



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

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**TREASURE STATE RESOURCES ASSOCIATION NEWS**  
**March, 2018**

**EPA Region 8 Administrator Doug Benevento to Keynote TSRA  
Annual Meeting Luncheon**

TSRA will host EPA Region 8 Administrator Doug Benevento at the association's upcoming annual meeting June 20-21, 2018 at the Copper King Hotel and Convention Center in Butte, MT. Administrator Benevento will speak at the noon luncheon on June 21, 2018.

Appointed by EPA Administrator Scott Pruitt in October, 2017, Mr. Benvento 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.

TSRA's 2018 annual meeting 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 20<sup>th</sup>.

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](http://treasurestateresources.org)

**Just a reminder, 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 Level: BNSF Railway**

**Champion Level: Browning, Kaleczyc, Berry & Hoven, 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.*

## **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>

## **6<sup>th</sup> Circuit Lifts WOTUS Stay as Fight over Delay Heats Up**

Source: E&E News, February 28, 2018 By: Ariel Wittenberg

The 6<sup>th</sup> U.S. Circuit Court of Appeals has lifted its stay of the Obama administration's Clean Water Rule following last month's Supreme Court decision that district courts should review legal challenges to the regulation.

The lifting of the stay will make little practical difference for now, as the Trump administration this month finalized a two year suspension of the Clean Water Rule, also known as the Waters of the U.S., or WOTUS, rule.

Legal challenges to that suspension are heating up in district courts, with a coalition of agriculture, energy and construction groups filing motions to intervene today in two of those lawsuits. Represented by Mayer Brown LLP, the 16 groups want to intercede in lawsuits filed by environmental groups and 12 state attorneys general in the U.S. District Court for the Southern District of New York.

## **Coal States Push Back on Carbon Tax**

*(Editor's Note: In last month's newsletter we reported the MT Environmental Quality Council had asked the MT Senate and House leaders to request the Montana Attorney General look into the legal implications of legislation proposed in Washington state to impose a tax on energy generated from coal. Per the following news article, that request has borne fruit.)*

Source: [Billings Gazette](#), February 22, 2018 By: Tom Lutey

Montana and Wyoming attorneys general are pushing back on a proposed Washington state carbon tax. Attorney General Tim Fox joined Wyoming AG Peter K. Michael in asserting that Washington cannot regulate environmental issues beyond its borders. Both states have coal-fired power plants owned by utilities selling electricity in Washington, where Democratic lawmakers and Gov. Jay Inslee are advancing Senate Bill 6203, a \$10-a-ton tax on carbon dioxide from various sources including power plants fired by natural gas and coal.

“Washington state obviously does not have the jurisdiction to regulate environmental issues in Montana and Wyoming,” the attorneys general wrote. “Yet the clear intent of SB 6203 is to force non-Washington power generation facilities into compliance with Washington air quality regulations through the imposition of a carbon tax on carbon dioxide emitted outside Washington.”

In Montana, a carbon pollution tax would pose challenges to the Colstrip Power Plant, which is co-owned by six utilities....all of which sell energy in Washington...Colstrip produces about 17 to 20 million tons of carbon dioxide a year, according to the Environmental Protection Agency. That \$10 per-ton tax would apply to at least the tons of pollution equal to the amount of power transmitted to Washington customers...

The attorneys general also argue that one state cannot regulate commerce in another, under the Interstate Commerce Clause of the Constitution. Also, the Clean Air Act puts the EPA in charge of setting air quality standards, which could point to a challenge for Washington, they said...

## **Groups Want in on Case of Washington State Coal Terminal**

Source: [Helena Independent Record](#) March 1, 2018 By: [Phuong Le](#), Associated Press and [Business Wire](#), February 28, 2018

BNSF Railway and five environmental groups are seeking to intervene on opposing sides of a lawsuit brought against Washington state by developers of a blocked export terminal that would send U.S. coal to Asian markets.

In a statement released by BNSF, the company argues that *Washington state officials have unduly burdened interstate commerce, a violation of the Constitution's dormant commerce clause and the ICC Termination Act (ICCTA) by using supposed rail impacts to unreasonably deny permits for Millennium Bulk Terminals. When it comes to regulation of railroad operations, federal law preempts state regulation.*

*“As a common carrier, BNSF is required by federal law to move regulated goods, including coal,” said Roger Nober, BNSF’s executive vice president Law and Corporate Affairs. “Permitting this facility should have followed the long-established process of making a determination based on site-specific impacts, instead they have taken it upon themselves to deny permits based on so-called rail impacts. This is a very clear violation of federal law.”*

The proposed terminal would move coal by train through Longview, Washington for export to Asia. Environmentalists and Indian tribes have opposed the plans because of concerns about global warming, coal dust pollution and potential damage to fisheries on the river. Those groups have filed a motion to intervene on the side of the state. A hearing is set for March 16, 2018.

## **Energy and Telecommunications Interim Committee Meets March 15-16, 2018**

Source: MT Legislative Services Division Staff Contact: Trevor Graff - 406-444-4975

The next meeting of the 2017-2018 Energy and Telecommunications Committee (ETIC) is March 15-16, 2018. It begins at 1:30 p.m. Thursday, March 15 and 8 a.m. Friday, March 16 in Room 172 of the State Capitol.

ETIC will continue its study of natural gas customer choice programs with a review of Big Sky Gas's response to a committee questionnaire, Montana Dakota Utilities' HJ 28 legislative proposal and a review of western states' independent supplier consumer standards. The committee will also conduct a programmatic review of small water utility regulations and integrated resource planning and electricity procurement planning, and review of construction principles for decoupling policies in Montana.

With regard to the natural gas customer choice topic, MDU has offered some potential statutory language for committee consideration. It would provide authority for the Montana Public Service Commission to require a utility implement customer choice if it determines it is in the public interest. The "public interest" standard would allow for full consideration of the costs and benefits of such a program.

Additional items include the state's high performance building program, the Understanding Energy in Montana guidebook, and Montana energy investment. The agenda and reports are posted on the committee's website. The meeting will also be live streamed. That information can be found at [:leg.mt.gov](http://leg.mt.gov)

## **Revenue and Transportation Interim Committee Meets March 13-14, 2018 in Helena**

Source: MT. Legislative Council Staff Contact: Megan Moore – 406-444-4496

The Revenue and Transportation Interim Committee holds its next meeting on March 13-14, 2018 in Rooms 137 and 317 of the State Capitol in Helena, MT beginning at 8 a.m. each day.

The morning of March 13 will begin in Room 137 and be devoted to agency presentations from the Department of Transportation and the Montana Tax Appeal Board, a history of agricultural property classification and valuation for the HJ 22 study, and an overview and panel discussion about the distribution of oil and natural gas production tax revenue.

After lunch, the committee will move to Room 317 and meet jointly with the Legislative Finance Committee for agenda items related to the changing economy and impacts to the long-term viability of Montana's tax structure. Topics include general fund trends relative to gross state

product, revenue trends in all 50 states, an industry comparison of taxes collected on \$1 million, economic sector trends, a tax gap analysis presentation by the Department of Revenue, and discussion of the corporate income tax.

The meeting will continue Wednesday, March 14 in Room 317 with a joint meeting of RTIC and the Local Government Interim Committee. The two committees will receive a presentation from the Legislative Audit Division on the recent performance audit of districts that use tax increment financing.

Afternoon agenda items include a medical marijuana administration and tax collections update, a year-to-date revenue collections report for the committee's revenue estimating and monitoring duties, an agency report from the Department of Revenue, a discussion of taxes paid by public utility customers for the SJ 23 study of the taxation of centrally assessed and industrial property, and an administrative rule review.

Information about the committee's agenda, materials and access to the meeting as it is live streamed can be found at: [leg.mt.gov](http://leg.mt.gov)

## **Ballot Initiative Targets Mine Pollution**

Source: [Helena Independent Record](#) February 22, 2018 By: Tom Kuglin

State mining permits could be denied if polluted water requires perpetual treatment under a proposed ballot initiative... Supporters filed paperwork with Secretary of State Corey Stapleton in preparation for signature gathering expected to begin next month (March). The language also faces a legal review from Attorney General Tim Fox.

The initiative would require mining companies seeking a new permit to submit reclamation plans that do not require perpetual treatment of water...If passed, Montana's mining reclamation law would add language for state regulators to consider. "The reclamation plan must contain measures sufficient to prevent the pollution of water and the degradation of adjacent lands without the need for perpetual treatment," the initiative says. "Perpetual treatment includes activities necessary to treat acid mine drainage or contaminants, including arsenic, mercury and lead"....

State and national Trout Unlimited, the Montana Environmental Information Center, Earthworks, the Greater Yellowstone Coalition, and the Park County Environmental Council have thrown support behind the initiative" ... In 2015, the Montana Mining Association and other mining interests opposed legislation that would have prohibited mining that included perpetual water treatment.

More than 25,000 valid voter signatures are needed by June 22 for the proposal to be placed on the November ballot.

## **Rep. Gianforte Introduces Legislation to Unlock Public Lands and Increase Public Access**

Source: Office of Montana Rep. Gianforte March 1, 2018

Congressman Greg Gianforte has introduced legislation, the *Protect Public Use of Public Lands Act* and the *Unlocking Public Lands Act*, that will increase access to public lands, empower local communities, and do the work Congress should have taken care of nearly 40 years ago.

The bills implement recommendations by the Bureau of Land Management (BLM) and the U.S. Forest Service (USFS) to release more than 690,000 acres of Wilderness Study Areas (WSAs) in Montana that the agencies found not suitable for wilderness designation.

“Nearly 700,000 acres of Montana’s public lands have been in limbo for as long as 40 years, stuck in a perpetual study that was actually completed years ago. Congress didn’t act then like it should have, and it’s about time we did,” Gianforte said. “Unlocking these lands and returning them to the Forest Service and BLM management will increase Montanans’ access to their public lands.”

U.S. Senator Steve Daines, who introduced the *Protect Public Use of Public Lands Act* in the Senate, welcomed Gianforte’s action.

“Thanks to Greg for introducing the Protect Public Use of Public Lands Act in the House. I’ve heard from county commissioners, outdoor recreationists, Montana families and the Montana state legislature – they are tired of Washington, D.C. paralysis locking up access to their public lands,” said Daines. “It’s time Washington, D.C. listens to Montanans and keep public lands in public hands.”

Gianforte introduced legislation to unlock Montana’s public lands and increase public access after hearing from local leaders, state legislators, key stakeholders and impacted communities who endorsed the decades-old USFS and BLM recommendations.

The proposals garnered statements of support from the Montana Farm Bureau Federation and the Montana Stockgrowers Association as well as several Boards of County Commissioners.

Congress designated Wilderness Study areas (WSAs) in the 1970’s. The legislation instructed the U.S. Forest Service and the Bureau of Land Management to study the areas and determine whether they should be included in the National Wilderness Preservation System.

By the early 1980’s, USFS and BLM made their recommendations to Congress. All recommendations for the WSAs were to designate the areas as non-wilderness or partial non-

wilderness. Congress granted itself the responsibility to act on the recommendations from the USFS as well as BLM and release the WSAs. Nearly 40 years later, Congress has not acted on the USFS and BLM findings.

## Caucus Members Push “Feasible” Warming Bill

Source: [E&E News](#) February 27, 2018 By: Arianna Skibell

Members of the bipartisan House caucus dedicated to finding market-based solutions to address global warming have released their first piece of legislation associated with the group...

Reps. Dan Lipinski (D-Ill.) and John Faso (R-N.Y.) of the Climate Solutions Caucus, which adds Republicans and Democrats in pairs, last week introduced the “Challenges and Prizes for Climate Act,” H.R. 5031, which aims to spur innovation through a prize competition related to climate and energy.

“Increased efficiency and continued technological innovation in clean energy will help the U.S. economy grow in the coming decades,” Faso said in a statement. “We should do all we can to incentivize progress and assist the private sector economy in innovating and inspiring technological changes which will reduce the impact of climate change.”

...The measure would direct the secretary of Energy to create a program called “Climate Solutions Challenges,” which would organize prize competitions in areas including **carbon capture**, energy efficiency, energy storage, climate resilience and data analytics.

“Clean energy prize competitions have the potential to yield major technological advances and transform industries and markets,” Lipinski said in a statement...

Joel Creswell, a legislative assistant of Lipinski who specializes in science and technology policy, said that to write the bill, his team consulted a wide variety of people, including experts from organizations that have had success in running prizes and challenges, both in the government and private sector...Creswell said his team wrote the bill with an “eye” to the current political climate. “As much as we’d like to see more comprehensive climate change legislation, this is something we think is feasible right now,” he said.

“It is in line with this administration’s priorities, which is to say the administration favors the use of challenges and prizes, public private partnerships and getting technology off the lab bench and into the marketplace.”



## Montana Energy Summit Agenda Takes Shape

The 2018 Montana Energy Summit hosted by U.S. Senator Steve Daines will take place at the Red Lion Hotel & Convention Center in Billings, Montana on May 30-31, 2018.

The bulk of the program takes place on Thursday, May 31<sup>st</sup> beginning at 8:00 am. Speakers include:

- Neil Chatterjee, Commissioner Federal Energy Regulatory Commission
- Christian Kendall, President & Chief Executive Officer, Denbury Resources, Inc.
- Robert C. Rowe, President and Chief Executive Officer, Northwestern Energy
- Mark Menezes, Under Secretary, U.S. Department of Energy
- David Goodin, President & Chief Executive Officer, MDU Resources
- Matthew Rose, Executive Chairman, BNSF
- Dan K. Eberhard, Chief Executive Officer, ONEOK
- Joseph E. Michetti, Chief Operating Officer, Westmoreland Coal Company
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More details about registration and other information is available at: [mtenergysummit.com](http://mtenergysummit.com)

### Upcoming Events/Dates

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.*