



ENVIRONMENTAL QUALITY COUNCIL

PO BOX 201704
HELENA, MONTANA 59620-1704
(406) 444-3742

GOVERNOR STEVE BULLOCK
DESIGNATED REPRESENTATIVE
TIM BAKER

HOUSE MEMBERS
JERRY BENNETT--Vice Chair
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

September 15, 2016
Room 102, 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. JOHN BRENDEN
SEN. JIM KEANE
SEN. MIKE PHILLIPS
SEN. RICK RIPLEY
SEN. CARY SMITH

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

MR. SCOTT ASPENLIEDER
MS. BROOKE ERB
MR. BERT LINDLER
MR. ROY MORRIS
MR. TIM BAKER

COMMITTEE MEMBERS EXCUSED

REP. ED LIESER

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 approve legislative proposals 1, 2, 4, 5, 7, 8, and 9 from the Department of Fish, Wildlife and Parks for pre-drafting;
- Voted to approve the legislative proposals from the Private Lands/Public Wildlife Council for pre-drafting.

CALL TO ORDER AND ROLL CALL

00:00:01 Rep. Bennett called the meeting to order at 8:01 a.m. The secretary noted the roll. (Attachment 3) Rep. Lieser was excused and gave his proxy to Rep. Ellis. (Attachment 4)

ORPHAN SHARE REMEDIAL ACTION AND PETROLEUM TANK RELEASE SITE CLOSURE UPDATES

00:00:24 Mike Trombetta, chief, Contaminated Site Clean-Up Bureau, Waste Management and Remediation Division, Department of Environmental Quality (DEQ), gave an update on the Orphan Share Remedial Action and Petroleum Tank Release Site closures and said that almost all of the \$7 million that was appropriated in 2015 has been obligated. (Exhibit 1)

Public Comment:

00:03:44 Terry Wadsworth, executive director, Petroleum Tank Release Compensation Board, said the DEQ and the Board are working together to try to leverage the money being spent on petroleum tank releases to meet the co-pay that owners are required to pay to clean up petroleum on their sites.

Committee Questions and Discussion:

- 00:04:23 Sen. Keane commented on the costs for administration and thanked Sen. Brenden for his work on getting the process started. He also thanked Joel Chavez who manages the projects for the DEQ.
- 00:06:30 Sen. Brenden thanked the DEQ for its work.
- 00:07:05 Mr. Morris asked about the number of sites that are required to be closed each year. Mr. Trombetta said there isn't a number requirement anymore, but the average is 100 per year.
- 00:07:46 Mr. Morris asked Mr. Trombetta if the sites currently being closed are more difficult and require more work.

Mr. Baker entered the meeting.

DEQ PROGRAM EVALUATIONS

WASTE AND UNDERGROUND TANK MANAGEMENT

- 00:09:45 Joe Kolman, legislative environmental analyst, Legislative Services Division, presented information on the Waste and Underground Tank Management Bureau. **(Exhibit 2)**
- 00:11:07 Mr. Kolman said the Council received three public comments. **(Exhibit 3)**
- 00:11:35 Mr. Kolman discussed the Asbestos Control Program.
- 00:13:36 Mr. Kolman discussed the Hazardous Waste Program.
- 00:16:17 Mr. Kolman discussed the Methamphetamine Cleanup Program.
- 00:17:44 Mr. Kolman discussed the Motor Vehicle Wrecking and Recycling Program.
- 00:21:22 Mr. Kolman discussed the Solid Waste Program.
- 00:22:32 Mr. Kolman discussed the Recycling and Materials Management Program.
- 00:23:40 Mr. Kolman discussed Infectious Waste.
- 00:24:06 Mr. Kolman discussed the Septic Pumper Program.
- 00:25:26 Mr. Kolman discussed the Underground Storage Tank Section.

Public Comment: None

Committee Questions and Discussion:

- 00:27:13 Rep. White asked Mr. Kolman if the Asbestos Advisory Group that was created by HB 434 (2015) will have any legislative proposals for the 2017 session. Mr. Kolman deferred the question.
- 00:27:57 Ed Thamke, Waste and Underground Tank Management Bureau chief, said there are no plans for legislation.
- 00:28:28 Rep. White asked Mr. Kolman if there is a facility in the state that takes hazardous waste for disposal. Mr. Kolman deferred the question to Mr. Thamke.
- 00:31:37 Rep. Manzella asked Mr. Thamke about the procedure if there is an outbreak of infectious disease in livestock and, if it required chemical euthanasia, how the carcasses would be disposed of. Mr. Thamke said there is a task force that handles it.
- 00:33:22 Rep. Manzella asked Mr. Thamke about the agency in charge. Mr. Thamke said it is usually the Department of Livestock.
- 00:33:49 Rep. Curdy said there is a protocol in place that uses interagency Type 1 and Type 2 management teams to deal with animal disease crises.

00:34:41 Rep. Curdy asked Mr. Kolman about the septic pumper program and land application areas that are eventually used to produce food for human consumption and what role DEQ has for rules and oversight. Mr. Kolman deferred to Mr. Thamke.

AIR RESOURCES MANAGEMENT

00:37:28 Mr. Kolman presented information on the Air Quality Bureau. **(Exhibit 4)**
00:38:18 Mr. Kolman discussed the six pollutants regulated by the Bureau and the other standards in Montana.
00:39:56 Mr. Kolman discussed the monitors in the state.
00:40:24 Mr. Kolman discussed implementation of the standards.
00:45:40 Mr. Kolman discussed preconstruction permits.
00:46:44 Mr. Kolman discussed operating permits.
00:47:08 Mr. Kolman discussed oil and gas permits and registrations.
00:49:11 Mr. Kolman discussed open burning permits.
00:51:22 Mr. Kolman discussed small business assistance.
00:51:45 Mr. Kolman discussed the Clean Air Act Advisory Committee.
00:52:21 Mr. Kolman discussed enforcement and compliance.

Public Comment: None

Committee Questions and Discussion:

00:53:49 Rep. Manzella asked David Klemp, Air Quality Bureau chief, DEQ, about the air quality index report for Ravalli County and when the days that were listed as unhealthy were.
00:54:59 Rep. Manzella asked Mr. Klemp if the DEQ tracks air quality associated with wildfire. Mr. Klemp said it does. Rep. Manzella requested a copy of the information.
00:55:46 Rep. Manzella asked Mr. Klemp to provide the names of the members of the Clean Air Act Advisory Committee and the members of the Board of Environmental Review.
00:56:09 Rep. White asked Mr. Klemp about the notice required for prescribed burns.
00:57:10 Rep. White asked Mr. Klemp about the oversight or input that the DEQ has for prescribed burns.
00:59:43 Rep. Ellis asked Mr. Klemp about the placement of monitoring stations and why there isn't one at Colstrip.
01:01:13 Rep. Ellis asked Mr. Klemp about the different standards in the preconstruction permit section.
01:03:10 Rep. Ellis asked Mr. Klemp about funding for the program and the percentage that comes from permits versus tonnage fees.
01:04:37 Sen. Keane said the stacks at Colstrip all have monitors on them.

YELLOWSTONE RIVER CLOSURE UPDATE

01:05:06 Paul Sihler, chief of staff, Department of Fish, Wildlife and Parks (FWP), presented information on the decision to close access to the Yellowstone River.

01:09:34 Travis Horton, regional fisheries manager, FWP, provided a map showing the Yellowstone River restrictions ([Exhibit 5](#)) and a fact sheet on the fish kill. ([Exhibit 6](#))

Public Comment:

01:16:05 Nick Gevock, conservation director, Montana Wildlife Federation, said that the decision made by FWP to close the Yellowstone River was in the best interest of the public fish and wildlife resources.

Committee Questions and Discussion:

01:17:49 Rep. White asked Mr. Horton if there was ever a time when there was eminent peril to public health, safety, and welfare. Mr. Horton said there was not.

01:18:25 Rep. White asked Mr. Sihler to provide a letter with the legal authority that the FWP used to put the temporary closure of the river in place.

01:19:20 Sen. Phillips asked Mr. Sihler to describe the authority and the MCA code that the FWP used to close the river.

01:20:37 Sen. Phillips asked Mr. Horton about the fish kill that happened in Idaho and what they did to manage the situation.

01:22:29 Sen. Phillips asked Mr. Horton about Montana's climate and, if it becomes more arid and warm, if fish population mortality will become more common in the future.

01:24:07 Rep. Curdy asked Mr. Sihler about the legal authority for hoot owl restrictions.

01:25:09 Rep. Curdy asked Mr. Sihler about river restrictions the FWP has done in the past.

01:26:33 Rep. Manzella asked Mr. Sihler about the process that FWP uses when it invokes an emergency rule to close a river and how it interfaces with local governments and the people who are impacted by the decision.

01:28:50 Helen Thigpen, staff attorney, Legislative Services Division, discussed the two statutes that were listed as the authority for the emergency closures.

01:29:39 Rep. White asked Ms. Thigpen about the statutes.

01:30:43 Brief Recess

01:43:16 Reconvene

Sen. Vuckovich assumed the role as chair.

OTHER BUSINESS

01:43:33 Sen. Vuckovich requested that the EQC review the letter written to Yellowstone National Park supporting tribal bison hunting rights within the park. ([Exhibit 7](#))

Discussion:

01:44:14 Rep. Ellis

01:45:01 Sen. Ripley

01:45:32 Rep. Manzella

01:45:57 Sen. Phillips

01:46:30 Sen. Brenden

01:46:41 Rep. Manzella

01:47:33 Sen. Vuckovich

01:47:52 Mr. Kolman
01:48:28 Sen. Vuckovich

FWP BRUCELLOSIS WORK PLAN 2016-2017

01:48:51 Quentin Kujala, Wildlife Bureau coordinator, FWP, presented information on the 2016-2017 work plan for elk management in areas with brucellosis. **(Exhibit 8)**

Public Comment: None

Committee Questions and Discussion:

02:00:10 Mr. Lindler asked Mr. Kujala to describe the successes and failures of the plan over the past four years.

02:02:33 Rep. White asked Mr. Kujala if the plan includes an adequate amount of money for fencing.

02:05:06 Mr. Aspenlieder asked Mr. Kujala about management options to reduce the spread of brucellosis in the Red Lodge area after a decision was made not to add any hazing or lethal deterrents to prevent interaction between the two elk herds in the Beartooth area.

02:07:12 Mr. Aspenlieder asked Mr. Kujala why the Fish and Wildlife Commission decided against giving the FWP some management tools to help try to prevent the spread of brucellosis in that area of Montana.

02:09:16 Mr. Aspenlieder commented on the commission's decision not to use the tools that it has to try and prevent the spread of brucellosis.

02:10:17 Sen. Phillips asked Mr. Kujala to provide a map of the disease surveillance area and adjacent areas where the work plan will apply.

02:10:47 Sen. Phillips asked Mr. Kujala about the surveillance area and if there is a count for the number of producers, and what percentage they represent for the state of Montana, in order to determine the impact to the livestock industry.

02:11:34 Rep. Curdy asked Mr. Kujala about elk shoulder seasons in the Beartooth area and if there are plans for a shoulder season hunt in the disease surveillance area.

FWP LICENSING REVENUE UPDATE

02:14:59 Jeff Hagener, director, FWP, gave an update on FWP's licensing revenues.

02:20:04 Mr. Hagener discussed revenue from the snowmobile trail pass.

02:20:36 Mr. Hagener discussed revenue from nonresident OHV permits.

Public Comment: None

Committee Questions and Discussion: None

FWP LEGISLATIVE PROPOSALS

02:21:58 Mr. Hagener said that in addition to the legislative proposals that the EQC received from FWP **(Exhibit 9)** there are three additional proposals from the Private Land/Public Wildlife Council (PL/PW). **(Exhibit 10)**

Public Comment: None

Committee Questions and Discussion:

02:24:30 Mr. Lindler asked Mr. Hagener about the legislative proposal from the PL/PW to modify MCA 87-2-513.

02:27:56 Mr. Kolman said the proposals from the PL/PW are not included with the legislative proposals from FWP for pre-drafting consideration.

02:28:15 Mr. Hagener

02:28:30 Mr. Kolman

02:28:47 Mr. Hagener

02:28:57 Mr. Kolman

02:29:03 Mr. Hagener

02:29:07 Mr. Kolman

02:29:29 Mr. Hagener

02:29:50 Mr. Hagener discussed FWP legislative proposal 1 — modify classification of spotted skunks (civet cat).

02:30:57 Mr. Hagener discussed FWP legislative proposal 2 — revise waiting period for big horn sheep licenses.

02:32:58 Mr. Hagener discussed FWP legislative proposal 3 — broaden the use of wolf license account funds to include all wolf management and delete statutory requirement to allocate \$500,000 for wolf management.

02:33:43 Mr. Hagener discussed FWP legislative proposal 4 — digital carcass tags.

02:34:59 Mr. Hagener discussed FWP legislative proposal 5 — extend the sunset date for paddlefish caviar program.

02:35:51 Mr. Hagener discussed FWP legislative proposal 6 — eliminate language that limits coldwater fish propagation at the Fort Peck Hatchery.

02:37:45 Mr. Hagener discussed FWP legislative proposal 7 — tightening statute pertaining to fish transport and transplantation.

02:38:30 Mr. Hagener discussed FWP legislative proposal 8 — cross-reference statutes for penalties applicable to hunting while using projected artificial light.

02:39:07 Mr. Hagener discussed FWP legislative proposal 9 — allocation of wild buffalo licenses to tribes for traditional purposes.

02:40:28 Mr. Kolman said he provided a copy of the PL/PW proposals to the EQC. (see Exhibit 10)

02:40:45 Sen. Brenden asked about the proposal to modify MCA 87-2-513.

02:41:28 Mr. Hagener

02:41:36 Hank Worsech, license bureau chief, FWP.

02:41:53 Sen. Brenden

02:42:09 Mr. Worsech

02:42:15 Sen. Brenden

Public Comment: None

Committee Questions and Discussion Continued:

02:42:41 Sen. Brenden asked about proposal 1.

02:43:09 Ken McDonald, Wildlife Division administrator, FWP.

02:44:13 Sen. Brenden commented on the other legislative proposals.

02:46:06 Sen. Phillips asked about proposal 9.

02:46:28 Mr. Hagener

02:46:47 Sen. Phillips

02:46:58 Sen. Phillips asked about proposal 6.
02:47:24 Mr. Hagener
02:48:47 Sen. Phillips asked about proposal 3.
02:49:17 Mr. Hagener
02:49:22 Sen. Phillips asked about proposal 1.
02:50:13 Mr. Hagener
02:50:28 Sen. Smith asked about proposal 3.
02:51:17 Mr. Hagener
02:51:45 Sen. Smith
02:52:23 Mr. Hagener
02:52:39 Rep. White asked about proposal 1.
02:53:29 Mr. Hagener
02:53:54 Rep. White
02:54:41 Mr. Hagener

02:55:19 **Motion:** Sen. Keane moved that legislative proposal 3 be removed from consideration for pre-drafting.

Discussion:

02:56:02 Mr. Kolman
02:56:18 Sen. Keane
02:56:46 Mr. Kolman
02:57:09 Sen. Keane
02:57:43 Mr. Kolman

02:58:00 **Substitute Motion:** Sen. Keane made a substitute motion to pre-draft legislative proposal 3.

Discussion:

02:58:29 Sen. Phillips
02:58:42 Sen. Keane
02:58:58 Sen. Phillips
02:59:15 Mr. Kolman

02:59:35 **Vote:** The motion failed 5-11 by roll call vote. Rep. Curdy, Rep. Ellis, Rep. Lieser, Sen. Phillips, and Mr. Lindler voted aye. Rep. Lieser voted aye by proxy. **(Attachment 5)**

03:00:55 **Motion:** Sen. Ripley moved to amend proposal 9 and approve it for pre-drafting.

Discussion:

03:01:10 Mr. Kolman
03:01:49 Mr. Hagener
03:02:38 Sen. Ripley withdrew his motion.

03:02:45 **Motion:** Sen. Brenden moved to pre-draft legislative proposal 6.

Discussion:

- 03:03:40 Sen. Ripley
03:04:06 Sen. Brenden
03:04:55 Sen. Vuckovich
03:05:44 Sen. Keane
03:06:24 Sen. Vuckovich
- 03:06:32 **Vote:** The motion failed 7-9 by roll call vote. Rep. Curdy, Rep. Ellis, Rep. Lieser, Sen. Phillips, Mr. Lindler, Mr. Morris, and Sen. Vuckovich voted aye. Rep. Lieser voted aye by proxy. **(Attachment 6)**
- 03:07:41 **Motion/Vote:** Sen. Keane moved to pre-draft legislative proposals 1, 2, 4, 5, 7, 8, and 9. The motion carried 12-4 by roll call vote. Rep. White, Sen. Brenden, Sen. Smith, and Mr. Aspenlieder voted no. Rep. Lieser voted aye by proxy. **(Attachment 7)**
- 03:09:11 **Motion:** Sen. Keane moved to pre-draft the legislative proposals from PL/PW.

Discussion:

- 03:09:57 Sen. Ripley
03:10:28 Mr. Hagener
03:11:37 Sen. Ripley
03:10:55 Sen. Brenden
03:11:56 Sen. Phillips
- 03:12:22 **Vote:** The motion carried 13-2 by voice vote. Rep. White and Mr. Aspenlieder voted no. Rep. Lieser was excused.

Committee Questions and Discussion:

- 03:12:53 Sen. Brenden asked Mr. Hagener about FWP's position on the trapping initiative and about Hell Creek State Park.
- 03:14:15 Rep. White asked Mr. Hagener for a copy of the comments submitted by FWP on the trapping initiative.
- 03:14:49 Sen. Ripley asked Mr. Hagener about the status of the Specimen Creek property acquisition.
- 03:16:26 Mr. Aspenlieder asked Mr. Hagener about FWP's position on the Lower Yellowstone irrigation project diversion dam.
- 03:19:45 Rep. Curdy asked Mr. Hagener about the status of replacing the irrigation dam that crosses the Bitterroot River below Woodside.
- 03:20:59 Rep. Manzella asked Mr. Hagener about the emergency closure on the Bitterroot River, because of the Roaring Lion fire, and how the state interfaces with local governments. She also asked when the river will reopen.

FIRE SEASON UPDATE

- 03:23:43 John Tubbs, director, Department of the Natural Resources and Conservation (DNRC), presented posters to the chair and vice chair showing the resources the state has for fighting wildland fires and depicting the partnership it has with local, state, and federal resources including contractor resources. **(Exhibit 11)**

- 03:24:44 Bob Harrington, administrator, Forestry Division, DNRC, provided a map of fire season activity in the state and provided copies of thank you letters it received from landowners. **(Exhibit 12)**
- 03:27:16 Mr. Harrington discussed the fire season statistics.
- 03:35:55 Mr. Harrington discussed the County Cooperative Fire program.
- 03:37:24 Mr. Harrington discussed the DNRC training program.
- 03:37:48 Mr. Harrington discussed repositioning resources and interagency cooperation.
- 03:39:13 Mr. Harrington discussed challenges.

Public Comment:

- 03:42:40 Ed Grady, former state legislator, discussed the Rattlesnake fire and interagency cooperation.

Committee Questions and Discussion:

- 03:46:20 Mr. Lindler complemented Mr. Harrington on the state's efforts in fighting the Grant Creek fire. Mr. Harrington said the fire was a successful interagency response.
- 03:49:27 Sen. Ripley congratulated and expressed his gratitude to Mr. Harrington and the DNRC for the work they do responding to wildfires. Mr. Harrington thanked Sen. Ripley and commented on the investments that have been made.
- 03:53:12 Rep. Curdy congratulated Mr. Harrington on the safe fire season and asked about recruiting people for volunteer fire departments and concerns about having enough staff.
- 03:54:48 Rep. Curdy asked about funding and payment for federal personnel that work fires in the state.
- 03:55:24 Rep. White asked Mr. Harrington about the benefit of staging and moving resources to eastern Montana.
- 03:57:01 Rep. White asked Mr. Harrington about the amount of federal money that will be owed to the state for fire suppression costs. Mr. Harrington said the latest estimate is about \$1.5 million.
- 03:59:32 Mr. Harrington provided a copy of the DNRC fire expenditure summary for fiscal year 2017. **(Exhibit 13)**
- 03:59:44 Rep. Manzella asked Mr. Harrington if the DNRC is involved in investigating why a fire started and thanked all of the agencies that worked together on the Roaring Lion Fire.
- 04:03:39 Sen. Keane asked Mr. Harrington about the balance in the fire fund after all outstanding bills are paid.
- 04:04:37 Mr. Harrington discussed the issue of fire contracting.

VOLUNTEER ISSUES ON PUBLIC LANDS

- 04:07:31 Rep. White said he has been working with the U.S. Forest Service (USFS) Region 1, FWP, and different organizations and user groups on possible solutions to the issue of liability for volunteers.
- 04:08:27 Mr. Kolman said the issue was first discussed during the SJ 15 (2013) interim study and said there are issues regarding worker's compensation and liability coverage for volunteers.

04:09:27 Joni Packard, Regional Volunteer Youth and Service Program Coordinator, USFS, Northern Region, provided information on the volunteer program for the USFS and discussed the issue of worker's compensation for USFS volunteers and the volunteers working for its cooperating partners.

Public Comment: None

Committee Questions and Discussion:

04:17:54 Rep. White thanked the EQC for providing staff to work on the issue and said he did not know if there needs to be any changes to the provisions in state law to help facilitate an insurance pool with the Montana State Fund.

04:20:26 Mr. Lindler complimented Rep. White and Rep. Lieser for their work.

Committee Comments:

04:21:10 Mr. Morris

04:22:37 Ms. Erb

04:23:39 Sen. Brenden

04:25:30 Rep. White

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

None

OTHER BUSINESS

04:27:01 Mr. Kolman said Mr. Klemp provided the information that was requested by Rep. Manzella on air quality related to wildfires. [\(Exhibit 14\)](#)

04:27:12 Mr. Kolman thanked the EQC and the legislative staff for their work during the interim.

ADJOURN

04:28:27 Sen. Vuckovich adjourned the meeting at 12:29 p.m.

CI0099 6287nsxa.