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Montana Legislative Services Division
Legislative Environmental Policy Office

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TO: The EQC

FROM: Joe Kolman

REGARDING: Program Evaluation Roundup

A year ago, the EQC selected for evaluation programs within the departments of Environmental Quality, Natural Resources and Conservation, and Fish, Wildlife and Parks. Since then, the Council reviewed five programs within FWP, four from DNRC, and three from DEQ. Two from DEQ will be presented in September.

The evaluation of programs administered by the agencies for which the EQC has oversight is required by law. Over the years, the EQC has accomplished this in a number of ways. This interim, the EQC asked for fairly broad overviews of selected programs.


The attached Program Evaluation Roundup is a summary of issues raised during the evaluations or noted by the agencies.

The EQC is not required to take action on any of these items. Some of the items, such as the statutory conflicts, would require a bill draft. Draft legislation could be presented to the Council in September.

As was discussed at the start of the interim, the intent of this more formal evaluation process was to give the EQC a picture of the variety of programs available for review and to allow for an in-depth and contextual review of a program, including applicable laws, rules, funding, and implementation.

Please call or write if you have questions or suggestions.

EQC Program Evaluation Roundup, DEQ & DNRC

Agency and Program	Date of Evaluation	Statutory Conflicts	Other Statutory Issues
			
Industrial and Energy Minerals	Sept. 2015		
Metal Mine Reclamation	July 2016		
Major Facility Siting	July 2016		<p>Key Industry Network Recommendations (Main Street Montana Project) Members say the requirement to identify three alternative routes makes it difficult to incorporate landowner input and cooperative agreement, the mile wide study corridor requirement is too time consuming, and the need determination requirements in rule are outdated. DEQ may propose 2017 Legislation.</p>
Air Resources Management	Sept. 2016		
Waste & Underground Tank Management	Sept. 2016		

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The Montana Department of
Natural Resources
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<p>Agriculture and Grazing</p>	<p>Sept 2015</p>	<p>Statute declared unconstitutional, remains in MCA, does not reflect rule</p> <p>If a lessee wants to continue a lease and there are no competing bids, the rental rate continues at the minimum. If there are one or more competing bids, the lessee can retain the lease by matching the high bid. Until 2004, this was considered an absolute preference right.</p> <p>A district judge declared the law, 77-6-205(1), MCA, unconstitutional because it deprives the Land Board of its discretion to obtain the best possible lessee for the trust. The decision further noted that the statute could not be interpreted to require a hearing or investigation by the Land Board to determine the best lessee when a preference right is exercised.¹</p> <p>The district court ruling was not appealed. While the unconstitutional law remains in statute, the Land Board adopted a rule in 2004 stating that the Land Board retains the right to select the best lessee possible to fulfil the operating obligations under any lease. The rule also said the DNRC director may grant a request for a hearing on a competitive lease and the director shall recommend who should be selected as the lessee.²</p>	<p>Civil penalties for state land violations difficult to administer, may go unresolved</p> <p>State land laws and rules violations result in both criminal and civil penalties. Using state land without a license is a misdemeanor crime, punishable by a fine of at least \$50 and up to \$500, up to six months in jail, or both a fine and jail time.³ The 2015 Legislature, through Senate Bill No. 326, also made unauthorized dumping of refuse on state land a misdemeanor crime punishable by a fine of up to \$1,500. However, violations of rules adopted by the board are civil penalties punishable by up to \$1,000 a day.⁴</p> <p>In 2010, the DNRC proposed to change all recreational use violations to misdemeanors because the civil penalties, which much be pursued by agency attorneys instead of going to a local justice of the peace, are difficult to administer and can go unresolved. The agency also said the difference was confusing for game wardens.⁵</p> <p>The EQC voted 13-2 against allowing the proposal to be predrafted and the agency did not pursue the idea in the 2011 Legislature. In fiscal year 2012, there were 10 civil violations issued with \$685 in fines collected. The next year, \$830 was collected from eight civil violations.⁶ For the most recent year, there were eight civil penalties with fines of \$800.</p>
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¹ Broadbent v. State Cause No. BDV-2003-361 Mont. 1st Judicial District Court Lewis & Clark County.

² [MAR Notice No. 36-25-102, page 2361](#)
[MAR 23-12/2/04, page 2918](#)

EQC Program Evaluation Roundup, DEQ & DNRC

Minerals Management	Jan 2016		<p>Legislative intent to adopt rules, no rules adopted</p> <p>Each of the mineral leasing sections in state law contains a statute similar to 77-3-451, MCA, which allows the DNRC to withhold from public inspection information from a lessee that in the hands of competitors may drive down leases and reduce revenue to the state. In passing the legislation in 1989, the Legislature added a statement of intent to Senate Bill No. 154 directing the Land Board to adopt rules to implement the new laws. The statute has not been challenged, but the Land Board has not adopted rules to implement the statute.</p>
Forest Management	March 2016		<p>Forest improvement fee authorized in statute, formula not articulated in law or rule</p> <p>State law has long allowed the Land Board to collect a forest improvement fee as part of the full market value of the wood. Forest improvement fees may be used, for, among other things, slash disposal, access acquisition, thinning, reforestation, and other improvements.⁷</p> <p>The forest improvement program is authorized to spend about \$1.35 million annually from the forest improvement account. The fee calculation is related to that spending goal. The formula takes into account the sustainable yield objective for each land office and can be adjusted through the year if the fee is under or over the spending goal. Although the fee is authorized in statute, the formula is not articulated in law or rule.</p>

³ 77-1-801, MCA

⁴ 77-1-804, MCA

⁵ DNRC [2011 Legislative Proposal Summaries](#)

⁶ DNRC [Enforcement and Compliance Report to EQC, 2013](#)

⁷ 77-5-204, MCA.

EQC Program Evaluation Roundup, DEQ & DNRC

<p>Real Estate Management</p>	<p>July 2016</p>	<p>Statutes voided by court settlement, remain in MCA In 2011, Senate Bill 409 established a competitive bidding process for vacant cabin site lots that would be averaged by neighborhood for existing leases up for renewal.⁸ A court challenge to the law resulted in a settlement that declared SB 409 void.⁹ However, the statutes remain in the Montana Code Annotated, specifically 77-1-235, MCA, and 77-1-236, MCA, and related amendments.</p>	<p>Audit suggests alternative methodology A legislative audit identified that for some leases the agency uses an alternative methodology to set the rent instead of an appraisal or the minimum set by statute. For instance, the value of the acreage used for a cell phone tower is less than the market value to place a cell phone tower on private or federal land. The department proposed House Bill 46 in 2015 to allow alternative methodologies. The bill died. The department is proposing agency legislation for 2017 to address the issue.</p> <p>Clean up dates for navigable river notices 77-1-1114, MCA requires the department to issue notices by July 1, 2016. That date is passed. 77-1-1115, MCA requires new uses of riverbed after Oct. 1, 2011 to obtain a lease, license or easement. That date is likely not necessary.</p>
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⁸ [Montana Trust Land Cabin Site Lease Rate Valuation Analysis](#), 2015.

⁹ DNRC, [Frequently Asked Questions](#), Nov. 10, 2015

EQC Program Evaluation Roundup



Evaluation	Date of Evaluation	Issues Identified by Agency
Wildlife Conflict Management	Sept. 2015	<p>Wildlife Health Program</p> <ul style="list-style-type: none"> • Additional staff and funding needed, especially for proactive monitoring. • Loss of one FTE for elk disease risk management support due to legislatively mandated staffing cuts. <p>Human Safety and Urban Wildlife</p> <ul style="list-style-type: none"> • Growing workload as more people move into rural areas and grizzly bears expand. • Potential change in DEA regulation regarding use of tranquilizing drugs only at “registered” locations (Wildlife Laboratory in Bozeman). • Impending retirement of multiple, seasoned specialists with sophisticated skill sets. • Need for ongoing stable funding sources for positions currently funded with “soft” money. • Funding for management post delisting. A 2015 legislative request to move funding for 3.38 grizzly bear FTE and 5.5 wolf FTE into FWP’s base budget was not approved.
Hunting Access	Jan. 2016	<p>Block Management Program</p> <ul style="list-style-type: none"> • The hunter day impact payment should be reassessed. • Questions about how shoulder seasons will impact the budget for, administrative rules and processes for, and overall delivery of the BMP.
Nongame, Threatened, and Endangered Species	Jan. 2016	<p>Nongame</p> <ul style="list-style-type: none"> • How will FWP keep funding three nongame specialists if federal grants run out? Ideally, the funding would be moved into FWP’s base budget. • State and national officials are exploring other funding options for nongame, including contributions from nontraditional users. <p>Threatened and Endangered</p> <ul style="list-style-type: none"> • How will a change in the U.S. administration affect the GYE grizzly delisting proposal? • Funding for management post delisting. A 2015 legislative request to move funding for 3.38 grizzly bear FTE currently funded with “soft” money into FWP’s base budget was not approved.

EQC Program Evaluation Roundup



<p><u>Habitat Management</u></p>	<p>March 2016</p>	<p>Conservation Easements</p> <ul style="list-style-type: none"> • More staff resources needed to monitor compliance with easement terms. • Challenges arise with changing environmental conditions and as ownership changes. <p>Wildlife Mitigation Trust</p> <ul style="list-style-type: none"> • Operational impacts from Libby and Hungry Horse dams remains one of the greatest needs of the program. <p>Sikes Act Funding</p> <ul style="list-style-type: none"> • Most license dollars budgeted for Sikes habitat restoration projects on federal lands were redirected a few years ago due to financial strain. Only one project remains funded. <p>Forestry Program</p> <ul style="list-style-type: none"> • Need to convert the forester position authorized by the 2015 Legislature to a permanent base position to meet statutory requirements. <p>Wildlife Management Areas</p> <ul style="list-style-type: none"> • FWP has identified \$3.7 million in projected O&M capital costs and FTE needs for fiscal years 2016 through 2020. Habitat MT funding can cover the capital requests, but legislative approval is needed for FTE.
<p><u>Wildlife Management</u></p>	<p>May 2016</p>	<p>Survey and Inventory</p> <ul style="list-style-type: none"> • Wildlife biologists request funding to repeat survey flights and for additional experienced pilots. • Additional funding authority for helicopter replacement is needed. <p>General Challenges</p> <ul style="list-style-type: none"> • Increasing cost of delivering the present level of services. • Increasing demand for opportunities to enjoy wildlife. • Nationwide trend of reduced hunter participation. • Fragmentation of habitat. • Securing adequate hunting access. • Increased frequency and severity of wildlife diseases. • Long-term warming and drying trends. • Secure, predictable funding sources. • Staff retirement. • Increasing emphasis on trophy wildlife and potential for commercialization. • Growing information requests. • Litigation. • Legislation: state, federal, and by ballot initiative.

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