



ENVIRONMENTAL QUALITY COUNCIL

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JOE KOLMAN, Legislative Environmental Analyst

MINUTES LOG

May 5, 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.

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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. JOHN BRENDEN
SEN. JIM KEANE
SEN. MIKE PHILLIPS
SEN. RICK RIPLEY
SEN. CARY SMITH

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

MS. BROOKE ERB
MR. BERT LINDLER
MR. TIM BAKER

COMMITTEE MEMBERS EXCUSED

MR. SCOTT ASPENLIEDER
MR. ROY MORRIS

STAFF PRESENT

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

AGENDA (Attachment 1)

VISITORS' LIST (Attachment 2)

COMMITTEE ACTIONS

- The Environmental Quality Council (EQC) voted 11-5 to send letters to the U.S. Fish and Wildlife Service (USFWS) and the U.S. Secretary of the Interior supporting delisting of the Greater Yellowstone Ecosystem grizzly bear population and delisting grizzly bear in all of Montana.

CALL TO ORDER AND ROLL CALL

00:00:00 Sen. Vuckovich called the meeting to order at 8:05 a.m. The secretary called the roll. (Attachment 3) Mr. Aspenlieder was excused and left his proxy with Rep. White. Mr. Morris was excused and left his proxy with Sen. Keane. (Attachment 4)

SAGE-GROUSE CONSERVATION UPDATE

00:01:10 Carolyn Sime, program manager, Montana Sage Grouse Habitat Conservation Program, gave an update on the status of the sage grouse conservation program.

00:01:31 Ms. Sime provided an update on the implementation of the governor's executive order.

00:11:46 Ms. Sime discussed stewardship grants. (Exhibit 1)

00:18:57 Ms. Sime provided a copy of the eligibility and evaluation criteria guidance for the stewardship fund grant program. (Exhibit 2)

Public Comment: None

Committee Questions and Discussion:

00:29:57 Sen. Phillips asked Ms. Sime about the goal to maintain viable sage grouse populations and conserve habitat and if other states are fulfilling their commitment. Ms. Sime said they are.

00:31:20 Ms. Erb asked Ms. Sime about fences that are deemed to be high risk and if they can be modified or if they have to be replaced.

00:32:37 Rep. Curdy asked Ms. Sime about the credit and debit program and if the Montana Sage Grouse Oversight Team (MSGOT) has any review or oversight on the process.

00:34:44 Sen. Brenden asked Ms. Sime what would happen if a lek moved into an area that was adjacent to an existing fence that was required because of herd laws. Ms. Sime said that under the circumstances there is nothing in the executive order or in the stewardship act that would require a private landowner to do anything.

00:35:58 Sen. Brenden said a private landowner with an existing lease for oil can be stopped from having an oil well on their land. He asked Ms. Sime if the landowner could buy conservation credits for a wind or solar farm and what the credits would cost. Ms. Sime said the executive order would not apply to an existing lease and if there is a mitigation component to a particular project in designated habitats the negotiation would take place between the program, the project proponent, and the oversight team. She said they haven't worked on the cost for credits yet.

00:37:48 Sen. Brenden asked Ms. Sime if a grandfather clause would allow an oil company to drill an oil well on land that is already leased. Ms. Sime said she believed so, but if there is additional disturbance associated with the lease it may generate a consultation requirement.

00:38:28 Sen. Brenden asked Ms. Sime if a grandfather clause would apply to a landowner who receives an offer for land that isn't already leased. Ms. Sime said it would not. Sen. Brenden asked Ms. Sime if she agreed that it was a taking of personal property rights. Ms. Sime said she can't agree.

00:39:19 Sen. Brenden asked Ms. Sime to provide a list of the funds dispersed for easements including where they are, who they are, and how much they are being paid. Ms. Sime said she will.

00:39:45 Rep. Manzella asked Ms. Sime about the number of reviews completed on proposed projects and how many have been approved. Ms. Sime said their role is to provide consultations and make recommendations. She said where projects are proposed that may increase surface disturbance, the project proponents have been willing to plan their activities to occur outside of the time period when birds are associated with leks or nesting.

00:42:28 Rep. Manzella asked Ms. Sime how they keep track of projects that have moved forward because they have successfully navigated the permitting process versus ones that have not.

FWP LANDS RECONCILIATION

00:44:07 Paul Sihler, chief of staff, Department of Fish, Wildlife, and Parks (FWP), said the EQC received a copy of a 2011 memo regarding state parks funded in part with hunting and fishing license money. He said there is one issue at West Shore State Park that needs to be addressed because of a federal funding encumbrance that resulted from a land exchange between FWP and a neighboring landowner. **(Exhibit 3)**

- 00:52:05 Mr. Sihler said the other parks referred to in the memo are not an issue as long as State Parks remain within FWP. He said the EQC received information on Sluice Boxes State Park as an example of how changes in administrative designation occurs over time. **(Exhibit 4)**
- 00:55:46 Mr. Sihler said the EQC received a 2011 list of all the sites and an assessment of their estimated value. **(Exhibit 5)**
- 00:57:04 Sue Daly, chief of administration, FWP, discussed USFWS guidelines when Pittman-Robertson or Wallop-Breaux funds are used to acquire property by a state agency.
- 00:59:09 Ms. Daly discussed the Pittman-Robertson encumbrance at West Shore State Park.
- 00:59:47 Ms. Daly said that the EQC received a copy of a letter that was sent to Jeff Hagener, director, FWP, from Stephen Jose, chief, Region 6, USFWS, regarding requirements for properties with Pittman-Robertson funding. **(Exhibit 6)**
- 01:02:52 Mary Sexton, vice chair, State Parks and Recreation Board, provided information on land reconciliation.

Public Comment:

- 01:07:29 Nick Gevock, conservation director, Montana Wildlife Federation
- 01:08:58 Ron Moody, Lewistown
- 01:11:44 Sen. Brad Hamlett, SD 15, provided information from Doug Johns regarding West Shore State Park. **(Exhibit 7)**

Committee Questions and Discussion:

- 01:25:49 Sen. Brenden asked Mr. Hagener about selling land that was purchased with federal funds and the amount that would need to be paid back. Mr. Hagener said it is fair market value when the land is sold.
- 01:27:33 Sen. Brenden asked Mr. Hagener if the land is appraised. Mr. Hagener said it is.
- 01:28:02 Mr. Lindler asked Mr. Sihler about areas where a park is adjacent to a fishing access site or wildlife management area and if the park status changes, and the site is enlarged and generates more revenue, can it be used to pay back the encumbrance.
- 01:29:54 Rep. Bennett asked Mr. Hagener his opinion about moving parks to another agency.
- 01:33:01 Rep. White commented on public controversy regarding fish and wildlife versus support for state parks. He asked Ms. Sexton about the amount of cooperation and support the Parks and Recreation Board gets from FWP and the Governor's office.
- 01:37:00 Rep. Ellis asked Mr. Sihler about dealing with encumbrances incrementally.
- 01:39:57 Rep. Ellis asked Mr. Sihler if there is a timeline for when FWP will receive its gross valuations. Mr. Sihler said they have contracted with an appraiser, but a timeline has not been set.
- 01:40:40 Sen. Ripley asked Mr. Sihler about the cost for the appraisals and what account the funds will come from.

- 01:41:51 Sen. Keane asked Mr. Hagener about the money that was diverted and why the department isn't held accountable for mistakes it has made. Mr. Hagener said he disagreed that there was a diversion of funds and that no mistakes were made.
- 01:44:08 Sen. Keane commented on how the department manages its fish, wildlife, and park areas and asked Mr. Hagener for his comments.
- 01:46:02 Sen. Keane asked Mr. Hagener if there can ever be a clear dividing line between fish, wildlife, and parks.
- 01:46:42 Mr. Lindler requested that the EQC continue to receive updates on West Shore State Park.

2015 WOLF POPULATION REPORT

- 01:47:30 Ken McDonald, administrator, Wildlife Division, FWP, gave an update on the annual wolf population monitoring report. ([Exhibit 8](#))

Public Comment:

The following individuals provided public comment on state management of wolves.

- 01:53:14 Ron Moody, Lewistown
- 01:55:44 Nick Gevock, Montana Wildlife Federation

Committee Questions and Discussion:

- 01:56:57 Rep. Curdy asked Mr. McDonald about federal funding for the wolf management program. Mr. McDonald said that the state no longer receives funding from the USFWS.
- 01:58:04 Rep. Curdy asked Mr. McDonald if the money the state received in 2015 from wolf license sales covered all of FWP's expenses for wolf management and monitoring. Mr. McDonald said it did not, but that the difference was made up with Pittman-Robertson funding.
- 01:59:20 Rep. Curdy asked Mr. McDonald if hunters and trappers from FWP and the USFWS have dealt with depredation issues in the past.
- 02:01:22 Sen. Phillips asked Mr. McDonald about the location of known wolf packs and if FWP thinks that there will be any expansion of packs into the eastern part of the state. Mr. McDonald said the locations have remained consistent.
- 02:02:27 Sen. Phillips asked Mr. McDonald about the rationale for increasing the number of wolves that can be harvested on the border of Yellowstone National Park. Mr. McDonald said the quota of two is well below the sustainable level and that there have been elk management issues in the area. Sen. Phillips asked if taking two more wolves will allow the elk population to rebound. Mr. McDonald said the biological recommendation was for 6-8 wolves but the social recommendation was less.
- 02:04:07 Sen. Phillips asked Mr. McDonald about legislation that was passed requiring every wolf pack near a livestock operation to wear a radio collar and if the state could manage wolf-livestock interactions without the burden to place radio collars on so many animals. Mr. McDonald said that from a wildlife management perspective it does not have to be done at all.
- 02:06:03 Rep. White said that some of the decisions made by FWP are based on social acceptance and asked Mr. McDonald if the proposal to increase the number of wolves that can be taken around Yellowstone National Park will be based on a scientific basis rather than social acceptance.

- 02:09:02 Rep. White said FWP should base its decisions and recommendations on the best available science.
- 02:09:38 Rep. Manzella asked Mr. McDonald about the number of wolves that were harvested and how many were hunted versus trapped. Mr. McDonald said 137 were taken by hunters and 73 by trappers.
- 02:10:10 Rep. Manzella said that hunting and trapping are some of the most useful tools available for the management of wildlife and asked Mr. McDonald about initiatives that would prohibit trapping on public land and what tools exist to protect the Montana constitution and the preservation of harvest heritage which provides the opportunity to harvest wild fish and wild game animals. Mr. McDonald said that the constitution is the basis and Title 87 is the statute under which FWP operates.
- 02:13:33 Sen. Phillips clarified his comment about the effect that taking two more wolves would have on the elk population around the Yellowstone National Park area and said that there are many forces in play that impact the elk.

GRIZZLY DELISTING - DISCUSSION OF EQC POSITION, IF ANY

- 02:14:51 Mr. Kolman said a motion was made at the last EQC meeting to support delisting of the Greater Yellowstone Ecosystem (GYE) grizzly bear population, but was withdrawn because the federal register notice had not come out yet. He said the item was added to the agenda so the EQC could decide if it wanted to take any action. **(Exhibit 9)**

Public Comment:

The following individuals provided public comment on delisting grizzly bear in Montana.

- 02:15:53 Jeff Hagener, director, FWP
- 02:22:04 Chelcie Cargill, Montana Farm Bureau Federation, provided information on livestock predation numbers collected by the Livestock Loss Board. **(Exhibit 10)**
- 02:25:37 George Edwards, executive director, Livestock Loss Board
- 02:26:55 Nick Gevock, Montana Wildlife Federation
- 02:28:26 Jay Bodner, Montana Stockgrowers Association
- 02:29:33 Sen. Bradley Hamlett, SD15
- 02:32:01 Ron Moody, Lewistown

Committee Questions and Discussion:

- 02:39:32 **Motion:** Sen. Brenden moved to send two letters to the USFWS and the U.S. Secretary of the Interior with one letter indicating that the EQC supports delisting of the GYE grizzly bear population and the other letter indicating that the EQC supports delisting the grizzly bear in all of Montana.

Discussion:

- 02:41:00 Rep. White
- 02:42:09 Mr. Hagener
- 02:42:16 Rep. White
- 02:43:05 Mr. Hagener
- 02:43:30 Rep. White
- 02:44:18 Mr. Hagener
- 02:44:51 Mr. Lindler

02:45:17 Sen. Brenden
02:45:49 Rep. Curdy
02:46:50 Sen. Ripley
02:47:29 Sen. Keane
02:49:10 Rep. Ellis
02:49:55 Sen. Brenden
02:50:50 Sen. Vuckovich
02:51:05 Mr. Kolman clarified the motion.
02:51:32 Sen. Brenden said a copy of the letter can be sent to Idaho, Wyoming, and any other entities that FWP has been working with on delisting.
02:52:10 Mr. Kolman said the motion is to draft a letter and the EQC can make any changes before the end of its meeting today.

02:52:20 **Vote:** The motion carried 11-5 by roll call vote with Rep. Curdy, Rep. Ellis, Rep. Lieser, Sen. Phillips, and Mr. Lindler voting no. Mr. Aspenlieder and Mr. Morris voted aye by proxy. ([Attachment 5](#))

Discussion:

02:53:22 Mr. Lindler requested that the letters include the vote count.
02:54:00 Rep. White
02:54:15 Sen. Phillips requested that the letters include the members that voted by proxy.
02:54:40 Mr. Kolman
02:54:50 Sen. Phillips
02:54:59 Mr. Kolman
02:55:04 Sen. Brenden
02:55:15 Sen. Phillips
02:55:39 Sen. Vuckovich
02:55:44 Mr. Kolman
02:55:48 Sen. Ripley
02:55:59 Mr. Kolman said the roll call vote sheet will be included with the letters.
02:56:17 Sen. Keane
02:56:42 Rep. White
02:57:04 Sen. Vuckovich

02:57:25 Recess
03:11:47 Reconvene

BISON MANAGEMENT UPDATE

03:12:11 Mr. Kolman said he attended the Interagency Bison Management (IBMP) meeting in April at West Yellowstone and the governor's recommendation for year-round bison habitat was approved. He said the EQC will receive an update on the plan from FWP, Region 3, and the Department of Livestock (DOL). He said the EQC will also receive information about a quarantine facility and procedures proposed by Yellowstone National Park.

Implementation of Governor's Year Round Plan

03:13:52 Sam Sheppard, supervisor, Region 3, FWP, provided an update about ongoing increased tolerance for bison outside the west and north sides of Yellowstone National Park (YNP).

Public Comment:

The following individuals provided public comment on the governor's plan to expand bison habitat.

03:17:06 Matt Skoglund, Natural Resource Defense Council, Bozeman

03:17:41 John Harrison, tribal attorney, Confederated Salish and Kootenai Tribe (CSKT)

03:18:21 Nick Gevock, Montana Wildlife Federation

Implementation of Governor's Year Round Plan continued

03:19:12 Marty Zaluski, State Veterinarian, DOL, said the change by the governor is in the framework of adaptive management which allows the department to respond to conflicts and change the amount of tolerance provided to bison. He said the south side of the Madison River is not included in the governor's area for tolerance.

Public Comment continued:

03:20:50 Shana Dunkley, biologist and advocate, Greater Yellowstone Coalition, said the coalition supports the governor's plan for bison management. ([Exhibit 11](#))

Committee Questions and Discussion:

03:24:38 Rep. White asked Mike Volesky, chief of operations, FWP, about a request made by the DOL to the Attorney General's office for an opinion regarding bison laws. Mr. Volesky redirected the question to the DOL. Mike Honeycutt, executive officer, DOL, provided information on the request that was made by the Board of Livestock.

03:30:20 Rep. White asked Mr. Honeycutt if it is correct that all of the parties involved in the IBMP have initially agreed to the governor's plan, but that it has not yet been signed. Mr. Honeycutt said that the governor intends to sign the plan and it is moving forward.

Update on Yellowstone National Park Quarantine

03:31:56 Dan Wenk, superintendent, YNP, provided an update on the quarantine proposal for Yellowstone bison.

03:38:37 Floyd Azure, chairman, Fort Peck Tribes, encouraged the EQC to allow the tribe to move forward with the Yellowstone bison project. He said the tribes want to get back to their culture and religion and need to bring back the bison in order to do so. He said that decisions need to be based on scientific fact.

03:46:45 Majel Russell, attorney, Fort Peck Tribes, said bison is the greatest traditional food source for native peoples and that this is an opportunity to sustain the tribe from that food source.

03:48:10 Ms. Russell discussed the tribes' cooperation with the state.

03:49:55 Ms. Russell discussed the quarantine facility on the Fort Peck reservation.

- 03:51:50 Ms. Russell discussed the DOL's opposition to the quarantine program.
- 03:55:22 Ms. Russell discussed the comments submitted by Animal Plant & Health Inspection Service (APHIS), U.S. Department of Agriculture.
- 03:36:40 Ms. Russell discussed the Environmental Assessment (EA) completed by the National Park Service.
- 03:55:54 Rep. Bennett left the meeting and gave his proxy to Sen. Smith. ([Attachment 6](#))
- 03:58:09 Mr. Zaluski discussed the comments submitted by the DOL on the EA. ([Exhibit 12](#))
- 04:03:29 Ken McDonald, administrator, Wildlife Division, FWP, discussed the comment letter that was sent by FWP to YNP supporting the concept of quarantining Yellowstone bison. ([Exhibit 13](#))
- 04:07:10 Tom Linfield, assistant director, APHIS, Veterinary Services, Helena, said that APHIS supports quarantine efforts to be able to designate bison as brucellosis free and referred to the 2003 Bison Brucellosis Eradication Uniform Methods and Rules study that defined approved bison quarantine facilities.

Public Comment:

- 04:09:17 Dennis Jorgensen, World Wildlife Fund, Bozeman, commented on their work with the Fort Peck tribes on management of the bison herd and examining the opportunity for quarantine.
- 04:14:19 Jay Bodner, Montana Stockgrowers Association, commented on the inadequate testing requirements that are identified in the EA. ([Exhibit 14](#))
- 04:16:03 Shana Dunkley, Greater Yellowstone Coalition (GYC), said that GYC supports the park and the Fort Peck tribes in their efforts to implement a quarantine program.
- 04:17:04 Ms. Dunkley read a letter on behalf of Defenders of Wildlife. ([Exhibit 15](#))
- 04:18:35 Matt Skoglund, Natural Resource Defense Council, Bozeman, commented on concerns about the quarantine process.
- 04:20:10 Robert Magnan, director, Fish and Game Department, Fort Peck Tribes, said he has been working on the quarantine proposal since its inception and is available for questions.
- 04:20:41 Chelcie Cargill, Montana Fam Bureau Federation (MFBF), said the MFBF submitted comments on the EA and that it is concerned about the potential risks and effects to the cattle industry and Montana Agriculture. ([Exhibit 16](#))
- 04:22:46 Rachel Cardwell, National Parks Conservation Association (NPCA), said the NPCA supports efforts to find a solution that will allow some Yellowstone bison to enter a quarantine and relocation program.
- 04:24:01 Nick Gevock, Montana Wildlife Federation (MWF), said MWF supports the plan.

Committee Questions and Discussion:

- 04:24:50 Rep. White asked about the period of time in which a bison that initially tests negative for brucellosis can then test positive. Mr. Linfield said the minimum number of tests required depends on the class of animal.

04:27:26 Sen. Ripley said that the park used to manage bison by habitat and carrying capacity and asked Mr. Wenk when the park changed its management philosophy and style.

04:31:59 Sen. Ripley asked about the number of bison in the park and what the carrying capacity or objective is. Mr. Wenk said that under the IBMP the target population is 3,000 based upon a political decision and not an environmental decision in terms of habitat.

04:32:36 Sen. Ripley asked Mr. Wenk if a scientific habitat evaluation has been done to determine the carrying capacity at the park. Mr. Wenk said yes and they believe the capacity, dependent upon outside range, is over 6,000 animals, but less than 8,000. He said there are currently 5,000 animals in the park.

04:33:10 Sen. Ripley asked Mr. Wenk what the carrying capacity is inside the park. Mr. Wenk said that for the time period the bison are in the park it is in excess of 6,000 animals.

04:33:35 Sen. Ripley asked Mr. Wenk if there is any consideration being given to managing bison the way they used to be managed and culling the herd. Mr. Wenk said the park's goal is to manage for a decreased population.

04:35:01 Ms. Erb left the meeting and gave her proxy to Sen. Smith. [\(Attachment 7\)](#)

04:36:05 Sen. Ripley asked Mr. Wenk if there is any scientific evidence that the bison are genetically pure. Mr. Wenk said there is not a test available to prove that they are not.

04:37:25 Mr. Lindler asked Mr. Wenk why the final decision in the EA did not call for the quarantine to be placed inside the designated surveillance area. Mr. Wenk said it was based on a capacity issue.

04:39:54 Sen. Keane asked if the park is increasing capacity because it doesn't want to kill the bison or allow hunting. Mr. Wenk said the park does allow native American treaty hunts instead of capturing and shipping the animals to slaughter. He said hunting outside the park is a valid method to control population.

04:41:12 Sen. Keane asked Mr. Wenk about expanding the number of bison in quarantine in the park.

04:41:51 Sen. Keane asked Mr. Wenk if the park is shifting the responsibility to pay for testing to the state or the tribe.

04:42:37 Sen. Keane said the park would not need to spend as much money if it reduced the number of bison. Mr. Wenk said the park is managing for a reduced population, but it can't control where the bison go.

04:43:38 Sen. Brenden said mismanagement of bison in the park by the federal government has cost the state of Montana tens of millions of dollars.

04:48:15 Sen. Phillips asked Mr. Honeycutt why the DOL hasn't visited Fort Peck's quarantine facility. Mr. Honeycutt said the department was not aware that the facility was being built.

04:50:52 Sen. Phillips asked Mr. Honeycutt if it would be useful for the department to visit the facility. Mr. Honeycutt said it would.

- 04:51:04 Sen. Phillips asked Mr. Wenk about the status of the EA and when they expect a decision that would allow for activities to move forward. Mr. Wenk said he expects the decision to be made in May and that the decision will determine what the parameters are for how operational quarantine might work.
- 04:52:41 Sen. Phillips asked Mr. Wenk if, over time, quarantine will become a part of the park's management program. Mr. Wenk said it will become a central part of how the park manages Yellowstone bison as they leave the park.
- 04:53:13 Sen. Phillips asked Mr. Wenk if brucellosis in bull bison is a non-issue. Mr. Wenk agreed.
- 04:53:34 Sen. Phillips asked Mr. Azure if the tribes would be interested in collaborating with the park and eventually using its quarantine facility to restore bison to tribes around the country. Mr. Azure said that is the tribes' intent.
- 04:54:18 Rep. Manzella asked Mr. McDonald about the allocation of tags for bison between the state's licensed hunters and the tribal hunters. Mr. McDonald said there is no formal allocation.
- 04:56:24 Rep. Manzella said she participated in a bison hunt outside of Yellowstone National Park and that wounded animals returned to the park and were left to die. She said it was inhumane and that it is a problem that needs to be fixed.
- 04:58:35 Mr. Azure said he did not know of any scientific fact that bison have transferred brucellosis to cattle, but that elk have, and elk are allowed to roam across the state.
- 05:00:02 Rep. White commented on management of bison inside the park.

OTHER BUSINESS

- 05:03:59 Mr. Kolman provided copies of the letters supporting delisting grizzly bear. **(Exhibit 17)**
- 05:04:10 Sen. Brenden said he talked to Mr. Hagener about a state law that prohibits a person who is supposed to pay alimony, but doesn't, from getting a hunting license. He said FWP does not want to enforce the law because it would take money away from license fees. He requested that it be added as an agenda item for the EQC's next meeting.
- 05:06:14 Mr. Kolman said if there are no objections he will send the letters that support grizzly bear delisting.

ADJOURN

- 05:06:25 Sen. Vuckovich adjourned the meeting at 1:11 p.m.

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