



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

P.O Box 1700, Helena, Montana 59624

Phone: (406) 443-5541

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

**Happy Election Day!**

**As the campaign ads wind down, it's time to focus on the 2019 Legislative Session in Montana. TSRA plays an active role in the legislative process by bringing our diverse membership together to promote the use of our natural resources. That includes holding widely-attended events, sharing information and expertise, and helping our member groups and companies make their case before legislative committees. We invite all our members to take advantage of these opportunities.**

**FIRST:**

**Take part in the Treasure State Resources Association  
2019 Legislative Reception and Showcase of Natural Resources  
January 8, 2019 Delta Helena Colonial Hotel, Helena, MT  
5:30 p.m. – 8:00 p.m.**

Sign up for the 2019 Legislative Reception and Showcase of Natural Resources scheduled for Tuesday, January 8, 2019 at the Delta Colonial Hotel in Helena, MT.

This event is a "tradition" for both TSRA members and legislators at the launch of a new session of the Montana Legislature. It provides an opportunity to showcase our members' contributions to Montana's economy and way of life to our invited guests – Montana legislators and other elected officials. TSRA members will have a welcoming meeting place to educate legislators and others about their industry, business, association, or organization. Legislators can meet representatives from TSRA's broad-ranging coalition and better appreciate the diversity of

Montana's "working (and recreating) landscape". In 2017 more than 120 legislators attended the event.

The Legislative Reception and Showcase is scheduled from 5:30 p.m. to 8:00 p.m. and offers a variety of ways to participate:

- Sign up for a booth to feature your company or organization.
- Be a sponsor of the event and have your name prominently displayed.
- Have a tabletop exhibit to display your information.
- Attend the Reception/Showcase as a member and mingle with elected officials and your TSRA peers.
- Provide tickets to the event to your personnel.

This is a great opportunity for TSRA members to share information about their businesses, associations, organizations and projects with a diverse and important audience. You are urged to attend and be generous hosts to our legislative guests. With your assistance and participation, TSRA can continue to make this a unique tradition for the Montana Legislative Session.

The 2019 Showcase Sponsorship and Reservation Form can be downloaded here: [2019 Showcase Sponsorship and Reservation Form](#). It can also be found on the "Events" page on TSRA's website. Booth and display space is limited so act soon.

#### **SECOND:**

**Plan to attend TSRA's weekly legislative breakfast meetings.**

**Held Thursday mornings at 7:00 a.m. these weekly meetings allow members to learn more about bills that impact their industry as well as "gather intelligence" about the administration and legislative leadership's priorities. In need of some help supporting or opposing a bill? This is a great forum to find some allies.**

This year we'll be meeting at the **Montana Association of REALTORS®** office in the downstairs conference room. That is located at 1 So. Montana Avenue, just across the street that runs behind the Capitol. TSRA will arrange for breakfast to be available – we just ask attendees to help cover the costs. This year the cost will be \$60 for the entire session. Contact TSRA's Executive Director about how to sign up. The first meeting will be Thursday, January 17<sup>th</sup> at 7:00 a.m.

TSRA wishes to thank Mark Simonich and the Montana Association of REALTORS® for use of their meeting room.

#### **THIRD:**

**Let us help. We invite our members to let us know about their legislative priorities. Often times those are shared by others in our coalition who may be able to assist by offering testimony or talking with legislators. We can include updates in our newsletters as well as add those issues to the agenda for our weekly breakfast meetings. Ongoing communication can also help members address potential conflicts before bills are heard in committee.**

## **New Network for Viewing Legislative Proceedings Launched**

Source: Montana Legislative Services Division (LSD)

The Montana Public Affairs Network (MPAN) premiered November 1, 2018. The channel formerly known as TVMT (Television Montana) becomes MPAN to reflect the channel's evolving focus toward expanding services to the citizens of Montana beyond the live, unedited nonpartisan, gavel-to-gavel coverage of the Legislative Branch.

Evolving technology implemented by the LSD also improves the quality of the service. All live events produced at the Capitol are now in high definition and have a wide screen format to better serve modern televisions. A new increased broadcast bandwidth delivers a higher quality signal to its viewers...These improvements enable viewers to see what they are currently watching and allow them to digitally record future programming.

MPAN provides the video for the Montana Legislature's live streaming service online at: <http://www.leg.mt.gov> Viewers can also engage with the service through Facebook, Twitter, Instagram.

## **Public Comment Sought on Proposed Administrative Rules for Sage Grouse Mitigation and Grants**

Source: Montana Sage Grouse Conservation Program

The Montana Sage Grouse Oversight Team is seeking public comment on proposed rules for implementation of portions of the Greater Sage-Grouse Stewardship Act. The Act was passed by the 2015 Montana Legislature. Proposed rules address mitigation and Stewardship Fund grants.

"The purpose of mitigation is to offset the impacts of development in sage grouse habitats so that Montana can maintain enough habitat to support viable sage grouse populations in the future," said Carolyn Sime, Sage Grouse Conservation Program Manager. "Mitigation is a central component of Montana's Greater Sage Grouse Conservation Strategy to balance development with conservation," she said. The overall approach and scientific methods were developed through a two-year stakeholder effort.

The proposed mitigation rules designate the habitat quantification tool and the accompanying policy for how development impacts and conservation project benefits will be measured, and direct the implementation of two, more detailed documents. The underlying mitigation documents can be found on the Montana Sage Grouse Team's web page at <https://sagegrouse.mt.gov/Team> . Under the heading Mitigation on the left side of the webpage, see links for the Policy Guidance Documents (v1 October 2018) and the Habitat Quantification Tool Technical Manual (v1 October 2018) The underlying documents themselves have undergone earlier opportunities for public comment and review by the Oversight Team.

The proposed rules also outline the process for how the Oversight Team will update the habitat quantification tool and mitigation policies through adaptive management in the future.

The purpose of the Stewardship Fund grants is to provide a source of competitive funding to facilitate free-market mechanisms for voluntary, incentive-based conservation on private lands, and public lands, as needed, in habitats designated as necessary to conserve sage grouse and maintain state management. These grants provide opportunities to enhance, restore, expand, or benefit sage grouse populations and habitats to offset the impacts of development.

The proposed grant rules direct the Oversight Team to give greater priority to grant applications for conservation of core area habitats, which have the highest conservation value and support the greatest number of displaying male sage grouse.

Lastly, the proposed rules direct the Oversight Team and the Sage Grouse Habitat Conservation Program to develop a method to administer the review and monitoring of projects selected for funding by the Oversight Team. The Oversight Team would also develop a method to track and maintain information about mitigation and make it available to the public.

The public comment period opened October 19, 2018 and will run through 11:59 p.m. on November 19, 2018. A copy of the proposed rules is available on the Secretary of State's Web site at <http://www.mtrules.org/gateway/ShowNoticeFile.asp?TID=8844>.

Interested persons may submit comments through the online public comment tool on the Oversight Team's webpage at <https://appsi.dnrc.mt.gov/pubcomment/>. Comments can be typed directly into the tool or interested persons can attach an electronic file of their comment letter.

The Montana Sage Grouse Oversight Team will host a public hearing on the proposed rules on November 9, 2018 at 2:00 p.m. at the DNRC Headquarters, Montana Room, 1539 11<sup>th</sup> Avenue, Helena, MT. The public can submit comments orally or in writing at the hearing.

Those unable to attend the hearing may submit written comment electronically through the online comment form at <https://appsi.dnrc.mt.gov/pubcomment/> or by postal mail to Carolyn Sime, Sage Grouse Resource Program Manager, MT Dept. of Natural Resources and Conservation, PO Box 201601, Helena, MT 59620-1601. All comments must be received by 11:59 p.m. on Nov. 19, 2018.

## **WPCAC To Consider Advancing Changes to Circular DEQ-7 (Groundwater Standards)**

On Friday, November 9<sup>th</sup>, members of the Water Pollution Control Advisory Council (WPCAC) will be asked to advance the rulemaking process for changes to Circular DEQ-7.

According to DEQ staff, the rulemaking consists of six new groundwater human health criteria to be added to Department Circular DEQ-7. The six criteria are for: diallate; dioxane, 1,4-; iron; manganese; perfluorooctane sulfonate (PFOS); and perfluorooctanoic acid (PFOA). Since these are groundwater criteria, all were derived under the assumption that exposure is through drinking water only (no accounting for exposure through consumption of fish is made).

DEQ's Hazardous Materials Program of the Waste Management and Remediation Division requested the inclusion of diallate. Hazardous waste permitted facilities must comply with cleanup standards in Circular DEQ-7; presently, a standard for diallate is not provided. Diallate is a chemical of concern in groundwater at a hazardous waste permitted herbicide formulating plant located in Billings, Montana. Including diallate in DEQ-7 will provide the Hazardous Materials Program with a more enforceable cleanup standard. Dioxane, 1,4, PFOS, PFOA, and iron are also considered important criteria to the Waste Management and Remediation Division as cleanup endpoints for remedial activities they are working on. Further, PFOS and PFOA are included in the 2016 EPA Office of Water Health Advisories.

Manganese used to be in DEQ-7 years ago as an aesthetics issue in drinking water (taste, and brown staining of sinks, etc.), but was removed in 2012. But scientific research has demonstrated that excessive levels can have neurobehavioral and neurocognitive impacts to infants (0-6 months) and the new criterion has been derived for this most-sensitive population. Manganese is also considered an important criterion to the Waste Management and Remediation Division as a cleanup endpoint. In the near future, DEQ's Public Water Supply Bureau (within the Water Quality Division) is planning to develop criteria and rules for addressing manganese in all public water supply systems.

If WPCAC gives the proposed rules the green light, they will be offered to the Board of Environmental Review at their December 7, 2018 meeting for approval to begin the formal rulemaking process that will include opportunities for public comment.

WPCAC will also be asked to advance a new rule for setbacks between sewage lagoons and water wells. It follows from HB 368 passed by the 2017 legislature requiring DEQ to establish rules for setbacks between sewage lagoons and water wells.

The proposed rule applies a default setback of 1,000 feet unless site-specific conditions indicate a shorter distance is appropriate. The minimum setback allowed is 100 feet. The proposed rule provides several methods to decrease the setbacks from the default distance of 1,000 feet. These methods include: data that demonstrates the ground water beneath the sewage lagoon and water well are not hydraulically connected; soil, aquifer, and well data that demonstrates an adequate amount of natural pathogen reduction before any sewage discharge to groundwater reaches the water well; or continuous disinfection of the water well.

DEQ will not be asking WPCAC to look at proposed rules to implement changes to arsenic standards based on the determination of the “natural” condition of the stream reach. They will continue to work with stakeholders to address such concerns as how those standards will be incorporated into permits.

## **Litigation to Watch:**

### **Montana Attorney General Intervenes in Lucky Minerals Case To Defend a Law Barring District Courts From Invalidating a State Agency’s Approval of a Project (Park County Environmental Council and Greater Yellowstone Coalition, Plaintiffs v. Montana DEQ and Lucky Minerals Inc. (Plaintiffs) and State of Montana, Intervenor)**

Sources include: Bozeman Chronicle and the Montana Attorney General’s Office

In May of this year, Park County District Judge Brenda Gilbert ruled that a Montana Department of Environmental Quality review of a proposed exploratory drilling project near Emigrant Gulch ignored key issues and was legally flawed. Judge Gilbert couldn’t block the project due to changes made to the Montana Environmental Policy Act in 2011 (SB233). The plaintiffs filed a motion to vacate the exploration permit.

The Park County Environmental Council and the Greater Yellowstone Coalition argue that the 2011 change to MEPA violates the state constitution’s guarantee of a person’s right to a “clean and healthful environment”.

The Montana Attorney General has weighed in to defend the current law in a brief filed October 17, 2018. One of the arguments made by the AG is that “the legislature never intended MEPA to be the roadblock tool of environmental groups for delaying – and ultimately shutting down – all resource development projects to which the environmental groups are philosophically opposed.”

SB 233 included other changes to MEPA, including restricting project reviews to actual or potential impacts within Montana and not outside the state’s borders.

### **Justices OK Climate Case, But Kids Have a Long Way to Go**

Source: E&E News, November 5, 2018 By: Benjamin Hulac

The Supreme Court on Friday (November 2) lifted the hold on a climate lawsuit (Juliana v. United States) brought by a group of young Americans against the federal government, ending the legal purgatory that the case had been stuck in for weeks.

The Trump administration had sought to scuttle the case, arguing that it was based on “unprecedented” legal concepts, including a constitutional right to safe climate conditions.

But in an unsigned order, the high court said it would not step in now. The court lifted a previous stay Chief Justice John Roberts had put in place October 19. Justices, though, signaled that the government could still take the case up with the 9<sup>th</sup> U.S. Circuit Court of Appeals.

Julia Olson, lead attorney for the 21 children and young adults who brought the case, said in a statement that she has contacted the federal district court in Oregon to start a long-anticipated trial next week. “The youth of our nation won an important decision today from the Supreme Court that shows even the most powerful government in the world must follow the rules and process of litigation in our democracy,” Olson said Friday.

The order is at least a temporary triumph for the plaintiffs, who are eager to present their case at trial with the hope of proving their central claim – that the government has undermined their constitutional right to live in an ecosystem with a safe climate.

The plaintiffs first sued the Obama administration in 2015, arguing that such a right is inherent in other, already enshrined constitutional protections. They are demanding a nationwide plan, based on the latest climate science, to ramp down fossil fuel combustion.

Before the stay, the trial was supposed to begin October 29 in Eugene, Ore., where U.S. District Judge Ann Aiken has issued rulings allowing the case to go forward. The judge, though, has acknowledged that this is not an ordinary environmental lawsuit.

Industry groups and some conservatives have said the case is built on faulty legal groundwork and there is no right to a safe climate.

The plaintiffs in the case are demanding a right that “simply does not exist,” Jeffrey Wood, the No. 2-ranking official in DOJ’s Environment and Natural Resources Division, said at a law conference last month.

Scott Segal, a partner in the law firm Bracewell LLP, which represents fossil energy companies, said hours after the stay that the case was based on a “tortured legal theory” and that the plaintiffs have a long fight ahead. A court-ordered climate plan is something best left for Congress and the White House, he said. “Climate change is serious, but the careful balancing of interests required to address it can only be addressed by the legislative and executive branches.”

## **EPA has ‘extremely ambitious’ timeline for climate rules**

Source: E&E News, October 23, 2018 By: Niina Helkkinen

EPA is aiming to complete at least two major overhauls of Obama-era climate rules in less than a year. It’s a goal analysts call ambitious and will help the agency meet the president’s rule-busting agenda.

EPA says it intends to finalize both its replacement for the Clean Power Plan and changes to standards related to methane emissions from the oil and gas industry in roughly six months.

The rapid timelines came out this month as part of the Fall 2018 Unified Agenda of Regulatory and Deregulatory Actions, which tracks federal agency progress on rulemaking.

EPA released its Affordable Clean Energy (ACE) rule, to replace the CPP, on August 31 and now predicts it will finalize the regulation in March.

The agency is taking two related actions to change the Obama team's regulation on new and modified sources in the oil and gas industry. In October, EPA announced certain technical changes, which it expects to complete by April. The agency then expects to release a broader proposal in December. Final action is due by June.

The estimated completion dates are part of another ambitious deregulatory fiscal year for EPA and other arms of the federal government. Collectively, agencies are projected to cut \$18 billion in regulatory costs next fiscal year, not counting finalized changes to the corporate average fuel economy standards.

To help meet that goal, EPA has a negative \$817.8 million regulatory budget for fiscal 2019. That follows the agency slashing \$1.2 billion in regulatory costs in fiscal 2018.

Regulatory budgets come from the president's executive order calling for agencies to cut two regulations for every new one. Agencies that were able to achieve that standard were expected to reduce regulatory costs further to achieve negative budgets...

In a press release following the unified agenda's release, acting EPA Administrator Andrew Wheeler praised the agency's rule-cutting efforts, noting the agency had finalized 28 significant deregulatory actions since the start of the Trump Administration. The agency is planning 25 "priority actions" in fiscal 2019, including the ACE and SAFE rules.

### **Upcoming Events/Dates**

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 Delta Helena Colonial Hotel, Helena MT



December 11-13, 2018	Montana Stockgrowers Association Convention Double Tree and Northern Hotels, Billings, MT
January 7, 2019	Montana Legislative Session Convenes State Capitol, Helena, MT
January 7-8, 2019	Montana Chamber Days at the Capitol Helena, MT
January 8, 2019	TSRA Legislative Reception and Showcase of Natural Resources 5:30 – 8:00 pm. Delta Helena Colonial Hotel, Helena, MT
June 19-20, 2019	TSRA 2019 Annual Meeting Holiday Inn Downtown, Missoula, 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.*