

**2011-2012 Environmental Quality Council
Final Draft Work Plan**

September 14, 2011

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- Copies of the Applicable Study Resolutions** **Attached Document**

- Draft EQC Work Plan Decision Matrix** **Attached Separate Document**

Information about the 2011-2012 Draft Work Plan

Introduction

This is the draft work plan for the Environmental Quality Council (EQC or Council) for the 2011-2012 interim. In this document you will find:

- An explanation of how the EQC plans its work.
- Instructions for using the draft work plan to make decisions about the final work plan.
- A description of potential work plan topics and options for addressing those topics.
- A draft timeline.

There are three additional documents, including copies of the pertinent study resolutions and the *Final Draft EQC Work Plan Decision Matrix*.

How the EQC Plans its Work

Because of the EQC's historically large interim workload demands, the EQC has:

- ✓ a very strong and proud tradition of systematically planning and prioritizing its work-load within existing resources;
- ✓ maintained an extremely high level of productivity throughout each and every interim; and
- ✓ always accomplished its work prior to the September 15th before the Legislative Session as required by the Legislative Council.

How does the EQC accomplish this? Because the EQC has used this work planning process to set up general guide posts for accomplishing it's work within the resources allocated to it since 1995. At times, it may seem like a tedious process, but it is the foundation of the EQC's historical success at getting the job done efficiently and cost-effectively.

During the legislative interim, the EQC typically focuses on one or two major study topics, while also maintaining oversight of programs and rulemaking activities of the

Montana Department of Natural Resources and Conservation (DNRC); the Montana Department of Environmental Quality (DEQ); and the Montana Department of Fish, Wildlife, and Parks (DFWP).

The Council selected study topics at the beginning of the interim during its May 2011 EQC meeting. The work plan includes two studies, two topics suggested by Council members, and statutory mandates. **The primary constraint limiting the EQC study agenda for the interim is the number of issues that can be effectively addressed within the available time and resources of the Council members and its staff.** The EQC has allocated 1.36 FTE of the 1.6 FTE in staff resources available for this work plan.

This *2011-2012 Work Plan* is really a **decisionmaking tool** to help Council members work together efficiently to set priorities and decide how and where to spend the EQC's limited time and resources. The work plan is your blueprint for the 2011-2012 interim. Staff has developed detailed draft work plans and timetables for each major task. A timeline illustrating the overall schedule that these work plans will fit into once the meeting schedule and work plan are finalized is presented at the end of this document.

Work Plan Topics

Study Resolutions assigned to the EQC by Legislative Council include:

1) HJ 32 - State parks and outdoor recreation and heritage resource programs

Legislative Poll Ranking: 11

Background: This study resolution grew primarily out of ongoing discussions about the solvency and management of Montana's state parks system. The Legislative Finance Committee reviewed the system in the 2009-2010 interim but did not propose legislation. At the request of the Department of Fish, Wildlife, and Parks (DFWP), the 2011 Legislature passed SB 43, revising the state's list of primitive parks and the types of improvements that may be made at those sites. The 2011 Legislature also approved HB 370, which increases the light motor vehicle registration fee used for operation and maintenance of state parks and state-owned facilities at Virginia and Nevada Cities.

HB 628 (2011), which sought to consolidate the administration of state parks and outdoor recreation and heritage programs under the Department of Commerce with oversight by a citizen board, did not pass but provoked discussion about improved management and coordination of these programs.

Currently, DFWP administers state parks, boating, OHV, and snowmobile programs, while the operation of Virginia and Nevada Cities and the Montana Heritage Preservation and Development Commission are affiliated with the Department of Commerce.

Council action:

The EQC allocated .06 FTE for this topic. For more information, contact Hope Stockwell at 444-1640 or hstockwell@mt.gov.

HJ 32 Work Plan Tasks:

- 1. Provide summary of existing state parks and outdoor recreation and heritage programs. Summarize existing legislative audits/reports.
Who: EQC staff
Time line: September 2011 meeting

- 2. EQC discussion and study direction.
Who: EQC members
Time line: September 2011 meeting

- 3. Review of state parks, recreation, and heritage program operation and structure in other Rocky Mountain states.
Who: EQC staff
Time line: January 2012 meeting

- 4. Panel discussion with administering state agencies.
Who: DFWP, Dept. of Commerce
Time line: January 2012 meeting

- 5. EQC discussion and study direction.
Who: EQC members
Time line: January 2012 meeting

- 6. Presentation of preliminary report and development of recommendations and proposed legislation.
Who: EQC members, staff
Time line: March 2012 meeting

- 7. Review draft report, findings, recommendations, and any proposed legislation.
Who: EQC members, staff
Time line: May 2012 meeting

- 8. Presentation of impacts of HB 370 implementation
Who: EQC, FWP staff
Time line: July 2012 meeting

- 9. Review public comment on draft report and any proposed legislation.
Who: EQC members, staff
Time line: July 2012 meeting

- 10. Approval of final report and any findings, recommendations, or legislation.
Who: EQC members
Time line: September 2012 meeting

2) SJ 26 - Review specific DFWP and DEQ programs/activities.

Legislative Poll Ranking: 10

Background: This study resolution requests followup by the EQC:

(1) of DFWP's agency goals and objectives for:

- (a) the migratory bird program;
- (b) the upland game bird program; and
- (c) the brucellosis in elk study; and

(2) provide interim monitoring, on at least an annual basis, of the Department of Environmental Quality's (DEQ):

- (a) cleanup progress at the KRY site; and
- (b) progress toward resolving (closing) petroleum tank release sites.

The EQC has monitored most of these programs in some form or another in past interims. For this study, the EQC could continue minimal monitoring efforts as part of its regular agency oversight efforts or could choose to conduct more extensive analysis. Staff would coordinate with the Legislative Finance Committee to ensure the LFC remains informed of the EQC's work on SJ 26, as the study resolution grew out of appropriations subcommittee discussions during the 2011 session.

The upland game bird program currently is required to provide reports prepared for the Upland Game Bird Citizens' Advisory Council to the fish and game committee of each house of the legislature every two years. HB 613* (2011) also requires the DEQ to report is progress in resolving petroleum tank release sites to the EQC on a biannual basis through 2015.

Council action:

The EQC allocated .02 FTE for this topic. For more information, contact Hope Stockwell at 444-1640 or hstockwell@mt.gov.

SJ 26 Work Plan Tasks:

- 1. Receive status sheet on cleanup progress at the KRY site.
Who: DEQ staff
Time line: September 2011 meeting

- 2. Receive progress report on resolving petroleum tank release sites.
Who: DEQ staff
Time line: January 2012 meeting

- 3. Receive progress report on cleanup at the KRY site.
Who: DEQ staff
Time line: March 2012 meeting

- 4. Receive update on goals and objectives of migratory and upland game bird programs.
Who: DFWP staff
Time line: May 2012 meeting

- 5. Receive progress report on brucellosis in elk study.
Who: DFWP staff
Time line: July 2012 meeting

- 6. Receive progress report on resolving petroleum tank release sites.
Who: DEQ staff
Time line: July 2012 meeting

EQC Statutory Duties and Obligations

1) Water Policy Statutory Duties

Source/authority: 75-5-313; 85-1-203; 85-1-621; 85-2-105; 85-2-281; 85-2-350; 85-2-436.

Background: In 2009, the Legislature created a Water Policy Interim Committee (WPIC) to study water policy issues. WPIC is to coordinate with the EQC to avoid duplication of work. The legislation did not take water policy duties away from the EQC, however some of those duties are no longer mandatory. The duties, set forth in 85-2-105, MCA, are paraphrased as follows:

The EQC *may*:

1. Advise the Legislature on the **adequacy of Montana's water policy**.
2. Advise the Legislature on **important state, regional, national, and international developments** that affect Montana's water resources.
3. Oversee **policies and activities of executive branch agencies** and other state institutions that affect Montana's water resources.
4. Assist with **interagency coordination** related to water resources.
5. **Communicate with the public** about water policy and water resources.

The EQC *shall*:

1. Analyze and comment on the **State Water Plan**, when prepared by the Montana Department of Natural Resources and Conservation (DNRC).
2. Analyze and comment on the **Renewable Resource Grant and Loan Program** report.
3. Analyze and comment on **water-related research** by state entities.
4. Analyze, verify and comment on the information in the **Water Information System of the Natural Resource Information System**.
5. Report to the Legislature.

Water-related statutory duties of the EQC include:

1. **75-5-313, MCA**, requires the DEQ to provide a summary of the status of the base numeric nutrient standards, the nutrient standards variances, and implementation of those standards and variances, including estimated economic impacts to the EQC. (revised 2011, SB 367)
2. **85-1-203, MCA**, requires the DNRC to submit a copy of the State Water Plan or any plan changes to the EQC. (SB 303, 2009, accelerated requirements)
3. **85-1-621, MCA**, requires the DNRC to submit a biennial report to the EQC that describes the status of the Renewable Resource Grant and Loan Program.
4. **85-2-281, MCA**, requires the Water Court and the DNRC to report to the EQC on the progress of the adjudication process until 2020.
5. **85-2-350, MCA**, requires Clark Fork River Task Force to report to the EQC annually.
6. **85-2-436, MCA**, requires the DFWP to submit a summary report to the EQC by December 1 of odd-numbered years of all appropriation rights changed to an instream flow purpose in the previous 2 years.

Council action:

The EQC allocated .1 FTE to this topic. For more information, contact Joe Kolman at 444-9280 or jkolman@mt.gov.

Work Plan Tasks:

- 1. Update EQC on water-related issues.
Who: EQC staff
Time line: Each EQC meeting
- 2. Update water quality and water rights handbooks
Who: EQC staff
Time line: January 2012

- 3. Coordinate other water-related mandatory duties.
Who: EQC staff
Time line: As needed

2) EQC General Statutory Duties

Source/authority: Sections 2-15-1514; 2-15-1523; 75-1-201 and 75-1-208; 75-1-314; 75-5-703; 75-10-111; 76-13-145; 77-2-366; 82-2-701, MCA and 87-1-230.

Background: Following the establishment of the EQC in 1971, the Legislature has occasionally authorized the Council to play a role in some specific programs or activities of state government. These directives are in addition to the more general oversight authorities for environmental programs and policies found in section 75-1-324, MCA. This general authority is arguably sufficient to address the specific programs and policies. However, and particularly for new environmental programs or policies, the Legislature has called upon the EQC to act as its liaison with the executive branch.

In the past, the EQC has prioritized its duties as the need for specific oversight changes with interest, time, and circumstance. They are listed as follows:

- **2-15-1514, MCA**, requires the participation of a Legislative Services Division employee on the Natural Resource Data System Advisory Committee. This has typically been assigned to the EQC staff on an as needed basis.
- **2-15-1523, MCA**, requires the participation of a representative of the Legislative Services Division on the Groundwater Assessment Steering Committee. This has typically been assigned to the EQC staff on an as needed basis.
- **75-1-201 and 75-1-208, MCA**, states executive agencies are required to submit copies of environmental review documents prepared in accordance with the Montana Environmental Policy Act (MEPA) to the EQC. The EQC staff has created and maintains a database of MEPA documents. Effective in 2001, a project sponsor may appear before the EQC at a regularly scheduled meeting to discuss issues regarding an executive agency's environmental review of the project.
- **75-1-314, MCA**, states the Departments of Environmental Quality, Agriculture and Natural Resources and Conservation are required to report specific compliance and enforcement information to the EQC on a biennial basis. This is the result of a 1997 EQC interim study.
- **75-5-703, MCA**, requires the DEQ to report its progress in completing TMDLs (total maximum daily load) and the current schedule for completion of TMDLs, on or before July 1 of each even-numbered year. (SB 267, 2011)

- **75-10-111, MCA**, requires the DEQ to circulate solid waste management and resource recovery plans to the EQC for its review.
- **76-13-145, MCA**, requires the DNRC to report its progress in designating wildland-urban interface parcels to an appropriate interim committee assigned to study wildland fire suppression or to the EQC. (SB 131, 2009)
- **77-2-366, MCA**, requires that the DNRC submit a detailed report of the land banking program to the EQC by July 1 of even-numbered years.
- **82-2-701, MCA**, requires the Montana Bureau of Mines and Geology to report to the EQC and the Education and Local Government Interim Committee on its investigation of the state's sand and gravel deposits within one year of starting its investigations.
- **87-1-230, MCA**, requires the DFWP to provide an annual report to the EQC regarding deposits into and withdrawals from the agency's water and land maintenance account related to implementation of the Good Neighbor Policy.

Council action:

The EQC allocated .5 FTE to this topic. For more information, contact Hope Stockwell at 444-1640 or hstockwell@mt.gov

3) EQC General Agency Oversight Statutory Duties

Source/authority: 2-4-402- 412, 5-5-202, 5-5-211, 5-5-215, 5-5-231, 5-16-101 through 5-16-105, 75-1-324, MCA.

Background: Under MEPA (75-1-324), the EQC has broad statutory oversight authority and has historically used that authority to review agency activities on an issue by issue basis as the need arises. In 1999, 2001, and 2003, the Legislature further expanded and defined the EQC's oversight authority to include draft legislation review, administrative rule review, program evaluation, and monitoring the functions of the DEQ, DNRC, and the DFWP. The EQC's oversight of these agencies includes entities that are attached to these agencies.

The Legislature's actions in 1999 required a more systematic approach to agency oversight, especially in terms of administrative rule review. Pursuant to 2-4-402 through 412, MCA, the Council has the authority to request records; make recommendations for adoption, amendment, or rejection of a rule; institute, intervene in, or otherwise participate in rulemaking proceedings; review the conduct of administrative proceedings; request a legislative poll; request an economic impact statement on a rule; or object to violation of authority for a rule.

The EQC is also required to review proposed draft legislation from each of the departments within its jurisdiction. At the end of the interim, the EQC schedules time to review this draft legislation.

Additionally, the 2011 Legislature approved HB 142, which requires all interim committees to review the statutorily established advisory councils and required reports of their assigned agencies and to make recommendations regarding the retention or elimination of those advisory councils and required reports. The EQC must review eight advisory councils and more than a dozen reports.

Traditionally, the EQC has one or more agency oversight issues on the agenda for each meeting. The Council has also historically allocated the necessary resources to respond to issues as they arise. There are also a number of statutorily required agency reports that are scheduled for presentations before the Council. One of the more significant reports is the compliance and enforcement of environmental and natural resource laws report required pursuant to 75-1-314, MCA.

- **2-4-402 through 2-4-412, MCA** - This section set out the administrative rule oversight powers and duties of the EQC.
- **5-5-202, 5-5-211 and 5-5-215, MCA**, discusses the organization and duties of interim committees. Section 5-5-231, MCA, requires the EQC and the Water Policy Interim Committee to coordinate on water issues.
- **5-16-101 through 5-16-105, MCA**, discusses the composition and terms of the EQC.
- **75-1-324, MCA** - This section of law contains the general oversight and policy review and recommendation responsibilities of the EQC. Members are urged to review it in detail. The EQC is directed to gather information concerning conditions and trends in the quality of the environment; to review state programs and activities to enhance or maintain environmental quality; to conduct studies, analyze proposals, and make recommendations concerning environmental issues; and to generally act as the Legislature's source of information and advisor on environmental policy issues and direction.

Council action:

The EQC allocated .4 FTE to this topic. For more information, contact Hope Stockwell at 444-1640 or hstockwell@mt.gov.

4) Carryover EQC Issue: Petroleum Tank Release Fund Solvency

Source/authority: 2007-2008, 2009-2010 Interim EQC Discussions, SJ 26, HB 613

Background: The solvency of the Petroleum Tank Release Fund has been tracked by the EQC during the last two interims. The Fund is the default payor for cleanup of releases (spills, leaks) from underground and aboveground petroleum storage tanks, as well as home heating oil tanks. The Fund's primary revenue source -- a \$.0075/gallon fuel tax -- hasn't kept pace with the cleanup work that is waiting to be done. Funding is therefore prioritized and lower-priority sites (based on risk to public health) cannot be resolved/closed.

The 2011 Legislature passed two bills intended to increase the number of releases that are resolved. SB 9, requested by the 2009-2010 EQC, authorizes the use of petroleum mixing zones to hasten the completion of work under certain circumstances. HB 613 establishes a series of performance benchmarks for the DEQ, by which the department must resolve a certain number of sites or money appropriated for petroleum tank release prevention will not be included in the department's base budget in the next budgeting cycle. As previously mentioned, SJ 26 tasked the EQC with reviewing, on at least an annual basis, the progress toward more petroleum site closures.

It is up to the 2011-12 EQC to determine whether it would like to monitor the impact that SB 9 and HB 613 have on the Fund's solvency during the biennium.

Council action:

The EQC allocated .02 FTE to this topic. For more information, contact Hope Stockwell at 444-1640 or hstockwell@mt.gov.

Petroleum Tank Release Work Plan Tasks:

- ___ 1. Receive updates on implementation/effects of SB 9 and HB 613 on tank release resolution.
Who: EQC and DEQ staff
Time line: January 2012 meeting, July 2012 meeting

- ___ 2. Discussion of whether SB 9 and HB 613 provisions need reinforcement or amendment. Direct staff to draft any legislation, if necessary.
Who: EQC members, staff
Time line: January 2012 meeting, July 2012 meeting

- 3. Review any draft legislation and any public comment.
Who: EQC members
Time line: July 2012 meeting, September 2012 meeting

- 4. Final approval for any legislation.
Who: EQC members
Time line: September 2012 meeting

5) EQC Educational Publications Obligations

Source/authority: 75-1-324, MCA.

Background: Under MEPA (75-1-324), the EQC has broad statutory authority and the EQC has historically used that authority to produce high quality, easy to understand, objective, nonpartisan, educational publications in addition to the study reports that the EQC produces during any given interim. These educational publications are well regarded and are constantly requested by the general public, legislators, state and federal agencies, other states, and industry and conservation groups. Several EQC publications have received national awards. The EQC has produced the following educational publications:

- ☆ *Montana Index of Environmental Permits (produced in 1976 and updated in 1978, 1981, 1984, 1987, 1988, 1991, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008 and 2010)*
Explanation: The EQC Permit Index is a complete guide to the permits and licenses needed to conduct activities that may affect the state's environment. The permit index lists the permits required, the permitting agencies, and the statutes and rules that regulate each permit. The Permit Index is the EQC's longest-standing ongoing publication.

- ☆ *Our Montana Environment: Where Do We Stand? (produced in 1996)*
Explanation: The EQC conducted its first comprehensive environmental indicators project in 1975. With the production of this publication 20 years later, the EQC revisited that effort to develop indicators to document changes in the state's environment over time.

- ☆ *A Guide to Montana Water Quality Regulation (produced in 1996 and updated in 2002, 2008, and 2009)*
Explanation: This publication is a primer that addresses water quality regulation in Montana. The impetus for producing this guide (which is one of the first educational primers that the EQC produced for a specific

subject matter area) came from numerous requests from the general public and legislators for an easy to understand reference booklet on the complex area of water quality.

- ☆ *Water Rights in Montana (produced in 2004 and updated in 2006, 2008, and 2009)*
Explanation: This publication is a primer on Montana's water right system. The EQC and the Department of Natural Resources and Conservation teamed up to produce this publication that distills a very complex area of law and regulation into a very easy to understand and readable document.

- ☆ *A Guide to the Montana Environmental Policy Act (produced in 1998 and updated in 2004, 2006, and 2009)*
Explanation: The EQC was created by the Montana Environmental Policy Act (MEPA) in 1971. The EQC has historically been very active in MEPA implementation and oversight and in developing policy related to MEPA. This guide was produced by the EQC at the request of Montana citizens, legislators, agencies, and industry and conservation groups in order to provide an easy to understand reference guide on MEPA.

- ☆ *Eminent Domain in Montana (produced in 2001 and updated in 2007)*
Explanation: This handbook was one of several products that the EQC produced as a result of its 1999-2001 interim study on eminent domain in Montana. This handbook was developed in order to help citizens better understand the state's eminent domain laws.

- ☆ *An informational Guide to State Debt (produced in 2004)*
Explanation: At the request of the 2003-04 EQC Energy Policy Subcommittee, the State Bond Counsel compiled the information for this brochure to assist those with projects utilizing state bonding mechanisms. The brochure defines state debt, describes bonds, describes the types of state debt, and provides other related information.

- ☆ *A Guide to Split Estates in Oil and Gas Development (produced in 2006 and updated in 2007)*
Explanation: This guide was produced in 2006 at the request of an EQC subcommittee that studied split estate issues. In 2007, EQC-approved legislation was signed into law requiring that the most current version of this brochure be provided to surface owners prior to oil and gas exploration and drilling.

- ☆ *Conservation easements: 20 things everyone should know (produced in 2008 and updated in 2010)*
Explanation: This brochure was first produced as part of a study of conservation easements on state land. It provides basic information about conservation easements.

- ☆ *Permitting in Montana: (produced in 2009)*
Explanation: This reference guide provides a quick overview of three permitting process that affect different types of projects ranging from power plants to gravel pits. This guide includes a series of flowcharts and summaries outlining the responsibilities of the applicant, the regulatory agencies, and the public within various permit processes in order to assist people in planning for a permitting process.

With some exceptions, the EQC's educational publications become outdated every interim as a result of legislative changes or administrative changes in the particular areas of law or rule that the publication addresses. Sometimes the updates require minimal time and effort, but some updates like the permit index require a more intensive effort.

Council action: The EQC allocated .2 FTE for this topic.

During the Interim, EQC staff will update the following publications:

- * Montana Index of Environmental Permits
- * A Guide to Montana Water Quality Regulation
- * Water Rights in Montana
- * A Guide to the Montana Environmental Policy Act
- * A Guide to Split Estates in Oil and Gas Development
- * Eminent Domain in Montana
- * Permitting in Montana

For more information on this topic, contact Hope Stockwell at (406) 444-1640 or hstockwell@mt.gov.

EQC Member Suggested Topics

Source/Authority: Section 75-1-324, MCA - General Oversight Authority

Background: At the May 24, 2011 meeting of the EQC, the Council allocated resources to analysis of two member suggested topics.

1) Eminent domain

The EQC allocated .05 FTE to:

- track the eminent domain case pending and provide legal analysis of issues related to public uses and the enumeration of the authority to exercise the power of eminent domain in response to the outcome of that case;
- review eminent domain discussions in other Western states and related statutes; and
- host a panel discussion at an upcoming EQC meeting.

2) Navigability

The EQC allocated .01 FTE to:

- analyze the various legal definitions of the term navigability as it pertains to rivers and present the findings to the EQC; and
- host a panel discussion at an upcoming EQC meeting.

2011-2012 Work Plan Timeline

[*Note: This draft timeline is provided to give you an idea of the timeline that each study will need to fit into in order to complete the work on time. It is subject to final approval of the EQC meeting dates. The timeline shows the last date for completion of certain items.*]

May 24, 2011	EQC Meeting. Interim work plan prioritization and EQC organizational meeting. Selection of studies and topics.
September 14-15, 2011	EQC Meeting. Adoption of detailed work plans for each selected study or topic.
January 11-12, 2012	EQC Meeting.
March 7-8, 2012	EQC Meeting. If public comment is desired on an EQC report, the contents of the <i>draft</i> report should be determined by this date. [May be earlier for some studies.]
May 2-3, 2012	EQC Meeting. Last date to suggest revisions to a <i>draft</i> document if a 30 day public comment period is desired. Comments received from the public will be compiled by staff and distributed to the EQC 1-2 weeks before the July 18-19, 2012 meeting.
July 18-19, 2012	EQC Meeting. Decision on recommendations, any proposed legislation, final report contents.
September 12-13, 2012	EQC Meeting. Final approval of recommendations, reports, proposed legislation. Select bill sponsors. Develop strategy. Review agency bill draft requests.

Council interim work must be completed prior to September 15, 2012.