



**TREASURE STATE**  
**RESOURCES ASSOCIATION**  
OF MONTANA

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**TREASURE STATE RESOURCES ASSOCIATION NEWS**  
**November, 2016**

**Invitation to the Treasure State Resources Association 2017 Legislative Reception and Showcase of Montana's Natural Resource Industries – Tuesday, January 3, 2017 Radisson Colonial Hotel, Helena, MT**

With the General Election coming up in just a few days, it's not too early to start planning for the 2017 Montana Legislative Session. One of the best ways to get started is to sign up for TSRA's Legislative Reception and Showcase - an event that's become a "must attend" tradition for both legislators and TSRA members.

The event will be held on **Tuesday, January 3, 2017 from 5:30 – 8:30 pm. at the Radisson Colonial Hotel** in Helena. The Showcase offers a great opportunity for your company or organization to be recognized and to discuss your issues with Montana legislators before they get too busy with other session activities. Nearly every legislator and many other elected officials and agency representatives attended this event at the 2015 Session.

In fact, the 2015 event drew a record crowd and featured 50 exhibitors and sponsors. Don't miss the opportunity to be part of the 2017 TSRA Reception and Showcase. There are lots of options to have a booth or table display, as well as be widely recognized as sponsors. Individual attendees are welcome to register as well.

Don't hesitate to contact TSRA Executive Director Peggy Trenk if you need more information. Ready to register? The Sponsorship and Booth Reservation Form can be found on the TSRA website at: [treasurestateresources.org](http://treasurestateresources.org).

## **Speaking of the Legislative Session....TSRA Will Continue The Tradition of Holding Weekly Legislative Breakfast Meetings**

As in past legislative sessions, TSRA will hold a weekly breakfast meeting on Thursday mornings at the Montana Contractor's Association office in Helena. These meetings offer an opportunity for members and others interested in issues that impact the use of our natural resources to share updates on key bills and stay current on legislative developments. The meetings begin at 7:00 am. each Thursday. Those interested in participating can contact Peggy Trenk at [ptrenk@tsria.net](mailto:ptrenk@tsria.net) to make sure you are on our email list for more information. TSRA will make arrangements for "breakfast" each week and participants will be invoiced for their share of the costs at the end of the session.

A big **Thank You** to Cary Hegreberg and the Montana Contractors' Association for the "use of the hall".

## **Montana contractors, ranchers, homeowners reminded to call before they dig in wake of fatal gas pipeline strike in Alabama; new "Dig Law" legislation in the works**

Source: Montana Contractors' Association News Release November 2, 2016

In light of a recent, fatal gas pipeline strike in Alabama, the Montana Contractors' Association (MCA) and Montana 811 are reminding Montana contractors, ranchers, and homeowners to request utility locates by visiting [Montana811.org](http://Montana811.org) or by calling 811 before they dig.

"We need to take every precaution in order to protect against loss of life and property damage. Calling 811 a couple of days before digging is a simple way to head off problems before they happen," said Clint Kalfell, Montana representative for the 811 program. "Remember, we aren't just talking about major excavations — many utilities are buried only a few inches below ground. Planting a flower bed or tree has the potential for disaster."

In addition to the risk to life and property, Cary Hegreberg, MCA executive director, advises that utility strikes may also lead to crippling civil fines leveled against offenders by the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA).

"In October, PHMSA began enforcement of federal excavation standards in Montana," he said. "Those civil penalties can be more than \$200,000 for each violation for each day the violation continues. The maximum civil penalty of more than \$2 million could be devastating for a business or individual."

PHMSA's enforcement of federal excavation standards in Montana follows a determination by that agency that Montana's excavation damage prevention law is inadequate for several reasons, including the state's inability to assess civil penalties for violations.

A group of stakeholders, including MCA and Montana 811, has been meeting for the past year to craft proposed changes to Montana's existing "Dig Law" to address concerns outlined by PHMSA.

"After a lot of hard work, voicing concerns and listening to how the current law and the changes will affect others, we have identified compromises, reached consensus, and are in the final stages of preparing a comprehensive bill draft to present to the Montana Legislature," said Dale Schultz, president of Montana 811 and manager of System Integrity for NorthWestern Energy's gas transmission system. "It was important to all of us that the bill draft be thoughtful, fair, and address the concerns of PHMSA so Montana can take back enforcement of excavation damage in this state."

For more information about how the 811 system works, go to [Montana811.org](http://Montana811.org). Need more information? The 811 operators are available to answer your questions.

*The Montana811 Call Before You Dig program promotes safe digging. Learn more at [Montana811.org](http://Montana811.org).*

*The Montana Contractors' Association's mission is to deliver value and opportunity to our member firms. Learn more at [mtagc.org](http://mtagc.org) or [letsbuildmontana.com](http://letsbuildmontana.com).*

## **TSRA's President Todd O'Hair takes on additional role as Chairman of the Montana Chamber of Commerce**

Source: [Billings Gazette](#) October 27, 2016 By: Tom Lutey

*Todd O'Hair, Senior Government Affairs Manager for Cloud Peak Energy (and current TSRA President) took the reins as Chairman of the Montana Chamber of Commerce during the organization's October 27, 2016 Annual Meeting in Billings. In his comments to attendees O'Hair stated:*

*"People wring their hands about the loss of working-class jobs. 'How are you going to raise families on minimum wage jobs?' Well, guess what? We still have those jobs right here in Montana. Right here at my company, Cloud Peak Energy" ...*

The Montana Chamber will commit itself to attracting large businesses to Montana and getting those businesses to remain here, while also promoting development of small Montana businesses...Lobbying for more favorable regulations and taxes for promoting businesses will be (Chamber) goals in the 2017 Legislature ... The focus will also be on getting state government to

deliver on the new roads and infrastructure that communities have demanded but not received in several legislative sessions...

"We've heard the back and forth among the political parties for the last four years about whose fault it is. Well, frankly, we don't care whose fault it is anymore," O'Hair said. "it's time we do something constructive. Too many towns and too many cities have been waiting too long for something to happen. So we're going to take this into our hands, and we're going to charge into the 2017 legislative session with a demand that they do something for infrastructure."...

## **Treasure State Resources Association granted Intervenor Status in Upper Missouri Waterkeeper v. U.S. EPA Challenge**

Earlier this Fall TSRA petitioned to intervene on behalf of our members in a suit filed on May 31, 2016 in U.S. District Court for the District of Montana challenging Montana's nutrient standards and variances. Just as an update, Judge Morris has granted TSRA's Motion to Intervene so our effort will be moving forward.

The Association participated in various legislative and rulemaking efforts that led to the establishment of the current regulatory process for nutrients. TSRA members currently hold variances and loss of that regulatory option would seriously impact their ability to operate.

The Montana League of Cities and Towns and the MT Department of Environmental Quality have also intervened in the case.

## **Interim Legislative Committees Wrap up Work**

Sources Include: The [Interim Newsletter](#) published by the MT. Legislative Council

## **Energy and Telecommunications Interim Committee Forwards 13 Proposals**

ETIC finished a very busy interim by sending 13 legislative proposals to the 2017 Session. Five of those address the closure of two coal-fired generating units in Colstrip, five deal with net metering, one with next generation 9-1-1 and two with renewable energy.

As a reminder, in July the owners of the four-unit Colstrip Generating Station and environmental groups reached a settlement agreeing that Colstrip Units 1 and 2 will be shut down by 2022 at the latest. The settlement also requires changes in operations at Units 3 and 4.

ETIC considered several proposals designed to help the state plan for closure of the facilities. Five bill drafts were moved forward. They are:

- LC 434 (COL1) – Appropriate money to the Department of Justice and the Governor's Office to assist in securing the future of communities affected by the closure of coal-fired

generating units in Montana. The original draft was amended to also include an appropriation to establish a stakeholder's group in the Governor's Office to identify future energy generation initiatives that utilize transmission systems currently used by coal-fired generation.

- LC 435 (COL2) - Establish the Coal-Fired Generating Unit Decommissioning and Remediation Act and provide requirements for submission, review, and modification, and approval of a decommissioning and remediation plan for a coal-fired generating unit and affected property.
- LC 436 (COL3) – Establish the Treasure State Restore and Rebuild Act. This draft was significantly amended from the original proposal. Instead of using money in the coal trust permanent fund, the draft doubles the Wholesale Energy Transaction tax paid by entities that export power from Montana generation. The increased revenue is placed in a fund for counties impacted by the closure of coal-fired generating units. Counties or local government entities would be able to use the money for loans or to bond against to address revenue impacts when coal-fired generating units close.
- LC 438 (COL5) – Establish the Montana Energy Accountability Act and require an electrical company, a wholesale-exempt generator, or a public utility that retires a coal-fired generating unit to pay a coal-county impact fee for 10 years following closure of the unit or units. The money is provided to entities (local governments, schools, etc.) impacted by the closure of the unit.
- LC 433 (COL6) – Establish a benefits and retirement security task force in the Governor's Office.

Questions concerning any of the ETIC proposals can be directed to: [snowakowski@mt.gov](mailto:snowakowski@mt.gov) or 406-444-3078.

## **Environmental Quality Council Approves Agency Bill Drafts**

At their final meeting of the interim, the EQC approved, for early drafting and pre-introduction, bill draft proposals from the agencies it oversees. Those of primary interest to TSRA members are as follows:

### Department of Environmental Quality

- LC 471 – Revising the required corridor width in the Major Facility Siting Act for evaluating pipelines and electric transmission lines. The changes also contemplate additional consultation with the applicant and public notice.

### Department of Natural Resources and Conservation

- LC 472 – Modifying commercial leasing rental provisions on state lands to clarify the valuation process and to allow extended option-to-lease periods.

- LC 473 – Increasing to 2 million board feet the amount of timber DNRC can harvest on state land with limited access when permission is granted by an adjacent landowner and there is only one potential buyer with legal access.
- LC 474 and LC 475 – Cleaning up moot conversation district statutes.
- LC 476 – Clarifying conservation district supervisor terms and when an oath of office must be signed.

The EQC also signed off on 10 legislative proposals from the Department of Fish, Wildlife and Parks.

Questions concerning the EQC's work during the interim can be directed to: [jkolman@mt.gov](mailto:jkolman@mt.gov) or 406-444-3747.

## **Water Policy Interim Committee Forwards Proposal Re: State Assumption of 404 Permitting**

WPIC met October 12<sup>th</sup> to finish their interim work. The Committee had been charged with studying the possibility for the state to assume jurisdiction for issuing 404 permits. In addition to issuing a report of their findings to the 2017 Montana Legislature, WPIC proposed a draft bill to take another step toward assumption. Noting some miscommunication with the drafter, WPIC amended the proposal to make it clear that the state would not have to move forward unless the Waters of the United States rule was upheld **as originally noticed in the Code of Federal Regulations**.

As noted above, the draft was amended to “direct”, not “authorize” the Montana Department of Environmental Quality to “take all actions necessary” to gain federal permission to assume the 404 permitting program. WPIC Committee member Senator Chas Vincent explained the language was needed to allow the DEQ to potentially apply for grant funds from the EPA to further study the 404 assumption process. A similar provision was included in legislation passed in Alaska for the same purpose. During Committee discussion on the measure, Senator Vincent explained one of the goals for the proposed bill was to position Montana at the head of the pack should a “worst case scenario” come about as a consequence of judicial action upholding the WOTUS rule

Staff contact Jason Mohr can be reached at 406-444-1640.

## **Helena Adopts Smith River Resolution**

Source: [Independent Record](#) October 18, 2016 By: Tom Kuglin

Following lengthy public comment, the Helena City Commission adopted a resolution....calling for assurance that a proposed Meagher County copper mine will not harm the Smith River.

Commissioners Robert Farris-Olsen, Ed Noonan and Andres Haladay voted in favor of the resolution while Mayor Jim Smith and Commissioner Dan Ellison opposed...The (resolution) language calls for skepticism in viewing Tintina Resources' proposed Black Butte Copper Project, and asking for "absolute certainty" that the mine will not adversely affect the river...

The resolution is an expression of the commission's opinion and does not put city resources towards opposition of Black Butte.... Those speaking in favor of the resolution Monday hammered mining's legacy of pollution and failed companies while proclaiming the Smith as a

natural wonder deserving of protection...Jim Jensen, executive director of the Montana Environmental Information Center, a major opponent of the mine, balked at the idea that the Montana Department of Environmental Quality would adequately ensure Black Butte will not pollute, citing failed mines the agency has permitted in the past.

...Opposition to the resolution has come from officials in Meagher County and White Sulphur Springs with letters from both the county commission and city council there criticizing the resolution...Representatives with Tintina pushed the message that the mine can operate and the environmental integrity of the river be maintained with modern mining practices. President and CEO John Shanahan agreed that the legacy environmental degradation is a problem that deserves attention, but asserted that his company through philosophy and regulation will develop responsibly...

(Commissioner) Ellison further criticized the resolution, stating the "absolute certainty" standard is unattainable. (Mayor) Smith said he waded through hundreds of pages of DEQ documents and was satisfied with the thoroughness of the environmental review and pointed out the many ways the city is regulated and permitted by the state.

*Editor's Note: TSRA was among those opposing the resolution, calling on the Commission to allow the regulatory process established in law and regulation for permitting a mine to work. Thank you to other TSRA members who took time to send comments to the Helena City Commission. TSRA also submitted the following guest column to newspapers around the state explaining the process:*

## **Black Butte Project Highlight Contemporary Mining Protocols**

Montana's history- part wonderful, part fascinating, and part problematic. This was the way of many mineral rich states that helped build our nation.

With no serious environmental regulation governing mining until the 1970s, early industrial activity left behind serious impacts. We look back on those early days questioning the decisions that were made, but also realizing that miners and other foundational industries used the best methods available to them at the time. Thankfully, this wonderful, fascinating, and problematic

mining history also helped us learn and advance in remarkable ways. We've grown; we've invented and helped modernize our country; and we've learned how to create a regulatory structure around mining processes that protects both environmental and human values.

Today, with Tintina Resources recently submitting their revised Black Butte Project's application to the Department of Environmental Quality (DEQ) for review, we have a great opportunity to reflect on this progress and acknowledge the benefits that modern mining brings to our state. It's also time to demand reasoned and rational thinking about this project.

First, the DEQ has significantly revised its bonding process, which allows for no self-bonding and requires bonds to be completely reviewed/adjusted every five years to prevent taxpayers from having to assist in reclaiming sites after mining is complete. In fact, existing mine operations now fund legacy restoration projects through the Montana Metal-Mines Tax. We've also re-written our reclamation statutes ensuring that Montana mine design standards are second to none and created the strictest tailings impoundment statutes in the world. This is progress to be proud of.

Next, we should be proud that Montana is the only state to address the "boom and bust" nature of mining by creating the Hard Rock Mining Impact Act. This act recognizes that large mineral developments put a strain on local government services and requires a negotiated plan upfront addressing issues from an influx of school students, to increased ambulance/fire service needs, or anything else putting socio/economic pressure on effected communities. These plans must be completed prior to construction and are designed to meet needs before, during, and after the operating life of a mine.

Finally, Montana mines work closely with stakeholders and community groups ensuring they meet expectations of all neighbors. Modern mining companies recognize that they must not only meet or exceed our state's regulatory requirements, but that they must also earn a social license to operate.

When a new mine application is being evaluated by the DEQ, we have every right to expect our regulatory structure and processes to scrutinize and hold that applicant accountable to the standards we have established. We also have an obligation to be informed and hold each other accountable, collectively ensuring that our state is a place that seeks both the protection of our environment and the benefits of new wealth creation simultaneously.

The Black Butte Copper project is a great example of why finding that balance is so necessary. If you have real concerns about the project or are simply interested in learning more, go out and seek the answers to your questions. Give yourself the benefit of looking past a three word slogan and evaluate the merits of the project proposal yourself, and from more than one perspective. Tintina Resources, as open and transparent company as I have ever seen, is eager to listen to your questions and concerns. They provide frequent tours and are likely giving a presentation on



their proposal somewhere in your area. If not, give them a call and request one, you'll be glad you did, I know I was.

Peggy Trenk  
Executive Director  
Treasure State Resources Association

## **National Association of Counties Weighs in On Comprehensive Forest Management Legislation**

Joining forces with the forest products industry and others, the National Association of Counties (NACo) has also weighed in on the conference negotiations on comprehensive energy legislation. NACo sent a letter to the Senate and House conferees on October 26, 2016 asking them to address a number of critical issues. That included the need to enact comprehensive forest management legislation. An excerpt from their letter reads as follows:

*NACo supports enacting comprehensive forest management legislation and we continue to encourage the House and Senate to work together to pass comprehensive legislation to reform federal land management practices before the end of the year.*

*Congress must work to reverse the decline in our federal forests by enacting meaningful forest management reforms that improve forest health and restore forest production. Counties believe that active management of federal lands and forests must be done in a sustainable manner to ensure the health of our federal lands for generations to come and we are intergovernmental partners with the federal government in achieving these goals.*

*The health of our federal forests has a direct effect on public health, safety and economic wellbeing of counties across the United States. Not only do unhealthy forests increase community fire risk, they can also negatively impact community access to clean water and air, threaten wildlife habitats and reduce county opportunities for forest-related tourism and job creation.*

*NACo applauds legislative proposals to:*

- *Promote forest management activities that cross federal, state and private land boundaries;*
- *Encourage landscape-wide forest management projects on federal lands;*
- *Provide funding flexibility to reinvest unused fire suppression dollars into reducing wildfire risks in at-risk communities.*
- *Streamline analysis and expedite review of forest management activities;*
- *Accelerate hazardous fuels reduction work in the areas at greatest risk for catastrophic wildfire; ...*

*As the conferees continue their work, NACo asks that you include provisions in the final conference report to address the negative impacts of excessive litigation, which have created a culture of "analysis paralysis" within federal land management agencies and have hampered collaboratively developed forest projects*

*across the nation. In recent years, costly litigation has slowed or prevented the timely implementation of forest health projects and created a checkerboard of conflicting judicial opinions resulting in inconsistent application of federal environmental laws and regulations and crippling regulatory burdens for counties and federal agencies alike. Proposals before the House and Senate that would require a court to balance the short and long term effects of a forest management activity against the short and long term effects of taking no action by issuing an injunction should be thoroughly considered. We also encourage the conferees to consider alternative dispute resolution options, such as arbitration, as a means of reducing forest project litigation and incentivizing collaborative forest management activities.*

Earlier in October several forest industry groups, including the Montana Wood Products and Montana Logging Associations, sent a letter to Senate and House Committee Chairs urging their support for solutions to the forest management crisis as well as wildfire funding. An excerpt is as follows:

*Any durable solution to the fire borrowing and forest management crisis should, in our view, include provisions which:*

*Builds on the use of Categorical Exclusions (CE's) under the National Environmental Policy Act to allow certain types of projects to go forward to address specific forest health needs, including hazardous fuels reduction and creation of early seral habitat;*

*Streamlines NEPA (action/no action) for collaboratively developed forest management projects, as well as expedited judicial review for covered projects.*

*We also urge you to address obstructionist litigation and affirm the professional judgment of agency professionals by incorporating the pilot authority for the Forest Service to experiment with binding arbitration as an alternative dispute resolution mechanism found in S. 3085. The pilot program in the bill would preserve access to judicial remedies, while allowing experimentation with a potentially time and money saving alternative. All covered projects should be given greater deference in the courts and be allowed to go forward under existing review procedures for hazardous fuels reduction projects.*

## Upcoming Events/Dates

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| <p><b>November 8, 2016</b><br/>General Election Day<br/>Don't Forget to Vote!</p>                 | <p><b>January 2, 2017</b><br/>Montana Legislative Session Begins</p>                            |
| <p><b>November 14, 2016</b><br/>Legislative Caucuses (2017 Session)<br/>State Capitol, Helena</p> | <p><b>January 2-3, 2017</b><br/>Montana State Chamber Days<br/>Helena, MT</p>                   |
| <p><b>December 7, 2016</b><br/>Montana Taxpayers Association Annual Meeting<br/>Helena</p>        | <p><b>January 3, 2017</b><br/>TSRA Legislative Showcase<br/>Radisson Colonial Hotel, Helena</p> |