



TREASURE STATE
RESOURCES ASSOCIATION
OF MONTANA

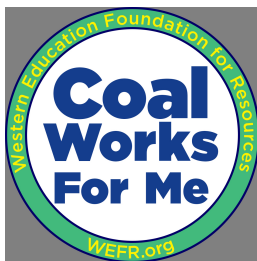
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TREASURE STATE RESOURCES ASSOCIATION NEWS
August, 2016

Registration Open for TSRA Annual Meeting – September 12-13, 2016

The TSRA Annual Meeting takes place in Helena September 12-13, 2016 at the Best Western Great Northern Hotel. Room reservation and registration information can be found under the Events tab at: treasurestateresources.org. Please note the TSRA room block expires August 12. Check the website for updates on the agenda and speakers.



“COAL WORKS FOR ME”

Western Education Foundation for Resources (WEFR) - Check out the latest videos and information

WEFR (the education foundation administered by TSRA) is in the midst of a natural resource education project aimed at increasing awareness of the importance of coal development in terms of revenue to the state of Montana, as well as for the jobs and economic opportunities it provides. We recently visited the community of Colstrip and spent some time talking to Mayor John Williams, Ashley Dennehy from Colstrip United, Rick Harbin from the local Parks and

Recreation Department and Doug Martens, Rosebud County Commissioner. You can view those video interviews on the WEFR website under the Media tab at: wefr.org

Fact Sheet: White House Council on Environmental Quality Releases Final Guidance on Considering Climate Change in Environmental Reviews

Source: The White House Briefing Room, August 2, 2016

Building on President Obama's unprecedented steps to address climate change, the White House Council on Environmental Quality (CEQ) is today releasing final guidance for Federal agencies on how to consider the impacts of their actions on climate change in their National Environmental Policy Act (NEPA) reviews. Following years of engagement and after receiving public comments and other feedback from members of Congress, State agencies, tribes, corporations, trade associations, and other stakeholders, the final guidance is another step in the Administration's effort to consider how all types of federal actions will impact climate change and identify opportunities to build climate resilience.

Today's guidance, which will be announced in the Federal Register in the coming days, is intended to help agencies make informed and transparent decisions about the impacts of climate change associated with their actions.

Final Guidance on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change

Under NEPA, Federal agencies are required to consider and disclose the potential effects of their actions and decisions on the environment. In many cases, Federal actions have the potential to contribute to climate change by producing greenhouse gas emissions or alternatively, be affected by many of the impacts of a changing climate, such as rising sea levels, extreme weather, drought and wildfires.

The final guidance released today provides a level of predictability and certainty by outlining how Federal agencies can describe these impacts by quantifying greenhouse gas emissions when conducting NEPA reviews. This increased predictability and certainty will allow decision makers and the public to more fully understand the potential climate impacts of all proposed Federal actions, and in turn, assist agencies in comparing alternatives and considering measures to mitigate the impacts of climate change.

In addition to providing agencies with a reasoned approach as to how to describe climate change impacts, the guidance:

- Advises agencies to quantify projected greenhouse gas emissions of proposed federal actions whenever the necessary tools, methodologies, and data inputs are available;
- Encourages agencies to draw on their experience and expertise to determine the appropriate level (broad, programmatic, or project- or site-specific) and the extent of quantitative or qualitative analysis required to comply with NEPA;
- Counsels agencies to consider alternatives that would make the action and affected communities more resilient to the effects of a changing climate; and
- Reminds agencies to use existing information and science when assessing proposed actions.

This guidance builds off of a 2010 draft guidance and 2014 guidance, and reflects consideration of comments and feedback received on both documents. Additionally, finalization of the 2014 revised draft guidance was specifically called for by the State, Local and Tribal Leaders Task Force on Climate Preparedness and Resilience's recommendations to the President. The Task Force requested the guidance to ensure that projects and investments include adequate and coordinated consideration of project design or alternatives in relation to climate impacts and greenhouse gas emissions, and to avoid unacceptable public health, safety, and financial risks for communities. Click on the following link for more details:

https://www.whitehouse.gov/sites/whitehouse.gov/files/documents/nepa_final_ghg_guidance.pdf

In a related analysis posted on the Climate Change Blog published by the Sabin Center for Climate Change Law at the Columbia Law School ...

By Michael Burger and Jessica Wentz Posted on August 3, 2016 by Justin Gundlach

The authors note "There are, however, two notable changes (from the 2014 draft guidance): First the final guidance no longer specifies a threshold for quantifying GHG emissions. Instead it directs agencies to quantify emissions whenever the tools and data are available to do so.

Second, the language calling for consideration of "upstream" and "downstream" emissions has been removed, and replaced with reference to the more technically precise term, "indirect effects". Importantly, the guidance states that the reasonably foreseeable indirect effects that should be accounted for in NEPA documents would include what are, in essence, downstream emissions – for example, emissions from the end-use of coal that is mined as a result of a federal action.... This will likely prompt many agencies to adopt more detailed, agency-specific guidance that is tailored to the types of actions that they frequently review. For example, several agencies have been waiting for the final CEQ guidance in order to adopt internal guidance on accounting for the effects of climate change on land and resource management actions... the guidance directs agencies to a study of the lifecycle GHG emissions from coal and natural gas as an example of the type of resource that should be used to evaluate indirect emissions...

Spokane, WA City Council Proposes “Illegal” Ban on the Transportation of Oil or “Uncontained Coal”

On Monday, July 25, 2016 the Spokane City Council voted 6-0 to ask voters in November whether the city should prohibit the shipment of crude oil or coal by rail. If approved by the voters, the ballot measure would make rail shipments of crude oil or coal a civil infraction, punishable by a fine of up to \$261 per tank per tank car. According to a letter written to the Council President by BNSF Railway Assistant Vice President for Community Affairs Andrew Johnson, “the new municipal code section, which would be put on the ballot in a special election, would have the effect of prohibiting the transportation of oil or “uncontained coal”.

Spokane’s actions are part of a trend seen around the country to impose restrictions on activities associated with coal and crude oil. However, it may be among the first to try to regulate what is shipped in trains. The proposal, if passed, would almost certainly be challenged. The Spokane City Counsel’s legal adviser noted it would difficult to win in court given the federal government’s role in regulating railroads.

That analysis was affirmed in the BNSF letter that stated: *This proposed addition to the Municipal Code, if enacted by voters, would be preempted by federal law and unenforceable. In fact, in substantially similar circumstances, an ordinance adopted by the District of Columbia City Council in 2005 was ruled unlawful. In addition to its illegality, your proposed ordinance could also have major negative economic impacts on Spokane’s and Washington State’s business climate, while also generating huge uncertainty for businesses potentially looking to invest in the state.*

You have taken this action despite the fact that moving hazardous materials by rail is 16 – 20 times safer than by other available modes with less impact to the environment. The reality is that 99.98% of all hazardous materials (including crude oil) moving on BNSF travel from origin to destination without incident, and oil is transported under the strictest operating policies and tougher federal tank car standards. Furthermore, you have included coal in your proposed ban, which is not even classified as a hazardous material; coal is an inert rock. Your action does not ban ethanol or other hazardous materials transported by rail, nor does it ban the movement of these commodities by truck or other transportation modes. Why is this if your argument is one of safety?

These facts lead one to conclude that your proposed ban is less about safety and more about a political agenda against fossil fuels. Seeking to ban certain, unpopular commodities will have a chilling effect on commerce and the region’s business climate, and if allowed to be implemented, severely inhibit the flow of a crucial energy supply for the state, including Spokane.

Others wishing to share their perspective on the Spokane City Council’s actions can go to: <http://www.bnsfnorthwest.com/spokane>. Given the level of activity demonstrated by those pursuing the “keep it in the ground” political agenda, other communities should be watchful for similar proposals.

New Fracking Rules Unnecessary

Source: Montana Petroleum Report, Published by MPA August 3, 2016 By: Jessica Sena

Last week, one of the largest and most well-funded environmental activist organizations in the United States, the Natural Resource Defense Council, filed a legal petition through Earthjustice, the self-proclaimed lawyers of the earth. The Montana Environmental Information Center, which has led the charge against numerous revenue generating natural resource development projects in Montana, was also named in the petition, along with 10 Montana households. The petitioners seek to press the Board of Oil and Gas Conservation (BOGC) into rulemaking to amend existing rules on the disclosure of chemicals used in frac fluid.

During the last session, a bill carried by Helena legislator Mary Ann Dunwell with a similar objective died in committee. Opponents of the bill, including the Montana Petroleum Association, testified that existing rules and regulations provide the reasonable balance to accommodate the public's right to know and the protection of proprietary information under Montana's Uniform Trade Secrets Act.

Alan Olson, Executive Director of MPA responded to the petition saying, "We feel the information that the public needs is readily available. Under the existing rules under the Board of Oil and Gas, should there be an incident, any information regarding proprietary chemicals would be released to the staff with the Oil and Gas Conservation and to any medical provider that needed it." ...

In the MEIC/NRDC petition for rulemaking, the claim is made that "numerous studies have documented adverse health effects in people who live or use domestic water wells near fracking operations."

On the contrary, countless studies have debunked the aforementioned claim. After a five-year study, the U.S. Environmental Protection Agency (EPA) concluded last year that "fracking" has not led to widespread water contamination accused of affecting public health. Additionally, researchers at Stanford University found no evidence of "fracking" fluids permeating the thousands of feet of bedrock which separate frac zones and drinking water acquirers.

Editor's Note: State law gives the board 60 days to either reject the request or begin a new rulemaking process.

SB 325 Work Group Continues Work on Rules

The DEQ stakeholder group charged with drafting rules to implement SB 325 (the "you shouldn't have to clean up Mother Nature" bill) has continued to meet monthly. The legislation was divided in two sections, one relative to determining what is the nonanthropogenic condition of a water body and the other to establish a variance process in accordance with EPA criteria for situations where water quality standards cannot currently be achieved. At the July 26th

stakeholder group meeting, DEQ staff offered presentations on different methodologies that could be used to determine if current water quality standards are more stringent than the nonanthropogenic condition of the water body. The three discussed were: arsenic mass balance loading, electrical conductivity/sodium absorption ratio modeling, and the reference stream approach. DEQ staff indicated they have received positive feedback so far from the EPA relative to the use of these methodologies. We anticipate these and other potential tools/resources will be included in guidance documents.

Go to <http://deq.mt.gov/Water/WQPB/standards/SB325Rulemaking> to learn more about the stakeholder group and to find copies of draft rule language and presentations. Meetings are open to the public. TSRA members who have comments or information that would be better inform this process are encouraged to weigh in on this important discussion.

Interim Legislative Committees:

Sources include the August Interim Newsletter published by the Montana Legislative Council. Please note there are several opportunities to comment on draft reports and bills being considered by the different committees as noted below.

Water Policy Interim Committee

The Water Policy Interim Committee (WPIC) has approved a draft of their report regarding how Montana might assume regulatory activities under federal Section 404 of the Clean Water Act. 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.

The Committee is seeking input on the study and has five options to consider. They are:

1. Issue the report as a conclusion to the SJ2 Study.
2. Issue this report and direct the Department of Environmental Quality to apply for a federal Wetland Program Development Grant in 2018 to further explore state assumption of federal Section 404 program.
3. Issue this report and recommend federal Section 404 program as an area of study for the 2017-18 WPIC.
4. Issue this report and preintroduce a committee bill, asking the Legislative Council to again designate an interim committee study of federal Section 404 program.
5. Issue this report and draft legislation directing the DEQ to assume the federal Section 404 program, assess fees for 404 permits, and establish a work-sharing agreement with the state’s 58 conservation districts.

You can access the report at: <http://www.leg.mt.gov/water> Comments can be sent to Jason Mohr at jasonmohr@mt.gov with the subject line “SJ2 comments”. The deadline for comments to be

compiled prior to the next WPIC meeting is August 15th. Otherwise comments can be presented at WPIC's August meeting.

Energy and Telecommunications Interim Committee

Just prior to ETIC's July 14-15 meeting, Colstrip owners announced a settlement with environmental groups in a 2013 lawsuit that calls for closing Colstrip Units 1 and 2 by 2022 at the latest. The settlement also requires changes in operations at Units 3 and 4. That announcement provided the backdrop for much of the Committee's discussion.

The Energy and Telecommunications Interim Committee requested that legislation be drafted and posted for public comment that addresses the needs of Montana, as plans to close two coal-fired generating units in Colstrip move forward. The legislation is also intended to address the owner's responsibility to help displaced workers and to outline remediation plans and requirements for the area. At their September 9th meeting the committee will determine whether to bring legislation to the 2017 legislative session.

The Committee learned more about Puget Sound Energy's rate case outlining the company's path forward at Units 1 and 2 relative to the legislation that was signed into law in Washington. That legislation authorizes the company to create a fund to pay for the closure of 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 those units and the closure dates.

To see copies of committee reports, as well as the draft legislation currently out for public comment go to: <http://www.leg.mt.gov/etic>

Environmental Quality Council

At its July 20-22nd meeting at the State Capitol in Helena, the Environmental Quality Council heard about the budget crunch caused at three state agencies by the drop in Montana's natural resource revenues. This biennium, the Department of Environmental Quality has a \$1.2 million shortfall, the Department of Natural Resources and Conservation has a \$374,000 deficit, and the Bureau of Mines and Geology has seen a revenue drop of \$69,000. All three agencies have reconfigured spending and staff to absorb as much as possible.

Agency Legislative Proposals

DNRC presented four legislative proposals for bill drafting authorization. The proposals would do the following:

- Increase to 2 million board feet the amount of timber that DNRC can harvest on state land with limited access when permissions is granted by an adjacent landowner and there is only one potential buyer with legal access.
- Clean up moot conservation district statutes.
- Clarify conservation district supervisor terms and when an oath of office must be signed.
- Modify commercial leasing rental provisions to clarify valuation processes and allow for extended option to lease periods.

Upcoming Events/Dates

August 29-30, 2016 Water Policy Interim Committee State Capitol, Helena	September 12-13, 2016 Treasure State Resources Association Annual Meeting Great Northern Hotel, Helena, MT
September 7-8, 2016 Revenue and Transportation Committee State Capitol, Helena	September 14-15, 2016 Environmental Quality Council State Capitol, Helena
September 8-9, 2016 Energy and Telecommunications Interim Committee State Capitol, Helena, MT	November 14, 2016 Legislative Caucuses (2017 Session) State Capitol, Helena