



TREASURE STATE
RESOURCES ASSOCIATION
OF MONTANA

P.O Box 1700, Helena, Montana 59624

Phone: (406) 443-5541

Email: ptrenk@tsria.net

TREASURE STATE RESOURCES ASSOCIATION NEWS
July, 2016

HAVE A SAFE AND HAPPY 4TH OF JULY



TSRA Annual Meeting – Watch for Registration Details

The TSRA Annual Meeting takes place in Helena September 12-13, 2016. Room reservation and registration information will be sent later this month. Great golf, great speakers, and great networking opportunities. Be sure to save the date.

Governor Bullock Unveils State Energy Plan

Montana Governor Steve Bullock has proposed a comprehensive plan for the future of Montana electricity. Released on June 21, 2016 the plan covers topics from continued use of coal resources to exploration of geothermal opportunities.

It includes several items of interest to TSRA members. For example, the plan incorporates a recommendation developed by the Energy and Utilities Key Industry Network (KIN), and endorsed by the Natural Resources KIN, calling for the establishment of an energy infrastructure authority for Montana. To quote from the Governor's plan, "Potential responsibilities include: developing a comprehensive energy policy and strategy for workforce needs; promoting energy export opportunities; coordinating state resources; assisting project developers and facilitating regulatory reviews; assessing transmission needs; exploring funding options including bonding and public-private partnerships; and exploring the challenges of emerging energy sectors such as carbon capture and renewables." Establishing this new entity will require legislative action.

Noting that transmission capacity is an obstacle to getting power to the marketplace, Governor Bullock also called on the Montana Department of Environmental Quality to bring stakeholders together to look at the Major Facility Siting Act (MFSA) and see where improvements can be made. Recommendations for changing MFSA will be forwarded to the 2017 session of the Montana Legislature.

While the plan places considerable emphasis on renewable energy sources, as well as energy efficiency, it recognizes coal will continue to play a significant role in Montana's energy future. Supporting the development and use of technology to produce "cleaner" energy from coal will be a priority. For a complete copy of the plan, go to governor.mt.gov.

Obama Administration Changing Coal Royalties to Increase Revenue

Source: [Helena Independent Record](#) July 1, 2016 By: Matthew Daly, AP

The Interior Department said Thursday it is changing the way it values coal mined from public lands in the West to make sure mining companies are not shortchanging taxpayers on sales to Asia and other markets.

A final rule issued Thursday comes after coal exports surged in recent years amid a weak U.S. market. Interior Secretary Sally Jewell said the updated rule will ensure that taxpayers receive "every dollar due" from coal leases on federal lands, a billion-dollar-a-year program that accounts for more than 40 percent of U.S. coal production.

"These improvements were long overdue and urgently needed to better align our regulatory framework with a 21st century energy marketplace," Jewell said.

Under rules in place since the 1980s, companies can sell the fuel to affiliates and pay royalties to the government on that price, then turn around and sell the coal at higher prices, often overseas. Under a rule set to take effect Jan. 1, the royalty rate will be determined at the time the coal is leased, and revenue will be based on the price paid by outside entity, rather than an interim sale to an affiliated company...The change in the way royalties are calculated comes as the Obama administration has launched a wide-ranging review of the federal coal-leasing program, including a three-year halt on new coal leases on federal lands. Officials are also determining if longstanding royalty rates charged to mining companies are too low and reviewing how coal production on federal land contributes to a climate change.

Critics say the lease moratorium and other changes are part of a broader effort to dismantle the coal industry at the expense of thousands of mining jobs in Montana, Wyoming, Colorado, Utah and other states with large, public coal reserves. The National Mining Association said the Obama Administration is collaborating with "extreme environmental interests" as it works "overtime to advance more job-crushing and market-distorting policies."

Coal is the largest source of electricity generation in the United States, and coal mined from federal lands accounts for about 44 percent of that total. Production of about 450 million tons a year brings in more than \$1 billion in annual revenue, a figure watchdog groups say is artificially low due to a notoriously uncompetitive bidding process.

Montanans React to Latest Department of Interior Rule Aimed at Killing Montana Coal Development

Source: Press Release Issued by Count on Coal Montana, June 30, 2016

Webb Brown, President of the Montana Chamber of Commerce, and Shelby DeMars, spokesperson for Count on Coal Montana issued the following statements in reaction to the Department of Interior's release today of a rule that would allow them to arbitrarily and retroactively determine federal coal valuations.

Statement by Webb Brown, President of the Montana Chamber of Commerce:

"This is very troubling news for Montana. More than half our coal economy depends on federal coal. This move is nothing more than yet another attempt by the Feds to destroy Montana coal jobs. If this rule is allowed to stand the economic impacts to our state will be severe."

Statement by Shelby DeMars, Spokesperson for Count on Coal Montana:

"Our coal industry is suffering for one reason and one reason only: the unrelenting assault by the Federal government and their environmental NGO allies to kill coal. Coal miners already pay five times as much in royalty payments as they earn in profits from federal coal. Contrary to claims of Interior, this rule will not "maximize" royalty revenue. It'll nearly eliminate it. Half of that royalty revenue belongs to our state government and is a critical funding source for

education and law enforcement. That revenue could soon go away, resulting in higher taxes for the rest of us.”

Speaking of coal, did you know...?

That 10% of the funding for Montana State Parks comes from the Montana coal severance tax. State Parks have seen an increase of 32% in visits from 2011 – 2015, putting a strain on their staffing and facilities. Compared to other surrounding states, we have more State Parks, but are already the second lowest in terms of funding. If you plan to enjoy some time in one of these parks, well, you can in part thank a coal miner. (Source: Montana State Parks Report to the Montana Environmental Council, May 4, 2016)

Judge Strikes Down Obama Rule on Fracking on Public Lands

Source: [Wall Street Journal](#) June 22, 2016 By: Amy Harder

A federal judge in Wyoming has blocked an Interior Department rule setting stricter standards for hydraulic fracking on public lands, the latest blow to an administration environmental agenda that has drawn wide opposition from Republicans and energy officials.

U.S. District Court Judge Scott Skavdahl issued a ruling late Tuesday invalidating the regulation, saying the Interior Department lacked the authority to issue it because Congress hadn't given the agency such authority. The same judge last year issued a preliminary injunction blocking the rule until he made a final decision.

Mr. Skavdahl, whom President Barack Obama nominated in 2011, said the issue before his court wasn't whether fracking "is good or bad for the environment or the citizens of the United States," but rather whether Congress had given the Interior Department the authority to regulate fracking.

The department's rule "is in excess of its statutory authority and contrary to law," Mr. Skavdahl wrote...An Interior Department spokeswoman declined to comment on the substance of the ruling, but she said the agency's regulation reflects fracking standards already used by many in the oil and natural-gas industry.

The government is expected to appeal the ruling, which would send the case to a federal appeals court and possibly to the Supreme Court. This week's ruling is the latest setback for Mr. Obama's environmental agenda, which he has pursued largely by issuing regulations and bypassing Congress...

“Only Congress can write laws,” House Speaker Paul Ryan (R., Wis.) said Wednesday in response to the fracking ruling. “Agencies acting without authority from Congress is simply illegal.”

The judge’s decision doesn’t mean fracking is now unregulated, since the activity is still subject to state rules. The federal regulations applied on top of state rules when the fracking was done on federal lands.

(Editor’s note: Environmental groups like the Sierra Club, Natural Resources Defense Council and others are working to ban or limit the use of fracking. Some are planning a protest march at the Democratic National Convention seeking a federal ban on the process. Several studies (ie. EPA, MIT) have demonstrated fracking does not harm groundwater, a claim made by those supporting a ban. What’s next? Check out the following article.)

New Data to Help CO Study Health Effects of Fracking

Source: [Helena Independent Record](#) June 15, 2016 By: Dan Elliott, AP

DENVER – New data on air pollution from fracking wells in Colorado will be a big help in assessing whether the emissions are harmful to human health, state officials say.

A three-year study released Tuesday measured methane – a greenhouse gas –and ozone-causing compounds that were released from natural gas wells in western Colorado.

The research, by Colorado State University professor Jeff Collett, didn’t measure the emissions’ health effects, but state officials will use the data in computer modeling to assess the risks, said Mike Van Dyke of the Colorado Department of Public Health and Environment.

“This study is incredibly useful,” said Van Dyke, chief of environmental epidemiology, occupational health and toxicology for the health department. The state expects to hire outside researchers by the end of next month to begin modeling the human health risks, using the western Colorado research as well as data from a second study Collett is conducting at wells near the state’s urban Front Range. The state risk study is expected to be completed in January, 2018.

Collett’s study is the first time researchers have been able to say with certainty they were measuring pollution only from drilling operations and not from other sources, Van Dyke said. Van Dyke believes Collett’s study is the first of its kind in the country.

Fracking, or hydraulic fracturing, uses pressurized water, sand and chemicals to break open underground formations and release oil and gas. Critics say air pollution, spills and leaks from fracking operations are a threat to public health and the environment, but the industry says the procedure is safe.

Garfield County, in the heart of western Colorado's biggest gas field, contributed \$1 million toward Collett's study. Oil and gas companies donated another \$700,000 and allowed researchers access to drilling sites. Collett said that access was essential.

Quizzed by the county commissioners in Glenwood Springs on Tuesday, Collett said neither the companies nor anyone else influenced his research.

Collett's team took air samples and measurements from the plume of air emissions downwind from new natural gas wells during three phases: drilling, fracking and "flow back", when the natural gas began flowing out of the fractured formations and up the well, pushing the water and fracking chemicals back out. They also released a tracer chemical – acetylene – at the well site, which helped them identify which direction the emissions were blowing. Since they know how much acetylene they released at the well, they were able to calculate how much of it was dispersed before it got to their sampling stations. That data also allowed them to calculate how much of the well emissions were dispersed.

Endangered Species Concerns Continue to Impact Timber Industry

We're very aware of the issues associated with management of the grizzly bear under the Endangered Species Act. The timber industry is also watching requirements unfold regarding management of other species that offer a new twist on growing difficulties with interpretations of the ESA.

In April of this year, Chief Judge Dana L. Christenson of the US District Court for Montana called the US Fish and Wildlife Service to task for failing to rely on "sound science" in its 2014 decision not to list the wolverine as an endangered species. Most notably, the judge cited climate change as one of the factors that was not adequately considered. In his decision Judge Christenson wrote: *No greater level of certainty is needed to see the writing on the wall for this snow-dependent species standing squarely in the path of **global climate change**. It's the undersigned's view that if there is one thing required of this service under the E.S.A. it is to take action at the earliest possible defensible point in time to protect against the loss of diversity within our reach as a nation. For the wolverine, that time is now.*"

Judge Christenson ordered the US Fish and Wildlife Service to reconsider the rationale for its earlier decision. Others concerned about the impact of a decision to list the wolverine as endangered include motorized recreation enthusiasts, particularly snowmobilers who fear they will lose even more access.

The Montana Wood Products Association is also following a court decision affecting management of critical lynx habitat. To quote from information provided by MWPA: *Our number one concern pertains to the adverse Cottonwood decision that recently came out of the 9th Circuit*

Court of Appeals, which not only upheld the past Salix decision (regarding critical lynx habitat), but expands consultation to all critical habitat designations. In essence, the 9th Circuit issued a decision that forest plans are ongoing actions, requiring ESA consultation. This is directly contrary to the 10th Circuit's position. The court previously held that consultation on 18 forest plans in the Northern Rockies was required when the U.S. Fish and Wildlife Service revised critical habitat for the Canada lynx. The Office of General Council believes a forest plan is only an action, if at all, when it is originally approved or formally revised. The forest plan is not an action requiring consultation for every ESA change in status, particularly when consultation also occurs at the project level.

MWPA reports that the Office of General Council has petitioned the U.S. Supreme Court. In the meantime, they anticipate having to consult at the plan level will add months to NEPA work and could pose a risk for any forest management projects proposed in critical habitat.

Montana Infrastructure Coalition Prepares for 2017 and Beyond

By Darryl James, Executive Director

After a year of informal meetings and discussions about the importance of infrastructure investment in the state of Montana, the Montana Infrastructure Coalition was established to ensure that taxpayers, and state and local decision-makers are fully informed of the fundamental role that infrastructure plays in establishing safe, healthy and economically thriving communities.

Since its formal establishment in April, the Coalition has elected a seven-member Board of Directors, retained Darryl James as Executive Director, and will engage two of Montana's indisputable experts on local government finance to conduct research and develop a series of white papers on current funding sources, and potential tools to fund infrastructure in the future. Membership in just a few months has grown to over 50 professional design, construction, labor, business, economic development, trade association and local government entities.

The Coalition is committed to conducting objective research and will consider – on a non-partisan basis—any proposal, perspective and information relevant to improving Montana's system of funding public infrastructure. While no formal policy positions have been taken to date, the Coalition does intend to develop a legislative package for the 2017 session. The Coalition will be exploring various funding programs, budget items and revenue tools over the next few months. Consideration of these items should be not interpreted as support unless and until the Coalition officially adopts a position. All policy positions will be designed to lead to long-term solutions to address Montana's infrastructure funding deficit.

At the June Membership Meeting in Billings, the Coalition adopted guidance for the Research and Policy Committee. In sum, the Committee was directed to:

- Seek reliable, long-term allocation of state matching funds necessary to leverage Federal Highway Funding.
- Seek policy options that maintain and enhance current local government funding levels, and oppose any efforts to reduce base local government funding levels.
- Support existing programs that have proved useful and beneficial to local government infrastructure investment, but encourage efficiencies in those programs to better leverage monies available.
- Encourage new funding streams that recognize the fiscal independence of local governments and consider eligibility for funding solely on the application at hand.

The next Member Meeting will be scheduled in August to review the initial research results and to begin exploring infrastructure investment tools that may be applicable in Montana. For more information on the Coalition or how to get involved, please contact Darryl James at darryl@jamesconsult.com or at 406-441-9100.

Interim Legislative Committees:

Sources include the July Interim Newsletter published by the Montana Legislative Council

Several interim committees will be meeting in July. They will continue to hear issue updates and reports, but may also make some decisions about legislative proposals for the 2017 Legislative Session. The Interim Revenue and Transportation Committee has already submitted several draft bill requests on behalf of agencies they oversee.

In total, more than 170 bill draft requests have been submitted for the 2017 Session. Many of those are broad placeholders in anticipation of the need to address changes in tax policy, water use or environmental laws. In addition to interim committees, only holdover Senators, or legislators who are unopposed in the general election are eligible to submit early bill draft requests.

Some examples of interest to TSRA members include bills that would: provide penalties/incentives for closure of certain coal-fired generating units; generally revise mineral, oil, and gas laws; generally revise water laws; address infrastructure funding; increase coal board trust funding for tribes and tribal entities; generally revise environmental laws; generally revise energy laws; establish liability requirements for owners of coal-fired generation; and one for a constitutional amendment to establish a natural resources trust fund.

Water Policy Interim Committee

WPIC meets Monday and Tuesday, July 11 and 12th in Helena at the State Capitol. As usual, they have a very full agenda that includes updates on literally “all things water”. That ranges from nutrient standards to the Sun River water flows.

According to staff, they will review draft legislation that includes:

- Clarify 12 percent threshold for water commissioner appointments
- Require training for water commissioners
- Clarify the definition of a water right change
- Allow applicants for water right permits or water right change authorizations to limit analysis of adverse effects for certain water rights
- Allow Water Court jurisdiction of appeals to DNRC decisions, and
- Define “combined appropriation for ground water wells that are exempt from permitting”.

Of particular interest to TSRA members is the SJ2 study of federal 404 permitting. Committee members will consider a draft report to the 2017 Legislature. So far the Committee has found that:

- Congress passed the Clean Water Act in 1972, which mandates 404 permits for anyone placing dredged or fill material in a jurisdictional waterway.
- Montana has previously explored assumption of the 404 program.
- Placing fill in streams and wetlands impacts water quality, water quantity, flood protection, and wildlife habitat.
- The U.S. Army Corps of Engineers administers the 404 program in Montana, which overlaps to varying degrees with seven other permissions that must be obtained from six federal, state, and local agencies for activities in a stream.
- The federal Clean Water Rule – and appeals to it—may impact the jurisdictional reach of 404 program.
- The Environmental Protection Agency has a process for a state to assume a Section 404 program.
- A state-issued Section 404 permit must be at least as rigorous as a Corps-issued permit.
- State assumption of the 404 program is uncommon; two states have assumed most 404 permitting functions while at least seven other states have formally explored assumption of their 404 program.
- EPA has convened an advisory subcommittee to study state jurisdiction of waters.
- The cost to run a 404 program roughly equivalent to the Corps’ is approximately \$1 million per year.
- It may take up to five years for the Department of Environmental Quality to prepare a fully functioning Section 404 program.

The 404 permitting study originated out of concern that the proposed changes to the “waters of the U.S. ” definition in the Clean Water Rule could expand the number of permits that would be required for previously unregulated waters. Some legislators feared that would result in delays and wanted to explore whether the state might be able to do the job more expeditiously.

Energy and Telecommunications Interim Committee

ETIC will be meeting July 14-15, 2016 in Room 172 of the State Capitol in Helena. The morning of the 14th, the Committee will hear from representatives of Talen Energy (now Riverstone Holdings) and Puget Sound Energy on the future of Colstrip Units 1 and 2. According to ETIC staff, Talen will discuss its plans for continued operation of Colstrip, and the company's ongoing efforts to exit Montana. Speakers will also discuss Puget's development of a rate case outlining the company's path forward at Units 1 and 2 – particularly in light of passage of Senate Bill 6248 by the Washington Legislature. The legislation authorizes Puget Sound Energy to create a fund to pay for the closure of Colstrip Units 1 and 2. The rate case will be submitted to the Washington Utilities and Transportation Commission in January, 2017 and will outline the retirement of Units 1 and 2, including closure dates.

The agenda also includes presentations from Absaroka Energy regarding the proposed Gordon Butte closed loop pumped storage hydro project and from Clearwater Energy's concerning a proposed wind farm near Forsyth that could generate up to 300 megawatts of electricity. The electricity that could be generated by those projects has been cited as a **potential** source to replace power now generated at Colstrip Units 1 and 2 that is exported to customers on the West coast who have expressed a preference for renewable energy.

On Friday afternoon, July 15th, ETIC will hear presentations on Marketing Montana's Energy Resources, following some of the work of the Key Industry Networks impaneled by Governor Bullock under his Main Street Montana program.

ETIC is also expected to begin wrapping up its study of net-metering and review draft legislation concerning the Next Generation 9-1-1.

As always, those not able to attend committee meetings in person can access them online. Go to leg.mt.gov and click on "Watch and Listen". You'll see the list of committees on the "Upcoming Streaming Schedule".

Environmental Quality Council

At its July 20-12st meeting at the State Capitol in Helena, the Environmental Quality Council will review 2017 legislative proposals as well as look at the impact of decreased natural resource revenues on budgets. The council will also finalize the study of federal roads before sending it out for public comment.

Upcoming Events/Dates

July 11-12, 2016 Water Policy Interim Committee State Capitol, Helena

July 14-15, 2016 Energy and Telecommunications Interim Committee State Capitol, Helena	July 20-21, 2016 Environmental Quality Council State Capitol, Helena
July 18-19, 2016 Montana Coal Council Annual Meeting KwaTakNuk, Polson. MT	July 28-30, 2016 Governors Cup Golf Tournament Flathead, MT
	September 12-13, 2016 Treasure State Resources Assoc. Annual Meeting Great Northern Hotel, Helena, MT