



TREASURE STATE
RESOURCES ASSOCIATION
OF MONTANA

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TREASURE STATE RESOURCES ASSOCIATION NEWS
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Best wishes to all for the upcoming Holiday Season

“Jump in Bed, Cover Up Your Head”, the Legislature’s Coming to Town

The Montana Legislative Session will kick off on Monday, January 4, 2021. Republicans enjoy large majorities in both the House of Representatives and the Montana Senate. Montana will also swear in a new Governor, Greg Gianforte, and other statewide elected officials following a Republican sweep of all major offices.

COVID-19 continues to create uncertainties for session activities, but initially most Republican legislators and some Democrats are expected to attend in person at the Capitol, with other legislators exercising the option to participate remotely. Discussions continue as to how committee hearings will be conducted, particularly whether those wishing to testify will need to weigh in via Zoom, a separate room in the Capitol or other Helena location, or the committee rooms as space allows. For hearings conducted via Zoom, all should be aware of the need to contact the respective committee staff or other designated legislative staffer ahead of the hearing to get access to the meeting. We expect more emphasis will be placed on written comments.

The Joint House and Senate Rules Committee is considering a provision that calls for a special panel made up of legislative leadership in both houses to monitor the COVID-19 situation and

make changes as needed – including recessing for a period of time if the number of legislators and staff who contract the virus makes conducting legislative business too challenging.

Legislators have met since the general election to choose their leaders and appoint committee members. The 2021 Leadership is as follows:

SENATE

- President: **Sen. Mark Blasdel**
- Majority Leader: **Sen. Cary Smith**
- Minority Leader: **Sen. Jill Cohenour**
- President Pro Tempore: **Sen. Jason Ellsworth**

- Majority Whips: Sen. Doug Kary, Sen. Steve Fitzpatrick, Sen. Gordy Vance
- Minority Whips: Sen. JP Pomnichowski, Sen. Pat Flowers, Sen. Diane Sands

HOUSE

- Speaker of the House: **Rep. Wylie Galt**
- Majority Leader: **Rep. Sue Vinton**
- Minority Leader: **Rep. Kim Abbott**
- Speaker Pro Tempore: **Rep. Casey Knudsen**

- Minority Caucus Chair: Rep. Marilyn Marler
- Majority Whips: Rep. Seth Berglee, Rep. Dennis Lenz, Rep. Lola Sheldon-Galloway, Rep. Derek Skees, Rep. Barry Usher
- Minority Whips: Rep. Tyson Running Wolf, Rep. Laurie Bishop, Rep. Derek Harvey

Standing Committee Members Named for 2021 Legislative Session

The Legislative Branch released the names of legislators who will serve on standing committees (also referred to as Session Committees) for the 67th Montana Legislative Session.

The 2021 House and Senate Standing Committees lists are online at: <https://leg.mt.gov/committees/session-committees/>

The 67th Legislative Session convenes on January 4, 2021. Additional information and bill tracking are online at on <https://leg.mt.gov/>.

Members and other information are subject to change. Check the website for the most up-to-date lists.

Legislative Bill Draft Requests:

The number of bill draft requests for the 67th Legislative Session is approaching 2000. The deadline for unlimited requests has passed, but legislators can continue to submit requests as the session approaches. A significant number of the requests are broad in title, serving as placeholders for more targeted language to come. Those interested in reviewing the list can click on the following link: [List All Introduced and Unintroduced Bills](#)

TSRA Legislative Breakfasts

We are still working out the details, but TSRA intends to hold our weekly legislative “breakfast” meetings each Thursday morning at 7:00 am. throughout the session. Due to COVID concerns, we will likely need to limit in-person attendance, but are working on offering a “Zoom” participation option. We are still evaluating what options we have for providing breakfast for those attending on site.

Weekly meetings allow us to look at upcoming hearings and determine what action TSRA will take on various bills, as well as discuss broader issues that arise during the session. Watch for more information about how to participate.

Montana Governor-elect Gianforte Invites Your Ideas

Gov.-elect Greg Gianforte has launched [MontanaComeback.com](#), a website where people can go to follow what’s happening with the transition.

Those interested can also submit policy ideas and recommendations to improve state government.

“Good ideas can come from anyone, anywhere, and I’m counting on Montanans to make their voices heard,” Gianforte said in a news release. “We built our Montana Comeback Plan with the input of Montanans across our state, but it’s just a starting point. We have a lot of work to do to get our state back on track. I urge you to keep your ideas coming and make your voices heard as we kick off Montana’s comeback.”

Regulatory Reform a Focus of new Administration

When the Gianforte Administration takes office next month, one of the areas they will be spending some time is looking at regulatory policy,

An option that has been proposed comes from the Frontier Institute in the form of a proposed “Effective Government Act”. The purpose of the policy is “to establish a baseline cap on the

total number of regulatory restrictions enacted by the state...For every new regulatory restriction enacted, two old regulatory restrictions are sunset until the Regulatory Target is met, at which point the act will allow for every new regulatory restriction enacted, one old regulatory restriction will be sunset, thus maintaining zero-net new regulatory restrictions.

The proposed act lays out a framework for implementing the Act, including creation of an Office of Regulatory Management to oversee the regulatory reform effort.

If this concept is adopted, TSRA members should be prepared to offer input in identifying regulations that should be reviewed.

Waterkeeper I and II Litigation Efforts Take New Direction

As has been reported in earlier newsletters, TSRA has intervened in two cases involving Montana's nutrient standards and the use of variances from those standards. The first case, Waterkeeper I is currently on appeal to the Ninth Circuit and has been fully briefed. Waterkeeper II challenges whether the non-severability clause (poison pill) triggered by EPA's earlier denial of MT DEQ's revised rules is consistent with the Clean Water Act and is also awaiting a decision.

All participants in the Waterkeeper II case shared a common belief that the non-severability clause had been triggered and that the state's strict numeric nutrient standards were no longer in play. MT DEQ reported to the Water Policy Interim Committee that they planned to introduce legislation that would repeal the state's nutrient standards variances statutes.

In an unprecedented turn, Judge Morris issued a court order in October that consolidated both those cases and required MT DEQ re-do the rules EPA denied and submit a new version for their consideration. Though many question his ability to take such an action, the result has been that MT DEQ has embarked on a second rulemaking effort .They have 120 days from the October 30th Order to complete that rulemaking. EPA then has 90 days to review and act on the new rules.

In a meeting on Monday, December 7th MT DEQ shared the draft rules that offer only a modest change from what was proposed earlier. Those will go forward in the formal rulemaking process in order to meet the timeline, Whether those would satisfy EPA's concerns is yet to be seen.

Judge Morris' October 30 Order Changed DEQ Legislative Direction

As a result of the Judge Morris' order, DEQ has decided not to proceed with the proposed legislation repealing the nutrient standards variances statutes. That does not preclude other

parties from pursuing legislation to address Montana's regulatory structure for nutrients. TSRA and other interested parties are discussing our options.

Parties seek Stay Regarding Judge Morris Order

TSRA and other intervenors in the above matters are seeking a stay of the Judge Morris' order pending appeal.

MT Board of Environmental Review Adopts Site-Specific Selenium Standards

On Friday, December 11th the Board of Environmental Review (BER) adopted rules setting very restrictive site specific selenium water quality standards in Lake Koocanusa and the Kootenai River.

Local legislators and other elected leaders in the Libby area earlier expressed concerns about how fast the rulemaking process had moved and the lack of public involvement. In the extensive comments submitted on the rules, there were many questions raised about the scientific work done to date and many encouraged the matter be delayed until more input could be gathered. The proposed rules were widely supported by environmental groups in Montana, as well as in Idaho and Canada.

TSRA offered comments in opposition to adopting the rules, also asking for more time and a deeper dive into the science.

Montana Sage Grouse Habitat Conservation Program Readies for 2020-2021 Conservation Assessment/Potential Legislative Changes

Since its inception in 2015, the Montana Sage Grouse Habitat Conservation Program has moved from a commitment by stakeholders to work together to keep the Greater Sage Grouse from being listed as endangered to a functioning "regulatory entity" with a broad reach across Montana's landscape and economy. Utilizing the Habitat Quantification Tool and extensive policy guidance, the program is the first stop for folks seeking a state permit in sage grouse habitats. It has evolved to recognize certain exemptions, to take into account new information about covered activities, to incorporate additional legislative changes, and for some projects, to generate a significant "price tag" in terms of mitigation costs.

We anticipate the program will again face legislative scrutiny in the 2021 Legislature. TSRA members play a role both in providing habitat for the sage grouse, as well as conducting activities that create jobs and bring new revenue to the state. We will be paying close attention to potential legislative proposals to look for opportunities to make improvements.

In the meantime, the following information is taken from the **Montana Sage Grouse Habitat Conservation Program's 2019 Annual Report** and is shared with TSRA members for the purpose of providing background/review for understanding potential legislative proposals.

Montana Sage Grouse Habitat Conservation Program Overview of the Consultation Process

Montana EO (Executive Order) -12-2015 requires the Program to review all proposed activities in sage grouse habitats designated as Core Area, General Habitat, or Connectivity Area that require a state permit or authorization or utilize state funds. EO 12-2015 also applies to work undertaken by state agencies themselves. If the proposed activity will take place outside of these designated habitats, review is not required. MSGOT has granted certain limited exemptions from the review requirement. Through the consultation review process, the Program works with project proponents before they submit applications for state permits, authorizations, or grant funds. This is to attempt to avoid or minimize project impacts to sage grouse and their habitats through project siting, design, construction dates, and implementation. This enables the project to be consistent with the requirements of EO-12-2015.

Completion of a sage grouse review is required prior to initiating a state permitting process. State permitting programs require evidence of a sage grouse review be provided at the time permit applications are submitted, if applicable. If evidence is not provided and sage grouse consultation is required, permitting programs will refer the applicant back to the Program. The Program undertakes a review for consistency with the requirements of EO 12-2015. If the proposed activity is not consistent with EO-12-2015, the Program will work with the proponent to determine the best solutions to both achieve consistency with EO-12-2015 and to facilitate permitting of the proposed activity. Additionally, the Program works with proponents to determine what, if any mitigation is required to offset the impacts of the development project.

Once the review has been completed, a letter describing the proposed project activity, the location of the project relative to sage grouse habitat and active leks, and resulting stipulations, if any. A hard copy of the letter is mailed to the proponent, and a PDF copy is attached to the project record and is available online to the project proponent. The project proponent then attaches the Program letter to the permit application submitted to the relevant state permitting agencies. The state agencies include the Program's recommendations as stipulations on the state permit.

Summary of 2019 Program Consultation Performance

In 2019, the Program received a total of 381 requests and carried over work on two projects initiated in 2018. As of December 31, 2019, the Program completed reviews for 288 projects (75%).

Most development projects reviewed by the Program in 2019 were proposed in General Habitat (n=277, 72% of 383 projects) compared to a Core Area (n=106, 28% of 383 projects).

Of the 16 major project types reviewed in 2019, 32.6% (94 of 288 total projects) was related to oil and gas development. Of the remaining major project types, Communication, Mining, Transmission Lines, and Wind combined accounted for 22.9% of the total projects reviewed (66 of 288). Four projects entailed reviewing a major pipeline.

Of the total 288 projects which reached Completed Review in 2019, an HQT was calculated was 151 projects (52%). Of those, a total of 132 development projects resulted in a mitigation obligation (45.8% of 288), whereas 156 projects did not.

Adaptive Management and Conclusions

Adaptive management discussions after this first mitigation year will likely focus on the first minor revisions to the base map through updating of individual GIS layers with the most currently available data. Another topic for exploration relates to the Program's observation that implementation of the strategy overall could be improved by creating a feedback looping mechanism between developers, state permitting agencies, and the Program to overcome the Program's lack of knowledge about the status and disposition of projects (i.e. permitting process, implementation schedule, or whether a project was cancelled altogether). Closing this loop would improve data accuracy and integrity, accuracy of disturbance data, fiscal management of the Stewardship Account, and most importantly, the accuracy and reliability of the credit/debit registry. Montana continues to work collaboratively with private landowners, state and federal agency partners, industry and conservation organizations, and elected officials.

Based on reports from Montana Fish, Wildlife & Parks, the population is secure. The number of confirmed active leks has held steady since 2015, with minor increases or decreases in individual years.

Going forward, Montana is well-positioned for an assessment of conservation efforts across 11 western states, set to take place in 2020-2021. A formal status review in the future is possible, but presently unknown.

Upcoming Events/Dates:

January 4, 2021 Start of 67th Legislative Session (12 Noon)
State Capitol, Helena

June 16-17,2021 TSRA Annual Meeting
DoubleTree Hotel, Billings, 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.