



# ENVIRONMENTAL QUALITY COUNCIL

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

**HOUSE MEMBERS**  
DUANE ANKNEY  
GERALD BENNETT  
BILL MCCHESENEY  
MICHELE REINHART  
CARY SMITH  
KATHLEEN WILLIAMS

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

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

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

## MINUTES

Approved September 14, 2011

DATE: May 24, 2011

Room 172  
State Capital Building

Please note: These are summary minutes. Testimony and discussion are paraphrased and condensed. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.**

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

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

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

### COMMITTEE MEMBERS PRESENT

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

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

MR. DEXTER BUSBY

**COMMITTEE MEMBERS EXCUSED**

MS. DIANE CONRADI  
MS. MARY FITZPATRICK  
MR. MIKE VOLESKY  
MR. JOHN YOUNGBERG

**STAFF PRESENT**

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

**Visitors**

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

**COMMITTEE ACTION**

- The EQC approved the EQC minutes from July 23, 2010, and September 13-14, 2010.
- The EQC elected Sen. Jim Keane as Chairman and Rep. Duane Ankney as Vice Chairman.

**CALL TO ORDER AND ROLL CALL**

00:01:06 Meeting was called to order and roll was noted ([Attachment 3](#)).

**AGENDA**

00:01:11 Sen. Ripley, Chairman *pro tem* of the Environmental Quality Council (EQC), welcomed the Council and invited members and staff to introduce themselves.

**ADMINISTRATIVE MATTERS**

**Adoption of EQC Minutes**

00:11:24 Sen. Brenden moved to accept the July 23, 2010, and September 13-14, 2010, EQC Minutes. Sen. Ripley noted one error (change "Rep. Ripley" to "Sen. Ripley.") The motion carried unanimously by voice vote.

## **EQC Budget overview**

00:13:06 Todd Everts, Legislative Environmental Analyst, Legislative Environmental Policy Office, stated that an overview of the EQC's budget would be given at the end of the meeting. He outlined Council and staff responsibilities and gave a brief history of the EQC. He touched on draft rules and procedures and pointed to the 2009-2010 EQC rules.

## **COUNCIL AND STAFF RESPONSIBILITIES**

### **EQC Decisionmaking process and Subcommittee Formation Criteria - Ms. Stockwell**

00:19:14 Hope Stockwell, Research Analyst, Legislative Environmental Policy Office, described the EQC decisionmaking process, the Work Plan Matrix and the differences between subcommittees and work groups (**EXHIBIT 1**).

### **EQC Staff/Council Responsibilities and Role - Ms. Nowakowski**

00:25:01 Sonja Nowakowski, Research Analyst, Legislative Environmental Policy Office, outlined staff and member responsibilities. She described the function of staff.

### **EQC Mailings and Communication - Mr. Kolman**

00:29:49 Joe Kolman, Research Analyst, Legislative Environmental Policy Office, talked about mailings, communication, public comment and committee records.

00:34:52 Mr. Everts detailed the relationship between the Legislative Fiscal Division (LFD) and the Legislative Environmental Policy Office (LEPO). Barbara Smith, Fiscal Analyst, LFD, invited members to contact LFD in the event of questions.

00:37:21 Sen. Ripley asked Mr. Everts to outline the choices in regard to proxy voting. Mr. Everts explained that proxies should be written and have often been e-mailed.

## **AGENCY OVERVIEW PRESENTATIONS**

### **Department of Natural Resources and Conservation - Director Sexton**

00:39:31 Mary Sexton, Director of the Department of Natural Resources and Conservation (DNRC), began a PowerPoint presentation detailing the role of the DNRC and touched on recent flooding in the state (**EXHIBIT 2**).

### **Questions from the EQC**

01:01:52 Sen. Brenden asked Dir. Sexton about DNRC wind farms and expressed concern about the bonding level of companies engaged in wind farming. Ms. Nowakowski said she had further information that she would provide.

- 01:03:59 Rep. Williams asked Tom Richmond, Board of Oil and Gas Conservation Administrator, about the proposed statewide rules for hydraulic fracturing and Mr. Richmond outlined the timetable. Ms. Stockwell talked about the public hearing Mr. Richmond mentioned being held June 15, 2011, in Sidney.
- 01:09:45 Sen. Ripley asked about a report on the Davis Fire from last interim. Ms. Stockwell said she could provide the report.

#### **Department of Environmental Quality - Director Opper**

- 01:10:47 Richard Opper, Director of the Department of Environmental Quality (DEQ), presented the duties of the DEQ. He highlighted three issues that the EQC would be dealing with this interim. First, that new quotas on the number of petroleum tank sites closed as required by HB 613 will change the focus of the department. Second, that more closures mean more demands on the cash-strapped petroleum fund. Dir. Opper pointed to problems with the administration of HB 613 and said that funding of permitting for petroleum tank sites will be jeopardized by closures. Lastly, he stated the DEQ's stance and defended its handling of eminent domain. He said the DEQ tried to be flexible regarding the permitting process. He addressed SB 233 and MEPA.

#### **Questions from the EQC**

- 01:25:43 Sen. Keane asked Dir. Opper about tank closure. They discussed which sites were the best candidates for closure. Dir. Opper said closure of "purgatory sites" would result in savings for the department.
- 01:28:50 Sen. Brenden advocated for swift resolution of the situation at Fort Peck.
- 01:29:45 Ms. Smith, LFD, clarified funding of the cleanup program.
- 01:30:32 Sen. Ripley asked about the flooding situation at Mike Horse Mine. Dir. Opper deferred to Tom Livers, Deputy Director of DEQ, who was cautiously optimistic and said the addition of four pumps had secured the diversion trench.

#### **Department of Fish, Wildlife, and Parks - Deputy Director Noonan**

- 01:32:48 Deputy Director Art Noonan, Fish, Wildlife and Parks (FWP), provided an overview of FWP.

#### **Questions from the EQC**

- 01:41:24 Rep. Ankney asked Deputy Director Noonan about a meeting on invasive species held in Billings and requested to be notified of future meetings.
- 01:42:48 Sen. Brenden addressed a comment made to a constituent at an FWP meeting. Deputy Director Noonan replied that the comments do not reflect the position of FWP.

- 01:44:55 Rep. Williams asked Deputy Director Noonan whether recent legislation related to parks funding solved funding issues. Deputy Director Noonan voiced support for a study investigating how to better get resources to existing parks. He also said the increased vehicle fee had given FWP more resources.
- 01:47:55 Sen. Keane inquired as to the cumulative effect of drought, as well as the current flooding, on fisheries. Deputy Director Noonan deferred to Dave Risley, Administrator of the Fish and Wildlife Division of FWP. Mr. Risley explained the relationship between spawning timetables and flood events and predicted short term impacts on limited areas. Rep. Williams asked if flooding could be beneficial under certain circumstances. Mr. Risley said that it could.
- 01:51:35 Rep. Reinhart asked about lawsuits filed against FWP since the end of session. Deputy Director Noonan said there had been three lawsuits filed regarding wolves and two regarding bison outside Yellowstone National Park north of Gardner, Montana.
- 01:52:30 Sen. Brenden asked who paid for the bison guard. Deputy Director Noonan was not sure but thought it was the Department of Transportation.
- 01:53:43 Sen. Ripley asked what became of the buffalo caught in the bison guard, to which Deputy Director Noonan responded that it was donated to a food bank. Sen. Ripley asked about internal procedures regarding department direction. Deputy Director Noonan said the department was making an effort to evaluate its processes in light of recent legislation. He also pointed to the FWP Commission's role in evaluating the department's policies.
- 01:59:02 Sen. Vuckovich asked about the possibility that FWP might sponsor a bison game farm. Deputy Director Noonan replied that they would not and elaborated on FWP's policies toward bison on the Spotted Dog Wildlife Management Area.
- 02:05:13 Sen. Hamlett asked about the department's management plan for sage grouse. Mr. Risley said he would provide information by mail.

(BREAK)

#### **ELECTION OF THE EQC CHAIR AND VICE CHAIR**

- 02:29:32 Sen. Vincent nominated Sen. Keane as Chairman of the EQC. Sen. Keane was elected Chairman of the EQC.
- 02:31:27 Sen. Hamlett nominated Rep. Ankney as Vice Chairman of the EQC. Rep. Ankney was elected Vice Chairman of the EQC.

#### **INTRODUCTION AND REVIEW OF INTERIM WORK PLAN OPTIONS**

##### **Work Plan Matrix Introduction - Mr. Everts**

- 02:34:01 Mr. Everts provided an introduction to the EQC work plan ([EXHIBIT 3](#)).

### **Review of Individual Work Plan Elements - EQC Staff**

- 02:40:39 Ms. Stockwell provided detail regarding the work plan. She noted that the Legislative Council recommended HJ 32 be investigated by the EQC. SJ 26 entailed five EQC duties. HB 613 contained a study that overlapped with SJ 26.
- 02:47:50 Mr. Kolman explained the relationship between the Water Policy Interim Committee and the EQC. He clarified that the committees' aim was to work in tandem without being redundant.

### **Overview of Statutory Duties Added by 2011 Legislature**

- 02:51:21 Ms. Stockwell talked about the EQC's statutory duties as related to additions by the 2011 Legislature. SB 307, HB 533 and HB 142's requirements of the EQC were discussed. She briefly described several publications produced by Legislative Services in the past interim. Proposed meeting dates were introduced.
- 03:02:55 Mr. Everts added additional information regarding EQC's publications.
- 03:03:51 Sen. Keane asked for public comment and requested the Council not divide into subcommittees.
- 03:05:20 Sen. Vincent asked Ms. Nowakowski to distribute information related to eminent domain (**EXHIBIT 4**).
- 03:07:05 Sen. Keane described his experience with time allocation and gave the Council recommendations on what percentage of an FTE (full-time employee) to give each issue. Sen. Vincent noted some differences in proposed time allocations.
- 03:12:00 Ms. Stockwell suggested last year's allocations be made available for the committee for point of reference.

(LUNCH)

### **CONTINUE REVIEW AND DISCUSSION OF WORK PLAN**

- 04:31:49 Sen. Keane proposed several options for the work plan and asked if any sections should be segregated. Rep. Reinhart suggested that the rewrite of "Our Montana Environment" be segregated. Sen. Ripley asked that HJ 32 be segregated.
- 04:35:52 A motion to segregate was made by Sen. Ripley and was passed unanimously by voice vote.

### **ADOPTION OF WORK PLAN OPTIONS**

- 04:36:42 The committee discussed adoption of the work plan. Rep. Williams made a proposal regarding allocation of FTE.

04:39:11 Sen. Ripley made a motion involving HJ 32's FTE.

04:41:43 The motion was passed with a voice with the of those present. Mr. Youngberg and Ms. Conradi voted aye by proxy. Ms. Fitzpatrick voted no by proxy.

04:42:30 Rep. Reinhart asked a question regarding updating "Our Montana Environment." Mr. Everts responded that a limited update could be undertaken. Ms. Stockwell added historical context to the proposed update.

04:46:33 Rep. Williams requested a MEPA training; it was suggested that such training could be provided without affecting FTEs.

04:49:56 Sen. Vincent made a motion of .5 FTE for general statutory duties, which passed unanimously by voice vote.

04:50:21 Sen. Vincent made a motion to take up Option B (.1 FTE) on eminent domain.

04:51:57 Rep. Ankney discouraged a study of eminent domain and said such investigation would prove too great a task for the committee.

04:52:46 Rep. Smith supported Sen. Vincent's suggestion. Sen. Brenden expressed disagreement with aspects of the work plan. Mr. Busby stated that the EQC has taken this issue up already with limited results. Rep. Bennett expressed support for Sen. Vincent's motion. Sen. Hamlett pointed to past legislation regarding eminent domain. Rep. Reinhart suggested a compromise. Sen. Vincent restated his motion. Sen. Keane agreed with Sen. Brenden and stated his opposition to Sen. Vincent's motion. Sen. Ripley stated his support for .05 FTE. Sen. Vuckovich agreed with Sen. Ripley.

05:01:54 Sen. Brenden called the question. The motion failed 9 to 5 by roll call vote with Rep. Bennett, Rep. Smith, Rep. Williams, Sen. Hamlett and Sen. Vincent voting yes.

05:03:52 Sen. Vincent made a motion for .05 FTE.

05:04:27 Sen. Brenden expressed opposition. Sen. Ripley made a case for .05 FTE. Sen. Hamlett voiced support. Sen. Keane asked Ms. Nowakowski to explain the "panel discussion" option. Sen. Keane and Sen. Vincent discussed the panel discussion. Sen. Hamlett asked Mr. Everts about the impact on the committee in regard to current court cases.

05:10:30 Sen. Vincent's motion passed 11-3 by roll call vote with Sen. Brenden, Mr. Busby and Mr. Youngberg voting no. Mr. Youngberg voted by proxy.

05:12:04 Sen. Hamlett made a motion requesting that the committee expend .01 FTE to investigate the state's policy on navigable rivers. Sen. Hamlett and Mr. Everts discussed the study of navigable rivers for commerce. Mr. Everts said that he'd seen multiple definitions for the same legal term and had written two legal opinions last interim.

05:17:04 Sen. Hamlett's motion passed unanimously by voice vote and the EQC work plan was adopted.

#### **ADOPTION OF INTERIM EQC CALENDAR**

05:17:52 Discussion turned to the meeting calendar. Sen. Brenden expressed opposition to meetings being held on Fridays. Mr. Everts said that Thursday/Friday meetings could be shifted to Wednesday/Thursday.

05:24:44 Sen. Ripley moved that the calendar be adopted with changes. The motion passed unanimously by voice vote and the EQC calendar was adopted.

#### **STATUTORY ADMINISTRATIVE RULE REVIEW**

05:25:49 Helen Thigpen, staff attorney, addressed Statutory Administrative Rule Review (**EXHIBIT 5**).

05:33:16 Ms. Thigpen made available newly proposed hydraulic fracturing rules.

(BREAK)

#### **EQC STATUTORY REPORTING REQUIREMENT - WATER ADJUDICATION PROCESS OVERSIGHT**

05:50:39 Mr. Kolman provided an update on water adjudication. He said future updates would be provided in written form at meetings, while oral presentations would be given to the Water Policy Interim Committee.

##### **Department of Natural Resources and Conservation Update - DNRC Staff**

05:51:47 Dir. Sexton provided a detailed report on water adjudication. A map illustrating the status of the adjudication of basins across the state was reviewed.

##### **Montana Water Court Update - Judge Loble**

06:10:50 Montana Water Court Judge Bruce Loble explained adjudication of water claims.

##### **Associate Water Judge - Lois Menzies, Court Administrator**

06:20:16 Supreme Court Administrator Lois Menzies described the new position of Associate Water Judge on behalf of Chief Justice McGrath (**EXHIBIT 6**).

06:23:31 Sen. Keane asked about other positions not covered in the table.

#### **EQC STATUTORY OVERSIGHT FUNCTION - WOLF DELISTING UPDATE**

##### **Art Noonan, Deputy Director, Department of Fish, Wildlife, and Parks**

06:25:14 Deputy Director Noonan provided an update on wolf delisting.

### Questions from the EQC

- 06:27:41 Sen. Ripley asked the Deputy Director who determines the "appropriateness" of management. Deputy Director Noonan said FWP would and that they would share their findings with the U.S. Fish and Wildlife Service.
- 06:30:47 Sen. Keane asked for the current number of wolves in the state, as well as the projected threshold. Mr. Risley said there was a range used for management. The current estimated minimum count was 566, which was thought to be too high. Sen. Keane asked for a definition of breeding pair, to which Mr. Risley responded that a breeding pair is a male, female and two pups surviving to December 31 of that year.
- 06:33:27 Ken McDonald, Chief of Wildlife for FWP, reviewed the methods used to attain the wolf count and the current wolf numbers.
- 06:35:03 Sen. Brenden said he had heard that there could be as many as 1,800 wolves in the state and recalled a grizzly bear census that accurately determined the number of grizzlies. Mr. McDonald said that hunter observational data was used to get current wolf numbers, which is less accurate than the "bear rub" technique used to attain grizzly numbers.
- 06:38:02 Sen. Ripley asked for clarification on the number of wolves in the state. Mr. McDonald said that 566 was probably 10-30% below the actual number.
- 06:39:16 Sen. Hamlett asked about the results of the first wolf hunting season. Mr. McDonald said that 72 wolves were taken from a quota of 75. Sen. Hamlett asked about the length of 2009's wolf hunt. Mr. McDonald said it ran from September 15 to November 16.
- 06:43:15 Sen. Vuckovich asked for further clarification on the number of wolves.
- 06:47:11 Sen. Keane asked about the department's preparations to reimplement wolf management in light of new legislation. Mr. McDonald stressed the efficacy of hunting for wolf management.
- 06:49:03 Sen. Vincent asked about collaring in areas where predation has been focused on game as opposed to livestock. Mr. McDonald said that FWP plans to follow many of Sen. Vincent's recommendations in the coming season. Sen. Vincent commented that he'd appreciate resources being used in his portion of the state.
- 06:54:23 Sen. Keane asked about an option for a special hunt in a specific area to deal with a specific problem.
- 06:56:07 Deputy Director Noonan introduced a handout that explained how hunting seasons are set ([EXHIBIT 7](#)).
- 06:56:47 Sen. Keane asked Bob Lane, Legal Counsel, FWP about whether there had been legal action regarding the wolf issue.

07:01:12 Mr. Lane addressed the legality of the budget rider in question.

**PUBLIC COMMENT**

07:06:56 No public comment was given.

**OTHER BUSINESS**

07:07:08 Mr. Everts addressed the budget for the coming biennium.

07:08:54 The meeting was adjourned at 4:08 p.m.

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