



ENVIRONMENTAL QUALITY COUNCIL

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

GOVERNOR BRIAN SCHWEITZER
DESIGNATED REPRESENTATIVE
MIKE VOLESKY

HOUSE MEMBERS
CHAS VINCENT--Chair
SUE DICKENSON
JULIE FRENCH
MIKE MILBURN
CARY SMITH
FRANKE WILMER

SENATE MEMBERS
BRADLEY MAXON HAMLETT--Vice Chair
JIM KEANE
RICK RIPLEY
JIM SHOCKLEY
MITCH TROPILA
BRUCE TUTVEDT

PUBLIC MEMBERS
JEFF PATTISON
BRIAN CEBULL
DIANE CONRADI
MARY FITZPATRICK

COUNCIL STAFF
JOE KOLMAN, Research Analyst
SONJA NOWAKOWSKI, Research Analyst
HOPE STOCKWELL, Research Analyst
CYNTHIA PETERSON, Secretary
TODD EVERTS, Legislative Environmental Analyst

MINUTES

Approved July 22, 2010

May 6, 2010

Room 172
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 Meeting Audio icon. Note: You must have Real Player to listen to the audio recording.

COMMITTEE MEMBERS PRESENT

REP. CHAS VINCENT, Chair
SEN. BRADLEY MAXON HAMLETT, Vice Chair
SEN. JIM KEANE
SEN. RICK RIPLEY
SEN. JIM SHOCKLEY
SEN. MITCH TROPILA
SEN. BRUCE TUTVEDT
REP. SUE DICKENSON
REP. JULIE FRENCH
REP. MIKE MILBURN
REP. CARY SMITH
MR. BRIAN CEBULL
MS. MARY FITZPATRICK
MR. JEFF PATTISON

COMMITTEE MEMBERS EXCUSED

REP. FRANKE WILMER
MS. DIANE CONRADI

MR. MIKE VOLESKY

STAFF PRESENT

JOE KOLMAN, Research Analyst
SONJA NOWAKOWSKI, Research Analyst
HOPE STOCKWELL, Research Analyst
LEANNE KURTZ, Research Analyst
GREG PETESCH, Attorney
HELEN THIGPEN, Attorney
BARB SMITH, Legislative Fiscal Analyst
CYNTHIA PETERSON, Secretary

VISITORS

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

COMMITTEE ACTION

- The EQC approved the March 4 and 5, 2010, minutes.
- The EQC voted to make minor changes to SB 507 and form a committee bill.
- The EQC will incorporate the two issues of municipal solid waste usage and update on grant fund expenditures for the draft report.
- The EQC approved sending "HJR 15: Touring and Recreational Access Study" forward to the public comment stage.

CALL TO ORDER AND ROLL CALL

00:00:03 Rep. Chas Vincent, Chairman, Environmental Quality Council (EQC), called the meeting to order at 9:00 a.m. The secretary called the roll ([Attachment 3](#)).

AGENDA

ADMINISTRATIVE MATTERS - Ms. Stockwell

Adoption of March 4 and 5 EQC meeting minutes

00:01:15 Rep. Milburn moved to approve the March 4 and 5, 2010, minutes. The motion carried unanimously.

EQC Budget Review

00:01:44 Hope Stockwell, Research Analyst, reported the EQC had expended \$25,955.71 to date and has a remaining budget of \$49,342.29.

- 00:03:16 Chairman Vincent requested the council grant an exception to one group who was not able to present their refined suggestions for biomass usage at the March EQC meeting. Their presentation would be scheduled for the July EQC meeting.
- 00:03:31 Rep. Dickenson asked the identity of the presenting group. Chairman Vincent identified Tracy McIntyre and Chad DeLong. Rep. Dickenson took exception to allowing one group to participate further and worried about the implications of making one exception. Chairman Vincent felt the exemption was allowable considering the group had already made their presentation on biomass at a previous meeting. There were no objections to Chairman Vincent's suggestion.

HJR 1--Study of Biomass

Introduction of Commerce Feasibility Studies - Tom Kaiserski

- 00:06:35 Tom Kaiserski, Energy Promotion and Development Division, Department of Commerce (DOC), introduced John Fitzpatrick of NorthWestern Energy and Frank Best, Porter Bench Energy.
- 00:07:28 Chairman Vincent disclosed that he has done contract work for Parsons Brinckerhoff Engineering Company, which is conducting the study for Porter Bench.

Northwestern Energy - John Fitzpatrick and Rosalie Cates

- 00:07:49 John Fitzpatrick, NorthWestern Energy, introduced Rosalie Cates, who would be addressing the results of the study, after which Mr. Fitzpatrick would address the ramifications of the study results.
- 00:08:31 Rosalie Sheehy Cates, President, Montana Community Development Corporation, thanked the EQC and several governmental agencies for their work on this study. She noted the project was conducted with the environmental, community, and business interests in mind. Ms. Cates said climate change is the driving force in seeking out alternative energy sources. Ms. Cates said the most cost-effective way to deal with biomass is to sell it to industries for their usage. Each involved sawmill has a co-generation plant as a result of this study. Ms. Cates said the study found that the Montana sawmills' price per kWh hour for biomass power will come in between 7.9 cents per kWh and 9.1 cents per kWh, rather than over 10 cents per kWh as anticipated. Ms. Cates said wood supply is not a constraining factor in considering biomass production.
- 00:22:16 Mr. Fitzpatrick thanked Ms. Cates and her corporation for the work on the feasibility study. Mr. Fitzpatrick submitted "How Soon Will the Electric Industry Pull Out of the Recession?" (**EXHIBIT 1**) and "Price Comparison of Prototypical Biomass Plant Versus Other Electricity Supply Resources" (**EXHIBIT 2**). Mr. Fitzpatrick stated he was pleased with the outcome of the study and felt that the numbers were in a workable range.

00:29:55 Chairman Vincent introduced Helen Thigpen, Attorney, Legislative Services Division (LSD).

Porter Bench Energy - Frank Best

00:30:45 Frank Best, Parsons Brinckerhoff Engineering, New York City, New York, gave a PowerPoint presentation entitled "Biomass Feasibility Study Report" (**EXHIBIT 3**). Mr. Best's study indicates that biomass is feasible in Montana but the primary roadblock is financial backing.

New Technologies - Timothy West, John Deere, Steve Marks, Marks Lumber

00:49:23 Timothy West, Construction and Forestry Division, John Deere, commented that woody biomass energy is needed today and referenced the severe economic impact on Missoula due to the layoffs caused by the closure of Smurfit Stone Container Corporation. Mr. West also addressed the impact to Montana's logging industry (**EXHIBIT 4**).

00:59:06 Steve Marks, Marks Lumber, Clancy, submitted information regarding wood grinding and wood chipping and addressed the permitting process (**EXHIBIT 5**).

01:07:49 Kevin Jump, John Jump Trucking, Kalispell, addressed the impact of the Smurfit Stone closure and the potential for biomass in Montana. Mr. Jump stated that a very positive effect of biomass production is returning the health to Montana forests, which are filled with dead and dying trees. Mr. Jump suggested looking at short-term opportunities for biomass production, such as the Frenchtown facility. Mr. Jump cautioned that the potential for development of a biomass industry was quickly moving out of Montana.

Introduction of Matrix and Report - Ms. Nowakowski

01:18:53 Sonja Nowakowski, LSD, directed the EQC to the draft biomass report titled "Harvesting Energy" (**EXHIBIT 6**) and the accompanying biomass matrix (**EXHIBIT 7**).

Public Comment

01:22:50 David Klemp, Bureau Chief, Air Resources Management Division, Department of Environmental Quality (DEQ), stated the DEQ is working with a very good stakeholders' group which is working toward a thorough understanding of the issues. Mr. Klemp stated the concern with air quality rests with the engine and not the grinder itself. Mr. Klemp stated it is a high priority for the DEQ to assist people through the permitting process.

01:25:00 Ellen Simpson, representing Montana Wood Products Association, disclosed her participation with the stakeholders' group and stated the DEQ has been very helpful.

(BREAK)

Questions & Discussion

- 01:50:00 Sen. Tutvedt questioned Mr. Jump about the discrepancies in the stated price of biomass. Mr. Jump stated that the prices vary depending on whether it is a green ton vs. bone-dry ton. Mr. Jump stated most of his material that had been delivered to Smurfitt Stone was measured at 35-37 percent wet, which he felt was a very good number to work with.
- 01:52:52 Sen. Tutvedt asked Mr. Fitzpatrick about the moisture content of the biomass he used with his stated figures. Mr. Fitzpatrick responded he was referring to a bone-dry ton.
- 01:53:41 Sen. Shockley inquired about the biomass difficulties experienced by Maine. Mr. Best explained the facilities were constructed in the 1980's and were using old technology. Sen. Shockley asked about the water content of the wood and Mr. Best stated the drier the wood the better, and that they would buy green wood and let it dry. Sen. Shockley noted the high inventory costs, and Mr. Best explained the importance of having stock on hand to support a 24 hour/7 days per week operation.
- 01:56:29 Sen. Ripley asked about the transportation costs and wondered if there could be a cost per mile to correlate with the weight of the product. Mr. Best stated that there is a great need for a fuel cost escalator in the equation because of the changing cost of fuel. Mr. Best further stated that there needs to be a collaboration between landowners and the suppliers in order to make biomass financially feasible.
- 02:00:15 Mr. Cebull inquired what the cost per kilowatt hour for biomass would be to ensure a reasonable rate of return on the investment. Mr. Best replied that an \$0.085 to \$0.09 rate would be reasonable. Mr. Cebull stated he struggled with the concept that biomass was feasible only if renewable energy credits are mandated. Mr. Best detailed the importance of keeping biomass on the books as a renewable energy.
- 02:02:35 Sen. Shockley inquired whether when a person signs a contract, the rate would be fixed. Mr. Fitzpatrick agreed, but also stated that the contract usually contains escalators. Mr. Fitzpatrick agreed the future price of fuel provides uncertainty with biomass feasibility.
- 02:06:09 Rep. Dickenson recalled that Ms. Cates did not really have concerns about water and air issues under the current regulatory environment. However, Mr. Best stated that there were water issues relating to the high volume of water needed for processing and concerns about CO₂ emissions. Ms. Cates deferred the question to Angela Farr, U.S. Forest Service (USFS), Northern Region, who stated they did consider air and water quality issues and that all plants had existing boilers and permits and old equipment would be replaced with better equipment which would reduce emissions.

- 02:11:17 Mr. Pattison inquired about how much of a subsidy of other energy sources would be needed for biomass. Mr. Fitzpatrick said he estimated straight production costs with no subsidies built in. Mr. Fitzpatrick continued to explain that there is a grant program which will cover 30% of the capital cost that has been factored in.
- 02:13:46 Mr. Pattison inquired of Mr. Klemp whether the DEQ offered an electronic process when applying for approval for moving a grinder, resulting in a shorter timeframe for the process. Mr. Klemp stated that the notice could be given electronically but the DEQ needs to have discretion as to when notice is required. Mr. Pattison asked how much time is needed between the notification and actual moving of the grinder. Mr. Klemp replied the standard time frame is 15 days.
- 02:16:01 Sen. Ripley inquired whether Maine had any mandatory renewable credits for its biomass production facilities. Mr. Best stated that Maine did not, but that West Virginia was presently offering triple renewable credits. Mr. Best further stated that renewable resource credits did not exist in the 1980s when Maine built most of their biomass facilities.
- 02:17:46 Sen. Hamlett inquired whether biochar plants were evaluated considering they emit fewer emissions. Ms. Cates responded that they were not evaluated in the study. Sen. Hamlett asked whether the possibility of catastrophic forest fire events entered into any of the equations. Mr. Fitzpatrick responded that was not considered.
- 02:19:41 Sen. Tutvedt asked for further explanation of the 30,000 gallons of water per day usage in biomass production. Mr. Best reported that the steam is recaptured and is not lost so that the 30,000 is what is used through the system, but that ultimate consumption is only 20% of the 30,000 gallons.
- 02:20:28 Sen. Keane inquired if the renewable energy credit was deducted from the cost of the power, would the cost of the power be lowered. Mr. Fitzpatrick responded that doing so could have an absolutely dramatic effect on the price of power. Mr. Fitzpatrick discussed the renewable energy credit program.
- (LUNCH) During the lunch break, the EQC saw a demonstration of biomass equipment, including a bundler brought from Washington state by John Deere and a Rotochopper provided by Marks Lumber, Clancy. Marks Lumber also provided 16 tons of slash for the demonstration.

PPL MONTANA vs. STATE OF MONTANA (NAVIGABLE RIVERS) COURT CASE

Update on SUPCO ruling--Staff

- 04:18:28 Greg Petesch, Code Commissioner, LSD, gave a history and summary of the *PPL Montana vs. State of Montana* court case. The federal case was dismissed due to lack of jurisdiction. The Montana District Court ruled that river bottom lands were school trust lands, and PPL owed damages in the amount of nearly \$41 million. PPL appealed that decision to the Montana Supreme Court.

Public Comment

04:28:55 Krista Lee Evans, representing the Senior Water Rights Coalition and the Association of Gallatin Agricultural Irrigators (AGAI), expressed concern about the impact of the court ruling on SB 507 due to the contingent voidness clause and asked the EQC to consider moving forward with a redraft of SB 507 to provide the framework for implementing assessments if agricultural structures are found to be located on rivers potentially designated as navigable.

Questions & Discussion

04:30:27 Sen. Shockley inquired that if the property was designated as school trust lands, the Land Board is obligated to get fair market value for whatever use the land is put to. Mr. Petesch stated that full market value is required by the Montana Constitution. Sen. Shockley further inquired whether or not the state is obligated to get fair market value for the use of river beds. Mr. Petesch responded that Article 10, Section 11, provides that no state land can ever be disposed of until the full market value of the land has been paid to the state.

04:32:20 Sen. Tutvedt shared his knowledge of an irrigator who is presently being billed \$150 for the pipe in his river. Ms. Evans responded there are great inconsistencies in the program and that often irrigators will check a box on a form that their waterway is navigable when it actually may not meet the test. Ms. Evans says this invites real discrepancies in how the program is implemented and enforced.

Motion & Vote

04:36:25 Sen. Hamlett observed SB 507 should be closely reviewed. Sen. Tutvedt agreed. Sen. Tutvedt moved SB 507 become a committee bill and that the small inconsistencies discussed be corrected. Sen. Ripley asked whether the Water Policy Interim Committee would be reviewing this policy. Mr. Kolman responded that while they were following this issue, the overall measure is viewed as having more to do with land issues than water issues.

04:38:10 Motion carried unanimously by voice vote with Reps. Dickenson and Milburn voting aye by proxy.

04:38:39 Mr. Kolman stated he would present a version of SB 507 with recommended changes for review by the EQC at the meeting in July.

HJR 30 -- STUDY OF FIRE SUPPRESSION

04:39:10 Leanne Kurtz, Research Analyst, LSD, spoke about the controversy in Bitterroot County over the community wildfire protection plan. Ms. Kurtz submitted a presentation by Bob Harrington entitled "SB 131: California or Bust" ([EXHIBIT 8](#)). Ms. Kurtz referred to a memorandum she wrote to the Education and Local Government Interim Committee, dated March 12, 2010, regarding SB 51 (2007) and SB 131 (2009) ([EXHIBIT 9](#)).

Public Comment

- 04:50:51 Bob Harrington, Division Administrator, Forestry Division, (DNRC), explained that the DNRC is relying on the Education and Local Government Interim Committee to set the delineation of the boundaries. Also of concern is whether these boundaries would be translated into new zoning areas. Additionally, Mr. Harrington identified his concern over the rulemaking with SB 51.
- 04:53:27 Ellen Simpson, representing Montana Wood Products Association, addressed the fire suppression fund and requested that the EQC consider using \$2 million of the \$26.4 million in the Fire Suppression Account specifically for the "wildly successful" Jump Start program before the fiscal year end date of June 30, 2010. Ms. Simpson also felt that another \$2 million from the fund could be designated for fire mitigation in July 2010.
- 05:00:37 Jason Toddhunter, Montana Logging Association, explained more than 1,100 people just completed a safety training course as well as firefighting training. Mr. Toddhunter supported fuels reduction efforts and the Jump Start Program as discussed by Ms. Simpson.

Questions & Discussion

- 05:02:53 Rep. French inquired of Mary Sexton, Director, DNRC, if \$2 million of the \$26 million balance in the Fire Suppression Account could be used as Ms. Simpson recommended. Director Sexton explained expending fire suppression money on other uses at this time would not be wise. Rep. French asked whether the Jump Start Program would be removing wood that could fuel wild fires. Director Sexton agreed that it would. Rep. French asked whether by investing the \$2 million in the projects, the payback could be doubled by reducing the chance of fires. Director Sexton responded there was no certainty where fires would occur and that the state needs as much money as possible in the fire suppression fund. Rep. French requested an estimate of the projected cost of the 2010 fire season. Director Sexton responded that while there was no "average year", the general range for fighting fires during the state's recent drought has been \$20 million to \$50 to \$60 million.
- 05:07:59 Ms. Kurtz stated that Mr. Harrington has extended an invitation for the EQC to visit fire camps during firefighting season.
- 05:08:44 Rep. French inquired whether it was important for each county to have a community wildfire protection plan. Ms. Kurtz responded that it is optional and some counties do not feel they need to develop a protection plan.

SJR 28 - STUDY OF RECYCLING

- 05:10:53 Ms. Nowakowski reviewed the report "The Coke Can From Columbus" ([EXHIBIT 10](#)) which analyzes methods for increasing recycling and solid waste diversion in Montana ([EXHIBIT 11](#)).

Public comment

There was no public comment.

Questions & Discussion

- 05:15:18 Rep. Dickenson expressed interest in the concept of using municipal solid waste to generate heat or electricity and wondered if this idea could be evaluated further in the state's integrated waste management plan.
- 05:18:27 Ms. Fitzpatrick stated however municipal waste might be used for electricity, it also needs another use to increase viability.
- 05:19:50 Chairman Vincent stated that this concept needs to be referenced in the draft report. Ms. Nowakowski requested a motion be made to include the recommendation in the findings.
- 05:20:34 Chairman Vincent explained that there needs to be another type of parasitic load and the tipping fees used.
- 05:22:01 Ms. Fitzpatrick asked whether the EQC should incorporate the concept into the report by reference so previous work is not duplicated. She further stated that sorting could be handled at the residential or business level rather than at the waste management site.
- 05:24:01 Ms. Nowakowski said she would incorporate Ms. Fitzpatrick's recommendation into the draft study report.
- 05:24:47 Ms. Fitzpatrick stated that public comment should be encouraged.
- 05:25:30 Ms. Nowakowski said she would ask the DEQ to report on the success of the grant programs and incorporate the information into the draft report.
- 05:26:57 Rep. Dickenson requested that the information be presented at the July EQC meeting.
- 05:29:21 Chairman Vincent said he was uncertain whether results would be available to make a determination whether programs are successful and noted the lack of seed money funding.
- 05:30:45 Louise Moore, Bureau Chief, Energy & Pollution Prevention Bureau, DEQ, explained that grants are being distributed, but it is too early in the process to provide specific results.
- 05:31:28 Ms. Nowakowski summarized the discussions and agreed to incorporate the two issues into the draft report. Ms. Nowakowski also agreed to integrate Ms. Fitzpatrick's request for further review of municipal solid waste usage and provide an update at the next interim EQC meeting on how the \$300,000 in grant funds were used.

Motion & Vote

05:32:41 Mr. Cebull made a motion to incorporate the two issues of the municipal solid waste usage study and the update on grant fund expenditures and results for the draft report to be prepared by Ms. Nowakowski. The motion passed unanimously by voice vote with Reps. Wilmer and Milburn voting by proxy.

(BREAK)

HJR 15: TOURISM AND RECREATIONAL ACCESS STUDY

05:50:12 Ms. Stockwell discussed the report and draft findings of HJR 15 entitled "Monetary Incentives for Tourism and Recreational Access" ([EXHIBIT 12](#)).

Public Comment

There was no public comment.

Questions & Discussion

05:52:49 Ms. Fitzpatrick inquired if bird watching and wildlife viewing are considered under the definition of hiking. Ms. Stockwell replied that if the council wished to extend the liability limitation, the definition of hiking may need to be expanded from its present one.

05:54:47 Mr. Pattison asked about the link between a landowner and the non-commercial flying of aircraft. Ms. Stockwell replied that the situation apparently refers to back country landing strips that recreationists are allowed to use.

05:55:37 Sen. Shockley stated that his understanding was that there was no liability to a landowner who allows for any recreational activities on their property if nothing is charged for the activity and if the owner did not do anything to the property that made it dangerous to the recreationist. Ms. Stockwell responded that the definition in the recreational limited liability statute lists the specific recreational activities under the purpose of this statute.

05:57:19 Sen. Hamlett inquired if gopher or prairie dog hunting was covered under the statute. Ms. Stockwell replied that it would be covered under the hunting classification of the statute.

Motion & Vote

05:58:02 Rep. French moved to send the study summary on and begin the public comment portion. The motion passed unanimously by voice vote.

AGENCY OVERSIGHT OF OPENCUT MINING

06:00:13 Ed Coleman, Bureau Chief, Industrial & Energy Minerals Bureau, DEQ, provided a review of the opencut mining permit program including sharing aerial photos showing mining disturbance and later reclamation ([EXHIBIT 13](#)).

Public Comment

There was no public comment.

Questions & Discussion

- 06:04:31 Sen. Shockley asked about the amount of the bond in the second photograph, where minimal reclamation had occurred. Mr. Coleman agreed to furnish that information to the council. Sen. Shockley expressed concern that if a bond was too small, the landowner could just walk away from a reclamation commitment.
- 06:05:21 Sen. Keane asked about the status of an opencut mining lawsuit in Gallatin County. Mr. Coleman said a group has filed a lawsuit with the county over zoning restrictions but the state is not a participant.
- 06:06:38 Mr. Pattison wondered if Mr. Coleman knew of any place in Montana that was doing opencut mining that was not covered by a bond. Mr. Coleman replied that the department was focusing on the backlog of permits to meet the requirements of the new law.
- 06:07:57 Sen. Hamlett asked if the 151 people who are listed in the backlog of permits had been contacted by the department by phone. Mr. Coleman replied that each application that is backlogged has been assigned to a member of the technical staff, who are working on them as time permits.
- 06:09:02 Sen. Hamlett inquired how many on the backlog list are no longer in business or have moved out of state. Mr. Coleman replied that the law states the state is able to send a letter to terminate the application if there has been no activity for at least one year.
- 06:10:06 Chairman Vincent asked if the DEQ had worked with the Montana Contractors' Association to help prioritize the bonds. New to his position, Mr. Coleman replied that the 50 applications reviewed were submitted prior to January 2010, and that of the 50 that are being reviewed now, there are some partial bond releases.
- 06:12:09 Sen. Hamlett asked what is the longest time period that someone has been on the present backlog list. Mr. Coleman agreed to report back with that information.

AGENCY OVERSIGHT: FISH, WILDLIFE & PARKS (FWP) FISH CREEK ACQUISITION

- 06:13:11 Chas Van Genderen, Administrator, Parks Division, FWP, gave an update on the Fish Creek Acquisition, a 41,000-acre site proposed for purchase by the state that was formerly owned by Plum Creek Timber Company.
- 06:16:07 Joe Maurier, Director, FWP, advised he would present a wolf update at tomorrow's meeting.
- 06:16:39 Dave Risley, Division Administrator, FWP, discussed the plans for the Fish Creek acquisition property. He reported that \$15,000 has been reserved for immediate weed control. Additionally, he said it would be important to begin a preliminary management plan to include an assessment of timber and timber management with community involvement.

Public Comment

There was no public comment.

Questions & Discussion

- 06:19:12 Rep. French inquired whether the state of Montana or FWP owned the Fish Creek property. Mr. Risley replied the state of Montana. Director Maurier stated that the people of Montana own the land, however, because of the funding sources, the state owns land but its use is limited and dictated by the funding source.
- 06:20:39 Rep. French asked if the full taxes are paid to the county. Director Maurier reported that FWP has always paid the county taxes on such property.
- 06:21:16 Sen. Shockley inquired about the split estate of real property and minerals, as frequently occurs in the eastern states. Mr. Van Genderen replied while there often may be some mineralization potential on property, it is not split because it is not expected that the minerals will be explored.
- 06:22:48 Sen. Ripley inquired about the amount of money that has been set aside for operations and what other resources were available. Mr. Van Genderen replied the passage of SB 164 required setting aside 20% from each transaction for management. In addition, HB 2 requires FWP to set aside funding for forest management planning.
- 06:24:39 Sen. Ripley asked what was the total amount set aside for operations. Mr. Van Genderen replied a total of \$300,000.
- 06:26:22 Sen. Ripley asked whether there was a conservation easement on the property. Mr. Van Genderen said a large portion of the funding was from Pittman-Robertson money, which places a federal encumbrance on the land and restricts what can be done with the land.

- 06:27:46 Sen. Tropila inquired whether FWP had discussed or developed plans for long-range funding for state parks. Director Maurier said the department is having robust debates about funding alternatives, and is working with Ms. Smith of Legislative Fiscal Division (LFD) to develop alternative resources.
- 06:32:10 Chairman Vincent asked if the Pittman-Robertson funding allowed for active land management to achieve values for the fish and wildlife habitat, and if this also allowed public access to the property. Mr. Risley replied that access was important and that road management and timber management will be overarching in the management plan but the first set would be an inventory.
- 06:35:09 Sen. Keane distributed an article from the New York Times "We Have Met the Enemy and He Is PowerPoint" ([EXHIBIT 14](#)).

(BREAK)

WHITMORE RAVINE

- 06:54:56 Sen. Hamlett said there will be a presentation on what uncontrolled water can do over time to landowners, fisheries and hydroelectric projects.
- 06:55:29 Joe Murphy, Big Sky Civil & Environmental, Inc., Great Falls, gave a PowerPoint presentation ([EXHIBIT 15](#)) on the Whitmore Ravine Erosion Control and Storm Drainage threatening the Missouri River, and handed out a brochure entitled "Whitmore Ravine" ([EXHIBIT 16](#)).

Public Comment

- 07:06:02 Dan Huestis, representing Zoller Farms, which farms the land adjacent to the Whitmore Ravine, stated the area landowners approached the Montana Legislature and were able to get a joint resolution passed in 2007 ([EXHIBIT 17](#)). Mr. Huestis circulated photographs of the soil erosion ([EXHIBIT 18](#)).
- 07:12:04 Gayla Wortman, Supervisor, Cascade County Conservation District, emphasized the district's commitment to this project to stop soil erosion ([EXHIBIT 19](#)).
- 07:15:38 Roger Doney, family member and trustee of the trust that owns the land, stated that the continued erosion caused by Malmstrom Air Force Base drainage has cut deep into the land and, while there is damage to the farmland, the real damage has been to the Missouri River.

Questions & Discussion

- 07:17:40 Rep. French stated that the DEQ had given a permit to Malmstrom and wondered if there had been follow up or oversight. Ms. Wortman replied that from the beginning the DEQ has been an active partner and the permit has been reissued. But the permit deals with the quality of water leaving Malmstrom, not the quantity of the water (90,000 gallons per day).

- 07:19:22 Rep. French asked if there had been any discussions about the legality of discharging this water onto private land. Ms. Wortman stated that if the landowners wanted to sue, they would have to sue the U. S. Department of Defense.
- 07:20:41 Dan Huestis further stated that there is no law that allows a person to drain storm water onto their neighbors' property.
- 07:21:47 Mr. Cebull asked about the differences in cost estimates to fix the Whitmore Ravine erosion between 2007 and 2010. Mr. Murphy stated he is uncertain about the costs shown in 2007, but explained that the 2010 costs are reflective of estimates and updates from previous engineering studies.
- 07:23:01 Sen. Shockley asked Ms. Wortman if she has talked to the county attorney, John Parker. Ms. Wortman replied she has not. Sen. Shockley stated he believes that this could be a case of trespass of water.
- 07:28:15 Sen. Ripley asked John Hale, Deputy Civil Engineer, Malmstrom Air Force Base, for his perspective on this issue. Mr. Hale said Malmstrom has had an easement since the 1940's to run drainage through this property.
- 07:30:21 Sen. Ripley asked if the perpetual easement changes Sen. Shockley's legal opinion. Sen. Shockley said if you have an easement, you have the right to use the property but you do not have the right to damage that person's property.
- 07:32:49 Rep. French asked if staff would follow-up to see if the state formally requested this of the Department of Defense. Chairman Vincent said the Secretary of State had sent the letter. Mr. Kolman stated that he would furnish the council with a copy of the letter.
- 07:33:35 Rep. French asked Ms. Wortman if this issue was brought to the council to obtain some action from the council. Ms. Wortman said the representatives were here to provide information that could be used during the legislative session.
- 07:34:20 Sen. Tropila reported that the joint resolution from the 2007 session was HJR 20. Sen. Tropila inquired whether there may be a buy-in from the state for this project. Ray Beck, DNRC, replied that they will submit applications to two of their programs. Mr. Beck stated that the Renewable Resource Grant and Loan Program provides funds of up to \$100,000 and the Reclamation and Development Grant Program provides funds of up to \$300,000.
- 07:37:59 Sen. Tropila offered to make arrangements if any council members wished to tour the ravine and see the land erosion and the environmental impact.
- 07:38:52 Rep. Smith stated he does not believe the landowners or the state should be forced to pay for anything relating to this erosion, and that full liability rests with the Air Force.

- 07:39:37 Rep. Dickenson asked how the council or Legislature could be more helpful in reaching a solution to this problem. Ms. Wortman felt the most anyone could do to bring about final resolution is to lobby Congress and get money from the Department of Defense and to not file a lawsuit.
- 07:42:35 Rep. Dickenson asked if the conservation district was successful in getting grants, would that be a temporary stopgap measure. Ms. Wortman replied that the money would be the next step to get the necessary engineering completed so they can go to Congress to show them that is the right step.
- 07:43:50 Sen. Tutvedt inquired why the Natural Resources Conservation Services (NRCS) was not involved with this issue. Ms. Wortman said NRCS programs are geared for this type of problem, however they are more restrictive now and often require cost-sharing among the parties.
- 07:45:28 Sen. Tutvedt asked whether the Air Force might cost-share with NRCS. Ms. Wortman replied that you can not cost-share federal dollars with federal dollars.
- 07:45:57 Sen. Tutvedt asked Mr. Huestis what he would like to see the council do with this issue. Mr. Huestis said that he has never brought a legal action against anyone, and he would prefer to work this out. He would like to see a resolution issued from state government and then approach Montana's Congressional delegation who will convey their concerns and see that this is stopped.
- 07:50:33 Sen. Tutvedt moved the council write a letter to Malmstrom Air Force Base, Montana's Congressional delegates, and NRCS to ask them to work together to obtain a solution to the erosion from the storm draining into Whitmore ravine.
- 07:51:03 Chairman Vincent asked Rep. Milburn (now at the council meeting) to comment. Rep. Milburn said the previous resolution and letter to Congress didn't resolve anything. He stated overall this is a federal government issue and deals with runoff that is not normal because the water is channeled into one area. He stated the council needs to have the Montana Congressional delegation make the Whitmore Ravine issue a top priority.
- 07:52:13 Chairman Vincent asked if it would be important to send a copy of the letter to the Department of Defense and get the active stakeholders involved. Rep. Milburn agreed.
- 07:52:30 Rep. Smith said the Legislature tried this route once before and sent a letter two years ago. He believes that the Air Force is violating the law and that Montana's Attorney General needs to become involved.
- 07:53:09 Sen. Ripley reported that he is in favor of writing a letter but as Rep. Smith said, this approach has already been tried and the 2007 Legislature passed a joint resolution. He believes that the Attorney General needs to be involved now.
- 07:53:54 Sen. Shockley said that everything done before has not yielded results, and believes that lawyers need to become involved.

- 07:55:09 Chairman Vincent agreed with what had been said on both sides. He believes that it is the council's prerogative to seek a solution to this problem and while he recognizes the importance of cooperation among the stakeholder groups, he also believes that the Attorney General needs to become informed.
- 07:56:53 Sen. Tropila said that because we do have a cooperating stakeholders group involved, he doesn't believe anything should be done to risk that relationship. He believes a letter should be sent, and that the groups should proceed as they presently plan to.
- 07:58:14 Mr. Huestis shared with the council a press release from Montana Representative Denny Rehberg ([EXHIBIT 20](#)) and a press release from Montana Senator Max Baucus ([EXHIBIT 21](#)). Both address the issue of erosion to Whitmore Ravine and request immediate action from the Department of Defense.
- 07:59:29 Rep. French asked why the DEQ wasn't involved in this issue and if NRCS is involved, aren't they required to fix the erosion? Sen. Tutvedt responded that this isn't DEQ's area of responsibility, and that NRCS has the power of oversight.
- 08:00:46 Rep. French stated she believes the problem is that of cost sharing. She does not believe that the landowners or the state of Montana caused the problem and thus they should not be required to pay for the fix to the problem. The full burden should rest with the Department of Defense.
- 08:02:08 Mr. Pattison shared his knowledge of a stockyard that was required to build a water flow pit to collect all runoff so that it would not run into the Milk River. All costs were paid by the stockyard operation.
- 08:03:03 Sen. Shockley stated that he did not believe the Air Force was taking this issue seriously and that it was time to get the lawyers involved and possibly go to court.
- 08:04:08 Ms. Fitzpatrick said she resists spending state of Montana or stakeholder money on this. She stated that the Montana Attorney General has a responsibility to not just the stakeholders, but to the entire state and believes he needs to become involved.
- 08:05:00 Sen. Tropila asked Ms. Wortman if she had an opinion on the council sending a letter. Ms. Wortman said that all parties have come here on good faith as stakeholders to give the council information. They would like the opportunity to go back to the table, visit about everything that has been said, talk about concerns, and come back in July or September and talk about revised goals. Then, possibly at that time it would be right to go forward with communication to Montana's Congressional delegation.
- 08:06:45 Sen. Hamlett asked Mr. Huestis what year was it noticed that the draining was starting to become a problem. Mr. Huestis replied in the early 1960s. Sen. Hamlett asked if Mr. Huestis had contacted the Air Force about his concern. Mr.

Huestis said that when he spoke to the Air Force, they reported they had the easements in place to discharge water across the property.

- 08:08:56 Sen. Hamlett observed and appreciated that landowners and farmers are trying to be good neighbors with the Air Force base. He believes that the council could write letters to people informing them that the council is aware of the problem and plans to stay involved until it gets resolved.
- 08:11:00 Rep. French suggested the council honor Ms. Wortman's desire to approach her board and discuss the suggestions that were made today. Rep. French requested that the group be invited to attend the July meeting, including the conservation district, the landowners, DEQ, and members of the Air Force, including the base commander.
- 08:12:37 Sen. Tutvedt withdrew his motion.
- 08:12:58 Sen. Hamlett moved the council invite representatives from FWP, DNRC, DEQ, and PP&L to the July meeting. Chairman Vincent stated that while a motion is not required, the consensus was affirmative and the invitations will be extended.
- 08:14:34 Rep. Dickenson asked that representatives from Montana's Congressional delegation be invited too. Chairman Vincent agreed and will make the additions.
- 08:15:50 Recessed at 5:16 p.m.

CI2255 0266cpxc.