



TREASURE STATE
RESOURCES ASSOCIATION
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TREASURE STATE RESOURCES ASSOCIATION NEWS

July, 2022

Revenue Interim Committee Completes HJ 6 Coal Severance Tax Trust Fund Study – No Substantive Recommendations Made

Source: Montana Legislative Services Division, HJ 6 Final Report, June 2022

House Joint Resolution 6, passed in the 2021 Legislative Session, called for an examination of the various uses of coal severance tax revenue and what adjustments might be made in light of a decline in coal production. Currently the Montana Constitution requires the Legislature to dedicate 50% of coal severance tax revenue to a trust fund. The Legislature may appropriate the interest earned on the trust fund for various programs, but the principal may only be appropriated with a three-quarters vote of the Legislature.

The committee first looked at how dollars had been spent in the past, as well as what the coal market might look like in terms of export opportunities.

The committee then considered how income to the trust might be expanded by potentially adding tax revenue from other natural resource development or energy generation.

No recommendations were made regarding any of those subject areas.

The topic that generated the most interest was how Montana's investment of the trust fund compares with other states' investments of severance and royalty trust funds. Looking at 12 other states with similar funds, the committee found that Montana's constitutional prohibition on investing the coal severance tax trust fund in corporate stocks was unique, and potentially limited the income that could be generated.

As a result, the committee made a recommendation that the Legislature conduct a study of the investment of the coal severance tax trust fund that would look more closely at the potential to invest in corporate stock and generate a more favorable return to the state. That recommendation may be considered in the 2023 session.

Comment Period on East Boulder Mine Expansion Extended

The Montana Department of Environmental Quality (DEQ) and the Custer Gallatin National Forest (CGNF) are preparing a joint Environmental Impact Statement (EIS) to analyze the potential impacts of a proposed major amendment (Amendment 004) to the approved Operating Permit and Plan of Operations for the East Boulder Mine, an existing platinum and palladium mine operated by Stillwater Mining Company (SMC) in Sweet Grass County, Montana. If approved, Amendment 004 (Project) would authorize construction and operation of the Lewis Gulch Tailings Storage Facility and the Dry Fork Waste Rock Storage Area. Construction of these facilities would provide SMC with the tailings and waste rock storage capacity needed to continue to mine the JM Reef.

Sibanye-Stillwater is a global precious metals producer and recycler and operates the East Boulder and Stillwater Mines, as well as a metal recycling and processing facility in Columbus, Montana.

According to a report prepared by the University of Montana Bureau of Business and Economic Research, the positive annual impacts of Sibanye-Stillwater's Montana operations in Montana based on 2021 economic data are significant. Those include:

- More than \$6 billion contributed to Montana's economy every year
- More than 11,000 permanent year-round jobs across a wide spectrum of industries
- Payment of total state tax and non-tax revenue of approximately \$295 million annually
- Employment for nearly 2,000 employees with an average compensation, before benefits, of more than \$150,000 per year, which is more than double the state average and which results in over \$260 million in total annual payroll expenditures

- Expenditures on purchases of over \$430 million in 2021, including nearly \$255 million of purchases in Montana.

According to information provided by Sibanye-Stillwater, if the proposed amendment is approved the East Boulder operation would be able to continue through approximately 2043. If the expansion is not approved, operations could cease as soon as 2026. The tailings facility meets or exceeds all the engineering design, operating, and closure planning requirements of the Montana Metal Mines Reclamation Act – some of the most stringent requirements in the world.

The East Boulder and Stillwater mines are the only PGM mines in the United States. Both platinum and palladium are on the United States Geological Survey’s 2022 critical minerals list. The Energy Act of 2020 defines a “critical mineral” as a non-fuel mineral or mineral material essential to the economic or national security of the U.S. and which has a supply chain vulnerable to disruption. Critical minerals are also characterized as serving an essential function in the manufacturing of a product, the absence of which would have significant consequences for the economy or national security.

The original comment period on this project has been extended to **July 18, 2022**.

You are invited to provide comments on the proposed Project. Please visit the Project webpage for more information and to submit comments

electronically: <https://www.fs.usda.gov/project/?project=61385> (click on “Comment/Object on Project”). Written comments can be mailed to ATTN: East Boulder Mine Amendment 004 EIS, C/O: Robert Grosvenor, Gardiner Ranger District, PO Box 5, Gardiner, MT, 59030. All comments must be received or postmarked by **July 18, 2022**. For additional information, please contact one of the project coordinators: Craig Jones (DEQ) at crajones@mt.gov or 406-444-0514 or Robert Grosvenor (CGNF) at robert.grosvenor@usda.gov or 406-848-7375 x28.

Editor’s Note: TSRA’s Board of Directors voted to support the proposed project and encourage individual members to consider doing the same.

Ballot Issue Update:

CI-121 – Property Tax Cap

As proposed, CI -121 sought to amend the state Constitution to reconfigure Montana’s tax system by capping residential property taxes. The initiative was widely opposed by a broad spectrum of organizations and individuals, including Montana Governor Greg Gianforte.

CI-121 failed to collect the required number of signatures by the June deadline and won't appear on the ballot. A lead proponent has stated his intent to try again in the next election cycle. Concerns about high property taxes did catch the attention of many in the Montana Legislature and potential legislative solutions may be offered in 2023.

TSRA opposed the measure.

I-191 – Outstanding Resource Water Designation

I-191 would have designated the Gallatin River from Yellowstone National Park's border to the confluence of Spanish Creek and the Madison River between Hebgen and Ennis lakes as "Outstanding Resource Waters".

ORW's are regulated under the most stringent water quality requirements in Montana. As with CI-121, the measure brought together a broad coalition in opposition due to its potential to affect agriculture, highway construction, habitat restoration and a host of other activities important to Montana's economy and quality of life.

I-191 also failed to gather enough signatures to place it on the ballot in 2023. In an interesting twist, supporters tried to qualify for the ballot by gathering signatures on line, a practice that was blocked by the Montana Supreme Court.

As with other failed measures, I-191 could spark another look at both the initiative process requirements and/or current statutory requirements for designating an ORW in Montana.

TSRA was an opponent of I-191, along with many of our member organizations.

U.S. Supreme Court Limits EPA in Curbing Power Plant Emissions

Source: Mark Sherman, Associated Press, June 30, 2022

On Thursday, June 29 the U.S. Supreme Court ruled that the Clean Air Act does not give the Environmental Protection Agency broad authority to regulate greenhouse gas emissions from power plants. Though the decision was specific to the EPA, it was in line with the conservative majority's skepticism of the power of regulatory agencies.

"Capping carbon dioxide emissions at a level that will force a nationwide transition away from the use of coal to generate electricity might be a sensible 'solution to the crisis of the day,'" Chief Justice John Roberts wrote in his opinion for the court.

But Roberts wrote that the Clean Air Act doesn't give EPA the authority to do so and that Congress must speak clearly on the subject. "A decision of such magnitude and consequence rests with Congress itself, or an agency acting pursuant to a clear delegation from that representative body," he wrote.

West Virginia Attorney General Patrick Morrisey, who led the legal challenge to EPA authority, said the “EPA can no longer sidestep Congress to exercise broad regulatory power that would radically transform the nation’s energy grid and force states to fundamentally shift their energy portfolios away from coal-fired generation.”

The court’s decision follows from an original challenge to the Obama Administration’s Clean Power Plan (which set individual state-level emissions reduction targets) and subsequent actions taken by the Trump Administration to reverse the plan.

Impact in Montana?

Source: Tom Lutey, Billings Gazette July 1, 2022

A Supreme Court decision limiting EPA powers to steer energy companies away from coal-fired power plants is unlikely to change the trajectory of Montana energy.

As the Justices noted in their ruling, the Clean Power Plan was never put into practice. The CPP set nearly impossible targets with Colstrip directly in the line of fire. Then Montana Attorney General Tim Fox joined in the challenge that resulted in securing an injunction in 2016.

What remained undecided was whether EPA’s “best system of emissions reduction” was within the powers given to the agency under the Clean Air Act of 1970.

Related Implications?

Source: July 1, 2022 Press Release Issued by the Western Energy Alliance and U.S. Oil and Gas Association

Following the Supreme Court’s ruling on the Clean Power Plan, the Western Energy Alliance and U.S. Oil and Gas Association called on the Securities and Exchange Commission (SEC) to rescind its proposed climate change disclosure rule.

The proposed rule runs afoul of the major questions doctrine authority for SEC. If even EPA doesn’t have such authority in the absence of a congressional mandate, then certainly a financial regulator cannot act like an environmental regulatory agency by requiring GHG emissions reporting and reductions.

“SCOTUS spoke clearly: an agency cannot conjure up regulatory authority without a basis in law. It’s really that simple,” said Kathleen Sgamma, president of the Alliance. “SEC is not an environmental regulatory agency. It cannot be a driver of climate change policy to force a societal transition away from oil and natural gas. It cannot impose a rule that requires companies to reduce their GHG emissions. Congress has passed no law generally for the country requiring a transition away from fossil fuels and certainly not one that enables SEC to use the financial markets to do so. We call on the SEC to cease and desist on the climate change disclosure rule or we’ll see you in court.”

“The Supreme Court fired a clean shot across the bow of the SEC and the Commission should get the message loud and clear,” said Tim Stewart, president of the USOGA. “If EPA doesn’t have the statutory authority to regulate greenhouse gases from power plants, the SEC certainly lacks the authority to regulate greenhouse gases related to financial disclosures. The SEC should just rescind the proposed rule now and put an end to the colossal waste of time and resources that will be spent fighting a rule that will not withstand the scrutiny of the court.”

In a public comment letter to SEC last month, the two trade associations detailed the agency’s lack of statutory authority, expansion of mission from protecting investors to regulating greenhouse gas emissions, and intent to increase the cost of energy.

MTDEQ Moving Forward with Proposed Variance Rule

While the Nutrient Working Group (NWG) and DEQ staff continue to work on rules to implement SB 358, DEQ is moving forward with rulemaking to establish a framework for approving temporary water quality standards variances. The draft rules are expected to be noticed this month to stay on schedule for adoption by October.

The draft rules apply to all potential pollutants, including nutrients. They follow from legislation passed in 2019 that identified EPA criteria for determining whether an individual variance from water quality standards can be granted. Variances can be sought for situations where treatment costs impose a significant economic burden on a community, as was the case with the former general variance from nutrient standards. Seeking an individual variance may not be a practical solution for private discharges given the requirements for disclosing financial and operational information to the public.

Some NWG members are concerned that DEQ may look to the use of variances to resolve permitting challenges rather than finish work on rules to implement SB 358 that requires use of narrative, rather than numeric nutrient standards. DEQ has expressed their commitment to completing the rulemaking effort. The next NWG meeting is July 20 beginning at 8:30 am.

The Water Policy Interim Committee will hear an update on the proposed variance rules during their meeting on July 11th.

US Forest Service Chief Commits to “Right-Sizing” Response to Wildfire Risk

In testimony before the Senate Committee on Energy and Natural Resources on June 9, 2022 U.S. Forest Service Chief Randy Moore highlighted the agency’s plans to tackle the growing risk of wildfire. He stated:

The growing wildfire risk is due to accumulating fuels, a warming climate, and expanding development in the wildland/urban interface. But we know what to do based on decades of science and experience. To protect communities and natural resources, we need to restore healthy, resilient fire-adapted forests.

For decades, we have been putting fuels and forest health treatments into place, but it has been a challenge to coordinate funding and capacity across landownership boundaries at the needed scale. We have tended to place our treatments, where we can rather than where we should. The result is that the scale of our work on the ground has not matched the place and scale of highest risk; therefore, the risk has continued to grow.

In the right places at the right scale, our science-based thinning and burning treatments work to protect communities, infrastructure, and natural resources while helping wildland firefighters respond to wildfires safely and effectively. We now have the science and tools we need to size and place treatments in a way that will truly make a difference for confronting the wildfire crisis. Science tells us that less than 10 percent of the fire-prone areas in the West are responsible for 80 percent of the exposure. That is where our focus will be: on the landscapes where the risk to lives, homes, communities, and natural resources is greatest.

Chief Moore also highlighted specifics from the President's FY 2023 Budget Requests, pointing specifically to \$321 million for hazardous fuels reduction, which will allow the agency to mitigate wildfire risk on 3.8 million acres in high priority and high-risk areas. This investment builds on the hazardous fuels funding the Forest Service will receive through the Infrastructure Investment and Jobs Act in 2023 and supports the objectives of the agency's 10-year wildfire crisis strategy.

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

July 19-20, 2022 State Capitol or via Zoom

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

Environmental Quality Council

July 19-20, 2022 State Capitol or via Zoom

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

Revenue Committee , 2022 State Capitol or Via Zoom

September 15, 2022

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

Water Policy Committee

July 11-12, 2022

State Capitol or Via Zoom

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

TSRA Legislative Showcase Planned for January 3, 2023

TSRA's popular Legislative Showcase is scheduled for the evening of January 3rd, 2023. 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 soon. If you have any questions about the event, please contact Peggy Trenk at 406-461-9945 or ptrenk@tsria.net

Upcoming Events/Dates:

July 18-19, 2022

Montana Coal Council Annual Convention

Northern Hotel, Billings, MT

August 29-31, 2022

Montana Petroleum Association Annual Meeting

Billings, MT

November 16-18, 2022

Legislative Caucus Training

State Capitol, 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.