



TREASURE STATE RESOURCES ASSOCIATION OF MONTANA

P.O Box 1700, Helena, Montana 59624

Phone: (406) 443-5541

TREASURE STATE RESOURCES ASSOCIATION NEWS August, 2019

Upper Missouri Waterkeeper v. EPA – The Saga Continues DEQ to Discuss Proposed Changes to the Nutrient Variance Rules on August 6th

On July 16, 2019, Judge Morris of the United State District Court in Great Falls, MT partially vacated EPA's approval of Montana's general nutrient standards variance and then stayed that vacatur, to allow the Department and EPA time to remedy the Court's concerns with the general variance. The Court then ordered the Department to complete the related rulemaking on Circular DEQ-12B within 120 days of his order (by November 13, 2019). In a previous Order, issued March 25, 2019, the Court upheld much of EPA's approval of Montana's general variance, but found certain legal errors related to the adoption of the general variance timeline.

Per Montana statute (75-5-313, MCA), the Department is to consult with the Nutrient Work Group regarding proposed changes to the general variance—including changes to Circular DEQ-12B. The meeting's purpose is to discuss proposed rule changes in the circular in response to the Court's decisions.

Additional Background: In 2016, EPA was sued in federal court by Upper Missouri Waterkeeper for having approved the general variance contained in Department Circular DEQ-12B. The court order of July 16, 2019 directs the Department to set forth a reasonable general variance timeline that begins with the Table 12B-1 treatment requirements and leads to compliance with the base numeric nutrient standards in the time range proposed by Upper Missouri Waterkeeper. Upper Missouri Waterkeeper proposed that the base numeric nutrient standards be met by 2035. In its

ruling, the Court also recognized the reality that discharges throughout Montana currently stand at different levels of attainment.

No changes to the end-of-pipe treatment requirements in Table 12B-1 of the circular are proposed. The proposed rulemaking will be specifically limited to addressing the Court's concerns regarding (a) the timeline to meet the Table 12B-1 treatment requirements, and (b) the timeline to meet the base numeric nutrient standards.

We will describe the changes proposed, how they mesh with the Court Order, and any implications for the regulated community.

TIME: 10:00 AM to 1:00 PM

WHEN: Tuesday, August 6, 2019

WHERE: Room 111 at the DEQ - Lee Metcalf Building, 1520 East 6th Ave., Helena

Please use the following instructions for joining the meeting:

- Use the Skype link below to access screen shared materials throughout the meeting. There will be no audio associated with this Skype link, you must call in to our separate teleconference line for audio

Call-in to the teleconference line for audio at: (Toll-free) 1-866-906-9888, or (Toll) 1-857-288-2555; **use pass code 7508058**

- - Please **do not** use the "Join by Phone" Skype number, it will not be connected. You must call-in to the teleconference line at 1-866-906-9888 or 1-857-288-2555 to join the meeting by phone.

[Join Skype Meeting](#)

There's Still Time to Comment on Montanore Project – Deadline is August 8th

Montanore Minerals Corp. (a wholly owned subsidiary of Hecla Mining Company) is currently seeking authorization from the US Forest Service to complete the work needed to evaluate the underground mineral resource of the proposed Montanore Mine.

The USFS is accepting public comment on the evaluation phase until August 8.

Commenting takes two minutes. It is easy and fast using the link: www.miningmontana.com

That site has links to the Supplemental EIS, info on the project and some pre-drafted letters you can send in as is or modify as you like – then hit the 'comment now' button and it will ship to the USFS.

Please take two minutes and weigh in on the Montanore Evaluation project. This project would provide information for future mine planning and around 50 family wage jobs in Northwest Montana.

Daines, Feinstein Developing Major, Bipartisan Legislation to Protect Communities from Deadly Wildfires

Source: Office of U.S. Senator Steve Daines, Thursday, August 1, 2019

Senators Dianne Feinstein (D-Calif.) and Steve Daines (R-Mont.) today released the following joint statement on bipartisan legislation they are developing to protect public safety by expediting and expanding the removal of dead, dying and hazardous trees in national forests:

“The 2017 and 2018 fire seasons brought unspeakable loss and grief to California and Montana communities. Unfortunately, millions of acres of forest in our states and across the West remain at high risk of catastrophic wildfires, and there is strong consensus that fire seasons will only get worse. We believe additional resources are urgently needed to protect our communities and tackle these emergency conditions.

We’re working together to develop bipartisan legislation to improve management and speed up restoration of forest landscapes in California and Montana, create viable solutions for the removal of wood biomass and dead and dying trees, accelerate post-fire restoration and reforestation, and expedite targeted treatments of dangerously dense forested areas where wildfires are most likely to start.

Our bipartisan bill will take concrete, meaningful steps to improve forest health and address the worsening threat that catastrophic wildfires pose to our communities. We intend to introduce the bipartisan legislation after the Senate returns from the August work period and will work with members of both parties to pass it.”

In a related story written by Marc Heller and published August 1, 2019 by E & E News the author further reports that:

Daines and Feinstein have worked together for a few years on forest legislation, trying to bridge differences between Democrats and Republicans on environmental policies related to forest management. A forest industry source said it’s likely that the legislation – a draft of which hasn’t been released – will seek modest changes to the National Environmental Policy Act but won’t delve into other legal issues such as alternatives to NEPA lawsuits when projects are in dispute.

Changes to NEPA could make some kinds of projects related to wildfire happen faster, and on a larger scale. Lawmakers from both parties have shown a willingness to accept categorical

exclusions from NEPA, for instance, for specific purposes like post-fire salvage operations or removing dead or dying trees that might pose a fire risk...

The lawmakers could explore larger categorical exclusions than authorized in the 2018 farm bill, for instance, an industry source said...

In both states, wildfires have left swaths of dead or dying trees that the timber industry says it could harvest, and which forest managers say might increase the risk of catastrophic fire.

In Montana, for instance, a total of 1.1 million acres burned last year, but just 4.4% of that area has been salvaged according to the **Montana Wood Products Association**. Mills had capacity to take on extra material, said **Julia Altemus**, the group's executive director...Altemus told E & E News she's encouraged by the joint work of Daines and Feinstein, adding that any proposal they make "will push us much farther along than we've been. It's really great they are working together," she said.

Legislative Interim Work Continues to Ramp Up

As reported in the July Newsletter, interim committees are beginning their work in preparation for the 2021 Legislative Session. Most have tentatively adopted work plans that will be finalized in their September meetings. Generally interim committees meet once a quarter, depending on their responsibilities. Any potential legislation, or "committee bills" will start to take shape by the spring of 2020 to allow time for public input. With some exceptions, interim committees need to complete their work by mid-September of 2020 to allow measures to be pre-introduced for the 2021 session.

Committees often schedule panel presentations on various topics of interest under their jurisdiction. Many TSRA members take part in those panel discussions throughout the interim, as was the case before the Energy and Telecommunications Interim Committee (ETIC) on July 29th when representatives of Northwestern Energy, Talen Montana, and Puget Sound Energy offered an update on the pending closure of Colstrip Units 1 and 2.

The following is a brief review of some of the committee work that has taken place to date: (Sources include the Montana Legislative Council's "The Interim" Newsletter)

Revenue Interim Committee Appoints HJ 35 Tax Study Committee

The Revenue Interim Committee met June 27, 2019 in Helena to plan its work for the 2019-2020 Interim. The committee elected Rep. Alan Redfield (R-Livingston) as presiding officer and Sen. Dick Barrett (D-Missoula) as vice presiding officer.

The adopted work plan allocates most of the committee and staff time to the top-ranked House Joint Resolution 35 study of state and local policy. The committee will approach the study by devoting time at the September meeting to evaluating the state's tax system using principles of a quality revenue system. The committee will use the evaluation to narrow the scope of the study and formulate a detailed study plan for the interim.

HJ 35 is aimed at looking at Montana's changing economy, including the increasing role of the Internet in commerce; as well as other factors that impact the ability to generate revenue for state and local government services. Study participants, including representatives of various stakeholder interests per the requirements of the resolution, will consider whether to revise the state's current tax structure to:

- Establish a tax structure that works with the current economy;
- Stabilize state revenue and reduce volatility;
- Promote the long-term economic prosperity of the state and its citizens;
- Reflect principles of sound tax policy, including simplicity, competitiveness, efficiency, predictability, stability, and ease of compliance and administration;
- Ensure the tax structure is fair and equitable; and
- Allow Montana to compete with other states and nations for jobs and investments.

Changes to tax policy are obviously of interest to TSRA members, particularly since taxes paid by the various resource industries have provided revenue for state and local governments for a long time. Any proposed policy changes that would add further to the burden already carried by business and industry would be of concern. Fortunately former legislator Bob Story, now head of the Montana Taxpayers Association, was appointed to be part of the study group and will bring a wealth of knowledge about the current tax system, as well as offer a thoughtful evaluation of the impacts of any proposed recommendations.

The committee, along with the appointed stakeholders will meet September 24-25, 2019 in Helena. Meeting materials will be posted on: <https://www.leg.mt.gov/rvic>

Legislative Finance Committee to Study Long-term Stabilization of State and Local Finances

During this interim, the Legislative Finance Committee(LFC) will be conducting a separate, but related study that takes a look at how to stabilize state and local finances in the long term given Montana's changing economy. Per the direction of HB 715, legislators on the committee will learn how Montana's finances have evolved in the last 20 years and look forward 10 years to see where finances will end up. Members will identify budget pressures, future risks that may cause a ripple effect in the state's economy, and opportunities to improve government finance.

To better organize the study, the LFC appointed four subcommittees to look at the following areas of government in greater detail. They are:

- State information and Technology Division Policy & Results First
- Local Government Budget Interactions
- SB 310 & Personal Services Budgeting
- An Education Subcommittee to study HB 633 and HB 657. *HB 633 created a digital services library state special revenue account and provided for a study of a funding formula for digital library services. HB 657 calls for a study of education-related topics, including K-12 special education funding and the community college funding formula.*

The committee will meet again on September 16-17, 2019 in Helena. The first day will be set aside for the subcommittees to meet, and the full committee will meet the following day.

For more information go to: <https://leg.mt.gov/committees/admincom/lfc/>

Local Government Interim Committee Sets Priorities

The Local Government Interim Committee agreed to focus a substantial amount of time in their work plan to a study of alternative septic systems and widened the scope to look at the subdivision review process in general.

Against the backdrop of the studies of Montana's tax system and state and local revenues assigned to other committees, the Local Government Committee has opted to gain a better understanding of the financial relationship between the state and local governments, including past legislative actions relative to the local government entitlement share. Members asked for regular updates on the HJ 35 and LFC studies.

The Local Government Committee will continue to work on a concept also considered during the last interim that would allow local fire departments and fire service areas to enter into an agreement to create a regional fire authority, essentially dissolving existing fire service boundaries and creating a new, larger fire authority with the ability to pool resources and leadership. It emerged as a committee bill, SB 17, but died in the Senate due to serious concerns about how timberlands would be assessed under a new regional fire authority. The League of Cities and Towns testified the concept remains a priority for their organization, but noted it was a big change and likely wasn't quite "ready for prime time" in the 2019 session. The Committee plans to hold a panel discussion at an upcoming meeting and will explore whether the remaining concerns can be addressed.

The committee will next meet on September 12, 2019 in Helena and is expected to approve the final details of their interim work plan at that time.

Energy and Telecommunications Interim Committee Adopts Tentative Work Plan

The Energy and Telecommunications Interim Committee (ETIC) met July 29th to consider their work for the upcoming interim. In one of their first statutorily-required actions, the committee reviewed and affirmed the state's energy policy as laid out in statute.

ETIC was assigned House Joint Resolution 12, a study of the state's ability to defend its infrastructure (transmission grid), with further direction to develop guidelines for infrastructure protection, to investigate and consider new advanced transmission technologies, and to analyze economic opportunities. ETIC allotted .4 FTE to the study, or nearly half of their available staff time for the interim. They anticipate holding panel discussions covering a range of topics, researching initiatives in other states to offer grid reliability, and looking at wildfire liability laws. Members anticipate this study will incorporate a look at the state's transmission capacity and other concerns.

While not directed by a study resolution, they will also spend a significant portion of their remaining resources to look at the Public Service Commission, including a "deep dive" into other states' regulatory structures. ETIC will approach the study by answering the question – what is the role of the PSC and what does that look like in terms of structure and process? Several bills were drafted for the 2019 session that touched the PSC in some manner and those will be reviewed to determine if there are common concerns that can be included in the study.

ETIC will also spend some time looking at energy storage systems. With their remaining time, they listed a number of items they'd like to keep apprised of, most likely in presentations to the committee at upcoming meetings. Those include: growth in the use of electric vehicles (with attention paid to the study being conducted by the Transportation Interim Committee), bonding requirements (with attention paid to the work being done by the EQC), the upcoming closure of Colstrip Units 1 and 2, the work of the Montana Climate Solutions Committee, and the energy imbalance market.

ETIC will meet again in Helena on September 23, 2019 at which time they plan to finalize the work plan.

Governor Bullock creates Montana Climate Solutions Council

Source: Montana Governor's Office, Monday, July 1, 2019

Governor Steve Bullock today issued an executive order establishing the Montana Climate Solutions Council, tasking up to thirty Montanans with providing made-in-Montana recommendations and solutions to reduce greenhouse gas emissions, prepare the state for

climate impacts, and address the needs of communities in transition through appropriate economic development and workforce strategies.

“Climate change is already impacting our way of life and our economy. How we choose to respond to the changes around us offers a pivotal opportunity to both safeguard our traditional strengths and diversify and grow new opportunities for our future,” said Governor Bullock. **“That’s why I’m convening a diverse group of Montanans to develop thoughtful solutions to address climate change for our state.”**

“Like all difficult issues we tackle here in Montana, I know we can find a path forward by getting together, rolling up our sleeves, and focusing on the values we share in common. The state needs Montana-focused solutions, now more than ever,” continued Governor Bullock. Governor Bullock announced the creation of the Council during a Live Town Hall hosted with the Forward Montana Foundation.

Governor Bullock also announced that Montana will be joining the U.S. Climate Alliance.

The creation of the Council is a result of discussions with legislators and Montanans from the most recent legislative session on how Montana can create a path forward in setting goals for the state around the issue of climate change.

Governor Bullock tasked the Council with issuing a Montana Climate Solutions Plan by June 1, 2020. Other duties include:

- Make recommendations toward achieving an interim goal of net greenhouse gas neutrality for average annual electric loads in the state by no later than 2035 and a goal of net-zero greenhouse gas emissions economy-wide at a date to be determined by the Council;
- Coordinate with the Montana University System to identify strategies to build upon the work of the Montana Climate Assessment (MCA) to develop science driven, regionally relevant research on climate impacts facing Montana’s economy, and to identify opportunities for the state to support innovation in climate-smart research and technology development, demonstration, and manufacturing work with the state’s business community; and
- Coordinate with all relevant state agencies to make climate an immediate and actionable priority for the state and incorporate strategies to adapt to climate in agency planning.

Several TSRA members have been appointed to the Council, including Todd O’Hair, President and CEO of the Montana Chamber of Commerce; Alan Olson, Executive Director of the Montana Petroleum Association; David Hoffman, Director of Government Affairs for NorthWestern Energy; and Gary Weins, CEO of the Montana Electric Cooperatives’ Association. We are also pleased that Al Ekblad, Executive Secretary of the Montana AFL-CIO was appointed to represent the interests of organized labor. Other appointees include the state climatologist, economic development experts, individuals from the university system, representatives of environmental groups and family farmer Eric Somerfeld from Power.

Grizzly Bear Advisory Council Appointed

Source: [Missoulian](#), July 27, 2019

Governor Steve Bullock has also appointed 18 members to the newly formed Grizzly Bear Advisory Council. Bullock solicited applications for council membership beginning in April, seeking individuals with a diversity of views and commitment to working together on the future of grizzly bears in Montana. More than 150 people applied.

Appointments are intended to reflect the diversity of Montanans across the state who have a connection to grizzly bears, including those who live, work and recreate in bear country. Members include representatives of the livestock industry, hunters, conservation groups, and outdoor recreation. **TSRA member Chuck Roady, Vice President and General Manager for F.H. Stolze Land & Lumber Company was also appointed to serve.**

Per the Governor's Executive Order, the advisory council's work will center around broad objectives including maintaining and enhancing human safety; ensuring a health and sustainable grizzly bear population; improving timely and effective response to conflicts involving grizzly bears, and improving intergovernmental, interagency and tribal coordination.

In Montana, the state Fish, Wildlife and Parks agency is responsible for much of the day-to-day management of bears. The federal Fish and Wildlife Service has attempted to delist grizzly bears in the Greater Yellowstone Ecosystem, and may delist them in the Northern Continental Divide Ecosystem. Whether listed or not, it is expected that grizzly populations will continue to grow and expand, and that conflicts and management challenges will continue to increase.

And finally, a victory for common sense...

No 'Wilderness' Right in Oregon Climate Change Suit

Source: Law360, July 31, 2019 By: Andrew Kragie

An Oregon federal judge on Wednesday said U.S. citizens don't have a constitutional right to privacy in the wilderness that has been violated by federal policies on fossil fuels, agriculture and forestry that have contributed to climate change.

U.S. District Judge Michael J. McShane dismissed the claims brought by an animal rights group, a Native American environmental group and six nature-loving individuals. He held that the environmentalists don't have standing to sue because the harm they described is not individualized, but rather a "diffuse, global phenomenon that affects every citizen of the world."

The Animal Legal Defense Fund, Seeding Sovereignty and the individuals said the right to privacy should extend to include a right to wilderness that could be infringed by climate change. They had asked the court for "nothing short of revolutionary thinking."

"The lower courts –bound by law – are not the forum for the 'revolutionary' thinking that plaintiffs articulately espouse," Judge McShane wrote.

The groups first complained last fall that governmental action and inaction on climate change diminished the groups' ability "to take time out and contemplate the wild deepens her pondering and awareness of our paradoxical presence on this Earth," threatening the wilderness enthusiasts' physical and mental health.

It's odd to think you would have a right to be free from minor governmental intrusions, but not from an existential threat," a lawyer for the groups, Carter Dillard, told Law 360. He acknowledged that no court had previously recognized a right to wilderness.

The environmentalists said the Constitution contains rights for people to enjoy land in its natural, undeveloped state and that the federal government's policies on fossil fuel combustion, deforestation, and animal agriculture have contributed to climate change and harmed the country's wilderness areas, thereby depriving them of a fundamental right to go into nature and be alone.

The government responded in May by saying the environmentalists claims went so far beyond what the Constitution allows that the lawsuit could not proceed. Setting aside the fact that the groups can't met standing requirements, the country's framers never guaranteed anyone a right to wilderness as the groups assert, the government said.

The government said the environmentalists had defined wilderness as being based on "purely theoretical concepts" without detailing any specific location they believe they have a right to access.

Dillard told Law360 they plan to take their case to the Ninth Circuit.

"We plan to appeal because it's hard to make sense of a right to be let alone, and liberty, without a right to wilderness," Dillard said. "Ignoring that environmental baseline is how we got into the situation we're in now in terms of the climate crisis."

Upcoming Events/Dates

August 27-29, 2019	Montana Petroleum Association Annual Meeting Billings, MT
September 5 - 6, 2019	Montana Wood Products Association Hilton Garden Inn, Missoula, MT
September 10-11, 2019	Water Policy Interim Committee Dillon, MT
September 11, 2019	Economic Affairs Interim Committee Room 137, State Capitol, Helena, MT (9:00 am.)

September 12, 2019	Local Government Interim Committee State Capitol, Helena, MT
September 16, 2019	Transportation Interim Committee State Capitol, Helena, MT
September 16-17, 2019	Legislative Interim Committee to Study Long-Term Stabilization of State and Local Finances State Capitol, Helena, MT
September 24-25, 2019	Revenue Interim Committee State Capitol, Helena, MT
September 25-26, 2019	Environmental Quality Council Libby, MT
November 7, 2019	Economic Affairs Interim Committee State Capitol, Helena, 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.