



# ENVIRONMENTAL QUALITY COUNCIL

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## ENVIRONMENTAL QUALITY COUNCIL Coal Bed Methane/Water Policy Subcommittee July 29, 2002 FINAL MINUTES

### COUNCIL MEMBERS PRESENT

SEN. MACK COLE, Chair  
MS. JULIA PAGE  
SEN. BEA McCARTHY  
SEN. PETE EKEGREN

SEN. JON TESTER, Vice Chair  
MR. TOM EBZERY

### STAFF MEMBERS PRESENT

Ms. Mary Vandebosch  
Ms. Krista Evans

Ms. Robyn Lund, Secretary

### AGENDA

Attachment 1

### VISITORS' LIST

Attachment 2

### SUBCOMMITTEE ACTION

- Approved May Minutes.
- Approved water quality regulation handbook as amended.
- Approved draft subcommittee report as amended.

## **I BUSINESS**

**MOTION/VOTE:** MR. EBZERY moved to accept the minutes of the May meeting. The motion passed unanimously.

## **II REVIEW DRAFT SUBCOMMITTEE REPORT**

**SEN. COLE** said that there were 2 reports that came out of the Subcommittee. The Coal Bed Methane (CBM)/Water Policy report is the first one that the Subcommittee will consider. **EXHIBIT 1.**

**MS. VANDENBOSCH** said that on page 1 of the report, the names of the Subcommittee members are in italic type so that the people reading the report will know who to direct questions to.

**SEN. COLE** said that the 2<sup>nd</sup> page is the standard table of contents.

**MS. PAGE** said that, in reference to page 2, the Subcommittee was unable to look at the development of the environmental impact statement (EIS) because they didn't see anything until the EIS was done. It may be appropriate to say that it was difficult to provide oversight because there was no insight into what was going to be in the EIS.

**MR. EBZERY** said that they were given the opportunity each step of the way to receive briefings from the lead agencies about what was in the document. They had the opportunity to participate in the hearings. After the hearings, there was a group that participated in the May meeting who offered information and answered questions. He feels that the Subcommittee had as much oversight as was appropriate for a committee of this nature.

**SEN. COLE** said that he attended 6 different meetings regarding the EIS, some formal and some not. He did make some comments. He would agree with MR. EBZERY.

**MS. PAGE** said that we don't have a definition of oversight, but she feels that the Subcommittee had the same opportunities as the public. She had thought that the Subcommittee would get a report ahead of time as the EIS was being developed that would have offered a look at what was to be included in the final EIS. The briefings from the agencies were so generalized that they were not revealing of what was going to be in the final EIS.

**MR. EBZERY** asked if MS. VANDENBOSCH got the reports as they came out.

**MS. VANDENBOSCH** said that there were 2 technical reports that were provided to the Subcommittee; one on soils and one on water. However, draft chapters of the report were not made available before the draft EIS was released.

**SEN. TESTER** said that the Subcommittee members did not receive the releases before the public did. This didn't allow the Subcommittee to comment before the EIS went to the public. The Subcommittee saw it after it was done. He doesn't know if the Subcommittee could have done a lot if they had seen the report before the public anyway.

**SEN. McCARTHY** said that the Subcommittee couldn't have done anything even if they had got the reports early.

**SEN. TESTER** said that he tended to agree, but it deals with expectations. He had thought that the committee would have some input into it, but that never came to fruition.

**MS. PAGE** said that the Subcommittee had the same opportunity as the public to view the EIS.

**MS. PAGE** referred to the first paragraph of page 3. She would like to have "and effects on soils" included in the sentence about what they were briefed on. The Subcommittee learned about the effects on soils, not just soils.

**MS. VANDENBOSCH** said that the report would have to go through editing. She would suggest that if the Subcommittee wanted to approve the concept of making sure that it is talking about the effects on soils that would be good, but not necessarily specific wording. **MS. PAGE** said that was fine.

**SEN. COLE** said that in some cases the water from CBM may not have any effect on the soil at all.

**MS. PAGE** said that the issue is the effect of the CBM water on the soil structure, not the soil.

**MR. EBZERY** said that sentiment is already in the sentence.

**SEN. McCARTHY** asked if, on page 4, where the dates are in there, does that mean that if an individual looking through this report wanted additional information, they could look to the minutes of that meeting. **MS. VANDENBOSCH** said that was correct. **SEN. McCARTHY** asked if there could be a way to put that in so that people will know that they can do that.

**MS. VANDENBOSCH** and **MS. EVANS** agreed that they could do that.

**MS. PAGE** said that on page 3, John Wheaton discussed the distance out from a well that the draw down was noticed. She feels that needs to be mentioned as a general topic.

**MR. EBZERY** said that he remembers that topic, but he thinks that it was fairly inconclusive in terms of how far out from the well that would occur. There was some indecision with those distances.

**MS. PAGE** said that there wasn't general agreement, but if there had been we wouldn't be going through this. There are other topics that are discussed in the report that also do not have general agreement and are not absolute. One of the sentences refers to the idea that the effects vary from site to site. The draw down area is one of the topics that needs to be discussed.

**SEN. COLE** asked if it was taken care of in the sentence saying that the Subcommittee discussed "the rate of production of water, the effect of the reduction of pressure." There is an emphasis that the effects will vary from site to site.

**MS. PAGE** said that it doesn't get at the issue of distance. There is legislation that covers mitigation for a specific distance from a well. This is an important issue and is dealt with, although not adequately, in the law. The distance of pumping from the well is an important concept to include in the report as one of the concepts that Mr. Wheaton talked about.

**SEN. TESTER** said it is an important issue that may be already covered. If, in fact, this would have any effect on legislation that may come, it should be included. It is a concern. These are general segments. If the subcommittee wanted to state that ground water impacts around the well vary significantly, he wouldn't have a problem with that.

**MR. EBZERY** suggested that MS. PAGE and MS. VANDENBOSCH work together on language and present it to the Subcommittee after lunch.

**MS. VANDENBOSCH** said that after this meeting, the report will go to the full Environmental Quality Council (EQC) before the September meeting.

**SEN. COLE** said that, in reference to page 4, there were some comments at some of the EIS meetings that the federal Bureau of Land Management (BLM) and the Montana Board of Oil and Gas Conservation (BOGC) had no authority over leasing and couldn't control it. The agencies were emphatic that they did have bonding authority on their leases. That is something that needs to be added to the report. There being no objections, that would be put in.

**SEN. COLE** said that there was one landowner in favor and one landowner against CBM development. The report should say it as such in order to show that both sides were heard from at that time.

**MS. PAGE** said that Mr. McRae has stated that he was not against CBM.

**MR. EBZERY** said that it was a reasonable assumption from what he said that he was against CBM development.

**MS. PAGE** said that the report was accurate in saying that he had concerns.

**SEN. COLE** said that if the Subcommittee had one landowner who was for CBM development and one landowner who was against it, it would balance out. There is no doubt that Mr. McRae was not in favor of it.

**MS. PAGE** said that Mr. McRae specifically said that he was not against CBM. It is not accurate to put it down otherwise.

**MS. VANDENBOSCH** said that the report is a summary. She doesn't feel that she can say something that is contradictory to what a witness said. She could write that the Subcommittee believes that Mr. McRae was against CBM development.

**MR. EBZERY** said that it is not worth fighting about. Those on the Subcommittee listened to the presentation and know where he stands. It is not necessary to make any changes.

**SEN. COLE** said that the Wyoming person indicated that it had been beneficial, but a person had to be very careful when choosing a company to work with and in how things were done.

**MR. EBZERY** said that she (the Wyoming landowner) wasn't in favor of the mining; she was in favor of the water. Part of the presentation was against the company.

**SEN. COLE** said that the Wyoming person indicated that the developments had been beneficial, but not the total CBM development.

**MS. VANDENBOSCH** suggested the following wording, "The full EQC heard from a landowner that discussed the benefits of coal bed methane development, as well as her concerns or perspective as a landowner."

**MS. PAGE** said that she and MS. VANDENBOSCH could wordsmith that as well.

**MR. EBZERY** said that MS. PAGE and MS. VANDENBOSCH can work on those.

**SEN. COLE** said that his recommendation was to include in the report that it was understood that the people had concerns about the bonding and lease requirements, but that both the BOGC and the BLM were explicit that they had jurisdiction to put bonding to make sure that the lease is satisfactory.

**SEN. TESTER** asked if bonding is the obligation of the BOGC and the BLM. **SEN. COLE** said that they have the authority for bonding. **MS. VANDENBOSCH** suggested inserting the phrase "including bonding requirements" at the end of the first sentence under the heading "Permitting and Leasing."

**MR. EBZERY** asked, in reference to page 6, was there any report that needed to be included regarding the Flathead Lake Biological Station Study. **MS. VANDENBOSCH** said that there was nothing to add.

**SEN. TESTER** said that there have been some questions from local governments about the effectiveness of the Drought Advisory Committee. There is some question about their effectiveness.

**MS. EVANS** said that they have been working on the federal level to come up with a drought plan for the nation.

**SEN. TESTER** said that the issue that arose was that when it comes to getting federal dollars, they didn't see that the committee was speeding things up at all.

**MOTION/VOTE: SEN. TESTER** moved to adopt the report with the changes that have been suggested. Motion passed unanimously.

### **III REVIEW WATER QUALITY REGULATION HANDBOOK**

**MS. EVANS** referred to **EXHIBITS 2 and 3**. EXHIBIT 2 is a foreword. There were some issues with taking off the original authors, so this foreword will give credit to those who originally put this report together. **Ms. Evans** had initially suggested removing the original authors from the publication because it had changed substantially since they had written it. She didn't feel they should be held responsible for a document that, after the revisions, may not contain information they are familiar with.

**SEN. McCARTHY** said that there should be a date for when the handbook was originally done included in the foreword.

**MR. EBZERY** asked if there is any way to know which changes were made. **MS. EVANS** said that it was changed significantly. In the original publication she felt that there was insufficient citing and that critical portions of the statute had been left out, so she added a lot of that. The format is generally the same, but she made quite a few other changes with regard to content. The part on total maximum daily loads (TMDL) is completely new.

**SEN. TESTER** asked, on page 10, under authorizations to degrade, how is that measured and who measures that. **MS. EVANS** said that it would be the Department of

Environmental Quality (DEQ) who is responsible and that is right out of the Montana Code Annotate (MCA).

**SEN. COLE** asked, on page 18, regarding schedules for TMDLs, were there 800 on the 1997 list.

**MS. EVANS** said that she tried to stay away from specific numbers so that the handbook would stay current longer.

**SEN. McCARTHY** said that the top of the next page says how the list was revised and takes the report to the point that numbers are not needed.

**SEN. TESTER**, said, on page 21, in the first paragraph under general guidance, he would like stronger language. He would like the conservation district and advisory group to be the primary input on that. **MS. EVANS** said that they are the only ones that are mentioned in statute to get information from. She suggested that Sen. Tester introduce legislation if he wanted that to be the case.

**SEN. TESTER** said he had heard that the Missouri TMDL was being done with very little producer input and asked if that is true? **Art Compton, DEQ**, said that the role of the local conservation district and local watershed group should be the same across the board on any type of water body. The DEQ looks toward existing watershed groups or encourages the creation of one.

**SEN. COLE** asked if, on page 30, under the Major Facility Siting Act, is Chapter 75 being quoted, or is this the old bill. **MS. EVANS** said that if there is a concern she can double check it.

**Mr. Compton** said that it should be limited to power facilities.

**MOTION/VOTE: SEN. EKEGREN** moved to adopt the report as amended. The motion passed unanimously.

#### **IV UPDATE ON LITIGATION RELATED TO COAL BED METHANE NATURAL GAS**

**MS. VANDENBOSCH** referred to **EXHIBIT 4**. It summarizes the active CBM cases. The first page includes the Northern Plains Resource Council (NPRC) v. Montana BOGC. A settlement was approved almost 2 years ago where the BOGC agreed to prepare a programmatic EIS. Further CBM development is on hold pending the Record of Decision on that. There are some exceptions for exploratory wells, and additional wells in the CX field.

Another case is the Tongue River Water Users Association v. DEQ. This is in state District Court. Originally there were 2 lawsuits, one filed by NPRC and one filed by the

Tongue River Water Users Association. Those have been combined into one complaint. The complaint is summarized in EXHIBIT 4. The lawsuit is in discovery.

NPRC v. Fidelity is a citizen suit under the federal Clean Water Act, which alleges unpermitted discharges into the Tongue River and Squirrel Creek.

NPRC v. Norton is in federal District Court. This case alleges that the BLM violated the National Environmental Policy Act (NEPA). There will be a hearing on a pending motion to dismiss and a motion for a preliminary injunction July 30, 2002. The motion for a preliminary injunction would keep the BLM from leasing without the analysis that the plaintiffs feel is required.

NPRC v. Fidelity is in federal District Court. The case alleges failure to obtain a Clean Water Act, Section 404 permit for the construction of certain facilities. It is in discovery. There was an order for inspection, which has not been scheduled yet.

Subcommittee members asked about an issue before the Interior Board of Land Appeals (IBLA). In 2000, the Wyoming Outdoor Council protested a competitive oil and gas lease sale with the BLM. The administrator dismissed the protest, so it was appealed to the Interior Board of Land Appeals (IBLA). On April 26, the IBLA reversed and remanded the decision. This decision affects only 3 parcels. Marathon Oil filed a suit in federal District Court hoping to overturn that decision. The U. S. Department of Interior has filed a motion to review the IBLA decision.

**MR. EBZERY** said that the BLM has asked for reconsideration by IBLA in that decision. Marathon appealed directly to federal District Court. This puts the Department of Interior in the position of defending a decision that they have asked to be reconsidered. The Secretary of Interior has the right to overturn IBLA and has not done so. The Outdoor Council would like this to apply to all leases, but the IBLA is on a site specific case. There would have to be actions brought on every single lease, which is why Marathon went to District Court. The Outdoor Council is saying that they brought the action and won and want to be interveners.

**MS. PAGE** asked if there is litigation over the Bozeman Pass CBM development.

**MS. VANDENBOSCH** said that there is a case. It is not included because it is a land use issue dealing with denial of a conditional use permit.

**SEN. McCARTHY** said that the litigation involves the Bozeman City Council because they are the ones who denied the permit. **MS. VANDENBOSCH** said that it is the Bridger Canyon Planning and Zoning Commission.

**MR. EBZERY** said that they voted 3 to 2 to deny the permit.

**SEN. McCARTHY** said that Huber was requesting a permit to drill for natural gas.



**MR. EBZERY** said that they may decide to go for conventional natural gas in deeper formations and then come back to the CBM gas.

**SEN. McCARTHY** said that at this point it is a local issue, not a state issue.

**MS. PAGE** said that it is related to the whole CBM development scenario in Montana. It would be nice to have that included in this summary of cases. It is relevant to what we are doing.

**MR. EBZERY** said that it is at least worth noting. It has implications for the whole state regarding any form of development.

**MS. VANDENBOSCH** said that she would mail that out.

**SEN. McCARTHY** said that the Subcommittee should have received information about the Wheeler Institute in Billings, Sept 26 and 27. There will be money for the Subcommittee to attend that.

## **V COAL BED METHANE NATURAL GAS AND WATER POLICY UPDATES**

### **• *Water policy updates***

**MS. EVANS** referred to **EXHIBIT 5**. There was a recent Supreme Court decision that had to do with the ground (lake bed) under Flathead Lake. An estate was trying to claim the ground under the lake. The Supreme Court explained that the land is held by the federal government in trust for the tribes. It is an interesting decision because it goes through the ownership issues of lake beds and stream beds.

**SEN. TESTER** asked if the lady had paid taxes on the land. **MS. EVANS** said that she had and that was the basis for filing a claim on it. **SEN. TESTER** asked if they got the tax money back. **MS. EVANS** said that the decision did not address that.

**MS. EVANS** said that the other issue is a notice from the DEQ stating that the newest 303d list and the TMDL schedule are out for public comment.

**Mr. Compton** said that every two years there are a few adjustments made. It is not a total reworking of the list.

**SEN. TESTER** asked what allows the streams to be taken off the list. **Mr. Compton** said that the original 1996 list was all inclusive. The TMDL legislation passed in 1997 created the sufficient and credible data standard, which was not applied to the 1996 list. **SEN. TESTER** asked if the streams are taken off, is it still using that sufficient and credible data standard. **Mr. Compton** said that was correct. **SEN. TESTER** asked what

puts the streams on the list. **Mr. Compton** said that it would be the continued assessment work that the DEQ is doing across the state.

• ***Coal bed natural gas updates***

**MS. VANDENBOSCH** referred to **EXHIBIT 6**. The Board of Environmental Review was presented with 3 alternative approaches to establishing numeric standards for establishing sodium adsorption ration(SAR) and electric conductivity(EC). The first 2 alternatives were prepared by the DEQ and established numeric standards. The difference between the 2 is that the first one sets 1 standard for the Tongue River and the second sets different standards for different reaches of the Tongue River. They were also presented with a petition that was submitted by T and Y Irrigation Company, the Tongue River Water Users Association, the Buffalo Rapids Irrigation Project and Northern Plains Resource Council. The petition proposed numeric water quality standards for EC and SAR for the Tongue River, Powder River, Little Powder River and Rosebud Creek. They proposed different standards for different reaches of water bodies, except for the Little Powder River. They also recommended a moratorium on discharges to the water bodies and tributaries pending collection of 24 months of baseline water quality data, the completion of a survey of irrigation use and practices, and development of numeric standards for the tributaries. The Board of Environmental Review decided to initiate rule making and seek comment on all 3 alternatives.

**MS. PAGE** asked for an explanation of the issues raised in relation to alternative 2 and the petition, that by having different standards for different reaches these alternatives would be more protective of beneficial uses. **Mr. Compton** said that the DEQ introduced to the Board the idea of allocation, which is taking a standard at the mouth of the river that is the number that is necessary to protect the most sensitive crop. This number is increased by 40% for precipitation. You can just set the standard at the mouth, and then the question is, what do the numbers need to be upstream before natural salinity increases will take you to the number at the mouth. One issue is the naturally increasing level of salinity as you go down stream. The other issue is that with the allocation there is a lower number at the Wyoming border, which is considered by some to be more restrictive than is necessary to protect beneficial uses. This can be done, but there need to be specific findings. They are not certain that they can make that demonstration at all points.

**MR. EBZERY** said that the DEQ was correct that this is an issue that needs to be resolved. How do they envision this? **Mr. Compton** said that it is a little early to answer that. Since the Board reached their finding, there have been many discussions about how they are going to make this work. They envision a series of meetings for the first 6 weeks. These will be professionally facilitated. They are hoping to get someone from the Governor's office to facilitate this. They will be looking at participants from industry, water users, tribal governments, and the Wyoming DEQ. The objective would be to see if industry and the irrigators can work something out that will work for everyone. He is

concerned that the irrigators are not willing to move very far. It looks like the 2 sides are a long way apart. These would be public meetings.

**MR. EBZERY** said that the attempt will be to get the grandstanding away from the issue. He would hope that the meetings would be boring and would help them get away from the pressures. **Mr. Compton** said that there are 2 factors that tend to make the discussion less polarized. The first is the DEQ's feeling that they need to get away from flow based standards. The second issue is the knowledge that the infiltration pond is going to be overwhelmingly the management tool of choice and those don't discharge.

**MR. EBZERY** asked about the concern that the ponds will leak. **Mr. Compton** said that the ponds are supposed to leak. They are sited off channel. Wyoming has moved away from on-channel siting. The on-channel ponds also prevent the good water from getting to users below. The off-channel ponds allow a good portion of that water to go vertical and never be seen again. **MR. EBZERY** asked if the Board will take public comment on the 3 alternatives and if that will be a separate process even though the people are meeting elsewhere. What role will the DEQ have in the rule making?

**Mr. Compton** said that the DEQ would not have input in the rule making. They are separate proposals. Public hearings are required by the process. If the parties can come together, the approach may be very different from the alternatives. **MR. EBZERY** asked if there is a legal impediment to the DEQ being involved in the process of working with interested parties. **Mr. Compton** said that he had not heard anything about that.

**MR. EBZERY** would like to know if the Montana Administrative Procedures Act (MAPA) would preclude the DEQ from participating in the meetings.

**MS. PAGE** asked about the low flow scenario. How does this relate to what is coming from Wyoming now? **Mr. Compton** said that the Tongue River is not having any problems. The drought is causing the limits to be exceeded on the Powder River, not CBM development. There is no contributing flow from tributaries that are hosting CBM development. What they are seeing is a lack of flow from some of the creeks that have high quality water. They have conclusively determined that the elevated levels have to do with the drought conditions. He can make the data available to staff.

**MS. VANDENBOSCH** said that the CBM EIS is projected to be released in early December. The BLM has a protest period following that. The DEQ is seeking comments on a proposed schedule change for development of TMDLs for the Tongue River and Powder River watersheds. This would move up the TMDLs for these watersheds to this year.

**SEN. COLE** said that they were going to have a tour that has been postponed. There will be letters coming to the legislators for tours on Sept 9 and 10.

**SEN. EKEGREN** asked if there is a way to coordinate this with the Wheeler Institute.

**MR. EBZERY** said that was a good point.

**SEN. McCARTHY** asked if it is a duplication of last year's tour. **SEN. COLE** said that they would see some of the same things, but there have been a lot of people that have indicated that they have not seen this.

**SEN. COLE** will check into changing the date of the tour to correspond with the Wheeler Institute Conference.

**MS. PAGE** would like to see some of the places where there has been alleged damage from CBM development. **SEN. COLE** said that he would take that into consideration.

**SEN. McCARTHY** said that there may not be enough money in the EQC budget to cover the travel expenses for the tour.

**SEN. TESTER** asked who in the state of Montana is sponsoring the trip. **SEN. COLE** said that nobody will pay the members' way down there.

**SEN. COLE** said that on August 9, there will be a joint House and Senate meeting looking at where we have been and where we are now as far as electric rates in the state of Montana, work that is being done at the University, and what funding tax money has come out in the past 5 years as far as coal, oil and gas is concerned. In addition to that, he has asked that the coal people, the oil and gas people, and the CBM people attend and offer information. He thought that this would be advantageous to the Subcommittee to observe.

**SEN. TESTER** said that it is possible that the Finance Committee could be meeting at that time. How flexible is that meeting time? **SEN. COLE** said that they picked the day hoping that most will be able to attend.

## **VI      WRAP UP**

**MS. VANDENBOSCH** said that on the *CBM and Water Policy in Montana* draft report, page 3, the suggestion was to add language so it would read: "Wheaton discussed the rate of production of water from coal bed methane wells, the distance from a well or field that ground water draw down may occur, the effect of the reduction of pressure in the aquifer and the yield from wells and springs, and the recovery of the aquifer through ground water recharge after production ceases."

There were no objections to that wording.

**MS. VANDENBOSCH** said that the next change was on page 4. The original wording was, "On its tour of coal bed methane sites in Wyoming the full EQC heard from a land owner who favored coal bed methane development." The new wording is, "The full EQC heard from a land owner who discussed the benefits of coal bed methane development."

There were no objections to that wording.

**MS. VANDENBOSCH** said that she would make the changes and then mail the report to the full EQC.

**MR. EBZERY** asked if this is the final Subcommittee meeting. **MS. VANDENBOSCH** said that was correct. The next EQC meeting be will be September 12 and 13.

**MS. EVANS** said that SEN. COLE had requested that the Major Facility Siting Act in the Water Quality Handbook be fixed. She will fix it according to the statutes.

## **VII    ADJOURN**

There being no further business, the meeting was adjourned.

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