



TREASURE STATE
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OF MONTANA

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TREASURE STATE RESOURCES ASSOCIATION NEWS
November, 2021

Montanans Figure Prominently in Department of Interior Positions

Source: Department of Interior October 22 and October 27, 2021 Press Releases

Director of the Bureau of Land Management Sworn In

Tracy Stone-Manning (Missoula, MT) was ceremonially sworn in on October 27th as Director of the Bureau of Land Management by Secretary of the Interior Deb Haaland.

“The Bureau of Land Management plays a critical role in Interior’s efforts to address the climate crisis, expand public access to our public lands, create a clean energy future, and preserve our nation’s outdoor heritage. Tracy brings a wealth of knowledge in conservation and environmental policy to these efforts and a history of working with diverse communities in service to our public lands,” said Secretary Haaland. “I look forward to working with her to strengthen the bureau and advance interior’s mission.”

“I am deeply honored to lead the Bureau of Land Management and carry out its critical mission to protect and manage America’s public lands. I recognize that there is work to be done to rebuild the BLM, and I look forward to connecting with the important stakeholders that relay on its strong management,” said Director Stone-Manning. “Our public lands are one of America’s finest ideas, and I am ready to get to work alongside a remarkable team to ensure our outdoor spaces are protected for current and future generations to enjoy.”

Tracy was most recently senior advisor for conservation policy at the National Wildlife Federation. Before joining the Federation, she served as Montana Governor Bullock's chief of staff, where she oversaw day-to-day operations of this cabinet and the state's 11,000 employees. She stepped into that post after serving as the director of the state's Department of Environmental Quality and as a regional director and senior advisor to Senator Jon Tester. Tracy holds a master's degree in environmental studies from the University of Montana and a bachelor's degree from the University of Maryland.

White House Announces Nomination of Martha Williams as Director of the Fish and Wildlife Service

On October 22, 2021 the White House announced the intent to nominate Martha Williams as Director of the Fish and Wildlife Service. Martha has been serving as Principal Deputy Director of the Fish and Wildlife Service since January 20, 2021, exercising the delegable authority of the Director. The nomination will now be considered by the U.S. Senate.

"Martha brings with her decades of experience, deep knowledge, and a passion for conservation, wildlife management, and natural resources stewardship," said Secretary Deb Haaland. "I look forward to continuing to work with her as the Department carries out its mission to protect America's most precious resources and as we answer President Biden's call to action to conserve, connect and resort the land, waters, and wildlife upon which we all depend on."

Prior to her appointment, Martha served as the Director of the Montana Department of Fish, Wildlife and Parks from 2017 to 2020. Previously Martha was an Assistant Professor of Law at the Blewett School of Law at the University of Montana in Missoula, Montana where she co-directed the university's Land Use and Natural Resources Clinic.

Martha returns to Interior after serving as Deputy Solicitor for Parks and Wildlife between 2011 and 2013, providing counsel to the National Park Service and the Fish and Wildlife Service. Growing up on a farm in Maryland, Martha gained an appreciation for open lands, waters, wildlife and people. She earned a bachelor's degree from the University of Virginia and a Juris Doctor degree from the University of Montana School of Law.

Bureau of Land Management Announces Next Steps, New Analyses for Upcoming Oil and Gas Lease Sales

Assessments will analyze greenhouse gas emissions, social cost of greenhouse gases – New BLM Director Stone-Manning In the News

Source: BLM Press Release, October 29, 2021

On October 29th, the Bureau of Land Management announced that state offices will issue draft environmental assessments over the coming days to solicit feedback from the public, Tribes, and state agencies regarding proposed oil and gas lease sales to be held in early 2022.

For the first time, the environmental assessments will analyze greenhouse gas emissions on a national scale and consider the social cost of greenhouse gases. The environmental assessments will also analyze impacts of potential energy development on air and water quality, wildlife habitat, the quality of life for nearby communities, and other factors.

“The BLM is committed to responsible development on public lands, including ensuring that our environmental reviews consider the climate impacts of energy development on lands and communities. We will continue to exercise the authority and discretion provided under law to conduct leasing in a manner that fulfills the Interior Department’s legal responsibilities,” said BLM Director Tracy Stone-Manning.

Environmental assessments for Colorado, Eastern States, Montana and the Dakotas, Nevada, New Mexico, Utah and Wyoming will be made available for public comment for 30 days. Each state office will distribute a news release and post to the state’s lease sale pages with instructions to access the assessments and to provide comment.

The BLM is also releasing a comprehensive analysis of cumulative greenhouse gas emissions from coal, oil, and gas activities on public lands, titled, “2020 BLM Specialist Report on Annual Greenhouse Gas Emissions and Climate Trends from Coal, Oil and Gas Exploration and Development on the Federal Mineral Estate” which helped to inform the greenhouse gas analysis for the proposed lease sales. The Specialist Report uses long-term projections from the Energy Information Administration to analyze expected lifetime emissions from existing and potential new fossil fuel leases on BLM-managed lands.

The scoping period for the proposed sales ended on October 1. A number of nominated parcels were deferred from further consideration for reasons ranging from the need to prioritize leasing outside of priority habitat for Greater Sage-Grouse, to determining that there was insufficient environmental analysis in pre-existing supporting documents. Additional parcels may be deferred based on public comment on the draft environmental assessments.

The recently completed public scoping and preparations for planned lease sales in 2022 are consistent with the district court’s preliminary injunction, [issued over the summer and pending appeal](#), which enjoins the Department’s implementation of Section 208 of Executive Order 14008. Parcels for scoping included those that were deferred in the first and second quarters of 2021.

Not all agree with the new approach. The following is an excerpt from a news article entitled “US to Look at Climate Emissions from Oil, Gas Leases” written by Matthew Brown of the Associated Press:

The ranking GOP member of the U.S. Senate Energy and Natural Resources Committee, Wyoming’s John Barrasso, said in response to Stone-Manning’s announcement that the added scrutiny of leases would “hamstring American energy.”

“Tracy Stone-Manning and the Bureau of Land Management want to build new regulatory road blocks for oil and gas leasing on America’s federal lands,” Barrasso said. “This draft plan will result in less American energy production, fewer jobs for energy workers, and more frivolous lawsuits from environmentalists.”

Federal agencies previously conducted reviews of potential greenhouse gas impacts from individual lease sales following court orders. Officials in many cases concluded the emissions were miniscule on a global basis.

Biden administration plans roll backs of Trump-era Endangered Species Act rules

Source: Politico Magazine 10/27/21 By: Ben LeFebvre

The Biden administration will formally introduce regulatory proposals to rescind changes the Trump administration made to how agencies interpret parts of the Endangered Species Act, according to documents scheduled to be filed in the Federal Register on Wednesday.

Details: The first change to be proposed by Commerce and Interior agencies would expand the definition of what is considered habitat for listed species to include areas where the species are not currently found but had previously lived in and would need to expand into if their numbers increase (Reg 1018-BD84). The second proposal would roll back the Trump administration’s rule (Reg. 1018-BE69) that economic data be used as a factor in deciding whether to protect a species’ habitat.

“Upon reconsideration of the final rule’s discussion of the extent to which areas that may need some degree of restoration can be considered ‘habitat’ for a species, we find that the definition and the preamble of the final rule inappropriately constrain the [the U.S. Fish and Wildlife Service and the National Marine Fisheries Service]’ ability to designate areas that meet the definition of ‘critical habitat’ under the Act,” regulators wrote in the proposal.

Background: The Biden administration in June had pledged to reverse the rules that the Trump administration put into effect in its final days.

Together, the two proposals would remove the changes that most concerned environmental groups, who had criticized the Trump-era changes for making it too easy for industry to expand into areas necessary to revive protected species. Building developers, oil companies and agriculture firms had sought the changes, saying that the ESA procedure made it too easy to exclude land from development and too difficult to remove species and their habitat from federal protection.

"We're relieved that the Biden administration has taken this important step toward restoring critical protections for imperiled species," said Noah Greenwald, endangered species director at the Center for Biological Diversity. "There's just no way to save animals and plants from extinction without safeguarding the places they need to live."

The oil industry was already engaging in conservation actions, the American Petroleum Institute said in response to the proposed changes.

"ESA regulations should ensure that decisions on the determination of critical habitats are based on science and objective data and coordinated with appropriate stakeholders," API senior policy adviser Amy Emmert said in a statement. "We will continue to support efforts to advance habitat protection and environmental stewardship while ensuring access to the safe and responsible development of American energy."

What's next: The agencies will take public comment for 30 days after the proposal is published in the Federal Register.

And now for some good news.

MT Coal Production Inches Up as Demand Spikes

Source: Missoulian, October 17, 2021 By: Tom Lutey

Coal production is increasing in Montana and Wyoming as demand in the Asia Pacific ratcheted up.

Coming off a volatile year in 2020, which saw mine closures and furloughs, Montana's mining industry has turned out 20.3 million tons of coal in the first nine months of 2021. That's a 2% increase of 524,000 tones over 2020, when the state had two more mines operating than it does currently. Production numbers through Oct. 2 are reported by the U.S. Energy Information Administration.

The Revenue Interim Committee of the Montana Legislature will be looking at the issue of coal exports at their November 8-9th meeting as part of the HJ6 study. The following report was prepared by Kristian Richardson, Industry Development Officer for the Montana Department of Commerce :

Montana's Coal Exporters

There are two mining operations in the State of Montana that export coal.

Signal Peak Energy, LLC is a subsidiary of Global Mining Group, LLC, which is owned by Global Mining Holding Company, LLC. Global Coal Sales Group, LLC handles the sale and transportation of coal from the Signal Peak Mine in Roundup, Montana to the Westshore Terminal in Port Metro Vancouver, British Columbia, Canada. Westshore is Canada's busiest coal export terminal, handling more than 33 million tons of coal annually and currently has excess shipping capacity.

PRODUCTION (2020) - Metric Tons: 5,463,900 , Heat Content: 22,575 (BTU/kg), Sulfur: 0.37 (%)

Spring Creek Mine is in Montana approximately 20 miles north of Sheridan, Wyoming and is owned by the Navajo Transitional Energy Authority (NTEC) - one of the largest U.S. coal producers. NTEC mines low sulfur, subbituminous coal and provides logistics supply services. The company owns and operates three surface coal mines in the Powder River Basin, the lowest cost major coal producing region in the nation. The Antelope and Cordero Rojo Mines are in Wyoming and the Spring Creek Mine is in Montana.

PRODUCTION (2020) - Metric Tons: 8,630,279, Heat Content: 20,555 (BTU/kg), Sulfur: 0.33

The largest export markets for Montana's coal are currently Japan (53%), South Korea (40%), China via Hong Kong (4%), and to a much smaller degree Chile, Taiwan, and Thailand. Just over 50% of each company's international coal sales were destined for Japan. 95% of Signal Peak's coal mined in 2021 was exported across the Pacific. International sales percentages are unavailable for Spring Creek Mine.

Both mining operations identified in this report are seeking to expand operations in 2022 with Signal Peak moving from a record 7m (2021 projected) to 8m metric tons.

Helena-Lewis and Clark National Forest 2021 Land Management Plan Approved

On October 29, 2021 Bill Avey, the Forest Supervisor for the Helena—Lewis and Clark National Forest, signed the record of decision (ROD) for the Helena—Lewis and Clark National Forest 2021 Land Management Plan (the Plan). The Plan will become effective 30 days after the publication of the notice of plan approval in the Federal Register.

To view the final record of decision, final environmental impact statement, the land management plan, and other related documents, please visit the Helena – Lewis and Clark National Forest website .

www.fs.usda.gov/goto/hlc/forestplanrevision

Federal Appellate Court Addresses Challenges to Montana Variances

Source: Author Walter Wright Jr., Mitchell, Williams, Gates and Woodyard, Published by JD Supra, October 14, 2021

The Ninth Circuit Court of Appeals (“Ninth Circuit”) addressed in an October 6th Opinion an issue arising out of the United States Environmental Protection Agency’s (“EPA”) approval of a Montana water quality standard (“WQS”) variance. See *Upper Missouri Waterkeeper v. U.S. Environmental Protection Agency, et al.*

The variance relates to the discharge of the nutrients phosphorus and nitrogen.

Section 303 of the Clean Water Act requires that each state develop water quality standards (“WQS”) for jurisdictional waters of the United States within their borders.

A WQS consists of three parts:

- Designated uses of a waterbody
- The water quality criteria that are necessary to protect existing uses and attain the beneficial uses designated by the state
- Anti-degradation statement or policy to protect existing uses in high quality water

A water quality variance is a temporary change in a state’s water quality standard for a specific pollutant and its relevant water quality criteria. It allows, in prescribed circumstances, a deviation from meeting a water quality-based effluent limit for a particular discharger.

Regulations promulgated by EPA pursuant to the Clean Water Act afford the flexibility in some circumstances to adopt such a variance. Nevertheless, EPA has ultimate approval of variances proposed by a particular state.

EPA has described appropriate WQS variances as being time limited and striking:

... a balance between providing states, territories, authorized tribes and dischargers the time and flexibility to make incremental water quality improvements reflecting the best that can be achieved in a given time period, with accountability measures to assure the public that progress will occur.

The role of nitrogen and phosphorus in water pollution has been a subject of serious consideration by EPA and the states for a number of years. Excessive nutrients can stimulate excess growth of algae. This can impair the recreational use of lakes or reservoirs and also increase the organic matter which (when decomposed) can depress dissolved oxygen concentrations harming aquatic life.

Excessive nutrients can also stimulate nuisance algae. This can produce cyanotoxins.

As a result, there has been significant pressure to address point source dischargers of such pollutants.

Montana adopted WQS standards addressing nitrogen and phosphorus in wadeable streams in 2014. It assigned designated uses for wadeable streams that included support of aquatic life and recreation. Further, to protect such uses, it specified the maximum permissible concentrations of nitrogen and phosphorus. EPA subsequently approved these WQS.

In 2017 Montana sought approval from EPA for a WQS variance. The variance would address 36 municipal wastewater treatment facilities (“WWTFs”). It would allow those facilities to discharge more nitrogen and phosphorus into wadeable streams than would be allowed under the 2015 Montana WQS.

In support of its submission to EPA Montana argued that the WWTFs could only meet the nutrient WQS if they installed reverse osmosis technology. The state contended that the cost of adopting this technology would result in substantial and widespread economic and social impact on the surrounding communities.

EPA subsequently approved the requested variance. It agreed with the state’s assessment that:

- Implementing reverse osmosis technology would be necessary to attain compliance with the base WQS; and
- The cost of implementing such technology would result in substantial and wide economic and social impact on communities served by the 36 municipal WWTFs

Upper Missouri Waterkeeper (“Waterkeeper”) filed an action in the United States District Court (“Court”) arguing that EPA’s approval of the variance violated the Administrative Procedure Act (“APA”) because it was not in accordance with the law. The organization argued that the Clean Water Act prohibits EPA from considering compliance costs when granting variance requests.

The Court granted partial vacatur of EPA’s approval of the variance.

The Ninth Circuit first considered Waterkeeper’s argument that the Clean Water Act precluded EPA from taking compliance costs into account when approving variance requests. The Chevron analysis was applied.

As to step one, Congress was held to have not directly spoken to the question at issue. In other words, Section 1313(c)(2)(A) of the Clean Water Act was not deemed to have addressed whether EPA may consider compliance costs when approving a state’s WQS or (by extension) when approving a state’s variance request.

In assessing step two, the Ninth Circuit held that EPA reasonably construed this section of the Clean Water Act as permitting it to consider compliance costs when approving WQS and various requests.

EPA had challenged the Court's partial vacatur of its decision approving Montana's variance.

The Court had held that the variance's terms of up to 17 years was invalid. The alleged invalidity was because of its failure to require compliance with the highest attainable condition at the outset of the term. Further, it did not require compliance with Montana's base WQS by the end of the term.

The Ninth Circuit held that EPA's Clean Water Act variance regulations unambiguously provided that compliance with the highest attainable condition was not required at the outset. It stated the Court did not identify any provision in the referenced regulations that supported its view that the variance must require compliance with the base WQS by the end of the variance's term.

A number of features in EPA's regulations whose intent was to ensure that dischargers in waterbodies subject to variances continued to improve water quality were identified. This regulatory framework was held consistent with the goals of the Clean Water Act, which as reasonably construed by EPA, included supporting aquatic life and recreation uses whenever attainable.

The Ninth Circuit remanded to the United States District Court with instructions to deny Waterkeeper's Motion for Summary Judgment and to grant to EPA and intervenor-defendant's Motion for Summary Judgment in full.

Editor's Note: TSRA was an Intervenor in both the Waterkeeper case before Judge Morris and the Appeal to the 9th Circuit. Thank you to those industry members who helped support this successful effort. The ruling demonstrates the opportunity to exercise flexibility under the CWA that we hope will guide the current narrative nutrient rulemaking under SB 358.

DEQ Proposes Interim Narrative Nutrient Water Quality Standards Rule for March 1st Deadline/Work Continues on the Full Rule Package to be Finalized by July

In recognition of the amount of work still needed to be done to find agreement between DEQ and stakeholders on the draft rules, circular and guidance documents to implement SB 358, the Department considered a recommendation from representatives of the Montana League of Cities and Towns, the Montana Petroleum Association, the Montana Mining Association and TSRA to advance an interim rule to meet the March 1st deadline set forth in the statute. The League and

industry groups believe the statutory language speaks to adoption of rules setting forth the “framework” for the adaptive management program, allowing for a more general approach for the first round.

DEQ reported their intent to look at the interim approach to the Water Policy Interim Committee in mid-October. TSRA and others offered their support in testimony before the committee. Commenters applauded the Department for working hard to get the full rule package in place, but stated it was important to allow extra time to get the details right. WPIC members expressed their support for the concept, asking that the committee be kept informed of progress at their January 2022 meeting.

DEQ officially announced the two-phase approach at the October 27th Nutrient Work Group meeting, at which time they also discussed the first draft of the full rule package. Written comments on the draft documents were due on Friday the October 29th and will be used to identify the areas of disagreement and help set priorities for the remainder of the rulemaking effort. The full rule package will not advance to the formal rulemaking process at this time.

In the meantime, DEQ drafted a simplified interim rule that will be discussed at the next meeting of the Nutrient Work Group meeting on November 3rd. DEQ is also planning to bring forth a rule repealing Circular 12 A that reflects the numeric nutrients standards that were repealed by SB 358. When finalized, the proposal will be shared with the Water Pollution Control Advisory Committee on November 19th and the advanced for formal rulemaking beginning in December.

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

Microgrids a future option for Resilience in Rural Montana

By Trevor Graff, State Liaison to the Energy and Telecommunications Interim Committee of the Montana Legislature October 22, 2021

Utilities increasingly turn to microgrid technology to solve grid resilience issues for critical infrastructure and difficult to service customers in rural areas.

In 2020, Texas and California exhibited more than 400 megawatts of deployed microgrid resources. Montana utilities boast only one microgrid system in the state, but the technology could prove increasingly useful in boosting rural grid resilience in the state.

Legislators visited NorthWestern Energy’s Beck Hill Rural Microgrid Project north of Deer Lodge this week. The pilot project uses solar photovoltaic panels paired with batteries to improve the reliability of 17 hard to reach, rural electric customers in the area and test the potential for the technology in Montana.

The pilot project uses a 40-kilowatt (KW) solar system with battery capacity that provides 80KW of power to customers for more than two hours. The 40KW solar array is divided into two parts: 8KW of AC coupled solar to feed the grid directly, and 32KW of DC coupled solar to feed the batteries until fully charged. The project's excess energy flows back to the grid.

System Overview:

- Installed: 2015
- Land Area: 1/4 Acre
- Total Solar Capacity: 40.26KW
- Estimated Production: 55,360 kWh/yr
- Storage Capacity: 80 KVA, 186 kWh

Component Overview:

- 305W LG Solar Panels (x132)
- 8kW Outback Inverter (x10)
- Outback DC Charge Controllers (x8)
- 4kW SMA String Inverter (x1)
- 240W SMA Micro Inverter (x12)
- Absolyte GP Lead Acid Batteries (x24)
- SEL Automation Controls

The project, located just off Interstate 90 north of Deer Lodge, is providing data and modeling for the future application of microgrid technology in the state.

Revenue Interim Committee Meets November 8-9th

The Revenue Interim Committee will meet Nov. 8-9 in Room 137 of the State Capitol to continue its studies of residential property taxes and the coal severance tax trust fund. The committee will also review the innovative educational program tax credit, hear a revenue update, and receive an agency update from the Department of Revenue.

For more information, visit [committee's website](#) to access the agenda and [meeting materials](#)

To join the meeting via Zoom [request the meeting link](#) by 5 pm on November 5.

Contact Megan Moore at <mailto:memoore@mt.gov> or (406) 444-4496 with questions.

TSRA Joins Others in Advocating for the Sage Grouse Rider

TSRA recently joined a long list of industry organizations, economic development interest and others in signing on to a letter to Senator Jon Tester asking for assistance in preserving the sage

grouse rider in the FY 2022 Department of Interior, Environment, and Related Agencies Appropriations Act.

The rider prevents the Department of Interior from proposing listing of the sage grouse as a threatened or endangered species. Listing would jeopardize a host of activities in Montana, including installation of high-speed broadband and energy production.

In the meantime, Montana's Sage Grouse Conservation Program continues to provide protection for the sage grouse and sage grouse habitat while allowing responsible growth and development.

CEQ Proposes to Restore Basic Community Safeguards during Federal Environmental Reviews

Source: CEQ Press Release October 6, 2021

The White House Council on Environmental Quality (CEQ) has announced steps to restore community safeguards during environmental reviews for a wide range of Federal projects and decisions.

CEQ is proposing to restore three core procedural provisions of the National Environmental Policy Act (NEPA) regulation to provide communities and decision makers with more complete information about proposed projects, their environmental and public health impacts, and their alternatives.

The proposed rule would make the following changes to the NEPA Rules that were modified in 2020:

1. **Restore the requirement that federal agencies evaluate all the relevant environmental impacts of the decisions they are making.** The proposed change would make clear that agencies must consider "direct", "indirect", and "cumulative" impacts of a proposed decision, including by evaluating a full range of climate changes impacts and assessing the consequences of releasing additional pollution in communities.
2. **Restore the full authority of agencies to work with communities to develop and analyze alternative approaches that could minimize environmental and public health costs.** The proposed change would give agencies the flexibility to determine the "purpose and need" of a proposed project based on a variety of factors, and to work with project proponents and communities to mitigate or avoid environmental harms by analyzing common sense alternative.

3. **Establish CEQ's NEPA regulations as a floor, rather than a ceiling, for the environmental standards federal agencies should be meeting.** This proposal would restore the ability of Federal agencies to tailor their NEPA procedures, consistent with CEQ NEPA regulations, to help meet the specific needs of their agencies, the public and stakeholders.

Over the coming months, CEQ will also work toward proposing a set of broader "Phase 2" changes to the NEPA regulations to help ensure full and fair public involvement in the environmental review process, meet the nation's environmental, climate change, and environmental justice challenges; provide regulatory certainty to stakeholders, and to promote better decision-making consistent with NEPA's goals and requirements.

Upcoming Events/Dates:

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| December 8, 2021 | 100 th Annual Meeting of the Montana Taxpayer's Association Helena, MT |
| June 8-9, 2022 | TSRA Annual Meeting Fairmont Hot Springs Resort |
| 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.