



# ENVIRONMENTAL QUALITY COUNCIL

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

**HOUSE MEMBERS**  
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WILLIS CURDY  
JANET ELLIS  
ED LIESER  
THERESA MANZELLA  
KERRY WHITE

**SENATE MEMBERS**  
GENE VUCKOVICH--Chair  
JOHN BRENDEN  
JIM KEANE  
MIKE PHILLIPS  
RICK RIPLEY  
CARY SMITH

**PUBLIC MEMBERS**  
SCOTT ASPENLIEDER  
BROOKE ERB  
BERT LINDLER  
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

July 20, 2016  
Room 317, Capitol Building  
Helena, Montana

Please note: This document is a Minutes Log and provides a notation of the time elapsed between the beginning of the meeting and the time at which the item was presented or discussed, a motion was made, or a vote was taken. The narrative presented here is provided only as a guide to the audio or video record of the meeting. The official discussion, motion, or vote is available on the audio or video archive of this meeting. The Legislature does not prepare a transcript of meeting activities. The 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 Log, along with the audio and video recordings, is listed by meeting date on the interim committee's web page. Each of the Exhibits is linked and can be viewed by clicking on the Exhibit of interest. All Exhibits are public information and may be printed.

Please contact the Legislative Services Division at 406-444-3064 for more information.

### **COMMITTEE MEMBERS PRESENT**

SEN. GENE VUCKOVICH, Chair  
REP. JERRY BENNETT, Vice Chair

SEN. JIM KEANE  
SEN. RICK RIPLEY  
SEN. CARY SMITH

REP. WILLIS CURDY  
REP. JANET ELLIS  
REP. KERRY WHITE

MS. BROOKE ERB  
MR. BERT LINDLER

**COMMITTEE MEMBERS EXCUSED**

SEN. JOHN BRENDEN  
SEN. MIKE PHILLIPS  
REP. ED LIESER  
REP. THERESA MANZELLA  
MR. SCOTT ASPENLIEDER  
MR. ROY MORRIS  
MR. TIM BAKER

**STAFF PRESENT**

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

**AGENDA** ([Attachment 1](#))

**VISITORS' LIST** ([Attachment 2](#))

**COMMITTEE ACTIONS**

The Environmental Quality Council (EQC):

- Voted to accept the minutes log from May 4 and 5;
- Voted to send a letter to the Legislative Audit Committee in support of a performance audit regarding the status of the northern portion of West Shore State Park and whether it is encumbered by the requirements of the federal Pittman-Robertson Act;
- Voted to put the HJ13 report out for public comment.

**CALL TO ORDER AND ROLL CALL**

00:00:02 Sen. Vuckovich called the meeting to order at 10:00 a.m. The secretary called the roll. ([Attachment 3](#)) Sen. Phillips was excused. Mr. Aspenlieder and Rep. Manzella were excused and left their proxies with Rep. White. Sen. Brenden was excused and left his proxy with Sen. Ripley. Rep. Lieser was excused and left his proxy with Rep. Ellis. Mr. Morris was excused and left his proxy with Sen. Keane. ([Attachment 4](#))

**ADMINISTRATIVE MATTERS**

00:01:07 **Motion/Vote:** Sen. Keane moved to adopt the minutes log from May 4 and 5. The motion carried unanimously by voice vote of those present and voting.

**WATER POLICY INTERIM COMMITTEE UPDATE**

00:01:34 Helen Thigpen, staff attorney, Legislative Services Division, presented an update from the Water Policy Interim Committee (WPIC) meeting on July 11 and 12.

- 00:02:10 Ms. Thigpen discussed the SJ2 report, study of the state's assumption of the federal Section 404 program.
- 00:04:47 Ms. Thigpen gave a summary of the study of water availability and supply.
- 00:05:21 Ms. Thigpen discussed the study of the future of the Water Court and water rights.
- 00:05:59 Ms. Thigpen discussed the 11 bill drafts that the WPIC approved for public comment and consideration at its next meeting on August 29 and 30.

**Public Comment:** None

**Committee Questions and Discussion:**

- 00:11:25 Rep. White asked Ms. Thigpen about the proposed legislation that would allow for a wavier by a senior water right holder so that someone who is applying for a new water right would not have to do an adverse effect analysis.
- 00:13:32 Rep. White asked Ms. Thigpen about cases where there are more than one senior water right holder and how many would have to sign the wavier.
- 00:15:16 Sen. Keane asked if there was any discussion about allowing a senior water right holder to sell a portion of their right. Ms. Thigpen said it is possible.
- 00:16:01 Sen. Ripley asked if the water right can be transferred from one family member to another. Ms. Thigpen said she will find out.

**ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE UPDATE**

- 00:17:00 Sonja Nowakowski, research analyst, Legislative Services Division, gave an update from the Energy and Telecommunications Interim Committee (ETIC) meeting on July 14 and 15.
- 00:17:20 Ms. Nowakowski said the ETIC discussed Colstrip Units 1 and 2 and the future of energy generation in the area.
- 00:19:57 Ms. Nowakowski discussed net metering and said the ETIC agreed to five potential committee bills related to updating portions of Montana's net metering framework.
- 00:22:26 Ms. Nowakowski said the ETIC reviewed public comment on draft legislation and a report concerning next generation 9-1-1 and agreed to move forward on draft legislation to update and revise all of Montana's 9-1-1 statutes and to address the stranded fund.
- 00:24:03 Ms. Nowakowski said the ETIC's next meeting will be on September 9.

**Public Comment:** None

**Committee Questions and Discussion:**

- 00:24:26 Sen. Keane said Colstrip will be a topic for the 2017 Legislative Session and thanked the ETIC for its work. He said that out-of-state corporations should compensate the state for closing Units 1 and 2.
- 00:25:48 Rep. White asked Sen. Keane if there is a future for Colstrip Units 1 and 2. Sen. Keane said that Units 3 and 4 should remain running for a long time. He said there are other opportunities for Units 1 and 2.
- 00:27:48 Rep. White said coal is important to the state of Montana and that he appreciates the work done by Sen. Ripley, Sen. Keane, and Sen. Ankney.

- 00:28:33 Sen. Ripley commented on the trickle down effect from decreased coal production to the state's budget.
- 00:29:28 Sen. Keane said that 20% of general fund money comes from coal. He said the Council can wait and see what the ETIC does at its September meeting.

#### **FWP '15 AND FORWARD/VISION AND GUIDE**

- 00:30:20 Jeff Hagener, director, Department of Fish, Wildlife, and Parks (FWP), discussed what the department has done to set the stage for the next 10 years.
- 00:34:36 Mr. Hagener discussed the FWP '15 and Forward planning team.
- 00:35:51 Mr. Hagener said the planning team and a sounding board within the agency put together a Vision and Guide. **(Exhibit 1)**
- 00:36:55 Mr. Hagener said eight core values were identified.
- 00:39:40 Mr. Hagener discussed FWP's three commitments: public service, resource management, and capacity building for effective management.
- 00:42:20 Mr. Hagener said that Mike Volesky, chief of operations, Paul Sihler, chief of staff, and Charlie Sperry, supervisor, Responsive Management Unit, are present and available for questions.

**Public Comment:** None

#### **Committee Questions and Discussion:**

- 00:43:27 Rep. Curdy thanked Mr. Hagener for the invitation to the listening session in Missoula and said he was one of two legislators who attended.
- 00:44:07 Rep. Curdy said he agreed that FWP is behind on the issue of social media and that it is a tremendous opportunity for the agency. He said that with the integration of all the different programs within FWP the hunting regulations have become overwhelming and confusing. He requested that the agency work to make the regulations more readable and understandable.
- 00:47:28 Rep. White asked Mr. Hagener what the agency is planning to do to increase access to state and federal land for multi-use recreational opportunities. Mr. Hagener said a lot of the access issues are on private land.
- 00:51:22 Rep. White said there is an opportunity for the FWP to work with the Montana State Parks and Recreation Board to look at providing recreational trails on wildlife management areas and other state land. Mr. Hagener commented on the growing demand for recreational opportunities that do not involve hunting or fishing.
- 00:54:50 Rep. White said he encouraged FWP to look at additional funding opportunities other than hunting and fishing licenses.
- 00:56:54 Rep. Ellis asked Mr. Hagener who oversees the state's trail program. Mr. Hagener said it is under the State Parks Division.
- 00:57:43 Rep. Ellis asked Mr. Hagener if he was surprised by anything in the report. Mr. Hagener said he was surprised by the amount of diversity within the agency.
- 00:59:43 Rep. Bennett asked Mr. Hagener about the amount of money needed for maintenance backlogs and infrastructure needs. Mr. Hagener said he will get the information.

- 01:00:54 Mr. Lindler said that some of the wildlife management areas and fishing sites were acquired with federal U.S. Fish and Wildlife money and with state funds for a primary mission. He said that needs to be considered when trying to promote other recreation.
- 01:02:00 Sen. Vuckovich recognized Sue Daly, chief of Administration, FWP, and said she is retiring.

### **FWP LANDS RECONCILIATION**

- 01:03:06 Paul Sihler, chief of staff, FWP, provided an overview and update on the land reconciliation at West Shore State Park. [\(Exhibit 2\)](#)
- 01:11:33 Mary Sexton, vice chair, State Parks and Recreation Board, discussed solutions for the Pittman-Robertson (P-R) encumbrance.

### **Public Comment:**

- 01:13:48 Sen. Bradley Hamlett, SD 15, said he requested a performance audit by the Legislative Audit Committee.

### **Committee Questions and Discussion:**

- 01:24:32 Rep. Ellis asked Mr. Sihler about the northern parcel and if it has a P-R encumbrance.
- 01:27:39 Rep. White asked staff about a motion to send a letter from the EQC to the Legislative Audit Committee requesting that it move forward with the performance audit.
- 01:28:20 Sen. Ripley said he agreed with Sen. Hamlett and recommends sending a letter requesting a performance audit.
- 01:29:19 **Motion/Vote:** Rep. White moved that the EQC send a letter to the Legislative Audit Committee in support of a performance audit regarding the status of the northern portion of West Shore State Park and whether it is encumbered by the requirements of the federal P-R Act. The motion carried 9-1 by voice vote of those present and voting. Mr. Lindler voted no.
- 01:30:03 Sen. Keane said that the FWP needs to move forward in a rational and fair manner. He asked Mr. Sihler if there is any litigation related to the land. Mr. Sihler said there is not.

### **PRIVATE LAND/PUBLIC WILDLIFE COUNCIL UPDATE**

- 01:31:20 Hank Warsech, chief, Licensing Bureau, FWP, provided an update on the Private Land/Public Wildlife Council (PL/PW). [\(Exhibit 3\)](#)
- 01:32:24 Mr. Warsech said the PL/PW came up with three recommendations. [\(Exhibit 4\)](#)

**Public Comment:** None

### **Committee Questions and Discussion:**

- 01:36:00 Sen. Ripley asked if the PL/PW is involved in any of the land exchanges with purchases or donation. Mr. Warsech said it is not.

- 01:36:23 Sen. Ripley asked if the PL/PW is involved in access issues. Mr. Worsech said it is not.
- 01:36:45 Rep. White asked about the recommendation to strike the requirement for license recipients to have completed a Montana hunter education course. Mr. Worsech said that the law will state that someone would have had to have previously hunted in the state of Montana and have taken a hunter education course in order to have a license and be legal to hunt.
- 01:38:30 Recess for lunch at 11:37 a.m.
- 03:01:37 Reconvene

Rep. Bennett assumed the role as chair.

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

None

**HJ13 STUDY**

- 03:02:09 Joe Kolman, legislative environmental analyst, Legislative Services Division, said that the EQC received the HJ13 draft report and can make any changes before it is put out for public comment. [\(Exhibit 5\)](#)
- 03:03:16 Rep. White said the FWP survey results are due in September and won't be included in the public comment period and asked if the report will go out again for public comment with the survey results. Mr. Kolman said he hopes to have the survey results by the September meeting so they can be included in the final report. He said they will not be included in the public comment period. Rep. White asked if they will be included as an appendix to the report. Mr. Kolman said they will be.

**Public Comment:** None

**Committee Questions and Discussion:**

- 03:04:37 Rep. White said in the section on wildlife management, on closed roads, it may not be appropriate to state "poachers may be less reluctant to commit crimes without getaway access."
- 03:05:46 Mr. Kolman said it was one of the findings in the Oregon study on the effects of roads on elk.
- 03:06:12 Rep. Ellis asked if it was a direct quote and if it can be rephrased. Mr. Kolman said it is not a direct quote and he can reword it.
- 03:07:34 **Motion/Vote:** Rep. White moved to put the HJ13 report out for public comment. The motion carried unanimously by voice vote of those present and voting.
- 03:08:00 Rep. Ellis asked Mr. Kolman about the public comment period.
- 03:09:06 Sen. Keane said the person with the gavel at the meeting is the chairman. Sen. Ripley asked staff about parliamentary procedure.

03:09:49 Rep. White said the EQC may want to consider recommendations and any requests received after the public comment period.

### **STATUTORY ADMINISTRATIVE RULE REVIEW**

03:10:39 Ms. Thigpen said MAR notice number 17-385, from the Department of Environmental Quality (DEQ), came out after the rule review report was sent to the EQC. **(Exhibit 6)** She said it proposes revisions to the underground storage tank rules and the hearing is scheduled for August 11 at 10:00 a.m.

03:12:20 Ms. Thigpen said MAR notice number 36-22-192, that revises the privilege and license tax on each barrel of crude petroleum, was adopted by the Montana Board of Oil and Gas Conservation (MBOGC). She said it raises the rate currently set at 30% of the maximum allowable rate to 100%.

**Public Comment:** None

### **Committee Questions and Discussion:**

03:13:12 Rep. White asked Ms. Thigpen about the fiscal impact from the change in the privilege and license tax.

03:13:55 Sen. Keane asked which fund the money will go into. Ms. Thigpen said it goes into the MBOGC's earmarked revenue account. She said she will find out the specific account.

03:15:07 Recess

03:22:22 Reconvene

### **Public Comment on Statutory Administrative Rule Review:**

03:22:44 Alan Olson, Montana Petroleum Association (MPA), discussed the rule adopted by the MBOGC to raise the privilege and license tax.

### **ORPHAN SHARE REMEDIAL ACTION AND PETROLEUM TANK RELEASE SITE CLOSURE UPDATES**

03:27:28 Jenny Chambers, administrator, Waste Management and Remediation Division, DEQ, provided an update on SB 96 (2015) orphan share account funds. **(Exhibit 7)**

03:29:31 Ms. Chambers said the department was able to resolve or close six petroleum tank release sites with the funding and said an additional 39 sites have been closed since the last EQC meeting. She said the total number of active petroleum releases is 1,127.

03:30:06 Ms. Chambers said that two state Superfund sites are also being cleaned up utilizing the funding and are the Milwaukee Roundhouse site in Deer Lodge and the Diamond P Ranch in West Yellowstone.

### **Public Comment:**

03:33:28 Terry Wadsworth, executive director, Petroleum Tank Release Compensation Board, said that the Board is working with the DEQ on the petroleum fund eligible sites and he is available to answer any questions.

**Committee Questions and Discussion:**

- 03:34:00 Rep. White asked Ms. Chambers about a discussion at the WPIC meeting concerning land acquired by West Bank, LLC, in Cascade County and problems they are having developing the site because of the remediation process for contaminants. Ms. Chambers said the 12-acre site is within a listed 40 to 60-acre state Superfund site and is considered a medium priority.
- 03:41:37 Rep. White asked Ms. Chambers about the funds that are available to clean up the petroleum refinery portion of the site.
- 03:44:15 Rep. White asked Ms. Chambers if Cascade County is accepting any responsibility for cleaning up the site.
- 03:45:55 Rep. White commented on redevelopment efforts and the amount of time it takes to obtain funding to clean up the site.
- 03:47:14 Ms. Chambers said that the West Bank partners have begun clean up at the site.
- 03:49:00 Rep. White requested that the EQC receive updates on the progress.

**DEQ PROGRAM EVALUATION MAJOR FACILITY SITING**

- 03:49:49 Mr. Kolman presented information on the Major Facility Siting Act (MFSA). [\(Exhibit 8\)](#)
- 03:56:41 Mr. Kolman discussed the Governor's Mainstreet Montana Project and Key Industry Network (KIN).

**Public Comment:** None

**Committee Questions and Discussion:**

- 04:02:12 Rep. Ellis asked Mr. Kolman how the MFSA and the Montana Environmental Policy Act (MEPA) interface. Mr. Kolman said MEPA looks at all the environmental effects while MFSA looks at the impacts, how to mitigate them, and includes compliance and reclamation. He redirected the question.
- 04:03:53 Craig Jones, environmental specialist, Public Policy, Director's Office, DEQ, said that MFSA is subject to MEPA and they have to look at alternatives.
- 04:04:26 Rep. Ellis asked Mr. Jones if the analysis area around transmission lines is one-half mile on either side of the lines. Mr. Jones said it is and that within MFSA they have to look at a mile wide analysis area for MEPA.
- 04:05:14 Rep. Ellis asked Mr. Jones how the analysis area interfaces with the governor's executive order on sage grouse that requires a .6 mile set-back on either side of a lek. Mr. Jones said it will be part of their analysis.
- 04:06:31 Rep. Ellis asked Mr. Jones about the change that was made in 2011 when MFSA changed the analysis area from 500 feet to one mile.
- 04:07:59 Rep. Ellis asked Mr. Jones about discussions between DEQ and the KIN regarding proposed changes to the way MFSA is implemented and if other groups will be able to consider the changes before there is any proposed legislation. Mr. Jones said that once they have finished discussions with the KIN and finalized potential draft legislation they will come back to the EQC.

**PROGRAM EVALUATION: DEQ HARD ROCK MINING & MAJOR FACILITY SITING**

- 04:09:24 Mr. Kolman presented a review on metal mine reclamation. (see Exhibit 8)
- 04:14:19 Mr. Kolman discussed bonding.



04:16:20 Mr. Kolman discussed enforcement.

**Public Comment:**

04:17:50 Tammy Johnson, executive director, Montana Mining Association (MMA), said the program is working and the MMA has no recommendations.

**Committee Questions and Discussion:** None

04:20:19 Recess

04:32:59 Reconvene

**PROGRAM EVALUATION: DNRC REAL ESTATE MANAGEMENT**

04:33:11 Mr. Kolman presented information on the program evaluation for Real Estate Management, Trust Land Management Division, Department of Natural Resources and Conservation (DNRC). **(Exhibit 9)**

04:35:50 Mr. Kolman discussed the Lands Section and land banking.

04:40:05 Mr. Kolman discussed cabin site sales.

04:41:40 Mr. Kolman discussed land exchanges.

04:42:37 Mr. Kolman discussed the Property Management Section and cabin site leasing.

04:45:58 Mr. Kolman discussed commercial leases.

04:48:48 Mr. Kolman discussed hydropower leases.

04:50:09 Mr. Kolman discussed riverbed leases.

04:54:27 Mr. Kolman discussed the Rights of Way Section.

**Public Comment:** None

**Committee Questions and Discussion:**

04:56:35 Rep. White asked Mr. Kolman if a county does not apply for an easement and has not purchased the right-of-way on a county road, if all improvements to the road are state owned and who is responsible for maintenance. Mr. Kolman said it is handled on a case-by-case basis.

04:58:10 Rep. White redirected the question to Shawn Thomas, administrator, Trust Land Management Division, DNRC.

05:00:42 Rep. Curdy asked how the Trust Land Management Division acquired the property on Reserve Street in Missoula. Mr. Thomas said the parcels were acquired in a land exchange with the Montana Department of Transportation.

**PROGRAM EVALUATION ROUND-UP**

05:02:10 Mr. Kolman discussed the program evaluation roundup that summarizes issues identified during the evaluation of programs from DEQ, DNRC, and FWP. **(Exhibit 10)**

05:03:17 Mr. Kolman discussed issues involving statutory conflicts in the Agriculture and Grazing program and in the Real Estate Management program involving cabin site leasing. He said if the EQC wants to take action it will require legislation and that staff can draft legislation for consideration at the September meeting.

05:05:34 Mr. Kolman discussed the other issues involving statutory conflicts.

05:06:45 Mr. Kolman discussed issues identified by FWP involving policy.

**Public Comment:** None

**Committee Questions and Discussion:**

- 05:07:33 Rep. Ellis asked Mr. Kolman about the statutory conflict involving agriculture and grazing and if the solution would be to repeal the law or to adopt the Land Board's rule as law. Mr. Kolman said the statute does not match the rule.
- 05:08:53 Rep. Ellis asked about drafting legislation so that the statute matches the district court opinion. Sen. Smith said that the Legislature does not always agree with the District Court.
- 05:10:58 Sen. Ripley said that drafting legislation may trigger an appeal to the district court ruling and that the problem has been fixed through rulemaking.
- 05:12:04 **Motion:** Rep. Curdy moved to have staff draft a bill to reflect the change in the grazing law to reflect the district court ruling.

**Discussion:**

- 05:13:16 Sen. Smith
- 05:13:52 **Vote:** The motion failed 7-8 by roll call vote. Rep. Curdy, Rep. Ellis, Rep. Lieser, Sen. Keane, Mr. Lindler, Mr. Morris, and Sen. Vuckovich voted aye. Rep. Lieser, Rep. Manzella, Sen. Brenden, Mr. Aspenlider, and Mr. Morris voted by proxy. Sen. Phillips was excused. ([Attachment 5](#))
- 05:15:42 Sen. Keane asked about the difference between a statute and a rule. Ms. Thigpen said that normally the statute has control over the rule, but this situation is unique because a district court order struck down the statute.
- 05:16:24 Sen. Keane asked if the department can bring legislation to change the law. Ms. Thigpen said it can.
- 05:16:43 Rep. White requested the opportunity to discuss the motion tomorrow.

**RECESS**

- 05:17:30 Rep. Bennett recessed the meeting at 3:16 p.m.

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