iconic bird. Montana’s Sage-grouse management plan is the right path forward in a state where 60 percent of the bird’s habitat is privately owned,” Bullock said. “This decision shows that when Montanans from diverse viewpoints put aside their differences, and focus on addressing a challenge, we can accomplish great things for our state.”

The announcement comes in large part as a result of intense work by Bullock and the Montanans he worked with to improve management of the bird. In the first weeks of his term, Bullock issued an executive order to establish a Greater Sage-grouse Advisory Council, which he tasked to create a statewide management plan for the bird. Through the council, Bullock brought together diverse stakeholders on this issue including representatives from conservation, sportsmen, energy development, agriculture and ranching, tribes, local governments and the legislature.

He subsequently worked with a bipartisan coalition of lawmakers in the 2015 legislative session to secure funding for the management plan crafted by the Council. The US Fish and Wildlife Service used this plan to consider whether federal protection of the bird would be necessary...

“This decision respects private property rights, and ensures that Montana ranchers, farmers, and landowners will continue to have a voice in the management of this bird, “ said Errol Rice, Executive Vice President of the Montana Stockgrowers Association. “I thank Governor Bullock for stepping up to the plate to bring diverse viewpoints to the table to focus on a solution that is in the best interest of Montana and this iconic bird”...

“We appreciate the efforts and leadership from Governor Bullock to ensure that management of the Sage-grouse remains in state hands, “ said Dave Galt, Executive Director of the Montana Petroleum Association. “The decision today recognizes the strength of Montana’s efforts to protect Sage-grouse and is a victory for Montana’s private landowners as well as our economic opportunities and quality of life.”

So What Happens Next With Sage Grouse?

The Montana Sage Grouse Habitat Conservation Program sets forth Montana’s Conservation Strategy for the conservation, regulatory protection, and management of sage grouse. The program is located in the Department of Natural Resources, but works collaboratively with all interests, private landowners, and agencies, with oversight by the Montana Sage Grouse Oversight Team.

Per Governor Bullock’s Executive Order No. 12-2015, the Montana Sage Grouse Habitat Conservation Program shall be completed and operational in all respects no later than January 1, 2016. The Executive Order further explains that:

The role of the Program is to provide guidance to, exchange information with, seek input from, and consult with state agencies and other instruments of state government during permitting and other authorizations, or during consultation, or technical, financial or other assistance for non-regulated activities; administration of applicable Executive Orders and attachments (including application of the Density Disturbance Calculation Model) and Senate Bill 261 passed during the 2015 Legislative Session (Conservation Strategy).

The **Montana Sage Grouse Oversight Team (MSGOT)** was created by Executive Order 10-2014, and further defined by the 2015 Legislature through Senate Bill 261, the Montana Greater Sage Grouse Stewardship Act, and Executive Order 12-2015. The Team's role is to oversee administration of the Montana Sage Grouse Habitat Conservation Program and implement Montana's Sage Grouse Conservation Strategy. The Executive Order states that: *Where appropriate, and to minimize or streamline processes associated with implementation of the Conservation Strategy, MSGOT will recommend adoption of best management practices to the Governor.*

The Conservation Program will provide for appropriate mitigation, including compensatory mitigations (financial, off-set, or off-site). All new land uses or activities that are subject to state agency review, approval, or authorization, shall follow these sequencing provisions: avoid, minimize, reclaim, and compensate as appropriate. Mitigation shall be required even if the adverse impacts to sage grouse are indirect or temporary. A variety of mitigation tools may be used, including conservation banks, habitat exchanges and approved conservation plans. All mitigation must be consistent with the United States Fish and Wildlife Service's Greater Sage-Grouse Rangeland Mitigation Framework.

Existing land uses and activities (including those authorized by existing permit but not yet conducted) shall be recognized and respected by state agencies, and those uses and activities that exist at the time the Conservation Program becomes effective will not be managed under the stipulations of the Conservation Strategy. Provided these uses and activities are within a defined project boundary they may continue within the existing boundary even if they exceed the stipulations of the strategy.

Only those activities on private lands for which state agencies are vested with discretion by state or federal statute to review approve, or authorize are subject to consistency review for compliance with the Program.

The Team implements the Conservation Strategy through members' respective agencies and programs. Team members are: Tom Livers, Director, Montana Department of Environmental Quality; Jeff Hagener, Director, Montana Fish, Wildlife and Parks; Jim Halvorson, Administrator, Montana Board of Oil and Gas; Senator Matt Rosendale, SD 19 Glendive, Montana; Tim Baker, Governor's Office; John Tubbs, Director, Montana Department of Natural Resources and Conservation; Mike Tooley, Director, Montana Department of Transportation; Diane Ahlgren, Montana Rangeland Resources Committee, and Rep. Mike Lang, HD 33 Malta, Montana.

The new Sage Grouse Program Manager is Carolyn Sime. She can be reached at 406-444-0554 or via email at csime2@mt.gov. Meetings of the MSGOT are open to the public and comment may be taken on topics under consideration. Their next meeting is scheduled for **November 17, 2015 from 1:00 to 4:30 pm. at the DNRC Land Office Conference Room.**

The MSGOT is interested in hearing from stakeholders as they continue to refine the Program. Rules for mitigation and/or the grants program will likely be discussed at the November meeting. In addition to suggested language, the MSGOT would benefit from learning more about “real world examples” that illustrate how projects might be impacted by the Conservation Strategy.

The future impact on BLM Plans is yet to be determined. According to an Associated Press article published in the Helena IR on September 23, 2015:

Montana officials are relieved by the Interior Department's decision not to recommend endangered species status protections for the greater sage grouse, but they are critical of the new conservation plans meant to protect the bird's habitat on federal lands. The final amendments to the U.S. Bureau of Land Management's land-use plans were released Tuesday along with the Interior Department's announcement that more sweeping protections aren't warranted. The BLM plans call for restrictions on 67 million acres throughout the West. About 9 million acres of sage grouse habitat in Montana are in federally controlled lands. Governor Steve Bullock has criticized the BLM plans as being more restrictive than the state's own sage group conservation plan. Bullock spokesman Mike Wessler says state officials will pressure the BLM to adjust its plans to make them more consistent with Montana's.

DEQ's Asbestos Advisory Group Update

The Asbestos Advisory Group created by the MT Department of Environmental Quality for purposes of reviewing and offering recommendations to the Department for revising or updating the current regulatory structure met for a second time on October 7th. The group approved the revised charter and operating procedures and heard presentations from DEQ staff regarding the different federal and state statutes and rules that govern asbestos. Going forward, the Advisory Group members will be tasked with serving on work groups that will delve more deeply into the areas identified in HB 434 for purposes of doing additional research and/or getting input from other stakeholders. The next meeting is set for November 5, 2015 from 1:30 – 3:30 pm. Those interested can find Agendas, Minutes and other applicable documents on the DEQ website at http://www.deq.mt.gov/asbestos/advisory_group.mcp. The Advisory Group is charged with reporting any recommendations to the DEQ Director by the end of 2016.

TSRIA is represented on the Asbestos Advisory Group by Executive Director Peggy Trenk, as well as Dave Galt, the Executive Director of the Montana Petroleum Association. As recommendations are developed, TSRIA will seek input from interested members. Anyone

wishing to serve on an informal TSRIA Asbestos Work Group should contact Peggy Trenk at 461-9945 or by email at ptrenk@tsria.net.

In the meantime, it is anticipated that DEQ will withdraw MAR Notice No. 17-371 which among other things proposes increases in permit fees for the asbestos program. Currently public comment on the rules is scheduled to close on November 2, 2015. Please check the DEQ website for any updated information regarding that notice.

Interim Legislative Committees – All Eyes are on the Clean Power Plan

The Environmental Quality Council, Water Policy Interim Committee, Energy and Telecommunications Interim Committee and Revenue and Transportation Interim Committee all met in September to continue refining their work plan. Work plans and other materials can be found on the Montana Legislature's website. Those Committees will not meet again until January.

Perhaps of greatest interest was the first meeting of the 111d Subcommittee that is tasked with following the development of Montana's plan for implementing the final Clean Power Plan rule. The Subcommittee met on September 10th and heard initial reactions from the Department of Environmental Quality, the Montana Public Service Commission and the Montana Consumer Counsel. DEQ is just beginning work on the draft plan and is expected to be guided by an Advisory Group of interested stakeholders that will be appointed by the Governor in the near future. The PSC and Consumer Council expressed initial concern about the potential impact on both the power grid and consumers. Many in attendance either formally or "unofficially" noted the significant economic impact the rule could have on Montana and particularly on Colstrip. The Subcommittee will meet again on January 14, 2016.

In the meantime.....some "interstate" conversation in Spokane set for October 28th

On a different, but closely related matter, representatives from the Energy and Telecommunications Interim Committee and the Environmental Quality Council will be attending a meeting in Spokane, Washington to discuss matters related to Colstrip Units 1 and 2.

Earlier this year the Washington Legislature considered bills that would allow electrical companies to petition the Washington Public Utility and Transportation Commission for approval to acquire and decommission one or more coal-fired generating units, like the Colstrip Units 1 and 2. The bills didn't pass, but the Commission is assessing the economic risks of continued operation of certain coal-fired generating units included in Washington utility rates and is investigating the costs of closing Colstrip Units 1 and 2.

The Montana ETIC sent comments to the WPUTC discussing the potential decommissioning and remediation costs of closing the Colstrip units as well as the tax implications and other economic impacts to Rosebud County.

The Washington Legislature is also taking steps to discuss the closure of Colstrip Units 1 and 2. The Washington Senate Energy Committee has scheduled a work session in Spokane on October 28th to which Montana legislative representatives have been invited to participate. Senators Duane Ankney, Cliff Larsen, Jim Keane and Rick Ripley will be attending.

The October 28th meeting will be held at the Davenport Grand Hotel in downtown Spokane and will run from 8 am. to 12 Noon. It is open to the public, but only those invited by the Committee will be allowed to speak. Anyone interested in attending can contact the Davenport Grand Hotel at 509-458-3330 to make a room reservation. The group rate for the room block is \$96.00 for October 27th only while they last. Let the reservation staff know you are with the Washington State Senate: Energy, Environment and Telecommunications Committee.

(Source: The Interim Newsletter published by the Montana Legislative Council)

Upcoming Events/Dates

October 16, 2015 Board of Environmental Review Helena, MT
November 8-11, 2015 MT Farm Bureau Federation Annual Convention Missoula, MT
December 1-3, 2015 MT Grain Growers Association Annual Convention Great Falls, MT
December 2, 2015 MT Taxpayers Association Annual Meeting Great Northern Hotel, Helena, MT
December 3-5, 2015 MT. Stockgrowers Association Billings, MT