ENVIRONMENTAL QUALITY COUNCIL

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GOVERNOR BRIAN SCHWEITZER **DESIGNATED REPRESENTATIVE** MIKE VOLESKY	**HOUSE MEMBERS** CAROL LAMBERT--Vice Chair NORMA BIXBY SUE DICKENSON JULIE FRENCH CHAS VINCENT CRAIG WITTE	**SENATE MEMBERS** DAVID WANZENRIED--Chair BOB HAWKS CHRISTINE KAUFMANN DANIEL MCGEE JIM SHOCKLEY ROBERT STORY JR	**PUBLIC MEMBERS** JOHN BRENDEN BRIAN CEBULL DIANE CONRADI DOUG MCRAE	**COUNCIL STAFF** TODD EVERTS, Lead Staff

AGENCY OVERSIGHT SUBCOMMITTEE MEETING MINUTES

Date: September 13, 2007 Room 102, State Capitol Building
10 a.m.-2:30 p.m. 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.

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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. JIM SHOCKLEY, Chair

REP. NORMA BIXBY, Vice Chair
REP. SUE DICKENSON
REP. CHAS VINCENT
REP. CRAIG WITTE

COMMITTEE MEMBERS ABSENT

MR. BRIAN CEBULL

STAFF PRESENT

TODD EVERTS, Lead Staff
JOE KOLMAN, Environmental Research Analyst
DEE BARFKNECHT, Committee Secretary

Visitors

Visitors' list (Attachment 1)
Agenda (Attachment 2)

COMMITTEE ACTION

- No Committee Action Required

CALL TO ORDER AND ROLL CALL

00:00:37 Sen. Shockley called the EQC Agency Oversight Subcommittee to order at 10:02 a.m., welcoming the committee and briefly reviewing the agenda. The secretary noted the roll, (Attachment 3).

AGENDA

AGENCY OVERVIEW PRESENTATIONS

00:01:08 **Department of Fish Wildlife and Parks**

Rick Northrup, Department of Fish Wildlife and Parks (FWP), Coordinator, Upland Game Bird Enhancement Program (UGBEP), gave an overview and update on the Upland Game Bird Enhancement Program (EXHIBIT 1).

- **Questions/Comments**

Rep. Vincent asked about shared costs of pipelines and roads and how funding is allocated. Mr. Northrup advised that as far as he knows he doesn't believe FWP has ever paid for roads, but when you set up a grazing program, placing water/pipelines in different areas for livestock is necessary and common and upland birds benefit from these efforts as well. Rep. Vincent asked which approaches to the program have been most successful and where resources should be placed in order to make the program even more successful and also how to access the database of public vs. private information. Mr. Northrup explained that the information in the database is not accessible to the public, but much of the information is accessible on the FWP website, in the access guide link. Rep. Vincent asked which program has been more successful, using incentive programs on private lands or developing habitat on other public lands. Mr. Northrup explained that it depends on how you define success, because you can have a very successful project on private lands, but if landowners aren't allowing hunting, then

of course the program is not successful for the general public. He advised that maximizing the area where the access is currently available and working with long term access agreements will be very worthwhile and enhances the valuable access FWP already has.

Rep. Dickenson questioned if farmers/ranchers will be paid to participate in this program. Mr. Northrup advised that the landowners are providing more "in-kind" cost shares, but basically, 'yes', FWP does pay the participants and will also pay for the materials. Rep. Dickenson wondered if this was like a Block Management grant. Mr. Northrup advised no it was not, unless they got into leasing or conservation easements, that would make it a little bit different. Rep. Dickenson asked if the landowners are getting less and less willing to allow hunting, due to drought and fire conditions. Mr. Northrup felt that this is sometimes the case, but also that the ranches are either being leased out by sportsmen who have the funds to do so or the ranches are being purchased by out of state interests and incrementally the bird hunters are losing opportunities in Montana.

Sen. Shockley clarified that the landowner is given money for fence enhancement for birds and/or cattle and in turn FWP is allowed to hunt on his land for a number of years. Mr. Northrup advised that is correct.

Rep. Witte verified that the landowner incentive program is $12 an acre to allow hunting on private land and asked if hunting permission is required with that program. Mr. Northrup advised yes it is. Rep. Witte asked about the history of federal funds matching FWP funds regarding the state sage grouse plan. Mr. Northrup explained that FWP applied for a federal grant and when matched with the Upland Game Bird Enhancement Program, would have given them the ability to enroll 183,000 acres. FWP is at 174,000 acres currently. He advised there are additional funds that are largely dedicated to sage grouse conservation that FWP plans to apply, which will represent another $50,000. Mr. Northrup advised FWP is getting right near the end of what they have to use, in matching dollars. Federal matching dollars must be used by the end of this calendar year. Rep. Witte asked about the FTE and what the cost to the state would be for this person. Mr. Northrup stated it is about $60,000 per year for salary, benefits and operations costs. Rep. Witte also wondered about the cost of the metal signs that FWP provides, with the landowner's names, etc. Mr. Northrup advised approximately $6 per sign, that approximately $9,000-$10,000 was spent on signs last year and they are produced at the state prison.

Rep. Vincent asked for the website for the FWP upland game bird information. Mr. Northrup advised http://fwp.mt.gov. and click on 'hunting', then click on 'Upland Birds'. There should be a link to the guide and that will show individual icons as to who the landowner is, if the area is accessible. Rep. Vincent asked Mr. Northrup to define what he felt is successful and Mr. Northrup advised to go back to the intent of the program, it is to enhance upland bird populations and increase access for the hunters.

(Break)

- **Questions/Comments**

Sen. Shockley asked Mr. Northrup if his specialty/expertise is with upland game birds. Mr. Northrup replied that he grew up in South Dakota and has his bachelor's degree from South Dakota State University and his master's degree from Montana State University working on a sharp-tailed grouse project on the Charles M. Russell National Wildlife Refuge. Since joining

FWP he has worked with water fowl and upland game birds specifically. Sen. Shockley asked about food plots and if they are successful or not. Mr. Northrup advised that particularly during the winter, the food plots can help carry the birds through the harsh weather, but that it can be a mixed bag, because birds can die due to exposure vs. starving to death. Sen. Shockley asked if the FWP is building food plots next to crop land and Conservation Reserve Program (CRP) land. Mr. Northrup explained that in some areas, FWP is buying standing grain in crop land to keep that standing grain adjacent to good cover and winter habitat. Sen. Shockley asked if these findings and opinions are based on some sort of empirical testing and do they test to determine if the projects are successful. He asked if FWP is going back out and checking these projects to see if they work or didn't work and to what extent. Mr. Northrup advised that FWP field biologists go out and make periodic checks on these projects to see if the landowners are complying with the project and to determine the level of use by wildlife. He explained that FWP doesn't go out annually and look at all 400 projects to determine if each one is successful. It is more of a sampling of all the projects, as getting to each one would be incredibly difficult to do. He advised that in combination with this, FWP developed a publication two years ago, which basically reviewed all of these types of projects and put them in context of what is being done in other states and what has been researched thus far, to help show their value and show that the expenditures are legitimate for enhancing upland game bird populations.

Sen. Shockley asked if they are relying on the literature instead of going out to the sites to determine their success. Mr. Northrup advised they are using literature to help guide the types of projects that FWP funds and that they have also looked at these projects to detect bird use. He advised that the birds are using these projects so it benefits that population. Sen. Shockley asked how much money is going into range management as it is very expensive. Mr. Northrup agreed that it is very expensive, but most of these range projects are involved in cost share programs from the NRCS, (Natural Resources Conservation Service, the old SCS - Soil Conversation Service), through the farm bill program, but that has not always been the case. He said that more recently, it has been more difficult for landowners to get cost share through NRCS, so FWP has actually been spending more dollars for these projects in cost share directly with the landowner. He didn't have an exact figure, but felt that it was approximately 1/3 of their expenditures.

Sen. Shockley asked about the survival rate of pheasants and how long they live once they are released. Mr. Northrup advised there is quite a bit of variability based on different habitats they are put in. Sen. Shockley asked how many of them make it through the winter to reproduce the next year and Mr. Northrup said that less than 5% make it through the winter, approximately 20% are shot/hunted, 75% are lost to a combination of forces; foxes, coyotes, raptors, drought, etc. Sen. Shockley asked if there are different 'strains' of pheasants that would last better/longer in Montana. Mr. Northrup advised that basically the difference in the strains of pheasants are very slight and the best possible scenario for a pheasant is to be raised by its mother biologically in the wild, that is when they last the longest. Sen. Shockley asked if the survival rate would be greater if they weren't released so young. Mr. Northrup explained that the overall intent of releasing birds was to establish breeding populations. He advised the longer the FWP 'holds' onto the birds when raising them versus releasing them, the more it costs, but yes, they may last longer. Sen. Shockley questioned turkey survival rates, if it is the same 5% survival rate as pheasants. Mr. Northrup advised it is a completely different situation as they are trapping wild turkeys and re-releasing them where they currently don't exist. Sen. Shockley asked about the cost of the program and Mr. Northrup said that during the last legislative session, FWP was given $3.7M spending authority.

Sen. Shockley asked about people/landowners not allowing hunting on their lands. Mr. Northrup explained that the FWP has 400+ contracts with landowners and some of them are not allowing hunting on their properties. He said because of the large number, it is extremely difficult to monitor each contract so he relies on complaints from the hunters and yes it does occur to a certain extent. Often times the contracts are very old and the landowners can forget about it or the land has changed hands, etc. Sen. Shockley asked if leases are filed with clerk and recorders offices in each county and Mr. Northrup advised yes, all grazing leases, (which only account for some of the FWP projects), are on file. Some contracts (food plots), are only annual contracts and are not on file, grazing leases are fifteen years.

Sen. Shockley asked if Mr. Russell is allowing hunting on his property currently, as he was previously posting it. Mr. Northrup advised that yes, currently he is allowing upland bird hunting. He advised that one of the problems FWP encountered with Mr. Russell's fifteen year contract (he admitted that the contract itself was definitely flawed), was that the ranch experienced a very long drought in combination with two hail storms that wiped it out. Sen. Shockley wondered if each region needs it's own biologist. Mr. Northrup said no, he didn't think they needed more biologists, just more man power or individuals (possibly farmers), to help deliver the programs and to work with landowners. Sen. Shockley advised he feels more FTE's are needed to determine if these programs are successful to determine if FWP is spending the money wisely.

01:27:16 **PUBLIC COMMENT**

Rep. Julie French, HD 36, advised she is here on behalf of herself, the people she represents and past senator, Ed Smith. She advised Mr. Smith has contacted her a number of times and would like her to communicate three major concerns of his in regards to the Upland Game Bird Enhancement Program:
1. The issue of restocking and the 'push' to do away with the restocking program.
2. The money management of the program.
3. The overall management of the program.
Rep. French advised that Sen. Smith and a number of other citizens would like to see more research conducted regarding the restocking program. She advised that it is imperative to restock birds or the hunters will not be back. She explained that SB 17 was introduced this year and the intent of the bill was to do away with the pheasant restocking part of the program. She advised that bill will most likely be brought back and she would like to see research done prior to this, so it would be fair for both sides -- those who feel restocking is important and those who feel it is not. She also advised that both as a member of the EQC and as a representative for HD 36, she would like to see EQC request more research and further investigation into that part of the program. She thanked Mr. Northrup for his presentation and said he and Mr. Charles will be coming out to northeastern Montana to meet with a number of people to address these issues. Rep. French advised that it is important to remember that the money spent on this program comes from licenses and most of those licenses come from out-of-state bird hunters. She explained that Region 6, which encompasses HD 36 and others, has the largest number of bird licenses, both local and out of state. And the expenditures and revenues for 2006, for Region 6, was $15M. As a representative and a person that lives in this area, Rep. French reiterated that she feels it is very important for the EQC to look at this program more in depth, particularly the restocking program.

Mr. John Brenden, of Scobey, advised he too has concerns regarding the Upland Game Bird Program. He wondered why the FWP pays the landowners 'upfront' for participation in the

program, without monitoring them to make sure they are meeting the objectives of the program. He questioned if the dollars they are spending on that program are well spent. He also stated that he would like to see the birds spread out in more areas when they are being released, instead of them being released in one area at one time. He felt the predators are getting a large number of them when they are all released together. Overall Mr. Brenden advised he felt FWP should have more constraints to ensure the money is spent wisely.

Sen. Shockley advised he agreed with Mr. Brenden that he would like to see the money spent wisely.

Department of Fish Wildlife and Parks Overview Continued

Ms. Sue Daly, FWP, Chief of Finance, gave an update on the 2005 Financial-Compliance Audit Corrective Action Plan Implementation (EXHIBIT 2).

Ms. Daly advised that two years ago, FWP received a qualified financial audit that contained thirteen recommendations. None of the recommendations from the audit questioned inappropriate spending of FWP funds, they were about issues related to accounting practices -- not misappropriations of funds. Prior to the 2005 audit (for the previous 20 years), FWP has always received unqualified audits. Ms. Daly advised this is a big difference from a qualified audit. The FWP Finance Division has made the 2005 audit their first priority and have had the full support of their Director to ensure that the changes recommended are implemented. She advised that the corrective action plan (EXHIBIT 2), identifies the issues and FWP's plan to correct the problems and their current status. She advised that currently, FWP is being audited for 2006 and 2007 and as a part of that process, the audit team is looking at the 13 recommendations for compliance to see if FWP is doing what was asked of them.
Ms. Daly explained that the auditor's preliminary results indicate that of the 13 items, eight have been corrected and five are in various stages. The five in various stages of being corrected are being addressed but may not be completely resolved at this time. She briefly reviewed each of those items and advised that until the final audit is issued, FWP won't know exactly what will be presented, but regardless, she advised that FWP plans to continue with the corrective actions and to consider additional recommendations that the audit team will make. Ms. Daly advised that FWP is working diligently to comply and improve internal processes. It is FWP's goal to ensure that these processes are in place so these issues aren't repeated. She said the audit provided the opportunity to improve practices and to put in place a number of controls that ensure that the state and federal dollars they receive are well spent and accounted for in the most professional manner.

- **Question/Comments**

Rep. Dickenson asked about safeguarding off-line licenses (EXHIBIT 2, Item 11), wondering what information was being safeguarded. Ms. Daly advised that Item 11 references the backup plan that FWP put in place when they moved from a paper system to an automated system. This plan ensures that if the automated system went down and licenses couldn't be issued by the automated system, FWP would still have a way to issue paper licenses to the agents, so they could still sell and get the licenses out in the event the automated system was down. Ms. Daly explained that annually, FWP issues all agents a certain number of paper licenses to use in this instance. The concern was, what happens to these paper licenses at the end of the license year. So, FWP put in place a process for each agent to be given a specific number of

licenses and at the end of the year the agent must return the licenses to FWP. This ensures that any issued licenses must be accounted for with dollars or else the unissued licenses returned. If there is a difference, the agent pays FWP. This ensures that the agent is not selling the license or issuing the license without FWP knowledge or revenue attached to it.

Sen. Shockley wanted to understand the corrective action plan that is outlined in Item 8. Ms. Daly advised that there were two issues associated with Item 8. First, the auditor recommended that all acquisitions be entered into the SABERS Asset Management Plan according to true cost. Ms. Daly explained that often times when FWP acquires land, they receive part of it as a donation, so there is no cash outlay. She advised that in the expenditure portion, they record what they actually spend, but in the asset management system they were inconsistent with how they recorded it. Sometimes they recorded the donated value and sometimes they didn't, so the auditor wanted FWP to be more consistent in reporting both the actual cash outlay and the donated value. She advised that they have corrected those records.
The second part of the issue had to do with the maintenance of an internal database that FWP maintains. She explained that in addition to the state's asset management system, the FWP database tracks additional information like acreage, funds used, legal descriptions and also the dollars. So when the auditor looked at the two systems, they didn't reconcile. That was because FWP didn't, in all cases, keep track of donated value. Currently, they are in the process of reconciling, but since the agency has been in existence for 100 years and there are a lot of land records to go back through and review. But processes are in place for current and future land acquisitions to be reconciled. Sen. Shockley asked if the terminology in the corrective action plan, "the review of all land values" was something different than what she was discussing. Ms. Daly verified that the terminology might be incorrect, because in fact what FWP is doing currently is reviewing "the land records".

Rep. Witte asked about the 'off-line' paper licenses, (Item 11), and where the money associated with the 30,750 off-line licenses sold during 2003, 2004 and 2005 went. Was it unaccounted for or where did the money end up? Ms. Daly advised that when paper licenses are issued, because the system is down, they are entered into the system once it is back on-line and the money is accounted for and tracked. She emphasized that all of the money from the 30,750 licenses was accounted for and those licenses were all entered in the system. She advised that the auditor's only request regarding Item 11 was to put this policy in writing so the risk of misuse was lessened.

(Break)

Agency Rule Review

Todd Everts - LSD, Lead Staff, gave the Agency Rule Review. He advised that this will be a standard agenda item throughout the interim for this subcommittee. As the staff attorney, he will be reviewing rules that are being proposed by the various agencies. Mr. Everts explained that he and Mr. Greg Petesch meet to review these rules each time a new set is received. He stated that he will also be going over any court cases that the agencies are involved in as well. He then reviewed the authority of the EQC and agency administrative review with the Process Flowchart (EXHIBIT 3).

Mr. Everts advised that he and Mr. Greg Petesch have reviewed the rules in relation to HB 831, Ground Water Appropriations and Closed Basins (EXHIBITS 4 and 5). There will be a public

hearing on the rules, September 26, 2007, at 9 a.m. in the public hearing room at the Department of Public Health and Human Services auditorium. Mr. Everts feels there will be a number of people interested in the making of these rules.

Rep. Vincent asked for clarification regarding the EQC's role in rule making, if the EQC can object to a rule or whether the EQC's statutory ability is to implement the rule and not necessarily be involved with the content of the rule. Mr. Everts explained that if the EQC does not believe that the content or substance of the rule is carrying out the intent of the legislation, which also gets to the statutory authority issue, then that is the EQC's call. The EQC has objected in the past (once with a Coal Methane rule and Sen. Shockley explained that particular situation). Rep. Vincent then asked if the EQC could object to the definition of net depletion and/or the definition of adverse effect that after public comment, the EQC could still object with those definitions on the grounds that the EQC disagrees. Mr. Everts advised that there is a line between the Executive Branch and the Legislature and yes the committee can disagree in terms of what the definition might look like based on what the legislation said and the guidance the legislation provided, but when objecting to an administrative rule, you must object based on the criteria he outlined. It gets back to the authority issue and if it is reasonably necessary to implement the statutory provisions. Rep. Vincent stated that he understands the line between the branches, but HB 831 was very contentious and he wondered if it would be possible to let the next legislative session determine the definitions of net depletion and adverse effect.

Mr. Everts explained that the key language is, "You may object to all or a portion of a proposed rule in writing, because the EQC considers the rules not to have been adopted in substantial compliance with the Montana Administrative Procedures Act." You must look at the procedural process they went through and then go back to the criteria in order to make a basis for your objection. You can't just disagree, there must be a foundation within the administrative act itself and the criteria laid out.

Sen. Shockley clarified that if the EQC gives the department the authority to define, then we are out of luck if we don't like the definitions. Mr. Everts advised there is a fairly broad rule making section within HB 831 which states, "The department may adopt rules to implement the provisions of {sections 14 through 18,19 and 20} "which are the new provisions, basically HB 831. "The rules must be oriented towards protection of existing rights from adverse effects from net depletions caused by new appropriation rights or changes in appropriation rights in closed basins and must be consistent with and not exceed the requirements of" the sections that are laid out within the bill. The sideboards are in HB 831 and there is definitely an emphasis on protecting existing water rights from the adverse effects of net depletion. Mr. Everts advised that in the public hearing, there will be room for interpretation on all sides of the issue and nothing is ever black and white in terms of authority.

Rep. Vincent believes there will be some tweaking and some fixing of this bill, 6 or 8 years down the road, as baseline information is gathered.

Rep. Dickenson advised that when legislation is crafted, legislative intent must be included when rules are defined. She stated a previous example that inadvertently left out a group not intended to be left out when the bill passed.

Rep. Vincent stated that part of the problem with this bill was that it was very broad and included such a sweeping change that it needed to be narrowed down. He explained how difficult it was for the Legislature to try to define those terms.

Rep. Dickenson advised that we have to remember the intent of this committee is for 'oversight', not to re-debate or re-define the bill and that this one will be tricky because we know how controversial water is in this state.

Mr. Everts reviewed FWP's emergency rules that were drafted due to the fire situation this summer. The rules included the closing of Placid and Seeley Lakes so that the helicopters and planes could dip for water. He explained that these rules were necessary for public safety. Mr. Everts advised that there are rules that the EQC will not review, only that the EQC needs to be aware of them. He stated that the only other rule making process that came in was in regards to rules for replacement licenses and that particular public hearing took place on August 15 (the hearing cleaned up the administrative rules regarding illegal use of replacement licenses). This led to a discussion regarding the communication of hearings that will take place between the EQC meetings. He asked how the EQC would like to be notified of these different hearings so they don't miss anything they don't want to miss. Mr. Everts advised that in the past, this committee has left it up to him to review the rules and if there is something extremely important, he will ensure this committee knows about it.

Mr. Everts advised that the Department of Environmental Quality (DEQ) also had a number of rules regarding fee increases over the summer. The DEQ increased the air quality operation and open burning fees. He advised that there was a hearing on August 1, 2007 regarding both sets of those rules and the fees were increased to be commensurate with costs. He advised these fees are reviewed annually and the increase in fees must be commensurate with the permitting costs.

The reason permitting costs go up include inflation, personnel costs and processing costs. There were public hearings on the asbestos fee increase as well as the public water supply rules.

Sen. Shockley asked Bob Lane, Chief Legal Counsel of FWP, if it is within 'executive authority' for a governor to shut down a forest in an emergency situation. Mr. Lane advised he believed it was and if there was doubt about the authority at that time, it has been clarified.

Review of Natural Resource and Environmental State Court Cases

Mr. Everts reviewed the list of significant court cases (EXHIBIT 6). He explained that these cases are active or recently resolved cases and are natural resource type cases or Montana Environmental Policy Act cases. He explained that he generally sends a summary of these cases out to the committee and lets them know that these are the specific cases he will be tracking and reporting on. He advised if there are other cases this committee wants to hear about, he will be happy to research them and bring parties in to discuss each case.

Rep. Vincent asked about one of the emergency FWP rules regarding fire aircraft scooping water to dump on the fires. Rep. Vincent referred specifically to the rule to close Placid and Seeley Lakes. Bob Lane, Chief Legal Counsel, FWP, advised the only reason they implemented the emergency rule was due to public safety. When planes and helicopters are scooping water

out of the lakes, the public cannot be in the water. It's only a public safety issue as the safety of the recreationists as well as the pilots can be put in jeopardy.

Rep. Bixby asked about one of the Environmental and Natural Resource Litigations, the Administrative Contested Case Proceedings and Water Court. Rep. Bixby wondered why they can't work these items out administratively rather than contesting them in court. Mr. Everts advised that this is contested case hearing process in the Water Court where FWP is objecting to new applications for water. The FWP is not necessarily going up against the Department of Natural Resources and Conservation (DNRC) itself, it is coming into the proceedings and making those objections. Sen. Shockley advised that this is what the Water Court is for, to handle these objections in a formal manner and deal with it. Mr. Lane advised that is correct, it is not that they can't work things out, it is a matter of having different roles.

Rep. Dickenson asked about the Game Farm issue, if Mr. Everts will keep the committee apprised of the decisions that come down. Mr. Everts advised he would keep the committee informed. Rep. Dickenson also inquired about a case regarding the fire/flame retardant and how it is impacting the habitat and wildlife. Mr. Lane advised that would be a law suit against federal agencies, not the state.

Sen. Shockley gave an update on a case in the Bitterroot Valley which will be heard on October 10, 2007. It will have an impact on landowners with property adjacent to creeks.

Mr. Everts asked the committee if they would like to hear about every rule that is initiated by the agencies and also if they would like to be called between meetings for hearings. He advised he would also send out an abbreviated version of the rules via e-mail. The committee agreed that his abbreviated version would be appropriate.

02:59:51 **PUBLIC COMMENT on any matter not contained in this agenda and that is within the jurisdiction of the EQC Agency Oversight Subcommittee**

There was no public comment.

Department of Fish Wildlife and Parks Overview Continued

Ken McDonald, FWP, WIldlife Division Administrator, introduced Quentin Kujala and Carolyn Sime to give a brief overview and update on the Status of Future Hunting Regulations for Wolves. Mr. McDonald would give the update on Grizzly Bears after they were finished.

Quentin Kujala, DFWP, Management Bureau Chief, advised that they had just finished with meetings around the state, presenting to the seven Citizen Advisory Committee's (CAC's), regarding future hunting regulations for wolves. He explained that his presentation included the history of the wolf program and Montana's plan/legislation for a wolf license and future hunting regulations. Mr. Kujala advised that his presentation touched upon things that need to be considered along with questions and answers regarding a wolf season, like wolf populations, objectives and monitoring. There are many issues to consider that are specific and unique only to the wolves, such as breeding pair definitions that are included in a de-listed review, monitor collars versus other traditional monitoring methods, state distribution and geographic overlay, timing of harvest and harvesting methods. Mr Kujala advised that by December 20, 2007, FWP

must have a specific season type articulated for presentation to the FWP Commission. Whatever comes out of that discussion in the form of a tentative adoption would go forward for public comment through the month of January, looking for a final adoption from the Commission in mid to late February. Then the season structure will be defined and regulations will be produced. Quotas would still need to be discussed in late spring and summer. In regards to the numbers of wolves that could be harvested, he advised that Carolyn Sime has done research with the University of Montana to run models to come up with a range of numbers where results might be predicted in 'hunter or trapper take'. He advised they are looking at a potential fall 2008 hunting season, spinning off from an anticipated February 2008 de-listing decision. There are still several 'ifs' and legal challenges to get through.

- **Questions/Comments**

Rep. Vincent asked if managing the wolf populations would be done by both trapping the wolves and hunting the wolves. Ms. Carolyn Sime, FWP, Wolf Coordinator, advised that in NW Montana there are a few new packs with most of the population growth being along the Montana/Idaho border. Regarding the management of these populations, she advised FWP would probably need to utilize both trapping and the use of firearms if they really want to regulate numbers in such a way that would address concerns about livestock as well as big game populations. Rep. Vincent asked about 'spotlighting' as a means to help control the population, since the wolves become nocturnal. Ms. Sime advised that spotlighting is not a legal means in terms of aiding hunters and she sees it as an unlikely means for FWP as well.

Sen. Shockley asked Mr. Kujala if the FWP has a position as to when the wolf season should be. Mr. Kujala advised that at this point the season proposal is still being developed, but that it would be easiest to overlay it during the current deer and elk season, putting it in place on top of the existing season structure and season dates. Mid to late fall through early winter is the current proposal which would include the trapping season. Sen. Shockley asked for clarification regarding the quota of the number of wolves that can be harvested and the locations where they can be harvested. Mr. Kujala advised that this information will be determined by Ms. Sime and a research committee from the University of Montana, but that the state cannot fall below the federally mandated fifteen breeding pairs of wolves after any given harvest, including both hunting and trapping.

Department of Fish Wildlife and Parks Overview Continued

Ken McDonald, FWP, Wildlife Division Administrator, gave an update on the Status of Future Hunting Regulations for Grizzly Bears. Mr. McDonald advised that one of the overriding objectives of managing both the wolf and grizzly bear populations is to bring them into the wildlife management fold so they are treated like mountain lions, bears, deer and elk and not something that is unique with too much focus. He advised that there are two grizzly bear populations, one centered in and around Yellowstone Park and the second in the NW part of the state, which is part of the northern continental divide ecosystem. Regulatory wise, the Yellowstone population was recently de-listed, but the NW populations are still listed as an endangered species. The Yellowstone population is managed under a cooperative agreement by the states of Montana, Wyoming and Idaho and since they are de-listed, there is an opportunity for a hunting season, but that is not the case for the NW population, they are not de-listed. There is an allowable mortality rate for the Yellowstone population and as long as we stay under the allowable mortality rate, the population should stay stable. There is an annual

monitoring rate with guidelines that state, not more than 15% of the males and 9% of the females can be killed any given year for any reason. They start with a population estimate and then they monitor mortality rates, i.e., how many bears die for any reason, those that have to be killed from being in trouble (garbage, human conflict, etc.), and those that are hit by cars and trains, etc. Whatever number is left after the mortality count is the number that can potentially be hunted. But that number has to be divided between the three states. For example, in 2004, there were a total of 8 or 9 bears that could be hunted and that number was divided up between the three states, so it is generally a very small number that can be hunted each year. In terms of future hunting plans, there are two law suits that have been filed against FWP regarding the de-listing and a third suit that is pending. FWP is waiting to see what happens with the litigation and probably won't push for a hunting season for the next 1-2 years. The 2007 legislative session provided authority to the commission to allow a bear license to be auctioned or sold through a lottery. FWP feels this could generate quite a bit of revenue that could go back into the overall management of bears.

- **Questions/Comments**

Sen. Shockley asked about grizzlies in the Selway-Bitterroot area. He advised that he has heard there is one bear in the area currently. Mr. Chris Smith, DFWP, Chief of Staff, advised there is not a population of grizzly bears in the Bitterroot ecosystem, it has been verified there is one male adult grizzly, but that is not considered a grizzly population in the Bitterroot.

03:29:30 **PUBLIC COMMENT**

There was no public comment.

Department of Fish Wildlife and Parks Overview Continued

Jeff Hagener, FWP, Director of FWP, gave an overview on Managing Big Game Populations as Private Lands are being Closed to Public Hunting. Director Hagener advised that there are a number of reasons why the management of big game populations is becoming more challenging. The changing/shifting climatic conditions (warmer winters), make it very difficult, as does the fact that private lands are being shut down for harvest management and hunting. These closures are limiting the access to big game and these animals are figuring out the safe areas and are migrating to safer lands. It is becoming more of a challenge to manage big game as they are 'harbored' on some of these closed private lands. Mr. Hagener introduced Alan Charles of FWP to give additional details of the challenges of managing the big game populations.

Alan Charles, FWP, Coordinator of Landowner - Sportsmen Relations. Mr. Charles advised that he administers the Block Management Hunting Access Program and also the Game Damage Program for FWP. He advised that he agrees with the Director that this issue is very complex. He noted that it was 20 years ago that HJR 36 was adopted calling for an interim study committee to look at these same issues. He said that 20 years ago, it was determined that warmer winter climates, as well as more closed lands were issues in managing big game populations. He pointed out that these are still major issues for the state of Montana 20 years later. You have wild animals that don't respect property boundaries, you have strong private property rights, (the land mass in Montana is 64% privately owned), and much of that property is key habitat for big game. The primary tool FWP has to work with in managing big game

populations is public hunting. In Montana, a hunter must have permission to hunt on private land and that is where the conflict comes in. Mr. Charles advised many of the landowners now are nontraditional landowners and they don't want hunting on their property or they lease it out to commercially profit from private hunting opportunities. This makes quite a bit of land and game not available to public hunters who FWP depend on to manage big game populations. Mr. Charles explained that FWP's approach to these challenges include the following: during the season setting process, FWP actively solicits input from both the landowners and the public to determine trend and population objectives to set what they feel is an appropriate season. And the season structures range from conservative to liberal. In the areas where the animal herd is above objective, they may adopt liberal harvests of either sex animals or include issuing additional tags for cows and does. He explained that FWP designates a 5 week season, consistent throughout the state, which attempts to focus all parties, hunters, landowners and outfitters on harvesting the animals on and off of private lands. He advised that FWP can also adopt additional management seasons either before or after that 5 week season to harvest animals that might not have been available during the season. Season structure is a major tool, both a biological and social tool, that FWP is able to use to help manage and harvest big game populations. Some of the licenses also allow hunters to take more than one elk in a given season. These flexible stipulations help in harvesting. There is also the Habitat Montana Program which currently protects, through conservation easements, habitat for big game animals. In addition, FWP has enhanced the Block Management Program which is now the largest private land hunting access program of its kind in the nation. This fall there will be approximately 1,250 landowners enrolling 8.3 million acres in that program to provide public access. They are also exploring more access corridor agreements with private landowners, where the landowner might not allow hunting on their land, but would allow the public to go through their land onto the public land behind them. That is an effective way to get to additional animals. Local hunt coordinators are also hired to work with the landowners to direct hunters to the animals that are hard to reach. FWP is also sponsoring public outreach programs, working through education to promote more responsible public hunting. Landowners are often concerned with having the public on their property because of the problems they cause. FWP is trying to make the public more aware of these issues. The Private Land Public Wildlife Council is working on many of these issues as is a new council just appointed by the governor with 15 citizens, landowners, outfitters, hunters, two legislators and a FWP Commissioner. Their charge is to develop recommendations regarding hunting access and management of game, as well as the change of land ownership and what incentives might be developed to promote the management of big game animals. They will bring their recommendations to the next Legislature. There are also many localized working groups throughout the state trying to work on these same issues. For example, the Devil's Kitchen Group in the Cascade area has been successful in trying to balance a shared vision for managing wildlife. Mr. Charles advised this issue continues to become more complex, but FWP tries to work with all players involved, in a cooperative and responsive effort, to manage the populations.

- **Question/Comments**

Rep. Vincent asked about landowner preference tags and how that program works for landowners versus the public hunters who have put in for licenses. Mr. Charles advised that 15% of the special permits in any elk hunting district are set aside for landowners who own 640 or more acres in that district. If there are sufficient landowners who apply for those, then they draw the permit. In any special deer or antelope districts, the same thing applies, the landowners get 15% of the permits and must own 160 acres. The history behind this is that the

landowners are providing critical habitat for the game species and subsequently deserve some sort of special opportunity to draw these special permits. Those have been in place for quite some time. Rep. Vincent advised that his constituent asked about never having the opportunity to hunt in specific areas because of not being able to get a tag because of the landowners having the preference tags. Mr. Charles advised that there is a perception of this not being fair, but the bottom line and ultimately the law states the landowners do get the preference tags in order to recognize them for their efforts.

Rep. Dickenson asked if there has been improvement to private lands and public access and if he feels things are slowly getting better. Mr. Charles advised that he feels there has been tremendous effort in the cooperation of private and public sectors. He advised that there are some landowners that are working with him now that have not previously worked with FWP and there is certainly heightened awareness of the complexity of these issues. But basically, the changes going on with the private lands changing hands is a huge issue. New landowners and/or new generations of landowners, plus the animals becoming conditioned to the safer areas makes it very challenging. He advised the issue is not going to go away, but they will continue to work on all of these issues.

Sen. Shockley asked if second cow elk tags could be purchased by people from out of state. Mr. Charles advised in those areas where there are an abundance of cows, yes they can apply for those permits. Sen. Shockley asked if landowners who do not allow hunting get paid for game damage. Mr. Charles advised that FWP does not provide any compensation to any landowners for game damage. What the department provides is materials and services to those landowners who meet the public hunting access eligibility. Sen. Shockley also asked if non-traditional seasons should be considered if big game populations need to be reduced. Mr. Charles advised they have discussed and considered non-traditional seasons, but there are many issues to be considered when trying to determine if that would be an option, like birthing cycles, newborns nursing, breeding periods, etc. The public image that would be associated with that is very concerning as well. Mr. Charles said they continually try to determine if there are any other timeframes to harvest these animals before they come down from the high country and do damage.

Sen. Shockley asked if hunting will ever be allowed in the National Parks. Director Hagener advised it is and has been discussed more recently. Colorado passed a resolution that went to the National Park Service, but nothing has happened yet. Montana's resolution asked to let sportsmen hunt inside the park and the National Park Service has come back and advised it will take it under consideration, but has taken no action yet. Sen. Shockley asked if FWP could haze the animals off private lands so they could be hunted on public lands. Director Hagener advised that yes they have been able to haze animals off private land but only with the permission of the landowner. They have also hired local ground 'herders' where allowed. Sen. Shockley advised there was a very positive article about Montana's FWP in the Smithsonian magazine, he would bring it in. Sen. Shockley also asked why FWP is stocking bass fish in the high lakes. Director Hagener explained that in all free flowing streams and rivers, those are wild fishes and are not stocked. However, in closed lakes, stocking of fish, some being non-native, does occur as long as they will not disrupt or harm the ecosystem and that is largely due to constituent demand. Mr. Chris Smith advised he has a database as to what fish are stocked where and why and it goes back to the 1920s. He advised that many of those lakes have had bass populations since the 1920s and 1930s and have had established populations, so FWP continues to stock these non-native fish in order to maintain those fishery habitats. They have,

however, taken out non-native fish if they have taken over the native fish and rehabilitate and restore the natural fishery if necessary. Sen. Shockley advised that maybe FWP should let nature take its course when stocking native fish.

Rep. Vincent asked about Tiger Muskies in Horseshoe Lake and wondered if they are as aggressive of a species as proclaimed to be, biting swimmers, etc. and if this is an example of sportsmen pushing the stocking issue too far. Mr. Ken McDonald, FWP, advised Tiger Muskies are a sterile hybrid fish that were stocked in Horseshoe Lake after it went from a productive trout fishery to a non-fishery with fish that killed the trout. The Tiger Muskies were introduced to rehabilitate it back to a trout fishery, but since then the lake itself has turned into a recreational lake versus a fishery, so it has become a conflict between recreational uses. He advised that Tiger Muskies do not eat children. It is mostly a conflict regarding the recreational use of the lake (EXHIBIT 7).

04:21:51 **PUBLIC COMMENT**

There was no public comment.

- **Additional Questions/Comments**

Rep. Witte asked Director Hagener about the Helena deer population problem in Helena. He questioned the decision to use sharp shooters and wanted to know the numbers of deer to be killed and what the cost will be to the tax payers. Director Hagener advised that several years ago a bill was passed to allow the cities to determine how to best control some of these urban animal populations. Director Hagener advised the City of Helena has looked at a number of ways to cut deer population and control the problem. Helena has approximately 600-700 deer living in the city limits. The city is to develop a plan and FWP will assist with the plan. FWP has already provided funds to help them with their survey work, to get the best estimates they can of the deer population, as well as taking part in the Urban Wildlife Task Force. So, when the city has fully developed their plan, they will bring it before the FWP Commission for the commission to approve their plan. The city has already reviewed many, many options and currently believe that they want to hire certified sharp shooters to care for this problem. Their objective is to cut the deer population in half or as close to half as they can, so they would like to harvest up to 350 deer with the certified sharp shooters. The city hasn't determined who the sharp shooters will be as of yet -- many of the details have not been worked out. Details like developing a certification process for the shooters, who the shooters will be and what to do with the harvested deer population have not yet been determined. The details will be addressed further this fall. Rep. Witte advised that he believes that residents on the outskirts/fringe of any given city should be able to buy a permit, (creating a revenue opportunity for FWP), and any certified hunter could then help harvest the deer population on the outskirts of the city, thus it would keep the problem at bay. Director Hagener advised that the deer in the Helena do not wander in and out of the city limits, as is the case in other cities, but by and large the deer population in the city was born and raised in the city limits and has never left the city limits.

Sen. Shockley advised that Joe Kolman has a copy of the Smithsonian article he discussed earlier (EXHIBIT 8).

A copy of the FWP Legislative Audit was also distributed (EXHIBIT 9).

04:32:28 **INSTRUCTIONS TO STAFF/NEXT SUBCOMMITTEE MEETING**

Mr. Everts advised that during each meeting, he and the Chairman will arrange for a different agency to present an overview. At the next Agency Oversight Subcommittee Meeting, DNRC will present.

04:33:53 **ADJOURN**

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