



TREASURE STATE RESOURCES ASSOCIATION OF MONTANA

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TREASURE STATE RESOURCES ASSOCIATION NEWS April, 2017

Montana Legislative Update

The following is an update on the status of some of the major bills TSRA has been following so far this session. For those addressed in an earlier newsletter, the updated information appears in **red**:

HB 38: Introduced by Rep. Curdy on behalf of the Department of Natural Resources, this bill increases the amount of timber that can be harvested on an inaccessible section of state land when the adjoining landowner will authorize access to only one potential buyer. The Department believes this will aid in carrying out their forest management goals.
Status: **TSRA supported. Signed by the Governor.**

HB 211: Introduced by Rep. Hamlett, the bill requires the Department of Fish, Wildlife and Parks to report sage grouse population data to the Montana Sage Grouse Oversight Team and the Environmental Quality Council on an annual basis. The report must include seasonal and historic population data available from the department or any other source. The bill was amended to include the requirement that the Department also report the number of leks. The goal is to stay abreast of population trends so MSGOT can evaluate whether efforts to conserve habitat are on track, or if adjustments may be warranted.
Status: **TSRA supported. Signed by the Governor.**

HB 228: Introduced by Rep. Keane to revise funding for the Montana Greater Sage Grouse Stewardship Act. This bill authorizes resources for operation of the sage grouse program, as well as funding for stewardship grants for a 4-year period. The bill was amended to cap the amount of money that would be spent on administration of the program at \$400,000.

Status: Awaiting action in Senate Finance and Claims before going to the Senate Floor for a final vote. TSRA Supports.

HB 339: Introduced by Rep. Carl Glimm, the measure establishes an approach to allowing drilling of individual water wells (exempt wells) for certain uses, including small-scale development and agricultural uses. It represents a collaborative effort that includes agricultural interests, homebuilders, water well drillers, real estate interests and others. Key is protection of the prior appropriation doctrine. TSRA supports the bill.

Status: Passed out of the Senate Natural Resources Committee and will go to the Senate floor for a vote.

HB 593: HB 593 would have added a new section of law to the Montana Metal Mine Reclamation Act requiring third party audits of operation permit compliance and performance bond adequacy every 3 years. Another section would have given the Board of Environmental Review rulemaking authority to determine a level of sulfide mineralization that would require a 150% bond be secured. The bill was introduced by Rep. McConnell from Missoula. The Montana Mining Association and representatives of member companies opposed the bill and did an excellent job of pointing out the extensive bonding requirements that already exist and how closely mining activities are already monitored. TSRA also testified in opposition to the bill.

Status: Bill was tabled in the House Natural Resources Committee.

SB 132: Introduced by Sen. Tom Richmond, the bill makes the 10-year tax exemption created in the 2015 session permanent for certain pollution control equipment installed by industry. The sponsor focused on the renewed potential for use of carbon capture equipment by some Montana facilities and the need to plan for costs in the long term.

Status: Tabled in the House Taxation Committee. TSRA Supported.

SJ 5: Introduced by Senator Mike Phillips, the joint resolution calls for an interim study to look at threats to the mining and burning of coal in Montana and the consequences of significant reductions in coal mining and usage. The resolution was amended in the Senate to include language that the study look at the potential for other economic sectors to compensate for any reduction in the coal severance tax due to reduced coal mining in Montana.

Status: The resolution was amended in the House Energy, Technology, and Federal Relations Committee to strip references to greenhouse gases and climate change to focus more closely on the economic impacts. Waiting for action on the House floor. Amendments will go back to the Senate for consideration. TSRA opposed the study bill.

SJ 6: Introduced by Sen. Ankney, the resolution would urge Congress to propose the Regulation Freedom Amendment to the United States Constitution. The amendment would state that “whenever one quarter of the members of the United States House of Representatives or the United States Senate transmits to the President their written declaration of opposition to a proposed federal regulation, it shall require a majority vote of the House of Representatives and

the Senate to adopt that regulation.” TSRA supported the resolution, citing the growing number of regulatory proposals that have far-reaching impacts on jobs and the economy that federal agencies aren’t taking into consideration when adopting rules.

Status: **The resolution has passed out the House Energy, Technology, and Federal Relations Committee and is waiting for action on the House floor.**

SB 170: Introduced by Sen. Hinebauch, the bill provided that a person who owns or occupies real property can bring a civil action against an operator of an unmanned aerial vehicle (drone) who trespasses on their property. The hearing drew a number of opponents, including TSRA, who while appreciating the intent to protect private property rights, pointed out the potential for unintended consequences for parties conducting various commercial activities. A number of amendments were added to exempt some activities, including those being conducted by law enforcement, land surveying, or for insurance purposes. **Additional concerns came to light during second reading on the Senate floor and the bill was re-referred to the Senate Business and Labor Committee for further work. Additional changes were made, including adding a definition of “critical infrastructure” and the bill was returned for second reading.**

Status: **Bill died on the Senate floor. Those speaking against the bill noted remaining concerns with the scope. TSRA opposed as originally introduced.**

SB 190: Senators Phillips and Barrett brought this bill to require the MT Department of Environmental Quality to develop and implement a greenhouse gas reporting program. The Board of Environmental Review would have been charged with adopting fees to be assessed on “significant sources of greenhouse gas emissions” for purposes of funding the program. The DEQ would **have needed** to produce a report by August 1, 2019 that would include a proposal to cap greenhouse gas emissions in Montana.

Status: **The bill was passed out of the Senate Natural Resources Committee for purposes of bringing the discussion to the floor. SB 190 died on second reading and was indefinitely postponed.**

SB 207: Sen. Moore introduced SB 207 to protect the confidentiality of certain artifacts or remains found on land obtained for common carrier pipelines. Sen. Moore noted there were some inconsistencies in current state regulatory requirements. Originally limited to lands obtained through the exercise of eminent domain, the bill was amended to apply to all lands, rights-of-way, or easements obtained for common carrier pipelines. TSRA was a “soft” opponent to the bill as introduced because of the eminent domain limitation. **The bill was amended to strike the limitation to situations where eminent domain is exercised, and further amended to clarify what rights DEQ has to information for permitting purposes.**

Status: **The bill has passed the House and Senate and will go to the Governor for signature.**

SB 232: This bill was brought on behalf of the Montana Trail Vehicle Riders Association and was sponsored by Sen. Connell. SB 232 would require resident users of Off-Highway

Vehicles (OHV's) to purchase and display a \$10 annual trail pass if they choose to operate them on public trails. Funds raised would go toward ethics and safety education, weed control, new trail construction, signage, trail clearing and maintenance. TSRA supports the bill, noting MTVRA's long participation in the association and recognizing the extensive volunteer efforts already expended by MTVRA members to maintain trails and provide safety education.

Status: **The bill is waiting for Executive Action in the House Natural Resources Committee.**

SB 235: Introduced by Sen. Tom Richmond, the bill would give the Montana Land Board more flexibility in managing coal leases on state land. For leases that are due to expire (currently a 10 year lease period unless certain development/production targets are met), the Land Board can take into account the current fact situation and consider an extension. Current law does not offer that option. Extending a lease does not affect any other required permitting processes. TSRA supports the bill.

Status: **Bill has passed the Senate is awaiting action in the House Natural Resources Committee.**

SB 284: Introduced by Sen. Mike Lang, the bill revises the Montana Greater Sage-Grouse Stewardship Act by changing the current requirement for the US Fish and Wildlife Service "to approve" the habitat quantification tool (HQT) being developed for Montana's program to state that the HQT would be designated in "consideration of applicable United States Fish and Wildlife Service sage grouse policies, state law, and any rules adopted pursuant to this part." The sponsor noted that when the legislation was first adopted in 2015, the state didn't know if the sage grouse would be listed as an endangered species, thereby making management subject to USFWS approval. In discussions regarding rulemaking for the state program last fall, the Service noted they technically did not have the authority to "approve" anything because sage grouse were not listed and are not currently under their jurisdiction. Given the potential for confusion between the statute and the rules being developed, the clarification in the bill will better align Montana's efforts to protect the sage grouse. TSRA supported the measure.

Status: **The bill is on its way to the Governor for signature.**

SJ 10: This resolution sponsored by Sen. Lang calls for Montana to urge Congress and the President to approve the Keystone XL pipeline. The language in the resolution highlights the expected \$63 million in annual property taxes that will be generated from the pipeline. The pipeline is expected to provide for 3500 jobs in the state during construction. The AFL-CIO testified in support, noting many of those jobs would be filled by union workers per agreement with the company. Representatives from local communities in eastern Montana testified as to the economic benefits the pipeline would provide and noted the company had been a "good neighbor" in terms of supporting local activities. TSRA supported the resolution.

Status: **The resolution passed both the Senate and House of Representatives. Resolutions do not go to the Governor for approval.**

SB 317: Senator Dan Salomon introduced the bill to address a situation in current law that allows the Department of Revenue to assess a 12% interest charge on underpayment of corporate

taxes that may result from mistakes or a disagreement over tax code interpretation. It applies to corporate taxpayers who pay their taxes on time and in good faith, but are then subject to what can sometimes be a lengthy audit by the Department. If DOR determines the taxpayer owes additional tax, the 12% is applied to the date of filing, not the discovery of the underpayment. SB 317 ties late tax payment interest to the true value of money, rather than an arbitrary rate. As introduced, the rate would be 2 percentage points over the prime rate. It was amended in the Senate to 4% over prime. It may be amended in the House to drop the rate to 3%. The bill does not affect any of the penalties the DOR can assess for such things as failure to file a return or filing a fraudulent return. TSRA testified in support as our member companies could be affected. Status: Bill is awaiting Executive Action in the House Taxation Committee.

SB 337: Introduced by Sen. Ankney, SB 337 calls for elimination of the Board of Environmental Review (BER). Duties of the Board would be reassigned to the Department of Environmental Quality. The BER decides such things as appeals from Department decisions and holds rulemaking authority for some programs as directed by statute. Proponents pointed out that much of what the BER does is redundant since DEQ provides the staff support, drafts the rules working with stakeholders, and must also consult with EPA on many matters. Opponents argued that the Board was important as an arbiter of Department decisions, particularly for small businesses. TSRA supports the bill. Status: The bill has passed out of the House Natural Resources Committee and will go to the House floor for a vote.

Department of Environmental Quality Initiates Rule Review for Nutrients Standards Variances

Source: MT. Department of Environmental Quality Draft Rules

Per state statute, the Montana Department of Environmental Quality must complete a review and update of the nutrient standards variances rules and guidance prior to July 1, 2017. DEQ has worked with the Nutrient Work Group (stakeholders), as well as a Technical Subcommittee of the Work Group to draft changes to the current rules and Circular DEQ -12B. The changes address EPA guidance issued after the original rules were adopted.

The draft rules will be published in the April 14, 2017 Montana Administrative Register (ARM) and will be open for public comment. The Department will also hold a public hearing on May 31st in Helena. In order to meet the statutory deadline, the rules will need to be published for adoption in the June 23, 2017 MAR.

Changes are being proposed for both general and individual variances. One of the changes made to the federal rules was that a "highest attainable condition" (HAC) must now be identified when a variance is granted. Montana's nutrient variances are based on economic impact considerations, so in order to comply with federal requirements, the requirements in

Table 12B-1 (New Circular DEQ-12B) must reflect the HAC determined, largely, by economic affordability considerations.

Another change is the requirement for permittees to include a pollution minimization program (PMP). This plan is to be submitted by a permittee at the time they achieve the HAC. The time it will take to achieve the HAC is expected to vary. The PMP identifies potential actions – which could be taken by others – to further reduce pollution. Those seeking an individual variance under the new requirements will have automatically identified a treatment level that is the highest attainable condition, tailored to their specific situation.

TSRA members are encouraged to review the draft rules and new DEQ Circular-12B once published, and submit comments as appropriate. Once adopted, the rules will be in effect until the next triennial review. The notice should be posted on the DEQ website once it is published.

Registration Open for REAL Montana Class III

Registration for the next REAL Montana Leadership Class is open until May 31, 2017. Resource Education and Agriculture Leadership (REAL) Montana is a two-year program offering in-depth education and training in the agriculture and natural resource industries.

The class schedule involves 10 seminars held over a two-year period, beginning in September 2017. Sessions focus on gaining leadership and communications skills as well as learning about Montana resource industries. The program will also include an international trip. The cost is \$3,000 plus in-state travel expenses.

Eligible applicants must earn a substantial percentage of their livelihood from natural resources or affiliated industries in Montana. Those interested in the program can contact Janelle Booth at 406-994-6480 janelle.booth@montana.edu or Tara Becken at 406-930-4205 tara.becken@montana.edu. Application information can also be found on line at realmontana.org.

New Administration in Washington Continues to Restore Balance in Environmental Regulation

While it has been a long time coming (eight years) the new Trump Administration is acting quickly to change the focus in Washington to promoting energy and resource development in concert with protecting the environment. The following articles reflect a range of positive initiatives that have been taken:

Trump paves way for American energy revival

Source: Montana Petroleum Report

Contact: Jessica Sena 406-590-8675

On Tuesday afternoon (March 28, 2017), just days after approving the Keystone XL pipeline, President Trump signed the Energy Independence Executive Order. The executive order lifts restrictions on American energy and cancels job killing regulation to put power back in the hands of states where power belongs, said Trump.

“It’s time the federal government recognizes that states know best how to regulate the industries that fuel their state and local economies,” said Alan Olson, executive director of the Montana Petroleum Association.

During his press conference, President Trump vowed to end the war on coal and stop the theft of American prosperity. Beyond calling on the EPA to take another look at the Clean Power Plan, President Trump’s executive order calls for lifting the moratorium on federal coal leasing.

The Order celebrates American production on American soil, recognizing private sector innovation to provide clean, affordable, reliable energy. In addition to unleashing America’s coal potential, reports from the White House indicate good news for oil and gas. Trump’s order initiates a review of onerous BLM rules on venting and flaring, and hydraulic fracturing.

“Our nation can’t run on pixie dust and hope,” said Interior Secretary Ryan Zinke...he pointed to the direct relationship between energy security and national security. “The world is safer when America is strong, and our strength relies on energy.”

This is only the beginning for American energy producers who’ve been promised a regulatory rollback under a Trump administration.

“We finally have a President willing to go to bat for the private sector and for American oilfield workers and coal miners,” said Olson. “It’s about time.”

Others commenting on the President’s Executive Order Repealing the Clean Power Plan included:

Source: March 28, 2017 Count on Coal News Release Contact: Shelby DeMars 406-660-1969

“Coal production in Montana has funded hundreds of great infrastructure project throughout Montana, and today’s executive order ensures that coal can compete with other energy sources on a level playing field and continue playing a major role in funding construction projects in our state well into the future.” – Cary Hegreberg, *Executive Director, Montana Contractors’ Association*

“The government should not regulate with the intent of picking winners and losers in the marketplace. Consumers and businesses across Montana deserve fair and consistent regulations – not punitive measures like the Clean Power Plan. 60% of Montana’s electricity is supplied by coal and hundreds of jobs in our state depend on our ability to provide affordable and reliable

power. This executive order will lift the restraints on business, lower energy prices, and put Montanans back to work.” – Bridger Mahlum, *Government Relations Director, Montana Chamber of Commerce*.

Secretary Zinke Takes Immediate Action to Advance American Energy Independence

Source: March 29, 2017 Department of Interior News Release

Today, U.S. Secretary of the Interior Ryan Zinke signed two secretarial orders to advance American energy independence. The Secretary’s orders foster responsible development of coal, oil, gas and renewable energy on federal and Tribal lands and initiate review of agency actions directed by President Trump’s executive order entitled “Promoting Energy Independence and Economic Growth.” Secretary Zinke also signed a charter establishing a Royalty Policy Committee to ensure the public receives the full value of natural resources produced from federal lands. In signing the historic actions on energy independence, Secretary Zinke was joined by Members of Congress from western states and other stakeholders.

“Today I took action to sign a series of directives that put America on track to achieve the President’s vision for energy independence and bringing jobs back to communities across the country”, said Secretary Zinke. “ American energy powers our national and local economies. But for too many local communities, energy on public lands has been more of a missed opportunity and has failed to include local consultation and partnership. Today’s orders allow for Americans to benefit from safe and environmentally responsible development on federal lands and put American on track for energy independence.”

Secretarial Order 3348 overturns the 2016 moratorium on all new coal leases on federal land and ends the programmatic environmental impact statement that was set to be completed no sooner than 2019. Based upon the Department’s review of Secretarial Order 3338, the order notes that “the public interest is not served by halting the federal coal program for an extended time, nor is a PEIS required to consider potential improvements to the program.” The order notes that the federal coal leasing program supplies approximately 40 percent of the coal produced in the United States and is critically important to the U.S. economy.

Secretarial Order 3349 implements review of agency actions directed by the President’s executive order ... on energy independence. It also directs a reexamination of the mitigation and climate change policies and guidance across the Department of Interior in order to better balance conservation strategies and policies with the equally legitimate need of creating jobs for hardworking American families. In particular, the order sets a timetable for review of agency actions that may hamper responsible energy development and reconsideration of regulations related to U.S. oil and natural gas development.

In an effort to ensure the public continues to receive the full value of natural resources produced on federal lands, Secretary Zinke also signed a charter establishing a Royalty Policy Committee to provide regular advice to the Secretary on the fair market value of and collection of revenues from Federal and Indian mineral and energy leases, including renewable energy sources. The Committee may also advise on the potential impacts of proposed policies and regulations related to revenue collection from such development, including whether a need exists for regulatory reform. The group will consist of up to 28 local, Tribal, state and other stakeholders and will serve in an advisory role.

Secretary Zinke added that, "It's important that taxpayers get the full value of traditional and renewable energy produced on public lands and that we ensure companies conduct environmental reviews under NEPA and have reclamation plans."

Save-the-Date Reminder: The Treasure State Resources Association Annual Meeting is Scheduled for June 21-23, 2017 Fairmont Hot Springs Resort, Fairmont, MT

Don't forget this year we'll be gathering at **Fairmont Hot Springs Resort**, Fairmont, MT on June 21-23, 2017 for our annual meeting. Plans include the traditional "golf scramble" and networking events. We're also combining our activities with a "strategy/planning" meeting for industry, recreation and other interested groups.

The program will include a presentation on the Habitat Quantification Tool being developed for the Montana Sage Grouse program. We'll also be hearing from officials about potential regulatory changes for water quality as well as other issues.

The TSRA Golf Scramble will be held at the **Old Works Golf Course in Anaconda, Montana beginning at 1:00 pm. on Wednesday, June 21, 2017**. Additional Program and Registration Details will be sent next week.

Upcoming Events/Dates

May 23-25, 2017	-	Montana Mining Association Convention Fairmont Hot Springs Resort
May 31 – June 1, 2017		Montana Stockgrowers Assn. Mid-Year Meeting Great Falls, MT
June 21-23, 2017	-	Treasure State Resources Association Annual Mtg. Fairmont Hot Springs Resort

- July 17-18, 2017 - Montana Coal Council Annual Meeting
Big Horn Resort, Billings, MT
- July 27-29, 2017 - Governor's Cup Golf Tournament
Flathead
- August 29 – 30, 2017 Montana Petroleum Association Annual Meeting
DoubleTree by Hilton, Billings, MT