



ENVIRONMENTAL QUALITY COUNCIL

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BRADLEY MAXON HAMLETT
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CHAS VINCENT
GENE VUCKOVICH

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DIANE CONRADI
MARY FITZPATRICK
JOHN YOUNGBERG

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

MINUTES

Approved May 1, 2012

March 7, 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. BRADLEY MAXON HAMLETT
SEN. RICK RIPLEY
SEN. CHAS VINCENT
SEN. GENE VUCKOVICH

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

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

MR. JOHN YOUNGBERG

COMMITTEE MEMBERS EXCUSED

SEN. JOHN BRENDEN
REP. MICHELE REINHART
MR. MIKE VOLESKY

STAFF PRESENT

HOPE STOCKWELL, Research Analyst
HELEN THIGPEN, Staff Attorney
KEVIN MCCUE, Secretary
JOE KOLMAN, Legislative Environmental Analyst
CHRISTINA ALLEN, Fiscal Analyst
KRIS WILKINSON, Fiscal Analyst

AGENDA AND VISITORS' LIST

Agenda, [5 HJW a Ybh%](#)
Visitors' list, [5 HJW a Ybh&](#)

COMMITTEE ACTION

- The EQC approved the minutes from its January 11 and 12, 2012 meeting.
- The EQC requested three bills be drafted outlining different organizational arrangements for the Parks Division and state-owned properties at Virginia and Nevada Cities.
- The EQC requested a bill draft to amend statute to express the fulfillment of DNRC's obligations to inform the EQC regarding the wildland urban interface.
- The EQC elected to continue to receive the Renewable Resource Grant and Loan Program report.
- The EQC elected to continue to receive the Instream Flow Report from the DFWP.

CALL TO ORDER AND ROLL CALL

00:00:17 Sen. Keane called the meeting to order and roll was noted ([5 HJW a Ybh'](#)).

AGENDA

ADMINISTRATIVE MATTERS - MR. KOLMAN

Approval of minutes from January meeting

00:01:29 Sen. Ripley moved to approve the EQC minutes from January 11 and 12, 2012. The motion passed unanimously by voice vote of those present and voting.

00:01:44 Sen. Keane briefed the EQC on a proposed visit to Virginia City and Nevada City.

Budget review

00:02:53 Mr. Kolman informed the EQC of its current budget.

HJ 32 - STUDY OF STATE PARKS, OUTDOOR RECREATION, AND HERITAGE RESOURCE PROGRAMS

Information requested in January - Ms. Stockwell

00:04:52 Ms. Stockwell provided the financial data requested by the EQC at its January meeting relating to the pros and cons of administrative alternatives for the Department of Fish, Wildlife and Parks (DFWP), and the Montana Heritage Commission (MHC). Ms. Stockwell noted that now was the time to request draft legislation as any change in administration would require legislation (9L<6H%).

EQC questions, discussion, and action, if any

00:22:57 Sen. Keane gave the committee an opportunity to ask questions about the data.

00:23:13 Sen. Ripley asked if there was a reason that the drop in FTE (full-time employee) expenditures from 18.25 to 11 corresponded with an increase in benefits of \$20,000. Ms. Stockwell deferred to Kris Wilkinson, Fiscal Analyst, who said that the figure cited represented a reduction in the budget for vacancy savings that the Legislature applies to all budgets.

00:25:14 Rep. Williams commented on the use of the words "board" and "commission" and said that care should be taken to be clear when wording any proposals. Rep. Williams asked Ms. Stockwell if the cost figures provided assumed static FTE levels. Ms. Stockwell said that she had not found a legal difference between the words "board" and "commission" but that quasi-judicial boards handle appeal decisions and end up costing more. Ms. Stockwell said that the FTE figures cited had been given to her by the Fiscal Division of the DFWP and that she was not sure if the department intended any consolidation of personnel but would find out and report back to the EQC.

00:28:11 Sen. Hamlett cited the additional cost of 2.5 FTEs in accounting costs that would be required if a Parks Commission was established separate from the DFWP Commission as well as previous testimony saying that accounting costs were high under the present system. Sen. Hamlett asked Ms. Stockwell if there would be savings of FTE's related to accounting and Fish and Wildlife if Parks was to become separate. Ms. Stockwell recounted her conversations with Sue Daly, Fiscal Division Administrator with DFWP, who had expressed the importance of segregating funding for Parks and for Fish and Wildlife. Ms. Daly told Ms. Stockwell that DFWP's accountants developed a system to avoid diversions and that she could not quantify the cost of that system. Ms. Stockwell noted DFWP's comment in Appendix G that it did not expect a significant impact.

00:31:45 Sen. Keane asked Christina Allen, Fiscal Analyst, why the drop in FTEs and associated salaries in the prepared data did not correspond to a drop in benefits. Ms. Allen said that the cost of benefits had dropped. Ms. Stockwell said that this discrepancy might be due to the accounting measure's calculation of benefits for seasonal employees. Sen. Keane said asked Ms. Stockwell to pursue the issue.

Public Comment

00:34:15 Marilyn Ross, Chair of the MHC, invited the EQC to visit Virginia City and Nevada City. Ms. Ross said that the MHC believes strongly that it is better under the Department of Commerce (DOC). Ms. Ross introduced the MHC's new Business Development Manager Elijah Allen.

00:36:22 Mr. Allen spoke in favor of the MHC remaining with the DOC. Mr. Allen contrasted the differences between Virginia City and Bannack State Park. Mr. Allen said that the business model for Virginia City and Nevada City must change and pointed the EQC to Reeder's Alley as an effective model (9L<6 H&).

00:44:32 Rebecca Ramsey, Executive Director of the Virginia City Chamber of Commerce, expressed appreciation for the MHC and stressed the symbiotic relationship between historic preservation and local businesses. Ms. Ramsey said that the MHC should remain with the DOC as Virginia City and Nevada City are driven by commerce.

00:48:31 Robert Erdall, Mayor of Virginia City, described his appreciation for Virginia City and praised the work of Mr. Allen.

00:50:02 Bob Walker, Our Montana and the Montana Recreation and Park Association, requested a change in the organizational structure. Mr. Walker asked that the EQC create a Parks, Recreation and Heritage Commission separate and distinct from the Fish and Wildlife Commission, but still a part of DFWP. Mr. Walker said this would be a natural marriage as controversial issues in DFWP preclude adequate discussion of parks issues (9L<6 H').

00:55:40 George Golie, Montana Game Wardens Association (MGWA), drew the EQC's attention to Appendix K of the HJ 32 study materials and said it did not provide financial specifics regarding the new park warden program. Mr. Golie said that state statute does not refer to park wardens but that Title 23 called for park rangers with no authority to carry firearms. Mr. Golie said the Parks Division used the authority in Title 87 to circumvent the law in establishing a park warden program. Mr. Golie said that there was \$1.3 million designated by law to law enforcement which is split between game wardens. Mr. Golie said that loss of this revenue would result in fewer game wardens or the utilization of the license account. Mr. Golie said that this was a liability issue as unauthorized personnel were now carrying weapons. Mr. Golie suggested that the park warden issue be added to the EQC agenda.

- 01:00:29 Dan Thyer, Living History Coordinator at Nevada City, said that the people of Nevada City currently have a working relationship with the MHC and told the EQC of the concern over Virginia City and Nevada City felt by volunteers from 10 Western states.
- 01:02:16 Linda Hamilton, owner of the Nevada City Hotel, extolled the relationship between local business and the MHC and expressed concern that a permanent funding source be found.

EQC questions, discussion, and action, if any

- 01:03:19 Sen. Hamlett asked Ms. Ross for the protocol for deaccession of materials under the MHC's protection. Ms. Ross said there was an 11 step process for deaccession. Sen. Hamlett asked if protocol would change if there was a reorganization. Ms. Ross said she was unsure if she was qualified to answer but assumed that the protocols would stay in place.
- 01:05:45 Sen. Vincent asked Deputy Director Art Noonan, DFWP, to address the concerns of the MGWA and explain the enforcement aspect of the issue. Mr. Noonan said that DFWP was there to cooperate to find a solution. Mr. Noonan said Mr. Golie's comments were inaccurate. Mr. Noonan said the Montana Employees Association Union filed a grievance that they be informed of changes to the training protocol of wardens. Mr. Noonan said that no wardens had been appointed under the ranger statute and that DFWP did not support the gun-carrying measure.
- 01:13:53 Sen. Vincent asked Mr. Noonan for the specific value of park wardens. Mr. Noonan said that there is no "park warden program," that there are wardens. Sen. Vincent asked if the \$400,000 cost referred to by Mr. Golie was included in the \$1.3 million used for the wardens' budget. Mr. Noonan said that Parks had to appropriate its own FTE and funds for wardens and that none of the financing had been changed.
- 01:16:14 Sen. Vuckovich asked Mr. Noonan if there were differences between game wardens and park wardens. Mr. Noonan said there was no difference in training, reporting, or pay. Sen. Vuckovich asked for clarification as to whether all wardens have the same authorities and duties but cannot carry a weapon. Mr. Noonan said all wardens can carry a weapon but that rangers cannot. Mr. Golie said the confusion arose due to a misrepresentation of the DFWP's white paper.
- 01:20:30 Sen. Keane asked that Council members be brief in further questioning on the topic.
- 01:20:51 Sen. Ripley referred to Appendix H and asked Ms. Stockwell how many FTE it would take to replace the cost of wardens and rangers and if reduction of one FTE would be enough to fund the Parks Commission. Sen. Ripley asked if \$9,000 was an adequate amount to fund a commission. Ms. Stockwell said she could not corroborate an amount.

01:23:12 Sen. Keane asked Ms. Wilkinson to elaborate on expenditures related to repair and maintenance. Ms. Wilkinson said there were other items included in that expenditure category and addressed employee benefits.

01:25:47 Sen. Hamlett said that controversy related to Mr. Golie's and Mr. Noonan's testimony may have arisen over a bill from last session.

01:26:28 Sen. Keane described the EQC's process for dealing with HJ 32.

01:28:18 Sen. Keane asked that a bill be drafted that would leave the Parks Division in the DFWP with its own five member Commission.

01:29:01 Sen. Keane asked that another bill be drafted giving Parks its own Commission but also including Virginia City and Nevada City under the Parks Division of DFWP. The MHC would be eliminated.

01:29:30 Ms. Conradi asked for clarification regarding the bill drafts and asked if the first option addressed the MHC as a board.

01:31:24 Sen. Keane added Option 3, which would be the same as Option 2 but under Option 3 the MHC would be an advisory board to the Parks Commission.

01:31:51 Ms. Stockwell restated Sen. Keane's proposals.

01:33:11 Sen. Keane said the state has a huge investment in Virginia City and that some models may need to change.

01:34:56 Rep. Williams said that heritage sites are different from state parks and suggested Option 2 include a Parks and Heritage Site Commission and that Bannack and other historic sites be called "state heritage sites." Rep. Williams suggested Option 1 include some heritage distinction.

01:36:28 Sen. Ripley addressed Sen. Keane about concern over the amount of money spent on state parks. Sen. Ripley proposed a bill which would change how parks are funded and maintained. Sen. Keane said this could be Option 4.

01:37:56 Ms. Stockwell pointed to the Appendix containing funding options.

01:38:28 Sen. Hamlett reiterated Sen. Keane's statement that Parks was receiving inadequate funding and said that situation leads to site deterioration.

01:39:02 Sen. Keane asked Ms. Stockwell to speak with the DFWP and DOC regarding funding.

01:39:22 Mr. Youngberg asked if the MHC had a plan for maintenance.

01:39:45 Ms. Ross said that there was a plan and it was described.

- 01:41:36 Sen. Vincent asked Ms. Ross to provide the EQC with a report addressing structural issues. Sen. Vincent asked Ms. Ross about the use of modern methods of restoration. Ms. Ross said the MHC works with the Montana History Foundation and that there was an historic preservation program at Montana Tech which would provide a new source of trained labor.
- 01:44:35 Rep. Ankney said that previous meetings led him to believe parks needed restructuring and asked the EQC if doing so would enhance financial assistance to parks.
- 01:46:00 Sen. Keane summarized the discussion.
- 01:47:35 Rep. Ankney said getting state parks on the right course is important to all Montanans.
- 01:47:58 Rep. Williams asked if staff needed direction as to what the starting authorities would be for a new commission and asked Mr. Noonan if it was DFWP's thinking that a new commission would have approval authority over issues. Mr. Noonan said DFWP could live with whatever arrangement was presented. Rep. Williams asked if DFWP would like the commission to have approval authority. Mr. Noonan said he did not think so.
- 01:50:51 Sen. Keane said he thought the EQC might be getting ahead of itself.
- 01:51:55 Rep. Williams asked if staff had sufficient direction. Ms. Stockwell explained her process for drafting the bill.

(Break)

EMINENT DOMAIN

Public uses and HB 198 litigation update - Ms. Nowakowski and Ms. Thigpen

- 02:06:51 Ms. Thigpen provided the Council with an update on litigation related to eminent domain and the passage of HB 198 (2011) (9L<6 H').
- 02:12:51 Ms. Nowakowski followed up on information requested by EQC on public uses and eminent domain in Montana. Ms. Nowakowski said the Law and Justice Interim Committee (LJIC) wrote a letter to the EQC about its eminent domain discussion. Ms. Nowakowski asked if the EQC wanted to respond with a letter and if the Council wanted additional research (9L<6 H') (9L<6 H'*).

Public Comment

- 02:19:55 None.

EQC questions, discussion, and action, if any

- 02:20:06 Rep. Ankney addressed the actions of the LJIC and stated his belief that the EQC's work was done in regard to eminent domain.
- 02:20:42 Sen. Keane agreed with Rep. Ankney's assessment.
- 02:20:46 Sen. Vincent asked Ms. Nowakowski if the LJIC would be doing a report on eminent domain. Ms. Nowakowski said they would not and that only a bill draft had been generated.
- 02:21:38 Sen. Hamlett asked if the LJIC was going to examine options such as the establishment of a wider corridor or annual landowner payments.
- 02:22:18 Sen. Keane suggested Sen. Hamlett address the LJIC directly.
- 02:22:44 Ms. Nowakowski said staff would compile the requested information.
- 02:23:18 Sen. Vincent asked for the procedure for providing input to the LJIC. Sen. Keane explained that the report would be compiled and that the LJIC would take up the bill.
- 02:25:15 Mr. Kolman restated the EQC's course of action.
- 02:25:39 Ms. Nowakowski said the draft would be provided to the LJIC at its meeting April 19 and 20, 2012, and that the EQC would be provided with the draft as well as a summary of the LJIC's related discussion at its May meeting.
- 02:25:56 Rep. Williams asked Ms. Nowakowski if the LJIC was only pursuing its "Bill of Rights" section and not its provision involving "facts necessary to be found before condemnation." Ms. Nowakowski said it was her understanding that the LJIC was only pursuing the "Bill of Rights."
- 02:26:41 Sen. Hamlett asked if issues such as the widening of a corridor did not fall under the Department of Environmental Quality (DEQ), which is in turn supervised by the EQC. Sen. Keane said that such examples would be covered by LJIC's eminent domain discussion.

HB 142 - REVIEW OF STATUTORILY REQUIRED AGENCY REPORTS

Introduction - Mr. Kolman

- 02:27:55 Mr. Kolman explained the requirements of HB 142 and said that if the EQC decides to recommend that a report be discontinued, a bill draft would be needed to amend the relevant statute.

Wildland Urban Interface report, Department of Natural Resources and Conservation (DNRC) (76-13-145, MCA)

Bob Harrington, State Forester

02:29:20 Bob Harrington, DNRC, updated the EQC on progress with identification of parcels in the wildland urban interface. Mr. Harrington said the DNRC had used community wildfire protection plans as the basis for boundaries and said the information had been published on the DNRC website ([9L<-6 H+](#)).

Public Comment

02:35:00 Ms. Sexton addressed building in the floodplain and wildland urban interface.

EQC questions, discussion, and action, if any

02:39:01 Sen. Hamlett asked Mr. Harrington for his current assessment of beetle kill in the state. Mr. Harrington said that five million acres had been affected in the last 10 years, resulting in significant fuel loading. Mr. Harrington said the infestation was moving into Beaverhead and Ravalli Counties but the beetles were running out of hosts. Mr. Harrington said that observations collected by the Fire Sciences Lab above Painted Rocks Reservoir displayed that a beetle-hit tree, even if green, responds as dead.

02:42:25 Sen. Vuckovich asked Mr. Harrington if the state intended to use the pine beetle-killed timber. Mr. Harrington said that timber was aggressively being harvested on state trust lands. Sen. Vuckovich suggested that the funds from timber be used to fund the parks.

02:47:07 Sen. Vincent said he was impressed with DNRC's involvement with counties.

02:49:15 Sen. Hamlett asked Mr. Harrington about the Painted Rocks fire watershed and asked if other watersheds were at risk. Mr. Harrington said there had been many stand replacement fires, predominantly of lodgepole pine, and that municipal watersheds would likely require treatment, especially the Butte and Gallatin watersheds.

02:51:41 Sen. Ripley asked if the DFWP had contacted the DNRC for help with a timber inventory. Mr. Kolman noted that HB 619 gave the DFWP until July 2012 to commission a study.

02:53:02 Mr. Harrington noted that engineer Bryan Long was in preliminary discussions to design criteria for an inventory. Sen. Keane asked if these activities would be performed by a private firm. Mr. Harrington said he thought they would be contracting for the work.

02:54:01 Mr. Kolman said that the statute was ambiguous regarding the wildland urban interface reporting requirement.

- 02:55:34 Sen. Keane asked Mr. Kolman if the EQC could ask for continued reports. Mr. Kolman said it could.
- 02:55:52 Sen. Ripley thanked Mr. Harrington and said the DNRC had fulfilled its obligations in the matter and that the statute did not require revision.
- 02:56:33 Mr. Kolman said that the statute should be revised to make clear that additional reports were not required.
- 02:57:26 Sen. Ripley moved to request a bill draft that would make it clear in statute that the DNRC had met its obligation regarding reporting on the wildland urban interface. The motion passed unanimously by voice vote of those present and voting. Rep. Reinhart voted yes by proxy, Sen. Brenden voted no by proxy. Rep. Ankney was excused from voting.

Renewable Resource Grant and Loan (RRGL) Program report, DNRC (85-1-621, MCA)

Mary Sexton, DNRC Director

- 02:58:55 Dir. Sexton updated the EQC on the RRGL program (9L<6H,).

Public Comment

- 03:04:43 None.

EQC questions, discussion, and action, if any

- 03:04:56 Rep. Ankney moved that the EQC continue to receive the RRGL Program report. The motion passed unanimously by voice vote of those present and voting. Rep. Reinhart voted yes by proxy. Sen. Brenden and Sen. Ripley were excused from voting.

Instream Flow Report, DFWP (85-2-436, MCA)

Mike McLane, Water Resources Specialist, DFWP

- 03:06:11 Mr. McLane presented DFWP's biennial Instream Flow Report (9L<6H-).

Public Comment

- 03:20:22 None.

EQC questions, discussion, and action, if any

- 03:20:32 Rep. Bennett asked Mr. McLane to talk about the Reserved Water Rights Compact Commission negotiations. Mr. McLane said that the Confederated Salish and Kootenai Tribes (CSKT) treaty is unique because it provided more

than just the right to catch fish, but also rights to resources equal to the states and federal government.

03:24:06 Sen. Vincent asked if the DFWP had instream flow rights in sub-basins and what the priority dates were on those rights. Mr. McLane said that according to the July proposal, the tribe would acquire co-ownership in the few water rights that DFWP has on the western side of the continental divide. Mr. McLane said that the department's Murphy Rights would be shared with the tribe.

03:32:29 Sen. Keane asked that Mr. McLane provide information regarding streams with leased water. Mr. Kolman said this information had been included in the last EQC mailing. Mr. McLane said pages 9 and 10 of the document in question lists streams that DFWP has leases on but does not list the costs. Sen. Keane asked that the information related to cost be provided to the committee.

03:33:40 Sen. Vincent moved that the EQC continue to receive the DFWP Instream Flow Report. The motion passed unanimously by voice vote of those present a voting. Sen. Ripley and Sen. Brenden were excused.

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

03:35:23 None.

03:35:29 The EQC recessed until March 8, 2012 at 9:00 a.m.

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