



TREASURE STATE
RESOURCES ASSOCIATION
OF MONTANA

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TREASURE STATE RESOURCES ASSOCIATION NEWS
April, 2018

Registration Open for TSRA Annual Meeting – Department of Interior Official Added to Speaker Line Up

Registration materials are now available for the 2018 Treasure State Resources Association Annual Meeting June 20-21, 2018 at the Clarion Inn, Copper King Hotel and Convention Center in Butte, Montana.

In addition to EPA Region 8 Administrator Doug Benevento, TSRA is pleased to announce that we will also hear from Tim Williams, Deputy Director in the Office of External Affairs at the Department of Interior at the association's upcoming annual meeting. Mr. Williams will speak in the morning and Administrator Benevento will speak following the noon luncheon on June 21, 2018.

Appointed by EPA Administrator Scott Pruitt in October, 2017, Mr. Benevento is responsible for working with the states of Colorado, Montana, North Dakota, South Dakota, Utah and Wyoming and 27 Tribal Nations to administer the nation's environmental laws. This responsibility includes protecting and improving air and water quality, cleaning up toxic waste sites, and responding to environmental emergencies.

As Deputy Director in Interior's Office of Intergovernmental and External Affairs, Mr. Williams works to strengthen relationships with the Office of the Secretary and also serves as liaison for governmental and nongovernmental partners in communicating with Departmental offices and

Bureaus. He'll catch us up on DOI's various initiatives, particularly those affecting resource development.

All meetings will take place at the newly renovated Clarion Inn, 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 on the afternoon of June 20th.

Room reservations can now be made at by calling the Clarion Inn, Copper King Hotel and Convention Center at **406-565-5001**. Rates are \$124.00 plus tax for single occupancy and \$134.00 plus tax for double occupancy. Identify yourself as a member of the **Treasure State Resources Association** when making your reservation to receive the group rate. Registration forms and other program material will be available soon. Check for details on the TSRA website at: treasurestateresources.org

Just a reminder, this year TSRA offered 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 Level: BNSF Railway

Champion Level: Browning, Kaleczyc, Berry & Hoven, BP America, CRH US, Hecla Mining Company, IBEW Local 44, and Northwestern Energy

Groundbreaker Level (Golf Sponsorship): CRH US and Solvay U.S.A.

Additional Golf Prize Sponsor: Melissa Lewis & Associates

Advocate Level: Energy Laboratories, Melissa Lewis & Associates, Montana Chamber of Commerce and Solvay U.S.A.

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

Montana Board of Environmental Review Adopts SB 325 Variance Rule

Following extensive stakeholder involvement and a formal rulemaking process, the MT Board of Environmental Review adopted a final rule authorizing variances to be granted to dischargers who can demonstrate they cannot meet current water quality standards due to impairments resulting from historic activities that cannot reasonably be expected to be cleaned up within 5 years. During their meeting on April 6th, the Board revisited the section of the original rule that DEQ proposed to be amended by striking "the department determines in writing" and adding that the following conditions are met as requested by the MT. Petroleum Association, the Montana Mining Association and TSRA in their written comments. Based on some concerns that the stricken language might suggest DEQ would not provide a rationale for their decision the language proposed to be stricken was maintained to make it clear that there would be a written

record of the factors taken into account in the decision. The final rule did include the additional language recommended by DEQ. For TSRA members, what's most important is the recognition that if the applicant for a variance meets all the criteria, it will be granted. This action implements one part of SB 325 passed in the 2015 Session. Work continues on the other section of the legislation that recognizes those seeking water quality permits shouldn't have to meet standards that are more stringent than the stream's natural condition.

2018 Water Quality Integrated Report: DEQ Reports Water Quality Improvements on Seven Montana Waterbodies from 2015 – 2017 (Public Comments Due by April 21, 2018)

Source: Montana Department of Environmental Quality, February 21, 2018)

The Montana Department of Environmental Quality has released its draft report for water quality conditions in Montana for 2015-2017. Called the 2018 Water Quality Integrated Report, it contains information on status and trends of water quality in Montana, as well as a list of waterbodies that don't support full beneficial uses and require a plan for water quality improvement.

The 2018 report notes seven waterbodies previously reported with water quality concerns that meet applicable standards. These successes can be credited to land management activities such as forest practices, grazing practices or stream restoration projects. All of Montana's surface waters have water quality goals for things such as aquatic life, which may be harmed by pollutants such as metals, sediment, nutrients and high temperatures. When a waterbody is determined to have an excessive amount of a pollutant, it is identified as needing a restoration plan (also called a Total Maximum Daily Load, or TMDL) for restoring and protecting the waterbody's beneficial uses and is placed on a list of waters not fully supporting beneficial uses – referred to as the 303(d) list.

“These restoration plans define what is needed for a waterbody to meet water quality standards for a given pollutant, for example, copper.” said Water Quality Administrator Tim Davis. “If a waterbody has levels of copper that harm aquatic life, a plan is developed to define the reduction of copper entering the waterbody needed from all sources to attain a level that does not harm aquatic life.”

Waterbodies with restoration plans where activities have resulted in specific pollutants no longer harming a beneficial use in the 2015-2017 period include Clarks Fork Yellowstone River, Stillwater River, Soda Butte Creek, Miller Creek, Fisher Creek, Careless Creek and Jim Creek. Restoration plans addressed 16 pollutant listings on these 7 waterbodies including cadmium, silver, lead, zinc, iron, lead, aluminum, silver and sedimentation.

Improvements to water quality come with great effort from a multitude of people and entities. Coordination among non-profit organizations, landowners, government agencies, other stakeholders and the public were crucial in improving water quality in these waterbodies.

Jim Creek, in the Swan watershed, is an example of how strong coordination helped reduce sediment loads, resulting in water quality improvement that allowed it to be removed from the 303(d) list.

“The creek had long been adversely affected by sediment loading from activities in the watershed,” said Robert Ray of DEQ’s Water Quality Division. “The Flathead National Forest and many other partners have done some outstanding work in this area. These partnerships have led to real improvements in water quality and we are happy to document these results in the Integrated Report.”

Montana has approximately 58,200 miles of perennial rivers and streams and 730,000 acres of lakes and reservoirs greater than 5 acres. The State of Montana has jurisdiction over about 54,800 miles and 641,200 acres, respectively. The tribes and federal government have jurisdiction over the remaining waters.

The Integrated Report is required under the federal Clean Water Act and DEQ must submit it to the Environmental Protection Agency every two years. The 305(b) portion is the status and trends of Montana’s waters, including an assessment of existing water quality conditions and an overview of the state’s water pollution control efforts. The 303(d) list includes the waterbodies that are not fully supporting one or more beneficial uses and need a restoration plan.

The complete report can be found on the DEQ’s Clean Water Act Information Center web application : www.cwaic.mt.gov (<http://CWAIC.mt.gov>)

DEQ is seeking comment on the report through April 21, 2018. Comments should be submitted electronically to the Public Comment page at <http://comment.cwaic.mt.gov/> (<http://comment.cwaic.mt.gov/>) or mailed to: Integrated Report Coordinator, Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

Scoping Meeting to Be Held for Environmental Impact Statement of Proposed Mine Expansion. (Comments due by April 30, 2018)

Source: Montana Department of Environmental Quality, March 30, 2018

The Montana Department of Environmental Quality is preparing an environmental impact statement under the Montana Environmental Policy Act for the expansion of Area B of the Rosebud Mine proposed by Western Energy Company. The EIS will analyze the potential

impacts of the proposed expansion area and serve as the MEPA review for other potential permits that may be issued by DEQ.

The first phase in preparing an EIS is to determine the scope. DEQ is hosting an open house and public scoping meeting to provide the public with information on the proposed project and an opportunity to submit written and/or oral comments. The meeting will be held on Wednesday, April 11 from 4-7 pm at the Colstrip City Hall, 12 Cherry Street, in Colstrip. The open house portion of the meeting will be from 4-5:30 pm. A presentation from DEQ regarding the EIS and permitting process will begin at 5:30 pm, followed by the opportunity for the public to provide oral and/or written testimony. Scoping comments must be received by April 30, 2018. Written comments should be submitted to Jen Lane, DEQ Director's Office, PO Box 200901, Helena, MT 59620-0902. Comments may be emailed to: western-energy-area-b-eis@erresources.com (mail to: western-energy-area-b-eis-@erresources.com)

DEQ deemed Western Energy's AM5 application administratively complete on May 24, 2017. The current Area B permit area is owned or controlled by Western Energy and encompasses approximately 6,063 acres. The proposed expansion would add coal reserves to the existing Rosebud Mine and extend mine life until 2047.

Endangered Species – Could big changes in ESA be afoot?

Source: E&E News, April 4, 2018 By Michael Doyle

The Fish and Wildlife Service has quietly floated to the White House a technical but potentially far-reaching change in Endangered Species Act protections.

In a move discovered by irate environmentalists, FWS officials appear to have raised the possibility of eliminating a long-standing rule that effectively grants threatened species the same level of protection as endangered species.

The proposed "removal of Blanket Section 4(d) Rule" was submitted on Monday (April 3rd) for review by the White House Office of Management and Budget. Though the proposal text has not yet been made public, environmentalists warn of dire possibilities.

"I would call this the biggest regulatory rollback in the history of the Endangered Species Act," Noah Greenwald, endangered species director at the Center for Biological Diversity, said in an interview.

FWS said it is moving prudently, along with other federal agencies.

"NOAA Fisheries and the Fish and Wildlife Service are working to develop regulations that improve our implementation of the ESA so that it is clear, unambiguous, consistent and flexible

to the greatest extent possible, and encourages collaborative conservation from a broad range of partners,” FWS spokesman Gavin Shire said in a statement today.

The ESA prohibits the “take” of species designated as endangered, while Section 4(d) of the law allows the agency to establish special regulations for threatened species. In 1978, FWS used this authority to extend the prohibition of take to all threatened species. This is known as the blanket 4(d) rule.”

Take covers a wide range of actions, including those that “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect” a threatened or endangered species. This blanket rule can be modified by a species-specific 4(d) rule.

Conservatives and private-property advocates have previously sought to scale back the blanket 4(d) rule, with the Pacific Legal Foundation filing a petition in August 2016 on behalf of the Washington Cattlemen’s Association.

“That regulation erodes the distinction between endangered and threatened species,” the petition stated, adding that it “creates an incentive for litigation.” ...

Any potential rule change, though, might take several forms; for instance, it might apply only to future listings.

“Any proposed changes will go through a full and transparent public review process that provides ample opportunity for interested parties to provide input that we will consider to help us ensure these regulations are effective in furthering the ESA’s ultimate goal – recovery of our most imperiled species to the point they no longer need federal protection, “ Shire said.

As a reminder ...

EPA Seeking comment on Clean Water Act Coverage of “Discharges of Pollutants” via a Direct Hydrologic Connection to Surface Water

Source: FR Doc. 2018- 03407 – Published February 20, 2018

EPA is requesting input from tribes, states, members of the public and other interested stakeholders regarding whether EPA should review and potentially revise its previous statements concerning the applicability of the Clean Water Act NPDES permit program to pollutant discharges from point sources that reach jurisdictional surface waters via groundwater or other subsurface flow that has a direct hydrologic connection to a jurisdictional surface water. Specifically, EPA seeks comment on whether subjecting such releases to CWA permitting is consistent with the text, structure, and purposes of the CWA. If EPA has the authority to permit such releases, EPA seeks comment on whether those releases would be better addressed through

other federal authorities as opposed to the NPDES permit program. Furthermore, EPA seeks comment on whether some or all of such releases are addressed adequately through existing state statutory or regulatory programs or through existing federal regulations and permit programs, such as, for example, state programs that implement EPA's underground injection control regulations promulgated pursuant to the Safe Drinking Water Act.

EPA also seeks comment on whether EPA should clarify its previous statements concerning pollutant discharges to groundwater with a direct hydrologic connection to jurisdictional water in order to provide additional certainty for the public and regulated community. Such a clarification could address the applicability of the CWA to groundwater with a direct hydrologic connection to jurisdictional surface water (i.e. placement on the land), or which connections are considered "direct" in order to reduce regulatory uncertainties associated with that term. EPA also seeks suggestions on what issues should be considered if further clarification is undertaken, including, for example, the consequences of asserting CWA jurisdiction over certain releases to groundwater or determining that no such jurisdiction exists. Finally, EPA seeks comment on what format or process EPA should use to review or clarify its previous statements (e.g., through memoranda, guidance, or in the form of rulemaking) if the Agency pursues further action in response to this request for comment.

Comments are due by **May 21, 2018**. Submit your comments, identified by Docket ID No EPA-HQ-OW-2018-0063, at <http://www.regulations.gov> For more information about this request, contact Scott Wilson, Office of Wastewater Management, Water Permits Division at: <mailto:wilson.js@epa.gov>

Montana DEQ Considering Air Quality Fee Increases

At the March 22nd meeting of the Clean Air Act Advisory Committee, the Montana Air Quality Division unveiled plans to propose a fee increase to fund their operations. If approved, it will be the first increase in 10 years. DEQ staff noted that as those emissions have been reduced, so has revenue to operate the program and maintain the state's primacy for regulating air quality.

DEQ estimates a shortfall in the program in FY 2018. Another piece of the funding puzzle that impacts the bottom line is how much the state will receive from the EPA to assist with program operations. That support has diminished over the years, even though the Air Quality Division has had to take on additional responsibilities.

A fee increase requires action by the Board of Environmental Review. They must approve rulemaking, hold a hearing and take public comment, respond to those comments and then consider final adoption. That could take 3-4 months. DEQ anticipates the fee increase to be in effect by this November.

At the CAAAC meeting, DEQ proposed two potential scenarios for fee increases. The most significant increase would be in the amount assessed per ton of emissions. In the first scenario, the proposed amount per ton of \$53.50 exceeds the Federal Presumptive Fee of \$49.85/ton. In the second, it would be \$45.93/ton – up from \$38.24 assessed currently.

TSRA will be working with the Montana Petroleum Association to more fully explore the proposed increases and overall budget concerns prior to the next CAAAC meeting in May. We anticipate meeting with DEQ staff and interested members later in April. DEQ hopes to initiate rulemaking at the Board of Environmental Review's June meeting.

Those interested in participating in a TSRA/MPA meeting with DEQ either in person or by telephone should contact Peggy Trenk at ptrenk@tsria.net. More information about the DEQ's presentation can be found on their website.

Washington state's carbon-tax bill dies in Legislature

Source: Seattle Times staff and The Associated Press March 2, 2018

An attempt to levy a tax on fossil-fuel polluters has died in the (Washington) state Legislature. There were not enough votes to impose a straight tax on carbon-dioxide emissions from fossil fuels. Washington would have been the first U.S. state to impose a straight tax on carbon-dioxide emissions from fossil fuels... Gov. Inslee told the Associated Press that "I would consider this a sea change in the climate fight. It's come a long way from where we've been. We've basically shown that carbon policy is within reach," said the Democratic governor. He noted the bill cleared key policy and fiscal committees – advancing further than previous measures – but didn't have the votes to bring it to a floor vote."

The bill's sponsor Sen. Reuven Carlyle, a Seattle Democrat, said in coming years, "we're going to see a price on carbon in this state."

But the push to put a price on carbon has not ended for the year.

New Washington initiative would put fee on carbon emissions

Source: Seattle Times staff reporter Hal Bernton, March 2, 2018

An initiative filed Friday would create an escalating Washington carbon "fee" on fossil fuels, and invest the revenue in clean energy, clean water, forests and other projects that seek to slow or help cope with climate change.

The initiative was filed with the Secretary of State one day after a carbon-tax bill died in the Legislature. It is backed by the Alliance for Jobs and Clean Energy, a coalition of labor, environmental and tribal groups that are hoping their measure can make it onto the November ballot...

By crafting a carbon fee – rather than a tax – it is possible to tie the revenue to expenditures that will help create a low-carbon economy (according to supporters) ...

The fee would start at \$15 per metric ton of carbon, which would add an estimated 14 cents to the cost of a gallon of gasoline, and rise annually by \$2 plus the rate of inflation.

According to the initiative, 70 percent of the fee money would be set aside for clean air and clean-energy investments, 25 percent for clean water and healthy forests, and 5 percent for communities.

The 57-page initiative carves out exemptions for some trade-sensitive industries, such as aluminum producers who face foreign competition...

To get on the ballot, the alliance must collect signatures from at least 259,622 registered voters by July 6, according to the Secretary of State's office.

ORW Petition Discussed by MT Board of Environmental Review

At its April 6, 2018 meeting the Board of Environmental Review discussed a petition filed earlier by the Cottonwood Environmental Law Center and the Gallatin Wildlife Association to designate a section of the Gallatin River from Yellowstone National Park's boundary to the river's confluence with Spanish Creek as an Outstanding Resource Water (ORW). The petitioners are concerned that Big Sky may seek to discharge treated wastewater into the Gallatin River. While Big Sky is exploring all future options to accommodate their growing population, no request is pending at this time.

ORW designation establishes the highest level of protection available under the state's already stringent nondegradation laws. Once established, no activity resulting in a permanent change to water quality can be authorized. Section 75-5-316 MCA sets forth a multi-step process for approving ORW designation, including a requirement for approval by the state legislature.

Consideration of this section of the Gallatin River for ORW designation is not a new idea. A similar effort was launched in 2001 based on concerns about growth at Big Sky. That resulted in a process stretching over several years, during which time local efforts to address growth concerns progressed to the point where no further action was taken by the BER. The EIS required as part of the ORW designation was finalized in 2007. At the time the BER decided not to extend the rulemaking process for potential ORW designation, DEQ advised the Board that an entity could again petition for ORW status, but an updated EIS would be required.

The EIS issue was front and center during the Board's April 6th discussion. Due to a statutory change made since the first petition was considered, the responsibility for paying for the EIS falls

to the petitioner. In comments before the Board, a representative from the Cottonwood Environmental Law Center seemed surprised to learn that an updated EIS would be needed, and stated their group would likely not have the resources to pay the cost.

Per direction of the Board, DEQ will develop an estimate of what information would need to be updated in the old EIS and what that might entail in terms of costs. They will provide that information to the Petitioner prior to the June BER meeting to allow time for them to consider their options.

In the meantime, the Board members will review the petition itself to determine if the petition contains sufficient credible information for the BER to accept it.

Upcoming Events/Dates

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 Bozeman City Hall, Bozeman, MT
May 22-23, 2018	Montana Mining Association Convention Fairmont Hot Springs Resort, Anaconda, MT
May 29-30, 2018	Environmental Quality Council State Capitol, Helena, MT
May 30-31, 2018	Montana Energy Summit Billings, 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.