EXHIBIT 4
DATE 2-7-07
HB 304

Environmental Quality Council
Water Policy Issues 1995-2006

Statutory duties

The EQC assumed these statutory duties from the Water Policy Committee in 1995.

85-2-105. Environmental quality council — water policy duties.

(1) The environmental quality council shall meet as often as necessary, including during the interim between sessions, to perform the duties specified within this section.

(2) On a continuing basis, the environmental quality council shall:

(a) advise the legislature on the adequacy of the state's water policy and on important state, regional, national, and international developments that affect Montana's water resources;

(b) oversee the policies and activities of the department [DNRC], other state executive agencies, and other state institutions as those policies and activities affect the water resources of the state; and

(c) communicate with the public on matters of water policy as well as the water resources of the state.

(3) On a regular basis, the environmental quality council shall:

(a) analyze and comment on the state water plan required by 85-1-203, when filed by the department;

(b) analyze and comment on the report of the status of the state's renewable resource grant and loan program required by 85-1-621, when filed by the department;

(c) analyze and comment on water-related research undertaken by any state agency, institution, college, or university;

(d) analyze, verify, and comment on the adequacy of and information contained in the water resources data management system maintained by the department under 85-2-112; and

(e) report to the legislature as provided in 5-11-210.

(4) the legislative services division shall provide staff assistance to the environmental quality council to carry out its water policy duties.

Between 1995 and 2005, section 85-2-105, MCA, was amended as follows:

SB 72 (1997) changed water resources data management system to water information system and changed department to natural resource information system

HB 548 (1999) added "assist with interagency coordination related to Montana's water resources" to the statutory duties.

Other statutory duties related to water policy

Section 2-15-1514, MCA, (enacted 1985) requires participation of a Legislative Services Division (changed from EQC to LSD in 1997) staff person on the natural resource data system advisory committee.

Section 2-15-1523, MCA, (enacted 1995) requires participation of a representative of the Legislative Services Division (changed from EQC to LSD in 1997) on the ground water assessment steering committee.

Section 77-5-301, *et seq.*, MCA. (enacted 1991) The legislative statement of intent requires the DNRC, along with the technical committee charged with advising the department on

implementation of the streamside management zone laws, to evaluate and report on the implementation of the act to the EQC.

Section 85-2-281, MCA, (enacted 2005) requires the Water Court and the DNRC to report to the EQC on the progress of the adjudication process until 2020.

Section 85-2-350, MCA, (enacted 2005) requires the Clark Fork River Basin Task Force to report annually to the EQC.

Section 85-2-436, MCA, (enacted 1989) requires the DFWP, in conjunction with the EQC, to conduct and coordinate a study of water leasing.

Reports produced

Report on Water Policy to the 55th Legislature. 1996

*A Guide to Montana Water Quality Regulation.*1997. Updated in 2002.

Wading into Montana Water Rights. 1997. Updated in 2000.

Montana Department of Fish, Wildlife and Parks' Water Leasing Study. Environmental Quality Council Final Report to the 56th Legislature. 1998

Montana's Water Policy—1997-1998. An EQC Communique to the Montana Legislature. 1998.

Montana's Revised Water Quality Monitoring, Assessment, and Improvement Program (HB 546 and TMDLs in Practice) : an EQC Oversight Report to the Montana Legislature. 1999

Water Policy 2000. Report to the 57th Legislature of the State of Montana. 2000

Coal Bed Methane and Water Policy in Montana 2002. 2002

Water Rights In Montana. update and integration of DNRC and EQC reports. 2004. Updated in 2006.

Zortman and Landusky Mines: Water Quality Impacts. 2004

Montana's Water—Where is it? Who can use it? Who decides? 2004

Water Policy in Montana. 2006

Major issues analyzed and who addressed

1995-1996
No water policy subcommittee appointed: the EQC addressed these issues.

- Received updates on the State Water Plan; Renewable Resource Grant and Loan

Program; activities of the Water Research Center, the Montana Water Information System, and the DFWP water leasing program.

- Held public hearings in the Big Hole River Basin to educate the Council and discuss instream flow issues

1997-1998

Appointed a 6-member Water Policy Subcommittee that addressed these issues.

- Total maximum daily load (TMDL) study
- Update on wetlands portions of the State Water Plan, dam-related issues, return flows, fish eradication policy, septic regulations
- Reviewed Gallatin Valley water right/subdivision issues
- Received the DFWP water leasing report

1999-2000

Appointed a 3-member Water Policy Subcommittee that addressed these issues.

- Discussed proposed federal TMDL legislation
- Received updates from the Governor's Drought Advisory Committee, on the Crow Tribe-Montana water rights compact and from the Renewable Resource Grant and Loan Program and the State Library Water Information System
- Heard presentations on coal bed methane development, Columbia River Basin issues, and Lockwood water quality issues
- Received comments on the DEQ's proposed general permit for confined animal feeding operations. Studied water quality issues related to hog farms
- Reviewed significant court cases related to water quality
- Received the DFWP water leasing report

2001-2002

Appointed a 6-member Coal Bed Methane/Water Policy Subcommittee that addressed these issues.

- Updated a *Guide to Montana Water Quality Regulation*
- Monitored the preparation of the coal bed methane development EIS for the Powder River Basin
- Received updates from the Governor's Drought Advisory Committee, the Natural Resource Information System, the DEQ on TMDLs, the RWRCC, and the Renewable Resource Grant and Loan Program
- Reviewed court decisions that affected water quality issues
- Received the DFWP water leasing report

2003-2004

No water policy subcommittee appointed: the EQC addressed these issues.

- HJR 4 water management/adjudication study
- HJR 43 study of water quality impacts at the Zortman and Landusky Mine
- HJR 35 study regarding Montana's share of water from the interstate tributaries pursuant to the Yellowstone River Compact
- HJR 40 study of issues associated with water rights for private ponds for fish, wildlife, recreational, wetland, aesthetic, and gravel mining uses

2005-2006
No water policy subcommittee appointed. The EQC Study Subcommittee addressed many of the water policy issues during the interim. The full EQC had an agenda item for water adjudication and HB 22 implementation issues for every EQC meeting during the interim.

- *Water Rights in Montana* update
- Review of surface water/ground water interaction issues, domestic well exemption for the filing of a water right and repair of the St. Mary's Canal
- Update of the water adjudication chronology

Water Policy Committee
Historic Overview (1985 - 1995)

When it was created?

1985
House Bill No. 680 (HB 680) implemented the recommendations of the EQC's 1983-1984 Select Committee on Water Marketing and established a Water Policy Committee.

Why it was created?

Recommended by the EQC Select Committee on Water Marketing and the 1985 Legislature to protect for present and future use Montanan's fair share of the water in interstate rivers and streams—particularly the Missouri.[1] (See also testimony from legislative hearings.)

Number and make-up of the membership

The committee consisted of 8 members, 4 from each house and each party.

> "Section 20. Water policy committee. (1) There is a permanent water policy committee of the legislature. The committee consists of eight members. The senate committee on committees and the speaker of the house of representatives shall each appoint four members on a bipartisan basis. The committee shall elect its chairman and vice-chairman. The committee shall meet as often as necessary, including during the interim between the sessions, to perform the duties specified in this section [85-2-105, MCA].

Statutory duties

The statutory duties of the Water Policy Committee were set forth in section 20 of HB 680 [85-2-105, MCA]. The section read as follows:

> "Section 20. Water policy committee. (2) On a continuing basis, the committee shall:
> (a) advise the legislature on the adequacy of the state's water policy and of important state, regional, national, and international developments which affect Montana's water resources;
> (b) oversee the policies and activities of the department of natural resources and conservation, other state executive agencies, and other state institutions, as they affect the water resources of the state; and
> (c) communicate with the public on matters of water policy as well as the water resources of the state.
> (3) On a regular basis, the committee shall:
> (a) analyze and comment on the state water plan required by 85-1-203, when filed by the department;

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[1]Final Report of the Select Committee on Water Marketing to the 40th Legislature, January 1985, p 7.

(b) analyze and comment on the report of the status of the state's water development program required by 85-1-621, when filed by the department.

(c) analyze and comment on water-related research undertaken by any state agency, institution, college, or university;

(d) analyze, verify, and comment on the adequacy of and information contained in the water resources data management system maintained by the department under 85-2-112; and

(e) report to the legislature, not less than once every biennium.

Between 1985 and 1995, section 85-2-105, MCA, was amended as follows:

HB 231 (1991) changed reporting requirements

HB 608 (1993) changed "water development program" to "renewable resource grant and loan program"

SB 234 (1995) style changes, including changing "chair" to "presiding officer"

SB 398 (1995) reorganized legislative committees, abolishing the Water Policy Committee and organizing its duties under the Environmental Quality Council

Other statutory duties

85-2-436, MCA, (enacted in 1989) requires the DFWP in conjunction with the Water Policy Committee to conduct and coordinate a study of water leasing.

How long was it in existence?

10 years

In 1995, SB 398 integrated the Water Policy Committee into the EQC (number of EQC members increased from 13 to 17)

Reports produced

Report of the Water Policy Committee to the 50th Legislature of the State of Montana. 1986

Report of the Water Policy Committee to the 51st Legislature of the State of Montana. 1988

Evaluation of Montana's Water Rights Adjudication Process. 1988.

Study of Water Resources Research Centers and Graduate Programs in Water Resources in the United States. 1989.

Water Policy Committee. Final Report to the 52nd Legislature of the State of Montana. 1990

Water Policy Committee. Final Report to the 53rd Legislature of the State of Montana. 1992

Water Policy Committee. Final Report to the 54th Legislature of the State of Montana. 1994

Staff support

The Environmental Quality Council staff provided support to the Water Policy Committee, as described in section 20 of HB 680 [85-2-105, MCA].

(4) The environmental quality council shall provide staff assistance to the committee. The committee may contract with experts and consultants, in addition to receiving assistance from the environmental quality council, in carrying out its duties under this section.

Major issues analyzed over the years

1985-86

- Drought management: participated in and made recommendations to the Drought Task Force
- Water adjudication: reviewed court cases including 1) DFWP v. Water Court—where the department asserted there were substantive errors in decreed water rights, procedural law errors in the Water Court adjudication process and in the accuracy and validity of decrees; and 2) Montana v. United States challenging the legal sufficiency of the adjudication process to consider Indian water rights. Presentations of general adjudication information were made by the Water Court, DNRC, RRWCC and others.
- Interstate water issues: worked with NCSL and other states to discuss apportionment of Missouri River Basin water
- Monitored the development of new rules to implement the reservation process in the Missouri River Basin
- Reviewed State Water Plan and planning process
- Reviewed state water data availability and needs
- Studied water use efficiency in the state

1987-1988

- Water adjudication; HB 2 appropriated $75,000 to the committee to conduct a thorough study of Montana's water adjudication process.
- Reviewed Montana's public trust doctrine and its application for agricultural water users
- Reviewed water development grant program
- Promoted water research in Montana and water data management, recommended the creation of the Water Research Policy Advisory Board
- Reviewed the State Water Plan
- Discussed water transfers
- Discussed hydropower development

1989-1990

- Reviewed the BNRC and the DFWP recommendations regarding water leasing and proposed changes to the water leasing pilot program
- Reviewed instream management strategies in Montana and implementation of the instream flow protection section of the State Water Plan
- Supported securing stable funding sources for the Montana Water Information System
- Recommended continued funding for the Water Research Center
- Commissioned study of water research centers and graduate programs in water research

- Reviewed federal-state water issues, including federal concerns with the state water adjudication process, increasing state benefits from the Pick Sloan program and the federal impact on state hydropower licensing
- Reviewed water development issues, including the rehabilitation of the Tongue River Dam and the St. Mary's canal and the protection of Missouri River water levels

1991-1992

- Dam safety study
- Water reservation study
- Geothermal resources study
- Water user/recreational user fees study
- Water leasing study
- Oversight of State Water Plan, water development program, water research and water data management, state drought response, wilderness dam maintenance and federally reserved water rights

1993-1994

- Late claims study
- Weather modification study
- Oversight of water data management, water development program, State Water Plan, water research and water leasing, state drought response, wilderness dam maintenance and water user/recreational user fees study
- Review of instream flow issues
- Cooperation with EQC on water quality nondegradation study