

Report on Water Policy
to the *55th* Legislature

Environmental Quality Council
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Environmental Quality Council

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INTRODUCTION :

This is the first biennial report to the Montana Legislature regarding water policy prepared by the Environmental Quality Council (EQC). The Water Policy Committee prepared its first biennial Water Policy Report to the Montana Legislature in 1985, and prepared four thereafter. The 1995 Montana Legislature then eliminated the Water Policy Committee and transferred its responsibilities to the EQC. The EQC is a 17-member, bipartisan committee that provides timely and authoritative information on the trends and conditions in the quality of Montana's environment, including the trends and conditions in water policy.

During the 1996 legislative interim, the Environmental Quality Council (EQC) looked at a number of water policy issues. Montana statutes charge the EQC with the responsibility of analyzing and commenting on four specific water policy issues: the state water plan, the renewable resources grant and loan program, water-related research, and the water resources data management system. Through presentations by agency experts and the ensuing discussion, the EQC fulfilled its statutory duties. In addition to its statutory responsibilities, the EQC can choose to study other timely water policy issues. This interim, the EQC chose to analyze instream flows and water leasing.

This report sets forth the EQC's activities during the 1995-96 legislative interim regarding water policy. It covers the EQC's analysis and comments on its four statutory responsibilities and the EQC's discussions regarding instream flows and water leasing. The brevity of this report is a testament to how some of the mechanisms for studying and implementing statewide water policies are in place and operating on their own. The EQC's function this interim was largely one of legislative oversight. The EQC's water policy oversight was interdisciplinary; the compliance and enforcement subcommittee and the indicators subcommittee also addressed pertinent water policy issues.

BACKGROUND :

In 1985, the Montana Legislature established a permanent Water Policy Committee to advise the legislature on the adequacy of Montana's water policy; to oversee the effect of state executive agencies' policies and activities on water resources; to communicate with the public regarding the state's water resources; and to analyze and comment on the state water plan, the water development program, water-related research, and the water resources data management system.

During its first legislative interim, the Water Policy Committee produced a report emphasizing the need for comprehensive and coordinated water management. The report suggested that water management be based on scientific study, sound policy-making, and informed public participation. In its ensuing ten years, the Water Policy Committee produced seminal reports and facilitated many of the water policy structures now in place.

In reorganizing the legislative branch, the 1995 Legislature subsequently eliminated the Water Policy Committee and transferred the Committee's duties to the Environmental Quality Council. The EQC decided not to create a subcommittee for the 1995-96 interim to address water policy issues but instead chose to have the Council as a whole address these issues. In choosing not to create a subcommittee on water policy, the EQC reasoned that many of the mechanisms that the Water Policy Committee had worked to develop were in place and facilitating their own dialogues. Therefore, the EQC's role in water policy during the 1995-96 interim was one of legislative oversight.

Section 85-2-105, MCA sets forth the EQC's current water policy duties. These duties include: 1) analyzing and commenting on the state water plan; 2) analyzing and commenting on the renewable resource grant and loan program report; 3) analyzing and commenting on water-related research; and 4) analyzing, verifying, and commenting on the adequacy of and information contained in the water resources data management system. Additionally, during the 1995-96 interim, the EQC looked into water policy issues that last interim's Water Policy Committee recommended for further study, such as instream flows and water leasing.

STATUTORY DUTIES

1. State Water Plan

Section 85-2-105(3), MCA, requires the EQC to:

- (a) . . . analyze and comment on the state water plan required by 85-1-203, [MCA] when filed by the department . . .

Background

From 1987 to 1994, the Department of Natural Resources and Conservation (DNRC) used a tightly structured planning process to develop sections of a statewide water plan. The process consisted of a governor-appointed Water Plan Advisory Council (WPAC), public meetings to identify relevant issues for study, broad-based steering committees appointed by the WPAC to analyze the identified issues, public hearings on the steering committee and WPAC recommendations, and Board of Natural Resources and Conservation adoption of the final plan sections. In the past, the water planning process looked at the following issues: instream flow, water storage, and the connection between water quantity and water quality.

The DNRC decided that during the 1993-1994 interim, instead of analyzing a specific water issue, it would analyze the process itself and therefore created the State Water Plan Review Working Group. Using extensive public involvement, the review working group produced a 17-point decision summary outlining suggestions on the state water plan process. The DNRC approved the 17-point decision summary regarding the water plan evaluation and the Water Policy Committee endorsed this document and the implementing legislation during the 1995 session. The legislation, HB 192, failed. However, its concept of removing the Board of Natural Resources and Conservation (BNRC) from the state water planning process was in effect approved by the passage of SB 234 that eliminated the BNRC altogether.

Council Action

During the 1995-96 interim, Rich Moy, Chief of the DNRC's Water Management Bureau gave the EQC an update on the State Water Plan and the DNRC's activities regarding water policy. In his presentation, Rich Moy noted that the Water Management Bureau did not compile a state water plan this interim, but instead concentrated its efforts on assisting local watershed groups in solving their problems.

Some of the Water Management Bureau's efforts include: staff assistance for the Bitterroot Water Forum, the Upper Clark Fork Steering Committee, the Ruby River Management Plan, and Musselshell water quality issues; surface flows and surface and ground water studies on the Beaverhead river; development of rural water supply systems; and many other projects. Because there is no water advisory board, DNRC staff was able to support local watershed groups. In addition to providing staff assistance for local projects, the DNRC supports the Montana

Watercourse in Bozeman. The Watercourse's mission is to provide objective information and workshops to local watershed groups to help the groups solve problems.

Rich Moy's presentation at the September 14-15, 1995 EQC meeting fulfilled the EQC's duty to analyze and comment on the state water plan.

2. Renewable Resource Grant and Loan Program

Section 85-2-105(3), MCA, requires the EQC to:

(b) analyze and comment on the report of the status of the state's renewable resource grant and loan program required by 85-1-621, [MCA] when filed by the department . . .

Montana's Renewable Resource Grant and Loan Program states:

85-1-602. Objectives. (1) The department shall administer a renewable resource grant and loan program to enhance Montana's renewable resources through projects that measurably conserve, develop, manage, or preserve resources. Either grants or loans may be provided to fund the following:

- (a) feasibility, design, research, and resource assessment studies;
 - (b) preparation of construction, rehabilitation, or production plans; and
 - (c) construction, rehabilitation, production, education, or other implementation efforts.
- (2) Projects that may enhance renewable resources in Montana include but are not limited to:
- (a) development of natural resource-based recreation;
 - (b) development of offstream and tributary storage;
 - (c) improvement of water use efficiency, including development of new, efficient water systems, rehabilitation of older, less efficient water systems, and acquisition and installation of measuring devices required under 85-2-113; and development of state-tribal, state-federal, and state-tribal-federal water projects; and
 - (d) advancement of farming practices that reduce agricultural chemical use.
- (3) The renewable resource grant and loan program is the key implementation portion of the state water plan and must be administered to encourage grant and loan applications for projects designed to accomplish the objectives of the plan.

The DNRC is required to submit a copy of the report to the EQC, formerly the Water Policy Committee. The Council must analyze and comment on the report when filed by the DNRC.

Background

Originally, the DNRC filed its report just prior to legislative sessions, after the Water Policy Committee had concluded its interim business. For this reason, historically, the Committee did not analyze or comment on the report.

The 1991-92 Water Policy Committee recommended in its report to the 52nd Legislature that the DNRC submit its draft report to the Committee at an earlier date. The DNRC complied with this request and submitted a draft report to the Committee at its October, 1994 meeting. The Committee recommended that next interim's Committee, now the EQC, continue to work towards efficient and earlier participation in the review and prioritization process.

Additionally, the Committee remained concerned about the continued use of trust funds, through the grant process, to fund general operating expenses of state agencies. The Committee recommended that the 1995-96 Committee address this issue if the 1995 Legislature did not take substantive action. HJR 28, which requested a study of RIGWAT issues, failed during the 54th Legislature.

Council Action

John Tubbs from the Department of Natural Resources and Conservation updated the EQC on the status of the renewable resources grant and loan program. He presented the list of grant requests, their order of priority, the total project cost, the grant request, the recommended grant funding, the cumulative grant funding, and the loan funding requested. This list is included as **Appendix 1**. In addition, the Legislative Finance Committee, along with the EQC, appointed a four-person subcommittee to analyze the potential issues arising with Resource Indemnity Trust funding shortfalls. The subcommittee made recommendations on the following: 1) narrow uses of RIT interest and proceeds to specific purposes; 2) amend statutes to include specific uses of RIT funds, and de-earmark the remaining revenues; 3) alleviate cash flow problems; 4) change the method of presenting RIT revenue and expenditure information to the legislature; 5) use of proceeds; 6) oil and gas well bonding; and 7) minor statutory cleanup.

John Tubbs' presentation, the subcommittee's actions, and the ensuing discussion fulfilled the EQC's statutory responsibility for analysis and comment on the renewable resource grant and loan program.

3. Water Research

Section 85-2-105(3), MCA, requires the EQC to:

- (c) analyze and comment on water-related research undertaken by any state agency, institution, college, or university . . .

Background

Water Resources Center

In 1988, the Water Policy Committee recommended that the university system restructure the Water Research Center at Montana State University to provide better services in water research and education on water issues and to improve communication with water users.

The Water Policy Committee closely followed the Montana University System's restructuring of the Water Resources Center during the 1993-94 interim. Dorothy Bradley, the Water Center

director, briefed the Committee on her plans for continuing the Water Center's renewal. She said that a useful Water Center will be one that provides a valuable interface between academic and other elements of society and also acts as a "switchboard" for water-related research. Ms. Bradley said her goal was "to help make Montana become a place where responsible citizens make decisions based on knowledge. This is the best way to ensure we remain stewards of our future."

Montana Watercourse

The Montana Watercourse is a statewide water education program started in 1989 and centered at Montana State University. The goal of the Watercourse program is to promote and facilitate the awareness of Montana's water resources and related issues through the development of special workshops, learning materials, conferences, activities, and reference guides. The Watercourse emphasizes public understanding of the importance of water to all user groups and the belief that Montana's future social and economic prosperity hinges on wise water management. The program scope is statewide and its delivery unbiased. Its mission is to build informed leadership in resource decisionmaking. The topics covered respond to the information needs of many diverse interest groups. The Watercourse program relies on cooperation with other resource agencies, water educators, and Montana citizens.

The Montana Watercourse has two major components, an Adult Water Awareness Program and a Water Education for Teachers Program, or Project WET Montana.

Council Action

Dorothy Bradley updated the EQC on the Water Center's research and programs. Her update included a discussion of the Drinking Water Assistance Center and a report to the EQC. The report is included as **Appendix 2**. The report stated that "[t]he Montana Water Center program includes: (1) a water resource lending library and information service; (2) a water directory/database that lists academic, professional, and citizen names, organizations, and interests; (3) an annual water research program emphasizing state needs; (4) partnership programs between the private and government sectors to respond to water-related challenges; and (5) a new technical and training assistance program for small, drinking water systems which is presently focusing on demonstrations of alternative technology and wellhead protection.

Dorothy Bradley's presentation and the EQC's ensuing discussion fulfilled the EQC's statutory responsibilities for water-related research.

4. Water Data Management

Section 85-2-105(3), MCA, requires the EQC to:

- (d) analyze, verify, and comment on the adequacy of and information contained in the water resources data management system maintained by the department [DNRC] under 85-2-112
- ...

Background

As the controversy over water issues increases in Montana, reliable and accessible information regarding these issues becomes ever more important. Effective and efficient water data management, including the gathering, storage, and dissemination of water data, is necessary for a valid long-term water policy that ultimately serves all Montanans.

The Montana Water Information System

In 1986, the DNRC delegated its responsibility to "establish and maintain a centralized and efficient water resources data management system" to the Montana Water Information System (WIS). The WIS, which is part of the Natural Resources Information System (NRIS), provides a central contact point for locating and obtaining all types of water data. In fact, the Water Policy Committee played an important role in the creation of WIS.

The Ground Water Assessment Program

The Montana Ground Water Assessment Act, section 2-85-901 et seq., MCA, systematically funds efforts to evaluate Montana's ground water resource. Its major purposes are:

- * to coordinate Montana's ground water data collection and information distribution efforts,
- * to develop an extensive and better planned statewide ambient water level and water quality monitoring network, and
- * to create a 21-year program to systematically evaluate Montana's ground water resource.

In the 1995 biennium, the Assessment Act was to be funded through a diversion of \$666,000 per year from the Resource Indemnity Trust (RIT) tax proceeds. However, Ground Water Assessment Act programs experienced a serious funding short-fall in 1994 due to lower than expected revenues to the Resource Indemnity Ground Water Assessment Trust (RIGWAT), formerly the RIT, and due to an error in the Metalliferous Mining Tax law.

In short, the programs received \$262,000 less than was expected for the year. This resulted in personnel layoffs and a total stoppage of field work. To help end the funding crisis, the steering committee chair assisted the Montana Bureau of Mines and Geology staff in making a series of detailed presentations to the Water Policy Committee, Environmental Quality Council, Revenue Oversight Committee, and Legislative Finance Committee. These efforts resulted in the Governor signing a grant agreement to ensure the Assessment Act programs would receive full funding for FY 95, and to eliminate the deficit. The legislature passed SB 46 to correct the error in the Metalliferous Mine Tax law and address funding for the ground water programs in the long-term.

Council Action

Jim Stimson, Coordinator of the WIS at the Montana State Library periodically updated the EQC on the water resources data management system and the ground water program. For example, Mr. Stimson presented a briefing summary on the Montana Water Information System in which he outlined the number of information requests he receives, summaries of special projects, and committee activities. Additionally, Mr. Stimson presented a report to the EQC on the water information systems activities and projects. The briefing summary and report are included as **Appendix 3**.

Mr. Stimson also discussed that the Ground Water Assessment Steering Committee resolved an issue regarding state/tribal relations in the Kalispell/Flathead area. The resolution, reached through a cooperative agreement, was significant because the reservation lands are sizable and a convincing ground water study requires access to those lands.

Allan Cox, Director of the NRIS and Mr. Stimson requested legislation to modify the statutes that direct the water data management system. Specifically, they requested that current Montana law be changed to reflect that NRIS, not the DNRC, fully staffs, operates, and supports WIS. Therefore, the proposed bill would amend statutory references to WIS by moving DNRC oversight to NRIS to reflect that NRIS obtained startup funding for the system and subsequently staffed and operated it. The EQC agreed to sponsor the bill adopting these requests.

Jim Stimson's update and any ensuing discussion fulfilled the EQC's statutory responsibility regarding information contained in the water resources data management system.

ADDITIONAL ISSUES

1. Water Leasing

Section 85-2-436, MCA, requires the Department of Fish, Wildlife, & Parks (DFWP) and the DNRC to conduct a Water Leasing Study in consultation with the EQC.

Background

Partially in response to a severe drought in 1988, the 1989 Legislature passed a water leasing study bill. The original study bill allowed for the DFWP to study up to five streams and expired in 1993. The 1991 legislature extended the leasing period to ten years and increased the five-stream limit to ten. The 1993 Legislature further extended leasing to up to 20 streams and requested an annual report for each study. The study has concentrated on smaller streams.

The 1991-92 Water Policy Committee recommended that the DFWP increase its efforts to use the water leasing process to improve Montana's fisheries. During the 1993-94 interim, the Committee was again encouraged by the DFWP's continued progress in the Water Leasing Study, specifically, the department overcoming the initial program problems including public uncertainty with the program, complex water rights issues involving many water rights holders, public relations issues involving the DFWP, and economic concerns.

A final report is not due to the legislature until 1998.

Action Taken:

Liter Spence from the Fisheries Division at DFWP gave a presentation to the EQC on the water leasing program, including an historical perspective and overview of the program. In addition, the DFWP submitted its annual progress reports and water leasing studies to the EQC, DNRC, and the Montana Fish, Wildlife and Parks Commission. These reports are included as **Appendix 4**.

2. Instream Flow Study

Few water issues have been as controversial in Montana as the issue of instream flow. The purpose of instream flow is to maintain or increase the flow of water in the watercourse for fisheries, recreation, and the protection of public health, while protecting existing water users and the stability of Montana's agricultural economy.

Background

The legislature has addressed instream flow issues periodically since at least 1969. In the 1989, 1991, and 1993 Sessions, the legislature debated controversial legislation specifically designed to increase instream flows in Montana.

Understanding its unique and comprehensive responsibility to "advise" the legislature regarding state water policy, "oversee" the policies and activities of state executive agencies as they affect Montana water resources, and to "communicate" with the public on water policy issues, the 1993-94 Water Policy Committee undertook an interim instream flow study.

The Committee's goals for the study were to educate the members of the Committee, the legislature, and members of the public regarding instream flow issues. The study included a review of Montana water law and the selection of a particular basin for study focus, specifically, the Big Hole River Basin. The Committee scheduled a series of public meetings during four days in the basin. The public meetings were well-attended and provided a forum for lively discussions on instream flow issues. The Committee believed that their work in the basin contributed significantly to the success of executive branch drought mitigation measures taken in the basin during the extended 1994 drought.

Also, the Committee believed that their educational approach contributed to the success of HB 472 during the 1995 Session. HB 472 allows for the first time under Montana water law a temporary change of a consumptive appropriation right to instream flow to benefit the fishery resource. It allows private entities to work with owners of water rights to lease water to benefit fisheries.

Council Action

Larry Holman, Chief of the Water Rights Bureau at the Department of Natural Resources and Conservation gave the EQC an update on HB 472. To date, the department had not had any applications for water leasing. Mr. Holman stated that before private entities submit an

application they have to publish their intent. So far, no one had done that. Mr. Holman further stated that HB 472 also calls for a working group from the governor's office to prepare a report. The Governor appointed an HB 472 Instream Flow Working Group. The Montana Consensus Council gave the EQC a memorandum outlining the working group's accomplishments to date and suggestions to improve the possibility of leasing water rights for fishery resources. The Montana Stockgrowers Association, Montana Farm Bureau Federation, Montana Water Resources Association, Montana Association of Conservation Districts, Montana Wildlife Federation, Montana Trout Unlimited, and the Montana Consensus Council produced a brochure on "Leasing Water Rights to Benefit Fisheries: Building Private Partnerships for Montana's Fish." The memorandum and brochure are included as **Appendix 5**.

HB 472 is scheduled to terminate in 2005. The DNRC set up procedures for implementing HB 472, but they have not been tested since there have been no applications.

Additionally, Bruce Farling, Executive Director of the Montana Council of Trout Unlimited gave an update on HB 472 instream flow.

CONCLUSION

In conclusion, during the 1995-96 interim, the EQC fulfilled its statutory duties to analyze and comment on the state water plan, the renewable resource grant and loan program, water-related research, and analyze, verify, and comment on the adequacy of and information contained in the water resources data management system. Additionally, the EQC discussed instream flows and water leasing.

Electronic copies of the appendices for this report are not available. For paper copies, please contact the EQC Office.