



TREASURE STATE RESOURCES ASSOCIATION OF MONTANA

P.O Box 1700, Helena, Montana 59624

Phone: (406) 443-5541

TREASURE STATE RESOURCES ASSOCIATION NEWS August, 2018

Environmental Quality Council Discusses Future of Coal

The Montana Environmental Quality Council met July 25-26, 2018 to continue their oversight role of the various agencies and programs under their purview as well as discuss potential legislation to recommend for 2019.

That included an update on the MT Sage Grouse Program about the latest versions of the Habitat Quantification Tool and the Mitigation Policy documents that are out for additional public comment prior to their consideration by MSGOT in September. The peer review process has also been initiated. The program anticipates rulemaking to be completed by the end of the year.

The EQC is also considering proposals that would spread the cost for fire preparedness across the state of Montana by assessing property owners a fee either against the number of parcels, or the acreage owned, as well as the presence of structures. At least three draft bills will be discussed in September. Those will be available for public review and comment in the near future.

Perhaps one of the more interesting discussions involved the wrap-up of the SJ 5 study on the future of coal. The breadth of how and where tax revenues from coal development are used in Montana points to the significance of the challenges we face as pressures mount to limit its use. Technology may hold the key to coal's future as pointed out by speakers from the coal industry and the Montana Chamber of Commerce. (See following story) The EQC will look further into the subject at their next meeting.

Montana Chamber Presents Analysis on Carbon Capture, Utilization, and Storage (CCUS) Technology

Source: MT Chamber of Commerce Press Release, July 27, 2018

The Montana Chamber of Commerce presented a report on Thursday (July 26) before the meeting of the Montana Environmental Quality Council (EQC) on the potential benefits of additional research and development into Carbon Capture, Utilization & Sequestration (CCUS). CCUS is a technology-based solution to decreasing greenhouse gas (GHG) emissions.

“Montana is resource rich with a plentiful amount of coal, but that only goes so far without cost effective methods to develop it,” said Todd O’Hair of Cloud Peak Energy. “While we have an abundance of research on CCUS, moving forward we need to put that research into action to see how this technology can be improved and modified to become more cost effective. Pilot projects would help shed light on what we need to do to take this technology to the next level so it can be implemented on a larger scale.”

CCUS is considered a critical aspect of lowest-cost mitigation. While at present the initial costs of the technology are high, it has the potential to be an effective and less disruptive technology to mitigate GHG emissions.

“As part of Envision 2026, our 10-year strategic plan, we took a hard look at CCUS,” said Webb Scott Brown, President/CEO of the Montana Chamber of Commerce. “CCUS has the potential to be a great solution to decrease emissions while still allowing us to develop our abundance of coal. That achieves our goals of increasing jobs, per capita income, and gross national product – all while preserving our beautiful environment. We can meet increasing national and global energy demand and continue to provide funding for schools, emergency services, local governments and infrastructure improvements.”

Without investment in CCUS, the International Energy Agency cautioned there may not be another long-term, effective plan for carbon emission mitigation.

“CCUS could be an ideal opportunity for Montana to be at the leading edge of implementing a technology that would significantly reduce global energy poverty,” continued Brown. “The federal government should strongly consider investment in pilot projects to build upon the CCUS research and development that is currently taking place.”

Implications of the Increasing Demand for Energy

- World energy consumption is projected to increase by 41 percent by 2050 as the world's population increases by more than 1 billion, and hundreds of millions more are lifted out of energy poverty.
- Renewables are an important part of addressing the dual challenges of climate change and energy poverty. However, renewables are projected to meet only 18 percent of world energy needs by 2050. A significant effort, then, needs to be made to reduce and eliminate carbon emissions related to burning coal.
- CCUS has been identified as one of the most promising and cost-effective technologies to mitigate carbon emissions. At the same time, CCUS will help the developing world continue to utilize cheap and plentiful coal.

TSRA Business and Industry Profiles

Editor's Note: We'd like to share more about what is happening in the different organizations, businesses and industries represented in TSRA. Let us know if you'd like to send an article or update to include in this newsletter. This month we're learning more about railroads.

Montana has reliable partners in railroads, trade

By Michael Gaynor

Among the many policy issues competing for attention is the future of America's trade deals. From renegotiating NAFTA to an escalating trade war, the haze of uncertainty surrounding trade undermines industries across the country. Freight railroads, which service nearly every industrial, retail and resource-based sector of the economy, are a prime example.

In Montana, railroads handle over 100 million tons of freight in annually, hauling Powder River Basin coal, minerals and ore as well as grain and everything in between to markets in the U.S. and across the globe. Across America, trains move one-third of U.S. exports. On top of that, over 40 percent of rail carloads and intermodal units and 50,000 rail jobs directly depend on international trade.

Montana's economy at large is similarly tied to trade, with its exports having increased to \$1.4 billion in 2016 – a 51 percent bump over 10 years. The U.S. Chamber today warns that \$20 million in Montana exports are threatened by an emerging trade war.

Economic developers know that we're all in this together. When tariffs bring uncertainty for manufacturers, it means they can't forecast and plan, which ripples into adjacent industries. For railroads, uncertainty makes it increasingly difficult to properly plan future business decisions, such as the allocation of rail cars, personnel and equipment.

Trains are often-overlooked economic connectors, chugging along day and night to deliver for the communities that they move through. But the story of U.S. freight rail, a truly American story with its beginnings over 200 years ago, is one of constant investment and innovation. Rail companies are some of the biggest spenders among U.S. industries, reinvesting into their network at about six times the rate of the average manufacturer.

This spending – about \$100 billion collectively over the last four years – is crucial to safely moving the goods that U.S. businesses and consumers rely on. When railroads spend their private dollars on new crossties, ballast or rail, it means the Montana farmer can move more grain more efficiently. It means the coal producer can reach international markets more reliably. Ultimately, this user-pay principle means that taxpayers aren't on the hook for rail infrastructure.

Consistent safety gains are another byproduct of massive investment. The companies that pioneered the Iron Horse are now pioneering drones, ultrasound and big data, among other technologies, to identify and prevent incidents before they happen. Accordingly, the train accident rate has fallen 28 percent over the last decade and 44 percent since 2000.

America's freight railroads are a true economic engine, creating wealth at the local and national levels, supporting 1.5 million jobs across the economy and reliably connecting U.S. industries to the world. As the Treasure State continues to export more goods internationally, rail will continue to be a key partner, investing what it takes to enhance service and provide U.S. industries with an edge in the global market.

Michael Gaynor is Assistant Vice President of Field Operations at GoRail, a national non-profit promoting the benefits of freight railroads.

Science of National Forest Planning Symposium – September 14, 2018

Free and Open to the Public

The Custer Gallatin National Forest Plan Revision Team is hosting a free public symposium on September 14th for those interested in learning more about the science that goes into forest planning. It will be held in the Roosevelt Amphitheatre at the Big Sky Resort in Big Sky, Montana.

The event will run from 8:00 am. – 1:00 pm. Topics to be covered include:

- The 2012 Planning Rule Approach
- Setting the forest vision in a changing climate
- Fire as part of the ecosystem; both challenges and opportunities
- Connectivity for all species
- Riparian Area management.

Check the website at: <http://www.fs.usda.gov/custergallatin> for a full agenda and additional details as those become available.

Air Pollution Trends Show Cleaner Air, Growing Economy

Source: USEPA News Release July 31, 2018

Today the U.S. Environmental Protection Agency (EPA) released its annual report on air quality, tracking our nation's progress in improving air quality since the passage of the Clean Air Act. "Our Nation's Air: Status and Trends Through 2017" documents the considerable improvements in air quality across America over more than 45 years.

"Through federal and state implementation of the Clean Air Act and technological advances in the private sector America has achieved one of the great public-private successes of our time – dramatically improving air quality and public health while simultaneously growing the nation's population and economy," said Acting Administrator Andrew Wheeler. **"This report details a remarkable achievement that should be recognized, celebrated, and replicated around the work. A 73 percent reduction in any other social ill, such as crime, disease, or drug addiction would lead the evening news."**

EPA's most recent report highlights that, between 1970 and 2017, the combined emissions of six key pollutants dropped by 73 percent, while the U.S. economy grew more than three times. A closer look at more recent progress shows that between 1990 and 2017, average concentrations of harmful air pollutants decreased significantly across our nation:

- Sulfur dioxide (1-hour) ↓ 88 percent
- Lead (3-month average) ↓ 80 percent
- Carbon monoxide (8-hour) ↓ 77 percent
- Nitrogen dioxide (annual) ↓ 56 percent
- Fine Particulate Matter (24-hour) ↓ 40 percent
- Coarse Particulate Matter (24-hour) ↓ 34 percent
- Ground-level ozone (8-hour) ↓ 22 percent

You can explore the full report at: <https://gispub.epa.gov/air/trendsreport/2018/>

And to the TSRA members who have contributed to this success story – thank you. You've demonstrated once again we can protect the environment, provide jobs and grow our economy.

July Sees Flurry of Activity Aimed at Reforming the Endangered Species Act:

First...Sen. Barrasso Releases Draft Legislation to Strengthen the Endangered Species Act

Source: U.S. Senate Environment and Public Works Committee Press Release, July 2, 2018

U.S. Senator John Barrasso (R-WY), chairman of the Senate Committee on Environment and Public Works (EPW), released the Endangered Species Act Amendments of 2018 discussion draft.

The discussion draft reauthorizes the ESA for the first time since 1992. It emphasizes elevating the role of states and increasing transparency in the implementation of the Endangered Species Act (ESA). It also prioritizes resources to better meet its conservation goals and provides regulatory certainty to promote conservation and recovery activities...

Barrasso has worked with the Western Governors' Association (WGA) in drafting the legislation. The bipartisan WGA has stated that the chairman's discussion draft is generally consistent with the WGA recommendations for modernizing the ESA and includes provisions inspired by the association's *Species Conservation and Endangered Species Act Innovation*, led by Wyoming Governor Matt Mead...

"The Western Governors' Association appreciates the Chairman's willingness to productively engage with Governors, and that the Chairman has approached this polarizing topic in an inclusive, thoughtful manner. The proposed bill reflects this fact and offers meaningful, bipartisan solutions to challenging species conservation issues."

The discussion draft will:

- Elevate the role of state conservation agencies in species management;
- Increase transparency associated with carrying out conservation under the Act;
- Prioritize available resources for species recovery;
- Provide regulatory certainty for landowners and other stakeholders to facilitate participation in conservation and recovery activities;
- Require that listing of any species must also include recovery goals, habitat objectives, and other criteria established by the Secretary of Interior, in consultation with impacted states, for the delisting and downlisting of the species;
- Require that the satisfaction of such criteria must be based on the best scientific and commercial data available;
- Enable states the opportunity to lead recovery efforts for listed species, including through a species recovery team;
- Allow such a recovery team to modify a recovery goal, habitat objective, or other established criteria, by unanimous vote with the approval of the secretary of the interior;
- Increase federal consultation with local communities;
- Improve transparency of information regarding status of a listed species;
- Create a prioritization system for addressing listing petitions, status reviews, and proposed and final determinations, based on the urgency of a species' circumstances, conservation efforts, and available data and information so that resources can be utilized in the most effective manner;
- Include studies on how to improve conservation efforts and to understand in greater depth the extent of resources being expended across the federal government associated with implementation of the act; and
- Reauthorize the ESA for the first time since its funding authorization expired in 1992.

Next ... Congress Seeks to Modernize Endangered Species Act By Introducing Nine Bills

Source: Congressional Western Caucus Press Release, July 12, 2018

On July 12, 2018 members of the Congressional Western Caucus unveiled a bipartisan package of nine bills, all united by the goal of modernizing and improving the Endangered Species Act.

The ESA has been modified only sparingly since its introduction, with the result being that the hundreds of thousands of transactions that take place every day between parties affected by the Act and the statute as implemented have had almost no bearing on the way species conservation is managed in the United States at the federal level. Even Executive branch regulations governing implementation of the Act lie mostly untouched - -and have for years.

Consequently, the sum total of experience and exposure to the ESA across decades by thousands of hugely different parties throughout the United States has been decisively ignored when it comes to improving the Act. Not a Caucus to let such an embarrassment of riches lie wasted, we saw an opportunity for serious reform.

The ultimate goal which every Member involved in the Modernization Package agreed on was that the ESA *must* be retooled in order to: 1) Fulfill its original intent of prioritizing real recovery and conservation of eligible species, and; 2) More effectively balance the interests of all parties involved in and affected by species and habitat listings – including species themselves, private citizens, industry, local governments, public infrastructure projects, nonprofit organizations and other entities.

The following is a brief summary of the individual legislative proposals:

Congressman Westerman: “The **PETITION** Act would give the Interior Secretary the tools necessary to prevent frivolous lawsuits from stopping the work of the Fish and Wildlife Service, while ensuring more resources are available to protect truly endangered species.”

Congressman Biggs: “As a part of this package, I introduced the **LIST** Act, which makes a number of improvements to bring the ESA up-to-date. Most notably, the LIST Act authorizes the Secretary of Interior to de-list species when he receives an objective, measurable, and scientific study demonstrating a species has recovered.”

Congressman Pearce: “This bill (EMPOWERS Act) would simply require the federal government to consult with states before making a listing decision under the Endangered Species Act (ESA). Recent listings under the ESA have lacked adequate communication with the states who have these animals. Lack of communication is a lost opportunity for the Fish and Wildlife Service to utilize state expertise and information under review. Decisions to list species under

the ESA often have serious adverse economic consequences, which is why the federal government should review all relevant information before making a decision. The **EMPOWERS Act** will help prevent rushed decisions that hurt local economies. “

Congressman Don Young: “The Endangered Species Act (ESA) has been weaponized and misused by environmental groups for too long. I am pleased to be part of the Western Caucus’ efforts to rein in the ESA, and to sponsor the Localizing Authority of Management Plans (**LAMP Act**). The bill permits the Secretary of Interior to enter into cooperative management agreements with state, local and tribal governments to improve habitat conservation.

Congressman Mike Johnson: “The ESA has been exploited for decades placing unnecessary burdens on our nation’s hard-working farmers and ranchers. And while protecting wildlife and their habitats is of the utmost importance, the agriculture community is already proactively and heavily involved in conservation programs that implement critical protections for both. My bill (the **WHOLE Act**) helps modernize the ESA so we can continue to protect endangered species and let our farmers and ranchers get back to what they do best – providing a safe, sustainable food source for the American people.” The bill ensures the totality of conservation measures will be considered when making decisions about managing species, and would empower states with robust conservation programs in place to take the lead if certain conditions were met.

Congressman Ralph Norman: “I am proud to have introduced the **PREDICTS Act**, which codifies the ‘No Surprises’ regulation and provides for greater certainty and improved planning for incidental take permit holders and landowners entering into an agreement to improve the status and recovery of at-risk and listed species.

Congressman Paul Gosar: The **STORAGE Act** addresses the US Fish and Wildlife Services’ use of proposed critical habitat designations which pass through or include limited water infrastructure areas -- designations that conflict with the language in the Endangered Species Act itself.

Congressman Tom McClintock: The Endangered Species Transparency and Reasonableness Act requires data used by federal agencies for ESA listing decisions to be made publically available and accessible through the internet, allowing the public to see what data is being used to make key listing decisions. The USFWS must also consider data provided by state, tribal and local governments. It also caps attorney fees at \$125/hour.

Montana Congressman Greg Gianforte is a member of the Caucus and has been actively involved in the reform efforts. He stated, “Montanans have a deep respect for and appreciation of our lands and the wildlife that occupy them. Montanans believe we can support multiple use of lands while conserving species. Unfortunately, environmental extremist groups have distorted the Endangered Species Act from its original intent and use it to unnecessarily shut down needed projects throughout Montana. Today’s package of bills offers us the opportunity

to modernize the ESA with targeted reforms that will encourage greater input from leaders on the ground, spur partnerships between communities to preserve habitats, and bring some common sense back to protecting endangered species.”

And Finally...U.S. Fish and Wildlife Service and NOAA Fisheries Seek Public Input on Proposed Reforms to Improve & Modernize Implementation of the Endangered Species Act

Source: Department of the Interior Press Release, July 19, 2018

Continuing efforts to improve how the Endangered Species Act (ESA) is implemented, the U.S. Fish and Wildlife Service and National Oceanic Atmospheric Administration (NOAA) Fisheries today proposed revisions to certain regulations to ensure clarity and consistency. The changes incorporate public input, best science and best practices to improve reliability, regulatory efficiency and environmental stewardship...

Several proposed changes related to section 4 of the ESA that deals with procedures for listing species, recovery and designating critical habitat. First, the agencies propose to revise the procedures for designating critical habitat by reinstating the requirement that they will first evaluate areas currently occupied by the species before considering unoccupied areas. Second, the agencies propose to clarify when they may determine unoccupied areas are essential to the conservation of the species.

While the agencies recognize the value of critical habitat as a conservation tool, in some cases, designation of critical habitat is not prudent. Accordingly, they are proposing a non-exhaustive list of circumstances where they may find that designation for a particular species would not be prudent. The agencies anticipate that such not-prudent determinations will continue to be rare and expect to designate critical habitat in most cases.

The ESA defines a threatened species as one that is likely to become in danger of extinction within the “foreseeable future”. For the first time, agencies are proposing an interpretation of “foreseeable future” to make it clear that it extends only as far as they can reasonably determine that both the future threats and the species’ responses to those threats are probable.

The agencies are also clarifying that decisions to delist a species are made using the same standard as decisions to list species. In both cases, that standard is whether a species meets the established ESA definition of an endangered or threatened species.

The U.S. Fish and Wildlife Service is separately proposing to rescind the blanket rule under section 4(d) of the ESA, which automatically conveyed the same protections for threatened species as for endangered species unless otherwise specified. This brings its regulatory approach in line with NOAA Fisheries, which has not employed such a blanket rule. The proposed changes would impact only future listings or downlistings and would not apply to those species

currently listed as threatened. The U.S. Fish and Wildlife Service will craft species-specific 4(d) rules for each future threatened species determination that are necessary and advisable for the conservation of the species, as has been standard practice for most species listed as threatened in recent years...

Under Section 7 of the ESA, other federal agencies consult with the U.S. Fish and Wildlife Service and NOAA Fisheries to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species or result in "destruction or adverse modification" of critical habitat. The proposed rule simplifies and clarifies the definition of "destruction or adverse modification" by removing redundant and confusing language. The proposed rule is not intended to alter existing consultation practice; rather, it seeks to revise and clarify language that was confusing to other federal agencies and the public...

The proposed rules are available at:

https://www.fws.gov/endangered/improving_ESA/regulation-revisions.html

They were published in the *Federal Register* on **July 25, 2018**, triggering a 60-day comment period. Comments are due by **September 24, 2018** and must be posted on <http://www.regulations.gov>

Upcoming Events/Dates

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 5, 2018	Montana Taxpayers Association Annual Meeting Radisson Colonial Hotel, 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.