



# ENVIRONMENTAL QUALITY COUNCIL

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

**GOVERNOR BRIAN SCHWEITZER**  
**DESIGNATED REPRESENTATIVE**  
MIKE VOLESKY

**HOUSE MEMBERS**  
DUANE ANKNEY--Vice  
JERRY BENNETT  
BILL MCCHESENEY  
MICHELE REINHART  
CARY SMITH  
KATHLEEN WILLIAMS

**SENATE MEMBERS**  
JIM KEANE--Chair  
JOHN BRENDEN  
BRADLEY MAXON HAMLETT  
RICK RIPLEY  
CHAS VINCENT  
GENE VUCKOVICH

**PUBLIC MEMBERS**  
DEXTER BUSBY  
DIANE CONRADI  
MARY FITZPATRICK  
JOHN YOUNGBERG

**COUNCIL STAFF**  
JASON MOHR, Research Analyst  
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 8, 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.

Access to an electronic copy of these minutes and the audio or video recording is provided from the Legislative Branch home page at <http://leg.mt.gov>. On the left-side menu of the home page, select *Committees*, then *Interim*. Once on the page for *Interim Committees*, scroll down to the appropriate committee. The written minutes summary, along with the audio and video recordings, are listed by meeting date on the interim committee's web page. You must have Real Player to listen to the audio recording or to view the video.

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. MARY FITZPATRICK

MR. JOHN YOUNGBERG

**COMMITTEE MEMBERS EXCUSED**

SEN. JOHN BRENDEN  
REP. MICHELE REINHART  
MR. MIKE VOLESKY  
MS. DIANE CONRADI

**STAFF PRESENT**

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

**AGENDA AND VISITORS' LIST**

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

**COMMITTEE ACTION**

- The EQC elected to continue to receive reports from the Water and Wastewater Advisory Council.
- The EQC asked that staff draft a bill removing the Air Pollution Control Advisory Council (APCAC) from statute.
- The EQC agreed the Water Pollution Control Advisory Council (WPCAC) should remain in statute.
- The EQC agreed to issue a letter requesting the Department of Natural Resources and Conservation (DNRC) write rules required by SB 35.

**CALL TO ORDER AND ROLL CALL**

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

**AGENDA**

**HB 142 - REVIEW OF STATUTORILY-ESTABLISHED ADVISORY COUNCILS FOR THE DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ)**

**Introduction - Ms. Stockwell**

00:00:57 Ms. Stockwell introduced the topic of statutorily-established advisory council reports and explained that today the EQC would be hearing the first four of eight total reports.

00:02:53 Rep. Ankney introduced written testimony regarding yesterday's discussion of HJ 32 ([EXHIBIT 1](#)).

## **Water and Wastewater Operators' Advisory Council**

### **Agency introduction - Shelley Nolan, Operator Certification Program**

00:03:27 Ms. Nolan gave a history of the Board of Water and Wastewater Certification and explained the requirements of the Water and Wastewater Operator Certification Program. Ms. Nolan said that HB 207 (2011) reestablished the operator certification board as an advisory council ([EXHIBIT 2](#)).

### **Public Comment**

00:12:20 None.

### **EQC questions, discussion, and action, if any**

00:12:40 Mr. Busby asked Ms. Nolan how much it costs the DEQ to operate the Board and how much participation it receives. Ms. Nolan said its cost is less than \$1,500 per year and that the Board meets its quorum at each meeting.

00:14:06 Sen. Vuckovich asked Ms. Nolan about the vacant university position mentioned in the pre-meeting materials. Ms. Nolan said that it had been filled.

00:14:35 Rep. Williams asked Ms. Nolan what role the Water Center played in the program. Ms. Nolan said that the council works with the university on its annual Water School.

00:15:33 Rep. Ankney moved that the EQC continue to receive reports from the Water and Wastewater Advisory Council.

00:15:54 Mr. Kolman clarified that the motion should be that no change be made to the law in regard to the report.

00:16:12 Rep. Ankney restated his previous motion. It was approved 13-1 by voice vote. Rep. Reinhart and Ms. Conradi voted yes by proxy. Sen. Brenden voted no by proxy.

## **Air Pollution Control Advisory Council (APCAC)**

### **Agency introduction - Bob Habeck, APCAC**

00:16:51 Mr. Habeck gave a history of the APCAC, noting that the APCAC is ineffective in reaching its original legislative intent. Mr. Habeck presented comment by APCAC member Dyrck Van Hyning suggesting that the Clean Air Act Advisory Council (CAAAC) could provide transparency in government and a forum by which to give the agency information. Mr. Habeck said that the APCAC is unequipped to digest the complex information often presented and to understand the effects of

rulemaking. Mr. Habeck said the CAAAC, made up of 200 interested parties, could more effectively shape the agency's agenda. He suggested the elimination of the APCAC in favor of the existing CAAAC process (**EXHIBIT 3**).

#### **Public Comment**

00:20:45 Dave Galt, Montana Petroleum Association, supported Mr. Habeck's recommendation and noted that the CAAAC is a voluntary organization made up of experts.

#### **EQC questions, discussion, and action, if any**

00:21:54 Ms. Fitzpatrick asked Mr. Habeck if there were any functions of the APCAC not currently being covered by the CAAAC. Mr. Habeck said the advice and recommendations received from the CAAAC were consistent with and often better than those given by the statutory APCAC.

00:22:45 Sen. Keane moved to have staff draft a bill removing the APCAC from statute. The motion passed unanimously by voice vote. Sen. Brenden, Rep. Reinhart, and Ms. Conradi voted yes by proxy.

#### **Water Pollution Control Advisory Council (WPCAC)**

##### **Agency introduction - Mark Bostrom, Water Quality Planning Bureau, DEQ**

00:23:56 Mr. Bostrom, described the WPCAC and commented on its value in its advisory role. Mr. Bostrom said the costs associated with the WPCAC are minimal. Mr. Bostrom said the DEQ finds the WPCAC to be a useful organization (**EXHIBIT 4**).

#### **Public Comment**

00:27:38 None.

#### **EQC questions, discussion, and action, if any**

00:27:58 Rep. Williams informed the EQC that she is a public member of the WPCAC. Sen. Keane asked Rep. Williams to provide insight on its value. Rep. Williams said there had been several issues the WPCAC had aided DEQ in pursuing, including progressive gray water regulations, nutrient rules program and other complex issues.

00:30:15 Rep. Williams moved that the WPCAC continue. The motion passed unanimously by voice vote. Sen. Brenden, Rep. Reinhart, and Ms. Conradi voted yes by proxy.

(Break)

## **Small Business Compliance Assistance Advisory Council (SBCAAC)**

### **Agency introduction - Bonnie Rouse, Energy and Pollution Prevention Bureau, DEQ**

00:48:08 Ms. Rouse reviewed the history and purpose of the Council and said that its annual meetings are valuable but that making Council appointments according to statute has been difficult. Ms. Rouse asked the EQC for help in getting these appointments made.

### **Public Comment**

00:50:58 None.

### **EQC questions, discussion, and action, if any**

00:51:11 Mr. Busby noted that the Council is required by the Federal Clean Air Act (1963) and asked Ms. Rouse if she thought the legislature was responsible for its ineffectiveness. Ms. Rouse said that the necessary communications with the small business community do occur but that the appointment process had not worked. Mr. Busby asked if the DEQ was not pushing hard enough to make the council function. Ms. Rouse said that the DEQ had made a strong push for appointments but that only one appointment had been made.

00:54:27 Sen. Keane asked Ms. Rouse what would happen if the Council were to be eliminated. Ms. Rouse said to do so would be to not be in compliance with the federal Clean Air Act. Sen. Keane asked if Ms. Rouse's dilemma involved the lack of appointments. Ms. Rouse agreed and said that she hoped for the EQC's involvement.

00:55:15 Rep. Williams asked Ms. Rouse for the minimum federal requirements in this matter. Ms. Rouse said it was a unique instance in which the appointment process is federally mandated. Rep. Williams asked if there are differences between state statute and the federal requirement. Ms. Rouse said that there were none.

00:55:44 Ms. Fitzpatrick asked Ms. Rouse to describe the appointment process and asked if the department made candidate nominations. Ms. Rouse said that they do and read from the guidelines.

00:56:46 Mr. Youngberg asked Ms. Rouse if the Council provided nominations to legislative leadership. Ms. Rouse said that they do ([EXHIBIT 5](#)).

00:57:28 Rep. Ankney moved that the Small Business Compliance Assistance Advisory Council be retained. The motion passed unanimously by voice vote. Sen. Ripley and Sen. Vincent were excused from voting. Ms. Conradi and Rep. Reinhart voted aye by proxy.

- 00:57:57 Sen. Keane moved that the EQC issue a letter to the Senate majority and minority leadership requesting involvement in making Council appointments. The motion passed unanimously by voice vote. Sen. Ripley and Sen. Vincent were excused from voting. Ms. Conradi and Rep. Reinhart voted aye by proxy.
- 00:58:57 Ms. Fitzpatrick suggested an addition to the EQC's September agenda regarding the appointments to be made at the next Legislature.
- 00:59:08 Sen. Keane said he hoped for immediate appointments and asked staff for its input.
- 00:59:27 Mr. Kolman asked Sen. Keane for his intentions regarding the timetable of release for the proposed letter. Sen. Keane asked that the letter be issued immediately upon its completion and that the EQC be informed of the leadership's response.

## **ADMINISTRATIVE RULE REVIEW**

### **General overview - Ms. Thigpen**

- 01:00:47 Ms. Thigpen noted changes to the rule review website ([EXHIBIT 6](#)).

### **SB 35 rule requirements - Ms. Thigpen**

- 01:03:00 Ms. Thigpen briefed the EQC on a request made by Sen. Hamlett regarding rules applying to navigable rivers.

### **Public Comment**

- 01:08:37 Krista Lee Evans, Association of Gallatin Agricultural Irrigators (AGAI), asked the EQC to urge the DNRC to adopt the rules required by SB 35. Ms. Evans noted the importance of the May 17, 2012, deadline and said that these rules are important because they provide consistency and fairness regarding the use of navigable rivers.

### **EQC questions, discussion, and action, if any**

- 01:10:04 Sen. Hamlett explained that SB 35 (2011) had been a committee bill derived from SB 507 (2009). Sen. Hamlett said that the bill had been rejected upon the Supreme Court's decision that the beds of rivers were public trust instead of school trust land. Sen. Hamlett said his two concerns involve the rules and the requirement of notice. Sen. Hamlett said that the (DNRC) knew this bill was coming and questioned DNRC's willingness to cooperate.
- 01:12:50 Sen. Hamlett asked Director Mary Sexton, DNRC, what the department planned to do. Dir. Sexton said that the recent Supreme Court decision would yield further consideration of the PPL case, which will affect navigability. Dir. Sexton said the delay in notification was done in the name of efficient use of staff time and funds, as well as avoiding possible confusion arising from multiple notices.

- 01:17:05 Sen. Hamlett commented that letters would only be sent if a court of competent jurisdiction determined that a previously unidentified navigable river was found navigable. Sen. Hamlett said that the law is the law and that the public is not being well-served by the department's actions. Sen. Hamlett asked Dir. Sexton if people had filed for lease, licenses or easements while SB 507 was in effect or on streams that were not adjudicated to be navigable at the time. Dir. Sexton said people had in both cases and noted that the five year period referred to in statute begins upon release of the letters of notification.
- 01:20:01 Sen. Hamlett said there was confusion regarding Section 6 for SB 35 and asked Mr. Kolman to clarify.
- 01:21:40 Mr. Kolman gave his interpretation of the statute and dispelled confusion regarding subsection 2 of section 6, section 4, referring to historic use. Mr. Kolman said that the deadline for filing for historic use was July 2017 for rivers navigable on the effective date.
- 01:23:51 Mr. Youngberg asked Dir. Sexton if the lower Yellowstone and lower Missouri River were navigable at the time of statehood. Dir. Sexton said that a gray area existed in these circumstances due to the recent U.S. Supreme Court decision. Mr. Youngberg inquired as to the status of other small pieces of rivers determined to be navigable by a court of competent jurisdiction. Dir. Sexton said the DNRC's primary concern lies with the larger stretches, as others were not under question by the Supreme Court. Mr. Youngberg asked if the DNRC was charging for leases, licenses or easements in these cases. Dir. Sexton said they were. Mr. Youngberg asked how the value of a lease, license or easement was determined. Dir. Sexton said the DNRC used guidance from the bill as well as the policy it had established and that both were compatible.
- 01:28:07 Sen. Keane asked Dir. Sexton if the DNRC is willing to start the rulemaking process. Dir. Sexton said the bill does not state a set date for rulemaking. Dir. Sexton said that work may be duplicated given the far-reaching impact of the recent court decision and that it made the most sense to wait for clarification. Sen. Keane said it was not fair to the legislature for the DNRC to decide when to implement rules. Dir. Sexton said she was trying to save confusion and staff time and had hoped for clarity from the Supreme Court but instead the issue had been further complicated. Sen. Keane said the DNRC needed to at least start working on the rules. Dir. Sexton said that work had begun on rulemaking. Sen. Keane asked if rules could be made available. Dir. Sexton said she would investigate and answer at the EQC's next meeting.
- 01:33:56 Rep. McChesney asked Ms. Evans about the lack of rules. Ms. Evans said that the notice and the rules are separate things and that it was important to have established rules for those who apply for a lease license or an easement. Ms. Evans said it was in the best interest of the state to receive fair market value for use. Ms. Evans disagreed with the interpretation that the Supreme Court's decision had muddied the bill.

- 01:36:13 Rep. McChesney paraphrased Ms. Evans' comments and asked if there was difficulty regarding the rulemaking process for all but the DNRC. Ms. Evans said that there are entities in the state that could be better served.
- 01:36:44 Sen. Keane asked Mr. Kolman for his interpretation of the rules. Mr. Kolman said the bill created two separate processes.
- 01:38:18 Sen. Keane expressed to Dir. Sexton the EQC's desire that DNRC begin rulemaking. Dir. Sexton said they have the intention of adopting rules and would report the status of rulemaking at the next EQC meeting. Sen. Keane asked if the EQC would receive the same response when the matter was next discussed. Dir. Sexton said she thought it was premature to commit to a schedule regarding rulemaking.
- 01:40:40 Ms. Thigpen clarified that the Montana Administrative Procedure Act (MAPA) requires that bill sponsors be contacted upon the beginning of work on the substantive content and wording of a proposal notice and that Sen. Hamlett would need to be contacted.
- 01:41:23 Sen. Hamlett said that the DNRC is an important agency and that laws should be followed when they are passed. Sen. Hamlett said that citizens had lost five months of notice and awareness of the issue when the DNRC did not notify them on October 6, 2011. Sen. Hamlett expressed his wish that the DNRC give notice and recommended a motion that requires the DNRC to begin rulemaking.
- 01:44:22 Mr. Kolman asked Ms. Thigpen if a letter from the EQC could be written urging the adoption of rules.
- 01:44:44 Ms. Thigpen replied that it was not explicitly within the power of the EQC to require rules from the DNRC. Ms. Thigpen recommended the EQC produce a letter urging the adoption of rules.
- 01:45:18 Rep. Ankney noted that the intent of any contract is that it be binding.
- 01:45:56 Sen. Hamlett moved that the EQC issue a letter requesting the DNRC to write the rules pursuant to SB 35 and that they be brought to its next meeting so the public process can begin.
- 01:46:38 Mr. Kolman said urging the DNRC to write the rules places them in the MAPA process and that draft rules could be brought to the EQC.
- 01:47:12 Sen. Hamlett's motion passed 14-2 by roll call vote. Sen. Brenden and Sen. Ripley voted no. Sen. Brenden, Sen. Ripley, Rep. Reinhart and Ms. Conradi voted by proxy ([EXHIBIT 7](#)).
- 01:48:19 Sen. Hamlett moved that the DNRC follow the law related to bill effective dates and give notice to the public. Sen. Hamlett's motion passed 9-5 by roll call vote ([EXHIBIT 8](#)).

01:49:56 Sen. Hamlett said that moving forward was in the best interest of the public and that there would be no duplication of work regarding rulemaking.

**Public Comments on any matter not contained on agenda and that is within the jurisdiction of the EQC**

01:51:50 Luke Serati, East Helena, expressed concern with rising sewer rates ([EXHIBIT 9](#)).

01:59:28 Rep. Ankney asked if Mr. Serati had discussed the issue with the DEQ and if any other solution had been offered besides spending money. Mr. Serati said the DEQ gave no other options.

02:01:50 Sen. Vuckovich said he sympathized with Mr. Serati's situation and asked if East Helena was a certified city. Mr. Serati said that it was. Mr. Serati explained that the DEQ's concern involved potential discharge into Prickly Pear Creek. Sen. Vuckovich explained how a similar situation was dealt with in Anaconda.

02:05:31 Sen. Keane said that Rep. Gibson had been given information in regard to sewer rates and suggested that Mr. Serati work with him.

02:05:56 Rep. Williams referred Mr. Serati to a company called AlgEvolve.

**UPDATE ON WATER POLICY INTERIM COMMITTEE (WPIC) - Mr. Kolman**

02:07:18 Mr. Kolman provided an update on WPIC activities with a focus on the exempt well issue. Mr. Kolman told the EQC of WPIC's public hearings to be held in June in Hamilton, Kalispell and Bozeman. Mr. Kolman explained the details of four proposed bill drafts that would be shown at these meetings and said the WPIC also wanted to reexamine a bill dealing with avulsion.

**UPDATE ON ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE (ETIC) AND RELATED STUDIES - MS. NOWAKOWSKI**

02:12:54 Ms. Nowakowski recapped ETIC's January meeting and informed the EQC of its meeting May 17 and 18 in Butte. Ms. Nowakowski relayed the testimony from cooperative members and the public regarding the bankruptcy of Southern Montana Electric (SME) ([EXHIBIT 10](#)).

(Lunch)

**SJR 26 OVERSIGHT: KRY SITE CLEANUP PROGRESS REPORT, DEQ**

**Moriah Bucy, Project Manager**

04:00:40 Ms. Bucy, DEQ, provided information and presented photographs related to the the KRY site. Ms. Bucy informed the EQC of litigation related to the site, chief among them the Montana Supreme Court's decision finding BNSF Railway liable

for cleanup at the site. Ms. Bucy spoke about expenditures related to the site ([EXHIBIT 11](#)).

### **Public Comment**

04:13:22 None.

### **EQC questions, discussion, and action, if any**

04:13:24 Sen. Vuckovich asked Ms. Bucy for the location of offsite disposal for the project. Ms. Bucy said that offsite disposal for lead excavated soils was located in North Dakota.

04:13:56 Sen. Keane asked how the percentages associated with liability were determined. Ms. Bucy said that it had been determined that the DNRC and Swank Enterprises possess 29.5 percent of the liability for cleanup with BNSF responsible for the other 70.5 percent.

04:14:52 Ms. Stockwell reminded the EQC that the KRY update arose out of SJR 26 (2011) and that the Legislative Finance Committee would receive the same update.

04:15:25 Sen. Keane asked Ms. Bucy if the Legislature would need to appropriate additional funds for the project. Ms. Bucy said an appropriation made last session would cover those costs.

## **AGENCY OVERSIGHT - WOLF MANAGEMENT**

### **County bounty program authority - Ms. Thigpen**

04:16:03 Ms. Thigpen explained the county bounty statutes and that a bounty for wolves could be established under them. However, Ms. Thigpen said the taking of wolves still ad to occur in accordance with the provisions of Title 87 and DFWP's regulations for wolf management ([EXHIBIT 12](#)).

### **Wolf Program Budget, Dave Risley, DFWP**

04:23:19 Mr. Risley, Division Administrator for Fish and Wildlife at DFWP, referred to the 2012 Wolf Program Budget ([EXHIBIT 13](#)). Mr. Risley said that federal funding for wolf management would soon be unavailable and would have to be made up with license funds. Mr. Risley said that much had been learned in the recent wolf hunting season but that changes in statute would be necessary to allow more a more liberal season.

04:28:32 Ken McDonald, DFWP Wildlife Bureau Chief, gave the EQC materials presented to county commissioners at a recent meeting ([EXHIBIT 14](#)). Mr. McDonald described the most recent wolf hunting season. Mr. McDonald said the DFWP was committed to managing large carnivores, sustaining ungulates, and addressing livestock and human safety concerns. Mr. McDonald said the

DFWP's preferred management method is fair chase hunting and the use of adaptive management.

- 04:49:19 Sen. Hamlett made a suggestion to Mr. Risley that the wolf season be made year-round.
- 04:50:30 Sen. Ripley asked that Mr. Risley provide the revenue side of the wolf program budget, not just expenses. Sen. Ripley asked when the last wolf had been collected by Wildlife Services. Mr. McDonald said he did not know but would find out. Sen. Ripley asked if Wildlife Services had collected any wolves since 2008. Mr. McDonald said they had. Sen. Ripley asked if they did conduct aerial darting. Mr. McDonald said they did not conduct aerial darting on wolves other than for research purposes. Sen. Ripley asked how many breeding pairs were included in the original wolf Environmental Impact Statement (EIS). Mr. McDonald said the EIS called for a minimum of 150 wolves with 15 breeding pairs and anticipated 300-600 wolves. Sen. Ripley suggested there was no need for quotas on wolves and that a year-round season would be beneficial.

### **Public Comment**

- 04:58:00? Dan Happel, Madison County Commissioner, challenged DFWP's wolf population figures. Mr. Happel said that the groups responsible for the situation had agreed to pay for livestock losses but had not.
- 05:02:02 Richard Grady stated agreement with Sens. Ripley and Hamlett's remarks.
- 05:05:39 Dave Schultz, Madison County, said he was impressed by the options that had been presented and that he hoped for their implementation before calving season.
- 05:10:16 Rena Wetherelt from Missoula County said she had observed the destruction of a national treasure in the game herds. Ms. Wetherelt said ranchers want a shoot-on-sight policy for wolves, not more collaring, tags, or flying.
- 05:15:10 Brian Quigley, Rocky Mountain Stockgrowers Association, asked for an accurate ledger of money spent on wolves and said that SB 348 (2011) is not being followed. Mr. Quigley said that wolves needed to be controlled and that bounties on wolves should not be paid by livestock producers.
- 05:17:34 Vito Quatraro, Montana Sportsmen Alliance and Headwaters Sportsmen Association, said that not everything in the management plan was black and white and that its third population criteria is not number-based. Mr. Quatraro said that the likelihood of relisting would grow if a shoot on sight plan was implemented.
- 05:20:08 Elaine Allestad, Livestock Loss Board Chair, said that although the U.S. Department of Agriculture (USDA) reported losses of 200 sheep to wolf depredation, many losses had not been reported.

- 05:21:52 J. W. Westman, Montana Sportsmen Alliance, seconded Mr. Quatraro's comments.
- 05:22:28 Rick Dunkerley, Lincoln, said he lost livestock that had not been reported to DFWP. Mr. Dunkerley said the problem had become a crisis and pointed to Alaska as an example of good wolf management.
- 05:26:45 Zach Muse, Lincoln, said that the DFWP's numbers were inaccurate and that they failed to recognize the severity of the problem. Mr. Muse said that if the DFWP did not take responsibility people would begin taking action themselves.
- 05:30:41 Stacy Philbrick, Ravalli County, said that she had seen canine scat containing larval tapeworm and warned of the dangers of *echinococcus granulosus* (E.G.). Ms. Philbrick said that DFWP was not informing the public.
- 05:33:22 Leonard Wortman, Jefferson County Commissioner, said that DFWP's numbers are low. Mr. Wortman questioned the management plan's definition of "breeding pair," saying that wolves are difficult to count and that lone wolves, not included in the count, may comprise 30-40% of the wolf populations.
- 05:37:13 Joe Perry, Montana Sportsmen Alliance, applauded efforts to liberalize the hunting season.
- 05:38:10 William Kornic, Lincoln, said he opposed license and fee hikes.
- 05:40:55 Jim Brown, Montana Wool Growers Association, thanked the EQC for conducting wolf management oversight. Mr. Brown said that the breakdown of the wolf management budget that had been asked for at the EQC's last meeting contained no data regarding the program's revenue and asked for more detailed information.
- 05:49:17 Rep. Christy Clark said that DFWP lost control of the wolf situation and predicted that the problem would get bigger. Rep. Clark said that the Rocky Mountain Elk Foundation had offered an emergency grant for Wildlife Services.
- 05:50:43 Gerald Goddard recounted a wolf kill of a whitetail deer and said his call to a warden was never returned.
- 05:52:35 John Borgreen, Russell Country Sportsmen, expressed his hope that wolves not be put back on the endangered species list.
- 05:54:05 Toby Bridges, Missoula, recommended the book "Wolves in Russia" by Will Graves.
- 05:56:02 Ben Lamb, Montana Wildlife Federation, urged that wolves not be relisted and said that funding questions deserved answers. Mr. Lamb reminded the EQC that DFWP had only pursued the issue for one year.

- 05:58:54 Mike Penfold, Billings, asked the EQC to use wisdom so wolves are not relisted.
- 05:59:20 Blake Henning, Rocky Mountain Elk Foundation, asked for more aggressive wolf management.
- 05:59:50 Tim Quigley, Rocky Mountain Stockgrowers, said that elk are being crowded into hay meadows by wolves and encouraged a year-round wolf hunting season.

#### **EQC questions, discussion, and action, if any**

- 06:01:17 Sen. Keane said his concern is financial. Mr. Risley said he shares the senator's concerns and that it was the path of the Endangered Species Act that once a species is restored, federal money is pulled off the table. Sen. Keane noted that the state now has a problem and asked how the problem could be controlled in a brief period of time. Mr. Risley agreed that the problem should be managed but said that people's expectation had been too high regarding the reduction of wolf populations and said DFWP would bring legislation before the next Legislature asking for more tools to fix the problem. Sen. Keane said the EQC would still like to see an account of revenues and expenditures for the wolf program and desired to see solutions implemented before the next Legislature. Mr. Risley said the DFWP would provide a more detailed breakdown.
- 06:06:57 Sen. Keane noted that E.G. had been investigated by the EQC last interim and pointed to the EQC website for further information.
- 06:07:34 Sen. Ripley requested that Mr. Risley supply an account of expenses and revenues, current balance in line items and mail it to the EQC before its next meeting. Mr. Risley said he would comply.
- 06:08:18 Mr. Youngberg observed that the budget item concerning wolf collaring looked inflated and asked if contracting with Wildlife Services would be a more cost-effective alternative. Mr. Risley said Wildlife Services is responsible for about a third of wolf collaring and that expenses are similar. Mr. Youngberg advised that DFWP consider contracting with Wildlife Services.

(Break)

#### **UPDATE OF PPL V. MONTANA**

##### **Mary Sexton, DNRC**

- 06:23:01 Dir. Sexton updated the EQC on the United States Supreme Court's recent PPL decision, saying that it would be remanded to the Montana Supreme Court which will pass it on to the First Judicial District. Dir. Sexton said the court adopted the segment by segment analysis that PPL had advocated. Dir. Sexton said the court would decide if fees will be paid for use of the bed of the river to riparian landowners. Dir. Sexton referred the EQC's questions to DNRC attorney Candy West.

**David Hoffman, Director of External Affairs, PPL**

06:29:13 Mr. Hoffman expounded upon the Supreme Court's unanimous overturn of the Montana Supreme Court's decision. Mr. Hoffman said the court agreed with PPL that the question of a river's navigability at the time of statehood must be answered by looking at the particular stretch in question, not the river as a whole.

**Public Comment**

06:38:55 None.

**EQC questions, discussion, and action, if any**

06:39:00 Sen. Hamlett asked Mr. Hoffman who owned the land in the Great Falls stretch in question, based on the Court's decision. Mr. Hoffman said the riverbed was a patchwork of ownership at the time the dams were built. Mr. Hoffmann said that if PPL did not own certain stretches they were owned by riparian owners and that PPL had flood easements on those properties.

06:40:30 Sen. Ripley asked Dir. Sexton for a rough estimate of legal fees associated with the case. Dir. Sexton said those figures could be obtained through the Attorney General's office. Dir. Sexton said that attorneys Tommy Butler, Anthony Johnstone, and Candy West had taken up the case because PPL had sued the department. Sen. Ripley asked if any additional money had been spent. Dir. Sexton said they had hired outside legal counsel upon the recommendation of the Attorney General, but until that time it had been done in house. Sen. Ripley asked if these fees constituted the \$450,000 PPL had referred to. Dir. Sexton said she did not know.

**Public comments on any matter not contained on agenda and that is within the jurisdiction of the EQC**

06:42:49 None.

**ADJOURN**

06:43:36 The EQC adjourned.

CI2244 2123mtxb.