



TREASURE STATE RESOURCES ASSOCIATION OF MONTANA

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TREASURE STATE RESOURCES ASSOCIATION NEWS

March, 2022

Montana Regional Haze SIP Public Participation Update

Source: Montana DEQ

The public comment period for the Montana Regional Haze State Implementation Plan (RH SIP) has been extended to **March 21, 2022**. The date of the public hearing has been moved to **March 18, 2022**.

The purpose of the Regional Haze Program is to improve visibility in wilderness areas and national parks with the goal to attain natural visibility conditions by 2064. Montana's RH SIP outlines a plan for the period 2018 – 2028 and addresses the requirements in the federal 1999 Regional Haze Rule as amended in 2017. According to DEQ, the current rate of visibility improvement projected by the end of the planning period (2028) is reasonable for making progress toward the 2064 end visibility goal. Montana is not requiring additional controls during this planning period.

Interested persons may view the proposed SIP revision on DEQ's website at:

<http://deq.mt.gov/Public/publiccomment>

Interested parties may submit written comments concerning the SIP revision by:

- Addressing them to Rhonda Payne, MT DEQ AQB, 1520 E. 6th Avenue, Helena, MT 59620-0901;
- Faxing them to 406-444-1499; or
- Sending them via email addressed to repayne@mt.gov

The public hearing will take place on March 18, 2022 in Room 40 of the Montana DEQ-Lee Metcalf Building (1520 E. 6th Avenue, Helena, MT 59601) from 1:30 – 3:00 p.m. An online option will also be available. Check the DEQ website for information about how best to access the hearing remotely.

MT DEQ Air Quality Bureau Reports on Priorities for Red Tape Reform

Source: MT DEQ Presentation to the Clean Air Act Advisory Committee, February 22, 2022

As a reminder, last year Montana Governor Gianforte signed Executive Order No. 1-2021 creating the Red Tape Advisory Council to implement state agency reform. The Council is charged with identifying regulations that are considered excessive, outdated, and/or unnecessary; specifically those affecting farmers, ranchers and business owners.

State agencies have been reviewing regulations under their jurisdiction, from statutes to rules, orders, and policies. They've also reached out to stakeholders for input.

The Air Quality Bureau's priority for addressing statutory concerns is the definition of an incinerator. Stakeholders requested clarification of the statute that defines an incinerator, requires all incinerators to obtain an air quality permit, and requires the owner or operator to conduct a health risk. It primarily applies to the permitting of human and animal crematoriums. Additionally, these requirements apply to thermal oxidizers and regenerative thermal oxidizers which are used to control emissions. The Air Quality Bureau is proposing to change the statute (See 75-2-103 (a) and (b) MCA) to remove the requirements that a health risk assessment be conducted for crematoriums and exempt control equipment from the definition of incinerator.

With regard to rulemaking, stakeholders also identified a list of sources for a permit by rule/registration program given their consistent conditions and reporting requirements. Emissions from these sources categories are generally minimal and a more streamlined regulatory process will continue to protect clean air. Identified sources include: human and animal crematoriums, grain elevators, and natural gas compression stations.

EPA and Army Select 10 Roundtables to Highlight Regional Implications of WOTUS

February 24, 2022

Contact Information

EPA Press Office [press@epa.gov]

The U.S. Environmental Protection Agency (EPA) and U.S. Department of the Army (the agencies) have announced the selection of ten geographically varied roundtables with participants representing diverse perspectives. The agencies will work with each selected roundtable to facilitate discussion on implementation of “waters of the United States” (WOTUS), while highlighting regional differences.

“EPA and Army are committed to listening to all sides and working to foster a common-ground approach to WOTUS that protects our environment and is informed by the experience of those who steward our waters day-in and day-out,” said **EPA Assistant Administrator for Water Radhika Fox**. “Through these regional roundtables, we will work toward a shared understanding of the challenges and opportunities to enhance WOTUS implementation to support public health, environmental protection, agricultural activity, and economic growth.”

“The Department of the Army, together with the EPA, is committed to gaining a better understanding of the various regional perspectives through these roundtables to develop an implementation approach that accounts for these diverse voices and regional variations,” said **Assistant Secretary of the Army for Civil Works Michael L. Connor**. “In addition, the Army hopes to identify implementation considerations and tools that could assist in effective, consistent, and efficient implementation across the nation.”

EPA and Army are announcing the selection of ten roundtables that highlight geographic differences and a range of perspectives—including agriculture, conservation groups, developers, drinking water and wastewater managers, environmental organizations, communities with environmental justice concerns, industry, Tribal nations, and state and local governments. The ten selected roundtables are:

- Amigos Bravos (Southwest)
- Arizona Farm Bureau (Southwest)
- Cahaba Brewing (Southeast)
- California Farm Bureau (West)
- Kansas Livestock Association (Midwest)
- Natural Resources Defense Council (Northeast)
- National Parks Conservation Association (Midwest)

- North Carolina Farm Bureau (Southeast)
- Regenerative Agriculture Foundation (Midwest)
- Wyoming County Commissioners Association / Montana Association of Counties / Idaho Association of Counties (West)

These regional roundtables are one important mechanism for the agencies to consider the regional variation in implementation of WOTUS, given the diverse water quality and quantity conditions in diverse parts of the United States. The regional roundtables will provide opportunities to discuss geographic similarities and differences, particular water resources that are characteristic of or unique to each region, and site-specific feedback about the ongoing implementation of WOTUS by the agencies. The agencies anticipate hosting these regional roundtables virtually over the spring and summer.

The agencies most recently concluded a public comment period on the proposed rule to re-establish the pre-2015 definition of WOTUS that had been in place for decades, updated to reflect consideration of Supreme Court decisions. The agencies also hosted public hearings on the proposed rule. Prior to proposal, the agencies requested written comments, hosted listening sessions, and conducted Federalism consultation with state and local governments. In addition, the agencies participated in a roundtable organized by the Small Business Administration.

For more information visit: www.epa.gov/wotus

Background

The Clean Water Act prohibits the discharge of pollutants from a point source to navigable waters unless otherwise authorized under the Act. Navigable waters are defined in the Act as “the waters of the United States, including the territorial seas.” Thus, “waters of the United States” (WOTUS) is a threshold term establishing the geographic scope of federal jurisdiction under the Clean Water Act. The term “waters of the United States” is not defined by the Act but has been defined by EPA and the Army in regulations since the 1970s and jointly implemented in the agencies’ respective programmatic activities.

On July 30, 2021, the agencies announced stakeholder engagement opportunities, including the agencies’ intent to host ten regionally focused roundtables. On October 13, 2021, EPA and Army announced a process for stakeholders to submit nomination letters for a slate of nominees to potentially be selected for one of these geographically focused roundtables. In response to robust interest in these regional roundtables, the agencies extended the deadline for submissions to December 1, 2021.

Proposed Ballot Initiative to Add Protections to Gallatin, Madison Rivers Reaches Supreme Court

Source: Helena Independent Record, February 17, 2022

By: Sam Wilson

Backers of a proposed ballot initiative that would prohibit new permits for pollution discharging into portions of the Gallatin and Madison rivers are asking the Montana Supreme Court to reverse the state's finding that it amounts to an unconstitutional encroachment on private property.

Citizen Initiative 24 seeks to apply the state's Outstanding Resource Water designation to 35 miles of the Gallatin River, from the Yellowstone National Park boundary to the Spanish Creek confluence, and to about 55 miles of the Madison River, from Hebgen Lake to Ennis Lake. It would also amend the (ORW) designation to prohibit temporary pollution sources. It currently applies to permanent ones.

The office of Attorney General Austin Knudsen on January 28 rejected the proposal, writing in a legal memo that it constitutes a private taking under the Fifth Amendment to the U.S. Constitution, and doesn't provide compensation to potentially affected property owners. The Cottonwood Environmental Law Center, one of the groups backing the measure, filed a petition with the state Supreme Court challenging the finding.

Cottonwood has previously attempted to get the designation applied to the Yellowstone-adjacent stretch of the Gallatin River in 2001, and again in 2018. After the Department of Environmental Quality published its environmental analysis of the proposal, the state Board of Environmental Review declined to move forward with the designation. Knudsen's office cited that decision in its legal memo, writing that the board's "analysis determined an ORW designation effectively prohibits development unless development achieves "zero discharge" in the Gallatin River systems."

Because of the initiative's potential to impact a host of economic and recreational activities in the areas adjacent to an Outstanding Resource Water, TSRA and numerous other businesses and associations submitted comments to the Attorney General regarding the legal insufficiency determination. Those same potentially-affected parties, including TSRA, have joined in submitting an Amicus Brief to the Montana Supreme Court supporting the Attorney General's finding. Briefs were due February 22, 2022. Because the time clock is ticking for collecting voter signatures to qualify the measure for the ballot, the Montana Supreme Court is expected to review the matter and issue its decision in the coming weeks.

Interior Department Launches Interagency Working Group on Mining Reform

Group will convene experts, stakeholders, and public to review and reform mining laws, regulations, and permitting

Source: February 22, 2022 U. S. Department of the Interior Press Release

On February 22, 2022 the Department of the Interior announced that it will launch a new interagency working group on reforming hardrock mining laws, regulations and permitting policies in the United States. The group, which will inform potential rulemaking efforts on mining, will help support President Biden's vision for a whole-of-government effort to promote the sustainable and responsible domestic production of critical minerals.

The formation of the interagency working group follows a recommendation to form a workgroup focused on mining laws and regulations from the 100-Day Reports that were produced under [Executive Order 14017 on America's Supply Chains](#).

"If we're going to meet the needs of the clean energy economy while respecting our obligations to Tribal Nations, Western communities, taxpayers, the environment, and future generations, we need an all-of-government approach and the input of all Americans to make sure mining in this country is sustainable, responsible, and efficient," said **Secretary of the Interior Deb Haaland**. "The 150th anniversary of the Mining Law of 1872 is a great opportunity to take a hard look at how we regulate and permit mining in this country. We look forward to working with our

The working group will bring together experts in mine permitting and environmental law to review existing mining laws, regulations and permitting processes. It will make recommendations for improvements necessary to ensure that new production meets strong environmental and community and Tribal engagement standards during all stages of mine development, from initial exploration through reclamation, while improving the efficiency and outcomes of the permitting process, consistent with the newly released [Biden-Harris Administration's Fundamental Principles for Domestic Mining Reform](#). The working group will also assess the content and effectiveness of mining governance structures in other jurisdictions and identify potential best practices that could be adopted by the United States.

In the coming months, the working group will convene a series of roundtables designed to receive comments and feedback from Tribal Nations, state and local governments, environmental justice groups, labor organizations, the mining industry, environmental and conservation groups, outdoor recreation interests, scientists, legal experts, and others. Additional information about these roundtables, and instructions on how to participate, will be provided in the *Federal Register*.

Lawsuit Against Helena National Forest

Source: Joint Press Release, Capital Trail Vehicle Riders and Citizens for Balanced Use
February 25, 2022

Capital Trail Vehicle Riders Association (CTVA), a non-profit organization advocating for all forms of motorized access to public land by representing motorized recreation enthusiasts throughout Montana, filed a lawsuit in federal court today challenging the U.S. Forest Service's Travel Management Plan which restricts motorized travel in the Helena National Forest located around Helena, Montana. Joining in the lawsuit are Citizens for Balanced Use, a non-profit multiple use advocacy organization, and their members. Three members of the public are also named as individual plaintiffs.

The Helena NF Travel Management Plan Record of Decision was signed on March 1st, 2016 and severely limited the number of forest roads and trails that remain open to motorized use. Non-designated routes, including many that have been open to motorized travel for decades, are now off-limits to the public, including the disabled, handicapped, firewood cutters, campers, hunters, Christmas tree cutters, OHV and motorized enthusiasts and other recreationalists. As time has shown, the Forest Service's public access closure decision affects everyone who uses roads and trails for access to the forest using pickups, cars, 4x4s, motorhomes, motorcycles, quads, tow rigs for equestrian trailers, travel trailers, and others. Thousands of recreationists, sportsmen, and many businesses have been negatively affected by this ill-conceived plan.

For outdoor enthusiasts who have suffered the indignities of the Travel Management Process during the development of the plan and the massive closures that resulted, this lawsuit has 7 claims for relief. Among those legal claims are:

- 1) Inadequate analysis under NEPA in taking a hard look at the direct, indirect and cumulative impacts of its final decision. Cumulative analysis of impacts must include economic, social, and environmental. The Forest Service failed to take a "hard look" at the Cumulative Impacts as required under the Council on Environmental Quality (CEQ) regulations.

2) The failure of the Forest Service to complete site-specific road and trail analysis as required under NEPA in the Travel Management Rule. Broad area closures are more appropriate in Forest Plan revisions where Travel Management Plans are to be done on a site-specific basis. The Forest Service did not complete site specific analysis in the Travel Plan and closed entire areas and trail systems in the Travel Plan. This action then set the stage for the Forest Service to then designate large areas of Recommended Wilderness Areas (RWA) in the recent signing of the Helena Lewis and Clark Forest Plan, stating in the new Forest Plan, that NO motorized use was currently allowed in these new RWAs. The Forest Service had unlawfully closed these areas to motorized use in the Travel Plan.

3) The Forest Service decision was arbitrary and capricious in closing Sweeny Creek year-round to motorized use by not providing the public with an opportunity to comment on the closure during the scoping and comment period. Closing Sweeny Creek without proper public notice violates NEPA by depriving the public and interested parties of a meaningful opportunity to thoroughly consider and to provide adequate public comment on the final decisions that significantly impacts the environment.

4) The 1986 Forest Plan called for maintaining existing developed campgrounds and picnic areas, while emphasizing dispersed recreation opportunities across the forest. The Travel Plan violated these forest-wide standards in closing many dispersed recreation and camping opportunities in the Travel Plan.

Kerry White, Executive Director CBU, stated:

"The Forest Service violated NEPA in closing entire areas to motorized use in the Travel Plan and then used this flawed decision to further designate additional areas of Recommended Wilderness in the 2021 Helena-Lewis and Clark National Forest Management Plan revision and stating no motorized use existed in these areas. This ten-plus year effort by the Forest Service all seems to have been a predetermined agenda to cut off public access to large swaths of the National Forest without proper analysis and without meeting the requirements of law to ensure continued multiple use of the forest." "With the Forest Service using its flawed Travel Plan as a pretext for adopting the 2021 Forest Plan revision, CBU and its members could no longer sit on the sidelines of these public lands access closure efforts. A lawsuit had to be filed to hold the Forest Service accountable for its actions in wrongfully shutting off recreation opportunities at a time when the public interest in outdoor recreation is exploding."

Doug Abelin, representing CTVA, stated:

"Accessibility for the handicapped, disabled and elderly was not considered, nor their needs accommodated. What the Forest Service has done seems like an incredible overreach of what a federal agency can do. The Department of Agriculture has recognized that most National Forest

visitors use motor vehicles to access the National Forest system, whether for recreational sightseeing, camping, hiking, or hunting and fishing. Further, the Forest Service has acknowledged that most visitors to National Forests consider motor vehicle travel to be an integral part of their recreational experience. Yet, here we are having to challenge a Forest Service decision that flies in the face of the agency's own findings. We have to bring fairness back, and we have to insist that it is part of our Cultural Rights to be able to access public land in an environmentally responsible way."

The Helena National Forest is comprised of 2.8 million acres in Central and North Central Montana. The final Travel Plan reduced multiple use access by roughly 45% and closed an estimated 144 miles of road open to motorized use. Access to dispersed camping and recreation was significantly reduced decreasing the public's ability to enjoy our public lands. The closures further diminished the ability for our land managers to actively manage this forest to reduce fuel loads and prevent catastrophic fires that destroy watersheds and habitat, sterilize the soil, and pollute our air.

Senate Confirms Former Montana FWP Director to Lead USFWS

Source: KTVH News, February 18, 2022

Former Montana Fish, Wildlife and Parks (FWP) Director Martha Williams has been confirmed by the U.S. Senate as the new director of the U.S. Fish and Wildlife Service (USFWS). Williams was confirmed by a voice vote. Earlier both Montana Senators Steve Daines and Jon Tester voiced their support for Williams.

Drought Management Plan Meeting Announcement:

The next [Montana Drought Task Force](#) meeting is

March 9, 10:00a.m. - 12:00p.m.

[Zoom registration](#)

[Agenda](#)

For more information about the Montana Drought Management Plan, check out this [Webinar](#) or visit mtdroughtinfo.org.

Upcoming Interim Legislative Committee Meeting Schedule

The schedule of upcoming meetings for interim committees followed by TSRA is listed below. Agendas and other information will be available closer to the meeting date on the committee's website:

Energy and Telecommunications Interim Committee

March 17-18, 2022 - Off Site Tour

Link to Committee Site: <https://leg.mt.gov/committees/interim/etic/meeting-info/>

Environmental Quality Council

March 22-23, 2022 State Capitol or via Zoom

Link to Committee Site: <https://leg.mt.gov/committees/interim/eqc/meeting-info/>

Revenue Committee

April 18-19, 2022 State Capitol or Via Zoom

Link to Committee Site: <https://leg.mt.gov/committees/interim/ric/>

Water Policy Committee

March 15-16, 2022 State Capitol or Via Zoom

Link to Committee Site: <https://leg.mt.gov/committees/interim/wpic/>

TSRA Annual Meeting – Room Block is Open

TSRA will be meeting June 8-9, 2022 at Fairmont Hot Springs Resort. Registration information will be coming later, but those planning to attend are encouraged to make their room reservation before the TSRA room block is filled. June is a busy time of year for the resort so the sooner you make your arrangements the better. To make your reservation you can:

Call the reservation line at 800.332.3272 and ask for the Treasure State Resources Association block or you can make reservations on-line at www.fairmontmontana.com. Once on the website, click the book now tab which will take you to a tab for a group code which is 26237. Or use the link below to submit the group code:

<https://book.b4checkin.com/chameleon/fairmonthotsprings#groupSignIn>

Room rates are \$134 plus tax and resort fee.

TSRA Legislative Showcase Planned for January 3, 2023

It's not too early to start thinking about participating in TSRA's popular Legislative Showcase scheduled for the evening of January 3rd, 2023. Over the years this event has been widely attended by legislators and other officials. It helps set the tone for the upcoming session by highlighting the importance of the various natural resource sectors of our economy, as well as the economic value of motorized recreation. Participants have the opportunity to "showcase" their companies or associations by reserving booth or table space. Others may choose to sponsor the event by helping with food and beverage costs.

Registration information will be available early this fall. If you have any questions about the event, please contact Peggy Trenk at 406-461-9945 or ptrenk@tsria.net

Upcoming Events/Dates:

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.