



# ENVIRONMENTAL QUALITY COUNCIL

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**GOVERNOR STEVE BULLOCK**  
**DESIGNATED REPRESENTATIVE**  
TIM BAKER

**HOUSE MEMBERS**  
JERRY BENNETT  
VIRGINIA COURT  
ED LIESER  
BILL MCCHESENEY  
JEFFREY WELBORN  
KERRY WHITE

**SENATE MEMBERS**  
JOHN BRENDEN  
JENNIFER FIELDER  
BRADLEY MAXON HAMLETT  
JIM KEANE  
RICK RIPLEY  
GENE VUCKOVICH

**PUBLIC MEMBERS**  
SCOTT ASPENLIEDER  
DEXTER BUSBY  
MARY FITZPATRICK  
ROY MORRIS

**COUNCIL STAFF**  
JASON MOHR, Research Analyst  
SONJA NOWAKOWSKI, Research Analyst  
HOPE STOCKWELL, Research Analyst  
HELEN THIGPEN, Staff Attorney  
NADINE SPENCER, Secretary  
JOE KOLMAN, Legislative Environmental Analyst

## MINUTES LOG

Approved September 11, 2013

Date: June 19, 2013

Room 172, State Capitol Building  
Helena, Montana

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.

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. JOHN BRENDEN, CHAIR  
REP. BILL MCCHESENEY, VICE CHAIR

SEN. JENNIFER FIELDER  
SEN. BRADLEY MAXON HAMLETT  
SEN. JIM KEANE  
SEN. RICK RIPLEY  
SEN. GENE VUCKOVICH  
REP. JERRY BENNETT  
REP. VIRGINIA COURT  
REP. ED LIESER  
REP. JEFFREY WELBORN  
REP. KERRY WHITE

MR. SCOTT ASPENLIEDER  
MR. DEXTER BUSBY  
MR. ROY MORRIS

## **COMMITTEE MEMBERS EXCUSED**

MS. MARY FITZPATRICK

## **STAFF PRESENT**

JOE KOLMAN, Legislative Environmental Analyst  
JASON MOHR, Research Analyst  
SONJA NOWAKOWSKI, Research Analyst  
HOPE STOCKWELL, Research Analyst  
HELEN THIGPEN, Staff Attorney  
NADINE SPENCER, Secretary

## **AGENDA & VISITORS' LIST**

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

## **COMMITTEE ACTION**

- The EQC approved the minutes from September 12-13, 2012.
- The EQC approved the Rules (including allowing proxy votes) for the committee.
- The EQC elected Sen. John Brenden as Chairman and Rep. Bill McChesney as Vice Chair.

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

### **AGENDA**

00:00:02 Sen. Ripley, senior senator, called the meeting to order at 10:00 a.m. The secretary called the roll, [Attachment 3](#). The EQC members introduced themselves.

### **ADMINISTRATIVE MATTERS**

#### **Staff Introductions**

00:06:45 Mr. Kolman, Legislative Environment Analyst, introduced the EQC staff.

#### **Adoption of EQC minutes**

00:09:28 Sen. Keane moved to accept the September 12 and 13, 2012 minutes. The motion carried unanimously by voice vote.

#### **EQC budget overview**

00:10:43 Mr. Kolman indicated that the budget for the 2013-14 EQC was \$86,000.

### **Adoption of EQC rules**

- 00:11:51 Mr. Kolman explained that the rules that have been adopted by the Legislative Council are generally used by all of the interim committees. Mr. Kolman indicated that last year the Legislative Council made an amendment to the rules regarding proxy votes. He said that proxy votes are generally discouraged but written proxies can be accepted from absent members.
- 00:12:30 Sen. Brenden asked whether or not proxy votes sent in by email would be accepted. Mr. Kolman confirmed that email proxies would be accepted.
- 00:13:03 Sen. Keane confirmed that a proxy held by a committee member could be used to vote on any issue that came up at the meeting and that members may vote over the phone.
- 00:13:46 Rep. Court asked if public members can serve as chair or vice chair on the committee. Mr. Kolman confirmed that public members are full voting members and can serve as chair or vice chair.
- 00:14:32 Sen. Keane moved to pass the rules and to accept proxy votes as discussed by the committee. The motion carried unanimously by voice vote of those present and voting.

### **COUNCIL AND STAFF RESPONSIBILITIES**

- 00:15:09 Mr. Kolman gave a brief description of the EQC and referred the committee members to the draft work plan as a way to prioritize their time, budget, and staff resources to accomplish their goals for the interim, [Exhibit 1](#).
- 00:21:38 Ms. Stockwell, Research Analyst, discussed the responsibilities of the staff and the EQC members. She indicated that all materials from the committee meetings are posted on the legislative website and emails received from constituents can be forwarded to committee members if they so choose. A record is also kept on file in the office.

### **AGENCY OVERVIEW PRESENTATIONS**

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

- 00:27:29 John Tubbs, Director, Department of Natural Resources and Conservation (DNRC), provided an overview of the DNRC and discussed four of the divisions within the department. He also highlighted some of the issues facing the department.

#### **Questions and discussion**

- 00:39:43 Sen. Keane asked if the conservation district in Helena approved the federal project at Canyon Ferry Lake. Director Tubbs indicated that he was not familiar

with the project. Sen. Keane said that he could provide him with the information later.

### **Department of Environmental Quality - Director Stone-Manning**

00:41:06 Tracy Stone-Manning, Director, Department of Environmental Quality (DEQ), provided an overview of the department and gave a description of the four divisions within the department.

### **Questions and discussion**

00:44:08 Rep. White asked if the Permitting and Compliance Division worked with the Enforcement Division. Director Stone-Manning responded that they do work closely together.

00:44:56 Sen. Fielder asked where she should direct constituents when they run into problems. Director Stone-Manning explained that anyone could call the department with questions or problems.

00:47:07 Mr. Aspenlieder indicated that he has concerns about communities in eastern Montana that entered into an administrative order of consent under the assumption that HB 218 (2013) was going to pass. He asked how the DEQ is working with these communities since the funding is lost, but the administrative order is still in place with penalties. Director Stone-Manning indicated that they were in the process of negotiating an administrative order of consent in advance of any permit violations.

00:50:39 Rep. White asked if the DEQ is working in conjunction with the DNRC to obtain conservation district grants for water and sewer in eastern Montana to make up for the funding lost by the veto of HB 218. Director Stone-Manning indicated that there are millions of dollars available under the state revolving loan fund program and that the DEQ is working hand in hand with the DNRC in obtaining funding for drinking and wastewater in eastern Montana.

00:51:41 Sen. Brenden stated that he is on the Drinking Water State Revolving Fund Advisory Committee (DWSRF) that met yesterday with the DEQ and the DNRC and reported that there are 144 grants available. Water and wastewater projects in eastern Montana are among the list of proposals being considered by the DWSRF.

### **Department of Fish Wildlife and Parks - Director Hagener**

00:52:49 Jeff Hagener, Director, Department of Fish, Wildlife and Parks (FWP), gave an overview of the FWP which is responsible for the management of all of the state's fish, wildlife, state parks and recreational resources.

### **Questions and discussion**

- 01:09:17 Rep. White asked Mr. Hagener how FWP's plan to introduce westslope cutthroat trout into streams in southwest Montana, and the plan to use poison before the trout are released would affect water rights and grazing and access to streams. Director Hagener indicated that part of this effort is to keep the cutthroat trout off the endangered species list. He said that the FWP would do a thorough analysis and review before any poisoning is done and that it will be monitored very closely.
- 01:11:42 Sen. Fielder thanked Director Hagener for the public outreach the department has done. Director Hagener indicated that outreach is a major part of their effort.
- 01:13:16 Sen. Ripley asked if there could be a combined effort between the FWP and the Legislature in adopting a work plan involving HB 609 (2013). Director Hagener indicated that he has already talked to legislative staff about putting together a work group and having a couple members of the EQC involved with the group.

**Public Comment** None

### **Questions and discussion**

- 01:15:33 Sen. Hamlett asked Director Stone-Manning about a problem with pollution from underground coal mines in Belt, Montana. Director Stone Manning indicated that the abandoned mine land program in the Remediation Division is working diligently on this issue.

### **WATER POLICY INTERIM COMMITTEE UPDATE**

- 01:18:51 Mr. Mohr gave a summary of the WPIC meeting held on June 17 and 18, 2013.
- 01:22:02 Sen. Hamlett added that at least six votes are needed in order for WPIC bills to be committee legislation.
- 01:23:03 Mr. Kolman indicated that because the bill that created WPIC in 2009 left a lot of the water-related statutory duties with the EQC, the Council will continue to receive updates from the WPIC.

### **ENERGY TELECOMMUNICATIONS INTERIM COMMITTEE UPDATE**

- 01:24:30 Ms. Nowakowski, Research Analyst, indicated that the Energy and Telecommunications Interim Committee (ETIC), will be meeting this Friday. She gave an update on what the committee will be working on during the interim.

### **GUIDE TO NEW LEGISLATIVE DISTRICT MAPS**

- 01:27:44 Mr. Kolman presented the guide to new legislative district maps, [Exhibit 2](#).

(BREAK)

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

- 02:58:36 Rep. Bennett nominated Sen. Brenden for chair of the EQC. The motion carried unanimously by voice vote.
- 02:59:56 Sen. Hamlett nominated Rep. McChesney for vice chair of the EQC. The motion carried unanimously by voice vote.

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

- 03:02:24 Mr. Kolman gave an overview of the draft work plan and matrix for the EQC, [Exhibit 3](#), [Exhibit 4](#).

### **HB 609 - A study of hunting and fishing licenses**

- 03:05:33 Ms. Stockwell discussed HB 609 (2013).

### **SJ 15 - An interim study evaluating the management of certain federal lands and assessing risks and identifying solutions**

- 03:12:01 Mr. Kolman discussed SJ 15 (2013).

### **Questions and discussion**

- 03:13:51 Sen. Hamlett indicated he wanted to include U.S. Department of Interior lands in the work plan because they included Glacier National Park.
- 03:14:29 Rep. White, Sen. Fielder, Sen. Hamlett and Sen. Brenden also supported including U.S. Department of Interior lands in the work plan.
- 03:16:53 Sen. Keane cautioned the Council to look at reports already completed on the subject so they did not duplicate effort.
- 03:17:58 Sen. Brenden requested that the reports be made available for the Council.
- 03:18:20 Rep. Bennett commented that he thought the management studies should be included in the work plan.
- 03:18:58 Sen. Fielder agreed that there is a lot of existing information and felt that it was important for the staff to take the time to compile the information for the Council.
- 03:19:37 Rep. White indicated that with the passage of HB 169 (2013), assistance from the state could be available to help counties in developing resource plans on federal land.
- 03:21:35 Sen. Ripley cautioned the Council not to spend time on areas of federal land management that can't be changed.

#### **SJ 4 - Study Virginia City, Nevada City and Reeder's Alley**

03:22:59 Ms. Kurtz, Research Analyst, presented information on SJ 4 (2013).

#### **Questions and discussion**

03:31:37 Sen. Keane said that both Virginia City and Nevada City have benefitted from work done by the EQC during the last interim. He indicated that it is important to preserve these areas not only because they are a treasure to the state, but because tourism is a main source of revenue for Virginia City and Nevada City.

03:33:23 Rep. Welborn agreed that Virginia City is a national treasure and that the involvement of the EQC can have a positive impact on the business and property owners in Virginia City and Nevada City.

03:34:31 Rep. Court agreed with the previous comments about Virginia City and Nevada City, but said she is also concerned about Reeder's Alley, indicating that the area has major problems with drainage. She asked the Council to look at all three areas when determining what kind of commitment to make.

03:36:55 Rep. Bennett commented that it is the responsibility of the state to help make these areas profitable.

03:37:45 Sen. Fielder thought that the Council should consider option B, which includes looking at experiences in other states, in particular looking at the Canadian historical sites.

03:38:32 Sen. Hamlett requested clarification on option A. Ms. Kurtz confirmed that this referred to state-owned properties managed and administered by the Montana Heritage Commission. Sen. Hamlett commented that he felt it was important to preserve these areas.

03:40:36 Rep. Bennett asked if any of the areas of the work plan would qualify for formation of a subcommittee or working group to lessen the amount of time spent by the EQC. Sen. Brenden responded that all options are open for discussion and requested that the EQC look at the work plan so they could come back tomorrow with their ideas. He also thought that funding for Virginia City, Nevada City and Reeder's Alley should be a combination of both public and private dollars.

#### **Water policy**

03:43:05 Mr. Kolman explained that almost all of the water policy duties that are assigned to the EQC are coming out of the WPIC personnel budget.

#### **EQC statutory duties**

03:43:48 Mr. Kolman explained the EQC statutory duties.

### **Questions and discussion**

- 03:46:23 Rep. White asked what "update and republish historical trend documents" referred to under option A. Mr. Kolman said that it involves collecting trend information and providing an analysis.
- 03:48:23 Sen. Fielder asked why MEPA training for state employees is included under option A and why this isn't being done by the Executive Branch. Mr. Kolman explained that state agencies do provide training on MEPA analysis to their employees. The function that the EQC has is mainly a coordination of effort to make sure everyone has the same basic training on MEPA.
- 03:49:37 Sen. Keane asked if publications would be updated as in previous interim sessions and Mr. Kolman indicated that they would be updated.

### **Agency oversight**

- 03:50:16 Mr. Kolman explained that the Council had picked option A in the last interim session.

### **Carryover EQC issue: Petroleum tank release fund solvency**

- 03:51:32 Ms. Stockwell explained that the petroleum tank release fund solvency issue is something the EQC has looked at in the past few interims and the Council continues to track. Ms. Stockwell indicated that HB 613 (2011) set benchmarks for clean up efforts at tank release sites. This requires that a report is sent by DEQ to the EQC every six months.

### **EQC publications**

- 03:54:01 Mr. Kolman explained that the publications in the office are updated on a periodic basis to reflect new laws. Also the EQC can determine if there is a need for any new publications.

### **Septic system study**

- 03:56:17 Mr. Kolman indicated that this study refers to a bill that Rep. Lieser sponsored during the legislative session. It deals with inspections at the point of sale of septic systems and having the Board of Environmental Review establish model rules for counties to follow. The bill failed, but the EQC could look at some options for how septic systems are maintained and inspected.

### **Questions and discussion**

- 03:57:06 Rep. Lieser indicated that the bill was an attempt to address the problems related to aging septic systems and the demise of water quality. The study would identify and come up with ways to deal with aging septic systems and the problems they create.

- 04:01:16 Rep. Court expressed the importance of the HB 609 study and how the FWP is funded.
- 04:02:22 Sen. Fielder asked Director Hagener if FWP is going to provide proposals on HB 609 and bring recommendations back to the committee. Director Hagener agreed and said the department would look at all of the licenses and compare Montana with other states.
- 04:06:37 Sen. Fielder asked Director Hagener if they were also looking at the impact of Initiative 161. Director Hagener indicated they would be looking at I-161 as well as other factors that may contribute to the number of nonresident licenses sold.
- 04:08:11 Sen. Brenden stated that he understands the impact that I-161, the economic downturn, and the increase in license fees for nonresidents has had on the number of licenses sold. He indicated he would also like to know the cost of administering the accounts and asked Director Hagener how much more money is being brought in from guns and ammunition sales. Director Hagener said he would find out what the increased amount was for the sales of guns and ammunition (Pittman-Robertson funding) and report back to the Council.
- 04:10:14 Rep. White wanted to know, in regard to HB 609, option C, when the Council could expect to be provided with the overview of FWP's licensing revenue and its uses. He also wanted to know what the administrative cost was for managing the accounts. Director Hagener indicated that they are in the process of forming a work group that will put this information together.
- 04:13:32 Ms. Stockwell added that she will keep the EQC updated on the information gathered by the FWP work group.

#### **Public comment**

- 04:15:41 Keith Kubista, representing Montana Sportsmen for Fish and Wildlife (SFW), encouraged the Council to look at and evaluate the impact of wildlife ballot initiatives.

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

- 04:18:47 Ms. Thigpen, Staff Attorney, gave an overview of the administrative rulemaking process and what the Council can expect from her during the interim, [Exhibit 5](#).

#### **Questions and discussion**

- 04:28:27 Sen. Brenden encouraged the Council to check the Secretary of State's website for information on administrative rules for individual bills.
- 04:29:20 Rep. White asked about the timeline and procedure for bringing a rule to the Council for review. Sen. Brenden indicated that staff would keep the Council updated on when rules would be scheduled for public hearing.

- 04:30:59 Rep. White asked about rulemaking related to SB 19 (2013). Mr. Kolman indicated that the DNRC plans to adopt the rules by October and both the EQC and the WPIC will be notified of the hearing.
- 04:32:52 Rep. McChesney asked what happens when a rule is in the draft stage and a Council objects to the rule. Ms. Thigpen indicated that when a formal objection is made to a rule it first delays the adoption of the rule for six months and if a second objection is made the rule is delayed until the next legislative session thereby allowing legislation to be proposed to deal with the rule issue.
- 04:34:14 Rep. Bennett asked when the amendment to 2-4-302, MCA was made regarding notification of the primary sponsor during the rulemaking process. Ms. Thigpen said that she will find out the information and report back.

(BREAK)

### **2015 WATER PLAN (85-1-203, MCA)**

- 04:52:47 Mr. Kolman indicated that the State Water Plan has not been revised for about 20 years and statute dictates that the DNRC solicit input from the EQC.
- 04:54:36 Tim Davis, Administrator, Water Resources Division, Department of Natural Resources and Conservation (DNRC), gave an overview of the State Water Plan, [Exhibit 6](#).

### **Questions and discussion**

- 05:12:42 Sen. Vuckovich asked if the State Water Plan can be developed before the Confederated Salish Kootenai Tribe (CSKT) Water Compact is developed. Mr. Davis replied that since the State Water Plan is not establishing a regulatory document, they can identify how much water is being used, the demand going forward, and how they propose to meet that demand without having the CSKT Water Compact.
- 05:13:44 Sen. Vuckovich asked if the DNRC is assuming the outcome of the CSKT Water Compact when developing the water plan. Mr. Davis said that they will engage the water users in the Clark Fork Basin, including the Flathead Basin and the CSKT, to determine how they are planning to use the water and to predict future needs. He said that the quantification, the projection, and identification of potential sources will not depend on the Compact.
- 05:14:56 Sen. Ripley asked Mr. Davis if he could comment on the progress of the CSKT Water Compact and if there is new information. Mr. Davis said that he did not have anything new to report and referred the Council to the new program director for a comprehensive answer.
- 05:16:18 Sen. Keane asked about allocation of water, identifying who owned the water, and how the department would identify water availability. Mr. Davis said that the department would only identify potential sources to meet future water demand

and that water appropriation decisions would be left to the market and the water users.

- 05:17:24 Sen. Keane commented that anyone interested in water and development should participate in the water planning process. Mr. Davis responded that they wanted to engage every industry and group that is interested in water and the future of water use in Montana to be engaged in the process.
- 05:18:02 Rep. White asked if within the water plan they are looking at building dams or containment facilities as a way to keep flood water from flowing out-of-state and negatively impacting areas downstream. Mr. Davis said that the Basin Advisory Group will be working on this issue.
- 05:21:00 Rep. White asked if additional storage facilities or containment facilities were proposed would a water right become open to adjudication and if so when it would be adjudicated and who has priority. Mr. Davis indicated that a new right to store water would need a water use permit.
- 05:22:45 Sen. Hamlett commented that there was a bill two sessions ago that dealt with early spring runoff and that the Legislature has already looked at this issue. He said that because spring run off is coming earlier and late season irrigation water is not available there may be a need to store more water.
- 05:24:19 Sen. Fielder stated that the WPIC received a comprehensive report on the CSKT Reserved Water Rights Compact yesterday.

**EQC STATUTORY REPORTING REQUIREMENT  
NUMERIC NUTRIENT STANDARDS REPORT (75-5-313, MCA)**

- 05:26:50 Mr. Kolman stated that the numeric nutrient standard report goes to the WPIC and by statute is also reported to the EQC as part of its rulemaking oversight duties.
- 05:27:15 George Mathieus, Administrator, Planning Division, Department of Environmental Quality (EQC), gave a history and background of numeric nutrient standards.

**Questions and discussion**

- 05:37:03 Mr. Busby asked Mr. Mathieus if he had any better information on cost. Mr. Mathieus said that he did not have any information on new technologies or their specific costs. He did say that the issues facing Montana and other states are aging infrastructure and growth.
- 05:42:24 Rep. Lieser asked if there are communities in Montana that have implemented nutrient trading. Mr. Mathieus indicated that two municipalities in Montana have implemented nutrient trading.
- 05:43:36 Sen. Brenden said that he had read examples of what it would cost to implement the standards and the cost was prohibitive.

## **BAKKEN UPDATE ON DEQ ISSUES**

05:46:02 Steve Kilbreath, Oil and Gas Coordinator, Department of Environmental Quality (DEQ), gave an overview of the Bakken oil and gas development and DEQ's role in the Bakken, [Exhibit 7](#).

### **Questions and discussion**

06:02:12 Sen. Brenden asked about the agreement that Culbertson and Sidney signed in order to receive revolving loan funds from the DEQ for projects. Mr. Kilbreath indicated that the DEQ could not approve plans and specifications for a system that is not in compliance and explained that Culbertson wanted to modify a wastewater treatment system without a ground water permit. In order to bypass the approval process they needed to sign an administrative agreement because it included funding.

06:04:59 Sen. Brendon also stressed the need to help the counties in eastern Montana impacted by the Bakken.

06:06:45 Sen. Fielder asked Mr. Kilbreath to explain his earlier statement that when water is injected deep into the ground it is gone forever. Mr. Kilbreath explained the intent behind the Class II underground injection program and that water cannot evaporate back up through the injection hole because it is grouted and cased in with steel.

06:08:22 Sen. Brenden indicated that a point of contention in fracking is worry about fresh water being impacted by wastewater. Mr. Kilbreath indicated that the injection wells are 3,000-4,000 feet below the fresh water and the Bakken is 8,000-10,000 feet below the fresh water.

### **Public comment**

06:09:32 Gail Abercrombie, representing Montana Petroleum Association, requested that PowerPoint presentations be posted to the Council website.

06:10:29 Sen. Brenden recessed the meeting at 4:15 p.m.

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