



# ENVIRONMENTAL QUALITY COUNCIL

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

## MINUTES

Approved January 11, 2011

October 17, 2011

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. BILL MCCHESENEY\*  
REP. CARY SMITH\*  
REP. KATHLEEN WILLIAMS\*

MR. DEXTER BUSBY\*  
MS. DIANE CONRADI\*

MS. MARY FITZPATRICK\*  
MR. MIKE VOLESKY  
MR. JOHN YOUNGBERG\*

\*These members participated by telephone.

### **COMMITTEE MEMBERS EXCUSED**

REP. JERRY BENNETT  
REP. MICHELLE REINHART

### **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 agreed to send a letter to FWP commenting on the draft Environmental Assessment (EA) for the interim translocation of bison.

### **CALL TO ORDER AND ROLL CALL**

00:00:17 Meeting was called to order and roll was noted ([Attachment 3](#)).

### **AGENDA**

#### **ADMINISTRATIVE MATTERS**

#### **DISCUSSION OF ENVIRONMENTAL ASSESSMENT FOR INTERIM TRANSLOCATION OF BISON**

##### **Overview - EQC Staff**

00:02:44 Hope Stockwell, Research Analyst, EQC, introduced the draft EA released by the FWP following the EQC's last meeting regarding the interim translocation of bison. She explained that the bison in question were bison or their progeny from Yellowstone National Park that have tested negative for brucellosis and have been held as part of a quarantine feasibility study. Ms. Stockwell said that the draft EA examined the possibility of taking bison that have been declared brucellosis-free and relocating them on state or tribal land. Ms. Stockwell said that the draft EA was up for a 30-day comment period that would end October

19, at which time FWP would respond to comments received and expect to present a decision based on the outcome of the EA to the FWP Commission at its meeting on November 10, 2011. Ms. Stockwell said that the EQC may contribute comments to FWP on the EA if the Council chooses.

### Public Comment

- 00:06:35 Joe Maurier, FWP Director, said that few problems had been reported by Montana's 133 bison ranchers who hold 14,000 bison. Dir. Maurier said that FWP's goal is to conserve bison genes and acknowledged the problems caused by bison migration outside Yellowstone. Dir. Maurier said that to do nothing was not productive and credited the EA with providing an interim step toward putting brucellosis-free bison back on the landscape and added he looked forward to receiving public comment.
- 00:10:37 Rep. Mike Miller, House District 84, said that his constituents near the Spotted Dog Wildlife Management Area (WMA) were upset. Rep. Miller recounted his experiences at meetings with FWP, including a meeting in Deer Lodge in July 2010 regarding the state's purchase of the Spotted Dog WMA at which a FWP representative said that there was no intention by FWP to put bison on the Spotted Dog. Rep. Miller said the original plan for the Spotted Dog, to enhance wildlife habitat (excluding bison) and provide better recreation and hunting access to the public, appear to be abandoned. Rep. Miller pointed to several bills introduced in the 2011 legislative session that aimed to either directly prevent the introduction of bison on Spotted Dog or to allow local control of the management of bison in those areas. Rep. Miller said that FWP could not guarantee there would be no disease, appeared unable to resolve the bison problem and was shifting the risk to the people of Powell County. He strongly urged the FWP to listen to his constituents in Powell County and not proceed with the planned introduction of bison onto the Spotted Dog WMA.
- 00:13:31 Kerry White, Board Member, Citizens for Balanced Use, spoke from his perspective as a fourth generation ranch owner in Gallatin County near Yellowstone National Park. Mr. White said that the problem was created by the federal government in the 1950s when it placed bison in Yellowstone to graze for fire prevention and for limited hunting by Native American groups. He said the state should not take on this federal problem. Mr. White said that the EA demonstrated that FWP does not have a disease management plan and asked what the cost of such a plan would be to ranchers with cattle on Spotted Dog. Mr. White asked why animals were being monitored over a five year period when there had been documented cases of animals carrying disease for eight years. Mr. White recalled a meeting held by the EQC on bison on March 17, 2006, at which the Governor presented a plan to the EQC to move bison outside Yellowstone Park which named landowners whose cattle would be removed. Mr. White claimed the FWP did not create the plan, rather that it had long been on the Governor's agenda. Mr. White complained of the undue stress put on ranchers and cattle due to repeated testing and urged the committee to oppose relocation of bison outside Yellowstone Park (**EXHIBIT 1**).

- 00:20:10 John Munding, a former FWP employee coming before the EQC as a private citizen, recounted his involvement with crafting the interagency bison plan and various Montana Environmental Policy Act (MEPA) documents that were subsequently prepared, including this EA for the second phase of the quarantine feasibility study. Mr. Munding said he agreed with FWP regarding the level of risk of brucellosis transmission by bison exiting the quarantine feasibility facilities. Mr. Munding acknowledged that no guarantee could be given, but that with the technology that was used these animals more than exceeded any standard applied to private cattle. Mr. Munding said he still had two concerns. First, he wondered where the federal government stood in relation to the issue and said that all five agencies responsible (the National Parks Service (NPS), the U.S. Animal and Plant Health Inspection Service (APHIS), the Gallatin National Forest, FWP, and the Department of Livestock) should cooperate to reach a decision regarding bison management. Second, Mr. Munding pointed to the Department of the Interior's (Dol) assertion regarding the genetic uniqueness of the Yellowstone bison. Mr. Munding said he did not understand why the Dol did not want to incorporate the quarantined bison genes into other federal herds. Mr. Munding questioned whether or not the EA was MEPA-compliant and pointed to several deficiencies. Mr. Munding suggested that the EA was sufficient to place bison on Ft. Belknap and Ft. Peck.
- 00:29:52 Jay Bodner, Montana Stockgrowers Association (MSA), said his members had not had enough time to consider the EA and that they would like to see the comment period extended. Mr. Bodner said that the MSA would also like FWP to reconsider its decision not to conduct an Environmental Impact Statement (EIS) as well as a full conservation plan prior to any translocation of bison.

### **EQC Questions and Discussion**

- 00:33:11 Sen. Brenden asked Dir. Maurier, hypothetically, if he thought free roaming dinosaurs should be placed on the landscape. Sen. Brenden then asked if there was a Fish, Wildlife and Parks Commission meeting planned for November 10 regarding the issue of translocation. Dir. Maurier said they would know whether or not to have a meeting after public comment had been received at this meeting. Sen. Brenden asked which representatives of FWP would be at the meeting in Glasgow that night. Dir. Maurier said Ken McDonald, Wildlife Bureau Chief, and Rebecca Cooper, the author of the EA, would be there. Sen. Brenden said he supported the draft EQC letter and would vote accordingly.
- 00:36:14 Rep. Williams asked Dir. Maurier how FWP reconciled moving forward with the EA given the requirements of SB 212 (2011) and whether or not there was a management plan that provides consistency with SB 212. Dir. Maurier said that if FWP received public comment that it was not compliant then FWP would take that comment. Dir. Maurier then deferred to Bob Lane, Chief Legal Counsel, FWP.
- 00:38:04 Mr. Lane said that there were two aspects of this issue, including the environmental review under the EA and compliance with the requirements of SB 212. Mr. Lane said that FWP would take the EQC's comments and with those

produce a final management plan that would address all the components of SB 212. Rep. Williams asked if there would be an additional EA on the management plan. Mr. Lane said there probably would not be an EA and that FWP would explore whether the existing EA was sufficient. Rep. Williams spoke about the "sample management plan" versus the "proposed management plan" and asked if there was not quite a bit more to do to comply with SB 212. Mr. Lane said there was more to do but that a decision had not been made on moving the bison and that a management plan would be produced after that decision. Rep. Williams commented that it seemed more efficient to develop a management plan that had an associated EA.

00:43:24 Sen. Vincent asked Dir. Maurier what his reasoning was for not doing an EIS. Dir. Maurier said that it was because this is a fairly limited interim proposal that does not involve the entire state. Sen. Vincent asked Dir. Maurier if an EIS is not needed if a plan did not involve the whole state. Dir. Maurier said that they were decided on a case-by-case basis. Sen. Vincent asked what had been the general sentiment of public comment received thus far. Dir. Maurier said that public comment had generally been unfavorable but that written comment helped balance the scale.

00:48:06 Sen. Hamlett asked Mr. Lane whether the state had to deal with bison because Yellowstone bison were trespassing. Mr. Lane said no. He said that the State of Montana is the manager of wildlife and bison are classified as wildlife. Sen. Hamlett asked who owned the bison. Mr. Lane said that wild animals are a wild resource owned by no one and that no proprietary ownership had been established by the United States Supreme Court. Sen. Hamlett asked what happened when tribes were involved and whether offspring from these animals were tribal property. Mr. Lane deferred the question to Dir. Maurier, who said that the current quarantine facility was running out of space and that the question was what was the "exit strategy" or intention for these bison. Dir. Maurier said that the tribes were not quite ready to take responsibility when FWP first looked at relocating bison. Dir. Maurier said that the FWP had been sued after bison were moved to Ted Turner's ranch over the issue of whether offspring from the bison could be given to Turner under the contract. Sen. Hamlett asked if bison belonging to a sovereign nation had offspring whether or not those offspring could be sold to private individuals. Dir. Maurier said that they could and that once bison were moved to tribal land the tribes could do whatever they pleased with those animals.

00:55:52 Sen. Vuckovich asked Dir. Maurier why the state had taken responsibility for this apparently federal issue. Dir. Maurier said that the FWP is responsible for the wildlife resources of the state by statute and that states had primacy over wildlife when they cross boundaries. Sen. Vuckovich asked whose responsibility the bison would be if they could be routinely herded back into Yellowstone Park. Dir. Maurier said once bison were back in Yellowstone they were a federal responsibility. Sen. Vuckovich asked which was more cost effective, to establish a game farm for bison outside of the park or to herd them back into Yellowstone and leave them to the federal government. Dir. Maurier said that the latter herding option was likely less expensive but that public comment outside the

state would likely be negative toward this option and that it begged the question whether or not bison were a wildlife species that should somehow be present on the Montana landscape.

- 01:00:47 Mr. Volesky said that 99.9% of bison that exited Yellowstone were herded back into the park but that it was another population that had been quarantined.
- 01:01:35 Sen. Vuckovich said that the addendum to the EA had reduced the proposed cost of the Spotted Dog enclosure by 80% and reduced the annual management cost by 58%. Sen. Vuckovich asked whether or not these new costs estimates conflicted with the stated objective of the EA. Dir. Maurier said he did not think that they conflicted and that he had wanted a range but that it had accidentally been neglected.
- 01:02:58 Sen. Ripley asked Mr. Lane whether or not there would be a management plan and public comment period. Mr. Lane said that there would be public input. Sen. Ripley asked if meetings would be held in the same locations as those held previously. Mr. Lane said the department would comply with the requirements of SB 212.
- 01:04:48 Sen. Ripley asked Dir. Maurier at what point a wild buffalo became a domestic buffalo. Dir. Maurier said that this was a good question, as quarantined buffalo are considered wild. Dir. Maurier said that ideally they would be wild and unfenced but geographically contained and eligible for fair-chase hunting.
- 01:06:52 Rep. Ankney referred to Sen. Vincent's request for a complete EIS and Dir. Maurier responded that only a portion of the state would be affected. Rep. Ankney said that if brucellosis broke out anywhere in the state it would affect the entire state.
- 01:08:17 Mr. Youngberg asked Dir. Maurier if the five year extension was part of the quarantine. Dir. Maurier said his understanding was that in addition to the first five year period an additional five years was ordered. Mr. Youngberg said that this appeared to be a disease management issue and asked if it did not fall under the Department of Livestock's (DoL) purview. Dir. Maurier said that it did. Mr. Youngberg said that the significant cost to the DoL was not reflected in the EA. Dir. Maurier said he did not think quarantined bison cost DoL anything but that he could be wrong. Mr. Youngberg requested that this issue be investigated and asked if FWP would pay a per capita tax on these bison in the bison ranch. Dir. Maurier said that they would not.
- 01:11:41 Mr. Volesky commented that the purpose of the EA was meant to inform decision-making and did not require perfect information. Mr. Volesky said that the potential impacts of a course of action determined whether or not an EA or EIS was conducted, not public affirmation or dissent. Mr. Volesky said that the bison in question are possibly the most tested animals in the history of animal health management and questioned why the testing is being questioned. He said he thought said position had disturbing implications for consumers regarding

disease control and the safety of the United States food supply and reiterated that no decision has been made.

- 01:15:35 Sen. Keane reviewed the events that had brought the Council to this meeting and said that although the EQC appreciated FWP's work it was clear from the public comment that there was not much support for the translocation of bison.
- 01:16:45 Sen. Vuckovich made a motion to accept the proposed document providing comment on the EA to FWP as prepared.
- 01:17:35 Sen. Ripley said he would support Sen. Vuckovich's motion.
- 01:18:22 Sen. Brenden said he supported Sen. Vuckovich's motion and that the damage had been done to Ft. Belknap and Ft. Peck by current bison herds.
- 01:19:04 Rep. Williams made a substitute motion to include an additional paragraph in the comment letter (**EXHIBIT 2**).
- 01:21:48 Sen. Keane said he would not support Rep. Williams' motion.
- 01:22:04 Sen. Ripley said he thought it would be unfair to take action on Rep. Williams' motion as those members participating in the meeting by telephone had not seen its content.
- 01:22:38 Rep. Williams read the addition in order that the Council be informed of its content.
- 01:24:38 Sen. Brenden said he could not support the substitute motion.
- 01:25:20 Rep. Williams' substitute motion failed 12-2 by roll call vote of those present and voting (**EXHIBIT 3**). Rep. Reinhart, Rep. Bennett, and Mr. Busby voted by proxy.
- 01:27:08 Sen. Vincent commented that SB 212 specified a management plan be in place before relocation of bison and said he would support Sen. Vuckovich's motion.
- 01:29:48 Sen. Vuckovich's motion carried unanimously by roll call vote of those present and voting (**EXHIBIT 4**). Rep. Reinhart, Rep. Bennett, and Mr. Busby voted by proxy.
- 01:31:02 Rep. Williams said that it would be helpful for the EA to address SB 212 and thanked the group for considering her addition.
- 01:32:01 The meeting was adjourned.

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