ENVIRONMENTAL QUALITY COUNCIL

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MINUTES

Approved March 10, 2008

Date: January 15, 2008
8:00 - 4:00 p.m.

Room: 102, State Capitol Building
Helena, Montana

Please note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.**

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

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

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

COMMITTEE MEMBERS PRESENT

SEN. DAVID WANZENRIED, Chair
REP. CAROL LAMBERT, Vice Chair

SEN. CHRISTINE KAUFMANN
SEN. DANIEL MCGEE
SEN. JIM SHOCKLEY
SEN. ROBERT STORY JR.

REP. NORMA BIXBY
REP. SUE DICKENSON
REP. JULIE FRENCH
REP. CHAS VINCENT
REP. CRAIG WITTE

MS. DIANE CONRADI
MR. DOUG McRAE
MR. MIKE VOLESKY
MR. JOHN BRENDEN
MR. BRIAN CEBULL

MEMBERS ABSENT

SEN. BOB HAWKS

STAFF PRESENT

TODD EVERTS, Lead Staff
SONJA NOWAKOWSKI, Research Analyst
DEE BARFKNECHT, Committee Secretary

Visitors

Visitors' list, **Attachment #1**
Agenda, **Attachment #2**

COMMITTEE ACTION

- No Committee Action Required

CALL TO ORDER/RECONVENE AND ROLL CALL

00:00:01

Sen. Wanzenried called the Environmental Quality Council (EQC) to order, to reconvene at 8:00 a.m. The secretary noted the roll, **Attachment #3**. Mr. Everts advised the Council that he has set up a conference call for 10 a.m. with a group from British Columbia regarding the mines in the Flathead Basin north of Glacier Park.

AGENDA

00:01:29 **Agency Oversight Subcommittee Report**

Senator Shockley gave an overview of the Agency Oversight Subcommittee meeting held on January 14, 2008. He explained that the subcommittee heard reports and updates on several programs within the Department of Natural Resources and Conservation (DNRC). They started with an update of several of the current grant programs.

Resource Indemnity Trust (RIT) Fund and the Renewable Resource/Reclamation Grant and Loan Programs - Sen. Shockley explained that these are grants awarded to local communities for planning and engineering for infrastructure development or updates, (e.g., city water systems, etc.). He stated that the DNRC feels these planning grants are very helpful to both the entity/city and the DNRC. The projects have improved tremendously as the pre-planning proves their projects are well thought out, well

researched, more viable and give them credibility when applying for further funding through state or federal grants to implement their plans. It makes the entire process much easier if the planning grant is done first.

Contract Timber Harvesting (Senate Bill No. B 25) - Sen. Shockley stated that normally a contractor bids on a forested area and when awarded the contract, is responsible for cutting, clearing, moving and selling the trees. But the Contract Timber Harvesting program may provide the state more money by paying someone just to cut the trees down and then the state will market and sell the timber. The DNRC is only in the planning stages currently and plan to conduct 2-3 pilot programs in 2008. The program will be launched on a larger scale in 2009. The department is allowed to do 10% of their annual sustainable yield under the contract harvesting program, which is 53 million board feet. In addition, they are allowed to take another 5% for forest health. The DNRC is trying to maximize their return on the trust lands.

Wildland-Urban Interface (Senate Bill No. 51) - He advised that the DNRC, in conjunction with the Department of Labor, is defining and developing a set of building codes to make homes/buildings less susceptible to fires in these areas. He added it won't make them fireproof, but it will make them less susceptible with strict codes and guidelines to adhere to. Individual counties will also be able to use the codes in their planning.

Ground Water Appropriations in Closed Basins (House Bill No. 831 (HB 831)) - Sen. Shockley advised that this bill states that when a person is in a closed basin and takes water from a well (for example), they must now prove/demonstrate that the water taken does not adversely impact the surface water, and if it does, the person is required to mitigate it. He added he believes that the hydrology is 'ify' and expensive. He also believes the agency is taking a very 'stiff' position that may not be proved by the science and it is impractical in his view.

Issue Remarks - An issue remark is a comment or a remark on a water right (made by the DNRC and required by law), on a situation in a particular drainage. The water user can file an objection against the agency if they don't agree with the remark or resolve the remark without complication. But there are remarks out there that no one objects to and many feel that the Water Court should not be wasting time or money to resolve the issue remark. The remarks are often very old, time consuming and take up court processes, but they have to be cleaned up. Attorneys on both sides presented as well as the Water Court judge who stated he initially didn't like having to resolve the remarks, but stated that is going better than expected.

Sen. Shockley stated that he feels that in general, the DNRC is doing a good job, but the water adjudication is most difficult and has been for a number of years. They seem to be on track for getting more decrees out as well.

- **Questions/Comments**

Rep. Dickenson added a comment to Sen. Shockley's update on HB 831, stating that the EQC should keep in mind that the wells he spoke about were not the smaller wells which are still exempt. HB 831 pertains to the larger wells that are restricted. She advised the agency is doing

the rulemaking, but if the agency seems somewhat rigid, it is also because that was what was written into the law. She thinks that there are already 10 applications in the process and she feels the law is working and being implemented the way it was intended.

Mary Sexton, Director, DNRC, then thanked the committee for the meeting yesterday, stating she was glad for the productive discussion and that she was able to introduce some of the new staff at the DNRC. She also distributed copies of the DNRC Annual Report, **Exhibit 1**.

Sen. Story asked Director Sexton why the DNRC is waiting until 2009 to launch the timber harvesting program. Director Sexton advised that was the way the legislation was written. There is no appropriation for 2008 except to put the plan together, conduct 2-3 pilot projects and ramp up for the 2009 implementation

Sen. Shockley then thanked the DNRC for good presentations and stated that he wishes the U.S. Forest Service would do as well with their forestry plans.

00:15:50 **ETIC Carbon Sequestration Study - Update**

Sonja Nowakowski gave an update of the Energy and Telecommunications Interim Committee (ETIC), stating that they have met twice since her last update. The committee has spent the majority of their time on the subject of carbon capture and sequestration. She stated that the ETIC traveled to Colstrip in October to visit the Colstrip Steam Electric Station and learned about the carbon issues there. They met again in Helena in November and will be meeting again on January 24 in Helena. She said that they hope to start closing in on findings and possible recommendations and issues related to carbon sequestration.

She explained that the ETIC has looked at three preliminary technologies regarding carbon sequestration. They looked at things like capital costs, which range from $430 million to $1.7 billion. They also had the Big Sky Sequestration Partnership present to the committee. Big Sky is currently focusing on different sequestration projects. They have a project underway in Wyoming and also one in Washington. They are actually looking at injecting carbon into the ground at the Washington project. The ETIC has also heard from the National Carbon Offset Coalition, which is based in Butte. They focus on terrestrial sequestration and are part of the Chicago Climate Exchange.

The ETIC also heard from ZERT, Zero Emissions Research Technology, a company out of Bozeman. They recently received $5.9 million from the federal budget bill to move forward with their research on carbon capture and sequestration. Their focus is on leak detection. They are currently injecting carbon into the ground (shallow surface), and are monitoring where the plumes go, what is happening and if it is interfering with ground water. They have also heard from the Northern Plains Resource Council and the National Center for Appropriate Technology. The committee has worked very closely with the Department of Environmental Quality (DEQ) as well as the Montana Board of Oil and Gas (MBOG). She explained that the MBOG is a member of the Interstate Oil and Gas Compact Commission (IOGCC--with 33 member states). The IOGCC spent most of 2007 working on a set of model rules and statutes for carbon sequestration. At next week's meeting they will walk through those rules and statutes and look at what is special to Montana.

Ms. Nowakowski advised that this committee will be looking closely at the Governor's Advisory Committee's findings in regards to those that deal with carbon sequestration. They heard a preliminary report in September and will study it more now that it is complete. She stated that in October, the U.S. Environmental Protection Agency (EPA) announced that they will be promulgating rules for the injection of carbon underground. They have oversight over Class V wells in Montana. The MBOG only has jurisdiction over Class II wells right now in the state. She explained that when the EPA moves forward with their rules on sequestration, it must be determined if they will allow the states to retain primacy or if the EPA would retain primacy. There is quite a bit of federal legislation regarding sequestration that she is trying to monitor as well.

- **Questions/Comments**

  None.

00:23:40 **Review and Update of the Fire Suppression Interim Committee**

Ms. Leanne Heisel, Research Analyst and Lead Staff for the Fire Suppression Interim Committee (FSIC), gave an update on the committee's activities since its creation stemming from HB 1 during the special session. She explained that there were several specific 'charges' set forth by HB 1 that the committee is studying including:

- an investigation of firefighting operations in Montana, including operations on tribal and private lands by state and federal governments and the management policies that affect the success of those firefighting operations
- an investigation of the efficient use of fire suppression resources including equipment and firefighters
- an investigation of impacts of operations on private land and on the effective use of private resources
- an investigation of state and federal forest management policies and how those policies may contribute to an increased number of wildfires

Ms. Heisel stated that the bill also required the committee to travel to five communities in Montana. They will travel to Hamilton, Thompson Falls, Libby, Lewistown and Miles City and possibly Choteau and Seeley Lake. She stated that the committee met in October, November and on January 11. They plan to meet monthly. In October, the committee elected their chair and started the education and learning process. They started learning about previous work that had been done by the Legislative Audit Division, the Fiscal Division and the Services Division. There has been quite a bit of work done regarding fire suppression over the years. During the November meeting, the committee learned about the differences in state and federal policies and how wildfire management works in Montana. There were several panel discussions with agency staff. The committee toured the Helena Dispatch Center and learned about how dispatch works. They also toured the DNRC's aviation facility. She advised that the FSIC is working closely with DNRC since they are the state's wildfire suppression agency.
Two subcommittees were formed, a Wildland-Urban Interface Subcommittee (WUI) and an Infrastructure Subcommittee. The Wildland-Urban Interface Subcommittee is focusing on development in the Wildland-Urban Interface, land use policies and practices and regulations. The Infrastructure Subcommittee is focusing on costs -- cost sharing, state and federal relations and the differences between the policies.

The WUI Subcommittee is also following the rulemaking that DNRC and the Department of Labor are working on. The committee determined that they will spend the winter meeting in their subcommittees to become educated and to start to develop some options before they go on the road. It was Sen. Cobb's idea for the committee to come up with items for the public to comment on before they go to the field hearings. They are making public comment a significant part of what they do. A press release went out last week soliciting public comment. They are interested in hearing from people on how wildfire suppression can be improved, how land management can be improved, etc. There is also a form on the web site where people can submit suggestions. The staff will determine a list/menu of options for the committee to decide on what they will present to the public at the field hearings. They will also look at private contracting for fire suppression. The subcommittees will meet again on February 15 and on March 4, when two of the committee members will hold a hearing regarding contracting issues. The end of March will be the final subcommittee meetings and at the end April, the full committee will meet in Hamilton. In mid-May they will travel to Lewistown, at the end of May they will meet in Miles City and in June they will make a tour of Seeley Lake, Thompson Falls and Libby. The FSIC has reserved July and August to travel to fires to see how fire suppression works on the ground. September 12, 2008, will be their final meeting where they present their recommendations.

- **Questions/Comments**

  None.

00:32:05 **Water Adjudication Process Oversight Report**

Director Mary Sexton gave an update on the water adjudication process, **Exhibit 2**. This included a summary of the claims examination process, reports to the Water Court, decrees issued by the Water Court, expenses, District Court enforcement actions, the billing system, appeals, ownership records and an update on the database progress.

- **Questions/Comments**

Sen. Story asked about the geocode issue, if the DNRC is putting a geocode in the water rights database to mark points of diversion or for place of use. Jim Gilman, Bureau Chief for the Adjudication Bureau, DNRC, stated they use the 'place of use' for the geocode matching and it is working quite well.

Mr. Brenden asked if a person sells some land, does the water right go with the land automatically. Director Sexton advised that if a person has an automatic transfer it will go with the real estate transfer certificate. But if there are exceptions, those will be filed as well and then the water right will not transfer.

Mr. Brenden verified that if he sells a piece of property, but wants to retain that particular water right, he has to do that. Director Sexton stated that yes, he has to retain it and that there is a form and a process to do that. It was part of House Bill No. 39 (2007).

Ms. Conradi asked what an 'exception' is, in regards to Mr. Brenden's question. Director Sexton advised that if a person wants to retain all or part of the water right, rather than having it fully transfer, that would be an exceptional circumstance and that is when they would have to go through a process to document it.

Sen. Story advised that is because it is how the law is currently. If a person sells a piece of land and doesn't retain the water right, the water right automatically goes with the land. It has to be severed intentionally.

Judge Bruce Loble, Chief Judge of the Montana Water Court, gave an update on Water Court activities which included:

- Big Hole River Basin, a decree was issued in April and the final objection deadline is March 31, 2008. There have been two extensions, with no further extensions authorized.
- Teton River Basin, a decree was issued on Dec. 29, 2005, the last procedural hoop for the water users is to file a notice of intent to appear - which is basically a notice of intervention to appear on a specific water right claim. That date is January 17, 2008. Following that date, the Water Master assigned to the Teton River will begin resolving the objections and issue remarks.
- Summary Reports, he explained that a summary report is basically a draft decree that comes to the Water Court and then they review it for any issues, **Exhibit 3**. He stated that they find a few problems, but not many, mostly programming problems.
- Tongue River decree, he advised that they will probably issue the Tongue River decrees, both of them about the same time, in February.
- Missouri River/Holter Dam to the Sun River, he is hoping to issue a decree in the next 2-3 weeks.
- Blackfoot River Drainage, this decree is being delayed. They received a motion from two users challenging the DNRC's examination of the Blackfoot River. The claims involve 'marshaling remarks'. They have set a briefing schedule for that issue and as soon as it is resolved, they will move forward with the decree.

- **Questions/Comments**

Ms. Conradi asked what marshaling remarks are. Judge Loble explained that 'marshaling remarks' are the combination of two or more water rights with different priority dates and different flow rates which have been combined into one property, often seen on ranches, old homesteads, etc. They combine the flow of all the water through/into one ditch.

Sen. Shockley asked if when water is combined into one ditch, does the owner lose their priority date? Judge Loble advised no, they do not lose their priority date.

Chairman Wanzenried asked about the timetable for the adjudication process. Judge Loble explained that by statue they are required to have decrees issued throughout the entire state by 2020. He believes they are on track to do that, assuming that the funding will remain the same through the next several sessions. If the money is available and remains available, they will have the decrees issued. However, he stated that he worries people will think they will have all of the work completed by 2020, which they will not. They will have the decrees issued, but they will still have to resolve all of the objections on the 26 decrees that are issued.

Sen. Story stated that he believes the Legislature thought that by 2020 all of the work will be finished: the decrees, the objections, everything. Judge Loble said that is exactly what he is worried about.

Sen. Story asked about the amount of work that will be left after 2020 and asked the Judge if he knows if the fact that 2020 is really not the end date was ever discussed with anyone. Judge

Loble stated that he remembered Sen. McNutt bringing it up and discussing it during the EQC meetings, but that he doesn't know if anyone else really heard it. He thinks the staffers heard it. He reiterated that he has always worried about it, so periodically he tries to remind the Legislature that there will be more work to be done beyond 2020. He said it is a matter of trying to re-educate everyone periodically.

Sen. Shockley advised he was one of those who thought the whole thing was going to be done by 2020.

01:03:44 **Unauthorized Practice of Law in Water Court - Review and Update**

Mr. Everts provided an overview on the topic of the unauthorized practice of law before the Water Court. He reviewed the fact that at the September EQC meeting this issue came up and there were a number of questions asked by the committee. The committee directed staff to come back with a DNRC attorney to address the issue. He stated that when he researched the issue, he felt it was worth having a number of people come to discuss it and give various opinions.

Mr. Everts distributed a paper/proposal on the unauthorized practice of law that was dated May 22, 2007, **Exhibit 4.** He explained that this particular proposal was the result of the efforts of the DNRC, Attorney General's Office and Fish, Wildlife and Parks working together to develop "Proposed Rule Language Regarding the Unauthorized Practice of Law." This proposal was submitted to the Supreme Court. The Supreme Court met in August 2007 and approved the proposal with a delayed effective date of July 1, 2009. Justice Morris was then assigned the task of circulating a proposed order to adopt these rules, but the order has not been issued yet.

Candace West, attorney for the DNRC, explained that she has worked with this issue for almost two years now as she was at the Attorney General's Office prior to accepting her current job at DNRC and this issue was one of her responsibilities over there. She clarified that these rules were first submitted to the Supreme Court for adoption in December of 2005. She stated that basically all this is, is an attempt to bring representation before the Water Court up to the same standards as representation in other courts in other jurisdictions throughout the state. It does not change the responsibilities for the DNRC in their administrative work with claimants, that will continue as it is today.

Mr. Cebull asked if a person represents themself in the Water Court, do they have to have a specific qualification to do so. Ms. West advised that they can represent themself without any other qualifications.

Mr. Brenden asked about Brenden Farms, which is considered an entity, not a person -- can Brenden Farms come before the Water Court representing themselves without an attorney. Ms. West advised that any member of the family can talk to the DNRC, but when it comes to the court, they must have legal representation because they are an entity and not an individual. And this is how it is with any court of law in Montana.

Mr. Brenden advised he strongly resents this and stated that he has spent thousands of dollars on water rights without even having a major stream or river on his property. He asked if this was already set in stone by the Supreme Court. Ms. West advised there is not an actual order from

the court yet. She stated that at a public meeting they chose to adopt the proposal and delay the effective date, but there is no actual order yet.

Judge Loble gave his presentation to help explain the entire situation.

Judge Loble advised that he does not believe a lawyer needs to represent claimants in the Water Court. He then gave the following history. He explained that the DNRC told the Supreme Court in 1986 that when the Legislature passed SB 76 in 1979 and created the adjudication, that they created an adjudication that "would be the least expensive, the least time consuming and with minimum involvement of lawyers." That is a quotation from a Supreme Court decision regarding the DNRC. From the beginning of the adjudication, when Judge Lessley was the Chief Water Judge, the Water Court has strived to meet those goals, to make it the least expensive, the least time consuming and with minimum involvement of lawyers. He stated that the Water Court is a user friendly court, trying to get people through the court as promptly, efficiently and as cheaply as possible within the parameters of the statutory framework that the Legislature set up and within the law that the Supreme Court and the Legislature has promulgated over the years.

He explained that he came to the Water Court in 1990. Prior to that he represented larger interests in the Water Court, (as an attorney). He stated that when he became judge, it surprised him as to how many entities were being represented by the president of the corporation. In 1992, the Supreme Court started to hear an appeal that was presented by a president of a corporation. However, the Supreme Court made the decision that since he was the president of a corporation and not a lawyer and was not represented by a lawyer, they refused to read his brief.

He stated that since 1979, in the Water Court, 219,000 claims have been filed and many of those statements of claims could be complaints. They could be the same kind of initial pleading that a person would file in a District Court.

Judge Loble stated that he started to question if those statement of claims could be thrown out because they were not filed by a lawyer. Many of the water users in Montana hold water claims as an artificial entity, because there are many business reasons to do so, tax shelters, tax consequences, etc.

In 1992, Judge Loble stated that he sent a letter to Chief Justice of the Supreme Court, Gene Turnage, who was one of the original authors of SB 76 as a Senator. He explained his concerns in a lengthy letter and finally got a letter back in 1993 stating that the Supreme Court thought that he/the Water Court should continue to use the discretion that had been used over the years and continue to operate the court that way. So he continued to operate the Water Court as Judge Lessley had in the past.

They didn't worry about getting lawyers for the artificial entities and they processed thousands of water right claims that way. Then when the procedural rules and claims examination rules were updated, this was an issue that came up and the Department of Fish, Wildlife and Parks, the DNRC and the Attorney General's Office said that the Water Court ought to have the same rules as other courts and that was what was proposed to the Supreme Court.

He explained that when Sen. O'Neil's case came up, it made it very clear, that you cannot represent people in court if you are not a lawyer. This brought the whole thing to a head. Judge Loble stated that he tried to convince the Supreme Court that the Water Court was unique and based on the history of how they had done business in past, etc., that there should be an exception made. The Supreme Court basically did not agree and it became clear when they adopted the rules proposed in Exhibit 4.

At one of the public meetings, the reason the Supreme Court decided to postpone the effective date to July 1, 2009, was because Rep. Diane Rice stated that she felt the Legislature might want to look at this issue. So they postponed the date. Judge Loble stated that the Water Court is still operating under the old rules until July 1, 2009 or if/until the Legislature does something different. He advised Mr. Brenden that he could currently still represent his family farm.

Sen. Shockley asked if this is going to increase the costs and will it slow down court processes. Judge Loble advised that yes, he felt it would increase costs and it will slow down court processes as well. He stated that there aren't very many lawyers who are up to date on how to represent claimants on water rights and how the process works. As an example, in the Teton River, there are 686 remarks, of which there are 96 claims that will require a lawyer to hand an affidavit to the Water Court to resolve one issue remark. That previously could have been done with a postage stamp for sending the affidavit in. It will now cost $100-$200 to hire the attorney to do it.

Sen. Shockley asked about the current law and how the Legislature could change this ruling. Judge Loble stated that if the Legislature does not like this ruling, they basically have two sessions to do something about it. He stated that he was surprised that the Supreme Court deferred this issue to the Legislature because the Supreme Court controls the practice of law in Montana. It is in the Constitution.

Sen. Shockley stated he too is surprised that the Supreme Court deferred the issue to the Legislature, but he wondered if the rule allowed the rancher or whomever was at the bench to have next to him a water rights expert or someone else other than an attorney. Judge Loble advised that the Water Court, effective July 1, 2009, will be run just like the District Courts which means that sometimes, the judge does allow an expert witness to sit at the bench with the lawyer. The lawyer would have to do all of the talking.

Mr. Brenden advised Judge Loble that he appreciated him taking the time to give the history of this issue and thanked the Judge for his explanation.

John Conner, an attorney for 38 years, the last 20 years serving as the Chief Special Prosecutor for the state. Mr. Conner noted that he is here as the Chairman of the Unauthorized Practice Commission of the Supreme Court. He explained that their commission attempts to regulate those people who attempt to practice law and are not qualified to do so. He stated that they are a volunteer commission, with no operating budget, made up of lay persons. He advised that they try to keep people from taking money from unsuspecting consumers on the apparent representation that they have the capacity to do a qualified job for them and then adversely and substantially affecting their legal rights. The Unauthorized Practice Commission tries to shut down those that run illegal operations. He stated, however, that they realize the Water Court situation is unique and they will be ready to carry out the Supreme Court's mandates with respect to the rules that it adopts, whether it be in the Water Court or otherwise.

He stated he has never had a complaint filed with the commission relating to someone operating in the Water Court who was not licensed to practice law. He distributed a copy of a letter that his commission sent to Judge Loble that outlined what the commission does, **Exhibit 5**. It provides general information for the Council.

Chris Manos, Executive Director of the State Bar of Montana, stated that he would reiterate what John Connor had stated and that the Bar, in and of itself, does not have a position about unauthorized practice. That is up to the court and is decided by its rules and regulations. One topic he wanted to speak on, however, was Judge Loble's and Mr. Gilman's work with the Bar over the last year with teaching and educating other attorneys about water rights and the adjudication process through continuing education, **Exhibit 6**. He stated that the University of Montana's Law School will also be offering specific water law classes. There are currently 2,800 members of the Bar in the state of Montana.

- **Questions/Comments**

Ms. Conradi asked Judge Loble about the P160 remarks that he had stated he felt would be an inefficiency --- she wondered if these remarks could be dealt with during the claims examination process. Judge Loble stated that yes, they could be resolved during the claims examination process. But what happened was when the DNRC contacted the claimants to resolve those remarks ahead of time, the claimant didn't come in to resolve them. Instead they decided to let the court resolve them. But now with all issue remarks needing to be resolved, they hope that users will want to resolve them early on in the process.

Ms. Conradi asked if there is any concern regarding the decrees being susceptible or enforceable based on the quality of the identification of the legal issues. Judge Loble said that no, he does not have any concerns because he feels that they have so much expertise and experience at the Water Court that when they have an issue that comes before them, they know the law. He and the Water Masters have been doing this for so long that he can look at a statement of claim and in 10-15 minutes he basically knows the answer.

Ms. Conradi verified that her concern/question is that legal issues may arise later, that there may be issues that either weren't addressed or weren't addressed adequately. Judge Loble advised one reason the Water Court is so different is because they are dealing with so many factual issues regarding water rights. The factual issues come from the water users who have dealt with them for years and years. That is why it works so well at the Water Court not to necessarily need lawyers, because the legal issues aren't as significant in the Water Court as they are in the District Court. For example, child custody or parenting plans can be very difficult and a person needs an experienced lawyer. In Water Court, they only need the factual information that is provided by the water user who usually has lived on the ranch or property for generations.

Ms. West stated that in response to Ms. Conradi's question, she concurs completely with Judge Loble's statements. The Water Court independently reviews the legal issues, so in terms of legal consequences, the Water Court is very competent. But beyond that, she feels that individual water rights may have been compromised or lost or some how misaligned with the actual claim or historic use because of not having legal representation. She stated that it is because of decisions made or people entering into stipulations in withdrawing claims or not

filing objections appropriately where she felt there would be better protection for individual water rights that they might not even know about yet.

Sen. Shockley asked Mr. Manos if, on behalf of the Montana Bar, if he felt that the Water Court is operating in the interest of the public, because he knows that getting an affidavit issued for $100 won't happen. It would be much more expensive and he feels that the quality of water law is going to go down overall and be less efficient with the new rules. He asked Mr. Manos to comment on behalf of the Bar. Mr. Manos stated that there are no easy answers, but the real dilemma is to balance the interests and rights of the individual who owns the water rights. He stated that if they choose to represent themselves, they still can - for the time being. But if they choose to hire a consultant, who doesn't have to have malpractice insurance, who doesn't have to follow any rules of professional conduct, there is no recourse against those who might misrepresent the individual. He stated it is also in the public interest to have consumer protection. He feels that it is a bit presumptuous, because no one has seen an order yet.

Sen. Shockley asked that Fish Wildlife and Parks (FWP) comment on this issue. Bob Lane, Chief Legal Council for FWP, stated that FWP has been in on this from the beginning because the law, provided by the Legislature, specifically states/requires that an attorney must appear and represent people before tribunals and courts. So that is the position they have taken. He also stated that the Water Court has operated contrary to the law and has been allowing people to represent themselves or to have consultants represent them. He verified that Judge Loble asked for the Water Court to continue their operations as they have historically, but Mr. Lane explained that the Supreme Court has stated twice now that they must follow the law, yet there still is no order for the last decision. He advised that FWP wants the law to be followed so that property rights are protected. He feels that legal issues aren't likely to be raised by consultants who might know the hydrology of water rights, but don't know the law of water rights, so these issues won't be addressed. That is the sole purpose of having an attorney, to protect people in court. He feels that this will present an opportunity for the Legislature and the State Bar and the citizens of the state to look at this issue and make a determination if Water Courts should be different than family law issues or worker's comp, etc. FWP is intending to step out of the fray in order to let the Legislature, the Bar and the citizens determine what they want.

Sen. Story asked specifically why FWP became involved in the first place. Mr. Lane stated that if the implication was that FWP had some interest they were trying to protect, then absolutely not. He stated that it is simply what the law requires and there are solid policy reasons for having lawyers involved. If there are exceptions to be made, then the Legislature has an obligation to determine the exception while still protecting the water users. He stated that it has been a frustrating issue for them and reiterated that it is simply the law and FWP wanted the law followed.

01:57:45 **Break**

02:06:09 **Update on Proposed Canadian Coal and Gas Projects on the Flathead**

Chairman Wanzenried explained that the EQC would next hear from Rich Moy from the Flathead Basin Commission as well as three representatives from British Columbia via conference call regarding an update on the proposed Canadian projects on the Flathead.

The three from the Canadian project team include the following individuals:

- Garry Alexander, Project Assessment Director, British Columbia Environmental Assessment Office
- Karen Koncohrada - Executive Director of Marketing, Aboriginal and Community Relations Division, British Columbia Ministry of Energy, Mines and Petroleum Resources
- Steve Simons, Executive Director, Corporate Relations, British Columbia Oil and Gas Commission

Rich Moy, from the Flathead Basin Commission, explained that he was the past chairman for the Flathead Basin Commission for the last three years as well as having been involved in and working on tranboundary issues for the state of Montana for about 25 years. He stated that he will present on Tranboundary Impacts of Energy Development in the B.C. Flathead, **Exhibit 7**.

The Canadian Project Team explained that none of the projects have received approval to proceed at this time. They discussed the British Columbia Regulatory Process along with the requirements to develop coal bed gas and the B.C. Energy Plan, **Exhibit 8**.

Mr. Alexander addressed the Environmental Assessment in British Columbia and the pre-application stage vs. the application review stage, **Exhibit 9**.

Ms. Koncohrada addressed the status of the BP proposal for the Mist Mountain area of the Flathead Basin, **Exhibit 9**.

Mr. Simons explained the structure of the B.C. and Gas Commission and the role of the regulatory process in reviewing applications for the oil and gas industry, **Exhibit 9**.

- **Questions/Comments**

Sen. Story asked about the criteria for determining coal bed gas areas. He stated that as he understood the criteria, it is based on the amount of water that is pumped out of the ground in a given area. The amount of water pumped triggers the study and review for coal bed methane. The amount of water is 75 liters per second. He questioned what that number is based on, if it is cumulative of the entire field or is it per well or just what is it based on. Mr. Simons advised that it is his understanding that it is cumulative.

Sen. Kaufmann stated that there is past history with Treaties and past decisions made between the two countries. She stated that this is a substantial investment on the government's part, so what new information is there would make them determine that they could move forward with these projects? Mr. Moy advised that they have seen negative impacts from the Cabin Creek Mine site. That those impacts cannot be mitigated and they see the impacts coming across the border. He feels that there are many more impacts that have not been looked at yet. There will be impacts all the way down into Flathead Lake that can't be mitigated, or if it was possible, the mitigation would be so expensive, it would be cost prohibitive.

Mr. Alexander stated that the idea of developing in the area of the Lodgepole Mine is still very early in the process and a feasibility assessment has to be done to determine the risks, which will be done. It is not that far along, however.

Ms. Koncohrada reiterated that the proponents will weigh the risks and benefits and a determination will be made, but she reiterated that only if the proponents can meet the high environmental standards will they be able to proceed.

Mr. Alexander stated that in the development of the Cabin Creek Mine, they did not have two of the environmental processes that are now in place, so those will help substantially in evaluating the other sites/projects.

Sen. Kaufmann asked Mr. Moy if the government of Montana or the United States has the power to stop these projects due to the Treaties that have been part of our past history? Mr. Moy stated that not really. However, there is an argument that Article IV does have some weight. A professor from the University of British Columbia feels that British Columbia would be violating international law if they proceed and if there are negative impacts on the U.S. side of the border.

Sen. Kaufmann stated that it seemed that the state can't stop them, but after the fact it can tell them they 'broke the law'. Mr. Moy agreed and sited an example of a lawsuit in the state of Washington where a large company has been polluting the Columbia River system. The U.S. Supreme Court just ruled that the people who filed the lawsuit have a very good case. He stated, however, that it does not go to that extent.

Mr. Brenden asked who appointed the 25 scientists from both sides. Mr. Moy stated that they were appointed by the Governor in consultation with the federal government and the various federal agencies and the International Joint Commission. He stated he feels they were some of the best scientists in both the U.S. and Canada assigned to this task.

Rep. Vincent asked if the $300 thousand that was allocated by the Legislature for the Flathead Basin Commission was supposed to be matched by other federal dollars. Mr. Moy advised he did not believe it was supposed to be matched, but that Sen. Baucus is getting additional dollars, $970 thousand, to collect baseline data. So in a way, yes, it was matched, but the money is strictly to collect baseline data.

Rep. Vincent asked when the money would be there. Mr. Moy advised it is supposed to be here in three months.

Ms. Conradi asked the Canadians how new the environmental process is that they are using. Mr. Alexander stated that it was legislated and adopted in 1995.

Ms. Conradi asked how many applications for mining projects that they have received and been able to run though the new environmental process. Mr. Alexander advised somewhere between 10 and 20.

Ms. Conradi asked if any of those have been denied. Mr. Alexander stated that they estimate about 15% of the applications are denied or not accepted.

Ms. Conradi asked if that 15% includes those that have not qualified for the process as well as those that did qualify for the process. Mr. Alexander advised that it includes all applications for projects that entered the process, those that were not accepted and those that removed themselves for whatever reason.

Rep. French asked if there is any public opposition to these mines from the citizens of Canada. Mr. Alexander stated that there were meetings for public comment and yes there were both concerns and support for the projects.

Rep. French asked for copies of the public comment. Mr. Alexander stated that when the proponent completes the responses to the public comment, it will be posted on the website, but the proponent has to finish it all first.

Rep. French asked for a hard copy of the comments. Mr. Alexander stated that when they are completed, he will forward a copy.

Chairman Wanzenried stated that the EQC would like to be kept apprised of the progress of these projects as well. Mr. Alexander agreed.

03:12:44 **HJR 57 Conservation Easement/Trust Land**

Mr. Everts introduced the panel of stakeholders to present on HJR 57. He reminded the EQC that the HJR 57 study is part of the Council's overall work plan. HJR 57 is a study requiring the EQC to study the granting of conservation easements on state trust lands. He stated that he asked the presenters to look at the resolution itself and to address the six elements in the resolution. He also asked them to keep in mind Sen. Story's request on how to value conservation easements from the September EQC meeting.

Ellen Engsted-Simpson, Montana Wood Products Association, stated that the association members are strongly in favor of active management on state trust lands, especially with the activities of grazing, timber harvesting, mining and agriculture. She advised that there are already several ways in Montana code that would allow the Board of Land Commissioners the opportunity to provide additional protection to parcels of land if they deem that appropriate. She felt that Joe Kolman's background paper that was distributed back in September pointed out all the different ways, including 2001 legislation, allowing for conservation easements on three separate pieces of trust land. Also in Mr. Kolman's research it states that the Land Board can currently grant easements on trust lands for public parks, community buildings, cemeteries and other public uses, so if the authority already exists for the Land Board to do easements, why would the state want to forfeit the right to future use of a piece of property and hand it over to a third party. That is what happens when an easement is granted. It doesn't mean there isn't value to that piece of property, just that they give up their right for use. She stated that the timber community is grateful for the timber sales that the department puts together as it provides a steady supply of timber for their mills. She advised that her uneasiness comes from the idea that a third party would be the 'owners' of a conservation easement and they would then be in charge of the management of that property. She stated that conservation easements are very strict in what they will and will not allow. She asked that the EQC, as they move forward with this study, keep in mind the original Congressional Enabling Act, passed in 1889, that established public lands in the state of Montana. She feels that the management of trust lands has been well run by the DNRC with the approval of the Board of Land Commissioners and she does not feel there needs to be another tool, because they have one if they choose to use it.

Janet Ellis, the Montana Audubon Council, discussed why people might want conservation easements on school trust lands and she advised she has a specific example to present. She distributed a map of a parcel of land that the Audubon Council has a license on currently. It is a

100 year floodplain map with about 15 acres that are outside of the floodplain. This parcel is one of those properties where a conservation easement should be allowed and she will explain why they might want to do that, **Exhibit 10**. She stated that this Owen Sowerwine Natural Area is located fairly close to Kalispell and is the only natural area on school trust land. It is 442 acres, with most of it in the floodplain, 79 acres is actually a river, it is very wet. She stated that the Audubon Council purchased the grazing rights as well as a cabin site on the 15 acres outside the floodplain. They also pay for any Audubon sponsored events that are held there, for example, school children come out to the site. They also pay for weed control. They basically manage the property. In 1999, the DNRC raised the lease rate from $550 per year to $21,000 per year, arbitrarily. So these are some of the reasons that she believes that the purchase of a perpetual easement makes sense to have as a tool. She distributed a fact sheet showing what the school trust lands "traditional uses" are and how much money they make off each use, **Exhibit 11**.

She stated that one of the conservation easements put in place and allowed by statute currently is in the Blackfoot. Fish, Wildlife and Parks paid $1.6 million for about $7,000 acres of land. The easement allows grazing, but not farming. It requires that 300,000 board feet be harvested annually. There are many benefits to such a permanent conservation easement. The money from this easement goes into the permanent trust and the investment income is there forever. She estimates that the DNRC is getting, on their annual rate of return, about $91,000 or $13.28 per acre, which seems pretty significant. These are all reasons as to why they would want to do conservation easements. She believes there is a place for non-profits to hold an easement as well.

Timothy Ravendall, President of Montana Multiple Use Association, stated that the big picture needs to be looked at when determining the feasibility of HJR 57 to sell trust lands as conservation easements. He advised that he feels they need to continue to ensure that multiple uses occur on the land as in grazing rights, mineral rights, timber harvesting, recreating, etc. He feels that conservation easements would eliminate part of the resource which would be an encumbrance on that land, limiting use and enjoyment of that resource. Prior to this committee hearing he researched back to the Enabling Act which dealt with the Territories looking at the rights of state lands and how they were established. Section 8, Article 17, of the Constitution states that our rights as citizens to enjoy the resources on our state lands is protected. It is important to remember that our rights are constitutionally protected. He stated that he did some polling of the representatives and senators and where they would like to see this issue go. One of the most common responses he received across the board was that perpetuity is a death knell to being flexible enough to keep up with the needs of the state of Montana. And that the constitution protects our rights as land users to ensure that the best benefit for the people is brought forth from these lands.

Glenn Marx, Executive Director of the Montana Association of Land Trusts, presented on land trusts, **Exhibit 12**.

Jay Bodner, Montana Stockgrowers Association, advised that they stand in opposition to conservation easements on state lands. He advised that they are not in opposition of conservation easements overall, but the issue they see is being able to maintain the traditional uses on this land. He stated that perpetuity on state lands, locking themselves into a lifetime decision, might not be something that the state really wants to do. He also feels that there needs to be some level of oversight of the easements, either by the DNRC, the Land Board or

the Legislature. If the local community is driving this, he feels there must be oversight for them as well in order to ensure that multiple uses on the property continues and that some consistency is provided. He feels a person must also look at what the lessee provides the state, fixing fences, maintain weed management, etc. For the DNRC to pick up those responsibilities would be quite labor intensive.

- **Questions/Comments**

Mr. Brenden stated that the EQC needs to remember why farmers and ranchers entered into easements. One of the main reasons farmers and ranchers entered into easements was because of a long drought and in order to keep the family farm or ranch. In Daniels County, of almost 1 million acres, 24% of it is state land. There have been a number of people trying to get to that land to put restrictions and easements on it. The Legislature has never appropriated the amount of money, in lieu of taxes, that should be paid, if private land owners owned that land. Private land owners in Daniels County pay for the roads on state lands. He stated that with all of the different federal and state programs, restrictions and mandates, over 50% of the land in Montana has some kind of a restriction of what can or cannot be done on that land. He feels that easements should be taken on a case by case basis because their impacts can be monumental.

Rep. Dickenson stated that in the audit on conservation easements, the auditors felt that there should be more oversight of conservation easements so that the requirements of the easement are met. She asked Janet Ellis to comment on how that type of oversight would benefit the Audubon or if the Audubon Council would see this as helpful. Ms. Ellis stated that her organization is not a conservation easement type of organization so they would not hold an easement on a parcel like the Owen Sowerwine Natural Area, but they have talked to other groups about potentially holding that easement, because she too believes that certain standards need to be met. But because she doesn't belong a group that holds an easement, she didn't feel like she could answer her question.

Rep. Dickenson asked about the current purpose of the Owen Sowerwine Natural Area and if its access is limited to people who like to hunt, does it limit public access? Ms. Ellis stated that there are no limitations. The only limitation stems from the fact that there are houses being built closer to the land and therefore fire arms can't be discharged because of the close proximity of the residential areas. Hunters do currently hunt on the land, however.

Rep. Dickenson asked Mr. Marx about the oversight on an ongoing basis, is it reasonable to think that could be done? Mr. Marx replied that he believes there is definitely a need for oversight of conservation easements on state lands (not private land easements) to make sure that the monitoring takes place, that the values of the easements are upheld and that the goals of the conservation easement are met.

Rep. Dickenson asked if it's true that an easement decreases the value of the land and why that is the case. Mr. Marx stated that there is almost always a donated aspect of the land in the easement, so the development rights are diminished, therefore the value is diminished. He stated, however, that the audit noted they didn't feel the value of land around the easement decreased.

Sen. Shockley stated he is not inclined to vote for conservation easements on state trust lands as opposed to conversation easements on private land. He noted that the state can make $13.28 per acre doing that versus leasing grazing land for $1.25 per acre. Why would anyone want to own it when you can lease it for $1.25 per acre? He feels we are not getting our money's worth.

Rep. French asked Director Sexton if she were to lease state land, could someone come in and put an easement on that land? Director Sexton stated that yes, the easement would be negotiated basically for agriculture use.

Rep. French asked if the lessee had the right to object to that. Director Sexton advised that yes they can object, it is a very public process, it would have to go through the Land Board, but there is a complete process they must follow.

Rep. French asked if there is a different 'reality' for easements in regards to eastern Montana vs. western Montana. Director Sexton stated that she thinks that is true. People in both the eastern and western parts of the state want conservation easements, sometimes for similar reasons and sometimes for different reasons, development needs versus farming etc.

Ms. Conradi talked about the Whitefish Trust Land Neighborhood Plan, stating that one of the tools that was contemplated (largely because these lands are some of the most valuable lands in the state, they also provided some of the best recreation, water quality and have somewhat of a timber basket) was a deed restriction that would basically limit development, but allow the state to continue managing the lands as it has traditionally done. Given that the deed restriction was to limit the development, she wondered how a third party would play in a deed restriction.

Director Sexton stated that a deed restriction is between a seller and a buyer whereas a conversation easement is usually between two or three people. A deed restriction is a restriction placed on the deed itself and the enforcement would come from the person who purchased it or from someone who knows it exists.

Ms. Conradi asked if a deed restriction might be a tool they could use to restrict growth and development in some of these areas. Director Sexton stated that yes, they could utilize deed restrictions.

Ms. Conradi asked about the agreement with DNRC and the Blackfoot. She wondered what type of an agreement it is. Director Sexton stated that those are conservation easements within the Blackfoot - Clearwater Wildlife Management area.

Ms. Conradi verified that it is Fish, Wildlife and Parks who holds the easements. Director Sexton stated that is correct.

Ms. Conradi asked about the valuation issues on easements, she wanted to know what their findings and issues were in regards to the value of conservation easements. Director Sexton stated that their experience with state land easements is that the property usually retains close to the full value of the property, particularly in areas where subdivision development is the primary focus. They retain full market value or close to it.

Mr. Volesky asked Director Sexton to describe the section of state land where this would most likely be used and who would bring that proposal forward. Director Sexton advised that they do have easement authority already for access, for public purposes and in some narrow areas for conservation easements. She believes that this might be used where there is a clear public purpose or public interest in gaining some sort of restrictions or conservation easements in a particular public area. When it fits in with an open space plan in a community or any other public purpose in that area and when all the stakeholders are in agreement, that is when it fits in best. Deed restrictions might be used in other circumstances where it is more of a private party transaction and again, road easements that have been used are more for access issues. She believes that it is basically another tool they could use.

Mr. Volesky asked Mr. Marx about easements that don't allow timber harvest or grazing and asked him to comment on those situations. Mr. Marx stated that the Montana Private Lands Conservation Easement Program has been in place since 1976 and some of the early easements were more restrictive then they are now. There has been an evolution of sorts and the easements now follow the IRS code and state and federal laws. They have evolved as the landscape has. More landowners with easements do more forest work now to protect their property. Conservation easements have actually been used for fire camps and to build fire lines. He feels there have been more adaptive uses of easements.

Sen. Story asked if the conservation easements that the DNRC has with FWP are in perpetuity Tom Schultz, Administrator for the Trust Land Management Division, DNRC, explained that the two easements they have with FWP are in the Blackfoot and both are in perpetuity. They have another easement with FWP outside of Ulm, where there is currently an option, but the easement has not been consummated yet.

Sen. Story asked what restrictions are included with these easements. Mr. Schultz stated that the larger Blackfoot - Clearwater easement allows for timber sales and timber harvest. There is a timber management plan, which is a cooperative plan between FWP and DNRC. The grazing rights are held by FWP on that easement. Mining cannot be restricted. It also allows for recreational use and four divisions of that land to be sold. The other easement is on the Blackfoot River, it is smaller and does allow for limited timber harvesting and grazing. This easement was negotiated in the mid-1980's.

Sen. Story asked if the easements could ever be broken. If both parties concurred and agreed to break it. Mr. Schultz stated he would need to see/review that document as he doesn't remember the specifics, but he believes it is common terminology in those agreements, both parties could agree to dissolve the easement agreement.

Sen. Story stated that with an easement agreement between a private party and the state, he realizes those agreements would never be broken because of the tax implications. But if an agreement between two state agencies, which are controlled by political force, decide to dissolve it their agreement, what happens then? Is there any protection against this to keep it from happening? Mr. Schultz stated that there is language in the easement regarding perpetration, regarding litigation, if there are disagreements, or if a new administration came in and wanted to 'undo' the easement. If all of these forces lined up, then yes it could hypothetically happen, but it would take quite an effort for that to take place.

Sen. Story stated that during the last session, he thought the two issues involving easements on state lands was first for open space and second for view shed (specifically, prohibiting cutting down trees that could ruin a view). He thought that mining was another issue. He asked Mr. Schultz to verify the issues. Mr. Schultz stated that mining cannot be restricted, it is the dominant right. You can't sell mineral rights, you can exchange them, but you cannot restrict development of mineral rights in any fashion. Regarding why easements have been allowed on state lands, one is for access. If state lands happen to be developed, an easement still allows access. He advised that what happens on private lands directly influences what happens on surrounding state lands and the state does not collect revenue. And as the land changes hands, is bought and sold, most of the time those state leases are 'assignable' and he believes the new land owners can and will do what they want with that land and will dictate what occurs with that land.

Rep. Vincent stated that there are many success stories about conservation easements, but we are talking about public lands. He advised he can relate to the difficult process to obtain easements on state public lands but he also stated that he believes in some cases when it impacts other things like the Wildland-Urban Interface and does not allow the management of catastrophic fuel loads that poses an eminent threat to the community because of a lawsuit over an easement, then it raises some grave concerns.

- **Public Comment**

  None.

04:39:53 **Lunch Break**

05:22:54 **Conservation Easements Directions to the Staff**

Mr. Everts outlined options as far as additional direction for the staff to take regarding conservation easements. He suggested that the staff could compile a draft report of all the information that has been shared and then the EQC can come up with findings and recommendations based on that information. Those findings and recommendations might include taking no action because the Council might feel that the state has all the tools needed, to recommend a progression of conservation easements. It could be a broad spectrum. Chairman Wanzenried asked for input or requests from the EQC regarding further research that might be needed in order to help them make decisions.

Sen. Story stated that the Council should review the information regarding what an easement is and what an easement isn't. He felt that maybe the staff could lay it out in a format that is easily understood. He stated that the primary question he has is, does the DNRC already have the tools that they need. Some think that they do and some think they don't. He wondered if the staff could look at that question.

Chairman Wanzenried wondered if the DNRC initiated any of the bills that made the laws concerning the easements.

Sen. Story stated that he felt from their presentations today, that maybe they felt that they needed more legislative process.

Chairman Wanzenried said he believes one of their issues is whether or not they have the tools to do what conservation easements are supposed to do and whether or not the Legislature wants them to be able to exercise that authority is another part of that. He stated that they can essentially accomplish what they want through a different process. Whether or not that is a good idea is another issue.

Sen. Story advised that the other way they can get it accomplished is through a political process --- that basically the Land Board doesn't sell a piece of property because they know the political fallout would be too great. But another question he has is, what if the trustee/the schools, ask the DNRC to sell a piece of land that isn't making a lot of money as a lease and put the money in the trust so the schools can then use the interest from the sale. He stated they could press that through the legal process versus the public process since they are the beneficiary of that trust.

Chairman Wanzenried recapped what he heard Sen. Story ask for from staff:

1. Fact Sheet on what an easement is or is not and the process.
2. Fully flush out if DNRC is requesting additional authority and if so how much.
3. To research whether or not the trustee or beneficiaries of the trust could file suit or force the sale of some of the parcels of land.

Mr. Everts said he would evaluate the last two ideas, both are legal questions and he will have those prepared for the next meeting. The first request has been done before and they would be happy to come up with an educational or informational piece to make sure that the Legislature doesn't have to start at the beginning each time they discuss conservation easements.

Ms. Conradi wanted to clarify that she believes part of the problem is the existing legislation. She thinks the tool is available but it is limited in geographic scope, specifically limited to Owen Sowerwine and the FWP parcels. So, it may not be as much of an issue as to whether the tool is available, but rather whether the tool is available on a broad scale.

Chairman Wanzenried stated that he feels one of the other issues that comes up is what are the 'tests' of the way in which the trust is to be managed. Certainly to maximize the return, but there are others and he feels it would be helpful for the Council to hear about that issue as well. Then they can understand that it is one of a number of considerations that the State Land Board has to consider in making the kinds of judgments, especially on conservation easements, if they were granted that authority.

Rep. Vincent stated that he would like to see what could or could not be done with the legislation.

Rep. French asked if the staff would also look at the investment return on state land money. She stated that she had seen a presentation at a conference, the Council of State Governments West Conference, where there was a discussion and presentation that showed the different states with state land and how their money was invested and the return they got on it. She remembered that it showed Montana was not reaching anywhere near its potential in returns and she wondered if staff would research that issue.

Sen. McGee stated that he wanted the Council to know that the state was actually sued back in 2001 by the "Citizens for the Trust", so it has happened. Also, in regards to the return on

investment of state lands money, that this issue has been brought up a number of times for as long as he has been in the Legislature. He advised that when David Ewer discussed this issue from the floor of the House, Mr. Ewer explained that the Board of Investments has control over it and that they have had to use certain conservative type investment protocols.

05:36:05 **Public Comment**

Ms. Conradi wanted the Council to know that she received a letter from the Whitefish Lake Institute, which was copied to the Governor. It is requesting that the Governor set up a task force for a pharmaceutical take back program to minimize the impact of pharmaceuticals that are disposed of in toilets, etc., which end up in municipal water systems. She advised that is particularly relevant to Whitefish Lake as it is a source of drinking water for the city of Whitefish. She will share the letter with the Council and perhaps at the next EQC meeting they can discuss it.

Sen. Story advised that he thought the Water Policy Committee might be addressing this and possibly preparing legislation. He also stated that he had a question regarding the way the DEQ spends money that is collected from fines. For example, the money that was collected from fines in the Thompson Falls area and was spent on a camera (as Director Opper discussed yesterday). He wondered if in the appropriations process, if agencies have authority to take the fine money and use it. He asked if there should be oversight of those types of funds.

Chairman Wanzenried stated that regarding the money, if it goes into a revolving account, that there wouldn't be any restrictions on it as long as the purchase doesn't exceed the amount that the Legislature projects, unless there is a restriction of the statute. But specifically regarding fine money, he didn't know.

Rep. Dickenson stated that if an entity is looking at a huge fine, they have the option of doing something else instead of paying the fine, but it must be something that is good for the community and shows that they are trying to be a good face to the community. She stated that she knows it has happened in other places besides Thompson Falls, like in Great Falls at the refinery, they are working with DEQ to do other things than just pay their fine, things that will make them visible and help their relationship with the community.

Chairman Wanzenried asked Sen. Story if that was a specific question or is it bigger and more broad than that. Sen. Story stated it is more general because his question is if the statute is really broad in that area, then an agency who has a lot of ability to fine, can go down their own path without much legislative oversight. Mr. Everts stated he will look into this issue and check the directives of the legislation to see exactly what was stated.

05:42:20 **Environmental Public Health Tracking Project**

Jane Smilie, Administrator of the Public Health and Safety Division, Department of Public Health and Human Services (DPHHS). Ms. Smilie stated that she wanted to talk about the Centers for Disease Control and Prevention (CDC) grant they received and the key activities they conducted with grant money and now that the grant is gone, what they are continuing to do in terms of environmental health programming. She explained that this grant was a planning and capacity building grant from the CDC for about $400,000 per year for three years. The CDC's goal for the grants was to plan and develop a coordinated integrated environmental public

health surveillance system. Their idea was to link data bases that contained information on environmental hazards, environmental exposures and health outcomes. Then to try to identify possible associations between hazards, exposures and health outcomes. That was a three year grant cycle and in the second round of grants, the CDC reduced the number of grants they gave and Montana was not successful in securing the grant the second time around.

Some of the key activities included conducting an inventory and assessment of all the databases in Montana containing information on environmental contaminants, potential exposures and health effects. The CDC felt that if they could get all of this information into one IT application, they could begin to identify possible associations. She stated it was cost prohibitive to set up the database however. They were also to conduct a pilot project of connecting a health outcome database with an environmental hazard database. They contracted with the University of Montana's Center for Environmental Health to do this. They were able to link hospital discharge data with information on air quality data. What they showed was an increase in asthma and chronic obstructive pulmonary disease (COPD) hospitalizations, both during wildfires and cold temperature inversions. The results of the project were consistent with results published in both the U.S. and Europe.

During the time of the grant, they also refined their investigation protocols. These are protocols for how they deal with citizen reports of perceived clusters of a non-infectious disease. They conducted community level assessments of citizen perceptions of environmental health issues. This was done in ten counties and on three reservations. This led to funding for further programs. One of the programs taught citizens how to care for their wells with many of the wells being tested. And the county gained data to be used for mapping and future water quality planning as well.

She explained that the grant allowed for a lot of outreach and education regarding environmental health issues, ranging from second-hand indoor smoke and indoor air quality to radon. The website for the program is still up with lots of good information. It is at the DPHHS website.

Now that the grant is over and the funding is gone, they are still working on environmental health issues. She introduced Mary Simmons who is now directing their environmental health program. She explained that they have placed a great deal of emphasis on continuing to improve their surveillance of health conditions that have been documented in the literature. They have beefed up surveillance of things like blood lead, cancer and asthma. She distributed four pieces of literature, **Exhibits 13**, **14**, **15** and **16**.

She then introduced Dr. Steve Helgerson, their Medical Officer. He is a nationally known Epidemiologist who has worked in every branch of public health at the federal, state and local level.

Mr. Helgerson started with a key concept that must be implemented as part of the environmental health surveillance activities in Montana. He stated that the concept is that certain adverse health affects have been clearly documented to be associated with specific exposures to non-infectious substances or conditions in the environment. Examples of known relationships, cancers versus cigarette smoking, Parkinson's symptoms associated with heroin type substances or loss of consciousness due to exposure to carbon dioxide. He explained that these are known relationships between an environmental exposure and adverse outcomes. He

explained that an environmental health program needs to devote particular attention to identifying and intervening as early as possible when these adverse effects occur. He believes we need to target surveillance to intervene before an adverse health event occurs or to prevent or minimize further exposure. Regulatory control of these exposures is an important part of preventing the adverse health effect. However, in the event that regulatory control is not entirely effective, an environmental health program needs to be able to intervene. Secondly, we should not wait for people to die before adverse health effects come to the attention of our surveillance systems. Mortality surveillance, using death records needs to be accompanied by using hospital or emergency department records. Some mortality surveillance is already in place in Montana because the Legislature made cancer reportable several decades ago. It has been possible to establish surveillance for the incidents and not just the death rates, for cancer. The single most important addition in addition to environmental health surveillance in Montana, would be to make hospital discharges reportable. He stated those discussions have already begun.

- **Questions/Comments**

Sen. Kaufmann asked about the $400 thousand grant that is now gone. How is the rest of this work being done, with what funding? Ms. Smilie explained they have picked up the key pieces and pieced together funding to continue with the work. The cancer cluster work is key and the hospital discharge study needs more work. She stated that she feels they are doing 'okay' right now.

Sen. Kaufmann asked if they would see a decision package in the Governor's budget related to beefing up some of these areas she mentioned. Ms. Smilie said they have not started to formulate the decision packages, so she couldn't answer that question.

Rep. Dickenson asked if they discuss their information with other agencies. Do they share their findings and put their information together in a cumulative or long-term fashion and come up with conclusions for when human health is at risk and what needs to be done to protect it. Ms. Smilie stated that some of the cluster investigation protocols actually do lead them through steps to work with the other agencies and yes they do talk to each other. They have agreements and they work closely with the DEQ and the Department of Agriculture.

Rep. Dickenson asked if what happened in Libby will ever happen again, if there are safeguards in place to prevent it. Ms. Smilie stated that she can't claim it won't happen, but that there are steps being taken to try to help ensure that it won't. She believes there is more attention being paid to it, but things like being able to look at hospital discharge records versus just looking at mortality records could be very important.

Sen. McGee stated he wasn't sure what all of the terms meant, so he asked what the following meant, "non-contagious, perceived health issue clusters, surveillance intervention." Ms. Smilie explained that they say perceived clusters because they don't want to declare that there is a cluster of disease before they know that there is a cluster. Surveillance is simply monitoring or looking at data to determine whether or not there is an excess of disease. Interventions would be things like program activities, like with blood lead - they are trying to mitigate the lead mostly in homes where children are being exposed. There are a variety of interventions to use to address different diseases. She apologized for speaking another language.

Sen. McGee asked, in a practical sense, what this means to the people of Montana, is there such a thing as health police. Ms. Smilie advised that there are no health police, but it means there is someone paying attention, looking at the data and trying to determine if there is a problem that really should be addressed.

Sen. McGee asked what power her office yields, can they shut down offices, can they quarantine cities, etc. What actions can/would they take. Ms. Smilie advised they have never shut down an industry, that is not part of their regulatory realm. They just try to mitigate the consequences to the persons who were ill.

Sen. McGee stated that getting more information from hospitals, as in discharge information, if that would be a privacy issue and HIPAA violation. Ms. Smilie stated that there are extreme use guidelines with what they can do with that information. At present, when they get hospital information, it is all de-identified, no personal identifiers are included. That gives them the picture of the disease without knowing who had the disease.

Rep. Bixby asked if they provide community awareness if they find a cluster or a disease within a particular community. Ms. Smilie advised that yes, one of the first calls they make is to alert the particular community's health office and to get them involved.

Rep. Bixby asked if they ever put out information or alerts on things like sulphur dioxide or mercury levels, preventive type alerts regarding health issues. Ms. Smilie state that no, those types of alerts would most likely be on the DEQ website. For example, during the fires this past summer, they worked with the DEQ to put pertinent information on the website to warn those people who were at high risk with air quality issues. And she stated that the message was put out to local health departments as well, that they issue those types alerts.

Rep. Vincent thanked Ms. Smilie for her role in helping to get the asbestos funding passed during the last legislative session noting it helped certain people with their medical bills. He also made a statement regarding the Libby situation, that part of the problem was with identification of the particular fibers and particles that were making people sick. It took a lot of time because we didn't have the technology and it took quite a bit of time to get the mine stopped.

06:19:57 **Direction from the Council Regarding Climate Change Study**

Chairman Wanzenried asked Mr. Everts to review the Council's work plan and the calendar to help the EQC determine how to proceed with the Climate Change Study recommendations. Mr. Everts outlined the calendar stating that traditionally the Council has tried to wrap up draft reports/legislation to go out for a 30 day public comment period, by June. That means there are two EQC meetings left. The work plan time-line that was adopted means that at the May meeting the Council should have some resolution on whether or not they should proceed on recommendations from the study, then it would go out for a 30 day public comment.

A narrative handout was then distributed from Mr. Lambrecht, PPL Montana. He had promised the Chairman a copy of his list of concerns he had compiled regarding the Climate Change Study recommendations. A copy of this list was given to each Council member, **Exhibit 17**.

Chairman Wanzenried stated that many of the questions that were asked during the Climate Change Study are answered in the binder that the committee received and he feels that maybe

people just need time to go through the information rather than to have more presentations or gather more information.

Sen. McGee advised that he would like time to be able to read and digest the information they have received to this point and then discuss the recommendations at a later date.

Mr. Cebull agreed with Sen. McGee's recommendation to allow the Council to read all of the information and be able to dig into it. He stated he is most concerned with the economics in the report. He wondered if having a representative from the Center for Climate Strategies come to the next EQC meeting to present on the economics of the study might be helpful or at least a conference call with a member from that group. He wants more information on the economics and stated that he is concerned about this possibly being a 'canned' approach.

Rep. Lambert stated that with the tremendous amount of information, she too would like to have the time to read and digest it.

Chairman Wanzenried asked if there was anything they/the Council could move forward with today so that at the next meeting there won't be 54 recommendations for the Council to address.

Mr. Cebull suggested that perhaps before the next meeting, the Council could get their feedback in as to what recommendations they would like to move forward with, prioritize them and start with those at the next meeting.

Ms. Nowakowski stated if they outlined deadlines it would be helpful.

Sen. Story agreed with the others that the Council needs time/deadlines to read and get through all of the material. He wondered about the additional groups that were part of this study, those that gave input to the study. He wondered what their thoughts were and what they feel is achievable in these recommendations. He also wondered what the Governor wants to do with these recommendations and what his direction is at this point. It might help the Council determine how to move forward.

Chairman Wanzenried advised that this is simply one set of ideas to look at and asked if anyone had other ideas that the Council should look at. He also asked those who felt that this is a 'canned study', if they will know anymore by studying it for another month.

Sen. Story stated he still would like to know what is in the study, more in-depth.

Sen. McGee advised that he feels this is a starting point, but they need time to determine what a possible "Montana Solution" might be and they will only get there by studying the information.

Ms. Conradi stated that she, with what she read in the appendix, is not convinced that this report is a "cookie cutter approach", she is not convinced that the Center for Climate Strategies did not fill in the blanks, but she would like more time to read and study it as well.

Rep. Dickenson explained that early on in the process, the advisory council was given templates to review and prioritize and narrow the templates down to possibilities of things the advisory council could look at to be part of this action strategy. Then the technical working

groups (which were made up of many individuals outside of the advisory council), helped flush out the templates further and that is how they came up with the recommendations. She advised the DEQ has the report on their website now and also that the Center for Climate Strategies has a very informational website at climatestrategies.us. She stated that she felt very privileged to have had their assistance and she didn't feel the advisory council could have done it without them. She said she felt it was helpful to have examples of what has worked in other states and that overall it was a good open, consensus driven study and she feels the recommendations are very much tailored to Montana's needs. She advised that where the costs couldn't be figured, she felt those would come with input from others. She liked the idea of taking more time to study it.

Ms. Conradi asked Mr. Cebull to clarify that when he said 'issues' if he meant the 54 recommendations or did he have specific issues he was talking about. Mr. Cebull advised that yes he meant the 54 recommendations and the issues surrounding them.

Ms. Conradi also stated that in regards to the homework assignment of reading and studying the 54 recommendations, she felt that each Council member should set a deadline for identifying each recommendation that they feel is acceptable, feasible and achievable. That each person should have their own list.

Mr. Cebull said he didn't want or mean to belittle the work the committee did.

Sen. Kaufmann also asked for a type of polling process regarding the 54 recommendations to help the Council 'whittle' them down, then they will move ahead faster and have a sense of those that won't work so they won't waste time.

Rep. Witte stated he does not favor a polling type process because he feels he has learned a great deal in the past by hearing explanations and discussions and the sharing of information amongst the members. He feels they should take the information home to study and at the next meeting just dive into it and everyone would benefit.

06:50:24 **Break**

06:56:45 **Natural Resource Information System (NRIS) Overview**

Sibyl Govan, Director of the Digital Library Division of the Montana State Library, **Exhibit 18 and 19** gave an overview of the Natural Resource Information System, (NRIS). She advised that it is a very valuable tool for all citizens of Montana to use as it is a vast electronic library of information on geography, land and water resources, wildlife and habitats. The website is nris.mt.gov.

- **Questions/Comments**

Sen. McGee asked about the GIS information. He wondered how many versions of aerial photography they have in their files. Ms. Govan advised that the earliest statewide version was about the mid-1990's for the statewide layer and then the 2005 color version. She stated they have started to collect ortho-photography which is not only air photographs, but they are referenced so they can be used in mapping systems. They have been pulling them from state

agencies, counties and cities and they are growing their collection, but they don't have them statewide yet.

Sen. McGee asked if they had contacted any of the old ASCS offices for some of their 1950's vintage type aerial photography and he wondered if they archiving any of it or if it is only located at the national archives. Ms. Govan stated that currently it is only available at the national archives, their effort in that area will begin with DNRC as they have quite a bit of it as well as the Department of Transportation. They will start at the state level. She stated that it is hard with the photos that are not geo-referenced because it takes quite a bit of effort to reference that photography so it can be used in the modern mapping systems. So they might start a program where they would collect all the information, but they would geo-reference it when someone asks for that area.

Sen. McGee stated that the reason he was asking was because sometimes state lands are islands and rivers and ancient (1950's) photos are very important and helpful in trying to establish the date that an island came into existence or whether it was an island at the time of statehood, etc. Ms. Govan advised that in their overall imagery plan, it is on their radar, they don't have resources to direct time to it at this point, but they would like to for all of the reasons he named.

Sen. McGee asked how long it takes for the library to update their systems with new development plots, subdivisions, etc. Ms. Govan stated that part of the program is administered through the Department of Administration. They have a GIS bureau that works with the counties, along with the Department of Revenue and they bring all of that information together and the library gets a copy of it monthly.

Sen. McGee asked what the approximate age of a development is by the time she would see it in her office. Ms. Govan stated that it varies by county. The work flow process depends on the county/municipality to get those records into the Department of Administration before the library sees them.

Ms. Conradi asked if a state agency like the DNRC conducts a mapping project, whether it would be for timber management, growth management, etc., is that part of the library's data base? Ms. Govan responded that yes, once the agency separates the working data from the data they want to be released to the public or another agency, then the library gets it and it is added to their collection.

Rep. Lambert asked if she could just go to one website to find it all. Ms. Govan advised either the state library website or the NRIS website will provide all of the information.

Sen. Story stated that years ago he was involved with a digital mapping system and at that time there were many different formats, he wondered if things were more uniform now so that all the information can mesh together. Ms. Govan stated that yes, they have come a long way with new technology and the coordination that exists between agencies at the federal and state levels. There is a lot that goes on behind the scenes, especially with the base layers are that compatible.

Sen. Story asked about the people in the private sector who are doing this, if they use different formats, what will happen then. Ms. Govan stated that yes, when you enter their catalog, you

will see those things that have been contributed at the local level and by other sectors and they could be in formats that might be difficult for your particular software because there is always a lot of technological detail. But at the state library, if they feel an item will have broad relevance, they put those items in a widely available format and most people can then access them.

Sen. Story stated that with all of the information that the library gathers, including information from non-government entities, he wondered if it is hard to keep all the information accurate, correct and true. Ms. Govan stated that it all takes a great deal of coordination and this has been done through entities like the Montana Land Information Council, the Department of Administration, etc. She stated that they do have professional cartographers on staff who review everything, but yes it is a concern, but they are very careful and she feels the broad statewide layers are pretty good.

Mr. Brenden asked how you read a license plate using Google Earth or if when she stated that she could read a license plate, was she using Homeland Security software or what. Ms. Govan stated she was exaggerating slightly on reading the license plates, but that Google gets their main areas of information from the state library. With the Homeland Security software she has, she stated that she could probably get the make of a car.

Mr. Brenden asked if there was greater imagery than 1 ft. Ms. Govan stated that there is greater imagery but it is very expensive.

Mr. Everts explained that of historical note is the fact that the EQC was instrumental in putting the NRIS program together back in the 1980's. It has been very helpful for many of the EQC issues. Rep. Jon Sesso was one of the first directors of the NRIS program.

Rep. Vincent asked about the Natural Heritage Tracker site, if there are numbers of species included in the information, like numbers of sitings, etc. Ms. Govan stated that she was not sure if that information was included on the site, but if he was interested they could try to get the information for him.

Chairman Wanzenried verified that the NRIS website was truly excellent and provided all kinds of very useful and helpful information.

07:30:44 **Sunburst School District v. Texaco Case Revisited**

Dave Slovak, from the Lewis, Slovak and Kovisich Law Firm in Great Falls, presented the Plaintiff's Counsel perspective in the Sunburst School District v. Texaco Case. He explained that they historically represent individuals and have handled a variety of environmental cases including the WR Grace case in Libby. He stated that his firm was trial counsel in the Sunburst case and also handled it on appeal in the Supreme Court. They worked on the case for approximately seven years and the final decision for the clean-up award came on August 6, 2007 as a 7-0 vote of the Montana Supreme Court.

He stated that he was here today to present his firm's view of the case as they felt that some of the public comments at the last EQC meeting needed to be 'flushed out'. The basic history of the case starts with the understanding that Texaco operated a refinery in Sunburst, MT from about 1924-1961, at which time they moved it to Anacortes, WA. During the course of their operations in Sunburst, there were continual leaks through lines, storage pipes and tanks and

there was also evidence at the trial, of intentional dumping of gas by Texaco. The problem first became apparent in 1955, when an individual arrived home one night, lit a match in his house and the home came off of its foundation. An investigation ensued and some remediation was made at the refinery site. A geo-probe was used to test/drill and bring up soil samples. It was found that Larry Linnel's house was located on the plume of contamination in Sunburst. What they learned was that picture accurately depicted the condition of the underground soil in the town of Sunburst itself. What also emerged at the trial was that no contamination has ever been removed from the town of Sunburst. There was some remediation at the refinery site that migrated down into the town, but as of July of 2004, no contamination had been remediated at all. So the 90 individuals, landowners and the school district had been living on and above that contamination with no remediation. Mr. Slovak stated his firm then pursued a simple claim under common law to restore their land to a clean and healthful environment.

He explained that the Sunburst trial was a battle between two different technologies. His firm suggested that some aggressive remediation be done, that they go in and remove the contamination. Texaco suggested that monitored natural attenuation should take place. Mr. Slovak stated that during the course of the trial, they determined that monitored natural attenuation was really to do nothing except let mother nature take care of it. There was no cleanup, just monitoring. However, Texaco could not guarantee that natural attenuation would ever work.

A jury awarded a total of $15 million for the actual cleanup, with an additional $350 thousand for the investigative costs (these two awards ended up being a single collective award that could not be split up), and individual compensation awards for the 90+ individuals totaled approximately $765 thousand. Mr. Slovak stated that the cleanup is progressing, they are cooperating with DEQ to get the cleanup jump started and they feel it will take 3-4 years and be within budget. Once the funds were paid by Texaco, they were put into a Qualified Settlement Fund Trust (QSF), and these funds are now drawing interest and will allow the cleanup to proceed over the 3-4 year period with adequate funds and to make sure it is done right with DEQ involvement and with cooperation of the plaintiff.

Mr. Slovak advised that the reason that this case was so important is because the Montana Constitution provides an inalienable right, a right to a clean and healthful environment. The DEQ can only go so far under the law to ensure that if an individual's property is contaminated, the individual has a right not only to get the value of the property, but to force the polluter to come in and clean the property up to the state it existed in prior to the contamination.

Mr. Slovak addressed a previous public comment when someone asked how a company can be expected to pay more for the cleanup than what the value of the property is worth. He stated that the Montana Supreme Court addressed this in 1980's in a case called Burk Ranches and it was addressed again in the Sunburst case. He stated that you cannot allow a wrong-doer or a polluter to contaminate land and then buy the problem. He summarized that the Sunburst decision and the rights provided to Montana citizens ties in very nicely with the DEQ. When a state agency is strapped for funding/resources, individuals can bring a case of this nature, which in turn can very much help and support the DEQ with the overall objective of cleanup of the contamination.

- **Questions/Comments**

Sen. Story thanked Mr. Slovak for the rest of the story as it helps in the overall understanding. He wondered if the liability migrates to the next individual(s) who purchases homes in the previously contaminated areas in Sunburst. Mr. Slovak explained that upon cleanup in the 3-4 year timeframe, Sunburst should be a clean town.

Sen. Story stated that he realizes that is the plan, but they won't know that until the money is spent, the work is done and time has passed. He stated that because they won a law suit, if the results aren't as expected in the end, then who is responsible if there is still a problem. Is it still Texaco or is it the people who were given the money to conduct the cleanup, but didn't get the job done. Mr. Slovak advised that it all goes back to knowing that the cleanup will be done. The cleanup will substantially reduce the levels, even lower than DEQ standards. If a person purchases property knowing there was/is a problem there, then you have a different situation. But the cleanup teams are highly skilled professionals with great experience in cleaning up these types of areas.

Mr. Brenden verified that $765 thousand was the award that the 90 individuals received. Mr. Slovak stated that the $765 thousand was in compensatory damages by way of nuisance, trespass and violation of constitutional torte.

Mr. Brenden stated that he is glad they are getting it cleaned up. He was part of a class action suit previously where he ended up getting 12 cents in the form of a check and the attorneys got $100 million. He stated that he is disappointed when the attorneys get more than the people. Mr. Slovak advised that the clients they represent were more interested in the overall cleanup of Sunburst and were not that interested in the individual awards. He stated that you have to look at the values of the town and their objectives.

- **Public Comment**

None.

07:53:41 **Other Business:**

Chairman Wanzenried reviewed earlier statements regarding the Climate Change Study recommendations and what the Council wanted to do to move forward.

Motion: Sen. McGee made a motion that they finish reading the material by February 14, 2008 and then between February 14, 2008 and March 1, 2008 they get their comments categorized in some fashion and reported back to the EQC staff. In addition he would like notification to go out stating that between February 1 and February 14 comments could be received from the public regarding the climate change issue and the CCAC report.

Discussion on the Motion: Sen. Story would like to see a uniform and simple way that both this committee and the public could report back, rather than a bunch of letters coming in, he wondered if they could do it in the form of a template and do it electronically. Mr. Everts advised that staff will look into it, putting it in template format and run it past the Chairman and the Vice Chair for approval.

Sen. Shockley advised that Janet Ellis of the Montana Audubon Society asked him to clarify and correct the record that it was not the Audubon Society who was the culprit, but actually the Sierra Club v. Dale Bosworth. Also, Sen. Shockley advised that he was correcting a statement he made that iJohn Conner's commission that deals with the unauthorized practice of law had not had any complaints in 30 years in the Water Court. Mr. Conner stated that the Water Court is 30 years old, but Mr. Conner did not know how old his commission was, so Sen. Shockley had overstated the case.

Rep. Witte recommended a grading system on the 54 recommendations, to use a 1-5 grading system on the recommendations.

Sen. McGee accepted that recommendation as a friendly conceptual amendment to his motion. Ms. Nowakowski advised she will develop a template for review of the Chair and Vice Chair and if accepted she will forward it on to the Council. She also stated that in regards to gathering public comment, she would send out a press release to the public and set up a public comment link on the EQC website using the same template the Council will use.

Chairman Wanzenried stated yes, that using the same template would work.

Chairman Wanzenried asked the committee to vote for Sen. McGee's motion.

Vote: Sen. McGee's motion carried unanimously by voice vote.

Chairman Wanzenried asked if there was further direction the Council would like to offer the staff or if the staff needed more direction or clarification from the Council.

Ms. Nowakowski asked the Council if they would like to have a member of the Center for Climate Strategies on a call or in attendance at the next meeting or have additional speakers regarding climate change at the next meeting.

Chairman Wanzenried advised that they would like to check into the feasability of having a member of CCS come to the next meeting or at least on a call if travel is cost prohibitive. He asked the Council if there was anyone else they would like to hear from for additional information.

Rep. Witte stated that it might be helpful to hear what the Governor's office thinks about the 54 recommendations, what his opinion is or even have him fill out the template.

Sen. Kaufmann stated that she asked Bob Decker if he would give her his information on the proposals he felt offered potential savings in the climate change study. He gave her the information and she stated she would be willing to share it if someone would like to see it, she has it and would make copies.

Other Business and Instructions to the Staff

Chairman Wanzenried stated that at a previous meeting there was discussion regarding the petroleum tank cleanup fund and there were two issues associated with it: 1) if we reduce remediation standards or 2) raise revenue - like a tax increase of some kind. He stated that he took the issue to the Finance Committee and they were so concerned about it that they

proposed the formation of a working group to study the issue. The working group will be comprised of two members from the Finance Committee and two members of the EQC. Chairman Wanzenried appointed Sen. Story and Rep. Dickenson to be part of that working group. They will meet and bring recommendations back to the EQC at an unspecified time.

Sen. Story asked who was in charge of the working group. Chairman Wanzenried stated that Mr. Everts would help set that up and be in touch with the working group to determine the date. He also stated that the Finance Committee has a policy now of not receiving hard copies of information, that if they can read/review them online some are choosing to do that. So Chairman Wanzenried wanted to make that option available to the Council since the Council is trying to do their part in saving energy and resources.

Ms. Conradi asked if it can be done now, effectively immediately. Chairman Wanzenried stated that yes, it could be done now and he would like to see the EQC take the lead, in the spirit of talking about all of these ideas, they should try to preserve some resources.

Sen. Story advised that it would take him a couple of days to download some of the documents, so he will need to continue to receive hard copies.

Rep. Vincent wanted to be on the record apologizing to Janet Ellis and the Audubon Society for previous remarks he made.

The next EQC meeting will be March 10 and 11, 2008.

08:06:16 **MEETING ADJOURNED**