



TREASURE STATE
RESOURCES ASSOCIATION
OF MONTANA

P.O Box 1700, Helena, Montana 59624

Phone: (406) 443-5541

TREASURE STATE RESOURCES ASSOCIATION NEWS
September, 2019

Interim Legislative Committees Meeting in September – Work Plans to be Finalized

Sources include the MT Legislative Services Division

After holding initial organizational meetings earlier this spring and summer, many interim legislative committees will be meeting in September to finalize their work plan for the coming months and launch into various studies. Those of particular interest to TSRA members are noted as follows:

Water Policy Interim Committee to Meet in Dillon on September 10 – 11, Followed by a Tour Near Butte

The Water Policy Interim Committee will convene at 10 a.m. September 10 at the Beaverhead County Courthouse, 2 South Pacific Street in Dillon, Montana. The committee is working on three studies:

- Study of the future of the Water Court (House Joint Resolution 14)
- Study of weather modification (HJ 40)
- Study of climate and water rights.

As part of the HJ 14 study, the committee will hear presentations and discuss the 1988 Ross Report on water rights adjudication and a 2014 University of Montana law school report on the state's legal system for water rights. The HJ 40 study includes a presentation on "cloud seeding" technology from Idaho Power and an overview of existing state laws related to weather

modification. The study of climate and water rights will begin with a discussion of the 2017 Montana Climate Assessment conducted by the Montana Institute on Ecosystems. They will conclude their work mid morning on the 11th and travel to take part in a field trip organized by the Montana Watershed Coordinating Council, as part of their Missouri Headwaters watershed tour. They will visit three natural water storage sites in the Big Hole River watershed located near California Creek, French Creek, and Mt. Haggin.

Because it is located outside the Capitol, the meeting will not be live-streamed or broadcast on the Montana Public Affairs Network. An audio recording of the committee meeting will be available on the committee's website after the meeting.

Economic Affairs Legislators to Meet September 11 in Helena

The Economic Affairs Interim Committee's September 11 meeting in Room 137 of the State Capitol will feature discussion and adoption of its 2019-2020 work plan. While studies assigned to the Committee generally fall outside of issues followed by TSRA, members often suggest additional topics to explore if time permits. Of interest to some TSRA members is a potential look at workforce development and the ongoing challenge of finding employees with the skills needed to fill positions.

Although a proposed study of genetically or engineered organisms (GMOs) did not pass in the 2019 Session, at least one committee member has suggested looking further into potential impacts of GMO's on agricultural trade.

As part of their oversight responsibilities, the EAIC members will hear an update on the Montana State Fund from CEO and President Laurence Hubbard as well as a report from the Department of Livestock.

Local Government Interim Committee Meets September 12

The Local Government Interim Committee (LGIC) will meet September 12 at 8:30 a.m. in Room 137 of the State Capitol in Helena. As with the other interim committees, member will finalize the work plan and strategize how the committee will meet its study goals for the duration of the interim.

The committee will learn about different types of wastewater systems to begin research into their assigned study resolution, [SJ 3](#). The Department of Environmental Quality is also on the agenda to explain its role in subdivision review and report to the committee on upcoming rule updates. The afternoon will be devoted to financial topics as the committee wades into the history of the entitlement share program and learns more about local government annual budgeting and financial reporting requirements.

While not a topic for the September 12 meeting, the Montana Wood Products Association and TSRA will be following an upcoming agenda item regarding creation of regional fire districts. That is expected to be considered in November.

The public and all interested stakeholders are invited to attend, and a draft agenda and all meeting materials are posted on the [LGIC website](#). The meeting will be streamed live at <http://leg.mt.gov> and broadcast on the Montana Public Affairs Network (MPAN).

Transportation Interim Committee Meets September 16

The meeting begins at 9 a.m. in Room 152 of the State Capitol. As with other committees, members are expected to adopt their work plan, relying on input from members tasked with further refining how studies might be conducted within the confines of resources available. That includes a look at passenger rail service in Montana.

Another topic that has piqued the committee's interest is use of autonomous vehicles and what other states are doing to regulate that activity. They will also hear about the state rail plan, and learn more about the HB 715 study that looks at Montana's changing economy and how our revenue and tax policies align with that "new economy".

Legislative Finance Committee/Subcommittees Meet September 16 – 18 in Helena

The Legislative Finance Committee members will be in Helena for a busy work session, including both meetings of the various subcommittees focusing on specific topics and the full committee. Included on the full committee agenda on Tuesday, September 17 is an update on the HB 715 Budget Sustainability study, including a review of what other states have done. As a reminder, during this interim the Legislative Finance Committee(LFC) will be looking 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. The September meeting schedule is as follows:

- Information, SITSD reporting, Performance Metrics and DPHHS data Subcommittee meets at 10 a.m. in Room 137 on Monday, September 16
- Legislative Sessions, SB 310 and personal services budgeting Subcommittee meets at 1 p.m. in Room 102 on Monday, September 16

- Local Government Budget Interactions, Office of Public Defender and Pensions Subcommittee meets on Monday, September 16 at 10:00 am. in Room 172
- Full Legislative Finance Committee Meets on Tuesday, September 17 at 8 a.m. in Room 102, and
- Education, HB 657 and HB 633 Subcommittee meets at 9:00 am. on Wednesday, September 18 in Room 102.

HJ 35 Tax Study Committee (Revenue Interim Committee) Meets September 24-25 in Helena

The HJ 35 Tax Study Committee meeting starts at 9:30 am. on Tuesday, September 24 in Room 317 of the State Capitol and runs through mid morning on Wednesday, September 25. The Committee will take a look at the Montana tax system before exploring what are considered key principles to be considered in their study. Those are: balanced revenue systems, reliability, equity, economic neutrality, administration and compliance, responsiveness to competition, accountability and complementary state and local tax systems.

HJ 35 sponsor and the Committee's presiding officer Rep. Alan Redfield recently told attendees at the Montana Petroleum Association(MPA) meeting that he brought the proposal in response to the seventy plus tax bills introduced in the 2019 Session aimed at "fixing" some part of our tax system. He thought it made more sense to address the matter comprehensively.

The HB 715 study sponsored by Rep. Llew Jones that focuses more on the revenue side of the equation is considered a companion effort to the HJ 35 tax study. Also speaking at the MPA meeting, Rep. Jones stated one of the challenges to reform is while many Montanans want changes, they can't come to agreement on what services might be reduced or eliminated to offset any loss of revenue. Rural areas of the state are not enjoying the same growth as urban areas, stretching local government resources in those communities. Rep. Jones noted the service industry in Montana is growing rapidly, but "is not paying their share of taxes".

Energy and Telecommunications Committee Meets September 23rd. The agenda is not yet available but the committee is expected to begin work on their study of protection of the state's energy infrastructure and their other priority interest involving potential changes to the structure of the Public Service Commission.

Environmental Quality Council Meets September 25 – 26 in Libby. The agenda is not yet available but EQC is expected to focus on study topics of chronic wasting disease and wilderness study areas as those are especially relevant to Northwest Montana and the community of Libby.

Proposed Incorporation of Air Pollutant Emission Limits – Public Comment Invitation

Source: Montana Department of Environmental Quality

The Department of Environmental Quality (Department) is inviting public comment on the proposed incorporation of air pollutant emission limits concerning the protection of visibility, currently included in the Environmental Protection Agency's (EPA) Federal Implementation Plan (FIP) (40 CFR §52.1396) into Board Orders that may be submitted by the State of Montana to EPA for inclusion into the State Implementation Plan (SIP).

Specifically, the Department proposes to include emission limits affecting the following facilities:

- Talen Montana, LLC's Colstrip Steam Electric Station, Units 1 and 2
- Talen Montana, LLC's Corette Steam Electric Station
- Ash Grove Cement Company's Montana City Plant
- GCC Three Forks, LLC's Trident Plant

The emission control strategy outlined in the FIP would continue to assure protection of visibility should the State of Montana gain authority for its implementation and enforcement. Montana DEQ is currently working on next steps to address regional haze as it seeks to gain approval of a State Implementation Plan.

Interested persons may view the proposed Orders on the Department's website at <http://deq.mt.gov/Public/publiccomment>.

To be guaranteed consideration, written comments must be **postmarked on or before 5 p.m. Thursday, September 19, 2019**

Interested parties may submit their comments concerning the proposal described above in writing to the Department by addressing them to Liz Ulrich, MT DEQ, 1520 E 6th Avenue, Helena, MT 59620-0901; faxing them to 406-444-1499; or sending them via email addressed to EUlrich2@mt.gov

Nebraska Supreme Court Affirms Keystone XL Route Approval

Sources: TC Energy Press Release, August 23, 2019 and the Missoulian, August 25, 2019 Article by Grant Schulte and Margery A. Beck

TC Energy Corporation today announced the Nebraska Supreme Court has affirmed the November 2017 decision by the Nebraska Public Service Commission that approved the Keystone XL Pipeline route through the state.

“The Supreme Court decision is another important step as we advance towards building this vital energy infrastructure project,” said Russ Gerling, TC Energy’s President and Chief Executive Officer. “We thank the thousands of government leaders, landowners, labor unions and other community partners for their continued support through this extensive review process. It has been their unwavering support that has advanced this proposal to where it is today.”

Friday’s ruling stemmed from the Nebraska Public Service Commissions 3-2 vote nearly two years ago in favor of an “alternative route” for the project instead of developer TC Energy’s preferred pathway. Opponents filed a lawsuit arguing the company didn’t follow all the required procedures for the alternative route, in violation of state law.

Attorneys for the opponents argued that TC Energy’s application with the commission was valid only for its preferred route, and the company formerly known as TransCanada could seek approval for one route at a time. Nebraska state attorneys disputed the claim, saying that the commission’s decision complied with the law and was in the public’s interest.

The high court sided with the state, saying the Public Service Commission is the agency responsible for determining which pipeline route is in the public interest, and that it did so after months of consideration.

“We find there is sufficient evidence to support the PSC’s determination that the (alternative route) is in the public interest,” Justice Jeffrey Funke wrote for the court...

If completed, the pipeline would carry oil from Canada through Montana, South Dakota and Nebraska, where it would connect to an existing pump station in Steele City, Nebraska. From there it would continue through Kansas, Oklahoma, and Texas until it reaches Gulf Coast refineries. Business groups and some unions support the project as a way to create jobs.

The pipeline faces intense resistance from environmental groups, Native American tribes and some landowners along the route who worry about its long-term impact on their groundwater and property rights. But in Nebraska, many affected landowners have accepted the project and are eager to collect payments from the company.

Of note, pipeline opponents filed a motion on August 29th asking the Nebraska Supreme Court to rehear the case.

Smelter site owner: Case could derail Superfund law

Source: E & E News August 22, 2019 By: Ellen M. Gilmer

The operator of one of the nation’s oldest Superfund sites is urging the Supreme Court to reverse a state-level ruling that could create “chaos” for environmental cleanups.

Atlantic Richfield Co. says the Montana Supreme Court made a serious error when it allowed landowners to pursue claims that the company owes them money for restoration work around the Anaconda Smelter Superfund site, even as EPA is overseeing a federal cleanup.

The BP PLC subsidiary, which acquired Anaconda Mineral Co. years ago, said the state court's decision conflicts with Superfund law – officially known as the Comprehensive Environmental Response, Compensation and Liability Act, or CERCLA – and will undermine cleanup efforts.

“The state court's holding throws remediation efforts at Anaconda and other massive sites into chaos and opens the door for thousands of private individuals to select and impose their own remedies at CERCLA sites at a potential cost of many millions of dollars per site,” company lawyers told the Supreme Court in a brief yesterday (August 21, 2019).

The Anaconda site, on EPA's National Priorities List since 1983, includes 300 square miles surrounding an old copper processing facility southwest of Helena, Montana where high levels of arsenic and other hazardous substances contaminate the soil and water.

EPA has been working with Atlantic Richfield for years to address the contamination. Some neighbors took matters into their own hands in 2008 and brought claims under state-level common law saying the company should pay for restoration work that goes beyond what EPA set out in its cleanup plan.

Atlantic Richfield and others say that disrupts the Superfund process because CERCLA gives EPA the final say on cleanup plans and the landowner's lawsuit is an end run around that framework. The landowners counter that EPA's cleanup plan did not return their yards to pre-smelter conditions, so they should be allowed to pursue that outcome through state courts.

“If this is what the statute means, Congress inexplicably abandoned EPA, affected communities, and private actors foolish enough to cooperate with EPA to the mercy of potential plaintiffs,” Atlantic Richfield lawyers told the court yesterday. “At any time, any landowner on any Superfund site should decide to shred EPA's plans and impose different detrimental multimillion-dollar cleanups.

Superfund site owners and operators are concerned the Montana case, if upheld, could open the floor to nonstop legal risk for companies that have already agreed to do EPA-approved work.

Many environmentalists are also concerned about the case, noting that it could discourage companies from reaching settlements with EPA and committing to cleanups.

The Supreme Court is expected to hear arguments later this year or early next year.

TSRA, Montana Mining Association, Montana Petroleum Association and the Montana Chamber of Commerce File Amicus Brief in Superfund Case

The Treasure State Resources Association and others have also filed a joint Amicus Brief in the *Atlantic Richfield Company v. Christian* case now before the Supreme Court. Counsel of Record Kyle Anne Gray, Holland and Hart, makes the point that:

The decision below will make it difficult, if not impossible for their Montana members to work with federal regulators and communities, to compromise and agree to settlements, where warranted, and to participate in ongoing regulatory efforts not yet finalized.

CERLA is not the only federal law at issue here. Particularly for the Montana Mining Association and the Montana Petroleum Association, their members operate within heavily regulated federal arena under the purview of the Clean Water Act, the Clean Air Act, and the Resource Conservation and Recovery Act, to name just a few. Predictability, certainty, consistency, finality -- these are all necessary ingredients for industry to thrive in this new world. "Amici's" members must have confidence that the remediation agreements, closure plans and other agreements they reach with federal regulators will not be undercut or overturned by state-law claimants seeking something, as here, in conflict with federal law...

In the 21st century, industry and government strive to work together with the broader community to protect the environment, and to remedy the problems of both the past and present. The decision below (Christian case) interferes with the viability of cooperation between the regulators and the regulated, with potentially chaotic and unsafe results for the community. Here that is exactly what will happen if the decision stands. This would be a disaster for Montana communities, industry and the EPA. Reversal is the only remedy.

Montana Climate Solutions Council Gets Organized

The Montana Climate Solutions Council created by Governor Bullock to develop recommendations for addressing climate change in Montana held its organizational meeting via conference call on July 13, 2019.

The work will be divided amongst three committees: GHG Mitigation Strategies, Technology Innovation and Transitions, and Climate Adaptation, Information and Decision Support.

Three TSRA members will serve on the GHG Mitigation Strategies Committee: David Hoffman, NorthWestern Energy; Alan Olson, Montana Petroleum Association and Gary Wiens, Montana Electric Cooperatives Association. Montana Chamber of Commerce President Todd O'Hair and AFL-CIO Executive Secretary Al Ekblad will sit on the Technology, Innovation and Transitions Committee. Committees expect to be working in September and October, either with in-person meetings or via telephone.

Governor Bullock plans to hold a Montana Climate Solutions Summit yet this Fall, potentially featuring nationally-recognized thought leaders to share lessons learned around the country.

The first in-person meeting of the MT Climate Solutions Council is expected to be held in conjunction with the Summit.

Kansas county bans wind farms, curbs solar to protect aviation

Source: E & E News, August 22, 2019 By: Associated Press

Large-scale wind power developments would not be allowed and commercial solar installations would be restricted in Sedgwick County under a proposal approved yesterday by the county commission.

The Sedgwick County Commission made the decision to protect aviation facilities after planner Dave Yearout told commissioners that large windmills can affect airport and flight operations within a 5-mile radius, the Wichita Eagle reported.

A map showing a 10-mile radius drawn around every airport and private landing strip in the county left only four small areas that would not be affected by a windfarm...He (Yearout) said studies show that wind facilities can cause dangerous atmospheric conditions that radiate out by 5 miles and could affect small aircraft that use landing strips across the county...

The commissioners also approved more requirements for large-scale solar operations. Large solar installations can produce glare and glint that can affect the ability of pilots to fly at certain times and in certain places, Yearout said.

"We do support wind and solar, but aviation is so important to the community that I think this is a good balance," Commissioner Jim Howell said.

The regulations will soon be presented to the Wichita City Council for final approval. The county shares planning responsibilities with the city.

The regulations were proposed after nearly nine months of studies, Yearout said, and they give the county "everything we need in our toolbox for adequate insight to regulate big energy generation facilities."

Upcoming Events/Dates

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
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 23, 2019	Energy and Telecommunications Committee State Capitol, Helena, MT
September 24-25, 2019	Revenue Interim Committee State Capitol, Helena, MT
September 25-26, 2019	Environmental Quality Council Libby, MT
October 29, 2019	State Administration Interim Committee State Capitol, Helena, MT
November 7, 2019	Economic Affairs Interim Committee State Capitol, Helena, MT
November 13, 2019	Local Government Interim Committee State Capitol, Helena, MT
December 2-3, 2019	Revenue Interim Committee State Capitol, Helena, MT
December 3, 2019	State Administration Interim Committee State Capitol, Helena, MT
December 4, 2019	Montana Taxpayers Association Annual Meeting Great Northern Hotel, Helena, MT

2020 Schedule of Events:

Note: Interim Committees usually meet in Helena, but have an option to meet in other communities. Be sure to verify the meeting date and location before making plans to attend.

January 6-7, 2020	Water Policy Interim Committee State Capitol, Helena, MT
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January 13, 2020	Energy and Telecommunications Committee State Capitol, Helena, MT
January 14, 2020	Revenue Interim Committee State Capitol, Helena, MT
January 15, 2020	Local Government Interim Committee State Capitol, Helena, MT
January 15-16, 2020	Environmental Quality Council State Capitol, Helena, MT
January 17, 2020	State Administration Committee State Capitol, Helena, MT
February 27, 2020	State Administration Committee State Capitol, Helena, MT
March 9 – 10, 2020	Water Policy Interim Committee State Capitol, Helena, MT
March 18, 2020	Local Government Interim Committee State Capitol, Helena, MT
March 19-20, 2020	Revenue Interim Committee State Capitol, Helena, MT
March 23-24, 2020	Energy and Telecommunications Interim Committee State Capitol, Helena, MT
March 25-26, 2020	Environmental Quality Council State Capitol, Helena, MT
May 12-13, 2020	Revenue Interim Committee State Capitol, Helena, MT
May 13, 2020	Local Government Interim Committee State Capitol, Helena, MT
May 18-19, 2020	Water Policy Interim Committee State Capitol, Helena, MT

May 21-22, 2020	Energy and Telecommunications Committee State Capitol, Helena, MT
May 27-28, 2020	Environmental Quality Council State Capitol, Helena, MT
June 17-18, 2020	TSRA Annual Meeting DoubleTree Hotel, Billings, MT
June 17, 2020	State Administration Interim Committee State Capitol, Helena, MT
July 13-14, 2020	Water Policy Interim Committee State Capitol, Helena, MT
July 14, 2020	Local Government Interim Committee State Capitol, Helena, MT
July 15, 2020	Energy and Telecommunications Committee State Capitol, Helena, MT
July 20-21, 2020	Revenue Interim Committee State Capitol, Helena, MT
July 29-30, 2020	Environmental Quality Council State Capitol, Helena, MT
August 25, 2020	State Administration Interim Committee State Capitol, Helena, MT
September 8, 2020	Energy and Telecommunications Committee State Capitol, Helena, MT
September 9, 2020	Local Government Interim Committee State Capitol, Helena, MT
September 9-10, 2020	Environmental Quality Council State Capitol, Helena, MT
September 11, 2020	Revenue Interim Committee State Capitol, Helena, MT

September 14-15, 2020 Water Policy Interim Committee
State Capitol, Helena, MT

October 29, 2020 State Administration Interim Committee
State Capitol, Helena, MT

November 19, 2020 Revenue 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.