



ENVIRONMENTAL QUALITY COUNCIL

PO BOX 201704
HELENA, MONTANA 59620-1704
(406) 444-3742

GOVERNOR JUDY MARTZ
DESIGNATED REPRESENTATIVE
Todd O'Hair

HOUSE MEMBERS
Debby Barrett
Paul Clark
Christopher Harris
Don Hedges
Monica J. Lindeen
Doug Mood

SENATE MEMBERS
Mack Cole
Pete Ekegren
Bea McCarthy
Walter L. McNutt
Jon Tester
Ken Toole

PUBLIC MEMBERS
Tom Ebzery
Julia Page
Ellen Porter
Howard F. Strause

LEGISLATIVE
ENVIRONMENTAL
ANALYST
Todd Everts

**ENVIRONMENTAL QUALITY COUNCIL
Coal Bed Methane/Water Policy Subcommittee
February 7, 2002
FINAL MINUTES**

COUNCIL MEMBERS PRESENT

**SEN. MACK COLE, Chair
MS. JULIA PAGE
SEN. BEA McCARTHY**

**SEN. JON TESTER, Vice Chair
MR. TOM EBZERY**

COUNCIL MEMBERS EXCUSED

SEN. PETE EKEGREN

STAFF MEMBERS PRESENT

Ms. Mary Vandebosch

Ms. Robyn Lund, Secretary

AGENDA

Attachment 1

VISITORS' LIST

Attachment 2

SUBCOMMITTEE ACTION

- Approved December minutes
- Adopted agenda for May meeting
- Approved recommendation to produce a brief report of Subcommittee activities

I PROJECTED EFFECTS OF COAL BED METHANE (CBM) DEVELOPMENT ON WATER QUALITY

John Wheaton, Montana Bureau of Mines and Geology (MBMG), said that he would be talking about the ground water quantity effects of CBM. He emphasized that information, discussions, and impacts are very site specific. Everything comes back to monitoring. Coal bed methane is a natural gas. It carries a separate definition because water is produced as the byproduct and CBM is associated with coal seams. If the coal seams are aquifers, then there is a conflict between the removal of water and the existing water uses. Water is produced in larger quantities than with traditional natural gas.

In the Powder River Basin coal seams are aquifers. Methane development is therefore in competition with the existing water resources and those uses. The Powder River Basin is one of the largest CBM producing areas in the US. It is the only major biogenic field in the US; all other fields are thermogenic.

SEN. TESTER asked if the other fields are injecting back into the same coal seam.

Mr. Wheaton said that his impression would be that would be into a different, deeper seam. Reinjecting into the same coal seam would set up a recirculation of the same water.

SEN. COLE asked if Montana exists at 8.6 gallons per minute (GPM) of water production because Wyoming has been in production longer, and we are now seeing a drop in production water there. **Mr. Wheaton** said that the rate of production will vary depending on the size of the field. The numbers are average production per well. As the grid expands, the overall average production number goes down.

Mr. Wheaton said that in Montana there isn't a lot of new drilling due to the moratorium. We don't know where CBM will become an issue in Montana. Montana holds 1/3 of the nation's coal reserves. There is a lot of discussion about coal and CBM in the Bull Mountain area. There is an interest currently in the Powder River Basin and the Bozeman-Livingston field. The most likely development is on the southern border of Montana, near Wyoming. As you move north, the coal seams are eroded, making them less likely for CBM development.

The water resource issues are the reduction of existing water, impacts due to disposal, and ground water issues. There are 4,500 wells identified in the Powder River Basin. There are about 1,100 springs listed, but the MBMG knows that number is low.

Because of where Montana lies, the coal seams are being eroded. The Anderson coal and the Knobloch coal seam are the most likely to be chosen for development. Mr. Wheaton showed a cross section of the Powder River Basin. In areas where the coal seams have been breached, some of the pressure has been let off, making CBM development near the edges non-existent. The edges where the coal seams are breached become springs. Shallow areas are good targets for drilling wells.

Coal is similar to sandstone in its ability to carry water. The permeability of coal is a little higher than sandstone. The coal seams have more continuity, allowing for a better probability of hitting a seam.

Draw down reduces the pressure in the aquifer, which within that zone of influence will reduce flow to wells and springs. When the pump for the well turns on it will pump the water out of the well. The water pressure of the aquifer adjacent to the well is lowered. There is a cone of depression that occurs around the well that drives the water coming to the well. When the well is turned off, the water redistributes and the aquifer brings the pressure back up to some amount less than the original pressure. Recharge will eventually replace the rest of the water.

SEN. TESTER asked for the distance of the zone of influence that was being referred to.

Mr. Wheaton said it was up to 5 to 10 miles outside the field that would be impacted.

SEN. TESTER asked if beyond that it wouldn't be impacted because by the time those wells go dry, the impact will stop on the outside of those. **Mr. Wheaton** said that it only goes so far.

Mr. Wheaton continued that the amount of impact to a private well can be calculated. As you get closer to the cone of depression, the amount of water that can be produced drops. The question is, at what point does it become a significant impact to a water right. If you get far enough away from the CBM field, there is no impact to the water level.

Both the coal mines and the Fidelity mines are impacting the water level. Charts show a quick drop in the water level when CBM development is introduced. He showed a chart of an alluvium well with no impact from coal mining, therefore they would expect the CBM development to go below that. Sites have shown that the draw down can be recovered.

MS. PAGE asked if recovery would be affected by how big an area was drawn down.

Mr. Wheaton said that it would. The proximity of the area to recharge would also play into it. As the development gets larger there is more water that is needed to re-establish the hydrologic pressure.

SEN. COLE asked if this would depend on what is in the area, as far as other water bodies.

Mr. Wheaton said that was correct. He reminded the Subcommittee that it is very site specific. The larger developments will take longer.

SEN. TESTER asked what the time projections were in the Wyoming EIS. **Rick Stefonic, Bureau of Indian Affairs**, said that 80% would recharge very quickly after production ceases. The rest of the recharge is estimated at 15 to 18 years for recovery. **Mr. Wheaton** said that it is site specific and size specific as far as the size of the field. The bigger the field, the lower the average discharge rate per well.

SEN. TESTER asked why the discharge rates drop. **Mr. Wheaton** said that the calculations are based on non-CBM standard hydrogeology theory. If you have a flowing artesian well that has been capped, when you first take the cap off, the well flows at a very high rate. That flow rate will decrease with time.

In reference to ground water levels, **Mr. Wheaton** said that draw down will be to the top of the coal. Some draw down will be in the overburden and underburden. Draw down will decrease with distance from the CBM field. The levels are estimated at ten feet of draw down at five to ten miles out from the field.

SEN. TESTER asked if that was regardless of the size of the field. **Mr. Wheaton** said that the size of the field will increase the size of the draw down. It won't go twice as far out for twice the size of the field.

Mr. Wheaton continued that availability at some wells and springs will be reduced. The amount of decrease will be site specific depending on factors such as field size. Discharge rates will vary with the size of the field and will be higher at the start of the CBM development. Recovery will occur. There is no activity in the coal seam that would prevent recovery from occurring. They are expecting five years to recover the water level outside of the CBM field and 10 to 15 years for recovery for inside the CBM field.

He emphasized that water quality is also site specific. The trend is that as you move north and west in the Tongue River and Powder River Basins, the electric conductivity (EC) and the sodium absorption ratio (SAR) increase, indicating deteriorating water. This trend changes in the Colstrip area. Sodium bicarbonate will be found in CBM produced water.

CBM is a diverse new energy source, but there are some issues with the water.

SEN. TESTER asked how concerned would Mr. Wheaton be if he had a ranch near a CBM development and he was concerned about watering the livestock. **Mr. Wheaton** said that there will be an impact to the stock wells. Springs will also be impacted and reduced. Replacement water supplies will have to be sought within the development area. **SEN. TESTER** asked, if the spring is within five miles from the edge of the field, will it be impacted? **Mr. Wheaton** said that the impact will include a number of miles, as has been seen with coal mining and CBM mining in Wyoming. **SEN. TESTER** asked if within five years, 70 % of the springs will be recovered. **Mr. Wheaton** said that 70% of the hydro-logic pressure will be recovered.

SEN. TESTER asked if 100% recovery is needed to get the springs to come back.

Mr. Wheaton said to get back to the original flow rate, 100% of the hydrostatic pressure would have to be recovered. **SEN. TESTER** asked how close the Montana Fidelity field is to the recharge source. **Mr. Wheaton** said that the Fidelity field is very close. Water in the Powder River Basin flows south to north, allowing water from Wyoming to get into Montana. There are also local recharge systems to the smaller outcrops.

Steve Gilbert, Helena, asked if, in terms of recharge, you would have to use the word "may."
Mr. Wheaton said that he agreed with that. We should talk about a range of recovery.

MS. PAGE asked about a chart that showed a steep increase in the recovery of the water level. **Mr. Wheaton** said that steep increase was caused by infiltration from a holding pond. The speculation is that there is recharge happening, but they don't know the implications for water quality. **MS. PAGE** asked if there is pressure associated with that recharge that would cause it to spread out into a larger area. **Mr. Wheaton** said that it will reach some equilibrium and then start to spread out. It will grow with time. **MS. PAGE** asked if the ponds are designed to have some infiltration. **Mr. Wheaton** didn't know the design criteria or intent.

Dick Clotfelter, Bozeman, asked if the recovery time starts when the mining is completed.

Mr. Wheaton said that was correct. **Mr. Clotfelter** said that could be 15 or 20 years.

Mr. Wheaton said that the impact to the water system would be throughout the time that the mine is in production.

MR. EBZERY asked if there is no recharge until the mining stops. **Mr. Wheaton** said that the recharge is occurring all the time, but the pumps for the well are removing the recharge so that there is no recovery of the pressure.

Holly Franz, attorney, asked if the Anderson seam is the same as the Dietz seam.

Mr. Wheaton said that was correct. There is a split and the Anderson and Dietz seams come and go; they are considered a single system. **Ms. Franz** asked if the list of wells in the Powder River area had been broken down as to how many are in the coal seams or the sandstone.

Mr. Wheaton said that they have well records. The drillers' logs, although filed, are not always complete and the completion zones include everything that they drill through. He is looking at it more from the hydrologic properties of the aquifers. **Ms. Franz** asked if the springs tended to be outcroppings from the Anderson-Dietz seam. **Mr. Wheaton** said that the clincker is responsible for a large number of springs. The thicker units are the predominant sources for the springs.

Bob Gilbert, Montana Association of Oil, Gas and Coal Counties, asked what the potential effect of the drought on the draw down might be. **Mr. Wheaton** said that the calculations have not considered weather patterns. The weather patterns affect the shallow flow systems. The deeper systems are more buffered from weather events than the shallow systems. **Mr. Gilbert** asked if the impacts in Colstrip are not similar to those created by CBM. The drought issue could be more of an impact than is known or expected. He wants to make sure that the blame for the draw down is correctly assigned.

Roger Muggli, T&Y Irrigation, said that given the number of wells in the Colstrip area that are drawing down the water level before CBM development, how is the aquifer ever going to recharge to 100% after CBM development. **Mr. Wheaton** said that the monitoring data hadn't indicated that the general aquifer status was dropping. It seems to be a very stable system.

Mr. Muggli said that a certain amount of the wells had to be drilled to a deeper level than they originally were. That use being considered, how is the aquifer ever going to recharge to current levels? **Mr. Wheaton** said that the recovery is going to take a significant amount of time and the recharge water will come from a distance away.

Rex Mongold, Miles City, said he is from an area that irrigates from basins. In that area they tried to balance the recharge rate and allow the wells to pump to a certain rate. What is the recharge rate and how much infiltration there is going to be into the seams? Would that determine how long it will take to recharge them? **Mr. Wheaton** said that in the modeling effort they calculated a flow through the system, but a basin-wide calculation was not done.

Mr. Mongold asked if they could come up with a figure for how long it would take to recharge if the recharge rate is unknown. **Mr. Wheaton** said that they are looking at side boards, not a specific date of recovery.

II POWDER RIVER CONTROLLED GROUND WATER AREA MONITORING

Russ Levens, Department of Natural Resources (DNRC), said the Powder River Basin controlled ground water area is an area between Lodgegrass and Broadus. It corresponds to the limit of the coal-bearing geologic units. It includes the drainage of the Tongue River and the Powder River. The controlled ground water area was established in 1999 following a series of public meetings. The justification was that excessive pumping of water related to CBM development has a strong potential for impacting existing water users. The purpose is to make

sure that the impacts of CBM development on water users are monitored and mitigated. Springs and shallow wells need to be protected. The controlled ground water area statute for permitting is under the Board of Oil and Gas Conservation (BOGC) and is administered through the permitting process.

The Technical Advisory Committee reviews monitoring plans and makes recommendations to the board for mitigation and general impacts. The CBM operators have annual reporting requirements on their monitoring results.

The Technical Advisory Committee is a voluntary group. Members from U.S. Geological Survey (USGS), MBMG, Bureau of Land Management (BLM), Department of Environmental Quality (DEQ), and the CBM industry all serve as part of the group. It meets on a regular basis. The initial activity was discussing a monitoring plan for the CX field and now they are discussing the environmental impact statement (EIS) and monitoring needs that need to be identified therein. They review ground water data and scientific evidence.

To monitor impacts they need to know what could potentially be impacted, so they need a good inventory of existing water users, water levels and spring flows. They want to improve the quality of their predictions, to do that they need information on geologic structures, the properties of the materials as far as how they transmit and store water. Then they can make better predictions on the long-term impacts. An ideal configuration for a monitoring network would be a ring of wells around the CBM operation. As the development continues, the monitoring wells will need to be expanded outward to a greater distance.

The CX field is in an area where there was a lot of previous study. They were able to rely on existing information on the hydrology, water users, etc., in order to identify the potential for impact. There is a significant amount of information existing. The CBM producers also are required to offer mitigation agreements to users within a mile of their field and to agree to replace any water that is impacted.

All of those involved are going to have to rely on developers to do a significant amount of work to get good baseline data and sufficiently characterize the aquifer in order to understand the potential for impact.

MS. PAGE asked what it takes to get good baseline data. **Mr. Levens** said that ideally it would take at least a year, and that two or three years would be great. There are seasonal variations.

MR. EBZERY asked about mitigation agreements. **Mr. Levens** said that legislation was passed that required mitigation agreements, not limited to the controlled ground water area.

MR. EBZERY asked if there had been any problems in the CX area. **Mr. Levens** said that they are in the process of producing an annual report that will provide details for that. He is not aware of any complaints or issues.

SEN. TESTER asked if the question was whether there are agreements within the field or the CBM development. **MR. EBZERY** said that he had asked within the controlled ground water area. He wanted to know if the development that is foreseen in the EIS would fall within the area and would they require mitigation agreements for all wells. The answer was that there are some that are without the mitigation agreements, but there was legislation passed in the last session that required mitigation agreements for everyone, even if they are not in the controlled ground

water area. **SEN. TESTER** asked if MR. EBZERY was referring to outside the ground water area. **Mr. Levens** said that developers are required to offer mitigation agreements to other water users within a mile of the proposed CBM well. There are provisions for expanding beyond that.

SEN. TESTER asked about the people that are outside of the development. **Mr. Levens** said that monitoring should start beyond one mile. Eventually they will have to expand monitoring out to include those users. You want to have your monitoring out there to see where the impact goes.

MS. VANDENBOSCH said that the DNRC established the Powder River Basin controlled ground water area that required a mitigation agreement. After that there was a law passed that required CBM developers to offer mitigation agreements, no matter where in the state the development may occur. If the well is farther away than one mile, but is still adversely affected, the developer would have to offer a mitigation agreement.

MR. EBZERY asked if a well is within the controlled ground water area, are there mitigation requirements for the developers to meet. **Mr. Levens** said that is right, but we are probably looking at about a five-mile radius that is most likely to have adverse impacts from the CBM development.

SEN. TESTER asked how far are they along in the monitoring plan and who is responsible for developing the baseline material. **Mr. Levens** said that the CBM operator is responsible, but there are some practical issues that play into it also. **SEN. TESTER** asked if they could tell if the draw down was due to CBM or the drought. **Mr. Levens** said that it would require a lot of data and years of time.

Mr. Levens said that the requirements of the controlled ground water area are going to be reasonably effective in identifying impacts. The difficulty is when the whole basin is developed. There isn't good monitoring at the edges of the impacted area. There needs to be a regional-scale monitoring plan developed to characterize the cumulative impacts to the water resources. The criteria would be monitoring water levels in coal zones, sandstone aquifers, and alluvial aquifers. There also needs to be monitoring wells in depleted fields. This sort of monitoring is very expensive and time consuming, so a set of priorities was developed. Areas of high water use, proximity to political boundaries, and sensitivity to hydro-geologic activities are on the top priority list.

Another question is that of the managing of the information that is gained through the monitoring. The access to existing data is a challenge. When we get away from areas where there is existing information there may be difficulty getting adequate monitoring. The Technical Advisory Committee is now volunteer, but eventually will need to be staffed. Time is necessary to develop good baseline data. We need to get started.

MR. EBZERY asked what is precluding the group from starting the monitoring. Is there a plan to coordinate with the groups that are active in the area? **Mr. Levens** said that there is potential for coordination because many of the groups are represented on the Technical Advisory Committee. There are areas that may not be covered. Most fields have some component of federal mineral rights that will be monitored, but there will be a need for funding for additional

monitoring. **MR. EBZERY** asked if there would be a share with the BLM to get the monitoring data. If they need state funding, is there a request in the upcoming budgeting process?

Mr. Levens said that there is coordination with the BLM. He didn't know if there was a request in the budget.

SEN. TESTER asked if there is a lead agency for the monitoring. **Mr. Levens** said that the Technical Advisory Committee had discussed that a group is needed to coordinate it, and that the committee will probably be the group to do that. **SEN. TESTER** said that we should have been monitoring a while back and without some organization this could go on forever. **Mr. Levens** said that is what they were hoping to do with the Technical Advisory Committee.

MS. PAGE asked what kind of mechanism is in place for resolving the differences of the terms of the mitigation agreement. **Mr. Levens** said that Fidelity probably had a standard offer, but that it is generally negotiated with the water user. There are minimum requirements that the agreement must meet. **MS. PAGE** asked if there is a provision that allows the mitigation to continue during the recharge. **Mr. Levens** said that the agreements are intended to last as long as the impacts. **MS. PAGE** asked if the committee was going to write a report. **Mr. Levens** said that they will do that soon. This will be the 2001 annual report.

SEN. TESTER asked what role is industry going to play in helping to fund the regional scale monitoring. **Mr. Levens** said that in Wyoming the operating companies install monitoring wells and BLM will then maintain the wells and do the monitoring.

Betsy Hovda, DNRC, asked if Wyoming installed the monitoring wells when the CBM wells were installed. **Mr. Levens** would guess that they would be done at the time the CBM production wells were installed.

Susan McGrath, PGCA, said that the issue will be, how are you going to get the water to mitigate who is going to pay for it. Also, she wanted to know who is going to enforce the mitigation agreement. **Mr. Levens** said that the CBM operator is supposed to pay for the mitigation. **Ms. McGrath** said that unless they went to court, enforcement would be up to the private parties. The way that she reads HB 573, it only provides mitigation up to 1 ½ miles out. It doesn't apply to mitigation farther away.

Art Hayes, rancher, said that if you look at the lease patterns there could be several companies in one area on his ranch. Who will replace the well if they can't decide what company is responsible for the damage? **Mr. Levens** said that he didn't know. **Mr. Hayes** asked if the controlled ground water area only covered CBM water only. **Mr. Levens** said that it was only CBM. **Mr. Hayes** said that he has artesian flowing wells in a sand formations that are brought up by methane. If that methane is tapped and he loses the well, there is no way that he can be mitigated for that. **Mr. Levens** said that was correct. **Mr. Hayes** said that the town of Birney was supplied by one artesian flowing well. It has supplied the town with water for 60 years. How would that be replaced? **Jack Stults, DNRC**, said that if the impact to the well was the result of CBM activities, it doesn't matter where the water in the well comes from. If it is within the 1 ½ mile, it will be mitigated. **Mr. Hayes** said that he had four producers, and he wonders which will step forward to do that. **Mr. Stults** said that currently the structure doesn't provide for that scenario.

Steve Gilbert, Helena, said that in order to get to the point where we can get answers, we need to get facts. We should have that now, and have answers now. There is nobody doing the monitoring. We need to have people doing the monitoring right now. He also said that mitigation is a concept, not an answer.

Dick Clotfelter, PGCA, said that there needs to be a policing authority to enforce the monitoring. Shouldn't there be something that says that there will be no more wells until the appropriate monitoring has been done?

III PERSPECTIVES ON WATER RIGHTS AND COAL BED METHANE DEVELOPMENT

Jack Stults, DNRC, said that the issue of CBM and how it relates to water rights is an issue that they have had progress on in the last couple years. In Montana you can establish a private property right for the use of water. That property right gives you certain entitlements and is based on first in time, first in use. The basis and measure of a water right has been the beneficial use of the water. This is something that implicates the concept of need and possession. It also implicates an amount. Without that implication there is no water right.

When CBM started coming into Wyoming, the DNRC determined that CBM produced water is not a beneficial use of water requiring a water right because it implies no possession or need. That didn't end DNRC's obligation to deal with it. Next a controlled ground water area was established under the existing statutes. This is a creature of the Water Use Act. The controlled ground water area requires a mitigation agreement and extends to any well or natural spring. The mitigation agreement also requires the immediate replacement of any loss of water. There is no proof required within that 1 ½ mile area. The regulatory authority for the controlled ground water area is the BOGC and is administered through their permitting authority. This means that any well or spring that is impacted that has a mitigation agreement will be replaced. It doesn't matter what the strata is that the well is accessing. This is a concept of strict liability and is a commonly used approach.

In Montana, the state has gone a little further than other states by adopting 85-2-521 MCA, which takes the concepts of the controlled ground water area and moves them into state law. This is sufficient to identify and address impacts near or in a CBM field. There is another dimension of broader geologic impacts. How to deal with those has not yet been decided. A regional monitoring system would give them the baseline information to know the impacts of any field; this proposal is included in the EIS. We can look at other states for examples of how to implement some of the ideas. In New Mexico, if the landowner can't get proper mitigation, he can appeal to a state agency.

There are no water rights for de-watering in Montana. The nature of CBM is very similar to any other kind of de-watering, such as the draining of wetlands to use the land for agricultural use. Strict liability then plays into the system. Mr. Stults said it is his opinion that it is still appropriate for the enforcement role, in terms of regulation and administration, to fall to the BOGC. They will continue to develop and expand the structure that is in place to protect the water rights. Water rights are private property rights. Up until 1972, all enforcement was with the district courts. Now it is shared with the permitting agencies. The agency is waiting for adjudication. As soon as there is a final order on a stream, those permits will be converted to certificates and, again, all enforcement falls to the district courts. DNRC has no enforcement authority. The BOGC is truly a regulatory authority.

There is a need to get serious about the regional monitoring. There is no question that once this activity gets started it goes in a big way.

Holly Franz, Attorney, referred to **EXHIBITS 1 and 2**. The first question is, why don't you need a water right for CBM wells? The water is a byproduct, and therefore considered dewatering, which isn't a property right. Other states agree with Montana on this issue, except possibly Wyoming. In Wyoming a ground water well permit must be applied for before CBM production. In Wyoming, the statute requires the permits be issued as a matter of course. It is a record-keeping function. The reason is so that the state can know where those wells are. That permit is not treated as other wells, however. A CBM developer doesn't ultimately end up with a water right. Most states also consider the discharged water a byproduct and therefore regulation falls to the Board of Oil and Gas.

There needs to be a beneficial use within a water right. There are a couple of statutes that apply to CBM water. One is the waste statute. This statute has set forth other types of dewatering and was amended to include CBM. The question is then, what protections are there for water right owners. The primary protections are mitigation and monitoring. Montana is the only state that has any water rights protection statutes on CBM and that is a mitigation agreement. The advantage to that is that it shifts the burden of proof to the industry. In the case of a mitigation agreement, it is presumed that the problem was caused by the CBM activity. The other advantage is the concept of reasonable use. If there is an aquifer that is from 200 to 400 feet deep and one water right holder for that well only penetrates the top 10 feet of that well, when a neighbor puts in a deeper well causing trouble with the first well, the reasonable use doctrine says that you can't prevent the beneficial use of someone else's water right. Therefore, the first person needs to drill deeper.

SEN. TESTER asked what happens when the field is done producing and the company loses its ability to pay. **Ms. Franz** said that her understanding is that when a company leaves, the landowner will have the option to maintain the wells and continue to maintain the mitigation. The landowner needs to make sure that they are contracting with a reliable company. HB 572 put together a fund that will help compensate the landowner in the situation where the producer is nowhere to be found. **SEN. TESTER** said that the problem is when the mineral rights owner is different than the surface owner. **Ms. Franz** said that you would have to look at the funds that were put aside for that circumstance.

Ms. Franz said that the BOGC is the one with the enforcement authority. The hammer is with injunctions. That is why the CBM producer will want to keep the water rights holder happy. Is there anything that existing ground water users should do now? She would suggest that the users file form 627 with the DNRC to make sure that the exempt water rights are on record.

Producers will need a DEQ permit to discharge. 85-2-510, MCA, gives the BOGC jurisdiction over the controlled ground water area.

Impacts on water rights will be very site specific. If you are in the actual aquifer, there may be reduced production and that is why there is a mitigation agreement and monitoring.

MR. EBZERY asked, if the mineral rights owner is different than the surface owner, is the mitigation with the surface owner? **Ms. Franz** said that was correct. The surface owner may not know who the mineral rights owner is contracting with. **MR. EBZERY** asked for explanation of

the 1 mile versus ½ mile distances. **Ms. Franz** said that the 1 mile is used to estimate where the impacts are most likely. If any well is impacted by CBM, the circle in which you have to offer mitigation expands by ½ mile. As time goes, there may be impacts in larger areas.

MR. EBZERY asked about the scenario of four producers in a close proximity.

Ms. Franz said that the mitigation agreement requires the companies to replace the wells, the companies will then have to divide up the costs as they see fit. **MR. EBZERY** asked what would happen if he didn't have a mitigation agreement. **Ms. Franz** said that the mitigation agreement will expand out as far as the impact from CBM. If his well is bad, he will get a mitigation agreement along with everyone within ½ mile of him. **MR. EBZERY** asked how you handle someone 4 miles away that believes that there has been an impact to his well. **Ms. Franz** said that you would have to look at whether there are any wells between that person's well and the CBM activity. The impacts move out gradually. With monitoring the impacts should be able to be identified as to where they came from. **Mr. Stults** said that if there is no mitigation agreement, it will be a matter of trying to determine where the impact came from. Currently there is no direct mechanism to determine that, other than hoping that the monitoring around the fields will determine which field is responsible.

John Bloomquist, Attorney, said that the agricultural community is concerned with their water. Many farms, ranches depend on water, even more so than land. CBM is a work in progress. Before the last session there was concern about relying on the controlled ground water area as the only measure of protection. The Legislature took some steps to help protection of water rights, but there is more that needs to be done. However, there is an information gap that may prevent this. After the EIS is complete, are we going to be at a point where permitting is up to snuff? CBM will impact water rights, but that impact will be site specific. The extent of those impacts is relatively unknown at this point.

One of the things that is important is that mitigation is up-front. There is a good start on those requirements, but they will likely change as information becomes available. It is a work in progress.

The specific statutory language in the Water Use Act and DNRC's interpretation on permitting tend to go against each other. The burden is on the permit applicant to show no adverse effect. The applicant will have more technical data than the water rights holder. The Reasonable Use Doctrine may not do the water rights holder much good. Adverse effect is open to interpretation. Mitigation is at least something that can statutorily be influenced.

The CBM Protection Program statute still needs some work as far as triggering it and time periods. The idea is that a pool of money be created to deal with the uncontrolled problems. There is going to be that type of failure of a company occurring. The protection program needs to speed up the funding. Mr. Bloomquist said he is also concerned about the cap on the amount that can be given to an applicant. There are some good statutory protections in Montana, but they will need to be worked on as time goes on.

There are always protections in the law and going to court. Those are always available, but are very burdensome. The common law can protect the quality side. Quality is as much a concern as quantity.

From a policy perspective, the information needs to be timely. There needs to be a more concerted effort to get ahead of the monitoring. The federal government should be pushed to get involved in this, too. We need to make sure that there is a coordinated program. We need to

make sure that mitigation agreements are properly put in place. Well owners and spring owners are being protected more than other areas under the law.

SEN. MCCARTHY asked if there were specific examples of tweaking of the law.

Mr. Bloomquist said that one of the things that needs to be looked at is whether 1 mile in the mitigation agreements is sufficient. There is some clarification needed of who is responsible for mitigation. There could be some fixes of the dates on the protection program. The cap of the amount that can be given is also not great.

SEN. MCCARTHY asked if most of the mitigation agreements are the same. **Ms. Franz** said that most are. It is a form that has been approved by the BOGC. There is room for negotiations on behalf of the surface owner.

SEN. TESTER asked where the money comes from for the safety net. **Mr. Bloomquist** said that it is the Resource Indemnity Trust (RIT). **SEN. TESTER** asked if the Legislature allocated certain funds to that. **Mr. Bloomquist** said that the contingency was \$100 million.

SEN. TESTER asked about the monitoring as a protection. **Ms. Franz** said that the monitoring requirements are established for each field as it is proposed. There has been proposed general monitoring provisions, which are a monitoring well between the field and any well around it. It also proposes no more than 4 miles between monitoring wells. **SEN. TESTER** asked if the monitoring appears to be happening after the fact, how will a baseline be obtained. **Mr. Stults** said that under the controlled ground water area monitoring program that was true. What we do have is a pervasive federal presence in terms of federal minerals and federal lands. The BLM will be implementing a monitoring plan where there are federal interests. In Wyoming the infrastructure is provided by the industry and then the federal government does the monitoring. That still leaves gaps. **Ms. Franz** said that one of the problems is that the monitoring needs to be targeted so that the information is valuable. To some extent you are limited to putting monitoring plans together as you see where the drilling is actually going to happen.

SEN. TESTER said that he doesn't want the CBM producers paying for wells that are dried up by drought, but he also doesn't want water users to be left out on a limb because CBM de-watered the aquifer. We need a baseline so that water rights can be protected. **Ms. Franz** said that the 1 mile has tried to identify where the impacts are most likely to occur. **SEN. TESTER** said that in some places wells are too far apart to be helped by the 1-mile impact.

MR. EBZERY asked if it is likely that there would be wells inbetween the affected well and the field, and how likely would it be to get 4 producers in the same area. **Mr. Bloomquist** said that spacing would have a lot to do with this. It is a very realistic issue to look at.

SEN. MCCARTHY asked about depth of the wells. **Mr. Bloomquist** said that would also have an effect.

Rep. Alan Olson said that statewide spacing on gas wells is one well per 640 acres. Any greater density, the operator has to go to BOGC and prove their point in order to drill at a greater density. **MR. EBZERY** asked if it was possible to get 4 producers close together. **Rep. Olson** said that he understood that you have a 1-mile radius around each well. Those radiuses could overlap.

MS. PAGE asked if there is an implication for water rights as far as the water impoundments. **Mr. Stults** said that the draft permit that DEQ has circulated says that the impoundments have to be off source to prevent impacting downstream water users. **MS. PAGE** asked about the issue of overflow through the impoundments and the quality of the discharge water. **Ms. Franz** said that the water quality laws and the water quantity laws don't overlap much. One overlap is that if you are diverting water from a stream of such a large quantity that it will actually impact downstream discharge permits, then the down stream discharger can object to the water right because the diversion of that water impacts their permit. **Mr. Stults** said that you set the standards to be protective and therefore it will be protective. The program is designed to be protective of beneficial uses. **Mr. Bloomquist** said that if you look at the classification, standards, etc., it all comes back to protecting the beneficial uses of the water. In reality, you would be looking at fish and wildlife standards, which would be more protective. The quality issue needs to be addressed.

MS. PAGE said that Art Compton had made the statement that the Montana/Wyoming agreement was not meant to be protective of irrigators. She asked if in mitigation agreements, they only have to replace water quantity and not additional costs. **Mr. Stults** said that they would have to cover the full cost. **MS. PAGE** asked if that would be for whatever period of time. **Mr. Stults** said that was the intent of the agreement. **MS. PAGE** said that mitigation agreements are intended to address the reduction or loss of water resources, and may exclude mechanical, electrical or similar loss of productivity not resulting in the reduction of the amount of available water. **Mr. Stults** said that if a pump breaks down or the well walls fail, the company is not responsible for replacing it.

• *Public Comment*

Steve Gilbert, Helena, said that 85-2-521, MCA, says that the developer of the CBM shall notify and offer a reasonable mitigation agreement. This doesn't mean that they are required to offer a mitigation agreement that will meet the landowner's needs. Under subsection (3)(b) of that section, it says that the mitigation agreement is not required to address a loss of water well productivity that doesn't result in the reduction in the amount of available water because of production of ground water from the CBM well. He would like to know if there is something that says that the burden of proof is on the industry, because he doesn't see that. There is no proof that the landowner will get what he needs in terms of mitigation. **Ms. Franz** said that the statute is administered by specific departments. Statutes are often more vague than how the law is actually administered.

Brenda Lindlief-Hall, Tongue River Water Users Association, said that even though the industry is commanded by statute to notify and offer a reasonable mitigation agreement, the obligation is on the water rights holders to negotiate something for themselves. The term "reasonable" is very vague. The water rights holders will have to spend money to ensure that they receive a good and protective mitigation agreement.

Susan McGrath, PGCA, said that she read the statute to mean that the burden would be on the water right holders to prove that the impact to the well came from the CBM activity. The mitigation agreement is not required to address a loss of water well productivity that doesn't result in the amount of reduction of available water because of the reduction of ground water due to the CBM well. That says that you have to prove that the adverse effects are from the CBM well. **Ms. Franz** said that the intent is that the burden be on the CBM producers and that is

how it is administered. **Mr. Bloomquist** said you need to look at the whole statute. The first sentence indicates that the mitigation agreement must provide for prompt supplementation or replacement of water from spring or well adversely affected by the CBM well. The second sentence is the indication that the mitigation agreement doesn't have to replace water for circumstances other than the CBM development.

SEN. COLE said he was chairman of the joint conference committee that worked on this bill. The intent is that the company would be responsible for any loss of water.

Ms. McGrath said that the language should be cleaned up so that it clearly reflects the intent.

Roger Muggli, T & Y Irrigation, asked how the reservoirs that are already installed met any soil conservation standards for installation and how would that affect the older water rights. There was a significant rain event, the reservoirs captured that water therefore affecting the water rights downstream. **Mr. Bloomquist** said that when you construct an impoundment you are obligated to show no impact to downstream water rights. He doesn't know if it was done in this case. **Ms. Franz** said that Tongue River water users may have filed a law suit concerning those issues. **Mr. Muggli** said that the quality of the water is a factor as well. Their soil is primarily heavy clay soil. There will be a lot of people in his area that are going to be out of business if they have to accept a decrease in water quality. The bill for compensation has a \$50,000 cap, the impact on his farm could be \$250,000 per year.

SEN. COLE asked if the white spots that were talked about were things that had been there a long time. **Mr. Muggli** said that it is caused by lack of drainage, but if there is a clay-based soil, how do you develop drainage? If that soil is exposed to a higher salt content, it will make it totally impervious to water and air, inhibiting any growth. **SEN. COLE** asked if the spots had been there for a while. **Mr. Muggli** said that they are small and they are on an increase. The EC that he has been monitoring has climbed in the last 3 years, indicating that the SAR has also increased.

Mr. Bloomquist said that standards come from classifications and classifications come from use. The standards have to meet the beneficial use. There are also ranges for site-specific use. In theory the standards should protect the uses. If the standards change, they should still protect the use.

Rex Mongold, farmer/rancher, said that he grows specialty vegetables. He bought a farm in the Tongue River Valley because of the water quality. He is dependant upon high quality water for his fruits and vegetables. If the water quality becomes degraded it will affect the plants as well as the soil. Right now, the majority of crops grown in the basin aren't high quality crops. High value crops will require the high quality water. He would appreciate concern in maintaining the water quality.

Heather Hines, student, said that she is questioning the logic. Water rights go back to common law and the settlement of the west. They have remained fairly static. The demands for water have changed dramatically; why haven't water rights become more dynamic to include dewatering.

IV COAL BED METHANE EIS STATUS UPDATE

Art Compton, Department of Environmental Quality (DEQ), said that the draft EIS is due to be out on February 15, 2002. The CBM Final EIS will include a 3D ground water study, air modeling (including cumulative effects), ethnographic study, and the tribes' rewrite of the socioeconomic section. However, these were not finished in time to be included in the draft. The air quality study will be completed in April. The draft EIS will be out in February and will then have 90 days of public comment. It will take the agencies a couple months to go through those comments and address any deficiencies. The final EIS should be out sometime this fall.

Studies that are going to be ongoing because of scope and technical demands of those studies are the hyper spectral imaging, which is remote sensing and provides the ability to find natural gas seams using remote imagery; fluvial geomorphic study, which is going on the Tongue River to characterize changes in the structure and how it is affected by ground water; wetland infiltration study, which will be gathering more information on the fate and transport on the CBM produced water; and the flora and fauna studies. These studies are intended to round out what is known about CBM and its development and any disruptions from that.

SEN. TESTER asked when the ongoing studies are projected to be finished. **Mr. Compton** said that each one is different. **SEN. TESTER** asked if they would be completed. **Mr. Compton** said that some will be completed for the final EIS, but some will be ongoing. **SEN. TESTER** asked if the studies are a part of the EIS. **Mr. Compton** said that they are not a part of the EIS. They are to round out the agencies' knowledge about CBM development and resources. They will give the agencies information. **SEN. TESTER** asked if they were referred to in the EIS. **Mr. Compton** said that they are. He would characterize them as issues that would go beyond what is reasonable for the EIS. They deal with issues of the impacts of CBM development that may not be apparent until some development occurs. **SEN. TESTER** said that it seemed important to him to determine where the discharge water is going to go, in reference to the wetland study that isn't going to be completed. **Mr. Compton** said that the EIS does reach impact conclusions based on a specific set of assumptions with respect to the fate and transport of the produced water. The estimate that was used was that 24% of the discharge water will find its way to surface water.

MR. EBZERY asked about the rewrite of the social environment by the Northern Cheyenne Tribe. Is the same information going to be used to redo that section, or will they come up with their own information? And also, will that replace what is in the EIS? **Mr. Compton** said that the effort was conceived by the tribes' dissatisfaction. The agencies negotiated to allow the tribes to rewrite it, and it will be used to supplement what is in the draft. **MR. EBZERY** asked how that would work and also, when will the public get to comment on that. **Mr. Compton** said that the issues haven't all been addressed. There has been some thought about that issue and probably what will appear in the final will be an amended version of what is in the draft. This version will give some consideration to what the tribes have provided.

SEN. MCCARTHY asked if the tribes would get the credit and say that it was done without public hearing. **Mr. Compton** said one of the issues on incorporating new material in a final EIS is the fact that it has not been commented on by the public. **SEN. MCCARTHY** said that it should be footnoted to show that. **Mr. Compton** agreed.

SEN. TESTER asked if the reinjection possibility is addressed in the EIS? **Mr. Compton** said that the EIS does address alternative water disposal practices and provide some insight into the cost of those. One problem with the alternative water disposal will depend on the price that is being made by the methane gas. **SEN. TESTER** said that there is not only the economics of making the gas possible, but also the potential economic burdens that can happen on irrigated land.

MS. VANDENBOSCH said that the members can look at the EIS on line, the executive summary on paper, the full draft EIS on paper, or on a CD-Rom. She handed around a sign-up sheet for those who wanted to receive the draft EIS.

V TOTAL MAXIMUM DAILY LOADS (TMDL's)

Art Compton, DEQ, said that the state is operating under a federal district court order that reinforces what state law says about when the TMDL's will be done. The court order required a schedule and a year-by-year process. The federal court order said that they couldn't issue any Montana Pollutant Discharge Elimination System (MPDES) permits on listed reaches or water bodies that needed TMDL's until all the necessary TMDL's were done.

In 11/99, the court found in favor of the U.S. Environmental Protection Agency (EPA), except on the pace of the TMDL development. The final order said that no new or expanded permits on listed waters be granted. This was later clarified that it didn't include the storm water permits. It required that all necessary TMDL's be completed for the 1996 impaired waters list by 5/5/07. The order required DEQ to develop a completion schedule by 11/1/00.

There were over 800 stream reaches on the 1996 list. The 2000 list and the 2002 list have about half that many water bodies on them. The reason for this decrease is that HB 546 came into play. HB 546 requires sufficient and credible data to list a stream. Going back and applying those standards to the 1996 list, only half of the streams had enough credible data to be listed. Because of this, half of the streams went to a re-assessment list that then become a priority for additional monitoring. The court order is holding DEQ to the 1996 list. There is sufficient and credible data to proceed on half of those. When the reassessment efforts lead DEQ to conclude that the stream is supporting its beneficial uses; they will attempt to build a case that the water body doesn't belong on the list. That case will be challenged. There are a few new additions to the list that have ten years to be completed.

The 1996 list was broken down into 91 watersheds. They are now submitting TMDL's on a watershed basis. The first deadline was Dec. 2001. The four watersheds that were due were submitted to EPA. There are eight that need to be done for 2002. They are moving the Tongue and Powder watersheds to the 2002 list because of some of the issues that are coming up now. They want to be able to act on any discharge water permit applications that may come up by the end of the year.

The Tongue River TMDL planning area stretches from Miles City to the Wyoming border. There are a few tributaries also included in the area. CBM development often follows infrastructure development. The earliest development on the Tongue River will be from south to north. Flow alteration is the reason for the listing. This alteration is considered pollution, but there are no pollutants, therefore a TMDL doesn't have to be done. The EPA wants TMDL's done on constituent issues for water quality. Diminished flows isn't one of those issues.

The Tongue River water quality is very good and therefore is more easily affected by any discharge of water that is lower than ambient flows. There is not the future for discharge permitting on the Tongue that there is on the Powder.

MS. PAGE asked if the interim agreement between Wyoming and Montana wasn't meant to be protective of irrigators, isn't that a beneficial use. **Mr. Compton** said that is correct. The border agreement was to maintain the quality at the border. There are no protective or beneficial uses implied by the border agreement. The concern is that the Montana users are going to have to live with the water quality that is found at the border. Also, in order to ensure that Montana CBM development doesn't start at a disadvantage, the water quality at the border needs to be maintained. **MS. PAGE** asked if the existing condition is that of when the agreement was made. **Mr. Compton** said that the existing conditions are how it was characterized based on data from the 1990's.

Mr. Compton said that they don't want the TMDL's to stand in the way of the development on those water bodies. He talked about the Powder River TMDL planning area. The Upper Powder was not listed in 1996; it could be that there are no TMDL's required for that. The court order requires that the TMDL's be prepared for all water body impairments. Task 1 includes collecting and reviewing all available data, doing any necessary field assessments to supplement that data, verifying the 1996 listing, and trying to establish a link with the cause of impairment and the inability of that water body to meet its beneficial use. This will be concluded by May 1st for the stretches on the Powder and Tongue Rivers.

SEN. COLE asked if by May both of the rivers would be done. **Mr. Compton** said that what they have done is adjust their completion schedule by taking off two watersheds that were to be done this year and replace them with the Tongue and the Powder Rivers. The two that are removed will be changed to a different year, not completely taken off the list. There will be eight completed this year.

SEN. TESTER asked if the TMDL lawsuit applied to all impaired water bodies. **Mr. Compton** said that was correct. **SEN. TESTER** asked about the new permits, was that strictly new discharge permits. **Mr. Compton** said that would be the MPDES permits. **SEN. TESTER** asked if that meant that back flows would not be taken into consideration. **Mr. Compton** said that it would be only if it was determined that the return flows from that irrigation project required an MPDES authorization.

SEN. COLE asked when we would know if there are 800 or 400 bodies on the list.

Mr. Compton said that they would generally be complying with both lists and justifying that on a case-by-case basis. The 400 streams that are the difference between the lists will be re-assessed. **SEN. COLE** asked how some of those got on the list. **Mr. Compton** said that any stream for which the water quality didn't meet the sufficient credible data test are not on the 2000 list. There just wasn't good data when they were put on the 1996 list.

• Public Comment

Dick Clotfelter asked if the EIS included a review of the loss of property value for a person in the Tongue River area versus the loss of property values for someone in the Bozeman pass area. **Mr. Compton** said that the EIS lays out what the adverse affects of CBM development will be. He doesn't think that property devaluation is addressed quantitatively, but it is addressed

qualitatively. **Dick Clotfelter** said that it is a critical and mitigating issue. Shouldn't it be included in more depth? **Mr. Compton** said that he doesn't know the degree to which that is possible. That is what the public comment is for and perhaps that will suggest a way to deal with that. **Mr. Clotfelter** said that should be done.

Steve Gilbert, Helena, asked if the primary goals through MEPA are to inform the public, gather data for existing environmental conditions, predict impacts, and offer mitigation solutions. **Mr. Compton** said that was correct. **Mr. Gilbert** said that adding four studies that contain some of the only original data that will be gathered for the entire process of the EIS and not including them in the draft would suggest some illegal or incorrect time lines for the document. He thinks that this is wrong. An EIS time line should be based on when the necessary information has been gathered. At this point there are more questions than there are answers.

Harmon Ranney, Montana Coal Bed Natural Gas Alliance, said that this is a programmatic EIS. It doesn't authorize any specific activity on the ground. This EIS amends the BLM's resource management plans to Miles City and Billings. On-site activity will be handled by a tiered off MEPA document. There will be further MEPA documentation that will look at some of the issues that have been raised.

SEN. TESTER would like to get a schedule of the meetings for the public comment on the EIS. **Mr. Compton** will provide that information to EQC staff, who can then present it to the Subcommittee members.

SEN. TESTER said that the Sage Creek TMDL was one of the first four that needed to be done. There were some frustrations with that process. He talked to the Chairman about meeting with a few of those people.

SEN. MCCARTHY asked where Sage Creek is. **SEN. TESTER** said that it comes out of the Sweet Grass Hills and runs east. Eventually it goes into the Milk River. It is his hope that some members of the Subcommittee can go down and talk to the watershed group about the process and ways to improve it.

MR. EBZERY asked if this would be a good example or bad. **SEN. TESTER** said that it turned out fine in the end. There are some concerns about expectations and why those expectations exist. **MR. EBZERY** asked who the Subcommittee would be talking to.

SEN. TESTER said farmers who are on that watershed. Perhaps the DEQ should be at that meeting.

SEN. COLE said that he would like to talk to DEQ and get a better understanding of where we are. He doesn't want to go to Chester and then have to go somewhere else. **SEN. TESTER** said that the process of the Chester watershed is completed.

SEN. MCCARTHY said that it is a good idea to do at least one field study. The TMDL law made so many different changes. She would also want to have time to look at what changes need to be made in the next session. She doesn't feel that having the full committee go would be appropriate.

SEN. TESTER said that he would hope to do it while it was still fresh in their minds, hopefully by April.

VI COAL BED NATURAL GAS AND WATER POLICY UPDATES

MS. VANDENBOSCH referred to **EXHIBIT 3**. The Northern Cheyenne did propose water quality standards. The deadline for public comment was February 3.

The EPA is doing a BPJ study, which is a best professional judgement determination of effluent limitations for CBM activities. It does take into account economics. There will be a listening session held in February in Sheridan. This meeting asked for the attendance of landowners, conservation groups, local governments, and others.

MS. VANDENBOSCH said that there will be a presentation on reserved water rights compacts in May. The Compact Commission has been seeking public comment on a proposal from the Confederated Salish and Kootenai tribes for settlement of their water rights in Montana.

The Sunnybrooke case was dismissed by Judge Honzel.

She referred to a bills summary of CBM legislation that was mentioned earlier. See **EXHIBIT 4**.

MR. EBZERY asked if there was anything that would help show the intent of the conference committee for HB 573. **MS. VANDENBOSCH** said that she could provide the minutes of the conference committee. **MR. EBZERY** said that if the plain meaning isn't very plain, that it may be something that needs to be looked at.

VII SUBCOMMITTEE DRAFT REPORTS AND/OR POLICY PROPOSALS

MS. VANDENBOSCH referred to a memo that she had sent. There are two paths that can be headed down at this point. The first option is a brief summary that could include everything the Subcommittee has dealt with or just the CBM. If the Subcommittee pursues this option, public comment is not necessary. The second option is to circulate proposed policy options, findings, proposed legislation or recommendations to the public. This will require a public comment period between the May and July meetings. There aren't any real requirements for this option. HJR 27 is a request that the EQC prepare a brief report of its findings and conclusions regarding the CBM natural gas process and present the report to the Governor and the Legislature. When that resolution passed, the EIS was expected to be completed by March 2002. The EQC also has a water policy obligation to report to the Legislature, but it doesn't say how often.

SEN. COLE recommended that the first option be undertaken.

MOTION/VOTE: **SEN. MCCARTHY** moved to accept the recommendation for the first option. Motion passed unanimously.

MS. VANDENBOSCH said that the work plan included the task of updating the Water Quality Handbook.

MS. EVANS said that she could get it done if the Subcommittee wanted to do it.

SEN. MCCARTHY asked if it was done in the last biennium. **MS. EVANS** said that the laws had changed since it was last updated. For it to be accurate with Montana's laws, it needs to be done.

SEN. MCCARTHY said that it needs to be updated.

MR. EBZERY agreed. The Subcommittee has heard a lot about water quality, as the EIS comes out, that issue will come out.

MS. VANDENBOSCH asked what the Subcommittee wanted to be included in the report under option 1.

SEN. MCCARTHY said that all of the work should be included.

VIII BUSINESS AND NEXT STEPS

MOTION/VOTE: SEN. MCCARTHY moved to approve the December minutes. The motion passed unanimously.

MS. VANDENBOSCH referred to the work plan in deciding an agenda for the next meeting.

SEN. MCCARTHY said that there hasn't been a meeting for the Columbia River Basin issue.

MR. EBZERY said that regarding the EIS status report, he wonders if 60 minutes at the May meeting will be enough to go through the document if it has come out.

SEN. COLE said that time could be increased.

MS. EVANS asked if the water quality handbook will need public comment.

MR. EBZERY said that since it was just an update, he didn't think that public comment would be needed.

MOTION/VOTE: SEN. TESTER moved to adopt the agenda for the May meeting. The motion passed unanimously.

IX ADJOURN

There being no further business the meeting was adjourned.

CI0425 2078mvxa.