



# ENVIRONMENTAL QUALITY COUNCIL

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**GOVERNOR BRIAN SCHWEITZER**  
**DESIGNATED REPRESENTATIVE**  
MIKE VOLESKY

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

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

**PUBLIC MEMBERS**  
JEFF PATTISON  
BRIAN CEBULL  
DIANE CONRADI  
MARY FITZPATRICK

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

## MINUTES

Approved September 13, 2010

Date: July 22, 2010

Room 172  
State Capitol Building

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

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

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

### **COMMITTEE MEMBERS PRESENT**

REP. CHAS VINCENT, Chair  
SEN. BRADLEY MAXON HAMLETT, Vice Chair  
SEN. JIM KEANE  
SEN. RICK RIPLEY  
SEN. JIM SHOCKLEY  
SEN. MITCH TROPILA  
SEN. BRUCE TUTVEDT  
REP. SUE DICKENSON  
REP. JULIE FRENCH  
REP. MIKE MILBURN  
REP. CARY SMITH  
REP. FRANKE WILMER  
MS. DIANE CONRADI (via telephone)  
MS. MARY FITZPATRICK

## **MEMBERS EXCUSED**

MR. BRIAN CEBULL  
MR. JEFF PATTISON

## **STAFF PRESENT**

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

## **Visitors**

Agenda ([Attachment 1](#))  
Visitor list ([Attachment 2](#))

## **COMMITTEE ACTION**

- The EQC approved the May 6-7, 2010 Minutes.
- The EQC approved the recycling report, "The Coke Can from Columbus," as changed, for publication and agreed to have the comments referenced on-line but not included in the report.
- The EQC approved the HJR 15 study summary "Monetary Incentives for Tourism and Recreational Access" for publication.
- The EQC approved all DNRC legislative proposals for drafting except proposals 1, 4, and 10.
- The EQC approved DEQ's legislative proposals for drafting.
- The EQC voted to redraft SB 507 to incorporate changes suggested by Krista Lee Evans and to put the draft back out for public comment.

## **CALL TO ORDER AND ROLL CALL**

00:00:08 Rep. Chas Vincent, Chairman of the Environmental Quality Council (EQC), called the meeting to order at 9:00 a.m. The secretary called the roll ([Attachment 3](#)).

## **AGENDA**

### **ADMINISTRATIVE MATTERS**

00:01:44 Sen. Keane moved the adoption of the May 6-7, 2010, EQC Minutes. The motion carried unanimously by voice vote. Mr. Everts reported that, to date, the EQC

had expended approximately \$35,285.43 and has a remaining balance of \$40,012.50.

## **HJR 1--STUDY OF BIOMASS**

### **Discussion of RECs and RPS--Chairman Greg Jergeson, PSC**

00:03:36 Greg Jergeson, Chairman, Montana Public Service Commission (PSC), provided information relating to Renewable Energy Credits (RECs) and the Renewable Portfolio Standard (RPS). Chairman Jergeson reported the PSC looks favorably at using biomass resources in Montana as part of the energy portfolio but outlined the difficulties in doing so.

### **Questions from the EQC**

00:26:19 Sen. Keane thought it appeared from last session that the wind energy industry wants to keep the RECs to themselves and not have them available to other energy programs. Chairman Jergeson commented the PSC does not have a bias for one technology over another. Chairman Jergeson suggested it is easy for someone who currently has RECs to attempt to hold onto the market. Sen. Keane hoped the PSC would consider all available options.

00:31:44 Sen. Tutvedt wanted to know the current market value of a REC. Chairman Jergeson stated the PSC does not have access to the details of transactions and that the value varies. Sen. Tutvedt wondered how much RECs increased a consumer's bill and how to make the cost of RECs evident to consumers. Mr. Jergeson agreed there are costs involved, but noted the difficulty in unbundling that REC cost since the price varies. Sen. Tutvedt agreed RECs have a cost and was interested in knowing the direct cost to customers. Chairman Jergeson estimated the cost as approximately one-half cent per kilowatt hour.

00:37:46 Ms. Conradi asked whether RECs are transferrable and marketed in the California market. Chairman Jergeson agreed RECs are transferrable, but did not know if RECs were marketable. Ms. Conradi recalled efforts to revise the RPS and wondered how that might impact the market. Chairman Jergeson responded there is no question that raising the standard could raise the value of RECs but cautioned there would be financial consequences to moving around the standard.

00:41:33 Sen. Shockley stated if the PSC cannot determine how a REC standard affects the price of power to consumers, then the PSC cannot do its job. Chairman Jergeson explained how those kinds of questions just cannot be answered with any kind of precision. Sen. Shockley reiterated if the answer cannot be determined, then RECs should not be used. Chairman Jergeson added the PSC does not have the legal authority to obtain the data.

00:46:28 Sen. Hamlett asked whether the value of RECs varies according to seasons. Chairman Jergeson assumed the value of RECs fluctuates during the year. Sen. Hamlett asked whether the PSC establishes the value of a REC. Chairman Jergeson replied no. Sen. Hamlett wondered whether the PSC considers

hydroelectricity as renewable energy and whether hydroelectricity qualified for RECs. Chairman Jergesen's understanding of the law was that hydro built after a certain date and below a certain amount does qualify for the RPS.

- 00:48:51 Sen. Ripley recalled RECs could be unbundled on a monthly basis to determine the value of a REC during a particular month. Chairman Jergeson stated he might be able to determine the value, but was not certain. Sen. Ripley asked if it would be possible to put a line item on consumer bills, so they would know what a REC costs per month. Chairman Jergeson predicted customers would resist since they do not want a whole bunch of lines on their bill.
- 00:53:18 Rep. Wilmer recalled the Senate Joint Finance Committee estimated the value of RECs over the next ten years and suggested that information may be helpful. Chairman Jergeson noted that the projections would be averages which would not particularly apply to the current situation.
- 00:54:38 Rep. French asked for clarification that the price of energy is dependent upon the market price at any given time. Chairman Jergeson agreed. Rep. French asked whether Chairman Jergeson envisioned a time when a price would have to be given to RECs nationally. Chairman Jergeson stated the market will determine the price.
- 00:59:49 Sen. Hamlett wondered whether the price of electricity to Montana consumers would decrease if hydropower received the same REC treatment as other generators. Chairman Jergeson suggested anyone promising to build new technology to secure cheap power is not giving the correct story to the public. Sen. Hamlett suggested the issue boils down to supply and demand, and that an increase in supply would lower the price of energy. Chairman Jergeson reminded Sen. Hamlett that new generation cannot be constructed cheaply.
- 01:03:02 Chairman Vincent thanked Chairman Jergeson and suggested the reality is that there is no RPS market available in Montana and a number of people are sitting on RECs. Chairman Jergeson noted the Judith Gap project qualified. Chairman Vincent asked whether there would be any development of a renewable energy facility without an RPS. Chairman Jergeson explained wind generation facilities have been constructed in Montana; however, the power is being marketed to other states in an effort to take advantage of RPS and REC markets in other states. Chairman Vincent wondered how much the RPS market in Montana drives renewable energy development. Chairman Jergeson responded he was not certain the RPS drove the construction of Judith Gap and did not believe other facilities in Montana were driven by the RPS.

#### **Algae Aqua-Culture Technology--John Murdock**

- 01:08:18 John Murdock gave a PowerPoint presentation entitled "Integrated Smart Technologies for a Sustainable Future" ([EXHIBIT 1](#)).

### **Biochar Sustainable Obtainable Solutions--Gloria Flora**

01:25:43 Gloria Flora gave a PowerPoint presentation entitled "Biochar--An Elegant Solution for Complex Problems" (**EXHIBIT 2**). Ms. Flora also submitted brochures entitled "You Can Protect your Property from Wildfire--and Still Live in the Woods!" (**EXHIBIT 3**), and "An Introduction to Biochar" (**EXHIBIT 4**).

### **Rural Development Partner Recommendations --Tracy McIntyre**

01:49:34 Tracy McIntyre reviewed "Western Montana Economic Developers' Collaboration on Forest Products Industries" (**EXHIBIT 5**).

### **Review of Public Comment--Ms. Nowakowski**

02:02:46 Sonja Nowakowski, Research Analyst, summarized the public comment received on proposed biomass legislation and the draft report (**EXHIBIT 6**).

### **Public Comment**

02:11:06 Bob Harrington, Forestry Division Administrator, Department of Natural Resources and Conservation (DNRC), wanted to ensure biomass received a fair amount of attention in developing an energy policy for Montana. Mr. Harrington addressed the Fuels to Schools program and stated there are 11 facilities operating in Montana and all the facilities currently meet EPA standards.

02:14:34 Paul McKenzie, F.H. Stoltze Land & Lumber Company, Columbia Falls, submitted proposed language for LC 7000 (**EXHIBIT 7**).

02:18:14 Ellen Simpson, Montana Wood Products Association, supported the draft language submitted by Mr. McKenzie.

02:18:50 Jason Todhunter, Montana Logging Association, also supported the language submitted by Mr. McKenzie.

02:19:44 Vickie Walsh, Air Quality Permitting, Department of Environmental Quality (DEQ), stated she was available to answer questions.

02:20:01 Christine Johnson, Johnson Brothers, also supported the language proposed by Mr. McKenzie.

02:20:22 John Fitzpatrick, Northwestern Energy, commented on RECs and RPS.

02:30:02 Mark Johnson, Flathead Electric, appearing on behalf of the Montana Electrical Co-op, spoke about the need to secure access to the forest and the need to have a fuel resource that is located near the generation facility.

## Questions from the EQC

- 02:32:09 Sen. Tutvedt asked Ms. Flora whether the biochar process would stand the market test. Ms. Flora stated most technologies are not ready for commercialization. Ms. Flora explained how it is not necessary to apply biochar annually since biochar remains in the soil and improves over time.
- 02:36:53 Sen. Keane asked Mr. Fitzpatrick whether Northwestern Energy is filling its reservoirs with cheap natural gas. Mr. Fitzpatrick agreed but cautioned consumers would not see the same prices as those prices reflected in newspapers. Sen. Keane asked about utilizing long-term natural gas prices to generate electricity. Mr. Fitzpatrick did not believe it would be possible to have a natural gas plant in Montana and still have a price under \$50.
- 02:40:47 Sen. Hamlett asked Ms. Flora about the ability to sustain the acquisition of biomass from the U.S. Forest Service and asked whether the fuel reduction program and timber sales keep up with growth in the forest. Ms. Flora believed the U.S. Forest Service is not keeping up with the growth in the forests. Sen. Hamlett asked whether biochar is used in municipal treatment facilities. Ms. Flora explained charcoal is used in many filtration systems. Sen. Hamlett asked whether biochar has to be incorporated into the soil and whether there has to be a mechanical process. Ms. Flora explained the current debate among the biochar community and experiments that are being performed to determine the answer. Sen. Hamlett asked whether biochar is produced in a granular form. Ms. Flora responded biochar is primarily, but not necessarily, granular.
- 02:45:57 Chairman Vincent addressed Shawn Thomas, Forest Management Bureau, DNRC, and asked about long-term contracting for biomass on state trust lands. Mr. Thomas explained how the DNRC can contract for forest products under a variety of methodologies and means. Mr. Thomas further explained the biomass is secondary from DNRC's timber sales. Chairman Vincent noted the DNRC was allowed to exceed the sustained yield limit by ten percent and asked whether that provision would be the proper vehicle to obtain biomass. Mr. Thomas agreed, but emphasized the need for a market.

## HJR 30--STUDY OF FIRE SUPPRESSION

### Update on Fire Season

- 02:51:09 Bob Harrington, Forestry Division Administrator, DNRC, provided a map depicting fire activity (**EXHIBIT 8**) and provided an update on the 2010 fire season. Mr. Harrington also submitted a memorandum to employees of the DNRC, Fire and Aviation Management Program, regarding U.S. Forest Service firefighters riding in DNRC aircraft (**EXHIBIT 9**). Mr. Harrington identified the liability of volunteer firefighters as another issue being addressed by the DNRC.

### **Public Comment**

02:57:18 Niki Sardot, Ravalli County, addressed the issue of the Wildland Urban Interface (WUI), and requested that SB 131 be tightened (**EXHIBIT 10**). Ms. Sardot depicted the WUI designation as "backdoor zoning."

### **Questions from the EQC**

03:00:06 Sen. Keane stated he received a letter regarding the volunteers that use state resources and wondered how the liability issue surfaced. Mr. Harrington explained that the Tort Claims Division raised the issue. Sen. Keane thought the problem should be corrected through legislation. Mr. Harrington agreed.

03:04:41 Chairman Vincent requested clarification on the state flying federal employees in state aircraft. Mr. Harrington explained the new agreement and interagency aircraft guidelines.

03:08:55 Sen. Ripley asked who holds the title to the aircraft with the safety issue allegations. Mr. Harrington explained the aircraft are operated by the DNRC, but the aircraft are owned by the U.S. Forest Service. Mr. Harrington explained the safety allegation was mechanical and the other concerns are operational issues.

(LUNCH)

## **SJR 28--STUDY OF RECYCLING**

### **Recycling Infrastructure Grants Update--Lou Moore, DEQ**

04:21:25 Lou Moore, Energy and Pollution Prevention, DEQ, provided the EQC with an update on the recycling infrastructure grant program and various recycling programs in Montana (**EXHIBIT 11**).

### **Review of Public Comment on Draft Report--Ms. Nowakowski**

04:25:13 Ms. Nowakowski provided a review of the public comment on the draft recycling report (**EXHIBIT 12**).

### **Public Comment**

04:31:28 Tyler Evilsizer, The Student Advocates for Valuing the Environment (SAVE) Foundation, thought the report did an excellent job of identifying the obstacles to recycling in Montana, but did not go far enough.

### **Questions from the EQC**

04:34:45 Rep. Wilmer asked about opportunities to recycle glass in Montana and thought it should be mentioned in the report. Ms. Nowakowski responded there is some discussion of different projects in Montana.

- 04:37:00 Ms. Fitzpatrick asked whether the DEQ had done any analysis on the market for ground glass. Ms. Moore identified a number of uses for ground glass. Ms. Fitzpatrick asked whether there had been an economic analysis. Ms. Moore responded there had not been an economic analysis.
- 04:39:04 Sen. Keane moved to adopt the report as changed for publication and have the comments referenced on-line but not included in the report.
- 04:39:33 Rep. Dickenson summarized people want to recycle but recycling is difficult. Rep. Dickenson stated she was disappointed the EQC could not do more from a policy standpoint, but understood the fiscal restraints. Rep. Dickenson hoped individual legislators would move forward with recycling legislation.
- 04:41:12 Rep. Wilmer asked about the report being published and whether the report would be on-line or would be reproduced with paper. Mr. Everts explained the process for interim committee publications consists of both on-line and paper copies, but noted the reduction in demand for paper copies of publications.
- 04:42:42 Sen. Keane's motion carried unanimously by voice vote, with Mr. Pattison and Mr. Cebull voting by proxy.

#### **HJR 15: TOURISM AND RECREATIONAL ACCESS STUDY**

- 04:43:26 Ms. Stockwell explained that the draft study report "Monetary Incentives for Tourism and Recreational Access" (**EXHIBIT 13**) did not receive any public comment. Ms. Stockwell sought the EQC's approval for publication.

##### **Public Comment**

- 04:44:51 Kerry White, Citizens for Balanced Use, submitted "Table of Cumulative Effects on Motorized Recreationists" (**EXHIBIT 14**). Mr. White believed the number of closed roads has greatly impacted recreation and tourism activities in Montana.
- 04:52:19 Rep. Milburn moved to accept the Tourism and Recreational Access report for publication.
- 04:53:44 Sen. Keane commented he preferred to include Mr. White's comments by reference rather than include the comments in their entirety. Rep. Milburn's motion carried by voice vote with Sen. Ripley, Mr. Cebull and Mr. Pattison voting by proxy.

#### **STATUTORY DUTIES: LEGISLATIVE PROPOSALS/REQUEST FOR DRAFTING**

##### **Introduction**

- 04:54:44 Mr. Everts reviewed the "EQC Process Regarding Agency Bill Draft Proposals" (**EXHIBIT 15**).

## **DNRC Proposals**

04:58:56 Mary Sexton, Director, DNRC, reviewed "DNRC 2011 Legislative Proposal Summaries" ([EXHIBIT 16](#)).

## **Public Comment**

There was no public comment.

## **Questions from the EQC**

05:12:19 Rep. Dickenson addressed the proposed legislation regarding interest and income for the State Land Trust and wondered whether the proposal would affect the beneficiaries. Director Sexton stated the procedure would improve since everyone operates under a fiscal year.

05:13:06 Sen. Shockley did not understand why the Water Policy Interim Committee (WPIC) was not addressing proposed legislation regarding water marketing. Director Sexton explained the DNRC was requested to report all of its legislative proposals to the EQC, and the WPIC will also be reviewing the proposals.

05:14:01 Sen. Tropila asked whether proposal 11 would be a statutory appropriation. Director Sexton agreed it would be a statutory appropriation.

05:15:05 Barb Smith, Fiscal Analyst, explained the difference between the funds, but could not immediately recall what fund the money was sitting in.

05:15:47 Rep. Wilmer requested clarification on proposal 10 and the Blackfeet Infrastructure Account and wondered over what period of time Montana had committed \$20 million. Director Sexton explained the budget proposal would come from the Office of Budget and Program Planning (OBPP). The proposal is currently before Congress. Director Sexton believed it would be appropriate to place the money in the account now in anticipation of the federal legislation passing.

05:17:31 Ms. Fitzpatrick addressed proposal 4 and wondered whether the water right owner would be paid for putting their rights in the bank or would be paid only when it is drawn upon. Director Sexton responded the water right owner would only be paid when the water is purchased.

05:18:16 Sen. Keane moved that proposal 4 not be moved out of the EQC. Sen. Keane withdrew his motion.

05:18:37 Sen. Shockley acknowledged the shortage of money in Montana and stated he would like to leave the \$16 million where it is. Director Sexton explained that as part of the compact, Montana agreed to contribute \$20 million. Sen. Shockley thought it would be wise not to fund the compact until it was necessary.

- 05:19:59 Sen. Hamlett wondered whether the money would draw interest if it were deposited and who would receive the interest. Director Sexton understood the interest would be available immediately and that the Tribe can access the interest.
- 05:20:46 Bill Shultz, Program Manager, Reserved Water Rights Compact Commission, clarified the interest is deposited back into the account and cannot be spent until the contract is ratified by the federal government. Sen. Hamlett asked for clarification that no one can draw money out of the account until Congress has passed legislation. Mr. Shultz agreed.
- 05:22:37 Rep. French asked what was meant by the reference to the Four Horns Reservoir. Mr. Shultz stated the Four Horns Reservoir needs substantial work to improve the infrastructure and allow for additional storage for the benefit of Indian and non-Indian irrigators on the project. Mr. Shultz believed non-Indian irrigators were both on and off the reservation.
- 05:23:50 Chairman Vincent addressed the recreational use penalty and requested examples of the various misdemeanor and civil penalty violations. Director Sexton explained inconsistencies in the penalties. Chairman Vincent asked about proposal 6 and asked whether that would utilize a DNRC hand crew.
- 05:25:56 Mr. Harrington, Forestry Division, DNRC, explained hand crews would only represent a portion of the work and 90 percent of the time the work would be burning slash piles under safe conditions.
- 05:26:30 Chairman Vincent addressed proposal 8 and requested clarification about how the coal bed methane account would be able to be accessed after 2010. Director Sexton explained the account has been accessible only for emergency situations, but no one has applied. After 2011, longer term damages can be applied for. Longer term damages sought under the fund would be increased from \$50,000 to \$150,000.
- 05:28:59 Ms. Smith clarified for Chairman Vincent that proposal 11 is a private purpose trust fund and is an 08 account and needs cleanup. Ms. Smith addressed proposal 10 and stated the account retains its own interest and that the principal and interest are available for expenditure.
- 05:29:48 Sen. Shockley referred to proposal 8 and asked for clarification that the producer is the entity responsible for the damage, and the state would pay if the producer does not. Director Sexton clarified the \$8.4 million in the account came from the producers.
- 05:31:16 Rep. Dickenson noted the different agreements made between landowners and producers. Director Sexton explained the fund was set up at the inception of the effort and most of the time the production companies have paid the landowners for emergency damages. The fund was set up mostly as a precaution because it was unknown what the industry would bring.

05:32:36 Chairman Vincent questioned proposal 1 and asked whether the proposal was for Fish, Wildlife & Parks' (FWP) land and DNRC land. Director Sexton clarified the proposal would address only DNRC state trust lands.

05:33:59 Sen. Hamlett wondered what happened to the money deposited in the Crow Compact and the history behind that fund.

05:34:33 Anna Miller, DNRC, addressed Sen. Hamlett's question and stated the entire \$15 million is in the account and the principal, as well as some income interest, is still intact. Up to \$600,000 a year in interest income can be disbursed. Sen. Hamlett wondered whether the Blackfeet Compact would be structured the same. Ms. Miller could not answer to the specifics of the Compact.

05:37:43 Director Sexton explained the mitigation account and the infrastructure account and the differences between the two accounts.

05:38:33 Sen. Ripley moved to segregate proposals 1, 4, 8, and 10, and approve all other DNRC legislative proposals for drafting. Sen. Ripley commented he would like further discussion regarding proposals 1, 4, 8, and 10.

05:40:13 Ms. Fitzpatrick stated she supports proposal 1 and an unenforceable law is a bad law. Sen. Ripley's motion carried unanimously with Mr. Cebull and Mr. Pattison voting aye by proxy.

05:41:21 Sen. Shockley provided an explanation and stated he did not care for civil penalties. Sen. Shockley cautioned against mixing civil law and criminal law.

05:42:16 Chairman Vincent explained difficulties people in his area are having with FWP enforcement.

05:45:23 Rep. French requested clarification regarding misdemeanor versus civil penalties. Sen. Shockley explained that a misdemeanor is a crime. The standard for a civil penalty is that it must be proven beyond a reasonable doubt, which is a lower standard than for a misdemeanor.

05:47:48 Rep. French asked Director Sexton why DNRC would not consider changing everything to a civil penalty. Director Sexton explained it is difficult to prosecute a civil penalty.

05:49:06 Kevin Chappell, Agricultural and Grazing Bureau Chief, DNRC, explained the case would be presented to a hearings officer.

05:49:30 Rep. Milburn expressed his opposition to proposal 1.

05:50:29 Sen. Keane also opposed proposal 1 since it would show up on a criminal record.

05:51:43 Rep. Dickenson moved that proposal 1 be moved forward. Rep. Dickenson stated she would like a chance to review the bill draft.

- 05:53:32 Mr. Everts clarified the EQC would not see the bill draft and the bill would next be reviewed by legislative committees.
- 05:54:30 Rep. Wilmer sought to know specific examples of misdemeanors.
- 05:55:54 Director Sexton reviewed DNRC's civil penalties. Mr. Chappell explained the various classifications of violations.
- 05:57:43 Sen. Shockley thought he would be able to see the bill draft. Sen. Shockley was uncomfortable with the DNRC proceeding with the proposal.
- 05:59:19 Sen. Hamlett asked Mr. Chappell what license he was referring to. Mr. Chappell clarified his reference was to either the conservation license or a general recreational use permit. Sen. Hamlett asked what the DNRC's procedure was for adjacent property owners being on state property. Mr. Chappell stated it would be a misdemeanor which would be handled by the local justice court.
- 06:01:00 Sen. Tropila requested further explanation from Sen. Shockley about the difference between misdemeanors and civil penalties. Sen. Shockley stated a misdemeanor is a crime which is prosecuted by the county attorney. However, a civil penalty is enforced administratively by the DNRC. Sen. Shockley cited the expense of enforcing a civil penalty as the driving force behind the proposal.
- 06:03:37 Rep. French asked whether a DNRC employee could issue a civil penalty or a misdemeanor. Mr. Chappell responded violations are originally issued by FWP officials.
- 06:05:24 Sen. Ripley reminded the EQC that the legislation could always be sponsored by individual legislators. The motion failed 2-13 by roll call vote with Mr. Cebull and Mr. Pattison voting no by proxy.
- 06:07:15 Rep. Wilmer moved to send proposal 10 forward. Rep. Wilmer commented the Compact is in order and that approval by Congress is imminent. Rep. Wilmer would like to work with the Blackfeet Tribe along the same lines as the process for the Crow Compact. Sen. Shockley commented he would rather not spend money right now unless he absolutely had to. Rep. Wilmer's motion failed 7-8 by roll call vote, with Mr. Cebull and Mr. Pattison voting no by proxy.
- 06:11:38 Rep. French moved to forward DNRC's proposal 8 for drafting purposes. Rep. French believed the proposal was no different than mitigating damage done to livestock by wolves, and that the proposal warrants discussion by the full Legislature.
- 06:12:38 Rep. Wilmer believed it was a straight-forward issue of property rights and damage and supported Rep. French's motion.
- 06:12:47 Sen. Shockley believed innocent people would be compensated and that the compensation would come from the industry. Rep. French's motion carried 8-7 by roll call vote with Mr. Cebull and Mr. Pattison voting no by proxy.

(BREAK)

### **DEQ Proposals**

06:28:01 Richard Opper, Director, DEQ, reviewed "Summary of Proposed Legislation, Department of Environmental Quality" ([EXHIBIT 17](#)).

### **Public Comment**

There was no public comment offered.

### **Questions from the EQC**

06:40:39 Sen. Ripley asked for clarification that although the DEQ has not heard from the federal government regarding what was specifically not approved in HB 278, the DEQ wants to draft legislation to address what has been informally stated. Director Opper agreed that he has informally heard from the federal government. Director Opper emphasized HB 278 has a contingency voidness provision providing that if federal Office of Surface Mining (OSM) does not approve, the entire bill is void.

06:42:21 Chairman Vincent requested clarification that HB 278 would remove "not limited to." Director Opper agreed.

06:42:46 Ms. Fitzpatrick addressed the state building energy conservation proposal and thought the repayment of moneys on savings would be from money appropriated by DEQ for energy use and water use. Director Opper stated the repayment would come from the savings from a particular retrofit. The money will automatically go back into the program. After the repayment period, the energy payments should decrease depending on the cost of energy.

06:44:55 Rep. Wilmer asked for clarification that the Municipal Wastewater Reuse Authorization Act allows cities and counties to have options regarding the reuse of water, but nothing is mandated. Director Opper agreed.

06:45:56 Sen. Keane moved that DEQ's proposals be moved forward for drafting. Motion carried unanimously with Mr. Pattison, Mr. Cebull, and Ms. Conradi voting by proxy.

## **STATUTORY DUTIES: DEQ--NUTRIENT CRITERIA DEVELOPMENT UPDATE**

### **George Mathieus, DEQ**

06:47:14 George Mathieus, DEQ, reported on the progress of the Nutrient Work Group and the progress of the project ([EXHIBIT 18](#)).

## **Public Comment**

- 07:00:22 Dave Galt, Montana Petroleum Association, praised the report and the work of Mr. Mathieus and the work group. Mr. Galt submitted "Montana Petroleum Association Concerns Submitted to DEQ" (**EXHIBIT 19**).
- 07:04:57 Debbie Shea, Montana Mining Association, submitted comments by Doug Harper (**EXHIBIT 20**).
- 07:07:22 Jay Bodner, Montana Stockgrowers Association, thanked Mr. Mathieus. Mr. Bodner was not aware of neighboring states taking the lead. Mr. Bodner believed Montana has been effective in addressing non-point source issues. Mr. Bodner expressed concern about setting standards and how those standards would affect federal grazing leases.

## **Questions from the EQC**

- 07:11:12 Sen. Tutvedt wondered about the differences between rivers and the inherent problems arising from those differences. Mr. Mathieus spoke about how water-quality standards are explained to laymen. Sen. Tutvedt recalled that tests in his area had completely different results, and that there were difficulties because of natural loading. Mr. Mathieus outlined the differences in Sen. Tutvedt's past experience and the current situation, which sets specific criteria to protect the use.
- 07:18:13 Rep. Dickenson asked whether the DEQ would recognize the differences in areas when setting the standards. Mr. Mathieus agreed that would be the case. Rep. Dickenson asked about the trading policy and asked if an industry was polluting more than what was allowed to meet the standards, whether it could trade with someone within the same watershed area. Mr. Mathieus explained there would be an alternatives analysis. Rep. Dickenson complimented Mr. Mathieus and the work group for their work.
- 07:23:18 Sen. Keane wondered why numeric standards are needed in Montana. Mr. Mathieus explained what is being done in other states and why Montana is leading the nation in taking a common sense stakeholder approach. Sen. Keane expressed concern about having different standards for different groups. Mr. Mathieus responded he did not believe that was the case.
- 07:26:51 Rep. Milburn recalled the concern that only a few will be able to meet the stringent standards without a variance. Mr. Mathieus agreed there was a lot of misconception and identified a need to balance the requirements with the individual needs of communities. Rep. Milburn was concerned about the manpower and headaches involved. Mr. Mathieus noted much of the work had been completed, and the rules would coordinate with the five-year discharge permit.

- 07:30:18 Sen. Tutvedt commented on the complexity of the standards and the need for variances. Mr. Mathieus commented that dealing with variability in nature is not new to the DEQ.
- 07:31:59 Sen. Ripley wanted to know how the DEQ would determine who would be allowed a variance. Mr. Mathieus explained how an individual community can go through an alternatives analysis and an affordability analysis. Sen. Ripley was concerned about moving from a voluntary to regulatory environment. Mr. Mathieus stated he did not view it that way.
- 07:37:52 Sen. Hamlett asked Mr. Mathieus to address the uniqueness of the Milk River since the Milk River leaves both the state and country. Mr. Mathieus was unable to respond. Sen. Hamlett commented that he did not want to see legislation proposed which would be based on a financial statement.

**SB 507 REDRAFTING UPDATE**  
**UPDATE: NAVIGABLE RIVERS CASE (PPL vs. State of Montana)**

**Introduction--Mr. Kolman**

- 07:40:13 Joe Kolman, Research Analyst, reviewed the redraft of SB 507 ([EXHIBIT 21](#)).

**Public Comment**

- 07:48:35 Krista Lee Evans, Senior Water Rights Coalition and the Association of Gallatin Agricultural Irrigators, outlined her proposed revisions to SB 507.
- 07:52:10 Mike Murphy, Montana Water Resources Association, supported SB 507 with the revisions suggested by Ms. Evans.
- 07:53:20 Rep. Milburn asked Ms. Evans for further explanation. Ms. Evans provided a detailed explanation of her proposed revisions.
- 08:00:02 Sen. Hamlett commented that SB 465 already addressed some of the issues and urged the EQC members to review that legislation.
- 08:02:50 Sen. Shockley addressed the notice requirements and stated everyone who has an interest in whether a stream is determined to be navigable or non-navigable would need to be noticed.
- 08:03:49 Rep. Milburn requested clarification from Sen. Hamlett regarding SB 465. Sen. Hamlett explained his concerns.
- 08:05:22 Mr. Everts explained SB 465 will be reviewed in the bill drafting process.
- 08:05:56 Mr. Kolman asked permission to work with Ms. Evans to incorporate the changes.

08:06:25 Rep. Milburn moved SB 507 be redrafted to incorporate the changes suggested by Ms. Evans and be put back out for public comment. Rep. Milburn's motion carried unanimously by voice vote with Ms. Conradi, Mr. Pattison, Sen. Shockley, and Mr. Cebull voting aye by proxy.

**UPDATE: NAVIGABLE RIVERS CASE (PPL vs. State of Montana)**

08:08:14 Jaret Coles, Legislative Staff Attorney, explained the legal opinion regarding the decision in PPL Montana, LLC v. State (**EXHIBIT 22**).

08:18:08 Sen. Dave Wanzenried, a member of the Legislative Finance Committee, was present by telephone, and outlined the outstanding issues and questions. Sen. Wanzenried requested that any legal action be delayed until efforts are made to determine whether there is any common ground.

08:22:12 Sen. Ripley, also a member of the Legislative Finance Committee, agreed a resolution would be desirable over legal action. Sen. Ripley requested a letter of support from the EQC.

**Public Comment**

08:23:35 Director Sexton offered the legal opinions of DNRC's Chief Legal Counsel. Director Sexton believed this was not a unique issue

**Questions from the EQC**

08:24:20 Sen. Shockley addressed Candace West, DNRC Legal Counsel, and stated his understanding was that it was not trust land involved, but rather state land. Ms. West stated that was partially true since the Supreme Court had affirmed the navigable rivers of the state are part of the broad public land trust even though they are not part of the common schools land trust. Sen. Shockley wondered what other pieces of property were in the overarching trust. Ms. West identified a number of other trusts that would fall within the overarching umbrella of the public land trust.

08:34:03 Sen. Tutvedt addressed the Legislature's power to appropriate to protect the people of Montana. Sen. Tutvedt believed the Legislature as a whole should protect its right to appropriate.

08:35:04 Sen. Ripley agreed with Sen. Tutvedt and did not want to see the issue become a partisan issue. Sen. Ripley moved the EQC write a letter to the Land Board in support of the Legislative Finance Committee's letter (**EXHIBIT 23**). Sen. Tutvedt commented he did not believe the proposed letter was strong enough.

08:37:25 Rep. French asked for clarification about the issue and viewed the issue as a need to decide where the money belongs. Chairman Vincent explained the issues and options and stated he supports the Legislative Finance Committee.

- 08:39:44 Sen. Wanzenried stated he thought the letter would put the Executive on notice that there discussions that need to be had and issues to be decided. Sen. Wanzenried also saw a need to protect the integrity of the Legislature.
- 08:41:48 Sen. Tropila asked Sen. Wanzenried whether he thought a recommendation from the EQC would move the issue toward resolution or cause larger problems. Sen. Wanzenried believed the Land Board has the prerogative under the constitution.
- 08:44:01 Sen. Ripley stated he believes the Land Board does not have the authority and that the money belongs to the state.
- 08:44:49 Sen. Hamlett asked whether the Legislative Finance Committee's vote was unanimous. Sen. Wanzenried recalled the vote was unanimous among the members present.
- 08:45:44 Sen. Hamlett asked whether the crux of the case was past due rent. Ms. West stated the calculations were based on the net benefit that did not go to the trust but went to the unjust enrichment of PPL.
- 08:48:24 Sen. Hamlett wondered, if rent is owed the state, who has the say to where the rent goes. Mr. Coles reviewed the powers of the Land Board.
- 08:49:54 Rep. Wilmer asked Mr. Coles why the decision was ambiguous. Mr. Coles explained the court focused more on whether the money was owed. Rep. Wilmer supported a bill that would have strengthened the role and power of the authority of the Legislature. Rep. Wilmer believed the issue was how to address the ambiguity of the Court's decision regarding the status of the money. Rep. Wilmer did not believe the Executive Branch was intentionally attempting to subvert the legislative appropriation power. Rep. Wilmer requested additional time to review the letter.
- 08:52:55 Chairman Vincent commented that if the Executive is not trying to subvert the Legislature's power to appropriate, why the Executive would not wait until the session. Chairman Vincent agreed the issue is the Legislature's authority to appropriate, but also identified a question of how to spend the money.
- 08:54:52 Rep. Wilmer commented on rents on trust lands.

#### **STATUTORY DUTIES: DNRC--LAND BANKING REPORT**

- 08:55:57 Director Sexton submitted revised information regarding the land banking program ([EXHIBIT 24](#)). Director Sexton also submitted a correction sheet to the report since some of the numbers had changed ([EXHIBIT 25](#)). Director Sexton also submitted "Classification of Acres Sold and Purchased Through Land Banking" ([EXHIBIT 26](#)).

#### **Public Comment**

There was no public comment.

**Questions from the EQC**

There were no questions.

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