



ENVIRONMENTAL QUALITY COUNCIL

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DESIGNATED REPRESENTATIVE
MIKE VOLESKY

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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 May 24, 2011

Date: July 23, 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

COMMITTEE 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 voted to amend LC 7000 to exempt chippers, grinders, and their engines from air-quality permitting regulations.
- The EQC voted to proceed with a bill draft regarding RECs and send a letter to the ETIC informing them of the EQC's intention.
- The EQC directed staff to draft a letter for public comment concerning biomass research at Montana's agricultural research stations.
- The EQC voted to send a letter to the Board of Land Commissioners regarding the PPL lawsuit.

CALL TO ORDER AND ROLL CALL

00:00:01 Representative Chas Vincent, Chairman of the Environmental Quality Council (EQC), called the meeting to order at 8:00 a.m. The secretary called the roll ([Attachment 3](#)).

AGENDA

LAND BOARD LETTER (Cont'd from previous day)

- 00:01:55 Sen. Ripley moved the EQC support the decision of the Legislative Finance Committee (LFC) and also send a letter to the LFC and the Land Board stating that only the Legislature has the authority to appropriate money, and that the issue needs to be resolved before the money is spent. Sen. Ripley noted the letter would be the same as the one sent by the LFC.
- 00:02:45 Ms. Fitzpatrick noted the date for the deadline would need to be changed in the EQC's letter. Sen. Ripley agreed.
- 00:03:03 Rep. Wilmer commented she would like the letter to say that the EQC supports the LFC's letter.

00:03:56 Sen. Shockley viewed the issue as having two concepts: contract and tort. Sen. Shockley believed the money awarded was for damages and not rent.

00:07:17 Sen. Ripley's motion carried unanimously with Mr. Cebull, Mr. Pattison and Ms. Conradi voting by proxy.

RULE REVIEW

00:08:32 Mr. Everts reviewed agency rulemaking activity ([EXHIBIT 1](#)).

00:09:06 Richard Opper, Director, Department of Environmental Quality (DEQ), reviewed the DEQ's rulemaking efforts.

Public Comment

There was no public comment.

Questions from the EQC

00:13:16 Rep. Milburn thanked Director Opper for his efforts to resolve differences.

00:14:19 Rep. French questioned a paper that had been randomly left on her committee chair and requested that all information submitted to the EQC members go through the Committee Chairman and be clearly identified with the name of the person who submitted the information.

00:15:05 Ms. Stockwell provided an explanation regarding the information that raised Rep. French's concern.

AGENCY OVERSIGHT: DEQ--SB 97 PETROLEUM TANK RELEASE FUND

00:15:51 Hope Stockwell, Research Analyst, submitted and reviewed the Petroleum Tank Release Compensation Fund, Budget Status Report ([EXHIBIT 2](#)).

00:19:33 Sandi Olsen, Remediation Division Administrator, DEQ, reviewed the risk-based corrective action and the site closure process rulemaking.

00:28:00 Ms. Stockwell submitted and reviewed LC 7010 ([EXHIBIT 3](#)) and comments regarding the bill draft proposal from Ronna Alexander, Executive Director, Montana Petroleum Marketers & Convenience Store Association ([EXHIBIT 4](#)).

Public Comment

There was no public comment.

Questions and Discussion--EQC

00:36:43 Roger Noble, Vice Chair, Petroleum Tank Release Compensation Board, spoke in favor of LC 7010, and stated the Board's attorney had not yet had an

opportunity to review LC 7010, and the Board would send a letter after the Board has had an opportunity to review the draft.

00:37:56 Sen. Keane identified the insolvency problem as being that many sites require constant monitoring and there is no money to cleanup sites.

00:40:14 Sen. Keane moved LC 7010 be put out for public comment. The motion carried unanimously with Mr. Pattison, Mr. Cebull and Ms. Conradi voting by proxy. Sen. Keane commended Ms. Olsen and the department for their diligent work.

BIOMASS

00:42:09 Rep. French asked if there would be a statement from the EQC requesting that biomass be included in the State Energy Policy.

00:42:33 Ms. Nowakowski responded a statement regarding biomass is included in the draft State Energy Policy.

00:44:16 Rep. French asked if the statement adequately reflected the EQC's desire. Ms. Nowakowski could not answer the question. Rep. French requested a copy of the draft policy.

00:45:03 Sen. Keane identified confusion regarding Renewable Energy Credits (RECs) and thought more consideration and information should be provided regarding RECs since the subject is so elusive and complicated. Sen. Keane hoped RECs could be used to benefit the public.

00:47:12 Chairman Vincent commented the general consensus is that there is no consensus. Chairman Vincent suggested drafting legislation that would bring out public comment and bring the parties to the table.

00:50:19 Sen. Tutvedt agreed there should be a debate since there seems to be a substantial amount of confusion.

00:51:05 Rep. Dickenson noted the EQC's responsibilities and suggested the issue should go before the Energy and Telecommunications Interim Committee (ETIC). Chairman Vincent believed the ETIC was looking for recommendations from the EQC.

00:52:10 Ms. Nowakowski speculated there would be changes to the draft energy policy since it received a substantial amount of public comment. Ms. Nowakowski suggested including the ETIC in any discussions.

00:53:53 Mr. Everts agreed with Ms. Nowakowski and identified a need to balance the work on energy issues with the ETIC.

00:54:26 Sen. Keane wondered whether a letter to the ETIC would be helpful. Mr. Everts agreed the EQC could proceed but also noted that the EQC should notify the ETIC of the EQC's intention to prevent duplication of efforts.

00:56:46 Sen. Keane suggested sending a letter from the EQC. Ms. Nowakowski stated direction on the bill draft is needed now in order to meet the timing of obtaining public comment. Sen. Keane moved to proceed with a bill draft regarding RECs and send a letter to the ETIC.

00:58:19 Ms. Nowakowski asked whether the bill draft should separate the portfolio standard from the RECs.

00:58:43 Rep. French requested clarification. Sen. Keane explained the bill draft would separate the RECs so discussions could begin.

01:00:27 Sen. Keane explained he would like to hear discussion regarding how the sale of the RECs could offset the cost of the energy.

01:00:49 Rep. French commented she was curious about exactly what the bill would do.

01:01:42 Ms. Nowakowski provided an explanation about renewable energy credits.

01:03:49 Sen. Keane's motion carried unanimously with Mr. Cebull, Mr. Pattison, and Ms. Conradi voting by proxy.

01:04:10 Ms. Fitzpatrick commented she would like the EQC to address fuel, biochar, and fertilizer and consider those economic development opportunities.

01:05:14 Chairman Vincent cautioned that providing incentives would involve providing subsidies, and he did not believe there would be any money available. Chairman Vincent suggested including a discussion of emerging technology in the report. Ms. Fitzpatrick thought there may be programs already in existence that could be encouraged. Chairman Vincent noted the programs are listed in the report.

01:08:40 Rep. French asked whether the draft state energy plan discusses supporting biomass research and new biomass technologies. Ms. Nowakowski explained the report has a general statement; however, the ETIC may not propose any legislation to implement those statements. Rep. French suggested the EQC could encourage the support of agricultural research stations and their work on biomass. Rep. French said she sees a need to support the research and technologies surrounding biomass. Rep. French added she would like the EQC to send a letter to the Governor. Rep. French believed there is potential for economic development from biomass in small rural areas. Rep. French moved the EQC send a letter to the Governor requesting continued support for agricultural research stations due to the EQC's concerns about the development of biomass in Montana.

01:13:20 Sen. Hamlett suggested biochar could be introduced in agricultural research stations and thought they should be encouraged to pursue studies on biochar.

01:14:12 Rep. Wilmer emphasized resources are also available from the federal government and some of the subsidies for fossil fuels should go to accelerating

market development of alternative cleaner energies. Rep. Wilmer stated she would like the letter to be carbon copied to the federal government.

- 01:15:58 Rep. Smith envisioned a need to get energy independent now by developing coal, oil, and gas in Montana.
- 01:16:35 Rep. French agreed with the idea of Montana becoming energy independent but believed biomass development should be encouraged and that biomass development reaches beyond woody products.
- 01:18:01 Rep. Milburn agreed with Rep. Smith but thought Montana should consider what it would do overall with biomass and look at the whole picture. Chairman Vincent noted the biomass information would be in the EQC's findings in its final report.
- 01:20:00 Rep. French stated she would like the letter to state the EQC supports the agricultural research stations that are researching the use of agricultural biomass and requested that the current level of state funding be maintained.
- 01:21:15 Rep. Wilmer thought it would be appropriate to encourage the Governor to continue the current level of support. Rep. Wilmer noted that every drop of oil that goes for sale on the international market and oil development in the United States does not encourage energy independence.
- 01:22:13 Ms. Stockwell read information from *The Great Falls Tribune* regarding proposed funding cuts for agricultural research.
- 01:23:18 Rep. Smith said he wanted an opportunity to look at the big funding picture and all funding cuts before making a formal statement regarding which programs he would like to see funded.
- 01:23:49 Ms. Fitzpatrick emphasized biomass offers opportunities for economic development and locally useful products that are non-energy related and is not solely about being energy independent.
- 01:24:42 Rep. French stated special interest is always given to oil and coal in Montana and believed biomass should be included as well.
- 01:25:26 Ms. Nowakowski summarized the content and purpose of Rep. French's proposed letter to the Governor.
- 01:26:29 Chairman Vincent wondered if there was a way to word the letter to emphasize that strong consideration be given to the benefits of agricultural research stations.
- 01:27:35 Rep. Wilmer thought the letter could refer to the EQC's report which contains all the benefits of biomass.

01:28:41 Rep. Milburn asked whether the EQC would develop a conclusion to the biomass study. Chairman Vincent responded the conclusion would come in September. Ms. Nowakowski outlined the direction she needed from the EQC.

01:32:01 Rep. French withdrew her motion. Staff was directed to work with Rep. French to draft a letter to be approved by the EQC in September.

01:32:35 Lee Heiman introduced Rob Stutz, the new Legal Director and Chief Counsel, Legislative Services Division.

01:34:04 Mr. Stutz greeted the EQC.

01:36:30 Rep. Dickenson moved the reports on biochar be expanded and added to the appendices of the EQC's report and that the report be accepted.

01:38:00 Sen. Keane thought the exemption proposed in LC 7000 should be for chippers and grinders only.

01:38:24 Sen. Tutvedt requested clarification. Chairman Vincent provided an explanation.
01:40:35 Sen. Keane made a substitute motion that the exemption include chippers and grinders only.

01:40:52 Ms. Nowakowski explained she did not believe the stakeholders intended to provide an exemption to lumber mills, plywood plants, open burning, etc. Ms. Nowakowski thought the issue could be solved by specifically defining "silvicultural activities."

01:43:08 Sen. Keane stated he preferred to vote now.

01:43:26 Sen. Tutvedt explained there was no reason to debate the full bill before the EQC.

01:43:49 Sen. Keane stated the bill is not what he signed on for.

01:44:06 Sen. Shockley thought there should be a broader title so the legislation could be amended in session.

01:46:00 Sen. Tropila stated he was uncomfortable with the term "silvicultural." Sen. Keane stated he would not support the bill if it included anything other than chippers and grinders. Sen. Shockley withdrew his suggestion.

01:46:53 Sen. Keane's substitute motion carried unanimously with Mr. Cebull, Mr. Pattison, and Ms. Conradi voting by proxy. Ms. Nowakowski clarified the legislation would include chippers and grinders and their engines only.

BREAK

AGENCY OVERSIGHT: DEPT. OF AG--COMPLIANCE & ENFORCEMENT REPORT

- 02:04:32 Mr. Everts explained the statutory duty of the Department of Agriculture (Ag) to report to the EQC.
- 02:05:24 Amy Bamber, Technical Services Bureau, Ag, explained the 2008 increase in violations was the result of the utilization of an intern. Ms. Bamber stated there were no pesticide ground water enforcement activities during the past biennium.

Public comment

There was no public comment.

Questions from the EQC

- 02:07:05 Rep. Dickenson asked Ms. Bamber to outline the process for someone wishing to utilize a non-registered pesticide. Ms. Bamber explained the process. Rep. Dickenson explained the Department of Health and Human Services (DPHHS) has hired a second epidemiologist to help assess public health issues relating to pesticides. Ms. Bamber said she has not yet had an opportunity to interact with that person.

AGENCY OVERSIGHT: DEQ--WATER QUALITY STANDARDS/LIBBY DAM

Introduction--Chairman Vincent

- 02:11:29 Chairman Vincent addressed the recent settlement agreement requiring the Libby Dam to spill from 5,000 to 10,000 cubic feet per second (CFS) and the frustration that the dam would be spilling at a time when water should be conserved, and the DEQ has granted the ability to exceed water quality standards during the spill. Chairman Vincent explained the biology supports the fact that water temperature, water habitat, and water nutrients, not spilling more water, is what is needed to support the endangered fish in the Kootenai River. Chairman Vincent wondered what would occur after the information is gathered; what would happen in the future; whether the spill would continue; and, whether water quality standards would continue to be exceeded. Chairman Vincent submitted a copy of the Stipulated Settlement Agreement ([EXHIBIT 5](#)).

Richard Opper, DEQ; Brian Marotz, FWP; Bruce Measure, NWPCC; Jason Flory, USFWS; Olton Swanson, U.S. Army Corps of Engineers

- 02:30:16 Director Opper provided a history of the Libby Dam and the spill test.
- 02:40:33 Bruce Measure, Northwest Power and Conservation Council, provided a detailed history of the Libby Dam.
- 02:48:48 Brian Marotz, Hydropower Mitigation Coordinator, Department of Fish, Wildlife & Parks (FWP), spoke about the biology of recovering the endangered white sturgeon and other species affected by the settlement agreement.

02:58:35 Jason Flory, U.S. Fish & Wildlife Service (USFWS), participated via telephone, and agreed the spill test was controversial. Mr. Flory also provided information regarding the history of the Libby Dam. Mr. Flory thought it was important that all parties, regardless of the outcome of the test, agree that the test was complete and valid.

03:16:02 Olton Swanson, U.S. Army Corps of Engineers, outlined the construction challenges and unique complexity of the Libby Dam operations.

Public Comment

There was no public comment.

Questions from the EQC

03:19:10 Rep. French wondered how the DEQ could ignore its own standards. Director Opper believed the DEQ did not ignore the standard by obtaining the variance and explained how the DEQ went through a legal process to obtain the variance. Director Opper explained the variance is for one year, but could be for up to three years if no harm to fish is observed. Rep. French wondered whether the variance was warranted given the decrease in the numbers of fish. Director Opper thought lessons would be learned, and there were benefits to allowing the variance.

03:22:55 Sen. Ripley asked about the reference to it taking thirty years for the sturgeon to recover and wanted to know if the spill test proved successful, whether the DEQ would grant a variance for up to thirty years. Director Opper recalled the comment was that the fish reached maturity after thirty years. Director Opper clarified it was not the intention to stretch the variance out indefinitely, but to proceed with the three year test and determine the positive and negative impacts.

03:25:08 Mr. Measure added the settlement agreement does not allow the spill test and variance to extend beyond the three-year test period.

03:28:12 Sen. Ripley asked if the settlement agreement addressed liability for downstream flooding resulting in damage. Mr. Measure responded the U.S. Army Corps of Engineers would have the liability.

03:29:27 Sen. Hamlett asked for clarification as to whether there was an increase in the gas in the water above the dam. Mr. Marotz explained how water has to plunge before the gas is created. Mr. Marotz provided clarification regarding gas bubble trauma. Sen. Hamlett asked about the comment that 60 percent of trout have been affected and asked how many river miles were involved in that estimation. Mr. Marotz responded that it is approximately 27 miles from the dam to the falls.

03:34:53 Sen. Ripley wondered what type of notification is given to people downstream who might be affected by the rise in water. Mr. Measure cited past public meetings, as well as media notification.

03:37:02 Chairman Vincent wondered what the likelihood would be that Montana would have another 2002 or 2006 early thaw. Chairman Vincent suggested it would be highly likely Montana could have a 2002 or 2006 thaw event unless policies are changed. Mr. Swanson added they continue to learn and are doing everything they can to limit downstream damage. Chairman Vincent stated the dam has been controlling flood waters since 1972, but other factors are causing unintended consequences for people who live along the Kootenai River.

03:42:06 Chairman Vincent understood the benefits of offering variances but thought variances should also be available to the private sector. Director Opper said the threat of contempt of court was why the variance was granted. Director Opper stated he is always more interested in reaching an outcome than strictly adhering to policy.

UPDATE ON WATER POLICY INTERIM COMMITTEE--Mr. Kolman

03:46:18 Mr. Kolman directed the EQC to the Water Policy Interim Committee's draft report, which is available on the internet.

UPDATE ON ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE--Ms. Nowakowski

03:47:52 Ms. Nowakowski stated the Energy and Telecommunications Interim Committee (ETIC), had received approximately 375 pages of public comment on its proposed energy policy. Ms. Nowakowski submitted a copy of the proposed energy policy ([EXHIBIT 6](#)).

(LUNCH)

GRIZZLY MANAGEMENT--DELISTING AND SCAT TRACKING METHODS

Introduction

05:01:39 Ms. Stockwell explained Sen. Hamlett had requested a presentation on the delisting of grizzly bears. In addition, Chairman Vincent had requested information on dog scat tracking methods.

05:03:34 Art Noonan, Deputy Director, FWP, introduced Dr. Rick Mace.

FWP Perspective--Dr. Rick Mace

05:04:39 Dr. Rick Mace, FWP, gave a PowerPoint presentation on Monitoring Grizzly Populations in Western Montana ([EXHIBIT 7](#)).

USFWS Perspective--Chris Servheen, Grizzly Bear Recovery Coordinator

05:17:31 Chris Servheen, Recovery Coordinator, USFWS, provided a history of the Grizzly Bear Recovery Program. Mr. Servheen submitted written information regarding grizzly bear recovery ([EXHIBIT 8](#)). Mr. Servheen also submitted a copy of FWP's

letter to Elena Kagan, Solicitor General, regarding the delisting of the Yellowstone grizzly bear (**EXHIBIT 9**).

Eric Klepfer, Montanore Project

05:24:55 Eric Klepfer, Montanore Project, provided information on Montanore's research on the effects of mining on grizzly bears.

Public Comment

There was no public comment.

Questions & Discussion--EQC

05:33:02 Rep. Dickenson asked Mr. Mace about the precautions taken to protect citizens who may be in the same area where FWP is tracking grizzlies. Dr. Mace explained they inform the appropriate agency and the public of where they will be trapping. Also, signs are used to mark an area where trapping operations are occurring. In addition, reverse drugs can now be used to revive a sedated bear within 12 minutes. Rep. Dickenson asked if there were guidelines as to how long signs should remain up. Mr. Mace referred the question to Mr. Servheen.

05:36:14 Mr. Servheen was on the team that investigated the bear encounter referenced by Rep. Dickenson and explained the investigation team decided there should be a protocol for signs and notices to the public.

05:37:40 Sen. Tutvedt wondered why the grizzly bear is never delisted. Mr. Servheen stated desired numbers were reached in the Yellowstone ecosystem, but delisting was denied, and the decision has been appealed. Mr. Servheen predicted delisting of other Northern Continental Divide areas within five years. Sen. Tutvedt wondered why the grizzly bear had yet to be delisted after thirty years and thought it was an embarrassment. Sen. Tropila objected. Mr. Servheen explained grizzly bears reproduce slowly compared to wolves, and that it is important to delist correctly.

05:41:46 Sen. Ripley asked what criteria FWP uses to determine whether a population is healthy. Sen. Ripley wanted to know whether there are concrete objectives. Dr. Mace explained the survival rate needs to be above 92 percent.

05:44:10 Rep. Milburn wondered about the accuracy of the grizzly bear counts. Dr. Mace depicted the 2004 count as very accurate.

05:46:21 Sen. Shockley wondered why the same methods were not used for the wolves. Mr. Servheen could not speak to the wolf issue.

05:47:50 Chairman Vincent spoke about the negative public sentiment. Chairman Vincent noted the social and economic impacts that grizzly bear habitat has on timber sales, which causes significant negative sentiment in his region. Chairman Vincent cited a need to strike a balance with grizzly bear recovery. Chairman

Vincent asked Mr. Servheen if he had seen bears cross the highway or swim the Kootenai or Clark Fork Rivers. Mr. Servheen suggested geographic boundaries prohibit the bears from crossing the highways and rivers but agreed it is possible. Chairman Vincent asked whether Mr. Servheen believed man could play a role in creating grizzly bear habitat. Mr. Servheen thought man could play a role and that sometimes man can improve grizzly bear habitat. Mr. Servheen agreed that in some cases timber harvests can improve grizzly bear habitat. Mr. Servheen envisioned a balance and identified one major difficulty as being the inability to get through the court system. Chairman Vincent saw a need to attempt new, innovative approaches.

05:58:07 Sen. Hamlett observed the whole state does not have to qualify for delisting. Mr. Servheen agreed. Sen. Hamlett wanted to know if there was a sign policy, and Mr. Servheen stated there was no sign policy, but that having a policy was one of the recommendations that came from the investigation. The particular grizzly bear in question had not been administered reverse drugs after sedation. Mr. Servheen stated the drug that was used was not reversible. Sen. Hamlett asked what the target number was for grizzly bear recovery in Glacier. Mr. Servheen responded an absolute target number was established for grizzly bears. Mr. Servheen thought the 765 count was much higher than originally estimated. Sen. Hamlett asked whether the tracking method had been implemented in the Cabinet-Yaak area. Mr. Servheen responded the method had been used in the Cabinet Mountains in the Cabinet-Yaak ecosystem. Sen. Hamlett observed an accurate count was needed in order to move on and make policy decisions.

06:05:32 Sen. Hamlett asked whether someone from FWP could address why the grizzly bears may be moving onto the plains.

06:06:20 Mike Madel, Choteau Division, FWP, explained that he has seen an increasing movement of bears onto the plains. The young bears are expanding their home range out further onto more open range. Mr. Madel explained bears were out of hibernation early in March. Sen. Hamlett wondered how many river miles the bears had moved from U.S. Forest Service land. Mr. Madel responded the bears had moved 176 river miles. Sen. Hamlett had understood this is something that would not change in the future because bears are becoming acclimated to the prairie. Mr. Madel explained how bears learn at an early age to use open habitats and grassland. Mr. Madel provided a history of the Loma bear. Sen. Hamlett asked Mr. Madel to speak about grizzly bear encounters with humans along the Front and what people along the Front are doing to take precautions. Mr. Madel believed there had been a change in social attitudes and that people are more informed. Also, ranchers are using electric fences to protect livestock and yards. Sen. Hamlett wanted to know how delisting would assist FWP in dealing with management of the grizzly bears. Mr. Madel believed FWP would have more flexibility. Sen. Hamlett asked Mr. Madel about the dangers involved with working with grizzly bears and whether Mr. Madel's life had ever been threatened. Mr. Madel clarified that FWP takes precautions when dealing with bears, and he has never had to shoot a bear in self-defense. Mr. Madel stated most bears flee from people.

Committee action, if any

There was no action taken.

Directions to Staff

There were no directions to staff.

AGENCY OVERSIGHT: FWP SPOTTED DOG LAND ACQUISITION

Departmental Overview--Dep. Dir. Art Noonan

06:21:58 Art Noonan provided information on the Spotted Dog acquisition and noted it is a coveted piece of property.

Public comment

06:26:00 Jim Flynn, an Anaconda resident, addressed the proposed acquisition of the Spotted Dog property using the Natural Resource Damage (NRD) fund. Mr. Flynn did not believe the acquisition was a proper use of the NRD fund.

06:33:00 John Hollenbeck, a rancher from Gold Creek, was concerned the process is getting shoved aside because FWP wants to rush to acquire the property. Mr. Hollenbeck did not feel the process was fair to other applicants. Mr. Hollenbeck was concerned about the removal of cattle. Mr. Hollenbeck reiterated his concern about rushing through the process.

06:39:25 Jay Bodner, Montana Stockgrowers' Association, said he also attended the meeting in Deer Lodge. Mr. Bodner stated the process was viewed as muddy and rushed by both proponents and opponents.

Questions from the Committee

06:42:19 Sen. Ripley recalled his past concerns with the ability of FWP to operate and maintain the land it currently owns. Mr. Noonan clarified FWP is not purchasing the land. Mr. Noonan stated nothing has been done without obtaining public comment, and the purchase was dictated by the NRD. Sen. Ripley clarified he was addressing FWP's plan to operate and maintain the property and wondered how that would be financed. Sen. Ripley stated he is concerned since operation and maintenance of parks has been an ongoing issue.

06:50:02 Rep. French requested accurate numbers for the NRD account.

06:50:47 Carol Fox, Natural Resource Damage Program, submitted information regarding the status of the Restoration Fund ([EXHIBIT 10](#)).

06:52:43 Rep. French requested confirmation that FWP is not purchasing the land. Ms. Fox clarified the land is being purchased with NRD money and will be managed by FWP. Rep. French asked who would be giving final approval for the funding.

Ms. Fox responded the final funding decision would be made by the Governor. Rep. French asked Mr. Noonan to address the comment regarding cattle. Mr. Noonan explained the purchase agreement allows for the cattle to remain on the existing ranch until 2012. At that time, the land will become a Wildlife Management Area (WMA) and will be managed as such.

- 06:56:50 Sen. Shockley wondered if by using NRD funds, FWP would avoid paying the additional 25 percent for operations and maintenance. Mr. Noonan stated the WMA would be treated like other WMAs, and FWP would live up to its good-neighbor policy. Sen. Shockley asked Mr. Noonan to address how FWP would come up with 25 percent of the purchase price for operation and maintenance. Paul Sihler, Land Section Supervisor, FWP, explained the requirements of the good-neighbor policy and clarified the NRD fund will place \$300,000 in the account for operation and maintenance. Mr. Sihler stated the \$300,000 will only be spent on those properties that NRD funds were used to purchase. Sen. Shockley believed that was not the intent of the good-neighbor legislation.
- 07:03:47 Sen. Tutvedt asked if there was a prioritization or list. Ms. Fox responded the restoration fund projects have to meet set criteria, but there is no prioritization. Sen. Tutvedt addressed the public's perception of the land acquisition. Ms. Fox explained the authority comes from the Superfund law, and that the Spotted Dog project falls within the replacement category and meets the legal threshold. Sen. Tutvedt asked how the school district would be made whole. Ms. Fox responded FWP will be paying taxes.
- 07:09:26 Sen. Ripley asked whether there was an appraisal done on the property. Ms. Fox explained the appraisal indicated the fair-market value is \$550 an acre. Sen. Ripley wondered whether the land had recently sold. Ms. Fox was not aware of any specific prior sales. Sen. Ripley asked for the total amount of acreage purchased by FWP in the past two years. Mr. Sihler responded that in 2009, FWP acquired 4,453 acres and 40,845 acres in 2010. Sen. Ripley asked how many acres FWP anticipates purchasing next year. Mr. Sihler cited the Spotted Dog acquisition; the Marshall Block (24,000 acres); the Sixteen Mile Creek project (75 acres); 480 acres in the Swan; and, a two-acre fishing access site.
- 07:13:58 Rep. Wilmer asked whether there is a citizen's advisory council involved in the process. Mr. Noonan agreed and explained the public comment process. Rep. Wilmer addressed the need for a prioritization plan and the need to take advantage of opportunities when they arise without driving up the market by developing a road map into the future. Mr. Noonan agreed there is a need to strike while the iron is hot.
- 07:21:03 Rep. Milburn wondered how much of the NRD fund would be used to purchase land. Ms. Fox could not provide the exact numbers, but estimated 25 percent has been used to purchase land. Rep. Milburn asked where money for other land acquisitions is coming from. Mr. Sihler explained the Marshall purchase funds are coming from two federal funding sources; and the Sixteen-Mile Creek acquisition is being funded by the Canyon Ferry Trust.

- 07:26:04 Mr. Volesky commented that the state has been looking at the Spotted Dog property for quite some time, and that the property has elk winter range, access, and other positive values. Mr. Volesky agreed the NRD program needs to be able to take advantage of opportunities when those opportunities arise.
- 07:32:53 Sen. Shockley stated he is not as anti-purchase as he was before the hearing, but admitted he is still bothered with using NRD fund money for maintenance. Mr. Volesky suggested Ms. Fox could better address the issue. Ms. Fox explained how NRD money can be used to fund operation and maintenance activities.
- 07:39:13 Sen. Hamlett asked if a portion of an acquisition could be sold. Ms. Fox stated she would need to obtain a legal evaluation. Sen. Hamlett asked whether water rights and mineral rights were sold with the land. Ms. Fox stated there are mineral rights that belong to the owner and there are some third-party mineral rights.
- 07:41:53 Sen. Hamlett wondered how many acres of state land are isolated because of this property. Joe Lamson, Deputy Director, DNRC, cited the figure as 10,400 acres. Sen. Hamlett wanted to know how much income the DNRC would receive from the land. Mr. Lamson identified \$23,000 in grazing leases. Sen. Hamlett asked if there were any isolated parcels in the holding. Mr. Lamson stated there are isolated parcels. Sen. Hamlett wanted to know if the DNRC was getting any money off those isolated parcels. Mr. Lamson explained the parcels are adjacent to RY Timber Company land and he would have to check. Sen. Hamlett wondered whether the grazing leases would be leased to other parties other than FWP. Mr. Lamson explained the grazing leases are part of a competitive bidding process.
- 07:45:34 Chairman Vincent asked whether FWP was familiar with the trust funding policy implemented by Governor Racicot. Chairman Vincent asked whether the Governor believed the project was time critical. Mr. Noonan agreed. Chairman Vincent recalled hearing the first right of refusal expires in 2011. Mr. Noonan could not speculate as to what happened with the first right of refusal.
- 07:50:49 Chairman Vincent asked whether there was a previous appraisal done and when. Mr. Sihler did not know about earlier values.
- 07:52:21 Mr. Noonan clarified the Governor does not have a vote on the Trustee Council. Chairman Vincent commented on the doubling of fee simple lands in two years. Chairman Vincent wondered whether Montana could afford all the acquisitions. Mr. Noonan stated FWP discusses operation and maintenance every day. Chairman Vincent viewed the transaction as a train wreck.

CONTINUED COUNCIL DISCUSSION OF ANY STUDY RECOMMENDATIONS & POSSIBLE LEGISLATION

- 08:01:15 Ms. Nowakowski requested direction on LC 7001, as well as changes to the report.

08:02:28 Sen. Tutvedt explained it would be difficult to go forward with LC 7001 without support.

PUBLIC COMMENT on any matter not contained in this agenda and that is within the jurisdiction of the EQC

08:04:24 John Hagenruber, U.S. Forest Service liaison, offered to facilitate conversations regarding Forest Service employees flying in DNRC helicopters. Mr. Hagenruber provided additional information regarding Montana's 2010 fire season.

OTHER BUSINESS

08:08:04 Chairman Vincent submitted a draft of the letter to the Board of Land Commissioners regarding the PPL lawsuit (**EXHIBIT 11**). Rep. Dickenson moved to send the letter to the Board of Land Commissioners. The motion carried unanimously with Mr. Pattison, Mr. Cebull, Sen. Keane, Sen. Shockley, and Rep. French voting aye by proxy.

INSTRUCTIONS TO STAFF

No further instructions to staff.

08:09:44 Rep. Dickenson expressed her appreciation to legislative staff.

ADJOURN

The EQC adjourned until September 13, 2010.

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