# Montana Environmental Quality Council

September 13

2017

The EQC typically tackles a broad array of topics over an interim and always meets the mandated deadline to finish its work. This success is rooted in the thoughtful consideration members give to planning the interim workload. The draft work plan is integral to meeting the EQC goals.

Work Plan for the 2017-18 Interim



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#### Introduction

This is the final work plan for the Environmental Quality Council (EQC or Council) for the 2017-2018 interim. This document includes:

- A description of how the EQC allocated staff time and prioritized its work
- Tasks for each item of study
- A draft timeline

#### **Resource Allocation**

There is approximately **1 FTE of staff time (2,880 work hours)** available to conduct the work assigned to the EQC and the additional work the EQC votes to undertake. These priorities – and the amount of staff hours devoted to a specific topic – are determined by the Council. The Council allocated .9 FTE.

# **Work Plan Topics**

### Study Resolutions assigned to the EQC by Legislative Council

 SJ 5 – Study Threats to Mining and Burning of Coal and Consequences

#### Legislative Poll Ranking: 7

**Background:** Economic and environmental factors, as well as other considerations, are affecting coal production and use in Montana. All but a fraction of the coal mined in Montana is eventually converted to electricity, either in-state, out-of-state, or out-of-country. Coal's contribution to U.S. electrical generation, however, continues to decline from its position of once providing half of the nation's electricity. Taxes on coal, despite decreases from historical highs, remain a major source of revenue for Montana. Severance and gross proceeds taxes generated more than \$81 million to state and local governments in FY2016, according to the Department of Revenue.

**Study approach:** The study will explore the future outlook of coal markets and the coal industry in Montana. It also will investigate the consequences of reductions in the mining and burning of coal and related impacts. Staff will review changes in the energy industry and analyze use of coal related taxes. Further work could include economic impacts of reduced coal production, analysis of other western states, and exploration of alternative revenue options.

**Staff time allocated:** .03 FTE (86 hours).

#### Study timeline:

- January 2018 Staff analysis of coal tax collection and distribution in Montana.
- March 2018 Staff overview of Montana coal industry and market. Panel discussion with stakeholders.

#### 2. SJ 9 – Study of Chronic Wasting Disease (CWD)

#### Legislative Poll Ranking: 18

**Background:** CWD is a disease of the nervous system that can affect deer, elk, and moose, for which there is no known treatment, and that is typically fatal. CWD is found in all of the states and provinces surrounding Montana, except Idaho. CWD is contagious and can be transmitted freely within and among free-ranging populations, even by animals that are not yet clinically ill. CWD has an extended incubation period before the onset of clinical signs. Prevention is the best defense as managing CWD in free-ranging populations is extremely difficult.

The DFWP's previous CWD plans (2005, updated in 2014) gave broad direction for managing CWD, but no specifics. The DFWP formed an internal team that is almost finished developing specific, action-oriented surveillance and management plans to look for and respond to CWD if it is detected here. The DFWP recently convened a 12-member citizen advisory panel to help review the plans and provide feedback, as well as to help predict and anticipate public sentiment and determine how to inform the public about potential CWD-oriented management actions.

Staff time allocated .05 FTE (144 hours)

**Study timeline:** Staff will follow progress of CWD action response plan by DFWP and the work of the citizen advisory council. Staff and DFWP will provide background and updates to EQC as timely throughout the interim.

# **Studies Assigned by Legislation**

#### **HB 661** –Study on MSU laboratories

**Background:** This bill creates a subcommittee that includes two members selected by a vote of the EQC, two members of the Legislative Finance Committee (LFC), and two members of the Economic Affairs Interim Committee (EAIC). Representatives are balanced between parties. The study is directed by the LFC and must examine the long-term future of and possible efficiencies to be gained from state-supported labs on the MSU campus in Bozeman, including, the Veterinary Diagnostic Lab, the Wool Lab, the Wildlife Lab, and the Seed Lab. With a \$61,250 appropriation, the subcommittee shall develop and analyze at least three economically viable proposals for each lab including:

- necessary infrastructural changes and upgrades, their costs, and potential funding sources:
- organizational changes and any financial efficiencies they would create; and
- statutory changes needed to facilitate proposed infrastructural or organizational changes.

Legislators appointed to the subcommittee include Sen. Eric Moore and Rep. Kelly McCarthy (LFC), Reps. Brad Hamlett and Kerry White (EQC), and Sens. Lea Whitford and Gordon Vance (EAIC).

Staff time allocated: .025 FTE (72 hours).

**Study timeline:** EQC staff will provide background and support to the subcommittee. Staff and the EQC's subcommittee members will provide regular updates to the EQC.

### Other Issues Proposed for EQC Study

#### 1. State Parks Program Evaluation

**Background:** This topic proposal grows out of ongoing legislative discussions about the solvency and management of Montana's state park system. The Parks Division at the DFWP is responsible for conserving the scenic, historic, archeological, scientific, and recreational resources of the state for public use and enjoyment. The division includes 55 parks and 13 affiliated lands. Other programs administered by Parks include motorized and non-motorized trail grants and local government recreation grants.

In the 2011-2012 interim, the EQC studied ways to improve the management, recognition, and coordination of state parks and outdoor recreation and heritage resource programs at the request of the Legislature (HJ 32, 2011). As a result, the <u>EQC proposed</u> and the 2013 Legislature approved the creation of a State Parks and Recreation Board (HB 24).

The Board subsequently adopted a 5-year state parks and recreation strategic plan, a lands policy, and a policy for the classification and prioritization of park resources, conducted a peer analysis of neighboring state park systems, and commissioned facility condition inventories that identified more than \$18 million in infrastructure needs.

Policy questions about the management of state parks persist, including about revenue and expenditures, reconciliation of financial encumbrances on park lands, and the status of the parks system within the organization and culture of the DFWP. In 2017, the Legislature considered two bills that would have restructured the administration of the parks system (HB 324, which was vetoed by the governor, and HB 454, which failed second reading). The 2017 Legislature also required that in 2019 the entire division budget, including the base, will be reviewed by the joint appropriations subcommittee on natural resources and transportation.

It is likely the Legislative Audit Division will examine these topics in a performance audit that is underway. Rather than duplicate this effort, the EQC will conduct a more comprehensive review of the Parks Division and the policy and strategy frameworks adopted by the Board, learning about individual programs and examining whether changes are needed to enhance their efficacy, efficiency, and coordination and collaboration with other programs in and outside of the DFWP.

Staff time allocated: .1 FTE (288 hours).

#### Study timeline:

- **September 2017** Staff summary of state park administration, history, and grant programs; review of 2011-12 EQC study; updates on infrastructure projects funded by the 2017 Legislature and an ongoing performance audit of state parks
- January 2018 Update on Parks in Focus effort requested by governor; analysis of Pittman-Robertson and Dingell-Johnson federal funding sources and uses; overview of management plans for individual parks, enforcement, and land administration related to funding sources; update on performance audit

- March 2018 Review in detail the advisory councils established for Parks Division programs in compliance with HB 142, 2011; update on performance audit
- Remainder of interim Updates on Parks in Focus and performance audit
- Further research and agenda items as directed by EQC

#### 2. Invasive Species Program Evaluation

**Background:** Three bills passed by the 2017 Legislature require reports to the EQC regarding invasive species. <u>HB 622</u> requires the newly-created Invasive Species Council and the Upper Columbia Conservation Commission to report annually to the EQC. <u>SB 363</u> requires the departments of Agriculture, Fish, Wildlife, and Parks, Natural Resources and Conservation, and Transportation to report at least biannually to the EQC on activities and expenditures related to implementation of aquatic invasive species laws. A report on <u>HB 434</u>, which allows the use of Pittman-Robertson funds received by the DFWP to combat noxious weeds is required once every two years.

In addition to the reports, the EQC may want to examine Montana's approach to all types invasive species.

Staff time allocated: .03 FTE (86 hours).

#### Study timeline:

- September 2017 Update on implementation of HB 622 committees and AIS inspection station and monitoring outcomes. Receipt of statutorily required agency reports on AIS-related activities. EQC provides direction in 'next steps' for information to be gathered for January 2018 discussion of AIS program funding sources.
- January 2018 Discussion of existing AIS program funding mechanisms and future funding sources. EQC to provide direction for this discussion at September 2017 meeting.
- March 2018 Continued discussion of AIS program funding mechanisms and update on upcoming AIS monitoring and inspection station season. Preview of HB 434 report to Legislature on use of P-R funds to combat noxious weeds.
- Remainder of interim ongoing updates on AIS funding, monitoring, and inspection stations
- Further research and agenda items as directed by EQC

#### 3. Hard Rock Mining Program Evaluation

**Background:** The EQC conducted a program evaluation last interim. This interim will include an update to the evaluation and presentations from selected applicants and others, subject to EQC direction in September 2017.

**Staff time allocated:** .05 FTE (144 hours)

#### Proposed study timeline: (Needs EQC direction in September 2017)

- **September 2017 -** Staff provides overview of hard rock mining laws and rules. DEQ provides overview of current issues.
- January 2018
  - o Tintina Black Butte copper project
- March 2018
  - o Montana Resources
  - o Stillwater Mining Corporation
- May 2018
  - o Hecla mines
    - Troy
    - Montanore
    - Rock Creek
- July 2018
  - o Crevice
  - o Lucky
- September 2018
  - o Golden Sunlight
  - o Montana Tunnels
- Further research and agenda items as directed by EQC.

#### 4. Fire-related topics

- The 2017 Senate Natural Resources Committee sent a letter to the EQC asking the council to examine the use of local resources in initial wildfire attack. The committee asked the EQC to:
  - Review the findings of the 2007-2008 Fire Suppression Committee;
     September 2017
  - Review agreements in other states, including Oregon, used to authorize local initial response to fires on federal lands; Meeting TBD
  - Compare and analyze initial attack success rates between state and federal fire agencies; Meeting TBD
  - Review and analyze fire suppression fees in different geographic regions of the state. September 2017
- Update on the good neighbor policy related to sustainable forest management required by <u>SB 342</u>. **September 2017**
- Examine recruitment and retention of firefighters, including issues of pay and
  workers compensation. Examine how firefighters are dispatched and general updates
  on rural and wildland firefighting issues. Many of these issues may be touched on by
  the Local Government study of <u>SJ 21</u>. EQC will receive updates and may request
  additional information. March 2018

Review issues raised during the session by <u>HB 587</u>, which would have created a
process for the DNRC to establish standards and a process for a nongovernmental
representative to conduct a prescribed burn. A person conducting the burn according
to standards would not be liable for damages caused, except in the case of
negligence. **Meeting TBD**

**Staff time allocated:** .05 FTE (144 hours)

#### 5. Study Natural Heritage Program

**Background:** The Legislature in 1983 created the Montana Natural Heritage Program as part of the Natural Resource Information System (NRIS) of the Montana State Library. As defined in law, the program acquires information related to the flora, fauna, and biological community types in the state. The program works with DEQ, DNRC, FWP, the departments of transportation and agriculture, the university system, as well as the Forest Service, the Bureau of Land Management, the U.S Fish and Wildlife Service and the Natural Resources Conservation Service. Data acquired by the program are used in environmental reviews by the private and public sectors for permitted activities including mining, timber sales, subdivisions, utility and pipeline corridors, oil and gas developments, and highway construction.

Staff time allocated: .025 FTE (72 hours).

#### Study timeline:

**September 2017** - Overview of program by staff. Presentation by NHP. Panel discussion from users of NHP.

**January 2018** – Discussion of NHP funding and options.

• Further research and agenda items as directed by EQC.

# 6. Study the creation of a report on the status of Montana's Natural Resources.

**Background:** Montana law requires the EQC to:

- gather timely and authoritative information concerning the conditions and trends in the quality of the environment, both current and prospective, analyze and interpret the information for the purpose of determining whether the conditions and trends are interfering or are likely to interfere with the achievement of the policy set forth in 75-1-103, and compile and submit to the governor and the legislature studies relating to the conditions and trends;
- review and appraise the various programs and activities of the state agencies, in the light of the policy set forth in 75-1-103, for the purpose of determining the extent to which the programs and activities are contributing to the achievement of the policy and make recommendations to the governor and the legislature with respect to the policy;
- develop and recommend to the governor and the legislature state policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the state;
- conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality; and

 document and define changes in the natural environment, including the plant and animal systems, and accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes.

The EQC meets these obligations in different ways. As always, how the EQC fulfills its duties is up to the members and their priorities, but in this case the availability of staff and staff expertise also plays a role.

**Study Approach:** The report on the status of Montana's Natural Resources would be in addition to, not a replacement of, existing efforts to fulfill the statutory obligations, including the online repository of trend information.

The EQC decides what to include in the report. The report could document changes in the natural environment, including the plant and animal systems. The work could accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes.

Staff would compile existing reports specific to Montana that contain information pertinent to the proposed report. Research would be done on similar reports produced by other states or organizations to use as a template for the Montana report.

The EQC would decide what additional information is needed and whether staff or an outside organization would do that work. Much of the approach would depend on the work contributed by the outside group and more direction provided by the EQC.

**Staff time allocated:** .1 FTE (288 hours).

**Study timeline: September 2017 –** Staff provide overview of EQC history with trends and indicators. Summarize similar undertakings by other entities. Provide options for EQC to direct rest of study.

# EQC agenda items through the interim

These topics will be addressed through agenda items at one or more meetings with a minimum of staff time.

#### 1. Echinococcus, a genus of tapeworm.

Echinococcus is a genus of tapeworm. Two species of Echinococcus (Echinococcus granulosus, and Echinococcus multilocularis) are known to exist in Montana wildlife. An article published in the Journal of Wildlife Diseases in 2009 describes the prevalence of E. granulosus in wolves and ungulates in Idaho and Montana. In 2010, the EQC discussed the tapeworm as an <u>agenda item</u> on wolf management.

June 2017

#### 2. Grizzly bear delisting

The 2017 Legislature passed <u>HJ15</u> supporting the delisting of Montana's grizzly bear population. The resolution requests specific actions from the U.S. Fish and Wildlife Service and the Montana congressional delegation.

Meeting time allocated: September 2017, and as requested by EQC.

# 3. Update on financial aid programs within DNRC and Department of Commerce

Presentation from the DNRC <u>Financial Bureau</u>, the <u>Reclamation and Development</u> <u>Grants Program</u>, the <u>Renewable Resource Grant and Loan Program</u>, as well as <u>Irrigation development grants</u>. Also update from the <u>Treasure Statement Endowment Program</u> (TSEP).

Meeting time allocated: TBD

# 4. Update from Forest Service on insurance issues for volunteers working on federal land

Presentation from U.S. Forest Service on insurance issues for volunteers who work on federal lands.

Meeting time allocated: TBD

#### 5. Mule Deer Permits

The 2017 Legislature considered but did not pass <u>SB171</u>, which dealt with the issuance of mule deer permits in certain areas where it was determined harvest should be limited. FWP will provide an overview of the issue. EQC will determine if follow-up or action is desired.

March 2018

#### 6. Sanitation Reviews for Subdivisions, HB 507 (2017)

The 2017 Legislature passed <u>HB507</u>, which revised sanitation reviews for subdivisions. DEQ will update EQC on developments

September 2017 May 2018 September 2018

# 7. Waiver from Migratory Bird Treaty Act to reduce depredation by raven or black-billed magpie on sage grouse

In 2015, the legislature created the Montana Sage Greater Sage-Grouse Stewardship Act. The law directs the <u>Montana Sage Grouse Oversight Team</u> to seek a depredation order from the United States fish and wildlife service under the Migratory Bird Treaty Act of 1918, as necessary, to control common raven (Corvus corax) or black-billed magpie (Pica hudsonia) to reduce depredation on sage grouse populations and their nests. EQC will be updated on directive.

January 2018

#### 8. Overviews of BLM, Forest Service, USFWS, and EPA

Several federal agencies oversee areas of interest to the EQC, including the Forest Service, the BLM, U.S. Fish and Wildlife Services, and the EPA. Agencies will be invited to provide an overview of timely issues and to take questions.

Meeting time allocated:

September 2017 – USFWS January 2018 March 2018 May 2018 July 2018 September 2018

# **EQC Statutory Duties and Obligations**

### **EQC General Statutory Duties**

**Source/authority:** Sections 2-15-1514, 2-15-1523, 75-1-201, 75-1-208, 75-1-314, 75-

10-111, 75-10-743, 76-22-118, 77-1-801, 77-2-366, 77-5-301, 82-2-

701, and 87-1-901, MCA

**Background:** Following the establishment of the EQC in 1971, the Legislature has occasionally authorized the Council to play a role in some specific programs or activities of state government. These directives are in addition to the more general oversight authorities for environmental programs and policies found in section 75-1-324, MCA. This general authority is arguably sufficient to address the specific programs and policies. However, and particularly for new environmental programs or policies, the Legislature has called upon the EQC to act as its liaison with the executive branch.

The 2017 Legislature approved the following additional statutory reports to the EQC:

- that the DEQ provide an annual summary of sanitation review procedures adopted under Title 76, chapter 4, and whether statutory changes are needed;
- that the FWP report specific information about mountain sheep harvested from the Tendoy Mountain herd by September 1 of each even-numbered year;
- that the FWP report on implementation of the Wildlife Habitat Improvement Act before September 1 of each year preceding a regular session;
- that the newly-created Invasive Species Council and the Upper Columbia Conservation Commission report their activities annually;
- that the Libby asbestos superfund liaison report by July 1 of each year; (May 2018)
- that the Department of Agriculture, FWP, DNRC, and MDT report at least biannually on their activities undertaken and expenditures incurred related to implementation of the aquatic invasive species laws.

The EQC prioritizes these duties as the need for specific oversight changes with interest, time, and circumstance.

- **2-15-1514**, **MCA**, requires the participation of a Legislative Services Division employee on the natural resource data system advisory committee. This has typically been assigned to the EQC staff on an as needed basis.
- **2-15-1523**, **MCA**, requires the participation of a representative of the Legislative Services Division on the Groundwater Assessment Steering Committee. This has typically been assigned to the EQC staff on an as needed basis.
- **75-1-201** and **75-1-208**, MCA, state executive agencies are required to submit copies of environmental review documents prepared in accordance with the Montana Environmental Policy Act (MEPA) to the EQC. A project sponsor may appear before the EQC at a regularly scheduled meeting to discuss issues regarding an executive agency's environmental review of the project.
- **75-1-314**, **MCA**, states the Departments of Environmental Quality, Agriculture, and Natural Resources and Conservation are required to report specific compliance and enforcement information to the EQC on a biennial basis. This is the result of a 1997 EQC interim study.

- **75-10-111**, **MCA**, requires the DEQ to circulate solid waste management and resource recovery plans to the EQC for its review.
- **75-10-743**, **MCA**, requires DEQ to report to the EQC before July 1 of each year regarding expenditures made and locations of facilities addressed through the use of orphan share funds for remedial action.
- **76-22-118**, **MCA**, requires the Montana Sage Grouse Oversight Team to report annually to the EQC on activities undertaken, including but not limited to money and real property received, grants awarded, and compensatory mitigation activities.
- **77-1-801**, **MCA**, requires the DNRC to report to the EQC on road closures and restrictions on state lands on or before September 1 of each year preceding a regular session.
- **77-2-366**, **MCA**, requires that the DNRC submit a detailed report of the land banking program to the EQC by July 1 of even-numbered years. The DNRC must also provide a summary report to the EQC on or before July 1 of each year on sales of state land cabins or home sites.
- **77-5-301** *et. seq.*, **MCA**, is the Streamside Management Zone law. The statement of intent for the enabling legislation requires the DNRC to periodically evaluate and report on the implementation of the act to the EQC.
- **82-2-701**, **MCA**, requires the Montana Bureau of Mines and Geology to report to the EQC and the Education and Local Government Interim Committee on its investigation of the state's sand and gravel deposits within one year of starting its investigations.
- **87-1-901**, **MCA**, establishes that the DFWP must report annually to the EQC on gray wolf management and conservation, including the tracking, hunting, trapping, and taking of gray wolves.

**Staff time allocated:** .2 FTE (576 hours)

# **EQC General Agency Oversight Statutory Duties**

**Source/authority:** 2-4-402- 412, 5-5-202, 5-5-211, 5-5-215, 5-16-101 through 5-16-105, and 75-1-324, MCA.

**Background:** Under MEPA (75-1-324), the EQC has broad statutory oversight authority and has historically used that authority to review agency activities on an issue by issue basis as the need arises. In 1999, 2001, and 2003, the Legislature further expanded and defined the EQC's oversight authority to include draft legislation review, administrative rule review, program evaluation, and monitoring the functions of the DEQ, DNRC, and DFWP. The EQC's oversight of these agencies includes entities that are attached to these agencies.

The Legislature's actions in 1999 required a more systematic approach to agency oversight, especially in terms of administrative rule review. Pursuant to 2-4-402 through 412, MCA, the Council has the authority to request records; make recommendations for adoption, amendment, or rejection of a rule; institute, intervene in, or otherwise participate in rulemaking proceedings; review the conduct of administrative proceedings; request a

legislative poll; request an economic impact statement on a rule; or object to violation of authority for a rule.

The EQC is also required to review proposed draft legislation from each of the departments within its jurisdiction. At the end of the interim, the EQC schedules time to review this draft legislation.

The 2011 Legislature required all interim committees to review the statutorily established advisory councils and required reports of their assigned agencies and to make recommendations regarding the retention or elimination of those advisory councils and required reports.

Traditionally, the EQC has one or more agency oversight issues on the agenda for each meeting. The Council has also historically allocated the necessary resources to respond to issues as they arise.

**2-4-402 through 2-4-412, MCA**, set out the administrative rule oversight powers and duties of the EQC.

**5-5-202**, **5-5-211**, **and 5-5-215**, **MCA**, discuss the organization and duties of interim committees.

**5-16-101 through 5-16-105, MCA,** discuss the composition of the EQC.

**75-1-324**, **MCA**, contains the general oversight and policy review and recommendation responsibilities of the EQC. Members are urged to review it in detail. The EQC is directed to gather information concerning conditions and trends in the quality of the environment; to review state programs and activities to enhance or maintain environmental quality; to conduct studies, analyze proposals, and make recommendations concerning environmental issues; and to generally act as the Legislature's source of information and advisor on environmental policy issues and direction.

Staff time allocated: .1 FTE (288 hours).

# **EQC Educational Publications Obligations**

Source/authority: 75-1-324, MCA

**Background:** The EQC has historically used its broad statutory authority to produce high quality, easy to understand, objective, nonpartisan, educational publications in addition to the study reports produced during the interim. These educational publications are well regarded and are constantly requested by the general public, legislators, state and federal agencies, other states, and industry and conservation groups. Several EQC publications have received national awards.

With some exceptions, the EQC's educational publications become outdated every interim as a result of legislative changes or administrative changes in the particular areas of law or rule that the publication addresses. Sometimes the updates require minimal time and effort, others are more intensive.

Staff time allocated: .02 FTE (58 hours)

### 2017-2018 Work Plan Timeline

[Note: This timeline is provided to give you an idea of the timeline that each study will need to fit into in order to complete the work on time. It is subject to final approval of the EQC meeting dates. The timeline shows the last date for completion of certain items.

| June 29-30, 2017      | <b>EQC Meeting.</b> Interim work plan prioritization and EQC organizational meeting. Selection of studies and topics.   |
|-----------------------|---|
| September 27-28, 2017 | <b>EQC Meeting.</b> Adoption of detailed work plans for each selected study or topic.   |
| January 17-18, 2018   | EQC Meeting.  |
| March 21-22, 2018     | <b>EQC Meeting.</b> If public comment is desired on an EQC report, the contents of the <i>draft</i> report should be determined by this date. [May be earlier for some studies.]  |
| May 30-31, 2018       | <b>EQC Meeting.</b> Last date to suggest revisions to a <i>draft</i> document if a 30 day public comment period is desired. Comments received from the public will be compiled by staff and distributed to the EQC 1-2 weeks before the July 25-26, 2018 meeting. |
| July 25-26, 2018      | <b>EQC Meeting</b> . Decision on recommendations, any proposed legislation, final report contents.  |
| September 12-13, 2018 | <b>EQC Meeting</b> . Final approval of recommendations, reports, proposed legislation. Select bill sponsors. Develop strategy. Review agency bill draft requests.   |

Council interim work must be completed September 15, 2018.

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