

**2003-2004 Environmental Quality Council  
Draft Work Plan**

May 29, 2003

**Table of Contents**

**Information about the 2003-2004 Draft Work Plan**

- Introduction ..... 1
- How the EQC Plans its Work ..... 1
- Instructions ..... 2

**Potential Work Plan Topics**

- Water Policy Duties ..... 3
- EQC Statutory Duties ..... 4
- EQC Publications ..... 6
- General Agency Oversight ..... 8
- Energy Policy Development ..... 9
- EQC Member Suggested Topics ..... 10
- Water Management Study HJR4 ..... 10
- Zortman-Landusky Water Quality Study HJR43 ..... 12
- Yellowstone River Water Compact Study HJR 35 ..... 13
- Water Quantity/Ponds Study HJR40 ..... 14

**Draft 2003 -2004 Work Plan Timeline** ..... 16

**Draft 2003-2004 Work Plan Appendix - Resolutions** ..... **Separate Document**

**Draft EQC Work Plan Decision Matrix** ..... **Separate Document**

# Information about the 2003-2004 Draft Work Plan

## Introduction

This is the draft work plan for the Environmental Quality Council (EQC or Council) for the 2003-2004 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 two additional documents--the *Draft Work Plan Appendices*, that contains copies of the study resolutions; and the draft decision matrix.

## How the EQC Plans its Work

During the legislative interim, the EQC typically focuses on two to four 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 selects study topics at the beginning of the interim. **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.**

This *Draft 2003-2004 Work Plan* is a **DRAFT**. It 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. Once you collectively make a decision on the work plan, it will become your blueprint for the 2003-2004 interim. Staff will then develop detailed draft work plans and timetables for each major study. A draft 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.

The draft work plan includes studies that were requested by legislators through study resolutions, suggested topics offered by Council members, and statutory mandates. The study resolutions have been ranked by the legislators and assigned to interim committees by the Legislative Council. The EQC now must decide how to prioritize its interim work regarding how or whether it plans to pursue these requests. The EQC's statutory mandates are broad. (See *A Council Member's Guide to the Environmental Quality Council*.) Therefore, there are countless potential study topics that may be of interest to Council members. Those topics that were suggested by members in response to the May 1, 2003 letter to the Council are listed in the Draft EQC Work Plan Decision Matrix.

## **Instructions**

The *DRAFT EQC Work Plan Decision Matrix* is included as a separate document. Council members have found the matrix to be extremely useful in making decisions on the work plan. The decisions you will need to make are simply "What?" and "How Much?" Just **follow these steps**:

1. Review the draft work plan.
2. Refer to the matrix. Review the topics and add any additional topics that are important to you.
3. For each category in the column on the far left, *choose* from the menu of options.
4. Circle the most appropriate option for that topic.
5. Fill in the resources allocated for that option in the far right column (#FTE, etc.).
6. Do this for each topic, then add the total. If it is more or less than **2.12 FTE**, reallocate.

Keep in mind that although we have listed "guesstimates" for *staff and council resources*, each option involves a time commitment from *Council members*. Last interim some EQC members indicated that they received too much information and that subcommittees were overused to the detriment of members that were not on the subcommittees. You may want to consider this when you make your decisions.

This exercise can be done individually in order to get an idea of your own preference. After Council discussion that should include answers to the question "Why", EQC members may generate proposals for the group to consider. At the end of the June EQC meeting, a plan of *what* the Council plans to work on during the interim and *how much* effort will be placed on each subject should be the result. Any direction on *how* you think the work can best be accomplished will assist staff in preparing detailed work plans on the selected topics.

Once again, the *Draft 2003-2004 Work Plan* is a decisionmaking tool. **Everything in it is subject to approval by the Council.**

## Potential Work Plan Topics

### Water Policy

**Source/authority:** 85-2-105, MCA.  
Recommendations of 1997-98 EQC.

**Background:** The water policy duties of the EQC that are set forth in 85-2-105, MCA are paraphrased below.

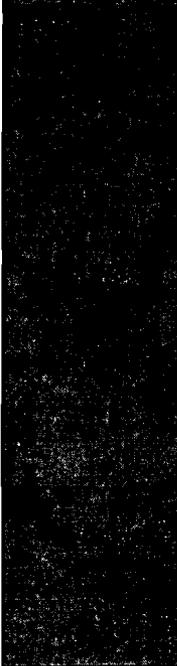
1. Advise the Legislature on the **adequacy of Montana's water policy.**
2. Advise the Legislature on **important state, regional, national, and international developments** that affect Montana's water resources.
3. Oversee **policies and activities of executive branch agencies** and other state institutions that affect Montana's water resources.
4. Assist with **interagency coordination** related to Montana's water resources.
5. **Communication with the public** about water policy and water resources.
6. Analyze and comment on the **State Water Plan**, when prepared by the Montana Department of Natural Resources and Conservation (DNRC).
7. Analyze and comment on the **Renewable Resource Grant and Loan Program** report.
8. Analyze and comment on **water related research** undertaken by state entities.
9. Analyze, verify and comment on the information in the **Water Information System of the Natural Resource Information System.**
10. Report to the Legislature.

Some of the many potential water policy issues that the EQC may want to address or receive information about during the 2001-2002 interim are described briefly below. Coal bed methane issues are highlighted in a separate section of the work plan

**Water quality monitoring, assessment and improvement (TMDL'S).** The 1997-98 EQC recommended that the next EQC continue to provide oversight of the Montana Department of Environmental Quality's (DEQ) implementation of House Bill 546, a bill passed in 1997 that addressed water quality monitoring, assessment and improvement, including total maximum daily loads, or TMDL's. U.S. District Court Judge Molloy has issued an order that requires the U.S. Environmental Protection Agency (EPA) to approve or establish TMDLs for each pollutant that impairs or threatens a water quality limited segment on the state's 1996 list of impaired and threatened water bodies by May 5, 2007. The DEQ is prohibited from issuing new permits or increasing permitted discharge for permittees to a water quality limited segment under the Montana Pollutant Discharge Elimination System (MPDES) permitting program until all necessary TMDLs are developed. The timelines affecting DEQ and the completion of TMDLs was extended to 2012 by House Bill 89 in the 2003 Legislature. House Bill 89 affects only the statutory completion date and does not affect the court mandated completion date of 2007.

**Drought.** If current conditions continue, the effects of drought will continue to be a grave concern in many parts of the state. Pursuant to section 2-15-3308, MCA, the Drought Advisory Committee chaired by the Lieutenant Governor is responsible for monitoring drought conditions, implementing the state drought plan, providing assistance to local drought advisory committees, and other duties related to drought.

**Wading into Montana Water Rights revision.** *Wading into Montana's Water Rights* is a primer for citizens that addresses frequently asked questions regarding water rights. This primer has not been revised since 1997. Montana's water laws have been amended during the three legislative sessions since 1997. Because the guide is general and amendments to Montana law have been fairly narrow, the guide continues to be a generally accurate and useful document. However, new questions have arisen and the laws have been amended. The EQC could request staff to update this primer. The DNRC also publishes a booklet -- *Water Rights in Montana* -- which was last updated in December 1999.

OPTION A	OPTION B	OPTION C	OPTION D
<p><b>.5-.75 FTE Active EQC Subcommittee</b></p> <ul style="list-style-type: none"> <li>• All mandatory duties.</li> <li>• Significant commitment to water issues.</li> <li>• Public involvement.</li> <li>• Review and discuss applicability of statutory responsibilities related to water policy issues.</li> </ul> <p>Deliverables:</p> <ul style="list-style-type: none"> <li>• Update water rights handbook.</li> <li>• Thorough report to Legislature.</li> <li>• Potential legislation to address statutory responsibilities</li> </ul>	<p><b>.25-.5 FTE Water Policy Subcommittee?</b></p> <ul style="list-style-type: none"> <li>• All mandatory duties.</li> <li>• Selected water issues.</li> <li>• Public involvement through EQC meetings.</li> <li>• Review and discuss applicability of statutory responsibilities related to water policy issues.</li> </ul> <p>Deliverables:</p> <ul style="list-style-type: none"> <li>• Update water rights handbook.</li> <li>• Brief report to Legislature.</li> <li>• Potential legislation to address statutory responsibilities</li> </ul>	<p><b>.1 FTE</b></p> <ul style="list-style-type: none"> <li>• Mandatory duties only.</li> <li>• Public involvement through EQC meetings.</li> <li>• Review and discuss applicability of statutory responsibilities related to water policy issues.</li> </ul> <p>Deliverables:</p> <ul style="list-style-type: none"> <li>• Very brief report to Legislature.</li> <li>• Potential legislation to address statutory responsibilities</li> </ul>	

**EQC Statutory Duties**

**Source/authority:** Sections 75-1-201, 75-1-208, 75-1-314, 75-1-324, 2-15-1514, 2-15-1523, 50-60-801, 75-10-111, 75-10-913, 918, and 927, 77-2-301, 77-5-301, 85-1-203, 85-1-621, 85-2-105, 85-2-436, 90-4-1001, and 1003, 90-4-1010 and 1011.

**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 these activities as the need for specific oversight changes with interest, time, and circumstance. They are listed as follows:

- 75-1-201 and 75-1-208 - 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 - Three agencies of state government 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. The agencies have provided two reports to date. The 2001-2002 EQC requested that the agencies provide the third report covering fiscal years 2001, 2002 and 2003 during this next interim.
- 75-1-324 - 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.
- 2-15-1514 requires 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 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.
- 50-60-801, 90-4-1001, and 1003, 90-4-1010 and 1011 are all EQC duties related to the oversight and review of state energy policies. More detail is provided in the draft work plan narrative on Energy.
- 75-10-111, 75-10-913, 918, and 927 all require EQC involvement and review of the state solid waste management plan and participation in the Megalandfill Siting Act review process. The DEQ has developed a state solid waste management plan that is under revision this year. There have been no megalandfill siting applications since the law was enacted in 1991.
- 77-2-301 *et. seq.* will include a new requirement authorized by HB 223 (2003 session) that the DNRC submit a report to the EQC by July 1, 2008 regarding the status of the state land banking program.
- 77-5-301 *et. seq.* is the Streamside Management Zone law. The statement of intent for the enabling legislation requires the DNRC to periodically evaluate and report on the implementation of the act to the EQC.
- 85-1-203, 85-2-105, and 85-2-436 all relate to obligations of the EQC to participate in or receive and review information on water policy issues including water leasing information from the DFWP. More detail is provided in the draft work plan narrative on Water Policy.
- 85-1-621 requires the DNRC to submit a biennial report to the EQC that describes the status of the renewable resource grant and loan program financed with funds from the Resource Indemnity Trust.

OPTION A	OPTION B	OPTION C	OPTION D
<p><b>1 FTE</b></p> <ul style="list-style-type: none"> <li>• Fulfill all statutory requirements.</li> <li>• Participate in all mandatory meetings and other environmental policy meetings (e.g. Board of Environmental Review, Fish, Wildlife and Parks Commission, etc.)</li> <li>• Rewrite and reprint <i>Our Montana Environment</i> or similar effort.</li> <li>• Establish MEPA training and training schedule for state employees and others.</li> <li>• Notify/solicit permit applicants to present MEPA concerns to EQC.</li> <li>• Review and comment on certain agency MEPA documents for compliance and consistency.</li> <li>• Review and comment as a Council on environmental reviews for selected controversial projects. (e.g. MEPA air quality debate over Holcim cement plant tire burning proposal.)</li> </ul>	<p><b>.3 FTE - .5 FTE</b></p> <ul style="list-style-type: none"> <li>• Fulfill selected statutory requirements in greater detail.</li> <li>• Accept reports and select some for EQC review, analysis, and comment.</li> <li>• Select specific topics for further analysis or presentation.</li> <li>• Request trend information for each topic reviewed by EQC.</li> <li>• Rewrite selected segments of EQC trends publication, <i>Our Montana Environment</i>, and post on EQC website.</li> <li>• Provide MEPA training to state agencies on as requested basis.</li> <li>• Provide updated web access to MEPA database.</li> <li>• Review selected controversial MEPA documents/projects.</li> <li>• Track MEPA litigation during interim.</li> </ul>	<p><b>.05 FTE</b></p> <ul style="list-style-type: none"> <li>• Minimum of activity.</li> <li>• Solicit and accept agency reports as required.</li> <li>• Fulfill statutory requirements at minimal level of effort.</li> <li>• Select oversight topics and issues for presentation and review at EQC meetings on an ad hoc basis.</li> <li>• Maintain MEPA database.</li> <li>• Participate in meetings as necessary.</li> <li>• Identify and describe trends in EQC interim study work.</li> <li>• Update MEPA handbook as needed.</li> <li>• Provide MEPA handbooks to agencies and others as requested.</li> <li>• Evaluate need for specific statutory duties.</li> </ul>	

## **EQC Educational Publications**

**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 2002, Thirteenth Edition*

**Explanation:** This is the EQC's oldest and perhaps most requested publication. It provides a complete list of 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 has been updated every interim for 26 years.

☆ *A Guide to Montana Water Regulation (produced in 1996 and updated in 2002)*

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.

☆ *Wading into Montana Water Rights (produced in 1997)*

Explanation: This publication is a primer on Montana's water right system. The EQC and the Montana University System Water Center 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 2002)*

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)*

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 Montana Citizens better understand Montana's eminent domain laws.

☆ *The Electricity Law Handbook: A Montanan's Guide to Understanding Electricity Law (produced in 2002)*

Explanation: This handbook was produced by the EQC last interim. The EQC felt that given the magnitude of the issues surrounding electricity and especially electricity deregulation in the state, that an educational publication was needed to help Montanans sort out the morass of laws that deal with electricity.

☆ *Understanding Electricity in Montana: A Guide to Electricity, Natural Gas and Coal Produced and Consumed in Montana (produced in 2002)*

Explanation: This guide was produced by Department of Environmental Quality energy staff for publication by the EQC last interim. It provides statistical and explanatory information on electricity supply, demand, and transmission and information on coal and natural gas supply and demand.

With some exceptions, the EQC's educational publications usually 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.

OPTION A	OPTION B	OPTION C	OPTION D
<b>.12 FTE</b> • In addition to Option B, update the Permit Index.	<b>.04 FTE (110 hrs)</b> • Update publications that require minimal effort. • Have the EQC review and approve updates	<b>No Action</b>	<b>No Action</b>

## **General Agency Oversight**

**Source/authority:** 2-4-401- 412; 5-5-202, 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 Department of Environmental Quality, Department of Natural Resources and Conservation, and the Department of Fish, Wildlife, and Parks. 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 2-4-401-412, 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.

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.

OPTION A	OPTION B	OPTION C	OPTION D
<p><b>.30 - .40 FTE</b>  <b>Active EQC Involvement</b>            Option B intensified!</p> <ul style="list-style-type: none"> <li>• Consistent EQC involvement encompassing a broad range of oversight issues.</li> <li>• In depth systematic review of a larger number of state agency programs than in Option B.</li> <li>• Possible report and recommendations/legislation for changes in implementation of state policy.</li> <li>• Active EQC review of rules and legislation.</li> </ul>	<p><b>.15 FTE</b></p> <ul style="list-style-type: none"> <li>• Systematic oversight.</li> <li>• In addition to Option C, systematically evaluate and monitor a specific number of state agency programs.</li> <li>• More intensive review of administrative rules than Option C (Council Attorney provides synopses of significant and controversial proposed rules).</li> <li>• Review draft agency legislation.</li> <li>• Receive and comment on the compliance and enforcement report required pursuant to 75-1-314, MCA.</li> <li>• Systematic oversight for targeted programs.</li> <li>• Active EQC review of rules and legislation.</li> <li>• Possible EQC recommendations to the next Legislature.</li> </ul>	<p><b>.10 FTE</b></p> <ul style="list-style-type: none"> <li>• Organize oversight issues before the EQC on an as requested basis.</li> <li>• Council members receive copies of rule notices of proposed adoption of rules. Council members responsible for notifying staff or the Council Chair if they want more information.</li> <li>• Review draft agency legislation.</li> <li>• Receive and comment on the compliance and enforcement report required pursuant to 75-1-314, MCA..</li> <li>• Oversight on an as needed basis.</li> <li>• Possible EQC recommendations to next Legislature.</li> </ul>	

## **Energy Policy Development**

**Source/authority:** 90-4-1003, MCA.

**Background:** The Council may, as the need arises, maintain a continual process to develop the components of a comprehensive state energy policy. The Council expended a significant amount of effort during the 1993-94 interim in developing a state-wide energy policy statement. The 1995 Legislature enacted the EQC's recommendations. During the 1995-96 interim the EQC assigned a broad-based working group of stakeholders to make recommendations on transportation energy policy and on alternative transportation fuels. Again, the 1997 Legislature adopted the EQC's recommendations. The EQC monitored and received updates on electric industry restructuring during the 1997-98 and 1999-2000 interims. During the 2001-02 interim the EQC created a subcommittee that developed educational materials on the status of electricity in Montana and electricity law. EQC staff also provided staffing services to the Transition Advisory Committee on Electric Industry Restructuring during the 1997-98, 1999-2000, and 2001-2002 interims.

OPTION A	OPTION B	OPTION C	OPTION D
<p><b>.035 FTE (100 hours)</b></p> <ul style="list-style-type: none"> <li>• Evaluate whether there is a need to develop specific energy policy.</li> <li>• Staff white paper.</li> <li>• Evaluate the EQC's role in future energy policy development given the creation of the new Energy and Telecommunications Committee.</li> </ul>	<p><b>.015 FTE (40 hours)</b></p> <ul style="list-style-type: none"> <li>• Monitor and receive updates on electric industry restructuring and other energy issues on an as needed basis.</li> </ul>	<p><b>No Action</b></p>	<p><b>No Action</b></p>

### **ECQ Member Suggested Topics**

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

**Background:** On May 1, EQC staff sent a memo to each Council member soliciting topics of interest that might be reviewed by the EQC this interim. The responses are listed in the Draft EQC Work Plan Decision Matrix as "member defined issues" in the "Why is this a topic?" column. There is no narrative description for each topic. The EQC member that requested the topic is responsible for explaining the issue to the Council. A review of the matrix should indicate the nature of the request and provide a draft of tasks and a rough estimate of possible resource allocations for each topic. The Council will decide on whether to approve any or all of these items at the June organizational meeting.

## **Study Resolutions Assigned to EQC by Legislative Council**

### **Water Management**

**Source/authority:** HJR 4 (2003) Legislative Poll Ranking: 3rd  
85-2-105, MCA

**Background:** As Montana and other Western states struggle with an existing drought and with recovering from an extended drought, the issues of water quantity and water management have risen to an increased level of awareness. Montana's citizens have learned how important it is to manage the State's water as efficiently as possible to try to avoid the impacts of drought. There are many thoughts and theories regarding water management and which practices are better suited to Montana. Many individuals feel that storage should be developed to keep water in Montana for a longer period of time, others feel that by being overly efficient with managing the state's water the State is actually losing more water to downstream States than is necessary. HJR4 was presented to the Legislature as a way to gather information on existing water management practices and potential improvements on those practices. Specifically, the resolution requests:

1. Evaluate the efficiency of water distribution systems.
2. Evaluate measures that promote the efficient use of water
3. Evaluate return flow impacts.

4. Study water banking as a means to alleviate water shortages.
5. Investigate options for improving the supply and distribution of water in Montana, including the development of off-stream storage facilities.
6. Evaluate the water storage policy established in section 85-1-703, MCA.
7. Evaluate the effects of excessive fuel levels on federal and state timbered lands to determine the impacts of the use of available water by timber versus the amount of water released by a watershed in Montana watercourses.

HJR 4 specifically states that the study should be conducted with expansive public involvement and input. The issues that are provided above are quite extensive. In fact, each of the seven elements could be a study all its own. The EQC might consider limiting the issues that it tries to address in this study by using a prioritization process for the issues identified in the resolution. The EQC could work on the highest priority concern in more detail and potentially address any lower ranking issues in a more simple fashion.

If a water policy subcommittee is appointed, the water management study could be addressed by that subcommittee or the full EQC. Whether or not a water policy subcommittee is appointed, the water management report could be incorporated into the water policy report.

OPTION A	OPTION B	OPTION C	OPTION D
<p><b>.75-1.0 FTE</b>  <b>Active Subcommittee</b></p> <ul style="list-style-type: none"> <li>• Subcommittee prioritize the issues provided in HJR 4 for study purposes.</li> <li>• Allow for public comment regarding research areas.</li> <li>• Identify scientific research that has been conducted in these areas and determine if additional research is needed to answer questions.</li> <li>• If necessary determine how to accomplish additional research.</li> <li>• determine if there are specific policy issues that need addressed based on the study findings.</li> <li>• Provide recommendations to address policy issues.</li> <li>• Draft legislation to implement recommendations.</li> <li>• Comprehensive summary of water management practices in Montana.</li> <li>• Written report to the 59th Legislature.</li> </ul>	<p><b>.5-.75 FTE</b></p> <ul style="list-style-type: none"> <li>• All of option C alternatives in addition to 1 or 2 additional subject areas.</li> </ul>	<p><b>.1-.25 FTE</b></p> <ul style="list-style-type: none"> <li>• Identify one area within the resolution to focus study.</li> <li>• Prepare a publication outlining facets of water management in Montana.</li> <li>• One or two opportunities for public comment related to the one identified issue, at an EQC meeting.</li> <li>• Potential recommendations to address policy concerns relating to issue.</li> <li>• Draft legislation to implement policy recommendations.</li> </ul>	<p><b>.1 FTE</b></p> <ul style="list-style-type: none"> <li>• Staff prepare a white paper summarizing existing issues identified in resolution</li> </ul>

## Zortman and Landusky Water Quality

**Source/authority:** HJR 43 Legislative Poll Ranking: 8th

**Background:** The state Department of Environmental Quality, with some federal assistance, has assumed the operational and financial responsibility of reclaiming the Zortman and Landusky mine sites following the bankruptcy of Pegasus Gold Corporation. The DEQ is using mine reclamation and water quality bond funds provided by Pegasus' surety as well as some other funds from state and federal sources. A joint state and federal Environmental Impact Statement has been prepared for the reclamation of the site. Reclamation is in progress.

Generally, the DEQ believes that it will be able to reclaim the site with the available funds except that it is underfunded regarding the long term water treatment needs at the sites. The Ft. Belknap Tribal Community and several other groups do not agree that there are sufficient funds to reclaim the site but do agree with the department that the funds available for water treatment are inadequate. A lawsuit has been filed to require the department to fund and implement a more complete reclamation of the sites. The primary environmental concern is whether or not surface and ground water quality will be adequately protected by ongoing and future reclamation efforts.

A considerable amount of reclamation information exists regarding the mine sites although gaps may exist that result in ongoing speculative arguments about the adequacy of the efforts. The Legislative Council has referred this study resolution to the EQC and has agreed with a staff suggestion that a white paper be prepared following a review of the available information.

OPTION A	OPTION B	OPTION C	OPTION D
<p><b>.2 FTE</b></p> <ul style="list-style-type: none"> <li>• Option B plus...</li> <li>• EQC oversight of reclamation efforts.</li> <li>• Panel presentations on project and discussion of issues.</li> <li>• Litigation tracking.</li> <li>• Identification of reclamation financing alternatives.</li> <li>• On site visit(s) for discussion and local input.</li> </ul> <p>Deliverable:</p> <ul style="list-style-type: none"> <li>• Brief report project.</li> <li>• Possible legislative initiatives.</li> </ul>	<p><b>.1 FTE</b></p> <ul style="list-style-type: none"> <li>• Review EIS and all other relevant water quality documents available.</li> <li>• Telephone interviews with local, tribal, and other interested participants.</li> </ul> <p>Deliverable:</p> <ul style="list-style-type: none"> <li>• Staff prepared white paper ~20 pp.</li> </ul>	<p><b>.01 FTE (27 hours)</b></p> <ul style="list-style-type: none"> <li>• Panel presentations to EQC by agency and others.</li> </ul>	<p><b>No Action</b></p>

## **State Share of Water Under the Yellowstone Compact**

**Source/authority:** HJR 35 (2003) Legislative Poll Ranking: 10th  
85-2-105, MCA

**Background:** Concern in Montana over the lack of sufficient water supplies in rivers that originate in Wyoming (Clarks Fork, Big Horn, Tongue, and Powder Rivers) and that flow into the Yellowstone River is the crux of the issue that generated this interim study resolution. The resolution requests the following:

- (1) investigate whether Montana is receiving its lawful share of water from the interstate tributaries pursuant to the Yellowstone River Compact; and
- (2) if the investigation determines that Montana is not receiving its lawful share of water, make recommendations regarding how to ensure that Montana receives its lawful share of water from the interstate tributaries pursuant to the Yellowstone River Compact.

The Legislative Branch does not have the financial or technical resources to fulfill the request described in subsection (1). It would cost the Legislative Services Division an estimated \$500,000 to \$1 million to hire a consultant to conduct the study as written. (The estimate assumes the study would be adequate if the state decided to pursue litigation to enforce the Compact.)

The Department of Natural Resources and Conservation (DNRC) has \$20,000 and professional staff to work on this effort this interim. The DNRC may have adequate financial and technical resources to begin negotiations with Wyoming if Wyoming agrees. Wyoming has begun negotiation with other states.

OPTION A	OPTION B	OPTION C	OPTION D
<p><b>.07 FTE</b></p> <ul style="list-style-type: none"> <li>• In addition to Option C, assign a staff white paper summarizing experiences with similar litigation in other states with respect to resources committed and administrative framework.</li> <li>• Evaluate the need for and, if appropriate, make recommendations for legislation related to enforcement of the compact (e.g., appropriations for adequate study, resolution or bill supporting or directing litigation)</li> </ul>	<p><b>.03 FTE</b></p> <ul style="list-style-type: none"> <li>• Request that the Department of Natural Resources and Conservation (DNRC) conduct (within the limits of available resources) an investigation into whether or not Montana is receiving its lawful share of water with EQC oversight and guidance on priorities.</li> <li>• Have DNRC report its findings, conclusions, and recommendations to the EQC.</li> </ul>	<p><b>No Action</b></p>	<p><b>No Action</b></p>

## **Water Quantity/Ponds**

**Source/authority:** HJR 40 (2003) Legislative Poll Ranking: 11th  
85-2-105, MCA

**Background:** A concept similar to HJ40 was introduced in the 2003 Legislature as HB505. HB505 was not passed by the legislature and one of the reasons identified was a lack of time and knowledge to fully evaluate and discuss the issues associated with the development of ponds in Montana. HJ40 was introduced in an effort have all of the various policy issues associated with pond development analyzed by an interim committee. HJ40 contains extensive whereas clauses that summarize the issues. The whereas clauses state:

- Montana's scarce water resources are of vital importance to the state, its environment, and its citizens for existing and future prosperity;
- water has been appropriated from Montana's rivers and streams under the prior appropriation doctrine for more than 100 years;
- many river basins are now closed to new appropriations;
- continuing diversions from overappropriated rivers and streams can adversely impact historic water users;
- the number of applications for new ponds has been increasing, even in closed basins;
- it is difficult to quantify the minimum or maximum amount of water needed for ponds for fish, wildlife, recreational, wetland, or aesthetic uses;
- impacts to a stream system resulting from a diversion of water from that stream for a pond can be much greater than the impacts resulting from an instream use of water that is nonconsumptive;
- Article IX, section 3 of the Montana Constitution provides that all water within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law; and
- Article IX, section 3 also provides that the Legislature shall provide for the administration, control, and regulation of water rights.

In order to evaluate the issues pointed out above, the resolution is very specific and requests that the appropriate interim committee:

1. evaluate whether or not water use for private ponds for fish, wildlife, recreational, wetland, or aesthetic uses should be considered a beneficial use of water under Montana law;
2. if private ponds for fish, wildlife, recreational, wetland, or aesthetic uses are to be considered beneficial uses, evaluate whether or not criteria or limits should be established to determine the size of a pond or the amount of water used for a pond that can be considered a beneficial use;
3. evaluate what measures, if any, are needed to address:
  - a. the proliferation of private ponds in Montana that are being constructed without first seeking or obtaining water rights; and
  - b. the proliferation of ponds associated with gravel mining operations.
4. examine the definition of "nonconsumptive use" and:
  - a. evaluate whether or not additional criteria should be established to determine whether or not a water use is a nonconsumptive use; and
  - b. identify what presumptions if any, should be applied to the term "nonconsumptive".
5. evaluate any other issues related to the use of water for private ponds for fish, wildlife, recreational, wetland, aesthetic, or gravel mining uses.

HJR 40 specifically states that the study should be conducted with public involvement and input. The issues that are provided above are very specific and the EQC can choose to follow the direction provided in the resolution or define its own goals and objectives with regard to this issue.

If a water policy subcommittee is appointed, the water quantity/ponds study could be addressed by that subcommittee or the full EQC. Whether or not a water policy subcommittee is appointed, the water quantity/ponds report could be incorporated into the water policy report.

OPTION A	OPTION B	OPTION C	OPTION D
<p><b>.75-1.0 FTE</b>  <b>Active EQC Subcommittee</b></p> <ul style="list-style-type: none"> <li>• All of Option B.</li> <li>• Develop working groups involving public to address specific issues and areas of concern.</li> <li>• Thorough statute and rule review.</li> <li>• Develop a state policy on ponds for both closed and open basins.</li> <li>• Identify any areas of concern within statutes or rules.</li> <li>• Review other Western states water laws regarding ponds.</li> <li>• Final Report to 59th Legislature including recommendations.</li> <li>• Legislation to implement recommendations if necessary.</li> </ul>	<p><b>.5-.75 FTE</b></p> <ul style="list-style-type: none"> <li>• All of option C.</li> <li>• Identify policy options.</li> <li>• Develop alternatives for addressing policy concerns.</li> <li>• Potential policy recommendations to address concerns.</li> <li>• Legislation to address policy concerns.</li> <li>• Final Report to 59th Legislature.</li> <li>• Extensive public involvement process.</li> </ul>	<p><b>.1 - .25 FTE</b></p> <ul style="list-style-type: none"> <li>• Review statutes, rules, and current permitting practices in Montana.</li> <li>• Provide written summary of current practices.</li> <li>• Provide 1-2 opportunities for public comment at EQC meetings.</li> <li>• Brief final report on findings.</li> </ul>	<p><b>.1 FTE</b></p> <ul style="list-style-type: none"> <li>• Review legislation developed and introduced in the 2003 session.</li> <li>• staff white paper summarizing issues associated with ponds.</li> </ul>

## Draft 2003-2004 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.]

June 16-17, 2003	<b>EQC Meeting.</b> Interim work plan prioritization and EQC organizational meeting. Selection of studies and topics.
October 8-9, 2003	<b>EQC Meeting.</b> Adoption of detailed work plans for each selected study or topic.
January 14-15, 2004	<b>EQC Meeting.</b>
March 9-10, 2004	<b>EQC Meeting.</b> 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 12-13, 2004	<b>EQC Meeting.</b> 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 22, 2002 meeting.
July 22-23, 2004	<b>EQC Meeting.</b> Decision on recommendations, any proposed legislation, final report contents.
September 13-14, 2004	<b>EQC Meeting.</b> Final approval of recommendations, any reports, proposed legislation. Selection of bill sponsors. Development of strategy. Review agency bill draft requests.

Council interim work must be completed prior to September 15, 2004.