



TREASURE STATE RESOURCES ASSOCIATION OF MONTANA

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TREASURE STATE RESOURCES ASSOCIATION NEWS October, 2021

Leasing Ban Places Montana's Economy and Future in Jeopardy

By Peggy Trenk, TSRA Executive Director

On-and-off again relationships can be messy and have a lot of unintended consequences—the same holds true for a federal oil and gas leasing moratorium.

As courts go back and forth on the legality of the Department of Interior's federal oil and gas leasing ban, Montana's energy companies and others throughout the country have been subjected to long periods of uncertainty, hurting local economies and state revenues. Oil and gas operations on federal lands have been repeatedly stopped, and then subsequently started, and then stopped again as this issue plays out in the courts, and it remains to be seen what the final verdict will be.

The thinking behind this potential leasing ban is that the ramifications of oil and gas operations are potentially hurtful to the environment and will delay our nation's inevitable energy transition—but that could not be further from the truth.

As the Executive Director of the Treasury State Resource Association, I have long collaborated with the oil and gas industry—in addition to other business, labor, agriculture, and recreation groups—to work together on issues that affect land use, conservation, and resource development in Montana. Many of our members and other businesses throughout the state benefit from the money provided by oil and gas operations, particularly through investments in the communities they serve.

The oil and gas sector has provided billions in state revenue over the past years, most of which goes toward crucial capital outlays like education, healthcare, and infrastructure—and of course, preservation efforts. Without the financial contributions and royalties collected from oil and natural gas operations, Montana’s communities, environment, and very way of life would be forever changed. Energy states like ours cannot afford to have a wide-sweeping, blanket federal leasing ban put into place—the repercussions are too severe.

Firstly, with gas prices rising in Montana and the Organization of the Petroleum Exporting Countries (OPEC+) rebuffing calls from federal officials to increase production levels, there is an urgent need to preserve America’s energy independence. Protecting domestic oil and gas operations is critical to maintaining our nation’s energy reserves and ensuring that we don’t have to rely on other nations—including rivals like Russia—to satisfy our energy needs.

But a leasing ban would curtail domestic production and instead leave us at the whims of foreign counterparts. An analysis of a federal leasing halt by the American Petroleum Institute found that through 2030, the United States would spend \$500 billion more on energy from foreign suppliers and oil imports from foreign sources would increase by 2 million barrels a day.

This not only hurts job creation, the economy, and our energy independence but has environmental impacts as well. Outsourcing our oil and gas needs means that countries with less stringent environmental regulations will increase production, resulting in additional air and water pollution in those countries and globally than would be if production remained here.

Additionally, putting a stop to leasing on federal lands would have devastating consequences for communities that rely on oil and natural gas revenues to support local investment and development. Revenue from oil and gas activity comprises 5.6% of Montana’s General Fund Budget which provides funding for state and local programs such as education, conservation, healthcare, and infrastructure.

We cannot take away critical funding from communities with no solution and expect there to be no consequences, especially with the precarious financial situations many find themselves in due to the pandemic. Workers are still getting back on their feet, businesses are struggling to keep their doors open, and students are just returning to school. Our lawmakers need to prioritize helping our communities and ensuring their recovery rather than pursuing an ill-advised leasing ban that leaves economies in jeopardy and hurts growth and development.

A federal leasing moratorium would also further exacerbate economic woes due to the jobs and economic activity lost from such an action. The oil and natural gas industry supported over 50,000 jobs—many of them offering high-paying, reliable work—and contributed more than \$6.2 billion to Montana’s economy in 2019. This notable economic impact is rivaled by no other professional industry in the state—we cannot afford to have its contributions reduced.

Montana's workers, enterprises, and communities have long had a prosperous and supportive relationship with the state's oil and gas industry. The state revenue provided by the industry's operations has been critical to growing our state's economy and boosting business for some time and will continue to be in the future—but only if lawmakers come to their senses and say no to a federal leasing ban.

Editors' Note: TSRA had the opportunity to have this opinion Guest Opinion published in several Montana newspapers during the month of September.

Did You Know Congress is considering a tax on plastic resin? Why Does it Matter?

TSRA would like to thank the American Chemistry Council for sharing information regarding a proposed "plastics excise tax". We have alerted the members of the Montana Congressional delegation as to the potential impacts.

United States Senate Finance Committee staff recently circulated a proposal to enact a "plastics excise tax" on the sale of virgin plastic.

The REDUCE Act, sponsored by Senator Sheldon Whitehouse (D-RI), would impose a tax of twenty cents per pound on businesses that manufacture or import more than 10 tons per year of virgin plastic resin. The tax would increase every year, rising to \$0.24/lb. by 2034 and \$0.36/lb. by 2050. This tax would be used to help pay for the budget reconciliation package but would also increase costs for businesses and consumers. Businesses and consumers are continuing to face rising prices on everything from gas, energy, food, furniture, and housing. Now is not the time to impose this tax.

The tax would increase prices for a wide variety of goods and activities.

The tax will raise prices across our many products and services that rely on plastic to package, transport, and serve foods and other consumer goods to customers. Plastic reliant products ranging from wind turbines to solar panels and electric vehicles would become more expensive. Nationwide, the tax would add nearly \$3.9 billion to the cost of eating at home, \$105 million to the cost of housekeeping supplies, and \$640 million to the cost of personal care products.

The tax would burden low-income households the most.

Like most excise taxes, the proposed resin tax is regressive—it would hit lowest income Americans the hardest. A \$0.20/lb. tax on single-use plastic resin would raise the prices of goods that make up a larger share of spending for the least wealthy households. The biggest impact would fall on households with annual income less than \$15,000 and the smallest impact would fall on households with annual income more than \$200,000. This impact gap between will widen

over time as the tax is raised. If enacted, the tax would violate President Biden's pledge not to raise taxes on those making less than \$400,000 per year.

Consider potential environmental impacts.

Since 29% of US plastic resin production is exported, this tax could shift production of finished plastic products to China and other countries, many of which produce these materials less efficiently and with more emissions.

The complex rebate system would impose a significant paperwork burden.

Because the tax is imposed on plastic resin, and most plastic resin is not used for single-use plastic products, most of the collected tax revenue (between \$12.1B-\$15B per year) will be given back in the form of a rebate. Implementing a complex tax rebate system will require significant time and effort on behalf of the government and the private sector—diverting attention from productive activities. For example, the annual paperwork required to report resin production and determine the amount of resin that is not transformed into a covered item would, in the aggregate, take 35,000 person-hours of labor, 24,000 hours of which would fall on small business.

Interior Department Proposes Change to Migratory Bird Treaty Act

Source: Department of the Interior Press Release, Wednesday, September 29, 2021

In late September, the Department of the Interior announced a series of actions regarding the Migratory Bird Treaty Act (MBTA). The U.S. Fish and Wildlife Service (Service) made public a final rule to revoke the January 7, 2021, regulation that limited the scope of the MBTA. In addition, the Service simultaneously made public an Advanced Notice of Proposed Rulemaking (ANPR) announcing the intent to solicit public comments and information to help develop proposed regulations to authorize the incidental take of migratory birds.

The January 7, 2021, final rule limiting the scope of the MBTA raised concerns from the public and international treaty partners and created numerous legal challenges. With this final and formal revocation of the January 7 rule, the Service returns to implementing the MBTA as prohibiting incidental take and applying enforcement discretion, consistent with judicial precedent and long-standing agency practice prior to 2017.

The Service will also issue a Director's Order in coordination with the publication of the rules. The Director's Order provides instruction to Service employees, including expectations for conducting Service activities and establishing criteria for the types of conduct that will be a priority for enforcement activities with respect to incidental take of migratory birds.

“Our next step will be to create a common-sense approach to regulating the incidental take of migratory birds that works to both conserve birds and provide regulatory certainty to industry and stakeholders,” said **Assistant Secretary for Fish and Wildlife and Parks Shannon Estenoz**. “That’s why the Service is simultaneously publishing an Advanced Notice of Proposed Rulemaking announcing our intent to solicit public comments and information as we consider developing proposed regulations.”

Over the last 50 years, the population of North American birds has declined by an estimated 3 billion birds. Many of the 1,093 species of birds protected under the MBTA are experiencing population decreases due to increased threats across the continent. Just recently, the Service released the *Birds of Conservation Concern 2021* report with 269 bird species considered to be in greatest need of conservation attention.

Both natural and human-caused sources of bird mortality have contributed to the loss of bird populations. Many industries and projects have voluntarily implemented beneficial practices to avoid and minimize the take of migratory birds; however, bird populations remain in decline. The Service seeks to better protect migratory bird populations by addressing human-caused mortality with an incidental take regulation.

As part of the development of these regulations, the Service is also preparing a draft environmental impact statement pursuant to the National Environmental Policy Act. The agency will initiate a new public scoping process to engage in meaningful conversations with stakeholders, receive suggestions, identify significant issues, and share information on the scope of issues and alternatives to consider.

The Service will invite public comments and host virtual public scoping meetings for the general public, stakeholders, and Tribes following the publication in the *Federal Register*.

The final MBTA revocation rule will go into effect 60 days after it publishes in the Federal Register on October 4, 2021.

The ANPR will publish in the *Federal Register* on October 4, 2021, opening a 60-day public comment period. The notice will be available at [Regulations.gov](https://www.regulations.gov), Docket Number: FWS-HQ-MB-2021-0105 and will include details on how to submit your comments on to help guide the development of the proposed rule and draft environmental review.

DEQ Finalizing Draft of Narrative Nutrient Water Quality Standards Rules

Work continues on the draft rules to implement SB 358, the bill to move the state away from numeric nutrient water quality standards. DEQ has to complete the formal rule adoption process

by March of next year, though there is some debate as to whether the entire regulatory process needs to be laid out in the initial rule package. In the meantime, EPA has affirmed their position that the previously-adopted numeric water quality standards and variance process that were the subject of court challenges remain in effect until the new rules developed under SB 358 are adopted.

DEQ is expected to share their initial draft of the rules, as well as any associated circulars or guidance documents with the NWG by October 18th to allow members to review the package prior to the October 27th meeting. The schedule for the remaining Nutrient Work Group meetings is as follows:

Nutrient Work Group	October 5, 2021	1:30 – 3:30 p.m.
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[NWG_Agenda_5Oct2021.pdf](#)

Nutrient Work Group	October 27, 2021	9 – 11 a.m.
Nutrient Work Group	November 3, 2021	9 – 11 a.m.

The DEQ website is in the process of being updated with the above information: <https://deq.mt.gov/water/Councils>

Please contact Christina Staten with any questions: CStaten@mt.gov, (406) 444-2836

Montana Sage Grouse Oversight Team (MSGOT) Reviews Habitat Quantification Tool, Discusses Program Improvements

In an effort to be more transparent, staff from the Montana Sage Grouse Program provided a training session for MSGOT members as well as the public on how the Habitat Quantification Tool is used to analyze impacts of projects proposed in sage grouse country. Staff explained how data is gathered and layered to arrive at the calculations that lead to determinations about such things as mitigation requirements.

In response to questions from MSGOT members, staff noted efforts were underway to account for impacts to sage grouse habitat, such as those caused by wildfire, in a more timely manner. MSGOT is expected to review that undertaking and other additional aspects of the program in coming months.

The Sage Grouse Program is developing a series of videos that will aid applicants in working with the HQT and other aspects of the program. Additional staff members have also been hired, reducing the time needed for applications to be processed.

Go to the program website for more information: <https://sagegrouse.mt.gov/>

Drought Management Plan Webinar

Montana is currently updating its Drought Management Plan. The Montana Department of Commerce is working with Montana Department of Natural Resources and Conservation, the Governor's office, regional stakeholder groups and the public on this timely and much-needed effort.

Stakeholder engagement and participation in the planning process are central to building and enhancing Montana's drought resilience. The plan update will use a stakeholder-driven process to expand and improve statewide drought monitoring, preparedness, response and adaptation. Your participation will help identify programs and policies that support local action.

Please join an informative webinar on **October 14 from 1:30-2:30p.m. (MDT)** to learn more about the Drought Management Plan update and the many ways you can get involved. Visit the Department of Natural Resources website to learn more about the upcoming effort and how to register for the webinar at: <http://dnrc.mt.gov/divisions/water/drought-management>

Water Policy Interim Committee Meets October 12-13, 2021

Source: Montana Legislative Council

Effects of this summer's drought and plans for future droughts will be part of the Water Policy Interim Committee's focus when it meets Oct. 12-13. The committee also plans to launch two studies related to selenium in Lake Koocanusa (HJ37) and Flathead River erosion (SJ28).

The summer drought of 2021 was memorably miserable, echoing past droughts of 1961 and 1988.

State agencies and other groups are hard at work preparing for the next drought. The WPIC will hear of several, including: work on an updated drought plan, the future of water storage in Montana, resilience on the Missouri River headwaters, and how federal infrastructure dollars might help irrigators.

Members of the committee are: Sen. Jill Cohenour (D-E. Helena), Sen. Shane Morigeau (D-Missoula), Sen. Walt Sales (R-Manhattan), Sen. Jeffrey Welborn (R-Dillon), Rep. Willis Curdy (D-Missoula), Rep. Robert Farris-Olsen (D-Helena), Rep. Tom France (D-Missoula), Rep. Rhonda Knudsen (R-Culbertson), Rep. Marty Malone (R-Pray), Rep. Bob Phalen (R-Lindsay).

The meeting begins at 1 p.m. Oct. 12 in Room 317 of the Capitol building in Helena. The meeting will reconvene at 8:30 a.m. on Oct. 13. The WPIC is allowing remote participation for those wanting to offer public comment. A remote participation form is available on the committee

website.

For more information on the committee's activities and upcoming meeting, please visit the committee's website or contact Jason Mohr, committee staff.

Committee website: www.leg.mt.gov/water

Committee staff: jasonmohr@mt.gov or 406-444-1640

Recap of September Committee Activity – Work Plans Finalized, Studies Initiated

Several of the interim legislative committees TSRA follows met in September. Most moved forward with their draft work plans without making any substantive changes. A new responsibility for interim committees that was added during the 2021 session is a requirement to review any proposed ballot issues that fall within their assigned topic areas.

Environmental Quality Council

EQC was only assigned one study – a look at funding for conservation districts. The Council will devote time to learning more about the different roles the districts fill across the state in order to look for solutions that fit a wide range of conditions.

EQC members are also interested in learning more about fire management, including the intersect between the state's responsibility to protect air quality and federal agency responses to fires burning on their lands. Representatives of the Forest Service and the BLM will be invited to participate in future Council discussions.

Other member topics include an update on the status of Grizzly Bear management and delisting, weed control, and hunting and outfitter issues.

The Council appointed Representatives Gunderson and Marler and Senators Smith and Sweeney to a joint WPIC Subcommittee to work on the Lake Kookanusa selenium study.

EQC's next meeting will be January 24-25, 2022.

Please find more information and materials at:

<https://leg.mt.gov/committees/interim/eqc/meeting-info/>

Energy and Telecommunications Committee

ETIC also finalized its work plan at their September meeting, and began work on interim studies concerning Montana's grid capacity and advanced nuclear reactors. Members heard from several speakers that spoke to how "balancing authorities" work to promote affordable and reliable power. A representative of Northwestern Energy shared information on their plans to join in regional planning and coordination, but noted utilities have to demonstrate they have the resources and capacity to participate. With current concerns about potential deficits in generation capacity, they will need to take incremental steps to engage.

Future panel discussions are expected to focus on current nongeneration technology on the grid, and the role of the private sector, regulated utilities, and state government in grid development.

ETIC's next meeting is set for January 18, 2022 in Helena.

For more information and meeting materials, please check the committee's web site:

<https://leg.mt.gov/committees/interim/etic/meeting-info/>

Revenue Interim Committee

The Revenue Interim Committee has begun work on their assigned study of residential property taxes, hearing from a range of speakers who briefed member on factors that could be considered in the study's methodology, including understanding any potential shifts to other classes of property tax payers that result from proposed changes.

The Committee is also taking a look at the Coal Severance Tax Trust Fund. The Coal Severance Tax has provided funding for a host of state and local programs, including school facilities. Given the move to lessen the use of coal for U.S. energy production, the Legislature is concerned about resulting fiscal challenges for Montana and particularly, local communities. Committee members received a thorough overview of the history of the tax and where the money goes.

Representatives of Montana coal mines shared information about their operations, as well as thoughts about what might lie ahead for the industry. International demand for coal remains strong, but the market is very competitive. The current tax rate may be putting Montana coal at a disadvantage and is expected to be discussed further as the study progresses.

Of interest to TSRA members beyond the coal industry is the Committee's plan to look at other resource or energy-related revenue streams to support the "trust" – making it more of a natural resources trust fund. They will also be looking at the rate of return on investments of coal trust dollars. Those are both topics for upcoming meetings.

The Revenue Interim Committee's next meeting is November 9, 2021.

DEQ Clean Air Act Advisory Committee Meets

MT DEQ Air Quality Bureau staff offered wide-ranging updates on their activities and took questions from stakeholders at the September 29 CAAAC meeting. Highlights include:

Regional Haze – DEQ has completed their State Implementation Plan and has shared the draft with federal agency partners for a 60-day consultation period. That will conclude on November 25th. Consultation will be followed by a 30-day public comment period from December 1st to December 30th. The proposed plan, as well as comments from the federal agencies will be posted on the website to aid the public in offering input. DEQ expects the SIP to be signed by the Governor mid-January and submitted to the EPA on January 31, 2022.

SO₂ – Laurel Nonattainment Area Redesignation – DEQ continues work on updating the Laurel nonattainment area designation with a goal of having the technical work needed to demonstrate the ability to meet and maintain air quality standards by late 2022. The technical demonstration will then be available for public comment.

MEPA & Permitting Requirement – DEQ is reviewing how MEPA is applied across all programs to establish more clear and consistent reviews.

Upcoming Events/Dates:

December 8, 2021	100 th Annual Meeting of the Montana Taxpayer's Association Helena, MT
January 3, 2023	TSRA Legislative Showcase Delta Colonial Hotel, 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.