



# TREASURE STATE RESOURCES ASSOCIATION OF MONTANA

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## TREASURE STATE RESOURCES ASSOCIATION NEWS

May, 2020

### **Interim Legislative Committees Meet Remotely**

Interim committees of the Montana Legislature are picking up work deferred in March when the COVID-19 pandemic hit. Legislators and the public are getting more comfortable with the “Zoom” meeting format that will continue to be used for their work in May.

Because March meetings weren’t held, most committees will be playing “catch up” with an eye to finalizing any potential legislative proposals for 2021 in September. They will give priority to assigned studies or mandatory duties as they revisit their work plans. Additional meetings during the summer may be considered, as well as expanding their scheduled July meetings to two days. State agencies are also working on draft bills that will be brought to their committee of jurisdiction in the coming months, adding further pressure to already busy agendas.

**HJ 35 Tax Study Committee:** The HJ 35 Tax Study Committee will meet May 13 beginning at 8:30 am. via video conference. The committee, a subcommittee of the Revenue Interim Committee that includes Revenue Interim Committee members and public members, will continue its study of the state and local tax system.

The May 13 meeting will cover the agenda items previously scheduled for the March 2020 meeting, which was cancelled. Topics include property tax, individual income tax, and corporate income tax. The agenda and meeting materials are posted on the committee’s website at: <http://www.leg.mt.gov/rvic>

Members of the public who wish to participate (and offer comment) may join the meeting. Those wishing to do so should contact: <mailto:memoore@mt.gov> the day before the meeting with their

name and request to join. Instructions will be provided. Those who wish only to watch the proceedings can follow the meeting at: <http://www.leg.mt.gov>

**Local Government Interim Committee:** The committee will meet on May 14<sup>th</sup>, beginning at 10:00 am. They will cover agenda items related to local impacts of the COVID-19 emergency and the federal Coronavirus Aid, Relief and Economic Security (CARES) Act. The committee will break for lunch at 12 pm. and reconvene at 1:00 pm. to discuss other agenda items including the MSU Local Government Center and continue work on its assigned study, the Senate Joint Resolution 3, study of alternative septic systems.

Members of the public who wish to participate and offer comments should contact the committee's staff person <mailto:toni.henneman@mt.gov> by 5 pm. the day before the meeting in order to receive instructions. The meeting will be also be streamed live on <http://www.leg.mt.gov> for those who just want to watch the proceedings.

**May 15 Transportation Interim Committee Meeting Postponed:** Transportation Interim Committee Chairman Gordon Vance has postponed the May 15 meeting. The next committee meeting is tentatively scheduled for June 22. The chair and vice chair will monitor the committee's workload and issues of concern raised by members and determine whether an additional meeting date of June 23 might be considered.

**Water Policy Interim Committee:** The full committee is scheduled to meet May 18-19. No additional details are available at this time although the Geocodes Working Group has been meeting regularly and WPIC is expected to discuss recommendations.

**Energy and Telecommunications Interim Committee:** The next scheduled meeting for the ETIC Committee is May 21-22 but no further details are available at this time.

**Environmental Quality Council:** The EQC's next scheduled meeting is May 27-28. No additional details are available at this time.

## **Montana Climate Solutions Council Continues Work on Recommendations to Governor Bullock**

The public comment period on the draft Montana Climate Solutions Council Plan closed April 24<sup>th</sup>. However, the process is far from complete.

On Thursday, April 30<sup>th</sup> Council members convened for a briefing from representatives of the United States Climate Alliance and The Center for the New Energy Economy. Twenty-five states, including Montana, belong to the U.S. Climate Alliance. Among other things, members have made a commitment to:

- Implementing policies that advance the goals of the Paris agreement aiming to reduce greenhouse gas emissions by at least 26-28 percent below 2005 levels by 2025, and
- Accelerating new and existing policies to reduce carbon pollution and promote clean energy deployment at the state and federal level.

The Center for the New Energy Economy is located at Colorado State University. The Center provides technical and strategic assistance to help decision makers create policies that facilitate America's transition to a clean energy economy.

Speakers from the Climate Alliance took the opportunity to comment on the Council's work to date, but also shared ideas about "best practices" in terms of how best to take proposals from an idea stage to actually effecting change. Those included:

- Establishing measurable outcomes for both the short and long term,
- Identifying parties responsible for implementing recommendations,
- Committing to a periodic progress report,
- Re-evaluating and adjusting recommendations,
- Assessing the economic costs and benefits (using REMI or Implan), and
- Integrating climate change planning into existing efforts to draft transportation and economic development plans.

Representatives of both entities shared the perspective that the most effective way to bring about lasting change is through legislation. They also stressed the importance of building a broad constituency for change that would provide support for future leaders to "stay the course" in terms of instituting changes aimed at decarbonization. Speakers noted while legislative solutions give the most certainty in terms of signals to the marketplace, Executive Orders can offer an opportunity to set the direction for change. Another option is to utilize public utility commissions who can open investigatory dockets.

**The Council's GHG Committee** is planning to meet weekly through June 15<sup>th</sup> to finalize their work, beginning this Thursday, May 7<sup>th</sup>. Their first topic will be Renewable Energy/Transmission Markets/Peak Capacity Challenges. Questions to be considered include:

- What policies should the state implement related to "beneficial electrification," which entails replacing the direct use of fossil fuels with electricity in a way that reduces GHG emissions and lowers overall costs?
- How should the Public Service Commission evaluate greenhouse gas impacts of decisions and rate-payer risks?

- What policies to further advance clean energy solutions should be considered for the unique business model facing the state's electric cooperatives? How can the state advance voluntary measures in coordination with electric co-ops?
- How can state agencies continue to foster leadership around sustainability, clean energy and emissions reductions?
- How can the state assist and learn from local government and tribal national greenhouse gas reduction efforts?
- How should the state consider new technologies in planning for greenhouse gas mitigation like renewable hydrogen or modular nuclear? And,
- How should the Council think about balancing regulatory and incentive-based tools? How should the Council consider fiscal impacts and revenue sources for incentive programs?

Other topics the GHG Committee will address further in coming weeks are: energy efficiency, transportation, industrial, oil and gas, ag & forestry; modeling, carbon pricing and the mid-century, economy-wide goal.

## Montana's Nutrient Saga Continues

In a recent meeting invite to members of the Nutrient Work Group, MT DEQ outlined a brief history of the state's work on establishing numeric nutrient criteria. To quote:

*We Montanans have long recognized the important of reducing nutrient pollution in our waters for the sake of aquatic life, recreation and our economy. To that end, DEQ invested considerable expertise and resources to establish scientifically sound water quality standards for nitrogen and phosphorus...codified in DEQ 12A (numeric nutrient criteria).*

*Once the science guided us to the protective standards, we also recognized that technology and economics did not allow for our permitted community to achieve those standards. We needed to provide time for our permittees to reduce their nutrient pollution and for technology to improve. The water quality standards provided an important driver for those two things to occur.*

*The Clean Water Act tool we utilized to provide that time is a water quality standards variance (codified in law as DEQ 12B). Based on legislative intent, the Board of Environmental Review insisted that our standards and a variance mechanism must go hand in hand via a non-severability clause that was codified in rule. The non-severability clause essentially states that there can be no 12A (numeric nutrient criteria) without 12B (nutrient variances).*

*EPA's 2020 disapproval of Montana's nutrient variance 12B (reported in TSRA's March Newsletter), which followed litigation challenging those variances (TSRA intervened on behalf of EPA and DEQ to uphold the variances in Waterkeeper I), triggers the removal of 12A. While we are deeply disappointed*

*in the events that have led us to this point, we remain committed to working with communities across the state to help ensure that they can continue to reduce nutrient contributions in Montana.*

**The DEQ Nutrient Work Group** will meet May 21<sup>st</sup> at 1:30 pm. to discuss next steps for addressing the nutrient standards' issue. Those interested in participating can join the Zoom meeting via the link below:

Join Zoom Meeting

<https://mt-gov.zoom.us/j/91335314015?pwd=QUhTNU9MUjRoUmlrd3lwUklzbUZ6UT09>

Meeting ID: 913 3531 4015

Password: 036284

Dial by Telephone

+1 646 558 8656

Meeting ID: 913 3531 4015

Password: 036284

Find your local number: <https://mt-gov.zoom.us/u/a3kYxyrGs>

## **Meanwhile, TSRA is considering intervening in a second Upper Missouri Waterkeeper v. EPA (Waterkeeper II) case filed March 31, 2020**

TSRA is continuing to participate in the original litigation filed by Upper Missouri Waterkeeper (Waterkeeper I) challenging the use of variances from strict numeric nutrient standards. While District Court Judge Brian Morris found that variances, as well as the economic hardship test applied to authorize their use did not violate the Clean Water Act, he did take issue with the timeline established by the MT DEQ and ordered a new schedule be established. That resulted in the rulemaking process referenced above, the result of which was EPA's disapproval of the nutrient variance and execution of the "poison pill" or non-severability clause. The Waterkeeper I case has been appealed to the Ninth Circuit and a briefing schedule was recently established.

On March 31<sup>st</sup>, Upper Missouri Waterkeeper filed another suit in Judge Morris' court. Waterkeeper II claims the "poison pill" or non-severability clause violates the Clean Water Act and argues it should not have been approved by EPA. TSRA has invited RFP's from several law firms aimed at seeking to intervene in the second case as well. Depending on the outcome of that process, the Association's Board of Directors will consider whether to move forward.

## **Board of Environmental Review Gives Green Light for Rulemaking to Adopt Non-Anthropogenic Standards for Arsenic in the Yellowstone River/New Draft Guidance to Be Discussed May 8th**

On April 17<sup>th</sup>, the Montana Board of Environmental Review approved a request from the MTDEQ to initiate the formal rulemaking process for adoption of the non-anthropogenic

standards for arsenic in the Yellowstone. The changes follow from 75-5-222 MCA that does not allow the department to apply a water quality standard to a water body that is more stringent than the non-anthropogenic (natural) condition. In addition, according to 75-5-306 MCA it is not necessary to treat wastes to a condition purer than the natural condition of the water body. In accordance with MAR (Montana Administrative Register) No. 17-412, a public hearing on June 17, 2020 has been scheduled in Room 111 of the Metcalf Building, 1520 E. Sixth Avenue, Helena, MT. Written comments are due on June 19, 2020.

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. On Friday, May 8<sup>th</sup> DEQ is hosting a discussion of the draft guidance via a Zoom meeting beginning at 10:00 am. To participate, use the following link.

Join Zoom Meeting

<https://mt-gov.zoom.us/j/98853727542?pwd=QkZGU2ZJTGJSdFI0MVQ4NXBxWWxHQT09>

Meeting ID: 988 5372 7542

Password: 014641

Dial by Telephone

+1 646 558 8656

Meeting ID: 988 5372 7542

Password: 014641

## **Comment Period for MT DEQ's Triennial Review of Water Quality Standards Extended to June 10, 2020 – BER Hearing also June 10th**

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 comment period was extended to June 10, 2020 to coincide with the public hearing scheduled for 1:00 pm. on June 10<sup>th</sup> in Room 45 of the Metcalf Building at 1520 E 6<sup>th</sup> Avenue, Helena, MT.

The purpose of the public comment period and the hearing is for the Board of Environmental Review to solicit comments from all interested persons regarding potential revisions to any aspect of Montana's water quality standards. Comments should identify the water quality standard at issue, any suggested revision to the standard, and the basis for the suggested revision, including any technical information.

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. (Note: DEQ 12A and 12B have been removed due to EPA's denial of Montana's nutrient variance 12B which triggered the "poison pill" or nonseverability clause).

Interested parties can submit data, views or arguments concerning water quality standards either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: William Howard George, Department of Environmental Quality, P.O. Box 200901, Helena, MT, 59620-0901 or email: <mailto:William.George@mt.gov> no later than 5:00 pm. on June 10, 2020t

## **Final Plan and Draft Record of Decision Expected for Helena-Lewis and Clark and Custer Gallatin National Forests Spring/Summer 2020**

The draft plan comment period for the Helena-Lewis and Clark National Forest closed in the fall of 2018. The comment period for the Custer Gallatin closed last summer. Both forests have been reviewing and analyzing comments, responding to concerns brought forward, and preparing the final documents. The Helena-Lewis and Clark Forest expects to publish the final plan and draft record of decision later this spring. The Custer Gallatin will likely follow with publication of their documents in early summer.

Publication of the draft Record of Decision for each respective plan will initiate a 60-day objection period. The final plan, final EIS, with a summary of response to comments, associated maps, and other information will accompany the draft Record of Decision.

More information about the objection process can be found at: <http://www.fs.usda.gov>

## **Projects in Chaos After Permit Shutdown**

In late April, Judge Brian Morris for the U.S District Court for the District of Montana ruled against the Army Corps of Engineers use of the Nationwide Permit 12, siding with environmental groups' claims that the Corps had failed to conduct a multiagency consultation required under the Endangered Species Act to assess the risks of the Nationwide Permit 12 program ahead of its five year renewal in 2017.

TSRA had joined in an effort organized by the Montana Petroleum Association to file an Amicus Brief in the case given the implications for construction of pipelines, electrical power lines, natural gas utility lines, potable water lines, and sewer lines. Other participants in the joint brief were the Montana Association of Oil and Gas Counties and the Montana Contractors Association.

The action could delay construction for a range of projects for months.

As a result, the Army Corps of Engineers is asking Judge Morris to reconsider his broad decision to vacate the agency's Nationwide Permit 12 program. The Corps is seeking a stay on the injunction and pending the outcome of that request, may elect to appeal the decision.

## **DEQ Issues Record of Decision on the Black Butte Copper Mine Project**

Source: Montana DEQ

On April 9<sup>th</sup> the Montana Department of Environmental Quality issued its Record of Decision for the permit applications submitted by Tintina Montana Inc. for the Black Butte Copper Project. Tintina proposes to construct, operate, and reclaim a new underground copper mine to be located approximately 15 miles north of White Sulphur Springs in Meagher County, Montana.

DEQ analyzed the project under the Montana Environmental Policy Act, and issued a Final Environmental Impact Statement on March 13, 2020. The Final Environmental Impact Statement analyzed the potential impacts from the proposed project and alternatives to the project. DEQ has selected the Agency-Modified Alternative.

“DEQ staff thoroughly analyzed this project and applied the best available science,” said DEQ Director Shaun McGrath. “Our job is to ensure a proposed project will meet or exceed the environmental regulations set forth in law. This work has resulted in the most protective hard rock mining permit this agency has ever signed.”

## **Be Sure This Date Is on Your Calendar: TSRA Annual Meeting at the DoubleTree Hotel in Billings on September 2-3, 2020**

TSRA’s 2020 Annual Meeting was moved from June 17-18 to **September 2-3, 2020** at the DoubleTree Hotel in Billings, Montana. This will immediately follow the Montana Petroleum Association Annual Meeting. Events kick off with the TSRA Golf Scramble on Wednesday. The “official” annual meeting will take place Thursday morning, September 3<sup>rd</sup> 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 growing list of Early Bird Sponsors for the Annual Meeting who make it possible to plan ahead for these events. To date, they are:

**Trailblazer:** BNSF, 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.



**Upcoming Events/Dates:**

May 13, 2020	HJ 35 Tax Study Committee Zoom Meeting
May 14, 2020	Local Government Interim Committee Zoom Meeting
May 18-19, 2020	Water Policy Interim Committee Zoom Meeting Anticipated
May 21-22, 2020	Energy and Telecommunications Committee Zoom Meeting Anticipated
May 27-28, 2020	Environmental Quality Council Zoom Meeting Anticipated
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 18-20, 2020	Legislator Caucus & Orientation State Capitol, Helena, MT
November 19, 2020	Revenue Interim Committee State Capitol, Helena, MT
January 4, 2021	Start of 67 <sup>th</sup> Legislative Session (12 Noon) State Capitol, Helena

*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.*