



ENVIRONMENTAL QUALITY COUNCIL

PO BOX 201704
HELENA, MONTANA 59620-1704
(406) 444-3742

GOVERNOR BRIAN SCHWEITZER
DESIGNATED REPRESENTATIVE
MIKE VOLESKY

HOUSE MEMBERS
DEBBY BARRETT
NORMA BIXBY
SUE DICKENSON
CHRISTOPHER HARRIS
WALTER MCNUTT
JIM PETERSON

SENATE MEMBERS
LANE LARSON
GREG LIND
DANIEL MCGEE
JIM SHOCKLEY
ROBERT STORY
MICHAEL WHEAT

PUBLIC MEMBERS
BRIAN CEBULL
KRIS KOK
BUZZ MATTELIN
DOUGLAS MCRAE

COUNCIL STAFF
KRISTA LEE EVANS, Research Analyst
JOE KOLMAN, Research Analyst
CYNTHIA PETERSON, Secretary
TODD EVERTS, Legislative Environmental Analyst

MINUTES

DATE: September 16, 2005

Room 102, State Capitol Building

Please Note: These are outlined minutes with an audio recording. These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities.

EQC MEMBERS PRESENT

SEN. LANE LARSON
SEN. GREG LIND
SEN. JIM SHOCKLEY
SEN. ROBERT STORY
SEN. MICHAEL WHEAT

REP. DEBBY BARRETT
REP. NORMA BIXBY
REP. SUE DICKENSON
REP. CHRISTOPHER HARRIS
REP. WALTER MCNUTT
REP. JIM PETERSON

EQC MEMBERS EXCUSED

SEN. DANIEL MCGEE

HB 790 SUBCOMMITTEE MEMBERS

REP. RICK RIPLEY (non-voting)
MR. BRIAN CEBULL
MS. CONNIE IVERSEN
MR. DOUGLAS MCRAE
MR. JOE OWEN
MR. JIM ROGERS
MS. LILA TAYLOR

HB 790 SUBCOMMITTEE MEMBERS EXCUSED

SEN. GLENN ROUSH (non-voting)
MR. DAVE WOODGERD
MR. BRUCE WILLIAMS

STAFF PRESENT

KRISTA LEE EVANS, Research Analyst
JOE KOLMAN, Research Analyst
TODD EVERTS, Legislative Environmental Analyst
CYNTHIA PETERSON, Secretary

VISITORS

Visitors' list, [Attachment 1](#).
Agenda, [Attachment 2](#).

COMMITTEE ACTION

- The EQC approved the Study Subcommittee Work Plan.
- The EQC approved the Agency Oversight Subcommittee Work Plan.
- The EQC adopted the EQC Work Plan

CALL TO ORDER AND ROLL CALL

00:00:00 The Environmental Quality Council (EQC) was called to order by Co-Chairman Chris Harris. Chairman Harris thanked the EQC staff for their work.

00:01:13 The secretary called roll for the EQC and the HB 790 Subcommittee (Attachments [3](#) and [4](#)).

0:02:52 The public members of the HB 790 Subcommittee introduced themselves.

AGENDA

ADMINISTRATIVE MATTERS

00:05:11 Chairman Harris commented about the minutes of the previous meeting and requested the minutes be expanded and be approved at the next meeting.

00:05:49 Sen. Story inquired what would ultimately be the official minutes. Mr. Everts explained the official minutes will be the written minutes. However, the EQC has the option of adopting the audio minutes as the official minutes.

- 00:06:31 Sen. Story stated he believed the audio should be the official minutes. Chairman Harris suggested looking at the issue in January.
- 00:08:29 Rep. Dickenson requested the past minutes be edited.
- 00:08:58 Mr. Everts informed the EQC that the National Conference of State Legislatures gave awards for Excellence on two EQC publications, *Alternative Energy Sources to Fuel Montana's Future* and *Montana's Water--Where is it? Who can use it? Who decides?* Mr. Everts recognized the work of Maureen Theisen and Krista Lee Evans.

SUBCOMMITTEE REPORTS

EQC Agency Oversight Subcommittee

- 00:10:19 Rep. Barrett provided a recap of the EQC Agency Oversight Subcommittee meeting on September 15, 2005. The Agency Oversight Committee consists of Rep. Barrett (Co-Chairman), Rep. Harris (Co-Chairman), Sen. Larson, Mr. Kok, and Sen. Shockley. Rep. Barrett explained the Agency Oversight Subcommittee oversees the Department of Environmental Quality (DEQ), the Department of Natural Resources and Conservation (DNRC), and the Department of Fish, Wildlife and Parks (FWP). Agency program and budget overviews were provided by all three departments. Rep. Barrett identified one recurring issue as the DEQ and the funding for the Environmental Impact Statement (EIS) for the Gallatin River. DEQ will incur a federal budget cut \$200,000 for Total Maximum Daily Loads (TMDLs). Another \$50,000 is needed to complete the EIS. The State of Montana is under court order to complete the TMDL process. In addition, meth lab cleanup was addressed by the Subcommittee, and it was reported the program is coming along well.
- 00:14:02 Chairman Harris commented about the success of the meth lab cleanup program and the work of the DEQ. Chairman Harris complimented the work of Ed Thamke and stated Mr. Thamke is doing a great job at contractor certification and public education. Currently, there are approximately 250 contaminated structures on the cleanup list.
- 00:15:16 Rep. Barrett addressed HJR 34, a study which came from legislation sponsored by Rep. Cohenour. Rep. Cohenour gave a presentation on HJR 34. Sandy Olson from DEQ provided a presentation on superfund sites. The Oversight Subcommittee will study state and federal superfund sites. The ASARCO bankruptcy will also affect Montana in many ways. A presentation was also given regarding the Orphan Share Account, and the EQC will receive quarterly updates on SB 489. The Agency Oversight Subcommittee will also monitor the air-quality permitting process at the Holcim plant. The Agency Oversight Subcommittee also addressed agency rule review.

- 00:19:32 Mr. Everts stated there are two petitions before the Board of Environmental Review (BER). The Agency Oversight Subcommittee will be looking at the rules once they are proposed. The Agency Oversight Subcommittee is interested in rules regarding coal bed methane waste water, limitations on mercury omissions, and meth lab cleanup.
- 00:20:50 Rep. Barrett continued and reported the Agency Oversight Subcommittee will be reviewing active environmental and natural resource court cases from all three reporting agencies.
- 00:21:38 Mr. Everts explained the three court cases pending before the Montana Supreme Court stated he will continue to monitor the cases.
- 00:22:08 The Agency Oversight Subcommittee adopted its Final Work Plan ([EXHIBIT 1](#)). Rep. Barrett encouraged comments on the Work Plan from the EQC. The Agency Oversight Subcommittee is contemplating holding an extra one-day meeting to address HJR 34.

EQC Study Subcommittee

- 00:23:01 Rep. McNutt reported on the EQC Study Subcommittee activities. The Study Subcommittee is comprised of Rep. McNutt (Chairman), Rep. Dickenson (Vice Chairman), Sen. Story, Sen. Lind, and Mr. Mattelin. The Study Subcommittee finalized and adopted its Final Work Plan ([EXHIBIT 2](#)). Rep. McNutt invited comments and approval from the EQC. Rep. McNutt explained the Study Subcommittee received a report from DNRC on timber harvesting, trust lands, and a work group that is investigating a different way to do timber sales. The DNRC will report back to the Study Subcommittee. The Study Subcommittee also received an update on the TMDL reassessment and the TMDL program. In addition, the Study Committee received information and discussed the fire audit. The Study Subcommittee also discussed the constitutionality of DNRC's administration of state trust lands. The issue was raised whether the state should be able to use the revenues from leases and timber sales on state trust land to pay administration costs. The Study Subcommittee will take an in-depth look at the issue. The Study Subcommittee also received an update from the Surface Groundwater Working Group. The Study Subcommittee will continue to monitor this group's activities and will review the issue again in January.

House Bill 790 Subcommittee

- 00:33:16 Sen. Wheat reported on HB 790 Subcommittee activities. The first meeting of the HB 790 Subcommittee was August 1, 2005, in Havre, and focused on landowner/industry communications. The key issues to be addressed by the HB 790 Subcommittee include notice requirements, surface use agreements, and bonding. The Subcommittee met again on September 15, 2005, in Helena, and heard from people on both sides of the issue. The next meeting will be in Sheridan, Wyoming, in October.

The Subcommittee will then travel to Sidney in February and to Billings in April. The HB 790 Subcommittee's decision-making process will include attempting to achieve consensus on important issues. In the event a consensus cannot be reached, a two-thirds vote of the HB 790 Subcommittee will be needed to make a recommendation to the EQC. All issues not receiving a majority vote will be reported to the full EQC without recommendation. The Subcommittee has not yet adopted a Work Plan, but will do so at its next meeting.

Public Comment on Subcommittees--None.

00:39:44 Rep. McNutt moved the EQC approve the Study Committee Work Plan. Chairman Harris suggested waiting until the afternoon, and Rep. McNutt withdrew his motion.

HB790 ISSUE: CURRENT OIL & GAS PERMITTING

(Tape 1; Side B)

00:41:51 Mr. Kolman referred the EQC to the flow charts in their packets which provide a broad overview of how oil and gas operations are currently permitted (EXHIBITS 3 and 4).

Montana Board of Oil and Gas Conservation--Jim Halvorson

00:44:05 Jim Halvorson, Petroleum Geologist, Montana Board of Oil and Gas Conservation, submitted and reviewed an outline of the well permitting requirements and process (EXHIBIT 5). Mr. Halvorson stated his outline was specific for any reasonable and usual oil and gas well.

01:00:56 Mr. Rogers asked if a surface use agreement is required before a permit is issued. Mr. Halvorson explained a surface use agreement is not required for a normal oil and gas well. For coal bed methane, a permit is required under the plan of development. Mr. Rogers asked how the cost for a bond for plugging is established. Mr. Halvorson explained the process for setting bond amounts is done by category. If a well is less than 2,000 feet in depth, the bond is set at \$1,500; a 2,000-3,500 foot well would be under a \$5,000 individual bond; a well over 3,500 feet would require a \$10,000 bond; a \$50,000 blanket bond would cover multiple wells. The BER has the authority to either double the blanket bond or limit the number of wells covered by the blanket bond. Mr. Rogers asked about the actual cost paid to plug a well. Mr. Halvorson explained most wells are pre-regulatory wells with significant problems; therefore, the statistics are skewed. Mr. Rogers estimated that plugging a Williston Basin-type well would be approximately \$30,000. Mr. Rogers requested information regarding the cost of plugging wells and how much money has come out of the mitigation fund to plug wells.

- 01:03:33 Rep. Peterson asked if there is a specific letter sent to notify the landowner of intent to drill. Mr. Halvorson explained there is a requirement in statute that the landowner be notified before any activity takes place on the surface. Rep. Peterson asked if the requirement applies to all oil and gas wells, and Mr. Halvorson agreed that it does.
- 01:05:27 Sen. Lind asked if the Montana Board of Oil and Gas (MBOG) publishes permit applications on a website, and Mr. Halvorson replied they are not published on a website until the permits are approved. Sen. Lind suggested the MBOG consider publishing permit applications on the internet.
- 01:06:50 Rep. Bixby asked if comments to the notice become part of the record and whether objections are presented to the MBOG. Mr. Halvorson explained if any comment is received, a public hearing is held.
- 01:08:18 Mr. Cebull asked about the time line for oil and gas permits and the coal bed methane permit approval process. Mr. Halvorson explained the permitting process for coal bed methane as set forth in the BER's Record of Decision following completion of the Environmental Impact Statement says no drilling permits can be approved in a proposed development area until after a plan of development is submitted by the operator, a hearing that approves the plan of development, and then an environmental assessment that sets forth effectively whether the permits can be approved. This process takes months from the onset until the permits are approved. The process is further complicated if there are federal lands or school trust lands involved. For conventional oil and gas wells, with the ten-day notice requirement, Mr. Halvorson estimated the permit approval process at 15-30 days.
- 01:10:38 Rep. Ripley asked about major differences in the permitting process in Montana versus those in North Dakota or Wyoming. Mr. Halvorson stated while there are statutory differences, the programs are fundamentally the same.

Bureau of Land Management--Will Lambert

- 01:12:02 Will Lambert, a Petroleum Engineer with the Bureau of Land Management (BLM), referred to the flowchart submitted earlier and explained the BLM's permitting process and bonding. Mr. Lambert explained the BLM's use of a resource management plan which decides what areas are available for use, operating constraints, and stipulations which will be attached to the leases. Periodic lease sales are held and available parcels are published on the internet and a mailing list is utilized for notification. The operator submits a complete Application for Permit to Drill (APD). The APD includes evidence of bond coverage, a survey plat, a drilling plan, a surface use plan, interim reclamation and final reclamation plans and a water management plan. For split-estate lands, the operator is required to submit certification that an agreement has

been reached with the landowner. APDs are posted for a minimum of 30 days. Pending APDs are currently not posted on the internet due to ongoing litigation, but it is anticipated they will be posted in the future. An on-site inspection is conducted on every proposed location, and landowners are encouraged to attend and voice their concerns. The BLM attempts to accommodate both the landowner and operator. The BLM is required to comply the National Environmental Policy Act. For coal bed methane development, the BLM works with the MBOG and DEQ to do a joint environmental analysis. The environmental analysis results in conditions of approval for permit to drill which become attached to the APD and are subject to enforcement.

(Tape 2; Side A)

BLM's goal is to issue APDs within 35 days, although the coal bed methane process takes at least four months. The BLM utilizes lease bonds for \$10,000, state-wide bonds for \$50,000, and nation-wide bonds for \$150,000, and BLM has authority to raise bond amounts if it determines an operator is an at-risk operator. BLM has not experienced any defaults on bonds in Montana in the past six years. The BLM has regulations in place to address split estates. BLM regulations require the operator to enter into good-faith negotiations with landowners and, in the majority of cases, this is achieved. If an agreement cannot be reached with the landowner, the operator is required to post a minimum \$1,000 bond, which will be used for damages to crops and tangible improvements. The landowner has the right to protest the bond amount set by BLM.

Questions from the Council--None.

Dept. of Environmental Quality--Tom Reid

01:26:59 Tom Reid, Supervisor of Water Quality Permitting, Montana Department of Environmental Quality, stated his main concern was the discharge of pollutants to state waters. Mr. Reid submitted a copy of a power point presentation on DEQ's current oil and gas permitting (**EXHIBIT 6**) and reviewed the exhibit with the EQC.

Questions from the Council

01:58:36 Mr. Rogers asked if the draft CBM general permit had been completed. Mr. Reid explained how the permit no longer fit, so it was abandoned. Mr. Rogers asked who is responsible for monitoring general discharge permits, the frequency of the monitoring, and who is responsible for reporting the excess. Mr. Reid explained there are two levels of permits. Self-monitoring allows the permittee to take the samples and analyze the samples at their expense, and report the results monthly. Monitoring details are contained in the permit. The agency then performs

compliance monitoring and the frequency of compliance monitoring varies.

(Tape 2; Side B)

If there is a non-compliance, the permittee is required to notify DEQ within 48 hours and submit the results, along with an explanation, within five working days. The requirements are in federal regulation, adopted in state regulation, and the rule becomes part of every permit as a standard requirement.

02:04:55 Sen. Shockley asked if each CBM well would be required to have a site-specific permit. Mr. Reid stated a permit would only be necessary if they were discharging to state water. Storm water permits are issued dependent upon the development permit. Mr. Reid explained a general permit is issued for a group of activities that are similar in nature. DEQ will issue coverage under a general permit by issuing a letter of authorization, and there could be a multitude of facilities covered under one general permit.

02:10:06 Rep. Peterson expressed confusion about Mr. Reid's statement that no general permits would be issued. Mr. Reid explained DEQ public noticed a draft general permit for CBM discharges and the permit was modeled after the conventional oil and gas permit. The permit was for CBM facilities that were proposing to discharge to off-channel impoundments and would only discharge to state surface waters during certain-size storm events. The strategy was to keep the discharges out of the surface water by encouraging off-channel impoundments and beneficial reuse. Companies are beginning to treat CBM wastewater, and they are not candidates for general permits.

02:13:09 Mr. Cebull asked Mr. Reid to elaborate on the current permitting processes for other methods of handling water such as off- and on-channel infiltration ponds and surface application irrigation. Mr. Reid explained the bottom line is whether there is a discharge to state waters. If the discharge is excluded, there are no permit requirements. While no permit may be required, the DEQ can require monitoring. However, Mr. Reid emphasized that DEQ cannot order monitoring unless it is aware of the activities.

Dept. of Natural Resources & Conservation--Jack Stults

02:16:02 Jack Stults, Division Administrator, Water Management, Montana Department of Natural Resources and Conservation, also serves on the Yellowstone River Compact Commission. Mr. Stults addressed coal bed methane development and how it affects water rights. Mr. Stults reported CBM discharge is a byproduct and not a beneficial use of water. Mr. Stults submitted a map depicting the location of the Powder River Basin Controlled Groundwater Area (**EXHIBIT 7**). Mr. Stults also submitted a

copy of the Final Order issued in the Matter of the Designation of the Power River Basin Controlled Groundwater Area (**EXHIBIT 8**). Mr. Stults summarized the conclusion in the order that the water byproduct of CBM does not inherently create or require a water right. The Controlled Groundwater Area requires all producers to offer a mitigation agreement to every water right within one mile of any CBM well. This shifts the burden of proof to the producer if a well is impacted. If a well is impacted, the one-mile requirement expands out from the impacted well.

- 02:26:22 Chairman Harris asked Mr. Stults where DNRC receives its authority to require the mitigation agreement. Mr. Stults cited 85-2-506, MCA, as the section that allows for the creation of a controlled groundwater area and the implementation of conditions to protect existing uses of water, both quality and quantity.
- 02:27:15 Mr. Stults provided a copy of the 2004 Annual Report for the Powder River Basin Controlled Groundwater Area Technical Advisory Committee (**EXHIBIT 9**). Mr. Stults explained if someone wants to take water produced from a CBM well and put the water to beneficial use, a permit must be issued by DNRC. To date, only six permits have been issued by DNRC, and those permits were temporary. Mr. Stults highlighted the differences between CBM development in Wyoming versus what is occurring in Montana. Mr. Stults expressed DNRC's concern with the issue of how the broad area will be affected from large amounts of water withdrawal from groundwater. Mr. Stults identified CBM development in Wyoming as a serious issue with DNRC because of surface flows across the border. Mr. Stults identified water quality in the Tongue River Reservoir as another significant issue.

Questions from the Council

- 02:34:42 Rep. Peterson asked if an operator of a CBM well is discharging water and chooses to treat the water and obtain a permit to discharge the water for beneficial use, whether there is anything that would prevent them from filing a water right. Mr. Stults replied there is nothing to prevent them from filing a water right, and they are, in fact, encouraged.
- 02:35:33 Mr. Rogers had questions about water rights being issued to industry and the six permits that were issued. Mr. Rogers asked whether any water right applications had been submitted to market water. Mr. Stults replied DNRC had been approached about water marketing. Mr. Stults explained the statutes contemplate sale of water for specific identified purposes. Mr. Stults explained that there is a principle that a water right cannot be created on speculation, so a general permit for the general sale of water crosses the line of speculation.
- 02:38:01 Mr. Rogers asked about Montana's responsibility once a water right has been established for a marketing scheme after the gas is gone. Mr. Stults explained the water right would terminate when CBM development

terminates. The water right would only be valid for as long as the water is produced as a byproduct of coal bed methane development.

02:39:15 Mr. Rogers asked for an explanation of a temporary water right. Mr. Stults explained temporary water rights are interim permits issued for a limited period of time. A temporary water right can only be issued if it appears there is a potential that all statutory requirements are met.

02:40:12 Mr. Rogers clarified there is no statute limitation on a water right. Mr. Stults confirmed that was correct.

02:40:34 Ms. Iversen asked if quality of the groundwater is also monitored. Mr. Stults replied the water quality is only monitored in the Tongue River Dam. Ms. Evans provided clarification on the beneficial use attached to the water and the associated water right.

(Tape 3; Side A)

Mr. Stults clarified a company would have to transfer the water right to a new use if CBM was no longer being developed. The well would not have to be plugged if the water was still going to be used for a beneficial use.

02:42:10 Ms. Iversen asked if anyone monitors water quality. Mr. Stults responded DEQ and the U.S. Geological Survey monitor water quality. In addition, Mr. Stults thought there was a component of water quality monitoring with the Bureau of Mines and Geology. Mr. Stults directed Ms. Iversen to the U.S. Geological Survey website for information. Mr. Stults suggested Mr. Reid could provide Ms. Iversen with information from DEQ.

02:42:53 Rep. Dickenson asked if the Tongue River Reservoir water-quality issues were related to activities in Wyoming. Mr. Stults responded the majority of the issues are related to activities in Wyoming, and that some development in Montana has impacted water quality. Mr. Stults stated the negotiations on water quality are ongoing between Montana and Wyoming.

02:44:14 Mr. McCrae asked if interim permits are subject to the same criteria for public hearing. Mr. Stults replied they are not.

02:44:33 Rep. Bixby asked about senior water rights being affected by CBM development. Mr. Stults explained it was possible a senior water right holder could have to file for a new water right if they deepen a well and do not stay within the same source. Rep. Bixby asked about the senior water right holder's recourse, and Mr. Stults stated there is jeopardy for an individual water right holder. Mr. Stults suggested the senior water right holder would need to look to the mitigation agreement. Mr. Stults agreed this area is not very tight and does jeopardize the individual water right holder since there is nothing that would allow DNRC to transfer the water right from one source to another.

02:46:48 Sen. Story noted beneficial use is defined in statute and asked if holding water for sale is listed as a beneficial use. Mr. Stults replied it is not explicitly listed in statute. Mr. Stults pointed out that beneficial use is, however, defined as a use that provides a benefit to the appropriator and there are statutes in the Water Use Act that allow for issuance of a water right for the sale of water.

02:48:02 Sen. Story clarified that if a person applies for a permit he has a certain amount of time to develop or the permit expires. Sen. Story suggested that person should have to provide an explanation about the intended use of the water. Mr. Stults agreed. Sen. Story asked if the DNRC would have recourse if a person drilled a well, pumped water, never put the water to use, and never filed a right. Mr. Stults replied the DNRC would have no recourse. Sen. Story was curious about sump pumps in people's basements. Mr. Stults replied in that situation, the people have no desire to have a protectable interest in that water since they are simply moving the water aside. Sen. Story asked about industry collecting and marketing water from discharge wells. Mr. Stults responded the proposal is relatively new, and DNRC would have to be careful not to allow people to speculate in water. Sen. Story wanted to know what the Department's position would be on the time allowed between temporary permits and completion of the projects. Mr. Stults explained the statutes require a time limit to develop and perfect the water right. Therefore, a developer would have to sell the water within a specified period of time

02:54:52 Sen. Lind asked Mr. Stults to comment on proposed commercial uses of water in Wyoming. Mr. Stults explained there is distinct difference between water quality in the Powder River Basin and water quality in the Tongue River Basin that is brought up through CBM development. Water in the Powder River Basin is being used to recharge groundwater aquifers that serve municipalities.

02:56:06 Mr. Mattelin requested clarification on the differences in water rights between surface water and groundwater. Mr. Stults explained groundwater and surface water are treated by statute as a unified resource, and that groundwater and surface water has to be put to a beneficial use, and a water right is required. The difference with CBM is that the water is being discharged and not put to a beneficial use. Mr. Stults explained the oldest water right holder has the right to fully satisfy the full extent of their water right prior to anybody with a younger right. Mr. Stults explained how the statutes are blind as to whether the water is on the surface or under the surface. Mr. Stults identified the problem as being the inability to identify how water behaves and the connection between groundwater and surface water. Mr. Stults explained that DNRC is attempting to find a way to accommodate the interaction between groundwater and surface water in a way that is hydrologically sound.

03:00:35 Mr. Mattelin commented that as long as someone could produce water and not have a water right for a non-beneficial use, then that person

would not be subject to water right laws. Mr. Stults emphasized it is illegal to waste water. Mr. Mattelin asked if surface water could be diverted without a beneficial use. Mr. Stults explained the water can be moved from where it occurs without obtaining a permit for beneficial use.

- 03:02:01 Rep. Peterson requested clarification on the review process for people wanting to sell water and asked when the review process would be completed. Mr. Stults could not provide a definite answer.
- 03:02:55 Rep. Bixby referred to the water being sold to Decker Coal for dust abatement and asked about the long-term effects on the Tongue River. Rep. Bixby suggested DNRC should look at the long-term impacts.
- 03:04:17 Mr. Woodgerd asked for an estimate on the average discharge from CBM wells. Mr. Stults identified the average as being between 12 -15 gpm and noted the number goes down over time.

Public Comment on HB 790

- 03:05:47 Gail Abercrombie, Montana Petroleum Association, provided clarification that CBM discharged water has nothing else in it and is the same water as it was in the ground.

Public Comment on Any Matter Within the EQC's Jurisdiction That Is Not on the Agenda

- 03:06:59 Richard Stevens, Flathead Valley, voiced his concern about what he perceives as misuse and criminal taking of water. Mr. Stevens expressed frustration and stated he would be filing a lawsuit against the State of Montana, the EQC, and Governor Schweitzer.
- 03:12:52 Sen. Shockley agreed Mr. Stevens was treated poorly by the legal system, but noted the judgment is final. Sen. Shockley agreed some of Mr. Stevens' documents were very suspicious; but, Sen. Shockley did not see a legal remedy for Mr. Stevens' situation. Sen. Shockley agreed Mr. Stevens was treated unfairly.
- 03:14:04 Mr. Stevens commented on the EQC's authority and duty to perform judicial review.

Approval of Work Plan

- 03:14:55 Rep. McNutt moved the approval of the Study Subcommittee's Work Plan. The motion carried unanimously by voice vote.
- 03:16:01 Rep. Barrett moved the approval of the Agency Oversight Subcommittee Work Plan.

- 03:16:28 Mr. Cebull asked about oversight of the BER and requested clarification on when the oversight could occur. Rep. Barrett explained once the rule is proposed, the Agency Oversight Subcommittee will review the rule.
- 03:17:19 Mr. Everts provided clarification that the rule would be reviewed once it is published, but that the subcommittee has general oversight.
- 03:17:55 Rep. Barrett's motion carried unanimously by voice vote.
- 03:18:14 Chairman Harris moved adoption of the EQC Work Plan (**EXHIBIT 10**).
- 03:18:50 Mr. Mattelin asked for clarification, and Mr. Everts explained the EQC Work Plan reflects decisions made at the May meeting. Mr. Everts explained the Work Plan can be changed. Chairman Harris' motion carried unanimously.

LUNCH

(Tape 3; Side B)

WATER ADJUDICATION PROCESS OVERSIGHT

EQC letter to Governor Re: Special Session Call

- 00:00:40 Ms. Evans informed the Committee that the letter the EQC requested to be drafted regarding HB 22 had been sent to the Governor's office (**EXHIBIT 11**).

DNRC Update on Claims Examination and Database Progress, Mary Sexton, Director, DNRC

- 00:01:43 Mary Sexton, Director of DNRC, provided DNRC's update on HB 22 implementation and submitted a written progress report (**EXHIBIT 12**).

Questions from the Council

- 00:12:53 Rep. Peterson noticed a discrepancy between DNRC's report and the report from Legislative Fiscal Division (**EXHIBIT 13**). Rep. Peterson pointed out DNRC's report reflected \$334,434 in expenses and Legislative Fiscal Division's report reflected \$395,481 in expenses. Rep. Peterson was curious about the difference. Director Sexton stated DNRC's report was through September 1, 2005, and might not be as current.
- 00:14:18 Ms. Evans referred the question to Barbara Smith, Associate Fiscal Analyst, Legislative Services Division.
- 00:14:42 Ms. Smith explained the difference in the two reports is due to timing, and that her report reflects live data off the system as of September 16, 2005.

- 00:15:08 Rep. Dickenson raised the question of moving the Milk River drainage up in the adjudication process. Mr. Stults explained the Milk River examination is complete, and some decrees have already been issued.
- 00:16:19 Rep. McNutt inquired about document imaging and wondered how that process is progressing. Director Sexton replied they are in the recruiting process and are purchasing equipment.
- 00:17:10 Sen. Larson asked about the \$800 per-year fee assessed to ditch companies. Director Sexton explained the fee can be a maximum of \$800 per year. The fee could be less depending on the number of users. The fee is per user per year, not per water right per year.
- 00:17:58 Ms. Evans clarified the \$800 fee is per billing cycle, which would be \$400 per year.
- 00:18:23 Rep. Peterson asked if DNRC would meet the benchmarks in HB 22. Director Sexton replied DNRC will not only meet the benchmarks, but would probably exceed the benchmarks.

Water Court update on progress, Judge Loble, Montana Water Court

- 00:19:50 Bruce Loble, Chief Water Judge, provided an update from the water court. Judge Loble reported that he received clarification from the Governor's Office on his ability to spend the Governor's allocation of funds. Judge Loble introduced Sandra Palakovich, the new Water Court Administrator. Judge Loble provided an update on the water right adjudication rules now pending before the Montana Supreme Court. There is a potential problem with a period of diversion reservoir remark in the claim examination rules. The water court is working with the DNRC adjudication staff to correct the problem. The proposed water court practice and procedure rules were returned by the Montana Supreme Court, and the water court is seeking a technical writer to assist with the rules. The Supreme Court reported it received a multitude of proposed revisions to the rules. Judge Loble reported that FWP raised the issue of the unauthorized practice of law occurring before the water court. Judge Loble expressed his concern about FWP's allegation.
- 00:28:07 Sen. Shockley pointed out that only the Supreme Court could make an exception regarding the unauthorized practice of law.
- 00:29:14 Judge Loble provided clarification regarding a person representing himself pro se and a corporate officer appearing without counsel.
- 00:29:47 Rep. Shockley asked about water consultants appearing before the water court. Judge Loble explained the water court attempts to keep water consultants away from the practice of law; however, a water consultant in the Bitterroot has filed several prehearing orders. The water court has

written the individual informing him that he cannot practice before the water court.

00:30:30 Ms. Evans referred the EQC members to letters that were sent to irrigation districts, as well as a followup letter to DNRC providing clarification (**EXHIBIT 14**) (**EXHIBIT 15**). Ms. Evans also directed the EQC to a letter sent to the Office of Budget and Program Planning (OBPP) (**EXHIBIT 16**) and the response received from OBPP (**EXHIBIT 17**).

00:31:08 Sen. Story suggested some irrigation districts are not correctly reporting their number of members. Sen. Story is concerned about irrigation districts paying their share.

00:32:09 Director Sexton agreed DNRC is taking the word of irrigation districts regarding their membership. Sen. Story requested the DNRC to monitor the reported membership numbers.

00:34:10 Ms. Smith provided clarification for the discrepancy in numbers related to the expenses. Ms. Smith explained her numbers run through September 15, 2005, and include an extra payroll. In addition, Director Sexton's numbers would not include any adjustments to operations. Ms. Smith's numbers are solely on the fund created by HB 22.

(Tape 4; Side A)

00:35:33 Rep. Peterson asked when the billing cycle would begin and revenues would begin to flow into the system. Ms. Evans responded the initial bills would be sent out in December and will be due in January. Ms. Evans suggested the revenue would be available in March or April.

00:36:45 Rep. Peterson asked if the projected cash flow would carry the process far enough. Ms. Evans added there is \$1.6 million of the Governor's funds available. Ms. Smith agreed and stated there was \$600,000 available in the first year and \$1 million appropriated for the second year. Ms. Smith suggested if cash flow became an issue, the \$1 million could be transferred into the fund.

00:37:43 Chairman Harris asked Judge Loble if he sees any dark clouds on the horizon as far as funding for the water court. Judge Loble thought the whole \$1.6 million was available. Ms. Smith addressed Judge Loble's concern and stated the \$1 million is available.

Public comment on Water Adjudication--None.

BISON AND ELK MANAGEMENT ISSUES

Department of Fish, Wildlife, and Parks--Jeff Hagener

00:39:27 Jeff Hagener, Director, Fish, Wildlife, and Parks, submitted copies of the bison hunt regulations (**EXHIBIT 18**). Director Hagener stated applications are now available on line or in hard copy and are due October 1, 2005. FWP will no longer provide information on where bison are located within the hunting district. Director Hagener explained the use of boundaries regarding hazing and FWP's ability to close the season within 24 hours. All hunters will receive an orientation prior to being allowed to hunt. The orientation will include how to take tissue and blood samples, how to dress out a bison, and how to deal with hunter harassment.

Questions from the Council

00:47:37 Mr. Cebull was curious why the hunt is limited to center-fired rifles only. Director Hagener explained that bison are difficult to bring down and that FWP desires to have clean kills.

00:48:42 Mr. McRae asked FWP was requiring animals to be dressed out at the location of the kill. Director Hagener explained it would be difficult to move the animal without dressing it out. Mr. McRae asked about the transmission of brucellosis by transporting dead animals. Director Hagener referred the question to Mr. Aenue who explained brucellosis can remain active in tissues for a period of thirty days, but not in the meat the hunters would be harvesting. Brucellosis resides primarily in lymph nodes and reproductive tissues.

00:50:32 Rep. Peterson asked about controlling access to the hunting areas to only those with hunting permits. Director Hagener stated they do not have the authority to restrict the public from access to public lands. Rep. Peterson asked if Wardens have authority to stop harassment of hunters. Director Hagener stated there are guidelines regarding harassment of hunters.

00:52:04 Sen. Story asked if the tribal licenses are authorized by statute. Director Hagener agreed they were and added the language says two permits are to be designated to each of the individual tribes, and a tribal member is to be designated by the tribal diabetic program. Sen. Story wondered if the licenses could be auctioned by a tribe to raise money. Director Hagener responded the permits are given to the tribe and tribes do not have to pay for the license. Director Hagener agreed a tribe could auction the permit.

00:54:02 Mr. Mattelin wondered how FWP arrived at the number of 50 for the hunt. Director Hagener explained the intent is to provide a fair hunt opportunity within the numbers that could be sustained by the herd. Director Hagener stated number could be increased.

- 00:56:05 Director Hagener mentioned the Greater Yellowstone Interagency Bison Committee and the need to update the Memorandum of Understanding (MOU). Director Hagener also mentioned the quarantine program being implemented to help contain brucellosis.
- 00:59:38 Rep. Barrett commented it was her understanding there was an MOU and that two Governor's had signed the MOU. Director Hagener stated the MOU had not been signed, and they are hoping it will be signed in October. Montana's Governor suggested changes to the MOU, and those changes are being discussed by the other entities.
- 01:01:15 Rep. Peterson asked what the Governor's recommended changes were, and Director Hagener could not readily review the proposed changes.
- 01:01:51 Mr. Volesky explained the changes proposed by Governor Schweitzer and the Governor's concerns about retaining current risk management tools.

BISON AND ELK MANAGEMENT ISSUES

- 01:03:39 Gary Hammond, Management Bureau Chief, Fish, Wildlife, and Parks, explained the Adaptive Harvest Management plan and provided an update. Mr. Hammond reported brucellosis is prevalent in the Madison Valley, and they are concerned about elk that stay on ranches that do not allow hunting. Mr. Hammond explained for the first time, some elk did not migrate out of the valley. FWP is monitoring the elk in the Madison Valley.

Questions from the Council

- 01:06:52 Sen. Story stated if brucellosis gets into a herd of cattle, the state requires action to be taken and wondered why the state cannot take action when brucellosis detected in an elk herd. Mr. Hammond explained FWP does not have authority to tell a landowner what to do within the confines of private land. Sen. Story asked what FWP would need to gain that authority. Director Hagener stated FWP would need authority to trespass. Sen. Story suggested a legislative directive could be passed to allow FWP deal with the elk on private land. Sen. Story recalled that game farm operations were not allowed to continue because of problems with disease and wondered why the state's diseased animals should be treated any differently even if they are on private land.
- 01:10:55 Sen. Shockley asked if FWP would support a bill that would give FWP the authority to treat sick elk the way sick cattle are treated. Director Hagener stated they would support legislation for the purpose of disease control, but cautioned that he is not an attorney and does not have the details of any proposed legislation.
- 01:12:45 Mr. Aenue, Chief of Research, Fish, Wildlife, and Parks, commented there is some authority already in statute for diseased animals. Mr. Aenue

stressed that they do have a Montana Elk Brucellosis Management Plan in effect. Mr. Aenue pointed out various departments are working on addressing the problem.

01:14:12 Rep. Barrett suggested the elk are the state's wildlife and that legislation to deal with the issue would be appropriate.

01:14:47 Mr. Cebull asked about the late season Gardiner hunt. Mr. Hammond cited low calf production in the Gardiner area, and explained most of the low calf production is due to grizzly bears rather than wolves. In addition, the current drought situation has resulted in low populations.

01:16:37 Mr. Cebull asked for a status report on wolf management.

(Tape 4; Side B)

Director Hagener explained Idaho, Montana, and Wyoming had to meet a recovery goal of the 30 breeding pairs of wolves for the three states and those criteria were met in 2002. In addition, each of the states had to submit an approved Wolf Management Plan. All of the states have completed their Wolf Management Plans. Montana's and Idaho's plans were approved, but Wyoming's plan was not approved. Director Hagener provided a history of wolf management in Montana and other states.

01:25:39 Rep. Peterson asked about the management of wolves on the Helle Ranch in the Dillon area (**EXHIBIT 19**). Director Hagener explained that he believes the problem has been addressed to everyone's satisfaction. Director Hagener stated FWP is not looking to take over control activities of wolves. Director Hagener explained the Halles were allowed a shoot-on-site permit for any wolf within their sheep allotment. Wildlife Services has a shoot-on-site permit for anywhere in the allotment. The Halles were also given receivers, and there are two collars on the pack of wolves.

01:28:41 Rep. Barrett appreciated FWP working with the Halles. Rep. Barrett would like to hear about wolves at the January meeting. Rep. Barrett expressed concerned about the wolves that are not collared in the Madison Valley and referred to the letter she received from Diane Rice (**EXHIBIT 20**). Director Hagener was not aware of any specific problems in the Madison Valley, and stated it was his understanding the wolves in the Madison Valley had collars or were killed because they had mange.

Questions/Public Comment--None.

PUBLIC COMMENT ON ANY MATTER NOT CONTAINED IN THIS AGENDA AND THAT IS WITHIN THE JURISDICTION OF THE EQC

01:32:32 Richard Stevens, Flathead Valley, asked the Council to review his case, and submitted a copy of the lawsuit he intends to file against Governor

Schweitzer, the EQC, and the Attorney General ([EXHIBIT 21](#)). Mr. Stevens requested copies of his exhibit be distributed to the EQC.

OTHER BUSINESS--None.

INSTRUCTIONS TO STAFF--None.

ADJOURN

01:36:08 The meeting adjourned at 2:40 p.m.