

ENVIRONMENTAL QUALITY COUNCIL

May 24 and 25, 1999

Original Minutes with Attachments

COUNCIL MEMBERS PRESENT

Sen. William Crismore, Chair
Rep. Kim Gillan, Vice Chair
Rep. Paul Clark
Sen. Mack Cole
Mr. Tom Ebzery
Ms. Julie Lapeyre
Rep. Monica Lindeen
Sen. Bea McCarthy

Rep. Doug Mood
Ms. Julia Page
Mr. Jerry Sorensen
Sen. Spook Stang
Rep. Bill Tash
Sen. Jon Tester
Rep. Cindy Younkin

COUNCIL MEMBERS EXCUSED

Sen. Ken Mesaros
Mr. Howard Strause

STAFF MEMBERS PRESENT

Mr. Todd Everts
Mr. Larry Mitchell
Ms. Mary Vandenbosch
Judy Keintz, Secretary

VISITORS' LIST

Attachment #1

COUNCIL ACTION

- Reviewed and adopted interim work plan.
- Approved Subcommittees and appointed Subcommittee members.
- Adopted the interim EQC calendar.
- Approved minutes from EQC meeting of April 19, 1999.
- Set next meeting date for September 22 and 23 in Libby.

I CALL TO ORDER AND ROLL CALL

CHAIRMAN CRISMORE called the meeting to order at 1:00 p.m. CHAIRMAN CRISMORE and VICE CHAIRMAN GILLAN welcomed all members. Roll call was noted; SEN. MESAROS and MR. STRAUSE were excused. **(Attachment #2.)**

II ADMINISTRATIVE MATTERS

MR. EVERTS introduced the staff: MARY VANDENBOSCH, Resource Policy Analyst; LARRY MITCHELL, Resource Policy Analyst, MAUREEN THEISEN, Publications Coordinator and Administrative Assistant, and JUDY KEINTZ, Contract Secretary.

MR. EVERTS reported that the EQC budget is approximately \$54,000. Due to the geographical diversity in the membership of the EQC this interim, the expenses for each meeting will be approximately \$5,000. He added that the budget will need to be closely monitored. A suggestion was made that some meetings be held via the Met Net.

III THE CROW-MONTANA WATER RIGHTS COMPACT UPDATE

SEN. COLE, EQC Subcommittee Chair, explained that three issues were involved, which included negotiating water rights, settling the coal severance tax lawsuit between the Tribe and the State, and addressing the Section Two matter. The lawsuit could involve up to \$300 million. The Tribe has received \$26 million to date. The Section Two issue involves the situation where non-tribal members cannot hold over 1,900 acres of land on the Crow Reservation. The Crow Reservation contains approximately 2.5 million acres. Approximately 1.5 million acres were ceded to the U. S. Government in 1904. The Tribe still has interests and individuals on this land.

Recent meetings included a morning working meeting in Billings and an afternoon meeting at Crow Agency. Approximately 200 people attended the afternoon meeting. The major concerns were brought by individuals who had allotments. Another meeting was held in Billings in the evening. Non-Indian ranchers raised concerns regarding their senior water rights. This compact will treat everyone on an equal basis. The leaders of the Crow Tribe realize the importance of being fair.

A further meeting of the EQC Subcommittee, the Judiciary Committee, and the Compact Commission was held. The general agreement was to support a special session. The Governor is waiting for a letter of recommendation from the Committees.

REP. CLARK added that very serious questions were presented. The federal team presented 24 suggestions and comments they would like to see addressed in the Compact prior to their involvement in the same. After Congress ratifies this agreement, the Crow Tribe will hold a referendum allowing all tribal members to vote on whether or not they agree to the terms of the Compact. He questioned whether the tribal members would approve the document.

REP. YOUNKIN maintained that the Compact is not a perfect document. She added that in dealing with water rights, a perfect settlement is not achievable. This document is fair and provides the appropriate protections for both parties.

REP. TASH raised a concern that the special session may include other issues. He questioned whether a special session could be limited to a single issue. MR. EVERTS explained that the Governor calls the Special Session and sets the agenda for the same. He can expand this beyond one issue. Also, once convened, the Legislature has the ability to add issues.

SEN. STANG added that there are concerns with the fact that the Special Session will not be held in the Capitol Building, which has been closed for remodeling. There will not be an electronic board for voting and amendments will not be produced as they are during a regular session.

SEN. COLE advised that the general consensus of the 34 legislators who attended the recent meetings was to support a Special Session call. Only two legislators were opposed to the same.

SEN. MCCARTHY questioned whether amendments that may be added during the session would need to be approved by the Compact Commission. MR. EVERTS explained that the Legislature would adopt rules for the Special Session. He believed that legislators would be allowed to offer amendments.

Susan Cottingham, Program Manager, Reserved Water Rights Compact Commission, explained that the Tribal attorney and negotiating team would attend the Special Session. She added that each section of the Compact was carefully negotiated. Changing one segment may alter compromises made to complete the Compact.

SEN. TESTER questioned whether the Tribal members supported the Compact. SEN. COLE believed that there was general support for the Compact. Many concerns with the Compact were technical in nature.

Ms. Cottingham explained that the federal negotiating team attends all meetings but will wait until there is an actual Compact before moving ahead on concerns for federal legislation. The Compact contains an allocation of storage water in Bighorn Lake. This will need to be allocated by Congress. She provided the Commission's response to questions submitted by REP. EGGERS, **Exhibit I**.

SEN. MCCARTHY questioned whether the payment of the monetary settlement to the Tribe would begin with the ratification by the state or whether this would not begin until this document was completely ratified. **Ms. Cottingham** explained that the Compact is LC01 and the companion bill is LC02. LC02 outlines the settlement. The state will eventually pay \$15 million for settlement of the coal severance tax agreement and the state's share towards the water rights agreement. The money is appropriated for this biennium only and will be taken out of the General Fund. The first payments are for \$1.5 million for the next biennium. These funds will go into an escrow account with a private company and will not be released to the Tribe until the settlement is completed and approved by the Water Court.

IV COUNCIL AND STAFF RESPONSIBILITIES

1. EQC Statutory Responsibilities

MR. MITCHELL reviewed the Legislative Interim Committees, reorganized by SB 11, **Exhibit 2**. The four main functions of the EQC are to: 1) Develop and recommend policy and legislation on natural resource, environmental, water, fish and wildlife, and energy issues; 2) Perform oversight and administrative rule review, program evaluation and monitoring functions for the Department of Environmental Quality (DEQ), the Department of Fish, Wildlife and Parks (DFWP), and the Department of Natural Resources and Conservation (DNRC); 3) Gather information, analyze trends, document changes, conduct investigations and studies, and disseminate factual nonpartisan information; and 4) Provide a balanced legislative forum to resolve critical and complex natural resource and environmental issues.

He further explained the duties of the EQC as set out in 75-1-324, MCA and the policy of the State of Montana as set out in 75-1-103, MCA.

2. EQC Rules and Procedures

MR. EVERTS explained that the rules and procedures that the past Council had adopted are to be reviewed, edited and adopted by the current Council. The rules and procedures may be found in the Council Member's Guide. He added that non-substantive changes would be made and the document would be ready for review and adoption at the next EQC meeting. The Public Participation Guidelines were added by the previous Council. These guidelines were provided before each meeting. The purpose of these guidelines was to create a forum for effective public comment.

3. EQC Decisionmaking Process

CHAIRMAN CRISMORE explained that the decisionmaking process is set out on page 9 of the Council Member's Guide. Working out disagreements and arriving at a consensus is very important to the Council. The diversity of the EQC membership is its strength when recommending policy changes to the Legislature.

4. Staff Mission and Responsibilities

MS. VANDENBOSCH remarked that the staff's mission is to assist the Council in achieving their mission and to provide the best information possible to the EQC, the Legislature and the public. The staff may identify options regarding issues but the option selection itself is left to Council members. The Council members' responsibility is to select and prioritize options. The staff will provide information that may help the members eliminate options or focus on options.

V SUMMARY OF 1999 ENVIRONMENTAL AND NATURAL RESOURCE RELATED BILLS AND LEGISLATION

MS. VANDENBOSCH presented an Overview of Selected Natural Resource Legislation Approved by the 1999 Montana Legislature, **Exhibit 3**. She added that a comprehensive document covering the status of natural resource legislation will be published this summer. This document includes both passed and failed bills.

The EQC proposed seven bills/resolutions this session. Six were approved and signed by the Governor. Two were study resolutions, SJ3 and HJR 3, and are included in the Council's draft work plan.

SB 98 - extended the DFWP instream flow leasing program for 10 years. It also increased the number of stream reaches for leasing from 20 to 40 and authorized the use of salvaged water through the other leasing programs.

SB 95 - authorizes counties to contribute to municipal infrastructure, if they choose to do so.

SB 96 - provided changes to municipal zoning laws, making it slightly more difficult to protest a change and reduced the super majority required to override a protest.

SB 98 - changed the term "master plan" to "growth policy" and established minimum requirements for growth policy. The bill specifically authorizes neighborhood planning when a growth policy has been adopted. It authorizes local governments to exempt review of certain public interest criteria in subdivision review, if certain requirements are met.

The only EQC bill that did not pass was **SB 407** which would have funded development of growth policies by using some bed tax revenue. She added that the Department of Commerce did have some grant money available for developing growth policies.

MS. VANDENBOSCH highlighted certain other natural resource bills that were approved by the Legislature.

HB 142 - revised MEPA. It clarified the treatment of a transfer of ownership pursuant to MEPA; limited a court's scope of review for a challenge to a decision to an EIS or other environmental review; and established exemptions for MEPA activities related to state lands when undertaken by the DNRC or the Board of Land Commissioners.

SB 468 - temporarily closes the Clark Fork Basin. Avista and the state have agreed to impose a temporary moratorium. The bill sunsets February 28, 2001.

SB 499 - amended the Water Quality Act in response to a letter the state received from the U.S. Environmental Protection Agency (EPA) in December of 1998. This letter stated that certain water quality standards were not adequate.

HB 392 - expanded the role of the Statewide TMDL Advisory Group. The group advises the DEQ on implementation of **HB 546**, which is Montana's water quality monitoring, assessment, and improvement program dealing with TMDLs.

HB 647 - creates the bull trout and cutthroat enhancement program.

HB 626 - expands the purposes for which the FWP Commission may adopt and enforce rules governing recreational use of waters. It also authorizes them to adopt rules governing operation of personal water craft and resolution of conflict between motorized and non-motorized boaters. She added that **SB 445** dealt with commercial use of the Beaverhead and Big Hole Rivers. The Governor vetoed the bill. There is a veto override poll being conducted. Since **HB 626** gave the FWP Commission additional authority, they are seeking comments on rules to address the issues involved with **SB 445**.

HB 647 - requires the FWP to conduct a comprehensive study of Blackfoot River use and the conflict between uses and report their findings to the next Legislature.

SB 338 - revises the hunter management and hunting access enhancement management programs. The program review committee is to report to the next Legislature. This is part of the Block Management Program.

SB 361 - revises the laws related to game farms. It also changes the term "game farm animals" to "alternative livestock". It requires the FWP and the Department of Livestock to conduct a programmatic review of environmental impacts associated with licensing alternative livestock ranches.

VI ADOPTION OF MINUTES

Motion/Vote: SEN. MCCARTHY MOVED THAT THE MINUTES OF THE APRIL 19, 1999 EQC MEETING BE APPROVED AS WRITTEN. THE MOTION CARRIED UNANIMOUSLY.

VII INTRODUCTION AND REVIEW OF INTERIM WORK PLAN OPTIONS

1. Workplan Option Matrix Introduction

MR. EVERTS presented the 1999-2000 Environmental Quality Council Draft Work Plan, **Exhibit 4**, and 1999-2000 Environmental Quality Council Draft Work Plan Appendices, **Exhibit 5**. Excluding comp time and vacation liability as well as hours spent on legislative requests outside of the Council, total resources available were 3.25 FTE. Topics for the work plan come from the Legislature and from statutory requirements.

The Legislative Council deliberated over whether the eminent domain study should be assigned to the Law, Justice, and Indian Affairs Committee instead of the EQC. The decision was that the EQC would conduct the study. Staff resources from the Law, Justice, and Indian Affairs Committee have been allocated to this study. GORDY HIGGINS will allocate between .25 and .50 of his time to the eminent domain study. This will be in addition to the EQC staff allocation. It was also decided that a Joint Subcommittee of the EQC and the Law, Justice, and Indian Affairs Committee be convened. The Chairpersons of the respective Committees will determine the format.

MEPA - The EQC receives all state government environmental review documents which are input into the EQC database. In 1988, all the agencies revised their rules with exception of the Department of Livestock. In 1991, the Legislature directed that the EQC become involved with MEPA implementation with state agency personnel. Between 1991 and 1995, approximately 600 individuals were trained. A training handbook was produced for use by state agency personnel. During the 1995 interim, an EQC Subcommittee reviewed ways to incorporate private property rights analysis into the MEPA review as required by SB 231 and developed a series of guidelines for state agency use in analyzing the impacts of certain state actions on private property rights.

Oversight - MR. EVERTS explained that SB 11 further expanded and defined the Council's oversight responsibilities. The DFWP, DNRC, and DEQ were

formally placed under the oversight authority of the EQC. The Administrative Code Committee has been dissolved and their rule making oversight authority was given to each individual interim committee. MR. EVERTS explained that he will review the rules for technical sufficiency and provide reports at each Council meeting. If the Council has an issue on a particular proposed rule by any of the three agencies listed above, the Council can call additional hearings, intervene in the process, request a legislative poll, and/or request an economic impact analysis. Additionally, each Council meeting includes one or two oversight issues. Typically the interested parties and the agencies are present at the meetings for a thorough discussion and review of possible solutions. The resource commitment for oversight is typically set at a .5 FTE.

Environmental Conditions/Trends (Indicators) - MR. MITCHELL reported that this work plan element is a statutory responsibility of the Council. Earlier Councils wrote annual reports each biennium. In 1996, the EQC prepared a document entitled "*Our Montana Environment . . . Where Do We Stand*". This document was a comparison of indicators over the past 20 years. This document will be on the web in the near future and will be easy to update. The information in this document has been used by various state agencies. Last interim a focused report on growth issues was developed by this Council.

Water Policy - MS. VANDENBOSCH stated that the last EQC did have a Water Policy Subcommittee and they recommended that several issues related to Montana's Water Quality Monitoring Assessment and Improvement Law (HB 546, which dealt with TMDLs) be followed up on this interim. A lawsuit is ongoing which involves how the EPA had handled Montana's law. Also, the EPA intends to issue draft regulations this summer that would relate to Montana's law. This would include the listing of impaired waters and development of TMDLs. The EPA has received a notice of intent to sue over how it is handling Endangered Species Act issues and approval of Montana TMDLs.

REP. CLARK asked for an update of EPA's disapproval of Montana's water quality standards. MS. VANDENBOSCH explained that the EPA sent a letter in December which disapproved Montana's standards. The Legislature then passed SB 499 to

address this issue. She agreed to follow up on this matter. The DEQ could report on this at a future EQC meeting.

Stream Corridors - MS. VANDENBOSCH reported that HB 458 includes reviewing and summarizing state, federal and local policies and programs that relate to stream side corridor management in Montana and identifying overlapping or conflicting goals and/or implementation programs. In addition, the bill asks the EQC to evaluate existing riparian best management practices (BMPs) and to evaluate programs, to disseminate information about voluntary BMPs and to develop cost effective mechanisms to compile and disseminate information. The portion of the bill that addresses these responsibilities sunsets at the end of 2000. She provided a table which showed BMPs for non-point source pollution, **Exhibit 6**. There is a significant amount of overlap. There are various guides for BMPs. A technical working group might be a good method of handling this issue if the EQC wants to actually develop BMPs. The Watershed Coordination Council and the Wetlands Council include persons who provide technical assistance for BMPs.

Energy - MR. EVERTS reported that last interim the EQC directed him, as staff to the Transition Advisory Committee on electric industry restructuring, to provide updates. He added that he will be providing technical support on specific issues to the TAC this interim and could report back to the EQC.

Growth/Land Use - MS. VANDENBOSCH related that the last EQC appointed a Growth Study Subcommittee that devoted a significant effort to growth issues. They proposed four bills and three out of the four bills passed. The funding bill did not pass. The funding issue could be addressed and implementation of the bills that did pass could be reviewed. Recommendations made by the past EQC Growth Subcommittee include: 1) Evaluate the exemption from subdivision review for a family conveyance; 2) Evaluate the cumulative effects of minor subdivisions; 3) Evaluate the citizen petition zoning statute; 4) Evaluate park dedication requirements; and 5) provide education. This work plan element may require a lot of time due to the controversial issues involved with land use matters.

MR. SORENSEN requested that the EQC monitor implementation of SB 97 at the county and city levels. It is unfortunate that the funding was not available. He added that there is some block grant money available.

Voluntary Cleanup Incentives - MR. MITCHELL explained that the issue of voluntary cleanup incentives originated from the Water Policy Subcommittee's oversight of the State Water Plan. The Montana Groundwater Plan Section of the Plan was completed by the DNRC. In that document, they suggested that the EQC, in collaboration with the DEQ Remediation Division and the Department of Commerce, should undertake a study to determine the need for and the ability of tax and other types of financial incentives to encourage voluntary cleanup and redevelopment of contaminated sites in Montana. The EQC's report to the Legislature suggested that the next EQC should make this a priority. This resulted in HJR 3. This resolution ranked low, 21st out of 24 studies, in the legislative poll of interim studies. The Legislative Council suggested that this study not be undertaken.

Eminent Domain - MS. VANDENBOSCH reported that this study ranked 2nd out of 24 studies included in the legislator poll. Five bills amending the eminent domain statutes were introduced this session. All of these bills were tabled. Some of the interest in eminent domain deals with several projects which include the Yellowstone Pipeline, the Tongue River Railroad and the relocation of a Cenex Pipeline. The study resolution places a lot of emphasis on gathering factual information about how the statutes are used and how the various mechanisms work. It also emphasizes making an effort to allow all Montanans to participate. The Legislative Council recommended that the study be undertaken by the EQC in cooperation with the Law, Justice, and Indian Affairs Interim Committee.

SEN. COLE explained that the eminent domain issue is very broad. The statutes have not been reviewed for quite some time and needs to be updated. The Joint Subcommittee will take a significant time allotment.

Other Topics - MS. VANDENBOSCH remarked that these issues would come from Council members.

MR. SORENSEN asked for the status of the cluster subdivision bill. MS.
VANDENBOSCH explained that the bill was tabled and SJR 21 was drafted to review the issues. The study was assigned to the Business, Labor and Agriculture Subcommittee.

RECESS - The Council recessed for the day at 4:30 p.m.

VIII RECONVENE MEETING

CHAIRMAN CRISMORE reconvened the meeting at 8:00 a.m. on Tuesday, May 25, 1999.

IX ADOPTION OF WORKPLAN OPTIONS

MR. EBZERY remarked that he had visited with several Council members and offered certain suggestions.

MEPA - Option A - There appeared to be significant interest in this element. A full subcommittee had been suggested. This option allowed for 1 FTE.

Oversight - Option B - He recommended that the FTE allotment be changed from .25 to .20. The change from the Administrative Code Committee has given this Council certain responsibilities and this will specifically involve MR. EVERTS' time.

Environmental Conditions/Trends (Indicators) - Option B - The 1996 report was well written and should be updated. He recommended that the FTE allotment be changed from .40 to .35.

Water Policy - Option B - This is a statutory requirement. A lot of work has been done in this area in the past and this should continue.

Stream Corridor Management - Option C - The FTE allotment of .20 should allow the Council to be watchful of this element.

Energy - Option C - There did not appear to be anything happening in this area at this time.

Growth and Land Use - Option C - The last Council worked very hard on this element and the Council should also be watchful of this element.

Voluntary Cleanup Incentives - No action at this time but this could be reviewed again at a later time if necessary.

Eminent Domain - Option B - He recommended that the FTE allotment be changed from .25 - .50 to .75. Gordy Higgins, Legislative Council, Research Analyst, who will be working with the EQC staff, will be a great asset. His time allotment of .5 FTE would give this element an allotment of 1.25 FTE. This would be a large study. A report to the Legislature would be provided as well as possible legislation. Public hearings would be held and the issue would be thoroughly discussed. He discouraged spending too many FTE hours on this issue because it could defeat the purpose.

SEN. MCCARTHY agreed with the suggestions in general. She added that under “Environmental Conditions/Trends”, an update of the publication may not need the total amount of the FTE allotment suggested. This would allow some flexibility for other areas which may need some extra time.

MR. SORENSEN agreed. He suggested combining three subjects to include environmental conditions/trends, stream corridor management (which he understands the main issue to be home sites on rivers), and growth/land use. This would amount to an allotment of between .5 and .75 FTE. A small working group could be set up to address the subjects as necessary.

SEN. COLE recommended that voluntary cleanup incentives be given some allotment of time. Perhaps this could involve attending meetings. MR. EVERTS added that staff could attend meetings with a Council member and this would take a very small amount of time.

REP. CLARK raised a concern that he did not have a comprehensive understanding of the process involved in dealing with contaminated site cleanup projects. His concern was whether or not projects were dealt with only during the sale and transfer of property. Without a transfer of property, he questioned how the cleanup for these

properties was being addressed. MR. EVERTS explained that the State's Superfund had a prioritization list. MR. MITCHELL added that the Remediation Division of DEQ could provide an update at a future meeting.

SEN. MCCARTHY remarked that she would be available to help set up tours of a number of the sites to include the affected sites as well as the cleanup sites.

CHAIRMAN CRISMORE suggested that the working group be very small. The Council agreed to also have a small working group for the water policy element.

IX PUBLIC COMMENT

Don Allen, Western Environmental Trade Association, remarked that it is very important for Council members to give particular attention to the reports MR. EVERTS will be preparing regarding new rules. This is an opportunity for the Council to have specific oversight on environmental issues. In general, he believed that the work plan was well developed.

MR. EVERTS added that this includes unchartered waters for all of the interim committees. He will provide updates on what is happening and the Council will need to determine the need to specifically address new rules.

The Council unanimously adopted the following work plan items, options and FTE allocations for the 1999-2000 interim:

MEPA:	Option A	1 FTE
Oversight:	Option B	.20 FTE
Env. Trends/ Stream Coord./ Growth/Land Use	Option B/C Option C Option C	> >> .50 FTE or (.75 ?) >
Water Policy	Option B	.50 FTE
Energy	Option C	.05 FTE

Eminent Domain Option B 1 FTE or (.75 ?)

Voluntary Cleanup attend conference N.A.

Total FTE allocation: 3.25

X SUBCOMMITTEE MEMBERSHIP ASSIGNMENTS

CHAIRMAN CRISMORE made the following assignments.

MEPA Subcommittee

SEN. MCCARTHY, Chair

SEN. MESAROS

REP. MOOD

REP. YOUNKIN

REP. CLARK

SEN. TESTER

MR. STRAUSE

Eminent Domain

SEN. COLE, Chair

REP. TASH

SEN. STANG

REP. LINDEEN

MR. SORENSEN

MS. PAGE

MR. EBZERY

Water Policy Working Group

SEN. MCCARTHY

REP. TASH

SEN. TESTER

Growth/Indicators/Riparian Working Group

MR. SORENSEN

SEN. STANG

MS. PAGE

Additional volunteers for the working groups would be appreciated.

XI OTHER BUSINESS

VICE CHAIR GILLAN requested that information be sent by e-mail to Council members who had e-mail.

XII ADOPTION OF INTERIM EQC CALENDAR

MR. EVERTS remarked that a draft calendar had been provided to Council members, **Exhibit 7.**

Due to scheduling conflicts, the September 30, 1999 and October 1, 1999 meeting was changed to September 22 and 23, 1999. The Council agreed to have a field meeting in

Libby for their next meeting. The Council will visit the Rock Creek Mine and a state timber sale. Both sites involve the MEPA process.

The December 3, 1999 meeting was also changed to December 2, 1999. The Council adopted the interim calendar as revised.

XIII SUBCOMMITTEE ORGANIZATIONAL MEETINGS

Subcommittee organizational meetings were held following the full EQC meeting. SENATOR MCCARTHY chaired the MEPA meeting and SENATOR COLE chaired a meeting of the eminent domain subcommittee.

XIV ADJOURNMENT

There being no further business, the meeting adjourned at 11:00 a.m.

SEN. CRISMORE, Chair