

ENVIRONMENTAL QUALITY COUNCIL

January 21, 2000

Original Minutes with Attachments

COUNCIL MEMBERS PRESENT

Sen. William Crismore, Chair
Rep. Kim Gillan, Vice Chair
Rep. Paul Clark
Sen. Mack Cole
Rep. Monica Lindeen
Sen. Ken Mesaros
Rep. Doug Mood
Sen. Spook Stang

Rep. Bill Tash
Sen. Jon Tester
Rep. Cindy Younkin
Mr. Tom Ebzery
Ms. Julie Lapeyre
Ms. Julia Page
Mr. Jerry Sorensen
Mr. Howard Strause

COUNCIL MEMBERS EXCUSED

Sen. Bea McCarthy

STAFF MEMBERS PRESENT

Mr. Todd Everts
Ms. Krista Lee
Mr. Larry Mitchell
Ms. Mary Vandembosch
Ms. Judy Keintz, Secretary

VISITORS' LIST

Attachment #1

COUNCIL ACTION

- Approved minutes from EQC meeting of December 2, 1999.
- Approved the supplemental budget request for the Eminent Domain Subcommittee and the MEPA Subcommittee.
- Recommended that the Legislative Council be advised of the EQC's support of the Legislative Council on River Governance. A resolution is to be drafted endorsing the same.
- Confirmed next meeting date for March 23 & 24 in Billings.

I CALL TO ORDER AND ROLL CALL

CHAIRMAN CRISMORE called the meeting to order at 8:30 a.m. Roll call was noted; SEN. MCCARTHY was excused. (**Attachment #2.**)

II ADOPTION OF MINUTES

Motion/Vote: SEN. COLE MOVED THAT THE MINUTES OF THE DECEMBER 2, 1999 EQC MEETING BE APPROVED AS WRITTEN. THE MOTION CARRIED UNANIMOUSLY.

III ADMINISTRATIVE MATTERS

A. EQC and Subcommittee Budget Update

MR. EVERTS provided a copy of the "EQC Budget Supplemental Request", **Exhibit 1**. He reported that a request for supplemental funding would be made to the Legislative Council at its January meeting. The request is for an additional \$26,000 which will be divided between the MEPA Subcommittee and the Eminent Domain Subcommittee.

Motion/Vote: REP. GILLAN MOVED TO ACCEPT THE SUPPLEMENTAL BUDGET REQUEST. THE MOTION CARRIED UNANIMOUSLY.

B. Administrative Rules Oversight Summary

MR. EVERTS provided a recap of the "EQC Administrative Rule Oversight Summaries", **Exhibit 2**. The Department of Resources and Conservation (DNRC) is making technical amendments to their water rights forms and definitions. The proposed rule amendments are technical changes.

The Department of Fish, Wildlife, and Parks (FWP), is proposing the adoption of a rule requiring permitting and also certification that sources of imported bait leaches are free from undesirable aquatic pests. The concern is the zebra mussels that may be included with the bait leaches. The rules allow for inspection and certification of the leaches.

C. Rooms/Email/Web Site

MR. EVERTS remarked that the EQC web site is being reconstructed. The site will include agendas, minutes, work plans, detailed information on the EQC, and a calendar of meetings. He requested that members advise the staff if they prefer that their e-mail address not be posted on the web site.

Rooms are reserved at the Hilltop Inn in Billings for March 22nd and 23rd. Members are requested to make reservations as soon as possible.

IV SUBCOMMITTEE UPDATES

A. Eminent Domain Subcommittee

SEN. COLE reported that at the next meeting in Billings, the Subcommittee will be using the MetNet at locations in Miles City and Glasgow. At yesterday's meeting, the first chapter of the final report was reviewed. It was decided that a subcommittee will be appointed to prepare the informational handbook. A panel presentation was held on the topic of "Possession of Property by Plaintiff." Two of the presenters believed the eminent domain laws are working very well while two presenters believed that major changes were necessary. A public hearing followed with very good testimony based on personal experiences. There was a discussion on pipeline and landowner liabilities.

SEN. STANG added that many landowners feel that they are at a disadvantage when negotiating with an entity seeking condemnation. If there is a spill from a pipeline, there is no protection for the landowner in terms of loss of value of land. A bonding mechanism was discussed.

B. MEPA Subcommittee

REP. YOUNKIN remarked that one of the highlights at the previous day's meeting was a report from the Montana Consensus Council. A public participation survey had been sent out with approximately 55 responses received. A discussion was held on MEPA costs and benefits, criteria and analysis. Given the magnitude of the issue, it was decided that the best way to proceed would be to develop criteria for a prospective review. For this analysis, it will also be necessary to include people who are affected by MEPA to include industries, permittees, and the public. Only a small number of persons were present for public comment portion of the meeting. The Subcommittee discussed the concern of informing the public of their meeting schedule. The next Subcommittee meeting will be held on February 18th in Helena.

SEN. TESTER added that the Montana Consensus Council will hold a public meeting to discuss their recommendations to the MEPA Subcommittee on the issue of public involvement in the MEPA process.

C. Water Policy Subcommittee

REP. TASH reported that at the previous day's meeting the Subcommittee heard a report on the Supreme Court decision involving the DNRC and the Confederated Salish and Kootenai Tribes. Environmental trend data has been requested from state agencies. Two departments responded to this request. The next meeting will be held on March 23rd in Billings.

SEN. TESTER relayed that the Department of Environmental Quality (DEQ) provided a report on the permitting process for concentrated animal confinement operations (CAFOs), in particular the hog operations. A discussion ensued regarding general permits versus individual permits. Other states' rules in regard to regulation of CAFOs were presented and Montana's rules were also discussed. It was noted that if rules need to be established, this should be accomplished in a manner allowing investors to know ahead of time the specifics involved in setting up an operation. He added that since the MetNet would be used for the next meeting in Billings, it is important that newspaper articles provide information regarding the meeting.

MS. LAPEYRE provided copies of comments from Governor Racicot on the TMDL rules proposed by the EPA, **Exhibit 3**. She also suggested that Newlinks be used as an advertising tool for future meeting schedules. Ms. Lee confirmed that Newlinks was used to advertise the meeting.

SEN. COLE remarked that more information is becoming available regarding confined animal feeding operations.

D. Land Use/Environmental Trends

MR. SORENSEN explained that the Subcommittee would be meeting in the afternoon. Representatives from Lake, Ravalli, and Missoula County had been invited to provide information on the implementation of SB 97. He further noted that several groups have formed the Montana Smart Growth Coalition. Their focus is to implement tools to reduce urban sprawl. He added that they have not given much consideration to SB 97 and that the coalition has retained the American Planning Association to study Montana's statutes.

V COLUMBIA BASIN ISSUES UPDATE

MS. VANDENBOSCH remarked that several EQC members have been participants on the Legislative Council on River Governance. The members include REP. TASH, SEN. MCCARTHY, and REP. LINDEEN. The Council is made up of legislators from four states: Washington, Oregon, Montana and Idaho. The focus of the group is to address issues appropriate to the four states. She referred to a handout which recapped the Council's mission and issues, **Exhibit 4**.

John Hines, Northwest Power Planning Council, stated that the Council is an agency of the four northwest states which encompass the U.S. portion of the Columbia River Basin. The federal Northwest Power Act directs the Council to develop a power plan and to ensure that the northwest has an adequate, efficient, and economical power supply system. The Bonneville Power Administration (BPA) markets the power created from the federal dams. Its customers

are primarily public utilities and cooperatives. They sell almost half of the region's electricity at a wholesale level. They also control about 75% of the voltage transmission system.

The Council is also required to prepare a fish and wildlife plan designed to protect, mitigate, and enhance fish and wildlife that have been affected by the federal dams. Approximately \$125,000,000 per year, of BPA rates, is directed by the Council toward fish and wildlife matters.

Because Montana has two dams that are part of the federal system on the Columbia Basin, we are affected by federally mandated salmon recovery activities. Since 1991, the National Marine Fisheries Service has listed as threatened or endangered, 12 salmon and steelhead runs. The United States Fish and Wildlife Service, which has control over the land locked system, has listed five species of fish in addition to bull trout and the sturgeon. The federal caucus is a group of nine federal agencies that have developed a draft All H Paper that addresses habitat, harvest, hatcheries, and hydro power. The fish caucus has not developed a preferred course of action but is seeking public comment.

The U.S. Department of the Army, Corp of Engineers has completed a draft Snake River EIS. Primarily, this study examines alternatives for configuring and operating the Snake River dams in the hopes that juvenile salmon mortality can be decreased. Taking out the four lower Snake River dams is one option.

The Columbia Basin Forum is the only existing forum that actively includes tribes and federal agencies. The work plan for the forum states that they will analyze various federal reports, deliberate and make consensus recommendations to the federal agencies.

We have two federally owned and operated dams in Western Montana, Hungry Horse Dam and Libby Dam, and both are seriously affected by Endangered Species Act driven operation mandates regarding salmon recovery. These two dams generate more power than Montana receives from the BPA. Montana reservoirs contain 38% of the U.S. storage of the hydro system. The most significant costs of the listings results from the continuing call for additional water out of our reservoirs. The costs involved with these calls include health costs. When the reservoirs are dewatered, there is an extensive amount of exposed mud banks. When the wind blows, dust storms are created. We lost significant trout fishing streams when the reservoirs were developed. In return, the federal government promised a fishing industry that would be based on reservoirs. The draw downs affect our listed bull trout. Most of the food growth for fish is in the upper reservoir layer and less food leads to smaller and fewer fish.

The primary benefit of the reservoir system is low cost electricity. Historically, the BPA has sold its power well below market prices. Any action that increases the price of this electricity, or decreases the amount of electricity available for sale decreases the benefits. The BPA's ratepayers have spent billions of dollars on salmon recovery during the last 10 years. Federal agencies are now considering the removal of the four dams on the snake river. This would significantly degrade the power system. The decisions on fish and wildlife expenditures or dam removal are entirely out of the region's hands. Two years ago, the region's four governors began to develop a governance structure that would give the states and the Basin's Indian tribes more say in how fish and wildlife recovery funding is spent. Until last month, all four governors were on the same path. However, Governor Locke from Washington has decided to no longer support developing a governance proposal because he believes the debate will sidetrack the region from addressing more important short-term issues. The three governors continue to believe that regional governance is an important priority.

There is a coalition of congressmen from the northeast and midwest who want to force the BPA to sell its power at market, not at cost. They feel that the northwest has a economic advantage because of our low cost power. They want to eliminate this so their areas of the country are on a more competitive footing. They do forget that we also have extensive costs such as transportation of our goods to market.

Taxpayer groups in the Office of Management and Budget believe all taxpayers are subsidizing the northwest's low electric rates because our dams were built and financed by the federal government. The northwest ratepayers are paying for these dams at market rates. They want to sell the BPA and use the difference between the market rate and the cost rate to finance government programs or buy down the programs. Also, many environmental groups from the northwest are trying to change the structure of the system. They would like to have a significant number of the dams removed. The investor owned utilities (IOUs) in the northwest are very concerned that they are not receiving a fair allocation of the power from the BPA. Residential and small customers of the IOUs are receiving 40% of their power from the BPA while public utilities receive 100%.

Any or all of these factors may move Congress to pass legislation that eliminates the benefits. The northwest region needs to act before Congress does. Two efforts underway are exploring options to change river governance and to reorganize and stabilize the power benefits for the region. The first group is called the Litchfield-Wilcox group. It is composed of public, cooperative, and investor-owned utilities and the large industrial customers for the BPA. These entities do not believe that the BPA's proposed power allocation scheme will work because it is harmful to the development of competition and they also believe it to be unfair. Their goal is to

develop three to five alternatives by next spring. These alternatives will look at change in river governance, reorganization of the power system, and transforming the BPA's transmission system into a more regional transmission system which will facilitate the development of competition. The second group is the Derfler Group. Sen. Derfler is from Oregon and his group is comprised of the legislators from the four northwest states. Their goals are closely aligned with the Litchfield-Wilcox group. A meeting is scheduled for April and they are seeking greater legislator participation.

Montana does not have much to gain. We have a lot of resources and everyone wants to use them but we do not have much say in how they are used. We need to limit the damage by staying involved.

SEN. COLE questioned the alternatives suggested if the dams were to be removed. **Mr. Hines** remarked that there are alternative plans but clean power is expensive. Nothing will replace the cost of a dam that has already been built and is in place.

Gail Kuntz, BPA, offered support to those interested in the issue. She stated that these matters are very complex. Not many people in the Legislature have the time to devote to this issue. They are available to answer questions and provide information.

SEN. TESTER questioned whether the river governance issue and the power distribution issue could be separated. **Mr. Hines** remarked that the governance structure step would benefit the entire region. **Ms. Kuntz** stated that a huge concern to the BPA is that the national challenges to the benefits of the northwest are very real. There are those who see the low cost resources and want to make sure they are spread out in the region. The only way the northwest will safeguard against the loss of the benefits is to find enough to agree on so that we can manage what we have in the northwest in terms of both shouldering the costs and reaping the economic benefits that underscore the economy in the region.

VI LEGISLATIVE COUNCIL ON RIVER GOVERNANCE

REP. TASH reported that four legislators attended the first meeting of the Legislative Council on River Governance in the spring of 1998. There were 27 delegates at this meeting. Sen. Derfler from Oregon has been the main catalyst of the group. At the last meeting, Sen. Beck proposed that each state would have four votes. Any number of delegates could be sent to the meetings. It is very critical that we protect our low power rates and the beneficial use and management of the water. There may be some dams that should be decommissioned. It is possible that the mitigation of salmon could be handled better by genetic engineering. Ratepayers have spent

\$300 billion for the salmon recovery effort and the accomplishments of this program have been questioned.

The Legislative Council on River Governance needs further coordination and the request is that this be handled through the Water Policy Subcommittee and the full EQC. Funding needs to be dedicated for this group.

REP. CLARK questioned the legal standing of the group. He also questioned whether or not the federal government was involved in the negotiations. REP. TASH explained that the federal government is involved through the Environmental Protection Agency (EPA) and the Endangered Species Act. The Council would like to alleviate the federal government's continued recommendations and management by presenting other alternatives and opportunities. He further noted that there is a strong interest by private investor groups to acquire the BPA.

REP. TASH announced that the next meeting for the Legislative Council on River Governance will be held in Montana on April 7-9. The location has not been set at this time.

Bill Drummond, Manager of Western Montana Generating and Transmission Cooperative, remarked that they represent six rural cooperatives in Western Montana. All of the members buy some or all of their power from the BPA. There are two separate issues involved. The river governance discussions address the decision on the Columbia River. A separate issue is regionalization. Then cooperatives have serious concerns about the discussions on reallocations of the benefits of the federal system. The interests of the State of Oregon are not the same as the interests of the State of Montana. There is talk about shifting benefits to the State of Oregon and away from the states of Idaho and Montana. His group supports the efforts of the Montana delegation to the Council.

SEN. COLE questioned the views of the Central Montana Generating and Transmission Cooperative. **Mr. Drummond** explained that they will begin purchasing half of their power from the BPA starting in June of this year. Reallocation of benefits would be detrimental to their members.

SEN. TESTER stated that it would be wise for the EQC to support this effort. This involves both a water and power issue and the EQC needs to be involved with the issue.

SEN. COLE remarked that the issue would be presented to the Legislative Council in January. He suggested that the EQC await information from the Legislative Council.

MR. EVERTS explained that SEN. BECK was interested in a motion from the EQC as to whether or not they would support the Montana Legislature's involvement in this matter.

Motion: MR. EBZERY MOVED THAT STAFF DRAFT A RESOLUTION OF SUPPORT.

SEN. STANG stated that it was important that the EQC express its support for the Legislature to fund programs of this nature.

MS. PAGE agreed that the EQC's participation in this matter is very important. Her interest is much more with salmon recovery efforts. She added that both sides of the issue were not presented today. She would like to hear a balanced presentation on salmon recovery at some point. The amounts of money being spent are tremendous. It could be that the money is being spent in the wrong way.

REP. TASH agreed that one of the critical reasons for involvement is the salmon recovery issue. There are a lot of examples of where the funds could be better spent. Exploring those possibilities would be a priority for the Council. The Transition Advisory Committee also needs to be a partner in this matter.

REP. CLARK questioned whether an endorsement from the EQC would involve the EQC in the agenda items or participation in the process of the group. MR. EVERTS remarked that the EQC is well represented on the Legislative Council on River Governance. That membership may change dependent on funding and leadership. The recommendation was made that the Water Policy Subcommittee be an administrative link and that EQC members participate in the April meeting. There is an issue of the EQC's endorsement and participation over time.

MS. VANDENBOSCH further noted that the Montana members of the Legislative Council on River Governance were appointed by Legislative leadership. There is no formal connection between the group and the EQC.

REP. GILLAN questioned the funding for the Legislative Council on River Governance. MR. EVERTS explained that the funding was from leadership funds.

Mr. Hines added that a group has been formed by Sen. Derfler that is composed of technical people developing the ideas. There could also be involvement at a staff level.

REP. CLARK requested that the resolution include a more specific outline of how the EQC would be involved in the process and stated that the resolution should outline what we are supporting.

MR. EBZERY stated that the resolution should be circulated in advance of the meeting.

Amended Motion/Vote: MR. EBZERY MOVED THAT THE EQC GO ON RECORD IN SUPPORT OF THIS PROCESS AND THAT THE LEGISLATIVE COUNCIL BE SO ADVISED. STAFF IS REQUESTED TO DRAFT A RESOLUTION OF SUPPORT FOR ADOPTION BY THE EQC. THE MOTION CARRIED UNANIMOUSLY.

VII UPDATE ON MONTANA'S ELECTRIC INDUSTRY RESTRUCTURING

MR. EVERTS explained that SB 390 provided customers with the ability to choose an electricity supplier before 2002, or at the latest 2004, making the assumption that competition will exist in Montana. Large electricity customers already have choice. The poles and wires that transport electricity will still be regulated. The Montana Power Company (MPC) brought forth the proposal (SB 390) stating that they needed the restructuring legislation in order to be competitive. The incentive was that the large electricity customers on the MPC and the Cooperative grids were going to have the ability to choose competitive electricity suppliers. This could have left the small consumers in the state shouldering significant institutional regulatory and infrastructure costs. It was also believed that the federal government would go ahead with restructuring legislation. This is still being attempted but the argument was that if Montana had legislation in place, it could be grandfathered into the federal statutes. Currently 25 states have passed bills or issued regulatory orders for restructuring.

The MPC has sold its generation assets for \$750 million. As a result, the MPC has proposed a 4% rate cut. They will argue that the Public Service Commission (PSC) ought not consider a rate cap established in SB 390. Large customers are able to choose their electricity suppliers. All but 4 of 18 of those customers have exercised choice. The savings has been between 5% and 10%. After a year, the MPC reports that approximately 25% of their retail electric loads have moved to choice.

The PSC has crafted licensing rules for electricity suppliers and is working on rules for designation of default suppliers, which is a fairly controversial issue. To date, 24 companies have obtained licenses to sell power in Montana but only four have indicated an interest in serving residential or small commercial customers. The PSC has finalized rules concerning consumer production. Key provisions of the rules include requirements that suppliers obtain the

consumer's written authorization and provide a service contract dealing with the terms and conditions of services before implementing a switch of electricity supply.

Two scenarios are beginning to materialize in Montana. The best scenario is that consumers will be able to choose from an array of competitively priced packages of safe and reliable, environmentally friendly related services on a competitive basis. The worst scenario is a situation where small residential customers have no real choice due to Montana's rural nature and low cost. It is possible that competition may not develop in the state. The Transition Advisory Committee (TAC) needs to determine whether competition is taking place and whether there are policy measures that foster competition.

Handouts provided, "Electric Industry Restructuring Basics", **Exhibit 5**, and "Electrical Industry Restructuring in a Nutshell", **Exhibit 6**.

REP. LINDEEN requested more information on the default supplier issue. MR. EVERTS explained that two bills were passed in the last legislative session, SB 406 and HB 211, that addressed this issue. SB 406 created the Montana electricity buying cooperative that could aggregate MPC customers and constitute a significant block of purchasing power. That bill prohibited the cooperative from purchasing poles and wires. This became important due to the BPA's restriction that an applicant for low cost preference power must own poles and wires. Thus the cooperative is unable to access low cost power supply. HB 211 allowed cities and towns to become licensed suppliers. They are also in a disadvantaged position. Before they can become the licensed supplier and be eligible for preference power, they need to demonstrate a bonafide obligation to serve the community as evidenced by a license from the PSC. The PSC has not finalized its rules governing this issue. The TAC has requested the PSC to hold off on that designation process. If the PSC does so, it would be too late to obtain preference power because the BPA preference power will be contracted by that date.

REP. LINDEEN questioned why the TAC asked the PSC to hold off on designation of a default supplier. MR. EVERTS explained that the TAC is concerned that competition be allowed to develop. If a default supplier is able to get preference power, this may stifle competition in the state. **Mr. Hines** added that the legislation makes it clear that the MPC will continue to be the default supplier for customers unless another entity is chosen.

SEN. TESTER questioned how many households had moved to choice. **Mr. Drummond** remarked that 1,000 households have moved to choice but there is only one choice which is Energy West. This is the only supplier fully licensed to serve residential consumers. There is no savings at this time. This is through the pilot program, but everyone is eligible for the pilot

program. The fundamental public policy question that faces Montana is energy supply for residential consumers. There are two schools of thought for dealing with this issue. Montana chose the path that allows consumers to pick a supplier. We hope that an array of suppliers will appear. The other school of thought is that residential consumers are the most difficult class of customers to serve, they buy the least amount of power and do so at the wrong times, they complain about bills, etc. It is possible that there may not be many suppliers interested in serving the residential customer. Nationwide, this appears to be the case. This may change in the future. Oregon structured their legislation to allow customers to choose but the residential class was kept aggregated under the current supplier and required the current supplier to offer an array of choices.

SEN. TESTER questioned whether the TAC is researching possible rates when this process is fully implemented. He questioned whether there was a contingency plan to make power rates affordable, if the need arises to do so. MR. EVERTS remarked that the TAC has heard from different parties regarding cost estimates. He further noted that their work plan does not mention studying rates.

REP. GILLAN questioned how MPC is working with PP& L Global in regard to the rate caps. MR. EVERTS explained that SB 390 instituted a rate cap that started in July of 1998 and lasts through June 30, 2002. **Mr. Hines** added that the MPC has the obligation to ensure that that power is delivered to the customer at the rate cap through the transition period. Even if they have to buy power back from PP&L at twice the cost, it is MPC's responsibility to deliver electric power at the rate cap or below.

VIII UPDATE OF THE BULL TROUT RECOVERY PLAN

Ken McDonald, MFWP Bull Trout Coordinator, reported that the Endangered Species Act (ESA) listing of the bull trout as threatened initiated a federal recovery plan process. The state has adopted a plan to restore the bull trout independent of the federal regulatory statutes. The restoration team includes government officials, private industry and conservation groups. They were chartered to work in a cooperative fashion to produce a plan that protects, maintains, or increases bull trout; includes a process and time table for recovery; has specific goals; uses shared research; and is based on best available current information. The state's effort addresses two major drainage basins: the Clark Fork and Kootenai Basins. Each basin has a barrier falls that separates the basins from fish passage from the rest of the Columbia Basin. This results in discrete populations. The plan has been broken down into twelve restoration/conservation areas. The focus of the state's plan is to protect the best of what habitat is left and then work to restore and conserve the rest. Bull trout are a migratory species. When they are two or three years old, the younger fish will move into the main stem rivers or

lakes. They have an array of habitat needs but the limiting factor is the spawning areas. They require cold, clean water and complex, connected habitat.

Bull trout management and recovery involves three major categories: habitat, fisheries, and population management. Status reports have been developed for 11 of the 12 basins. The plan was designed to be a voluntary plan and recommends an oversight committee. A draft of the plan was submitted for public comment. The comments received included: time lines were lacking, no funding, no regulatory mechanisms for enforcement, and no long term commitment to the plan. The group has addressed the comments that they were able to address.

The state's ultimate goal is to recover the population to a sufficient level to allow for recreational fishing. The objectives involved in meeting the goal include protecting existing populations within core areas, maintaining and restoring activity among core areas and restoration/conservation areas, and developing and implementing a valid monitoring program by 2002.

Among the comments received was a concern about the lack of funding. They have reviewed available funding in Montana. There is the Future Fisheries Improvement Program within the MFWP that generates approximately \$750,000 per year and includes an emphasis on native fish. HB 647 will add another \$500,000 to this program specifically for bull trout and cutthroat trout. The U.S. Fish and Wildlife Service (USFWS) has a Partners for Wildlife Program that has approximately \$175,000 for this purpose. Other possible sources of funding include the Milltown mitigation settlement, Avista relicensing agreement, the Northwest Power Planning Council's programs with the Libby and Hungry Horse Dams which provides approximately \$600,000 for native fish restoration, and the natural resource damage settlement with ARCO that specifically allocates \$500,000 over the next ten years for bull trout restoration.

A final draft of the plan has been sent to the restoration team and their comments should be received by the end of January. The USFWS listed the Columbia Basin bull trout population segment as threatened on June 10, 1998.

SEN. MESAROS questioned whether the Canadian provinces were working to enhance bull trout populations. **Mr. McDonald** remarked that they are working with the Canadians to monitor and gather information on their populations. The Canadian agencies are working on conservation measures but this approach is not a regulatory approach.

The USFWS has 18 months to prepare a draft recovery plan. The recovery team includes one state employee and one federal employee from each state. Montana made a strong case that

the bull trout population in the Clark Fork and Kootenai Basins met the criteria of a discrete population segment. However, in their rule, the USFWS decided to treat the entire Columbia Basin as one range. Delisting can only occur at the range level or the discrete population segment level. Currently, delisting can only occur when the entire Columbia Basin is recovered. Montana and Idaho populations are increasing. Oregon and Washington are having more problems due to the salmon recovery situation.

MR. STRAUSE questioned whether the bull trout recovery plan was in conflict with the salmon recovery plan. **Mr. McDonald** stated that there is some controversy in regard to states being forced to release water from reservoirs in Montana to aid fish migration of salmon through the Snake and Columbia Rivers. The state believes that the mandated releases are detrimental to our native fish such as bull trout and the benefit to salmon is not that good.

SEN. MESAROS asked if the on-the-ground management practices in restoring bull trout was similar to the management practices of the Future Fisheries Program. **Mr. McDonald** explained that a lot of the recovery actions are funded by the Future Fisheries Program. In the Blackfoot area, a variety of actions have been funded that include screening irrigation diversions, riparian fencing and working with landowners to modify grazing strategies, stream restoration, and removing culverts and adding a bridge. One of the main benefactors is the bull trout. The strategy is to work with and help landowners.

CHAIRMAN CRISMORE questioned the procedure whereby bull trout could be caught and turned loose without violating the Endangered Species Act. **Mr. McDonald** clarified that there was a provision in the listing rule specifically addressing this situation. This is the 4(d) Rule and it provides the exemptions from the list of "take". This exemption includes bull trout that are caught incidental to permitted fishing as long as this is done in compliance with state or tribal fishing regulations. Montana's state fishing regulations allow a harvest of one fish per day on Swan Lake. This harvest is allowed as well. A proposed rule would exempt other activities to include restoration activities.

IX CONFIRM LOCATION OF NEXT MEETING

The next meeting was confirmed for Thursday and Friday, March 23 & 24, 2000, in Billings. The MEPA Subcommittee will meet in Helena on February 18th. The Eminent Domain Subcommittee will meet in Helena on February 24th.

X ADJOURNMENT

There being no further business, the meeting adjourned at 12:15 p.m.

SEN. CRISMORE, Chair