



ENVIRONMENTAL QUALITY COUNCIL

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

GOVERNOR BRIAN SCHWEITZER
DESIGNATED REPRESENTATIVE
MIKE VOLESKY

HOUSE MEMBERS
CHAS VINCENT--Chair
SUE DICKENSON
JULIE FRENCH
MIKE MILBURN
CARY SMITH
FRANKE WILMER

SENATE MEMBERS
BRADLEY MAXON HAMLETT--Vice Chair
JIM KEANE
RICK RIPLEY
JIM SHOCKLEY
MITCH TROPILA
BRUCE TUTVEDT

PUBLIC MEMBERS
JEFF PATTISON
BRIAN CEBULL
DIANE CONRADI
MARY FITZPATRICK

COUNCIL STAFF
JOE KOLMAN, Research Analyst
SONJA NOWAKOWSKI, Research Analyst
HOPE STOCKWELL, Research Analyst
CYNTHIA PETERSON, Secretary
TODD EVERTS, Legislative Environmental Analyst

MINUTES

Approved May 24, 2011

September 13, 2010

Room 172
State Capitol Building

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

An electronic copy of these minutes and the audio recording may be accessed from the Legislative Branch home page at <http://leg.mt.gov>. On the left-side column of the home page, select *Committees*, then *Interim*, and then the appropriate committee.

To view the minutes, locate the meeting date and click on minutes. To hear the audio recording, click on the Real Player icon. Note: You must have Real Player to listen to the audio recording.

COMMITTEE MEMBERS PRESENT

REP. CHAS VINCENT, Chair
SEN. BRADLEY MAXON HAMLETT, Vice Chair
SEN. RICK RIPLEY
SEN. JIM SHOCKLEY
SEN. MITCH TROPILA
REP. SUE DICKENSON
REP. JULIE FRENCH
REP. MIKE MILBURN
REP. CARY SMITH
REP. FRANKE WILMER
MR. BRIAN CEBULL
MS. DIANE CONRADI
MS. MARY FITZPATRICK
MR. JEFF PATTISON

MEMBERS ABSENT

SEN. JIM KEANE
SEN. BRUCE TUTVEDT
MR. MIKE VOLESKY

STAFF PRESENT

JOE KOLMAN, Research Analyst
SONJA NOWAKOWSKI, Research Analyst
HOPE STOCKWELL, Research Analyst
BARBARA SMITH, Legislative Fiscal Analyst
LEANNE KURTZ, Research Analyst
CYNTHIA PETERSON, Secretary
TODD EVERTS, Legislative Environmental Analyst

Visitors

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

COMMITTEE ACTION

- The EQC voted to approve the July 22, 2010, EQC minutes.
- The EQC voted to send a letter to Governor Schweitzer soliciting support for biomass production.
- The EQC voted to approve the Department of Environmental Quality's amendment to LC 7000 (see Exhibit 3, letter dated August 19, 2010, from F.H. Stoltze Land and Lumber Company).
- The EQC voted to co-sponsor the Water Policy Interim Committee's legislation regarding use of stream beds of navigable rivers.

CALL TO ORDER AND ROLL CALL

00:00:01 Rep. Chas Vincent, Chairman of the Environmental Quality Council (EQC), called the meeting to order at 10:00 a.m. The secretary called roll ([Attachment 3](#)).

AGENDA

ADMINISTRATIVE MATTERS--Mr. Everts

Adoption of July 22 EQC Minutes

00:01:02 Sen. Ripley moved to approve the July 22, 2010, EQC minutes. The motion carried unanimously by voice vote.

EQC Budget Review

00:01:12 Mr. Everts reported a remaining balance of \$32,242.16 in the budget before the September meeting. Mr. Everts asked the EQC members to complete staff evaluations.

LEGISLATIVE FINANCE COMMITTEE REFERENCE BOOK PROJECT AND 2013 BUDGET DISCUSSION

Sen. Carol Williams and Sen. Rick Ripley

00:02:40 Sen. Ripley provided information regarding the Reference Book--Status Update prepared by the Legislative Finance Committee (**EXHIBIT 1**). Sen. Ripley stated revenue projections are actually much lower than originally anticipated, so the Legislative Finance Committee (LFC) is meeting with policymakers to make interim committee members aware of the difficulties coming next session.

Amy Carlson and Barb Smith, LFD

00:05:05 Barb Smith, Legislative Fiscal Division (LFD), directed the EQC to information she provided regarding budget basics and revenue estimating (**EXHIBIT 2**).

00:22:38 Sen. Ripley asked whether the five percent base budget reductions that were submitted by the agencies were prioritized. Ms. Smith responded the Department of Natural Resources and Conservation's (DNRC) and the Department of Fish, Wildlife & Park's (FWP) were in priority order.

00:24:39 Ms. Smith continued reviewing the contents of Exhibit 1.

00:32:36 Chairman Vincent wanted to know the amount of Pittman Robertson dollars Montana receives. Ms. Smith recalled the amount was approximately \$30 million per biennium which constitutes approximately 20 percent of the budget. Ms. Smith explained that the majority of Pittman Robertson dollars is fish and wildlife support money.

00:33:41 Ms. Smith reviewed the LFD, Legislative Budget Options, contained in Exhibit 1.

Public Comment

- 00:43:35 Mr. Cebull asked about returning primacy to the U.S. Environmental Protection Agency (EPA) and whether the assumptions for cost savings include an assumption for fewer people. Ms. Smith agreed the total estimate would have to include lost jobs.
- 00:44:33 Rep. Milburn asked Ms. Smith to explain "current level of service." Ms. Smith explained current level of service is an ongoing service of state government that the Legislature chose to fund on a one-time-only basis. Rep. Milburn asked whether consideration was given to things like misuse of unemployment insurance benefits. Ms. Smith explained options could still be added. Rep. Milburn identified public confusion between what the Governor is saying and what Ms. Smith is saying. Rep. Milburn wondered what the definition is of a "balanced budget." Ms. Smith explained it is her job to let legislators know that the session will be challenging. Ms. Smith explained that outflow cannot be greater than inflow, and revenues and expenditures must be balanced.
- 00:47:54 Sen. Shockley asked about raiding the Old Fund. Ms. Smith referred Sen. Shockley to the reference book.
- 00:48:13 Rep. Wilmer explained that the state budget is balanced through July 2011 and asked if the EQC was discussing how to balance the next fiscal year and revenue projections. Ms. Smith agreed they were discussing FY 2012-13 and that Montana's budget is currently balanced.
- 00:49:10 Sen. Ripley asked what other states are doing to balance their budgets. Ms. Smith stated the information is available on the website. Ms. Smith explained there have been changes made to grade K-12 budgets, as well as changes to Medicaid and state employees.
- 00:51:10 Chairman Vincent asked about giving primacy back to the EPA for air and water quality and wondered how that would impact Montana. Tom Livers, Deputy Director, Department of Environmental Quality (DEQ), stated there would be staffing reductions, and the EPA would need to run all air and water programs. Mr. Livers explained the DEQ believes it would have to be all or nothing, and all programs would need to be transferred as opposed to just one program.
- 00:56:00 Sen. Hamlett suggested if the federal government took over the programs, fees and fines could be increased. Mr. Livers agreed it would be likely that fees and fines would increase. Sen. Hamlett asked if Montanans are better off negotiating with state rather than federal agencies. Mr. Livers responded yes.
- 00:57:22 Rep. French asked if the wages and travel expenses for the Board of Oil and Gas are paid from oil and gas income. Ms. Smith responded yes. Rep. French requested information regarding how much of the money has been used for well plugging. Ms. Smith offered to obtain the information.

- 00:59:02 Chairman Vincent suggested taking a special look at the effects of budget changes in other states. Ms. Smith stated they are attempting to identify issues that occurred in other states.
- 01:00:40 Sen. Hamlett asked Ms. Smith to provide the percentage of the general fund compared to the percentages for state special revenue and federal government funds. Ms. Smith identified ten percent, or roughly \$400 million. Sen. Hamlett wanted to know how much of the money that comes into Montana is federal, state special revenue, and general fund. Ms. Smith offered to obtain the answer.

Public Comment

There was no public comment.

Questions & Discussion--EQC

- 01:02:18 Rep. French requested FWP to bring the numbers regarding Pittman Robertson money and a general overview of what the money is used for. Ms. Smith indicated she would provide the requested information.
- 01:02:59 Mr. Everts explained the Legislative Council's efforts at integrating its fiscal and audit staff with policy committees.

Council Action, if any and directions to staff

There was no action taken.

UPDATE ON ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE--Ms. Nowakowski

- 01:05:16 Ms. Nowakowski explained the Energy and Telecommunications Interim Committee (ETIC) held its last meeting September 10, 2010. The ETIC did not reach consensus on a bill draft for a revised State Energy Policy. The ETIC did approve three bill drafts, including a bill to change the process for reviewing the State Energy Policy.
- 01:10:18 Rep. Wilmer questioned the bill draft LC numbers. Ms. Nowakowski explained the reassignment of LC numbers in the formal LAWS system. Rep. Wilmer asked about amendments, and Ms. Nowakowski explained the one change to the ETIC bill drafts.
- 01:11:38 Chairman Vincent asked whether the ETIC had made any comments on the EQC's bill draft. Ms. Nowakowski stated there were no comments.

UPDATE ON WATER POLICY INTERIM COMMITTEE--Mr. Kolman

- 01:12:00 Mr. Kolman explained the Water Policy Interim Committee (WPIC) held its last meeting September 8-9, 2010. Legislation approved by the WPIC included a bill requiring mixing zones for new subdivisions to be contained within the

subdivision, and bills on water marketing, attorney fees, and continuation of the Ground Water Investigation Program.

01:21:06 Rep. Dickenson asked if the WPIC took any action regarding exempt wells. Mr. Kolman agreed there were discussions, but the WPIC did not suggest any legislation or findings. The WPIC did agree that the Ground Water Investigation Program should continue and that the program will provide data which would enable decisions to be made regarding exempt wells.

01:22:27 Chairman Vincent addressed water banking and asked whether the owner would be required to do a hydrogeologic assessment regarding mitigation. Mr. Kolman explained the process would be like any other change for a new use and a consumptive use analysis would be done ahead of time. The completion period would be issued by the department.

(LUNCH)

HJR 1--STUDY OF BIOMASS

LC 7000--BER Rulemaking for Chippers and Grinders

Staff Overview of Public Comment

03:01:58 Ms. Nowakowski reviewed the public comment received on LC 7000 (**EXHIBIT 3**). Ms. Nowakowski noted most of the public comment requested that LC 7000 be expanded.

Public Comment

03:05:22 Ellen Simpson, Montana Wood Products Association, agreed with exempting wood chippers and other associated forestry equipment and their engines. Ms. Simpson saw a need to cover emerging technology and make it clear the pieces of equipment are portable and located in the forests.

Council Questions and Executive Action

03:08:43 Ms. Fitzpatrick asked if LC 7000 would permit the equipment to operate in a suburban area. Ms. Nowakowski agreed.

03:10:25 Charles Homer, Air Permitting Compliance Manager, DEQ, explained LC 7000 would remove the DEQ's authority to regulate chippers and grinders.

03:11:46 Mr. Cebull moved to approve LC 7000 as originally drafted.

03:12:03 Rep. Wilmer moved LC 7000 be amended (**EXHIBIT 4**).

03:13:31 Mr. Cebull asked whether "forested land" is defined in statute. Rep. Wilmer replied she was uncertain. Ms. Nowakowski responded that forested land is not defined in statute and suggested the statute would need a definition.

- 03:14:53 Sen. Ripley asked Rep. Wilmer to withdraw her motion until forested lands could be defined. Rep. Wilmer agreed.
- 03:16:14 Mr. Cebull recalled the whole purpose of the legislation was to make it easier to remove dead timber and turn it into energy and clear the Wildland Urban Interface (WUI). Mr. Cebull stated he was uneasy with making the process more difficult.
- 03:18:07 Rep. French said she did not understand that chippers and grinders would be used in city limits and thought the legislation was to address chippers and grinders in forested areas. Chairman Vincent recalled that chippers and grinders would be moving so frequently that the regulations should not be onerous. Rep. French asked if they were already chipping within city limits. Chairman Vincent responded yes.
- 03:21:08 Rep. French asked if, as LC 7000 is written, an operator would have to notify the DEQ if they were moving their equipment into a city. Mr. Homer explained as written, chippers and grinders would be exempt from air quality rules and would not have to obtain a permit or notify DEQ of any change in location.
- 03:24:20 Rep. Dickenson recalled logging operations and cleanup operations would already be in progress before the chipper is brought in.
- 03:25:45 Sen. Shockley recalled the bill was intended to address forested land.
- 03:26:11 Rep. French asked Rep. Wilmer if she would be willing to postpone her motion. Rep. Wilmer agreed and withdrew her motion.
- 03:27:30 Sen. Hamlett moved the DEQ amendment to LC 7000 (see Exhibit 3, letter dated August 19, 2010, from F.H. Stoltze Land and Lumber Company). The motion carried unanimously by voice vote. Ms. Nowakowski was requested to seek a definition of "residential area" or "forested area."
- 03:32:36 Mr. Cebull asked whether the concern was with noise or air quality. Rep. Wilmer responded the concern was with both noise and air quality. Mr. Cebull wondered whether local ordinances addressed noise. Mr. Homer agreed the DEQ regulated air quality and would not regulate noise.
- 03:33:42 Sen. Ripley stated if grinders are not exempted, chainsaws could be used instead, which would pollute more and generate more noise.

LC 7002--Separate Renewable Energy Credits from RPS

Staff Overview of Public Comment

- 03:34:43 Ms. Nowakowski explained the public comment received regarding LC 7002.

Public Comment

03:37:46 John Fitzpatrick, Northwestern Energy, thought the EQC should not move forward since the federal government is considering federal legislation regarding renewable energy credits.

Council Questions and Executive Action

There were no questions.

Biomass Draft Letter to Governor

03:39:54 Rep. French stated she was satisfied with the letter to Governor Schweitzer regarding biomass (**EXHIBIT 5**).

Council Questions and Executive Action

03:42:02 Rep. Dickenson asked about the reference in the letter to future budget cuts. Ms. Nowakowski stated there have been some cuts but was uncertain about the time line for implementing budget cuts. Ms. Nowakowski stated she would make sure the information regarding budget cuts is accurate.

03:43:40 Chairman Vincent complimented Ms. Nowakowski on the letter. Ms. Nowakowski clarified there is a definition of "forest land" in Title 15. In addition, Ms. Nowakowski stated the stakeholders had researched what is happening with permitting for chippers and grinders in other states.

03:45:16 Rep. French moved the acceptance of the letter to Governor Schweitzer. The motion carried unanimously.

03:45:42 Ms. Nowakowski read the statutory definition of "forest land."

03:46:49 Ms. Simpson agreed to provide information from other states regarding exempt equipment.

(BREAK)

HJR 30--STUDY OF FIRE SUPPRESSION

Summary on Study Activity--Ms. Kurtz

04:03:29 Leanne Kurtz, Research Analyst, Legislative Services Division, reviewed the EQC's activities during the past interim and provided an update on the WUI rulemaking (**EXHIBIT 6**).

Update on 2010 Fire Season--DNRC

04:09:39 Bob Harrington, Forestry Division Administrator, DNRC, spoke about Montana's past fire season and depicted the fire season as moderately mild. Mr. Harrington

identified the Stillwater County/Carbon County area as Montana's biggest problem. As of September 10, 2010, \$1.8 million had been expended on fire activity, and Mr. Harrington predicted it would be unlikely that Montana would break the projected \$3 million. Mr. Harrington reported that the DNRC does expect more fire activity yet this season.

Update on Fire Costs

04:14:05 Ms. Smith reported that through August 27, 2010, the state has paid \$2.2 million for fire suppression, \$300,000 of which will be reimbursed from federal agencies.

Public Comment

There was no public comment.

Questions from the EQC

04:15:06 Mr. Cebull asked about the controlled fire started by the U.S. Forest Service and whether the state was liable for fire suppression or damages from the fire. Mr. Harrington responded the state is not liable. Mr. Harrington stated Montana did incur some expenses with aviation initial attack, as well as some incidental expenses, but most of those costs will be reimbursable.

04:16:21 Sen. Ripley believed that U.S. Forest Service personnel in Lincoln were taking a lot of blame and that it sounded like one person was shouldering the blame even though a multi-step process is followed regarding controlled burns. Mr. Harrington could not speak for the U.S. Forest Service and stated the final review report had not yet been made public. Mr. Harrington stated that the District Ranger in Lincoln is one of the finest rangers in the nation and has a lot of support.

04:19:03 Rep. Dickenson asked about building standards and if the authority for encouraging fire-safe buildings would be up to local governments. Ms. Kurtz stated the Department of Labor and Industry rules tie directly to local subdivision regulations, and the rules are a list of construction techniques that experts in the field believe are successful in mitigating fire hazards.

04:20:23 Mr. Pattison stated he has concerns about the overlap between agencies and asked for an update and, if there is a meeting date planned, what would be discussed. Mr. Harrington responded there was an agency pre-season meeting and, if the season has been active, there will be a post-season meeting. Mr. Harrington explained the meeting consisted of the renewal of the Montana Cooperative Fire Agreement as to how wildland fire issues will be resolved. Mr. Harrington explained the agencies also meet to give local governments an opportunity to meet with state and federal officials. Mr. Harrington suggested there are areas where communication could be improved.

04:26:07 John Hagenruber, U.S. Forest Service, believed the U.S. Forest Service Supervisor for the Davis Fire would be present at any time.

- 04:27:17 Maggie Dougherty regional Aviation Officer, explained the board meeting is November 8-10, 2010, and that subcommittees would also meet at that time.
- 04:29:07 Chairman Vincent asked for an update on aviation issues. Ms. Dougherty explained they met with the DNRC and aviation issues will be presented to the groups, including the issue of additional authorization for U.S. Forest Service personnel transport on the DNRC aircraft.
- 04:30:38 Chairman Vincent recalled past discussions regarding the benefits of wildfire. Chairman Vincent did not understand how the Davis Fire controlled burn was conducted in such poor conditions. Chairman Vincent recalled past discussions emphasizing the importance of coordination and cooperation between the agencies. Chairman Vincent wondered whether the state should be pushing harder to have federal partners look at state and local plans with regard to fire burning restrictions.
- 04:33:42 Mr. Harrington stated the DNRC would wait until the final report comes out, and that the report will be discussed between the state and federal agencies. Mr. Harrington thought the relationships between the agencies were strong and that there were federal efforts to develop a new approach for wildland firefighting.
- 04:38:52 Sen. Hamlett expressed concern about the lawsuit against fire retardant use and the implications that lawsuit holds for initial attack efforts. Mr. Harrington suggested lack of retardant use would diminish the ability to fight fires. Mr. Harrington stated that he would stay abreast of the lawsuit.
- 04:41:17 Ms. Dougherty explained the U.S. Forest Service has been moving forward to study the effect of air retardant drops on potentially endangered species. Ms. Dougherty stated air tankers respond to less than five percent of the fires annually with retardant. Ms. Dougherty explained that multiple retardants are utilized for fire suppression to support the ground firefighters. Sen. Hamlett was curious what the difference would be in the cost between present retardant and new fire retardant products. Ms. Dougherty identified delivery as the delineating cost.
- 04:45:16 Sen. Hamlett asked whether the DNRC mostly used retardant to protect structures and people. Mr. Harrington replied retardant is used whenever warranted.
- 04:46:33 Sen. Ripley requested the EQC return to the agenda item if the regional U.S. Forest Service Supervisor became present at the EQC meeting.

LC 8002--USE OF NAVIGABLE RIVERS

Review of Draft--Mr. Kolman

- 04:47:05 Mr. Kolman provided an explanation of the public comment received on LC 8002 ([EXHIBIT 7](#)), and reviewed a new version of LC 8002 as amended by the WPIC ([EXHIBIT 8](#)).

Public Comment

- 04:53:41 Mary Sexton, Director, DNRC, reviewed DNRC's suggestions regarding LC 8002.
- 05:00:08 Krista Lee Evans, Senior Water Rights Coalition and Association of Gallatin Agricultural Irrigators, thought it was critical to include the requirement that navigability for title be determined by a court of competent jurisdiction. Ms. Evans explained the *Daniel Ball* decision is the case law that is applied to determine navigability for title. Ms. Evans thought it was important to remember the bill applies to a footprint made on a river bed and not to oil and gas development. Ms. Evans also emphasized that navigability for recreation is also not addressed by LC 8002. Ms. Evans did not believe the bill requires the board or the department not to meet their fiduciary responsibility to the trust.
- 05:03:43 John Youngberg, Montana Farm Bureau, agreed with Ms. Evans. Mr. Youngberg explained how Montana Farm Bureau members are looking for clarity in the law.
- 05:05:11 Mr. Kolman explained the differences between the WPIC's version and the EQC's version of LC 8002.

Council Questions and Executive Action

- 05:06:02 Sen. Shockley asked whether the log test would be used to determine navigability or whether those streams already determined to be navigable by the log test would now have to be litigated to determine navigability. Director Sexton explained the list was compiled using evidence of navigability but admitted the list was not comprehensive. Sen. Shockley asked what would be considered navigable. Director Sexton referred Sen. Shockley to the definition of "navigable" in the *Daniel Ball* case. Sen. Shockley addressed Section 1(b) and asked whether the use of a weir would be acceptable. Director Sexton stated she was not able to address specific situations. Mr. Kolman directed Sen. Shockley to page 2 and the definition of "footprint."
- 05:13:46 Mr. Cebull was concerned about removing language that would have protected property owners from being required to pay compensation for diversions over the past years. Director Sexton explained it is not the intent to go back and collect fees and the concern was to not consider past property taxes as compensation. Mr. Cebull wondered if it was the DNRC's position that it would be unconstitutional. Director Sexton clarified it was not viewed to be unconstitutional, but it was the opinion that since property taxes do not come to the DNRC, property taxes cannot be considered compensation.
- 05:16:09 Mr. Everts explained this was a past legal issue, and the WPIC chose to leave the language in.
- 05:16:46 Sen. Ripley addressed the new Section 2 and wondered how the amount of \$150 was determined for fair-market value. Director Sexton explained \$150 is the minimal payment for an annual lease and that the amount was not set in stone.

- 05:18:19 Sen. Shockley wondered if the problem could be solved if the taxes paid in the future related to the river bottom were diverted to the trust for fair rental value. Director Sexton responded there should not be any taxes paid if it is a navigable river. Director Sexton believed the proposed legislation would provide consistency in calculating fair-market value.
- 05:22:34 Mr. Cebull wondered what would happen if the state tried to go backward. Ms. Evans explained her groups are also concerned about the possibility of back payments. Ms. Evans noted it is the general fund's responsibility to make the trust whole.
- 05:24:12 Rep. French commented about concerns voiced by irrigators about structures in the river. Rep. French also recalled concerns that as property was being taxed as personal property, that the taxes will no longer be paid to the county. Rep. French was concerned about taking money away from the general fund and local governments. Rep. French stated there were payments made to the state by landowners in accordance with the law and now that is being changed. Rep. French believed the issue warranted further discussion.
- 05:26:15 Sen. Ripley added there is also a question because property has been sold. Sen. Ripley thought there would be numerous concerns and issues.
- 05:26:52 Sen. Hamlett addressed the historical use component in subsection (b) and how it might conflict with the Land Board's ability to do its job. Director Sexton noted the Land Board has the final word and the final discretion in determining whether an easement, lease, or license is given, and that constitutional right cannot be taken from the Land Board. Sen. Hamlett thought the proposal may result in someone not being able to use their water right. Director Sexton stated it is a land use issue for the structure in the river and thought that was different than a water right. Sen. Hamlett commented if someone has had a structure in the river and is not granted an easement or land use license, they could lose their water right. Director Sexton thought it would be up to the Land Board's discretion. Sen. Hamlett asked Director Sexton if she believed language in statute is inadequate to protect the state of Montana. Director Sexton suggested changing "may" to "must." Sen. Hamlett asked whether money is paid to the public schools through property taxes. Director Sexton agreed and outlined the difference in funds from state trust land and funds from private property taxes. Sen. Hamlett addressed keeping the trust whole, and explained that SB 507 was trying to address structures already in a navigable river and people did not pay property taxes below the low water mark. Sen. Hamlett asked whether Director Sexton believed the state and the Land Board want that practice to continue. Director Sexton stated the state wants people to be able to continue to use the structures in the rivers and summarized the issue as how to pay for the use. Director Sexton noted the Land Board has fiduciary land trust responsibilities. Sen. Hamlett asked how Director Sexton would calculate a charge for a footprint on a navigable river and whether that would be fair and just compensation. Director Sexton stated either an easement or land use license would be used and that those provisions are contained in the proposed legislation. Sen. Hamlett recalled the charge for the footprint would be determined by calculating the footprint

under the low water mark and taking half the value of the adjoining upland land. Director Sexton clarified that is how the state has been doing the calculations. Sen. Hamlett commented that when you have a structure in a river that has not been determined to be navigable, there is no charge to individuals. If there is a later determination that the river is navigable, the bill would allow people to have an easement to their structures in perpetuity. Director Sexton explained 8 of 10 easements and land use licenses issued in the past are on rivers that have not been adjudicated.

- 05:40:18 Rep. French asked if Section 1(d) was removed, whether the Land Board could go back to all of those structures and ask for compensation. Director Sexton agreed that the DNRC would have that ability, but the practicality is that the DNRC does not know where those structures are located. Director Sexton suggested it would not be worth the money to attempt to go back. Director Sexton could not imagine that scenario actually occurring, but admitted the possibility would exist. Rep. French wondered why the Land Board would not go back to the state and say taxes were paid to you on land we owned and why the Land Board would not attempt to recoup that money. Director Sexton thought it would be an almost impossible task. Director Sexton supposed it would be better to move forward in a logical way. Rep. French thought the practical solution would be to leave in subsection (d). Director Sexton emphasized no compensation has been received. Rep. French commented that someone was compensated. Director Sexton clarified the DNRC did not receive any compensation.
- 05:45:22 Chairman Vincent asked Mr. Everts to explain the definition of navigability. Mr. Everts provided the definition of navigability for title. Mr. Everts identified the question as whether title passed to the state and noted that would be a factual determination.
- 05:49:53 Sen. Hamlett observed the taxes still went to the schools. Sen. Hamlett also emphasized that SB 465 states a navigable river is one that is determined to be navigable by a court of competent jurisdiction.
- 05:51:26 Rep. Milburn moved to add the EQC as a co-sponsor to Sen. Hamlett's bill.
- 05:52:16 Rep. Milburn's motion carried unanimously.
- 05:53:36 Nancy Peak, Deputy Forest Supervisor, Helena National Forest, offered to answer questions regarding the Davis Fire. Sen. Ripley asked Ms. Peak to explain the thought process behind the decision to approve the controlled burn. Ms. Peak explained the Davis Fire went from a prescribed burn, to an escaped fire, to a suppression fire. Ms. Peak identified the specific objectives for the Davis Fire prescribed burn. Ms. Peak explained the findings and recommendations from the investigation would be released soon. Sen. Ripley wanted to know how the controlled burn got approved on a red-flag day. Ms. Peak stated all the documents were turned over to the investigating team for review.

- 05:58:21 Mr. Cebull acknowledged the specifics of the fire were still under investigation and asked how the process generally works for prescribed burns. Ms. Peak explained the authority is delegated from the Regional Forester and then delegated down to the line officer at the local level. Ms. Peak explained \$2 million is a gauge for suppression costs to keep a prescribed burn as a prescribed burn.
- 06:01:00 Chairman Vincent identified air inversion issues and windows for controlled burns and asked whether those were factors. Ms. Peak explained that with every prescribed burn there is a scientific approach that is utilized and listed in the burn plan. Ms. Peak stated that, typically, there are two burn windows: spring and fall. Ms. Peak explained that the decisions are gauged by the window and the conditions on the ground. Chairman Vincent asked if weather conditions were taken into consideration. Chairman Vincent explained the topic was discussed in the Fire Suppression Interim Committee, and that Mr. Tidwell had assured the FSIC that it would never happen. Ms. Peak clarified that it would not be out of the realm of possibilities to burn in August and that the windows are pretty short. Ms. Peak assured the EQC that all information and decisions were being reviewed.
- 06:04:33 Sen. Hamlett wanted to know what the exact window of opportunity was for the Davis Fire. Ms. Peak did not have the particulars and stated the details were contained in the burn plan specifics in Missoula. Ms. Peak stated that once the review results are released, the report will be a public document. Sen. Hamlett requested the EQC be placed on the mailing list.

(RECESS)

CI2244 1145mtxb.