



# ENVIRONMENTAL QUALITY COUNCIL

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**GOVERNOR STEVE BULLOCK**  
**DESIGNATED REPRESENTATIVE**  
PATRICK HOLMES

**HOUSE MEMBERS**  
WILLIS CURDY  
JANET ELLIS  
STEVE GUNDERSON  
BRADLEY MAXON HAMLETT  
THERESA MANZELLA  
KERRY WHITE

**SENATE MEMBERS**  
MIKE LANG  
MIKE PHILLIPS  
JP POMNICHOWSKI  
CARY SMITH  
CHAS VINCENT  
GENE VUCKOVICH

**PUBLIC MEMBERS**  
SCOTT ASPENLIEDER  
JOHN C. BRENDEN  
KYLIE PAUL  
MATT VINCENT

**COUNCIL STAFF**  
JASON MOHR, Research Analyst  
HOPE STOCKWELL, Research Analyst  
NADINE SPENCER, Secretary  
JOE KOLMAN, Legislative Environmental Analyst

## MINUTES LOG

June 29, 2017  
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. CHAS VINCENT, Chairman  
REP. BRADLEY MAXON HAMLETT, Vice Chairman

SEN. MIKE LANG  
SEN. CARY SMITH  
SEN. GENE VUCKOVICH

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

MR. SCOTT ASPENLIDER  
MR. JOHN BRENDEN  
MS. KYLIE PAUL  
MR. MATT VINCENT  
MR. PATRICK HOLMES

### **COMMITTEE MEMBERS EXCUSED**

SEN. MIKE PHILLIPS  
SEN. JP POMNICHOWSKI

### **STAFF PRESENT**

HOPE STOCKWELL, Research Analyst  
JAMESON WALKER, Staff Attorney  
NADINE SPENCER, Secretary  
JOE KOLMAN, Legislative Environmental Analyst

### **VISITORS' LIST (Attachment 1)**

### **AGENDA (Attachment 2)**

### **COMMITTEE ACTIONS**

The Environmental Quality Council (EQC):

- Approved the minutes from September 14-15, 2016;
- Adopted its interim rules;
- Voted to elect Sen. Chas Vincent as chairman of the EQC;
- Voted to elect Rep. Bradley Hamlett as vice chairman of the EQC.

### **CALL TO ORDER AND ROLL CALL**

00:00:03 Sen. Vincent called the meeting to order at 1:12 p.m. The secretary called the roll. (Attachment 3) Sen. Phillips and Sen. Pomnichowski were excused and left their proxies with Rep. Ellis. (Attachment 4)

### **ADMINISTRATIVE MATTERS**

#### **Committee Member Introductions**

00:01:45 The EQC members introduced themselves.

#### **Staff Introductions**

00:20:22 The EQC staff introduced themselves.

#### **Adoption of EQC minutes**

#### **Motion**

00:23:36 Sen. Vuckovich moved to approve the minutes from September 14-15, 2016.

### **Committee Discussion on the Motion**

00:23:46 Mr. Brenden  
00:24:20 Joe Kolman, Legislative Environmental Analyst, Legislative Services Division  
00:25:34 Mr. Brenden

### **Vote**

00:25:48 The motion carried unanimously by voice vote. Sen. Pomnichowski voted by proxy. Sen. Phillips was excused.

### **EQC Budget Overview**

00:26:18 Mr. Kolman presented the budget overview. He said there is \$88,000 available for the 2017-18 interim.

### **Adoption of EQC rules**

00:27:13 Sen. Vincent said the Council received a copy of the draft interim committee rules. **(Exhibit 1)** He said he talked to Sen. Phillips about proxy votes. Sen. Phillips proposed allowing proxy votes as long as they were on a specific subject matter.

### **Committee Discussion on Proxy Votes**

00:29:20 Sen. Brenden said it is the responsibility of the person who holds the proxy to know how the other member will vote and that proxies do not need to be for a single issue. Sen. Smith, Rep. Ellis, and Sen. Hamlett agreed.  
00:32:37 Sen. Vincent said that since the Council is in agreement a motion is not needed for proxy votes.

### **Motion/Vote**

00:32:44 Mr. Brenden moved to adopt the EQC rules. The motion carried unanimously by voice vote. Sen. Pomnichowski voted by proxy. Sen. Phillips was excused.

### **COUNCIL AND STAFF RESPONSIBILITIES**

00:33:12 Mr. Kolman presented the Council and staff responsibilities and said the EQC members received a copy of A Council Member's Guide to the EQC. **(Exhibit 2)**

### **ELECTION OF THE EQC CHAIR AND VICE CHAIR**

00:37:16 Sen. Vincent discussed the election process and said he would like to be considered for chairman of the EQC. He said Council members received a history of the EQC chairman and vice chairman history. **(Exhibit 3)**  
00:38:56 Rep. White presented his reasons and qualifications for consideration as chairman of the EQC.

### **Committee Questions and Discussion**

00:40:14 Mr. Brenden  
00:41:25 Sen. Vincent  
00:41:42 Rep. Hamlett  
00:42:35 Sen. Vincent  
00:42:47 Mr. Brenden  
00:43:08 Mr. Aspenlieder

00:43:17 Sen. Vincent

**Motion**

00:43:33 Mr. Aspenlieder moved to nominate Rep. White as chairman.

**Substitute Motion**

00:43:45 Rep. Hamlett made a substitute motion and moved to nominate Sen. Vincent as chairman.

**Committee Discussion on the Motion**

00:45:26 Rep. White

00:45:40 Sen. Vincent

**Vote**

00:44:10 The motion carried 11-5 by roll call vote. Rep. Manzella, Rep. White, Sen. Lang, Mr. Aspenlieder, and Mr. Brenden voted no. **(Attachment 5)** Sen. Phillips and Sen. Pomnichowski voted aye by proxy.

**Committee Discussion**

00:45:30 Rep. White congratulated Sen. Vincent.

00:45:40 Sen. Vincent said he is committed to the interim and to making sure that the Council's work is kept on track, is done in a timely matter, and is as approved by the work plan. He opened nominations for vice chairman and said that Rep. Hamlett is interested in serving as vice chairman.

00:46:15 Sen. Vuckovich nominated Rep. White as vice chairman. Sen. Vincent said that by rule the chairman and vice chairman need to be from different political parties.

00:46:28 Rep. Curdy said he would like to be considered for vice chairman.

00:46:57 Rep. Hamlett said he would also like to be considered for vice chairman.

00:47:00 Rep. Curdy presented his reasons and qualifications for vice chairman.

00:47:52 Rep. Hamlett presented his reasons and qualifications for vice chairman.

**Motion**

00:48:40 Rep. Ellis moved to nominate Rep. Curdy as vice chairman.

**Substitute Motion**

00:48:47 Mr. Aspenlieder made a substitute motion and moved to nominate Rep. Hamlett as vice chairman.

**Vote**

00:49:02 The motion carried 11-4 by roll call vote. Rep. Curdy, Rep. Ellis, Rep. Pomnichowski, and Ms. Paul voted no. **(Attachment 6)** Sen. Pomnichowski voted no by proxy. Sen. Phillips was excused.

00:51:03 Recess

01:00:28 Reconvene

## **INTRODUCTION AND REVIEW OF INTERIM WORK PLAN OPTIONS**

- 01:00:55 Sen. Vincent said the Council will be given an overview on the work plan matrix followed by committee discussion. He said the Council will approve the work plan matrix tomorrow.
- 01:01:46 Mr. Kolman presented the draft work plan and work plan matrix. **(Exhibit 4)**
- 01:04:56 Mr. Kolman discussed SJ 5 (2017) and SJ 9 (2017).
- 01:06:28 Mr. Kolman discussed HB 661 (2017).
- 01:08:20 Mr. Kolman discussed other issues proposed for EQC study.
- 01:10:38 Mr. Kolman discussed other possible EQC agenda items.
- 01:11:38 Mr. Kolman discussed the EQC statutory duties.
- 01:12:20 Mr. Kolman discussed the EQC general agency oversight statutory duties.

## **Committee Questions and Discussion**

- 01:13:43 Rep. Ellis said Sen. Pomnichowski wants to add an item in the work plan. Sen. Vincent said it can be included in the motion when the work plan is adopted.
- 01:15:47 Rep. White said he wants to be considered as a member of the HB 661 subcommittee. Sen. Vincent said Sen. Phillips also wants to be considered. Rep. Ellis said that Sen. Pomnichowski is interested and Rep. Hamlett said he would also like to be considered. Sen. Vincent said members will be considered at the meeting tomorrow.
- 01:18:02 Rep. White said that item six can be removed from the work plan since legislation was passed allowing coverage through the U.S. Forest Service for volunteer organizations and non-profits that do work to maintain trails and roads on public lands. Sen. Vincent said a report can be added as a meeting agenda item. Rep. White said Joni Packard, Regional Volunteer and Youth Services Program coordinator, Region 1, can provide an update on the program.
- 01:20:20 Rep. Gunderson said he would like to add HJ 15 (2017) as an agenda item.
- 01:21:05 Rep. Ellis asked about setting priorities. Sen. Vincent explained the process.
- 01:23:06 Rep. White said he would like the EQC to be more involved in the oversight of HB 507 (2017) and receive updates at each meeting. Sen. Vincent agreed.
- 01:25:18 Mr. Brenden asked about taking action on the proposed rule by the Department of Fish, Wildlife, and Parks pertaining to permits for dog training in upland game bird nesting areas. Mr. Kolman said it will be discussed at the meeting tomorrow. Sen. Vincent said action can be taken tomorrow.
- 01:27:47 Mr. Aspenlieder asked about the summary of sanitation review procedures provided by the Department of Environmental Quality and if it is the same legislation as HB 507. Mr. Kolman said it is. Mr. Aspenlieder said he would like the EQC to receive quarterly reports from the advisory committee.

## **Public Comment**

- 01:31:22 Todd O'Hair, senior government affairs manager, Cloud Peak Energy, said that Cloud Peak Energy can provide its expertise on the SJ 5 study and invited the EQC to tour its coal mine.
- 01:35:05 Peggy Trenk, representing Treasure State Resource Association, encouraged the EQC to look at how coal money is spent and the positive impact it has for the state of Montana.
- 01:36:18 Neal Ullman, program director, Montana Conservation Voters, discussed the issue involving aquatic invasive species.

01:40:31 Recess  
02:05:54 Reconvene

## **AGENCY OVERVIEW PRESENTATIONS**

### **Department of Natural Resources and Conservation**

02:06:13 John Tubbs, director, Department of Natural Resources and Conservation (DNRC), presented an overview of the divisions within the DNRC. **(Exhibit 5)**

02:10:56 Mr. Tubbs discussed the current drought conditions in the state. **(Exhibit 6)**

02:14:50 Mr. Tubbs discussed HB 110 (2017)

02:19:10 Mr. Tubbs discussed the DNRC budget.

### **Department of Environmental Quality**

02:20:45 Tom Livers, director, Department of Environmental Quality (DEQ), presented an overview of the DEQ. **(Exhibit 7)**

02:22:46 Mr. Livers discussed key changes that involve the agency doing its work better and providing better customer service.

02:32:58 Mr. Livers discussed the DEQ budget.

### **Department of Fish, Wildlife, and Parks**

02:37:41 Martha Williams, director, Department of Fish, Wildlife, and Parks (FWP), provided an overview of FWP. **(Exhibit 8)**

02:41:10 Ms. Williams discussed highlights in the State Parks Division.

02:43:55 Ms. Williams discussed highlights in the Wildlife Division.

02:46:29 Ms. Williams discussed the issue of Pittman-Robertson funding for the Enforcement Division.

02:49:25 Ms. Williams discussed the FWP budget.

Public Comment None

### **Committee Questions and Discussion**

02:50:38 Mr. Brenden commented on the Parks Division and transparency in funding. Ms. Williams said she plans to focus on accountability and transparency across the board.

02:54:01 Rep. Curdy said in the 2019 budget there is a \$1 million appropriation for the Smurfit-Stone clean-up and asked Mr. Livers if budget issues present any challenges to completing the clean-up process. Mr. Livers said he did not think it is at risk.

02:55:40 Rep. Ellis asked Mr. Livers about budget cuts to federal superfund sites and the state's role when there is a cut. Mr. Livers said it will affect sites differently.

03:00:38 Rep. Ellis asked Mr. Livers to provide a list of the federal superfund sites and who has the lead for each site. Mr. Livers said he will.

03:01:08 Rep. Ellis asked how much of DEQ's involvement and budget is reliant on federal funds. Mr. Livers said the agency receives core funding for several sites.

03:02:13 Rep. White asked Ms. Williams about FWP's commitment to being engaged with federal agencies on travel management and forest management plans on land acquisitions and if it is a priority. Ms. Williams said it will be a balance between wildlife concerns and parks concerns. Rep. White said he recommends taking a closer look at the balance on recreation.

03:05:25 Rep. White asked Mr. Livers about the pilot project created by HB 507 (2017). Mr. Livers said it is in the subdivision review process and discussed the two laws that govern subdivisions.

03:10:05 Rep. Manzella asked Mr. Tubbs if Bob Harrington, Forestry Division administrator, has been placed on administrative leave and who will fill his position during fire season. Mr. Tubbs said Mr. Harrington is currently on vacation leave and he has also been placed on administrative leave. He said Sue Clark is acting administrator of the Forestry Division and Mike DeGrosky does an excellent job as the Fire and Aviation Management Bureau chief.

03:11:28 Sen. Vincent said that the hotline number for the four counties under stage 1 fire restrictions is 406-444-0560.

03:11:50 Sen. Lang asked Mr. Tubbs if state agriculture on trust lands is protected by federal crop insurance. Mr. Tubbs said there are three counties that participate in federal crop insurance.

03:12:34 Sen. Lang asked Mr. Tubbs about the ability to graze cattle or start haying on land enrolled in the Conservation Reserve Program (CRP). Mr. Tubbs said some land has been opened for grazing.

03:15:58 Mr. Aspenlieder commented on the pilot program created by HB 507 and the need for the DEQ to report to the EQC.

03:16:37 Mr. Aspenlieder asked Mr. Tubbs about the cost to send the notices required under HB 110 and if the department has a mechanism for determining its effectiveness. Mr. Tubbs said the cost for the mailing was just under \$200,000 and that the DNRC will report the outcome to the next legislature.

03:19:25 Mr. Aspenlieder said the letter sent by the department was confusing and asked Mr. Tubbs if there is a process for improving communication in the future. Mr. Tubbs agreed and said the department is putting out additional information.

03:22:16 Sen. Vuckovich asked Ms. Williams why FWP convinced the governor to veto the bill that would have allowed hunters to make a voluntary contribution to help pay for federal wildlife officials who kill wolves that attack livestock. Ms. Williams said it was an issue of giving control to someone else and the risk of losing funds. She said she will provide more information for the Council.

03:27:57 Sen. Vincent said the issue was regarding the on-going contractual relationship with the U.S. Fish and Wildlife Service.

03:29:05 Rep. Hamlett asked Mr. Livers if there is anything the legislature can do to give the DEQ needed authority to inspect storage ponds, like the one at the Yellowstone Club, to help prevent wastewater spills in the future.

03:38:32 Rep. Hamlett asked Mr. Tubbs about budget cuts at the Montana State Library to the IT and water resource management position.

03:40:29 Sen. Hamlett asked Mr. Tubbs about the Forestry Division administrator and coverage for the severe fire season that has been forecasted.

03:43:33 Rep. Hamlett asked Ms. Williams about the number of people working in the Parks Division and about changes in personnel and requested she provide the number and positions that have changed.

- 03:49:00 Rep. Hamlett asked if FWP will begin charging the Parks Division for rent for office space in its building. Ms. Williams said it is an issue under the federal aid rules and will be addressed in an upcoming federal audit.
- 03:49:38 Rep. Hamlett asked about property that is purchased by FWP and whether it puts an easement on the property so that it remains in the same use. Ms. Williams said it depends on the funds that were used to buy the property.
- 03:51:00 Rep. Hamlett asked Ms. Williams about the status of West Shore State Park and the final resolution.
- 03:53:04 Ms. Paul commented on the Montana State Library budget cuts and the Montana Natural Heritage Program. She said it is one of the proposed items included in the EQC work plan and hopes that the EQC can look at the important role it plays to the DNRC and other agencies.
- 03:54:05 Sen. Vincent commented on digital libraries and having a third party provide the service.
- 03:54:44 Sen. Vincent asked Mr. Tubbs about filing claims under HB 110 for a pre-1973 water right with one domestic well for home use and stock water. Mr. Tubbs said he will find out.
- 03:55:32 Sen. Vincent asked about the amount that counties in eastern Montana pay for fire assessment fees. Mr. Tubbs said the counties do not pay fire assessment fees.
- 03:56:43 Sen. Vincent asked Mr. Tubbs if the DNRC, in its fire preparedness planning, uses the same assumptions as the U.S. Forest Service.
- 03:58:48 Sen. Vincent commented on the programs that were put in place by Mr. Harrington and his future with the Forestry Division.
- 03:59:31 Sen. Vincent asked Ms. Williams if there is a plan to have legislative input and participation in the Parks in Focus program. Ms. Williams said there is.
- 04:00:30 Sen. Vincent commented on interagency participation in the delisting of grizzly bears.

### **WOLF MANAGEMENT UPDATE**

- 04:02:00 Ken McDonald, administrator, Wildlife Division, FWP, gave a report on the wolf management program. **(Exhibit 9)**
- 04:14:57 Mr. McDonald provided an update on the Echinococcus granulosus tapeworm.

### **Public Comment on the Wolf Management Program**

- 04:19:38 Marc Cooke, Wolves of the Rockies **(Exhibit 10)**
- 04:25:02 Nick Gevock, conservation director, Montana Wildlife Federation

### **Committee Questions and Discussion**          None

### **UPDATE: SAGE GROUSE STEWARDSHIP ACT**

- 04:27:28 Hope Stockwell, research analyst, Legislative Services Division, provided an updated chart on the Sage Grouse Habitat Conservation Fund **(Exhibit 11)** and a copy of the Montana Sage Grouse Habitat Conservation Program 2016 Annual Report. **(Exhibit 12)**
- 04:29:00 Ms. Stockwell discussed the Montana Sage Grouse Stewardship Fund.
- 04:32:13 Ms. Stockwell said that the Council was given a copy of the mitigation crediting and debiting process. **(Exhibit 13)**

04:33:25 Ms. Stockwell said the Council was given a briefing paper on the Habitat Quantification Tool process and compensatory mitigation. (Exhibit 14)

04:33:36 Ms. Stockwell discussed the annual report.

Public Comment None

Committee Questions and Discussion

04:35:07 Rep. White asked Ms. Stockwell about the effect a major wildfire would have on sage grouse habitat calculations. Ms. Stockwell said it is counted toward density disturbance.

04:36:16 Rep. White asked about transferring mitigation credits between zones. Ms. Stockwell said there is a banking program in Wyoming, but deferred the question to the Montana Sage Grouse Habitat Program.

04:39:44 Rep. White referred his questions to Carolyn Sime, Montana Sage Grouse Habitat Program manager.

04:42:25 Rep. White asked Ms. Sime if a project is mitigated for its disturbance during the construction phase of the project or for its long-term impact once the project is complete. Ms. Sime said that each phase of a project is mitigated separately.

04:44:41 Rep. White said he supports a rule that would allow cross jurisdiction for mitigation between different zones.

04:45:02 Mr. Aspenlieder commented on the delay in developing a Habitat Quantification Tool and the impact on industry and development.

04:48:34 Sen. Lang asked Ms. Sime about the credit and the debit ratio.

04:50:59 Sen. Lang asked Ms. Sime if zoning has been completed. Ms. Sime said it has not.

04:51:50 Sen. Lang said anyone can come to the stakeholder meetings to voice their concerns.

04:53:04 Mr. Brenden said that credits and debits are subjective and asked Ms. Sime about landowner liability due to fire.

04:57:46 Sen. Vincent asked if a fire would make it more difficult for an applicant to develop in an area and if the compensatory mitigation would be higher. Ms. Sime said it would.

04:58:26 Sen. Vincent asked Ms. Sime if a landowner would be liable for a lightning strike that burned leks. Ms. Sime said no.

04:59:06 Mr. Aspenlieder asked Ms. Sime if the one-to-one ratio has been determined. Ms. Sime said it has not, but is the on-going work of the stakeholders.

05:00:04 Mr. Aspenlieder asked about landowner liability for an accidentally caused fire and said it needs to be addressed.

05:03:40 Ms. Sime said she will follow up separately with Council members regarding liability.

05:03:54 Ms. Paul commented on incentivizing creation of credits.

05:04:33 Rep. White asked Ms. Sime about fire on private property and the ability of the landowner to do a project after a fire. Ms. Sime said it could have an effect.

05:05:36 Sen. Lang said that a fire in southern Phillips County in the mid-1960's burned through sagebrush, but moved quickly and the sagebrush did not die. He said it is now some of the greatest sage grouse habitat in Montana.

05:07:10 Rep. Hamlett said the Montana Sage Grouse Oversight Team and the U.S. Fish and Wildlife Service need to agree to a time frame for when sage grouse habitat that has been burned is useable again. He said that when the stay is lifted on the lawsuit in federal court a determination will be made for listing the greater sage grouse under the federal Endangered Species Act.

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

05:08:55 Mr. Gevock said that the Montana Wildlife Federation is opposed to anything that threatens Pittman-Robertson funding.

05:11:13 Sen. Vincent said the EQC is receiving handouts on both Pittman-Robertson and Dingell-Johnson Funding. ([Exhibit 15](#))

05:11:49 Sen. Vincent recessed the meeting at 6:24 p.m.

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