



ENVIRONMENTAL QUALITY COUNCIL

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SONJA NOWAKOWSKI, Research Analyst
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HELEN THIGPEN, Staff Attorney
KEVIN MCCUE, Secretary
JOE KOLMAN, Legislative Environmental Analyst

MINUTES

Approved March 7, 2012

January 12, 2012

Room 172
State Capitol Building

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. To the left of each section in these minutes is a time designation indicating the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

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Hard copies of the exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.

COMMITTEE MEMBERS PRESENT

SEN. JIM KEANE, Chair
REP. DUANE ANKNEY, Vice Chair

SEN. JOHN BRENDEN
SEN. BRADLEY MAXON HAMLETT
SEN. RICK RIPLEY
SEN. CHAS VINCENT
SEN. GENE VUCKOVICH

REP. JERRY BENNETT
REP. BILL MCCHESENEY
REP. MICHELE REINHART
REP. CARY SMITH
REP. KATHLEEN WILLIAMS

MR. DEXTER BUSBY
MS. DIANE CONRADI
MS. MARY FITZPATRICK
MR. MIKE VOLESKY

COMMITTEE MEMBERS EXCUSED

MR. JOHN YOUNGBERG

STAFF PRESENT

JASON MOHR, Research Analyst
SONJA NOWAKOWSKI, Research Analyst
HOPE STOCKWELL, Research Analyst
HELEN THIGPEN, Staff Attorney
KEVIN MCCUE, Secretary
JOE KOLMAN, Legislative Environmental Analyst
CHRISTINA ALLEN, Fiscal Analyst

Agenda and Visitors' List

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

COMMITTEE ACTION

- The EQC voted to recommend to the 62nd Legislature that it continue receiving compliance and enforcement reports required under 75-1-314, MCA, and the Clark Fork River Basin Task Force report required under 85-2-350, MCA.
- The EQC requested that staff generate a template for statutorily-required agency reports.

CALL TO ORDER AND ROLL CALL

00:00:00 Sen. Keane called the meeting to order and roll was noted ([Attachment 3](#)).

AGENDA

00:01:02 Sen. Keane issued instructions to staff and some members were excused to file applications for elections.

HB 142 - REVIEW OF STATUTORILY-REQUIRED AGENCY REPORTS

Introduction - Mr. Kolman

00:02:15 Mr. Kolman introduced and distributed a handout about statutorily-required agency reports ([EXHIBIT 1](#)).

Compliance and Enforcement Reports

Department of Agriculture - Director Ron de Yong

00:04:59 Dir. de Yong presented the Department of Agriculture's compliance and enforcement report and gave an update on the pesticide program, explaining that it promotes compliance through education and inspection and collaborates with Montana State University on training and licensure. Dir. de Yong also updated the EQC on the M44 sodium cyanide capsule program, which the Department of Agriculture had taken over from the Department of Livestock. Dir. de Yong summarized the work of the Groundwater Protection Program (GPP), a federally mandated pesticide and groundwater management plan that includes the monitoring of wells to construct a database ([EXHIBIT 2](#)).

Public comment

00:15:13 None.

EQC questions, discussion, and action, if any

00:15:18 None.

Department of Natural Resources and Conservation (DNRC) - Director Mary Sexton

00:15:35 Dir. Sexton presented the DNRC's compliance and enforcement report which included an overview of the oil and gas conservation program. Dir. Sexton said that the Board of Oil and Gas Conservation and the Board of Water Well Contractors (BWWC) were both administratively attached to the DNRC. She added, the BWWC is working to reduce contamination of ground water resources. Dir. Sexton discussed the Dam Safety Regulatory Program and informed the EQC of compliance with the dam safety standards. Dir. Sexton spoke about the DNRC's water management program for chronically dewatered areas and floodway and flood insurance issues. Dir. Sexton reported on the Forestry Division's hazard reduction agreements and noted that noncompliance is down 49% from the previous year. Dir. Sexton told the EQC that the DNRC's voluntary monitoring program for BMPs (Best Management Practices) had a compliance rate of 100% and continues to be very effective ([EXHIBIT 3](#)).

Public comment

None.

EQC questions, discussion, and action, if any

00:22:58 Rep. McChesney asked Dir. Sexton for the DNRC's status in regard to dike certification and Army Corps of Engineers (Corps) assistance. Dir. Sexton said that the Corps had participated in a conference call with WPIC and that it is focused on levee repair. Dir. Sexton said that the Corps maintains that many

dikes and levees have private partners to look after them but that the Corps may pursue grant funding.

- 00:24:28 Rep. Reinhart asked the panel about the implementation and compliance of new hydraulic fracturing rules. Tom Richmond, Administrator and Petroleum Engineer, Montana Board of Oil and Gas Conservation (MBOGC), said that the new fracking rules went into effect on August 26, 2011, and that compliance has been good thus far. Mr. Richmond spoke of the Board's collaboration with fracfocus.org and said that the two were working to develop a direct report tracking system.
- 00:27:26 Sen. Brenden asked Mr. Richmond how Montana's fracking laws compared to those of North Dakota. Mr. Richmond said that Montana and Texas are "ahead of the curve" and have the nation's most comprehensive fracking rules, while North Dakota is in the process of developing disclosure laws.
- 00:29:28 Sen. Keane requested to see a map that had been part of a presentation to the Select Committee on Efficiency in Government which contrasted the respective amounts of oil in Montana and North Dakota (**EXHIBIT 4**).
- 00:31:36 Rep. Williams asked Mr. Richmond if Colorado is allowing, but requiring justification, for withholding information to protect trade secrets. Mr. Richmond said that they do have a process for reviewing trade secrets.
- 00:32:21 Sen. Hamlett asked Mr. Richmond to comment on leasing activity in Teton County. Mr. Richmond said there are oil bearing formations but that technology must catch up before they could be made useful. Sen. Hamlett asked what the nutrient level was in core samples drilled on the front compared to those from Eastern Montana. Mr. Richmond said that the sediments set down in the Bakken play had not decayed as it was developed in a shallow lakebed, whereas Montana's Middle Bakken contained less debris and produced less oil. Mr. Richmond said the Middle Bakken's resources were underpressured and thus harder to remove from the shale.
- 00:39:36 Rep. Williams asked Mr. Richmond to account for the difference between the MBOGC's recent performance audit, which stated that 35% of compliance issues were still unresolved, and its compliance report, which said that most noncompliance issues were resolved. Mr. Richmond said that the MBOGC was revamping how it addressed inspection and enforcement and was working to improve related documentation. Rep. Williams asked that the committee be provided with information from more recent reports.
- 00:42:32 Sen. Brenden asked Mr. Richmond how deep the deposits of salt water are located underground. Mr. Richmond explained that there is a salt water "cap" at a depth of about 6,500 feet.
- 00:44:57 Sen. Keane asked Mr. Richmond to explain oil trends. Mr. Richmond stated that oil wells naturally decline and that production must be added every year to prevent rapid decline.

Department of Environmental Quality (DEQ) - John Arrigo and Judy Hanson

00:47:39 Mr. Arrigo, Administrator of the DEQ Enforcement Division, presented DEQ's compliance and enforcement report (**EXHIBIT 5**).

EQC questions, discussion, and action, if any

00:56:38 Sen. Ripley asked whether DEQ's report had been available for six months. Mr. Arrigo said that it had as it covers the fiscal years 2010 and 2011.

00:57:05 Sen. Brenden asked Mr. Arrigo to elaborate on the situation facing a woman at Fort Peck. Mr. Arrigo said, in regard to the Fort Peck station case, that the Board of Environmental Review had agreed with the department and ordered the woman to remove the tanks and that the decision was being appealed. Sen. Brenden asked if the DEQ had initially approved her request and later changed its mind. Mr. Arrigo said that the question was over the applicability of some new underground storage tank requirements. Mr. Arrigo said that there had been a DEQ legal opinion that was modified to entail removal of tanks. Sen. Brenden said that he would like to be kept apprised of the situation.

00:59:53 Rep. Reinhart asked about page 9 of DEQ's report, which cited leaking ash ponds at Colstrip. Rep. Reinhart asked when the DEQ found out about the situation and when they would issue fines. Mr. Arrigo said that the DEQ had been aware of leaks associated with the Colstrip power facility since the 1980s, but that PPL Montana had made an agreement to address ground water quality at the site.

01:02:39 Rep. Reinhart asked when the order for compliance at Colstrip would be issued and what measures would be taken to prevent future leaks. Mr. Arrigo deferred to Warren McCullough, Environmental Management Bureau Chief, who said the Colstrip situation is a work in progress. Mr. McCullough said that the DEQ had been following a policy of compliance assistance rather than enforcement and fines. Rep. Reinhart asked how the DEQ decides between compliance assistance and enforcement in these situations. Mr. McCullough said that the DEQ has maintained its policy of compliance assistance under three directors as long as companies pursue the treatment of contamination.

01:06:17 Sen. Keane asked Mr. McCullough if the pumpback system at Colstrip was preventing pollution from escaping the property. Mr. McCullough said he would hesitate to say the problem was solved but that DEQ receives lengthy monitoring reports detailing the effectiveness of the pumpback systems.

Public comment

01:07:54 None.

Clark Fork River Basin Task Force report (85-2-350, MCA)

Gerald Mueller, task force facilitator

01:08:04 Mr. Mueller provided background information on the Clark Fork River Basin Task Force and reported task force activities ([EXHIBIT 6](#)).

EQC questions, discussion, and action, if any

01:22:00 Ms. Conradi asked how exempt well provisions factor into future water needs in the basin. Mr. Mueller said that certain types of wells do not require permits from the DNRC and can be a source for new domestic uses. Mr. Mueller explained that controversy arises as water use changes from primarily agricultural use to domestic use by subdivisions.

01:24:13 Sen. Keane noted that the Water Policy Interim Committee (WPIC) is studying exempt wells.

01:24:24 Rep. Reinhart asked Mr. Mueller how the task force would use the planning contained in its drought plan thesis and the recommendations of the Governor's Drought Advisory Committee to address the potential lack of water due to drought. Mr. Mueller said that drought needed to be addressed at a local level but that the task force hoped to develop drought plans and take actions to help mitigate drought.

01:26:18 Rep. Williams asked if the Columbia River Treaty had been signed and whether or not he knew of potential renegotiations. Mr. Mueller said that negotiations are being prepared for the U.S. and Canada treaty and noted that one major change is how the Columbia River system is operated for flood control. Rep. Williams asked when the original treaty had been signed. Mr. Mueller said he thought it was signed in the 1960s. Rep. Williams noted that one of the EQC's duties was to evaluate the value of agency reports and asked Mr. Mueller for his perspective on the value of these reports. Mr. Mueller said the task force appreciated the opportunity to appear before the EQC as it is not a state agency and that since the task force does not have a regular funding source these presentations demonstrate its value.

01:31:43 Sen. Hamlett asked Mr. Mueller what money from the Renewable Resource Grant and Loan Program (RRGLP) is being spent. Mr. Mueller said that it had not yet been spent and will pay for a facilitator and to fund conferences. Sen. Hamlett asked where the money had come from to fund Mr. Mueller's contract. Mr. Mueller said that a grant for the two prior fiscal years had been provided by the legislature.

01:35:08 Sen. Hamlett noted the importance of the international treaty and reminded the EQC that 80% of the water in the Columbia comes from Canada. Sen. Hamlett explained that the U.S. had traded electricity to Canada in exchange for water storage and that problems could arise if Canada decides to expand irrigation and cut down on storage.

01:36:42 Sen. Keane asked Mr. Mueller if there had been any resistance by Avista or other power plants in regard to storing water in aquifers. Mr. Mueller said that the hydropower utilities participated in the task force's work.

Public comment

01:38:38 Krista Lee Evans, Senior Water Rights Coalition, reminded the EQC of the difference between physical and legal water availability and said that obtaining legal water remains difficult in the Clark Fork River Basin. Ms. Evans said that senior water rights holders have never made a call on anyone in the basin and asked that the EQC continue to recognize decreed water rights and protect the Prior Appropriation Doctrine.

01:40:14 Dir. Sexton said that the task force had been an advisor to the DNRC and to the Governor. Dir. Sexton said that the task force had received some funding from DNRC's grant and loan programs but that these funds were meant for projects, not ongoing operations, and that the two agencies were working together to secure reliable funding for the task force.

01:41:50 Sen. Keane asked the EQC if it would like to continue to receive the agency reports.

01:42:37 Mr. Kolman recommended that the EQC vote on the topic.

01:42:54 Sen. Ankney moved that the EQC continue to receive the compliance and enforcement reports. The EQC approved the motion unanimously by voice vote.

01:43:21 Rep. Ankney moved that the EQC continue to receive the task force report. The EQC approved the motion unanimously by voice vote.

01:43:46 Sen. Keane gave the EQC his recommendations on how to use the reports and asked staff to work on a uniform template for the agency reports.

01:45:38 Ms. Conradi agreed with Sen. Keane's suggestion and moved that staff generate a template for agency reports.

01:46:24 Rep. Bennett said he preferred to receive a hard copy of the agency reports.

01:47:10 Rep. Williams recognized the importance of the reports and urged staff to examine the original statute and implement its specific provisions.

01:48:17 Mr. Busby questioned the cost to departments of developing the proposed new agency report template. Mr. Busby asked Dir. Opper whether or not the template would be particularly burdensome for some agencies.

01:49:02 Dir. Opper reiterated support for the agency reports and noted that they give the agencies the opportunity to evaluate themselves. Dir. Opper said that the other agencies were free to use DEQ's reports as a template.

- 01:50:21 Dir. Sexton agreed that a consistent template would prove helpful and that DNRC would use DEQ's report as a template.
- 01:51:08 Amy Bamber, Montana Department of Agriculture, said that implementing the new format would be easy for her department and invited suggestions from the EQC in regard to what data it finds most useful.
- 01:51:52 Sen. Vincent agreed that a uniform template for agency reports would prove helpful and stem some of the negative aspects of term limits.
- 01:52:44 Rep. Reinhart said that one of the statutory requirements for reports is that they identify quantitative trends and that uniformity between the agency reports will help the EQC identify problems that have been resolved and those that have not.
- 01:53:49 Ms. Conradi's motion that staff generate a template for agency reports carried unanimously by voice vote.

(Break)

UPDATE ON WATER POLICY INTERIM COMMITTEE - MR. KOLMAN

- 02:20:32 Mr. Kolman said that the purpose of the WPIC update was to inform the EQC without duplicating the work of the two committees. Mr. Kolman recounted the WPIC's examination of exempt wells. Mr. Kolman said that exempt well proposals from the public had been presented and he briefly outlined the four proposals that the WPIC had asked staff to put in bill draft form.
- 02:28:35 Sen. Brenden said that he brought the exempt rights issue to the WPIC by request of his constituents and that he did not want to change the adjudication process.
- 02:29:50 Rep. Reinhart asked about the feasibility of adopting Walla Walla's water mitigation model in Montana. Mr. Kolman reviewed the panel discussion and said that the Walla Walla model most closely resembled Trout Unlimited's exempt well proposal.
- 02:31:46 Rep. Williams asked Mr. Kolman to clarify the third option. Mr. Kolman said that the option was based on SB 17 (2009). Rep. Williams asked whether the first option was just clarifying statute that was already in effect. Mr. Kolman explained that the first option would require an entire subdivision to limit itself to 35 gallons per minute and 10 acre-feet. Rep. Williams asked for a time line for the release of WPIC's findings. Mr. Kolman said that WPIC's proposals would be reviewed by the agencies and the public.

UPDATE ON ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE AND RELATED STUDIES - MS. NOWAKOWSKI

- 02:34:50 Ms. Nowakowski said that representatives of the Southern Montana Electric Generation and Transmission Cooperative had been invited before the ETIC to

discuss the company's recent decision to seek bankruptcy protection. Ms. Nowakowski said the ETIC would review the statutes that established the operations and organization of the Public Service Commission. Ms. Nowakowski said that the ETIC would review stakeholders' efforts to reform the underground facility damage prevention program (the "one call" program).

02:40:29 Sen. Keane requested that Ms. Nowakowski investigate which committees have subpoena power. Ms. Nowakowski said that in 1999 all interim committees were granted subpoena power.

EXECUTIVE BRANCH MEPA STUDY UPDATE

DEQ Director Richard Opper

02:41:37 Dir. Opper spoke on the joint effort among the DEQ, DNRC and DFWP to streamline the Montana Environmental Policy Act (MEPA, 1971). Dir. Opper said that two extreme views had been advanced in regard to the legislature's modification of MEPA. Dir. Opper said that the 2011 Legislature had approved Sen. Keane's SB 233 and that the Governor had issued a directive to improve MEPA without compromising its intent. Dir. Opper said that MEPA is procedural and would not be made substantive, nor would it be discarded ([EXHIBIT 7](#)).

EQC questions, discussion, and action, if any

02:48:14 Ms. Fitzpatrick asked how the agencies achieved the broad spectrum requested by the Governor for the MEPA review committee. Mr. Opper explained that agency staff, legislative staff, and representatives of industry and the environmental community were interviewed. Ms. Fitzpatrick asked if any nonprofessionals, such as landowners affected by a transmission line or well, had been consulted. Dir. Opper said they had not. He said the agencies had only included those who work with MEPA because funding for the study was limited.

02:51:40 Sen. Vincent noted that the policy makers represent the landowners and their interests.

02:52:22 Rep. Reinhart said she looked forward to the work of the law students working with the panel on MEPA and recognized that identifying the scope of the project could lead to conflicts. Dir. Opper said he had been impressed with the quality of the work done by the two students working on the project.

Public comment

02:54:29 None.

AGENCY OVERSIGHT -- PETROLEUM TANK RELEASE CLEANUP UPDATE

Introduction - Ms. Stockwell

02:54:43 Ms. Stockwell introduced work by the DEQ on petroleum tank release site closure.

SB 9 and HB 613 Implementation - Sandi Olsen & Rebecca Ridenour, DEQ

02:56:53 Ms. Olsen introduced Ms. Ridenour, Petroleum Technical Section Supervisor.

02:57:43 Ms. Ridenour detailed the efforts by DEQ to oversee sites where petroleum tanks have released petroleum into the environment and to comply with the Montana Underground Storage Tank Act and the Petroleum Storage Tank Cleanup Act. Ms. Ridenour reported on department actions related to HB 613, and which required a report of the progress made on benchmarks established by the bill, and SB 9, which granted authority to establish petroleum mixing zones for releases from tank systems ([EXHIBIT 8](#)).

EQC questions, discussion, and action, if any

03:16:44 Sen. Keane noted that staff working on site closures should not criticize legislators who passed the bill. Ms. Ridenour replied that they will refrain from doing so.

03:18:13 Sen. Keane acknowledged that the program was underfunded and requested documentation from staff displaying its funding. Sen. Keane said that the program's goal was to be able to clean up additional sites as sites are closed.

Public comment

03:18:59 Terry Wadsworth, Petroleum Tank Release Compensation Board, thanked the EQC for its efforts. Mr. Wadsworth expressed the board's concern that the revenue generated by the set fee established in 1989 was not keeping pace with the inflating cost of remediation.

03:21:25 Sen. Ripley noted that the DEQ met HB 613's requirement of completing 45 closures every six months and anticipates it will meet the closure criteria in the next semi-annual reporting period.

HJ 32 Discussion - State Parks, continued

03:22:48 Sen. Keane asked the EQC how it would like to proceed in regard to the state parks study heard yesterday.

03:23:43 Rep. Williams said she would be interested having staff contact the five agencies in the U.S. that have combined parks departments and fish and wildlife departments to obtain information on their decision making structures and whether they include historic resources.

- 03:25:32 Sen. Keane praised the information provided by Ms. Stockwell. Sen. Keane said that the EQC had several options regarding the Parks Division. Sen. Keane said that they could leave Parks in DFWP or move it somewhere else. Sen. Keane said that another question to address was whether the Parks should have its own board rather than being included in the purview of the Fish, Wildlife, and Parks Commission. Sen. Keane asked what would be done with Virginia City and Nevada City and whether they would be managed by Parks.
- 03:27:12 Rep. Ankney said that parks are important to people in Montana and recommended that if it was to stay in DFWP that it have a separate commission. Rep. Ankney said he did not think that the historic sites fit well with parks. Rep. Ankney said that the Council must decide whether or not to fund parks.
- 03:30:07 Mr. Volesky agreed with Rep. Ankney and said that Parks needed its own commission and a reliable source of funding. Mr. Volesky gave his interpretation of Dir. Maurier's statements, saying that the Director did not want to be parochial in regard to Parks. Mr. Volesky said that DFWP was open to suggestions and that it was probably best to keep Parks where it is.
- 03:33:17 Sen. Keane said he was hearing Mr. Volesky say that moving Parks would be expensive and perhaps waste funding.
- 03:33:46 Mr. Volesky agreed with Sen. Keane and gave recommendations on how to best manage historical collections.
- 03:35:14 Sen. Keane asked Mr. Volesky for his recommendations regarding Virginia City and Nevada City. Mr. Volesky said he was unaware of any internal discussions in regard to the two.
- 03:36:40 Rep. Reinhart said that pricing of the different proposals would be helpful. Rep. Reinhart said that these figures would help EQC see how much of an FTE (full-time employee) would be saved and where the money is coming from.
- 03:39:00 Sen. Keane said that the contracts for Virginia City and Nevada City could be renegotiated for improved funding.
- 03:39:37 Sen. Ripley agreed with Rep. Reinhart's request and said that funding decisions must be made in regard to Parks. Sen. Ripley said that once the cost of restructuring was assessed the EQC could move on to the more serious issue of Parks' funding.
- 03:40:54 Sen. Vincent said that the acquisition of new land complicates the issue. He asked staff for the feasibility and time investment involved in the request for a cost analysis.
- 03:42:06 Ms. Stockwell said that resources were available from which to extrapolate the requested data and that the fiscal note from Rep. Stahl's bill (HB 628, 2011) could be considered.

- 03:43:20 Sen. Hamlett recounted his experience serving on a friends group for First People's State Park in Ulm. Sen. Hamlett recommended that if nothing else, Parks get its own board. Sen. Hamlett said that land management would be easier under DNRC but also that tourism is commerce. Sen. Hamlett said that better management of collections would be a wise investment in our future and that the EQC needed more facts before making decisions.
- 03:47:24 Sen. Keane said that the Select Committee on Efficiency in Government had been finding that moving any entity can become expensive.
- 03:48:31 Ms. Stockwell responded to Rep. Reinhart's request and said she would work with the agencies to see what could be assembled.
- 03:49:08 Ms. Fitzpatrick said it seemed self-evident that leaving Parks where it is and giving it its own board would be the most cost effective solution.
- 03:50:31 Sen. Vuckovich agreed that Parks must have its own board so that its needs are not ignored.
- 03:51:25 Sen. Vincent said that drafting the previous bill had been a lot of work. Sen. Vincent recommended examining potential conflicts.
- 03:52:53 Ms. Stockwell said that she envisioned first asking the agencies to draft a fiscal note without constructing a bill draft. Sen. Keane asked that the figures be an estimate.
- 03:54:46 Sen. Hamlett reminded the EQC that Parks receives no general fund money and requested that Ms. Stockwell investigate the cost of DFWP's accurate accounting of funds and ensuring that Fish and Wildlife monies and Park monies are kept separate in accordance with federal law.
- 03:56:02 Rep. Bennett asked if the EQC needed to examine the differences in the agencies' missions.
- 03:56:55 Rep. Reinhart asked that information be presented in an easy-to-read chart format.

(Lunch)

ADMINISTRATIVE RULE REVIEW

General overview - Ms. Thigpen

- 05:00:35 Ms. Thigpen reviewed the administrative rules. Ms. Thigpen told the EQC that the DEQ was proposing to amend its rules relating to the Strip and Underground Mine Reclamation Act and implementing the requirements of SB 286. Ms. Thigpen said that the rule establishing the Horse Creek Controlled Groundwater Area had been adopted. Ms. Thigpen said that the Board of Environmental Review had extended the comment period for the designation of the Gallatin

River as an outstanding resource water. Ms. Thigpen said that the cabin site leasing rules from DNRC and new grazing lease rates had been adopted. Ms. Thigpen reminded the EQC that the website is a good resource for rulemaking information ([EXHIBIT 9](#)).

Public comment

05:06:25 Jerry Swenson, Montana Leaseholders Association, commented on SB 409 (2011) and the cabin site lease program ([EXHIBIT 10](#)).

EQC questions, discussion, and action, if any

05:12:25 Sen. Keane said that he had spoken to Sen. Tutvedt about his bill, SB 409.

05:13:02 Sen. Hamlett asked Ms. Thigpen for an update on the rules process regarding SB 35 (2011). Ms. Thigpen said that the process had not yet begun.

05:13:54 Sen. Hamlett redirected his question to Dir. Sexton, who said that the DNRC had examined new rules but was not going to take the issue up at this time. Dir. Sexton said that payment for the use of navigable rivers had been heard by the United States Supreme Court, which may issue its decision in June. Dir. Sexton said the DNRC had decided to wait for a clear direction from the Supreme Court as the decision would affect notification of people on navigable rivers.

05:16:48 Sen. Hamlett asked Mr. Kolman for an overview of SB 35. Mr. Kolman explained that SB 35 set out to provide an avenue for those who use state owned riverbeds and became effective in October 2011. Mr. Kolman said that now anyone using the bed of a navigable river has five years to secure a lease, license or easement. Mr. Kolman said that those adjacent to navigable rivers would be notified by the department and that they had until 2017 to get a lease, license or easement.

05:19:22 Sen. Keane asked Sen. Hamlett if Ms. Thigpen should bring an analysis of what should be done.

05:19:52 Sen. Hamlett said he was not opposed to Sen. Keane's proposal but that he thought this was an example of kicking the can down the road, as EQC does not know what the Supreme Court will do. Sen. Hamlett asked Ms. Thigpen to look into the issue and see what the EQC could do.

05:21:45 Sen. Keane asked that the issue be put on the agenda for EQC's March meeting.

AGENCY OVERSIGHT - BISON TRANSLOCATION UPDATE

DFWP Director Joe Maurier

05:22:47 Dir. Maurier introduced the new FWP Chief Legal Counsel Becky Jakes Dockter and clarified his statements from the previous day regarding relocation of the Parks Division.

- 05:25:51 Sen. Keane advised attendees that a TV had been set up in the hallway and visitor overflow was available outside the EQC meeting room.
- 05:26:28 Dir. Maurier said that the FWP Commission voted not to move any bison to the proposed wildlife management areas (WMA) but did agree to move 68 bison to Fort Peck and Fort Belknap pending memorandums of understanding (MOU) regarding management of the bison by the tribes. Dir. Maurier said that he would be unable to comment on certain things as FWP had just been served with a lawsuit regarding the potential relocation.

Public comment

- 05:29:37 Mark Azure, Fort Belknap, stated the people of Fort Belknap are committed to resolving the bison issue.
- 05:30:05 Errol Rice, Montana Stockgrowers' Association, reinforced EQC's role in the process and said that they expect a MOU between the state and the tribes to occur.
- 05:31:12 Brian Quigley, Avon, said he thought that this was not a state issue and that federal authorities at Yellowstone National Park needed to step up and take care of the problem they created.
- 05:31:43 Jane Roybal, Montana-Wyoming Tribal Fish and Wildlife Commission (MWTFWC), said that the MWTFWC supports the transport of these bison to Fort Belknap and Fort Peck.

EQC questions, discussion, and action, if any

- 05:33:28 Sen. Brenden asked Dir. Maurier how he could guarantee that the bison would not escape. Dir. Maurier said they had never had an animal escape from the bison range. Sen. Brenden asked if the fence being built at Ft. Belknap was similar to those at Moiese. Dir. Maurier said he believed it was but that it would be part of the negotiated agreement with the tribe. Sen. Brenden asked why bison were not sent to WMA's but rather moved to reservations. Dir. Maurier said that bison already exist on reservations. Sen. Brenden asked if the bison on the two reservations had been loose several times. Dir. Maurier said that they had been loose. Sen. Brenden asked Dir. Maurier for the public comments he had requested in November 2011. Dir. Maurier said that staff had immediately been directed to send the comments.
- 05:37:15 Sen. Ripley asked Dir. Maurier if DFWP planned to respond to the letter it received from the EQC. Dir. Maurier said he had not realized that a response was required. Sen. Ripley asked if DFWP planned to do a full EIS. Dir. Maurier said that nuances to the answer to his question would be affected by the new court case. Sen. Ripley asked for better communication both ways.
- 05:39:46 Sen. Vincent said he hoped for a more thorough analysis as some feel they were not given adequate consideration.

- 05:40:49 Sen. Keane reiterated Sen. Ripley's request.
- 05:41:13 Dir. Maurier said that DFWP would try to respond to the EQC's communications in the future.
- 05:42:06 Rep. Williams said that DFWP had probably considered the EQC's letter to be MEPA comments and did not think a response was necessary.
- 05:42:54 Mr. Kolman said staff had received a Record of Decision for the proposal which contained responses to a summary of public comments.

AGENCY OVERSIGHT - WOLF MANAGEMENT UPDATE

DFWP Director Joe Maurier & DFWP Staff

Litigation

- 05:43:29 Dir. Maurier gave an update on litigation regarding wolf management.

Hunting season

- 05:46:10 Dir. Maurier gave an update on the wolf hunting season, saying that 18,380 resident and 155 nonresident wolf licenses had been issued and that 133 wolves had been taken. Dir. Maurier said that a 10-J proposal had been approved to take wolves in Hunting District 250 in the Bitterroot based on predation on ungulates and that FWP was wrestling with the best way to do it. Dir. Maurier said he thought making more than one license available, use of electronic calling and reduction of the cost of nonresident tags might be necessary ([EXHIBIT 11](#)).

Lethal control -- contracts and funding

- 05:50:00 Dir. Maurier said that DFWP had entered a MOU with the U.S. Wildlife Services for \$110,000.00. Dir. Maurier gave predation figures and said that the DFWP Commission had passed a rule allowing hunters to help take wolves but that they preferred to use Wildlife Services.

Implementation of HB 363 and SB 348

- 05:52:20 Ken McDonald, FWP Wildlife Bureau Chief, addressed SB 348 (2011), defining management according to 87-5-102, MCA, and saying that \$900,000 is available to cover these activities. Mr. McDonald said that HB 363 (2011) requires that FWP set up a wolf management account and deposit any funds gained from wolf license sales. Mr. McDonald explained how the funds were being used. He added that current efforts included implementing of the hunting season, recruiting a full-time wolf specialist to be based out of Great Falls, collaring, aerial darting, and renewing an agreement for wolf management with Wildlife Services. Mr. McDonald said that DFWP had undertaken a wolf/elk interaction study in the Bitterroot.

06:00:19 Sen. Keane asked for figures citing wolf management funding and Mr. McDonald said he would provide them. Sen. Keane asked if Mr. McDonald had mentioned the federal predator control component. Mr. McDonald clarified figures related to the funding of wolf management.

Implementation of management plan

06:02:05 Mr. McDonald presented the wolf management plan's planned components (**EXHIBIT 12**). Mr. McDonald said that monitoring, collaring and livestock control were the main parts of the plan. Mr. McDonald said that DFWP is using an adaptive management approach and that predator control for livestock depredation is a major concern.

EQC questions, discussion, and action, if any

06:07:01 Sen. Vuckovich asked Mr. McDonald how effective the Wildlife Services contract had been compared to the hunting season and other methods. Mr. McDonald said that Wildlife Services was very effective and has the expertise in regard to confirming wolf kills and that DFWP's specialists determine the prescription. Sen. Vuckovich asked if it would behoove DFWP to increase the contribution to Wildlife Services in order to take out more wolves.

06:09:42 Dave Risley, DFWP Administrator, responded that Wildlife Services could kill more wolves for more money.

06:10:53 Sen. Vincent recalled an argument last session that arose when the adaptive management issue was preventing a hunting season for wolves. Sen. Vincent asked if landowners who would not buy tags could be allowed to take action. Dir. Maurier said he thought that landowners could take action now, especially regarding life and livestock.

06:15:34 Sen. Keane asked Sen. Vincent to clarify.

06:15:43 Sen. Vincent said that most land in his district is public and that he wants a working relationship with DFWP to find a solution that will help citizens and the department. Mr. Maurier invited further conversation.

Public comment

06:18:07 Sen. Debby Barrett, SD 36, said she had sponsored SB 348, which called for \$900,000 for wolf management and that she did not like Dir. Maurier's statement that the \$900,000 could come from anywhere and would come from the wolf account. Sen. Barrett cited 87-1-201(3), MCA, and asked why it had not been used in wildlife management.

06:25:40 Toby Bridges, Lobo Watch, said he did not understand DFWP's agenda for wolves. Mr. Bridges said that wolves had never been managed through sport hunting. Mr. Bridges said he was upset with DFWP and urged the EQC to take action.

- 06:29:36 Brian Quigley, Avon, said that wolves are an elusive, fleet-footed predator. Mr. Quigley said that he lost 10 head of cattle in 2011 amounting to a \$20,000 loss.
- 06:31:03 Jim Brown, Montana Wool Growers Association (MWGA), cited Montana's wolf management plan and the reasons for that plan. Mr. Brown said the MWGA came before the legislature to pass HB 363 (2011) which provided that money generated by wolf licenses goes to killing and collaring wolves. Mr. Brown recommended that the EQC ask DFWP for an accounting of wolf license funding. Mr. Brown said that there was a provision in law that allows counties to establish bounty programs for wolves.
- 06:40:12 Dave Schulz, Madison County Commissioner, said his county had spent much of its meager funds controlling wolves.

EQC questions, discussion, and action, if any

- 06:43:14 Sen. Keane asked Mr. Schulz if MACo had ever investigated whether the counties could control wolves themselves. Mr. Schulz said he had not heard of it. Sen. Keane asked Mr. Schulz to obtain MACo's thoughts on the subject.
- 06:44:27 Sen. Hamlett noted that there were other consequences when Wildlife Services does not receive enough funding and that there probably had not been an accurate count of wolves.
- 06:45:32 Sen. Keane requested that Ms. Thigpen provide information on the county bounty law.
- 06:46:00 Dan Happel, Madison County Commissioner, said that MACo had discussed a loss control policy at its midwinter conference.
- 06:46:49 Rep. McChesney asked for a detailed breakdown of wolf license fee money.
- 06:47:28 Sen. Vincent asked Mr. McDonald to restate the profit made from the sale of wolf tags. Mr. McDonald said around \$400,000 had been generated.
- 06:48:39 Sen. Keane asked Dir. Maurier to work with the EQC to enhance certain funds.
- 06:52:48 Sen. Vuckovich asked whether or not the state was subsidizing the federal government in regard to the management of bison. Mr. Maurier said that DFWP had been trying to resolve the issue since before the brucellosis quarantine protocol had been in place.
- 06:54:44 Sen. Barrett clarified that the wolf management plan cited a Wildlife Services cost of \$1,000,000 per year for 100 wolves.
- 06:55:54 Dir. Maurier said the wolf management plan does say "may" and did not include money spent on department salaries.

06:56:31 Sen. Vincent said that there appeared to be ambiguity regarding money paid to Wildlife Services and whether it constitutes a diversion. Dir. Maurier said that there was a nuance between Pittman-Robertson money and general license money. Sen. Vincent commented that it comes down to prioritizing. Dir. Maurier recommended a forum with sportsmans' groups.

OTHER BUSINESS

INSTRUCTIONS TO STAFF

07:00:51 Ms. Stockwell introduced three publications recently published by the Legislative Environmental Policy Office: two permitting primers and the "Citizen's Guide to Montana Energy Law." Mr. Kolman complimented the work of Ms. Stockwell, Ms. Nowakowski, and Ms. Maureen Theisen.

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

07:02:49 Sen. Terry Murphy, SD 39, spoke on problems in FWP's procedure in preparing for the transport of bighorn sheep. Sen. Murphy said that the spirit, intent and letter of the law had been violated ([EXHIBIT 13](#)).

07:08:28 Dir. Maurier said he thought the transport of bighorn sheep had been taken to the FWP Commission as a conceptual issue but that no action was taken.

07:08:50 Mr. Risley said that DFWP had started the process and acknowledged difficulties with landowner notification.

07:09:26 Sen. Keane asked Mr. Risley if DFWP did a MEPA review on this type of issue. Mr. Risley said that they had and did contact a significant number of landowners. Mr. Risley said that DFWP had pulled back when it heard that some landowners had not been contacted.

07:10:47 Ms. Conradi complimented DFWP's technical assistance and recreation planning services.

07:12:31 Sen. Keane announced the date of the next meeting of the EQC.

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