



ENVIRONMENTAL QUALITY COUNCIL

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DESIGNATED REPRESENTATIVE
MIKE VOLESKY

HOUSE MEMBERS
DEBBY BARRETT
NORMA BIXBY
SUE DICKENSON
CHRISTOPHER HARRIS
WALTER MCNUTT
JIM PETERSON

SENATE MEMBERS
LANE LARSON
GREG LIND
DANIEL MCGEE
JIM SHOCKLEY
ROBERT STORY
MICHAEL WHEAT

PUBLIC MEMBERS
BRIAN CEBULL
KRIS KOK
BUZZ MATTELIN
DOUGLAS MCRAE

COUNCIL STAFF
KRISTA LEE EVANS, Research Analyst
JOE KOLMAN, Research Analyst
CYNTHIA PETERSON, Secretary
TODD EVERTS, Legislative Environmental Analyst

MINUTES

DATE: September 11, 2006

Room 137, State Capitol Building

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

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

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

COMMITTEE MEMBERS PRESENT

SEN. LANE LARSON
SEN. GREG LIND
SEN. DANIEL MCGEE
SEN. ROBERT STORY
SEN. MICHAEL WHEAT
REP. DEBBY BARRETT
REP. NORMA BIXBY
REP. SUE DICKENSON
REP. CHRISTOPHER HARRIS
REP. WALTER MCNUTT
REP. JIM PETERSON
MR. BRIAN CEBULL
MR. KRIS KOK
MR. BUZZ MATTELIN
MR. DOUGLAS MCRAE

MEMBERS EXCUSED

SEN. JIM SHOCKLEY

STAFF PRESENT

KRISTA LEE EVANS, Research Analyst
TODD EVERTS, Legislative Environmental Analyst
JOE KOLMAN, Research Analyst
CYNTHIA PETERSON, Committee Secretary

Visitors

Visitors' list ([Attachment 1](#))
Agenda ([Attachment 2](#))

COMMITTEE ACTION

- The Environmental Quality Council (EQC) approved the minutes of the Study Subcommittee and the HB 790 Subcommittee.
- The EQC adopted the State Wide Wolf Management Authority Guidelines Proposal submitted by Co-Chairman Barrett and struck the reference to “interagency” and changed the language to read: "explains the jurisdictional authority of all relevant agencies regarding wolf management decisions."
- The EQC will request Montana's Congressional Delegation to fully fund the cooperative agreement regarding wolf management.
- The EQC approved the Department of Fish, Wildlife and Parks (FWP) proposed legislation with the exception of proposals 5, 11, and 13.

CALL TO ORDER AND ROLL CALL

00:00:01 Co-Chairman Barrett called the EQC meeting to order at 1:02 p.m. The secretary noted the roll ([Attachment 3](#)).

AGENDA

ADOPTION OF MINUTES

00:01:41 Rep. McNutt moved the Study Subcommittee minutes be approved. The motion carried unanimously by voice vote. Sen. Wheat moved the adoption of the HB 790 Subcommittee minutes. The motion carried unanimously by voice vote.

ADMINISTRATIVE MATTERS

00:02:27 Mr. Everts reported the EQC has a remaining budget of \$23,767.05, not including the current meeting. Mr. Everts directed the EQC to the staff evaluation form.

AGENCY OVERSIGHT OF STATE WOLF MANAGEMENT ISSUES

00:03:33 Co-Chairman Barrett reported on the wolf management public hearing held in Ennis, Montana.

00:03:56 Co-Chairman Harris reported on Agency Oversight Subcommittee activities. The subcommittee heard from the Petroleum Tank Release Compensation Board and its concerns regarding a proposed policy restricting travel to eliminate the 150-mile limit for consultant reimbursement. The agency agreed to conduct rule-making. The subcommittee also heard from the Department of Natural Resources and Conservation (DNRC) on compliance and enforcement efforts.

00:07:40 Co-Chairman Barrett reported approximately 100 people attended the meeting and 50 people testified. In addition, approximately 1,000 e-mails were received. Other states and sportsmen's groups commented at the meeting as well. Funding was identified as an issue, including funding for the Department of Livestock and USDA Wildlife Services. Concern was also expressed for livestock compensation; conflicting or undefined management authorities; increasing need to protect public health, safety and welfare; and declining elk and other populations due to wolf delisting. Co-Chairman Barrett also identified a growing concern about wolf diseases.

Loss, Reduction, and Mitigation Program Group--Jay Bodner

00:11:21 Mr. Bodner introduced the members of the working group and reported on the diverse working group's activities. Mr. Bodner provided a history of wolf management in Montana and identified compensation for livestock losses as a high priority. Mr. Bodner directed the EQC to the Montana Livestock Loss Reduction and Mitigation Program ([EXHIBIT 1](#)).

00:18:41 Elaine Alstead, Sweet Grass County Commissioner and rancher, submitted and reviewed proposed legislation ([EXHIBIT 2](#)). Ms. Alstead addressed funding and stated the majority of the working group believed the program should be federally funded. Ms. Alstead also submitted Joint Resolution No. 2005-41 ([EXHIBIT 3](#)).

Questions from the EQC

00:21:20 Rep. Peterson was curious about the funding and noted that the proposed state legislation would be funded federally and asked how that proposal would work. Ms. Alstead replied federal funding could be channeled through the agencies and earmarked for a specific use.

Wolf Disease Issues in Montana--Mark Atkinson, Department of Fish, Wildlife and Parks Veterinarian

00:23:31 Dr. Mark Atkinson, Wildlife Veterinarian, FWP, gave a power point presentation and submitted a paper entitled "Disease Surveillance in Gray Wolves in Montana" ([EXHIBIT 4](#)).

Public Comment

There was no public comment offered.

Questions from the EQC

- 00:50:29 Rep. Dickenson recalled one of wolf packs in the Madison Valley was infected with mange and asked whether those wolves could be euthanized. Dr. Atkinson explained by the time mange is detected, it would most likely be widely disseminated among wildlife and that euthanization of infected animals has never proven to be effective in reducing the disease in the greater population.
- 00:52:08 Sen. Lind asked whether data was available regarding chronic wasting disease. Dr. Atkinson responded the state has been performing chronic wasting disease surveillance for a number of years and has not found any positive animals in the wild deer and elk populations, but is working with wildlife researchers in other states. Data suggests wolves and other predators are able to single out deer and elk that have chronic wasting disease much earlier than people are able to detect the presence of the disease. Therefore, the data suggests predators may have a positive effect by removing early infected animals.
- 00:54:30 Co-Chairman Harris inquired whether wolves were more sick now than they were a hundred years ago, and asked how the wolf population compares to the coyote population. Dr. Atkinson depicted the wolves in Montana as very healthy. Wolves moved from Canada to Yellowstone were tested prior to being moved. Dr. Atkinson stated wildlife researchers would like to look at the coyote and fox populations, but funding and resources are not available.
- 00:57:00 Co-Chairman Harris asked whether it would be fair to say the wolf population is healthy. Dr. Atkinson agreed that would be a fair statement.
- 00:57:28 Mr. Volesky inquired whether any new information regarding chronic wasting disease was available on the elk herd that got loose in Idaho. Dr. Atkinson explained members of FWP are ready and poised in southwest Montana so, if the elk do come into the state, they will be killed. To date, none of those elk have crossed into Montana.
- 00:58:22 Rep. Peterson asked what particular zoonotic diseases the wolf might play a role in. Dr. Atkinson identified rabies as the disease which causes the largest concern; however, wolves are not a concern with rabies. Mange mites are very species specific and do not pose a threat to humans. There are concerns about tapeworm, but chances are very small that tapeworms would transfer to humans.

- 01:02:28 Mr. McRae asked whether plague is a concern among the wolf population. Dr. Atkinson stated plague has never been found in wolves, and that there are no reports indicating it is a problem.
- 01:03:39 Co-Chairman Barrett recalled Dr. Atkinson's statement that there is no statewide disease management plan for wolves for Montana. Dr. Atkinson agreed and added no other states or Canada have a disease management plan. Dr. Atkinson explained there have been attempts to control diseases in Alaska, but there are no current successful specific control programs.

(Tape 1; Side B)

- 01:04:59 Co-Chairman Barrett recalled it was her understanding from attending a wildlife diseases in Montana symposium that Montana's wolves are not as healthy as wolves in other places. Dr. Atkinson stated that was not his opinion. Co-Chairman Barrett suggested that enough data may not be available about diseases in Montana. Dr. Atkinson agreed that could be true, but indications could be that diseases may exist but may not be impacting the wolf population significantly. Co-Chairman Barrett recalled wildlife corridors were identified as places where diseases are spread and that the drugs that could prevent wolves from spreading diseases are not environmentally allowed. Dr. Atkinson did not believe that was accurate. Dr. Atkinson disagreed that the wolf population is unhealthy and disagreed that Montana is limited to treat the wolf population medically because of environmental issues. Dr. Atkinson did not believe it was necessary to treat wildlife animals on a regular basis. Co-Chairman Barrett suggested she could have confused the issue with elk management.
- 01:10:07 Co-Chairman Harris asked what would cause wolves to die off. Dr. Atkinson explained information indicates not many wolves die of disease, and juveniles are the most prone to mortality and die from starvation or other wolves. Co-Chairman Harris asked whether wolves die of old age. Dr. Atkinson explained occasionally wolves lose the support of their pack or experience a hard winter.
- 01:12:48 Sen. McGee referenced the pie chart on Exhibit 4, page 2, and asked what "natural factors" included and the meaning of "unknown." Sen. McGee also asked about the statement that ten percent were euthanized for physical injury or skin disease. Dr. Atkinson explained "natural factors" would include starvation and severe injury. Dr. Atkinson replied one wolf was euthanized because of mange. "Unknown" would be the designation used when Dr. Atkinson receives a bag of bones. Sen. McGee inquired how many wolves were represented in the chart. Dr. Atkinson replied the chart represented 122 wolves.
- 01:15:58 Sen. Story inquired what percentage of the population 122 wolves would be. Dr. Atkinson replied based on the number of wolves he examined in the lab, the number represented about 30 percent of the state's estimated population.
- 01:17:59 Carolyn Sime, Wolf Management Specialist, FWP, clarified there are approximately 200-250 wolves in the state and approximately 30 percent of the wolf population dies per year.

01:18:25 Rep. Peterson recalled numbers being presented in Ennis that there were 53 packs in Montana and close to 400 wolves in the state. Ms. Simes clarified the estimate of 50 packs is a preliminary guess for 2006.

01:19:17 Rep Harris recalled there were 256 live wolves in Montana. Ms. Simes clarified 256 was the minimum number estimated at the end of 2005. Co-Chairman Harris noted 122 would be nearly half the population. Ms. Simes explained 122 is a multi-year number for investigations conducted over a three-year period from 2003-06.

Public Comment

01:21:44 Dr. Nelson Ward, a retired Veterinarian, testified he preferred federal funding, but recognized that federal funding may or may not occur. Dr. Ward suggested a need to look at the longer range and noted if delisting of the wolf occurs, there may not be any federal funding available for compensation. Mr. Ward asked whether there is anything new regarding chronic wasting disease spreading through the intestinal tract of the wolf. Dr. Atkinson did not have any specific scientific information available and offered to investigate the issue and report back.

01:25:02 Mr. Bodner requested support from the EQC and offered assistance regarding the Montana Livestock Loss Reduction and Mediation Program.

01:26:07 Rep. Diane Rice, HD 71, thanked the EQC for allowing the subcommittee to travel to Ennis on August 11, 2006. Rep. Rice reported more lost livestock in the Ennis area and reported on a wolf attacking humans in Canada. Rep. Rice stated she has heard the wolf was going to be delisted since 2000. Rep. Rice indicated the numbers regarding wolf population are all over the map and the wolf population is growing beyond anyone's expectations. Rep. Rice explained that Bob Fanning, Friends of the Northern Yellowstone Elk Herd (FNYEH), is in the process of filing suit and proposed that the EQC submit a bill draft recommending intervening in the FNYEH lawsuit in favor of the lawsuit. Rep. Rice also read an e-mail from Greg Petesch saying the EQC could intervene. Rep. Rice asked the EQC to move forward with a bill draft recommendation. Rep. Rice stated there would be a \$75,000 statutory appropriation, and that amount would be approximately one-half of the ultimate legal fee. The remaining one-half would be paid by the FNYEH. Rep. Rice submitted a letter dated August 10, 2006, from Karen Budd-Falen of the Budd-Falen Law Offices (**EXHIBIT 5**).

01:31:21 Orville Skogen, a rancher with cattle throughout Montana, testified three of his cattle were recently killed by wolves. Mr. Skogen spoke about the cattle kills in counties with wolf problems. Mr. Skogen stated there are 13 wolves in his cattle herd in his 640-acre section. Mr. Skogen identified the various ways stress from wolves affects his cattle. Mr. Skogen estimated he lost \$26,283 in two weeks due to weight loss experienced by his cattle. Mr. Skogen believed if ranchers are going to be required to live with wolves, there should be a way to tax the public interest groups that support wolves. Mr. Skogen pointed out that ranchers were present before the wolf population.

- 01:40:05 Jannelle Holden, Predator Conservation Alliance, helps ranchers prevent conflicts and stated her organization has paid out over \$70,000 to help reduce conflicts. Ms. Holden would like to address the costs of managing cattle in wolf country and see money put aside to help ranchers with those efforts. Ms. Holden supported the delisting of the gray wolf but cautioned against developing legislation that would jeopardize policies already approved by the U.S. Fish and Wildlife Service (USFWS).
- 01:42:46 Joe Helle, a sheep producer in Madison County, has experienced wolf conflicts since 1995. Mr. Helle believed in restitution and mitigation, but not compensation.

(Tape 2; Side A)

Mr. Helle has lost 200 head of sheep over the past ten years, as well as six or seven guard dogs. Mr. Helle recalled a lot of concern about public safety being voiced at the meeting in Ennis. Mr. Helle suggested concentration be placed on the need to manage the wolves by reducing the wolf pack number to 15.

EQC Discussion and Action (If Any)

- 01:47:17 Rep. Peterson recalled at the meeting in Ennis there was an issue of management coordination between FWP and USFWS and that the two agencies were going to develop a Memorandum of Understanding (MOU). Rep. Peterson hoped the MOU was on its way to completion. Co-Chairman Barrett requested Director Hagener to address the MOU.
- 01:48:42 Jeff Hagener, Director, FWP, explained the parties are close to finalizing the MOU and anticipated the MOU would be completed by the middle of October. Rep. Peterson requested the agreement be completed as quickly as possible.
- 01:50:12 Sen. Story believed half the problem is that neither of the two agencies is clear on what their authority is. Sen. Story asked if the MOU contained a provision that if a situation is not specifically addressed in the MOU, one of the agencies is specified as having the authority to make a decision. Director Hagener believed the MOU contained that provision. Director Hagener stated responsiveness has been faster due to the fact that both agencies are dealing with the problem and the MOU has clearly outlined how issues are to be resolved.
- 01:52:07 Co-Chairman Barrett distributed a State Wide Wolf Management Authority Guidelines Proposal (**EXHIBIT 6**) and moved the EQC adopt the proposal. Co-Chairman Harris asked about the reference to "interagency." Co-Chairman Barrett clarified that there needs to be an outline of what can be done, where, when, and by whom. Sen. Story agreed with Co-Chairman Harris that the proposal should make reference to an outline that explains each agency's jurisdictional authority. Co-Chairman Harris suggested language stating "explains the jurisdictional authority of all relevant agencies regarding wolf management decisions." Co-Chairman Harris thought the term "interagency" would be confusing.

- 01:55:58 Sen. Lind asked whether the November 1 time frame was reasonable and realistic. Co-Chairman Barrett explained the deadline is necessary since the agencies already had 2005 and 2006 to complete the MOU. Sen. Lind posed the question to Director Hagener. Director Hagener responded most of all of what is asked for will be in the MOU and did not believe the November 1 deadline would be a problem. Co-Chairman Barrett's motion carried unanimously by roll call vote.
- 01:58:35 Co-Chairman Barrett moved the EQC be authorized to draft a bill for the state of Montana to legally intervene in favor of the lawsuit by the FNYEH in their petition to delist the gray wolf. The bill draft will also statutorily appropriate \$75,000 for legal expenses. The bill draft will authorize the Legislative Services Division to act on behalf of the Montana Legislature.

Discussion by the EQC

- 01:59:24 Mr. Kok asked Director Hagener about FWP's position on Co-Chairman Barrett's motion. Director Hagener explained FWP's concern that their plan has been approved, and they believe the plan is a positive step. Mr. Hagener suggested USFWS will most likely delist and stated he is afraid by intervening, it would stop USFWS from delisting or slow down the delisting process. Director Hagener noted the lawsuit, to date, had not been filed. Mr. Kok wondered if there were any other legal options available. Co-Chairman Barrett explained the EQC could file its own lawsuit, but noted the EQC is constrained by its budget. If the Legislature agreed to file a lawsuit, there would need to be an appropriation. Co-Chairman Barrett believed lawsuits would be filed regarding USFWS's decision to delist.
- 02:03:07 Mr. Volesky commented about the state of Montana showing its frustration through lawsuits, which was essentially what Wyoming did. Mr. Volesky read a letter he had drafted to Secretary Kempthorne, and asked the EQC to recall that the Governor believed the chances of delisting would be better with Secretary Kempthorne.
- 02:06:22 Co-Chairman Barrett acknowledged the letter could be sent again. Co-Chairman Barrett emphasized Montana and Wyoming are nothing alike since Montana has complied with everything the federal government has requested.
- 02:07:05 Rep. Peterson stated he was unsure of the correct answer and was not sure intervening in the lawsuit would be the correct answer, but believed all options should be kept open. Rep. Peterson thought requesting a bill and letting the bill go through the legislative process would be appropriate. Rep. Peterson agreed with the need to expedite delisting. Rep. Peterson was not certain a partnership with the FNYEH in its litigation would be the right way to go, but acknowledged it is an option. Co-Chairman Barrett stated her motion would also keep consistent the legislative intent that we want wolves delisted and controlled. Co-Chairman Barrett recalled previous legislation that was passed requiring the state to petition for delisting by 2003.

- 02:09:05 Sen. Lind asked about background material on FNYEH's litigation. Co-Chairman Barrett stated Mr. Fanning had appeared before the EQC and submitted voluminous background material. In addition, the information is also on the internet. Sen. Lind expressed concern about expending \$75,000 on something that has not been specifically reviewed. Rep. Rice added anytime Montana has seriously put pressure on the federal government, results have been achieved.
- 02:11:36 Sen. Lind asked Mr. Everts whether the EQC could vote and take action on something not noticed on the agenda. Mr. Everts explained the EQC could take action since the agenda item is broad in scope.
- 02:12:02 Sen. Wheat stated he does not have a problem with the EQC forcing the federal government's hand, but did not want to hook up with a private organization.

(Tape 2; Side B)

- Sen. Wheat stated he would prefer seeing the state file its own lawsuit. Sen. Wheat cautioned against the EQC getting behind one particular group.
- 02:14:05 Rep. McNutt thought joining the lawsuit would be against the protocol of EQC. Rep. McNutt explained the EQC has not held a clear hearing and received information from all interested parties. Rep. McNutt stated he did not like the process the EQC was following.
- 02:15:49 Co-Chairman Harris agreed with Sen. Wheat's comments about entangling Montana with a private organization's lawsuit. Co-Chairman Harris believed Montana would have more success if it separated itself from Wyoming and associated more with Idaho. Co-Chairman Harris also believed the EQC should pay attention to the concerns voiced by Director Hagener, Rep. McNutt, and Sen. Wheat.
- 02:17:46 Sen. McGee agreed with asking for a bill draft, and stated he has less heartburn with requesting this bill draft than he has had with other proposals for bill drafts submitted by DEQ and the DNRC.
- 02:19:09 Rep. Dickenson also agreed with Sen. Wheat and believed litigation is unpleasant and should be avoided. Rep. Dickenson was concerned about setting a precedent by supporting a private group in a lawsuit. Rep. Dickenson could not support submitting a bill draft request just to see what happens.
- 02:21:09 Sen. Story referred to Exhibit 5 and was concerned about the apparent lack of information regarding the reason for denial of the petition and the inability to ascertain the probability of prevailing in a lawsuit. Sen. Story did not support bringing proposed legislation as a committee bill. Co-Chairman Barrett reminded the EQC that legislation had been passed previously, but was not carried through at the state level.
- 02:23:57 Mr. Cebull stated he was uncomfortable with the EQC endorsing and joining a lawsuit without all of the details. Mr. Cebull asked whether there is an option for a

bill draft where the EQC could suggest the state could sue if delisting is not accomplished. Co-Chairman Barrett replied she was unsure of the process.

- 02:25:51 Rep. Peterson referred to Exhibit 5, and asked how Rep. Rice would respond to the last sentence of the first paragraph that says "I have not reviewed the underlying record to be able to give you a recommendation. . . ." Rep. Rice responded that she visited with Karen Budd-Fallon, and that Ms. Budd-Fallon had reviewed the entire case. Rep. Rice stated Ms. Budd-Fallon had been very successful in past litigation under the National Environmental Policy Act (NEPA) and had simply not made a determination on what grounds FNYEH would sue.
- 02:27:38 Co-Chairman Harris noted Ms. Budd-Fallon had not reviewed the record to know what the basis of the lawsuit is. Rep. Rice agreed there would be volumes to followup with. Rep. Rice believed a legislative action is needed since EQC's past efforts to go through the Attorney General have not been productive. Rep. Rice believed the EQC should now decide whether to join this lawsuit or pursue a lawsuit on its own. Rep. Rice stated she is requesting a recommendation from the EQC to proceed with a legislative bill to either delist or join the FNYEH lawsuit.
- 02:30:09 Rep. Peterson requested Co-Chairman Barrett to repeat her motion and asked whether she would be willing to amend the motion to include either a recommendation to delist or join the existing lawsuit. Co-Chairman Barrett moved the EQC to authorize drafting of a bill for the state of Montana to legally intervene in favor of the lawsuit by the FNYEH in their petition to delist the gray wolf. The bill draft will also statutorily appropriate \$75,000 for legal expenses. The bill draft will authorize Legislative Services Division to act on behalf of the Montana Legislature. Rep. Peterson asked whether Co-Chairman Barrett would be willing to amend her motion to make it more general in the bill draft request to include a recommendation to delist or join an existing lawsuit that might be appropriate. Co-Chairman Barrett agreed with Rep. Peterson's suggestion. Mr. Everts summarized the motion would authorize the drafting of a bill for the Montana State Legislature to enter into a lawsuit to petition to delist with subsequent money to do so. Rep. Peterson believed the state should not attach itself to a particular law firm, but should keep the issue open, so it could be debated in the Legislature.
- 02:33:19 Sen. Story asked whether there was still an opportunity to petition for delisting. Mr. Everts responded that the time had passed and identified the issue as on what grounds would the lawsuit go forward. Sen. Story suggested the EQC could meet again in January 2007. Mr. Everts agreed there was a precedent for the EQC to meet the first part of January. Sen. Story asked what the basis for a lawsuit would be. Sen. Story believed the issue warranted more work and believed the EQC could meet in January. Sen. Story believed that the EQC needed to move forward in the right way.
- 02:36:07 Co-Chairman Harris asked Bob Lane, Chief Legal Counsel, FWP, what the basis is for a lawsuit if it is filed and whether the state has independent grounds to go into federal court and force a decision on Montana's proposal for delisting. Mr.

Lane questioned whether FNYEH would have standing to bring a lawsuit at all. Mr. Lange suggested joining the FNYEH lawsuit could weigh on Montana's credibility. Mr. Lane believed USFWS would proceed with delisting based on state boundaries. If that does not happen, the state could file its own petition. Mr. Lane believed it would be important to preserve and set the framework for litigation. Co-Chairman Harris stated he did not believe it would be appropriate to spend taxpayer money to join a law firm that may have filed a deficient petition.

(Tape 3; Side A)

- 02:39:49 Mr. Mattelin shared his frustration with delisting the gray wolf but believed the current motion is the best way.
- 02:40:25 Mr. Kok asked for clarification on the motion, and Co-Chairman Barrett replied the vote would be on the original motion as she proposed. Rep. Peterson expressed confusion and suggested more research should be conducted and that the EQC could meet in January. Rep. Peterson suggested Co-Chairman Barrett should withdraw her motion. Co-Chairman Barrett rescinded her motion and requested that the EQC meet in January. Mr. Evert explained committee bills have deadlines and must be pre-introduced. Mr. Everts stated the EQC would need to decide at the present meeting whether it wants to draft a committee bill, and that it would not be appropriate to simply request a placeholder.
- 02:44:05 Sen. Wheat asked whether jurisdictional authority regarding wolf management decisions would include delisting.
- 02:44:35 Rep. Peterson believed delisting would be a federal action separate from the motion.
- 02:45:07 Co-Chairman Barrett rescinded her motion. Sen. Story suggested a subcommittee could be appointed to decide whether to proceed.
- 02:46:25 Rep. McNutt explained the reason the EQC met in January 2005, and was uncertain of the precedent for EQC to continue on with a subcommittee.
- 02:47:13 Mr. Everts explained interim work is required to be completed by September 15, so resources could not be allocated for a subcommittee, but a certain amount of research could be allowed.
- 02:48:00 Co-Chairman Barrett submitted a funding proposal for wolf management (**EXHIBIT 7**) and reviewed the proposal with the EQC. Co-Chairman Barrett submitted specific language (**EXHIBIT 8**) and referred to a Joint Resolution signed by six counties, which was previously submitted as Exhibit 3. Co-Chairman Barrett moved the language on Exhibit 7 stating: "The EQC recommends that the Department of Fish, Wildlife and Parks request from the USFWS that the State of Montana receive the same level of funding per year that the State of Idaho receives for wolf management and conservation in fulfilling the cooperative agreement."

- 02:52:15 Sen. Wheat asked whether Montana would receive the same level of federal funding as Idaho.
- 02:52:58 Co-Chairman Harris commented he was not sure the motion was feasible and suggested the money was probably related to a matrix of some kind and believed there may not be any authority for the U.S. Department of Interior (USDOI) to adjust the money. Co-Chairman Harris asked Director Hagener to comment.
- 02:54:03 Director Hagener explained the funding is not a direct appropriation from USDOI and the money is split with Idaho. Director Hagener believed Montana would have to ask the Senator Conrad Burns for the money. Co-Chairman Harris wondered whether the proposal was feasible given the relationships with Idaho, and the USDOI, and the Congressional Delegation. Director Hagener responded Montana can put in the request, but the request would have to go through the federal appropriation process.
- 02:56:24 Co-Chairman Barrett clarified the motion is directed to FWP to recommend that FWP make the request. Co-Chairman Barrett stated she spoke with Sen. Baucus and he was very interested and saw no reason why Montana should not get the same as Idaho. Director Hagener asked for support from EQC. Co-Chairman Harris suggested the motion should say the money is being requested from Montana's Congressional Delegation who will go to Congress to get the funds.
- 02:58:57 Sen. Story asked whether the request needed to go to FWP or the Governor's office. Mr. Volesky believed the request should come through the agency and then go through, or at least with the awareness of, the Governor's office. Co-Chairman Barrett provided clarification from Ed Bangs.
- 03:00:43 Sen. Story wondered about the timing issue since FWP would need legislative authority to spend federal money. Director Hagener agreed with Sen. Story and stated FWP's budget has been finalized with the Governor's office, but suggested a budget amendment process could be utilized. In addition, the Department of Livestock would also need authority to spend money.
- 03:03:25 Co-Chairman Barrett asked Mr. Volesky to address the time frame. Mr. Volesky explained his letter would encourage that as Montana and Idaho take on management of the program, the money continue, and requesting that Montana, like Idaho, receive compensation dollars.
- 03:04:11 Rep. Peterson amended Co-Chairman Barrett's motion to read: "EQC recommends that FWP request the Montana Congressional Delegation and Congress that USFWS fund the State of Montana at the same level per year that the State of Idaho receives for wolf management and conservation fulfilling their cooperative agreement."
- 03:05:14 Co-Chairman Harris stated he was unclear whether EQC was making the request of Congress or the USDOI. Rep. Peterson clarified the request was directed to the Congressional Delegation and Congress that they direct USFWS to appropriate the same amount to Montana as Idaho. Co-Chairman Harris

agreed the request could only be accomplished through congressional action. Rep. Peterson agreed that was his intention.

03:07:37 Sen. Story was concerned the result could be a budget cut for Idaho. Sen. Story believed the request should be the amount specified in the cooperative agreement. Co-Chairman Barrett agreed the amount should be for the amount specified in the cooperative agreement.

(Tape 3; Side B)

03:09:22 Sen. Wheat asked what would happen if the amount in the cooperative agreement is based on a certain amount of wolves, and wondered if Montana should tie itself to Idaho's funding. Co-Chairman Barrett pointed out Montana is already tied to Idaho by the Endangered Species Act and the reintroduction of wolves, and Montana and Idaho have followed all the rules.

03:10:54 Co-Chairman Harris believed asking the Congressional Delegation to fully fund the cooperative agreement would make sense. Co-Chairman Harris suggested tying Montana to Idaho would lessen the chance of success. Co-Chairman Harris made a substitute motion for EQC to request Montana's Congressional Delegation to fully fund the cooperative agreement. Co-Chairman Harris's substitute motion carried unanimously by roll call vote.

(BREAK)

REVIEW OF FWP LEGISLATIVE PROPOSALS

FWP Review of Legislative Proposals--Jeff Hagener, Director, Montana Department of Fish, Wildlife, and Parks.

03:31:58 Director Hagener submitted a packet containing FWP's proposed 2007 legislation ([EXHIBIT 9](#)) and reviewed the proposals with the EQC.

EQC Questions

03:47:42 Co-Chairman Barrett cited Mr. Smith listing FWP's priorities for the interim as fisheries, PCB cleanup, fishing access sites, issues on the Yellowstone, wildlife implementation plans for elk management, wolf, and sage grouse, and major maintenance issues in parks.

03:48:23 Rep. Dickenson questioned request No. 8 proposing a requirement for trapper safety and education and asked how FWP proposed to fund the program and what the cost would be. Director Hagener explained currently there is a trapper-sponsored voluntary program, and FWP would integrate with that course. Therefore, the cost would be minor, and the program would now be mandatory.

03:49:28 Rep. Dickenson asked about proposal No. 13 and asked for examples of violations where citations could be issued. Bob Lane, Chief Legal Counsel, FWP, provided examples such as reckless snowmobiling and failure to have the proper

decals. Mr. Lane stated civil violations have never been enforced. Mr. Lane suggested the snowmobile statutes need to be straightened out. Rep. Dickenson asked whether reckless snowmobiling would include going off designated trails. Mr. Lane replied that would be another violation but would be different from reckless snowmobiling.

(Tape 4; Side A)

- 03:52:12 Co-Chairman Harris expressed concerns with FWP's proposals 11 and 13. Co-Chairman Harris believed proposal 11 would create a conflict of interest because it creates an incentive for FWP to collect fines. Co-Chairman Harris urged FWP to consider the potential conflict of interest. Co-Chairman Harris was also concerned that proposal 13 would cause "creeping criminalization" since it would turn a civil violation into a criminal act.
- 03:55:23 Sen. McGee addressed proposal 5 and asked whether the outfitters would carry the legislation. Director Hagener agreed the outfitters would carry the legislation, so the proposal could be removed from FWP's list of proposed legislation. Sen. McGee addressed the first three proposals which contained sunsets and thought those programs had sunsets so the programs could be reviewed and suggested the sunsets could be extended. Director Hagener stated the sunsets were in place for that reason but wondered if there was a need to continue to review the programs or whether it would be more appropriate to make the programs permanent. Sen. McGee asked about proposal 13 and asked whether the proposal envisioned the Montana Highway Patrol or FWP issuing citations. Director Hagener anticipated FWP would be more involved on trails.
- 03:58:00 Co-Chairman Barrett addressed the future fisheries program and noted another interim committee is studying RIT funding and pointed out future fisheries was rated third from the bottom, and that the interim committee believed future fisheries is not what the RIT funds were intended to address. Co-Chairman Barrett read from the FWP brochure and asked if future fisheries could continue without RIT funding. Director Hagener agreed there were other forms of funding available for future fisheries.
- 03:59:55 Barbara Smith, Legislative Fiscal Division, explained the RIT subcommittee was unable to acquire the needed information. Ms. Smith explained a performance audit is currently underway. Co-Chairman Barrett asked how much funding is appropriated per biennium for fishing access sites. Director Hagener explained fishing access includes acquisition, operation and maintenance, and site protection of new sites. Director Hagener explained the cost of doing business continues to rise. Co-Chairman Barrett noticed the appropriation is substantial, but the number of sites has not increased. Director Hagener suggested the numbers need to be updated.
- 04:03:26 Sue Daly, Chief of Finance at FWP, provided the figures on the appropriation explaining \$500,000 was provided in 2005 for acquisition for two years, and approximately \$1.1 million for operation and maintenance for one year.

- 04:03:56 Sen. Story asked about proposal 3 and asked if the ARCO right would need to be purchased. Director Hagener replied the issue is in negotiations and would be part of the settlement of the natural resource damage claim. Sen. Story had concerns about block management conflicting with fire fighting efforts. Director Hagener explained the landowner has the ability to suspend block management. In addition, the FWP Commission decided it would not close hunting season and that the counties do have a procedure and process to close hunting seasons. Sen. Story questioned proposal 6, and Director Hagener stated FWP would raise the warm water stamp from \$5 to \$7.50. Sen. Story asked if FWP's proposals had been approved by the Governor's office. Director Hagener replied the proposals had been approved.
- 04:09:01 Mr. Mattelin addressed proposal 3 and asked Director Hagener to review how it would change instream flows from a beneficial use. Director Hagener explained FWP could lease the water and leave the water in the stream but not change the use. Mr. Lane added property is sometimes purchased with water rights on that property, but sometimes FWP might want to change the use. Current statutes limit FWP to leasing only, and the use can be changed only for a period of ten years. Mr. Mattelin asked what the beneficial use is on the ARCO right. Mr. Lane identified that right as irrigation.
- 04:13:28 Co-Chairman Barrett asked if there is currently a statute that says anyone in the state can lease water into perpetuity. Mr. Lane responded the statute provides for changes to an instream use by the owner every ten years. An owner can lease into perpetuity, but they have to do it in ten-year increments.
- 04:16:10 Mr. Mattelin stated irrigation rights have a date of use and asked whether instream flows correspond to those dates of use. Mr. Lane replied water rights have to be adjusted for an instream use because the same amount of water has to be used.
- 04:18:16 Rep. McNutt suggested a separate bill could be drafted to address the ARCO situation since the proposal constitutes such a large change. Mr. Lane responded FWP realizes the proposal will raise some issues, but did not agree it is a major change, but agreed it would be perceived as a major change. Mr. Lane stated FWP does not currently have the necessary resources or opportunities and that the situation will not occur very often. Rep. McNutt disagreed and believed the proposal was a big change from current law. Rep. McNutt addressed the Ft. Peck fish hatchery issue and recalled in order to get the bill passed, there was a cut on the number of lakes that would require the stamp and wondered if reinstating that number was part of the dialogue.

(Tape 4; Side B)

Director Hagener agreed there are discussions about expanding the use of the warm water stamp. Rep. McNutt asked how much of the general license fishing fee supports cold water hatcheries. Director Hagener could not provide a specific answer. Director Hagener suggested FWP could need a cold water stamp to run

hatcheries. Director Hagener agreed there was an issue that needed to be addressed.

Public Comment

No public comment was offered

EQC Discussion and Action (if any)

- 04:24:05 Co-Chairman Harris moved that proposal 13 be segregated from FWP.'s proposed legislation. Co-Chairman Harris suggested housekeeping is not a sufficient reason to identify people as criminals.
- 04:25:19 Sen. McGee asked whether proposals 11 and 5 could also be segregated. Co-Chairman Harris agreed with the friendly amendment, and stated proposals 5, 11, and 13 would be segregated and the rest of the proposal would be approved. The motion carried by voice vote with Sen. McGee and Rep. Peterson voting no and Sen. Shockley voting yes by proxy.
- 04:28:32 Rep. McNutt asked for clarification regarding the motion and the segregation of proposals 5, 11, and 13. Co-Chairman Harris clarified his motion was to segregate 5, 11, and 13, and approve the balance of the proposals. Rep. McNutt believed the segregated proposals still need to be addressed. Sen. Story stated a motion would need to be made to address the segregated proposals.
- 04:29:55 Sen. Larson moved that EQC approve FWP's proposal 11 and the drafting of the bill. Sen. McGee explained how the statutes have attempted not to create a situation where an agency or an entity would have a financial motive to go after someone. Sen. McGee believed there is a rationale for the reason the program was set up in that particular manner.
- 04:31:47 Sen. Larson stated there is a problem with \$60,000 and that crimes are huge. Sen. Larson thought the money could be earmarked for investigators. Sen. Larson agreed the language could be refined, but saw a definite need to get more investigators on the ground.
- 04:33:10 Sen. Story thought the flaw was that the \$60,000 is in there anyway. Sen. Story believed the decision should be made with the subcommittee in the appropriation process.
- 04:34:50 Rep. Dickenson depicted wildlife poaching as a threat and stated she believed investigations were sometimes long-term and wondered what would happen if there was a problem with funding sources. Sen. Larson agreed investigations into poaching operations can take a substantial amount of time. Sen. Larson identified poaching as a concern of both industry and the general public.
- 04:36:26 Sen. Wheat noted drug enforcement can take people's property and sell it, and the money goes to the drug task force. Sen. Wheat recognized the conflict and

recalled additional money would be used for hunter education. Sen. Wheat suggested additional education would not affect poaching rings.

04:37:55 Rep. McNutt believed the money comes through the appropriation process and not through fines. Sen. Larson's motion failed by roll call vote.

PUBLIC COMMENT ON ANY MATTER NOT CONTAINED IN THIS AGENDA AND THAT IS WITHIN THE JURISDICTION OF THE EQC.

04:41:20 Walt Whitfield, a Deputy Water Commissioner on Rock Creek between Red Lodge and Rockvale, discussed the way water commissioners get paid. In 2003, Mr. Whitfield had to wait until the end of the year and for assessments to come in before he could get paid. In 2004, Mr. Whitfield requested that his expenses be reimbursed monthly; however, there was no money available in the fund. Mr. Whitfield stated in the summer of 2004, he had to take out a loan from the Joliet Bank to cover his expenses. Mr. Whitfield wondered how a person could be expected to do a job without being paid. Mr. Whitfield suggested that what works on the Mussellshell may not work on Rock Creek due to rapid growth and new subdivisions. Mr. Whitfield stated since water commissioners and deputies are picked by the district judge, water commissioners should be funded by the district court until the assessments come in.

(Tape 5; Side A)

Mr. Whitfield believed going through the district court would be the best solution.

SENATE BILL 489 UPDATE

DEQ Overview–Director Opper

04:49:35 Richard Opper, Director of the Department of Environmental Quality (DEQ), provided an update on SB 489. Director Opper explained the State of Montana is a Potentially Responsible Party (PRP) on a complex site in the Kalispell area. A Remedial Investigation and Feasibility Study (RIFS) is being conducted so a judge can order the implementation of a Record of Decision (ROD). The previous administration had requested an appropriation of \$2 million from the general fund to complete the RIFS. The Legislature provided \$1.25 million from the orphan share fund to complete the RIFS. Director Opper reported the data summary report was completed, and that there were larger gaps in existing data than they had hoped. The data did, however, reinforce what they already knew about the site. The remedial investigation was completed, and costs escalated because of material in the test wells that had to be disposed of through the RCRA process. Director Opper also pointed out that construction costs have risen substantially. Director Opper reported that DEQ has cut back on sampling as much as possible without compromising the data, and that the sampling plan adequately identified the magnitude, nature, and extent of the contamination. Director Opper predicted the RIFS would be completed within the time frame contemplated by SB 489 but will exceed the \$1.25 million appropriation by approximately \$350,000. Director Opper stated DEQ does have the ability to cost recover from the liable parties for

the cost overrun. Director Opper believed the additional sampling would help cut the costs of cleanup. Director Opper submitted a copy of DEQ's Quarterly Report to EQC ([EXHIBIT 10](#)).

EQC Discussion and Action (if any)

- 04:58:07 Sen. Lind asked about the movement of the contaminants in the ground water. Director Opper explained keeping the contamination from reaching the river and cleaning up contaminants that did reach the river has been a major concern.
- 04:58:59 Sen. McGee noted legislation provides until 2007 to collect data. Director Opper explained that data collection is complete but the study will not be completed until June 30, 2007, and that study will result in an ROD. Sen. McGee wondered how fast the plume is moving and in which direction and whether the study is anticipating the movement. Director Opper replied DEQ did not anticipate a need to collect more data. Mariah Busse, Project Manager, explained the contamination is moving away from the river, but DEQ is in the beginning stages of evaluating the data. Sen. McGee thought it would take time to get through the process, and wondered if the plume would move. Ms. Busse believed the plume would have moved slightly, but noted the contamination is old and that DEQ is calculating how fast the plume is moving. Sen. McGee expressed concern that if the process is carried on for a longer period of time, the data will no longer be current.

Public Comment

No public comment was offered

RESERVED WATER RIGHTS COMPACT COMMISSION FOREST SERVICE PROPOSED COMPACT--Ms. Faye Bergan, Legal Counsel

Update on the Proposed Forest Service Compact

- 05:03:23 Faye Bergan, Legal Counsel for the Reserved Water Rights Compact Commission, provided information regarding the purpose of the Reserved Water Rights Compact Commission ([EXHIBIT 11](#)). Ms. Bergan reported a mediator has been hired for negotiations with the Forest Service, and the parties have reached an agreement in principle. The agreement will go out for public review and comment. Ms. Bergan reviewed the individual components and specific elements of the compact and emphasized the Forest Service has agreed to withdraw its claims for reserved water rights for instream flows in the ongoing adjudication in exchange for creation of state-based instream flow water right claims. Ms. Bergan identified certainty for water users in Montana and avoiding litigation as major advantages of the agreement. In addition, the agreement will protect downstream users.

(Tape 5; Side B)

Questions from the EQC

- 05:18:22 Sen. Larson asked whether the compact is receiving wide-spread support as it moves through the process. Ms. Bergan replied the meetings are widely noticed; however, not many people had attended the hearings, but they will be meeting with various groups along the way. The concepts have been in the works for a long time and they have tried to keep people informed. Ms. Bergan stated there has been support for the agreement, but noted the parties were very far apart in the negotiations.
- 05:20:48 Mr. Mattelin asked what kind of volume of rights were being proposed for the change of rights of instream flows. Ms. Bergan explained the change is limited to holdings in the national forest or immediately adjacent lands and usually includes high-mountain meadow irrigation and low volumes that would return to the users down stream. Ms. Bergan stated the specific language to authorize the change is still being drafted and would entail a change application to the DNRC.
- 05:22:41 Sen. Story noted if someone wanted to apply for a new water right and divert water on Forest Service land, they have to get a permit from the Forest Service before they can apply to the DNRC. Sen. Story asked if that would be a functional change in policy since it would place the Forest Service in charge of the water. Ms. Bergan stated people could apply and preserve their priority date, but the application would not be ruled correct and complete until they have a special use permit. Ms. Bergan believed the DNRC already requires a federal special use permit, so it would not be a change in policy or procedure.
- 05:24:19 Sen. Story addressed the ramifications of court cases that EQC would be addressing. Ms. Bergan stated the compact does not deal with those rights since they are not reserved water rights.
- 05:26:12 Rep. McNutt asked whether the Forest Service would start paying into the fund. Ms. Bergan could not answer Rep. McNutt's question.
- 05:26:38 Co-Chairman Barrett recalled Ms. Bergan's statement that the Forest Service would seek to avoid abandonment from non-use and wondered if that was state water law. Ms. Bergan agreed. Co-Chairman Barrett asked whether anyone else in the state could be afforded that opportunity. Krista Lee Evans, Research Analyst, stated that is the same issue FWP is dealing with. Ms. Evans suggested if FWP or the Forest Service acquire property that has historically been irrigated, and they no longer irrigate and leave the water in the stream, it could be deemed abandoned since the water is no longer put to a beneficial use. The Forest Service wants to go through a change application to permanently change the application to instream flow purposes. If they cannot make the change, they could use the water right. Ms. Bergan added the Compact Commission does not have the authority to make that call. Ms. Bergan further stated it would require a change of statute and is part of the package that accompanies the compact.

Public Comment

No public comment was offered.

EQC Discussion and Action (if any)

LETTER TO CONGRESSIONAL DELEGATION RE: CROW AND FT. BELKNAP COMPACTS

Review and Comment on Letter

05:29:38 Ms. Evans explained EQC decided to send a letter to the Congressional Delegation and submitted a proposed letter dated October 1, 2006, to Senator Baucus (**EXHIBIT 12**). Ms. Evans reported Fort Belknap representatives are currently in Washington D.C., and the Crow Tribe will be moving into the federal level soon. Ms. Evans reported she had invited representatives from both tribes to attend EQC's meeting. Ms. Evans solicited comments from the EQC.

Public Comment

There was no public comment offered.

EQC Discussion and Action (if any)

The EQC took no action.

SURFACE WATER/GROUND WATER INFORMATIONAL PRESENTATION

DNRC Presentation on Work Group Process and Agency Bill Draft Proposal.

05:31:49 Mary Sexton, Director, DNRC, provided an update on the Ground Water/Surface Water Working Group which was implemented by SB 269. Director Sexton reported broad interest and support for the working group's efforts. When someone applies for a new use in a closed basin, augmentation which is "an arranged or temporary permit to make water available for a new use in a water source or tributary through the development of a new or alternative water supply or a change in existing water right that reasonably places in the reach affected the amount of water that will be consumed by the new proposed use." The working group also defined "municipality" as "an incorporated city or town in the state organized and incorporated under Title 7, chapter 2." In addition, when there is an application for a new use in a closed basin, the applicant will be required to supply a hydrologic report and augmentation plan (**EXHIBIT 13**).

05:37:08 Sen. McGee asked whether the proposed legislation would address ground water appropriations from domestic wells of 35 gpm or less. Director Sexton replied it would not.

05:37:34 Sen. Story questioned what the reason was for defining municipality in the statute. Director Sexton replied the working group wanted it clearly defined in statute and that the definition was needed because municipalities have an

exception. Sen. Story asked whether stock water is also an exception. Director Sexton agreed.

05:38:44 Mike McLean, DNRC, explained the working groups have the experience of working on this issue for 15 years. Mr. McLean explained there was concern that the stock water exemption would be used to create recreational ponds. In addition, some working group members were concerned about the exemption being expanded to include situations beyond the original intent of the statute.

05:41:41 Sen. Story stated he believed augmentation would just move the problem somewhere else. Mr. McLean explained the vision was that augmentation would balance things out by changing the use. Mr. McLean agreed augmentation is not a single fix and simply modifies how water is managed. Sen. Story asked whether augmentation plans would be permanent. Mr. McLean urged that the augmentation plan not to be taken too narrowly and to look at augmentation as including new storage and ground water storage, rather than taking the right and moving it to instream flow.

05:46:04 Rep. Peterson asked how the definition of augmentation could include a temporary solution. Mr. McLean replied part of the intent is to build flexibility into the state-wide definition of augmentation and augmentation could include a temporary strategy.

05:47:20 Sen. McGee asked about encouraging people to do flood irrigation for ground water discharge and noted on page 11, Section 85-2-329, MCA, the definition of ground water is being stricken, but is referred to in other places as Section 85-2-102. Director Sexton explained the stricken definition on page 12 was a definition created 12 years ago and that definition led to the *Smith River v. DNRC* lawsuit. Mr. McLean added the definition was the state-wide definition of ground water in Section 85-2-102, MCA. Mr. McLean stated the other definition of ground water was part of the basin closure bill and was intentionally applied because the sponsors of the legislation were attempting to get at the surface water/ground water connection and keeping ground water open to appropriation unless it impacted ground water systems. Sen. McGee expressed concern about a “one-size-fits-all” definition. Mr. McLean explained the working group believed it would be best to strike the language and avoid future conflicts by reverting to the statutory definition of ground water. Sen. McGee recalled the DEQ required nitrate sensitivity analyses on sewage systems and refused to recognize the difference between a confined and unconfined water system. Sen. McGee asked whether the bill would require rulemaking authority for the DNRC. Mr. McLean replied the working group would assist with drafting rules. Sen. McGee urged Director Sexton and Mr. McLean to consider one size does not fit all.

05:54:48 Rep. Dickenson asked whether legislation regarding 35 gpm would fall within the idea of augmentation. Director Sexton responded the DNRC is looking for two different approaches: (1) minimize the exemption; and (2) maybe having a provision dealing with subdivisions and perhaps using augmentation for a community water system. Rep. Dickenson asked what if they are still using a 35-gpm well. Director Sexton suggested a developer might choose to do a

community water system. Also, within certain subdivisions exempt wells may not be allowed at all.

Public Comment

05:57:39 Paul Shennum, a member of the Four Corners Community Foundation in the Gallatin River area, has conducted substantial research regarding augmentation. Mr. Shennum cited a need to have an orderly process and a clear understanding of the possible impacts and the need to have the rules clarified before it becomes law. Mr. Shennum agreed what we interpret augmentation to be is a lot more than just replacing water that is pumped out and that the hydrological affects need to be understood prior to implementing or approving an augmentation plan. Mr. Shennum stated there is a logical progression that must be adhered to in order to be able to grant a water user permit under this type of regulation and discussed the process. Mr. Shennum pointed out that not all hydrologists understand Aquifer Storage and Recovery (ASR). Modeling ground water flow without having test data can provide any answer you want the hydrologist to provide. Mr. Shennum suggested it could take months or years to get water back in the aquifer. Mr. Shennum wanted to see feasibility studies and pilot test programs before a report is made to the DNRC and plans need to be tested over a period of years. Mr. Shennum encouraged the EQC to make sure policies are in place to establish rules before the legislation is passed. Mr. Shennum would like people to be educated before going forward, so they can understand the real impact. Mr. Shennum submitted a 2004 report from the Colorado Geological Survey entitled "Artificial Recharge of Ground Water in Colorado—A Statewide Assessment" ([EXHIBIT 14](#)); a report dated September 8, 2006, from HKM Engineering entitled "Upper Gallatin Valley Supply Development Gateway, Montana, Initial Approach and Feasibility Assessment for Aquifer Storage and Recovery" ([EXHIBIT 15](#)); and an August 2002 report entitled "Survey and Analysis of Aquifer Storage and Recovery (ASR) Systems and Associated Regulatory Programs in the United States" ([EXHIBIT 16](#)). Mr. Shennum urged the EQC to gain an understanding of the real impact and to have a structure in place before passing the legislation.

06:08:11 George Metcalfe, Four Corners Community Foundation, had reviewed the proposed legislation and believed the legislation was intended for very good purposes. Mr. Metcalfe believed the problems could not be solved on the basis of a hydrological model. Mr. Metcalfe also believed economic impacts must also be considered. Mr. Metcalfe stated ASRs are subject to constant fluctuations and modifications. Mr. Metcalfe emphasized it is Important to understand that augmentation requires a slightly different view, and that to augment means to increase, but the bill will not make anything larger but will result in a zero-sum gain.

(Tape 6; Side B)

Mr. Metcalfe suggested Montana should look at ways to conserve water because it is impossible to increase water. Mr. Metcalfe suggested economic growth means sustainability of a solution and not just an immediate fix. Mr. Metcalfe

submitted the Mission Statement of the Four Corners Community Foundation (**EXHIBIT 17**); an article entitled “Artificial recharge of ground water; hydrogeology and engineering” by Herman Bouwer (**EXHIBIT 18**); “Transient effects of ground water pumping and surface-water-irrigation returns on streamflow” by Eloise Kendy and John Bredehoeft (**EXHIBIT 19**); and “Artificial Recharge of Ground water” by Nayantara Nanda Kumar & Niranjana Aiyagari (**EXHIBIT 20**).

06:20:15 Anthony Kolnick, a former resident of the Four Corners area, complimented the DNRC and its staff. Mr. Kolnick believed the DNRC needs qualified attorneys with prosecution experience, and that the DNRC needs enforcement capabilities. Mr. Kolnick encouraged legislators to support the DNRC with conducting more studies.

ENVIRONMENTAL CONTINGENCY ACCOUNT

Review and Discuss Authorizing Statutes, Historical Use, Current Projects, and Other Pertinent issues

06:24:36 Ms. Evans circulated and reviewed summary information about the Environmental Contingency Account (**EXHIBIT 21**). Ms. Evans submitted a spreadsheet outlining the expenditures from the contingency account fund (**EXHIBIT 22**). Ms. Evans pointed out the statute provides the account cannot have a balance in excess of \$750,000; however, in 2006 the balance was \$779,021.

Questions from the EQC

06:31:21 Sen. McGee wondered why the information was being presented to the EQC. Ms. Evans explained this is the first time the account had been used to purchase water to put into a river or stream system. Ms. Evans' concern was that there are many de-watered streams in Montana, and she wondered what type of prioritization was used for allocating the water to the Tongue River. Ms. Evans was concerned about setting a precedent by purchasing water and putting it in a de-watered stream. Ms. Evans wondered how the DNRC determined which streams it is going to buy water for. Co-Chairman Barrett added the issue was before the EQC also because she believed it would properly be a job for FWP, and she wondered why there is a cross over between FWP and the DNRC. Co-Chairman Barrett thought the question of who the land managers are and who the wildlife managers are might be a proper topic for a study.

06:34:54 Mr. Cebull asked if the action was taken to benefit downstream irrigators or the fish. Director Sexton explained the Tongue River is at historic lows, and the DNRC has contracted water in the Tongue River Reservoir. Director Sexton believed there may be some benefit to trout, but that the benefit will be minimal. Director Sexton stated there is very little irrigation use at this point. At this point, there is a water commissioner on the river. Director Sexton stated factors indicated it was reasonable to make a request to the Environmental Contingency Fund in this situation. Director Sexton explained how requests to the Environmental Contingency Fund are done on a case-by-case. Mr. Cebull asked

whether any of the downstream irrigation districts participated in the purchasing of the water. Director Sexton replied they did.

06:37:54 Sen. Lind asked whether total maximum daily loads, sodium, and coal bed methane are issues. Director Sexton responded the DNRC was trying to extend the life of the river as best they could. The DNRC did not talk to DEQ about water-quality issues and that was not the DNRC's primary purpose.

06:38:45 Sen. Story asked whether this was a permissible use for the account and what the legal analysis was. Director Sexton explained the uses of the account had been varied and addressed on a case-by-case basis. Director Sexton directed the EQC to the various uses outlined on the spreadsheet and noted many disbursements were one-time-only. Sen. Story asked whether the law allowed for allocation to the various projects. Director Sexton replied the allocations were made within the parameters of existing law.

(Tape 7; Side A)

06:40:31 Co-Chairman Barrett recalled information in the DNRC's enforcement and compliance report and the other dewatered rivers and wondered why the DNRC gave priority to the Tongue River. Director Sexton explained information obtained from U.S.G.S. measuring devices was used. Director Sexton explained they monitor all rivers and agreed the Powder River is also chronically dry, but there is no water available where water for the Tongue River could be purchased from the Tongue River Reservoir. Director Sexton stated they do not have a prioritized list because each situation is different. Director Sexton stated there are no endangered fish in the Tongue River.

06:43:11 Sen. Story asked Barbara Smith, Legislative Fiscal Division, whether she had an idea of how the balance in the account came to be over the statutory limit. Ms. Smith responded in fiscal year 2006, they received their full RIT interest allocation, and there was a transfer in from the Renewable Resource Fund as a rebate for something that did not occur. Also, there were four projects that had been granted authority, but the money had not yet left the treasury.

RECESS AT 7:45 P.M.