



# TREASURE STATE RESOURCES ASSOCIATION OF MONTANA

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## TREASURE STATE RESOURCES ASSOCIATION NEWS February, 2018

### **Thank you to our Member Sponsor/Exhibitors for the Joint MT Chamber/TSRA Business and Industry Showcase**

Several of our TSRA members helped sponsor the recent MT. Chamber Business Days at the Capitol, an event that for the first time included a joint Chamber/TSRA business and industry showcase on the evening of January 10<sup>th</sup>. We'd like to thank all those members who supported this event and/or participated in the showcase. They are: **Cloud Peak Energy, Northwestern Energy, The Washington Companies, Talen Energy, Crowley Fleck, Hecla Mining Company, Weyerhaeuser, BNSF Railway, Tintina Resources, Montana Petroleum Association, Montana Stockgrower's Association, Citizens for Balanced Use and the Montana Mining Association.** We appreciate all you do to support Montana's economy. And a special thank you to the Montana Chamber of Commerce members and staff for inviting us to take part in this event.

### **MT Water Policy Interim Committee to Meet February 9, 2018**

Source: Montana Legislative Council

The Water Policy Interim Committee (WPIC) has called a meeting for February 9<sup>th</sup> to discuss their response to a recent administrative rule proposed by the Department of Natural Resources and Conservation. Members will consider the committee's ongoing objection to MAR Notice No. 36-22-196.

The meeting will be held in Room 172 at the State Capitol in Helena, though most committee members are expected to participate via telephone. It will be live-streamed at:

<http://www.leg.mt.mt.gov>

The Committee's primary concern is whether or not the DNRC has statutory authority to implement water permitting rules requiring a letter from the Montana Sage Grouse Habitat Conservation Program stating a proposed project is consistent with Executive Orders 12-2015 and 21-2015 if it is proposed in sage grouse habitat.

*And speaking of sage grouse...*

## **Montana Sage Grouse Oversight Team (MSGOT) Hears Update on Habitat Quantification Tool(HQT) and Mitigation Policy (July 2017 Draft)**

MSGOT met in Helena on Tuesday, January 30, 2018. Members approved a draft grant agreement developed for the Nature Conservancy's purchase of a conservation easement on the Hansen Livestock Company in southwest Montana using matching funds from the Stewardship Fund. They expect to review final easement language at their next meeting in May.

MSGOT also approved an exception for the MT. Department of Environmental Quality's Montana Pollutant Discharge Elimination System (MPDES) Permitting Section from consultation with the Sage Grouse Conservation Program under certain circumstances involving renewal and modification of existing Individual Permits and the Domestic Sewage Lagoon General Permit.

The exception is granted when: 1) the facility already exists but is modifying a permit within the confines of existing infrastructure and no new surface disturbance or disrupting activity would occur as a result of the modification, 2) the changes to a permit constitute a minor modification as defined in ARM 17.30.1362, or 3) no changes are proposed but the existing permit requires renewal.

MSGOT members heard a presentation on how the proposed HQT and Mitigation Guidance are anticipated to work together to produce a marketplace for offsetting impacts of proposed development activities in sage grouse habitat. While progress has been made with the HQT and in many areas of the mitigation guidance, there are still several outstanding issues that will require more vetting with stakeholders before MSGOT lands on a policy document that will be published for public comment and undergo peer review. A stakeholder meeting will likely be held in February, giving program staff time to draft proposed rules and guidance for consideration at MSGOT's May 4, 2018 meeting in Helena. TSRA as well as many of our members actively participate in the stakeholder process and look forward to moving this discussion forward into a formal public comment period and ultimately adoption of the tools needed for a fully functioning sage grouse conservation program.

## **2018 Montana Water Summit will focus on “Water in a Changing West” – March 6 – 7, 2018 – Radisson Colonial Hotel, Helena, MT**

According to information from the Montana Department of Natural Resources, the 2018 Water Summit will convene diverse stakeholders involved in water management, policy, research and practice – from legislators to landowners – to discuss some of the most pressing current and future challenges with Montana’s water quality and quantity.

*Building on the knowledge and experience of past state water policy leaders, the 2017 Montana Climate Assessment, and information regarding the state’s changing demographics and shifting economy, the Montana Water Summit will: highlight the impacts from these well-documented pressures on the state’s water resources (quantity and quality); examine water policy and management challenges at the quality/quantity nexus; present transferrable case studies of adaptation across water use sectors, and foster a statewide, multidisciplinary discussion about Montana’s water future.*

Speakers include former Montana legislators Dorothy Bradley, Steve Doherty, and Lorents Grosfield as well as current Montana EQC Chair Chas Vincent. To find more information or to register for the Summit go to: [dnrc.mt.gov](http://dnrc.mt.gov)

Organizers of the Water Summit are the Montana Department of Natural Resources and Conservation, Montana Water Center, Montana Department of Environmental Quality, Montana Department of Fish, Wildlife and Parks and the Montana Bureau of Mines and Geology.

## **Montana Environmental Quality Council (EQC) Requests Review of Proposed Washington Carbon Tax on Coal-Fired Electricity**

As part of their January 17<sup>th</sup> presentation on the important role coal revenues play in Montana, EQC members were briefed on legislation introduced in the State of Washington that would level a carbon tax on electricity generated from coal. Given the potential impact to the cost of electricity generated at Colstrip, the EQC agreed to request the President of the Montana Senate and the Speaker of the House to request the Montana Attorney General look into the matter. The text of the letter reads as follows:

*Dear President Sales and Speaker Knudsen:*

*We respectfully request that you ask for an interpretation from Montana Attorney General Tim Fox pursuant to section 2-15-501(7), MCA, analyzing a legislative proposal under review in the state of Washington. Senate Bill 6203 “An Act Relating to Reducing Carbon Pollution by Moving to a Clean Energy Economy,” and similar carbon tax legislation currently under review by the 2018 Washington Legislature, proposit taxing carbon emissions generated in Montana to produce electricity that Washington imports. We are seeking your response with respect to the following question:*

***To what extent can another state regulate and tax carbon emissions generated in Montana, and does Senate Bill 6203 conflict with the Commerce Clause of the U.S. Constitution by favoring Washington's own energy generation while discriminating against or imposing an excessive burden on out-of-state generation?***

*Prior to this request, the EQC heard testimony at its January 2018 meeting that the Washington Legislature is considering carbon tax proposals. A carbon tax in Washington will have far-reaching and dramatic implications in Montana, where the Colstrip generating station is located. It also promises to greatly change the flow of commerce in the northwest. Montana has provided reliable coal-fired energy to Washington for the last 40 years.*

*Thank you for your consideration of this matter.*

*Sincerely,  
Sen. Chas Vincent, Presiding Officer*

*(Editor's Note: SB 6203 was heard on January 16, 2018 in the Senate Committee on Energy, Environment and Technology. A January 26 Fiscal Note prepared for the Committee estimates the tax would raise \$1,558,603,418 in FY 2019-21.)*

## **Flurry of Activity Surrounding Waters of the United States Rule (WOTUS)**

Sources: Greenwire: January 22 and January 29, 2018 articles by Amanda Reilly and Ariel Wittenberg, E&E News Reporters, a January 23, 2018 article by Ariel Wittenberg, E & E News, and a January 31, 2018 article by E & E News reporter Cecelia Smith-Schoenwalder

**Trump Administration finalizes WOTUS applicability date** (By Cecelia Smith-Schoenwalder, E&E News)

On Wednesday, January 31, 2018 the U.S. EPA and the Army Corps of Engineers finalized a rule that would delay the effective date of the 2015 Clean Water Rule.

“Today EPA is taking action to reduce confusion and provide certainty to America’s farmers and ranchers,” EPA Administrator Scott Pruitt said. “The 2015 WOTUS rule developed by the Obama administration will not be applicable for the next two years, while we work through the process of providing long-term regulatory certainty across all 50 states about what waters are subject to federal regulation. “

The new applicability date will be two years from the rule’s listing in the *Federal Register*, EPA said. For most rules it’s 30 to 60 days after publication depending on whether they are economically significant...

Environmental groups are already taking shots at the Trump Administration's actions.

"Once again, the administration has defied administrative law by ramming a fatally-flawed rule through in a matter of weeks with no meaningful opportunity for public comment and no rational basis for the delay," National Wildlife Federation President Collin O'Mara said in a statement. He added, "The administration has left us no choice but to defend America's waterways in court."

EPA and the Army Corps pledged today to continue the process of reconsidering the rule while waiting for the new applicability date. "We are committed to transparency as we execute the Clean Water Act Section 404 regulatory program. The Army and EPA proposed this rule to provide the regulated public clarity and predictability during the rulemaking process," said Ryan Fisher, acting assistant secretary of the Army for civil works.

*Why does this matter?*

**January 22, 2018 Supreme Court Ruling** (January 22 and January 29, 2018 by Amanda Reilly and Ariel Wittenberg, E&E News)

The Trump administration wants to finalize the delay before the 6<sup>th</sup> U.S. Circuit of Appeals withdraws its decision to stay WOTUS nationwide.

The U.S. Supreme Court ruled unanimously last week (January 22, 2018) in National Association of Manufacturers v. Department of Defense et al. that lawsuits against WOTUS, which defines which wetlands and small waterways are protected by the Clean Water Act, must be decided by district courts....

...The choice of court – district or appeals—is significant because it affects the resources needed to litigate the merits of the challenges, sets the statute of limitations for filing lawsuits and helps determine whether actions can be challenged in subsequent civil or criminal proceedings. District courts are also more tilted toward overturning government actions.

The National Association of Manufacturers took the turf fight to the Supreme Court, seeking to overturn a February 2016 split decision by the 6<sup>th</sup> U.S. Circuit Court of Appeals finding that it has jurisdiction...The Supreme Court reversed the 6<sup>th</sup> Circuit decision on jurisdiction and remanded the case with instructions to dismiss the petitions for review that have been filed in that court...

The January 22, 2018 decision complicates things for the Trump administration as it means the nationwide stay issued by the 6<sup>th</sup> Circuit must be withdrawn...When the court acts, the rule could go into effect in 37 states, putting the administration in the awkward position of enforcing the rule in some states while simultaneously working to replace it nationwide...

Adding another layer of complication: In 2015, before the 6<sup>th</sup> Circuit issued its nationwide stay, a North Dakota judge decided to halt implementation of the rule in 13 states, including North Dakota (*and Montana*). So, even if the 6<sup>th</sup> Circuit lifts its stay, the rule will likely remain stayed in those states.

But the judge, Ralph Erickson, has since been confirmed to the U.S. Circuit Court of Appeals. Another judge would be assigned to the case if the litigation goes forward in the North Dakota district court...

After the Supreme Court ruled last Monday, the Justice Department notified the 6<sup>th</sup> Circuit of the decision. But federal attorneys also asked the court to hold the case in abeyance until the Supreme Court issues its final judgment, after a 25-day period for parties to file petitions for rehearing...That could give EPA and the Army Corps enough time for the rule delaying the applicability of WOTUS to go into effect...

Environmental groups are almost certain to challenge the legality of the WOTUS delay. Earlier drafts of the regulation would have changed the "effective date" of WOTUS, and courts have ruled that the effective date of a rule cannot be changed after it takes effect. In the current proposal, the administration changed the wording to add an "applicability date". It is not clear if that distinction would be recognized by a federal judge...

Meanwhile, an effort will likely be made to obtain a nationwide injunction from a district court should the current stay expire before the rule changing the applicability date of WOTUS goes into effect.

**Calling on Congress** (January 23, 2018 by Ariel Wittenberg, E&E News)

Seeing a tangle of lawsuits ahead, industry groups are vowing a push for Congress to act.

There are many appropriations bills that include language to authorize EPA and the Army Corps to withdraw WOTUS "without regard to any provision of statute or regulation that establishes a requirement for such a withdrawal."

Don Parrish, senior director of regulatory relations at the American Farm Bureau Federation, said yesterday's high court ruling raises the stakes for congressional action. Provisions being considered would allow the administration to repeal WOTUS without following the requirements for public notice and comment under the Administrative Procedure Act. Options for challenging a repeal would shrink if those provisions clear Congress.

“It is even more important than it was before,” Parrish said. “I think Congress has an interest in not seeing a patchwork of regulations go into play. They should err on the side of consistency and certainty.” ...

## **Reminder: Comments Due on MT DEQ Water Quality Variance Rule Comment Due Date: February 9, 2018 New Rule 1 Variance from Standard for Water Body Conditions (SB 325 – 2015 Legislative Session)**

The Board of Environmental Review has initiated rulemaking for the New Rule 1 Variance from Standard for Water Body Conditions that fulfills the requirements of MCA 75-5-222 (2). The BER held a public hearing on January 26, 2018 to consider the adoption of the new rule. Written comments can still be submitted in writing, but must be received by close of business on February 9, 2018.

According to the DEQ notice, the proposed rule is necessary to fulfill the requirements of Montana Code Annotated (MCA) 75-5-222(2). This statute states that if pollution upstream of a discharger is due to anthropogenic sources, a variance from the applicable standards may be appropriate under certain conditions. The statute was directed at focusing water quality remediation efforts toward the primary pollution contributors, often historic mining, instead of less significant Pollutant Discharge Elimination System dischargers such as publically owned treatment works, until such time that their contributions were significant.

The rule reflects months of work by the Department and input from a stakeholder group that has met since the passage of SB 325. It is anticipated to have limited application.

TSRA has joined with the Montana Mining Association and the Montana Petroleum Association to offer written comments.

The rule notice may be found on the DEQ website at: <http://www.deq.mt.gov> Those submitting written comments can send those to: Sandy Scherer, Legal Secretary, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901 or email to: <mailto:sscherer@mt.gov>

## **The Wilderness Society Launches new Tool to Track Greenhouse Gas Emissions**

During a review of the federal coal program, former Interior Secretary Sally Jewell ordered public disclosure of greenhouse gas emissions from fossil fuels extracted on federal lands. That direction was reversed by the Trump Administration and Secretary Zinke.

Now The Wilderness Society is taking up the charge, launching the Federal Lands Emissions Accountability Tool (FLEAT) that was created in partnership with the economics and policy consulting firm Apogee EP.

According to information on The Wilderness Society's website, the interactive tool allows users to explore federal coal, oil and gas production and emissions data. "With the data hosted in one place, The Wilderness Society can conduct in-depth analysis and continue to tell stories about the hidden impacts of fossil fuel production on our public lands."

The tool uses data from various government sources, including the Office of Natural Resources Revenues (ONRR) and US Extractive Industries Transparency Initiative (USEITI). Information that can be found on the site includes U.S Public lands emissions from coal, oil and gas; a state comparison of emissions; a country comparison of emissions and production of coal, oil and gas.

## **Details Pending on Montana Energy Summit 2018**

As reported last month, U.S. Senator Steve Daines is cosponsoring the 2018 Energy Summit at the Red Lion Hotel & Convention Center in Billings, Montana on May 30-31, 2018.

The Energy Summit will bring together thought leaders from around the country to continue discussing Montana's integral role in energy.

More details about registration, speakers, and events will be available in the near future. For more information go to: [mtenergysummit.com](http://mtenergysummit.com)

There are also opportunities to sponsor the Summit that include the option have a booth at the event and be recognized throughout the program. For more details about sponsorship options, contact [mailto:akono@highwoodcap.com?subject=2018 Energy Summit Sponsorship](mailto:akono@highwoodcap.com?subject=2018%20Energy%20Summit%20Sponsorship)

## **TSRA Recognizes "Early Bird" 2018 Annual Meeting Sponsors**

This year TSRA is offering the opportunity for members to enjoy a 5% discount for annual meeting sponsorships paid with their 2018 membership dues. We'd like to recognize our "Early Bird" Sponsors to Date. They are:

**Trailblazer: BNSF Railway**

**Champion Level: Browning, Kaleczyc, Berry & Hoven, CRH US, Hecla Mining Company, and Northwestern Energy**

**Groundbreaker Level (Golf Sponsorship): CRH US**

**Advocate Level: Energy Laboratories**

*Thank you for your early support for our annual meeting program.*



TSRA's 2018 annual meeting will take place at the newly renovated Copper King Hotel & Convention Center in Butte, Montana on **June 20– 21st, 2018**. The TSRA Golf Scramble will be played at the Butte Country Club. The scramble will be held on the afternoon of June 20<sup>th</sup>. TSRA's "official" annual meeting will be held the following day, June 21<sup>th</sup> along with a full program. Please add those dates to your calendar for 2018 and watch for registration information early next year.

**It's not too late to receive a discounted annual meeting "Early Bird" sponsorship rate if it is included with your 2018 Dues.**

### **Upcoming Events/Dates**

February 9, 2018	Water Policy Interim Committee State Capitol, Room 172 Helena, MT
March 5, 2018	Water Policy Interim Committee State Capitol, Helena, MT
March 6-7, 2018	Montana Water Summit: Water In a Changing West Radisson Colonial Hotel, Helena, MT
March 13-14, 2018	Revenue and Transportation Interim Committee State Capitol, Helena, MT
March 15-16, 2018	Energy and Telecommunications Committee State Capitol, Helena, MT
March 21-22, 2018	Environmental Quality Council State Capitol, Helena, MT
April 14, 2018	Citizens for Balanced Use Annual Banquet and Trailraiser Montana State University Campus, SUB Ballroom, Bozeman, MT
May 2-3, 2018	Revenue and Transportation Interim Committee State Capitol, Helena, MT
May 4, 2018	MT. Sage Grouse Oversight Team State Capitol, Helena, MT

May 17-18, 2018	Energy and Telecommunications Committee State Capitol, Helena, MT
May 21-22, 2018	Water Policy Interim Committee State Capitol, Helena, MT
May 22-23, 2018	Montana Mining Association Convention Fairmont Hot Springs Resort, Anaconda, MT
May 30-31, 2018	Montana Energy Summit Billings, MT
May 30-31, 2018	Environmental Quality Council State Capitol, Helena, MT
June 12-15, 2018	Montana Farm Bureau Federation Summer Conference Fairmont Hot Springs Resort, Anaconda, MT
June 20-21, 2018	Treasure State Resources Association Annual Meeting Copper King Inn, Butte, MT
July 10-11, 2018	Revenue and Transportation Interim Committee State Capitol, Helena, MT
July 16-17, 2018	Montana Coal Council Annual Meeting Bighorn Resort, Billings, MT
July 16-17, 2018	Water Policy Interim Committee State Capitol, Helena, MT
July 19-20, 2018	Energy and Telecommunications Committee State Capitol, Helena, MT
July 25-26, 2018	Environmental Quality Council State Capitol, Helena, MT
August 28-29, 2018	Montana Petroleum Association Annual Meeting Billings, MT
September 6-7, 2018	Montana Wood Products Association Hilton Garden Inn, Missoula, MT

September 10, 2018	Energy and Telecommunications Committee State Capitol, Helena, MT
September 10-11, 2018	Water Policy Interim Committee State Capitol, Helena, MT
September 12-13, 2018	Environmental Quality Council State Capitol, Helena, MT
September 13, 2018	Revenue and Transportation Interim Committee State Capitol, Helena, MT
September 14, 2018	MT. Sage Grouse Oversight Team State Capitol, Helena, MT
November 7-10, 2018	MT Farm Bureau Federation Convention Double Tree and Northern Hotels, Billings, MT
November 19, 2018	Revenue and Transportation Interim Committee State Capitol, Helena, MT
December 11-13, 2018	Montana Stockgrowers Association Convention Double Tree and Northern Hotels, Billings, MT

*If you don't want to receive the TSRA Newsletter, please let me know. If you want to share with others in your company or organization, please do so. The mission of the Treasure State Resources Association is to promote and enhance the Montana Way of Life through responsible resource development.*