



# TREASURE STATE RESOURCES ASSOCIATION OF MONTANA

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## TREASURE STATE RESOURCES ASSOCIATION NEWS April, 2016

### **New Association Website Launched**

As reported last month, TSRA has a new website. Remember to check it out at: [treasurestateresources.org](http://treasurestateresources.org). We'd like to build the "library" of resources that would be helpful for members or others using the site. If you have studies or reports that shed light on issues that matter to our members, please forward those to [ptrenk@tsria.net](mailto:ptrenk@tsria.net). Also, if your organization or company is holding meetings or conferences that might be of interest, we can add those to the calendar. The site links directly with our Facebook page so the latest news will be posted regularly.

### **DEQ Notices TWO Important Public Comment Process re: Water Quality - Members are Encouraged to Review and Comment**

#### **Draft 2016 Water Quality Integrated Report**

The Montana Department of Environmental Quality is accepting public comment on Montana's 2016 Draft Water Quality Integrated Report. The report documents the state's water quality conditions for the years 2013 – 2014 as required by the federal Clean Water Act. Comments will be accepted during a 60-day comment period from March 14- May 13, 2016.

The entire report can be viewed at [cwaic.mt.gov](http://cwaic.mt.gov). Comments on the report should be submitted electronically via the Public Comment link available from this site or mailed to: Integrated Report Coordinator, Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-

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0901. DEQ cannot guarantee that comments received after the May 13 closing date will be considered in developing the final report.

The Integrated Report summarizes the current water quality status and trends for water bodies under the jurisdiction of the State of Montana, including lakes, reservoirs, rivers and streams. It does not include waterbodies on tribal lands. It also contains a summary of state water quality information and an overview of Montana's water pollution control efforts.

A schedule for preparing water quality improvement plans, known as TMDLs, is included in the report's Appendix B, the 303 (d) list. This sub-set of waters is not fully supporting one or more beneficial uses. A TMDL is a plan for restoring and protecting water quality.

DEQ prepares this report every two years for EPA approval. Comments from the public and interested parties will be used to prepare the final report for submittal to EPA. The draft report, appendices, assessment of information, and an interactive map can be viewed at DEQ's Clean Water Act Information Center site: [cwaic.mt.gov](http://cwaic.mt.gov). Anyone experiencing problems accessing this site should contact the Montana Integrated Report Coordinator, Pam Arroues, by phone at (406) 444-6763.

*Editor's Note: Why does this matter? Just as one example, if you've been following the effort to draft rules to implement SB 325 (referenced later in this newsletter), you might recall that one of the discussion items has been how streams that have been "misclassified" on the 303 (d) list might be addressed. Making sure water bodies are properly classified earlier, rather than later, could pay dividends down the road in terms of future projects or activities in those areas.*

## **Water Quality Standards Triennial Review**

On June 3, 2016, the Board of Environmental Review (Board) will hold a public hearing during its regularly scheduled meeting at 9:00 am. in Room 111 of the Metcalf building at 1520 E. 6<sup>th</sup> Avenue, Helena, Montana. The purpose of the public hearing is for the Board to solicit comment from all interested persons on any aspect of Montana's water quality standards that a person believes the board should consider for potential revision.

Montana's water quality standards include the Administrative Rules of Montana Title 17, Chapter 30, subchapters 5 (mixing zones), 6 (water quality standards), 7 (nondegradation), and 10 (groundwater protection), and Department of Environmental Quality (DEQ) Circulars DEQ-7 and DEQ-12. Also included is Montana's compliance schedule authorizing provision at ARM 17.30.1350. Comments should identify the water quality standard at issue, any suggested revision to the standard, and the basis for the suggested revision, including technical information.

You are invited to submit data, views or arguments concerning water quality standards either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Amy Steinmetz, Department of Environmental Quality, P.O. Box 200901, Helena, Montana,

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59620-0901; telephone (406) 444-0371; fax (406) 444-6836; or email: [asteinmetz@mt.gov](mailto:asteinmetz@mt.gov).

Comments may also be submitted on the DEQ website at:

<http://comment.cwaic.mt.gov/commentpage.aspx?cmntkey=tD1bnMl6Pu>. Comments must be received no later than 5:00 p.m., June 3, 2016.

*Editor's note: According to a report made by DEQ staff to the Water Pollution Control Advisory Council in March, some of the changes that the department is already looking at include: working with EPA to update all human health criteria in DEQ-7 using the new human exposure inputs for drinking water intake, body weight, and fish consumption; adopting criteria for Clothianidin, Glufosinate, Saflufenacil, Thiamethoxam, and Sulfentrazone (new pesticides found in groundwater); corrections to nitrate trigger values; and updated nutrient language in the introduction and in the footnotes of DEQ-7, and reference to DEQ-12, the department's aquatic life nutrient criteria document, for consistency and clarity.*

## **2016 Montana Energy Conference Recap**

The 2016 Montana Energy Conference wrapped up last week, but not before the audience heard from a wide range of presenters who despite the current challenges from low commodity prices, regulatory pressures, and a slowing economy overseas, spoke to a brighter energy future ahead and the role of technology in leading the way. One message that came through loud and clear was that coal would continue to be part of our energy mix, due in large part to its reliability.

The following are just a few comments that highlighted the week:

### **Ryan M. Lance, CEO ConocoPhillips**

"The same kind of innovative spirit that helped the United States regain the title of the world's leader in oil and gas production will also help the industry weather market downturns, says the chairman and chief executive officer of ConocoPhillips.

Over the past decade, horizontal drilling and hydraulic fracturing have unleashed a flood of new oil and gas production in the United States. Despite a year-long decline in prices, "The U.S. energy renaissance is here to stay," said Ryan M. Lance, a Montana native." Source: [Billings Gazette](#), 3.31.16 By, Tom Howard

### **Colin Marshall, CEO Cloud Peak Energy**

"Montana got about 89 million dollars from tax and royalties in coal last year and 52 of that was from Cloud Peak Energy," said Marshall.

"I think the future for coal in America is brighter than people think. Coal is not going to go away. I think we have to readjust to the level that we need to meet the society's desire to reduce emissions when the coal is burned." [Voices of Montana](#) Interview 3.30.16 (Northern Broadcasting)

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### **Karen Harbert, President and CEO Institute for 21<sup>st</sup> Century Energy**

“Montana is sort of a microcosm of about what’s happening all over the country on steroids, because you have all these abundant resources and you’ve got a quarter of our nation’s coal supply and coming right at you is the federal government,” said Karen Harbert, president and CEO of Institute for 21<sup>st</sup> Century Energy.

Harbert spoke on Wednesday (March 30) asserting there is dire implications of current and future regulations as well as not investing in technologies to improve quality coal...

“We’re a country that’s been blessed with abundant coal resources,” Harbert said. “The policy is to keep them in the ground. What the policy should be is continue to invest in those technologies that will improve the quality of our coal and ability to use it.”

Most recent data compiled in 2014 shows coal is the largest source of energy at 39 percent, natural gas is the second most used at 27 percent, while hydropower and wind make up slightly over 10 percent. [KTVQ.com](http://KTVQ.com) 3.30.16

### **Travis Kavula, PSC Commissioner & Bob Rowe, CEO NorthWestern Energy (Re: Colstrip)**

“Do you see at the moment any possibility for a deal to be done where NorthWestern, or any other utility, take those units and has some kind of arrangement to sell that production, either in a regulated manner or an unregulated manner to wholesale customers like the refineries?” asked Kavula.

“It’s certainly possible, given strategies the state could pursue if the industrial customers taking power were supporting it, Legislature was supporting it, the commission were supporting it,” Rowe said. “There are strategies that would allow a party, that could be us, could be someone else, to step into the role Talen now plays. But it is very inconsistent with the risk profile that we have and we think our customers want us to have. There are lots of risks that would have to be addressed.” [Independent Record](http://IndependentRecord.com), 4.1.16 By, Tom Lutey

**And the latest on Colstrip...**

## **Governor Bullock wants “working group” to look for potential Colstrip owners**

**Source: [cordilleramontana.worldnow.com](http://cordilleramontana.worldnow.com) 4.5.16**

HELENA – Governor Steve Bullock said Tuesday he’ll form a “working group” to explore whether NorthWestern Energy or others might buy three Colstrip power plants to ensure they keep operating.

The action comes just four days after Washington state enacted a law that enables Colstrip part-owner Puget Sound Energy to set up a fund to pay for costs of closing two of the plants if and when that happens.

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Washington Gov. Jay Inslee, in signing the law, said it's a step toward halting the consumption of coal-fired power in Washington state.

In an interview with MTN News, Bullock said instead of relying on out-of-state owners and political forces to decide the fate of coal-fired power plants in Colstrip, he wants to see whether options exist in Montana.

"I am concerned about the community, workers, and the valued electricity that is provided by those facilities both for in-state consumption by Montanans and for export to our neighbors," he said.

Bullock broached the subject in a letter to NorthWestern Energy CEO Bob Rowe, noting that the two had discussed the issue last week.

The governor acknowledged that Rowe conveyed "very real and understandable obstacles" to local acquisition of the Colstrip plants, but said he still wants to explore the possibility.

## **Legislative Interim Committee Update**

Many of the Montana Legislative Interim Committees met in March. The following is a synopsis of key issues taken up during the meetings:

(Sources Include the Legislature's April 2016 [Interim Newsletter](#))

### **Water Policy Interim Committee**

#### **Section 404 Permitting**

On March 7<sup>th</sup>, the Water Policy Interim Committee continued its study of the possibility for Montana to assume management of the Army Corps of Engineers 404 permitting programs. A permit is required anytime someone places dredge or fill in any jurisdictional water body.

Legislative staff prepared a preliminary estimate of the annual costs for the state to run the program. Using several assumptions, staff projected a cost of a little over a \$ 1 million per year. Again, the impetus for the study was a concern that the new EPA "Waters of the United States" rule could increase the number of 404 permits needed. That could result in delays in permit issuance that would impact such activities as highway construction projects. While implementation of the EPA rule has currently been stayed by the courts, it is still a concern.

The Committee heard from a number of presenters who shared their perspectives regarding the permitting program. Most stated they had a good working relationship with the Army Corps of Engineers, but did see areas for improvement. Several commented that the initial cost estimate seemed insufficient in terms of the need for more staff and other resources. Committee

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members noted there could also be opportunities for cost savings. DEQ staff reported that it would take 4-5 years for the transition to a state program.

Additionally, it is unclear if Montana could assume the entire program, because an 1899 federal law requires the Corps to maintain jurisdiction over “navigable” waterways.

Staff was asked to begin drafting findings for the SJ2 study. Additional research will be needed regarding any differences in legal responsibilities between the state and federal government in terms of compliance, as well as a more in-depth look at the potential impact of the WOTUS rule if the courts decide in favor of the EPA. A draft report is expected to be discussed at the Committee’s May meeting before being distributed for public comment.

The Committee’s next meeting is May 2-3, 2016 at the Bozeman City Commission chambers.

## **Environmental Quality Council**

A key topic for discussion by the Council was the status of legislation in Washington and Oregon that could impact Colstrip. The Washington bill allows Puget Sound Energy to set aside funds to pay for the potential decommissioning and remediating Colstrip 1 and 2. (*Note: The after 2022 date was removed by Washington Governor Inslee when he signed the bill.*) The Oregon bill moves customers off coal-fired energy by 2035. (*Note: The Oregon bill has been signed by the Governor.*) While both measures will likely affect Colstrip’s future, both allow some time for looking at available options.

MT Legislators who testified in Washington, and who also communicated with Oregon legislators, expressed disappointment with the measures, noting they had asked for a longer timeline. One looming concern is the potential impact of future closures at Colstrip on the larger industrial customers who consume large amounts of electricity. Those include diverse entities ranging from cement companies to hospitals. Some fear a bump in rates resulting from closure could cause some companies to close or limit their operations, further impacting job losses. That could be softened by availability from other sources but there are a number of factors that impact that option as well.

There were some on the Committee who felt the EQC should begin work on a legislative proposal to initiate a wide-ranging study of the impacts of the potential closure of Colstrip 1 and 2, but the majority thought it was too early in the process.

The EQC began debating possible findings for its study on federal lands, inaccessible public lands, and big game management and reviewed the first draft of its final report.

### **HJR 13: Study of Roads, Land, and Big Game**

House Joint Resolution 13 (2015), sponsored by Rep. Kerry White (R-Bozeman), tasked EQC with assessing road closures on federal lands over the past 35 years, identifying parcels of federal lands, and evaluating deer and elk harvest trends in relation to limited access to federal lands. Proposed findings and recommendations will be reviewed in May. Public comment will also be taken and reviewed as the council continues to work on its findings and recommendations through June and July.

### **Sage Grouse**

The manager of the state's Sage Grouse Habitat Conservation Program provided an update on work to implement the Montana sage grouse conversation strategy. The strategy includes stipulations for new development in sage grouse habitat and a competitive grant program for conservation measures. The Montana Sage Grouse Oversight voted in February to open its fist call for grant applications and expects to review the applications at its May 24 meeting.

The Council will meet on May 4-5 in Room 317 of the Capitol in Helena.

## **Revenue and Transportation Interim Committee**

During its May meetings, RTIC completed the information-gathering phase for five of its nine interim studies. Recommendations or suggestions for legislation will be offered at the Committee's June meeting. The five studies for which the committee is not expected to gather additional information are studies of tax increment financing districts, the elderly homeowner/renter credit, property taxable value neutrality, nonprofit reporting of community benefits, and the taxation of international corporations doing business in Montana.

Additional information will be presented for the four remaining studies at the June meeting. Those studies are of the highway state special revenue account, the adequacy of local government revenue-generating capacity, treatment of intangible property for centrally-assessed property valuation, and tax liens and tax deeds.

Following the June meeting the Committee should begin work toward drafting any legislative proposals that might emerge from the various studies. Of note, the study of the adequacy of local government revenue-generating capacity has implications for the larger conversation regarding infrastructure funding as local officials look for more options to meet the needs of their communities.

The Committee will next meet on June 9-10, 2016 in Room 137 of the State Capitol.

## **Energy and Telecommunications Interim Committee**

As with the EQC, the Committee heard reports concerning the Washington and Oregon legislation that could impact Colstrip 1 and 2. New information was shared concerning requirements for Puget Sound Energy to file a rate case by April, 2016 with their regulating entity. That timeline was moved to January 17, 2017 allowing the company more time to further explore options for Colstrip and develop a plan for all parts of their system.

Senator Ankney spoke to the point that while the 2017 Montana Legislature would almost certainly consider legislation about the future of Colstrip, we should remember this situation is not as much about changing energy markets as it is a “war on coal”. He noted coal has always been a reliable source of energy and it would be “irresponsible” not to keep it part of the mix. That perspective was affirmed by other speakers who reminded the Committee about the significant tax revenue that is generated by the coal industry and how it benefits the state. ETIC members were encouraged “to fight for the coal industry, not roll up the tent and go home.”

Members did not discuss drafting any committee bills concerning Colstrip.

ETIC also continued to review aspects of Montana’s net metering law in accordance with Senate Joint Resolution 12(2015). They will continue to work on findings and recommendations for the study. They did agree that rural electric cooperatives should not be subject to Montana’s net metering laws. Rural electric cooperatives are governed by their own boards of trustees, which establish parameters for their net metering systems.

The Committee’s next meeting will be May 12-13 in Kalispell. Time and location TBD.

### **SB 325 Rulemaking Stakeholder Group Considers Draft Rule Language**

The SB 325 Stakeholder Group met again on March 22, 2016 to continue work on developing the process for implementing the bill. DEQ and EPA representatives clarified that in terms of the variance process being developed under the bill, once rules are adopted by the Montana Board of Environmental Review and approved by EPA, it will not be necessary for each variance to go through rulemaking and be considered by the Board of Environmental Review. EPA will still review any variances that are approved by DEQ.

We are, however, a long way from having those rules ready to launch. DEQ provided a draft for consideration by the stakeholder group, but noted the more complex process for making the determination as to whether or not a discharge would “materially contribute” to the current conditions of the water body would come in a guidance document or a department circular that would also be adopted in rulemaking.

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The draft rule language is as follows:

- (1) *A person may apply to the department for a variance from a water quality standard if the conditions at Section 75-5-222(2)(a)(i) and (ii), MCA are met.*
- (2) *The applicant must demonstrate to the department that one of the six factors at 40 CFR 131.14(b)(2)(i) apply. Application of one of the six factors must also be demonstrated for non-40 CFR 101(a)(2) uses. The demonstration shall consider any guidance developed by the department of EPA. The board adopts and incorporates by reference Department Circular DEQ-18, entitled "Material Contribution Evaluation and Variance Determination."*
- (3) *The department shall review each application to determine whether a reasonable alternative, including but not limited to a permit compliance schedule, reuse, or other department actions already in place (e.g., a TMDL) would eliminate the need for the variance. If the department makes a preliminary finding that a reasonable alternative to approving a variance is available, the department shall consult with the applicant prior to making a final decision to approve or deny the variance.*
- (4) *If, after consultation with the applicant, the department shall determine whether the information provided by the applicant pursuant to (2) adequately demonstrates the need for a variance. If the department finds that a variance is needed, the department shall approve a discharge variance which reflects the highest attainable water quality condition. The highest attainable water quality condition must, at a minimum equal the average concentration of the pollutant in the receiving waterbody. The variance will become effective and can be incorporated into the applicant's permit only after approval by EPA.*
- (5) *The basis of the variance must be reviewed every 5 years. If remedial activities have resulted in improved water quality in the receiving waterbody, recipients of variances must, upon renewal of the subsequent 5-year interval, treat the pollutant to concentrations no higher than the ambient upstream condition of the waterbody as characterized over the previous 2 years. Recipients of variances may receive a compliance schedule from the department in order to meet the more stringent requirements of the variance.*

In subsequent discussion, Sections 4 and 5 were identified as areas needing more work. Several noted concerns with the implications of the language "equal the average concentration of a pollutant". With regard to Section 5, the group highlighted the challenge of planning for upgrades to water treatment systems if standards in the variance might change within a 5-year permit review.

The DEQ stakeholder group will meet again on April 20, 2016 from 9 – 11 am. TSRA's Water Issues Work Group continues to gather input and information from our broad coalition of members relative to the development of the administrative rules for aiding the implementation of SB 325. Those interested in participating in the TSRA work group should contact Peggy Trenk at [ptrenk@tsria.net](mailto:ptrenk@tsria.net).

We would particularly welcome recommendations for alternative language to the "average concentration of a pollutant" found in Section 4.

## Save the Date

Don't forget the Treasure State Resources Association Annual Meeting will be held September 12-13<sup>th</sup>, 2016 at the Great Northern Best Western Hotel in Helena, MT. We'll hold a golf scramble on the 12<sup>th</sup> at Green Meadow Country Club. Registration and hotel reservation information will be sent at a later date.

## Upcoming Events/Dates

<b>May 2-3, 2016</b> Water Policy Interim Committee Bozeman City Commission Chambers	<b>June 9 – 10, 2016</b> Revenue and Transportation Committee Helena, MT
<b>May 4-5, 2016</b> Environmental Quality Council Helena, MT	<b>June 9 – 11, 2016</b> MT. Stockgrowers Mid-Year Meeting Great Falls, MT Hilton Garden Inn
<b>May 12-13, 2016</b> Energy and Telecommunications Interim Committee Kalispell, MT Location TBD	<b>July 28-30, 2016</b> Governors' Cup Golf Tournament Flathead, MT
<b>May 20-21, 2016</b> MT Logging Association Annual Meeting Missoula, MT Holiday Inn Downtown	
<b>May 25-26, 2016</b> Montana Mining Association Fairmont Hot Springs Resort	