



ENVIRONMENTAL QUALITY COUNCIL

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

MINUTES LOG

June 4, 2015
Room 172, 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.

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

COMMITTEE MEMBERS PRESENT

SEN. GENE VUCKOVICH, chair
SEN. JOHN BRENDEN
SEN. JIM KEANE
SEN. MIKE PHILLIPS
SEN. RICK RIPLEY

REP. WILLIS CURDY
REP. JANET ELLIS
REP. ED LIESER
REP. THERESA MANZELLA
REP. KERRY WHITE

MS. BROOKE ERB
MR. BERT LINDLER (arrived after roll call)
MR. ROY MORRIS

COMMITTEE MEMBERS EXCUSED

SEN. CARY SMITH
REP. JERRY BENNETT, vice chair
MR. SCOTT ASPENLIEDER

STAFF PRESENT

HOPE STOCKWELL, research analyst
HELEN THIGPEN, staff attorney
NADINE SPENCER, secretary
JOE KOLMAN, legislative environmental analyst

AGENDA & VISITORS' LIST

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

COMMITTEE ACTIONS

- The Environmental Quality Council (EQC) adopted the 2015-2016 interim work plan.
- The EQC appointed Sen. Keane and Rep. Ellis to the EQC and Energy and Telecommunications (ETIC) joint subcommittee to study the proposed rule on EPA's Clean Power Plan, Section 111(d).
- The EQC adopted the 2015-2016 interim calendar.

CALL TO ORDER AND ROLL CALL

- 00:00:01 Sen. Vuckovich called the meeting to order at 8:03 a.m. The secretary called the roll, [Attachment 3](#).
- 00:01:08 Joe Kolman, legislative environmental analyst, Legislative Services Division, collected the program review sheets.

PETROLEUM TANK RELEASE SITE CLOSURE UPDATE

- 00:03:17 Rebecca Ridenour, supervisor, Petroleum Tank Clean-up Section, Remediation Division, Department of Environmental Quality, gave an update on the petroleum tank release site closures, [Exhibit 1](#).
- 00:05:52 Terry Wadsworth, executive director, Petroleum Tank Release Compensation Board, gave an update on the status of the petroleum tank compensation fund, [Exhibit 2](#).

Public comment: None

Committee questions and discussion:

- 00:11:00 Mr. Morris provided background information on the Petroleum Tank Release Compensation Board.
- 00:12:38 Rep. Ellis asked about the number of petroleum release sites. Ms. Ridenour said that currently there are approximately 1,200 active petroleum releases.
- 00:14:53 Sen. Keane asked if DEQ is coordinating closing sites with SB 96 (2015) funds. Ms. Ridenour said it is.
- 00:16:20 Sen. Keane asked if there is coordination between the Compensation Board and the Remediation Division to use money that is available to close sites. Mr. Wadsworth said there is.
- 00:18:11 Sen. Keane asked that the EQC continue to be updated on site closures.
- 00:19:05 Rep. Lieser asked Mr. Wadsworth about the status of progress moving forward.
- 00:21:01 Rep. White asked if the number of sites being closed is slowing down. Ms. Ridenour said that while SB 96 was being deliberated DEQ did relax on closing sites, but that has picked up.

ORPHAN SHARE REMEDIAL ACTION UPDATE

- 00:23:23 Jenny Chambers, administrator, Remediation Division, Department of Environmental Quality, discussed SB 96. She gave an update on the projects under evaluation, [Exhibit 3](#).

Public comment: None

Committee questions and discussion:

- 00:29:38 Sen. Brenden asked if there is money leftover for additional sites to be closed before the end of the fiscal year. Ms. Chambers said there is not.
- 00:31:15 Sen. Brenden asked about the relationship between DEQ and the petroleum board. Ms. Chambers said it is a good working relationship.
- 00:32:17 Sen. Brenden commented on coordination between the two agencies and asked that the EQC get an update on site closures at every meeting.
- 00:32:59 Sen. Keane said he would also like an update on how the money is being coordinated and spent.
- 00:36:14 Sen. Vuckovich asked how DEQ determines which sites it will close. Ms. Chambers explained the priorities the department uses.
- 00:39:50 Sen. Phillips asked about liability for cleaning up sites. Ms. Chambers said the department investigates whether or not a property owner has liability. She said it does have the ability for cost recovery.
- 00:42:24 Sen. Vuckovich asked when a county or city takes over a property, if it is liable for cleaning-up the site. Ms. Chambers said it is.
- 00:43:24 Mr. Morris asked if the state can recover its cost to clean up a property that can't be sold. Ms. Chambers said DEQ can work with landowners to recover the cost for cleaning up a site.

UPDATE: IMPLEMENTATION OF SAGE GROUSE STEWARDSHIP ACT

- 00:45:20 Tim Baker, Natural Resource Policy advisor, Governor's Office, discussed the executive order creating the sage grouse advisory council.
00:49:42 Mr. Baker discussed SB 261 (2015).
00:51:34 Mr. Baker discussed program funding for habitat protection and staffing.
00:53:16 Mr. Baker discussed the issuance of the Bureau of Land Management (BLM) draft resource management plans.
00:57:47 Mr. Baker discussed federal legislation.

Public comment:

- 01:01:37 Jeff Tiberi, policy director, Montana Association of Conservation Districts
01:03:49 Niki Sardot, Ravalli County
01:05:14 Leo Berry, attorney, Great Northern Properties
01:07:07 Rick Hotaling, district manager, Western Montana District, BLM

Committee questions and discussion:

- 01:07:51 Sen. Vuckovich asked about the status of hiring someone to head the program. Mr. Baker said the governor's office is in the process of finalizing position descriptions and determining how the positions will be hired.
01:09:33 Sen. Vuckovich asked if the position will be a contracted position or a full-time state position. Mr. Baker said the office is looking at hiring a contracted employee with direct accountability.
01:10:38 Sen. Brenden asked what will happen to the money from SB 261 if the U.S. Fish and Wildlife Service does not accept Montana's sage grouse plan. Mr. Baker said the money will revert back.
01:11:26 Sen. Brenden asked about predation. Mr. Baker said the primary objective is to avoid listing on the ESA. He said the U.S. Fish and Wildlife Service does not view predation as a significant threat and therefore most of the time and energy is spent addressing issues identified as primary threats.
01:13:57 Sen. Brenden asked if primary fire suppression protection is being given to core areas of sage grouse habitat. Mr. Baker said the executive order does not change the priority for protecting private property or human life.
01:16:59 Sen. Phillips asked what will happen to Montana's sage grouse program if the U.S. Congress delays the ESA listing for 10 years. Mr. Baker said the concern is that it will become less of a priority.
01:20:01 Sen. Phillips asked if there is any other position in state government that has a species focus like sage grouse. Mr. Baker said he is not aware of any.
01:20:28 Sen. Phillips asked Mr. Berry to comment on his concerns regarding the BLM plan impacting private rights.
01:22:38 Sen. Phillips asked Mr. Hotaling to comment on the impact of the BLM plan on private rights.
01:25:47 Sen. Keane asked how the BLM is dealing with the Wyoming sage grouse plan. Mr. Hotaling said it is working on a plan that is consistent in all western states.
01:27:33 Sen. Keane asked if the BLM plan is consistent with the plan in Wyoming. Mr. Hotaling said he is not familiar with the Wyoming plan.

- 01:29:26 Sen. Keane asked Mr. Hotaling to find out if the BLM in Wyoming has accepted the Wyoming plan.
- 01:30:03 Sen. Keane asked about concerns in hiring a contractor to head the sage grouse program. Mr. Baker said the concern is about the level of accountability.
- 01:34:40 Rep. Curdy commented on hiring contract workers.
- 01:36:21 Rep. Curdy asked what the BLM's fire plan is for protecting sage grouse habitat. Mr. Hotaling said its primary focus is firefighter and public safety, followed by protection of property, then resources.
- 01:39:27 Sen. Ripley asked who is reviewing the BLM plan. Mr. Baker said the Governor's Office has asked each of the resource agencies to review the plan.
- 01:43:17 Sen. Ripley requested a report of the review at the next EQC meeting and a funding update. He said legislation requires the program position be hired through contracted services. Mr. Baker said he will provide an update at the next meeting and said he will advise stakeholders of concerns by the EQC.
- 01:45:42 Sen. Ripley asked who is responsible for reviewing the state plan at the BLM and what the difference is in the review for the Montana plan verses the Wyoming plan. Mr. Hotaling said the deputy state director for biological research is reviewing the plan. He said the difference is based on the time the plan was released.
- 01:49:08 Sen. Ripley asked Mr. Hotaling who is responsible for coordinating the BLM plan and the Montana plan.
- 01:52:30 Rep. White commented on the BLM plan.
- 01:55:50 Ms. Erb asked if the BLM has considered FWP's model of success with the Arctic grayling as a possible solution in high density areas on private property. Mr. Hotaling said it has not.
- 01:57:20 Rep. Manzella asked about the concern of predation of sage grouse eggs and if the science is being disregarded in implementation of the program. Mr. Baker said the overall goal is to make sure to address issues identified by the U. S. Fish and Wildlife Service as key stresses to the bird. He said the program is trying to build an option for addressing predation.
- 02:00:06 Rep. Manzella asked Mr. Baker if there is a mechanism in place to challenge the science.
- 02:01:23 Sen. Keane referred the EQC to the document provided by the U.S. Fish and Wildlife Service and the BLM regarding the Wyoming plan, [Exhibit 4](#).
- 02:02:16 Recess
- 02:18:01 Reconvene

CONTINUE REVIEW AND DISCUSSION OF WORK PLAN

- 02:18:16 Mr. Kolman provided a copy of the survey of EQC program evaluation priorities, [Exhibit 5](#), and explained different options for the work plan.

Committee questions and discussion:

- 02:22:49 Sen. Phillips said as the work plan is finalized the EQC should consider some of the members' issues.

02:25:05 Sen. Brenden commented on including member issues in the work plan. He recommended the EQC delegate 75% of its time.

02:27:45 **Motion:** Sen. Brenden moved to put .25 full time equivalent (FTE) on HJ 13.

02:28:12 Sen. Brenden withdrew his motion.

Public comment:

02:28:31 John Hagengruber, liaison, U.S. Forest Service

02:29:19 **Motion:** Sen. Brenden moved to put .25 FTE on HJ 13, .50 FTE on the 111(d) subcommittee and general obligations including sage grouse, and keep .25 FTE for other issues as needed.

02:30:57 Sen. Phillips clarified the motion and asked how much detail staff needs on the .50 FTE. Mr. Kolman discussed time needed for EQC publications, program reviews, agency oversight, and sage grouse.

Committee discussion on implementation of the sage grouse plan:

02:33:47 Sen. Ripley

02:35:15 Mr. Kolman

02:36:46 Hope Stockwell, research analyst, Legislative Services Division

02:37:31 Sen. Ripley

02:38:09 Sen. Phillips

02:39:29 Rep. Ellis

Committee discussion on HJ 13:

02:40:22 Rep. Lieser

02:44:36 Rep. White

02:49:26 Rep. Lieser

02:51:26 Sen. Phillips recommended that staff write a letter requesting an extension of time to review the BLM management plans. He said the EQC needs to clearly define the .50 FTE.

Committee discussion on allocation of FTE:

02:52:53 Sen. Brenden

02:56:26 Rep. White

02:58:38 Rep. Ellis

03:00:42 Sen. Vuckovich

03:00:55 Mr. Kolman

03:03:52 Sen. Keane

03:04:05 Sen. Phillips

03:04:51 Sen. Keane

03:05:00 Sen. Phillips
03:05:06 Sen. Keane
03:05:32 Mr. Kolman
03:07:57 Sen. Keane
03:07:40 Mr. Kolman
03:08:07 Sen. Keane
03:09:59 Sen. Brenden
03:10:30 Sen. Keane
03:11:01 Sen. Brenden
03:11:27 Mr. Kolman
03:11:42 Sen. Keane
03:12:16 Mr. Kolman
03:12:46 Sen. Keane
03:12:56 Mr. Kolman
03:13:05 Sen. Phillips
03:13:55 Rep. Ellis
03:14:38 Sen. Phillips
03:15:07 Mr. Morris
03:15:53 Rep. White
03:18:19 Rep. Lieser
03:18:57 Rep. Ellis
03:19:51 Rep. White
03:20:32 Sen. Brenden
03:20:44 Mr. Kolman
03:21:18 Sen. Brenden
03:21:35 Mr. Kolman
03:21:41 Sen. Brenden
03:22:36 Mr. Kolman clarified the allocation of FTE.
03:23:16 Sen. Phillips
03:23:22 Sen. Brenden
03:23:35 Sen. Brenden clarified the motion.

03:23:46 **Vote:** The motion carried 15-1 by roll call vote, [Attachment 4](#), with Rep. Curdy voting no. Sen. Smith, Rep. Bennett, and Mr. Aspenlieder voted yes by proxy, [Attachment 5](#).

03:24:59 Without objection, Rep. White said he will move forward on creating the HJ 13 surveys so they are available at the September meeting.

Appointment of EQC-ETIC subcommittee

03:26:32 Sen. Keane said he would like to serve on the subcommittee.
03:26:51 Sen. Phillips said he would also like to serve on the subcommittee.
03:27:22 Sen. Brenden said there should be 2 members from each house and both political parties on the subcommittee.
03:27:45 Sen. Vuckovich appointed Sen. Keane and Rep. Ellis as the Democratic members of the subcommittee. He said he will contact Rep. Bennett to appoint the Republican members.

- 03:28:38 Sen. Keane asked when ETIC will be meeting to appoint its members. Mr. Kolman said it meets tomorrow.
- 03:29:05 Mr. Kolman said the other members of the subcommittee can be appointed at the September EQC meeting.

ADOPTION OF INTERIM EQC CALENDAR

- 03:30:01 Mr. Kolman referred the committee to the schedule for the 2015-2016 EQC interim meetings, [Exhibit 6](#).
- 03:30:41 Sen. Brenden asked if all the meetings will be on Wednesday and Thursday. Mr. Kolman said they will be.
- 03:31:07 **Motion/Vote:** Rep. Lieser moved to adopt the EQC interim calendar. The motion carried unanimously by voice vote of those present and voting.

DISCUSSION OF NEXT STEPS FOR EQC STUDIES

- 03:31:41 Mr. Kolman clarified the work plan. He said he will work with Rep. White and Sen. Vuckovich on survey questions for HJ 13 and will put together summaries on transportation planning.
- 03:32:39 Sen. Keane requested that sportsmen associations be included in the HJ 13 surveys.
- 03:33:35 Sen. Ripley requested that representatives from the agriculture community be included in the survey.
- 03:33:47 Sen. Brenden said some county commissioners have already been surveyed and do not need to be included. Rep. White said the survey will be more specific than the previous survey.

OVERVIEW OF 2016-2019 FISHING REGULATIONS

- 03:36:27 Jeff Hagener, director, Department of Fish, Wildlife and Parks, discussed the goals of the department's fishing regulations.
- 03:37:31 Bruce Rich, chief, Fisheries Division, Department of Fish, Wildlife and Parks, FWP, gave an overview of the 2016-2019 fishing regulation process and time line, [Exhibit 7](#), and discussed the proposed changes, [Exhibit 8](#).

Public comment:

- 03:42:15 Dyrek Van Hyning, Great Falls

Committee questions and discussion: None

WOLF MANAGEMENT UPDATE

- 03:44:22 Mr. Hagener gave an overview of wolf conservation and management, [Exhibit 9](#).
- 03:49:40 Mr. Hagener discussed the proposal for the 2015-2016 wolf season.
- 03:50:50 Mr. Hagener discussed SB 200 (2013).

Public comment:

03:51:49 Rhonda Lanier, Bozeman board member, Wolves of the Rockies, [Exhibit 10](#).

Committee questions and discussion:

03:53:59 Rep. White asked about disease found in the wolf population. Ken McDonald, administrator, Wildlife Division, FWP, said the department finds typical canine disease.

03:57:24 Sen. Phillips asked about FWP's efforts to investigate poaching and how fines for gray wolf compare to other fines. Mr. Hagener said the department investigates all reports of poaching and discussed fines.

03:58:44 Rep. Curdy asked about game warden vacancies and the department's ability to apprehend poachers. Mr. Hagener said FWP is in the process of filling all vacancies.

AGENCY OVERVIEW PRESENTATIONS

Department of Fish, Wildlife, and Parks

04:00:08 Mr. Hagener gave an overview of the department.
04:01:40 Mr. Hagener gave an update on sage grouse.
04:02:07 Mr. Hagener discussed wildlife populations.
04:02:46 Mr. Hagener discussed threatened and endangered species.
04:06:30 Mr. Hagener discussed bison.
04:08:37 Mr. Hagener discussed the audit done on the game damage program and the elk management plan.
04:10:32 Mr. Hagener discussed land acquisitions under HB 403 (2015).
04:12:53 Mr. Hagener discussed fee increases under HB 140 (2015).
04:14:25 Mr. Hagener discussed state parks.
04:15:36 Mr. Hagener discussed FTE reductions.

Department of Environmental Quality

04:19:49 Tom Livers, director, DEQ, gave an overview of the department.
04:21:47 Mr. Livers discussed 2015 environmental legislation.
04:25:36 Mr. Livers said the department will provide enforcement and compliance reports at future EQC meetings.

Department of Natural Resources and Conservation

04:26:03 John Tubbs, director, DNRC, gave an overview of the department.
04:27:42 Mr. Tubbs discussed agency priorities.

Public Comment:

04:30:56 Dyrek Van Hyning, Great Falls, [Exhibit 11](#)

04:34:55 Kathryn QannaYahu, conservation hunter, founder, Enhancing Montana's Wildlife and Habitat, [Exhibit 12](#)

04:43:33 Harold Johns, Butte, Skyline Sportsmen Group, representing himself
04:48:01 Gail Richardson, Bozeman
04:49:56 Sen. Ripley said he objected.
04:50:01 Ms. Richardson continued her comment.
04:52:42 Sen. Vuckovich

Committee questions and discussion:

04:53:07 Sen. Ripley asked if FWP has started the review process for the management plans from the BLM. Mr. Hagener said it has.
04:53:32 Sen. Ripley asked who is assigned to do the review. Mr. Hagener said it is Catherine Wightman and Rick Northrup.
04:54:16 Sen. Ripley asked if DNRC has started the review process. Mr. Tubbs said it has and that Shawn Thomas and Clive Rooney are assigned to do the review.
04:56:06 Sen. Phillips asked Mr. Hagener about the positions eliminated as a result of legislation.
04:59:27 Sen. Phillips asked Mr. Hagener about the timeline for bison planning.
05:03:33 Rep. White asked for an update on combined appropriation. Mr. Tubbs said DNRC is working with developers to adhere to current rules.
05:04:42 Rep. White asked about public grazing leases and the progress the BLM is making in switching grazing from cattle to bison. Mr. Hotaling said he did not know.
05:07:25 Rep. Ellis asked Mr. Hagener about the BLM resource management plans FWP is reviewing on sage grouse.
05:08:41 Sen. Keane asked about hiring a contract worker to head the sage grouse program. Mr. Tubbs said in all of its programs with a large contract, DNRC has a program manager.
05:11:16 Sen. Keane asked if the sage grouse program will be ready to go by July 1. Mr. Tubbs said it will be.
05:11:56 Sen. Keane requested a report from DNRC at the September meeting.

PUBLIC COMMENT

None

OTHER BUSINESS

05:13:15 Sen. Ripley recommended sending a letter requesting that the comment period on the BLM plans related to sage grouse be extended. Rep. White agreed and recommended the letter be sent by the EQC to the governor.
05:14:38 Sen. Keane recommended sending the letter to Montana's congressional delegation. Rep. Curdy agreed.
05:15:11 Rep. Ellis said sending a letter may not be successful because of the court-imposed September deadline for a decision on whether to list the Greater sage-grouse as an endangered species.
05:15:46 Sen. Ripley asked about legislation that could delay the decision to list sage grouse for ten years. Rep. Ellis said she did not know if the U.S. Congress can override the court order.
05:17:06 Mr. Kolman said the EQC could ask the governor to request that his comment

- period be extended. He said a letter can be filed with the BLM protesting the plan since it is not consistent with the Montana plan.
- 05:18:51 Mr. Hotaling discussed the request for an extension of time by the governor and the protest period.
- 05:21:35 Mr. Lindler said if the EQC sends a letter requesting the BLM delay its decision it could jeopardize the decision on listing sage grouse.
- 05:22:37 Sen. Ripley said he does not want to delay the process and recommended sending a letter asking that the EQC be involved in the process.
- 05:23:29 Rep. White commented on extending the time so the EQC can look at the discrepancy between the plans.
- 05:25:04 **Motion:** Sen. Ripley moved to direct staff to send a letter to the governor requesting that the comment period be extended.

Discussion:

- 05:25:37 Mr. Kolman
- 05:25:47 Sen. Ripley
- 05:26:14 Mr. Lindler
- 05:26:21 Mr. Hotaling
- 05:26:53 Sen. Ripley withdrew his motion.
- 05:27:06 Mr. Lindler recommended the EQC send a letter to the governor expressing concern about the BLM plan.
- 05:27:30 Sen. Ripley said there will not be a lot accomplished by sending a letter.
- 05:27:49 Mr. Kolman said staff will let the Governor's Office know of EQC's interest in the issue.
- 05:28:00 Mr. Morris requested that staff keep the EQC updated.
- 05:29:15 Sen. Vuckovich adjourned the meeting at 1:32 p.m.

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