



# TREASURE STATE RESOURCES ASSOCIATION OF MONTANA

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## TREASURE STATE RESOURCES ASSOCIATION NEWS September, 2020

### **TSRA Annual Meeting Recap: EPA Region 8 Administrator Greg Sopkin Shares Updates, Board Members Re-elected**

EPA Region 8 Director Greg Sopkin covered an array of topics relevant to TSRA's membership in comments to those attending the association's annual meeting on September 3, 2020. A recording of the meeting will be posted on TSRA's website in coming days, but the following is a brief recap of topics covered:

#### **How will recent changes made to the National Environmental Policy Act (NEPA) and the Navigable Waters Protection Rule (WOTUS) be rolled out within EPA?**

The final NEPA rule was promulgated on July 15, 2020. There is a new prescribed 2 year timeline for completion of Environmental Impact Statements and 1 year for finalizing Environmental Assessments. There are also page limits.

It places emphasis on a multi-agency collaborative process that requires a joint schedule and a single EIS and Record of Decision. The role of the lead agency has been strengthened, including requiring the senior agency official to resolve disputes and delays.

EPA's strategy includes:

- Early participation in the process
- Periodic feedback to the lead agency

- Working collaboratively with cooperating agencies
- Participating in public meetings, and
- Commenting by established deadlines to avoid contributing to any delays.

Relative to WOTUS, the effective date of the new rule was June 22, 2020. It has been implemented by EPA and the Army Corps of Engineers in all states except Colorado where the District Court stayed the rule.

For more information about the rule, go to: <https://www.epa.gov/nwpr>

### **Montana DEQ is working on a State Implementation Plan for Regional Haze. What's going on with that?**

On March 25, 2020, the State of Montana submitted a statewide regional haze State Implementation Plan (SIP) to replace the Federal Implementation Plan. EPA continues to work with the State of Montana on the second planning period.

### **What are the key accomplishments made by EPA and relevant stakeholders in improving the environment in our Region?**

Accomplishments include:

- Adoption of rules that promote economic activities while preserving environmental protection. Examples are: WOTUS, NSPS, and Affordable Clean Energy Rule
- Stakeholder outreach
- Respect for state primacy
- Expedited assessment and clean up at Superfund sites
- Compliance assistance for tribes
- Leveraging Smart Sector and Opportunity Zones to assist regulated communities, and
- Support for Region 8 States during the pandemic and reopening.

TSRA appreciates having Director Sopkin speak to our membership. He can be reached at: <mailto:Sopkin.Gregory@epa.gov>

### **TSRA Re-Elects Board of Directors Members**

During the 2020 Annual Meeting the following individuals were re-elected to the TSRA Board of Directors for a three-year term:

**Haley Beaudry, Engineer (2023)**  
**Tom Ebzery, Attorney-at-Law (2023)**  
**Gary Forrester, MDU (2023)**  
**David Hoffman, NorthWestern Energy (2023)**

**Tom Ray, Weyerhaeuser (2023)**  
**Randy Weimer, Sibanye-Stillwater (2023)**  
**Kerry White, Citizens for Balanced Use (2023)**  
**John Youngberg, MT Farm Bureau (2023)**

**Congratulations!**

**Save the Date:**

In the meantime, our 2021 Annual Meeting and Conference has been scheduled for June 16-17<sup>th</sup> at the DoubleTree Hotel in Billings. Be sure to get those dates on your calendar.

**Tintina Posts Reclamation Bond for Phase 1 Development of Black Butte Mine**

MTN News August 14, 2020 By: John Riley

HELENA - The Montana Department of Environmental Quality (DEQ) has issued its final Hard Rock Mining Operating Permit to Tintina Montana Inc., on the Black Butte Copper Project.

The Black Butte Copper Project will be located about 15 miles north of White Sulphur Springs in the Little Belt Mountains.

The issuance of the final operating permit means the mining company can proceed with Phase 1 Development construction. Phase 1 activities include: building and improving roads, staging for construction, creating temporary waste rock storage and building brine contact water pond impoundment.

Tintina has posted a \$4,653,348 bond to cover the reclamation costs for the disturbance created by the Phase 1 Development construction activities.

At this time Phase 1 is the only approved work Tintina can conduct without further action by DEQ.

In order to proceed into any Phase 2 Development or Mining Phase activities, Tintina must submit the corresponding incremental bond for review and approval by DEQ and adhere to requirements in its final permit. DEQ will require detailed final designs consistent with the Final Environmental Impact Statement (EIS).

The mining company will also obtain a permit from the Montana Department of Natural Resources and Conservation to appropriate water and/or change authorizations needed to mitigate the predicted reduction of flow in Coon Creek.

## **TSRA to Intervene in “Waterkeeper II” Litigation**

By way of background, TSRA retains its status as a Defendant-Intervenor in the *Upper Missouri Waterkeeper v. U.S. Environmental Protection Agency*. (Waterkeeper I) That case is currently on appeal before the Ninth Circuit. The primary focus of the appeal is the new timeline required by Judge Morris based on his interpretation of when strict numeric nutrient standards need to be met. TSRA is participating in this matter to ensure the court continues to recognize the use of variances and allows consideration of economic and social factors in setting regulatory requirements.

Earlier this year USEPA rejected rules proposed by MT DEQ to comply with Judge Morris’ interpretation of the timeline referenced above. That essentially did away with the general variance from nutrient standards. The agency also approved the non-severability clause found in the current nutrient rules. MT DEQ affirmed the EPA action triggered the non-severability clause, thereby negating the numeric nutrient criteria, and took us back to application of a narrative nutrient standard. That has initiated a discussion between MT DEQ, EPA and stakeholders about what a new nutrient regulatory program will look like in Montana.

Meanwhile, Upper Missouri Waterkeeper filed a second lawsuit against USEPA, challenging the approval of the non-severability clause in Montana’s rules. If successful, the case could result in Montana having to comply with strict numeric nutrient criteria WITHOUT the benefit of other key components of the state’s regulatory program including the general variance from nutrient standards and the ability to demonstrate compliance would result in unacceptable economic and social impacts.

TSRA was just recently granted Defendant-Intervenor status in the second Waterkeeper case, along with MT DEQ and the Montana League of Cities and Towns. The “Waterkeeper II” case is also before Judge Morris.

## **Montana Department of Environmental Quality to Hold Monthly Nutrient Work Group Meetings**

As mentioned above, MTDEQ has begun holding meetings with stakeholders about the next chapter in regulating nutrients in Montana. At the most recent meeting on August 19<sup>th</sup>, stakeholders heard a presentation prepared by the MT League of Cities and Towns regarding how other states have dealt with this issue. USEPA also weighed in with their perspective.

Given the uncertainty this situation has created, DEQ was asked to hold monthly meetings to engage stakeholders in crafting a solution. The Montana Legislature is expected to play a role in setting the policy parameters for any new approach.

## **Legislative Committee Updates:**

Source: MT Legislative Services Division

This month Legislative Interim Committees will be finalizing their work in preparation for the 2021 Legislative Session. There will be a flurry of activity in the next two weeks as committees continue to meet via Zoom to evaluate public comment on reports and draft legislation.

### **Energy and Telecommunications Committee Meets September 8**

The ETIC meets Sept. 8 to adopt final reports, review proposed agency legislation, and decide if the committee will endorse legislation for the 2021 Legislative Session.

The draft documents are available on the ETIC website at <https://leg.mt.gov/committees/interim/2019etic/meeting-info/>.

For more information about the meeting, including a full agenda, visit the committee's website or contact Trevor Graff, committee staff.

Committee Website: <https://leg.mt.gov/committees/interim/2019etic/>

Committee Staff: [Trevor.Graff@mt.gov](mailto:Trevor.Graff@mt.gov) or 406-444-4975

### **Local Government Interim Committee Meets September 9**

The Local Government Interim Committee meets on September 9 to finalize its interim work. An [agenda](#) is posted to the [committee website](#) along with [meeting materials](#). The committee will review bill drafts related to:

- regional fire protection authorities,
- the Multifamily Coal Trust Home Loan Program,
- the MSU Local Government Center, and
- experimental on-site wastewater treatment systems.

In addition, the committee will receive updates on the Local Government Reimbursement Program, the Emergency Housing Assistance Program, and the Housing Montana Fund among other topics.

The committee will meet virtually, through Zoom, starting 9 am. The meeting will also be broadcast on MPAN and streamed live at [leg.mt.gov](http://leg.mt.gov).

Members of the public who wish to participate may join the meeting. If you want to participate, please email [toni.henneman@mt.gov](mailto:toni.henneman@mt.gov) by 5 p.m. the day before the meeting with your name and a request and you will be sent instructions for joining and participating in the meeting.

Committee staff: Toni Henneman, [toni.henneman@mt.gov](mailto:toni.henneman@mt.gov) or 406-444-3593

Committee website: <https://leg.mt.gov/committees/interim/2019lgic/>

## **Environmental Quality Council Wraps Up Interim September 9-10**

The Environmental Quality Council (EQC) wraps up its interim in September with a two-day Zoom meeting, starting at 10:00 am. on September 9.

During the meeting, the EQC will finalize reports for its major studies. Those include:

- chronic wasting disease
- wildlife location data
- wilderness study areas
- bonding, decommissioning, and remediation of energy facilities

EQC will also review reports and legislative proposals from Fish, Wildlife and Parks; DEQ, and DNRC. Topics include opencut mining, aquatic invasive species, wolf management, mountain sheep, sage grouse, grizzly bear wildlife habitat, repairs on the St. Mary Canal, and updates on the 2020 fire season and the state's water supply.

The council will also review legislative proposals from the Private Lands/Public Wildlife Council. For more information, go to: <http://leg.mt.gov/eqc>

Those wishing to offer comments should contact the Council staff at: <mailto:jkolman@mt.gov>

## **Revenue Committee Meets September 11 to Conclude Interim Work**

The Revenue Interim Committee will hold its final regular meeting of the interim on September 11 at 9 am. via Zoom.

The [agenda](#) and [meeting materials](#) are available on the [committee website](#).

The agenda includes a 2023 biennium revenue outlook, an administrative rule review, an agency update from the Department of Revenue, and consideration of requested legislation.

The committee will consider five draft bills recommended by the HJ 35 Tax Study Committee:

- [HJ35-01](#) - Full inflation for mill levy limit;
- [HJ35-02](#) - Property tax circuit breaker;
- [HJ35-03](#) - Increase minimum corporate income tax to \$200;
- [HJ35-04](#) - Revise calculation of capital gains tax credit; and
- [HJ35-08](#) - Decouple from CARES Act net operating loss deduction provisions.

Two draft bills requested as part of the committee's tax credit review will also be discussed:

- [TC03](#) - Alternative energy systems credit refundability; and
- [TC04](#) - Increase minimum project subject to contractor's license fee.

The committee will also review four draft bills on other topics under the committee's jurisdiction:

- [RIC-01](#) - Revise tax lien and tax deed laws;
- [RIC-02](#) - Convert tax haven list to tax haven criteria;
- [RIC-03](#) - Revise lodging tax laws (*will be posted to website when available*); and
- [CC01](#) - Revise tax credit review process.

The Revenue Interim Committee will take public comment on all bill drafts under consideration.

Comments may be made in-person via Zoom or may be made in writing to [memoore@mt.gov](mailto:memoore@mt.gov)

If you want to participate, please email [memoore@mt.gov](mailto:memoore@mt.gov) by 5 p.m. the day before the meeting.

Committee staff: Megan Moore, [memoore@mt.gov](mailto:memoore@mt.gov) or 406-444-4496

Committee website: <https://www.leg.mt.gov/committees/interim/2019rvic/>

## **The Water Policy Interim Committee (WPIC) meets September 14-15**

A discussion of the state's water rights database – and how ownership information is updated will kick off WPIC's two-day meeting. The committee will also finalize reports, recommendations and legislation.

The Department of Natural Resources and Conservation (DNRC) is upgrading the Water Rights Information System, which contains information on approximately 360,000 water rights. In response to WPIC's work on water right ownership updates, the DNRC is also updating an internal policy handbook.

The WPIC meeting will be conducted in two Zoom segments at 1 p.m. Sept. 14 and at 9:00 a.m. Sept 15.

As part of this, the committee will consider the following reports:

- HJ 14 study of the future of the Water Court
- HJ 40 study of weather modification
- Climate and water rights

The committee will also discuss legislation related to:

- weather modification
- adjudication benchmarks
- water right ownership updates and use of geocodes

WPIC will also review submitted public comments on their reports and draft legislation. The may meet again in October.

For more information visit the WPIC's website: <http://www.leg.mt.gov/water>. Anyone wishing to comment during the meeting should contact the committee's staff liaison Jason Mohr at: [jasonmohr@mt.gov](mailto:jasonmohr@mt.gov) to get instructions about how to participate.

**Upcoming Events/Dates:**

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 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
January 5, 2021	TSRA Natural Resources Showcase Helena, MT – (Depending on Session Calendar)
January 27-28, 2021	Montana Contractors Association Winter Convention Best Western Great Northern Hotel, Helena, MT

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