



TREASURE STATE RESOURCES ASSOCIATION OF MONTANA

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TREASURE STATE RESOURCES ASSOCIATION NEWS February, 2016

Save-the-Date – We’re trying something NEW for the Treasure State Resources Association Annual Meeting

Join us at Fairmont Hot Springs Resort, Fairmont, MT – June 21-23, 2017

We’re changing things up this year for the Annual Meeting. Recognizing that many of the groups our members are involved with meet in the Fall, we’re hoping to reduce conflicts by meeting earlier in the summer. This year we’ll be gathering at **Fairmont Hot Springs Resort**, Fairmont, MT on June 21-23, 2017. 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. Program and Registration Details will follow.

Legislative Update – News from the “Front”

The 2017 Session has entered its second month. Much of the focus has been on the state’s fiscal situation where both parties have recognized the need to hold the line on spending. That appears to translate into an equally cautious approach to introduction of bills. While many bill requests were submitted, the number introduced so far is significantly lower than in previous years. Many committees are hearing bills from the other House well before the mid-session transmittal deadline.

TSRA has weighed in on several bills to date. Those include:

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. TSRA testified in support.

Status: Passed the House of Representatives. Waiting for hearing in the (S) Natural Resources Committee.

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 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. TSRA testified in support.

Status: Passed unanimously out of the (H) Natural Resources Committee. Will be sent to the House floor.

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. TSRA testified in support.

Status: Waiting for Executive Action in the (H) Natural Resources Committee.

HB 296: Introduced by Rep. Hayman, the legislation called for establishing a hazardous materials response and preparedness task force to identify needs for beefing up readiness across the state to respond to hazardous waste emergencies. TSRA emphasized the commitment to safety across all industry sectors, but opposed the measure because it created a duplication of effort. The State Emergency Response Commission is already in place and working on the same issues.

Status: The bill was tabled in committee.

SB 109: Introduced by Senator Mike Phillips, the bill allows regulators to consider potential environmental impacts outside of Montana when reviewing a proposed action. It would roll back limitations placed on consideration of those impacts in an earlier session. Opponents pointed to the uncertainty the change would create in state permitting processes. TSRA President Todd O'Hair testified in opposition to the bill on behalf of the Association.

Status: Waiting for Executive Action in (S) 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. TSRA testified in support. Status: Waiting for Executive Action in (S) Energy and Telecom. Committee

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. While a study might call attention to the significant contribution coal makes to the state, there was some discomfort with the sponsor's approach based on the measure's short title calling for an "interim study regarding coal phase - out". TSRA President Todd O'Hair testified in opposition on behalf of the Association. Status: Waiting for Executive Action in (S) Natural Resources Committee.

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: Waiting for Executive Action in (S) Energy and Telecommunications Committee.

Senator Steve Daines Picked to Lead Parks Committee

Source: Helena Independent Record February 1, 2017 By: Rob Chaney, Missoulian

Montana Senator Steve Daines has been appointed Chairman of the Senate's subcommittee on National Parks. The panel that has oversight of the National Park System, Wild and Scenic River System, National Trails System, historic sites, military battlefields, and the Land and Water Conservation Fund reports to the Senate's Committee on Energy and National Resources....Daines also sits on the subcommittee on Public Lands, Forests and Mining, and Subcommittee on Energy... Running that subcommittee will put Daines in close contact with fellow Montanan Ryan Zinke, who was confirmed Tuesday (Jan. 31) by a Senate panel for secretary of the Department of Interior. The Interior Department oversees the National Park Service, among other agencies.

The appointment drew praise from national park system stakeholders, including Michael Jamison of the National Parks Conservation Association. "Sen. Daines understands that National Parks have incredible value, beyond the millions of dollars they provide our state's tourism economy," Jamison wrote...Montana Outfitters and Guides Association executive director Mac Minard added that the appointment should benefit Montana's outdoor economy. "Access to our National Parks is important for many of us that are small business owners and key parts to our local economies and our state's robust tourism industry," Minard wrote.

National Mining Group Applauds New Sage Grouse Legislation

Senator Risch and Rep. Bishop Lead the Efforts to Repeal BLM's Epic Land Grab

Source: American Exploration and Mining Association, February 2, 2017 Contact: Devon Coquillard at : dcoquillard@miningamerica.org

Today, U.S. Senator Jim Risch (R-ID) introduced the *Greater Sage-Grouse Protection and Recovery Act of 2017* (S.273), allowing states to implement their own specific conservation and management plans to protect greater sage-grouse populations and their habitats, in lieu of federal management. Original co-sponsors of the bill include U.S. Senators Mike Crapo (R-ID), Dean Heller (R-NV), Orrin Hatch (R-UT), Mike Lee (R-UT), and Steve Daines (R-MT).

Representative Rob Bishop (R-UT) along with 10 co-sponsors have introduced a House version (H.R. 527). The Bill is aimed at halting the rushed Land Use Plan Amendments of the Obama Administration that ignored sound science, states' rights and led to the lock up of over 10 million acres to mineral access.

"Thank you to Rep. Bishop and Sen. Risch for the leadership necessary to end this epic land grab from our federal government, said Laura Skaer, AEMA Executive Director. "With this legislation we can restore public land access and end the politically driven policy that led to these deeply flawed plans."

Montana's Sage Grouse Stewardship Program Subject of Rulemaking and Legislative Proposals

While changes may be coming at the national level, diverse stakeholders in Montana continue to work on implementing Montana's Sage Grouse Stewardship program that was created in the 2015 session. As a reminder, the Legislature approved \$10 million as a source of funding for competitive grants to support voluntary conservation actions on private lands. Approximately 64% of sage-grouse habitat in Montana is found on private lands. So far five projects has been approved for a total of \$3.4 million in commitments. Only half of the \$10 million could be spent before a habitat quantification tool was approved.

Due to the tight state budget, the Governor has proposed paying out the \$10 million in funding transferred to the sage grouse stewardship state special revenue account in 2015 over the next four years, both for operation of the program and to provide grants for habitat improvement projects. The \$10 million commitment in 2015 was a key element in assuring the U.S. Fish and Wildlife Service that listing the sage grouse as an endangered species was not warranted. While the Governor's proposal has not been embraced by those involved in the 2015 legislative effort, stakeholders recognize the importance of keeping the program moving forward to allow projects in sage grouse habitat to be approved and any necessary mitigation to be addressed.

Representative Jim Keane is carrying the legislation, HB 228, that directs the change. Reauthorization of the funding was necessary regardless of the manner in which it was structured. At a hearing on the bill held on January 25th, proponents emphasized the importance of continuing the program, both for economic development and protection of the sage grouse. There were no opponents to the bill. TSRA testified in support of the measure.

On the rulemaking front, public comment on draft rules to lay the groundwork for the habitat quantification tool and mitigation policy closed January 23rd. Those comments are being reviewed and final action will be taken up by the Montana Sage Grouse Oversight Team in a few weeks.

TSRA signed on to a comment letter along with the Montana Petroleum Association, the Montana Coal Council, the Montana Contractors Association and the Montana Electric Cooperative Association. The following is an excerpt:

The Coalition has several primary concerns with the rule that are discussed in detail in this comment letter:

- 1. It appears the proposed rule would require compensatory mitigation for all development in sage grouse habitat. It is our assertion that if a developer is able to successfully adhere to all of the stipulations required by the Governor's Executive Order ("EO") when operating in Core, General, or Connectivity Areas, then no compensatory mitigation should be required. This would mean that compensatory mitigation is only required when the EO stipulations cannot be successfully implemented by a developer.*
- 2. We are increasingly concerned about the concept of net conservation gain.*
- 3. Due to the USFWS stating that they do not currently have any approval authority over Sage Grouse (a species not listed under the ESA), we are not comfortable with giving the USFWS final approval authority over the Montana Sage Grouse Conservation Plan. The coalition believes that all final approval authority should lie with the Montana Sage Grouse Oversight Team (MSGOT) and that the USFWS's role should be to review the habitat quantification tool (HQT) for scientific sufficiency and report their findings to the MSGOT.*
- 4. We believe that all authority granted by this proposed rule should be granted to MSGOT and not to the program.*

Comments were compiled and prepared by Dave Galt, Government Affairs Consultant with the Browning, Kaleczyc, Berry and Hoven Law Firm.

Additional legislation is anticipated to be introduced in the 2017 Session addressing the role of the US Fish and Wildlife Service in Montana's program.

Bill to Kill Obama Coal Rule Divides Tester, Daines

Source: Billings Gazette February 3, 2017 By: Tom Lutey

One of Barack Obama's last executive orders concerning coal divided Montana's U.S. Senators as a bipartisan group of the lawmakers voted this week to kill the former president's "stream protection rule".

Four coal state Democrats joined Republicans in scrapping former President Obama's rule, which Sen. Steve Daines, R-Mont. called "devastating to Montana's coal jobs. By eliminating it, we are opening the door for common-sense policies that protect our environment and good-paying Montana jobs."

The Senate vote Thursday (2/2/17) was 54-45.

Montana's Sen. Jon Tester, a Democrat, voted in favor of the Obama policy, issued last December, which he framed as promoting clean water. There was no mention of coal mining in a statement Tester issued after the early evening vote.

"Clean water gives life to Montana's crops, livestock, fish, and ultimately our economy. Whether it's farming or our booming tourism industry, our economy needs clean water to thrive," said Tester. "As a farmer, I know darn well our crops won't grow without clean water. And any Montanan will tell you: you don't fish from polluted streams. Clean water is critically important to our Montana way of life, and we need to protect that for the next generation."

Obama sought to change the way the Department of the Interior's Office of Surface Mining Reclamation and Enforcement addressed the effects of surface coal mining on streams, fish and wildlife. OSMRE estimated the rule would have improved reforestation of 2,468 acres of mined land per year, or 6,000 miles of streams and 52,000 acres of forest over the next 21 years.

Mining companies and other stakeholders bristled at the executive order's broad reach, which applied to drainages beyond the acres immediately surrounding a mine. They argued that the existing federal and state laws protecting streams and spelling out reclamation requirements were sufficient. They argued the rule was too one-size-fits all and didn't recognize the differences in rainfall and geology between mine sites in Appalachia and the flat, arid Powder River Basin of Montana and Wyoming.

"This rule wears the guise of an environmental regulation, when in reality it is a punitive measure designed to destroy an economic sector and, in doing so, reward environmental special interests at the expense of everyday Americans," said Rick Curtsinger, of Cloud Peak Energy.

Cloud Peak mines coal in Montana and Wyoming. Like other coal proponents in the region, the mining company considered the “Stream Protection Rule” title a misnomer for an attempt to “keep coal in the ground,” the battle cry of coal opponents in the West.

“The facetiously named ‘Stream Protection Rule’ was in fact the de facto coal mining ban rule. Congress’ action to overturn this rule is an important step toward ending the Obama era’s regulatory onslaught against reliable, affordable energy critical to ensuring American energy independence,” Curtsinger said.

One of the more vocal opponents of the rule was the Crow Tribe of Southeast Montana. The Crow wrote Obama last November asking that tribal resources be left out of the rule because the Crow weren’t offered meaningful consultation, something the tribe argued it was entitled to under federal law.

The National Mining Association said the rule would cost the coal industry 78,000 mining jobs and considerably more as jobs at railroads and power plants were folding into the mix. The estimates were based on analysis of 36 surface and underground mines.

MT. Department of Environmental Quality Revising Rules for Nutrient Standards Variance

In accordance with the requirements set forth in Montana law, MT DEQ has begun working on revisions to Department Circular DEQ-12B for Nutrient Standards Variances. The department has re-engaged the stakeholders who participated in the earlier Nutrient Work Group in this process.

DEQ’s current nutrient variance rules sunset July 1, 2017. Rules submitted by DEQ will be reviewed by the EPA, taking into account the new rules adopted in 2015 under the Clean Water Act.

DEQ reports that in discussions with EPA, key areas of focus for the rules have been:

1. Identifying the highest attainable condition (HAC), and
2. Providing a justification for the timeframe to meet the HAC.

According to information provided by DEQ, the HAC is defined at the federal level as the highest attainable interim criterion or the interim effluent condition that reflects the greatest pollutant reduction achievable. For Montana, that translates as the highest cost for effluent treatment that can be afforded based on the state’s economic affordability process.

Late last Fall the DEQ looked at ways to align Montana’s statute and variance rules with EPA’s 2015 requirements. The Nutrient Work Group met January 24, 2017 to review their findings and consider next steps in the rule revision process. Representatives from municipalities expressed

concerns with the regulatory direction, noting the challenges of planning for long term investments in local water treatment facilities when rules are a moving target. DEQ will involve those with technical concerns more closely in development of the changes going forward.

The timeline proposed by DEQ to meet the statutory deadline calls for having the draft rules ready for a 45-day public comment period beginning around May 1st. The comment period will be followed by a public hearing. The department will then address comments and finalize the rules for the Director's signature. EPA has to review and approve the final rules prior to the July 1st deadline.

The next Nutrient Work Group meeting is scheduled for February 27th in Helena.

Trump Takes on the Regulatory State

Editors Note: With all the discussion about Executive Orders and regulatory reform, the following column offers some food for thought. It's long, but if you haven't seen it, it's worth the read.

Source: [Helena Independent Record](#) February 6, 2017 By: Robert J. Samuelson for the [Washington Post](#)

President Donald Trump pledges to dismantle much of the regulatory state – the amalgam of federal rules, directives and warnings that aside from advancing many well-known policy goals, are also alleged to have reduced the competitiveness of the U.S. economy. This objective is to cut government regulation by about 70 percent. It will be a tough target to reach. But Trump seems determined to try.

Last week, he signaled an overhaul in the Dodd-Frank financial regulation regime adopted after the 2008-09 financial crisis. He has also frozen regulations adopted in the Obama administration's final months and issued an executive order requiring agencies to kill two regulations for every new one they propose (a regulation to curb regulation!). Consistent with this, agencies would be prohibited from promulgating rules that impose regulatory costs on the economy. Higher costs stemming from new regulations would have to be offset by lower costs on existing regulations.

Whether this works in practice remains to be seen. There certainly will be legal and political challenges to Trump's changes, which would affect regulations on everything from global warming to financial advisory services.

We are dealing here with a basic transformation of how the American economy works. Before World War II, some industries (railroads, banks and electric and phone utilities) were regulated and in the great Depression, Congress had embraced a minimum wage and protection for unions. But there was little environmental, social or health regulation. Other areas of current

regulation (racial and sexual discrimination, finance, and worker safety) were either skeletal or nonexistent.

Now regulation is pervasive. It touches air and water pollution, pensions, vehicle fuel efficiency, the internet (“net neutrality” rules), home mortgages, political campaign contributions...and much more. The annual outpouring of new rules and proposed rules is mind-boggling. In fiscal 2015, the Federal Register – containing final and recommended rules – totaled 80,260 pages, says the Competitive Enterprise Institute (CEI), a market-oriented think tank.

The popularity of regulation is no mystery. Many regulatory goals (say, clean air and water) enjoy broad public support. Through regulation, government can promote those activities without having to raise taxes or increase budget deficits. The costs of regulation are largely invisible and are shifted mainly to consumers in higher prices, workers in lower wages or companies in reduced profits.

The size of those costs remains controversial. It’s not large, says the White House’s Office of Management and Budget (OMB). In studies, it consistently found that regulations’ benefits dwarf the costs. For 2015, OMB estimated that the benefits for 21 new and major regulations totaled \$45 billion compared with costs of only \$6 billion. The regulations included a rule on food labeling from the Food and Drug Administration and a rule affecting construction workers from the Occupational Health and Safety Administration.

Some economists and interest groups put costs much higher. At CEI, Wayne Crews Jr. found that all federal regulations cost \$1.9 trillion in 2015, an amount about half of the federal budget. Although Crews didn’t estimate regulations’ benefits, his higher cost figure suggests a substantial regulatory burden. Other studies have even higher estimates.

Just what explains the gap between OMB and private studies isn’t clear. One possibility is that the OMB study covers only about one-fourth of the major regulations issued in 2015, according to the Regulatory Studies Center at George Washington University. The regulations studies by OMB may have better cost-benefit relationships than the other rules.

All these nuances may be lost in the looming debate over regulation. Trump has blamed overregulation for slow economic growth. Too many restrictions and mandates have been imposed on too many industries, restricting their ability to expand; and regulatory costs undermine companies’ productivity by inflating firms’ overhead. Deregulation is one answer.

To this, Democrats can be expected to respond: Deregulation is less an economic policy than a Trump giveaway to his corporate supporters, who would be enriched by having to comply with fewer public-interest regulations. Trump’s policies would aggravate income and wealth inequality, rather than spurring faster economic growth, and expose millions of Americans to corporate abuses.

Life being complicated, there's some truth to both positions. It would be nice if Trump and his critics could find some common ground: Democrats admitting that regulations have been carelessly overused; Republicans conceding that the regulatory state isn't going away. It needs to be governed better, neither abused nor abolished.

Upcoming Events/Dates

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| February 17, 2017 WPCAC Meeting Metcalf Building, Helena, MT | March 31, 2017 Board of Environmental Review Metcalf Building, Helena, MT |
| February 21, 2017 DEQ SB 325 Rulemaking Stakeholder Meeting Metcalf Building, Helena, MT | June 21-23, 2017 Treasure State Resources Association Annual Mtg. Fairmont Hot Springs Resort, Fairmont, MT |
| March 21, 2017 DEQ SB 325 Rulemaking Stakeholder Meeting Metcalf Building, Helena | July 27-29, 2017 Governor's Cup Golf Tournament Flathead |