



TREASURE STATE
RESOURCES ASSOCIATION
OF MONTANA

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TREASURE STATE RESOURCES ASSOCIATION NEWS

April, 2020

Thank you.

***In this COVID-19 Pandemic, TSRA would like to
thank all the essential businesses, agricultural operations and workers who
continue to do all they can
to provide what we need to feed our families, keep the lights on, stay connected
and maintain our economic foundation.***

***We salute you.
Be safe everyone.***

**Change the Date: TSRA Annual Meeting Moved to September 2-3,
2020 DoubleTree Hotel, Billings**

Due to the ongoing uncertainty regarding COVID-19 impacts, TSRA's 2020 Annual Meeting that was scheduled for June 17-18, has been moved to **September 2-3, 2020** at the DoubleTree Hotel in Billings, Montana. This will immediately follow the Montana Petroleum Association Annual Meeting. As in past years, events kick off with the TSRA Golf Scramble on Wednesday.

The “official” annual meeting will take place Thursday morning, September 3rd followed by a program featuring timely topics of interest to our membership. Watch for registration information at a later date.

We would like to thank our Early Bird Sponsors for the Annual Meeting who make it possible to plan ahead for these events. To date, they are:

Trailblazer: MDU Resources and NorthWestern Energy

Champion: Browning, Kaleczyc, Berry and Hoven, Crowley Fleck, Hecla Montana, and The Washington Companies

Advocate: Ash Grove Cement, Enbridge Energy, Energy Laboratories, Great Northern Properties, Phillips66, Sandfire Black Butte, and Solvay, Inc.

Groundbreaker Golf: IBEW Local 44, and Solvay, Inc.

Montana Climate Solutions Council Extends Public Comment Period on Draft Recommendations to April 24, 2020

In response to the evolving COVID-19 public health situation, the deadline for submitting comments on the draft Montana Climate Solutions Plan has been extended. The purpose is to ensure everyone who wishes to comment is able to do so. *The deadline to submit comments is now April 24, 2020.*

The draft document is available at the following link: deq.mt.gov/climate

Comments may be submitted by email to ClimateCouncil@mt.gov. All comments received will be made available for public review.

In a response to a question during a recent meeting of one of the Council Committees, a representative of the Governor’s office noted they would not be responding to individual comments as is done in a formal rulemaking process, but rather anticipate grouping comments received into topic areas and offering a more general response. The Council is particularly interested in comments that highlight topics or information that might not have been considered in discussions to date that might add value to their ongoing deliberations.

Environmental Compliance and Enforcement Discretion in Response to COVID-19 – EPA and MT DEQ Recognize Need for Flexibility

As the COVID-19 pandemic continues to unfold, the EPA and the Montana Department of Environmental Quality have advised both companies and communities that while compliance with existing environmental requirements should remain a priority, the agencies understand some flexibility may be appropriate.

EPA noted that due to social distancing and other COVID-19 guidance, it might be difficult to comply with some deadlines and requirements. If companies miss a deadline or exceed emissions limits, the agency will show discretion by not imposing fines and penalties. Businesses must document the details and show that the occurrence was related to the coronavirus or is the result of steps taken to slow the pandemic.

The memo also states EPA may temporarily offer “No Action Assurance” to the operators of some “critical infrastructure”. That could include oil refineries, chemical plants and coal-fired plants. Any promise to not enforce violations would still protect the public and be “in the public interest.”

Montana DEQ’s compliance memo states that “communities and companies should identify areas of concern of the highest priority and communicate those concerns to the appropriate DEQ program in an effort to work productively toward resolution of the issue ... if an enforcement action becomes necessary, DEQ will consider the efforts taken by facilities to remain in compliance.”

MT DEQ to Request the Board of Environmental Review Initiate Rulemaking for Adoption of Non-Anthropogenic Standards for Arsenic in the Yellowstone River/New Draft Guidance Available

The Montana Board of Environmental Review is still planning to hold their April 17, 2020 meeting, but will do so remotely. One of the agenda items will be a request from the Department to initiate rulemaking to adopt non-anthropogenic standards for arsenic in the Yellowstone. The rules emanate from SB 325 passed in 2015 and will be the first test of the Department’s new process to quantify the “natural” condition of a stream. In addition to the standards themselves, DEQ has also developed draft guidance for other entities that might be interested in pursuing a similar change to water quality standards based on non-anthropogenic pollutant conditions.

For a copy of the draft guidance, contact Peggy Trenk at: <mailto:ptrenk@tsria.net> DEQ expects to schedule a stakeholder meeting to discuss the guidance document the first week of May either in person at the Metcalf Building in Helena or remotely depending on COVID-19 guidelines.

Comment Period for MT DEQ’s Triennial Review of Water Quality Standards to be Extended

The Montana Water Quality Act and the Federal Clean Water Act require that the State of Montana review and, as appropriate, adopt new or revised water quality standards at least every three years. The review process was launched in February with comments originally due April 20, 2020. Due to COVID-19 challenges, the public hearing (originally April 6) will be rescheduled

and the comment period extended. Watch for more information about the new hearing date and the comment deadline in the next few days.

Montana's water quality standards include the Administrative Rules of Montana Title 17, Chapter 30, subchapters 5 (mixing zones), 6 water quality standards, 7 (nondegradation), and 10 (groundwater protection), and Department Circulars DEQ-7 and DEQ 12A and 12B.

Comments should identify the water quality standard at issue, any suggested revision to the standard, and the basis for the suggested revision, including technical information.

TC Energy to Build Keystone XL Pipeline

Source: TC Energy Press Release March 31, 2020

TC Energy Corporation (has) announced that it will proceed with construction of the Keystone XL Pipeline Project (the Project), resulting in an investment of approximately \$8 billion into the North American economy. "We appreciate the ongoing backing of landowners, customers, Indigenous groups and numerous partners in the U.S. and Canada who helped us secure project support and key regulatory approvals as this important energy infrastructure project is poised to put thousands of people to work, generate substantial economic benefits and strengthen continental energy security," said Russ Girling, TC Energy's President and Chief Executive Officer.

"In addition, we thank U.S. President Donald Trump and Alberta Premier Jason Kenney as well as many government officials across North America for their support and advocacy, without which, individually and collectively, this Project could not have advanced." At 1,210-miles (1,947-kilometres) in length, the Project will be capable of safely delivering 830,000 barrels per day (Bbl/day) of crude oil from Hardisty, Alberta to Steele City, Nebraska where it will connect with TC Energy's existing facilities to reach U.S. Gulf Coast refiners to meet critical needs for transportation fuel and useful manufactured products. With pre-construction activities underway, the pipeline is expected to enter service in 2023.

"During construction, we will continue to take guidance from all levels of government and health authorities to determine the most proactive and responsible actions to ensure the safety of our crews and community members during the current COVID-19 situation. Construction will advance only after every consideration for the health and safety of our people, their families and of those in the surrounding communities has been taken into account," said Girling

Project overview:

- Thousands of well-paying jobs during construction
- Advances continental energy security
- Tens of millions in property and income taxes through every year of operation

- Six comprehensive scientific reviews by the U.S. Department of State over the past decade concluding that the project can be built and operated in an environmentally sustainable and responsible way
- Thousands of stakeholders engaged, including landowners, community members and Indigenous communities.

Industry Groups Weigh in on Keystone XL Water Permitting Challenge

Judge Brian Morris for the U.S District Court for the District of Montana is presiding over a challenge to the Army Corps of Engineers decision to allow the use of a Nationwide Permit 12 for the Keystone XL Pipeline. The lawsuit centers on the pipeline as a whole.

TSRA joined in an effort organized by the Montana Petroleum Association to file an Amicus Brief in the case given not only the immediate concern for the Keystone XL Pipeline, but also the broader implications for other projects. Other participants in the joint brief are the Montana Association of Oil and Gas Counties and the Montana Contractors Association.

The Brief points out that the Corps acted within its authority and within the bounds of the law in issuing the permit. Further the Corps undertook the proper environmental review under NEPA and properly limited review in its jurisdiction in accordance with the Clean Water Act...and in accordance with the Endangered Species Act...the NWP 12 is used not only for pipelines containing crude or refined petroleum, but also for electrical power lines, natural gas utility lines, potable water lines, and sewer lines providing necessary services to homes, schools, hospitals, and businesses across the nation.

Navajo Transitional Energy Company Reaches Agreement on a Final Limited Waiver of Sovereign Immunity, Commences Permit Transfer Process for Spring Creek Mine

Source: NTEC Press Release March 12, 2020

Navajo Transitional Energy Company (NTEC) and the State of Montana have agreed to a limited waiver of sovereign immunity. The limited waiver ensures the State's ability to regulate and enforce applicable state laws, while protecting NTEC's rights as a Tribal entity. The State can now continue processing the application to transfer the Spring Creek Mine permits to NTEC...

Upon purchasing the Cloud Peak Energy (CPE) assets, NTEC initiated the necessary steps to transfer all required permits and licenses from CPE. Because of NTEC's status as a wholly-owned tribal entity, NTEC anticipated it would be required to provide limited waivers of sovereign immunity to the state and federal agencies with oversight of CEP's operations. The agreement with Montana completes all limited sovereign immunity waivers needed as part of

the acquisition process and comes just weeks after similar arrangement with the State of Wyoming and US Department of the Interior.

“Since assuming ownership, we have been working diligently with the State to effect permit transfer,” said Clark Moseley, CEO. “NTEC appreciates the engagement on this issue and is extremely pleased to have the final limited waiver in place.”

NTEC purchased the Spring Creek mine, along with the Antelope and Cordero Rojo mines in Wyoming, from CPE’s bankruptcy proceedings in October. The purchase prevented mine closures, loss of jobs, and loss of state taxes and royalties. NTEC (has been) operating the mines in full compliance under CPE’s permits. Moseley said, “NTEC looks forward to a strong relationship with the State as we work to sustain the economy, provide good local jobs, and be a respectable steward of the beautiful lands of Montana.

In a related story...

MT DEQ Issues Record of Decision and Written Findings on the Spring Creek Mine Expansion Project

Source: DEQ Press Release March 30, 2020

The Montana Department of Environmental Quality has issued its Record of Decision and rationale to allow for an additional 977 acres of new mining disturbance to recover approximately 72 million tons of coal at the Spring Creek Mine...The Spring Creek Mine is now operated by the Navajo Transitional Energy Company (NTEC)

State Agencies Advance the Review Process on the Proposed Black Butte Copper Mine Project

Source: Montana DEQ

On March 13, the Montana Department of Environmental Quality (DEQ) and the Department of Natural Resources and Conservation (DNRC) took steps to move the review process forward for the Black Butte Copper Mine Project proposed by Tintina Montana, Inc. (Tintina). The proposed project consists of an underground copper mine to be located in west-central Montana, approximately 15 miles north of White Sulphur Springs.

DEQ has issued a Final Environmental Impact Statement (EIS), which was prepared under the authority of the Montana Environmental Policy Act (MEPA), analyzing the potential impacts of the proposed project. The Final EIS is not a decision document, but will help DEQ make informed decisions with respect to permit applications submitted by Tintina, including, applications for a hard rock mining operating permit, an air quality.

DNRC has issued Preliminary Determinations to Grant two water permit applications and six water right change applications related to the project. One permit application requests to divert groundwater from the mine workings for industrial use around the mine site. The other permit would allow Tintina to divert and temporarily store water during high spring flows for release later in the year...The six water right applications would allow existing irrigation rights to be marketed on an annual basis to Tintina to mitigate impacts to surface water from Tintina's underground appropriation...

Through the MEPA analysis, DEQ identified the Agency Modified Alternative as the agency's preferred alternative. This alternative includes all elements from Tintina's Proposed Action, with one additional component: backfilling additional areas of the underground mine workings. The Proposed Action involves a mining method called "drift-and-fill" where mining happens incrementally and areas are continuously backfilled as mining activity moves forward. DEQ proposes that Tintina backfill more areas than originally proposed, including certain access ramps and other openings located within sulfide zones. The mined-out areas would be backfilled with cemented paste tailings, which is paste-like materials created by adding cement, slag and/or fly ash to mine tailings. Water does not easily flow through cemented paste tailings, so the use of this material minimizes the potential for new groundwater flow patterns to develop across the reactive materials in these zones. While the analysis has shown that the Proposed Action would comply with water quality standards, DEQ has selected the Agency Modified Alternative to further protect water quality.

DEQ has to wait at least 15 days from the publication of the Final EIS to issue its final decision and rationale in a Record of Decision (ROD). The ROD identifies what the decision is, the reasons for the decision and any special conditions surrounding the decision or its implementation.

Editor's Note: As of the publication of this newsletter the agency has not issued the ROD.

What Happened to WOTUS?

Source: E&E News, March 31, 2020 By: Pamela King

A coalition of conservation groups announced on Monday that they stand ready to launch a legal challenge against the Trump administration's revamped protections for waterways and wetlands.

Attorneys for the Natural Resources Defense Council, the Conservation Law Foundation and other groups said President Trump's EPA and Army Corps of Engineers violated consultation requirements under the Endangered Species Act in shaping their new definition of the Waters of the U.S., or WOTUS, rule.

“The Rule is a ‘discretionary’ action...that ‘may affect’ endangered and threatened species,” the groups wrote. “The Agencies therefore had a legal duty to complete consultation with the [Fish and Wildlife Service and NOAA Fisheries] before promulgating the Rule.”

Clean Wisconsin, the Connecticut River Conservancy, Bangor Land Trust, the Massachusetts Audubon Society, the Merrimack Rivers Watershed Council, the New Mexico Wilderness Alliance and the Prairie Rivers Network also sign on to the notice of intent to sue EPA and the Army Corps.

The agencies unveiled their Navigable Waters Protection Rule in January, but the rule has yet to appear in the *Federal Register*. Once it does, opponents are expected to file lawsuits challenging the definition.

Judge Upholds Trump’s Repeal of Obama-era Fracking Rule

Source: [E&E News](#), Monday, March 30, 2020 By Niina H. Farah

The fossil fuel industry scored a win Friday (March 27, 2020) after a federal judge upheld the Trump administration’s rescission of an Obama-era rule governing oil and gas extraction on public lands.

U.S. District Court for the District of Northern California Judge Haywood Gillam said states and environmental groups had not shown that the repeal of the 2015 hydraulic fracking rule had or would result in harm, since the rule had not yet gone into effect.

“The Court agrees with Federal Defendants that allegations of past injuries are not sufficient to show actual or imminent injury,” Gillam wrote. “Although Citizen Group Plaintiffs argue that the removal of these protections increases the risk of harm to members’ drinking supply, this only points to a hypothetical, future injury.” ...

“The Court’s task is not to decide whether the changes the Federal Defendants seek to make will result in better or worse environmental policy,” he said. “Those policy questions are the province of Congress and the administrative agencies, and policy changes inevitably result when new decision makers take office. In other words, elections have policy consequences.”

Upcoming Events/Dates:

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, 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
August 25-26, 2020	Montana Mining Association Annual Meeting Fairmont Hot Springs Resort
August 31-September 2, 2020	Montana Petroleum Association Annual Meeting DoubleTree Hotel, Billings, MT
September 2-3, 2020	TSRA Annual Meeting DoubleTree Hotel, Billings, MT (New Date)
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 10-11, 2020	Montana Wood Products Association Annual Meeting
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.