



Newsletter

Time for Legislators, Other State Employees to Sign Up for Health Insurance

For legislators and other state employees who accept state health benefits, the annual change period has arrived. From now through Oct. 25, individuals can choose the health insurance plan they want for the 2014 calendar year. Individuals who want to remain eligible for benefits must sign up by Oct. 25.

The Health Care and Benefits Division mailed booklets to every member this year to explain the options for medical and dental insurance, as well as vision benefits. Anyone who did not receive the booklet in September should contact the Health Care and Benefits Division or Legislative Services Division.

The annual change period provides an opportunity to decide which plans will work best for you and your family. You can re-enroll in the same plans you currently have or select new options. Presentations on the options are scheduled around the state to help employees make the decisions that are best for them. The schedule of presentations is available online at: <http://benefits.mt.gov/pages/annual.change.html>.

Legislators who have questions about the insurance options or the procedures for enrollment may contact either:

- the Health Care and Benefits Division at 800-287-8266, 406-444-7462, TTY 406-444-1421, or benefitsquestions@mt.gov; or
- Lesley Bergman or Kelly DaSilva in the Financial and Human Resources Office of the Legislative Services Division at 406-444-3064.

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All interim committee meetings are held in the Capitol in Helena unless otherwise noted.

Committee Tours State Institutions

The Children, Families, Health, and Human Services Interim Committee visited four state-operated facilities in September, to learn more about the individuals served at each facility and the types of mental health services they receive.

The site visits kicked off the committee's House Joint Resolution 16 study of state-operated institutions that provide services to individuals with a mental illness, intellectual disability, or chemical dependency. The visits were designed to lay the foundation for further review of changes

that could result in more effective treatment or treatment that is provided in a more cost-effective manner.

Over the course of two days, the committee toured the Montana Chemical Dependency Center, Montana Developmental Center, Montana State Hospital, and Montana State Prison. At each location, committee members heard an overview presentation about the facility and its services, took public comment, and toured the facility.

Day 1: Butte and Boulder

On Sept. 16, committee members toured both the existing 50-bed Chemical Dependency Center in Butte and the site where three 16-bed buildings are under construction and will be leased by the state. The committee then traveled to the Montana Developmental Center in Boulder.

The Chemical Dependency Center expects to move into the new 16-bed buildings at the end of this year. Mary Dalton, manager of the Medicaid and Health Services Branch of the Department of Public Health and Human Services, told members that the change in building size might allow the state to be reimbursed by Medicaid for services provided to some MCDC patients. The facility also is working to attain accreditation by the Commission on Accreditation of Rehabilitation Facilities. Dalton said that would increase the likelihood that private insurance would pay for the costs of treatment for individuals who have insurance. Currently, costs of operating the facility are paid for almost solely with state alcohol tax dollars.

Committee members also learned that most patients receiving treatment at the center are there on a voluntary basis — unlike the other three facilities the committee visited.

At the Montana Developmental Center, committee members heard about the complexities of providing treatment to individuals who have both an intellectual disability and a mental illness. All individuals committed to the facility have been found by a court to have a serious developmental disability that poses an imminent risk to the individual or others. But MDC Clinical Director Polly Peterson said 44 percent of the clients also have a severe disabling mental illness, while almost all other clients have less serious mental illnesses. And seven of the 51 residents at the facility were there because they had been charged with and convicted of a crime but sentenced to the custody of the DPHHS director because placement in a correctional facility was not appropriate.

MDC Administrator Gene Haire also said the facility is trying to reduce the amount of time clients spend at MDC before returning to a community placement.

Committee members toured one of the five residences on the campus. They also saw the buildings where treatment and recreational activities are provided, as well as the 12-

bed fenced, secure Assessment and Stabilization Unit where residents with severe behavioral issues live until they are ready for placement in a residence elsewhere on the campus.

Day 2: Warm Springs and Deer Lodge

During the second day of its meeting, the committee visited the Montana State Hospital in Warm Springs and the Montana State Prison in Deer Lodge.

Montana State Hospital Administrator John Glueckert discussed the treatment provided to individuals who are either committed to the State Hospital through a civil court proceeding or who are at the hospital because they are facing or have been sentenced on criminal charges. Forty of the approximately 200 patients at the hospital were sentenced to the custody of the DPHHS director because they had been convicted of a crime but found to be mentally ill at the time the crime was committed. In addition, another 11 patients are at MSH after being found not guilty of a crime because they were mentally ill.

Drew Schoeninger, director of clinical services, noted some of the barriers to discharging patients to the community. They included a shortage of psychiatrists, particularly in rural areas of the state; the reluctance of some communities to accept patients who have committed crimes; and the tendency of some patients to stop complying with their treatment plans, including taking medications.

Committee members toured several areas of the hospital, including one of the treatment wings for individuals who were committed in a civil proceeding, a building for patients with long-term care needs, and the fenced and secure wing that houses individuals who have been criminally committed to the hospital.

In Deer Lodge, the committee heard about the mental health services that are available to all of the approximately 1,425 inmates at the Montana State Prison. They also heard about the services provided to individuals with serious mental illness, including inmates who are held in a special Mental Health Treatment Unit. Members of the prison's mental health staff also suggested improvements that could be made to the program if funding were available, including consolidating treatment services in a central location and creating an electronic medical records system.

During their tour, members visited the Mental Health Treatment Unit and one of the locked housing units, where prisoners with disciplinary problems are isolated from the general population. They also saw the Martz Diagnostic Intake Unit, where offenders are held when they first arrive and are assessed to determine their future placement at the prison. The assessments also help identify individuals who need mental health services.

Hearing from the Public

Individuals who presented public comment to the committee encouraged members to look at the following topics during the interim:

- the law that allows a judge to sentence a person to the custody of the DPHHS director and allows the director to transfer a person to a correctional facility;
- the criteria used for transferring people from the Montana State Hospital or Montana Developmental Center to the Montana State Prison;
- the adequacy of mental health treatment at the prison;
- the ways in which the Assessment and Stabilization Unit at the Montana Developmental Center is used;
- the forensic population at all the institutions, because people who are criminally committed to a facility typically have longer lengths of stay than other individuals; and
- the possibility of establishing assisted outpatient treatment, which includes involuntary medication of individuals who are in the community but refusing to take psychiatric medications they need.

The committee also discussed whether the study should be expanded to take a closer look at community mental health services. However, members decided that the current study plan allows for a review and discussion of those services and did not make changes to the plan.

Next Meeting

The committee meets next on Nov. 15 in Room 137 of the Capitol in Helena. For more information on the committee's activities and upcoming meeting, visit the committee's website or contact Sue O'Connell, committee staff.

Committee Website: www.leg.mt.gov/cfhhs

Committee Staff: soconnell@mt.gov or 406-444-3597

Economic Affairs Committee to Start Review of State Fund

The Economic Affairs Interim Committee will begin a review of the Montana State Fund in October, with the help of two actuaries who have studied how the agency sets its premiums and how well its business model is handling workers' compensation coverage.

The Oct. 22 meeting will begin with an overview of State Fund's structure, which is one of many study topics related to workers' compensation in House Joint Resolution 25. The committee decided as part of its work plan against reviewing what would be required to make Montana State Fund into a

private company. Instead, the committee will review possible regulatory changes.

In addition to reviewing current State Fund operations, the actuaries also will give estimates for the value of the Old Fund, which is the term used for workers' compensation claims for injuries that occurred before July 1, 1990. An earlier actuarial estimate of the Old Fund's value has proven inaccurate. That inaccurate estimate, along with legislative raids on the Old Fund and other factors, has made a review of the Old Fund's value topical again. Unlike many other insurance claims, a workers' compensation claim filed under laws prior to 1990 tends not to be a one-and-done scenario.

The committee also will hear a panel discussion regarding the State Fund's structure as seen by representatives of the three types of insurers that provide workers' compensation in Montana: the self-insured employers, private insurers, and Montana State Fund. The State Fund not only serves generally as a guaranteed market if no other insurer will write workers' compensation coverage for a company but also has the largest work comp market share in the state, at 57% of the written premium in 2012. (See the [Department of Labor and Industry's report](#).)

Other meeting topics include:

- updates from the State Auditor's Office as part of agency monitoring;
- a panel discussion featuring speakers who have been hired as so-called "navigators" for individuals buying health insurance in the federally facilitated insurance exchange, insurers who sell health insurance policies, and the Association of Montana Health Care Providers, which is preparing hospitals to use certified assistance counselors to help people who do not have insurance learn more about obtaining insurance through a health exchange;
- a review of three licensing boards whose licensees typically are hired by hospitals or health care clinics to determine if the licensees need to be separately licensed by the state or to have a licensing board. The three licensing boards are the Board of Clinical Laboratory Science Practitioners, the Board of Radiologic Technicians, and the Board of Respiratory Care Practitioners. The review is required under 37-1-142, MCA.
- an update from the Department of Agriculture regarding the committee's letter in opposition to a proposed rule increasing noxious weed seed free forage fees due to concern that the increase is not commensurate with costs.

The committee also will hear an overview of proposed rules and will take public comment on issues raised during the

meeting as well as on any issue not on the agenda but related to the committee's interim responsibilities. A review of the Diagnostic Laboratory in Bozeman will take place at the committee's January 2014 meeting instead of in October as previously announced.

Next Meeting

The committee meets next at 8:30 a.m. on Oct. 22 in Room 137 of the Capitol in Helena. For more information on the committee's activities and upcoming meeting, visit the committee's website or contact Pat Murdo, committee staff.

Committee Website: www.leg.mt.gov/eaic

Committee Staff: pmurdo@mt.gov or 406-444-3594

ELG Examines Process for Adoption of Accreditation Standards

Based on reports and public comments received during a two-day meeting, the Education and Local Government Interim Committee decided in September to take a closer look at the process for adopting school accreditation standards and at policy goals established for the K-12 and K-20 education systems.

The committee reviewed a staff report and heard public comment at its Sept. 23-24 meeting on the process for adoption or amendment of K-12 school accreditation standards by the Board of Public Education. Members subsequently agreed to further examine questions raised in the staff report regarding the process for fiscal analysis of proposed changes in the standards.

The committee also reviewed the Shared Policy Goals for the K-12 and K-20 education systems, as well as those for the Montana University System. The goals are non-binding agreements that aim to advance interagency cooperation and the quality of education policymaking in the state. Following their review, members discussed whether to create a subcommittee to more closely examine and possibly revise the goals. The committee will decide in December whether to form a subcommittee.

HJR 2 Study

As part of its House Joint Resolution 2 study of electronic records management by state and local governments, the committee heard about previous study efforts and about the governance structure for records management. Representatives from the Office of the Secretary of State, the Department of Administration, and the Montana Historical Society also presented information to the committee, providing a view of electronic records management "from 30,000 feet."

The committee directed staff to coordinate a work group of interested parties to look at study topics and provide regular reports to the committee, including reporting on any recommendations for changes.

HJR 2 noted the lack of "enterprisewide policy, planning, and resources to properly archive, maintain, and access state and local government electronic records." The HJR 2 work group will gather information about agency and local government current systems and anticipated needs, examine the frameworks used in states with exemplary electronic records management, review Montana statutes to identify any barriers, explore solutions, and analyze the costs and benefits of possible solutions.

The ELG website will have a page for the work group activities.

Education Updates

The committee heard about other education-related topics from the preschool to college levels.

Sara Groves of the Montana State Library gave a presentation on the library's early literacy program, known as Ready2Read. Seventy-two libraries around the state participate in the program, which supports efforts for early childhood programming at libraries by offering materials and training. More information on the program can be found at <http://ready2readmontana.org>.

The Office of Public Instruction provided updates on the following topics:

- changes in high school equivalency testing;
- possible congressional reauthorization of the Elementary and Secondary Education Act; and
- the K-12 Data Task Force established in Senate Bill 175.

Commissioner of Higher Education Clayton Christian informed the committee on Montana University System efforts related to performance funding as well as Montana's participation in the Complete College America Initiative. Deans from Colleges of Education within the university system provided information on teacher preparation to the committee.

Next Meeting

The committee meets next on Dec. 2 in Room 137 of the Capitol in Helena. For more information on the committee's activities and upcoming meeting, including activities related to the HJR 2 Work Group, visit the committee's website or contact Pad McCracken, committee staff.

Committee Website: www.leg.mt.gov/elgic

Committee Staff: padmccracken@mt.gov or 406-444-3595

ETIC Visits Wind Farms, Objects to PSC Rule

Energy and Telecommunications Interim Committee members in September objected to a proposed Public Service Commission rule related to contracts involving small power production facilities. The rule would reduce the size of facilities that could receive standard rate or automatic contracts from a public utility, from the current 10-megawatt standard to a 100-kilowatt standard.

The committee's objection prohibits the PSC from adopting the rule for six months after the date that notice of the proposed rule was first published, unless the committee withdraws its objection.

Under the current rules, if a qualifying facility generates 10 megawatts or less and meets cost standards that are set by the PSC and negotiated with the public utility, then the utility must buy the power from the facility. The proposed PSC rule would require facilities generating more than 100 kilowatts to participate in a competitive solicitation process rather than receiving the standard contract. In an 8-0 vote, the committee asked the PSC to revisit the rule and consider a 3-megawatt cap, as opposed to 100 kilowatts, for standard offer contracts.

Committee members met Sept. 12-13 in Harlowton, where they visited two qualifying facilities before taking up the rule. Qualifying facilities are generally 80 megawatts or less whose primary energy source is renewable. Federal laws require state commissions such as the PSC to set rates for purchases from small qualifying facilities that are equal to the avoided cost of a public utility. The PSC has the discretion to increase or decrease the limit on design capacity, but the limit may not be less than 100 kilowatts.

The committee visited the Sheep Valley Ranch wind farm in Wheatland County near Two Dot and the 9.6-megawatt Gordon Butte wind farm near Martinsdale. The committee heard the perspectives of regulated utilities and small wind developers concerning the standard offer tariff and competitive solicitation process.

In late June, a group of legislators also asked that the PSC conduct an economic impact analysis in response to the proposed rule changes. ETIC voted 7-1 that the economic impact statement was insufficient and requested an alternative analysis of a 3-megawatt contract cap.

SJR 6 Study

The committee also continued its work on Senate Joint Resolution 6, a study of the Montana renewable portfolio requirements. The committee visited the 135-megawatt Judith Gap Wind Energy Center and learned first hand about the economic impacts the project has had in Wheatland and surrounding counties. Brian Goddard, operations and mainte-

nance manager for the Invenergy project, discussed the more than \$1.5 million in yearly property taxes paid to Wheatland County and the \$400,000 paid annually to landowners for lease payments. In addition, the project uses the services of 56 different vendors within a 50-mile radius and 182 vendors in a 100-mile radius. Services range from concrete brought in from Lewistown to tractors purchased in Roundup.

Wheatland County Commissioner Richard Moe welcomed the committee to Harlowton, noting the \$2.4 million wind impact fund in the county. The fund fuels grants to community projects. "As you tour around, keep in mind that wind is good for rural counties," Moe told the committee.

The SJR 6 study is focused on the economic impacts of renewable energy requirements, the environmental impacts of Montana's requirements, and the impacts the requirement has had on Montana utility customers.

Next Meeting

The committee meets next on Nov. 8 in Room 172 of the Capitol in Helena. For more information on the committee's activities and upcoming meeting, visit the committee's website or contact Sonja Nowakowski, committee staff.

Committee Website: www.leg.mt.gov/etic

Committee Staff: snowakowski@mt.gov or 406-444-3078

Field Trips Aid EQC Preservation, Land Management Studies

From the bumpy bricks of Reeder's Alley to the washboard gravel of the Lump Gulch, the Environmental Quality Council took its interim studies on the road in September.

The travels were part of the council's Senate Joint Resolution 4 study of state-owned heritage properties and SJR 15 study of federal land management.

SJR 4 Study

On Sept. 11, Ellen Baumler, interpretive historian at the Montana Historical Society and seasoned Reeder's Alley tour guide, led the EQC members through the Pioneer Cabin and Reeder's Alley in Helena and recounted the history and development of the area and structures. Private donors gifted the structures and the property to the state in 2001 and 2006. The Board of Land Commissioners approved acceptance of the properties, and the Montana Heritage Commission (MHC) assumed management, adding stewardship of Reeder's Alley to its responsibility to administer state-owned facilities in Virginia City and Nevada City.

SJR 4 requested a study of state-owned heritage properties managed by the commission, including Virginia City, Nevada City, and Reeder's Alley.

EQC members were shown some of the structural maintenance problems in need of attention at Reeder's Alley, including an unstable and unusable staircase and degradation of a corner of one of the brick structures. Representatives of the MHC also discussed damage caused by runoff from the housing development situated above Reeder's Alley and measures under consideration to mitigate the damage.

The following day, MHC Director of Operations Elijah Allen presented several reports on the 2013 tourist season at Virginia City and Nevada City, including visitation numbers and revenue and expenditures. He also provided a list of pending grant applications and described ongoing efforts to inventory the collections.

Virginia City business owners, Madison County commissioners, Rep. Ray Shaw, and MHC members spoke to the council about the business plan, marketing efforts, and increased visitation this year, as well as the ongoing maintenance and funding needs at the sites.

EQC Chairman John Brenden appointed a working group to direct staff on where to focus continued study efforts and to provide its recommendations to the full committee. Sen. Jim Keane, D-Butte, will serve as presiding officer. Other working group members are Sen. Rick Ripley, R-Wolf Creek; Rep. Virginia Court, D-Billings; and Rep. Jeff Welborn, R-Dillon.

SJR 15 Study

The EQC got a healthy dose of the history of federal land management as well as an on-the-ground look at how that management plays out in the mountains south of Helena.

Martin Nie, a professor of natural resources policy in the College of Forestry and Conservation at the University of Montana, spoke to the council. Nie's recent work focuses on adaptive management and the law, federal lands planning, wilderness and protected lands, and various reform proposals and initiatives in national forest law and management.

Also speaking was Jay O'Laughlin, director of the Policy Analysis Group at the University of Idaho's College of Natural Resources. The Idaho Legislature created the position in 1989 with the goal of providing objective analysis of natural resource issues important to Idaho citizens. Earlier this year, O'Laughlin testified on federal land management alternative governance models, especially state trust land management, before the U.S. Senate Committee on Energy and Natural Resources. Earlier this summer, he also spoke to the Idaho Legislature's Federal Lands Interim Committee.

An overview of the two main federal landowners in Montana was provided by Tom Schmidt, deputy regional forester for the Forest Service's Northern Region, and Theresa Hanley, the associate state director for the Bureau of Land Management.

Doug Mote provided the perspective of a private land manager. As forest manager for several Montana ranches, Mote is responsible for all forestry-related activities on more than 90,000 acres of non-industrial private forests. The majority of these acres are certified sustainable by the American Tree Farm System, and the remainder are in process of being certified.

After an afternoon of talking, EQC members rode into the Helena National Forest south of town to tour the area around Chessman Reservoir, which is a main water supply for the city of Helena. Legislators were told that decades of fire suppression and the recent mountain pine beetle epidemic have caused the Tenmile watershed to experience significant tree mortality and uncharacteristic fuel loading.

Two of the tour guides were Helena City Manager Ron Alles and Bill Avey, supervisor of the Lewis and Clark National Forest.

The study continues in January with a discussion of county survey results. A working group was appointed to further examine public land issues. Sen. Jennifer Fielder, R-Thompson Falls, will serve as presiding officer. Other members are Sen. Brad Hamlett, D-Cascade; Rep. Ed Lieser, D-Whitefish; and Rep. Kerry White, R-Bozeman.

HB 609 Study

The EQC reviewed information on the Department of Fish, Wildlife, and Parks' current fiscal situation, license sales trends, the effects of free and reduced-cost licenses, and hunter recruitment and retention. The council also saw a comparison of hunting and fishing licenses and fees in 12 states.

The presentations were part of an ongoing study of Montana's hunting and fishing license system as requested by House Bill 609. The governor also has appointed an advisory council to look at the system. Both the EQC and the advisory council are charged with reviewing the license system and making recommendations for changing and simplifying its structure and fees to improve the balance between revenue and expenditures for fish and wildlife management and to improve services and better meet the needs of license buyers.

Next Meeting

The EQC meets next on Jan. 8-9 in Room 172 of the Capitol in Helena. For more information about the committee's activities and upcoming meeting, visit the council's website or contact Joe Kolman, council staff.

Council Website: www.leg.mt.gov/eqc

Council Staff: jkolman@mt.gov or 406-444-3747

LJIC Begins Parole, Family Law Studies

The Law and Justice Interim Committee dove headfirst into its interim work in September, spending two days learning about the laws and agencies that will be crucial to its studies of family law and of the Board of Pardons and Parole.

Members also heard an overview of how state and federal laws on gun ownership and mental health issues might affect the rights of Montanans suffering from mental illness and Montana's ability to receive certain federal funds.

Experts Explain Family Law

As a start to the committee's work on the Senate Joint Resolution 22 study of family law procedures and alternatives, committee members heard from a series of experts about the state of family law in Montana. The speakers included two current Montana District Court judges, a standing master who concentrates on family law cases, a court clerk, an attorney, the Montana court administrator, the executive director of an organization that provides legal assistance to low-income people, and a mediator.

As part of the presentations, the speakers made suggestions to the committee about possible changes to existing statutes, court structures, and resources provided to low-income litigants or those going to court without an attorney.

The committee will hear more about these topics and suggestions in future meetings.

Parole 101: Process and Philosophy

Committee members devoted much of their Sept. 20 agenda to the SJR 3 study of the Board of Pardons and Parole, including hearing directly from current and former board members about the parole philosophy of the board and how those members approached their work on the citizen board.

The day started with an overview of the criminal justice process after a person is convicted of and sentenced for a crime, and it ended with a committee discussion of next steps for the year-long look at parole and the parole board. In between, board and Department of Corrections staff walked the members through the steps taken to determine parole eligibility for an offender, to prepare the offender and the board for parole hearings, to release an offender who is granted parole, and to supervise a parolee in the community.

During a panel discussion on the parole board philosophy, current members Margaret Bowman and Darryl Dupuis and former members Don Hargrove and Sam Lemaich spoke at length about how and why they were appointed to the board, the workload involved each month, and how they sorted through the reports, records, and testimony to reach conclusions. All agreed that the parole hearings were an important time to hear from the offender, victims, and other individuals about whether parole should be granted.

In a short work session at the meeting's end, committee members requested additional statistics about recidivism and parole success or failure at first eligibility and more information about:

- criteria for selection of members of other appointed boards in Montana, especially quasi-judicial ones;
- other states that use entirely citizen boards to grant parole;
- criteria used by other states to determine whether to grant parole, especially the location of those criteria in statute, rule, or policy; and
- two legal cases related to the board and the parole process.

The committee agreed that certain issues raised by the SJR 3 study might overlap with work being accomplished by the re-entry task force created by House Bill 68, approved by the 2013 Legislature. Those topics included the housing and employment challenges that face offenders who are granted parole. Also, the committee noted that other areas of the SJR 3 study might dovetail with work being done by the Children, Families, Health, and Human Services Interim Committee for its House Joint Resolution 16 study of state institutions providing services to individuals with mental illness, intellectual disabilities, and substance abuse disorders.

Gun Ownership and Mental Illness

In addition to its assigned studies, the committee took up the topic of gun ownership and mental illness. Deputy Attorney General Jon Bennion of the Montana Department of Justice gave committee members an overview of how federal laws and rules and Montana law affect who can legally own firearms, the information that states can or must provide to the National Instant Criminal Background Check System (NICS) about certain individuals, and the protections given in these laws to people who suffer from mental illness.

Bennion noted that the NICS Improvement Amendments Act of 2007 requires states to provide to the NICS information about people who have been "adjudicated as a mental defective." In federal law and regulations, "mental defective" is the term used to mean a person who, as a result of a mental condition, is adjudicated to be a danger to the person or others or lacking in the mental capacity to manage the person's own affairs. The term includes a person who has been found incompetent to stand trial or found not guilty in a criminal procedure because of lack of mental responsibility. The NICS Improvement Amendments Act of 2007 also requires states to establish an appeal and restoration process to restore a person's right to own firearms.

If Montana fails to comply with the law, the state could lose certain grant funds related to law enforcement and criminal

justice or be ineligible to apply for other funds. Montana provides certain records to the NICS but is only partially compliant in reporting. The state also lacks an appeal and restoration process for people previously denied firearms for reasons relating to mental illness.

The committee agreed to study three interrelated topics at a future meeting: privacy protections for those with a mental illness, gun ownership issues for those judged to be a “mental defective” (including how to restore rights when the person is no longer affected), and federal funding for law enforcement.

Next Meeting

The committee meets next on Dec. 5 in Room 102 of the Capitol in Helena. For more information on the committee’s activities and upcoming meeting, visit the committee’s website or contact Rachel Weiss, committee staff.

Committee Website: www.leg.mt.gov/ljic

Committee Staff: rweiss@mt.gov or 406-444-5367

Council Makes Appointment, Discusses Interim Priorities

The Legislative Council has appointed Jonathon Byington, a University of Montana law professor, to the Uniform Law Commission. Byington replaces Montana Supreme Court Justice Mike Wheat on the commission. Wheat resigned his position earlier this year.

Byington joins Montanans Edwin Eck, Karen Powell, and Legal Services Director Todd Everts on the commission, which researches, drafts, and promotes enactment of uniform acts in areas of state law where uniformity across the states is desirable and practical.

The council made the appointment at its August meeting, when members also held their traditional biennial strategic planning session. During the session, council members and staff looked at ways to strengthen the legislative institution. Major topics that the council decided to pursue for its interim work include:

- the legislative calendar;
- legislative rules; and
- ways to increase communication and training for legislators, especially leadership, and for committee presiding officers, members, and staff.

The council also discussed ways to restore faith in the legislative branch and options for civic education, including a potential panel discussion with stakeholders and possibilities for using TVMT and social media more extensively. The council will adopt a work plan and begin working on these strategic objectives at its next meeting.

Next Meeting

The council meets next on Oct. 23 in Room 102 of the Capitol in Helena. For more information on the committee’s activities and upcoming meeting, visit the committee’s website or contact Susan Byorth Fox, committee staff.

Committee Website: www.leg.mt.gov/legcouncil

Committee Staff: sfox@mt.gov or 406-444-3066

State-Tribal Relations Committee to Hold Joint Meeting with Fort Belknap

The State-Tribal Relations Interim Committee will hold a joint meeting in Harlem with the Fort Belknap Indian Community Council on Oct. 3 and with Aaniiih Nakoda College officials on Oct. 4.

On Oct. 3, following introductions and an opening blessing, the committee’s portion of the agenda will begin. Legislative staff will provide updates on the Montana Indian language preservation pilot program that was created through passage of Senate Bill 342 in 2013 and on the water compact with the Confederated Salish and Kootenai Tribes.

The remainder of the morning will be taken up with the question of bison management. Legislative staff will provide a brief update on the Environmental Quality Council’s recent discussion of bison. Several speakers will then discuss the recent release of bison on the Fort Belknap Indian Reservation; recent legislative initiatives, agency rulemaking, court actions, and projects on the ground; and factors that lawmakers may want to keep in mind for future discussions on the topic. The following individuals are scheduled to speak on the topic:

- Mark Azure, director of the Fort Belknap Department of Fish and Wildlife;
- Ken McDonald, chief of the Wildlife Bureau at the Montana Department of Fish, Wildlife, and Parks;
- John Youngberg, vice president of governmental affairs for the Montana Farm Bureau Federation;
- Leon LaSalle, a board member representing the North Central District of the Montana Stockgrowers Association;
- Jim Stone, executive director of the Inter-Tribal Buffalo Council; and
- Sean Gerrity, president of the American Prairie Reserve.

During the afternoon, the Fort Belknap Indian Community Council will discuss the Blaine County road user tax; an update on the Fort Belknap water compact; Temporary Assistance for Needy Families payments; matters involving the Tribal Employment Rights Ordinance; right of ways on

reservation highways; and federal funding for Indian child welfare issues.

The committee also will hear an update on the work of the Governor's Office of Indian Affairs.

On Oct. 4, the committee will meet with Aaniiih Nakoda (Fort Belknap) College officials. Topics of discussion will include the college's language immersion program, transferability of academic credits between tribal colleges and the Montana University System, general equivalency diplomas, adult basic education, and workforce training. A Montana University System representative will be on hand for the discussion of transferring academic credits between state and tribal colleges.

Time allowing, the committee will tour the college campus.

Next Meeting

The committee meets next at 8:30 a.m. on Oct. 3 in the Conference Room of the Fort Belknap Housing Authority in Harlem. The meeting continues at 9 a.m. on Oct. 4 at the Aaniiih Nakoda College in Harlem, at a location to be determined. For more information on the committee's activities or upcoming meeting, please visit the committee's website or contact Casey Barrs, committee staff.

Committee Website: www.leg.mt.gov/tribal

Committee Staff: cbarrs@mt.gov or 406-444-3957

WPIC Members React to Proposed "Combined Appropriation" Rules

Chairman Chas Vincent and a majority of legislators on the Water Policy Interim Committee voiced concerns last month over a Department of Natural Resources and Conservation proposal related to exempt groundwater wells.

The agency began the administrative rulemaking process on Aug. 12, proposing to change the definition of "combined appropriation" in ARM 36.12.101. The term first appeared in statute in 1987, but is undefined. The DNRC proposed to add criteria to the definition currently in administrative rule. The changes in some cases would have limited a new exempt groundwater well to less than the currently allowed maximum of 10 acre-feet per year.

By a 7-1 vote on Sept. 10, the committee submitted formal comment on the rule. In the letter of comment, the committee expressed concern that the proposed rule was not consistent with statute, ignores the history of the department's own rule making, ignores the intent of the 2013 Legislature, and contains other mistakes.

The Environmental Quality Council has statutory oversight over DNRC; the council objected to the rule on Sept. 12,

delaying its implementation for up to six months. If implemented, it would be the third definition of "combined appropriation" in rule since 1987. The proposed rule is also subject to a stipulated agreement with a number of parties, including the Clark Fork Coalition. And 15 legislators have petitioned to DNRC for an economic impact analysis.

CSKT Compact Report Delayed

Also at WPIC's Sept. 9-10 meeting, the Reserved Water Rights Compact Commission did not deliver a report related to questions about the stalled reserved water rights compact with the Confederated Salish and Kootenai Tribes. The commission will deliver that report at the January WPIC meeting.

The committee also discussed the role of the Water Court in permitting and change application. Water Court Chief Judge Russ McElyea and DNRC Water Resources Division Administrator Tim Davis said they may be able to identify possible efficiencies to water right administrative processes. McElyea told the committee it was possible for a water right claimant to have the water right subject to proceedings before the DNRC, Water Court, and District Court at the same time. The committee will again take up the issue in March.

In other action, the committee heard:

- a presentation from University of Montana Law School Professor Michelle Bryan-Mudd, providing a legal backdrop as the committee began its House Joint Resolution 26 study of the intersecting interests of estate owners and ditch owners;
- that DNRC has received at least one application for a temporary water right lease. The 2013 Legislature approved House Bill 37, which allows leases of water rights under certain limits; and
- that surface water supply and soil moisture varies depending on one's location within Montana. Southwest Montana is classified as moderately to extremely dry, according to information from www.drought.mt.gov. The Hi-Line and eastern Montana are classified as "slightly moist."

Next Meeting

The committee meets next on Jan. 6-7 in Room 172 of the Capitol in Helena. For more information on the committee's activities and upcoming meeting, visit the committee's website or contact Jason Mohr, committee staff.

Committee Website: www.leg.mt.gov/water

Committee Staff: jasonmohr@mt.gov or 406-444-1640

Third State Health Clinic Opens for Employees, Legislators

The Health Care and Benefits Division and CareHere have announced that the third Montana Health Center opened in Miles City on Sept. 24. The other Montana Health Centers are in Helena and Billings. All three clinics are accepting patients.

The health centers offer an array of services to state employees, including legislators, if they are covered by the state health insurance plan and are:

- active employees or their dependents over 2 years of age;
- early retirees who are not eligible for Medicare; or
- employees who have been injured on the job and have a workers' compensation claim.

Eligible members may receive primary care, same-day services with appointments, health screenings, flu shots, health coaching, and more.

Medicare retirees may have health screenings and flu shots at the Health Center.

The Montana Health Center website provides a list of services and directions for registering and making an appointment. Members may schedule an appointment at www.carehere.com or by calling 877-423-1330 to speak with a person at any time.

The new Miles City clinic is located at 515 Main St. The Helena center is at 405 Saddle Drive, and the Billings clinic is located at 1501 14th St. W., Suite 230.

More information and scheduling options are available online at <http://benefits.mt.gov/pages/health.center.html>. Questions may be answered by e-mailing benefitsquestions@mt.gov or calling 800-287-8266, 406-444-7462, or TTY 406-444-1421.

The Back Page

Time, Muscle, and Money: Combating Eurasian Watermilfoil in the Jefferson Slough and Beyond

by Hope Stockwell
Research Analyst
Legislative Environmental Policy Office

Hand-pulling Eurasian watermilfoil — one of three aquatic plants on the state's noxious weed list — is a dirty job, but somebody has to do it. It's one of the only ways to keep the invasive plant at bay in the Jefferson Slough east of Whitehall right now.

Celestine Duncan, an invasive plant consultant to the state, is one of those somebodies.

"You're working in sediment that ranges from a foot to four feet deep and you're trying to pull all the root material out of the sediment," she said recently. There's usually a foot or two of water to contend with as well, she said, adding: "It's a really dirty job."

Duncan says it's not all bad. There are places where the bottom of the slough is hard because it's in the riffle.

"At least you can walk on it pretty easy," she says, "but then you're on your hands and knees trying to pry up the roots that are trapped under rocks."

This is the second year that workers from the Montana Conservation Corps, the Golden Sunlight Mine, the Jefferson County Weed District, and the Broadwater County Conser-

vation District have pulled Eurasian watermilfoil, or EWM, since it was found there in 2011.

"The first year we pulled out almost 4,500 pounds," says Duncan. "The second year we cut the size of our area back and got 1,500 pounds out. That's just a lot of material."



Workers from the Montana Conservation Corps and the Jefferson County Weed District and Jim Beck, a volunteer with the Broadwater Conservation District, remove Eurasian watermilfoil from the Jefferson Slough in August. Photo courtesy of Celestine Duncan.



Montana Conservation Corps workers use a canoe to haul bags of EWM out of the Jefferson Slough for disposal. Photo courtesy of Celestine Duncan.

This year's effort focused on a 1.3-mile stretch of the slough. Duncan says the hand-pulling was done over a week's time in about five passes.

"You get the bulk of them the first time, then you make more passes to try to get the rest of the population," she said.

After being pulled, workers put the plant in mesh laundry bags and try to clean rocks and sediment from the milfoil. During the pulling and cleaning process, the milfoil can break. Duncan says it takes just a small piece, roughly four inches, to breed a new infestation, so minnow seines are set up along the creek to trap any that break loose.

"It worked really good," says Duncan. "We would send somebody down every half hour to clean it out so water could keep going through it."

Duncan says hand-pulling is very effective for a smaller infestation.

"When you have populations like we're dealing with, 1,400 pounds of plant material or more, it gets to be a real challenge."

And, there's another five miles of slough downstream infested with an estimated 28,000 pounds of EWM.

"That's not hand-pullable," Duncan says.

A Growing Concern

The state's first-found and largest infestation of EWM — about 350 acres — is located at Noxon Reservoir where the plant was discovered in 2007.

"It poses a big threat to the Flathead Basin because of the short driving distance from Noxon to Flathead Lake or other lakes in the area," says Ray Beck, administrator of the Conservation and Resource Development Division at the Department of Natural Resources and Conservation. His division

administers various grants used to fight invasive species at the local level.

In 2012 and 2013, herbicide treatments were applied at Noxon. A whole-lake survey was just completed to help evaluate the effects. Although the data isn't final, EWM populations in Noxon have significantly declined with perhaps 80 percent to 90 percent control, according to Beck.

"We consider the Jefferson Slough as a serious infestation also," says Beck. "(It's) not anywhere the size of Noxon, but infests the Missouri Basin or has the potential to do so."

EWM has already been found elsewhere along the headwaters of the Missouri River and farther downstream. More than 4,900 pounds of EWM have been removed at Toston Reservoir since 2010. More than 7,000 pounds have been taken from the Canyon Ferry Management Area. At Fort Peck Lake, an herbicide treatment demonstration project is being used on 27 acres of EWM, while a draw down of more than 13 feet during the 2012-2013 winter proved that exposure can cause a significant decline in the population.

"The Jefferson Slough is the uppermost point on the Missouri River," Beck recently explained to the Legislative Environmental Quality Council (EQC). "We're working in those (other) areas to try and keep the infestation down so it's not transferred. If we don't control it in the Jefferson Slough, we won't control it in the Missouri Basin."

Though showing promising results in other locations, herbicide treatments present a challenge in the Jefferson Slough.

"It's more difficult to use herbicides in flowing water systems," says Duncan. "You're a lot more limited to what you can use because it's all based on contact time because you have to have a long enough time to kill it."

There are also irrigation restrictions to consider.

Other treatment options include bottom barriers, which are essentially big sheets laid over an infestation. They can be effective in choking out EWM, but can choke out other species, as well. Duncan says the barriers are also high maintenance and expensive — roughly \$1 per square foot. She thinks they could be used in the Jefferson Slough where some of the hand-pulling has already occurred.

“If we get barriers in there and cover up the worst areas, I think we have a fighting chance,” says Duncan.

But the estimated 28,000 pounds of EWM farther down will need bigger guns. That’s why Duncan and others are working with a consultant on herbicide and dredging options.

Tangential Benefits

Dredging, channel modifications, and improvements to the local irrigation infrastructure could be the long-term solution to the Jefferson Slough’s EWM problem. The tactics could also benefit local landowners and irrigators and relieve flooding concerns in nearby Whitehall.

The Legislature took note of the situation in 2013 and dedicated nearly \$1.8 million to area projects for the biennium.

As noted in Table 1, House Bill 586 appropriated \$300,000 to DNRC for projects that prevent or control any aquatic invasive species. However, the Joint Appropriations Subcommittee on Natural Resources and Transportation indicated its desire that all of that funding be used for the Jefferson Slough. Beck says DNRC is sticking to that plan.



Celestine Duncan, invasive plant consultant, shows lawmakers and others touring the Jefferson Slough in August how little Eurasian watermilfoil it takes to start a new infestation. Photo courtesy of Rep. Mike Cuffe.

Table 1
2013 Legislative Appropriations for Jefferson Slough Projects

Recipient	Project	Amount
Jefferson Valley Conservation District	Jefferson Canal Headgate	\$100,000
Jefferson County	Big Pipestone/Jefferson Slough Watershed Restoration	\$99,531
	Landowner #24 Ranch Channel Restoration	\$760,500
	Riparian Management Plan Development	\$15,500
	Beaver Management Planning	\$21,240
	Landowner #7 Channel Restoration	\$299,596
	Jefferson Slough Hydrology and Sedimentology Stations	\$176,850
Subtotal		\$1,473,217
DNRC	Prevent or Control Nonnative Aquatic Invasive Species	\$300,000*
Total		\$1,773,217

* This appropriation was made in HB 586. All other appropriations were made in HB 6.

Area lawmakers, two members of the appropriations subcommittee, and local officials and landowners toured the Jefferson Slough area in August.

Jefferson County Commissioner Leonard Wortman told the crowd the effort originally began as a discussion of how to relieve frequent flooding in Whitehall, but then EWM was found.

“Silt creates a wonderful nursery for milfoil,” Wortman says. “The entire drainage needs to be the focus of the project to get it done right. If you just dredge, it fills right back in.”

State and local officials attribute the slough’s present-day sedimentation problem to many sources — Big Pipestone and Whitetail creeks, which feed into the slough, runoff from Homestake Pass, nearby cattle grazing and off-highway vehicle use that impact riparian areas, worn and outdated irrigation infrastructure that is ineffective during high flows, a current lack of beaver dams that historically have been present, railroad construction that cut off the stream’s natural meanders, abundant cattails that slow the slough, and the milfoil itself, which helps trap sediment.

John Smith has farmland and feeds cattle on the west side of Whitehall, where some of the slough’s troubles first become visible. He’s been there 53 years and in August told lawmak-

ers they’ve done work on the creek every year, using materials they have at hand, such as concrete and rocks, to stabilize the creek banks. He says 1982 and 2011 were particularly bad years due to high waters.

When asked by a lawmaker what he thinks about restoring the slough’s historic stream channel to alleviate sedimentation, Smith said he has some concerns. He wants to be able to keep the property’s pond structure in place.

Tim Mulligan, a landowner on the east side of Whitehall, says he thinks dredging is the likely fix and that landowners are supportive.

“But I’ve got to be convinced that the new channel is in the right spot,” he says, “so it’s not flooding into my living room.”

Duncan hopes that by the end of next summer, after working with engineers and consultants, there will be a pretty good plan in place that people can review and agree on.

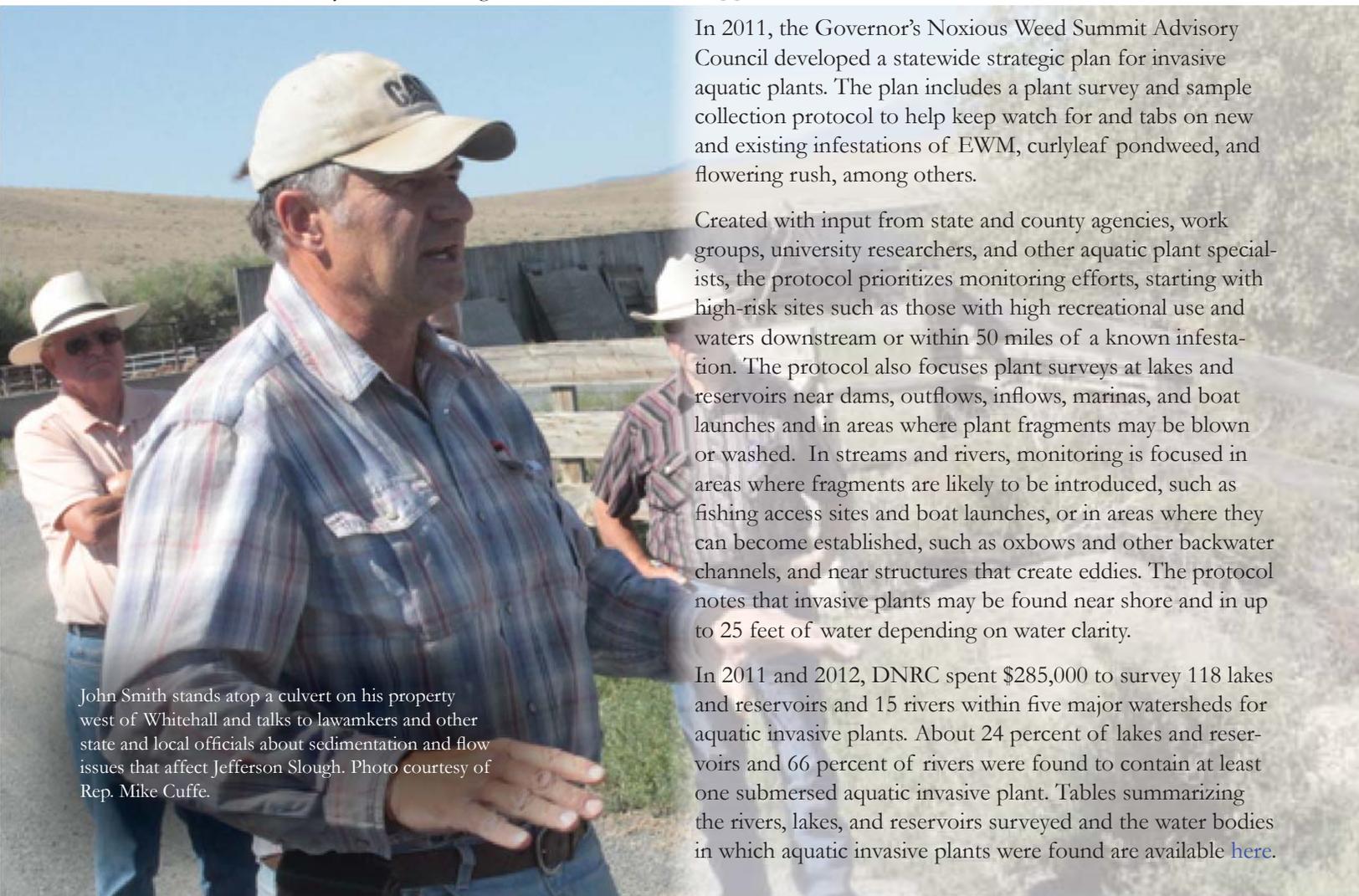
“There are a lot of folks that will have to buy in and agree this is the best plan for us, for everybody down there,” she says. “It may improve irrigation, could improve the fishery, and get rid of milfoil.”

Bigger Picture

In 2011, the Governor’s Noxious Weed Summit Advisory Council developed a statewide strategic plan for invasive aquatic plants. The plan includes a plant survey and sample collection protocol to help keep watch for and tabs on new and existing infestations of EWM, curlyleaf pondweed, and flowering rush, among others.

Created with input from state and county agencies, work groups, university researchers, and other aquatic plant specialists, the protocol prioritizes monitoring efforts, starting with high-risk sites such as those with high recreational use and waters downstream or within 50 miles of a known infestation. The protocol also focuses plant surveys at lakes and reservoirs near dams, outflows, inflows, marinas, and boat launches and in areas where plant fragments may be blown or washed. In streams and rivers, monitoring is focused in areas where fragments are likely to be introduced, such as fishing access sites and boat launches, or in areas where they can become established, such as oxbows and other backwater channels, and near structures that create eddies. The protocol notes that invasive plants may be found near shore and in up to 25 feet of water depending on water clarity.

In 2011 and 2012, DNRC spent \$285,000 to survey 118 lakes and reservoirs and 15 rivers within five major watersheds for aquatic invasive plants. About 24 percent of lakes and reservoirs and 66 percent of rivers were found to contain at least one submersed aquatic invasive plant. Tables summarizing the rivers, lakes, and reservoirs surveyed and the water bodies in which aquatic invasive plants were found are available [here](#).



John Smith stands atop a culvert on his property west of Whitehall and talks to lawmakers and other state and local officials about sedimentation and flow issues that affect Jefferson Slough. Photo courtesy of Rep. Mike Cuffe.

STOP AQUATIC HITCHHIKERS!™

Of course, aquatic invasives don't necessarily stick to protocol. Duncan says four of the five primary sites for EWM in Montana were found outside of a "formal" survey process, including:

- Jefferson Slough, where EWM caught the eye of a fishery biologist from the Department of Fish, Wildlife, and Parks;
- Fort Peck, where EWM was discovered by a fisherman;
- Toston Reservoir, where the plant was found by a Montana State University researcher; and
- Beaver Lake northwest of Kalispell, where it was found by a DNRC employee during a field tour for an unrelated project.

Duncan says that's why public education and awareness of aquatic invasive species is so critical in Montana.

"We need to have as many people as possible informed and looking for aquatic invasive species," she says.

INSPECT. CLEAN. DRY.

The Legislature placed a priority on public awareness and education when it enacted the Montana Aquatic Invasive Species Act in 2009.

Some of the state's most visible efforts include signs and billboards proclaiming "Stop Aquatic Hitchhikers!" and "Inspect. Clean. Dry."

FWP provides the following do-it-yourself instructions for anglers and boaters on its website at

<http://fwp.mt.gov/fishing/guide/ANS/default.html>.

1. INSPECT

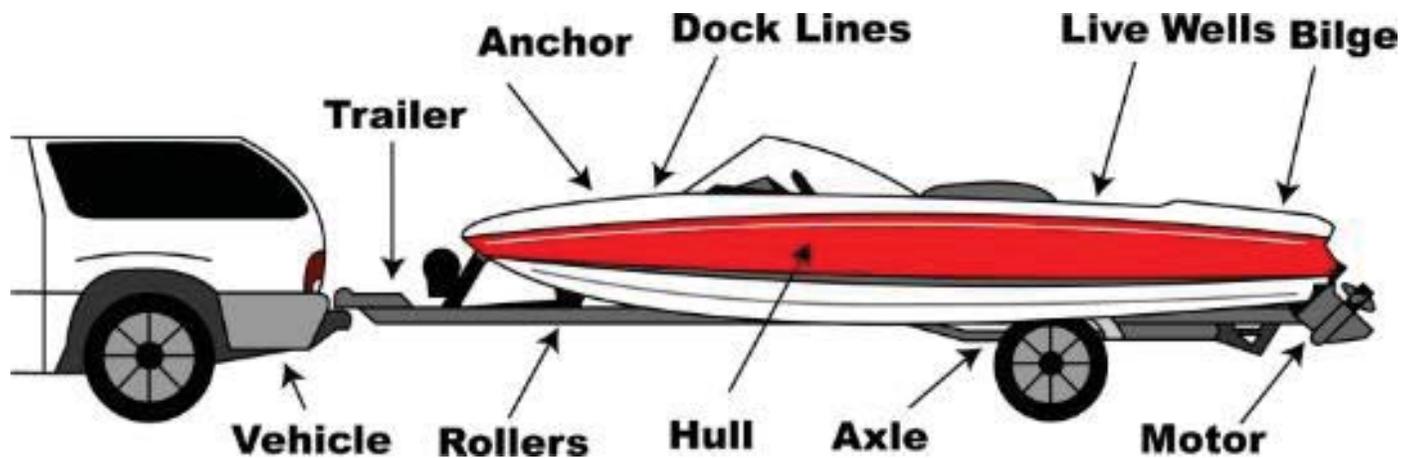
After leaving a lake or stream, inspect your boat, engine, trailer, anchor, waders, and other fishing and boating gear for mud, water, and vegetation that could carry aquatic invasive species.

2. CLEAN

Completely remove all mud, water, and vegetation you find. Boaters should use a pressurized power sprayer, found at most do-it-yourself car washes. The hot water helps kill organisms and the pressure removes mud and vegetation. No need to use soap or chemicals.

3. DRY

Aquatic invaders can survive only in water and wet areas. By drying your boating and fishing equipment thoroughly, you will kill most invasive species. The longer you can keep your boat, trailer, waders, wading boots, and other equipment outside in the hot sun between fishing trips, the better.



This illustration from FWP's website shows the key areas to Inspect.Clean.Dry on any watercraft.

A more formal type of public education has been happening at 20 watercraft inspection stations set up around the state by FWP between May and September this year. The 2013 Legislature appropriated \$640,000 in HB 586 to FWP this biennium for its aquatic invasive species program, including the check stations.

FWP Fisheries Habitat Section Manager Jim Darling told the EQC that as of mid-August, more than 23,500 watercraft had been inspected at the check stations. Of those, 242 were fouled with vegetation; 31 carried EWM.

Most of the check stations closed after the Labor Day weekend to conserve funding for next year, although Darling says the inspection site at Noxon Reservoir remained open until mid-September and the station at Fort Peck will operate through hunting season.

Restoration of Jefferson Slough

Last year, Jefferson County used planning grants from DNRC and Federal Clean Water Act funds distributed by the Department of Environmental Quality to pay an engineering firm to estimate the cost of stream restoration on the Jefferson Slough and its feeder, Big Pipestone Creek.

The report, completed in January, describes 32 needed projects with a total cost of \$5.3 million. Jefferson County sought funding for the top five projects in the last legislative session. Those projects totaled \$1.26 million. The Legislature put \$1.27 million into HB 6 to get Jefferson County started. (See Table 1.)

The joint appropriations subcommittees on Long-range Planning, which reviewed HB 6, and Natural Resources and Transportation, which wrote HB 586, discussed six primary goals for the Jefferson Slough's restoration. Those goals are:

- eliminate the infestation of (and future presence of) Eurasian watermilfoil in the slough;
- reduce sediment load, temperatures, and nutrients in the slough and Big Pipestone Creek;
- improve riparian habitat;
- reduce bank erosion and preserve arable land;
- improve access to permitted irrigation water; and
- reduce flood hazard to Whitehall.

DNRC Resource Development Bureau Chief Alice Stanley says the goals are a combination of what DNRC, FWP, DEQ, and the U.S. Department of Agriculture's Natural Resources Conservation Service want to see with the restoration and what local landowners and the town of Whitehall want accomplished.

Stanley says the cost estimate provided in the January report was a very good effort, but was focused primarily on impaired infrastructure. Stanley says Jefferson County has now contracted with a stream restoration firm to get a much clearer idea of the real cost to restore the Jefferson Slough.

"It may be less, it may be more," she says.

The results should be in by the end of next summer.