



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

P.O Box 1700, Helena, Montana 59624

Phone: (406) 443-5541

**TREASURE STATE RESOURCES ASSOCIATION NEWS**  
May, 2019

**Registration Open**  
**TSRA Annual Meeting – June 19-20, 2019**  
**Holiday Inn Downtown Missoula**

You are invited to join other TSRA members and guests at the Holiday Inn Downtown Missoula, 200 South Pattee, Missoula, MT on June 19-20, 2019 for the TSRA Annual Meeting. In **addition** to a timely, issues-driven program, it offers a great networking opportunity.

Here's a sample of what to expect for the TSRA meeting:

- On Wednesday, June 19, the 4-person scramble golf tournament begins at **1:00 pm.** at the **Canyon River Golf Club, Missoula, MT.** Participation is limited to 24 golfers so sign up soon. Priority will be given to our Groundbreaker Golf Sponsors. Arrive early to grab your lunch (provided for registered golfers).
- **No Host Dinner** - TSRA Meeting Attendees and Guests are invited to a No-Host Group dinner at **The Ranch Club Restaurant, 8501 Ranch Club Road, Missoula, MT.** The dinner starts at 6:30 pm.

**Following dinner, (approximately 8:00 pm.) you are invited to enjoy “dessert” and refreshments at the home of TSRA Executive Director Peggy Trenk .** The address is 3084 Rustler Drive, Missoula, MT - just two blocks from The Ranch Club Restaurant. Even if you don't make it to dinner, you are welcome to attend.

- **TSRA's Annual Business Meeting is scheduled for Thursday, June 20<sup>th</sup> at 9:00 am.** at the Holiday Inn Downtown Missoula. We will be electing officers for the coming two years.
- **A Preliminary Meeting Agenda is Available**, but please note it is subject to change. Check the Events page on our website at: [treasurestateresources.org](http://treasurestateresources.org) for up-to-date agenda information and other details as the meeting approaches. We will have representatives from the MT Department of Environmental Quality as well as the MT Legislative staff give us a preview of upcoming rulemaking, interim studies and other matters. **We look forward to receiving your registration(s) no later than June 5, 2019.**

**It's Time to Make a Room Reservation--Don't delay!**

We have a block of rooms set aside at the Holiday Inn Downtown Missoula for Tuesday and Wednesday evening, June 18 and 19, 2019. To reserve your room, call **406-721-8550** and let the reservations clerk know you are with the TSRA Annual Meeting block. The room block code is TSR. Rates are \$149 plus tax.

**The room block expires on May 19<sup>th</sup>** so act now for the best rates.

**Great Options for Meeting and Golf Sponsors**

We need your help to assure a quality program. **If you haven't already done so, please consider being a sponsor and/or donating prizes for golf. See the attached Sponsorship Form for details about the value you'll receive. Your support is greatly appreciated.**

TSRA sincerely thanks our Sponsors to date. They are:

**Trailblazer Level: MDU Resources Group**

**Champion Level: Atlantic Richfield, Denbury Resources, NorthWestern Energy, Washington Business Services and Weyerhaeuser**

**Groundbreaker Level (Golf Sponsorship): Citizens for Balanced Use, Hecla Montana, NorthWestern Energy and Solvay U.S.A**

**Advocate Level: Browning, Kalecyzc, Berry and Hoven, Energy Laboratories, Montana Chamber of Commerce, Montana Farm Bureau Federation, Phillips 66 and Solvay U.S.A.**

Registration forms can be found on the TSRA website at: [treasurestateresources.org](http://treasurestateresources.org). (Events Page) We look forward to seeing you on June 19-20, 2019.

## **2019 Montana Legislative Session Update:**

The Montana Legislature adjourned on April 25, 2019. The following is an update on bills reported earlier that were still in process at the time the April Newsletter was published. A complete list of bills that TSRA testified on and their status will be posted on the website.

**House Bill 32/House Bill 411: Introduced by Rep. Willis Curdy – An act revising laws related to Aquatic Invasive Species Programs; Requiring an Aquatic Invasive Species Prevention Pass for Operation of Vessels; Establishing Fees; Revising Prevention Pass Fees for Anglers and Providing for Transfers of General Fund:** TSRA testified in support when HB 32 was heard February 4, 2019 before House Natural Resources. The bill did not assess fees on hydro facilities as recommended by the Environmental Quality Council during the last interim. HB 32 was later tabled in favor of **HB 411: Revise Laws Related to AIS Expenditures and Funding.** HB 411 continued to be amended as it moved through the process, with the final version drawing funding from a range of sources including prevention passes for non-resident motorized and non-motorized vessels, fees on resident boat registrations, fees on fishing licenses, lodging use taxes, and hydroelectric fees. The bill has been transmitted to the Governor.

**House Bill 34: Introduced by Rep. Jim Keane – An Act Providing a Statutory Appropriation for Good Neighbor Forestry Accounts:** This bill gives the Department of Natural Resources authority to spend private contributions and revenue from qualifying timber sales to manage timber resources, including those on national forests, in a productive manner. TSRA supported the bill. HB 34 passed both the House and Senate and was transmitted to the Governor.

**House Bill 403: Introduced by Rep. Barry Usher – An Act Revising the Coal Gross Proceeds Tax Rate on Coal Mined from an Underground Mine:** TSRA supported the bill when it was heard in the House Taxation Committee as it offers some certainty for the coal industry in the current market. The Committee amended the bill to raise the local share of the gross proceeds tax on underground mines to 5%. The Senate struck the amendments. The bill has been transmitted to the Governor.

**House Bill 441: Introduced by Rep. Kerry White: An Act Eliminating Timber Conservation Licenses for State Lands:** The measure proposes to eliminate the current conservation license option available for state timber sales. When a sale is offered, timber companies offer bids, but an individual or individuals can also bid to purchase a conservation license that provides some revenue to the state trust, but precludes harvest of the timber. That has only been fully exercised for a small buffer zone of timber between state and private land. However, that option is being pursued for a current timber sale near Bozeman. If a conservation license is awarded, it precludes active management, leaving the dead and dying timber in place and potentially creating a further risk for fire. If a conservation license is awarded, not only would timber not be harvested, but the related economic benefits from harvest activity would not be generated.

TSRA supported the bill. The Senate added a “savings clause”, stating that the changes did not affect any proceedings for issuing a conservation license already in process. The amended version passed the Senate and the amendment was concurred in by the House. The bill has been sent to the Governor.

**House Bill 722: Introduced by Rep. Steve Gunderson: An Act Allowing Transfer of Hard Rock Mining Permits Under Certain Conditions:** HB 722 was drafted on behalf of the mining industry. It offers an opportunity for a permit to be held in suspension for up to five years, allowing another company to take a look at an existing property that is in a default situation, receive the permit, post full bond and put people back to work – with no risk to the state. TSRA supported the measure. The bill was amended and then passed by the House Natural Resources Committee and by the full House. The Senate Natural Resources Committee made additional changes, largely to provide more clarity for DEQ concerning implementation. The amended bill received 50 votes on the Senate floor and the Senate amendments were also passed by the House. The bill has been transmitted to the Governor.

**Senate Bill 48: Introduced by Sen. Tom Richmond on behalf of the MT. Department of Environmental Quality: An Act Generally Revising Variances to Water Quality Standards for Pollution Dischargers:** The bill gives dischargers more options for seeking a variance from water quality standards in Montana, using criteria established by the EPA. The bill had been substantially amended from its introduced version, largely at the request of environmental groups. TSRA stood as an opponent to the bill, noting our support for the measure but asking for one additional amendment. We asked that the rulemaking authority be given to the department, as opposed to the board of environmental review. EPA holds the final authority in granting any variance and it seemed an unnecessary step to have rules go through the BER. At the request of the sponsor, the bill was amended to make the change. TSRA supported the amended bill. The amended bill passed the Senate and the House and was signed by the Governor on May 3<sup>rd</sup>.

**Senate Bill 299: Introduced by Sen. Mike Lang: An Act Revising Laws Related to Sage Grouse:** As introduced, the bill codified language in the Governor’s Executive Order that launched the Sage Grouse program, making it clearer that activities such as maintenance activities for existing wellheads were exempt from oversight by the sage grouse conservation program. It also provided for waivers from compensatory mitigation requirements for projects that addressed public safety. Prior to being heard in the Senate Natural Resources Committee, various stakeholders worked with the Governor’s office to make changes that struck some of the language, pointing to provisions in the current mitigation policy that offered the same considerations. Per protocol, TSRA appeared as an opponent because we supported the bill with the amendments being requested. The Senate Natural Resources Committee made the amendments to the bill and moved it to the Senate floor. The bill passed the Senate and was amended in the House to address remaining concerns before being finalized by both bodies. In the final version, certain maintenance activities are exempt from application of the Habitat

Quantification Tool for purposes of calculating compensatory mitigation. Other restrictions can be applied when appropriate. TSRA supported SB 299 in the House. It was signed by the Governor on May 3<sup>rd</sup>.

**Senate Bill 318: Introduced by Sen. Roger Webb: An Act Providing for Approval of An Abatement for New or Expanding Industry Prior to Commencement of Construction:** The bill clarified the process for granting (and removing) new and expanding industry local property tax abatements. Under the bill, companies can submit project plans in advance of construction and receive approval prior to beginning work. That provides more certainty for both the applicant and the local jurisdiction. The bill passed the Senate but was amended in the House to add further clarification. TSRA supported the measure. It was finalized by both bodies and signed by the Governor on May 3<sup>rd</sup>.

**Senate Bill 328: Introduced by Sen. Tom Richmond: An Act Authorizing a Board of County Commissioners to Authorize a Local Abatement of the Coal Gross Proceeds Tax from a New or Expanding Surface Coal Mine:** SB 328 extends the same treatment to surface mines as is currently allowed for underground mines in terms of authorizing local abatement of the coal gross proceeds tax. Counties can abate up to 50% of the coal gross proceeds tax for five or ten year periods. TSRA supported the bill. The bill passed both houses and has been transmitted to the Governor.

**Senate Bill 329: Introduced by Sen. Tom Richmond: An Act Allowing the Land Board to Extend a Coal Lease for Up to 10 Years if the Extension is in the Best Interest of the State:** This bill would give the Land Board the same flexibility for administering coal leases as might be found in other program areas. The State Land Board can take into account the current fact situation and determine whether extending a lease comports with their fiduciary duties. TSRA supported the bill. It passed both houses and has been transmitted to the Governor.

**Senate Bill 331: Introduced by Sen. Tom Richmond: The Montana Energy Security Act of 2019:** This bill replaced SB 278 that was tabled by the sponsor. It also created the opportunity for NorthWestern Energy to purchase a larger share of Colstrip Unit 4. That would help fill the need for more 24/7 energy sources in the company's portfolio – energy that is the lowest-cost alternative available for Montana. TSRA supported the measure. It passed the Senate and was later amended by the House Energy, Technology and Federal Relations Committee. The bill passed second reading in the House, but failed on third reading the following day.

**Senate Bill 343: Introduced by Sen. Tom Richmond: An Act Generally Revising Laws Related to Opencut Mining:** SB 343 is the result of work by stakeholders and the Montana DEQ to make improvements to the permit application process, encourage reclamation, and allow for timely release of bonds. It also provides a source of revenue to operate the Opencut Bureau. Counties had a concern with the cost of the annual permit fee. The bill passed the Senate. The House

Natural Resources Committee made changes to address the concerns of county governments and others. Both houses approved the changes and the bill has been transmitted to the Governor.

**Senate Joint Resolution 6: Introduced by Sen. Mike Cuffe: A Joint Resolution Requesting that Montana's Congressional Delegation Introduce Federal Legislation to Return Management of the Montana Grizzly Bear Population to the State:** TSRA was among a host of proponents for the resolution pointing to the success of grizzly bear recovery efforts in Montana and the need to give management responsibility to the state so that concerns of ranchers and farmers, hunters, and local residents could be more fully considered. The Resolution was substantially amended to take into account the objections from opponents before being passed by the Senate. The resolution passed the House and has been filed with the Secretary of State. (Resolutions do not require the Governor's signature.)

## **Don't Forget to Comment on the Draft EIS for the Black Butte Project – Comments Needed by May 10, 2019**

TSRA members are encouraged to help support our friends in the mining industry by commenting on the proposal. To assist, the information below was provided by the Montana Mining Association.

### **Comments Needed by May 10<sup>th</sup>**

Tintina Montana, wholly owned by Sandfire Resources America, Inc., is in the last stages of permitting their high tech, underground Black Butte Copper project to conduct mining operations on private property located approximately 17 miles north of the community of White Sulphur Springs in central Montana.

The company has spent over \$60 million in exploration, environmental analysis and planning and plans to spend approximately another \$300 million bringing the project into production. When the mine opens, 240 full-time employees and up to 50 full-time contractors will provide a significant and positive economic foundation for Meagher County and Central Montana in an environmentally friendly manner.

The Montana Department of Environmental Quality (MDEQ) has jurisdiction to approve and regulate the underground Black Butte Copper project. All exploration and permitting is bonded by the MDEQ.

Tintina Montana started conducting exploration in September 2010 and applied for its Mine Operating Permit (MOP) in December 2015. A draft permit stating that Black Butte Copper met and exceeded all of the laws of the State of Montana was granted by MDEQ in September 2017. Since then, the MDEQ has been completing a 3rd party Environmental Impact Statement (EIS).

After completing a multi-year rigorous review of the project proposal, the MDEQ released a draft EIS on March 11, 2019 is accepting public comment on the Black Butte Copper Project EIS until May 10, 2019!

You can find much more information on the comment website found at [www.miningmontana.com](http://www.miningmontana.com). It will only take a few minutes of your time, so please [COMMENT NOW](#).

## **Montana Air Quality Bureau Implements New Registration Program**

Source: Air Quality Bureau, MT Department of Environmental Quality

The Air Quality Bureau is excited to announce a new, streamlined registration program that will replace the existing air quality permitting process for **crushers and screens, concrete batch plants, and asphalt plants**. Rather than applying for a permit, owners or operators of eligible facilities are now required to register the equipment with DEQ prior to operating.

Under the old permitting process, DEQ would perform a case-by-case analysis of potential emissions and other environmental impacts that would result from operation of the equipment at the proposed facility. Based on the analysis, DEQ would issue an air quality permit with requirements to install and operate the appropriate control technology to limit emissions. For most crushers, screens, concrete plants, and asphalt plants, the permitting process could take up to three months to complete, even though the analysis almost always resulted in the same types of control requirements. After decades of writing permits this way, DEQ decided it was time to change the process to become more efficient.

In the new registration program, the control requirements that were previously included in air quality permits (such as spray bars, bag houses, or filters) are now adopted into state rules. The rules will be located in Title 17, chapter 8, subchapter 18 of the Administrative Rules of Montana, titled "Standards and Requirements for Sand and Gravel, Concrete, and Asphalt." **The new registration process requires that you must notify DEQ at least 15 days before beginning to operate at any location in Montana. This notification is called "registration." By registering with DEQ, owners/operators certify that operation of the equipment will comply with all applicable rules and regulations.** This simplified process will shorten the time it takes between application and the ability to operate and will streamline the steps for relocating portable equipment to new job sites. Owners/Operators who already hold a valid air quality permit may continue to operate under the permit(s), but must transition to the new registration program by registering with DEQ by December 31, 2019.

The new air quality registration program is the result of many conversations with stakeholders over the last few years. Find out more about the new process by contacting the Air Quality Bureau at (406) 444-3490. **More information on the rules as well as the new, simplified registration forms and guidance documents are now available on DEQ's website at <http://deq.mt.gov/Air/BI/NewFacility>.**

## **Rulemaking to Set New Arsenic Standards for Yellowstone River Expected This Summer**

Source: Montana Department of Environmental Quality

At their May 3rd meeting, members of the Water Pollution Control Advisory Council were briefed on the status of the process to develop site-specific standards for the portion of the Yellowstone River from the MT/WY border to the juncture with the Bighorn River. These site-specific standards are based on the naturally high concentrations of arsenic in this segment of the river. The Department intends to propose rulemaking be initiated this summer.

Per legislation passed in 2015, DEQ may not apply a water quality standard to a water body that has a nonanthropogenic concentration greater than the standard (75-5-222, MCA) Furthermore, Montana law has stated since 1967 that dischargers are not required to discharge purer than natural (75-5-306, MCA). Arsenic concentrations for much of the Yellowstone River from the MT/WY border through Billings are consistently above the human health standard of 10 ppb. The major source of arsenic loading to the Yellowstone River is known to be nonanthropogenic – the geothermal water of the Yellowstone Caldera. However, the proportion of the total arsenic load to the Yellowstone River that is nonanthropogenic (or natural) was previously undetermined. DEQ has completed the science to establish the non-anthropogenic arsenic load for the Yellowstone River Basin.

Based on the results of that project, the arsenic nonanthropogenic standard(s) (NAS) for the Yellowstone River will be selected. Once the NAS is finalized and approved by the Board of Environmental Review and the US Environmental Protection Agency, the NAS will replace the current health standard of 10 ppb that is contained in Circular DEQ 7, for that segment of the river.

## **EPA Won't Regulate Pollution that Moves Through Groundwater**

Source: E & E News, April 16, 2019 By: Ariel Wittenberg and Ellen M. Gilmer

EPA won't regulate any pollution to surface water that passes through groundwater. The Clean Water Act regulates pollution to surface water and requires permits for so-called point-source discharges to them.

But questions have remained about whether the law regulates any pollution that ends up in surface waters, or only direct discharges. EPA now says it's the latter.

"The agency concludes that the best, if not the only, reading of the Clean Water Act is that Congress intentionally chose to exclude all releases of pollutants to groundwater from the (point source) program, even where pollutants are conveyed to jurisdictional surface waters via groundwater," the agency wrote in an interpretive statement posted on April 15<sup>th</sup>.



If pollution travels through groundwater, EPA says it “breaks the causal chain” between a source of pollution and surface waters. That could affect regulation of pollution from a variety of sources, including seepage from coal ash and manure management ponds, sewage collection systems, septic system discharges and accidental spills and releases.

The guidance comes as the Supreme Court is preparing to hear arguments on the same issue.

But the memo contradicts arguments EPA and the Department of Justice made on the same case three years ago. “The case does not require the means by which the pollutant discharged from a point source reaches a water of the United States to be a point source,” the agencies wrote in a brief to the 9<sup>th</sup> U.S. Circuit Court of Appeals in *County of Maui, Hawaii v. Hawaii Wildlife Fund*.

That 2016 brief further concludes that while the Clean Water Act clearly does not regulate groundwater, the law does cover “the movement of pollutants to jurisdictional waters through groundwater with a direct hydrologic connection.”

Such an addition of pollutants to navigable waters falls squarely within the Clean Water Act’s scope,” it says. The 9<sup>th</sup> Circuit ultimately agreed with the agencies, as did the 4<sup>th</sup> U.S. Circuit Court of Appeals in a separate case.

The Supreme Court takes up the 9<sup>th</sup> Circuit case this fall.

**In a related story written by Ellen M. Gilmer and published by E&E News on April 23, 2019...**

While EPA’s policy claims to settle a complex legal debate, most stakeholders are still waiting for answers. “You don’t know which way the Supreme Court is going to rule in the *Maui* case, so you can’t take a lot of comfort from this interpretive statement until we have a decision in that case,” said Morgan Lewis attorney Duke McCall, who advises industry clients on Clean Water Act issues...“I would counsel a conservative approach for my clients.”

The new interpretation is also limited in geographic scope. It does not apply within two appellate court regions – the 4<sup>th</sup> U.S. Circuit Court of Appeals and the 9<sup>th</sup> U.S. Circuit Court of Appeals (*Montana*) - that have adopted the broader Clean Water Act interpretation.

## **Mining Company Says Court Decision Won’t Stop Development**

Source: [Flathead Beacon](#) April 26, 2019 By: Justin Franz

Officials with the Idaho-based company hoping to open a massive copper and silver mine near Noxon said the recent decision by a Lewis and Clark County judge to overturn a Montana Department of Natural Resources and Conservation water permit will not slow their efforts.

Hecla Mining Company spokesperson Luke Russell said the DNRC water permit that was struck down by Judge Kathy Seeley would not impact the company's upcoming exploration work at the Rock Creek Mine and that it expects the state will appeal the decision.

This will not impact the exploration phase of the project," Russell said. The U.S. Forest Service is currently working on a final record of decision regarding exploration at the proposed Rock Creek Mine and once that is in hand the company will start building an adit from the surface to the ore deposit, Russell said.

Earth Justice filed the lawsuit against the DNRC on behalf of four environmental groups, including the Clark Fork Coalition, Rock Creek Alliance, Earthworks and the Montana Environmental Information Center.

In 2016, the DNRC issued a water use permit to Hecla and ruled that the proposed mine, which is projected to produce up to 10,000 tons of ore daily, would not negatively impact the environment. But environmental groups have argued that the mine would drain water from wilderness streams and harm bull trout and other native fish. The groups filed a complaint against the DNRC's decision and an administrative hearing was held regarding the claims in 2018. During that hearing, Hecla's Montana subsidiary, RC Resources Inc., filed a successful motion to dismiss the claims. The environmental groups then filed a lawsuit against DNRC in Lewis and Clark County District Court. The court ruled (on April 9) the DNRC had indeed violated the law.

If the judgment stands it could have wide-ranging impacts on future water permits issued by DNRC. In the past, permits were issued primarily based on water quantity instead of water quality. The state has 60 days from the judge's decision to file a formal appeal.

The earth below the Cabinet Mountains has long been eyed by mining companies as a prime source of copper and silver. Since the 1980s, numerous companies have tried to bring two different mines –Rock Creek near Noxon and Montanore near Libby – to production but have been delayed by a gamut of legal, environmental and economic forces. Proponents of the projects have said opening either of the Rock Creek or Motanore mines would result in an economic boon for one of the most depressed areas of Montana.

Taken together, both Montanore and Rock Creek have the potential to produce more than 500 million ounces of silver and 4 billion pounds of copper in their lifetime. The two deposits are separated by about 7,000 feet of earth and a fault line, suggesting that at one time it was actually one ore body. Many consider the combined deposit beneath the Cabinet Mountains to be one of the largest untapped copper and silver resources on Earth.

Russell said the mines could operate for upwards of 20 to 30 years.

## Upcoming Events/Dates

|                    |  |
|--------------------|--|
| May 14-15, 2019    | Montana Mining Association, Fairmont Hot Springs Resort        |
| June 12-15, 2019   | Montana Stockgrowers Mid-Year Meeting, Miles City, MT          |
| June 19-20, 2019   | TSRA 2019 Annual Meeting<br>Holiday Inn Downtown, Missoula, MT |
| August 27-29, 2019 | Montana Petroleum Association Annual Meeting<br>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.*